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Title 3—

The President

Proclamation 5162 of March 17, 1984

National Energy Education Day, 1984

By the President of the United States of America

A Proclamation

America's vast energy resources are among its greatest assets. Intelligent use of our existing energy supplies together with prudent conservation measures and development of alternative sources of supply will allow this country to maintain its position of world leadership and help ensure a higher standard of living and greater prosperity for all our people.

The shift in Government policy away from artificial controls to an emphasis on free market forces has produced adequate supplies of energy at affordable prices. The impact of this policy shift was clearly demonstrated by deregulation of petroleum prices, which resulted in greater production of energy, more efficient use of energy, and lower energy costs for consumers. We anticipate a similar experience with the move toward a freer market in natural gas.

Fundamental changes in the energy future of the United States and moves toward even greater energy security require that all grade levels of the American educational system prepare our youth for the new demands and challenges that lie ahead. In recognition of this fact and to bring together students, teachers, school officials, and community officials to focus on the need for a greater understanding of energy issues, Congress has, by Senate Joint Resolution 146, requested the President to proclaim March 23, 1984, as "National Energy Education Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 23, 1984, as National Energy Education Day. I call upon educational institutions, Federal agencies, and all Americans to participate in appropriate ceremonies and activities on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-7647
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Presidential Documents

Proclamation 5163 of March 17, 1984

National Organ Donation Awareness Week, 1984

By the President of the United States of America

A Proclamation

One of the most meaningful gifts that one human being can bestow upon another is the precious gift of life. It can be given simply by making arrangements to donate our organs or those of our loved ones after death. Donation of our corneas would give others the gift of sight; donation of our kidneys, hearts, lungs, livers, and pancreata could save the lives of many people who might otherwise die.

On several occasions during the last year, I have asked the American people to be aware of the opportunities to donate their organs, and I have made special pleas for small children in need of liver transplants. The response proved to be overwhelming. Tragically, however, many desperately ill persons, including small children, have died while awaiting a suitable organ.

Ironically, recent surveys indicate that about 93 percent of all Americans have heard about organ transplants, but the need for organs far surpasses the number donated each year. Our organ procurement system is being managed effectively by the private sector but can be improved to meet a larger portion of the need. For these reasons, I supported the establishment of the American Council on Transplantation. The primary goal of this national umbrella organization is to increase the availability of organs for transplantation.

It is appropriate that we as a Nation encourage organ donation and increase public awareness of the need for such donations. By filling out a uniform donor card and carrying it, and by making our wishes of donation known to our families, we may give the gift of life to people who so desperately need solid organs for transplantation, an exceedingly scarce resource.

Americans are a caring and giving people. I have heard from many Americans who have lost their loved ones in tragic accidents, but who have found sblace in knowing that through their loss other lives were saved.

The Congress, by House Joint Resolution 229, has authorized and requested the President to issue a proclamation designating the week beginning April 22, 1984, as "National Organ Donation Awareness Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week of April 22 through April 28, 1984, as National Organ Donation Awareness Week. I urge all citizens, health care professionals, educators, the media, and the public and private organizations concerned with organ donation and transplantation to join me in supporting this humanitarian action.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-7648
Filed 3-19-84; 11:24 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5164 of March 19, 1984

Import Fees on Certain Sugars, Sirups and Molasses

By the President of the United States of America

A Proclamation

By Proclamation 4887 of December 23, 1981, and Proclamation 4940 of May 5, 1982, I imposed, on an emergency basis, import fees on certain sugars, sirups and molasses. These fees were to be effective pending my further action after receipt of the report of findings and recommendations of the United States International Trade Commission after its investigation with respect to this matter pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). The Commission has made its investigation and reported its findings and recommendations to me.

On the basis of the information submitted to me, I find and declare that:

(a) Sugars classified under items 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support operations being conducted by the Department of Agriculture for sugar cane and sugar beets.

(b) The imposition of the import fees hereinafter proclaimed is necessary in order that the entry, or withdrawal from warehouse for consumption, of such sugars will not render or tend to render ineffective, or materially interfere with, the price support operations being conducted by the Department of Agriculture for sugar beets and sugar cane.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by section 22 of the Agricultural Adjustment Act of 1933, as amended, and the statutes of the United States, including section 301 of Title 3 of the United States Code, do hereby proclaim until otherwise superseded by law:

A. Headnote 4 of part 3 of the Appendix to the TSUS is continued in effect and amended, effective 12:01 a.m. Eastern Standard Time of the day following the date of the signing of this proclamation, by changing paragraph (c) to read as follows:

(c)(i) The quarterly adjusted fee provided for in items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent per pound.

(ii) The quarterly adjusted fee provided for in item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar and Cocoa Exchange) expressed in United States cents per pound, in bulk, is less than the applicable market stabilization price: *Provided*, That whenever the average of the daily spot (domestic) price quotations for 10 consecutive market days within any calendar quarter (1) exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent per pound, or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent per pound. The adjusted daily spot (domestic) price quotation for any market day shall be the daily spot (domestic) price quotation for such market day less the amount of the fee for item 956.15 that is in effect on that day. For any market day for which the New York Coffee, Sugar and Cocoa Exchange does not report a daily spot (domestic) price for raw sugar, then the Secretary of Agriculture (the Secretary) shall use such other price as he determines appropriate.

(iii) The market stabilization price that shall be applicable to each fiscal year (October 1–September 30) shall be determined and announced by the Secretary in accordance with this headnote no later than 30 days prior to the beginning of the fiscal year for which such market stabilization price shall be applicable. The market stabilization price shall be equal to the sum of: (1) the price support level for the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average transportation costs; (3) interest costs, if applicable; and (4) 0.2 cent. The adjusted average transportation costs shall be the weighted average cost of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast ports, as determined by the Secretary. Interest costs shall be the amount of interest, as determined or estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs shall only be applicable if a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral.

(iv) Notwithstanding the provisions of paragraph (iii) hereof, if the Secretary determines that there is a significant change in any one or more of the elements comprising the market stabilization price during the fiscal year, the Secretary shall adjust the market stabilization price within the fiscal year to reflect such change. The Secretary shall announce any such adjusted market stabilization price and file notice thereof with the **Federal Register**. This adjusted market stabilization price will become effective the first calendar quarter following its announcement or, if the Secretary announced it less than 30 days before the beginning of a new calendar quarter, then it will become effective the second calendar quarter following its announcement. Any adjusted market stabilization price, once effective, shall remain in effect through the remainder of the fiscal year unless it is adjusted further in accordance with this paragraph.

(v) The Secretary shall determine the amount of the quarterly fees in accordance with this headnote and shall announce such fees not later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary shall certify the amount of such fees to the Commissioner of Customs and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. The Secretary shall determine and announce any adjustment in the fees made within a calendar quarter in accordance with the proviso of paragraph (ii) hereof, shall certify such adjusted fees to the Commissioner of Customs, and shall file notice thereof with the **Federal Register** within 3 market days of the fulfillment of that proviso.

(vi) If an adjustment is made in the fee in accordance with the proviso of paragraph (ii) hereof, any subsequent adjustment made within that quarter shall only be made on the basis of the average spot price for any 10 consecutive market day period following the effective date of the immediately preceding fee adjustment. No adjustment shall be made in any fee in accordance with the proviso of paragraph (ii) hereof during the last fifteen market days of a calendar quarter.

(vii) Any adjustment made in a fee during a quarter in accordance with the proviso of paragraph (ii) hereof shall be effective only with respect to sugar entered or withdrawn from warehouse for consumption after 12:01 a.m. (local time at point of entry) on the day following the filing of notice thereof with the **Federal Register**: *Provided*, That such adjustment in the fee shall not apply to sugar exported (as defined by Customs in accordance with 19 CFR 152.1) on a through bill of lading to the United States from the country of origin before such time. The exemption contained in the preceding proviso shall apply regardless of whether the adjustment in the fee is upward or downward.

B. Items 956.05, 956.15 and 957.15 of part 3 of the Appendix to the TSUS are continued in effect and the "Rates of Duty (Section 22 Fees)" are amended to read as follows:

Item	Articles	Rates of Duty (Section 22 Fees)
	Sugars, sirups and molasses derived from sugar cane or sugar beets, except those entered pursuant to a license issued by the Secretary of Agriculture in accordance with headnote 4(a):	
	Principally of crystalline structure or in dry amorphous form, provided for in item 155.20, part 10A, schedule 1:	
956.05	Not to be further refined or improved in quality	An amount determined and adjusted in accordance with headnote 4(c), but not in excess of 50% ad val.
956.15	To be further refined or improved in quality	An amount determined and adjusted in accordance with headnote 4(c), but not in excess of 50% ad val.

Item	Articles	Rates of Duty (Section 22 Fees)
957.15	Not principally of crystalline structure and not in dry amorphous form, containing soluble non-sugar solids (excluding any foreign substance that may have been added or developed in the product) equal to 6% or less by weight of the total soluble solids, provided for in item 155.30, part 10A, schedule 1.	An amount determined and adjusted in accordance with headnote 4(c) per pound of total sugars, but not in excess of 50% ad val.

C. The Secretary of Agriculture, in consultation with other appropriate agencies, shall review the fee system established by this Proclamation on a quarterly basis and shall submit to me any recommendations for any changes determined to be necessary or appropriate.

D. The provisions of this proclamation shall terminate upon the filing of a notice in the **Federal Register** by the Secretary of Agriculture that the Department of Agriculture is no longer conducting a price support program for sugar beets and sugar cane.

E. The provisions of Proclamation 4940 of May 5, 1982, are hereby terminated, except that the import fees on items 956.15, 956.05 and 957.15 presently in effect and the market stabilization price determined and announced by the Secretary of Agriculture for fiscal year 1984 (October 1, 1983–September 30, 1984) shall remain in effect, unless adjusted by the Secretary of Agriculture in accordance with paragraph (c) of Headnote 4 of part 3 of the Appendix to the TSUS, as modified herein.

F. This proclamation shall be effective as of 12:01 a.m. Eastern Standard Time on the day following the date of its signing, and shall apply to articles entered, or withdrawn from warehouse for consumption, on or after such effective date.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and general officers of the Department to revise the title of the Director, Office of Grants and Programs Systems to the Administrator, Office of Grants and Program Systems, to delegate to the Assistant Secretary for Science and Education and the Administrator, Office of Grants and Program Systems responsibilities under the Small Business Innovation Development Act of 1982, and to clarify the authority of the Administrator to administer the competitive grants program.

EFFECTIVE DATE: March 21, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Acting Assistant General Counsel, Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C., (202) 447–6035.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are revised to reflect the change in the title of the Director, Office of Grants and Programs Systems to the Administrator, Office of Grants and Program Systems. Although the correct title of the Office is the Office of Grants and Program Systems, the delegations to the Director inadvertently used the word "Programs." Also, it has been determined that the head of that Office should be an Administrator rather than a Director. This document makes those changes. In addition, the delegations of authority to the Assistant Secretary for Science and Education and the Administrator, Office of Grants and Program Systems are revised to reflect the assignment of responsibility to administer the Small Business Innovation Development Act of 1982. In addition, the Administrator, Office of Grants and Program Systems is delegated the authority to enter into grants pursuant to 7 U.S.C. 3318 to carry out the Department's Small Business Innovation Research Program. Further, the delegations of authority to the Administrators, Office of Grants and Program Systems and Cooperative State Research Service are revised to clarify the authority of the Administrator, Office of Grants and Program Systems to administer the competitive grants program authorized under 7 U.S.C. 450i.

This rule relates to internal management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise stated.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.30 is amended by adding a new paragraph (a)(77) to read as follows:

§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.

* * * * *

(a) * * *

(77) Administer the Small Business Innovation Development Act of 1982 for the Department of Agriculture (15 U.S.C. 638 (e)–(k)).

* * * * *

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

3. Section 2.107 is amended by revising paragraph (a) (3) to read as follows:

§ 2.107 Administrator, Cooperative State Research Service.

(a) * * *

(3) Administer a program of special grants (1) to carry out research to facilitate or expand promising breakthroughs in areas of food and agricultural sciences, and (2) to facilitate or expand ongoing State-Federal food and agricultural research programs; and administer a program of facilities grants to renovate and refurbish research spaces (7 U.S.C. 450i(c), (d)).

* * * * *

Section 2.110 is amended by revising the heading, the introductory paragraph, and paragraph (a)(1), by redesignating paragraphs (a)(4) and (a)(5) as (a)(6) and (a)(7) respectively, and by adding new paragraphs (a(4) and (a)(5) to read as follows:

§ 2.110 Delegations of authority to the Administrator, Office of Grants and Program Systems.

(a) *Delegations.* Pursuant to § 2.30(a), subject to reservations in § 2.30a, the following delegations of authority are made by the Assistant Secretary for Science and Education to the

Administrator, Office of Grants and Program Systems:

(1) Administer a program of competitive grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations and individuals for research to further the programs of the Department of Agriculture (7 U.S.C. 450i(b)).

* * * * *

(4) Administer the Small Business Innovation Development Act of 1982 for the Department of Agriculture (15 U.S.C. 638(e)(k)).

(5) Enter into grants for the purpose of carrying out the Department's Small Business Innovation Research Program (7 U.S.C. 3318).

* * * * *

For Subpart C:

John R. Block,

Secretary of Agriculture.

For Subpart N.

Orville G. Bentley,

Assistant Secretary for Science and Education.

March 15, 1984.

[FR Doc. 84-7329 Filed 3-20-84; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Parts 56, 59, and 70

Increase in Fees and Charges; Poultry, Rabbit, and Egg Grading and Egg Products Inspection; Interim Rule Made Final

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The interim rule with request for comments published January 19, 1984 (49 FR 2223) which increased fees and charges for poultry, rabbit, and egg grading and egg products inspection is made final. These changes are necessary to cover increased costs associated with the programs. This document finalizes charges for the Federal voluntary egg, poultry, and rabbit grading; and the overtime rate for Federal mandatory egg products inspection as revised in the interim final rule.

EFFECTIVE DATE: March 21, 1984.

FOR FURTHER INFORMATION CONTACT: D. M. Holbrook, (202) 447-3506.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291, and has been classified "nonmajor" as it does not meet the criteria contained therein for major regulatory actions. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because: (i) The fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services; and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e. the cost to users increases in proportion to increased volume.

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing Federal voluntary egg, poultry, and rabbit grading. The Egg Products Inspection Act requires that the cost for overtime inspection be borne by the user of the service. The fees for these services are determined by the grader's or inspector's salary and fringe, cost of supervision, travel, and other overhead and administrative costs.

Last year's fee increase was based primarily on a 4.0-percent salary increase and a loss in appropriated funding used to offset a portion of overhead costs. Since then, program costs have continued to rise.

Federal employees received in January 1984 a 3.5-percent increase in conformity with the Federal Pay Comparability Act of 1970. Likewise, payments for workmen's compensation and medicare have increased 0.5 percent and approximately 0.1 percent, respectively.

Costs of supervision and other overhead and administrative costs have also increased for the same reasons. They are covered by an administrative service charge assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1982, these rates were established at $0.024 per case of shell eggs and $0.00024 per pound of poultry. Through the interim rule, these rates have been changed to $0.025 per case of shell eggs and $0.00025 per pound of poultry. Also, these charges were set at a minimum of $120 and a maximum of $1,200 per billing period for each official plant in 1982. These figures have been changed to $125 and $1,250, respectively.

Due to the situtations described above, the hourly rate for mandatory overtime egg products inspection service has been increased from $16.56 to $17.20. Administrative charges for the resident voluntary rabbit grading and nonresident voluntary continuous poultry and egg grading programs will continue to be based on 25 percent of the grader's total salary costs. The minimum charge per billing period for these programs has been increased from $120 to $125 per official plant.

Overall, fees and charges have been increased about 3.5 percent.

Because increased revenues were needed to cover costs of services, an interim final rule published January 19, 1984, with an effective date of February 1, 1984, was necessary. The interim rule invited comments until February 15, 1984. However, no comments were received during the comment period. And, since this document does not alter the regulations which have been in effect since February 1, 1984, there is no reason to postpone its effective date for 30 days. Thus, good cause is found to make this document effective upon publication.

Information Collection Requirements and Recordkeeping

Information collection requirements and recordkeeping provisions contained in 7 CFR Parts 56, 59, and 70 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35. As a result, 7 CFR Part 56 has been assigned OMB No. 0581-0128; 7 CFR Part 59 has been assigned OMB Nos. 0581-0113 and 0581-0114; and 7 CFR Part 70 has been assigned OMB No. 0581-0127.

List of Subjects

7 CFR Part 56

Shell eggs, Voluntary grading service.

7 CFR Part 59

Shell eggs, Egg products, Mandatory inspection service.

7 CFR Part 70

Poultry, Poultry products, Rabbits products, Voluntary grading service.

Accordingly, for reasons and purposes stated above and in the interim final rule published January 19, 1984 (49 FR 2223), the amendments made to §§ 56.52 and 56.54 of Part 56; § 59.126 of Part 59; and §§ 70.76 and 70.77 of Part 70; Title 7, Code of Federal Regulations, by the said interim rule are hereby made final, without any change.

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*); Egg Products Inspection Act (21 U.S.C. 1031-1056))

Done at Washington, D.C. on March 14, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-7528 Filed 3-20-84; 8:45 am]

BILLING CODE 3410-02-M

Federal Crop Insurance Corporation

7 CFR Part 432

Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final a revision and reissuance of the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1983 and succeeding crop years. The revision and reissuance of these regulations was implemented by the Federal Crop Insurance Corporation (FCIC) on an interim basis to provide insureds with sufficient time to consider changes being made in the policy for insuring corn and to comply with the regulations with respect to placing these changes on file in a timely manner.

EFFECTIVE DATE: March 21, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On December 21, 1982, FCIC published an interim rule in the **Federal Register** at 47 FR 56827, revising and reissuing the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1983 and succeeding crop years to: (1) Include a provision to require the insured to file a notice of probable loss when the crop is damaged to the extent that a loss is probable and to leave intact a representative sample of the unharvested crop; (2) prescribe the interest rate to be charged on any unpaid premium balances; (3) add a provision to provide a replanting payment limited to the actual cost of replanting such payment to be considered as an indemnity payment deducted from any additional loss; (4) define FCIC's liability in cases of loss due to fire when the insured has other insurance against fire; (5) delete a section of the regulations requiring posting of indemnities paid within a county; (6) eliminate the provision providing reduction in guarantee for any unharvested acreage; (7) eliminate the provision for substitute crops; (8) provide improved coverage in cases where the producer elects not to have FCIC fire and hail coverage and buys an equal amount of such coverage from private companies; (9) provide a policy that is written in clearer, easier to understand language; and (10) include a revised multi-crop application form to replace the former single-crop application. The intended effect of this rule was to revise the system of reporting damage or loss to an insured crop, improve the debt management practices of FCIC, rewrite the policy in clearer language, remove certain restrictions in the policy, and, reduce the time and paperwork demands on the applicant, in addition to the review of these regulations in compliance with the provisions of Secretary's Memorandum No. 1512-1 (June 11, 1981) now Departmental Regulation 1512-1 (December 15, 1983).

In accordance with the provisions of these regulations for insuring corn, any amendments to these regulations must have been placed on file 15 days prior to the cancellation date in order to provide sufficient time for the policyholder to consider the changes being made. There would not have been sufficient time for notice and public comment prior to the implementation of this rule and still comply with the regulations with respect to placing this rule on file in the required time to be effective for the 1983 crop year.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3051, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Departmental Regulation 1512-1. The sunset review date established for these regulations is December 1, 1987.

List of Subjects in 7 CFR Part 432

Crop Insurance, Corn.

Final rule

Accordingly, the Interim Rule, published in the **Federal Register** of December 21, 1982, on page 56827, is hereby adopted as final.

Done in Washington, D.C., on January 25, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

March 13, 1984.

[FR Doc. 84-7567 Filed 3-20-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 454, Amdt. 2]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to the fresh market to 295,000 cartons during the period March 11-17, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: March 11-17, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of

lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met by telephone on March 14, 1984, to consider the current and prospective conditions of supply and demand and recommended and increase in the quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is strong.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the Act, and it relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.754 Lemon Regulation 454 is revised to read as follows:

§ 910.754 Lemon Regulation 454.

The quantity of lemons grown in California and Arizona which may be handled during the period March 11, 1984, through March 17, 1984 is established at 295,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 16, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-7585 Filed 3-20-84; 8:45 am]

BILLING CODE 3410-02-M

VETERANS ADMINISTRATION

38 CFR Part 17

Treatment of Veterans in Noncontiguous States, Territories and Possessions

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is amending its medical regulations (38 CFR Part 17) to extend the authority for treating veterans at VA expense in non-VA facilities outside of the United States as authorized by Public Law 98–105. This amendment will permit continuation of a benefit already available to eligible veterans.

EFFECTIVE DATE: March 14, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein, Chief, Policies and Procedures Division (136F), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389–3785.

SUPPLEMENTARY INFORMATION: Public Law 98–105 extended from September 30, 1983, to September 30, 1984, the authority for treating veterans in Puerto Rico, the Virgin Islands and other Territories and Possessions through contract services in non-VA facilities.

The Administrator has determined that this amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; it will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The VA finds that advance publication for public notice and comments is unnecessary and not required. These changes are primarily date changes reflecting a one-year statutory extension to an already existing benefit. The regulation changes will not have independent effect. Therefore, the changes come within exceptions to the general VA policy of prior publication for public notice and comment, contained in 38 CFR 1.12. Accordingly, the changes are now published as final regulations.

Since a proposed rule will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, these changes are not subject to that act. In any case, the changes will not have a significant economic impact on a substantial number of small entities because they concern the entitlement of individual veterans and their beneficiaries, and do not have independent effect.

(Catalog of Federal Domestic Assistance Numbers: 64.009 and 64.011)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: March 14, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

§ 17.506 [Amended]

In 38 CFR Part 17, Medical, § 17.50b, paragraph (e) is amended by changing the year on the date in the last sentence of the paragraph to "1984"; and by adding to the end of the public laws listed in the cite following the paragraph the public law "Pub. L. 98–105".

(38 U.S.C. 210(c))

[FR Doc. 84-7548 Filed 3-20-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1 FRL 2549-6]

Approval and Promulgation of Implementation Plans; Connecticut; 1982 Ozone and Carbon Monoxide Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan revisions submitted by the State of Connecticut. These revisions will reduce emissions from stationary and mobile sources. The intended effect of these actions is to control emissions of volatile organic compounds, oxides of nitrogen and carbon monoxide in order to attain the National Ambient Air Quality Standards

for ozone and carbon monoxide as required under Part D of the Clean Air Act.

EFFECTIVE DATE: April 20, 1984.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2313, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW, Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, D.C. 20408; and the Connecticut Department of Environmental Protection (DEP), Air Compliance Unit, 165 Capitol Avenue, Hartford, CT 06115.

FOR FURTHER INFORMATION CONTACT: Susan S. Hager, (617) 223–4873.

SUPPLEMENTARY INFORMATION: On February 3, 1983 (48 FR 5054) EPA published a Notice of Proposed Rulemaking (NPR) for the Connecticut 1982 Ozone and Carbon Monoxide State Implementation Plan (SIP) revisions. The NPR proposed to disapprove certain elements of the revisions. Based on commitments outlined in a letter dated January 7, 1983 from Stanley Pac, Commissioner of the DEP, EPA reconsidered its disapproval and on April 12, 1983 (48 FR 15658) published a second NPR which proposed full approval of the Connecticut 1982 SIP revisions. In response to EPA testimony presented to DEP during the State's public comment period and to EPA comments in the NPRs, Connecticut submitted on December 10, 1982, January 7 and 21, 1983, May 19, 1983, June 15, 1983, September 19, 1983, and December 15, 1983 final SIP revisions that, with minor exceptions described in this notice, correct deficiencies cited by EPA. Sections of the final 1982 SIP revisions which were changed from the proposal are explained in detail in this Notice. The rationale for EPA's actions on revisions which were not changed was explained in the NPRs and will not be restated here.

EPA received comments on the NPRs from four government agencies. A summary of each comment and EPA's response appears in the section of this Notice to which the comment applies. In addition to comments on specific sections of this Notice, the Connecticut Department of Transportation submitted a general comment critical of the first NPR's proposed disapproval. The publication of the second NPR proposing approval resolved this comment. After reviewing the final Connecticut 1982 SIP revisions and considering all comments received, EPA is approving the following:

1. The mobile, point, and area source emissions inventories for volatile organic compounds and oxides of nitrogen.

2. The hydrocarbon emissions growth margin.

3. The data base and attainment demonstration for ozone.

4. A schedule to adopt controls for gasoline tank trucks with a final compliance date of June 1985.

5. A schedule to adopt controls for external floating roof tanks with a final compliance date of November 1984.

6. Regulation 22a–174–20(ee) which limits emissions from major nonCTG sources of VOCs and the supporting narrative which commits to submitting each RACT determination to EPA for approval as a SIP revision.

7. The Connecticut Inspection and Maintenance Program and Regulations 22a–174–27 and 14–164c.

8. The transportation plan review portions of the SIP revisions and emission reduction goals for transportation measures.

9. The Reasonable Further Progress line for VOC emissions.

10. The carbon monoxide air quality data base.

11. The carbon monoxide attainment demonstration and Reasonable Further Progress line.

12. The resource commitments to implement the Connecticut 1982 SIP revisions.

13. The public participation and intergovernmental consultation portions of the plan revisions.

In the April 12, 1983 NPR, EPA also proposed approval of Regulation 19–508–20(*1*) limiting emissions from solvent metal cleaners and supporting narrative describing an educational program for automobile repair facilities. Final action on these revisions was published on February 1, 1984 at 49 FR 3988 and allowed EPA to rescind the moratorium on construction and modification of major VOC sources. These revisions were separated from other elements of the 1982 SIP revisions in order to expedite final action and rescind the moratorium as quickly as possible.

EPA's actions on the State submittals are discussed according to the following outline:

I. Ozone
A. Emissions Inventories
B. Air Quality Data
C. Attainment Demonstration
D. Stationary Source Controls
E. Inspection and Maintenance
F. Transportation Control Measures
G. Reasonable Further Progress

II. Carbon Monoxide
A. Air Quality Data
B. Attainment Demonstration and Reasonable Further Progress
C. Transportation Control Measures

III. Additional Requirements
A. Resources
B. Public Participation and Intergovernmental Consultation Documentation

IV. Final Action

I. Ozone

Connecticut is divided into four Air Quality Control Regions, but uses its State boundaries to define the analysis area for ozone. The final Connecticut 1982 State Implementation Plan revisions (Connecticut 1982 SIP revisions) combine a mix of strategies—stationary and mobile source—to achieve the necesary reductions. The Connecticut SIP is an "accommodative" SIP, which means that it provides for a VOC reduction greater than that needed to achieve ozone standards by 1987. This planned margin for growth will allow new sources to construct or existing sources to expand without being required to "offset" the new emissions by reducing emissions from an existing source. Offsets are required under New Source Review regulations in nonattainment areas where emission reductions provided for by the SIP are just adequate to attain standards.

A. Emissions Inventories

The NPR stated that the mobile source inventory was consistent with EPA guidance but noted deficiencies related to the point and area stationary source inventories. The proposed submittal had not provided documentation on how emissions data for point sources were derived. Connecticut has now added sample calculations to its stationary point source VOC inventory. Although some of the formulas were not from the most recent EPA emission inventory guidance, the difference between total emissions using the older factors as compared with current emission factors is not considered significant.

A second issue raised by the NPR was whether Connecticut underestimated emissions of area sources in several source categories. For two categories, cold cleaner degreasers and leaks from gasoline tank trucks, the State revised its emission estimates to account for sources omitted from the original inventory. In the third category, gasoline marketing, EPA has accepted the State's original estimates. Our acceptance is based on information from DEP that all sources were considered in the gasoline sales projection, the critical parameter used to predict emissions from this source category. The NPR proposed

approval of the emissions growth margin contingent upon DEP resolving questions on the area source inventory.

Changes to Connecticut's area source inventory do result in a slight increase in the growth margin, however, a more significant increase results from Connecticut's revised attainment demonstration. As discussed in Section I.C., Connecticut's new demonstration shows that a smaller VOC reduction is needed than was estimated by the analysis done as part of the 1979 SIP revisions. This smaller reduction target provides a larger margin for emissions growth than was presented in the proposal.

The New York Department of Environmental Conservation submitted comments on this section of the NPR. Its concern was that Connecticut had used 1976 and 1979 base years rather than a 1980 base year as required by EPA policy. In the proposal Connecticut used 1975 through 1977 ambient air quality data from its 1979 plan revisions to make an attainment demonstration and a 1980 base year for the emissions inventory. To reconcile these different base years, Connecticut used the current 1980 emissions data, but adjusted back to 1976 by adding and subtracting emissions to account for growth, business closings, and other new information. In the final submission Connecticut uses 1980–1982 ambient data, thus no adjustments to the 1980 emissions inventory were necessary. The New York DEC's comment is, therefore, resolved.

Final Action: EPA is approving the:

(1) Mobile source inventory
(2) Point source inventory
(3) Area source inventory
(4) Emissions growth margin

B. Air Quality Data

As was discussed in the NPR, Connecticut met the requirement to present current ozone-related data. No changes were made in the final, and no comments were received on this portion of the Connecticut 1982 SIP revisions.

Final Action: EPA is approving the ozone-related air quality data base.

C. Attainment Demonstration

The attainment demonstration prepared by the Connecticut DEP is a statewide analysis, using the worst case design value to determine a percentage VOC emission reduction to be applied in both urban and nonurban areas of the State. While a portion of Connecticut is part of the New York-New Jersey-Connecticut Interstate Air Quality Control Region (AQCR), Connecticut does not consider this area part of the New York metropolitan area for ozone planning purposes.

Consistent with EPA criteria for Approval of 1979 State Implementation Plan Revisions (43 FR 21673), EPA concurs with this position. EPA recommends that the urban area and all fringe areas of development be used for ozone control strategy planning and no part of Connecticut is within the New York urban area as defined by the U.S. Bureau of the Census. Further, we do not believe that the Southwestern portion of Connecticut can be considered a fringe development area because the population and VOC emission densities are significantly lower than those in the New York area, and emission source characteristics are also quite different. Additional information on this subject is in the Technical Support Document.

The NPR proposed approval of Connecticut's attainment demonstration contingent upon the submittal of additional information. The proposed 1982 SIP revisions presented the Standard EKMA analysis done as part of the 1979 plan revisions. The NPR cited EPA's requirement for Connecticut to analyze the most recent three years of ambient data to determine how the more current data could affect the plan and asked that the final revisions correct this deficiency.

To address this comment, DEP chose to perform a new Standard EKMA analysis using ambient data from 1980–1982. The results of the modeling are as follows:

OZONE SUMMARY TABLE

Nonattainment area	Design Value (ppm)	Receptor Location	Percent reduction required	Attainment year
Connecticut, statewide	.140	Stratford, CT	26	1987

In preparing the analysis, DEP looked at only those days which had violations attributable to Connecticut emission sources. EPA policy requires that the fourth highest percent reduction requirement in a three year period be used for the design value, thus assuring that, on average, standards will only be exceeded once per year. However, since the Metropolitan New York area had also used the Stratford monitor to establish its design value, Connecticut has used the design value analyzed as requiring the greatest reduction requirement of all days examined. By using the highest, rather than the fourth highest value, the Stratford area can be expected to have one standard exceedence in 1987 caused by emissions from the New York area and no exceedences caused by Connecticut emissions.

Since the DEP's analysis examines only monitoring sites within Connecticut, EPA, additionally, analyzed sites in Massachusetts, downwind of Connecticut. EPA's analysis shows no concentrations which would result in a greater reduction requirement than that found at the Stratford site.

The New York State Department of Environmental Conservation (DEC) made three comments on this section of the NPR. The first was that Connecticut should use the latest available ambient data. In the final submission, Connecticut did use data from 1980 through 1982 which was the most current data available at the time the analysis was prepared.

DEC's second comment was that Connecticut should use City-Specific EKMA as required by EPA policy. DEC acknowledged that, as discussed in the NPR, Connecticut's arguments against the use of City-Specific EKMA may be valid, but felt that since all other states in the New York-New Jersey-Connecticut Interstate Air Quality Control Region (AQCR) used City-Specific EKMA, Connecticut should also. EPA is approving Connecticut's analysis because Standard EKMA gives more conservative results than does City-Specific EKMA, and therefore, Connecticut has demonstrated to EPA's satisfaction that standard attainment is assured.

DEC's third comment was that the Connecticut portion of the New York-New Jersey-Connecticut Interstate AQCR should be required to reduce emissions by 60%, which is the percent reduction determined necessary to eliminate ozone violations caused by the New York City urban area. As discussed above, this comment is not applicable to Connecticut SIP. However, the State is pursuing additional state wide VOC controls and has committed to study and adopt measures which are later determined to be reasonable. EPA is approving the attainment demonstration as submitted, and will also encourage the State to adopt new control strategies as they become reasonable to implement.

Final Action: EPA is approving the ozone attainment demonstration.

D. Stationary Source Controls

The NPR proposed action on three categories of stationary source controls: (1) Sources covered by Group I Control Techniques Guidelines (CTG); (2) sources covered by Group II CTG's; and (3) all remaining major sources of volatile organic compounds (VOC).

1. EPA proposed approval of revisions to Connecticut Regulation 19–508–20(1) controlling solvent metal cleaners despite its exemption of cold cleaners at automobile repair facilities. To compensate for this exemption Connecticut revised the narrative of the SIP to provide for an educational program at such facilities. EPA separated this portion of the NPR and took final action on February 1, 1984 (49 FR 3988) to approve Connecticut SIP revisions addressing solvent metal cleaners.

That approval also allowed EPA to rescind the moratorium on growth or modification of major stationary sources in Connecticut which had been in effect since October 1982.

2. Connecticut has EPA-approved regulations for all but two applicable categories of the Group II CTG's. For the two remaining categories, gasoline tank trucks and external floating roof tanks, Connecticut has agreed to meet the schedule approved below for submitting final regulations.

3. To fulfill the 1982 SIP policy requirement to control non-CTG sources emitting 100 tons per year (TPY) or more of VOC's Connecticut submitted Regulation 19–508–20(ee). This "generic" regulation requires that Reasonably Available Control Technology (RACT) be individually assessed and applied to each major source not covered by a CTG. Since the regulation does not establish federally enforceable limitations, Connecticut revised the narrative portion of the SIP to state that source-specific RACT determinations will be submitted to EPA for approval as SIP revisions. Emission limitations on major sources of VOC's will, therefore, be federally enforceable.

Connecticut also submitted revisions to its generic VOC bubble regulation (19–508–20(cc)) which would allow additional sources to use a bubble to come into compliance with SIP requirements. The State also revised Regulations 19–508–20(aa), (bb) and (dd). Since we did not discuss these revisions in the NPRs, and therefore the public has not had the opportunity to comment on these revisions, we intend to publish a separate NPR describing these changes before taking final action.

Final Action: 1. EPA is approving the following schedule for submitting regulations to control gasoline tank trucks and external floating roof tanks:

Action	Date
Conduct a public hearing	Mar. 1983.
Adopt regulations	May 1984.
Voluntary compliance for gasoline tank trucks	June 1984.
Final compliance for gasoline tank trucks	June 1985.
Final compliance for external floating roof tanks.	Nov. 1984.

2. EPA is approving Regulation 19–508–20(ee) controlling major nonCTG sources of VOCs based on the supporting narrative, which interprets the regulation's use of the term "RACT" as the level of technology submitted and approved as RACT by EPA for individual sources subject to the regulation.

E. Inspection and Maintenance

Although Connecticut has been successfully operating an Inspection and Maintenance (I&M) program since January 1, 1983, at the time the NPR was published EPA had not received adequate documentation for the program. With the final SIP revisions, Connecticut submitted:

1. Department of Motor Vehicle (DMV) Regulation 14–164c which prescribes inspection test procedures, fleet inspection station licensing requirements, recordkeeping and record submittal requirements, and other official rules and procedures;

2. DEP Regulation 19–508–27 which sets forth idle emission standards for each model year required to be tested;

3. DMV's Fleet Emissions Inspection Program Handbook which describes emission analyzer specifications and quality control audit and surveillance procedures as well as providing information to support the DMV's regulation;

4. The memorandum of agreement between the DMV and the DEP outlining each agency's program responsibilities, and the contract with Hamilton Test Systems specifying how the centralized I&M program will be operated.

Additionally, the final SIP revisions contained sufficient data for EPA to calculate the effectiveness of the Connecticut I&M program. For both VOCs and carbon monoxide the program will reduce emissions in 1987 by more than that required by EPA policy.

Final Action: EPA is approving the Connecticut I&M program including DEP Regulation 19–508–27 and DMV Regulation 14–164c.

F. Transportation Measures

The NPR cited four areas of the Connecticut 1982 SIP revisions which did not fully meet EPA's policy requirements for transportation measures. The first was that the SIP revisions did not show emission reductions attributable to individual "reasonably available control measures" (RACMs) or packages of RACMs. The second area is closely related to the first and concerns the lack of commitment and schedules to support individual RACM projects. The State's position is that it has committed to achieve an emissions reduction goal of 1425 kg/day in 1987 with transportation measures but needs flexibility in choosing which projects will be implemented to meet the goal. This need for flexibility stems from the alleged difficulty in predicting when projects will be ready for construction, whether funding will be available, and whether all necessary approvals will be given.

The Federal Highway Administration (FHWA) commented specifically on this issue by stating it agreed that RACM measures should be explicitly identified. FHWA also noted that the reductions from transportation measures were not a major strategy of the Connecticut 1982 SIP revisions and therefore could not be viewed as critical to achieving the overall reductions needed to attain standards.

EPA believes that the adoption of individual projects and measures is preferable to the adoption of a total emissions reduction goal, but also recognizes that reductions from transportation measures are small when compared with the total reductions adopted in the plan. (Reductions from transportation measures account for approximately 1% of the total adopted emission reduction.) Although the Connecticut 1982 SIP revisions do not fully comply with EPA policy requirements to adopt individual projects, EPA does not believe that this is a serious enough deficiency to warrant disapproval. Without the adoption of projects, it follows that the plan revisions cannot include commitments and schedules for individual RACM project. However, EPA expects the State to report progress in RACM implementation as part of the annual RFP Report.

A third area cited as deficient was the portion of the plan revisions describing how transportation projects would be monitored to determine if predicted emission reductions were being achieved. The final SIP revisions correct the deficiency by describing the

methodology used by the Connecticut Department of Transportation to assess changes in vehicle miles of travel and in emissions statewide, and by describing how the I&M and the rideshare programs will be monitored.

In the fourth area, conformity provisions, EPA asked for clarification of plan, program, and project level conformity procedures. The State complied by assuring an annual conformity statement will be made each year showing that the emission reduction targets are being met and that RACM projects are advancing toward implementation.

Comments received from FHWA were critical of the conformity provisions because "nonconformity restrictions proposed by the State go beyond those required by the federal level." Specifically FHWA feels that the Indirect Source Review, which applies only to highway projects, should not be retained. FHWA believes that the National Environmental Policy Act (NEPA) process reinforces the SIP without the need for additional regulation. While EPA agrees that the Connecticut provisions are more comprehensive than the requirements issued jointly by FHWA and the Urban Mass Transportation Administration, and endorsed in principle by EPA, EPA does not agree that the Connecticut SIP revisions should be amended. The revisions, as written, assure that transportation plans, programs, and projects will be consistent with the SIP and thus meet EPA policy requirements.

EPA takes no position on the issue of whether the Indirect Source Review should be retained. The State must have a process to determine that transportation projects will conform to the SIP, but need not use an Indirect Source Review regulation to accomplish this objective. The State has chosen this approach; it meets EPA policy requirements, and is approvable.

Despite these comments, FHWA agreed with EPA's general conclusion to accept the transportation element of the SIP. The Urban Mass Transportation Administration also expressed support of EPA approval, stating that the proposed actions were reasonable and appropriate.

Final Action: EPA is approving the transportation plan review portions of the 1982 Connecticut SIP revisions and the emission reductions goals for transportation measures.

G. Reasonable Further Progress

The proposed revisions showed that the State would attain standards by 1987 with a margin of growth for new or modified sources of VOC emissions. As explained in the NPR, EPA proposed acceptance of the Reasonable Further Progress line but questioned whether the emissions growth margin had been accurately calculated. EPA's questions were resolved (See Section I. A. "Emissions Inventory," of this Notice) and EPA can now approve the Reasonable Further Progress line including the full margin for growth.

Final Action: EPA is approving the Reasonable Further Progress demonstration line for VOC emission.

II. Carbon Monoxide

Connecticut has submitted plan revisions which demonstrate attainment of carbon monoxide standards statewide by 1987. Additionally, the Indirect Source Review provides assurance that new transportation projects will not cause future violations.

A. Air Quality Data

As discussed in the NPR, Connecticut submitted ambient air quality data for each of its nine carbon monoxide monitoring sites covering the years 1978–1980. The data shows that the highest second highest eight hour concentration was 27.5 ppm recorded at Stanford in 1978. No comments were received on this section.

Final Action: EPA is approving the carbon monoxide air quality data base.

B. Attainment Demonstration and Reasonable Further Progress

Connecticut used a screening model to evaluate the likelihood that carbon monoxide standards would be violated at intersections throughout the State. Intersections which showed the greatest potential for violations were modeled again, using a refined dispersion model, Caline 3, modified to account for emissions from motor vehicles as they idle, Mobile 2 emission factors, and the Connecticut Department of Transportation's queuing model. Based on this analysis, Connecticut has shown that standards will be attained statewide by 1987.

Further, Connecticut prepared Reasonable Further Progress (RFP) lines for each monitoring site with a recorded violation. A rollback model, one which assumes that changes in ambient levels of CO are directly proportional to changes in CO emissions, was used for those sites which had low violations or no recent violations, had demonstrable emission reductions, and for which area specific controls were not considered necessary. Caline 3 was used for locations which did not meet these criteria. All monitoring sites were demonstrated to attain CO standards by 1987.

Final Action: EPA is approving the CO attainment demonstration and Reasonable Further Progress lines.

C. Transportation Control Measures

Transportation measures adopted by Connecticut to reduce VOC emissions will also reduce CO levels at hotspots. The most significant of these measures are the Inspection and Maintenance program, traffic flow improvements, and right-turn-on-red. No additional site specific measures were found to be necessary to attain CO standards by 1987.

Final Action: EPA is approving transportation measures as discussed under Section II.F., "Transportation Measures," of this Notice, and is taking no separate action here.

III. Additional Requirements

A. Resource Commitments

In order to assure that the control strategies included in the 1982 attainment plan are implemented, EPA requested that the State show financial support which will be associated with the adopted measures. Connecticut has included estimates for the implementation costs of each strategy and has agreed to revise its section 105 Air Program Grant to reflect SIP commitments.

Final Action: EPA is approving the State's commitment of resources for the Connecticut 1982 SIP revisions.

B. Public Participation and Intergovernmental Consultation Documentation

EPA asked that this section of the proposed revisions be expanded to describe fully the Connecticut program and activities. The State complied by revising the "Public Participation" portion of the SIP. The final revisions discuss various State activities including its advisory committee, participation efforts made by regional agencies, its work program, publicity and educational efforts, and how the Department will improve its public comment mechanisms.

Final Action: EPA is approving the public participation and intergovernmental consultation portions of the Connecticut 1982 SIP revisions.

IV. Final Action

EPA is approving the Connecticut 1982 State Implementation Plan revisions for ozone and carbon monoxide.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons and intergovernmental relations, Incorporation by reference.

Authority: Sec. 110(a) and sec. 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 16, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart H—Connecticut

1. Section 52.370, is amended by adding paragraph (c)(32) as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(32) Attainment plan revisions to meet the requirements of Part D for ozone and carbon monoxide were submitted by the Department of Environmental Protection on December 10, 1982, January 7, 1983, January 21, 1983, May 19, 1983, June 15, 1983, September 19, 1983, and December 15, 1983. The revisions control volatile organic compound (VOC) and carbon monoxide emissions through a mix of stationary and mobile source controls. EPA approval includes the following regulatory provisions:

(1) Regulation 22a–174–20(ee) limiting emissions from major nonCTG source categories, and

(2) Regulations 22a–174–27 and 14–164c describing the requirements for Connecticut's motor vehicle Inspection and Maintenance Program.

[FR Doc. 84–7541 Filed 3–20–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 3F2887/R652; PH–FRL 2547–5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 1-(4-Chlorophenoxy)-3,3-Dimethyl-1-(1H-1,2,4-Triazol-1-yl)-2-Butanone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolites in or on certain raw agricultural commodities and changes the expression for the residues on all commodities for which tolerances have been established. This regulation to establish maximum permissible levels for residues of the fungicide was requested, pursuant to a petition, by Mobay Chemical Corporation.

EFFECTIVE DATE: Effective on March 21, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 227, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of July 13, 1983 (48 FR 32077), which announced that Mobay Chemical Corporation, P.O. Box 4913, Kansas City, MO 64120, had submitted pesticide petition 3F2887 to EPA proposing to amend 40 CFR 180.410 by establishing tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol in or on the raw agricultural commodities apricots, peaches, nectarines and plums (fresh prunes) at 4.0 parts per million (ppm); cucurbits at 0.3 ppm; sugar beets at 1.0 ppm and sugar beet tops at 3.0 ppm.

In the Federal Register of December 21, 1983 (48 FR 56436) EPA announced that Mobay had amended the petition by decreasing the tolerance level for sugar beets from 1.0 ppm to 0.5 ppm.

EPA issued a notice, published in the Federal Register of November 30, 1983 (48 FR 54117), which proposed to amend the tolerance expression for residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1(1*H*-1, 2, 4-triazol-1-yl)-2-butanone to include for plant derived commodities the metabolite beta-chlorophenoxyl)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol and for animal derived commodities to include metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on certain raw agricultural and animal derived commodities. EPA issued a final rule on January 4, 1984 (49 FR 388) amending the regulation of February 9, 1983 (48 FR 5920), establishing tolerances in or on certain raw agricultural and animal derived commodities, to include the metabolites set forth above in the tolerance expression. There were no comments received in response to these notices. Residue data have now been submitted which indicate that all tolerances for this fungicide should be expressed as the fungicide and metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of these tolerances include a rat teratology study which indicated that cleft palates are treatment-related effects (the no-observed effects level (NOEL) for fetal development and teratology is considered to be at least 50 milligrams (mg) per kilogram (kg) per day, the NOEL for maternal toxicity is considered to be 10 mg/kg/day); an inhalation study in rats which was negative for teratogenicity and embryotoxicity at a dose level of 11.3 mg/m^3; dominant lethal test which was negative for mutagenicity; a micronucleus test which was negative; an Ames test which was also negative for mutagenicity; a 2-year feeding (oncogenicity) study in rats with no oncogenic potential observed under the conditions of the study and a systemic NOEL of 50 ppm (2.5 mg/kg/day in the diet); a 2-year feeding (oncogenicity) study in mice, with no oncogenic potential observed under the conditions of the study and a systemic NOEL of 50 ppm (7.1 mg/kg/day in the diet); a 2-year feeding study in dogs with a systemic NOEL of 100 ppm; and a multigeneration reproduction study in rats with a NOEL of 50 ppm 2.5 mg/day in the diet) for reproductive effects.

Based on the NOEL of 50 ppm (2.5 mg/kg) in the 2-year feeding study in rats, and using a 100-fold safety factor, the allowable daily intake (ADI) is calculated to be 0.025 mg/kg/day and the maximum permissible intake (MPI) is 1.5 mg/day for a 60-kg person. Presently established temporary tolerances, toxicologically approved tolerances, and tolerances established by this rule result in a theoretical maximum residue contribution (TMRC) of 0.5033 mg/day for a 60-kg person, which represents 33.55 percent of the ADI. Temporary tolerances have previously been established for the combined residues of this fungicide and its metabolite in or on wheat grain, apple pomace, grape pomace, raisin waste, fresh apples, grapes, almonds and almond hulls.

Residues resulting in fat, meat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; and in milk and eggs from use of the agricultural commodities, for which tolerances are established by this notice, as feed are adequately covered by established tolerances.

The pesticide is considered useful for the purpose for which the tolerances are sought. There are no regulatory actions pending against the continued registration of the pesticide. The metabolism of the pesticide is adequately understood, and an adequate analytical method, gas chromatography, is available for enforcement purposes.

Based on the information cited above, the Agency has determined that the establishment of the tolerances for residues of the pesticide in or on the commodities will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 9, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.410 is revised to read as follows:

§ 180.410 1-(4-Chlorophenoxy)-3,3-dimethyl-1(1H-1,2,4-triazol-1-yl)-2-butanone; tolerances for residues.

Tolerances are established for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the following raw agricultural commodities:

Commodities	Parts per million
Apples	1.0
Apricots	4.0
Barley, grain	1.0
Barley, green forage	15.0
Barley, straw	5.0
Cattle, fat	1.0
Cattle, meat	1.0
Cattle, mbyp	1.0
Chick pea, seed (dry)	1.0
Cucurbits	0.3
Eggs	0.04
Grapes	1.0
Goats, fat	1.0
Goats, meat	1.0
Goats, mbyp	1.0
Grass, forage	0.2
Grass, seed cleanings (including hulls)	145.0
Grass, seed straw (including chaff)	105.0
Hogs, fat	0.04
Hogs, meat	0.04
Hogs, mbyp	0.04
Horses, fat	1.0
Horses, meat	1.0
Horses, mbyp	1.0
Milk	0.04
Nectarines	4.0
Peaches	4.0
Pears	1.0
Pineapples (fresh)	3.0
Plums (fresh prunes)	4.0
Poultry, fat	0.04
Poultry, meat	0.04
Poultry, mbyp	0.04
Sheep, fat	1.0
Sheep, meat	1.0
Sheep, mbyp	1.0
Sugar beets	0.5
Sugar beets, tops	3.0
Wheat, grain	1.0
Wheat, green forage	15.0
Wheat, straw	5.0

[FR Doc. 84-7431 Filed 3-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300078A; PH-FRL 2545-4]

Folic Acid, Nicotinamide, Pyridoxine, Cysteine, Glutamine, Methionine, Tryptophan, and Adenosine; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on exemptions from the requirement of a tolerance that appeared at page 55569 in the **Federal Register** of December 14, 1983. This action is necessary to insert the entry for cysteine that was inadvertently omitted.

EFFECTIVE DATE: Effective on March 21, 1984.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Federal Register Unit (TS-788), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202-382-3637).

SUPPLEMENTARY INFORMATION: In FR Doc. 83-32923 at page 55570 in the **Federal Register** of December 14, 1983, EPA issued a final rule that added various inert ingredients to the table in 40 CFR 180.1001(d). The entry for cysteineas noted in the heading, summary, and supplementary information of the document was inadvertently omitted from the additions to 40 CFR 180.1001(d).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C 346a(e)))

Dated: March 9, 1984.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR 180.1001(d) is corrected by adding and alphabetically inserting the inert ingredient cysteine, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
Cysteine (CAS Reg. No. 52-90-4).	Maximum of 0.6% of formulation.	Synergist.

[FR Doc. 84-7158 Filed 3-20-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 78-72; Phase I; FCC 84-77]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Wavier of Commission orders.

SUMMARY: This action grants a waiver of the Commission's prohibition against the use of cost study based settlements for line haul and special service functions by exchange carriers that were receiving average schedule settlements for "A" and "B" functions. The action is necessary to mitigate local exchange carrier revenue dislocations during the transition to National Exchange Carrier Association ("NECA") administered distributions of access charge revenues. The action is intended to afford sufficient time to the NECA to update the cost studies which underlie the average schedules for line haul and special service functions.

DATES: Effective March 5, 1984 through June 1, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 29554.

FOR FURTHER INFORMATION CONTACT: Kent R. Nilsson, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: *MTS and WATS Market Structure Phase I Order,* FCC 83-386, 48 FR 42987.

Order Granting Waiver

In the matter of MIS and WATS market structure, CC Docket No. 78-72 Phase I.

Adopted: March 5, 1984.
Released: March 9, 1984.

By the Commission: Commissioner Patrick not participating.

1. By Memorandum Opinion and Order, FCC 83-509, released November 14, 1983, (*Formula Approval Order*), the Commission accepted an average schedule formula proposed by AT&T to determine access revenue distributions payable by the National Exchange Carrier Association ("NECA") to those companies that are compensated under the average schedule. The Commission found, however, that one provision of the formula was inconsistent with the *Access Charge Reconsideration Order*[1] insofar as it would have allowed companies to settle on a cost basis for certain access elements while receiving distributions based on the average schedule for others. In a letter to the Chief, Common Carrier Bureau dated December 6, 1983, NECA requested that the Commission waive its prohibition against the simultaneous use of individual cost data for "C" and "Special Services" functions with average schedule cost data for "A" and "B" functions.[2]

2. In supporting its request, NECA stated that the "C" function and the "Special Services" function average cost schedules have not been updated since 1957. This has resulted in a situation in which local exchange carriers have been compensated upon bases other than average schedule cost data for "C" and "Special Services" functions while receiving settlements on the basis of average schedule data for "A" and "B" functions. For average schedule exchange carriers, compliance with the Commission's *Formula Approval Order*[3] would require either that Schedule A & B companies revert to 1957 level average cost schedules for C and Special Service functions, with concomitant reductions in revenues, or that individual cost studies be prepared in lieu of Schedules A and B. NECA stated that a two year waiver would provide sufficient time to gather and analyze data and to revise the C and Special Service average settlement schedules.

3. Underlying the Commission's access charge plan was a recognition that the presence of average schedules for exchange carriers has facilitated the settlements process, and has enabled many small telephone companies to economize on record keeping by reducing the amount of data which would otherwise be required. The Commission's decision to permit a continuation of average schedule settlements was based upon the premise that unnecessary disruptions in the distibution of access charges revenues were not desirable, and that additional administrative burdens during the transition period should be mitigated as long as the underlying integrity of the access charge decision was not vitiated.

4. It was not apparent, however, upon reconsideration or at the time of the adoption of the *Formula Approval Order,* that local exchange carriers would encounter substantial difficulty in developing cost studies by the time access charge tariffs were likely to go into effect. Nor was it evident that requiring local exchange carriers to elect either average schedule treatment *or* cost study treatment would disrupt revenue streams to Independent telephone companies during the transition to Exchange Carrier Association administered distributions of access charges revenues.

5. Although the Commission's policy is clearly directed to requiring that local exchange carriers be compensated for local access functions either on the basis of individual cost studies or average cost schedules, it was not the intention of the Commission to introduce major dislocations during the initial transition from settlements arrangements to Exchange Carrier Association distributions of access charges revenues. As a consequence, to facilitate that transition, a waiver of the terms of the *Formula Approval Order* and the underlying provisions of the *Access Charge Reconsideration Order* is granted to permit:

(1) The use of individual company cost or other relevant studies for Schedule "C" functions by companies that are also being compensated under average schedules for "A" and "B" functions;

(2) The use of individual company cost or other relevant studies for Special Service settlements by companies that are also being compensated under average schedules for other access services.

6. Accordingly, it is ordered, that the request of the National Exchange Carriers Association for waiver effective as of the adoption date of this order and is granted through June 1, 1986.

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[1] *MTS and WATS Market Structure Phase I,* FCC 83-386, 48 FR 42987. (released August 22, 1983), at para. 197.

[2] Currently there are three groups of average schedules: Schedules A, B, and C. These groups reflect the revenue requirements associated with the various functions performed by local exchange telephone companies in the provision of message services (MTS), 800 service, and outward wide area telecommunication service (WATS). The "A" function schedule reflects the allocated toll revenue requirements incurred in providing local exchange facilities for originating and terminating MTS and WATS messages, and buildings, central office equipment, billing, and collecting. The "B" function schedules include the revenue requirements which are associated with toll operating, automatic ticketing, automatic number identification, and intertoll dial switching equipment. The "C" function schedule has been used to calculate settlements for the provision of toll interexchange (or "Line Haul") functions. "Special Services" functions have covered private line services (e.g., point to point private line, remote metering, and data services). Source: Memorandum from W.R. Stump (Assistant Vice President, A.T.&T.) to the Chief, Common Carrier Bureau, dated June 30, 1983.

[3] *See also* § 69.606(b) of the rules, 48 FR 10366 (November 14, 1983).

7. This order shall be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-7201 Filed 3-20-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 31230-254]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Director), has determined that the optimum harvest levels of Tanner crab in the Eastside Section of the Kodiak District and in the South Peninsula District, both in Registration Area J, will be achieved on March 17, 1984, and March 20, 1984, respectively, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing the Eastside Section and the South Peninsula District to fishing for Tanner crab by vessels of the United States effective March 17 and 20, 1984, respectively. The previously scheduled closing dates are April 30, 1984, for the Eastside Section and May 15, 1984, for the South Peninsula District.

DATES: This notice is effective from 12:00 noon, Alaska Standard Time (AST), March 17, 1984. It was filed for public inspection with the Office of the Federal Register on March 16, 1984. Public comments on this notice of closure are invited until April 1, 1984.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m.) at (1) The NMFS Kodiak Field Office, ADF&G Building, Kashevaroff and Mission Roads, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907-486-4791.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments, by field order, of season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) established six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. Two of the districts are the Kodiak and South Peninsula Districts. The Kodiak District is further subdivided into eight sections. The Alaska Board of Fisheries has set the desired 1984 harvest level for the Eastside Section of the Kodiak District at 4.37 million pounds and for the South Peninsula District at 2.75 million pounds. These desired harvest levels were based on pot and trawl index surveys conducted by the Alaska Department of Fish and Game (ADF&G) during 1983. The 1984 fishing season for both areas began on February 10. Reasons for the closures in these areas follow:

East Section of the Kodiak District

Approximately 100 vessels have delivered about 3.7 million pounds of crab through March 11. The catch rate has declined rapidly since February 10 from about 70 to about 15 crabs per pot. This rapid decline indicates that stocks are not sufficient to support this fishery through the scheduled April 30 closure date. The optimum harvest level of 4.37 million pounds is expected to be reached on March 17.

South Peninsula District

Fifty-seven vessels have delivered about 1.4 million pounds of crab through March 11. The catch rate has declined rapidly since February 10 from about 20 to about 10 crabs per pot. Vessels landing crab are reporting increasing proportions of "deadloss", that is, crabs in a vulnerable soft-shell condition which are discarded at sea as dead. On the basis of the rapid decline in catch rate and the increasing deadloss, the fishery is being limited to an optimum harvest level of 1.7 million pounds instead of the previously projected level of 2.75 million pounds. The optimum harvest of 1.7 million pounds is expected to be reached on March 20.

In light of this information, the Regional Director, in accordance with §671.27(b)(2), has determined that: (1) The actual condition of Tanner crab stocks in the Eastside Section and the South Peninsula District is substantially different from the condition anticipated at the beginning of the fishing year; and (2) this difference reasonably supports the need to protect those Tanner crab stocks by closing the Eastside Section of the Kodiak District and the South Peninsula District, as described in § 671.26(f)(1) (i) and (ii). The Eastside Section and the South Peninsula District are therefore closed to all fishing for Tanner crab from 12:00 noon, AST, March 17, 1984, and March 20, 1984, respectively, until 12:00 noon, ADT, April 30, 1984, and May 15, 1984, respectively, at which time the closure of these areas prescribed in § 671.26(f)(2) (i) and (ii) will begin.

These closures will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closures are publicized for 48 hours through ADF&G procedures under § 671.27(a)(2). Public comments on this notice of closure may be submitted to the Regional Director at the address above. If comments are received, the necessity of these closures will be reconsidered and a subsequent notice will be published in the **Federal Register,** either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Eastside Section and the South Peninsula District will be subject to damage by overfishing unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment on this order are contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of § 671.27 and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fish, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-7549 Filed 3-16-84; 3:23 pm]

BILLING CODE 3510-22-M

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50 CFR Part 671

[Docket No. 31230-254]

Tanner Crab Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum harvest level of Tanner crab in the Southeast District in Registration Area A will be achieved on March 18, 1984, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing the Southeast District to fishing for Tanner crab by vessels of the United States on that date. The previously scheduled closing date is May 1, 1984.

DATES: This notice is effective from 12:00 noon, Alaska Standard Time (AST), March 18, 1984, until 12:00 noon Alaska Daylight Time (ADT), May 1, 1984. It was filed for public inspection with the Office of the Federal Register on March 16, 1984. Public comments on this notice of closure are invited until April 2, 1984.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, (NMFS Fishery Management Biologist), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments by field order of season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(c) established two districts within Registration Area A in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of the districts is the Southeast District. Although the FMP specifies the optimum yield (OY) for the Southeast District to be 2.5 million pounds, the Alaska Board of Fisheries has set the desired 1984 harvest level at 1.5 million pounds. This level reflects the reduced abundance of harvestable Tanner crab in the Southeast District.

The 1984 fishing season for this district began on February 10. Approximately 99 vessels have delivered about 1.18 million pounds through March 8, a period of 28 days. When this catch rate is compared to 1983, when 85 vessels delivered 1.0 million pounds in only 15 days, it is apparent that crab stocks cannot support a fishery through the scheduled May 1 closure date. The 1984 catch rate has declined since February 10 from about 20 to about 5 crabs per pot, which also indicates that stocks are not sufficient to support this fishery without causing biological harm to the resource. The optimum harvest level of 1.5 million pounds is expected to be reached on March 18.

In light of this information, the Regional Director, in accordance with § 671.27(b)(2), has determined that: (1) The actual condition of Tanner crab stocks in the Southeast District is substantially different from the condition that was anticipated at the beginning of the fishing year; and (2) this difference reasonably supports the need to protect those Tanner crab stocks by closing the Southeast District of Registration Area A, as described in § 671.26(c)(1)(i). This district is closed, therefore, to all fishing for Tanner crab from 12:00 noon AST, March 18, 1984, until 12:00 noon ADT, May 1, 1984, at which time the previously scheduled closure of this district prescribed in § 671.26(c)(2)(i) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through ADF&G procedures, under § 671.27(a)(2). Public comments on this notice of closure may be submitted to the Regional Director at the address above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Southeast District will be subject to damage by overfishing unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comments on this order are contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of § 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Resource Management, National Marine Fisheries Service.

[FR Doc. 84-7550 Filed 3-16-84; 3:22 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 56
Wednesday, March 21, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 83-AAL-9]

Proposed Establishment of J-529—Fort Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish new Jet Route J-529 between Fort Yukon, AK, and Shingle Point nondirectional beacon (NDB), Yukon Territory (YT), Canada. This new jet route is proposed as part of a planned new polar route across Canada. This action would designate controlled airspace in an area where no FAA radar coverage currently exists and would improve flight planning.

DATES: Comments must be received on or before May 7, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 83-AAL-9, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8020.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge reciept of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AAL-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish a new jet route between Fort Yukon, AK, and Shingle Point, NDB, YT, Canada. The International Airline Transportation Association (IATA) has requested a new polar route across Canada and the FAA is cooperating with the Canadian Government by proposing the initial phase of the route in the Fort Yukon area. Tentatively, the FAA has determined that suitable navigational signal coverage between Fort Yukon and Shingle Point NDB on the 018° magnetic radial at Flight Level 280 and above. Also, this action designates controlled airspace in an area where no FAA radar coverage exists and aids flight planning. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 75

Airspace, Jet routes, Navigation (air).

The Proposed Amendment

PART 75—AMENDED

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

J-529 [New]

From Fort Yukon, AK, via 049°T(018°M) radial; to Shingle Point NDB, YT, Canada. The airspace within Canada is excluded.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65.)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on March 13, 1984.

John W. Baier,

Acting Manager, Airspace, Rules and Aeronautical Information Division.

[FR Doc. 84-7499 Filed 3-20-84; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 505; Ref. Notice No. 486]

Standards of Fill for Distilled Spirits; Extension of Comment Period

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: ATF has been requested by the Distilled Spirits council of the United States, Inc. (DISCUS) and the National Association of Beverage Importers, Inc. (NABI) to extend the comment period on Notice No. 486 (September 23, 1983, 48 FR 43346). The comment period was originally to have closed on March 23, 1984. However, in order to ensure that all pertinent data and information is made available before deciding whether the 500 ml size will remain a standard of fill for distilled spirits or be eliminated, ATF is extending the comment an additional nine months.

DATE: Comments must be received on or before January 2, 1985.

ADDRESS: Comments should be submitted to: Chief, FAA, Wine and Beer Branch, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 486).

FOR FURTHER INFORMATION CONTACT: Roger Bowling, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1983, ATF published Treasury Decision ATF-146 (48 FR 43319) adopting the 100 ml size and 375 ml size as standards of fill for distilled spirits. These sizes became effective for use in interstate and foreign commerce on January 3, 1984. Concurrent with this Treasury decision, ATF published Notice No. 486 relating to the 375 ml size and 500 ml size.

A major concern with the 375 ml and 500 ml sizes is the similarity in bottle size and shape even though the volumetric difference is 125 ml, or slightly over four fluid ounces. Because of this concern, ATF issued Notice No. 486 which requested comments on whether bottlers should be allowed the option of bottling their products in either the 375 ml size or 500 ml size, but not both; or should the 500 ml size be eliminated entirely as a standard of fill for distilled spirits.

To reiterate, ATF requested specific comments on the following issues:

(a) Would retention of the 500 ml size lead to consumer confusion or deception because of its similarity to the 375 ml size?

(b) Since there is only slightly over four fluid ounces difference between the 375 ml size and 500 ml size, is there a need to have both sizes? Would the 375 ml size fulfill the market need for the 500 ml size?

(c) In the event the 500 ml size is eliminated as a standard of fill, what is a reasonable transition period to allow for a use-up of present inventories of this bottle size?

(d) Does the greater benefit to both industry and the consumer exist with both sizes in the market without qualification since it allows greater flexibility in bottling and wider size choice on purchases?

(e) Would repeat purchases negate any confusion or deception that may arise between the 375 ml size and 500 ml size? Does the option of having a purchase choice between the 375 ml size and 500 ml size outweigh any confusion or deception that may arise?

Extension Requests

In a letter dated January 17, 1984, DISCUS requested that the comment period be extended to January 2, 1985. NABI, in a letter dated March 1, 1984, requested an extension until January 1, 1985. DISCUS stated that this extension is necessary in that "The distilled spirits industry believes that extending the comment period to that date would allow consumers and all segments of the industry to have sufficient experience with the 375 ml and 500 ml sizes to file informed comments. This experience would allow all persons to have a base of experience from which to respond to the issues about which ATF has requested specific comment. Specifically, the industry needs the experience of having both the 375 ml and 500 ml sizes on the market for a substantial period of time in order to determine whether there is consumer need to have both sizes. It may be, for example, that there will be demand for both sizes for all products, or that consumers will prefer one size for certain products (such as cordials and liqueurs) and the other size for other types of products. Finally, it will take considerable time to determine whether the existence of both sizes results in consumer confusion, a concern expressed by the Bureau."

NABI stated that the relatively short period of time in which the 375 ml and 500 ml sizes have been available to consumers is inadequate to determine consumers' reaction to the two sizes. Therefore, NABI requested an extension to provide ATF and industry with information on which to base a decision on the issues posed in Notice No. 486.

Because of its desire to have all pertinent and relevant information at hand before rendering its decision on the 500 ml size, ATF is granting the extension as requested. Although a year may appear to be an excessive amount of time, ATF believes it is a reasonable period in this case. The 375 ml size was adopted on September 23, 1983, however, the size was not available for sale to consumers until January 3, 1984. The requests by DISCUS and NABI places the 375 ml size and 500 ml size in the market for one year. To be able to make an informed comment, a year may be necessary to make market surveys on consumer preferences and purchases. Therefore, ATF is extending the comment period until January 2, 1985.

Disclosure

Comments may be inspected by any person during normal business hours at: Office of Public Affairs and Disclosure, ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal author of this document is Roger Bowling, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This notice is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 State. 981, as amended, 27 U.S.C. 205.

Approved: March 21, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-7588 Filed 3-20-84; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 301

Incentive Grants

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue revisions to the regulations under Section 619 of Part B of the Education of the Handicapped Act to conform those regulations to recent amendments to Section 619. These proposed regulations will expand the age range of children who may receive services under the Incentive Grants program by adding children from birth to three years of age in accordance with the Education of the Handicapped Act Amendments of 1983, Public Law 98–199.

DATES: Comments must be received on or before June 19, 1984.

ADDRESSES: Comments should be addressed to: Dr. David Rostetter, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3607), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila Friedman. Telephone: (202) 472–3800.

SUPPLEMENTARY INFORMATION: The Incentive Grants program established under Section 619 of Part B of the Education of the Handicapped Act (20 U.S.C. 1419) authorizes grants to State educational agencies to provide special education and related services to handicapped children from birth through five years of age. States are entitled to payments under this program based on the number of handicapped children ages three through five that are receiving special education and related services.

Final regulations for this program were published on August 23, 1977 (42 FR 42517), and redesignated on November 21, 1980 at 45 FR 77368.

The proposed amendment is a technical change in the Incentive Grant regulations, 34 CFR Part 301, which reflects an amendment to the authority for that program, Section 619 of the EHA-B, made in Public Law 98–199. That change expanded the age range of handicapped children eligible to receive services under the Incentive Grant program from three through five to birth through five.

The report of the House Committee on Education and Labor on the Education of the Handicapped Act Amendments of 1983 states that:

> Research studies of the past decade confirm that early identification, diagnosis and treatment of handicapping condition[s] can significantly reduce the number and severity of handicaps in later life. Early efforts to reduce the limiting effects that physical and cognitive impairments have on major life functions increase the potential benefits of the educational system.

See H.R. Rep. No. 410, 98th Cong., 1st Sess. 24 (1983), *See, also,* S. Rep. No. 191, 98th Cong., 1st Sess. 14 (1983).

States may expand services to children from birth to age three at their discretion; Section 619 does not require services to this group. States which elect to serve such children will, however, need to amend their approved applications for Fiscal Years 1984–86.

Proposed changes to implement the expanded age groups are made to the following sections: § 301.1(c) and § 301.5(a) and (d). No other changes are proposed. States will continue to receive payments based on the number of handicapped children served ages three through five.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These amendments to the regulations for Incentive Grants merely incorporate a statutory revision that expands the age range of handicapped children eligible for special education and related services. Inclusion of additional children will be on a voluntary basis. The regulations will not have a significant economic impact on States or local educational agencies participating in the program.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to comment: Interested persons are invited to submit comments and recommendations to the address given at the beginning of this document. All comments received on or before June 19, 1984 will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3529, Switzer Building, 330 C Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Paperwork Reduction Act

The information collection requirements contained in these proposed rules will be sent to OMB for review under the provisions of Section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Comments concerning information collection requirements *only* should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue, N.W., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education. All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 301

Administrative practices and procedures, Education, Education of handicapped, Grant programs—education, Preschool.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.027, Incentive Grants)

Dated: March 15, 1984.

T. H. Bell,

Secretary of Education.

PART 301—[AMENDED]

The Secretary proposes to amend Part 301 of Title 34 of the Code of Federal Regulations as follows:

1. Section 301.1 is amended by revising paragraph (c) to read as follows:

§ 301.1 Scope; purpose.

* * * * *

(c) The State shall use funds provided under this part to give special education and related services to handicapped children in the age groups named in paragraph (b) of this section and to handicapped children from birth to three years of age.

* * * * *

2. Section 301.5 is amended by revising paragraphs (a) and (d) to read as follows:

§ 301.5 Application contents.

* * * * *

(a) A description of the State's goals and objectives for meeting the educational needs of handicapped children from birth through five years of age. These goals and objectives must be consistent with the State's full educational opportunity goal under §300.123 of this chapter.

* * * * *

(d) A description of the impact the proposed activities will have on handicapped children from birth through five years of age. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the amount of the expenditure. The application must indicate the number of children to be served and the number of handicapped children who will be benefitted indirectly. If children are to be benefitted indirectly, there must be a rationale that demonstrates the benefit.

* * * * *

(20 U.S.C. 1419)

[FR Doc. 84-7469 Filed 3-20-84; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 145

[WH-FRL 2547-8]

Washington Department of Ecology; Underground Injection Control Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that: (1) The Environmental Protection Agency (EPA) has received a complete application from the State of Washington requesting primary enforcement responsibility for the Underground Injection Control (UIC) Program; (2) the application is now available for inspection and copying; (3) public comments are requested; and (4) a public hearing will be held.

The proposed comment period will provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part and disapprove in part the Section 1422 application of the Washington Department of Ecology (WDE) to regulate Classes I, II, III, IV, and V injection wells in the State.

DATES: Requests to hold a public hearing and present oral testimony should be filed by April 23, 1984. The Public Hearing will be held on April 26, 1984, from 1:00 p.m. to 3:00 p.m. The public comment period closes May 3, 1984. If sufficient public interest in holding the hearing is not expressed by April 23, 1984, EPA reserves the right to cancel the hearing pursuant to the provisions of 40 CFR 145.31(c). If the hearing is cancelled, those persons having expressed interest in attending the hearing will be notified of the cancellation either by phone or letter. Other persons should contact EPA in Seattle at (206) 442-1846 to confirm the date and time.

ADDRESSES: Comments and requests to testify should be mailed to Harold Scott, M/S 409, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the application and pertinent material are available during normal business hours at the following locations:

Environmental Protection Agency, Region X, Library, 1200 Sixth Avenue, Seattle, Washington 98101.

Department of Ecology, Headquarters, Mail Stop PV-11, Olympia, Washington 98504, PH: (206) 459-6077.

Department of Ecology, Southwest Regional Office, 7272 Clearwater Lane, Olympia, Washington 98504. PH: (206) 753-2353.

Department of Ecology, Northwest Regional Office, 4350 150th Avenue, NE., Redmond, Washington 98502, PH: (206) 885-1900.

Department of Ecology, Central Regional Office, 3601 W. Washington, Yakima, Washington 98903, PH: (509) 575-2491.

Department of Ecology, Eastern Regional Office, East 103 Indiana, Spokane, Washington 99207, PH: (509) 456-2925.

The hearing will be held at the Environmental Protection Agency, Room 12C, 12th Floor, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Harold Scott, M/S 409, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle Washington 98101, PH: (206) 442-1846 or FTS 399-1846.

SUPPLEMENTARY INFORMATION: The Underground Injection Control (UIC) program seeks to protect as "underground sources of drinking water" (USDWs) all aquifers capable of yielding a significant amount of water containing less than 10,000 mg/l of total dissolved solids. At present, the State of Washington has one Class I well, and 6000 inventoried Class V wells. Class V wells will be studied to assess whether further regulatory measures are required. In the meantime, Class V wells will be regulated under existing State procedures. The State of Washington does not intend to exempt any aquifers at this time.

Requests for a public hearing should include the following information:

(1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the UIC program and of information that the requesting person intends to submit at such hearing; and,

(3) The signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 145, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 145

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

This application from the Washington Department of Ecology is for the regulation of all injection wells in the State. The application includes a description of the State Undergound Injection Control Program, copies of all applicable statutes and rules, a statement of legal authority and a proposed memorandum of agreement between the Washington Department of Ecology and Region X office of the Environmental Protection Agency.

Dated: March 14, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 84-7542 Filed 3-20-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 76

[MM Docket No. 84-168; FCC 84-50]

Authorization of the Offering of Data Transmission Services on the Vertical Blanking Interval by TV Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission requests comments upon its proposal to authorize any television station to offer any data transmission services on the vertical blanking interval either on a private or common carrier basis. Data transmission services include such services as paging, raw data transmission, and computer software. Because there is unused spectrum in the vertical blanking interval and there are numerous services requiring additional spectrum, the Commission believes it is appropriate to remove any remaining restrictions on the use of this particular portion of the broadcast spectrum. The Commission intends this action to provide television stations with additional opportunities for extending and diversifying their services, to improve the efficiency of spectrum utilization, and to assist in satisfying a demonstrated public need. This action will also hopefully increase development of vertical blanking interval technology.

DATES: Comments are due by April 16, 1984 and replies by May 1, 1984.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Broadcast Bureau, 202-632-6302.

List of Subjects

47 CFR Part 2

Frequency allocation, Radio.

47 CFR Part 73

Television.

47 CFR Part 76

Cable television.

Notice of Proposed Rulemaking

In the matter of amendment of Parts 2, 73, and 76 to Authorize the Offering of Data Transmission Services on the Vertical Blanking Interval by TV Stations (MM Docket No. 84-168).

Adopted: February 15, 1984.
Released: March 8, 1984.

By the Commission.

1. The Commission is today initiating a proceeding to solicit comment upon a proposal to permit television stations to provide various data transmission services on the vertical blanking interval (VBI) [1] of the television signal. In BC Docket No. 81-741, we recently authorized television stations to offer teletext [2] services on the VBI.[3] We noted in that order that teletext was only one of many potential services that could be offered on the vertical blanking interval. Some of the other service possibilities include paging, raw data transmission, computer software and video game delivery, utility load management, and facsimile transmissions that would use analog signalling techniques. In fact, any data transmission service for which the VBI offers sufficient capacity could be provided.[4]

2. Authorizing television stations to provide various data transmission services is consistent with our mandate to "[s]tudy new uses for radio . . . and generally encourage the larger and more effective use of radio in the public interest." 47 U.S.C. 303(g). Broadening the number of services that may be offered on the VBI would encourage more efficient use of the broadcast spectrum. These additional uses of the spectrum will also afford the public a better opportunity to secure the communications services they desire from a variety of sources.[5] *See Authorization of Teletext, supra* at paragraph 42. Because there is a growing demand for additional data transmission services, we propose to authorize both commercial and public broadcasting television stations to offer these services on the VBI. Data transmission services will include the transmission of raw data, processed information, or any other communication in either a digital or analog mode. This authority would further be granted to both full services and low power television stations.

3. Paging services stand out as one of the more significant forms of data transmission services which television stations may want to consider offering. Because paging services offered on the VBI will be competitive with existing common carrier and private paging systems, we have taken particular care to consider whether the introduction of additional competition in this area is in the public interest. We tentatively conclude that it is.

4. Our tentative conclusion vis-a-vis paging services is supported by the definite need for such services. The Commission recently documented the need for additional paging services in General Docket No. 80-183.[6] Studies submitted by Arthur D. Little in 1975 and Frost & Sullivan in 1978, indicated that by 1985 there would be approximately three million pagers in use.[7] In response to those forecasts, the Commission decided to allocate forty additional paging channels each for private and common carrier paging systems.[8]

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[1] The vertical blanking interval is that portion of the television signal that appears as a black bar when the picture rolls.

[2] Teletext is the transmission of textual and graphic data on the VBI of the video portion of the television signal which is intended for display on a viewing screen.

[3] *Authorization of Teletext, BC Docket No. 81-741*, FCC 83-120, mimeo 32977, released May 20, 1983, (53 RR 2d 1309 (1983)).

[4] The proposed definition would permit the transmission of raw data, processed information, or any other communication in either a digital or analog mode.

[5] These additional services do not preclude the simultaneous provision of several services, including teletext, on a particular station's vertical blanking interval.

[6] *Paging Systems-DPLMRS*, 89 FCC 2d 1337 (1982).

[7] *Notice of Proposed Rule Making* (Docket No. 80-183), 45 Fed. Reg. 32013, 32015 (May 15, 1980).

[8] Three of the common carrier and four of the private radio channels are reserved for nationwide paging. An additional one megahertz (forty 25 khz channels) is to be held in reserve for use by advanced technology paging systems. Thus, the reserve channels may not be available for alleviating the need for traditional paging services. An additional 28 low band channels have also recently been allocated to paging services. *See First Report and Order*, CC Docket No. 80-189, 49 RR 2d 1541 (1981), *recon. granted in part*, FCC 82-342, 47 FR 34561 (Aug. 10, 1982); and *Second Report and Order*, Docket No. 19327, 51 RR 2d 1532 (1982), 47 Fed. Reg. 34568 (Aug. 10, 1982).

However, both the Ad Hoc Private Paging Committee (AHPPC) and Telocator Network of America (Telocator) indicated that the Commission's proposed allocation of forty channels might be inadequate.[9] In light of these comments and the response by applicants to the Commission's lowband [10] and 900 MHz allocations (more than 5,500 applications have been filed so far),[11] it seems clear that the demand for paging services should continue to be strong. Therefore, we believe it is appropriate to remove restrictions on existing broadcast spectrum in order that it may provide an additional means of satisfying the demand for paging service. Thus, authorizing the provision of paging services, as one form of data transmission, over the VBI appears to provide a particularly suitable response. We request comments on this particular aspect of our proposal.

5. With respect to data transmissions generally, we are not proposing to classify particular VBI data transmission services as either private or comon carrier offerings. Rather, as we indicated in the *Report and Order* for BC Docket No. 81–741,[12] and also in the *First Report and Order* for BC Docket No. 82–536,[13] licensees, other than licensees in the land mobile services, should be guided by the criteria set forth by the United States Court of Appeals for the District of Columbia in *National Assocation of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir 1976), *cert. denied*, 425 U.S. 992 (1976) (NARUC I). Among the factors indicative of non-common carriage delineated by the court are the establishment of medium-to-long term contractual relationships with customers, a relatively stable clientele base, the failure to hold out facilities indifferently, and the selection of clients on a highly individualized basis. With regard to land mobile services, such as paging, the Communications Amendments Act of 1982, Section 120, establishes a demarcation between private and common carrier land mobile services, and indicates that this new test is intended to supersede the *NARUC I* standard. *See* 47 U.S.C. 332(c). The new statutory test is based on the manner in which a mulitple licensed or shared private land station is interconnected with a telephone exchange or interexchange service or facility. It will be the initial responsibility of the licensee to decide on what basis to offer its services.

6. If a licensee intends to offer data transmission services on a common carrier basis, we will require that it first obtain authorization to do so by filing an application in accordance with Parts 21 or 22, as appropriate. *See* 47 CFR Parts 21 and 22. Public Notice will be given of each such request received, and a 30-day period will be afforded to all parties wishing to file comments in connection therewith. It is our intention that, in seeking such authorizations, the television station licensee will be in the same position, entitled to the same privileges and subject to the same obligations and regulations as a traditional offeror of such services. As we noted in the *First Report and Order* in BC Docket No. 82–536, "our policy is that applications to provide common carrier services from qualified applicants will be granted unless there is some basis to believe that such a grant 'is likely to produce results that conflict with the goals of the Communications Act.'" *Authorization of FM Subcarriers, supra* at paragraph 25.[14]

7. Television station licensees seeking to provide private carrier service on the VBI will be required to notify the Licensing Division of the Private Radio Bureau at Gettysburg, Pennsylvania, 17325, by letter, prior to initiating service. Licensees must certify that their facilities will be used in this regard only for permissible services. *See* 47 CFR Parts 90 and 94. Further, when providing land mobile service, they must also certify that service will only be offered to users eligible under Part 90 of the Commission's Rules, and that any interconnection of the station with a telephone exchange or interexchange service or facility will be obtained in accordance with Section 331 of the Communications Act, 47 U.S.C. 332.[15] We do not intend such notification to give rise to a comment period, and no separate authorization will be issued by the Commission. Television station licensees offering a private service will be similarly situated, entitled to the same privileges, and subject to the same obligations and regulations, as a traditional offeror of such services.

8. Regardless of whether the television station licensee contemplates offering private or common carrier services, the licensee will not be required to seek additional approval for the technical facilities of the television station. As in the case of teletext and FM subcarriers, we also consider the use of the VBI for the transmission of data as a secondary privilege that runs with the primary television station license. Therefore, that right will only be conferred on the primary station licensee; in other words, we do not intend to entertain competing applications for that right. Of course, licensees will be permitted to lease portions of the VBI to entities that will provide either a private or common carrier service. In such instances, the lessee may be permitted to seek the appropriate authorization, but the primary licensee of the television station will be held responsible for the technical operation of the transmitting facilities.

9. In both the Teletext and FM subcarrier dockets, we recognized that there may be situations when the provision of services via the VBI could enjoy a competitive advantage vis-a-fis other carriers offering similar services by virtue of the greater service area of some television stations. This problem is particularly germane to the provision of paging services over the VBI, although it would be pertinent to any data transmission service that competes with other licensed services. We do not, however, believe that authorizing television stations to enter these markets will have any adverse public interest consequences for existing operations. It would be possible to reduce or eliminate that competitive impact through rules that would place specific restrictions on technical operations. For example, we could require television stations to limit the injection level of their VBI data service signals or, in the extreme, could limit station transmitter power to a degree that would yield coverage equal to that of paging or other competitors. Such an approach would, however, be spectrally inefficient and, in the latter case, would subvert the provision of basic broadcast

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[9] *Paging Systems-DPLMRS, supra* at 1338.

[10] *First Report and Order, CC Docket No. 80–189*, 49 RR 2d 1541 (1981), *recon. granted in part*, FCC 82–342, 47 FR 34561 (Aug. 10, 1982).

[11] *Paging Systems-DPLMRS, supra.*

[12] *Authorization of Teletext, supra* at paragraphs 51–55.

[13] *Authorization of FM Subcarriers*, BC Docket No. 82–536, FCC 83–154, Mimeo 33147, released May 19, 1983, at paragraphs 20–27. [53 RR 2d 1519 (1983)].

[14] With regard to common carrier paging services, we note that because applicants for an initial common carrier channel are not required to demonstrate need, VBI paging applicants will not be required to demonstrate need when they are proposing an initial system in a market. *Paging Systems-DPLMRS, supra* at 1349–1354. Additionally, we request comments upon the question of whether some kind of need must be demonstrated when a television station licensee or its lessee is currently authorized to operate a common carrier paging facility within its television station service area. Finally, a financial showing will not be required. *Elimination of Financial Qualifications*, 82 FCC 2d 152 (1980).

[15] The Commission's interpretation of this test in the new legislation is contained in our reconsideration of the *Second Report and Order*, Docket No. 20846, 89 FCC 2d 741 (1982). See *Memorandum Opinion and Order*, Docket No. 20846, Mimeo 33104, FCC 83–174, released May 27, 1983.

service. Moreover, the development of new technology should not be thwarted simply to protect the status quo.[16] In any event, we doubt there will be an adverse impact upon existing services for several reasons. First, the VBI would be available for many different services and there is no evidence to suggest that the industry would focus its use of the VBI on any one particular service. Thus, it is possible that the number of stations engaged in any particular activity would be limited. Second, wide-area services are not necessarily more attractive or important to potential customers, particularly where there are differences in pricing and supplemental services.[17] Third, with respect to paging services, many existing paging systems operate wide-area systems that would be competitive with VBI systems. Accordingly, it appears that the competitive impact upon existing facilities, whether paging or otherwise, will not be critically adverse.[18]

10. With regard to the technical rules that will govern VBI data transmissions, we propose to apply the same technical rules adopted for teletext in BC Docket No. 81-741. Television stations will be able to offer data transmission services, including paging, at the same signal level as teletext and over all VBI lines authorized for teletext. Similarly, VBI signal transmitting data will not be permitted to interfere with other radio frequency services or degrade reception of the originating station's regular programs. The proposed rules will afford licensees wide latitude in designing systems, while protecting existing services.[19] We are also concerned as to whether the technical aspects of teletext operations could differ from those of some non-teletext services. Although we are not aware of any such differences, we request technical comments on signalling methods that may be appropriate for specific services or VBI operations in general but not for the more limited teletext transmissions. Interested parties are invited to comment upon the desirability of these or additional technical requirements.

11. Proposed rules that would implement a general authorization of the VBI for data services as discussed *supra* are presented in the Appendix. Inasmuch as teletext as currently authorized would qualify as a data service as defined herein, the proposed rules would replace the teletext rules on a one-for-one basis as appropriate.

12. Finally, it is likely that equipment manufacturers will develop and market devices that can receive and either display or utilize the data transmissions. We would like specific comments as to how such devices should be treated under Part 15 of our Rules. For example, such devices could be treated as either a Class I TV device under Part 15 of the Commission's Rules or they could be considered a receiver under Part 15, Subpart C.[20]

13. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. Reason for Action

Authorization of data transmission services, including paging, on the vertical blanking interval will provide additional opportunities for extending and diversifying the services provided by television stations, improve the efficiency of spectrum utilization, and assist in satisfying a demonstrated public need.

II. Objective

The Commission is proposing to authorize data transmission services on the vertical blanking interval in order to encourage additional and diverse uses of this relatively underutilized spectrum. Additionally, we believe this will assist us in satisfying a demonstrated public need for paging services. Finally, this action will also hopefully increase development of vertical blanking interval technology.

III. Legal Basis

The proposed action is authorized under Section 303 of the Communications Act of 1934, as amended, which charges the Commission with the responsibility to explore new and improved uses of radio.

IV. Description, Potential Impact and Number of Small Entities Affected

Authorizing the use of the vertical blanking interval for data transmission services should have a beneficial effect on most television station licensees because it will increase the number of permissible VBI uses. We anticipate that operators of private and common carrier paging systems could be slightly adversely affected in they were to lose some customers to the television stations' paging services. Because there is a substantial unmet demand for this service which is increasing yearly, we do not, however, expect that impact, should it occur, to be significant. Moreover, any estimate of the impact at this time is highly speculative. If this proposal is ultimately adopted, paging will only be one of many services which can be offered on the vertical blanking interval. We do not know how many television station licensees will actually be interested in offering paging services and, if so, in what form. Without that information, we cannot accurately estimate the potential impact of this action upon operators of private and common carrier paging systems. Finally, manufacturers of electronic equipment could be beneficially affected because this action should produce an additional avenue for the sale of their equipment.

V. Reporting, Recordkeeping and Other Compliance Requirements

Beyond the requirements currently imposed upon various services, such as paging, no new requirements will be imposed upon television stations

VI. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

VII. Significant Alternatives

With respect to the authorization of services that will be competitive with other existing licnesed services, there are two possible alternatives: (1) either not authorize the provision of competitive services on the VBI or (2) authorize such services, but require that those television stations intending to offer competitive services demonstrate that there exists an unmet need for the service in their area. The first alternative could result in VBI spectrum remaining unused and a demonstrated public need remaining unmet. As we indicated above, we believe that alternative is spectrally inefficient and contrary to the public interest. The second alternative places requirements upon television licensees which are generally not placed upon private and common carrier system operators. Such requirements would be unfair and unnecessary in light of the anticipated need for additional data transmission services.

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[16] *E.g., Cellular Communications Systems*, 86 FCC 2d 469, 485 (1981).

[17] *Id.*

[18] In the FM Subcarriers proceeding, we concluded that "[o]n balance . . . we believe that any possible inequity in technical facilities is overshadowed by the public interest benefits to be derived from innovative and spectrum-efficient subcarrier services that are possible under the decision herein." *Authorization of FM Subcarriers, supra* at paragraph 28. Nevertheless, parties are invited to comment on any technical differences between the services that might result in any existing carriers suffering a significant economic impact from the advent of the proposed services.

[19] Furthermore, we do not propose to require cable television systems to carry any data transmission services offered on the VBI. *See Authorization of Teletext, supra* at paragraph 91. However, this decision is not intended to prejudice any decision ultimately rendered in the Teletext reconsideration.

[20] *Authorization of Teletext, supra* at 84.

14. Accordingly, it is proposed to amend Part 73 of the Commission's Rules and Regulations as set forth in the attached Appendix A.

15. Authority for the action taken herein is contained in Sections 4(i) and 303 (a), (b), (c), (d), (e), (f), (g), (h), and (r) of the Communications Act of 1934, as amended.

16. Pursuant to procedures set out in §§ 1.4, 1.415 and 1.419 of the Commission's Rules and Regulations, interested parties may file comments on or before April 16, 1984, and reply comments on or before May 1, 1984. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. An original and five copies of all comments, replies, briefs and other decuments filed in this proceeing shall be furnished the Commission. Further, members of the general public who wish to participate informally in this proceeding may submit one copy of their comments. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided the fact the Commission's reliance on such information is noted in the Report and Order.

17. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summay must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rulemakings is available from the Commission's Consumer Assistance Office, FCC, Washington, DC 20544, (202) 632–6990.

18. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

19. For further information concerning this proceeding, contact Alan Stillwell, Mass Media Bureau, (202) 632–6302.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Chapter I of Title 47 of the Code of Federal Regulations is amended as set forth below.

PART 2—[AMENDED]

1. Section 2.106 is amended by revising footnote NG142 to the Table of Allocations to read as follows:

§ 2.106 Table of frequency allocation

* * * * *

NG142 TV broadcast stations authorized to operate in the bands 54–72, 76–88, 174–216, 470–51, and 512–806 MHz may use a portion of the television vertical blanking interval for the transmission of data signals, on the condition that harmful interference will not be caused to the reception of primary services, and that such data services must accept any interference caused by primary services operating in these bands.

PART 73—[AMENDED]

2. Section 73.646 is revised to read as follows:

§ 73.646 Data Service.

(a) Data service is the transmission of raw data, processed information, or any other communication in either a digital or analog mode.

(b) Data service is of an ancillary nature and as such is an elective, subsidiary activity. No service guidelines, limitations, or performance standards are applied to it. The kinds of service that may be provided include, but are not limited to, teletext, paging, computer software and bulk data distribution, and aural messages. Such services may be provided on a broadcast (sustained, advertiser supported, or subscription), point-to-point, or point to multipoint basis.

(c) Data services that are common carrier in nature are subject to common carrier regulation. Licensees operating such services are required to apply to the Commission for the appropriate authorization and to comply with all policies and rules applicable to the particular service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the licensee. Initial determinations submitted by licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(d) Television licensees are authorized to lease their data transmission facilities to outside parties. In all arrangements entered into with outside parties affecting data service operation, the licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material that it deems in appropriate or undesirable. The licensee or permittee is also responsible for all aspects of technical operation involving data services.

(e) The grant or renewal of a TV station license or permit will not be furthered or promoted by proposed or past data service operation; the licensee must establish that its broadcast operation serves the public interest wholly apart from data service activities. (Violation of rules applicable to data services would, of course, reflect on a licensee's qualifications to hold its license or permit.)

(f) TV broadcast stations are authorized to transmit data service signals during any time period, including portions of the day when normal programming is not broadcast. Such transmissions must be in accordance with the technical provisions of § 73.682.

3. Section 73.621 is amended by revising paragraph (f) to read as follows:

§ 73.621 Noncommercial educational TV stations.

* * * * *

(f) *Data service.* The provisions governing data service in § 73.646 are applicable to noncommercial educational TV stations.

4. Section 73.682 is amended by adding new paragraph (a)(24) to read as follows:

§ 73.682 Transmission standards.

(a) * * *

(24) Specific scanning lines in the vertical blanking interval may be used for the purpose of transmitting data signals, subject to certain conditions:

(i) Data signals may be transmitted on Lines 10–18 and 20, all of Field 1 and Field 2. Use of specific lines is to be in accordance with Schedule I.

(ii) No observable degradation may be caused to any portion of the visual or aural signals.

(iii) Data signals must not produce emissions outside the authorized television channel bandwidth. Digital data pulses must be shaped to limit spectral energy to the nominal video baseband.

(iv) Transmission of emergency visual messages pursuant to § 73.1250 must take precedence over, and shall be cause for interrupting, a data service transmitted on the aural channel.

(v) A reference pulse for a decoder associated adaptive equalizer filter designed to improve the decoding of data signals may be inserted on any portion of the vertical blanking interval authorized for data service, in accordance with the signal levels set forth on Schedule I.

(vi) All lines authorized for data transmissions may be used for other purposes upon prior approval by the Commission.

* * * * *

5. Section 76.64 is revised to read as follows:

§ 76.64 Carriage of subscription television broadcast programs and data services.

The provisions of §§ 76.57, 76.59, 76.61, and 76.63 do not require carriage of any subscription TV broadcast program or any data service transmitted on the vertical blanking interval.

[FR Doc. 84-7504 Filed 3-20-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket 84-109; FCC 84-33]

Amendment of the Commission's Rules To Eliminate the Permissible Communications Restrictions in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making which proposes to amend Part 90 to eliminate the rules regarding permissible communications in the Private Land Mobile Radio Services. The proposal, which was initiated by the Commission on its own motion, would delete the present rules which require that communications in these services be essential to or necessary for the official or business activities of licensees.

DATES: Comments are due by May 11, 1984 and replies by June 11, 1984.

ADDRESS: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael D. Kennedy, Private Radio Bureau, Land Mobile & Microwave Division, Rules Branch, (202) 634–2443.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Proposed Rulemaking

In the matter of amendment of Part 90 of the Commission's rules and regulations to eliminate the permissible communications restrictions in the Private Land Mobile Radio Services (PR Docket No. 84–109).

Adopted: February 3, 1984.
Released: March 12, 1984.
By the Commission.

Introduction

1. The Commission is initiating this proceeding on its own motion to propose the elimination of restrictions regarding permissible communications in the Private Land Mobile Radio Services.[1] Under current rules, licensees in these services are required to restrict their communications to matters directly related to their official or business activities. This has caused some problems for both licensees and the Commission. Licensees may have to have dual communications systems to meet all of their communications requirements. We have been requested to decide whether or not a particular communication is in connection with an "official" activity. We believe that the communications of licensees in the Private Radio Services should be as unrestricted as possible within our statutory guidelines. Once basic eligibility has been established, licensees should have discretion to decide which communication are essential to the efficient and effective operation of their businesses. We are therefore proposing to relax our permissible communications rules.

Background

2. The Private Land Mobile Radio Services comprise the largest group of licensed radio users regulated by the Commission.[2] These services provide for the communications needs of a broad community of users, from police departments to taxicab companies. Licensees are grouped into five main services according to their business or governmental activities: Public Safety Radio Services, Special Emergency Radio Service, Industrial Radio Services, Land Transportation Radio Service, and Radiolocation Service.

3. The Public Safety Radio Services include the Local Government, Police, Fire, Highway Maintenance, and Forestry-Conservation Radio Services. State and local government entities and private organizations operating under their jurisdiction are eligible to operate radios in these services. Only communications essential to the official activities of licensees are now permitted.

4. Persons and organizations engaged in medical and safety-related activities are eligible for authorizations in the Special Emergency Radio Service. Typical licensees include hospitals, physicians, rescue squads, school bus operators, beach patrols, and entities that require radio communications during emergencies. In this service, communications are restricted, in general, to the transmission of messages related to medical care and treatment and to the transmission of emergency messages. Some licensees are permitted to transmit urgent messages related to the operation of their organization, or administrative messages on a secondary basis to messages related to medical services.

5. The Industrial Radio Services include the Power, Petroleum, Forest Products, Motion Picture, Relay Press, Special Industrial, Business, Manufacturers, and Telephone Maintenance Radio Services. Eligibility criteria range from very restrictive, as in the Motion Picture Radio Service where licensees must be engaged in the production or filming of motion pictures, to very broad, as in the Business Radio Service where licensees need only be engaged in any type of commercial activity. Communications are restricted in varying degrees in these services. For instance, in the Business Radio Service, communications necessary to the commercial activities of the licensee are permitted while in the Telephone

[1] General restrictions on the communications of stations licensed in these services are given in 47 CFR 90.405. Additional restrictions appear throughout 47 CFR Part 90. For a complete list of the proposed rule amendments, see the attached Appendix.

[2] There are presently over 600,000 licensees employing over 7 million transmitters in these services.

Maintenance Radio Service only communications directly related to the construction, repair, maintenance, or operation of facilities are allowed. In most Industrial Radio Services, however, only communications essential to the activities of the licensees are allowed.

6. The Land Transportation Radio Services include the Motor Carrier, Railroad, Taxicab, and Automobile Emergency Radio Services. Entities such as trucking companies, railroads, taxicab companies, and persons and organizations providing emergency assistance to motorists are eligible for licensing in these services. Comminications are, in general, restricted to transmissions essential to the commercial activities of the licensees. In the Automobile Emergency Radio Service, however, reports of traffic conditions are specifically permitted.

7. The Radiolocation Service accommodates the use of radio methods for determination of direction, distance, speed, or position for purposes other than navigation. This service differs substantially from the other Private Radio Services in that the eligibility criteria are very broad and the communications are not typically voice. Licensees are engaged in commercial, industrial, scientific, educational, and local government activities. Licensees are grouped together in this service because of their common desire for radiolocation information, as opposed to the other Private Radio Services where licensees are grouped according to their business or official activities.

Discussion

8. A bifurcated structure is used by the Commission in regulating land mobile radio systems. Land mobile common carriers are regulated under Part 22 of the Commission's rules. They are required to offer service indiscriminately to the public. (See 47 CFR 22.0(a).) Private radio systems are restricted to providing radio service to specific groups of "eligibles" and are regulated under Part 90 of the Commission's rules. (See 47 CFR 90.1(b).) Accordingly, applicants who seek authorization in the private services must first demonstrate eligibility to be licensed in one of the particular Private Radio Services involved. Once a license is granted, the present rules restrict the communications of these licensees to transmissions specifically related to official or business activities. This has at times placed a burden on both licensees and the Commission to resolve issues as to what is and is not "a permissible communication". After considering this matter, it appears unnecessary and inefficient to continue to restrict completely the types of communications private radio licensees may transmit over their radios. In light of these factors, we propose to relax these restrictions.

9. Historically, the permissible communications rules have been regarded as a means of curtailing spectrum use by licensees. The theory has been that if each licensee is restricted in use on the channel for which licensed, more licensees can be accommodated in this limited resource. Moreover, spectrum has been allocated to the private services based solely on the perceived demand for communications related to the "official or business activities" of the licensees. However, it is clear that restrictions on communications capabilities can result in inefficiencies. Licensees may find that the communications permitted in a particular service satisfy only part of their needs.[3] It may become necessary for licensees to employ multiple frequencies or duplicate radio systems and, in some cases, to request authorization in more than one radio service to meet their needs.[4]

10. The Commission received formal guidelines for managing the spectrum made available to the Private Land Mobile Radio Services when, on September 13, 1982, the "Communications Amendments Act of 1982" was signed into law.[5] Section 331 (47 U.S.C. 332) of the Communications Act now provides that:

(a) In taking actions to manage the spectrum to be made available for use by the private land mobile services, the Commission shall consider, consistent with section 1 of this Act, whether such actions will—

(1) Promote the safety of life and property;

(2) Improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

(3) Encourage competition and provide services to the largest feasible number of users; or

(4) Increase interservice sharing opportunities between private land mobile services and other services.

* * * * *

We believe that this proposal, which allows licencees increased flexibility in their communications, is consistent with these new statutory guidelines. The present rules regarding permissible communications appear to be an unnecessary regulatory burden on spectrum users.

11. We propose to eliminate the present restrictions regarding permissible communications in the Private Land Mobile Radio Services. Specific rule amendments are detailed in the attached Appendix. We do not intend to alter the basic nature of these services. The primary goal of these services has been and will continue to be to provide for communications related to the official and business activities of licensees. We simply propose to remove the blanket prohibitions on all other types of communications. We expect most communications in these services will continue to relate to business and official activities. We propose to allow licensees, however, the discretion to determine for themselves the proper mix of business and non-business communications because we recognize that the ability of a lincesee and its employees to send and receive messages which are not, strictly speaking, business related can have a direct impact on the efficient operation of the licensee's business.

12. Our proposal to eliminate the permissible communications restrictions from our rules does not alter the eligibility criteria set forth in the individual radio services. These criteria allow us to group together licensees with common goals and interests. This is especially important on shared radio systems where all licensees must co-exist peacefully. All communications, however, would no longer be required to be restricted solely to those essential or necessary to the activities by which licensees have established eligibility.

13. Under our proposal, it will be necessary for all licensees to exercise additional self-discipline when operating their radios. If licensees abuse the additional flexibility we are proposing, we will consider enforcement action under Section 90.173(b) of our rules. This rule requires licensees to cooperate in the use of frequencies in

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[3] A recurrent example is the Fire Radio Service where announcements of tests or meetings are "official" communications, but announcements of funeral services or fund raising efforts are not.

[4] Many licensees in the Private Land Mobile Radio Services have inquired whether they can transmit personal communications. Because the rules regarding permissible communications forbid personal communications, these licensees must apply for authorizations in the General Mobile Radio Service, where both personal and business communications are permitted. Only eight frequency pairs are available in this service. See 47 CFR 95–1 and 95–55.

[5] "The Communications Amendments Act of 1982," Pub. L. 97–259, 96 Stat 1087, September 13, 1982.

order to make the most effective use of their facilities. We could restrict the communications of licensees on a case by case basis if necessary to ensure effective use of Private Radio Service frequencies.

14. This proposal does not alter the present prohibition on transmitting program material for use in broadcasting or rendering a communications common carrier service in the Private Radio Services.[6] The Commission has provided for these activities in spectrum dedicated to the broadcast and common carrier services and they will not be duplicated in the Private Radio Services.

15. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. *Reason for Action:* This proposal would allow private radio licensees to judge for themselves which communications would contribute to the effective operation of their businesses. We believe this will allow licensees to improve their business efficiency. We also recognize that by enhancing each licensee's ability to send those communications it considers desirable for its efficient business operation, we may be increasing the amount of difficulty licensees will experience in securing a clear channel on a shared frequency. Nevertheless, we believe on a balance that adverse effect must give way to the licensees' need for greater flexibility in the use if their private radio systems.

II. *Objective:* The Commission is advancing this proposal in order to increase the flexibility of Private Radio Service licensees in the use of their communications systems, to reduce current costs to licensees in that service, and to reduce the current administrative burden upon the Commission.

III. *Legal Basis:* The proposed action is authorized under Sections 4(i), 303(r), and 331(a) of the Communications Act of 1934, as amended, which authorize the Commission to make such rules and regulations as may be necessary to carry out its function and reduce the regulatory burden upon Private Land Mobile Radio Service licensees.

IV. *Description, Potential Impact and Number of Small Entities Affected:* While it is conceivable that this proposal, if adopted, may increase congestion among licensees sharing a frequency, the cost associated with that problem is not readily quantifiable. We believe our willingness to consider licensees' abuses that result in extreme congestion on a case-by-case basis will ameliorate the potential problem. Furthermore, any adverse economic effects should be balanced against the benefits which will accrue to the licensees, both large and small entities, from these proposed changes. Beyond this we are unable to quantify the potential effects on small entities. Accordingly, we are serving a copy of this proposal on the Small Business Administration and invite specific comments on this point by interested parties.

V. *Reporting, Recordkeeping and other Compliance Requirements:* No new requirements will be imposed upon Private Land Mobile Radio Service licensees.

VI. *Federal Rules which Overlap, Duplicate or Conflict with the Rule:* None.

VII. *Significant Alternatives:* There are no significant alternatives which would accomplish our stated objective of increasing the communications flexibility afforded Private Radio Service licensees. Additionally, in our view retaining the *status quo* represents a continuing burden on those licenses.

16. For purposes of this non-restricted notice and comment rule making, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communications (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addresing matters not fully covered in any previously filed written comments for the preceding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231.

17. This action is taken pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on this proposal on or before May 11, 1984 and reply comments on or before June 11, 1984. All relevant and timely comments filed in accordance with Sections 1.415 and 1.419 of our rules and regulations (47 CFR 1.415 and 1.419) will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the Commission's reliance on such information s noted in its final decision.

18. In accordance with the provisions of § 1.419 of the rules and regulations, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy of their comments without regard to form (as long as the docket number is clearly stated in the heading). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

19. For further information concerning this rule making contact Michael D. Kennedy of the Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C., (202) 634–2443.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 90—[AMENDED]

§ 90.405 [Removed]

A. Section 90.405 of Part 90 of the Commission's Rules and Regulations is proposed to be removed in its entirety.

B. In the following sections the references to permissible communications would be removed by specific amendments in each section:

Section 90.17 (a) and (c)(1), § 90.19(a), § 90.21(a),

Section 90.23(a), § 90.25(a), § 90.33, § 90.35(a),

Section 90.37(a), § 90.39(a), § 90.41(a), § 90.43(a),

Section 90.45(a), § 90.63, § 90.65(a), § 90.67(a),

[6] 47 CFR 90.415.

Section 90.69(a), § 90.71(a), § 90.73(a) and (b),

Section 90.75(a), § 90.79(a) and (b)(1),

Section 90.81(a) and (b), § 90.85, § 90.89(a),

Section 90.91(a), § 90.93(a), § 90.95(a) and (b), and

Section 90.101, § 90.378, § 90.401, and § 90.645.

C. Section 90.173(b) is proposed to be amended to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(b) All applicants and licensees shall cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the use of any frequency at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest; the use of any frequency may be restricted as to specified geographical areas, maximum power, premissible communications, or such operating conditions contained in this part or in the station authorization.

* * * * *

[FR Doc. 84-7197 Filed 3-20-84; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 56
Wednesday, March 21, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Deerlodge National Forest Grazing Advisory Board; Meeting

The Deerlodge National Forest Grazing Advisory Board Will meet at 10:00 a.m., April 25, 1984, in Room 315 of the Federal Building, corner of Copper and Main in Butte, Montana.

The purpose of the meeting will be a discussion of the distribution of range betterment funds and proposed projects on the Deerlodge National Forest.

The Advisory Board meeting is open to the public. Any member of the public who wishes to be on the agenda may submit a written statement and should contact Tom Griffith at the Deerlodge National Forest Supervisor's Office.

Dated: March 12, 1984.

Frank E. Salomonsen,

Forest Supervisor.

[FR Doc. 84-7814 Filed 3-20-84; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Bean Creek Watershed Protection Plan, Michigan; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bean Creek Watershed, Hillsdale and Lenawee Counties, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contract has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This project concerns a plan for the installation and treatment of practices for watershed protection. These practices will include: conservation tillage, critical area treatment, grassed waterways, erosion control structures, diversions, sediment basins, wildlife plantings and terraces. Total financial and technical assistance cost is estimated to be $1,478,100; $1,110,800 Pub. L.-566 funds, and $367,300 local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be initiated until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection And Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is available)

Dated: March 12, 1984.

Homer R. Hilner,

State Conservationist.

[FR Doc. 84-7521 Filed 3-20-84; 8:45 am]
BILLING CODE 3410-15-M

Carroll County Road Bank Critical Area Treatment RC&D Measure, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Carroll County Road Bank Critical Area Treatment RC&D Measure, Carroll County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804-771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Carroll County Road Bank Critical Area Treatment RC&D Measue, Virginia

The measure concerns a plan for seeding eroding road banks in Carroll County, Virginia. The planned work will include the establishment of 73 acres of permanent vegetative cover by hydro-seeding and mulching.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental

Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: March 12, 1984.

Manly S. Wilder,

State Conservationist.

[FR Doc. 84–7522 Filed 3–20–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL RIGHTS COMMISSION

Connecticut Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission originally scheduled for March 13, 1984, at Hartford, Connecticut (FR Doc 84–4316 on page 5980, has a new convening date).

The meeting will be held on April 26, 1984. The address and time will remain the same.

Dated at Washington, D.C., March 16, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–7618 Filed 3–20–84; 8:45 am]

BILLING CODE 6335–01–M

New Hampshire Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission of Civil Rights that a meeting of the Advisory Committee to the Commission originally scheduled for March 21, 1984, at Manchester, New Hampshire (FR Doc 84–4317 on page 5980), has a new convening date.

The meeting will be on April 11, 1984. The address and time will remain the same.

Dated at Washington, D.C., March 16, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–7619 Filed 3–20–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

President's Commission on Industrial Competitiveness

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of meeting.

SUMMARY: This notice announces the forthcoming meeting of the Committee on Capital Resources, a subcommittee of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphisis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Time and Place: Friday, April 6, 1984, 8:30 am–5:00 pm, Sheraton Carlton Hotel, Mount Vernon Room, 923 16th Street, NW., Washington, D.C. 20006

Public Participation: The meeting will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, N.W., Washington, DC 20503, telephone: 202–395–4527 on substantive issues or Marilyn McLennan, Chief, Information Management Division, 202–377–4217, on issues regarding administration of the Commission.

SUPPLEMENTARY INFORMATION: The Capital Resources Committee will discuss problems affecting cost, supply and allocation of capital. The Committee will consider a report on reactions of economists and an outline of alternative solutions to capital problems. It also will review requirements for data comparing U.S. economic performance to other countries.

Dated: March 16, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84–7535 Filed 3–20–84; 8:45 am]

BILLING CODE 3510–16–M

Bureau of the Census

Census Advisory Committee of the American Economic Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409), notice is hereby given that the Census Advisory Committee of the American Economic Association will convene on April 13, 1984, at 9:15 a.m. in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Economic Association advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Bureau's programs; and advises on the role of analysis within the Bureau.

The Committee is composed of 15 members of the American Economic Association.

The agenda for the meeting, which is scheduled to adjourn at 3:45 p.m., is (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and major budget program developments; (2) obtaining expert advice; (3) update on the service sector; (4) new Federal Government expenditure reports; (5) update on planning the 1990 census, including pretest plans and geographic coding update; (6) update on the Survey of Income and Program Participation; (7) valuation of non-cash benefits and their effect on poverty estimates; (8) general discussion and Committee recommendations; and (9) plans and date for the next meeting.

The meeting is open to the public, and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. Barry Rappaport, Bureau of the Census, Room 3061, Federal Building 3, Suitland,

Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763–5483.

Dated: March 15, 1984.

C. L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 84–7617 Filed 3–20–84; 8:45 am]

BILLING CODE 3510-07-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Tuesday, April 10, 1984 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 566–1066.

Dated in Washington, D.C. March 13, 1984.

Charles H. Atherton,

Secretary.

[FR Doc. 84–7520 Filed 3–20–84; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting to Import Levels for Certain Cotton Textiles and Textile Products Produced or Manufactured in Brazil

March 16, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 22, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377–4212.

Background

The CITA directive dated March 11, 1983 (48 FR 11143), as amended, (see also 48 FR 35482), established levels of restraint for certain categories of cotton and man-made fiber textile and apparel products, including Categories 300/301, 317 and 319, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1983. Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of March 31, 1982, the United States Government is increasing the current year limits for cotton textile products in Categories 300/301 (carded and combed yarn), by the application of carryforward and in Categories 317 (twill and sateen) and 319 (carded duck) by the application of carryover. To the extent used, this carryforward will be deducted from the limits established for these categories in the agreement year which begins on April 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. number was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 16, 1984

Commissioner of Customs, Department of the Treasury, Washington, D.C., 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of March 11, 1983 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1983.

Effective on March 22, 1984, paragraph 1 of the directive of March 11, 1983 is hereby further amended to adjust levels of restraint established for the following categories, according to the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of March 31, 1982, between the Governments of the United States and the Federative Republic of Brazil:[1]

Category and Adjusted Twelve-Month Level of Restraint [2]

300/301—7,834,782 pounds
317—10,808,070 square yards
319—8,313,900 square yards

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] The bilateral agreement provides, among other things, that: (1) within the aggregate and group limits, specific limits may be exceeded by designated percentages; (2) specific ceilings may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The levels have not been adjusted to reflect any imports exported after March 31, 1983.

Sincerely,

Ronald I. Levin,

Acting, Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–7537 Filed 3–20–84; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limit for Certain Man-Made Fiber Products Produced or Manufactured in the Republic of the Philippines

March 15, 1984

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 21, 1984. For further information contact Carl Ruths, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated December 16, 1983 (48 FR 56425) established limits for certain specified categories of cotton, wool, and man-made fiber textile products, including Category 648 pt. (women's trousers), produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1984.

The 1984 limit for Category 648 pt. is being increased from 57,623 dozen to 64,276 dozen to account for the application of carryforward and swing, as provided under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982 between the Governments of the United States and the Republic of the Philippines. To the extent used in 1984, the carryforward will be deducted from the limit established for this category in 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 15, 1984

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 16, 1983 from the Chairman of the Committee for the Implementation of Textile

Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1984.[1]

Effective on March 21, 1984, paragraph 1 of the directive of December 16, 1983 is hereby amended to include an adjusted level of restraint for Category 648 pt.[2] of 64,276 dozen.[3]

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-7538 Filed 3-20-84; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Wool and Man-Made Fiber Apparel Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia Under a New Bilateral Agreement

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 22, 1984. For further information contact Gordana Slijepcevic, International Trade Specialist (202) 377-4212.

Background

On February 21 and 27, 1984, the Governments of the United States and the Socialist Federal Republic of Yugoslavia exchanged diplomatic notes extending their Bilateral Wool and Man-Made Fiber Textile Agreement for two years, dating from January 1, 1984 and extending through December 31, 1985. The extended agreement establishes a specific limit of 19,000 dozen for men's and boys' wool and man-made fiber suits in Category 643/443, produced or manufactured in Yugoslavia and exported during the agreement year which began on January 1, 1984, and a sub-limit of 8,200 dozen for Category 443 exported during the same time period.

[1] The agreement provides, in part, that: (1) specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] In Category 648, all TSUSA numbers except 383.1955, 383.2250, 383.6146, and 383.9071.

[3] The level of restraint has not been adjusted to reflect any imports exported after December 31, 1983.

The letter published below directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Category 643/443 in excess of the designated limits.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 16, 1984

Commissioner of Customs, Department of the Treasury, Washington, D.C., 20229.

This directive cancels and supersedes the directive of December 22, 1983 which directed you to prohibit entry of certain specified categories of wool and man-made fiber textile products, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the fifteen-month period which began on January 1, 1983 and extends through March 31, 1983.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool and Man-Made Textile Agreement of February 21 and 27, 1984, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 22, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Categories 643/443, produced or manufactured in the Socialist Federal Republic of Yugoslavia, and exported during the twelve-month period which began on January 1, 1984, in excess of the following limits:

Category and Twelve-Month Limit [1]

643/443—19,000 dozen of which not more than 8,200 dozen shall be in Cat. 443

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in the Socialist Federal Republic of Yugoslavia, which have been exported to the United States on and after January 1, 1983 and extending through December 31, 1983, shall, to the extent of any unfilled balances, be charged against the following limits:

Category and Adjusted Twelve-Month Level of Restraint [2]

643/443—18,884 dozen of which not more than 9,750 dozen shall be in Cat. 443

In the event the foregoing limits have been exhausted by previous entries, such goods shall be subject to the limits established for goods exported during 1984.

Textile products in Category 643/443 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of February 21 and 27, 1984 between the Governments of the United States and the Socialist Federal Republic of Yugoslavia which provide, in part, that (1) within the group limit the specific limit may be exceeded by five percent in any agreement period; (swing) (2) the group limit may be exceeded for carryover and carryforward not to exceed 11 percent of the applicable limit; and (3) up to 67% of the carryover and carryforward applied to the group limit may be applied to the Category 443 limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Socialist Federal Republic of Yugoslavia and with respect to imports of wool and man-made fiber textile products from Yugoslavia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

Acting, Chairman Committee for the Implementation of Textile Agreements.

[FR Doc. 84-7539 Filed 3-20-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1983.

[2] The limits have not been adjusted to reflect any imports exported after December 31, 1982.

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Personnel Security Clearance Change Notification.

The Defense Investigative Service (DIS) administers the DOD Industrial Security Program on behalf of all DOD components and other User Agencies. In accomplishment of this mission, defense contractors are required to keep the DIS apprised of status changes of cleared personnel, i.e., employment termination, transfer, change in name, etc. DISCO Form 562 is used by participating defense contractors to report these changes.

Participating cleared defense contractors: 12,285 responses, .2 hours.

Forward comments to Edward Springer, OMB Desk, Room 3235, NEOB, Washington, DC 20503, and Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Fred Schonert, DIS, HQ Administrative Services Division, 1900 Half Street, SW, Washington, DC 20324, telephone (202) 693–0881.

Dated: March 16, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–7524 Filed 3–20–84; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Department of Defense Security Agreement.

The Defense Investigative Service (DIS) is responsible for administering the Industrial Security Program on behalf of DoD components and other User Agencies.

The Department of Defense Security Agreement (DD Form 441) is used by DIS to establish the initial contractual legal obligation between government and industry and is the basis for all subsequent security requirements imposed upon industry. These requirements are essential in order to preserve and maintain the security of the United States by preventing the loss and compromise of classified information pertaining to the national defense.

Respondents: (Participating cleared DoD contractors) 12,498.

Forward comments to Edward Springer, OMB Desk, Room 3235, NEOB, Washington, DC 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Fred Schonert, DIS, HQ Administrative Services Division, 1900 Half Street, SW, Washington, DC 20324, telephone (202) 693–0881.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–7525 Filed 3–20–84; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Questionnaire for Conscientious Objectors.

The Defense Investigative Service (DIS) requests that each individual who is cleared or who is in the process of being cleared and who has indicated an unwillingness to work on classified work verify this objection by completing a Questionnaire. Completion of this form serves not only as verification of this objection, but serves as a basis for further determination of continued access to classified information.

Individuals contacted: Approximately 120 respondents annually, 30 hours.

Forward comments to Edward Springer, OMB Desk, Room 3235, NEOB, Washington, DC 20503, and Daniel J. Vitiellok DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Fred Schonert, DIS, HQ Administrative Services Division, 1900 Half Street, SW, Washington, DC 20324, telephone (202) 693–0881.

Dated: March 16, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–7526 Filed 3–20–84; 8:45 am]

BILLING CODE 3810-01-M

Defense Nuclear Agency (DNA); Scientific Advisory Group on Effects (SAGE); Meeting

The Scientific Advisory Group on Effects (SAGE) will meet in closed session May 1 and May 2, 1984 at the National Defense University, Fort McNair, Washington, DC.

Agenda: May 1–2 (0830–1700): Presentations, Discussions and Executive Sessions on Issues Related to the Strategic Defense Initiatives. The presentations and discussions in the above cited agenda will focus on current and planned activities of the Defense Nuclear Agency (DNA) and others in support of the President's Strategic Defense Initiatives, with emphasis on the Lethality and Target Hardening Project. Executive sessions will be held for the primary purpose of advising the Director, DNA, as to the adequacy of ongoing and planned activities. All planned presentations, discussions, and executive sessions may include classified defense information; therefore, under the provisions of Sections 552b(c) (1) and (3), Title 5, U.S.C., this meeting is closed to the public. Any additional information concerning the meeting may be obtained from Lt Col Robert A. Rissell, USAF, Scientific Secretary, SAGE, Headquarters, Defense Nuclear Agency, ATTN: DDST, Washington, DC 20305.

Dated: March 15, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–7523 Filed 3–20–84; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Flood Control Project for the City of Laurel, Mississippi

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Description of proposed action: The proposed action is to prepare a DEIS relative to flood control alternatives to reduce flood damages in Laurel, Mississippi. The study area will encompass a portion of Tallahala and Tallahoma creek drainage basins in Jones county, Mississippi.

2. Alternatives to the Proposed Action: The US Army Corps of Engineers has available four alternatives. These are: no action, non-structural solution, structural solution, or a combination of non-structural and structural measures. Specific alternatives will be identified and included in the draft report scheduled for completion in September, 1985.

3. Description of the Scoping Process: Public participation in the development of the preliminary survey report will be initiated by a public workshop meeting scheduled for August 1984. Local news media will be provided public notices and information concerning public meetings and workshops for dissemination within the study area.

The DEIS will undergo the public review process as required by the National Environmental Policy Act. Significant issues to be addressed will be possible impacts of the proposed action and alternatives to air quality, drainage, water quality, general environment, cultural resources, and human safety of the project area and outlying areas. A public hearing may be held upon completion of the DEIS, if interests indicate that a public hearing will improve the decision making on this action. A notice informing the public as to time and location will be issued at least 30 days prior to such hearing.

4. Scope Meeting: No additional scoping meetings are scheduled.

5. DEIS Preparation: It is estimated that the DEIS will be available to the public in September 1985.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Tommy Lightcap, PD–ES, US Army Engineer District, Mobile, Post Office Box 2288, Mobile, AL 36628.

Dated: March 12, 1984.

Patrick J. Kelly,

Colonel, CE, District Engineer.

[FR Doc. 84–7517 Filed 3–20–84; 8:45 am]

BILLING CODE 3710-C-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30000/37; PH–FRL 2543–5]

Dicofol; Special Review of Pesticide Products Containing Dicofol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Special Review.

SUMMARY: This Notice announces that EPA is initiating a Special Review of all pesticide products containing the active ingredient dicofol [1,1-bis(chlorophenyl)-2,2,2-trichloroethanol]. EPA has determined that dicofol is contaminated with DDT and chemically related compounds and that use of pesticides containing dicofol poses a risk to nontarget wildlife, particularly bird populations. The Special Review will be conducted under EPA's regulations in 40 CFR 162.11(a). During the Special Review process, EPA will carefully examine the risks and benefits of using dicofol products and will determine whether such use should be restricted or cancelled.

DATE: Comments, evidence to rebut the conclusions in this Notice, and other relevant information must be received on or before May 7, 1984.

ADDRESS: Written comments by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Bruce A. Kapner, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711–I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7400).

SUPPLEMENTARY INFORMATION: EPA has determined that a Special Review will be conducted for all products containing dicofol. The term "Special Review" is the name now being used by EPA for the process previously called the Rebuttable Presumption Against Registration (RPAR) process. This name and associated modifications in the process will be proposed in regulations in the near future. The present Special Review will adhere to RPAR procedures now in effect.

Issuance of this Notice means that potential adverse effects associated with the use of dicofol have been identified and will be examined further to determine their extent and whether or not, in light of the benefits of dicofol, such risks are unreasonable.

A document entitled "Guidance for the Reregistration of Pesticide Products Containing Dicofol as the Active Ingredient" (Guidance Document) has been issued and is available to the public from the previously mentioned contact person. The Guidance Document explains the basis of EPA's decision to start this Special Review and also contains references, background information, data requirements, and other information pertinent to the

reregistration of pesticides containing dicofol. The exclusion of indoor uses of dicofol from the Special Review by the Guidance Document was based on general criteria for testing requirements. The persistence and mobility of DDT, however, dictate against excluding indoor uses from the Special Review.

I. Initiation of a Special Review

A. General

Issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136–136y), 40 CFR 162.11 provides that an RPAR (Special Review) shall be conducted if EPA determines that a pesticide meets or exceeds any of the risk criteria relating to acute and chronic toxic effects set forth in 40 CFR 162.11(a)(3). In making this determination, EPA is guided by section 3(c)(8) of FIFRA which directs EPA to begin an RPAR (Special Review) only if it is based on a "validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or the environment." If such a determination is made, the registrant(s) will be notified by certified mail and afforded an opportunity to submit evidence in rebuttal to EPA's presumption. In addition, any registrant may voluntarily petition EPA to cancel the registration of its product(s).

Following the initiation of the Special Review, the pesticide use or uses of concern will enter the public discussions stage of the Special Review process. Upon request, public discussions will be held in an effort to resolve risk issues through voluntary actions by the registrants. Requests for such meetings should be made in accordance with directions described in Unit V, below.

If risk issues cannot be resolved through voluntary actions, EPA would proceed to evaluate the risks and benefits of dicofol and to propose a regulatory solution in a Position Document 2/3 (PD 2/3). After obtaining comments from the Scientific Advisory Panel, the Secretary of Agriculture, registrants, and the public on PD 2/3," EPA would issue a Position Document 4 (PD 4) containing EPA's final regulatory position. If EPA determines that the risks of use exceed the benefits, EPA would issue a notice of intent to cancel the registration of products intended for such use. The notice may identify for specific uses certain changes in the composition, packaging, and/or labeling of the product which would reduce the risks to levels that EPA would consider acceptable. Cancellation would become effective unless within 30 days of issuance of the notice, the registrant either requests a hearing to challenge the cancellation or submits an application to amend his product's registration in a manner prescribed in the notice of intent to cancel.

It is emphasized that a Notice initiating a Special Review is not a notice of intent to cancel the registration of a pesticide, and a Special Review may or may not lead to cancellation. Ordinarily, EPA issues a notice of intent to cancel only after carefully considering the risks and benefits of a pesticide and determining that the pesticide may generally cause unreasonable adverse effects on the environment. Commenters may also submit for consideration data on benefits which they believe are relevant to registration or continued registration of dicofol products.

B. Presumption

EPA has determined that registrations and applications for registration of pesticide products containing dicofol meet or exceed the risk criteria in 40 CFR 162.11(a)(3)(ii)(C). That section provides that an RPAR (Special Review) shall be conducted if the use of a pesticide "[c]an reasonably be anticipated to result in significant local, regional, or national population reductions in nontarget organisms, or fatalities to members of endangered species." On the basis of the scientific studies and information summarized in the dicofol Guidance Document, EPA has concluded that this risk criterion has been exceeded by certain registrations of pesticide products containing dicofol and has no present basis to conclude that other uses do not meet the same risk criterion.

Specifically, EPA has determined that products containing dicofol are contaminated with significant amounts of DDT and related compounds, which together are designated as DDTr. These related compounds are the o,p' and p,p'. isomers of DDT, DDD, DDE, and a compound known as "extrachlorine" DDT [o,p' and p,p' bis(chlorophenyl)tetrachloroethane]. The amount of these contaminants is in the order of 10 percent in the technical dicofol products. When dicofol products are used these DDTr contaminants are released into the environment and bioaccumulate through food chains. There is a significant body of literature which documents the movement of DDT and its metabolites and their adverse effects on fish and wildlife. The factual basis and conclusion of law in the 1972 Opinion and Order, as published in the **Federal Register** of July 7, 1972 (37 FR 13369), cancelling the registrations of DDT products remain valid in 1984. To the extent that the current review of dicofol raises the same issues, e.g., the ecological effects, oncogenicity, and persistence of DDT, EPA may rely on these findings and conclusions to support its regulatory actions.

Based on an extensive knowledge of the fate of DDTr in the environment and the levels found in current dicofol products, EPA used a model to predict the environmental transport and accumulation of these contaminants in the Arroyo Colorado river basin. This river basin was chosen because of the high level of dicofol used on citrus crops and the important aquatic bird habitats in the drainage area. EPA estimated through the model that dicofol containing 10 percent DDTr would result in accumulated levels of DDTr of 9 ppm in the bodies of fish in that river. This level would be much greater than that known to cause adverse reproductive effects in certain aquatic birds. The specific data on which this model is based, as well as the various parameters and assumptions used in this model, can be found in the Guidance Document.

A major reproductive effect is the capability of DDTr to cause eggshell thinning in certain species of birds, thus impairing their reproductive capacity. Based on the vast body of knowledge about the adverse effects of DDT and related compounds on the environment, and based on the results of the model, EPA is concerned about DDTr at levels below the minimum amounts currently known to be in technical dicofol products. Because current dicofol products contain much more DDTr than that judged to cause adverse effects from certain uses, EPA has determined that the risk criterion for chronic wildlife effects has been met for all uses, a position that is consistent with the 1972 cancellation order.

EPA is requiring registrants to indicate the level of DDTr in their current products and to provide information on their manufacturing methods. EPA may then determine the extent to which the contamination can be reduced or eliminated, conceivably resolving the Special Review for some uses.

C. Rebuttal Criteria

All registrants, applicants for registration, and other interested members of the public are invited to submit evidence either to support or to rebut the presumption (as listed in Unit I.B. of this Notice) that the use of dicofol products containing DDTr will cause adverse ecological effects such as eggshell thinning and other reproductive impairment. Under 40 CFR

162.11(a)(4)(ii) the presumption triggering a Special Review must be rebutted by sustaining the burden of proving, in the case of the chronic wildlife toxicity criteria, "that when considered with proposed restrictions on use and widespread and commonly recognized practices of use, the pesticide will not concentrate, persist or accrue to levels in man or the environment likely to result in any significant chronic adverse effects."

D. Benefits Information

An estimated 2 to 3 million pounds of dicofol active ingredient are used annually as an acaricide in the United States. The major use sites are citrus crops and cotton, which accounted for an estimated two-thirds of the dicofol usage during the 1980–1981 period. Other use sites include fruits, vegetables, seed crops, ornamentals (indoor and greenhouse), lawn and turf grasses, around building foundations, and indoors for such uses as treating house plants.

EPA has done an initial review of the use of dicofol usage on citrus crops and cotton. The farm level value of the U.S. orange, grapefruit, and lemon production was approximately $1.8 billon for the 1980–1981 citrus season. Dicofol is used throughout the citrus-growing regions for control of mites. Uncontrolled mite populations reduce yield and quality of citrus and increase the average cost of citrus producton. Although alternative acaricides to dicofol are available, dicofol's widespread use suggests that alternatives are considered to be less cost effective than, or less preferable to dicofol for control of mite populations under specific circumstances.

The farm level value of U.S. cotton production is approximately $4 billion annually. Dicofol is used for mite control primarily in the State of California, which produces approximately $1 billion worth of cotton annually. Uncontrolled damage due to spider mites would increase the average unit cost of cotton. As in the case of citrus, although alternative acaricides to dicofol are available, dicofol's use, particularly in the San Joaquin valley of California, suggests that alternatives are considered to be less cost effective than, or less preferable to dicofol for control of mite populations under specific circumstances.

In addition to submitting evidence to rebut the presumptions of risk in the Special Review, 40 CFR 162.11(a)(5)(iii) provides that a registrant or applicant "may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide subject to the presumption outweigh the risk of use." If the presumption of risk is not rebutted, the benefit evidence submitted by registrants, applicants, and other interested persons will be considered by the Administrator when determining the appropriate regulatory action.

Registrants, applicants, or other interested persons who desire to submit benefit information should consider submitting information on the following subjects along with any other relevant information they desire to submit:

1. Identification of the economically important uses of dicofol, including market studies and estimated quantities applied for those uses.

2. Identification of alternative chemical and non-chemical methods for controlling mites for uses set forth in item 1 above.

3. Determination of the change in costs to dicofol users of obtaining equivalent pest control with available substitute products or crop management techniques.

4. Assessment of the expected changes in level of pest damage (if any) associated with the use of alternative pest control measures. Changes in pest damage can be measured in terms of yield and/or quality of commodities.

5. If changes in control costs or level of pest control are significant, an assessment can be made of the impact of dicofol's cancellation on the production and price of affected commodities.

II. Additional Grounds for Review

In 1972, the Administrator's Order and Opinion cancelling the registration of most products containing DDT concluded that "DDT is a potential human carcinogen," and "DDT presents a carcinogenic risk" (37 FR 13375). EPA also is aware of some data associating dicofol with oncogenic effects. However, exposure data and the analyses currently available, relative to this effect, are not the basis for the Special Review at this time.

The potential oncogenicity of dicofol *per se* is unknown due to the unavailability of adequate studies. A study conducted by the National Cancer Institute in 1978 suggests the possibility of oncogenicity in male mice, but the study is unacceptable due to the reported decomposition of the test material during the study. Because of the limitations of the data base, EPA is requiring all registrants of dicofol products to provide additional data on human toxicity and dietary exposure. All comments, information and related analyses received with respect to this potential adverse effect may serve as a basis for a supplemental Special Review and will, in any event, be included in EPA's final decision on registering pesticides containing dicofol.

In addition, EPA is requiring, through the Guidance Document, that additional testing of the toxicological, ecological, crop residue, and environmental fate properties of dicofol be conducted.

III. Rebuttal Submission Procedures

All registrants and applicants for registration are being notified by certified mail of the Special Review being initiated on their products containing dicofol.

The registrants and applicants for registration will have 45 days from the date this Notice is sent or until May 7, 1984 to submit evidence in rebuttal to the Agency's presumption. EPA is interested in a prompt resolution of this Special Review and therefore will not grant an extension of the comment period unless a good cause is shown.

A registrant or applicant for registration may claim that part or all of the material being submitted in response to this Notice is trade secret or confidential business information. If a commenter makes such a claim, the commenter should clearly identify the information claimed to be confidential by placing on the information a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret", "proprietary", or "company confidential," or by marking allegedly confidential portions of otherwise nonconfidential documents clearly. If a confidentiality claim is asserted, the information covered by the claim will be disclosed by the Agency only to the extent and by means of the procedures issued under 40 CFR Part 2, Subpart B published in the **Federal Register** of September 1, 1976 (41 FR 36906). If the information is not accompanied by a confidentiality claim at the time it is received, the Agency will place it in the public comment file where it will be available for public inspection.

A registrant or applicant who asserts a confidentiality claim for some, but not all, of the information submitted in rebuttal should furnish two copies of the information to the Agency. The first copy should contain all of the evidence submitted in rebuttal, with information claimed to be confidential clearly identified. The second copy should be identical to the first except that all information claimed as confidential should be deleted. The second copy will be placed in the public comment file. The first copy will be treated in accordance with the procedures set out above.

IV. Duty To Submit Information on Adverse Effects

Registrants are required by law to submit to EPA any additional information regarding adverse effects on man or the environment which comes to their attention at any time, pursuant to section 6(a)(2) of FIFRA. Registrants of dicofol products must immediately submit any published or unpublished information, studies, reports, analyses, or reanalyses regarding any dicofol residues, adverse effects in animal species or humans, and claimed or verified accidents to humans, domestic animals, or wildlife which have not been previously submitted to EPA. Registrants should notify EPA of any studies currently in progress, their purpose, the protocol, the approximate completion date, and a summary of all results obseved to date.

V. Public Comments, Inspections, and Requests for Meetings

During the time allowed for submission of rebuttal evidence, specific comments on the presumptions set forth in this Notice and on the material in the Guidance Document for reregistration are solicited from the public. In particular, any documented episodes of adverse effects on humans or domestic animals, and information as to any laboratory studies in progress or completed should be submitted to the Agency as soon as possible. Specifically, information on the fate and effects of dicofol, its DDT impurities, metaolities, and degradation products is solicited. Similarly, submission of any studies or comments on the benefits from the use of dicofol is requested. All comments and information received, as well as any other relevant information and analysis thereof which comes to the attention of EPA, may serve as a basis for final determination pursuant to 40 CFR 162.11(a)(5).

All comments and should be sent to the address given above, preferably in triplicate, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation "OPP-30000/37." Comments received after the specified time will be considered only to the extent feasible, consistent with the time limits imposed by 40 CFR 162.11(a)(5)(ii).

During the rebuttal comment period, interested members of the public or registrants may request a public meeting to discuss the risk issues and methods of reducing risks. Requests for such meetings should be directed to the contact person listed in this Notice. Any records pertaining to such meetings, including minutes, agendas, and comments received, will be filed in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, under docket number OPP-30000/37.

Dated: March 4, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84-6781 Filed 3-20-84; 8:45 am]

BILLING CODE 6560-50-M

[PF-371; PH-FRL 2547-4]

Certain Companies; Pesticide and Feed Additive Petitions

AGENCY: Environmental Peotection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment of tolerances for residures of certain pesticide chemicals in or on certain commodities.

ADDRESS: By mail submit comments identified by the document control number [PF-371] and the petition number, attention Product Manager (PM) 25, at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

Robert Taylor, PM-25, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA has received pesticide and feed additive petitions relating to the establishment of tolerances for residues of certain pesticide chemicals and their metabolites in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

Initial Filings

1. *PP 4F3041.* Velsicol Chemical Corp., 341 East Ohio St., Chicago, Il 60611. Proposes amending 40 CFR 180.227 by:

a. Establishing tolerances for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on the commodities as follows:

Commodities	Parts per million (ppm)
Corn, fodder	300.0
Corn, forage	300.0
Corn, grain	2.0
Barley, grain	1.0
Barley, straw	8.5
Grass, forage	700.0
Grass, hay	500.0
Wheat, grain	1.0
Wheat, straw	8.5

b. Establishing tolerances for the combined residues of dicamba and its 3,6-dichloro 2-hydroxybenoic acid metabolite in or on the commodities as follows:

Commodities	Parts per million (ppm)
Cottonseed	4.0
Soybean	4.0
Soybean, fodder	250.0
Soybean, forage	200.0
Soybean, hay	200.0

The proposed analytical method for determining residues is gas chromatography with Ni-63 electron capture detector.

2. *FAP 4H5428.* Velsicol Chemical Corp. Proposes amending 21 CFR 561.427 by establishing a regulation permitting residues of the herbicide dicamba and its metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on the commodity cottonseed meal at 8.0 ppm.

3. *PP 4F3042.* American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540. Proposes amending 40 CFR 180.361 by establishing tolerances for the combined residues of the herbicide pendimethalin [*N*-(ethylpropyl)-3,4-

dimethyl-2,6-dinitrobenzenamine) and its metabolite [4-([1-ethylpropyl]amino)-2-methyl-3,5-dinitrobenzyl alcohol] in or on the commodity tomatoes at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with a Ni–63 electron capture detector.

4. *PP 4F3019.* Union Carbide Agricultural Products Company, Inc., P.O. Box 12014, T.W. Alexander Dr., Research Triangle Park, NC 27709. Proposes amending 40 CFR 180.324 to reflect residues of the herbicide bromoxynil resulting from the application of phenol, octanic or butyric acid esters of bromoxynil in or on sorghum fodder, forage, and grain and residues of bromoxynil in corn fodder, forage, and grain. The proposes analytical method for determining residues is gas chromatography with Ni–63 electron capture detector.

5. *PP 4F3020.* Atlantic & Pacific Research Inc., P.O. Box 14545, North Palm Beach, FL 33408. Proposes amending 40 CFR 180.1042 by establishing an exemption from the requirement of a tolerance for the plant growth regulator aqueous extract of seaweed derived from *laminaria digitata, laminaria hyperbora, Fucus serratus; ascophyllum nodosum* in or on the commodity bananas. The proposed analytical method for determining residues in bean hypocotyl test.

(Secs. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)) and 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: March 8, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–7430 Filed 3–20–84; 8:45 am]

BILLING CODE 6560–50–M

[PF–369; PH–FRL 2547–3]

Certain Companies; Pesticide, Feed, and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment of tolerances for residues of certain pesticide chemicals in or on certain commodities.

ADDRESS:

By mail submit written comments to: Program Management and Support Division (TS–757C), Attn: Product Manager (PM) 12, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments must be identified by the document control number [PF–369]. All written comments filed in response to this notice will be available for public inspection in the Program Management and Support Division office at the address above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, PM–12, CM #2, Rm. 205 (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA has received pesticide, feed, and food additive petitions relating to the establishment of tolerances for residues of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

Initial Filings

1. *FAP 4H5422.* Union Carbide Corp., T.W. Alexander Dr., Research Triangle Park, NC 27709. Proposes amending 21 CFR Part 193 by establishing a regulation, in conjunction with an experimental use permit, permitting residues of the insecticide thiodicarb (dimethyl *N,N'*-(thiobis[(methylamino)carbonyloxy)) bis (ethanimidothioate)) and its metabolite methomyl [*S*-methyl *N*-((methylcarbamoyl)oxy)thioacetimidate] in or on the commodity tomato paste at 5.0 parts per million (ppm).

2. *PP 4F3009.* FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of the insecticide carbosulfan (2,3-dihydro-2,2-dimethyl-7-benzofuranyl [(dibutylamino) thio] methylcarbamate) and 2,3-dihydro-2,2-dimethyl-benzofuranyl-*N*-methylcarbamate (carbofuran), its carbamate metabolites 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and 2,3-dihydro-2,2-dimethyl-3-keto-7-benzofuranyl-*N*-methylcarbamate; its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol and its metabolite di-*n*-butylamine in or on the following commodities:

a. Apples and pears: 4.3 total, of which 2.0 ppm is carbosulfan *per se*, 1.0 ppm is carbamate metabolites, 0.3 ppm phenolic metabolites, and 1.0 ppm of the dibutylamine metabolite.

b. Kidney and liver of cattle, goats, hogs, horses and sheep: 1.5 ppm total, of which no more than .02 ppm is carbosulfan and its cholinesterase inhibiting metabolites, .08 ppm is phenolic metabolites, and 1.4 ppm is the dibutylamine metabolite.

c. Milk: 1 ppm total, of which no more than .02 ppm is carbosulfan *per se* and its cholinesterase inhibiting metabolites, 0.18 ppm is its phenolic metabolites, and 0.8 ppm is the dibutylamine metabolite.

d. Meat, fat and meat byproducts (except kidney and liver) of cattle, goats, hogs, horses and sheep: 0.2 ppm total, of which no more than .02 ppm is carbosulfan and its cholinesterase inhibiting metabolites .03 ppm is phenolic metabolites, and 0.15 ppm is the dibutylamine metabolite.

The proposed analytical method for determining residues is gas chromatography.

3. *FAP 4H5420.* FMC Corp. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the insecticide carbosulfan in or on the following commodities:

a. Apple pomace dry: 51.0 ppm total, of which 25 ppm is carbosulfan *per se*, 11.0 ppm is carbamate metabolites, 2.0 ppm is phenolic metabolites, and 13.0 ppm is the dibutylamine metabolite.

b. Apple pomace wet: 15.5 ppm total, of which 7.0 ppm is carbosulfan *per se*, 2.5 ppm is carbamate metabolites, 1.0 ppm is phenolic metabolites, and 5.0 ppm is the dibutylamine metabolite.

(Secs. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)) and 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: March 8, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–7427 Filed 3–20–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66107; PH–FRL 2547–1]

Certain Pesticide Products; Intent to Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended Distribution or sale of these products after the effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: April 20, 1984.

ADDRESS: By mail, submit comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Lela Sykes, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration number	Product name	Registrant	Date registered
,00–523	Tolban 4E Herbicide	Ciba-Geigy Corp., P.O. Box 11422, Greensboro, NC 27409	Nov. 1, 1974.
239–2111	Ortho Phaltan Sulfur 7.5–10 Dust	Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804	July 12, 1965.
239–2329	Ortho Phaltan Rose Black Spot Control	do	Sept. 24, 1971.
279–1850	Niagara Niacide M7 G–3 Dust	FMC Corporation, 2000 Market St., Philadelphia, PA 19103	Sept. 27, 1961.
279–2075	Niagara M7 Ethion 4 Dust	do	Aug. 6, 1963.
[illegible]	Randox	Monsanto Co., 1101 17th St., NW., Washington, DC 20036	Feb. 8, 1956.
[illegible]–104	Monsanto Granular Randox		May 11, 1959.
524–311	Polaris	do	Mar. 10, 1975.
524–312	Randox Technical	do	Sept. 25, 1974.
524–317	Glyphosate Technical Grade	do	Apr. 28,. 1975.
528–55	Amsco's Penta Treat Ready to Use Wood Preserver	Union Oil Company of California, 1900 East Golf Road, Schaumburg, IL 60195	Dec. 24, 1975.
541–203	Pzazz Bacteriostatic Cream Cleanser	Puritan/Churchill Chemical Co., 916 Ashby St., NW., Atlanta, GA 30318	Apr. 30, 1969.
595–292	Diazinon Dust No. 2	Haviland Agricultural 1845 Sterling, NW., Grand Rapids, MI 49502	July 11, 1966.
655–17	Prentox 50% Chlordane Wettable Powder	Prentiss Durg and Chemical Co., Inc., C.B. 2000, 21 Vernon St., Floral Park, NY 11011.	Aug. 25, 1949.
[illegible]–25	Prentox 4 pounds Chlordane Emulsifiable Concentrate	do	Aug. 26, 1952.
655–46	Prentox 40% Chlordane Dust Concentrate	do	Jan. 21, 1954.
655–47	Prentox 40% Chlordane Wettable Powder	do	Jan. 21, 1954.
644–48	Prentox 8 pounds Chlordane Emulsifiable Concentrate	do	Jan. 21, 1954.
655–92	Prentox 50% Chlordane Dust Concentrate	do	Feb. 13, 1956.
655–277	Prentox 2 pounds Heptachlor Emulsifiable Concentrate	do	Apr. 18, 1966.
655–506	Prenchlor 8 pounds Emulsifiable Concentrate Insecticide	do	Aug. 12, 1975.
655–611	Prentox Poison Ivy Brush Killer	do	July 23, 1968.
[illegible]–4[illegible]	Poison Ivy Killer	Kerr-McGee Chemical Corp., Kerr-McGee Center, Oklahoma City, OK 73125	Mar. 4, 1967.
2749–167	Chloropropylate 2E	Aceto Agricultural Chemicals Corp., 126–02 Northern Blvd., Flushing, NY 11368	Dec. 4, 1972.
3743–199	Royal Brand Herban 62	Southern Agricultural Chemicals Inc., P.O. Box 527, Kingstree, SC 29556	July 14, 1967.
4185–124	Smith Douglass Mangle Brush Killer	Smith-Douglass, Inc., P.O. Box 419, Norfolk, VA 23501	Oct. 15, 1963.
4185–126	Smith Douglass 2,4,5–T 4 pounds Low Volatile Ester Brush Killer.	do	Oct. 17, 1963.
4185–354	Ongaro's Weed and Feed 20–5–5	do	Dec. 13, 1967.
4185–454	Nutro Dandelion and Weed Killer	do	Aug. 13, 1968.
4185–441	Nutro New Weed and Feed 22–6–6	do	Jan. 29, 1970.
4221–16	2,4,5–T P Acid	Gallard-Schlesinger Corp., 584 Mineola Ave., Carle Place, Long Island, NY 11514	July 17, 1958.
5185–32	Bio-Guard 120–140	Bio-Lab Inc., P.O. Box 1489, Decatur, GA 30031	Aug. 9, 1960.
5185–106	Bestall Germicidal Detergent	do	Mar. 22, 1966.
5185–118	Guardall X–195 Bactericide, Fungicide, Virucide (Water Soluble)	do	Mar. 31, 1967.
5185–231	Bio-Guard WS 222 Farm Premise Disinfectant	do	Dec. 4, 1974.
5185–232	Bio-Guard Kontrol Bactericide, Fungicide, Virucide	do	Mar. 31, 1975.
7185–6	Destun 50 WP Cotton Herbicide	Medical Products Division/3M, 3M Center, Bldg. 230–3, St. Paul, MN 55144	Feb. 24, 1976.
10350–6	Grouting Compound with Root Inhibitor Type 200	3M Company Product Toxicology, 3M Center, Bldg. 220–2E, St. Paul, MN 55101	Nov. 12, 1975.
12130–9	Farmchem EPN Methyl 24	Farm Chemicals, Inc., P.O. Box 456, Aberdeen, NC 28315	Mar. 12, 1973.
15091–2	MB 98–2 Preplant Soil Fumigant	V–J Growers Supply, R. R. #1 Box 1115, Boynton Beach, FL 33437	May 26, 1976.
39027–1	Sodium Hypochlorite 9.0% Solution	Miramar Hardware Inc., 6832 SW. 37th St., Miramar, FL 33023	Apr. 25, 1979.
46084–2	Lindane Borer and Leaf Miner Spray	Stewart Industries, Inc., P.O. Box 8658, Fort Worth, TX 76112	Oct. 5, 1981.
46084–10	Dursban Lawn Spray	do	July 29, 1981.
45084–11	Diazinon 25% EC Lawn and Garden Insect Control	do	Aug. 18, 1981.
45084–14	Sevin 5% Dust	do	July 29, 1981.
48111–1	Adeptacide–W	Adept Water Engineering Co., 1800 West Hatcher, Suite B, Phoenix, AZ 85021	Aug. 13, 1982.
48111–2	Adeptacide–S		Oct. 18, 1982.

The Agency has agreed that each cancellation shall be effective April 20, 1984 unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for one year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Sale or distribution of any quantity of any of these products produced after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued may be submitted in triplicate to the Registration Support and Emergency Response Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP–66107]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended, 86 Stat. 973, 89 Stat. (751, 7 U.S.C. 136))

Dated: March 9, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84–7429 Filed 3–20–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP-180638; PH-FRL 2547-2]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the thirteen States listed below. Also listed is a quarantine exemption granted to the U.S. Department of Agriculture.

DATES: See each specific and quarantine exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific and quarantine exemption for the name of the contact person. The following information applies to all contact people:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office Location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1191).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Commission of Agriculture and Horticulture for the use of fenamiphos on non-bearing palm trees to control reinform nematodes; January 11, 1984 to January 1, 1985. Arizona had initiated a crisis exemption for this use. (Jim Tompkins)

2. California Department of Food and Agriculture for the use of 2-[1-(ethoxyimino) butyl]-5-[2-(ethylthio) propyl]-3-hydroxy-2-cyclohenxen-1-one on sugarbeets to control grassy weeds; February 1, 1984 to June 15, 1984. (Jim Tompkins)

3. Louisiana Department of Agriculture for the use of methiocarb on rice seed to control depredating birds; January 16, 1984 to November 30, 1984. (Jack E. Housenger)

4. Michigan Department of Agriculture for the use of permethrin on asparagus to control dark-sided cutworms; January 16, 1984 to June 30, 1984. (Gene Asbury)

5. North Dakota Department of Agriculture for the use of methalaxyl on sunflower seeds to control downy mildew; January 24, 1984 to June 15, 1984. (Jack E. Housenger)

6. U.S. Department of Agriculture for the use of chlorpyrifos on ornamental sod to control the imported fire ant in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas; February 9, 1984 to December 31, 1984. (Jack E. Housenger)

A quarantine exemption was granted to the U.S. Department of Agriculture (APHIS) for the use of malathion and diazinon on host sites in California to eradicate the Mexican fruit fly; January 19, 1984 to January 19, 1985. The U.S. Department of Agriculture had initiated a crisis exemption for this use. (Jack E. Housenger)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: March 9, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84-7428 Filed 3-20-84; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2546-1]

Issuance of General Civil Penalty Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the EPA's new General Civil Penalty Policy. The new penalty policy sets out criteria which EPA should consider in pursing penalties against violators of environmental requirements. These criteria should be considered regardless of the statute or regulation involved. This policy will probably be of significant interest to members of the regulated community and the public in general. We are therefore issuing this notice so that those interested will become aware of the policy's existence and availability.

DATE: This policy became effective February 16, 1984.

ADDRESS: Jonathan D. Libber, Acting Chief, General Policy and Review Branch (LE-130A), Office of Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202/426-7503).

SUPPLEMENTARY INFORMATION: EPA's new "Policy on Civil Penalties" explains the Agency's three primary goals in civil penalty assessment. Those three are: deterring future violations, resolving existing violations quickly and promoting equity within the regulated community. The policy identifies criteria which EPA should apply in pursuing these goals sets out guidance for each program to follow in developing statute-specific penalty assessment policies which build on the general policy.

The new Civil Penalty Policy consists of two documents. The first, "Policy on Civil Penalties," presents the philosophical basis for deciding on how large a civil penalty to pursue. The second document, "A Framework for Statute-Specific Approaches to Penalty Assessments," provides detailed guidance for the development of program-specific penalty policies.

Copies of this policy are available upon request. Pursuant to 40 CFR 2.120, EPA may charge a reasonable fee for each copy it provides.

Dated: March 12, 1984.

Courtney M. Price,

Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 84-7540 Filed 3-20-84; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-HA-78-3; ORD-FRL 2548-2]

Draft Health Assessment Document for Tetrachloroethylene (Perchloroethylene)

AGENCY: Environmental Protection Agency.

ACTION: Revision Clarifying the Carcinogenicity Conclusions of the Draft Health Assessment Document for Tetrachloroethylene (Perchloroethylene), and Reopening of Public Comment Period.

SUMMARY: The External Review Draft of the EPA document, Draft Health Assessment Document for Tetrachloroethylene (Perchloroethylene), EPA-600/8-82-005B dated December 1983 was announced on December 23, 1983 in the **Federal Register** as being available for public review and comment from January 5, 1984 through March 5, 1984. On February 3, errata for pages 1-4 and 9-45 were distributed to all parties who had requested a copy of the document from EPA and inserted in all undistributed copies.

Because of a need to further clarify the conclusion regarding the carcinogenicity findings, the Agency is issuing a revised statement of these conclusions. This statement replaces the last four lines on page 1-3 and all of page 1-4, and also replaces the Conclusion section 9.4.3 on page 9-45. The revised statement is as follows:

Tetrachloroethylene has been demonstrated to induce malignant tumors of the liver in both male and female mice of the B6C3F1 strain. This constitutes a signal that tetrachloroethylene might be a carcinogen for humans. The technical adequacy and the strong nature of the positive response in the 1977 NCI tetrachloroethylene bioassay study makes it likely that a repeat bioassay would also be positive. In fact, a recent National Toxicology Program (NTP)

study, currently under audit, showed similar positive results. This bioassay study, if validated, would strengthen the evidence for carcinogenicity of tetrachloroethylene.

It should be recognized that there is a substantial body of opinion in the scientific community to the effect that the mouse liver overreacts to chlorinated organic compounds in contrast to that of the rat, and that the induction of live cancer in the mouse represents only a promoting action for spontaneous liver tumors which normally occur with substantial incidence. Furthermore, this promoting action might be related to liver damage associated only with high liver exposures to chlorinated agents such as tetrachloroethylene. However, the evidence is inconclusive either for this restrictive position on the mouse liver carcinogenic response to chlorinated organics or to the position that the mouse liver is as good as any other mammalian indicator of carcinogenicity for these compounds.

According to a literal interpretation of the criteria of the International Agency for Reseach on Cancer (IARC), the animal data supporting the carcinogenicity to tetrachloroethylene might be classified as limited. Also, since existing human epidemiologic data for tetrachloroethylene are inconclusive, its overall IARC ranking might be classified as Group 3, meaning, according to IARC language, the perchloroethylene cannot be classified as to its human carcinogenicity.

It should be recognized that Group 3 covers a broad range of evidence: From inadequate to almost sufficient animal data. Because of the strength of the mouse liver cancer response, tetrachloroethylene is at the upper end of this range. Hence, the classification of the carcinogenicity of tetrachloroethylene under the IARC criteria for animal evidence could be limited or almost sufficient depending on the nature of the bioassay evidence as it exists today and on the differing current scientific views about the induction of liver tumors in mice by chlorinated organic compounds. Therefore, the overall IARC ranking of tetrachloroethylene is Group 3 but close to Group 2B, i.e. the more conservative scientific view would regard tetrachloroethylene as being close to a probable human carcinogen, but there is considerable scientific sentiment for regarding tetrachloroethylene as an agenct that cannot be classified as to its carcinogenicity for humans.

In consideration of the above action, the public comment period will be reopened for 30 days beginning March 23, 1984 and ending April 23, 1984. In addition to this notice, copies of this revision will be forwarded to those who have already received copies of the draft health assessment document and errata from the ORD Publications Office, Center for Environmental Research Information (CERI), in Cincinnati. During the 30-day public comment period, requesters may obtain copies of these materials, as follows:

- Single copies will be available from ORD Publication—CERI–FRN, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268. Tel. (513) 684–7562.
- These documents also will be available for public inspection and copying at the EPA library at Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Comments on the revision should be submitted in writing by close of business on April 23, 1984 to: Project Officer for Tetrachloroethylene (Perchloroethylene), Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Chappell, 919/541/3637.

Dated: March 16, 1984.

Bernard D. Goldstein,

Assistant Administrator for Research and Development.

[FR Doc. 84–7680 Filed 3–20–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 84–272 and 84–273; File Nos. BP–821021AF and 830502AK]

Cortland Broadcasting Co., Inc., and Geri Taczak Media, Inc.; Hearing Designation Order

In the Matter of Applications of Cortland Broadcasting Company, Inc., Cortland, Ohio, Req: 830 kHz, 1 kW, D (MM Docket No. 84–272, File No. BP–821021AF); Geri Taczak Media, Inc., WOKG, Warren, Ohio, Has: 1570 kHz, 0.5 kW, DA–D, Req: 830 kHz, 5 kW, DA–D (MM Docket No. 84–273, File No. 830502AK) For Construction Permit.

Adopted: March 5, 1984.
Released: March 15, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications.

2. The applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the applications are for different communities, they would serve substantial areas in common. Therefore, in addition to determining pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of them would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

3. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural services to such areas and populations.

(2) To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

(3) To determine in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

(4) To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

4. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

5. It is further ordered, that pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communciations Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-7302 Filed 3-20-84; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket Nos. 84-259 and 84-260; File Nos. BPCT-830328KJ and BPCT-830429KF]

George E. Gunter; and Midwest Television Inc.; Hearing Designation Order

In the Matter of Applications of George E. Gunter, Springfield, Illinois, (MM Docket No. 84-259, File No. BPCT-830328KJ) and Midwest Television, Inc., Springfield, Illinois, (MM Docket No. 84-260, Filed No. BPCT-830429KF) For Construction Permit.

Adopted: February 29, 1984.
Released: March 15, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it: (1) The above-captioned mutually exclusive applications of George E. Gunter (Gunter) [1] and Midwest Television, Inc. (MTI) for authority to construct a new commercial television station on Channel 49, Springfield, Illinois; (2) a petition to deny filed by Springfield Independent Television Company, Inc., (SITCI), licensee of station WRSP-TV, Springfield, Illinois against Gunter; (3) a comment on petition to deny, filed by Gunter and (4) a reply to comments on petition to deny filed by SITCI.

2. SITCI claims standing as a party in interest pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, on the grounds that if Gunter's application were granted, the new station would compete for audience and revenue with SITCI's station WRSP-TV, Channel 55, Springfield, Illinois. We find that SITCI has standing, *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940).

Financial Qualifications

3. Petitioner alleges that the certifications contained in Gunter's application cannot support a finding that he posseses the financial qualifications to implement each of his pending proposals. (Gunter is an applicant for six other television stations.) Petitioner states that Commission policy requires that an applicant with more than one pending proposal must be able to show his ability to finance each pending proposal, citing *Sawnee Broadcasting Co.*, 7 RR 2d (1966). This case was, of course, decided well before the Commission changed the application form to permit an applicant to certify as to its financial qualifications. It does not, therefore, stand for the proposition that an applicant with several co-pending applications may not certify that it is financially qualified.

4. The Commission has not modified its requirement that an applicant have the financial ability to construct and operate its proposed facility for three months. The revised Section III (Financial Qualifications) of FCC Form 301 allows an applicant to certify that it is financially qualified. Gunter has certified that he is financially qualified. He has, therefore, done all that is required by the Commission. Petitioner's allegations are speculative and lack specificity. Petitioner has not supplied any information or documentation to indicate that the certifications are false. Consequently, we find that the allegations do not warrant the addition of a financial issue.

Staffing Proposal

5. Petitioner further alleges that Gunter's proposal to employ less than 5 full-time persons is inherently unreasonable and is incapable of effectuation. Petitioner notes that the Commission has not hesitated in the past to insure that staffing proposals are somewhat realistic and it should not hesitate to find Gunter's proposal defective. Petitioner points out that its own station, WRSP-TV, Springfield, Illinois, has a staff of 13 full-time and 3 part-time employees.

6. The Commission has no rigid rules or standards prescribing personnel or staffing requirements; there is only a general policy that there be a reasonable likelihood that an applicant can effectuate its proposed operation with its staff. *Bisbee Broadcasting, Inc.*, 48 FCC 2d 291, 292-293 (1974). George Gunter proposes to operate the television station with less than five full-time employees. He proposes to operate 126 hours per week, of which 7 hours (5.95%) will be local programming. Based on a 7-day week, this means that the station would be in operation 18 hours per day, of which 1 hour would be local programming. An 18-hour day would appear to require at least two shifts. This would mean that the station must be operated by no more than two full-time employees per shift. The petitioner, moreover, commissioned a study of comparable stations in comparable markets to determine the staffs required. This study indicates that a station operating as many hours as proposed here (including 1 hour, 10 minutes per day of local programming) requires between 27 and 49 full-time employees. While we recognize that petitioner's study cannot be taken to mean that the applicant cannot effectuate its proposal with far fewer people than the study indicates, we believe it raises a valid question regarding Gunter's staffing proposal which warrants exploration in the hearing. Accordingly, an appropriate issue will be specified.

7. The proposed antenna for Gunter is to be mounted on the tower of AM radio station WTAX, Springfield, Illinois. Consequently, any grant of a construction permit to Gunter will be conditioned to ensure that WTAX's radiation pattern is not adversely affected by the construction of the proposed station.

8. MTI intends to operate the proposed facility as a satellite of its commonly owned station, WCIA-TV, Champaign, Illinois. Further, the Grade B contours of WCIA-TV and the proposed station will overlap over an area of 1560 sq. miles. The overlap area represents approximately 46% of the Grade B coverage area of the proposed station. George E. Gunter does not propose a satellite operation. Accordingly, an issue will be specified with respect to the need for a satellite operation.[2]

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed.[3] Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are

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[1] Gunter filed an amendment on September 7, 1983, the "B" cut-off date, which was accompanied by a request for lease to amend. Since the amendment contains information required by the staff to complete its processing of Gunter application, the petition for leave to amend is granted and the amendment is accepted for filing. However, Gunter shall not receive any comparative credit as a result of the amendment.

[2] The issue to be specified as to whether circumstances exist which make the "satellite" form of operation necessary in Springfield will be a qualifying issue, for if it is resolved in the negative, the application proposing a satellite operation can not be granted.

[3] We note that MTI is the licensee of KFMB-TV, San Diego, California. There are two complaints pending before the Fair Employment Practices Commission of California and the Superior Court of California for the County of San Diego arising out of the operation of KFMB-TV. Accordingly, any grant of MTI's application will be without prejudice to such action as the Commission may deem appropriate as a result of the outcome of these proceedings.

designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine, with respect to Midwest Television, Inc., whether circumstances exist which justify the operation of a satellite in Springfield, Illinois.

(2) To determine with respect to George E. Gunter:

(a) The size, composition, duties and hours of the staff proposed by the applicant.

(b) In light of the evidence adduced pursuant to the foregoing, whether there is a reasonable likelihood that the applicant can effectuate its proposal with the staff proposed.

(3) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(4) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, that the petition to deny the application of George Gunter, filed by Springfield Independent Television Company, Inc. is granted, to the extent indicated and otherwise is denied.

12. It is further ordered, that Springfield Independent Television Company, Inc. is made respondent.

13. It is further ordered, that in the event of a grant of the application of George Gunter, the construction permit shall be conditioned as follows:

During installation of the antenna authorized herein, AM station WTAX shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements on the AM antenna shall be made and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

14. It is further ordered, that to avail themselves of the opportunity to be heard, the applicant and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, filed with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

15. It is further ordered, that the applicant herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-7503 Filed 3-20-84; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Application for Consolidated Hearing; Women's Coalition for Better Broadcasting, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM stations:

Applicant, city, and State	File No.	MM docket No.
A. Frances R. McClure and Carolyn L. McClure d.b.a Women's Coalition for Better Broadcasting; Charleston, WV.	BPH-820627AC	84-262
B. CLW Communications Group; South Charleston, WV.	BPH-830124AT	84-263
C. William A. Clark d/b/a Communicast; Charleston, WV.	BPH-830124AU	84-264

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. City Coverage, A.
2. Air Hazard, A.
3. 307(b) A, B, C.
4. Contingent Comparative, A, B, C.
5. Ultimate, A, B, C.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554, Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-7500 Filed 3-20-84; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Marcell's Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Marcell's Inc.; Glendale, AZ.	BPH-811211AJ	84-244
B. Arizona Number One Radio, Inc.; Glendale, AZ.	BPH-820514AP	84-245
C. Interstate Broadcasting System of Arizona, Inc.; Glendale, AZ.	BPH-820521AN	84-246
D. Hector P. Torres and Adib Eden, Sr. d/b/a Arizona Family Radio Ltd.; Glendale, AZ.	BPH-820618AP	84-247
E. Newmountain Broadcasting Corporation; Glendale, AZ.	BPH-820621AK	84-248
F. Compadres Communications Corporation; Glendale, AZ.	BPH-820622AD	84-249
G. Diana M. Greenlee; Glendale, AZ.	BPH-820623AM	84-250
H. Lamraf, Inc.; Glendale, AZ.	BPH-820623AO	84-251
I. Glendale Broadcasting Company, Inc.; Glendale, AZ.	BPH-820624AD	84-252
J. Jane M. Hawkins and Edith M. Blazier d/b/a Dove Enterprises of Glendale, Glendale, AZ.	BPH-820624AK	84-253
K. MCB Broadcasting of Arizona, Inc.; Glendale, AZ.	BPH-820624AM	84-254
L. Continental Broadcasting Corporation of Arizona, Inc.; Glendale, AZ.	BPH-820624AN	84-255
M. Lee Optical & Associated Companies Retirement & Pension Fund Trust; Peoria, AZ.	BPH-820624AT	84-256
N. Turner-Flinton-Winslow Broadcasters, Inc.; Glendale, AZ.	BPH-820624BJ	84-257
O. Elayne N. Boros et al. d/b/a Thunder Radio; Peoria, AZ.	BPH-820624BT	84-258

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below

to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix) A.
2. Air Hazard A, B, C, E, H, I.
3. 307(b) A through O.
4. Contingent comparative A through O.
5. Ultimate A through O.

3. If there is any non-standardized issue(s) in this proceeding, the full text of this issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8, [1] the applicant(s) is financially qualified: A (Marcell)

[FR Doc. 84–7501 Filed 3–20–84; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

BKLA Bancorp; Formation of Bank Holding Co.

The company listed in this notice has applied for the Board's approval under sections 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring voting shares and/or assets of a bank. The factors that are considered in action on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. Interested persons may express their views in writing to the address indicated for the application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BKLA Bancorp,* Los Angeles California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Los Angeles County, Los Angeles, California. Comments on this application must be received not later than April 13, 1984.

Board of Governors of the Federal Reserve System, March 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–7531 Filed 3–20–84; 8:45 am]

BILLING CODE 6210–01–M

City National Bancorp, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 12, 1984.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *City National Bancorp, Inc.,* Fulton, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The City National Bank of Fulton, Fulton, Kentucky.

2. *First State Capital Corporation,* Holly Springs, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Holly Springs, Mississippi.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Franklin Bancorp, Inc.,* Winnsboro, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Franklin State Bank & Trust Company, Winnsboro, Louisiana.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Valley National Corporation,* Forest Grove, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Valley National Bank of Oregon, Forest Grove, Oregon.

Board of Governors of the Federal Reserve System, March 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–7532 Filed 3–20–84; 8:45 am]

BILLING CODE 6210–01–M

The Bank of New York Company, Inc.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

[1] Paragraph 8 reads as follows: The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency—Applicant(s): A (Marcell). Deficiency: Failure to verify availability of committed loan. Failure to file financing loan commitment and balance sheet for Syncom Capital Corporation.

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 12, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York, and B.N.Y. Holdings (Delaware) Corporation, Wilmington, Delaware; to acquire Union Financial Services Corporation, New Haven, Connecticut, and thereby engage in the activity of issuing as agent Mastercard travelers cheques, serving the state of Connecticut.

2. *Chemical New York Corporation*, New York, New York; to acquire Brown & Company Securities Corporation, Boston, Massachusetts, and thereby engage in discount brokerage services, including executing purchases and sales of securities such as equities, bonds, bills and options upon the order of its customers, related securities credit activities pursuant to the Board's Regulation T and other incidental activities including but not limited to custodial services, all of which are subject to the qualifications specified in 12 CFR 225.25(b)(15). Comments on this application must be received not later than April 10, 1984.

Board of Governors of the Federal Reserve System, March 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7533 Filed 3-20-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPR 63]

Federal Procurement; Changes in Small Business Size Standards and Requirements

March 19, 1984.

1. *Purpose.* This bulletin provides interim guidance concerning revised small business size standards and determinations of the U.S. Trade Representative concerning the dollar thresholds and covered agencies under the Trade Agreements Act of 1979.

2. *Expiration date.* This bulletin expires December 31, 1984, unless revised or superseded sooner.

3. *Background.*

a. *Small business.*

(1) The Small Business Administation (SBA) has prescribed detailed definitions for small business concerns (size standards) in 13 CFR Part 121 as authorized by the Small Business Act (15 U.S.C. 632).

(2) On February 9, 1984, the SBA published revised small business size standards regulations in the **Federal Register**. The revisions made to 13 CFR Part 121 by the SBA are intended to:

(a) Deal with the effects of inflation by adjusting the size standards so as to return to the status quo of 1975 when the last inflationary adjustment was made;

(b) Provide one set of standards for both the SBA procurement and financial assistance programs; and

(c) Address longstanding problems of defining small business in certain industries.

(3) The SBA size standards and related regulations are set forth in Subpart 1–1.7 of the FPR. Section 1–1.701 states that the size standards are based on the governing regulations of SBA. Therefore, the interim guidance set forth in paragraph 4 below is provided until the details of the revised SBA regulations can be incorporated into applicable procurement regulations.

b. *Purchases under the Trade Agreement Act oif 1979.*

(1) Executive Order 12260 provides that the U.S. Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing right units.

(2) Sections in the FPR that contain a reference to this dollar threshold include the following: 1–6.1601(b), 1–6.1601(e), 1–6.1603(b), 1–6.1603(c), 1–6.1603(d), 1–6.1605–(a), and 1–6.1609(a).

(3) Section 1–6.1613 lists agencies covered by the Agreement on Government Procurement.

4. *Agency guidance.*

a. *Small business size standards.* After the March 12, 1984, effective date of the revised SBA small business size standard regulations, and pending their incorporation into the Federal Acquisition Regulation, agencies should follow the revised provisions of 13 CFR Part 121 (see 49 FR 5023, February 9, 1984).

b. *Purchases under the Trade Agreements Act of 1979.*

(1) Effective January 1, 1984, the U.S. Trade Representative has determined that, with respect to the Agreement on Government Procurement, the dollar equivalent of 150,000 Special Drawing Right units is $161,000 (48 FR 44790).

(2) Effective December 29, 1981, the status of the Peace Corps changed from an agency within the Action agency to an independent agency by the International Security and Development Cooperation Act of 1981 (22 USC 2501–1).

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 84-7641 Filed 3-20-84; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a national consumer exchange meeting, chaired by Mark Novitch, M.D., Acting Commissioner of Food and Drugs.

DATE: Wednesday, April 11, 1984, 1:15 p.m. to 3:15 p.m.

ADDRESS: Hubert Humphrey Bldg. Auditorium, 200 Independence Ave. S.W., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Alexander Grant, Associate Commissioner for Consumer Affairs, Food and Drug Administration, 5600 Fishers Lane, Rm. 16–85, Rockville, MD 20857, 301–443–5006; TTY (for the deaf) 301–443–1818.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for consumers and FDA officials to exchange views and to relay information on vital health and policy issues. Proposed topics of discussion at this meeting will be Sulfiting Agents in Foods and Drugs, Ethylene Dibromide (EDB), and the **Federal Register** Proposal on Irradiated Foods (49 FR 5714; February 14, 1984).

Dated: March 15, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-7505 Filed 3-20-84; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made

of the following National Advisory body scheduled to meet during the month of April 1984:

Name: National Council on Health Planning and Development.

Date and Time: April 5–6, 1984, 8:30 a.m.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

The entire meeting is open.

Purpose: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to: (1) The development of national guidelines under section 1501 of Public Law 93–641, (2) the implementation and administration of Title XV and XVI of Public Law 93–641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda: The Council will deliberate on a prospective payment system for capital. The Department of Health and Human Services is required to report to Congress by October 1984 on how capital should be treated under the Diagnostic Related Groups prospective payment system. This Council meeting will serve as a public forum for all the proposals that have surfaced at this time. The Council will consider these proposals and forward a recommendation to the Secretary.

On April 5, a number of presentations will be made to overview the various methods of treating capital and to summarize the resultant impact on the consumer, hospital and investment banking communities. In addition, several invited organizations will present their proposals and perspectives on the issue. On April 6, the Council will hear status reports from officials of the Health Resources and Services Administration, and conduct other Council business.

A public comment period will be provided each day. A detailed agenda may be obtained after March 20, 1984 by writing or telephoning Mrs. Diane A. McMenamin.

Anyone requiring information regarding the subject Council should contact Mrs. Diane A. McMenamin, Executive Secretary, National Council on Health Planning and Development, Room 9–A–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone 301–443–6377.

Agenda items are subject to change as priorities dictate.

Dated: March 15, 1984.

George T. Lewis,

Acting Advisory Committee Management Officer, HRSA.

[FR Doc. 84–7506 Filed 3–20–84; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Group 630]

California; Filing of Plat of Survey

March 12, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, San Diego County

T. 10 S., R. 3 E.
T. 10 S., R. 4 E.
T. 11 S., R. 3 E.
T. 11 S., R. 4 E.

2. This plat representing the dependent resurvey of a portion of the Rancho San Jose del Valle Boundary in Tps. 10 and 11 S., Rs. 3 and 4 E., portions of the south, east, west and north boundaries and subdivisional lines, and the subdivision of sections 20, 30, 31 and 32, the survey of the subdivision of sections 19 and 36, and the survey of section 37, T. 10 S., R. 4 E., San Bernardino Meridian, under Group No. 630, California, was accepted February 14, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This Survey was executed to meet certain administrative needs of the Bureau of Indian Affairs and this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84–7510 Filed 3–20–84; 8:45 am]

BILLING CODE 4310–40–M

[Group 630]

California; Filing of Plat of Survey

March 12, 1984.

1. This plate of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, Riverside County

T. 9 S., R. 4 E.
T. 10 S., R. 5 E.
T. 11 S., R. 4 E.

2. This plat, representing the following:

a. Dependent resurvey of portions of the west boundary and subdivisional lines of T. 9 S., R. 4 E., San Bernardino Meridian.

b. Dependent resurvey of portions of the north and south boundaries and the subdivisional lines in T. 10 S., R. 5 E., San Bernardino Meridian.

c. Dependent resurvey of a portion of the subdivisional lines of T. 11 S., R. 4 E., San Bernardino Meridian, under Group No. 630, California, was accepted February 14, 1984.

e. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs and this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84–7509 Filed 3–20–84; 8:45 am]

BILLING CODE 4310–40–M

[Group 792]

California; Filing of Plat of Survey

March 8, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Mariposa County

T 4 S., R. 18 E.

2. This plat, representing the dependent resurvey of a portion of the subdivision lines and Mineral Survey No. 5897, and the survey of the subdivision of Section 10, T. 4 S., R. 18 E., MDM, under Group No. 752, California, was accepted February 15, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84–7508 Filed 3–20–84; 8:45 am]

BILLING CODE 4310–40–M

[Group 739]

California; Filing of Plat of Survey

March 12, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Shasta County

T. 31 N., R. 8 W.

2. This plat, representing the dependent resurvey of portions of the Sixth Standard Parallel North, on the south boundary, west boundary and subdivision lines, and the survey of the subdivisional sections 10, 14, 22, 26, 28, and 35, T. 31 N., R. 8 W., Mount Diablo Meridian, under Group No. 739, California, was accepted February 17, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84–7507 Filed 3–20–84; 8:45 am]

BILLING CODE 4310–40–M

Suspension of Approval of Record Title Assignments of Oil and Gas Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of suspension of approval of record title assignments of oil and gas leases.

SUMMARY: The Bureau of Land Management is reviewing the policy of approving small acreage oil and gas lease record title assignments in Alaska and the lower 48 States. A recent trend has developed whereby assignments of record title interests of oil and gas leases are fragmenting larger lease acreages into parcels of smaller undevelopable size which is counter-productive to the intent of the Mineral Leasing Act of 1920 and the Fiscal Year 1981 Department of the Interior Appropriations Acts which is the timely development of reserves and production of the resources on Federal lands.

For noncompetitive nonproducing lands under lease for oil and gas, approval of record title assignments of less than 640 acres in the lower 48 States is hereby suspended until further notice. This suspension also includes competitive and noncompetitive lands under lease for oil and gas of less than 2,560 acres in Alaska. Where diligent operations on a lease are likely to occur, exceptions will be made (a) where the record title assignment is for 100 percent of the original lease size or (b) where the assignee transmits a request for approval of the assignment together with evidence of diligent development, that is, an approvable application or request for a legitimate proposal, as follows:

1. Evidence that an Application for Permit to Drill with all attachments has been filed with the proper BLM office, see 43 CFR 3160;

2. Request for approval of a Cooperative or Unit Agreement, see 43 CFR 3180;

3. Request for approval of a Communitization or Drilling agreement, see 43 CFR 3105.2;

4. Request for approval of Operating, Drilling or Development Contracts, see 43 CFR 3105.3; or

5. Justification in special unique cases not meeting the above exceptions that is submitted to the authorized officer for consideration at the same time as submittal of the request for approval of an assignment. Such a justification must demonstrate that the assignment will advance diligent development of the leased resources.

Applicants with record title assignments now pending approval may qualify under the second exception by submitting to the proper Bureau of Land Management office one of the above documents. Reference must be made on the document of the lease serial number of the assignment pending approval.

This suspension also extends to processing record title assignments of an undivided interest where the average undivided interest holding in the lease is less than 10 percent. Assignments of operating rights or royalty interests are unaffected by this suspension.

EFFECTIVE DATE: March 21, 1984.

FOR FURTHER INFORMATION CONTACT: Gloria J. Austin, Division of Fluid Mineral Leasing, Bureau of Land Management (620), 18th and C Streets, NW., Washington, D.C. 20240, telephone (202/FTS 653–2228).

Dated: March 15, 1984.

Garrey E. Carruthers,

Assistant Secretary.

[FR Doc. 84–7497 Filed 3–20–84; 8:45 am]

BILLING CODE 4310–84–M

[C–09957 R/W]

Temporary Closure Order Canceled; Waterton Canyon, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure order cancelled—Waterton Canyon, Colorado.

SUMMARY: Notice of temporary closure, published in the **Federal Register** of September 7, 1979 at pages 52344 and 52345, temporarily closed the following public lands to all public use for the protection of public health and safety during the construction of the Denver Water Board's Strontia Springs reservoir, dam, conduit, tunnel and related facilities:

Sixth Principal Meridian, Colorado

T. 7 S., R. 69 W.,
Sec. 5, NE¼ and S½;
Sec. 8, E½E½;
Sec. 17, E½E½;
Sec. 20, N½NE¼, SE¼NW¼, SW¼SW¼, S½SE¼ and N½SW¼.

Project construction is now complete; the need for the closure to public use no longer exists. Accordingly, the closure order is hereby canceled, effective 10 a.m., April 21, 1984.

Dated: March 9, 1984.

H. Robert Moore,

Acting State Director.

[FR Doc. 84–7513 Filed 3–20–84; 8:45 am]

BILLING CODE 4310–JB–M

Salt Lake District; Proposed Amendment to Randolph Management Framework Plan

AGENCY: Bureau of Land Management.

ACTION: Notice of proposed amendment of Randolph Management Framework Plan.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Salt Lake District, intends to amend the

forestry portion of the Management Framework Plan (MFP) for the Randolph Planning Unit; Rich County, Utah.

Recommendations and decisions in the Randolph MFP call for managing forestry products by issuing permits for posts, poles, and firewoods to meet local needs only. The plan does not provide for commercial cutting of woodland products.

BLM is now preparing a forestry management plan for the Bear River Resource Area, including Rich County. Information in the forestry management plan has demonstrated a need for reassessment of the MFP to allow for possible commercial cutting of woodland products. The public demand for firewood has been steadily increasing due to rising heating costs and the trend toward energy efficient stoves. As a result, indiscriminate theft of all types of woodland products has increased proportionately in the Randolph Planning unit. In addition, a serious mountain pine beetle infestation has developed in the area; therefore, an increasing percentage of susceptible lodgepole pine have become infected. The U.S. Forest Service has been involved in an intensive program to control the reinfection of forest lands in adjacent areas; therefore, there has been considerable pressure on other landowners to attempt a beetle control program. Long-term, sustained-yield management, including identifying cutting areas for commercial and personal use, has been identified by BLM as a possible solution to these existing forestry management problems in the area.

An environmental assessment evaluating impacts of the proposed action and alternatives will be prepared. Up to 5,000 acres of public land in Rich County could be affected by this MFP amendment. The following issues will be considered in the amendment: wildlife habitat, livestock grazing, recreation opportunities, watershed and potential erosion, and socioeconomics.

ADDRESS AND DATES: Comments, including issues to be considered in the proposed MFP amendment, should be sent by April 22, 1984 to Wayne Richards, Area Manager, Bear River Resource Area, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

Dated: March 12, 1984.

Frank W. Snell,

District Manager.

[FR Doc. 84-7511 Filed 3-20-84; 8:45 am]

BILLING CODE 4310-84-M

Dickinson District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: The citizen advisory council for the Bureau of Land Management's Dickinson District will meet April 24, 1984, in Dickinson, North Dakota. There will be three topics for the Council to consider: BLM land pattern adjustment through exchanges; BLM-Forest Service grazing fee study; and tract delineation and leasing level for the second round of leasing in the Fort Union Coal Region. In addition, the Council will be briefed on the BLM oil and gas conference to be held in Bismarck in May; temporary wild horse adoption center in West Fargo; the environmental impact statement covering grazing on BLM lands in North Dakota; status of the McKenzie-Williams and Southwest North Dakota management framework plans; and future land use planning efforts in the state.

The Council is chartered by the Secretary of the Interior to give citizen advice to the Dickinson District Manager regarding planning and management of public lands and resources.

The meeting is open to the public, and members of the public will be given the opportunity to make statements before the Council. Persons wishing to submit a written statement to the Council should send it to the Dickinson District Manager.

Location, Date, and Time

April 24, 1984, from 8:30 a.m. to approximately 4:00 p.m. Mountain Daylight Time; Community Room (Basement) of the Gate City Building, 204 Sims Street, Dickinson, North Dakota.

FOR MORE INFORMATION CONTACT: Mel Ingeroi, Public Affairs Specialist; P.O. Box 1229; Dickinson, North Dakota 58602; Telephone (701) 225-9148.

William F. Krech,

Associate District Manager.

[FR Doc. 84-7570 Filed 3-20-84; 8:45 am]

BILLING CODE 4310-84-M

Ukiah District, California, Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Ukiah District Advisory Council will be held on Thursday, April 19, 1984.

The meeting will begin at 10:00 a.m. in the Bureau of Land Management conference room, 555 Leslie Street, Ukiah, California.

The agenda will include the King Range and Chemise Mountain wilderness study areas. An environmental impact statement on the two WSAs will be released for public review in October 1984.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Opportunity for public comment will be provided at 1:00 p.m., April 19, 1984.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

Dated: March 14, 1984.

Van W. Manning,

District Manager.

[FR Doc. 84-7569 Filed 3-20-84; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permits; Receipt of Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Miami Metrozoo, Miami, FL, APP# 584467.

The applicant requests a permit to import ten radiated tortoises [*Geochelone (=Testudo) radiata*] from Jersey Wildlife Preservation Trust, Channel Islands, Great Britain for enhancement of propagation.

Applicant: Kenneth L. DeCroo, Wild Animal Training Center, Riverside, CA, APP# 153266.

The applicant requests a permit to export and re-import one captive-bred male jaguar (*Panthera onca*) for educational purposes.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: March 16, 1984.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-7504 Filed 3-20-84; 8:45 am]

BILLING CODE 4310-07-M

Management of Charles M. Russell National Wildlife Refuge; Availability of Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of DEIS and cancellation of 1980 DEIS.

SUMMARY: This notice cancels the 1980 draft environmental impact statement (DEIS) for the Charles M. Russell National Wildlife Refuge (CMR), Montana, and advises the public that the Fish and Wildlife Service's (Service) new DEIS to implement a master plan for the operation of CMR is available for review and comment. By administrative decision occasioned by litigation, the preparation of the earlier EIS was halted in June 1981. Litigation has now been completed. This notice informs the public that, due in part to the litigation and delay between draft and final EIS, a new CMR DEIS has been prepared. The new DEIS considers five alternative management options for CMR: Alternative A, No Action (continue management unchanged); Alternative B, Enhanced Wildlife Habitat Management (proposed action); Alternative C, Intensive Wildlife Management; Alternative D, Multiple Use; and Alternative E, No Grazing. Public comments and suggestions regarding this new DEIS are requested.

DATE: Comments on this DEIS must be submitted on or before (60 days from date of publication).

ADDRESS: Written comments should be sent to Galen Buterbaugh, Regional Director, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Fries, Refuge Manager, Charles M. Russell National Wildlife Refuge, Post Office Box 110, Lewistown, Montana 59457, telephone: 406–538–8706. Individuals wanting copies of this DEIS for review should immediately contact either Mr. Fries or the Denver Regional Office (addresses above). Copies have been sent to all agencies and individuals who participated in the preparation of and/or commented on the earlier EIS.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to advise the public that the Service has prepared a new DEIS for the management of the Charles M. Russell National Wildlife Refuge, Montana, and that it is available for review and comment. This notice also advises of the cancellation of the previous DEIS for CMR, issued in 1980.

In the **Federal Register**, dated September 27, 1979, the Service published a Notice of Intent to prepare an EIS for a proposal to implement a master plan for the operation of CMR. From the beginning of the planning effort in January 1978, a comprehensive public involvement and scoping program was initiated. During August 1980, the DEIS was distributed to interested parties for comment. Public meetings regarding the DEIS were held in Washington, D.C., and in Lewistown, Clasgow, and Missoula, Montana, during late 1980. Public comments were solicited and 396 letters were received.

Publication of the final EIS was delayed as a result of court action concerning administration of the CMR (*Schwenke, et al., v. Secretary of the Interior, et al.*). On January 14, 1982, the U.S. District Court in Billings, Montana, ruled: "We have decided that the ranchers are entitled to have grazing declared a co-equal priority with wildlife conservation * * *" and "* * * thus we must conclude that CMR must still be administered under the Taylor Grazing Act."

The district court's decision was appealed to the U.S. Ninth Circuit Court of Appeals. On October 14, 1983, the appellate court overturned the district court and ruled that:

(1) Wildlife has priority in access to the forage resources of the range up to the limits specified in Executive Order 7509;

(2) Beyond those limits, wildlife and livestock have equal priority in access to the resources of the Range;

(3) The Range is to be administered under the "Wildlife Refuge Act (sic)."

Due to the court actions and the resultant delay of over three years since publication of the original DEIS, the Service has decided to cancel the earlier DEIS. Although the five alternative management strategies in the new DEIS remain basically the same as those described in the 1980 DEIS, three major changes distinguish the new DEIS from the previous one. First, the entire economic analysis has been reevaluated, and the description of the anticipated economic effects of proposed action and its alternatives is more accurately depicited. Second, the proposed action has been clarified regarding prescription grazing by allotment. Finally, the planning process and methodology used to develop grazing recommendations are explained in great detail to facilitate understanding and review.

The DEIS considers five alternative management options for the 1,904,301-acre refuge and identifies five management elements of operation: endangered or unique species, habitat management, forage allocation, range developments, and recreation and cultural resources. Each of the five alternative management options contains various levels of probable operations in each element.

Alternative A is the "No Action" alternative, and represents unchanged management of the refuge.

Alternative B is the "Proposed Action" and is designed to reach and maintain the refuge objectives. Reintroductions of peregrine falcons, black-footed ferrets, and swift fox would be made in certain refuge areas as animals became available. In addition, bighorn sheep would be introduced at selected sites. A habitat management plan for each allotment would be prepared by 1990, identifying specific wildlife habitat programs and providing specific management actions to correct the problems. Periodic habitat evaluations would be made to determine whether wildlife objectives were being met. The most significant management actions to achieve habitat objectives would be reductions of livestock grazing, changes in seasons of livestock use, and habitat treatment practices such as prescribed burning. Cooperative farming and haying would be phased out in the bottoms along the Missouri River to restore natural river bottoms. Livestock grazing would be reduced to 40,482 federal AUMs, which represent a 33% average reduction from present federally-licensed AUMs. Prescription grazing would be employed as a management tool to provide certain habitat conditions to benefit a particular wildlife species. Range improvements would include some fencing to keep livestock numbers within authorized levels, and some new water developments would be constructed. No soil ripping would occur. There would be more opportunities for wildlife recreation due to improvement of habitat and expected increases in wildlife populations. A new boat access site would be established at Fourchette Bay. Private cabins would not be affected. Interpretive programs would be emphasized, and access to recreational areas and facilities would be improved.

Alternative C, Intensive Wildlife Management, would allocate livestock grazing only as needed for vegetative manipulation to benefit wildlife.

Intensive wildlife habitat manipulations would occur, private cabins would be removed, and inholdings would be purchased to control grazing. Approximately two-thirds of the refuge boundary would be fenced.

Alternative D, Multiple Use, would not be possible to implement unless Congress changed CMR from a national wildlife refuge to a multiple-use management area. Livestock would receive approximately one-half the allocated forage. Range improvements, such as fencing, water development, or mechanical soils treatment would be based upon allotment needs. More recreational facilities and opportunities would be provided than those outlined in the preferred alternative. Limited reintroduction of unique or endangered species would occur.

Alternative E, No Grazing, would not be in compliance with Executive Order 7509, which requires that excess forage be allocated to livestock.

The earlier scoping process and the numerous verbal and written suggestions received during preparation and review of the first DEIS were considered in the preparation of the new draft. All previous comment letters with the Service's responses are included as an appendix to the new DEIS. Comments on the new DEIS are encouraged.

The final EIS and Record of Decision are anticipated to be completed in early 1985.

Dated: March 9, 1984.

Bob Shields,

Acting Regional Director.

[FR Doc. 84-7515 Filed 3-20-84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulfur Operations on the Outer Continental Shelf; Receipt of Proposed Development and Production Plan

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Shell California Production Inc. has submitted a supplemental development and production plan describing the activities it proposes to conduct as operator of the Beta Unit, offshore California. The purpose of this Notice is to inform the public that the Minerals Management Service (MMS) is considering approval of the plan and that it is available for public review and comment.

DATES: The plan may be reviewed weekdays, 8:00 a.m. to 3:00 p.m. Written comments must be received or postmarked by May 25, 1984.

ADDRESS: The plan is available for public review at the Office of the Regional Manager, Pacific OCS Region, Minerals Management Service, Room 160, 1340 West Sixth Street, Los Angeles, California 90017. Written comments may be mailed or hand-delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Dunaway, Regional Supervisor, Field Operations Office, Pacific OCS Region, (213) 688-2083.

SUPPLEMENTARY INFORMATION: Section 25 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1351, requires the MMS to make development and production plans available for public review. Regulation 30 CFR 250.34 provides for the publication of a Notice that such a plan is available for review.

William E. Grant,

Regional Manager, Pacific OCS Region.

[FR Doc. 84-7551 Filed 3-20-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

George Washington Memorial Parkway, Virginia, Spout Run Parkway to Theodore Roosevelt Memorial Bridge Section; Intent To Prepare an Environmental Impact Statement and Conduct Scoping Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare environmental impact statement and conduct scoping meetings.

SUMMARY: The National Park Service intends to prepare an Environmental Impact Statement (EIS) concerning potential alterations to a section of the George Washington Memorial Parkway between the Theodore Roosevelt Bridge (I-66) and Spout Run Parkway, including Spout Run Parkway to its western terminus at Lee Highway (29-211). The EIS will be developed in cooperation with Federal, state and local agencies.

The George Washington Memorial Parkway is part of a large "park, parkway, and playgound" system serving the Nation's Capital. Built as a scenic memorial approach to Washington, D.C., the Parkway has become a major commuter route now carrying traffic volumes characteristic of the major Northern Virginia arterials. The morning and evening traffic volumes exceed the design capacity of the roadway, creating congestion which is further aggravated by the inadequate capacities of the Key and Roosevelt Bridges.

Due to this inadequacy, the eastbound off-ramp to Key Bridge and Rosslyn is closed during the morning rush hour period to prevent incapacitating backups onto the George Washington Memorial Parkway.

Congestion on Spout Run Parkway begins at the Lorcom Lane intersection because of the left turn demand from Lorcom Lane to eastbound Spout Run. This necessitates the closing of westbound traffic in the morning.

The peak rush hour volume at the merge of Spout Run Parkway and the George Washington Memorial Parkway eastbound greatly exceeds the capacity of the roadway and results in long backups on both parkways.

Because of high westbound traffic volumes on roadways east of the Potomac River leading to the Roosevelt Bridge, evening rush hour traffic congestion is created on the bridge, on the on-ramp to the George Washington Memorial Parkway, and on the westbound George Wshington Memorial Parkway. Severe congestion also occurs at the on-ramp from Key Bridge because of the high volume of merging and weaving traffic. The peak hour volume of 4,500 vehicles per hour between Key Bridge and Spout Run greatly exceeds roadway capacity.

The EIS will identify construction and non-construciton alternatives to reduce or eliminaate congestion in a way that protects and enhances the values for which the parkway was established. The effects and consequences of these alternatives on the environment will be analyzed and a proposed action identified.

A broad range of impact issues will be addressed during development and analysis of alternatives. These issues include:

—Effects on the human safety;
—Social and economic effects on the community;
—Effects on the visual qualities of the parkway;
—Effects on recreation activities such as pleasure driving, bicycling, scenic viewing, and sightseeing;
—Effects on historic and archeological resources;
—Effects of floodplain and wetlands; and
—Potential mitigation issues;
—Effects on environmental quality.

Public scoping workshops will be held between April 25 and May 2 in Virginia, the District of Columbia and Maryland.

Exact meeting locations, dates, and times will be published in the **Federal Register** and local newspapers at a later date. The purpose of the workshops will be to inform the public about the study and to identify, through the public's involvement, additional concerns or issues which need to be addressed in the EIS.

The public is also welcome to submit its concerns and issues in written form to the Superintendent of the George Washington Memorial Parkway.

FOR FURTHER INFORMATION CONTACT: Mr. John Byrne, Superintendent, George Washington Memorial Parkway, Turkey Run Headquarters, McLean, Virginia 22101.

Dated: March 14, 1984.

Manus J. Fish,

Regional Director, National Capital Region.

[FR Doc. 84-7554 Filed 3-20-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-209 (Final)]

Carbon Steel Wire Rod From Spain

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: February 24, 1984.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports from Spain of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States (TSUS), are being subsidized by the Government of Spain within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671), the United States International Trade Commission hereby gives notice of the institution of investigation No. 701-TA-209 (Final) under section 705(b) of the act (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

The Department of Commerce will make its final subsidy determination in this case on or before May 1, 1984, and the Commission will make its final injury determination by June 22, 1984 (19 CFR 207.25).

FOR FURTHER INFORMATION CONTACT: Larry Reavis, (202-523-0296), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1984, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of carbon steel wire rod from Spain. The preliminary investigation was instituted in response to a petition filed on November 23, 1983, by Atlantic Steel Co., Continential Steel Co., Georgetown Steel Corp., North Star Steel Co.-Texas, and Raritan River Steel Co.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16 (c)).

Staff Reprot

A public version of the staff report containing preliminary findings of fact in the investigation will be placed in the public record on April 20, 1984, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a public hearing in connection with this investigation beginning at 10:00 a.m. on May 7, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 20, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on April 26, 1984, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 2, 1984.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 14, 1984.

Written Submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 14, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be avialable for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207),

and part 201, subparts A through E (19 CFR Part 201).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 12, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-7555 Filed 3-20-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-123 (Final)]

Certain Flat-Rolled Carbon Steel Products From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Brazil of certain flat-rolled carbon steel products, provided for in items 607.66, 607.94, 608.07, and 608.11 of the Tariff Schedules of the United States (TSUS),[2] which are being, or are likely to be, sold in the United States at less than fair value (LTFV). In addition, pursuant to section 735(b)(4)(A) of the act (19 U.S.C. 1673d(b)(4)(A)), the Commission also determines that the material injury found in this case is by reason of massive imports of the subject products over a relatively short period to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the antidumping duty retroactively on these imports.[3]

Background

The Commission instituted this investigation effective September 7, 1983, following a preliminary determination by the Department of Commerce that imports of the subject flat-rolled carbon steel products from Brazil were being, or were likely to be, sold in the United States at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on September 28, 1983 (48 FR 44279).

Commerce was scheduled to make its final determinations in this case by November 14, 1983. However, Commerce extended its investigation and published its final affirmative determination in the **Federal Register** on January 25, 1984 (49 FR 3102). The Commission's hearing was held in Washington, D.C. on January 31, 1984. All persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on March 9, 19894. A public version of the Commission's report, Certain Flat-Rolled Carbon Steel Products from Brazil (investigation No. 731-TA-123 (Final), USITC Publication 1499, March 1984) contains the views of the Commission and information developed during the investigation.

By order of the Commission.

Issued: March 9, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-7558 Filed 3-20-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-210 and 211 (Preliminary) and 731-TA-167 and 168 (Preliminary)]

Certain Table Wine From France and Italy

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is no reasonable indication that an industry in the United States is materially injured, or threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of imports from France and Italy of certain table wine,[3] provided for in item 167.30 of the Tariff Schedules of the United States (TSUS), which are allged to be subsidized by the Governments of France (investigation No. 70-TA-210 (Preliminary)) and Italy (investigation No. 701-TA-211 (Preliminary)).

The Commission also determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a), that there is no reasoanble indication that an industry in the United States is materially injured, or threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of imports from France (investigation No. 731-TA-167 (Preliminary)) and Italy (investigation No. 731-TA-168 (Preliminary)), of certain table wine,[3] provided for in item 167.30 of the TSUS, which are alleged to be sold in the United States at less than fair value.

Background

On January 27, 1984, petitions were filed with the United States International Trade Commission and the U.S. Department of Commerce by counsel on behalf of the American Grape Growers Alliance for Fair Trade (Alliance), alleging that imports of the subject merchandise are being subsidized, and are being sold in the United States at less than fair value. Accordingly, effective January 27, 1984, the Commission instituted preliminary countervailing and antidumping investigations under sections 703(a) and 733(a), respectively, of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

Notice of the institution of the Commission's investigations and of the public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on February 6, 1984 (49 FR 4440). The conference was held in Washington, D.C., on February 17, 1984 , and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigations to the Secretary of Commerce on March 12, 1984. A public version of the Commission's reprot, Certain Table Wine from France and Italy (investigations Nos. 701-TA-210 and 211 (Preliminary) and 732-TA-167 and 168 (Preliminary), USITC Publication 1502, 1984), contains the

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[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] The specific products covered by this determination are carbon steel plate in coils or cut-to-length, whether or not not coated or plated with metal (TSUS items 607.66, 608.07, and 608.11); and clad plate (TSUS item 607.94).

[3] The effect of this determination is that, pursuant to section 733(e)(2) of the act (19 U.S.C. 1673b(e)(2)), antidumping duties will be imposed 90 days before the date on which suspension of liquidation was first ordered (Sept. 7, 1983).

[1] The "record" is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i).

[2] Commissioner Haggast not participating.

[3] Certain table wine is defined as still wine produced from grapes, containing not over 14 percent of alcohol by volume, other than wines categorized by the appropriate authorities in France or Italy as "Appelation d'Origine Controlee" or "Vins Delimites de Qualite Superieure" or "Denomiazione di Origine Controllata," respectively.

views of the Commission and information developed during the investigations.

Issued: March 12, 1984.
By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-7560 Filed 3-20-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-162]

Certain Cardiac Pacemakers and Components Thereof; Decision Not To Review Initial Determination Designating Investigation More Complicated

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) (Order No. 29) designating this investigation "more complicated" within the meaning of 19 U.S.C. 1337.

Authority: 19 U.S.C. 1337; 19 CFR 210.15.

SUPPLEMENTARY INFORMATION: On February 9, 1984, the Teletronics respondents filed a motion to designate this investigation "more complicated." The motion was supported by the Commission investigative attorney and opposed by complainant Medtronics Inc. On March 1, 1984, the presiding officer issued an ID granting the motion.

As a result of the "more complicated" designation, the deadline for the conduct of this investigation has been extended from September 12, 1984, to March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0103

Issued: March 15, 1984.
By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-7563 Filed 3-20-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-160]

Certain Composite Diamond Coated Textile Machinery Components; Order

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Janet D. Saxon and designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: March 9, 1984.

Donald K. Duvall,
Chief Administrative Law Judge.

[FR Doc. 84-7557 Filed 3-20-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-154]

Certain DOT Matrix Line Printers; Commission Decision Not To Review Initial Determination Terminating Investigation on the Basis of a Consent Order Agreement; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination (I.D.) to terminate this investigation as to all parties on the basis of a consent order agreement.

Authority: 19 U.S.C. 1337, 19 CFR 210.51, 19 CFR 211.21.

SUPPLEMENTARY INFORMATION: Notice of the I.D. was published in the **Federal Register** of February 23, 1984, 49 FR 6809. No petitions for review or agency or public comments were received.

Copies of all non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1693.

Issued: March 14, 1984.
By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-7561 Filed 3-20-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-167]

Certain Glass Construction Blocks; Order

Purusant to may authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: March 8, 1984.

Donald K. Duvall,
Chief Administrative Law Judge.

[FR Doc. 84-7556 Filed 3-20-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-177]

Certain Film Web Drive Stretch Apparatus and Components Thereof; Commission Decision Not To Review Initial Determination Terminating Respondents on the Basis of a Consent Order; Issuance of Consent Order and Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination (I.D.) to terminate this investigation as to respondents Muller Manufacturing, Ltd. and Muller Packaging Systems, Inc., on the basis of a consent order. As these two respondents are the only respondents in the investigation, their termination terminates the investigation.

Authority: 9 U.S.C. 1337, 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983 (partially codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: Notice of the I.D. was published in the **Federal Register** of February 23, 1984, 49 FR 6810. No petitions for review or agency or public comments were received.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0311.

Issued: March 14, 1984.
By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-7562 Filed 3-20-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-140]

Certain Personal Computers and Components Thereof; Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined that a violation of section 337 exists in the above-captioned investigation and has issued a general exclusion order.

Authority: U.S.C. 1337.

SUPPLEMENTARY INFORMATION: The presiding officer issued an initial determination in the above-captioned investigation on December 9, 1983, in which she determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation and sale of certain personal computers and components thereof. As a result of its review of that initial determination, the Commission on March 9, 1984, determined that a violation of section 337 exists in the unauthorized importation and sale of certain personal computers and components thereof which infringe U.S. Letters Patent 4,136,359, U.S. Letters Patent 4,278,972, Copyright Registration No. TX 873–203, Copyright Registration No. TX 809–449 or Copyright Registration No. TX 886–569 owned by complainant Apple Computer, Inc., the tendency of which unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Copies of the Commission's Action and Order, its Opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0480.

Issued: March 9, 1984.

By order of the Commission..

Kenneth R. Mason,

Secretary.

[FR Doc. 84–7559 Filed 3–20–84; 8:45 am]

BILLING CODE 7020–02–M

[332–170]

Competitive Assessment of the U.S. Wood and Upholstered Household Furniture Industry

AGENCY: United States International Trade Commission.

ACTION: This notice announces the location of and change in time for the hearing in connection with the Commission's investigation on the competitive assessment of the U.S. wood and upholstered household furniture industry.

EFFECTIVE DATE: March 14, 1984.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the public hearing in connection with this investigation (see FR 48, 50631, November 2, 1983) will be held at the Radisson Hotel in High Point, North Carolina, beginning at 9:00 a.m. e.s.t, on April 3, 1984, to be continued on April 4, if required. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW, Washington, D.C., not later than noon, March 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Rhett Leverett, or Mr. Ruben Moller, General Manufactures Division, U.S. International Trade Commission, Washington, D.C., 20436, telephone 202–724–1725 or 202–724–1732, respectively.

Issued: March 16, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–7618 Filed 3–20–84; 8:45 am]

BILLING CODE 7020–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel Meeting

The meeting of the Theater Advisory Panel (Professional Companies Section) which is scheduled to meet on March 21–25, 1984, from 9:00 a.m.–6:00 p.m. with a scheduled open session on March 25 from 4:00 p.m.–6:00 p.m. is hereby amended to be a fully closed meeting to be held on March 21–25, 1984, from 9:00 a.m.–6:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–7519 Filed 3–20–84; 8:45 am]

BILLING CODE 7537–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by April 20, 1984.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202–786–0233) or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202–786–0233), from whom copies of the form and supporting documents are available.

SUPPLEMENTARY INFORMATION:

Category: Revision
Title: NEH Financial Status Report
Form Number: n/a
Frequency of Collection: Occasional (at end of grant)
Respondents: All NEH Institutional Grantees, at their option
Use: Provide information on project expenditures
Estimated Number of Respondents: 3,000 maximum
Estimated Hours for Respondents to Provide Information: 1

This entry is not subject to 44 U.S.C. 3504(h).

Dated: March 16, 1984.

Victor J. Loughnan,

Director of Administration.

[FR Doc. 84-7585 Filed 3-20-84; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted to OMB for Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, NSF is posting this notice of information collection that will affect the public.

Agency clearance Officer: Herman G. Fleming, (202) 357–9421

OMB Officer: Carlos Tellez, (202) 395–7340

Title: DOE/NSF Nuclear Science Advisory Committee Survey of Manpower in Basic U.S. Nuclear Science

Affected public: Individuals, Federal agencies or employees

Number of responses: 2,000 responses; total number of burden hours—200

Abstract: The proposed survey will be the third survey in a program begun in 1978 to monitor, on a regular basis, the flow of personnel into and out of basic nuclear science. The survey, as in the past, will be conducted by the Manpower Subcommittee of the DOE/NSF Nuclear Science Advisory Committee

Dated: March 15, 1984.

Herman G. Fleming,

OMB Clearance Officer.

[FR Doc. 84-7516 Filed 3-20-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-249]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit No. 3); Order Confirming Commonwealth Edison Company's Commitments Re IGSCC Inspection

I

The Commonwealth Edison Company, (CECo, the licensee) is the holder of Facility Operating License No. DPR-25, which authorizes the licensee to operate the Dresden Nuclear Power Station, Unit No. 3 (the facility) at power levels not in excess of 2527 megawatts thermal (rated power). The facility is a boiling water reactor located at the licensee's site in Grundy County, Illinois.

II

As a result of inspections conducted at 18 operating boiling water reactor (BWRs) in conformance with recent Office of Inspection and Enforcement Bulletins (IE Bulletin No. 82-03, Revision 1, "Stress Corrosion Cracking in Thick-Wall, Large-Diameter Stainless Steel Recirculation System Piping at BWR Plants," and IE Bulletin No. 83-02, "Stress Corrosion Cracking in Large-Diameter Stainless Steel Recirculation System Piping at BWR Plants"), a potential safety concern regarding intergranular stress corrosion cracking (IGSCC) in primary system piping was identified. These bulletins requested selected licensees to perform a number of actions regarding inspection and testing of pipe welds.

Results of these and other inspections pursuant to IE Bulletins 82-03 and 83-02 have revealed extensive cracking in large-diameter recirculation and residual heat removal system piping. In almost every case, where inspections were performed, IGSCC was discovered and, in many cases, repairs, analysis, and additional surveillance conditions were required. In view of the foregoing and the fact that the facility is similar in design to plants where IGSCC has occured, there was significant potential for IGSCC to exist in this facility. Therefore, inspection was required to determine the extent of IGSCC and to ascertain, if necessary, the degree of remedial action.

On August 26, 1983 an Order was issued to the licensee which required that the facility be shut down by September 30, 1983 and an IGSCC inspection be performed. The facility was shut down on September 30, 1983 pursuant to Section III.B of the Order and an IGSCC inspection was performed pursuant to Section III.C of the August 26, 1983 Order.

By letter dated December 9, 1983, the licensee provided its plan for inspection and repair of welds covered by the Order of August 26, 1983. The plan provided that, to the extent practicable, the ultransonic testing (UT) program of examination would encompass 100% of the Type 304 Stainless Steel piping welds of 4-inch and greater size in the recirculation system and the ASME Code Class 1 portions of the residual heat removal systems, core spray external to the reactor pressure vessel and the reactor water cleanup system. Specific welds which were not to be inspected were identified and explanations for their exclusion had previously been provided in the licensee's letter of October 26, 1983. On February 15, 1984, the staff met with the licensee to discuss its program and its findings, and to receive clarifying information. By letter of March 5, 1984, the licensee submitted a report on the inspection and repair of welds covered in the Order of August 26, 1983. By letter dated March 12, 1984, the licensee provided additional information on the results of the inspection.

The NRC staff has reviewed and evaluated all the above reports and information provided by the licensee. That review is documented in our Safety Evaluation dated March 15, 1984. By letter dated March 15, 1984, the NRC notified the licensee that the facility could be returned to power.

Although the calculations performed by the licensee and evaluated by the staff indicate that the cracks in the repaired and unrepaired welds will not progress to the point of leakage during the operating cycle, and wide margins are expected to be maintained over crack growth which could compromise safety, uncertainties in crack sizing and growth rate remain. Because of these uncertainties, we have determined that the following actions should be taken:

(1) The ASME Code-required system pressure tests and nondestructive examinations on overlay repaired welds should be satisfactorily completed prior to startup.

(2) The limiting conditions for operation and surveillance requirements imposed by the August 26, 1983 Order should be continued. These enhanced surveillance measures will provide adequate assurance that possible cracks in pipes will be detected before growing to a size that will compromise the safety of the plant.

The staff also has some concern regarding the long-term growth of IGSCC cracks and its effect on the long-term operation of the plant. Therefore, we have determined that plans for inspections, corrective action and/or modification including replacement of the recirculation and other reactor coolant pressure boundary piping systems during the next refueling outage must be submitted at least 90 days before the start of the next refueling outage. In addition, the staff has determined that a justification for continued operation must be submitted to NRC for review and approval prior to startup after the next refueling outage.

By letters dated March 5 and March 9, 1984, the licensee committed to the above described conditions on leakage monitoring and early submittal of inspection and/or modification plans. I have determined that the public health and safety requires that these commitments should be confirmed by an immediately effective Order.

III

Accordingly, pursuant to section 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 1 and 50, it is hereby ordered effective immediately that:

A. Notwithstanding the current Technical Specifications for the facility the following compensatory measures shall be implemented:

1. The reactor coolant system leakage shall be limited to a 2 gpm increase in unidentified leakage within any 24 hour period (leakage shall be monitored and recorded once every 4 hours). Should this leakage limit be exceeded, the unit shall immediately start an orderly shutdown. The unit shall be placed in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

2. At least one Primary Containment sump collection and flow monitoring system shall be operable. With the primary containment sump collection and flow monitoring system inoperable, restore the inoperable system to operable status within 24 hours or immediately initiate an orderly shutdown and be in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

B. Plans for inspection, corrective actions, and/or modification, including replacement of the recirculation and/or coolant pressure boundary piping systems, during the next refueling outage which is currently expected to begin approximately April 1985 shall be submitted at least three months before the start of that outage.

C. At least one month prior to startup of the facility after its next refueling outage, a justification for continued operation shall be submitted for NRC review and approval.

D. The Director, Division of Licensing, may, in writing, relax or terminate any of the above provisions upon written request from the licensee, if the request is timely and provides good cause for the requested action.

IV

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, on the basis of the matters set forth in Section II of the Order, the licensee should comply with the requirements set forth in Section III of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 15th day of March 1984.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-7597 Filed 3-20-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 84 to Facility Operating License No. DPR-39 and Amendment No. 74 to Facility Operating License No. DPR-48, issued to commonwealth Edison Company (the licensee), which revised the Technical Sepecifications for operation of the Zion Station, Unit Nos. 1 and 2 (the facilities) located in Zion, Illinois. The amendments are effective as to the date of issuance.

The amendments will allow performing extensive preventive maintenance on the diesel generator shared between the two units. These one-time changes will extend the present seven-day period to forty-five days during which, with one unit in cold shutdown, only two diesel generators would be required to satisfy the standby AC on-site power requirements.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in these license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on January 12, 1984 (49 FR 1595). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.1(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to the action see (1) the application for amendments transmitted by letters October 14, and December 22, 1983, (2) Amendment No. 84 to License No. DPR-39 and Amendment No. 74 to License No. DPR-48, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., and at the Zion-Benton Public Library District, 2600 Emmans Avenue, Zion, Illinois 60039. A copy of items (2) and (3) may be obtained upon request addressed to U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 12th day of March 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 84-7596 Filed 3-20-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-18 issued to Rochester Gas and Electric Corporation (the licensee) for operation of the R.E. Ginna Nuclear Power Plant located in Wayne County, New York.

The proposed amendment to the Technical Specifications (TS) would incorporate certain provisions to permit a planned fuel design change from Exxon Nuclear Company (ENC) fuel to the Westinghouse 14×14 9-grid Optimized Fuel Assembly (OFA) fuel with core loadings ranging from approximately a 15% OFA and 85% ENC fueled core to a core fueled entirely with OFA. The proposed changes to the TS would allow (1) a positive moderator temperature coefficient (MTC) (+5 pcm/°F) up to 70% power, (2) a reduction

in shutdown margin at EOC from 1900 pcm to 1800 pcm, (3) a change in the F^N_H limits at less than 100% power, (4) a change in the core protection limits (OT T and OP T setpoint equations), and (5) a deletion of the limits on Target Axial Offset. The changes to the core physics parameters and thermal characteristics are required to account for increased enrichment and improved neutronic characteristics of the fuel and control assemblies.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The 14×14 OFA design meets the same basic requirements and criteria which were approved by the NRC for the 17×17 OFA design in May 1981. In addition there are four 14×14 7-grid demonstration assemblies that have completed two cycles of operation (establishing burnup 20,000 MWD/MTU). Post-test examination at the completion of the first cycle of irradiation indicated no abnormalities. However, one demonstration assembly at the end of the second cycle of irradiation was damaged and removed. It was concluded that the cause of the damage was an isolated event and not a generic OFA design problem (see Letter Report IT–83–222, "Failure Investigation of Point Beach Unit 2 OFA Rods," July 1983). The demonstration assemblies will have experienced approximately 35,000 MWD/MTU of burnup in 1984.

A safety analysis was prepared which used parameters which will bound those to be experienced during the transition which will apply to subsequent cycles with the OFA. The safety analysis was composed of a summary of the mechanical, thermal-hydraulic and accident analysis and detailed results of the non-LOCA and LOCA analysis. Those analyses incorporated the proposed changes to the Technical Specifications and showed that the applicable design criteria for the Exxon and OFA were satisfied.

Based on the results of evaluation/analyses and tests it was concluded that: (1) The Westinghouse OFA's are mechanically and hydraulically compatible with the ENC fuel assemblies, control rods, and reactor internals interfaces. All NRC approved design criteria for the Westinghouse OFA's are satisfied. (2) Generally changes in the nuclear characteristics because of the transition from ENC to OFA fuel will lie within the cycle-to-cycle variations observed for past fuel reload design. The moderator temperature coefficient is the most significant exception to this. Since the Hydrogen/Uranium ratio is larger for OFA, the moderator temperature coefficient is more positive than observed in past Westinghouse fueled R.E. Ginna cores. This has been accounted for in the accident evaluations. (3) Demonstration experience with Westinghouse OFAs containing Zircaloy grids provides reason to expect satisfactory operation from OFA Zircaloy grids. (4) The proposed technical specifications changes are applicable to cores containing any combination of OFA and ENC fuel and plant operating limitations will be satisfied with these proposed changes. (5) A reference was established upon which to base future cycle safety evaluations for Westinghouse OFA reload fuel.

Four mixed oxide assemblies (MOX) will remain in the core for Cycle 14. These assemblies are mechanically identical to the Westinghouse HIPAR design used as reload fuel to Ginna prior to Cycle 8. Exxon previously has performed a safety analysis and concluded on a best estimate basis that in a mixed core configuration the flow to each assembly was within one percent of the core average. Applying a DNBR penalty equivalent to a decrease in one percent of flow to the minimum DNBR for Exxon fuel calculated by Westinghouse indicates that sufficient margin to the design DNBR limit exists.

The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). The requested action does not fall within the scope of the examples of such actions. Thus the bases for considering that the no significant hazards consideration determination, as specified in 10 CFR 50.92, have been met are delineated below.

Moderator Temperature Coefficient (MTC)

The present Technical Specifications (TSs) require that the MTC be negative or positive at all times when the reactor is critical. The proposed TS allows a +5 pcm/°F MTC below 70% of rated power, changing to a 0 pcm/°F MTC at 70% power and above. The MTC is only a portion of the overall temperature coefficient. Other factors which contribute to the overall temperature coefficient compensate for the positive MTC at power levels below 70% thus maintaining the overall temperature coefficient negative at all times.

The MTC is incorporated as an assumption into the analysis of Design Basis Events. These events assume certain transients occur which challenge the safety systems of the plant. A change in the MTC has no effect on the probability of such event. Westinghouse has demonstrated that the results of these transients satisfy the acceptance criteria, therefore, the consequences of the accident are unchanged.

The possibility of a new accident is not created by the change in core physics parameter such at MTC.

Westinghouse analysis has shown that the limiting transients for which the assumption of positive MTC is conservative are those initiated from 100% power. However, the proposed TSs state at this condition the MTC must still be negative which is unchanged from previous analyses. Westinghouse has incorporated the positive MTC into their transient analysis and has demonstrated that appropriate margin exists between the results and the acceptance criteria. Therefore, there is no significant reduction in the margin of safety.

Reduction in EOC Shutdown Margin

The EOC shutdown margin was incorporated into the Westinghouse transient analysis. The limiting Design Basis Accident affected by the EOC shutdown margin is the Large Steam Break at 0% power. A change in this parameter has no effect on the probability of this event. Westinghouse has demonstrated that the results of this transient satisfy the acceptance criteria. Therefore, the consequences of the event are unchanged.

The change in the EOC shutdown margin is a small change in a known quantity and does not involve the possibility of a new or different kind of accident from any accident previously evaluated.

The Westinghouse transient analysis has incorporated the change in shutdown margin into the Large Steam Break. The results satisfy the acceptance criteria for Condition IV events. Therefore, there is no reduction in the margin of safety.

Change in the F^N_H Limits at Less than 100% Power

The limit of F^N_H has been increased and the equation format changed to be continuous over all power ranges. The modification of the F^N_H limit for partial power, a 0.3 multiplier in the equation, has similarly been previously reviewed and approved by the NRC for other facilities. The proposed change does not significantly increase the probability or consequences of an existing accident,

create a new accident, or significantly reduce the margin of safety.

Change in Core Protection Limits (OT T and OP T)

Westinghouse has updated the correlations for the core protection limits using current methodology. The new limits were incorporated into their analysis of Design Basis Events. The results of these analyses show that the acceptance criteria was satisfied. Therefore, the consequences of accidents previously evaluated are not increased.

The possibility of a new accident being created is not created by a change in core protection limits.

Westinghouse has incorporated these new protection limits into their transient analysis and the results satisfy the acceptance criteria. The purpose of these limits are unchanged, i.e., to protect against fuel centerline melting and Departure from Nucleate Boiling. This change does not involve a significant reduction in the margin of safety.

A Deletion in the Limits of Target Axial Offset (TAO)

Westinghouse assumes that the worst case power distributions for their transient analysis that they predict would bound any that would occur during operation. For every reload design, Westinghouse assures that the potential worst case power distribution for that reload does not exceed those assumed in the transient analysis. Therefore, a limitation on TAO is unnecessary. Based on the above aforementioned, this change has no effect on either the probability or consequences of an accident. This change does not create the possibility of a different kind of accident.

Since Westinghouse evaluates the worst case power distribution for every reload to assure it is bounded by those assumed in the transient analysis, and the transient analysis results show that the acceptance criteria is met, there is no significant reduction in the margin of safety.

For the foregoing reasons the Commission's staff proposes to determine that operating the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the staff proposes to determine that the proposed license amendment would involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission , U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By April 20, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing

after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Dennis M. Crutchfield: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue NW., Suite 1100, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14604.

Dated at Bethesda, Maryland, this 15th day of March 1984.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 84-7660 Filed 3-20-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–24 and DPR–27, issued to Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant Units 1 and 2 located in the Town of Two Creeks, Manitowoc County, Wisconsin.

The amendment would revise the surveillance interval for evaluating the leakage integrity of post-accident recovery systems outside containment in accordance with the licensee's application for amendment dated December 23, 1983.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On July 2, 1980 all pressurized water reactor licensees were sent guidance in the form of model technical specifications in order to provide reasonable assurance that facility operation would be maintained within the limits determined acceptable following implementation of the TMI–1 Lessons Learned Category "A" items. In part, these model technical specifications included the surveillance requirement for integrated leak testing of systems outside containment that would or could contain highly radioactive fluids during a serious transient or accident "at a frequency not to exceed refueling cycle intervals." The Commission's guidance took into account that several licensees' refueling cycle intervals were at 18 month intervals.

The normal refueling interval for the Point Beach Nuclear Plant Units 1 and 2 is approximately 12 months. Wisconsin Electric Power Company (licensee) proposed a yearly surveillance frequency for evaluating the integrity of post accident recovery systems outside containment. Slight deviations (±25%) from the yearly surveillance interval were allowed by previously existing technical specifications to accommodate small changes in the annual refueling outage dates. At the time the licensee's proposed technical specifications were reviewed and approved, the licensee did not anticipate conducting extended refueling outages which might exceed the normal five-week duration. Subsequent to the issuance of the technical specifications for evaluating the integrity of post-accident recovery systems outside containment, the licensee has begun an extended refueling outage (six-months duration) on Point Beach Unit 1. This also creates the need for Unit 2 to remain in a greater than 12 month operating cycle so as not to have both units shutdown simultaneously. Because of this, the licensee has requested changes to the wording of the surveillance frequency for evaluating the integrity of post-accident recovery systems to an inspection interval of "each refueling cycle." While the interval between inspections may, in unique situations (such as following an extended refueling outage), exceed the current yearly inspection interval, it is clearly within the guidelines proposed by the Commission in their July 2, 1980 letter to all licensees of pressurized water reactors. For this reason, the staff proposes to determine that the amendments do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By April 20, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the

proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Borad Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements describerd above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James R. Miller, Chief, Operating Reactors Branch #3, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C., 20036, attorney for the licensee.

Nontimely filings petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, D.C., and at the Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Bethesda, Maryland this 9th day of February 1984.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 84–7599 Filed 3–20–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co.; Exemption

I

The Baltimore Gas and Electric Company (the licensee) is the holder of Facility Operating License Nos. DPR–53 and DPR–69 which authorize operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located in Calvert County, Maryland.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR

76602). The revised section 50.48 and Appendix R became effective on February 17, 1981. Appendix R, section III.G.2.a, requires that cables, equipment, and associated circuits of redundant systems and components important to safe shutdown be separated by 3-hour rated fire barriers.

By letter dated November 21, 1983, the licensee requested an exemption from section III.G of Appendix R to 10 CFR 50 to the extent that it requires approved fire door assemblies for the protection of personnel access openings in 3-hour rated fire boundaries. As an alternative, the licensee has proposed the use of non-rated watertight doors and water curtains in specified plant areas.

The Unit 1 and Unit 2 service water pump rooms are located on the 5 foot elevation of the auxiliary building and are separated by greater than 400 feet. The waterweight door in each pump room provides access to the adjacent penetration rooms, thus permitting a path for fire to spread from one service water pump room through the two adjacent penetration rooms to the second service water pump room.

By letter dated March 19, 1981, the licensee requested an exemption for similarly designed watertight doors. This exemption was granted on August 16, 1982 based upon our evaluation of test data which indicated that these water-tight doors would perform adequately as three-hour rated fire doors (the ASTME–119 test).

Although the doors referenced in the November 21, 1983 letter are approximately one-half the size of the doors tested per ASTM E–119, we conclude that the size difference would not appreciably affect the test results.

With regard to the water curtains, the licensee's November 21, 1983 letter proposes installation of a dedicated sprinkler head (water curtain) to provide three-hour protection for an unrated metal emergency hatch between Corridor No. 110 (Elev. 10'0" and Reactor Coolant Make-Up Pump Room No. 216A (Unit 2, Elev. 5'0") Room 216A is presently provided with sprinkler protection. This sprinkler system will supply a dedicated sprinkler head on the Room 216A side of the hatch. On the Corridor No. 110 side of the hatch, a dedicated sprinkler head will be supplied from the Room No. 116 sprinkler system.

In an Exmeption dated August 6, 1982, the staff approved the use of water curtains for specific locations at Calvert Cliffs. This approval was based upon our evaluation of ASTM E–119 test results which indicated that the proposed fire curtain designed provided an equivalent level of fire protection as the required 3-hour rated fire door assemblies, and will provide reasonable assurance that a postulated fire will not propagate to redundant trains. The hydraulic capacity of the sprinkler systems supplying the dedicated heads referenced in the licensee's November 21, 1983 letter is sufficient to ensure a water curtain denisty on both sides of the hatch consistent with that used in the ASTM E–119 tests and is therefore adequate.

Based upon the above, we conclude that the level of fire protection provided by the watertight doors and water curtains is equivalent to the level of protection required by the technical requirements of Appendix R to 10 CFR 50, and therefore, the licensee's request to be exempted from the requirement to provide 3-hour fire rated barriers for the areas described in Attachment 1, herein, should be granted.

An Exemption has also been requested from section III.G of Appendix R to the extent it requires the installation of automatic suppression throughout a protected area.

Fire Area 10 is located on the minus 10 foot elevation of the auxiliary building and includes a corridor and a charging pump room. There are four additional rooms in Fire Area 10 that contain water processing equipment. Four rooms do not contain fixed fire suppression (sprinklers). The remainder of Fire Area 10 is provided with automatic suppression and detection. The combustible loading in the area is negligible.

Fire Area 11 is on the 5 foot through 69 foot elevations of the auxiliary building. Automatic fire suppression and detection are provided on the 5 foot elevation; however, the automatic sprinkler system does not extend to the 69 foot elevation. The floor/ceiling assembly between the 45 and 69 foot elevations is a 3-hour rated barrier except for a rolling steel fire door. The door is approved as a 3-hour rated barrier when installed vertically, but as installed in the floor, its fire resistance capability is uncertain. The ceiling height in both areas is greater than 20 feet. The combustible loading is negligible. Cables for the diesel generators are located on the 45 foot elevation at the ceiling level; however, they are located greater than 20 feet above the floor and are adequately protected by automatic sprinklers.

Redundant cables are located in a corridor on the 69 foot elevation behind the spent fuel pools approximately 40 feet away. The corridor construction is unrated.

Fire Areas 10 and 11 consist of large areas containing negligible amounts of combustible materials. Sprinklers are provided in portions of the areas where minor quantities of combustibles exist. Detection systems are provided throughout the areas. If a fire occurred in a non-sprinklered portion of either area, the early warning provided would alert the fire brigade. The configuration of the areas combined with the response of the fire brigade would prevent a fire from growing to a size which would overwhelm the partial sprinkler systems. The addition of more sprinkler coverage would not significantly enhance safety.

Based on our evaluation, we conclude that the protection provided for the Fire Areas 10 and 11 provide a level of fire protection equivalent to the technical requirements of section III.G. The exemption should, therefore, be granted.

With regard to RCP oil collection, the licensee has requested an exemption from Appendix R Section III.0 to the extent that it requires an oil collection tank sized to hold the lube oil inventory of all four RCP motors.

Each Calvert Cliffs reactor coolant system has four reactor coolant pumps, with an oil collection system which drains to two vented closed collection tanks (two pumps per tank). The quantity of lubricating oil in each pump is 225 gallons. The capacity of each oil collection tank is 275 gallons. The components, except for the collection tank, have been designed so that they are capable of withstanding a safe shutdown earthquake (SSE). The collection tanks are arranged such that, if a failure of more than one RCP motor lube system occurred, the oil collection tank would overflow onto the lower containment floor. The lubricating oil used in the RCP motors has a flash point greater than 400°F. There are no ignition sources at the floor level of the lower containment.

The RCP motor lube oil system does not comply with section III.0 because the oil collection tank is not sized to contain the entire lube oil system inventory. The RCP motor lube oil system is capable of withstanding the safe shutdown earthquake. The oil collection tank is provided with sufficient capacity to hold the total lube oil inventory of one reactor coolant pump with margin and is designed so that any overflow will be drained to a safe location. This combination of features is acceptable.

Based on the above, the existing RCP motor lube oil collection system provides a level of safety equivalent to the technical requirement of section III.0 and, therefore, the exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Appendix R to 10 CFR Part 50:

• Section III.G—"Fire protection of safe shutdown capability."

(1) The licensee may utilize the proposed alternatives to the requirement for maintenance of 3-hour fire rated barriers. The proposed alternatives and locations of their use are contained in Attachment 1 hereto.

(2) The licensee need not install fixed fire suppression systems in Fire Areas 10 and 11 in addition to that described in the licensee's November 21, 1983 submittal.

• Section III.O—"Oil collection system for reactor coolant pump."

The existing oil collection tank capacity for Calvert Cliffs Units 1 and 2 is adequate.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 15th of March 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1.—CALVERT CLIFFS UNITS 1 AND 2, ALTERNATIVE FIRE BARRIERS

Unit No.	Door No.	Between rooms	Type
1	Emergency hatch 3	226 and 227	Watertight.
2	Emergency hatch 4	205 and 206	Do.
2	Escape hatch	216A and 110	Water curtain.

[FR Doc. 84-7586 Filed 3-20-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collections for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of proposed information collections submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act 1980 (Title 44, U.S.C. Chapter 35), this notice announces a proposal to collect information from the public. SF 2800, Application for Death Benefits, is completed by survivors of employees and annuitants to apply for survivor benefits as provided by the Civil Service Retirement System (Title 5, U.S.C. Chapter 83). SF 2803, Application to Make Deposit or Redeposit, is completed by Federal employees or former Federal employees to apply to make a deposit or redeposit of contributions to the Civil Service Retirement System (Title 5, U.S.C. Chapter 83). SF 2808, Designation of Beneficiary Under the Civil Service Retirement System, is completed by Federal employees and annuitants to designate beneficiaries under the Civil Service Retirement System (Title 5, U.S.C. Chapter 83). SF 2809 (overprint) is completed by annuitants and survivor annuitants who choose to elect, cancel or change health benefits under the Federal Employees Health Benefits Program (Title 5, U.S.C. Chapter 89). SF 2823, Designation of Beneficiary—FEGLI Program, is completed by Federal employees and annuitants to designate beneficiaries under the Federal Employees' Group Life Insurance Program (Title 5, U.S.C. Chapter 87). BRI 49–204, Financial Resources Questionnaire, is completed by debtors to the Civil Service Retirement System. OPM determines if a waiver should be granted or periodic payments should be accepted (Federal Claims Collection Act, 80 Stat., Section 309). BRI 41–167, Representative Payee Questionnaire, is completed by individuals who apply to be a fiduciary for a payee entitled to benefits under the Civil Service Retirement System (Title 5, U.S.C. Chapter 83). BRI 80–32, Request to Disability Annuitant for Information on Physical Condition and Employment, is completed by disability annuitants to determine if disability annuity should continue (Title 5, U.S.C. Chapter 83). BRI 49–263, Request for Social Security Number, is completed by annuitants and survivor annuitants when the social security number is incorrect or missing from the Civil Service Retirement System (Executive Order 9397). BRI 46–305, Survivor Annuity Information, is completed by annuitants who elect survivor benefits when a marriage occurs (Title 5, U.S.C. Chapter 83). BRI 46–305–A, Survivor Annuity Information, is completed by annuitants who elect survivor benefits when a remarriage occurs (Title 5, U.S.C. Chapter 83). BRI 49–219, Reinstatement of Disability Annuity Previously Terminated, is collected by OPM to determine if a disability annuity which was terminated because the individual was restored to earning capacity should be reinstated. For copies of these proposals, call John P. Weld, Agency Clearance Officer, on (202) 632–7720.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6410, Washington, DC 20415; and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William J. Washington, on (202) 254–7052.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-7527 Filed 3-20-84; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Cogeneration Options Task Force; Regular Meeting

AGENCY: Cogeneration Options Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Needs of developers (K. Canon, ICNU),
- Other Business,
- Public Comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Cogeneration Options Task Force.

DATE: Thursday, March 29, 1984. 9 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room at 700 SW. Taylor; Suite 200, in Portland, Oregon.

FOR FURTHER INFORMATION, CONTACT: Tom Foley, (503)222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–7586 Filed 3–20–84; 8:45 am]

BILLING CODE 0000–00–M

Options Steering Committee; Regular Meeting

AGENCY: Options Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Bonneville Authority to Acquire Options,
- NEPA Process Related to Options,
- Timing of Section 6(c) activities in Options Acquisition Process,
- Discussion of Non-major Resources,
- Options Process Implication to BPA Budget,
- Other Business,
- Public Comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Options Steering Committee.

DATE: Friday, April 20, 1984, 11 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room at 700 SW. Taylor; Suite 200, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Tom Foley, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–7584 Filed 3–20–84; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23247; 70–6930]

Consolidated Natural Gas Co., et al; Proposed Change in Introsystem Financing

In the matter of Consolidated Natural Gas Co., #100 Broadway, New York, New York, 10005, CNG Producing Co., Consolidated Gas Supply Corp., Consolidated Gas Transmission Corp., The East Ohio Gas Co.,The Peoples Natural Gas Co., West Ohio Gas Co., Notice of Proposed Change in Intrasystem Financing.

March 16, 1984.

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiary companies listed above have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2), 45, and 50(a)(3) promulgated thereunder.

By order dated January 17, 1984 (HCAR No. 23201) in File No. 70–6937, Consolidated Gas Supply Corporation ("Supply Corporation") was authorized to transfer to Consolidated Gas Transmission Corporation ("Transmission") all of its assets and related liabilities, other than its natural gas utility business in the State of West Virginia. By order dated December 28, 1983 (HCAR No. 23186) in this proceeding, the Commission authorized, during 1984, the temporary prepayment by Supply Corporation of not in excess of $50,000,000 of its long-term notes held by Consolidated as excess cash accumulates, together with the making of cash advances by Consolidated as required by Supply Corporation.

It is anticipated that the transfers of Supply Corporation's assets and related liabilities authorized in the order of January 17, 1984, in File No. 70–6937, will be completed shortly. Therefore, it is proposed that the $50,000,000 of temporary prepayments from excess cash and cash advances allowed to Supply Corporation in the order of December 28, 1983, be rescinded as to Supply Corporation and such authorization be granted in its place and stead to Transmission.

The post-effective amendment to the application-declaration and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 12, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–7610 Filed 3–20–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13826; 812–5720]

Dresdner Bank Aktiengesellschaft, and Dresdner U.S. Finance Inc.; Filing of Application for an Order

March 15, 1984.

Notice is hereby given that Dresdner Bank Aktiengesellschaft ("Bank") Jurgen-Ponto-Platz 1, 6000 Frankfurt/Main 11, Germany, a commercial bank organized under the laws of the Federal Republic of Germany, and Dresdner U.S. Finance Inc. ("Issuer"), 60 Broad Street, New York, New York, 10004, a Delaware corporation wholly-owned by the Bank (collectively, "Applicants"), filed an application on December 5, 1983, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the applicable provisions thereof.

According to the application, the Bank, the second largest bank in Germany, provides, directly or through its subsidiaries, a wide range of commercial, retail and investment banking services to individuals, businesses and governments throughout Germany and internationally which, in addition to traditional retail banking services, includes services in the areas of currency exchange, securities brokerage, portfolio administration and custodial services. In addition to an agency, two branches and two representative offices in the United States, the Bank also holds a 75% equity ownership interest in ABD Securities Corporation, a Delaware corporation, registered as a broker-dealer and investment adviser. The application states that, as of December 31, 1982, deposits with the Bank (including demand, time and savings deposits and bonds and notes) totaled approximately 92% of the Bank's total liabilities (including capital) of $35,168,151,000 (at the rate of exchange prevailing on that date) and that the aggregate principal amount of loans extended by the Bank constituted approximately 55% of the

Bank's total assets of $35,168,151,000 as of the same date.

The application indicates that the Issuer is a Delaware coporation, incorporated on October 13, 1983, all of whose outstanding capital stock is owned by the Bank and whose sole business will consist of issuing and selling the Issuer's commercial paper notes ("Commercial Paper Notes") and advancing ("Advances") the net proceeds of sale thereof to the Bank through its Grand Cayman Branch pursuant to an operating agreement ("Operating Agreement") to be entered into by the Issuer and the Bank, as well as issuing and selling the Issuer's other debt securities and advancing or loaning the net proceeds of the sale thereof to the Bank in a manner similar to the Advances. The application further states that, in the future, there will be no public offering of the Issuer's capital stock or of any other equity security of the Issuer; substantially all of the Issuer's assets will consist of the Issuer's rights to receive repayments from the Bank of the Bank's indebtedness arising from the Advances made by the Issuer from the net proceeds of sales of the Commercial Paper Notes or other debt securities.

The application states that the Bank is extensively regulated by German banking authorities, including supervision by the German Federal Banking Supervisory Authority and the German Central Bank; reports are periodically required to be made to either or both of those entities. The Bank, moreover, must be audited annually to ensure compliance with principles of valuation and the correct disclosure of assets, liabilities, income and expenses. The application further represents that the Bank's United States banking activities are subject to extensive federal supervision and regulation under the International Banking Act of 1978; the Bank's agency and branches are also subject to state regulation substantially similar to that of domestic banks.

The application indicates that the Issuer proposes to enter into an arrangement with the Bank pursuant to which the Bank may request the Issuer to make Advances: the Issuer, in order to obtain funds to make the Advances, proposes to issue and sell its short-term negotiable promissory notes which will be exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") by virtue of Section 3(a)(3) thereof and will be sold in minimum denominations of $100,000, will have maturities not exceeding 270 days, and will neither be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either the holders or the Issuer. It is estimated by Applicants that the face amount of Commercial Paper Notes outstanding in the first year of issuance will not exceed $150,000,000. The application further states that the Issuer undertakes not to market any Commercial Paper Notes prior to receiving an opinion of counsel to the effect that the proposed offering is exempt from the registration requirements of the 1933 Act by virtue of Section 3(a)(3) thereof; the Issuer does not request Commission review or approval of counsel's opinion, and the Commission expresses no opinion concerning availability of any such exemption. Applicants represent that, prior to their issuance, the Commercial Paper Notes will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that Issuer's United States counsel shall have certified that the rating was received.

Applicants represent that the Commercial Paper Notes will be offered publicly, through one or more major dealers, only to the types of sophisticated and largely institutional investors that ordinarily participate in the commercial paper market. The application also states that the Issuer undertakes to insure that each dealer in the Commercial Paper Notes will furnish to each offeree memoranda describing the businesses of the Bank and the Issuer and providing the most recent annual audited financial statements for the Bank, together with a description of the material differences between German accounting principles utilized in the preparation of the financial statements of the Bank and generally accepted accounting principles as applied in the United States. The application represents that the memoranda prepared by each dealer will be updated as promptly as practicable to reflect material adverse changes in the financial status of the Issuer or the Bank and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the United States.

The application states that the Issuer will select a major commercial bank ("Depositary") to act as issuing and paying agent for the Commercial Paper Notes and that the Bank will consent to the appointment of the Depositary. The application further states that the Bank will unconditionally agree to pay to the Issuer amounts necessary to satisfy the Issuer's obligations under the Commercial Paper Notes and other liabilities of the Issuer with respect to the transaction and will expressly consent to the enforcement of those obligations directly by the holders of the Commercial Paper Notes or by the Depositary on behalf of the holders of the Commercial Paper Notes. The Applicants maintain that the obligation of the Bank will be the functional equivalent of a guarantee by the Bank of the Issuer's obligations with respect to the Commercial Paper Notes and that the Bank's obligations with respect to its liabilities to the Issuer (including its liabilities with respect to the Issuer's obligations under the Commercial Paper Notes) will rank *pari passu* and equally with all deposit liabilities and other unsecured, unsubordinated indebtedness of the Bank and superior to any subordinated indebtedness of the Bank and to claims of holders of the Bank's capital stock.

The Applicants represent that, in connection with the Operating Agreement, the Bank will submit to the jurisdiction of any State or Federal Court in The City of New York, and will authorize an agent in The City of New York to accept service of process in any action based upon its obligations to the Issuer. Applicants further represent that this consent to jurisdiction and appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Advances and all obligations of the Bank to the Issuer have been paid by the Bank.

The application indicates that the Issuer and the Bank will enter into the Operating Agreement by which the Issuer will agree to make Advances to the Bank solely from the net proceeds of the sale of the Commercial Paper Notes. Applicants represent that the Issuer will advance to the Bank all of the proceeds from sales of the Commercial Paper Notes (after deduction from the proceeds of amounts necessary to pay certain of the Issuer's liabilities in connection with the transactions contemplated by the Operating Agreement, including a commission payable to any commercial paper dealer used by the Issuer on account of its services in connection with the purchase and sale of the Commercial Paper Notes). The application states that the Bank will use the proceeds of the Advances in the ordinary course of its banking business for "current transactions" within the meaning of Section 3(a)(3) of the 1933 Act.

The Applicants state that the Bank will be obligated to repay to the Issuer on the maturity date of each Advance

the principal together with interest payable from time to time in an amount sufficient to enable the Issuer to satisfy its liabilities in connection with the transaction. Applicants further state that each Advance will have the same maturity date as that of the Commercial Paper Notes issued by the Issuer; the Bank will be unconditionally obligated to pay amounts as are necessary to satisfy the Issuer's obligations under the Commercial Paper Notes and other liabilities of the Issuer with respect to the transaction; and the Bank will consent to the enforcement of the agreement directly by the holders of the Commercial Paper Notes and by the Depositary on behalf of those holders.

Applicants may, from time to time, offer their debt securities other than the Commercial Paper Notes for sale in the United States, the proceeds of which would, in the case of debt securities of the Issuer, be loaned or advanced to the Bank in a manner similar to the Advances and, in the case of debt securities issued by the Bank, utilized directly by the Bank or one of its branches in its banking operations. The application states that the Issuer's obligations with respect to any such debt securities it issues may be supported by the Bank's guarantee or by such other unconditional obligation on the part of the Bank to pay the obligations of the Issuer in connection with those debt securities as would be the functional equivalent of a guarantee of those debt securities. Applicants undertake that, prior to their issuance, any future issue of Applicants' debt securities other than the Commercial Paper Notes will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that the Applicants' United States counsel shall have certified that the rating was received; provided, however that no rating need be obtained with respect to any such issue if, in the opinion of Applicants' United States counsel (counsel having taken into account for the purposes there of the doctrine of "integration" referred to in Rule 502 under the 1933 Act and relevant "no-action" letters made public by the Commission) an exemption from registration is available under Section 4(2) of the 1933 Act or Regulation D thereunder.

The Applicants undertake that they will not issue or sell in the future any of their debt securities in the United States unless the Applicants have received an opinion of United States counsel or a "no-action" letter issued by the Commission to the effect that the proposed offering is in compliance with, or entitled to an exemption from, the registration requirements of the 1933 Act. The Applicants also undertake that any future offering will be effected on the basis of disclosure documents at least as comprehensive in their description of the Issuer or the Bank or both, as the case may be, their businesses and their financial statements as the commercial paper dealer memoranda referred to above, and that in the case of an offering made pursuant to a registration statement under the 1933 Act, the offering will be made on the basis of disclosure documents appropriate for such registration.

The Applicants represent that the Bank will, in connection with any future offering of its debt securities in the United States and in connection with any future offering of the Issuer's debt securities in the United States, appoint an agent to accept service of process in any suit, action or proceeding brought against the Bank on its obligations under its debt securities or its obligations under its guarantee (or functionally equivalent obligation) of the debt securities of the issuer, and instituted in any State or Federal court by the holder of any debt securities and will expressly submit to the jurisdiction of any State or Federal court located in The City of New York with respect to any such suit, action or proceeding. The Applicants further represent that such appointment of an agent for service of process and consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect of such issuance of debt securities have been paid.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Geoge A. Fitzsimmons,

Secretary.

[FR Doc. 84-7601 Filed 3-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13823; 812-5760]

RC Apartment Partners Limited Partnership, et al.; Application for an Order for Exemption

March 15, 1984.

Notice is hereby given that RC Apartment Partners Limited Partnership and RC Commercial Partners Limited Partnership (respectively, the "Residential Partnership" and the "Commercial Partnership," and collectively, the "Partnerships"), 225 Franklin Street, Boston, Massachusetts 02110: Maryland limited partnerships, and their managing general partner, Winthrop Financial Co., Inc. ("Winthrop Financial" or the "Managing General Partner" and, together with the Partnerships, collectively referred to hereinafter as "Applicants"), filed and application of January 30, 1984, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") for an order exempting the Partnerships from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicants state that the Partnerships were formed under the Maryland Revised Uniform Limited Partnership Act as vehicles for equity investment in a project including government-assisted rental housing in accordance with the policies and objectives of Title IX of the Housing and Urban Development Act of 1968 ("Title IX"). Applicants state that the Partnerships will operate as "two-tier" entities, that is, the Partnerships, as limited partners, will invest in River City Apartment Associates and River City Commercial Associates (together, the "Operating Partnerships"), which in turn, will engage in the acquisition, development, construction, ownership and operation of a project containing 446 units of housing, of which 339, or approximately 76% are for moderate income persons, and commercial space developed in connection with such housing (the "Combined Project")/ Applicants state that the Partnerships are organized as limited partnerships because that form of organization is the

only one that provides an investor with both liability limited to his capital investment and the ability to claim on his individual income tax return tax benefits as if he were a direct owner of the Combined Project in which the limited partnership invests.

Applicants state that the Residential and Commercial Partnerships will offer 160 and 80 units, respectively, of limited partnership interests ("Units") at a price of $70,465 and $76,447 per Unit, respectively, plus interest, to investors meeting certain suitability standards pursuant to Section 4(2) of the Securities Act of 1933 ("Securities Act") and Regulation D promulgated thereunder. It is estimated that the Partnerships will have as net proceeds of the offerings $7,680,125 and $4,921,331, respectively, available for investment in the Operating Partnerships after deductions for sales commissions, anticipated offering expenses, and certain fees and expenses. To become a limited partner ("Limited Partner") in either Partnership, an investors subscription for Units must be approved by Winthrop Financial, and such approval will be made conditional upon respresentations as to suitability of the investment for each subscriber.

Applicants state that the Partnerships will be controlled by the Managing General Partner, and that the Limited Partners, consistent with their limited liability status will not be entitled to participate in the control of the Partnerships. Limited Partners owning a majority of interests in a partnership will have the right to amend the partnership agreements, dissolve the Partnerships, and remove any General Partner and elect a replacement therefor. Any amendment to either partnership agreement, however, may not allow the Limited Partners to take part in the control of the respective Partnerships business, or otherwise affect the limited liability of the Limited Partners.

Applicants represent, in addition, that under the partnership agreements, each Limited Partner is entitled to review all books and records of his Partnership at any and all reasonable times. It is stated that the Combined Project will be assisted by federal and local government agencies and will contain housing for moderate income persons and commercial space developed in connection with such housing. Applicants state that the general partner of the Operating Partnerships is River City Developers, an Illinois limited partnership, the general partners of which are Daniel N. Epstein and Bertrand Goldberg. It is further stated that Mr. Epstein has had substantial experience in the construction and development of real estate projects and that Mr. Goldberg is an architect with extensive experience in the design, planning and development of both residential and commercial structures. It is stated that River City Developers will receive interests in the Operating Partnerships disproportionate to its capital contributions.

Applicants state further that the registered broker-dealers who are to sell the Units ("Placing Brokers") will receive commissions equal to 8% of the principal amount of the Units sold, and that the selling agent, an affiliate of the Managing General Partner, will receive an additional 1% as reimbursement for expenses of the offering. Offers and sales of the Units will be effected through the Placing Brokers and other members of the National Association of Securities Dealers, Inc. ("NASD") authorized by the Placing Brokers to sell Units.

Applicants represent that selling commissions based on 8% of the offering proceeds are customarily charged in securities offerings of this type and are consistent with the guidelines of the NASD.

Applicants further state that during the offering and organizational stage, the Managing General Partner will receive from the Residential and Commercial Partnerships non-recurring fees equal to .6% and 1.2%, respectively, of the offering proceeds, including interest ("Gross Proceeds") for organizational services, and non-recurring fees equal to .4% and .8%, respectively, of Gross Proceeds for costs incurred in obtaining professional tax advice for the Residential and Commercial Partnerships. Applicants further state that during this stage an affiliate of the Managing General Partner will receive from Continental Casualty Company ("CNA"), which will provide finanacial guaranty bonds insuring the payment of the Limited Partners' promissory notes, fees of up to .35% and .25% of Gross Proceeds for the Residential and Commercial Partnerships, respectively, for insurance brokerage services in arranging the CNA insurance. Applicants state that CNA may also pay a contingent fee of up to .5% and .37% of Gross Proceeds for the Residential and Commercial Partnerships, respectively, depending on the loss ratio experienced on the financial guaranty bonds.

During the Partnerships' developmental stage, Applicants state that the Managing General Partner will receive non-recurring fees equal to 13.87% and 8.7%, respectively, of Gross Proceeds for monitoring the Partnerships' investments in their respective Operating Partnerships during the period in which the capital contributions of the Limited Partners are being paid, and non-recurring fees equal to .7% and .6%, respectively, of Gross Proceeds in consideration for obtaining advances of $1,418,000 and $561,000, respectively, to the Residential and Commercial Partnerships, to enable the Partnerships to make timely payment of the first portion of the initial installment of their capital contributions to the Operating Partnerships, and arranging commercial bank loans to the Partnerships in the amounts of $7,338,509 and $3,029,730, respectively. In consideration for these services, the Managing General Partner will also receive the amount, if any, by which the interest actually paid on the commerical bank loans is less than projected to be paid, and any interest income earned on temporary investments of Limited Partners' Capital Contributions pending payment by the Partnerships of their capital contributions to their respective Operating Partnerships.

During the Partnership's operating stage, Applicants state that the Managing General Partner will receive annual management fees from each of the Partnerships in the amount $25,000 per year, and non-recurring fees equal to 2.2% and 2.3%, respectively, of Gross Proceeds in consideration for the agreement to make additional capital contributions of up to $1,300,000 and $900,000, if needed to cover certain operating deficits of the respective Operating Partnerships. Applicants state that compensation to the Managing General Partner during the liquidating stage will be in the form of distributions of the proceeds of the sale or refinancing of the Combined Project or the Partnerships' interests in the Operating Partnership, or of real or personal property of the Partnerships.

Applicants state that, in addition to the foregoing fees and interests, the Managing General Partner and affiliates that are also general partners of the Partnerships will receive in the aggregate a 1.6% interest in each Partnership's profits and losses, cash flow and, after the Limited Partners have received sale or refinancing proceeds equal to the amount of their capital contributions, 5% of the proceeds resulting from a sale or refinancing of Partnership assets.

Applicants state that the substantial fees and other forms of compensation that will be paid to the Managing General Partner and its affiliates will not have been negotiated through arm's

length negotiations. They represent, however, that terms of all such compensation will be fair and not less favorable to the Partnerships than would be the case if such terms had been negotiated with independent third parties.

Applicants state that the Limited Partners will make their capital contributions to the Residential and Commercial Partnerships in seven and eight installments over six and seven years, respectively, according to a schedule which corresponds approximately to the timing of the payments by the Partnership of its capital contributions to the Operating Partnerships.

Applicants further state that a portion of the second through seventh or eighth installments, as the case may be, will be invested for approximately two months in short-term obligations pending payment by each Partnership of its capital contributions to the appropriate Operating Partnership. Applicants state that at no time will the value of the investment from the proceeds of such installments exceed 40% of a Partnership's total assets.

Applicants state that each Partnership will distribute to Limited Partners annual audited financial statements, as well as an annual statement describing any transactions between the Partnership and any affiliate of the General Partners. Applicants state that the partnership agreements provide that the Partnerships shall indemnify any General Partner for losses sustained for any act performed within the scope of the authority granted to the General Partner by the partnership agreements if the General Partner was not guilty of fraud or gross negligence. Applicants further state, however, that insofar as indemnification for liabilities under the Securities Act may be permitted to a General Partner, the Partnerships have been advised that in the opinion of the Commission, such indemnification is contrary to public policy as expressed in the Securities Act and is therefore unenforceable.

Without conceding that the Partnerships are investment companies as defined in the Act, Applicants request that the Partnerships be exempted from the provisions of the Act pursuant to Section 6(c). Applicants assert that investment in housing projects of the nature of the Combined Project is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form. It is stated that the limited partnership structure provides the only means of bringing private equity capital into government-subsidized housing, particularly because investors typically consider investment in such housing programs as involving greater risk than real estate investment generally.

It is further represented, however, that despite the advantages it affords investors in government-assisted housing, the limited partnership form of organization is incompatible with certain fundamental provisions of the Act. Thus, an exemption from these basic provisions is necessary, and, Applicants contend, it is appropriate that such exemption be granted so as not to discourage use of the two-tier limited partnership entity. To do so, Applicants assert, would frustrate the public policy established by the housing laws.

Applicants further state that, although the interests of the Managing General Partners and its affiliates, and of the general partners of the Operating Partnerships and their affiliates, may conflict in various ways with the interests of Limited Partners are adequately protected through disclosure in the selling documents prepared in connection with the offering of Units. Further protection for the interests of Limited Partners is provided, Applicants assert, by the provisions of the partnership agreements designed to prevent overreaching by the Managing General Partner and to assure fair dealing by the Managing General Partner vis-a-vis the Limited Partners, as well as by the suitability standards established by the selling documents for prospective Limited Partners and the private offering criteria of Regulation D under Section 4(2) of the Securities Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, and order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7808 Filed 3-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13825 812-5733]

Thomson McKinnon Investment Trust, One New York Plaza, New York, New York, 10004; Application for Order

March 15, 1984.

Notice is hereby given that Thomson McKinnon Investment Trust ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on December 27, 1983, pursuant to Section 6(c) of the Act, for an order of the Commission exempting Applicant from the provisions of Sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d-1 thereunder to the extent necessary to permit Applicant to assess a contingent deferred sales charge on redemptions of its initial and future series of shares, and to permit Applicant to waive the contingent deferred sales charge in certain cases. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions cited in the application.

Applicant states that it consists of four series and that, although it has not current intention to create any additional series, it requests that the proposed exemptive relief extend to its initial series and any future series offered on substantially the same basis. Applicant states that mutual funds sold with a sales charge have traditionally imposed a front-end load so that purchase payments are invested after the deduction of any applicable sales so that investors will have the entire amount of their purchase payments fully invested when made. However, Applicant also proposes to pay to its distributor a contingent deferred sales charge from the proceeds of certain redemptions of Applicant's shares. Applicant represents that the amount of such charges, in the aggregate, will not exceed 5% of the aggregate purchase payments made by the investor.

Applicant states that the contingent deferred sales charge would be imposed if an investor redeems an amount which causes the current value of the investor's account with Applicant to fall

below the total dollar amount of purchase payments made by the investor during the preceding five years, except that no sales charge would be imposed if the amount redeemed is derived from (1) increases in the value of the investor's account above the amount of purchase payments during the preceding five years of (2) purchase payments made more than five years prior to the redemption.

Applicant states that the imposition of the contingent defered sales charge is to be waived on the following redemptions: (1) Redemptions following the death or disability, as defined in Section 72(m)(7) of the Internal Revenue Code (the "Code"), of a shareholder (including one who owns the shares as joint tenant with his or her spouse), provided the redemption is requested within one year of the death or initial determination of disability; (2) any partial or complete redemption in connection with certain distributions from Individual Retirement Accounts ("IRA's") or other qualified retirement plans, and (3) redemptions by the Trustees, officers and any employees of Applicant and by employees of Thomson McKinnon Securities Inc., Applicant's principal underwriter (the "Distributor"), or of Thomson McKinnon Asset Mangement Inc., Applicant's investment manager (the "Manager"), or of their parent corporation, Thomson McKinnon Inc., or its other existing and future subsidiaries ("Affiliated Employees"). Thomson McKinnon Inc. is a holding company which through its subsidiaries is engaged primarily in providing customers with a wide variety of financial services in connection with securities, commodities, options, corporate and public finance and related fields.

Applicant states that the contigent deferred sales charge is calculated on the basis of Applicant's current net asset value and the aggregate purchase payments (including purchase payments allocable to exchanges from other series) of the particular series from which shares are being redeedmed. Applicant states that, in determining the applicability of a contingent deferred sales charge to each redemption, the amount which represents an increase in the net asset value of the investor's shares in the series from which the redemption is being made above the amount of the total payment for the purchase of shares in such series within the last five years will be redeemed first. In the event the redemption amount exceeds such increase in value, the next portion of the amount redeemed will be the amount which represents the net asset value of the investor's shares purchased more than five years prior to the redemption and/or purchased through reinvestment of dividends or distributions. Applicant states that any portion of the amount redeemed which exceeds an amount which represents both such increase in value and the value of shares purchased through reinvestment of dividends or distributions will be subject to a contingent deferred sales charge. Applicant states that where a contingent deferred sales charge is imposed, the amount of the charge will depend on the number of years since the investor made the purchase payment from which an amount is redeemed, according to the following table:

Year since purchase payment made	Contingent deferred sales charge as a percentage of amount redeemed (percent)
First	5.0
Second	4.0
Third	3.0
Fourth	2.0
Fifth	2.0
Sixth	None.

Applicant states that the amount of the contingent deferred sales charge is calculated by determining the date on which the purchase payment which is the source of the redemption was made, and applying the appropriate percentage to the amount of the redemption subject to the charge. Applicant states that, in determining the rate of any applicable contingent deferred sales charge, it will be assumed that a redemption is made of shares held by the investor for the longest period of time within the applicable five-year period. Applicant asserts that this will result in any such charge being imposed at the lowest possible rate.

According to Applicant, the holding period for calculation of the contingent charge payable on redemptions of shares acquired in exchange transactions will equal the aggregate time that an investor has maintained an investment in any series of Applicant. Also, in computing the charge payable on such redemptions, the purchase date will be the date of acquisition of the exchanged shares.

Applicant asserts that imposition of the contingent deferred sales charge is fair and is in the best interests of shareholders. Applicant submits that the proposed contingent deferred sales charge permits shareholders to have the advantages of greater investment dollars working for them from the time of the purchase of Applicant's shares. Applicant asserts that because the contingent deferred sales charge applies only to redemptions of amounts representing purchase payments, it does not apply to increases in the value of a shareholder's account through increases in net asset value per share, or to amounts representing reinvestment of distributions.

Applicant proposes to finance its own distribution expenses pursuant to a distribution plan adopted pursuant to Rule 12b/1 under the Act. The proposed distribution plan requires Applicant to pay an annual fee to the Distributor for expenses related to the offering of Applicant's shares. Applicant states that its distribution fee is equal on an annual basis for each series of Applicant to 1.0% of the lesser of (1) aggregate gross sales of the shares of such series since inception of the series (excluding reinvestments of dividend or capital gain distributions and sales of shares that have been exchanged for shares of another series, but including sales of shares acquired by exchanges of shares of another series), less the aggregate dollar amount of redemptions since inception upon which a contingent deferred sales charge has been imposed or with respect to which such charge has been waived, or (2) the average daily net assets of such series.

Applicant asserts that where amounts attributable to purchase payments are redeemed (and thus no longer contribute to the annual distribution charge) it is fair (1) to impose on the withdrawing shareholder a lump sum payment reflecting approximately the amount of distribution expense which has not been recovered through payments pursuant to Applicant's 12b-1 plan and (2) to remove the assets on which the contigent deferred sales charge was imposed from the base amount on which Applicant's distribution fee is calculated.

Applicant asserts that imposition of the proposed contingent deferred sales charge will in no way restrict a shareholder from receiving his proportionate share of Applicant's current net assets, but merely defers deduction of a sales charge and makes it contingent upon an event that may never occur. Accordingly, Applicant requests an exemption from the provisions of Section 2(a)(32) of the Act

to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Applicant asserts that the contingent deferred sales charge is paid to the Distributor to reimburse it solely for expenses related to offering Applicant's shares for sale to the public, and, therefore, the contingent deferred sales charge is within the Section 2(a)(35) definition of "sales load," but for the timing of the imposition of the charge. Applicant states that the deferral of the sales charge, and its contingency upon the occurrence of an event that might not occur, does not change the basic nature of the charge, which is in every respect a sales charge. Accordingly, Applicant requests an exemption from the provisions of Section 2(a)(35) of the Act, to the extent necessary to permit implementation of the proposed charge.

Applicant states that when a redemption of Applicant's shares occurs, the price of the shares on redemption will be based on current net asset value. However, the contingent deferred sales charge will be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds. Accordingly, Applicant requests an exemption from the provisions of Section 22(c) of the Act and Rule 22c–1 thereunder to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Applicant requests an exemption from the provisions of Section 22(d) of the Act and Rule 22d–1 thereunder to permit waiver of the contingent deferred sales charge under the circumstances described above (except where waiver of the charge is permitted by Rule 22d–1(i) under the Act). Applicant asserts that, in each situation where the charge would be waived, the redeeming shareholder is a member of a class of shareholders that is favored under the tax laws or the securities laws or for which Applicant would not incur distribution expense under its 12b–1 plan. Applicant further asserts that the proposed waiver of the contingent deferred sales charge is fair to remaining shareholders because Applicant will not be charged with any revenue lost as a result of the waiver. Applicant states that, as with redemptions subject to the contingent deferred sales charge, redemptions subject to the waiver are removed from the base of aggregate purchase payments for purposes of calculating Applicant's distribution fee.

Applicant asserts that waiver of the contingent deferred sales charge in the extraordinary circumstances of death or total disability of the investor is justified on basic considerations of fairness. Applicant further asserts that waiving the charge on certain distributions from a qualified retirement plan is fully consistent with the policies reflected in (1) the Code provisions granting favored tax treatment to accumulations under such plans and imposing additional taxes on early distributions from IRA's and other plans, and (2) Rules 22d–1(a)(3) and 22d–1(b)(3) under the Act, which permit quantity discounts to plans qualified under Code Section 401, and Rule 22d–1(f) under the Act, which permits variations in the sales load for qualified and non-qualified employee benefit plans (which need not be based on realization of economies of scale where the plans are qualified under Section 401 of the Code).

Applicant asserts that waiving the charge with respect to redemptions by trustees, officers and employees of Applicant and Affiliated Employees is justified because of the absence of selling expenses associated with sales to such persons. Applicant further asserts that, as to Applicant's Trustees and officers and employees of Applicant or of the Distributor and Manager, such waivers are fully consistent with Rule 22d–1(i) under the Act. Rule 22d–1(i) generally permits reduction or elimination of sales loads in connection with sales of a registered investment company's shares to directors, officers and employees of the company, its investment adviser and principal underwriter.

Applicant argues that waiver of the deferred sales charge on redemptions of Applicant's shares by employees of Thomson McKinnon Inc. and its existing and future subsidiaries could be permitted by Rule 22d–1(f) under the Act because such employees are participants in an employee benefit plan (the "Plan") that offers economies of scale in sales effort and expense and would be described in Applicant's prospectus. Rule 22d–1(f) under the Act permits elimination of sales charges upon a sale of shares pursuant to a uniform offer described in the prospectus and made to employee benefit plans not qualified under Code Section 401 provided such non-qualified plans satisfy uniform criteria relating to the realization of economies of scale in sales effort and sales related expenses. However, it is not clear that waiver of the deferred sales charge on redemptions by employees of Thomson McKinnon Inc. would meet the "uniform offer" requirement of Rule 22d–1(f).

Applicant states that employees of Thomson McKinnon Inc. can be expected to have a basic understanding of the nature of an investment in a mutual fund as well as general familiarity with, and a significant degree of loyalty to, Applicant. Applicant submits that the relationship between the Distributor and Manager with the other Thomson McKinnon Inc. corporate affiliates is the basis for a unique relationship that can be expected to result in economies in sales effort and sales related expense that justifies elimination of all contingent deferred sales charges on Applicant's shares purchased by participants in the Plan without discrimination against other employee benefit plans or other purchasers of Applicant's shares.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary

[FR Doc. 84–7602 Filed 3–20–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13824; 811–2332]

VIP Growth Fund, Inc.; Proposal To Terminate Registration Pursuant to Section 8(f) of the Investment Company Act of 1940

March 15, 1984.

Notice is hereby Given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act") to declare by order on its own motion that VIP Growth Fund, Inc. ("VIP"), Warfside Building San Francisco, California 94109 registered under the Act as an open-end, diversified management investment company, ceased to be an investment company required to be registered under the Act.

Information contained in the files of the Commission indicates that VIP, a corporation organized under the laws of

California, registered under the Act on November 13, 1972, and subsequently became inactive.

Section 8(f) provides, in pertinent part, that whenever the Commission on its own motion finds that a registered investment company has ceased to be an investment company, it shall so declare by order.

Notice is further given that any interested person wishing to request a hearing on the proposal may, not later than April 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon VIP at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the proposal will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7609 Filed 3-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20754; SR-CBOE-80-16]

Self-Regulatory Organization; Chicago Board Options Exchange, Inc.; Order Extending Partial Approval of Proposed Rule Change on a Summary and Temporary Basis

March 14, 1984.

I. Introduction

On June 9, 1980, the Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605, filed with the Commission, pursuant to the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to modify its operations and procedures relating to options market makers. Among other things, the proposed rule change created a single class of market makers by eliminating supplemental appointments, increased the number of options classes in which market makers were permitted to have appointments, and established a new Exchange committee responsible for evaluating the performance of and taking disciplinary action against market makers. The proposed rule change also prescribed minimum requirements concerning the extent to which a market maker's trading activity must be conducted in person.[1] The rule change was approved by the Commission on February 12, 1981,[2] but the 1981 approval order was vacated on April 5, 1982, by the United States Court of Appeals for the Seventh Circuit in *Clement* v. *Securities and Exchange Commission,* an action challenging the minimum requirement for in-person market maker transactions, and the matter was remanded to the Commission.[3]

On May 11, 1982, with extensions thereafter effective until February 10, 1984, the Commission reviewed the rule filing and summarily and temporarily approved those portions of the proposed rule change not addressed in *Clement.*[4] During this interval, the Commission awaited certain amendments to the proposal and additional information from CBOE.[5] The Commission also solicited and evaluated public comment upon the proposed rule change.[6]

Further information has been received from the CBOE concerning the impact of CBOE's previous in-person requirement prior to that requirement's elimination by *Clement* v. *Securities and Exchange Commission.*[7] The Commission expects to act soon with respect to the proposed in-person rule. In the interim, it will be necessary for the Commission to extend for an additional 30 days its summary and temporary approval of those portions of the proposed rule change not at issue in *Clement.*[8]

Copies of the original submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the CBOE.

It is therefore ordered, that the proposed rule change referenced above, and to the extent indicated above, be, and it hereby is, approved until April 13, 1984.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7607 Filed 3-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20753; File No. SR-NASD-82-24]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc.

March 14, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 2, 1982, the

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[1] Notice of the proposed rule change was published in Securities Exchange Act Release No. 16919 (June 24, 1980), 45 FR 43914 (1980). Subsequently, on July 9, 1980, the CBOE filed an amendment to the proposed rule change excluding certain closing transactions from the calculations of transactions required to be executed in person by market makers and requiring the recording of additional information on market maker orders. NOtice of the amendment to the proposed rule change was published in Securities Exchange Act Release No. 17012 (July 25, 1980), 45 FR 51325 (1980).

[2] Securities Exchange Act Release No. 17535 (February 12, 1981), 46 FR 13055 (1981) ("1981 Approval Order").

[3] *Clement* v. *Securities and Exchange Commission,* 674 F.2d 641 (7th Cir. 1982).

[4] *See* Securities Exchange Act Release Nos. 18727 (May 11, 1982), 47 FR 21169 (1982); 18963 (August 16, 1982), 47 FR 37020 (1982); 19203 (November 1, 1982), 47 FR 50790 (1982); 19386 (December 30, 1982), 48 FR 915 (1983); 19641 (March 29, 1983), 48 FR 14795 (1983); and 19923 (June 28, 1983), 48 FR 31133 (1983); 20082 (August 12, 1983), 48 FR 37755 (1983); 20228 (September 23, 1983), 48 FR 44982 (1983); and 20362 (November 10, 1983), 48 FR 52529 (1983); 20475 (December 13, 1983), 48 FR 56291 (1983); 20552 (January 12, 1984), 49 FR 2176 (1984); and 20637 (February 9, 1984), 49 FR 6062 (1984).

[5] CBOE filed a substantive amendment to the proposed rule change on October 19, 1982. *See* Securities Exchange Act Release No. 19203 (November 1, 1982), 47 FR 50790 (1982). The Commission also received a letter from CBOE requesting approval of its proposed "in-person" rule on a pilot basis. *See* letter of May 10, 1983, from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Richard Chase, Division of Market Regulation, Securities and Exchange Commission. File No. SR-CBOE-80-16.

[6] The public comments received since the beginning of November 1982 are discussed in Securities Exchange Act Release Nos. 19386 (December 30, 1982), 48 FR 915 (1983); 19641 (March 29, 1983), 48 FR 14795 (1983); and 20082 (August 12, 1983), 48 FR 37755 (1983), and are available for public inspection in File No. SR-CBOE-80-16. A further letter from CBOE, noted in the preceding footnote, is discussed in Securities Exchange Act Release No. 19923 (June 28, 1983), 48 FR 31133 (1983). Further letters are discussed below.

[7] *See* letter of Anne Taylor, Secretary and Associate General Counsel, CBOE, to Kevin Fogarty, Division of Market Regulation, Securities and Exchange Commission, September 22, 1983. The Chicago Board of Trade also submitted its interpretation of the data provided in this CBOE letter. *See* letter of January 10, 1984, from Thomas R. Donovan, President, Chicago Board of Trade, to George A. Fitzsimmons, Secretary. File No. SR-CBOE-80-16.

[8] CBOE has consented to this extension of partial approval.

National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, NW., Washington, D.C. 20006, filed with the Securities and Exchange Commission the proposed rule change as described herein. Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 19382, December 29, 1982) and by publication in the **Federal Register** (48 FR 1137, January 10, 1983). One comment was received. The NASD filed an amendment to the proposed rule change on August 18, 1983. The Commission is publishing this notice to solicit comments on the amendment to the proposed rule change from interested persons.

The proposed rule change would amend Part I of Schedule C of the NASD's By-Laws to adopt standards and procedures that NASD staff members will follow when discussing membership with an applicant ("pre-membership interview" or "Interview"). The amendment to the proposed rule change modifies some of the procedures relating to these Interviews. In general, the proposal provides that once an applicant has been interviewed by the NASD's District Office, the District Office will make a preliminary determination and advise the applicant in writing of whether it may become an NASD member, and, if so what restrictions would be imposed on its membership. Paragraph (2)(c) was amended to provide that if the applicant does not consent to these restrictions, it may request the District Committee to make a *de novo* determination regarding what, if any, restrictions will be imposed on the member. Similarly, paragraph (2)(f) provides for *de novo* consideration by the Board of Governors of the restrictions on membership imposed by the District Committee and/or the District Office. Paragraph (3) provides for the removal of restrictions imposed as a result of the Interview. Two sections were added to paragraph (3) to indicate that modifications of restrictions are subject to review by the Board of Governors and by the Commission and to clarify that the NASD and the applicant must execute a new agreement whenever the restrictions are modified.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–NASD–82–24.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–7606 Filed 3–20–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20756; File No. SR–OCC–84–2]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change by the Options Clearing Corp.

March 15, 1984.

The Options Clearing Corporation ("OCC") on February 18, 1984, submitted a proposed rule change to the Commission pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), that amends Interpretation and Policy No. 2 OCC Rule 604 relating to the maximum allowable amounts of letters of credit from non-U.S. institutions ("foreign LC's") that clearing members may pledge for OCC margin purposes. Under the proposal, OCC will calculate each clearing member's maximum allowable amount of foreign LC's on the basis of the member's aggregate OCC margin deposit, rather than on its OCC margin requirement.[1]

[1] Previously, the Interpretation and Policy provided that no more than 50% of a clearing member's margin requirement at any time could be met by foreign LC's in the aggregate and no more than 20% could be met by LC's issued by a single foreign institution. The proposal does not change the Interpretation and Policy's applicable percentages.

OCC believes that its clearing members will benefit from the proposal in several ways. First, clearing members will be able to exercise greater control over their allowable amount of foreign LC's by maintaining a stable margin deposit. Second, clearing members no longer will need to monitor constantly their foreign LC level, which changed daily because of fluctuations in their margin requirements, or to amend frequently their foreign letter of credit agreements. Third, the proposal conforms with clearing members' current practices. Most clearing members keep excess margin deposits to allow for fluctuating margin requirements.

OCC also believes that it will benefit from the proposal. The proposal should reduce OCC's unnecessary costs and administrative burdens incurred in monitoring the foreign LC program. In addition, the proposal should encourage clearing members to maintain higher OCC margin deposits of all types, thereby enhancing OCC's financial safeguarding systems.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any item within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the **Federal Register.** Persons desiring to make a written submission should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–OCC–84–2.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7604 Filed 3-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20757; File No. SR-PSE-84-4]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc.

March 15, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 1, 1984, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE proposes to reduce the fee which the PSE charges its affected member firms for the direct costs of the computer terminal equipment for the PSE's on-line automated options trade check system.[1] The Exchange has noted in its filing that the proposed rule change is intended to permit the Exchange to pass on to its members the benefits of the reduced costs resulting from its acquisition of different data processing equipment. The proposed rule change reflects the reduction in the Exchange's direct costs from $130 to approximately $70 per terminal per month. The PSE states that the proposed rule change is consistent with Section 6(b)(4) of the Act in that the Exchange has provided for the equitable allocation of reasonable fees and charges among its members.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-84-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7608 Filed 3-20-84; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission approved the adoption of the PSE's on-line automated options trade check system and its plan to charge each affected member firm for the direct costs of the required computer terminal equipment (SR-PSE-83-13) on August 6, 1983 (Securities Exchange Act No. 20154, 48 FR 41255 September 14, 1983).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2121]

Texas; Declaration of Disaster Loan Area

Harris County and the adjacent Counties of Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller in the State of Texas constitute a disaster area because of damage caused by below freezing temperatures on December 22-29, 1983. Applications for loans for physical damage may be filed until the close of business on May 14, 1984, and for economic injury until the close of business on December 17, 1984, at the address listed below: U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, or other locally announced locations.

Interested rates for this disaster are:

	Percent
Homeowners with credit available elsewhere	12.500
Homeowners without credit available elsewhere	6.250
Businesses with credit available elsewhere	11.000
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 212107 for physical damage and for economic injury the number is 614900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 15, 1984.

Donald P. Young,

Acting Administrator.

[FR Doc. 84-7593 Filed 3-20-84; 8:45 am]

BILLING CODE 8025-01-M

National Advisory Council Meeting

The Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, D.C., will hold its semiannual National Advisory Council meeting from 8:30 a.m., Thursday, April 26, 1984, to 3:30 p.m., Friday, April 27, 1984, at the Washington Hilton Hotel, Connecticut Avenue at Columbia Road NW., Washington, D.C. 20009 to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, Office of Advisory Councils, U.S. Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, (202) 653-6892.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 16, 1984.

[FR Doc. 84-7586 Filed 3-20-84; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidental Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 8:30 a.m. until 5:00 p.m., Friday, April 6, 1984, at the Ambassador Hotel, Boulevard Room, 3400 Wilshire Boulevard, Los Angeles, California 90010, to discuss such business as may be presented by the Committee members. The meeting will be open to the interested public, however, space is limited.

Persons wishing to present written statements should notify Mr. Milton Wilson, Jr., Office of Capital Ownership Development, Small Business Administration, Room 602, 1441 L Street NW., Washington, D.C. 20416, in writing no later than April 2, 1984.

Dated: March 14, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-7582 Filed 3-20-84; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council Meeting

The Small Business Administration, Region II Advisory Council, located in the geographical area of Hato Rey, will hold a public meeting at 9:00 a.m., on Friday, April 13, 1984, at room G-59, Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00919, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Wilfred Benitez Robles, District Director, U.S. Small Business Administration, Federico Degetau Federal Building, Room 691, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918—(809) 753-4003.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 16, 1984.

[FR Doc. 84-7587 Filed 3-20-84; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting

The Small Business Administration, Region III Advisory Council, located in the geographical area of Philadelphia, will hold a public meeting at 8:30 a.m. on Friday, May 25, 1984, at the Philadelphia District Office, Suite 400, East Lobby, One Bala Plaza, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania 19004, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania 19004, (215) 596-5801.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 16, 1984.

[FR Doc. 84-7580 Filed 3-20-84; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting

The Small Business Administration, Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 9:30 a.m. on Tuesday May 1, 1984, 211 Main Street—5th Floor—Room 543, San Francisco, California 94105, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Lawrence J. Wodarski, District Director, U.S. Small Business Administration, 211 Main Street—4th Floor, San Francisco, California 94105, (415) 974-0642.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 16, 1984.

[FR Doc. 84-7591 Filed 3-20-84; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting

The Small Business Administration, Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 9:30 a.m., on Thursday, April 12, 1984, at the Owyhee Plaza "Gold Room", 1109 Main Street, Boise, Idaho, 83702 to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Verne A. Leighton, District Director, U.S. Small Business Administration, 1005 Main Street, Boise, Idaho 83702, (208) 334-1096.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 16, 1984.

[FR Doc. 84-7588 Filed 3-20-84; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting

The Small Business Administration, Region X Advisory Council, located in the geographical area of Spokane, will hold a public meeting at 9:30 a.m., on Wednesday, April 11, 1984, in Room 752 U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington 99210, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Valmer W. Cameron, District Director, U.S. Small Business Administration, Room 651, U.S. Courthouse Building, Post Office Box 2167, Spokane, Washington, 99210, (509) 456-3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 16, 1984.

[FR Doc. 84-7589 Filed 3-20-84; 8:45 am]

BILLING CODE 8025-01-M

VETERANS ADMINISTRATION

Career Development Committee; Meeting

The Veterans Administration gives notice under the provisions of Public Law 92-463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the Caucus Room of the Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037, April 11 through 13, 1984 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, Senior Medical Investigators and William S. Middleton Award Nominees.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202-389-2317) prior to April 4, 1984.

The meeting will be closed from 9 a.m. to 5 p.m. on April 11 through 13 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Public Law 92-463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420, (Phone 202-389-2317).

Dated: March 13, 1984.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-7547 Filed 3-20-84; 8:45 am]

BILLING CODE 8320-01-M

St. Cloud, Minnesota—120-Bed Nursing Home Care Unit; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the development of a 120-Bed Nursing Home Care Unit (NHCU) at the VA Medical Center in St. Cloud, Minnesota. The Assessment found that there are no anticipated long-term, adverse impacts associated with the development and subsequent operation of the proposed NHCU and, therefore, the VA concludes a Finding of No Significant Impact.

The proposed project is a single level, freestanding structure of approximately 43,500 gross square feet. The new construction would be connected to existing Building No. 51 through a corridor.

There are no identified long-term impacts associated with the project, but several temporary impacts may occur as a result of the construction process. These temporary impacts include: air pollution (dust and fumes), construction noise, and solid waste generation. The proper planning and implementation of the project will mitigate potential impacts on land use, vegetation, and cultural resources.

Construction related impacts will be mitigated through the application of the best available engineering techniques and construction specifications. The project will be in compliance with all applicable Federal, State, and local environmental regulations during construction and subsequent operation.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality, (40 CFR 1508.27).

An Environmental Assessment has been perfomred in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389–3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: March 14, 1984.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84–7546 Filed 3–20–84; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RE84–1–000]

Central Illinois Public Service Co.; Application for Exemption

March 16, 1984.

Take notice that Central Illinois Public Service Company (CIPS) filed an application on February 13, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption CIPS states, in part, that it should not be required to file the specified data for the following reasons:

The data produced and submitted in compliance with Part 290 are for an unadjusted historical period and therefore unlikely to be useful in retail rate proceedings before the Illinois Commerce Commission (ICC) which requires numerous adjustments to historical test periods and authorizes use of both current and future test periods.

The ICC currently requires that CIPS, as part of the record in each CIPS retail rate proceeding, file both embedded/accounting cost of service studies and marginal cost of service studies in formats different from those specified in Part 290.

CIPS' current program of class load studies is more extensive than the load studies required by Part 290. The results of CIPS' ongoing research in class loads are provided to the ICC.

The ICC allows its staff and retail intervenors wide latitude to serve data requests upon CIPS for data and information that have not been provided in the initial rate case filings. These data requests are tailored to the specific issues of the rate cases, and are not satisfied by the scope of Part 290 information. CIPS is not aware of any instance where Part 290 data has reduced the number and scope of such data requests.

CIPS' costs to comply with Part 290 requirements for the 1982 filing were approximately $11,000. Since Part 290 information has not been utilized to any significant extent by either the ICC or intervenors in any past CIPS rate proceeding, CIPS submits that any incurrence of costs in connection with future Part 290 filings would be unjustified and that the requirements imposed by Part 290 constitute an unwarranted burden on CIPS.

The Illinois Commerce Commission supports the applicant's request for a blanket exemption from the filing requirements of PURPA Section 133 and 18 CFR Part 290 filing requirements for the June 30, 1984 filing and all subsequent filings.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Carl Wall, Vice President, Central Illinois Public Service Company, 607 East Adams Street, Springfield, Illinois 62701.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–7575 Filed 3–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES84–33–000]

Citizens Utilities Co.; Application

March 16, 1984.

Take notice that on February 24, 1984, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission, seeking a declaratory interpretation of the jurisdictional status, under Section 204 of the Federal Power Act, of agreements between it, a subsidiary company and unrelated third parties concerning the subsidiary's operation of proposed cogeneration facilities.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before April 9, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C.

20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7576 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-253-000]

East Tennessee Natural Gas Co.; Request Under Blanket Authorization

March 16, 1984.

Take notice that on February 22, 1984, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP84-253-000 a request pursuant to Section 157.205(b) of the Regulations under the Natural Gas Act (18 CFR 157.205(b)) that East Tennessee proposes to construct and operate two new delivery points for its existing customers, under authorization issued in Docket No. CP82-412-000 pursuant to section 7 of the Natural Gas Act, all as morefully set forth in the request on file with the Commission and open to public inspection.

Specifically, East Tennessee proposes to establish a new delivery point to Tennessee-Virginia Energy Corporation (Tenn-Va) located in Sullivan County, Tennessee, to serve the area of the Bristol-Kingsport-Johnson City (TriCity) airport and one delivery point to First Utility District of Maury County, Tennessee (The District) to serve the area along U.S. Highway 43, east of Mount Pleasant, Tennessee. East Tennessee states that Tenn-Va recently received authorization from the Tennessee Public Service Commission to serve Tri-City, an area which presently does not have gas service. East Tennessee further states that the new delivery point to the District would alleviate serious pressure problems encountered by the District in its service area along Highway 43. The proposed quantities of natural gas to be delivered at the new delivery points would be 27,283 Mcf and 27,754 Mcf, respectively, it is stated. All gas to be sold to Tenn-Va and The District through the proposed new delivery points would be within existing contract volumes and/or curtailment period quantity entitlements, it is explained. The estimated cost of each proposed new facility is $35,000 and would be paid from funds on hand, it is asserted.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7577 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-28-000]

El Paso Electric Co.; Amended Application

March 16, 1984.

Take notice that on March 7, 1984, El Paso Electric Company filed an amendment to its application with the Federal Energy Regulatory Commission (Commission) seeking authority, pursuant to Section 204 of the Federal Power Act, to issue and sell up to $80,000,000 principal amount of first mortgage bonds in addition to up to $50,000,000 principal amount of long-term promissory notes secured by second mortgage bonds via negotiated private placement. The proposed issuance of the notes and second mortgage bonds was previously noticed on February 6, 1984.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before April 2, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7578 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-263-000]

Lone Star Gas Company, a Division of ENSERCH Corp.; Request Under Blanket Authorization

March 16, 1984.

Take notice that on February 27, 1984, Lone Star Gas Company a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP84-263-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Lone Star proposes the construction and operation of a sales tap and appurtenant facilities under the authorization issued in Docket No. CP83-59-000, as amended in Docket No. CP83-59-002, pursuant to section 7 of the Natural Gas Act, to provide service to Sun Production Company (Sun), a new commercial customer in Murray County, Oklahoma, all as more fully set forth in the request on file with the Commission and open to public inspection.

Lone Star proposes to sell up to 24,000 Mcf of natural gas on an annual basis to Sun. This service would be provided through the construction of a new sales tap and metering facility on Line GD1. It is stated that Sun would purchase natural gas at Lone Star's commercial rate, which is approved by the Oklahoma Corporation Commission.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7579 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-275-000]

Texas Gas Transmission Corp.; Application

March 16, 1984.

Take notice that on March 1, 1984, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP84-275-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to the City of Morgan City, Louisiana (Morgan City), for a period of two years and authorizing the construction and operation of facilities to accomplish such sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant is requesting authorization with pregranted abandonment authorization to serve Morgan City up to a maximum of 6,500 Mcf of natural gas per day from its general system supply, with an annual maximum of 650,000 Mcf, for residential and commercial service. It is stated that the sale would be on a firm basis but would be subject to curtailment in the event of a gas supply shortage on Applicant's system. It is further stated that the service would be performed pursuant to Applicant's Rate Schedule G-SL which terms are asserted to be identical to those under Applicant's currently effective Rate Schedule G. The one exception is that the service would be fully curtailed by Applicant prior to the curtailment of any other existing sales customer, it is stated. Rate Schedule G-SL would describe Applicant's general service in its Southern Louisiana zone; initial rates under this rate schedule would be $3.48 per Mcf for the monthly demand rate and 311.71 cents per Mcf for the commodity rate. Applicant asserts that the G-SL rates were determined in the settlement data for Docket No. RP82-74 approved by Commission letter order dated June 20, 1983.

Applicant additionally proposes to construct and operate a sales meter station and related facilities at the point of interconnection of Applicant's Eunice-Thibodaux 20-inch and 26-inch pipeline facilities and the facilities of Morgan City in St. Mary Parish, Louisiana. The total estimated cost of the proposed facilities is $103,400.00 which would be reimbursed to Applicant by Morgan City, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7580 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-213-000]

United Gas Pipe Line Co.; Application

March 16, 1984.

Take notice that on January 27, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-213-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible sale of natural gas to an existing on-system, direct industrial customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization in Docket No. CP84-213-000 to make deliveries for interruptible sales of natural gas to Shell Chemical Company (Shell), an existing on-system, direct industrial customer located near LeMoyne, Alabama. Specifically, United proposes to sell up to 2,000 Mcf of gas per day above the volumes under its existing sales agreement with Shell. United further states that it intends to offer this service to Shell only on such days as its supplies of natural gas exceed the demand of its customers, for firm service, taking into account storage volumes and the requirements for storage injection. It is indicated that the proposed sale would be made under United's Rate Schedule IRS 82-109, which provides Shell to pay United the sum of 40 cents per Mcf plus the weighted average cost of gas per Mcf in United's system, calculated according to the terms and conditions of Schedule S-82.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motions to intervene are filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If motions for leave to intervene are timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for United to appear or be represented at the hearings.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7581 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6284-001]

Washington Electric Cooperative; Surrender of Preliminary Permit

March 15, 1984.

Take notice that the Washington Electric Cooperative, Permittee for the proposed Peak Shaver No. 1 Project No. 6284, requested by letter dated February 2, 1984, that its preliminary permit be surrendered. The preliminary permit was issued on September 16, 1982, and would have expired on September 30, 1984. The Permittee has decided that because of environmental and economic concerns it would not be feasible to pursue the project.

The surrender of the preliminary permit for Project No. 6284 will become effective thirty days from the date of issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7582 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6086-001]

Western Hydro Electric, Inc.; Surrender of Exemption From Licensing

March 15, 1984.

Take notice that the Western Hydro Electric, Inc. ("WHE") Exemptee for the Smith Creek Project No. 6086, has requested that its exemption be terminated. The exemption for Project No. 6086 was issued on December 23, 1982. The project would have been located on Smith Creek in Lewis County, Washington. WHE states in its request that project construction has not commenced.

WHE filed the request on January 12, 1984. The surrender of the exemption for Project No. 6086 is deemed accepted as of January 12, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7583 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE84-3-000]

Alabama Power Co.; Application for Exemption

March 16, 1984.

Take notice that Alabama Power Company (APCO) filed an application on January 24, 1984, for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290. In addition, APCO requests a waiver of the requirement that an application for exemption shall be filed "no less than 18 months prior to the time the information would otherwise be required" (Section 290.601(a)).

In its application for exemption APCO states, in part, that it should not be required to file the specified data for the following reasons:

Section 133 data is of limited value in retail rate proceedings in Alabama because the time frame for collecting and reporting such information is not based on rate case test periods. As a consequence, Section 133 data cannot be used in rate filings before the Alabama Public Service Commission.

The collection and publication of Section 133 data impose considerable expense upon APCO and, ultimately, the consumers.

APCO periodically provides various federal and state regulatory agencies with the following documents: FERC Form 1, FERC Form 12, SEC Form 10-K, monthly operating reports, annual reports, load forecasts, rate schedules, generation expansion plans, annual budgets and forecasts, jurisdictional separation studies, retail and wholesale rate filings, cost of service studies, appliance saturation studies and other information, which to a large extent duplicate the information required by Part 290 of the FERC rules implementing section 133 of PURPA.

Copies of the application exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Elmer B. Harris, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, Alabama 35291.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7572 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No 6166-001]

Banta Carbona Irrigation District; Surrender of Generic Exemption

March 15, 1984.

Take notice that Banta Carbona Irrigation District, Exemptee for the proposed Pumping Plant No. 6, Project No. 6166, has requested that its generic exemption be terminated. The exemption was noticed on May 5, 1982. The project would have been located on Banta Carbona Irrigation District's major water conveyance system in San Joaquin County, California. The Exemptee filed its request on February 6, 1984, and the surrender of the exemption for Project No. 6166 is deemed accepted as of February 6, 1984, and effective 30 days after the date of this notice.

Kenneth Plumb,

Secretary.

[FR Doc. 84-7573 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-32-000]

Cambridge Electric Light Co.; Application

March 16, 1984.

Take notice that on March 7, 1984, Cambridge Electric Light Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $15,000,000 on or before December 31, 1984, with maturities on or before December 31, 1985.

Any person desiring to be heard or make any protest with reference to the application should file a motion to intervene or protest on or before April 9, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules

of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7574 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-259-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

March 14, 1984.

Take notice that on February 27, 1984, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 24325-1273, filed in Docket No. CP84-259-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Stratoflex. Inc. (Stratoflex), under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to transport for one year up to 215 million Btu equivalent of natural gas per day on behalf of Stratoflex. Columbia would receive gas from Energy Management, Inc. (EMI), at existing points of receipt in Ohio and redeliver to Columbia Gas of Ohio, Inc., for ultimate delivery to Stratoflex, it is explained. Stratoflex involve certain gas supplies released by Columbia. Columbia states these supplies are subject to the ceiling price provisions of sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Depending upon whether gathering facilities are involved, Columbia states that it would charge either (1) Columbia's average system-wide storage and transmission costs, exclusive of company-use and unaccounted-for gas, or (2) Columbia's average system-wide storage, transmission and gathering costs, exclusive of company-use and unaccounted-for gas. It is stated that the storage and transmission charge is currently 40.11 cents per dt equivalent and the storage, transmission and gathering charge is 44.93 cents per dt equivalent. In addition, Columbia proposes to retain 2.85 percent of the gas delivered to it for company-use and unaccounted-for gas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7571 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective April 1, 1984. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE-034, Washington, D.C. 20585, Telephone: (202) 252-6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	4.02
Arizona [1]	4.10
Arkansas [1]	3.96
California	4.00
Colorado [2]	4.07
Connecticut	4.39
Delaware [1]	4.39
Florida	4.36
Georgia [1]	4.30
Idaho [2]	4.07
Illinois [1]	4.24
Indiana	3.97
Iowa [1]	4.18
Kansas	4.02
Kentucky [1]	4.24
Louisiana [1]	3.96
Maine [1]	4.45
Maryland [1]	4.39
Massachusetts	4.36
Michigan [1]	4.24
Minnesota	4.18
Mississippi [1]	4.30
Missouri [1]	4.18
Montana [2]	4.07
Nebraska	4.16
Nevada [1]	4.10
New Hampshire [1]	4.45
New Jersey	4.19
New Mexico	3.67
New York [1]	4.39
North Carolina [1]	4.30
North Dakota [1]	4.18
Ohio	4.22
Oklahoma [1]	3.96
Oregon [1]	4.10
Pennsylvania	4.39
Rhode Island [1]	4.45
South Carolina [1]	4.30
South Dakota [1]	4.18
Tennessee	4.27
Texas [1]	3.96
Utah [2]	4.07
Vermont [1]	4.45
Virginia [1]	4.30
Washington [1]	4.10
West Virginia [1]	4.24
Wisconsin [1]	4.24
Wyoming [2]	4.07

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM-79-21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during January 1984 was $38.14 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II section 203 (a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high

cost natural gas, effective April 1, 1984, is $8.55 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, isued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of November 1983, December 1983, and January 1984.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective April 1, 1984, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, November 1983, December 1983, and January 1984. Reported prices for sales in November 1983 were adjusted by the percent change in the nationwide volume-weighted average price from November 1983 to January 1984. Prices for December 1983 were similarly adjusted by the percent change in the nationwide volume-weighted average price from December 1983 to January 1984. The volume-weighted 3-month average of the adjusted November 1983 and December 1983, and the reported January 1984 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B. (1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B. (1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B. (2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million But's).

There were insufficient sales reported in Region G for the months of November, December 1983, and January 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending March 14, 1984, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of January 1984. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B. (3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	
Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	
Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	
Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, D.C., March 16, 1984.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 84–7818 Filed 3–20–84; 11:11 am]

BILLING CODE 6450–01–M

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Sunshine Act Meetings

Federal Register
Vol. 49, No. 58
Wednesday, March 21, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FARM CREDIT ADMINISTRATION

Federal Farm Credit Board; Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. § 522b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be held on the first Monday of April 1984, as specified in 12 CFR § 604.325(a).

DATES AND TIMES: The regular meeting of the Federal Farm Credit Board is scheduled to be held on April 2, 1984, 8:30 a.m. to 4:30 p.m.; April 3, 1984, 8:30 a.m. to 4:30 p.m.; and April 4, 1984, 8:30 a.m. to 12:00.

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean VA 22102–5090.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean VA 22102–5090 (703–883–4000).

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Portions Open to the Public:
- Reports of Board Members
- Governors Report
- Economic Report
- Legislative Report
- Report of National Committees
- Other Subjects to be Determined.

Portions Closed to the Public:
- Executive Session(s)
- Agency Report to District Boards of Directors
- Office of Supervision Report
- Office of Examination Report.

Dated at Washington, DC, March 19, 1984.

Donald E. Wilkinson,

Governor.

[FR Doc. 84-7601 Filed 3-19-84; 1:31 pm]

BILLING CODE 6705-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Monday, March 26, 1984, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7611 Filed 3-16-84; 4:48 pm]

BILLING CODE 6210-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Monday, March 26, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Consideration of issues relating to risk on large dollar transfer systems.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7612 Filed 3-16-84; 4:48 pm]

BILLING CODE 6210-01-M

4

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: It will commence at 10:00 a.m. and continue until all official business is completed; Friday, March 30, 1984.

PLACE: DeSoto Hilton, Pulaski Room, 15 East Liberty Street, Savannah, Georgia.

STATUS OF MEETINGS: Open [Portion of Meeting is to be closed to discuss personnel, personal, criminal, litigation, and investigatory matters under 45 CFR 1622.5(a), (d), (e), (f), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —February 6, 1984
3. Report from the President
   —Needs Study
   —New Developments
   —ACCA
   —IOLTA
   —Legal Clinics
   —Law School Clinics
4. Report from the Operations and Regulations Committee Meeting Including recommendation on Proposed Final Regulations
   —1609–Fee Generating cases
   —1620–Priorities in Allocation of Resources
5. Report from the Office of General Counsel
   —Proposed Final Regulation
   1612–Restrictions on Lobbying and Other Certain Activities
   —Proposed Regulations
   1614–Private Attorney Involvement
   1628–Recipient Fund Balance
6. Report from the Office of Field Services
   —Support Studies Update
7. Report from the Office of Government Relations
   —Congressional Hearings
   —GAO Investigation
   —Annual Report

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272–4040.

DATE ISSUED: March 19, 1984.

Donald P. Bogard,

President.

[FR Doc. 84-7752 Filed 3-19-84; 8:45 am]

BILLING CODE 6820-35-M

5

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 1:55 p.m., Friday, February 17, 1984.

PLACE: 1776 G Street, NW., Washington, D.C., 6th Floor.

STATUS: Closed.

MATTER CONSIDERED:

1. Revocation of Charter.

The Board unanimously voted that the Agency business required that a meeting be held with less than seven days advance notice.

The Board voted to close the meeting under exemptions (8) and (9)(B). The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84–7681 Filed 3–19–84; 12:13 pm]

BILLING CODE 7535–01–M

6

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9 a.m., Tuesday, March 20, 1984.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(9)(B) (disclose information the premature disclosure of which would * * * be likely to significantly frustrate implementation of a proposed agency action * * *.)

MATTERS TO BE CONSIDERED: Internal case-handling procedures.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, D.C., March 19, 1984.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 84–7741 Filed 3–19–84; 3:23 pm]

BILLING CODE 7545–01–M

7

NUCLEAR REGULATORY COMMISSION

DATE: Week of March 19, 1984 (Revised) and the Week of March 26, 1984.

PLACE: Commissioners' Conference Room 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Monday, March 19

10:00 a.m.
Status of Pending Investigation on Diablo Canyon (Open/Closed—Ex. 5 & 7) (As Announced)

Tuesday, March 20

10:00 a.m.
Briefing on Grand Gulf Technical Specification Requirements (Public Meeting) (Replaces Briefing on Steam Generator Generic Requirements)

Thursday, March 22

2:00 p.m.
Briefing on Public Comments on ANPR—Role of the Staff (Public Meeting) (As Announced)

Friday, March 23

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for LaSalle–2 (Open/Closed—Ex. 5) (Postponed from March 19)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (New Item)
a. Request to Deny Renewal of Construction Permit for Seabrook 2 (Tentative)
b. Review of ALAB–724 (Tentative)
c. Earthquakes—Diablo Canyon (Tentative) (Postponed from March 16)

2:00 p.m.
Discussion of Pending Investigation—TMI (Closed—Ex. 5 & 7) (Title Change)

Week of March 26

Monday, March 26

11:00 a.m.
Status of Pending Investigation on Diablo Canyon (Closed—Ex. 5 & 7)

2:00 p.m.
Discussion/Possible Vote on Diablo Canyon Critically and Low Power Operation (Public Meeting)

Tuesday, March 27

10:00 a.m.
Briefing on Status of Utility and NRC Compliance with TMI Action Plan (Public Meeting) (Postponed from March 23)

2:00 p.m.
Discussion of the Terms "Important to Safety" and "Safety Related" (Public Meeting)

Friday, March 30

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for WPPSS–2 (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of License Fees and Hydrogen Control scheduled for March 16, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 6534–1410

Walter Magee,

Office of the Secretary.

[FR Doc. 84–7736 Filed 3–19–84; 8:45 am]

BILLING CODE 7590–01–M

8

PAROLE COMMISSION

Pursuant To The Government In The Sunshine Act Pub. L. 94–409 (5 U.S.C. Section 552b)

U.S. Parole Commission, National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters.

TIME AND DATE: Thursday, March 22, 1984—2:00 p.m.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 4 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of . parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: March 16, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 84–7662 Filed 3–16–84; 12:13 pm]

[BILLING CODE 4410–01–M]

9

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (To be published)

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 9, 1984.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at a closed meeting scheduled for Thursday, March 22, 1984, following the 2:30 p.m. open meeting.

Opinion.

Chairman Shad and Commissioners Treadway and Cox determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: JoAnn Zuercher at (202) 272–2014.

George A. Fitzsimmons,

Secretary.

March 15, 1984.

[FR Doc. 84–7605 Filed 3–16–84; 4:48 am]

BILLING CODE 6010–01–M

10

TENNESSEE VALLEY AUTHORITY

Meeting No. 1327

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 10220 (March 19, 1984)

CHANGE IN PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: The previously announced time and date of TVA Board meeting No. 1327 is changed to 1 p.m. (EST), March 19, 1984.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following item is added to the previously announced agenda:

Action Items

Consideration of formal settlement agreement on uranium antitrust litigation.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that this meeting be called at the time set out above, that the subject matter of this meeting be changed to include the additional item shown above, and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Approved: C. H. Dean, Jr., S. David Freeman.

Dated: March 15, 1984.

[FR Doc. 84–7687 Filed 3–19–84; 3:20 pm]

BILLING CODE 8120–01–M

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federal register

Wednesday
March 21, 1984

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards for Normal, Utility and Acrobatic Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 23826; Notice No. 84-2]

Airworthiness Standards; Normal, Utility and Acrobatic Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airworthiness requirements of Part 23 of the Federal Aviation Regulations (FAR) for single-engine, turbopropeller-powered airplanes to include whirl mode instability analysis and test as one of the dynamic evaluations associated with freedom from flutter, control reversal, and divergence. Single-engine, turbopropeller-powered airplanes are now being manufactured, and the FAA has determined such dynamic evaluations are necessary. The proposal, if adopted, will establish a level of safety for powerplant installations in single-engine, turbopropeller-powered airplanes consistent with that already established for multiengine, turbopropeller-powered airplanes.

DATES: Comments must be received on or before June 19, 1984.

ADDRESS: Comments on this notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23826, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked: Docket No. 23826. Comments may be inspected in Room 916 between 8:30 a.m. and 5:00 p.m. weekdays, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Olson, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23826." The postcard will be date/time stamped and returned to the commenter. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Information Center, (APA-430), 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Propeller whirl flutter is an aeroelastic instability that can occur in an airplane with a flexible engine installation. While such instability was predicted as early as 1938, it was not likely to be encountered in the low-speed range and low power airplanes of that era. Consequently, designers considered, for propeller-driven airplanes, the mass of the engine-propeller combination and the natural frequencies of its suspension, but not the elastic, inertia, and aerodynamic forces associated with the rotations and displacements of the plane of the propeller.

During 1959 and 1960, two fatal accidents involving four-engine, turbopropeller airplanes focused particular attention on the hazards associated with aeroelastic instabilities in transport category airplanes. Subsequently, the regulations for transport category airplanes were amended to include investigations of the various forces with the rotations in and out of the plane of the propeller in evaluating airplane freedom from flutter.

When turbopropeller engines were first installed on small, multiengine airplanes, special conditions were written to include a dynamic evaluation of whirl mode degrees of freedom. The analysis accounted for the aeroelastic stability of the plane of rotation of the propeller and significant elastic, inertial, and aerodynamic forces as well as powerplant (from propeller to airplane structure) stiffness and damping variations appropriate to the particular configuration. Then, in 1969, the rules for the type certification of small multiengine, turbopropeller-powered airplanes were amended to include these dynamic evaluations of the possible whirl mode aeroelastic instabilities in the flutter analysis to show freedom from flutter.

Turbopropeller installations are becoming increasingly common on single-engine airplanes and a turbopropeller, wherever installed on an airplane, can exhibit unstable oscillatory motion resulting from combined aerodynamic, inertial, and gyroscopic modes. Special conditions have been issued to cover these requirements for single-engine airplanes with turbopropeller engines. This Notice proposes to codify the dynamic stability evaluation now required for multiengine small airplanes to include single-engine, turbopropeller-powered airplanes, and, in so doing, end the practice of imposing this single-engine requirement by special condition.

Discussion of Proposal

Because of their unique characteristics, turbopropeller engine installations require special consideration. If damping and aerodynamic forces are not considered and the structure allows angular deflections, the spinning propeller could behave like a gyroscopic pendulum. As an example, if the system were released from an initial pitch deflection, the resulting angular velocity as the system springs back would induce a gyroscopic moment about the yaw axis. This moment would, in turn, cause the system to yaw, inducing a pitching moment, and so on. Thus, in a flexible system it is very significant that gyroscopic action of the rotating propeller couples with natural pitch and yaw modes, causing a precession motion about the axis of the undisturbed system. This gyroscopic action by itself cannot lead to a divergent type whirl mode instability because the net energy input to the system is zero. However, when the

resultant air stream is misaligned from the propeller rotation axis due to an angular displacement or a transverse linear velocity of the propeller axis, certain forces and moments are generated. As an example, if the axis is deflected in pitch, a vertical lift force together with a yawing moment is developed by the propeller which, for small deflections, is proportional to the pitch angle.

During the 1960's, several reciprocating engine-powered, single-engine airplane models were converted to turbopropeller power and were approved without a required whirl mode evaluation. These airplanes have been flying without adverse service experience with regard to flutter. More recently, however, an applicant conducted a whirl mode investigation and, based on the findings, stiffened the engine mount before certificating the airplane. This occurrence, and characteristics typical to turbopropeller engine installations, concerned the FAA because the applicable airworthiness standards did not envision the novel and unusual features associated with single-engine, turbopropeller installations. As a result, the FAA has subsequently issued special conditions to require a whirl mode evaluation on all new certification projects involving turbopropeller engine installations.

On a typical conversion from reciprocating to turbopropeller propulsion in a single-engine airplane, the lighter weight powerplant is usually moved forward to maintain the center of gravity between established limits. While the new longer engine mount could meet requirements for engine support, thrust, and torque loads, it could be more flexible than the structure it replaced, to the point where propeller whirl flutter could occur.

In like manner, the fuselage of a new single-engine tractor turbopropeller airplane could be slimmed in profile to accommodate a smaller frontal area engine, lightened in structure to support less engine weight, and made rigid enough to absorb engine thrust and torque loads, but, at the same time, be too flexible to prevent propeller whirl mode flutter.

Another area in which flutter evaluation is of concern to the FAA is the empennage of single-engine, pusher, turbopropeller-powered airplanes. Several new airplanes of this type are now under development and, in this configuration, empennage motion may be as significantly influenced by loads from the propeller as wing motion is influenced in multiengine, turbopropeller airplanes.

The present wording of § 23.629(e)(2) of the FAR, "Engine-propeller-nacelle stiffness" places undue emphasis on engine mount and propeller hub flexibility with regard to the whirl mode analysis. In actuality, the airplane normal modes include airplane flexibility as well as flexibilities associated with the powerplant installation. Also, the word "nacelle" in § 23.629(e)(2) implies stiffness in an engine enclosure whose main purpose is reducing drag. Accordingly, a change is proposed for § 23.629(e)(2) to resolve this ambiguity by referring to propeller, engine, engine mount, and airplane structure stiffness for the required dynamic evaluation.

Present § 23.629(e) limits whirl mode requirements to multiengine, turbopropeller-powered airplanes. Accordingly, it is proposed to amend § 23.629(e) to include all turopropeller powered airplanes.

Economic Evaluation

In compliance with Executive Order 12291, 46 FR 13193 (1981), the FAA has determined that this proposal, if adopted, will not be a "major rule" having an annual effect on the economy of $100 million or more because it only codifies dynamic stability requirements of § 23.629 that the FAA has been imposing by special conditions. It will not result in a major increase in costs or prices for consumers, individual, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In addition to the reasons discussed earlier, the regulatory impact of showing compliance with this proposed requirement is minimal in that the whirl mode evaluation only has to be conducted once for a specific airplane model and the expected cost is less than that considered significant on an annual basis, and the final rule is not expected to have subsequent secondary or incidental effects on a substantial number of small entities.

Because this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis will not be prepared.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Air transportation, Tires.

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Part 23 of the Federal Aviation Regulations (14 CFR Part 23) as follows:

By revising § 23.629(e) introductory text and paragraph (e)(2) to read as follows:

§ 23.629 Flutter.

* * * * *

(e) For turbopropeller-powered airplanes, the dynamic evaluation must include—

* * * * *

(2) Propeller, engine, engine mount, and airplane structure stiffness and damping variations appropriate to the particular configuration.

* * * * *

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423) and 49 U.S.C. 106(g) (Revised Pub. L 97-449, Jan. 12, 1983) and 14 CFR, Sec. 11.45)

Note.—For reasons discussed earlier in the preamble, the FAA has determined that this proposed requirement is not a major rule under provisions of Executive Order 12291, is not significant under the provisions of the Department of Transportation Regulatory Policies and Procedures [44 FR 11034; February 26, 1979], and the FAA certifies that the proposal, if promulgated will not have a significant economic impact on a substantial number of small entities under provisions of the Regulatory Flexibility Act. In addition, this proposal if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the U.S. The draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person under the caption "FOR FURTHER INFORMATION CONTACT".

Issued in Kansas City, Missouri, on November 18, 1983.

James O. Robinson,

Acting Director.

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Part III

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Office of the Secretary

29 CFR Part 6

Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 6

Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of procedural regulations resulting from the Administration's reexamination of the regulations applicable to Federal and federally assisted construction contracts and Federal service contracts under the Davis-Bacon and Service Contract Acts.

It is intended to provide for administrative proceedings in enforcement matters and questions of substantial interest, and substantial variance and arm's-length proceedings under Section 4(c) of the Service Contract Act. These revisions are designed to make such proceedings as uniform as possible.

EFFECTIVE DATE: This final rulemaking becomes effective on March 21, 1984.

FOR FURTHER INFORMATION CONTACT: Gail V. Coleman, Counsel for Trial Litigation, Fair Labor Standards Division, Office of the Solicitor, U.S. Department of Labor, Room N2716, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210, Phone (202) 523–7626.

SUPPLEMENTARY INFORMATION: On April 22, 1980, a proposal was published in the **Federal Register** (45 FR 27400) to make revisions to 29 CFR Part 6, Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts. As stated in the proposal, its purpose was primarily to make more uniform the proceedings for enforcement under the various labor standards statutes and to provide more expedited hearings under Section 4(c) of the Service Contract Act.

On January 16, 1981, the regulation was published in the **Federal Register** (46 FR 4398) as a final rule with a scheduled effective date of February 17, 1981. However, pursuant to the President's Memorandum of January 29, 1981, the Department published notices on February 6, 1981 (46 FR 11253), and thereafter, delaying implementation of this regulation until August 15, 1981, in order to reconsider the rule pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981); 46 FR 36140 (July 14, 1981).

On January 16 and 19, 1981, the Department also published final rules under the Davis-Bacon and Related Acts, the Contract Work Hours and Safety Standards Act (29 CFR Parts 1 and 5; 46 FR 4306 and 4380), and the Service Contract Act (29 CFR Part 4; 46 FR 4320 and 4886). However, these rules were also delayed pursuant to the President's Memorandum in order to fully reconsider the rules as required by Executive Order 12291.

During this period, the Department conducted a thorough review of these regulations which led to significant new proposals which on August 14, 1981, were published for comment in the **Federal Register**. Interested persons were afforded the opportunity to submit comments to the Office of the Solicitor on or before October 13, 1981. The effective dates of the regulations published in January 1981 were postponed until action could be taken on these proposals.

Comments on or pertaining to the August 14, 1981 publication of Part 6 were received from four interested parties, namely the National Aeronautics and Space Administration (NASA), the Department of Energy (DOE), the Laborers' International Union of North America, AFL–CIO–CLC, and the International Association of Machinists and Aerospace Workers.

Subsequent to the publication in the **Federal Register** on August 14, 1981 of this rulemaking, the Department published (48 FR 32538, July 15, 1983) as a final rule (to be codified at 29 CFR Part 18) rules of practice and procedure for administrative hearings before the Office of Administratve Law Judges. As explained in the preamble to 29 CFR Part 18, its provisions generally govern administrative hearings before ALJ's, and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of 29 CFR Part 18 and a rule or procedure required by statute, executive order or regulation, the latter controls. The Department has reviewed the provisions of 29 CFR Part 6 as published on August 14, 1981 *vis-a-vis* the provisions of 29 CFR Part 18, and has determined that certain of the provisions in the former are no longer necessary since they are adequately covered by the latter. Thus, deleted in their entirety were provisions in Subpart A of the proposed Part 6 on the following specific matters: computation of time; motions and requests; depositions; witnesses and fees; prehearing conferences; hearing; and transmission of record. Other revisions to proposed Part 6 were made which, while they did not result in the deletion of specific provisions, incorporated certain of the provisions of 29 CFR Part 18 into Part 6. An intended effect of these revisions to Part 6 is to facilitate the uniformity established by 29 CFR Part 18 and to harmonize the provisions of Parts 6 and 18.

Subsequent to the publication on August 14, 1981, of this proposed Part 6, the Department issued final rules for implementing the Equal Access to Justice Act which became effective on October 1, 1981; those rules are codified at 29 CFR Part 16. Therein at § 16.104(a)(2), the Department listed those proceedings involving the Employment Standards Administration which were found to be subject to the provisions of the Equal Access to Justice Act; none of the proceedings covered by this Part 6 are listed as being subject to that Act. Moreover, when the Equal Access final rules were published on December 29, 1981 (46 FR 63020), the Department discussed in the Supplementary Information section of the Preamble the types of proceedings which were not subject to the Act, including certain proceedings under the Service Contract Act and the Davis-Bacon Act. In view of the exclusion from the Equal Access to Justice Act of the proceedings covered by this Part 6, a new section has been added (§ 6.6(a)) expressly providing that Administrative Law Judges shall have no authority to award attorney fees or other litigation expenses pursuant to the Equal Access to Justice Act in any proceeding covered by this Part 6.

On July 1, 1983, the Department published (48 FR 30602) the final text of procedural regulations pertaining to the Davis-Bacon and Related Acts, the Contract Work Hours and Safety Standards Act (except where the contract is subject to the Service Contract Act) and the Copeland Act. At that time, it was expressly noted that procedural regulations pertaining to the Service Contract Act were being deferred pending publication of final substantive regulations under the Service Contract Act (29 CFR Part 4). Those substantive regulations were published as a final rule on October 27, 1983, and became effective on January 27, 1984 (48 FR 49736, 48 FR 56577). The final rule herein set forth, containing procedures for both Davis-Bacon and Service Contract Act hearings, is in large part the same as the proposed rule

published on August 14, 1981 (46 FR 41428).

A procedure for appeal to a Board of Service Contract Appeals for issues arising under the Service Contract Act is established in a separate 29 CFR Part 8, which Part is being simultaneously published in the **Federal Register**.

Discussion of Major Comments

Both NASA and DOE expressed concern over proposed Section 6.12(b), which would give a party the right to file a petition for review of an ALJ's decision by the Board of Service Contract Appeals, even if the party had failed to appear before the ALJ. In particular, they suggest that such a party might unjustifiably protract the resolution of a proceeding by not appearing in the ALJ proceeding but then seeking and obtaining a remand of the case by the Board for the taking of additional evidence. This concern is well-taken and accordingly pertinent sections in both Part 6 and Part 8 have been revised to address this matter. Proposed Section 6.12(b)—which has been re-designated as § 6.7(b)—has been revised to expressly authorize the presiding ALJ to enter default judgment in such cases without the need for the appearing party to present evidence, and has been further revised to permit a non-appearing party to file a petition for review of such default judgment only in cases where the petition cites alleged procedural irregularities in the proceeding below and not to permit such filing where the petition is addressed to the merits of the case. Section 8.1(d) of Part 8 is likewise being revised to reflect this change.

Finally, both NASA and DOE expressed concern over Sections 6.50–6–57, which relate to the substantial variance and arm's-length proceedings referred by the Administrator to the ALJ procedure. The commentators noted that while specific time limits would be prescribed by these provisions for action by the Chief Administrative Law Judge, the assigned ALJ, the contracting agency and other parties, there is no corresponding time limitation placed upon the Administrator. The Department has carefully considered these concerns and has concluded that, due to the great variations in the scope and complexity of the issues which must be considered in such proceedings, it is not practicable to prescribe an absolute limitation upon the Administrator in the performance of his duties therein. However, the Department does agree that the Administrator has an obligation to assure the most expeditious treatment of such cases and is therefore providing that he respond within 30 days to requests for substantial variance hearings or in the alternative that he notify the requesting party if additional time is needed to consider such request. Accordingly, the Department is amending its proposed regulations in 29 CFR Part 4, Section 4.10(b)(2), to expressly provide for such action by the Administrator.

Classification

This rule is procedural in character. It is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

The Department believes that the rule will have no "significant economic impact on a substantial number of small entities" within the meaning of § 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the rule, which is procedural in character, will effect a substantial uniformity in administrative proceedings, with a resulting economy in such proceedings. Accordingly, no regulatory flexibility analysis is required.

The rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not require the collection or retention of information.

Effective Date

Final rules for the Service Contract Act, 29 CFR Part 4, which were published in the **Federal Register** on October 27, 1983 (48 FR 49736), became effective on January 27, 1984. This Part 6 contains procedures for administrative hearings in cases arising under the Service Contract Act. In order to preserve uninterrupted such rights, it is essential that this Part 6 become effective as soon as possible. Accordingly, the Secretary has determined that good cause exists for waiving the customary requirement of delaying the effective date of a final rule for at least 30 days after its publication. 5 U.S.C. 553(d). This rule, therefore, will become effective immediately upon publication.

List of Subjects in 29 CFR Part 6

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

Accordingly, 29 CFR Part 6 is revised as set forth below:

Signed at Washington, D.C. on this 13th day of March 1984.

Raymond J. Donovan,

Secretary of Labor.

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS AND FEDERAL SERVICE CONTRACTS

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Authority: Secs. 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 46 Stat. 1494, as amended by 49 Stat. 1011, 78 Stat. 238, 40 U.S.C. 276a–276a–7, 76 Stat. 357–359, 40 U.S.C. 327–332; 48 Stat. 948, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

Subpart A—General

§ 6.1 Applicability of rules.

This part provides the rules of practice for administrative proceedings under the Service Contract Act, the Davis-Bacon Act and related statutes listed in § 5.1 of Part 5 of this title which require payment of wages determined in accordance with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act. See Parts 4 and 5 of this title.

§ 6.2 Definitions.

(a) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(b) "Associate Solicitor" means the Associate Solicitor for Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

(c) "Chief Administrative Law Judge" means the Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street, N.W., Suite 700, Washington, D.C. 20036.

(d) "Respondent" means the contractor, subcontractor, person alleged to be responsible under the contract or subcontract, and/or any firm, corporation, partnership, or association in which such person or firm is alleged to have a substantial interest (or interest, if the proceeding is under the Davis-Bacon Act) against whom the proceedings are brought.

§ 6.3 Service; copies of documents and pleadings.

(a) *Manner of Service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. When a party is represented by an attorney, the service should be upon the attorney.

(b) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service. Where service is made by mail, service shall be complete upon mailing. However, documents are not deemed filed until received by the Chief Clerk at the Office of Administrative Law Judges and where documents are filed by mail 5 days shall be added to the prescribed period.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor: The original and one copy with the Administrative Law Judge before whom the case is pending, one copy with the attorney representing the Department during the hearing, and one copy with the Associate Solicitor.

§ 6.4 Subpoenas (Service Contract Act).

All applications under the Service Contract Act for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the Administrative Law Judge. Application for subpoenas duces tecum shall specify as exactly as possible the documents to be produced.

§ 6.5 Production of documents and witnesses.

The parties, who shall be deemed to be the Department of Labor and the respondent(s), may serve on any other party a request to produce documents or witnesses in the control of the party served, setting forth with particularity the documents or witnesses requested. The party served shall have 15 days to respond or object thereto unless a shorter or longer time is ordered by the Administrative Law Judge. The parties shall produce documents and witnesses to which no privilege attaches which are in the control of the party, if so ordered by the Administrative Law Judge upon motion therefor by a party. If a privilege is claimed, it must be specifically claimed in writing prior to the hearing or orally at the hearing or deposition, including the reasons therefor. In no event shall a statement taken in confidence by the Department of Labor or other Federal agency be ordered to be produced prior to the date of testimony at trial of the person whose statement is at issue unless the consent of such person has been obtained.

§ 6.6 Administrative Law Judge.

(a) *Equal Access to Justice Act.* Proceedings under this part are not subject to the provisions of the Equal Access to Justice Act (Pub. L. 96–481). In any hearing conducted pursuant to the provisions of this Part 6, Administrative Law Judges shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

(b) *Contumacious conduct: failure or refusal of a witness to appear or answer.* Contumacious conduct at any hearing before an Administrative Law Judge shall be ground for exclusion from the hearing., In cases arising under the Service Contract Act, the failure or refusal of a witness to appear at any hearing or at a deposition when so ordered by the Administrative Law Judge, or to answer any question which has been ruled to be proper, shall be ground for the action provided in section 5 of the Act of June 30, 1936 (41 U.S.C. 39) and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

§ 6.7 Appearances.

(a) *Representation.* The parties may appear in person, by counsel, or otherwise.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the presiding Administrative Law Judge is authorized, if such party fails to show good cause for such failure to appear, to dismiss the case or to find the facts as alleged in the complaint and to enter a default judgment containing such findings, conclusions and order as are appropriate. Only where a petition for review of such default judgment cites alleged procedural irregularities in the proceeding below and not the merits of the case shall a non-appearing party be permitted to file such a petition for review. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

§ 6.8 Transmission of record.

If a petition for review of the Administrative Law Judge's decision is filed with the Board of Service Contract Appeals or the Wage Appeals Board, the Chief Administrative Law Judge shall promptly transmit the record of the proceeding.

If a petition for review is not filed within the time prescribed in this part, the Chief Administrative Law Judge shall so advise the Administrator.

Subpart B—Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

§ 6.15 Complaints.

(a) Enforcement proceedings under the Service Contract Act and under the Contract Work Hours and Safety Standards Act for contracts subject to the Service Contract Act, may be instituted by the Associate Solicitor for Fair Labor Standards or a Regional Solicitor by issuing a complaint and causing the complaint to be served upon the respondent.

(b) The complaint shall contain a clear and concise factual statement of the grounds for relief and the relief requested.

(c) The Administrative Law Judge shall notify the parties of the time and place for a hearing.

§ 6.16 Answer.

(a) Within 30 days after the service of the complaint the respondent shall file an answer with the Chief Administrative Law Judge. The answer shall be signed by the respondent or his/her attorney.

(b) The answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) Failure to file an answer shall constitute grounds for waiver of hearing and entry of a default judgment unless respondent shows good cause for such failure to file. In preparing the decision of default judgment the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate relief and/or sanctions.

§ 6.17 Amendments to pleadings.

At any time prior to the close of the hearing record, the complaint or answer may be amended with the permission of the Administrative Law Judge and on such terms as he/she may approve. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the data of the pleadings and which are relevant to any of the issues involved.

§ 6.18 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the processings in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and Board of Service Contract Appeals regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 6.19 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 20 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow each party may file with the Administrative Law Judge proposed findings of fact, conclusion of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* (1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.20 of this title, and such decision and order shall be inoperative unless and until the Board of Service Contract Appeals issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made under §§ 6.16, 6.17 and 6.18 of this title. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with the regulations and rulings contained in Parts 4 and 5 and other pertinent parts of this title.

(2) If the respondent is found to have violated the Service Contract Act, the Administrative Law Judge shall include in his/her decision an order as to whether the respondent is to be relieved from the ineligible list as provided in Section 5(a) of the Act, and, if relief is ordered, findings of the unusual circumstance, within the meaning of Section 5(a) of the Act, which are the basis therefor. If respondent is found to have violated the provisions of the Contract Work Hours and Safety Standards Act, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in § 5.12(a)(1)

of Part 4 of this title, including findings regarding the existence of aggravated or willful violations. If wages and/or fringe benefits are found due under the Service Contract Act and/or the Contract Work Safety Standards Act and are unpaid, no relief from the ineligible list shall be ordered except on condition that such wages and/or fringe benefits are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

§ 6.20 Petition for review.

Within 40 days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Board of Service Contract Appeals), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Board of Service Contract Appeals pursuant to 29 CFR Part 8, with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

§ 6.21 Ineligible list.

(a) Upon the final decision of the Administrative Law Judge or Board of Service Contract Appeals, as appropriate, the Administrator shall within 90 days forward to the Comptroller General the name of any respondent found in violation of the Service Contract Act, including the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest, unless such decision orders relief from the ineligible list because of unusual circumstances.

(b) Upon the final decision of the Administrative Law Judge or the Board of Service Contract Appeals, as appropriate, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to be in aggravated or willful violation of the Contract Work Hours and Safety Standards Act, and the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest.

Subpart C—Enforcement Proceedings Under the Davis-Bacon and Related Prevailing Wage Statutes, the Copeland Act, and the Contract Work Hours and Safety Standards Act (Except Under Contracts Subject to the Service Contract Act)

§ 6.30 Referred to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under § 5.11 (where the Administrator has determined that relevant facts are in dispute) or § 5.12 of Part 5 of this title, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the notification letter to the respondent from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent.

(b) The notification letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings. The notification letter and response shall be in accordance with the provisions of § 5.11 or § 5.12(b)(1) of Part 5 of this title, as appropriate.

§ 6.31 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (notification letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to § 5.11 of Part 5 of this title, such an amendment may include a statement that debarment action is warranted under § 5.12(a)(1) of Part 5 of this title or under Section 3(a) of the Davis-Bacon Act. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 6.32 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) That any order concerning debarment under the Davis-Bacon Act (but not under any of the other statutes listed in § 5.1 of Part 5 of this title) shall constitute a recommendation to the Comptroller General;

(4) A waiver of any further procedural steps before the Administrative Law Judge and the Wage Appeals Board regarding those matters which are the subject of the agreement; and

(5) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 6.33 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 20 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief

shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* (1) Within a reasonable time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in §6.34 of this title, and such decision and order shall be inoperative unless and until the Wage Appeals Board either declines to review the decision or issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in Part 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondent's answer (response) and § 6.32 of this title. It shall be supported by reliable and probative evidence.

(2) If the respondent is found to have violated the labor standards provisions of any of the statutes listed in § 5.1 of Part 5 of this title other than the Davis-Bacon Act, and if debarment action was requested pursuant to the complaint (notification letter) or any amendment thereto, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in § 5.12(a)(1) of this title, including any findings of aggravated or willful violations. If the respondent is found to have violated the Davis-Bacon Act, and if debarment action was requested, the Administrative Law Judge shall issue as a part of the order a recommendation as to whether respondent should be subject to the ineligible list pursuant to Section 3(a) of the Act, including any findings regarding respondent's disregard of obligations to employees and subcontractors. If wages are found due and are unpaid, no relief from the ineligible list shall be ordered or recommended except on condition that such wages are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

§ 6.34 Petition for review.

Within 40 days after the date of the decision of the Administrative Law judge (or such additional time as is granted by the Wage Appeals Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Wage Appeals Board, pursuant to Part 7 of this title, with a copy thereof to the Chief Administrative Law judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the aggravated or willful violations and/or disregard of obligations to employees and subcontractors, or lack thereof, as appropriate.

§ 6.35 Ineligible lists.

Upon the final decision of the Administrative Law judge or Wage Appeals Board, as appropriate, regarding violations of any statute listed in § 5.1 of Part 5 of this title other than the Davis-Bacon Act, the Administrator promptly shall foward to the Comptroller General the name of any respondent found to have committed aggravated or willful violations of the labor standards provisions of such statute, and the name of any firm, corporation, partnership, or association in which such respondent has a substantial interest. Upon the final decision of the Administrative Law judge or Wage Appeals Board, as appropriate, regarding violations of the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General any recommendation regarding debarment action against a respondent, and the name of any firm, corporation, partnership, or association in which such respondent has an interest.

Subpart D—Substantial Interest Proceedings

§ 6.40 Scope.

This subpart supplements the procedures contained in § 4.12 of Part 4 and § 5.12(d) of Part 5 of this title, and states the rules of practice applicable to hearings to determine whether persons of firms whose names appear on the ineligible list pursuant to Section 5(a) of the Service Contract Act or § 5.12(a)(1) of Part 5 of this title have a substantial interest in any firm, corporation, partnership, or association other than those listed on the ineligible list; and/or to determine whether persons or firms whose names appear on the ineligible list pursuant to Section 3(a) of the Davis-Bacon Act have an interest in any firm, corporation, partnership, or association other than those listed on the ineligible list.

§ 6.41 Referral to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under § 4.12 of Part 4 or § 5.12 of Part 5 of this title, where the Administrator has determined that relevant facts are in dispute, or on his/her own motion, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of any findings of the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the person or firm requesting the hearing, if any and upon the respondents.

(b) The findings of the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative preceedings.

§ 6.42 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (Administrator's findings) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administative Law Judge may, upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened a since the data of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 6.43 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Board of Service Contract Appeals or the Wage Appeals Board, as appropriate, regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If a such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 6.44 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* Within 60 days after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision a petition for review thereof shall be filed as provided in § 6.45 of this title, and such decision and order shall be inoperative unless and until the Board of Service Contract Appeals or the Wage Appeals Board issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in Parts 4 and 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondents' answer (response) and § 6.43 of this title.

§ 6.45 Petition for review.

Within 30 days after the date of the decision of the Administrative Law Judge, any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Board of Service Contract Appeals pursuant to 29 CFR Part 8 if the proceeding was under the Service Contract Act, or to the Wage Appeals Board pursuant to 29 CFR Part 7 if the proceeding was under § 5.12(a)(1) of Part 5 of this title or under Section 3(a) of the Davis-Bacon Act, with a copy thereof to the Chief Administrative Law Judge. The petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

§ 6.46 Ineligible list.

Upon the final decision of the Administrative Law Judge, Board of Service Contract Appeals or Wage Appeals Board, as appropriate, the Administrator promptly shall forward to the Comptroller General the names of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to Section 5(a) of the Service Contract Act or § 5.12(a) of Part 5 of this title has a substantial interest; and/or the name of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to Section 3(a) of the Davis-Bacon Act has an interest.

Subpart E—Substantial Variance and Arm's Length Proceedings

§ 6.5 Scope.

This subpart supplements the procedures contained in §§ 4.10 and 4.11 of Part 4 of this title and states the rules of practice applicable to hearings under Section 4(c) of the Act to determine whether the collectively bargained wages and/or fringe benefits otherwise required to be paid under that section and Sections 2(a) (1) and (2) of the Act are substantially at variance with those which prevail for services of a character similar in the locality, and/or to determine whether the wages and/or fringe benefits provided in the collective bargaining agreement were reached as a result of arm's-length negotiations.

§ 6.51 Referral to Chief Administrative Law Judge.

(a) Referral pursuant to § 4.10 or § 4.11 of Part 4 of this title will be by an Order of Reference from the Administrator to the Chief Administrative Law Judge, to which will be attached the material submitted by the applicant or any other material the Administrator considers relevant and, for proceedings pursuant to § 4.11 of this title, a copy of any findings of the Administrator. A copy of the Order of Reference and all attachments will be sent by mail to the following parties: the agency whose contract is involved, the parties to the collective bargaining agreement, any contractor or subcontractor performing on the contract, any contractor or subcontractor known to be desirous of bidding thereon or performing services thereunder who is known or believed to be interested in the determination of the issue, any unions or other authorized representatives of service employees employed or who may be expected to be employed by such contractor or subcontractor on the contract work, and any other affected parties known to be interested in the determination of the issue. The Order of Reference will have attached a certificate of service naming all interested parties who have been served.

(b) Accompanying the Order of Reference and attachments will be a notice advising that any interested party, including the applicant, who intends to participate in the proceeding shall submit a written response to the Chief Administrative Law Judge within 20 days of the date on which the certificate of service indicates the Order of Reference was mailed. The notice will state that such a response shall include:

(1) A statement of the interested party's case;

(2) A list of witnesses the interested party will present, a summary of the testimony each is expected to give, and copies of all exhibits proposed to be proffered;

(3) A list of persons who have knowledge of the facts for whom the interested party requests that subpoenas

be issued and a brief statement of the purpose of their testimony; and

(4) A certificate of service in accordance with § 6.3 of this title on all interested parties, including the Administrator.

§ 6.52 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.

Upon receipt from the Administrator of an Order of Reference, notice to the parties, attachments and certificate of service, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall promptly notify all interested parties of the time and place of a prehearing conference and of the hearing which shall be held immediately upon the completion of prehearing conference. The date of the prehearing conference and hearing shall be not more than 60 days from the date on which the certificate of service indicates the Order of Reference was mailed.

§ 6.53 Prehearing conference.

(a) At the prehearing conference the Administrative Law Judge shall attempt to determine the exact areas of agreement and disagreement raised by the Administrator's Order of Reference and replies thereto, so that the evidence and arguments presented at the hearing will be relevant, complete, and as brief and concise as possible.

(b) Any interested party desiring to file proposed findings of fact and conclusions of law shall submit them to the Administrative Law Judge at the prehearing conference.

(c) If the parties agree that no hearing is necessary to supplement the written evidence and the views and arguments that have been presented, the Administrative Law Judge shall forthwith render his/her final decision. The Administrative Law Judge with the agreement of the parties may permit submission of additional written evidence or argument, such as data accompanied by affidavits attesting to its validity or depositions, within ten days of commencement of the prehearing conference.

§ 6.54 Hearing.

(a) Except as provided in § 6.53(c) of this title, the hearing shall commence immediately upon the close of the prehearing conference. All matters remaining in controversy, including the presentation of additional evidence, shall be considered at the hearing. There shall be a minimum of formality in the proceeding consistent with orderly procedure.

(b) To expedite the proceeding the Administrative Law Judge shall, after consultation with the parties, set reasonable guidelines and limitations for the presentations to be made at the hearing. The Administrative Law Judge may limit cross-examination and may question witnesses.

(c) Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of establishments contacted by the Bureau be submitted into evidence or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be submitted into evidence.

(d) Affidavits or depositions may be admitted at the discretion of the Administrative Law Judge. The Administrative Law Judge may also require that unduly repetitious testimony be submitted as affidavits. Such affidavits shall be submitted within three days of the conclusions of the hearing.

(e) Counsel for the Administrator shall participate in the proceeding to the degree he/she deems appropriate.

(f) An expedited transcript shall be made of the hearing and of the prehearing conference.

§ 6.55 Closing of record.

The Administrative Law Judge shall close the record promptly and not later than 10 days after the date of commencement of the prehearing conference. Post-hearing briefs may be permitted, but the filing of briefs shall not delay issuance of the decision of the Administrative Law Judge pursuant to § 6.56 of this title.

§ 6.56 Decision of the Administrative Law Judge.

Within 15 days of receipt of the transcript, the Administrative Law Judge shall render his/her decision containing findings of fact and conclusions of law. The decision of the Administrative Law Judge shall be based upon consideration of the whole record, and shall be in accordance with the regulations and rulings contained in Part 4 and other pertinent parts of this title. If any party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.57 of this title, and such decision and order shall be inoperative unless and until the Board of Service Contract Appeals issues an order affirming the decision. If a petition has not been filed within 10 days of issuance of the Administrative Law Judge's decision, the Administrator shall promptly issue any wage determination which may be required as a result of the decision.

§ 6.57 Petition for review.

Within 10 days after the date of the decision of the Administrative Law Judge, any interested party who participated in the proceedings before the Administrative Law Judge and desires review of the decision shall file a petition for review by the Board of Service Contract Appeals pursuant to 29 CFR Part 8. The petition shall refer to the specific findings of fact, conclusions of law, or order excepted to and the specific pages of transcript relevant to the petition for review.

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Part IV

Department of Labor

Office of the Secretary

29 CFR Part 8

Practice Before the Board of Service Contract Appeals: Final Rule

DEPARTMENT OF LABOR

29 CFR Part 8

Practice Before the Board of Service Contract Appeals

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: A Board of Service Contract Appeals is established to hear appeals from decisions of the Wage and Hour Administrator and appeals from decisions pursuant to 29 CFR Part 6 by Administrative Law Judges involving Service Contract Act matters and related Contract Work Hours and Safety Standards Act matters. Part 6 sets forth rules of practice for administrative proceedings enforcing labor standards in Federal and federally assisted construction contracts and Federal service contracts.

EFFECTIVE DATE: This final rulemaking becomes effective on March 21, 1984.

FOR FURTHER INFORMATION CONTACT: Gail V. Coleman, Counsel for Trial Litigation, Fair Labor Standards Division, Office of the Solicitor, U.S. Department of Labor, Room N2716, 200 Constitution Ave., N.W., Washington, D.C. 20210, Phone 202-523-7626.

SUPPLEMENTARY INFORMATION: On April 22, 1980, a proposal was published in the **Federal Register** (45 FR 27410) to make a new Part 8 of Title 29, Code of Federal Regulations, Practice Before the Board of Service Contract Appeals. The purpose of this proposal was to issue procedures concerning a new appellate Board of Service Contract Appeals. Interested persons were afforded the opportunity to submit comments to the Office of the Solicitor on or before May 27, 1980. Comments were received from 13 interested parties.

On January 19, 1981, proposed Part 8 was withdrawn (46 FR 4951). On January 16, 1981, 29 CFR Part 6 was published as a final rule (46 FR 4398) with a scheduled effective date of February 17, 1981. That regulation contained a new Subpart F providing for appeals to the Secretary on matters arising under the Service Contract Act (and the Contract Work Hours and Safety Standards Act on contracts subject to the Service Contract Act), instead of appeals to a Board. Pursuant to the President's Memorandum of January 29, 1981, the Department published notices on February 6, 1981 (46 FR 11253), and thereafter delaying implementation of the regulation until August 15, 1981 in order to reconsider the rule pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 20, 1981); 46 FR 33514 (June 30, 1981); 46 FR 36140 (July 14, 1981).

The procedures in this Part 8, which was published for comment in the **Federal Register** on August 14, 1981 (46 FR 41438), are substantially identical to those published as Subpart F of Part 6 January 16, 1981, except that appeal is provided to a Board of Service Contract Appeals, rather than to the Secretary. It is envisioned that it would operate in a manner similar to the Wage Appeals Board, which hears appeals under the Davis-Bacon and Related Acts, and the Department is considering consolidating it with the Wage Appeals Board into one Board with jurisdiction to hear all issues under government contract wage statutes.

With respect to the jurisdiction of the Board of Service Contract Appeals, which is prescribed by 29 CFR § 8.1(b) herein, the Board is empowered to hear and decide in its discretion appeals from decisions of Administrative Law Judges issued under Subparts B, D and E of Part 6 of this title, entitled Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts. Part 6 is being simultaneously published in the **Federal Register.**

Comments on this proposed Part 8 were received from five interested parties, namely the National Aeronautics and Space Administration (NASA), the Department of Energy (DOE), the Laborers' International Union of North America, AFL-CIO-CLC, the International Association of Machinists and Aerospace Workers, and the Service Employees International Union, AFL-CIO-CLC. In addition, NASA and DOE in commenting upon proposed 29 CFR Part 6, offered comments on Part 8 which relate to matters addressed by this Part 8; to the extent such comments are relevant to this final rulemaking, they will be discussed below.

Subsequent to the publication on August 14, 1981, of this proposed Part 8, the Department issued final rules for implementing the Equal Access to Justice Act which became effective on October 1, 1981; those rules are codified at 29 CFR Part 16. Therein at § 16.104(a)(2), the Department listed those proceedings involving the Employment Standards Administration which were found to be subject to the provisions of the Equal Access to Justice Act; none of the proceedings covered by Part 6 or 8 are listed as being subject to that Act. Moreover, when the Equal Access final rules were published on December 29, 1981 (46 FR 63020), the Department discussed in the Supplementary Information section of the Preamble the types of proceedings which were not subject to the Act, including certain proceedings under the Service Contract Act and the Davis-Bacon Act. In view of the inapplicability of the Equal Access to Justice Act to proceedings covered by Part 6, a new subsection (§ 6.6(a)) has been added to Part 6 expressly providing that Administrative Law Judges shall have no authority to award attorney fees or other litigation expenses pursuant to the Equal Access to Justice Act in any proceeding covered by Part 6. Similarly, a new section (§ 8.19) has been added to Part 8 to the same effect. If an appeal to the Board under this Part 8 involves a decision pursuant to Part 6 wherein an Administrative Law Judge erroneously awarded attorney fees or other litigation expenses pursuant to that Act, the Board shall have the authority to vacate such award.

A new section 8.0 has been added to provide that during the period before the Board has been duly constituted, the Secretary or his designee will act on appeals in its stead.

Discussion of Major Comments

Section 8.1(b)—Both NASA and DOE expressed concern that granting the Board authority to review substantial variance cases pursuant to Section 4(c) of the Service Contract Act would cause such proceedings to become unduly protracted. Similar concerns were expressed by the labor organizations which commented upon this Part 8. For a discussion of such concerns, see the comments and supplementary information set out *infra*.

Section 8.1(c)—Both NASA and DOE questioned whether a decision issued by the Board, acting within the scope of its jurisdiction, would be binding upon the Secretary of Labor, and suggested that, if it is intended not to accord such finality to a Board decision, the regulations clarify such intent. It is intended by this Part 8 that Board decisions shall be final and binding upon the Secretary; Section 8.1(c) has been revised to expressly reflect this intent.

Section 8.1(d)—Both NASA and DOE expressed concern over the non-inclusion in this section of a settlement which expressly indicates the standard of review to be exercised by the Board. This concern is well-taken, and the section has been revised to provide that the Board shall base its decision on the preponderance of the evidence, the statutory standard under the Service Contract Act. A similar revision has been made in Section 8.9(b). With

further reference to Section 8.1(d), these commentators, in their comments upon proposed 29 CFR Part 8, expressed concern that a party which did not appear in the ALJ proceeding might attempt to unduly protract such a case by filing with the Board a petition for review. This concern is also well-taken. Accordingly, Section 8.1(d) is revised to provide that the Board shall not consider on the merits any petition for review filed by a party against whom default judgment has been entered pursuant to the provisions of Part 6 of this Title.

Section 8.7—Both NASA and DOE questioned whether a Federal agency, under this section, could be included within the definition of "aggrieved party" for purpose of filing a petition for review of an ALJ decision pursuant to Subpart B, D or E of Part 6 of this title. By the use of the term "any aggrieved party" the Department intends that such term may include a Federal agency, and does not consider it necessary to amend or change Section 8.7 as now written.

General—Both NASA and DOE recommended that certain administrative matters concerning the composition of the Board be addressed in this Part 8. It is the Department's position that such internal administrative matters would be more appropriately addressed in a separate order of the Secretary rather than in this Part 8 which prescribes the rules of procedure of such Board; it is the Department's intention to promulgate such an order forthwith.

Comments received from the Laborers' International and the IAM expressed concern that a hearing procedure for wage determinations might result in a court decision such as that in *Wirtz* v. *Baldor Electric Co.*, 337 F.2d 518 (D.C. Cir. 1963) (arising under the Walsh-Healey Public Contracts Act), and the cessation of wage determinations under the Service Contract Act. These concerns have been carefully considered. The Department has concluded that since the basis of the *Baldor* decision was the provision in the Walsh-Healey Act (section 10) which expressly requires an APA hearing, and since no similar statutory provision exists in the Service Contract Act, these concerns are ill-founded. Accordingly, the Department has concluded that further changes in Part 8 to address this perceived problem are not necessary.

Both of these commentators expressed the further concern that creation of a separate Board might encourage or foster frivolous appeals from an ALJ decision. The Department agrees that the Board's procedure should expressly provide for the rejection of any petition for review which appears to the Board to constitute a frivolous appeal. Accordingly, Sections 8.6(a) and 8.9(a) have been revised to specifically vest authority in the Board to decline review of particular types of cases, including frivolous appeals.

Finally, all three labor organizations (as well as NASA and DOE) which commented upon Part 8 expressed concern that creation of the Board constitutes an unnecessary level of review and poses a potential obstacle to a timely resolution of cases brought before it. These concerns have been carefully considered and have been found to be without foundation, particularly when viewed in the context of the added assurance of a thorough adjudication which is afforded by the Board's appellate process. As previously indicated, pursuant to Sections 8.6(a) and 8.9(a), the Board is empowered to decline review in certain enumerated instances, and in addition pursuant to Section 8.1(d) the Board shall not hear appeals on the merits filed by parties against whom default judgment has been entered pursuant to the provisions of Part 6 of this Title.

Classification

This rule is procedural in character. Therefore, this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

The Department believes that the rule will have no "significant economic impact on a substantial number of small entites" within the meaning of § 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the rule is procedural in character. Accordingly, no regulatory flexibility analysis is required.

The rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not require the collection or retention of information.

Effective Date

Final rules for the Service Contract Act, 29 CFR Part 4, which were published in the **Federal Register** on October 27, 1983 (48 FR 49736), became effective on January 27, 1984 (48 FR 56577). This Part 8 contains procedures for administrative appeals from decisions made under Part 4 and under Part 6, published this date. In order to preserve uninterrupted such appellate rights, it is essential that this Part 8 become effective as soon as possible. Accordingly, the Secretary has determined that good cause exists for waiving the customary requirements of delaying the effective date of a final rule for at least 30 days after its publication. 5 U.S.C. 553(d). This rule, therefore, will become effective immediately upon publication.

List of Subjects in 29 CFR Part 8

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

Accordingly, 29 CFR Part 8 is adopted as a final rule as set forth below.

Signed at Washington, D.C. on this 13th day of March 1984.

Raymond J. Donovan,

Secretary of Labor.

PART 8—PRACTICE BEFORE THE BOARD OF SERVICE CONTRACT APPEALS

Subpart A—Purpose and Scope

Sec.
8.0 Interim procedures.
8.1 Purpose and scope.

Subpart B—Review of Wage Determinations

8.2 Who may file petitions for review.
8.3 When to file.
8.4 Contents of petitions.
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8.7 Review of decisions in other proceedings.
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Subpart D—General Procedural Matters

8.10 Filing and service.
8.11 Presentations of other interested persons.
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8.19 Equal Access to Justice Act.

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357–359, 40 U.S.C. 327–332.

Subpart A—Purpose and Scope

§ 8.0 Interim procedures.

The Secretary of Labor shall establish a Board of Service Contract appeals, by Secretary's Order and delegate to the Board the authority and responsibilities set forth herein. During the interim period prior to the appointment of a duly constituted Board, the functions of the Board shall be performed by the Secretary or his designee. In all other respects the rules in this part shall be applicable, unless inconsistent herewith.

§ 8.1 Purpose and scope.

(a) This part contains the rules of practice of the Board of Service Contract Appeals (hereinafter referred to as the Board).

(b) The Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions of the Administrator of the Wage and Hour Division or authorized representative, and from decisions of Administrative Law Judges under Subparts B, D, and E of Part 6 of this title, arising under the Service Contract Act and the Contract Work Hours and Safety Standards Act where the contract is also subject to the Service Contract Act. The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations which has been duly promulgated through notice and comment by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The jurisdiction of the Board includes:

(1) Wage determinations issued under the Service Contract Act;

(2) Substantial variance proceedings or arm's-length negotiations proceedings pursuant to Section 4(c) of the Service Contract Act;

(3) Debarment or other enforcement proceedings;

(4) Proceedings to determine substantial interest of debarred persons or firms;

(5) Decisions of the Wage-Hour Administrator or authorized representative regarding recommendations of a Federal agency for adjustment or waiver of liquidated damages assessed under the Contract Work Hours and Safety Standards Act;

(6) Other final actions of the Wage-Hour Administrator or authorized representative (e.g., additional classification actions and rulings with respect to application of the Act(s), or the regulations, or of wage determinations issued thereunder).

(7) Other matters specifically referred to the Board by the Secretary of Labor.

(c) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters.

(d) The Board is an appellate body and shall decide cases properly brought before it on the basis of all relevant matter contained in the entire record before it. Decisions by the Board shall be based upon the preponderance of the evidence before it. It may remand with appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence. However, unless the petition for review cities alleged procedural irregularities in the proceeding below and not the merits of a case, the Board shall not consider a petition for review filed by any party against whom default judgment has been entered pursuant to the provisions of Part 6 of this Title.

Subpart B—Review of Wage Determinations

§ 8.2 Who may file petitions of review.

(a) Any interested party who is seeking a modification of other change in a wage determination under the Service Contract Act and who has requested the Wage-Hour Administrator or authorized representative to make such modification or other change under § 4.55 of Part 4 of this title, and the request has been denied, shall have a right to petition of review of the action taken by that officer.

(b) For purposes of this subpart, the term "interested party" shall mean:

(1) Any employee or any labor organization which represents an employee who is likely to be employed or to seek employment under a contract containing a particular wage determination, or any contractor or an association representing a contractor who is likely to seek a contract or to work under a contract containing a particular wage determination;

(2) The Federal agency(s) which will administer a proposed contract containing a particular wage determination issued pursuant to the Service Contract Act; and

(3) Any other party whom the Board finds to have a sufficient interest in the wage determination.

§ 8.3 When to file.

(a) Requests for review of wage determinations must be filed within 20 days of issuance of the Wage-Hour Administrator's decision denying a request to make a change in the wage determination.

(b) The Board shall under no circumstances request any administering agency to postpone any contract action because of the filing of a petition.

§ 8.4 Contents of petition.

(a) A petition for review of a wage determination shall:

(1) Be in writing and signed by the petitioner or his/her counsel (or other authorized representative);

(2) Be addressed to the Board of Service Contract Appeals;

(3) Identify clearly the wage determination, location where the contract will be performed, if known, and the agency concerned;

(4) State that the petitioner has requested reconsideration of the wage determination in question pursuant to 29 CFR 4.55 and describe briefly the action taken in response to the request;

(5) Contain a short and plain statement of the grounds for review;

(6) Be accompanied by supporting data, views, or arguments; and

(7) Contain a statement that all data or other evidence submitted have previously been submitted to the Administrator.

(b) A petition shall indicate whether or not the petitioner consents to the disposition of the questions involved by a single member of the Board.

§ 8.5 Filing of wage determination record.

The Associate Solicitor for Fair Labor Standards shall, promptly after service of the petition, file with the Board the record upon which the wage determination was based. Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of establishments contacted by the Bureau be filed with the Board or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be filed.

§ 8.6 Disposition by the Board of Service Contract Appeals.

(a) The Board may decline review of any case whenever in its judgment review would be inappropriate because of lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, the appeal is frivolous on its face, or other reasons. A

case will be reviewed upon the affirmative vote of one member.

(b) Except as provided in paragraphs (c) and (d) of this section, the Board will not review a wage determination after award, exercise of option, or extension of a contract, unless such procurement action was taken without the wage determination required pursuant to §§ 4.4 and 4.5 of Part 4 of this title.

(c) A wage determination may be reviewed after award, exercise of option, or extension of a contract if it is issued after a finding by an Administrative Law Judge or the Board that a substantial variance exists between collectively bargained wage rates and/or fringe benefits otherwise required to be paid pursuant to Section 4(c) of the Act and those prevailing for services of a character similar in the locality, or after a finding that such collective bargaining agreement was not reached as a result of arm's length negotiations.

(d) Where a petition for review of a wage determination is filed prior to award, exercise of option, or extension of a contract, the Board may review the wage determination after such award, exercise of option, or extension of a contract if the issue is a significant issue of general applicability. The Board's decision shall not affect the contract after such award, exercise of option, or extension.

(e) In issuing its decision the Board will act expeditiously, taking into consideration procurement deadlines. The Board shall decide the case upon the basis of all relevant matters contained in the entire record before it and shall not consider any data not submitted to the Wage-Hour Administrator with the request for reconsideration. The Board in its decision affirming, modifying, or setting aside the wage determination, shall include a statement of reasons or bases for the actions taken. In any remand of a case as provided in § 8.1(d) of this title, the Board shall include appropriate instructions.

Subpart C—Review of Other Proceedings and Related Matters

§ 8.7 Review of decisions in other proceedings.

(a) A petition for review of a decision of an Administrative Law Judge pursuant to Subparts B, D or E of Part 6 of this title may be filed by any aggrieved party in accordance with the provisions therein.

(b) A petition for review of a final written decision (other than a wage determination) of the Administrator or authorized representative may be filed by any aggrieved party within 60 days of the date of the decision of which review is sought. Where a case has been referred directly to the Board pursuant to § 4.11 or § 4.12 of this title, no petition for review shall be necessary; a brief in support of the aggrieved party's position shall be filed within 30 days of filing of the administrative record by the Administrator.

(c) A petition shall state concisely the points relied upon, and shall be accompanied by a statement setting forth supporting reasons. The petition shall also indicate whether or not the petitioner consents to the disposition of the questions involved by a single member.

§ 8.8 Filing of administrative record.

(a) If a petition for review has been filed concerning a decision pursuant to Part 6 of this title, the Chief Administrative Law Judge shall promptly forward the record of the proceeding before the Administrative Law Judge to the Board.

(b) If a petition for review has been filed concerning a final decision of the Wage-Hour Administrator or authorized representative, the Associate Solicitor for Fair Labor Standards shall promptly file with the Board a record upon which the decision was based.

§ 8.9 Disposition by the Board of Service Contract Appeals.

(a) The Board may decline review of any case whenever in its judgment review would be inappropriate because of lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, the appeal is frivolous on its face, or other reasons. A case will be reviewed upon the affirmative vote of one member.

(b) In issuing its decision the Board will take into consideration procurement deadlines where appropriate. The Board shall pass upon the points raised in the petition upon the basis of the entire record before it. The Board may affirm, modify or set aside, in whole or in part, the decision under review and shall issue a decision including a statement of reasons or bases for the actions taken. The Board shall modify or set aside findings of fact only when it determines that those findings are not supported by a preponderance of the evidence. In any remand of a case as provided in § 8.1(e) of this title, the Board shall include any appropriate instructions.

Subpart D—General Procedural Matters

§ 8.10 Filing and service.

(a) *Filing.* All papers submitted to the Board under this part shall be filed with the Executive Secretary of the Board of Service Contract Appeals, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Number of copies.* An original and four copies of all papers shall be submitted.

(c) *Manner of service.* Service under this part shall be personal or by mail. Service by mail is complete on mailing. For purposes of this part, filing is accomplished upon the day of service, by mail or otherwise.

(d) *Proof of service.* Papers filed with the Board shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service.

(e) *Service upon the Department of Labor and other interested parties.* A copy of all documents filed with the Board shall be served upon the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210; the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210; the Federal contracting agency involved; and all other interested parties.

§ 8.11 Presentations of other interested persons.

(a) Where a petition has been filed for review of a wage determination or other final decision of the Administrator or authorized representative, the Board shall notify the parties known or believed to be interested in the case. The Associate Solicitor and any other parties interested in presenting their views shall file a statement within 30 days of the filing of the petition (or such other time as is specified by the Board, with consideration of procurement deadlines, as appropriate).

(b) Where a petition has been filed for review of a decision issued pursuant to Subparts B, D or E of Part 6 of this title, any other parties to the proceeding interested in presenting their views shall file a statement within 30 days of the filing of the petition (or such other time as is specified by the Board, with consideration of procurement deadlines, as appropriate).

§ 8.12 Intervention; other participation.

For good cause shown, the Board may permit any interested party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing (original and four copies) and shall state with precision and particularity:

(a) The petitioner's relationship to the matters involved in the proceedings, and

(b) The nature of the presentation which the peititioner would make.

§ 8.13 Right to counsel.

Each interested party shall have the right to appear in person or by counsel or other representative in any proceeding before the Board.

§ 8.14 Consolidations.

Upon its own initative or upon motion of any interested party, the Board may consolidate any proceeding or concurrently consider two or more appeals which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or concurrent review will contribute to a proper dispatch of its business and to the ends of justice, and it will not unduly delay consideration of any such appeals.

§ 8.15 Motions; extensions of time.

(a) Except as otherwise provided in this part, any application for an order or other relief shall be made by motion. Except when made orally before the Board, motions shall be in writing and shall be accompanied by proof of service on all other parties. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may respond to the motion within such time as may be provided by the Board.

(b) Requests for extension of time as to the filing of papers or oral presentation shall be in the form of a motion under paragraph (a) of this section.

§ 8.16 Oral proceedings.

(a) With respect to any proceedings before it, the Board may upon its own initative or upon request of any interested party direct the interested parties to appear before the Board or its designee at a specified time and place in order to simplify the issues persented or to take up any other matters which may tend to expedite or facilitate the disposition of the proceeding.

(b) In its discretion, the Board or a single presiding member may permit oral argument in any proceeding. The Board or the presiding member shall prescribe the time and place for argument and the time allocated for argument. A petitioner wishing to make oral argument should make the request therefore in the petition.

§ 8.17 Decision of the Board.

(a) Unless the petitioner consents to disposition by a single member, decisions of the Board shall be by majority vote.

(b) Where petitioner consents to disposition by a single member, other interested parties shall have an opportunity to oppose such disposition, and such opposition shall be taken into consideration by the Board in determining whether the decision shall be by a single member or majority vote.

§ 8.18 Public information.

Subject to the provisions of Part 70 of this title, all papers and documents made a part of the official record in the proceedings of the Board and decisions of the Board shall be made available for public inspection during usual business hours at the Office of the Board of Service Contract Appeals, U.S. Department of Labor, Washington, D.C. 20210.

§ 8.19 Equal Access to Justice Act.

Proceedings under the Service Contract Act and the Contract Work Hours and Safety Standards Act are not subject to the Equal Access to Justice Act (Pub. L. 96–481). Accordingly, in any proceeding conducted pursuant to the provisions of this Part 8, the Board shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the Eqaul Access to Justice Act.

[FR Doc. 84–7476 Filed 3–20–84; 8:45 am]

BILLING CODE 4510–23–M

federal register

Wednesday
March 21, 1984

Part V

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978; Notice

DEPARTMENT OF ENERGY

[Vol. 1086]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: March 16, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices in available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–GS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper well
108–SA: Seasonally affecte
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
Issued March 16, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
OKLAHOMA CORPORATION COMMISSION						
-AMCANA OIL CORP				RECEIVED:	02/22/84	JA: OK
8422134	24345	3500321944		102-4		EMMONS #1-35
-AN-SON CORPORATION				RECEIVED:	02/23/84	JA: OK
8422139	24589	3503920915		102-2		JEFF MOORE #1-20
-ANADARKO LAND & EXPLORATION CO				RECEIVED:	02/22/84	JA: OK
8422128	26588	3503920956		103		HALLE #1-7
-ANADARKO PRODUCTION COMPANY				RECEIVED:	02/22/84	JA: OK
8422125	26557	3502720779		103		JOHNSON B #1-25
-ANADARKO PRODUCTION COMPANY				RECEIVED:	02/23/84	JA: OK
8422168	24427	3500922166		102-4		RICHARDSON A 1-23
8422169	24426	3500922166		102-4		RICHARDSON A 1-23
-BARBOUR ENERGY CORP				RECEIVED:	02/22/84	JA: OK
8422131	14964	3503121085		107-TF		DAVIS UNIT #1-27
8422130	14959	3503120900		107-TF		HENNESSEY #1-26
-BARUCH-FOSTER CORP				RECEIVED:	02/23/84	JA: OK
8422171	24373	3501720866		102-4		GLADE-STATE #1
-BOGERT OIL CO				RECEIVED:	02/23/84	JA: OK
8422159	26708	3501121768		103		VAUGHN #1-1
-CLAREMONT CORP				RECEIVED:	02/22/84	JA: OK
8422126	26596	3500300000		103		ZIEGELGRUBER #31-1
-CONOCO INC				RECEIVED:	02/23/84	JA: OK
8422163	25937	3513900000		108		C H LOHMAN #1
-CORE OIL & GAS CORP				RECEIVED:	02/23/84	JA: OK
8422158	26704	3500723480		103		BEEBY #1
-DAWN ENERGY CO				RECEIVED:	02/23/84	JA: OK
8422186	26533	3513921787		103		CLARK #2-22
-DLB ENERGY CORP				RECEIVED:	02/22/84	JA: OK
8422133	24329	3507323793		102-4 103		GRELLNER #32-6
-EL PASO NATURAL GAS COMPANY				RECEIVED:	02/23/84	JA: OK
8422149	26106	3500920140		108		STATE OF OKLAHOMA A #2
-ENERGY QUEST INC				RECEIVED:	02/23/84	JA: OK
8422154	26662	3507121839		108		MITCHELL #1-A
-ESSEX EXPLORATION INC				RECEIVED:	02/23/84	JA: OK
8422160	26712	3501722614		103		OVERTON #1
-GREEN OPERATING CO				RECEIVED:	02/22/84	JA: OK
8422135	24354	3501121995		102-4		CARR 14-2
-HARPER OIL COMPANY				RECEIVED:	02/22/84	JA: OK
8422127	26594	3510920788		103		SMITH-GREER #2
-HARPER OIL COMPANY				RECEIVED:	02/23/84	JA: OK
8422172	18005	3512920791		102-2		GRACE #1
-HOLDER A C				RECEIVED:	02/22/84	JA: OK
8422119	26266	3507122762		103		JANTZ 3-20
-INEXCO OIL COMPANY				RECEIVED:	02/22/84	JA: OK
8422136	24424	3512920997		102-2		CLOVIS #1-10
8422137	24425	3512920982		102-2		WILLIAMSON #1-24
-J M HUBER CORPORATION				RECEIVED:	02/23/84	JA: OK

VOLUME 1086

FIELD NAME	PROD	PURCHASER
WATERLOO	365.0	CHAMPLIN PETROLEU
W CLINTON	1714.0	
S W THOMAS	1000.0	TRANSOK PIPELINE
STELLA (E) PROSPECT	100.0	MUSTANG FUEL CORP
SW ANTIOCH	8.0	WARREN PETROLEUM
SW ANTIOCH	130.0	WARREN PETROLEUM
S WELLSTON	0.0	EL PASO NATURAL G
	0.0	EL PASO NATURAL G
EAST MARAMEC	30.0	MID AMERICA GAS L
SOONER TREND	900.0	ARKANSAS LOUISIAN
	91.3	PHILLIPS PETROLEU
GUYMON-HUGOTON	[illegible].0	NORTHWEST CENTRAL
	[illegible].0	AMINOIL USA INC
NORTH RICE	100.0	
SOONER TREND	108.0	PHILLIPS PETROLEU
ERICK SOUTH - BROWN D	14.0	EL PASO NATURAL G
	4.3	CHASE EXPLORATION
	[illegible].0	
SOUTHWEST MT VERNON	[illegible]6.5	SUN EXPLORATION &
WEST EDMOND	21.0	PHILLIPS PETROLEU
S E ROLL	[illegible].0	DELHI GAS PIPELIN
	[illegible].3	CHASE GATHERING S
NORTH EAST STRONG CIT	11.0	
RED MOON FIELD	[illegible]00.0	

BILLING CODE 6717-01-M

VOLUME 1086

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422182	26658	3500722604		103		BRYAN #2-14	M W GREENOUGH	16.0	PANHANDLE EASTERN
8422174	26659	3500722583		103		WALLACE "F" #1	M W GREENOUGH	125.0	PANHANDLE EASTERN
-JEFFERSON-WILLIAMS ENERGY CORP				RECEIVED:	02/22/84	JA: OK			
8422124	26598	3510300000		103		HAZEL CHESSMORE #2	LONE ELM NORTH	29.0	AMINOIL USA INC
-K M ENERGY INC				RECEIVED:	02/23/84	JA: OK			
8422166	24487	3513921730		103		PREWETT "B" 3	CAMRICK	80.0	
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	02/23/84	JA: OK			
8422175	26551	3500722607		103		BERGEN #1-31		492.8	
-KIRKPATRICK OIL CO				RECEIVED:	02/23/84	JA: OK			
8422164	25999	3507323833		103		PRITCHETT "A" #2		0.0	CONOCO INC
-M K M INC				RECEIVED:	02/22/84	JA: OK			
8422123	26616	3510322075		103		WAGNER #2		72.0	ARCO OIL & GAS CO
-MOBIL OIL CORP				RECEIVED:	02/23/84	JA: OK			
8422161	26137	3501900000		108		COUNTYLINE #27-13 M G JORDAN #13	SHO VEL TUM	0.0	OKLAHOMA NATURAL
-MONSANTO COMPANY				RECEIVED:	02/22/84	JA: OK			
8422129	26586	3507323858		103		THEMER #3	DOVER EAST	65.0	EXXON CO USA
8422121	26648	3507323864		103		THROCKMORTON #3	DOVER EAST	0.0	EXXON CO U S A
-NEW TREND RESOURCES INC				RECEIVED:	02/23/84	JA: OK			
8422152	26547	3510721344		103		MIRACLE 3-A	SOUTH MORSE	25.0	SHAB CORP
-NORTH CENTRAL DRILLING CO INC				RECEIVED:	02/23/84	JA: OK			
8422184	26191	3508122132		103		CINDY #2 037-80665-1	SOUTHWEST STROUD	2.0	SHAB CORP
-OKLAND OIL CO				RECEIVED:	02/22/84	JA: OK			
8422120	26655	3504723128		103		ENID TOWNSITE #1-13	SOONER TREND	165.0	UNION TEXAS PETRO
-PHILLIPS OIL OPERATING CO				RECEIVED:	02/23/84	JA: OK			
8422179	26620	3508120862		108		BETTY WOLFE #1		16.3	SUN GAS CO
8422157	26675	3500320276		108		CALLAHAN - COULREE #1		27.6	PIONEER GAS PRODU
8422156	26674	3500320273		108		FRECH #1		37.2	PIONEER GAS PRODU
8422176	26617	3508100000		108		GREEN #1		27.4	SUN GAS CO
8422180	26621	3508121041		108		GREEN #2		4.8	SUN GAS CO
8422178	26619	3508121208		108		HAGAR #3		27.4	SUN GAS CO
8422155	26673	3500320308		108		HUGHEY #1		8.0	PIONEER GAS PRODU
8422177	26618	3508121315		108		WARE #1		16.5	SUN GAS CO
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	02/23/84	JA: OK			
8422165	25051	3513900000		108		IRENE #1	GUYMON HUGOTON	8.0	PANHANDLE EASTERN
-PSEC INC				RECEIVED:	02/22/84	JA: OK			
8422132	19555	3508121494		107-TF		HUMPHRIES #1-25	HELLSTON	0.0	EL PASO NATURAL G
-QUASIUS DAVID				RECEIVED:	02/23/84	JA: OK			
8422162	26073	3510100000		108		REDO #10-2		8.0	PHILLIPS PETROLEU
-READING & BATES PETROLEUM CO				RECEIVED:	02/23/84	JA: OK			
8422181	26630	3504700000		103		VIV #1	KREMLIN	73.0	UNION TEXAS PETRO
-SHELL OIL CO				RECEIVED:	02/23/84	JA: OK			
8422148	25161	3500900000		108		ELK CITY HOXBAR SAND CONGLO #1-14-6	ELK CITY	12.7	PANHANDLE EASTERN
8422146	25159	3500900000		108		ELK CITY HOXBAR SAND CONGLO 1-16-12	ELK CITY	12.8	PANHANDLE EASTERN
8422147	25160	3500900000		108		ELK CITY HOXBAR SAND CONGLO #1-16-7	ELK CITY	12.7	PANHANDLE EASTERN
8422143	25156	3500900000		108		ELK CITY HOXBAR SAND CONGLO #1-17-6	ELK CITY	12.7	PANHANDLE EASTERN
8422144	25157	3500900000		108		ELK CITY HOXBAR SAND CONGLO #1-17-4	ELK CITY	12.7	PANHANDLE EASTERN
8422145	25158	3500900000		108		ELK CITY HOXBAR SAND CONGLO #1-17-1	ELK CITY	12.5	PANHANDLE EASTERN
8422140	25143	3500900000		108		ELK CITY HOXBAR SAND CONGLO #1-7-12	ELK CITY	12.7	PANHANDLE EASTERN
8422141	25144	3500900000		108		ELK CITY HOXBAR SAND CONGLO #1-7-4	ELK CITY	12.7	PANHANDLE EASTERN
8422142	25145	3500900000		108		ELK CITY HOXBAR SAND CONGLO #1-9-11	ELK CITY	13.2	PANHANDLE EASTERN
-SOUTHLAND ROYALTY CO				RECEIVED:	02/23/84	JA: OK			
8422170	19495	3513900377		103		ELMORE #1	EAST HOOKER	21.5	NORTHERN NATURAL
-T-REX CORP				RECEIVED:	02/23/84	JA: OK			
8422150	26236	3503725286		103		DUTCHMAN #2	STROUD OIL FIELD	36.0	KERR-MCGEE CORP
8422151	26237	3503725287		103		DUTCHMAN #3	STROUD OIL FIELD	36.0	KERR-MCGEE CORP
-TIGER ENERGY CORP				RECEIVED:	02/23/84	JA: OK			
8422185	26367	3511721121		103		BISCHOFF #4	NORTH TERLTON	8.5	MJD GAS CO
-TXO PRODUCTION CORP				RECEIVED:	02/22/84	JA: OK			
8422138	26555	3509322758		103		BUTTEL #1	W CHEYENNE VALLEY	8.0	DELMI GAS PIPELIN
-TXO PRODUCTION CORP				RECEIVED:	02/23/84	JA: OK			
8422173	17027	3504320278		108-ER		DEDRICK #1		8.0	DELMI GAS PIPELIN
-WARD PETROLEUM CORP				RECEIVED:	02/22/84	JA: OK			
8422122	26647	3502720762		103		J M SMITH A-#3		64.0	SUN EXPLORATION &
-WESTFALL ENTERPRISES				RECEIVED:	02/23/84	JA: OK			
8422153	26615	3511922304		103		SHARPLEY-ALLEN #1	NORTH EAST SPORN	8.0	SUN EXPLORATION &
-WICKLUND PETROLEUM CORP				RECEIVED:	02/23/84	JA: OK			
8422183	24820	3501700000		103		PAYNE #1	MUSTANG	8.0	
-WOODS PETROLEUM CORPORATION				RECEIVED:	02/23/84	JA: OK			
8422167	24470	3512920970		102-2		TUNE #20-1	MADDOX	694.0	

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** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE, NM

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-AMOCO PRODUCTION CO				RECEIVED:	02/23/84	JA: NM K			
8422050	NM-1008-83	3004508434		108		A L ELLIOTT "B" #5	BASIN - DAKOTA	16.0	EL PASO NATURAL G
8422047	NM 0998-83	3004507567		108		DAY GAS COM #1 (4TH FILING)	BASIN - DAKOTA	18.0	SOUTHERN UNION GA
8422041	NM 0868-83	3004525613		103		JAMES F BELL / TRUE #1E	BASIN DAKOTA	89.6	EL PASO NATURAL G
8422051	NM 1007-83	3003906664		108		JICARILLA APACHE 102 #4	BLANCO - MESAVERDE/TA	19.0	GAS CO OF NEW MEX
8422046	NM 0999-83	3003922483		108		JICARILLA CONTRACT 148 #22	SOUTH BLANCO - PC/OTE	16.0	NORTHWEST PIPELIN
8422048	NM-1004-83	3004523588		108		JOHNSON GAS COM "E" #1	FLORA VISTA - MESAVER	12.0	EL PASO NATURAL G
8422096	NM 1000-83	3004506819		108		M M GALT "H" #1 (2ND FILING)	BASIN - DAKOTA	15.0	SOUTHERN UNION GA
8422097	NM 1001-83	3004524665		108		P O PIPKIN #1E	BASIN - DAKOTA	7.0	EL PASO NATURAL G
8422049	NM 1003-83	3004521056		108		R P HARGRAVE #2	FULCHER KUTZ - PICTUR	10.0	SOUTHERN UNION GA
8422098	NM 1002-83	3004506780		108		SHIPP GAS COM #1	BASIN - DAKOTA	12.0	EL PASO NATURAL G
8422057	NM-1026-83	3004524610		108		UTE INDIANS "A" #16	UTE DOME - DAKOTA	20.0	SOUTHERN UNION GA
8422052	NM-1005-83	3003920700		108		VALENCIA CANYON UNIT #1	CHOZA MESA - PICTURED	11.0	EL PASO NATURAL G
-BCO INC				RECEIVED:	02/23/84	JA: NM K			
8422044	NM-0861-83	3003923230		103		ESCRITO GALLUP UNIT #22 (ELIZ 7)	ESCRITO GALLUP	50.0	EL PASO NATURAL G
8422113	NM 0844-83	3003923229		103		ESCRITO GALLUP UNIT #23	ESCRITO GALLUP	0.0	EL PASO NATURAL G
-CONOCO INC				RECEIVED:	02/23/84	JA: NM K			
8422076	NM-1051-83	3003905120		108		AXI APACHE A #8	AXI APACHE AREA	17.3	GAS CO OF NEW MEX
8422034	NM-974-83	3003920439		108		AXI APACHE J #23	AXI APACHE AREA	13.4	GAS CO OF NEW MEX
8422031	NM-975-83	3003920445		108		AXI APACHE J [illegible]	AXI APACHE AREA	11.8	GAS CO OF NEW MEX
8422075	NM-1050-83	3003920677		108		AXI APACHE O #2	AXI APACHE AREA	11.2	GAS CO OF NEW MEX
8422110	NM-1049-83	3003920968		108		AXI APACHE O #4	AXI APACHE AREA	11.4	GAS CO OF NEW MEX
-DEPCO INC				RECEIVED:	02/23/84	JA: NM K			
8422069	NM-0851-83	3003922392		107-TF		BURNS FEDERAL #2	BLANCO MESAVERDE/OTER	35.0	EL PASO NATURAL G
-DOME PETROLEUM CORP				RECEIVED:	02/23/84	JA: NM K			
8422072	NM 1955-83	3004320638		107-TF		DOME FEDERAL 1-21-7 #1	RUSTY CHACRA	0.0	SOUTHWEST GAS COR
-DUGAN PRODUCTION CORP				RECEIVED:	02/23/84	JA: NM K			
8422027	NM-988-83	3004525536		103		BABY DOE #1 - J WELL	WAW FRUITLAND PICTURE	10.0	EL PASO NATURAL G
8422085	NM-1034-83	3004522968		108		FAF #3	WAW FRUITLAND PICTURE	10.0	EL PASO NATURAL G
8422064	NM-1036-83	3004520379		108		FEDERAL I #4	HARPER HILL FRUITLAND	6.0	EL PASO NATURAL G
8422063	NM-1037-83	3004520721		108		FEDERAL I #5	HARPER HILL FRUITLAND	6.0	EL PASO NATURAL G
8422026	NM-989-83	3004524330		103		LUCKY BILLY CHARLIE #1	WAW FRUITLAND PC	15.0	NORTHWEST PIPELIN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
[illegible]	NM-1039-83	3004523050		107-TF		MARY ANNE #3
[illegible]	NM-1040-83-A	3004525050		103		MARY ANNE #3
[illegible]	NM-1040-83-B	3004525050		103		MARY ANNE #3
[illegible]	NM-1035-83	3004523510		103		THOMAS JEFFERSON #3
[illegible]	NM-1041-83	3004524331		103		UNCLE SAM #1
-EL PASO NATURAL GAS COMPANY				RECEIVED:	02/23/84	JA: NM K
8422100	NM-995-83	3003905632		103		CANYON LARGO UNIT #120
[illegible]	NM-976-83	3003920943		103		CANYON LARGO UNIT #272
8422073	NM-0799-83	3004520812		103		DAY A #12
8422111	NM-1048-83	3004510495		103		ELLIOTT A #1
[illegible]	NM 1033-83	3004520292		103		JOHNSON #1R
[illegible]	NM-1047-83	3004509293		103		LUDWICK #12
-GETTY OIL COMPANY				RECEIVED:	02/23/84	JA: NM K
8422045	NM 0996-83	3003905760		103		JICARILLA "C" #16
8422099	NM 0997-83	3003905819		103		JICARILLA "C" #21
-GULF OIL CORPORATION				RECEIVED:	02/23/84	JA: NM K
8422038	NM 0970-83	3004506354		103		SCOTT "E" FEDERAL #13
-JACK A COLE				RECEIVED:	02/23/84	JA: NM K
8422095	NM 1018-83	3004525712		103		HUGH WASH FEDERAL #1
8422094	NM 1009-83	3004320637		103		INDIAN BEND "A" #3
-MERRION OIL & GAS CORP				RECEIVED:	02/23/84	JA: NM K
8422039	NM 0966-83	[illegible]		103		BLACKROCK D #1
8422062	NM-1032-83	3003922889		103		CANYON LARGO UNIT #310
8422040	NM 0967-83	3004522542		103		CHACO #4
8422037	NM-0968-83	[illegible]		103		NELSON A #1
-NORTHWEST PIPELIME CORPORATION				RECEIVED:	02/23/84	JA: NM K
8422107	NM-085583107	3003922727		103	107-TF	SAN JUAN 30-5 UNIT #76
8422108	NM-085683107	3003922707		103	107-TF	SAN JUAN 30-5 UNIT #78
8422106	NM-085783107	3003923157		103	107-TF	SAN JUAN 30-5 UNIT #87
8422105	NM-085283107	3003923169		103	107-TF	SAN JUAN 31-6 UNIT #25
8422109	NM-085483107	3003923149		103	107-TF	SAN JUAN 31-6 UNIT #39
8422067	NM-085383107	3003923150		103	107-TF	SAN JUAN 31-6 UNIT 27
-OXOCO EXPLORATION & PRODUCTION INC				RECEIVED:	02/23/84	JA: NM K
8422088	NM-1028-83	3004524599		103		CAMPBELL #1
8422087	NM-1027-83	3004524597		103		GASS #1
8422089	NM-1029-83	3004524598		103		GASS #2
8422118	NM-977-83	3004523590		107-TF		RATTLESNAKE CANYON #1
-ROBERT L BAYLESS				RECEIVED:	02/23/84	JA: NM K
8422030	NM-979-83	[illegible]		103		MORTON #2
-SOUTHERN UNION EXPLORATION COMPANY				RECEIVED:	02/23/84	JA: NM K
8422112	NM-0845-83	3004524441		103		HODGES #17
8422068	NM-0846-83	3004524475		103		HODGES #20
8422071	NM-0847-83	3003921517		103		JICARILLA "B" [illegible]
8422115	NM-0848-83	3003922038		103		JICARILLA "C" [illegible]
8422114	NM-0849-83	3003920103		108		JICARILLA "E" [illegible]
-SOUTHLAND ROYALTY CO				RECEIVED:	02/23/84	JA: NM K
8422056	NM-1011-83	3004507794		103		CAIN #16
8422033	NM-973-83	3004525660		103		HUBBARD #7
8422074	NM-0843-83	3004523622		107-TF		REESE MESA #6
[illegible]	NM-972-83	3004507294		103		REID #12
[illegible]	NM-0866-83	3004513240		103		REID #3
8422035	NM-971-83	3004507324		103		REID #7
8422117	NM-983-83	3004506685		103		WHITLEY #5
8422116	NM-982-83	3004511734		103		WHITLEY #9
-TENNECO OIL COMPANY				RECEIVED:	02/23/84	JA: NM K
8422028	NM-986-83	3004521317		103		GALLEGOS A
8422104	NM-984-83	3004500008		103		LODEWICK #1
8422070	NM-985-83	3004511613		103		STOREY C #1
-TEXACO INC				RECEIVED:	02/23/84	JA: NM K
8422042	NM 0965-83	3004524554		103		H J LOE "B" FEDERAL WELL #2E
-UNICON PRODUCING CO				RECEIVED:	02/23/84	JA: NM K
8422103	NM-992-83	3004525531		103		ANGEL PEAK "B" #24E
8422079	NM-1046-83	3004525654		103		ANGEL PEAK "B" #37
8422093	NM-1019-83	3004525675		103		CONGRESS #15
8422066	NM-1043-83	3004525606		103		EATON FEDERAL #2
8422101	NM-990-83	3003922854		103		F-27-24-7 #1
8422029	NM-993-83	3004510249		103		HUNSAKER #1
8422077	NM-1030-83	3004505943		103		NEWSOM B #9
8422102	NM-991-83	3004524505		103		NEWSON "B" #20
8422054	NM 1014-83	3004525674		103		SUMMIT #12
8422053	NM-1015-83	3004525629		103		ZACHRY #45
8422091	NM 1017-83	3004525609		103		ZACHRY #47
8422078	NM -1045-83	3004525608		103		ZACHRY #48
8422055	NM 1013-83	3004525610		103		ZACHRY #49
[illegible]	NM-1022-83	3004525611		103		ZACHRY #51
[illegible]	NM 1018-83	3004525598		103		ZACHRY #52
8422090	NM 1016-83	3004525596		103		ZACHRY #54
[illegible]	NM-1023-83	3004525650		103		ZACHRY #55
8422065	NM-1044-83	3004525649		103		ZACHRY #56
[illegible]	NM-1020-83	3004525595		103		ZACHRY #57

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FIELD NAME	PROD	PURCHASER
BASIN DAKOTA	18.0	NORTHWEST PIPELIN
BISTI GALLUP	18.0	NORTHWEST PIPELIN
BASIN DAKOTA	18.0	NORTHWEST PIPELIN
WAW FRUITLAND - PICTU	6.0	EL PASO NATURAL G
WAW FRUITLAND PICTURE	18.0	NORTHWEST PIPELIN
BALLARD - PICTURED CL	11.0	EL PASO NATURAL G
BALLARD - PICTURED CL	10.0	EL PASO NATURAL G
BLANCO - PICTURED CLI	12.0	EL PASO NATURAL G
BLANCO - MESA VERDE	14.0	EL PASO NATURAL G
FULCHER KUTZ - PICTUR	24.0	EL PASO NATURAL G
BLANCO - MESAVERDE	15.0	EL PASO NATURAL G
OTERO CHACRA	20.0	EL PASO NATURAL G
OTERO GALLUP	5.0	EL PASO NATURAL G
BASIN DAKOTA	13.1	GAS CO OF NEW MEX
BASIN DAKOTA	[illegible]	NORTHWEST PIPELIN
BALLARD PICTURED CLIF	105.0	EL PASO NATURAL G
BASIN DAKOTA	11.0	EL PASO NATURAL G
DEVILS FORK GALLUP	34.7	EL PASO NATURAL G
WAW FRUITLAND PICTURE	12.9	EL PASO NATURAL G
GALLEGOS GALLUP	10.9	EL PASO NATURAL G
BASIN DAKOTA	101.9	NORTHWEST PIPELIN
BASIN DAKOTA	79.3	NORTHWEST PIPELIN
BASIN DAKOTA	137.9	NORTHWEST PIPELIN
BASIN DAKOTA	120.5	NORTHWEST PIPELIN
BASIN DAKOTA	[illegible]	NORTHWEST PIPELIN
BASIN DAKOTA	75.3	NORTHWEST PIPELIN
W A W	12.0	EL PASO NATURAL G
W A W	10.0	EL PASO NATURAL G
W A W	18.0	EL PASO NATURAL G
BLANCO MESA VERDE	73.0	NORTHWEST PIPELIN
BASIN DAKOTA	105.0	NORTHWEST PIPELIN
BALLARD PICTURED CLIF	11.0	GAS CO OF NEW MEX
BALLARD PICTURED CLIF	[illegible]	GAS CO OF NEW MEX
BLANCO MESAVERDE	10.0	GAS CO OF NEW MEX
TAPACITO PICTURED CLI	17.0	GAS CO OF NEW MEX
TAPACITO PC AND BASIN	[illegible]	GAS CO OF NEW MEX
BASIN	12.0	SOUTHERN UNION GA
BLANCO	105.0	SOUTHERN UNION GA
BASIN	80.0	NORTHWEST PIPELIN
AZTEC	19.0	SOUTHERN UNION GA
AZTEC	8.0	SOUTHERN UNION GA
AZTEC	[illegible]	SOUTHERN UNION GA
BASIN	12.0	SOUTHERN UNION GA
BLANCO	18.0	SOUTHERN UNION GA
BASIN DAKOTA	19.0	GAS CO OF NEW MEX
BASIN DAKOTA	12.0	SOUTHERN UNION GA
BASIN DAKOTA	12.0	NORTHWEST PIPELIN
BASIN DAKOTA	12.0	SOUTHERN UNION GA
BASIN DAKOTA	133.0	SOUTHERN UNION GA
GALLUP	55.0	GAS CO OF NEW MEX
GALLUP	58.0	SOUTHERN UNION GA
GALLUP	178.0	EL PASO NATURAL G
ESCRITO GALLUP	16.0	
BLANCO MESA VERDE	25.0	SOUTHERN UNION GA
BASIN DAKOTA	49.0	EL PASO NATURAL G
BALLARD PICTURED CLIF	578.0	EL PASO NATURAL G
GALLUP	142.0	GAS CO OF NEW MEX
GALLUP	27.0	EL PASO NATURAL G
GALLUP	34.0	EL PASO NATURAL G
GALLUP	[illegible]	EL PASO NATURAL G
GALLUP	62.0	EL PASO NATURAL G
GALLUP	254.0	EL PASO NATURAL G
GALLUP	[illegible]	EL PASO NATURAL G
ARMENTA GALLUP	365.0	EL PASO NATURAL G
ARMENTA GALLUP	105.0	EL PASO NATURAL G
GALLUP	61.0	EL PASO NATURAL G
ARMENTA GALLUP	81.0	EL PASO NATURAL G

[FR Doc. 84-7014 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-C

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Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: March 16, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register**.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease.

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation.

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
Issued March 16, 1984

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-ADOBE OIL & GAS CORPORATION				RECEIVED:	02/24/84	JA: TX			
8422365	F-7B-077751	4225332671		103		D L BRISTOW #5	MINTER	12.0	
-AMERICAN QUASAR PETROLEUM CO				RECEIVED:	02/24/84	JA: TX			
8422320	F-09-077018	4218130991		102-4	103	ELIZABETH 1-A	TURNER SURVEY A-1266	0.0	LONE STAR GAS CO
-AMOCO PRODUCTION CO				RECEIVED:	02/24/84	JA: TX			
8422353	F-8A-077512	4218930255		103		ANTON IRISH CLEARFORK UNIT #437	ANTON IRISH	19.0	WESTAR TRANSMISSI
8422197	F-04-071660	4248900404		103		ELMER G JOHNSON #2	WILLAMAR	37.0	NATURAL GAS PIPEL
8422354	F-8A-077517	4250132428		103		WASSON ODC UNIT #576	WASSOM	65.0	SHELL OIL CO
-ARCADIA REFINING CO				RECEIVED:	02/24/84	JA: TX			
8422203	F-06-072434	4240130620		102-4		TERRY BRIDGES #1 #89742	CHAPMAN (COTTON VALLE	0.0	TUFCO
-ARCO OIL AND GAS COMPANY				RECEIVED:	02/24/84	JA: TX			
8422409	F-04-078326	4250531681		102-4		ARCO MARSHALL S G #1	LAS OVEJAS (LOBO 6)	705.0	ARCO PETROLEUM PR
8422418	F-04-078327	4250531662		102-4		ARCO MERCURIO MARTINEZ #1	LAS OVEJAS (LOBO 6)	365.0	ARCO PETROLEUM PR
8422204	F-01-072437	4231131533		108		D W RHODE 18 #5	RHODE RANCH EAST (WIL	0.0	HOUSTON PIPELINE
8422225	F-04-073509	4213134931		103		HAGIST A #15	HAGIST RANCH (WILCOX	650.0	NATURAL GAS PIPEL
-ATWELL OIL CO INC				RECEIVED:	02/24/84	JA: TX			
8422313	F-7B-076898	4205934704		102-4		T CARTER "A" #1	MIS RAIZES (DUFFER)	0.0	SOUTHWESTERN GAS
-ATWOOD EXPLORATION CO				RECEIVED:	02/24/84	JA: TX			
8422359	F-04-077585	4240931754		103		BLASCHKE-MAYO #1	MIDWAY (2700)	22.0	HOUSTON PIPE LINE
-AUSTIN OIL & MINERAL				RECEIVED:	02/24/84	JA: TX			
8422247	F-03-074890	4228700000		102-4		V HERVEY #1	DIME BOX (NAVARRO)	10.6	PHILLIPS PETROLEU
-BRIGHT & COMPANY				RECEIVED:	02/24/84	JA: TX			
8422246	F-04-074621	4221531364		102-4	107-TF	HAMMAN "A"-7	MONTE CHRISTO (VICKSB	1000.0	TECO PIPELINE CO
-C & K PETROLEUM INC				RECEIVED:	02/24/84	JA: TX			
8422202	F-04-071867	4224731548		102-3		MESTENA E-7	MESTENA GRANDE (QUEEN	367.0	AMERICAN PIPELINE
-C F LAWRENCE & ASSOC INC				RECEIVED:	02/24/84	JA: TX			
8422199	F-7C-071842	4210500000		103		TODD Y #1	TODD SW (SAN ANDRES)	0.0	APACHE GAS CORP
-CARAWAY OPERATING CO				RECEIVED:	02/24/84	JA: TX			
8422357	F-7C-077570	4241331345		102-4		MARY ROBINSON #1	ARLENE (NEW FIELD)	536.0	FARMLAND INDUSTRI
-CHAMPLIN EXPLORATION INC				RECEIVED:	02/24/84	JA: TX			
8422222	F-03-073426	4214931465		102-2		BECKER-MUELLER #1	GIDDINGS (AUSTIN CHAL	10.0	PHILLIPS PETROLEU
-CHASE-MANN PETROLEUM INC				RECEIVED:	02/24/84	JA: TX			
8422338	F-7B-077358	4213300000		102-4		M A CLYATT #1	CAMERON P (MARBLE FAL	17.6	EL PASO HYDROCARB
-CHESTER R UPHAM JR				RECEIVED:	02/24/84	JA: TX			
8422321	F-7B-077128	4236300000		102-4		CHASTAIN #2	CALABRIA (CONGL 3700)	0.0	SOUTHWESTERN GAS
-CHRISTI CO INC				RECEIVED:	02/24/84	JA: TX			
8422423	F-7B-078367	4204932402		[illegible]		HENSOM #1 090691	BROWN CO REGULAR (MAR	10.0	EL PASO HYDROCARB
-CIM\ EXPLORATION INC				RECEIVED:	02/24/84	JA: TX			
8 :425	F-7C-078372	4238332318		103		HICKMAN #1	PRICE	10.0	JAMES L LAMB JR
84 2428	F-7C-078376	4238332429		103		HICKMAN #2	PRICE	10.0	JAMES L LAMB JR
84 2434	F-7C-078388	4238332472		103		HICKMAN #3	PRICE	10.0	JAMES L LAMB JR
8422427	F-7C-078374	4238332633		103		HICKMAN #4	PRICE	10.0	JAMES L LAMB JR
8422426	F-7C-078373	4238332551		103		HICKMAN "A" #3	PRICE	10.0	JAMES L LAMB JR
-CIPPELE RESOURCES CO				RECEIVED:	02/24/84	JA: TX			
8422276	F-06-076010	4218330592		103	107-TF	COLLIER GAS UNIT #1	OAK HILL	540.0	TEJAS GAS CORP
-CI[illegible]LE SEVEN OIL & GAS INC				RECEIVED:	02/24/84	JA: TX			

BILLING CODE 6717-01-M

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422390	F-09-078037	4223735570		102-4		AUSTIN WEBB #1	PFIESTER (STRAWN)	0.0	SOUTHWESTERN GAS
-COATES ENERGY TRUST				RECEIVED:	02/24/84	JA: TX			
8422207	F-04-072536	4242731773		102-4		DANIEL ALVARADO UNIT #I #2	ALVARADO (6780')	91.0	VALERO INTERSTATE
-CONOCO INC				RECEIVED:	02/24/84	JA: TX			
8422312	F-08-076894	4222733041		103		G O CHALK "B" ID 18988	HOWARD GLASSCOCK	365.0	PHILLIPS PETROLEU
8422350	F-08-077466	4213500000		103		GIST UNIT #136 ID 19373	[illegible]	1.5	EL PASO HYDROCARB
8422294	F-04-076552	4200730732		103		ST CHARLES CO #71	BLACKJACK (Y-10 650)	0.0	
8422421	F-04-078359	4242731230		[illegible]		T B SLICK EST A-221 #152	RINCON (FRIO B-1)	11.0	TENNESSEE GAS PIP
-COURSON OIL & GAS INC				RECEIVED:	02/24/84	JA: TX			
8422322	F-10-077155	4235731438		107-TF		FIRST NATIONAL TRUST #4-571	ELLIS RANCH (CLEVELAN	120.0	TRANSWESTERN PIPE
-CROWN EXPLORATION CO				RECEIVED:	02/24/84	JA: TX			
8422352	F-7B-077508	4205900000		102-2		GILBRETH #1 RRC #100255	PUTNAM SOUTH (CADDO L	275.0	DELHI GAS PIPELIN
-CROWN PRODUCTION CO INC				RECEIVED:	02/24/84	JA: TX			
8422189	F-01-056368	4216331974		103		RIGGS "F" #3	PEARSALL (AUSTIN CHAL	0.0	TIPPERARY CORP
-CRYSTAL OIL AND LAND COMPANY				RECEIVED:	02/24/84	JA: TX			
8422253	F-06-075436	4206730439		102-4	103	BLANCHARD "A" #1-L	RODESSA	912.0	BRECKENRIDGE GASO
8422251	F-06-075248	4206700000		102-4		CRYSTAL TERRY ET AL "A" #1-U	RODESSA	142.0	BRECKENRIDGE GASO
8422275	F-06-075981	4206730441		102-4		TERRY "B" #1-L	RODESSA	50.0	BRECKENRIDGE GASO
-CYCLONE EXPLORATION INC				RECEIVED:	02/24/84	JA: TX			
8422231	F-7C-073678	4243532884		103	107-TF	JOHN D FIELDS "B" #1-60	SAWYER (CANYON)	25.0	EL PASO NATURAL G
-DIAMOND CHEMICALS CO				RECEIVED:	02/24/84	JA: TX			
8422245	F-10-074491	4229531284		103		VESTER SMITH #2-700	LIPSCOMB SEC 610	0.0	
-DISCOVERY OPERATING INC				RECEIVED:	02/24/84	JA: TX			
8422296	F-7C-076587	4[illegible]332682		103		LOFTIN #6	SPRABERRY (TREND AREA	0.0	EL PASO NATURAL G
-DON M HANVEY OIL INTERESTS INC				RECEIVED:	02/24/84	JA: TX			
8422265	F-7B-075716	4221333469		102-4		GARL D GORR #1 RRC LEASE NO 19694	HANVEY (LAKE SAND)	200.0	EL PASO HYDROCARB
8422266	F-7B-075717	4221333486		102-4		GARL D GORR #2	HANVEY (LAKE SAND)	200.0	EL PASO HYDROCARB
8422264	F-7B-075714	4221333353		102-4		J B BOGGS #1 RRC LEASE NO 18450	HANVEY (LAKE SAND)	139.0	EL PASO HYDROCARB
8422263	F-7B-075713	4221333495		102-4		J B BOGGS #3 RRC LEASE NO 18450	HANVEY (LAKE SAND)	45.0	EL PASO HYDROCARB
8422268	F-7B-075721	4213334281		102-4		THOMAS ET AL "A" #1	HANVEY (LAKE SAND)	125.0	EL PASO HYDROCARB
8422267	F-7B-075720	4213333895		102-4		WESLEY SMITH #1 RRC LEASE NO 099933	HANVEY (LAKE SAND)	350.0	EL PASO HYDROCARB
-DORCHESTER EXPLORATION INC				RECEIVED:	02/24/84	JA: TX			
8422239	F-08-074119	4217331901		103		CURRIE 41 #1	SPRABERRY TREND AREA	9.0	
-ENERGY DEVELOPMENT CORP (TX)				RECEIVED:	02/24/84	JA: TX			
8422366	F-02-077764	4205731120		102-4		POWDERHORN RANCH #5 - ID #107946	POWDERHORN SW (FRIO 8	474.5	PUBLIC SERVICE EL
-ENSERCH EXPLORATION INC				RECEIVED:	02/24/84	JA: TX			
8422283	F-8A-076266	4203330944		103		EICKE #1	HOOD N	0.0	
8422308	F-01-076861	4201331798		103		J L TOM "A" UNIT 2 #3	FASHING/EDWARDS LIME	0.0	NATURAL GAS PIPEL
8422309	F-01-076862	4201331798		103		J L TOM "A" UNIT 2 #3	FASHING/EDWARDS LIME	0.0	NATURAL GAS PIPEL
8422271	F-05-075911	4221330383		103		MCELREATH & SUGGETT #6C	OPELIKA	0.0	LONE STAR GAS CO
8422273	F-05-075925	4221330383		103		MCELREATH & SUGGETT #6T	OPELIKA	0.0	LONE STAR GAS CO
-ESENJAY PETROLEUM CORP				RECEIVED:	02/24/84	JA: TX			
8422377	F-02-077833	4223931899		103		ASHFORD #1	ANITA (6250)	1204.0	
-EVEREST MINERALS CORP				RECEIVED:	02/24/84	JA: TX			
8422220	F-04-073339	4247933269		102-4	103	A MARTINEZ #1A	LAS ANIMAS-LEFEVERE N	70.0	ESPERANZA TRANSMI
8422221	F-04-073341	4247933426		102-4	103	A MARTINEZ #5	LAS ANIMAS-LEFEVERE N	70.0	ESPERANZA TRANSMI
-EXXON CORPORATION				RECEIVED:	02/24/84	JA: TX			
8422238	F-08-073591	4[illegible]0333462		103		FULLERTON CLEARFORK UNIT #586	FULLERTON	15.0	PHILLIPS PETROLEU
8422254	F-03-075441	4[illegible]7131445		103		GALVESTON BAY STATE A #186	RED FISH REEF (FB B-1	650.0	HOUSTON PIPELINE
8422419	F-06-078355	4[illegible]7330505		102-4		HARLAND LANIER GAS UNIT #1 #1T	REKLAW (TRAVIS PEAK)	455.0	ARMCO STEEL CORP
8422418	F-06-078354	4[illegible]9931210		103		HAWKINS FIELD UNIT #2389	HAWKINS	43.0	
8422414	F-06-078348	4269931204		103		HAWKINS FIELD UNIT #4207	HAWKINS	43.0	
8422415	F-03-078350	4[illegible]5731482		103		J H P DAVIS #70	THOMPSON SOUTH	30.0	ARMCO STEEL CORP
8422291	F-03-076497	4[illegible]7330393		103		KATY GAS FIELD UNIT I #W-56	KATY (FIRST WILCOX)	730.0	UNITED TEXAS TRAN
8422452	F-04-078513	4[illegible]7331790		102-4		KING RANCH MORGAN M-84 (10365)	MAGNOLIA CITY (F-10)	22.0	ARMCO STEEL CORP
8422376	F-05-077831	4[illegible]4933324		102-4		KIT W ROWE ESTATE #2	INGRAM TRINITY (RODES	91.0	ARMCO STEEL CORP
8422420	F-03-078358	4[illegible]5731485		103		LOCKWOOD & SHARP "A" #98	THOMPSON	13.0	ARMCO STEEL CORP
8422417	F-06-078353	42[illegible]0131623		102-4		MRS L E COOLIDGE A/C 1 #87	NEW LONDON	18.0	ARMCO STEEL CORP
8422424	F-04-078370	4[illegible]3136319		103		PAUL E WHITE "B" 117 05624	LUNDELL (MIRANDO NO 1	3.3	ARMCO STEEL CORP
8422451	F-04-078512	4[illegible]6130817		102-4		RJ KLEBERG JR TR STILLMAN 638108346	TORDILLA (J-42)	1135.0	ARMCO STEEL CORP
8422302	F-8A-076663	4[illegible]6532530		103		ROBERTSON CLEARFORK UNIT #2803	ROBERTSON N (CLEAR FO	15.0	PHILLIPS PETROLEU
8422326	F-08-077209	4[illegible]0931698		103		TEXACO FEE F #1	FORD WEST (4100)	3.0	
8422413	F-03-078345	42[illegible]0131618		103		WEBSTER FIELD UNIT #2782	WEBSTER	100.0	HOUSTON PIPELINE
-F W BURGER INC				RECEIVED:	02/24/84	JA: TX			
8422388	F-7B-078006	4205330711		102-4		W HOLLADAY #1 (19861)	DOUBLE ODDS (CADDO)	36.0	PALO DURO PIPELIN
-FOREST OIL CORPORATION				RECEIVED:	02/24/84	JA: TX			
8422278	F-04-076092	4221531354		103	107-TF	A A MCALLEN #25	MCALLEN RANCH (VICKSB	900.0	VALERO TRANSMISSI
-FORGOTSON JAMES M JR				RECEIVED:	02/24/84	JA: TX			
8422250	F-06-075161	4205930401		[illegible]		P K WILLIAMS GAS UNIT #1 ID #078604	ROSEWOOD (COTTON VALL	13.0	WESTERN GAS CORP
-GAYLYN EXPLORATION INC				RECEIVED:	02/24/84	JA: TX			
8422379	F-09-077836	4223735501		102-4		CALDWELL M P #1	WALDEN (3318) FIELD	48.0	SOUTHWESTERN GAS
-GETTY OIL COMPANY				RECEIVED:	02/24/84	JA: TX			
8422236	F-04-073917	4247900000		102-4	107-TF	DIX RANCH #342-A	DIX RANCH (LOWER WILC	0.0	HOUSTON PIPELINE
8422408	F-7B-078325	4203331749		103		FLOWERS CANYON SAND UNIT #231	FLOWERS (CANYON SAND)	1.7	CITIES SERVICE OI
8422319	F-7C-077009	4201300000		103	107-TF	L I WHITTEN #2	ELDORADO N (CANYON A)	60.0	ARCO OIL & GAS CO
-GRAND BANKS ENERGY CO				RECEIVED:	02/24/84	JA: TX			
8422289	F-7B-076374	4208333449		102-4	103	GRAY #1	HRUBETZ (ELLEN)	2.0	UNION TEXAS PETRO
8422288	F-7B-076373	4208333521		102-4	103	GRAY #2	HRUBETZ (ELLEN)	7.3	UNION TEXAS PETRO
8422287	F-7B-076371	4[illegible]3333559		102-4	103	GRAY #3	HRUBETZ (ELLEN)	12.8	UNION TEXAS PETRO
-GROVER J GEISELMAN				RECEIVED:	02/24/84	JA: TX			
8422387	F-03-077994	4215731442		103		LEUS GAS UNIT #2 107695	NEEDVILLE (MIO 4000 2	180.0	PHILLIPS PETROLEU
-GULF OIL CORPORATION				RECEIVED:	02/24/84	JA: TX			
8422431	F-09-078382	4223735180		103		BILLIE YATES #12	BOONSVILLE/BEND CONGL	2388.9	NATURAL GAS PIPEL
8422439	F-08-078439	4[illegible]7532771		103		CRAWAR FIELD UNIT #20	CRAWAR SAN ANDRES	18.0	TRANSWESTERN PIPE
8422440	F-08-078440	4[illegible]7532769		103		CRAWAR FIELD UNIT #21	CRAWAR (SAN ANDRES)	18.0	TRANSWESTERN PIPE
8422430	F-08-078381	4[illegible]7134558		103		FRED SCHLOSSER ETAL #4	ROJO CABALLOS/DELAWAR	93.0	EL PASO NATURAL G
8422290	F-08-076403	4[illegible]3534278		103		GOLDSMITH C A ET AL #1398	WILDCAT GOLDSMITH (MC	1.0	PHILLIPS PETROLEU
8422433	F-08-078384	4[illegible]7132510		103		L H MILLAR ET AL #16	PUTNAM/WICHITA ALBANY	234.0	PHILLIPS PETROLEU
8422432	F-08-078383	4[illegible]2733267		103		OTIS CHALK #13	HOWARD GLASSCOCK	1.0	PHILLIPS PETROLEU
8422441	F-08-078445	4[illegible]0333717		103		TRIPLE-N GRAYBURG CONS #A-10-P	TRIPLE-N (GRAYBURG)	0.0	PHILLIPS PETROLEU
8422256	F-08-075536	4[illegible]3931407		103		TXL "BM" (NCT-A) #13	JESS BURNER (DELAWARE	14.0	CONOCO INC
8422261	F-08-075697	4[illegible]3931407		102-4		TXL "BM" (NCT-A) #13	JESS BURNER (DELAWARE	14.0	CONOCO INC
8422262	F-08-075699	4[illegible]7532955		103		UNIVERSITY 18-29 #10	QUITO EAST (CHERRY CA	341.0	VALERO TRANSMISSI
-HAMMAN OIL & REFINING CO				RECEIVED:	02/24/84	JA: TX			
8422192	F-03-06749	4207100000		103		STATE TRACT #36 #1	LAKE ANAHUAC TOWNSITE	0.0	UNITED TEXAS TRAN
-HARRISON INTERESTS LTD				RECEIVED:	02/24/84	JA: TX			
8422334	F-03-077298	4207131450		102-4	103	ANDY FRANKLAND #2	FRANKLAND S (11200')	400.0	HOUSTON PIPELINE
-HCW EXPLORATION INC				RECEIVED:	02/24/84	JA: TX			
8422255	F-09-075459	4223732455		[illegible]		KIT GUNTER #1 ID #081747	RIGGS (CONGLOMERATE)	5.1	LONE STAR GAS CO
-HEWIT & DOUGHERTY				RECEIVED:	02/24/84	JA: TX			
8422386	F-04-077948	4205500000		102-4		L M JONES #2 (RRC ID #108035)	RIVERSIDE EAST (6375'	365.0	CHANNEL INDUSTRIE
-HIGHLAND RESOURCES INC				RECEIVED:	02/24/84	JA: TX			
8422210	F-05-073037	4216130831		103	107-TF	J W BROWN G U WELL #1	TEAGUE TOWNSITE (COTT	0.0	LONE STAR GAS CO
-HILLIARD OIL & GAS INC				RECEIVED:	02/24/84	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8422383	F-02-076698	4217531763		102-4		GRUETZMACHER #1
-HINTON PRODUCTION COMPANY				RECEIVED:	02/24/84	JA: TX
8422223	F-06-073439	4240131682		102-4		TUFCO "A" 1
8422232	F-06-073693	4240131653		102-4		WATTS - JOHNSON #1
-HNG OIL COMPANY				RECEIVED:	02/24/84	JA: TX
8422336	F-7C-077347	4243500000		103	107-TF	GALBREATH "78" #4-A
8422295	F-08-076557	4237100000		102-2	103	HUDGINS "37" #1
-HOLIDAY RESOURCES INC				RECEIVED:	02/24/84	JA: TX
8422314	F-06-076965	4213136286		102-4		JUANITA SALINAS #1
-INDIAN WELLS OIL CO				RECEIVED:	02/24/84	JA: TX
8422407	F-7C-078322	4223532151		103		ROCKER B 1949-4
8422406	F-7C-078321	4223532168		103		WINTERBOTHAM 27-4
-J A LEONARD				RECEIVED:	02/24/84	JA: TX
8422315	F-03-076966	4205100000		102-4		JAMESON #1
-J B DAVIS PIPE CO INC				RECEIVED:	02/24/84	JA: TX
8422335	F-7B-077318	4236332215		102-4		J B DAVIS #2
-J B HERRMANN				RECEIVED:	02/24/84	JA: TX
8422355	F-10-077547	4223331655		103		CHAIN "C" #4
8422358	F-10-077575	4223331543		103		WHITTENBURG #1
-J M HUBER CORPORATION				RECEIVED:	02/24/84	JA: TX
8422240	F-03-074184	4219931837		102-2	103	J FINKELSTEIN #2
8422442	F-10-078454	4223331698		103		MAGNOLIA HERRING #32
-JAMES K ANDERSON INC				RECEIVED:	02/24/84	JA: TX
8422337	F-7C-077348	4239932796		102-4		ODELL "B" #2
-JAMES L LAMB JR				RECEIVED:	02/24/84	JA: TX
8422385	F-7C-077914	4210534553		103		UNIVERSITY 51-2 #3
-JENNINGS EXPLORATION CO				RECEIVED:	02/24/84	JA: TX
8422422	F-01-078361	4250731995		102-4		HENDERSON LTM ENTERPRISES #1 108225
-K-M OPERATING CORP				RECEIVED:	02/24/84	JA: TX
8422235	F-03-073881	4205132521		102-2		BATES #6
-KAISER OIL (US) LTD				RECEIVED:	02/24/84	JA: TX
8422188	F-06-051178	4206730371		102-4		V E GLASS #1
-KATLACO OPERATING CO INC				RECEIVED:	02/24/84	JA: TX
8422252	F-7B-075341	4213335245		102-4		KATLACO FEE "O" #8
-LACY & BYRD INC				RECEIVED:	02/24/84	JA: TX
8422416	F-7C-078352	4223532162		103		ROCKER B "B" #10 (RRC 007533)
-LADD PETROLEUM CORPORATION				RECEIVED:	02/24/84	JA: TX
8422378	F-7C-077834	4210534634		103	107-TF	V I PIERCE #10-5
-LAMBERT HOLLUB DRILLING CO				RECEIVED:	02/24/84	JA: TX
8422398	F-03-078271	4205132523		102-4		STANLEY "A" #1
-LAYTON ENTERPRISES INC				RECEIVED:	02/24/84	JA: TX
8422402	F-8A-078284	4207931664		103		REED WRIGHT #A-1
8422403	F-8A-078285	4207931662		103		REED WRIGHT #B-2
8422399	F-8A-078280	4207931661		103		REED WRIGHT #B-3
8422400	F-8A-078282	4207931660		103		REED WRIGHT #B-4
8422401	F-8A-078283	4207931659		103		REED WRIGHT #B-5
8422404	F-8A-078287	4207931658		103		REED WRIGHT #B-6
-LEWIS & AIKINS OIL & GAS INC				RECEIVED:	02/24/84	JA: TX
8422193	F-7C-068004	4238332487		103		UNIVERSITY 15 "C" #1
-LEWIS B BURLESON				RECEIVED:	02/24/84	JA: TX
8422361	F-08-077601	4237134092		103		PUCKETT #5
-M & G OIL COMPANY				RECEIVED:	02/24/84	JA: TX
8422316	F-7C-077001	4210533201		103		THOMPSON "A" #1
-M BRAD BENNETT INC & RKH LTD				RECEIVED:	02/24/84	JA: TX
8422412	F-08-078341	4247533117		102-4		ADOBE #5
-MABEE PETROLEUM CORP				RECEIVED:	02/24/84	JA: TX
8422281	F-8A-076143	4250132381		103		GIBSON UNIT #1010
-MARIANAS OPERATING CO INC				RECEIVED:	02/24/84	JA: TX
8422226	F-7B-073518	4208333336		102-4		MCCORD #1 (107032)
-MARSHALL EXPLORATION INC				RECEIVED:	02/24/84	JA: TX
8422211	F-03-073246	4231330454		102-4	103	MOSS-MALONE "B" #5
-MCCAULEY F R				RECEIVED:	02/24/84	JA: TX
8422397	F-02-078255	4228500000		103		BONORDEN-CLARK GU #1 0003803
-MCZ INC				RECEIVED:	02/24/84	JA: TX
8422190	F-03-061169	4204130768		102-2		SIEGERT UNIT #1-L
-MESA PETROLEUM CO				RECEIVED:	02/24/84	JA: TX
8422323	F-8A-077158	4211531556		103		THOMAS "11" #1
-MITCHELL ENERGY CORPORATION				RECEIVED:	02/24/84	JA: TX
8422191	F-09-066314	4249700000		108-ER		CLEO RANN A #1
8422259	F-09-075623	4249732648		103		G Y GANN #3-T
8422280	F-09-076137	4249732590		103		GAGE BROS GU #2
8422373	F-7B-077801	4236700000		103		J BROUMLEY #1 #075536
8422372	F-7B-077800	4236700000		108		J D GILBERT #1 #084683
8422371	F-09-077797	4249700000		108		L D SHAWVER #2 097138
8422356	F-8A-077552	4203330925		103		REEDER -410- #1
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	02/24/84	JA: TX
8422453	F-8A-078518	4216532733		103		H & J SEC 127 #5
8422455	F-8A-078520	4221934131		103		NORTH CENTRAL LEVELLAND UNIT #395
8422454	F-08-078519	4230130461		102-4		W D JOHNSON 34-N #4
-MORAN EXPLORATION INC				RECEIVED:	02/24/84	JA: TX
8422380	F-7C-077844	4223530754		108		ROCKER B "110" #1 RRC 73717
-NEWPORT PETROLEUMS INC				RECEIVED:	02/24/84	JA: TX
8422205	F-7C-072481	4238332362		103		UNIVERSITY 31-1
8422206	F-7C-072482	4238332381		103		UNIVERSITY 32-1
-NORDIC PETROLEUMS INC				RECEIVED:	02/24/84	JA: TX
8422389	F-7B-078011	4208333818		103		NEFF #1
-OWL PETROLEUM CO				RECEIVED:	02/24/84	JA: TX
8422351	F-03-077488	4248132539		102-4		BROWNSON HOME ET AL GAS UNIT #3
-PARKER & PARSLEY INC				RECEIVED:	02/24/84	JA: TX
8422391	F-08-078056	4232900000		103		BEAL-SNYDER "B" #1
8422285	F-08-076338	4231700000		103		CAMPBELL "83" #1
8422286	F-08-076339	4231700000		103		CAMPBELL "83" #2
8422212	F-7C-073265	4238300000		103		HARTGROVE #2
8422238	F-08-074060	4232900000		103		MILES "B" #1
8422274	F-08-075934	4232900000		103		TURNER "H" #1
-PHILLIPS OIL CO				RECEIVED:	02/24/84	JA: TX
8422363	F-7C-077713	4245131288		102-4		MUNN-B "1125" #1
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	02/24/84	JA: TX
8422364	F-08-077716	4213504646		108		SLAT #2 (07002)
-POLK & PATTON INC				RECEIVED:	02/24/84	JA: TX
8422234	F-7B-073795	4236732571		103		BUD #2
-PRAIRIE PRODUCING CO				RECEIVED:	02/24/84	JA: TX
8422297	F-06-076598	4234700000		102-4		STRONG GAS UNIT #1
-PRINGLE PETROLEUM INC				RECEIVED:	02/24/84	JA: TX

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FIELD NAME	PROD	PURCHASER
WEESATCHE WEST (WOLT	1460.0	HOUSTON PIPE LINE
MINDEN (TRAVIS PEAK M	500.0	TEXAS UTILITIES F
MINDEN W (TRAVIS PEAK	500.0	TEXAS UTILITIES F
SAWYER (CANYON)	183.0	INTRATEX GAS CO
OATES SW (MONTOVA)	300.0	INTRATEX GAS CO
AMANDO (YEGUA) (PROPO	200.0	OLMOS GATHERING C
ROCKER B (CANYON)	0.0	NORTHERN NATURAL
BROOKS (CANYON K)	0.0	NORTHERN NATURAL
INEZ JAMESON (NAVARRO	11.0	FERGUSON CROSSING
MCCLISH-STONE (CONGL	20.0	NORTHERN GAS PROD
PANHANDLE - HUTCHINSO	18.0	LIQUID ENERGY COR
PANHANDLE - HUTCHINSO	29.0	LIQUID ENERGY COR
SOUR LAKE EAST (KIRBY	1825.0	HOUSTON PIPE LINE
PANHANDLE	55.0	COLORADO INTERSTA
FRITZESS EAST (GARDNE	180.0	LONE STAR GAS CO
FARMER	18.0	CROCKETT COUNTY G
CAPOTA CREED (BRACERO	146.0	REATA INDUSTRIAL
BIG -A- TAYLOR	0.0	CLAJON GAS CO
ATLANTA (SOUTH)	420.0	
ARDINGER (LAKE SAND U	197.0	EL PASO HYDROCARB
SPRABERRY (TREND AREA	38.0	NORTHERN NATURAL
OZONA (CANYON SAND)	232.7	AMERICAN PIPELINE
HOOKER CREEK (NAVARRO	125.0	FERGUSON CROSSING
LEVELLAND	8.9	CITIES SERVICE CO
LEVELLAND	8.9	CITIES SERVICE CO
LEVELLAND	8.9	CITIES SERVICE CO
LEVELLAND	8.9	CITIES SERVICE CO
LEVELLAND	8.9	CITIES SERVICE CO
LEVELLAND	8.9	CITIES SERVICE CO
SPRABERRY (TREND AREA	36.0	J L DAVIS
BELDING (YATES)	40.0	APACHE GAS CORP
NOELKE W (880)	0.0	KIBO COMPRESSOR C
COLLIE (DELAWARE)	45.6	INTRATEX GAS CO
WASSON 72	0.0	SHELL OIL CO
MARIANAS (GARDNER)	200.0	EL PASO HYDROCARB
MADISONVILLE NE (GEOR	180.0	LONE STAR GAS CO
PROVIDENT CITY	21.0	TEXAS EASTERN TRA
BRYAN N (GEORGETOWN)	170.0	FERGUSON CROSSING
WELCH SE (SPRABERRY)	13.0	
BOONSVILLE	0.0	CORONADO TRANSMIS
BOONSVILLE (BEND CONG	232.5	NATURAL GAS PIPEL
BOONSVILLE (BEND CONG	189.6	LONE STAR GAS CO
BUCK RANCH (STRAWN)	0.0	CORONADO TRANSMIS
BRAZOS EAST (STRAWN)	0.0	CORONADO TRANSMIS
BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
MYRTLE W (STRAWN)	0.0	
SEMINOLE EAST (SAN AN	15.0	PHILLIPS PETROLEU
LEVELLAND	5.0	AMOCO PRODUCTION
DIMMIT (CHERRY CANYON	14.0	INTRATEX GAS CO
ELA SUGG (WOLFCAMP)	18.5	NORTHERN NATURAL
SPRAYBERRY (TREND ARE	12.0	EL PASO HYDROCARB
SPRAYBERRY (TREND ARE	4.0	EL PASO HYDROCARB
GAYLE	146.0	SOUTHWESTERN GAS
BLACK OWL	1000.0	HOUSTON PIPE LINE
SPRABERRY (TREND AREA	1.5	PHILLIPS PETROLEU
SPRAYBERRY (TREND ARE	0.0	
SPRABERRY (TREND AREA	0.0	
SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	15.0	EL PASO NATURAL G
T D (6575)	45.0	
TXL (SILURIAN)	7.0	SHELL OIL CO
TOTO(CADDO CONGL)	0.0	SOUTHWESTERN GAS
NACONICHE CREEK (TRAV	60.0	UNITED GAS PIPE L

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422279	F-03-076131	4220100000		102-4		E PORTER #1 - ID #108352	HOUSTON NORTH (7020)	260.0	BADISCHE CORP
-QUAHAM DRILLING & EXPLORATION INC		RECEIVED:	02/24/84	JA: TX					
8422332	F-7B-077251	4236732505		102-4		BONE #2	DENNIS WEST (STRAWN)	24.0	TEXAS UTILITIES F
-R A W ENERGY CORP		RECEIVED:	02/24/84	JA: TX					
8422277	F-7B-076018	4208333481		102-4		SEALY-SMITH #8	WILDCAT	50.0	UNION TEXAS PETRO
8422328	F-7B-077235	4236732623		102-4		WILEY "A" 3B	DICEY N (BIG SALINE C	250.0	TEXAS UTILITIES F
-RELIANCE ENERGY & MINERALS CORP		RECEIVED:	02/24/84	JA: TX					
8422394	F-03-078153	4205100000		102-2		JYNNIFER #1	GIDDINGS/AUSTIN CHALK	0.0	CLAJON GAS CO
8422227	F-03-073522	[illegible]		102-2		ODSTRCIL #1	GIDDINGS/AUSTIN CHALK	0.0	FERGUSON CROSSING
-RENDOVA OIL CO		RECEIVED:	02/24/84	JA: TX					
8422382	F-08-077881	4238931439		102-4	103	[illegible] 'A' #2	SCOTT (CHERRY CANYON)	200.0	INTRATEX GAS CO
-RIDGEWAY EXCO INC		RECEIVED:	02/24/84	JA: TX					
8422429	F-7B-078379	4213335411		102-4		TARVER "A" #18 (19061)	HAWK-EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
-RISA ENERGY CORP		RECEIVED:	02/24/84	JA: TX					
8422248	F-02-074944	4217531773		102-4		MARTIN #2	ANDER (1400 SAND)	36.0	REATA INDUSTRIAL
-ROBERTS & HAMMACK INC		RECEIVED:	02/24/84	JA: TX					
8422317	F-05-077002	4228930384		[illegible]		JAMES DONAHOE #2	RED OAK (SUB-CLARKSVI	19.0	LONE STAR GAS CO
8422318	F-05-077003	[illegible]		[illegible]		WELDON ALLBRITTON #2	RED OAK (SUB-CLARKSVI	18.0	LONE STAR GAS CO
-ROYAL OIL & GAS CORPORATION		RECEIVED:	02/24/84	JA: TX					
8422292	F-01-076499	4231131948		102-4	103	BRACKEM RANCH #7	A W P (OLMOS)	55.0	HOUSTON PIPE LINE
8422228	F-01-073549	4231131878		102-4	103	R P HORTON #5	A W P (OLMOS)	365.0	HOUSTON PIPE LINE
-S K TUTHILL & B J BARBEE		RECEIVED:	02/24/84	JA: TX					
8422393	F-7C-078142	4223500009		102-4		WINTERBOTHAM "D" 2-2	BUTTES NORTH FIELD	10.0	FARMLAND INDUSTRI
-SABIO OIL & GAS INC		RECEIVED:	02/24/84	JA: TX					
8422187	F-09-085636	4249700000		108-ER		I C MORROW #1	BOONSVILLE	0.0	NATURAL GAS PIPEL
-SAGE ENERGY CO		RECEIVED:	02/24/84	JA: TX					
8422216	F-03-073308	4205132505		102-2		BEN #1 RRC#16944	GIDDINGS (AUSTIN CHAL	17.1	FERGUSON CROSSING
8422217	F-03-073332	4205100000		102-2		COOKS POINT #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
8422246	F-03-074399	4214931622		102-2		FALCON UNIT #1 RRC#16968	GIDDINGS (BUDA)	34.6	PHILLIPS PETROLEU
8422215	F-03-073307	4214931611		102-2		IVY #2 RRC#13655	GIDDINGS (AUSTIN CHAL	14.9	PHILLIPS PETROLEU
8422218	F-03-073333	4214931594		102-2		MACBETH #1 RRC #17091	GIDDINGS (AUSTIN CHAL	14.9	PHILLIPS PETROLEU
8422198	F-03-071740	4214931467		102-2		MARTINEZ #2 RRC #13495	GIDDINGS (AUSTIN CHAL	18.0	PHILLIPS PETROLEU
8422339	F-7C-077427	4210534648		103		OZONA DEVELOPMENT "7" #1/RRC #	FARMER (SAN ANDRES)	2.7	NORTHERN NATURAL
8422340	F-7C-077428	4238332732		103		PHILLIPS STATE #3 RRC #10149	FARMER (SAN ANDRES)	1.2	NORTHERN NATURAL
8422342	F-7C-077430	4210534640		103		SUPERIOR STATE "14" #4 RRC #09923	FARMER (SAN ANDRES)	0.7	NORTHERN NATURAL
8422341	F-7C-077429	4210534642		103		SUPERIOR STATE "7" #4 RRC #09917	FARMER (SAN ANDRES)	0.9	NORTHERN NATURAL
8422214	F-03-073306	4214931589		102-2		TEXACO #1 RRC#16860	GIDDINGS (AUSTIN CHAL	27.0	PHILLIPS PETROLEU
8422213	F-03-073305	4214900000		102-2		TEXACO #2 RRC#	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
8422346	F-7C-077434	4210534563		103		UNIVERSITY "13" #6 RRC #07388	FARMER (SAN ANDRES)	1.1	NORTHERN NATURAL
8422343	F-7C-077431	4210534623		103		UNIVERSITY "7" #10 RRC #07555	FARMER (SAN ANDRES)	1.6	NORTHERN NATURAL
8422347	F-7C-077435	4210534579		103		UNIVERSITY 13 #7 RRC #07388	FARMER (SAN ANDRES)	0.9	NORTHERN NATURAL
8422348	F-7C-077444	4238332773		103		UNIVERSITY 23-A #2 RRC #07704	FARMER (SAN ANDRES)	0.7	NORTHERN NATURAL
8422349	F-7C-077445	4238332579		103		UNIVERSITY 23-B #8 RRC #07705	FARMER (SAN ANDRES)	0.5	NORTHERN NATURAL
8422344	F-7C-077432	4238332659		103		UNIVERSITY 8-C #3 RRC #09384	FARMER (SAN ANDRES)	0.5	NORTHERN NATURAL
8422345	F-7C-077433	4238332646		103		UNIVERSITY 8-E #1-G RRC #07584	FARMER (SAN ANDRES)	0.5	NORTHERN NATURAL
-SAXON OIL COMPANY		RECEIVED:	02/24/84	JA: TX					
8422241	F-7C-074264	4238332671		103		WEATHERBY #13	SPRABERRY TREND AREA	0.0	PHILLIPS PETROLEU
-SBC ENERGY INC		RECEIVED:	02/24/84	JA: TX					
8422360	F-7B-077589	4208333682		102-4		MARVIN SMITH #1	TRICKHAM (CROSSCUT)	203.0	EL PASO HYDROCARB
-SCANDRILL INC		RECEIVED:	02/24/84	JA: TX					
8422196	F-09-069765	4223735081		103		ED SEWELL #3	LUNA-MAG (BEND CONGL)	36.5	TEXAS UTILITIES F
-SENTINEL PETROLEUM CORP		RECEIVED:	02/24/84	JA: TX					
8422435	F-7B-078434	4213333446		102-4		MAMIE LITTLE #1	LITTLE SANDS	0.0	FLATWOOD GAS INC
-SEQUOIA OIL & GAS INC		RECEIVED:	02/24/84	JA: TX					
8422195	F-09-069450	4223735109		102-4		MULLINAZ #5	MULLINAX (5100 CONGLO	0.0	NORTHWEST CENTRAL
-SHAR-ALAM OIL CO		RECEIVED:	02/24/84	JA: TX					
8422194	F-03-069148	4231330424		102-4		M Y VICK #1	MADISONVILLE NE (GEOR	0.0	LONE STAR GAS CO
-SOUTHERN CRUDE OIL RESOURCES INC		RECEIVED:	02/24/84	JA: TX					
8422374	F-7B-077813	4236333007		102-4		HAGLER #1 RRCID 103807	HAGLER (CONGL)	0.0	INTERSTATE GATHER
-SPG EXPLORATION CORP		RECEIVED:	02/24/84	JA: TX					
8422327	F-03-077230	4214931633		102-2		CHERRY #2	GIDDINGS/AUSTIN CHALK	0.0	
-SUE-ANN OIL & GAS CO		RECEIVED:	02/24/84	JA: TX					
8422375	F-03-077814	[illegible]		107-PE		MARIE B HAYNES GDM #1	CHENANGO WEST (8100)	[illegible]	AMOCO GAS CO
-SUN EXPLORATION & PRODUCTION CO		RECEIVED:	02/24/84	JA: TX					
8422448	F-7B-078481	4242933811		103		BLACK-STOKER (CADDO) UNIT #28	STEPHENS COUNTY REGUL	9.0	WARREN PETROLEUM
8422411	F-09-078334	4227531167		103		JOHN P CALLAHAN #2	FANT	12.0	SUN GAS TRANSMISS
8422469	F-7C-078483	[illegible]		106		LOTTIE JALONICK -A- #3	CALVIN-DEAN	15.0	EL PASO NATURAL G
8422441	F-06-078463	4234510428		103		PRIESTLY - HOLMES UNIT #2	CARTHAGE	786.0	DELHI GAS PIPELIN
8422464	F-7C-078464	4235331445		103		SANDERSON #4	RAY	1.0	
8422581	F-03-077870	[illegible]		106		ST LOUIS B C #2	MIDFIELDS	0.1	
8422446	F-7C-078474	[illegible]		106		UNIVERSITY "D" #2	FARMER (SAN ANDRES)	2.0	J L DAVIS
8422445	F-7C-078473	[illegible]		106		UNIVERSITY "D" #3	FARMER (SAN ANDRES)	2.0	J L DAVIS
8422447	F-7C-078475	[illegible]		106		UNIVERSITY C-19 #19	SPRABERRY (TREND AREA	3.0	EL PASO NATURAL G
-SUM-KEY OIL CO INC		RECEIVED:	02/24/84	JA: TX					
8422233	F-7B-073791	4214330791		102-4		MCDONALD M D IL	INDIANOLA (MARBLE FAL	620.7	CHRISTIE GAS TRAN
-SUPERIOR MINERALS INC		RECEIVED:	02/24/84	JA: TX					
8422392	F-01-078078	4217700000		103		HALAMICEK #1	CHRISTIAN (6800)	20.0	ORECA GAS CORP
-SUPERIOR OIL CO		RECEIVED:	02/24/84	JA: TX					
8422270	F-03-075810	4224130402		103		BELLE RICHARDSON #4	SALLY WITHERS W (1041	48.0	ARCO OIL & GAS CO
8422201	F-03-071863	4224130397		103		(BELLE RICHARDSON ET-AL #3(L)	SALLY WITHERS W (WILC	91.0	ARCO OIL & GAS CO
8422281	F-03-071862	4224130397		103		BELLE RICHARDSON ET-AL #3-U	SALLY WITHERS W (9850	70.0	ARCO OIL & GAS CO
8422258	F-06-075550	4221531341		102-4		F I JOHNSON #24-L	MONTE CHRISTO (51)	[illegible]	FLORIDA GAS TRANS
8422257	F-06-075549	4221531341		102-4		F I JOHNSON #24-U		[illegible]	FLORIDA GAS TRANS
8422281	F-06-072581	4221631352		102-4		F I JOHNSON WELL #30U	MONTE CHRISTO (34)	66.0	FLORIDA GAS TRANS
-TANA OIL & GAS CORP		RECEIVED:	02/24/84	JA: TX					
8422298	F-06-076607	4221531363		102-4	107-DP	JOHNSON "A" #1	MONTE CHRISTO (VICKSB	360.0	TECO PIPELINE CO
-TAUBERT STEED GUNN & REDDERS		RECEIVED:	02/24/84	JA: TX					
8422362	F-8A-077653	4226931100		102-4		S B BURNETT ESTATE "NA" #33	ANNE TANDY (STRAWN LO	4.8	LONE STAR GAS CO
-TEXACO INC		RECEIVED:	02/24/84	JA: TX					
8422311	F-08-076878	4243131395		102-4		E B COPE "B" #3	CONGER S W	369.0	REATA INDUSTRIAL
8422310	F-08-076877	4243131394		102-4		E B COPE "B" #4	CONGER SW	276.3	REATA INDUSTRIAL
8422268	F-08-075643	4217331485		103		GLASSCOCK "L" FEE #2	BLALOCK LAKE S (WOLFC	102.6	PHILLIPS PETROLEU
8422324	F-08-077181	4217331504		103		GLASSCOCK "L" FEE #3	BLALOCK LAKE S (WOLFC	151.5	PHILLIPS PETROLEU
8422437	F-8A-078437	[illegible]		106		ROBERTS UNIT #3512	WASSON	1.1	SHELL OIL CO
8422436	F-8A-078436	4250100000		106		ROBERTS UNIT #3521	WASSON	1.4	SHELL OIL CO
8422304	F-08-076818	4243131397		103		STERLING "I" FEE #8	CONGER (PENN)	288.4	REATA INDUSTRIAL
8422284	F-08-076312	4243131371		103		STERLING "N" FEE #8	CONGER (PENN)	194.6	REATA INDUSTRIAL
8422307	F-08-076834	4243131343		107-TF		STERLING "T" FEE #5	CONGER S W (PENN)	318.3	REATA INDUSTRIAL
8422370	F-08-077784	4243131386		103		V E BROWNFIELD #8	CONGER (PENN)	237.3	REATA INDUSTRIAL
8422369	F-8A-077783	4221934155		101		W T COBLE "B" MCT-1010	LEVELLAND	16.8	AMOCO PRODUCTION
8422272	F-8A-075919	4216532664		101		WHARTON UNIT #141	HARRIS	6.9	PHILLIPS PETROLEU
8422305	F-8A-076820	4216532663		101		WHARTON UNIT #142	HARRIS	0.0	PHILLIPS PETROLEU
8422325	F-8A-077186	4216532680		101		WHARTON UNIT #145	HARRIS	0.0	PHILLIPS PETROLEU
8422306	F-8A-076821	4216532681		101		WHARTON UNIT #146	HARRIS	15.3	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8422368	F-8A-077782	4216532682		103		WHARTON UNIT #147
-TIBURON PETROLEUM CO				RECEIVED:	02/24/84	JA: TX
8422237	F-7C-074004	4238300000		103		ROCKER B-43-1
-TOM BROWN INC				RECEIVED:	02/24/84	JA: TX
8422450	F-08-078502	4231732728		103		HOLT RANCH "A" #1
-TOM MCGEE CORP				RECEIVED:	02/24/84	JA: TX
8422395	F-10-078208	4229531396		102-4		YAUCK #1
-TRIPLE L OIL CO INC				RECEIVED:	02/24/84	JA: TX
8422293	F-04-076547	4235531829		102-4		M & F PROPERTIES #5-B
-TXO PRODUCTION CORP				RECEIVED:	02/24/84	JA: TX
8422209	F-08-073024	4237100000		107-PE		ABDELNOUR "A" #1
8422243	F-04-074325	4224931656		102-4		HUNTER D-1
8422219	F-02-073335	[illegible]		103		SMOTHERS #5
-UNION OIL COMPANY OF CALIF				RECEIVED:	02/24/84	JA: TX
8422367	F-03-077769	4237330541		107-DP		ALABAMA-COUSHATTA #1
-VENUS OIL COMPANY				RECEIVED:	02/24/84	JA: TX
8422269	F-04-075797	4235531366		102-4		M L SANDERS "B" #5
-VERNON E FAULCONER INC				RECEIVED:	02/24/84	JA: TX
8422396	F-06-078247	4228300000		108		GRACIE BELL #1 ID8029459
-W & W OIL CO				RECEIVED:	02/24/84	JA: TX
8422299	F-08-076643	4200333526		103		CREWS MAST "9" WELL #1 28272
8422300	F-08-076644	4200332804		103		CREWS MAST B WELL #8-1B
8422301	F-8A-076648	4216532513		103		LAWRENCE "C" WELL #1 #64253
-W R EDWARDS JR				RECEIVED:	02/24/84	JA: TX
8422333	F-10-077294	4223300000		103		BARNHILL #521
-WARREN AMERICAN OIL CO				RECEIVED:	02/24/84	JA: TX
8422384	F-7C-077912	4210533739		103		UNIVERSITY OF TEXAS 234-2
8422383	F-7C-077909	4210533660		103		UNIVERSITY OF TEXAS 236-4
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	02/24/84	JA: TX
8422438	F-08-078438	4210333268		103		E N SNODGRASS #36
8422329	F-08-077238	4210333259		103		M F HENDERSON #172
8422331	F-08-077241	4200302116		108		W M WADDELL ETAL (TR A) #667
8422330	F-08-077240	4210302144		108		W M WADDELL ETAL (TR A) #695
-WAYLAND W OATMAN				RECEIVED:	02/24/84	JA: TX
8422405	F-7B-078308	4204933589		103		J B STEPHENS #1 107979
-WESTERN CHIEF OIL & GAS CO				RECEIVED:	02/24/84	JA: TX
8422249	F-09-075158	4223735493		102-4	103	SCHLITTLER-JONES #1
8422282	F-09-076158	4223735513		102-4	103	SCHLITTLER-STEWART
-WESTWIND EXPLORATION INC				RECEIVED:	02/24/84	JA: TX
8422229	F-7B-073550	4235331462		103		COLLINS 20045
-WINCHESTER PRODUCTION CO				RECEIVED:	02/24/84	JA: TX
8422224	F-06-073461	4220331001		103	107-TF	JONESVILLE #6
-WOOLF & MAGEE INC				RECEIVED:	02/24/84	JA: TX
8422242	F-03-074323	4208530144		102-4		CARTER BROS GAS UNIT #7

[FR Doc. 84-7615 Filed 3-20-84; 8:45 am]

BILLING CODE 6717-01-C

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FIELD NAME	PROD	PURCHASER
HARRIS	0.0	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	0.0	
SPRABERRY (TREND AREA	36.0	NORTHERN GAS PROD
MAMMOTH CREEK NW (TON	182.5	DIAMOND CHEMICALS
SAXET	365.0	DELHI GAS PIPELIN
PECOS VALLEY (MCKEE)	35.0	DELHI GAS PIPELIN
MUERTO CREEK	0.0	NUE WELLS PIPELIN
SPEAKS S W (WILCOX E)	0.0	HOUSTON PIPE LINE
CHIEF COLABE	1825.0	PANHANDLE GAS CO
BALDWIN (2550')	0.0	DELHI GAS PIPELIN
BETHANY PETTIT	0.0	UNITED GAS PIPELI
BLOCK A-34 (SAN ANDRE	29.0	PHILLIPS PETROLEU
BLK A-34 NORTH SAN AN	25.6	PHILLIPS PETROLEU
CARM-ANN (SAN ANDRES)	73.0	PHILLIPS PETROLEU
PANHANDLE HUTCHINSON	0.0	TRANS-PAN PIPELIN
BLOCK 46 EAST (GRAYBU	0.0	J L DAVIS
WEGER (SAN ANDRES)	0.0	J L DAVIS
[illegible]	29.5	EL PASO NATURAL G
WADDELL (SAN ANDRES)	19.6	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	39.1	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	15.8	EL PASO NATURAL G
BROWN COUNTY REGULAR	18.0	EL PASO HYDROCARB
PEARL BASIL	0.0	
PEARL BASIL	0.0	
WESTWIND (STRAWN)	0.0	UNITED TEXAS TRAN
WASKOM (COTTON VALLEY	0.0	TEXAS EASTERN TRA
DAMASCUS (CARTER)	100.0	EASTEX GAS TRANSM

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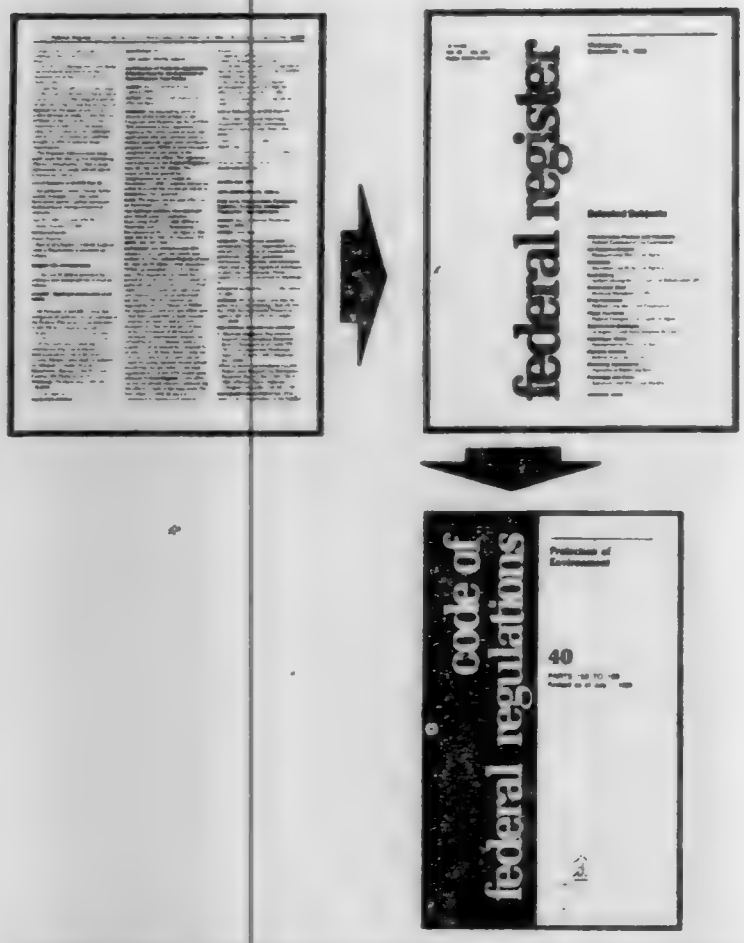

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Thursday, March 22, 1984

Presidential Documents

Title 3—

The President

Proclamation 5165 of March 20, 1984

Afghanistan Day, 1984

By the President of the United States of America

A Proclamation

For much of the world spring is now beginning. It is a time of new life, renewal, freshness, and hope.

For the people of Afghanistan, March 21 is the traditional celebration of the New Year, the beginning of the cycle of life. It is a period of rejoicing and celebration for life's regeneration as a gift of God.

But today, for most of the people of Afghanistan, the March 21 New Year brings only the renewal of fighting, destruction, and death. For more than four years, the armed forces of the Soviet Union have occupied Afghanistan. More than 100,000 Soviet soldiers now occupy that beleaguered country. The overwhelming majority of the Afghan people are struggling against the Soviet occupation troops and the puppet regime headed by Babrak Karmal. It is a regime that is maintained only by Soviet force.

Afghan resistance to Marxist rule grew dramatically after the Soviet invasion, and it has now spread throughout the country. A solution to the Afghanistan problem must begin with the removal of the Soviet troops. A negotiated political settlement can be achieved if the Soviet Union agrees to withdraw its military forces of occupation.

The goal of United States policy remains clear and consistent. We seek the removal of Soviet military forces so that the Afghan people can live freely in their own country and are able to choose their own way of life and government.

Hope, it is said, springs eternal. We continue to hope that a negotiated settlement can be found, a settlement which fulfills the conditions spelled out five times in resolutions resoundingly endorsed by the General Assembly of the United Nations.

These resolutions, passed by the overwhelming majority of the world's nations, call for the immediate withdrawal of foreign troops from Afghanistan; reaffirm the right of the Afghan people to determine their own form of government and to choose their economic, political, and social system; reiterate that the preservation of the sovereignty, territorial integrity, political independence, and nonaligned character of Afghanistan is essential for a peaceful solution of the problem; and call for the creation of the conditions which would enable the Afghan refugees to return voluntarily to their homes in safety and honor.

We stand in admiration of the indomitable will and courage of the Afghan people who continue their resistance to tyranny. All freedom-loving people around the globe should be inspired by the Afghan people's struggle to be free and the heavy sacrifices they bear for liberty.

Afghanistan Day will serve to recall the fundamental principles involved when a people struggles for the freedom to determine its own future and the right to be free of foreign interference. Let us therefore resolve to pay tribute to the brave Afghan people by observing March 21, 1984 as Afghanistan Day.

Let us pledge our continuing admiration for their cause and for their perseverance, and lend our support to the Afghan refugees in Pakistan.

Let us redouble our determination to help find a negotiated settlement that will enable the Afghan people to again welcome spring without the suffering brought by war, but with celebration and joy.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 21, 1984, as Afghanistan Day.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-7869
Filed 3-20-84; 3:02 pm]
Billing code 3195-01-M

VOL 49 ISS 57 MR 22 1984 UMI

Rules and Regulations

Federal Register
Vol. 49, No. 57
Thursday, March 22, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

Walnuts Grown in California; Free and Reserve Percentages for the 1983–84 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes free and reserve percentages of 76 percent and 24 percent, respectively, for California walnuts certified as merchantable during the 1983–84 marketing year, which began August 1, 1983. The rule is designed to allocate this season's supplies between domestic and export markets so as to make ample supplies available for domestic needs and all of the excess merchantable walnuts available for export. The percentages are authorized by the Federal marketing order for walnuts grown in California.

EFFECTIVE DATES: August 1, 1983 through July 31, 1984.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that good cause exists for not postponing the effective time of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The relevant provisions of the order require that the free and reserve percentages established for a particular marketing year shall apply to all walnuts certified as merchantable from the beginning of that year. The 1983–84 marketing year began August 1, 1983.

Notice of this action was published in the January 16, 1984, issue of the **Federal Register** (49 FR 1909), and interested persons were afforded an opportunity to submit written comments. No comments were received.

The authority to establish free and reserve percentages is pursuant to § 984.49 of the marketing agreement and Order No. 984, both as amended (7 CFR Part 984), regulating the handling of walnuts grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was unanimously recommended by the Walnut Marketing Board, hereinafter referred to as the "Board," which works with USDA in administering the order.

Pursuant to § 984.48 of the order, the Board based its recommendation for free and reserve percentages of 76 percent and 24 percent, respectively, on estimates of supply and combined inshell and shelled domestic trade demand for the current marketing year. Estimated trade demand was adjusted to account for supplies of certified walnuts carried in from the 1982–83 marketing year and for supplies deemed desirable to be carried out on July 31, 1983, for early season domestic use next marketing year until the 1984 crop is available for market.

The estimated 1983 production is well in excess of the 1983–84 marketing year domestic needs. While the proposal is designed to tailor the supply to domestic demand, it would still ensure the availablity of ample supplies of walnuts for domestic markets during that year and promote maximum usage.

Supplies in excess of domestic needs would be available chiefly for export. Handlers may also obtain reserve disposition credit for disposing of substandard walnuts in oil, feed, or other outlets the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts.

The Board used the estimates given in the table below in making its recommendation for the 1983–84 marketing year. Weight figures for inshell walnuts are converted to their equivalent shelled kernel weights.

	Inshell weight (1,000 lbs)	Conversion factor (per-cent)	Kernel weight (1,000 lbs)
SUPPLY			
1. Orchard-Run production	[illegible]		
2. Less: Miscellaneous farm use	[illegible]		
3. Commercial production	[illegible]	[illegible]	143,200
4. Plus:			
Uncertified carryin inshell	11,578	[illegible]	5,210
Uncertified carryin shelled			[illegible]
5. Total merchantable supply			178,490
6. Plus: Substandard creditable for reserve			8,000
7. Total supply subject to regulation			[illegible]
DEMAND			
8. Inshell demand	[illegible]		
9. Plus: Desirable carryout	[illegible]		
10. Less: Certified carryin	12,677		
11. Adjusted inshell demand	[illegible]	45	[illegible]
12. Shelled demand			[illegible]
13. Plus: Desirable carryout			[illegible]
14. Lessess: Certified carryin			31,740
15. Adjusted shelled demand			110,760
16. Total demand (item 11 + item 15)			141 955
MARKETING PERCENTAGES			
17. Free percentage (item 16 ÷ item 7) 76% (75.6% rounded up by the Board)			
18. Reserve percentage (100% – item 17) 24% (24.4% rounded down by the Board)			

List of Subjects in 7 CFR Part 984

Marketing agreement and orders, Walnuts, California.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Board, and other available information, it is further found that establishment of the free and reserve percentages under the order, as hereinafter set forth, will tend to effectuate the declared policy of the act.

PART 984—[AMENDED]

Therefore, § 984.229 is added to 7 CFR Part 984 as follows: [This section will not appear in the Code of Federal Regulations).

§ 984.229 Free and reserve percentages for California walnuts during the 1983–84 marketing year.

The free and reserve percentages for California walnuts during the marketing year beginning August 1, 1983, shall be 76 percent and 24 percent, respectively.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 16, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-7774 Filed 3-21-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 985

Spearmint Oil Produced in the Far West; Establishment of Salable Quantities and Allotment Percentages for the 1984–85 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from, or handled for, producers by handlers during the 1984–85 marketing year which begins June 1, 1984. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions. The proposal was recommended by the Spearmint Oil Administrative Committee which works with USDA in administering the order.

EFFECTIVE DATE: June 1, 1984 through May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the February 8, 1984, issue of the **Federal Register** (49 FR 4763), and interested persons were afforded an opportunity to submit written comments. No comments were received.

The salable quantity and allotment percentage for each class of spearmint oil are established in accordance with the provisions of Marketing Order No. 985, regulating the handling of spearmint oil produced in the Far West, hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The salable quantities and allotment percentages were recommended by the Spearmint Oil Administrative Committee, which works with the USDA in administering the order.

The salable quantity and allotment percentage established for each class of spearmint oil for the 1984–85 marketing year beginning June 1, 1984, are based upon recommendations of the Committee and the following data and estimates:

(1) "Class 1" Oil (Scotch Spearmint).

(A) Estimated carryin on June 1, 1984—186,769 pounds.

(B) Estimated trade demand (domestic and export) for the 1984–85 marketing year based on prior 3-year average sales—728,467 pounds.

(C) Recommended desirable carryout on May 31, 1985—50,000 pounds.

(D) Salable quantity required from 1984 production—591,698 pounds.

(E) Total allotment bases for "Class 1" Oil—1,602,434 pounds.

(F) Computed allotment percentage—36.9 percent.

(G) The Committee's recommendation for the salable quantity—673,022 pounds.

(H) Recommended allotment percentage—42 percent.

(2) "Class 3" Oil (Native Spearmint).

(A) Estimated carryin on June 1, 1984—206,227 pounds.

(B) Estimated trade demand (domestic and export) for the 1984–85 marketing year based on 3-year average sales—811,508 pounds.

(c) Recommended desirable carryout on May 31, 1985—0 pounds.

(D) Salable quantity required from 1984 production—605,281 pounds.

(E) Total allotment bases for "Class 3" Oil—1,774,169 pounds.

(F) Computed allotment percentage—34.1 percent.

(G) The Committee's recommendation for the salable quantity—745,151 pounds.

(H) Recommended allotment percentage—42 percent.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to his allotment base for the applicable class.

In conformity with the order's provisions, the Committee conducted a drawing on October 4, 1983, and issued additional allotment bases to both new and existing producers for the 1984–85 marketing year. New producers were issued allotment bases in units of 1,823 pounds for "Class 1" Oil and 2,205 pounds for "Class 3" Oil. Existing producers who had initially received small allotment bases and applied for additional allotment base were issued an amount of allotment base that would bring their total base up to a more economic unit. The issuance of the additional allotment bases increased the total of "Class 1" Oil bases by 26,450 pounds and "Class 3" Oil by 10,077 pounds.

The Committee's recommendations are based on expected increased sales of spearmint oil during the 1984–85 marketing year and a further reduction in the quantity of spearmint oil held by producers. The Committee's recommendations appear appropriate for the 1984–85 season and are expected to aid in achieving the objectives of the act of maintaining a stable market for each class of oil and promoting orderly marketing.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee, and other available information, it is found that to establish a salable quantity and allotment percentage for each class of oil, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 985

Marketing agreements and orders, Spearmint oil.

PART 985—[AMENDED]

Therefore, a new § 985.204 under Subpart—Salable Quantities and Allotment Percentages is added to read as follows: (The following provisions will not be published in the Code of Federal Regulations).

§ 985.204 Salable quantities and allotment percentages—1984–85 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins June 1, 1984, shall be as follows:

(a) "Class 1" Oil—a salable quantity of 673,022 pounds, and an allotment percentage of 42 percent.

(b) "Class 3" Oil—a salable quantity of 745,151 pounds, and an allotment percentage of 42 percent.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 19, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 84–7772 Filed 3–21–84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 985

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for "Class 3" Native Spearmint Oil for the 1983–84 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This emergency final rule increases the quantity of "Class 3" Native Spearmint Oil produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1983–84 marketing year. That year began June 1, 1983. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended unanimously by the Spearmint Oil Administrative Committee, which works with the USDA in administering the spearmint oil marketing order.

EFFECTIVE DATE: June 1, 1983 through May 31, 1984.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This emergency final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice because an emergency situation exists which warrants publication and implementation of this action without opportunity for a public comment period. This emergency final action would increase the salable quantity and allotment percentage for "Class 3" Native Spearmint Oil for the 1983–84 marketing year. It relieves restrictions on handlers by increasing the quantity of "Class 3" Oil that may be freely marketed immediately and should be effective as soon as possible to enable handlers to satisfy current market needs for "Class 3" Oil. In the absence of this action being made effective promptly, the price of "Class 3" Oil could rise to high levels and defeat the Committee's goal of maintaining stable marketing conditions at reasonable prices.

Further, under this marketing program, the salable quantity and allotment percentage established for a class of oil for a particular marketing year, and any revisions thereof, apply during the entire marketing year. The current marketing year began June 1, 1983, and the revisions made herein will automatically apply beginning with that date. Handlers are aware of this action and need no advance notice.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this emergency final action are impractical and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register**.

The Spearmint Oil Administrative Committee has recommended unanimously that the salable quantity and allotment percentage for "Class 3" Native Spearmint Oil for the 1983–84 marketing year be increased. The salable quantity and allotment percentage for that class of oil was issued on April 22, 1983, and published in the **Federal Register** on April 29, 1983 (§ 985.203; 48 FR 19357). The revision would increase the salable quantity from 867,901 pounds to 1,045,024 pounds and increase the salable percentage from 49 percent to 59 percent. The Committee is established under, and its recommendations are made pursuant to the provisions of Marketing Order No. 985, regulating the handling of spearmint oil produced in the Far West, hereinafter referred to collectively as the "order" (7 CFR Part 985). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The revision is pursuant to § 985.51 of the marketing order program.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for that class of oil.

The market for "Class 3" Oil has strengthened dramatically in the last few months and in order to keep prices at reasonable levels a higher salable quantity and allotment percentage for "Class 3" Oil are required. To meet current market needs and maintain stable prices for "Class 3" Oil, the Committee recommended a salable quantity of 1,045,024 pounds and an allotment percentage of 59 percent. The salable percentage is computed by dividing the salable quantity by 1,771,227 pounds which is the total of all 1983 crop allotment bases.

The Committee determined that an additional 80,000 pounds of "Class 3" Oil was needed to meet current market needs. However, because some producers had already used their reserve pool oil to fill their individual production deficits (as authorized under § 985.57(b)) the Committee had to increase the salable quantity by 177,123 pounds to make an additional 79,782 pounds available for current market needs.

After consideration of all relevant matter presented, including that in the action issued on April 22, 1983, in connection with the initial establishment of the salable quantity and allotment percentage for "Class 3" Oil, the information and recommendation submitted by the Committee, and other available information, it is found that to amend § 985.203 (48 FR 19357) so as to change the salable quantity and allotment percentage for "Class 3" Native Spearmint Oil, as set forth below, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 985

Marketing agreements and orders, Spearmint oil.

PART 985—[AMENDED]

Therefore, § 985.203 is amended by revising paragraph (c) to read as follows: (The following provisions will not be published in the Code of Federal Regulations).

§ 985.203 Salable quantities and allotment percentages—1983–84 marketing year.

* * * * *

(c) Class "3" Oil—a salable quantity of 1,045,024 pounds and an allotment percentage of 59 percent.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 16, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-7882 Filed 3-21-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1033

[Milk Order No. 33]

Milk in the Ohio Valley Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues for the months of April through August 1984 a previous suspension of certain provisions affecting the regulatory status of fluid milk plants under the Ohio Valley Federal milk order. The suspension makes inoperative the requirement that a distributing plant must dispose of not less than 45 percent of its receipts on routes to qualify as a pool plant.

The action was requested by a proprietary handler operating four distributing plants that are fully regulated under the order. This emergency action is needed to maintain pool status for the handler's distributing plants and to assure producer status for dairy farmers who have been associated with such plants and who have regularly supplied the market's fluid milk needs. It is also needed to accommodate the efficient disposition of the market's reserve milk supplies. The suspension is based on the record of a public hearing, held at Columbus, Ohio, on October 12 and 13, 1983, where this particular pooling requirement was an issue.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued September 26, 1983; published September 29, 1983 (48 FR 44565).

Suspension Order: Issued December 6, 1983; published December 12, 1983 (48 FR 55275).

Suspension Order: Issued December 12, 1983; published December 16, 1983 (48 FR 55829).

Suspension Order: Issued January 12, 1984; published January 17, 1984 (49 FR 1980).

Termination Order: Issued February 24, 1984; published February 29, 1984 (49 FR 7353).

William T. Manley, Deputy Administrator, Marketing Programs, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who supply milk for the area will have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Ohio Valley marketing area.

It is hereby found and determined that for the months of April through August 1984, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1033.12, paragraph (a)(2).

Statement of Consideration

This action is based on the record of a public hearing held on October 12 and 13, 1983, at Columbus, Ohio, to consider certain proposed amendments to the Ohio Valley order. It continues a suspension that has been effective since December 1, 1983 (48 FR 55829 and 49 FR 1910). The action continues for the months of April through August, 1984, to make inoperative the requirement that a distributing plant must dispose of not less than 45 percent of its receipts on routes to qualify as a pool plant.

A continuation of the suspension was requested by Beatrice Foods Company (Beatrice), a proprietary handler who operates four pool distributing plants under the order.

The basis for the handler's request is a continuing downward trend in Class I sales of the handler's distributing plants during a period in which producer receipts have been steadily increasing. The handler claims that recently it has lost more Class I customers so the need for a suspension now is even more acute than it was at the time of the hearing and when it requested the previous suspensions. This situation likely will cause the handler's total route disposition of the four distributing plants to fall below the order's total route disposition requirement for pooling distributing plants. Unless the suspension is continued, it probably will be necessary for the handlers to engage in uneconomic movements of milk merely for the purpose of meeting the order's total route disposition requirement.

At the hearing, a proposed amendment by Beatrice was considered that would reduce the total route disposition requirement by 10 percentage points each month. The proponent testified that the amendment is necessary to accommodate the pooling of all of the milk received at its four distributing plants from producers who historically have been associated with the market. The handler requested that the total route disposition requirement be suspended pending completion of the hearing proceeding.

Whether or not the total route disposition requirement for distributing plants shall be reduced on a permanent basis and to what extent, is a matter to be decided after the hearing record and post-hearing briefs have been thoroughly analyzed. However, there is not adequate time to resolve the handler's pooling problem for the months of April through August 1984 through amendatory action. Continuation of the suspension through August 1984 is the only practical means of providing the immediate relief sought by proponent. Such action is warranted because it will promote orderly marketing pending the final outcome of this issue based on the conclusion of the hearing proceeding.

It is unlikely that this 5-month suspension of the pooling requirement will have a significant adverse impact on producers or handlers serving the market. However, it will eliminate the possibility of a handler making certain uneconomic adjustments to maintain pool plant status for its distributing plants and producer status for the milk of dairy farmers who have been historically associated with such plants and the market's fluid milk needs. Such action also will facilitate the disposal of the market's reserve milk supplies during this 5-month period. For these reasons, the continuation of the suspension through August 1984 should be and hereby is granted.

The handler requested that the suspension apply also to the month of September. It is anticipated that the amendatory process based on the hearing record should be completed by September 1, 1984. Thus, the question of whether or not the total route disposition requirement for pooling distributing plants should be permanently reduced and to what extent would be resolved for the month of September and no suspension would be necessary. If, however, the amendatory process is not completed by September 1, the handler could request a further

suspension at that time. Accordingly, the request to include the month of September in this suspension action is hereby denied.

It is hereby found and determined that notice of proposed rulemaking, public procedure thereon, and thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that substantial quantities of milk of producers who have regularly supplied this market otherwise could be excluded from the market wide pool.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing problems that provide the basis for this suspension action were fully reviewed at a public hearing where all interested parties had the opportunity of being heard on this matter.

Therefore, good cause exists for making this order effective April 1, 1984.

List of Subjects in 7 CFR Part 1033

Milk marketing orders, Milk, Dairy products.

PART 1033—[AMENDED]

It is therefore ordered, that the aforesaid provisions in § 1033.12(a)(2) of the Ohio Valley order are hereby suspended for the months of April through August 1984.

Effective Date: April 1, 1984.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington D.C., on March 16, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–7773 Filed 3–21–84; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Codes and Standards for Nuclear Power Plants

Correction

In FR Doc. 84–6953 beginning on page 9711 of the issue Thursday, March 15, 1984, make the following corrections:

1. On page 9713, third column, in the first line of § 50.55a (a)(2), "System" should be "Systems".

2. On page 9714, second column, in § 50.55a (c)(4) and (d)(1), replace the parenthetical expression with "May 14, 1984".

3. On the same page, third column, in the fourth line of footnote 9 to § 50.55a, "50.349b)" should be "50.34(b)".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83–NM–87–AD; Amdt. 39–4832]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Airbus Industrie Model A300 B2 and B4 series airplanes which requires replacement of certain components of the slat and flap transmission systems. At least 13 instances of failure in these transmission systems have been reported. These failures create inoperative slats or flaps which can lead to asymmetrical deployment of flight control surfaces, compromising the controllability of the airplane.

EFFECTIVE DATE: May 14, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Generale de l'Aviation Civile (DGAC), the civil aviation authority of France, the country of manufacture for the Airbus Industrie Model A300, has classified certain Airbus Industrie (AI) and Lucas Aerospace (LA) service bulletins as mandatory. These service bulletins specify actions necessary to solve reported service difficulties in the flap and slat transmission systems.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspections, repairs, and modifications, as necessary, of the slat and flap linkages was published in the **Federal Register** on October 31, 1983 (48 FR 50083). The comment period closed December 16, 1983, and interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received. This commenter stated that he has accomplished the major part of the requirements of the AD and, therefore, there is no reason for issuing a final rule. The FAA disagrees; there are still outstanding French AD's on the subject and no verification that the world fleet of A300 airplanes has accomplished the AD requirements. Hence, the AD is also issued to cover the import of A300 airplanes that may not have completed the required inspections, repairs, and modifications.

The U.S. fleet of A300 airplanes has accomplished most of the requirements of the AD but repetitive inspections and repairs if necessary, must still be accomplished. It is estimated that the cost impact to the U.S. operator will be less than $2,000 per airplane, or less than $52,000 for the entire fleet for each of the repetitive inspections. For these reasons, the final rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in all categories. To prevent failure of the flap and slat control linkages, within 120 days after the effective date of this AD or upon reaching the landing thresholds specified in the service bulletins, whichever occurs later, accomplish the following, unless previously accomplished:

A. Inspect, repair, and modify, as necessary, the slat and flap linkages in accordance with the service bulletins listed below:

Airbus Industrie A300–27–151, Revision 4, dated December 20, 1982;
Airbus Industrie A300–27–150, Revision 2, dated December 20, 1982;
Airbus Industrie A300–27–158, Revision 1, dated March 9, 1982;
Airbus Industrie A300–27–101, Revision 2, dated March 2, 1982;
Lucas Aerospace 704–27–599, Revision 1, dated September 25, 1981;
Lucas Aerospace 704–27–1063, Revision 1, dated October 11, 1982; and
Lucas Aerospace 704–27–602, Revision 1, dated November 27, 1981.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective May 14, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because no small entities operate Airbus Industrie Model A300 airplanes. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington on March 14, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–7823 Filed 3–21–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ASW–4]

Alteration of Transition Area; Sand Springs, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Sand Springs, OK. The intended effect of the amendment is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the William R. Pogue Airport. This amendment is necessary since the owner proposed to install a nonfederal nondirectional radio beacon (NDB) on the airport and a SIAP will be developed from this facility to Runway 35 at the William R. Pogue Airport.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW–535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877–2630.

SUPPLEMENTARY INFORMATION:

History

On February 2, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 4102) stating that the Federal Aviation Administration proposed to alter the Sand Springs, OK, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

PART 71—[AMENDED]

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, (pursuant to the authority delegated to me by the Administrator) Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70–3A dated January 3, 1983, is amended, effective 0901 GMT, July 5, 1984, by adding the following:

Sand Springs, OK [Amended]

* * * and within 3 miles each side of a 164° bearing of the NDB (latitude 36°10'24" N., longitude 96°09'17" W.), extending from the 6.5-mile radius to 8.5 miles south of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on March 12, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–7820 Filed 3–21–84; 8:45 am]

BILLING CODE 4910–13–M

CIVIL AERONAUTICS BOARD

14 CFR Part 389

Fees and Charges for Special Services; Waiver of Filing Fee Requirements; Foreign Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Waiver of filing fee requirements under 14 CFR Part 389.

SUMMARY: Following requests on behalf of certain foreign carriers, the Acting Director, Bureau of International Aviation, acting under delegated authority, has waived the requirements of Part 389 of the Board's Organization Regulations to the extent necessary to relieve the carriers of Italy (by 10/6/83 letter), Czechoslovakia (by 10/28/83 letter), Guatemala (by 10/31/83 letter), Antigua and Barbuda (by 11/18/83 letter), the Netherlands Antilles (by 11/21/83 letter), Portugal (by 11/23/83 letter), Venezuela (by 12/8/83 letter), Dominica (by 12/12/83 letter), Saint Lucia (by 12/12/83 letter), Saint Vincent and Grenadines (by 12/12/83 letter), Saint Kitts and Nevis (by 12/12/83 letter), Grenada (by 12/12/83 letter), India (by 12/12/83 letter), Paraguay (by 12/16/83 letter), Romania (by 1/12/84 letter), Poland (by 2/23/84 letter), and the Dominican Republic (by 3/13/84 letter), from paying the filing fees set forth in § 389.25.

DATES: Each action was effective on the date of the letter and filing of a petition for review will not alter its effectiveness.

FOR FURTHER INFORMATION CONTACT: Allen Brown, Regulatory Affairs Division, Bureau of International

Aviation, Civil Aeronautics Board (202) 673–5134.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–7791 Filed 3–21–84; 8:45 am]

BILLING CODE 6320–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

Tracking and Data Relay Satellite System (TDRSS); Use and Reimbursement Policy for Non-U.S. Government Users

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The existing rule states that rates for TDRSS services will be set by NASA Headquarters. 14 CFR Part 1215 is hereby being amended by revising 14 CFR 1215.114(b) to identify the Associate Administrator for Space Tracking and Data Systems as the NASA official who will set the rates for TDRSS services. Appendix A is also amended to reflect the rate changes for January through December for CY 1985. Since this revision involves NASA management procedures and decisions, no public comment is required.

EFFECTIVE DATE: March 22, 1984.

ADDRESS: Office of Space Tracking and Data Systems, Code T, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Robert O. Aller, 202–453–2019.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 1215

Satellites, Tracking and data relay satellite, Communications equipment, Government contract.

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

For reasons set out in the Preamble, 14 CFR 1215.114(b) and Appendix A are revised to read as follows:

§ 1215.114 Service rates.

* * * * *

(b) Rates for TDRSS services will be set by the Associate Administrator for Space Tracking and Data Systems each October for the following year, January through December. Rate variations will reflect changes in operating costs, loading formulas and escalation.

* * * * *

Appendix A—Estimated Service Rates in 1985 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

TDRSS user service rates for services rendered in CY–85 based on current projections in 1985 dollars are as follows:

Single Access Service—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $120.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is $27.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is $8.00 per minute for non-U.S. Government users.

* * * * *

(Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended; 42 U.S.C. 2473)

James M. Beggs,

Administrator.

[FR Doc. 84–7826 Filed 3–21–84; 8:45 am]

BILLING CODE 7510–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 7

Contract Market Rule Amendment

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of contract market rule change.

SUMMARY: The Chicago Board of Trade ("CBT") has amended CBT Regulation 620.01(B), which relates to the exchange's customer arbitration procedures. The amendment, which the Commodity Futures Trading Commission ("Commission") has permitted the CBT to place into effect, conforms that Regulation to recent amendments to the Commodity Exchange Act ("Act") and the Commission's regulations which have eliminated a previously existing limitation upon disputes which must be accepted for arbitration by contract markets. Because CBT Regulation 620.01(B) was altered by the Commission in November 1981 pursuant to the Commission's statutory authority to alter contract market rules, the text of CBT Regulation 620.01(B) is set forth in Part 7 of the Commission's regulations. The Commission is therefore amending Commission regulation § 7.201 to set forth accurately the language of CBT Regulation 620.01(B) as recently amended by the CBT.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Karen Matteson, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: On November 24, 1981, the Commission, pursuant to its authority under sections 5a(12)[1] and 8a(7)[2] of the Act, disapproved, altered, and approved as altered CBT Regulation 620.01(B), relating to the Exchange's arbitration of disputes between customers and exchange members. As the Commission explained at that time, proposed CBT regulation 602.01(B) would have restricted the ability of customers to obtain CBT-sponsored arbitration of certain claims and grievances had it not been disapproved and altered by the Commission. In particular, the CBT asserted that Section 5a(11) of the Act (7 U.S.C. 7a(11)) and Part 180 of the Commission's regulations (17 CFR Part 180), which require each contract market to provide a fair and equitable procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee of the contract market, did not require members of the CBT and their employees to submit to customer-initiated arbitration proceedings. The Commission therefore altered CBT regulation 620.01(B) to conform it to the requirements of the Act and the Commission's regulations and simultaneously published the text of the amended CBT regulation as § 7.201 of its own regulations.[3]

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[1] Section 5a(12) of the Act, 7 U.S.C. 7a(12) (Supp. V 1981), provided in relevant part:

[T]he Commission shall disapprove, after appropriate notice and opportunity for hearing, any [contract market] bylaw, rule, regulation, or resolution which the Commission finds at any time is in violation of the provisions of this Act or the regulations of the Commission * * *.

Section 5a(12) was amended by section 216(2) of the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2306.

[2] Section 8a(7) of the Act, 7 U.S.C. 12a(7) (Supp. V 1981), provided in relevant part:

[The Commission is authorized—] to alter or supplement the rules of a contract market insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a contract market that such contract market effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such contract market has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such contract market, or the product or byproduct thereof, or for the protection of traders to insure fair dealing in commodities traded for future delivery on such contract market * * *.

[3] 46 FR 57457 (November 24, 1981).

Section 5a(11) of the Act was subsequently amended by Section 217(a) of the Futures Trading Act of 1982.[4] Among other things, this statutory amendment eliminated what had been a $15,000 limitation upon disputes which must be accepted for arbitration by contract markets. The Commission subsequently amended its arbitration regulations to conform those regulations to amended section 5a(11) of the Act.[5]

By letter dated January 20, 1984, the CBT submitted to the Commission, pursuant to section 5a(12) of the Act and Commission regulation 1.41(c), amendments to its Regulation 620.01(B) which delete references to the $15,000 limitation on disputes which must be accepted for arbitration by the CBT.

In a letter dated January 27, 1984, the Commission's Division of Trading and Markets informed the CBT that the amendments did not require the Commission's prior approval and could be made effective immediately. Because the text of Commission regulation 7.201 is intended to reflect the language of CBT regulation 620.01(B), the Commission is now amending § 7.201 in order to conform its rule to CBT Regulation 620.01(B).

List of Subjects in 17 CFR Part 7

Commodity exchanges, Arbitration, Commodity futures.

PART 7—CONTRACT MARKET RULES ALTERED OR SUPPLEMENTED BY THE COMMISSION

Pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 5a and 8a thereof, 7 U.S.C. 7a, 12a (1982), the Commission is amending Chapter I of Title 17 of the Code of Federal Regulations by revising § 7.201 as follows:

Subpart C—Board of Trade of the City of Chicago Rules

Section 7.201 is revised to read as follows:

§ 7.201 Regulation 620.01(B).

Customers' Claims and Grievances. The Arbitration Committee and Mixed Panels constituted pursuant to Regulation 620.02 have jurisdiction to arbitrate all customers' claims and grievances against any member or employee thereof which have arisen prior to the date the customer's claim is asserted. If the customer elects to initiate an arbitration proceeding of any customer claim or grievance, the member shall submit to arbitration in accordance with these Arbitration Rules and Regulations. The Arbitration shall be initiated by delivery to the Administrator of (a) a Statement of Claim and a "Chicago Board of Trade Arbitration Submission Agreement for Customer's Claims and Grievances" signed by the customer or (b) a Statement of Claim and another arbitration agreement between the parties, which agreement conforms in all respects with any applicable requirements prescribed by the Commodity Futures Trading Commission. The refusal of any member or employee to sign the "Chicago Board of Trade Arbitration Submission Agreement for Customer's Claims and Grievances" shall not deprive the Arbitration Committee or a Mixed Panel constituted pursuant to Regulation 620.02 of jurisdiction to arbitrate customers' claims under these Arbitration Rules and Regulations. The Committee and Mixed Panels have jurisdiction to arbitrate a counterclaim asserted in such an arbitration, but only if it arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties or third persons over whom the Association does not have jurisdiction. Other counterclaims are subject to arbitration by the Committee, or a Mixed Panel, only if the customer agrees to the submission after the counterclaim has arisen.

Issued in Washington, D.C. on March 16, 1984 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-7807 Filed 3-21-84; 8:45 am]

BILLING CODE 6351-01-M

[4] Pub. L. 97-444, 96 Stat. 2307.

[5] 48 FR 22136 (May 17, 1983).

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Dept. Reg. 108.837]

Ineligible Classes of Immigrants; Aliens Ineligible To Receive Visas

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The amendment to § 42.91(a)(15) eliminates the alternative use by an employer in the United States of a form prescribed by the Department to establish the essential elements of a prearranged offer of employment to an alien seeking to establish eligibility for an immigrant visa under the provisions of section 212(a)(15) of the Immigration and Nationality Act. This rule is less stringent because it retains only the requirement that the essential elements of such an offer of employment be established by a document sworn and subscribed to before a notary public by the employer or his authorized agent.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Gerald M. Brown, Chief, Legislation and Regulations Division, Visa Service, Washington, D.C. 20520, (202) 632-1900.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 is designed in part "to minimize the Federal paperwork burden on individuals, small businesses, State and local governments, and other persons". In an effort to reduce the volume of information collected through standardized forms, and in response to a survey conducted by the Department, which resulted overwhelmingly in favor of eliminating Form DS-1743 (Offer of Employment to an Alien), the Department has decided to discontinue the prescribed form.

Because the rule eliminates the cost of printing and distributing Form DS-1743 and fascilitates data collecting in an alternative manner without having adverse effect on any person, compliance with the procedures of 5 U.S.C 553, Administrative Procedure Act, relating to notice of proposed rulemaking and delayed effective date is not required and the provisions of E.O. 12291 are not applicable in this instance.

List of Subjects in 22 CFR Part 42

Aliens, Immigrant visas, Ineligible classes of immigrants.

PART 42—[AMENDED]

In light of the foregoing, § 42.91(a)(15)(ii) is amended by revising the first two sentences to read as set forth below:

§ 42.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.* * * *

(15) *Public charge.* * * *

(ii) An alien relying on an offer of prearranged employment to establish eligibility under section 212(a)(15) of the Act, other than an offer of employment certified by the Department of Labor pursuant to section 212(a)(14) of the Act, must establish the offer of employment by a document which confirms the essential elements of the employment offer. The document presented to confirm the employment offer must be sworn to and subscribed to before a

notary public by the employer or an authorized employee or agent of the employer.

* * * * *

(Sec. 104, 66 Stat. 166; 8 U.S.C. 1104; 109(b)(1), 91 Stat. 847)

Dated: February 24, 1984.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 84-7687 Filed 3-21-84; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 652

Pedestrian and Bicycle Accommodations and Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This revision of existing FHWA pedestrian and bikeway regulations reflects the amendments to 23 U.S.C. 217 made by section 126 of the Surface Transportation Assistance Act of 1982, and makes other changes to promote clarity and improve program effectiveness.

EFFECTIVE DATE: April 23, 1984.

FOR FURTHER INFORMATION CONTACT: John C. Wasley, Highway Design Division, Office of Engineering (202–426–0306), or Reid Alsop, Office of the Chief Counsel (202–426–0800), Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA issued a notice of proposed rulemaking (NPRM) under Docket No. 83–17 on August 11, 1983 (48 FR 36470) to revise 23 CFR Part 652 which primarily concerns FHWA participation in the costs of bicycle and pedestrian projects. The NPRM reflected amendments to 23 U.S.C. 217 and proposed other changes to Part 652 that would improve program effectiveness. The statutory changes and the proposed revisions to Part 652 were discussed in detail in the NPRM.

In response to the NPRM 31 comments were received, including 13 from State transportation agencies, 9 from bicycle groups, 4 from local governments, 2 from regional planning agencies, and 1 each from a Federal agency, a private citizen and an association of bicycle manufacturers. The majority of comments were positive and supported pedestrian and bicycle accommodations as a part of highway transportation, as well as the incorporation of the new statutory requirements. Many commenters wished to have more prescriptive provisions provided in the final rule, other provisions were cited as needing clarification and further explanation.

The following is a description of the significant comments that were received in response to the NPRM, and the changes that were made as a result.

Title Change

In response to several comments the title of Part 652 was changed from "Pedestrian and Bicycle Facilities" to "Pedestrian and Bicycle Accommodations and Projects" to acknowledge availability of FHWA participation in nonconstruction projects. Apparently to many people the term "bicycle facilities" means bicycle paths, and thus could be misinterpreted to mean that Federal-aid funds are restricted to the development of bicycle paths. Also, the addition of the term "accommodations" is intended to make it clear that Federal-aid funds can be used in the construction of shared roadways and in the construction of those design features which enable a roadway to function as a shared roadway.

Section 652.3 Definitions.

Two commenters wanted to change the definition of "bicycle" either to expand the definition to include adult tricycles, bicycle trailers, etc., or to bring the definition into compliance with the Uniform Vehicle Code. No change is proposed. The American Association of State Highway and Transportation Officials design guide definition is used as it describes the basic vehicle the characteristics of which are used for design purposes. Other similar vehicles may have different characteristics.

These non-motorized vehicles may be allowed to operate on bicycle facilities if they are safe. Changes were made in the definitions of "Independent Bicycle Project" and "Independent Walkway Project", in paragraphs (i) and (j), to promote greater clarity without changing the meaning. They now more clearly describe the relationship between Independent projects and Incidental projects.

Section 652.5 Policy.

A sentence has been added requiring consideration of the special needs of the elderly and handicapped on all Federal-aid projects that include pedestrian facilities.

The largest number of comments received concerned deletion of the sentence in former § 652.9(b) which provided that in developing bicycle projects consultation with organized groups of bicyclists should be sought. In response a statement encouraging such consultation has been added to this section. Consultation with local groups of bicyclists has proven a valuable source of local information about bicycling. These groups can and do provide insight and knowledge toward the development of bicycle facilities and often serve to promote safety. It is the Federal policy to encourage their counsel and support in promoting safe operational practices on new facilities.

Section 652.7 Eligibility.

Proposed § 652.9(a) concerning "transportation" use was revised slightly and renumbered as § 652.7(a), as it is more appropriately considered an eligibility requirement rather than a condition for Federal participation. In response to several comments, the word "principally" was inserted between "be" and "for" in the first sentence.

A number of comments concerned the difficulty in distinguishing between transportation and recreation use. The proposed examples were deleted because there could be instances where these examples might not be appropriate. The nature and purpose of a bicycle project can best be determined on a case-by-case basis considering the facts and circumstances of the individual project. It is intended that the FHWA Division Administrator will review proposed projects to determine if the proposed expenditure of funds is reasonable in addition to evaluating the proposed usage of the facility as conditioned in § 652.7.

The remainder of proposed § 652.7 was renumbered, with some revisions, as § 652.7(b). The first sentence was revised slightly to insure that its coverage included nonconstruction projects.

Twelve comments were received on proposed § 652.7(c)(2) which provided that all motorized vehicles should be banned from pedestrian or bicycle facilities. In the case of a shared roadway, it was not intended to ban motorized vehicles, but rather to ban parking that would block or otherwise restrict bicycle movements. Section 652.7(b)(3) has been revised to (1) limit the ban on motorized vehicles to walkways and bicycle paths, and (2) ban parking on bicycle lanes that are contiguous to traffic lanes except in the case of a breakdown or other such emergencies.

Section 652.9 Participation.

As noted above, proposed § 652.9(a) was renumbered as 652.7(a). The

remaining paragraphs of § 652.9 were renumbered (a) through (d). The first sentence of the last paragraph of proposed § 652.9(e) was added at the end of § 652.9(a) to promote clarity and remove duplication. The remainder of the last paragraph of proposed § 652.9(e) was deleted as unnecessary.

Nine comments dealt with funding. At least one State indicated that it is prohibited by State law from using State gasoline tax revenues for the construction of bicycle paths. The 100 percent FHWA funding, which is provided by § 652.9(a), creates a new method for developing bicycle transportation, without the use of State or local funds. However, it is not the intent of this regulation to preclude the use of local and/or State financial participation to supplement 100 percent Federal funds provided for independent projects. Acting on their own, local jurisdictions and States may provide right-of-way, engineering, additional construction and/or provide funds in conjunction with an independent Federal-aid project.

The last sentence of § 652.9(b)(2) was rewritten to make it clear that independent bicycle projects may include design features necessary to enable a roadway to function as a shared roadway.

Eight comments concerned the identification of eligible nonconstruction projects. This regulation does not attempt to describe every eligible nonconstruction project. However, the last sentence of § 652.9(b)(3) was revised to make the proposed language more specific and to make clear that the cost of staff salaries for development of a specific nonconstruction project may be included.

The first sentence of § 652.9(c) was changed slightly to make it clear that funds provided by FHWA for direct Federal projects, described in § 652.9(d), may be used for incidental bicycle and pedestrian highway features.

Section 652.11 Planning.

This section was revised and simplified to reflect current FHWA project planning requirements. Policy related language in proposed § 652.11(a) was moved to § 652.5.

Section 652.13 Design and Construction Criteria.

This section is unchanged.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory policies and procedures. The FHWA has also determined that the change reflected in this action will have only minimal impact on the affected States and public. The total amount of Federal funds available annually for pedestrian and bicycle facilities will remain unchanged. Accordingly, for the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. The anticipated economic impact of this proposal is so minimal as not to require preparation of a full regulatory evaluation.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 652

Bicycles, Grant programs—transportation, Highways and roads.

Issued on: March 15, 1984.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby amends Chapter I of title 23 Code of Federal Regulations, by revising Part 652 to read as follows:

PART 652—PEDESTRIAN AND BICYCLE ACCOMMODATIONS AND PROJECTS

Sec.

652.1 Purpose.
652.3 Definitions.
652.5 Policy.
652.7 Eligibility.
652.9 Federal participation.
652.11 Planning.
652.13 Design and construction criteria.

Authority: 23 U.S.C. 109, 217, 315, 402(b)(1)(F); 49 CFR 1.48(b).

§ 652.1 Purpose.

To provide policies and procedures relating to the provision of pedestrian and bicycle accommodations on Federal-aid projects, and Federal participation in the cost of these accommodations and projects.

§ 652.3 Definitions.

(a) *Bicycle.* A vehicle having two tandem wheels, propelled solely by human power, upon which any person or persons may ride.

(b) *Bikeway.* Any road, path, or way which in some manner is specifically designated as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.

(c) *Bicycle Path (Bike Path).* A bikeway physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way.

(d) *Bicycle Lane (Bike Lane).* A portion of a roadway which has been designated by striping, signing and pavement markings for the preferential or exclusive use of bicyclists.

(e) *Bicycle Route (Bike Route).* A segment of a system of bikeways designated by the jurisdiction having authority with appropriate directional and informational markers, with or without a specific bicycle route number.

(f) *Shared Roadway.* Any roadway upon which a bicycle lane is not designated and which may be legally used by bicycles regardless of whether such facility is specifically designated as a bikeway.

(g) *Pedestrian Walkway or Walkway.* A continuous way designated for pedestrians and separated from the through lanes for motor vehicles by space or barrier.

(h) *Highway Construction Project.* A project financed in whole or in part with Federal-aid or Federal funds for the construction, reconstruction or improvement of a highway or portions thereof, including bridges and tunnels.

(i) *Independent Bicycle Construction Project (Independent Bicycle Project).* A project designation used to distinguish a bicycle facility constructed independently and primarily for use by bicyclists from an improvement included as an incidental part of a highway construction project.

(j) *Independent Pedestrian Walkway Construction Project (Independent Walkway Project).* A project designation used to distinguish a walkway constructed independently and solely as a pedestrian walkway project from a pedestrian improvement included as an incidental part of a highway construction project.

(k) *Incidental Bicycle or Pedestrian Walkway Construction Project (Incidental Feature).* One constructed as an incidental part of a highway construction project.

(l) *Nonconstruction Bicycle Project.* A bicycle project not involving physical construction which enhances the safe use of bicycles for transportation purposes.

(m) *Snowmobile.* A motorized vehicle solely designed to operate on snow or ice.

§ 652.5 Policy.

The safe accommodation of pedestrians and bicyclists should be given full consideration during the development of Federal-aid highway projects, and during the construction of such projects. The special needs for the elderly and the handicapped shall be considered in all Federal-aid projects that include pedestrian facilities. Where current or anticipated pedestrian and/or bicycle traffic presents a potential conflict with motor vehicle traffic, every effort shall be made to minimize the detrimental effects on all highway users who share the facility. On highways without full control of access where a bridge deck is being replaced or rehabilitated, and where bicycles are permitted to operate at each end, the bridge shall be reconstructed so that bicycles can be safely accommodated when it can be done at a reasonable cost. Consultation with local groups of organized bicyclists is to be encouraged in the development of bicycle projects.

§ 652.7 Eligibility.

(a) Independent pedestrian projects, incidental bicycle projects, and nonconstruction bicycle projects must be principally for transportation rather than recreational use and must meet the project conditions for authorization where applicable.

(b) The implementation of pedestrian and bicycle accommodations may be authorized for Federal-aid participation as either incidental features of highways or as independent projects where all of the following conditions are satisfied.

(1) The safety of the motorist, bicyclist, and/or pedestrian will be enhanced by the project.

(2) The project is initiated or supported by the appropriate State highway agency(ies) and/or the Federal land management agency. Projects are to be located and designed pursuant to an overall plan, which provides due consideration for safety and contiguous routes.

(3) A public agency has formally agreed to:

(i) Accept the responsibility for the operation and maintenance of the facility,

(ii) Ban all motorized vehicles other than maintenance vehicles, or snowmobiles where permitted by State or local regulations, from pedestrian walkways and bicycle paths, and

(iii) Ban parking, except in the case of emergency, from bicycle lanes that are contiguous to traffic lanes.

(4) The estimated cost of the project is consistent with the anticipated benefits to the community.

(5) The project will be designed in substantial conformity with the latest official design criteria. (See § 652.13.)

§ 652.9 Federal participation.

(a) Independent walkway projects, independent bicycle projects and nonconstruction bicycle projects shall be financed with 100 percent Federal-aid primary, secondary or urban highway funds, provided the total amount obligated for all such projects in any one State in any fiscal year does not exceed $4.5 million of Federal-aid funds or a lesser amount apportioned by the Federal Highway Administrator to avoid exceeding the annual $45 million cost limitation on these projects for all States in a fiscal year. The Federal Highway Administrator may, upon application, waive this limitation for a State for any fiscal year. This limitation also applies to projects funded under § 652.9(d). This limitation does not apply to projects of the type described in § 652.9(c). The FHWA Offices of Direct Federal Programs and Engineering will coordinate projects of the type described in § 652.9(d) to ensure that the annual cost limitations will not be exceeded.

(b) Specific eligibility requirements for Federal-aid participation in independent and nonconstruction projects are:

(1) An independent walkway project must be constructed on highway right-of-way or easement, or right-of-way acquired for this purpose. Independent walkway projects may be constructed separately or in conjunction with a Federal-aid highway construction project. Where an independent walkway project is located away from the Federal-aid highway right-of-way, it must serve pedestrians who would normally desire to use the Federal-aid route.

(2) An independent bicycle project may include the acquisition of land needed for the facility, or such projects may be constructed on existing highway right-of-way or easement acquired for this purpose. Independent bicycle projects may include construction of bicycle lanes, paths, shelters, bicycle parking facilities and other roadway and bridge work necessary to accommodate bicyclists.

(3) Nonconstruction bicycle projects must be related to the safe use of bicycles for transportation, and may include safety educational material and route maps for safe bicycle transportation purposes. Nonconstruction bicycle projects shall not include salaries for administration, law enforcement, maintenance and similar items required to operate transportation networks and programs, but may include cost of staff or consultants for development of specific nonconstruction projects.

(c) Bicycle and pedestrian accommodations may also be constructed as incidental features of highway construction projects. These incidental features may be financed with the same type of Federal-aid funds, including funds of the type described in § 652.9(d) (except Interstate construction funds) and at the same Federal share payable as a basic highway project. These accommodations are not subject to the funding limitations for independent walkway, independent bicycle and nonconstruction bicycle projects. In the case of the Interstate construction projects, Federal-aid Interstate construction funds may only be used to replace existing facilities that would be interrupted by construction of the project, or to mitigate specific environmental impacts. Interstate 4R funds provided by 23 U.S.C. 104(b)(5)(B) may be used only for incidental features. As incidental features, these accommodations must be part of a highway improvement and must be located within the right-of-way of the highway, including land acquired under 23 U.S.C. 319 (Scenic Enhancement Program).

(d) Funds authorized for Federal lands highways (forest highways, public lands highways, park roads, parkways, and Indian reservation roads which are public roads), forest development roads and trails (i.e., roads or trails under the jurisdiction of the Forest Service), and public lands development roads and trails (i.e., roads or trails which the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under his/her control), may be used for independent bicycle routes and independent walkway projects. These funds may not be used for nonconstruction bicycle projects.

§ 652.11 Planning.

Federally aided bicycle and pedestrian projects implemented within urbanized areas must be included in the transportation improvement program/annual (or biennial) element unless excluded by agreement between the State and the metropolitan planning organization.

§ 652.13 Design and construction criteria.

(a) The American Association of State Highway and Transportation Officials' "Guide for Development of New Bicycle Facilities, 1981" (AASHTO Guide) or equivalent guides developed in

cooperation with State or local officials and acceptable to the division office of the FHWA, shall be used as standards for the construction and design of bicycle routes. Copies of the AASHTO Guide may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Suite 225, Washington, D.C. 20001.

(b) Curb cuts and other provisions as may be appropriate for the handicapped are required on all Federal and Federal-aid projects involving the provision of curbs or sidewalks at all pedestrian crosswalks.

[FR Doc. 84-7068 Filed 3-21-84; 8:45 am]
BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

23 CFR Parts 1209, 1213, 1214, 1215, 1217, 1309, and 1317

[Docket No. 84-03; Notice 1]

Incentive Grant Criteria for Alcohol Traffic Safety Programs; Incentive Grant Criteria for State Safety Belt Use Laws; Incentive Grant Criteria for Reduction of State Annual Highway Fatality Rates; Interim Grant Criteria for Reduction of Annual State Highway Fatalities; Innovative Project Grants

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice makes a number of changes to the agency's highway safety regulations codified in Title 23 of the Code of Federal Regulations. It deletes three regulations on incentive grant programs which have been terminated by Congress. It also transfers two regulations from Chapter II to a new Chapter III in Title 23 to show that these regulations are administered solely by NHTSA, rather than being jointly-administered with the Federal Highway Administration (FHWA). In addition, it also amends Part 1209 to indicate that the Office of Management and Budget (OMB) has approved the recordkeeping requirements of that rule.

EFFECTIVE DATE: The amendments are effective on March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen L. Oesch, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-1834).

SUPPLEMENTARY INFORMATION: The agency's regulations on traffic safety programs are codified in Chapter II of Title 23 of the Code of Federal Regulations. Parts 1213, Incentive Grant Criteria for State Safety Belt Use Laws, 1214, Incentive Grant Criteria for Reduction of State Annual Highway Fatality Rates, and 1215, Interim Grant Criteria for Reduction of Annual State Highway Fatalities, of the agency's regulations set requirements for three incentive grant programs that were established by Congress in 1973. Subsequently, in section 1107(d) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), Congress terminated those three incentive grant programs. This notice amends Title 23 by removing those regulations.

New Chapter III

Almost all of the regulations in Chapter II of Title 23 concern programs that are jointly administered by NHTSA and FHWA. Two of those regulations, Parts 1209, Incentive Grant Criteria for Alcohol Traffic Safety Programs, and 1217, Innovative Product Grants, are administered solely by NHTSA. To reflect that fact, the agency is creating a new Chapter III in Title 23 and transferring Parts 1209 and 1217 to that Chapter and redesignating them as Parts 1309 and 1317, respectively.

Information Collection

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 3516 of the Act authorizes the Director, Office of Management and Budget (OMB) to "promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." OMB used this authority and recently promulgated a new regulation, 5 CFR Part 1320. Sections 1320.7(f)(2) and 1320.14(e) of that regulation require agencies to display the control number assigned by OMB, after OMB approved the information collection requirements contained in agency rules.

On February 7, 1983 (49 FR 5548) NHTSA published a final rule establishing incentive grant criteria for effective program to reduce crashes resulting from persons driving while under the influence of alcohol. In the preamble, NHTSA noted that, pursuant to the Paperwork Reduction Act, it had requested OMB approval for the recordkeeping requirements adopted in the final rule. OMB has approved the use of the recordkeeping requirements through January 31, 1986. The OMB approval number is 2127-0501. This notice amends new Part 1309 to add that approval number to the regulation.

Effect of Amendment

The amendments made by this notice impose no obligations or responsibilities on any party, nor do they alter any existing obligations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment are unnecessary, and that the amendments are effective as soon as this notice is published.

NHTSA has analyzed the impacts of this action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This rule does not affect any existing duties or obligations under agency regulations, and will have no cost impacts. Therefore, a full regulatory evaluation is unnecessary.

For the same reasons, NHTSA has determined that this rule will not significantly affect the human environment, after considering the environmental implications in accordance with the National Environmental Policy Act of 1969. Likewise, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities, after making the evaluation required by the Regulatory Flexibility Act.

List of Subjects

23 CFR Part 1209

Alcoholism Grant Programs.

23 CFR Parts 1213, 1214, 1215 and 1217

Grant programs, Highway Safety.

In consideration of the foregoing the following amendments are made to Title 23 of the Code of Federal Regulations.

1. A new Chapter III is added entitled "Chapter III—National Highway Traffic Safety Administration."

PARTS 1209 AND 1217 [REDESIGNATED AS PARTS 1309 AND 1317]

2. Parts 1209 and 1217 of Chapter II are transferred to Chapter III and redesignated as 1309 and 1317, respectively.

PARTS 1213, 1214 AND 1215 [REMOVED]

3. Chapter II is amended by removing parts 1213, 1214, and 1215.

PART 1309—[AMENDED]

§ 1309.14 [Amended]

4. Section 1309.4 is amended by adding the following parenthetical

language at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2127–0501)

Authority: Sec. 2, Pub. L. 96–511, 94 Stat. 2819 (44 U.S.C. 3507); Sec. 101 Pub. L. 97–384; 96 Stat. 1738 (23 U.S.C. 408); Sec. 208, Pub. L. 95–599; 92 Stat. 2732 (23 U.S.C. 407); Delegations of authority at 49 CFR 1.48 and 1.50.

Issued on March 13, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84–7242 Filed 3–21–84; 8:45 am]

BILLING CODE 4910–58–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 52, 570, 590, 595, 600, 720, 841, 870, 880, 881, 883, 885 and 891

[Docket No. R–83–1070]

Intergovernmental Review of the Department of Housing and Urban Development Programs and Activities; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on June 24, 1983 (49 FR 29206) that implemented Executive Order 12372, "Intergovernmental Review of Federal Programs", by adding the authority citation to the end of the text of the rule.

FOR FURTHER INFORMATION CONTACT: Dr. June Koch, Deputy Under Secretary for Intergovernmental Relations, Telephone number (202) 755–6580. (This is not a toll-free number).

Accordingly, the following correction is being made to FR Doc. 83–16843 in the issue of June 24, 1983 appearing on page 29206:

1. On page 29221, third column, after the five asterisks following § 891.305(b) and before the word "Dated:———", add the following citation, "**Authority:** Executive Order 12372, July 14, 1982 (47 FR 30959), amended April 8, 1983 (48 FR 15887); Sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))."

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 16, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations

[FR Doc. 84–7686 Filed 3–21–84; 8:45 am]

BILLING CODE 4210–32–M

24 CFR Parts 203, 207, 213, 220, 221, 232, 234, 236, 241, 242, and 244

[Docket No. R–83–1133]

Mortgage Insurance and Home Improvement Loans; Changes in Interest Rates; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Correction to final rule.

SUMMARY: This document corrects amendatory language contained in a final rule that decreased the maximum allowable interest rates on HUD/FHA mortgage insurance programs that was published in the **Federal Register** on November 9, 1983 (48 FR 51455).

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Telephone number (202) 755–7270. (This is not a toll-free number).

Accordingly, the following correction is being made to FR Doc. 83–30208 appearing in the issue of November 9, 1983 on page 51456 as item 14:

On page 51456, third column, item 14, the amendatory language, "In § 241.75 paragraph (a) is revised to read as follows" is corrected to read "Section 241.75 is revised to read as follows."

Authority: Section 3(a), 82 Stat. 113; 12 U.S.C. 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 16, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84–7683 Filed 3–21–84; 8:45 am]

BILLING CODE 4210–27–M

24 CFR Part 888

[Docket No. R–83–1137; FR–1864]

Section 8—Fair Market Rents for New Construction and Substantial Rehabilitation—All Market Areas

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of effective date.

SUMMARY: This document announces the effective date for the interim rule published in the **Federal Register** on February 8, 1984 (49 FR 4892) which amends the Section 8 Fair Market Rents applicable to New Construction and Substantial Rehabilitation for all market areas, in compliance with the requirements of section 8(c)(1) of the U.S. Housing Act of 1937. The rule provided for a 30-day public comment period from the date of publication, and the effective date provision of the rule stated that, after the comment due date of March 9, 1984, a notice of the effective date of the rule would be published in the **Federal Register**.

On the basis of its consideration of the comments received during the public comment period, HUD has determined not to make any changes at this time in the Fair Market Rents published on February 8, 1984. Accordingly, all of the Fair Market Rents contained in Schedule A, as published in the **Federal Register** on February 8, 1984, will become effective as provided under "**EFFECTIVE DATE**," below.

However, HUD will continue carefully to evaluate all comments received, whether during or after expiration of the public comment period, to determine whether any further revision of the Fair Market Rent schedules should be made. If this evaluation indicates a need to make any further revision of the Fair Market Rent schedules for particular market areas, HUD will publish a revision of those schedules at a future date.

EFFECTIVE DATE: The effective date for the interim rule published February 8, 1984 at 49 FR 4892, is March 21, 1984.

FOR FURTHER INFORMATION CONTACT: Department of Housing and Urban Development, Room 6138, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: (202) 755–5743. This is not a toll-free number.

Dated: March 19, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84–7684 Filed 3–21–84; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3282

[Docket No. R–79–553]

Manufactured Home Procedural and Enforcement Regulations; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This document corrects an inaccurate cross-reference to paragraph (a)(3)(i) located in Part 3282 in Title 24 of the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Telephone number, (202) 755–7055. (This is not a toll-free number.)

Accordingly, 24 CFR Part 3282 is amended as follows:

1. In § 3282.12(b)(3)(ii), remove the reference to "paragraph (a)(3)(i)" whenever it appears, and add in its place the following: "(b)(3)(i)".

(Secs. 604(h) and 625 of the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5403 and 5424, and Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: March 16, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84–7759 Filed 3–21–84; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 252

Definition of "Area Adjacent to a State"

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the definition of "area adjacent to a State" to that portion of the Outer Continental Shelf (OCS) included within a planning area if such planning area is bordered by that State. This change will facilitate the proper inspection of privileged information by an affected State concerning any offshore activity adjacent to such State.

EFFECTIVE DATE: April 23, 1984.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091. Telephone: (703) 860–7916, (FTS) 928–7916.

SUPPLEMENTARY INFORMATION:

Background

Section 26 of the OCS Lands Act, 43 U.S.C. 1352, permits the Governor of any affected State, pursuant to an agreement with the Secretary, to designate an official to inspect any privileged information received by the Department of the Interior (Department) regarding any offshore activity adjacent to such State. As the Act does not specifically define the phrase "area adjacent to a State" for these purposes, the regulations must define the offshore area for which a State is permitted to inspect privileged and proprietary information. The current regulations define "area adjacent to a State" as "that portion of the OCS which would be within the area of a State if the State's boundaries were extended seaward to the outer margin of the OCS." For purposes of identifying the extended boundaries, the Department employed boundaries established by the National Oceanic and Atmospheric Administration for purposes of the Coastal Energy Impact Program (CEIP). In the alternative, States were invited to adopt their own mutually acceptable boundaries. Some States objected to the use of CEIP boundaries and suggested the use of Minerals Management Service (MMS) planning areas in determining areas adjacent to a State. Recognizing that a State has a legitimate interest in obtaining access to information on offshore activities adjacent to such a State, the Department is amending the regulations to accommodate that legitimate State interest.

The determination of adjacency by planning area makes use of geographic boundaries which have already been established by MMS and are used in the lease-offering process. The list below gives the established planning areas and the States which border each planning area.

Planning area	States which border planning area
North Atlantic Planning Area	Massachusetts, New Hampshire, and Maine.
Mid-Atlantic Planning Area	Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.
South Atlantic Planning Area	North Carolina, South Carolina, Georgia, and Florida.
Eastern Gulf of Mexico Planning Area.	Florida and Alabama.
Central Gulf of Mexico Planning Area.	Alabama, Mississippi, Louisiana, and Texas.
Western Gulf of Mexico Planning Area.	Texas.
Southern California Planning Area.	California.
Central and Northern California Planning Area.	Do.
Diapir Field Planning Area	Alaska.
Barrow Arch Planning Area	Do.
Norton Basin Planning Area	Do.
Navarin Basin Planning Area	None.
St. George Basin Planning Area.	Alaska.
North Aleutian Basin Planning Area.	Do.
Shumagin Planning Area	Do.
Kodiak Planning Area	Do.
Cook Inlet Planning Area	Do.
Gulf of Alaska Planning Area	Do.

In the Alaska Region, the Navarin Basin Planning Area does not include the area immediately seaward of Alaska and, as a result, is not bordered by any State. Since the Navarin Basin Planning Area is the first planning area seaward of Alaska, the MMS believes that it should be deemed adjacent to Alaska, and the definition is broadened to include this Area.

Difference Between Proposed Rule and Final Rule

The final rule differs from the proposed rule only in that the new definition of "area adjacent to a State" appears only in Part 252 and not in Part 250. The definition of "area adjacent to a State" for Part 250 was removed since it is not used in that part.

Discussion of Comments

A Notice of Proposed Rulemaking was published in the **Federal Register** on Wednesday, August 24, 1983 (48 FR 38500). Fourteen timely comments were received—4 from oil companies and 10 from States. Many commenters favored the change and made no specific comments. Other commenters raised specific points which are addressed below.

One commenter pointed out that the person inspecting data is a qualified representative of the Governor and not any member of the general public. Another commenter pointed out that the State inspecting the data must be affected, in addition to being adjacent. The MMS agrees with these comments; however, the proposed change addresses only the definition of adjacency. Whether the State is affected and who will inspect the data are addressed in other parts of the regulations.

Two commenters felt that an entire planning area was a larger area than Congress had intended when they used the term "adjacent." The MMS disagrees. Since Congress did not define "area adjacent to a State" for the purpose of sharing proprietary data, the MMS has the discretion to define the term. The MMS has done so taking into account the interests of the States, the regulated industry, and the general public.

One State suggested that it have access to data in the next planning area (not bordered by that State) because of its close proximity to such planning area. The commenter said that activity in the second planning area would impact onshore communities within their State. Proprietary data is intended to provide a State with information concerning how Federal leases will

effect hydrocarbon production on existing or future State leases. If offshore activity in the next planning area will affect local communities within a particular State, then that State can obtain necessary information from other sources such as the OCS Oil and Gas Information Program and Exploration and Development and Production Plans rather than by examining proprietary data.

One State suggested that the planning areas be defined in the rule. The MMS has chosen planning areas as the basis for adjacency to a State, in part, because the planning area boundaries are an existing part of the lease-offering process and have previously been defined. The general limits of a planning area are included in each call for information, and specific limits are available from protraction diagrams in appropriate regional offices. The viewing of proprietary data by a representative of the Governor of the adjacent State is only applicable to areas already under lease and, therefore, is only applicable to areas already in a specific planning area. Any time a State wishes to inspect data, the data will be from a specific lease and that lease will be in a specific planning area. To further assist interested parties, general maps of the planning areas are included with this Notice.

BILLING CODE 4310-MR-M

VOL 49 NO 57 MR 22 1984 UMI

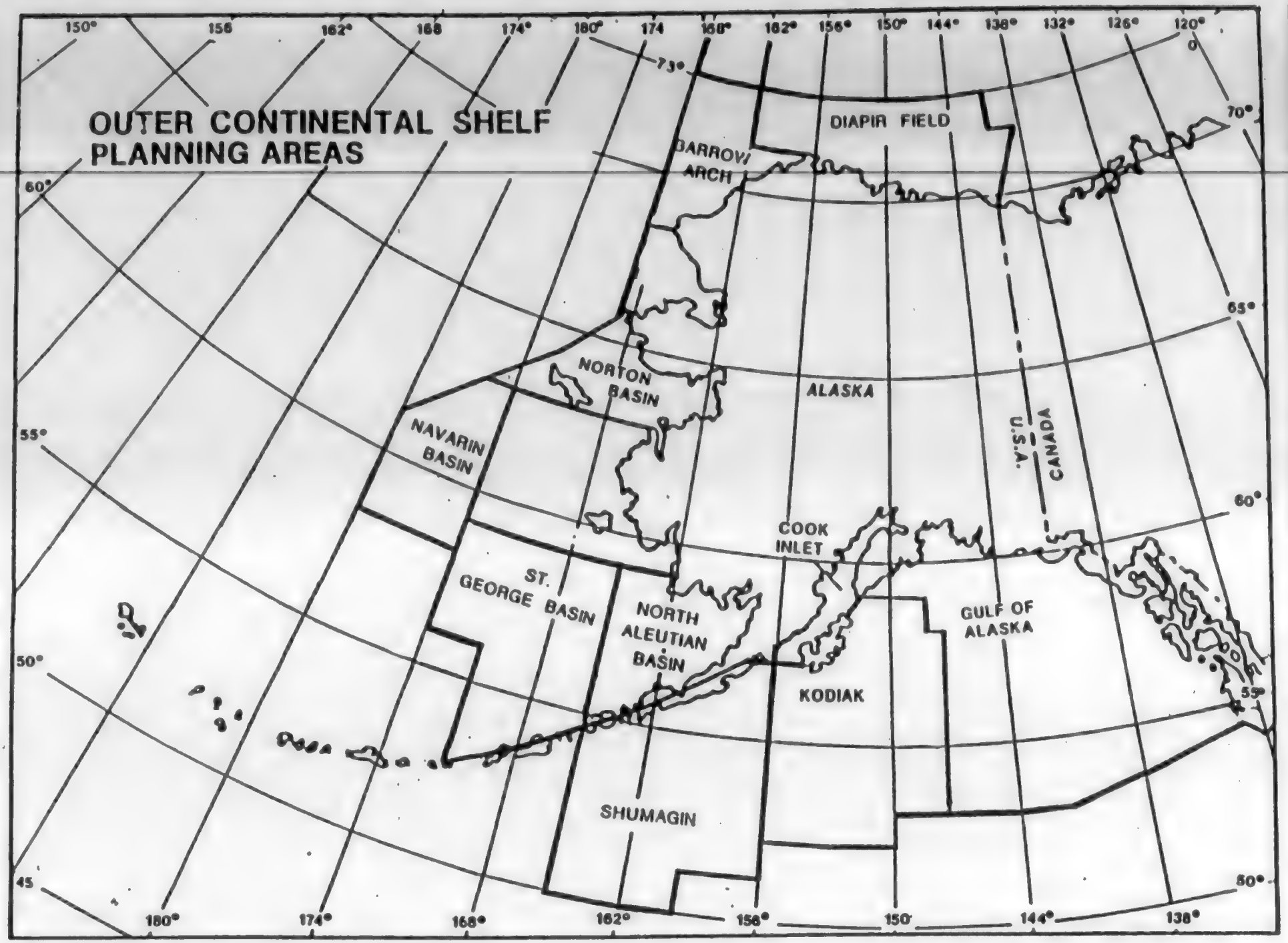

July 1982

U.S. Department of the Interior
Minerals Management Service

OUTER CONTINENTAL SHELF PLANNING AREAS

BILLING CODE 4310-MR-C

OUTER CONTINENTAL SHELF PLANNING AREAS

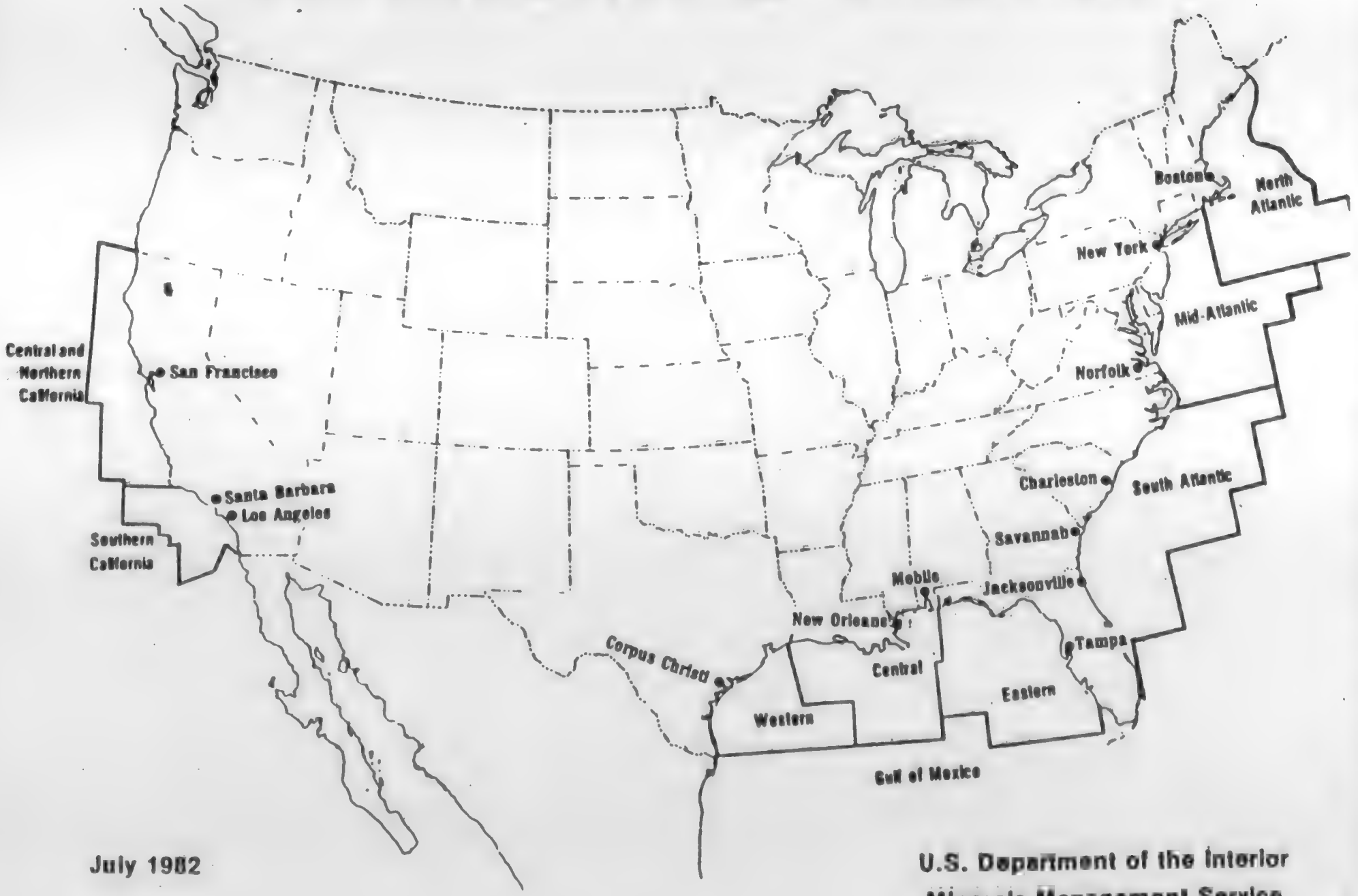

July 1982

U.S. Department of the Interior
Minerals Management Service

One State suggested that the limits of planning areas be published for comment. The MMS established planning area boundaries as part of the lease sale process. Planning areas are being addressed by MMS in this rulemaking to determine whether these existing boundaries should be used in defining "area adjacent to a State" and not to determine new planning area boundaries.

One commenter questioned the need to have the definition of "area adjacent to a State" included in Part 250 since it is only used in Part 252. The MMS agrees with this comment and the definition for "area adjacent to a State" has been removed from Part 250.

Regulatory Analysis, and Small Entity Flexibility Analysis

As this is an alteration of a definition to determine State interests in inspecting privileged information, the Department has determined that this document is not a major rule under Executive Order 12291.

The Department also certifies that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources necessary to conduct such activities.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author

This document was prepared by John Mirabella, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Minerals royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 252

Continental shelf, Freedom of information, Intergovernmental relations, Oil and gas exploration, Public lands/mineral resources, Reporting and recordkeeping requirements.

Dated: January 31, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Parts 250 and 252 are amended as shown:

PART 250—[AMENDED]

1. In § 250.2, paragraph (e) is removed and reserved as follows:

§ 250.2 Definitions.

* * * * *

(e) [Reserved]

* * * * *

PART 252—[AMENDED]

1. In § 252.2, paragraph (e) is revised to read as follows:

§ 252.2 Definitions.

* * * * *

(e) "Area adjacent to a State" means all of that portion of the OCS included wihtin a planning area if such planning area is bordered by that State. The portion of the OCS in the Navarin Basin Planning Area is deemed to be adjacent to the State of Alaska.

* * * * *

(43 U.S.C. 1352)

[FR Doc. 84-7642 Filed 3-21-84; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 83-060]

Drawbridge Operation Regulations; Nacote Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Atlantic County, New Jersey, the Coast Guard is changing the regulations governing the Route 575 Bridge over Nacote Creek at Port Republic, NJ by requiring notice of opening at all times and an opening as soon as possible for a public vessel of the United States. This change is being made because no requests have been made to open the draw since 1979. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: April 23, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668-7994.

SUPPLEMENTARY INFORMATION: On January 12, 1984, the Coast Guard published a proposed rule (49 FR 1535) concerning this amendment. The Commander, Third Coast Guard District also published this proposal as a Public Notice dated January 27, 1984. In each notice interested persons were given until February 27, 1984 to submit comments.

Drafting Information

The drafters of this rule are Ernest J. Feemster, project manager, and Mary Ann Arisman, project attorney.

Discussion of Comments

Two responses were received on the public notice, both expressing no objection to this proposed action. This general lack of objection corroborates the Coast Guard's finding that few if any future openings of the Route 575 bridge will be required. The bridge has a minimum eight foot clearance and this appears to be adequate for the few vessels using the waterway.

No changes to the substance of the proposed rule have been made in this final rule. Also no draft or final economic evaluation has been conducted for this action. This is because no water-dependent facilities, entities or other persons will be adversely affected by this action.

Economic Assessment and Certification

These final regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be major rules. They are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by adding a new § 117.225(f)(9-a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(9–a) Nacote Creek; the draw of the Ocean County Route 575 bridge, mile 3.5 at Port Republic shall open on signal if at least eight hours notice is given, and shall open as soon as possible at all times for passage for a public vessel of the United States.

* * * * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: March 14, 1984.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84–7723 Filed 3–21–84; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

49 CFR Part 350

[BMCS Docket No. MC–108; Amdt. No. 83–6]

Motor Carrier Safety Assistance Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amendment to interim final rule; request for comments.

SUMMARY: The FHWA is amending its interim final rule, published August 31, 1983 (48 FR 39455), establishing the Motor Carrier Safety Assistance Program (MCSAP), at 49 CFR 350, authorized by sections 401–404 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424) (STAA of 1982). This amendment will provide for a waiver, upon request, of the State matching share which would otherwise be required to be provided by the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas as a condition of their participating in the MCSAP. The FHWA invites comments on this amendment to the interim final rule.

DATES: This final rule is effective March 22, 1984.

Comments must be received by May 21, 1984.

ADDRESS: All written comments should refer to the docket number that appears at the top of this document and should be submitted, preferably in triplicate, to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh St., Washington, D.C. 20590. Those desiring notification of receipt of comments must include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Mr. W. R. Fiste, Bureau of Motor Carrier Safety, (202) 426–0701 or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 403 of the STAA of 1982 provides that Federal participation in the MCSAP will not exceed 80 per centum of the costs incurred by any State. Accordingly, in its interim final rule published on August 31, 1983, the FHWA provided that "[t]he Federal share payable to reimburse States for eligible costs incurred in the development or implementation of a commercial motor carrier safety program shall not exceed 80 percent." 49 CFR 350.13(a).

The Congress has also declared, however, that it is the policy of the Congress that agencies waive any requirements for matching funds otherwise required by law to be provided by an "Insular Area," which includes the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Marianas. This policy has been set forth at section 1469a(d) of title 48, United States Code. These named areas are considered as States for purposes of the MCSAP and, therefore, are eligible for participation therein, 49 U.S.C. 401(6), 49 CFR 350.3.

The FHWA has carefully reviewed the Congressional policy toward these areas and the special circumstances surrounding them. We note in particular the severely limited resources available to these areas and the consequent extensive involvement of other Federal funds there. Thus, we believe that insistence upon the provision of a "local match" might prove pointless. Moreover, the FHWA has concluded that, in certain instances, the absence of a provision for waiver of the "local match" would preclude participation in the MCSAP. This, obviously, would not enhance motor carrier safety in these areas, nor would it promote the objectives of sections 401–404 of the STAA of 1982.

Consequently, the FHWA will, upon request, waive the requirement for the Virgin Islands, American Samoa, Guam, or the Northern Marianas to provide local funds as a match in order to participate in this program.

The FHWA has determined that this action does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendment, however, is important inasmuch as it may enable a territory to participate in the MCSAP when otherwise, because of severely limited funds, it might not be able to. The economic impact of this action is minimal and, accordingly, a full regulatory evaluation is not required.

For the foregoing reasons, under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

The FHWA recognizes that any delay in publishing this amendment would prevent the effective use of a portion of the appropriated funds to carry out the statutory purposes of improving motor carrier safety enforcement during FY 1984. For this reason, and since the rule relieves a burden, the FHWA finds good cause to make this regulation effective without prior notice and opportunity for comment and without a 30-day delay in the effective date. Neither a general notice of proposed rulemaking nor a 30-day delay of the effective date is required under the Administrative Procedures Act because the matters affected relate to grants, benefits or contracts pursuant to 5 U.S.C. 553(a)(2). Accordingly, the regulation is effective upon publication. The FHWA will accept comments on this action which will be evaluated in determining the need for future revisions to the interim final rule as amended herein.

Since this amendment is being published in order to carry out the legislative objectives of sections 401–404 of the STAA of 1982, publication of this amendment without an opportunity for prior comment, but with a request for comment following publication, is consistent with the Department of Transportation's regulatory policies.

List of Subjects in 49 CFR Part 350

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, and under the authority of Sections 401–404 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424) and section 1469a(d) of title 48, United States Code, the FHWA hereby amends Title 49, Code of Federal Regulations, Part 350, by revising § 350.13(a) to read as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

350.13 Distribution of Funds.

(a)(1) The Federal share payable to reimburse States for eligible costs incurred in the development or implementation of a commercial motor carrier safety program shall not exceed 80 percent.

(2) *Exception.* The FHWA shall, upon request, waive the requirement for matching funds to be provided by the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas.

* * * * *

(Catalog of Federal Domestic Assistance Programs 20.217, Motor Carrier Safety)

Issued on: March 15, 1984.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 84-7044 Filed 3-21-84; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 49, No. 57
Thursday, March 22, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-84-2]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawls of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, May 21, 1984.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket #———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on February 16, 1984.

John H. Cassady,
Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Rulemaking

Docket No.

23894.

Petitioner

Kenneth B. Sherman.

Description of the Petition

To change Part 63: Certification of Flight Crewmembers Other than Pilots to extend to fully qualified military flight navigators the same privilege that has been enjoyed for decades by military pilots, i.e., to award FAA certification on the basis of military competency.

Regulations Affected

14 CFR Part 63.

Petitioner's Reason for Rule

In summary:

1. The FAA fails to recognize that military navigator training and subsequent qualification in a great variety of military aircraft, as conducted by the Armed Forces of the U.S., is equal to pilot training in all degrees of professionalism and skill.

2. There is no meaningful reason to deny issuance of the FAA Flight Navigator Certificate to suitably qualified military navigators, as the FAA issues pilot licenses to suitably qualified pilots, on the basis of military competency.

3. The rationale that the commercial pilot license and the flight navigator certificate refer to two, mutually exclusive worlds of civil aviation (air transport versus nonair transport) is spurious and further obviated by the conditions and qualifications given as part of this proposed rule change.

4. The FARs need to be changed to redress this inequity.

[FR Doc. 84-7622 Filed 3-21-84; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373 and 376

[Docket No. 40110-04]

Amendments to the Distribution License Procedure

AGENCY: Office of Export Administration, ITA, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends for 15 days the comment period for a proposed rule announced in the **Federal Register** (49 FR 2264-2267, January 19, 1984) and originally extended for 30 days (49 FR 5349, February 13, 1984). This document extends the comment period until April 6, 1984. This extension will afford interested persons an opportunity to address the issues raised in the proposed rule. The Office of export Administration does not intend to grant another extension of the comment period.

DATE: Comments on or before April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporter Services Division (Telephone: (202) 377-3856).

SUPPLEMENTARY INFORMATION: The public is invited to make specific comments on each proposed change announced in the January 19 Notice, "Amendments to the Distribution License Procedure." The guidelines for submitting comments and the mailing address are set forth in that Notice.

Dated: March 20, 1984.

John K. Boidock,
Director, Office of Export Administration, International Trade Administration.

[FR Doc. 84-7943 Filed 3-20-84; 4:44 pm]
BILLING CODE 3510-DT-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

Truck Size; Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction.

SUMMARY: This document corrects the route designations for the State of Alabama that appeared at page 7249 in the **Federal Register** of Tuesday, February 28, 1984 (49 FR 7249).

FOR FURTHER INFORMATION CONTACT: Mr. David C. Oliver, Office of the Chief Counsel, (202) 426–0825, or Mr. Sheldon G. Strickland, Office of Highway Planning, (202) 426–0153, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 to 4:15 p.m., ET, Monday through Friday, except legal holidays.

In FR Doc. 84–5234 appearing on page 7249 in the issue of Tuesday, February 28, 1984, correct the Alabama route designations to read as set forth below.

(23 U.S.C. 315; 49 CFR 1.48)

Issued: March 14, 1984.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

APPENDIX.—OTHER DESIGNATED ROUTES—ALABAMA

Posted route No.	From	To
US 431	AL 210 in Dothan	US 431/AL 173 in Rockford.
US 431	AL I-20 Anniston	I-59 Gadsden
US 431	AL 77 Attalla	Al 79 near Columbus City in Marshall County.
US 431	Co Rd 8 near New Hope in Madison County	Tennessee St. Line.
US 72	Mississippi St. Line	Jackson County Road 33 near Hollywood.
US 31	AL 152 Montgomery	AL 14 north of Prattville.
US 31	End of I-65 north of Birmingham.	I-65 north of Kimberly.
US 78	Beginning of four-lane west of AL 5 at Jasper in Walker County.	I-59 Birmingham.
US 78	End of I-20 in Irondale	I-20 west of Leeds.
US 82	Coker (west of Northport).	Eoline (west of Brent).
US 82	AL 206 Prattville	US 31 Prattville.
US 80	AL 14 west of Selma	AL 152 Montgomery.
US 84	AL 92 (east of Dalevilla)	AL 210 Dothan.
US 84	AL 210 Dothan	End of four-lane east of Dothan.
US 43	I-65 north of Mobile	Sunflower in Washington Co.
US 43	AL 5 near Fulton	US 72 Tuscumbia.
US 43	US 72 Florence	Tennessee St. Line.
US 29	Fairfax	Georgia St. Line.
AL 20	US 72 Tuscumbia	US 231 Huntsville.
AL 21	US 31 at Atmore	I-65 north of Atmore.
AL 21	US 431 Anniston	Jacksonville.
US 280	US 31 Mountain Brook	AL 22 at Alexander City.
US 280	I-85 Opelika	Georgia St. Line.
US 98	I-10 Daphne	End of four-lane near Fairhope.
US 231	Florida St. Line	AL 210 Dothan.
US 231	AL 210 Dothan	AL 152 Montgomery.
US 231	AL 152 Montgomery	End of 4-lane north of Wetumpka.
US 231	Arab	US 431 Huntsville.
AL 67	I-65 near Priceville	AL 20 west of Decatur
AL 77	I-59 Gadsden	US 431 Attalla.
AL 79	I-59 Birmingham	Pinson.
AL 152	US 31 (north of Montgomery).	I-65 north of Montgomery.

APPENDIX.—OTHER DESIGNATED ROUTES—ALABAMA—Continued

Posted route No.	From	To
AL 210	Dothan Circle (Beltway around Dothan).	
AL 249	US 84 Enterprise	Ft. Rucker.
AL 249	Ft. Rucker	US 231.

[FR Doc. 84–7845 Filed 3–21–84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Indiana to promulgate and submit rules governing the training, examination and certification of blasters. On March 6, 1984, Indiana requested an extension of time for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments must be received by April 23, 1984, at the address below, no later than 5:00 p.m.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Richard D. McNabb, Field Office Director, Indianapolis Field Office, Office of Surface Mining, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Field Office Director, Indianapolis Field Office, Office of Surface Mining, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204; Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Indiana's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 6, 1984, Indiana advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an extension until either September 1, 1984, or March 1, 1985, to develop and adopt a blaster certification program.

The Director of the Indiana Department of Natural Resources, the regulatory authority for Indiana's program, advised OSM that the State would require the additional time in order to promulgate and submit proposed rules for its blaster certification and training program. He state that rules necessary to implement the blaster certification and training program were preliminarily adopted on June 22, 1983. However, substantial public comment was received, primarily in opposition to the rules as proposed. Therefore, it is necessary for the Hearing Officer to review and make a recommendation on the substantial comment received and to evaluate the proposed rules. If the Hearing Officer's recommendation on the rules for final adoption results in rules not substantially different than those preliminarily adopted, the rules could be promulgated and submitted to OSM by September 1, 1984. If the Hearing Officer's recommendation would result in substantialy different rules from those preliminarily adopted, it would be necessary for the Natural Resources Commission to reinitiate its process to promulgate the rules resulting in promulgation and submittal of the rules by March 1, 1985. Also, he stated another factor in the delay is the resignation of the Blasting Specialist who would have conducted the training and examination of the blasters.

OSM is seeking comment on the State's request for additional time to develop and adopt a blaster cetification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a

program upon a demonstration of good cause.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paper Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining; Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 19, 1984.

Dean Hunt,

Acting Director, Office of Surfoce Mining.

[FR Doc. 84–7777 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 926

Proposed Modifications to the Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for review and comment on modified portions of the Montana permanent regulatory program. In the February 6, 1984 **Federal Register**, OSM announced a public comment period and procedure for requesting a public hearing on the substantive adequacy of proposed amendments to the Montana permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) submitted by Montana on January 3, 1984. The amendments submitted by Montana are modifications to the Montana rules that, among other things, address the training, examination and certification of blasters, and the assessment and waiver of civil penalties under the Montana Strip and Underground Mine Reclamation Act. OSM is reopening the comment period to allow the public an opportunity to comment on revisions made to the rules addressing the waiver on civil penalties. The rules addressing the blaster certification program will be the subject of separate rulemaking.

DATE: Written comments must be received on or before 4:00 p.m. on April 23, 1984.

ADDRESSES: Written comments should be mailed or hand delivered to William R. Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

Copies of the revised material submitted by Montana and other relevant documents are available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

Montana Department of State Lands, Reclamation Division, Capitol Station, Helena, Montana 59620

FOR FURTHER INFORMATION CONTACT: William R. Thomas, Field Office Director, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 328–5830.

SUPPLEMENTARY INFORMATION: The general background on the permanent regulatory program, the State program approval process, the Montana program and the conditional approval can be found in the Secretary's Findings and conditional approval published in the April 1, 1980 **Federal Register** (45 FR 21560) and the February 11, 1982 **Federal Register** (47 FR 6266).

On January 3, 1984, Montana submitted to OSM a program amendment that, among other things, addresses civil penalties. The proposed amendment consists of proposed regulations governing procedures for the assessment and waiver of civil penalties; implementation of a point system for civil penalties and waivers; issuance of notice of non-compliance and cessation orders; informal hearings; operator's inability to comply with a notice of compliance or cessation order; and continuation of health and safety activities during the period an order is in effect. The February 6, 1984, **Federal Register** announced receipt of the modification by OSM as well as a public comment period (49 FR 4385). In that same notice, OSM announced that a public hearing would be held only if requested. No requests were received and no hearing was held. The State of Montana, however, on February 2, 1984, conducted a public hearing to receive comments on the adequacy of Montana's proposed regulations. As a result of comments received at the hearing, the State, on March 6, 1984, submitted to OSM revised proposed regulations addressing civil penalties. Copies of the revised material are available in the OSM Administrative Record. Therefore, OSM is reopening the comment period in order to allow the public an opportunity to review and comment on the revised material submitted to OSM by the State on March 6, 1984.

Specifically, OSM is seeking comment on whether the material pertaining to civil penalties submitted by Montana on March 6, 1984, satisfies the criteria for approval of State program amendments at 30 CFR 732.17 and 732.15.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 16, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84–7775 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 926

Permanent State Regulatory Program of Montana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Montana (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On March 6, 1984, Montana requested an extension of time for the development of a blaster certification program until May 31, 1984. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments must be received by April 23, 1984 at the address below, no later than 5:00 p.m.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 328–5830.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 23 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Montana's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On January 3, 1984, the State of Montana submitted to OSM amendments to its permanent regulatory program. One amendment was intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. In addition to the proposed blaster certification regulations, Montana submitted to OSM a proposed program amendment addressing civil penalties.

OSM announced in the February 6, 1984 **Federal Register** (49 FR 4385), receipt of the proposed program amendment and procedures for the public comment period and public hearing on the adequacy of the proposed amendments.

The State of Montana conducted on February 2, 1984, a public hearing to receive comments on the adequacy of Montana's proposed regulations. As a result of substantive comments received at the hearing, the State decided to revise its amendment package and reopen the comment period until April 13, 1984.

To accommodate the revised schedule, the State submitted to OSM on March 6, 1984, a request for an extension until May 31, 1984, to submit final rules addressing the blaster certification program. The State also indicated that the final rules addressing civil penalties would be resubmitted at that time. Subsequently, on March 6, 1984, Montana submitted the revised rules addressing civil penalties. Through a separate rulemaking, OSM will publish shortly a **Federal Register** notice reopening the public comment period on the proposed amendment pertaining to civil penalties.

Therefore, OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

Dated: March 19, 1984.

Dean Hunt,

Acting Director, Office of Surface Mining.

[FR Doc. 84–7778 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 80

[CGD 80–142]

COLREGS Demarcation Lines; Savannah River, GA to Amelia Island, FL; Withdrawal

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: On July 27, 1981, the Coast Guard published a notice of proposed rulemaking to relocate the demarcation lines authorized by the International Regulations for Preventing Collisions at Sea (1972), (COLREGS) along the barrier islands off the coast of Georgia to coincide with the Georgia State Department of Natural Resources (DNR) sound/beach boundaries. (46 FR 38378; July 27, 1981). After further study of the proposal, the Coast Guard has determined that the COLREGS Lines should not be relocated and is withdrawing the Notice of Proposed Rulemaking.

DATE: This withdrawal is effective March 22, 1983.

FOR FURTHER INFORMATION CONTACT: LCDR Kent Kirkpatrick, Office of Navigation, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, (202) 245–0108.

SUPPLEMENTARY INFORMATION: In July of 1980, the Georgia State DNR petitioned the Coast Guard requesting that the COLREGS demarcation lines on the Georgia coast be reestablished to coincide with DNR sound/beach boundary lines. The Coast Guard gave preliminary approval to the Georgia DNR petition and published a notice of proposed rulemaking seeking further input from interested parties. [46 FR 38378; July 27, 1981].

Four comments on the proposed rule were received. None of these comments were pertinent to the issues involved. No comments were received in support of the proposed rule. The Coast Guard has reevaluated the proposal and concluded that the COLREGS demarcation lines should not be relocated at this time.

The COLREGS demarcation lines distinguish those waters upon which the International Regulations for Preventing Collisions at Sea, 1972, apply from those waters upon which mariners must comply with the Inland Navigation Rules. The COLREGS demarcation lines were established in 1977. A great deal of care was taken to make placement of the lines as consistent as possible throughout the United States. The proposed change to the demarcation lines to coincide with boundaries established for unrelated reasons could confuse mariners entering these waters from other geographic areas. No problems have been reported with current placements in Georgia. Further, the Georgia DNR has withdrawn its request for modification of the demarcation lines.

It is in the interest of navigational safety to retain the established demarcation lines absent compelling needs for modification. Therefore, no final rule or revised proposal to amend or modify Part 80 of Title 33, Code of Federal Regulations is contemplated at this time except to update the COLREGS demarcation line descriptions where landmarks used to describe locations have been renamed, destroyed, or moved.

In view of the foregoing, the notice of proposed rulemaking published at 46 FR 38378, Coast Guard Docket CGD 80–142, is hereby withdrawn.

Dated: March 14, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coat Guard, Chief, Office of Navigation.

[FR Doc. 84–7726 Filed 3–21–84; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 110

[CGD5 83–08]

Anchorage Ground; Baltimore Harbor, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to disestablish the small vessel anchorage in Northwest Harbor. This action is being taken at the request of the City of Baltimore which intends to build a marina in the location of this anchorage. It is necessary to disestablish this small vessel anchorage to permit this marina to be built.

DATES: Comments must be received on or before May 7, 1984.

ADDRESSES: Comments should be mailed to Commander (mpv), Fifth Coast Guard District, Federal Building, 431 Crawford St., Portmouth, VA 23705. The comments will be available for inspection and copying at 431 Crawford St., Room 408, Portmouth, VA. Normal office hours are between 8:00 a.m. and 4:30 p.m. Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lt. W. J. Wetzel at (804) 398–6388.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD5 83–08) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant W. J. Wetzel, project officer, Marine Safety Division, and Lieutenant W. J. Bruydzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Proposed Regulation

This proposal to disestablish the small vessel anchorage in Northwest Harbor is being taken at the request of the City of Baltimore to allow for the construction of a new marina. As part of its waterfront redevelopment, the City of Baltimore plans to build a marina which will encroach upon a portion of the area presently designated as the small vessel anchorage. As a result, either the marina cannot be built as now designed, or the anchorage must be discontinued or relocated. The Maryland Department of Transportation has already stated that if has no objection to the elimination of this anchorage. Our investigation has shown that it is seldom if ever used. Most boat operators anchor instead in the Inner Harbor nearer the center of the city. The addition of over 300 new vessel berths will also provide for more berthing capacity than currently exists in the small vessel anchorage. For reasons cited above it is proposed that this small vessel anchorage be eliminated.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations. (DOT Order 2100.5.) It's economic impact is expected to be minimal since this anchorage area is seldom used and the marina which will replace it will greatly add to the berthing spaces currently available to boat operators. Based upon this assessment it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons stated above. Also, the regulation has be reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be major rule under the terms of that order.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Titles 33, Code of Federal Regulations, by removing section 110.158(a)(9).

(33 U.S.C. 471; 49 U.S.C. 1655(g)(1); 49 CFR 1.46; and 33 CFR 1.05–1(g))

Dated: March 5, 1984.

John D. Costello,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 84-7728 Filed 3-21-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD5-83-04]

Anchorage Ground; Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based upon discussions with the Virginia Department of Highways and Transportation, the U.S. Navy, the U.S. Army Corps of Engineers, the Virginia Pilots Association and the Hampton Roads Maritime Association, the Coast Guard is proposing to review and amend the anchorage regulations for Hampton Roads, Virginia and adjacent waters. This proposal is being made to accommodate the intended construction of the Newport News Bridge-Tunnel, a proposed widening and deepening of the Newport News Channel, and the construction of a U.S. Navy ammunition barge mooring facility. The intended effect of the proposed action is to provide safer anchorage grounds in Hampton Roads while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before May 7, 1984.

ADDRESSES: Comments should be mailed to Commander(mpv), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23705. Comments will be available for inspection and copying at the office of the Commander, Fifth Coast Guard District(mpv), Room 408-A, Federal Building, 431 Crawford Street, Portsmouth, Virginia, 23705. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant W. J. Wetzel, Port and Vessel Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23705, (804) 398-6388.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written views, data, or arguments. Persons submitting comments should include their names and addresses, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped, self-addressed postal card or envelope is enclosed.

Discussion

The anchorage grounds which are affected by this proposal are located in Hampton Roads between the Hampton Roads (Interstate 64) Bridge-Tunnel and the James River (Route 17) Bridge. Three major projects which will have a significant impact on navigation in the Hampton Roads area are presently underway or are planned for the near future. These projects are:

a. Planned construction of the Newport New (Interstate 664) Bridge-Tunnel between downtown Newport News, Virginia and Suffolk, Virginia under Army Corps of Engineers, Norfolk District permit application NAOOP-P-83-0094-15 dated April 6, 1983;

b. The construction of a Navy ammunition barge mooring facility in anchorage B, under Army Corps of Engineers, Norfolk District permit 82-0370-01; and

c. A proposed widening of Newport News Channel to 1000 feet and dredging to a depth of 55 feet.

The Newport News Bridge-Tunnel is a 3.9 mile long, four-laned project with its northern terminus located near the Newport News Small Boat Harbor and its southern terminus near Salter's Creek in Suffolk, Virginia, approximately one mile east of Pig Point. This complex will be similar to the Hampton Roads Bridge Tunnel between Hampton, Virginia and Norfolk, Virginia.

The construction of the bridge-tunnel complex will require the elimination or realignment of some Federal anchorage grounds, as well as the removal of the Navy ammunition barge mooring facility which is located approximately 1 mile southwest of Newport News Middle Ground. Based upon the damages sustained by the Chesapeake Bay Bridge Tunnel during the past several years, the Coast Guard desires to reduce the likelihood of similar damages to the Newport News Bridge Tunnel by developing regulations which restrict vessel operation and/or anchoring in its vicinity. There are many feasible ways that this can be done and the Coast Guard would like to find that way which least disrupts navigation and vessel operations, yet which still provides an acceptable level of safety.

The Navy Ammunition barge mooring facility presently under construction in the vicinity of 38°58'34" N., 7°21'21"W. is situated in anchorage B near other anchorages and major ship channels. This means that changes in safety regulations will have to be developed. This facility is intended to berth loaded and unloaded ammunition barges for short periods of time, and quite likely, similar regulations to those which exist at the present barge mooring facility in Anchorage F will need to be implemented. The present barge mooring facility in Anchorage F will be dismantled and the sight abandoned by the U.S. Navy. Newport News Channel is presently maintained to a width of 800 feet, but if it is widened to 1,000 feet by the Corps of Engineers the anchorage boundaries along this channel will have to be shifted. This change should significantly improve the navigability of this channel but at the same time it will mean a reduction in the available anchorage ground along its perimeter.

Your specific recommendations for addressing the concerns of the proposals outlined above are invited. Additionally, your thoughts on matters not addressed above, but which you feel can improve the usefulness and safety of anchorage areas in Hampton Roads are especially desired, and will assist the Coast Guard in the development of any proposed regulations which result from this advance notice.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

(33 U.S.C. 471; 49 U.S.C. 1655(g)(1); 49 CFR 1.46; and 33 CFR 1.05-1(g), and 33 CFR 1.05-3)

Dated: March 5, 1984.

John D. Costello,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 84-7725 Filed 3-21-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD3 84-06]

Drawbridge Operation Regulations; Christina River, Delaware

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Delaware Department of Transportation, the Coast Guard is considering a change to the regulations governing the Market Street Bridge over Christina River at Wilmington, Delaware to require advance notice at all times while still providing for closed periods during commuter rush hours. This proposal is being made because no requests have been made to open the draw since 1980. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw

and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before May 7, 1984.

ADDRESS: Comments should be submitted to and are available for examination from 9 a.m. to 3 p.m., Monday through Friday, except holidays, at the office of the Commander (oan-br), Third Coast Guard District, Building 135A, Governors Island, NY 10004. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District will evaluate all communications received and will determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ernest J. Feemster, project manager, and Mary Ann Arisman, project attorney.

Discussion of Proposed regulations

The requirement for eight hours advance notice is proposed in addition to existing regulations. Existing regulations providing for closed periods during the morning and evening rush hour remain unchanged. These new regulations are being proposed because marine traffic is very sparse through the area consisting, as far as can be determined, of pleasure boats. There are no water-dependent, commercial facilities upstream of the bridge, and no defined requirement for commercial vessel openings. Bridge opening logs show that openings for commercial vessels were last made in 1980 but such openings are not presently required or anticipated.

Bridge opening logs (1980–1983) are not complete, mainly because the bridge was not functioning properly (because of repair) from May 1981 until August 1982. However, no openings of any kind are shown since 1980. The bridge owner has also stated that no openings were requested during the period the bridge was out of service because of repair. It is for these reasons that the regulations are being proposed. No draft economic evaluation has been conducted since very few if any openings are expected to be required each year. Therefore the regulations are expected to have minimal effect on the mariner. Also no entities of any type have been identified as being adversely affected by these proposed regulations.

Economic Assessment and Certification

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with § 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by adding a new § 117.235(g)(6)(iii) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.235 Christina River, Del.; bridges.

* * * * *

(g) * * *

(6) * * *

(iii) Market Street Bridge, mile 3.0, at Wilmington. Except as provided in paragraph (h) of this section, the draw shall open on signal if at least eight hours notice is given. The draw shall open at all times as soon as possible for passage of a public vessel of the United States.

* * * * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: March 12, 1984.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 84–7727 Filed 3–21–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 166

[CGD 84–011]

Port Access Routes

AGENCY: Coast Guard, DOT.

ACTION: Notice of study.

SUMMARY: The Coast Guard is undertaking a study of the potential vessel traffic density and the need for safe access routes in the approach to Boston, Massachusetts. New safety fairways will be considered for this area to overlay the Traffic Separation Scheme (TSS), in the Approach to Boston, Massachusetts, and the Precautionary Area located between that TSS and the TSS Off New York (Eastern Approach Off Nantucket). This study is being conducted in accordance with standards contained in the Ports and Waterways Safety Act (PWSA) (Pub. L. 95–474; 33 U.S.C. 1223 and 1224). As a result of this study, new or modified routing measures may be proposed in a future **Federal Register**. Also, the results of this study could cause restrictions in the manner in which specific offshore areas leased after the date of this notice may be explored and developed.

DATE: Comments due by June 30, 1984.

ADDRESS: Commander (mps), First Coast Guard District, Boston, MA 02114.

FOR FURTHER INFORMATION CONTACT: Lt. Commander Paul J. Howard, (617) 223–6915.

SUPPLEMENTARY INFORMATION:

Specifically, the area to be examined during the study is bounded by a line connecting the following geographic positions:

Latitude	*Longitude*
(1) 42°12′00″ N.,	69°38′00″ W.
(2) 40°28′00″ N.,	66°28′00″ W.
(3) 40°10′00″ N.,	69°16′00″ W.
(4) 40°59′00″ N.,	69°16′00″ W.
(5) 42°12′00″ N.,	70°04′00″ W.

The above area encompasses the TSS in the Approach to Boston, Massachusetts and the Precautionary Area that connects the Boston TSS with the TSS Off New York (Eastern Approach, Off Nantucket). The study area is approximately 500 meters wider than the existing TSS and precautionary area to consider the need for a fairway buffer area along the traffic lanes. (Similar

measurers are being considered in a study of the Eastern Approach off New York as announced at 49 FR 5017, and corrected at 49 FR 8593).

Port access routing needs in the Boston Approach area were previously studied in 1980; and results were published on January 7, 1982, in 47 FR 879. It was announced that a new precautionary area was needed at the junction of the New York and Boston TSSs off Nantucket. This precautionary area was adopted by the International Maritime Organization as a TSS amendment in June 1983. It became effective on January 1, 1984. New interest in leasing tracts on the North Atlantic Outer Continental Shelf in the area of the Boston Approach traffic lanes poses a potentially significant impact on navigation and the Coast Guard has determined that the area must be restudied.

The First Coast Guard District will be conducting the study and developing recommendations. Following is the name, address and telephone number of the project officer who will be responsible for the study of this area: LCDR Paul J. Howard, (mps), First Coast Guard District, Boston, MA 02114, (617) 223–6915.

The Coast Guard is interested in receiving information and opinions from persons who have an interest in safe routing of ships as affected by other uses of the area. Written comments should be mailed to the above address. In accordance with the PWSA, the Coast Guard will directly consult with the Secretaries of State, the Interior, Commerce and Army, and the Governors of the affected states during the study. In order to be most useful, any relevant information should be made available to the First District office by 30 June 1984.

In particular, the Coast Guard would like comments pertaining to the need for and the benefits and costs of a shipping safety fairway to overlay the TSS in the Approach to Boston and the Precautionary Area off Nantucket. Vessel operators are invited to comment on any navigational benefits of having a safety fairway. Offshore developers are encouraged to identify and support any foreseeable cost impact of indirect access resulting from a new fairway.

Study Policies

The actions to be taken as a result of this study cannot be specified at this time. However, the Coast Guard will be governed by certain policies which are emphasized here to assist those who wish to submit comments. These policies and intentions are based on Coast Guard experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions, as well as the mandates of the PWSA.

The PWSA directs that "in order to provide safe access routes for the movement of vessel traffic proceeding to and from ports * * * the Secretary shall designate necessary fairways and traffic separation schemes" in which the "paramount right of navigation over all others uses" shall be recognized. Before a designation can be made, the Coast Guard is required to "undertake a study of the potential traffic density and the need for safe access route."

During the study, the Coast Guard is directed to consult with federal and state agencies and to "consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action."

The use conflict which is of current concern in the area to be studied involves the present or potential placement of oil exploration and production facilities in or near traditional transatlantic traffic routes. The location of oil and gas exploration and development facilities in areas of heavy vessel traffic can be regulated by the establishment of shipping safety fairways. In accordance with 33 U.S.C. 1223(c), the Coast Guard will "to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved." If the Coast Guard determines that a new routing measure designation is needed, a notice of proposed rulemaking will be published.

It is anticipated that the study will be concluded by January 31, 1985.

Dated: March 13, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation.

[FR Doc. 84–7728 Filed 3–21–84; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 207

Navigation Regulations; McClellan—Kerr Arkansas River Navigation System

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Proposed regulations.

SUMMARY: The Corps of Engineers proposes to amend the regulations which govern the use, administration and navigation of the McClellan-Kerr Arkansas River Navigation System. This proposed revision eliminates obsolete requirements and provides for an improved format similar to regulations promulgated by the Corps for other major waterways. In addition, several paragraphs pertaining to safety items are included in these regulations.

DATE: Comments must be received on or before April 23, 1984.

ADDRESS: Comments should be submitted in writing to: Office of the Chief of Engineers, Attn: DAEN–CWO–M, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Reavis, Little Rock District, at (501) 378–5738 or Mr. Bob Schmidt, (202) 272–0245.

SUPPLEMENTARY INFORMATION: The existing regulations were written in the late 1960's and contain obsolete requirements. The need for revising the regulations was increased when parts of the regulations were transferred to the Coast Guard in 1977. The draft regulations have an improved format similar to the Ohio River and Mississippi River regulations which will be easier to comprehend.

The principal additions to the regulations are in paragraphs (e), (f), (m), and (o) which are titled: "Safety Rules for Vessels Using Navigation Locks," "Dangerous Cargo Barges," "Restricted Areas at Locks and Dams," and "Repair and Construction of Navigation Structures," respectively. These paragraphs pertain to safety items which are essential to protect the locks and dams and the users.

List of Subjects in 33 CFR Part 207

Navigation (water), water transportation, vessels, Boats and boating safety.

An environmental impact assessment of the revised regulations has been prepared and placed on file in Little Rock and Tulsa Districts. The evaluation of the assessment was favorable.

Note.—The Chief of Engineers has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices. The Chief of Engineers has also determined that this proposed rule will not have a significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

Dated: January 24, 1984.

Michael Volpe,

Colonel, Corps of Engineers, Executive Director of Civil Works.

PART 207—[AMENDED]

Accordingly, the Corps of Engineers proposes, to revise 33 CFR 207.275 as set forth below.

§ 207.275 McClellan-Kerr Arkansas River Navigation System: Use, administration, and navigation.

(a) *Applicability of regulations.* These regulations apply to all locks and appurtenant structures, wharves, and other Corps of Engineers structures in the following waterways: The White River between Mississippi River and Arkansas Post Canal, Arkansas; Arkansas Post Canal, Arkansas; Arkansas River between Dam No. 2, Arkansas, and Verdigris River, Oklahoma; Verdigris River between Arkansas River and Catoosa, Oklahoma; and reservoirs on these waterways between Mississippi River, Arkansas, and Catoosa, Oklahoma.

(b) *Authority of district engineers.* The use, administration, and navigation of the structures to which this section applies shall be under the direction of the officers of the Corps of Engineers, U.S. Army detailed in charge of the respective districts, and their authorized assistants. The cities in which these district engineers are located, and the limits of their jurisdictions, are as follows:

(1) *District engineer, U.S. Army Engineer District, Little Rock, Arkansas.* From Mississippi River, Arkansas, to Arkansas-Oklahoma State line at Fort Smith, Arkansas.

(2) *District Engineer, U.S. Army Engineer District, Tulsa, Oklahoma.* From Arkansas-Oklahoma State line at Fort Smith, Arkansas, to Catoosa, Oklahoma.

(c) *Authority of lockmasters.* The lockmaster shall be charged with the immediate control and management of the lock and of the area set aside as the lock area. The lockmaster shall ensure that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he/she is authorized to give all necessary orders and directions both to employees of the Government and to any person within the limits of the lock area, whether navigating the lock or not. No one shall cause any movement of any vessel or other floating thing in the lock area except by or under the direction of the lockmaster. Failure to comply with directions given by the lockmaster pursuant to the regulations in this section may result in refusal of lockage. For the purpose of the regulations in this section, the "lock area" is considered to be between the upstream and downstream arrival points. The district engineer may extend the limits of the lock area consistent with the safe and efficient use of the waterway.

(d) *Precedence at locks.* (1) Precedence shall be given to vessels owned by the United States, licensed commercial passenger vessels operating on a published schedule or regularly operating in the "for hire" trade, commercial tows, rafts, and pleasure craft, in the order named. Precedence being equal, the first vessel to arrive at a lock will normally be the first to lock through; however, the lockmaster may depart from this procedure to achieve optimum utilization of the lock or in accordance with the order of precedence stated above and paragraphs (d)(2) and (h). Arrival points have been established ashore upstream and downstream of the locks. Vessels arriving at these markers or the mooring cells immediately upstream and downstream of the lock will be considered as having arrived at the lock within the meaning of this subparagraph.

(2) Vessels or tows, with overall dimensions greater than 105 feet wide or 595 feet long may transit the lock at such time as the lockmaster determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind, current, or other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster deems necessary at the time of transit.

(e) *Safety rules for vessels using navigation locks.* (1) Leaking vessels may be excluded from the locks.

(2) Open flames, burning or other flammable activities such as painting will not be permitted in the lock chamber during the locking cycle.

(3) All deckhands handling lines during locking procedures shall wear a personal flotation device.

(f) *Dangerous cargo barges.* The following rules are prescribed for all tows containing dangerous cargoes as defined in Title 46, Code of Federal Regulations. These rules are applicable to both loaded barges and empty barges.

(1) All hatches on barges used to transport dangerous cargoes shall be closed before the tow enters the lock area.

(2) Prior to entering the lock area, towboat pilots shall furnish the name of product, the source of shipment, the company which made the shipment, and the consignee. If a towboat is not equipped with a radio or its radio is out of service, pilots shall furnish this information to the lockmaster while the tow is in the lock chamber. The shipping papers required by Title 46, Code of Federal Regulations, shall be available for review by the lockmaster. Lockage shall be refused when this information is not furnished to the lockmaster.

(3) Fenders shall be water-soaked or otherwise spark proofed.

(4) Smoking, open flames, chipping, or other spark producing activity are prohibited in the "lock area".

(5) Simultaneous lockage of other vessels with vessels carrying dangerous cargoes or containing flammable vapors shall normally not be permitted. If significant delays are occurring at a lock, such simultaneous lockages, except with pleasure craft, may be permitted by the lockmaster, when he/she determines such action safe and appropriate, provided:

(i) The first vessel entering or the last vessel exiting shall be secured before the other enters or leaves.

(ii) All masters involved have agreed to the joint use of the lock.

(g) *General locking procedures.* (1) In case two or more boats or tows are to enter for the same lockage, their order of entry and exit shall be determined by the lockmaster.

(2) Tows entering a lock shall come to a complete stop at a point designated by the district engineer before proceeding to the mooring position.

(3) When entering or exiting locks, tow speeds shall not exceed 200 feet per minute (rate of slow walk) or the rate of travel whereby the tow can be stopped by checking should mechanical difficulties develop. when navigating over Norrell Dam during high water, vessels shall reduce speed to barely maintain steerage way. Pilots should check with the individual lockmasters concerning prevailing conditions. It is also recommended that pilots check their ability to reverse their engines prior to beginning an approach. Towboat engines shall not be turned off in the lock unless authorized by lockmaster.

(4) The sides and ends of all vessels passing through any lock shall be free from protrusions of any kind which might damage the lock structure.

(5) All vessels shall be provided with suitable fenders. One or more deckhands, as the lockmaster may direct, shall be kept at the bow and stern of every tow until it has cleared the lock and guidewalls to protect the walls by use of hand-held fenders. When entering a lock, two deckhands are required at the bow of tows 105 feet wide or wider until the bow passes the recessed miter gates.

(6) Masters and pilots must use every precaution to prevent unnecessary delay in entering or leaving locks. Vessels failing to enter locks with reasonable promptness when signaled to do so shall lose their turn. Rearranging or switching of barges in the locks or in approaches is prohibited unless approved or directed by the lockmaster.

(7) No vessel shall enter a lock unless its draft is at least 2 feet less than the least depth of water over the sills. Information concerning controlling depth over sills can be obtained from the lockmaster at each lock or by inquiry at the office of the District Engineer of the District in which the lock is located.

(8) Vessels awaiting their turn to lock shall be positioned so that they will not interfere with vessels leaving the lock. However, to the extent practicable under the prevailing conditions, vessels and tows shall position themselves so as to minimize approach time when signaled to do so.

(9) *Number of Lockages.* (i) Tows or rafts locking in sections will generally be allowed only two consecutive lockages if other vessels are waiting lockage, but may be allowed more in special cases. No part of a tow shall pass a lock until the whole of the one preceding it shall have passed. The lockmaster may prescribe a departure from the normal order of precedence to achieve the best lock utilization.

(ii) One or more deckhands, as the lockmaster may direct, shall tend the lines at the bow and stern of each section of a tow that transits a lock or moors to the guidewalls.

(10) Vessels shall enter and leave locks under such control as to prevent any damage to the walls and gates.

(h) *Lockage of pleasure craft.* In order to fully utilize the capacity of the lock, lockmasters may expedite the lockage of pleasure craft by locking them through with commercial vessels, except vessels carrying volatile cargoes or other substances likely to emit toxic, flammable, or explosive vapors. If the lockage of pleasure craft cannot be accomplished within the time required for three single lockages, a separate lockage of pleasure craft shall be made. Pleasure craft operators are advised that the locks have a pull chain located at the end of each guidewall which signals the lockmaster that lockage is desired.

(i) *Locking rafts and floating dredge discharge line.* While awaiting lockage, rafts and tows containing floating dredge discharge line shall not obstruct the lock approaches. They shall be properly and securely assembled to assure adequate control while entering and exiting the locks. The passage of loose logs through a lock is prohibited. Lockage will be refused to rafts unless the logs float sufficiently high to make it evident that the raft will not sink.

(j) *Mooring.* (1) *At Locks.* (i) When in the locks, all vessels shall be moored as directed by the lockmaster. Vessels shall be Moored with bow and stern lines leading in opposite directions to prevent the vessel from "running" in the lock. All vessels will have one additional line available on the head of the tow for emergency use. The pilot of a vessel shall remain at his station in the pilot house and the deckhands shall stand by the mooring lines during the entire locking procedure. When the vessel is securely moored, the pilot shall not cause movement of the propeller except in an emergency or unless directed by the lockmaster. Tying to lock ladders is strictly prohibited.

(ii) Mooring of any vessel will not be permitted at or between the arrival points without permission of the lockmaster.

(2) *Outside of Locks.* (i) Vessels over 40 feet in length shall not anchor over revetted banks of the river, except in case of emergency. Vessels over 40 feet in length shall not land against revetted banks without written permission of the district engineer. In all cases, every precaution to avoid damage to the revetment works shall be exercised. The construction of log rafts along mattressed or paved banks or the tying up and landing of log rafts against such banks require the permission of the district engineer.

(ii) Government mooring facilities at the junction of main stem and secondary channels are to provide temporary mooring for tows awaiting transfer of barges to or from ports, docks, or fleeting areas located on the secondary channels. These facilities shall not be used for storage of barges or fleeting activities. The maximum permissible time of mooring at the facilities shall be determined by the district engineer.

(k) *Locking signals.* Vessels must approach the locks with caution and not enter or leave the locks until signaled to do so by the lockmaster.

(1) *Signal By Radio.* Requests for lockage by radio will be the primary signal for vessels equipped with VHF–FM radios operating in the FCC authorized Maritime Band. District engineers will advise all known interested parties of the channels available for use in communicating with the locks. Commercial tows should contact the locks at least one-half hour before arrival in order that the pilots may be informed of current river and traffic conditions that may affect the safe passage of their tows.

(2) *Sound Signals.* In addition to radio communication, the following sound signals are prescribed for use during lockage. Sound signals given by vessels and locks shall be given by means of a horn. Long blasts of the horn shall not exceed 10 seconds and short blasts shall not exceed 3 seconds. The following sound signals are prescribed:

(i) Vessels desiring a single lockage shall give notice to the lockmaster by one long blast of the horn followed by one short blast. If a double lockage is required, vessels shall give one long blast of the horn followed by two short blasts. These signals are not required from pleasure craft not equipped with horns. Locking procedures for pleasure craft are prescribed in paragraph (h).

(ii) When the lock is ready for entrance, the lockmaster shall give one long blast of the horn to signal permission to enter the lock chamber.

(iii) The lockmaster shall give permission to leave the lock chamber by one short blast of the horn.

(iv) Four or more short blasts of the lock horn delivered in rapid succession will be used as a means of attracting attention, to indicate caution, or to signal danger. This signal will be used to attract the attention of the masters and crews of vessels using the lock or navigating in the lock area and to indicate that something unusual involving danger or requiring special caution is happening or is about to happen. When this signal is given by the lockmaster, the masters and crews of vessels in the vicinity shall immediately become alert to determine the reason for the signal and shall take the necessary steps to cope with the situation.

(3) *Visual Signals.* Signal lights are displayed outside each lock gate to supplement the radio and sound signals. Vessels will be governed as follows:

(i) One flashing green light to indicate that the lock is open to approaching navigation.

(ii) One flashing red light to indicate that the lock is not open to approaching navigation. Vessels shall stand clear.

(iii) One flashing amber light to indicate that the lock is being made ready to receive vessels for lockage. Vessels may move along side the guidewall, but shall remain at least 200 feet from the miter gates.

(iv) Flashing amber and green lights to indicate that one or both lock gates can not be fully recessed or other unusual conditions exist. Vessels can enter the lock with caution.

(v) In the absence of any of the above visual signals, pilot shall signal for lockage by radio or horn and wait for

the lockmaster to acknowledge their signal.

(l) *Navigation lights on locks and dams.*

(1) The following navigation lights will be displayed at all locks except Norrell Lock and Lock No. 2 during hours of darkness and heavy fog.

(i) Three green lights visible through an arc of 360 degrees arranged in a vertical line on the end of the upstream guidewall.

(ii) Two green lights visible through an arc of 360 degrees arranged in a vertical line on the end of the downstream guardwall.

(iii) A single red light visible through an arc of 360 degrees on each end of the upstream and downstream guardwall.

(2) The following navigation lights will be displayed at Norrell Lock and Lock No. 2 during hours of darkness and heavy fog, except when navigation is passing over Norrel Dam.

(i) Three green lights visible through an arc of 360 degrees arranged in a vertical line on the end of the upstream guardwall.

(ii) Two green lights visible through an arc of 360 degrees arranged in a vertical line on the end of the downstream guidewall.

(iii) A single red light visible through an arc of 360 degrees on the dolphin located furthest upstream in line with the guidewall and on the dolphin located furthest downstream in line with the guidewall.

(3) The following navigation lights will be displayed at Norrell Lock and Dam during hours of darkness and heavy fog when navigation is passing over the dam. During daylight hours a yellow and black disc will be displayed on each end (upstream and downstream) of the guidewall to signal navigation over the dam.

(i) Three red lights visible through an arc of 360 degrees arranged in a vertical line on the end of the upstream guardwall.

(ii) Two red lights visible through an arc of 360 degrees arranged in a vertical line on the end of the downstream guidewall.

(iii) A single red light visible through an arc of 360 degrees on the dolphin located furthest upstream in line with the guidewall and on the dolphin located furthest downstream in line with the guidewall.

(iv) A single, flashing blue light visible through an arc of 360 degrees located on the end of the dam opposite the lock.

(m) *Restricted areas at locks and dams.* All water immediately above and below each dam, as posted by the respective district engineers, are hereby designated as restricted areas. No vessel or other floating craft shall enter any such restricted area without permission of the lockmaster. The limits of the restricted areas at each dam will be determined by the responsible district engineer and marked by signs installed in conspicuous and appropriate places.

(n) *Trespass on lock and dam property.* (1) Trespass on locks or dams or other United States property pertaining to the locks or dams is strictly prohibited except in those areas specifically permitted by the lockmaster. Any person committing a willful injury to any United States property or personnel will be prosecuted.

(2) No fishing will be permitted from the lock and dam structures.

(3) No one but employees of the United States shall move any lock machinery unless directed by the lockmaster. Tampering or meddling with the machinery or other parts of the lock is strictly forbidden.

(o) *Repair and construction of navigation structures.* To avoid damage to plant and structures connected with the construction or repair of locks and dams, vessels passing structures in the process of construction or repair shall reduce their speed and navigate with special caution while in the vicinity of such work.

(p) *Reporting of navigation incidents.* In furtherance of maintaining the navigation channel the following rules are prescribed for all navigation interests:

(1) Any incident resulting in uncontrolled barges shall immediately be reported to the nearest lock and the appropriate U.S. Coast Guard Office. The report shall include information as to the number of loose barges, their cargo, and the time and location where they broke loose. The lockmaster shall be kept informed of the progress being made in bringing the barges under control so that he/she can initiate whatever actions may be warranted.

(2) Masters, owners, or other persons using the waterways to which the regulations in this section apply shall report to the nearest lockmaster or the district engineer by the most expeditious means available all marine accidents; such as fire, collision, sinking, or grounding, where there is possible obstruction of the channel or interference with navigation; furnishing a clear statement as to the name, address, and ownership of the vessel or vessels involved; the time and place; and the action taken. In all cases, the owner of a sunken vessel shall take immediate steps to mark the wreck properly.

(i) Sunken or sinking barges shall be reported to the nearest lock both downstream and upstream of the location in order that traffic passing those points may be advised of the hazards. The appropriate U.S. Coast Guard Office shall also be notified.

(ii) Whenever it is necessary to report an incident involving uncontrolled, sunken or sinking barges, the cargo in the barges shall be precisely identified.

(iii) The owners or masters of vessels sunk in the navigable waters of the United States shall provide the appropriate district engineer with a copy of the sunken vessel report furnished to the appropriate U.S. Coast Guard Marine Inspection Office.

(q) *Statistical information.* Masters of vessels shall furnish to the lockmaster such statistics on passengers or cargo as may be requested. Statistics must be furnished in writing and/or orally as requested by the lockmaster.

(r) *Liability for damage.* This section shall not affect the liability of the owners and operators of vessels for any damage caused by their operations. Should any Government property be damaged as the result of the operation of a vessel, the master of the vessel shall report the accident to the nearest lockmaster or the appropriate district engineer.

(s) *Persistent violation of regulations.* If the owner or operator of any vessel persistently violates the regulations of this section or any orders given in pursuance thereof, after due notice of same, lockage may be refused by the district engineer. The lockmaster may refuse lockage if deemed necessary to protect Government property in the vicinity of the lock.

(t) *Vessels to carry regulations.* A copy of these regulations shall be kept at all times on board each commercial vessel engaged in navigating the waterway. Copies may be obtained from any lock or district engineer's office on request. Masters of such vessels are also required to have on board current copies of the navigation charts and applicable Notices to Navigation Interest.

(33 U.S.C. 1)

[FR Doc. 84-7666 Filed 3-21-84; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-1-FRL-2549-3]

Hazardous Waste Management Program; Massachusetts Amended Application for Interim Authorization, Phase II, Components A, B, and C

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and notice of a public hearing.

SUMMARY: Today EPA is announcing the availability for public review of the Massachusetts amended application for Phase II, Components A, B, and C, Interim Authorization, Hazardous Waste Management Program, inviting public comment, and giving notice that if significant public interest is expressed, EPA will hold a public hearing on the amended application. These amendments have been developed by Massachusetts to address comments made by EPA on the state's earlier submission.

40 CFR 271.123 (formerly § 123.123(c)) requires the formal review period to recommence upon receipt of a revised submission of a state's application, if the state's submission is "materially changed". EPA today reopens Massachusetts Phase II, Components A, B, and C application for public review because Massachusetts has made material changes to its regulations in order to respond to EPA comments on the state's earlier submission. EPA's review of the State's revised application began on March 6, 1984, the date EPA received the amended application. Within 90 days of this notice in the **Federal Register**, EPA will give notice again in the **Federal Register** as to the denial or issuance of Interim Authorization.

DATE: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for Tuesday, April 24, 1984 at 10:00 a.m. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by April 17, 1984. All written comments on the Interim authorization application must be received by the close of business on April 24, 1984. If you wish to know whether a hearing will be held, write or telephone the EPA contact person listed below after April 18, 1984. This procedure is being used to expedite consideration of the Massachusetts application. As a result no additional **Federal Register** notice will be published concerning this hearing.

ADDRESSES: EPA will hold a public hearing, if necessary, on Massachusetts application at the University of Massachusetts Medical Center, Level A Lecture Hall, 55 Lake Avenue North, Worcester, Massachusetts, 01605.

Written comments on the application and written or telephone communication of interest in holding a hearing must be sent to the EPA contact person listed below.

Copies of the amended Massachusetts Phase II Interim Authorization application are available during normal business hours for inspection and copying by the public at the following addresses:

Massachusetts Department of Environmental Quality Engineering, Division of Hazardous Waste, 1 Winter Street, Boston, Massachusetts 02108, Telephone (617) 292–5851

Massachusetts Department of Environmental Quality Engineering, Division of Hazardous Waste, Central Regional Office, 75 Grove Street, Worcester, Massachusetts 01605, Telephone (617) 792–7650

Environmental Protection Agency, Region I Office Library, Room E–121, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Telephone (617) 223–5791

EPA Headquarters Library, Room 2404, 401 M Street, S.W., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Gary B. Gosbee, Massachusetts State Coordinator, State Waste Programs Branch, U.S. EPA, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Telephone (617) 223–1922.

SUPPLEMENTARY INFORMATION: The Commonwealth of Massachusetts received Interim Authorization for Phase I on February 25, 1981. Its Phase II application for Components A, B, and C was submitted to EPA on October 21, 1983. In the November 22, 1983 **Federal Register**, 48 FR 52754, a notice was published concerning a public hearing to be held on Massachusetts' Phase II Components A, B, and C Application for Interim Authorization. The notice also announced the availability of the application for public review and invited public comment on the application. A public hearing on the application was held on December 22, 1983 at which 8 parties presented comments.

On December 20, 1983, EPA transmitted its comments to the state on their Phase II application. Some of these comments raised questions concerning the Program Description, Memorandum of Agreement, Authorization Plan and Attorney General's Statement. Other comments dealt with our ability to determine whether the Massachusetts regulations were substantially equivalent to the Federal regulations, particularly in the area of recycle/reuse of hazardous waste.

On March 6, 1984, Massachusetts submitted a revised application reflecting changes to the Massachusetts program to address the comments raised in our December 20, 1983 letter. In particular, they have made regulation changes in the area of recycle/reuse of hazardous waste to respond to our earlier comments on this subject. It is this revised application that is being presented for public comment in this Notice. Within 90 days of this notice in the **Federal Register**, EPA will give notice again in the **Federal Register** as to the denial or issuance of Interim Authorization.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. The authorization of a state suspends the applicability of certain federal regulations in favor of the state program, thereby eliminating duplicative requirements for handlers of hazardous waste in the state. It does not impose any new burdens on small entities. This action, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget has exempted this action from the requirements of Section 3, Executive Order 12291.

Lists of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and delegation 8–7.

Dated: March 12, 1984.

Michael R. Deland,

Regional Administrator.

[FR Doc. 84–7544 Filed 3–21–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 58, 147, and 184

[CGD 83-013]

Carriage and Use of Liquefied or Nonliquefied Flammable Gas as Cooking Rules on Vessels Carrying Passengers for Hire

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: Coast Guard regulations in 46 CFR Parts 25, 58, 147, and 184 currently prohibit the carriage and use of liquefied and nonliquefied flammable gas as ships' stores on vessels carrying passengers for hire. The purpose of this rulemaking is to remove this prohibition as it pertains to cooking appliances and to promulgate standards to govern the design, installation and testing of cooking appliances using these fuels.

DATE: Comments must be received on or before May 22, 1984.

ADDRESSES: 1. Send comments to Commandant (G-CMC/44) [CGD 83-013], U.S. Coast Guard, Washington, DC 20593. All comments received and other materials referenced in this notice will be available for examination or copying between 7:30 a.m. and 3:30 p.m, Monday through Friday, exclusive of Federal holidays, at the Marine Safety Council (G-CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Comments may also be hand delivered to this address.

2. The standards proposed for incorporation by reference may be obtained from the American Boat and Yacht Council Inc., P.O. Box 806, Amityville, NY 11701, (516) 598-0050. They may also be examined at most Coast Guard Marine Inspection and Marine Safety Offices.

FOR FURTHER INFORMATION CONTACT: LCDR Alan E. Spackman, Project Manager, (202) 426-4431.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address, identify this notice [CGD 83-103], the specific section of the proposal to which the comments apply, and give reasons. If acknowledgement of receipt of a comment is desired, a stamped, self-addresed post card should be enclosed. The proposal may be changed in light of comments received. All comments will be considered before final action is taken on this proposal. No public hearing is planned, but one will be held if requested by anyone raising a genuine issue.

Drafting Information

The principal persons involved in drafting this document are LCDRs Alan E. Spackman and James W. Gormanson, Office of Merchant Marine Safety, and Michael N. Mervin, Office of the Chief Counsel.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and non significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the location specified in the **ADDRESSES** paragraph. Copies may also be obtained by sending a written request to that address.

As explained in the draft evaluation, the proposed rules are deregulatory. They provide alternatives to fuels currently in use by permitting the use of cooking fuels that are currently prohibited by the regulations. The rules would not require vessel owners or operators to install systems using these fuels. Vessel owners would choose to install LPG or CNG cooking appliances on new vessels only if they believed that the cost of such equipment, in terms of initial purchase price, installation costs or operating costs were less than the currently permitted systems, or if they believed that these systems provided added convenience that outweighted any additional costs. Owners of existing vessels with installed cooking appliances may choose to replace them with LPG or CNG systems if they believed them to be less costly, if they are experiencing difficulty in obtaining fuel for their current systems and LPG or CNG are readily available, or if they prefer these systems for their cleanliness and ease of operation.

Because the proposed rules serve only to expand the choices available to vessel owners, and because some vessel owners may choose to install LPG or CNG systems for their added convenience even though they may in some instances be more costly, it is not possible to quantify the economic impact of this proposal. There are relatively minor differences between the cost of electric marine stoves and those with similar features that are fueled either by alcohol or LPG. Depending upon the individual features of an electric stove, its purchase price may range from less than $100 to over $400; typically, an equivalent alcohol stove would be priced $10 to $30 more, and an LPG stove priced $15 to $45 more. There would be little, if any, difference in installation costs. The differences in operating costs would be governed by the relative costs and availability of the fuels.

Environmental Assessment

An environmental assessment had not been prepared. As specified by DOT Order 5610.1C and Commandant Instruction M16714.1A, regulations of this type are excluded from the requirement to prepare an environmental assessment.

Regulatory Flexibility Act

The Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities. This proposal principally affects small vessels carrying passengers for hire. This includes both Coast Guard inspected and uninspected vessels. Many of these are operated as small businesses. While it has not been possible to quantify the economic impact of this proposal, any cost of installing LPG or CNG cooking appliances would be voluntarily assumed by the vessel owner or operator. The proposal does not require the installation of systems using these fuels.

Discussion of the Proposed Regulations

The Coast Guard's ships' store regulations, 46 CFR Part 147, prohibit the carriage of liquefied and non-liquefied gases, such as liquefied petroleum gas (LPG) and compressed natural gas (CNG), as ships' stores items (items intended for use or consumption on board a vessel) on vessels carrying passengers for hire. This prohibition dates back to 1937. The prohibition is referenced or paraphrased in 46 CFR 25.45—Uninspected Vessels, 46 CFR 58.16—Marine Engineering, and 46 CFR 184.05—Small Passenger Vessels.

The Coast Guard has recently received numerous requests asking that this prohibition, as it pertains to the use of LPG and CNG as cooking fuels, be re-evaluated. A technical proposal submitted by the Virgin Islands Charterboat League (VICBL) cites advances in the technology of LPG systems, the adoption by the American Boat and Yacht Council (ABYC) of voluntary standards, and their own perception of the hazards of these fuels vis-a-vis the principal alternative fuels—alcohol and kerosene—as reasons for re-evaluating the regulations. Also mentioned are cleanliness, convenience and commercial availability of LPG as compared to the alternative fuels. Some vessel operators also claim that they

face inequitable treatment because LPG cooking appliances are not prohibited on vessels offered for bareboat charter or on similar vessels operating in the British Virgin Islands.

The Coast Guard has reviewed its casualty statistics for recreational boats, where LPG and CNG systems are not prohibited. This data indicates that LPG and CNG cooking systems do not contribute to a greater number of galley fires than the principal alternative fuels—kerosene and alcohol. However, data is not available to indicate the number of LPG and CNG units installed vis-a-vis kerosene or alcohol units.

The ABYC has adopted voluntary standards for both LNG and CNG systems on small vessels. ABYC standard A–1–78 provides standards for the design, installation, testing and use of LPG systems; ABYC standard A–22–78 provides similar standards for CNG systems. Coast Guard regulations (46 CFR 58.16) permit the use of LPG systems on inspected vessels that do not carry passengers for hire; ABYC standard A–1–78 is similar in most respects to these regulations. The Coast Guard does not have regulations specifically governing the design, installation or testing of CNG systems on inspected vessels. The Coast Guard has concluded that there is not sufficient interest in installing CNG systems on large inspected vessels to develop specific regulations at this time; such installations may be considered on a case-by-case basis under the provisions of 46 CFR 50.20–30.

Having reviewed the ABYC standards A–1–78 and A–22–78 the Coast Guard has concluded that, with few exceptions, they can be adopted and used to govern the design, installation and testing of attended LPG and CNG systems on vessels carrying passengers for hire. A major concern with both LPG and CNG is the possibility of a dangerous concentration of vapor accumulating in any enclosed space through which the fuel supply piping is led, where the appliances are located, or where the cylinders are stored. To minimize the possibility of inadvertent vapor accumulations the Coast Guard is proposing to limit the use of LPG and CNG to cooking appliances at this time. The ABYC standards do permit the use of LPG and CNG for unattended appliances such as heating units. Cooking appliances are normally operated by a member of the vessel's crew, the fuel need only be supplied to these appliances for a limited period of time, and they are normally attended while in operation. Most other LPG or CNG applications involve unattended appliances or appliances, such as heating units, which would normally be accessible to and operated by the passengers. The Coast Guard has concluded that the greater possibility of undetected vapor accumulation or misuse with these other LPG and CNG applications warrants their continued prohibition on passenger-carrying vessels for the present. To further reduce the possibility of dangerous vapor accumulations, the Coast Guard is proposing to retain its requirements that LPG and CNG cylinders be located outside enclosed areas, and to add a requirement that a remotely operated shut-off valve be installed in the fuel supply line if it enters an enclosed space on the vessel.

On 26 August 1983, all the maritime shipping laws related to vessels and seamen which were contained in the Revised Statutes and the Statutes at Large were recodified and enacted into Subtitle II of Title 46, United States Code, "Shipping". The recodification repealed Revised Statute 4472 (46 U.S.C. 170) on the basis that its authority was duplicated elsewhere within the Coast Guard's and Department of Transportation's statutes, and that no substantive changes were made to the law. The Coast Guard's authority to regulate Ship's Stores on inspected vessels is now 46 U.S.C. 3306. The authority to regulate cooking, heating, and lighting systems on uninspected vessels carrying passengers for hire (46 CFR 25.45) is now 46 U.S.C. 4105 and 46 U.S.C. 4302. The authority citations in the proposed rule indicate these changes.

In accordance with 46 U.S.C. 4302(c), the Coast Guard consulted with the National Boating Safety Advisory Council concerning the proposed amendment to 46 CFR 25.45 at its scheduled meeting 9–10 November 1983 in St. Louis, Missouri and no comments were received.

In this Notice of Proposed Rulemaking (NPRM) the Coast Guard proposes to amend 46 CFR Subpart 25.45 by consolidating into one subpart all the existing requirements in Parts 25 and 147 related to cooking, heating, and lighting systems on uninspected vessels carrying passengers for hire. Included in the proposed Subpart 25.45 is the authorization for using LPG and CNG as cooking fuels. If the proposal is adopted, the ABYC standards would be incorporated by reference and would apply to LPG and CNG cooking appliances on uninspected passenger-carrying vessels. The proposal would further modify the existing regulations in Parts 58, 147, and 184 to permit LPG and CNG systems on inspected vessels carrying passengers for hire.

List of Subjects

46 CFR Part 25

Marine safety, Vessels, Fishing vessels, Passenger vessels, Fire prevention, Hazardous materials transportation.

46 CFR Part 58

Marine safety, Vessels, Oil and gas exploration.

46 CFR Part 147

Marine safety, Arms and munitions, Hazardous materials transportation.

46 CFR Part 184

Marine safety, Passenger vessels, Navigation (water), Communication equipment.

In consideration of the foregoing, the Coast Guard proposes to amend Chapter I of Title 46 of the Code of Federal Regulations as set forth below.

PART 25—REQUIREMENTS

* * * * *

1. By revising Subpart 25.45 to read as follows:

Subpart 25.45—Cooking, Heating, and Lighting Systems

25.45–1 Heating and lighting systems on vessels carrying passengers for hire.
25.45–2 Cooking systems on vessels carrying passengers for hire.

Authority: 46 U.S.C. 2104; 46 U.S.C. 4102; 46 U.S.C. 4104; 46 U.S.C. 4105; 46 U.S.C. 4302; 49 CFR 1.4 (a) and (g); and CFR 1.46 except as otherwise noted.

Subpart 25.45—Cooking, Heating, and Lighting Systems

§ 25.45–1 Heating and lighting systems on vessels carrying passengers for hire.

(a) No fuel may be used in any heating or lighting system on any vessel carrying passengers for hire without approval of Commandant (G-MTH), except—

(1) Alcohol, solid,

(2) Alcohol, liquid, combustible,

(3) Fuel oil, No. 1, No. 2, or No. 3,

(4) Kerosene, and

(5) Wood.

(b) Heating and lighting systems using alcohol must meet the following requirements:

(1) Containers of solidified alcohol must be properly secured to a fixed base.

(2) Fluid alcohol burners, where wet priming is used, must have—

(i) A catch pan of not less than ¾" depth secured inside the frame of the stove; or

(ii) The metal protection under the stove flanged up at least ¾" to form a pan.

(c) Heating and lighting systems using kerosene of fuel oil must meet the following requirements:

(1) Where wet priming is used, each system must have—

(i) A catch pan of not less than ¾" depth secured inside the frame of the stove; or

(ii) The metal protection under the stove flanged up at least ¾" to form a pan.

(2) Fuel tanks must be—

(i) Separated from the stove that they serve;

(ii) Mounted in a location open to the atmosphere or mounted inside a compartment that is vented to the atmosphere; and

(iii) Fitted with an outside fill and vent.

§ 25.45–2 Cooking systems on vessels carrying passengers for hire.

(a) No fuel may be used in any cooking system on any vessel carrying passengers for hire without approval of Commandant (G–MTH) except those listed in § 25.45–1, subject to the requirements stated therein, and liquefied petroleum gas (LPG), and compressed natural gas (CNG).

(b) Cooking systems using LPG or CNG must meet the following requirements:

(1) The design, installation, and testing of each LPG system meet ABYC A–1–78.

(2) The design, installation and testing of each CNG system meet ABYC A–22–78.

(3) The stowage of each LPG or CNG cylinder in a cooking system must be as follows:

(i) Each cylinder must be located in a locker or housing on or above the weather deck in such a position that any escaping vapor cannot reach living quarters or enclosed compartments on board the vessel;

(ii) The lockers or housings must be vented to the open air near the bottom for LPG and near the top of the enclosure for CNG; and

(iii) The cylinder must be protected from climatic extremes.

(4) If the fuel supply line of an LPG or CNG system enters an enclosed space on the vessel, a remote shut-off valve must be installed that can be operated from a position adjacent to the appliance. The valve must be located between the regulatory and the point where the fuel supply line enters the enclosed portion of the vessel.

(c) In accordance with 5 U.S.C. 552(a), the following standards of the American Boat and Yacht Council, Inc. (ABYC), P.O. Box 806, Amityville, NY 11701, (516) 598–0050, are incorporated by reference in this section as approved by the Director of the Federal Register on February 6, 1984.

(1) Standard A–1–78, "Marine LPG—Liquefied Petroleum Gas Systems" dated December 15, 1978.

(2) Standard A–22–78, "Marine CNG—Compressed Natural Gas Systems" dated December 15, 1978.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

3. The authority citation for Part 58 would be revised to read as follows:

Authority: 46 U.S.C. 1333(b); 46 U.S.C. 2104; 46 U.S.C. 3306; 46 U.S.C. 3316; 46 U.S.C. 3703; 46 U.S.C. 4104; 50 U.S.C. 198; 49 CFR 1.46; E.O. 12234, 45 FR 58801, Sept. 5, 1980 except as otherwise noted.

4. In § 58.61–1 by revising paragraph (a) to read as follows:

§ 58.16–1 Scope.

(a) This subpart prescribes standards for the use of liquefied pertroleum gas for heating and cooking on inspected vessels, except ferries.

5. By adding a new § 58.16–7 to read as follows:

§ 58.16–7 Use of liquefied petroleum gas.

(a) Cooking equipment using liquefied petroleum gas on vessels of 100 gross tons or more that carry passengers for hire must meet the requirements of this subpart.

(b) Cooking equipment using liquefied petroleum gas on vessels of less than 100 gross tons that carry passengers for hire must meet the requirements of 46 CFR 184–05.

(c) Liquefied petroleum gas for cooking or heating on any other vessels subject to inspection by the Coast Guard must be used in systems that meet the requirements of this subpart.

PART 147—REGULATIONS GOVERNING USE OF DANGEROUS ARTICLES AS SHIPS' STORES AND SUPPLIES ON BOARD VESSELS

6. The authority citation for Part 147 would be revised to read as follows:

Authority: 46 U.S.C. 2104; 46 U.S.C. 3306; 50 U.S.C. 198; 49 CFR 1.46 except as otherwise noted.

§ 147.05–100 [Amended]

7. By revising the entry in § 147.05–100, Table S—Classification: Ships' Stores and Supplies of a Dangerous Nature for "Liquefied or non-liquefied gas" under the descriptive heading of "Fuel for heating, cooking, lighting" to read as follows:

TABLE S.—CLASSIFICATION: SHIPS' STORES AND SUPPLIES OF A DANGEROUS NATURE

Descriptive name of article	Characteristic properties, precautions required, markings	Label required	Required conditions for transportation			
			Cargo vessel	Passenger vessel	Ferry vessel, [illegible] or vehicle	R R car ferry, [illegible] vehicle
Fuel for heating, cooking, lighting: Liquefied or nonliquefied gas.	Systems using a liquefied or nonliquefied gas, including regulating and safety equipment, exclusive of the cylinder, shall be of a design approved by the Commandant of the Coast Guard for such use. *Vapors from petroleum gases are heavier than air and with air form explosive mixtures over wide ranges. Acetylene, methane and coal gas are lighter than air.*	Flammable gas label required.	Permitted subject to Subpart [illegible]. Cylinders shall be DOT specification containers. The cylinder shall bear a test date marking indicating test within the preceding 5 years. Cylinders shall be located in a locker or housing on or above the weather deck in such position that any escaping vapor cannot reach living quarters or enclosed compartments on board the vessel. Lockers or housings shall be vented to the open air near the bottom for gases evolving vapors heavier than air and near the top of the enclosure for gases evolving vapors lighter than air. Cylinders shall be protected from climatic extremes.	Permitted only for cooking subject to the rquirements of §§ 58.16 and 184.05–1 of this chapter. Cylinders shall be DOT specification containers. The cylinders shall bear a test date marking indicating test within the preceding 5 years. Cylinders shall be located in a locker or housing on or above the weather deck in such position that any escapng vapor cannot reach living quarters or enclosed compartments on board the vessel. Lockers or housings shall be vented to the open air near the bottom for gases evolving vapors heavier than air and near the top of the enclosure for gases evolving vapors lighter than air. Cylinders shall be protected from climatic extremes.	Not permitted.....	Not permitted.

PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

8. The authority citation for Part 184 would be revised to read as follows:

Authority: 46 U.S.C. 2104; 46 U.S.C. 3306; 49 CFR 1.4(a)(2); 49 CFR 1.46 except as otherwise noted.

9. In § 184.05–1 by revising paragraph (b) and adding paragraphs (d) and (e) to read as follows:

§ 184.05–1 Restrictions.

* * * * *

(b) Except as provided by paragraph (d) of this section, the carriage or use of liquefied or non-liquefied gases and certain flammable liquids as ships' stores are prohibited by Part 147 of this chapter.

* * * * *

(d) Cooking equipment using liquefied petroleum gas (LPG) and compressed natural gas (CNG) must meet the following requirements:

(1) The design, installation and testing of each LPG system must meet ABYC A–1–78.

(2) The design, installation and testing of each CNG system must meet ABYC A–22–78.

(3) The stowage of each LPG or CNG cylinder shall be as follows:

(i) Each cylinder must be located in a locker or housing on or above the weather deck in such a position that any escaping vapor cannot reach living quarters or enclosed compartments on board the vessel;

(ii) The locker or housing must be vented to the open air near the bottom for LPG and near the top of the enclosure for CNG; and

(iii) The cylinder must be protected from climatic extremes.

(4) If the fuel supply line of an LPG or CNG system enters an enclosed space on the vessel, a remote shut-off valve must be installed which can be operated from a position adjacent to the appliance. The valve must be located between the regulator and the point where the fuel supply line enters the enclosed portion of the vessel.

(e) In accordance with 5 U.S.C. 552(a), the following standards of the American Boat and Yacht Council, Inc. (ABYC), P.O. Box 806, Amityville, NY 11701, (516) 598–0050, are incorporated by reference in this section as approved by the Director of the Federal Register on February 1984.

(1) Standard A–1–78, "Marine LPG—Liquefied Petroleum Gas Systems" dated December 15, 1978.

(2) Standard A–22–78, "Marine CNG—Compressed Natural Gas Systems" dated December 15, 1978.

(46 U.S.C. 3306; 49 CFR 1.46)

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 84–7729 Filed 3–21–84; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 49, No. 57
Thursday, March 22, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

March 19, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since that last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Office, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250, (202) 447–4414.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

NEW

• Rural Electrification Administration
Acceptance of Specifications and Standards for Electric and Telephone
On Occasion
Small Businesses: 343 reponses; 6,860 hours; not applicable under 3504(h)
Archie W. Cain (202) 382–9082

• Agricultural Research Service
Food and Agricultural Sciences National Needs Graduate Fellowships Application Kit
ARS– 701, 702, 703, 704, 706
Annually
Non-Profit Institutions: 900 responses; 14,400 hours; not applicable under 3504(h)
Jane Coulter (202) 447–7854

• Human Nutrition Information Service
Development and Validation of a Food Frequency Questionnaire
Quarterly
Individuals on Households: 1,000 responses; 1,500 hours; not applicable under 3504(h)
Patricia Guenther (301) 436–5618

Revised

Agricultural Marketing Service
Reporting Requirements Under 7 CFR Part 51, Regulations Governing Inspection, Certification, and Standards for Fresh Fruit, Vegetables and Other Products.
FV 237 and 292
On Occasion
Individuals, State or Local Government, Farms, Businesses; 904,241 responses; 18,180 hours, not applicable under 3504(h)
Gilbert O. Hand (202) 447–2482

Susan B. Hess,

Acting Department Clearance Officer.

[FR Doc. 84–7767 Filed 3–21–84; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Meadows Land Unit Plan Supplement; Region 4; Payette National Forest, McCall, Idaho; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture will prepare an Environmental Impact Statement for supplementing land management direction in the Land Use Plan for the Meadows Planning Unit, Payette National Forest. The subject land use plan was approved April 29, 1976.

The Environmental Impact Statement will evaluate alternative management direction for a portion of management unit 3.3 covering approximately 1500 acres. Current management direction implies existing roads will not be reopened and states that no new roads will be constructed. The affected portion of unit 3.3 is downstream from three existing water storage reservoirs where a small hydroelectric project has been proposed to utilize the stored water for power production purposes. Some of the facilities for this project would encroach into management unit 3.3.

Alternatives to create a new management unit to allow roads and/or other similar ground-disturbing activities will be considered along with a no-action alternative.

Those parties that were involved in preparation of the original EIS and subsequent Land Use Plan will be invited to participate in the preparation of this supplement. In addition, all agencies, organizations, and individuals who have expressed an interest in small hydro development on the Forest will also be invited to participate. No public hearings or meetings are planned.

Key Weyers, Payette National Forest Supervisor is the responsible official. The draft Environmental Impact Statement should be available for review by May 1, 1984. Written comments concerning this analysis should be sent to Peter J. Walker, District Ranger, P.O. Box J, New Meadows, Idaho 83654 by April 1, 1984.

Dated: March 14, 1984.

Kenneth D. Weyers,

Forest Supervisor.

[FR Doc. 84–7745 Filed 3–21–84; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Latimer County Critical Area Treatment No. 2 RC&D Measure, Oklahoma; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Latimer County Critical Area Treatment No. 2 RC&D Measure, Latimer County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma, 74074, telephone (405) 624–4360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns critical area treatment for reducing roadside erosion. The structural measures will consist of installing a concrete channel liner and replacing an inadequate culvert. The mechanical measures will consist of grading and shaping, filling, and topsoiling. The vegetative measures will consist of bermudagrass mulch sod, bermudagrass solid sod, and fertilizing.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roland R. Willis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: March 16, 1984.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 84–7755 Filed 3–21–84; 8:45 am]

BILLING CODE 3410–16–M

Middle Grave Creek Watershed, West Virginia; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Middle Grave Creek Watershed, Marshall County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone: 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection and flood prevention. Alternatives under consideration to reach this objective include conservation land treatment, nonstructural measures, earth dams, channel work, floodway, and dike.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings have been held with various resource agency personnel to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or planned meetings may be obtained from Rollin N. Swank, State Conservationist, at the above address or telephone 304–291–4151.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. The State of West Virginia's process regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Rollin N. Swank,

State Conservationist.

March 15, 1984.

[FR Doc. 84–7757 Filed 3–21–84; 8:45 am]

BILLING CODE 3410–16–M

Morlee Watershed, Iowa; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 1202(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Morlee Watershed, Franklin County, Iowa.

FOR FURTHER INFORMATION CONTACT: Hershel R. Read, Acting State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, telephone 515–284–4260.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Hershel R. Read, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan that includes a system of measures for agricultural water management for drainage. The planned works of improvement include 2.8 miles of channel work with appurtenances and 17.2 miles of tile drains.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on

file and may be reviewed by contacting Hershel R. Read.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and Local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: March 12, 1984.

Hershel R. Read,

Acting State Conservationist.

[FR Doc. 84–7638 Filed 3–21–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Docket 42034]

Air America, Inc., Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated: Washington, D.C., March 13, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84–7783 Filed 3–21–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 41520]

Airspur Helicopter, Inc., Fitness Investigation; Reconvened Hearing

Notice is hereby given that the hearing in the above-entitled matter will reconvene on March 22, 1984, at 10:00 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., March 15, 1984.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84–7784 Filed 3–21–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–002]

Antidumping Duty Order; Chloropicrin From the People's Republic of China

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning chloropicrin from the People's Republic of China (PRC), the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that chloropicrin from the PRC is being sold at less than fair value and that sales of chloropicrin from the PRC are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of chloropicrin from the PRC made on or after September 19, 1983, the date on which the Department published its "Preliminary Determination of Sales at Less Than Fair Value" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–2613.

SUPPLEMENTARY INFORMATION: The merchandise covered by this investigation is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant. Chloropicrin is currently classifiable under item numbers 408.1600, 408.2900 and 425.5290 of the *Tariff Schedules of the United States Annotated* (TSUSA).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on September 9, 1983, the Department published its preliminary determination that there was reason to believe or suspect that chloropicrin from the PRC was being sold at less than fair value (48 FR 41799). On February 16, 1984, the Department published its final determination that these imports were being sold at less than fair value (49 FR 5982).

On March 19, 1984, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations are materially injuring a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of chloropicrin from the PRC. These antidumping duties will be assessed on all unliquidated entries of chloropicrin entered, or withdrawn from warehouse, for consumption on or after September 19, 1983, the date on which the Department published its "Preliminary Determination of Sales At Less Than Fair Value" notice in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	[illegible]
China National Chemicals Import and Export Corporation (SINOCHEM)	58.0
All Other Manufacturers/Producers/Exporters	[illegible]

This determination constitutes an antidumping order with respect to chloropicrin from the People's Republic of China, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48).

We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) the Department hereby gives notice that it is commencing an administrative review of this order on March 22, 1984. For further information regarding this review, contact Mr. William Matthews at (202) 377–5253.

This notice is published in accordance with section 736 of the Act (19 U.S.C.

1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 16, 1984.

[FR Doc. 84-7736 Filed 3-21-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-012, A-351-014]

Antidumping Duty Orders; Hot-Rolled Carbon Steel Plate and Hot-Rolled Carbon Steel Sheet From Brazil

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning hot-rolled carbon steel plate and hot-rolled carbon steel sheet from Brazil, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that hot-rolled carbon steel plate and hot-rolled carbon steel sheet from Brazil are being sold at less than fair value and that sales of hot-rolled carbon steel plate and hot-rolled carbon steel sheet from Brazil are materially injuring a United States industry. Additionally, both the Department of Commerce and the ITC found that "critical circumstances" did exist with respect to hot-rolled carbon steel plate and hot-rolled carbon steel sheet from Brazil. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of hot-rolled carbon steel plate and hot-rolled carbon steel sheet from Brazil made 90 days before September 8, 1983, the date on which the Department published its "Preliminary Determinations of Sales At Less Than Fair Value" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION: The products covered by these investigations are hot-rolled carbon steel plate and hot-rolled carbon steel sheet.

The term "hot-rolled carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6615 and 607.9400 of the *Tariff Schedules of the United States Annotated* (TSUSA); and hot-rolled carbon steel plate which has been coated or plated with metal including any material which has been painted or otherwise covered after having been coated or plated with metal, as currently provided for in items 608.0710 and 608.1100 of the TSUSA. Semifinished products of solid rectangular cross sections with width at least four times the thickness in cast condition or processed only through primary mill hot rolling are not included.

Hot-rolled carbon steel plate is used in the construction of bridges, mining equipment, pressure vessels, railroad freight and passenger cars, ships, line pipe, industrial machinery, machine parts, and a large variety of other products.

The term "hot-rolled carbon steel sheet" covers hot-rolled carbon steel products, whether or not corrugated or crimped and not pickled; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 8 inches in width and over 0.1875 inch in thickness and in coils, as currently provided for in item 607.6610 of the TSUSA.

Hot-rolled carbon steel sheet is used in the construction of automobiles, industrial machinery and products, pipe, and a large variety of other products.

The hot-rolled carbon steel sheet covered by these investigations is a different product from that covered by the recently initiated investigations on "Certain Carbon Steel Products from Brazil". The sheet in these investigations is the product described as "plate in coil" in Appendix A to the notice of "Certain Steel Products from Mexico; Initiation of Countervailing Duty Investigations" (48 FR 55013).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on September 8, 1983, the Department published its preliminary determinations that there was reason to believe or suspect that hot-rolled carbon steel plate and hot-rolled carbon steel sheet from Brazil were being sold at less than fair value, (48 FR 40418). On September 6, 1983, the petition was amended to include an allegation that "critical circumstances" existed. We preliminarily determined that critical circumstances exist within the meaning of section 733(e) of the Act (19 U.S.C. 1673(b)) (48 FR 46829). On January 25, 1984, the Department published its final determinations that these imports were being sold at less than fair value and that "critical circumstances" existed with respect to hot-rolled carbon steel plate and hot-rolled carbon steel sheet from Brazil (49 FR 3102).

On March 9, 1984, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations are materially injuring a United States industry. The ITC also made affirmative determinations regarding "critical circumstances."

Therefore, in accordance with section 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of hot-rolled carbon steel plate and hot-rolled carbon steel sheet from Brazil. These antidumping duties will be assessed on all unliquidated entries of hot-rolled carbon steel plate and hot-rolled carbon steel sheet entered, or withdrawn from warehouse, for consumption 90 days before September 8, 1983, the date on which the Department published its "Preliminary Determinations of Sales At Less than Fair Value" notice in the **Federal Register.**

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margins (percent)
Hot-Rolled Carbon Steel Plate:	
COSIPA	102.04
USIMINAS	65.58
All Other Manufacturers/Producers/Exporters	86.81
Hot-Rolled Carbon Steel Sheet:	
COSIPA	59.46
CSN	52.67
USIMINAS	50.56
All Other Manufacturers/Producers/Exporters	57.42

These determinations constitute antidumping orders with respect, to hot-rolled carbon steel plate and hot-rolled

carbon steel sheet from Brazil, pursuant to section 736 of the Act (19 U.S.C. 1673e) and §353.48 of the Commerce Regulations (19 CFR 353.48).

We have deleted from the Commerce Regulations, Annex 1 of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that it is commencing an administrative review of this order on March 22, 1984. For further information regarding this review, contact Mr. William Matthews at (202) 377–5253.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 16, 1984.

[FR Doc. 84–7789 Filed 3–21–84; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–073]

Bicycle Tires and Tubes From Korea; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On November 14, 1983, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on bicycle tires and tubes from Korea. The review covers the seven known manufacturers and/or exporters of this merchandise to the United States and generally the period April 1, 1981 through March 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from one importer. Based on our analysis of the comment received, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (203) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On Novemer 14, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 51800) the preliminary results of its administrative review of the antidumping finding on bicycle tires and tubes from Korea (44 FR 22051–2, April 13, 1979). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of bicycle tires and tubes. The term "bicycle tires and tubes" means pnuematic bicycle tires and tubes of rubber or plastics, whether such tires and tubes are sold together as units or separately. Bicycle tires and tubes are currently classifiable under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated.

The review covers the seven known manufacturers and/or exporters of Korean bicycle tires and tubes to the United States and the period April 1, 1981 through March 31, 1982, as well as certain shipments by one of the seven firms not covered in prior reviews.

Analysis of Comment Received

We invited interested parties to comment on our preliminary results. We received a comment from one importer, Oriental Boeki.

Comment

The Department in its first review failed to analyze certain entries covered by the response of one of the exporters, Hung-A Industrial Co., Ltd. The Department deferred appraisement of those entries and has covered them in this review. During the first review, the Department disallowed all of Hung-A's general claim for credit on the entries covered by the response, because the caim was not sufficiently related to the Korean market or to the covered merchandise. Oriental Boeki claimed that, inasmuch as Hung-A in the first review provided documents, including promissory notes, shipping invoices, and balance sheets, in support of its claimed credit costs, and the Department verified that Hung-A incurred such expenses on the sales of bicycle tires and tubes, the Department's denial of an adjustment for credit cost differences is inappropriate.

Department's Position

Oriental Boeki's comment only relates to materials presented in the first administrative review of this case. In the current review Hung-A presented no supplemental evidence that would now support that these credit costs were directly related to Korean bicycle tire and tube sales. Therefore, we disallowed the claimed adjustment.

Final Results of the Review

Based on our analysis of the comment received, the final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exists:

Manufacturer/exporter	Time period	Margin (percent)
Dae Yung Commercial Co., Ltd.	04/01/81–03/31/82	0
Hung-A Industrial Co., Ltd	04/01/78–12/31/78	[illegible]
	01/01/79–03/31/80	[illegible]
	04/01/81–03/31/82	[illegible]
Korea Inoue Kasei Co., Ltd	04/01/81–03/31/82	0.70
Shin Hung Rubber Co., Ltd	04/01/81–03/31/82	0
Dae Woo Industrial Co., Ltd	04/01/81–03/31/82	[1] 2.32
Kukje (KCC) Corporation	04/01/81–03/31/82	0
Nichiman Corporation	04/01/81–03/31/82	0

[1] No shipments during the period.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties based upon the most recent of the above margins for all shipments from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. The Department shall waive the cash deposit requirement for Korea Inoue Kasei Co., Ltd., since the margin for that firm is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes. No cash deposit of estimated antidumping duties shall be required on future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after March 31, 1982 and who is unrelated to any reviewed firm. These cash deposit requirements and waiver shall remain in effect until publication of the final results of the next administrative review.

Since the Department's revocation of the countervailing duty order on this merchandise with respect to Korea Inoue Kasei Co., Ltd. was effective on August 10, 1981, the Department shall

make an addition to the United States price in the amount of any countervailing duty attributable to any export subsidies only for entries of this merchandise during the period April 1, 1978 through August 9, 1981.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review. The Department intends to begin immediately the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: March 16, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-7734 Filed 3-21-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-435-007]

Pig Iron From Czechoslovakia; Final Results of Administrative Review and Revocation of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review and Revocation of Antidumping Finding.

SUMMARY: On November 17, 1983, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on pig iron from Czechoslovakia. The review covered the only known exporter of this merchandise to the United States, Ferromet Opletalova, and the period October 1, 1981 through September 30, 1982. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke. We received no comments. We also determined that there were no shipments of this merchandise to the United States during the period October 1, 1982 through November 17, 1983, the date of the tentative determination to revoke. We advised all interested parties that there were no shipments and we provided an additional opportunity to comment. Again we received no comments. Accordingly, these final results cover up to November 17, 1983 and we revoke the antidumping finding on pig iron from Czechoslovakia.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On November 17, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 52345-6) the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on pig iron from Czechoslovakia (33 FR 15904, October 29, 1968). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, currently classifiable under item numbers 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated. Such merchandise is used in steel production and in the iron foundry for making iron castings such as pipe, automobile castings, and machine parts.

The review covered the one known exporter of Czechoslovakian pig iron to the United States, Ferromet Opletalova, and the period October 1, 1981 through September 30, 1982. The Department has also determined that there were no shipments of this merchandise to the United States during the period October 1, 1982 through November 17, 1983, the date of publication of the tentative determination to revoke.

Final Results of Review and Revocation

We invited interested parties to comment on the preliminary results and tentative determination to revoke. We received no comments or requests for a hearing. The Department provided to all interested parties further preliminary results for the period up to the date of the tentative determination to revoke, and gave interested parties an additional opportunity to comment. Again we received no comments. Based on our analysis, the final results of our review are the same as those presented in the preliminary results. As a result of the review, the Department revokes the antidumping finding on pig iron from Czechoslovakia.

This revocation applies to all unliquidated entries of Czechoslovakian pig iron entered, or withdrawn from warehouse, for consumption on or after November 17, 1983.

This administrative review, revocation, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: March 16, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-7735 Filed 3-21-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-046]

Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On January 16, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on polychloroprene rubber from Japan. The review covers the six known manufacturers and/or exporters of this merchandise to the United States and generally the period December 1, 1981 through November 30, 1982. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in our preliminary results of review.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 1921) the preliminary results of its last administrative review of the antidumping finding on polychloroprene rubber from Japan (38 FR 35393, December 6, 1973). The Department has

now completed that administrative review. The appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 446.1521 and 446.2000 of the Tariff Schedules of the United States Annotated.

The review covers the six known Japanese manufacturers and/or exporters of this merchandise to the United States and generally the period December 1, 1981 through November 30, 1982. There were no known shipments of this merchandise to the United States by these firms during the period December 1, 1981 through November 30, 1982, and there are no known unliquidated entries for this period.

As part of the last administrative review of this finding the Department deferred its review of certain unliquidated entries of this merchandise exported by Hoei Sangyo and manufactured by Toyo Soda and Showa Neoprene. The Department has now reviewed these entries.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Denki Kagaku, K.K.	12/01/81–11/30/82	[1] 0
Denki Kagaku, Koggo, K.K./ Hoei Sangyo Co., Ltd.	12/01/81–11/30/82	[1] 55
Mitsui Bussan K.K.	12/01/81–11/30/82	[1] 0
Showa Neoprene, K.K.	12/01/81–11/30/82	[1] 0
Showa Neoprene, K.K./Hoei Sangyo Co., Ltd.	10/11/74–11/30/75	[1]
	12/01/81–11/30/82	[1] 0
Suzugo Corporation	12/01/81–11/30/82	[1] 55
Toyo Soda Manufacturing Co., Ltd.	12/01/81–11/30/82	[1] 0
Toyo Soda Manufacturing Co., Ltd./Hoei Sangyo Co., Ltd.	10/11/74–11/30/75	[1]
	12/01/81–11/30/82	[1] 0

[1] No shipments during the period.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the most recent of the above margins shall be required on future shipments from these firms. The Department shall not require a cash deposit of estimated antidumping duties for future entries from a new exporter not covered in this or prior reviews, whose first shipments of polychloroprene rubber occurred after November 30, 1982 and who is unrelated to any reviewed firm. These deposit requirements are effective for all shipments of Japanese polychloroprene rubber entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department is beginning immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: March 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-7733 Filed 3-21-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-05]

Sorbitol From France; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping duty order.

SUMMARY: On September 15, 1983, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on sorbitol from France. The review covers the one known exporter of this merchandise to the United States and the period October 1, 1981 through May 31, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. At the request of the exporter, we held a public hearing on Novemer 16, 1983.

As a result of correction of a clerical error, we have changed the margin for liquid sorbitol. Based on our review of the comments received, the final results of review for crystalline sorbitol remain unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Amy F. Dale or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 41476–7) the preliminary results of its administrative review of the antidumping duty order on sorbitol from France (47 FR 153291–2, April 9, 1982). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of sorbitol. Sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is commercially available in two forms: (1) Crystalline sorbitol, used in the production of sugarless gum, candy, groceries, and pharmaceuticals, and (2) liquid sorbitol used in cosmetics and toiletries (such as toothpaste). Sorbitol is currently classifiable under item 493.8820 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French sorbitol to the United States, Roquette Freres, and the period October 1, 1981 through May 31, 1982.

Analysis of Comments Received

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. At the request of the respondent, Roquette Freres, we held a public hearing on November 16, 1983.

Comment 1: On April 9, 1982, the Department published an antidumping duty order on sorbitol from France. On May 7, 1982, Roquette Freres initiated a court challenge to the Department's final affirmative determination and the International Trade Commission's ("ITC") final affirmative determination of material injury (47 FR 14981, March 29, 1982). *See Roquette Freres and Roquette Corporation* v. *United States,* USCIT No. 82–5–00636.

The Court of International Trade ("CIT") granted the government's motion and remanded the case on July 18, 1983 to enable the ITC to consider in full all relevant information then presently before it, or which would be submitted during the remand, to determine whether an industry was materially injured by reason of imports of sorbitol from France being sold at less than fair value.

On October 17, 1983, the remand results were filed with the court. On remand, the ITC determined that an industry in the United States was materially injured by reason of imports of crystalline sorbitol, and was not being materially injured, or threatened with material injury, by reason of imports of liquid sorbitol. On February 3, 1984, the court granted a preliminary injunction against liquidation of all entries of sorbitol pending disposition of the litigation. The case is still before the CIT.

The respondent claims the the ITC's remand results constitutes a final determination. Therefore, the Department has no lawful basis for determination, assessment or imposition of antidumping duties on imports of liquid sorbitol, and the Department should revoke its antidumping duty order with respect to liquid sorbitol.

On the other hand, the petitioner, Pfizer, Inc., claims that the negative injury determination made by the ITC on remand of the court, is still before the court and subject to further revisions, and is therefore outside the scope of this administrative review. Pfizer contends that the Department cannot revoke or modify its antidumping duty order on sorbitol until it receives a directive from the court.

Department's Position

The determination of the ITC on remand was not a final determination. The litigation, which includes the ITC remand results, continues to be under the jurisdiction of the CIT and will remain so until the court disposes of the litigation. *See Roquette Freres* v. *United States*, USCIT No. 83–11–01683. Therefore, revocation would be premature prior to the court's disposition of this case.

The ITC's final affirmative determination of material injury (47 FR 14981, March 1982) is the final determination and shall remain in effect until a final court decision is rendered which is not in harmony with that determination. Since the court has ordered a preliminary injunction with respect to entries of sorbitol, the Department will not liquidate those entries prior to the disposition of the litigation.

Unless liquidation is enjoined by the court, the Department is required by section 516A of the Tariff Act of 1930 ("the Tariff Act") to liquidate all entries, entered, or withdrawn from warehouse, for consumption on or before the date of publication in the **Federal Register** of a notice of a decision of the court not in harmony with the ITC's affirmative determination, published March 1982. This is supported by the report of the Senate Finance Committee on the Trade Agreements Act of 1979 (Report No. 96–249, July 17, 1979, at 248), which states:

> Pursuant to subsection (c)(1) and (e), in the usual case, liquidation would proceed in accordance with the decision under challenge while the litigation is proceeding. If the court issues a decision which is contrary to the challenged determination decision, then the administering authority is to publish notice of the adverse decision in the **Federal Register** within 10 days and all entries which occur on or after the date of publication are to be liquidated in accordance with the court's decision.

Comment 2: Roquette Freres claims that the Department erred in failing to adjust the United States price upward by the amount of import levies on imported corn which it claims were refunded by reason of the exportation of sorbitol to the United States.

Pfizer on the other hand contends that the Department should disallow any claimed upward adjustment to United States price for an "export restitution payment". Since the European Community ("EC") makes this payment on all exports of sorbitol, whether the source of the corn used in its manufacture is domestic or imported, there is no link between the export payment and any import levy on corn.

Department's Position: There is an import tax levied by member countries of the EC on imports of corn. However, EC "export restitution payments" are paid on all exports of sorbitol outside the EC, regardless of whether the corn used to produce that sorbitol was domestic (from within the EC) or imported.

The import levy and the "export restitution payments" are not directly linked to, or dependent upon, one another within the context of EC regulations. It is irrelevant in this particular case that Roquette Freres could show it had paid an "import levy" on imported corn and received "export restitution payments" on the corn content of sorbitol. We have determined that the "export restitution payment" (Roquette Freres refers to it as an "import levy refund") is not a rebate of an import levy imposed by the EC on corn which has been rebated by reason of the exportation of sorbitol to the United States. Therefore, in this case we did not allow the payment as an adjustment to the United States price.

Final Results of the Review

As a result of correction of a clerical error, we have changed the margin for liquid sorbitol. The final results of the review for crystalline sorbitol remain unchanged from those presented in the preliminary results and we determine that the following weighted-average margins exist for the period October 1, 1981 through May 31, 1982:

Exporter	Margin (percent)
Roquette Freres:	
Crystalline Sorbitol	3.69
Liquid Sorbitol	17.14

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service after the preliminary injunction is lifted.

Further, as provided by section 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of French sorbitol entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department is beginning immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: March 12, 1984.

Judith Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–7732 Filed 3–21–84; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Ion Microanalyzers

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–12. Applicant: Arizona State University, Tempe, AZ 85287. Instrument: Ion Microanalyzer, Model IMS–3F. Manufacturer: Cameca Instruments, France, Intended use: See notice at 48 FR 57581. Advice submitted by: National Bureau of Standards: February 6, 1984.

Docket No. 84–25. Applicant: University of California, Livermore, CA 94550. Instrument: Ion Microanalyzer, Model IMS–3F with Accessories. Manufacturer: Cameca, France. Intended use: See notice at 49 FR 922. Advice Submitted by: National Bureau of Standards: February 6, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for such purposes as these instruments are intended to be used, is being manufactured in the United States.

Reasons: Each foreign instrument to which the foregoing applications relate provides a mass resolving power greater than 5000. The National Bureau of Standards advises in its respectively cited memoranda that (1) the capability of each of the foreign instruments described above is pertinent to the purposes for which each article is intended to be used and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to either of the foreign instruments for such purposes as these instruments are intended to be used.

We know of no other instrument or apparatus of equivalent scientific value to either of the foreign instruments to which the foregoing applications relate which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Material)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–7731 Filed 3–21–84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Receipt of Application for General Permit; International Trading and Shipping Agency

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. Fishery Conservation Zone during 1984 and 1985 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Applicant: International Trading and Shipping Agency, 19 Rector Street, Suite 1115, New York, New York 10006, has applied on behalf of Spanish fishing vessels for a Category 1: "Towed or Dragged Gear" general permit to take up to 10 northern sea lions, 5 harbor seals and 5 cetaceans in the Bering Sea and Gulf of Alaska.

This application is available for review in the following office: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Interested parties may submit written comments on this application within thirty (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: March 13, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–7764 Filed 3–21–84; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Georgs Kudravetz,

Patent Licensing, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–352,661 (4,431,039)
Involuted Disc Slicer
SN 6–566,380
Alkaline Peroxide Treatment of Nonwoody Lignocellulosics
SN 6–566,469
Sesbanimide and the Use Thereof in Treating Leukemic Tumors

Department of Health and Human Services

SN 6–249,229 (4,431,742)
Radioreceptor Assay for Benzodiazepines in Saliva

Department of the Air Force

SN 6–306,843 (4,414,670)
E-Beam Maintained Plasma Discharge Electrodes
SN 6–324,348 (4,418,127)
Battery Cell Module
SN 6–324,349 (4,415,993)
Fast Access Non-Volatile Memory
SN 6–324,913 (4,415,132)
Aircraft Having Variable Incidence Forward-Swept Wing
SN 6–399,661 (4,417,039)
Cis-Enyne Aromatic and Aromatic Heterocyclic Polymers
SN 6–434,648
Technique for the Growth of Compositionally Ungraded Single Crystals of Solid Solutions
SN 6–478,589
Pentafluorotellurium Oxide Fluorocarbons
SN 6–562,263
Improved Flameholder with Removable Flameholder Attachments
SN 6–564,547
Heat Resistant Sheathed Insulated Electrical Conductors
SN 6–564,548
Seal Part Supported on Rotor Disc Lug
SN 6–566,351
Electroluminescent (EL) Remotely-Controlled Landing Zone Marker Light System
SN 6–566,352
Variable Radius Lead Former
SN 6–566,444
Apparatus for Etching Vertical Junction Solar Cell Wafers
SN 6–566,445
Fuel Pump Vent Drain System
SN 6–566,753
Multiple Jet Blowing Around the Blunt Trailing Edge of a Circulation

Controlled Airfoil

Department of the Army

SN 6–020,145 (4,225,224)
Process and Apparatus for Laser Illumination of Printing Plates
SN 6–090,809 (4,262,381)
Amphibious Vehicle Bridge Apparatus
SN 6–124,873 (4,347,410)
Microphone Droop and Sensitivity Measurement Device
SN 6–132,592 (4,304,120)
Automatic Gas Measurement and Analysis for a Test Cell
SN 6–152,441 (4,360,799)
Hybrid Optical-Digital Pattern Recognition Apparatus and Method
SN 6–164,490 (4,397,126)
Environmentally Adaptable Roof Structure
SN 6–181,495 (4,422,181)
Bi-Directional Fibre-Optic Coupler
SN 6–183,878 (4,301,208)
Method for Reducing the Adhesion of Ice to the Walls of Navigation Locks
SN 6–193,495 (4,002,708)
Method for Producing Polymer Impregnated Foamed Masonary Elements
SN 6–195,821 (4,326,420)
Kerf Pressure Plate Material Tester
SN 6–198,977 (4,346,602)
Apparatus and Method for Measuring Adhesive Bond Strength
SN 6–217,335 (4,397,548)
Distance Measuring System
SN 6–248,934 (4,346,612)
Liquid Sampler
SN 6–255,184 (4,352,322)
Prefabricated Vehicle Maintenance Apparatus
SN 6–265,886
Apparatus for Determining Break Locations in Fencing
SN 6–274,602 (4,398,787)
Optical Leverage Telecentric Scanning Apparatus
SN 6–285,889
Method for Dispersing or Arresting Lava Flow
SN 6–315,551 (4,379,050)
Granular Fluid Biofilter Reversing
SN 6–318,500
A Microwave System for Particle and Shock Velocity Measurement in a Geological Type Material
SN 6–322,306
Reticle Plate and Method for Establishment of a North–Oriented or South-Oriented Line by Circumpolar Orientation
SN 6–328,765 (4,425,654)
Ultraviolet Preionizer for High Power Laser
SN 6–479,631
Electronic Monitoring System
SN 6–496,700
Measurement Techniques of Electrical Parameters of Surface Materials in the X-Band Region
SN 6–828,796 (4,110,912)
Triaxial Deflectiion Meter
SN 6–895,881 (4,167,260)
Bracket Means for Mounting Test Fixtures on Boiler Tubes

[FR Doc. 84–7635 Filed 3–21–84; 8:45 am]
BILLING CODE 3510–04–M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Extension of Approval of Information Collection Requirements—Labels and Instructions for Certain Coal and Wood Burning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through April 30, 1985, of a collection of information in the form of a rule which requires the manufacturers of certain wood and coal burning appliances to submit to the Commission copies of labels and directions giving needed safety information which they are required to furnish with the products under 16 CFR Part 1406. The manufacturers are also required to submit to the Commission an explanation of how the appropriate clearance distances stated on the labels and directions were determined.

The purpose of this reporting requirement is to determine the extent to which the subject manufacturers are complying with 16 CFR Part 1406.

Information about the Requested Extension of Approval of Requirements for Collection of Information:

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20270.

Title of information collection: Coal and Wood Burning Appliances—Notification of Performance and Technical Data.

Type of request: Extension of approval.

Frequency of collection: One time, plus updates when new models are introduced or previously submitted materials are changed.

General description of respondents: Manufacturers and importers of coal and wood burning fireplace stoves, heaters, and similar appliances.

Estimated number of respondents: 200.

Estimated average number of hours per response: 3 per year.

Comments: Comments on this requested extension of approval of information collection requirements should be addressed to Andy Valez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone: (202) 395–7313. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Budget, Planning, and Program Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: March 19, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84–7779 Filed 3–21–84; 8:45 am]
BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Pub. L. 95–202 and DODD 1000.20—Naval Support Activity Civilians Who Actively Participated in the Defense of Hue During the 1968 Tet Offensive

Under the provisions of Section 401 of Pub. L. 95–202 and DODD 1000.20, the DOD Civilian/Military Service Review Board has accepted an application on behalf of Naval Support Activity Civilians Who Actively Participated in the Defense of Hue During the 1968 Tet Offensive. Persons with information or documentation pertinent to the determination of whether the service of this group was equivalent to active military service are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MIPC), Washington, D.C. 20330. For further information contact Lt. Col. Kenneth D. Phelps, Jr., Telephone No. 692–4744.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 84–7762 Filed 3–21–84; 8:45 am]
BILLING CODE 3910–01–M

Department of the Army

Board of Visitors, United States Military Academy; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy
Date of Meeting: 11 April 1984
Place of Meeting: Washington, D.C. (Exact Location TBD)
Time of Meeting: 9:30 a.m.
Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for reminder of year; identification of areas of interest for 1984; and comments by Naval and Air Force representatives concerning their respective Boards of Visitors.

All proceedings are open. For further information contact Colonel D. P. Tillar, Jr., United States Military Academy, West Point, NY 10996.

For the Board of Visitors.

D. P. Tillar, Jr.,

Col, GS, Executive Secretary, USMA Board of Visitors.

[FR Doc. 84–7651 Filed 3–21–84; 8:45 am]

BILLING CODE 3710–02–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the supply of the following material:

Contract Number WC–EU–268, for the supply of 4.63 kilograms of depleted uranium in the form of U_3Si_2 powder, and 0.05 kilograms of depleted uranium in the form of U_3Si_2-Al dispersion fuel, for studies related to the Reduced Enrichment Research and Test Reactor program. At conclusion of the studies the material is to be returned to the U.S.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 12, 1984.

Dr. H. A. Morklein,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 84–7666 Filed 3–21–84; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–JA–345, for the supply of 296.8 grams of natural uranium for use as standard reference material by the Mitsubishi Nuclear Fuel Co., Ltd, Tokyo, Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 16, 1984.

Dr. H. A. Merklein,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 84–7670 Filed 3–21–84; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. OFU– 044, 045, 046, 047]

Energy Supply and Environmental Coordination Act; Notice of Effectiveness of Prohibition Orders in Docket No. OFU– 046, 047; Notice and Proposed Rescission of Prohibition Orders in OFU– 044, 045; Delmarva Power and Light Co., Edgemoor Station

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of effectiveness; notice and proposed rescission of prohibition orders.

SUMMARY: On June 30, 1975, the Federal Energy Administration (FEA) issued Prohibition Orders[1] to the Delmarva Power and Light Company's (Delmarva) Edgemoor Generating Station Units 1, 2, 3, and 4 (hereafter referred to, jointly and severally, as Edgemoor 1, 2, 3, and 4), pursuant to Section 2 of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 791 *et seq.* (ESECA).[2] The Economic Regulatory Administration (ERA) of the Department of Energy (DOE),[3] having completed the required administrative process, hereby issues: (1) Its Notice of Effectiveness (NOE) effectuating the prohibitions contained in the Prohibition Orders to Edgemoor 3 and 4 in Docket Nos. OFU–046 and OFU–047; and (2) its Notice and Proposed Rescission of the Prohibition Orders to Edgemoor 1 and 2 in Dockets Nos. OFU–044 and OFU–045. When the prohibitions applicable to Edgemoor 3 and 4 become effective, as stated in the **DATES** section below, Edgemoor 3 and 4 will be prohibited from using petroleum or natural gas as their primary energy source.

The NOE for Edgemoor 3 and 4, the Notice and Rescission Order proposed by ERA for Edgemoor 1 and 2, and other information on this proceeding are included in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The Prohibition Orders to Edgemoor 3 and 4 in Docket Nos. OFU–046 and OFU–047 are effective upon March 22, 1984, the date of publication of the NOE in the **Federal Register**. The date of publication is also the date of service. The prohibitions contained in the orders will become effective on April 23, 1984.

Written responses to ERA's proposed rescission of the Prohibition Orders to Edgemoor 1 and 2 in Docket Nos. OFU–044 and OFU–045 must be received no later than April 23, 1984. The rescissions shall become final without further ERA action upon expiration of the established comment period, if ERA receives no adverse comments on its

[1] 40 FR 28430, July 3, 1975.

[2] Effective November 2, 1981, Delmarva elected, pursuant to section 1022 of the Omnibus Budget Reconciliation Act of 1981, to have Edgemoor 1, 2, 3, and 4 remain subject to the jurisdiction of section 2 of ESECA, rather than to become jurisdictional under Title III, section 301 of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8341.

[3] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (Pub. L. 95–91).

proposed action, and will become effective thirty (30) days thereafter. For purposes of appeal of the final rescission order, the date of service shall be the day following the expiration of the comment period.

ADDRESS: Written responses to the proposed rescissions in Docket Nos. OFU–044 and OFU–045 are to be addressed to: Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA–093, 1000 Independence Avenue, S.W., Washington, D.C. 20585. "Delmarva Power, Edgemoor Station, OFU–044 and 045" should be printed on the outside of the envelope and on the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Robert L. Davies, Director, Coal and Electricity Division, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA–033, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Phone: (202) 252–1316

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–141, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Phone: (202) 252–6739

SUPPLEMENTARY INFORMATION:

NOTICE OF EFFECTIVENESS (NOE)

Docket No.	Owner	Installation	Unit	Location
OFU–046.	Delmarva Power & Light Co.	Edgemoor	3	Wilmington, Del.
OFU–047.	do	do	4	Do.

In accordance with 10 CFR 303.10(b), 303.37, and 305.7, ERA hereby gives notice that the Prohibition Orders issued in Docket Nos. OFU–046 and OFU–047 to Edgemoor 3 and 4 by the Federal Energy Administration under section 2 of ESECA on June 30, 1975 shall be effective upon the date this NOE is published in the **Federal Register** and that the prohibitions in the orders shall take effect on April 23, 1984.

As directed in 10 CFR 305.7, ERA has established the effective date of the prohibitions, taking into account the following information: In accordance with the provisions of section 119(d)(1)(B) of the Clean Air Act (42 U.S.C. 1857 *et seq.*), which were in effect at the time the subject orders were issued, and in accordance with the requirements of the Clean Air Act, as amended (42 U.S.C. 7413(d)(5)) and section 112 of the Clean Air Act Amendments of 1977 (Pub. L. 95–95), the Environmental Protection Agency (EPA) certified to DOE by letter of February 17, 1984 that Delmarva's Edgemoor 3 and 4 are presently burning coal in compliance with all applicable regulations for air quality control.

NEPA Compliance. Due to Delmarva's earlier voluntary conversions, Edgemoor 3 and 4 are currently operated with coal as their primary energy source. Therefore, in complying with the requirements of the National Environmental Policy Act of 1969 (NEPA), DOE has determined that the prohibitions to Edgemoor 3 and 4, when made effective by the NOE, will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)).

As provided in the June 30, 1975 Prohibition Orders, any person aggrieved by such orders may file an appeal with the DOE Office of Hearings and Appeals in accordance with 10 CFR Part 303, Subpart H. The appeal must be filed within 30 days after the service of the NOE. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of Part 303, and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Application may be made for modification or rescission of the Prohibition Orders in accordance with the provisions of 10 CFR Part 303, Subpart J. An application for modification or rescission of the Prohibition Orders based on "significantly changed circumstances," which circumstances occurred during the interval between issuance of the orders and service of the NOE, shall be filed within 30 days of the service date. Application for modification or rescission of the Prohibition Orders based on significantly changed circumstances occurring after that interval may be filed at any time after the NOE is served.

All or any part of the Prohibition Orders and the NOE may be the subject of an appeal or an application for modification or rescission. If an application for modification or rescission is filed, any appeal of the orders shall be suspended until 30 days after a decision on the application has been issued or the date on which it may be taken to have been denied.[4]

The Prohibition Orders made effective by this NOE are effective against any persons that, as of the date of service of this NOE, own, lease, operate, or control Edgemoor 3 and 4, and against any successors-in-interest or assignees of such persons. Any terms used in this NOE have the same meaning as such terms in 10 CFR Parts 303 and 305.

Notice and Proposed Rescission Order

ERA is also giving notice of the commencement of a proceeding to rescind the Prohibition Orders issued under section 2 of ESECA on June 30, 1975 in Docket Nos. OFU–044 and OFU–045 to Edgemoor 1 and 2.[5] The proceeding, begun by ERA on its own initiative under 10 CFR 303.130(b), is governed by the provisions of 10 CFR Part 303, Subpart J.

ERA proposes the following order to accomplish the rescission of the pending prohibitions in Docket Nos. OFU–044 and OFU–045:

RESCISSION ORDER

Docket No.	Owner	Installation	Unit	Location
OFU–044.	Delmarva Power & Light Co.	Edgemoor	1	Wilmington, Del.
OFU–045.	do	do	2	Do.

Based on information provided to it by Delmarva and incorporated into the record of the proceeding, ERA has determined that, as Edgemoor 1 and 2 are scheduled for retirement on or around January 31, 1984, the effectuation of the prohibitions against the use by these units of oil or natural gas as their primary energy source would serve no useful purpose under ESECA. Accordingly, having determined that significantly changed circumstances as defined in 10 CFR 303.136(b)(1) exist with respect to the application of the pending prohibitions to these units, ERA hereby rescinds the Prohibition Orders addressed to Edgemoor 1 and 2 in Docket Nos. OFU–044 and OFU–045.

Pursuant to 10 CFR 303.137(b), any person aggrieved by this action may file an appeal with the DOE Office of Hearings and Appeals in accordance with 10 CFR Part 303, Subpart H. As required by 10 CFR 303.139(c), any appeal of this order must be filed within 30 days of its service. If no adverse comments are received during the period

[4] Under 10 CFR 303.138, an applicant may treat the application as denied if DOE fails to take action on it within 90 days of filing.

[5] *Id.*

provided in the **DATES** section, above, the date of service, for purposes of appeal, shall be the day following the expiration of the comment period.

ERA is hereby giving notice to all parties to the original proceeding of their right under 10 CFR 303.134(a) to file a written response to ERA's proposed rescission within 30 days of the publication of this Notice in the **Federal Register** (see **DATES** section above). If no responses are received during the comment period established, the rescission order shall become final upon the expiration of such period.

NEPA Compliance

DOE has reviewed the environmental implications of its proposed action and has concluded that rescission of the Prohibition Orders to Edgemoor 1 and 2, as proposed, is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA.

Issued in Washington, D.C. March 8, 1984.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-7754 Filed 3-21-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-017; OFC Case No. 63011-9162-01-24]

Proposed Modification of an Order Granting Permanent Cogeneration Exemption; Great Western Malting Co.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under 10 CFR Part 501, Subpart G to modify the permanent cogeneration exemption granted by Order ("Order") to a new cogeneration powerplant owned and operated by Great Western Malting Company (Great Western) at its Vancourver, Washington facility, under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act").

Based upon its review of Great Western's February 14, 1984 modification request, ERA is proposing to modify the Order on the basis of its determination that significantly changed circumstances, as defined in 10 CFR 501.102(b), exist with respect to the applicability of the original exemption. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this Notice in the **Federal Register** (see **DATES** section, below). If no responses are received within the established period, the modification Order, as proposed, shall become final upon the expiration of that period without further action by ERA. A detailed discussion of the Order and Great Western's request for modification thereof is provided in the Supplementary Information section below.

DATES: Written responses to ERA's proposed modification of the Great Western Order must be received no later than April 23, 1984. Unless ERA receives comments adverse to its proposed action within the established comment period, the modification order shall become final on April 23, 1984; and the modification therein shall become effective on June 22, 1984.

ADDRESS: Written responses are to be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585. OFC-63011-9162-01-24 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue, SW., Washington, D.C. 20585 Telephone (202) 252-8162.

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-141, 1000 Independence Avenue, SW., Washington, D.C. 20585 Telephone (202) 252-6739.

SUPPLEMENTARY INFORMATION: On February 24, 1981, ERA exempted, by Order, Great Western's new combined combustion turbine and waste heat boiler cogeneration facility at its Vancouver, Washington malting plant from the prohibitions of section 201 of FUA.[1] The Order was published in the **Federal Register** on March 3, 1981 (46 FR 14916). Subject to the terms and conditions set forth in the Order, the permanent cogeneration exemption permitted the use of natural gas in the new combustion turbine as the unit's primary energy source. Great Western's exemption request was filed under the then-effective 10 CFR 503.37 (44 FR 28530, May 15, 1979 and 44 FR 28950, May 17, 1979) and was granted pursuant to section 212(c) of FUA.

By letter filed with ERA on February 16, 1984, Great Western requested that ERA now modify the Order to delete Term and Condition A which states:

> A. To the maximum extent practicable, Great Western will operate its natural gas oil-fired boilers instead of its cogeneration powerplant whenever the generation of electricity by its cogeneration powerplant would result in less than full utilization of alternate fuel capability available to the Western Group of the Northwest Power Pool.

Great Western bases its modification request upon the following situation which it believes to constitute significantly changed circumstances within the meaning of 10 CFR 501.102(b): Shortly after the issuance of the Order subject to the electric generating restriction in Term and Condition A, ERA commenced the process of substantially revising and modifying its FUA regulations, consistent with its policy of regulatory reform in the FUA program, to eliminate provisions that permitted the imposition of unnecessary and unduly burdensome regulatory requirements upon powerplant owners and operators. This process resulted in significant modifications to 10 CFR 503.37(a)(1) and 503.12(a), which formed the basis for the Great Western exemption and the imposition of Term and Condition A thereon.[2] Thereafter, ERA imposed no operting restrictions upon any cogeneration facilities exempted by it from the prohibitions of Title II of FUA, and, if Great Western's Order had been issued under the revised final regulations, Term and Condition A would not have been included therein.[3] Great Western believes, therefore, that Term and Condition A should be removed from the Order to make the treatment of the Vancouver, Washington cogenerator to which it applies consistent with ERA's policy of permitting order recipients to establish their own operational guidelines and to prevent any inequities that might arise as a result of the inclusion of such a restriction in the Great Western Order, but not in other cogeneration orders.

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[1] Section 201 of FUA prohibits (1) the use of natural gas or petroleum as the primary energy source in any new electric powerplant, and (2) the construction of such a powerplant without the capability of using an alternate fuel as its primary energy source.

[2] See 47 FR 29209, July 6, 1982 and 46 FR 59872, December 7, 1981. In particular, at the time of ERA's consideration of the Great Western application in 1981, 10 CFR § 503.12(a) provided that: A petitioner must comply with the terms and conditions of any exemption granted by ERA, *including terms and conditions requiring the use of effective fuel conservation measures.* (Emphasis added)

The fuel conservation measures provision was deleted from the final rules published in December of 1981 reflecting ERA's intention not to impose such restrictions on powerplant owners and operators in the future.

[3] Great Western was the first United States company to apply for and to receive a cogeneration exemption for a natural gas turbine unit.

As requested, ERA has commenced a proceeding pursuant to 10 CFR § 501.101(a), for the modification of the above-described exemption Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G.

Having considered the information contained in Great Western's request, along with other information of record in this proceeding, ERA proposes to modify the original permanent cogeneration exemption Order as follows:

To: The Great Western Malting Company.

MODIFICATION ORDER

Powerplant	Location	Docket No.
Cogeneration facility.	Vancover, Washington.	ERA-FC-80-017 (OFC Case No. 63011-9162-01-24).

Based upon its review of the whole record in the proceeding, ERA has determined that the revision of the FUA regulations to eliminate provisions that permitted the imposition of unnecesary regulatory burdens and impediments to operational self-determination by powerplant owners and operators at a point in time subsequent to the issuance of the permanent cogeneration exemption to the above-cited facility constitutes significantly changed circumstances warranting the modification of the original exemption Order, as provided by 10 CFR 501.102 and 501.103.

Accordingly, ERA hereby modifies the Order in Docket Number ERA-FC-80-017 to remove Term and Condition A therefrom.

Procedures

Parties to the original proceeding in Docket No. ERA-FC-80-017 are hereby notified of ERA's proposed modification of the Order exempting Great Western's Vancouver, Washington cogeneration facility from the prohibitions of section 201 of FUA and of their right pursuant to 10 CFR 501.101(d) to file a response thereto within 30 days after the publication of this Notice in the **Federal Register**. If ERA receives no adverse responses within the allotted comment period, the modification Order shall become final as proposed, without further ERA action, upon the expiration of that period.

Issued in Washington, D.C., March 14, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-7671 Filed 3-21-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposal sent to OMB for approval. The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Forum title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Thursday, March 8, 1984, (49 FR 8666).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Divison, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Federal Energy Regulatory Commission, Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7313.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C. March 19, 1984.

Douglas Hale,

Acting Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated No. of respondents (7)	Annual respondent burden (8)	Abstract (9)
EIA-767(2)	Steam-Electric Plant Operation and Design Report.	Reinstatement.	Annually	Mandatory	Steam-electric plants with 100 megawatt or greater capacity.	779	40,850	Form EIA-767 collects data on steam-electric generating plants and related environmental data. Data are used by FERC, BEA, EPA and DOE in models and to evaluate compliance with the Clean Air Act. (The burden figure shown represents DOE's share of the burden for Form EIA-767. EP is responsible for 19,350 hours of burden and FERC is responsible for 21,50 hours. EPA and BEA will submit separate clearance requests for their allocated shares of burden; 30,101 and 717 hours respectively.)

DOE Forms Under Review by OMB—Continued

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated No. of respondents (7)	Annual respondent burden (8)	Abstract (9)
FERC–579	Implementation of PURPA 210—Congeneration and Small Power Production.	New	On occasion	Voluntary	State regulatory commissions, electric utilities, and a few cogenerators in 17 selected states.	1,044	783	The information is needed to evaluate the success of FERC's PURPA 210 Rules in accomplishing the statutory goal of encouraging cogeneration and small power production. It will be used by the Commission in assessing the effectiveness of its rules.

[FR Doc. 84–7753 Filed 3–21–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 20 Through February 24, 1984

During the week of February 20 through February 24, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also lists a submission that was dismissed by the Office of Hearings and Appeals.

APPEAL

The Seattle Times, 2/22/84, HFA–0206

The Seattle Times filed an Appeal from a partial denial by the Chief of the Resource Oversight Branch of the Bonneville Power Administration of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the withheld document contained opinions and recommendations which were exempt from disclosure under FOIA Exemption 5. However, the DOE also found that the document contained segregable, factual passages, the release of which would not divulge the agency's internal decisionmaking process. The DOE therefore ordered the release of the factual passages of the document. Accordingly the Appeal was granted in part.

Remedial Orders

Stephen Slevinski d.b.a. Slevinski Service Stations of Northport, Ltd. 2/23/84, BRO–1526 through BRO–1532

Stephen Slevinski d.b.a. Slevinski Service Stations of Northport, Ltd. (Slevinski) objected to seven Proposed Remedial Orders (PROs) which the Northeast District Office of Enforcement of the Economic Regulatory Administration (ERA) issued to the firm on April 22, 1980. In the PROs the ERA found that Slevinski had charged prices for motor gasoline which exceeded its maximum lawful selling prices calculated pursuant to 10 CFR 212.93. After considering Slevinski's objections, the Department of Energy determined that the remedial provisions of the seven PROs should be modified, and that the PROs, as modified, should be issued as Final Remedial Orders. The important issues considered in the Decision and Order included whether or not (i) the PROs were served on the proper party to the proceeding and (ii) the ERA established a *prima facie* case pursuant to 10 CFR 205.192A(a) and 205.192(d) as to the validity of the findings of fact and conclusions of law asserted in the PROs.

Motion for Discovery

Department of Interior/Laketon Asphalt Refining, Inc., 2/22/84, HED–0165, HEH–0165, HED–0155, HEH–0155

The Department of Interior and Laketon Asphalt Refining, Inc. filed Motions for Evidentiary Proceeding in connection with an Application for Exception submitted by the DOI which requested retroactive exception from certain DOE crude oil pricing regulations which pertained to DOI's sales of federal royalty crude oil to Laketon. On December 16, 1983, the DOE convened a conference to determine the status of the discovery requests and requested that the parties resolve contested matters through stipulations to the extent possible. On January 18, 1984, the parties filed a discovery stipulation which outlined the requests upon which they agreed, the points remaining in contention, and the areas in which material obtained through discovery in pending court litigation could be used in the exception proceeding. At a hearing held on February 10, 1984, the DOE heard oral argument on the remaining disputed discovery requests and ruled on both parties' motions. The Decision and Order sets forth the rulings of the Presiding Officer.

Requests for Modification and/or Rescission

Cities Service Company, 2/24/84, HER–0051

Cities Service Company filed an Application for Modification or Rescission of a January 4, 1983 Decision and Order issued by the Office of Hearings and Appeals to Energy Cooperative, Inc. (ECI). The January 4 Decision found that ECI was experiencing a hardship, inequity and unfair distribution of burdens as a result of the DOE regulatory program. The January 4 Decision therefore approved limited entitlements and Buy-Sell exception relief to ECI. In its Application for Modification or Rescission, Cities claimed that ECI's financial difficulties were not solely attributable to the DOE regulations, but were instead largely the result of a contract dispute between ECI and the Northern Illinois Gas Company (Ni-Gas). Cities alleged that ECI deliberately withheld information about the contract dispute from the Office of Hearings and Appeals and that the January 4 Decision should therefore be modified to deny relief to ECI. In considering Cities' application, the OHA noted that the exception relief originally awarded to ECI was narrowly focused on those aspects of ECI's overall hardship that were clearly attributable to the operation of the DOE regulations. The OHA therefore determined that while ECI should have provided information on its contract dispute with Ni-Gas, subsequent knowledge of the dispute did not undermine the findings of the January 4 Decision. Accordingly, Cities' Application for Modification or Rescission was denied.

West Coast Oil Company, 2/21/84, HRR–0077

West Coast Oil Company filed a Motion for Reconsideration of a Decision and Order issued by the Office of Hearings and Appeals on December 9, 1983. *West Coast Oil Co.*, 11 DOE ¶ 84,042 (1983). In that determination the OHA denied a Motion for Discovery filed by West Coast in connection with its Statement of Objections,to a Proposed Remedial Order issued to the firm on July 30, 1982, by the Economic Regulatory Administration. The firm's Motion for Reconsideration was denied because the firm had not shown any prejudicial error in the original determination.

Refund Applications

Palo Pinto Oil and Gas/Mississippi, Maryland, Puerto Rico, 2/23/84, RQ5–2, RQ5–44, RQ5–50

The Office of Hearings and Appeals granted refunds to the States of Mississippi and Maryland and the Territory of Puerto Rico after approving proposed plans for the utilization of a portion of the funds remitted to the DOE pursuant to a consent order entered into with Palo Pinto Oil and Gas. Mississippi plans to use its share of the consent order funds to improve its public tranportation system, and to publicize available services. Maryland plans to use its refund to train van pool drivers in defensive driving skills. Puerto Rico will use its refund money to promote a ridesharing program through various publicity measures.

Standard Oil Company (Indiana)/Bystol Oil Company 2/24/84, RF21–12282

On January 10, 1984, the Office of Hearings and Appeals received a letter from Bassman & Mitchell, Chartered, the attorneys represented Bystol Oil Company, Inc. (Bystol), in which the law firm stated that it had inadvertently submitted duplicate wholesale gasoline claims on behalf of Bystol. Both refund applications were granted on August 4, 1983. *See Standard Oil Co. (Indiana)/Leblanc Oil Company, Inc.*, 11 DOE ¶ 85,100 (1983). In order to remedy this excessive payment, Bassman & Mitchell has remitted the $489 refund granted to Bystol pursuant to its duplicate refund application. In the present Decision and Order, the OHA directed that the remitted money be credited to the Amoco excrow account at the Department of the Treasury, and that the August 4 Decision be revised accordingly.

Dismissal

The following submission was dismissed:

Name	Case No.
Village Car Wash, Inc	RF21-1640

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 14, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-7669 Filed 3-21-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-2549-7]

Proposal To Recommend Designation of the Snake River Plain Aquifer as a Sole Source Aquifer and Request for Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and public hearings.

SUMMARY: The Region 10 office of the Environmental Protection Agency (EPA) is proposing to recommend that the Snake River Plain Aquifer in southeastern Idaho be designated as the sole or principal source of drinking water for the area. A draft Support Document providing the bases for this recommendation is available for review and public comments are requested. Hearings will be held if sufficient public interest is expressed.

DATES: Requests to hold a public hearing should be filed on or before April 20, 1984.

Public hearings are tentatively scheduled for May 7, 1984, in Idaho Falls at 7:30 p.m. and May 8, 1984, in Twin Falls at 7:30 p.m. One or both of the hearings will be cancelled if sufficient public interest is not expressed by April 20, 1984. The public is also encouraged to submit written comments. These must be submitted by May 25, 1984.

ADDRESSES: Persons requesting a hearing should notify Wendy Marshall, M/S 409, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

The draft Support Document is available for public inspection and copying during normal business hours at the Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

It is also available for inspection and copying during normal business hours at the main public library in the following cities: Aberdeen, American Falls, Arco, Ashton, Bellevue, Blackfoot, Boise, Buhl, Burley, Carey, Downey, Dubois, Fairfield, Filer, Fort Hall, Gooding, Hagerman, Hailey, Hamer, Hansen, Idaho Falls, Jerome, Ketchum, Kimberly, Lewisville, Oakley, Pocatello, Rexburg, Richfield, Rigby, Rockland, Rupert, Saint Anthony, Shelley, Shoshone, Sugar City, Twin Falls, Victor and Wilder.

The public hearings will be held at the District Seven Health Department Conference Room 254, "E" Street, Idaho Falls on May 7, 1984, from 7:30 p.m. to 9:30 p.m. and at the College of Southern Idaho, Room 118—Shields, Twin Falls, on May 8, 1984, from 7:30 p.m. to 9:30 p.m.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall at (208) 442–1890 or FTS 399–1890.

SUPPLEMENTARY INFORMATION: Section 1424(e) of the Safe Drinking Water Act (Pub. L. 93–523) authorizes the Administrator to determine, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health. After such a determination is made, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Adminstrator determines may contaminate such an aquifer through a recharge zone so as to create a significant hazard to public health.

On September 25, 1982, the Hagerman Valley Citizen's Alert, Inc. submitted a petition requesting that the Administrator of the EPA designate the aquifer underlying the eastern Snake River Plain as the sole drinking water source for the area. Additional information, including the petitioners' interest in the Administrator's determination and the petitioners' views as to why contamination of the aquifer would result in a significant hazard to public health, was provided to EPA on October 27, 1982. Notice of this petition was published in the **Federal Register** on February 9, 1983.

The EPA Region 10 office is proposing to recommend to the Administrator that the requested determination be made. The designated area would consist of the land overlying the aquifer itself (the recharge zone) and the area in the streamflow source zone, i.e., the upstream headwaters area which drains into the recharge zone (also referred to as the contributory drainage area). Included in the designated area would be all or part of Bannock, Bingham, Blaine, Bonneville, Butte, Camas, Cassia, Clark, Fremont, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Power, Teton, and Twin Falls Counties.

A draft Support Document providing the bases for the recommendation of aquifer designation is available for public review. This document includes such information as a description of the location of petitioned area, estimate of size of area, boundaries of area, pertinent geologic and hydrologic information, information on the recharge and streamflow source zones, climate, population, existence or absence of alternate drinking water sources, and potential sources of contamination.

Hearings will be held to discuss the draft Support Document if sufficient public interest is expressed. Requests for a public hearing should include the following information: (1) Name, address, and telephone number of the individual, organization, or other entity requesting a hearing and which hearing they would be attending; and (2) a brief statement of the requesting person's interest in the proposed recommendation.

If one or both of the hearings are cancelled, those persons having expressed interest in attending the hearing will be notified by phone and by letter of the cancellation. Other persons should contact the Environmental Section of the South Central District Health Department in Twin Falls at (208) 734–5000 or the Environmental Health Section of the District Seven

Health Department in Idaho Falls at (208) 523–5382 to confirm the hearing date and time. EPA will also send notice of the hearings or of their cancellation to the local media.

Dated: February 17, 1984.

Ernesta B. Barnes,

Regional Administrator.

[FR Doc. 84–7679 Filed 3–21–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0033
Title: Notice of Interest in Applying for Federal Disaster Assistance
Abstract: Brief check list indicating disaster damage to be inspected for grant.
Type of respondents: State or Local Governments
Number of respondents: 2,500
Burden hours: 1,250

Copies of the above information collection request and supporting documentation can be obtained by calling for writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C Street, SW., Washington, D.C. 20472.

Comments should be directed to Ken Allen, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 15, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84–7639 Filed 3–21–84; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Existing Regulation
Title: Project Application for Federal Assistance
Abstract: Standard OMB Form 424 (modified) used to apply for grants
Type of respondents: State or Local Governments; Non-Profit Institutions
Number of respondents: 2,500
Burden hours: 7,500

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C Street, SW., Washington, D.C. 20472.

Comments should be directed to Ken Allen, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 15, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84–7640 Filed 3–21–84; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Premier Cruise Lines, Ltd., 101 George King Blvd., Port Canaveral, Cape Canaveral, Florida 32920.

Dated: March 19, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–7683 Filed 3–21–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Central Louisiana Capital Corporation, et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under sections 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c).

The applications may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. Interested persons may express their views in writing to the address indicated for the applications. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing. Comments on these applications must be received not later than April 5, 1984.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 74222:

1. *Central Louisiana Capital Corporation,* Ferriday, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Louisiana Central Bank, Ferriday, Louisiana.

2. *Schwertner Financial Corporation,* Schwertner, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Schwertner State Bank.

Board of Governors of the Federal Reserve System, March 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–7633 Filed 3–21–84; 8:45 am]

BILLING CODE 6210–01–M

Commercial Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C.1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank Indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 13, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Commercial Bancshares, Inc.*, Jersey City, New Jersey; to acquire 100 percent of the voting shares of The Wood Ridge National Bank, Wood Ridge, New Jersey.

2. *Community Bank System, Inc.*, Canton, New York; to acquire 100 percent of the voting shares of The Exchange National Bank, Olean, New York, a *de novo* bank to be formed for the purpose of acquiring three branches of the bank of New York, New York, New York, located in Olean, Allegany and Portville, New York.

3. *Hamptons Bancshares, Inc.*, East Hampton, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of the Hamptons, N.A., East Hampton, New York

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Citizens BancShares, Inc.*, Greensboro, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank, Greensboro, Alabama.

2. *Vista Banks, Inc.*, DeLeon Springs, Florida; to acquire 80 percent of the voting shares of bank of Belleview, Belleview, Florida.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois [illegible]

1. *Blanchardville Financial Services, Inc.*, Blanchardville, Wisconsin; to acquire 94 percent of the voting shares of Highland State Bank, Highland, Wisconsin.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Schuyler County Bancshares, Inc.*, Lancaster, Missouri; to become a bank holding company by acquiring at least 99.6 percent of the voting shares of Schuyler County State Bank, Lancaster, Missouri.

2. *Simmons First National Corporation*, Pine Bluff, Arkansas; to acquire 98 percent of the voting shares of First State Bank & Trust Company, Lake Village, Arkansas.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Continental Financial, Inc.*, Omaha, Nebraska; to become a bank holding company by acquiring at least 80 percent of the voting shares of First Continental National Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, March 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7632 Filed 3-21-84; 8:45 am]

BILLING CODE 6210-01-M

Huntington Bancshares, Inc.; Formation of Bank Holding Company

The company listed in this notice has applied for the Board's approval under sections 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. Interested persons may express their views in writing to the address indicated for the application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Huntington Bancshares, Inc.*, Huntington, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Huntington State Bank, Huntington, Texas. Comments on this application must be received not later than March 31, 1984.

Board of Governors of the Federal Reserve System, March 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7631 Filed 3-21-84; 8:45 am]

BILLING CODE 6210-01-M

Maryland Bancorp, Inc.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably by expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1984.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Maryland Bancorp, Inc.*, Lexington Park, Maryland; to engage *de novo* through its subsidiary, Maryland Bankers Life Insurance Corporation, Phoenix, Arizona, in underwriting as reinsurer certain credit life and credit accident and health insurance directly related to extensions of credit by Maryland Bank and Trust Company. These activities would be conducted in St. Marys County, and Charles County, Maryland; and the Piscataway, Surrats, Brandywine, and Oxon Hill Districts of Prince Georges County, Maryland.

Board of Governors of the Federal Reserve System, March 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7680 Filed 3-21-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Deletion of a System of Records

AGENCY: General Services Administration.

ACTION: Notification of deletion of a system of records.

SUMMARY: The General Services Administration is deleting a system of records, Accounts Receivable Claims Files, GSA/PPFM-2, that is no longer in use.

DATE: Effective March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. William Hiebert, Records and Forms Management Branch, Information Management Division, (202) 535-7647.

SUPPLEMENTARY INFORMATION: On August 25, 1980, and pursuant to the provisions of the Privacy Act of 1974, there was published in the **Federal Register** (45 FR 57874) a notice of the system of records, Accounts Receivable Claims Files, GSA/PPFM-2. This notice deletes this system of records.

Dated: March 15, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84-7643 Filed 3-21-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee; Notice of Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Gastrointestinal Drugs Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on March 3, 1986, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: March 15, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-7627 Filed 3-21-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83N-0018; DESI 6514]

Oral Prescription Drugs Offered for Relief of Symptoms of Couch, Cold, or Allergy; Drug Efficacy Study Implementation; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the original formulations of Tuss-Ornade Spansules and Liquid containing caramiphen edisylate, chlorpheniramine maleate, phenylpropanolamine hydrochloride, and isopropamide iodide. These products are no longer marketed. The basis for the withdrawal is that these combination drug products lack substantial evidence of effectiveness. Reformulations of Tuss-Ornade Spansules and Liquid, containing caramiphen edisylate and phenylpropanolamine hydrochloride, are currently marketed pending final determination of effectiveness.

EFFECTIVE DATE: April 23, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with reference number DESI 6514 and directed to the Division of Drug Labeling Compliance (HFN-310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Francis J. Sasinowski, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 6, 1983 (48 FR 40322), the Director of the National Center for Durgs and Biologics reclassified Tuss-Ornade Spansules and Liquid as lacking substantial evidence of effectiveness as combination drug products. The Director offered an opportunity for hearing on two proposals: (1) To withdraw approval of the original formulations of Tuss-Ornade Spansules and Liquid, and (2) to refuse approval of supplemental reformulations of the same products.

Neither the holder of the two new drug applications (NDA's) nor any other interested party requested a hearing on the proposal to withdraw approval of the original formulations of Tuss-Ornade Spansules and Liquid. Failure to file a notice of appearance and request for a hearing constitutes a waiver of the opportunity for a hearing. Accordingly, the Director of the National Center for Drugs and Biologics withdraws approval of the following new drug applications:

1. NDA 12-903; Tuss-Ornade Spansules containing caramiphen edisylate 20 milligrams (mg), chlorpheniramine maleate 8 mg, phenylpropanolamine hydrochloride 50 mg, and isopropamide iodide 2.5 mg; Smith Kline and French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.

2. NDA 13-068; Tuss-Ornade Liquid containing caramiphen eidsylate 5 mg, chlorpheniramine maleate 2 mg, phenylpropanolamine hydrochloride 15 mg, and isopropamide iodide 0.75 mg; Smith Kline and French Laboratories.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

In response to that part of the September 6, 1983 notice that proposed to refuse to approve the reformulated products (described below), two firms requested a hearing: Smith Kline and French Laboratories for its reformulated Tuss-Ornade products and National Pharmaceutical Manufacturing Company for its identical, similar, or related product, Oratuss Liquid. Those hearing requests are under review and will be the subject of a future **Federal Register** notice. The marketing status of these products is not affected by this notice. The supplements submitted by Smith Kline and French proposed to reformulate the products listed above to the following:

1. NDA 12-903: Caramiphen edisylate 40 mg and phenylpropanolamine hydrochloride 25 mg.

2. NDA 13-068: Caramiphen edisylate 6.7 mg and phenylpropanolamine hydrochloride 12.5 mg.

The Director of the National Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82) finds that, on the basis of new information before him with respect to the original drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 12–903 and NDA 13–068 and all their previously approved amendments and supplements is withdrawn effective April 23, 1984. Shipment in interstate commerce of the original products listed above, or any identical, related, or similar product that is not the subject of an approved new drug application or pending hearing request, will then be unlawful.

Dated: March 14, 1984.

Paul Parkman,

Acting Director, National Center for Drugs and Biologics.

[FR Doc. 84–7628 Filed 3–21–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 77N–0203; DESI 12342]

Tranylcypromine Sulfate; Drugs for Human Use; Drug Efficacy Study Implementation, Revocation of Exemption; Announcement of Marketing Conditions; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemption that has allowed tranylcypromine sulfate to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. FDA announces the conditions for marketing this product for the indication now regarded as effective. Tranylcypromine sulfate is catergorized as a monoamine oxidase inhibitor.

DATES: Requests for hearings are due on or before April 23, 1984; supplements to approved new drug applications are due on or before May 21, 1984.

ADDRESSES: Communications in response to this notice should be identified with reference number DESI 12342, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number); Division of Neuropharmacological Drug Products (HFN–120) Rm. 10B–40, National Center for Drugs and Biologics.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN–530), National Center for Drugs and Biologics.

Requests for hearing (identify with Docket No. 77N–0203): Dockets Mangement Branch (HFA–305), Rm. 4–62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), National Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Francis J. Sasinowski, National Center for Drugs and Biologics (HFN–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 1, 1970 (35 FR 13855), FDA classified tranylcypromine sulfate as probably effective for symptomatic relief in patients who have severe depression, are not candidates for electroconvulsive therapy, have failed to respond satisfactorily to other antidepressant therapy, and are hospitalized or under similar close supervision. This classification reflected the findings of the Panel on Psychiatric Drugs of the National Academy of Sciences/National Research Council as part of the Drug Efficacy Study Implementation (DESI).

In a notice published in the **Federal Register** of September 2, 1977 (42 FR 44286), tranylcypromine sulfate was added as category XX to the list of drugs that would temporarily be exempt from the time limits established for completing the DESI program. This exemption allowed this drug to remain on the market while studies were conducted to determine its effectiveness. Labeling this drug product as "probably effective for symptomatic relief of servere reactive or endogenous depression in hospitalized or closely supervised patients who have not responded to other antidepressant therapy" was required in this notice as one of the specific conditons for the continued marketing of this drug.

In a subsequent notice published in the **Federal Register** of July 14, 1978 (43 FR 30351), FDA extended the time allowed for completion of the clinical studies of effectiveness and allowed other firms to market this product under an abbreviated new drug application (ANDA).

On the basis of the agency's review of additional data and information submitted by the holder of the new drug application (NDA), the Director of the National Center for Drugs and Biologics has determined that tranylcypromine sulfate, as contained in the product covered by the NDA listed below, is effective for the management of certain types of depression and that the drug is no longer entitled to the temporary exemption announced in 1977. Accordingly, the exemption, as it pertains to tranylcypromine sulfate, is hereby revoked.

NDA 12–342; Parnate Tablets containing tranylcypromine sulfate equivalent to 10 milligrams (mg) tranylcypromine; Smith Kline & French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.

This drug is regarded as a new drug (21 U.S.C. 321(p)), and an approved new drug application is required for marketing it. A supplemental new drug application is now required to revise the labeling and to update any previously approved new drug application providing for this drug.

In addition to the holder of the application specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* FDA has reviewed all available evidence and concludes that tranylcypromine sulfate is effective for the indication in the labeling conditions below. The drug product lacks substantial evidence of effectiveness for other labeled indications.

B. *Conditions for approval and marketing.* FDA is prepared to approve abbreviated new drug applications for products containing tranylcypromine sulfate for the indication now regarded as effective and a supplement to the

previously approved new drug application under the conditions described herein.

1. *Form of drug.* The drug product is in tablet form for oral administration. Each tablet contains tranylcypromine sulfate equivalent to 10 mg of tranylcypromine.

2. *Labeling conditions.* a. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

For the treatment of Major Depressive Episode without Melancholia.

Tranylcypromine sulfate should be used in adult patients who can be closely supervised. It should rarely be the first antidepressant drug given. Rather, the drug is suited for patients who have failed to respond to the drugs more commonly administered for depression.

The effectiveness of tranylcypromine sulfate has been established in adult outpatients, most of whom had a depressive illness which would correspond to a diagnosis of Major Depressive Episode without Melancholia. As described in the American Psychiatric Association's Diagnostic and Statistical Manual, third edition (DSM III), Major Depressive episode implies a prominent and relatively persistent (nearly every day for at least two weeks) depressed or dysphoric mood that usually interferes with daily functioning and includes at least four of the following eight symptoms: change in appetite, change in sleep, psychomotor agitation or retardation, loss of interest in usual activities or decrease in sexual drive, increased fatigability, feelings of guilt or worthlessness, slowed thinking or impaired concentration, and suicidal ideation or attempts.

The effectiveness of tranylcypromine sulfate in patients who meet the criteria for Major Depressive Episode With Melancholia (endogenous features) has not been established. (See "CLINICAL STUDIES" section.)

c. The "DOSAGE AND ADMINISTRATION" section shall include the following information.

The usual effective dosage is 30 mg per day. If there are no signs of improvement after a reasonable period (up to 2 weeks), then the dosage may be increased in 10 mg per day increments at intervals of 1 to 3 weeks. the dosage range may be extended to a maximum of 60 mg per day from the usual 30 mg per day.

3. *Marketing status.* The marketing of the drug product that is now the subject of an approved or effective new drug application may be continued provided that, on or before May 21, 1984, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide current information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)(2)).

Approval of an abbreviated new drug application (21 CFR 314.2) that contains full information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)(2)) must be obtained before marketing such product. The requirement in the bioavailability regulations (21 CFR 320.21) that an application include evidence demonstrating in vivo bioavailability will not be waived for this drug, tranylcypromine sulfate (21 CFR 320.22(c)(3)). Marketing the drug product before approval of a new drug application will subject to regulatory action both the product and the person responsible for causing such product to be marketed.

C. *Notice of opportunity for hearing.* Notice is given to the holder of the new drug application and to all other interested persons that the Director of the National Center for Drugs and Biologics proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the new drug application and all amendments and supplements thereto providing for the indications (not referred to in paragraph B.2.b., above) that lack substantial evidence of effectiveness. The basis of the proposed action is that new information before the Director with respect to the drug product, evaluated together with the evidence available to the Director when the application was approved, shows there is a lack of substantial evidence that the drug product will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. If no hearing is requested, and the application is further supplemented in accord with this notice, then the approval of the claims that lack evidence of effectiveness will be considered withdrawn, and no further order will issue.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug product subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938 in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310 and 314), the applicant and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) and not the subject of a new drug application are hereby given an opportunity for a hearing to show why approval of the new drug application should not be withdrawn, and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug product named above and of all identical, related, or similar drug products not the subject of a new drug application.

The applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file: (1) On or before April 23, 1984 a written notice of appearance and request for hearing, and (2) on or before May 21, 1984 the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a granting or denial of a hearing, are contained in 21 CFR 314.200.

The failure of the applicant or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug

product labeled for the indications referred to in this notice as lacking substantial evidence of effectiveness may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such a drug product from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the National Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: March 14, 1984.

Paul Parkman,

Acting Director, National Center for Drugs and Biologics.

[FR Doc. 84-7829 Filed 3-21-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare Program; Revised Criteria for Defining a Skilled Nursing Facility When Determining Spell of Illness Status

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of HCFA ruling.

SUMMARY: This notice announces a HCFA Ruling that establishes revised criteria for defining a skilled nursing facility under section 1861(j)(1) of the Social Security Act when determining a beneficiary's spell of illness status.

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, Office of Coverage Policy, (301) 594–9446.

SUPPLEMENTARY INFORMATION: We plan to compile and publish all HCFA Rulings in the "Health Care Financing Administration Rulings" Booklet which will be indexed for citation purposes. When this ruling is republished in the booklet, it will be known as HCFAR 83–3. The text of the HCFA ruling is as follows:

Criteria for Defining a Skilled Nursing Facility When Determining a Beneficiary's Spell of Illness Status—HCFAR 83–3

Purpose

This ruling provides public notice of the revised criteria that HCFA has established for defining a skilled nursing facility (SNF) under section 1861(j)(1) of the Social Security Act (the Act) when determining a beneficiary's spell of illness status.

Citations

Section 1812 and 1861 of the Social Security Act (42 U.S.C. 1395d and 1395x).

Pertinent History

Under the Hospital Insurance Program (Medicare—Part A), payment for covered inpatient hospital and skilled nursing facility services is available for a limited number of days during each benefit period or *spell of illness.* Once a beneficiary has exhausted that allotted number of days (90 days for inpatient hospital care plus 60 lifetime reserve days and 100 days for SNF care), no further Part A program payment is available for those services until the beneficiary ends that spell of illness and begins a new one (Section 1812(a) of the Act, 42 U.S.C. 1395d(a)). A patient's spell of illness begins on the day he or she is furnished hospital or SNF services and ends when he or she has not been an inpatient of a hospital or SNF for 60 consecutive days (Section 1861(a) of the Act, 42 U.S.C. 1395x(a)).

The material following section 1861(j)(15) of the Act (42 U.S.C. 1395x(j)(15)) specifies that for purposes of determining when a spell of illness ends under section 1861(a), an SNF is defined by section 1861(j)(1) of the Act (42 U.S.C. 1395x(j)(1)). This latter provision defines an SNF as a facility that:

(1) Is primarily engaged in providing to inpatients—

(A) Skilled nursing care and related services for patients who require medical or nursing care, or

(B) Rehabilitation services, for the rehabilitation of injured, disabled, or sick persons.

Thus, while a beneficiary is an inpatient of a nursing home which meets this definition, the beneficiary is considered an inpatient of an SNF under section 1861(a) of the Act, and cannot terminate his or her spell of illness for purposes of receiving renewed benefits.

We developed criteria early in the program that clarified the section 1861(j)(1) definition of a skilled nursing facility. These criteria are included in section 3412 of the *State Operation Manual* and in a HCFA Ruling (HCFAR 83–2) published in the **Federal Register** on December 3, 1982 (47 FR 54551). For determinations made prior to October 17, 1983, these criteria defining those SNFs where a stay could either prolong a spell of illness or constitute a patient's being in his "home" for purposes of the DME and home health benefits.

As a result of the recent court order in *Kron* v. *Heckler,* Civil Action No. 80–1332 (E.D. La., October 17, 1983), we instructed all fiscal intermediaries to start using a new set of criteria for defining section 1861(j)(1) facilities for spell of illness purposes. The new criteria, effective as of October 17, 1983 (the date the *Kron* judgment was entered), retain the previous section 1861(j)(1) criteria elements, but also provide that a section 1861(j)(1) SNF, for purposes of prolonging a Medicare spell of illness, cannot include a facility or part of a facility that is licensed by the State solely as an intermediate care facility (ICF). This Ruling utilizes the elements of the definition of spell of illness that were contained in our instruction to fiscal intermediaries and also contains further clarifying language. The Ruling is applicable to spell of illness determinations made on or after October 17, 1983 and applies only to use of the "spell of illness" concept in the context of hospital or skilled nursing facility services, coverage, and reimbursement under Medicare. HCFAR 83–2 (47 FR 54551, December 3, 1982) is modified to the extent necessary to conform to this Ruling.

Ruling

Criteria for Defining a Skilled Nursing Facility Under Section 1861(j)(1) of the Social Security Act When Determining a Beneficiary's Spell of Illness Status

An institution meets the section 1861(j)(1) definition of skilled nursing or rehabilitation facility for purposes of prolonging a spell of illness under sections 1812(a) and 1861(a)(2) of the

Social Security Act only if all the following criteria are met.

A. *Nursing Services.*—Nursing services are provided under the direction or supervision of one or more registered nurses or licensed practical or vocational nurses without regard to whether they are 'waived.' This condition will be considered met even if the nurse is also the administrator of the facility or is employed on a part-time basis.

B. *24–Hour Nursing Services.*—There are nursing personnel on duty 24 hours a day. The term 'nursing personnel' includes registered nurses, licensed practical or vocational nurses without regard to whether they are 'waived' or not, practical nurses, student nurses, nursing aides, and orderlies.

C. *Nurse-Bed Ratio.*—The number of full-time equivalent nursing personnel to the number of beds is not less than an average ratio of 1 to 15 per shift.

Note.—Generally, there will be a close equivalency between the number of beds and average number of patients in an institution. When the circumstances indicate a significant discrepancy in these factors, the ratio of nurses to the average patient census should be used in determining section 1861(j)(1) status.

A facility which has three 8-hour shifts would have to have a minimum of the equivalent of three full-time nursing personnel during a 24-hour period for each 15 beds. It is not necessary that the 1 to 15 ratio be maintained for each shift, but the average of all shifts must be at least 1 to 15. Nursing personnel include all those persons listed in paragraph B above. In determining the ratio, nurses who are also administrators should be counted as nursing personnel.

D. *Other Services.*—Bed and board are provided to inpatients in connection with the furnishing of nursing care, plus one or more medically related health services such as physicians' services, physical, occupational or speech therapy, diagnostic and laboratory services, and administration of medication. (Social, diversional, or recreational services provided by the institution would not be considered medically related health services.)

E. *Not Solely an Intermediate Care Facility.*—The facility or part of a facility which is being classified is not—

1. Certified solely as an intermediate care facility, consistent with 42 CFR Part 442, Subpart E; or

2. Licensed by the State solely at a level or levels at or below the intermediate care facility (or a comparable) level.

(Secs. 1812 and 1861 of the Social Security Act; 42 U.S.C. 1395d and 1395x)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: March 19, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84–7758 Filed 3–21–84; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Request for Items for Inclusion in Coming Year Work Program

As required by the operating procedures of the Alaska Land Use Council, which was established under the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487, the Council shall issue a call for recommended items to be included in the work program for the coming year. Each item submitted for the work program must include a brief description of the work to be accomplished, the completion date, the anticipated product, the estimated cost, a public participation statement, and the nature of the Council's involvement. The Cochairmen, after consultation with the Council's Staff Committee, will prepare a recommended work program considering the requirements of ANILCA, projected Council resources, special requests, and recommendations from the public and Council members. The proposed work program will be submitted in May to the Council for adoption. Any interested parties having a proposed work program item shall submit the information to the Cochairmen prior to April 15, 1984. Submittals should be sent to: Cochairmen, Alaska Land Use Council, P.O. Box 100120, Anchorage, Alaska 99510.

Anyone having questions regarding the Council's work program may call the Council office at (907) 272–3422 or (907) 271–5485 (FTS)

Dated: March 15, 1984.

William P. Horn,

Deputy Under Secretary.

[FR Doc. 84–7678 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Indian Affairs

Montana; Irrigation Operation and Maintenance Charges; Correction

Pursuant to the final rule published on June 14, 1977, in 42 FR 30361 and with authority contained in the Acts of August 1, 1914 and March 7, 1928 (38 Stat. 583, 25 U.S.C. 385; 45 Stat. 210, 25 U.S.C. 387) the operation and maintenance charges for lands under the Crow Irrigation Project, Montana, for the season of 1984 and subsequent years were fixed.

These fixed charges were published in the **Federal Register** on Friday, February 24, 1984, on Page 7002, Vol. 49, No. 38, and are corrected to read as follows:

On page 7002 the rate per acre for Two Leggins Drainage is corrected from "$125." to "$1.25".

John A. Montgomery,

Acting Superintendent, Crow Indian Agency, Crow Agency, MT 59022.

[FR Doc. 84–7703 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AA–40838]

Alaska Native Claims Selection; Cook Inlet Area

In accordance with Departmental regulation 43 CFR 2650.7(d) notice is hereby given that a decision to issue conveyance under the provisions of Secs. 12(b)(6) of the Act of January 2, 1976 (89 Stat. 1151), and I.C.(2) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976 (90 Stat. 1935), will be issued to Cook Inlet Region, Inc., for approximately 1,156.68 acres. The lands involved are within the Copper River Meridian, Alaska:

T. 39 S., R. 58 E.
T. 39 S., R. 59 E.
T. 40 S., R. 59 E.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the Juneau Empire upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision of the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage,

Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which are not certified, return receipt requested, shall have until April 23, 1984 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.
Retained Lands Unit—Easements, Division of Land and Water Management, Alaska Department of Natural Resources, Pouch 7–005, Anchorage, Alaska 99510.

Helen Burleson,

Acting Chief, Branch of ANCSA Adjudication.

[FR Doc. 84–7684 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–JA–M

Proposed Land Exchange Between the Bureau of Land Management and Energy Fuels, Ltd.: Correction

March 13, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction Notice.

SUMMARY: This action will correct a Notice published in the **Federal Register** on March 1, 1984, as FR Doc. 84–5549, on page 7663, as follows:

Selected Lands

Delete: T. 38 S., R. 22 E., SLBM,
Sec. 4: Lots 1, 2, 3, 4, S½N½, SW¼, W½SE¼, W½SE¼, W½E½SE¼, E½SE¼;
Add: T. 38 S., R. 22 E., SLBM,
Sec. 4: Lots 1, 2, 3, 4, S½N½, SW¼, W½SE¼, W½E½SE¼, W½E½E½SE¼.

Kenneth V. Rhea,

Associate District Manager.

[FR Doc. 84–7512 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–GG–M

[A–17000–T]

Arizona; Termination of Segregative Effect

1. On July 2, 1981, the State of Arizona filed application to select certain public lands in lieu of school lands that were encumbered by other rights or reservations before the State's title could attach (43 U.S.C. 851–852). Effective August 27, 1981, said lands were segregated from appropriation under the public land laws, including the mining, but not the mineral leasing laws (46 FR, No. 144; pp 38508–38509).

The State has withdrawn its application as to the following described lands:

Gila and Salt River Meridian, Arizona

T. 4 N., R. 17 W.,
Sec. 28, N½SE¼NE¼, NE¼NE¼, S½NE¼NW¼NE¼, S½NW¼NE¼, E½NE¼SE¼NW¼, SE¼SE¼ NE¼NW¼, N½SW¼NE¼.
T 4 N., R. 18 W.,
Sec. 14, S½S½SW¼, S½SE¼SW¼;
Sec. 23, N½NE¼NW¼.
T 1 S., R. 5 W.,
Sec. 3, S½N½.
T. 8 S., R. 14 W.,
Sec. 17, lots 6, 7 E½NE¼SW¼, N½SE¼ SW¼, W½NE¼NW¼SE¼, NW¼NW¼ SE¼, SW¼SE¼.

The areas described aggregated 524.74 acres in La Paz, Maricopa and Yuma Counties.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 were opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on August 27, 1983.

Appropriation of lands under the general mining laws between Augut 27, 1981 and August 26, 1983 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vested no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073, (602–261–4774).

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–7747 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–32–M

Coeur d'Alene District Office, Cottonwood Resource Area, Idaho; Camping Restriction Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Title 43, Code of Federal Regulations, 8364.1, that the following act is prohibited on all lands administered by the Bureau of Land Management, Cottonwood Resource Area:

Camping for a period longer than fourteen (14) consecutive days at one location or within one mile of that location unless expressly authorized by permit.

This restriction is effective immediately, and will remain in effect until revoked or rescinded.

This restriction does not apply to any Federal, State or local officer, or any member of an organized rescue or fire-fighting force in the performance of an official duty.

This restriction is necessary to:

(a) preclude any individual or group from camping at one location for a long period, thereby denying others an opportunity to also use the location for recreational purposes.

(b) protect the lands from the effects of long-term camping.

(c) prevent unauthorized non-recreational occupancy of the public lands from occurring under the guise of recreation.

Signed at Coeur d'Alene, Idaho, this 16th day of March 1984.

Wayne Zinne,

District Manager.

[FR Doc. 84–7751 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–GG–M

Idaho; Cancellation of Survey

1. Survey of Omitted Lands, Lots 14 and 15 only, Section 1, T. 7N., R. 40 E., approved July 30, 1970, has been cancelled effective January 17, 1984.

2. Subsequent to the survey, the United States Court of the District of Idaho, in Amended Judgment, Civil No. 1–76–125, dated November 22, 1984, quieted title to portions of Lots 14 and 15 in favor of the owners as listed in the judgment. It is the intention of the Bureau of Land Management to issue a disclaimer of ownership in all of the area shown to be Lots 14 and 15.

Sharron Deroin,

Chief, Land Services Section.

[FR Doc. 84–7749 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–GG–M

[A–18971]

Public Lands Exchange; Mohave County, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 25 N., R. 19 W.,
Sec. 10, S½NW¼SW¼ and SW¼SW¼.
Containing 60 acres, more or less.

In exchange for these lands, the United States will acquire the following described land from Thomas R. Reingruber of Las Vegas, Nevada.

Gila and Salt River Meridian, Arizona

T. 18 N., R. 16 W.,
Sec. 11, SW¼SW¼NW¼ and W½SE¼SW¼NW¼;
Sec. 15, N½NE¼,E½SE¼NW¼, SW¼SE¼NW¼,E½NE¼SW¼,and E½NW¼SW¼;
Sec. 17, E½NE¼SE¼.
Containing 185 acres, more or less.

The purpose of the exchange is to acquire the non-federal land that contains highly diversified wildlife habitat on the southwest slope of Wabayuma Peak, south of Kingman, Arizona. The exchange is consistent with the Bureau's land use plans and the public interest will be well served.

The above lands will be subject to an appraisal to determine the value of the lands to be exchanged. The listed lands may change to reflect equal value following the completion of the appraisal.

Lands to be transferred from the United States will be subject to the following reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391: U.S.C. 945).

2. All minerals in the subject are reserved to the United States.

3. Subject to an easement to Mohave County for Pierce Ferry Road as approved by the County Board of Supervisors by Resolution No. 476, Recorded in Book 132 of Dockets, Pages 425–428 on October 24, 1968.

4. Subject to an easement to Mohave County for 7th Street as approved by the County Board of Supervisors by Resolution No. 984, Recorded in Book 266 of Official Records, Pages 98–99, on March 27, 1975.

5. Subject to an easement to Mohave County for Edgemont Drive as approved by the County Board of Supervisors by Resolution No. 947, Recorded in Book 380 of Official Records, Page 874, on March 9, 1977.

6. Reserving such rights for powerline right-of-way A–18556 as provided under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

7. Reserving such rights for telephone right-of-way A–11587 as provided under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Private lands to be acquired by the United States will be subject to the following reservations, terms and conditions:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 78 of Deeds, page 348, Mohave County, Arizona.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, including the mining laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action, and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

Dated: March 16, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84–7748 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–33–M

[W–87166]

Realty Action; Noncompetitive Sale of Public Lands in Sweetwater County, Wyoming¼

AGENCY: Bureau of Land Management, Interior.

ACTION: Under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), public land described as the N½NE¼NW¼SE¼, Section 34, T. 18 N., R 107 W., 6th P.M., Wyoming, containing 5.0 acres, is proposed for direct sale to Western Wyoming College at the fair market value of $20,000.00.

SUMMARY: The purpose of this sale is to provide land for construction of a new college facility in Green River, Wyoming. The land proposed for sale is presently leased to Western Wyoming College under authority of the Recreation and Public Purposes Act; however, because of area drainage problems, the College has been forced to redesign their proposed facilities in such a manner that buildings will straddle federal/private property lines thereby making a lease situation inappropriate. The Recreation and Public Purposes classification and lease would be terminated at the time of sale. The sale is consistent with Bureau and local government plans for the area. The public interest will be well served by offering these lands for direct sale to Western Wyoming College.

DATES: Interested parties may submit comments for a period of 45 days from the date of this notice. The proposed sale will not be held until 60 days after publication of this notice.

ADDRESS: Detailed information concerning the sale is available for review at: Salt Wells Resource Area Office, 79 Winston Drive, Gateway Building, P.O. Box 1170, Rock Springs, Wyoming 82902–1170, (307) 362–7350.

Comments should also be directed to this address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are as follows:

1. All minerals in the lands will be reserved to the United States in

accordance with Section 209(a) of the Federal Land Policy and Management Act of 1976.

2. Right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patent will be issued subject to all valid existing rights and reservations of record.

All comments received will be evaluated by the District Manager who may vacate or modify this realty action. In the absence of any action by the District Manager, this realty action will be the final determination of the Department of the Interior.

Gene C. Herrin,

Associate District Manager.

[FR Doc. 84-7750 Filed 3-21-84; 8:45 am]

BILLING CODE 4310-22-M

Canon City District Grazing Advisory Board; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Grazing Advisory Board Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Canon City District Grazing Advisory Board to be held at 10:00 a.m., Thursday, May 3, 1984 in the Community Room in the lower level of the First National Bank Building at 831 Royal Gorge Boulevard in Canon City, Colorado.

Agenda of this meeting will include; (1) election of officers, (2) expenditure of range betterment funds, (3) proposals for expenditure of range improvement funds for fiscal year 1985, (4) review of proposed Cooperative Management Agreements in the Canon City District, (5) update on current issues dealing with grazing management programs in the district. A field trip is to be held on Friday, May 4th to visit proposed Cooperative Management allotments in the Royal Gorge Resource Area, weather and accessibility permitting.

The meeting will be open to the public. Facilities and space to accommodate members of the public are limited and persons will be accommodated on a first come, first served basis. Any member of the public may file with the Board a written statement concerning matters to be discussed. A portion of the meeting time will be set aside on Thursday, May 3rd at 2:00 p.m. to hear members of the public.

Minutes of the meeting will be made available for public inspection 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Donnie Sparks, District Manager, Bureau of Land Management, 3080 East Main Street, Canon City, Colorado 81212, (303) 275-0631.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 84-7673 Filed 3-21-84; 8:45 am]

BILLING CODE 4310-JB-M

Public Land Sale; Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, I-19698, I-19699, I-19715, I-19716 and I-20348, Bear Lake and Caribou Counties.

SUMMARY: The following described land has been examined, and through the development of land use decisions based on public input, it has been determined that the sale of these tracts is consistent with Section 203(a) of the Federal Land Policy and Management Act of 1976. The land will be offered for sale for no less than the appraised fair market value. these parcels will be offered using competitive procedures. Only sealed bids will be accepted.

I-19698 T. 12 S., R. 43 E., Boise Meridian
Sec. 10: SW¼SE¼
I-19699 T. 13 S., R. 44 E., Boise Meridian
Sec. 18: SW¼SE¼
I-19715 T. 8 S., R. 39 E., Boise Meridian
Sec. 19: Lot 1
I-19716 T. 8 S., R. 43 E., Boise Meridian
Sec. 35: NW¼NW¼
I-20348 T. 13 S., R. 44 E., Boise Meridian
Sec. 34: SW¼SE¼
The above aggregates 180.95 acres.

The appraisals will be available at the Pocatello Resource Area Headquarters, after May 8, 1984.

Upon publication of this Notice in the **Federal Register**, the land described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of two years, or until the lands are sold. The segregative effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the two-year period.

These parcels will be sold under the Government Land Office Cadastral Surveys as follows: 1876 (I-19698); 1888 (I-19699 and I-20348); 1874 (I-19715); and 1902 (I-19716).

The lands will be subject to the following reservations and conditions when patented:

1. Right-of-way reservation to the United States for ditches and canals (43 U.S.C. 945).

2. All leasable minerals, including oil and gas (43 U.S.C. 1719).

3. All existing rights as identified on the Master Title Plat on the date of publication of the Notice of Realty Action.

4. *I-19699 only*: The successful bidder agrees that the real estate is taken, subject to the grazing use occurring within grazing allotment No. 4290 by Evan Pope. The privilege to graze domestic livestock on the real estate according to the terms and conditions of grazing lease No. 3790 dated April 9, 1979, shall cease on February 28, 1989. The level of use allowed on the real estate under the above grazing lease will not exceed 5 animal unit months annually. The successful bidder is entitled to receive annual grazing fees from Evan Pope in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register**. If, at any time prior to the expiration date listed above, the lessee sells or leases to another person, this condition of patent is null and void.

5. a. *I-19699 only*: Pursuant to the authority contained in Sec. 4 of E.O. 11990 of May 24, 1977 and the Federal Land Policy and Management Act of 1976, Sec. 203(a), this patent is subject to a restriction which constitutes a covenant running with the land that the portion of the land lying within T. 13 S., R. 44 E., B.M. Sec. 18: SW¼SE¼ containing wetland-riparian habitat must be managed to protect and maintain the wetland/riparian habitat on a continuous basis.

b. *I-19716 only*: Pursuant to the authority contained in Sec. 4 of E.O. 11990 of May 24, 1977 and the Federal Land Policy and Management Act of 1976, Sec. 203(a), this patent is subject to a restriction which constitutes a covenant running with the land that the portion of the land lying within T. 8 S., R. 43 E., B.M., Sec. 35: NW¼NW¼ containing wetland/riparian habitat must be managed to protect and maintain the wetland/riparian habitat on a continuous basis.

c. *I-20348 only:* Pursuant to the authority contained in Sec. 4 of E.O. 11990 of May 24, 1977 and the Federal Land Policy and Management Act of 1976, Sec. 203(a), this patent is subject to a restriction which constitutes a covenant running with the land that the portion of the land lying within T. 13 S., R. 44 E., B.M., Sec. 34: SW¼SW¼ containing wetland/riparian habitat must be managed to protect and maintain the wetland/riparian habitat on a continuous basis.

6. Acceptable bids will also constitute an application for non-leasable minerals. The declared high bidder will be required to deposit a $50 non-returnable filing fee (43 CFR 2720.1–2(c)) and one-fifth of the full bid price (43 CFR 2711.3–1(d)), immediately at the sale. Failure to deposit these sums will result in disqualification as the high bidder. The Authorized Officer shall then determine whether to accept the next highest bid, withdraw the public lands from the market, or reoffer them for sale at a later date. The Bureau has determined that the mineral interests being offered have no known mineral value.

Dates and Addresses: Bids received for parcels I–19698, I–19699 and I–20348 will be opened June 5, 1984 at 10:30 a.m. at the Sheriffs Bldg. Meeting Room, 50 N. Main, Paris, Idaho.

Bids received for parcels I–19715 and I–19716 will be opened June 5, 1984, at 2 p.m. at the Caribou Courthouse Meeting Room, 159 S. Main, Soda Springs, Idaho.

If no bids are received by this date, additional bids will be accepted until, and opened on, June 26, 1984 at 11 a.m. at the Idaho Falls District BLM, 940 Lincoln Rd., Idaho Falls, Idaho.

Additional information concerning this parcel, terms and conditions of the sale, and bidding instructions may be obtained from Wallace Evans, Area Manager, at the Pocatello Resource Area Office, 250 South 4th Ave., Pocatello, ID 83201, or by calling 236–6860 during office hours.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager 940 Lincoln Rd., Idaho Falls, Idaho 83401 regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: O'dell A. Frandsen, District Manager.

Dated: March 14, 1984.

O'dell A. Frandsen,

District Manager.

[FR Doc. 84–7677 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–GG–M

Public Land Sale; Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, I–19712, Caribou Co.

SUMMARY: The following described land has been examined, and through the development of land use decisions based on public input, it has been determined that the sale of this tract is consistent with Section 203(a) of the Federal Land Policy and Management Act of 1976. The lands will be offered for sale for no less than the appraised fair market value. This parcel will be offered using direct sale procedures to Rich Livestock Company based on historic use and ownership of all lands bordering this parcel. Failure of Rich Livestock Company to submit the required amount by June 5, 1984, will result in cancellation of the sale to them.

T. 5 S., R. 40 E., Boise Meridian
Section 9: NE¼NE¼
The above aggregates 40 acres.

The appraisal will be available at the Pocatello Resource Area Headquarters, after May 6, 1984.

Upon publication of this Notice in the **Federal Register**, the land described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of two years, or until the lands are sold. The segregative effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the two-year period.

This parcel will be sold and is described, under the Government Land Office Cadastral Survey of 1876.

The lands will be subject to the following reservations and conditions when patented:

1. Right-of-way reservation to the United States for ditches and canals (43 U.S.C. 945).

2. All leasable minerals, including oil and gas (43 U.S.C. 1719).

3. All existing rights as identified on the Master Title Plat on the date of publication of the Notice of Realty Action.

4. The successful bidder agrees that the real estate is taken, subject to the grazing use occurring within grazing allotment No. 4320 by Rich Livestock Company. The privilege to graze domestic livestock on the real estate according to the terms and conditions of grazing lease No. 3820 dated January 28, 1982, shall cease on February 28, 1992. The level of use allowed on the real estate under the above grazing lease will not exceed 4 animal unit months annually. The successful bidder is entitled to receive annual grazing fees from Rich Livestock Company in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register**. If, at any time prior to the expiration date listed above, the lessee sells or leases to another person, this condition of patent is null and void.

5. An acceptable bid will also constitute an application for non-leasable minerals. Rich Livestock Company will be required to deposit a $50 non-returnable filing fee (43 CFR 2720.1–2(c)) and one-fifth of the full bid price (43 CFR 2711.3–1(d)), prior to June 5, 1984. Failure to deposit these sums will result in disqualification. The Authorized Officer shall then determine whether to withdraw the public lands from the market, or reoffer them for sale at a later date. The Bureau has determined that the mineral interests being offered have no known mineral value.

Additional information concerning this parcel, terms and conditions of the sale, and bidding instructions may be obtained from Wallace Evans, Area Manager, Pocatello Resource Area Office, 250 South 4th Ave., Pocatello, ID 83201, or by calling 236–6860 during office hours.

Supplementary Information: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, 940 Lincoln Road, Idaho Falls, Idaho 83401, regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: O'dell A. Frandsen, District Manager.

Dated: March 14, 1984.

O'dell A. Frandsen,

District Manager.

[FR Doc. 84–7676 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–GG–M

Realty Action; Sale of Public Lands in Beaver County, Utah U–52851

AGENCY: Bureau of Land Management, Interior.

ACTION: Under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as S½N½, N½S½ sec. 3, and NE¼SE¼, SE¼NW¼, sec. 4, T. 27 S., R. 14 W., SLB&M, Utah containing 400 acres, is proposed for direct sale to Wintch Livestock Company at the fair market value of $30,000.

SUMMARY: The purpose of the sale is to settle an unintentional occupancy trespass and to dispose of public land that is difficult and uneconomical to manage by a government agency.

ADDRESS: Detailed information concerning the sale is available for review at the Beaver River Resource Area Office, 444 South Main, Cedar City, Utah 84720 (telephone (801) 586–2458). Comments should also be sent to the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 495).

2. The sale will be for surface estate only. Minerals will remain with the United States Government.

3. Title transfer will be subject to valid existing rights.

Any comments received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any action by the District Manager, this realty action notice will be the final determination of the Department of the Interior.

Dated: March 14, 1984.

J. Kent Giles,

Acting District Manager.

[FR Doc. 84–7674 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–DQ–M

Realty Action; Sale of Public Lands in Beaver County, Utah, U–51405

AGENCY: Bureau of Land Management, Interior.

ACTION: Under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as SW¼NW¼ sec. 1, T. 30 S., R. 10 W., SLB&M, Utah containing 40 acres, is proposed for direct sale to Dale Thurman Eyre at the fair market value of $10,000.

SUMMARY: The purpose of the sale is to settle an unintentional occupancy trespass and to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATE: Comments should be submitted on or before May 21, 1984.

ADDRESS: Detailed information concerning the sale is available for review at the Beaver River Resource Area Office, 444 South Main, Cedar City, Utah 84720 (telephone (801) 586–2458). Comments should also be sent to the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The sale will be for surface estate only. Minerals will remain with the United States Government.

3. Title transfer will be subject to valid existing rights.

Any comments received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any action by the District Manager, this realty action notice will be the final determination of the Department of the Interior.

Dated: March 14, 1984.

J. Kent Giles,

Acting District Manager.

[FR Doc. 84–7679 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Gallup-Navajo Indian Water Supply Project, New Mexico-Arizona-Utah; Public Hearings on Planning Report/Draft Environmental Statement and on Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands)

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Reclamation, has prepared a planning-report/draft environmental statement for the Gallup-Navajo Indian Water Supply Project. This document (DES 84–3) was filed with the Environmental Protection Agency and made available to the public on January 24, 1984.

Public hearings will be held as follows: 7 p.m. April 23, 1984, in Gallup, New Mexico, at City Hall, City Council Chambers, 2nd and Aztec Streets; 10 a.m. April 24, 1984, in Window Rock Arizona, at Window Rock Civic Center; 10 a.m. April 25, 1984, in Crownpoint, New Mexico, at the Crownpoint Chapter House; 10 a.m. April 26, 1984, in Shiprock, New Mexico, at Navajo Community College, South Campus Conference Room; and 7 p.m. April 26, 1984, in Farmington, New Mexico, at City Hall, City Council Chambers, 800 Municipal Drive.

The purposes of these hearings are: (1) To receive views and comments from interested organizations and individuals relating to the environmental impacts of the project and (2) to provide the public with information on the effect this project will have on wetlands (Executive Order 11990) and flood plains (Executive Order 11988). The hearings will give the public an opportunity to participate in the decisionmaking process.

Oral statements at the hearing will be limited to 10 minutes. Speakers will not trade their time to obtain a longer oral presentation; however, the hearings officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request whenever possible; and any scheduled speaker not present when called will lose his/her privilege in the scheduled order, and his/her name will be recalled at the end of the scheduled speakers. Requests for scheduled presentations will be accepted through April 18, 1984, and any subsequent requests will be handled on a first-come-first-served basis following the scheduled presentation.

Organizations or individuals desiring to present statements at the hearing should contact the Bureau of Reclamation, 714 South Tyler Street, Suite 201, Amarillo, Texas 79101, telephone (806) 378–5474 or (806) 378–5467, and announce their intention to participate. Written comments from those unable to attend and from those wishing to supplement their oral presentation at the hearing should be received by May 1, 1984, for inclusion in the hearing record.

Dated: March 16, 1984.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 84–7628 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement; Comprehensive Conservation Plan for the Koyukuk National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to prepare an Environmental Impact Statement (EIS) and a comprehensive conservation plan and wilderness suitability assessment for the Koyukuk National Wildlife Refuge in Alaska. This notice is being furnished as required by National Environmental

Policy Act regulations to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Public meetings will also be held to solicit comments and participation in this scoping process.

DATES: Written comments should be received by June 10, 1984. Public meetings regarding the Koyukuk National Wildlife Refuge plan, assessment, and EIS will be held at:

Galena—Galena Community Hall, 7:30 p.m., April 27, 1984;

Anchorage—Central Junior High School Multi-purpose Room, 15th Avenue and E Street, 7:30 p.m., May 8, 1984;

Fairbanks—Noel Wien Public Library Auditorium, 1215 Cowles Street, 7:30 p.m., May 10, 1984.

In addition, public meetings will be held at Hughes, Huslia, Koyukuk, Kaltag and Nulato during the period April 23–May 3, 1984, weather permitting.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service; 1011 E. Tudor Road; Anchorage, Alaska 99503. Attention: Mike Evans.

FOR FURTHER INFORMATION CONTACT: Mike Evans, Public Affairs Specialist, Refuge Planning, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

SUPPLEMENTARY INFORMATION: This comprehensive conservation plan and wilderness suitability assessment is being prepared to fulfill requirements of the Alaska National Interest Lands Conservation Act of 1980, section 304(g). The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations. We estimate the Draft Environmental Impact Statement, plan, and assessment will be made available to the public by December 1985.

Dated: March 12, 1984.

Jan E. Riffe,

Acting Regional Director.

[FR Doc. 84–7850 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Map Separates and Composites; Price Change

Notice is hereby given that effective April 1, 1984, the price of map separates and composites made by the Geological Survey will be increased. (Map separates and composites are photographic reproductions of map features.) The price increase is necessary to recover the costs of reproduction and distribution. The last price change was in September 1981.

New prices will be as follows:

STANDARD MAP SEPARATES AND COMPOSITES

	Price
7.5- and 15-Minute Maps:	
Single Feature Group	$3.50
2 Feature Group Composite	4.5
3 Feature Group Composite	5.4
Planimetric Composite	6.3
Topographic Composite	7.2
Topographic-Bathymetric Composite	10.0
1:250,000-Scale Maps:	
Single Feature Group	4.0
2 Feature Group Composite	4.9
3 Feature Group Composite	5.8
Planimetric Composite	6.7
Topographic Composite	7.6
Complete Composite	8.5
Topographic-Bathymetric Composite	11.2
1:100,000-Scale and 7.5- x 15-Minute 1:25,000-Scale Maps	
Single Feature Group	4.8
2 Feature Group Composite	5.5
3 Feature Group Composite	6.4

STANDARD MAP SEPARATES AND COMPOSITES—Continued

	Price
4 Feature Group Composite	7.3
Planimetric Composite	7.8
Togographic Composite	8.2
Complete Composite	8.6
Topographic-Bathymetric Composite	11.6

Available feature groups, as shown on the printed map:

Black—Includes grid and projection, lettering, and culture

Blue—Includes rivers, streams, and water tint

Purple—Includes all new map features determined from aerial photograph

Red—Includes road classification, fence lines, and land office lines in applicable States

Brown—Includes contours and contour numbers

Green—Includes woodland and orchards

Bathymetry—Underwater contours in offshore areas by National Ocean Service

NONSTANDARD MATERIALS

Size	Film Contact	Scribe-Guide Color Proofs	Peel-coat Etch Guides	Silver Emul. Paper Print	Diazo Prints	Diazo Foil	Film Camera
24″×30″	$4.00	$4.5	$6.0	$3.0	$3	$12.50	$3.0
24″×36″	4.2	5.0	7.0	4.2	3.50	15	4.5
30″×42″	6.6	8.0	8.5	5.7	4	25	6.0
30″×46″	4.7	8.5	9.0	5.9	4.50	N/A	[illegible]
30″×48″	5.0	7.0	10.0	3.1	4.50	N/A	7.0
$1/square foot	1	7	11	N/A	8	2.00	7
$/added exposure	1	1	5	N/A	N/A	N/A	N/A
$/added color	N/A	4	N/A	N/A	N/A	N/A	N/A

Additional charges for special mailing:

Overseas Airmail	$1 per pound.
Registered and Certified Mail	$5 per Parcel.
United Parcel Service (UPS)	$10 per parcel.
Federal Express	$20 per parcel.
Air Freight	COD only (mailing charges only)

Information on products and availability may be obtained from the following Geological Survey offices.

National Cartographic Information Center U.S. Geological Survey, 507 National Center, Reston, VA 22092, (703) 860–6045, (FTS) 928–6045

Eastern Mapping Center, National Cartographic Information Center, U.S. Geological Survey, 536 National Center, Reston, VA 22092, (703) 860–6336, (FTS) 928–6336

Mid-Continent Mapping Center, National Cartographic Information Center, U.S. Geological Survey, 1400 Independence Road, Rolla, MO 65401, (314) 341–0851, ext. 107, (FTS)277–0851

Rocky Mountain Mapping Center, National Catographic Information Center, U.S. Geological Survey, Box 25046, Stop 504 Federal Center, Denver, CO 80225, (303) 234–2326, (FTS) 234–2326

Western Mapping Center, National Cartographic Information Center, U.S. Geological Survey, 345 Middlefield Road, Menlo Park CA 94025, (415) 328–8111, ext. 2427, (FTS) 467–2427

National Space Technology Laboratories, National Cartographic Information Center, U.S. Geological Survey, Building 3101, NSTL Station, MS 39529, (601) 688–3544, (FTS) 494–3544

Dated: March 16, 1984.

R. B. Southard,

Chief, National Mapping Division, U.S. Geological Survey.

[FR Doc. 84–7634 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3164, Block 135, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on March 14, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD's available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 14, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–7760 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Seagull Energy E&P, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Seagull Energy E&P, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4142, Block 213, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on February 21, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Hossein Hekmatdoost, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0873.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 13, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–7761 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Western Regional Advisory Committee; Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that the second meeting of the Western Regional Advisory Committee will be held from 9:00 a.m. to 5:00 p.m. on Friday, March 30, 1984 and from 9:00 a.m. to noon on Saturday, March 31, at Grand Canyon National Park Headquarters, Grand Canyon, Arizona.

The Western Regional Advisory Committee was established to provide for closer communication with the public on programs, policies, and other matters relating to the Western Region of the National Park Service.

Members of the Committee are:

Mr. Lewis Eaton, chairman, of California
Ms. Kathleen Caldwell of California
Mr. Roger Ernst of Arizona
Mrs. Barbara Morrow Julian of California
Mr. William Lowenberg of California

The agenda will include briefings on the termination of grazing rights, aircraft monitoring and a proposal for train service to the Grand Canyon.

The meeting is open to the public. Any members of the public may file with the Committee a written statement concerning the matter to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Office of Public Affairs, National Park Service, 450 Golden Gate Avenue, Box 36063, San Francisco, California 94102, telephone (415) 556–5560.

Dated: March 14, 1984.

John Cherry,

Acting Regional Director, Western Region.

[FR Doc. 84–7738 Filed 3–21–84; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App. 1 section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, April 13, 1984.

The Commission was established pursuant to Pub. L. 91–383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

At the 1:30 p.m. meeting the Commission will consider the following:

1. Provincetown Water Supply.
2. Dune Stabilization.
3. Concurrent Jurisdiction.

The meeting is open to the public. It is expected that 30 persons will be able to

attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, telephone (617) 349–3785. Minutes of the meeting will be available for public information and copying two weeks after the meeting at the Office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

March 16, 1984.

[FR Doc. 84–7737 Filed 3–21–84: 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–159]

Certain Poultry Cut Up Machines; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Jacobus Eliza Hazenbroek, Systemate B.V., Systemate International Limited, and Numafa B.V.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on March 16, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: March 16, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–7625 Filed 3–21–84: 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,

Acting Secretary.

Note.—Please direct status inquires to Team 1, (202) 275–7992.

Please direct status inquires to Team 1, (202) 275–7992.

Volume No. OP1–159

Decided: March 13, 1984.

By the Commission, Review Board Members Parker, Joyce, and Fortier.

MC–F–15630, filed February 10, 1984. DeCamp Bus Lines (101 Greenwood Ave., Montclair, NJ 07042)—Continuance in Control—DeCamp Bus Tours, Inc., and DeCamp Transit, Inc. (both of 101 Greenwood Ave., Montclair, NJ 07042) Representative: Edward F. Bowes, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068. DeCamp Bus (No. MC–109312), and in turn, Robert B. DeCamp, Sr., Lois E. DeCamp, Robert B. DeCamp, Jr., and Suzanne C. DeCamp, who control DeCamp Bus through stock ownership and management, seek to continue in control of DeCamp Tours and DeCamp Transit, upon the institution by the latter of operations, in interstate or foreign commerce, as a motor common carrier.

DeCamp Bus controls DeCamp Tours, which holds Certificate No. MC–155100 (Sub-No. 1), authorizing the transportation of passengers over irregular routes, in charter and special operations, between points in the U.S.

Notes.—(1) DeCamp Transit has filed its initial, directly related, common carrier application in No. MC–170393, which was published in the ICC Register on October 4, 1983, for authority to transport passengers, over irregular routes, in charter and special operations, between points in the U.S. (except Hawaii). (2) As a condition to a grant of that authority, DeCamp was required to file this continuance in control application or submit an affidavit indicating why such approval is unnecessary. (3) A previously submitted affidavit was found to be insufficient and rejected.

[FR Doc. 84–7658 Filed 3–21–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

March 19, 1984.

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(H) of Pub. L. 96–511 applies; (10) The name and telephone number of the person or office responsible for OMB review. Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer Larry E. Miesse—202–633–4312

New Collection

- Antitrust Division, Department of Justice

DOJ Recordkeeping Regulations Pursuant to the International Energy Program

Recordkeeping

Businesses or other for-profit

Section 252(e)(2) of the Energy Policy and Conservation Act (EPCA) requires the Attorney General, in consultation with the Federal Trade Commission and the Secretary of Energy, to promulgate rules concerning the maintenance of the necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action pursuant to the Agreement on an International Energy Program (IEP). The Department of Energy (DOE), in consultation with the Attorney General, the Federal Trade Commission and the Department of State, has already promulgated regulations concerning the rules, standards, procedures and recordkeeping required by EPCA to implement the provisions of the IEP (see 10 CFR Part 209). The DOE recordkeeping requirements, which were prepared after lengthy consultation with and approval by the Department of Justice, fully meet any and all needs of the Department to maintain the necessary and appropriate records under Section 252(e)(2) of EPCA. Accordingly, the Department of Justice proposes to formally adopt the DOE regulations as its own. *See* 10 CFR §§ 209.24, 209.34. Thus, no new reporting or recordkeeping burden will be created or imposed by the proposed regulation: 0 respondents, 0 hours, not applicable under 3504(h).

Robert Veeder—395–4814

- Immigration and Naturalization Service, Department of Justice

Alien Address Report Card (I–104)

On occasion

Individuals or households

To be used by aliens to report current address, upon 10 days notice, only when required under Section 265(b) of the Immigration and Nationality Act: 0 respondents; 0 hours, not applicable under 3504(h).

Robert Veeder—395–4814

Larry E. Miesse

Agency Clearance Officer, Systems Policy Staff, Office of Information Technology, Justice Management Division, Department of Justice.

[FR Doc. 84–7682 Filed 3–21–84; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Wagner-Peyser Act, as amended by Pub. L. 97–300; Program Year (PY) 1984 Final Allotments for State Employment Services Under the Wagner-Peyser Act, as Amended

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final allotments for PY 1984 (July 1, 1984–June 30, 1985) for State Employment Services under the Wagner-Peyser Act, as amended.

FOR FURTHER INFORMATION CONTACT: Robert J. Litman, Acting Director, Office of Planning and Review, 601 D Street, N.W., Washington, D.C. 20213, telephone number (202) 376–6650.

SUPPLEMENTARY INFORMATION: Attached are the final allotments for PY 1984 (July 1, 1984–June 30, 1985) for State Employment Services under the Wagner-Peyser Act, as amended. The

allotments are based on the funds appropriated by Pub. L. 98–139, the statutory formula contained in the Act and the latest data available to the Secretary. These allotments will not be updated for subsequent unemployment data. The PY 1984 State public employment system appropriation totals $740,398,000. In accordance with the formula criteria in section 6 of the Wagner-Peyser Act as amended, $727,698,000 is being allotted to the States as displayed in Column 5. Nationally, $12,700,000 is being held back to finance the postage costs associated with conducting public employment service business.

The final allotments to the States are based on Calendar Year 1983 average civilian labor force and unemployment data. The relative share hold-harmless as provided for under section 6(b)(2) of the Act was from the transition period allotments published in the **Federal Register** on November 25, 1983. The Secretary is authorized under section 6(b)(4) of the Act to reserve 3 percent of the total availability. Under section 6(b)(4), $21,830,940, or 3 percent has been set aside; the distribution of these funds is included in these final allotments. Of this total $8,831,987 is allocated to the 12 States whose relative share decreased from transition period 1984 to the PY 1984 basic formula allotment and which have a civilian labor force (CLF) below 1 million and are below the median CLF density. These States are held harmless at 100 percent of their transition period 1984 relative share. The remaining $12,998,953 is distributed to the remaining 17 States losing in relative share from transition period 1984 to PY 1984 basic formula amount. Ten percent of each State's total allotment (Column 5,) is to be reserved for use according to the activities described under section 7(b) of the Act.

Further information regarding the allocation methodology is available upon request.

Signed at Washington, D.C. on March 16, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, FINAL PY 1984 WAGNER-PEYSER ALLOTMENTS TO STATES, MARCH 2, 1984

	Basic formula	3 percent distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Alabama	11,347,351	[illegible]	0	0	11,347,351
Alaska	6,905,280	1,005,146	0	1,005,146	7,910,426
Arizona	7,658,177	[illegible]	293,343	293,343	7,951,520
Arkansas	7,618,520	0	520,865	520,865	[illegible]
California	70,006,930	[illegible]	0	0	[illegible]
Colorado	8,486,917	[illegible]	454,496	454,496	8,941,413
Connecticut	8,431,957	[illegible]	576,478	576,478	[illegible]
Delaware	1,971,461	[illegible]	61,127	61,127	[illegible]
District of Columbia	[illegible]	0	387,540	387,540	[illegible]
Florida	26,822,061	[illegible]	0	0	[illegible]
Georgia	14,185,655	[illegible]	0	0	14,185,655
Hawaii	3,033,043	[illegible]	207,364	207,364	3,240,407
Idaho	5,753,326	837,465	0	837,465	6,590,791
Illinois	33,645,756	[illegible]	0	0	33,645,756
Indiana	15,359,718	[illegible]	0	0	15,359,718
Iowa	9,679,392	[illegible]	661,763	661,763	10,341,155
Kansas	6,014,700	[illegible]	411,215	411,215	6,425,915
Kentucky	10,300,587	[illegible]	0	0	10,300,587
Louisiana	11,612,902	[illegible]	0	0	11,612,902
Maine	3,421,449	498,032	0	498,032	3,919,481
Maryland	11,392,064	0	0	0	11,392,064
Massachusetts	15,357,941	[illegible]	0	0	15,357,941
Michigan	28,130,267	[illegible]	0	0	28,130,267
Minnesota	11,727,438	[illegible]	245,296	245,296	11,972,734
Mississippi	8,402,611	[illegible]	574,472	574,472	8,977,083
Missouri	13,451,544	[illegible]	0	0	13,451,544
Montana	4,701,648	[illegible]	0	684,381	[illegible]
Nebraska	5,650,456	[illegible]	0	822,491	6,472,947
Nevada	4,570,497	[illegible]	0	665,290	5,235,787
New Hampshire	2,442,672	0	0	0	2,442,672
New Jersey	19,486,402	[illegible]	0	0	[illegible]
New Mexico	5,276,074	[illegible]	0	767,996	6,044,070
New York	58,407,107	[illegible]	3,993,193	3,993,193	[illegible]
North Carolina	16,288,737	[illegible]	0	0	16,288,737
North Dakota	4,787,684	[illegible]	0	696,904	[illegible]
Ohio	31,451,492	[illegible]	0	0	31,451,492
Oklahoma	13,354,343	[illegible]	913,013	913,013	14,267,356
Oregon	9,347,483	0	639,071	639,071	9,986,554
Pennsylvania	33,537,669	[illegible]	0	0	33,537,669
Puerto Rico	7,808,373	0	0	0	7,808,373
Rhode Island	2,811,632	[illegible]	192,226	192,226	3,003,858
South Carolina	8,480,324	0	0	0	8,480,324
South Dakota	4,424,921	644,100	0	644,100	5,069,021
Tennessee	13,178,184	0	0	0	13,178,184
Texas	40,855,464	[illegible]	2,571,867	2,571,867	43,427,331
Utah	9,677,839	1,408,725	0	1,408,725	11,086,564
Vermont	2,072,887	301,733	0	301,733	2,374,620
Virginia	13,579,101	[illegible]	0	0	13,579,101
Washington	12,294,584	[illegible]	295,624	295,624	12,590,208
West Virginia	5,611,024	0	0	0	5,611,024
Wisconsin	14,178,044	[illegible]	0	0	14,178,044
Wyoming	3,433,068	499,724	0	499,724	3,932,792
Formula total	704,093,185	8,831,987	12,998,953	21,830,940	725,924,125
Guam	340,506	0	[illegible]	0	340,506
Virgin Islands	1,433,369	[illegible]	[illegible]	[illegible]	1,433,369
National total	705,867,060	8,831,987	12,998,953	21,830,940	727,698,000

[1] Funds are allocated to the 12 States whose relative share decreased from total TP 1984 to the PY 1984 basic formula amount and which have a civilian labor force (CLF) below one million and are below the median CLF density. These States are held harmless at 100 percent of their TP 1984 relative share.

[2] The balance of the 3 percent funds are distributed to the remaining 17 States losing in relative share from total TP 1984 to the PY 1984 basic formula amount.

[3] Hold-Harmless provisions required under section 6(b) of the Wagner-Peyser Act, as amended, are maintained at the final allotment level.

[FR Doc. 84–7690 Filed 3–21–84; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-28-C]

Betty B. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Betty B. Coal Company, Inc., Box 1139, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 4 Mine (I.D. No. 44-02136) located in Dickenson County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditons of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7691 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-10-C]

Cannelton Industries, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cannelton Industries, Inc., Cannelton, West Virginia 25036 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 3 and 4 Mine (I.D. No. 46-01403) located in McDowell County, West Virginia, its No. 130 Mine (I.D. no. 46-06051) located in Kanawha County, West Virginia, and its No. 1 Mine (I.D. No. 467-01284) and its No. 4 Mine (I.D. No. 46-02061), both located in Boone County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with no more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only;

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7692 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-17-C]

Cantrell Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cantrell Mining Company, Inc., Box 354, Pound, Virginia 24279 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 44-05703) located in Wise County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7693 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-58-C]

Chafe Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Chafe Mining Co., Inc., P.O. Box 1603, Beckley, West Virginia 25802 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 46-06136) located in Raleigh County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used only by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying the conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7694 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-15-C]

Crockett Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Crockett Coal Company, P.O. Box 2280, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75. 1303 (permissible blasting devices) to its No. 5-A Mine (I.D. No. 44-05920) located in Wise County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that permissible blasting devices by used, that all explosives and

blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitoner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with no more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7695 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-25-C]

Deep Mine Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Deep Mine Coal Co., Inc., R.D. #2, Box 102A, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 2 Slope (I.D. No. 36-05738) located in Northumberland County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The distance from the mine portal to the actual working face is less than 1,500 feet; the mine can be evacuated in less than 15 minutes.

3. The mine is always wet and there are only two pieces of electrical equipment, which are submergible pumps; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape out the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7696 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-90-C]

Eastern Associated Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Federal No. 1 Mine (I.D. No. 46-01429) and Joanne Mine (I.D. No. 46-01430), both located in Marion County, West Virginia; its Federal No. 2 Mine (I.D. No. 46-01456) located in Monongalia County, West Virginia; its Keystone No. 1 Mine (I.D. No. 46-01464) located in McDowell County, West Virginia; its Keystone No. 2 Mine (I.D. No. 46-01535), Kopperston No. 1 Mine (I.D. No. 46-01537), and Kopperston No. 2 Mine (I.D. No. 46-01536), all located in Wyoming County, West Virginia; its Keystone No. 4 Mine (I.D. No. 46-01498) and Keystone No. 5 Mine (I.D. No. 46-02067), both located in Raleigh County, West Virginia; its Harris No. 1 Mine (I.D. No. 46-01271), Harris No. 2 Mine (I.D. No. 46-01270), Wharton No. 11 Mine (I.D. No. 46-04500), Wharton No. 4 Mine (I.D. No. 46-01272), Lightfoot No. 1 Mine (I.D. 46-04332), and its Lightfoot No. 2 Mine (I.D. No. 46-04955), all located in Boone County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposed to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cables with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides and indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7697 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-27-C]

Elbow Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Elbow Mining, Inc., P.O. Box 1740, Princeton, West Virginia 24740 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Lick Branch No. 1 Mine (I.D. No. 46-05509) located in McDowell County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7698 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-19-C]

Elro Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Elro Coal Corporation, Box 230, Appalachia, Virginia 24216 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 3 Mine (I.D. No. 44-05182) located in Wise County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulatidns nd Variances.

[FR Doc. 84-7699 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-80-C]

Faith Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Faith Coal Company, Route 1, Box 94-B, Palmer, Tennessee 37365 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Goforth Mine (I.D. No. 40-02701) located in Sequatchie County, Tennessee. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (). Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7700 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-8-C]

H.R.C. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

H.R.C. Coal Company, Drawer 890, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 44-05090) located in Wise County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7701 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-21-C]

Horne-Rigg Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Horne-Rigg Coal Corporation, Box 949, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 44-05241) located in Wise County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7702 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-47-C]

J. J. & G. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

J. J. & G. Coal Company, 523 E. Market Street, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 FR 75.1714 (self-contained self-rescue devices) to its Whites Vein Slope (I.D. No. 36-06815) located in Dauphin County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. The mine is wet and virtually dust free. The upper area of the mine was deep and strip mined, leaving ventilation to the surface by means of abandoned slopes, cracks, fissures, and strip pits. This creates a natural draft that wold sweep noxious fumes to the surface away from the miners.

3. Petitioner states that the mine geology, undulation, thin coal and varying pitches make it impossible to wear the devices while working. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. In addition, the wet conditions of the mine make it difficult to locate a suitable dry storage location for the self-rescuers.

4. Petitioner proposes to continue using the present filter-type self-rescuers as an alternative to providing self-contained self-rescuers, and states that this will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7703 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-22-C]

Interstate Commercial Energy Corp.; Petition for Modification of Application of Mandatory Safety Standard

Interstate Commercial Energy Corporation, P.O. Box 538, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 44-05600) located in Wise County, Virginia. The petition is

filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cables with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All Comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7704 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-95-C]

K. M. & K. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

K. M. & K. Coal Company, Box 40, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its D and R Slope (I.D. No. 36-01821) located in Schuylkill County, Pennsylvania and its No. 14 Vein Slope (I.D. No. 36-07244) located in Northumberland County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The distance from the mine portal to the actual working face is less than 2,000 feet; the mine can be evacuated in less than 15 minutes.

3. The mine is always damp to wet and there is only one piece of electrical equipment, which is a small pump located at the foot of the slope; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape out the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7705 Filed 3-21-84; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Notice of Meeting

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of the thirty-third meeting of the National Commission for Employment Policy in Washington, D.C. at the Hotel Washington, Pennsylvania Avenue at 15th Street, NW.

DATES: April 12, 9:00 a.m.-5:00 p.m.; April 13, 9:00 a.m.-5:00 p.m.

STATUS: This meeting will be open to the public.

MATTERS TO BE DISCUSSED: From 9:00 a.m. until about 12:00 m., the meeting will consist of providing orientation information for newly appointed Commissioners. During the remaining one and one-half days of the meeting, the Commissioners will discuss the final report and recommendations evolving out of the project on older workers and plan for activities under a national employment policy statement and will hear updates on research under the Job Training Partnership Act and plans for research into changes in the work place. Possible speakers include Senator Dan Quayle and Representative Augustus Hawkins. The public is encouraged to call and verify their attendance.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Hogue, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, D.C. 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established as title V of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95-524) and reauthorized under title

IV, Part F of the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. People wishing to submit written statements to the Commission that are germane to the agenda may do so, provided that such statements are in reproducible form and are submitted to the Director at least 5 days before the meeting and not more than 7 days after the meeting.

In addition, members of the general public may request to make oral presentations to the Commission, time permitting. Such statements must be applicable to the announced agenda and written application must be submitted to the director at least 5 days before the meeting. This application should include: name and address of applicant, subject of presentation, relation to agenda, amount of time needed, individual's qualifications to speak on the subject, and a statement justifying the need for an oral rather than written statement.

The Commission Chairman has the right to decide to what extent public oral presentations may be permitted at the meeting. Oral presentations will be limited to statements of fact and views and shall not include any questioning of the Commissioners or other participants unless these questions have been specifically approved by the Chairman.

Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, D.C. 20005.

Signed in Washington, D.C., this 16th day of March 1984.

Patricia W. Hogue,

Director.

[FR Doc. 84–7689 Filed 3–21–84; 8:45 am]

BILLING CODE 4510–36–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITY

Media Arts Advisory Panel; Meeting

Pursuant to section 10(c)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (NEA/AFI Film Preservation Section) to the National Council on the Arts will be held on April 12, 1984, from 9:00 a.m.–5:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)((4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–7649 Filed 3–21–84; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel of the Advisory Committee for Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel.

Date and time: April 11, 12, 13, and 14, 1984; 8:30 a.m. to 5:00 p.m. each day.

Place: The National Science Foundation, Room 543, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact Person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357–7958.

Purpose of Committee: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda

To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing

The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: March 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–7785 Filed 3–21–84; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee for Ocean Sciences Research of the Advisory Committee for Ocean Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee for Ocean Science Research.

Date and time: April 10, 11, and 12, 1984, 9:00 a.m. to 6:00 pm each day.

Place: Rooms 628, 1141, 1224, and 1240, National Science Foundation, 1800 G Street, NW., Washington, D.C.

Type of meeting: Closed.

Contact Person: Dr. Robert E. Hall, Head, Ocean Science Research Section, Room 611, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357–7924.

Purpose of meeting: To provide advice and recommendations concerning support for research in Oceanography.

Agenda

To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing

The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting

This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF, on July 6, 1979.

Dated: March 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–7786 Filed 3–21–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-329 and 50-330]

Consumers Power Co. (Midland Plant, Units 1 and 2); Receipt of Request for Action

Notice is hereby given that by letter dated February 10, 1984, Billie Pirner Garde of the Government Accountability Project, on behalf of the Lone Tree Council and others, has requested that the Commission take action with respect to the Midland Plant. The letter, which is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, has been referred to the Director of the Office of Inspection and Enforcement for consideration. As provided in 10 CFR 2.206, appropriate action will be taken on the request within a reasonable time.

Copies of the request are available for inspection in the Commission's Public Document Room, located at 1717 H Street NW., Washington, D.C. 20555 and in the local public document room for the Midland facility, located at the Grace A. Dow Memorial Library, 1910 W. St. Andrews Road, Midland, Michigan 48640.

Dated at Bethesda, Maryland this 14th day of March 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-7739 Filed 3-21-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445, 50-446]

Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2); Rescheduled Hearing Application for Operating License

March 19, 1984.

Before Administrative Judges: Peter B. Bloch, Chairman, Dr. Kenneth A. McCollom, Dr. Walter H. Jordan.

The Evidentiary Hearing in the above captioned proceeding scheduled for April 23-27, 1984, has been rescheduled for Arpil 24-27, 1984, 8:30 a.m. to 6:00 p.m. on Monday through Thursday and 8:30 a.m. to 3:00 p.m. on Friday at the Fritz Lantham Building, Room 5B14, 819 Taylor Street, Fort Worth, Texas.

Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Administrative Judge.

[FR Doc. 84-7740 Filed 3-21-84; 8:45 am]

BILLING CODE 7590-01-M

Monthly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This monthly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last monthly notice which was published on February 24, 1984 (49 FR 7028) through March 13, 1984.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By April 23, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A

petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: December 12, 1983.

Description of amendments request: The amendments would modify the Technical Specifications to add a number of specifications required by the Commission in NUREG–0737 following the Three Mile Island accident and following certain system changes made at Farley site. The systems and the proposed changes to the Technical Specifications include: (1) Reactor vessel head vents, (2) noble gas effluent monitors, (3) containment water level monitors and (4) instrumentation for detection of inadequate core cooling.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain example (48 FR 14870). The licensee states that the changes are similar to "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." We agree that the proposed Technical Specification adds limiting conditions of operation and surveillance requirements per the Commission request contained in Generic Letter 83–37 dated November 1, 1983. Therefore, the Commission proposes that the changes would fall into the category of a no significant hazard consideration determination.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdenshaw Street, Dothan, Alabama 36303.

Attorney for licensee: George F. Trowbridge, Esquire, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: January 10, 1984.

Desciption of amendment request: The proposed Technical Specification changes request postponement of one full flow test of the core spray pumps until the primary containment suppression chamber is restored to its operational condition.

The licensee is presently planning to shut down the Brunswick Steam Electric Plant, Unit 2 during the month of March 1984 for a 30 week outage (plus six weeks for contingencies) to refuel, performace maintenance work and modify the Mark I torus. During this outage, CP&L also plans to off-load the entire reactor core in order to perform an inservice inspection of the reactor vessel and remove the cladding on the feedwater spargers. In conjunction with the Mark I torus modifications, the suppression chamber will be drained and, therefore, it will not be possible to perform the full-flow surveillance test of the Core Spray System (CSS) wherein water is recirculated into the suppression pool.

This requirement will last be performed on approximately March 9, 1984. Due to the modifications being made to the suppression pool the maximum permissible interval between full flow tests will be exceeded. The licensee is, therefore, requesting a one time exemption to the maximum surveillance interval during the upcoming refueling outage (Reload 5) until within 48 hours after restoration of the suppression chamber to operable status, but in any case no later than November 15, 1984. Based on the present outage schedule, CP&L plans to restore the suppression chamber to operable

status and perform Surveillance Requirement 4.5.3.1.c.1 by approximately August 15, 1984. This will extend the surveillance interval from the present maximum of 115 days to approximately 159 days. The November 15, 1983 date allows for contingencies in the completion of modifications to the suppression pool making the total allowable surveillance interval 251 days.

For the majority of the outage (about 20 weeks) fuel will not be in the reactor core. During that period of time the need for the core spray system is removed.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance in the form of examples of amendments that are not considered likely to involve significant hazards considerations (48 FR 14870). The licensee's January 10, 1984 submittal included a discussion of the proposed action with respect to the no significant hazards consideration. The licensee provided a discussion regarding the proposed Technical Specification change.

The discussion has been reviewed and the Commission finds it acceptable. The licensee has determined and the NRC staff concurs that extending the surveillance interval, for a full flow test of the Core Spray System (CSS), from 92 days to a total allowable surveillance interval of 251 days does not constitute a significant reduction in the verification of operability or the availability of this system for the following reasons:

1. For the majority of the outage (approximately 20 weeks) the fuel will not be in the vessel, therefore, removing the need for the CSS System.

2. The core spray system is not required to be OPERABLE when the suppression pool is inoperable provided that the reactor vessel head is removed and the cavity is flooded, the spent fuel pool gates are removed, and the water level is maintained. The CSS will be available for operation during the relatively short interval when operability is required due to plant conditions.

3. The CSS consists of two independent subsystems, each with 100% capacity, thus providing redundant safety system subsystems.

4. Surveillance is performed every 12 hours to verify that the CSS has an operable water source (T.S. 4.5.3.1.a).

Surveillance is performed every 31 days to verify that the CSC is filled with water (T.S. 4.5.3.1.b.1).

Surveillance is performed every 31 days to verify that all valves in the CSS flow path are properly aligned (T.S. 4.5.3.1.b.2).

Surveillance is performed every 92 days to verify the operability of the core spray header differential pressure instrumentation (T.S. 4.5.3.1.c.2).

5. A review of previous CSS operability testing shows that the system is extremely reliable, as no failures have been identified since 1978.

The proposed change pertaining to specification 4.5.3.1.c.1 represents a relaxation in the surveillance requirements. However, adequate precautions have been taken to ensure the availability of other means of cooling for the reactor core. Based on the foregoing discussion, the results of this change, would not: (1) Involve significant increase in the probability or consequences of an accident previously evaluated or (2) create the possibility of a new and different kind of accident or (3) involve a significant reduction in a margin of safety. Therefore, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2

Date of amendment request: January 9, 1984.

Description of amendment request: This amendment request proposes to change the Technical Specification (TS) regarding auxiliary feedwater (AFW) initiation. The current TS Table 3.4–1 implies that the AFW pump automatic initiation feature is required above 200°F whereas TS 3.4.1 and TS Table 3.5–5 require operability of other AFW systems components above 350°F. Therefore to correct the inconsistencies, the proposed change would revise TS Table 3.4–1 to require automatic initiation feature above 350°F and would be consistent with the Westinghouse Standard Technical Specifications NUREG–0452.

Basis for proposed no significant hazards consideration determination: The basis for the proposed amendment request is the discovering of inconsistencies and errors within the Technical Specifications when comparing TS Table 3.4–1 to other sections.

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards considerations by providing certain examples published in the **Federal Register** on April 6, 1983 (48 FR 14864). One of the examples of an amendment which will likely be found to involve no significant hazards consideration is a purely administrative change to the TS; for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature. The attached proposed changes fall within the Commission's example (i) of a change not likely to involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 29, 1983.

Description of amendment request: The proposed amendment would revise the descriptive material in Section 5.3.3 of the Palisades Technical Specifications. The revision to Section 5.3.3 would delete the third (spare) high pressure safety injection pump from the description of the design features of the plant because this spare pump has been adapted for auxiliary feedwater service.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples of actions likely to involve no significant hazards consideration relates to a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The Palisades Emergency Core Cooling System (ECCS) has two high pressure safety injection pumps; the third pump was an installed spare and was not relied on in the analysis of the performance of the ECCS. Accordingly, the deletion of the third high pressure safety injection pump from the description of the design features of the ECCS does not affect the safety of the plant. This change, therefore, would be administrative in nature and would fall within the category of the example cited above. On this basis, the staff proposes to determined that the requested action would involve a no significant hazards consideration determination.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Dennis M. Crutchfield.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: November 2, 1983.

Description of amendment request: The proposed license amendment would delete requirements incorporated into the license by Order dated November 9, 1979, issued by the Commission's Office of Inspection and Enforcement. Specifically, items A, B and C of Section IV of the Order, as quoted below, would be deleted:

"A. Prior to startup following the present refueling the licensee shall conduct a comprehensive review of all procedures and check lists to assure that:

(1) all valves and other controls for engineered safety features have been identified in such procedures and check lists;

(2) such procedures and check lists require that all such valve and other controls are in their proper position prior to startup after any cold shutdown; and

(3) such procedures and check lists require that after testing, maintenance or other activities which involve manipulating such valves and other controls, the valves and other controls have been returned to their proper position for operation.

B. Report to the Director of the NRC's Region III office the results of at least monthly inspections during operation of all accessible valves and other controls for engineered safety systems for compliance with the Limiting Condition for Operation (LCO) requirements of the Technical Specifications.

C. Prior to startup following the present refueling, the licensee shall explain to the Director, NRC Office of Inspection and Enforcement, in a meeting in Bethesda, Maryland, how the above requirements shall be implemented."

Basis for proposed no significant hazards consideration determination: The licensee states that Items A and C above were completed prior to startup from the 1979 refueling outage. Moreover, the licensee maintains that since Item B is a monthly requirement, and is currently ongoing, the licensee will continue the monthly surveillance of all accessible valves and contrls for engineered safety features. The licensee further states that the monthly reporting is an unnecessary function since any noncompliance discovered must be reported to the Commission in accordance with the Palisades Technical Specifications.

The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (iv) of actions not likely to involve a significant hazards consideration relates to a "relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met." The requested action is encompassed within this example. Based on the above discussion, and if the Commission's Region III Office confirms that the requirements of the Orders have been satisfactorily completed, the staff proposes to determine that the requested action would involve a no significant hazards consideration determination.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Dennis M. Crutchfield.

Dairyland Power Cooperative, Docket No. 50409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin.

Date of amendment request: December 19, 1983.

Description of amendment request: The proposed amendment consists of four parts. (1) Add the requirement that the NRC be notified of any changes in use of two small portions of land in the exclusion area which might allow the establishment of residences; (2) Add the requirement that the plant be shut down in the event of flooding by the Mississippi River; (3) Modify to increase the stringency of requirements for reactor primary water quality; and (4) Add a requirement to inspect the containment air lock door seals evey 72 hours and to replace them periodically in accordance with manufacturer's instructions.

Basis for proposed no significant hazards consideration determination: All of the above proposed changes resulted from the Systematic Evaluation Program (SEP) review of the La Crosse Boiling Water Reactor. The basis for these changes is contained in the La Crosse Integrated Plant Safety Assessment Report, NUREG0827. Each of the four changes introduces an additional restriction or control which does not currently exist.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an addition restriction or control not presently included in the Technical Specifications. The staff proposes to conclude that the four proposed changes described above would be encompassed within example (ii) and, therefore, would involve a no significant hazards consideration determination.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: O. S. Heistand, Jr., Esquire, Morgan Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Banch Chief: Dennis M. Crutchfield.

Duke Power Company, Dockets Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 13, 1984.

Description of amendment requests: The amendments would authorize proposed changes to the Oconee Nuclear Station (ONS) Technical Specifications (TSs) which are required to support the operation of Oconee Unit 3 at full rated power during Cycle 6. The proposed changes to the core protection safety limits (TS 2.1), the protective system maximum allowable setpoints (TS 2.3), and the rod position limits (TS 3.5.2), as well as the administrative renumbering of the figures in TS 3.5.2 are in accordance with the application.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). Example (iii) of the types of amendments not likely to

involve significant hazards considerations applies in this case as the reload is for a nuclear power reactor. Duke Power Company has provided an evaluation of the amendment requested against the standards of 10 CFR 50.92 to demonstrate the Commission's Example (iii) fits the case of this amendment request. The reload does not involve fuel assemblies significantly different from those found previously acceptable to the NRC and there are no significant changes being made to the acceptance criteria for the TSs. Moreover, the analytical method used to demonstate conformance with the TSs and regulations is not significantly changed, and the NRC has previously found the method acceptable. The Commission proposes to determine that the application does not involve a significant hazards consideration since it appears that the standards of 10 CFR 50.92 are met.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Duke Power Company, Dockets Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 13, 1984.

Description of amendment request: The amendments would authorize a proposed change to the Technical Specifications (TSs) by revising TS 3.4.5 to establish a degraded mode for the Emergency Condenser Cooling Water (ECCW) System. Such a degraded mode would allow for continued operation of the Oconee units for a limited period of time (seven days) if the ECCW System becomes inoperable. The ECCW System is a unique design feature at Oconee which allows for continued condenser circulating water flow by gravity following a loss of all station power except station batteries.

This feature provides a continuous flow of condenser cooling water as a means of removing decay heat, with backup paths that utilize the main steam relief valves, auxiliary service water system, or the safe shutdown facility. The ECCW System is a desirable feature which allows continued plant heat removal through the condensers during an extended loss of power. In order to maintain use of the condenser and not require use of backup measures to remove decay heat, it is preferable to repair an inoperable ECCW System while the plant is at power instead of requiring a plant shutdown as would presently be required. Seven days is a reasonable time to make repairs on the system.

Basis for proposed no significant hazards consideration determination: Duke Power Company's (the licensee) submittal of February 13, 1984, included a discussion of the proposed action with respect to the no significant hazards consideration standards. This discussion has been reviewed, and the Commission finds it acceptable. Each of the three standards is discussed below.

First Standard

The impact that ECCW inoperability would have on the results of the analysis for the loss of all station power case was determined. Briefly, there is no increase in the probability that this accident scenario will occur as a result of the ECCW System being inoperable. Furthermore, with the ECCW System inoperable, the consequences resulting from this accident will not be increased.

Each accident analysis addressed in the Oconee Final Safety Analysis Report (FSAR) has been reviewed with respect to the requested specification change. The review has indicated that the ECCW System is referred to in only the hypothetical case where all station power except station batteries is lost (FSAR Section 15.8.3). All other accidents evaluated in the FSAR do not address the use of the ECCW System.

The probability that this accident scenario will occur is not affected by this amendment request. The operability/inoperability of the ECCW System has no influence on events that may result in the loss of all station power.

The consequences resulting from this accident with the ECCW System inoperable have been evaluated. As addressed in the FSAR, the immediate operability of the ECCW System is not required. Additional means of decay heat removal are available, as described in the licensee's technical justification for this amendment request and the FSAR. With the turbine-driven emergency feedwater pump but without either electrical power or presence of Lake Keowee, several hours are available before exhausting the supply of stored condensate pumped into the steam generators and the steam vented to the atmosphere. When normal condensate supply is exhausted, then the auxiliary service water pumps or the standby shutdown facility (SSF) can put lake water directly into the steam generators. This feature ensures that the decay heat removal through the secondary side can continue as long as necessary.

In addition, the overall risk to the health and safety of the public is extremely low because during the time the ECCW System is inoperable there is a very low probability that a complete loss of power will occur. Furthermore, Oconee's emergency power system is provided by the two Keowee hydroelectric units instead of diesel generators, offering a high degree of reliable power for emergency situations.

Second Standard

The proposed amendments allowing for temporary inoperability of the ECCW System do not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

The proposed amendments specify a degraded mode of operation for the ECCW System. The ECCW System is a backup system to the Condenser Circulating Water System (CCW) which provides coolant flow to the condensers during normal and emergency plant operations. The CCW System is a heat sink for Oconee Nuclear Station during plant cooldown and hot standby.

As stated earlier, the ECCW System will maintain a source of coolant flow to the condensers in the highly unlikely event in which all station power except station batteries is lost. As detailed in FSAR Section 15.8.3, the immediate operation of the ECCW System is not required. Further, even if the CCW or the ECCW Systems cannot provide coolant flow to the condensers, then steam produced in the steam generators will be relieved to the atmosphere via the main steam relief valves. If the normal condensate supply is exhausted, then the auxiliary service water pumps or the SSF can put lake water directly into the steam generators. This feature ensures that decay heat removal through the secondary side can continue as long as necessary; therefore, the absence of a recirculation path for the steam will not compromise plant safety. Thus, the margin of safety will not be significantly reduced by the proposed amendments.

The Commission proposes to determine that the application does not involve a significant hazards consideration since it appears that the standards of 10 CFR 50.92 are met.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washingtoin, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: January 10, 1984.

Description of amendment request: This proposed amendment would delete Appendix B, Part 1 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples of actions involving no significant hazards considerations. One of the examples of actions involving no significant hazards considerations (i) relates to amendments of a purely administrative change to a technical specification, correction of an error, or a change in nomenclature. The current Technical Specifications contains, in Appendix B, Part 1 radiological technical specifications that have now been included in the Technical Specifications as a part of Amendment 59 that was issued on August 18, 1983. Appendix B, Part 1 should have been deleted with the issuance of Amendment 59. In view of the above, the staff considers this to be an administrative change and proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esq., Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: May 6, 1982, as supplemented on January 20, March 7, 1983 and February 6, 1984 (withheld from public disclosure).

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 Modified Amended Security Plan, Revision 2, dated November 10, 1978. The proposed changes include: a complete revision of the Plan in a format compatible with NUREG–0908; changes in security management structure; revisions in procedures and documentation relative to personnel screening, access authorization, access controls at the personnel access point, badging, escorting, vehicular access and associated controls, processing of packages and materials, construction activities, and testing of security equipment and surveillance of barriers; revision of the training and qualification requirements for Security Force personnel to assure consistency with the Security Training and Qualification Plan; updated listings and drawings of vital areas and vital area portals; deletion of security requirements concerning the Owner-Controlled Area; revision of the methods and frequency of security patrols; upgrading of search requirements for personnel, vehicles, and material; revision of control accountability measures for security keys, locks, and related equipment; upgrading of performance parameters for intrusion and detection equipment; further detail on illumination, security emergency power, the CCTV system, alarm station operation, and security communications; upgrading of requirements to be in effect during refueling and major maintenace outages; consolidation of security reporting and recordkeeping requirements; and revision of security audit commitments as required by 10 CFR 73.40(d) and 10 CFR 73.55(g)(4). Pursuant to 10 CFR 73.21, these changes are withheld from public inspection.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). Three of these examples of guidance are: a purely administrative change to technical specifications; a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; and a change to make a license conform to changes in the regulations, where the licensing change results in very minor changes to facility operations clearly in keeping with the regulations. The proposed changes all fall into one of these categories. Administrative changes do not lend themselves to a significant hazards consideration based on the proposed amendment because the changes result in very minor changes to facility operations. Other changes are proposed to make the license conform to changes in the regulations since the initial submittal and approval of the Plan and add requirements to ensure compliance with regulations. Still other changes impose additional limitations, restrictions, or controls not previously submitted that improve safeguards effectiveness of the facility. Although some prior commitments have decreased in the proposed amendment, these reductions shave been instituted to conform to more recent Commission guidelines and are clearly within all applicable Commission acceptance criteria.

Furthermore, this comprehensive change, applied in its entirety, results in a more effective security program which does not decrease safeguards effectiveness. The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration, because the changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

GPU Nucler Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 21, 1983 which supersedes application dated July 13, 1983.

Description of amendment request: Request for approval of Technical Specification (TS) changes which would involve changes to Section 3.1 and 4.2 concerning the scram discharge volume (SDV) modifications.

Basis for proposed no significant hazards consideration determination: On June 28, 1980, during a routine shutdown of the Browns Ferry Unit 3 reactor, a manual scram from approximately 36% power failed to insert about 40% of the control rods. Two additional manual scrams followed by an automatic scram were required before all control rods were fully inserted. The total time that elapsed from the initial scram until all rods were inserted was approximately 15 minutes.

Subsequent investigations by the licensee, General Electric Company, and the NRC staff narrowed the cause of the problem to an accumulation of water in the SDV header at the time of the first scram. It is believed that water accumulated because the SDV system venting and/or draining were obstructed. Furthermore, the accumulation of water was not detected by SDV level instruments which input to the reactor protection system. It was believed that the SDV level instrumentation was designed to scram the reactor before water accumulated in the scram discharge volume that could hinder scram. As a result, the Commission's Office of Inspection and Enforcement (I&E) issued two I&E Bulletins addressing both short and long term programs.

The long term program addressed SDV system design. In order to improve the overall design of the SDV system an NRR task force has been working with a subgroup of the BWR Owners Group to develop revised scram discharge system design and safety criteria. The NRC endorsed the criteria developed by the BWR Owners Group. The modifications being performed at Oyster Creek are in accordance with the BWR Owners Group recommendations in response to IE Bulletin 80–17 and its supplements. As a result of providing two SDV instrument volumes, the high water level scram and rod block setpoints are to be changed. The high water level setting for scram, is requested to be changed from 37 gallons to 18.36 gallons (59 inches) of water, which will permit the 137 control rods to scram by either set of level instruments. The high water level setting for rod block is requested to be changed from 18 gallons to 9 gallons (29 inches) of water which results in a rod block and an alarm at either instrument volume. In addition, the scram discharge volume drain and vent valves closure times are requested to be changed to be in agreement with the BWR Owners Group recommendations.

The proposed modification would ensure that there is sufficient volume available in the SDV to allow all 137 control rods to scram in the event that plant conditions warrant this action. The safety function of the SDV and its associated instruments have not changed. Since the modification and associated technical specifications provide the redundant instrument volumes with necessary instrumentation and appropriate setpoints, the safety of the plant will be enhanced, thereby providing a greater degree of protection for the health and safety of the public. This change would constitute an additional limitation, restriction, or control not presently included in the Technical Specifications that is, a more stringent surveillance requirement, and is, therefore, consistent with example (ii) of the Commission guidance (48 FR 14870, April 6, 1983) as a type of action which would involve a no significant hazards consideration determination. On this basis, the NRC Staff proposes to determine that this amendment does not involve significant hazards considerations.

Local Public Document Room location: 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Dennis M. Crutchfield, Chief.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 26, 1984.

Description of amendment request: The proposed amendment would modify the environmental Technical Specifications and delete the requirement to examine the vegetation on and around the site to determine if there is any salt drift damage from the cooling towers.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). One such example (iv), of actions states that a relief is granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not demonstrated. This assumes that the operating criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met.

The proposed change deletes the requirement to examine the vegetation on and around the site to determine if there is any salt drift damage from the cooling towers. The Technical Specifications require that the vegetation damage study be done for at least two years to document any possible adverse effects. The licensee has conducted such a study for nine years and found no significant damage to any vegetation. Since the licensee has demonstrated that the cooling tower operation has been found acceptable from the point of view of its impact on surrounding vegetation, the Commission's example (iv) applies and the requested amendment is not expected to involve a significant hazards consideration.

Since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 27, 1984.

Description of amendment request: The proposed amendment requests modification to the Technical Specifications pertaining to the requirements set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements" and as requested by our Generic Letter 83–36. Technical Specification changes are requested in response to:

(1) The following TMI Action Plan Items: II.B.3—Post-Accident Sampling; II.F.1.1—Noble Gas Monitor; II.F.1.2—Iodine Particulate Sampling; II.F.1.3—Containment High-Range Monitor; II.F.1.4—Containment Pressure Monitor; II.F.1.5—Containment Water Level Monitor; II.F.1.6—Containment Hydrogen Monitor; III.D.3.4—Control Room Habitability Requirements;

(2) The new rule, "Licensed Operator staffing at Nuclear Power Plants;" and

(3) Changes to the Technical Specifications Table of Contents.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples relates to: "(i) A purely administrative change to Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in

nomenclature. Another example (ii) of actions involving no significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications.

(1) Technical Specification changes in response to TMI Action Items II.B.3, II.F.1.1, II.F.1.2, II.F.1.3, II.F.1.4, II.F.1.5, II.F.1.6 and III.D.3.4.

The modifications to Technical Specifications in response to the above TMI Action Items requirements constitute additional limitations, restrictions, or controls not presently included in the DAEC Technical Specifications. Therefore, the proposed changes are similar to the Commission's example (ii) above. Therefore, we expect that the requested changes will not involve significant hazards considerations.

(2) The licensee also proposes to revise the Technical Specifications to meet the staffing requirements pursuant to the new rule "Licensed Operator Staffing at Nuclear Power Plants." This requested change is similar to the Commission's example (ii) and involves additional restrictions not presently included in the Technical Specifications. Therefore, the requested change is not expected to involve significant hazards considerations.

(3) The licensee has proposed to change the Table of Contents to the Technical Specifications. This requested change is similar to the Commission's example (i) and is intended to achieve consistency of the Table of Contents with the Technical Specifications.

Since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Plant, Wiscasset, Maine

Date of amendment request: January 16, 1984.

Description of amendment request: The proposed amendment provides additional limiting conditions for operation and surveillance requirements for the alternate safe shutdown system. This technical specification implements the requirements of 10 CFR 50 Appendix R by specifying the components of the alternate safe shutdown system and the required actions to be taken if any of these components is found to be not operable.

Basis for proposed no significant hazards consideration determination: This proposed amendment represents additional restrictions not currently included in the technical specifications. It therefore fits example (iii) of the examples of amendments considered not likely to involve significant hazards considerations as given by the Commission (48 FR 14870). Therefore, the initial determination for this amendment is proposed as no significant hazards considerations.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: John A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: James R. Miller.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Plant, Wiscasset, Maine

Date of amendment request: January 27, 1984.

Description of amendment request: This proposed amendment provides Technical Specification changes needed to support Cycle 8 operation of the Maine Yankee plant. It incorporates previous amendment requests made on February 18, 1983 and January 19, 1984. This proposed amendment would: (1) Modify Technical Specifications to reflect Cycle 8 power distributions, insertion limits, and peaking factors; (2) reflect the required fuel centerline design limit for each fuel type; (3) incorporate a reference power concept; (4) reflect changes to the auxiliary feedwater isolation system; and (5) provide for alternate methods of measuring quadrant tilt.

Basis for proposed no significant hazards consideration determination: Part (1) of this change is a reload amendment. No fuel assemblies used in the Cycle 8 design are significantly different than those previously used at Maine Yankee and found to be acceptable by the NRC. The acceptance criteria for the Technical Specifications associated with the Cycle 8 design are the same as the acceptance criteria associated with the current Technical Specifications. The methods used to demonstrate conformance of the Cycle 8 design with applicable Technical Specifications have been previously found acceptable by the NRC. These findings are consistent with example (iii) of an amendment that does not involve a significant hazards consideration as noted by the Commission in their statement of considerations associated with 10 CFR 50.92 (48 FR 14864).

Parts (2) through (5) of these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, the possibility of a new or different kind of accident from any accident previously evaluated or a significant reduction in a margin of safety. Furthermore, they do not represent significant unreviewed safety questions. Thus, these changes do not fit examples (i), (ii) or (iv), of significant hazards considerations associated with 10 CFR 50.92. Therefore, we propose to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: John A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: James R. Miller.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 5, 1984.

Description of amendment request: The proposed amendment changes the section of the Technical Specifications pertaining to instrumentation that initiates or isolates emergency cooling and the respective bases. Currently, the emergency condensers are automatically isolated on two parameters, namely, high system flow and high radiation in the emergency cooling system shell vent. This amendment proposes to remove the automatic isolation on high radiation, leaving the high radiation signal for alarm only.

Basis for proposed no significant hazards consideration determination: The licensee has presented its determination of significant hazards considerations as follows:

The Commission has provided guidance concerning the determination of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards consideration. One of the examples (vi), relates to a change which either may result in some increase to the

probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed change would increase the availability of the emergency condensers by reducing the likelihood of spurious isolation due to local radiation from a source other than the emergency condensers. However, relying on manual rather than automatic isolation could increase the time to isolate the emergency condensers for a leak in the emergency condenser tubing. This could result in some increase in activity to the environment. This item was addressed in a Safety Evaluation (SE) for Nine Mile Point Unit 1 dated December 15, 1981 for TMI Action Plan Item II.K.3.14, NUREG–0737. In the Safety Evaluation, Nine Mile Point Unit 1 was found acceptable, based on automatic isolation of the emergency condenser on high radiation signals. In the same SE, other units were found acceptable with manual operator action being required to isolate the emergency condensers on high radiation signal alarms. Therefore, since this change may result in some increase in the consequences of previously analyzed events but is within previously accepted staff criteria, the change is similar to example (vi).

The staff has reviewed the licensee's significant hazards considerations determinations and based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, D.C. 20006.

NRC Branch Chief: Domenic B. Vassallo.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 9, 1984.

Description of amendment request: The proposed amendment changes the section of the Technical Specifications pertaining to limiting values of the Minimum Critical Power Ratio (MCPR). The limits have been changed in a conservative manner, i.e., they have been increased to values greater than the limits currently calculated. For each reload these limits will be verified by the ODYN computer code. The reason for this change is to establish limits which are sufficiently conservative and need not be corrected on a cycle by cycle basis for potential, small changes in analysis results.

Basis for proposed no significant hazards consideration determination: The licensee has presented its determination of significant hazards considerations as follows:

The Commission has provided guidance concerning the determination of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards consideration. One of the examples (ii), relates to a change which constitutes an additional limitation, restriction or control not presently in the Technical Specifications. The proposed Technical Specification change is similar to this in that it imposes a greater restriction on operation. Another example (iii), is a change resulting from core reloading if no fuel assemblies significantly different from those found previously acceptable to the Nuclear Regulatory Commission are used. This example is applicable since the fuel to be loaded is of the same design as fuel used the previous cycle.

The staff has reviewed the licensee's significant hazards considerations determinations and based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, D.C. 20006.

NRC Branch Chief: Domenic B. Vassallo.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 13, 1984.

Description of amendment request: The proposed amendment changes the Limiting Condition for Operation and Surveillance Requirements sections of the Technical Specification to add requirements for the protective relaying that will be installed on the output side of the reactor protection and reactor trip bus motor generator sets during the spring 1984 refueling outage.

Basis for proposed no significant hazards consideration determination: The licensee has presented its determination of significant hazards considerations as follows:

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards considerations. One of the examples (ii), cites changes that constitute an additional limitation, restriction or control not presently included in the Technical Specifications. The proposed Technical Specifications are similar to this exemple because it includes operability and surveillance requirements for monitoring the output of the motor generator sets which supply power to the reactor protection system and reactor trip buses.

The staff has reviewed the licensee's significant hazards considerations determinations and based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006

NRC Branch Chief: Domenic B. Vassallo.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 30, 1984.

Description of amendment request: The proposed amendment changes Table 4.6.2a, "Instrumentation that Initiates Scram—Surveillance Requirements" of the Technical Specifications by adding instrument channel calibration surveillance requirements for the main steamline isolation valve position and turbine stops valve closure instrumentation.

Basis for proposed no significant hazards consideration determination: The licensee has presented its determination of significant hazards considerations as follows:

The Commission has provided guidance concerning the determination of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards consideration. One of the examples (ii), relates to a change which constitutes an additional limitation, restriction, or

control not presently in the Technical Specifications. The proposed Technical Specification change is similar to this in that it imposes more stringent surveillance requirements.

The staff has reviewed the licensee's significant hazards considerations determinations and based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: State University Colege at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006

NRC Branch Chief: Domenic B. Vassallo.

Northeast Nuclear Energy Company (NNECO), et al, Docket No. 50–245, Millstone Station, Unit No. 1, New London County, Connecticut

Date of amendment request: December 13, 1983.

Description of amendment request: The Technical Specification (TS) changes proposed by the amendment request would allow a change in the station battery testing requirements to be consistent with the Standard Technical Specifications (STS) and with Regulatory Guide 1.129, Revision 1. These proposed changes constitute NNECO's resolution of SEP Topic VIII–3.A, Station Battery Test Requirements. The proposed change requires periodic testing for determining battery capacity and for demonstrating that the batteries will provide sufficient power under accident conditions. This fulfills the commitment in Section 4.29 of NUREG–0824, Integrated Plant Safety Assessment Report for Millstone Unit 1.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). Two of the examples (ii and vii) of actions not likely to involve a significant hazards consideration relate to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications and a change to conform to changes to the regulations, where the change results in very minor changes to facility operations. The changes proposed in the application for amendment are encompassed by these examples since the requested action would result in an additional limitation and conformance to staff guidance, i.e. battery tests in accordance with Section 5.6 of IEEE Standard 450–1975 instead of 1972 to verify adequate battery capacity for emergency leads and a new battery discharge test to verify that the battery capacity is at least 80% of manufacturer's rating. The staff, therefore, proposes to determine that the requested action would involve a no significant hazards consideration determination.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Attorney for licensee: William H. Cuddy, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Dennis M. Crutchfield.

Northeast Nuclear Energy Company (NNECO), et al, Docket No. 50–245, Millstone Station, unit No. 1, New London County, Connecticut

Date of amendment request: December 28, 1983.

Description of amendment request: The proposed amendment would approve Appendix A Technical Specification (TS) changes which would allow a change in the reactor coolant chemistry limits to be consistent with the Standard Technical Specifications (STS) and with Regulatory Guide 1.56, Revision 1. These proposed changes constitute NNECO's resolution of Systematic Evaluation Program (SEP) Topics V–12A, Water Purity of BWR Primary Coolant, XV–16, Radiological Consequences of Failure of Small Lines Carrying Primary Coolant Outside Containment, and XV–18, Radiological Consequences of Main Steam Line Failure Outside Containment. The purpose of the proposed changes is to ensure that the reactor coolant chemistry is adequately controlled to minimize the possibility of corrosion-induced failures and to ensure that coolant iodine concentration is maintained at or below a level that would yield acceptable doses in the event of failure of a small line outside the containment. The proposed Technical Specification changes would fulfill the commitments in Sections 4.19.1, 4.35 and 4.36 of NUREG–0824, Integrated Plant Safety Assessment Report prepared under the SEP for Millstone Station, Unit 1.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The changes proposed in the application for amendment are encompassed by this example since the requested action would result in additional limitation. The staff, therefore, proposes to determine that the requested action would involve a no significant hazards consideration determination.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Attorney for licensee: William H. Cuddy, Esquire, Day, Berry & Howard, counselors at Law, One Constitution Plaza, Harford, Connecticut 06103.

NRC Branch Chief: Dennis M. Crutchfield.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: September 10, 1982, as revised on July 29, 1983.

Description of amendment request: The proposed amendment would revise the Limiting Conditions for Operation (LCO) and surveillance requirements associated with the vent and drain valves of the scram discharge volume (SDV). The proposed changes would allow plant operation with one valve inoperable and the redundant valve operable. The proposed changes would reflect: (1) Plant modifications to the SDV system whereby it has been madified into two SDVs, each with two vent and drain valves and (2) the redundancy and diversity added to the SDV system by this modification. The existing Technical Specifications require plant shutdown if a vent or drain valve is inoperable.

Basis for proposed no significant hazards consideration determination: The licensee has presented its determination of significant hazards consideration as follow: "The safety function of the SDV vent and drair valves is to limit the loss of reactor coolant leaked past the control rod drive (CRD) seals while the scram valves are open. The scram valves remain open during the interval from scram initiation to the resetting of the scram signal. Normally this interval is between five and thirty minutes (although during

accidents this time could be longer). Failure of the vent valves should have no undesirable consequences since a check valve is also installed in the vent line which will limit leakage. Failure of the drain valves will allow flow of reactor water to the clean radwaste sytem. This potential loss of reactor water is undesirable. In order to reduce the probability of this occurrence the scram discharge valves should be operable. However, the inoperability of one of the two redundant valves will not cause a significant reduction in safety because the probability of the other valve failing, at a time when it is required to prevent the loss of reactor water, is very small and this condition is only permitted for a limited time interval. Closure of the failed or redundant vent or drain valves will contain reactor water leakage without inhibiting the functions of the scram discharge volume. For the reasons mentioned above, the licensee has determined, under the Commission's regulations in 10 CFR 50.92, that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety."

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The example most similar to the amendment proposed by the licensee is one of the examples of amendments involving a significant hazards consideration * * *" (iii) A significant relaxation in Limiting Conditions for Operation not accompanied by compensatory changes, conditions or actions that maintain a commensurate level of safety. However, in this case, the licensee has proposed compensatory measures by modifying the SDV system and installing redundant vent and drain valves.

Therefore, for the reasons discussed above, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment requests: February 14, 1984.

Description of amendment request: The amendment would authorize proposed changes to the Fort Calhoun Station, Unit No. 1 Technical Specifications which are required to support the operation of the unit at full rated power during Cycle 9. Specifically, the following specifications are proposed to be changed: minimum departure from nucleate boiling (DNB) ratio, total unrodded planar radial peak, unrodded integrated total radial peak, lower bound of the moderator temperature coefficient, linear heat rate measurement-calculational uncertainty factor, and minimum reactor coolant system flow rate. Because these specifications are proposed to be changed, the following figures would be changed: Thermal Margin/Low Pressure Safety Limit, Thermal Margin/Low Pressure Limiting Safety System Settings, Limiting Condition for Operation for Excore Monitoring of Linear Heat Rate, Limiting Condition for Operation for DNB Monitoring, and F^T_R and F^T_N and Core Power Limitations. A steam generator differential pressure reactor protective system trip would also be added to the technical specifications. Instrument Operating Requirements and Minimum Frequencies for Checks, Calibrations, and Testing would be added for this added trip.

The amendment would also revise the Technical Specifications for the reactor coolant system pressure-temperature limits for operation to 8.5 effective full power years. The current technical specifications permit operations to 7.0 effective full power years, which will occur during cycle 9 operation. This would necessitate a change in the following figures: Heatup-Reactor Not Critical, Cooldown-Reactor Not Critical, and Predicted Radiation Induced NDTT Shift. Lastly, the amendment would delete the spent fuel inspection requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether license amendments involve significant hazards considerations by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations is a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility are involved (Example iii). The licensee states that the changes, except for the new pressure-temperature limits and the deletion of the spent fuel inspection requirements come under this example. The licensee's conclusion is based upon a fuel reload evaluation which was submitted as part of the application. Therefore, since this part of the application for amendment involves changes similar to an example for which no significant hazards considerations exist, the staff has made a proposed determination that this part of the application for amendment involves no significant hazards considerations.

Another example of actions involving no significant hazards considerations is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications (Example ii). The licensee states that the new pressure-temperature limits ensure that adequate fracture toughness is maintained through all conditions of normal operation, including anticipated operational transients and system hydrostatic tests. Therefore, since this part of the application for amendment involves changes similar to an example for which no significant hazards considerations exist, the staff has made a proposed determination that this part of the application for amendment involves no significant hazards considerations.

The licensee has presented its discussion of significant hazards considerations pursuant to 10 CFR 50.92 in regard to deleting the spent fuel inspection requirement. The licensee stated that: (1) There is no significant increase in the probability or consequences of an accident previously evaluated because no accident evaluations are affected by this change in surveillance requirements, (2) the change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the deleted surveillance requirement was only applicable to fuel discharge from the core, and (3) no significant reduction in a margin of safety is involved because the completed inspection program demonstrates the adequacy of the current fuel assembly design. The staff has reviewed the licensee's significant hazards considerations determination for deletion of the spent fuel inspection requirement, and based upon this review, the staff has made a proposed

determination that this part of the application for amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: May 4, 1983, as supplemented November 10, 1983.

Description of amendment request: The amendment proposed by the licensees would revise the Technical Specifications (TSs) of the operating licenses to add additional restrictions, limits and controls on the amount of unidentified leakage into the primary containment as measured by the primary containment (Drywell) sump collection system. The present TSs limit leakage from unidentified sources to a total of 5 gallons per minute (gpm). The changes would add an additional limitation requiring that the unidentified leakage also be limited to an increase of not more than 2 gpm in any 24-hour period. The changes would also require that the reactor coolant system leakage be checked and recorded every 4 hours rather than once per day as is now required. These additional leakage limitations were proposed by the licensees in response to requirements of NUREG–0313, Revision 1.

In addition, the licensees requested changes to the Peach Bottom TSs pertaining to a reduction in Iodine-131 activity limits for the reactor coolant. The proposed change reduces the operating limit for Iodine-131 to 0.2 micro-curies per gram of dose equivalent I–131 from the present TS value of 2.0 micro-curies per gram. This limit may be exceeded for a 48-hour period provided it does not exceed 4.0 micro-curies per gram. In addition, the proposed change would limit reactor operation to no more than 800 hours within any 12-month period with Iodine-131 concentrations above 0.2 microcuries per gram of dose equivalent I–131. The licensees proposed these additional reactor coolant activity limitations in accordance with the BWR Standard Technical Specifications as requested by the NRC staff.

The proposed amendments would also add to the Reactor Coolant Specific Activity Sampling and Analysis Program (Table 1 of Section 3.6.B) Krypton-88 (Kr–88) as part of the offgas sample in accordance with the BWR Standard Technical Specifications (NUREG–0123, Revision 3).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing examples of actions that are likely, and are not likely, to involve significant hazards considerations (48 FR 14870). Examples of actions not likely to involve a significant hazards consideration include: "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement." The restrictions, limitations and controls on unidentified primary containment leakage as measured by the primary containment (Drywell) sump system, I–131 activity limits and coolant chemistry activity sampling (Kr–88) which would be added to the present limits in the TSs are encompassed by the above example. Thus, these changes fall within example (ii) of changes that are not likely to involve significant hazards considerations and, on this basis, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Finally, the proposed amendment request would delete any limiting conditions for operation, surveillance requirements, calibration frequency requirements and bases for the Drywell Air Monitoring Systems relative to detecting unidentified Drywell leakage. This request will be the subject of a separate **Federal Register** notice.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006.

NRC Branch Chief: John F. Stolz.

Power Authority of the State of New York, Docket No. 50–333, James A FitzPatrick Nuclear Power Plant, Oswego County, New York.

Date of amendment request: November 10, 1983.

Descriptions of amendment request: This amendment would modify the Technical Specifications to reflect the installation of nine remote, manually operated containment isolation valves in the Reactor Building Closed Loop Cooling Water System (RBCLCWS) piping, in compliance with 10 CFR Part 50, Appendix A, GDC 57. The amendment would also exclude these valves from quarterly surveillance requirements. Testing, instead, would be conducted once per operating cycle.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed revision entails a change in surveillance interval for the newly installed RBCLCWS valves and does not involve any change in operating conditions or design. Therefore, no increase in the probability of an accident previously evaluated or the creation or a new or different kind of accident will result from the proposed change. Also, since no changes in any accident analyses will result from a change in surveillance interval, no increase in the consequences of any accident previously evaluated is expected to occur. An increase in surveillance interval can, in general, result in a reduced safety margin. For the case in point, however, a continuous flow of coolant through the RBCLCWS to the drywell air and recirculation coolers is necessary. Closure of the RBCLCWS valves during normal operation to test operability quarterly would temporarily deprive these coolers of coolant flow, resulting in the drywell air and equipment temperature limits possibly being exceeded. Therefore, the proposed revision to test operability of the RBCLCWS valves once per cycle, during shutdown, does not create a reduction in safety margin.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 28, 1983.

Description of amendment request: This amendment would modify the Technical Specifications to reflect changes in the minimum critical power ratio (MCPR) Operating Limits resulting from turbine control valve modifications completed during Reload 5. In the table entitled "MCPR Operating Limit for Incremental Cycle Core Average Exposure," the MCPR values for the 39% thru 43% rod block monitor hi-trip level settings for "EOC-1GWD/t to EOC" would be increased from 1.29 to 1.30. In addition, Figure 3.1-2, "Operating Limit MCPR Versus τ (defined in Section 3.1.B.2)—For all Fuel Types," would be revised to account for the valve modification. The subject modifications changed the turbine control valve configuration from partial to full arc admission. Prior to this modification, the main turbine's four control valves would open in sequence—two valves open simultaneously, while the remaining two valves open one after the other and only after the first two valves were fully open. At full power, this resulted in three valves fully open and the remaining valve open approximately 25-33 percent.

With full arc admission, all four valves open simultaneously. At full power, this results in all four valves open approximately 50-52 percent. Since each control valve admits steam to only one ninety degree quadrant of the turbine rotor, this modification results in full-arc steam admission. Full arc admission reduces the cyclical stresses on the turbine blades that accompany partial arc admission.

The proposed changes to the MCPR operating limits are based on an analysis of the load rejection without bypass event for the full arc configuration.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: (vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The changes proposed in this amendment request are encompassed by this example. The revised MCPR Operating Limits are based on calculations of the load rejection without bypass event in the full arc configurations. The load rejection without bypass event begins with a loss of generator load. The resulting power/load imbalance closes the turbine control valves. Full stroke closure time is 150 msec. Since in full arc all the turbine control valves are only partially open, closure is more rapid than in partial arc where full stroke time is required. The effect on the reactor core of this more rapid closure is that the void collapse occurs faster relative to the insertion to negative reactivity by the scram signal, which is unaffected by the partial to full arc change. The potential consequences of a load rejection without bypass event (a previously analyzed event) are therefore more severe for the full arc configuration. However, the consequences are still within the relevant acceptance criteria because the MCPR Operating Limit has been increased accordingly, thus preserving the original safety margin. Therefore, the Commission proposes to determine that the proposed license amendment does not involve significant hazards considerations.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: January 6, 1984.

Description of amendment request: The proposed amendment would incorporate into the license the Commission approved Physical Security Plan.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration related to "a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: . . ." in that the amendment would add a license condition to incorporate the Commission approved Physical Security Plan into the license. On this basis, the Commission proposes to determine that this action does not involve a significant hazards consideration. (The Physical Security Plan consists of Safeguards Information of the type specified in 10 CFR 73.21 and accordingly is withheld from public disclosure.)

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: October 21, 1983.

Description of amendment request: The amendment would change Technical Specification 3.4.9.3, "Overpressure Protection Systems," from a power operated relief valve (PORV) system to a residual heat removal (RHR) relief valve system. The associated Technical Specification bases and surveillance requirements would also be changed to reflect the RHR relief valve system.

Basis for proposed no significant hazards consideration determination: The RHR relief valve system would have a lower lift setting of 450 psig to protect against overpressure compared

to the lowest lift setting of 540 psig for the PORV system. Also, the RHR relief valve system would change the action statement to require depressurization and venting of the reactor coolant system following 7 days or 8 hours for 1 or 2 inoperable valves respectively. The present PORV system action statement only requires Commission notification and preparation of a special report for any inoperable valve(s). The coolant flowpath for overpresssure protection will remain essentially unchanged, since both the PORVs and RHR relief valves are located inside containment and discharge to the pressurizer relief tank location inside containment. Surveillance requirements and bases would reflect the new system, but essentially remain unchanged.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The amendment involved here is similar to this example in that it tightens the limitation on the lift setting and provides a more restrictive action statement. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, P.O. Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Elinor G. Adensam.

Southern California Edison Company, Docket Nos. 50–206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: May 7, 1981, November 30, 1983, and December 30, 1983.

Description of amendment request: The proposed amendment requested by the licensee's November 30, 1983 submittal, as supplemented December 30, 1983, would revise Section 3.7, "Auxiliary Electrical Supply," and Section 4.4, "Emergency Power System Periodic Testing." The revision to Section 4.4 includes, among other changes, substantive revisions to the surveillance requirements for the station batteries. This proposed request supersedes the licensee's October 20, 1978 request regarding surveillance requirements for the station battery which was previously noticed in the **Federal Register** (48 FR 38421, August 23, 1983). In addition, by application dated May 7, 1981, the licensee proposed certain Technical Specification modifications that included changes related to the auxiliary feedwater system. Proposed technical specification 3.4.3 would add limiting conditions for operation regarding the motor driven and steam driven auxiliary feedwater pumps. This proposed technical specification was inadvertently omitted from License Amendment No. 65 dated October 22, 1982.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards of no significant hazards consideration by providing certain examples (April 6, 1983, 48 FR 14870). These examples are not applicable in many cases to the proposed November 30, 1983 application. The basis for concluding that the standards are met with respect to a no significant hazards consideration is discussed below.

The licensee discussed each of the proposed changes. The portion of the licensee's discussion describing each change is presented below.

Section 3.7.I This section would be revised to include power supply requirements in Modes 1 through 4, instead of only defining requirements in Modes 1 and 2 as is presently the case. These changes would be consistent to the extent parcticable, with the Standard Technical Specifications (STS) and will formalize the existing station practice. By adding specific power supply requirements in Modes 3 and 4, the plant safety is enhanced. The remainder of the revisions in this section would be editorial in nature involving no substantive changes and including the use of standard outline format. Specification 3.7.I.A would be consistent with the definition of offsite power supply incorporated into Specification 3.7.II (revised to 3.7.III) by Amendment No. 68 to the license. Specification 3.7.I.A.3.C would be revised to include all required Vital Buses including the newly installed Vital Buses which support equipment installed as part of the TMI modifications. Specification 3.7.I.A.4 would be revised for clarity to explicitly require the operability of the battery banks associated with the DC buses.

Section 3.7.II This section would replace the previous 3.7.II (now 3.7.III) to add the Uninterruptible Power Supply (UPS) for MOV 850C which were implied by the Surveillance Requirements contained in Technical Specifications 4.4.B.1.g (now 4.4.E), 4.4.B.3 (now 4.4.F) and 4.4.D. The requirements imposed on the operability of the system would be consistent, to the extent practicable, with the STS and will formalize the existing station practice. The action requirements would allow continued operation for 72 hours with either one load sequencer inorperable or the UPS inoperable, or both, since this event would still allow one train of safety injection to be operable due to the configuration of the safety injection system at the station. By adding these specific requirements which are omitted from the existing Technical Specification, the plant safety would be enhanced.

Section 3.7.III This section (previously 3.7.II) would be revised editorially into standard outline format. Specification 3.7.III.A.3 would be revised for consistency with 3.7.I.A.4 for the DC buses and to require the operability of all Vital Buses associated with equipment required to be operable in Modes 5 and 6. A review of Sections 3.1 and 4.1 of the Technical Specifications determined that the only major instruments, components or systems supplied by the vital buses that are required in Modes 5 and 6 are: (1) RCS temperature indication (table 4.1.1–5); (2) Pressurizer pressure (Table 4.1.1–7); (3) Pressurizer level (Table 4.1.1–8); (4) Area Radiation Monitoring System (Table 4.1.1–18); (5) Nuclear Flux, 3 NIS Channels Table 3.5.1); and (6) 2 Source Range NIS Channels, Mode 6 only, (TS 3.8.A.2).

The following vital bus review includes a description of which vital buses provide power to the instruments indicated above. (1) Vital Buses 1, 2 and 3 each have one train of RCS temperature (T-cold), Pressurizer pressure (narrow range). Each vital bus has two NIS channels, one power range and one source or intermediate range. All other loads on Vital Buses 1, 2 and 3 are not required in Modes 5 or 6. (2) Vital Buses 3A, 5 and 6 have predominately post-TMI loads. None of the loads on these buses in required or necessary in Modes 5 or 6. (3) Vital Bus 4 presently has the only wide-range Pressurizer pressure indicator and cold-calibrated pressurizer level indicator. It also provides power to valves in both flow paths to the core from the charging pumps. In addition, all Area Radiation Monitors and Operational Radiation Monitors are supplied from this bus. Also, Vital Bus 4 is the alternate supply for one source range and one power range NIS channel.

Accordingly, Vital Bus 4 would be required to be operable at all times and since Vital Buses 1, 2 and 3 each have only one power range NIS channel and

two additional channels are required in addition to those associated with Vital Bus 4, two buses of the three are required. This configuration is modified to allow for the two source range channels as required in Mode 6 by specifying that Vital Bus 1 be operable.

Section 4.4 This section would be revised so that the equipment surveillance is applicable as required by the newly established mode related LCO's of Specification 3.7 as discussed above. The format would also be revised to be consistent with the new LCO's for the load sequencers and the MOV 850C UPS. Specific changes are discussed below.

Section 4.4.B.g (Deleted) This section would be deleted since the load sequencer surveillance is transferred to 4.4.E. This revision would involve no substantive changes.

Section 4.4.D The proposed Technical Specifications would revise the battery surveillance requirements consistent with the STS. The STS are based on the recommendations of Regulatory Guide 1.120, "Maintenance, Testing, and Replacement of Large Lead Storage Batteries for Nuclear Power Plants," and the Institute of Electrical and Electronics Engineers (IEEE) Standard 450–1980, "IEEE Recommended Practice of Maintenance, Testing, and Replacement of Large Lead Storage Batteries for Generating Stations and Substations."

Implementation of the STS at San Onofre Unit 1 would assure that stanby DC power supplies are maintained in an operable condition as required by the proposed mode dependent LCO's. The proposal involves significant changes to format and content. To assure all considerations are addressed, the following discussion provides background information on the safety function of San Onofre Unit 1 batteries and specific information on the actual surveillances. Item numbers correspond to the proposal.

Background Information The safety function of Battery Banks 1 and 2 is to provide continuous power to necessary plant loads in response to a loss of offsite power (LOP) event. The time period during which the batteries must supply continuous power is from LOP initiation until a diesel generator provides sufficient output to carry all necessary plant loads. In the event of a safety injection response to a loss of coliant accident (LOCA) coincident with the LOP, this time period is approximately fifteen seconds with a completely automatic plant response. In the event of LOP without a coincident LOCA, this time period has been estimated to be a maximum of seven minutes with manual operator action required. However, in situations requiring manual operator action, the NRC has established a common practice of requiring that thirty minutes be available to complete the manual action. Therefore, the limiting safety function of Battery Bank 1 and 2 is to provide continuous power to necessary plant loads for thirty minutes following a LOP event. To assure Battery Banks 1 and 2 are adequate to maintain necessary plant loads for thirty minutes, both banks are conservatively sized for a design duty cycle of ninety minutes.

The safety function of the UPS is to provide the necessary power for one operation of MOV 850C in the event of a coincident LOP, LOCA in the safety injection leg aligned to diesel generator 1 and loss of diesel generator 2. To assure the UPS has adequate capacity to perform this safety function, the UPS is sized to perform two consecutive operations (opening and closing twice) of MOV 850C.

Section 4.4.D.1 This surveillance has been retained from the current Technical Specifications to assure the standby DC power system is available if required.

Section 4.4.D.2 The San Onofre Unit 1 DC battery banks have a nominal voltage of 125 volts.

Section 4.4.D.2.a.1 While the current Technical Specifications require a pilot cell voltage greater than or equal to 2.17 volts, the proposal establishes the minumum acceptable pilot cell voltage as 2.13 volts. As discussed in IEE STD 450–1980, cell voltage is not, by itself, an indication of the state of charge of the battery. The concern is that prolonged operation of cells below 2.13 volts can reduce the life expectancy of the cells. Since IEEE and NRC have endorsed a minimum acceptable pilot cell voltage of 2.13 volts, the current requirement of 2.17 volts is considered unnecessarily restrictive.

Section 4.4.D.2.a.2 The current Technical Specifications require an overall battery bank voltage greater than or equal to 125 volts while the proposed minimum is 129 volts. The proposed minimum formalizes actual practical at San Onofre Unit 1 for maintaining a battery bank under float charge conditions. As discussed in the comments on 4.4.D.2.a.1 above, a battery cell should be maintained at a minimum of 2.13 volts. By establishing an oveall minimum voltage of 129 volts, reasonable assurance is provided on a weekly basis that each connected cell (60 cells maximum) is at a minimum of 2.13 volts.

Section 4.4.D.2.b The proposal introduces surveillance requirements in response to a battery discharge with terminal voltage below 110 volts or battery overcharge with terminal voltage above 150 volts. The current Technical Specifications lack a corresponding requirement. The proposed responses to abnormal battery conditions assure batteries are returned to the normal state within an acceptable time period.

Section 4.4.D.2.b.1 The current Technical Specifications require the voltage of each connected cell to be greater than or equal to 2.17 volts and not decreased more than .08 volts from the value observed during the original acceptance test. The proposed minimum voltage is 2.13 volts with no comparison to the original acceptance test. The comments on 4.4.D.2.a.1 above concerning a minimum voltage of 2.13 volts also applies to this item. The comparison requirement is deleted from the proposal since the STS lack a corresponding requirement and this comparison provides misleading information when determining battery bank operability.

The current Technical Specifications require the specific gravity of each connected cell to be greater than or equal to 1.20 and not decrease more than .02 from the value observed during the previous test. The proposal requires that specific gravity of each connected cell to be greater than or equal to 1.195 and the average of all conncected cells to be greater than 1.205 in accordance with the STS. The proposal eliminates the requirement for a comparision with values observed during the previous test since the STS lack a coresponding requirement and this comparison yields misleading information for determining battery bank operability.

Section 4.4.D.2.b.2 The proposal introduces a quantitative acceptance parameter for the allowable resistance of cell-to-cell and terminal connections. This criterion is absent from the current Technical Specifications. Therefore, inclusion of this criterion in the proposal provides an additional test of the battery bank condition. The value for the aceptance parameter was derived from the STS.

Section 4.4.D.2.b.3 Ten connected cells are considered to be representative of a battery bank, which is consistent with the San Onofre Unit 2 Technical Specifications. Battery Banks 1 and 2 were sized based on an electrolyte temperature of 61°F. Therefore, a minimum electrolyte temperature above 61°F provides assurance that the batteries operate in their designed intended thermal environment. The UPS is excluded from this provision since the

UPS thermal environment is controlled by atmospheric temperature and process heat. The arrangement allows electrolyte temperature to occasionally drop below 61°F, particularly during Modes 5 and 6 when no process heat is produced (the UPS is not required to be operable in Modes 4, 5 and 6). However, the UPS battery bank is adequately sized to allow reliable operation in a low temperature environment. A calculation has been performed to show that with an electrolyte temperature of 35°F, the UPS has adequate capacity for two consecutive, complete operations (open and close twice) of MOV 850C. Additionally, the UPS is only required to be operable in Modes 1, 2 and 3, during which time the reactor coolant system is greater than or equal to 350°F and process heat is produced by turbine plant systems.

Section 4.4.D.2.c.5 The proposed charger output of 200 amps DC reflects battery bank requirements based on the 8 hour charging period. The proposed charger output at 130 volts DC formalizes station practice.

Section 4.4.D.2.c.6 The proposed charger test time of 8 hour reflects battery bank requirements and establishes a consistent test duration for the UPS and Battery Banks 1 and 2.

Section 4.4.D.2.d The current Technical Specifications require a battery service test be conducted on Battery Bank 1 for eight hours, Battery Bank 2 for three hours and the UPS for two consecutive complete strokes of MOV 850C. The proposed Technical Specifications require a battery service test for each respective battery bank's design duty cycle. As discussed above under background information, the duty cycles for Battery Banks 1 and 2 are ninety minutes while the duty cycle for the UPS is two consecutive complete strokes of MOV 850C. The proposed service test demonstrates battery capability to perform as designed. The current eight (Battery Bank 1) and three (Battery Bank 2) hour test durations are eliminated for consistency with the STS and IEEE STD 450–1980. The current service test procedure consists of applying the design battery load for ninety minutes, followed by a zero load period (no load applied to the battery) of six and one-half hours (Battery Bank 1) and one and one-half hours (Battery Bank 2). As approved by the NRC, the zero load period was performed merely to comply with the test duration requirements. Since the zero load period is inconsequential to the service test and to the determination of battery acceptability, the zero load period has been eliminated in the proposal.

Section 4.4.D.2.e The current Technical Specifications require a performance discharge test every sixty months subsequent to the satisfactory completion of an eighteen month battery service test. The proposed Technical Specifications also require a once per sixty month performance discharge test, but this test can be performed in lieu of the service test, once per sixty month interval in accordance with the STS. While performance of the service test is not a prerequisite for the performance discharge test in the proposal, the performance discharge test is sufficient for determining the acceptability of the battery banks. The batteries were designed to adequately maintain plant loads (as would be demonstrated in a service test) even if the battery capacity drops to 80% of the manufacturer's rating when subjected to a performance discharge test. Since the performance test acceptance criterion is 80% capacity, reasonable assurance exists that the batteries will pass a service test if they pass a performance discharge test.

Section 4.4.D.2.f The proposal introduces surveillances to be performed in response to battery degradation or aging. The current Technical Specifications lack a corresponding requirement. The proposed requirement assures a battery bank exhibiting signs of degradation or aging is properly monitored and corrective action taken if required.

Section 4.4.E The existing requirements of 4.4.E relate to surveillance of the auxiliary feedwater pumps. New proposed changes to the auxiliary feedwater system Technical Specification will be submitted for NRC review and approval at least 90 days prior to startup from the present outage. In anticipation of submitting revised specifications, the licensee proposes to delete the current Section 4.4.E specifications. By letter dated December 22, 1983, the NRC staff informed the licensee that adequate justification for deleting the current specification had not been provided and that the NRC did not intend to act on this portion of the Technical Specification change request. By letter dated December 30, 1983, the licensee provided additional information. Based on discussions between the NRC staff and the licensee, it was agreed that the request to delete the current provisions of Section 4.4.E will not be acted on at this time. New requirements of 4.4.E consist of the surveillance requirements for the load sequencers previously included in section 4.4.B.g and do not include any substantive changes.

Section 4.4.F This new section consists of the surveillance requirements for the diesel generators and the load sequencers previously included in 4.4.B.3. The only substantive change involves the use of 18 months for the interval between tests rather than refueling cycles. This change is consistent with the STS for testing frequencies of this nature and provides improved assurance of the operability of the required system when operating fuel cycles are extended. This change would enhance plant safety.

The licensee's November 30, 1983 submittal included a discussion of the proposed action with respect to a no significant hazards consideration. The submittal addressed the three standards of 10 CFR 50.92(c). This discussion has been reviewed and the Commission finds it acceptable with the exception of the proposed deletion of current Section 4.4.E as discussed above. Each of the three standards is discussed below.

First Standard With regard to the first standard, the licensee stated, "As discussed in the Safety Analysis, all changes will result in operation of the facility in accordance with the established design basis and, therefore, will not significantly increase the probability or consequences of an accident previously evaluated."

Second Standard The licensee stated the following with regard to the second standard, "As discussed in the Safety Analysis, all changes will result in operation of the facility in accordance with the established design basis, and therefore, will not create the probability of a new or different kind of accident from any accident previously evaluated."

Third Standard The licensee's discussion of the third standard states, "As discussed in the Safety Analysis, no safety margins will be affected by the changes identified in this proposed amendment."

Addition of Proposed Technical Specification 3.4.3 One of the examples of amendments not likely to involve a significant hazards consideration is example (ii), "a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification." The proposed change regarding the addition of Technical Specification 3.4.3 fits this category because it requires that the motor driven and turbine driven auxiliary feedwater pumps and associated flow paths for operable in Modes 1, 2, and 3 where these requirements does not exist now.

Because the submittals by the licensee appear to demonstrate that the

standards in 10 CFR 50.92 have been met, the Commission proposes to determine that the applications do not involve a significant hazards consideration.

Local Public Document Room Location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770.

NRC Branch Chief: Dennis M. Crutchfield.

Southern California Edison Company, Docket Nos. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: December 5, 1983.

Description of amendment request: This amendment would add limiting conditions for operation and surveillance requirements to the Technical Specifications to provide for redundancy in Decay Heat Removal Capability in all modes of operation. During startup and power operation, all three reactor coolant loops and their associated steam generators and reactor coolant pumps would be required to be in operation. Specifications regarding Decay Heat Removal Capability for Hot Standby, Hot and Cold Shutdown, and Refueling Modes are also proposed. The proposed changes supersede Sections 3.1.2, Section 3.8 and Table 4.1.2 of Proposed Change No. 96, submitted by letter dated December 1, 1980 (see 48 FR 38422, August 23, 1983).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards of no significant hazard consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples of actions likely to involve no significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. The proposed amendment adds more stringent limiting conditions for operation and surveillance requirements and, therefore, falls within the category of the cited example. On this basis, the staff proposes to determine that the requested action would involve a no significant hazards consideration determination.

Local Public Document Room Location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770.

NRC Branch Chief: Dennis M. Crutchfield.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 2, 1983 (Item 3 only).

Description of amendment request: The proposed amendment would permit conducting required surveillance testing of the Main Steam Isolation Valves (MSIVs), per paragraph 4.6.3.1.1 of the Technical Specifications, after entering Mode 4 but prior to entering Mode 3. This would replace the present requirement to test the MSIVs prior to entering Mode 4.

Basis for proposed no significant hazards consideration determination: When the plant is operating in Modes 5 or 6, the temperature of the reactor coolant does not exceed 200°F and therefore no steam is being produced. When the plant is operating in Mode 4, the temperature of the reactor coolant is between 200°F and 280°F and sufficient steam is generated to fill the main steam lines. This amendment would permit testing of the MSIVs in Mode 4 when there is sufficient steam in the main steam lines to keep the valve piston rings wet thereby avoiding damage to the valve bodies. Testing these valves when the piston rings are dry could damage the valve bodies and reduce the reliability of the valves for subsequent operation.

The purpose of the required testing is to demonstrate operability of the MSIVs which must function to provide containment isolation in the event of certain types of accidents. The intent of the current surveillance requirement is to demonstrate the operability of automatic containment isolation valves to ensure that the containment atmosphere will be isolated in the event of a release of radioactive material or pressurization of the containment. Performing the required testing prior to entering Mode 4 demonstrates valve operability before the potential for containment pressurization exists. Permitting the performance of the surveillance testing for the MSIVs in Mode 4 allows the potential for containment pressurization to exist before MSIV operability is demonstrated thereby increasing risk slightly. However, this increase in risk is offset by eliminating the potential for valve damage thereby increasing its reliability and decreasing risk of failure.

The proposed change has been reviewed against each of the criteria in 10 CFR 50.92, namely that the proposed change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

In addressing each of the above criteria, the proposed change in required testing of the MSIVs from prior to Mode 4 to during Mode 4 would not increase the probability of an accident previously evaluated because accidents previously evaluated are normally postulated to occur when the reactor is operating. The testing of the valves with the current Technical Specifications and with the proposed Technical Specifications would be when the reactor is not operating or when the reactor is not critical but is shut down or starting up from a cold shut down. Both situations have no effect on accidents associated with the steam lines which have been previously evaluated. The proposed change would not affect the consequences of an accident previously evaluated because the postulated accidents related to the MSIV involve failure modes of the valve which produce consequences during the testing phase much less severe than if the valves would fail during times when the reactor is operating, which is when the accidents previously evaluated are postulated to occur. The proposed change would possibly involve a reduction in margin of safety as indicated above; however, because this reduction in margin of safety, which is due to the possible increase in pressure of the containment due to a postulated steam break, would be compensated by a possible increase in reliability of the valve and decrease in the risk of valve failure, the proposed change is not considered significant. On this basis, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Windham County, Vermont

Date of amendment request: January 23, 1984.

Description of amendment request: Modification of the Technical Specifications to reflect a change in the main steam line low pressure setpoint, when the reactor is in the run mode, from 850 to 800 psig. The change will reduce the probability of spurious low pressure trips.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). One such amendment involves a change which either may result in some increase in the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the changes are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The change proposed by the licensee would reduce the main steam line low pressure set point from 850 to 800 psig.

The main steam line low pressure isolation setpoint trip function is provided primarily to provide protection against a pressure regulator malfunction which could cause the control and/or bypass valves to open, resulting in a rapid depressurization and cooldown of the reactor vessel. According to the licensee's analysis, the 800 psig trip setpoint limits the depressurization such that no excessive vessel thermal stress occurs as a result of a pressure regulator malfunction. No other adverse effects have been identified from this change, and the reduction in setpoint should reduce spurious primary containment isolations consistent with the licensee's proposed resolution to NUREG–0737, Item II.K.3.16, Reduction in the Challenges and Failures of Relief Valves. Therefore the change is clearly within all acceptable criteria with respect to the reactor coolant system and its associated auxiliaries as contained in Section 15.3.1 of the Standard Review Plan (SRP) "Loss of Forced Reactor Coolant Flow Including Trip of Pump Motor and Flow Controller Malfunctions" which is the applicable section of the SRP for the system involved.

Therefore, since the application for amendment involves proposed changes that are similar to the examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: Domenic B. Vassallo.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Windham County, Vermont

Date of amendment request: January 23, 1984.

Description of amendment request: Technical Specifications (TS) changes to incorporate revised radiological effluent and environmental monitoring limiting conditions for operation, action statements, and surveillance requirements. The proposed changes are in response to NRC requests of July 11, 1978 and November 15, 1978 and supersede in its entirety a licensee submittal of February 13, 1979. The proposed changes are intended to implement the design objectives and requirements of 10 CFR 50.34(a), 10 CFR 50.36a, 10 CFR 20,, 10 CFR 50 Appendix A, General Design Criteria 60 and 64 and 40 CFR 190.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). One such amendment involves a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The change proposed by the licensee is intended to implement: 10 CFR 50.34(a), which pertains to Design Objectives for equipment to control releases of radioactive materials in effluents from nuclear power reactors; 10 CFR 50.36a, which pertains to technical specifications on effluents from nuclear power reactors; 10 CFR 20, which pertains, in part, to the controlled release of radioactive materials in liquid and gaseous effluents; 10 CFR 50, Appendix A, General Design Criteria 60, which pertains to control of releases of radioactive materials to the environment and 64, which pertains to monitoring radioactivity releases; and 40 CFR 190, which pertains to radiation doses to the public from operations associated with the entire uranium fuel cycle. This amendment, therefore, reflects changes to make the Vermont Yankee license conform to changes in the regulations. Since the licensee is presently obligated by these regulations to control and limit offsite releases of radioactive materials to levels which are as low as is reasonably achievable, this license change will only result in very minor changes to facility operations which are clearly in keeping with the regulations.

Therefore, since the application for amendment involves proposed changes that are similar to the examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: Domenic B. Vassallo.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: December 10, 1981.

Description of amendment request: The proposed changes to the Technical Specifications would provide limiting conditions for operation and surveillance requirements related to new inverters and station batteries. Changes to the original application have been made which now require all four batteries and their associated DC systems be operable prior to taking one or both reactors critical. The original application proposed that one battery and its associated DC system be allowed to be inoperable prior to taking one or both reactors critical.

Basis for proposed no significant hazards consideration determination. The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations

relates to additional limitations, restrictions or controls not presently included in the technical specifications (ii). The proposed amendments would provide limiting conditions for operation for new equipment similar to that currently in effect for similar equipment.

The licensee's original application proposed that one of the four batteries and associated DC systems be allowed to be inoperable prior to taking one or both reactors critical. While most standard technical specifications relating to limiting conditions for operation of safety related components allow such components to be inoperable for short periods of time after which action statements must be followed, it is usually contemplated that all such components be operable prior to taking a reactor critical. While the licensee could have met the intent of the technical specifications by restoring the inoperable battery and DC system to operable status within the allowable time frame, inability to do so would necessitate the need for a reactor shutdown. Therefore, the staff, during a September 2, 1983 telephone conference call with the licensee, proposed wording changes to the licensee's original December 10, 1981 application which would require all four batteries and associated DC systems be operable prior to taking one or both reactors critical. The licensee agreed to these changes. Because these changes place additional restrictions on operation of the batteries and associated DC systems, the staff proposes to determine that the changes to the original amendment application do not involve a significant hazards consideration. The original application for amendments was noticed on July 20, 1983 (48 FR 33094).

Local Public Document Room location: Joseph P. Mann Public Library, 1516 16th Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: January 27, 1984.

Description of amendment request: The application proposes changes to the Technical Specifications concerning reporting requirements. The changes were submitted at the request of the Commission and are intended to conform to the reporting requirements of 10 CFR 50.73.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidelines concerning the application of the standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations is example (vii), a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations

The changes proposed by the licensee are intended to modify the Technical Specification reporting requirements to conform with the recently published final rule on reportability requirements, 10 CFR 50.73. The staff finds that they meet the Commission's example vii of actions likely to involve no significant hazards considerations. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: December 15, 1981, as revised December 16, 1983.

Description: The amendment would approve changes which would incorporate a description of an operating requirements for the new Stack Gas Monitoring System.

Date of Publication of individual notice in "Federal Register:" March 1, 1984 (48 FR 7671).

Expiration date of individual notice: April 3, 1984.

Local Public Document Room location: Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: December 16, 1983.

Description: The amendment would place lower, more restrictive limits on the allowable concentration of radioactive iodine in the reactor coolant than currently exist.

Date of Publication of individual notice in "Federal Register:" March 1, 1984 (48 FR 7669).

Expiration date of individual notice: April 3, 1984.

Local Public Document Room location: Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 12, 1983.

Brief Description of amendment: The proposed technical specification revisions involve changes in operating limits related to the boron injection system and control rod insertion limits. McGuire Units 1 and 2 have been operating with Westinghouse 17x17 (STD) fueled cores. It is proposed to refuel both Units 1 and 2 with Westinhouse 17x17 Optimized Fuel Assembly (OFA) regions. The major differences are the use of six intermediate (mixing vane) Zircaloy grids for the OFA fuel versus six intermediate (mixing vane) Inconel grids for STD fuel and a reduction in fuel rod diameter. As a result, future core loading would range from an approximately ⅓ OFA–⅔ STD transition core to eventually an all OFA fueled core. The OFA fuel has similar design features compared to the STD fuel which has had substantial operating experience in an number of nuclear plants. Major advantages for utilizing the OFA are: (1) Increased efficiency of the core by reducing the amount of parasitic material and (2) reduced fuel cycle costs due to an optimization of water to uranium ratio.

Regarding the deletion of boron injection system Technical Specification 3/4.5.4 for Unit 1, the proposed amendments would delete the Technical Specification requirements related to the boron injection system for Unit 1 as a result of bypass piping being installed around the boron injection tank.

In the matter of revised control rod insertion limits Technical Specification change, the proposed amendments would revise Technical Specification rod insertion limits for Units 1 and 2 as a result of hardware limitations and use of an appropriate conversion correlation.

Date of publication of individual notice in "Federal Register:" March 2, 1984 (49 FR 7893).

Expiration date of individual notice: April 2, 1984.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: February 24, 1984.

Brief description of amendment: The amendment would modify an existing technical specification requirement for the initial inservice inspection for two mechanical snubbers to permit inspection at the first refueling outage.

Date of publication of individual notice in "Federal Register:" March 13, 1984, 49 FR 9516.

Expiration date of individual notice: April 12, 1984.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, fort Pierce, Florida 33420.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: December 14 and 20, 1983.

Brief description of amendment: The proposed amendments would add a closure time requirement for Scram Discharge Volume (SDV) vent and drain valves to the Technical Specifications for both Hatch Units 1 and 2.

Date of publication of individual notice in "Federal Register:" February 27, 1984, 49 FR 7161.

Expiration date of individual notice: March 29, 1984.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego, California

Date of amendment request: January 3, 1984.

Brief description of amendment: Proposed changes to the Technical Specifications limit on operation of the 8-inch containment purge system from 1,000 hours per 365 days to 3,000 hours per 365 days.

Date of publication of individual notice in "Federal Register:" February 2, 1984 (49 FR 4166).

Expiration date of individual notice: March 5, 1984.

Local Public Document Room location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: December 23, 1983.

Brief description of amendment: The amendments would revise the surveillance interval for evaluation of the leakage integrity of post-accident recovery systems outside containment.

Date of publication of individual notice in "Federal Register:" February 16, 1984, 49 FR 6401.

Expiration date of individual notice: March 19, 1984.

Local Public Document Room location: Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless indicated otherwise, the Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments. If the Commission has prepared an Environmental Impact Appraisal related to these actions, it is so indicated. If indicated, this notice constitutes a negative declaration and indicates that the Commission has concluded that an environmental impact statement is not warranted because there will be no significant effect on the quality of the human environment.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Impact Appraisals as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket No. 50-348 Joseph M. Farley Nuclear Plant, Unit No. 1, Houston County, Alabama

Date of application for amendment: May 27, 1983.

Brief description of amendment: The amendment changes the Technical Specifications to correct the listing of hydraulic and mechanical snubbers that support safety related systems. The changes are purely administrative in nature.

Date of issuance: February 29, 1984.

Effective date: February 29, 1984.

Amendment No. 43.

Facility Operating License No. NPF-2. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" January 26, 1984 (48 FR 3345). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 29, 1984.

Significant hazards consideration comments received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Unit Nos. 1 and 2, Brunswick County, North Carolina.

Date of application for amendment: September 7, 1982.

Brief description of amendment: The amendments modify the Technical Specifications to provide a clarification of certain requirements, provide editorial and/or administrative corrections of certain requirements, and provide changes to reflect consistency with the actual plant design. The revisions are described as follows: revise the monthly channel check in the surveillance requirements, for Reactor Vessel Water Level to "Not Applicable" for instruments B21–LT–NO17D–3 and B21–LSH–NO17D–3, revise the valve group number from 7 to 8 for the reactor vessel head spray isolation valves, and revise the valve group number from 8 to 2 for the RHR discharge isolation valves to radwaste and the RHR process sampling valves, revise the minimum number of flame, heat, and smoke instruments required to be operable in their defined fire zones and add additional fire zones that have been established, revised the surveillance requirement for demonstrating Safety/Relief Valve (S/RV) operability, and revise the snubber list to reflect typographical corrections, snubber additions, and snubber deletions.

This amendment request also requested changes to the Technical Specifications regarding surveillance requirements for primary containment integrity and regarding by-passing the actuation of isolation functions associated with a loss of vacuum in the main turbine condenser. This portion of the amendment request will be addressed in a separate action.

Date of issuance: March 6, 1984.

Effective date: March 6, 1984.

Amendment Nos. 66 and 92.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the Technical Specifications.

Date of initial notice in "Federal Register:" The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Commonwealth Edison Company, Docket Nos. 50–237/249/254/265, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Quad Cities Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment: August 31, 1983.

Brief description of amendment: The amendments approve Technical Specification changes which provide additional limiting conditions for operation for the Class 1E RPS power monitoring systems when the number of Class 1E power monitoring systems are less than specified in the Technical Specifications. They also approve surveillance requirements which include a functional test, channel calibration and verification of trip setpoints.

Date of issuance: February 14, 1984.

Effective date: February 14, 1984.

Amendment Nos: 80, 72, 86, 81.

Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30. The amendments revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 22, 1983 (48 FR 52808). The Commission's related evaluations supporting these amendments are contained in Safety Evaluations issued by Commission letters dated June 9, 1983 (Dresden 2 and 3) and December 29, 1983 (Quad Cities 1 and 2). The Technical Evaluation Reports prepared by the staff's consultant, Lawrence Livermore Laboratory, were also issued by these letters.

No significant hazards consideration comments received: None.

Local Public Document Room locations: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451 (Dresden 2/3); and Moline Public Library, 504 17th Street, Moline, Illinois 61265 (Quad Cities 1/2),

Commonwealth Edison Company, Docket Nos. 50–237/249/254/265, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Quad Cities Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment: *January 12, 1982.*

Brief description of amendment: The amendments approve Technical Specification changes which revise the Limiting Condition for Operation concerning safety and relief valve position indication.

Date of issuance: February 24, 1984.

Effective date: February 24, 1984.

Amendment Nos: 81, 73, 87, 82.

Provisional Operating License No. DPR–19, and Facility Operating License Nos. DPR–25, DPR–29, and DPR–30. The amendments revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 22, 1983 (48 FR 52807). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1984. No public or State comments were received with respect to the Commission's proposed determination that the amendments would involve a no significant hazards consideration determination.

Local Public Document Room locations: Morris Pubic Library, 604 Liberty Street, Morris, Illinois 60451 (Dresden 2/3); and Moline Public Library, 504 17th Street, Moline, Illinois 61265 (Quad Cities 1/2).

Commonwealth Edison Company, Docket No. 50–249, Dresden Nuclear Power Station, Unit 3, Grundy County, Illinois

Date of application for amendmennt: July 18, 1983 and August 25, 1983, as supplemented by letters dated November 3, 10 and 30, 1983, two letters dated December 13, 1983 and a letter dated December 16, 1983.

Brief description of amendment: The amendment authorizes changes to the Technical Specifications to support Cycle 9 operation of Dresden 3 with reload fuel supplied by and the associated analyses performed by the Exxon Nuclear Company. The amendment also authorizes Dresden 3 to install eight lead control blades designed and built by ASEA-Atom. Specifically related to the operation with an Exxon fuel reload, the amendment authorizes (1) a revision of the MAPLHGR curves for Dresden Unit 3, Cycle 9, (2) replacement of the K_f curve with Exxon Nuclear Corporation's reduced flow MCPR limits and (3) an administrative change to the bases of the reactor coolant safety limit specification which corrects an oversight in the Dresden Unit 3, Cycle 8 submittal.

Date of issuance: March 9, 1984.

Effective date: March 9, 1984.

Amendment No.: 74.

Facility Operating License No. DPR–25: Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 22, 1983 (48 FR 52807 and 52808). No public comments or hearing requests were received with respect to the Commission's proposed determination that the amendment would involve a no significant hazards consideration determination. The Commission's related evaluation of the

amendment is contained in a Safety Evaluation dated March 9, 1984. A verbal comment was received by the Commission on December 5, 1983 from Mr. R. Minue, Illinois Department of Nuclear Safety. The concerns Mr. Minue expressed relating to the ASEA–Atom blade cracking issue are addressed in Section 2.5 of the aforementioned Safety Evaluation.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of Application for amendment: February 14, 1983.

Brief description of amendment: This amendment modifies the Technical Specifications by increasing the waiting time after shutdown before fuel from the reactor core can be moved. This increased waiting time is necessary to insure that the radiological consequences following a fuel handling accident inside of containment would be within the Commission's guidelines.

Date of issuance: February 21, 1984.

Effective date: February 21, 1984.

Amendment No.: 86.

Facility Operating License No. DPR–26. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" August 23, 1983 (48 FR 38395) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of Application for amendment: February 14, 1983.

Brief description of amendment: This amendment modifies the Technical Specification by requiring a minimum of 23 feet of water above the reactor pressure vessel flange during movement of control rods or fuel assemblies. The additional depth of water is to prevent inadvertent exposure of a fuel assembly during transfer.

Date of issuance: February 29, 1984.

Effective date: February 29, 1984.

Amendment No.: 87

Facilities Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" August 23, 1983 (48 FR 38395). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 29, 1984.

No signifcant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of Application for amendment: February 14, 1983.

Brief description of amendment: The amendment is an administrative change to the Technical Specifications which moves the reactor vessel surveillance program from Section 4.2 (item 7.2) to Section 3.1. No change to the requirements of the program are made.

Date of issuance: March 7, 1984.

Effective date: March 7, 1984.

Amendment No.: 88

Facility Operating License No. DPR–26. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" August 23, 1983 (48 FR 38395) The Commission's related evaluation of the amendment is contained in a letter dated March 7, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix, County, Michigan

Date of application for amendment: June 20, 1983.

Brief description of amendment: The amendment approves changes to the Guard Training and Qualification Plan.

Date of Issuance: February 17, 1984.

Effective Date: February 17, 1984.

Amendment No.: 65.

Facility Operating License No. DPR–6 Amendment revised the license.

Date of initial notice in "Federal Register": September 21, 1983 (48 FR 43135) The Commission's related evaluation and other pertinent discussion related to this amendment are contained in a Safety Evaluation and letter dated February 17, 1984. No public or State comments were received with respect to the Commission's proposed determination that the requested action would not involve a significant hazards consideration determination.

Local Public Document Room location: Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Consumers Power Company Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 3, 1983.

Brief description of amendment: The amendment approves (1) the deletion of Capsule A–60 from the Reactor Vessel Surveillance Capsule Program, and (2) modify the Reactor Vessel Surveillance Coupon Removal Schedule (Table 4.3.3) to provide the option of removing either a primary capsule or its equivalent counterpart located on the opposite side of the reactor core.

Date of issuance: February 28, 1984.

Effective date: February 28, 1984.

Amendment No. 79.

Provisional Operating License No. DPR–20. The amendment revised the Technical Specifications.

Date of initial notice in "Federal Register": October 26, 1983 (48 FR 49583) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1984. No comments were received with respect to the Commission's proposed determination that the requested action would involve a no significant hazards consideration determination.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Dennis M. Crutchfield.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 2, 1983.

Brief description of amendments: The amendments change the Technical Specifications related to response time for steamline isolation, deletion of mechanical snubbers, inoperable steam generator instrumentation channels, surveillance requirements for sprinkler system valves, and correction of typographical errors.

Date of issuance: February 29, 1984.

Effective date: February 29, 1984.

Amendment Nos.: 29 and 10.

Facility Operating License Nos. NPF–9 and NPF–17. Amendments revised the Technical Specifications.

Date of initial notice in "Federal Register:" October 27, 1983 (48 FR 49717) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 29, 1984.

No significant hazards consideration comments received. No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: March 17, 1983.

Brief description of amendments: These amendments revised the Technical Specifications (TSs) to prohibit the connection of more than one generating unit load to a single startup transformer. The specific revision to the TSs incorporates a revised Limiting Condition for Operation of the plant in the event of the loss of a startup transformer and establishes allowable degraded conditions and required action statements.

Date of issuance: March 2, 1984.

Effective date: March 2, 1984.

Amendments Nos. 127, 127, 124.

Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55. Amendments revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 23, 1983, 48 FR 52811.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconne County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: July 14, 1983.

Brief description of amendment: This amendment adds six hydraulic snubbers to the surveillance list in the Beaver Valley Unit 1 Technical Specifications.

Date of issuance: February 27, 1984.

Effective date: February 27, 1984.

Amendment No. 76.

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 26, 1983 (48 FR 49585).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Units No. 1 and No. 2, St. Lucie County, Florida

Date of application for amendments: October 12, 1983.

Brief description of amendments: The amendment revised the Facility Organization chart to change the title of Watch Engineer to Assist (Nuclear) Plant Supervisor at both St. Lucie Plant Units and standardized the title of the Nuclear Plant Supervisor. It eliminated a footnote in the Unit 1 Technical Specification that applied only until Unit 2 was licensed and commenced fuel loading. The Shift Technical Advisor function definition was modified. The amendments denied the request to allow for a dual role use of a properly qualified individual as both a Senior Reactor Operator and Shift Technical Advisor.

Date of issuance: February 24, 1984.

Effective date: February 24, 1984.

Amendment Nos.: 62 and 5.

Facility Operating License Nos. DPR–67 and NPF–16. Amendments revised the Technical Specifications.

Date of initial notice in "Federal Register." December 21, 1983 (48 FR 56498 at 56503).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1984.

No significant hazards consideration comments received. No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: January 20, 1983 as supplemented February 8 and 17, March 11, April 6, May 13, June 23 and July 15, 1983.

Brief description of amendment: The amendment revised the Technical Specifications to change the shutdown margin requirements, change the moderator temperature coefficient limits, and delete the flux peaking augmentation curve for fuel Cycle 6.

Date of issuance: March 1, 1984.

Effective date: March 1, 1984.

Amendment No.: 63.

Facility Operating License No. DPR–67. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" August 23, 1983, 48 FR 38302 at 38402.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1984.

No significant hazards consideration comments received: No.

Location of Local Public Document Room: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 11, 1978, modified August 9, 1978, and supplemented January 4, 1983, February 15, 1983 and October 31, 1983.

Brief description for amendments: These amendments revise the Technical Specifications to add motor operated valves 863–A and 863–B to the existing list of valves required to have their power removed. These valves are installed in parallel and provide a crosstie from the discharge of the residual heat removal pumps to the system. The valves are closed during normal operation and remain closed upon initial Emergency Core Cooling System (ECCS) injection phase, the valves will have power removed from their motor operators by locking open the circuit breakers in the appropriate motor control centers. Power will be restored to the valve operators to accomplish the switchover from the ECCS injection mode to the recirculation mode. The request also includes provisions to allow restoration of power for a limited time to comply with the Technical Specification surveillance requirements.

Date of issuance: February 22, 1984.

Effective date: February 22, 1984.

Amendment Nos.: Amendment No. 101 and Amendment No. 95.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in "Federal Register:" August 23, 1983 (48 FR 38403).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1984.

No significant hazards consideration comments have been received.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of applications for amendments: April 5, 1982; June 11, 1982, as corrected October 15, 1982; November 10, 1982; and March 31, 1983.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) for Hatch Unit 2 to: (1) Extend the time allowed to restore thermal power scram and control rod block trip setpoints to within allowable limits, and (2) correct an erroneous reference to a section of the TSs.

The amendments also revise the TSs for both Hatch Unit 1 and Unit 2 to: (1) Increase the minimum shift crew composition and (2) increase the frequency of independent audits of both the emergency and security plans.

Date of issuance: February 22, 1984.

Effective date: February 22, 1984.

Amendments Nos. 98 and 35.

Facility Operating Licenses Nos. DPR–57 and NPF–5. Amendments revised the Technical Specifications.

Date of initial notices in "Federal Register:" December 21, 1983, 48 FR 56505 (April 5, 1982, application); September 21, 1983, 48 FR 43137 (June 11, 1982, and November 10, 1982, applications); and October 26, 1983, 48 FR 49586 (March 31, 1983, application).

The Commission's related evaluation of the amendments in contained in a Safety Evaluation dated February 22, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of application for amendment: April 22, 1983.

Brief description of amendment: The amendment deletes the Technical Specification requirements concerning the drywell to torus differential pressure system.

Date of issuance: March 6, 1984.

Effective date: March 6, 1984.

Amendment No. 99.

Facility Operating License No. DPR–57. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 22, 1983, 48 FR 52812.

The Commission's related evaluation of the amendment is contained in a letter to Georgia Power Company dated March 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: November 10, 1981.

Brief description of amendment: Modifies the Technical Specifications pertaining to six miscellaneous matters:

(1) Section 3.2/4.2–H is added to provide a reference to Tables 3.2–H and 4.2–H

(2) Table 3.2–G is revised to reflect that the trip level setting of greater than or equal to −38.5 in. indicated level is the reactor low-low water level rater than the reactor low water level. Also, the RPT system (response time) trip level setting is provided and the note that this value would be determined by testing is removed.

(3) Sections 3.13.B.2 and 3.13.B.3.b are revised to be consistent with the wording of Sections 3.13.A.3, 3.13.C.3 and 3.13.D.3. This is also consistent with Section 6.11.

(4) In Section 6.6 the Assistant Vice President-Nuclear Generation is replaced by Director, Nuclear Generation.

(5) Section 6.9 is revised to provide a proposed alternative to the requirements of 10CFR20 Paragraph 20.203(c)(2).

(6) Section 6.11 is revised to add Specification 3.13.B.2 to the Fire Protection Systems for which Special Reports shall be submitted. This is consistent with Section 3.13.B.

Date of issuance: February 14, 1984.

Effective date: February 14, 1984.

Amendment No. 93.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" August 23, 1983, 48 FR 38406.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

Iowa Electic Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: November 30, 1976.

Brief description of amendment: Revises the Technical Specifications to include a program for verification of sensor response time in the Reactor Protection System.

Date of issuance: March 8, 1984.

Effective date: March 8, 1984.

Amendment No. 94.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" December 21, 1983, 48 FR 56506.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

Mississippi Power and Light Company, Middle South Energy Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 25, 1983, June 23, 1983, July 11, 1983, September 12, 1983.

Brief description of amendment: This Amendment grants changds to the Technical Specifications which involve the following sections: (a) 3.4.2.1: Revises low-low set function for relief valves (July 11, 1983), (b) Tables 3.3.2–1 and 4.3.2.1–1: Deletes automatic removal of low condenser vacuum bypass (June 23, 1983), (c) 4.3.4.2.3: Postpones the surveillance test for breaker are suppression time until first refueling outage (June 23, 1983), (d) 4.3.7.6 and Table 3.3.6–2: Lowers the minimum allowable countrate for Source Range Monitor (SRM) Operability (September 12, 1983), (e) 4.7.6.1.3: Revises surveillance procedure for fire pump diesel batteries (April 25, 1983), and (f) 4.8.2.1: Increases the load profile for Division 2 125 volt DC batteries (June 23, 1983).

Date of issuance: February 21, 1984.

Effective date: February 21, 1984.

Amendment No.: 12.

Facility Operating License No. NPF–13. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" August 10, 1983, 48 FR 36355;

November 2, 1983, 48 FR 50637 The Commission's related evaluation is contained in a Safety Evaluation dated February 21, 1984.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendment: July 1, 1983 as supplemented August 26, 1983.

Brief description of amendment: The amendments change the Technical Specifications (TS) in the following areas:

1. An additional restriction is included in the TS to reflect the installed hydrogen recombiners to meet the Commission's interim hydrogen rule (TS 3.6 and TS 4.4-1).

2. A change corrects an inaccuracy in the explanation of the K(z) curve for approximately the upper two thirds of the core. The K(z) is a function normalizing the limits of the height dependent heat flux hot channel factor of the fuel rods during accident conditions (TS 3.10-9).

3. An additional restriction is included in the TS to add a snubber (i.e., CVCH-166) to the existing table of safety related snubbers.

4. An additional restriction is included in the TS to reflect the addition of a chlorine detection system that was added to the control room air treatment system. The addition of the chlorine detection system is in response to the NRC requirement imposed by NUREG-0737 Item II.D.3.4 (TS 3.13 and table TS 4.1-1).

5. An administrative change deleted the operability of the diesel-generator in conjunction with the operability of the control room air treatment system (TS 3.13A). The operable status of the diesel generator is already covered by TS 3.7.B(2). This change thus eliminated a redundancy.

6. An administrative change deleted from TS table 4.1-1 the reference to the FSAR table 7.7-2.

7. An administrative change eliminated redundant or unnecessary information in TS table 4.1-1.

8. An administrative change eliminated the potential confusion as to frequency for examining the damper mating surfaces in the steam exclusion system. The change consists of replacing the words "at each reactor refueling shutdown" with the words "once each year."

9. Additional restrictions are included in the TSs to reflect the additions of containment water level, hydrogen monitoring and pressure monitoring instrumentation that were added to monitor these parameters in containment during an accident. The addition of these instruments is in response to our requirement imposed by NUREG-0737 item II.F.1.

Date of issuance: February 21, 1984.
Effective date: February 21, 1984.
Amendment Nos.: 68 and 62.
Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.
Date of initial notice in "Federal Register:" November 22, 1983, 48 FR 50804 at 52818.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 1984.

No significant hazards consideration comments received: No.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, 1747 Pennsylvania Avenue, Washington, D.C. 20006.

Local Public Document Room location: George M. McLendon Library, Hinds Jr. College, Raymond, Mississippi 39154.

Northeast Nuclear Energy Company, et al, Docket Nos. 50-245/336, Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of application for amendment: October 4, 1983.

Brief description of amendment: The amendment approves Technical Specification changes which comply with the final rule on Licensed Operator Staffing requirements of 10 CFR 50.54(m).

Date of issuance: February 16, 1984.
Effective date: February 16, 1984.
Amendment Nos.: 95 and 92.
Provisional Operating License No. DPR-21 and Facility Operating License No. DPR-65. The amendments revised the Technical Specifications.
Date of initial notice in "Federal Register:" November 28, 1983 (48 FR 53611).

The Commission's related evaluation of this action is contained in its letter transmitting the amendments dated February 16, 1984. No public or State comments were received with respect to the Commission's proposed determination that the requested action would involve a no significant hazards consideration determination.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06358.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 14, 1983.

Brief description of amendments: These amendments are in partial response to the February 14, 1983 application. They delete certain Appendix B Environmental Technical Specifications (ETS) which pertain to: (1) Noise monitoring requirements and (2) nonradiological water quality-related requirements, as required by the Federal Water Pollution Control Act Amendments of 1972.

The proposed deletion of thermal discharge specifications is not being granted at this time. These specifications were adopted as a result of a March 23, 1979 Decision by the Atomic Safety and Licensing Appeal Board (ALAB-532). Other changes requested in the February 14, 1983 application are being handled separately.

Date of issuance: February 24, 1984.
Effective date: February 24, 1984.
Amendments Nos. 92 and 94.
Facility Operating Licenses Nos. DPR-44 and DPR-56. Amendments revised the Technical Specifications.
Date of initial notice in "Federal Register:" November 3, 1983, 48 FR 50808.

The Commission's related evaluation of the amendments is contained in a letter and Environmental Impact Appraisal dated February 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of application for amendment: December 2, 1983.

Brief description of amendment: The amendment revised the Design Features Technical Specification which describes the type of fuel elements to be used in the upcoming and future refuelings. Previously, only type H-327 graphite was discussed; type H-451 is now also discussed. The use of H-451 graphite had been previously approved

contingent upon providing additional data; that data was submitted and found acceptable.

Date of issuance: March 2, 1984.

Effective date: March 2, 1984.

Amendment No.: 40.

Facility Operating License No. DPR–34. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register." December 21, 1983 (48 FR 56509).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of application for amendment: September 28, 1983.

Brief description of amendment: The amendment allows the licensee to possess and use large sized radioactive Cesium-137 and Krypton-85 instrumentation calibration sources.

Date of issuance: March 8, 1984.

Effective date: March 8, 1984.

Amendment No.: 41.

Facility Operating License No. DPR–34. Amendment revised the License.

Date of initial notice in "Federal Register:" November 22, 1983; 48 FR 52821.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: July 13, 1979, revised March 11, 1982 and December 7, 1982.

Brief description of amendment: The amendment permits operation with changes to the Radiological Effluent Technical Specifications that bring them into compliance with Appendix I of 10 CFR Part 50. It provides new Technical Specification sections defining limiting conditions for operations and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. This change also incorporates into the Technical Specifications the bases that support the operation and surveillance requirements. In addition, some changes were made in administrative controls, specifically dealing with the process control program and the offsite dose calculation manual. The amendment removes the current Radiological Effluent Technical Specifications from the Appendix "B" Technical Specifications.

Date of issuance: February 22, 1984.

Effective date: February 22, 1984.

Amendment No.: 53.

Facility Operating License No. DPR–54. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 22, 1983, 48 FR 52825.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Southern California Edison Company, Docket No. 50–206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: September 9, 1983.

Brief description of amendment: The amendment approves Technical Specification changes which require that manual valves CVS–301 and CVS–313 of the Sphere Purge Air Supply and Air Outlet lines, respectively, be locked closed during Modes 1, 2, 3, and 4.

Dates of issuance: February 17, 1984.

Effective date: February 17, 1984.

Amendment No.: 71.

Provisional Operating License No. DPR–13. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 22, 1983 (48 FR 52826).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Southern California Edison Company, Docket No. 50–206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application of amendment: August 10, 1983.

Brief description of amendment: The amendment approves changes to the Technical Specification which: (1) Increases the "Pressurizer Pressure-Low" trip setpoint in Table 3.5.5–2 from 1685 psig to 1735 psig, and (2) updates some of the descriptive material in Section 5 of the Technical Specifications regarding (a) the addition of the Sphere Enclosure Building around the containment, (b) pressure-temperature capability of the containment following postulated rupture of the primary or secondary coolant system, and (c) the range of the neutron monitoring instrumentation.

Date of issuance: February 17, 1984.

Effective date: February 17, 1984.

Amendment No.: 72.

Provisional Operating License No. DPR–13. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" October 26, 1983 (48 FR 49596).

Safety Evaluation dated February 17, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendment: June 2, 1983.

Brief description of amendment: Revise the Technical Specifications to allow operation of Browns Ferry Units 2 and 3 with increased core flow during the remainder of Cycle 5 for each unit.

Date of issuance: March 6, 1984.

Effective date: March 6, 1984.

Amendment Nos.: 88 and 61.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 22, 1983, 48 FR 52834.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 27, 1983 supplemented December 27, 1983.

Brief description of amendments: The amendments revised the TS to reflect the addition and installation of new fire protection systems at NA–1 & 2. The newly installed fire protection systems are based on the requirements of the NRC safety evaluation for the NA–1 & 2 Fire Protection Program dated February 1979. The listing of these systems in the NA–1 & 2 TS will provide the required specificity for limiting conditions of operability and surveillance requirements.

Date of issuance: February 28, 1984.

Effective date: February 28, 1984.

Amendment Nos.: 51 and 35.

Facility Operating License Nos. NPF–4 and NPF–7: Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 22, 1983, 48 FR 52804 at 52840. Subsequent to the initial notice in the **Federal Register**, Virginia Electric and Power Company provided additional clarifying information by letter dated December 27, 1983 for revising the North Anna Power Station, Units No. 1 and No. 2 Technical Specifications for conformance with the NRC safety evaluation for the North Anna Power Station Fire Protection Program. This information does not affect the discussion or conclusions of the initial notice of our proposed determination in any way. The Commission's related evaluation of the amendment is contained in a safety evaluation dated February 28, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendment: August 24, 1983.

Brief description of amendment: The amendment provide clarification of limiting conditions for operation and surveillance testing of weight loaded check valves which are specified as Containment Isolation Valves. The changes do not result in any revision to the presently approved technical specifications for Containment Isolation Valves.

Date of issuance: March 6, 1984.

Effective date: March 6, 1984.

Amendment Nos.: 52 and 36.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 22, 1983, 48 FR 52804 at 52838.

The Commission's related evaluation of the amendment is contained in a letter dated March 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Board of Supervisors Office, Louisa County Courthouse, Louisa Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company and Old Dominion Electric Cooperative, Docket No. 50–338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of application for amendment: November 15, 1983.

Brief description of amendment: The amendment deletes from Technical Specification Table 4.3–2 the surveillance requirements in Mode 4 (Hot Standby) for the auxiliary feedwater pump actuation signals from indication for Steam Generator Water Level Low-Low and Station Blackout. The change provides consistency with the NRC approved Westinghouse Standard Technical Specifications which are appropriately applied to this facility.

Date of issuance: March 6, 1984.

Effective date: March 6, 1984.

Amendment No. 53.

Facility Operating License No. NPF–4. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" January 26, 1984 (48 FR 3344 at 3558).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket No. 50–338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of application for amendment: December 30, 1982 (supplemented April 25, July 6 and July 11, 1983) and September 29, 1983.

Brief description of amendment: The amendment revises the North Anna Power Stations, Unit 1 Technical Specifications to allow operation with an average reactor coolant temperature of 587.8 degrees Fahrenheit with a maximum of 5% steam generator tube plugging as opposed to the currently approved average reactor coolant temperature of 582.8 degrees Fahrenheit with a maximum of 7% steam generator tube plugging. The amendment completes the licensee's Phase 1 and Phase 2 plant upgrade which increases secondary steam pressure in concentration from 11.5% to 0% and to change the Boric Acid System boron concentration from 11.5% to 7%.

Date of issuance: February 24, 1984.

Effective date: February 24, 1984.

Amendment Nos. Amendment No. 95 and No. 94.

Facility Operating License Nos. DPR–32 and DPR–37. Amendment revised the Technical Specifications.

Date of initial notice in "Federal Register:" November 22, 1983 (48 FR 52840).

The Commission's related evaluation of the amendments is attached to a letter dated February 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Bethesda, Maryland, this 15th day of March 1984.

For the Nuclear Regulatory Commission.

E. G. Tourigny,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 84–7584 Filed 3–21–84; 8:45 am]

BILLING CODE 7590–01–M

Meeting on Siting Guidelines

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of DOE/NRC Meetings of Siting Guidelines.

SUMMARY: The Nuclear Regulatory Commission (NRC) announces a series of forthcoming meetings with the U.S. Department of Energy (DOE), Office of Civilian Radioactive Waste Management.

DATE: March 21, March 28, and April 4, 1984. Each meeting will begin at 9:00 a.m.

ADDRESS: U.S. Department of Energy, Forrestal Building, Room 1E245, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Regis Boyle, Section Leader, Regulations and Environmental Section, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Phone: 301–427–4127 or FTS 427–4127.

SUPPLEMENTARY INFORMATION: The purpose of these meetings, which are open to the public as observers, is to resolve several issues concerning the DOE *General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories*. These issues are set forth in the NRC's preliminary decision on the siting guidelines (49 FR 9650). The siting guidelines are required by Section 112(a) of the Nuclear Waste Policy Act of 1982 and require the concurrence of the NRC.

Dated at Bethesda, Maryland, this 20th day of March 1984.

For the Nuclear Regulatory Commission.

John Philips,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration.

[FR Doc. 84–7913 Filed 3–20–84; 4:35 pm]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 901]

International Conferences; Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 623 (43 FR 37784), August 24, 1978, the Department is submitting its January to March 1984 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article IV (c)(4) of the guidelines published in the **Federal Register** on August 24, 1978.

Dated: March 14, 1984.

Kevin E. Carroll,

Director, Office of International Conferences.

U.S. Delegation to the World Administrative Radio Conference for Planning Allocation of the High Frequency Broadcasting Bands (HF–WARC), International Telecommunication Union (ITU), Geneva, January 10–February 10, 1984

Chairman

The Honorable Leonard H. Marks, Department of State

Vice Chairman

Rush W. Taylor, Jr., Executive Director of Delegation, Office of the Coordinator for International Communication and Information Policy, Department of State

Daniel Brenner, Assistant to the Chairman, Federal Communications Commission

William Jahn, Office of International Communications Policy, Bureau of Economic and Business Affairs, Department of State

Richard D. Parlow, Associate Director, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce

Walter Roberts, Executive Director, Board of International Broadcasting, Washington, D.C.

The Honorable Kenneth Tomlinson, Director, Voice of America, United States Information Agency

Jaroslav J. Verner, Special Adviser, Office of the Coordinator for International Communication and Information Policy, Department of State

Advisers

Stephen Bond, United States Mission, Geneva

Lewis Bradley, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce

The Honorable James L. Buckley, President, Radio Free Europe/Radio Liberty

Bohdan Bulawka, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce

Anna Case, Assistant Deputy for Operations, Office of Engineering and Technical Operations, Voice of America, United States Information Agency

David Cohen, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce

Wilson Dizard, Consultant, Department of State

Bruce C. Doerle, Office of Engineering Frequency Management, Voice of America, United States Information Agency

The Honorable Diana Lady Dougan, Ambassador, Coordinator for International Communication and Information Policy, Department of State

Edward Elly, United States Mission, Geneva

James Feeney, Bureau of International Organization Affairs, Department of State

The Honorable Mark S. Fowler, Chairman, Federal Communications Commission

The Honorable Lincoln Gordon, U.S. Ambassador (Retired), Department of State

Jennifer Gregg, United States Mission, Geneva

Howard Hardy, UNESCO Coordinator, Bureau of Educational and Cultural Affairs, United States Information Agency

George Hayden, Consultant, National Telecommunications and Information Agency, Department of Commerce

The Honorable Harold H. Horen, U.S. Ambassador (Retired), Department of State

Lucy Hummer, Deputy Assistant Legal Adviser, Department of State

George Jacobs, Consultant, Board for International Broadcasting

Stanley Leinwoll, Director of Engineering for Propagation and Frequency Management, Radio Free Europe/Radio Liberty

The Honorable David Markey, Administrator, National Telecommunications and Information Administration, Department of Commerce

Vernon McConnell, Staff Frequency Manager, United States Military Communications Electronics Board, Department of Defense

Neal McNaughton, Office of Science and Technology, Federal Communications Commission

D. Clark Norton, Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State

Maurice Raffensperger, Director, Office of Engineering and Technical Operations, Voice of America, United States Information Agency

Warren Richards, Office of Engineering and Technical Operations, Voice of

America, United States Information Agency
Charles Rush, Spectrum Division, Institute for Telecommunication Sciences, National Telecommunications and Information Agency, Department of Commerce
The Honorable Frank Shakespeare, Chairman, Board for International Broadcasting
Gilbert Sheinbaum, United States Mission, Geneva
Anatole Shub, Program Officer, Board for International Broadcasting
The Honorable Michael M. Uhlmann, Special Assistant to the President and Assistand Director for Legal Policy, The White House
Francis S. Urbany, Office of the Assistant Secretary for International Affairs, National Telecommunications and Information Agency, Department of Commerce
The Honorable Ben J. Wattenberg, Vice Chairman, Board for International Broadcasting
The Honorable Charles Z. Wick, Director, United States Information Agency

Private Sector Advisers

Mark Bench, Vice President, Bonneville International Corporation, New York, New York
Phillip Merrill, Corporation President, Capitol Gazette Communications, Inc., Washington, D.C.

U.S. Delegation to the Meeting of the Hague Conference, Special Commission on General Affairs and Policy, The Hague, January 16–20, 1984

Representative

Peter H. Pfund, Assistant Legal Adviser for Private International Law, Department of State

Private Sector Adviser

Professor Willis L. M. Reese, Columbia University School of Law, New York, New York

U.S. Delegation to the Twenty-Second Session of the Population Commission, and the Preparatory Committee for the International Conference on Population, United Nations Economic and Social Counsil (ECOSOC), New York, January 18–27, 1984

Representative

The Honorable Vincent P. Barabba, United States Representative to the Population Commission of the Economic and Social Counsil of the United Nations

Alternate Representative

The Honorable Richard E. Benedick, Ambassador, Coordinator of Population Affairs, Department of State

Advisers

Samuel Baum, Chief, Center for International Research, Bureau of the Census
Philander P. Claxton, President, World Population Society, Washington, D.C.
Harold S. Fleming, Economic and Social Affairs, U.S. Mission to the United Nations
Carl Hemmer, Office of Population, Agency for International Development

Private Sector Adviser

Daniel B. Levine, Study Director, Panel on Migration Statistics, National Academy of Sciences

U.S. Delegation to the Manpower and Social Affairs Committee, High Level Conference on Employment Growth, Organization for Economic Cooperation and Development (OECD), Paris, February 6–8, 1984

Representative

Roger B. Porter, Deputy Assistant to the President for Policy Development, The White House

Advisers

Robert P. Hagemann, Office of Economic Policy, Department of the Treasury
John Holmes, Director, Office of Regional Political-Economic Affairs, Bureau of European and Canadian Affairs, Department of State
Ronald E. Kutscher, Associate Commissioner, Office of Economic Growth and Employment Projections, Bureau of Labor Statistics, Department of Labor
Kathleen B. Utgoff, Senior Staff Economist, Council of Economic Advisers, Executive Office of the President
Roger Whyte, Special Assistant to the Deputy Undersecretary for International Affairs, Department of Labor

Private Sector Adviser

David L. Grove, President, United States Council for International Business, New York, New York

U.S. Delegation to the Eighth Meeting of the Dangerous Goods Panel, International Civil Aviation Organization (ICAO), Montreal, February 9–24, 1984

Member

Edward A. Altemos, Office of Hazardous Materials Regulation, Materials Transportation Branch, Department of Transportation

Adviser

Walter G. Greiner, Technical and Cargo Security Division, Federal Aviation Administration, Department of Transportation

Private Sector Advisers

Frank J. Black, Manager, Cargo Services, Air Transport Association, Washington, D.C.
Kenneth Snow, Manager, Dangerous Goods Control, Flying Tigers, Los Angeles, California

U.S. Delegation to the International Telecommunication Union (ITU), Interim Working Party 4/1, International Radio Consultative Committee (CCIR), Geneva, February 13–22, 1984

Representative

Richard E. Shrum, Deputy Director, Office of International Communications Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

William Long, Military Satellite Office, Defense Communications Agency, Department of Defense
Anthony Rutkowski, Office of Science and Technology, Federal Communications Commission
Thomas Tycz, Common Carrier Bureau, Federal Communications Commission
Thomas Walsh, National Telecommunications and Information Administration, Department of Commerce

Private Sector Advisers

Perry Ackerman, Spectrum Management Office, Space and Communications Group, Hughes Aircraft Company, Los Angeles, California
Donald M. Jansky, Jansky Telecommunications, Washington, D.C.
James Potts, Consultant, Communications Satellite Corporation, Washington, D.C.

U.S. Delegation to the 18th Session of the Intergovernmental Group on Oilseeds, Oils and Fats and the 15th Session of its Statistical Sub-Group, Food and Agriculture Organization (FAO), Rome, February 20–24, 1984

Representative Ex Officio

The Honorable Millicent Fenwick, United States Representative to the United Nations Agencies for Food and Agriculture, Rome

Representative

Richard T. McDonnell, Oilseeds and Products Division, Foreign

Agricultural Service, Department of Agriculture

Alternate Representative

George J. Dietz, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Private Sector Adviser

Rhond Roth, Director, Regulatory Affairs, National Soybean Processors Association, Washington, D.C.

U.S. Delegation to the Committee on Buffer Stock Operations, International Natural Rubber Organization (INRO), Kuala Lumpur, February 27–28, 1984

Representative

Seward L. Jones, Office of International Sector Policy, International Resources Division, Department of Commerce

Alternate Representative

James L. Gagnon, United States Embassy, Kuala Lumpur

Adviser

Robert Pastorino, Chief, Industrial and Strategic Materials Division, Bureau of Economic and Business Affairs, Department of State

Private Sector Adviser

Howard Chapel, Goodyear Orient Private Ltd., Singapore

U.S. Delegation to the 27th Session of the Subcommittee on Ship Design and Equipment, International Maritime Organization (IMO), London, February 27—March 2, 1984

Representative

Arthur E. Henn, Captain, Office of Marchant Marine Safety, United States Coast Guard, Department of Transportation

Alternate Representative

Paul J. Pluta, Commander, Office of Marchant Marine Safety, United States Coast Guard, Department of Transportation

Advisers

Harvey Clew, Shipping Attaché, United States Embassy, London
Howard L. Hime, Office of Marchant Marine Safety, United States Coast Guard, Department of Transportation
Eugene J. Holler, Office of Marchant Marine Safety, United States Coast Guard, Department of Transportation
John S. Spencer, Office of Marchant Marine Safety, United States Coast Guard, Department of Transportation

Private Sector Adviser

Harris Knecht, Zapata Offshore Company, Houston, Texas

U.S. Delegation to the Second Meeting of the Panel of Experts on Route Facility Costs, International Civil Aviation Organization (ICAO), Montreal, February 27—March 9, 1984

Member

Harvey B. Safeer, Director, Office of Aviation Policy and Plans, Federal Aviation Administration, Department of Transportation

Adviser

John C. Davies, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

William M. Hawkins, Vice President, Air Transport Association, Washington, D.C.

U.S. Delegation to the Fourth Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property, World Intellectual Property Organization (WIPO), Geneva, February 27–March 24, 1984

Representative

The Honorable Gerald J. Mossinghoff, Commissioner of Patents and Trademarks, Department of Commerce

Alternate Representative

Michael K. Kirk, Assistant Commissioner for External Affairs, Patent and Trademark Office, Department of Commerce
Harvey J. Winter, Director, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State

Advisers

George Dempsey, United States Mission, Geneva
The Honorable Harrison H. Schmitt, Consultant, Department of Commerce
Lee Schroeder, Industrial Property Specialist, Patent and Trademark Office, Department of Commerce

Private Sector Advisers

Donald W. Banner, Schuyler, Banner, Birch, McKie and Beckett, Washington, D.C.
Robert B. Benson, Allis-Chalmers Manufacturing Company, Milwaukee, Wisconsin
Donald R. Dunner, Finnegan, Henderson, Farabow, Garrett and Dunner, Washington, D.C.
Larry W. Evans, Standard Oil Company, Cleveland, Ohio
Gabriel M. Frayne, Abelman, Frayne, Rezac and Schwab, New York, New York
W. Thomas Hofstetter, Partishall McAuliffe and Hofstetter, Chicago, Illinois
John T. Lanahan, UOP Inc., Des Plaines, Illinois
Alan D. Lourie, Smith Kline Bechman Corp., Philadelphia, Pennsylvania
Leonard B. Mackey, ITT Corporation, New York, New York
Pauline Newman, FMC Corporation, Philadelphia, Pennsylvania
Louis T. Pirkey, Arnold, White and Durkee, Austin, Texas
Thomas F. Smegal, Jr., Townsend and Townsend, San Francisco, California
Richard C. Witte, Proctor and Gamble Company, Cincinnati, Ohio

U.S. Delegation to the Council, International Natural Rubber Organization (INRO), Kuala Lumpur, March 1–2, 1984

Representative

James L. Gagnon, United States Embassy, Kuala Lumpur

Alternate Representative

Seward L. Jones, Office of International Sector Policy, International Resources Division, Department of Commerce

Adviser

Robert Pastorino, Chief, Industrial and Strategic Materials Division, Bureau of Economic and Business Affairs, Department of State

Private Sector Adviser

Howard Chapel, Goodyear Orient Private Ltd., Singapore

U.S. Delegation to the Final Meeting of Study Group VIII, International Telephone and Telegraph Consultative Committee (CCITT), International Telecommunication Union (ITU), Geneva, March 1–9, 1984

Representative

Thomas Z. Corless, Industry Specialist, International Trade Administration, Department of Commerce

Alternate Representative

Charles D. Bodson, National Communications System, Washington, D.C.

Private Sector Advisers

Roy K. Andres, MCI, International, Rye Brook, New York
Seraphin B. Calo, IBM Research Laboratories, Yorktown, New York
Herman Silbiger, AT&T Information Systems, Morristown, New Jersey
Joe D. Wetherington, Adviser to the American Telephone and Telegraph

Company, c/o Global Information Strategies, Inc., Sterling, New Jersey

U.S. Delegation to the Intergovernmental Group on Rice, Food and Agriculture Organization (FAO), Rome, March 5–9, 1984

Representative Ex Officio

The Honorable Millicent Fenwick, United States Representative to the United Nations Agencies for Food and Agriculture, Rome

Representative

Thomas M. Slayton, Grain and Feed Division, Foreign Agricultural Service, Department of Agriculture

Alternate Representative

George J. Dietz, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Private Sector Adviser

J. Stephen Gabbert, Executive Vice President, U.S. Rice Miller's Association, Washington, D.C.

[FR Doc. 84-7655 Filed 3-21-84; 8:45 am]
BILLING CODE 4710-15-M

[Public Notice CM-8/722]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 3:00 PM, Thursday, April 12, 1984, in Room 3524, Department of State, Washington, D.C.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the April 12 meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees to Room 3524.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Friday, April 13, 1984, at the National Academy of Sciences, 2101 Constitution Avenue, N.W., in sessions which will not be open to the public. As these sessions will include discussion of classified material, they have been closed pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and 5 U.S.C. 552b (c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future negotiations. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctic resources, particularly Antarctic mineral resources. This portion of the meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OPA, Room 5801, Department of State. He may be reached by telephone on (202) 632-3262.

James L. Malone,

Chairman.

March 5, 1984.

[FR Doc. 84-7652 Filed 3-21-84; 8:45 am]
BILLING CODE 4710-09-M

[Public Notice CM-8/723]

Shipping Coordinating Committee, National Committee for the Prevention of Marine Pollution; Meeting

The National Committee for the Prevention of Marine Pollution will conduct an open meeting at 9:30 AM on April 12 (and 13th as necessary), 1984 in Room 2417, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. The purpose of the meeting is to prepare position documents for an International Conference on Liability and Compensation for Damage in Connection with the Carriage of Certain Substances by Sea. The Conference will be held at the International Maritime Organization, London, England, April 30—May 25, 1984. The Conference will consider:

A Draft Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC),

A Draft Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND), and,

Draft Articles for a Convention on Liability and Compensation in Connection with the Carriage of Noxious and Hazardous Substances by Sea (HNS).

In particular the Committee will discuss, for CLC and FUND, the following topics:

—Ships to be Covered by the Conventions
—Oils to be Covered by the Conventions
—Pre-spill Preventive Measures
—Definition of Pollution Damage
—Limitation of Liability; levels in general
—Indemnification of Shipowner

For HNS:

—Liability: Shipowner only or Shipowner and Shipper
—Types of Cargoes to be Covered
—Definition of Shipowner and Shipper
—Limits of Liability of Shipowner and Shipper Supplemental Coverage
—Cargo Insurance

and for both CLC/FUND and HNS:

—Geographical Scope of the Conventions
—Limitation of Liability; Updating Limitation Amounts
—Limitation of Liability; Standard for Breaking Limitation
—Channeling, Recourse, and Position of the Charterer
—Aids to Navigation Defense.

Members of the public may attend up the seating capacity of the room.

For further information contact Captain R. Corbett, U.S. Coast Guard Headquarters (G-WER), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426-2010.

Dated: March 8, 1984.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 84-7653 Filed 3-21-84; 8:45 am]
BILLING CODE 4710-07-M

[Public Notice CM-8/724]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea: Working Group on Radio Communications; Notice of Meeting

The Working Group on Radio Communications of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 AM on April 19, 1984, in Room 8334–8336 of the Department of Transportation, 400 Seventh Street, SW., Washington, D.C.

The purpose of the meeting is to review the results of the Twenty-seventh Session of the Subcommittee on Radiocommunications of the International Maritime Organization held in London during March 1984. There will also be a discussion with the Radio Technical Commission for Marine

Services (RTCM) Oversight Committee for the Future Global Maritime Distress and Safety System and a discussion of the Toulouse Symposium on the Use of Satellites for Maritime Safety.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Richard Swanson, U.S. Coast Guard Headquarters (G-TPP-3/63), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426-1231.

Dated: March 14, 1984.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 84-7654 Filed 3-21-84; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments: Certain Personal Computers and Components Thereof

The United States International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, and in the sale, of certain personal computers and components thereof that were found to infringe U.S. Letters Patent 4,136,359, U.S. Letters Patent 4,278,972, and Registered Copyright Nos. TX 873-203, TX 809-449, and TX 886-569. The Commission found that the infringement tended to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The Commission ordered the products involved excluded from entry into the United States.

Under section 337(g), the President, for policy reasons, may disapprove the Commission's determination within sixty days following receipt of the determination and record. If disapproved the President, the determination, and any order issued under its authority, would be without force or effect. The President also may approve the determination, making it, and any order issued under its authority, final on the date the Commission receives notice. The determination, and any related order, becomes final automatically following the sixty day review period, if the President has not disapproved it.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this case. Parties commenting on issues of domestic policy should refer to the portion of the Commission's record in which that issue was discussed. Parties should provide a rationale if the domestic policy issue was not raised before the Commission.

Comments may not exceed 15 letter-sized pages, including attachments. Twenty copies of the submission must be provided. Comments must be delivered by the close of business, Friday, April 6, 1984, to the Secretary, Trade Policy Staff Committee, 600 17th Street, NW., Washington, D.C. 20506. Copies of submissions will be provided on request and additional comments will be accepted through the close of business April 13, 1984. For further information, call Alice Zalik (202) 395-3432.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 84-7637 Filed 3-21-84; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-43]

Termination of Investigation Under Section 301: Rice Millers' Association

On October 11, 1983 the United States Trade Representative initiated an investigation on the basis of a petition filed by the Rice Millers' Association requesting relief under Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411 et seq.). (See 48 FR 56289) The petitioner alleged that the authorities on Taiwan subsidize the export of rice in a manner which burdens or restricts U.S. commerce.

On March 9, 1984, the petitioner withdrew the petition in light of the understanding reached between representatives of the American Institute in Taiwan and the Coordination Council for North American Affairs which, inter alia, calls for a limitation on the quantity of subsidized rice exports from Taiwan. In view of the withdrawal of the petition, the 301 investigation is hereby terminated.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 84-7636 Filed 3-21-84; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB February 28-March 9, 1984

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements, transmitted by the Department of Transportation, during the period Feb. 28-Mar. 9, 1984, to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Windsor, John Chandler, or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-1887 or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for approval under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements.

As needed, the Department of Transportation will publish in the **Federal Register** a list of those forms, reporting and recordkeeping requirements that it has submitted to OMB for review and approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The published list also will include the following information for each item submitted to OMB:

(1) A DOT control number.

(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.

(3) The name of the DOT Operating Administration or Secretarial Office involved.

(4) The title of the information collection request.

(5) The form numbers used, if any.

(6) The frequency of required responses.

(7) The persona required to respond.

(8) A brief statement of the need for, and uses to be made of, the information collection.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above.

Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 5 days from the date of publication is needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from Feb. 28–Mar. 9, 1984:

DOT No: 2385
OMB No: New
By: Federal Railroad Administration
Title: Stencilling Reporting Mark, Car Number, etc., on Freight Cars
Forms: None
Frequency: On Occasion
Respondents: Railroads

Need/Use: The Federal Railroad Administration and the railroad industry use these markings to identify rail cars for an inventory count, in case of involvement in an accident, for locating and tracking cargoes, and for repair billing records.

DOT No: 2386
OMB No: 2130–0035
By: Federal Railroad Administration
Title: Railroad Operating Rules
Forms: None
Frequency: On Occasion
Respondents: Railroads

Need/Use: This information is needed to ensure that the operating rules and practices of the railroad are safe and that the standard instructions that railroads provide to their employees are adequate and reasonable to provide for safe working conditions and operation.

DOT No: 2387
OMB No: New
By: Federal Highway Administration
Title: Submission of Alternate Procedures for Processing Railroad Adjustments
Forms: None
Frequency: On Occasion
Respondents: State Highway Agencies

Need/Use: The "alternate procedures" process allows the State highway agencies to assist the Federal Government by reviewing and approving Federal assistance for funding railroad construction changes required because of Federal-aid highway projects which cross the railroads right-of-way.

DOT No: 2388
OMB No: New
By: Federal Highway Administration
Title: Compliance Activity Report
Forms: FHWA–86
Frequency: On Occasion
Respondents: State Highway Agencies

Need/Use: The Federal Highway Administration (FHWA) needs information from the States to ensure that the States and contractors using Federal funds comply with equal opportunity requirements. FHWA issues guidance to assist compliance by the recipients of such Federal grant funds based on the data from these reports.

DOT No: 2389
OMB No: New
By: Federal Railroad Administration
Title: Quarterly Railroad Procurement Report
Forms: None
Frequency: Quarterly
Respondents: Railroads

Need/Use: The Federal Railroad Administration uses this information to ascertain and monitor the amount of Federal financial assistance dollars to railroads which they spend for goods or services from small, disadvantaged, or minority business firms.

DOT No: 2390
OMB No: 2132–0506
By: Urban Mass Transportation Administration
Title: Description of the Public Transportation System Urbanized Area
Forms: None
Frequency: On Occasion
Respondents: State and Local Governments

Need/Use: The Urban Mass Transportation Administration Regional Offices use this submission to ensure that Federal funds are not expended in violation of the law and to rank the various proposed projects in terms of meeting broad program goals.

DOT No: 2391
OMB No: New
By: Urban Mass Transportation Administration
Title: Project Description
Forms: None
Frequency: On Occasion
Respondents: State and Local Governments

Need/Use: The Urban Mass Transportation Administration must review the project description to determine whether the project falls into one of the eligible categories, e.g. fulfills environmental, planning and other requirements to which the project eligibility is subject.

DOT No: 2392
OMB No: New
By: Urban Mass Transportation Administration
Title: Project Justification
Forms: None
Frequency: On Occasion
Respondents: State and Local Governments

Need/Use: The Urban Mass Transportation Administration reviews the project justification to determine whether proposed project will meet one of the statutory goals and the proposed project is consistent with area-wide transportation plans.

DOT No: 2393
OMB No: 2132–0500
By: Urban Mass Transportation Administration
Title: Section 16(b)(2) Semi-Annual Program Status Report
Forms: None
Frequency: Semiannually
Respondents: State and Local Governments

Need/Use: The information is used by the Regional Offices to determine whether: (a) grantees are operating within the approved budget; (b) approaching an overrun condition within that budget; or (c) the project activities are falling behind schedule or becoming inactive; and (d) the requisitions for funds are supportable.

DOT No: 2394
OMB No: 2132–0529
By: Urban Mass Transportation Administration
Title: Transportation Improvement Program/Annual Element and Transportation Plan (TIP/AE and Plan)
Forms: N/A
Frequency: Annually/Biennially or on Occasion
Respondents: State and Local Governments

Need/Use: The TIP/AE and Plan is used by State and Metropolitan Planning Organizations as the basis for making investment decisions and as a management tool regarding the use of Federal and Non-Federal capital funds.

DOT No: 2395
OMB No: New
By: Urban Mass Transportation Administration
Title: Relocation and Real Property Acquisition Assurances

Forms: None
Frequency: On Occasion
Respondents: State and Local Governments

Need/Use: The information is used by Urban Mass Transportation Administration's Regional Administrators to obtain assurances from grantees that there is nothing in State or local law to prevent them from fully implementing the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970.
DOT No: 2396
OMB No: New
By: Urban Mass Transportation Administration
Title: Designated Recipients
Form: None
Frequency: On Occasion
Respondents: State and Local Governments

Need/Use: This information is used by Urban Mass Transportation Administration's Regional Offices to determine whether new applicants have the legal capacity to become designated recipients and to assume the following responsibilities; (1) receive and dispense Federal funds for transit purposes, (2) submit a progress report of project applications, (3) enter into formal project agreements with Urban Mass Transportation Administration, and (4) certify that a public hearing has been conducted.

DOT No: 2397
OMB No: New
By: Urban Mass Transportation Administration
Title: Assurance of Compliance with 5(i)(3) Urban Mass Transportation Act of 1964 (Public notice and/or hearings before fare raise and before significant change in service).
Form: None
Frequency: On Occasion
Respondents: State and Local Governments

Need/Use: This information is used by Urban Mass Transportation Administration's Regional Offices in determining that the grantee is complying with the Congressional intent of the Urban Mass Transportation Act of 1964, requiring adequate public notices and/or hearing before any fare increases and before any changes in service levels; that recognition and action has been taken on public comments regarding the above changes.

Issued in Washington, D.C. on March 15, 1984.

Jon H. Seymour,
Deputy Assistant Secretary for Administration.

[FR Doc. 84-7705 Filed 3-21-84; 8:45 am]
BILLING CODE 4910-62-M

[OST Docket No. 22; Notice 84-3]

Standard Time Zone Boundaries; Operating Exception for the Burlington Northern Railroad

AGENCY: Office of the Secretary, DOT.

ACTION: Notice; correction.

SUMMARY: In the Federal Register of March 6, 1984 (49 FR 8320), the Burlington Northern Railroad was granted an exception from the standard time of the time zones created by Congress. It was mistakenly stated that the exception permits operation under "*central time*" from the Montana-Idaho boundary to Sandpoint Junction, Idaho, despite the fact that the affected area is in the Pacific time zone. The exception actually permits operation under "mountain time."

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, (202) 426-4723.

Authority: Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-64; 49 CFR 1.59(a).

Issued in Washington, DC, on March 19, 1984.

Rosalind A. Knapp,
Deputy General Counsel.

[FR Doc. 84-7771 Filed 3-21-84; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-84-5]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before April 11, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination of the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on March 16, 1984.

John H. Cassady,
Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
[illegible]	Bolivar Aviation	14 CFR 141.65	To permit petitioner to hold examining authority and to recommend graduates of the schools certification courses for a pilot certificate and ratings for flight instructor, instrument flight instructor, and airline transport pilot, without taking the FAA written test.
23906	Eagle Aviation, Inc	14 CFR 121.61(c)(1)	To permit petitioner to use Mr. T. Belote as director of maintenance although he does not fully meet the experience requirements.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
[illegible]	Mobil Oil Exploration & Producing Southeast Inc	14 CFR 91.23(a)(3)	To extend Exemption 3472 which permits petitioner to operate its helicopters under IFR conditions with a 30-minute fuel reserve instead of the specified 45-minute fuel reserve.
[illegible]	Executive Air Fleet	14 CFR 135.297(a)	To extend Exemption 3202A which permits petitioner to use pilots in command who have completed an instrument proficiency check within the preceding 12-calendar months and, in addition, who have satisfactorily completed either an instrument proficiency check or training to proficiency in an approved aircraft simulator within the preceding 6 months.
19946	Trans World Airlines	14 CFR Portions of Parts 92 & 121	To extend Exemption 2914A to permit petitioner to operate its Boeing 747SP aircraft above flight level 410 without one pilot at the controls of the airplane wearing and using an oxygen mask secured, sealed, and supplying oxygen.
[illegible]	Int'l. Business Machines Corp	14 CFR 21.181	To permit petitioner to operate four Learjet Model 55 aircrafts using an FAA-approved minimum equipment list.
23921	Flight Safety Int'l	14 CFR 61.57 (c) & (d)	To permit petitioner to use an approved Phase II simulator to meet the currency requirements.
[illegible]	Type Rating Training J. R. Haley, Owners	14 CFR 61.157(d)(1) & 61.63(d) (2) and (3)	To amend and extend Exemption 3217A which permits trainees of Type Rating Training (TRT) to complete a practical test for the issuance of a type rating to be added to any grade of certificate that includes the items and procedures for testing in an airplane simulator as set forth in Appendix A of Part 61, although TRT does not have an operating certificate issued under Part 121. Petitioner requests that the exemption be amended to include McDonnell Douglas DC–8 airplane simulators.
21760	Civil Air Patrol (CAP)	14 CFR 61.118	To permit petitioner's members who hold pilot certificates to be reimbursed for fuel, oil, and maintenance while serving on official CAP missions.
23926	Dept. of Natural Resources, State of Wisconsin	14 CFR 91.73 (a) & (d)	To permit the operation of aircraft at night without lighted position lights and anti-collision lights.
23920	KLS Television	14 CFR 47.27 & 45.29	To allow petitioner to use its Bell Jet Range Helicopter displaying 3-inch registration markings on the side of the fuselage and 20-inch bottom markings instead of 12" side marks.
23703	Republic Airlines	14 CFR 63.39(b)(1)	To amend Exemption 3907 to revise condition 4 of the exemption to require each flight engineer to acquire 12 hours rather than 25 hours of operating experience under the supervision of a check airman.
[illegible]	Gulfstream Aerospace Corp	14 CFR 23.49(b)(1)	To permit type certification of the Gulfstream Model 1500 single engine pressurized Fan Jet airplanes with a stall speed greater than 61 knots.
22531	Pyramid Airlines	14 CFR Portions of Parts 21 & 91	To extend Exemption 3532 to permit petitioner to operate certain leased, U.S.-registered aircraft using FAA-approved minimum equipment lists.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23848	Greater Rockford Aviation, August C. Hohl	14 CFR 141.35 (b)(4), (c)(5), & (d)(4)	To permit petitioner to be eligible for designation as a chief flight instructor without meeting the required recency experience. *Denied 2/29/84.*
23707	Ford Motor Company	14 CFR 21.181, 91.29, & 91.165	To amend Exemption 3696 which allows petitioner to operate four Convair (CV-580) aircraft, N300K, N301K, N302K, and N303K, and two Grumman (G–1159 aircraft, N327K & N329K, using an FAA-approved minimum equipment list. The amendment would allow petitioner to add two Hawker Siddeley 125–700A (HS–125 aircraft, N324K & N326K, to its exemption. *Granted 2/29/84.*
13418	Sierra Academy of Aeronautics (Sierra)	14 CFR 63.39(b)(2)	To extend Exemption 2095D which permits petitioner and any similarly situated flight engineer school or operator to allow applicants being trained in preparation for the flight engineer practical test to take the normal procedures portion of the practical test in an appropriate simulator in lieu of taking that portion of the test in an airplane in flight. *Granted 2/29/84.*
23812	Sven A. Akesson	14 CFR 61.161(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotorcraft rating without meeting the recency of experience requirement. *Granted 2/29/84.*
22282	Regional Airline Assn.	14 CFR 135.261	To extend Exemption 3535B to the extent necessary to allow a certificate holder to assign a flight crewmember and to allow a flight crewmember to accept an assignment for duty during flight time if that assignment provides for at least 8, rather than 10, consecutive hours of rest during the 24-hour period preceding the planned completion of the assignment. *Granted 2/28/84.*
[illegible]	Braniff Int'l	14 CFR Portion of Appendix H Part 121	To extend Exemption 3147A which allows petitioner to conduct training and checking as permitted in a Phase II simulator without meeting the minimum visual field-of-view requirement subject to certain conditions. *Granted 2/28/84.*
20314	Flight Training Devices	14 CFR 61.63(d) (2), & (3), 61.157(d)(1) & Appendix A of Part 61.	To extend Exemption 3022A which permits petitioner's trainees to complete a portion of the practical test for the issuance of an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate by substituting the flight test requirements of § 61.157(a) for those of § 61.63(d) (2) and (3), limited to the items and procedures for testing in an airplane simulator as set forth in Appendix A of Part 61. *Granted 2/27/84.*
23818	United States Gypsum Co. (USGC)	14 CFR Portions of Parts 21 & 91	To permit petitioner to operate one Gulfstream G–1159 (G–II) aircraft, N510US, and one Falcon 20 (DA–20) aircraft, N414OUS, using an FAA-approved minimum equipment list. *Granted 2/27/84.*
16343	Scenic Airlines, Inc.	14 CFR 135.113	To extend Exemption 2631D which grants petitioner relief from § 135.113 to permit a passenger to occupy the copilot seat in Cessna 404 type airplanes operated by petitioner subject to certain conditions and limitations. *Granted 2/24/84.*

[FR Doc. 84–7821 Filed 3–21–84; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Marion County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Marion County, Oregon.

FOR FURTHER INFORMATION CONTACT: Richard R. Arnold, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301, Telephone: (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oregon Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct a beltline road through southeast Salem, Oregon, in Marion County. The proposal consists of an extension of Kuebler Boulevard from S. Commercial Street to Turner Road and an extension of Cordon Road from the Santiam Highway to Turner Road. An interchange with I–5 and an interchange with Santiam Highway are included in the proposal.

The project will provide improved circulation for the southeast quadrant of the city and will provide northbound access to I–5. The project will also complete the beltline which has been under construction in phases for several years.

The project has potential for land use impacts, noise increases at abutting residences, significant changes in traffic patterns, and reduction in wildlife habitat. The interchange at the Santiam Highway is expected to support industrial development and the interchange at I–5 may encourage commercial development at the interchange.

Information describing the proposed action will be sent to the appropriate Federal, State, and local agencies, and to private organizations and citizens who have previoulsy expressed interest in this proposal. Public meetings will be held, as may be necessary, and a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action, and the EIS, should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program)

Issued: March 15, 1984.

Richard R. Arnold,

Environment Coordinator, Safety Programs Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 84-7748 Filed 3-21-84; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in February 1984. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

SUPPLEMENTARY INFORMATION:

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4460–X	DOT–E 4460	Ethyl Corp., Baton Rouge, LA	49 CFR 173.29, 176.74(c), 176.76(g)(3)	To authorize special stowage limits for DOT Specification 51 portable tanks containing metallic sodium. (Mode 3.)
4661–X	DOT–E 4661	Foote Mineral Co., Exton, PA	49 CFR 173.34(e)(1)	To authorize transport of butyl lithium in petroleum solvent in DOT Specification 4BA240 cylinders with alternative retest procedures. (Modes 1, 2, and 3.)
5243–X	DOT–E 5243	Austin Powder Co., Cleveland, OH	49 CFR 173.103(a), 173.66(g)(1), 177.835(g).	To authorize modified DOT specification packaging for transportation of Class C or Class A explosives. (Modes 1, 2, and 3.)
5891–X	DOT–E 5891	U.S. Department of Energy, Washington, DC.	49 CFR 173.64(a)(4)	To authorize transport of high explosives in quantities greater than those authorized in 49 CFR, in DOT Specification 15A wooden boxes. (Mode 1.)
6530–X	DOT–E 6530	Liquid Air Corp., San Francisco, CA	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Airco Industrial Gases, Murray Hill, NJ	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Tri-State Supply Co., Bismarck, ND	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6691–X	DOT–E 6691	Union Carbide Corp., Danbury, CT	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To authorize use of DOT Specification 3A or 3AA cylinders over 35 years old which may be retested every 10 years, for transportation of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
6731–X	DOT–E 6731	U.S. Department of Defense, Washington, DC.	49 CFR 173.266(b), 175.3	To authorize small vials and ampules not currently specified for transportation of an M72E1 simulant chemical agent identification training set, containing a Class B poison, corrosive liquids, and non-hazardous articles. (Modes 1, 4.)
6735–X	DOT–E 6735	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.252	To authorize transport of bromine in a non-DOT specification cylinder constructed in accordance with all requirements of DOT Specification 4B, 4BA or 4BW except that the cylinder shall be marked "DOT–E 6735" in lieu of the DOT specification marking. (Modes 1, 2, and 3.)
6861–X	DOT–E 6861	Teledyne McCormick Selph, Hollister, CA	49 CFR 173.65(a)	To authorize use of DOT Specification 21P fiber drums with DOT Specification 2SL or 2U polyethylene liners, for transportation of certain Class A explosives. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8006-X	DOT-E 8006	U.S. Department of Defense, Washington, DC.	49 CFR 173.302(a)(1), 175.3, 178.65	To authorize certain variances from the specifications for DOT Specification 39 cylinders, for shipment of certain nonflammable gases. (Modes 1, 2, 3, and 4.)
8065-X	DOT-E 8065	U.S. Department of Energy, Washington, DC.	49 CFR 173.154(a)(6), 173.86(a)	To authorize shipment of diallyl phthalate-pyrotechnic materials in various DOT Specification wooden boxes. (Mode 1.)
8099-X	DOT-E 8099	U.S. Department of Defense, Washington, DC.	49 CFR 176.120(b)	To authorize cargo loading hatches of vessels being loaded with military explosives to remain open overnight under certain conditions. (Mode 3.)
7465-X	DOT-E 7465	State of Alaska, Department of Transportation, Juneau, AK.	49 CFR 173.304, 176.83, 176.905(1), Part 172, Part 176, Subpart H.	To authorize stowage of transport motor vehicles and liquefied petroleum gases aboard passenger vessels. (Mode 3.)
7607-X	DOT-E 7607	Ecology and Environment, Inc., Buffalo, NY.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7636-X	DOT-E 7636	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.304(a), 175.3	To authorize use of an additional model DOT-4L cylinder, having water capacity of 550 pounds, for liquefied carbon dioxide, and nitrous oxide. (Modes 1, 2, 3, and 4.)
7668-X	DOT-E 7668	Foster Wheeler Energy Corp., Livingston, NJ.	49 CFR 173.304(a)	To authorize use of non-DOT specification nonrefillable steel tubes welded closed at both ends, for transport of a nonflammable compressed gas. (Mode 1.)
7963-X	DOT-E 7963	Stauffer Chemical Co., Westport, CT	49 CFR 173.245, 173.356, 173.360(a)(5)	To authorize transport of perchloromethyl mercaptan and thiophene-2-acetyl chloride, in monel tanks constructed in accordance with DOT Specification 51, with certain exceptions. (Modes 1, 2, and 3.)
8051-X	DOT-E 8051	Mauser-Werke GmbH, Brul, West Germany.	49 CFR 178.19, Part 173, Subpart D, F, H.	To authorize hydrobromic acid solutions, corrosive material as an additional commodity. (Modes 1, 2, and 3.)
8264-X	DOT-E 8264	Hercules, Inc., Wilmington, DE.	49 CFR 173.93	To authorize shipment of certain solid propellant explosives (Class B) and smokeless powders for small arms (flammable solids), in non-DOT specification fiber cans or tubes packed in fiberboard boxes. (Modes 1, 2.)
8265-X	DOT-E 8265	do	49 CFR 173.197a, 173.93, 177.838(g)	To authorize transport of certain solid propellant explosives in non-DOT specification fiber tubes packed in telescoping DOT Specification 12B fiberboard boxes, and certain smokeless powders for small arms, in DOT Specification 21C fiber drums packed in fiberboard boxes. (Modes 1, 2.)
8306-P	DOT-E 8306	American Priority Enterprises, Inc., Rahway, NJ.	49 CFR 177.842(a), 177.842(b)	To become a party to Exemption 8306. (Mode 1.)
8324-X	DOT-E 8324	Rexnord, Inc., Milwaukee, WI.	49 CFR 173.245(a)(17), 175.3, 178.131	To authorize shipment of certain corrosive liquids, n.o.s., in a one-gallon tin can, placed in a molded polyethylene liner, overpacked in a modified 26 gage, untined DOT Specification 37A 5 gallon steel drum containing a non-hazardous resin mix. (Modes 1, 2, 3, and 4.)
8339-X	DOT-E 8339	Eastern Steel Barrel Corp., Piscataway, NJ.	49 CFR 173.119(a), (b), 173.245(a)(26), 173.245(b)(6), 173.249(a)(1), 173.250a(a)(1), 173.257(a)(1), 173.263(a)(28), 173.265(d)(6), 173.266(b)(8), 173.271, 173.272(i)(9), 173.277(a)(6), 173.287(c)(1), 173.289(a)(1), 173.292(a)(1), 173.357(b), 178.19.	To authorize manufacture, marking and sale of non-DOT specification 55-gallon polyethylene Specification 34 type container, for transportation of certain oxidizers, corrosive liquids, Class B poison, flammable liquids and a corrosive solid. (Modes 1, 2, and 3.)
8489-P	DOT-E 8489	Ciba-Geigy Corp., Greensboro, NC	49 CFR 173.154, 173.182, 173.217, 173.245b.	To become a party to Exemption 8489. (Modes 1, 2, and 3.)
8525-X	DOT-E 8525	Associated Container Transportation (USA), New York, NY	49 CFR 173.389(o)(1), 173.392(c), 176.700(h)(1), 176.700(h)(2).	To authorize shipment of mineral monazite sand, classed as radioactive material, low specific activity, n.o.s. under modified exclusive use provisions. (Modes 1, 2, and 3.)
8647-X	DOT-E 8647	Marine Technical Services, Inc., Stafford, TX.	49 CFR 172.101 column 6(b), 173.304(a)(2), 175.30.	To authorize shipment by cargo-only aircraft of pressurized liquid oxygen in DOT Specification 4L cylinders. (Mode 4.)
8716-P	DOT-E 8716	GTE Products Corp., Waltham, MA	49 CFR 173.28(m)	To become a party to Exemption 8716. (Mode 1.)
8722-X	DOT-E 8722	Northrop Corp., Hawthorne, CA	49 CFR 172.101, 173.276, 174.3, 175.3, 175.30, 176.3.	To renew; to authorize use of 304L stainless steel for container construction and redesignate assembly name from F-5G to F-20. (Modes 1, 2, 3, and 4.)
8732-X	DOT-E 8732	Dow Chemical Co., Midland, MI	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8753-X	DOT-E 8753	Union Carbide Corp., Danbury, CT	49 CFR 173.315	To renew, to increase the water capacity of the LTM-1600 tank from 1500 to 1670 and the LTM 2000 tank from 1950 to 2100 gallons, and to increase the 2 year retest period to 5 years. (Mode 1.)
8764-P	DOT-E 8764	Redding Air Service, Inc., Redding, CA	49 CFR 173.286, 175.3, 175.85	To become a party to Exemption 8764. (Mode 4.)
8770-X	DOT-E 8770	Eastman Kodak Co., Rochester, NY	49 CFR 172.402, 173.286(c)	To authorize shipment of a corrosive liquid and minute quantity of a flammable, poisonous solid in DOT Specification 12A, 12B or 15A fiberboard or wooden boxes with inside glass bottles. (Mode 1, 2, and 3.)
8772-X	DOT-E 8772	Armak Co., Chicago, IL	49 CFR 172.101, column 6(b)	To authorize an increase in the net quantity limitation, not exceeding five gallons per package, for shipment of certain corrosive liquids and flammable liquids that are corrosive, when shipped via cargo-only aircraft. (Mode 4.)
8901-P	DOT-E 8901	Great Lakes Chemical Corp., West Lafayette, IN.	49 CFR 173.357	To become a party to Exemption 8901. (Mode 1.)
8901-P	DOT-E 8901	Hopkins Agricultural Chem. Co., Madison, WI.	49 CFR 173.357	To become a party to Exemption 8901. (Mode 1.)
9052-X	DOT-E 9052	Chemical Handling Equipment Co., Inc., Detroit, MI	49 CFR 173.119, 173.125, 178.19, 178.253, Part 173, Subpart F.	To authorize an alternate steel frame to surround the polyethylene portable tank for shipment of various corrosives, flammable and oxidizers. (Modes 1, 2, and 3.)
9061-X	DOT-E 9061	The S. S. I. Group Ltd., Fairdale, KY	49 CFR 172.504, 173.178	To authorize rail as an additional mode of transportation, and to allow more than 10 lbs. of calcium carbide per transport vehicle (Modes 1, 2.)
9061-P	DOT-E 9061	Allied Chemical, Morristown, NJ	49 CFR 173.164(a)(6)	To become a party to Exemption 9061. (Modes 1, 2.)
9116-X	DOT-E 9116	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173 Subpart F.	To authorize additional portable tanks of 300 gallon capacity identical (except for size) to the 400 gallon capacity presently authorized. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9163–X	DOT–E 6906	The Garret Corp., Tempe, AZ	49 CFR 173.302(a)(1), 175.3, 178.65	To authorize manufacture, marking and sale of non-DOT specification nonrefillable steel aperical pressure vessels, for shipment of nitrogen with traces of helium, classed as nonflammable gas. (Modes 1, 2, 3, and 4.)
9174–P	DOT–E 9174	McDonnell Douglas Corp., St. Louis, MO	49 CFR 173.302(a)	To become a party to Exemption 9174. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9066–N	DOT–E 9066	Bayern-Chemie GmbH, Ottobrunn, West Germany.	49 CFR 173.154, 175.3	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption. (Modes 1, 2, 3, and 4.)
[illegible]–N	DOT–E 9089	Fabricated Metals, Inc., San Leandro, CA	49 CFR 178.251	to authorize manufacture, marking and sale of DOT Specification 56 portable tanks, with one specification deviation compensated by additional structural features, for transportation of oxidizers. (Modes 1, 2.)
9119–N	DOT–E 9119	Bennett Industries, Pacoima, CA	49 CFR 173.125	To authorize manufacture, marking and sale of DOT Specification 34 drums, for shipment of certain flammable liquids. (Modes 1, 2, 3.)
9125–N	DOT–E 9125	Tri-Wall Containers (Israel) Ltd., Tel-Aviv, Israel	49 CFR 173.252(a)(1), 178.168, 178.169	To authorize manufacture, marking and sale of wooden boxes comparable to DOT Specification 15A or 15B, except they are constructed of mediterranean pine, for shipment of liquid bromine. (Modes 1, 3.)
9130–N	DOT–E 9130	Hydrotech Chemical Corp., Marietta, GA	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Modes 1, 2.)
9134–N	DOT–E 9134	I.S.C. Chemicals Ltd., Avonmouth, England.	49 CFR 173.264, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain corrosive materials. (Modes 1, 2, and 3.)
9149–N	DOT–E 9149	Ethyl Corp., Baton Rouge, LA	49 CFR 173.354, 178.245	To authorize use of non-DOT specification IMO Type 1 portable tanks, for transportation of motor fuel antiknock compound. (Modes 1, 2, and 3.)
9157–N	DOT–E 9157	Matheson Gas Products, Inc., Secaucus, NJ.	49 CFR 173.314(c), 179.300–7	To authorize use of a non-DOT specification multi-unit tank car tank, for transportation of a flammable gas. (Mode 1.)
9161–N	DOT–E 9161	Henderson's Welding and Manufacturing Corp., Seminole, TX.	49 CFR 173.119, 173.245, 173.253	To authorize manufacture, marking and sale of six (6) non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1.)
9162–N	DOT–E 9162	Sun Pipe Line Co., Longview, TX	49 CFR 173.119, 173.304, 173.315	To authorize use of a non-DOT specification container, for transportation of flammable liquids or flammable gases. (Mode 1.)
9167–N	DOT–E 9167	Disposal Systems, Inc., Houston, TX	49 CFR 173.272(c)(25), (28)	to authorize use of a DOT Specification MC–310, MC–311 or MC–312 cargo tank lined with plastic, duralcane or other plastic lining, for transportation of certain corrosive materials. (Mode 1.)
9169–N	DOT–E 9169	Pacific Smelting Co., Torrance, CA	49 CFR 173.154	To authorize transport of a water reactive material in vented freight shipping containers. (Modes 1, 3.)
9174–N	DOT–E 9174	The National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.302(a)	To authorize use of non-DOT specification cylindrical and spherical pressure vessels, for transportation of helium and nitrogen. (Mode 1.)
9176–N	DOT–E 9176	Minnesota Valley Engineering, New Prague, MN.	49 CFR 173.304(a), 177.840(a)(1)	To authorize manufacture, marking and sale of DOT Specification 4L cylinders, for transportation of certain nonflammable gases. (Mode 1.)
9179–N	DOT–E 9179	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	49 CFR 173.31(c), Retest Table 1	To authorize use of DOT Specification 105A300W tank car tanks which are overdue for retesting, for a one-time shipment of a poison B for disposal. (Modes 1, 2.)
9191–N	DOT–E 9191	do	49 CFR 173.264(b)(2), 179.101 Table Note 4.	To authorize shipment of hydrogen fluoride in DOT Specification 112A400W and 114A400W tanks cars that have a wide, dark-colored band encircling the tank. (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 6530–X	DOT–E 6530	Liquid Carbonic Corp., Chicago, IL	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
EE 7011–P	DOT–E 7011	Russell-Stanley Corp., Woodbridge, NJ	49 CFR 173.239(a), 173.245b(a)(6)	To become a party to Exemption 7011. (Modes 1, 2, and 3.)
EE 9181–P	DOT–E 9181	GTE Products Corp., Waltham, MA	49 CFR 173.206, 173.21, 173.247	To become a party to Exemption 9181. (Mode 1.)
EE 9218–N	DOT–E 9218	Falcon Industrial Inc., St. Louis, MO	49 CFR 172.203(d), 173.425	To authorize transport of solid cast iron articles contaminated with cobalt 60. (Mode 1.)
EE 9222–N	DOT–E 9222	Seaboard Chemical Corp., Jamestown, NC.	49 CFR 173.119(b), 173.154	To authorize use of non-DOT specification metal tanks, for transportation of a flammable liquid. (mode 1.)
EE 9223–N	DOT–E 9223	AAI Corp., Baltimore, MD	49 CFR 172.101, 173.86, 175.30	To authorize transport of ammunition for cannon (Class A or B explosive) with other Class B and C explosives and inert materials. (Mode 4.)
EE 9223–N	DOT–E 9223	Southern Air Transport, Inc., Miami, FL	49 CFR 172.101, 173.86, 175.30	To authorize transport of ammunition for cannon (Class A or B explosive) with other Class B and C explosives and inert materials. (Mode 4.)
EE 9227–N	DOT–E 9227	U.S. Department of Defense, Washington, DC.	49 CFR 172.101	To authorize shipment of barium styphnate, monohydrate, an initiating explosive, Class A in packaging prescribed in 173.74. (Mode 1.)

DENIALS

7883-X	Request by Ethyl Corporation, Baton Rouge, LA to authorize the transport of solid metallic sodium in DOT specification 105A300-W tank cars which have not been subjected to the hydrostatic retest requirements of 49 CFR 173.31(c)(2) denied February 10, 1984 as being unnecessary.
7953-X	Request by E. I. du Pont de Nemours & Company, Inc., Wilmington, DE to authorize the transport of solid metallic sodium in DOT specification 105A300-W tank cars which have not been subjected to the hydrostatic retest requirements of 49 CFR 173.31(c)(2) denied February 10, 1984 as being unnecessary.
8032-N	Request by Southern Pacific Transportation Company, San Francisco, CA to authorize use of computer generated shipping papers omitting certain required descriptions (e.g placard notation and endorsement, and car location) as acceptable documentation of hazardous material shipments; to utilize train consent as a substitute for notice to train crew of placarded cars denied February 13, 1984.

NOTE.—party status under DOT-E 9121 is terminated for Rockwell International, Canoga Park, CA

Issued in Washington, DC, on March 12, 1984.

J. R. Grothe,

Chief, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-7780 Filed 3-21-84; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0217
Form Number: IRS Form 5735 and Schedule P
Type of Review: Revision
Title: Computation of Possessions Corporation Tax Credit Allowed Under Section 936

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Regulations Under Tax Conventions—Pakistan

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Regulations Under Tax Conventions—Denmark

OMB Number: 1545-0685
Form Number: Form 1363
Type of Review: Revision
Title: Export Exemption Certificate

OMB Number: 1545-0172
Form Number: Form 4562
Type of Review: Existing Collection
Title: Depreciation and Amortization

OMB Reviewer: Norman Frumkin (202) 395-6880; Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

United States Customs Service

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Establishment of Container Stations—ICB Form 149

OMB Reviewer: Judy McIntosh (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Gary Kowalczyk,

Departmental Reports, Management Office.

[FR Doc. 84-7744 Filed 3-21-84; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 15]

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $1,000,000 has been established for the company.

Name of Company: Hawaiian Insurance & Guaranty Company, Limited
Business Address: P.O. Box 2255, Honolulu, HI 96804
State of Incorporation: Hawaii.

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30543 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, DC 20226.

Dated: March 13, 1984.

W. E. Douglas,

Commissioner.

[FR Doc. 84-7742 Filed 3-21-84; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, December 27, 1982), I hereby determine that the object in the exhibit, "Titian: The Flaying of Marsyas", imported from abroad for the temporary exhibition without profit within the United States is of cultural significance. This object is imported pursuant to a loan agreement between the National Gallery of Art and foreign lenders. I also determine that the temporary exhibition or display of the exhibit object at the National Gallery of Art, beginning on or about March 23, 1984, to on or about September 3, 1984, is in the national interest. Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 19, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-7788 Filed 3-21-84; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 57
Thursday, March 22, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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CIVIL AERONAUTICS BOARD

[M–400 Amdt 1, 3/12/84]

Notice of Addition and Closure of Items to the Closed Session of the March 12, 1984 Meeting

TIME AND DATE: 10:30 a.m., March 12, 1984.

PLACE: Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428

SUBJECT:

Discussion on Switzerland. (BIA)
Discussion on Luxembourg. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

[FR Doc. 84–7786 Filed 3–20–84; 8:59 am]
BILLING CODE 6320–01–M

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[M–402 Amdt 1, 3/14/84]

Short Notice Addition to the March 19, 1984 Meeting

TIME AND DATE: 10:00 a.m., March 19, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

9a. Dockets 41999 and 42018: Petitions of the Guam Parties and The Governor of Guam, the 17th Guam Legislature and the Guam Airport Authority concerning Pan American's termination of service at Guam. (Memo 2269, BDA, OCCCA, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

[FR Doc. 84–7787 Filed 3–20–84; 8:59 am]
BILLING CODE 6320–01–M

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COMMISSION ON CIVIL RIGHTS

PLACE: Room 512, 1121 Vermont Avenue, NW., Washington, D.C.

DATE AND TIME: Tuesday, March 27, 1984, 9:00 a.m.–12:00 noon; 1:30–5:00 p.m. Wednesday, March 28, 9:00 a.m.–12:00 noon; 1:30–4:00 p.m.

STATUS OF MEETINGS: All sessions open to public.

MATTERS TO BE CONSIDERED:

Tuesday, March 27

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Civil Rights Developments in the Eastern Region
V. Recommendations re: State Advisory Committee Operating Procedures
VI. Review of Proposal on Employment of Americans of Eastern and Southern European Ancestry
VII. Review of Proposal on Housing and Civil Rights
VIII. Review of Proposal on State and Local Civil Rights Enforcement
IX. Review of Proposal on Affirmative Action in Higher Education

Wednesday, March 28

X. Review of Proposal on Federal Civil Rights Enforcement Efforts
XI. Review of School Discipline Proposal
XII. Background Paper on Grove City Case and Discussion of Proposed Legislation to Change Section 504 of Title VI and Related Provisions
XIII. Review of S. 2116 re: Recommendations of Commission on Wartime Relocation
XIV. Review of Questions re: GAO Audit
XV. Review of Central States' Report Entitled *Federal Civil Rights Enforcement Efforts in Mid-America*
XVI. Review of Iowa Advisory Committee Report Entitled *Implementation of Federal Civil Rights Laws in Iowa—Nondiscrimination in the Block Grants and Minority Business Participation*

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Lawrence B. Glick,
Solicitor.

[FR Doc. 84–7806 Filed 3–20–84; 10:38 am]
BILLING CODE 6335–01–M

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, March 27, 1984, 9:30 a.m. (Eastern Time).

PLACE: Commission Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Freedom of Information Act Appeal No. 83–12–FOIA–260–NY, concerning a request for information from his charge file
4. Freedom of Information Act Appeal No. 84–1–FOIA–14–SL, concerning documents contained in an ADEA charge file.
5. Freedom of Information Act Appeal No. 84–1–FOIA–17–SL, concerning a request for a closed ADEA file.
6. A Proposed Contract needed in Connection with a Court Case.
7. Proposed Revision of EEOC Regulations to Reflect the Field Reorganization.
8. Proposed Compliance Manual Section 612. Volume II—Plant Relocation
9. Ten proposed Compliance Manual Sections of Volume I

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Consideration of an ORA Decision
3. Consideration of Subpoenas

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634–6748.

This Notice Issued March 20, 1984.

Treva McCall,

Executive Secretary to the Commission.

[FR Doc. 84-7888 Filed 3-20-84; 2:46 pm]

BILLING CODE 6750-06-M

5

FEDERAL COMMUNICATIONS COMMISSION

En Banc Meeting for March 22, 1984

March 15, 1984.

The Federal Communications Commission will meet *en banc* on Thursday, March 22, 1984 at 10:00 a.m. to hear the presentations of three parties who have requested time to appear. Each party will be allocated one-half hour for both their presentations and to answer questions from the Commissioners.

The schedule will be as follows:

10–10:30 a.m.—National Black Media Coalition
10:30–11 a.m.—Telecommunications Research & Action Center
11–11:30 a.m.—National Conference of Black Lawyers

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-7813 Filed 3-20-84; 8:45 am]

BILLING CODE 6712-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 26, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Intermountain Thrift and Loan, Salt Lake City, Utah, an operating noninsured industrial bank.

Request for reconsideration of a previous denial of an application for consent to purchase assets and assume liabilities and establish one branch:

Farmers and Merchants Bank and Trust of Watertown, Watertown, South Dakota, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Rosholt Branch of United National Bank, Sioux Falls, South Dakota, and for consent to establish that branch as a branch of Farmers and Merchants Bank and Trust of Watertown.

Applications for consent to establish a branch:

Hazen First State Bank, Hazen, Arkansas, for consent to establish a branch on Highway 70, Biscoe, Arkansas.

The Howard Savings Bank, Newark, New Jersey, for consent to establish a branch within the Acme Shopping Center on the grounds of the Rockaway Townsquare Mall, Mt. Hope and Mt. Pleasant Avenues, Rockaway Township, New Jersey.

The Howard Savings Bank, Newark, New Jersey, for consent to establish a branch at the west side of Pompton Avenue, between Claremont and Bloomfield Avenues, Verona, New Jersey.

First Commercial Bank, Asheville, North Carolina, for consent to establish a branch in the Ingles Supermarket at 915 Merrimon Avenue, Asheville, North Carolina.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: First National Bank of Oak Lawn Oak Lawn, Illinois.

Memorandum and resolution re: Withdrawal of proposed amendments to Parts 332 and 337 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law" and "Unsafe and Unsound Banking Practices," respectively, which would have specifically authorized nonmember insured banks to conduct check-guaranty and credit-card sponsorship programs, subject to fixed limitations on risk.

Memorandum re: Budget Year 1984 Liquidation Expense Budget.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Corporate Audits and Internal Investigations:

Memorandum re: Status of Auditee Corrective Actions.

Discussion Agenda:

Memorandum and resolution re: Final amendments to the Corporation's rules and regulations to implement section 906 of the International Lending Supervision Act of 1983 which amendments establish uniform requirements for the accounting for fees associated with restructuring of international lending arrangements and nonrefundable fees charged by banking institutions in connection with other international loans.

Memorandum and resolution re: Final amendments to Part 330 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage" which concern insurance coverage of brokered deposits.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: March 19, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-7842 Filed 3-20-84; 12:07 pm]

BILLING CODE 6714-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 26, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of

the "Government in the Sunshine Act" [5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within the category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance for a United States branch of a foreign bank:

Bank Hapoalim B.M., Tel Aviv, Israel, for Federal deposit insurance of deposits received at and recorded for the accounts of its United States branch to be located on the fourth floor, 10 Rockfeller Plaza, New York City (Manhattan), New York.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: March 19, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–7843 Filed 3–20–84; 8:45 am]

BILLING CODE 6714–01–M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, March 19, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Request of Universal Trust Company, San Juan, Puerto Rico, an operating noninsured bank, for modification of a previous Order granting Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Resolution re: Heritage Bank, Anaheim, California

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter added to the agenda in a meeting open to public observation; and that the matter added to the agenda could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 19, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–4873 Filed 3–20–84; 3:42 pm]

BILLING CODE 6714–01–M

9

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 27, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, March 29, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion No. 1984–4 (If not concluded on March 22, 1984)
Draft Advisory Opinion No. 1984–5: Robert Ohlbach, Vice President, Pacific Gas and Electric Co.
Draft Advisory Opinion No. 1984–7: H. Richard Mayberry, Jr., on behalf of White Consolidated Industries, Inc.
Finance Committee Report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84–7872 Filed 3–20–84; 3:33 pm]

BILLING CODE 6715–01–M

10

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—March 28, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Agreement No. 10486: Establishment of the EAC Transpacific Service Agreement.

Portions Closed to the public:

1. Agreements Nos. 9847–9, 10027–12, 9848–1, 10320–6, 9873–5, 10330–2, 10382–4, 10389–1, 10388–2, 10386–4, 9938–5, and 10453–1: Modifications and Extensions of Pooling and Equal Access Agreements in the Brazilian and Argentine Trades.

2. Carrier Practices of Collecting Certain Freight Charges from Consignees on Prepaid Bills of Lading in the China/U.S. Import Trade.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84–7881 Filed 3–20–84; 3:56 pm]

BILLING CODE 6730–01–M

11

POSTAL RATE COMMISSION

TIME AND DATE: 9:00 a.m., Thursday, March 22, 1984.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C. 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Discussion of matters in Docket No. R84–1. (Closed pursuant to 5 U.S.C. 552b(c)(10).)

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone (202) 254–5614.

Charles L. Clapp,

Secretary.

[FR Doc. 84–7805 Filed 3–20–84; 10:36 am]

BILLING CODE 7715–01–M

12

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 26, 1984, at 450 Fifth Street, NW., Washington, D.C.

Open meetings will be held on Monday, March 26, 1984, at 3:00 p.m., and on Thursday, March 29, 1984, at 10:00 a.m. in Room 1C30. A closed meeting will be held on Tuesday, March 27, 1984, at 9:30 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway and Cox voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Monday, March 26, 1984, at 3:00 p.m., will be:

The Commission will meet with representatives of the International Accounting Standards Committee to exchange views on recent activities regarding the development of international accounting and reporting standards, including efforts to harmonize such standards. For further information, please contact Clarence Staubs at (202) 272–2130.

The subject matter of the closed meeting scheduled for Tuesday, March 27, 1984, at 9:30 a.m., will be:

Reports of investigation.
Institution of injunctive actions.
Formal order of investigation.
Institution and settlement of administrative proceedings on an enforcement nature.
Opinions.

The subject matter of the open meeting scheduled for Thursday, March 29, 1984, at 10:00 a.m., will be:

1. Consideration of whether to: (1) Amend the Commission's rules relating to general organization and information requests, to delegate to the General Counsel the authority to decide Privacy Act appeals; and (2) issue a release announcing the amendment. For further information, please contact W. Robert Gray at (202) 272–2419.

2. Consideration of whether to adopt amendments to Rule 10b–4 under the Securities Exchange Act of 1934 that would prohibit hedged and multiple tendering and narrow the types of offers to which Rule 10b–4 applies. For further information, please contact M. Blair Corkran, Jr. at (202) 272–2853.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272–3195.

George A. Fitzsimmons,

Secretary.

March 16, 1984.

[FR Doc. 84–7880 Filed 3–20–84; 3:59 pm]

BILLING CODE 8010–01–M

federal register

Thursday
March 22, 1984

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 172, 173, 174, 176, 177, 178, and 179

Shipment of Hazardous Materials; Proposed Miscellaneous Amendments

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 174, 176, 177, 178, and 179

[Docket No. HM-166R; Notice No. 84-3]

Shipment of Hazardous Materials; Proposed Miscellaneous Amendments

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) is proposing to make several miscellaneous amendments to the regulations pertaining to the shipment of hazardous materials. This action is necessary to update the regulations and to reduce MTB's backlog of rulemaking petitions. Approximately twenty petitions would be eliminated by this rulemaking.

DATE: Comments must be received by June 29, 1984.

ADDRESS: Address comments to the Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in room 8426 of the Nassif Building, 400 7th Street SW., Washington, D.C. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590 (202) 426-2075.

SUPPLEMENTARY INFORMATION: This document is primarily designed to reduce regulatory burdens by incorporating changes in the Hazardous Materials Regulations based on either petitions for rulemaking submitted in accordance with 49 CFR 106.31 or on MTB's own initiative. These proposed amendments are in keeping with Executive Order 12291 and are designed to simplify existing regulations.

In Part 172, these proposed amendments would (1) change the word "may" to "must" in § 172.101(i)(1), (i)(2) and (i)(3) to be consistent with § 172.102(L) and § 176.63. Also, a new paragraph would be added to § 172.101(i) to explain the meaning of "1,2" as shown in § 172.102(L); (2) revise the last sentence of the first paragraph of the introduction to the CERCLA List (§ 172.101) for clarity; (3) add "Aluminum chloride, anhydrous" as a corrosive material to the § 172.101 table; (4) add Ammonium persulfate as a proper shipping name in the § 172.101 table; (5) delete the entry "Cartridge cases, empty, primed" from § 172.101 and § 173.107; (6) add "Diacetone alcohol" as a combustible liquid to the § 172.101 table; (7) add "Fluosilicic acid" and "Hydrofluosilicic acid" to the § 172.101 table and § 173.265; (8) change the hazard class of "Hexamethyleneimine" from a corrosive material to a flammable liquid in the § 172.101 table; (9) add Methyl cyanide to the § 172.101 table; (10) add Potassium persulfate, Sodium persulfate, Sodium sulfide, anhydrous *or* Sodium sulfide *with less than 30 percent water of crystallization;* Sodium sulfide, hydrated *with not less than 30 percent water* and Trichloroisocyanuric acid, dry *containing over 39 percent available chlorine* to the § 172.101 table; (11) revise § 172.504(c) to make the placarding requirements consistent for Table 2 materials when transported by motor vehicle, rail car, or a freight container when transported by highway or by rail car.

In Part 173, these proposed amendments would (1) amend § 173.7(a) to include a reference to a joint Department of Defense (DOD) publication which prescribes policies and procedures for the issuance of a Certification of Equivalency (COE) by the DOD; (2) revise § 173.31(a)(2) to delete obsolete tank car references; (3) revise § 173.31(c)(9) regarding retesting and to authorize additional type of linings for tank cars; (4) revise § 173.31(c)(10) to require stenciling of the test due date for the tank car, safety relief valve and heater system; (5) revise the retest table in § 173.31(c)(13) by deleting obsolete references; and adding two footnotes; (6) revise § 173.32(a) to eliminate the need for the owner of DOT Specification 56 and 57 portable tanks to keep on file a copy of the manufacturers data report; (7) delete § 173.32a(e) because the requirement for compliance expired October 1, 1981; (8) revise § 173.33(d)(13) to eliminate the need for operators of certain DOT Specification MC 330 or MC 331 cargo tanks to file a copy of the retest report with the Director of the Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590; (9) delete paragraph (c)(4) of § 173.34; (10) amend the Table in § 173.34(e)(10) by adding DOT Specification 3 AA for argon, helium, nitrogen, oxygen, breathing air, and dry compressed air; (11) amend § 173.53(h) to include the Bureau of Mines, U.S. Department of the Interior as an authorized agency to examine Type 8 explosives; (12) remove references to obsolete tank car references in § 173.119(a)(12); (13) authorize the use of DOT Specification MC 310, MC 311, or MC 312 cargo tanks in § 173.119(a)(17) for the Transporation of flammable liquids; (14) revise § 173.119(a)(18) and (e)(2) by deleting the reference to obsolete tank cars; (15) revise § 173.119(e)(3), (e)(3)(i), and (f)(5) to authorize the use of DOT Specification MC 310, MC 311 or MC 312 cargo tanks for the transportation of flammable liquids; (16) correct (see Note 2) in § 173.119(f) to read (see Note 1); (17) amend § 173.119(f)(3) and (f)(4) to remove the reference to obsolete tank cars; (18) remove and reserve paragraphs (g) and (h) of § 173.119; (19) revise § 173.123(a)(5) by deleting the reference to ARA-IV-A [1] tank cars and to Note 1; (20) eliminate the need for a heat retardant paint to be examined by the Bureau of Explosives and approved by the Associate Director for HMR in § 173.124(a)(1) and (a)(2); (21) eliminate the need for certain inside metal containers to be examined by the Bureau of Explosives and approved by the Associate Director for HMR in § 173.202(a)(1); (22) delete the net weight restriction in § 173.206(c)(2); (23) remove the entire § 173.238 as it pertains to commercial aircraft rocket engines and/or aircraft rocket engine igniters; (24) revise § 173.245(a)(25) to eliminate the need for inside aluminum containers to be examined by the Bureau of Explosives and approved by the Associate director for HMR; (25 revise § 173.252(g)(1) to eliminate the need for the gasket material to be examined by the Bureau of Explosives and approved by the Associate Director for HMR; (26) revise § 173.256(a)(3) to eliminate the need for a molded liner to be examined by the Bureau of Explosives and approved by the Associate Director for HMR; (27) amend § 173.263(a)(9) to authorize the use of a safety relief valve on DOT Specification 103BW and 111A100W5 tank cars; (28) clarify § 173.289(a)(2)(i) regarding marking requirements; (29) delete reference to ARA-V tank cars in Note 12 of the § 173.314(c) table. Also, for the entry Chlorotrifluoromethane (R-13), DOT-106A500X, 110A500W and Note 25 would be removed; (30) amend the

[1] The use of existing tank cars authorized but new construction not authorized.

heading in column 4 of Table in § 173.315(b) to show that "See Note 1" applies to all of the entries; (31) revise § 173.354(a)(5) and (a)(6) to authorize the use of a frangible disc in series with a spring-loaded safety relief valve on DOT Specification 51 portable tanks and DOT Specification MC 331 cargo tanks which are used to transport motor fuel antiknock compound; (32) add a paragraph (c)(5) to § 173.860 to provide an exception for minute quantities of metallic mercury in electron and vapor tubes.

In Part 174, these proposed amendments would (1) revise § 174.63(d) to specify the criteria for approving DOT Specifications IM 101 and IM 102 protable tanks for trailer-on-flat-car (TOFC) and container-on-flat-car (COFC) service and (2) revise § 174.104(a) to specifically state that cushioned underframe rail cars are authorized for the transportation of explosives; also, paragraph (b)(6) would be amended to require the carrier to check for the presence of flammable or other potential hazardous residues that may have permeated the car floor or walls.

In Part 176, § 176.305(c)(5) would be revised to clarify that flammable liquids having a flash point above 73° and in excess of one ton may be transported in any hold or compartment that is fitted with a gooseneck type of vent head.

In Part 177, § 177.817 (a) and (d) would be revised to make the shipping paper requirements consistent with those in Part 172.

In Part 178, (1) § 178.24–7(a), 178.27–3(a), and 178.35a–3(a) would be revised to clarify that testing may be done at a location other than at the manufacturing location; (2) relocate Note 2 in § 178.37–5(a) of the end of the first table; (3) revise § 178.46–4(d)(12) by eliminating the need for a copy of the inspectors report to be filed with the Associate Director for HMR; (4) correct Part III to read Part II in § 178.46–8(e)(2); (5) amend §§ 178.47–8(a), 178.50–8(b), 178.51–8(d), 178.53–8(b), 178.54–8(a)(2), 178.55–8(d), 178.56–8(d), 178.57–8(e), 178.58–8(a), 178.59–7(a), 178.60–7(b), 178.61–8(d), and 178.65–6(d) to require all DOT Specifications for welded steel cylinders to reference CGA Pamphlet C–3 for consistenty; (6) add the word "stress" after the word "wall" in § 178.57–10(a)(5); (7) revise § 178.61–15(a) to specify lot size and frequency of test; (8) amend § 178.65–5(b) to authorize the use of aluminum alloy identified as "1060" for DOT Specifications 39 cylinders; (9) revise § 178.80–11; (10) eliminate the minimum marking size for metal drums in §§ 178.80–12(a), 178.81–12(a), 178.82–12(a), 178.83–12(a), 178.88–11(a), 178.89–10(a), 178.90–11(a), 178.92–12(a), 178.98–10(a), 178.99–10(a), 178.100–10(a), 178.102–4(a), 178.107–10(a), 178.109–10(a), 178.115–11(a), 178.116–11(a), 178.117–12(a), 178.118–11(a), 178.130–9(a), 178.131–10(a), 178.132–10(a), 178.133–10(a), 178.134–4(a), 178.135–9(a), 178.137–6(a), 178.140–7(a), and 178.141–7(a); (11) revise § 178.102–4(a) to allow embossment on either permanent head of a new DOT Specification 6D drum or on the side of a drum which has been altered to a DOT Specification 6D; (12) revise § 178.117–9 to authorize the use of a performance type of closure for DOT Specification 17F steel drums; (13) revise § 178.134–2(c) to allow two weep holes in a DOT Specification 37M cylindrical steel overpack immediately below the top chime; (14) correct the introductory text of § 178.137–7(b) to reference paragraphs (1) and (2) instead of paragraphs (a)(1) and (2); (15) revise § 178.251–3(d) to reduce the number of size of specimens which are required to be tested for DOT Specification 56 and 57 portable tanks. Also, the test interval would be increased from six months to twelve months; (16) revise § 178.255–8 to eliminate the need for safety devices on DOT Specification 60 portable tanks to be approved by the Associate Director for HMR; (17 revise § 178.255–15(a) to eliminate the need for a copy of the manufacturers data report and registration of each DOT Specification 60 portable tank to be filed with the Associate Director for HMR; (18) revise §§ 178.337–17(a) and 178.340–10(b) by requiring the metal certification plate to be on the left side of the cargo tank near the front on all DOT Specification MC 306, MC 307, MC 312, MC 331, and MC 331, and MC 338 cargo tanks constructed after September 30, 1984.

In Part 179, (1) § 179.200–15(a) would be revised by deleting the reference to § 179.202–1; (2) amend the § 179.201–1(a) table by deleting the reference to 179.202–1 each time it appears in the line entry "Special references"; (3) remove § 179.202–1 because the same requirement is contained in § 179.201–6(a) and, (4) amend the table to authorize a safety relief valve on DOT Specification 103BW and 111A100W5 tank cars.

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. These proposed regulations are considered to be noncontroversial and are intended to ease the burden on manufacturers, shippers, carriers and users of hazardous materials.

Since the impact of this proposal is expected to be minimal, the MTB certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 172

Hazardous materials transportation. Labeling, packaging and containers.

49 CFR Part 173

Hazardous materials transportation. Packaging and containers.

49 CFR Part 174

Hazardous materials transportation. Railroad safety.

49 CFR Part 176

Hazardous materials transportation. Maritime carriers.

49 CFR Part 177

Hazardous materials transportation. Motor carriers.

49 CFR Part 178

Hazardous materials transportation. Packaging and containers.

49 CFR Part 179

Hazardous materials transportation. Railroad safety.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 172.101(i) (1), (2), and (3).	The use of the word "may" is not consistent with § 172.102(i) and § 176.63. Also, a new paragraph would be added to § 172.101(i) to explain what "1, 2," means regarding stowage.	To amend paragraphs (i) (1), (2), and (3) of § 172.101 by changing the word "may" to "must" and add a new paragraph to read as follow: "1, 2" means the material must be stowed either "on deck" or "under deck"; however, "under deck stowage should be used if available".

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 172.101 (CERCLA List).	Question for clarity	In § 172.101, the last sentence of the first paragraph preceding the CERCLA List would be revised to read as follows: NOTE— * * * With respect to other materials in the following list, those that are not forbidden materials or do not fall within a hazard class defined in this subchapter are not subject to the requirements of this subchapter.
§ 172.101	To add Aluminum chloride, anhydrous as a corrosive material to the § 172.101 Table. This material will react with moisture or water and releases hydrogen chloride gas and heat. The UN Recommendation for Transport of Dangerous Goods, IMO and ICAO list anhydrous aluminum chloride as a corrosive.	See § 172.101 Table for proposed entry.
§ 172.101	To add Methyl cyanide to the § 172.101 Table. Methyl cyanide is the international description for Acetonitrile, NA 1648, which is in the Table. Because of the "UN" vs "NA" prefix to the identification number, methyl cyanide would be added as a complete entry instead of a "See" reference to acetonitrile.	Do
§ 172.101, § 173.107.	The Sporting Arms and Ammunition Manufacturers' Institute, Inc. has requested that all references to Cartridge cases, empty, primed be removed for clarity. The petitioner points out that this product is not listed and defined in § 173.100 and that in § 173.55 cartridge cases containing only a primer are exempt from Parts 170–189.	In 172.101, the Table would be amended by removing the entire entry for "Cartridge cases, empty, primed." Also, in § 173.107 all references to cartridge cases, empty primed would be removed.
§ 172.101, § 173.265.	To add the proper shipping name "Fluosilicic acid" and "Hydrofluosilicic acid" to the § 172.101 Table and § 173.265. The United Nations Recommendations on the Transport of Dangerous Goods do not list hydrofluorosilicic acid or hydrofluosilicac acid as proper shipping names; only "Fluosilicic acid" is listed. This change will facilitate international shipments.	See § 172.101 Table for proposed entries. Also, § 173.265 would be amended to include "Fluosilicic acid" and "Hydrofluosilicic acid".
§ 172.101	To add a new entry in the Hazardous Materials Table for "Diacetone alcohol" classed as Combustible liquid. Flash point of Diacetone alcohol range from 48° F. to 148° F. (closed cup) depending on the grade of diacetone alcohol. At present, diacetone alcohol which has a flash point of 100 ° F. or higher and is classed as Combustible liquid must be described as Combustible liquid, n.o.s. and NA 1993 must be used.	See § 172.101 Table for proposed entry
§ 172.101	To change the hazard class of Hexamethylenediamine from corrosive material to flammable liquid. In addition to being corrosive to skin, hexamethylenediamine has a closed cup flash point of 65° F. (18° C) and meets the definition of the flammable liquid hazard class.	Do

§ 172.101 Hazardous Materials Table.

+/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identifications number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Cargo vessel	Other requirements
(1)	(2)	(3)	(3a)	(4)	(5a)	(5b)	(6a)	(6b)	(7a)	(7b)	(7c)
	ADD										
	Aluminum chloride, anhydrous.	Corrosive material	UN1726	Corrosive	173.244	173.245b	25 pounds	100 pounds	1, 2	1, 2	Keep dry
	Ammonium persulfate	Oxidizer	UN1444	Oxidizer	173.153	173.154	50 pounds	200 pounds	1, 2	1, 2	
	Diacetone alcohol	Combustible liquid	UN1148	None	173.118a	None	No limit	No limit	1, 2	1, 2	
	Fluosilicic acid	Corrosive material	UN1778	Corrosive	None	173.265	1 quart	1 gallon	1, 2	1, 2	
	Hydrofluorosilicic acid or Hydrofluosilicic acid.	Corrosive material	NA1778	Corrosive	None	173.265	1 quart	1 gallon	1, 2	1, 2	
	Methyl cyanide	Flammable liquid	UN1648	Flammable liquid	173.118	173.319	1 quart	10 gallons	I	4	Shade from radiant heat
	Potassium persulfate	Oxidizer	UN1492	Oxidizer	173.153	173.154	50 pounds	200 pounds	1, 2	1, 2	
	Sodium persulfate	Oxidizer	UN1505	Oxidizer	173.153	173.154	50 pounds	200 pounds	1, 2	1, 2	
	Sodium sulfide, anhydrous or Sodium sulfide with less than 30% water of crystallization.	Flammable solid	UN1385	Flammable solid	173.153	173.207	25 pounds	100 pounds	1, 2	1, 2	Stow separated from liquid acids.
	Sodium sulfide, hydrated with not less than 30% water.	Corrosive material	UN1849	Corrosive	173.244	173.245b	25 pounds	100 pounds	1, 2	1, 2	Stow away from acids.
	Trichloroisocyanuric acid, dry.	Oxidizer	UN2468	Oxidizer	173.153	173.217	10 pounds	50 pounds	1, 2	1, 2	Shade from radiant heat. Keep dry. Stow separated from nitrogen compounds
	DELETE										
	Cartridge cases, empty, primed.	Class C explosive		None	None	173.107	50 pounds	150 pounds	1, 2	1, 3	
	Hydrofluorosilicic acid	Corrosive material	NA1778	Corrosive	None	173.265	1 quart	1 gallon	1, 2	1, 2	
	Sodium sulfide, anhydrous	Flammable solid	UN1385	Flammable solid	173.153	173.207	25 pounds	300 pounds	1, 2	1, 2	Stow separate from liquid acids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides
	CHANGE										
	Hexamethylenediamine	Flammable liquid	UN2493	Flammable liquid and Corrosive.	None	173.119	1 quart	1 gallon	1, 2	1	

+/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Cargo vessel	Other requirements
(1)	(2)	(3)	[3a]	[4]	[5a]	[5b]	[6a]	[6b]	(7a)	[7b]	(7c)
	Motor fuel antiknock compound *or* Antiknock compound (*these materials may contain various hazardous substances for which the appropriate RQ applies*).	Poison B	UN1649	Poison	None	173.354	Forbiden	55 gallons	1	5	If flashpoint less than 141 deg. F. segregation same as for flammable liquids
	Trichloro-s-triazine-trione dry, *containing over 39% available chlorine.*	Oxidizer	NA1479	Oxidizer	173.153	173.217	50 pounds	100 pounds	1, 2	1, 2	Shade from radiant heat. Keep dry. Stow separated from nitrogen compounds

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 172.504(c)	To make the placarding requirements consistent for Table 2 materials when transported by motor vehicle, freight container or rail car.	In § 172.504, paragraph (c) would be revised to read as follows: (c) Except for a transport vehicle or freight container that contains a hazardous material covered by Table 1; when the gross weight of all hazardous materials covered by Table 2 is less than 1000 pounds, no placard is required on a motor vehicle rail car, or freight container. This paragraph does not apply to a portable tank, cargo tank, tank car, or to transportation by aircraft or vessel.
§ 173.7(a)	To add a reference to a joint Department of Defense (DOD) publication which states the policies and procedures for the issuance of a Certification of Equivalency (COE) by the DOD.	In § 173.7 paragraph (a) would be revised to read as follows: (a) Hazardous materials offered for transportation by, for, or to the Department of Defense (DOD) of the U.S. Government, including commercial shipments pursuant to a DOD contract, must be packaged in accordance with the regulations in this subchapter or in packagings of equal or greater strength and efficiency as certified by DOD pursuant to the "Policies and Procedures for Hazardous Materials Packaging Certification, AFLCR 800-29/AFSCR 800-29/DARCOM-R 700-103NAVMATINST 4030.11/DLAR 4145.37. Hazardous materials offered for transportation by DOD under this provision may be reshipped by any shipper to any consignee provided the original packaging has not been damaged or altered in any manner.
§ 173.31(a)(2)	The Association of American Railroads (AAR) has petitioned for several changes to § 173.31 in order to delete unnecessary text and reference to obsolete tank car specifications. The MTB concurs with these proposed changes.	In § 173.31, paragraph (a)(2) would be revised to read as follows: (2) Tanks prescribed in the following table are authorized for service provided they comply with all of the other safety requirements of this subchapter:

Specifications prescribed in current regulations	Other specifications permitted (subject to the notes)	Notes
105A200W	105A100W	1
105A200A LW	105A100A LW	1
105A300W	ICC-105, 105A300	
105A400W	105A400	
105A500W	105A500	
105A600W	105A600	
106A500X	ICC-27, BE-27, 106A500	
106A800X	106A800	
107A***		2

Note 1.—Tanks built as Spec. DOT-105A100-W or 105A100AL-W may be altered and reclassified as Spec. DOT 105A200W or 105A200ALW, respectively, by installing safety relief valves, retesting and stenciling in accordance with the applicable specification.

Note 2.—The test pressures of tanks built in the United States prior to January 1, 1956, may be increased to comply with current Spec. DOT-107A except that tanks built prior to 1941 are not authorized. Original and revised test pressure must be indicated and may be shown on a plate attached to the bulkhead of the car.

§ 173.31(c)(9)	To clarify that a tank car must be retested at time of repair and that the reference to Table 1 is for retest pressure only. Also, to clarify that lined tanks must be retested after a lining is removed prior to being replaced in service as an unlined tank or prior to receiving a new lining. In addition, two other tank car linings, elastomeric and polyvinyl chloride, are being proposed	In § 173.31, paragraph (c)(9) would be revised to read as follows: (9) After repairs requiring welding, riveting, caulking of rivets, or hot or cold forming to restore tank contour, tanks must be retested at the pressure specified in Retest Table 1 of this paragraph before return to service. Glass, lead, rubber, elastomeric or polyvinyl chloride lined tanks must be retested before lining is renewed or after lining is removed. Interior heater systems must be retested before return to service after repairs or renewals of any part of the system.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.31(c)(10)	To require stenciling of the test due date for the tank, safety relief valve and interior heater system so that the carrier and shipper personnel can quickly tell if a tank car is in compliance.	In § 173.31, paragraph (c)(10) would be revised to read as follows: (10) The year of the test of any tank, tank safety relief valve, and interior heating system, and the pressure to which it was tested and the test due dates must be stenciled on the tank or on the jacket if insulated, except that if a retest is required specifically by the regulations during the calendar month the retest falls due, the month and year must be so stenciled. On existing cars, the test due date stencil must be applied at the next test date or tank painting whichever comes first. Any safety relief valve from a stock which has been tested within six months of installation may be considered as having been tested or retested in the month in which installed, providing the valve has been protected from deterioration during this period.
§ 173.31(c)(13) Table 1.	To update the Table by deleting the reference to obsolete tank car specifications and footnotes thereto, deleting obsolete references in the column marked "Up to 10 years", adding footnotes "u" and "v", and changing "95" to read "92" in the last column for Specification 112A175W.	In § 173.31, the Retest Table following paragraph (c)(13) would be amended by revising or deleting the following entries:

RETEST TABLE 1

Specification	Car age and retest interval (years)[1]			Pressure relief valve	Tank	Retest pressure—p.s.i.	
	Tank and interior heater systems					Pressure relief valve	
	Up to 10 years old	Over 10 to 22 years old	Over 22 years old			Start to discharge	Vapor tight
REVISE							
DOT-103		10	10	10	60	[illegible]	[illegible]
DOT-103A		3	1	2	60	[illegible]	28
DOT-103A-ALW[6]	[5]	3	1	(7)	60	[illegible]	28
DOT-103B		[illegible]	[illegible]	None	60		
DOT-103C		3	1	(7)	60	[illegible]	[illegible]
DOT-104		10	10	10	60	[illegible]	[illegible]
DOT-104A		10	10	5	100	75	
DOT-105A100[8]		10	10	5	100	75	60
DOT-105A200ALW[6]							
DOT-105A300		[10]	[10]	[5]	100	[225]	180
DOT-105A300W[6]							
DOT-105A400		[10]	[10]	[5]	400	[300]	240
DOT-105A500		[10]	[10]	[5]	500	[375]	300
DOT-105A600		[10]	[10]	[5]	600	450	360
DOT-111A60ALW1[9]	[10]10	10	10	1	60	35	28
DOT-111A60ALW2[9]	[5]	3	1	(7)	60	35	28
DOT-111A60F1[9]	10	10	10	10	60	35	28
DOT-111A60W1[9]		[20]	10	10	60	35	28
DOT-111A60W5	[5]	[3]	[1]	None	60		
DOT-111A100ALW1[9]	10	10	10	10	100	75	60
DOT-111A100ALW2[9]	5	[illegible]	1	[7]	100	75	60
DOT-111A100F1[9]		10	10	10	100	75	60
DOT-111A100W1[9]		[20]	10	10	100	75	60
DOT-112A340W[6]	10	10	10	5	340	[255]	[204]
DOT-112A400F[6]		10	10	5	400	300	240
DOT-112A400W[6]	10	10	10	5	400	[300]	[240]
DOT-112A500W[6]	10	10	10	5	500	[375]	300
DOT-113A175W	(11)	(11)	(11)	5	(11)	115	92
DOT-114A340W[6]	10	10	10	5	340	[255]	[204]
DOT-114A400W[6]	10	10	10	[illegible]	400	[300]	[240]
DELETE							
DOT-103CAL		2	1	(7)	60	[illegible]	28
EMERG. USG- A, B, and C		10	10	10	60	25	
ARA-III		10	10	[illegible]	[illegible]	[illegible]	
ARA-III acid (unlined)			1	None	60		
ARA-III (rubber lined)			(7)	None	[illegible]		
ARA-IV			10	10	[illegible]	[illegible]	[illegible]
ARA-IV-A			10	5	[illegible]	35	[illegible]
ARA-V			[10]	[5]	300	[225]	[illegible]

[1] Class 103 and 104 tank cars built before January 1, 1959 and equipped with 25 psi safety relief valves may remain in service with start-to-discharge retested at 25 psi, vapor tight at 20 psig.

[2] Nickel clad tanks in bromine service and any glass, rubber, lead, or elastomeric lined tank need not be periodically retested, but the interior heater systems and safety relief valves must be retested at the prescribed interval. For testing requirements for glass, rubber or other lined tanks see paragraphs (c)(9), (c)(11), and (c)(12) of this section.

[3] When the retest interval changes due to the age of the tank, the new retest interval must be measured from the last retest date but in no case shall the time between retests exceed the interval specified in Table 1 for the age of the tank. The retest of a tank because of repairs may alter the normal retest schedule specified in the table.

[6] Tanks must be retested at the time they are converted from existing pressure type tanks to a non-pressure specification. When tanks are converted to DOT 103A-ALW from DOT 103ALW or AAR 201A70W, the tank must be retested at the time of conversion if welding on the tank is performed. For future retests of converted tanks, the retest interval must be selected from the table based on the age of the tank computed from the date converted instead of the date built. The conversion date must be stenciled on the tank below the built date.

[8] When tanks are converted to DOT-103AW from existing DOT-103W or 103BW tanks, the tank must be retested at time of conversion if welding on the tank is performed. Lined tanks must be retested before or after the lining is removed. For future retests, the retest interval must be selected from the Table as though the tank were 10 years old at time of conversion. The conversion date must be stenciled on the tank below the built date.

[9] Tank cars stenciled 112S, 112T, 112J, 114S, 114T or 114J have the same retest requirements as 112A or 114A, respectively.

[11] Pressure tank cars authorized for corrosive materials service must have tank and safety relief valve retested when removed from the service and prior to return to compressed gas service.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.32(a)	To clarify that it is not necessary for the owner of DOT Specification 56 and 57 portable tanks to keep on file a copy of the manufacturer's data report during the time the tanks are in service.	In § 173.32 paragraph (a) would be revised to read as follows: (a) Except as otherwise provided in this section, every portable tank container used for the transportation of dangerous articles shall fulfill the requirements of the specification and regulations for the transportation of the particular commodity. Except for Specification 56 and 57 portable tanks, a manufacturer's data report of the portable tank container shall be procured and retained in the files of the owner during the time that such portable tank container is used for [illegible].
§ 173.32a(e)	To remove the entire paragraph (e) because the owner of manufacturer of the IM portable tanks was required to advice the Associate Director for HMR before October 1, 1981 if the tanks could not be certified as a DOT Specification IM 101 or IM 102. Paragraph (e) has served its purpose and is no longer needed.	In § 173.32a, paragraph (e) would be removed and reserved.
§ 173.33(d)(12)	To eliminate the need for the inspection/test report to be prepared in duplicate. See § 173.33(d)(13) for further explanation.	To amend the introductory text of paragraph (d)(12) of § 173.33 by deleting the words "in duplicate".
§ 173.33(d)(13)	To eliminate the need for motor carriers operating certain DOT Specification MC 330 or MC 331 cargo tanks to file a copy of the retest report with the Director of the Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590. This change should result in a savings of over 3,000 hours pe year just for the motor carrier industry.	To revise paragraph (d)(13) of § 173.33 to read as follows: (13) *Report retention.* A copy of the report required by this section must be retained by the carrier at its principal place of business during the period the tank is in the carrier's service and for 1 year thereafter. However, upon a written request to, and with the approval of the Director, Regional Motor Carrier Safety Office, for the region in which a motor carrier has his principal place of business, the carrier may maintain the reports at a regional or terminal office.
• • •	• • •	• • •
§ 173.34(c)(4)	To delete paragraph (c)(4) because it is a duplicate of paragraph (c)(2).	In § 173.34 paragraph (c)(4) would be removed.
§ 173.34(e)(10)	To add DOT Specification 3AA for argon, helium, nitrogen, oxygen, breathing air, and dry compressed air which is commercially free from corroding components to the Table in paragraph (e)(10). The addition of these noncorrosive laboratory gases to the table will make it practical to reduce the number of high pressure stresses on the cylinders during hydrostatic tests.	To amend the table in paragraph (e)(10) of § 173.34 by adding the following to the end thereof: DOT–3AA —— argon, helium, nitrogen, oxygen, breathing air, and dry compressed air which is commercially free from corroding components.
§173.53(h)	To add the Bureau of Mines, U.S. Department of the Interior as an authorized agency to examine Type 8 explosives. The Bureau of Mines was added to § 173.86(b) under Docket No. HM–163E on April 16, 1981	In § 173.53, paragraph (h) would be revised to read as follows. (h) Type 8. Any solid or liquid compound, mixture or device which is not specifically included in any of the above types, and which under special conditions may be so designated and examined by the Bureau of Explosives or the Bureau of Mines, U.S. Department of the Interior and approved by the Associate Director for HMR. Example: Shaped charges, commercial
§173.91 (a)(6) and (a)(6)(i)	To eliminate the need for DOT approval of blocking and bracing methods prescribed by the military departments.	In §173.91, paragraphs (a)(6) and (a)(6)(i) would be amended by deleting the words "and approved by the Department"
§ 173.119(a)(12)	To remove the reference to obsolete tank car specifications	In § 173.119, paragraphs (a)(12) would be amended by deleting Specification ARA–III,[2] ARA–IV,[2] or ARA–IV–A.[2]
§173 119(a)(17)	To authorize the use of DOT Specification MC 310 MC311 and MC312 cargo tanks for transportation of flammable liquids. Subject cargo tanks are authorized in § 173.119(m)(12) for flammable liquids which are also oxidizers, corrosive liquids or Poison B liquids. The restriction against the use of MC 310, MC 311 or MC 312 cargo tanks for a product which is only a flammable liquid appears to be unreasonable.	To revise § 173.119(a)(17) to read as follows: (17) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330,[3] or MC 331,[3] (§§ 178.340, 178.341, 178.342, 178.343, 178.337). Tank motor vehicles. Bottom outlets on Spec. MC 304 cargo tanks must be equipped with valves conforming with § 178.342–5(a). If Spec. MC 310, MC 311 or MC 312 cargo tanks are constructed with bottom outlets, they must conform with §§ 178.342–5(a) and 178.343–5. Bottom outlets on Spec. MC 300 and MC 331 cargo tanks must be equipped with valves conforming with § 178.337–11(c).
§173.119(a)(18)	To remove reference to obsolete tank car specifications	In § 173.119, paragraph (a)(18) would be removed and reserved. Also, footnote 4 would be removed.
§ 173.119(e)(2)	To remove the reference to obsolete tank car specifications	§ 173.119, (e)(2) would be amended by deleting Specification ARA–III,[2] ARA–IV,[2] or ARA–IV–A.[2] Also, the last two lines which reads "(See Note 1 of paragraph (f)(3) of this section)" would be removed.
§173 119(e)(3), (e)(3)(i), and (f)(5)	To authorize the use of DOT Specification MC 310, MC 311, and MC 312 cargo tanks for shipment of flammable liquids. See § 173.119(a)(17) for proposed change.	In § 173.119, paragraph (e)(3), (e)(3)(i) and (f)(5) would be amended to include Specification MC 310, MC 311, and MC 312 and provide for bottom outlets. See § 173.119(a)(17)
§173.119(f)	Reference to "(see Note (2)" would be changed to "(see Note 1)" because the present Note 1 applies to obsolete tank cars.	In § 173.119, the introductory text of paragraph (f) would be amended by changing "(see Note 2)" to read "(see Note 1)".
§173.119(f)(3)	To remove the reference to obsolete tank car specification, remove reference to paragraphs (g) and (h) and change the reference of "Note 3" to read "Note 2"	In § 173.119, paragraph (f)(3) would be amended by (1) deleting Specifications ARA–IV–A[2] and ARA–IV[2]; (2) deleting (see Note 1 of this paragraph); (3) deleting reference to paragraphs (g) and (h) and (4) changing reference to "Note 3" to read "Note 2".
§ 173.119(f)(4)	To remove the reference to obsolete tank car specifications and (1) delete the third and fourth sentence, (2) delete all of Note 1, and (3) change Note 2 and Note 3 to read Note 1 and Note 2	In § 173.119, paragraph (f)(4) would be revised to read as follows. (4) Specification 103[2], 103W, 103ALW, 104[2], 104W, 111A60ALW1 111A60F1, 111A60W1, 115A60W1, 115A60W6 or 115A60ALW (§§ 179.200, 179.201, 179.220, 179.221 of this subchapter). Tank [illegible] Note 1 would be deleted and Note 2 and Note 3 would be renumbered Note 1 and Note 2 respectively
§ 173.119 (g) and (h)	To remove the requirement for obsolete manhole closure identification mark and dome placards. The ARA tank cars which required the above are no longer in service.	In 173.119, paragraphs (g) and (h) would be removed and reserved.
§ 173 123(a)(5)	To remove the reference to obsolete tank car specification ARA–IV–A and the reference to an obsolete Note 1	In § 173.123, paragraph (a)(5) would be revised to read as follows: (5) Specification 105A100,[3] 105A100W, 111A100W4, 112A200W, 112A400F, or 114A340W (§§ 179.100, 179.101, 179.200, 179.201 of this subchapter). Tank cars. Specification 114A340W tank cars must not be equipped with any bottom outlet. Bottom washout permitted. (See § 173.10 for shipping instructions)
§ 173 124 (a)(1) and (a)(2)	To eliminate the need for the inside metal containers prescribed in paragraph (a)(1) and the cylinders prescribed in paragraph (a)(2) of § 173.124 to be coated with a heat-retardant paint. The MTB will appreciate receiving comments from shippers of ethylene oxide who have information regarding benefits of heat-retardant paint and whether standards exist for specifying such paints.	In § 173.124, paragraphs (a)(1) and (a)(2) would be amended by deleting that portion of the paragraph that pertains to heat-retardant paint and examined by the Bureau of Explosives and approved by the Associate Director for HMR"

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.202(a)(1)	To eliminate the need for inside metal containers to be examined by the Bureau of Explosives and approved by the Associate Director for HMR. The MTB believes that the examination and approval of the inside metal can is no longer necessary because of the wording in §§ 173.21 and 173.24.	In § 173.202, paragraph (a)(1) would be revised to read as follows: (1) Specification 15A, 15B, or 19B (§§ 178.168, 178.169, 178.191 of this subchapter). Wooden boxes with inside metal containers. Inside packaging must be cushioned with incombustible cushioning material. Each container must have been tested hydrostatically to a pressure of not less than 60 pounds per square inch without rupture. Closing devices must be protected from injury. Not more than 300 pounds of sodium or potassium liquid alloy may be shipped in one outside container.
§ 173.206(c)(2)	To remove the net weight restriction of 300 pounds for DOT Specification 17C drums and the 30 pounds restriction for DOT Specification 17H, 37A and 37B drums. This restrictrion appears to be unnecessary.	To delete the last sentence of paragraph (c)(2) in § 173.206.
§ 173.238	The MTB is considering the removal of the entire section regarding "Aircraft rocket engines (commercial) and/or aircraft rocket engine igniters (commercial)" from 49 CFR. Note 1 of the referenced section states that "For purposes of § 173.238, aircraft rocket engines (commercial) are standby aircraft propulsion engines which are for civil aircraft installation only, comprising a metal case containing a solid composite fuel other than one classified as an explosive and containing no explosive material or element". According to our information, the MTB is not aware of any aircraft rocket engines (commercial) that do not contain some explosive material. For this reason, this section serves no useful purpose. Jet thrust unit (*jato*) appears to be the proper shipping name.	In § 173.238 the section would be reissued and reserved: § 173.238 [Reserved]
§ 173.245(a)(25)	To eliminate the need for the inside aluminum containers to be examined by the Bureau of Explosives (B of E) and approved by the Associate Director for HMR. The MTB believes that the examination and approval of the inside aluminum container is unnecessary because of the wording in §§ 173.21 and 173.24. This section was added to the regulations several years ago for the shipment of diethyl pyrocarbonate.	In § 173.245, paragraph (a)(25) would be revised to read as follows: (25) Specification 12A or 12B (§§ 178.210, 178.205 of this subchapter). Fiberboard boxes with inside aluminum packagings.
§ 173.252(g)(1)	To eliminate the need for gasket material used on Spec. 5K or 5M drums for bromine to be examined by the Bureau of Explosives and approved by the Associate Director for HMR. The wording in § 173.24 should be adequate.	In § 173.252, the last sentence in paragraph (g)(1) would be revised to read as follows: (1) * * * Each drum must be completely emptied and dried before reuse.
§ 173.256(a)(3)	To eliminate the need for the Molded liner to be examined by the Bureau of Explosives and approved by the Associate Director for HMR. Referenced paragraph was added several years ago when a shipper wanted to switch from a rubber liner to a polyethylene liner.	In § 173.256, paragraph (a)(3) would be revised to read as follows: (3) Specification 22B (§ 178.197 of this subchapter). Plywood drums equipped with a liner of rubber, polyethylene or other material impervious to the solution.
§ 173.263(a)(9)	To authorize the use of a safety relief valve or safety vent. Release of hazardous material through the vent has caused human injuries. DOT-E 8509 authorizes the use of a safety relief valve on DOT Specification 103BW and 111A100W5.	In § 173.263, paragraph (a)(9) would be amended by changing the introductory text of the fourth sentence to read * * * A safety relief valve or a safety vent of approved design * * *.
§ 173.289(a)(2)(i)	To clarify the marking requirements in § 173.289(a)(2)(i) also applies to the tank cars that could be used under the provisions of paragraph (a)(1) of § 173.289.	In § 173.289, paragraph (a)(2)(i) would be revised to read as follows: (i) Each tank car authorized under this section must be marked "FORMIC ACID" in accordance with the requirements in § 172.330 of this subchapter.
§ 173.314(c) Table	To delete reference to DOT-106A500X, 110A500W, Note 25 for chlorotrifluoromethane (R-13) because these tanks are not suitable for this product.	In column 3 of the Table in § 173.314(c) for the entry chlorotrifluoromethane (R-13) DOT-106A500X, 110A500W, Note 25, would be removed.
§ 173.314(c) Table Note 12	To remove the reference to obsolete tank car specification ARA-V.	In § 173.314(c), Note 12 following the Table would be amended by deleting reference to ARA-V tank cars.
§ 173.315(b) Table	At present, the Table infers that "See Note 1." in the fourth column applies to only two entries instead of the entire table. Apparently, the 1976 edition of 49 CFR was the last issue in which the Table was published correctly.	To amend the Table in paragraph (b) of § 173.315 by adding "See Note 1" in the same block as the heading in the fourth column.
§ 173.354(a)(5) and § 173.354(a)(6)	To authorize the use of a frangible disc in series with a spring-loaded safety relief valve on DOT Specification 51 portable tanks and DOT Specification MC 331 cargo tanks which are used to transport motor fuel antiknock compound. This action is necessary in order to protect the relief valve from possible corrosion which could result in a faulty operation.	To add a sentence at the end of paragraphs (a)(5) and (a)(6) of § 173.354 to read as follows: * * * A frangible disc may be used in series with and inboard of the safety relief valve. The relief valve and the frangible disc must be set to function in a range of no less than 100 percent and no greater than 110 percent of the maximum allowable working pressure.
§ 173.860(c)	To provide an exception for minute quantities of metallic mercury (contained in electron tubes and vapor tubes) which do not pose a transportation hazard.	To add paragraph (c)(5) to § 173.860 to read as follows: (5) In manufacturer's original packaging if each item does not contain more than 100 milligrams of mercury per tube and if the outside package does not contain more than one gram total net quantity. Packages complying with these quantity limitations are not subject to any other requirements of this subchapter.
§ 174.63(d)	To specify the criteria for approving DOT Specifications IM 101 and IM 102 portable tanks for Trailer-on-flat-car (TOFC) and Container-on-flat-car (COFC) service. At present, approval is granted under conditions approved by the Associate Administrator for Safety, FRA.	In § 174.63, paragraph (d) would be revised to read as follows: (d) An IM 101 or IM 102 portable tank may be transported in trailer-on-flat-car (TOFC) or container-on-flat-car (COFC) service only on cushioned underframe rail cars—. (1) *General requirements.* (i) IM portable tanks when used for TOFC shipments must be equipped to be securely mated to a container trailer chassis. The tie-downs on each chassis trailer must be the standard ISO twist-lock pins and corner casting. (ii) IM portable tanks when used for COFC shipments must be equipped to be securely attached to a railroad container car equipped with an ISO standard COFC basic pedestal system designed for container support and securement. (2) *Under DOT Exemption*—IM portable tanks which were constructed before October 1, 1981 are approved for TOFC/COFC service in accordance with § 174.63(d) provided the general requirements and the following requirements have been met: (i) The IM portable tanks have been approved for TOFC or COFC service by the provisions of a DOT exemption; and (ii)The owner or manufacturer has certified to the Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau, DOT, that the IM portable tanks meet either the IM 101 or the IM 102 DOT specification.

Regulation affected	Reason(s) for proposed change	Proposed amendment
		(3) *New Construction*—IM portable tanks which were constructed after May 1, 1981 are approved for TOFC/COFC service in accordance with 174.63(d) provided the general requiremetns are met and the Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau, DOT has received an approval certificate, as required in § 173.32a(b) certifying the IM portable tanks meet either the IM 101 or the IM 102 DOT Specification, from a designated approval agency for DOT Specification IM 101 and IM 102 portable [illegible].
		(4) *Existing Tanks Not Authorized by Exemption*—IM portable tanks which were constructed before May 1, 1981 that have not been authorized for service by the provisions of DOT exemptions are approved for TOFC/COFC service in accordance with § 174.63(d) provided the general requirements are met and the Associate Director for Hazardous Materials Regulations, Materials Transportation Bureau, DOT has received an approval certificate, as required in § 173.32a(b) certifying that the IM portable tanks meet either the IM 101 or the IM 102 DOT Specification from a designated approval agency for DOT Specification 101 and 102 portable tanks.
§ 174.104(a)	The Department of Defense requested an amendment to specifically state that cushioned underframe rail cars are authorized for the shipment of Class A explosives. These cars give a smoother ride and reduce shock loads during coupling operations.	In § 174.104, paragraph (a) would be revised to read as follows: (a) Except as provided in § 174.101 (b), (n), and (o), Class A explosives being transported by rail may only be transported in a certified and properly placarded closed car of not less than 80,000 pounds capacity, with steel underframes and friction draft gear or cushioned underframe, except that on a narrow-gauge railroad they may be transported in a car of less capacity so long as the car of greatest capacity and strength available is used.
§ 174.104(b)(6)	The Department of Defense requested an amendment to require the carrier to check munitions rail cars prior to loading for the presence of flammable or otherwise potentially hazardous residues or other contaminants that may have permeated the car floor or interior structure from previous cargoes.	In § 174.104, paragraph (b)(6) would be amended by adding the following sentence to the end: (6) * * * If evidence of potential hazardous contamination is apparent after the floor has been swept the carrier must either decontaminate the car or provide a suitable substitute car
§ 176.305(c)(5)	To clarify that flammable liquids having a flashpoint above 73° F. and in excess of one ton may be transported in any hold or compartment that is fitted with a gooseneck type of vent head.	To revise paragraph (c)(5) of § 176.305 to read as follows: (5) Flammable liquids in excess of one ton, except flammable liquids with a flashpoint above 73° F., may not be transported in any hold or compartment that is fitted with a gooseneck type of vent head
§ 177.817 (a) and (d)	To make the shipping paper requirements in § 177.817 consistent with those in Part 172	In § 177.817 paragraphs (a) and (d) would be revised to read as follows:
		(a) General requirements. A carrier may not transport a hazardous material unless it is accompanied by a shipping paper that is prepared in accordance with §§ 172.200, 172.201, 172.202, and 172.203 of this subchapter.
. . .	. . .	. . .
		(d) This section does not apply to any material, other than a hazardous substance or a hazardous waste, that is classed as an ORM- A, B, C or D (See § 172.200 of this subchapter).
§ 178.24-7(a), § 178.27-3(a), and § 178.35a-3(a)	Present wording infers that the required testing be done at the same manufacturing location where the container is made. A change is needed to specifically state that the testing may be performed at a location other than at manufacturing location.	To revise the introductory text of §§ 178.24-7(a), 178.27-3(a), and 178.35a-3(a) to read as follows: (a) Samples taken at random shall withstand prescribed test without breakage or leakage. Test shall be made on each type and size produced at each manufacturing location starting production and shall be repeated every four months. Testing may be performed at a location other than at the manufacturing location. The type of tests are as follows:
. . .	. . .	. . .
§ 178.37-5(a), § 178.44-5(a), Note 1	Note 2 following the second table should follow Note 1 after the first table. Reference to Note 2 is only mentioned in the heading of the first table. Also, the last part of Note 1 which reads "except as approved by the Department" would be removed. These same words would be removed in Note 1 of § 178.44-5(a).	In § 178.37-5(a), Note 2 would be relocated at the end of the first [illegible]
§ 178.46-4(d)(12)	To eliminate the need for a copy of the inspector's report to be filed with the Associate Director for HMR. The proposed wording would be the same as required in § 178.37-4(d) for DOT Specifications 3AA and 3AAX cylinders.	To revise paragraph (d)(12) of § 178.46-4 to read as follows: (d) Furnish complete test reports required by this specification to the maker of the cylinder and, upon request, to the purchaser. The test report must be retained by the inspector for fifteen years from the original test date of the cylinder.
§ 178.46-8(e)(2)	To correct the reference to "Part III" to read "Part II" in § 178.46-8(e)(2).	To amend paragraph (e)(2) of 178.46-8 by changing "Part III" to read "Part II".
§ 178.47-8(a), § 178.50-8(b), § 178.51-8(d), § 178.53-8(b), § 178.54-8(a)(2), § 178.55-8(d), § 178.56-8(d), § 178.57-8(e), § 178.58-8(a), § 178.59-7(a), § 178.60-7(b), § 178.61-8(d), and § 178.65-6(d).	To have all DOT specifications for welded steel cylinders to reference CGA Pamphlet C-3 for consistency.	In 178.47-8(a), third sentence, 178.54-8(a)(2), last sentence, 178.58-8(a), last sentence, and 178.61-8 (d) would all be revised to read "Welding procedures and operators must be qualified in accordance with the sections CGA Pamphlet C-3 that apply"
		Sections 178.50-8(b), 178.51-8(d), 178.53-8(b), 178.55-8(d), 178.56-8(d), 178.57-8(e), 178.59-9(b), 178.60-7(b), and 178.65-6(d) would all be added to read: "Welding procedures and operators must be qualified in accordance with the sections of CGA Pamphlet C-3 that apply"
		In addition to the change in § 178.57-8(e), an additional sentence would be added to read: "In addition, impact test of the weld shall be performed in accordance with § 178.57-17(d) as part of the qualification of each welding procedure and operator"
§ 178.57-10(a)(5)	To add the word "stress" after the word "wall"	To revise paragraph (a)(5) in § 178.57-10 to read as follows: (5) Further provided that wall stress for cylinders having longitudinal seams must not exceed 85 percent of the above value, whichever applies.
§ 178.61.-15(a)	To specify lot size and resultant frequency of test	To revise paragraph (a) of § 178.61-15 to read as follows: (a) To determine yield strength, tensile strength, elongation, and reduction of area material specimens must be cut from one cylinder taken at random out of each lot of 200 or less after heat treatment as follows:
		(1) One specimen shall be taken longitudinally from the body section at least 90 degrees away from the weld and one other specimen from either of the heads. If the two heads are of differing materials, a specimen shall be taken from each head.

Regulation affected	Reason(s) for proposed change	Proposed amendment
		(2) If due to welded attachments there is insufficient space to obtain the specimen from the top head, the specimen may be taken from a representative head subjected to the same heat treatment as the test cylinder.
§ 178.65–5(b)	To authorize the use of aluminum alloy identified as 1060. Essentially alloy 1060 is very similar to alloy 1170. The final product performance of cylinders manufactured with 1060 alloy yield very slightly improved mechanical characteristics.	To amend paragraph (c) of § 178.65–5 to include alloy "1060"
§ 178.61–11, § 178.61–12(a), § 178.62–12(a), § 178.63–12(a), § 178.68–11(a), § 178.89–10(a), § 178.90–11(a), § 178.92–12(a)(4), § 178.98–10(a), § 178.99–10(a), § 178.100–10(a), § 178.102–4(a), § 178.107–10(a), § 178.109–10(a), § 178.115–11(a), § 178.116–11(a), § 178.117–12(a), § 178.118–11(a), § 178.130–9(a), § 178.131–10(a), § 178.132–10(a), § 178.133–10(a), § 178.134–4(a), § 178.135–9(a), § 178.137–6(a), § 178.140–7(a), and § 178.141–7(a)(3).	To eliminate the minimum marking sizes for metal drums. The Steel Shipping Container Institute (SSCI) has requested this change so that the embossed markings will be consistent with international standards. Because of the limited space for embossment, these proposed changes should eliminate manufacturing marking problems without affecting safety. Note.—Instead of repeating all of the information proposed in § 178.80–11 for each specification affected, the MTB is planning to revise all of the affected sections by referring the reader to the § 179.80–11 section.	In § 178.80–11 the entire text would be revised to read as follows: § 178.80–11 Marking. (a) Each container shall be marked by embossing on a permanent head with clearly legible raised characters as follows: (1) DOT–(Spec. No.) (where applicable, STC; indicating a single trip container, or NRC; indicating a nonreusable container). (2) If manufactured of stainless steel, the type of steel used in body and head sheets as identified by the American Iron and Steel Institute type number (for example, 304, 316, 304HT). This mark should be near the DOT mark. (3) Name or symbol of person making the mark specified in paragraph (a)(1) of this section. Symbol, if used, must be registered with the Associate Director for HMR. (4) Gauge of metal in thinnest part, rated capacity in gallons, and year of manufacture (for example, 18–55–83). When gauge of metal in body differs from that in heads, both must be indicated with a slanting line between and with gauge of body indicated first. (for example, 18/16–55–83 for body 18 gauge and head 16 gauge) (b) For the purpose of this subchapter, the minimum character size specified in § 173.24(c)(1)(iv) is waived.
§ 178.24–7, § 178.35e–3, § 178.80–13(a), § 178.81–13(a), § 178.82–13(a), § 178.83–13(a), § 178.88–12(a), § 178.89–11(a), § 178.90–12(a), § 178.92–13(a), § 178.98–11(a), § 178.99–11(a), § 178.100–11(a), § 178.107–11(a), § 178.109–11(a), § 178.115–12(a), § 178.116–12(a), § 178.117–13(a), § 178.118–12(a), § 178.130–10(a), § 178.131–11(a), § 178.132–11(a), § 178.133–11(a), § 178.135–10(a), § 178.137–7(b), § 178.140(a), and § 178.141–8(c).	In addition to the proposed marking changes, the "SSCI has also requested that the "type and size" in the test requirements for metal drums be amended to eliminate unnecessary testing of smaller drums when the taller drum of the smae design, size, material, thickness and construction has already passed of the required tests. This would be consistent with UN recommendations and Docket HM–181, Advance Notice. Note.—For the purpose of this notice, the proposed amendment will only be listed once. However, in the final rulemaking the proposed wording would be inserted in each of the referenced sections.	In § 178.80–13, the second sentence of the introductory text of paragraph (a) would be amended to read as follows: (a) Tests shall be successfully performed on each packaging design type before such packaging is used. A packaging design type is defined by the design, size, material, thickness and manner of construction but may include various surface treatments. It also includes packagings which differ from the design type only in their lesser design heights
§ 178.102–4	To allow embossment on either permanent head of a new DOT Specification 6D drum or in the case where a drum has been altered to Specification 6D from an all 18-gauge tight head drum, the markings may be embossed on the body of the drum, no more than six inches from top curl. See § 178.118–10 for similar marking requirements for DOT Specification 17H drums.	To revise the introductory text of paragraph (a) of § 178.102–4 to read as follows: (a) Marking requirements for new or altered drums are as follows: *New drums.* Marking on each drum by embossing on the permanent head, with raised marks not less than ⅛ inch. *Altered drums.* Drums which have been altered to Specification 6D from an all 18-gauge tight head drum may be embossed on the body of the drum, no more than six inches from top curl.
§ 178.117–9	To authorize the use of a performance type of closure for DOT Specification 17F steel drums as authorized for DOT Specifications 5A, 5B, 5C, 17E and 17H drums.	To add paragraph (e) to § 178.117–9 to read as follows: (e) Other types of closures are authorized if they perform without failure under the tests required by this section and a record of the tests is retained during the period the closure is in use.
§ 178.134–2(c)	To authorize two weep holes in the overpack body (DOT Specification 37M) immediately below the top chime as authorized for DOT Specificaton 6D	To revise the introductory text of paragraph (c) of § 178.134–2 to read as follows: (c) Two holes not exceeding ¼ inch each are permitted diametrically opposite each other in the overpack body immediately below the top chime or immediately above the double seam of the boom chime or three holes not exceeding 5/16 inch in diameter on centers 120 degrees apart in the botoom head.
§ 178.137–7(b)	Paragraph (b) incorrectly states that samples of drums must be tested as prescribed in paragraphs (a) (1) and (2) of this section. Since there is no paragraphs (a) (1) and (2) the introductory text of paragraph (b) would be amended by correcting the reference to paragraph (b).	In § 178.137–7, the introductory text of paragraph (b) would be revised to read as follows: (b) Samples which are taken at random and closed as for use must be tested as prescribed in paragraphs (1) and (2) of this section without leakage.
§ 178.251–3(d)	To reduce the number and size of specimens which are required to be tested for DOT Specification 56 and 57 portable tanks. Also, the test interval would be increased from six months to twelve months. The present wording of § 178.251–3(d) is more appropriate for DOT Specification MC 306, MC 307 and MC 312 cargo tanks. Fabrication of several different types and sizes of portable tanks by a single manufacturer could become expensive. The proposed change would reduce the cost of testing without reducing safety.	To revise § 178.251–3(d) to read as follows: (d) *Compliance test.* Compliance with the requirements contained in paragraph (b) or (c) of this section for the welded joints must be determined by preparing two test specimens from materials and fabrication techniques representative of those to be used in each tank. Each specimen must be tested to failure under tension. Each test specimen must be prepared and tested in accordance with ASTM Standard E8–81 for metallic materials and ASTM Standard B557–81 aluminum and magnesium alloy products. As a minimum, one pair of representative test specimens, consisting of the minimum and maximum thickness for each type of material used, may represent all the related tanks manufactured in the same shop within 12 months after the tests on the samples have been completed. The butt welded specimens tested may be considered as qualifying other types or combinations of types of welds using the same filler material and welding process as long as parent metals are of the same types of materials.
§ 178.255–8	To eliminate the need for safety devices on DOT Specification 60 portable tanks to be approved by the Associate Director for HMR. The MTB believes that this approval should not be any different than that specified in § 178.337–9 for a MC 331 cargo tank.	To revise § 178.255–8 to read as follows: See § 173.315(i) of this subchapter.
§ 178.255–15	To eliminate the need for a copy of the manufacturer's data report and registration of each tank with the Associate Director for HMR.	To revise § 178.255–15(a) to read as follows: (a) A copy of the manufacturer's data report required by the Code (See § 178.245–1(a) under which the tank is fabricated shall be furnished to the owner for each new tank.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 178.337–17(a) and § 178.340–10(b)	To change the requirement for the metal certification plate to be on the left side of the cargo tank near the front, instead of the right side near the front, on all DOT Specification MC 306, MC 307, MC 312, MC 331, and MC 338 cargo tanks constructed after September 30, 1984. Also, this requirement would apply to future cargo tanks such as the proposed hazardous waste tanks. The Truck Trailer Manufacturer Association (TTMA) has further requested a change to authorize a single certification plate combining all mandatory DOT data. These changes are considered necessary in order to have a uniform location for this information. At present, 49 CFR 178.340–10 and NHTSA Certification regulations 49 CFR Part 567 require this data to be located on opposite sides of the cargo tank.	To revise § 178.337–17(a) and § 178.340–10(b) and by changing the words "on the right side near the front" to read "on the left side near the front". In addition, § 178.337–17(a) and § 178.340–10(b) would be revised to authorize a combination ASME/DOT/NHTSA certification plate.
§ 179.200–15(a)	To delete the reference to § 179.202–1 because it pertains in part to obsolete tank cars and § 179.201–6(a) covers the required information for manway closures.	In § 179.200–15, paragraph (a) would be revised to read as follows: (a) Manway covers shall be of approved type.
§ 179.201(a)–1 Table	In the Table, the line entry "Special references", 179.202–1 is referenced for DOT Specification tank cars 103ALW, 103DW, 103W, 104W, 111A60ALW1, 111A100W1 [1], 111A100W3, 111A100W4 and 111A100W6. Since 179.202–1 is not necessary because of 179.201–6(a), the reference would be removed for the above referenced tank cars.	In § 179.201–1, the Table would be amended by removing 179.202–1 each time it appears under DOT Specifications 103ALW, 103DW, 103W, 104W, 111A60ALW1, 111A100W1 [1], 111A100W3, 111A100W4 and 111A100W6
§ 179.201–1(a)	To authorize the use of a safety relief valve instead of a safety vent on DOT Specification 103BW and 111A100W5 tank cars. See proposed change to § 173.263(a)(9).	In § 179.201–1, the Table would be amended by adding the word "valve" on the line "safety relief devices (see § 179.200–18)" for DOT Specification 103BW and 111A100W5 tank cars.
§ 179.202–1	Under § 179.201–6(a), manway covers must be designed to prevent removal while the tank is under pressure; therefore, § 179.202–1 is redundant.	In § 179.202–1 the entire text would be removed and the section would be marked [Reserved]".

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(3) of Appendix A to Part 106)

Issued in Washington D.C. on March 14, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84–7250 Filed 3–21–84; 8:45 am]

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Part III

General Services Administration

48 CFR Ch. 5

Establishing the General Services Administration Acquisition Regulation (GSAR); Final Rule

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[APD 2800.12]

Establishing the General Services Administration Acquisition Regulation (GSAR)

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is established to implement and supplement the Federal Acquisition Regulation. The GSAR replaces the General Services Administration Procurement Regulation (GSPR), 41 CFR Ch. 5 for solicitations issued on or after April 1, 1984. The GSPR will continue to apply to contracts awarded based on solicitations issued before April 1, 1984.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations, Office Acquisition Policy, (202) 523-4754.

SUPPLEMENTARY INFORMATION:

1. *Background.*

A notice of availability of each proposed GSAR Part was published in the **Federal Register.** Interested persons were afforded the opportunity to obtain copies of the proposed parts and to submit comments. All comments received were reviewed and appropriate changes were made to incorporate the comments.

2. *Statutory and regulatory requirements.*

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982 exempted agency procurement regulations form Executive Order 12291. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). All information collection requirements which require approval by OMB under 44 U.S.C. 3501 et seq. have been submitted to OMB. In those cases where an OMB Control number has been assigned, the control number is included in the regulation along with the information collection or recordkeeping requirement.

List of Subjects in 48 CFR Chapter 5

Government procurement.

For the reasons set out in the preamble, there is established in the Code of Federal Regulations Title 48—Federal Acquisition Regulations System, Chapter 5—General Services Administration Acquisition Regulation, consisting of Parts 501 through 570 to read as set forth below.

This edition is the initial publication of the GSAR. It is effective on April 1, 1984, in accordance with procedures to be established by the undersigned.

Dated: March 9, 1984.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

Title 48 of the CFR is amended by establishing Chapter 5 as follows:

CHAPTER 5—GENERAL SERVICES ADMINISTRATION

General Structure

SUBCHAPTER A—GENERAL

Part 501—General Services Administration Acquisition Regulations system
Part 502—Definitions of words and terms
Part 503—Improper business practices and personal conflicts of interest
Part 504—Administrative matters
Part 505—Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

Part 507—Acquisition planning
Part 508—Required sources of supplies and services
Part 509—Contractor qualifications
Part 510—Specifications, standards, and other purchase descriptions
Part 511—Acquisition and distribution of commercial products
Part 512—Contract delivery or performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 513—Small purchase and other simplified purchase procedures
Part 514—Formal advertising
Part 515—Contracting by negotiation
Part 516—Types of contracts
Part 517—Special contracting methods—[Reserved]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 519—Small business and small disadvantaged business concerns
Part 520—Labor surplus area concerns—[Reserved]
Part 522—Application of labor laws to Government acquisitions
Part 523—Environment, conservation, and occupational safety
Part 524—Protection of privacy and freedom of information
Part 525—Foreign acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 527—Patents, data, and copyrights—[Reserved]
Part 528—Bonds and insurance
Part 529—Taxes
Part 530—Cost accounting standards
Part 531—Contract cost principles and procedures
Part 532—Contract financing
Part 533—Disputes and appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 534—Major system acquisition
Part 535—Research and development contracting—[Reserved]
Part 536—Construction and architect-engineer contracts
Part 537—Service contracting
Part 538—Federal supply schedule contracting—[Reserved]
Part 539—Management acquisition, and use of information resources—[Reserved]

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 542—Contract administration
Part 543—Contract modification
Part 544—Subcontracting policies and procedures—[Reserved]
Part 545—Government property—[Reserved]
Part 546—Quality assurance
Part 547—Transportation
Part 548—Value engineering
Part 549—Termination of contracts
Part 550—Extraordinary contractual actions
Part 551—Use of Government sources by contractors—[Reserved]

SUBCHAPTER H—CLAUSES AND FORMS

Part 552—Solicitation provisions and contract clauses
Part 553—Forms

SUBCHAPTERS—I THRU M—[RESERVED]

SUBCHAPTER N—SPECIAL CONTRACTING PROGRAMS

Part 570—Acquisition of leasehold interests in real property
Appendix A to Chapter 5—Contracting office assignment codes—[Note]
Appendix B to Chapter 5—Rules of the GSA Board of Contract Appeals—[Reserved]

SUBCHAPTER A—GENERAL

PART 501—GENERAL SERVICES ACQUISITION REGULATIONS SYSTEM

Sec.
501.000 Scope of part.

Subpart 501.1—Purpose, Authority, Issuance.

501.101 Purpose.
501.102 Authority.
501.103 Applicability.
501.104 Issuance.
501.104-1 Publication and code arrangement.
501.104-2 Arrangement of regulations.
501.104-3 Copies.
501.170 The General Services Acquisition Regulation (GSAR).
501.170-1 General.
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Authority: 40 U.S.C. 486(c).

501.000 Scope of part.

This part sets forth introductory information concerning the General services Administration Acquisition Regulation (GSAR), describes the methods by which the General Services Administration implements and supplements the Federal Acquisition regulation (FAR), and contains policies and procedures that implement and supplement Part 1 of the FAR.

Subpart 501.1—Purpose, Authority, Issuance

501.101 Purpose.

This subpart establishes Chapter 5 of the Federal Acquisition Regulations System, and describes the relationship of Chapter 5 to the FAR.

501.102 Authority.

The General Services Administration Acquisition Regulation (GSAR 5) is prescribed by the Assistant Administrator for Acquisition Policy in Chapter 5, Title 48, Code of Federal Regulations, under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

501.103 Applicability

(a) The GSAR applies to all GSA contracts for supplies or services (including construction) for the use of the Federal Government through purchase or lease.

(b) Part 570 of the GSAR contains policies and procedures on the acquisition of leasehold interest in real property. Parts 501, 502, 503, 505, 533, 543, 552, 553, and Subparts 504.70, 509.4, 515.1, 515.2, and 532.8 include policies and procedures which have general application to all contracts including leases of real property. Other GSAR provisions do not apply to leases of real property unless a specific cross reference is made to the provision in Part 570.

(c) The GSAR apply to sales of real and personal property only to the extent explicity stated in specific GSAR provisions. The portions of Subpart 501.6 regarding the Contracting Officer Warranty Program and legal review and assistance and Subpart 504.70 on the uniform procurement instrument identification system apply to sales of real or personal property.

(d) Regulations in the GSAR may deviate from the FAR when a deviation has been explicitly authorized. (See FAR Part 1.4 and GSAR Subpart 501.4.) When the GSAR contains no regulation that implements the FAR, the FAR alone will govern.

501.104 Issuance.

501.104–1 Publication and code arrangement.

(a) The GSAR is published in: (1) The daily issue of the **Federal Register**, (2) cumulated form in the Code of Federal Regulations (CFR), and (3) a separate looseleaf edition on buff colored paper stock.

(b) The GSAR is issued as Chapter 5 of Title 48, Code of Federal Regulations.

(c) Each numbered unit or segment (e.g., part, subpart, section, etc.) begins with the CFR chapter number.

501.104–2 Arrangement of regulations.

(a) *General.* The GSAR is divided into subchapters, parts, subparts, sections, subsections, and further subdivisions as necessary.

(b) *Numbering.* (1) The numbering system used in GSAR conforms to the FAR System. (See FAR 1.104–2.) A particular policy or procedure is identified by the same number in both the FAR and GSAR except that the chapter number assigned to the FAR (Chapter 1) in not included in the FAR.

(2) When the GSAR 5 implements a subchapter, part, subpart, section, or subsection of the FAR, the implementing subchapter, part, subpart, section, or subsection of GSAR is numbered (and captioned) to correspond to the FAR subchapter, part, subpart, section, or subsection.

(3) When the GSAR 5 supplements the FAR and thus deals with subject matter not contained in the FAR, numbers beginning with 70 are assigned to the supplementing part, subpart, section, or subsection.

(4) When the subject matter contained in the FAR subchapter, part, subpart, section, or subsection requires no implementation, the GSAR will not contain a corresponding subchapter, part, section, or subsection. This will result in some gaps in the GSAR series of subchapter, part, subpart, section or subsection numbers. In such cases, reference must be made to the FAR for applicable policies and procedures.

(c) *References and citations.* (1) In the GSAR, cross-reference to the FAR are made in the same manner as in the FAR. (See FAR 1.104–2(c) for information on FAR numbering.)

(2) In the GSAR cross-references to parts, subparts, and sections of the GSAR are made in the same manner as in the FAR. For example, this paragraph would be identified as "GSAR 501.104–2(c)."

(3) Any section of the GSAR, for purpose of brevity, may be informally identified as "GSAR" followed by the section number. For example, this paragraph would be identified as "GSAR 501.104–2(c)."

(4) In formal documents, such as legal briefs, citations of GSAR material shall include an appropriate reference to Title 48 of the Code of Federal Regulations: e.g., "48 CFR ———."

501.104–3 Copies.

Copies of the GSAR in the Code of Federal Regulations form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

501.170 The General Services Administration Acquisition Regulation (GSAR).

501.170–1 General.

The General Services Administration Acquisition Regulation (GSAR) implements and supplements the FAR. The GSAR also prescribes policies, procedures, contract clauses, and solicitation provisions that govern the acquisition process or otherwise control the relationship between the agency, including its suborganizations, and contractors or prospective contractors. Nonregulatory internal agency guidance, as described in the the FAR, may be issued in accordance with 501.171.

501.170–2 Exclusions.

Certain GSA procurement policies and procedures which would otherwise fall within the scope of this GSAR may be excluded when justified. These exclusions may include the following categories:

(a) Subject matter that bears a security classification.

(b) Policies or procedures that are expected to be effective for a period of less than 6 months.

(c) Policies or procedures that are expected to be effective on an experimental basis for a reasonable period.

(d) Policies and procedures pertaining to other functions of GSA as well as to procurements functions, and for which there is need to make the directive available simultaneously to all GSA employees concerned.

501.170–3 Amendments.

The GSAR may be amended from time to time by the Assistant Administrator for Acquisition Policy, with appropriate concurrences from other GSA officials (e.g., counsel and other appropriate offices).

501.170–4 Acquisition circulars.

(a) Acquisition Circulars (AC) shall be issued by the Assistant Administrator for Acquisition Policy as often as may be necessary to provide coverage on an interim basis, pending subsequent incorporation of material in this regulation by amendment. The use of Acquisition Circulars to supplement the GSAR is appropriate when speed of issuance is essential, numerous changes are required and all necessary changes cannot be made promptly. Acquisition Circulars shall be considered canceled after six months and therefore must be incorporated in the GSAR within this time period.

(b) Acquisition Circulars will be identified by the prefix "AC" followed by the last two digits of the calendar year in which issued and will be numbered consecutively. For example, the first circular issued in calendar year 1984 will be identified as AC–84–1.

501.171 Other GSA publications.

501.171–1 GSA orders and handbooks.

Internal agency guidance, as described in the FAR, shall be issued in the form of a GSA Order or handbook. "Internal agency guidance" is defined as designations and delegations of authority, assignments of delegations of authority, assignments of responsibility, work-flow procedures, internal reporting requirements, detailed operating procedures, etc. GSA Orders and handbooks shall not unnecessarily repeat, paraphrase, or otherwise restate the FAR and GSAR. GSA Orders and handbooks dealing with procurement may be issued by the heads of contracting activities or their designees. Policies and procedures for drafting, formatting, and numbering GSA Orders and handbooks are contained in the Writing GSA Internal Directives Handbook (OAD P 1832.3).

501.171–2 Acquisition letters (AL).

(a) Acquisition Letters may be issued as often as may be necessary to provide coverage on an interim basis, pending subsequent incorporation of material in GSA Orders or handbooks. The use of Acquisition Letters to amend GSA Orders or handbooks is appropriate when speed of issuance is essential, numerous changes are required, and all necessary changes cannot be made promptly. Acquisition Letters shall be considered canceled after six months and therefore must be incorporated into the applicable order or handbook within that time period.

(b) The Assistant Administrator for Acquisition Policy, and heads of contracting activities or their designees may issue Acquisition Letters. No more than two officials within a contracting activity, as appropriate, may be designated to issue Acquisition Letters.

(c) The Assistant Administrator for Acquisition Policy or his designee shall coordinate ALs with the heads of central office contracting activities, counsel, and the Inspector General. The heads of central office contracting activities or their designees shall coordinate ALs with the Office of Acquisition Policy, counsel and the Inspector General. Regional offices shall coordinate ALs with the regional counsel, and the regional Office of Project Control and Oversight (OPCO). When time permits, regional offices should also coordinate ALs with their Central Office counterpart and the Office of Acquisition Policy.

(d) ALs shall be identified by a number which shall be assigned by the issuing activity. The number shall begin with the correspondence symbol of the issuing office, shall be followed by the last two digits of the calendar year in which it is issued and shall be numbered consecutively beginning with 1. For example, the number of the first letter issued by the Commissioner, Public Buildings Service in calendar year 1984 will be P–84–1. If the Commissioner, PBS, authorized the Assistant Commissioner for the Office of Contracts (PP) and the Assistant Commissioner for the Office of Space Management (PR) to issue ALs on his behalf the ALs would be numbered PP–84–1 respectively. If the Commissioner authorizes the Assistant Commissioners to issue ALs on his behalf, but elects to sign a particular letter, the AL letter should be numbered using the correspondence symbol of the office that prepared the AL. Regional numbers will be preceded by the region number.

(e) ALs shall conform to the format for instructional letters outlined in Appendix D of the Writing GSA Internal Directives Handbook (OAD P 1832.3). In addition, each AL shall be numbered, dated, and include a subject line which cites the order or handbook reference. The body of the AL shall contain the following paragraphs, as appropriate.

(1) Purpose.

(2) Background.

(3) Cancellation.

(4) Coverage (who does AL apply to).

(5) Reference to regulations (FAR or GSAR), handbooks, Orders.

(6) Instructions/procedures.

(f) ALs issued by the heads of Central Office contracting activities, other than the Office of Acquisition Policy, shall be signed by the head of the contracting activity or his/her designee and by the Assistant Administrator for Acquisition Policy or his/her designee to indicate his/her concurrence.

(g) ALs shall be printed on colored paper in accordance with the following color designations:

Blue—Office of Acquisition Policy
Salmon—Office of Federal Supply and Services
Yellow—Office of Information Resource Management
Pink—Federal Property Resources Service
Buff—National Archives and Records Service
Green—Public Buildings Service
White—Regional Offices and other Central Office Contracting Activities not listed above

(h) The issuing office shall be responsible for distribution of their ALs

in accordance with the guidelines outlined below:

Issuing office	Distribution
Office of Acquisition Policy.	All GSA contracting activities, regional Offices of Project Control and Oversight (OPCO), Assistant General Counsels and regional counsels, and the Directives and Reports Management Branch (ATRAI).
Central Offices Heads of Services and Staff Offices.	Office of Acquisition Policy, Service/office contracting activities or segment thereof, regional OPCOs, Assistant General Counsels and regional counsels, and the Directives and Reports Management Branch (ATRAI).
Regional Office	Office of Acquisition Policy, appropriate Central Office contracting activities, regional OPCO, regional counsel, regional contracting activities or segment thereof and the Directives and Reports Management Branch (ATRAI)

(i) Each issuing office shall submit a report of ALs issued and canceled to the Office of GSA Acquisition Policy and Regulations (VP) on a quarterly basis. The Office of Acquisition Policy shall issue a consolidated index of all AL's issued or canceled on a quarterly basis. This index shall be distributed to all GSA contracting activites.

Subpart 501.4—Deviations From the FAR and GSAR

501.401 Definition.

The term "deviation" as used in the GSAR has the same meaning as in the FAR 1.401.

501.402 Policy.

In order to maintain maximum uniformity, deviations from the GSAR and the FAR shall be kept to a minimum.

501.403 Individual deviations.

(a) Deviations by GSA activities from the GSAR or the FAR in individual cases may be approved at a level not lower than the head of the contracting activity. The file shall disclose the nature of the deviation and the reasons for the action. A copy of the deviation approval and disclosure shall be furnished to the Office of Acquisition Policy (V).

(b) The deviation procedure shall not be used to defeat the approval requirements contained in the FAR and GSAR.

501.404 Class deviations.

(a) Deviations by GSA activities from the FAR in classes of cases may be approved only by the Assistant Administrator for Acquisition Policy (V).

(b) Deviations by GSA activities from the GSAR in classes of cases may be approved only by the Assistant Administrator for Acquisition Policy (V). These deviations will expire in 12 months if not extended. They may be rescinded earlier without prejudice to any action previously taken.

(c) Class deviation request shall be supported by statements which fully disclose the need for and the nature of the deviation.

(d) When a deviation from a form prescribed in the GSAR or the FAR is authorized, physical changes may not be made in the printed form (except as otherwise authorized). Changes shall be made by appropriate provisions in the schedule, specifications, or on a continuation sheet, as appropriate.

Subpart 501.6—Contracting Authority and Responsibilities

501.600-70 Scope of subpart.

This subpart sets forth policy and procedures for the GSA-wide contracting officer warrant program (COWP) and delineates the responsibilities of contracting officers and the heads of contracting activities (HCA).

501.601 General.

(a) The Assistant Administrator for Acquisition Policy is the Procurement Executive for GSA and is responsible for:

(1) Managment direction of the procurement system of the agency, including implementation of the unique procurement policies, regulations and standards of the agency;

(2) Developing and maintaining a procurement career management program to ensure an adequate professional workforce; and

(3) Delegating contracting officer authority in accordance with the Contracting Officer Warrant Program.

(b) Head of contracting activities, (HCA) (see 502.170) have unlimited contracting authority which may not be redelegated and are responsible for:

(1) Implementing and maintaining an effective and efficient program for the procurement of personal property and non-personal services (including construction and leasing) assigned to the activity;

(2) Establishing adequate controls to ensure compliance with applicable laws, regulations, procedures, and good management practices;

(3) Recommending highly qualified, well trained candidates to the Assistant Administrator for Acquisition Policy for designation as contracting officers with the limitations prescribed by the warrant boards and based on a vaild organizational need;

(4) Monitoring the performance of warranted contracting officers with regard to actions that may require suspension or termination of the appointment and recommending to the Assistant Administrator for Acquisition Policy the suspension or termination of appointment of contracting officers; and

(5) Establishing and approving acquisition/contracting training plans to satisfy COWP training requirements and ensuring the availability of required training funds for implementation of these plans.

501.601-70 Responsibility for administration of Contracting Officer Warrant Program (COWP).

(a) *Regional offices.* (1) *Regional Administrator.* The regional Administrator or his/her deputy, as the recommending official, shall recommend to the designating official the appointment or termination of appointment of contracting officers.

(2) *Contracting Officer Warrant Board.* The Contracting Officer Warrant Board shall receive, evaluate and process to the Office of Project Control and Oversight (OPCO) requests for appointment of contracting officers. (See 501.603-72.)

(3) *Office of Project Control and Oversight.* The regional administration of the contracting Officer Warrant Program has been assigned to the Office of Project Control and Oversight (OPCO). OPCO shall:

(i) Administer the Contracting Officer Warrant Program (COWP);

(ii) Ensure that the warrant board evaluates and recommends acceptance or rejection of applicants according to the requirements of the COWP;

(iii) Recommend appropriate additional training and the level of warrant certifications as required by the warrant board;

(iv) Issue procedures with approval of the Office of Acquisition Policy for the operation of the program at the regional level;

(v) Recommend program changes to the Office of Acquisition Policy;

(vi) Analyze proposed regional courses and training materials for procurement personnel and recommend them to the Office of Acquisition Policy, as appropriate, for fulfilling the requirements of COWP; and

(vii) Maintain detailed training records for each contracting officer.

(viii) Ensure that a GSA Form 19, Designation of Authorized Representative, is submitted to the Regional Finance Division when each contracting officer warrant is issued and that the Regional Finance Division is

notified promptly when a contracting officers authority changes, is suspended or terminated.

(b) *Central Office.* The head of a contracting activity, as recommending official, shall recommend to the designating official the appointment or termination of appointment of contracting officers. The head of a contracting activity, shall also act as the warrant board.

501.602 Contracting officers.

501.602-1 Authority.

Contracting officers designated by name on Standard Form 1402, Certificates of Appointment, are authorized to exercise contracting officer authority, subject to all requirements and limitations set forth in the certificate of appointment (501.603-3(b)(2)) and existing delegations of authority. Contracting officers shall exercise reasonable care, skill and judgement in all actions.

501.602-2 Responsibilities.

(a) *GSA revolving funds.* Unless otherwise notified, contracting officers may assume that sufficient funds are available for purchases payable from GSA revolving funds upon the receipt of a requisition signed by an authorized individual citing funds. Requisitions for requirement contracts which provide for a guaranteed minimum must cite funds in an amount adequate to cover the guaranteed minimum quantities.

(b) *GSA funds, other than revolving funds.* (1) The receipt of a requisition signed by an authorized individual shall be considered as evidence that the amount of funds cited is available for purchases payable from GSA funds other than revolving funds. Clearance as to the availability of additional funds shall be obtained from the requisitioning activity prior to issuance of a contract or purchase order when the purchase exceeds (by 10 percent or $50, whichever is greater) the amount cited on the purchase requisition.

(2) In cases where a requisition is not used, e.g., leases of real property, the contracting officer shall take the necessary action to ensure funds are available before executing their contract.

(c) *Other Federal agencies' funds.* On purchases for direct delivery to Federal agencies other than GSA, the receipt of a properly signed/approved purchase request shall be considered as sufficient evidence that funds are available. Where, however, the agency's purchase request indicates that a specific dollar amount has been set aside for the acquisition, as in the case of a Project Implementation Order/Commodities (PIO/C) from the Agency for International Development, the buying activity shall not exceed the fund limitation except to the extent authorized in supply support agreements. When the funds stated on the purchase request appear to be or are insufficient to cover all applicable costs for the acquisition, transportation, export surcharge, and any other expense involved in the delivery of material to designated consignees, additional funds shall be requested and received from the requiring agency before the acquisition is completed by the activity indicated below:

(1) When requirements are submitted by agencies directly to a contracting division in the Central Office (whether the procurement is actually made by the appropriate contracting division in the Central office or subsequently transmitted, in whole or in part, to one or more regions for acquisition) the request for additional funds shall be made by the appropriate Central Office contracting division.

(2) When requirements are submitted to a regional contracting division (whether acquisition is made by that region, forwarded in whole or in part to another regional contracting division or to a contracting division in the Central Office) the request for additional funds shall be made by the order processing and control activity in the region initially receiving the requirement.

501.603 Selection, appointment, and termination of appointment.

(a) *General.* This section establishes the uniform policy and procedure for warranting contracting officers (CO). The objective of the COWP is to appoint as contracting officers only those officials who are fully qualified to obligate the Government to the expenditure of public funds for the acquisition of property or services, based on a valid organizational need and appropriate workload. In order to enable the Finance Division to check signatures on obligating documents to ensure such documents have been signed by warranted contracting officers, a GSA Form 19, Designation of Authorized Representative, shall be submitted to the Finance Division upon receipt of a Standard Form 1402, Certificate of Appointment. In the event of a change, suspension, or termination of a contracting officers appointment, the Finance Division shall be promptly notified. No obligation or authorization for the expenditure of funds will be accepted by the Finance Division unless a GSA Form 19 is on file.

(b) *Applicability.* (1) The GSA Contracting Officer Warrant Program applies to all services, staff offices, and regions of the General Services Administration, except for those contracting officers appointed pursuant to the Inspector General Act (Pub. L. 95-452).

(2) A warrant is not required for:

(i) The execution of individual purchases under $150, regardless of the method of procurement;

(ii) Any imprest fund transaction;

(iii) The signing of training authorizations for public course offerings;

(iv) The signing of travel related documents;

(v) The authorizations or orders for printing and duplicating services;

(vi) The ordering of supplies from GSA store stock via a Standard Form 344, FEDSTRIP;

(vii) The signing of Government Bills of Lading;

(viii) Transactions issued under NARS Trust Funds including Number 320X—National Archives Gift Funds and Number 355X—National Archives Trust Funds;

(ix) The processing/procuring of a telephone service authorization or a communication service authorization issued to regulated/public utility common carriers. Emergency communications coordinators shall be authorized in their warrants to procure emergency communications equipment and services during Presidentially declared emergency or disasters;

(x) The ordering by inventory managers of stock replenishment under established source contracts that are machine loaded. Current GSA Form 19 signature cards must be on file in the Office of Finance;

(xi) Delivery orders (machine generated) for motor vehicle procurements that are written against definite quality contracts need not be signed as the contract is the obligating document in this case;

(xii) Entering into a Memorandum of Agreement with another Federal agency and to authorize the transfer of funds to that agency for services rendered; and

(xiii) The authorization of interagency transfers of funds via a GSA 2957, Work Authorization.

(c) *Definitions.* The following definitions apply to the material in this section:

(1) "Recommending official" means the head of the contracting activity who has been authorized to recommend candidates for designation as contracting officers to the designating official subject to the requirements and

recommendations of the warrant boards and this 501.603. A Regional Administrator may redelegate this authority to his/her deputy.

(2) "Designating official" means the Administrator or Assistant Administrator for Acquisition Policy, who is authorized to appoint contracting officers in GSA.

(3) "GSA Contracting Officer Representative" (COR) means a Government employee, designated in writing by the CO, by name and position title, who is authorized to take action for the CO with specified limitations. A CO may not authorize a COR to issue change orders or otherwise modify a contract unless the COR is a warranted CO.

(4) "Delivery order" means the placement of an order for supplies and/or nonpersonal services against an already established contract in accordance with the terms and conditions of such contract.

(5) "Warrant Limitations" means limitations which in addition to the FAR, GSAR, laws, Executive Orders, GSA Orders and other applicable regulations are imposed on the authority of contracting officers either by delegation or actions of the designating official and which will be set forth in the Certificate of Appointment (Standard Form 1402). Warrant limitations may include but are not limited to requirements for prior reviews, approvals and other controls.

501.603-1 General.

The authority to appoint contracting officers is delegated from the Administrator to the Assistant Administrator for Acquisition Policy. See the Delegations of Authority Manual (ADM P 5450.39B) for specific delegations of authority.

501.603-2 Selection.

(a) Contracting officers (CO) shall be designated only in those instances in which a valid organizational need for warranted personnel can be demonstrated. Factors to be considered in assessing the need for a contracting officer designation include volume of actions, complexity of work and organizational structure.

(b) To certify organizational needs and assure that the candidate meets minimum CO qualifications, a completed GSA Form 3410, Request for Appointment, shall be signed by the candidate's immediate supervisor and submitted to the appropriate warrant board along with a statement of fact. The Request for Appointment shall be accompanied by GSA Form 3409, Personal Qualifications Statement for Appointment as a Contracting Officer, prepared and signed by the candidate.

(c) Warrant boards will evaluate condidates for CO warrants based on supervisory recommendations, experience, education, training, business acumen, judgment, character, ethics and reputation. Warrant boards may establish additional qualification requirements, as appropriate. Minimum qualifications of contracting officers (purchasing contracting officers (PCO) and administrative contracting officers (ACO)) are based on a combination of training and experience with consideration of relevant academic credit or degrees earned. The following warrant levels are equated with dollar value of individual transactions (e.g., contract, modification, supplemental agreement, etc.) and not the aggregate contract value.

Basic—up to and including $25,000 per open market purchase or the maximum order limitation for orders placed against established contracts;
Intermediate—up to and including $100,000;
Senior—unlimited.

(1) *Knowledge and skill.* Written statements of fact must be presented by supervisors of CO candidates to the warrant board, covering the knowledge and abilities of each candidate and their specific level of skill which is appropriate to the activity in the following areas:

(i) Contract Placement.
(ii) Contract Administration.
(iii) Contract Termination.
(iv) Real Property Leasing.
(v) Sales

(2) *Experience requirements for contracting officer candidates.* Warrant boards shall consider contracting experience in terms of basic, intermediate, and senior levels.

(i) *Basic experience.* Candidates must have a least one year of current (within last 5 years) experience with progressive work assignments and orientation.

(ii) *Intermediate experience.* Candidates must have at least two years of current (within last 5 years) experience with progressive assignments leading to broader technical ability.

(iii) *Senior experience.* Candidates must have at least three years of current (within last 5 years) experience with progressive assignments and broad technical ability.

(3) *Mandatory training requirements for contracting officer candidates.* Training standards have been implemented by the GSA Acquisition/Contracting Career Management Board. A candidate must have completed the minimum core training required for each warrant level as described below. Supervisors are responsible for providing their employees with advice and assistance necessary to complete this required training. Mandatory training must have included the following general topics as a minimum:

(i) *Basic level* (Does not apply to realty leasing and sales personnel.)

(A) Small Purchases and Federal supply schedules—40 hours,

(B) Basic Acquisition—40 hours,

(C) Contract Administration for Program Personnel—40 hours, (Applicable to GSA Buildings Managers only.)

(ii) *Intermediate level* (Does not apply to realty leasing and sales personnel.)

(A) Contract Law—60–80 hours,

(B) Negotiated Contracts and Negotiation Techniques—40 hours,

(C) Formal Advertising—40 hours,

(D) Contract Administration—40 hours,

(E) Cost and Price Analysis—40 hours,

(F) Government ADP Resource Acquisition—40 hours (Applicable to ADP acquisition personnel only.)

(G) Termination Settlements—40 hours,

(H) Services Contracting—40 hours, and

(I) Public Utility Contracts—40 hours (Applicable to personnel handling public utility procurements.)

(J) Architect-Engineer Contracting—40 hours (Applicable to personnel handling procurement by Architect services.)

(K) Construction Contracts—40 hours. (Applicable to personnel handling procurement of construction.)

(iii) Senior level (over $100,000). (Do not apply to leasing and sales).

(A) Executive Seminar in Acquisition—24–40 hours,

(B) Advanced Procurement Managment—40 hours, and

(C) Advanced Contract Administration—40 hours.

(iv) *Non-1102 COs.* COs not classified as 1102 employees and who do not make open market purchases greater than small purchases will not be required to take the Basic Acquisition course.

(v) *Realty leasing personnel.*

(A) Real Property Leasing/Law of Leasing—40–60 hours.

(B) Negotiated Contracts and Negotiation Techniques—40 hours, and

(C) Cost and Price Analysis—40 hours.

(vi) Sales contracting personnel.

(A) Basic Acquisition—40 hours,

(B) Contract Law—40 hours,

(C) Formal Advertising—40 hours,

(D) Negotiated Contracts and Negotiation Techniques—40 hours, and

(E) Sales and Disposal of Government Property—40 hours.

(vii) *Construction contracting officer representatives (CORs).* Individuals nominated for warrants limited to the issuance of change orders up to $25,000 may be required by warrant boards to complete the Basic Acquisition course and the Construction Contracting course.

(4) *Substitution of experience for training.* Individuals currently serving in and classified as 1102 positions for an uninterrupted period of three years will not be required to take the basic level courses under the COWP if they are proposed for intermediate or senior level warrants.

(5) *Substitute courses.* Training courses of equivalent content will be allowable substitutes to acquisition/contracting training plan courses. Courses from the following sources are considered to be equivalent by the Office of Acquisition Policy, provided the training meets the minimum hours required in (c) of this section:

(i) Training from a Government-sponsored source such as U.S. Army Logistics Management Center (ALMC).

(ii) Training from a source listed in the Defense Management Education and Training (DMET) Catalog or the Federal Acquisition Institute (FAI) Catalog.

(6) *Tests.* Tests administered either by the GSA Office of Civil Rights, Organization, and Training or by DOD training facilities may be taken as an alternative to training to demonstrate career knowledge. The GSA training office may be contacted for referral to DOD testing facilities such as Fort Lee, VA. Other tests may be considered on a case by case basis.

501.603-3 Appointment.

(a) The recommending official may recommend candidates for contracting officer warrants to the designating official subject to the approval of the warrant board. Only the Administrator or the Assistant Administrator for Acquisition Policy, as designating officials, are authorized to sign the Standard Form 1402, Certificate of Appointment.

(b) Specific warrant limitations imposed upon the authority of contracting officers either by delegation or by actions of the warrant boards shall be set forth in certificates of appointment or otherwise conveyed in writing to designated contracting officers.

(c) As a condition of continuing designation all warranted COs, except those on interim appointments, shall complete 40 hours of formal procurement training, at least once every 3 years, beyond the minimum core requirements in order to maintain competency.

(d) As a part of the acquisition management reviews conducted by the Office of Acquisition Policy, Office of Acquisition Management and Contract Clearance (VC), applicable appointment documents will be reviewed periodically to determine the adequacy of local procedures, practices, and appointments. (See GSA Acquisition Management Assistance Review Program (ADM 2851.4)).

501.603-4 Termination.

(a) The appointment of a contracting officer may be revoked at any time by the designating official. Contracting officer appointments shall be revoked and the warrant certificate shall be returned to VC when:

(1) The appointee no longer meets required qualifications;

(2) There is no longer a clear and convincing need for the appointment;

(3) The effective period of the appointment has expired; or

(4) There exists evidence of malfeasance or gross incompetence.

(b) Contracting officer appointments terminate when the appointee is reassigned from the position or activity held at the time of appointment.

(c) Contracting officers whose appointments are revoked or terminated, shall be provided a written notice by the designating official stating the reasons therefor.

(d) Warranted personnel shall be reassessed by each appropriate warrant board when any organization change occurs which alters the procurement function.

(1) VC shall be notified briefly, in writing, by each affected organization as soon as personnel actions are completed that reassign warranted personnel from one service/office or Region to another.

(2) Existing warrants remain in effect until they can be reconsidered in light of new organizational structures.

(3) Reassessement of warrant needs should be delayed until movement of functions and personnel is completed.

(e) When warranted COs transfer within an organization, the warrant certificate shall be terminated and returned to VC. This restriction does not apply to GSA buildings managers that are reassigned from one field office to another provided the individual occupies a similar position and VC is notified of the change in location. A copy of the termination notice shall be provided to the CO, the previously assigned duty station and VC.

(f) The provisions of FAR 1.603-4 apply to this section.

501.603-70 Changes or suspensions of contracting officer appointments.

(a) *Changes.* When a designating official determines to change or limit the appointment of a contracting officer without revocation, a new Certificate of Appointment shall be issued. When the change involves responsibility in a new functional area wherein the contracting officer has not demonstrated minimum qualifications, the proposed change may be requested by the recommending official, but must be approved by the appropriate warrant board and the Assistant Administrator for Acquisition Policy.

(b) *Suspension of designation.* Warrant boards or HCAs, pursuant to their responsibilities as set forth under 501.601-70, may suspend a CO's warrant for a temporary period not to exceed 30 days for failing to exercise sound business judgment in placing or administering procurements or for other minor improprieties in the execution of contracting officer responsibilities. Within the 30 day suspension period the Warrant Board or HCA shall either lift the suspension or recommend the Assistant Administrator for Acquisition Policy terminate the warrant.

501.603-71 Interim appointment provisions.

(a) Individuals who do not meet minimum qualifications as described in 501.603-2, may be appointed on an interim basis if warrant boards consider experience and past performance and make recommendations for interim appointments. All minimum training requirements shall be scheduled and met within a reasonable period of time. At least two of the required courses or equivalency tests shall be successfully completed each year after the date of appointment to avoid losing the warrant.

(b) Failure to successfully complete minimum training requirements within this timeframe may result in the loss of the warrant. Prior to revoking any warrant, the Office of Acquisition Policy will periodically review training records of warranted personnel and determine whether specific individuals are making adequate progress towards program completion.

(c) Instances that may require the use of interim appointments may include, but are not limited to the following:

(1) Organizational changes;

(2) Reduction in Force proceedings; or

(3) Sudden extreme increases in the number of procurement requests.

501.603–72 Contracting Officer Warrant Boards.

(a) Separate contracting officer warrant boards shall be established for each region. Within the Central Office the head of each service of staff office shall perform the function of the warrant board.

(b) The purpose of the contracting officer warrant boards is to receive, evaluate, and process requests for appointment of Contracting Officers under the GSA-wide Contracting Officer Warrant Program prescribed in this Subpart.

(c) Warrant boards shall consist of supervisory personnel at the SES or GM/GS–14/15 levels representing contracting offices in each region and, in an advisory capacity, representatives of the Office of Personnel and Office of General Counsel.

(1) A minimum of four members constitute a quorum for a warrant board.

(2) Personnel from the Office of Acquisition Policy shall participate randomly in the actions of each warrant board, as appropriate.

(3) Assistant Regional Administrators shall chair regional warrant boards.

(4) Except for Office of Acquisition Policy personnel, all warrant board members and chairpersons shall be appointed by the Regional Administrators on an ad hoc basis.

(d) The suggested (optional) composition of regional warrant boards may include:

Deputy Regional Administrator, Chairperson
Director, OPCO
Senior Procurement Analyst, OPCO
Regional Controller
Assistant Regional Administrator, Office of Information Resource Management
Assistant Regional Administrator, Office of Federal Supply and Services
Assistant Regional Administrator, Office of Public Buildings and Real Property
Regional Personnel Office (Advisory)
Regional Counsel (Advisory)

501.603–73 Post appointment maintenance of warrants.

(a) The original Certificate of Appointment shall be provided to the appointed contracting officer and displayed at the contracting officer's duty station. The designating official shall have three copies of the signed original Certificate of Appointment reproduced and numbered for distribution.

(1) Copy 1 shall be distributed to and maintained by the cognizant headquarters office for each affected service/office or the regional Office of Project Control and Oversight (OPCO).

(2) Copy 2 shall be provided to and maintained by the Office of Acquisition Policy, Office of Acquisition Management and Contract Clearance (VC).

(3) Copy 3 shall be provided to and maintained by the Office of Finance (BCGP).

(b) Certificates of Appointment shall be serially numbered for each Central Office service/office and for each region.

(c) The Privacy Act of 1974 applies to the information collected during selection, designation and appointment of contracting officers.

501.670 Legal review and assistance.

This section sets forth the responsibilities of contracting personnel and assigned legal counsel in obtaining and providing legal review and assistance.

501.670–1 Applicability.

The provisions of the section apply to all GSA organizational elements having contracting responsibility, as defined in 501.670–2.

501.670–2 Definitions.

(a) *Contracting.* For the purpose of this subpart, the term "contracting" includes the procurement or disposal by contract or lease of any interest in real or personal property, or services. To the extent that specific language herein reflects terminology used in procurement, it is understood that counterpart disposal terminology is intended for matters involving disposals; likewise, to the extent that specific language herein reflects terminology involving contracts, it is understood that counterpart leasing language is intended for matters involving leases.

(b) *Legal review.* Legal review is a formal process whereby assigned counsel analyzes a matter to ensure legal sufficiency (i.e., that the proposed action is in compliance with applicable laws, regulations, and directives). During this process, counsel is also required to bring to the attention of appropriate contracting officials any problems concerning the matter under review and should object on policy or other grounds where such action appears warranted, notwithstanding approval for legal sufficiency.

(c) *Legal assistance.* Legal assistance is a process whereby assigned counsel provides legal guidance with respect to questions or problems that arise during the contracting process. Assistance need not be limited to matters of legal sufficiency.

501.670–3 Responsibilities.

(a) *Contracting officials.* (1) Contracting officials are expected to exercise sound judgment in obtaining legal review or assistance before taking any action that would affect the rights or obligations of the Government, a contractor, an offeror, or a potential offeror. Contracting officials should seek legal assistance throughout the contracting cycle, particularly when there is doubt or controversy as to the propriety or legal sufficiency of an action, or the interpretation or application of existing statutes, policies, regulations, and directives.

(2) When legal review or assistance is requested by a contracting official, the official shall provide assigned counsel with all pertinent information. When appropriate, the official shall brief assigned counsel regarding the facts and points at issue and provide a detailed rationale for the proposed action. Legal review or assistance should be requested in a timely fashion in order to allow assigned counsel sufficient time to respond to the matter in issue. Counsel's approval, comments, or objections should be documented and retained as part of the contract file.

(b) *Legal counsel.* It is the responsibility of assigned counsel to provide timely assistance with respect to a broad range of legal and business problems arising during the contracting process and to ensure that proposed contractual actions comply with applicable laws, regulations, and directives. When legal review is required on any contract-related matter, the approval of counsel shall attest to the legal sufficiency of the action or document.

501.670–4 Legal review.

The following matters shall be submitted to assigned counsel, before action being taken thereon, for legal review and, where appropriate, written approval. Heads of contracting activities, in conjunction with assigned counsel, are encouraged to establish more stringent supplemental criteria for legal review when available resources make such supplemental requirements practicable. Copies of supplemental directives shall be forwarded to the Assistant Administrator for Acquisition Policy and to the General Counsel.

(a) Solicitations which deviate from standard terms or conditions provided for by regulation or other appropriate authority.

(b) Alleged mistakes in bid.

(c) Protests (including small business size protests).

(d) Determinations and findings required by FAR and GSAR, or other appropriate authority to be reviewed by counsel.

(e) Offers indicating that contingent fee has been, or may be, paid.

(f) Matters involving the disclosure of offers prior to opening and determinations as to whether such disclosure was made with collusive intent.

(g) Decisions involving the nonapplication of, or any exemptions proposed to be taken from, the subcontracting plan requirements of Pub. L. 95–507.

(h) Questions regarding the proper use of appropriations or other funds.

(i) Proposed awards to other than low offerors.

(j) Proposed no-awards for reasons other than excessive prices.

(k) Proposed letter contracts.

(l) Proposed contract awards subject to the requirements of GSA Order, Contract Clearance (APD 2800.1B).

(m) Termination actions, including pretermination (i.e., "cure") letters.

(n) Contract disputes of any nature.

(o) Waivers of material contract terms, conditions or specifications.

(p) Assignments of claims or rents, and change of name and novation agreements.

(q) Contract claims, actions taken under the disputes clause (including final decision letters), and memorandums of position and appeal files in case appealed to the General Service Board of Contract Appeals or U.S. Claims Court.

(r) Recommendations relative to suspending or debarring a concern or individual.

(s) Freedom of Information Act (5 U.S.C. 552) and Privacy Act (5 U.S.C. 552a) matters.

(t) Proposed responses to Congressional inquiries, and to General Accounting Office (GAO) and Inspector General audit reports which pertain to the legality of proposed or past actions.

(u) Deviations from the FAR, GSAR, or other directives.

(v) Matters relating to litigation before the courts or the General Services Board of Contract Appeals.

(w) Late bids, offers, and modifications.

501.670–5 Legal assistance.

The following matters illustrate areas in which legal issues are likely to arise; accordingly, contracting officials are encouraged to pay special attention to these areas and to present problems or questions to assigned counsel for assistance, as appropriate, in a timely manner.

(a) Preliminary questions or problems relating to matters requiring legal review.

(b) Meetings scheduled with legal representatives of private parties or meetings where legal issues are likely to be discussed.

(c) Solicitations involving repurchase actions against the account of a defaulted contractor.

(d) Matters concerning nonresponsiveness or nonresponsibility.

(e) Matters involving the application of the Buy American Act (41 U.S.C. 10 et seq.) or related provisions of law.

(f) Matters involving the application of labor statutes (e.g., Walsh-Healey Act, Service Contract Act, etc.).

(g) Matters involving small business or labor surplus areas concerns.

(h) Matters involving the consideration of subcontracting plans as required by Pub. L. 95–507.

(i) Matters involving the withholding of payments to contractors for Department of Labor wage/rate violations.

(j) Matters involving the adequacy of bid guarantees and payment or performance bonds.

(k) Matters relating to contractor indebtedness, bankruptcy, or financing.

(l) Matters involving the utilization of special and directed sources of supply, e.g., procurement of supplies and services from Federal Prision Industries or from workshops for the blind and other severely handicapped.

(m) Matters involving eligibility to use GSA supply sources.

501.670–6 Waivers.

The General Counsel may waive the legal review requirements. Waivers may be granted either on a case-by-case basis or in classes of cases. A request for waiver may be made in writing by an Assistant General Counsel or regional counsel in conjunction with the head of a contracting activity. Under circumstances of extreme urgency, requests for waiver may be made and granted orally but written documentation of the waiver shall be made as soon as time permits.

501.671 Audit of contractor's records.

501.671–1 General.

The Assistant Inspector General-Auditing and the Field Audit Offices conduct contract audits of contractors' records to the extent that such audits are required by law, regulation, or sound business judgment. These audits include the conduct of periodic or special request audits of contractors deemed warranted because of such matters as the financial condition, integrity, and reliability of the contractor and prior audit experience, adequacy of the accounting system, and the amount of unaudited claims. So that the Government can benefit to the maximum extent from these audits, a coordinated and cooperative effort shall be made by contracting officers, technical specialists, and finance and audit personnel. It is the responsibility of the contracting officer to have an audit clause inserted in all contracts subject to audit pursuant to 501.671–3.

501.671–2 Purpose of audit.

Audits are conducted to advise and make recommendations to the contracting officer concerning the following:

(a) Propriety of amounts paid, or to be paid, by GSA to contractors when such amounts are based on a cost or time determination or on variable features related to the results of contractors' operations;

(b) Adequacy of measures taken by contractors regarding the use and safeguarding of Government assets under their custody or control;

(c) Compliance by contractors with contractual provisions having financial implications such as progress payments, advance payments, guaranteed loans, cash return provisions, and price adjustments. The adequacy of a contractor's accounting system and controls shall be evaluated by contract audit before inclusion of a Progress Payments clause. A similar evaluation shall be made prior to the making of any advance payments or guaranteed loans pursuant to FAR Part 32 and GSAR Part 32.

(d) Reasonableness of contractor's settlement proposals in termination of contracts;

(e) Compliance with contract provisions; and

(f) Contractor's financial condition and ability to perform or to continue to perform under Government contracts.

501.671–3 Types of contracts subject to audit.

(a) The following types of contracts in excess of $10,000 include the Examination of Records by GSA clause prescribed in 514.201–6(e) and 515.106–1 and are subject to audit by GSA.

(1) Cost-reimbursement type contracts;

(2) Contracts involving the use or disposition of Government-furnished property;

(3) When advance payments, progress payments based on costs, or guaranteed loans are to be made;

(4) Contracts containing a price warranty or price reduction clause;

(5) Contracts or leases involving income to the Government when the

income is based on operations that are under the control of the contractor or lessee;

(6) Fixed-price contracts with economic price adjustment, with incentives and with price redetermination;

(7) Requirements and indefinite quantity (call-type) contracts;

(8) Time-and-material, labor-hour, and letter contracts; and

(9) Leases when the rental is subject to adjustment based on negotiated operating cost escalation.

(b) Inclusion of the contract clause in 552.215–70 (whether or not modified) in contracts does not affect in any way the requirements for use of the Examination of Records clause permitting review of contractor books and records by the Comptroller General or the clauses on audit and records pertaining to the verification of cost or pricing data.

(c) A copy of each contract or modification of the types described in 542.672 subject to audit shall be furnished to the Assistant Inspector General for Auditing (JA), General Services Administration, Washington, DC 20405, or to the Field Audit Office, as appropriate, simultaneously with distribution of other copies of the contract.

501.672 Payments under contracts subject to audit.

501.672–1 General.

(a) The contracting officer shall not approve the initial payment invoice or voucher until he has consulted with the Assistant Inspector General—Auditing or the Field Audit Office regarding cost or other supporting data as required under:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price type contracts;

(3) Time and materials or labor-hour contracts; or

(4) Fixed-price contracts providing for: (i) Progress payments based on costs, (ii) advance payments, (iii) guaranteed loans, or (iv) incentives or redetermination.

(b) The contracting officer shall not approve the final payment invoice or voucher for such contracts, nor for the final payment of settlement of other contracts subject to audit prior to the: (1) Receipt and review of the contract audit report or (2) consultation with the Assistant Inspector General for Auditing or the Field Audit Office if no audit is to be conducted; provided, that this paragraph (b) shall not apply to fixed-price contracts with escalation where no price revision (upward or downward) is to be made.

501.672–2 Submission and processing of invoices or vouchers.

(a) Contractors shall be required to submit invoices or vouchers to the contracting officer. The processing of invoices or vouchers prior to payment for work or services rendered shall include a review by the contracting officer, or his designated representative, to determine that the nature of items and amounts claimed are in consonance with the contract terms, represent prudent business transactions within any stipulated contractual limitations. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted from his claim amounts which are questionable or which are required to be withheld, the contracting officer shall make the required deduction, except as provided in 501.672–3.

(b) Subject to the provisions of 501.672–1, approval by the contracting officer of any payment, including any specific approval as to the nature or amount of the cost, shall be noted on (or attached to) the invoice or voucher. The invoice or voucher shall be forwarded to the appropriate accounting center and retained therein after certification and scheduling for payment to a disbursing office.

501.672–3 Action upon receipt of an audit report.

Audit reports shall be furnished to the contracting officer, with a copy to the appropriate accounting center. Upon receipt of an audit report, the contracting officer shall, pursuant to contract terms, determine the allowability of all costs covered by audit, giving full consideration to the auditor's recommendations. When the contracting officer is in doubt or questions the recommendations of the auditor, deductions need not be made from invoices or vouchers for provisional payments. In these cases, the contracting officer shall confer with the auditor and other appropriate Government personnel (such as a price specialist of legal counsel) to determine what further action should be taken regarding the items of cost in question. If the contracting officer disagrees with the auditor's recommendations, the contracting officer shall prepare a statement for the contract file to support and justify his decision and shall furnish the auditor with a copy of the statement.

501.672–4 Suspensions and disapprovals of amounts claimed.

The contracting officer shall notify the appropriate accounting center in writing when amounts claimed for payment are: (a) Suspended, (b) disapproved as not being allowable according to contract terms, or (c) not reasonably incident or allocable to performance of the contract. This notice by the contracting officer shall be the basis for the issuance by the accounting center of GSA Form 533, Administrative Difference Statement. A copy of GSA Form 533 shall be attached to each copy of the invoice or voucher from which the deduction has been made, including an explanation of the deduction. Control over the issuance of GSA Form 533 shall be maintained by the accounting center.

501.673 Additional internal controls.

As supplement to the contractual right to audit contractor records in cost-reimbursement type, time and materials, labor-hour, requirements and indefinite quantity (call-type) contracts, the contracting officer (with the assistance of the Assistant Inspector General-Auditing or the Field Audit Office) shall establish appropriate internal controls or procedures prior to the performance of those contracts with respect to any flexible or variable features. For example, if a time and materials or labor-hour contract is performed (on a Government facility or elsewhere) subject to observation or overall supervision by Government personnel approval of time records may be provided for as incidental to the Government supervision. Any reasonable and reliable method or procedure may be established to account for such matters as the time spent on the job and materials or supplies received which will assist the contract auditor and the contracting officer to determine the correctness of the charges to the contract.

501.674 Releasing or withholding of audit reports.

The Freedom of Information Act generally requires the disclosure of Government records subject to certain exceptions. It may be to the benefit or detriment of the Government to release contract audit reports or portions of them depending upon the circumstances. However, because of the complexity of the matter, contracting officers shall consult with both the Assistant Inspector General-Auditing and the Office of General Counsel, prior to the release or withholding of such information.

PART 502—DEFINITION OF WORDS AND TERMS

Sec.
502.000 Scope of part.

Subpart 502.1—Definitions

502.170 Head of the contracting activity.
502.171 Contracting director.

Authority: 40 U.S.C. 486(c).

502.000 Scope of part.

This part defines words and terms commonly used throughout the General Services Administration Acquisition Regulation (GSAR). Other terms are defined in the part or subpart with which they are particularly associated.

Subpart 502.1—Definitions

502.170 Head of the contracting activity.

"Head of the contracting activity" means Assistant Administrators, Associate Administrators, or Commissioners of Central Office organizational units which perform contracting functions; the Archivist of the United States; or Regional Administrators.

502.171 Contracting director.

"Contracting director" means directors of Central Office or regional office divisions that are responsible for performing contracting and/or contract administration functions.

Part 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

Subpart 503.1—Safeguards

503.101–3 Agency regulations.

Subpart 503.2—Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the gratuities clause.
503.204 Treatment of violations.

Subpart 503.3—Reports of Identical Bids and Suspected Antitrust Violations

503.303 Reporting suspected antitrust violations.

Subpart 503.4—Contingent Fees

503.408 Evaluation of the SF 119.
503.408–1 Responsibilities.
503.409 Misrepresentations or violations of the covenant against contingent fees.

Subpart 503.5—Other Improper Business Practices

503.502 Subcontractor kickbacks.
503.570 Advertising of awards.

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503.602 Exceptions.
503.603 Responsibilities of the contracting officer.

Authority: 40 U.S.C. 486(c).

SUBPART 503.1—SAFEGUARDS

503.101–3 Agency regulations.

(a) GSA Standards of Conduct are issued as 41 CFR Part 105–735 of the General Services Administration Property Management Regulations (GSPMR), ADM 7900.9. The agency authorized exceptions to FAR 3.101–2 are outlined in 503.101–2 and in 41 CFR 105–735.202(e) of the GSPMR. The procedures for enforcement of the standards are outlined in 41 CFR 105–735.101 of the GSPMR.

(b) The requirements for employee financial disclosure and restrictions on private employment for former Government employees are contained in the GSA Standards of Conduct. See 41 CFR 105–735.4 and 105–735.6 of the GSPMR.

Subpart 503.2—Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the Gratuities clause.

It is the obligation of GSA employees to report immediately any apparent or suspected violation of the Gratuities clause in connection with any operation of GSA. The report shall be made to the contracting officer and to the Assistant Inspector General for Investigations in the Central Office or to the Regional Inspector General for Investigation. GSA employees shall also report suspected violations of the Gratuities clause to the Deputy Standards of Conduct Counselor in accordance with 105–735.202(e)(4) of the GSPMR. The report shall outline the events, acts, or conditions which indicate the Gratuities clause has been violated and shall include all pertinent documents, if any. The Office of Inspector General (OIG), shall conduct such investigation as is deemed necessary and, if appropriate, forward a report and recommendation, together with all pertinent documentation, to the Department of Justice and/or the Office of Acquisition Policy.

503.204 Treatment of violations.

The Assistant Administrator for Acquisition Policy shall act as the Administrator's designee and be responsible for determining whether the contractor offered or gave a gratuity and intended by the gratuity to obtain a contract or favorable treatment under a contract.

Subpart 503.3—Reports of Identical Bids and Suspected Antitrust Violations

503.303 Reporting suspected antitrust violations.

(a) When contracting officers become aware of circumstances that may indicate violations of antitrust laws, they shall report the circumstances to the Assistant Inspector General for Investigation in the Central Office or to the Regional Inspector General for Investigations. The Office of Inspector General (OIG), shall conduct such investigation as may be necessary and prepare formal documents and statements for submission to the Department of Justice and/or the Office of Acquisition Policy for suspension or debarment consideration.

(b) If the Inspector General finds that violations of antitrust laws may have been committed, the Inspector General will refer the matter to the Department of Justice, in accordance with section 4(d) of the Inspector General Act of 1978, 5 U.S.C. Appendix, and notify the General Counsel, when appropriate, of the referral.

Subpart 503.4—Contingent Fees

503.408 Evaluation of the SF 119.

503.408–1 Responsibilities.

Upon receipt of Standard Form 119, Statement of Contingent or Other Fees, the contracting officer shall obtain advice of legal counsel as to the legality and general propriety of the relationship disclosed thereon. Also, the contracting officer may request the Assistant Inspector General for Investigation in the Central Office or the Regional Inspector General for Investigation to develop further information if the facts available are deemed insufficient for a proper decision. After careful review and evaluation of all the information obtained, the contracting officer shall render a decision in writing which shall be made a part of the contract file.

503.409 Misrepresentations or violations of the covenant against contingent fees.

(a) The name of successful offerors who fail or refuse to furnish the representation and agreement after opportunity therefor has been afforded, shall be submitted, with a statement of the pertinent circumstances, to the Assistant Inspector General for Investigation in the Central Office or the Regional Inspector General for Investigation for such further action as may be appropriate.

(b) The names of offerors who fail or refuse to furnish a complete Standard

Form 119 (or a statement in lieu thereof as provided in FAR 3.405) shall be submitted, together with pertinent information, to the Assistant Inspector General for Investigation in the Central Office or the Regional Inspector General for Investigation for appropriate action. If the contract has been awarded, consideration shall be given to the feasibility of terminating the contract. If the contract has been awarded the eligibility of the offeror should be questioned.

(c) If an award has been made, any action to enforce the terms of the covenant shall be taken only upon the recommendation of legal counsel. Whether or not an award has been made, a suspected misrepresentation or anticipatory violation of the covenant against contingent fees shall be reported to the Assistant Inspector General for Investigation in the Central Office or the Regional Inspector General for Investigation.

Subpart 503.5—Other Improper Business Practices

503.502 Subcontractor kickbacks.

(a) When contracting officers become aware of circumstances that may indicate violations of the Anti-Kickback Act, they shall report the circumstances to the Assistant Inspector General for Investigation in the Central Office or to the Regional Inspector General for Investigation.

(b) If the Inspector General finds that violations of the Anti-Kickback law may have been committed, the Inspector General will refer the matter to the Department of Justice, in accordance with section 4(d) of the Inspector General Act of 1978, 5 U.S.C. Appendix and notify the General Counsel, when appropriate, of the referral.

503.570 Advertising of award.

The contracting officer shall insert the clause at 552.203–1, Advertising of Award, in solicitations and contracts for supplies and services when the contract amount is expected to exceed the small purchase limitation.

Subpart 503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

503.602 Exceptions.

Offers submitted by Government employees on solicitations issued pursuant to the Office of Management and Budget (OBM) Circular A–76 may be considered provided the contracting officer has complied with the requirements outlined in 503.603 before making an award. Normally when Government employees bid on A–76 solicitations, they do so with the knowledge that if the contract is awarded, their Government employment will be terminated. They are merely competing for the right to continue to provide a service to GSA. While they are Government employees at the time the bid is submitted, they will not be Government employees during the performance period. The implementation of OMB Circular A–76 presents a unique situation which may be considered to be an authorized exception to the policy in FAR 3.601. Contracts between the Government and its employees are not expressly prohibited by statute except, where the employee acts for both the Government and the contractor in a particular transaction or where the service to be rendered is such as could be required of the contractor in his/her capacity as a Government employee, 18 U.S.C. 208 (1976); Hugh Moher B–187841, March 31, 1977, 77–1 CPD 204.

503.603 Responsibilities of the contracting officer.

Before awarding a contract to a GSA employee who responded to an A–76 solicitation, the contracting officer shall:

(a) Obtain a written certification from the employee's supervisor that: The individual was not involved in the development of the solicitation or specifications, or in the preparation of the independent Government cost estimate or in-house cost comparison; had no advance knowledge of the details of the contents of the solicitation package; and was not otherwise involved in the contracting process.

(b) Refer the proposed award to the appropriate Assistant General Counsel for review and approval.

(c) Ascertain whether a reduction in force notice has been issued to the employee.

PART 504—ADMINISTRATIVE MATTERS

Subpart 504.4—Safeguarding Classified Information Within Industry

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504.402 General.
504.470 Requests for release of classified information.
504.470–1 Authorization for release.
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504.471 Processing security requirements checklist (DD Form 254).
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Subpart 504.6—Contract Reporting

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Subpart 504.8—Contract Files

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504.7001 Uniform procurement instrument identification.
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504.7001–4 Supplemental procurement instrument identification number.
504.7002 Procurement contract register.

Authority: 40 U.S.C. 486(c).

Subpart 504.4—Safeguarding Classified Information Within Industry

504.402 General.

(a) This subpart prescribes procedures for safeguarding classified information required to be disclosed to contractors in connection with the solicitation of bids and offers, and the award, performance, and termination of contracts. As used in this subpart, the term "contractor(s)" includes prospective contractors, contractors, subcontractors, vendors, and suppliers of any tier.

(b) The provisions of this subpart implement the requirements of the Department of Defense Industrial Security Regulations and the Department of Defense Industrial Security Manual for Safeguarding Classified Information. By agreement, the Department of Defense will act for and in behalf of General Services Administration (GSA) in rendering security services required for safeguarding classified information released by GSA to United States (U.S.) industry.

(c) As used in this subpart, the term "U.S. industry" pertains to those industries (including educational and research institutions) located within the United States, its possessions, and the Commonwealth of Puerto Rico.

504.470 Requests for release of classified information.

Prior to entering into discussion, negotiation, or solicitation of bids for contracts involving the disclosure of classified information, the contracting officer shall prepare, in triplicate, section I of GSA Form 1720, Request for Release of Classified Information to U.S. Industry (illustrated in 553.2). After signing as requesting officer and obtaining approval from his/her immediate supervisor, the contracting officer shall forward all copies to the Office of Internal Security (ATOI), Office of Oversight.

504.470–1 Authorization for release.

ATOI, after determining that the contractor has been issued a Department of Defense facility security clearance, will complete the appropriate parts of section II, of GSA Form 1720, and return the original and one copy to the contracting officer. Under no circumstances will classified information be disclosed or made accessible to any contractor until the completed form has been received from ATOI. Where only Item 14b, section II, of the form has been checked, the contracting officer will be guided in his/her actions by the instructions on the reverse side of the form. In the event that a contractor is found to be ineligible for a security clearance, ATOI shall advise the contracting officer.

504.470–2 Termination of authorization for release.

When it develops that a clearance should be withdrawn or revoked, ATOI will advise the contracting officer of the termination of authorization to release classified information. This will include instructions concerning actions required to safeguard, withhold, or obtain the return of classified information. Reasons for such termination may include:

(a) Failure of the contractor to maintain the physical standards required by the Industrial Security Manual for Safeguarding Classified Information.

(b) Information indicating the contractor should no longer be eligible for clearance.

(c) The contractor no longer requires access to classified information.

504.471 Processing security requirements checklist (DD Form 254).

(a) Contracts involving access to classified information by the contractor require preparation of DD Form 254, Contract Security Classification specification (illustrated in FAR 53.303–DD–254), to identify and indicate to Department of Defense (DOD) and contractors the areas of classified information involved. In the case of contracts for research, consultant services, graphic arts services, or other procurements of services, written notice of classification may be used in lieu thereof.

(b) Below are instructions for completing each item on the DD Form 254. The GSA contracting officer is responsible only for the preparation of DD Forms 254 that are issued to the prime contractor. Those issued to subcontractors are the responsibility of the prime contractor. Since GSA has the review and distribution responsibility for DD Forms 254 that are issued to subcontractors, instructions for completing those items on the DD Form 254 as they apply to subcontractors are also included. Each item of the DD Form 254 is to be completed; N/A should be shown for items that are not applicable.

(1) *Item 1:* Enter the appropriate clearance: Top Secret, Secret, or Confidential.

(2) *Item 2:* Check item 2a, 2b, 2c, as applicable.

(3) *Item 3:* Enter the complete identifying number and the completion date in 3a or 3b. If item 3c is used, enter the appropriate data identifying the type of solicitation (i.e., Request for Proposal (RFP), Request for Quotation (RFQ), or Invitation for Bid (IFB)).

(4) *Item 4:* Furnish date in block 4a, 4b, or 4c, as applicable.

(5) *Item 5:* If the DD Form 254 is not for a follow-on contract, annotate block "Does Not Apply." If the DD Form 254 is for a follow-on contract, enter the preceding contract identification number from which this contract evolved and its completion date.

(6) *Item 6:* If there is a prime contract, complete items 6a and 6b, showing the complete name and address of the prime contractor's facility that will receive classified information in the performance of the prime contract identified in item 3a along with the responsible security office of that facility. If there is no prime contract and item 3c is completed, enter instead in items 6a and 6b the name and address of the contractor's facility to which the DD Form 254 is to be sent in connection with the RFP, RFQ, or IFB, or GSA program as described in 553.401, and the responsible security office of that facility. The identity of the responsible security office is obtainable from section II of the GSA Form 1720.

(7) *Item 7:* If there is a first tier subcontract, complete items 7a and 7b showing the complete name and address of the subcontractor's facility that will receive classified information in performance of the subcontract listed in item 3b. If there is no first tier subcontract and item 3c is completed, enter instead the name and address of the subcontractor's facility to which the DD Form 254 is to be sent in connection with RFP, RFQ, IFB, and the responsible security office of that facility.

(8) *Item 8:* List in the proper order of succession beginning with the second tier, the subcontract's identification number and the complete name and address of the subcontractor of each successive tier, down to and including the subcontractor's facility for which the DD Form 254 is being provided, and the responsible security office of such last facility. If item 3c is completed, the last entry should be the name and address of the subcontractor's facility to which the particular DD Form 254 is to be sent in connection with the RFP, RFQ, or IFB, and the responsible security office of such facility.

(9) *Item 9:* Under item 9a, include a brief unclassified statement or notation of sufficient information to identify the nature of the procurement or program. If an unclassified notation cannot be made, enter the word "classified."

Usually, item 9b is checked "no." If a case arises where the contracting officer believes item 9b should be checked "yes," the Director, Office of Internal Security should be contacted for further guidance.

(10) *Item 10:* Check the appropriate box for each item listed. Use the "Remarks" column to elaborate as necessary. When either the RESTRICTED Data, Cryptographic Information, or Communication Analysis Information block is checked "yes," identify the applicable classification guide(s) pertinent to the contract or attach them to the DD Form 254. If these extracts are classified, forward them by separate correspondence. If it is necessary to check "yes" to the Defense Documentation Center of Defense Information Analysis Center services, coordination should be effected with the GSA office of Internal Security (ATOI), Office of Oversight.

(11) *Item 11:* Enter the name, address, telephone number, and office symbol of the GSA official to whom inquiries pertaining to classification guidance determinations or interpretations for the subcontract are to be directed. (This item must be completed even if the official is the same as the official identified in item 14.) In first tier subcontracting situations, show the name, address, and telephone number of the responsible official in the facility of the prime contractor listed in item 6a. In subcontracting situations beyond the

first tier, show the name, address, and telephone number of the responsible official in the subcontractor's facility listed in item 3b or item 8, as appropriate to whom inquiries pertaining to classification guidance determinations or interpretations for the subcontract are to be directed.

(12) *Item 12:* Strike through "Direct" and "Through" boxes and enter "To: Director, Office of Internal Security (ATOI), General Services Administration, Washington, DC 20405."

(13) *Item 13:*

(i) This item provides the necessary security classification specifications for the contract. The specification must elaborate and explain sufficiently to clearly identify the areas and specific information within those areas that require classification. The guidance must be accompanied by either of the following statements: "Subject to General Declassification Schedule" or "Exempt from General Declassification Schedule." When all the specific information is not subject to the General Declassification Schedule or when all the information is not exempt from the Schedule, then the applicable identifying statement must appear next to each item of information.

(ii) Classified contracts in GSA are awarded for reasons that fall into the following broad categories: Release of classified information to the contractor; services by the contractor at classified or sensitive locations; and guard service contracts.

(c) In addition to the distribution set forth on the DD Form 254, the GSA Office of Internal Security (ATOI), Office of Oversight shall receive two copies.

504.472 Periodic reviews.

Contracting officers shall review DD Form 254 whenever a change in the phase of performance occurs or at their own discretion, but in any event at least once a year, to determine whether the classified information can be downgraded or declassified. The contractor shall be informed of the results of the review by issuance of a revised specification, or by written instructions in lieu of DD Form 254 (where authorized), or if the review results in no change in the classification specifications, by written notification to that effect. Upon termination or completion of the contract, a final checklist shall be prepared.

504.473 Recurring procurement.

When procurement is of a recurring nature, a new DD Form 254 is not required if the end item is not changed and there is no change from the previous security classification.

504.474 Control of classified information.

(a) Classified information shall be transmitted to the contractor in the manner required by the HB, Information Security, Chapter 1–7 (ADM P 1025.2B).

(b) Classified information shall be addressed and delivered to the contractor so that it may be secured and recorded at the control stations established at the contractor's facility in accordance with the requirements of the Industrial Security Manual for Safeguarding Classified Information. Classified material may be delivered or made available to an employee of the contractor if the employee has security clearance for access to classified information at the required level and the contractor has given GSA advance written notification of the name (in full) of the employee, his official position, and his current clearance status.

(c) The "need to know" principle must be enforced at all times. "Need to know" means that the knowledge or the possession of classified material is permitted only to persons whose official duties require such access in the interests of promoting national security. The contracting officer is responsible for determining who is permitted access to classified material.

(d) When classified information is originated by another agency, the consent of the originating agency shall be obtained prior to releasing the classified information to the contractor.

504.474–1 Records.

Contracting officers shall ensure that a record is maintained of classified information released to contractors.

504.474–2 Markings.

Classified material furnished to a contractor shall be marked in accordance with the provisions of the HB, Information Security, Chapter 1–4 (ADM P 1025.2B).

504.475 Return of classified information to GSA.

Unless the classified information has been destroyed as provided in paragraph 19 of the Industrial Security Manual for Safeguarding Classified Information, the contracting officer shall obtain the return of this information. Where classified information is furnished to a GSA contractor by another Government agency, the return of such information is the responsibility of that agency.

504.475–1 Return from prospective contractors.

When a bid or proposal is not submitted, any classified information furnished shall be required to be returned prior to or immediately after the time set for bid opening or the closing date for receipt of proposals. For unsuccessful bidders or offerors, any classified information shall be required to be returned within 15 days after contracts have been awarded.

504.475–2 Return from contractors.

All classified information furnished a contractor shall be required to be returned at the termination or completion of the contract or when otherwise directed by the contracting officer.

504.475–3 Termination, revocation, or inactivation of facility security clearance.

(a) When a contracting officer has been advised by the GSA Office of Internal Security that authorization to release classified information has been withdrawn, or by the responsible security officer that the facility's security clearances have been revoked or inactivated, immediate action shall be taken to obtain the return of classified information.

(b) If the contracting officer is advised that a facility does not have adequate means for safeguarding classified information in its possession, additional classified information shall not be furnished. Any classified information previously furnished shall be required to be returned as in (a), above, until the facility meets the standards required by the Industrial Security Manual for Safeguarding Classified Information.

504.476 Breaches of security.

When an unauthorized disclosure of classified information is discovered, the GSA contracting officer or other GSA employee responsible for the information shall promptly refer the facts of such breach or compromise to the GSA Office of Internal Security for appropriate remedial action.

Subpart 504.6—Contract Reporting

504.601 Federal Procurement Data System.

GSA guidance, procedures, and instructions on reporting procurements to the Federal Procurement Data System are contained in the GSA Procurement Management Information Reporting System Manual (ADM P 2800.16).

504.670 Notification of proposed substantial awards and awards involving Congressional interest.

(a) *Applicability.* This section applies to notification of proposed awards resulting from either advertised or negotiated solicitations, including contract modifications exercising options: When a supply contract is involved and the dollar value exceeds or is estimated to exceed $500,000 (except for products whose points of origin are not readily identifiable or which involve foreign production points); when a design (Architect/Engineer) contract or construction contract is involved and the dollar value exceeds or is estimated to exceed $100,000; or when there is Congressional interest any contract for supplies or services regardless of dollar value.

(1) When Congressional interest is involved, GSA Form 2932, Proposed Substantial Contract Awards or a facsimile message shall be prepared for transmittal to the Director of Congressional Affairs (EG) containing the following information:

"Congressional Interest—*Name of Congressman or Senator)*———— (State)—Control No.———— *In behalf of (Name of firm and complete address)—If award is not proposed to the bidder, explain why)*————."

(2) In addition to the requirement in (a)(1) above, when a Congressional inquiry is made orally with a contracting officer, and award or other information has been promised to a Congressman or Senator, GSA Form 2932, or the facsimile message shall contain the following statements:

Unless notified to the contrary, we will assume that the (*Congressman or Senator*) has been advised by EG.

(b) *Codes.* The following codes shall be used in the appropriate columns of GSA Form 2932 or in the facsimile message, as applicable.

(1) *DQ* for definite quantity contract;

(2) *SC* for schedule contract;

(3) *TC* for term contract other than schedule;

(4) *S* for small business concern;

(5) *O* for other than a small business concern;

(6) *NLS* for not labor surplus area; and

(7) *LS* for labor surplus area.

(c) *Notification procedure.* (1) The contracting director shall be responsible for submitting directly to the Director of Congressional Affairs (EG) complete and factual data pertinent to any proposed award of the type described in paragraph (a) of this section.

(2) Regional offices (except Region W) shall prepare GSA Form 2932 and transmit the notification directly to the Director of Congressional Affairs (EG), by facsimile machine except as shown in paragraph (c)(4) of this section.

(3) Central Office and Region W contracting activities shall prepare GSA Form 2932 and transmit the notification (original only) directly to the Director of Congressional Affairs (EG). The notifications(s) shall be placed in a messenger envelope and addressed as follows: PLEASE HAND-CARRY Attention: EG, GS Bldg.

(4) The following additional information shall be furnished on the GSA Form 2932 as applicable.

(i) Under Type of Contract insert "A" for advertised and "N" for negotiated, including the applicable negotiation authority in parentheses; i.e., N(2) for negotiated public exigency.

(ii) Under Point of Production show the name (plant or operational unit), address (including county), and the dollar value for each production point. When the name of the supplier (subcontractor) is different from the contractor, show the supplier's or subcontractor's name, address (including county), and applicable dollar value for each point of production. When the offer does not clearly indicate a specific production point for the item(s); i.e., several sources shown for one item, the word "undeterminable" shall be stated in the Point of Production column, and the various production points (name, address, and county will be listed). When there are multiple production points and specific items and their points of production are not shown, or when the number of production points exceed 10, show the word multiple and indicate immediately after, in parentheses, the total number of production points.

(iii) For definite quantity awards, show: (A) The quantity and unit, in parentheses, under each production point, (B) the name of the requisitioning activity next to the applicable quantity, and (C) the requirement or portion thereof for overseas use.

(iv) The contracting officer's name and telephone number shall be typed or printed at the bottom of each report in the event additional information is required by the Director of Congressional Affairs (EG).

(d) *Release of awards.* (1) Unless notified to the contrary contracting activities may release awards of the type described in (c) (2) and (3) of this section, or information pertinent thereto, upon the expiration of two full workdays (48 hours) after the time and date of transmittal of the GSA Form 2932 or the facsimile message to the Director of Congressional Affairs (EG).

(2) Preaward inquiries from offerors shall be processed in accordance with FAR 14.408 and 15.1001.

(e) Proposed exigency or emergency awards and cases when the acceptance time in an offer is about to expire.

(1) The contracting activities shall transmit notifications as determined by their director directly to the Director of Congressional Affairs (EG), by telephone, followed by a completed GSA Form 2932 to confirm the oral notification.

(2) Release of notifications which require priority processing by the Director of Congressional Affairs (EG), shall be completed at the time and date specified by EG.

504.671 Reporting taxpayer identification numbers.

(a) *General.* Contracting officers shall obtain and report contractors' taxpayers identification numbers (TIN) to the Office of Finance. The Office of Finance in turn will record and report this information on Internal Revenue Service Form NEC 1099 in compliance with IRS directives regarding the reporting of income.

(b) *Procedures.* (1) This procedure pertains only to contractors who are not incorporated and who receive payments from GSA totaling $600 or more in any calendar year. If the contracting officer anticipates that payments to the contractor will equal or exceed the $600 amount for the year, he shall report the TIN.

(2) Contracting officers shall obtain and report contractor's TIN to their designated Office of Finance.

(3) The TIN is either the employer identification number or social security number.

(4) Contracting officers shall make the request for the TIN a part of the solicitation. A copy of the contract (containing the TIN) shall be forwarded to the Office of Finance for payment.

(5) The TIN shall also appear on the face of any orders placed against a contract, copies of which are forwarded to the Office of Finance for payment.

(6) If written solicitations/orders are not used, the TIN should appear on the invoice certified by an authorized Government official and forwarded to the Office of Finance for payment.

(7) When a prospective contractor fails to provide the TIN in an offer, it shall be handled as a minor informality.

(8) If a contractor refuses to furnish the TIN to the contracting officer, the contracting officer shall so notify the Office of Finance.

Subpart 504.8—Contract Files

504.800 Scope of subpart.

This subpart prescribes requirements for use of a standard contract file format for all contracts except leases of real property which exceed the small purchase limitation. The application of this subpart to small purchases is optional.

504.802 Contract files.

Professionalism in acquisition dictates that contract files be complete and able to stand on their own. To achieve this goal and to make easier the processing and administration of contracts at all levels, contract files are to be organized in a standardized manner throughout the agency. Therefore, all contracts over $25,000 in value shall be supported with an official contract file containing all necessary information and documentation in accordance with the requirements outlined in FAR 4.802 and 4.803. The documents shall be organized in accordance with the standard contract file format in 504.803.

504.803 Contents of contract files.

(a) The items listed therein shall be placed in the contract file in reverse order, i.e., item (1) should be placed on the bottom of the file, item (2) on top of item (1),.etc.

(1) Requisition or request for contractual action.

(2) Specifications, drawings and other technical document.

(3) Acquisiton plan, including where applicable, the determination required by OMB Circular A–76.

(4) Determination and findings required by Part 15 of the FAR. Any associated administrative approvals required, such as approval of sole source solicitations should be included under this tab.

(5) Department of Labor Wage Determination.

(6) Small business and labor surplus area determinations.

(7) Source list.

(8) Statement as to synopsis of proposed procurement pursuant to FAR 5.2 or other required advertisements.

(9) Pre-invitation notice (PIN).

(10) IFP/RFP and amendments.

(11) Abstract of bids/proposals including identification of the low bidder/offeror, discounted price, etc.

(12) Cost or pricing data. Where the requirement for submission of cost or pricing data is waived as provided in FAR 15.804–3 the waiver and documentation supporting the waiver shall be filed under this tab.

(13) Audit report. Where the requirement for an audit of a price proposal is waived per FAR 15.805–5, the waiver and documentation supporting the waiver shall be filed under this tab.

(14) Price or cost analysis report prepared pursuant to FAR 15.608. Supporting technical analyses, other than those supporting an audit report, shall be filed under this tab. The profit of fee analysis required by FAR 15.9 shall be made a part of the price or cost analysis report. In those cases where an independent Government estimate is prepared, it also shall be made a part of the price or cost analysis report.

(15) A price negotiation memorandum as required by FAR 15.808 must be written so as to permit reconstruction of all the major events of the acquisition and placed under this tab.

(16) Certificate of current cost or pricing data.

(17) Pre-award survey.

(18) EEO compliance review. Subcontract plan.

(19) No bid or no proposal correspondence.

(20) Unsuccessful bids or proposals. A copy of each rejected bid or each unacceptable proposal also must be included in the file under this tab.

(21) Mistakes in bids and protests. This includes all correspondence and determinations relating to mistakes in bids disclosed prior to award and/or protest.

(22) Actions taken on late bids or proposals.

(23) Successful bid or proposal and all pertinent correspondence applicable to the contractual action.

(24) Contractual action. Where an award is to be accomplished by use of the award portion of the SF 33, or similar forms, the contract document shall be included in TAB 23.

(25) Status of overall requirement. A summary should be provided on the disposition of all items solicited; e.g., items 1 to 10 no offers received, item 11 in the total amount of $100,000 to ABC Company, items 12 and 13 to XYZ Company, value of award $350,000 (Item 12 $200,000 and item 13 $150,000). For negotiated action, this information shall be included in the Price Negotiation Memorandum.

(26) Evidence of concurrence for legal sufficiency of the appropriate counsel.

(27) Any required approvals—GSA Form 1535, Recommendation for Award (if applicable).

(28) GSA Form 2932, Proposed Substantial Contract Award (if applicable).

(29) Standard Form 99, Notice of Award of Contract, (if applicable).

(30) GSA Form 3439, GSA/FPDS Individual Contract Action Report.

(b) The contract file shall be numerically tabbed pursuant to the format outlined in 504.803(a). Documents within the tab should be filed chronologically with the most recent document on top. If any of the documents are too voluminous to be placed under the applicable tab, they should be included in a separate file and the tab annotated with the location of the file. All of the items described will not always be needed for each contract action. Unneeded items, therefore, will be self deleting. If a tab is not required for a particular action, it should be omitted from that contract file.

(c) An index of the file tabs should be prepared and placed on top of the file. Items which are not applicable should be so marked and if necessary, a brief explanation included. In order to make easier preparation of the index, each service/office shall prepare a standard contract file checklist based on the requirements of 504.803(a) appropriate to that particular service/office. The requirements of a particular service/office may make appropriate the inclusion of sub-headings under a tab or, if deemed necessary, additional items.

(d) The contracting officer shall be responsible for the official file. All documents pertaining to the contract should be forwarded by those initiating them to the contracting officer for inclusion in this file.

Subpart 504.70—Uniform Procurement Instrument Identification

504.7001 Uniform procurement instrument identification.

This section is effective October 1, 1984, and prescribes procedures for the identification of all GSA contracts, orders, and other procurement instruments regardless of the dollar threshold.

504.7001–1 Policy.

(a) The uniform procurement instrument identification system shall be used for procurement instruments listed in paragraph (f) of 504.7001–2.

(b) Identification shall be placed in spaces provided on the applicable procurement forms, with major elements separated by hyphens. If a space is not reserved for the prescribed number, it shall be placed in the upper right-hand corner of the form.

(c) Each contracting office shall maintain records to ensure continuity and control of procurement instrument identification numbers.

504.7001–2 Basic procurement instrument identification number.

The basic procurement instrument identification number shall remain unchanged for the life of the particular instrument and shall consist of 14 alphanumeric characters as follows:

(a) The basic procurement instrument identification number shall use characters 1 and 2 for the symbol "GS."

(b) The third and fourth characters shall be assigned to the region preparing the instrument as follows.

00 Central Office
01 Region 1
02 Region 2
03 Region 3
04 Region 4
05 Region 5
06 Region 6
07 Region 7
08 Region 8
09 Region 9
10 Region 10
11 National Capital Region

(c) The fifth character shall be a capital letter assigned to the service/office preparing the instrument as follows:

A Office of the Administrator
B Office of Comptroller
D Federal Property Resources Services
F Office of Federal Supply and Services
G Board of Contract Appeals
H Office of Civil Rights, Organization and Training
J Office of Inspector General
K Office of Information Resource Management
L Office of General Counsel
N National Archives and Records Service
P Public Buildings Service

(d) The sixth and seventh characters shall be the last two digits of the fiscal year in which the number is assigned.

(e) The eight and ninth characters shall be an alpha or alpha/numeric code identifying the contracting office preparing the instrument. (These codes will be assigned to each GSA organization where a warranted contracting officer is assigned.) See Appendix A for code assignment.

(f) The tenth character shall be a capital letter assigned to indicate the type of procurement instrument code as follows:

A Agreements, including basic agreements, basic ordering agreements, and blanket purchase agreements.
B Reserved
C Contracts, including letter contracts, contracts referencing basic agreements, and contracts providing subsequent provisions, excluding indefinite delivery type contracts.
D Indefinite delivery requirements type contracts.
E Sales contracts.
F–K Reserved.
L Leases of real property.
M Purchase orders (open market small purchases)—manual.
N Notice of intent to purchase.
P Purchase orders—(open market small purchases)—automated.
Q Reserved.
R Reserved.
S Schedule contract.
T–Z Reserved.

(g) The eleventh through fourteenth characters shall be the serial number of the instrument. A separate series of numbers, maintained at the contracting office level, may be used for each type of instrument listed in paragraph (f) of this 504.7001–2, depending upon procurement document volume. At the beginning of each fiscal year, these serial numbers shall commence with the number 0001. Alphanumeric characters shall be serially assigned, after all the numeric series are exhausted, i.e., 0001 through 9999, with an alpha as the first character, followed by three character numeric serial number. Each issuing office shall be responsible for the control of the serial number assignments. The following numeric and alphanumeric sequences, excluding alpha I and O, shall be used:

0001 through 9999,
A001 through A999, B001 through B999.
And so to Z001 through Z999.

(h) An example of this procurement instrument identification number is:

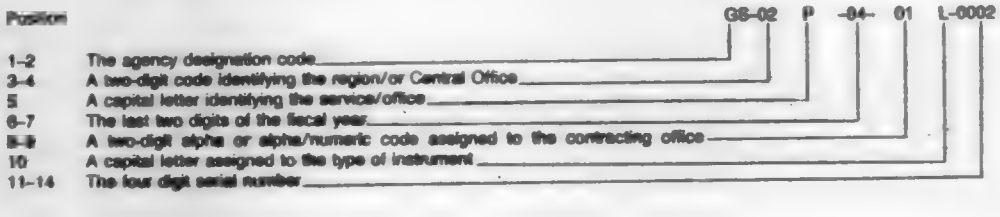

504.7001–3 Orders and calls instrument identification number.

Delivery orders under type contracts (orders), orders under basic ordering agreements (orders), calls under blanket purchase agreements (calls), and orders under schedule contracts shall be identified by an "11" character alphanumeric identification number.

(a) The first character shall be a capital letter assigned to the service/office issuing the order. This code will be identical to those assigned in paragraph (d) of 504.7001–2.

(b) The second and third characters shall be assigned to the Region issuing the order. These identification codes will be identical to the codes assigned in paragraph (b) of 504.7001–2.

(c) The fourth and fifth characters shall be the last two digits of the fiscal year in which the number is assigned.

(d) The sixth and seventh characters shall be assigned to the contracting office preparing the order. These identification codes will be the same as the codes assigned in paragraph (e) of 504.7001–2.

(e) The eighth through the eleventh characters shall be the serial number of the order. Each contracting office shall maintain their own serial number. Alphanumeric numbers shall be used when more than 9999 numbers are required. Alphanumeric numbers shall be serially assigned with an alpha in the first position followed by the numeric serial number. The following sequences, excluding alpha I and O shall be used:

0001 through 9999,
A001 through A999,
And so on to Z001 through Z999.

(f) An example of a delivery order number is:

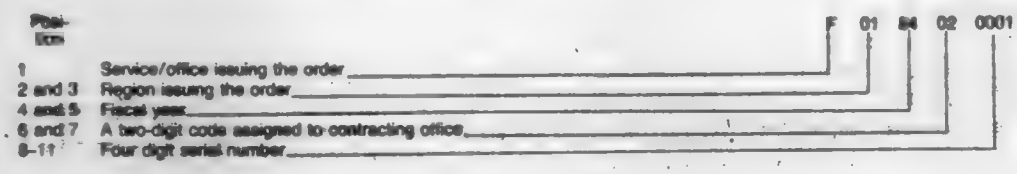

504.7001–4 Supplemental procurement instrument identification number.

Modifications to the basic contract instrument and to call/order against contracts shall be numbered by use of a four character alphanumeric number. The supplemental identification numbering system shall apply to all modifications to contracts and to call/orders against contracts.

(a) The first character shall be a capital letter identifying the office

issuing the modification, as indicated below:

A Contract administration office modification (Administrative Components), or
P Purchasing office modification.

(b) The second character shall be a capital letter identifying the type of instrument, as follows:

C Change order.
E Exercise of an option provision.
S Supplemental agreement (bilateral signatures).
T Termination action.
Z For a definitized letter contract, the letter Z shall be used only for that modification which represents the definitized contract.

(c) The third and fourth characters shall be the serial number. Alphanumeric numbers shall be used when more than 99 numbers are required. Alphanumeric numbers shall be serially assigned with an alpha in the first position followed by a numeric number. The following sequences, excluding alpha I and O, shall be used:

01 through 99, A1 through A9, and so on to Z1 through Z9.

(d) An example of the supplemental procurement instrument identification number is:

Positions		Example: A S 0 1
1	Identifying office A or P	
2	Type action	
3 and 4	The two-digit serial number	

504.7002 Procurement contract register.

GSA Form 2728, Procurement Contract Register, or an automated register shall be used to ensure continuity and control of procurement instrument identification numbers.

PART 505—PUBLICIZING CONTRACT ACTIONS

Sec.
505.000 Scope of part.
505.001 Policy.

Subpart 505.1—Dissemination of Information

505.101 Methods of disseminating information.

Subpart 505.2—Synopses of Proposed Contracts

505.201 General.
505.202 Exceptions.
505.203 Time of synopsizing.
505.205 Special situations.
505.205-70 Synopses of special notices used in connection with market searches for competitive sources.
505.207 Preparation and transmittal of synopses.
505.270 Synopses of amendments to solicitations.

Subpart 505.3—Synopses of Contract Awards

505.301 General.
505.302 Preparation and transmittal of synopses of awards.

Subpart 505.5—Paid Advertisements

505.502 Authority.
505.504 Use of advertising agencies.

Authority: 40 U.S.C. 486(c).

505.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information.

505.001 Policy.

In addition to the publicizing requirements of FAR 5.001, market searches for competitive sources shall be publicized when required by this Subpart for the purpose of enhancing competition and reducing the number of noncompetitive procurements.

Subpart 505.1—Dissemination of Information

505.101 Methods of disseminating information.

(a) The appropriate Business Service Center shall be furnished a copy of solicitation documents (except solicitations for leases of real property) when the estimated contract amount is expected to exceed the small purchase limitation. The Business Service Centers shall display the solicitation documents so they are readily available and accessible for public examination.

(b) All proposed leases of real property for 10,000 or more square feet of space shall be publicized in newspapers and/or periodicals unless the contracting officer determines that such advertising will not serve to promote competition.

Subpart 505.2—Synopses of Proposed Contracts

505.201 General.

(a) In accordance with Section 8 of the Small Business Act, as amended by Pub. L. 98-72, all proposed competitive and noncompetitive procurement actions of $10,000 and above shall be publicized in the Commerce Business Daily (CBD) immediately after the necessity for the procurement is established. Exceptions to the publication requirement are outlined in 505.202.

(b) All synopsis messages (single or consolidated) for proposed procurements shall be forwarded to the appropriate Business Service Center (BSC). Procuring activities shall ensure that internal procedures for forwarding messages to BSC provide for maximum compliance with 505.203, Time of Synopsizing. Business Service Centers will arrange for prompt submission of information concerning proposed procurements for publication in the Commerce Business Daily. Submission to the Commerce Department shall be in accordance with FAR 5.207.

505.202 Exceptions.

(a) Synopsizing is not required when the contracting officer determines, in writing, on a case-by-case basis that:

(1) The procurement is of a classified nature where the information necessary to be included or referenced in the solicitation (invitation for bids or request for proposals) is in itself of a classified nature and the public disclosure of this information would violate security requirements. All other classified procurements shall be published in the Department of Commerce Synopsis if sufficient information of an unclassified nature can be provided in the solicitation to enable a prospective contractor to submit a bid or proposal.

(2) The need for the property, supplies, or services is of such an unusual and compelling urgency that the Government would be seriously injured if the time periods set forth in 505.203 were complied with;

(3) A foreign government reimburses GSA the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty;

(4) The procurement is made from another Government agency, or a mandatory source of supply;

(5) The procurement is for utility services and only one source is available;

(6) The procurement is made against an order placed under a requirements or similar contract, including orders for perishable subsistence supplies. (This exemption may be used in cases where an order is placed against an existing contract except for non-mandatory schedule contracts for automatic data processing equipment).

(7) The procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originallity of thought or innovativeness of the proposed research.

(b) Synopsizing is not required when the Administrator determines, with the concurrences of the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable. (These determinations may cover classes of cases.)

(c) The Administrator has determined in accordance with exception (10) of 15 U.S.C. 637(e), that advance publicity in the Commerce Business Daily for the acquisition of space by a lease of real property (except when lease construction is required) is not appropriate or reasonable. The Administrator of the Small Business Administration has concurred in this determination. Therefore, a requirement for the acquisition of space by a lease for real property, except when lease construction is required, need not be synopsized in the Commerce Business Daily. However, all lease awards over $25,000 are subject to the post award synopsizing requirements in 505.302.

505.203 Time of synopsizing.

Whenever a proposed procurement is required to be synopsized under 505.201, contracting officers shall proceed as follows:

(a) A proper notice of the procurement action shall be published in the Commerce Business Daily (CBD) at least 15 days before issuance of a solicitation, except when the solicitation is for procurement of requirements categorized as research or development effort, in which case the CBD notice shall be published at least 30 days before a solicitation is issued.

(b) Allow at least 30 days response time from:

(1) the date of issuance of the solicitation,

(2) the date of a proper notice of intention to contract for architect-engineer services, or

(3) in the case of orders under a basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order.

(c) Contracting officer shall allow at least 30 days response time from the date of publication of a proper notice of intent to contract before commencing negotiations for the award of a sole-source contract. Nothing in this paragraph prohibits officers or employees of agencies from responding to requests for information.

505.205 Special situations.

505.205–70 Synopses of special notices used in connection with market searches for competitives sources.

(a) *General.* The term "sources-sought synopsis" means the type of Commerce Business Daily (CBD) notice designed to identify potential sources for procurements. The sources-sought synopsis provides an opportunity for the marketplace to indicate its interest in submitting bids, offers proposals, or quotations for future procurement. It is normally used to discover if more than one firm is interested and qualified to provide a particular product or service, although a solicitation is not yet available. This type of synopsis has particular application when one contractor is thought to be uniquely capable of meeting the Goverment's minimum requirements and verification of this opinion is needed.

(b) *Property and services.* Sources-sought notices publicizing the Government's interest in anticipated property or service procurements may be published in the CBD, using the general format outlined in 505.207, except where security considerations prohibit such publication. A sources-sought synopsis may be published in connection with market searches for sources of property or services, other than those discussed in FAR 5.205, when a sources-sought synopsis is required to test the marketplace for competitive sources. If one or more potential contractors are identified as a result of such a market search, they shall be solicited. In conjunction with that solicitation, the specific procurement of the property or service shall be publicized in the CBD as required by 505.201 unless: (1) One of the exceptions stated in 505.202 is applicable, or (2) a sources-sought synopsis had been published in the CBD, and such notice was sufficiently specific to permit potential sources to identify an interest in the forthcoming procurement, and was provided for them to request solicitations for the procurement.

505.207 Preparation and transmittal of synopses.

(a) Normally, synopsis messages shall be prepared on informal letterhead stationery and mailed to the Commerce Business Daily. However, when time is of the essence synopsis messages may be prepared on a Standard Form 14, Telegraphic Message and transmitted electronically via teletype.

(b) Texts of synopsis messages shall be prepared as prescribed in FAR 5.207, except that the name and address of the contracting office (see FAR 5.207) shall be construed to mean the appropriate BSC.

(c) Notices described in 505.205–70 as sources-sought snyopses shall be headed, "Property Sources Sought" or "Service Sources Sought." This shall be followed by a statement similar to the following (modifications may be made to suit agency needs):

Concerns having the ability to furnish the following property (services) are requested to give written notification (including the telephone number for a point of contact) to the procuring office listed in this notice within —— calendar days (no less than 30 days should be entered) from the date of this synopsis:

(Describe the requirement so as to furnish a complete property (service) description, and a condensation of other essential information, to provide concerns with an intelligible basis for judging whether they have an interest in the procurement. Such information may include a statement regarding the Government's belief that the property or service may be available only from a sole source and the reasons for such belief.)

This is not a formal solicitation. However, concerns that respond should furnish detailed data concerning their capabilities and may request to receive a copy of the solicitation when it becomes available. This notice may represent the only official notice of such a solicitation.

505.270 Synopses of amendments to solicitations.

All amendments to solicitations for offers shall be published in the Commerce Business Daily when the amendment increases the anticipated dollar amount of the contract above the dollar threshold requiring synopsis of the proposed procurement or the amendment alters the scope of the proposed contract in a manner which would generate the interest of contractors who may not have had an interest in the procurement as originally synopsized.

Subpart 505.3—Synopses of Contract Awards

505.301 General.

A notice announcing awards of all unclassified contracts exceeding $25,000 shall be published in the Commerce Business Daily. The publicizing of smaller dollar awards is not prohibited when it would be advantageous to industry or the Government.

505.302 Preparation and transmittal of synopses of awards.

The provisions of 505.201 and 505.207 regarding preaward synopses messages are equally applicable to contract award synopses messages, except that the text shall be prepared as prescribed in FAR 5.302.

Subpart 505.5—Paid Advertisements

505.502 Authority.

(a) *Newspapers.* The head of the contracting activity or his/her designee may approve the publication of paid advertisements in newspapers. Written approval is required for paid newspaper advertisements, except, when such publication is required by FAR or GSAR (see 505.101(b)). The contracting officer shall document the case file with the regulatory citation or written approval to support the use of paid newspaper advertisements.

(b) *Other media.* Advance approval is not required to place paid advertisements in media other than newspapers.

505.504 Use of advertising agencies.

It is the policy of GSA to make use of the services of commercial advertising agencies whenever it is determined that the services rendered by such agencies can increase competition for GSA contracts and improve the effectiveness of GSA advertising and marketing programs.

SUBCHAPTER B—ACQUISITION PLANNING

PART 507—ACQUISITION PLANNING

Subpart 507.3—Contractor Versus Government Performance

507.305 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause to 552.207–70, Report of Employment Under Commercial Activities, in solicitations issued for the purpose of making a cost comparison covering work currently being performed by the Government and in contracts that result from the solicitations.

(40 U.S.C. 486(c))

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

508.002 Use of other Government supply sources.
508.002–70 Department of Defense contracts.
508.002–71 District of Columbia Government—Department of Corrections.
508.002–72 District of Columbia Government indefinite delivery contracts.

Subpart 508.6—Acquisition From Federal Prison Industries, Inc.

508.604 Ordering procedures.
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508.605–70 Federal Prison Industries clearance numbers.

Subpart 508.7—Acquisition From the Blind and Other Severely Handicapped

508.705 Procedures.
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508.705–71 Workshop performance capability.
508.705–72 Allocations and orders.
508.705–73 Delinquent delivery orders.
508.706 Purchase exceptions.
508.706–70 Citations of purchase exception number.

Subpart 508.8—Acquisition of Printing and Related Supplies

508.870 Government Printing Office (GPO).

Authority: 40 U.S.C. 486(c).

508.002 Use of other Government supply source.

508.002–70 Department of Defense contracts.

The Defense Logistics Agency, Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22314, and the Defense General Supply Center, Richmond, VA 22319, prepare annual contracts for lubricating oils, greases, gear lubricants, packaged petroleum products, gasoline, fuel oil (diesel and burner), kerosene, solvents, and coal. Electronic items are available from the Defense Electronic Supply Center, Dayton, OH 45444. Except as otherwise provided by FPMR 41 CFR 101–26.602 of the FPMR, the supply sources listed below are mandatory.

(a) Lubricating oils, greases, and gear lubricants. See FPMR 41 CFR 101–26.602–1.

(b) Packaged petroleum products. See FPMR 41 CFR 101–26.602–2.

(c) Gasoline, fuel oil (diesel and burner), kerosene, and solvents. See FPMR 41 CFR 101–26.602–3.

(d) Coal. See FPMR 41 CFR 101–26.602–4.

(e) Electronic items. See FPMR 41 CFR 101–26.603.

508.002–71 District of Columbia Government—Department of Corrections.

(a) The District of Columbia is authorized, under Pub. L. 88–622, to sell industrial products and services to Federal agencies. A listing of the commercial products and services is available from:

DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS
INDUSTRIES DIVISION
LORTON, VA 22079

Except as otherwise provided in paragraphs (b) and (c) of this 508.002–71, these supplies and services may be procured on an optional basis.

(b) Laundry services for Federal agencies in the Washington, DC, metropolitan area should be obtained from the Department of Corrections except when the department approves procurement from another source.

(c) Official U.S. Government tags for use on motor vehicles shall be acquired under FPMR 41 CFR 101–38.3.

508.002–72 District of Columbia Government indefinite delivery contracts.

The District of Columbia places indefinite delivery contracts for sand, gravel, premixed concrete, Portland cement, slag and slag screenings, and road salt that may be used as needed in the Washington, DC, area. Details of these contracts may be obtained from the Purchasing Officer, DC Government, 613 G St. NW, Room 1002, Washington, DC 20001.

Subpart 508.6—Acquisition From Federal Prison Industries, Inc.

508.604 Ordering procedures.

508.604–70 Delinquent delivery orders.

(a) Contracting officers shall establish delivery schedules based on the leadtime required by Federal Prison Industries (FPI) to prevent avoidable delinquent orders.

(b) Should delivery orders become delinquent, the contracting officer shall monitor progress until all deliveries are complete.

(c) Contracting officers' efforts to negotiate an adjustment to the delivery schedule shall not include a request for price adjustment.

(d) Delinquent orders may indicate the need to request clearance to procure from other sources until FPI can make deliveries on time.

(e) If FPI cannot furnish the supplies on time, and the items can be obtained from commercial sources in much less time than from FPI, clearance for buying them from another source shall be obtained under FAR 8.605.

508.605 Clearances.

508.605-70 Federal Prison Industries clearance numbers.

When FPI items are bought from a source other than FPI, permission to make the purchase shall be obtained from FPI in the form of a clearance number. This number shall be cited in the solicitation for offers and all subsequent award documents.

Subpart 508.7—Acquisition From the Blind and Other Severely Handicapped

508.705 Procedures.

508.705 Adding items to the procurement list.

(a) When a central non-profit agency (CNA) expresses an interest in a particular commodity or service being added to the procurement list, the contracting officer shall provide the CNA with the most recent solicitations issued for the supply or service involved and the price(s) at which the item was awarded.

(b) The Committee for Purchase from the Blind and Other Severely Handicapped (The Committee), if requested by the CNA, may assign the supply or service to the CNA for development by a workshop and will list the item in the Committee Assignment Register. A copy of the register, updated monthly, is maintained by the Office of Small and Disadvantaged Business Utilization (AU).

(c) Prior to issuing a solicitation, contracting officers shall request from the CNA, the status of any item previously identified as one in which the Committee has expressed interest.

(d) The Committee may request that a procurement be delayed pending Committee action. The contracting activity shall consult with AU prior to rejecting such a request.

508.705-71 Workshop performance capability.

In addition to the annual requirement, the purchase document shall include an estimated monthly requirement. The contracting officer may verify the workshop's ability to satisfy the Government's anticipated requirement by requesting a preaward survey. If it is determined that the Government's estimated monthly requirement exceeds the workshop's ability to perform, a purchase exception may be requested only for those quantities which cannot be provided in a timely manner by the workshop.

508.705-72 Allocations and orders.

In addition to the requirements set forth in FAR 8.706, requests for allocations and orders shall indicate the packaging, packing, or marking required if it differs from the specification cited, or otherwise provided in the Procurement List. Pricing of nonstandard requirements is covered in FAR 8.707.

508.705-73 Delinquent delivery orders.

(a) Contracting officers shall take appropriate action on delinquent delivery orders until all deliveries are made. Procedures shall follow FAR 8.705 and the regulations of the Committee for Purchase from the Blind and Other Severely Handicapped (see 41 CFR 51-5.2 and 51-5.7).

(1) Contracting officers' efforts to negotiate an adjustment to the delivery schedule shall not include a request for price adjustment.

(2) Records of delinquent delivery orders shall be maintained whether or not the delivery schedule is adjusted.

(b) If the CNA delays acting on the request or refuses to grant a purchase exception, the matter shall be referred through the contracting director, to the head of the contracting activity for expeditious resolution of the problem with the Committee.

508.706 Purchase exceptions.

508.706-70 Citation of purchase exception number.

Purchases from commercial sources under FAR 8.706 shall cite the purchase exception number issued by the CNA in the solicitation for offers and all later award documents.

Subpart 508.8—Acquisition of Printing and Related Supplies

508.870 Government Printing Office (GPO).

Procurement of items for use within the District of Columbia which are listed in the GPO Catalog and Price List shall be from GPO. Procurement of these items from commercial sources is prohibited unless a waiver is granted by the Public Printer through the Printing and Distribution Branch, National Capital Region, authorizing such purchases. When so authorized, the GPO waiver number shall be shown in the contract and/or purchase order. Acquisition from GPO of such items for use outside the District of Columbia is not mandatory. See FPMR 41 CFR 101-26.703 regarding marginally punched continuous forms.

PART 509—CONTRACTOR QUALIFICATIONS

Subpart 509.1—Responsible Prospective Contractors

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509.407-3 Procedures.

Authority: 40 U.S.C. 486(c).

Subpart 509.1—Responsible Prospective Contractors

509.104 Standards.

509.104-4 Subcontractor responsibility.

(a) Before authorizing a contractor to change a designated source of supply or any designated inspection or production point, the contracting officer shall determine that such change will not be detrimental to the ability of the contractor to fulfill his obligations under the terms of the contract.

(b) In making an evaluation of the requested change, contracting officers shall exercise precautions with regard to new sources similar to those taken in determining the acceptability of the initial supply source. If the contracting officer approves a change of supply source, inspection point, or production point, he/she shall issue an appropriate contract modification specifying the nature of the change and the effective date. Where feasible, the modification shall provide that delivery orders placed prior to the effective date, will remain in effect as written. In determining the effective date, contracting officers shall take into consideration the time

necessary for offices concerned to take required actions thereunder.

(c) The contracting officer shall insert the clause at 552.209–70, Subcontractor Eligibility, in solicitations and contracts when a construction contract, or a contract for dismantling, demolition or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

509.105 Procedures.

509.105–1 Obtaining information.

(a) The GSA Form 527, Contractor's Qualifications and Financial Information, may be used to obtain information regarding prospective contractors financial capability.

(b) Advice and assistance should be obtained from all appropriate activities, including legal counsel, quality control, and finance, in arriving at a determination that an offeror qualifies as responsible under the standards set forth in FAR 9.105.

(c) Preaward surveys shall be conducted in accordance with FAR 9.105 and 9.106 and this subpart. The contracting officer or his/her designee shall forward a preaward survey request to the surveying activity(ies) using Standard Form 1403, Preaward Survey of Prospective Contractor (General), accompanied by the appropriate subparts of the preaward survey (Standard Forms 1404 through 1408).

(d) For the purposes of this subpart, the "auditor" in FAR 9.105–1(b)(2)(ii) is the Assistant Inspector General for Audits in the Central Office and the Regional Inspector General for Audits in the regions except for the evalation of a prospective contractor's financial competence and credit needs, for which it is the Chief, Credit and Finance Branch, Region 2.

509.105–3 Disclosure of preaward information.

When an offer is rejected because of a determination by the contracting officer that the prospective contractor is not responsible, the contracting officer shall notify the prospective contractor by letter, setting forth the basis for the rejection. This will provide the offeror with the opportunity, where applicable, to cure the factors that lead to the nonresponsibility determination.

509.105–70 Contractor certification of responsibility.

(a) The contracting officer shall insert the certification provision at 552.209–71, Certification Regarding Previous Crimes, Debarments, Suspensions, and Defaults, in solicitations when the resulting contract is expected to exceed the small purchase limitation.

(b) When an offeror's certification indicates an indictment for or conviction of a specified offense, debarment or suspension, or default of a contract, the contracting officer shall:

(1) Request such additional information from the low, responsive offeror as the contracting officer deems necessary in order to make a determination of the offeror's responsibility, and

(2) Notify the Office of Inspector General (OIG) in the case of a criminal indictment or conviction.

(c) Information furnished by offerors shall be used by contracting officers:

(1) When making the determination of an offeror's responsibility, and

(2) When deciding in accordance with 509.4, whether debarment or suspension action should be recommended.

(d) Offerors who do not furnish the certification shall be given an opportunity to remedy the deficiency. Failure to furnish the certification by time of contract award renders the offeror nonresponsible.

(e) The contract clause at 552.209–72, Termination—Erroneous Representation Concerning Crimes, Debarments, Suspensions, and Defaults, shall be included in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation.

509.106 Preaward surveys.

509.106–1 Conditions for preaward surveys.

(a) The contracting officer, in evaluating whether to initiate a preaward survey, shall consider:

(1) The experience and past performance record of the offeror and the dollar value of the procurement;

(2) The extent and currency of previous preaward surveys;

(3) Whether a bid guarantee is submitted and the type of guarantee submitted (i.e., corporate surety, individual surety, letter of credit);

(4) Information as to the offeror's prior performance; and

(5) The adequacy of financial information submitted by the offeror (i.e., certified balance sheets and income statements, audited annual reports). Should a financial analysis be determined necessary, it should include a credit report to identify delinquent debts, especially those owed to the Federal Government.

(b) The preaward survey may be limited in scope pursuant to FAR 9.106–2(e) to those aspects of the responsibility determination for which the contracting officer is lacking information.

(c) Notwithstanding the other provisions of this subpart, the contracting officer shall obtain a preaward survey, consistent with FAR 9.106–1(a) and 509.106–1(a) of this chapter, when the contracting officer has doubts as to the offeror's responsibility.

509.106–70 Disagreement with preaward survey recommendation.

When the contracting officer does not concur with the preaward survey recommendation, the contract file shall be documented as to the basis of the determination of contractor responsibility. The concurrence of the head of the contracting activity shall be obtained prior to award of a contract to a firm which reveived an unfavorable preaward survey. If the contracting officer finds a small business non-responsible, the certificate of competency procedures in FAR Subpart 19.6 shall be used. The activity that prepared the preaward survey shall be furnished with a copy of the contracting officer's justification for overriding the preaward survey recommendation.

Subpart 509.2—Qualified Products

509.206 Acquiring qualified products.

509.206–2 Solicitation provisions and contract clauses.

The contracting officer shall insert one of the clauses at 552.209–73, Product Removal from Qualified Products List, in solicitations and contracts, when appropriate. These clauses supplement the clause at FAR 52.209–2.

509.270 Waiver of qualification requirement.

(a) When a contracting activity has a requirement for a product to be procured under a specification which includes a qualification requirement and the contracting officer has evidence to support a conclusion that it is likely that a solicitation for a Qualified Products List (QPL) product would not produce acceptable offers or adequate competition, a request for a waiver from the qualification requirement of the specification shall be submitted by the contracting director to the Director, Commodity Management Division (FCM). The reasons why the waiver is being requested shall be stated in the request.

(b) If a waiver is granted, it shall be stated in the solicitation that the qualification requirement of the specification does not apply. Unless a notification of waiver states otherwise,

each waiver granted shall apply only to the specific procurement for which the waiver was requested, and shall not be construed as authorizing a waiver with respect to any other procurement.

Subpart 509.4—Debarment, Suspension, and Ineligibility

509.400 Scope of subpart.

This subpart implements and supplements FAR Subpart 9.4 with respect to the debarment and suspension of contractors and the maintenance, distribution, and use of a consolidated list of debarred, suspended, and ineligible contractors. The subpart is applicable to all elements of GSA with respect to the procurement of personal property and nonpersonal services, including construction and leases of real property.

509.403 Definitions.

In addition to the definitions set forth in FAR 9.403, the following terms have special meaning as indicated:

(a) The "debarring official" and the "suspending official" for GSA is the Assistant Administrator for Acquisition Policy. The authority to act in these capacities may be delegated to his/her deputy.

(b) "Notice" means a written communication sent by certified mail, return receipt requested, to the last known address of a party, its identified counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed.

(c) The "fact-finding official" for GSA is the Chairman of the General Services Administration Suspension and Debarment Board within the GSA Board of Contract Appeals or his/her designee(s).

509.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The debarring and suspending official shall be responsible for the compilation, maintenance, revision, and distribution of the Consolidated List, including distribution to GSA contracting activities.

(b) Heads of contracting activities and other interested officials shall notify the debarring and suspending official of their distribution needs and shall ensure that the list is used effectively by agency contracting officers.

509.404–70 Agency records.

The debarring and suspending official shall maintain records containing the information required by FAR 9.404, in accordance with agency practies.

509.405 Effect of listing.

509.405–1 Continuation of current contracts.

(a) Notwithstanding the debarment or suspension of a contractor, contracting officers may continue contracts or subcontracts in existence at the time of the debarment or suspension. However, termination of current contracts should be considered under the circumstances set forth in (b), (c), and (d) below.

(b) Termination for default under a contract's "Default" clause is appropriate where the circumstances giving rise to the debarment or suspension also constitites a default in the contractor's performance of the contract. Debarment or suspension of the contractor for reasons unrelated to the performance of the contract will not support a termination for default.

(c) Termination for convenience or cancellation under appropriate contract provisions should be considered where the contractor presents a significant risk to the Government in completing a current contract and such action is determined to be in the Government's best interest. In making this determination the contracting officer should consider such factors as the:

(1) Seriousness of the cause of debarment or suspension;

(2) Extent of contract performance;

(3) Potential costs of termination and reprocurement;

(4) Urgency of the requirement and the impact of the delay of reprocurement;

(5) Availability of other safeguards to protect the Government's interest until completion of the contract.

(d) A decision to terminate an existing contract with a debarred or suspended contractor under a "Termination for Convenience" or "Cancellation" clause must be concurred in by assigned legal counsel and approved at a level above the contracting officer.

§ 509.406 Debarment.

§ 509.406–3 Procedures.

(a) *Investigation and referral.* (1) Any constituent element of GSA that becomes aware of circumstances which may serve as the basis for a debarment shall refer those circumstances to the debarring official through appropriate channels for consideration of debarment action. However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Office of the Inspector General (OIG), for investigative consideration in accordance with GSA Standards of Conduct (ADM 7900.9) 41 CFR 105.735–216, Reporting Suspected irregularities. If appropriate, the Office of Inspector General shall make a referral to the debarring official.

(2) Referrals for consideration of debarment action at a minimum should include:

(i) The cause for debarment (see FAR 9.406);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates (including current or last known home and business addresses and zip codes);

(v) A statement of GSA's procurement history with such contractors, including any recent experience under a GSA contract;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceeding, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from the cognizant contracting activity as to the impact of the debarment action on GSA programs for debarment referrals not transmitted by the Inspector General.

(3) Referrals may be returned to the originator for further information, investigation, or development.

(b) *Notice of proposal to debar.* (1) Upon receipt of a completed referral, the debarring official shall decide whether to initiate debarment action, after coordinating the matter with assigned legal counsel.

(2) Where a determination is made to initiate action, affected contractors and any specifically named affiliates shall be given written notice of the information required by FAR 9.406–3 and contained in 509.406–3.

(3) A copy of the notice shall be given to affected agency components.

(4) Where a determination is made not to initiate action, notice shall be given to the agency official who made the referral.

(c) *Decision-making process.* (1) Contractors shall be given an opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment. However, if a response to the debarment notice is not received by the debarring official within 30 calendar days of receipt of the notice, the debarment shall become final.

(2) If, in response to the debarment notice, the contractor, or a representative, desires to present information and arguments in person to the debarring official, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. The oral presentation shall be informally conducted and a transcript need not be made. The contractor may, however, supplement the oral presentation with written information and arguments for inclusion in the administrative record.

(3) In actions not based upon a conviction or civil judgment and where the contractor disputes facts relating to the proposed debarment, the contractor may also request, and shall be entitled to, a hearing before the agency fact-finding official. The hearing will be conducted within 20 calendar days of receipt of the contractor's response, unless a longer period of time is requested by the contractor.

(4) The purpose of a hearing is to: (i) Afford the affected contractor the opportunity to dispute facts relating to the proposed debarment through the submission of oral and written evidence; (ii) provide the debarring official with findings of fact based on a preponderance of evidence; and (iii) provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(5) Hearings will be conducted by the fact-finding official in accordance with rules promulgated by that official. The rules shall be as informal as is practicable, consistent with principles of fundamental fairness and FAR 9.4 and 509.4; they shall provide an opportunity for the affected contractor to appear with counsel, submit documentary evidence, present witnesses, and cross-examine any witness GSA presents. The fact-finding official shall make a transcribed record of the hearing and make it available at cost to the affected contractor upon request, unless the contractor and GSA, by mutual agreement, waive the requirement for a transcript.

(6) The hearing shall be initiated by a formal written transfer of the matter by the debarring official to the fact-finding official.

(7) Upon receipt of such a transfer, the fact-finding official shall notify the affected contractor, schedule a hearing date, and provide the contractor an opportunity to present written evidence and oral testimony and to cross examine opposing witnesses. The fact-finding official shall deliver written findings to the debarring official (together with a transcription of the proceeding, if made) within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment exists.

(d) *Debarring official's decision.* The debarring official's final decision shall be made in writing in accordance with FAR 9.406–3 and notice of the decision will be given in accordance with FAR 9.406–3. A copy of the notice shall be given to affected agency components.

509.407 Suspension.

509.407–3 Procedures.

(a) The provisions of 509.406–3(a) apply to investigations and referrals for suspensions as if for debarments.

(b) *Notice of suspension.* (1) Upon receipt of a completed referral, the suspending official shall decide whether to suspend, after coordinating the matter with assigned legal counsel.

(2) In cases not based on an indictment the suspending official shall, in appropriate cases, obtain through OIG the written advice of the Department of Justice or state prosecutorial authority as to whether substantial interests of the Federal or state government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by the conduct of a hearing before the agency fact-finding official. If, on the basis of advice received, the suspending official determines that substantial interests of the Federal or a state government would be impaired he/she shall so advise the contractor in the notice.

(3) Notice shall be furnished as provided in 509.407–3 except that the notice to the contractor shall contain the information required by FAR 9.407–3 and contained in 509.407–3.

(c) *Decision-making process.* (1) Contractors shall be given an opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a suspension. However, to be considered, a response must be received by the suspending official within 30 calendar days of receipt of the suspension notice.

(2) When requested, an oral presentation before the suspending official shall be conducted as outlined in 509.406–3.

(3) In actions not based on an indictment or a suspension by another agency, and where the contractor disputes facts relating to the suspension, the contractor may also request, and shall be entitled to, a hearing before the agency fact-finding official, unless a determination has been made that substantial interests of the Government would be prejudiced by a hearing. The hearing will be conducted within 20 calendar days of receipt of the contractor's response, unless a longer period of time is requested by the contractor.

(4) The purpose of a hearing is to: (i) Afford the affected contractor the opportunity to dispute facts relating to the suspension action through the submission of oral and written evidence, and (ii) provide the suspending official with a determination as to whether adequate evidence exists to support the cause for suspension. Hearings shall be conducted as outlined in 509.406–3.

(d) The suspending official's decision shall be made in writing and notice shall be given in accordance with FAR 9.406.

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

510.001 Definitions.
510.004 Selecting specifications or descriptions for use.
510.004–70 Brand name products or equal.
510.004–71 Limitations on the use of brand name or equal pruchase descriptions.
510.004–72 Solicitations, brand name or equal descriptions.
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510.007–71 Notice of determination.
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510.007–5 Deviations from GSA stock or Federal supply schedules.
510.071 Standards.

Authority: 40 U.S.C. 486(c).

510.001 Definitions.

"Specification Manager" means an official (within the Office of Federal Supply and Services for Federal or Interim Federal Specifications or the program office for other than Federal specifications) responsible for reviewing a contracting officer's referral of a request for deviation from a specification.

510.004 Selecting specifications or descriptions for use.

510.004–70 Brand name products or equal.

(a) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later procurements. If a brand name product is no longer applicable, the reference thereto shall be deleted from the purchase description. Information on additions and deletions shall be immediately communicated to the specification manager.

(b) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to readvertise the requirements. (See 510.004–73.) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

510.004–71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the clause at 552.210–74 would be impracticable, the requirement to include the entry described in 510.004–72(a), shall not apply. If the clause is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the clause applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to procure a particular product under the guise of competitive procurement to the exclusion of other products that would meet the actual needs.

(b) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practical.

(c) *Approval required.* A brand name or equal purchase description shall not be used unless it has been approved by the contracting director.

510.004–72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding on:
Manufacturer's Name————————.
Brand————————.
No.————————.

(b) Because offerors frequently overlook the requirements of the clause at 552.210–74, Brand Name or Equal, the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause:

OFFERORS OFFERING OTHER THAN BRAND NAME ITEMS IDENTIFIED HEREIN SHOULD FURNISH WITH THEIR OFFERS ADEQUATE INFORMATION TO ENSURE THAT A DETERMINATION CAN BE MADE AS TO EQUALITY OF THE PRODUCT(S) OFFERED (SEE THE CLAUSE ENTITLED BRAND NAME OR EQUAL SET FORTH IN SECTION 552.210–74 OF THE GSA ACQUISITION REGULATION.)

(c) If offer samples are requested for brand name or equal procurements the above notice shall not be included in the solicitation.

510.004–73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should readvertise the requirements, using a purchase description that sets forth the essential characteristics.

510.007 Deviations.

The head of the contracting activity shall ensure that the requirements of FAR 10.007 and this subpart are complied with.

510.007–70 Responsibilities of the contracting officer.

(a) The procuring contracting officer shall obtain the concurrence of the specification manager in the Office of Federal Supply and Services (FSS) to deviate from a Federal specification before it is used in a solicitation, amendment, or contract modification. Prior to requesting a deviation, the contracting officer shall reject any deviation request that is similar to a deviation which formed the basis for the rejection of an otherwise low bid under the solicitation. The contracting officer shall consider the following factors prior to forwarding a deviation request for evaluation:

(1) The impact that it might have on the ability of other offerors to furnish the item.

(2) The impact that it might have on future solicitations to be issued by the procuring contracting officer (PCO).

(3) Whether the item is the subject of a protest, is under litigation, or is sensitive or controversial.

(4) The timeliness of the deviation request.

(5) The urgency of the requirement.

(6) Alternatives available to the Government other than accepting nonconforming supplies, (e.g., extending due dates upon receipt of adequate consideration, terminating the contract and reprocuring).

(b) A contracting officer's request to deviate from a Federal specification shall include the following information:

(1) A statement describing the deviation.

(2) A justification.

(3) A recommendation for revising or amending the specification, if appropriate.

(4) The effect of the deviation on the form, fit, or function of the contract item, if known.

(5) The contractor's written submission advising the Government of the cost savings that would accrue to the contractor and to the Government if the request is granted.

(c) The procuring contracting officer (PCO) is responsible for authorizing or rejecting the deviation request after obtaining appropriate input. The administrative contracting officer (ACO) may be delegated the responsibility of coordinating the review of the request and making a recommendation to the PCO. The PCO's determination shall be based upon the following:

(1) The specification manager's evaluation of the request, including:

(i) The effect granting the deviation would have on the form, fit or function of the item.

(ii) The adequacy of the proposed monetary consideration.

(iii) The contractor's cost savings accruing as a result of the deviation.

(2) A conclusion that granting the request is clearly advantageous to the Government.

(3) Whether conforming supplies can be obtained without jeopardizing the Government's supply position.

510.007-71 Notice of determination.

(a) The contracting officer submitting the request shall be promptly advised in writing by the ACO/specification manager as to the acceptability of the request.

(b) Any resultant amendment of the terms of solicitation shall be accomplished using Standard Form 30, Amendment of Solicitation/Modification of Contract, and shall be sent to all offerors.

(c) Any resultant modification of the terms of the contract shall be made by using SF 30, Amendment of Solicitation/Modification of Contract.

510.011 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.210-70, Standard References, in solicitations and contracts for construction services that:

(1) Cite documents or publications that are not furnished with the solicitation, or

(2) Incorporate documents or publications by reference.

(b) The contracting officer shall insert the clause at 552.210-71, Reference to Specifications in Drawings, in solicitations and contracts if Federal specifications which involve drawings are cited.

(c) The contracting officer shall insert the clause at 552.210-72, Acceptable Age of Shelf-Life Items, in solicitations and contracts when contractors are required to furnish shelf-life items within a specified time from the date of manufacture or production of the supplies to the time supplies are offered for inspection in accordance with 41 CFR 101-27.206-2 of the Federal Property Management Regulation.

(d) The contracting officer shall insert the clause at 552.210-73, Age on Delivery, in solicitations and contracts when contractors are required to furnish shelf-life items within a specified time from the date of manufacture or production of the supplies to the time of shipment or delivery in accordance with 41 CFR 101-27.206-2 of the Federal Property Management Regulation.

(e) The contracting officer shall include the provision at 552.210-74, Brand Name or Equal, in solicitations for which a brand name or equal purchase is used.

(f) The contracting officer shall include the clause at 552.210-75, Marking, in solicitations and contracts for supplies when the contract amount is expected to exceed the small purchase limitation.

(g) The contracting officers shall insert the clause at 552.210-76, Charges for Marking, in solicitations and contracts that include the clause in 552.210-75 or a similar clause.

(h) The contracting officer shall include the clause at 552.210-77, Preservation, Packaging and Packing, in solicitations and contracts for supplies when the contract amount is expected to exceed the small purchase limitation. The contracting officer may include the clause in contracts awarded through small purchase procedures when appropriate.

(i) The contracting officer shall insert a clause substantially the same as the clause at 552.210-78, Charges for Packaging and Packing, in solicitations and contracts for supplies that are to be delivered to GSA supply distribution facilities.

(j) The contracting officer shall include the clause a 552.210-79, Packing List, in solicitations and contracts for supplies including small purchases.

510.070 Specifications.

510.070-1 Exceptions to mandatory use of Federal specifications.

When an interim Federal specification exists for an item that is also in a Federal specification, contracting activities shall use the interim Federal specification if it is more suitable in the absence of a Federal specification, an interim Federal specification, if any, shall be used.

510.070-2 Optional use of interim Federal specifications.

Buying offices shall use interim Federal specifications instead of Federal specifications whenever practical, under 510.070-1. When a contracting activity finds an interim Federal specification is not practical, or that changes are desirable, the specification manager shall be notified in writing of the recommended changes.

510.070-3 Use Federal or interim Federal specifications and standards.

(a) Federal or interim Federal specifications and standards shall be incorporated by reference in solicitations. The reference shall identify the specifications or standard by series, i.e., Federal, military, or departmental (e.g., Forest Service), followed by the number and date. (The specification number includes the revision indicator.) Amendments shall be identified, e.g., Federal Specification PPP-B-636C, dated February 17, 1972, and Interim Amendment 1, dated August 30, 1972.

(b) Canceled or superseded specifications, or standards shall not be used.

(c) When Federal or interim Federal specifications and standards are cited in the solicitation, the provision(s) and/or clause(s) prescribed in FAR 10.011 and 510.011 of this chapter shall be used.

510.070-4 Other than Federal and interim Federal specifications.

(a) When the services or staff offices issue guide specifications that apply to the contracting offices within an organization, the head of the service or staff office may establish the review procedures for deviation requests.

(b) The contracting officer shall analyze requests for deviations in accordance with the requirements outlined in 510.007-71.

510.070-5 Deviations from GSA stock or Federal Supply Schedules.

41 CFR 101-26.100-2 of the Federal Property Management Regulations (FPMR) instructs agencies on submitting requests to deviate from the requirement to use items available from GSA stock or from Federal Supply Schedules and provides that such requests be submitted to the Assistant Administrator, Office of Federal Supply and Services (F), for approval.

510.071 Standards.

The provisions of 510.070-1 and 510.070-2 relating to mandatory use of Federal specifications and requests to deviate from Federal specifications also apply to Federal standards.

PART 511—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

Sec.

511.001 Definitions.
511.003 General.

Sec.
511.070 Solicitation provision and contract clause.
511.070–1 Solicitation provision.

Authority: 40 U.S.C. 486(c).

511.001 Definitions.

"Commercial item description" (CID) is a simplified product description that describes by design, function, and/or performance the characteristics of available, acceptable, commercial supplies.

511.003 General.

(a) The specification manager with advice from the contracting officer, if necessary, shall determine if inclusion of a CID in a solicitation is the most appropriate way of describing the Government's needs.

(b) When the CID consists of only the minimum salient characteristics of the commercially available supplies (e.g., general requirements, test procedures), a commercial item certification shall be included in the solicitation. (See 511.070–1.) Because the certification provision supplements and replaces the quality assurance provisions, the certification must be obtained to represent that the supplies being offered are of standard commercial quality.

(c) For CID's that incorporate specific salient characteristics including performance standards, packaging and packing requirements, quality assurance provisions (e.g., visual examination, sampling plans, test methods) the commercial item certification is not required. In this instance, the CID is the sole basis of determining whether the item meets the Government's needs.

511.070 Solicitation provision and contract clause.

511.070–1 Solicitation provision.

The contracting officer shall include the certification provision at 552.211–70, Commercial Item Certification, in solicitations for supplies when a basic or broad description of a standard commercially available product is used to describe the requirement.

PART 512—CONTRACT DELIVERY OR PERFORMANCE

Subpart 512.1—Delivery or Performance Schedules

Sec.
512.101 General.
512.102 Factors to consider in establishing schedules.
512.103 Supplies or services.
512.104 Contract clauses.

Authority: 40 U.S.C. 486(c).

Subpart 512.1—Delivery or Performance Schedules

512.101 General.

(a) Normally, time of delivery provisions in solicitations and resultant contracts, except multiple-award schedules, shall be stated as "required" time of delivery (or shipment), expressed in specific periods from receipt by the contractor of a notice of award (or receipt of a delivery order under indefinite delivery type contracts). In multiple-award schedule solicitations delivery times shall usually be stated as "desired" time of delivery, and offerors shall indicate in the solicitation a definite number of days within which delivery will be made.

(b) Information shall be included in the contract file to justify unusually short time of delivery requirements. This is particularly important where the time specified is so short that it may limit competition and possibly result in higher prices. Examples of circumstances providing such justification are:

(1) Furniture is required in a short time to outfit quarters scheduled for occupancy on a specific early date,

(2) Construction material is required to meet predetermined job progress schedules, and

(3) Supplies are required at a port to meet scheduled ship sailings for overseas destinations. The contracting officer must be satisfied that the requisitioning office has justified such unusually short time of delivery.

(c) When a portion of the total delivery is needed early, consideration should be given to requiring that portion by the required date and the balance later. Determine whether the portion required early and the balance should be included as separate items in the same solicitation or whether the two portions should be procured under separate solicitations.

(d) Delivery times for indefinite delivery type contract solicitations shall be carefully calculated to ensure that they reflect the most advantageous terms to the Government without imposing an unreasonable burden on potential contractors.

(e) When a particular solicitation contains a mixture of items that require substantially different times for delivery, the delivery periods should be set forth separately and items with similar delivery time requirements should be grouped according to delivery times in the solicitation.

(f) In negotiations for multiple awards, secure the best possible delivery time regardless of the "desired" delivery time(s) in the solicitation. For example, some offers comply with the Government's desired delivery time but others cite delivery times which are substantially shorter. The former should be questioned and negotiated to bring them closer in line with the latter. Variable delivery time offers (e.g., 30–90 days) should be negotiated to keep the timespan to a munimum. If the span applies to several items or several quantity breaks for one item, the items or item quantity breaks should be segregated into smaller groups which can be assigned more specific delivery times.

512.102 Factors to consider in establishing schedules.

(a) In addition to the requirements of FAR 12.102, the contracting officer shall, when determining time of delivery or performance, consider the circumstance where lengthy testing is involved and the time for completion of tests cannot be properly estimated.

(b) In making a determination, the contracting officer should also consider use of the contract clauses prescribed by FAR 12.104.

512.103 Supplies or services.

When the contract delivery date is contingent upon the date the contractor received notice of award, one of the following methods, as appropriate, shall be used to provide evidence of the actual date the notice of award was received:

(a) Mail the notice of award using certified mail with return receipt requested (see FAR 12.103(d)).

(b) Hand deliver the notice of award to the contractor (for example by contracting officer quality control representative) and obtain a dated receipt therefor.

512.104 Contract clauses.

(a) The contracting officer may insert one of the time of delivery clauses at 552.212–1, Time of Delivery, in solicitations and contracts, or may develop a clause substantially as shown to set forth a required delivery schedule.

(b) The contracting officer may insert one of time of shipment clauses at 552.212–70, Time of Shipment, in solicitations and contracts, or may develop a clause substantially as shown to set forth a required time of shipment.

(c) The contracting officer shall insert one of the clauses at 552.212–71, Notice of Shipment, in solicitations and contracts, when contractors are required to furnish notice of shipment.

(d) The contracting officer shall insert one of the clauses at 552.212–72, Availability for Inspection and Testing and Shipment/Delivery, in solicitations

and contracts for supplies when lengthy testing is involved and the time required for completion of these tests cannot be predetermined.

(e) The contracting officer shall insert one or both of the clauses at 552.212–73, Parts and Services, in solicitations and contracts whenever an AID requisition (P10/c, P10/t, PA/PR) specifies the need for assembling, servicing, and maintenance of equipment to be performed by the contractor.

(f) The contracting officer shall insert the clause at 552.212–74, Non Compliance with Contract Requirements, in solicitations and contracts for construction services when the contract amount is expected to exceed the small purchase limitation.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.

Subpart 513.1—General

513.106 Competition and price reasonableness.
513.106–70 Exigency procurement.
513.107 Solicitation and evaluation of quotations.

Subpart 513.2—Blanket Purchase Agreements

513.203 Establishment of Blanket Purchase Agreements (BPA).
513.203–1 General.
513.204 Purchases under Blanket Purchase Agreements.

Subpart 513.3—Fast Payment Procedure

513.301 General.

Subpart 513.4—Imprest Fund

513.403 Agency responsibilities.

Subpart 513.5—Purchase Orders

513.501 General.
513.505 Purchase order and related forms.
513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
513.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

Subpart 513.70—Certified Invoice Procedure

513.7001 Certified invoice procedure.

Authority: 40 U.S.C. 486(c).

Subpart 513.1—General

513.106 Competition and price reasonableness.

(a) *Purchases not over $1000.* Purchases not over $1000 may be accomplished in accordance with 513.70 using the certified invoice procedure.

(b) *Purchases over $1000.* When procuring similar items or services for which there are many qualified sources in active competition, the firms solicited shall be rotated or the number solicited should be increased to include the additional sources to the extent commensurate with the value of the purchase, the potential for additional price savings, and the additional administrative costs involved.

(b) *Purchases over $1000.* When procuring similar items or services for which there are many qualified sources in active competition, the firms solicited shall be rotated or the number solicited should be increased to include the additional sources to the extent commensurate with the value of the purchase, the potential for additional price savings, and the additional administrative costs involved.

(c) *Oral solicitation.* Quotations may be solicited orally under the circumstances described in FAR 13.106(b)(2) unless:

(1) A service contract which will include a wage determination issued by the Department of Labor under the Service Contract Act is involved; or

(2) The proposed procurement is estimated to exceed $10,000 and must be publicized in the Commerce Business Daily.

(d) *Source lists.* Contracting activities may supplement small purchase source lists established in accordance with FAR 13.106(b)(4), through the use of trade publications, *Thomas Register*, and other comparable publications.

(e) *Data to support small purchases.*

(1) When other than the lowest quotation is accepted, the reason(s) for rejecting any lower quotation shall be entered in the purchase case file.

(2) The GSA Form 2010, Small Purchases Tabulation Source List/Abstract, shall be used to document small purchases.

513.106–70 Exigency procurement.

When an item or service that requires the use of a written solicitation is needed in an emergency situation, competition may be solicited by having prospective sources visit the site and by orally informing them, together, of the exact requirements, to enable the sources to prepare estimates for submitting quotations while the written solicitation is being prepared by the Government. The written solicitation must be issued before written quotations are received to allow prospective offerors to effect any necessary changes in the event that there has been any misunderstanding of the oral description of the work encompassed. Emergencies, for the purpose of this subsection, include situations which, if not corrected promptly, will result in unnecessary expenditure of funds, property damage, personal injury, serious loss of agency efficiency in operations, or interruption of agency functions, any of which could be avoided by immediate corrective action.

513.107 Solicitation and evaluation of quotations.

GSA Form 3186, Request for Quotation, is authorized for use by the Office of Federal Supply and Services with the FSS–19 system in lieu of the Standard Form 18, Request for Quotations.

Subpart 513.2—Blanket Purchase Agreements

513.203 Establishment of Blanket Purchase Agreements (BPA).

513.203–1 General.

(a) *Authority citation and numbering of BPAs.* Each blanket purchase agreement shall be numbered or otherwise identified and shall cite as the negotiation authority, 41 U.S.C. 252(c)(3) except that 41 U.S.C. 252(c)(15) shall be cited when the agreement is made consistent with Pub. L. 95–507 as a small purchase-small business set-aside.

(b) *Provisions required.* Blanket purchase agreements (BPAs) normally shall be documented on a purchase order form or on a GSA Form 1821, Blanket Purchase Agreement. In addition to the requirements of FAR 13.203–1(j), each blanket purchase agreement shall, when appropriate, specify the geographic area to be served under the BPA.

(c) *Requesting deliveries.* Only the contracting officer (CO) and officials authorized by a CO and designated in the blanket purchase agreement shall be permitted to request deliveries. Delivery (call) orders shall usually be made by telephone or in person. Prior to placing calls against the blanket purchase agreement, each requirement shall be screened for availability from mandatory sources of supply. Necessary controls shall be maintained by the person placing call orders under the blanket purchase agreement to ensure that any limitation stated therein is not exceeded. The blanket purchase agreement identification, and requisition number, if any, should be specified each time a delivery is requested.

(d) *Delivery tickets.* When deliveries are made, the receiving activity will retain one copy of the related delivery ticket and return the remaining copies to the supplier; one copy of which is to be signed and dated. Each delivery ticket in addition to the requirements of FAR 13.203–1(j)(6), must contain the

requisition number, if any, and the name of the person placing the call.

(e) *Invoices.* When the GSA Form 1821, Blanket Purchase Agreement, is used, invoices may be submitted by the vendor for each delivery. The office placing the order shall forward each invoice to the appropriate Finance Division for payment. The invoice should be marked to indicate that the pruchase was made under a BPA.

513.204 Purchases Under Blanket Purchase Agreements.

Individual call orders against such agreements shall not exceed $5,000.

Subpart 513.3—Fast Payment Procedure

513.301 General.

The fast payment procedures outlined in FAR Subpart 13.3 shall not be used by GSA contracting activities.

Subpart 513.4—Imprest Fund

513.403 Agency responsibilities.

Imprest fund cashiers shall be designated and shall function in accordance with GSA Order, Establishment and use of imprest funds, (MPB 1210.1), and the requirements of FAR Subpart 13.4.

Subpart 513.5—Purchase Orders

513.501 General.

The Office of Finance (B) will not accept facsimile signatures on machine-produced purchase orders to obligate funds. An original (carbon copy but not photocopied) handwritten signature is required for obligation purposes on individual purchase orders or an original handwritten signature on a listing that references individual machine-produced purchase orders and dollar amounts.

513.505 Purchase order and related forms.

513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Either the GSA Form 300, Order for Supplies and Services, or the GSA Form 3186, Order for Supplies or Services, shall be used in lieu of OF 347. The GSA Form 3186 is used in connection with the FSS–19 System.

(B) GSA Form 3025, NEAR Receiving Report, shall be used to certify the receipt of supplies or services ordered using GSA Form 300.

513.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) *General.* Use of the Standard Form 44, Purchase Order-Invoice-Voucher, will not serve the best interest of either the Government or business when the accounting system of the seller requires production of an invoice as a matter of routine. In these cases, whichever of the other authorized methods of making small purchases is most appropriate shall be used. Whenever possible, within the dollar value limitations of each method, preference shall be given to the use of imprest funds and blanket purchase agreements. (See FAR Subpart 13.4 and GSAR Subpart 513.2 of this chapter.)

(b) *Authorization for using the form.* Where necessary, designated employees may be authorized to make small purchases under $150 using Standard Form 44 in accordance with this subpart. Purchases over $ 150 using SF 44 may be made only by contracting officers.

(c) *Issuance of books from stock.* Issuance of books of SF 44 from stock shall be made only to contracting directors or to their designees. These officials shall be responsible for the custody and issuance of the books to the users and shall maintain a simple card record for each book issued.

Subpart 513.70—Certified Invoice Procedure

513.7001 Certified invoice procedure.

(a) When advantageous to the Government, supplies or services may be procured from local suppliers at the site of work or use point, or by a supply distribution facility when authorized, using vendors' invoices in lieu of purchase orders.

(b) Such purchases shall be effected only in accordance with FAR Part 13 and GSAR Part 513 of this chapter, subject to the following:

(1) The amount of any one purchase in $1000 or less (see AFR 13.106(a));

(2) A purchase order is not required by either the supplier or the Government and

(3) Appropriate invoices are obtainable from the suplier.

(c) The items to be purchased shall be domestic source end products, except as provided in FAR Subpart 25.1. For special rules governing purchases of hand and measuring tools and stainless steel flatware see 525.105–70, 525.105–71, and 525.105–72.

(d) Use of the certified invoice procedure does not eliminate the requirements in FAR Part 13 and GSAR Part 513 of this chaper to:

(1) Reserve small purchases for small business in accordance with Pub. L. 95–507, or document the file.

(2) Cite the negotiation authority on GSA Form 2010, Small Purchase Tabulation Source List/Abstract.

(3) Certify that the quality and quantity of items/services furnished are in accordance with the verbal agreement made with the vendor.

(e) Quotations shall be documented on GSA Form 2010, Small Purchase Tabulation Source List/Abstract. The solicitation of quotations may be performed by authorized personnel without contracting officer (CO) warrants, however, the placement of the order shall be approved in advance by a warranted CO, in writing, in the "Remarks" block of the GSA 2010, Purchase Tabulation/Source List/Abstract.

(f) Each contracting officer using this purchasing technique shall require the supplier to immediately submit properly prepared invoices which itemize property or services furnished.

PART 514—FORMAL ADVERTISING

Subpart 514.2—Solicitation of Bids

Sec.
514.201 Preparation of invitation for bids.
514.201–1 Uniform contract format.
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514.471 Multiple bidding.

Authority: 40 U.S.C. 486(c).

Subpart 514.2—Solicitation of Bids

514.201 Preparation of invitation for bids.

514.201–1 Uniform contract format.

All solicitations shall include the following notice on the first page of the solicitation:

> The information collection requirements contained in this solicitation/contract, that are not required by regulation have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0163.

514.201–689 Solicitation provisions.

(a) A special minimum bid acceptance time requirement as authorized in FAR 14.201–6(j) shall only be used when based on experience with previous procurements of the same or similar items, the contracting officer is relatively certain that either: (1) More than 60 days bid acceptance time will be needed, or (2) a bid acceptance time of less than 60 days (e.g., 30 or 45 days) will be adequate.

(b) The contracting officer shall insert the following provisions in all solicitations for offers:

(1) 552.214–71 Telecopier Submissions, Modifications or Withdrawals of Bids.

(2) 552.214–72 Telegraphic Submissions, Modifications, or Withdrawals of Bids Received at the GSA Communication Center.

(c) The contracting officer shall insert the clause at 552.214–73, "All-or-None" Offers, in solicitations when all-or-none offers will be considered.

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.214–75, Progressive Awards and Monthly Quantity Allocations, in solicitations for supplies when progressive awards might be made.

(e) The contracting officer shall insert a clause at 552.215–70; Examination of Records by GSA, in solicitations and contracts which involve the disposition of Government furnished property or advance payments and in requirements or indefinite quantity contracts.

514.201–70 Request for brand name information—limitation.

(a) When an item is described in a solicitation by a formal specification or a detailed purchases description (other than a brand name or equal purchase description), the solicitation shall not require or request that bidders specify the brand names of the products they propose to furnish. However, brand name information may be requested in the following situations:

(1) Items for which descriptive literature is requested in accordance with FAR 14.202–5.

(2) Items for which preproduction samples or test are required.

(3) Procurements of qualified products.

(b) This limitation also applies to procurements using "restricted advertising" techniques as described in FAR 19.502–4 (Procurements set aside for small business and FAR Subpart 25.3 Balance of Payments Program).

514.201–71 Fire or casualty hazards, or safety or health requirements.

(a) Specifications covering electrical equipment, building materials, etc., which involve fire or casualty hazards, or safety or health requirements, normally contain a provision requiring conformance to the standards of nationally recognized technical societies, associations, or laboratories, or other GSA-approved testing laboratories, regarding fire and casualty hazards, explosion protection, or safety or health requirements.

(b) When a specification is not available, or the specification to be used does not include a provision such as that described in (a) of this 514.201–71 and it is believed that such a provision should be included in the current procurement, technical advice shall be obtained from the appropriate program or technical office. If the contracting officer then determines that the matter should be covered, an appropriate provision shall be included in the solicitation. The provision shall cite the nationally recognized standards requiring compliance. If several such standards are available, the provision shall cite all standards that are acceptable. Since compliance with such standards is normally objectively determined under regular acceptance inspection and test procedures, no requirement for bidders to submit proof of compliance with the standard shall be included in the provision.

514.201–72 Distribution of bidding documents.

(a) Principal construction subcontractors may obtain copies of bid doucments by: (1) Requesting in writing and (2) paying the required bid document charges or deposits, as provided in 536.302–70.

(b) When copies are not available, subcontractors shall be informed where bid documents may be reviewed.

514.201–73 Grouping of items for aggregate award.

(a) Contract awards shall be made on an individual items basis, except that aggregate awards of grouped items may at times best serve the Government's interest. This may occur when furniture or fixtures are required for a single project, when uniformity of design is desirable, when the articles required will be assembled and used as a unit, or when factors such as carload shipments, production runs, and quantity discounts, are involved.

(b) Items should not be grouped for aggregate award if it will unduly restrict competition or place a significant portion or class (e.g., small business concerns) of prospective bidders at a competitive disadvantage.

(1) Only items of a related character, normally handled by the majority of interested bidders, should be included in a single group. The grouping of nonrelated items tends to limit competition, provides inequitable treatment to bidders who cannot bid on all items, and may increase Government costs.

(2) Avoid grouping (for aggregate award) requirements for two or more widely dispersed geographic locations when it may restrict competition and result in higher bid prices. (Some prospective bidders may not be able to offer competitive prices on requirements for some of the locations within the

group.) Item grouping may be justified when: (i) One location has a large requirement and another location has a requirement too small to individually attract competitive bids, or (ii) it is industry practice to serve outlying locations on a route basis and complete coverage of all locations can only be obtained economically by grouping them for aggregate award.

(c) When considering aggregate awards, the solicitation shall clearly state the basis on which awards will be made and require bidders to insert unit prices for each item.

514.202 General rules for solicitation of bids.

514.202-1 Bidding time.

(a) *Factors to be considered.* The urgency of the Government's need for the items or services, the complexity of the invitation, the extent of subcontracting anticipated, the use of pre-invitation notices, the geographic distribution of bidders, the normal time for mail transmission of both invitations and bids, and other related factors, must be considered in establishing bidding time. For example, a bidding time of more than the statutory minimum of 30 days may be necessary when bidders are required to prepare special drawings, designs, and samples, or to obtain quotation from several suppliers and subcontractors, as frequently is the case in construction and production contracts. Conversely, a bidding time of 30 days may be adequate when bids would reasonably be expected to be based on stock-on-hand, or current regular production, or service personnel and facilities regularly available (as in the case of maintenance and repair of structures, and similar work).

(b) *Minimum bidding time.* Bidding time shall be at least 30 days (see Small Business Act, 15 U.S.C. 637) from the date of issuance of the invitation for bids whenever the proposed procurement is required to be published in the Commerce Business Daily (CBD). This rule need not be observed if the need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if statutory publicizing and response times were complied with, or if any of the other statutory exceptions to the requirement for publicizing in the CBD apply. Contracting officers shall ensure that adequate bidding time is allowed when procurements are exempt from the statutory publicizing requirement.

514.202-4 Bid samples.

(a) Bid samples shall be received and safeguarded in either a sample room or the Business Service Center. The term "sample custodian" as used herein refers to both Business Sevice Center personnel or sample room personnel, as appropriate.

(b) Bid samples submitted in response to a solicitation requirement must be received before bid opening to be considered for award. Samples are to be promptly time-stamped upon receipt by the sample custodian indicating the date and hour received. The sample custodian shall record whether the samples were sent by regular, registered, or certified mail, or by other delivery methods. Each sample container is to be accompanied by GSA Form 434, Sample Record Sheet, included as part of the solicitation. The regulations concerning late bids (FAR 14.304) also apply to samples received after the time set for receipt of bids.

(c) Bid samples shall be carefully protected against loss, damage, or pilferage. Each sample shall be recorded and tagged showing the firm's name and address, solicitation number, noun name, national stock number (NSN), and date of receipt. If samples or their containers arrive damaged, the sample custodian shall note the condition of the container upon receipt and request a quality assurance specialist (QAS) to verify the actual condition of the samples involved.

(d) *Approved samples.* (1) Upon award of a contract, the contracting officer shall forward a copy of GSA Form 6419, Transmittal of Contract Award Data, to the sample custodian who shall tag the approved samples showing the contract number and the contract period. When there is only one sample, it shall be hand-carried or sent by an appropriate means of transportation to the manufacturing plant marked to the attention of the QAS. If there are two identical samples, one sample shall be retained in the bid sample room until performance is completed and the other shall be forwarded as stated above. The sample shall normally have the tag secured by wire with a lead seal except when other means of identification are more appropriate. The sample custodian shall notifiy the Quality Assurance Branch of sample shipment by furnishing a copy of GSA Form 6334, Transmittal of Approved Samples of Items Under Contract.

(2) Upon completion of all deliveries/shipments and inspections under the contract, the samples shall be returned to the supplier at the supplier's expense if so indicated on GSA Form 434, Sample Record Sheet. Other samples are to be treated as Government property for use or disposal. In those instances when the contracting officer has indicated that they may be reapplied to a succeeding solicitation, the sample shall be retained in the bid sample room.

(3) When the CO anticipates that there may be a future claim regarding a contract, the bid samples shall be retained until the claim is resolved.

(e) *Disposition of other samples.* (1) Bid samples rejected or untested shall be returned to the supplier at the supplier's expense, if so indicated on GSA Form 434, Sample Record Sheet. The others will be treated as Government property for use or disposal. (See FAR 14.202-4(h).)

(2) Bid samples determined to be received late in accordance with FAR 14.304 shall be held until awards are made and returned to the offeror, freight collect, unless other disposition is requested or agreed to by the bidder.

514.202-70 Bid samples (supply contracts).

(a) Normally only subjective characteristics of bid samples will be listed in the solicitation. Objective characteristics may be listed when it has been determined, on the basis of past procurement experience or other valid considerations, that examination of such characteristics is essential in the procurement of an acceptable product. When characteristics are listed in the solicitation, the listed characteristics shall be separately shown under the headings of Subjective Characteristics, and Objective Characteristics. Products furnished under any resultant contract shall strictly comply with the listed subjective characteristics of the approved bid sample and shall conform to the specifications as to all other characteristics whether or not listed.

(b) Samples received with bids being considered for award must be from the production of the manufacturer whose product is to be supplied and shall be evaluated with respect to the characteristics listed in the solicitation by the buying activity and the appropriate quality control activity. A written record of the evaluation findings shall be made.

(c) Bid samples will not normally be inspected until the bidder is being considered for award on the item(s) represented by the sample. Bid samples received by the National Tools Center shall be evaluated in the Central Office by a team consisting of representatives from the procurement, quality control,

and specification management activities. When laboratory support is required, the QAS will arrange for the testing and the samples shall be hand-carried or sent by another method.

(d) If the samples meet the listed characteristics but there is doubt that the sample meets all of the characteristics required by the specifications, arrangements shall be made for technical evaluation and/or testing by the appropriate quality assurance activity. A report of the evaluation of the sample, showing results with respect to all characteristics examined, shall be furnished promptly to the contracting officer.

(e) If the bid sample has been found to conform to all of the characteristics listed in the solicitation, but found deficient with respect to one or more of the unlisted characteristics, a preaward survey report shall be requested as provided in 509.105–1(c). A copy of the sample evaluation report shall be attached to the Standard Form 1404, Preaward Survey of Prospective Contractor—Technical, which shall include a request that special attention be given to the prospective contractor's ability (notwithstanding the deficiencies noted with respect to the characteristics not listed in the solicitation which were evaluated) to produce supplies fully conforming to applicable specifications. For example, can the noted deficiencies be corrected by fairly simple production or process control adjustments, or would expensive and time-consuming retooling be involved? The preaward survey report shall include a specific statement regarding the prospective contractor's ability or inability to correct each noted deficiency in objective characteristics as well as an overall appraisal of his capability.

(f) If the preaward survey report is not favorable, a determination of nonresponsibility shall be made based upon the facts and evaluation contained in the report together with any other evidence that may be obtained in a given case bearing on the bidder's inability to meet the standards of responsibility in FAR Subpart 9.1.

(g) If the preaward survey report is favorable, award may be made, if otherwise proper, to the low bidder whose samples conform to the characteristics listed in the solicitation. Concurrently with award, the contracting officer shall specifically, in writing, call to the attention of the contractor, the inadequacies of the sample with respect to unlisted characteristics and advise him of his responsibilities to furnish items conforming to all of the requirements of the specification. A copy of the letter shall be furnished to the appropriate Office of Engineering and Technical Management for use when making subsequent inspections.

(h) For further instructions regarding the treatment and evaluation of samples, see 514.202–4.

(i) If bid samples were required on a prior solicitation, written approval of the appropriate Office of Engineering and Technical Management or the appropriate commodity center specification activity is required prior to waiving the bid sample requirement.

514.203 Methods of soliciting bids.

514.203–1 Mailing or delivering to prospective bidders.

(a) A copy of each solicitation shall be provided to the requisitioning office.

(b) Active bidders (current contractors and bidders that responded to recent similar solicitations) shall be provided with bid sets for the same or similar items. Active bidders' names shall be checked against the bidders mailing list and, if they are not listed, they shall be added.

(c) Contracting activities shall prepare the required address labels or addressed envelopes for the active bidders and furnish them to the local printing and distribution activity.

(d) The distribution of solicitations shall included the quantities required by the Business Service Center in the region where the solicitation originates. Business Service Centers shall advise contracting offices of quantities required for public display, reference, and for filling requests for copies. The approval of the appropriate Contracting Director shall be obtained when it is necessary to vary the normal distribution of bid sets.

(e) At the contracting officer's discretion, the notice in 552.214–74 Solicitation Copies, shall be included in solicitations or on GSA Form 1602, Notice Concerning your Solicitation for Offers, as appropriate.

(f) Contracting officers shall ensure that all amendments to solicitations and related notices are furnished promptly to every addressee previously furnished a solicitation.

514.203–70 Telegraphic solicitation.

(a) Bids may be solicited by telegram when the contracting officer determines that there is an urgent need. However, all other applicable requirements of formal advertising must be fulfilled.

(b) Before soliciting by telegram, consider the following:

(1) The factors justifying exceptions to the standard minimum bidding times prescribed in 514.202–1; and

(2) The use of time of delivery clauses designed to ensure delivery or performance to meet the Government's requirements.

(c) The use of telegraphic solicitations does not relieve the contracting officer from the responsibility for ensuring full and free competition. Accordingly, the contracting officer shall solicit a sufficient number of prospective bidders to ensure adequate response.

(d) A written justification for using telegraphic solicitation shall be included in the procurement file.

514.204 Records of invitations for bids and records of bids.

Business Service Centers shall submit promptly to the appropriate contracting officer a supplemental list of firms (including addresses) to whom the BSC furnished solicitations. Contracting officers shall furnish these firms with applicable amendments or supply the Business Service Center with amendments for distribution.

514.205 Solicitation mailing lists.

514.205–1 Establishment of lists.

(a) Solicitation mailing lists shall be established in accordance with FAR 14.205. Contracting officers may use either the computerized central solicitation mailing list maintained by Region 8 for supplies and services or local lists maintained by the contracting activity.

(b) Inquiries from or for business firms requesting inclusion on solicitation mailing lists shall be referred to the GSA Business Service Center serving the geographic areas in which the firms are located. Business Service Centers will assist firms to be included on the proper GSA mailing lists and will provide prospective bidders with necessary application forms and related information.

514.205–2 Removal of names from computerized solicitation mailing lists (SML).

(a) To remove firms from the SML:

(1) Encircle in black on a copy of the applicable solicitation mailing list the firms to be removed; and

(2) Attach a cover letter listing the solicitation number to which the firm did not respond, the commodity, the issue and closing dates of the solicitation, and the class and mailing list code (MLC) from GSA Form 1382, List of Commodities and Services, and forward to 8BRC for action. The letter should read substantially as follows:

Please delete the encircled firms which did not respond to solicitation No. — for —, issued —, and opened —, class —, and MLC —.

(3) Unless the addressee requests removal, addresses such as U.S. Congressional Offices and offices in GSA's Central Office should not be removed from the computerized SML.

(b) Only contracting activities having national responsibility for the items or services shall remove firms from the SML. Other contracting activities shall route such lists and letters through the activity having national commodity or service responsibility for concurrence and for forwarding to the Centralized Mailing Lists Services Branch (8BRC) for action.

514.208 Amendment of invitation for bids.

The date set for bid opening shall be extended when amendments relating to wage determinations issued pursuant to the Service Contract Act or Davis-Bacon Act are issued less than 10 days before the scheduled bid opening date.

Subpart 514.3—Submission of Bids

514.301 Responsiveness of bids.

514.301-70 Telecopier bids.

(a) Telecopier bids, proposals, modifications or withdrawals are not permitted, accepted or honored.

(b) Include the clause in 552.214-71, Telecopier Submissions, Modifications, or Withdrawal of Bids, in all solicitations for supplies and services (including construction).

514.302 Bid submission.

When a telegraphic bid is received by telephone under the circumstances described in FAR 14.302, the identity of the telegraph office employee telephoning the message shall be obtained and recorded in the solicitation file along with a copy of the telegram that formed the basis for the telephone call.

514.303 Modification or withdrawal of bids.

(a) Bid modifications received prior to bid opening time shall be handled in the same manner as bids and shall be attached to the related bid envelope to ensure opening at the same time. When a telegraphic modification or withdrawal of a bid is received by telephone under the circumstances described in FAR 14.303, the identity of the telegraph office employee telephoning the message shall be obtained and recorded in the solicitation file.

(b) The receipt required by FAR 14.303(b) for withdrawal of a bid in person by a bidder or an authorized representative of the bidder before the time set for opening shall be worded as follows:

> I certify that I am a bona fide fully authorized agent for or representative of (Bidder's name and address) whose bid on IFB No. —— is scheduled for opening on ——. I hereby withdraw that bid from consideration and acknowledge receipt of the unopened bid.
> Name and telephone No. ————————
> Date ————————

(c) The provision in 552.214-72, Telegraphic Submissions, Modifications, or Withdrawal of Bids Received at the GSA Communications Center, shall be included in all solicitations for supply and service contracts.

514.304 Late bids, late modification of bids, or late withdrawal of bids.

514.304-1 General.

(a) Upon receipt of a late bid delivered by mail (or telegraph, when authorized), the bid custodian shall record it on the duplicate copy of the list of bidders and have it delivered immediately to the responsible contracting officer.

(b) The delivery of a bid after the bid opening time (by other than mail or telegram) shall not be accepted. Should a bid custodian become unavoidably in possession of such a bid, it shall be immediately time stamped and handled in the same manner as prescribed for late bids. In addition, the bid custodian shall note on the duplicate copy of the list of bidders when and how the bid was delivered.

514.370 Copies of bids required in submission.

Bids shall be submitted in an original and one copy. The original will be used by the contracting activity for the tabulation and evaluation of bids. The copy will be retained by the Business Service Center for public information until the bid abstract is available to replace it. When information such as the GSA Form 527, Contractor's Qualifications and Financial Information, or Standard Form 24, Bid Bonds, is submitted with a bid it shall not be retained by the Business Service Center for public information.

Subpart 514.4—Opening of Bids and Award of Contract

514.401 Receipt and safeguarding of bids.

Bids, and modifications in response to solicitations shall be received and safeguarded by the appropriate Business Service Center until the time specified for opening. Adequate space and facilities shall be provided for the receipt and safeguarding of bids and for the holding of public bid openings. This shall include a locking-type bid box located within sight of the bid custodian and in a place where bidders or their representatives can readily deposit bids.

(a) Bids received shall be handled as follows:

(1) At the initial point of receipt, each envelope (or other covering) received by mail and identified as containing a bid shall be immediately time-stamped or indicated thereon the place, date, and time of receipt by authorized personnel. Then the bid(s) shall be delivered by special handling to the bid custodian in the Business Service Center. Each Business Service Center Director shall designate bid custodians and alternates as may be required, to perform the functions incident to the receipt, custody, and recording of bids.

(2) Insufficient postage on bid envelopes shall not be a reason for failure to accept delivery of bids.

(3) Mailed bids and modifications delivered to the bid custodian prior to bid opening time shall be recorded on the list of bidders on the same day they are delivered and then placed in a suitable locked cabinet.

(4) Hand-carried bids delivered prior to bid opening time will be deposited in the locked bid box in the Business Service Center. The bid custodian shall have custody of a key or combination to this receptacle. In the event a hand-carried bid is not placed in the bid box by the bidder, but is handed to the bid custodian or other Business Service Center personnel, it shall be time stamped immediately and then handled in the same manner as provided for mailed bids. At least once daily (and immediately preceding the time for each scheduled bid opening), the bid custodian shall remove and time stamp the bids, record them and place them with any other bids previously received.

(5) Telegraphic bids and modifications shall be sealed in envelopes immediately upon receipt, appropriately identified, and handled in the same manner as bids submitted by mail.

(6) For each invitation, the bid custodian shall prepare a list, in duplicate, of the biddres whose bids are received before bid opening time. The list shall show the invitation number and the name and address of each bidders In addition, when a bid modification is received before bid opening time or when a bid previously recorded on this list is withdrawn, the list shall so indicate.

(b) At the scheduled bid opening time, the bid custodian shall deliver all bids received in response to the invitation, together with both copies of the list of bidders, to the authorized bid opening

official or designee, who shall acknowledge receipt of the bids by signing the duplicate copy of the list and returning it to the bid custodian. The original list shall become part of the contract file.

514.402 Opening of bids.

514.402-1 Unclassified bids.

(a) Public bid openings shall be held in the Business Service Center except when determined to be impracticable by the Business Service Center and the contracting officer or bid opening officer. The schedule for bid openings shall be developed jointly by the Business Service Center and the bid opening officer in order to avoid conflicts. The contracting officer shall be responsible for obtaining space for bid openings which are to be held outside the Business Service Center. As soon as it is determined to hold the bid opening elsewhere, the contracting officer shall inform the Business Service Center serving the geographic area in which the contracting office is located of the invitation number and the location where the public bid opening will be held.

(b) The assistant bid opening officer shall be a qualified employee of the contracting office. Upon authorization by the head of the contracting activity, and the Director of Small and Disadvantaged Business Utilization in Central office or the Director of the Business Service Center in the region, bids may be opened by selected Business Service Center personnal. Normally, this authorization will be requested only when the geographic distance separating the Business Service Center where bids are to be delivered and the contracting office makes it impracticable for the bid opening officer or designee to be present to open bids. (See FAR 14.402-1(b).)

(c) Bid openings shall be open to business representatives, members of the press, and the general public.

(d) To ensure that bids will be opened at the exact time specified, the bid opening official shall verify the accuracy of the timepiece to be used.

(e) For the information of those bidders present, approximately one-minute prior notice of bid opening will be announced audibly by the bid opening official.

(f)(1) The bid opening official shall take precaution to ensure that the exact time of opening has arrived and shall announce this fact audibly, citing the invitation or invitations scheduled for opening. The opening of bids shall then proceed in full view of the parties present.

(2) For construction contracts that provide for bid alternates, the amount of funds available for the award shall be announced prior to opening bids.

(g) In reading bids, the following information from each bid shall be announced when considered practicable and feasible: The name of the bidder, the unit price for each item bid upon, and other pertinent information, such as delivery and discount terms. A copy of each bid submitted in multiple copies shall remain in the bid opening room and be available for public examination until the bid abstract is completed and made available instead. Bids submitted in an original only shall be made available for examination in accordance with FAR 14.402-1(c).

(h) No person shall tamper with any bid after it has been formally opened. This includes making any alterations or notations with pencil or ink, or disassembling or withdrawing pages or adding pages not submitted with the bid.

(i) When invitations for bids provide for the summission of bid guarantees, the contracting officer or designated bid opening official, shall turn over any checks submitted to satisfy the bid guarantee requirement to the regional Finance Division. As soon as an award is made, the contracting officer shall direct the regional Finance Division to issue a check to the unsuccessful offeror in an amount equal to the amount of the bid guarantee originally submitted. A similar procedure shall be followed in the event the solicitation is canceled or all bids are rejected. Bid guarantees may be returned before award when a bidder requests the guarantee be returned and the bidder is not in contention for the award. Other forms of bid guarantees e.g., bid bonds, letters of credit, etc. shall be retained by the contracting officer and include in the contract file.

(j) A record of persons attending each bid opening shall be maintained. This record shall include at least the names of persons present, firms or organizations represented, date and time of opening, and the invitation numbers in which each person is interested. The reverse of the bid abstract form may be used for this purpose. The record shall be made a part of the invitation for bids file.

(k) If two or more bid openings are scheduled for the same date and hour and are to be conducted by the same bid opening official, normally the bid opening for which the greatest number of persons is present shall be conducted first.

(l) When multiple copies of bids are received, the bid opening official shall verify the entries on all copies. If there is a discrepancy between the copies of a bid, the contracting officer shall direct the bidder's attention to the suspected mistake and shall follow the procedures set forth in FAR 14.406 concerning mistakes in bids.

(m) Envelopes in which bids and bid modifications are received shall be retained in a temporary file until after all awards have been made. At that time, those which bear notations concerning abnormal receipt or opening for identification shall be made a part of the solicitation file and the remainder may be destroyed.

514.402-3 Postponement of bid openings.

(a) When the contracting officer postpones a bid opening, (see FAR 14.402-3), an amendment (see FAR 14.208) to the solicitation should be issued and distributed to all prospective bidders by mail or telegraph as early as possible. The new time and date set shall be as soon as possible. Prospective bidders shall be notified of the new time and date if circumstances permit.

(b) When an amendment is issued as described in paragraph (a) of this 514.402-3, bids and modifications received before the new time and date set for the opening of bids shall be considered for award. Bids and modifications received thereafter shall be handled according to the provisions of FAR 14.304 regarding late bids and modifications.

(c) Consent of surety to extension of the bid acceptance period need be obtained only if such extension goes beyond 120 days when Standard Form 24, Bid Bond, has been executed.

514.403 Recording of bids.

(a) The abstracting and tabulating of bids normally shall be completed within 24 hours after bid opening and a copy shall be delivered immediately to the appropriate Business Service Center where it shall be made available for public examination for a minimum period of 30 calendar days. Late bids determined eligible for consideration shall be included on the bid abstract form. However, if eligibility is established after delivery of the original tabulation, the bids shall be recorded separately, identified as an amendment to the original tabulation, and delivered to the Business Service Center.

(b) The status of the bidder (manufacturer or dealer) shall be annotated in the remarks column of the abstract.

514.404 Rejection of bids.

514.404–2 Rejection of individual bids (Supplies and services).

(a) When an award is proposed to other than the low offeror, the contracting officer shall explain the circumstances by using substantially the following format and justify rejection of the low offer either on GSA Form 1535, Recommendation for Award(s) or on a separate sheet:

Award to Other than Low Offeror:
(1) Item number(s) involved;
(2) Names of low offeror(s) and proposed awardee(s);
(3) Low and proposed prices:
(i) Unit,
(ii) Totals.
(4) Differences;
(i) In total prices,
(ii) In percent.
(5) *Explanation:* Example, "FAR 14.404–2(a), Failure to conform to the essential requirements of the invitation: The deviation is unacceptable." (Include a description of the specific requirement to which the bid fails to conform.)

(b) When a proposed rejection is based on failure to meet Qualified Products List (QPL) requirements, the explanation shall include information as to whether the items offered had been tested and approved for inclusion in the QPL as required by the solicitation; whether the item had been submitted for qualification testing; and/or the status of testing, if available.

(c) Explanations which involve cases of a sensitive or controversial nature shall be accompanied by all supporting documentation to justify awards to other than low offerors, such as copy of the offer to be rejected, statements from (or record of conversation with) the requisitioning activity, plant facilities and/or financial responsibility reports, relevant correspondence or reports, e.g. with the Small Business Administration on Certificates of Competency matters, copies of Congressional correspondence or other high level interest, etc.

514.404–5 All or none qualifications.

The clauses in 552.214–73 regarding all or none offers apply to solicitations for definite quantity and indefinite quantity type contracts.

514.405 Minor informalities or irregularities in bids.

(a) When bidders are instructed in the solicitation to return the entire solicitation and a page or pages are missing from the bid, the contracting officer shall determine whether it is a major defect or if it constitutes a minor informality or irregularity which may be waived under FAR 14.405. The essential test whether such bid may be considered responsive is whether the bidder's intention to be bound by all substantive portions of the solicitation in any resulting contract is evident from the terms of the bid as submitted. For example, when the solicitation portion of SF 33 specifically identifies the number of pages in the solicitation and the bidder has taken no exception to any portion of the solicitation, the signed offer usually should be considered as evidencing the bidder's intention to be bound by all of the substantive terms and conditions of the solicitation.

(b) If the missing pages are waived, as a minor informality or irregularity, the contractor shall be advised by letter accompanying the award document identifying the missing pages and incorporating them as part of the contract. The letter should caution the contractor that failure to submit all pages of a bid could cause rejection of a bid as nonresponsive in cases when a missing page contained substantive rather than inconsequential material.

514.406 Mistakes in bids.

514.406–3 Other mistakes disclosed before award.

(a)(1) The head of the contracting activity (HCA) is authorized as the central authority to make the administrative determinations permitted in FAR 14.406–3 (a) and (b).

(2) The appropriate Assistant General Counsel is the approving authority for proposed administrative determinations made by the HCA.

(b)(1) The contracting director (see 502.271) is authorized to make administrative determinations allowing bids to be withdrawn as permitted in FAR 14.406–3(c).

(2) For cases arising in the regions, the regional counsel is the approving authority for proposed determinations made by the contracting directors. For cases arising in the Central Office determinations shall be approved by the appropriate Assistant General Counsel.

(3) Questions arising in these cases shall be forwarded to the HCA for a decision.

(c) All doubtful cases shall be referred to the Comptroller General for an advance decision through the appropriate Assistant General Counsel. (See FAR 14.406–3(i).)

514.406–4 Mistakes after award.

(a) Contracting officers are authorized to make administrative determinations to rescind or reform contracts as permitted in FAR 14.406–4(b).

(b) Cases arising in the regions shall be reviewed by the HCA and Regional Counsel who will send them with appropriate recommendations to the appropriate Assistant General Counsel for approval.

(c) Cases arising in the Central Office shall be reviewed by the HCA and forwarded directly to the appropriate Assistant General Counsel for approval.

514.406–70 Submissions to the Comptroller General.

Where the General Counsel determines that a case supporting a mistake in bid is doubtful, a decision on the matter my be requested from the Comptroller General.

514.407 Award.

514.407–1 General.

(a) Bid acceptance should be accomplished in 30 days or less. However, more than 30 days may be required in certain cases, such as those which involve the evaluation of numerous bids for many items, time-consuming laboratory testing of bid samples, or on-site inspection of bidder's facilities.

(b) Preaward inquiries from bidders normally shall be directed to the Business Service Center in accordance with 514.408–1(a).

(1) If the inquiry concerns the status of an award and notice of award has not been issued, the response shall be limited to a statement that final award determinaition has not been made.

(2) A bidder who is pressing for award status may be advised that award will not be made to that bidder, if and when such a conclusion has been reached at the appropriate level required by the GSA Delegations of Authority Manual.

(3) The bidder may also be advised if the case has been referred to the Small Business Administration for consideration for Certificate of Competency action and the reasons why.

(4) No information shall be furnished concerning the status of a proposed award being processed through GSA approval channels. When pressed for information under these circumstances, bidders shall be advised that our policy and procedures do not permit the release of information about status of awards while they are in process.

(5) Any action or discussion which may create false impressions in the eyes of prospective contractors about any forthcoming award must be avoided.

514.407–2 Responsible bidder—Reasonableness of price.

(a) When only one bid is received in response to an invitation for bids, the bid may be considered and accepted if:
(1) The specifications used in the

invitation were not restrictive, (2) adequate competition was solicited, (3) the price is reasonable, and (4) the bid is otherwise consistent with the invitation for bids.

(b) The responsible contracting officer shall document the contract file to the effect that an award to the only bidder is in the best interest of the Government, and that the price is reasonable. The basis for price reasonableness shall be established if possible from data or information which is available to the contracting officer without contacting the bidder. (See FAR 15.805–2 for price analysis techniques and guidelines.)

514.407–3 Prompt payment discounts.

(a) Payments, for the purpose of earning a discount, will be deemed to have been made on the date which appears on the payment check, or the date of payment by wire transfer. (See clauses in 552.232–8.)

(b) The clause in 552.232–8(a), Discounts for Early (Prompt) Payment, shall be included in solicitations that may involve discounts for early payment in lieu of the clause in FAR 52.232–8.

514.407–6 Equal low bids.

In breaking a tie of equal low bids, factors qualifying a bidder for priority in award (see FAR 14.407–6) must have existed on the date of bid opening. Certifications (for example, Small Business or Labor Surplus Area) after the bid opening date cannot be applied to breaking an equal low bid tie.

514.407–7 Documentation of award.

A record of the method of purchase and basis for award shall be retained in the file and, in addition to the information required by FAR 14.407–7, shall include the number of firms solicited.

514.407–8 Protests against award.

All protests against award shall be handled in accordance with FAR 14.407–8 and this section.

(a) *Protests lodged with the agency.* Upon the receipt of a written protest, the contracting officer shall assemble the facts, review the protest with assigned counsel, and prepare a written reply to the protester setting forth the contracting officer's final decision. Replies to protests received after award shall be signed by the contracting director (see 502.271). When appropriate, concurrence is required from other officials (including members of the contract review committee) who concurred with the contract award involved in the protest.

(b) *Protests lodged with the General Accounting Office (GAO).* Replies to protests lodged with GAO are prepared by the Office of General Counsel. These replies are based on a statement of fact and position prepared by the contracting officer and approved by the contracting director.

(1) *Submission of statement of fact and position.* Within 10 working days after receipt of the written statement of protest from GAO, the appropriate organizational element shall submit, in triplicate, a properly signed and approved statement of fact and position (with required exhibits) to the Office of General Counsel. Because of the short time frame allowed by GAO (25 working days) for submission of the report, GAO usually informs the appropriate Assistant General Counsel by telephone of protests received or anticipated. This information is relayed immediately to the organizational element directly concerned. If the statement cannot be prepared within ten working days after receipt by the organizational element, the Head of the Contracting Activity shall be notified in writing (with copy to appropriate Assistant General Counsel) of the reasons for the delay and the projected submission date. After submission of the statement to the Office of General Counsel, the contracting officer shall advise counsel of all new developments which may have a bearing on the case. When further actions are required, the contracting officer shall obtain the advice of assigned counsel.

(2) *Preparation of statement of fact and position.* This statement shall contain the elements set forth in (b)(2)(i) through (ix) of this section, in addition to the requirements of FAR 14.407–8(a)(2). The contracting officer shall review the statement with assigned counsel prior to submission to the contracting director for approval.

(i) The identity of the GAO protest (if made against a solicitation or award) by B-number (GAO case file number), solicitation number, and contract number (if award has been made).

(ii) The full corporate name of the protesting organization and other firms involved when referenced for the first time in the position statement.

(iii) A statement whether the protest has been filed before or after award. If the protest has been filed after award, identify the awardee, the date of award, and the contract number.

(iv) A statement as required by FAR 14.407–8(b)(5), including a date when a determination is required for pending awards. See 514.407–8(b)(4) for action required if award must be made prior to resolution of protests.

(v) The date and time of bid opening (specify if the date of bid opening has been extended by subsequent amendments) and the total number of bidders.

(vi) An accurate, complete, and current statement of facts, in chronological order, of all relevant events and administrative actions taken. Include reasons for the actions taken and cite the authorities under which they were taken.

(vii) Any exhibits and/or documentary evidence, in triplicate, as set forth in FAR 14.407–8(a)(2) (i) through (vi). Include any other relevant documents believed helpful in determining the validity of the protest. (This evidence should be referenced and identified within the text of the position statement, alphabetically or numerically, e.g., Tab A, Exhibit 1, etc.).

(viii) A statement setting forth and answering point by point, if possible, all contentions, allegations, and issues raised by the protester.

(ix) Any comments or legal analysis (including legal precedents or authorities) received from assigned counsel.

(3) *Awards prior to resolution of protest.* If award must be made prior to final resolution of the protest pursuant to FAR 14.407–8(b)(4), a written finding and determination must be prepared by the contracting officer and approved by the head of the contracting activity. In protests involving regional procurements, the findings and determination shall be reviewed and concurred in by the regional counsel. A copy of such finding and determination shall be provided to the appropriate Assistant General Counsel so that he/she may inform GAO that an award will be made.

(c) *Protests after award.* A complete report of all the facts and all pertinent papers relating to protests which cannot be resolved at the regional level, protests to higher authority, and protests to the Comptroller General of the United States, shall be submitted to the Office of General Counsel after clearance through regular channels and concurrence by regional counsel.

514.407–71 Awards involving related cases referred to higher authority.

When a case is to be or has been referred to higher authority for review, any action which might prejudice the freedom of the higher authority to act on that case must be avoided. This includes other awards to the same bidder under the same solicitation.

514.407–72 Extension of time for bid acceptance.

(a)(1) Extensions of bid acceptance time shall not be requested when the conditions in (a) (2) and (3) of this paragraph exist. If the case in question has been referred to another organizational element for action, that organizational element shall be notified of any extension obtained and shall be requested to complete its action in time to permit award within the extended time.

(2) A bidder whose bid is determined unacceptable by the contracting officer and assigned legal counsel, shall not be requested or otherwise given an opportunity to extend the time for bid acceptance.

(3) When a special minimum bid acceptance time provision is included in the invitation for bids (see FAR 14.201–6(j) and 514.201–6 of this chapter), and a bidder, offers a lesser time bid for acceptance, the bid shall be rejected as nonresponsive.

(b) Requests for extention of bid acceptance time shall specify the additional acceptance time desired by the Government and shall be reasonable under the circumstances.

(c) If a bidder does not grant the additional bid acceptance time requested, special action shall be taken to accomplish acceptance of the bid within the time allowed by the bidder. Should it be advisable to permit the bid to expire, the contracting officer shall promptly, before the expiration of the bid, refer the case to the appropriate contracting director for decision.

(d) Appropriate legal counsel shall be consulted before an award is made when the acceptance time of an otherwise acceptable bid has expired.

514.407–73 Forms for recommending award(s) (Supplies and services).

(a) GSA Form 1535, Recommendation for Award(s), and GSA Form 1535–A, Recommendation for Award(s), Continuation Sheet, shall be used to document all proposed awards (except construction contracts) of more than $25,000 whether resulting from advertised or negotiated procurements. The use of the form for awards of $25,000 or less is at the discretion of the contracting activity. One or more awards may be set forth on each form. All information pertinent to the recommendation shall be furnished on the form. The checklist on the back of the form shall be completed.

(b) GSA Form 1447, Procurement Case Summary, shall be used to detail the analyses of procurements which require concurrence or approval in accordance with the GSA Delegations of Authority Manual (ADM P 5450.39B) or FSS Central Office Delegations of Authority (FSS P 5450.21B).

514.407–74 Preparation of documents for acceptance.

The acceptance of an offer received on SF 33, Solicitation, Offer, and Award, shall be as follows:

(a) *Definite-quantity contracts.* (1) *Single consignee.* When only one consignee is involved, notice of award of contract shall be documented as specified below:

(i) When Standard Form 33 is used, the award portion on both the original and duplicate copies of the accepted offer shall be completed. The original contract shall be retained by the Government and the duplicate copy furnished to the contractor. A purchase (delivery) order also must be issued to provide shipping instructions and necessary information copies to others concerned.

(ii) When a purchase order form is used, enter substantially the following: "Your offer on solicitation No. —— is accepted for items listed herein." Under this procedure, the original contract consists of the original bid signed by the contractor and the paying office copy of the purchase order, signed by the contracting officer. The contractor's copy of the contract consists of his retained copy of the bid and the original purchase order, signed by the contracting officer.

(2) *Multiple consignees.* Award on Standard Form 26, Award/Contract normally is advantageous for contracts involving more than one consignee. However, when numerous items on a single invitation for bids are awarded to one contractor, completion of the Award portion of Standard Form 33 may be more advantageous. Either method of documenting the award is authorized.

(b) *Indefinite quantity contracts.* Awards for indefinite quantity contracts may be documented on either Standard Form 26 or Standard Form 33. "Indefinite" shall be entered in the spaces provided for entering the quantity and dollar amount of such awards.

514.407–75 Notification of contract award.

Successful bidders shall be notified of award by furnishing to such bidders, within the time specified for bid acceptance, documents prepared in accordance with 514.407–74. Bids specifying a certain number of days for acceptance may be accepted any time before midnight of the last day.

514.408 Information to bidders.

514.408–1 Award of unclassified contracts.

(a) When considering in what form to provide notice to unsuccessful bidders (orally or in writing), contracting officers shall consider the following factors: (See FAR 14.408–1(a).)

(1) Size of the particular procurement;

(2) Number of items and the complexity of the invitation;

(3) Number of bids received;

(4) Necessity for bidders to make arrangements for securing necessary materials, financing, bonding, and other commitments;

(5) Whether procurement of the particular commodity would have any significant impact upon other bidders; and

(6) Availability of the information in Business Service Centers, the Department of Commerce Synopsis, and from any other sources available to anyone having an interest in such information.

(b) Normally, all inquiries whether oral or written, requesting information concerning the status of any bid or invitation for bids, including those not yet publicly opened, those already opened, and those for which abstracts have been prepared, shall be referred to the appropriate Business Service Center for reply.

514.40.8–70 Restriction on disclosure of inspection or test data.

(a) No inspection or test data generated in the process of bid evaluation shall be disclosed except as provided in this subsection. This includes information obtained from inspection or test reports whether prepared by the Government or an outside inspection or testing agency.

(b) Prior to award, no information regarding inspection or test data shall be disclosed to any bidder or individual except Government officials or employees required to have access to such information in connection with bid evaluation and determination of award.

(c) In providing notice of the rejection of a bid, the contracting officer shall inform the bidder concerning the results of tests on the products offered by that bidder.

(d) All other inspection or test data shall be furnished in accordance with the Freedom of Information Act. (See FAR Subpart 24.2.)

514.470 Advance notice of contract award.

Advance notices of award shall be in writing over the signature of the contracting officer except as otherwise

authorized. When an advance notice of award is issued, it shall be followed as soon as possible by the formal contract document.

514.470–1 Circumstances which warrant advance notice.

Advance notices of contract award may be issued by contracting officers under any of the circumstances listed below:

(a) A bid or offer is about to expire and it is necessary to issue an award notice promptly.

(b) Prompt action is necessary to afford the contractor an opportunity to secure necessary materials.

(c) Delivery or performance is urgent and cannot await release of formal contract documents.

(d) The contract involves work of an urgent nature and it is essential that the contractor rush all preliminaries prior to actual starting of work.

(e) Prompt action is necessary to secure advance predelivery samples on contracts.

(f) A prospective contractor requests advice, orally or in writing, as to whether he is to receive the award, and gives sufficient reasons, to the satisfaction of the contracting officer, why advance notice is desirable.

(g) Other compelling circumstances exist and advance notice is concurred in by the head of the contracting activity.

514.470–2 Telegraphic notices.

When justified by the circumstances described in 514.470–1, telegraphic notice may be used. The notice shall contain, in addition to the requirements set forth in 514.470–4 a statement that written confirmation will follow. Such confirmation shall be issued without delay.

514.470–3 Oral notices.

Oral notices shall not be used.

514.470–4 Content of notices.

Advance notices of award shall include all of the essential elements to identify the award, such as: identification of invitation, description of the procurement, and the contract number. No language shall be used which might in any way vary from the terms of the bid.

514.471 Multiple bidding.

(a) If more than one bid is received from a person or firm, or its affiliates in response to an invitation for bids, such bids shall be considered for award if responsive and otherwise acceptable.

(b) If a bidder submits bids on two or more products in response to the same item in an invitation and one of those bids is the lowest received which meets the requirements of the invitation, it may be accepted regardless of whether it is designated by the bidder as an "alternate."

PART 515—CONTRACTING BY NEGOTIATION

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Authority: 40 U.S.C. 486(c).

Subpart 515.1—General Requirements for Negotiation

515.104 Authorization and approval.

Requirements for pre- and post-award review and approval of contracts are prescribed in the GSA Order, Contract Clearance (APD 2800.1B).

515.105 Competition.

515.105–70 Justification and approval of the use of noncompetitive procedures.

(a) Except as provided in paragraph (c) of this section, a written justification for use of noncompetitive procedures is required for each contract, including a lease of real property, in excess of the small purchase threshold. The written justification shall:

(1) Be signed by the contracting officer;

(2) Be approved by higher level authority in accordance with paragraph (b) of this section, prior to commencing negotiation;

(3) Identify the problem, mission deficiency, or need that the procurement is intended to satisfy;

(4) Provide the facts supporting the determination that the use of competitive procedures is not practical or feasible, including, in appropriate cases, a demonstration of how it is known that a particular contractor is the only source that can meet the Government's minimum requirements (e.g., responses to a CBD notice of intent to contract on a sole-source basis or to a sources-sought synopses); and

(5) Be retained as part of the contract file.

(b) Except as provided in paragraph (d) of this section, written justification shall be approved as follows:

Estimated value of procurement	Approving official
$300,000 or less	Contracting Director or Deputy
Over $300,000	Head of Contracting Activity or Deputy.

(c) A written justification is not required where:

(1) The agency is authorized by statute to contract with a specific source;

(2) The procurement is for the services of a public utility and only one such source is available;

(3) A written justification covering a class of contracts has been previously approved by the head of the contracting activity or his deputy and has been concurred in by the Assistant Administrator for Acquisition Policy, in which case, a copy of the class justification shall be included in the contract file.

(d) Approval of a written justification prior to commencing negotiation is not required where the need for the supplies or services is of such unusual and compelling urgency that the Government would be seriously injured if the requirements of paragraph (b) of this section were complied with; however, the justification shall be submitted for approval as soon as possible thereafter.

(e) Each contracting office shall maintain a separate file containing a copy of each written justification used to support the use of noncompetitive procedures.

(f) Pursuant to Pub. L 98–72, GSA may be required to report to Congress each instance where noncompetitive procedures have been used, but have not been approved pursuant to paragraph (b) of this section. Accordingly, any such actions should be reported to the Office of Acquisition Policy.

515.105–71 Management controls designed to maximize the use of competitive procurement.

The Office of Acquisition Policy, Office of Acquisition Management and Contract Clearance, shall:

(a) Conduct, as necessary, a review of the Federal Procurement Data System to identify contracting activities and/or programs having noncompetitive awards, and, in conjunction with the appropriate contracting activity, shall:

(1) Determine the reasons for and identify the circumstances resulting in noncompetitive procurements;

(2) Determine the potential for increasing competition;

(3) When appropriate, obtain an action plan from the contracting activity to increase competition and monitor progress.

(b) Review noncompetitive procurement as part of its procurement management assistance reviews of contracting activities. The adequacy of the documentation of noncompetitive procurement justifications is of particular importance and should be emphasized in all procurement reviews. As each justification for the use of noncompetitive procedures is reviewed, the reviewer should ascertain and evaluate:

(1) The reasons why the procurement cannot be completed;

(2) The adequacy of the grounds for excluding all other actual or potential offerors;

(3) Any action that can be taken to obtain competition in the future.

515.106 Contract clauses.

515.106–1 Examination of records by GSA clause.

(a) The following types of contracts in excess of $10,000 shall include the Examination of Records by GSA clause in 552.215–70:

(1) Cost-reimbursement type contracts;

(2) Contracts involving the use or disposition of Government-furnished property;

(3) When advance payments, progress payments based on costs, or guaranteed loans are to be made;

(4) Contracts for supplies or services containing a price warranty or price reduction clause;

(5) Contracts or leases involving income to the Government when the income is based on operations that are to any degree under the control of the contractor or lessee;

(6) Fixed-price contracts with economic price adjustment, with incentives, and price redetermination;

(7) Requirements and indefinite quantity (call-type) contracts;

(8) Time-and-material, labor-hour, and letter contracts; and

(9) Leases when the rental is subject to adjustment based on negotiated operating cost escalation.

(b) In some of the contracts listed in paragraph (a) of 515.106–1, it may be appropriate to define the specific area of audit such as: (1) The use or disposition of Government-furnished property, or (2) variable or other special features of the contract, e.g., price escalation and compliance with the price warranty or price reductions clauses. In these cases, the contract clause in 552.215–70 may be appropriately modified with the concurrence of the Office of General Counsel or Regional Counsel and the Assistant Inspector General Auditing, or the Regional Inspector General-Auditing, as appropriate.

(c) Insertion of the contract clause in 552.215–70 (modified or not) in contracts does not affect the requirements for use of the Examination of Records clause permitting review of contractor books and records by the Comptroller General or the clauses on audit and records pertaining to verifying cost or pricing data.

Subpart 515.2—Negotiation Authorities

515.200–70 Citing the negotiation authority.

Each negotiated contract shall cite in the appropriate block of the award document, the authority under which the contract is negotiated, i.e., the Federal Property and Administrative Services Act of 1949, as follows: "41 U.S.C. 252(c)(*)" (* insert paragraph number under which negotiation is permitted). (See FAR Subpart 15.2.) Cite any additional authority used; e.g. the Small Business Act. (See 15 U.S.C. 637(a).)

515.202 Public exigency.

(a) When contracts are awarded on behalf of other agencies, the public exigency negotiation authority at FAR 15.202 may be used only when the requisitioning agencies have furnished sufficient information for the execution of the required findings and determinations. Delivery dates which are not supported by further information are not adequate justifications for the use of the authority.

(b) Requirements concerning military purchase requests citing an issue priority designator assigned in accordance with DOD Uniform Material Movement and Issue Priority System (UMMIPS) are prescribed by DOD Directive 4410.6, and civilian agency purchase requests citing a priority designator 03 or 06, are prescribed by the FPMR 41 CFR 101–26.20.

515.203 Purchases under the small purchase limitation.

(a) The full purchase price shall be used in determining whether the aggregate amount of a transaction exceeds the small purchase limitation. Trade-in values may not be deducted.

(b) Section 302(c)(15) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(15) shall be cited as the negotiation authority for small purchases which are reserved (set-aside) for small business under section 15(j) of the Small Business Act, as amended (15 U.S.C. 644(j)). When small purchases are not set-aside section 302(c)(3) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(3)) shall be cited unless FAR 15.206 applies.

515.210 Impractical to secure competition by formal advertising.

This authority shall not be used where negotiation is authorized under FAR 15.211, 15.212, 15.213, or 15.214.

Subpart 515.4—Solicitation and Receipt of Proposals and Quotations

515.402 General.

(a) An oral solicitation is not justified solely because it has been assigned a high issue priority designator (see 515.202(b)) or because of public exigency.

(b) In addition to the documentation requirements of FAR Subpart 15.3, should the issuance of the resulting contract be unduly delayed, the contract file shall be documented with the reasons for the delay and to justify award based on the oral solicitation.

(c) Oral solicitations other than those authorized for small purchases (see 513.106(c) and 513.106–70), shall only be used under the conditions prescribed in FAR 15.402(f), with prior approval at a level higher than the contracting officer.

515.402–70 Telegraphic or telephonic solicitations.

Telephonic solicitations may be used in urgency situations under FAR 15.202, and 515.202 and 515.402. Telegraphic and telephonic requests must make specific reference to all applicable terms and conditions. The reason for using telegraphic or telephonic requests shall be entered in the file. (See FAR 15.402(f).)

515.403 Solicitation mailing lists.

Source lists for negotiated procurements shall be established, maintained, and used in accordance with FAR 14.205 and 514.205 of this Chapter

515.405 Solicitations for information or planning purposes.

515.405–1 General.

Solicitations for information or planning purposes shall be approved by the contracting director, in accordance with FAR 15.405–1.

515.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

515.406–1 Uniform contract format.

(a) Contracts for utility services and leases of real property are exempted from the requirement for use of the uniform contract format.

(b) All contracts, including leases of real property, shall include the following notice on the first page of the solicitation.

The information collection requirements contained in this solicitation/contract, that are not required by regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

515.406–2 Part I—The Schedule.

The contracting officer shall insert the provision at 552.215–75, Data Universal Numbering System (DUNS) in solicitations for supplies and services when the contract amount is expected to exceed the small purchase limitation.

515.406–5 Part IV—Representations and Instructions.

The factors for proposal evaluation and award (other than the lowest price) should be determined prior to solicitation. The solicitation shall identify the evaluation factors and when numerical values, percentages, or weights are not specified, shall list the factors in descending order of importance.

515.407 Solicitation provisions.

(a) The contracting officer shall insert the provision at 552.215–71, Telecopier Submissions, Modifications, or Withdrawal of Proposals, in solicitations for supplies and services (including construction) when the contract amount is expected to exceed the small purchase limitation. The provision may be included in small purchase solicitations when firm offers are solicited.

(b) The contracting officer shall insert the provision at 552.215–72, Telegraphic Submissions, Modifications, or Withdrawals of Proposals Received at the GSA Communication Center, in solicitations for supplies and services (including construction) when the contract amount is expected to exceed the small purchase limitation. The provision may be included in small purchase solicitations when firm offers are solicited.

(c) The contracting officer shall insert the provison at 552.215–73, Preparation of Offers-Construction, in solicitations for construction in lieu of the provision at FAR 52.215–13.

(d) The contracting officer shall insert the provision at 552.215–74, Contract Award-Negotiated-Construction, in solicitations for construction in lieu of the provision at FAR 52.215–16.

515.411 Receipt of proposals and quotations.

Classified proposals and quotations shall be handled under FAR 15.411 and the requirements of GSA Order, Freedom of Information Act procedures (ADM 1035.11).

515.411–70 Recording of offers.

Offers shall be abstracted under FAR 14.403 and 514.403.

Subpart 515.5—Unsolicited Proposals

515.500 Scope of subpart.

This subpart implements and supplements the policies and procedures prescribed in FAR Subpart 15.5 for submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

515.501 Definitions.

Minimum requirements refers only to those features that are essential to meeting the Government's need.

515.503 General.

Unsolicited proposals may be considered for non-competitive procurement only when the contracting officer has conclusive evidence (as determined by a market search) that the proposer possesses unique capabilities and is the only firm capable of meeting the Government's minimum requirements and the contracting officer has considered the factors in FAR 15.507.

515.504 Advance guidance.

Potential offerors shall be encouraged to make preliminary contacts, as provided in FAR 15.504, with regional contracting offices and/or the Office of GSA Acquisition Policy and Regulations prior to submitting a detailed unsolicited proposal or proprietary data.

515.505 Content of unsolicited proposals.

Potential offerors shall be provided with the description of requirements for unsolicited proposals in FAR 15.505.

515.506 Agency procedures.

(a) The Office of GSA Acquisition Policy and Regulations (VP) is designated as the GSA contact point for unsolicited proposals. The address is:

General Services Administration (VP)
Washington, DC 20405

(b) Regional contracting activities shall be the local contact points for review and acknowledgement of unsolicited proposals.

515.506–1 Receipt and initial review.

(a) Unsolicited proposals shall be reviewed for the information in FAR 15.506–1, and acknowledged as soon after receipt as possible by the local point of contact as follows:

(1) When an unsolicited proposal is received first by the Region, Service, or Staff Office where the evaluation will be performed under FAR 15.506–2, that

organization shall inform the offeror by letter that the proposal has been received. The letter should indicate the name, business address, and telephone number of the individual who will evaluate the proposal.

(2) A copy of the letter to the offeror shall be sent to the Office of GSA Acquisition Policy and Regulations (VP).

(b) When an unsolicited proposal is received first by a Region, Service, or Staff Office that is not in a position to evaluate it, the organization shall forward it to VP, as soon as possible. VP will review the proposal for the information in FAR 15.506–1, and determine which organization will be responsible for evaluating the proposal.

(1) Then the proposal will be sent to the Region, Service or Staff Office that VP has determined will be responsible for the evaluation.

(2) The Region, Service, or Staff Office responsible for evaluating the proposal shall inform the offeror by letter that the proposal has been received. The letter should indicate the name, business address and the telephone number of the individual who will evaluate the proposal.

(3) If the evaluating office forwards the unsolicited proposal to another region, or office, the evaluating office shall notify VP of the location, name, and phone number of the assigned evaluator.

515.506–2 Evaluation.

The evaluation shall be completed under FAR 15.506–2, as soon as practicable (normally within 45 calendar days). The evaluator shall send the evaluation results plus recommended action to VP. If the proposal is rejected the evaluator shall the response to the offeror for the signature of the head of the organization responsible for the evaluation. A copy shall be sent to VP.

Subpart 515.6—Source Selection

515.605 Evaluation factors.

515.605–70 Discounts for early payment.

(a) The soliciting of discounts for early payment presupposes that under the payment terms of the contract, there is sufficient time for the Government to make payment before payment is actually due. Consequently, discounts for early payment should not be solicited in connection with contracts under which payments are required to be expedited in the first place, and there is little or no latitude for making "early" payment (i.e., at least 10 days before payment is otherwise due under the contract). Examples are rental or leasing contracts providing for payment in arrears within a few days after the end of each month.

(b) The policy in FAR 14.407–3 is applicable to competitive negotiated procurements. In this connection, the word "competitive" refers to situations where there is direct competition between offerors for identical supplies or services, such as articles purchased under Government specifications. The clause in 552.232–8(a) shall be included in competitive negotiated solicitations/contracts which may involve the offer of a discount for early payment.

(c) The policy in FAR 14.407–3 is not applicable to sole-source procurements, nor to the procurement of commercial items when the evaluation process involves a comparison of the offeror's price to the Government against the offeror's price (or, discount from a commercial pricelist) to other customers. In these situations, the reasons for the policy in FAR 14.407–3 do not exist, and consideration may be given to discounts for early payment to the extent indicated in the solicitation. Accordingly, the clause in 552.232–8(b) shall be included in all multiple-award type solicitations and resultant contracts.

Subpart 515.8—Price Negotiation

515.803 General.

515.803–70 Cost-reimbursement contracts (construction contracts).

The consideration and discussions during negotiations of construction contracts shall include, to the extent necessary to resolve uncertainties, such matters as:

(a) The location, size, and character of the work and the estimated cost;

(b) The general conditions for the cost-plus-a-fixed-fee contract and the procedures to be followed;

(c) The organization the contractor will use at the site and proposed salaries for those employees;

(d) The types and amount of contractor's own equipment available for the project;

(e) The amount and nature of work to be performed by the contractor's own forces and by subcontract;

(f) The time for completion, liquidated damages (if specified), insurance, and bonds;

(g) The fixed fee and the basis upon which its amount was predicated. (All of these factors, (a) through (f), affect the amont of the fee.)

515.804 Cost or pricing data.

515.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

Approval of the appropriate contracting director shall be obtained in all cases when it is determined that the requirement for cost or pricing data may be waived. (See FAR 15.804–3.)

515.804–70 Refusal to provide cost or pricing data.

Whenever a contractor refuses to provide cost or pricing data, the matter shall be referred to the appropriate contracting director. (See FAR 15.804.)

515.805 Proposal analysis.

515.805–1 General.

Contracting officers may request field pricing support whenever assistance is required to evaluate price reasonableness. Within GSA "field pricing support" is provided by the Assistant Inspector General—Auditing, or the Regional Inspector General—Auditing, as appropriate.

Subpart 515.9—Profit

515.902 Policy.

(a) Structured approach for determining profit fee objectives.

(1) The contracting officer's analysis of these profit factors is based on information available to the Government before negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like. The structured approach also provides a basis for documentation of a profit objective, including an explanation of any significant departure from this objective in reaching a final agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed procurement.

(2) The negotiation process does not require agreement on individual estimated cost elements or profit elements. The profit objective is a part of an overall negotiation objective. Specific agreement on the exact weights or values of the individual factors is not required and should not be attempted.

(b) Exemptions from requirement to use the structured approach.

(1) Under exempted procurements, other methods for establishing profit objectives may be used. Generally, such methods will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of profit objective). However, factors within the structured approach considered inapplicable to the

procurement shall be excluded from the profit objectives. The following types of procurements are exempt from the structured approach:

(i) Management contracts for operation and/or maintenance of Government facilities;

(ii) Contracts primarily requiring delivery of material supplied by subcontractors;

(iii) Termination settlements;

(iv) Cost-plus-award-fee contracts;

(v) Contracts where only price analysis is required (FAR 15.805);

(vi) Contracts and contract modifications of $100,000 or less in value; and

(vii) Architect-engineer and construction contracts.

(2) Other exemptions may be made in the negotiation of contracts having unusual pricing situations where the structured approach is determined to be unsuitable. Such exemptions shall be justified in writing and approved by the head of the contracting activity.

515.905 Profit analysis factors.

(a) The following factors shall be considered in all situations in which profit is to be specifically negotiated. The weight ranges listed after each factor shall be used when the structured approach is used.

Profit factors	Weight ranges in percent
Contractor Effort:	
Material acquisition	1 to 4.
Conversion direct labor	4 to 12.
Conversion related indirect cost	3 to 8.
Other costs	1 to 3.
General management	4 to 8.
Other Factors:	
Contract cost risk	0 to 7.
Capital investment	−2 to +2.
Cost-control and other past accomplishments	−2 to +2.
Federal socio-economic programs	−.5 to +.5.
Special situations and independent development	−2 to +2.

(b) GSA Form 1766, Structured Approach Profit/Fee Objective, shall be used to facilitate the profit objective computation. The contracting officer shall measure the Contractor Effort by the assignment of a profit percentage within the designated weight ranges to each element of cost recognized. The amount calculated for facilities capital cost of money shall not be included in the cost base for the computation of the profit objective.

(c) *Facilities capital cost of money.* When facilities capital cost of money is included as an item of cost in the contractor's proposal a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed.

515.905-1 Common factors.

(a) The categories listed under Contractor Effort are for reference purposes only. Individual proposals may be in different formats; but since these categories are broad and basic they provide sufficient guidance to evaluate all items of cost.

(b) After computing a total dollar profit for Contractor Effort, the contracting officer shall calculate the specific profit dollars for contract cost risk, capital investment, cost-control and other past accomplishments, Federal social-economic programs and special situations. This is done by multiplying the total Government cost objective, exclusive of any cost of money for facilities capital, by the specific weights assigned to the elements within the Other Factors category.

(c) In determining the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as prescribed in FAR 15.905-1 and the following:

(1) *General management.* Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a new program for an item that involves advanced state of the art techniques may casue more problems and require more managerial time and abilities of a higher order, than one that is a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward as many of the problems should have been solved. An evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(2) *Other costs.* Include all other direct costs associated with contractor performance under this item (e.g., travel and relocation, direct support, and consultants). Analysis of these items of costs for the purpose of assigning profit weights shall include: (i) The significance of the costs, (ii) the nature of the costs, and (iii) how much they contribute to contract performance.

(3) *Contract cost risk.* Where proper contract type selection has been made, the reward for risk by contract type would usaully fall into the following percentage ranges:

	Percent
Cost-reimbursement type contracts	0–3
Fixed-price type contracts	3–7

(i) Within the above ranges, cost-plus-a-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads. In such cases, up to 1 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the 0 to 3 percent range with weightings directly related to such factors as confidence in target cost, share ratio of fee(s), etc. The weight range for fixed-price contracts in wide enough to accommodate the many types of fixed-price arrangements. These include fixed-price incentive, firm fixed-price with economic price adjustment, fixed-price with prospective or retroactive price determination, and firm fixed-price contracts. Weighting should indicate the cost risk assumed, with only firm fixed-price contracts reaching the top end of the range.

(ii) The contractor's subcontracting program may have significant impact on the contractor's acceptance of risk under a contract form. It could cause risk to increase or decrease in terms of both cost and perfomance. This consideration should be a part of the contracting officer's overall eavaluation in selecting a factor to apply for cost risk. It may be determined, for instance that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation may, as a result, be below the range which would otherwise apply for the contract type being proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract cost represents subcontracts without any substantial transfer of contractor's risk.

(iii) In making a contract cost risk evaluation in the definitization of letter contracts, unpriced change orders, and unpriced orders under basic ordering agreements; consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances the total amount of cost risk may have effectively reduced. Under other circumstances, the contractor's cost risk may have remained substantially unchanged. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances; not just to the portion of costs incurred or percentage of work completed prior to definitization.

(iv) Service contracts, such as janitorial, guard servcie, etc., shall have a weight range for cost risk of 0 to 4 percent. There may be instances where a firm fixed-price contract, which is not

priced on a labor-hour method, warrants additional consideration for contractor cost risk. In those circumstances, a weight of up to 4 percent is authorized. Conversely, a cost-plus-a-fixed-fee service contract normally should be priced using a zero cost risk factor.

(4) *Capital investment.* GSA contractors are normally encouraged to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. It is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. The evaluation of this factor for profit weights should include an analysis of the following:

(i) *Facilities.* To evaluate how this factor contributes to the profit objective requies knowledge of the level of facilities use needed for contract performance, the source of financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities which significantly contribute to lower total contract costs should be provided with additional profit. Contractors who rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit. Situations between the above examples should be evaluated on their merits with either a positive or negative profit weight adjustment, as appropriate, being made. However, when a contractor who owns a large quantity of facilities is to perform a contract which does not benefit from these facilities, or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(ii) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, for payments more frequent than monthly, negative consideration should be given, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for payments less frequent than the contractor's or the industry's normal practice.

(5) *Cost control and other past accomplishments.* A contractor's past and present performance should be evaluated in such areas as quality of product or service, meeting performance schedules, efficiency in cost control (including need for and reasonableness of cost incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions, and management of subcontract programs. Where a contractor has consistently achieved excellent results in the foregoing areas as compared with other contractors in similar circumstances, such performance merits a proportionately higher profit weight is appropriate. A poor record in this regard should be reflected by a reduced or negative weight.

(6) *Federal socio-economic programs.* The contractor's policies and procedures which energetically support such Government programs and achieve successful results should be given positive consideration. Failure or unwillingness on the part of the contractor to support these programs should be assigned negative profit weight consideration.

(7) *Special situations and independent development.* (i) *Unusual pricing agreements.* Occasionally, unusual contract pricing arrangements are made with the contractor wherein they agree to participate in the sharing of contract costs. In such circumstances, a positiveprofit weight may be assigned for this factor commensurate with cost savings.

(ii) *Spin-off benefits.* A negative weight may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract (e.g., products with commercial application).

515.905–70 Nonprofit organizations.

(a) The structured approach was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the structured approach can be used as a basis for arriving at fee objectives for nonprofit organizations. Therefore, the structured approach, as modified in paragraph (b) below, shall be used to establish fee objectives for non-profit organizations. The modifications should not be applied as deductions against historical fee levels, but rather, to the fee objectives for such a contract as calculated under the structured approach.

(b) For purposes of this subparagraph, nonprofit organizations are defined as those entities organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(c) For contracts with nonprofit organizations where fees are involved, an adjustment of up to 3 percent will be subtracted from the total profit-fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(1) Tax position benefits;

(2) Granting of financing through letters of credit;

(3) Facility requirements of the nonprofit organization; and

(4) Other factors which may work to the advantage or disadvantage of the contractor in its position as a nonprofit organization.

Subpart 515.10—Preaward and Postaward Notifications, Protests, and Mistakes

515.1001 Notifications to offerors.

(a) The provisions of FAR 15.1001 and 515.407 regarding the issuance of advance notices of award shall be followed for negotiated contracts.

515.1070 Release of information concerning unsuccessful offerors.

Information concerning unsuccessful offerors, including identity and pricing data, ordinarily will not be released before award. GSA Order, GSA Freedom of Information Act (FOI) procedure (see ADM 1035.11) should be consulted to determine what information may be disclosed after award. When small purchase procedures are used, the names and dollar amounts of unsuccessful offers may be released upon request without processing through the formal FOI procedures.

PART 516—TYPES OF CONTRACTS

Subpart 516.3—Cost-Reimbursement Contracts

516.307 Contract clause.

The contracting officer shall insert the clause at 552.216–70, Fixed Fee-Construction, in cost-plus-a-fixed-fee construction contracts when the contractor's fee is negotiated on the basis of performance of specified portions of the work by the contractor and subcontractor, respectively.

(40 U.S.C. 486(c))

PART 517—SPECIAL CONTRACTING METHODS [RESERVED]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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Subpart 519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

519.705–6 Postaward responsibilities of the contracting officer.

Authority: 40 U.S.C. 486(c).

Subpart 519.2—Policies

519.201 General policies.

The head of each contracting activity is responsible for results under the small business program.

519.202 Specific policies.

(a) Each contracting activity shall use its best efforts to identify procurements where a potential exists for increasing the small business share of contract awards. Whenever feasible, contracting officers shall seek the assistance of GSA's Business Service Center (BSC) personnel and Small Business Administration (SBA) procurement representatives in locating qualified small business sources.

(b) The head of each contracting activity shall develop and continuously maintain a training program as necessary to emphasize the importance of small business set-aside program.

(c) Each BSC will keep all other BSC's and the Office of Small and Disadvantaged Business Utilization (AU) informed on items of mutual interest under the small business program.

(d) Each BSC will:

(1) Take appropriate actions to publicize advance and current information about regional and national GSA business opportunities to the maximum extent feasible.

(2) Provide maximum advance and current information, assistance, and counseling of such nature, extent, and timeliness so as to enable small business concerns to take full advantage of the available business opportunities and to compete for contracts.

(3) Develop publications and public relations techniques designed to obtain maximum interest and participation of small business concerns. This activity will include, but not be limited to, the following:

(i) Arranging for and participating in meetings with business groups such as Chambers of Commerce, trade associations and similar organizations, State development corporations, Governors' and Mayors' advisory groups, local business and civic organizations, and small business councils.

(ii) Developing, preparing, and distributing informational material designed to stimulate interest on the part of small business concerns.

(iii) Developing interest and cooperation on the part of trade publications, the local press, and other media.

(e) Proposed regulations and procedures affecting the operation of the small business program shall be coordinated with the Office of Small Disadvantaged Business Utilization (AU) prior to issuance.

519.202 Data collection and reporting requirements.

(a) *Responsibilities* (1) The Office of Small and Disadvantaged Business Utilization (AU) is responsible for collecting section 8(a) award information from Regional Offices and preparing cumlative report.

(2) The regional contracting officer is responsible for submitting section 8(a) contract award information to the regional Business Service Center (BSC).

(3) The regional Business Service Center is responsible for submitting the section 8(a) contract award information to AU as an attachment to the GSA Form 3077, FY 19—Procurement Preference Program Goal Achievement, (see ADM 2800.17). This data is required on the the 20th calendar day following the end of each quarter.

(4) Central Office services and commodity center contracting officers are responsible for submitting the section 8(a) contract award information to AU.

(b) *Reporting procedures.*

(1) GSA Form 2677, Minority Contract Fact Sheet, shall be used to report the information required by this section to the appropriate BSC at the time of award.

(2) Regional Business Service Centers shall report all amendments of modifications to existing section 8(a) contracts on a separate GSA Form 2677.

Subpart 519.3—Determination of Status as a Small Business Concern

519.302 Protesting a small business representation.

(a) If a protest regarding small business size status is received after expiration of the 5-day period specified in FAR 19.302, or if the protest is received after contract award, the matter shall be presented to SBA (unless there is no validity to the protest as in the case where SBA has recently determined the size status of the firm in question) on the basis that the contracting officer questions the size status of the firm involved. The contracting officer's reason for raising the question should be stated and copies of the pertinent available documents should be furnished to SBA. If SBA determines that the concern in question is not a small business concern, the following action shall be taken.

(1) If award has not been made, the offer shall be rejected as nonresponsive when the procurement is totally set-aside for small business concerns. When the procurement is partially set-aside, the firm which has misrepresented its size status shall not be considered for preferential award under the set-aside portion.

(2) If award has been made, the contract should be terminated in accordance with the provisions of the clause at 55.219–70, Termination-Erroneous Representation Concerning Size Status, unless termination would not be in the best interest of the Government. Prior to final action under this paragraph, the case shall be referred to the cognizant contracting directors for approval. Such submissions shall include the status of performance of the contract, the urgency of need for the items covered, any evidence bearing on the issue of whether the erroneous certification was willful or inadvertent, any other information which would be helpful in determining whether the contract should be terminated and whether the matter should be referred to the Office of the Inspector General (J) for possible Department of Justice action.

Subpart 519.5—Set-Asides for Small Business

519.501 General

When the solicitation provides for a total or partial small business set-aside, or labor surplus area set-aside, it is essential that the applicable small business size standard be set forth clearly in the solicitation. (See FAR 19.502–2 and 19.502–3.) In addition, the clause at 552.219–70, Termination-Erroneous Representation Concerning Size Status, shall be included in all solicitations for supplies and services (excluding construction).

519.502–1 Requirements for setting aside an acquisition.

(a) *General.* Contracting activities, to the maximum extent feasible, shall make unilateral small business set-asides on all procurements qualifying therefor, as provided in FAR Subpart 19.5 and as required by paragraphs (c) through (j) below. Priority consideration shall be given to establishing class set-asides. Contracting activities shall periodically review individual set-asides to identify commodities and services suitable for class set-asides.

(b) *Small purchases.* (1) Procurements estimated to have a contract value of less than $10,000 and which are subject to small purchase procedures shall be reserved exclusively for small business concerns as required by Pub. L. 95–507. Offers shall be solicited from small business concerns only, unless the contracting officer makes a determination that there is no reasonable expectation that two or more small business concerns will submit acceptable offers at a reasonable price. The contract file shall be documented accordingly.

(2) While Pub. L. 95–507 does not require small purchases between $10,000 and $25,000 be reserved for small business, contracting activities may make a determination to set-aside such purchases on a class basis.

(c) *Class set-aside determination.* Execpt for construction contracts subject to provisions of this 519.502–1 (d) and (e), small business class set-asides will normally be made on a unilateral basis by the contracting officer and documented in accordance with 519.503(b). Class set-aside determinations shall be reviewed at least annually.

(d) *Construction contracts from $10,000 to $500,000.* In an understanding with the SBA, every proposed procurement for construction, including alteration, maintenance, and repairs estimated to be in excess of $10,000 and under $500,000 shall be considered individually as though the SBA had initiated a set-aside request and shall be set aside, except as otherwise provided in 519.502–1 (e) and (f).

(e) *Construction contracts from $500,000 to $1 million.* The Commissioner, Public Buildings Service (P), has unilaterally established a class set-aside for procurements of construction, including alteration, maintenance, and repairs estimated to cost between $500,000 and $1 million, except as otherwise provided in 519.502–1(f).

(f) *Exemption of certain construction and repair contracts.* All separate construction contracts under a construction-management-phased construction project and contracts for repair of mechanical systems, such as elevators, steam generators, air-conditioners, or distributing systems, are exempt from the requirements of 519.502–1(d) or (e). However, contracting officers shall review each such exempt procurement and initiate a small business set aside where it appears that there would be sufficient competition to ensure award at a reasonable price and set-aside is otherwise feasible.

(g) *Building service contracts in excess of $10,000.* Each contracting activity shall, to the maximum extent feasible, arrange for the making of small business set-asides on all building service contracts which qualify therefor as provided in FAR Subpart 19.5. In the initiation of small business set-asides, contracting activities should give priority consideration to the establishment of class set-asides. Contracting activities shall periodically review individual set-asides to identify services suitable for class set-asides.

(h) *Architect-Engineer contracts.* (1) All architect-engineer contracts for construction projects with an estimated construction contract amount not exceeding $2.5 million shall be set aside for small business.

(2) A synopsis message indicating that the architect-engineer contract is set aside for small business shall be prepared and forwarded as provided by FAR 5.207.

(i) *All other contracts.* All contracts other than those contracts subject to the provisions of 519.502–1 (c), (d), (e), (f), (g), and (h) are subject to set-aside in accordance with the provisions of FAR 19.501–2 and 519.502–1(a) of this chapter.

(j) *Determination not to set aside.* Where the contracting officer determines that a small business set-aside of a procurement is not feasible, the procedures defined in 519.505 shall be followed.

519.502–2 Total set-asides.

When a total small business-labor surplus area set-aside, a total small business set-aside or a total labor surplus area set-aside is made, contracting activities using Standard Form 33, Solicitation, Offer and Award, may include an appropriate statement to that effect on the reverse side of the form. Contracting activities using solicitation for offer forms other than SF–33 may use the cover sheet to include an appropriate notice statement of set-aside.

519.502–3 Partial set-asides.

(a) *Initiating partial set-asides.* Contracting officers shall continuously review the items for which they have procurement responsibility (both national and regional requirements) and make partial small business set-asides as provided herein. Particular attention shall be given to high volume items which are not totally set aside and which have a potential for being partially set aside. Partial set-asides for stock items may be made when the following Economic Order Quantity (EOQ) factors are present: (1) For annual contracts, an EOQ factor not exceeding 3 months; and (2) for 6-month contracts, an EOQ factor not exceeding 1 month.

(b) *Preparation of solicitation.* In addition to the requirements of FAR 19.502–3, the following are applicable when preparing solicitations involving requirements-type contracts and partial small business set-asides:

(1) The clause at 552.219–71, Allocation of Orders—Partially Set-Aside Item, shall be included in the solicitation.

(2) When a group of items is covered by partial set-aside awards, it is not necessary to order identical quantities of each item from each portion of the award so long as at least a 60/40 division of the total value of the orders issued is attained. Additional orders needed to bring the value division within 60/40 limits can be made for any item included in the partial set-aside awards regardless of previous quantities ordered on that item.

(c) *Evaluation of offers and contract award.* (1) Offers on the non-set-aside portion shall be evaluated under normal procedures while those on the set-aside portion shall be evaluated under FAR 19.502–3. Normally, only one award will be made for each item or subitem whether it be of the non-set-aside or of the set-aside portion.

(2) When the set-aside portion of an item is to be awarded to the same concern which was awarded the

corresponding non-set-aside portion of an item, such an award shall be documented by issuing a separate contract in the same manner as if two different concerns are involved.

(3) If offers are received which appear designed to take unfair advantage of other offerors by devices such as unrealistically low offers on mere token quantities, the matter shall be referred to the appropriate contracting director for resolution.

(d) *Procurement of unawarded set-aside portions.* If the entire set-aside portion cannot be awarded under the partial set-aside procedures, the unawarded portion shall be procured by advertising or negotiation, as appropriate, in accordance with FAR 19.502–3.

(e) *Partial coverage.* When only the non-set-aside portion of the procurement is awarded prior to the expiration of the current contract, contractual documents covering the transaction shall be distributed to the ordering activities to provide at least partial coverage of the requirements.

(f) *Contract coding.* To asure that set-asides are properly identified for reporting purposes, information regarding awards based on partial or total set-asides shall be included on Form 1535, Recommendation for Award(s), as appropriate. Further, if a class set-aside is involved, the face of the GSA Form 1535 shall be annotated as follows: "Class set-asides apply to items ———."

(g) *Ordering procedures.* The Inventory Manager is responsible for ensuring that the specified division of orders is made in those cases where two contractors are to supply one item to one destination.

519.503 Setting aside a class of acquisitions.

(a) *Clarification of class set-aside definition.* In further explanation of FAR 19.503, a class set-aside may consist of an item (or service), a group of related items under an Federal Supply Class (FSC), or a whole FSC class when restricted to small business on more than a one time basis, as distinct from a one-time, basis. Under this definition, a single item or a group of items restricted to small business on more than a one time basis, even though constituting only a small portion of an FSC class, is defined as a class set-aside.

(b) *Determining the set-aside status of an item.* The fact that an item (or service), group of items, or a FSC class is the subject of a class set-aside, and presumptively will be set aside on the next procurement, does not mean that it is automatically set aside without consideration of events which may have occurred since the last procurement. The contracting officer must determine if intervening events have changed the situation so that it is no longer in the best interest of the Government to make a particular set-aside (either individual or class set-aside). When the conclusion is reached that a set-aside should be dissolved, it must be accomplished in accordance with FAR 19.506 and considered only as a one-time dissolution if feasible.

(c) The determination to make a partial or total small business set-aside in connection with an individual procurement shall be noted in the contract file.

(d) Class set-aside determinations shall be documented substantially in the format set forth below and a copy shall be retained in the contract file covering the commodity or service involved.

Small Business Class Set-Aside Determination

In accordance with FAR 19.502–2, it is hereby determined that procurements by the (*name of contracting activity*) of the following commodities or services shall be set aside for small business concerns on a class basis. This determination shall be reviewed on (date), or, in any event, not later than 1 year after the above determination date. This determination does not apply to any individual procurement for which small purchase procedures are to be used and applies only to the contracting activity named above.

(List items or services)

The above format should be appropriately modified with respect to any class of procurements proposed to be partially set aside. It shall be signed by the contracting officer having procurement responsibility for the class of commodities or services involved and approved by the appropriate contracting director or his designee.

(e) Reviews of the proposed small business non-set-aside procurement shall be completed by reviewing offices within five workdays. If no response or objection is received within five workdays, the contracting officer may assume concurrence by the reviewing offices in the determination not to make a small business set-aside procurement.

(f) When the reviewing officials mentioned above can provide additional small business sources or if they have other information which might result in a set-aside procurement, the sources and/or information shall be furnished to the contracting officer within the prescribed time. In this connection, reviewing officials who furnish additional small business sources should be completely aware of the capability of these sources to produce the item to be procured. Additionally, the furnishing of these small business sources should be based on information (including firms' interest to bid) obtained through actual contact with them and not merely firms selected from general registers or listings. If time is of the essence, additional small business sources and other pertinent information may be given orally to the contracting officer. The contracting officer shall consider any suggestion received before making a final non-set-aside determination.

519.505 Rejecting set-aside recommendations.

(a) When the contracting officer determines that a procurement cannot be restricted for small business, the reasons for this determination shall be recorded on GSA Form 2689, Procurement Not Set-Aside, and submitted for review. When small purchases (under $10,000) are not set-aside for small business, the contracting officer need only document the file.

(b) Responsibility for these reviews shall be as follows:

(1) When deciding not to have a set-aside, the contracting officer shall notify the appropriate GSA Regional Director of Business Service Centers or, in Central Office procurements, the Office of Small and Disadvantaged Business Utilization (AU). These officials are responsible for any coordination with the Small Business Administration (SBA).

(2) If the SBA representative does not agree to a proposed non-set-aside action, the procedures set forth in FAR 19.505 shall be followed.

(c) If there is a disagreement between the GSA reviewing official and the contracting officer concerning the initiation of a small business set aside, the disagreement shall be referred to the head of the contracting activity, as defined in FAR Subpart 2.1.

(d) In the event the disagreement is not resolved, the following procedures shall be followed:

(1) In no circumstances will procurement actions be initiated until small business set-aside disagreements have been formally resolved by the appropriate officials in accordance with this regulation.

(2) In any procurement where a set-aside is not considered feasible, the reasons for not making a set-aside shall be summarized in the contract file. In addition, if the Central Office reviewing official or the Regional Director, Business Service Center has recommended a set-aside for that procurement action, he/she shall be

furnished a copy of the summary of the reasons for not making a set-aside. In other cases, the contract files containing the reasons for not making a set-aside shall be made available for review by the Central Office reviewing official or the Regional Director, Business Service Center or his designee, on an on-site basis.

(3) In any case where the Central Office reviewing official or the Regional Director, Business Service Center disagrees with a contracting activity's determination not to make a small business set-aside on a proposed procurement, or in any case where the Central Office reviewing officials or the Regional Director, Business Service Center develops information which indicates that a small business set-aside should be made on a scheduled procurement action, he will promptly so notify the contracting officer.

519.506 Withdrawing or modifying set-asides.

(a) The determination not to make a set-aside shall not be changed (except when there is an appeal by the Small Business Administration) once the solicitation is issued even if information subsequently available discloses a basis for setting aside an unrestricted procurement, unless the contracting officer determines in writing that to do so will not unduly delay the procurement process.

(b) A set-aside must be dissolved in accordance with FAR 19.506. Depending upon the procurement, a resolicitation may be required.

(c) In accordance with the provisions of FAR 19.506, the notice shall:

(1) Describe the procurement and the fact that it has been changed to an unrestricted procurement; and

(2) Establish a new date for submission of bids/offers, if necessary.

(d) The contracting officer may remove a set-aside under circumstances where:

(1) It becomes apparent that there will not be adequate competition with the small business community; or

(2) An amendment is issued which will increase materially the scope or extent of the procurement which would diminish participation by small business.

Subpart 519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

519.705–6 Postaward responsibilities of the contracting officer.

(a) In addition to the requirement in FAR 19.705–6, Contracting officers shall notify the Director of the GSA Business Service Center, in the region where a contractor will perform a contract, of each contract award (negotiated or advertised) which is $500,000 or more ($1 million or more for construction), amendment, or modification that contains a subcontracting plan. The notice shall contain a copy of the subcontracting plan as well as the following information:

(1) Contractor's name.

(2) Address.

(3) Place of performance.

(4) Dollar amount of contract award.

(5) Period of contract performance.

(6) Description of contract items (supplies or services).

(7) Contracting officer's name and address.

(b) The regional Director, of the GSA Business Service Center, shall retain the notice and the contractor's subcontracting plan.

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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522.1403 Waivers.
522.1406 Complaint procedures.

Authority: 40 U.S.C. 486(c).

Subpart 522.1—Basic Labor Policies

522.101 Labor relations.

522.101–1 General.

The contracting officer shall include the clause at FAR 52.222–1, Notice to the Government of Labor Disputes, in solicitations and contracts in all acquisitions involving items on the DOD Master Urgency List and in any other contract of a class or kind which the head of the contracting activity concerned determines to be appropriate

for the use of such a clause (see FAR 22.101–1(e)).

522.103 Overtime.

522.103–4 Approvals.

The head of the program office or his/her designee is the agency official responsible for approval of overtime.

Subpart 522.3—Contract Work Hours and Safety Standards Act

522.302 Computation of overtime and liquidated damages.

The provisions of 522.405–13 apply to all contracts covered by the Contract Work Hours and Safety Standards Act, including construction contracts.

522.303 Administration and enforcement.

The procedures and reports required in 552.405 in connection with the Contract Work Hours and Safety Standards Act apply to all contracts covered by that Act, including construction contracts.

Subpart 522.4—Labor Standards for Contracts Involving Construction

522.400 Scope of subpart.

This subpart sets forth the labor standards applicable to construction contracts, including the policies and procedures and the statutory basis for these standards.

522.401 Applicability.

The requirements of this Subpart 522.4 apply to construction contracts estimated to exceed $2,000 and, under some circumstances, to other types of contracts involving construction. For purposes of implementing the labor standards, the terms as defined in 29 CFR 5.2 shall govern.

522.401–1 Construction contracts.

(a) A contract is for construction if it is solely or predominantly for construction as defined in 29 CFR 5.2(j).

(1) These requirements are applicable only if the construction work is, or reasonably can be foreseen to be, performed at a particular site so that wage rates can be determined for the locality.

(2) These requirements do not apply to contracts solely for dismantling, demolition, or removal of improvements, though certain of the statutes mentioned herein may apply to such contracts as prescribed in FAR Subpart 37.3.

(3) These requirements apply to manufacture or fabrication of materials and components on the site by a construction contractor or subcontractor under a contract otherwise subject to these requirements but do not apply to other manufacturing or furnishing of equipment, components, or other materials.

(4) These requirements do not apply to employees of railroads operating under collective bargaining agreements that are subject to the provisions of the Railway Labor Act.

(b) Under contracts for construction as described in 522.401–1(a), the requirements of this subpart apply only to work performed by mechanics and laborers at the site of the work as defined in 29 CFR 5.2.

(1) "Laborer" or "mechanic" are construed to include at least those workers whose duties are manual or physical in nature as distinguished from mental or managerial whether employed by a prime contractor or by a subcontractor of any tier. The term includes any workers who work with tools or equipment or perform the work of a trade, apprentices and trainees, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards. The term does not apply to employees whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541 are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties and do not meet the criteria of 29 CFR Part 541, are laborers and mechanics for the time so spent. Every person performing the duties of a laborer or mechanic is employed regardless of any contractual relationship alleged to exist between the contractor and such person.

(2) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and to other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site" because of proximity. For example, if a small office building is being erected, the "site of the work" will normally include no more than the building itself and its grounds and other land or structures "down the block" or "across the street" which the contractor or subcontractor uses in the course of his performance on the particular contract. In the case of larger contracts such as for a large building, an airport, or a dam, the "site of the work" is necessarily more extensive and includes the whole area in which the contract construction activity will take place. Fabrication plants "mobile factories," batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively or nearly so to performance on the contract and are so located in proximity to the actual construction location that it would be reasonable to include them. Once the limits of "site of the work" have been determined, the Secretary's wage rate decision is applicable only to those mechanics and laborers employed by a contractor or subcontractor within such limits (that is, upon the "site of the work"), including drivers who temporarily leave the "site" to transport materials and equipment used in the course of contract operations. Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work". Such permanent, previously etablished facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(3) Other terms (i.e., contract building, work, public building, public work, and wages) shall have the meaning as defined in 29 CFR 5.2.

522.401–2 Supply, service, maintenance, or other contracts involving construction.

(a) The requirements of this Subpart 522.4 do not ordinarily apply to supply, service, maintenance, research and development, or other nonconstruction contracts. However, contracts predominantly for nonconstruction work may also involve construction work. Construction items under such contracts are not exempted from the requirements of this subpart simply because the work is to be performed under a contract which also requires, for example, the furnishing of supplies. On the other hand, where construction work is to be performed in support of other work such as manufacturing and furnishing of supplies, the circumstances may be such that the construction work may be so merged with nonconstruction activity or may be so fragmented in terms of the locations or time spans in which it is to be performed that it cannot be

segregated as a separate contractual requirement for construction, alteration, or repair of a public building or public work. Generally, the requirements apply to and the appropriate clauses in 552.222–70 thru 552.222–82, must be included in, a prime contract if:

(1) The contract contains specific requirements for substantial amounts of construction work, or it is ascertainable at the contract date that a substantial amount of construction work will be necessary for the performance of the contract. The word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract; and

(2) Such construction work is physically or functionally separate from and, as a practical matter, is capable of being performed on a segregated basis from the other work required by the contract.

(b) The standard clauses will be applicable to the contract work only to the extent that such work is subject to the labor standards statutes involved. Under contracts requiring substantial amounts of segregable construction work, only such segregable construction will be covered.

(1) For example, the requirements do not apply to installation, maintenance, and alteration work incidental to furnishing supplies under a supply contract; however, if a substantial and segregable amount of construction, alteration, or repair work at the site is required, such as for installation of heavy generators and large refrigerator systems or for plant modification or rearrangement, the labor standards for construction contracts apply to the construction work at the site.

(2) Contracts for maintenance or service are not ordinarily subject to the requirements of this subpart. Maintenance includes the routine, recurring type of work necessary to keep a facility in such condition that it may be continuously used at an established capacity and efficiency for its intended purpose. However, if such maintenance or service contracts call for substantial and segregable items of construction, alteration, or repair, the labor standards provisions for construction contracts will be applicable to those items. All contracts in excess of $2,000 for painting of any public building or public work, whether performed in connection with the original construction or as regular maintenance, are subject to the labor standards provisions for construction contracts.

522.402 Statutory and regulatory requirements.

522.402–1 Davis-Bacon Act.

(a) The Davis-Bacon Act (Act of March 3, 1931, as amended (40 U.S.C. 276a–276a–7)) provides that certain contracts over $2,000 entered into by any executive agency for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States shall contain a clause (see 552.222–70) to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing wage rates determined by the Secretary of Labor.

(b) The wage rate determination applies only to those laborers and mechanics employed by a contractor or subscontractor within the limits of the site of the work. Wages include the basic hourly rate of pay, the rate of contribution irrevocably made by an employer pursuant to a fund, plan, or program, and the rate of costs to the employer which may be reasonably anticipated in providing certain bona fide fringe benefits.

(c) Laborers and mechanics employed at the site must be paid at least weekly and without deduction or subsequent rebate except as authorized by statute or regulation.

(d) Each worker must be assigned an authorized classification which accurately describes the duties performed in conformance with recognized practices in the construction industry and in the area. For example, if a laborer performs the work of a journeyman for any portion of the time employed on the contract, that person must be so classified and receive the wages of a journeyman for that part of the time engaged in work at journeyman level. Employees performing work in more than one capacity, such as three hours a day as a laborer and five hours a day as a carpenter must be classified accordingly and paid the applicable wage rate specified in the contract wage schedule for the specific work performed in each classification. If the contractor fails to show dual classification in such cases, payment shall be required at the higher rate for all hours worked.

(e) Violations of Davis-Bacon provisions may be grounds for termination of contract.

522.402–2 Copeland Act.

The Copeland ("Anti-kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force or otherwise, any person employed in the construction or repair of public buildings, public works, financed in whole or in part by the United States, to give up any part of the compensation to which the person is entitled under a contract of employment. The Copeland Act also requires compensated at not less than one and one-half times his basic rate of pay for each contractor and subcontractor to furnish weekly statements of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Act shall contain a clause (see 552.222–74) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

522.402–3 Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), requires that certain contracts contain a clause (see 552.222–71), specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 8 hours in any one calendar day or 40 hours in any workweek unless such laborer or mechanic is all hours worked in excess of 8 hours in any one calendar day or 40 hours in any workweek. The worker will be paid according to the calculation that represents the greater number of overtime hours. (See also FAR Subpart 22.3).

(b) In addition to the requirements under 522.402–3(a), the Act provides that no employer shall require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under construction safety and health standards promulgated by the Secretary of Labor. For violations of the excess hours provisions of the Act, the contractor is liable for restitution of unpaid wages to the employee and for the payment of liquidated damages to the Government at a rate of $10 per calendar day for each employee who was required or permitted to work overtime hours in violation of the Act. Violation of the safety and health standards provisions of the Act may be cause for termination of the contract. Conditions under which a contractor may be relieved of the assessment of liquidated damages, see 522.405–13. Procedures to be followed in withholding funds to cover underpayments to employees are prescribed in 522.405–9 and 522.405–10.

522.402–4 Department of Labor regulations.

Under the statutes referred to in this 522.402 and Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), the Secretary of Labor has issued regulations in Title 29, Subtitle A, Code of Federal Regulations as follows:

(a) Part 1 provides procedures for the predetermination of Davis-Bacon wage rates;

(b) Part 3, describes the Copeland Act requirements;

(c) Part 5, provides for the administration and enforcement of the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act;

(d) Part 6, provides rules of practice for administrative proceedings enforcing labor standards in construction and service contracts; and

(e) Part 7, describes the Department of Labor Wage Appeals Board procedures.

522.403 Contract clauses.

(a) Except as required by 522.403 (b) and (c), every construction contract in excess of $2,000 (or of such other amount as may be specifically indicated) for work within the United States shall include the following clauses:

Davis-Bacon Act (40 U.S.C. 276a–276a–7) clause at 552.222–70.

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327–333) clause at 552.222–71.

Apprentices and Trainees clause at 552.222–72.

Payrolls and Basic Records clause at 552.222–73.

Compliance with Copeland Act Requirements clause at 552.222–74.

Withholding clause at 552.222–75.

Subcontracts clause at 552.222–76.

Contract Termination; Debarment clause at 552.222–77.

Disputes Concerning Labor Standards clause at 552.222–78.

Compliance with Davis-Bacon and Related Act Requirements clause at 552.222–79.

Certification of Eligibility clause at 552.222–80.

Applicable Minimum Hourly Rates of Wages clause at 552.222–81.

(b) In construction contracts with State or political subdivisions, the clauses prescribed in 522.403(a) shall be inserted, but prefaced by the clause at 552.222–82.

(c) Every construction contract in excess of $2,000 for work outside the United States, but which is nevertheless subject to the Contract Work Hours and Safety Standards Act as set forth in FAR Subpart 22.3, shall include the Work Hours and Safety Standards Act Overtime Compensation clause at 552.222–71.

522.404 Wage determinations.

522.404–1 Types of wage determinations.

(a) A general wage determination is published in the **Federal Register** and is used by all Government agencies. It contains prevailing wage rates for the types of construction designated in the determination, and for use in contracts performed within a given geographical area. These general wage determinations contain no expiration date and remain current until modified, superseded, or canceled in the **Federal Register** by the Department of Labor. These determinations shall be used whenever possible. They are issued at the discretion of the Department of Labor upon agency request or on the initiative of the Department of Labor.

(b) A project wage determination, as the term is used herein and in 29 CFR Part 1, applies to both individual and installation determinations. A project wage determination is issued for use by the requesting Federal agency. It provides rates for work described in the determination that may be required by contract in a specific geographical area (usually an installation or county) during the life of the determination. This type of determination is used only when no general wage determination is in effect, and may be obtained when continuing construction activity is anticipated at an installation or within the particular geographical area. These wage determinations are generally effective for 180 calendar days.

522.404–2 Procedure for requesting determinations.

(a) *Requests for wage determinations.* A request for a general wage determination may be submitted to the Administrator, Wage and Hour Division, Department of Labor, if—

(1) The wage patterns for the particular type of construction are well settled in the area;

(2) No general wage determination published in the **Federal Register** is in effect for the particular type of construction in the area; and

(3) The agency anticipates a large volume of the particular type of construction in the area. The request shall include the information in paragraph (c) below.

(b) *Requests for installation type project wage determinations.* A contracting agency shall submit requests for installation wage determinations on Standard Form 308, Request for Determination and Response to Request, to the Department of Labor address at 522.404–2(c). The request shall include the information in 522.404–2(c) and the following:

(1) The incidence of use of the last previously issued installation determination, the total dollar amount of the contracts awarded thereunder, and an estimate of the use of any new determination during its 180-day life.

(2) A complete rationale for requiring an installation determination.

(3) The estimated cost of each project.

(4) The kinds of laborers and mechanics likely to be employed.

(c) *Requests for individual type project wage determinations.* Requests shall be submitted in accordance with agency procedures on a completed SF 308, to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Contract Wage Determinations, Washington, DC 20210. The request shall indicate only those craft classifications that are needed in the performance of the work. Classifications may be added if they cannot be fitted into classifications on the form, or if they are generally recognized in the area or in the construction industry. Requests shall include—

(1) The location of the project or installation, giving the distance in miles and the direction from the nearest point of reference;

(2) A sufficiently detailed description of the work to indicate the type of construction involved (i.e., building, heavy, highway, residential, or other type); and

(3) Any available pertinent wage payment information, unless the wage patterns in the area are clearly established.

(d) *Time of submission of requests.* Agencies shall submit requests for wage determinations to the Department of Labor at least 30 calendar days before they are required for use in advertising for bids or for entering into negotiations of the contract for which the determinations are sought.

(e) *Limitations.* Individual and installation wage determinations are effective for 180 calendar days from the date of the determination and are applicable only to contract awards made within that period. Individual wage determinations may not be applied to contracts other than the one for which they are issued.

(f) *Review of wage determination decisions.* Immediately upon receipt, the contracting agency shall examine the wage determination and inform the Department of Labor of any changes necessary or appropriate to correct errors. Private parties requesting changes should be advised to submit

their requests to the Department of Labor.

522.404–3 Wage Determinations in solicitations and contracts.

(a) *Rate schedule to be included in solicitations.* (1) In an area covered by a general wage determination, or an installation determination containing more than one rate schedule (i.e., building, heavy, highway, or other type of construction), the contracting officer shall include in the solicitation the rate schedule applicable to the particular type of construction involved.

(2) If there is more than one type of construction involved, the complete determination may be included in the solicitation. However, the contracting officer shall identify the rate schedules believed to be applicable to the particular type of construction involved.

(3) If there is doubt as to the applicability of various rate schedules to the type or types of construction involved, guidance should first be sought from the Administrator, Wage and Hour Division.

(b) *Formally advertised contracts.* (1) If it appears before bid opening that a wage determination may expire before award, or a determination actually does expire before bid opening, the contracting officer shall request a new determination. The contracting officer shall postpone the bid opening date, if necessary, to allow a reasonable time to obtain the determination, modify the solicitation to reflect the new determination, and permit bidders to amend their bids. Even if the new determination, does not change the wage rates and would not warrant amended bids, the contracting officer shall modify the solicitation to include the number and date of the new determination.

(2) When bids have been opened in a formally advertised contract and the wage determination will expire before award, the head of the agency or designee may submit a written request for an extension of the expiration date to the Administrator, Wage and Hour Division, Department of Labor. This action shall be taken only upon a written finding that an extension is in the public interest to prevent injustice, undue hardship, or serious impairment of the conduct of Government business. The Administrator may extend the period of effectiveness of the determination. If an extension is not requested, or if an extension is requested and denied, the contracting officer shall obtain a new wage determination. If the new determination changes the wage rates, the contracting officer shall cancel the solicitation and readvertise using the new wage rates.

(c) *Negotiated contracts.* (1) If it appears that a wage determination will expire before award, or the determination actually does expire before award, the contracting officer shall request a new wage determination. If the new determination makes a change in the wage rates, the contracting officer shall furnish the wage rate information specified in the new determination to all prospective offerors—

(i) To whom a solicitation has been sent, if the closing date for receipt of proposals has not yet occurred; or

(ii) That have submitted proposals if the closing date is past.

(2) All prospective offerors to whom wage rate information has been furnished shall be given a reasonable opportunity to amend their proposals.

(3) The contracting officer need not delay opening and reviewing proposals or discussing them with the offerors while a new determination is being obtained. The contracting officer shall request offerors to extend the period for acceptance of any proposal if that period expires or may expire while the contracting officer is waiting for a new wage determination.

(d) *Receipt of new determination before expiration of original determination.* When a new wage determination has been requested and received before award, but an award is made before the expiration date of the original determination, the new determination must be treated as a superseding decision in accordance with 522.404–4. However, the new determination shall expire on the expiration date stated on the new determination and not on the expiration date of the determination that it replaces.

(e) *Withdrawal or discovery of incorrect wage determination.* If the wage determination included in the bidding document or solicitation is found to be an incorrect wage determination or is withdrawn by the Department of Labor, the Department of Labor shall notify the contracting agency. Any written notification by the Department of Labor received prior to contact award shall become effective immediately without regard to 522.404–4 of this regulation.

(f) *Contracts awarded without required wage rate.* If a contract is inadvertently awarded without the required wage determination or modification, and the required determination either was not issued or was inapplicable or has expired or been rescinded, the contracting officer with the concurrence of his legal advisor shall submit a request to the Department of Labor for an advisory opinion setting forth the wage rate as of the date of award. Upon receipt of the opinion, the contracting officer shall issue a contract modification replacing or adding the determination data, effective retroactively to the date of award with an equitable adjustment in the contract price. See 29 CFR 1.6(f).

(g) *Formal advertising without a wage determination.* When a solicitation is issued before the wage determination is obtained, notice shall be included in the solicitation that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment. Under no circumstances may bids be opened until a reasonable time after the wage determination has been furnished to all bidders.

522.404–4 Modifications of wage determinations.

(a) The Secretary of Labor may modify a wage determination by issuing a "letter of inadvertence" to correct a clerical error in the determination, a "notice of modification" which specifies changes in the determination, or a "supersedeas decision," which is a reissuance of the entire determination with changes incorporated. All these modifications expire on the same day as the original determination. Since the need for inclusion of a modification (other than letter of inadvertence) in a solicitation is determined by the time of receipt by the contracting agency concerned, all modifications shall be time-date stamped immediately upon receipt by the agency. Letters of inadvertence are applicable retroactively to the date of award regardless of when they are issued or received by the contracting officer. The need for inclusion of a modification of a general wage determination in a solicitation is determined by the publication date in the **Federal Register**.

(b) A modification to an individual or installation determination received by the contracting officer concerned 10 calendar days or more before bid opening, or a modification to a general determination published in the **Federal Register** 10 calendar days or more before bid opening, shall be processed as follows:

(1) Formally advertised contracts.

(i) If the modification reaches the contracting officer before bid opening, the contracting officer shall issue an amendment to the solicitation and, if necessary, extend the date of bid opening.

(ii) If the modification reaches the contracting officer after bid opening, but before award, and the modification increases any included wage rates and the lowest responsible, responsive bidder agrees in writing to the increase without a change in the bid price, the contracting officer shall award the contract and incorporate the modification;

(2) *Negotiated contracts.* If the modification reaches the contracting officer before award, the contracting officer shall notify the prospective contractors and allow them sufficient time to adjust their offers accordingly.

(c) A modification that affects wage rates included in a solicitation and is received by the contracting agency (or in the case of a general determination, is printed in the **Federal Register**) less than 10 days before bid opening in the case of formally advertised contracts need be included in the solicitation only if the contracting officer finds that there is reasonable time to notify all potential offerors of the modifications. If the contracting officer finds that there is not reasonable time to notify potential offerors, those modifications may be disregarded. The contracting officer shall include in the contract file a written statement why a modification, if any, was not incorporated in the solicitation. A copy of the statement shall be furnished to the Department of Labor upon request.

(d) If the contract has not been awarded within 90 calendar days after bid opening, any modifications to the wage determinations published in the **Federal Register** prior to award shall be effective with respect to that contract except when an extension from the 90 day period has been obtained from DOL. If a situation arises where award cannot be made within 90 calendar days after bid opening, the agency Labor Relations Advisor or Legal Counsel should be contacted for guidance or assistance in obtaining an extension to the 90 day requirement.

Note.—If an extension is deemed necessary, the Contracting Officer shall not incorporate modifications to the general wage determination published subsequent to the bid opening without obtaining legal review and concurrence.

522.404–5 Wage determination appeals.

The Secretary of Labor has established a Wage Appeals Board. The Board, among other things, decides appeals concerning questions of law and fact arising from decisions regarding wage determinations issued under the Davis-Bacon Act and related minimum wage statutes. Each contracting agency may file a petition for review of, or for intervention in, any matter that appears appropriate for the Board's action, under the procedures in 29 CFR Part 7 and pertinent agency procedures.

522.405 Administration and enforcement.

522.405–1 Policy.

(a) *General.* Contracting agencies are responsible for assuring the full and impartial enforcement of the labor standards in the administration of construction contracts. To enforce this policy, contracting agencies shall maintain a continuing effective program that shall include—

(1) Ensuring that contractors and subcontractors are informed, prior to commencement of work, of the obligations under the labor standards clauses of the contract (see GSA Form 618–A, Form Letter for Informing Contractor of Labor Standard Provisions);

(2) Adequate payroll reviews, on-site inspections, and employee interviews to determine compliance by the contractor and subcontractors and prompt initiation of corrective action when required;

(3) Prompt investigation and disposition of complaints, (see GSA Form 3017, Labor Standards Interview); and

(4) Prompt submission of all reports required by this subpart.

(b) *Responsibility.* The contracting officer shall inform the contractor of the labor standards clauses of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter or arrange a conference with the contractor promptly after award of the contract. The contracting officer may use the GSA Form 618–A, for this purpose.

552.405–2 Wages, fringe benefits, and overtime.

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the requirements of 29 CFR Part 3.

(2) Contributions, except those required by Federal, State, or local law, that the contractor makes irrevocably to a trustee or a third party under any bona fide fund, plan, or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity unemployment benefits, life insurance, disability and sickness insurance, accident insurance vacation and holiday pay, defraying costs of apprenticeship, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)(1) The contractor may satisfy the obligation under the clause at 562.222–70, Davis-Bacon Act, by providing wages consisting of any combination of contributions or costs as specified in 522.405–2(a), if the total cost of such combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination decision for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as exact cash amounts. In these cases, the interested parties shall determine the cash equivalent of the cost of those items when necessary to determine whether the wages provided by the contractor satisfy the requirements of the wage determination. If the interested parties cannot agree on the cash equivalent, the contracting officer under paragraph (d) of the clause at 552.222–70, Davis-Bacon Act, shall submit the question for final determination to the Department of Labor. The information submitted shall include—

(i) A comparison of the payments, contributions, or costs in the wage determination decision with those made or proposed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required overtime payments, the contractor shall use the basic rate of pay in the wage determination, or the rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic rate specified in the wage determination.

522.405–3 Additional classifications.

(a) If any laborer or mechanic is to be employed in a classification not listed in the wage determination applicable to the contract, the contractor shall submit to the contracting officer a request for authorization (GSA Form 2428), stating the proposed additional classification

and minimum wage rate inlcuding any fringe benefits payments.

(b) Upon receipt, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed under the classification requested cannot be performed by a classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates in the wage determination contained in the contract.

(c) If the conditions in 522.405–3(b) (1), (2), and (3) are met and no interested party objects to the proposed classification, the contracting officer shall approve the request subject to review by the Department of Labor. The contracting officer shall submit a copy to the Department of Labor who will approve, modify or disapprove every additional classification action within 30 days of receipt or will notify the contracting officer within the 30 day period that additional time is required.

(d) If the criteria are not met or the interested parties cannot agree on the request, the contracting officer shall submit the proposal including the views of all interested parties, other available pertinent information and the contracting officer's recommendation, to the Department of Labor for final determination. (29 CFR 5.5).

(e) Upon approval under paragraph (c) or (d) above, the contracting officer shall notify the contractor and instruct that the approved rate and classification be posted in accordance with 522.405–6(e) and the approved rate be paid to all workers in the affected classification from the first day on which work was performed in the classification.

522.405–4 Apprentices and trainees.

(a) A contractor, prior to using apprentices or trainees on the contract work, is required to have on file written evidence of registration of those employees in a program accepted by the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, or a State apprenticeship and training agency approved and recognized by BAT. The contractor also is required to have on file written evidence of the ratios of apprentices to journeymen, and trainees to journeymen, with the wage rates for apprentices and trainees including fringe benefits payments, specified in the contractor's or subcontractor's registered programs. The contracting officer should examine these files to determine ratios and rates and compare them with those approved in the BAT program to determine the contractor's compliance with the clause at 552.222–72, Apprentices and Trainees

(b) When a contractor has classified employees as apprentices or trainees without complying with the requirements in paragraph (a) above, the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

(c) Enforcement, including the investigation of complaints of violations, to ensure compliance with the requirements of the clause at 552.222–72, Apprentices and Trainees, shall primarily be the responsibility of the contracting agency awarding the contract.

552.405–5 Subcontracts.

In order to ensure that the requirements of the clause at 552.222–76, Subcontracts, have been met, the contractor is required to submit a fully executed Standard Form 1413, Statement and Acknowledgment, amended to include all clauses listed in the Subcontract clause and the Subcontractor Eligibility clause at 552.209–70 upon award of each subcontract.

552.405–6 Payrolls and statements.

(a) *Submission.* Within 7 calendar days after the regular payment date of the payroll week covered, the contractor is required to submit or cause to be submitted, for the contractor and each subcontractor, copies of weekly payrolls applicable to the contract and weekly payroll statements of compliance. The contractor may use the Department of Labor Form WH–347, Payroll (For Contractors Optional Use), or a similar form that provides the same data and identical representations.

(b) *Withholding for nonsubmission.* If the contractor fails to promptly submit copies of its or its subcontractors' payrolls, the contracting officer shall, from any payment due to the contractor, withhold approval of an amount that the contracting officer considers necessary to protect the interests of the Government and the employees of the contractor or any subcontractor. (See 29 CFR 5.5.)

(c) *Examination.* (1) The contracting officer shall examine the payrolls and statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to—

(i) The correctness of classifications and rates;

(ii) Fringe benefits payments;

(iii) Hours worked;

(iv) Deductions; and

(v) Disproportionate employment ratios of laborers, helpers, apprentices, or trainees, to journeymen.

(2) Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* The agency shall retain payrolls and statements for 3 years after completion of the contract and shall make them available when requested by the Department of Labor at any time during that period.

(e) *Posting wage determinations.* The contractor is required to keep a copy of the wage determination and any approved additional classifications posted at the site of the work in a prominent place where they can be easily seen by the workers. The contracting officer shall furnish to the contractor the Department of Labor Form WH–1321, Notice to Employees Working on Federal or Federally Financed Construction Projects, for posting with the wage rates. The name and address of the officer responsible for the administration of the contract shall be inserted in the poster to inform workers to whom they may submit complaints or raise questions concerning labor standards.

(f) *Statement when work is performed personally.* Prime contractors and subcontractors who personally perform work are required to submit, in lieu of weekly payrolls and statements of compliance with respect to payment of wages, a statement clearly showing (1) their contractual relationship, (2) the scope and dates of work performed, (3) that they received no wages, and (4) that no mechanics or laborers were employed in the prosecution of the work. GSA Form 618D, Statement to be Submitted When Work is Performed Personally, should be used to furnish this information.

552.405–7 Compliance checking.

(a) *Regular compliance checks.* The contracting officer administering the contract shall cause regular checks to be made to ensure compliance with the contract labor standards requirements. Compliance checking shall be made as frequently as necessary. Contracts of 6 months duration or less shall be investigated before final payment is made. Continuous and careful checking is essential to the success of the labor

standards enforcement program. Compliance checking includes the following activities:

(1) Employee interviews to determine correctness of classifications and rates of pay, including fringe benefits payments.

(2) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and correct.

(4) Comparison of the above information with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

(b) *Special compliance checks.* Situations that may require special compliance checks include—

(1) Inconsistencies, errors, or omissions detected during regular compliance checks; or

(2) Receipt of a complaint alleging violations. When the complaint is not specific enough, the complainant shall be so advised and invited to submit additional information. The disclosure of employee statements shall be protected and governed by the provision of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552(a)).

522.405–8 Investigations.

(a) *General.* Investigations shall be made when a special compliance check indicates either that a complaint has merit or that possible violations have occurred that are substantial in amount, willful, or not corrected. The investigation shall include all aspects of the contractors' compliance with labor standards requirements, and not be limited to a specific complaint, allegation, or possible violation disclosed during compliance checking. The investigation should be made by personnel familiar with labor laws and their application to contracts. When oral or written statements are taken from an employee during a regular or special investigation, they shall not be divulged to the individual's employer or to anyone other than authorized Government representatives working on the case, without the employee's written permission. In the absence of individual agency instructions, investigators are urged to use other guidelines provided by the investigation and enforcement instructions contained in memoranda issued by the Administrator, Wage and Hour Division, U.S. Department of Labor. Copies of those instructions may be obtained from the Administrator upon request.

(b) *Notification to the contractor.* (1) The contracting officer shall review the investigator's report and make preliminary findings regarding the contractor. Adverse findings that are not supported by other evidence shall not normally be based solely on employee statements that have not been authorized for disclosure by the employee. However, when investigation establishes a pattern of possible violations that are based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(2) Except in cases involving criminal violations under the Copeland (Antikickback) Act and the Contract Work Hours and Safety Standards Act, the contracting officer shall take the following actions upon completing the review:

(i) Provide written notice to the contractor concerning the preliminary findings, proposed corrective actions, and the contractor's right to request that the basis for the findings be made available and to submit written or oral rebuttal information within a reasonable period of time.

(ii) Request the contractor to make payment for restitution or liquidated damages determined by the contracting officer to be due, whether the violation is considered willful or nonwillful. If the request includes liquidated damages, it shall contain a written statement that the contractor may request relief from the assessment. Also see 552.405–13(b).

(3) If the contractor submits a rebuttal, the contracting officer shall reconsider the preliminary findings based on information brought out by the rebuttal and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings shall be considered to be final.

(4) Upon request from the contractor, the contracting officer shall make the basis for the findings available. However, under no circumstances will the contractor be permitted to examine the investigation report.

522.405–9 Requests for restitution of underpayments.

When a violation of the Davis-Bacon Act or the Contract Work Hours and Safety Standards Act appears to exist, the contracting officer shall request the contractor to make restitution to the employees and/or plans, funds, or programs for any type of benefits required by the applicable wage determinations.

522.405–10 Withholdings from contract payments.

(a) If the contractor or subcontractor fails or refuses to make restitution of all or any part of the wages due the employees, the contracting officer shall withhold from accrued payments due the contractor, an amount equal to the estimated wage underpayments, plus any estimated liquidated damages due under the Contract Work Hours and Safety Standards Act. In this regard the clause at 552.222–75, withholding, permits the contracting officer to withhold or cause to be withheld from the contractor under the current contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage (or Contract Work Hours and Safety Standards Act, as appropriate) requirements, which is held by the prime contractor, so much of the accrued payments or advances as may be considered necessary for payment of unpaid wages. The General Accounting Office encourages timely action to withhold funds for underpayments.

(b) If wage underpayments continue, or the failure or refusal to make restitution appears continuing or willful, or if the contractor fails or refuses to comply with any other contract, statutory or regulatory requirements, the contracting officer may suspend all contract payments to the contractor until the violations have ceased.

(c) If restitution has not been made prior to final payment under the contract, the contracting officer shall submit to the General Accounting Office, through the appropriate disbursing office: (1) The contractor's payment voucher or vouchers, (2) a Standard Form 1093, Schedule of Withholdings Under the Davis-Bacon Act, and/or the Contract Work Hours and Safety Standards Act, and (3) a statement of the amounts to be withheld for underpayment of wages and liquidated damages under the Contract Work Hours and Safety Standards Act. These amounts shall be disposed of in accordance with agency procedures.

522.405–11 Contract terminations.

If a contract is terminated for violation of the labor standards clauses, the contracting agency shall submit a report to the Administrator, Wage and Hour Division, Department of Labor, and the Comptroller General. The report shall include—

(a) The number of the terminated contract;

(b) The name and address of the terminated contractor or subcontractor;

(c) The name and address of the contractor or subcontractor who is to complete the work;

(d) The amount and number of the latter's contract; and

(e) A description of the work.

522.405–12 Cooperation with the Department of Labor.

(a) The contracting agency shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, the contracting agency shall furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(b) If a Department of Labor representative undertakes an investigation at a construction project, the contracting officer shall inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, or Copeland Act. Notwithstanding the Department of Labor's responsibility to investigate, the contracting officer has primary responsibility for enforcement of the Davis-Bacon Act, and Copeland Act, and the withholding of contract funds for the proper payment of laborers and mechanics under these Acts. In this regard, the contracting officer, upon a written request from an authorized representative of the Department of Labor, shall withhold the amount of accrued contract funds which are considered necessary for the payment of unpaid wages.

522.405–13 Overtime and liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) Under the Contract Work Hours and Safety Standards Act, the contractor will be liable to affected employees for underpaid wages and liable to the United States for liquidated damages in the sum of $10 per calendar day for each laborer and mechanic who was not paid overtime wages as required by the Act.

(b) The Administrator of GSA has delegated to the Heads of Central Office Services the authority necessary to act as the head of the agency for purposes of carrying out the requirements contained in 40 U.S.C. 330(c), Contract Work Hours and Safety Standards Act (CWHSS). (See Delegations of authority (ADM 5450.85) dated February 19, 1982.)

(c) When the contracting officer administratively determines (not a "final decision") that the assessed liquidated damages are due under section 104(a) of the Contract Work Hours and Safety Standards Act, the following procedures should be followed.

(1) The contracting officer shall advise the contractor of the assessment and/or withholding of liquidated damages as well as the contractor's appeals rights.

(2) The contractor may appeal to the head of the agency within 60 calendar days.

(3) The head of the agency has the authority to review the appeal and issue either:

(i) A final order affirming the determination, which the contractor may appeal to the Claims Court within 60 calendar days from issuance; or

(ii) A recommendation to the Secretary of Labor that liquidated damages be adjusted or waived if it is found that the sum assessed is incorrect or that the violations were inadvertent, notwithstanding the exercise of due care by the contractor.

(d) When the contracting officer finds that the assessed liquidated damages due under section 104(a) of the Contract Work Hours and Safety Standards Act are incorrect, or that the contractor or subcontractor inadvertently violated the provisions of the Act notwithstanding the exercise of due care, the contracting officer shall recommend to the head of the agency to—

(1) Make an adjustment in, or release the contractor or subcontractor from, the liability for the liquidated damage if the amount is $500 or less; or

(2) Make a recommendation to the Secretary of Labor, as provided in 29 CFR 5.8, for adjustment or release when the amount of damage is in excess of $500.

522.405–14 Enforcement reports.

(a) *Semiannual reports.* A semiannual report on compliance with an enforcement of the construction labor standards provisions of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act is required from the contracting agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports shall be prepared as prescribed in the Department of Labor circular memoranda and submitted to the Department of Labor within 30 days of the end of the reporting period.

(b) Reports of violations. (1) No report is required if (i) the underpayments total less than $1000 and are nonwillful, (ii) restitution has been effected, and (iii) future compliance has been assured. However, if an investigation is expressly requested by the Department of Labor, the contracting agency shall submit a factual summary report as required in 29 CFR 5.7(a)(1).

(2) For all other underpayments, the contracting agency shall furnish to the Department of Labor, as soon as practicable, a detailed enforcement report as required in 29 CFR 5.7(a)(2).

(3) If there is substantial evidence that violations are willful and in breach of the provisions of 18 U.S.C. 1001 or other criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution and the Secretary of Labor shall be informed of the action.

522.405–15 Disposition of disputes arising out of construction contract labor standards enforcement.

(a) The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include—

(1) Misclassification of workers;

(2) Hours of work;

(3) Wage rates and payment;

(4) Withholding practices; and

(5) The applicability of the labor standards provisions under varying circumstances.

(b) For the most part, these differences are settled administratively at the project level by the contracting agency. If necessary, such differences may be settled with assistance from the Department of Labor, without reference to the Disputes clause of the construction contract.

(c) Those disagreements involving the meaning of classifications, wage rates contained in the wage determination of the Secretary of Labor, or the applicability of contract labor provisions, which cannot be settled administratively by the contracting agency shall be referred with sufficient support data to explain both sides of the dispute to the Secretary of Labor for an opinion, in accordance with 29 CFR 5.11. No final decision on these matters shall be made by the contracting officer until the Department of Labor renders its opinion.

(d) The opinion obtained from the Department of Labor shall be made a part of the contract file and shall be applied—

(1) In the investigation of the case; and

(2) In the computation of wage underpayments.

(e) The contractor shall be furnished a copy of the opinion and advised that any appeal should be to the Wage Appeals Board of the Department of Labor as provided in 29 CFR Part 7.

522.405–16 Debarment.

The procedures for debarment in connection with the labor standards are prescribed in 29 CFR 5.12. All recommendations or referrals for debarment associated with the labor standards shall be sent to the debarring official, Assistant Administrator for Acquisition Policy, for consideration and submission to the Department of Labor. The recommendation and referrals should include the items listed in 509.406–3(a).

Subpart 522.6—Walsh-Healey Public Contracts Act

522.608 Procedures.

522.608–2 Determination of eligibility.

The contracting officer shall submit an ineligibility determination under FAR 22.608–2(f) to the Department of Labor through the contracting director.

522.608–3 Protest against eligibility.

The contracting officer shall submit any determination under FAR 22.608–3(b) to the Department of Labor or Small Business Administration through the contracting director.

522.608–4 Award pending final determination.

The certification required under FAR 22.608–4(a) must be approved by the head of the contracting activity.

522.608–6 Postaward.

Violations and complaints. Information concerning possible violations of the requirements of the Walsh-Healey Public Contracts Act can originate from complaints of injured parties, from officers or employees of the U.S. Government, or otherwise. Any such complaints coming to the attention of the contracting officer shall be considered, together with any other relevant information that is available, in coordination with the assigned legal counsel. Reports of violations shall be prepared and submitted to the Department of Labor, Employment Standards Administration, Wage and Hour Division.

Subpart 522.8—Equal Employment Opportunity

522.803 Responsibilities.

The contracting officer will submit any questions under FAR 22.803(d) to head of the contracting activity for resolution.

522.804 Affirmative action programs.

522.804–1 Nonconstruction.

In addition to the requirements of FAR 22.804, each contractor and subcontractor who serves as a depository of Government funds in any amount; or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, shall develop a written affirmative action compliance program for each of its establishments within 120 days from the start of its first such Government contract or subcontract.

522.804–70 Reports and other required information.

Nonexempt contractors shall submit information reports in accordance with the Equal Opportunity clause on Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1, to the Joint Reporting Committee with an information copy to the contracting officer within 30 days after award of a contract unless a report has been submitted within the 12 months preceding the award date. Subsequent reports shall be submitted annually on or before March 31 (see 41 CFR 60–1.7). If additional information is required regarding the submission of the EEO–1 report, contact the Office of Federal Contract Compliance Programs (OFCCP) regional office.

522.804–71 Furnishing information to contractors.

Contracting officers, when mailing contract documents to contractors who are subject to the Equal Opportunity clause, shall include appropriate information explaining the contract requirements concerning submission of Employer Information Report forms, notices to labor unions or other organizations of workers, and use of required posters (see FAR 22.805).

522.805 Procedures.

Requests for preaward reviews under FAR 22.805(a)(5) shall be made by the contracting officer directly to the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor for the region in which the contract is to be performed.

522.807 Exemptions.

Requests for exemption from use of the Equal Opportunity clause for specific contracts or categories of contracts shall be submitted with a complete written justification through the head of the contracting activity to the appropriate regional office of the OFCCP.

Subpart 522.10—Service Contract Act of 1965

522.1003 Applicability.

Requests for determinations regarding the applicability of the Service Contract Act and requests for exemptions from the Act pursuant to FAR 22.1003(e) shall be submitted to the Wage and Hour Administrator by the head of the contracting activity.

522.1006 Clauses for contracts over $2,500.

The contracting officer shall insert one of the clauses at 552.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Option and Multiyear Contracts), in solicitations and contracts for building services when the contract is expected to be a fixed price service contract containing the clause at FAR 52.222–41, Service Contract Act of 1965, and is a multiyear contract or is a contract with options to renew. The clauses at 552.222–43 shall be used in building service contracts in lieu of the clauses at FAR 52.222–43 except when the contract is negotiated based on certified cost and pricing data.

522.1007 Notice of intention to make a service contract.

Requests to expedite wage determinations under FAR 22.1007(e) may be made by the contracting officer directly to the Wage and Hour Administrator.

522.1008 Wage determinations and collective bargaining agreements.

For the purposes of this subpart, the agency labor advisor will be legal counsel.

522.1011 Hearings.

Requests for hearings under FAR 22.1011, will be made by the contracting officer through the head of the contracting activity to the Administrator, Wage and Hour Division, Employment Standard Administration, U.S. Department of Labor, Washington, DC 20210. All such requests shall be coordinated with the appropriate legal counsel.

Subpart 522.13—Special Disabled and Vietnam Era Veterans

522.1303 Waivers.

Requests for the waiver provided for in FAR 22.1303 will be proposed by the contracting officer and submitted through the head of the contracting activity to the Administrator for concurrence. After concurrence the

waiver will be submitted to the Director of OFCCP for approval.

522.1306 Complaint procedures.

Within GSA complaints as to the administration of the Act will be forwarded by the contracting officer directly to the Veteran's Employment Service.

Subpart 522.14—Employment of the Handicapped

522.1403 Waivers.

Requests for the waiver provided for in FAR 22.1403 will be proposed by the contracting officer and submitted through the head of the contracting activity to the Administrator for concurrence. After concurrence the waiver will be submitted to the Director of OFCCP for approval.

522.1406 Complaint procedures.

Complaints as to the administration of the Act will be forwarded by the contracting officer directly to the Director, OFCCP.

PART 523—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

523.303 Contract clause.
523.370 Solicitation provision.

Authority: 40 U.S.C. 486(c).

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

523.303 Contract clause.

The contracting officer shall insert the clause at 552.223–70, Hazardous Substances, in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

523.370 Solicitation provision.

The contracting office shall insert the provision at 552.223–71, Hazardous Material Information, in solicitations including small purchases, which involve the shipment of hazardous materials on an f.o.b. origin basis.

PART 524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 524.1—Protection of Individual Privacy

524.103 Procedures.

Subpart 524.2—Freedom of Information Act

524.202 Policy.

Authority: 40 U.S.C. 486(c).

Subpart 524.1—Protection of Individual Privacy

524.103 Procedures.

The GSA regulations applicable to FAR 24.103 are in 41 CFR 105–64 and the GSA Privacy Act Program (OAD P 1878.8). Refer to these regulations when contracting for the design, development, or operation of a system of records on individuals.

Subpart 524.2—Freedom of Information Act

524.202 Policy.

See 41 CFR 105–60 and the Freedom of Information Act (ADM 1035.11), procedures, for requirements related to making records available under the Freedom of Information Act covered in FAR 24.202.

PART 525—FOREIGN ACQUISITION

Subpart 525.1—Buy American Act—Supplies

525.105 Evaluating offers.
525.105–70 Evaluating offers—Hand and measuring tools for other than the Department of Defense.
525.105–71 Procurement of hand and measuring tools for the Department of Defense.
525.105–72 Procurement of stainless steel flatware for the Department of Defense.
525.108 Excepted articles, materials, and supplies.
525.108–70 Determination of nonavailability.

Subpart 525.3—Balance of Payments Program

525.302–70 Procurements for the Agency for International Development (AID).
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525.370 Exceptions.
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525.401 Definitions.
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525.402–71 Delegation of limited waiver authority.
525.407 Solicitation provisions and contract clauses.

Authority: 40 U.S.C. 486(c).

Subpart 525.1—Buy American Act—Supplies

525.105 Evaluating offers.

(a) Proposed awards requiring the approval of the head of the agency, pursuant to FAR 25.105, shall be submitted to the head of the contracting activity or his/her designee together with a statement of facts containing the following information:

(1) Description of the item(s), including unit and quantity.

(2) Estimated cost.

(3) Statement as to whether duty is included in the estimated cost and, if not, the reasons for exclusion.

(4) Transportation costs for delivery to destination if the item is to be procured f.o.b. origin.

(5) Country of origin.

(6) Name and address of proposed contractor(s), if available.

(7) Brief statement as to necessity for procurement.

(8) Reasons why an award to a small business concern or labor surplus area concern would not be unreasonable as to cost or inconsistent with the public interest, when an award for more than $250,000 to a domestic concern would be made if the 12 percent factor is applied, but would not be made if the 6 percent factor is applied.

(9) Reasons for recommending rejection of an acceptable low foreign bid to protect essential national security interests, or rejection of any bid or proposal for other reasons of national interest, when the Trade Agreements Act of 1979 is not applicable.

(b) With the exception of circumstances described in (a)(8), before rejection of offered prices under paragraph (a) of this section, for reasons of the national interest not described or referred to in Executive Order 10582, as amended, the head of the contracting activity or his/her designee shall obtain advice from the Director, Federal Emergency Management Agency, and apprise the Executive Office of the President, Office of Management and Budget, of the facts in the matter.

525.105–70 Evaluating offers—Hand and measuring tools for other than the Department of Defense.

(a) *Definition.* "Hand and measuring tools" are Groups 51 and 52, in Cataloging Handbook H2–1, Federal Supply Classification, Part I, Groups and Classes, published by the Defense Logistics Agency, Defense Logistics Services Center, Battle Creek, Michigan.

(b) *Solicitation provision.* The contracting officer shall insert the clause in 552.225–70, Buy America Act, Hand and Measuring Tools, in solicitations and contracts for the acquisition of hand and measuring tools for other than the Department of Defense requirements..

(c) *GSA Appropriation Act restrictions.* Joint Resolution, H.J. 413, makes GSA appropriations subject to H.R. 4139 as passed by the House of Representatives on October 27, 1983. Section 506 of H.R. 4139 continues the Congressional policy contained in previous GSA Appropriations Acts that requires GSA purchases of hand and

measuring tools be from domestic sources or be made in accordance with procedures prescribed by 32 CFR 6–104.4(b) of the Armed Services Procurement Regulation (now the Defense Acquisition Regulation) as such regulation existed on June 15, 1970, and further provides that a factor of 75 percent in lieu of 50 percent shall be used for evaluating foreign source end products in 32 CFR 6–104.4(b)

(d) *Offer evaluation procedures.* Offers and proposals for hand and measuring tools shall be evaluated in accordance with the following procedures which are adaptations of DAR 32 CFR 6–104.4(b)

(1) Offers shall be evaluated to give preference to domestic bids. Offers offering end products manufactured in Canada shall be evaluated on the same basis as bids offering domestic end products after applicable duty is included for evaluation purposes, whether or not a duty free entry certificate is issued.

(2) Each foreign offer shall be adjusted for purposes of evaluation by either (i) excluding the duty from the foreign offer and adding 75 percent of the offer (exclusive of duty) to the remainder, or (ii) by adding to the foreign offer (inclusive of duty) a factor of 6 percent of that offer, whichever results in the greater evaluated price.

(3) A 12 percent factor shall be used instead of the 6 percent factor, if (i) the firm submitting the low acceptable domestic offer is a small business or a labor surplus area concern, or both, and (ii) any contract award to a domestic concern if the 12 percent factor is applied, but would not be made if the 6 percent or 75 percent factor is applied, the matter shall be submitted to the head of the contracting activity for a decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest.

(4) If the foregoing results in a tie between a foreign offer as evaluated and a domestic offer, award shall be made on the domestic offer. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to a specific group of items if the solicitation specifically designates that award may be made on a specific group of items.

525.105–71 Procurement of hand and measuring tools for the Department of Defense.

(a) *DOD Appropriations Act restrictions.* Congressional policy, as expressed in the current DOD Appropriations Act, prohibits DOD from acquiring foreign hand and measuring tools.

(b) *Solicitation provision.* The contracting officer shall insert the clause at 552.225–71, Notice of Procurement Restriction—Hand or Measuring Tools, in solicitations and contracts for the acquisition of hand or measuring tools for the Department of Defense.

525.105–72 Procurement of stainless steel flatware for the Department of Defense.

(a) *DOD Appropriations Act restrictions.* Congressional policy, as expressed in the current DOD Appropriations Act, prohibits DOD from acquiring foreign stainless steel flatware.

(b) Since the following stock items are issued almost exclusively to DOD, only domestic source end products of these stainless steel flatware items shall be procured. Also, nonstock items of stainless steel flatware purchased for DOD shall be domestic source end products.

7340–00–080–6057	7340–00–241–8171
7340–00–205–3340	7340–00–559–8357
7340–00–205–3341	7340–00–688–1055
7340–00–241–8169	7340–00–721–6316
7340–00–241–8170	7340–00–721–6971

(c) *Solicitation provision.* The contracting officer shall insert the clause in 552.225–72, Offers Must Be For Domestic Source End Products, in solicitations and contracts for the acquisition of stainless steel flatware for the Department of Defense.

525.108 Excepted articles, materials, and supplies.

525.108–70 Determination of nonavailability.

(a) Requests for determinations concerning nonavailability of domestic supplies (see FAR 25.108) shall be submitted to the head of the contracting activity or his/her designee with an appropriate statement of facts and a proposed determination. The statement of facts shall include the following information:

(1) Description of the item(s), including unit and quantity;

(2) Estimated cost, including duty, if any (show the amount of duty separately);

(3) Transportation costs for delivery to destination, if item is to be procured f.o.b. origin;

(4) Country of origin;

(5) Name and address of prospective contractor(s), if available;

(6) Brief statement as to the necessity for the procurement; and

(7) Statement of effort made to procure a similar item of domestic origin or statement that there is no domestic item which can be used as a reasonable substitute.

(b) Findings and determination of nonavailability shall normally be prepared in the format shown below:

General Services Administration

Reference No.——

Findings and Determination of Nonavailability Under the Buy American Act Regarding Purchase of (insert description)

Pursuant to the provisions of the Buy American Act (41 U.S.C. 10a–d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), and by virtue of delegated authority the following findings of fact and determination are hereby made:

1. Finding (set forth a statement of facts).

2. Determination. In view of the foregoing, it is hereby determined that for the purposes of the Buy American Act (insert item description) is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Date ——————————

Signed ——————— ——————————

(End of Findings and Determination).

(c) When it has been determined that the Buy American Act is not applicable to the purchase of the end product, or to the components from which it is manufactured, the original of the determination shall be made a part of the contract file. In addition, a statement substantially as set forth at 552.225–73 shall be inserted in the applicable solicitation and contract.

Subpart 525.3—Balance of Payments Program

525.302–70 Procurements for the Agency for International Developemnt (AID).

When a contracting activity enters into contracts as the contracting agent for the Agency for International Development (AID), including contracts under the Commercial Import Program (CIP), such contracts (except those involving administrative purchases) are not governed by the policies and procedures in FAR Subpart 25.3 and Subpart 525.3 of this chapter, but shall be governed by AID policies and procedures.

525.304 Excess and near-excess foreign currencies.

When a contracting activity procures articles or services for use outside the United States for another agency it will be assumed (unless a specific notation is made on the purchase request) that use of excess or near excess foreign currencies has been considered by the requisitioning agency and that such currencies are not available.

525.370 Exceptions.

When the contracting officer has knowledge that the domestic cost of an end product or service exceeds the foreign cost by more than 50 percent of the foreign cost pursuant to the procedures in FAR 25.303, the matter shall be submitted to the head of the contracting activity or his/her designee for a determination to procure the domestic product or service. This procedure shall be followed for all Balance of Payments Program procurements over $10,000.

525.371 Restricted solicitation.

(a) Estimates of comparative delivered prices of end products or services of domestic origin versus foreign origin normally will not be made by the contracting activities. Such cost estimates will have been made by the requisitioning offices prior to the submission of purchase requests. Specific written evidence from the requisitioning office concerning such estimates is not required. Accordingly, procurements made directly for other agencies of items to be used outside the United States shall be made under the Balance of Payments Program, except for AID (including Commercial Import Program) items.

(b) Prior to procuring any item for GSA use outside the United States. cost estimates shall be made before restricting to U.S. end products or services.

Subpart 525.4—Purchases Under the Trade Agreements Act of 1979

525.401 Definitions.

"Product," means a stock number or other method of identification such as National Stock Number (NSN), a non-NSN, part number or Special Item Number (SIN) that identifies a line item in a solicitation. Where two or more line items in a solicitation have identical stock numbers or other identification, such line items shall be deemed to constitute a single "product" for purposes of determining the applicability of the Trade Agreements Act.

525.402 Policy.

525.402-70 Application of dollar threshold.

(a) Where two or more line items in a solicitation have identical stock numbers or other identification, constituting a single product, the dollar threshold specified by the U.S. Trade Representative is applicable to the total of all line items for the single product.

(b) When General Services Administration multiple award schedule contracts are involved, the dollar threshold specified by the U.S. Trade Representative, is applicable to the total estimated dollar value of all orders placed under contracts for eligible products under a Special Item Number during the contract period, not the dollar value of individual products on a purchase/delivery order placed against the schedule contract. Therefore, when schedules are published, they must indicate the Special Item Numbers subject to the Buy American Act, the Balance of Payments evaluation procedures, and the requirements of the Trade Agreements Act.

525.402-71 Delegation of limited waiver authority.

(a) Section 302 (a)(1) of the Act restricts the purchase of eligible products to those originating in the United States or a designated country absent a waiver by the U.S. Trade Representative. The U.S. Trade Representative has authorized the Administrator of General Services to waive, under specified circumstances and on a case-by-case basis, the purchasing prohibition provided in Section 302(a)(1) of the Trade Agreements Act of 1979 (the Act).

(b) The Administrator of General Services has authorized the heads of contracting activities, as defined by 501.206, to grant such waivers in cases where:

(1) In response to a solicitation, there are no responsive bids or acceptable offers received from responsible offerors of products from the U.S. or countries designated by section 302(b)(2) of the Act, or

(2) Offerors of products from the U.S. or such designated countries do not offer a sufficient quantity of the product being sought to meet the Government's requirements as specified in the solicitation.

(c) When the head of the contracting activity grants such a waiver, a copy of the waiver will be furnished to the Assistant Administrator for Acquisition Policy for subsequent transmittal to the U.S. Trade Representative.

525.407 Solicitation provisions and contract clauses.

The contracting officer shall insert the provision at 552.225-74, Eligible Products from Non-Designated Countries—Waiver, in all solicitations subject to the Trade Agreements Act. This clause shall be used in concert with the required clauses cited in FAR 25.407.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 527—PATENTS, DATA, AND COPYRIGHTS [RESERVED]

PART 528—BONDS AND INSURANCE

Subpart 528.1—Bonds

Sec.

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Authority: 40 U.S.C. 486(c).

Subpart 528.1—Bonds

528.101 Bid guarantee.

528.101-1 Policy on use.

(a) *Construction contracts.*

(1) Bid guarantees shall not be required for contracts awarded under section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)). Refer to FAR 19.809(b)(5) for guidance on bonding requirements applicable to contracts to be awarded under the section 8(a) program.

(2) Bid guarantees shall be required for construction contracts (except section 8(a) contracts) that do not exceed $25,000 when it is determined that a performance bond is essential to protect the Government as provided in 528.102-1.

(b) *Building service contracts.* Bid guarantees shall be required for building service contracts in excess of $25,000 when it is determined that a performance bond is essential to protect the interests of the Government as provided in FAR 28.103-2.

(c) *All other contracts.* Refer to FAR 28.101 for additional guidance on the use of bid guarantees.

528.101-3 Contract clause.

(a) The contracting officer shall insert a clause substantially the same as the clause at 552.228-70, Bid Guarantee and Bonds, in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and bid guarantee requirement is included.

(b) The contracting officer shall insert a clause substantially the same as the clause at 552.228-71, Bid Guarantee, in solicitations and contracts when a building service or other service contract is contemplated and a bid guarantee requirement is to be included.

528.101-70 Failure to provide bid guarantee.

Where a request for proposals requires support by a bid guarantee and an offeror does not comply, the proposal shall not be rejected because nonresponsiveness is not a criterion for negotiated procurements. During negotiations, deficiencies in a proposal in the competitive range, such as the failure to submit a bid guarantee, may be remedied by the offeror in a revised proposal. (See FAR Subpart 15.6.)

528.102 Performance and payment bonds for construction contracts.

528.102-1 General.

(a) The performance and payment bond requirements in FAR 28.102-1 are applicable to contracts awarded under section 8(a)(2) of the Small Business Act unless the bonding requirement has been waived by SBA under section 8(a)(2) of the Small Business Act as amended (15 U.S.C. 637(a)(2); see section 3 of Pub. L. 98-47 of July 13, 1983).

(b) Performance and/or payment bonds may be required on a case-by-case basis for construction contracts that do not exceed $25,000 if a written determination is made by the contracting officer, that such a requirement is in the best interest of the Government. Such determinations must be approved at a level above the contracting officer.

(c) Furnishing performance and payment bonds shall be required in the solicitation, as prescribed in 528.102-3.

528.102-3 Solicitation requirements.

The contracting officer shall insert a clause substantially the same as the clause at 552.228-70, Bid Guarantee and Bonds, in solicitations and contracts when a performance and payment is included.

528.103 Performance and payment bonds for other than construction contracts.

528.103-2 Performance bonds.

(a) Performance bonds may be required on a case-by-case basis for building service contracts in excess of $25,000, if a written determination is made by the contracting officer, that it is essential to the best interest of the Government. Such determinations must be approved at a level above the contracting officer.

(b) Performance bonds shall not be required for building service contracts awarded under section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)), or contracts awarded to workshops for the blind or other severely handicapped under the Wagner O'Day Act, as amended (41 U.S.C. 46-48c).

(c) The penal amount of the performance bond generally shall be 10 to 50 percent of the contract price for the term of the contract at the time of the award. The contracting officer shall consider the circumstances and determine the amount of the performance bond on a case-by-case basis.

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.228-72, Performance Bond, in solicitations and contracts when a performance bond requirement is included.

528.103-3 Payment bonds.

(a) Payment bonds may be required for other than construction contracts when the head of the contracting activity determines, in accordance with FAR 28.103-3, that such a requirement is in the best interest of the Government.

(b) The penal amount of the payment bond generally shall be 10 to 50 percent of the contract price for the term of the contract at the time of award. The contracting officer shall consider the circumstances and determine the amount of the payment bond on a case-by-case basis.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.228-73, Performance and Payment Bonds, in solicitations and contracts when a performance and payment bond requirement is included.

528.106 Administration.

528.106-70 Execution and administration of bonds.

(a) Bid guarantees, other than corporate or individual sureties, shall be returned to unsuccessful offerors as soon as practicable after the opening of bids.

(b) A bid guarantee, other than corporate or individual sureties, submitted by a successful offeror shall be retained until the offeror has executed all contractual documents as may be required and has submitted as acceptable performance bond or performance and payment bonds, if required.

(c) When a performance or payment bond or acceptable alternate is not furnished within the period specified by the terms of the contract, the contract may be terminated for default. (See FAR Subpart 49.4.)

(d) A surety is legally liable in the event the contractor fails to fulfill contractual obligations. To avoid the possibility of releasing a surety from liability for a contractor's default, it is necessary to furnish the surety with a copy of any notice sent to the contractor in addition to the default letter. When the Government terminates a contract for default, it is entitled to recover the excess costs involved in having the work completed. The surety must be advised of the default; they may elect to fulfill their obligations by obtaining another contractor to perform the balance of the contract work or they may reimburse the Government for any excess costs the Government incurs.

(e) A performance or payment guarantee, other than corporate or individual sureties, shall be returned to the contractor upon completing the obligations for which the guarantee was submitted.

Subpart 528.2—Sureties

528.200 Scope of subpart.

This subpart supplements FAR Subpart 28.2, Sureties, and sets forth additional guidance on the requirements applicable to bonds furnished.

528.202 Acceptable sureties.

528.202-1 Corporate sureties.

(a) The current edition of Treasury Department Circular 570 shall be prominently displayed in bid opening rooms, in GSA Business Service Centers, and in all places where bid forms and information are regularly available. Copies should be made available to officials having a need to know.

(b) Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company. The corporate seal of the surety company should be affixed. Failure of the surety to affix the seal may be waived as a minor informality. (See B-184120, July 2, 1975, 75-2 CPD 9.) Copies of the powers

of attorney from the surety company authorizing the Attorney-in-Fact to excute bonds may be requested by the contracting officer.

(c) Where an invitation for bid requires a bid be supported by a bid guarantee and an unacceptable corporate surety is submitted in fulfillment of the requirement, the bid shall be rejected as nonresponsive. A bidder shall not be permitted to substitute an acceptable surety after bid opening. (See B–198687, May 23, 1980, 80–1 CPD 360.)

(d) A contractor submitting a performance or payment bond executed by an unacceptable corporate surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

528.202–2 Individual sureties.

(a) In addition to the requirements of FAR 28.202–2, the following criteria shall be considered when making determinations regarding the acceptability of individual sureties:

(1) If Standard Form 28, Affidavit of Individual Surety (SF 28) is not executed by each individual surety and submitted with the offer, the contracting officer must request a SF 28. The SF 28 shall be reviewed to ascertain the net worth of the proposed individual surety. (See Block 7, line g. of SF 28.) However, the contracting officer should consider all relevant information furnished by the surety on SF 28 and make an independent determination of the surety's net worth based upon the contracting officer's best judgment.

(2) The number and amount of other bonds for which the surety is committed and the status of the contracts with which the bonds were furnished must be considered. For example: The contracting officer may deduct the total amount of other bonds which the surety executed (Block 10 of SF 28) from the net worth figure entered in Block 7, line g, to arrive at a realistic net worth. Alternatively, the contracting officer may deduct nothing or only a portion of the amount entered in Block 10 based upon the degree of completion of the contracts on which the bonds were provided.

(b) If the contracting officer is unable to make a determination of net worth from the SF 28, the individual surety shall be required to furnish additional information. Generally, supplementary information shall not be required unless the SF 28 is incomplete or improperly filled out or unless the contracting officer has reason to believe the surety's statement on the SF 28 does not reflect the true net worth.

(c) If the contracting officer determines that either surety's net worth is not equal to the penal amount of the bond, the bid of the firm utilizing the sureties shall be rejected as non-responsible. A finding of bidder nonresponsibility pursuant to FAR 9.105–2, based on unacceptability of an individual surety need not be referred to the Small Business Administration for a competency review. (See 61 Comp. Gen. 456 (1982).)

(d) Under certain circumstances, such as when there is a record indicating a continuing pattern among certain individual sureties not to disclose outstanding bond obligations, the offeror's sureties may be rejected as unacceptable. (See 61 Comp. Gen. 592 (1982).)

(e) In a formally advertised procurement (including restricted advertising) an offeror submitting a bid guarantee executed by an unacceptable surety may not subsitute an acceptable individual surety after bid opening. This holds even though the surety's acceptability is a matter of bidder responsibility. (See 61 Comp. Gen. 456 (1982).) When a negotiated procurement is involved, such a deficiency may be remedied by the offeror in a revised proposal.

(f) Any individual surety executing a bond furnished GSA cannot have been excluded from acting as an individual surety by the Assistant Administrator for Acquisition Policy. (See 528.270.) Any bid submitted in response to an invitation for bid which is accompanied by a bid guarantee backed by an individual surety who has been excluded shall be rejected as nonresponsive. When a negotiated procurement is involved, such a deficiency may be remedied by the offeror in a revised proposal.

(g) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

528.202–70 Acceptability of bonds and sureties.

(a) Every bond furnished in connection with a procurement must be supported by corporate or individual sureties or by other acceptable security such as postal money orders, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Upon receipt of a required bond, the contracting officer shall ascertain the acceptability of the surety.

(b) When determining the acceptability of a bond, if there is a question of validity, the contracting officer shall seek the advice of legal counsel. The contracting officer shall check the current Treasury Department circular 570 to determine acceptability.

(c) When a contracting officer has verified the acceptability of the surety on a bond, he shall so certify by placing the words "Acceptability of Bond Verified," with his signature immediately thereunder, on the bond or on a properly identified attachment. The bond shall be retained with the original of the contract. The contracting officer shall notify the contractor that the bond(s) has been accepted.

(d) Any contracting officer who becomes aware of circumstances which may serve as the basis for exclusion of an individual from acting as an individual surety on bonds submitted by offerors on GSA procurements shall refer those circumstances to the Assistant Administrator for Acquisition Policy through appropriate channels for consideration of exclusion action. (See 528.270.) However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Assistant Inspector General for Investigations in the Central Office or to the appropriate regional Inspector General for Investigations; the Office of Inspector General may conduct an investigation and when appropriate report such apparent or suspected violations to the Assistant Administrator. Referrals for consideration of exclusion action as a minimum should include:

(1) The basis for exclusion (see 528.270(b));

(2) A statement of facts;

(3) Copies of supporting documentary evidence;

(4) The individual's name and current or last known home and/or business addresses including zip codes;

(5) A statement of GSA's history with such individuals, if any; and

(6) A statement concerning any known active or potential criminal investigations or court proceedings.

528.202–71 Assets pledged to support bonds.

(a) When bid guarantees, performance and/or payment bonds are required, the solicitation clauses at 552.228–70, 552.228–71, 552.228–72, and 552.228–73 may be expanded at the contracting officer's discretion to include the clause at 552.228–74, Pledges of Assets, requiring offerors to obtain pledges of

assets from individual sureties identified in their offers, e.g., a recordable Covenant Not To Encumber or Convey Real Estate and/or commercial or government securities placed in escrow accounts in accordance with 528.203.

(b) The following format or any document substantially the same, may be attached when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

Covenant Not To Encumber or Convey Real Estate

I/we covenant and agree that so long as I/we shall be obligated as an individual surety on solicitation/contract No. GS——— in the amount of $——— to the United States of America whether such obligation be incurred before or after the date hereof, and until this instrument is formally released. I/we shall not make, or cause to be made, any deed of trust, mortgage, conveyance or any other instrument or agreement having the effect of a lien upon or conveyance of the real estate now owned by me/us described as follows:

(Address)

In witness whereof, I/we have hereunto affixed my/our hand(s) and seal(s) this — day of ———.

Witness:

_____

_____

(Seal)

_____

(Seal)

_____

I, ———————, a Notary Public in and for the (State), do hereby certify that ———————, party to a certain Covenant and Agreement bearing date the — day of ——— 19—, and hereunto annexed, personally appeared before me the said ——————— being personally well known to me as the person(s) who executed the said Covenant and Agreement, and acknowledged the same to be his/her act and deed.

Given under my hand and seal this — day of ——— 19—.

_____

Notary Public, State

(c) When an offeror chooses to provide an individual surety who pledges real estate as described in 528.202–71(a), the contracting officer shall arrange for the recording of the covenant in a format as prescribed above in 528.202–71(b).

528.203 Options in lieu of sureties.

Security deposited in lieu of corporate or individual sureties on bonds shall be placed in the custody of a bonded collection officer immediately after they are received except that United States bonds or notes received in the District of Columbia shall be deposited with the Treasurer of the United States as provided in FAR 28.230–1. The contracting officer shall arrange for the return of such security, or its equivalent, to the contractor when he has fulfilled all of the obligations secured by the bond in connection with which the security was deposited.

528.270 Exclusion of individual sureties.

(a) The Assistant Administrator for Acquisition Policy may exclude an individual from acting as an individual surety on bonds submitted by offerors on GSA procurements. This exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill his/her obligation under a bond.

(2) Willful failure to disclose other bond obligations.

(3) Misrepresentation of available assets.

(4) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined by the Assistant Administrator to warrant exclusion.

(c) Exclusion of an individual shall continue until revoked by the Assistant Administrator. An exclusion shall only be revoked upon the submission of an application, supported by documentary evidence of changed circumstances or of the elimination of the causes for which the exclusion was imposed.

(d) Prior to excluding an individual, the Assistant Administrator shall furnish the individual with a written notice stating the exclusion is being considered, setting forth the reasons for the proposed exclusion, and indicating that the individual may submit, within 30 calendar days, information in writing to explain why the exclusion should not be imposed.

(e) If the individual fails to respond to the notice of proposed exclusion within 30 calendar days of receipt of the notice, the exclusion shall be imposed. If a response is provided, the Assistant Administrator shall consider the information and issue a final decision on the matter.

(f) The Assistant Administrator shall establish and maintain a system for distributing information regarding excluded individual sureties to GSA contracting activities.

Subpart 528.3—Insurance

528.301 General.

(a) The policy stated in FAR 28.301 is based on the theory that the quantity of the Government's transactions, together with the magnitude of its resources, makes it more advantageous to the Government to carry its own risks than to have them assumed by private insurers. Exceptions to this principle exist when Government property is not under the direct control and custody of the Government, or when other special circumstances are present as indicated in FAR 28.301 and 28.306. However, when a contractor is responsible for Government property, there is no objection to requiring or permitting the contractor to carry insurance against loss of, or damage to the property, provided the Government's interests in any payments under the policy are protected and the contractor does not pass on the cost of the insurance to the Government, except as provided in FAR 28.301, i.e., when it is required by law or when it is in the best interest of the Government, and the Government's interest in any payments under the policy is protected. The need for this coverage and the extent of protection required shall be based on the circumstances in each case.

(b) Insurance requirements shall be adequate, just, and reasonable, and will be predicated on potential loss or damage (not necessarily on the value of the contract). When it is determined that insurance coverage should be required, the solicitation and resultant contract shall contain the appropriate provision prescribed in FAR 28.309, 28.310, or 28.311. Determination as to type of insurance, amount, and any related insurance requirements shall be made jointly by the contracting officer and the appropriate credit and finance office after clearance by legal counsel. All premiums or costs incurred to comply with an insurance requirement shall be paid by the contractor.

(c) Insurance policies, or endorsements thereto, shall be submitted to the contracting officer for examination, approval, and servicing.

528.310 Contract clause for work on a Government installation.

(a) The contracting officer shall insert the clause at 552.228–75, Workmen's Compensation Laws, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation and the contract will require work to be performed on Government property.

(b) The contracting officer shall insert the clause at 552.228–76, Insurance, in solicitations and contracts when the clause prescribed in FAR 52.228–5 is included and the contract amount is expected to exceed the small purchase limitation.

PART 529—TAXES

Subpart 529.4—Contract Clauses

Sec.

529.401 Domestic contracts.
529.401–70 Small purchases.

Sec.
529.401–71 Multiple award schedule contracts.
529.401–72 Contracts usable by the D.C. Government.

Authority: 40 U.S.C. 486(c).

Subpart 529.4—Contract Clauses

529.401 Domestic contracts.

529.401–70 Small purchases.

The contracting officer shall insert the clause at 552.229–70, Federal, State, and local taxes in all small purchase contracts.

529.401–71 Multiple award schedule contracts.

The contracting officer shall insert the clause 552.229–71, State and Local Taxes, in all multiple award schedule solicitations and resultant contracts (including new item introductory schedules).

529.401–72 Contracts usable by the D.C. Government.

The contracting officer shall insert the clause at 552.229–72, Federal Excise Tax—D.C. Government, in all contracts which may involve the purchase of supplies by the District of Columbia Government.

PART 530—COST ACCOUNTING STANDARDS

Subpart 530.3—CAS Contract Requirements

530.304 Waiver.

(a) Within GSA the Assistant Administrator for Acquisition Policy will be the review authority for seeking waivers to the Cost Accounting Standards (CAS) clauses in FAR 30.304(b).

(b) The approving authority for non-defense contracts in FAR 30.304(c) will be the Assistant Administrator for Acquisition Policy.

(40 U.S.C. 486(c))

PART 531—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 531.1—Applicability

531.101 Objectives.

The Administrator has designated the Assistant Administrator for Acquisition Policy as the approval authority for deviations concerning cost principles, deviations will be considered on a case-by-case basis.

(40 U.S.C. 486(c))

PART 532—CONTRACT FINANCING

Subpart 532.1—General

Sec.
532.111 Contract clauses.

Subpart 532.4—Advance Payments

532.402 General.
532.407 Interest.
532.409 Contracting officer action.

Subpart 532.5—Progress Payments Based on Costs

532.501–2 Unusual progress payments.
532.501–70 Use of benchmarks with progress payments based on costs.
532.502–2 Contract Finance Office clearance.
532.502–3 Solicitation provisions.
532.502–4 Contract clauses.
532.502–70 Definitions.
532.502–5 Administration of Progress Payments.
532.503–6 Suspension or reduction of payments.
532.503–70 Progress payment liquidation.
532.503–71 Eligibility for progress payments.

Subpart 532.6—Contract Debts

532.601 Definitions.
532.606 Debt determination and collection.
532.606–70 Referral of delinquent debts.

Subpart 532.7—Contract Funding

532.700 Scope.
532.705 Contract clauses.
532.705–1 Clauses for contracting in advance of funds.

Subpart 532.8—Assignment of Claims

532.802 Conditions.
532.802–70 Requirements and indefinite quantity contracts.
532.805 Procedures.
532.805–70 Procedures upon receipt of notice of assignment and instrument of assignment.
532.805–71 Requirements and indefinite quantity contracts for use by more than one agency.
532.805–72 Definite quantity contracts and requirements or indefinite quantity contracts for use only by GSA.
532.806 Contract clauses.

Subpart 532.70—Payments on Construction Contracts Including Progress Payments Based on Percent of Completion

532.7000 Scope of subpart.
532.7001 Definitions.
532.7002 Policy.
532.7003 Contract clause.
532.7004 Payment monitoring and expediting.
532.7005 Certification of payment to subcontractors and suppliers.
532.7006 Processing of customary progess payments.
532.7007 Partial payments.
532.7008 Final payment.
532.7009 Consent of surety.

Authority: 40 U.S.C. 486(c).

Subpart 532.1—General

532.111 Contract clauses.

(a) The contracting officer shall insert one of the clauses at 552.232–8, Discounts for Prompt Payments, in solicitations and contracts for supplies or services in lieu of the clause at FAR 52.232–8.

(b) The contracting officer shall insert one of the clauses at 552.232–70, Payment Due Date, in solicitations and contracts. The contracting officer shall select the Alternate that is applicable to the type of supplies or services being procured.

(c) The contracting officer shall insert one of the clauses at 552.232–71, Interest on Overdue Payments, in solicitations and contracts. The contracting officer shall select the Alternate that is applicable to the type of supplies or services being procured.

(d) The contracting officer shall insert the clause at 552.232–72, Invoice Requirements, in solicitations and contracts for supplies or services which require the submission of invoices.

(e) The contracting officer shall insert the clause at 552.232–73, Method of Payment, in all solicitations and contracts for supplies and services, including construction, and in leases of real property.

Subpart 532.4—Advance Payments

532.402 General.

The findings and determinations required under FAR 32.402(e) shall be prepared by the contracting officer in cooperation with legal counsel and the Credit and Finance Branch, Region 2. The approval of the findings and determinations, along with the authorization for advance payments FAR 32.410, shall be made by the head of the contracting activity.

532.407 Interest.

The contract finance office will inform the contracting officer of the interest rate to be charged on the unliquidated balance of advance payments.

532.409 Contracting officer action.

The contracting officer shall submit for review and approval all the decisions required by FAR 32.4 to the head of the contracting activity.

Subpart 532.5—Progress Payments Based on Costs

532.501–2 Unusual progress payments.

The head of the contracting activity shall approve or disapprove requests for "unusual" progress payments on a case-by-case basis.

532.501–70 Use of benchmarks with progress payments based on costs.

In unusual circumstances it may be desirable for progress payments based on costs to provide for the achievement of specified benchmarks prior to the receipt of progress payments, when payments prior to the achievement of such benchmarks are not in the best interest of the Government. For example, such a benchmark might be the submission and acceptance of a preproduction or pilot model.

(a) The making of progress payments based on cost under any individual contract or class of contracts may be conditioned, in unusual circumstances, upon the achievement of specified benchmarks during the performance of the contract when the head of the contracting activity determines in writing based on all relevant facts, that the use of benchmarks is in the best interest of the Government. When such a determination has been made, an appropriate provision establishing one or more such benchmarks shall be included in the solicitation and each resulting contract.

(b) Benchmarks may not be used in such a manner that their effect is to convert progress payments based on costs into progress payments based on a percentage or stage of completion.

532.502–2 Contract Finance Office clearance.

(a) *Assistance in development of financial provisions.* Appropriate financial provisions shall be developed and used in accordance with FAR Part 32 and this Part 532. The contract finance office shall, upon request, provide technical advice and assistance in the development of all financial aspects of solicitations and resultant contracts. In adddition, advice may be requested by the contracting activity as to the adequacy of proposed contracts containing standard financial provisions.

(b) *Clearances.* Solicitations and contracts involving nonstandard financial provisions shall be forwarded to the contract finance office for review during the procurement process. The review shall be made prior to issuance of the solicitation. In cases of proposed additions, deletions, or other modification regarding standard financial provisions, applicable deviation procedures shall be followed.

(c) *Action by finance office.* When a matter is referred to the contract finance office for review or clearance, that office shall immediately notify the contracting officer as to the sufficiency of the financial provisions. If inadequate or improper financial provisions are proposed, the deficiencies will be explained together with the recommended remedial action which must be taken.

(d) *Contract financing office clearance.* The contract finance office clearance required by FAR 32.502–2 shall be the responsibility of the Director of Finance or the regional finance division director.

532.502–3 Solicitation provisions.

When the notice set forth in FAR 532.502–3 (a) or (b) is included in a solicitation, the notice shall include the solicitation provision set forth in 552.232–74, Progress Payments, as an additional part thereof.

532.502–4 Contract clauses.

The contracting officer shall select the appropriate progress payment clause to be used in a particular contract after coordinating the matter with appropriate legal counsel.

532.502–70 Definitions.

As used in this subpart the following terms shall have the meanings set forth below:

(a) "Financial provisions" means provisions for payments (generally), partial payments, progress payments, advance payments, insurance provisions, or other financial terms and conditions contained in, or proposed to be included in a solicitation or a resultant contract.

(b) "Standard financial provisions" means financial provisions which have been formally prescribed by the FAR or GSAR.

(c) "Nonstandard financial provisions" means financial provisions (or proposed additions, deletions, or other modifications with respect to standard financial provisions) which have not been formally prescribed or authorized as stated in the definition of Standard Financial Provisions.

(d) "Contract finance office" means the Director of Finance or the Regional Director, Finance Division for regional contracts.

532.503–5 Administration of progress payments.

The contract finance office shall establish adequate administrative and fiscal procedures to ensure the accomplishment of the fiscal aspects of FAR 32.503–5. The contract finance office shall promptly report to the contracting officer the date and amount of each progress payment to a contractor and shall provide the contracting officer with written recommendations whenever findings are made which warrant action by the Government.

532.503–6 Suspension or reduction of payments.

Action recommended by the contracting officer under FAR 32.503–6 shall be submitted to the head of the contracting activity for approval after coordination with the appropriate legal counsel. Upon approval the contracting officer shall direct the contract finance office responsible for processing payments to suspend or reduce payments.

532.503–70 Progress payment liquidation.

Recovery at rates lower than those specified in paragraph (b) of the clause in FAR 52.232–16, may be made only with the approval of the head of the contracting activity after coordination with the contract finance office. Upon approval the contracting officer shall direct the contract finance office responsible for processing payment of the lower rate.

532.503–71 Eligibility of progress payments.

(a) Contracting officers shall determine the eligibility of contractors or prospective contractors to receive progress payments. The contracting officer shall request advice and assistance from the Credit and Finance Branch, Finance Division (Region 2), when making a determination regarding progress payments. The determination shall be approved by the head of the contracting activity. The contractor or prospective contractor, and the contract finance office shall be notified of the eligibility. Contract files shall include appropriate documentation to support the determination.

(b) To be eligible to receive a progress payment, a contractor or prospective contractor must:

(1) Have submitted a written request;

(2) Have been found responsible under the provision of FAR Subparts 9.1 and 32.5; and

(3) have an accounting system and controls adequate for the proper administration of the progress payments, as described in FAR 32.503–3.

Subpart 532.6—Contract Debts

532.601 Definitions.

(a) "Responsible official" as used in this subpart means the contracting officer. However, the contract finance office is responsible for the administration of debt collection under the Accounting Operations—Accounts Receivable and Credit and Finance

Operations, and Related Activities Handbook (PFM P 4253.1).

(b) "Debt" means an amount of money or property which has been determined by a responsible official to be owed to the United States from any person, or entity except that the terms do not apply to amounts owed by another Federal agency.

(c) "Delinquent debt" means an amount that has not been paid or otherwise collected by the date specified (usually 30 days) in the contracting officer's initial written demand for payment (i.e., final decision letter).

532.606 Debt determination and collection.

532.606-70 Referral of delinquent debts.

(a) When the contracting officer determines that a debt in excess of $100 is delinquent, the contracting officer shall forward notification of the delinquent debt to the applicable regional finance office for collection and possible forwarding to a credit reporting agency.

(b) If the contractor appeals the contracting officer's demand for payment pursuant to the Disputes clause of its contract, the contracting officer shall advise the Finance Office to suspend collection efforts pending resolution of the dispute.

Subpart 532.7—Contract Funding

532.700 Scope.

GSA fiscal regulations are contained in the Budget Administration Handbook (PFM P 4220.1), Accounting Classification Handbook (PFM P 4240.1B), and Accounting Operations—Voucher Examination, Payment Handbook (PFM P 4252.1).

532.705 Contract clauses.

532.705-1 Clauses for contracting in advance of funds.

The contracting officer shall insert the clauses at 552.232-18, Availability of Funds, in solicitations and contracts which include option provisions, will be chargeable to funds of more than one fiscal year, and the contract action will be initiated before funds are available.

Subpart 532.8—Assignment of Claims

532.802 Conditions.

532.802-70 Requirements and indefinite quantity contracts.

When more than one agency is making payments under a requirements or indefinite quantity contract, it is necessary to restrict assignments of claims to individual orders placed thereunder in order to prevent confusion and delay in making payment. Thus, assignments shall be limited to each particular purchase order amounting to $1,000 or more. (See FAR 32.806(a)(1).) This limitation is non applicable in connection with requirements and indefinite quantity contracts under the sole administrative control of GSA.

532.805 Procedures.

532.805-70 Procedures upon receipt of notice of assignment and instrument of assignment.

When complying with the procedures set forth in FAR 32.805 regarding the acknowledgement of an assignment or reassignment of claims in proper form, the contracting officer shall at the same time notify the contractor (assignor) that all future invoices or other requests for payment under the contract shall specify the name and address of the assignee and include a notation that payments due thereunder have been duly assigned.

532.805-71 Requirements and indefinite quantity contracts for use by more than one agency.

Upon receipt of a notice of assignment together with a true copy of the instrument of assignment by the GSA office that issued the purchase order under the contract, the appropriate ordering officer shall:

(a) Promptly furnish notification by TWX or other expeditious means of the pending assignment to the appropriate accounting center(s), Accounts Payable Branch indicated on the original purchase order; and

(b) Secure written assurance from assigned counsel that both the notice and the instrument of assignment are in proper form, are properly executed, and are actions that the contractor is entitled to make under the terms of the contract.

532.805-72 Definite quantity contracts and requirements or indefinite quantity contracts for use only by GSA.

(a) When definite quantity contracts involve the issuance of one or more purchase orders, the contracting officer shall process any notice and instrument of assignment thereof as prescribed in 532.805-71.

(b) When definite quantity contracts are utilized (1) to supplement and satisfy regional stores stock replenishment needs that exceed the maximum order limitations (MOL) or monthly supply potential of term contracts, or (2) to satisfy requirements that exceed the MOL of Federal Supply Schedule contracts, the contracting officer shall process any notice and instrument of assignment thereof in accordance with procedures prescribed in 532.805-71. The contracting officer shall also notify all offices that will issue order against the contract, that all moneys due or to become due under the contract have been assigned. The notification shall be furnished to the appropriate regional divisions on GSA Form 1584, Contract Summary, concurrently with the transmittal of copies of the notice and instrument of assignment to the accounting center(s), and shall include the contract number, the assignee's name and address, and the assignment date.

(c) When requirements or indefinite quantity contracts are for the sole use of GSA, the contracting officer shall process any notice and instrument of assignment thereof as prescribed in 532.805-72(b); however notification of the assignment by means of GSA Form 1584 shall be furnished to all appropriate regional finance division directors.

(d) When ordering officers receive notices and instruments of assignment of claims relative to (a), (b), or (c), above, concerning contracts or purchase orders prepared by another GSA office, the ordering officer shall return the documents to the contractor with the name and address of the contracting officer or ordering officer to whom the documents should have been sent.

532.806 Contract clauses.

The contracting officer shall insert the clause at 552.232-23, Assignment of Claims, in solicitations and requirement or indefinite quantity contracts under which more than one agency may place orders.

Subpart 532.70—Payments on Construction Contracts Including Progress Payments Based on Percent of Completion

532.7000 Scope of subpart.

This subpart prescribes policies and procedures for making payments on construction contracts.

532.7001 Definitions.

(a) "Progress payments" as used in this subpart means payments over the course of construction which are made on the basis of percentage or stage of completion. This term does not include payments for partial deliveries accepted by the Government under a contract, or partial payments on contract termination claims.

(b) "Partial payment" as used in this subpart, means those payments made under a contract for completed services rendered and accepted for beneficial use by the Government, where such services

are only a part of the contract requirements.

(c) "Final payment" as used in this subpart, means payment that is made for completed services which takes into account all offsets for work not satisfactorily completed under the contract and all outstanding claims the Government has against the contractor and which is made after the receipt of the contractor's release of claims against the Government.

532.7002 Policy.

(a) All payments are subject to the agency policy to pay its bills on time. The Prompt Payment Act (Public Law 97–177, May 21, 1982, 31 U.S.C. 1801), which is implemented by the Office of Management and Budget (OMB) Circular A–125, provides for the payment of interest penalties on certain late payments. Progress payments and other payments made for financing purposes before receipt of complete delivered items of property or services are exempt from the assessment of interest penalties. However construction contracts generally provide for more than one type of payment (e.g., progress payments, partial payments, and final payments), and a particular payment may be a combination of these payment types, some of which would be exempt from interest penalties (progress payments) while others would be subject to interest penalties (partial and final payments). Payment provisions prescribed in GSA construction contracts shall reflect the prompt payment requirements of the agency, as well as the differing applicability of interest penalties.

(b) The policy on retainage of funds from payments to construction contractors is outlined in OFPP Policy Letter 83–1, dated May 6, 1983. The policy letter permits full payment of the current monthly progress payment where progress under a construction contract has been determined by the contracting officer to be satifactory. Contracting officer will not routinely retain funds throughout the term of a contract, and will make decisions to retain funds on a case-by-case basis. Retainage may be used: (1) Where performance deficiences have been identified under the contract or past unsatisfactory performance by the contractor has been experienced or (2) as the contract approaches completion, to ensure that deficiencies will be corrected and that completion is timely. The level of retainage withheld, if any, shall not exceed 10 percent in the case of unsatisfactory performance, or 5 percent where the retainage is to ensure satisfactory completion. Upon completion of all contract requirements, retained amounts shall be paid promptly.

(c) Use of progress payments based on a percentage or stage of completion shall be approved by the head of the contracting activity.

532.7003 Contract clause.

(a) The contracting officer shall insert the clause at 552.232–75, Payments to Contractor, in solicitations and contracts for construction, dismantling, demolition or removal of improvements.

(b) The contracting officer shall insert the clause at 552.232–76, Certification of Payment, in solicitations and contracts for construction, repair, alteration, improvement, painting, or decorating unless the procurement will be made under small purchase procedures. The clause may be used on an optional basis in small purchases.

532.7004 Payment monitoring and expediting.

(a) Payments to contractors shall be made in a timely manner, as prescribed herein, and without unwarranted delay.

(b) The contracting officer shall develop time standards and receipt control methods to ensure that progress and other payments are tracked from initiation to payment, and that inspections for payment purposes and transmissions of payment documents to the contracting officer are made expeditiously.

532.7005 Certification of payment to subcontractors and suppliers.

When a contract includes the clause at 552.232–76, Certification of Payment, no payment shall be processed unless the contractor submits therewith executed GSA Form 2419, Certification of Payment to Subcontractors and Suppliers.

532.7006 Processing of customary progress payments.

(a) Progress payments of fixed price construction contracts will be made in accordance with the clause at FAR 52.232–5, and the policy and procedure set forth below.

(b) Where the contracting officer acts on the initiation of a payment request by the contractor, a progress payment meeting and/or progress inspection shall normally be made within one week of receipt by the Government of the payment request. When project sites to be inspected are remote from the regional office, the contracting officer, when possible, should arrange for inspection by on-site personnel for payment purposes; non-technical personnel, however, should not be depended upon for technical acceptance inspection or for the detection of defects and omissions.

(c) Where the contractor and the contracting officer disagree over the amount due, the payment shall not be delayed for settlement of the differences. Instead, the contracting officer shall make payment of the undisputed amount.

532.7007 Partial payments.

Partial payments may be appropriate when a segregable portion of the project work is accepted for beneficial use by the Government. Examples include an elevator or a floor of a building, or one building of several included in a contract.

532.7008 Final payment.

(a) The final payment voucher shall be prepared for the signature of the contracting officer. The date of signature shall be considered the final settlement date for the purpose of assessing any interest penalties for late payment.

(b) The amount of the final payment shall reflect deductions made to cover liquidated damages for late completion, liquidated damages for labor violations, amounts withheld for improper payment of labor, and the amount of unilateral change orders covering defects and omissions.

(c) The final payment shall not be processed until the contractor submits a properly executed GSA Form 1142, Release of Claims. The contracting officer should consider making payment of undisputed amounts including retainage, to avoid the holding of substantial sums of money by the Government.

532.7009 Consent of surety.

Final payment to the contractor shall not be made by the Government after notice is given by the surety of a claim unless the surety provides written consent to such payment.

PART 533—DISPUTES AND APPEALS

Sec.
533.000 Scope of part.
533.014 Contract clause.

Subpart 533.70—Rules of the GSA Board of Contract Appeals

533.7001 Rules of the GSA Board of Contract Appeals.

Subpart 533.71—Processing Contract Appeals

533.7101 Notice of appeal.
533.7102 Contents of notices of appeal.
533.7103 Appeal files.
533.7103–1 Preparation of the appeal file.
533.7103–2 Transmittal of the appeal file.
533.7104 The contracting officer's memorandum of position.

Sec.
533.7105 Procedure following decision of the GSA Board of Contract Appeals.

Authority: 40 U.S.C. 486(c).

533.000 Scope of part.

This part sets forth procedures for processing contract appeals to be decided by the GSA Board of Contract Appeals.

533.014 Contract clause.

The contracting officer shall insert the clause at 552.233–70, Disputes (Utility Contract), in solicitations and contracts for utility services. This clause supplements the Disputes clause at FAR 52.233–1.

Subpart 533.70—Rules of the GSA Board of Contract Appeals

533.7001 Rules of the GSA Board of Contract Appeals.

The rules of GSA Board of Contract Appeals are being revised and upon completion will appear in Appendix B of this regulation.

Subpart 533.71—Processing Contract Appeals

533.7101 Notice of appeal.

(a) Notices of appeal are to be addressed to the GSA Board of Contract Appeals with a copy to the contracting officer. Final decisions must be appealed within 90 days from the date the decision of the contracting officer is received. Any request for an extension of the 90-day appeal period shall be denied.

(b) If the notice of appeal was mailed or otherwise submitted to the contracting officer in an untimely manner, a separate letter, signed by the contracting director, shall be sent to the Assistant General Counsel, Claims and Litigation Division (LC), requesting that a motion for dismissal of the appeal be submitted to the GSA Board of Contract Appeals (the Board). The letter shall state the name of the appellant, contract number, and date of contracting officer's final decision, and shall be accompanied by (1) the certified mail receipt showing the date on which the appellant received the contracting officer's final decision, and (2) the envelope which contained the notice of appeal or other evidence of late submission of the notice of appeal.

533.7102 Contents of notices of appeals.

A notice of appeal shall be in writing and should indicate that an appeal is thereby intended, should identify the decision and the date thereof from which the appeal is taken, the GSA office cognizant of the dispute, and the number of the contract in question. The appeal should describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute which are considered to be important. The notice of appeal shall be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm or by the contractor's duly authorized representative or attorney.

533.7103 Appeal files.

(a) Appeals files shall be prepared in accordance with this section and forwarded, after concurrence by assigned counsel, to LC within 20 calendar days after receipt of the notice of appeal or advice that an appeal has been filed unless LC advises that the Board requires a shorter period under its small claims procedures. In the event the time for submission of the appeal file can not be met, the contracting officer shall submit in writing a full explanation and a request for additional time to the Assitant General Counsel, Claims and Litigation Division (LC), prior to expiration of the designated time.

(b) Upon receipt of the notice of appeal, the contracting activity shall establish a record to ensure the timely preparation and submission of appeal cases. The record shall show, as a minimum, the name of the appellant, the date of the contracting officer's final decision, the date the appeal was filed, contract number, docket number, and name of the contracting officer.

533.7103–1 Preparation of the appeal file.

(a) *General.* Appeal files shall be prepared in quadruplicate. Each file shall be identified by the name of the appellant, contract number, and docket number. All copies of the appeal file must be identical both as to content and position of items. If more than one appeal is filed under the same contract, upon request to, and waiver by, the Board, the appeal file for the second and subsequent appeals need not duplicate the documents included in the first appeal file, but shall make reference to the appeal file which contained such documents, including the docket and item numbers. However, if changes to such documents occur subsequent to preparation of the original file such changes shall be included, appropriately identified, in the later appeal file. Such files shall also include any documents pertinent to the later appeal but not previously furnished.

(b) *Content of appeal file.* (1) Each appeal file shall be assembled by using a two-piece red pressboard binder 11 by 8½ inches punched with a 3-inch capacity fastener (NSN 7510–00–582–4201). A gummed label (NSN 7510–00–264–5460) shall be used on top of the file to identify the case by contractor, contract number, and docket number.

(2) Individual appeal files shall not be more than 1 inch in thickness. If the file will be more than 1 inch in thickness, two or more consecutive binders shall be used and identified with the appropriate exhibit numbers contained in each.

(3) Each document to be included in the appeal file (i.e., letter, telegram, memo, report, invoice, etc.) shall be legible, complete, included as a separate exhibit in the file, and listed in the "Index of Exhibits" by exhibit number and brief description. If a document cannot be legibly reproduced, the unaltered document shall be submitted with an attached accurate typewritten transcription thereof. Assigned counsel will assist the contracting officer in determining which documents are relevant to the issue in the appeal or not privileged for inclusion in the appeal file.

(4) Each appeal file shall contain division sheets separating the different documents listed in the "Index of Exhibits." Division sheets shall be tabbed and numbered consecutively commencing with number one, in whole Arabic numbers (no letters, decimals, or fractions) and continuously from each file to the next so that the complete appeal file will consist of one set of consecutively numbered appeal file exhibits.

(c) *Arrangements of document.* (1) The first (top) document in the appeal file shall be the "Index of Exhibits." The index shall list, opposite each exhibit number the date and a brief description of the document and shall indicate which exhibits, if any, have been filed with the Board but not served on the other party because of their length or bulk. Documents in the appeal file shall be arranged in chronological order earliest documents first. For example:

	Exhibit	Date
Board of Contract Appeals acknowledgement of contractor's notice of appeal	1	
Notice of appeal (letter and/or GSA Form 2465, Notice of Appeal, with attachments, if any)	2	
Facsimile of Post Office receipt of the final decision letter	3	
Contracting Officer's final decision letter applicable to the dispute	4	
Contractor's request for final decision or other documents of claim in response to which the decision was issued	5	

(2) In addition to the exhibits listed in (c)(1), above, other pertinent exhibits,

such as the following, should be included and exhibited in chronological order:

(i) Copy of the basic contract, including referenced terms and conditions and any amendments.

(ii) Notice of award.

(iii) Notice to proceed and facsimile of Post Office receipt.

(iv) Copy of the repurchase contract, including referenced terms and conditions.

(v) Copies of specifications/drawings applicable to the dispute.

(vi) Copies of the abstract of offers and list of all offerors solicited for the repurchase contract.

(vii) Copy of letter of assessment, including worksheet showing determination of excess costs.

(viii) Copies of defaulted purchase/delivery orders.

(ix) Copies of purchase/delivery orders issued under the repurchase contract.

(x) Proof of payment and a detailed disbursement listing annotated and certified, if applicable.

Note.—The information and documents needed shall be obtained from the appropriate GSA accounting center. The finance information will include a detailed disbursement listing annotated with the check number and date, and the amount applicable to the repurchase order if different than the check amount. The disbursement listing will be certified by an appropriate finace division official whose title and date of signature will also be shown.

(xi) Evidence of certification of the claim or claims, as applicable.

(xii) All other correspondence between the Government and the contractor relevant to the appeal.

(xiii) All documents and other physical evidence on which the contractor relied in making a decision.

533.7103–2 Transmittal of the appeal file.

(a) The original and two copies of the appeal file shall be forwarded to LC by a transmittal letter from the contracting director. The appeal file shall be accompanied by the contracting officer's detailed statement of facts in a memorandum of position as a separate document which shall be concurred in by assigned counsel who shall also prepare and attach a statement of legal position. In addition a list of recommended witnesses and the Government's estimate (when appropriate) of the amount of any claim in the event of an adverse decision shall be prepared. A point of contact must be given LC; name of individual, position, title, and telephone number.

(b) One copy of the appeal file shall be retained by the contracting officer.

(c) After reviewing the appeal file for adequacy, the trial attorney in LC will transmit the appeal file to the Board and serve a copy of the appeal file upon appellant.

533.7104 The contracting officer's memorandum of position.

The memorandum of position is a chronological summary of the actions leading to the dispute and a rationale of the contracting officer's actions for the information of the trial attorney. The memorandum of position shall be submitted to LC simultaneously with the appeal file but as a separate document; i.e., it shall not be included as part of the appeal file, or included in the index. Although no particular form is prescribed, the statement must identify the contract, state the nature of the contractor's claim, cite pertinent portions of the contract, state the contracting officer's decision with citations to pertinent contract provisions and a supporting explanation, and set out any new facts which may have developed since the decision was made. The memorandum of position shall be signed by the contracting officer.

533.7105 Procedure following decision of the GSA Board of Contract Appeals.

(a) Decisions of the Board shall be promptly implemented. However, it must be recognized that the contractor may decide to appeal a Board decision in the Federal District Court. It is also possible for either party to file a motion for reconsideration by the Board within 30 calendar days from the date of the receipt of a copy of the Board decision. In the event that further appeal of a decision or a motion for reconsideration of a decision is contemplated the implementation of the decision may be postponed; if the issue is over quantum, however, consideration should be made to making payment of the undisputed amount to minimize interest to be paid the contractor.

(b) The contracting officer need take no further action (other than administrative) if the Board affirms the contracting officer's original decision, provided a recovery of costs is not due from the contractor. Where a recovery is due, collection shall be initiated by the contracting officer either by (1) a contract amendment adjusting the contract price or (2) a written demand for immediate payment, as appropriate. (In excess cost cases, the Financial Management Division, Office of Finance (BCF), or regional counterpart, as appropriate, will normally pursue the necessary collection.) Any written demand shall instruct the contractor to make payment to the General Services Administration and address it to the appropriate GSA accounting center. A copy of any written demand shall be provided to the appropriate GSA accounting center for information and followup.

(c) In appeals brought under the disputes clauses of the contract, when the Board does not uphold the contracting officer's original decision and the Board's decision provides for payment in favor of the contractor, the contracting officer shall prepare a supplemental agreement with concurrence of assigned counsel. The supplemental agreement will ensure against further litigation of the same dispute. The contracting officer shall forward the recommendation for payment to the appropriate accounting center with the original of the supplemental agreement and a copy of the Board's decision.

(d) In appeals brought under the Contract Disputes Act of 1978, when the Board does not uphold the contracting officer's original decision and the Board's decision awards the contractor an amount of money, and LC informs the contracting officer that the Government will not move for reconsideration of the Board's decision or appeal it to the United States Court of Appeals for the Federal Circuit, the contracting officer must complete the Certificate of Finality attached to the copy of the Board's decision and return it to the Board. The Board will forward the Certificate of Finality completed by both parties and a certified copy of its decision to the United States General Accounting Office to be certified for payment to the contractor.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 534—MAJOR SYSTEM ACQUISITION

Sec.

543.002–70 Policy.
543.002–71 Definitions.

Authority: 40 U.S.C. 486(c).

534.002–70 Policy.

The policies and procedures applicable to major systems acquisition and the procedures by which the Systems Acquisition Review Council reviews these acquisitions are contained in GSA orders. Personnel concerned with acquiring major systems should be familiar with the following orders:

(a) *Orders applicable agency wide.*

(1) Major System Acquisitions in the General Services Administration, (ADM 5400.33).

(2) Establishment of the General Services Administration System Acquisition Review Council (SARC) (ADM 5400.36).

(b) *Orders applicable to the individual service.*

(1) Major system acquisitions in the Automated Data and Telecommunications Service, (DTS 5400.1).

(2) Major systems acquisitions in the Public Buildings Service (PBS 5400.18).

534.002-71 Definitions.

(a) "Major system" means a combination of elements that function together to produce the capabilities required to fulfill a mission need. Major system acquisitions are those that are:

(1) Directed at and critical to fulfilling an agency mission;

(2) Estimated to entail the allocation of $25 million or more life cycle cost in current year dollars. In the case of space acquisitions, a major system will be designated if it is estimated to be $25 million or more in cost or 250,000 square feet of space; or

(3) Determined by the Administrator to warrant special management attention or to be of critical importance to the agency or technologically advanced.

PART 535—RESEARCH AND DEVELOPMENT CONTRACTING—[RESERVED]

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 536.1—General

Sec.
536.101 Applicability.
536.102 Definitions.

Subpart 536.2—Special Aspects of Contracting for Construction

536.201 Evaluation of contractor performance.
536.202 Specifications.
536.202-70 Excepted materials used in construction.
536.203 Government estimate of construction cost.
536.204 Disclosure of the magnitude of construction projects.
536.206 Liquidated damages.

Subpart 536.3—Special Aspects of Formal Advertising in Construction Contracting

536.302-70—Charges and deposits for bidding documents.
536.303 Invitations for bids.
536.303-70 Bids that include alternates.

Subpart 536.5—Contract Clauses

536.570-1 Definitions.
536.570-2 Authorities and limitations.
536.570-3 Specialist.
536.570-4 Contract award—with alternates.
536.570-5 Working hours.
536.570-6 Use of premises.
536.570-7 Measurements.
536.570-8 Specifications and drawings.
536.570-9 Shop drawings, coordination drawings, and schedules.
536.570-10 Samples.
536.570-11 Heat.
536.570-12 Use of equipment by the Government.
536.570-13 Subcontracts.
536.570-14 Furnishing information and records.
536.570-15 Government rights (unlimited).
536.570-16 Drawings and other data to become property of Government.

Authority: 40 U.S.C. 486(c).

Subpart 536.1—General

536.101 Applicability.

Other requirements of this regulation are generally applicable to construction and architect-engineer contracts. However, if a requirement in this part is inconsistent with a requirement in another part of this regulation, this part takes precedence.

536.102 Definitions.

(a) "Construction activity" means the organizational level of the agency that has authority and responsibility for the architectural, engineering, and other technical or administrative aspects of design and construction.

(b) "Statutory cost limitations" as used in this part, refers to the cost limits that may be included in the agency's statutory authorization or annual appropriations act (by law).

Subpart 536.2—Special Aspects of Contracting for Construction

536.201 Evaluation of contractor performance.

(a) The construction activity shall prepare a performance report for each construction contract of $25,000 or more, and each construction contract where any element of performance was unsatisfactory or outstanding.

(b) Each regional construction activity shall establish procedures for maintaining alphabetically the evaluation reports and for ensuring that fully qualified personnel possessing the knowledge of the contractor's performance will prepare and review the evaluation reports.

(c) The contracting officer shall include a copy of the report in the regional evaluation report file, the contract file, and shall forward a copy to the Office of Contracts (PP), Washington, DC 20405.

536.202 Specifications.

Pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, the Environmental Protection Agency has promulgated rules in 40 CFR Part 249, regarding the use of certain waste by products as generally acceptable substitutes for energy-intensive raw materials. When cement or concrete is being acquired, specifications should allow the use of cement or concrete that contains fly ash as an alternate material. However, specifications should not be revised to allow the use of fly ash if it is found that performance requirements for the cement or concrete would not be met or that the use of fly ash would be unsatisfactory for technical reasons.

536.202-70 Excepted materials used in construction.

The list of excepted materials appearing at FAR 25.108 shall be included in the specifications.

536.203 Government estimate of construction cost.

(a) A detailed independent Government estimate that includes each item specified in the solicitation shall be prepared for contracts for new construction, repairs and alterations, professional services, and for any modification expected to cost $25,000 or more. When the expected cost is less than $25,000, the contracting officer, at his or her discretion, may require the preparation of an estimate. Except as provided in paragraphs (c) and (d) of this section access to or disclosure of the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate.

(b) A copy of the independent Government estimate shall be sealed in an envelope and submitted to the contracting officer before the date and time for bid opening or the date for receipt of proposals. (See paragraphs c and d.)

(c) If the procurement is by formal advertising, the sealed copy of the detailed Government estimate shall be stored with the bids received until bid opening. Before releasing an amendment to a solicitation that may affect the bid price, a revised sealed Government estimate shall be stored with the bids until bid opening. After the bids are read and recorded, the sealed Government estimate shall be opened and retained with the Standard Form 1419, Abstract of Offers-Construction. However, the Government's estimate shall not be disclosed until after award. Immediately after award the Government estimate shall be recorded on the SF 1419 as the Independent Government Estimate.

(d) If the procurement is by negotiation, the sealed copy of the

detailed Government estimate shall be stored with the proposals until the closing time for receipt of proposals. Cost figures in the Government estimate may be disclosed during negotiation, but only to the extent considered necessary for arriving at a fair and reasonable price, provided that the overall amount of the Government estimate is not disclosed before award. Before the release of a modification to the solicitation which may affect price, a revised Government estimate shall be prepared, sealed, and sorted, with the proposals until closing time for proposals. After award, the independent Government estimated price may be revealed, upon request, to those firms or individuals who submitted proposals.

(e) The detailed Government estimate shall be used to evaluate offers, as a guide in conducting contract negotiations or negotiations of contract modifications, and as a tool for determining the reasonableness of prices.

536.204 Disclosure of the magnitude of construction projects.

The magnitude of construction projects in excess of $10,000,000 should be shown in increments of $10,000,000 (e.g. $20,000,000 to $30,000,000).

536.206 Liquidated damages.

(a) The liquidated damages provision shall be included in construction contracts, except where a written justification to omit such a provision is approved at a level above the contracting officer.

(b) The rate of liquidated damages included in the solicitations shall reflect the probable damages the Government may suffer, which include items such as:

(1) The added cost of contract administration and supervision,

(2) The rental the Government would have to pay if construction is not completed on schedule, and

(3) The cost of these moneys.

Subpart 536.3—Special Aspects of Formal Advertising in Construction Contracting

536.302–70 Charges and deposits for bidding documents.

This subsection is applicable to construction procurements, including repairs and alterations.

(a) Generally, bid documents will be provided free and without a requirement for either a refundable deposit or a nonrefundable charge, except as provided in paragraph (c), below. Bid documents will be provided free for review purposes to plan rooms, contractor service facilities, and other similar places having a legitimate interest in the bidding process.

(b) To encourage the return of specifications and drawings to GSA, a note similar to the following, shall be prominently placed in each solicitation:

Note.—We request your cooperation in returning the bid documents to GSA within 20 calendar days after bid opening date.

(c) If the contracting officer determines before issuance of the solicitation that an insufficient number of sets of bid documents were returned on previous projects, a refundable bid document deposit may be required. Under extraordinary circumstances, a nonrefundable charge may be required for bid documents if approved by the head of the contracting activity. No charges or deposits shall be made in negotiated procurements.

(1) The amount of deposit for bid documents should be determined on the basis of the actual printing costs of the documents. The following table is for guidance purposes only, and the contracting officer may require amounts higher or lower than those shown. Deposits should not be so high as to discourage bidder participation. Refundable bid document charges are intended to ensure the return of bid documents to the Government for use by the successful contractor and Government personnel, and thus minimize the need for duplication of additional sets. When the administrative cost of processing bid document deposits and returning bid documents is greater than the value of returned documents, the contracting officer should not require deposits.

Estimated project cost range	Guide for refundable bid document deposit
Up to $1,000,000	None
$1,000,000 to $5,000,000	$30
$5,000,000 to $10,000,000	$40
$10,000,000 and over	$50

(2) When a bid document deposit is required, the preinvitation notice shall require that the deposit be made by certified check, cashier's check, or money order payable to the General Services Administration. If a deposit is not submitted as specified, a reasonable attempt shall be made to obtain the deposit in the proper form without delay. A record of the attempt shall be placed in the contract file. The document deposit will be refunded if bid documents are returned in good condition, without marks, notes, or mutilations, within 20 calendar days after bid opening. Refunds will not be made for bid documents returned more than 20 days after bid opening.

(3) The contracting officer shall cite the amount of the refundable deposit on Standard Form 1417, Pre-Solicitation Notice (Construction Contract).

536.303 Invitations for bids.

The invitation for bids shall include the following information, when applicable:

(a) Special instructions concerning bids, alternates and awards of contracts (see 536.303–70, Base bid and alternate prices).

(b) Instructions concerning the pre-bid conference (see FAR 14.207, Pre-bid Conference).

536.303–70 Bids that include alternates.

(a) The base bid shall include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to allow the inclusion of all desired features in the base bid, the contracting officer may issue a solicitation for a base bid and include one or more alternates in the order of preference. Alternates shall be used only when clearly justified and should involve significant amounts of work in relation to the base bid. Their use shall be limited and should involve only "add" alternates.

(b) Alternates may be justified under certain project or market conditions, for example:

(1) When accurate cost estimates are not available, a base bid may be required for minimum acceptable projects, with add alternates for desired materials or equipment, or both.

(2) Add alternates may be used to secure bids on a proprietary item or system considered necessary for the proper operation of the facility.

(3) On reimbursable projects, alternates may be necessary when the reimbursing agency cannot state exactly the maximum funds available. A base bid may then be required which can be covered by the available funds and add alternates for additional items which may be covered by transfer of additional funds.

(c) The language of all alternates shall be approved in writing by counsel.

(d) All solicitations requiring bids on alternates shall include the provision at 552.236–73, Contract Award—with Alternates, which defines the method of evaluation of the bids.

(e) Before opening bids that include alternates, the contracting officer shall determine and record in the contract file the amount of funds available for the project. The amount recorded shall be

announced at the beginning of the bid opening and shall be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus such a combination of alternate items does not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

Subpart 536.5—Contract Clauses

536.570–1 Definitions.

The contracting officer shall insert the clause at 552.236–70, Definitions, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–2 Authorities and limitations.

The contracting officer shall insert the clause at 552.236–71, Authorities and Limitations, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limit.

536.570–3 Specialist.

The contracting officer shall insert the clause at 552.236–72, Specialist, in construction contracts when the technical sections of the contract require unusual experience or specialized facilities for adequate contract performance.

536.570–4 Contract award—with alternates.

The contracting officer shall insert the provision at 552.236–73, Contract Award—with Alternates, in solicitations when bids are to include alternates for a fixed-price construction contract and the contract amount is expected to exceed the small purchase limit.

536.570–5 Working hours.

The contracting officer shall insert the clause at 552.236–74, Working Hours, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

536.570–6 Use of premises.

The contracting officer shall insert the clause at 552.236–75, Use of Premises, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–7 Measurements.

The contracting officer shall insert the clause at 552.236–76, Measurements, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–8 Specifications and drawings.

The contracting officer shall insert the clause at 552.236–77, Specifications and Drawings, in contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract is expected to exceed the small purchase limit.

536.570–9 Shop drawings, coordination drawings, and schedules.

The contracting officer shall insert the clause at 552.236–78, Shop Drawings, Coordination Drawings, and Schedules, in contracts when construction is contemplated and the contract is expected to exceed the small purchase limit.

536.570–10 Samples.

The contracting officer shall insert the clause at 552.236–79, Samples, in construction contracts when the technical sections of the contract require the submission and approval of samples.

536.570–11 Heat.

The contracting officer shall insert the clause at 552.236–80, Heat, in contracts, as appropriate, when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–12 Use of equipment by the Government.

The contracting officer shall insert the clause at 552.236–81, Use of Equipment of the Government, in contracts requiring heating and air-conditioning of existing buildings when it may be necessary for the Government to operate all or part of the equipment before final acceptance of the contract.

536.570–13 Subcontracts.

The contracting officer shall insert the clause at 552.236–82, Subcontracts, in solicitations and contracts for construction when the contract is expected to excess the small purchase limit.

536.570–14 Furnishing information and records.

The contracting officer shall insert the clause at 552.236–83, Furnishing Information and Records, in solicitations and contracts for construction, dismantling, demolition or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limit.

536.570–15 Government rights (unlimited).

The contracting officer shall insert the clause at 552.236–84, Government Rights (Unlimited), in contracts for architect-engineer services and construction involving architect-engineer services, except when the clause at 552.236–85 is required.

536.57–16 Drawings and other data to become property of Government.

The contracting officer shall substitute the clause at 552.236–85, Drawings and Other Data to Become Property of Government, for the clause at 552.236–84 in contracts for architect-engineer services and construction involving architect-engineer services, when the sole property rights and exclusive control over the design and data are required by the Government.

PART 537—SERVICE CONTRACTING

Subpart 537.1—Service Contracts—General

Sec.
537.101 Definitions.
537.106 Funding and term of service contracts.
537.110 Solicitation provisions and contract clauses.

Subpart 537.2—Consulting Services

537.201 Definitions.
537.205 Management controls.

Authority: 40 U.S.C. 486(c).

Subpart 537.1—Service Contracts—General

537.101 Definitions.

"Building service contract" means a contract for services relating to the operation and maintenance of a building, e.g., janitorial; window washing; snow removal; trash removal; lawn and grounds care; inspection, maintenance and repair of fixed equipment (elevators, air-conditioning, and heater systems, etc.) and protection or guard service.

537.106 Funding and term of service contracts.

Services are generally viewed as chargeable to the appropriate current at the time the services are rendered. However, a need may rise in one fiscal year for services which, by their nature, cannot be separated for performance in separate fiscal years. The determination to charge the appropriation current on the date of contract award, or to charge the appropriation current at the time services are rendered, depends upon whether the services are "severable" or "entire." A contract which is "entire" is

chargeable to the fiscal year in which the contract is awarded, notwithstanding that performance may extend into the following fiscal year. However, where the services are continuing or recurring in nature, the contract is severable and the services must be charged to the fiscal year in which they are rendered. Service contracts which are "severable" may not cross fiscal year lines in the absence of statutory authority. Based on these principles the following rules apply:

(a) The performance period of a service contract funded by an annual appropriation may cross fiscal years when a bona fide need for the service exists during the funded fiscal year and the contract calls for an end item that cannot be subdivided for separate performance in each fiscal year (e.g., contracts for experts or consultants, contracts for a one-time performance of services such as window washing, carpet cleaning, etc., and contracts for appraisal or auctioneer services).

(b) One-year indefinite quantity or requirements services contracts (e.g., contracts for carpet cleaning, drapery cleaning, carpet laying, etc.) funded by annual appropriations may extend beyond the fiscal year in which it is awarded; provided the specified minimum quantities, if any, are ordered in the initial fiscal year and the contract includes the clause at FAR 52.232–19, Availability of Funds for Next Fiscal Year. One-year contracts with option provisions to extend the performance period for additional years may also be used. However, the clause at 552.232–77, Availability of Funds, shall be used in lieu of the FAR clause at 52.232–19.

(c) The performance period of a contract for severable services (e.g., janitorial, guard, trash removal, mechanical equipment maintenance, etc.) may not cross fiscal years unless authorized by law. (See 31 U.S.C. 668 and 699.) The Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 260), authorizes contracts for periods not to exceed three years for the operation, maintenance, and repair of fixed building equipment in Federally owned buildings (40 U.S.C. 490(a)(14)) and contracts for periods not exceeding ten years for utility services (40 U.S.C. 481(a)(3)). Contracts for these services may be awarded for the performance periods indicated without an "Availability of Funds" clause.

537.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.237–70, Qualifications of Offerors, in solicitations and contracts for building services when the contract amount is expected to exceed the small purchase limitation.

(b) The contracting officer shall insert the clause at 552.237–71, Qualifications of Employees, in solicitations and contracts for building services when the amount is expected to exceed the small purchase limitation. Supplemental clauses may be used with the clause at 552.237–1 to outline specific requirements regarding employees who will perform work on contracts.

(c) The contracting officer shall insert the certification at 552.237–72, Certification Regarding "Quasi-Military Armed Forces," in solicitations and contracts for guard service.

Subpart 537.2—Consulting Services

537.201 Definitions.

The term "consulting service" as defined in FAR 37.201 does not include those services which are directly required for performance of operations necessary to the accomplishment of substantive missions. Examples of services not included are: Architect-Engineer services and other associated services directly related to a particular structure; roofing consulting services; services of auctioneers, realty-brokers, surveyors, and appraisers; automated data processing support services; research and development services; technology assessments; or services in support of intervention or litigation (other than attorney's fee).

537.205 Management controls.

Consulting service contracts must be authorized by the Administrator in accordance with the requirements of GSA Order, Procurement of Consulting Services (ADM 2800.12B).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING [RESERVED]

PART 539—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES [RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 542—CONTRACT ADMINISTRATION

Subpart 542.2—Assignment of Contract Administration

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542.200 Scope of subpart.
542.200–70 Policy.
542.201 Definitions.
542.202 Assignment of contract administration.
542.204 Supporting contract administration.
542.206 Reassignment of contract administration.

Subpart 542.3—Contract Administration Office Functions

542.301 General.
542.302 Contract administration functions.

Subpart 542.4—Correspondence and Visits

542.401 Contract correspondence.
542.402 Visits to contractors' facilities.
542.470 Implementation.

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clauses.

Authority: 40 U.S.C. 486(c).

Subpart 542.2—Assignment of Contract Administration

542.200 Scope of subpart.

This subpart prescribes the policies and procedures for contract administration.

542.200–70 Policy.

(a) Contract administration is an essential element of the procurement process which, among other things, ensures the delivery of the Government's requirements in accordance with all contract terms and conditions. Accordingly, contracting directors must ensure that contract administration activities are performed by qualified personnel and in an effective manner.

(b) In some cases, contract administration may be performed by the contracting officer who awarded the contract. In others, it may be assigned to an administrative contracting officer (ACO) located within the contracting office. Management also may establish a separate contract administration office (CAO) consistent with the nature and complexities of the contracts awarded by contracting offices, the need to provide for performance of contract administration functions at or near the contractor's facility or the place of performance, and the availability of resources. FAR 42.202 and 542.202 prescribe policies and procedures for the assignment of contract administration responsibility in those instances where a separate contract administration office has been established or where it has been delegated to an ACO within the contracting office.

(c) The contracting officer ultimately is responsible for the performance of contract administration. In carrying out the responsibility, the contracting officer may designate representatives to perform specified functions. Such representatives may be designated for activities such as quality assurance, production, price analysis, finance and

various engineering and technical specialities. These representatives may not enter into or modify a contract or otherwise perform functions reserved for a contracting officer except to the limited extent permitted for construction contracts. (See 542.201.2(d).) Designations or authorities of these representatives must be in writing and communicated to the contractor.

542.201 Definitions.

As used in this subpart the following terms shall have the meanings set forth below:

(a) "Contract administration" means the performance and coordination of all actions subsequent to the award of a contract that the Government must take to obtain compliance with all contract requirements, including timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions also include all technical, financial, audit, legal, administrative and managerial services in support of the contracting offer. It may include such additional tasks as may be requested or needed by the contracting activity to include support in the pre-award phase of contracting.

(b) "Procuring Contracting Officer" (PCO) means, a contracting officer (see FAR Subpart 2.1). For purposes of this regulation, this term will be used where necessary to differentiate between procurement and administrative functional responsibilities when contract administration authority has been delegated to an ACO within a contracting office or a CAO.

(c) "Assignment of contract administration" means that process whereby identified functions, duties, or responsibilities related to the administration of contracts are assigned either by this part or by individual assignment to a contract administration office or an ACO within a contracting office.

(d) "Contracting Officer's Representative (COR), Contracting Officer's Technical Representative (COTR), or Contract Administrator" means an individual designated and authorized by the contracting officer to perform contract administration activities on his/her behalf within the limits of delegated authority. Normally, these individuals do not have authority to commit the Government; i.e., signatory authority. In order to commit or bind the Government, a valid contracting officer warrant is needed. COR's or COTR's for construction contracts may possess contracting officer warrants to issue change orders not to exceed $25,000.

(e) for definitions of other commonly used contract administration terms see FAR Subpart 2.1 and GSAR Subpart 502.1 of this Chapter.

542.202 Assignment of contract administration.

(a) In addition to consulting with the CAO in determining whether individual functions listed in FAR 42.302(a) should be witheld, the contracting officer may consult with an ACO within a contracting office as appropriate.

(b) For individual contracts or groups of contracts, the contracting officer may delegate, to an ACO within a contracting office or the CAO, functions not listed in FAR 42.302 and 542.302(b) provided that:

(1) The requirements of FAR 42.202(c) are met and,

(2) The Assistant Administrator for Acquisition Policy approves the additional delegation. Requests for additional delegations must be submitted through the Commissioner or Assistant Administrator of the appropriate service or staff office to the Office of Acquisition Policy. If a service/office is providing contracting support for another service/office the request shall be sent to the Commissioner/Assistant Administrator of the contracting service/office. That official shall coordinate as necessary with the affected service/office.

(c) In addition to the requirements of FAR 42.202(d), the contracting officer shall provide or make available, as appropriate, a complete copy of the contract file to the individual assigned administration responsibility to the CAO or ACO within a contracting office.

(d) References to responsibilities of a contract administration office apply also to an ACO within a contracting office when appropriate.

542.204 Supporting contract administration.

References in FAR 42.206 to a CAO apply also to an ACO within a contracting office when appropriate.

542.206 Reassignment of contract administration.

References in FAR 42.206 to a CAO of initial assignment and to a successor CAO apply also to an ACO within a contracting office when appropriate.

Subpart 542.3—Contract Administration Office Functions

542.301 General.

References to assignment of contract adminstration under FAR Subpart 42.2 to a CAO apply also to an ACO within a contracting office when appropriate.

542.302 Contract administration functions.

(a) Normal contract administration functions which are identified at FAR 42.302(a) are to be performed to the extent they apply by a contracting officer awarding a contract, an ACO within a contracting office or by a separate CAO.

(b) The ACO within the contracting office or CAO shall perform the functions listed at FAR 42.302(b) and the additional functions listed below only when and to the extent they are specifically authorized by the contracting officer or by directive issued by the contracting activity.

(1) Negotiate and issue priced or unpriced orders under indefinite delivery type contract and basic ordering agreements.

(2) Make termination decisions on purchase/delivery orders with coordination or any required concurrence by the PCO. Process the action.

(3) Process termination for default for contracts after PCO termination decision.

(4) Process contractor claims and make final determination.

(5) Assess liquidated damages as appropriate.

(6) Issue cure or show cause notices in accordance with the requirements of FAR 49.402–3(b).

(7) Issue change orders not to exceed $25,000 for construction contracts.

(c) In addition to the instruction at FAR 42.302(c), additional functions not listed at 542.302(b)(1)–(7), or not otherwise delegated, remain the responsibility of the contracting office.

(d) GSA contracting activities may supplement the foregoing lists with additional functions peculiar to their programs upon the approval of the Assistant Administrator for Acquisition Policy. Requests for additional functions must be submitted through the Commissioner or Assistant Administrator of the appropriate service/office to the Office of Acquisition Policy. If a service/office is providing contracting support for another service/office, the request shall be sent to the Commissioner/Assistant Administrator of the contracting service/office. That official shall coordinate as necessary with the other affected service/office.

Subpart 542.4—Correspondence and Visits

542.401 Contract correspondence.

All references in FAR 42.401 to the CAO apply also to an ACO within a contracting office when appropriate.

542.402 Visits to contractor's facilities.

All references in FAR 42.402 to the CAO apply also to an ACO within a contracting office when appropriate.

542.470 Implementation.

Heads of contracting activities may issue implementing guidelines or procedures. Before issuance of such documents, the concurrence of the Assistant Administrator for Acquisition Policy shall be obtained.

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clauses.

(a) The contracting officer shall insert the clause at 552.242–70, Status Report of Orders and Shipments, in solicitations and indefinite delivery requirements contracts for stock replenishment items. The clause may also be used in indefinite delivery definite quantity contracts for stock items when close monitoring is necessary because numerous shipments are involved.

(b) The contracting officer shall insert a clause substantially the same as the clause at 552.242–71, Preproduction Samples, in solicitations and contracts for supplies when the submission of preproduction samples will be required. Preproduction samples may be required to determine that the contractor can produce supplies which comply with the contract specifications, and to provide a quality standard for reference during the life of the contract.

(c) The contracting officer shall insert the clause at 552.242–72, Disposition of Production Samples, in solicitations and contracts for supplies when source inspection is required and testing is to be conducted at a Government facility.

PART 543—CONTRACT MODIFICATION

Subpart 543.1—General

Sec.
543.100 Scope of subpart.
543.170 Pricing of modifications to leases of real property.

Subpart 543.2—Change Orders

543.202 Authority to issue change orders.
543.205 Contract clauses.

Authority:—40 U.S.C. 486(c).

Subpart 543.1—General

543.100 Scope of subpart.

This subpart sets forth policies and procedures for issuing contract modifications for leases of real property.

543.170 Pricing of modifications to leases of real property.

The contracting officer shall ensure that lease actions comply with the procedures in FAR 15.804.

Subpart 543.2—Change Orders

543.202 Authority to issue change orders.

(a) Change orders shall be issued only by the procuring contracting officer with the following exceptions:

(1) The limited circumstances provided for by FAR 42.202(c) and 542.202(b) of this chapter.

(2) Contracting officer's representatives (COR) for construction contracts may be given contracting officer warrants to issue change orders not to exceed $25,000 for those situations when time does not permit action by the contracting officer.

(b) Change orders shall be issued by the contracting officer after coordination as appropriate, with counsel, quality control, finance, audit or other technical personnel.

543.205 Contract clauses.

(a) The contracting officer shall insert the clause at 552.243–70, Pricing of Adjustments, in solicitations and contracts which are expected to exceed the small purchase limitation except cost type contracts.

(b) The contracting officer shall insert the clause at 552.243–71, Equitable Adjustments, in solicitations and contracts for (1) dismantling, demolishing, or removing improvements; and (2) construction, when a fixed-price contract is planned and the contract price is expected to exceed the small purchase limit.

PART 544—SUBCONTRACTING POLICIES AND PROCEDURES—[RESERVED]

PART 545—GOVERNMENT PROPERTY—[RESERVED]

PART 546—QUALITY ASSURANCE

Subpart 546.3—Contract Clauses

Sec.
546.302 Fixed-price supply contracts.
546.302–70 Inspection facilities.
546.302–71 Source inspection.
546.302–72 Charges for inspection and testing.
546.312 Construction contracts.
546.316 Responsibility for supplies.
546.316–70 Rejected supplies.

Subpart 546.4—Government Contract Quality Assurance

546.400 Scope of subpart.
546.402 Government contract quality assurance at source.
546.403 Government contract quality assurance at destination.
546.470 Testing.
546.470–1 Acceptance testing.
546.470–2 Certification testing.
546.470–3 Qualification (QPL) testing.
546.470–4 Development testing.

Subpart 546.7—Warranties

546.710 Contract clauses.

Authority: 40 U.S.C. 486(c).

Subpart 546.3—Contract Clauses

546.302 Fixed-price supply contracts.

In addition to the clause at FAR 52.246–2, the clauses prescribed in this 546.302 relating to inspection shall be included in solicitations and contracts under the circumstances indicated in the respective subsections. These clauses may be included in contracts established under the small purchase procedures if considered appropriate by the contracting officer.

546.302–70 Inspection facilities.

(a) The contracting officer shall insert the clause at 522.246–70, Inspection Facilities, in solicitations and contracts to reserve the right for the Government to evaluate the acceptability and effectiveness of the contractor's inspection system. In accordance with the requirement of paragraph (b) of the clause, space shall be provided in the solicitation for offerors to provide the required information.

(b) Paragraph (c) of the clause in 552.246–70 concerns the inspection of supplies of foreign origin. The requirements of this paragraph (c) of the clauses may be waived (1) when inspection services are available from another Federal agency on the basis of its primary inspection cognizance in a geographic area, (2) when an inspection interchange agreement exists with another agency concerning inspection at a contractor's plant, (3) when procurements to be made for AID specify the area of source, or (4) when other considerations will assure more economical and effective inspection consistent with the best interests of the Government. When this portion of the clause is to be waived, a statement to that effect shall be made in the schedule. Any such decisions should be fully coordinated with the appropriate quality assurance representative.

546.302–71 Source inspection.

The contracting officer shall insert the clause at 552.246–73, Source Inspection,

in solicitations and contracts when it is determined that inspection is to be performed at source.

546.302-72 Charges for inspection and testing.

The contracting officer shall insert the clause at 552.246-74, Charges for Inspection and Testing, in solicitations and contracts which include the clause at 552.246-73.

546.312 Construction contracts.

The contracting officer shall insert the clause at 552.246-71, Final Inspection and Tests, in solicitations and contracts for construction when a fixed price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. This clause supplements the Inspection of Construction clause at FAR 52.246-12.

546.316 Responsibility for supplies.

546.316-70 Rejected supplies.

The contracting officer shall insert the clause at 552.246-72, Responsibility for Supplies—Rejected Supplies, in solicitations and contracts for supplies when the contract amount is expected to exceed the small purchase limitation.

Subpart 546.4—Government Contract Quality Assurance

546.400 Scope of subpart.

This subpart prescribes policies and procedures which are to be used as applicable.

546.402 Government contract quality assurance at source.

Source inspection shall be designated in contracts for:

(a) National requirements regardless of dollar amounts (including shipments to key GSA supply distribution facilities);

(b) Schedules selected for source inspection;

(c) Regional requirements-estimated value $15,000 and over;

(d) Indefinite delivery, definite quantity over $10,000;

(e) Indefinite delivery, definite quantity under $10,000, if it is known that the contractor holds one or more GSA contracts for which source inspection is being performed; otherwise inspection will be at destination;

(f) Class 8010 items over $5,000, or under this amount when the situations in (e), above, is known;

(g) The following vehicles:

(1) Special purpose;

(2) Trucks over 10,000 pounds gross vehicle weight (GVW); and trucks 10,000 pounds GVW and under not covered by a Federal Standards; and

(3) Those shipped outside the conterminous United States; and

(h) Other instances when the contracting director determines it would be in the best interest of the Government due to the critical nature of the material. In these instances, the contracting director shall notifiy the appropriate Contract Management Division that the contract provides for source inspection and state the reasons.

(i) For lower dollar values than those listed in (c) and (d), above, unless otherwise excepted under (e) and (f).

546.403 Government contract quality assurance at destination.

Destination inspection shall be designated on contracts:

(a) For subsistence items;

(b) With domestic consignees for:

(1) Standard vehicles;

(2) Trucks 10,000 pounds GVW and under covered by a Federal Standard.

546.470 Testing.

Testing to determine conformance with specifications and standards may be conducted at facilities of the Federal agencies, manufacturers, independent testing laboratories, and others, as appropriate, may be used in the conduct of tests.

546.470-1 Acceptance testing.

(a) Acceptance testing is conducted to determine conformance with requirements of purchase descriptions or specifications before a shipment is accepted. Such testing shall not be solely for the purpose of furnishing information to a producer or vendor as to conformance of an article or commodity with specification requirements.

(b) The cost of services for acceptance testing of representative samples of a shipment normally shall be borne by GSA. However, if the samples tested fail to meet the requirements of the specification or purchase description, the contractor shall be required to pay any additional costs incurred for a retest as a result of the failure.

546.470-2 Certification testing.

(a) Certification testing is conducted to determine conformance of an article or commodity with a specification requirement for the purpose of executing a certificate of compliance when a certification is called for by the specification.

(b) A certificate from a recognized laboratory may be a requirement in a Federal Specification. When there is a lack of suitable commercial testing facilities, producers or vendors may obtain a certification from a Government laboratory such as the National Bureau of Standards, and shall be required to bear the cost of testing, including all components of that cost. In this event GSA will, when feasible, arrange for the required testing upon receipt of a request from a producer or vendor and upon payment of the required test fee.

546.470-3 Qualification (QPL) testing.

(a) Qualification testing is conducted to determine conformance of an article or commodity with the qualification requirements of a specification for inclusion of the article or commodity in a Qualified Products List (QPL).

(b) When QPL tests will serve predominantly the interest of the producer or vendor, GSA shall fix the test fee in such an amount as will recover the cost of conducting the test, including all components of such cost determined in accordance with accepted accounting principles. Usually, the producer or vendor shall be required to bear the cost of testing to qualify an article or commodity for inclusion in a qualified products list, except when it is determined that making these tests will serve predominantly the interest of the producer or vendor. This may be the case where adequate competition has not been developed in industry because of an insufficient number of qualification approvals, or sources of supply have not been sufficiently established to ensure availability.

(c) Normally, payment shall be made to the General Supply Fund and appropriate reimbursement shall be made by GSA to the agency whose laboratory conducted the tests. In certain cases the producer or vendor may be required to submit his/her product to one or more independent testing laboratories approved by GSA. In these cases, the producer or vendor may be directed to pay the testing fee directly to the laboratory that conducted the test.

(d) Other instructions concerning establishment of qualified products lists, qualification of products, etc., are contained in FAR 9.2, FPMR 41 CFR Part 101-29 and the Federal Standardization Handbook.

546.470-4 Development testing.

(a) Development testing is conducted to determine whether a new article or commodity that is not covered by an existing specification may be suitable for Government use, or to aid in the development of contemplated specifications and standards.

(b) When tests are conducted in the development of specifications or standards, those procedures in 546.470-

3(b) and (c) pertaining to test fees shall apply.

Subpart 546.7—Warranties

546.710 Contract clauses.

(a) The contracting officer shall insert the clause at 552.246–76, Warranty of Pesticides, in solicitations and contracts involving the procurement of pesticides.

(b) The contracting officer shall insert the clause at 552.246–75, Guarantees, in solicitations and contracts for construction when the contract amount is expected to exceed the small purchase limitation.

PART 547—TRANSPORTATION

Subpart 547.3—Transportation in Supply Contracts

Sec.

547.300 Scope of subpart.
547.302 Place of delivery—f.o.b. point.
547.302–70 Delivery zones—Indefinite delivery contracts: Requirements contracts for stock and non-stock items.
547.304 Determination of delivery terms.
547.304–70 F.o.b. origin.
547.304–71 F.o.b. origin, freight prepaid.
547.305 Solicitation provisions, contracts clauses, and transportation factors.
547.305–70 Placarding railcar shipments.
547.305–71 Shipping points.
547.305–72 Contracting for agencies located in Alaska.
547.370 Use of appropriate delivery terms.
547.371 Restrictions on transportation to military installations.

Authority:—40 U.S.C. 486(c).

Subpart 547.3—Transportation in Supply Contracts

547.300 Scope of subpart.

This subpart prescribes policies and procedures which are applicable to the Office of Federal Supply and Services acquisitions.

547.302 Place of delivery—f.o.b. point.

547.302–70 Delivery zones—Indefinite delivery contracts: Requirements contracts for stock and non-stock items.

(a) Each solicitation shall specify the zone or zones when zone prices are required.

(b) Zone means the officially established geographic area for each GSA Region.

(c) Zones shall not be subdivided or altered unless such a change is approved by the Director, Office of Procurement, Office of Federal Supply and Services.

(d) The contracting officer shall determine which zones are required for each solicitation. Also, the contracting officer shall prepare an appropriate contract file justification for the number of zones used in the solicitation.

547.304 Determination of delivery terms.

547.304–70 F.o.b. origin.

(a) When a contract specifies "f.o.b. origin," a Government bill of lading (GBL) normally shall be issued before shipment for use by the contractor unless the shipment will be made via postal or parcel services. If the shipment is extremely urgent and a GBL cannot be issued in a timely manner, contracting officers may, after coordination with the transportation officer concerned, authorize shipment on a commercial bill of lading. If the transportation cost is estimated not to exceed $100, the contractor shall be requested to ship on a prepaid basis and add the transportation charges to the invoice as provided in 547.304–71.

(b) When f.o.b. origin shipments are authorized to be made by commercial bill of lading (CBL), the contracting officer shall instruct the contractor to (1) obtain the signature of the origin carrier's agent on the original and all copies of the CBL; (2) annotate the original and all copies of the CBL with the phrase "TO BE CONVERTED TO U.S. GOVERNMENT BILL OF LADING"; and (3) forward the original to the office which authorized the use of CBL for the purpose of converting to a GBL.

547.304–71 F.o.b. origin, freight prepaid.

When the contract specifies "f.o.b. origin, freight prepaid," the contractor shall be requested to make shipment on a CBL and make payment to the transportation company. These prepaid CBLs shall not be converted to GBL's. The contracting officer shall instruct the contractor, in writing, to show the transportation charges as a separate item on the invoice for each individual shipment and include a copy of the prepaid freight bill. This method shall be used only when transportation costs are estimated not to exceed $100, unless a larger amount has been specifically authorized in writing by the contracting officer or his/her designated transportation officer.

547.305 Solicitation provisions, contract clauses, and transportation factors.

547.305–70 Placarding railcar shipments.

It is essential that the railcar is "spotted" for unloading with the proper car door positioned next to the unloading dock, platform, or warehouse door. Therefore, placards shall be placed on each door; one reading "UNLOAD FROM OTHER SIDE" and the other "UNLOAD FROM THIS SIDE." When applicable, the solicitation and contract shall include the clause at 552.247–70, Placarding Railroad Shipments.

547.305–71 Shipping points.

When f.o.b. origin prices are solicited, offerors shall be required to specify their shipping point(s) by providing street address, city, county, and state applicable to each item on which an offer is submitted. Spaces shall be provided in the solicitation for inserting this information.

547.305–72 Contracting for agencies located in Alaska.

(a) Solicitations for requirements of Federal agencies located in Alaska shall solicit offers on the basis of alternate delivery terms including f.o.b. Alaskan destination basis. When the requiring agency specifically requests delivery on other than an f.o.b. Alaskan destination basis, contracting officers shall verify the validity of such requests and document the case file.

(b) When feasible, offers involving delivery in Alaska shall be solicited f.o.b. origin, f.o.b. port of exit (Seattle), and f.o.b. Alaskan destination. All offers shall be evaluated on the basis of the lowest delivered cost to the ultimate destination.

(c) Federal supply schedules should include a delivery zone providing for delivery f.o.b. named Alaska destination to the extent that these destinations are served by regularly scheduled surface transportation. Contracting officers shall request assistance from the Region 10 Transportation Office in determining Alaska destination with regularly scheduled surface transportation.

547.370 Use of appropriate delivery terms.

If the contracting officer uses only one delivery term in the solicitation, the reasons for so doing shall be documented in the contract file.

547.371 Restrictions on transportation to military installations.

(a) DOD publications entitled "Terminal Facilities Guide" list the shipping and receiving capabilities and delivery restrictions at all military installations and are updated as changes occur. Copies of the guides are distributed to the GSA regional Transportation Division.

(b) For solicitations specifying direct delivery to military installations, contracts shall include a provision specifying any applicable delivery restrictions. The contracting officer shall verify receiving capabilities or restrictions with the appropriate Transportation Division before issuing the solicitation.

PART 548—VALUE ENGINEERING

548.000 Scope of Part.

Pending revision of FAR coverage on value engineering all previously prescribed GSA policies, procedures, and forms shall remain in effect with the following modifications to the GSA Form 2894 (Rev. 6-76), Value Incentive Clause (Fixed Price Supply Contract).

(a) Paragraph 1.4 references the Patent Indemnity clause shall ensure that the most recent version of the clause is used; and

(b) Paragraph 1.5 references the Federal Procurement Regulations, 41 CFR Part 1-15 shall be changed to Federal Acquisition Regulation, 48 CFR Part 31.

(40 U.S.C. 486(c))

PART 549—TERMINATION OF CONTRACTS

Subpart 549.1—General Principles

Sec.
549.111 Review of proposed settlements.

Subpart 549.4—Termination for Default

549.402-6 Repurchase against contractor's account.

Authority: 40 U.S.C. 486(c).

Subpart 549.1—General Principles

549.111 Review of proposed settlements.

(a) Proposed termination settlement between $25,000 and $100,000, shall be reviewed and approved by the contracting director as defined at 502.171.

(b) Proposed termination settlements over $100,000, shall be reviewed and approved by the head of the contracting activity as defined at 502.170.

(c) The head of the contracting activity may require review and approval of proposed termination settlements less than $25,000 at least one supervisory level above the contracting officer.

Subpart 549.4—Termination for Default

549.402-6 Repurchase against contractor's account.

(a) After termination but prior to repurchase the contracting officer shall revalidate the original need for the supplies or services. The file shall be appropriately documented.

(b) Repurchase against a contractor's account usually shall be made on the basis of the original contract terms and conditions, including the specification, under which the contractor defaulted. If acceptable bids or offers cannot be obtained on this basis, similar supplies or services may be bought under specifications which will substantially satisfy the original requirement. Advice of counsel should be obtained before issuing a solicitation for similar supplies or services.

(c) In order to assist in protecting the Government's rights to recover excess costs, the contracting officer shall document the file to explain the circumstances surrounding any delay in repurchasing the terminated supplies or services.

PART 550—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 550.1—General

550.102 Policy.

Any Region, Service or Staff Office which receives a request for action under FAR Part 50 shall, within 5 working days, so notify the Assistant Administrator for Acquisition Policy by memorandum.

(40 U.S.C. 486(c))

SUBCHAPTER H—CLAUSES AND FORMS

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
552.000 Scope of part.

Subpart 552.1—Instructions for Using Provisions and Clauses

552.100 Scope of subpart.
552.101 Using Part 552.
552.102 Incorporating provisions and clauses.
552.102-1 Incorporation by reference.
552.103 Identification of provisions and clauses.
552.105 Procedures for using alternate.
552.107 Provisions and clauses prescribed in Subpart 552.1.

Subpart 552.2—Text of Provisions and Clauses

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552.209-71 Certification Regarding Previous Crimes, Debarments, Suspensions and Defaults.
552.209-72 Termination—Erroneous Representation Concerning Crimes, Debarments, Suspensions, and Defaults.
552.209-73 Product Removal from Qualified Products List.
552.210-70 Standard References.
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552.210-72 Acceptable Age of Supplies.
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552.210-74 Brand Name or Equal.
552.210-75 Marking.
552.210-76 Charges for Marking.
552.210-77 Preservation, Packaging and Packing.
552.210-78 Charges for Packaging and Packing.
552.210-79 Packing List.
552.211-70 Commercial Item Certification.
552.212-1 Time of Delivery.
552.212-70 Time of Shipment.
552.212-71 Notice of Shipment.
552.212-72 Availability for Inspection and Testing, and Shipment/Delivery.
552.212-73 Parts and Services.
552.212-74 Non-compliance With Contract Requirements.
552.214-70 [Reserved].
552.214-71 Telecopier Submissions, Modifications, or Withdrawals of Bids.
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552.214-73 "All of None" Offers.
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552.215-72 Telegraphic Submissions, Modifications, or Withdrawals of Proposals Received at the GSA Communications Center.
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552.216-70 Fixed Fee—Construction.
552.219-70 Termination—Erroneous Representation Concerning Size Status.
552.219-71 Allocation of Orders—Partially Set-aside Items.
552.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).
552.222-70 Davis-Bacon Act (40 U.S.C. 276a-276a-7).
552.222-71 Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333).
552.222-72 Apprentices and Trainees.
552.222-73 Payrolls and Basic Records.
552.222-74 Compliance with Copeland Act Requirements.
552.222-75 Withholding.
552.222-76 Subcontracts.
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552.223-70 Hazardous Substances.
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552.225-70 Buy American Act—Hand and Measuring Tools.
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Sec.
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552.246–72 Responsibility for Supplies (Rejected Supplies).
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552.246–75 Guarantees.
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552.270–2 Subletting the Premises.
552.270–3 Maintenance of Premises.
552.270–4 Damage by Fire or Other Casualty.
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552.270–6 Applicable Codes and Ordinances.
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552.270–8 Failure in Performance.
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552.270–10 Alterations by Government.
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Subpart 552.3—Provision and Clause Matrixes

552.300 Scope of subpart.
552.301 Fixed-price supply.
552.305 Fixed-price service.
552.307 Fixed-price construction.
552.308 Cost-reimbursement construction.
552.314 Architect-engineering.
552.319 Small purchases.
552.320–70 Utility services (sole supplier—regulated rates).
552.370) Leases of real property.

Authority: 40 U.S.C. 486(c).

552.000 Scope of part.

This part (a) gives instructions for using provisions and clauses in solicitation and/or contracts; (b) sets forth the solicitation provisions and contract clauses prescribed by this regulation; (c) presents matrixes listing the GSAR provisions and clauses applicable to supply, service, construction, architect-engineer contracts, and contracts using small purchase procedures, and (d) presents matrixes listing FAR and GSAR provisions and clauses applicable to utility contracts (sole supplierregulated rates) and to leases of real property.

Subpart 552.1—Instructions for Using Provisions and Clauses

552.100 Scope of subpart.

This subpart explains the numbering system used in Subpart 552.2, and prescribes procedures for incorporating and identifying provisions and clauses in solicitations and contracts.

552.101 Using Part 552.

(a) *Definitions.* The definitions set forth in FAR 52.101(a) apply to this GSAR Part 552.

(b) *Numbering.* When a provision or clause in this Part has the same title as a similar provision or clause contained in the FAR, the provisions or clause is preceded by the number 5 and is included under the same subsection number and caption as in the FAR. Provisions or clauses numbered in this manner represent (1) provisions or clauses which are "substantially" the same as FAR provisions or clauses, and (2) provisions and clauses which are to be used instead of FAR provisions. All supplemental provisions and clauses are numbered in the same manner as the FAR, except that the number is preceded by the chapter number and the subsection numbers begin with 70 and are sequentially numbered e.g., 552.232–70, 552.232–71, etc.

(c) *Matrixes.* Matrixes are included as a guide to locating provisions and clauses which are applicable to supply, service, construction, and architect-engineer solicitations/contracts. A separate matrix lists provisions and clauses prescribed for use in connection with small purchases; other matrix are not applicable to small purchases. Matrixes listing FAR and GSAR provisions and clauses applicable to utility contracts (sole-supplier-regulated rates) and to leases of real property are also included. The absence of a GSAR entry in any given matrix does not mean that the clause cannot be used in other instances. Persons responsible for drafting solicitations must research pertinent regulations or make other determinations necessary to ensure that (1) the clauses selected fit the procurement, (2) there are no restrictions which preclude their use, and (3) when one clause is dependent upon the use of another clause, that all necessary clauses are included in the solicitation.

552.102 Incorporating provisions and clauses.

552.102–1 Incorporation by reference.

Provisions and clauses prescribed in the GSAR shall not be incorporated in solicitations/contracts by making a direct reference to a GSAR section. Unlike the FAR, copies of the GSAR (i.e., subscriptions to the loose-leaf issuances) are not available through the Government Printing Office for purchase by the general public. However, forms containing GSAR provisions and clauses in full text may be incorporated by reference if copies of the forms have been distributed to prospective offerors on GSA mailing lists.

552.103 Identification of provisions and clauses.

(a) When a provision or clause that is a deviation from a FAR provision or clause is prescribed in the GSAR, the word "(DEVIATION)" is included as a part of the title of the provision or clause along with the FAR citation. The Contracting Officer shall show the GSAR citation (552.232–8—Prompt Payment Discount (April 1984)

(DEVIATION—FAR 52.232–8)) in solicitations and contracts.

(b) Provisions and clauses that deviate from FAR provisions and clauses, but which are not prescribed in the GSAR, shall be shown in solicitations/contracts in accordance with FAR 52.103(a).

(c) Provisions and clauses which deviate from GSAR provisions and clauses shall be shown in solicitations/contracts in accordance with FAR 52.103(b).

552.105 Procedures for using alternates.

The procedures set forth in FAR 52.105 are applicable with respect to this GSAR Part 552.

552.107 Provisions and clauses prescribed in Subpart 552.1.

(a) The contracting officer shall insert the provision at 552.252–5, Authorized Deviations in Provisions, in solicitations that include any FAR or GSAR provision with an authorized deviation. This provision shall be used in lieu of the FAR provision at 52.252–5.

(b) The contracting officer shall insert the provision at 552.252–6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or GSAR provision with an authorized deviation. This clause shall be used in lieu of the FAR provision at 52.252–6.

Subpart 552.2—Text of Provisions and Clauses

552.200 Scope of subpart.

This subpart sets forth the text of all GSAR provisions and clauses, and for each provision and clause, provides a cross-reference to the location in the GSAR that prescribes its use. Brief instructions are given regarding the use of provisions and clauses, but these instructions may not be complete, and contracting officers must review the basic text where the clause is prescribed to determine requirements for use of the provision or clause.

552.203–70 Advertising of Award.

As prescribed in 503.570, insert one of the following clauses in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation:

Alternate I

The following clause shall be included in all solicitations and contracts for supplies and services except those including the Experimental Technology Incentives program (ETIP) provisions:

Advertising of Award (April 1984)

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(End of Clause)

Alternate II

The following clause shall be included in solicitations and contracts when the Experimental Technology Incentive Program (ETIP) provisions are included:

Advertising of Award (April 1984)

The Contractor agrees not to refer to awards in commercial advertising in an inaccurate or misleading manner or in such a manner as to state or imply that the product or service is endorsed by the Federal Government. The Contractor may state that a contract was awarded pursuant to the ETIP criteria provided that the information given is complete and accurate.

(End of Clause)

552.207–70 Report of Employment Under Commercial Activities.

As prescribed in 507.305, insert the following clause in solicitations issued for the purpose of making a cost comparison covering work currently being performed by Government employees and in contracts that result from such solicitations.

Report of Employment Under Commercial Activities (April 1984)

(a) The Contracting Officer, as soon as practicable, will provide the Contractor with a list of the Federal employees, including social security numbers, that will be involuntarily separated from Government employment as a result of this contract.

(b) The Contractor agrees:

(1) To provide the Contracting Officer, within 5 working days after the date of transfer of the operation and maintenance responsibilities of a Federal project to the Contractor (contract start date), with the names and social security numbers of individuals on the list referenced in paragraph (a) that, as of the contract start date, has accepted or rejected offers of employment comparable to their previous employment with the Federal Government. For those who reject the Contractor's employment offer, the Contractor shall include the total monetary value of the pay and benefits offered:

(2) To provide the Contracting Officer with the names and social security numbers of the individuals hired, within 5 working days of such hiring, during the first 90 days after the contract start date, if the Contractor hires any additional Federal employees on the list referenced in paragraph (a) for any job within the Contractor's organization; and

(3) To furnish the information required by this clause in a concise and clearly detailed format. (Report requirement approved by the Office of Management and Budget (OMB) under OMB Control Number 3090–0104.)

(c) The operation of the system of records identified by this clause is subject to the Privacy Act of 1974 (5 U.S.C. 552a) and the Privacy Act Notification and Clause of this contract. The clause constitutes the notice required to invoke compliance by the contractor with the provisions of the Notice and clause.

(End of Clause)

552.209–70 Subcontractor Eligibility.

As prescribed in 509.104–4(c), insert the following clause in solicitations and contracts when a construction contract, or a contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

Subcontractor Eligibility (April 1984)

(a) In connection with the performance of work under this contract, the Contractor shall not subcontract with any subcontractor who, at the time of subcontract award, is listed on the current Consolidated List of Debarred, Suspended, and Ineligible Contractors, unless otherwise authorized by the Government in accordance with Subpart 9.4 of the Federal Acquisition Regulation.

(b) Prior to award of the prime contract, the Consolidated List of Debarred, Suspended, and Ineligible Contractors will be available for inspection at the Business Service Center in the GSA regional office. After contract award, the Contractor may obtain a copy of the current list from the Contracting Officer.

(c) In the event of the Contractor's noncompliance with the foregoing requirements, the Government may terminate this contract for default or take other appropriate action, including, but not limited to, requiring the Contractor to terminate any such subcontract and substitute an eligible subcontractor in lieu thereof, at no increase in the contract price or time for performance.

(d) The term "subcontractor," as used in this clause, shall mean the individual or firm with whom the Contractor proposes to enter into a subcontract for manufacturing, fabricating, installing, or otherwise performing work under this contract.

(e) The contract shall include the provisions of paragraphs (a), (b), (d), and (e) of this clause in every subcontract hereunder.

(End of Clause)

552.209–71 Certification Regarding Previous Crimes, Debarments, Suspensions, and Defaults.

As prescribed in 509.105–70(a), insert the following certification in solicitations for supplies, services (except utility services), and leases of real property when the contract amount is expected to exceed the small purchase limitation.

(a) The offeror certifies that, within 3 years prior to the date of this offer, it and/or any of its officers and principal employees:

(1) Have ( ) have not ( ) been indicted, otherwise charged or convicted of:

(i) A criminal offense incident to obtaining or attempting to obtain a public (Federal, state, or municipal) or private contract or subcontract thereunder, or in the performance of such contract or subcontract;

(ii) A violation of the Organized Crime Control Act of 1970;

(iii) A violation of the Federal or State Antitrust statutes arising out of the submission of bids or proposals; or

(iv) Embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, tax fraud, receiving stolen property, or equivalent crimes which are indicative of a lack of business integrity.

(2) Have ( ) have not ( ) been debarred or suspended from the award of public contracts;

(3) Have ( ) have not ( ) had a public contract terminated for default.

(b) For the purpose of this certification, a principal employee is defined as the person(s) acting in a managerial or supervisory capacity who will be responsible for administering the offeror's performance of the contract to be awarded under this solicitation (e.g., project manager, plant manager).

(c) By submitting this certification, the offeror agrees to immediately notify the Contracting Officer, in writing, of any revision to the above certification based upon changed circumstances from the submission of its offer up to contract award, or for the duration of its offer.

(d) The knowledge of the person who executes this certification is not required to exceed the "knowledge" which that person reasonably can be expected to possess.

(e) A certification that any of the items in (a) above exist will not necessarily result in the withholding of an award under this solicitation. However, the certification will be considered in connection with the determination of an offeror's responsibility. Offerors who fail to furnish the certification and provide such additional information as requested by the Contracting Officer will not be responsible.

(f) The Government may utilize the remedy delineated in the Termination—Erroneous Representations Concerning Crimes, Debarments, Suspensions, and Defaults clause prescribed at 552.209–72 in addition to other remedies available to the Government, if the offeror furnishes an erroneous certification and contract award results from this solicitation.

(End of Certification)

552.209–72 Termination—Erroneous Representation Concerning Crimes, Debarments, Suspensions, and Defaults.

As prescribed in 509.105–70(e), insert the following clause in solicitations and contracts for supplies, services (except utility services), and leases of real property when the contract amount is expected to exceed the small purchase limitation.

Termination—Erroneous Representation Concerning Crimes, Debarments, Suspensions and Defaults (April 1984)

The certification regarding previous crimes, debarments, suspensions, and defaults contained in the representation and certification provision of this solicitation is a material representation of fact upon which the Government relies when making award. If it is later determined that the certification was erroneous, in addition to other remedies available to the Government, the Government reserves the right to terminate for default any contract resulting from this solicitation.

(End of Clause)

552.209–73 Product Removal from Qualified Products List.

As prescribed in 509.206–2, insert one of the following clauses in solicitations and contracts when qualified products are to be procured (use with FAR 52.209–02):

Alternate I

The following clause shall be included in the solicitation when security cabinets, security vault doors, and changeable combination padlocks qualify under applicable Federal or Interim Federal Specifications are to be procured:

Product Removal From Qualified Products List (April 1984)

If, during the performance of this contract, the product being furnished is, for any reason except those outlined in paragraph 3.1.1 of the applicable Federal or Interim Federal Specification, removed from the Qualified Products List, the Government may terminate this contract for default pursuant to paragraph (a)(1)(ii) of the Default clause prescribed in FAR 52–249–8.

(End of Clause)

Alternate II

The following clause shall be included in the solicitation when other qualified products are to be procured:

Product Removal From Qualified Products List (April 1984)

If, during the performance of this contract, the product being furnished is for any reason removed from the Qualified Products List, the Government may terminate this contract for default pursuant to paragraph (a)(1)(ii) of the Default clause prescribed in FAR 52.249–8.

(End of Clause)

552.210–70 Standard References.

As prescribed in 510.011(a), insert the following clause in solicitations and contracts for construction when the contract amount is expected to exceed the small purchase limitation:

Standard References (April 1984)

(a) All documents and publications (such as, but limited to, manuals, handbooks, codes, standards and specifications) which are cited in this contract for the purpose of establishing requirements applicable to equipment, materials or workmanship under this contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of this contract, in accordance with the following:

(1) Wherever reference is made to Standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the Contractor shall comply with the requirements set out in the issue or edition identified in this contract.

(2) Wherever reference is made to any such document other than those specified in subparagraph (1) above, the Contractor shall comply with the requirements set out in the edition specified in this contract, or if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the solicitation on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the specifications of this contract.

(b) Federal Specifications, Federal Standards, Standard Specifications of the Public Buildings Service and Public Buildings Service Standard Methods of Test may be obtained from the Business Service Center at any GSA Regional Office. Inquiries regarding "Commercial Standards", "Product Standards" and "Simplified Practice Recommendations" should be addressed to the Standard Development Service Section, National Bureau of Standards, Washington, DC, 20234. Publications of Associations referred to in the specifications may be obtained directly from the Associations.

(c) Upon request the Contractor shall make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in this contract and which governs quality and workmanship.

(End of Clause)

552.210–71 Reference of Specifications in Drawings.

As prescribed in 510.011(b), insert the following clause in solicitations and contracts for supplies that cite or include Federal Specifications which contain drawings:

References to Specifications in Drawings (April 1984)

If military or other drawings are made a part of this contract, any reference in the drawings to Federal Specifications or Standards shall be considered to be a reference to the date of such Federal Specification or standard identified in the contract.

(End of Clause)

552.210–72 Acceptable Age of Supplies.

As prescribed in 510.011(c), insert the following clause when contractors are required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies in accordance with § 101–27.206–2 of the Federal Property Management Regulations. When the required shelf-life period is 12 months or less, the corresponding age-on-delivery period as suggested in FPMR § 101–27.206–2 is relatively short (i.e., one or two months from date of manufacture). Consequently, if the supplies are to be laboratory tested by the Government prior to acceptance, the acceptable age period should stop at the

time the supplies are offered for inspection and testing. Otherwise, contractors may be prejudiced by unusal delays on the part of the Government in completing the testing process.

Acceptable Age of Supplies (April 1984)

The supplies furnished under this contract shall not be more than—months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies shall be considered to be furnished (1) when they are offered to the Government for inspection and testing, or (2) on the date of shipment if the supplies are shipped under Quality Approved Manufacturer Agreement. If the age of the supplies furnished under this contract is greater than the specified number of months, the Government may exercise its rights under the Inspection clause of this clause.

(End of Clause)

552.210-73 Age on Delivery.

As prescribed in 510.011(d), insert the following clause when contractors are required to furnish self-life items within a specified number of months from the date of manufacture or production of the supplies in accordance with 101–27.206–2 of the Federal Property Management Regulations. If the minimum shelf-life period of the supplies being procured is more than 12 months and/or if lengthy testing is not involved, the end of the acceptable age period may be either the time of shipment or the time of delivery, as considered appropriate by the contracting officer. (Note.—This clause is applicable to procurements which cover both shelf-life and non-shelf-life items, or items with different shelf-life periods.)

Age on Delivery (April 1984)

Included in the item description of each shelf-life item covered by this procurement is a statement regarding the "age on delivery" of the item. The age of the item(s) shall not exceed the number of months shown in the item description, counted from the first day of the month following the month of manufacture to the date of actual delivery to the delivery point(s) specified herein. If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its rights under the Inspection clause of this contract.

(End of Clause)

552.210-74 Brand Name or Equal.

As prescribed in 510.011(e) insert the following clause when a "brand name or equal" purchase description is used in solicitations and contracts.

Brand Name or Equal (April 1984)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the soliciation.

(c)(1) If the bidder proposed to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the solicitation, he/she shall (i) include in their bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of Clause)

552.210-75 Marking.

As prescribed in 510.011(f) insert the following clause in requirements-type solicitations/contracts under which deliveries may be made to civilian and military activities. Other clauses may be used in definite quantity contracts when much of the language is inappropriate (e.g., in contracts for motor vehicles), or when it is not desirable to include two "Marking" clauses in the solicitation/contract.

Marking (April 1984)

(a) *General requirements.* Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards.

(1) *Deliveries to civilian activities.* Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

(2) *Deliveries to military activities.* Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material.* When Government inspection and acceptance are at destination, and delivered supplies are not marked in accordance with contract requirements, the Government has the right, without prior notice to the contractor, to perform the required marking, by contract or otherwise, and charge the contractor therefor at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of Clause)

552.210-76 Charges for Marking.

As prescribed in §510.011(g), insert a clause substantially as follows in solicitations/contracts which include the clause in 552.210–75, or a similar clause which includes the substance of paragraph (b) of the clause in 552.210–75.

Charges for Marking (April 1984)

In accordance with paragraph (b) of clause 552.210–75 Marking, the Government will charge the contractor for marking or remarking improperly marked supplies at the rate of $——* Per man-hour or fraction thereof.

(End of Clause)

552.210-77 Preservation, Packaging and Packing.

As prescribed in 510.011(h), insert the following clause in solicitations and contracts for supplies when the contract amount is expected to exceed the small purchase limitation. The contracting officer may include the clause in contracts awarded through small purchase procedures when appropriate.

Preservation, Packaging, and Packing (April 1984)

Unless otherwise specified, all items shall be preserved, packaged, and packed in

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* The rate to be inserted in the above clause shall be determined and published by the Assistant Administrator, Office of Federal Supply and Services, or his designee.

accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering agency and the Contractor.

(End of Clause)

552.210-78 Charges for Packaging and Packing.

As prescribed in 510.011(i), insert a clause substantially as follows in solicitations/contracts under which supplies are expected to be delivered to GSA supply distribution facilities.

Charges for Packaging and Packing (April 1984)

If supplies shipped to a GSA supply distribution facility are not packaged and packed in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking by contract or otherwise, and charge the Contractor therefor at the rate of $——* per man-hour or fraction thereof. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of Clause)

552.210-79 Packing List.

As prescribed in 510.011(j), insert the following clause in solicitations and contracts for supplies, including small purchases.

Packing List (April 1984)

A packing list or other suitable shipping document shall accompany each shipment and shall show the (a) name and address of consignor, (b) the name and address of consignee, (c) Government purchase order number, (d) Government bill of lading number covering the shipment, if any, and (e) description of the material shipped, including item number, quantity, number of containers, and package number, if any.

(End of Clause)

552.211-70 Commercial Item Certification.

As prescribed in 511.070-1, insert the following certification in solicitations for supplies when a basic or broad description of a standard commercially available product is used to describe the requirement.

Commercial Item Certification (April 1984)

By signing this offer, the offeror certifies that the product(s) offered meet the requirements of the CID and are the offeror's commercial or commercial-type product(s) as defined below.

(a) A commercial product is a product such as an item, material, component, subsystem, or system, (1) regularly used for other than Government purposes and (2) *sold* or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804-3 for explanation of terms).

(b) A *commercial-type* product is a commercial product that is modified or altered, without degrading the quality, appearance, or function of the commercial product, in compliance with the Government requirements and as such is usually sold only to the Government and not through the normal catalog or retail outlets, or (2) identified, packaged or marked differently than the commerical product normally sold to the general public.

(End of Certification)

552.212-1 Time of Delivery.

(a) As prescribed in 512.104(a) insert the following clause in single award schedule solications for supplies.

Time of Delivery (April 1984)

The time of delivery for each item means the time required after receipt of an order (i) to make delivery to a destination in the case of delivered prices, (ii) to place shipment in transit in the case of f.o.b. origin prices.

Delivery is required to be made at the point(s) specified within — days after receipt of order.

(End of Clause)

Alternate I

When it is appropriate to show different delivery times for different items or groups of items, the second paragraph of the basic clause above, should be revised to read: "Delivery is required to be made at the point(s) specified within the number of calendar days after receipt of order as indicated below." Appropriately captioned columns (completed by the solicitation preparer) should be inserted following the text of the clause.

(b) As prescribed in 512.104(a) insert the following clause in multiple award schedule solicitations for supplies.

Time of Delivery (April 1984)

The Government desires that delivery be made at destination within the number of calendar days after receipt of order as set forth below. Offerors are requested to insert in the "Time of Deliver (days ARO)" column in the Schedule of Items a definite number of calendar days within which delivery will be made. *If the offeror does not insert a delivery time, he shall be deemed to offer delivery in accordance with the Government's stated desired delivery time.*

Items or groups of items (Special item numbers or nomenclature)	Desired delivery time (days ARO)

(End of Clause)

Alternative I

As an alternative, the Government's listing of desired delivery times may be shown in a column titled "Desired Delivery Time (days ARO)" next to the column "Time of Delivery (days (ARO)" in the Schedule of Items. In this instance, the basic clause above, should be appropriately modified.

Alternate II

When the same desired delivery time applies to all items, the basic clause above, shall be modified by substituting the following as the first sentence of the clause: "The Government desires that delivery be made at destination within — calendar days after receipt of order." Also, the blank spaces and headings shall be omitted.

552.212-70 Time of Shipment.

(a) As prescribed in 512.104(b), insert the following clause in solicitations and resultant stock replenishment contracts which do not include the Availability for Inspection and Testing, and Shipment/Delivery Clause at 552.212-72 and require shipment more than 45 calendar days after receipt of the order.

Time of Shipment (April 1984)

Shipment is required within — calendar days after receipt of order. Each delivery order issued under this contract will specify that shipment is required no later than the number of days shown above. If such order also states that "Early Shipment is Precluded," the Contractor agrees to make shipment no sooner than — calendar days after receipt of order. Earlier shipments may result in nonacceptance of the supplies at the delivery point at the time of arrival.

(End of Clause)

(The second number to be inserted should be 15 calendar days less than the first number.)

(b) As prescribed in 512.104(b), insert the following clause in solicitations and resultant stock replenishment contracts which do not include the Availability for Inspection and Testing, and Shipment/Delivery Clause at 552.212-72 and require shipment within 45 calendar days or less after receipt of the order.

Time of Shipment (April 1984)

Shipment is required within — calendar days after receipt of order.

(End of Clause)

552.212-71 Notice of Shipment.

As prescribed in 512.104(c), insert the following clause in solicitations and contracts for supplies when it is in the Government's best interest to reserve the right to require a notice of shipment.

Notice of Shipment (April 1984)

If specified in an order submitted under the contract, the Contractor shall, at the time each shipment is made on such order, furnish a notice of shipment to either the consignee

* The rate to be inserted in the above clause shall be determined by the Assistant Administrator, Office of Federal Supply and Services, or his designee.

or the ordering office or both, as specified. This requirement may be satisfied by completion and return to appropriate forms furnished by the ordering office of by the furnishing of copies of bills of lading, freight bills, packing lists, invoices, or similar documents in accordance with normal commercial practice if such document clearly identifies the order number, items and quantities shipped, date of shipment, point of origin, method of shipment and routing, and the name of initial carrier.

(End of Clause)

552.212-72 Availability for Inspection and Testing, and Shipment/Delivery.

(a) As prescribed in 512.104(d), insert the following clause in solicitations and contracts for stock items, other than exigencies, when lengthy testing is involved and the time required for completion of these tests cannot be predetermined.

Availability for Inspection and Testing, and Shipment (April 1984)

(a) The Government requires that the supplies listed herein be made available for inspection and testing within—calendar days after receipt of order, and be shipped within - calendar days after notice of approval and release by the appropriate Government inspection representative. If the point of inspection is changed to destination, or shipment is made under a QAM agreement, shipment is required within—* days after receipt of order.

(b) If notice of approval and release by the appropriate Government inspection representative is received prior to —* calendar days after receipt of order, receipt of such notice shall be deemed to be on the —* calendar day after receipt of order. No shipment shall be made prior to the —* calendar day after receipt of order unless specifically authorized in writing by the Contracting Officer. Earlier shipments may result in rejection of the supplies at the delivery point at the time of arrival.

(c) If the Contractor fails to make the supplies available for inspection and testing within the number of days after receipt of order specified above, or fails to make shipment within the number of days after notice of approval and release by the Government inspection representative, the Contractor shall be deemed to have failed to make delivery within the purview of the default clause.

(End of Clause)

(b) As prescribed in 512.104(d), insert the following clause in definite quantity or requirement type contracts for supplies (other than stock items). Paragraph (c) of the clause shall only be included when the requirements are small and the proposed award is less than the dollar limitation established for source inspection.

Availability for Inspection and Testing, and Delivery* (April 1984)

(a) The Government requires that supplies herein be made available for inspection and testing within — days after receipt of (notice of award) (order) and be (delivered) (shipped) to destination within — calendar days after notice of approval and release by the appropriate Government inspection representative. If the point of inspection is changed to destination, or shipment is made under a QAM agreement, delivery is required within —** days after receipt of order.

(b) If the contractor fails to make the supplies available for inspection and testing within the number of days after receipt of (notice of award) (order) specified above, or number of days after notice of approval and release by the Government inspection representative, the Contractor shall be deemed to have failed to make delivery within the purview of the default clause.

(c) In the event the point of inspection is changed to destination (delivery at) (shipment to) destination is required within — calendar days after receipt of (notice of award) (order).

(End of Clause)

552.212-73 Parts and Services.

As prescribed in 512.104(e), insert the following clause in solicitations and contracts whenever an AID requisition (P10/c, P10/t, PA/PR) specifies the need for assembling, servicing, and maintenance of equipment to be performed by the contractor.

Parts and Services (April 1984)

(a) For equipment under items listed in the schedule or services on which offers are submitted, the offeror certifies by submission of an offer that parts and service (including qualified mechanics) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established. The offeror shall state in spaces provided below, the name and address of the nearest servicing facility and the value of spare parts for the equipment carried or to be carried in inventory. If parts and servicing facilities are not located, or to be located, in the city of ultimate destination the bidder shall indicate the distance in miles between point shown and indicated destination.

(b) Each Contractor will be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the orginal service proves unsatisfactory. If a new servicing facility is to be established the Contractor fully guarantees that such facility will be established no later than the date of arrival of the equipment at ultimate destination.

Item Number———————————

———————————

———————————

Check one: New ———————————

Already Established ———————————

Value of Spare Parts Inventory Carried for the Type of Equipment Specified: $——.

Number of Qualified Mechanics ——.

(End of Clause)

552.212-74 Non-Compliance with Contract Requirements.

As prescribed in 512.104(f), insert the following clause in solicitations and contracts for construction services when the contract amount is expected to exceed the small purchase limitation.

Non-Compliance With Contract Requirements (April 1984)

In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirement of this contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

(End of Clause)

552.214-70 [Reserved]

552.214-71 Telecopier Submissions, Modifications, or Withdrawals of bids.

As prescribed in 514.201-6(b)(1), insert the following provision in solicitations for supplies and services (including construction) when the contract amount is expected to exceed the small purchase limitations:

Telecopier Submissions, Modifications, or Withdrawals of Bids (April 1984)

Telecopier bids, or modifications or withdrawals of bids, are not permitted and will be disregarded if received.

(End of Provision)

552.214-72 Telegraphic Submissions, Modifications, or Withdrawals of Bids Received at the GSA Communications Center

As prescribed in 514.201-6(b)(2), insert the following provision in solicitations for supplies and services (including construction) when the contract amount is expected to exceed the small purchase limitation:

Telegraphic Submissions, Modifications, or Withdrawals of Bids Received at the GSA Communications Center (April 1984)

When telegraphic bids (if authorized) or modifications or withdrawals of bids, are received at the local GSA Communications Center, the date and time of receipt stamped on the message by Government personnel at

* Entries are normally the same number of days specified for availability.

* When availability for shipment is to be used, substitute "SHIPMENT" for "DELIVERY".

** Entry is normally the same number of days specified for availability.

the Center shall be deemed to be the date and time of receipt at the office designated in the solicitation for the receipt of bids.

(End of Provision)

552.214–73 "All or None" Offers.

As prescribed in 514.201–6(c), insert one of the following provisions in solicitations when "All or None" offers are to be considered and a definite quantity contract is involved.

"All or None" Offers (April 1984)

(a) Unless awards in the aggregate are specifically precluded in this solicitation, the Government reserves the right to evaluate offers and make awards on an "all or none" basis as provided below.

(b) An offer submitted on an "all or none" or similar basis will be evaluated as follows: The lowest acceptable offer exclusive of the "all or none" offer will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable "all or none" offer. Award will be made to result in the lowest total cost to the Government.

(End of Provision)

Alternate I

When a requirements or indefinite quantity type contract is involved paragraph (b) of the basic provision shall be deleted and the following substituted.

"(b) An offer submitted on an "all or none" or similar basis will not be considered unless the offer is low on each item to which the "all or none" offer is made applicable. The term "each item" as used in this clause refers either to an item that under the terms of the solicitation may be independently awarded, or to a group of items on which an award is to be made in the aggregate."

552.214–74 Solicitation Copies.

As prescribed in 514–203–1(e), insert the following notice in solicitations or on the GSA Form 1602, Notice Concerning Your Solicitation For Offers, when appropriate:

Solicitation Copies (April 1984)

To reduce costs, only a single copy of this solicitation is mailed to addressees on our bidders mailing list. Complete bid sets are furnished to active bidders who responded to previous solicitations for similar commodities. If additional copies are required (see Block 9, page 1, for number of bid copies to be submitted), you may reproduce them yourself, provided they are complete in every respect, or you may obtain them from the GSA Business Service Center, *(insert address and phone number of the BSC serving the issuing office).*

(End of Notice)

552.214–75 Progressive Awards and Monthly Quantity Allocations.

As prescribed in 514.201–6(d), insert the following clause in solicitations and contracts for supplies when progressive awards might have to be made in order to meet the Government's requirements.

Progressive Awards and Monthly Quantity Allocations (April 1984)

(a) *Monthly quantity allocation.* (1) Set forth below are the Government's estimated annual and monthly requirements for each stock item covered by this solicitation. In order to preclude the placement of orders with any Contractor in excess of production capacity, offerors are requested to indicate, in the spaces provided, the total quantity per month which they are willing to furnish of any item, or group of items, involving the use of the same production facilities. Since the number of items on which any offeror may be eligible for award cannot be determined in advance of bid opening, offerors are urged, in making monthly allocations, to group, for allocation purposes, as many items as possible. Such groupings will make it possible for the Government to make fullest use of the production capabilities of each offeror. (2) Offerors need not limit their monthly allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If an offeror does not insert monthly allocation quantities, he will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

National stock No.	Estimated annual requirements	Estimated monthly requirements

BIDDERS MONTHLY QUANTITY ALLOCATIONS

Items or groups of items	Monthly allocation quantity

(b) *Progressive awards.* If the low responsive offeror offers a monthly quantity allocation of less than the Government's estimated requirements, the Government may make progressive awards to the extent necessary to meet the estimated requirements. In such cases, awards will be made to the low responsive offeror, covering Government requirements up to that offeror's stated monthly quantity allocations, and then progressively to other offerors to the extent necessary.

(c) *Ordering procedures.* If progressive awards are made, orders will be placed first with the Contractor offering the lowest price on each item normally up to that Contractor's maximum quantity allocation and then, in the same manner, successively to other Contractors. However, to avoid the placement of unduly small orders or the splitting of a single requirement between two Contractors, the Government reserves the right to place orders with back-up Contractors whenever the orders placed with lower priced contracts equal or exceed 95 percent of their monthly quantity allocation for the item or group of items being ordered. In no case will orders be placed with any Contractor in excess of his monthly quantity allocation.

(End of Clause)

552.215–70 Examination of Records by GSA.

As prescribed in 515.106–1 and 514.201–6(e), when awarding contracts in excess of $10,000, insert the following clause in the following types of contracts:

(a) Cost-reimbursement type contracts:

(b) Contracts involving the use or disposition of Government-furnished property;

(c) When advance payments, progress payments based on costs, or guaranteed loans are to be made;

(d) Contracts containing a price warranty or price reduction clause;

(e) Contracts or leases involving income to the Government when the income is based on operations that are under the control of the Contractor or lessee;

(f) Fixed-price contracts with economic price adjustment, with incentives, and with price redetermination;

(g) Requirements and indefinite quantity (call-type) contracts;

(h) Leases when the rental is subject to adjustment based on negotiated operating cost escalation.

(i) Time-and-material, labor-hour, and letter contracts.

Examination of Records by GSA (April 1984)

The Contractor agrees that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier have access to and the right to examine any books, documents, papers, and records of such sub-Contractor, involving transactions related to the subcontract for compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding $10,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of Clause)

552.215-71 Telecopier Submissions, Modifications, or Withdrawal of Proposals.

As prescribed in 515.407(a), insert the following provision in solicitations for supplies and services (including construction) when the contract amount is expected to exceed the small purchase limitation. The provision may be included in small purchase solicitations when firm offers are solicited.

Telecopier Submissions, Modifications, or Withdrawals of Proposals (April 1984)

Telecopier proposals, or modifications or withdrawals of proposals, are not permitted and will be disregarded if received.

(End of Provision)

552.215-72 Telegraphic Submissions, Modifications, or Withdrawals of Proposals Received at the GSA Communications Center.

As prescribed in 515.407(b), insert the following provision in solicitations for supplies and services (including construction) when the contract amount is expected to exceed the small purchase limitation. The provision may be included in small purchase solicitations when firm offers are solicited.

Telegraphic Submissions, Modifications, or Withdrawals of Proposals Received at the GAS Communications Center (April 1984)

When telegraphic proposals (if authorized), or modifications or withdrawals of proposals, are received at the local GSA Communications Center, the date and time of receipt stamped on the message by Government personnel at the Center shall be deemed to be the date and time of receipt at the office designated in the solicitation for the receipt of proposals.

(End of Provision)

552.215-73 Preparation of Offers—Construction.

As prescribed in 515.407(c), insert the following provision in solicitations for construction in lieu of the provision at FAR 52.215-13:

Preparation of Offers—Construction (April 1984) (Deviation FAR 52.215-13)

(a) Offers must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.

(b) The offer form may require offerors to submit offer prices for one or more items on various bases, including—

(1) Lump sum offer;

(2) Alternative prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires an offer on all items, failure to do so will disqualify the offer. If an offer on all items is not required, offerors should insert the words "no offer" in the space provided for any item on which no price is submitted.

(d) Alternate offers will not be considered unless this solicitation authorizes their submission.

(End of Provision)

552.215-74 Contract Award—Negotiated—Construction.

As prescribed in 515.407(d), insert the following provision in solicitations for construction in lieu of the provision at FAR 52.215-16.

Contract Award—Negotiated—Construction (April 1984) (Deviation FAR 52.215-16)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation, will be most advantageous to the Government, price and other factors considered.

(b) The Government may (1) reject any or all offers, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

(c) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the offer.

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part or an offer, as provided in paragraph (d) above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(f) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

(End of Provision)

552.215-75 Data Universal Numbering System (DUNS).

As prescribed in 515.406-2, insert the following provision in all solicitations for supplies and services when the contract amount is expected to exceed the small purchase limitation.

Data Universal Numbering System (DUNS) (April 1984)

(a) The offeror shall insert the DUNS number applicable to the offeror's address entered on the Solicitation, Offer, and Award Form ——.

(b) If the offeror's production point (point of final assembly) is other than the location entered on the Solicitation, Offer, and Award Form, or if additional production points are involved, the offeror is requested to furnish the DUNS number applicable to each production point. Spaces for inserting these numbers are provided in the clause of this solicitation where offerors are to list production point addresses.

(c) If DUNS numbers have not been established for the addresses indicated in paragraphs (a) and (b) of these clauses, GSA will arrange for the assignment of these numbers after award of a contract, and will notify the Contractor accordingly.

(End of Provision)

552.216-70 Fixed Fee—Construction.

As prescribed in 516.307, insert the following clause in cost-plus-fixed-fee construction contracts when the contractor's fee is negotiated on the basis of performance of specified portions of the work by the contractor and by subcontractors, respectively.

Fixed Fee—Construction (April 1984)

The provisions of the Fixed—Fee Construction clause prescribed by FAR 52.216-9 are supplemented as follows:

(a) At the time the contract was negotiated the Government and the Contractor contemplated that the following specific items of work would be subcontracted:

(List the items. Examples are: Electrical Work, Painting and Roofing and Sheet Metal.)

(b) The fixed fee payable hereunder was determined on this basis and on the further contemplation that it would be advantageous both to the Government and to the Contractor to have subcontracted in addition to the items specified above other portions of the work not predetermined in character but having a total estimated cost not exceeding $——. If the total cost of such other subcontracted portions of the work exceeds such amount, there shall be an equitable downward adjustment of the fixed fee.

(c) Nothing in this clause shall impair the right of the Contracting Officer to approve or disapprove the subcontracting of any portion of the work and the subcontracts therefor.

(End of Clause)

552.219-70 Termination—Erroneous Representation Concerning Size Status.

As prescribed in 519.501, insert the following clause in solicitations and contracts for supplies and services (except construction) when the solicitation provides for a total or partial set-aside and the contract amount is expected to exceed the small purchase limitation.

Termination—Erroneous Representation Concerning Size Status (April 1984)

The small business representation made by the offeror when submitting its offer is a material representation of fact upon which the Government relies when making award. If it is later determined that the small business representation was erroneous, and the

Contractor was not a small business on the date of its offer, the contract may be terminated by the Government and the Contractor charged with any damages sustained by the Government as a result of such termination.

(End of Clause)

552.219-71 Allocation of Orders—Partially Set-Aside Items.

As prescribed in 519.502-3(b)(1), insert the following clause in solicitations and requirement-type contracts for stock items which involve partial small business set-asides.

Allocation of Orders—Partially Set-Aside Items (April 1984)

Where the set-aside portion of an item or group of items is awarded to a Contractor other than to the one receiving the award on the corresponding non-set-aside portion, the Government will make an equitable division of requirements to be ordered between the two Contractors with the intent of achieving, as nearly as possible a 50/50 division of the total value of orders place under such contracts for the items partially set-aside. In no case should this division vary to more than a 60/40 division (with either the non-set-aside or set-aside Contractor receiving the larger portion). If fluctuations in demand or other factors cause a variance greater than a 60/40 division, additional orders will be placed by the Government within 30 calendar days following the expiration of the contract to bring division within the 60/40 limits.

(End of Clause)

552.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).

(a) As prescribed in 522.1006 insert the following clause in solicitations and contracts for building services in lieu of the clause at FAR 52.222-43 unless the contract is being negotiated based on certified cost and pricing data.

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Option Contract) (April 1984) (Deviation FAR 52.222-43)

(a) The offeror warrants that the prices submitted in response to this solicitation for option periods do not include any allowance for any contingency to cover increased costs for which adjustments are provided under this clause.

(b) The (*——) option price(s) shall be adjusted upward or downward by the Contracting Officer at the time each option is exercised with the adjusted price to be effective beginning the first day of the option period. In accordance with this schedule, the Contracting Officer will notify the contractor of the adjusted price(s) and will incorporate the most recent Wage Determination issued by the Administrator of the Wage and Hour Division of the U.S. Department of Labor under the McNamara-O'Hara Service Contract Act by contract modification.

*The contracting officer should insert a description of the unit price, i.e., monthly, hourly, etc.

(c) The (*——) option price(s) will be adjusted in accordance with the formula contained herein, provided that the (*——) contract prices for the first option period as escalated shall not exceed the (*——) price(s) for the initial period by more than **— percent. In the event the (*——) prices after escalation exceeds the initial period by more than (**—) percent, the ceiling price (the (*——) price for the initial (——) increased by *— percent) shall be contract price for the first option period. Similarly, the contract prices for the second option period as escalated shall not exceed the (——) prices for the first option period by more than **— percent. In the event the (*——) prices after escalation exceeds the contract prices for the first option period by more than **— percent, the ceiling price (the (*——) prices for the first option period increased by **— percent) shall be the contract price for the second option period.

(d) (***——) percent of the (*——) option prices shall be adjusted upward or downward based on the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid (****——) in the locality where the contract work is to be performed as determined by the Administrator, Wage and Hour Division, U.S. Department of Labor, and stated on the Register of Wage Determinations and Fringe Benefits under the McNamara-O'Hara Service Contract Act. In determining the percentage of the increase or decrease the wage determination being applied to the option period will be compared with the wage determination applicable to the original contact period.

(e) When no wage determination has been issued by the Department of Labor the Federal minimum wage established by Section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 201-219) shall apply to this contract and be used in computing adjustments in the contract price(s). In the event no determination is issued for the initial contract period but a wage determination is issued for the option period(s), the adjustment will be based on the increase or decrease in wages and fringe benefits the contractor is obligated to pay his employees by law under the Fair Labor Standards Act versus the Service Contract Act.

(End of Clause)

**The contracting officer should insert a percentage consistent with the past increases of wage rates in the locality where services will be performed. For example, if increases over the past 3 years have been 5 percent, 7 percent, and 8 percent you should establish a ceiling of 10 percent. The ceiling is intended to force contractors to bargain with local unions to maintain reasonable wage increases from year to year. It is not our intention to deprive contractors from recovering wage increases which are beyond their control.

***The contracting officer should insert the percentage of the option prices to be adjusted. The percentage to be used will be based on the portion of the total price that represents the labor and labor burden cost.

****The contracting officer should insert the class of service employee listed in the wage determination that is expected to perform the majority of work required by the contract, i.e., janitor, guard, mechanic, etc.

Alternate I

When it is necessary to provide for an adjustment in the option price for material as well as labor, the clause in Alternate I above, may be modified to add the following as paragraph (f).

"(f) (*——) percent of the (**——) price shall be adjusted upward or downward based upon the percentage increase or decrease in material cost reflected on the (***——) published by U.S. Department of Labor, Bureau of Labor Statistics. The first price adjustment will be based on the increase or decrease in wholesale prices for (****——) period beginning with the month in which the bid opening was held for the subject requirement. The second price adjustment will be based upon the increase or decrease in the wholesale prices for the subsequent (***——) period."

(b) As prescribed in 522.1006, insert the following clause in solicitations and contracts for building services in lieu of the clause at FAR 52.222-43 unless the contract is being negotiated based on certified cost and pricing data.

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear Contract) (Deviation FAR 52.222-43)

(a) The (*——) prices shall be adjusted upward or downward prior to the end of the first year of the contract period, with the adjusted price to be effective beginning the first day of the thirteenth month. The (*——) prices will be adjusted again prior to the end of the second year of the contract period with the adjusted price to be effective beginning the first day of the twenty-fifth month.

(b) In accordance with this schedule the Contracting Officer will notify the Contractor of the adjusted (*——) prices and will incorporate the current Wage Determination issued by the Administrator of the Wage and Hour Division of the U.S. Department of Labor under the McNamara-O'Hara Service Contract Act by contract modification. When no wage determination has been issued by the Department of Labor the Federal minimum wage established by Section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. Sec. 201-219) shall apply to this contract and be used in computing adjustments in the contract price. In the event no wage determination is issued for the initial 12 month period but a wage determination is

*The contracting officer should insert the percentage of the option price to be adjusted. The percentage to be used will be based on the portion of the total price that represents the material costs.

**The contracting officer should insert a description of the unit price, i.e., monthly, hourly, etc.

***The contracting officer should insert the index that will be used to compute the adjustment for material cost increases, i.e., Wholesale Commodity Prices for General Purpose Machinery and Equipment, Code 114.

****The contracting officer should insert the period of time to be used for computing the adjustment, i.e., 1 year, etc.

*The contracting officer should insert a description of the unit price, i.e., monthly, hourly, etc.

issued for the second or third year period, the adjustment will be based on the increase or decrease in wages and fringe benefits the Contractor is obligated to pay his employees by law under the Fair Labor Standards Act versus the Service Contract Act.

(c) The (*——) price will be adjusted in accordance with the formula contained herein, provided that the (*——) amount of the contract shall not be escalated more than (**——) percent per year.

(d) (***——) percent of the (*——) price shall be adjusted upward or downward based upon the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid (****——) in the locality where the contract work is to be performed as determined by the Administrator, Wage and Hour Division, U.S. Department of Labor, and stated on the Register of Wage Determinations and fringe benefits issued under the McNamara-O'Hara Service Contract Act.

(End Of Clause)

Alternate I

When it is necessary to provide for an adjustment in the contract price for materials as well as labor, the clause in Alternate II above, may be modified to add the following as paragraph (e).

"(e) (*—) percent of the (**——) price shall be adjusted upward or downward based upon the percentage increase or decrease in material cost reflected on the (***——) published by the U.S. Department of Labor, Bureau of Labor Statistics. The first price adjustment will be based on the increase or decrease in wholesale prices for the (****——) period beginning with the month in which the bid opening was held for the subject requirement. The second price adjustment will be based upon the increase or decrease in the wholesale prices for the subsequent (****——) period."

**The contracting officer should insert a percentage consistent with the past increases of wage rates in the locality where services will be performed.

***The contracting officer should insert the percentage of the contract prices to be adjusted. The percentage to be used will be based on the portion of the total price that represents the labor and labor burden costs.

****The contracting officer should insert the class of service employee listed in the wage determination that is expected to perform the majority of work required by the contract, i.e., elevator mechanic, maintenance mechanic, etc.

* The contracting officer should insert the percentage of the contract price to be adjusted. The percentage to be used will be based on the portion of the total price that represents the material costs.

** The contracting officer should insert a description of the unit price, i.e., monthly, hourly, etc.

*** The contracting officer should insert the index that will be used to compute the adjustment for material cost increases, i.e., Wholesale Commodity Prices for General Purpose Machinery and Equipment, Code 114.

**** The contracting officer should insert the period of time to be used for computing the adjustment, i.e., 1 year, etc.

552.222-70 Davis-Bacon Act (40 U.S.C. 276a–276a–7).

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Davis-Bacon Act (40 U.S.C. 276a–276a–7) (April 1984)

(a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator of the Wage and Hour Division, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215–0140.)

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator of the Wage and Hour Division, or an authorized representative will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30 day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215–0140.)

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(3) of this clause, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minumum wage rate prescribed in the contract for a class of laborers or mechanics included a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the Contractor, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office

of Management and Budget under OMB control number 1215-0141.)

(e) Paragraphs (a) through (d) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(End of Clause)

552.222-71 Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333).

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333) (April 1984)

This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calender day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon its own action or written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for upaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

552.222-72 Apprentices and Trainees.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Apprentices and Trainees (April 1984)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees:* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employee and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal Employment Opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of Clause)

552.222-73 Payrolls and Basic Records.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Payrolls and Basic Records (April 1984)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates or wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deduction made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215–0140 and 1215–0017.)

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls and a "Statement of Compliance" to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls and "Statements of Compliance" to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The information may be submitted in any form desired. Optional Form WH–347 is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215–0149.)

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of the clause entitled "Payrolls and Basic Records" and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deduction as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

552.222-74 Compliance with Copeland Act Requirements.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Compliance with Copeland Act Requirements (April 1984)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(End of clause)

552.222-75 Withholding.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Withholding (April 1984)

The Contracting Officer shall upon his/her own action or written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

552.222-76 Subcontracts.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Subcontracts (April 1984)

The Contractor or subcontractor shall insert in any subcontracts the clause entitled "Davis-Bacon Act", "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance With Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination—Debarment," "Disputes Concerning Labor Standards," "Compliance with Davis-Bacon and Related Act Requirement," and "Certification of Eligibility," and such other clauses as the Contracting Officer may by appropriate instruction require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited above.

(End of Clause)

552.222-77 Contract Termination; Debarment.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Contract Termination; Debarment (April 1984)

A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards-Act Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding," "Subcontracts," "Compliance

With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility" may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(End of Clause)

552.222-78 Disputes Concerning Labor Standards.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Disputes Concerning Labor Standards (April 1984)

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

552.222-79 Compliance with Davis-Bacon and Related Act Requirements.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Compliance With Davis-Bacon and Related Act Requirements (April 1984)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(End of Clause)

552.222-80 Certification of Eligibility.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

Certification of Eligibility (April 1984)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of Clause)

552.222-81 Applicable Minimum Hourly Rates of Wages.

As prescribed in 522.403(a) the contracting officer shall insert the following clause:

Applicable Minimum Hourly Rates of Wages (April 1984)

(a) The wage determination decision of the Secretary of Labor in this contract specifies the minimum hourly rates of wages which shall be paid to laborers and mechanics employed or working upon the site of the work. These rates have been determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act, as amended, to be the prevailing rates for the corresponding classes of laborers and mechanics employed on contracts of a similar character in the locality where this work is to be performed. THESE MINIMUM HOURLY RATES OF WAGES SHALL APPLY ONLY IF THE CONTRACT IS IN EXCESS OF $2,000 IN AMOUNT.

(b) While the wage rates given in the decision are the minimum rates required to be paid during the life of the contract, it is the responsibility of bidders to inform themselves as to local labor conditions such as the prevailing wage rates, the length of the work day and work week, overtime compensation, fringe benefit payments, available labor supply, and prospective changes or adjustments of wage rates. The Contractor shall abide by and conform to all applicable laws, Executive Orders, and rules, regulations and orders of the Secretary of Labor. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed in the contract wage determination decision.

(c) The wage determination decision of the Secretary of Labor in the contract is solely for the purpose of setting forth the minimum hourly wage rates required to be paid during the life of the contract and is not to be accepted as a guarantee, warranty or representation as to the wage rates indicated.

(End of Clause)

552.222-82 Preface for Labor Standards—State or Political Subdivision Contracts.

As prescribed in 522.403(b), the contracting officer shall insert the following clause:

Preface for Labor Standards—State or Political Subdivision Contracts (April 1984)

The Contractor shall comply with the requirements of the Contract Work Hours Safety Standards Act and shall insert the following clauses in all subcontracts under this contract with private persons or firms.

(End of Clause)

552.223-70 Hazardous Substances.

As prescribed in 523.303, insert the following clause in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

Hazardous Substances (April 1984)

(a) Federal Hazardous Substances Act—If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, the contract shall be subject to the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261–1276), implementing regulations thereof (16 CFR Chapter II(c)), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) Hazardous Materials Transportation Act—If packaged items to be delivered under this contract shall be subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR.

(c) Without exception, the minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those prescribed in 49 CFR 173. However, packages which exceed the packaging requirements of the CFR are acceptable.

(End of Clause)

552.223-71 Hazardous Material Information.

As prescribed in 523.370, insert the following clause in solicitations, including small purchases, which involve the shipment of hazardous materials on an f.o.b. origin basis.

Hazardous Material Information (April 1984)

Offeror shall indicate for each national stock number (NSN) the following information:

NSN	DOT shipping name	DOT hazard class	DOT label required
			Yes ☐ No ☐
			Yes ☐ No ☐
			Yes ☐ No ☐

(End of Clause)

552.225-70 Buy American Act—Hand and Measuring Tools.

As prescribed in 525.105-70(b), insert the following provision in solicitations and contracts for the acquisition of hand and measuring tools:

Buy American Act—Hand and Measuring Tools (April 1984)

Offers submitted in response to this solicitation offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of 75 percent to the latter, exclusive of import duties. Each offer offering a foreign source end product must state below or on an attachment to the offer the amount of duty included in each offered price. Failure to furnish duty information will result in use of the entire item bid price (inclusive of any unspecified duty) when adding the "Buy American" differential.

Item No.	Unit	Amount of duty (in dollars and cents)

(End of Provision)

552.225-71 Notice of Procurement Restriction—Hand or Measuring Tools.

As prescribed in 525.105-71(g), insert the following provision in solicitations and contracts for acquisition of hand or measuring tools for the Department of Defense.

Notice of Procurement Restriction—Hand or Measuring Tools (April 1984)

(a) Under this procurement awards will be made only to manufacturers or regular dealers offering hand or measuring tools (Federal Supply Classification (FSC) Groups 51 & 52) manufactured or produced wholly in the United States or its possessions. Offers received from firms which are offering hand or measuring tools that are not wholly manufactured or produced in the United States will be considered nonresponsive. This provisions does not apply to individual hand or measuring tool components which make up tool kits or sets that are not classified in FSC's 51 or 52.

(b) Congressional policy requires that GSA procurements of hand and measuring tools be form domestic sources or made in accordance with procedures prescribed by 6-104.4 of the Armed Services Procurement Regulations (now the Defense Acquisition Regulation) as it existed on June 15, 1970.

(c) Pursuant to subsection (d)(3)(ii) of the above cited regulation, the General Services Administration has determined that the national interest requires the rejection of all bids from companies offering a foreign product for items covered by this solicitation. This determination is based upon the following findings:

(1) DOD is the predominant user of items being procured.

(2) DOD Appropriations Act restrictions prohibit its purchase of foreign hand or measuring tools.

(3) It is infeasible for GSA to maintain dual supply systems for civilian and military agencies.

(d) A foreign product is one which is either:

(1) Manufactured or produced outside of the United States, District of Columbia, Puerto Rico, American Samoa, the Canal Zone, U.S. Virgin Islands or other places subject to U.S. jurisdiction, or

(2) Contains any component, regardless of cost, not manufactured or produced in the United States, District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the U.S. Virgin Islands, or other places subject to U.S. juridiction.

(i) Component means those articles, materials and supplies which are directly incorporated into the hand or measuring tool being procured.

(ii) In the procurement of tool kits or sets, the kit or set will be considered foreign, if any individual hand or measuring tools classified in Group 51 or 52 and included in the kit or set, contains components not wholly manufactured or produced domestically.

(e) Any bidder offering a foreign product as defined above will be considered non-responsive and therefore rejected.

(End of Clause)

552.225-72 Offers Must Be for Domestic Source End Products.

As prescribed in 525.105-72(c), insert the following provision in solicitations and contracts for the acquisition of stainless steel flatware for the Department of Defense.

Offers Must Be for Domestic Source End Products (April 1984)

In accordance with the current Appropriation Act for the Department of Defense, *award will be made for domestic source end products only.* Bids offering foreign source end products will be rejected as nonresponsive.

(End of Provisions)

552.225-73 Determination of Nonavailability of Domestic Supplies.

As prescribed in 525.108-70(c), insert the following statement in solicitations and contracts when it has been determined that the Buy American Act is not applicable to the purchase of the end product, or to the components from which it is manufactured:

Determination of Nonavailability of Domestic Supplies (April 1984)

For the purpose of the Buy American Act, the (insert the title of person making determination), General Services Administration, has determined that (insert item description) is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a statisfactory quality.

(End of Statement)

552.225-74 Eligible Products From Non-Designated Countries—Waiver.

As prescribed in 525.407, insert the following provision in all solicitations subject to the Trade Agreements Act:

Eligible Products From Non-Designated Countries—Waiver (April 1984)

In accordance with the Trade Agreements Act of 1979 and 48 CFR 25.402(b), no eligible product which originates in a nondesignated foreign country may be purchased by a Federal agency. However, this restriction may be waived prior to award when it is determined to be in the national interest. Accordingly, offers to furnish products originating in a nondesignated country may be submitted in response to this solicitation and shall be considered for award if a waiver is obtained from the U.S. Trade Representative or other designee (19 U.S.C. 2512) on the basis that:

(1) The Government's requirements, in whole or in part, can only be obtained from products originating in nondesignated countries;

(2) No responsive bid from a responsible source of supply is received offering products originating in the U.S. or originating in a designated country (48 CFR 52.225-8, 52.225-9). The determination to seek a waiver shall be in the sole discretion of the procurement activity, and the granting of the waiver shall be at the sole discretion of the U.S. Trade Representative or other designee (48 CFR 525.402).

(End of Provision)

552.228-70 Bid Guarantee and Bonds.

As prescribed in 528.101-3(a) and 528.102-3, insert the following clause in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and a bid guarantee and bonds are required:

Bid Guarantee and Bonds (April 1984)

A bid guarantee is required as provided in Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair).

(a) If the contract price is more than $25,000, the bidder shall furnish a performance bond in a penal amount of 100 percent of the contract price, and payment bond in a penal amount as follows:

(1) Fifty percent of the contract price if the contract price is more than $25,000 but not more than $1,000,000; or

(2) Forty percent of the contract price if the contract price is more than $1,000,000 but not more than $5,000,000; if the contract price is over $5,000,000, then forty percent of the contract price or $2,500,000, whichever is less.

(b) If bids on one or more alternate and/or unit price bids were accepted in awarding the contract, contract price as used above shall mean the aggregate of the lump sum amount plus the product of each unit price accepted multiplied by the applicable number of units specified in the bid form, plus or minus such alternate bids as were accepted.

(c) Performance and payment bonds shall be submitted within the time specified on the Standard Form 1442, Solicitation, Offer, and Award, for this contract.

(d) The bidder shall not lose the right to receive any payment due or to become due under the contract unless and until the surety has made payment in settlement of claims by suppliers of labor or material in accordance with the requirements of the surety's undertaking under the payment or performance bond and has notified the Contracting Officer of the claims and amount so paid.

(End of Clause)

552.228-71 Bid Guarantee.

As prescribed in 528.101-3(b), insert a clause substantially as follows in solicitations and contracts when a building service contract or other service contract is contemplated and a bid guarantee is to be required:

Bid Guarantee (April 1984)

If the contract price is more than $25,000, bidders shall furnish a bid guarantee in a penal amount of —— percent of the bid price for the term of the contract (excluding options to extend the term of the contract, if any) or $3,000,000, whichever is less.

For bid guarantee purposes the amount of the bid shall be deemed to be the aggregate of each unit price bid multiplied by the applicable number of units shown on the bid form or in the method of award formula.

(End of Clause)

552.228–72 Performance Bond.

As prescribed in 528.103–2(d), insert a clause substantially as follows in solicitations and contracts when a building service contract or other service contract is contemplated and a performance bond is to be required:

Performance Bond (April 1984)

(a) The offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to — percent of the contract price for the term of the contract (excluding options to extend the term of the contract, if any) within 15 calendar days after receiving the written award (or acceptance of offer) and bonding forms. The period of time for furnishing the performance bond may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period.

(b) The performance bond shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of Clause)

552.228–73 Performance and Payment Bonds.

As prescribed in 528.103–3(c), insert a clause substantially as follows in solicitations and contracts when a building service or other service contract is contemplated and a performance bond and payment bond are to be required:

Performance and Payment Bonds (April 1984)

(a) The offeror to whom the award is made shall furnish a performance bond in an amount equal to — percent of the contract price and a payment bond in an amount equal to — percent of the contract price. As used herein the term "contract price" means the total amount of the contract for the term of the contract (excluding options to extend the term of the contract, if any). Bonds shall be provided within 15 calendar days after receiving the written award (or acceptance of offer) and bonding forms. The period of time for furnishing bonds may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period.

(b) The performance and payment bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of Clause)

552.228–74 Pledge of Assets.

As prescribed in 528.202–71(a), insert a clause substantially the same as the following in solicitations and contracts that contain a requirement for a bid guarantee and performance bond or a performance and payment bonds.

Pledges of Assets (April 1984)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond or a payment bond (1) Pledges of Assets, and (2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety, in the amount of the penal sum of the bond, shall be in the form of:

(1) Evidence of an escrow account containing commercial and/or Government securities; and/or

(2) A recorded Covenant not to Convey or Encumber Real Estate. (At the Contracting Officer's discretion the offeror may be required to provide evidence of clear title by the conduct of a title search on each piece of pledged property.)

(End of Clause)

552.228–75 Workmen's Compensation Laws.

As prescribed in 528.310(a), insert the following clause in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation and the contract will require work to be performed on Government property.

Workmen's Compensation Laws (April 1984)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several States to apply their workmen's compensation laws to all lands and premises owned or held by the United States.

(End of Clause)

552.228–76 Insurance.

As prescribed in 528.310(b), insert the following clause in solicitations and contracts when the clause prescribed in FAR 52.228–5 is included and the contract amount is expected to exceed the small purchase limitation:

Insurance (April 1984)

The requirements of the Insurance-Work on a Government Installation clause prescribed in FAR 52.228–5 are supplemented to provide that the general liability policy shall name "the United States of America, acting by and through the General Services Administration," as an additional insured with respect to operations performed under this contract.

(End of Clause)

552.229–70 Federal, State, and Local Taxes.

As prescribed in 529.401–70, insert the following clause in solicitations and contracts when the procurement will be made under small purchase procedures:

Federal, State, and Local Taxes (April 1984)

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

(End of Clause)

552.229–71 State and Local Taxes.

As prescribed in 529.401–71, insert the following clause in multiple award schedule solicitations and resultant contracts (including new item introductory schedules):

State and Local Taxes (April 1984)

Notwithstanding the provisions of the clause entitled "Federal, State, and Local Taxes" (see FAR 29.401–1), the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Taxes excluded from the contract price pursuant to the preceding sentence shall be separately stated on the Contractor's invoices and the Government agrees either to pay to the Contractor amounts covering such taxes or to provide evidence necessary to sustain an exemption therefrom.

(End of Clause)

552.229–72 Federal Excise Tax—DC Government.

As prescribed in 529.401–72, insert the following clause in solicitations and resultant contracts which may involve the purchase of supplies by the District of Columbia Government:

Federal Excise Tax—DC Government (April 1984)

The District of Columbia is exempt from and will not pay Federal excise taxes. Contractors will bill shipments to the District of Columbia at prices exclusive of such excise tax and show the amount of such tax on the invoice. The Internal Revenue Tax Exempt Certificate Number will be shown on all District of Columbia Government purchase orders.

(End of Clause)

552.232–8 Discounts for Prompt Payments.

(a) As prescribed in 532.111(a), insert the following clause in solicitations/contracts for supplies.

Discounts for Early (Prompt) Payment (April 1984) (Deviation FarR 52.232-8)

(a) Discounts for early payment will not be considered in the evaluation of offers.

(b) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract, and discounts offered will be taken by the Government if payment is made within the discount period specified.

(c) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(d) The ending date of the discount period will be determined by applying the number of calendar days specified by the Contractor, beginning with the later of:

(1) The date the supplies are deemed to be accepted by the Government, as determined in accordance with the payment terms of this contract, or

(2) The date a proper invoice or voucher is received in the office specified by the Government.

(e) The date of the check issued in payment, or the date of payment by wire transfer through the Treasury Financial Communications System, shall be considered to be the date payment is made.

(End of Clause)

Alternate I

If the contract is for nonpersonal services, substitute paragraph (d), below, for paragraph (d) of the basic clause.

"(d) The ending date of the discount period will be determined by applying the number of calendar days specified by the Contractor, beginning with the later of:

(1) The date of completion of performance of the services, or

(2) The date a proper invoice or voucher is received in the office specified by the Government."

(b) As prescribed in 532.111(a), insert the following clause in multiple-award type solicitations and resultant contracts.

Discounts for Early (Prompt) Payment (April 1984)

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earining the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the Federal Register. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Agencies required to use the resultant schedule will not apply the discount in determining the lowest delivered price pursuant to the FPMR, 41 CFR 101–28.408, if the agency determines that payment will probably not be made within the discount period offered. The same is true if the discount is considered uneconomical at the time of placement of the order.

(e) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract and discounts offered will be taken by the Government if payment is made within the discount period specified.

(f) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(g) The ending date of the discount period will be determined by applying the number of calendar days specified by the Contractor, beginning with the later of:

(1) The date the supplies are deemed to be accepted by the Government, as determined in accordance with the payment terms of this contract, or

(2) The date a proper invoice or voucher is received in the office specified by the Government.

(h) The date of the check issued in payment, or the date of payment by wire transfer through the Treasury Financial Communications System, shall be considered to be the date payment is made.

(End of Clause)

552.232–23 Assignment of Claims.

As prescribed in 532.806, insert the following clause in solicitations and requirements or indefinite quantity contracts under which more than one agency may place orders:

Assignment of Claims (April 1984)

Because this is a requirements or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause prescribed in FAR 52.232–23 is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, no claim(s) for all moneys due or to become due under this contract, shall be assigned by the Contractor; but it shall be permissible for the Contractor to assign separately to a bank, trust company, or other financing institution, including any Federal lending agency, in accordance with the provisions of the assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), all moneys due or to become due under any particular delivery order amounting to $1,000 or more issued by any Government activity or agency under this contract. Any such assignment shall be effective only if and when the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with the officer issuing the delivery order, in addition to complying with the filing requirements set forth in clause 4 of the provision in said Act, as amended, be subject to reduction or set-off.

(End of Clause)

552.232–70 Payment Due Date.

As prescribed in 532.111(b), insert a clause substantially the same as the following provision in solicitations and supply contracts when invoices required to be furnished by Contractors may be received before the Government has had an opportunity to inspect and accept the supplies. It shall be stipulated in the payment terms that payment will be due on the later of (a) receipt of invoice, or (b) the acceptance of the supplies. The following clause, for example, is suitable for use in supply contracts when delivery is on an f.o.b. destination basis.

Payment Due Date (April 1984)

(a) Payments under this contract will be due on the ————* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the supplies are accepted by the Government.

(b) For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur on the ** calendar day after the date of delivery of the supplies in accordance with the terms of the contract.

(c) If the supplies are rejected for failure to conform to the technical requirements of the contract, or for damage in transit or otherwise, the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies.

(d) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

**The contracting officer should insert a number of days which constitutes the number of days necessary for inspection, acceptance, and other necessary actions.

(b) As prescribed in 532.111(b), insert the following clause in solicitations and supply contracts when invoices are required to reflect that delivery (or performance) and acceptance has already occurred. This would be the situation in the case of supplies purchased on an f.o.b. origin basis, with inspection and acceptance at source, and proof of shipment (e.g., a Government bill of lading) required to be furnished with the invoice. This may also be the case with respect to various contracts for services. As indicated by the following example clause, the terms are relatively simple because no (whichever is later) stipulation is necessary.

Payment Due Date (April 1984)

(a) Payments under this contract will be due on the ————* calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.

(b) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

(c) As prescribed in 532.111(b), insert the following clause in solicitations and supply contracts for meats and meat food products, or perishable agricultural commodities.

Payment Due Date (April 1984)

(a) Payment under this contract will be due on the ————* calendar day after the date of delivery.

(b) A proper invoice covering the supplies delivered is required to be submitted with the shipment. Delivery will be deemed to be made on the later of the actual date of delivery, or the date a proper invoice is received in the office designated to receive the invoice.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert a number of days which constitutes the number of days necessary for inspection, acceptance and other necessary actions.

(d) As prescribed in 532.111(b), insert the following clause in solicitations and nonpersonal service contracts when invoices required to be furnished by contractors may be received before the date of completion of performance of the services it shall be stipulated in the payment terms that payment will be due on the later of receipt of the invoice, or the date of completion of performance of the services.

Payment Due Date (April 1984)

(a) Payment under this contract will be due on the —* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date of completion of performance of the services.

(b) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communication System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

(e) As prescribed in 532.111(b), insert the following clause in architect-engineer (including supplemental architect-engineer contracts) and other professional or technical service contracts.

Payment Due Date (April 1984)

(a) The required payment date will be 30 calendar days after (1) the date of actual receipt of a proper invoice by the office designated to receive the invoice, or (2) the date the contract deliverable is approved, whichever is later.

(b) The date of the check issued in payment or the date of the payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

(f) As prescribed in 532.111(b), insert the following clause in solicitations and construction contracts when the contract amount is expected to exceed the small purchase limitation. Construction contracts which do not involve progress or other financing payments shall utilize the clause in paragraph (d) above.

Payment Due Date (April 1984)

(a) The required payment date under this contract will be as follows:

(1) For progress payments, 30 calendar days after the approval by the Contracting Officer of the amount of the payment due to the Contractor. The term "progress payments" as used herein, signifies payments made as work progresses under the contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion, as provided for under the clause, "Payments to Contractor." As used herein this term does not include payments for partial deliveries accepted by the Government under this contract, or partial payments on contract termination claims.

(2) For partial payments for complete delivered items of property or service, 30 calendar days after acceptance of the property or service. The term "partial payments," as used herein, means payments made under the contract for property delivered and accepted or services rendered and accepted, where such property or services are only a part of the total contract requirements.

(3) For final payment, —* calendar days after the completion and acceptance of all work and the presentation to the Contracting Officer of both a properly executed voucher and a release of all claims against the Government, relating to this contract, other than claims in stated amounts as may be specifically excepted by the contractor from the operation of the release.

The Contracting officer should to insert an appropriate number (normally 30 days, unless some other number of days is necessary and is justified in the contract file).

(b) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

(g) As prescribed in 532.111(b) insert the following clause in all solicitation and contracts for leases of real property.

Payment Due Date (April 1984)

The initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the lease or supplemental agreement establishing commencement of the lease term is executed, or the first workday of the month following the month in which the occupancy of space is effective, whichever is later. Subsequent rent shall be paid in arrears, and will be due on the first workday of each successive month, and only as provided for by the lease.

(End of Clause)

552.232-71 Interest on Overdue Payments.

As prescribed in 532.111(c), insert the following clause in all solicitations and contracts for supplies and services, including construction, and in leases of real property.

Interest on Overdue Payments (April 1984)

(a) The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract and requires the payment to Contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(End of Clause)

Alternate I

If an architect-engineer or other professional or technical service contract is involved add the following paragraphs (c) and (d) to the basic clause:

"(c) The A-E (Contractor) shall not be entitled to interest penalties on progress payments (such as payments for concept and tentative drawings) and other payments made for financing purposes before receipt of complete delivered items of property or service. The Government shall be liable for interest penalties only on the amount of payment which is past due that represents payment for complete delivered items of property or service which have been accepted by the Government."

(d) The term "progress payments," as used herein, signifies payments made as work progresses under the contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion, as provided under the payment provisions of this contract. As used herein this term does not include payments for partial deliveries accepted by the Government under this contract, or partial payments on contract termination claims."

Alternate II

If a construction contract which provides for progress payments is involved add the followinf paragraph (c) to the basic clause:

"(c) The Contractor shall not be entitled to interest penalties on progress payments and other payments made for financing purposes before receipt of complete delivered items of property or service, or on amounts withheld temporarily in accordance with the contract

(e.g., retainage). The Government shall be liable for interest penalties only on the amount of payment which is past due that represents payment for complete delivered items of property or service which have been accepted by the Government.)

552.232-72 Invoice Requirements.

As prescribed in § 532.111(d), insert the following clause in solicitations and contracts for supplies or services which require the submission of invoices:

Invoice Requirements (April 1984)

(a) Invoicies shall be submitted in an original and—copies to the Government office designated in this contract or on the delivery order to receive invoices. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

(1) Name of the business concern and invoice date.

(2) Contract number, or other authorization for delivery of property or services.

(3) Description, price, and quantity of property and services actually delivered or rendered.

(4) Shipping and payment terms.

(5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent. The "remit to" address must correspond to the remittance address in the contract.

(6) Other substantiating documentation or information as required by the contract.

(b) To assist the Government in making timely payments, the Contractor is requested to furnish the following additional information either on the invoice or on an attachment to the invoice:

(List any such additional information)

(End of Clause)

552.232-73 Method of Payment

As prescribed in 532.111(e), insert the following clause in all solicitations and contracts for supplies and services, including construction, and in leases of real property:

Method of Payment (April 1984)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The Contractor shall forward the following information in writing to ——— not later than 7 days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) (i) to whom check payments are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified also provide:

(A) Address and telegraphic abbreviation of the correspondent financial institution.

(B) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to the Contracting Officer in writing at least 30 days before the effective date of the change. It is the Contractor's responsibility to furnish these changes 30 days before submitting invoices to avoid invoices being returned as improper.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number. (OMB Control Number 3090–0141).

(End of Clause)

552.232-74 Progress Payments.

As prescribed in 532.502–3, insert the following provision in solicitations as a supplement to the notice prescribed in FAR 32.502–3 (a) or (b).

Progress Payments (April 1984)

If an offeror desires progress payments, he should make a written request that will accompany his offer and check the appropriate box below:

[ ] Progress payments are desired, but offer is not conditioned on receiving progress payments.

[ ] Offer is conditioned on receiving progress payments.

(Note.—1. If an offer is conditioned on the availability of progress payments and the offeror is found ineligible for such payments, the offer will be rejected.

2. Submission of an offer without requesting progress payments does not preclude the offeror from later requesting progress payments in accordance with applicable regulations, prior to or after award of the contract.)

(End of Provision)

552.232-75 Payments to Contractor.

As prescribed in 532.7003(a), insert the following clause in solicitations and contracts for construction, dismantling, demolition or removal of improvements when the contract amount is expected to exceed the small purchase limitation.

Payments to Contractor (April 1984)

The provisions of the Clause entitled "Payments Under Fixed-Price Construction Contracts" prescribed in FAR 52.232–5 are supplemented as follows:

(a) Before the first progress payment under this contract becomes due, the Contractor shall prepare a breakdown of the contract price acceptable to the Contracting Officer. The values in the breakdown will be used for determining progress payments. The Contractor's overhead and profit shall be prorated through the life of the contract.

(b) Preparatory work done (including shop drawings) will not be taken into consideration in preparing estimates upon which progress payments are based.

(c) Unless otherwise provided in the specifications, material delivered that will be incorporated into the structure will be taken into consideration in computing progress payments, provided the material is delivered on the site, or is delivered to the Contractor and properly stored by him in a warehouse, storage yard or similar suitable place as may be approved by the Contracting Officer. Before each such payment is made for delivered material stored on the site, the Contractor shall furnish to the Contracting Officer such evidence as he may require as proof of the quantity and value of such materials. Before each such payment is made for delivered material stored off the site, the Contractor shall furnish the Contracting Officer properly executed bills of sale for the delivered material upon which payment is being made. The Contractor shall remain responsible for such stored materials.

(d) Estimates on which progress payments are based shall include the value (as determined by the Contracting Officer) of satisfactory inplace work performed pursuant to a change order as to which final agreement on the equitable price adjustment has not been reached, provided, however, that (except in an unusual case where a unilateral determination cannot be made, as provided in paragraph (a)(6) of the Equitable Adjustments Clause) no further progress payments shall be made under the provisions of this paragraph after the work is 50% completed as determined by the Contracting Officer.

(End of Clause)

552.232-76 Certification of Payment.

As prescribed in 532.7003(b), the contracting officer shall insert the following clause in solicitations and contracts for construction, dismantling, demolition, or removal of improvements unless the procurement will be made under small purchase procedures. The clause may be used on an optional basis in small purchases.

Certification of Payment (April 1984)

The Contractor, prior to receiving a progress or final payment under this contract, shall submit to the Contracting Officer a certification that the Contractor has made payment from proceeds of prior payments, or that he will make timely payment from the proceeds of the progress or final payment then due him, to his subcontractors and suppliers in accordance with his contractual arrangements with them.

(End of Clause)

552.232-77 Availability of Funds.

As prescribed in 532.705-1, insert the following clause in solicitations and contracts for building services which include option provisions, will be chargeable to funds of more than one fiscal year, and the contract action will be initiated before funds are available.

Availability of Funds (April 1984)

The authorization of performance of work under this contract during the initial contract period and any option period(s) is contingent upon the appropriation of funds to procure this service. If the contract is awarded or option(s) exercised, the Government's obligation beyond the end of the fiscal year (September 30), in which the award is made or option(s) exercised, is contingent upon the availability of funds from which payment for the contract services can be made. No legal liability on the part of the Government for payment of any money beyond the end of each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for this procurement and written notice of such availability is given to the contractor.

552.233-70 Disputes (Utility Contract).

As prescribed in 533.014, insert the following clause in solicitations and contracts for utility services.

Disputes (Utility Contract) (April 1984)

The requirements of the Disputes clause at FAR 52.233-1 are supplemental to provide that matters involving the interpretation of retail rates, rate schedules, tariffs, riders, and tariff related terms provided under this contract and conditions of service are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of Clause)

552.236-70 Definitions.

As prescribed in 536.570-1, insert the following clause in solicitations and contracts for construction, or dismantling, demolition or removal of improvements:

Definitions (April 1984)

The terms "Administration" and "Service" as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

(End of Clause)

552.236-71 Authorities and Limitations.

As prescribed in 536.570-2, insert the following clause in contracts for construction, or dismantling, demolition or removal of improvements:

Authorities and Limitations (April 1984)

(a) All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation or determination) of anyone not authorized to issue such order.

(End of Clause)

552.236-72 Specialist.

As prescribed in 536.570-3, insert the following clause in contracts for construction:

Specialist (April 1984)

The term "Specialist" as used in the contract specification shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

(End of Clause)

552.236-73 Contract Award—with Alternates.

As prescribed in 536.570-4, insert the following provision in solicitations for construction:

Contract Award—With Alternates (April 1984)

For bids that include additive or deductive alternates, the low bidder is the responsible bidder offering the lowest aggregate amount of the base bid, plus or minus those alternates (in the order listed in the solicitation) that provide the most features of work within the funds available at bid opening. If the addition of the next alternate in the order of priority would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent additional alternate in a lower amount shall be added if the bid thereon is within the funds available at bid opening. Accordingly, an award may be made to this bidder on the base bid, plus any combination of alternates for which funds are available at the time of award unless precluded by (1) the solicitation, or (2) a restrictive limitation included by the bidder. However, if the combinaton of alternates exeeds the amount offered by any other responsible bidder for the same combination of alternates, the award cannot be made on that combination of alternates. (See also the provision entitled "Contract Award—Formal Advertising—Construction.)

(End of Provision)

552.236-74 Working Hours.

As prescribed in 536.570-5, insert the following clause in solicitations and contracts for construction, or dismantling, demolition or removal of improvements:

Working Hours (April 1984)

(a) It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

(b) Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

(End of Clause)

552.236-75 Use of Premises.

As prescribed in 536.570-6, insert the following clause in solicitations and contracts for construction, or dismantling, demolition or removal of improvements.

Use of Premises (April 1984)

(a) If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Government business.

(b) Any request received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

(c) If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be

admitted into any building outside the scope of this contract except with official permission.

552.236–76 Measurements.

As prescribed in 536.570–7, insert the following clause in contracts for construction, dismantling, demolition or removal of improvements.

Measurements (April 1984)

All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

(End of Clause)

552.236–77 Specifications and Drawings.

As prescribed in 536.570–8, insert the following clause in contracts for construction, or dismantling, demolition, or removal of improvements which are expected to exceed the small purchase limitation.

Specifications and Drawings (April 1984)

The requirements of the clause entitled "Specifications and Drawings" at FAR 52.236–21, are supplemented as follows:

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern. Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing. On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(b) Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

(c) Standard Details or Specification Drawings are applicable when listed, bound with the specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.

(d) In case of difference between Standard Details or Specification Drawings and the specifications, the specifications will govern. In case of difference between the Standard Details or Specification Drawings and the drawings prepared specifically for this contract, the later shall govern.

(End of Clause)

552.236–78 Shop Drawings, Coordination Drawings, and Schedules.

As prescribed in 536.570–9, insert the following clause in contracts for construction, or dismantling, demolition, or removal of improvements which are expected to exceed the small purchase limitation.

Shop Drawings, Coordination Drawings, and Schedules (April 1984)

The requirements, of the clause entitled "Specifications and Drawings" at FAR 52.236–21, are supplemented as follows:

(a) The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:

(b) Shop drawings shall include fabrication, erection and setting drawings, schedule drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(c) Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer. Upon approval, the reproducible form will be returned to the Contractor who shall then furnish the number of additional prints, not to exceed 10, required by the specifications. The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by subcontractors.

(d) Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Contracting Officer's approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications.

(e) Each shop drawing or coordination drawing shall have a blank area 5 by 5 inches, located adjacent to the title block. The title block shall display the following:

Number and title of drawing
Date of drawing or revision
Name of project building or facility
Name of contractor and (if appropriate) name of subcontractor submitting drawing
Clear identity of contents and location on the work
Project title and contract number

(f) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, shop drawings, coordination drawings and schedules shall be submitted to the Contracting Officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.

(g) Approval of drawings and schedules will be general and shall not be construed as permitting any departure from the contract requirements, or as approving departures from full-size details furnished by the Contracting Officer.

(End of Clause)

552.236–79 Samples.

As prescribed in 536.570–10, insert the following clause in contracts for construction which are expected to exceed the small purchase limitation.

Samples (April 1984)

(a) After the award of the contract, the Contractor shall furnish for the approval of the Contracting Officer samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect as specified or as directed. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Contracting Officer.

(b) Each sample shall have a label indicating:

(i) Name of project building or facility, project title and contract number.

(ii) Name of Contractor and, if appropriate, name of subcontractor.

(iii) Identification of material or equipment with specification requirement.

(iv) Place of origin.

(v) Name of producer and brand (if any).

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

(c) The Contractor shall mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraph (b) above. He shall enclose a copy of this letter with the shipment and send a copy to the Government representative of the project. Approval of a sample shall be only for the characteristics or use name in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer.

(d) Approved samples not destroyed in testing will be sent to the Government representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment, incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

(e) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material or equipment which previously has proved unsatisfactory in service.

(f) Samples of various materials or equipment delivered on the site or in place may be taken by the Government representative for testing. Samples failing to meet contract requirements will automatically void previous approvals of the items tested. The Contractor shall replace such materials or equipment found out to have met contract requirements, or there shall be a proper adjustment of the contract price as determined by the Contracting Officer.

(g) Unless otherwise specified, when tests are required only one test of each sample proposed for use will be made at the expense of the Government. Samples which do not meet specification requirements will be rejected. Testing of additional samples will

be made by the Government at the expense of the Contractor.
(End of Clause)

552.236-80 Heat.

As prescribed in 536.570-11, insert the following clause in solicitations and contracts for construction or dismantling, demolition, or removal of improvements.

Heat (April 1984)

Unless otherwise specified or unless already provided by the Government the Contractor shall:
(a) Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;
(b) Protect, cover and/or heat as may be necessary, to produce and maintain a temperature of not less than 50 degrees Fahrenheit (1) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and
(c) Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing of interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.
(End of Clause)

552.236-81 Use of Equipment by the Government.

As prescribed in 536.570-12, insert the following clause in solicitations and contracts for construction, or dismantling, demolition, or removal of improvements.

Use of Equipment by the Government (April 1984)

(a) The Government may take over and operate, with Government employees, such equipment as is necessary for heating or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.
(b) The Contracting Officer will advise the Contractor by letter, prior to the use of equipment, which items of equipment will be operated, and the date and time such operation begin.
(c) Government operation of equipment will not relieve the Contractor of the one-year guarantee on materials and workmanship elsewhere provided for in this contract.
(d) The guarantee period, elsewhere provided for in this contract, for each piece of equipment shall be in accordance with the "Guarantees" clause of this contract.
(End of Clause)

552.236-82 Subcontracts.

As prescribed in 536.570-13, insert the following clause in solicitations and contracts for construction services when the contract amount is expected to exceed the small purchase limitation.

Subcontracts (April 1984)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.
(b) The Contractor shall be responsible to the Government for acts and omissions of his own employees and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors and suppliers.
(c) The Government will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.
(End of Clause)

552.236-83 Furnishing Information and Records.

As prescribed in 536.570-14, insert the following clause in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

Furnishing Information and Records (April 1984)

(a) If the Contractor or any subcontractor under this contract, or the officers or agents of the Contractor or any subcontractor, refuses, except as provided by the terms of this contract, to furnish to any Government agency or any establishment in the legislative or judicial branch of the Government information or records reasonably pertinent to this contract. The following actions may be taken:
(1) In the case of a refusal by the Contractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, terminate the Contractor's right to proceed with the work. The rights and remedies provided in this clause are in addition to those outlined in paragraph (a) of the Default (Fixed-Price Construction) clause of FAR 52.249-10, paragraph (b) of the Liquidated Damages—Construction clause at FAR 52.212-5 and to any other rights and remedies provided by law or under this contract;
(2) In the case of a refusal by a subcontractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, require the Contractor to terminate the subcontract without cost to the Government, or if the Contractor fails or refuses to effect such termination, the Government may terminate the Contractor's right to proceed with the work under this contract and thereupon the Government may avail itself of the rights and remedies referred to in subparagraph (b) above.
(b) The term "subcontract" as used in this paragraph means any contract entered into, or any purchase order issued by, a prime contractor under a contract with the Government in connection with the performance of the prime contractor's obligations this contract.
(c) The term "subcontractor" as used in this paragraph means a party to a subcontract other than the prime contractor under this contract.
(End of Clause)

552.236-84 Government Rights (Unlimited).

As prescribed in 536.570-15, insert the following clause in contracts for architect-engineer services.

Government Rights (Unlimited) (April 1984)

The Government shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.
(End of Clause)

552.236-85 Drawings and Other Data to Become Property of Government.

As prescribed in 536.570-16, substitute the following clause in contracts for architect-engineer services for the clause at 552.236-84, when the sole rights and exclusive control over the design and data are required by the Government.

Drawings and Other Data To Become Property of Government (April 1984)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.
(End of Clause)

552.237-1 Qualification of Offerors.

As prescribed in 537.110(a), insert the following provision in solicitations for building services when the contract amount is expected to exceed the small purchase limitation. A supplemental provision may be used with this provision to outline specific

qualification requirements for individual contracts.

Qualifications of Offerors (April 1984)

(a) Offers will be considered only from responsible organizations or individuals now or recently engaged in the performance of building service contracts comparable to those described in this solicitation. In order to determine his qualifications, each offeror may be requested to furnish a narrative statement listing comparable contracts which he has performed; the general history of his operating organization; and his complete experience. Each offeror may also be requried to furnish a statement of his financial resources; show that he has the ability to maintain a staff of regular employees adequate to insure continuous performance of the work; and, demonstrate that his equipment and/or plant capacity for the work contemplated is sufficient, adequate, and suitable.

(b) Competency in performing comparable building service contracts, demonstration of acceptable financial resources, personnel staffing, plant, equipment, and supply sources will be considered in determining the offer to be accepted.

(c) Prospective offerors are advised that in evaluating these areas involving any small business concern or group of such concerns, any negative determinations are subject to the Certificate of Competency procedures set forth in the Federal Acquisition Regulation.

(End of Provision)

552.237-71 Qualifications of Employees.

As prescribed in 537.110(b), insert the following clause in solicitations and contracts for building services when the contract amount is expected to exceed the small purchase limitation. Supplemental clauses may be used with this clause to outline specific requirements regarding employees who will perform work on the contract.

Qualifications of Employees (April 1984)

The Contracting Officer may require dismissal from the work of employees which he deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he deems contrary to the public interest or inconsistent with the best interest of national security. The Contractor shall fill out and cause each of his employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, he and his employees shall be fingerprinted. Each employee of the contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidence by Alien Registration Receipt Card Form I-151, or, who presents other evidence from the Immigration and Naturalization Service that employment will not affect his immigration status.

(End of Clause)

552.237-72 Certification Regarding "Quasi-Military Armed Forces."

As prescribed in 537.110(c), insert the following certification in solicitations and contracts for guard service.

Certification Regarding "Quasi-Military Armed Forces" (April 1984)

(a) By signing this offer, the offeror certifies that the individual, firm, or corporation submitting this offer is not a "Quasi-Military Armed Force" within the meaning of the decision of the court in United States ex. rel. Weiberger v. Equifax, 557 F. 2d 456 (5th Cir. 1977).

(b) The offeror further certifies that he will not, during the term of this contract, offer "Quasi-Military Armed Forces" for hire.

(End of Certification)

552.242-70 Status Report of Orders and Shipments.

As prescribed in 542.1107(a), insert the following clause in solicitations and requirement or definite quantity type contracts for stock replenishment items.

Status Report of Orders and Shipments (April 1984)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month this contract is in effect. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form, and forwarded to ACO not later than the seventh workday after the close of each reporting period.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or the Contractor may reproduce the form.

(End of Clause)

552.242-71 Preproduction samples.

As prescribed in 542.1107(b), insert a clause substantially as follows in solicitations and contracts for supplies when the submission of preproduction samples will be required.

Preproduction Samples (April 1984)

The Contractor shall have available at his expense within (specify appropriate number of days) calendar days after receipt of notice of award two preproduction samples of each item to be delivered under the contract for inspection and determination by the Government as to compliance with the specifications. The Contractor shall notify the Contracting Officer and the Regional Quality Assurance Division set forth in the notice of award, in writing, of the availability of the samples for inspection, the notification to be made *(specify appropriate number of days)* calendar days prior to the date the Contractor proposes to have the samples available. The Contractor shall without any additional charge provide all necessary facilities for inspection of the samples.

Preproduction samples required by this contract must conform to all specification requirements. The acceptance of any previous preproduction samples or the granting of any deviations on previous preproduction samples or on supplies required by previous contracts for the same item(s) shall in no way be considered as justification for assuming that the preproduction samples submitted under this contract will be accepted unless they fully meet specifications or that deviations will be granted.

When the preproduction samples are approved, the Government shall notify the Contractor of their acceptance in writing. After acceptance, one preproduction sample shall be retained by the Contractor and made available to the Government without additional cost to the Government, at the location where the material is offered to the Government for inspection, until completion of the contract, at which time it may be delivered in "like new" condition as part of the last scheduled delivery under the contract. The other preproduction sample shall be delivered to the Government in accordance with instructions to be furnished by the Contracting Officer and upon acceptance shall be deemed an item delivered under the contract.

If the Contractor fails to deliver the preproduction samples, or if the Government disapproves the preproduction samples, the Contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract and this contract shall be subject to termination for default, provided that failure of the Government in such an event to terminate this contract for default shall not relieve the Contractor of his responsibility to meet the delivery schedule for production quantities.

The Government reserves the right to waive the requirements for preproduction samples as to those bidders offering a product which has been previously procured and approved by General Services Administration under the same specifications applicable to this procurement.

(End of Clause)

552.242-72 Disposition of production samples.

As prescribed in 542.1107(c), insert the following clause in solicitations and contracts for supplies when source inspection is required and testing is to be conducted at a Government facility.

Disposition of Production Samples (April 1984)

Production samples sent to a Government testing facility will be disposed of in the following manner: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in the manner requested by the Contractor.

(End of Clause)

552.243-70 Pricing of Adjustments.

As prescribed in 543.205(a), insert the following clause in all formally advertised and negotiated contracts which are expected to exceed the small purchase limitation except cost type contracts.

Pricing of Adjustments (April 1984)

When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other clause of this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract.

(End of Clause)

552.243-71 Equitable Adjustments.

As prescribed in 543.205(b), insert the following clause in solicitations and contracts for (a) dismantling, demolition, or removal of improvements; and (b) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation:

Equitable Adjustments (April 1984)

(a) The provisions of the "Changes" clause prescribed by FAR 52.243-4 are supplemented as follows:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the "Equitable Adjustments" clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following detail:

Direct Costs.

Material quantities by trades and unit costs (Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site.)

Labor breakdown by trades and unit costs. (Identified with specific item of material to be placed or operation to be performed.)

Construction equipment exclusively necessary for the change.

Costs of preparation and/or revision to shop drawings resulting from the change.

Workmen's Compensation and Public Liability Insurance.

Employment taxes under FICA and FUTA.

Bond Costs—when size of change warrants revision.

Overhead, Profit and Commission

(2) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following unless the contractor demonstrates entitlement to a higher percentage:

	Overhead	Profit (percent)	Commission (percent)
To contractor on work performed by other than his own forces			10
To first tier subcontractor on work performed by his subcontractors			15
To contractor and/or the subcontractors for that portion of the work performed with their respective forces	(1)	10	

[1] To be negotiated.

Not more than four percentages will be allowed regardless of the number of tier subcontractors. The Contractor shall not be allowed a commission on the commission received by a first tier subcontractor. Equitable adjustments for deleted work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

(3) The Contractor shall submit with the proposal his request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirely.

(4) In considering a proposal, the Government shall make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

(5) After receipt of a proposal the Contracting Officer shall act thereon, within 30 days; provided however, that when the necessity to proceed with a change does not allow time properly to check a proposal or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed.

(6) If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally.

(b) The provisions of the "Differing Site Conditions" clause prescribed by FAR 52.236-2, are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in, paragraph (a) of this "Equitable Adjustments" clause.

(End of Clause)

552.246-70 Inspection Facilities.

As prescribed in 546.302-70, insert the following clause in solicitations and contracts for supplies.

Inspection Facilities (April 1984)

(a) The inspection system required to be maintained by the Contractor in accordance with clause 52.246-2, Inspection of Supplies—Fixed-Price, may be the Contractor's own facilities or any other facilities acceptable to the Government. These facilities shall be utilized to perform all inspections and tests of materials and components prior to incorporation into end articles, and for the inspection of such end articles prior to shipment. The right is reserved by the government to evaluate the acceptability and effectiveness of the Contractor's inspection system prior to award and periodically during the contract period.

(b) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(c) A contract will be awarded only to the responsible offeror (1) who agrees deliver the items specified in the contract from a plant or warehouse located within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by the contract or specifications, to evidence conformance therewith, or (2) who will arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(End of Clause)

552.246-71 Final Inspection and Tests.

As prescibed in 546.312, insert the following clause in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

Final Inspection and Tests (April 1984)

The requirements of the Inspection of Construction clause prescribed in FAR 52.246-12, are supplemented to provide that the Contractor shall give the Contracting Officer at least 10 days advance written notice of the date the work will be fully completed and ready for final inspection and tests. Final inspection and tests will be started within 10 days from the date specified in the aforesaid notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

(End of Clause)

552.246-72 Responsibility for Supplies (Rejected Supplies).

As prescribed in 546.316-70, insert the following clause in solicitations and contracts for supplies.

Responsibility for Supplies—Rejected Supplies (April 1984)

As provided in FAR 52.246–16, the Contractor shall bear all risks as to rejected supplies after notice of rejection. The Contractor shall be liable for all costs, including but not limited to storage costs, incurred by the Government in taking such measures as are expedient to save unnecessary loss to the Contractor. Should the Contractor upon due notice fail to remove or provide instructions for the removal of such rejected supplies within the period specified by the Government, or if no period is specified within a reasonable period of time, the supplies may be stored for the Contractor's account, or reshipped to the open market and the proceeds applied against the accumulated storage and other costs, including costs of the sale. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

552.246–73 Source Inspection.

As prescribed in 546.302–71, insert the following clause in solicitations and contracts for supplies when it is determined that inspection is to be performed at source.

Source Inspection (April 1984)

(a) *Inspection by Government personnel.*

(1) Supplies to be furnished under this contract will be inspected at source by the Government prior to shipment from the manufacturing plant or other facility designated by the Contractor, unless (a) the Contractor is notified otherwise in writing by the Contracting Officer or his designated representative or (b) the Contractor or his subcontractor, pursuant to a Quality Approved Manufacturer Agreement with the General Services Administration, is authorized to issue a certificate covering such supplies at the time of shipment notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment.

(2) Inspection responsibility will be assigned to the Office of Engineering and Technical Management of the GSA regional office having jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for source inspection is located. The Contractor shall notify, or arrange for his subcontractor to notify, that office at least 10 days prior to the date when supplies will be ready for inspection. Shipments shall not be made until released by the Office of Engineering and Technical Management unless release is otherwise authorized under terms of a currently applicable Quality Approved Manufacturer Agreement.

(b) *Inspection and receiving reports.*

The Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection, for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their preparation and distribution.

(c) *Availability of records.* In addition to any other requirement of the contract, the Contractor shall maintain at the point for source inspection, and make available to the Contracting Officer or an authorized representative, for the duration of the contract and six months (180 days) thereafter, records showing the following information for each order received under the contract: (1) order number; (2) date order received by the contractor; (3) quantity ordered; (4) date scheduled into production; (5) batch or lot number, if applicable; (6) date inspected and/or tested; (7) date available for shipment; and (8) date shipped or date service completed.

(d) *Additional cost of inspection and testing.* The Contractor will be charged for any additional cost of inspecting/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of clause 52.246–2, Inspection of Supplies—Fixed-Price. In addition, if supplies purchased on an f.o.b. destination basis were source-inspected by Government personnel, but the supplies are not delivered or are delivered in a condition requiring Government reinspection of the same or replacement material, the Contractor will be charged for the cost of such reinspection. Charges for inspection or testing shall be as specified elsewhere in the contract.

(End of Clause)

552.246–74 Charges for Inspection and Testing.

As prescribed in 546.302–72, insert the following clause in solicitations/contracts which include clause 552.246–73, Source Inspection.

Charges for Inspection and Testing (April 1984)

As provided in the clauses in this contract relating to inspection, the Contractor will be charged for any additional cost to the Government for inspection and testing (or reinspection and retesting). When such inspection or testing is performed by or under the direction of the General Services Administration, charges will be at the rate of $*—per man-hour or fraction thereof if the inspection is at GSA supply distribution facility; $*—per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $*—per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(End of Clause)

* The rates to be inserted in the clause shall be determined and published by the Assistant Administrator, Office of Federal Supply and Services, or his designee.

552.246–75 Guarantees.

As prescribed in 546.710(b), insert the following clause in solicitations and contracts for construction when the contract amount is expected to exceed the small purchase limitation.

Guarantees (April 1984)

(a) Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for one year after the date of final acceptance or the date the equipment or work was placed in the by the Government.

(b), If, within any guarantee period, the Contracting Officer finds that guaranteed work needs to be repaired or changed because of the use of materials, equipment, or workmanship which, in his opinion, are inferior, defective, or not in accordance with the terms of the contract, he/she shall so inform the Contractor in writing and the Contractor shall promptly and without additional expense to the Government:

(1) Place in a satisfactory condition all of such guaranteed work;

(2) Satisfactorily correct all damage to equipment, the site, the building or contents thereof, which is the result of such unsatisfactory guaranteed work; and

(3) Satisfactorily correct any work, materials, and equipment that are disturbed in fulfilling the guarantee, including any disturbed work materials and equipment that may have been guaranteed under another contract. Should the Contractor fail to proceed promptly in accordance with the guarantee, the Government may have such work performed at the expense of the Contractor.

(c) Any special guarantees that may be required under the contract shall be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special guarantees.

(d) The Contractor shall obtain each transferable guarantee or warranty of equipment, materials or installation thereof which is furnished by any manufacturer, supplier or installer in the ordinary course of the manufacturer's, supplier's, or installer's business or trade. In addition, the Contractor shall obtain and furnish to the Government all information which is required in order to make any such guarantee or warranty legally binding and effective, and shall submit both the information and the guarantee or warranty to the Government in sufficient time to permit the Government to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under this contract.

(End of Clause)

552.246–76 Warranty of pesticides.

As prescribed in 546.710(a), insert the following clause in solicitations and

contracts involving the procurement of pesticides.

Warranty of Pesticides (April 1984)

(a) Notwithstanding acceptance of pesticides by the Government, the Contractor warrants that for the period of one year after the date of shipment, all pesticides furnished under this contract shall meet the regulatory requirements of Pub. L. 92–516, as amended, and shall be registered with the Administrator, Environmental Protection Agency (EPA).

(b) If EPA takes action to stop sale, stop use, remove, seize, or cancel registration of a pesticide within 1 year after the date of shipment, the Contractor shall immediately notify the Contracting Officer. The notification shall include: (1) contract number; (2) identification of the pesticide; (3) reason for the EPA action against the pesticide; and (4) list of Government activities and addresses to which delivery had been made.

(End of Clause)

552.247–70 Placarding Railcar Shipments.

As prescribed in 547.305–70, insert the following clause in solicitations and contracts which require railcar shipments to GSA supply distribution facilities.

Placarding Railcar Shipments (April 1984)

When a railcar is loaded in such a manner that it can be or should be unloaded from only one side, the Contractor is required to placard the car with two placards, one placard placed on the appropriate car door reading "UNLOAD FROM THIS SIDE" and the other placard placed on the opposite door reading "UNLOAD FROM OTHER SIDE."

552.252–5 Authorized Deviations in Provisions.

As prescribed in 552.107(a), insert the following provision in solicitations that include any FAR or GSAR provision with an authorized deviation. This provision shall be used in lieu of the FAR provision at 52.252–5.

Authorized Deviations in Provisions (Deviation FAR 52.252–5) (April 1984)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision, if the provision (authorized deviation) is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5). The use in this solicitation of any Federal Acquisition Regulation (FAR) provision with an authorized deviation that is published in the General Services Administration Acquisition Regulation is indicated by the addition of "(DEVIATION (FAR provision no.))" after the date of the provision.

(b) The use in this solicitation of any General Services Administration Acquisition Regulation clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(End of Clause)

552.252–6 Authorized Deviations in Clauses.

As prescribed in 552.107(b), insert the following clause in solicitations and contracts that include any FAR or GSAR clauses which are authorized deviations. This clause shall be used in lieu of the FAR clause at 52.252–6.

Authorized Deviations in Clauses (Deviation FAR 52.252–6) (April 1984)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause, if the clause (authorized deviation) is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5). The use in this solicitation of any Federal Acquisition Regulation (FAR) clause with an authorized deviation that is published in the General Services Administration Acquisition Regulation is indicated by the addition of "(DEVIATION (FAR clause no.))" after the date of the clause.

(b) The use of this solicitation of any Federal Services Administration Acquisition Regulation clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(End of Clause)

552.253–70 Forms Containing Solicitation Provisions and/or Contract Clauses Incorporated by Reference.

As prescribed in 553.171, insert the following provision in solicitations in order to incorporate forms containing solicitation provisions and/or contract clauses by reference. List each of these forms by number, title, and date.

Forms Containing Solicitation Provisions and/or Contract Clauses Incorporated by Reference (April 1984)

This solicitation incorporates the following forms containing solicitation provisions and/or contract clauses by reference, with the same force and effect as if they were included in full text. Upon request, the contracting officer will make the forms available.

GSA Form ———————————————

(End of Clause)

552.270–1 Definitions—Leases.

As prescribed in 570.701, insert the following clause in contracts for leasehold interests in real property.

Definitions—Leases (April 1984)

(a) The terms "Administration" and "Service" as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

(b) The terms "contract" and "Contractor" shall mean "lease" and "Lessor," respectively.

(c) The term "Lessor shall provide" means the Lessor shall furnish and install.

(End of Clause)

552.270–2 Subletting the Premises.

As prescribed in 570.702, insert the following clause in solicitations and contracts for leasehold interests in real property.

Subletting the Premises (April 1984)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting.

(End of Clause)

552.270–3 Maintenance of Premises.

As prescribed in 570.703, insert the following clause in solicitations and contracts for leasehold interests in real property.

Maintenance of Premises (April 1984)

The Lessor shall maintain the demised premises, including the building and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease in good repair and tenantable condition, except in case of damage arising from the act or the negligence of the Government's agents or employees. For the purpose of so maintaining said premises and property, the Lessor may at reasonable times, and with the approval of the authorized Government representative in charge, enter and inspect the same and make any necessary repairs thereto.

(End of Clause)

552.270–4 Damage by Fire or Other Casualty.

As prescribed in 570.704, insert the following clause in solicitations and contracts for leasehold interests in real property.

Damage by Fire or Other Casualty (April 1984)

If the said premises be destroyed by fire or other casualty, this lease shall immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 days thereafter; if so terminated, no rent shall accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent shall be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.

(End of Clause)

552.270–5 Condition Report.

As prescribed in 570.705, insert the following clause in solicitations and contracts for leasehold interests in real property.

Condition Report (April 1984)

A joint physical survey and inspection report of the demised premises shall be made as of the effective date of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

(End of Clause)

552.270-6 Applicable Codes and Ordinances.

As prescribed in 570.706, insert the following clause in solicitations and contracts for leasehold interests in real property.

Applicable Codes and Ordinances (April 1984)

The Lessor, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and operation of the building in which the leased space is situated and, at his own expense, to obtain all necessary permits and related items.
(End of Clause)

552.270-7 Inspection of Premises.

As prescribed in 570.707, insert the following clause in solicitations and contracts for leasehold interests in real property.

Inspection of Premises (April 1984)

At all times after receipt of offers, prior to or after acceptance of any offers, or during any construction, remodeling, or renovation work, the premises and the building or any parts thereof, upon reasonable and proper notice, shall be accessible for inspection by the Contracting Officer, or by architects, engineers, or other technicians representing him, to determine whether the essential requirements of the solicitation or the lease requirements are met.
(End of Clause)

552.270-8 Failure in Performance.

As prescribed in 570.708, insert the following clause in all solicitations and contracts for leasehold interests in real property.

Failure in Performance (April 1984)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are dependent. In the event of failure by the lessor to provide any of these items, the Government may by contract or otherwise perform the service, maintenance, utility, or repair, and charge to the Lessor any cost incurred by the Government that is related to the performance of such service, maintenance etc., including any administrative costs, and deduct such cost from any rental payments. Alternately, the Government may reduce rental payments by the corresponding decrease in value of the contract requirement not performed, as determined by the Contracting Officer. These remedies are not exclusive and are in addition to any other remedies which may be available under this contract or in the law.
(End of Clause)

552.270-9 Lessor's Successors.

As prescribed in 570.709, insert the following clause in solicitations and contracts for leasehold interests in real property

Lessor's Successors (April 1984)

The terms and provisions of this lease and the conditions herein shall bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.
(End of Clause)

552.270-10 Alterations by Government.

As prescribed in 570.710, insert a clause substantially the same as the following clause in solicitations and contracts for leasehold interests in real property.

Alterations by Government (April 1984)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this paragraph, the leased premises shall include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.
(End of Clause)

552.270-11 Alterations by Lessor.

As prescribed in 570.711, insert a clause substantially the same as the following clause in solicitations and contracts for leasehold interests in real property.

Alterations by Lessor (April 1984)

(a) The Lessor may be requested to provide alterations subsequent to award. If the Lessor desires to perform the alterations, an amount will be negotiated and set forth in an amendment to this lease, by award letter, or on an appropriate construction form.

(b) Upon request by the Government, the Lessor will submit, in a timely manner, an itemized cost proposal for the work to be accomplished. The proposal, including all subcontractor work shall contain at least the following details—

(1) Material quantities and unit costs,

(2) Labor costs (identified with specific item or material to be placed or operation to be performed),

(3) Construction equipment costs,

(4) Workman's compensation and public liability insurance,

(5) Overhead,

(6) Profit, and

(7) Employment taxes under FICA and FUTA.

Alternate I

For the acquisition of leasehold interests in real property of 10,000 square feet or more, add paragraphs (c) and (d) to the basic clause.

(c) Certain Federal Acquisition Regulation (FAR) provisions also apply to all alterations projects exceeding $500,000 in cost—

(1) The Lessor must provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.804–2),

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the job exceeds $500,000 must sign and return the "Certificate of Current Cost of Pricing Data" (48 CFR 15.804–4),

(3) The detailed and itemized proposal will be subject to a GSA audit (48 CFR 15.106–2), and

(4) The agreement for "Price Reduction for Defective Cost or Pricing Data" must be signed and returned (48 CFR 15.804–8).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.
(End of Clause)

552.270-12 Historic Preference.

As prescribed in 570.712, insert the following provision in solicitations for leasehold interests in real property.

Historic Preference (April 1984)

(a) Preference will be given to offerors of space in buildings on, or formally listed as eligible for inclusion in the National Register of Historic Places and to Historically significant buildings in historic districts listed in the National Register. Such preference will be extended to historic buildings and will result in award if:

(1) The offer for space meets the terms and conditions of this solicitation as well as any other offer received. (It is within the discretion of the Contracting Officer to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of the building, such as high ceilings, wooden floors, etc.) and

(2) The rental is no more than 10 percent higher on a total annual square foot (net usable area) cost to the Government than the lowest otherwise acceptable offer.

(b) If more than one offer of an historic building is received and they meet the above criteria, an award will then be made to the lowest historic property offered.
(End of Provision)

552.270-13 Late Submissions Modifications and Withdrawals of Offers—Leases.

As prescribed in 570.713, insert the following provision in solicitations for leasehold interest in real property.

Late Submissions, Modifications, and Withdrawals of Offers—Leases

(a) Any offer or modification of an offer which is received after the exact time specified for receipt of "best and final" offers will not be considered unless it is received before award is made, and—

(1) It was sent registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);

(2) It was sent by mail (telegram or mailgram if authorized) and it was determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) It is the only offer received.

(b) The only acceptable evidence to establish—

(1) The date of the mailing of a late offer or modification sent either by registered or certified mail is the U.S Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer or modification shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore. Offerors should request that the postal clerk place a hand canceled postmark on both the receipt and the envelope or wrapper.)

(2) The time of receipt at the Government installation is the time-date stamp of such installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.

(c) Notwithstanding (a), of this provision, a late modification of an otherwise successful offer which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(d) Offers may be withdrawn by written notice or telegram (including mailgram) received at any time prior to award. Offers may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the proposal before award.

(End of Provision)

Subpart 552.3—Provision and Clause Matrixes

552.300 Scope of Subpart.

This subpart consists of a series of matrixes, one each for supply, service construction, architect-engineer and small purchase contracts which lists the applicable GSAR provisions and clauses; and one each for utility contracts (sole supplier-regulated rates) and leases of real property which list the applicable FAR and GSAR provisions and clauses.

Note.—The matrixes do not appear in this volume of the **Federal Register** or Title 48, Chapter 5 of the Code of Federal Regulations, but are filed with the original document.

PART 553—FORMS

Subpart 553.1—General

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553.102 Current editions.
553.110 Continuation sheets.
553.110–70 The item listing (Section B of the Uniform Contract Format).
553.170 Forms containing clauses.
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553.171 Forms incorporated by reference.
553.172 GSA forms for optional use.
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Subpart 553.2—Prescription of Forms

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553.270–1 Representations and certifications.
553.270–2 Solicitation provisions.
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Subpart 553.3—Illustrations of Forms

553.300 Scope of subpart.
553.301 Standard forms.
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Authority: 40 U.S.C. 486(c).

Subpart 553.1—General

553.100 Scope of subpart.

This subpart deals with matters which are generally applicable to forms referenced in this GSAR, including delineations of responsibility for the maintenance of forms.

553.101 Requirements for use of forms.

(a) The requirements concerning the use of GSA forms illustrated in this part are explained in other parts of this regulation, with the exception of the forms prescribed in GSAR Subpart 553.2.

(b) The location in the text where a form is prescribed is identified by a cross-reference shown in conjunction with the illustration of the form. Although in some cases a form may be mentioned in several places in this regulation, the section referenced with the illustration contains the basic prescribing language.

553.102 Current editions.

Contracting officers shall use the edition of the procurement forms illustrated in Part 553 unless the use of a later edition is authorized by an Acquisition Circular. For the purposes of this 553.102, a "procurement form" is a form which is contractual in nature, and relates directly to the rights and obligations as between the Government and the contractor, including but not limited to, forms containing solicitation provisions and contract clauses, purchase/delivery orders, and forms containing specification requirements.

553.110 Continuation sheets.

553.110–70 The item listing (Section B of the Uniform Contract Format).

(a) FAR 53.110 provides for the use of specially constructed continuation sheets instead of Standard Form 36, Continuation Sheet. For many procurements, particularly requirements-type contracts, columns other than those shown on SF 36 are needed. Consequently, GSA forms containing appropriate columns may be developed for use, or item listing formats may be typed on blank pages, with or without ruled columns.

(b) When SF 36 is used for the item listing, and unit prices are solicited, the "Amount" column shall be shown as not applicable. This is to avoid problems resulting from possible discrepancies between the unit price and the total price, if both are submitted by an offeror.

553.170 Forms containing clauses.

553.170–1 Forms containing basic clauses.

GSA forms containing clauses prescribed in the FAR and this GSAR that have general applicability to (a) supply contracts, (b) construction contracts, and (c) service contracts are authorized for use on an optional basis (see 553.270–3).

553.170–2 Forms containing supplemental clauses.

(a) *Authority to establish forms.* The heads of contracting activities in the Central Office are authorized to establish GSA forms containing clauses of a more specialized nature than those contained in the forms described in 553.170–1.

(b) *Content of forms.* These forms, which may be attached to or incorporated by reference in solicitations/contracts, should contain clauses which have a relatively broad applicability. In connection with supply contracts, for example, the clauses should have general applicability to all or most contracts established by Central Office and regional contracting activities under one or more buying programs (e.g., Stock program, Federal Supply Schedule program). In the case of nonpersonal service contracts, the clauses should apply to a category of services and/or a large number of contracts for the same type of service (e.g. transportation services, building services).

(c) *Coordination.* Proposed new or revised GSA forms containing clauses shall be coordinated with the Office of GSA Acquisition Policy and Regulations

(VP), other interested Central Office activities, and the GSA regions. A copy of the proposed final draft of the form shall then be submitted to the Office of Acquisition Policy for review and concurrence.

553.171 Forms incorporated by reference.

(a) Forms containing solicitation provisions and/or contract clauses should not be incorporated by reference in solicitations/contracts until a copy of the form(s) has been distributed to all prospective offerors on the applicable bidders mailing list with a request that the form be retained for future reference. Copies of forms shall also be forwarded to GSA Business Service Centers.

(b) A clause substantially as that set forth at 552.252–70 shall be used to incorporate forms by reference in solicitations/contracts.

553.172 GSA forms for optional use.

If this GSAR is the prescribing directive of a form which is authorized for use on an optional basis, the establishment of a form serving substantially the same purpose is not permitted without prior concurrence by the Office of Acquisition Policy. See also the GSA Forms Management Program Handbook, Ch. 2 (OAD P 1824.4A) concerning restrictions on the issuance of similar forms.

553.173 Responsibility for the maintenance of forms.

(a) As used in 553.173, the word "maintenance" means the processing of a new or revised form, including coordination with all interested GSA activities, the preparation of camera copy and related documents (e.g., GSA Form 2192, Request for Forms Management Services), and the distribution of copies of the form. The responsibility for maintenance of a form carries with it the responsibility for handling auxiliary actions relating to the form, such as the processing of employee suggestions regarding revisions of the form. Activities which are responsible for the maintenance of a form will be shown as the "Originator" in Block 4 of GSA Form 3414, Forms Action/Status Notice, and will pay for the cost of printing the form, unless the form has been designated as "common-use."

(b) The following applies to GSA forms except those originated by activities which provide administrative or technical support to all GSA contracting activities.

(1) If, on the basis of the prescriptive language set forth in this GSAR, two or more GSA services/offices are required to use a specified GSA form, the Office of Acquisition Policy shall be responsible for maintaining the form.

(2) When a GSA form prescribed by this GSAR is required to be used by a particular GSA service/office, or if the form is required to be used in connection with a type of contract which is established by only one GSA service/office (e.g., construction contracts), that service/office shall be responsible for maintenance of the form.

(3) When a GSA form originated by a service/office is authorized for use on an optional basis, that service/office shall retain responsibility for maintenance of the form, notwithstanding that the form may be appropriate for use by other services/offices.

(c) In accordance with paragraph (b) of 553.173, the services/offices indicated below are responsible for maintaining the following GSA forms referenced in this regulation.

GSA form No.	Responsible office	GSA form No.	Responsible office
19	AT	2166	F
72	K	2419	F
72–A	F	2426	F
276	F	2677	AU
300	V	2689	V
300–A	V	2726	V
387	P	2932	V
434	F	3017	F
527	[illegible]	3025	[illegible]
618–A	[illegible]	3077	AU
618–D	[illegible]	3186	F
1056	F	3188	F
1142	P	3409	V
1364	F	3410	V
1447	F	3433	F
1535	V	3501	V
1535–A	V	3502	V
1584	F	3503	V
1584–A	F	3504	[illegible]
1602	F	3505	F
1678	F	3506	P
1720	AT	3507	F
1766	V	6334	F
1821	P	6419	F
2010	V	6002	F

Subpart 553.2—Prescription of Forms

553.200 Scope of subpart.

This subpart relates to the use of certain GSA Forms not prescribed elsewhere in this regulation, or forms that may be mentioned elsewhere in connection with only some of the uses to which the form may be applied.

553.270 Forms containing representations and certifications, provisions, and clauses.

The GSA Forms referenced in 553.270 are for use on an optional basis, within the limitations indicated in connection with a particular form. Unless otherwise indicated, the forms containing provision and clauses may either be physically included in the solicitation/contract, or may be incorporated therein by reference in accordance with 553.171.

553.270–1 Representations and certifications.

GSA Form 3503, Representations and Certifications, may be used as a part of all solicitations and contracts, except contracts for utilities and leases of real property. The form may also be used for small purchases when Standard Form 33, Solicitation, Offer, and Award, or Standard Form 1142, Solicitation, Offer, and Award, is used.

553.270–2 Solicitation provisions.

(a) GSA Form 3501, Solicitation Provisions (Advertised), is for use in connection with all advertised solicitations.

(b) GSA Form 3502, Solicitation Provisions (Negotiated), is for use in connection with all negotiated procurements, including small purchases when offers are solicited by the use of SF 33 or SF 1442.

553.270–3 Contract clauses.

(a) GSA Form 2166, Service Contract Act of 1965 (as Amended), is for use in connection with advertised and negotiated contracts for services to which the Act applies. Because the clause contained in this form must be included in solicitations/contracts in full text, the form shall not be incorporated by reference.

(b) GSA Form 3504, Service Contract Clauses, is for use in connection with advertised and negotiated contracts for services, except small purchases.

(c) GSA Form 3505, Labor Standards (Construction Contract), is for use in connection with advertised and negotiated contracts subject to the Davis-Bacon Act and related Acts. Because the clauses contained in this form must be included in solicitations/contracts in full text, the form shall not be incorporated by reference.

(d) GSA Form 3506, Construction Contract Clauses, is for use in connection with all advertised and negotiated construction contracts, except small purchases.

(e) GSA Form 3507, Supply Contract Clauses, is for use in connection with advertised and negotiated contracts for supplies. However, because most of the clauses contained in the form are also applicable to contracts for the rental of personal property, the form may also be used in connection with rental contracts.

553.271 [Reserved]

553.272 Purchase/Delivery orders.

Except as otherwise indicated, each of the following forms is designed for use as a purchase order (small purchases) with applicable provisions and clauses printed on the reverse of the form, or as

a delivery order under an established contract.

(a) GSA Form 300, Order for Supplies or Services, a 6-part form, is required for purchases payable by GSA under the National Electronic Accounting and Reporting (NEAR) System of funds control. This form may also be used in other situations, unless a specific form is prescribed for use. GSA Form 300–A, Order for Supplies or Services (Continuation), is available for use with GSA Form 300.

(b) GSA Form 3186, Order for Supplies or Services, a 7-part form, is required for use in connection with all contracts for stock items, including direct deliveries and stock replenishment orders. This form may also be used as a nonstock direct delivery order.

(c) GSA Form 8002, Motor Vehicle Delivery Order, a 5-part form, is designed for use in connection with the ordering of motor vehicles. This form is not intended for use as a purchase order for small purchases, and does not include provisions and clauses on the reverse.

553.273 Receiving reports.

GSA Form 3025, Receiving Report shall be used in conjunction with GSA Form 300, Order for Supplies or Services, and as may be prescribed in GSA handbooks or other directives.

553.274 Solicitation cover page.

GSA Form 1602, Notice Concerning Your Solicitation For Offers, may be used to: (a) Describe the type of contract (e.g., requirements or definite quantity), the duration of the contract, and the identity of the supplies or services being procured; (b) Direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer; (c) Highlight significant changes from previous solicitations covering the same commodity or service; and (d) Include other special notices, as appropriate. The notices on this cover page are informational only, because this unnumbered page is not a part of the solicitation or contract.

553.275 Contract summaries.

(a) To provide an abstract of pricing and other pertinent information applicable to requirements contracts for stock replenishment, contracting officers shall prepare GSA Form 1584, Contract Summary, in accordance with instructions in 553.370–1584–I. GSA Form 1584–A, Contract Summary—Continuation, shall be used as necessary. The completed form shall be duplicated and distributed as soon as possible after award to inventory managers, paying offices, quality assurance specialists, and other interested personnel, in accordance with distribution instruction established by the Office of Federal Supply and Services.

(b) Contract summaries (GSA Form 1584) may also be prepared in connection with nonstock contracts, if considered expedient.

553.276 Forms containing technical requirements.

GSA Form 3433, Marking and Shipping Instructions, is for use as an attachment to a purchase order when marking and shipping instructions are not otherwise specified.

Subpart 553.3—Illustrations of Forms

Editorial Note.—GSAR Forms are not published in the Federal Register or the Code of Federal Regulations. A list of forms appears at the end of this subpart.

553.300 Scope of subpart.

(a) This subpart contains illustrations of most form referenced in this GSAR, except standard forms that are illustrated in the Federal Acquisition Regulation (FAR).

(b) In some cases, detailed instructions regarding the completion of a form are included in conjunction with the illustration of the form. These instructions are identified by the addition of the suffix "I" following the subsection number.

553.301 Standard forms.

This section contains illustrations of standard forms that are referenced in this GSAR, but which are not illustrated in the FAR. Subsection numbers correspond with the number of the standard form being illustrated.

553.370 GSA forms.

This section contains illustrations of GSA forms referenced in this GSAR. Subsection numbers correspond with the number of the GSA form being illustrated.

Editorial Note.—GSAR Forms are not published in the Federal Register or the Code of Federal Regulations. For the convenience of the user, a list containing section numbers, form numbers and form titles appears below.

Sec.

553.301–2 Standard Form 2 U.S. Government Lease for Real Property.
553.301–2–B Standard Form 2–B, U.S. Government Lease for Real Property (Short Form).
553.370–19 GSA Form 19, Designation of Authorized Representative.
553.370–72 GSA Form 72, Contractor's Report of Order Received.
553.370–72–A GSA Form 72–A, Contractor's Report of Orders Received.
553.370–276 GSA Form 276, Supplemental Lease Agreement.
553.370–300–A GSA Form 300–A, Order for Supplies or Services (Continuation).
553.370–387 GSA Form 387, Analysis of Values Statement (Leased Space).
553.370–434 GSA Form 434, Sample Record Sheet.
553.370–527 GSA Form 527, Contractor's Qualifications and Financial Information.
553.370–618–D GSA Form 618–D, Statement to be Submitted When Work is Performed Personnally.
553.370–1056 GSA Form 1056, Notice of Shipment.
553.370–1142 GSA Form 1142, Release of Claims.
553.370–1364 GSA Form 1364, Proposal to Lease Space.
553.370–1447 GSA Form 1447, Procurement Case Summary.
553.370–1535 GSA Form 1535, Recommendation for Award(s).
553.370–1535–A GSA Form 1535–A, Recommendation for Award(s) (Continuation).
553.370–1584 GSA Form 1584, Contract Summary.
553.370–1584–A GSA Form 1584–A, Contract Summary Continuation Sheet.
553.370–1584–I Instructions for completing GSA Form 1584, Contract Summary.
553.370–1602 GSA Form 1602, Notice Concerning Your Solicitation for Offers.
553.370–1678 GSA Form 1678, Status Report of Orders and Shipments.
553.370–1720 GSA Form 1720, Request for Release of Classified Information to U.S Industry.
553.370–1766 GSA Form 1766, Structured Approach Profit/Fee Objective.
553.370–2010 GSA Form 2010, Small Purchase Tabulation Source List/Abstract.
553.370–2428 GSA Form 2428, Request for Authorization of Additional Classification(s), Rate(s), and Fringe Benefit(s).
553.370–2677 GSA Form 2677, Minority Contract Fact Sheet.
553.370–2689 GSA Form 2689, Procurement Not Set Aside.
553.370–2728 GSA Form 2728, Procurement Contract Register.
553.370–2932 GSA Form 2932, Proposed Substantial Contract Awards.
553.370–3017 GSA Form 3017, Labor Standards Interview.
553.370–3025 GSA Form 3025, Receiving Report.
553.370–3077 GSA Form 3077, FY 19—Procurement Preference Program Goal Achievement.
553.370–3409 GSA Form 3409, Personal Qualification Statement for Appointment as Contracting Officer.
553.370–3410 GSA Form 3410, Request for Appointment.
553.370–3501 GSA Form 3501, Solicitation Provisions (Advertised).
553.370–3502 GSA Form 3502, Solicitation Provisions (Negotiated).
553.370–6334 GSA Form 6334, Transmittal of Approved Samples of Items Under Contract.

553.370-6419 GSA Form 6419, Transmittal of Contract Award Data.
553.370-6002 GSA Form 6002, Motor Vehicle Delivery Order.

SUBCHAPTERS I-M—[RESERVED]

SUBCHAPTER N—SPECIAL CONTRACTING PROGRAMS

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

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Authority: 40 U.S.C. 486(c).

570.000 Scope of part.

This part prescribes policies and procedures for the leasing of real property (space).

Subpart 570.1—General

570.101 Applicability.

(a) The requirements of this part apply to the acquisition of leasehold interests in real property by GSA.

(b) The requirements of this part do not apply to the acquisition of leasehold interests in real property by eminent domain or donation.

(c) The GSAR applies to leasehold interests in real property only to the extent specified in this part and 501.103(b).

570.102 Definitions.

The terms as used in this part have the following meanings:

(a) "Acquisition" means the acquisition by lease, of the right to use certain privately owned space and to receive services such as heating, air conditioning, light, and janitor services furnishing by the lessor (landlord).

(b) "Contract" means lease.

(c) "Contractor" means lessor.

(d) "Fair Annual Rental" means the annual monetary amount which reasonably can be expected for the agreed use of real property as established by competition in the rental market and by an appraisal. If market information is unavailable, it is the annual amount which will amortize the value of the remaining capital investment plus a fair rate of interest return during the remaining useful life of the rented property.

(e) "Fair Market Value (FMV)" means the highest monetary price that a property will bring if offered for sale in the open market by a seller who is willing but not obliged to sell. This offer allows a reasonable time to find a buyer who is not obliged to buy, when both parties have full knowledge of all the uses to which rental property is adapted and for which it is capable of being used.

(f) "Fair Market Value for Leasing Purposes (FMVLP)" means the value of a whole or part of a property to be leased by the Government, which is determined for purposes of the lease on the basis of the FMV.

(g) "Leasehold interests" in real property means a lease contract which involves the relationship of landlord and tenant (Government) and grants the Government the right of exclusive possession of real property for a definite period including procurement of the right to use improvements (lease alterations) provided by the lessor subsequent to award of the lease.

(h) "Lessor or landlord" means any individual, firm, partnership, trust, association, or other legal entity which leases property.

(i) "Rent and related services" means the consideration paid for the use of leased property plus the costs of operational services such as heat, light, and janitor services whether furnished by the lessor, the Government, or both.

(j) "Rent or rental" as used in the Economy Act means the consideration paid for the use of leased property exclusive of the value of any special services such as heat, light, and janitor services which may be furnished under the lease; also called "net rental".

(k) "Small business" means a concern including affiliates, which is organized for profit, is independently owned and operated, is not dominant in the field of leasing commercial real estate, and has annual average gross receipts of $10 million or less for the preceding three fiscal years.

(l) "Solicitation for Offers (SFO)" means invitation for bids or request for proposals.

570.103 Authority to lease.

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(1)), as amended, and Section 1 of the Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 Note) authorize the Administrator of General Services to acquire leasehold interests in real property for use by Federal agencies. The authority is limited to leases for buildings and improvements that do not bind the Government for periods in excess of 20 years.

570.104 Contracting officers.

(a) Contracting officers, acting within the scope of their appointments, are the exclusive GSA agents to enter into and administer leases on behalf of the Government in accordance with agency procedures.

(b) Each contracting officer is responsible for performing, or having performed, all administrative actions necessary for effective contracting.

570.105 Competition.

(a) Contracts involving leases of real property shall be awarded on a competitive basis (formal advertising or negotiation) to the maximum practical extent. This shall include obtaining offers from the maximum number of qualified sources of space available which meet the minimum requirements of the Government.

(b) Noncompetitive acquisitions of leased space shall be held to the smallest number practicable and shall be justified in writing and approved in accordance with the provisions of 515.105–70.

570.106 Methods of contracting.

(a) *Formal advertising.* The use of formal advertising in connection with the leasing of real property is generally not feasible, unless a building site has been preselected and a building is to be constructed on the site in accordance with Government furnished plans and specifications for lease to the Government. When procuring by formal advertising, the provisions of FAR Part 14 and GSAR Part 514 shall be followed.

(b) *Negotiation.* (1) The Commissioner of the Public Buildings Service has made a class Determination and Findings authorizing the negotiated method of procurement for acquisition of real property by lease in accordance with section 302(c)(10) of the Federal Property and Administrative Services Act of 1949.

(2) The class Determination and Findings need not appear in the lease file; however it should be referenced on the award document as the authority to negotiate.

Supbart 570.2—Special Aspects of Contracting for Leasehold Interests of 10,000 Square Feet or More

570.201 Market surveys.

Market surveys shall be made for all lease acquisitions of space and shall include—

(a) Information on the availability of space through the use of circulars or newspaper advertisements and consultations with realtors, brokers, owners, and others, as appropriate;

(b) Inspections of all offered and other available locations which meet the minimum requirements regarding quantity, quality, availability, and probable cost; and

(c) Documentation of the survey findings for each location inspected, including the reasons for unacceptability and identity of the interested parties that received an SFO.

570.202 Advertising.

(a) Government space requirements for 10,000 or more square feet shall be advertised in newspapers and/or periodicals to solicit prospective offerors, unless the contracting officer determines that such advertising will not serve to promote competition.

(b) When the Government proposes the acquisition of leasehold interests in new construction on a preselected site the proposed acquisition shall be publicized (synopsized) in the Commerce Business Daily (CBD) at least 15 days prior to issuance of the SFO.

(c) For further information on advertising and synopsizing refer to GSAR Part 505.

570.203 Solicitation for offers (SFO).

The SFO is the basis for the entire lease negotiation process and shall be made a part of the lease. SFO's shall contain the information necessary to enable the prospective offeror to prepare a proposal.

(a) It shall—

(1) Be in writing.

(2) Contain the minimum requirements of the Government, including—

(i) A description of the required space,

(ii) Specifications,

(iii) Any special requirements, and

(iv) A delivery schedule.

(3) Describe the method used to measure space.

(4) Specify a date and place for the submission of offers. (Any extension of time to one offeror shall be granted uniformly to all offerors.)

(5) Advise that offers will only be considered for the initial lease term unless otherwise specified.

(6) Require offers to be submitted on an annual rate per square foot basis for the amount of space offered.

(7) Specify how offers will be evaluated, including award factors to be considered in addition to rent and related services.

(i) Offers will be reduced to an annual rental rate per square foot for the amount of space offered.

(ii) When different types of space are solicited, the lowest offer as to price will be determined on the basis of the composite square foot rate per year for the total amount of space offered.

(iii) When lump sum payments for initial tenant alterations are solicited, the lowest offer as to price will be determined by adding to the annual square foot rate (or the composite square foot rate) the result of the lump sum amount amortized over the term of the lease (i.e., divided by number of years in the term) divided by the square footage offered.

(iv) Award factors may include, but are not limited to, susceptibility of space to efficient layout, availability of public transportation, and availability of adequate food service within reasonable distance as determined by the Government.

(8) Include applicable provisions and contract clauses substantially the same as those listed on the matrix at 552.370.

(9) Include appropriate forms as prescribed in GSAR Subpart 570.8.

(b) The initial release of SFO's normally shall be made to all prospective offerors at the same time.

(c) Copies of each SFO shall be maintained at the issuing office until an award has been made. A reasonable number shall be duplicated and made available upon request to individuals and firms having an interest.

570.204 Changes to SFO's.

(a) When changes occur in the Government's requirements (either before or after receipt of proposals), the solicitation shall be amended in writing.

(b) When timeliness is essential, oral information regarding modifications may be given if—

(1) The modifications are not complex;

(2) A record is made of the oral information;

(3) All firms to be notified are given notice, on the same day if possible; and

(4) The oral information is promptly confirmed by a written amendment.

(c) When modifications in space requirements occur, the following procedures apply—

(1) If proposals are not yet due, amendments shall be sent to all firms solicited.

(2) If the time for receipt of proposals has passed, but proposals have not yet been evaluated, the amendments shall be sent to the concerns that have submitted offers.

(3) If a modification is so substantial that it requires a complete revision of the solicitation, the solicitation shall be canceled and a new solicitation issued. New solicitations shall be issued to all concerns solicited originally, any concerns added to the original mailing list, and any other qualified concerns.

570.205 Negotiations.

(a) Negotiations will be conducted with all offerors that are within the competitive range (i.e., that are acceptable or can be made acceptable in terms of price and technical requirements) provided awards are not made without oral discussion.

(b) Offerors, as a minimum, will be given an opportunity to modify their offers during negotiations.

(c) Offerors that do not meet minimum requirements after the initial negotiation will be notified and dropped from further consideration.

(d) A best and final offer shall be requested in writing from each offeror under consideration and shall include an established cutoff date.

(e) Further negotiations will not take place after the cutoff date, unless negotiations are conducted with all offerors.

(f) Negotiations shall be confidential and shall reflect complete agreement on all items and conditions of the lease contract. Information regarding the transaction will not be furnished until after the contract is awarded.

(g) A written negotiation record shall be placed in the permanent lease file.

570.206 Evaluating offers.

(a) An abstract of final offers shall be prepared to aid the analysis of offers received.

(b) Offers will be evaluated on the basis of the lowest annual price per square foot cost to the Government and other award factors as stated in the SFO.

570.207 Late offers, modifications of offers, and withdrawals of offers.

Offers received after the date for best and final offers will be considered in accordance with the provisions of FAR 15.412.

570.208 Preaward requirements.

Before making a lease award the following actions are required—

(a) When the annual net rental exceeds $2,000, an appraisal of the fair rental shall be obtained for the property to be leased. The lease file must demonstrate that the fair rental value has been properly established and show how it relates to the proposed contract rental.

(b) The analysis of the award factors used in the evaluation process shall be documented.

(c) Financial responsibility.

(1) A determination must be made that the prospective offeror is financially responsible with respect to the lease being considered. The contracting officer's signature on the contract shall be deemed to be an affirmative determination. The market survey shall constitute adequate support for the determination.

(2) When the offer is for acquisition of leasehold interests in new construction, the contracting officer shall request the Credit and Finance Branch, Region 2, to evaluate the offeror's financial status, unless the offeror has been evaluated and found satisfactory with the past year. Upon receipt of this information, the contracting officer shall make the determination of the lessor's financial responsibility.

(3) In other cases where the contracting officer has reason to question the lessor's financial ability to perform, a responsibility check shall be requested from the Credit and Finance Branch.

(4) All documents generated as a result of responsibility checks shall be placed in the permanent lease file.

(d) In order to comply with the warranty requirement of 41 U.S.C. 254(a) concerning contingent fees, the requirements of FAR Subpart 3.4 and GSAR Subpart 503.4 shall be followed.

(e) Applicable certifications as prescribed in 552.370 shall be reviewed for compliance with regulations.

570.209 Award.

(a) Awards shall be made to offerors whose offers are the most advantageous to the Government, price and other factors considered.

(b) Award will be made in writing within the time frame specified in the SFO. If an award cannot be made within that time, the contracting officer shall request in writing from each offeror an extension of the acceptance period through a specific date.

570.210 Inspection and certification.

A Government representative shall—

(a) Inspect the space and

(b) Certify that the space is in compliance with the Government's requirements and specifications prior to occupancy.

Subpart 570.3—Special Aspects of Contracting for Leasehold Interests Less Than 10,000 Square Feet

570.301 Market Surveys.

The market survey is the most crucial aspect of the small lease program. In these actions, a comprehensive market survey is usually sufficient to provide information on available properties that meet minimum requirements.

570.302 Requirements.

(a) SFO's need not be prepared or issued.

(b) When one or more acceptable locations is identified, an abbreviated package of information will be presented to each offeror. It will discuss all aspects of the Government requirements, including—

(1) Any factors other than price to be used in determining the offer most advantageous to the Government.

(2) The provisions, and contract clauses to be included in the lease. Provisions and clauses included shall be substantially the same as those listed on the matrix at 552.370.

(c) Offerors must make all appropriate certifications as prescribed at 552.370.

(d) Contract clauses and specifications that are negotiated for services or special requirements shall be included in the lease package.

(e) Appraisals of the fair annual rental may be completed based upon information gathered during the market survey.

Subpart 570.4—Mistakes, Protests, Miscellaneous

570.401 Disclosure of mistakes after award.

When a mistake in a lessor's offer is not discovered until after award, the mistake shall be handled as provided in FAR 14.406–4 and GSAR Subpart 514.4.

570.402 Protests.

Protests regarding the award of lease contracts shall be handled as provided in FAR 14.407–8 and GSAR Subpart 514.4.

(a) If the protest is prior to an award, no award will be made before the protest is resolved, unless the head of the contracting activity after review and comments by the regional counsel, determines that an immediate award will be in the best interests of the Government. A copy of the protest and related correspondence together with the statement of the determination made by the regional office will be forwarded promptly to the Assistant Commissioner for Space Management.

(b) When a protest is received after an award, the contracting officer shall develop a fact sheet covering pertinent issues and will prepare an appropriate letter in response to the protest in accordance with the advice of the regional counsel. Copies of these documents will be promptly forwarded to the Assistant Commissioner for Space Management.

570.403 Awards to Federal employees.

(a) Offers to lease space received from officers or employees of the Government shall be handled as provided in FAR Subpart 3.6.

(b) The head of the contracting activity may authorize an exception.

Subpart 570.5—Special Aspects of Contracting for Continued Occupancy in Leased Space

570.501 Renewal options.

(a) *Notification.* When a contracting officer determines that it is in the best interest of the Government to continue to lease a property, the lessor shall be notified within the time frame required by the lease.

(b) *Market survey.* When the right to renew a lease exists, a renewal shall be based on a market survey and other applicable considerations. Surveys should focus on the prevailing rental rates for comparable space.

(c) *Reappraisal.* To ensure that the rental to be paid during the renewal period will not exceed the appraised fair annual rental value or the net rent will not exceed the 15 percent limitation imposed by the Economy Act, consideration shall be given to the desirability of updating the original appraisal. The 15 percent Economy Act rent limitation applies to leases awarded prior to October 1, 1981. The updating of an original appraisal may be accomplished by means of a memorandum, unless it is obvious that sufficient changes have occurred to warrant a new appraisal.

(d) *Cancellation.* When a determination is made that a lease which has an automatic renewal clause is no longer required, the lessor will be notified in writing that the lease has been canceled.

570.502 Succeeding leases.

(a) When the right to renew a lease does not exist, an effort to continue the occupancy may be made by negotiating a succeeding lease when the contracting officer determines that—

(1) The occupant agency has a continuing need for the space and proposes no significant change in the amount of space required;

(2) The agency is satisfied with the space and proposes no substantial alteration;

(3) The market survey indicates that the negotiated rental for the proposed succeeding lease is fair and reasonable;

(4) A succeeding lease is in the best interest of the Government after due consideration of the prices of other available properties, relocation costs (including estimated moving costs and the estimated cost of alterations beyond those to be required in the existing space, amortized over the firm term of the lease), and other appropriate considerations; and

(5) A succeeding lease meeting all legal requirements can be negotiated.

(b) For succeeding leases of 10,000 square feet or less, the requirement for a market survey may be satisfied by three telephone contacts with firms or individuals having space available for lease, or recently leased to others.

570.503 Expansion requests.

(a) When the Government is currently housed in a building under a firm term lease with time remaining and has a valid expansion need, the contracting officer must determine whether it is more prudent to lease adjacent expansion space or to satisfy the total requirement through relocation. A market survey shall be conducted to determine whether suitable alternative locations are available. If the market survey reveals alternate locations which can satisfy the total requirement, an analysis shall be performed to determine whether it is in the Government's best interest to relocate. This analysis should include—

(1) The cost of the alternate space compared to the cost of expanding at the existing location;

(2) The cost of moving; and

(3) The cost of the unexpired portion of the firm term lease (unless a buy out or termination is possible, in which case the actual cost of such an action should be used).

(b) If no suitable alternative location is available, a noncompetitive lease may be negotiated with the current lessor to provide contiguous expansion space by Supplemental Lease Agreement, provided the original lease term is not extended.

570.504 Superseding leases.

Consideration shall be given to the execution of a superseding lease which would replace the existing lease when the changes or modifications contemplated are so numerous or detailed as to cause complications, or would substantially change the present lease.

570.505 Lease extensions.

When there is a need for continued occupancy on a short term basis, usually not to exceed 1 year, the lease may be extended by Supplemental Lease Agreement.

Subpart 570.6—Special Aspects of Contracting for Lease Alterations

570.600 Scope of subpart.

This subpart addresses negotiated alterations performed by lessors.

570.601 Sole-source determination and findings.

(a) The Commissioner of the Public Buildings Service has made a class Determination and Findings (D & F) authorizing the accomplishment of alterations to leased premises through lessors by negotiation in accordance with Section 302(c)(10) of the Federal Property and Administrative Services Act of 1949.

(b) The contracting officer shall make a certification for each project in support of the class D & F.

570.602 Scope of work.

A scope of work shall be prepared for all alteration projects.

570.603 Independent Government estimate.

An independent Government estimate shall be prepared for all alteration projects, including changes to alteration agreements with lessors.

570.604 Request for proposals.

(a) The lessor shall be provided with a scope of work, including any plans and specifications which have been developed, and shall be requested to submit a proposal.

(b) The proposal shall be requested to be submitted in such detail that a cost or price analysis can be made.

(c) Alterations over $500,000.

(1) When alterations are procured under a lease which contains the clause at 552.270–11, Alterations by Lessor, the lessor must submit cost or pricing data and related documentation.

(2) When the lease does not contain the clause at 552.270–11, the request for proposal shall request the lessor to submit the proposal and related documentation in the same detail as if the clause were in the lease.

570.605 Audits.

(a) Audits shall be requested for all sole source negotiated alterations in leased space which exceed $500,000 in cost unless the cost or pricing data requirement is exempted or waived in accordance with FAR 15.804–3.

(b) Audits shall be requested for initial space alterations when—

(1) The lease procurement is noncompetitive, and

(2) The alterations are special alterations above SFO standards and are not covered by unit pricing for standard alteration allowances.

570.606 Evaluation of proposals.

(a) Determine whether the proposal will meet the Government's requirements.

(b) Analyze cost as compared to the independent estimate and the audit.

(c) Analyze profit in accordance with FAR Subpart 15.9.

(d) Document analysis leading to negotiation objectives developed from (a) through (c) of this section.

570.607 Price negotiations.

(a) The contracting officer is responsible for exercising sound judgment and may make reasonable compromise as necessary.

(b) The negotiated price should provide the lessor with the greatest incentive for efficient and economical performance.

(c) Negotiations shall be documented by a price negotiations memorandum.

570.608 Award.

Alteration awards may be made by Supplement Lease Agreement, award letter, or an appropriate construction contract form, provided in all cases that the award contains reference to the lease and the provisions of section 332 of the Economy Act of June 30, 1932 (47 Stat. 412), as amended, are met.

570.609 Inspection and payment.

Final payment for alterations shall not be made until the work is—

(a) Inspected by a qualified Government employee or independent Government contractor, and

(b) Certified as completed in a satisfactory manner.

Subpart 570.7—Solicitation Provisions and Contract Clauses

570.701 Definitions—Leases.

The contracting officer shall insert the clause at 552.270–1, Definitions—Leases, in solicitation and contracts for leasehold interests in real property.

570.702 Subletting the premises.

The contracting officer shall insert the clause at 552.270–2, Subletting the Premises, in solicitation and contracts for leasehold interests in real property.

570.703 Maintenance of premises.

The contracting officer shall insert the clause at 552.270–3, Maintenance of Premises, in solicitations and contracts for leasehold interests in real property.

570.704 Damage by fire or other casualty.

The contracting officer shall insert the clause at 552.270–4, Damage by Fire or Other Casualty in solicitations and contracts for leasehold interests in real property.

570.705 Condition report.

The contracting officer shall insert the clause at 552.270–5, Condition Report, in solicitations and contracts for leasehold interests in real property.

570.706 Applicable codes and ordinances.

The contracting officer shall insert the clause at 552.270–6, Applicable Codes and Ordinances, in solicitations and contracts for leasehold interests in real property.

570.707 Inspection of premises.

The contracting officer shall insert the clause at 552.270–7, Inspection of Premises, in solicitations and contracts for leasehold interests in real property.

570.708 Failure in Performance.

The contracting officer shall insert the clause at 552.270–8, Failure in Performance, in solicitations and contracts for leasehold interests in real property.

570.709 Lessor's successors.

The contracting officer shall insert the clause at 552.270–9, Lessor's Successors, in solicitations and contracts for leasehold interests in real property.

570.710 Alterations by government.

The contracting officer shall insert the clause at 552.270–10, Alterations by Government, in solicitations and contracts for leasehold interests in real property.

570.711 Alterations by lessor.

The contracting officer shall insert the clause at 552.270–11, Alterations by Lessor, in solicitations and contracts for leasehold interests in real property. If the lease is for 10,000 square feet or more, the contracting officer shall use the clause with its Alternate I.

570.712 Historic preference.

The contracting officer shall insert the provision at 552.270–12, Historic Preference, in solicitations and contracts for leasehold interests in real property.

570.713 Late submissions, modifications, and withdrawals of offers—leases.

The contracting officer shall insert the provision at 552.270–13, Late Submissions, Modifications, and Withdrawals of Offers—Leases, in solicitations and contracts for leasehold interests in real property.

Subpart 570.8—Forms Used for Acquisition of Leasehold Interests in Real Property

570.800 Scope of subpart.

This subpart sets further requirements for the use of forms in contracting for leasehold interests in real property.

570.801 Standard Forms.

(a) Standard Form 2, U.S. Government Lease for Real Property, shall be used to award leases of 10,000 square feet or more. Its use for leases of less than 10,000 square feet is optional.

(b) Standard Form 2–B U.S. Government Lease for Real Propery (Short Form), may be used to award leases for less than 10,000 square feet.

570.802 GSA Forms.

(a) GSA Form 276 Supplemental Lease Agreement, shall be used to amend existing leases which involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, rental payments, payments for overtime services, restoration settlements, and alterations.

(b) GSA Form 387, Analysis of Values Statement, shall be used to demonstrate that the fair rent value of the leased space is proper.

(c) GSA Form 1364, Proposal To Lease Space To The United States of America, may be used to obtain offers from prospective offers.

Appendix A to Chapter 5—Contracting Office Assignment Codes

Note.—Appendix A will not appear in 48 CFR Chapter 5, or this issue of the **Federal Register**, but will be filed with the original document.

Appendix B to Chapter 5—Rules of the GSA Board of Contract Appeals—[Reserved]

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Thursday
March 22, 1984

Part IV

Department of Commerce

National Telecommunications and Information Administration

Grants for planning and Construction of Public Telecommunications Facilities; Acceptance of Applications for Filing; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Grants for Planning and Construction of Public Telecommunications Facilities; Acceptance of Applications for Filing

I. New Applications and Major Amendments to Deferred Applications

Notice is hereby given that the following described applications for Federal financial assistance are accepted for filing under provisions of Title III, Part IV, of the Communications Act of 1934, as amended (47 U.S.C. 390–94) and in accordance with 15 CFR Part 2301. All of the applications listed in this section were received postmarked by January 16, 1984. The effective date of acceptance of these proposals, unless otherwise indicated herein, is "Date Received." Applications are listed alphabetically by their State.

The acceptance of applications for filing is a procedure designed for making preliminary determinations of eligibility and for providing the opportunity for public comment on applications. Acceptance of an application does not preclude subsequent return or disapproval of an application if it is found to be not in accordance with the provisions of either the Act or 15 CFR Part 2301, or if the applicant fails to file any additional information requested by the Public Telecommunications Facilities Program (PTFP). Acceptance for filing does not assure an application of being funded; it merely qualifies it to compete for funding with other applications which have also been accepted for filing.

Pursuant to 15 CFR 2301.09, applicants were required to publish in a newspaper of general circulation, in the community to be served by the applicant, a notice that such application has been tendered to the PTFP of the National Telecommunications and Information Administration. The notice shall have been published once a week for two consecutive weeks on or before January 16, 1984. The notice included (1) information as to where within the community to be served a copy of the application, and any amendments thereto, may be inspected by the public during normal business hours; and (2) an invitation for parties supporting or opposing the application to file comments with the Administrator, National Telecommunications and Information Administration, Public Telecommunications Facilities Program, Washington, D.C. 20230. All comments must be filed within fifteen (15) calendar days from the date of this public notice of acceptance of the application and must be accompained by a written assurance that a copy of the comments has been mailed to the applicant.

Scott Mason,

Chief, Management Branch.

AK

File No. 4087CTB, Alaska Public Television, Inc., 2677 Providence Drive, Anchorage, AK 99508. Signed by: Mr. Elmo A. Sackett, General Manager. Funds Requested: $507.896. Total Project Cost: $677,195. To extend and improve noncommercial television station, DAKM–TV, Channel 7, Anchorage, Alaska, by constructing and installing new tower, antenna and related dissemination facilities in order to provide expanded telecommunications service to communities in and about the Anchorage metropolitan area.

File No. 4176CRB, Alaska Public Radio Network, 2607 Fairbanks Street, Anchorage, AK 99503. Signed by: Mr. Bruce Smith, Secretary/Treasurer. Funds Requested: $44,568. Total Project Cost: $59,425. To improve the originating facilities of the Alaskan Public radio Network, Anchorage, Alaska, in order to provide better program services for distribution by Alaska's fourteen member radio stations.

File No. 4191CTB, University of Alaska, 208 Theatre Bldg., 312 Tanana Dr. Fairbanks, AD 99701. Signed by: Mr. Keith B. Mather, Vice Chancellor for Research. Funds Requested: $268,965. Total Project Cost: $358,620. To replace obsolete apparatus and improve origination equipment of noncommercial television station KUAC–TV, Channel 9, Fairbanks, Alaska, in order to meet expanding programming needs of the Fairbanks metropolitan area and member stations of the Alaskan network.

File No. 4122CRB, Rainbird Community Broadcasting Corporation, 716 Totem Way, Ketchikan, AK 99901. Signed by: Mr. Ken Burton, President. Funds Requested: $39,379. Total Project Cost: $52,506. To extend the signal of noncommercial radio station, KRBD–FM, operating on frequency 105.9 MHz, Ketchikan, Alaska, with translators to serve the communities of Hydaburg, Klawock, Thorne bay, Herring Cove and Mountain Point.

File No. 4055CRB, Pribilof School District, Tolstoy Street, St. Paul, AK 99660. Signed by: Mr. Leland L. Dishman, Superintendent. Funds Requested: $177,872. Total Project Cost: $157,163. To establish a noncommercial FM radio station operating on a frequency of 91.9 MHz, St. Paul, AK, with dissemination and origination facilities to bring first service and local production to St. Paul and other communities in the Pribilof Islands of Alaska.

AL

File No. 4217PRTB, Alabama Center for Higher Education, 2121 8th Avenue North, Suite 1520, Birmingham, AL 35203. Signed by: Ms. Charlena H. Bray, Executive Director. Funds Requested: $50,000. Total Project Cost: $72,300. To ascertain equipment and program needs and financing resources to establish and operate a radio and TV network of stations comprising twelve Black colleges and two Black community colleges to provide alternate programming for an unserved minority population of 275,000 Blacks residing in Alabama, North Carolina, Tennessee, and Mississippi.

File No. 4249CRB, University of Alabama, Birmingham, 1028 7th Avenue South, Birmingham, AL 35294. Signed by: Mr. Robert N. Eastman. Funds Requested: $57,220. Total Project Cost: $76,293. To replace a worn out transmitter and studio transmitter link for WBHM–FM, operating on 90.3 MHz with a power of 50,000 watts and serving 3.9 million persons in the Birmingham, Alabama area.

File No. 4270CTB, Alabama Educational Television Commission, 2101 Magnolia Avenue, Birmingham, AL 35256. Signed by: Mr. Wilbur H. Hinton, General Manager. Funds Requested: $1,378,761. Total Project Cost: $1,882,467. To provide for the replacement of worn-out transmission equipment to stabilize the rapidly eroding technical base of the Alabama Public TV Network and to replace badly deteriorated origination equipment in an effort to better serve the 3,993,888 citizens of the State.

File No. 4290CRB, Jefferson Davis State Junior College, Alco Drive, Brewton, AL 36427. Signed by: Mr. William D. Ward, Project Director. Funds requested: $86,321. Total Project Cost: $115,095. To establish a public radio station in Brewton, Alabama, operating with a power of 5KW on 90.9 MHz, to provide the first radio signal for the counties of Escambia and Conecuh. The proposed community program service will be produced in studios at Jefferson Davis State Junior College and will reach 75,000 persons.

File No. 4297CRB, Oakwood College, Oakwood Road, N.W., Huntsville, AL 35896. Signed by: Dr. Mervyn Warren, Senior Vice President. Funds Requested: $140,184. Total Project Cost: $185,632. To replace and improve the basic transmission and origination equipment

for WOCG–FM operating with a power of 25,000 watts on 90.1 MHz in Huntsville, Alabama.

File No. 4239CRB, Troy State University, University Avenue, Troy, AL 36082. Signed by: Mr. Ralph W. Adams, President. Funds Requested: $189,287. Total Project Cost: $252,383. To establish a second radio station with a transmission and studio production facility in Dothan, Alabama, providing the first public radio signal to 201,531 persons in the southeastern corner of Alabama.

AR

File No 4215CRB, Little Rock Public School District, 7701 Scott Hamilton Drive, Little Rock, AR 72209. Signed by: Mr. Edward L. Kelly, Superintendent of Schools. Funds Requested: $22,686. Total Project Cost: $30,248. To acquire satellite earth station for KLRE–FM, 90.5 MHz, in Little Rock. KLRE–FM serves over 1,000,000 listeners in Little Rock area. Facilities will be used in cooperation with KABF–FM and the Arkansas Radio Reading Service.

AZ

File No. 4171CTB, Arizona Board of Regents for Arizona State University, Stauffer Hall, Tempe, AZ 85287. Signed by: Mr. H. B. Hunnicutt, Asst Vice President for Research. Funds Requested: $197,125. Total Project Cost: $394,250. To replace obsolete and worn-out studio equipment at noncommercial TV station, KAET, Channel 8, Tempe, Arizona, to improve the public TV service brought to the residents of central Arizona.

File No. 4174CTB, Arizona Board of Regents for Benefit of University of Arizona, University Boulevard, Tucson, AZ 85704. Signed by: Mr. William R. Noyes. Associate Vice President. Funds Requested: $269,010. Total Project Cost: $409,101. To construct a microwave system to interconnect noncommercial TV stations KUAT, Channel 5, in Tucson, and KAET, Channel 8, in Phoenix, Arizona. The interconnection would allow the exchange of broadcast and ITFS programming.

File No. 4281CRB, Foundation for Creative Broadcasting, Inc., Tucson, AZ 85722. Signed by: Mr. Frank Milan, Station Manager. Funds Requested: $101,250. Total Project Cost: $135,000. To establish production facility at KXCI–FM in Tucson that will be used for community access especially for minorities and women.

CA

File No. 4012CRB, KXOL, 1252 East Tenth Street, Chico, CA 95926. Signed by: Mr. Marcus A. Smith. Funds Requested: $78,890. Total Project Cost: $105,188. To activate a new noncommercial radio station on 90.3 MHz in Chico. Station will primarily serve the Black audiences in Butte and Glenn Counties as well as the Chico area.

File No. 4154CTB, Redwood Empire Public Television, Inc., 7246 Humboldt Hill Road, POB 13, Eureka, CA 95501. Signed by: Dr. John Burke, President. Funds Requested: $353,485. Total Project Cost: $471,314. To extend the signal of KEET–TV, Channel 13, in Eureka. Project will provide first service to areas in northwest California and southern Oregon. Applicant proposes to increase power and tower height.

File No. 4116CTN, Los Angeles Unified School District, 1061 West Temple Street, Los Angeles, CA 90012. Signed by: Mr. William R. Anton, Deputy Superintendent. Funds Requested: $61,612. Total Project Cost: $82,216. To interconnect KLCS–TV, Channel 58, educational program services, with cable television headends in Los Angeles. Service is in addition to regular KLCS–TV public TV service.

File No. 4153PTB, Cal Poly Kellogg Unit Foundation, Inc., 3801 West Temple Avenue, Pomona, CA 91791. Signed by: Mr. John R. Kropf, Director. Funds Requested: $45,646. Total Project Cost: $79,687. To plan for the use of telecommunications technology to deliver credit and non-credit education to public schools, public and private organizations and local industry in the Pomona area.

File No. 4031CRB, Broadcast Services for the Blind, Inc., 420 Taylor Street, Room 330, San Francisco, CA 94102. Signed by: Mr. R. L. Schoenberger, Jr., President/Board of Directors. Funds Requested: $23,650. Total Project Cost: $31,534. To acquire production equipment and SCA receivers for use by print handicapped in the nine county San Francisco Bay area. Applicant uses the sub-carrier channel of KPFA–FM, Berkeley, and is also carried on local cable.

File No. 4050CTB, Santa Clara County Board of Education, 100 Skyport Drive, San Jose, CA 95115. Signed by: Mr. Maynard F. Orme, General Manager. Funds Requested: $28,338. Total Project Cost: $37,784. To acquire a new master control switcher at KTEH–TV, Channel 54, in San Jose. Switcher replaces basic equipment that is worn out. Equipment will benefit three million Bay Area residents.

CO

File No. 4225CTB, Front Range Educational Media Corporation, 6801 W. 117th Avenue, Broomfield, CO 80020. Signed by: Mr. Michael J. August, General Manager. Funds Requested: $601,905. Total Project Cost: $802,540. To replace the obsolete and worn-out transmitter of KBRA in Broomfield and to establish originating studio at KBDI's television translator site in Boulder.

File No. 4200PRB, Crested Butte Mountain Educational Radio, 977 Belleview, PO Box 877, Crested Butte, CO 81224. Signed by: Mr. W. Mitchell, Signator, Board of Directors. Funds Requested: $11,556. Total Project Cost: $15,436. To plan for first service public radio for Crested Butte, Colorado, and surrounding rural communities.

File No. 4020CRB, University of Denver—Colorado Seminary, 2056 South York Street, Denver, CO 80208. Signed by: Ms. Deborah G. Bradford, Sponsored Agreements Services. Funds Requested: $52,184. Total Project Cost: $76,184. To replace and upgrade current transmission system of KCFR–FM serving Denver, in order to implement power increase.

File No. 4298CRB, Western Colorado Public Radio, Inc., 2754 Compass Drive, Ste. 325, Grand Junction, CO 81501. Signed by: Ms. Marsha L. Gobo, Project Administrator. Funds Requested: $94,822. Total Project Cost: $126,430. To interconnect public radio stations in Colorado for purpose of program exchange. Project will use state microwave system and requests studios for production and satellite receive equipment.

File No. 4021PRTBN, School District #12, Adams County, 11285 Highline Drive, Northglenn, CO 80233. Signed by: Dr. Ted Rogers, Assistant Superintendent. Funds Requested: $211,790. Total Project Cost: $262,365. To plan an expandable interconnected interactive communication network for the schools and community of Northglenn, Colorado.

File No. 4039CRB, North Fork Valley Public Radio, Inc., 213 Grand Avenue, Paonia, CO 81428. Signed by: Mr. Felix Belmont, President. Funds Requested: $36,890. Total Project Cost: $49,187. To expand signal of public radio station KUNF–FM to four unserved counties in western Colorado by increasing power of KUNF to 6 KW and adding three translators.

File No. 4268CTB, University of Southern Colorado, 2200 Bonforte Boulevard, Pueblo, CO 81001. Signed by: Dr. Lyle C. Wilcox, President. Funds Requested: $654,609. Total Project Cost: $872,813. To improve signal of KTSC–TV serving Pueblo and Colorado Springs by replacing obsolete dissemination and origination equipment.

File No. 4269CRB, University of Southern Colorado, 2200 Bonforte Boulevard, Pueblo, CO 81001. Signed by: Dr. Lyle C. Wilcox, President. Funds Requested: $240,366. Total Project Cost: $320,489. To expand power of KTSC–FM from 9.8 KW to 100,000 watts thereby providing first public radio service to Pueblo and other unserved communities of south and southeastern Colorado.

File No. 4296CRB, Rangely Community Radio, Inc., 209 E. Main Street, Rangely, CO 81648. Signed by: Ms. Mary Ann Carlson, Project Director. Funds Requested: $103,608. Total Project Cost: $138,144. To establish a first public radio station on 90.1 with 250KW to serve Rangely and surrounding communities.

File No. 4293CTB, County of San Miguel, P.O. Box 548, Telluride, CO 81435. Signed by: Mr. Fred Ellerd, Chairman, Bd of County Comm. Funds Requested: $53,161. Total Project Cost: $70,881. To extend the signal of KRMA–TV, Channel 6, Denver and provide, via translator, first public TV service to residents of the County of San Miguel.

CT

File No. 4146CTB, Connecticut Educational Telecommunications Corporation, 24 Summit Street, Hartford, CT 06106. Signed by: Mr. Paul K. Taff, President & General Manager. Funds Requested: $241,613. Total Project Cost: $531,113. To raise power, increase reliability and efficiency, and improve quality of WEDN–TV serving Norwich, CT by retrofiting transmitter and replacing antenna. Project will also allow remote controlled operation.

DC

File No. 4041CRB, Greater Washington Educational Telecommunications Association, P.O. Box 2626, Washington, DC 20013. Signed by: Mr. F. Kim Hodgson, Vice President & General Manager. Funds Requested: $192,372. Total Project Cost: $256,497. To improve noncommercial radio station WETA–FM, 90.9 MHz, in Washington. Project is for funding 30 KW transmitter, studio equipment and routing switcher. Equipment will allow WETA to better serve over 250,000 listeners in Washington, D.C. metro area.

File No. 4106CRB, University of the District of Columbia, 4200 Connecticut Avenue, N.W., Washington, DC 20008. Signed by: Dr. Anne O. Hughes, Director of Development. Funds Requested: $24,050. Total Project Cost: $37,000. To augment noncommercial radio station WDCU–FM on 90.1 MHz. Station seeks equipment to automate facility. WDCU–FM serves greater Washington, D.C. metropolitan area.

File No. 4119CRB, The American University, 4400 Massachusetts Avenue, N.W., Washington, DC 20016. Signed by: Mr. Donald L. Myers, V.P. for Finance. Funds Requested: $63,080. Total Project Cost: $84,107. To improve WAMU–FM, 88.5 MHz, to better serve Washington metro area. Proposes to acquire new main and standby antenna and related equipment.

DE

File No. 4160CTB, Delaware Citizens Committee, 122 Front Street, Seaford, DE 19973. Signed by: Mr. J. Christopher Farlow, President and General Manager. Funds Requested: $64,031. Total Project Cost: $85,375. To extend the signal of WDPB–TV by establishing a satellite station in Dover, Delaware, an area unserved by public television. The new station will rebroadcast the programming of WDPB–TV in Seaford.

FL

File No. 4207CRB, South Florida Public Telecommunications, Inc., 505 South Congress Avenue, Boynton Beach, FL 33425. Signed by: Mr. Sam J. Barbaro, Vice President & General manager. Funds Requested: $60,288. Total Project Cost: $80,384. To improve the local production capability of WHRS–FM in Boynton Beach, Fl, by providing the station's first remote capability and thereby better meet the needs of this six county community.

File No. 4208CTB, South Florida Public Telecommunications, 505 South Congress Avenue, Boynton Beach, FL 33435. Signed by: Mr. Sam J. Barbaro, Vice President & General Manager. Funds Requested: $64,016. Total Project Cost: $85,355. To provide the first remote local production capability for WHRS–TV, Channel 42, in Boynton, Beach Florida, in order to better meet the needs of the community, totaling two million persons.

File No. 4094CTB, Goldcoast Educational Television System, Inc., 225 East Las Olas Boulevard, Fort Lauderdale, FL 33301. Signed by: Mr. Clinton D. Hamilton, President. Funds Requested: $750,000. Total Project Cost: $2,960,000. To activate a local service educational TV station on Channel 62 in Boca Raton, Florida, providing alternative services to Broward County and the surrounding area.

File No. 4162CRB, Indian River Community College, 3209 Virginia Avenue, Fort Pierce, FL 33450. Signed by: Dr. Herman A. Heisel, President. Funds Requested: $140,625. Total Project Cost: $187,500. To construct a new 500 foot tower, install a larger antenna and increase the power of the transmitter to obtain an ERP of 100,000 watts, thereby enabling WQCS–FM in Fort Pierce, Florida to provide the first public radio signal to 103,809 persons in this Indian River community.

File No. 4044CTB, WJCT, Inc., 100 Festival Park Avenue, Jacksonville, FL 32202. Signed by: Mr. Fred Rebman, President. Funds Requested; $442,051. Total Project Cost: $589,402. To replace a worn-out transmitter with a new higher power TV transmitter at a new higher antenna-tower site to enable WJCT–TV, Channel 7, in Jacksonville, Florida, to provide first service to approximately 25,000 persons in the southern end of the new coverage area.

File No. 4325CTB, School Board of Dade County, Florida, 1410 NE 2nd Avenue, Miami, FL 33132. Signed by: Mr. Leonard Britton, Superintendent of Schools. Funds Requested: $285,000. Total Project Cost: $380,000. To replace obsolete transmitter exciter and studio equipment used for production of local programming at WLRN–TV serving Miami, FL and Dade, Broward, and Monroe counties.

File No. 4078PRB, Youth and Family Alternatives, Inc., 5250 C.R. 54, New Port Richey, FL 33552. Signed by: Mr. George Magrill, Executive director. Funds Requested: $20,000. Total Project Cost: $34,222. To plan the establishment of a public radio station to serve the residents of west Pasco County, near Tampa, Florida, with social service programs.

File No. 4321CRB, Community Communications, Inc., 1151 E. Colonial Drive, Orlando, FL 32817. Signed by: Mr. Stephen M. Steck, President. Funds Requested: $18,072. Total Project Cost $24,096. To activate a translator system in Cocoa Beach to provide the first public radio service for 200,000 persons residing in a transmitter null area along the coast of Brevard County. WMFE–FM in Orlando, Florida, will provide the signal.

File No. 4306CRB, The School Board of Broward County, Florida, 8000 N.W. 44th Street, Sunrise, FL 33321. Signed by: Dr. William T. McFatter, Superintendent of Schools. Funds Requested: $39,600. Total Project Cost: $52,825. To augment the local production capability of WKPX–FM in Sunrise, Florida, by equipping this high school station with a second studio and announce booth and thereby increase the number of local programs for the residents of Broward County.

File No. 4140CTB, State of Florida, Acting for and in behalf of Univ. of South Florida, 4202 Fowler Avenue, Tampa, FL 33620. Signed by: Mr. A. Riley Macon, Director of Research. Funds Requested: $494,546. Total Project

Cost: $659,395. To replace worn-out equipment and upgrade the local production capability including portable equipment for remote programming which will provide WUSF–TV, Channel 36, in Tampa, Florida, with increased and improved local programs for the Tampa, St. Petersburg, Sarasota and Ft. Myers area.

File No. 4183CRB, State Board of Regents of Florida for the Univ. of South Florida, 4202 Fowler Avenue, Tampa, FL 33620. Signed by: Mr. Frank Lucarelli, Asst Dir, Div of Sponsored Res. Funds Requested: $131,995. Total Project Cost: $175,940. To upgrade the studio transmitter link with the studios of WSFP–FM in Fort Myers, Florida, and with the off-air signal from WUSF–FM in Tampa which will enable programming from Tampa to be re-broadcast on both the main channel and the sub-channel for the radio reading service of WSFP–FM, and to improve studio and control room equipment for local programming.

File No. 4184CTB, State Board of Regents of Florida for the Univ. of South Florida, 4202 Fowler Avenue, Tampa, FL 33620. Signed by: Mr. Frank Lucarelli, Asst Dir. Div of Sponsored Research. Funds Requested: $277,514. Total Project Cost: $370,019. To provide the first remote production equipment for WSFP–TV in Ft. Myers, Florida, to help meet more of the community needs in this newly served five county area.

File No. 4185CRB, The University of South Florida, 4202 Fowler Avenue, Tampa, FL 33620. Signed by: Mr. Frank Lucarelli, Asst Dir of Sponsored Research. Funds Requested: $134,951. Total Project Cost: $179,935. To improve the operational capability of WUSF–FM in Tampa, Florida, by obtaining a program automation system, to increase the number of radio programs available for broadcast, by adding another satellite receiver, and by extending the radio reading service with additional SCA receivers.

File No. 4322CTB, Florida West Coast Public Broadcasting, Inc., 1300 North Boulevard, Tampa, FL 33607. Signed by: Mr. Mark Damen, President. Funds Requested: $371,400. Total Project Cost: $495,200. To replace worn-out studio production equipment which will enable WEDU–TV, Channel 3, in Tampa, Florida, to broadcast more and better quality local programs without the down time and high maintenance costs the station is now experiencing.

GA

File No. 4159CRB, Georgia Public Telecommunications Commission, 1540 Stewart Avenue, S.W., Atlanta, GA 30310. Signed by: Mr. R. E. Ottinger, Executive Director. Funds Requested: $185,718. Total Project Cost: $247,625. To establish a new noncommercial radio station on 90.1 MHz in Waycross. Station is part os proposed statewide radio network. Applicant proposes to serve 435,550 residents in Waycross/Valdosta area of State. Station will initially repeat the state radio network signal.

File No. 4237CTB, Atlanta Board of Education, 740 Bismark Road, N.E., Atlanta, GA 30324. Signed by: Mr. Alonzo A. Crim, Superintendent. Funds Requested: $555,832. Total Project Cost: $741,110. To augument station WETV–TV, Channel 30, in Atlanta. Project proposes to equip a mobile van to better serve the needs of the 2.5 million residents of the Atlanta metropolitan area.

File No. 4080CRB, Savannah State College, P.O. Box 20484, Savannah, GA 31404. Signed by: Dr. Wendell G. Rayburn, President. Funds Requested: $78,750. Total Project Cost: $105,004. To increase the power of noncommercial station, WHCJ–FM, from 10 to 1500 watts. Proposal will benefit 268,085 persons in the Savannah area. Application also seeks funds for origination equipment and satellite downlink.

GQ

File No. 4192PTB, Guam Educational Telecommunication Corporation, P.O. Box 21449, G.M.F., GQ 96921. Signed by: Mr. Kau Kiang Woo, Station Manager. Funds Requested: $21,450. Total Project Cost: $21,450. To develop a five-year expansion plan that will address technical and financial resources needed to upgrade and expand public TV service of KGTF serving Guam and the Marianas.

HI

File No. 4018CRB, Hawaii Public Radio, Inc., 1335 Lower Campus Drive, Honolulu, HI 96822. Signed by: Mr. Clarence A. Eblen, Executive Vice President. Funds Requested: $69,788. Total Project Cost: $93,050. To establish an FM repeater that will provide first public radio service to Maui which will repeat the signal of KHPR–FM. Studio for local origination will be developed as resources permit.

File No. 4284PRTB, The Zion Land Foundation, 205 Lewers Street, Suite 320, Honolulu, HI 96815. Signed by: Mr. J. K. Amsterdam, Project Director/Chairman. Funds Requested: $35,432. Total Project Cost: $96,860. To plan for the development of a public telecommunications entity that will serve Honolulu and will be controlled and operated by native Hawaiians.

ID

File No. 4312CRB, Idaho Migrant Council, Inc., 715 S. Capitol Blvd., Suite 405, Boise, ID 83707–9469. Signed by: Mr. Humberto Fuentes, Executive Director. Funds Requested: $153,032. Total Project Cost: $219,832. To establish a noncommercial FM radio station operating on a frequency of 90.1 MHz, Boise, Idaho, to bring local and network programming to the minority populations within the Boise metropolitan area and surrounding counties.

IL

File No. 4068CTB, Chicago Educational Television Association, 5400 N. St. Louis Avenue, Chicago, IL 60625. Signed by: Mr. John C. Rahmann, Senior Vice President. Funds Requested: $337,500. Total Project Cost: $450,000. To improve the production facilities of noncommercial television station, WTTW, operating on Channel 11, Chicago, Illinois, by replacing obsolete apparatus needed to provide programming services to the metropolitan Chicago area and neighboring communities in Illinois, Wisconsin, Indiana, and Western Michigan.

File No. 4203CRB, Open Media Corporation, 1813 W. Cortland Street, Chicago, IL 60622. Signed by: Mr. Mitchell A. Lieber, President. Funds Requested: $303,056. Total Project Cost: $458,645. To establish a noncommercial FM radio station on frequency 90.5 MHz, Chicago, Illinois, to bring second service public educational and cultural programming to the metropolitan Chicago area and surrounding communities.

File No. 4248CRB, College of Dupage, 22nd Street & Lambert Road, Glen Ellyn, IL 60137. Signed by: Mr. H. D. McAninch, President. Funds Requested: $44,927. Total Project Cost: $59,903. To improve noncommercial radio station, WDCB, operating at a frequency of 90.9 MHz, Glen Ellyn, Illinois, by replacing obsolete and worn-out dissemination and origination equipment in order to improve signal strength and make more reliable production of local programs needed to meet the needs of the communities in the western suburban Chicago metropolitan area.

File No. 413CFB, Springfield and Sagamon County CAA, 110 S. 15th Street, Springfield, IL 62703. Signed by: Ms. Theresa Faith Cummings, Executive Director. Funds Requested: $6,725. Total Project Cost: $11,605. To establish local programming capacity distributed over radio and cable radio in the City of

Springfield and Sangamon County, Illinois, to bring specialized programming to minority populations and the general public in order to meet the expanding telecommunications needs in the community.

File No. 4282CRB, University of Illinois, 354 Administration Building, Urbana, IL 61801. Signed by: Mrs. Sarah W. Wasserman, Acting Secretary. Funds Requested: $14,175. Total Project Cost: $18,900. To improve the noncommercial radio broadcast stations of WILL–AM and WILL–FM, 580 KHz, and 90.9 MHz, respectively, Urbana, Illinois, by replacing obsolete origination equipment to provide improved production capability to meet the need of East Central Illinois communities.

IN

File No. 4048CRB, Indiana University, Indiana University, Bloomington, IN 47405. Signed by: Mr. J. D. Mulholland, Treasurer. Funds Requested: $36,214. Total Project Cost: $48,286.

To replace obsolete and worn-out dissemination apparatus for noncommercial radio station, WFIU, 1037 MHz, Bloomington, Indiana, in order to assure uninterrupted program services to the communities in South Central Indiana.

File No. 4180CTB, Southwest Indiana Public Broadcasting, Inc., 9201 Petersburg Road, Evansville, IN 47711. Signed by: Mr. Arthur A. Paul, President and General Manager. Funds Requested: $379,880. Total Project Cost: $506,480. To replace obsolete and worn-out transmission apparatus and improve origination facilities of noncommercial public television station, WNIN, Channel 9, Evansville, Indiana, in order to maintain telecommunications services to Southwestern Indiana and Northwestern Kentucky communities in the Evansville area.

File No. 4060CTB, Northwest Indiana Public Broadcasting, Inc., 8149 Kennedy Avenue, Highland, IN 46322. Signed by: Mr. Gerald H. Ftizgerald, Chairman. Funds Requested: $2,189,502. Total Project Cost: $2,919,337. To reactivate noncommercial public television station WCAE, Channel 50, St. John, Indiana, by providing dissemination, origination, and related apparatus to meet local and other programming needs in the Northwest Counties of Indiana.

File No. 4093CTB, Metropolitan Indianapolis Television Association, Inc., 1401 N. Meridan Street, Indianapolis, IN 46202. Signed by: Mr. Frank Meek, Executive Vice President. Funds Requested: $200,000. Total Project Cost: $300,000. To improve public television station, WFYI, Channel 20, Indianapolis, Indiana, by providing origination and related apparatus to enable the production of needed public telecommunications services for distribution in the metropolitan Indianapolis area as well as for the Region and the Nation.

File No. 4255CRB, Ball State University, 2000 University Avenue, Muncie, IN 47306. Signed by: Mr. Thomas J. Kinghorn, VP for Business Affairs. Funds Requested: $52,121. Total Project Cost: $69,495. To improve both dissemination and origination apparatus of noncommercial radio station, WBST, 92.1 MHz, Muncie, Indiana, by replacing costly and obsolete equipment needed to provide programming to residents of the Muncie metropolitan area.

KS

File No. 4286CTB, Smoky Hills Public Television, 6th & Elm Streets, Banker Hill, KS 67626. Signed by: Mr. Kenneth F. Gardner, Vice President & General Manager. Funds Requested: $219,750. Total Project Cost: $305,750. To extend the signal of public TV station KOOD, in Bunker Hill to unserved counties of Ford, Gray Meade, Clark, Kiowa, Edwards, and Hodgeman counties in southwest Kansas.

File No. 4073CRB, University of Kansas, Broadcasting Hall, Lawrence, KS 66045. Signed by: Ms. Carolyn Cross, Director, Research Studies. Funds Requested: $116,400. Total Project Cost: $155,200. To expand coverage of public radio station KANU located in Lawrence, KS, to unserved areas of southeast Kansas and parts of Missouri and Oklahoma by replacing an obsolete transmitter and expanding their system of translators. The project will also expand and improve the audio reading service.

File No. 4318CRB, Kanza Society, Inc., One Braodcast Plaza/Box 57, Pierceville, KS 67868. Signed by: Mr. Van Lynn Floyd, Chairman, Board of Directors. Funds Requested: $220,855. Total Project Cost: $294,474. To activate a full service public radio station on 90.5 that will be licensed by Hill City, Kansas, and will serve northwest Kansas and southern Nebraska.

File No. 4040CTB, Washburn University of Topeka, 301 N. Wanamaker Road, Topeka, KS 66604. Signed by: Dr. John L. Green, President. Funds Requested: $631,567. Total Project Cost: $850,877. To replace studio equipment and to extend, via translator, the signal of KTWU, a public TV station serving Topeka, to the unserved counties of Independence, Pittsburg, and Emporia.

File No. 4238CTB, Kansas Public Telecommunications Services, Inc., 320 West 21st/P.O. box 288, Wichita, KS 67201. Signed by: Mr. Zoel Parenteau, President and General Manager. Funds Requested: $672,567. Total Project Cost: $896,757. to establish a program service of community education to be distributed on Channel 15 in Wichita, Kansas. KPTS is currently licensee of Channel 8, serving Wichita.

File No. 4251CTB, Kansas Public Telecommunications Service, Inc., 320 West 21st, Wichita, KS 67201. Signed by: Mr. Zoel Parenteau, President and General Manager. Funds Requested: $95,452. Total Project Cost: $127,470. To replace obsolete transmitter components and to improve technical proficiency of KPTS, a public TV station serving Wichita, Kansas, and operating on Channel 8.

File No. 4158CTB, Western Kentucky University, 153 Academic Complex, College Hts., Bowling Green, KY 42101. Signed by: Dr. Paul Cook, President for Resources Mgmt., Funds Requested: $722,353. Total Project Cost: $963,138. To establish a noncommercial television station operating on Channel 59, Bowling Green, Kentucky, to provide first service with local origination to meet the specialized program needs of communities in the seventeen county area surrounding Bowling Green.

File No. 4323CTB, Fifteen Telecommunications, Inc., 4309 Bishop Lane/PO Box 37380, Louisville, KY 40218. Signed by: Mr. J. R. Curtin, General Manager. Funds Requested: $411,513. Total Project Cost: $548,684. To improve noncommercial television station, WKPC, Channel 15, Louisville, Kentucky, by replacing obsolete and worn-out dissemination and microwave apparatus and improving origination equipment to deliver programming to the residents of the Louisville metropolitan area and communities in the surrounding Kentucky and Indiana counties.

MA

File No. 4232CRB, Trustees of Boston University, 630 Commonwealth Avenue, Boston, MA 02215. Signed by: Mr. Peter J. Cusato, Comptroller. Funds Requested: $245,022. Total Project Cost: $326,696. To replace and relocate transmitting equipment and antenna in order to extend signal of WBUR, public radio station serving Boston, Massachusetts, on 90.9.

File No. 4319CRB, University of Massachusetts/Boston, Harbor Campus, Boston, MA 02125. Signed by: Mr. Carl S. Finn, Director Grants & Contract Admin. Funds Requested: $99,584. Total Project Cost: $132,779. To increase power from 200 to 1 KW, construct a new antenna system, increase tower height, and

install two translators to improve and extend signal of WUMB–FM serving Boston, Massachusetts.

File No. 4213CRB, WICN Public Radio, Inc., 75 Grove Street, Worcester, MA 01605. Signed by: Mr. Erwin H. Miller, President. Funds Requested: $130,989. Total Project Cost: $174,652. To implement power increase already granted by FCC of public radio station, WICN, from 2000W to 8100W and to improve production capacity.

ME

File No. 4188CTB, University of Maine, Alumni Hall, Orono, ME 04469. Signed by: Mr. William J. Sullivan, Treasurer. Funds Requested: $283,200. Total Project Cost: $377,600. To replace unreliable and obsolete switching equipment and VTR's in the studios of Maine Public Broadcasting Network serving the State of Maine with public television signals.

File No. 4189CTB, University of Maine, Alumni Hall, Orono, ME 04469. Signed by: Mr. William J. Sullivan, Treasurer. Funds Requested: $867,699. Total Project Cost: $1,156,932. To replace obsolete transmitter and antenna at WNEB, a public TV station serving Orono, Maine.

File No. 4129CTN, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103. Signed by: Mr. Robert J. Goettel, Director, Center for Research. Funds Requested: $99,241. Total Project Cost: $132,322. To link two cable systems with the microwave network at the University of Southern Maine in Portland. To construct studio and switching facilities to feed cable systems with educational and community originated programming.

File No. 4088CRB, Board of Control of Northern Michigan University, Elizabeth Harden Drive, Marquette, MI 49855. Signed by: Dr. James B. Appleberry, President. Funds Requested: $62,847. Total Project Cost: $83,796. To improve noncommercial public radio station, WNMU–FM, 90.1 MHz, Marquette, Michigan, by replacing obsolete and worn-out origination apparatus needed to deliver local and network program services to communities of the Upper Peninsula of Michigan.

File No. 4089CTB, Board of Control of Northern Michigan University, Elizabeth Harden Drive, Marquette, MI 49855. Signed by: Dr. James B. Appleberry, President. Funds Requested: $374,306. Total Project Cost: $409,075. To improve the facilities of noncommercial public television station, WNMU–TV, Channel 13, Marquette, Michigan, by replacing obsolete and wornout apparatus for dissemination and origination in order to meet the programming need for public telecommunications in the upper peninsula of Michigan.

File No. 4161CTB, Central Michigan University, Mt. Pleasant, MI 48859. Signed by: Dr. John E. Cantelon, Provost. Funds Requested: $402,473. Total Project Cost: $536,631. To extend the signal of public television station, WCMU–TV, Channel 14, Mt. Pleasant, Michigan, by constructing a repeater station on Channel 15, Bad Axe, Michigan, to provide noncommercial television services to the "thumb" area of the state including the counties of Huron, Sanilac and Tuscola.

MN

File No. 4137CTB, Northern Minnesota Public Television, Inc., 14th & Birchmont Drive, Bemidji, MN 56601. Signed by: Mr. Thomas W. Holter, Acting General Manager. Funds Requested: $140,400. Total Project Cost: $191,400. To improve the production and transmission facilities of public television station, KAWE, Channel 9, Bemidji, Minnesota, by replacing obsolete and wornout apparatus needed to provide programming services to communities in and around the Bemidji metropolitan area.

File No. 4193CTB, Independent School District #790, POB 799, Park Ave. & Main Street, Eagle Bend, MN 56446. Signed by: Mr. Russell W. Martinson, Superintendent of Schools. Funds Requested: $108,776. Total Project Cost: $145,035. To extend the signal of ITFS and translator public telecommunications service operating on KG2XCB, Channel 45, Eagle Bend, Minnesota, in order to bring first service to a large portion of the population located in the counties of Ottertail, Cass, Douglas, Morrison, Todd, and Wadena.

File No. 4226CRB, Mankato State University, MSU Campus, Box 153, Mankato, MN 56001. Signed by: Ms Margaret R. Preska, President. Funds Requested: $45,750. Total Project Cost: $61,000. To extend the signal of noncommercial radio station, KMSU–FM, 89.7 MHz, Mankato Minnesota, by providing new tower, antenna and related dissemination facilities to better serve existing publics and reach unserved communities in south central Minnesota and northern Iowa.

File No. 4228CRB, Mankato State University, MSU Campus, Box 153, Mankato, MN 56001. Signed by: Ms Margaret R. Preska, President. Funds Requested: $17,002. Total Project Cost: $22,670. To replace obsolete and worn-out origination and transmitter control facilities for public radio station, KMSU–FM, 89.7, Mankato, Minnesota, in order to improve programming services to communities in the Mankato metropolitan area.

File No. 4081CTBN, Minnesota Tele-Media, N. Hwy. 23/POB 547, Marshall, MN 56258. Signed by: Mr. Wally Schoeb, Chairperson. Funds Requested: $383,872. Total Project Cost: $518,276. To establish a noncommercial telecommunications services network by acquiring instructional television fixed service and microwave network facilities in order to provide locally originated and network programming for the first time to unserved communities in southwest rural Minnesota.

MO

File No. 4138CTB, Public Television 19, Inc., 125 East 31st Street, Kansas City, MO 64108. Signed by: Mr. Robert F. Fuzy, President. Funds Requested: $751,125. Total Project Cost: $1,001,500. To construct a satellite station which will provide first public TV service to St. Joseph, Missouri. It will repeat the signal of KCPT of Kansas City.

File No. 4098CRB, Southwest Missouri State University, 901 South National, Springfield, MO 65804. Signed by: Dr. Russell M. Keeling, Associate Dean of Faculties. Funds Requested: $110,688. Total Project Cost: $157,584. To extend public radio into unserved areas of southwest Missouri by increasing power and antenna height of KSMU, located in Springfield, Missouri, and operating at 91.9 FM.

File No. 4167CTB, Ozark Public Telecommunications, 1101 N. Summit Street, MPO 21, Springfield, MO 65801. Signed by: Mr. Chris Nattinger, Chairman of the Board. Funds Requested: $133,815. Total Project Cost: $178,420. To update production facility of KOZK, providing public TV to Springfield. Improvement will increase KOZK's ability to train students and will improve their capacity to do contract production.

File No. 4163CTB, St. Louis Regional Education Public Television Commission, 6996 Millbrook, St. Louis, MO 63130. Signed by: Mr. Michael Hardgrove, President and General Manager. Funds Requested: $96,928. Total Project Cost: $129,238. To replace obsolete origination equipment essential to operation of KETC, Channel 9, serving St. Louis, Missouri.

MT

File No. 4165CRB, Eastern Montana College, 1500 North 30th Street, Billings, MT 59101. Signed by: Dr. Bruce Carpenter, President. Funds Requested: $30,000. Total Project Cost: $40,000. To establish a radio reading service for the 4,710 print handicapped in the Billings,

Montana area. It will be colocated in and operated by KEMC–FM which serves eastern Montana, northern Wyoming and parts of North Dakota.

File No. 4166PTB, Blackfeet Media, Inc., P.O. Box 850, Browning, MT 59417. Signed by: Ms. Darnell Doore, Media Director. Funds Requested: $32,080. Total Project Cost: $40,400. To determine the best telecommunication system to deliver public television programs, including instructional and local programming to the 10,000 unserved people in and around Browning, Montana, particularly the Blackfeet Indian Reservation.

File No. 4123CTB, Stillwater Public Television, Inc., 135 West 4th Avenue North, Columbus, MT 59019. Signed by: Mr. Jon J. Brown, President. Funds Requested: $44,448. Total Project Cost: $59,265. To provide the first Public Broadcasting Service signal to Columbus, Montana, via the local cable company which serves the City of Columbus.

File No. 4324PRTB, The Buffalo Horse Society, Inc., P.O. Box 151, Dodson, MT 85924. Signed by: Mr. Charles Ereaux, President. Funds Requested: $24,280. Total Project Cost: $24,280. To plan for the most beneficial applications of broadcasting on the Fort Balknap Indian Reservation in Montana, to define the most appropriate technology, and to plan the establishment of the first Public Broadcasting Service for this isolated, economically deprived community.

File No. 4170CTN, Forsyth Community Public Television, Inc., 12th & Main Streets, Forsyth, MT 59327. Signed by: Rev. Cecil Eanes, President. Funds Requested: $44,448. Total Project Cost: $59,265. To provide the first signal for the Public Broadcasting Service to Forsyth, Montana, via the local cable company which currently serves the Rosebud County area.

File No. 4302CTB, Bitterroot Valley Public Television, Inc., 212 South 3rd Street, Hamilton, MT 59840. Signed by: Ms. Helen Bibler, President. Funds Requested: $124,489. Total Project Cost: $165,985. To activate a noncommercial low power TV facility for the Montana Bitterroot Valley area via the Rural TV System and the local cable TV company at first and via an LPTV transmitter when approved. This station will provide the first signal for the Public Broadcasting Service and for locally produced programs to the towns of Darby, Grantsdale, Corvallis, and Victor, MT.

File No. 4261CTN, Northern Montana College, Cowan Hall, Havre, MT 59501. Signed by: Dr. James H. M. Erickson, President. Funds Requested: $93,799. Total Project Cost: $125,065. To provide the first Public Broadcasting Service signal and locally produced programs to Havre, Montana, via the local cable company which currently serves the Hill County area.

File No. 4127PRTB, Native American Satellite Network, Box 141, Lame Deer, MT 59043. Signed by: Ms. Beverly Badhorse, Development Officer. Funds Requested: $100,000. Total Project Cost: $100,000. To plan for the development of a regional network of public TV and radio stations on 52 Indian reservations, linked by satellite to provide the first comprehensive telecommunications service to 341,000 Indians living on the isolated western reservations in 18 states and eastern reservations in 3 states.

File No. 4130CTN, Laurel Public Television, Inc., 307 6th Avenue, Laurel, MT 59044. Signed by: Mr. Robert Engel, Secretary/Treasurer. Funds Requested: $44,448. Total Project Cost: $59,265. To provide the first Public Broadcasting Service signal to Laurel, Montana, via the local cable company which serves the City of Laurel.

File No. 4131CTB, Roundup TV Tax District, Main Street, Roundup, MT 59072. Signed by: Judge Nat Allen, Chairman. Funds Requested: $38,711. Total Project Cost: $51,615. To provide the first signal for the Public Broadcasting Service to Roundup, Montana, via the applicant's presently-owned LPTV transmitter which provides service to 2,500 people.

File No. 4090CTB, Meagher County Public Television, Inc., P.O. Box 421, White Sulphur Sp, MT 59645. Signed by: Mr. R. E. Saunders, President. Funds Requested: $60,573. Total Project Cost: $80,765. To activate an LPTV station in White Sulphur Springs, Montana, to provide the first public broadcasting service signal to this rural community of 2,900 people.

File No. 4064CTN, Whitehall Low-Power Television, Inc., 400 First Street, Whitehall, MT 59759. Signed by: Mr. Dale Davis, President. Funds Requested: $42,375. Total Project Cost: $56,500. To provide the first Public Broadcasting Service signal to Whitehall, Montana, via the local cable company which has 650 subscribers.

NC

File No. 4111CTB, University of North Carolina, 910 Raleigh Road/PO Box 3508, Chapel Hill, NC 27514. Signed by: Mr. John W. Dunlop, Director. Funds Requested: $355,000. Total Project Cost: $522,261. To establish a new noncommercial TV station on Channel 36. Station will provide first service to 453,241 in Roanoke Rapids area. Proposal seeks only dissemination equipment. Station will be one of serveral satellite stations in statewide system.

File No. 4015CTB, Charlotte-Mecklenberg Public Broadcasting Authority, 42 Coliseum Drive, Charlotte, NC 28205. Signed by: Mr. John G. Swinney, Chairman. Funds Requested: $830,040. Total Project Cost: $1,106,720. To expand the service area of WTVI–TV, Channel 42, in Charlotte. By replacing transmitter, antenna, and transmission line will add 89,029 viewers. Station presently serves 1.2 million people in Charlotte/Mecklenburg County area.

File No. 4291PTN, Fayetteville State University, 1200 Murchison Road, Fayetteville, NC 28301. Signed by: Dr. Charles A. Lyons, Jr., Chancellor. Funds Requested: $45,000. Total Project Cost: $95,874. To plan for the development of on-campus closed circuit TV, microwave links to cable companies and cable distribution to military installations. Project will serve Cumberland County, Ft. Bragg, and Pope Air Force Base.

ND

File No. 4043CRB, North Dakota State University, Ceres Hall, University Station, Fargo, ND 58105. Signed by: Mr. James R. Hetland, Acting General Manager. Funds Requested: $19,500. Total Project Cost: $26,000. To replace obsolete and worn-out equipment at noncommercial radio station, KDSU–FM, operating on 91.9 at North Dakota State University, Fargo, to improve its ability to bring public radio service to southeast North Dakota and west central Minnesota.

File No. 4076CTB, Prairie Public Television, Inc., 4500 South University Drive, Fargo, ND 58103. Signed by: Mr. Dennis L. Falk, President. Funds Requested: $812,945. Total Project Cost: $1,083,927. To improve public TV station, KFME–TV, in Fargo, North Dakota, by replacing worn out equipment and by establishing a microwave interconnection between its new facility and its satellite earth station to better serve North Dakota, northwest Minnesota, and northeast Montana.

NE

File No. 4067CRB, Sunrise Communications, Inc., 244 N. 10th Street, Lincoln, NE 68508. Signed by: Ms. Natalie McClendon, Station Manager. Funds Requested: $28,311. Total Project Cost: $42,664. To expand power of KZUM–FM in Lincoln, Nebraska, from 10 watts to 2KW, thereby providing program service for women and minorities to an additional 149,464

people and to upgrade the station's local production capability.

File No. 4084CTB, Nebraska Educational Television Commission, 1800 North 33rd Street, Lincoln, NE 68501. Signed by: Mr. Jack G. McBride, Secretary and General Manager. Funds Requested: $594,033. Total Project Cost: $792,044. To replace essential transmission equipment for KLNE, a public television station located in Lexington, and production equipment for the statewide Nebraska ETV Network located in Lincoln.

File No. 4147CTB, University of Nebraska, P.O. Box 83111, Lincoln, NE 68501. Signed by: Mr. Earl J. Freise, Asst. Vice Chancellor/Research. Funds Requested: $163,912. Total Project Costs: $218,550. To replace and improve to state-of-the-art, essential studio equipment of KUON, a public TV station serving Lincoln, and the State via the Nebraska ETV Network.

File No. 4051PTBN, Metropolitan Technical Community College, P.O. Box 3777, Omaha, NE 68103. Signed by: Mr. J. Richard Gilliland, President. Funds Requested: $14,500. Total Project Cost: $14,500. To determine feasibility of establishing a coordinated telecommunications facility to serve the educational needs of area colleges and nontraditional students in area.

File No. 4062CRB, Board of Regents of University of Nebraska, 60th & Dodge Street, Omaha, NE 68182. Signed by: Mr. Del Weber, Chancellor. Funds Requested: $106,313. Total Project Cost: $141,751. To replace worn out equipment items and upgrade the local production capability of KVNO–FM operating on 90.7 Mhz with a power of 3000 watts in Omaha, Nebraska.

File No. 4236CRB, Radio Talking Book Service, Inc., 3219 Cuming Street, Omaha, NE 68131. Signed by: Mr. David E. Robinson, Director. Funds Requested: $15,177. Total Project Cost: $20,236. To upgrade facilities of the Radio Talking Book Service operating on KIOS–FM in Omaha and KUCU in Lincoln with state-of-the-art SCA generator, production equipment and 150 subcarrier receivers.

NH

File No. 4149CTB, University of New Hampshire, Box 1100, Durham, NH 03824. Signed by: Dr. James D. Morrison, Acting Director of Research. Funds Requested: $461,550. Total Project Cost: $615,400. To replace essential pieces of studio production equipment for WENH–TV serving Durham and the State of New Hampshire on Channel 11.

NJ

File No. 4274PTB, City of Camden, City Hall, Room 405, Camden, NJ 08101. Signed by: Mr. Melvin R. Primas, Mayor. Funds Requested: $20,000. Total Project Cost: $20,000. To plan for a telecommunications service to meet the needs of citizens and schools of Camden.

File No. 4124CRB, Brookdale Community College, Newman Springs Road, Lincroft, NJ 07738. Signed by: Dr. B. A. Barringer, President. Funds Requested: $95,293. Total Project Cost: $127,058. To increase power of WBJB–FM, a college station operating on 90.5 from 2250W to 22KW, serving the Cincroft, New Jersey community.

File No. 4288CRB, Newark Public Radio, Inc., 54 Park Place, Newark, NJ 07101. Signed by: Mr. Robert Ottenhoff, General Manager. Funds Requested: $142,018. Total Project Cost: $189,357. To improve radio station WBGO, operating on 88.3 in Newark, New Jersey, by replacing the STL and acquiring a mobile unit for news.

File No. 4303CRB, Stockton State College, Jimmy Leeds Road, H–201, Pomona, NJ. Signed by: Dr. Vera King Farris, President. Funds Requested: $41,524. Total Project Cost: $55,365. To extend signal of WSSR–FM, a student noncommercial radio station, operating at 91.7, to the unserved area of Pomona.

File No. 4069CTB, New Jersey Public Broadcasting Authority, 1573 Parkside Avenue, CN777, Trenton, NJ 08625. Signed by: Mr. Hendrix F. C. Neimann, Executive Director. Funds Requested: $1,953,410. Total Project Cost: $2,604,547. To replace obsolete studio and mobile equipment for the public TV station of New Jersey Public Broadcasting Authority serving Trenton and Newark.

File No. 4091CRB, Mercer County Community College, 1200 Old Trenton Road, Trenton, NJ 08690. Signed by: Dr. John P. Hanley, President. Funds Requested: $70,050. Total Project Cost: $93,400. To extend signal of WWFM, operating at 89.1 FM and serving Trenton, by four mile radius by increasing tower height.

File No. 4264CTN, Mercer County Community College, 1200 Old Trenton Road, Trenton, NJ 08690. Signed by: Dr. John P. Hanley, President. Funds Requested: $231,337. Total Project Cost: $308,450. To replace obsolete transmitter, upgrade origination equipment and expand audiences of Mercer County Community College's ITFS system.

NM

File No. 4307CRB, Regents of the University of New Mexico, 305 Onate Hall, Campus Blvd., Albuquerque, NM 87131. Signed by: Mr. Douglas Gordon, Contract Administrator. Funds Requested: $95,950. Total Project Cost: $127,550. To replace studio equipment of noncommercial radio station KUNM–FM, operating on 90.1 in Albuquerque, New Mexico, and to extend the station's signal via translators to bring the first public radio service to the Arroyo Seco, Taos, and Las Vegas areas.

File No. 4314CTB, Regents of New Mexico State University, Box TV 22, Las Cruces, NM 88003. Signed by: Mr. Robert E. Kirkpatrick, VP for Business Affairs. Funds Requested: $155,625. Total Project Cost: $207,500. To replace obsolete video recording equipment used for origination and production of programming of station KRWG–TV, Channel 22, in Las Cruces.

File No. 4315CRB, Regents of New Mexico State University, Box FM 91, Las Cruces, NM 88003–0142. Signed by: Ms. Jane Youngers, Director Grants & Contracts. Funds Requested: $30,075. Total Project Cost: $70,075. To replace transmitter and related transmission equipment at KRWG–FM, 90.7 MHz, in Las Cruces. Station presently serves 250,000 in southwestern New Mexico.

NV

File No. 4132PTB, Rural Television System, Inc., P.O. Box 9039, Incline Village, NV 89450. Signed by: Mr. Daniel J. Tone, Administrator. Funds Requested: $100,000. Total Project Cost: $100,000. To plan for the establishment of first service public TV in unserved rural areas in the western states, especially Nevada, Montana, and Wyoming.

File No. 4168CRB, Nevada Public Radio Corporation, 5151 Boulder Highway, Las Vegas, NV 89122. Signed by: Mr. Lamar Marchese, General Manager. Funds Requested: $47,408. Total Project Cost: $63,211. To strengthen the antenna ERP and construct a system of four translators to extend the signal of noncommercial radio station, KNPR–FM, operating on 89.5 in Las Vegas, Nevada. When activated, the system will bring first public radio service to residents of rural Nye and Clark Counties.

File No. 4256CTB, Lyon County Board of Commissioners, 34 South Main Street, Yerington, NV 89447. Signed by: Mrs. Bobbie J. Miller, Chairman. Funds Requested: $21,750. Total Project Cost: $29,000. To extend the signal of noncommercial TV station, KNPB, on Channel 5, from Reno Nevada, by putting into place a translator that will bring the first public TV signal to the residents of Lyon County, Nevada.

NY

File No. 4310CTB, STETA, Inc., P.O. Box 3000, Binghamton, NY 13902. Signed

by: Mr. Michael J. Ziegler, President & General Manager. Funds Requested: $221,000. Total Project Cost: $295,000. To augment the studio editing and lighting equipment of noncommercial TV station WSKG, the licensee of STETA, Inc., operating on Channel 46 out of Binghamton, New York, to improve its service to the southern New York and northwest Pennsylvania area.

File No. 4095CRB, St. Lawrence University, Payson Hall, Canton, NY 13617. Signed by: Mr. James A. Arvidson, Director of Broadcasting. Funds Requested: $13,572. Total Project Cost: $19,072. To extend the signal of noncommercial radio signal WSLU–FM operating on 96.7 in Canton, New York, by constructing a system of three translators that will bring public radio service to St. Lawrence County residents, many of them in rural and isolated communities.

File No. 4014CTB, The Public Broadcasting Council of Central New York, Inc., 506 Old Liverpool Road, Liverpool, NY 13088. Signed by: Mr. Richard W. Russell, President and General Manager. Funds Requested: $221,235. Total Project Cost: $294,980. To replace aging videotape equipment with state-of-the-art equipment at public TV station, WCNY–TV, operating on Channel 24 in Syracuse, New York, to improve public TV programming service to residents of north central New York.

File No. 4117CTB, Montauk Union Free School District, S. Dorset Road, R.D. #1, Box 105, Montauk, NY 11954. Signed by: Mr. Frederick D. Philley, Superintendent of Schools. Funds Requested: $61,603. Total Project Cost: $82,138. To provide the first local TV signal to the 3,000 residents of the Montauk area on the eastern tip of Long Island by equipping a local production center and providing the distribution equipment to operate cable Channel 5.

File No. 4112CRB, Houghton College Radio Corporation, Hougton Street, Hougthon, NY 14744. Signed by: Mr. Daniel R. Chamberlain, President. Funds Requested: $84,490. Total Project Cost: $127,180. To extend and improve the transmissiom and programming capabilities of noncommercial radio station WJSL–FM operating on 90.3 in Houghton, NY to provide public radio service to rural and isolated communities in Alleghany county. Transmission would be extended by increasing antenna ERP.

File No. 4058PBTN, Greater New York Black Media Coalition, 30 W. 40th Street, New York, NY 10016. Signed by: Mr. Lionel Wilson, President. Funds Requested: $72,020. Total Project Cost: $72,070. To plan for the development of a Black public telecommunications national network using the most feasible combination of cable, microwave, satellite, low power TV and direct broadcast service. Control center for network origination is planned for New York City, and service is for Black communities nationwide, numbering 26.5 million.

File No. 4262CRN, In Touch Networks, Inc., 322 West 48th Street, New York NY. 10036. Signed by: Mr. Jasha M. Levi, Executive Director. Funds Requested: $61,950. Total Project Cost: $82,600. To provide SCA receivers, an automated information system, and some studio equipment to assist In Touch Networks, Inc., New York, New York, establish a nationwide satellite-connected network that would use diverse communications services to bring special programming to the print handicapped.

File No. 4178CTB, Northeast New York Public Telecommunications Council, Inc., P.O. Box 617, Yokum Hall, Plattsburg, NY 12901. Signed by: Mr. Gerald K. Bates, President and General Manager. Funds Requested: $147,502. Total Project Cost: $196,670. To replace the studio transmitter link and other critical items which are worn-out and upgrade the local production equipment to a basic capability so that WCFE–TV in Plattsburg, New York, may continue and improve its program service to this rural northern New York area.

File No. 4201PRB, Northeast New York Public Telecommunications Council, Inc., Yokum Hall, PO Box 617, Plattsburg, NY 12901. Signed by: Mr. Gerald K. Bates, President and General Manager. Funds Requested: $15,176. Total Project Cost: $17,452. To study how noncommercial radio services might be established to best meet the diverse needs of the residents of northeast New York State, many of whom live in rural communities.

File No. 4273CTB, Dutchess Community College, Pendell Road, Poughkeepsie, NY 12601. Signed by: Dr. Jerry A. Lee, President. Funds Requested: $190,968. Total Project Cost: $260,946. To upgrade the local production and program reception capability of this 100 watt TV translator station, Channel 42, in Poughkeepsie, New York, which provides an alternative service for the 250,000 people in Dutchess County.

File No. 4032CRN, Rochester Radio Reading Service, Inc., 422 S. Clinton Avenue, Rochester, NY 14620. Signed by: Ms. Elissa Higgins, Executive Director. Funds Requested: $40,029. Total Project Cost: $53,372. To acquire SCA-related equipment to bring specialized programming to the print handicapped in Monroe County, New York.

OH

File No. 4263CTB, Greater Cincinnati Television Educational Foundation, 1223 Central Parkway, Cincinnati, OH 45214. Signed by: Mr. Charles W. Vaughan, President and General Manager. Funds Requested: $257,525. Total Project Cost: $343,370. To improve WCET–TV, Channel 48, in Cincinnati, by replacing obsolete, inoperable or worn-out equipment. In addition, seeks equipment to allow more cost efficient operation of transmitter thus reducing operating costs. Station serves approximately two million people in service area.

File No. 4258CRB, Toledo Board of Education Broadcasting Arts (WAMP), Manhattan and Elm Streets, Toledo, OH 43608. Signed by: Mr. Hugh T. Caumartin, Superintendent of Schools. Funds Requested: $118,818. Total Project Cost: $158,425. To increase the power and improve WAMP–FM, 88.3 MHz, in Toledo. Station will provide increased service to metropolitan Toledo, including Lucas and Wood Counties in Ohio, and Lenawee and Monroe Counties in Michigan.

OK

File No. 4104CTB, Rogers State College, Will Rogers at College Hill, Claremore, OK 74017. Signed by: Dr. Richard H. Mosier, President. Funds Requested: $320,000. Total Project Cost: $429,142. To establish a 5,000 watt public TV station on Channel 35, including local production equipment providing alternate programming for minority groups, particularly Native Americans in the area of Claremore, OK.

OR

File No. 4017CRB, Tillicum Foundation, KMUN–FM, 1129 Commercial, Astoria, OR 97103. Signed by: Ms. Harriet Baskas, Station Manager. Funds Requested: $21,616. Total Project Cost: $25,597. To upgrade the local production equipment of KMUN–FM in Astoria, Oregon, to more nearly a basis origination capability to better serve the 80,000 residents in northwest Oregon.

File No. 4128CTN, Lane Community College, 4000 East 30th Avenue, Eugene, OR 97405. Signed by: Dr. Eldon G. Schafer, President. Funds Requested: $44,000. Total Project Cost: $58,675. To extend the ITFS instructional service of the Western Oregon Regional Telecommunications Agency south to Cottage Grove, providing the first cable TV service to an estimated 12,000 persons, and extending the service north to Albany providing a second service via cable to 6,000 persons.

File No. 4075PRB, Committee of Spanish Speaking People of Oregon, 4750 N.E. Gilson, Portland, OR 97213. Signed by: Ms. Alicia Diaz-Lund, Executive Director. Funds Requested: $20,000. Total Project Cost: $23,000. To investigate the needs for, and to plan the establishment of, a Spanish language educational radio station to serve Portland and the upper Willamette Valley of Oregon, which includes 45,000 Hispanics.

File No. 4107CTB, State of Oregon Acting by and through Oregon Commission on Public Broadcasting, 2828 S.W. Front Avenue, Portland, OR 97201. Signed by: Mr. Gerald L. Appy, Executive Director. Funds Requested: $338,742. Total Project Cost: $451,656. To establish a 1,000W TV translator on Channel 49 via microwave from the Oregon Public Broadcasting Network station, KOAB–TV, Channel 3, in Bend, to bring the first public TV service to Klamath Falls and to establish a 100W TV translator on Channel 61 to bring first service to Lakeview. Both unserved areas are located in south central Oregon.

File No. 4109CTN, State of Oregon Acting by and through Oregon Commission on Public Broadcasting, 2828 S.W. Front Avenue, Portland, OR 97201. Signed by: Mr. Gerald L. Appy, Executive Director. Funds Requested: $186,112. Total Project Cost: $248,150. To establish four ITFS channels to help meet critical educational and training needs of the Portland area communities that cannot be accommodated by the current open broadcast limitations of the Oregon Public Broadcasting Network.

File No. 4052CRTB, The Confederated Tribes of the Warm Springs Reservation—Oregon, P.O. Box C, Warm Springs, OR 97761. Signed by: Mr. Ralph Minnick, Secretary/Treasurer. Funds Requested: $507,160. Total Project Cost: $676,214. To establish a 3,500W public radio station on 96.5 MHz and an LPTV station on the Warm Springs Indian Reservation in central Oregon to provide the first public broadcast signals, including local origination, for the 2,500 Indians residing in the proposed coverage area.

PA

File No. 4065CTB, WHYY, Inc., 150 North Sixth Street, Philadelphia, PA 19106. Signed by: Mr. Frederick Breitenfeld, Jr., President. Funds Requested: $383,200. Total Project Cost: $511,000. To establish statewide microwave interconnection network within DE in order to improve statewide coverage provided by WHYY–TV. Project will also upgrade mobile capabilities of Wilmington studio.

File No. 4220CTB, Northeastern Pennsylvania Educational TV Association, Old Boston Road, Pittston, PA 18640. Signed by: Dr. John E. Walsh, President and General Manager. Funds Requested: $59,471. Total Project Cost: $79,295. To replace obsolete and worn-out on-the-air and routing switcher at WVIA–TV, Channel 44, in Pittston. Proposal also seeks funds to acquire frame synchronizer to eliminate picture roll problem.

File No. 4305CTB, The Pennsylvania State University, 501 J. O. Keller Bldg., University Park, PA 16803. Signed by: Mr. Robert J. Scannell, VP & Dean, Commonwealth Ed Sys., Funds Requested: $365,359. Total Project Cost: $487,146. To replace transmitter of WPSX, a public TV station serving University Park, Pennsylvania, and to install a remote control system for automation. This will reduce labor and utility costs and improve system reliability.

RI

File No. 4103CTB, Rhode Island Public Telecommunications Authority, 24 Madison Street, Providence, RI 02903. Signed by: Mr. Michael E. Collins, Chairman. Funds Requested; $438,349. Total Project Cost: $638,116. To improve the signal of WSBE, a public television station serving Providence, Rhode Island, by replacing their obsolete and deficient antenna.

RQ

File No. 4077CRB, Arecibo Technological University College, P.O. Box 1806, Arecibo, RQ 00613. Signed by: Mr. Marcos A. Morell, Dean-Director. Funds Requested: $94,952. Total Project Cost: $126,602. To establish a noncommercial FM radio station operating on a frequency of 91.7 MHz, Arecibo, Puerto Rico, to provide first local origination service to the sixteen province areas surrounding the City of Arecibo.

File No. 4152CRTB, Department of Education, P.O. Box 909, Hato Rey, RQ 00919. Signed by: Ms. Maria Socorro Lacot, Secretary of Education. Funds Requested: $515,680. Total Project Cost: $687,573. To improve noncommercial WIPR radio and television broadcast stations in Hato Rey and San Juan, Puerto Rico, by replacing obsolete and worn out dissemination apparatus obtaining state of the art origination equipment and installing sub-carrier FM radio service to network stations to meet service needs of communities in the Channel 6 television and WIPR–FM station service areas.

SC

File No. 4045CRB, South Carolina Educational Television Commission, 2712 Millwood Avenue, Columbia, SC 29205. Signed by: Mr. Henry J. Cauthen, President & General Manager. Funds Requested: $75,000. Total Project Cost: $100,000. To acquire 1,355 SCA receivers for use statewide in conjunction with the state educational radio network. Receivers will benefit print-handicapped in South Carolina.

SD

File No. 4016CRB, Sioux Falls College, 1501 S. Prairie Avenue, Sioux Falls, SD 57105. Signed by: Mr. Samuel P. Kvasnica, Vice President. Funds Requested: $99,150. Total Project Cost: $132,200. To establish an FM noncommercial radio station operating on 90.1 on the campus of Sioux Falls College, Sioux Falls, South Dakota, to provide first local origination public radio service to that area.

TN

File No. 4234PTB, Cleveland State Community College, P.O. Box 3570, Cleveland, TN 37311. Signed by: Mr. L. Quentin Lane, President. Funds Requested: $21,310. Total Project Cost: $23,441. To plan for the development of alternate modes of distribution of telecommunications services which will increase the capabilities of Cleveland State Communities College in Cleveland, Tennessee, to reach the residents of the counties of Bradley, McMinn, and Polk, which it serves.

File No. 4181CTB, Tennessee State Board of Education, SW Corner, Tucker Stadium, Cookeville, TN 38501. Signed by: Dr. Robert L. McElrath, Chairman, State Board. Funds Requested: $83,500. Total Project Cost: $167,000. To upgrade the operation and programming of WCTE–TV in Cookeville, TN, by securing a studio transmitter link with remote control and input monitoring equipment which will strengthen the station's local origination and provide better service to the upper Cumberland region.

File No. 4133PRTB, East Tennessee State University, Box 24 490A, Johnson City, TN 37614. Signed by: Dr. Ronald E. Beller, President. Funds Requested: $50,000. Total Project Cost: $18,210. To plan the development of a comprehensive telecommunications system using broadcast TV, radio, and cable for maximum utilization of existing delivery systems as well as additional systems required to enable East Tennessee State University to expand its instructional program service

to the entire 14 counties of the University service area.

File No. 4025CTN, Memphis City Schools, 220 North Montgomery, Memphis, TN 38104. Signed by: Mr. W. W. Herenton, Superintendent. Funds Requested: $309,920. Total Project Cost: $414,400. To extend and improve the educational cable dissemination capabilities of the Memphis public schools, Memphis, Tennessee, by providing interconnection and origination facilities for cable nonbroadcast services to the city school system.

File No. 4197CTB, Memphis Community Foundation, 900 Getwell Street, Box 80,000, Memphis, TN 38152. Signed by: Mr. Howard D. Holst, Treasurer. Funds Requested: $260,205. Total Project Cost: $520,410. To improve origination facilities of noncommercial television station, WKNO–TV, Channel 10, Memphis, Tennessee, by replacing obsolete and worn-out production apparatus and obtaining field use equipment to meet increased local and network production needs in the Memphis metropolitan area.

File No. 4198CRB, Memphis Community Foundation, Box 80,000, Memphis, TN 38152. Signed by: Mr. Howard D. Holst, Treasurer. Funds Requested: $40,997. Total Project Cost: $61,586. To improve the production and satellite reception facilities of noncommercial radio station, WKNO–FM, 91.1 MHz, Memphis, Tennessee, by replacing obsolete and worn-out equipment used for origination of programs in order to meet telecommunications service needs of the metropolitan Memphis area.

TX

File No. 4036CTB, Amarillo College, P.O. Box 447, Amarillo, TX 79178. Signed by: Mr. W. L. Prather, Vice President for Business. Funds Requested: $761,549. Total Project Cost: $1,015,399. To establish a noncommercial TV station on the Amarillo College main campus, operating on Channel 2 and bringing a public television signal with local origination capacity to the northern portion of the Texas Panhandle.

File No. 4267PRTN, Henderson County Junior College, Cardinal Drive, Athens, TX 75751. Signed by: Dr. William J. Campion, President. Funds Requested: $19,866. Total Project Cost: $19,866. To plan a telecommunciations system based at Henderson County Junior College, Athens, Texas, to provide instructional materials to rural and urban fringe areas of east Texas.

File No. 4222CRB, Austin Community Radio, Inc., 3112 B Manor Road, Austin, TX 78723. Signed by: Dr. John Wakefield, President. Funds Requested: $132,701. Total Project Cost: $176,935. To replace and improve the broadcast facilities of noncommercial radio station, KAZI–FM, operating on 88.7 in Austin, Texas, that provides minority-oriented programming to the Austin metropolitan area.

File No. 4199CRB, Navarro College, P.O. Box 1170, Corsicana, TX 75110. Signed by: Dr. Kenneth P. Walker, President. Funds Requested: $196,758. Total Project Cost: $262,344. To establish a noncommercial radio station on the campus of Navarro College, to operate on 88.7 to provide first local service to rural and isolated population in Corsicana, Texas, and the surrounding area, and to install a satellite receiving dish to receive NPR programming.

File No. 4279CRB, San Antonio Community Radio Corporation, Inc., 300 West Jones Avenue, San Antonio, TX 78216. Signed by: Marc Hand, Treasurer. Funds Requested: $168,188. Total Project Cost: $224,250. To acquire dissemination equipment to be used by station, KURU–FM, which will operate on 89.1 in San Antonio, Texas. When activated, the station will provide bilingual radio service to San Antonio.

File No. 4280CTB, Education Service Center, Region 20, 1314 Hines Avenue, San Antonio, TX 78208. Signed by: Dr. Dwain M. Estes, Executive Director. Funds Requested: $794,902. Total Project Cost: $1,059,869. To establish a telecommunications system based at the Education Service Center, Region 20, San Antonio, Texas, which will combine ITFS and thin-line satellite service to better serve the educational and training needs of San Antonio and rural and isolated communities in southwest Texas.

UT

File No. 4186CRTB, University of Utah, 204 James Talmage Bldg., Salt Lake City, UT 84112. Signed by: Mr. James J. Brophy, Vice President for Research. Funds Requested: $1,375,208. Total Project Cost: $2,362,084. To further develop a comprehensive telecommunications system serving Utah. This proposal includes a request to complete the microwave system, activate a TV station, to extend signals of several public radio stations, and to provide phone and data service to State Agencies.

VA

File No. 4083CRB, James Madison University, West Main Street, Harrisonburg, VA 22807. Signed by: Dr. Ronald E. Carrier, President. Funds Requested: $93,041. Total Project Cost: $129,055. To extend and improve the transmission and origination capabilities of noncommercial FM radio station, WMRA–FM, on frequency 90.7 MHz, Harrisonburg, Virginia, by replacing inadequate and obsolete dissemination equipment needed to serve the seven rural counties in the Harrisonburg, Virginia area.

File N. 4096PRB, Virginia State University, Hayden Street, Petersburg, VA 23803. Signed by: Dr. Wilbert Greenfield, President. Funds Requested: $28,860. Total Project Costs: $32,360. To plan for a noncommercial radio station at Virginia State University, Petersburg, Virginia, to provide first local origination and an additional service to the rural Virginia counties of Chesterfield, Prince George and Dinwiddie.

File No. 4027CTB, Blue Ridge ETV Association, 1215 McNeill Drive, S.W., Roanoke, VA 24032. Signed by: Mr. E. V. Rexrode, Jr., Exec VP and General Manager. Funds Requested: $90,000. Total Project Cost: $120,000. To improve the production facilities of noncommercial television station, WBRA, Channel 15, Roanoke, Virginia, by providing video recording equipment for programming to meet the needs of communities served by the Blue Ridge ETV Association's stations at Roanoke and Norton, Virginia.

File No. 4106PTN, National University of the Air, Inc., 1118 Ironbound Road, Williamsburg, VA 23185. Signed by: Mr. John A. Curtis, Chairman. Funds Requested: $149,907. Total Project Cost: $337,207. To plan for a consortium of public and private educational and related entities to make use of telecommunications systems and technologies to meet educational needs in the communitie of Washington, D.C., Boston, MA, Atlanta, GA, Baltimore, MD, Miami, FL, and Williamsburg, VA area coordinated by the National University of the Air, Inc. of Williamsburg, VA.

VQ

File No. 4097PTN, College of the Virgin Island, St. Thomas, VQ 00801. Signed by: Dr. Arthur A. Richards, President. Funds Requested: $25,965. Total Project Cost: $47,515. To plan for transmission, production and interconmnection facilities designed to provide an educational television network to meet the telecommunication service needs of communities of the Virgin Islands.

VT

File No. 4308PTB, Vermont Technical College, Ridge Road, Randolph Center, VT 05061. Signed by: Mr. James P. Todd

President. Funds Requested: $65,960. total Project Cost: $72,260. To plan for a telecommunications system to serve the State of Vermont.

File No. 4194CTB, University of Vermont and State Agricultural College, 88 Ethan Allen Avenue, Winooski, VT 05404. Signed by: Mr. Roert G. Arns, Vice President for Academic Aff. Funds Requested: $412,470. Total Project Cost: $602,990. To replace obsolete studio equipment at Vermont Educational TV serving the entire State with public television.

WA

File No. 4292CRB, Northwest Chicano Radio Network, P.O. Box 82, Granger, WA 98932. Signed by: Ms. Rosa Ramon, Station Manager. Funds Requested: $24,045. Total Project Cost: $32,060. To improve the production facilities of noncommercial radio station, KDNA, operating at a frequency of 91.9 MHz, Yakima, Washington, by providing studio equipment to meet expanding Hispanic needs in the counties of Adams, Benton, Franklin, Grant and Yakima.

File No. 4059PTB, Tulalip Board of Directors, 6700 Totem Beach Road, Marysville, WA 98270. Signed by: Mr. Stanley G. Jones, Chairman. Funds Requested: $16,000. Total Project Cost: $16,000. To plan for a cable television system to operate in Marysville, Washington, and designed to serve the members of the Tulalip Tribes with noncommercial telecommunications services on the reservation.

File No. 4182PTB, Olympia Technical Community College, 2011 Mottman Road, Olympia, WA 98502. Signed by: Dr. Kenneth J. Minnaert, President. Funds Requested: $39,838. Total Project Cost: $39,838. To plan for cable access, local origination and other systems for distribution of noncommercial telecommunications services in the Olympia, Washington area under the aegis of Olympia Technical Community College.

File No. 4148CTB, Washington State University, Administration Drive, Pullman, WA 99164–2530. Signed by: Mr. C. J. Nyman, Associate Provost for Research. Funds Requested: $333,262. Total Project Cost: $446,849. To improve the broadcasting network facilities of Washington State University by establishing a repeater television station operating on Channel 31, Kennewick, WA. with primary studios at KW SU–TV Channel 10, Pullman and regional studios at Richland WA to provide first service to many communities in the tri-city area of South Eastern Washington and North Eastern Oregon.

File No. 4110CTB, Yakima School District #7, 1105 South 15th Avenue, Yakima, WA 98902. Signed by: Mr. Paul Hartman, General Manager. Funds Requested: $473,000. Total Project Cost: $673,000. To replace worn-out and obsolete apparatus for noncommercial television station, KYVE–TV, Channel 7, Yakima, Washington, to deliver improved program services to communities in and about the Yakima area.

WI

File No. 4260PRB, Red Cliff Tribal Council, Red Cliff Band of Lake Superior Chippewas, Box 529, Bayfield, WI 54814. Signed by: Mr. Joseph Bresette, Chairman. Funds Requested: $17,232. Total Project Cost: $29,122. To plan for a locally-originating repeater station at Red Cliff to rebroadcast the signal of WOJB–FM to the Ojibwa Indian Reservation located at the northermost tip of Wisconsin.

File No. 4026CTB, University of Wisconsin at Green Bay, 2420 Nicolet Drive, Green Bay, WI 54301. Signed by: Dr. E. W. Weidner, Chancellor. Funds Requested: $299,400. Total project Cost: $399,400. To replace obsolete and worn-out equipment at noncommercial TV station, WPNE, Channel 38, in Green Bay, Wisconsin, to improve the public TV service to resident of northeast Wisconsin.

File No. 4224PTBN, Gateway Technical Institute, 3520 30th Avenue, Kenosha, WI 53141. Signed by: Mr. Arthur Binnie, District Director. Funds Requested: $25,000. Total Project Cost: $31,977. To plan the development of a regional telecommunications system to disseminate educational programming to the cities of Kenosha, Racine, Burlington, Elkhorn, and Lake Geneva, Wisconsin. The project will be coordinated by Gateway Technical Institute, Kenosha.

File No. 4295CTN, State of Wisconsin Educational Communications Board, 3319 W. Beltline Highway, Madison, WI 53713. Signed by: Mr. Paul M. Norton, Executive Director. funds Requested: $781,510. Total Project Cost: $1,754,319. To establish the first stage of an ITFS network that will bring diverse educational services designed for varied segments of the population in, initially, 6 cities, and, eventually, 13 cities throughout Wisconsin. The project will be administered by the State's Educational Communications Board, Madison.

File No. 4259PRB, Bad River Tribal Council, P.O. Box 39, Odanah, WI 54861. Signed by: Mr. Joseph Corbine, Chairman. Funds Requested: $18,125. Total Project Cost: $20,475. To plan for a noncommercial FM radio station which will serve the Bad River Reservation located in the far northern part of Wisconsin.

WV

File No. 4285CRB, Trustees of Bethany College, Bethany House 301 College St., Bethany, WV 26032. Signed by: Mr. Todd H. Bullard, President. Funds Requested: $62,083. Total Project Cost: $82,778. To expand student-operated WVBC, operating on 88.1 FM, from 10W to 1KW. Increase would provide first service to Brooke County and Northern Panhandle of West Virginia.

File No. 4071CTB, West Virginia Educational Broadcasting Authority, State Building 6, Suite B–424, Charleston, WV 25305. Signed by: Mr. Presley D. Holmes, Executive Director. Funds Requested: $623,527. Total Project Cost: $831,370. To replace obsolete production, transmission, and interconnection equipment of three West Virginia public TV stations licensed by the West Virginia Broadcasting Authority serving Huntington, Beckley and Morgantown, WV.

File No. 4202CTB, Sheridan College, 3059 Coffeen Avenue, PO Box 1500, Sheridan, WY 82801. Signed by: Dr. Gordon Ward, President. Funds Requested: $107,363. Total Project Cost: $143,150. To provide this LPTV station in Sheridan, Wyoming, the necessary distribution control of the public broadcasting service available from the Rural TV System in order to bring first service to the towns of Big Horn, Big Goose, and Ranchester, Wyoming, and to provide the first local production capability for this Sheridan College station.

AL

New file No. 4304CTB; old file No. 3223; University of Alabama, University.

AR

New file No. 4218CRB; old file No. 3238; Arkansas Broadcasting Foundation, Inc., Little Rock.

New file No. 4022CRB; old file No. 3348; Newark Public Schools, Newark.

AZ

New file No. 4229CTBN; old file No. 3227; Navajo Community College, Tsaile.

New file No. 4054CTB; old file No. 3144; University of Arizona, Tucson.

New file No. 4126PTB; old file No. 3355; Silvercloud Video Productions, Tucson.

CA

New file No. 4150PRTB; old file No. 3061; California State College, Bakersfield Foundation, Bakersfield.

New file No. 4155CTN; old file No. 3206; California State University, Carson.

New file No. 4006CTB; old file No. 3288; California State University, Chico.

New file No. 4047CRN; old file No. 3340; Pacifica Foundation, Los Angeles.

New file No. 4053CTB; old file No. 3059; Community Television of Southern California, Los Angeles.

New file No. 4125PTB; old file No. 3053; Corporation on Disabilities and Telecommunication, Los Angeles.

New file No. 4139CTB; old file No. 3200; Indian Wells Valley TV Booster, Inc., Ridgecrest.

New file No. 4244CTN; old file No. 3240; San Diego County Office of Education, San Diego.

New file No. 4179PRB; old file No. 3218; Western Community Bilingual Radio, San Francisco.

New file No. 4252CTB; old file No. 3237; KQED, Inc., San Francisco.

New file No. 4169CRB; old file No. 3282; Pataphysical Broadcasting Foundation, Inc., Santa Cruz.

New file No. 4317PRTN; old file No. 3265; Mendocino County Superintendent of Schools, Ukiah.

New file No. 4271CTB; old file No. 3167; California Community Television Network, Watsonville.

CO

New file No. 4113CRB; old file No. 3275; Colorado State Board of Agriculture, Fort Collins.

CT

New file No. 4144CTN; old file No. 3100; Connecticut Educational Telecommunications Corporation, Hartford.

New file No. 4241PTN; old file No. 3047; The Community Renewal Team of Greater Hartford, Inc., Hartford.

FL

New file No. 4007PRTB; old file No. 3031; The School Board of Broward County, Florida, Fort Lauderdale.

New file No. 4143CTB; old file No. 3005; University of Florida, Gainesville.

New file No. 4313CTB; old file No. 3217; Community Television Foundation of South Florida, Inc., Miami.

New file No. 4066CRTN; old file No. 3129; State of Florida, Department of General Services, Tallahassee.

IA

New file No. 4214CRB; old file No. 3333; Oakhill-Jackson Economic Development Corporation, Cedar Rapids.

New file No. 4272CTB; old file No. 3071; Eastern Iowa Community College District, Davenport.

New file No. 4212CRB; old file No. 3349; Urban Community Broadcasting, Des Moines.

New file No. 4019CTN; old file No. 3072; Iowa Lakes Community College, Estherville.

IL

New file No. 4231CRB; old file No. 3128; University of Illinois, Urbana.

IN

New file No. 4121CTB; old file No. 3241; Ball State University, Muncie.

New file No. 4063CTB; old file No. 3060; Board of Trustees for the Vincennes University, Vincennes.

KS

New file No. 4003CRB; old file No. 3013; Friends University, Wichita.

KY

New file No. 4005CRB; old file No. 3042; Black American Communications, Harrodsburg.

LA

New file No. 4102CTN; old file No. 3096; Louisiana Educational Television Authority, Baton Rouge.

MA

New file No. 4196CRB; old file No. 3011; Talking Information Center, Marshfield.

ME

New file No. 4177PTB; old file No. 3204; Medical Care Development, Inc., Augusta.

New file No. 4187CTB; old file No. 3232; University of Maine, Orono.

MI

New file No. 4082CTB; old file No. 3109; Grand Valley State College, Allendale.

New file No. 4233CRB; old file No. 3110; Grand Valley State College, Allendale.

New file No. 4013CTB; old file No. 3087; The University of Michigan, Flint, Ann Arbor.

New file No. 4061CTB; old file No. 3175; Michigan State University, East Lansing.

New file No. 4254CRB; old file No. 3105; Central Michigan University, Mt. Pleasant.

New file No. 4086CRB; old file No. 3026; Delta College, Univ. Center.

MN

New file No. 4057CRB; old file No. 3114; Minnesota Public Radio, Inc., St. Paul.

New file No. 4190CRB; old file No. 3113; Minnesota Public Radio, Inc., St. Paul.

MO

New file No. 4223CRB; old file no. 3314; The School of the Ozarks, Point Lookout.

New file No. 4070CRB; old file no. 3009; Curators of the University of Missouri, Rolla.

New file No. 4211CTB; old file no. 3153; Double Helix Corporation, St. Louis.

New file No. 4079CRB; old file no. 3301; Mid-Coast Radio Project, Inc., Kansas City.

MT

New file No. 4209CTN; old file no. 3342; Blaine County Public Television, Inc., Chinook.

New file No. 4157CTB; old file no. 3166; Dull Knife Memorial College, Lame Deer.

New file No. 4114CTB; old file no. 3248; Shields and Paradise Valley TV District, Livingston.

New file No. 4195CTB; old file no. 3209; Phillips County TV Tax District, Malta.

NC

New file No. 4099CRB; old file no. 3092; The University of North Carolina at Chapel Hill, Chapel Hill.

NE

New file No. 4235PRB; old file no. 3126; Radio Talking Book Service, Inc., Omaha.

NJ

New file No. 4115PRB; old file no. 3104; Newark Public Radio, Inc., Newark.

New file No. 4300CTB; old file no. 3137; State of New Jersey, Trenton.

NM

New file No. 4316CTB; old file no. 3245; Regents of Univ of New Mexico & Bd of Educ of the City of Alburquerque, Albuquerque.

New file No. 4242CRB; old file no. 3089; Northern New Mexico Community College, Espanola.

New file No. 4042CRB; old file no. 3010; Ramah Navajo School Board, Inc., Ramah.

NV

New file No. 4056CTB; old file no. 3341; Channel 5 Public Broadcasting, Inc., Reno.

NY

New file No. 4142CRB; old file no. 3160; Genesee Community College, Batavia.

New file No. 4023CRB; old file no. 3107; UHURU Communications, Inc., Binghamton.

New file No. 4276CRB; old file no. 3076; Sun Ship Communications, Inc., Buffalo.

New file No. 4247CRB; old file no. 3313; Board of Cooperative Educational Services (BOCES #1), Fairport.

New file No. 4216PTN; old file no. 3270; Asian Cinevision, Inc., New York.

New file No. 4310CRTBN; old file no. 3295; Hispanic Information and Telecommunications Network, Inc., New York.

New file No. 4100CRTBN; old file no. 3094; Rochester Area Educational TV Association, Inc., Rochester.

New file No. 4038CRB; old file no. 3281; Mohawk-Hudson Council on Educational Television, Inc., Schenectady.

New file No. 4037CTB; old file no. 3172; Mohawk-Hudson Council on Educational Television, Inc., Schnectady.

OH

New file No. 4009CTB; old file no. 3138; The University of Akron, Akron.

New file No. 4243CTB; old file no. 3185; Ohio University Telecommunications Center/WOUB-TV, Athens.

New file No. 4011CTB; old file no. 3122; Bowling Green State University, Bowling Green.

New file No. 4145CTB; old file no. 3120; The Ohio State University, Columbus.

New file No. 4101CTB; old file no. 3178; The Public Broadcasting Foundation of Northwest Ohio, Toledo.

PA

New file No. 4172CTN; old file No. 3201; Bloomsburg University, Bloomsburg.

New file No. 4287CTB; old file No. 3130; South Central Educational Broadcasting Council, Harrisburg.

New file No. 4245CRB; old file No. 3351; Solebury School, New Hope.

New file No. 4181CRB; old file No. 3312; Temple University, Philadelphia.

New file No. 4033CRB; old file No. 3111; Metropolitan Pittsburgh Public Broadcasting, Pittsburgh.

New file No. 4034CTB; old file No. 3141; Metropolitan Pittsburgh Public Broadcasting, Pittsburgh.

New file No. 4035CTB; old file No. 3093; Metropolitan Pittsburgh Public Broadcasting, Pittsburgh.

New file No. 4221CRB; old file No. 3168; Northeastern Pennsylvania Educational Television Association, Pittston.

RQ

New file No. 4164CTB; old file No. 3085; Fundacion Educative Ana G. Mendez Foundation, Rio Piedras.

SC

New file No. 4010CRB; old file No. 3064; Barnwell School District #19, Blackville.

TN

New file No. 4175PRB; old file No. 3324; Southern College, Collegedale.

TX

New file No. 4028CTB; old file No. 3065; South Texas Public Broadcasting System, Corpus Christi.

New file No. 4029CRB; old file No. 3049; South Texas Public Broadcasting System, Corpus Christi.

New file No. 4030CRB; old file No. 3050; South Texas Public Broadcasting System, Corpus Christi.

New file No. 4135CRB; old file No. 3163; Public Communication Foundation for North Texas, Dallas.

New file No. 4151CTB; old file No. 3180; Public Communication Foundation for North Texas, Dallas.

New file No. 4008CTB; old file No. 3039; Denton Channel Two Foundation, Denton.

New file No. 4049CTB; old file No. 3193; Odessa Junior College District, Odessa.

VA

New file No. 4219PTN; old file No. 3269; Northern Virginia Community College, Annadale.

New file No. 4204CTB; old file No. 3135; Hampton Roads Educational Telecommunications Association, Inc., Norfolk.

New file No. 4205CRB; old file No. 3131; Hampton Roads Educational Telecommunications Association, Inc., Norfolk.

New file No. 4105CTN; old file No. 3255; Center for Excellence, Inc., Williamsburg.

New file No. 4046CTB; old file No. 3156; State of Wisconsin, Madison.

WY

New file No. 4004CTB; old file No. 3024; Western Wyoming Community College, Rock Springs.

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1 CFR

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3 CFR

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Friday, March 23, 1984

Presidential Documents

Title 3—

The President

Proclamation 5166 of March 21, 1984

National Single Parent Day, 1984

By the President of the United States of America

A Proclamation

Before they are eighteen, about half of our Nation's children will have lived part of their lives with a single parent who strives to fill the role of both mother and father.

Many single parents in America are making valiant efforts on behalf of their children under trying circumstances. Whether it is a deserted spouse forced to work and care for children simultaneously, or a spouse who is not receiving child support that has been awarded by a court, or an unwed mother who has bravely foregone the all-too-available option of abortion, or a widow or widower, single parents deserve our recognition and appreciation for their demonstrated dedication to their young.

At the same time, we should also recognize the vital and ongoing role a large percentage of non-custodial parents play in the nurturing process of their offspring. Their sacrifices, devotion, and concern reflect the bonds of caring for those they have brought into this world.

Single parents can and do provide children with the financial, physical, emotional, and social support they need to take their places as productive and mature citizens. With the active interest and support of friends, relatives, and local communities, they can do even more to raise their children in the best possible environment.

The Congress, by H.J. Res. 200, has designated March 21, 1984, as "National Single Parent Day" and has requested the President to issue as proclamation in observance of that day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 21, 1984, as National Single Parent Day. I call on the people of the United States to recognize the contributions single parents are making, sometimes under great hardships, to the lives of their children, and I ask that they volunteer their help, privately or through community organizations, to single parents who seek it to meet their aspirations for their children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-8113
Filed 3-22-84; 11:13 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 49, No. 58
Friday, March 23, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regs. 456; 455, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period March 25–31, 1984, and increases the quantity of lemons that may be shipped to 295,000 cartons during the period March 18–24, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective March 25, 1984, and the amendment is effective for the period March 18–24, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on March 20, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.756 is added as follows:

§ 910.756 Lemon Regulation 456.

The quantity of lemons grown in California and Arizona which may be handled during the period March 25, 1984, through March 31, 1984, is established at 275,000 cartons.

2. Section 910.755 Lemon Regulation 455 (49 FR 9859) is revised to read as follows:

§ 910.755 Lemon Regulation 455.

The quantity of lemons grown in California and Arizona which may be handled during the period March 18, 1984, through March 24, 1984 is established at 295,000 cartons.

(Secs. 1–19, [illegible] Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 21, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-8053 Filed 3-22-84; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 73

[Docket No. 84–022]

Scabies in Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; correction.

SUMMARY: This document corrects an editorial error in an interim rule captioned "Scabies in Cattle" which was published in the **Federal Register** on March 20, 1984 (49 FR 10528). In the fourth paragraph of the Supplementary Information "as provided in the regulations." is added immediately after the word "except."

FOR FURTHER INFORMATION CONTACT: Dr. Glen O. Schubert, Assistant Senior Staff Veterinarian, Special Diseases Staff, VS, APHIS, USDA, Room 824, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8438.

Dated: March 20, 1984.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-7891 Filed 3-22-84; 8:45 am]
BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments

Correction

In FR Doc. 84-6324, beginning on page 9352, in the issue of Monday, March 12, 1984, make the following corrections:

1. On page 9388, in the third column, in § 51.51, paragraph (b) consists of Table S-3 only; therefore the three asterisks should be removed since there was no introductory text omitted.

2. On page 9390, in the second column, in § 51.52, paragraph (c) consists of Table S-4 only; therefore the three asterisks should be removed since there was no introductory text omitted.

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-ASW-55; Amendment 39-4828]

Airworthiness Directives; Boeing Vertol Model 234 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Boeing Vertol Model 234 series helicopters by individual telegrams. The AD establishes a 1,600-hour retirement time for main rotor head horizontal hinge pins. The AD is prompted by a report of a cracked horizontal hinge pin. Failure of a main rotor head horizontal hinge pin could lead to separation of a main rotor blade and subsequent loss of the helicopter.

EFFECTIVE DATE: Effective March 23, 1984, to all persons except those to whom it was made immediately effective by telegraphic AD T83-25-51 issued December 9, 1983, which contained this amendment.

Compliance required as prescribed in the body of AD after the effective date of this AD unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Boeing Vertol Company, Boeing Center, P.O. Box 1858, Philadelphia, Pennsylvania 19142. These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chrastil, ANE-172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone number (516) 791-6221.

SUPPLEMENTARY INFORMATION: On December 9, 1983, telegraphic AD T83-25-51 was issued and made effective immediately to all known U.S. owners and operators of Boeing Vertol Model 234 series helicopters. The AD established a 1,600-hour retirement time for main rotor head horizontal hinge pins. The AD was prompted by a report of a cracked main rotor head horizontal hinge pin which was detected during a sampling inspection program conducted by a Model 234 operator.

Ten aircraft will be affected by the AD, of which two are U.S. registered, for an estimated annual cost of $30,000. None of these aircraft are owned by a small entity.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD revision effective immediately by individual telegrams issued December 9, 1983, to all known U.S. owners and operators of Boeing Vertol Model 234 helicopters. These conditions still exist and the AD revision is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

BOEING VERTOL COMPANY: Applies to Boeing Vertol Model 234 series helicopters certificated in all categories.

Compliance is required as indicated.

To prevent possible hazards in flight associated with cracking of the main rotor head horizontal hinge pins, accomplish the following:

(a) Within the next 25 hours' time in service from the effective date of this AD or before the accumulation of 1,600 hours' time in service, whichever comes later, retire main rotor head horizontal hinge pins P/N's 114R2196-2 and 114R2197-5 and replace with serviceable parts.

(b) An equivalent method of compliance with this AD may be used when approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

(c) In accordance with FAR 21.197 flight is permitted to a base where the requirements of this AD may be accomplished.

This amendment becomes effective March 23, 1984, as to all persons except those persons to whom it was made immediately effective by telegraphic AD No. T83-25-51 issued December 9, 1983, which contained the amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; 14 CFR 11.89)

Note: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas on March 6, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-7801 Filed 3-22-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-ASW-8; Amdt. 39-4829]

Airworthiness Directives; Sikorsky Model S-76A Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires initial and repetitive inspections, and adds a retaining pad

between the inboard tail rotor spar and the tail rotor gearbox output shaft on Sikorsky Model S–76A series helicopters. The AD is needed to prevent the tail rotor spar elliptical plug from migrating inboard as a result of a bond failure between the elliptical plug and the spar which could result in possible loss of the tail rotor control.

DATES: *Effective:* March 30, 1984.

Compliance schedule: As prescribed in the body of the AD.

ADDRESSES: The applicable Alert Service Bulletin SB76–65–35 and Amendment No. 1 may be obtained from Sikorsky Aircraft, Division of United Technologies Corporation, North Main Street, Stratford, Connecticut 06602.

Copies of the applicable Sikorsky Aircraft Alert Service Bulletin 76–65–35 and Amendment No. 1 (CBT–TP–84–011) are contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Section, ANE–152, Boston Aircraft Certification Branch, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone number (617) 273–7336.

SUPPLEMENTARY INFORMATION: There have been three reports of the tail rotor elliptical plug disbonding from the tail rotor spar. One incident reported severe vibrations in flight causing the pilot to make an unscheduled landing. A postinspection revealed the disbonding and lateral migration of the elliptical tail rotor plug from the spar and displacement of the tail rotor blade in a radial direction. All three reported failures have occurred from 399 hours' to 1,199 hours' total time in service.

Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires a one-time initial inspection and repetitive 500-hour inspections of the tail rotor spar for disbonding of the elliptical tail rotor plug. The AD also requires the installation of a retaining pad to prevent the tail rotor elliptical plug from migrating in the event of a bond failure.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Sikorsky Aircraft: Applies to S–76A series helicopters certificated in all categories.

Compliance is required as indicated (unless already accomplished).

To prevent operation with a disbonded tail rotor spar elliptical plug, accomplish the following: Applies to tail rotor blade P/Ns 76101–05001 and 76101–05101 series with more than 130 hours' time in service. Compliance is required within the next 25 hours' time in service after the effective date of this AD.

(a) Remove the tail rotor blades in accordance with Maintenance Manual SA 4047–76–2, section 65–21–00, Revision 16, or later approved revision, or FAA approved equivalent, and inspect the center plug for disbonding of the polyurethane filler which fills space between the aluminum shaped plug and the graphite spar as per Sikorsky's Alert Service Bulletin 76–65–35 or FAA approved equivalent.

(1) If the inspection of the elliptical tail rotor plug shows no evidence of disbonding greater than one-half inch in length, proceed to paragraph (b).

(2) For disbonds greater than one-half inch but less than 2 inches in length repair per Sikorsky's Alert Service Bulletin 76–65–35 paragraph 2.B.(2) or FAA approved equivalent.

(3) For disbonds greater than 2 inches in length but not completely disbonded, or disbonded plugs with the polyurethane filler excessively cracked or deteriorated to the extent of breaking away from plug, remove the blade from service and replace with an airworthy component of the same or FAA approved equivalent part number.

(4) For completely disbonded spar plugs in which the polyurethane filler remains fully bonded to the aluminum plug, repair the plug to the graphite spar per Alert Service Bulletin 76–65–35 paragraph 2.B.(3) or FAA approved equivalent.

(5) For blades found with a completely disbonded aluminum elliptical plug, where the polyurethane filler is intact and remains bonded to the spar, repair as per paragraph 2.B.(4) of Amendment No. 1 to Alert Service Bulletin 76–65–35 or FAA approved equivalent.

(b) Install retaining pad P/N 76102–05004–111 on the pitch change shaft between the output tail gearbox flange and the inboard tail rotor blade spar assembly.

(c) Reinstall tail rotor blade per Maintenance Manual SA4047–76–2, section 65–21–00, Rev. 16, or later approved revision, or FAA approved equivalent.

(d) At the next 500 hours' time in service and every 500 hours' time in service thereafter, remove tail rotor blades and inspect the elliptical plug for disbond per paragraph (a) of this AD.

(e) Helicopters with serial numbers 760264 and subsequent, and those that have retaining pad P/N 76102–05004–111 installed, are not required to comply with the initial 25-hour inspection in this AD.

(f) Alternate inspections, repairs, modifications, or other means of compliance which provide an equivalent level of safety must be approved by the Manager, Boston Aircraft Certification Branch, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective March 30, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.)

Note: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that the action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Fort Worth, Texas on March 7, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–7802 Filed 3–22–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ASO–10]

Alteration of Transition Area; Leesburg, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Leesburg, Florida, transition area by realigning the arrival extension. The instrument approach procedure serving Leesburg Municipal Airport is predicated upon the Leesburg radio beacon (RBN). The airport authority has relocated the RBN from the west side to

the east side of the airport. This relocation requires a change in the instrument approach procedure final approach course, which results in a realignment of the transition area arrival extension. No significant change in airspace is intended by this action.

DATES: Effective 0901 GMT, May 10, 1984.

Comments must be received on or before April 20, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ATTN: Manager, Airspace and Procedures Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves realignment of the transition area arrival extension, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the Leesburg, Florida, transition area by realigning the arrival extension with the instrument approach procedure final approach course. The airport authority has relocated the Leesburg RBN which resulted in a change to the instrument approach procedure. The change to the instrument approach procedure requires realignment of the transition area arrival extension so that it will overlie the final approach course. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to alter the transition area so that it is properly aligned to accommodate the instrument approach procedure. The change is so minor and nonsubstantive I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Leesburg, Florida, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 GMT, May 10, 1984, as follows:

Leesburg, FL—[Revised]

That airspace extending upward from 700 feet above the surface within a 6-Mile radius of Leesburg Municipal Airport (Lat. 28°49'20" N., Long. 81°48'35" W.), within 3 miles each side of the 140° bearing from the Leesburg RBN (Lat. 28°49'33" N., Long. 81°48'28" W.), extending from the 6-mile radius area to 8.5 miles southeast of the RBN.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on March 15, 1984.

Seymour Oberlander,

Acting Director, Southern Region.

[FR Doc. 84-7808 Filed 3-22-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-AAL-8]

Alteration of Compulsory Reporting Points, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment establishes a compulsory reporting point in Additional Control Areas 1234 and 1235 to aid the Oakland and Anchorage Air Route Traffic Control Centers (ARTCC) determine when a transfer of air traffic control responsibility occurs. It also establishes Cairn Mountain NDB, AK, as a compulsory reporting point on Colored Federal Airway G–6 to enhance the application of air traffic control (ATC) separation procedures by Anchorage ARTCC. The compulsory reporting point currently named Sparrevohn NDB, AK, is corrected to Sparrevohn, AK, to correctly reflect the navigation aid at that location.

DATE: *Effective date*—July 5, 1984.

Comments must be received on or before May 7, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 83–AAL–8, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8733.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves amendments to §§ 71.211 and 71.213 to establish three compulsory reporting points and correct the name of another and, thus, was not preceded by notice and public procedure, comments are invited on the

rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.211 and § 71.213 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to enhance the application of ATC separation procedures by Anchorage ARTCC, aid the Oakland and Anchorage ARTCC's controllers to determine when the transfer of the ATC responsibility occurs and accurately reflect the type of navigation aid associated with the Sparrevohn, AK, compulsory reporting point. SAVRY and NESSY Intersections, respectively, are established in Additional Control Areas 1234 and 1235 at the newly established Oakland/Anchorage Control Area (CTA) boundary. Cairn Mountain NDB, AK, is established as a compulsory reporting point on Colored Federal Airway G–6. The name of compulsory reporting point Sparrevohn NDB, AK, is changed to Sparrevohn, AK. Section 91.125 requires pilots operating in nonradar ATC environment to report to ATC the time passing all compulsory reporting points. The safety and effectiveness of traffic control depends, to a large extent, on accurate position reporting. In order to provide the proper separation and expedite aircraft movement, ATC must be able to make accurate estimates of the progress of every aircraft operating on an IFR flight plan. Sections 71.211 and 71.213 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA concludes that there is an immediate need for a regulation to correct the name of Sparrevohn NDB, AK, compulsory reporting point to Sparrevohn, AK, and to establish three other compulsory reporting points to enhance the application of ATC control separation procedures. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective on the next charting date.

List of Subjects in 14 CFR Part 71

Compulsory reporting points, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.211 and § 71.213 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, effective 0901 GMT, July 5, 1984, as follows:

§ 71.211 [Amended]

By deleting the words "Sparrevohn NDB, AK" and substituting the words "Sparrevohn, AK"

By adding the words "Cairn Mountain NDB, AK"

By adding the words "NESSY: lat. 55°53'53" N., long. 153°19'45" W. (Kodiak 174° radial 117.5 DME)."

By adding the words "SAVRY: lat. 51°09'04" N., long. 170°00'00" W. (INT long. 170°00'00" W. and the boundary of Control 1234)."

§ 71.213 [Amended]

By adding the words "Sparrevohn, AK"

By adding the words "NESSY: lat. 55°53'53" N., long. 153°19'45" W. (Kodiak 174° radial 117.5 DME)."

By adding the words "SAVRY: lat. 51°09'04" N., long. 170°00'00" N. (INT long. 170°00'00" W. and the boundary of Control 1234)."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and (14 CFR 11.69.)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on March 15, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-7798 Filed 3-22-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASW-50]

Alteration of Control Zone; Alexandria-England Air Force Base (AFB), LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the control zone at Alexandria-England AFB, LA. The intended effect of the amendment is to provide controlled airspace for aircraft executing standard instrument approach procedures (SIAPs) to England AFB. This amendment is necessary since the Alexandria VORTAC will be decommissioned, thereby requiring a realignment of controlled airspace, predicated on this facility.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW–535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877–2630.

SUPPLEMENTARY INFORMATION:

History

On December 9, 1983, a notice of proposed rulemaking was published in the **Federal Register** (48 FR 55137) stating that the Federal Aviation Administration proposed to alter the Alexandria-England AFB, LA, control zone. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator,

Subpart F of Part 71, § 71.171, of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3A dated January 3, 1983, is amended, effective 0901 GMT, May 10, 1984, as follows:

Alexandria-England AFB, LA Revised

Within a 5-mile radius of England AFB (latitude 31°19'38" N., longitude 92°32'53" W.), within 2 miles each side of the northwest localizer course extending from the 5-mile radius area to 7 miles northwest.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c).)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on March 15, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-7798 Filed 3-22-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 84-AWA-3]

Alteration of Restricted Area R-5203, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to Restricted Area R-5203, located in the State of New York changes the name of the using agency from 21st Air Division, Hancock Field, Syracuse, NY, to 24th Air Division/DOTS, Griffiss AFB, NY. This change is necessary due to the redesignation of the 24th Air Division.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Brent A. Fernald, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to § 73.52 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to change the name of the using agency of R-5203 from 21st Air Division, Hancock Field, Syracuse, NY, to 24th Air Division/DOTS, Griffiss AFB, NY. This amendment is editorial in nature and a minor matter in which the public would have no particular desire to comment; therefore, notice and public procedure thereon are unnecessary. Section 73.52 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR Part 73

Restricted Areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 73.52 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, effective 0901 GMT, May 10, 1984, as follows:

R-5203 [Amended]

By deleting the words "21st Air Division, Hancock Field, Syracuse, NY." and substituting the words "24th air Division/DOTS, Griffiss AFB, NY."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69.)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on March 16, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-7797 Filed 3-22-84; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6517; 34-20763; 35-23252; 39-893; IC-13829; IA-902]

Approved Information Collections; Current OMB Expiration Dates

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending Subpart N of Part 200 relating to collection requirements under the Paperwork Reduction Act to reflect current OMB expiration dates for approved information collections.

EFFECTIVE DATE: March 23, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Fogash, Deputy Executive Director, SEC, 450 Fifth Street, NW., Washington, D.C. 20549 (202) 272-2142.

SUPPLEMENTARY INFORMATION: The Commission will amend Subpart N periodically to reflect current information.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Nos. and Expiration Dates

Part 200 of 17 CFR Chapter II is amended by revising the OMB control number and expiration date for Rule 13e-1, Rule 17a-2, Rule 19h-1(a), (c)-(e), (g), Rule 206(3)-2 and Rule 23C-1; by revising the OMB control number for Rule 203.2 and Form ADV-W; by adding Form N-1A; by deleting Rule 15b8-1, Rule 15b9-1 (a) and (b), Rule 15b9-1(c), Rule 15b9-2, Rule 15b10-6, Rule 15b10-8, Rule 15b10-9, Rule 15b10-11, Form U-4, Form SECO-2F, Form SECO-4, Form SECO-5, Rule 23C-2, Form N-27D-1, Form N-27D-2, Form N-27E-1, and Form N-27F-1; and revising certain expiration dates in paragraph (b) of § 200.800 as follows:

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) Display.

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date
Revised:			
Regulation S-X	Part 210	3235-0009	June 30, 1984.
Regulation S-K	Part 229	3235-0071	Feb. 28, 1986.
Rule 236	§ 230.236	3235-0095	Mar. 31, 1984.
Regulation A	§§ 230.251 through 230.264	3235-0286	Feb. 28, 1986.
Regulation B	§§ 230.300 through 230.346	3235-0093	Mar. 31, 1984.
•	•	•	•
Form S-6	§ 239.16	3235-0184	May 31, 1986.
•	•	•	•
Form S-16	§ 239.28	3235-0088	Nov. 30, 1986.
•	•	•	•
Form 1-A	§ 239.90	3235-0286	Feb. 28, 1986.
Form 2-A	§ 239.91	3235-0286	Feb. 28, 1986.
Form 3-A	§ 239.92	3235-0286	Feb. 28, 1986.
Form 4-A	§ 239.93	[illegible]	Feb. 28, 1986.
Form 5-A	§ 239.94	3235-0286	Feb. 28, 1986.
Form 6-A	§ 239.95	3235-0286	Feb. 28, 1986.
Form 7-A	§ 239.96	3235-0286	Feb. 28, 1986.
Schedules A, B, C, D	§ 239.101	3235-0093	Jan. 31, 1984.
Form 1-G	§ 239.101	3235-0093	Jan. 31, 1984.
Form 3-G	§ 239.101	3235-0093	Jan. 31, 1984.
Form 144	§ 239.144	3235-0101	Feb. 28, 1987.
•	•	•	•
Form D	§ 239.500	3235-0076	Dec. 31, 1984.
Rule 6a-1	§ 240.6a-1	3235-0017	Sept. 30, 1986.
•	•	•	•
Rule 6a-3	§ 240.6a-3	3235-0021	Jan. 31, 1987
Rule 10b-7	§ 240.10b-7	3235-0201	Dec. 31, 1986.
•	•	•	•
Rule 12i-2	§ 240.12i-2	3235-0246	Dec. 31, 1984.
•	•	•	•
Rule 13e-1	§ 240.13e-1	3235-0305	Feb. 28, 1986.
Rule 13e-3	§ 240.13e-3	3235-0007	June 30, 1986.
Rule 13e-4	§ 240.13e-4	3235-0203	Feb. 28, 1986.
•	•	•	•
Schedule 13E-4	§ 240.13e-101	3235-0203	Feb. 28, 1986.
Regulation 14A	§§ 240.14a-1 through 240.14a-12	3235-0059	Nov. 30, 1986.
Schedule 14A	§ 240.14a-101	3235-0059	Nov. 30, 1986.
Schedule 14B	§ 240.14a-102	3235-0059	Nov. 30, 1986.
•	•	•	•
Regulation 14D	§§ 240.14d-1 through 240.14d-9	3235-0102	Jan. 31, 1987.
Schedule 14D-1	§ 240.14d-100	3235-0102	Jan. 31, 1987.
Schedule 14D-9	§ 240.14d-101	3235-0102	Jan. 31, 1987.
Regulation 14E	§§ 240.14e-1 through 240.14e-2	3235-0102	Jan. 31, 1987.
Rule 15a-4(a)	§ 240.15a-4(a)	3235-0010	Aug. 31, 1984.
•	•	•	•
Rule 15b1-1	§ 240.15b1-1	3235-0012	Aug. 31, 1984.
Rule 15b1-2	§ 240.15b1-2	3235-0020	Aug. 31, 1984.
Rule 15b1-3	§ 240.15b1-3	3235-0011	Aug. 31, 1984.
Rule 15b1-4	§ 240.15b1-4	3235-0016	Aug. 31, 1986.
Rule 15b2-1	§ 240.15b2-1	3235-3014	Aug. 31, 1984.
Rule 15b3-1	§ 240.15b3-1	3235-3013	Aug. 31, 1984.
Rule 15b6-1(a)	§ 240.15b6-1(a)	3235-0018	Aug. 31, 1986.
•	•	•	•
Rule 15c2-1	§ 240.15c2-11	3235-0202	June 30, 1986.
•	•	•	•
Rule 15c3-3	§ 240.15c3-3	3235-0078	Sept. 30, 1986.
•	•	•	•
Rule 17a-1	§ 240.17a-1	3235-0208	Oct. 31, 1986.
Rule 17a-2	§ 240.17a-2	3235-0201	Dec. 31, 1986.
Rule 17a-3	§ 240.17a-3	3235-0033	Sept. 30, 1986.
Rule 17a-4	§ 240.17a-4	3235-0279	Sept. 30, 1986.
Rule 17a-5	§ 240.17a-5	3235-0123	Feb. 28, 1986.
•	•	•	•
Rule 17a-8	§ 240.17a-8	3235-0092	Feb. 28, 1986.
•	•	•	•
Rule 17Ad-6	§ 240.17Ad-6	3235-0291	Aug. 31, 1986.
Rule 17Ad-7	§ 240.17Ad-7	3235-0136	Sept. 30, 1986.
Rule 17Ad-10	§ 240.17Ad(10)	3235-0275	Nov. 30, 1986.
•	•	•	•
Rule 17f-1(b)	§ 240.17f-1(b)	3235-0032	Feb. 28, 1986.
•	•	•	•
Rule 17f-1(g)	§ 240.17f-1(g)	3235-0295	Feb. 28, 1986.
•	•	•	•
Rule 19d-1(b)-(f)	§ 240.19d-1(b)-(f)	3235-0206	Sept. 30, 1986.
•	•	•	•
Rule 19h-1(a), (c)-(e), (g)	§ 240.19h-1(a), (c)-(e), (g)	3235-0209	Oct. 31, 1986.
•	•	•	•
Form 27	§ 249.27	3235-0248	Dec. 31, 1984.
•	•	•	•
Form 4	§ 249.104	3235-0287	Feb. 28, 1986.

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date
Form 20-F	§ 249.220f	3235-0288	May 31, 1984.
Form 10-Q	§ 249.308a	3235-0070	Sept. 30, 1985.
Form 10-K	§ 249.310	3235-0063	Feb. 28, 1986.
Form 11-K	§ 249.311	3235-0082	April 30, 1984.
Form 12g-4/15d-6	§ 249.323	3235-0167	Nov. 30, 1986.
Form 13F	§ 249.325	3235-0006	Dec. 31, 1986.
Form 8	§ 249.460	3235-0141	Mar. 31, 1984.
Form 8D	§ 249.501	3235-0012	Aug. 31, 1986.
Form 8DW	§ 249.501a	3235-0018	Aug. 31, 1986.
Form X-17A-5	§ 249.617	3235-0123	Feb. 28, 1986.
Form X-17A-12(1)	§ 249.619	3235-0192	Dec. 31, 1984.
Form X-17A-1	§ 249.717	3235-0208	Oc. 31, 1986.
Rule 1(c)	§ 250.1(c)	3235-0164	Nov. 30, 1986.
Rule 4M(b)	§ 250.480(b)	3235-0156	Dec. 31, 1984.
	Part 257	3235-0305	Nov. 30, 1986.
Form U5S	§ 259.5a	3235-0154	Nov. 30, 1986.
Rule 2A-7	§ 270.2a-7	3235-0268	July 31, 1984.
Rule 6c-6	§ 270.6c-6	3235-0245	Nov. 30, 1986.
Rule 7d	§ 270.7d-(b)(8)(i), (iii) and (viii)	3235-0166	June 30, 1983.
Rule 10f-3	§ 270.10f-3	3235-0226	Nov. 30, 1986.
Rule 12b-1	§ 270.12b-1	3235-0212	Nov. 30, 1986.
Rule 17e-1	§ 270.17e-1	3235-0217	June 30, 1984.
Rule 17f-4	§ 270.17f-4	3235-0225	Oct. 31, 1984.
Rule 17j-1	§ 270.17j-1	3235-0224	Nov. 30, 1986.
Rule 23c-1	§ 270.23c-1	3235-0238	Feb. 28, 1986.
Rule 24f-2	§ 270.24f-2	3235-0159	June 30, 1986.
Rule 31a-1	§ 270.31a-1	3235-0178	.
Form N-5	§ 274.5	3235-0169	Feb. 28, 1986.
Form N-1	§ 274.11	3235-0027	Feb. 28, 1986.
Form N-8B-2	§ 274.12	3235-0186	Feb. 28, 1986.
Rule 203.1	§ 275.203.1	3235-0049	Sept. 30, 1984.
Rule 203.2	§ 275.203-2	3235-0313	Sept. 30, 1984.
Rule 204.2	§ 275.204.2	3235-0278	Nov. 30, 1986.
Rule 206(3)-2	§ 275.206(3)-2	3235-0243	June 30, 1986.
Rule 206(4)-2	§ 275.206(4)-2	3235-0241	Feb. 28, 1986.
Rule 206(4)-3	§ 275.206(4)-3	3235-0242	Feb. 28, 1986.
Form ADV	§ 279.1	3235-0049	Sept. 30, 1984.
Form ADV-W	§ 279.2	3235-0313	Sept. 30, 1984.
Form ADV-S	§ 279.3	3235-0046	July 31, 1984.
[illegible]			
Form N-1A	§ 274.11A	3235-0307	Nov. 30, 1986.
Delete:			
Form F-6	§ 239.16	3235-0292	Jan. 31, 1986.
Form 237	§ 239.145	3235-0263	Jan. 31, 1984.
Rule 15b6-1	§ 240.15b6-1	3235-0135	Nov. 30, 1984.
Rule 15b9-1(a) and (b)	§ 240.15b9-1(a) and (b)	3235-0129	Nov. 30, 1984.
Rule 15b9-1(c)	§ 240.15b9-1(c)	3235-0139	Nov. 30, 1984.
Rule 15b9-2	§ 240.15b9-2	3235-0146	Nov. 30, 1984.
Rule 15b10-6	§ 240.15b10-6	3235-0287	Sept. 30, 1983.
Rule 15b10-8	§ 240.15b10-8	3235-0189	Dec. 31, 1984.
Rule 15b10-9	§ 240.15b10-9	3235-0081	Oct. 31, 1984.

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date
Rule 15b10-11	§ 240.15b10-11	3235-0190	Dec. 31, 1984.
Form 19	§ 249.219	3235-0119	Nov. 30, 1984.
Form 19-K	§ 249.319	3235-0116	Nov. 30, 1984.
Form U-4	§ 249.502	3235-0018	Aug. 31, 1983.
Form SECO-2F	§ 249.502a	3235-0139	Nov. 30, 1984.
Form SECO-4	§ 249.504a	3235-0140	Nov. 30, 1984.
Form SECO-5	§ 249.505	3235-0129	Nov. 30, 1984.
Rule 23c-2	§ 270.23c-2	3235-0252	Feb. 29, 1988.
Form N-27D-1	§ 274.127d-1	3235-0254	Dec. 31, 1984.
Form N-27D-2	§ 274.127d-2	3235-0251	Dec. 31, 1984.
Form N-27E-1	§ 274.127e-1	3235-0255	Sept. 30, 1985.
Form N-27F-1	§ 274.127f-1	3235-0253	Sept. 30, 1985.

The Commission finds that this amendment, concerning the display of the control numbers and expiration dates assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act, pertains only to procedural matters; it is therefore not subject to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 et seq., requiring advance notice and opportunity for comment. Accordingly, it is effective upon publication in the Federal Register.

Statutory Authority: 44 U.S.C. 3507(f).

Dated: March 19, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7944 Filed 3-22-84; 8:45 am]

BILLING CODE 8010-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-61

[ADM 7900.2]

Public Use of Records, Donated Historical Materials and Facilities in the National Archives and Records Service; Fees

AGENCY: National Archives and Records Service, GSA.

ACTION: Technical correction notice.

SUMMARY: This document corrects the effective date of a final rule published in the Federal Register on March 15, 1984 (48 FR 9725) which revises fees charged by the National Archives and Records Service for reproduction of archival records, donated historical materials, and records filed with the Office of the Federal Register.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Adrienne Thomas (202) 523-3214.

PART 105-61—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES IN THE NATIONAL ARCHIVES AND RECORDS SERVICE

Section 106-61.5208 is corrected to read as follows:

§ 105-61.5208 Effective date.

The fees in § 105-61.5206 are effective on April 1, 1984.

Authority: 40 U.S.C. 486(c).

Dated: March 19, 1984.

Robert M. Warner,

Archivist of United States

[FR Doc. 84-8002 Filed 3-22-84; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PART 3100

Oil and Gas Leasing; Rescission of Interpretative Rule

AGENCY: Bureau of Land Management, Interior.

ACTION: Rescission of interpretative rule relating to approval of assignments on producing leases.

SUMMARY: This notice announces the termination of the process, which was the subject of an interpretative rule published in the Federal Register on January 24, 1984 (49 FR 2896), designed to clarify for the public the Bureau of Land Management's regulations at 43 CFR 3106.7-3 which require that no assignment shall be approved unless the lease account is in good standing.

EFFECTIVE DATE: March 23, 1984.

SUPPLEMENTARY INFORMATION: Although the Bureau of Land Management had identified as a priority the elimination of oil and gas assignment backlogs, its efforts were frustrated when the Minerals Management Service advised that it would no longer review lease accounts to determine the financial liability of the assignor prior to approval of assignments for producing leases. In order to provide the public with an expedited assignment procedure, an interpretative rule was published which provided a means of establishing good standing consistent with existing regulations, thus making approval of producing lease assignments possible without reliance on a Service review of lease accounts.

On January 9, 1984, the Bureau of Land Management and the Minerals Management entered into a Memorandum of Understanding in which the Service agreed to furnish to the Bureau, on a monthly basis, a delinquent payment listing. If the lease does not appear on the delinquent payment list, the lease account shall be considered in "good standing" and may continue to be processed expeditiously.

The process for handling assignments on producing leases set forth in the interpretative rule published on January 24, 1984, is terminated as of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Lois Mason, Division of Fluid Mineral Leasing, Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240, (202) 653-2190.

Dated: March 20, 1984.

Robert F. Burford,

Director.

[FR Doc. 84-7870 Filed 3-22-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6524

[Nev-047410, Nev-047411, Nev-047419; Nev-047423 and Nev-047436]

Revocation of Stock Driveway Withdrawals

Correction

In FR Doc. 84-5660 beginning on page 7807 in the issue of Friday, March 2, 1984, make the following correction:

On page 7808, column three, line eight from the bottom, "Lots 1 thru 9" should read "Lots 5 thru 9", and in line seven from the bottom, the comma that appears between "N½" and "N½" should be removed.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[BC Docket No. 82-20; RM-2500]

Operation of Microwave Boosters; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the amendatory instructions to the FCC rule providing for the use of microwave booster stations in the aural broadcast STL and intercity relay radio services and in the TV auxiliary radio services, FR Doc. 84-4994, 49 FR 7127, February 27, 1984. The corrections are necessary to prevent unintended deletion of those portions of the existing rules that were to be retained. If not corrected users would be unable to correctly understand the rule information.

FOR FURTHER INFORMATION CONTACT: John Reiser, Mass Media Bureau, (202) 632-9660.

Erratum

In the matter of amendment of subparts E and F of Part 74 to provide for the operation of microwave boosters (BC Docket No. 82-20 RM-2500).

Released: March 15, 1984.

The *Report and Order* in the above entitled matter, adopted on February 3, 1984, and released February 17, 1984, 49 FR 7127, published February 27, 1984, contained several inadvertent errors in the editing instructions and note omissions. The following corrections are necessary:

The amendment instructions for § 74.532 given in paragraph 4, page 7129 of the Appendix should read:

4. Section 74.532 is amended by revising paragraphs (c) and (d), redesignating existing paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

The following note should be added following the revised paragraph (d) of § 74.532 as shown in Appendix paragraph 4, page 7129.

Note.—Applications for aural broadcast microwave booster stations will not be accepted for filing prior to January 1, 1985.

The amendment instructions for § 74.632 given in paragraph 13 page 7130, of the Appendix should read:

13. Section 74.632 is amended by redesignating existing paragraph (f) as paragraph (g) and adding new paragraph (f) as follows:

The following note should be added following the revised paragraph (f) of § 74.632 as shown in Appendix paragraph 13.

Note.—Applications for TV microwave booster stations will not be accepted for filing prior to January 1, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-7841 Filed 3-22-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Ch. 24

[Docket No. R-84-1145; FR-1860]

Acquisition Regulations; Corrections

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule; corrections.

SUMMARY: This document corrects several errors in the Department's Acquisition Regulations published in the **Federal Register** on March 1, 1984 (49 FR 7696, corrected March 6, 1984, 49 FR 8258).

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5262, Department of Housing and Urban Development, 451 Seventh St., SW., Washington, D.C. 20410, telephone (202) 755-5294. (This is not a toll-free number.) Accordingly, the Department makes the following corrections to FR Doc. 84-5503 appearing on page 7696 and following in the issue of March 1, 1984:

1. On page 7697, column two, in the table of contents, add the following, after "2437 Service contracting":

SUBCHAPTER G—CONTRACT MANAGEMENT

2. On page 7699, at the top of column one, in 2401.601-2(c), "Divisions" is corrected to read "Division".

3. On page 7699, beginning three lines from the top of column two, in 2401.603-2(a), the second sentence is corrected to read:

Alternatively, where appointment of a Contracting Officer involves a specialized procurement field, experience in that field may be considered as a criterion for the appointment.

4. On page 7699, in the first full paragraph of column two, in 2401.603-2(b), correct the phrase "nongovernment procurement office" to read "nongovernment contracting office."

5. On page 7700, halfway down column 3, in 2404.805-1(a), correct the phrases "procuring activity" to read "contracting activity" and "procurement office" to read "contracting office."

6. On page 7701, column three, in the contract language following 2409.504(b), paragraph (1)(iii) is corrected to read:

(iii) The contractor has disclosed all relevant information and requested the Contracting Officer to make a determination with respect to this contract.

7. On page 7703, halfway down column two, in 2414.407-8(b)(3)(i), the phrase "procuring activity" is corrected to read "contracting activity."

8. On page 7705, column one, in 2415.670(c) the phrase "procurement file" is corrected to read "contract file".

9. On page 7706, column two, under DISTRIBUTION OF AWARD FEE, "A" is corrected to read as follows:

A. The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period: ————.

Available Award Fee :————.

10. On page 7707, column one, in 2419.503(a), "$500,000." is corrected to read "$1,000,000.".

11. On page 7707, column two and column three, "Subpart 2421.2" is corrected to read "Subpart 2421.70" and "2421.201 Policy" is corrected to read "2421.701 Policy".

12. On page 7708, column two, immediately before the part heading to Part 2436, add the following:

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

13. On page 7708, column three, in 2436.602-5, "used" is corrected to read "use".

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 19, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-7780 Filed 3-22-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 40228-20]

Groundfish of the Gulf of Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; correction.

SUMMARY: This document corrects coordinates given for trawling in the Western and Central Regulatory Areas, corrects the date of expiration of the rule, and provides an effective date for a definition, in an emergency interim rule for the Groundfish of the Gulf of Alaska that was published on March 8, 1984, 49 FR 8616.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, (907) 586-7230.

In FR Doc. 84-6268, page 8617, first column, the coordinates given in lines 11 and 12 are corrected and the complete sentence should read "Foreign fishermen are restricted to the use of off-bottom gear when trawling in the Western (159° W. to 170° W. longitude) and Central (147° W. to 159° W. longitude) Regulatory Areas from December 1 through May 31, a period when juvenile Pacific halibut are in shallow water and are more subject to capture in trawls." Additionally, the "**DATES**" section is corrected by adding after the first sentence the following: "The definition of a bottom trawl added to § 672.2 is effective March 8, 1984." Also in the "**DATES**" section and in the rule § 672.20 the date of expiration of June 6, 1984, is corrected to read May 31, 1984.

Dated: March 20, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-7832 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 40216-29]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule and request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has determined that an emergency exists in the pollock fishery in the Western and Central Regulatory Areas of the Gulf of Alaska because the current optimum yields (OY) for these areas are significantly underspecified given current resource availability, resulting in undue restriction and economic hardship to the developing U.S. fishery. Because pollock in the Western and Central Regulatory Areas are believed to comprise a single stock, the Council is combining these two regulatory areas for pollock management and is increasing the pollock OY in the combined area from 200,000 mt to 400,000 mt. Therefore, the Secretary of Commerce issues this emergency interim rule reflecting the Council's determinations and requests comment from the public. This action avoids undue economic hardship to the fishery by allowing both the timely optimum harvest of the pollock resource and the distribution of fishing effort according to pollock availability.

DATE: This rule is effective from 12:00 noon, Alaska Standard Time, March 20, 1984, until 12:00 noon, Alaska Daylight Time, June 21, 1984. Comments must be received on or before April 19, 1984.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. Copies of the environmental assessment/final regulatory flexibility analysis prepared for this rule are available from Mr. McVey.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

Amendment 11 of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) (48 FR 43044, September 21, 1983) increased the OY for pollock in the Central Regulatory Area from 95,200 mt to 143,000 mt. Based on later indications of abundance (year class analysis and acoustic surveys), the OY was again increased through an emergency interim rule (48 FR 55470, December 13, 1983) to 183,000 mt.

In response to the apparent inadequacy of the current specifications for pollock under the FMP, the Council developed an amendment (Amendment 13) to the FMP that would revise the management of the pollock resource in the Western and Central Areas and approved the amendment at its December 1983 meeting. While this amendment could be implemented by mid-1984, it will not be effective soon enough to prevent the current OY (143,000 mt in the Central Area) from restricting the U.S. joint-venture pollock fishery in the Shelikof Strait region near Kodiak Island. This fishery has harvested increasing amounts of pollock in Shelikof Strait since 1980, and the 1984 fishery that started at the end of January may harvest up to 210,300 mt before the end of April. Therefore, the Council has unanimously requested the Secretary to issue this emergency rule to increase the pollock OY for the combined Western and Central Areas to 400,000 mt and apportion the OY such that DAP=9,000 mt, JVP=210,300 mt, reserves=80,000 mt and TALFF=100,700 mt during the period that the amendment is being prepared and reviewed for implementation. These apportionment figures are based on a NMFS survey of the anticipated needs of the U.S. industry during 1984.

Rationale for Combining the OY for Western and Central Areas

Under the current FMP, separate OYs are assigned to the Western, Central, and Eastern Regulatory Areas, essentially treating pollock from each area as a separate stock. The pollock OY for the Western and Central Areas is divided such that 37 percent of the exploitable biomass is distributed to the Western Area and 63 percent to the Central Area. This apportionment of OY was based on resource distribution as indicated by summer-fall trawl surveys conducted during 1973-1975.

Recent information, however, indicates that Western and Central Area pollock are likely from one stock. Resource assessments of pollock in the Gulf of Alaska have found a major spawning concentration of pollock in the Shelikof Strait region during winter and spring months. An extensive acoustic survey of the Western and Central Areas during 1983 indicated that during the late January-April spawning period, significant amounts of pollock were found only in the Shelikof Strait region, suggesting that major concentrations of pollock normally found elsewhere in the

Western and Central Areas at other times of the year moved into and concentrated in the Shelikof Strait region during the spawning period. This observation, together with other biological information indicating that pollock from the Western and Central Areas share similar growth and year class strength patterns, has led NMFS scientists to believe that (1) most of the pollock in the Western and Central Areas are all of one stock; and (2) the current OY distribution between areas based only on the summer-fall pollock distribution results in management of the pollock resource in the Gulf of Alaska as separate stock units in each of the regulatory areas and is, therefore, inadequate to manage the resource. This inadequacy becomes even more apparent in view of the two separate fisheries for pollock in the Western and Central Areas.

The fishery is the winter-spring U.S. joint-venture operation in Shelikof Strait of the Central Area that occurs when most of the pollock from the Western and Central Areas are concentrated there usually from the end of January until the spawning concentrations disperse in March or April. This fishery is rapidly expanding and currently accounts for the largest pollock harvest in the Gulf of Alaska. Joint venture harvests have been as follows:

Year	Pollock catch (mt)
1980	1,136
1981	16,856
1982	73,917
1983	139,592

The second fishery is the foreign trawl fishery for pollock in the Western and Central Areas that normally begins after June 1 when the pollock have dispersed to their summer-fall distributions in these areas. The timing of foreign operations is due primarily to foreign fishing restrictions that prohibit all foreign bottom trawling in the Western and Central Areas from December 1 through May 31 and prohibit *all* trawling between 147° W. and 157° W. longitude in the Central Area from February 16 through May 31.

Under the current distribution of pollock OY in the Western and Central Areas and because of the large pollock harvest by the U.S. joint-venture fishery early in the year, little of the Central Area pollock OY may remain for the summer-fall fisheries after pollock disperse to the outer continental shelf. However, because only a small portion of the joint-venture harvest in Shelikof Strait consists of Central Area pollock, these fish may be underharvested. The opposite situation may result for Western Area pollock because these fish are subject both to the U.S. joint-venture fishery in Shelikof Strait during the spawning season and to the summer-fall foreign target fishery operating in the Western Area and therefore may be subject to relatively greater harvests.

In view of these concerns, the Council opted to combine the pollock OY for the Western and Central Areas to reflect the single stock status of pollock in these areas and to allow the fishery to distribute itself according to pollock availability rather than according to distribution percentages derived from trawl surveys done in the early 1970's. The catch of other nontarget groundfish species in the pollock fishery will continue to be regulated by the specific OYs assigned for these species in the Western and Central Areas.

Rationale for Increasing the Current OY Level for Pollock

In view of the present abundance of pollock, maintenance of the current 200,000 mt OY level for the Western and Central Areas is inappropriate and would unduly restrict the developing U.S. joint-venture fishery. The best scientific information available (summarized below) indicates that the resource in the Western and Central Areas can support an OY level of up to 500,000 mt in 1984. An increase in the OY is highly desirable because, based on an industry survey by NMFS, the U.S. fishery is anticipated to take 219,300 mt from these areas in 1984.

Results of resource assessment surveys since 1975 and recent scientific analyses of other data indicate that the pollock resource in the Western and Central Areas has increased in terms of total exploitable biomass and in exploitable annual surplus production (ASP), or the amount of pollock available for harvest. The increasing trend in biomass is principally a consequence of increased recruitment of the strong 1975–79 year classes into the 1978–82 fisheries. Actual estimates of pollock biomass in the Western and Central Regulatory Areas have been derived from acoustic surveys conducted during April 1980 and March and April of 1981 and 1983 in the Shelikof Strait region (Table 1).

TABLE 1.—POLLOCK BIOMASS (MT) IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA AS DERIVED FROM ACOUSTIC SURVEYS CONDUCTED IN 1980, 1981, AND 1983

Year	Date	Biomass estimates
1980	April	709,000
1981	March [1]	3,764,000
	April	2,060,000
1983	March [2]	2,454,000
	April	813,000

[1] Average of two March 1981 surveys of 4,380,000 mt and 3,147,900 mt.
[2] Average of two March 1983 surveys of 2,548,000 mt and 2,360,000 mt.

The lower biomass figures estimated for April 1980 and 1983 are believed to be a result of the dispersion of stocks following their spawning, which commences in late January and mostly concludes by late March. The relatively large estimate for April 1981 probably resulted from a delay in the dispersion of the spawning stock.

The estimates obtained from the acoustic surveys conducted in March of each year are considered to represent the pollock biomass most accurately and are therefore used as the best available information. The estimates apply to the combined area of the Western and Central Areas, because only negligible quantities of pollock were found outside of Shelikof Strait during the spawning period. The March 1983 figure is smaller than the March 1981 figure by 1,310,000 mt; however, this difference between the 1981 and 1983 mean biomass estimates is not statistically significant because the variances of the acoustic survey estimates are large and overlap.

The stock abundance in 1984 is uncertain, because it is largely dependent on the magnitude of the 1980 year class for which data concerning its abundance are conflicting. Fish from the 1980 year class are now four years old. Four-year-old fish have been important contributors to the fishery since 1979. At age three, however, the 1980 year class contributed only 3%–4% of the catch in the 1983 Shelikof Strait fishery. A similar percentage was found for the 1983 research survey in Shelikof Strait. In contrast, the preliminary age data from the 1983 foreign fishery showed the 1980 year class to make up 15.3% of the catch by numbers. This value is similar to the value observed for the 1977–1979 classes that are known to be relatively strong.

Due to the uncertainty of the strength of the 1980 year class, NMFS scientists

developed an age structure model to forecast future levels of exploitable biomass given various levels of OY and future recruitment patterns. The forecasting model was run to simulate the pollock population for four years (1983–1986) with four different recruitment scenarios (ranging from high to low recruitment levels) and five OY options ranging from 300,000 mt to 500,000 mt.

The results of the recruitment forecasts suggested that a decline in the pollock exploitable biomass can be expected unless recruitment continues at high levels (three billion fish annually) and that projected levels of biomass are more dependent on the recruitment levels than the projected catches. Based on the projections derived from the forecast model, NMFS scientists concluded that the ASP of pollock for 1984 is at least 400,000 mt and could be as high as 500,000 mt, although an 80% probability exists that the true value of average ASP is less than 500,000 mt. This latter figure, therefore, would not likely be sustainable over a number of years.

Given the uncertainty of the recruitment level of four-year-old pollock into the 1984 fishery and after considering various options for OY, the Council has opted for a fairly conservative OY of 400,000 mt. This OY level will provide a sufficient amount of pollock for the U.S. pollock fishery and still allow for a pollock harvest in the foreign target fishery comparable to that taken in 1983.

The Secretary agrees with the Council's determination that the current needs of the U.S. pollock joint-venture fishery and the abundance of the resource warrant implementation of the increased OY in the combined Western and Central Regulatory Areas under § 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). He has taken this action to avoid severe economic disruption to the domestic fishery that would occur if this opportunity to harvest the available pollock resource were not made available. This emergency rule will be effective for 90 days after its publication in the **Federal Register** and may be repromulgated for a subsequent 90 days if the need remains.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. This action will avoid the disruption that would otherwise occur in the developing domestic pollock fishery.

The Assistant Administrator also finds that, because achieving the existing pollock OY is imminent in the Central Area, the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment or to delay for 30 days the effective date of the rule under the provisions of 5 U.S.C. 553 (b) and (d). However, comments are invited for a period of 30 days following the effective date of this rule. Comments should be sent to the Director, Alaska Region (Regional Director) at the above address.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the Alaska Coastal Management Program. This determination has been submitted for review by the responsible State agency.

The Assistant Administrator prepared an environmental assessment/final regulatory flexibility analysis (EA/FRFA) of this action and concluded that no significant impact on the human environment will result. A copy of the EA/FRFA is available also from the Regional Director.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. He made his decision on the basis of the cost/benefit analysis contained in the EA/FRFA. This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in Section 8(a)(1) of that order. This rule will have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This determination is also based on the analysis contained in the EA/FRFA.

In summary, the cost/benefit analysis shows that increasing the combined pollock OY for the Western and Central Areas from 200,000 mt to 400,000 mt will provide harvest opportunity consistent with the known current abundance of the stock. A certain number of Pacific halibut, king crab, Tanner crab, and salmon are likely to be caught incidentally with an increased pollock harvest in both the foreign directed fishery and the U.S. pollock joint-venture fishery. These species are of major commercial importance to U.S. fishermen who target on them. Assuming no change in the size of the U.S. fleets that targeted on each of these species during 1982–1983 in the Western and Central Areas (halibut=2,295 vessels, crab=360 vessels, and salmon=600 vessels), and provided that all of the incidentally-caught halibut, crab, and salmon would have been caught in the domestic target fisheries, the per-boat-present-value loss due to the increase in pollock OY under this rule would be as follows: Pacific halibut—$508, king crab—$20, Tanner crab—$17, chinook salmon—$281, and chum salmon—$9. These estimates assume a 10 percent discount rate and were based on the 1983 incidental catch rates of prohibited species in both the foreign and domestic pollock fisheries. The short-term benefit to the 40 U.S. vessels that are anticipated to participate in the 1984 joint-venture pollock fishery, however, is $183,778 per vessel. In addition, the 50,630-mt increase in TALFF associated with the final rule would generate an additional $1,417,640 in foreign fees paid to the U.S. Government.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: March 20, 1984.

Carmen Blondin,

Deputy Assistant Administrator for Fisheries Resources, Department of Commerce.

For the reason set out in the preamble, 50 CFR Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, Table 1, the entries for pollock in the Western and Central Regulatory Areas are removed and a new single entry combining the Western and Central Regulatory Areas is added to read as follows:

§ 672.20 Optimum Yield.

* * * * *

TABLE 1.—Initial (as of January 1, each year) Optimum Yield (OY), Domestic Annual Harvest (DAH), Domestic Annual Processing (DAP), Joint-Venture Processing (JVP), Reserve, and Total Allowable Level of Foreign Fishing (TALFF) (metric tons).

Species	Species code	Areas	OY	DAH	DAP	JVP	Reserve	TALFF
•	•	•	•	•	•	•	•	•
Pollock	701	Western/Central	400,000	219,300	9,000	210,300	80,000	100,700
•	•	•	•	•	•	•	•	•

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[FR Doc. 84-7886 Filed 3-20-84; 4:59 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 56
Friday, March 23, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Siting Procedures

AGENCY: Administrative Conference of the United States; Committee on Regulation.

ACTION: Request for comments.

SUMMARY: The Administrative Conference Committee on Regulation is considering a tentative recommendation on the subject of "public regulation of siting of industrial development projects". This topic includes federal and state agency procedures involved in the processes used to regulate the selection and preparation of sites chosen for large-scale industrial projects where significant environmental effects are likely. Views and supporting factual material are requested to be submitted to aid the Committee on its consideration.

DATES: *Comment Deadline:* April 10, 1984. One copy is sufficient. Comments received after the deadline will be considered to the extent feasible.

ADDRESSES: *Send comments to:* Willliam C. Bush, Administrative Conference of the United States, 2129 L Street, NW., Suite 500, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037; telephone: (202) 254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference Committee on Regulation is working toward development of a recommendation concerning federal and state agency procedures in the regulation of siting of industrial development projects. The Committee is particularly interested in finding ways to improve cooperation among the many agencies that may be involved in a siting process, with a view to reducing delay and eliminating duplicative regulatory procedures. The Committee's tentative recommendation, reproduced below, is based largely on a report by our consultant Professor Gregory L. Ogden of Pepperdine University School of Law. Copies of Professor Ogden's report, *Second Draft Report on Public Regulation of Siting of Industrial Development Projects* (September 1983), are available on request.

Proposal on Which Comments Are Requested

Tentative Recommendation

Public Regulation of Siting of Industrial Development Projects

March 30, 1984.

Major industrial development projects often create significant environmental effects and require permit approvals and preparation of environmental impact statements by agencies enforcing legislation such as the National Environmental Policy Act (NEPA) and the Clean Air Act. When many agencies at different levels of government must approve a project proposal, the complexity and uncertainty of the process can be reduced through an appropriate degree of interagency coordination and the use of adequate procedures.[1]

Intgoragency Coordination

Many federal, state, and local agencies must review environmentally sensitive industrial projects. Project developers need assistance in determining which agencies must be consulted for project approval, what permits are required, what applications must be completed, and what information is needed for each application. Developers' informational needs could be met by a clearinghouse established at the level of government closest to project review.

When relatively few agencies must consider a project application, agreements can be worked out among the agencies to coordinate agency review or to resolve jurisdictional or interpretation conflicts. These agreements can facilitate more timely project review, reduce overlapping review, decrease uncertainty, and provide for joint state-federal agency review of a project.

When many agencies with different responsibilties must approve a project proposal there is a greater need for coordination because of a variety of perspectives due to distinct agency missions and different governing statutes. Selection of a coordinating agency early in the application process is desirable to facilitate the permitting process. The coordinating agency can facilitate the exchange of information, can encourage more efficient review, and can reduce mistrust by scheduling regular face-to-face meetings between the project developer, governmental agencies, and residents of the community in which a project is to be located. The coordinating agency often will have permitting duties but may be a non-permitting body such as the Colorado Joint Review Project.[2] To be effective a non-permitting body must be supported by key governmental leaders in the jurisdiction. The coordinating agency may be a body different from the

[1] Congress requested that the Administrative Conference (ACUS) work cooperatively with the Advisory Committee on Intergovernmental Relations (ACIR) toward resolving regulatory conflicts and overlap among federal, state, and local agencies. ACUS and ACIR were specifically asked to address the issue of streamlining the permit process based on approaches that lead to improved intergovernmental cooperation. Congress was concerned with the complexity and costs associated with the permit process in the review of energy and port development projects. Congress expects ACIR and ACUS to work together to assess alternative ways to resolve intergovernmental problems and conflicts in permitting. In conducting this joint effort, the agencies have sought and will continue to seek the input of business, government, and environmental experts. House Committee on Appropriations, Report on Treasury, Postal Service, and General Government Appropriation Bill, 1983, H.R. Doc. No. 654, 97th Cong., 2nd Sess. 39 (1982). ACIR has cooperated in the development of this recommendation, but has not formally adopted the recommendation at this time.

[2] The Colorado Joint Review Project (JRP) is an innovative new approach to coordinating governmental review of energy projects. Originally part of the Colorado Department of Natural Resources, it is now a wholly separate body, fully supported by the Governor and other key state officials. The JRP has no permitting responsibilities but performs a coordinating role and operates on a voluntary basis. A developer must choose to have its project application accepted into the JRP process. The JRP works with the developer, the public, and all levels of government to identify affected agencies and permit processes, to determine what environmental and other issues must be addressed, to clarify what information is necessary, and to establish a decision schedule for all governmental review processes that must be completed for that project. The JRP sponsors periodic meetings with all affected actors and otherwise seeks to ensure a smoother and more organized review.

clearinghouse agency or the lead agency for EIS preparation.

Public Participation

Citizens of the community in which a project is to be sited have a strong interest in the project and will seek information about the project particularly when it has major environmental effects. Environmental groups and other members of the public also have similar interests. Severely limiting legitimate public participation can unnecessarily increase opposition to a project and can lead to lawsuits to stop a project. Facilitating public participation can reduce fears and concerns, can mitigate the not-in-my-backyard attitude of a community, and can lessen public mistrust of the developer and government. The public can also contribute useful information to a project. Developers can allay concerns by sharing information about their project with the public and can work more effectively by cooperating with the community in which a project is to be sited. Public participation at an early stage of agency review ensures that changes can be made before substantial developer funds are committed to a specific project design. Public participation is enhanced when hearings are held in the project community and when the agency designates a public advisor to help citizens understand the process.

Environmental Review

Under the provisions of NEPA and similar state legislation, environmental impact statements often must be prepared by agencies prior to approving a project application. When both federal and state EIS statutes apply to a project application, preparing a joint statement can reduce duplication and overlap. The approach taken in the regulations of the Council on Environmental Quality—in which a "lead agency" is designated to coordinate EIS preparation—provides an excellent mode adaptable even when there is no major federal interest in a project. Early identification of environmental impacts through the "scoping of issues" process facilities NEPA compliance and allows project changes by a developer when it is least expensive. Identifying commenting agencies early in the process ensures that the concerns of every agency are addressed in the EIS. Face-to-face meetings of all participants in the EIS process are useful for identifying impacts, exchanging information, and getting to know the other participants in the process and their concerns. Negotiating a decision schedule with the project proponent and other agencies in which a completion date for each step of the process is agreed upon can ensure a more timely EIS process. The lead agency can play a major coordinating role by identifying other agencies, setting up meetings, organizing the stages of EIS preparation, and negotiating decision schedules for each stage.

Permit Approvals

Developers must file applications in which they provide information about their project. Developers and agencies may disagree as to what information is required and how much information is adequate for a complete applicaiton. There may also be uncertainty over procedural and substantive requirements that must be met. Agencies can assist developers by specifying in advance the information needed for an application to be complete and the standards that must be met for a permit to be approved. The agency can clarify what is required by holding pre-application meetings with developers. The agency can resolve informational, procedural, and substantive problems by holding post-application meetings with the developer. Agencies need adequate information and full cooperation from developers to make permitting or compliance decisions. Duplication, overlap, and paperwork can be reduced if agencies with joint permit responsibilities for a project adopt common application requirements, standardized information requirements, and common procedures such as joint hearings. Sharing of staff and budgetary resources can make these approaches easier to implement.

Time Limits for Decisionmaking

Legitimate concerns are expressed by developers and others that too much time is required by agencies to review and permit major industrial projects. Legislatures have reacted by passing time limit statutes that mandate an agency's preparation of an EIS or approval of a permit application within a set period of time. Agencies often have the most knowledge about how long a particular decision can take and thus can specify and appropriate time limit. The legislature must be sensitive to the agency's needs by allowing sufficient time in the statute to complete the decision, by giving the agency adequate resources, and by allowing flexibility to extend the deadline when the agency has good cause. Agency compliance with time limit statutes can be monitored if the legislature requires agencies periodically to report their performance under the statute and to identify any problems encountered in meeting the time limits.

An alternative to mandated statutory time limits is a requirement that agencies establish decision schedules which set deadlines for the completion of specific actions (e.g., comment periods, drafting of required agency reports) within each phase of project review. A decision schedule is desirable because it is individualized for each project and because it requires the developer and all responsible agencies to make commitments to meet the agreed schedule. Commitment by the developer is crucial since developers can speed up or slow down development of a project depending upon internal or external economic considerations. Also some agencies have no commitment to timeliness; if agencies are required to agree to a schedule, they are more likely to make that commitment.

Recommendation

These recommendations are directed primarily to federal and state agencies that have permitting and environmental review responsibilities. In addition, many of the time limit recommendations are directed to Congress and state legislatures. To the extent statutory changes are necessary to implement the other recommendations, they are also directed to the appropriate legislative bodies.[3]

A. Interagency Coordination

1. Clearinghouses should be established at the level of government closest to review of a particular project to provide information to project developers about applications, agencies to be consulted, and permitting requirements.

2. Agencies should make agreements to coordinate review of a particular project, or to resolve jurisdictional or interpretation conflicts.

3. A coordinating agency should be selected to coordinate governmental review of projects when many agencies are involved.

4. The coordinating agency should schedule regular face-to-face meetings between developers, agencies, and the public.

5. The Colorado Joint Review Project approach (note 2, *supra*) in which a nonpermitting agency coordinates project review by all agencies should be considered.

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[3] See statement regarding joint ACUS–ACIR effort in note 1.

B. Public Participation [4]

1. Agencies with permitting and environmental review responsibilities should take into account in their decisionmaking the views of public participants, including citizens of the community in which a project is to be sited.

2. To make public participation more meaningful, agencies should develop procedures such as holding local hearings and appointing public advisors.

3. Agencies should encourage developers to proivde information to the community about a project application and to be responsive to legitimate community concerns.

4. Agencies should ensure that public participation occurs at an early stage of project review and developer planning so that changes in project design can be made before substantial funds are committed to a specific project design.

C. Environmental Review

1. The Council on Environmental Quality Regulations approach in which a lead agency is designated to coordinate EIS preparation is recommended even when there is no significant federal involvement in a project.[5]

2. When appropriate, agencies should agree to prepare joint state-federal EIS statements.

3. The lead agency should identify commenting agencies and should schedule face-to-face meetings of all participants in the EIS process.

4. The lead agency should utilize the scoping of issues process to identify environmental impacts early in the process before a draft statement is prepared.

5. The lead agency should negotiate decision schedules with the developers and all affected agencies, setting deadlines for completion of scoping, draft statement preparation and comments, final statement preparation and comments, and issuance of a statement.

D. Permit Approvals

1. Whenever feasible permitting agencies should specify in advance what informational, procedural, and substantive requirements will apply to a particular permit application.

2. Agencies should be available for pre-application meetings with the project developer to clarify informational, procedural, and substantive requirements.

3. Agencies should hold post-applicaiton meetings with developers to discuss procedural, informational, and substantive deficiencies in an application, and should promptly advise developers of any deficiences throughout the pendency of the permit process.

4. Agencies should make clear to developers that the developers must supply necessary information in an application and must cooperate in the permitting process.

5. Whenever feasible, agencies with joint permit responsibility for a project should be encouraged to reduce duplication and paperwork by accepting common applications, by standardizing informational requirements, and by adopting common procedures such as joint hearings.

E. Time Limits for Decisionmaking [6]

1. Agencies should negotiate a decision schedule with the project developer and all affected agencies within existing statutory deadlines. The schedule should set a deadline for the completion of specific stages of project review. The schedule should be contained in an agreements in which the developer and the agencies make a commitment to meet the deadlines.

2. If a legislature [7] adopts a time limit statute, it is preferable that the time limit be established by the agency itself, rather then by statute.

3. A legislatively mandated time limit should allow an appropriate amount of time for the type of decision involved, and the agency should have the option of extending the time limit for good cause explicitly stated.

4. Legislatures should provide adequate resources for agencies to meet time limit requirements and should periodically review agency compliance with time limits.

List of Subjects in 1 CFR Ch. III

Administrative practice and procedure, Siting.

Dated: March 20, 1984.

Richard K. Berg,

General Counsel.

[FR Doc. 84-7912 Filed 3-22-84; 8:45 am]

BILLING CODE 6175-01-M

[4] This part does not overrule or supersede Recommendation 71-6: Public Participation in Administrative Proceedings [1 CFR 305.71-6).

[5] The Conference is not suggesting that an EIS be prepared when none is required by law, but only that, if environmental review is to involve several agencies, a lead agency be selected.

[6] See generally, Recommendation 78-3: Time Limits on Agency Action [1 CFR 305.78-3), which is consistent with this part.

[7] As used here, "legislature" includes Congress, as well as state, regional, and local legislative bodies.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWP-9]

Proposed Designation of Transition Area; Show Low Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate 700 and 1200 foot transition areas at Show Low, Arizona, to provide protection for aircraft executing a new instrument approach procedure (NDB-A) to the Show Low Municipal Airport and establish transition routes between the Nondirectional Radio Beacon (NDB) and adjacent VOR airways.

DATES: Comments must be received on or before May 9, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

The official docket may be examined in the Office of Western-Pacific Regional Counsel, Room 6W14 at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Huntington, Airspace and Procedures Branch, 15000 Aviation Boulevard, Lawndale, California 90261, (213) 536-6182.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those

comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83–AWP–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Show Low, Arizona, 700 foot and 1200 foot transition areas. This action will provide additional controlled airspace to accommodate aircraft executing the NDB–A approach procedure to the Show Low Municipal Airport and for controlled airspace between adjacent VOR Airway 190 and the Show Low NDB.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following:

Show Low, Arizona (New)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Show Low Municipal Airport (latitude 34°15'55" N., longitude 109°59'55" W.) and within 3.5 miles each side of the Show Low NDB (latitude 34°16'04.5" N., longitude 110°00'24.0" W.) 038T/025M bearing, extending from the 6.5-mile radius area to 10 miles northeast of the NDB; that airspace extending upward from 1200 feet above the surface within 9.5 miles northwest and 5 miles southeast of the Show Low NDB 038T/025M bearing extending from the NDB 18.5 miles northeast and within 5 miles each side of the Show Low NDB 337T/324M bearing extending from the NDB to the north edge of V190.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Los Angeles, California on March 16, 1984.

Richard L. Devereaux,

Acting Director, Western-Pacific Region.

[FR Doc. 84–7793 Filed 3–22–84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84–AGL–2]

Proposed Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a new controlled airspace area near New Lexington, Ohio, to accommodate a new VOR/DME Runway 26 instrument approach procedure into Perry County Airport. This designation is based on a request from the Perry County Airport officials to provide that facility with instrument approach capability.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before May 11, 1984.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL–7, Attention: Rules Docket Clerk, Docket No. 84–AGL–2, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedure requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AGL–2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426–8058.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new 700-foot controlled airspace transition area near New Lexington, Ohio.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70–3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

New Lexington, OH

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Perry County Airport (lat. 39°41'29" N., long. 82°11'52" W.).

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plains, Illinois, on March 14, 1984.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 84–7799 Filed 3–22–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regs. Nos. 4 and 16]

Federal Old-Age, Survivors and Disability Insurance, Supplemental Security Income for the Aged, Blind, and Disabled; Changes of Time or Place of Hearings Before Administrative Law Judges, Notice of Hearing, and Dismissal of Requests for Hearing When Claimants Fail To Appear

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Social Security Administration (SSA) proposes to amend its regulations governing hearings before administrative law judges (ALJs) which are requested by claimants under titles II and XVI of the Social Security Act. These changes will promote greater efficiency in the administration of the ALJ hearing process, and will also provide clearer guidance, and in some respects greater latitude, to claimants and their representatives with regard to several important aspects of that process.

Specifically, the proposed regulations comply with the recent order of the U.S. District Court for the District of Colorado in the case of *Pulido* v. *Heckler*, which requires the Secretary to establish regulatory standards for determining whether there is good cause for changing the time or place of an ALJ hearing at a claimant's request. The proposed regulations also extend from 10 days to 20 days the minimum time period for notifying the claimant and his or her representative of the time and place of the hearing. Finally, the proposed regulations clarify that an ALJ may dismiss a request for hearing without further contact with the claimant or his or her representative when the claimant and the representative fail to appear at a scheduled hearing and the ALJ has not found good cause for changing the time and place of the hearing.

We emphasize that the proposed changes pertain only to claimant hearings before ALJs under titles II and XVI, and will not affect any other proceedings conducted by SSA.

DATE: Your comments will be considered if we receive them no later than May 22, 1984.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203. They may also be delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Eugene Larkin, Division of Hearing Procedures, Office of Policy and Procedures—Office of Hearings and Appeals, Room 101, Webb Building, P.O. Box 3200, Arlington, Virginia 22203, telephone (703) 235–8545.

SUPPLEMENTARY INFORMATION:

Background

The ALJ has the authority under existing regulations to set the time and place for the hearing and send the notice of hearing (20 CFR 404.936 and 416.1436). (Under our operating procedures, the place of hearing will be one of the hearing sites established for use by the hearing offices unless the claimant is

confined to his or her residence or an institution. In these instances, consideration is given to holding the hearing at the claimant's residence or in the institution.) The regulations at §§ 404.936 and 416.1436 require the ALJ to send a written notice of the time and place of the hearing to the claimant at least 10 days before the scheduled hearing.

If the claimant or representative objects to the time or place of the scheduled hearing, he or she must notify the ALJ at the earliest opportunity. The ALJ may then change the time or place for the hearing if good cause is shown. Under the regulations at §§ 404.957 and 416.1457, the ALJ may dismiss a request for hearing if neither the claimant nor his or her representative appears at the scheduled hearing and: (1) before the time set for the hearing, the claimant does not give the ALJ a good reason for changing the time or place of the scheduled hearing; or (2) within 10 days after the ALJ sends a notice requesting that a reason for not appearing be provided, the claimant fails to provide a good reason.

The plaintiffs and the District Court in *Pulido* expressed concern that our existing regulations do not set forth standards to be applied or factors to be considered by our ALJs in determining whether there is good cause for changing the time or place of hearings. As noted in the Summary above, the Court in that case has specifically ordered that we amend our regulations to provide such standards.

A second, related criticism of our existing regulations voiced by claimants and their representatives is that the requirement that the ALJ notify the claimant at least 10 days in advance of the time and place of the hearing in many situations does not permit the claimant and his or her representative enough time to make necessary arrangements and fully prepare for the ALJ hearing. These indivduals have urged that this requirement be changed to provide a longer period of notice before the date of the hearing.

Finally, we are proposing a clarification in the regulations governing dismissal of ALJ hearing requests, to more explicitly state that an ALJ may dismiss the hearing request without further contact with the claimant when: (1) The claimant fails to appear at the hearing, (2) the claimant has been notified in advance of the hearing that failure to appear without good cause can result in immediate dismissal of the hearing request, and (3) the ALJ has not found good cause for a change in the time or place of the hearing.

Proposed changes

In order to enable the ALJs to schedule hearings as efficiently as possible and to provide better service to the public as a whole, and in part to respond to the *Pulido* court, we propose to amend our regulations: (1) To require that the notice of hearing must be sent to the claimant at least *20 days* prior to the date of the hearing, rather than 10 days as provided in existing regulations; (2) to revise the notice of hearing so that it provides more information to claimants, particularly with regard to changes in time and place of hearings and dismissal of hearing requests for failure to appear; (3) to establish standards to be applied and factors to be considered in determining whether there is good cause for granting a request to change the time or place of an ALJ hearing, and to provide examples of situations which constitute good cause for such changes; and (4) to provide explicitly that the ALJs may dismiss requests for hearing without further contact with the claimant or his or her representative when the claimant and the representative fail to appear at the scheduled hearing and the ALJ has not found good cause for a change in the time or place of the hearing.

A. Proposed Changes Regarding Hearing Notices

In order to better ensure that claimants are given sufficient advance notice of the ALJ hearing so that they can decide about obtaining representation and make necessary plans to attend the hearing, we propose to revise the regulations at §§ 404.938 and 416.1438, Notice of a hearing before an administrative law judge, to provide that the notice of hearing will be provided to the claimant at least *20 days* prior to the date of the hearing. (Under existing regulations, a notice setting the time and place of the hearing and a statement of the issues must be provided to the claimant at least *10 days* before the hearing.)

We also propose to add to §§ 404.938 and 416.1438 a sentence explaining that the notice of hearing will contain information about requesting changes in time and place of scheduled hearings, and about the procedure for dismissal of a request for hearing when the claimant and his or her representative fail to appear at his or her scheduled hearing without good cause. (The proposed changes in those provisions are discussed below.) The notice of hearing, of course, could also include other information not specifically mentioned in §§ 404.938 and 416.1438, as appropriate. For example, we intend to add to our hearing notices a reminder that, in accordance with existing regulations at 20 CFR §§ 404.935 and 416.1435, the claimant should, if possible, submit any additional evidence that he or she wishes to have considered by the ALJ *before* the date of the hearing, to facilitate the ALJ's consideration of his or her case.

B. Standards for Determining Good Cause for Changing the Time or Place of an ALJ Hearing

We propose to amend the regulations at §§ 404.936 and 416.1436, Time and place for a hearing before an administrative law judge, to set forth the standards to be applied and the factors to be considered by an ALJ in determining whether there is good cause for changing the time or place of a hearing at a claimant's request.

The proposed regulations provide situations in which good cause *will* be found when the reason given by the claimant or representative is supported by the facts. The proposed regulations also provide examples of when good cause *may* be found where the reason given by the claimant or representative is supported by the facts and granting the request would not adversely impact on the orderly administration of the hearing process. Examples of reasons the claimant might provide include illness or other emergency involving the claimant or representative, hospitalization, situations involving the unavailability of a representative or transportation, or the inability of a witness to attend the scheduled hearing. Factors which could affect the orderly administration of the hearing process include the impact of the change on the processing of other scheduled hearings, delay which might occur in rescheduling the claimant's hearing if the request is granted (for example, when the claimant's hearing must be held at a remote hearing site which the ALJ visits only infrequently), and whether any prior changes were granted to the claimant.

C. Dismissals of ALJ Hearing Requests When the Claimant Fails to Appear

The large growth in the number of ALJ hearing requests in recent years has been accompanied in many ALJ hearing offices by a corresponding increase in the number of cases in which claimants, without good cause, fail to appear at their scheduled hearings. When a claimant, without good cause, fails to appear at a scheduled hearing, the time and effort of the ALJ and hearing office support staff in preparing for the hearing have essentially been wasted.

Meanwhile, in almost any ALJ hearing office, a large number of hearing requests are pending and could have been given some attention in the time needlessly used to prepare for the "no-show" case. We are concerned, therefore, that the failure of some claimants, without good cause, to attend their scheduled hearings adversely affects the overall timeliness of our service to the public.

Our existing regulations governing dismissal of hearing requests authorize the ALJ to send a separate notice to the claimant when he or she fails to appear at the hearing, asking the claimant to provide a good reason for his or her failure to appear. Alternatively, we believe that the existing regulations also permit the ALJ to notify the claimant before the hearing that failure to appear without good cause can result in an immediate dismissal, so that a separate notice need not be sent after the claimant does not appear. The latter procedure allows the ALJ to clear the case from his or her docket more readily and thus facilitates the processing of other pending hearing requests. For this reason, we believe it is in may instances the better procedure, assuming that the claimant has a fair opportunity to request that any dismissal be vacated upon a showing of good cause, which is assured in all dismissal cases by existing regulations at 20 CFR 404.960 and 416.1460, Vacating a dismissal of a hearing request.

Accordingly, we are proposing to clarify paragraph (b) of §§ 404.957 and 416.1457 so that the two alternative procedures permitted by existing regulations are more explicitly set out in the regulations. We do not believe that the proposed clarification represents a substantive departure from the existing regulations governing dismissals of hearing requests, and emphasize that the ALJs will continue to have the discretion to use either of the alternative procedures to assure that the claimant is clearly notified about the possible consequences of failiure to appear at his or her scheduled hearing. Our dismissal notices will also continue to advise the claimant, as they currently do, that he or she may, within 60 days after the date the dismissal nctice is received, request that the dismissal be vacated for good cause.

Regulatory Procedures

Executive Order 12291

The proposed regulations have been reviewed under E.O. 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

The proposed regulations impose no new reporting/recordkeeping requirements. Paragraph (b) of §§ 404.936 and 416.1436 contains existing requirements which have been approved by OMB. The optional form which can be used for this information collection requirement is the "Appearance at Hearing" form (OMB No. 0960–0280).

Regulatory Flexibility Act

We certify in accorrdance with the Regulatory Flexibility Act that the proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Authority

The proposed regulations are issued under the authority contained in Sections 205, 1102, and 1631 of the Social Security Act, as amended; 49 Stat. 647, 86 Stat. 1475 as amended; 42 U.S.C. 405, 1302, and 1383.

(Catalog of Federal Domestic Assistance Program Nos. 13.802, Social Security Disability Insurance; 13.803, Social Security Retirement Insurance; 13.805, Social Security Survivors' Insurance, and 13.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, death benefits, Disability benefits, Old-Age Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental security income (SSI).

Dated: January 26, 1984.

Martha A. McSteen

Acting Commissioner of Social Security.

Approved: February 25, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

For the reasons set forth above, Part 404 and Part 416 of Chapter 3 of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Part 404, Subpart J is revised to read as follows:

Authority: Sec. 205, and 1102 of the Social Security Act, sec. 5 of Reorganization Plan No. 1 of 1953, 53 Stat. 1368, 49 Stat. 647 (42 U.S.C. 405 and 1302, unless otherwise noted).

2. In § 404.936, paragraph (b) is revised, and new paragraphs (c) and (d) are added, to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

* * * * *

(b) If you object to the time or place of the hearing, you must notify the administrative law judge in writing at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held (OMB approval No. 0960–0280). The administrative law judge will change the time or place of the hearing if you have good cause, as determined under paragraphs (c) and (d) of this section.

(c) The administrative law judge will find good cause for changing the time or place of your scheduled hearing if your reason is one of the following circumstances which is supported by the facts:

(1) You or your representative are unable to attend or to travel to the scheduled hearing because of a serious medical condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing.

(d) In determining whether good cause exists in circumstances other than those set out in paragraph (c) of this section, the administrative law judge will consider your reason for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in the time or place of the hearing, include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your recently appointed representative needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(4) A witness would be unavailable to attend the scheduled hearing;

(5) The unavailability of transportation prevents you from travelling to the scheduled hearing; or

(6) You live closer to another hearing site.

3. Section 404.938 is revised to read as follows:

§ 404.938 Notice of a hearing before an administrative law judge.

After the administrative law judge sets the time and place of the hearing, notice of the hearing will be mailed to the parties at their last known address, or given by personal service, unless you have indicated in writing that you do not wish to receive this notice. The notice will be mailed or served at least 20 days before the hearing. The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the ALJ may dismiss your hearing request, and other information about the scheduling and conduct of your hearing.

4. In § 404.957, the introductory text of the section is set out for the convenience of the reader and paragraph (b) is revised to read as follows:

§ 404.957 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for hearing under any of the following conditions:

* * * * *

(b) Neither you nor the person you designate to act as your representative appears at the time and place set for the hearing and—

(1) Before the time set for the hearing you did not give the administrative law judge a good reason why you or your representative could not appear;

(2) You have been notified before the time set for the hearing that if you fail to appear and good cause has not been found by the administrative law judge for a change in the time or place of the hearing, your hearing request may be dismissed without further contact with you; or

(3) Within 10 days after the administrative law judge mails you a notice asking why you did not appear, you do not give a good reason for the failure to appear.

* * * * *

PART 416—[AMENDED]

5. The authority citation for Part 416, Subpart N is revised to read as follows:

Authority: Sec 1102, 1631, and 1633 of the Social Security Act, 49 Stat. 647, 86 Stat. 1475 and 1478, (42 U.S.C. 1302, 1383, and 1383b).

6. In § 416.1436, paragraph (b) is revised, and new paragraphs (c) and (d) are added, to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

* * * * *

(b) If you object to the time or place of the hearing, you must notify the administrative law judge in writing at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held (OMB approval No. 0960–0280). The administrative law judge will change the time or place of the hearing if you have good cause, as determined under paragraphs (c) and (d) of this section.

(c) The administrative law judge will find good cause for changing the time or place of your scheduled hearing if your reason is one of the following circumstances which is supported by the facts:

(1) You or your representative are unable to attend or to travel to the scheduled hearing because of a serious medical condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing.

(d) In determining whether good cause exists in circumstances other than those set out in paragraph (c) of this section, the administrative law judge will consider your reason for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in the time or place of the hearing, include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your recently appointed representative needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(4) A witness would be unavailable to attend the scheduled hearing;

(5) The unavailability of transportation prevents you from travelling to the scheduled hearing; or

(6) You live closer to another hearing site.

7. Section 416.1438 is revised to read as follows:

§ 416.1438 Notice of a hearing before an administrative law judge.

After the administrative law judge sets the time and place of the hearing, notice of the hearing will be mailed to the parties at their last known address, or given by personal service, unless you have indicated in writing that you do not wish to receive this notice. The notice will be mailed or served at least 20 days before the hearing. The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the ALJ may dismiss your hearing request, and other information about the scheduling and conduct of your hearing.

8. In § 416.1457, the introductory text of the section is set out for the convenience of the reader and paragraph (b) is revised to read as follows:

§ 416.1457 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for hearing under any of the following conditions:

* * * * *

(b) Neither you nor the person you designate to act as your representative appears at the time and place set for the hearing and—

(1) Before the time set for the hearing you did not give the administrative law judge a good reason why you or your representative could not appear;

(2) You have been notified before the time set for the hearing that if you fail to appear and good cause has not been found by the administrative law judge for a change in the time or place of the hearing, your hearing request may be dismissed without further contact with you; or

(3) Within 10 days after the administrative law judge mails you a notice asking why you did not appear, you do not give a good reason for the failure to appear.

* * * * *

[FR Doc. 84-7946 Filed 3-22-84; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Texas to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed program amendment consists of proposed provisions to implement a blaster training, examination and certification program as required by the Federal regulations at 30 CFR Part 850.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments must be received on or before 4:00 p.m. April 23, 1984, to be considered.

If requested, a public hearing on the proposed modifications will be held on April 18, 1984, beginning at 10:00 a.m. at the location shown below under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103.

If a public hearing is held its location will be at: The Austin Marriott Hotel, 6121 I–35 North at U.S. 290, Austin, Texas 78752.

See "SUPPLEMENTARY INFORMATION" for addresses where copies of the Texas program amendment and administrative record on the Texas program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Tulsa Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Texas program amendment, the Texas program and the administrative record on the Texas program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone (918) 581–7927

Office of Surface Mining, 1100 "L" Street, N.W., Room 5315, Washington, D.C. 20240, Telephone: (202) 343–7896

Surface Mining Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711, Telephone: (512) 475–8715

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in the support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Tulsa, Oklahoma, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business April 5, 1984. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

Background

On July 29, 1979, the Secretary of the Interior received a proposed regulatory program from the State of Texas. On February 16, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Texas program (45 FR 12998, February 27, 1980).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the condition of approval of the Texas program, can be found in the February 27, 1980 Federal Register.

Proposed Amendment

On March 1, 1984, the State of Texas submitted to OSM an amendment to its approved permanent regulatory program. The proposed amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of proposed regulations: providing general requirements for use of explosives; providing authority for a blaster certification and training program; governing the standards for certification of blasters; providing authority and procedures for suspension and revocation of certification; providing administrative procedures relating to appeals; defining certain terms used throughout the proposed blaster program; specifying training requirements for blasters; and training outline for blaster certification. The Texas regulation cites are Sections 051.07.04.357 and 051.07.04.526 (use of explosives: general requirements) and Subchapter M, Part 850 (training, examination, and certification of blasters).

At the time of the Secretary's approval of the Texas program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the February 27, 1980 **Federal Register** notice announcing conditional approval of the Texas program, the Secretary specified that Texas would be required to adopt such provisions following promulgation of the Federal standards.

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). OSM is seeking comment on whether the Texas proposed modifications are no less effective than the requirements of the revised Federal standards and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the program modification submitted by Texas for OSM's consideration is available for public review at the addresses listed under "**ADDRESSES.**"

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: 30 U.S.C. 1253.

Dated: March 13, 1984.

James R. Harris,

Director, Office of Surface Mining.

[FR Doc. 84-7778 Filed 3-22-84; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 78

Waiver of Federal Agency Responsibilities Under the National Historic Preservation Act

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: These proposed rules establish procedures under which the requirements of Section 110 of the National Historic Preservation Act of 1966, as amended ("Act"), concerning Federal agency historic preservation responsibilities may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the National security. Subsection 110(j) of the Act authorizes the Secretary of the Interior to promulgate regulations implementing waiver procedures. The intended effect of this action is to provide for a process whereby the historic preservation responsibilities of Federal agencies can be modified during an emergency.

DATES: Comments must be received on or before May 22, 1984.

ADDRESS: Send comments to: Associate Director, Cultural Resources, National Park Service, United States Department of the Interior, Washington, D.C. 20240, (202–343–7625).

FOR FURTHER INFORMATION CONTACT: Lawrence E. Aten, Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, D.C. 20240, (202–343–9500).

SUPPLEMENTARY INFORMATION: Section 110 of the Act codifies the responsibilities of Federal agencies in carrying out the purposes of the National Historic Preservation Act of 1966 in accordance with the guidelines to be established by the Secretary of the Interior in consultation with the Advisory Council on Historic Preservation.

Section 110(j) requires the Secretary to promulgate regulations under which the requirements of Secton 110 may be waived, either in whole or in part, in the event of a major natural disaster or imminent threat to national security.

Federal agency responsibilities covered by the waiver include:

Preserving and using properties owned or controlled by the Federal agency;

Locating, inventorying, and nominating for inclusion on the National Register of Historic Places properties under agency ownership or control, and ensuring that such properties are not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly;

Recording properties to be altered or demolished;

Consideration of National Historic Landmarks.

Classification: In accordance with Executive Order 12291 we have determined that this rule is not "major". In accordance with the Regulatory Flexibility Act, we have determined that this rule will not have a significant economic effect on a substantial number of small entities. These rules do not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*

Regulatory Analysis: Not required for this rulemaking.

Environmental Impact Statement: This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

List of Subjects in 36 CFR Part 78

Historic preservation.

The originator of these procedures is Steve Sheffield, Interagency Resources Division, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240, (202–343–9500).

Dated: December 22, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Part 78 is added to 36 CFR to read as follows:

PART 78—WAIVER OF FEDERAL AGENCY RESPONSIBILITIES UNDER THE NATIONAL HISTORIC PRESERVATION ACT

Sec.

78.1 Authorization.
78.2 Federal agency decision to waive responsibilities.
78.3 Notice of the Secretary of the Interior.
78.4 Secretary of the Interior responsibility.

Authority: National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

§ 78.1 Authorization.

Section 110 of the National Historic Preservation Act of 1966, as amended ("Act"), sets forth certain responsibilities of Federal agencies in carrying out the purposes of the National Historic Preservation Act of 1966. Subsection 110(j) authorizes the Secretary of the Interior to promulgate regulations under which these requirements may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

§ 78.2 Federal agency decision to waive responsibilities.

When a Federal agency head determines that a major natural disaster or imminent threat to national security exists that prevents the agency from carrying out all or part of its responsibilities under Section 110 of the Act, that agency head may waive those responsibilities, subject to the procedures set forth herein and provided that the agency head implements such mitigation measures or procedures as are possible in the circumstances to avoid or ameliorate harm to historic properties.

§ 78.3 Notice of the Secretary of the Interior.

(a) Federal agency heads making use of the waiver authority shall immediately notify the Secretary of the Interior, in writing identifying:

(1) The disaster or national security threat necessitating the waiver;

(2) The period during which the waiver is to be in effect;

(3) Which provisions of Section 110 are being waived;

(4) The geographic area to which the waiver applies; and

(5) The mitigation measures and procedures to be utilized to avoid or ameliorate harm to historic properties.

(b) Federal agency heads may begin to exercise the waiver immediately from the time the Secretary of the Interior has been notified, subject to other applicable legal requirements.

(c) Federal agency heads shall consider the recommendations of the Secretary of the Interior pursuant to § 78.4.

§ 78.4 Secretary of the Interior responsibility.

If, after consultation with appropriate agency officials, the Secretary considers that all or part of the agency's decision as outlined § 78.3(a) is inconsistent with the intent of the Act or these regulations, the Secretary shall notify the agency head and recommend such modifications to the waiver as the Secretary considers appropriate.

[FR Doc. 84-7861 Filed 3-22-84; 8:45 am]
BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 3

Eligibility for Annual Clothing Allowance

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendment.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations concerning basic eligibility for the annual clothing allowance available to certain disabled veterans. This action is required because the VA General Counsel has determined that certain disabilities which are not related to military service may also establish eligibility for this benefit. The intended effect of this regulatory amendment is to expand the class of veterans eligible for the annual clothing allowance in accordance with that determination.

DATES: Comments must be received on or before April 23, 1984. These changes are proposed to be effective May 12, 1983, the date of the General Counsel's determination.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 7, 1984.

Any person visiting Central Office for the purpose of inspecting comments will be received by the Central Office Veterans Assistance Unit in Room 132. Visitors to a VA field station will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: Robert M. White 202-389-3005.

SUPPLEMENTARY INFORMATION: The current language of 38 CFR 3.810 authorizes payment of the clothing allowance under specified conditions if the qualifying disability is service-connected. However, 38 U.S.C. 362 authorizes payment of the clothing allowance where the qualifying disability "is compensable under the provisions of this chapter" (11).

Chapter 11 of title 38, United States Code, provides compensation for service-connected disabilities, but it also provides compensation, under section 351 of that chapter, for additional disabilities incurred or aggravated during VA hospitalization, medical or surgical treatment, examination or in pursuit of a course of vocational rehabilitation through the VA, as long as the additional disability was not the result of the veteran's own willful misconduct. These additional disabilities, while not service-connected, are compensable in the same manner as if they were service-connected.

Because the VA General Counsel has determined that disabilities compensable under 38 U.S.C. 351 may be the basis of eligibility for the annual clothing allowance, we propose to amend 38 CFR 3.810 to incorporate that decision. The effective date of the amendment will be May 12, 1983, the date of the decision, so that veterans who are in the class affected by the decision and who became entitled on or after that date, but prior to August 1, 1983, may apply for the August 1, 1983, clothing allowance.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Exec. Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program number is 64.109)

Approved: March 5, 1984

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, ADJUDICATION, is amended by revising § 3.810(a) to read as follows:

§ 3.810 Clothing allowance.

(a) A veteran whose disability is compensable under chapter 11 of title 38, United States Code is entitled, upon application therefor, to an annual clothing allowance as specified in 38 U.S.C. 362. The annual clothing allowance is payable in a lump sum, and the compensable disability must be either service-connected or compensable under 38 U.S.C. 351 as if it were service-connected. The following eligibility criteria must also be satisfied:

(1) A VA examination or hospital or examination report from a facility specified in § 3.326(c) discloses that the veteran wears or uses certain prosthetic or orthopedic appliances which tend to wear or tear clothing (including a wheelchair) because of such disability and such disability is the loss or loss of use of a hand or foot compensable at a rate specified in § 3.350 (a), (b), (c), (d), or (f); or

(2) The Chief Medical Director or designee certifies that because of such disability a prosthetic or orthopedic applicance is worn or used which tends to wear or tear the veteran's clothing. For the purposes of this paragraph "applicance" includes a wheelchair.

(38 U.S.C. 210(c))

* * * * *

[FR Doc. 84-7886 Filed 3-22-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. 1

[SWH-FRL 2484-1]

Hazardous Waste Management System

Correction

In FR Doc. 84-4034 beginning on page 5854 in the issue of Wednesday, February 15, 1984, make the following corrections:

1. On page 5854, column two, line six, "Regualtions" should read "Regulations".

2. On page 5855, column two, line twenty-three, "no" should appear between "be" and "migration".

3. On the same page, column three, first complete paragraph, line six, "areas" should read "area".

4. On page 5856, column two, "a. *Physical measurements",* line ten "(< cps.)" should read "(<100 cps)".

5. On page 5857, column two, first complete paragraph, line twelve, "date" should read "data".

6. On the same page, column two, line eleven from the bottom, "presents" should read "present".

7. On the same page, column two, line six from the bottom, "wasts" should read "wastes".

8. On the same page, column three, first complete paragraph, line four, "not" should read "no", and in line eight "disopsal" should read "disposal".

9. On the same page, column three, paragraph two, line two, "or" should appear between "one" and "more", and in line twenty-one "alternatives" should read "alternative".

10. On page 5858, column one, line fourteen, "must" should read "may".

11. On page 5859, column one, paragraph five, line seven, "stong" should read "strong".

BILLING CODE 1505-01-M

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40 CFR Parts 52 and 81

[A-10-FRL 2551-6]

Approval and Promulgation of State Implementation Plans Designation of Areas for Air Quality Planning Purposes; Utah Sulfur Dioxide Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This action proposes to approve a revision to the State Implementation Plan (SIP) for attainment of the national standards for sulfur dioxide (SO_2) in the Salt Lake County and Tooele County nonattainment area conditioned upon the satisfactory resolution of issues discussed in this proposal. The revision contains emission limitations for several sources at the Kennecott Minerals Company smelter in Magna, Utah, including a new multipoint roll back (MPR) limit for the main stack. In approving this revision, EPA also proposes to remove federally promulgated limits contained in 40 CFR 52.2325 applicable to that facility. This action also proposes not to redesignate portions of Salt Lake and Tooele Counties as requested by the State. The effect of this approval would be to remove the Section 110(a)(2)(i) construction ban in effect near the Kennecott smelter.

DATES: Comments due May 22, 1984.

ADDRESSES: Written comments should be addressed to: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-3471.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8964), September 11, 1978 (43 FR 40434), and March 12, 1981 (46 FR 16258) EPA established Salt Lake County and portions of Tooele County above 5600 feet as nonattainment under Section 107 of the Clean Air Act. This designation was based upon measured and predicted violations of the national ambient air quality standards in the vicinity of the Kennecott Minerals Company copper smelter near Magna, Utah.

On August 18, 1981, following proper notice and public hearing, the Governor of Utah submitted a revision to the Utah State Implementation Plan (SIP) which addressed attainment of the national standards for sulfur dioxide in portions of the nonattainment area. The submittal included a map redefining the boundaries of the nonattainment area. On December 1, 1981 and January 25, 1983, the State submitted additional material intended to demonstrate that the plan meets the requirements of Section 110 and Part D of the Clean Air Act. On February 28, 1983, the Governor of Utah submitted a request to redesignate all of Salt Lake and Tooele Counties as attainment. The basis for this recommendation is the fact that no violations of the national standards have been recorded at the monitors in the lower elevations in the vicinity of the smelter since 1981.

State Control Strategy

The plan includes control requirements for the low level sources as well as a multipoint limit for the main stack. The emission points controlled by the plan are: power plant boilers, molybdenite heat treaters, refinery, fugitive emissions, and the main stack.

The power plant boilers, heat treaters and refinery are required to meet constant emission limitations. The fugitive emissions are controlled by application of "best engineering techniques". The main stack, which accounts for 88 per cent of the total emissions, is controlled by a variable emission limitation. The main stack limits contain the following key

elements: (1) annual average emission limit of 18,200 pounds per hour; (2) cumulative occurrence limits at specified frequencies and 3-hour running average emission rates; and (3) maximum 3-hour emission limit of 98,400 pounds per hour, never to be exceeded. These limitations were developed using the multipoint rollback (MPR) approach and represents a 10 percent decrease in allowable emissions from the previous State regulation.[1]

State Attainment Demonstration

The Clean Air Act requires that any SIP control strategy provide for attainment of the national ambient air quality standards. Title 40 CFR Part 50 requires that the NAAQS apply in all areas to which the public has access [i.e. ambient air as defined in 40 CFR 50.1(e)]. The State of Utah's plan included demonstrations that the limitations in the plan will provide for attainment of the standards in the lower elevations. The plan does not address attainment of the national standards in the elevated terrain. Instead, the state has taken the position that the public does not have access to the elevated terrain, and therefore, it is not "ambient air."

The State employed several methods in developing the emission limitations and demonstrating that the SIP would provide a reasonable probability of attaining the national standards in the lower elevations. They included:

(1) Analysis of measured violations in Magna, Utah and at the Great Salt Lake Beach and the cause of those violations.

(2) Calibrated dispersion modeling estimates to predict sulfur dioxide concentrations in the lower elevations before and after implementation of the SIP. This modeling was also used by the State to revise the nonattainment area boundaries.

(3) Qualitative analysis of the impacts of fugitive emissions at the Great Salt Lake Beach and the improvements expected as a result of the SIP.

(4) Multipoint Rollback (MPR) for the development of the variable emission limitations at the main stack.

In its review of the Utah SIP, EPA found several issues which merit additional discussion here. These are:

(1) The State did not address that portion of the nonattainment area in the elevated terrain. Instead the State proposed to remove that area from the designated nonattainment area. If company-owned property in the elevated terrain had been used as the basis for the control strategy, more restrictive emission limits might have been necessary.

(2) Additional modeling results for the lower elevations by EPA indicated that there is some potential for violations caused by fugitive emissions which needed additional analysis.

(3) The multipoint rollback performed by the State does not completely conform to the recommended technical criteria developed by EPA for that procedure.

(4) The "GEP" stack height demonstration performed by Kennecott does not fully comply with EPA's 1982 "stack height" regulations. In addition, the United States Court of Appeals for the D.C. Circuit recently reversed in part and remanded in part these 1982 regulations, leaving EPA without firm standards by which to evaluate Kennecott's stack height demonstration.

These issues are discussed below.

Elevated Terrain

As mentioned above, the State of Utah designed its control strategy to attain the national standards at the lower elevations around the facility. No mention was made of the elevated terrain south and east of the smelter. The elevated terrain consists of the Oquirrh Mountain Range and is a combination of public land, Kennecott property and other private land. Past EPA promulgations have all been based upon measured and predicted concentrations at Lake Point which was considered to be representative of the elevated terrain near the smelter and where severe violations of the national standards have occurred. The question of whether the main stack emission limits should be set at a level needed to protect air quality in the elevated terrain near the smelter has been a subject of much discussion and debate between EPA, the State, and the Kennecott Minerals Company in recent years. In those discussions, the State and Company have contented that, since the properties in question were either on Company property or surrounded by Company property thereby precluding legal access by the public, the national standards need not be attained on such properties. On November 8, 1982, and January 25, 1983, Kennecott and the State submitted materials documenting that the company owns or controls a substantial amount of the area.

In the August 1981 submittal, the State included a map redefining the SO_2 nonattainment area boundaries based upon monitoring and modeling performed for the SIP revision. The only area identified as nonattainment are in lower elevations, thereby reaffirming the State's position that the elevated terrain in Tooele and Salt Lake Counties is not "ambient air" and is not subject to the national ambient air quality standards.

In view of the position taken by the State, EPA must determine where the ambient standards apply in the elevated terrain and whether the SIP provides for attainment of the ambient standards in the portions of the elevated terrain where the ambient standards apply.

Central to these questions is the definition of "ambient air." EPA regulations define "ambient air" as "that portion of the atmosphere external to buildings to which the general public has access" 40 CFR 50.1(e). EPA has applied this regulatory definition in such a way that if public access were precluded such as by a fence or other physical barrier, then air over property owned or controlled by a source would not be considered "ambient air" and therefore not subject to the ambient standards. This policy is reflected in past EPA rulemaking actions affecting the Kennecott stack SO_2 emission limitation. In a November 26, 1975 final rule, EPA promulgated a stack emission limitation based on the level of control needed to "achieve the national standards for SO_2 off Company property" 40 FR 54788. The reason for excluding a source's property from application of the ambient standards when public access is precluded is that the goal of the Clean Air Act is to protect public health and welfare.

The issue then is whether the general public has access to Company property. First, it must be recognized that the elevated terrain in question can best be characterized as somewhat rugged mountainous land having all the inherent physical barriers associated with mountain terrain. Second, and most significant, in response to prior EPA rulemaking actions related to the smelter, Kennecott has also emphatically maintained that general public access to Company property is precluded by fences and that "No Trespassing" signs are clearly posted along the perimeter. A November 8, 1982, document received from Kennecott reaffirmed the Company's position on this matter. The submission states; "Access to Kennecott's lands is controlled by locked gates and fences placed across roads and trails leading on to Company property and by the posting of "no trespassing" signs along the property lines. Routine patrols are made by Company security forces with diligent efforts to evict any trespassers found on Kennecott property. There is no legal or inadvertent access to these lands." Further, recent measures taken by the Company with respect to precluding even limited elk hunting on its lands attest to the Company's

[1] There is also a federally-promulgated regulation for Kennecott which establishes a 6030 lbs/hr emission limit for the main stack and requires RACT for fugitive emissions. *See* 40 CFR 2325. However, in response to petitions for reconsideration and litigation filed challenging that regulation, EPA stipulated not to enforce these limits in 1977.

continuing intention to deny even potential access by easement.

EPA's proposed action on the State SO_2 regulation is based on the Agency's preliminary finding that documentation and representations made by Kennecott adequately demonstrate that the Company has taken reasonable and effective precautions to preclude general public access to Company property, and that Company property in the elevated terrain is not "ambient air". However, EPA specifically solicits public comment on this determination.

Having preliminarily determined that company property in the elevated terrain is not subject to the national standards, it must be determined whether the SIP provides for attainment of the ambient standards in those portions of the elevated terrain off-company property. Since the Company has recently acquired the Lake Point property, and that property is not representative of any non-Company property in the elevated terrain, an independent analysis of the impact of the smelter in the elevated terrain is necessary. The November 8, 1982 information from Kennecott and the January 25, 1983, submission from the State contained documentation regarding the boundaries of Kennecott's property in the elevated terrain. Dispersion modeling estimates made by EPA and described in the technical support document reveal that violations of the ambient standards are expected to occur over company property, but not to occur off company property. As noted in that document, there is much uncertainty in modeling predictions for this particular application. It is EPA's judgment that this uncertainty is not grounds for finding the SIP to be inadequate for attainment of the standards in the areas in question.

SO_2 Control Strategy for Main Stack

The strategy developed by the State of Utah for the main stack was derived from a general approach known as multipoint rollback (MPR). The MPR approach is designed to accommodate the highly variable sulfur dioxide emissions produced by smelters and produces a cumulative frequency distribution of allowed emission rates. Under MPR, cumulative distributions of observed emission rates and air quality measurements over an extended period of time (usually a year or more) are used to develop emission limits adequate for attainment and maintenance of the national standards. The principle behind MPR is that a reduction factor is calculated based upon the ratio of observed air quality and the national standard for sulfur dioxide, and the distribution curve for emissions is changed proportionally by the reduction factor to produce an allowable distribution of emission rates.

In the Utah application, the design value for the MPR was a predicted 3-hour concentration of 0.46 ppm in lower elevations as compared to the national standard of 0.50 ppm. Because the design value is less than the standards, this would allow an 8.7 percent increase in allowable emissions from the base period. The result is an allowable annual average stack emission rate of 18,200 pounds per hour.

In order to review and evaluate the MPR control strategy technique, EPA has developed eight general technical review criteria. These criteria are:

1. Ambient air quality monitoring data and emission data must meet acceptable quality assurance criteria. Data records must be of sufficient length to reasonably describe atmospheric dispersion conditions and their frequencies. To the extent possible, ambient data must also reflect locations of maximum expected air quality impact.

2. Neither ambient data nor emission data can be influenced by dispersion techniques, i.e., supplemental control systems or stack heights greater than good engineering practice (GEP).

3. Ambient data concentration distributions shall be developed for all possible discrete averaging periods (e.g., for 3-hour at 12 a.m., 3 a.m., 6 a.m.; 1 a.m., 4 a.m., 7 a.m.; 2 a.m., 5 a.m., 8 a.m.). The rollback shall be based upon the highest once-per-year maximum concentration provided by these distributions.

4. Baseline emission profiles should be based upon continuous emission measurement (CEM) data. Where it is not initially possible to do so, then profiles must be based upon conservative assumptions. Allowable emission profiles must ultimately be verified by CEM data.

5. To represent a fully acceptable demonstration of attainment, measures adequate to ensure that fugitive emissions will not violate the national standards must be incorporated directly into the control strategy.

6. Regulations should require that continuous emission monitors (CEM) measure at least 95% of the hours in which emissions occur. CEM downtime should be minimized by providing an incentive to sources to strive for 100 percent data capture. This may be accomplished by reducing the cumulative occurrence limits by the percent missing data or other comparable approaches.

7. Regulations shall not exempt malfunctions from either the emission profile determination or the ultimate emission limitations.

8. If the data base permits that the control strategy be developed in a probabilistic manner, then the control strategy must consider the probability that the source causes a violation anywhere rather than simply at the worst site. Concurrently, the probability for a violation of the NAAQS must be shown to be consistent with Agency policy in effect at that time.

A discussion of how the plan adheres to each of the recommended criteria is contained in the EPA evaluation report. Two major technical concerns were identified. The first involves the use of production curtailments (supplemental control systems or SCS) during the period of record. The second pertains to the selection of the design value and site used in the attainment demonstration. In addition, two enforcement issues dealing with continuous emission monitoring and quality assurance (QA) are noted below.

With regard to the first point, the use of SCS during the period of record violates a basic principle inherent in the derivation of the MPR equation, i.e., that emissions and dispersion are independent. However, no acceptable alternate data are available for development of emission limits for the Kennecott smelter. Accordingly, the State of Utah analyzed the data base and the Company's record of curtailments to evaluate the effects of SCS. They concluded that the use of SCS did not influence the design value.

The seond technical concern involves the selection of the design value. The State of Utah used the second highest of the discrete 3-hour averages instead of the highest once-per-year maximum concentration.

In light of these deviations from EPA's recommended criteria and other concerns with the attainment demonstration EPA and its consultants analyzed the data base and performed independent diffusion modeling and data analysis to determine whether these deviations from the recommended criteria would invalidate the attainment demonstration. The results of these analyses (included in the record) lead EPA to conclude that the State strategy for the Kennecott main stack should not jeopardize attainment and maintenance of the national standards in the lower elevations. EPA solicit comments on this finding.

The first enforcement issue concerns the reliability of continuous emission monitors (CEM). In order to avoid enforcement problems and smelter operations in excess of the allowed emissions profile, the regulations must require a high degree of monitor up-time. Although complete data recovery would be desirable, EPA recognizes that this may not be possible. The proposed regulation requires monitors to operate at least 95% of the time in each one month period. However, it does not limit

the duration of a single breakdown. EPA believes the regulations should contain provisions both limiting individual monitor downtime periods and providing incentives to strive for 100% continuous emissions monitoring data recovery. EPA proposes to approve the SIP provided that this concern is addressed prior to final rulemaking.

The second enforcement issue concerns the QA procedures used in collecting CEM data. The proposed regulations do not state the procedure to be followed when determining which CEM data is 20% or more in error. They also give the smelter the option of deleting or retaining such data. These provisions not only inadequately define a QA standard but allow the smelter excessive latitude in choosing the emissions it can delete or retain. EPA believes that the QA requirements found in 40 CFR Part 60, Appendix B–2 or the equivalent should be made a part of this proposed regulation in order to define acceptable CEM data. EPA proposes to approve the SIP provided that this concern is addressed to final rulemaking.

Low Level Source Issues

During the winter of 1979–80, there were five measured violations of the 24-hour national standard of 0.14 ppm in Magna. In addition, during the winter of 1981 there were two measured violations of the same standard at the Beach monitor located very close to the smelter. The highest concentration at that site was 0.19 ppm. As a result of these observed violations, the State focused its control strategy on attaining the standards at those receptors.

Since 1980, several site studies have been performed to determine the cause of the Magna and Beach violations. These studies have concluded that the main cause of all of the violations is the low-level fixed stack sources and the fugitive emissions.

Consistent with that conclusion, the SIP contained a strategy which would reduce emissions from the smelter's low level sources up to 70% and would require improved fugitive emission capture practices at the smelter.

The SIP included State modeling estimates predicting violations of the national standards at the Beach and at Magna in 1979 and attainment of the national standards by December 1982. While the model used by the State can provide a good indication of where high concentrations could be expected to occur, it is not considered to be the appropriate model for predicting the effects of a single source strategy on attainment of the 24-hour and 3-hour concentrations. Therefore, EPA attempted to model the effectiveness of the strategy using more acceptable models. The results agreed with the State's result at Magna, but showed that the predicted concentration at the Beach receptor is extremely sensitive to the estimated fugitive emission rate and that if reductions in fugitive emissions are not realized from the 1981 levels, violations could occur. Since the fugitive emissions cannot be reliably quantified and the reduction expected by December 1982 cannot be reliably quantified, the State submitted information on January 25, 1983, which describes the control practices on fugitive emissions implemented at the smelter since the 1981 violations and includes a qualitative analysis of the expected effects of those practices. The State's conclusions regarding attainment of the standards in the vicinity have been substantiated by measured data since 1981.

Based upon this information it is EPA's judgment that the State's strategy for the low-level sources should result in attainment of the standards in lower elevations.

Stack Height Credit

The emission limit contained in this SIP revision is dependent on the source's receiving full emissions credit for its existing stack. Such credit must be evaluated under section 123 of the Clean Air Act, which provides in part that:

> The degree of emission limitation required for control of any air pollutant . . . shall not be affected in any manner by . . . so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator).

The Administrator promulgated such "stack height" regulations at 47 FR 5864 (February 8, 1982). Under these 1982 regulations, stack height credit for a source is to be calculated according to one of the following three methods: *de minimis* height (stack less than 65 meters), mathematical formulas, or physical demonstrations. 47 FR 5865. A physical demonstration consists of either a fluid modeling study or a field study. In either case, the source had to demonstrate that downwash caused at least a 40% increase in concentrations of air pollutants in the immediate vicinity of the source.

In October 1983, a panel of the United States Court of Appeals for the D.C. Circuit overturned significant portions of the regulations in *Sierra Club v. E.P.A.*, 719 F.2d 436. In *Sierra Club,* the Court reversed two provisions of the 1982 stack height regulations as being beyond the Agency's authority and remanded other provisions for reconsideration by the Agency. Among the remanded provisions were the definitions of two statutory terms—"nearby" and "excessive concentrations"—which form the core of the 1982 requirements for fluid modeling demonstrations.

The *Sierra Club* decision has been appealed by a group of utilities to the U.S. Supreme Court. As a result, issuance of a mandate by the D.C. Circuit putting into effect the *Sierra Club* decision has been stayed. This stay will continue during the pendency of the appeal. Therefore, the 1982 stack height regulations remain on the books, although their continuing validity remains uncertain.

In the interest of avoiding further delay, EPA has evaluated the adequacy of the SIP under the 1982 stack height regulations and is proposing to take interim action on the basis of the substantive requirements of those regulations. In this SIP revision, the source calculated its GEP stack height according to a fluid modeling demonstration. The demonstration does not fully comply with EPA's 1982 regulations in that no specific percentage of increased concentrations was measured. However, based on the best engineering judgment of EPA technical staff, the source apparently could demonstrate at least a 40% increase in concentrations under the approach in 1982 regulations. Because of the uncertain status of the 1982 regulations, EPA is not presently able to give unqualified approval to any stack height credit based on a fluid model demonstration. Therefore, EPA concludes that it would be pointless at this time to require the source to perform an additional fluid modeling demonstration based on the 1982 regulations. Accordingly, EPA is proposing interim approval of this SIP on the condition that the State of Utah agree to satisfy all procedural and substantive requirements of the stack height regulations once any further regulations are promulgated, or the existing regulations are upheld on appeal.

EPA will not finally approve this SIP revision until the State promulgates an additional SIP provision whereby it commits to take the following action:

(1) In the event EPA promulgates new regulations with requirements different from those in the 1982 regulations, the State of Utah will, within nine months of such promulgation, submit a demonstration of the GEP stack height under the new regulations and, based on that demonstration, submit either (a) a demonstration that the SIP adequately assures attainment when that height is taken into account, or (b) a SIP revision demonstrating attainment:

(2) In the event the 1982 regulations are upheld on appeal, the State will submit a new fluid modeling study meeting the requirements of those regulations within nine months of the decision.

Under this proposal, EPA's approval of the control strategy in this SIP revision would terminate automatically if the State does not fulfill its commitment within the nine month period specified. In addition, if the State does submit the required demonstration or SIP revision on time, EPA's approval of the control strategy in the current SIP would terminate upon EPA's determination that the demonstration or SIP revision submitted does not satisfy the requirements of the Clean Air Act or EPA's regulations.

Proposed Action on Sulfur Dioxide Strategy

Based upon the information currently available to EPA discussed above, the control strategy and emission limitations for the Kennecott smelter appear reasonably likely to attain and maintain the national standards for SO_2 in the nonattainment area. Therefore, EPA proposes to approve the revised plan conditioned upon satisfaction of the additional requirements discussed above. In addition, EPA is proposing to remove federally promulgated limits, for the Kennecott facility contained in 40 CFR 52.2325.

The requirements of Part D of the Clean Air Act will be satisfied for the Salt Lake County and Tooele County nonattainment area once SO_2 emission limits for the Kennecott smelter are finally approved. Therefore, final approval of this SIP revision would result in satisfaction of the requirements of Part D and would remove the Section 110(a)(2)(I) construction ban from the Salt Lake County and Tooele County nonattainment area.

Proposed Redesignations

The following facts are relevent to the appropriate Section 107 status:

(1) Measured data at the Magna and Beach monitoring sites in the lower elevation have not shown violations since 1981.

(2) There has been no definitive showing that all the off-company property in the elevated terrain has in fact reached attainment.

(3) It is EPA policy that nonattainment boundaries coincide with logical political boundaries whenever possible.

(4) The plan relies upon the 1200 foot stack which cannot now be given unqualified approval by EPA because of the uncertain status of the stack height regulations.

Until the issues listed above are resolved, EPA proposes to retain the nonattainment designation as it exists.

Interested persons are invited to comment on the revisions to the Utah SIP and EPA's proposed actions. Comments should be submitted to the address listed in the front of this notice.

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget for review.

Under 5 U.S.C. 605b, the Administrator has certified that SIP approvals/redesignations do not have a significant economic impact on a substantial number of small entities.

This notice of proposed rulemaking is issued under the authority of Sections 107 and 110 of the Clean Air Act (42 U.S.C. 7407 and 7410).

List of Subjects 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Air pollution control, National Parks, Wilderness areas.

Dated: March 12, 1984.

John G. Welles,

Regional Administrator.

[FR Doc. 84-7675 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AH-FRL 2551-1]

Standards of Performance for New Stationary Sources; Fossil-Fuel-Fired Steam Generators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of Public Comment Period.

SUMMARY: On October 21, 1983, revisions to the existing new source performance standards for large fossil-fuel-fired steam generating units constructed after August 17, 1971, (40 CFR Part 60, Subpart D) were proposed (48 FR 48960). These revisions would establish sulfur dioxide compliance, emission monitoring, and reporting requirements on a 30-day rolling average basis.

In response to several requests, additional materials were added to the docket for the proposed revisions. As a result, on January 17, 1984, the public comment period was reopened for 60 days (40 FR 1997).

Additionally, on March 6, 1984, the Natural Resources Defense Council requested that the public comment period be extended. As a result, the period for receiving written comments on the proposed revisions is being reopened for 30 days.

DATES: Comments on the proposed revisions are requested by (30 days from the date of today's notice.)

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. Attention: Docket No. A-81-15.

Docket. Docket No. A-81-15 containing supporting information used in developing the proposed revisions is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C., 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter or Mr. Walter Stevenson, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C., 27711. Telephone: (919) 541-5624.

Dated: March 16, 1984.

Joseph A. Carman,

Assistant Administrator for Air and Radiation.

[FR Doc. 84-7677 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule adopts as a Corporation regulation Instruction 83-6: Attorney Involvement by Recipients of Funding, published in the **Federal Register** on November 29, 1983. This instruction provides direction to recipients of Legal Services Corporation funding on allocating amounts of the recipient's financial support from the Corporation to provide the opportunity for involvement of private attorneys in the delivery of legal assistance to eligible clients. The proposed rule formalizes the structures and procedures of the continued Corporation interest in private attorney involvement.

DATE: Comments must be received on or before April 23, 1984.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW. Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, Office of the General Counsel, (202) 272–4010.

SUPPLEMENTARY INFORMATION: The proposed regulation sets forth the policy adopted by the Board of Directors on October 2, 1981, which requires that a substantial amount of recipient funds be made available to provide opportunities for involvement of private attorneys to deliver legal assistance to eligible clients. Implementation through both *pro bono* and compensated mechanisms is encouraged by the Corporation.

"Substantial amount" is defined as at least twelve and one-half percent of the recipient's Legal Services Corporation annualized basic field award. This is an increase from the ten percent previously required by the Corporation. One-time special grants from the Corporation are not to be considered in determining the private attorney involvement requirement. Recipients of migrant or Native American funding are to use their best efforts to meet the requirements or the Corporation must be satisfied that private legal involvement is not feasible.

The Corporation's private attorney involvement requirement is based on both local program experience and on the Corporation's own formal research and experimentation. This research demonstrates that there are several effective and economical ways in which to involve private attorneys, on either a voluntary or a partially-compensated basis, in the delivery of legal services to eligible clients. Over the years, it has become clear that mixed delivery systems provide for effective and economical delivery service.

The proposed regulation defines a wide range of activities permitted in involving private attorneys in the delivery of legal assistance to eligible clients. The primary consideration is, of course, that the highest quality of civil legal services be provided to the clients in an effective and economical manner. The proposed regulation outlines specific methods to be undertaken by recipients to involve private attorneys in providing such legal assistance and states the components various systems should include.

There are specific financial considerations and procedures which the recipient must utilize to account for costs allowable for private attorney involvolvement. These are set out in detail in the proposed regulation.

Section 1614.3(d)(9) provides that grants for private attorney involvement shall be accounted for on a cost-reimbursable basis. This means that, at the end of a grant period, funds transferred for private attorney involvement activities to a sub-grantee must be returned to the recipient if not actually expended for private attorney involvement activities. It does not mean that costs must first be incurred by a sub-grantee and reimbursement sought from the recipient.

In § 1614.3(d)(10), the requirement in the Instruction for interim billing has been removed from the Proposed Rule. While the Corporation believes such a practice would maximize efficient management and promote cash flow controls, it is responding to numerous comments in removing that requirement.

The proposed regulation also maintains the procedural measures implemented in Instruction 83–6 and 1984 Grant Applications, to be utilized by the recipient. The recipient must develop a specific plan and a budget to meet the requirements of the regulation. This plan and budget shall be a part of the recipient's refunding application or initial grant application. However, in response to comments on the Instruction, the annual requirement that each program certify that it is spending the sums necessary to comply with this Part has been removed.

The proposed regulation concludes with a statement with regard to revolving litigation fund systems. The Office of Field Services will not endorse or approve such mechanisms.

The purpose of the "revolving litigation fund prohibition" is to prevent the creation of systems or projects which encourage the acceptance of fee-generating cases. The Act and 45 CFR 1609 expressly discourage the acceptance of fee-generating cases except under certain circumstances. This prohibition does not, however, prevent payment of costs or reimbursement of expenses incurrred by private attorneys in normal situations where litigation might result in attorney fees. Examples of such situations would be case assignments through a judicare or *pro bono* panel.

List of Subjects in 45 CFR Part 1614

Legal services, Private attorneys.

For the reasons set out above, a new 45 CFR Part 1614 is proposed to be added as follows:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.
1614.1 Purpose.
1614.2 General policy.
1614.3 Range of activities.
1614.4 Procedure.
1614.5 Prohibition of revolving litigation funds.

Authority: Sec. 1007(a)(2)(C) and sec. 1007(a)(3); 42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3).

§ 1614.1 Purpose.

(a) This part is designed to provide direction to recipients of Legal Services Corporation funding on allocating a substantial amount of the recipient's financial support from the Legal Services Corporation to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients. The term "substantial amount" is defined as at least twelve and one-half percent (12½%) of the recipient's LSC annualized basic field award. Funds received from the Corporation as one-time special grants shall not be considered in determining the private bar involvement requirement.

(b) Recipients of Native American or migrant funding shall provide the opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

§ 1614.2 General policy

(a) This part implements the policy adopted by the Board of Directors of the Corporation on October 2, 1981, and ratified and modified by the Board on November 21, 1983, requiring that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economical and efficient manner.

(b) Recipients of national and state support grant awards shall apply the percentage requirement to that portion of their programs related to any direct advocacy activities on behalf of eligible clients.

(c) Private attorney involvement (PAI) shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§ 1614.3 Range of activities.

(a) Activities undertaken by the recipient to meet the requirements of

this Part might include, but are not limited to:

(1) Direct delivery of legal assistance to eligible clients through organized *pro bono*, reduced fee plans, judicare panels, private attorney contracts, and/or organized referral systems; except that "revolving litigation fund" systems, as described in Section 1614.5 of this Part, shall neither be used nor funded under this Part nor funded with any LSC support;

(2) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and,

(3) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel; or the use of recipient facilities, libraries, computer-assisted legal research systems or other resources.

(b) The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient taking into account the following factors:

(1) The priorities established pursuant to Part 1620 of these regulations;

(2) The effective and economical delivery of legal assistance to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy;

(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and,

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys.

(c) Systems designed to provide direct services to eligible clients by private attorneys on either *pro bono* or reduced fee basis, shall include at a minimum, the following components:

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and,

(4) Support and technical assistance procedures which are appropriate and, to the extent feasible, provide access for participating attorneys to materials, training opportunities, and back-up on substantive law and practice considerations.

(d) The recipient shall utilize financial systems and procedures to account for costs allowable in meeting this Part. Such systems shall have the following characteristics:

(1) They shall meet the requirements of the Corporation's *Audit and Accounting Guide for Recipients and Auditors*;

(2) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to private attorney involvement activities;

(ii) Payments to private attorneys for support or direct client services rendered;

(iii) Contractual payments to individuals or organizations which will undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this Part; and,

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(3) Income and expenses relating to the PAI effort must be reported separately in the year-end audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule of income and expenses related to the PAI effort as part of the audit.

(4) Auditors will be required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this Part.

(5) Programs must maintain the internal records necessary to demonstrate that funds have been utilized for private attorney involvement consistent with this Part. Internal records should include:

(i) Contracts on file which set forth payment systems, hourly rates, maximum allowable fees, etc.;

(ii) Bills/invoices which are submitted before payments are made;

(iii) Job descriptions that reflect the assignment of specific responsibilities for PAI activities to specific program staff; and

(iv) Staff time records.

(6) If any direct or indirect staff time is to be allocated as a cost to private attorney involvement, such costs must be documented by detailed timesheets accounting for all of that employees' time, not just the time spent on private attorney involvement activities.

(7) Direct payments to private attorneys shall be supported by invoices and internal procedures performed by the program to ensure that the services billed have actually been delivered.

(8) Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating funds shall be clearly documented.

(9) Contracts concerning transfer of LSC funds for PAI activities shall indicate that such funds will be accounted for in accordance with LSC guidelines. The organization receiving funds will be considered a sub-recipient or sub-grantee and will be bound by all accounting and audit requirements of the *Audit Guide* and 45 CFR Part 1627. These grants shall be accounted for on a cost-reimbursable basis so that the primary recipient will be responsible for unspent funds. This part does not pertain to contracts with individual lawyers or law firms who only provide legal services directly to eligible clients.

(10) Each recipient which utilizes a compensated private bar mechanism, whether judicare, contract, or some other form, must develop a system which includes a schedule for uniform assignment of encumbrances to similar types of cases, a procedure to determine net encumbrances, and a mechanism to relate specific encumbrances to specific cases and to determine statistically the appropriateness of the encumbrance system.

(11) Net encumbrances shall not be included in the calculation of whether a program has met the requirements of this Part, nor should they be recorded as an expense for audit purposes. Only actual expenditures or those amounts shown as accounts payable or accrued liabilities according to GAAP at the end of the fiscal period may be utilized to determine whether or not the program has met the requirements of this part.

(12) In private attorney models, attorneys may be reimbursed for actual costs and expenses, but attorney fees may not be paid at a rate which exceeds 50 percent of the local prevailing market rate for that type of service.

§ 1614.4 Procedure.

(a) The recipient shall maintain the plan and budget required by Instruction 83-6 to meet the requirements of this Part which shall be a part of the

refunding application or initial grant application. The budget shall be modified as necessary to fulfill this Part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to Section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)) and Part 1620 of the Regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients.

(c) Recipients must assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

§ 1614.5 Prohibtion of revolving litigation funds.

(a) The Office of Field Services shall not endorse or approve revolving litigation fund systems which systematically encourage the acceptance of fee-generating cases by advancing funds to private attorneys for costs, expenses and/or attorney fees.

(b) This prohibition does not prevent reimbursement or payment of costs and expenses incurred by private attorneys in normal situations in which litigation may result in attorney fees, such as case assignments through a judicare or *pro bono* panel.

Dated: March 20, 1984.

Donald P. Bogard,

President, Legal Services Corporation.

[FR Doc. 84-7988 Filed 3-22-84; 8:45 am]

BILLING CODE 6820-35-M

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45 CFR Part 1628

Procedures Governing Recipient Fund Balances

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule adopts as a Corporation regulation Instruction 83–4: Recipient Fund Balances, published in the **Federal Register** on October 27, 1983, which requires Corporation approval of the disposition of any recipient fund balances that exceed specified limits. Certain technical amendments have been incorporated into this proposed regulation to address more fully this issue. This proposed rule also requires the prior written approval of the Corporation where a recipient seeks to use current year grant funds to liquidate operating deficits from a preceding period(s).

DATES: Comments must be received on or before April 23, 1984.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, Office of the General Counsel, (202) 272–4010.

SUPPLEMENTARY INFORMATION: Over a period of time and for various reasons, some recipients have accumulated significant fund balances. These individual instances have given rise to severe criticism of Corporation management. Specifically, the *Review of Legal Services Corporation's Activities Concerning Program Evaluation and Expansion,* issued by the United States General Accounting Office on August 28, 1980, stated in reference to fund balances: "We recommend that the President of the Legal Services Corporation require regional offices to closely monitor the expenditures of funds by grantees to minimize year end fund carryovers and adjust subsequent year funding of grantees with excess fund balances."

Corporate directives were thereafter issued through internal memoranda, dated December 18, 1980 and reiterated on March 18, 1982. These directives formalized and expanded upon existing policies. At its meeting on October 30, 1982, the Legal Services Corporation Board of Directors instructed staff to take appropriate action consistent with its Resolution On Fund Balance Policy. A grant condition was attached to the 1983 Refunding grants requiring adherence to the Fund Balance Instruction, 83–1, which was published in the **Federal Register** for comment on November 27, 1982 and published as a final Instruction on January 5, 1983.

That Instruction has been determined by a district court to be unenforceable for the recovery of 1982 fund balances because it was published after January 1, 1983, the effective date for 1983 grants. That decision has been appealed by the Corporation. The Corporation redrafted Instruction 83–1 and published it in the October 27, 1983 **Federal Register**, as Instruction 83–4: Recipient Fund Balances, which will be implemented to recover FY1983 fund balances.

Corporation policy regarding fund balances has remained relatively consistent throughout these documents. In the proposed regulation, the Corporation continues to define an excess fund balance to mean a total fund balance amount in excess of 10% of the recipient's annual funding level.

The proposed regulation also includes explicit language with regard to deficit fund balances, a subject not adequately addressed by a previous Corporation policy. Operating deficits are considered to be a more severe violation of the recipient's responsibility to safeguard and manage Corporation funds, often indicative of serious problems which can have a long-lasting impact on program operations.

A recipient is permitted to reduce an operating deficit incurred in one grant period by fund balance amounts qualifying under the regulation for carryover into a subsequent grant period(s), except those amounts which were carried over by the recipient under a specific waiver from the Corporation. A recipient may not, however, unilaterally offset that operating deficit against funds awarded by LSC for a succeeding period. Legal Services Corporation awards grants for a twelve month period. These grants are not intended nor should they be expected to absorb the burden of prior period costs. The Legal Services Corporation will, therefore, require specific prior written approval for the carryover of those costs.

The Corporation is issuing this proposed regulation pursuant to its mandate to ensure the delivery of high quality legal services in an effective and economical manner. Recovered fund balance amounts will be reprogrammed for the direct provision of legal services to eligible clients.

List of Subjects in 45 CFR Part 1628

Legal services, Fund balances.

For the reasons set out above a new 45 CFR Part 1628 is proposed to be added as follows:

PART 1628—RECIPIENT FUND BALANCES

Sec.

1628.1 Purpose.

Sec.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedure.
1628.5 Operating deficits.

Authority: Sec. 1006(b)(1)(A), 1007(a)(3); 42 U.S.C. 2996e(b)(1)(A), 42 U.S.C. 2996f(a)(3).

§ 1628.1 Purpose.

(a) This part is designed to ensure the timely allocation of Legal Services Corporation (LSC) funds for the effective and economical provision of high quality legal assistance to eligible clients. To that end, recipients will be permitted to maintain and re-program from year to year fund balances of no more than 10% of their annualized LSC support.

(b) A waiver of this policy up to a maximum of 25% of the recipient's annualized grant amount may be obtained under certain conditions as described in § 1628.3(d). Funds carried over in excess of 10% or above the level permitted by a specific waiver will be recovered as set forth in § 1628.3(a).

§ 1628.2 Definitions.

(a) LSC "support" for the reporting period shall be defined as the sum of: (1) The annualized LSC grant award(s); (2) any additional income derived from an LSC grant (interest, rents, etc.); and, (3) reimbursements or recoveries of attorney fees, proceeds from the sale of assets, or other compensation or income related to any LSC grant.

(b) The LSC "fund balance amount" shall be determined solely by reference to the recipient's annual audit. (The fund balance reported in the recipient's annual audit is subject to review and approval by the Corporation's Audit Division. Noncompliance with provisions of the Corporation's *Audit and Accounting Guide for Recipients and Auditors* may result in an increase or decrease in the fund balance as reported in the audit.)

(c) The "fund balance percentage" shall be determined by expressing the fund balance amount as a percentage of the recipient's LSC support for the reporting period.

(d) "Recipient" as used in this Part, means any recipients as defined in Section 1002(6) of the LSC Act and any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1) or 1006(a)(3) of the Act.

§ 1628.3 Policy.

(a) In the absence of a waiver from the Corporation, any fund balance amount in excess of 10% of LSC support shall be repaid to the Corporation in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Corporation shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(b) After the Corporation's receipt and review of the recipient's annual audit, the Corporation shall provide written notice to the recipient of the fund balance amount due and payable to the Corporation as well as the method for repayment 30 days prior to the effective date for repayment either to occur or to commence in accordance with § 1628.3(a).

(c) In no way shall any such reduction and/or deduction in LSC support be construed to affect permanently the annualized funding level of the recipient, nor shall any such reduction and/or deduction in LSC support be considered to be a termination or denial of refunding under 45 CFR Parts 1606 and 1625 respectively.

(d) A waiver of the 10% ceiling may be granted at the discretion of the Corporation in extraordinary circumstances; such a waiver may be granted by the Corporation to extend the ceiling for fund balance amounts established under this regulation to a maximum of 25% of LSC support. Further, in addition to the established 10% ceiling, recipients who operate compensated private bar programs or components shall be granted a waiver to allow them to maintain carryover funds not to exceed 25% of the expense for attorney fees as reported in the latest audit, provided that such additional carryover is utilized exclusively to fund a cash reserve or encumbrance system for payment of attorney fees. (**Note:** The applicable recipients must submit a timely written request to obtain this waiver.) However, under no circumstance will a recipient be allowed to retain a fund balance in excess of 25% of support.

(e) All one-time or special purpose grants awarded by the Corporation shall have an effective date and termination date. Such grants are not subject to this fund balance policy. Revenue and expenses relating to such grants must be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the termination date of the grant without the prior written approval of the Corporation. All unexpended funds under such grants shall be returned to the Corporation.

§ 1628.4 Procedure.

(a) Any recipient whose audited fund balance exceeds the ceiling set forth in §1628.1 shall submit to the Corporation, within 120 days after the close of the recipient's fiscal year, a statement of the fund balance which occurred according to the annual audit required by Section 1009(c)(1) of the Legal Services Corporation Act, as amended. The funds will be recovered as set forth in §1628.3, unless excluded by a specific waiver.

(b) The recipient may, within 120 days after the close of its fiscal year, apply to the Corporation for a waiver of the 10% ceiling. Such application must specify:

(1) The fund balance amount according to the recipient's annual audit;

(2) The reason such fund balance has been attained;

(3) The recipient's plan for the disposition or reserve of such fund balance amount within the current grant period;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's then current fiscal year; and

(5) The extraordinary circumstances justifying the retention of the fund balance.

(c) Excess fund balance amounts shall not be expended by the recipient prior to approval of the waiver application by the Corporation.

(d) The decision of the Corporation regarding the granting of a waiver shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. The Corporation shall grant a waiver of the 10% ceiling established under this regulation where a recipient who operates a compensated private bar program or component needs to maintain a cash reserve. In addition, the Corporation shall give special consideration to the following factors in reviewing a waiver request submitted pursuant to this regulation:

(1) Emergencies, unusual occurrences, or other extraordinary circumstances giving rise to the existence of a fund balance in excess of 10%, and the special needs of clients.

(2) The need for a recipient which operates a compensated bar program or component to maintain a cash reserve.

(e) Excess fund balance amounts approved for expenditure must be separately reported in the current fiscal year audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

§1628.5 Operating Deficits.

(a) Sound financial management practices such as those established in LSC's "Fundamental Criteria of an Accounting and Financial Reporting System," should preclude deficit spending. Use of current year grant funds to liquidate operating deficits from a preceding period(s) requires the prior written approval of the Corporation.

(b) The recipient may, within 120 days of the close of its fiscal year, apply to the Corporation for approval of the costs associated with the liquidation of the operating deficit.

(c) In the absence of approval by the Corporation, the operating deficit incurred by a recipient during a grant period shall be disallowed under this regulation. However, a recipient may seek to resolve the disposition of such costs in accordance with the requirements established by Instruction 83–8, "Standard Operating Procedure for Questioned Costs," published in the **Federal Register** on November 29, 1983.

(d) The recipient's request must specify the same information relative to the deficit fund balance as that set forth in §1628.4(b) (1), (2), (3), and (4). Additionally, the recipient must develop and submit a plan approved by its Board of Directors describing the measures which will be implemented to prevent a recurrence of an operating deficit. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other extraordinary circumstances giving rise to this situation.

Dated: March 20, 1984.

Donald P. Bogard,

President, Legal Services Corporation.

[FR Doc. 84–7985 Filed 3–22–84; 8:45 am]

BILLING CODE 6820–35–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1135

[Ex Parte No. 290; Sub-2]

Railroad Cost Recovery Procedures; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Determinations on notice of proposed rulemaking.

SUMMARY: The Commission has voted to change its rules for the computation of the labor portion of the interim mid-quarter index of railroad costs under 49 U.S.C. 10707a(a)(2)(B) (the RCAF) in order to satisfy certain portions of the Northeast Rail Service Act of 1981 (NERSA). That Act requires the Consolidated Rail Corporation (Conrail) to enter into negotiations with its unions to achieve certain wage concessions. NERSA provides that the cost reductions resulting from the provisions of the Act cannot be used to limit the maximum levels of Conrail's rates. In order to satisfy these provisions, the labor portion of the RCAF shall be computed using labor costs for Conrail restated at the national contract levels and actual labor costs for all other railroads included in the index. The remainder of our decision on the methodologies involved in the RCAF, as raised by our notice of proposed rulemaking, will be disposed of in a future decision. The petitions for reconsideration of our decisions of December 19 and 27, 1983, are hereby denied. We will, however, restate the RCAF in light of miscalculations in the December 27 decision.

FOR FURTHER INFORMATION CONTACT:
William T. Bono (202) 275–7354, or
Robert C. Hasek (202) 275–0938

SUPPLEMENTARY INFORMATION:

Background

Section 203 of the Staggers Rail Act of 1980, codified at 49 U.S.C. 10707a, requires the Commission to publish a rail cost adjustment factor (RCAF) on at least a quarterly basis. That section of the Staggers Act requires the numerator of the RCAF to be the latest published index of rail costs, as compiled or verified by the Commission. The current denominator is the index which was controlling (120.9) for the fourth quarter of 1983, rebased to 100.0. That Act also requires the RCAF index to reflect the changing composition of railroad costs, including the quality and mix of materials and labor.

In Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, 364 I.C.C. 841 (1981), the Commission adopted an interim indexing methodology. In adopting that interim indexing methodology, the Commission stated that "the Producer Price Index (PPI) would be used for measuring the 'all other' category, until AAR's 'all inclusive' index became available."

AAR filed its proposed "all inclusive" index with the Commission on January 29, 1982. That index made several changes in the methods of calculating the indices for wages, fringe benefits, fuel and the market basket of materials and supplies. It also substituted alternative methodologies for calculating the indices for the "all other" category which was measured by the PPI in the interim methodology.

In a decision served April 27, 1982 (47 FR 18012, April 27, 1982), the Commission reopened Ex Parte No. 290 (Sub-No. 2) for the purpose of soliciting public comments on AAR's proposed "all inclusive" index.

In a Notice of Proposed Rulemaking, served June 20, 1983 (48 FR 29024, June 24, 1983), we proposed the adoption of a modified version of AAR's "all inclusive" index of railroad costs and invited comments on the proposed revised indexing methodology and other matters related to the index.

In that notice, we observed that Section 1159 of the Northeast Rail Service Act of 1981, Pub. L. No. 97–35 (NERSA), provided that certain cost reductions resulting from application of its provisions could not be used to limit the maximum level of Conrail's rates. We proposed a methodology for reconciling NERSA provisions with the requirement in Section 10707a of the Staggers Rail Act requiring an index of railroad costs applicable to all railroads. We proposed the application of "national contract" wage provisions to Conrail's labor expenses to determine Conrail's portion of the wage component of the index. We proposed that Conrail's labor costs be computed as if the "national contract" (and not Conrail's actual wage levels) applied to Conrail's labor. We observed that the use of "national contract" provisions rather than the actual Conrail contract provisions may provide the most practical way to preserve Conrail's benefits mandated by NERSA while also assuring that our single nationwide index reflects, as closely as possible, railway labor costs. Public comments were invited.

In its quarterly index submission filed September 9, 1983, AAR revised the methodology for the computation of the labor portion of the index. This revised computation of the labor component excluded all of Conrail's labor costs. AAR, in submitting this revised labor index, stated that Conrail was excluded because Section 1159 of NERSA provides that cost reductions resulting from its application shall not be used to limit the maximum level of Conrail's rates.

In a decision served September 21, 1983 (48 FR 43413, September 23, 1983), we approved a restated version of the index submitted by AAR, including Conrail's labor costs at actual levels.

We noted that comments in response to our June 20 Notice of Proposed Rulemaking had just been submitted and that we would reach a decision on the effect of Section 1159 of NERSA shortly. We concluded that, until a decision was made, the procedures established in our interim methodology (366 I.C.C. 841) would continue to govern.

On October 7, 1983, AAR filed a petition for reconsideration of our restated railroad cost adjustment factor. AAR argued that the fact that the consideration of the methodology for handling Conrail's labor costs was the subject of another proceeding should not affect the disposition of this matter and that waiting for the conclusion of another proceeding was supported by neither law nor equity. The delay in implementing the provisions of NERSA, AAR contends, would cause the railroads irreparable harm because of lost revenues.

AAR further argued that NERSA was enacted to provide Conrail an opportunity to become profitable through several statutory objectives including that of reduced labor costs. It contends that we have recognized the applicability of NERSA in proposing that "national contract" provisions be applied to Conrail but have failed to follow its provisions. It argued that although we have discretion in the methodology employed to implement the applicable NERSA provisions we cannot ignore those requirements.

Several shipper parties responded to AAR's petition for reconsideration on October 27, 1983. Shipper parties argued that Section 1159 of NERSA applies to Conrail only, and that the inclusion of Conrail's labor costs in the index at higher than actual levels serves to inflate the rate levels of other railroads. They contend that the applicable NERSA provisions were intended to aid Conrail in achieving profitability, and note that Section 1159 concerns only rates charged by Conrail or joint rates of Conrail and other carriers. These parties also observe that the Ex Parte No. 290 (Sub-No. 2) general increase procedures are but one of the several means available to Conrail for rate increases and that the construction of the RCAF index using the actual labor costs of all railroads merely limits one particular method of increasing rates. Shippers also contend that the inclusion of Conrail's labor costs in the RCAF index at other than actual levels directly violates Section 203 of the Staggers Rail Act, 49 U.S.C. 10707a, which requires that the RCAF be based on actual labor costs.

In a short notice served December 19, 1983 (48 FR 56659, December 22, 1983), we stated that we had changed our rules for the computation of the labor portion of the interim mid-quarter index in order to satisfy the provisions of Section 1159 of NERSA. We stated that the labor portion of the index would be computed, including labor costs for Conrail, restated at "national contract" levels and actual labor costs for all other railroads included in the index. We also said that the labor index figures for the first quarter of 1984 would be restated to include Conrail at "national contract" wage levels and a decision fully explaining our changed rules would be issued shortly.

In a decision served December 27, 1983 (48 FR 57633, December 30, 1984), we approved a restated version of AAR's first quarter 1984 rail cost recovery index. That index was restated to include Conrail's labor costs at "national contract" levels in order to satisfy the provisions of NERSA. The restated index produced a rail cost adjustment factor of 1.063 rather than the 1.046 figure proposed by AAR. Application of the first quarter RCAF provided for a maximum increase of 4.1 percent above the levels authorized in our decision served September 21, 1983. The net effect of the restatement was to authorized maximum increases of 4.1 percent rather than the 3.4 percent proposed by AAR.

Various shipper parties petitioned for reconsideration on January 16, 1984, and January 18, 1984. One party now argues that we violated the Administrative Procedure Act by modifying the interim indexing methodology without providing any notice or opportunity for comment by interested or affected persons. It asserts that we cannot modify or amend a rule or regulation without providing these procedural protections.

Southern Electric also believes that there were computational errors in our restatement of the index and that when these errors are corrected the maximum allowable rate increases under these provisions would be 4.0 percent and not the 4.1 percent increase allowed. It contends that the employee count used for computing railroad retirement taxes did not include Conrail and the ratio used for updating wages to a current period was incorrect because it was computed using an incorrect denominator. It observes that although the RCAF index is computed using wage data for all Class I railroads except the Long Island Rail Road, the employee count used for computing railroad retirement payments excluded both the Long Island and Conrail. It also argues that the mid-1981 wage figures used as a base period were updated by the National Railway Labor Conference from 1980 Railroad Retirement Board data using national contract provision. Thus, it argues that the straight time hourly rate for the base period (the denominator used for the calculation of the ratio) should have included Conrail at "national contract" levels rather than at actual levels.

In its response AAR admits that although the number of employees used as a base for the computation of railroad retirement taxes should have included Conrail, the omission of Conrail makes no difference in the end result because employees are distributed among various wage grades using a Railroad Retirement Board sample. AAR also admits that the use of a base number including Conrail at an actual level and a first quarter 1984 figure including Conrail at "national contract" levels is improper and has recalculated the railroad retirement payments using a proper ratio. It further observes that although its calculations do not agree with those submitted by the shipper party, the shipper's end result remains unchanged. In addition, AAR concludes that the overall index should have been 105.2 (rather than the 105.3 which we approved) and concludes that the index computation should be corrected and the index adjusted.

Discussion

The current regulations (49 CFR Part 1135) governing the methodology for calculating the RCAF do not provide for the adjustment or elimination of any railroad's costs. The enactment of NERSA, subsequent to the passage of the Staggers Act, requires that we reconsider the methodology of the RCAF vis-a-vis the labor component of the index. In our notice of proposed rulemaking served June 20, 1983, we raised the question of the proper method for adjusting the index in light of NERSA. As stated in our notice of December 19, 1983, we have determined that the labor portion of the index shall be computed including labor costs for Conrail restated at national contract levels, and actual labor costs for all other railroads. We utilized this approach in our statement of the RCAF for the First Quarter of 1984, as reflected in our decision of December 27, 1983.

By this decision, we (1) reaffirm our determination of December 19, 1983, that the Conrail labor costs, as restated, will be used to compute the RCAF, and (2) deny the petitions for reconsideration filed by various shipper groups of our first quarter 1984 RCAF utilizing the new methodology, but grant the petitions insofar as they point out a

miscalculation in the RCAF in our December 27 decision.

One preliminary issue has been raised in the petitions for reconsideration. Carolina Power & Light Company, Duke Power Company, South Carolina Electric & Gas Company, Virginia Electric and Power Company, and Tampa Electric Company (jointly referred to as the Power Companies) argue that the Commission's decisions of December 19 and 27, 1983, violated the Administrative Procedure Act because "[t]he Commission summarily authorized the railroads to adopt this treatment of Conrail's labor costs when the railroads never even requested such treatment." The Power Companies' argument is without merit. In our notice of proposed rulemaking, served June 20, 1983, we informed the public that we were considering changes to the RCAF methodology, including ways of altering the consideration of the Conrail labor component of the RCAF as mandated by NERSA. Subsequently, after the receipt of comments from the public, including the Power Companies and AAR, we determined that Conrail labor costs must be restated in order to properly reflect NERSA and the Staggers Act. In so doing, we merely determined one issue of the Ex Parte No. 290 (Sub–No. 2) rulemaking in advance of the others. Public comments were received and considered. There was no "summary authorization" of the restatement of the labor costs, and the procedures utilized in reaching this determination were fully in compliance with the procedural protections of the APA.

The Treatment of Conrail's Labor Costs

The provisions of Section 10707a(a)(2)(B) and Section 1159 of NERSA, 45 U.S.C. 1109, must be reconciled in our determination of the proper methodology for calculating the RCAF. Reconcilation is necessary because NERSA's Section 1159 states:

> Any cost reductions resulting from the provisions or the amendments made by this subtitle shall not be used to limit the maximum level of any rate charged by Conrail for the provision of rail service, to limit the amount of any increase in any such rate (including rates maintained jointly by Conrail and other rail carriers), or to limit a surcharge or cancellation otherwise lawful under Chapter 107 of title 49, United States Code.

Conrail is entitled to take rate increases under the RCAF provisions of the Staggers Act, and those increases are insulated from regulation. If Conrail's actual labor costs (reflecting concessions) were figured into the RCAF, the RCAF would be lower than it would be absent the Conrail wage concessions. The result would be that Conrail's increases under the RCAF would be limited by the concessions, and we believe this result violates NERSA's plain terms.

Several alternatives were offered for harmonizing the statutes. After examination of the alternatives, we conclude that the restatement of Conrail labor costs at the national level correctly reflects the intent of Congress in enacting NERSA and the Staggers Act. We therefore will amend our methodology for calculating the RCAF, 49 CFR 1135, to restate the Conrail portion of the labor component of the index to national labor agreement levels.

Under NERSA, Conrail has negotiated wage levels lower than the national agreement level in effect for other railroads. By restating the Conrail labor component we are replicating the condition that would have existed had NERSA not been passed and, as a result, Conrail continued to be a party to the national wage agreement. This recalculated RCAF will apply to Conrail and all other railroads. Conrail will not be penalized (as Congress directed in 45 U.S.C. 1109) due to the lower wage costs it has negotiated pursuant to 45 U.S.C. 1103(4)(A). Clearly, 45 U.S.C. 1109 envisioned that Conrail's maximum rate calculations would be performed as if the wage holddowns of NERSA were not in existence. This is precisely what our action in this proceeding will accomplish, and thus our action is consisted with NERSA.

Nor will the nation's other railroads be penalized by the use of the lower Conrail labor costs in calculating the across-the-board RCAF. If the NERSA mandated lower Conrail labor costs were included in calculating the RCAF, the index would be lower. The nation's other railroads, who pay wages at the national agreement level, and whose labor costs increase with increases in that agreement, would not be able to recover their full actual labor cost increases. This is not what Congress intended when it enacted the RCAF provisions, and there is no indication Congress intended this result when it enacted NERSA. It was clearly the intent of the Staggers Act to enable the railroads to fully recover increased costs. Use in the RCAF of the lower actual Conrail labor costs (reflecting the concessions mandated by NERSA) would have the perverse effect of using a legislated Conrail labor cost holddown to penalize the rest of the rail industry by forcing other railroads to take lower RCAF increases than they would otherwise be entitled to. By our action, the nation's railroads are placed in the same position as if the wage-holddowns of NERSA were not in effect. We believe this is consistent with Congress' intent in enacting NERSA. We see no evidence that Congress intended either Conrail or the rest of the industry to have their permissible rate limited as result of NERSA.

The legislative history of Section 1159 of NERSA supports this interpretation. The provision has its origins in the House of Representatives legislation. In H.R. Rep. No. 97–153, 97th Cong., 1st Sess. 39–40 (1981), the Committee stated the purpose of Section 614(a), the predecessor of Section 1159:

> Subsection (a) provides that any cost reductions resulting from this Act may not be used to limit the amount of any rate, rate increase or surcharge maintained or proposed by Conrail. The Committee expects the Commission to prescribe *a simple formula to allow implementation of this section without undue burden on shippers, Conrail, or other railroads.* Conrail management would retain discretion to adjust rates downward on the basis of any cost reductions or competitive efficiencies that would be achieved as a result of this Act. [Emphasis supplied].

The House of Representatives version of the section was ultimately adopted by Congress with one minor modification. In the Conference Report on NERSA, printed at 127 Cong. Rec. S9056 (July 31, 1981), the Conference Committee recommended adoption of the House version with one modification.

> The Conference substitute adopts the House provisions with a change that limits the House language to labor savings which result from this Act. The Commission may not consider such savings in any rate proceedings.

127 Cong. Rec. S9065. *See also* 127 Cong. Rec. H5965 (reprinting the Conference Report for the House of Representatives).

None of the other proposals regarding the harmonization of NERSA and the Staggers Act adequately addresses the requirements of the two statutes. One proposal submitted by commenting shippers is to compute the RCAF excluding Conrail's labor costs. This methodology was proposed by AAR for the computation of the Fourth Quarter 1983 Index, and was rejected by us in our September 21, 1983, decision. We continue to believe that this is not a viable approach. Under Section 10707a(a)(2)(B), Congress anticipated the inclusion of all railroads' costs. Conrail's portion of the labor component totals some 14 percent of that facet of the index. To eliminate the Conrail labor component would contravene the congressional mandate to index all railroad costs.

Some shippers have also suggested that Conrail could use an RCAF reflecting its actual labor costs along with other mechanisms, such as Commission restraint in suspension decisions, or use other rate flexibility provisions in the Act, to obtain the additional rate increases that would be necessary to ensure that the NERSA-inspired concessions do not limit Conrail's rates. Aside from the problems inherent in any dual index scheme, these alternatives would deprive Conrail of one of the principal benefits of an RCAF—fast, reliable rate increases virtually free of regulatory oversight and attendant burdens. Conrail would always face the uncertainty and potential limits inherent in any regulated rate increase.

Another possible approach, one proposed by certain shipper parties, is to adopt two separate indices. One index would apply to all railroads except Conrail, and would be calculated based on all railroads' (including Conrail's) actual labor costs. The second index would apply only to Conrail and would be calculated based on all railroad's (except Conrail's) actual labor costs with Conrail's labor cost restated to the national wage agreement level. We do not believe that this approach is appropriate under Section 10707a(a)(2)(B) and NERSA.

First, the result of applying two indices would be a variety of different allowable rate increases, because all Conrail rates would be entitled to greater increases, as would any joint rates in which Conrail participates. The substantial benefits of a single simple index would be lost in the resulting patchwork of allowable increases, and the time lags the index was intended to avoid might well result as the railroads tried to determine which increase to apply to each rate.

Second, and just as important, we believe that Congress enacted NERSA to address Conrail's problems. Because NERSA was intended to benefit Conrail, the effects of NERSA should be confined to Conrail. There is no indication that Congress intended NERSA's effects to extend to the nation's other railroads, and certainly no indication that NERSA was intended to adversely affect those other carriers by denying them full recovery of their labor cost increases. *See* H.R. Rep. No. 97–153, *supra*, at 39–40. Our approach to the RCAF does confine the effects of NERSA to Conrail. For purpose of calculating the RCAF, the rail industry is treated as if the NERSA does not exist. To adopt the dual indices system proposed by the shippers would give the NERSA benefits to Conrail, but would impose the burdens of NERSA on the rest of the nation's railroads. Conrail would have lower wages but higher rates reflecting the higher wages in the rest of the industry, whereas the rest of the industry would have higher wages but lower rates reflecting the lower wages paid to Conrail labor.

We agree that if one railroad succeeds in lowering its labor cost, the other railroads would all recover less than their full labor cost under the RCAF mechanism. Some shippers contend that Conrail's labor cost savings should also be treated in this manner. We do not agree with this proposition.

In enacting NERSA, Congress adopted a different approach. Recognizing that the labor cost savings it was mandating were fundamentally different from those voluntarily negotiated between labor and management, it required that the ICC not attempt to pass the savings on to Conrail shippers. Therefore, Congress' intention in NERSA appears to be that the extent to which these labor cost savings result in lowes rates should be left to Conrail and determined by normal market forces rather than by regulatory fiat. Presumably, Congress assumed that would be the end of the issue. Indeed, in an unregulated industry, it would be the end of it since downward pressure on other carriers' rates would only be produced by the attempt of the carrier receiving the cost saving to increase market share by lowering rates or increasing service.

Under the dual RCAF approach urged by some shippers, the congressional intentions reflected by NERSA would be ignored insofar as other carriers were concerned. Even though Conrail's RCAF increase would not be limited as a result of NERSA, other carriers' increases would be limited. This strange result would not be consistent with Congress' intention that the sacrifices of Conrail labor accrue to Conrail to the extent that competitive conditions permit. Under the dual RCAF approach, shippers on other railroads would receive major benefits, virtually as large as the benefits received by Conrail, at the expense of the other railroads. We find it implausible that Congress would have intended such a large transfer of funds between non-Conrail shippers and carriers given that neither the transfer nor the parties themselves are mentioned in the legislation, and that the only mention of shippers and other railroads in the legislative history indicates that NERSA was intended to have no effect on those entities. It is doubly implausible that non-Conrail shippers would be the intended beneficiaries of a law that specifically excludes the possibility of similar benefits for Conrail shippers.

In sum, we believe there should only be a single RCAF for the entire industry and that our approach is the best way to harmonize the two statutes at issue. The nation's railroads other than Conrail will continue to incur the labor cost increases imposed by the national agreement. Our approach does not "inflate" those costs, as certain shippers say, but merely allows those other carriers to recover the costs they indisputably will incur. The only railroad that will recover more than its actual cost increases is Conrail, as envisioned by NERSA. The shippers are essentially arguing that NERSA mandates *reduction* in the cost recovery for the other railroads. But as we have discussed, we see no evidence that Congress intended that result when it enacted NERSA.

Miscalculation of the Index

Southern Electric System argues that there are computational errors in our restatement of the index in our December 27 decision. The AAR agrees that our earlier decision miscalculated the index.

We agree that the ratio used to update mid-year 1981 wage classes to subsequent levels was not developed properly. In this case the wages used as a base period had been in turn updated from 1980 levels using national contract provisions. Since that updating process had the effect of including Conrail at national contract levels rather than at its own reduced wage levels the ratio used to further update these wages must also include Conrail at national contract levels in order to be consistent. The index will be revised from 1.053 to 1.052 in order to eliminate the overstatement.

Entry Level Employee Cost Calculation

A shipper party questions why no downward adjustment had been made to the straight time hourly rate of wages to account for the lower wages paid to entry-level employees. The shipper observes that the labor portion of the index had been previously adjusted for this cost saving. However, as AAR correctly points out in response, the straight time hourly rate had been adjusted for entry-level savings only through the fourth quarter of 1983. This correctly reflects the two-year phase-in of the entry-level personnel. As that period has passed, no further downward adjustment need be made.

Employee Count in the RCAF Calculation

Southern Electric argues that in the calculation of the first quarter 1984 RCAF, the Commission failed to include Conrail employees in the computation of railroad retirement costs. We agree that the Conrail employees should have been included in the count of employees used to compute railroad retirement payments, but this omission was harmless error. The omission of the Conrail employees does not change the railroad retirement payment per straight time hour used in calculating the labor portion of the index. Indeed, our adjustment of the RCAF, as discussed above, corrects any miscalculations consistent with Southern Electric's complaints regarding the December 27, 1983 calculation of the RCAF.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources or have a significant impact on small entities.

Conclusion

The RCAF will include Conrail's labor costs restated to the national contract level. The changes in the rules governing the RCAF to reflect this decision will appear in the final set of rules to be issued in the future decision in Ex Parte No. 290 (Sub-No. 2).

The petitions for reconsideration of our decisions in this proceeding of December 1983 are denied.

Authority: 49 U.S.C. 10321 and 10707a.

Dated: March 16, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-7660 Filed 3-22-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for the Owens tui chub (Gila Bicolor Snyderi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes the Owens tui chub to be an endangered species. This action is being taken because the Owens tui chub has declined in recent years and has been extirpated from many areas where it was formerly common. It inhabited streams, rivers, springs, and irrigation ditches in the Owens Basin of Mono and Inyo Counties, California. The Owens tui chub now occurs in only two habitats, the headwaters of the Hot Creek and in a short segment, approximately 8 miles long, of the Owens River below Long Valley Dam, both in Mono County, California. Critical habitat is included with this proposal. If made final, this proposed rule would protect this subspecies and the critical habitat of its wild populations and provide for the species' recovery. The Service seeks data and comments from all interested parties on this proposal.

DATES: Comments from all interested parties must be received by May 22, 1984. Public hearing requests must be received by May 7, 1984.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials relating to this rule are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah St., Portland, Oregon 97232, (503/231-6131).

SUPPLEMENTARY INFORMATION:

Background

The Owens tui chub (*Gila bicolor snyderi*) was described as a new subspecies in 1973 (Miller, 1973), but has been known to scientists since the late 1800's. Sporadic fish collections made around the turn of the century indicated the presence of chubs in the Owens River (Snyder, 1917) and Owens Lake (Gilbert, 1893). The collections of Carl Hubbs (reported by Miller, 1973), made during the 1930's, provide the first major survey of the Owens Basin aquatic habitats. Owens tui chubs were collected by Hubbs and coworkers in the following areas: irrigation canals south of Bishop, Owens River, headsprings of Fish Slough, drainage ditches south of Big Pine, North Fork of Bishop Creek, Bishop Creek, Hot Creek, headwater springs of Hot Creek, Whiskey Creek, Owens Lake, ponds at Lone Pine, Morton's Slough and various ditches emanating from the Owens River. However, by the time the Owens tui chub, endemic to the Owens Basin of Inyo and Mono Counties, California, was described as *Gila bicolor snyderi* in 1973, the status of the fish was declining rapidly.

Habitat alteration, predation and competition by exotic fishes, and hybridization with introduced Lahontan tui chubs have eliminated pure Owens tui chubs from all but two localities. Owens tui chubs are now known only from an approximately 8 mile section of the Owens River below Long Valley Dam and from 2 adjacent headwater springs of Hot Creek. The population in the Owens River is greatly reduced in numbers because of predation by brown trout. The population in the headwater springs of Hot Creek is small and is threatened by the presence of exotic fishes. These two springs represent less than 1 percent of the original available habitat. The springs and the adjacent lands are owned by the city of Los Angeles but there are no plans for development in the area. The status of the Owens tui chub, which is the most precarious of any fish in the Death Valley region (Pister, 1980), has resulted in the fish being classified as Endangered by the State of California (CDFG, 1980).

The Owens tui chub was included in the Service's December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454-60). In this review, the Owens tui Chub was listed as a category 1 species indication that the Service currently has substantial information on hand to support a proposed rule to list the species as endangered or threatened. On April 12, 1982, the Service was petitioned by the Desert Fishes Council to list the Owens tui chub. After evaluation of this petition, the Service found that the petitioned action was warranted. A notice of finding for this petition was published in the **Federal Register** on June 14, 1983 (48 FR 27273-27274).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Owens tui chub (*Gila bicolor snyderi*) are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Ichthyological surveys conducted during the 1930's and 1940's found Owens tui chubs common in a wide range of aquatic habitats in the Owens Basin. Since that time, many habitats have been modified, streams have been diverted, and rivers have been impounded.

Demand for the water resources of the Owens Basin is high. Water is used for local agricultural and municipal purposes. The largest consumer of Owens Basin water is the city of Los Angeles, which through a system of diversion structures and aqueducts, conducts the water to the Los Angeles Basin. Because of the various demands, most waters have been adversely modified by man. This physical habitat alteration, often accompanied by an increase in exotic fishes, has reduced available habitat for the Owens tui chub.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence to suggest that the Owens tui chub has declined as a result of overutilization.

C. *Disease or predation.* Numerous exotic fishes and other aquatic organisms have been introduced into the Owens Basin. Pister (1981) reports that 18 exotic fishes have been introduced into the Owens River, which historically supported 4 native fishes. Predation by brown trout, Salmo trutta, is responsible for the reduced numbers of Owens tui chubs below Long Valley Dam. Exotic fishes are the major threat facing the population of Owens tui chubs in the Owens River system.

D. *The inadequacy of existing regulatory mechanisms.* The State of California has a provision in their endangered species law to protect the Owens tui chub from taking but has no authority to protect its habitat. If listed, the Owens tui chub would be eligible for funding by the State and Federal Government for its conservation and recovery.

E. *Other natural or manmade factors affecting its continued existence.* Lahontan tui chubs have been introduced into many waters of the Owens Basin as bait fish. Subsequently, they have hybridized extensively with the native and closely related Owens tui chub. The hybridization problem was first recognized in 1973 at Crowly Lake where fishermen had apparently illegally introduced the Lahontan tui chub as bait while fishing (Miller, 1983). Since that time, hybridization with Lahontan tui chubs has been shown to be a major problem throughout the range of the Owens tui chub. Pure Owens tui chubs are now restricted to two known localities.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act and at 50 CFR Part 424, means (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The Act in Section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat for the Owens tui chub is being proposed in two areas:

1. *California, Mono County.* Owens River and 50 feet on each side of the river from Long Valley Dam downstream for a distance of 8 stream miles.

2. *California, Mono County.* Hot Creek and its headwater springs and their outflow including 50 feet on all sides of the springs and Hot Creek.

The areas proposed as critical habitat for the Owens tui chub satisfy all known criteria for the ecological, behavioral, and physiological requirements of the species. This fish successfully reproduces in the headwater springs of Hot Creek where the population is small, probably several hundred fish, but viable. The population in the Owens River was very successful prior to the introduction of exotic fishes. The Owens River continues to support a small but viable population in the 8 stream miles below the dam. The Owens River below Long Valley Dam would provide excellent habitat for the Owens tui chub if the exotic fishes can be eliminated or their populations reduced. The area of 50 feet adjacent to the streams and springs is included for the protection of the riparian habitat which is important in the maintainance of the aquatic ecosytems.

The areas proposed include the entire habitat of this subspecies. Modifications to the critical habitat descriptions may be proposed in the future.

Section 4(b)(8) requires that for any proposed or final regulation which designates critical habitat, a brief description and evaluation of those activities (public and private) which may adversely modify such habitat or may be affected by such designation must be provided. Such activities are identified for the habitat of the Owens tui chub as follows:

1. Introduction of aquatic organisms;

2. Activities that decrease available waters or cause a significant change in the physical or chemical properties (e.g., temperature or dissolved gasses) of the water;

3. Removal of natural riparian vegetation, except what might be required to maintain some open water; and

4. Pollution of aquatic habitats or adjacent terrestrial environments.

No presently known activities involving Federal agencies affect the critical habitat of the Owens tui chub, nor is any Federal involvement anticipated in these areas. If the Service becomes aware of any involvement in the future, consultation with the appropriate Federal agency would be initiated to determine the extent of the impact and approriate alternative measures, if necessary. Any Federal agency which feels its actions might affect the survival or continued existence of the Owens tui chub should enter into consultation with the Service.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will evaluate the geographic critical habitat designation at the time the final rule is prepared, after considering all additional information obtained.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions; requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and taking and harm prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see

proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an action "may affect" a listed species, the Federal agency must enter into consultation with the Service. At this time, there are no known Federal activities which will be impacted by this proposal.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale listed species in interstate or foreign commerce. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exception would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out the otherwise prohibited activities involving endangered animal species under certain circumstances. Endangered species permits are governed by 50 CFR 17.22 and 17.23 and Section 10(a) of the Act. Such permits are available for scientific purposes or to enhance the propagation or survival of the species, or to take species as an incident to otherwise lawful activities in limited circumstances. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the Owens tui chub;

(2) The location of and the reasons why any habitat of this subspecies should or should not be determined to be critical habitat as provided for by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this subspecies;

(4) Current or planned activities in the subject area and their possible impacts on the Owens tui chub; and

(5) The foreseeable economic and other impacts resulting from the proposed critical habitat designation.

Final promulgation of the regulations on the Owens tui chub will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

California Department of Fish and Game. 1980. At the crossroads 1980, a report on California's endangered and rare fish and wildlife. 147 pp.

Gilbert, C. H. 1893. Report on the fishes of the Death Valley expedition collected in southern California and Nevada in 1891, with description of new species. No Amer. Fauna, No. 7.

Miller, R. R. 1973. Two new fishes, *Gila bicolor snyderi* and *Catostomus fumeiventris*, from the Owens River Basin, California. Occ. Pap. Mus. Zool. Univ. Michigan 667:1–19.

Pister, E. P. 1980. Death Valley system committee report. Proc. Desert Fishes Council 12:8–13.

Pister, E. P. 1981. The conservation of desert fishes. Pages 411–445 in Fishes in North American deserts. R. J. Naiman and D. L. Soltz (eds.) John Wiley and Sons, New York.

Snyder, J. O. 1917. An account of some fishes from Owens River, California. Proc. U.S. Nat. Mus. 54:201–5.

Author

The primary author of this rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814, (916/440–2791 or FTS 448–2791).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the United States Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order, under fishes, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Chub, Owens tui	*Gila bicolor snyderi*	U.S.A. (CA)	Entire	E		17.95(e)	NA

3. It is further proposed to amend § 17.95(e) by adding critical habitat of the Owens tui chub as follows: The position of this and any following Critical Habitat entries under § 17.95(e) will be determined at the time of publication of a final rule.

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(e) * * *

Owens tui chub

Gila bicolor snyderi

California, Mono County.

1. Hot Creek and adjacent springs near Hot Creek Hatchery including 50 feet on all sides of the creek and springs, in T3S, R28E, SW 1/4 Section 35.

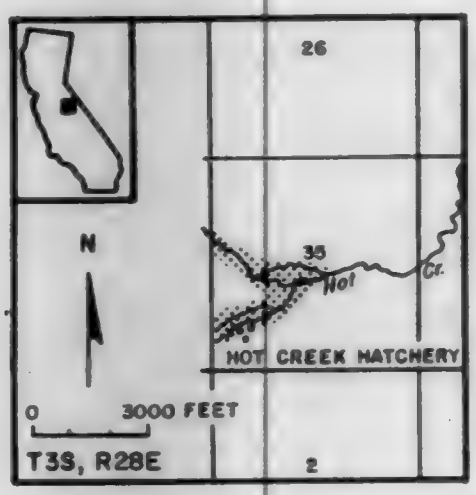

2. Owens River, including 50 feet on both sides of the river, for 8 stream miles below Long Valley Dam in T4S, R30E, Sections 19, 20, 21, 22, 23, 24, 25, and 36.

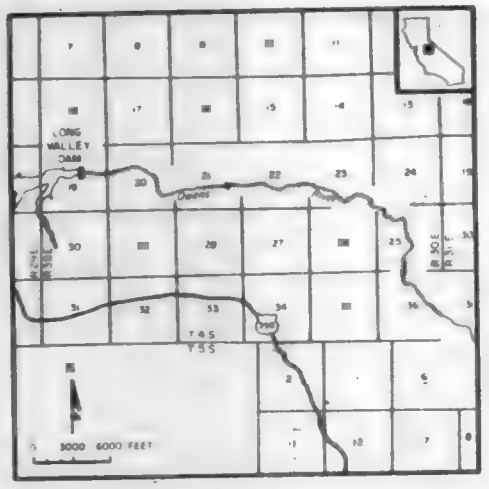

Known constituent elements include clean permanent flowing streams and or springs with riparian vegetation, deep pools, overhanging banks, aquatic vegetation, and the absence of exotic fishes.

Dated: March 8, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-7825 Filed 3-22-84; 8:45 am]

BILLING CODE 4310-07-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The New England Fishery Management Council will hold a public hearing in conjunction with its regular monthly meeting to allow for input on a proposed amendment to the Sea Scallop Fishery Management Plan.

DATE: The hearing will be held on Tuesday, April 3, 1984, at 1:30 p.m.

ADDRESS: The hearing will take place at the Howard Johnson's Motor Lodge, Interstate Traffic Circle, Portsmouth, NH.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1) Saugus, MA 01906.

SUPPLEMENTARY INFORMATION: On May 15, 1984, the regulated minimum *average* meat count standard for sea scallops is scheduled to change from 35 meats per pound to 30 meats per pound. The amendment to the sea Scallop Fishery Management Plan proposes to implement a 40 meat count (equivalent) *minimum* size for sea scallops to *replace* the 30 meat count *average* through emergency action by May 15, 1984. The proposed minimum size regulation will delay harvest of scallops until they have reached sexual maturity and stop the present practice of taking small scallops which have not fully matured and had an opportunity to spawn.

Dated: March 20, 1984.

Roland Finch,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 84-7833 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 58
Friday, March 23, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Forest Service

[Docket No. 84-311]

Final Environmental Impact Statement on the Gypsy Moth Suppression and Eradication Projects

AGENCY: Animal and Plant Health Inspection Service and Forest Service, USDA.

ACTION: Notice.

SUMMARY: This document provides information concerning a final environmental impact statement on Gypsy Moth Suppression and Eradication Projects (EIS) (USDA FS–EIS 83–05) that has been prepared and is available for public comment. The EIS was sent to the Environmental Protection Agency (EPA) on March 16, 1984, by the U.S. Department of Agriculture (USDA) pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: Written comments concerning the final EIS risk analysis, using worst case assumptions must be received on or before May 7, 1984.

ADDRESSES: Written comments and/or requests for a copy of the EIS should be addressed to: R. L. Williamson, Director, National Program Planning Staff, Plant Protection and Quarantine, APHIS USDA, Room 648, Federal Building, Hyattsville, MD 20782 or Thomas N. Schenarts, Area Director, USDA Forest Service, 370 Reed Road, Broomall, Pennsylvania 19008.

Copies are available for public inspection at the following locations:

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 302–E, Administration Building, 14th and Independence Avenue, Washington, DC 20250

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782

Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008

Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 180 Canfield Street, Morgantown, WV 26505

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436–8295; or Thomas N. Schenarts, Area Director, Insect and Disease Management Staff, Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008, (215) 461–3158.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) and the Forest Service of the United States Department of Agriculture published a notice in the **Federal Register** on October 11, 1983 (48 FR 46089) of their intent to prepare a programmatic environmental impact statement on the Gypsy Moth Suppression and Eradication Projects (EIS). The decision to prepare the EIS was made because of the need to revise and update an earlier programmatic Environmental Impact Statement for Gypsy Moth Suppression and Regulatory Program Activities to reflect program and other changes that have occurred since the programmatic EIS was prepared in 1981. The decision by APHIS and the Forest Service to cooperate in the preparation of the EIS was made because it was determined that an indepth and complete study could be done while conserving economic and other resources of both agencies.

On December 28, 1983 the draft EIS was furnished to EPA. Notices were published on January 6, 1984 (49 FR 933) and on January 17, 1984 (49 FR 2001) announcing the availability and requesting comments on the Draft EIS. Comments were accepted on the Draft EIS through February 25, 1984.

All comments received pursuant to the notice of availability of the Draft EIS were considered in the preparation of this final EIS. Further, on January 26, 1984, the United States District Court for the District of Oregon in *Oregon Environmental Council v. Kunzman et al.* permanently enjoined any programs using the aerial application of carbaryl in populated areas in Oregon. The court directed the defendants to fully consider all health risks of such spraying. In addition, several comments on the draft EIS indicated the need for further consideration of the human health effects associated with the use of chemical insecticides or some type of worst case analysis associated with the proposed use of insecticides in gypsy moth eradication or suppression projects.

In responding to these concerns, APHIS and the Forest Service have prepared a risk analysis, using worst case assumptions, which expands upon the discussion in the draft EIS of the health risks associated with the use of acephate, carbaryl, diflubenzuron, and trichlorfon as used in gypsy moth suppression and eradication projects.

In order to provide further opportunity for input prior to any decision utilizing assumptions and conclusions drawn from the risk analysis, a 45-day public review and comment period is being provided. Comments must be received prior to May 7, 1984.

The final EIS has been transmitted to the Environmental Protection Agency on March 16, 1984.

Done at Washington, D.C. this 20th day of March 1984.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

Done at Washington, D.C. this 20th day of March 1984.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 84-7911 Filed 3-22-84; 8:45 am]
BILLING CODE 3410-34-M

Commodity Credit Corporation

Proposed Determination Regarding Support Prices for Pulled Wool and Mohair for the 1984 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to propose certain determinations concerning the support price for pulled wool and mohair for the 1984 marketing year. These determinations are made in accordance with the provisions of the National Wool Act of 1954, as amended.

EFFECTIVE DATE: Comments must be received on or before April 23, 1984 in order to be assured of consideration.

ADDRESS: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, USDA, ASCS, Room 4095, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Gerald Schiermeyer, Agricultural Program Specialist, EOLP Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447-5171.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of proposed determination has been reviewed and USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." This notice has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determination since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The title and number of the Federal assistance program that this notice of determination applies to are: Title—National Wool Act Payments; Number—10.059 as found in the Catalog of Federal Domestic Assistance Programs.

The National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of pulled wool and mohair to producers by means of loans, purchases, payments or other operations.

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1985 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, and rounding the result to the nearest full cent.

Section 703(c) of the Wool Act also provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 percent above or below the comparable percentage of parity at which shorn wool is supported.

Comments are requested on the method used to calculate the support price for pulled wool, as well as the support price for mohair, for the 1984 marketing year. The comment period has been limited to 30 days in order that producers may have an opportunity to make production plans for the 1984 marketing year.

Notice

Accordingly, the following method for calculating the support price for pulled wool, as well as the following support prices for mohair, for the 1984 marketing year are being proposed:

a. *Support Price-Pulled Wool.* The support price for pulled wool for the 1984 marketing year cannot be determined until the 1984 average market price for shorn wool is calculated, which should occur by April 1985. Once the average market price for shorn wool is known, it is proposed that the support price for pulled wool be determined, as in prior years, by subtracting the 1984 average market price for shorn wool from the 1984 support price of shorn wool and multiplying that figure by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb). The result is then multiplied by 80 percent which represents a quality differential which is determined because pulled wool which is derived from unshorn lamb pelts contains a shorter staple and is of a lower quality of wool than wool shorn from other sheep.

b. *Support price—Mohair.* It is proposed that the support price for mohair for the 1984 marketing year shall be determined based on the October 1983 parity prices for mohair and for shorn wool and shall be one of the following three options:

Price Support Level and Mohair Support Price

1. 85% of the percent of parity at which shorn wool is supported=$4.396 per lb.
2. Equal percent of parity at which shorn wool is supported=$5.169 per lb.
3. 115% of the percent of parity at which shorn wool is supported=$5.942 per lb.

Interested persons are encouraged to comment on the proposed levels of price support for mohair and the method of calculation for payments on pulled wool.

Consideration will be given to any data, views and recommendations which are submitted with respect to the proposed levels of price support for pulled wool and mohair.

All comments will be made available for public inspection in Room 4095 of USDA's South Building during business hours (8:15 a.m. to 4:45 p.m.)

Signed at Washington, D.C., on March 16, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-7836 Filed 3-22-84; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Inspection Service

[Docket No. 84-004N]

Public Meeting; National Academy of Sciences

Dated: March 15, 1984.

The Food and Nutrition Board and the Board on Agriculture of the National Academy of Sciences (NAS) is under contract with the Department to assess the scientific basis of the Department's

meat and poultry inspection procedures. The NAS has formed a committee (the Committee on the Scientific Basis for Meat and Poultry Inspection) to perform this task, and has asked the Department to assist it by publishing notice of public meetings to be held by that committee.

This committee is holding a public meeting April 26, 1984, beginning at 9:30 a.m., at the National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, D.C. 20418. The purpose of this meeting is to provide NAS with relevant information and materials. The NAS wishes to obtain scientific data and other information bearing on the adequacy and efficiency, in terms of the public health, of the Food Safety and Inspection Services' current and proposed meat and poultry inspection procedures. The NAS also wishes to obtain information and materials on new and emerging scientific and technological advances which could be relevent to this inquiry.

Persons wishing to attend this meeting are requested to advise the NAS of their intent to attend, and to describe in general terms any information or materials they intend to provide. Please notify Dr. Susan Berkow, National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, D.C., (202) 334–3510, no later than March 30, 1984.

Done at Washington, D.C. on March 16, 1984.

L. L. Gast,

Acting Administrator.

[FR Doc. 84–7910 Filed 3–22–84; 8:45 am]

BILLING CODE 3410–DM–M

Soil Conservation Service

Franklin County Road Critical Area Treatment RC&D Measure, Idaho; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Franklin County Road Critical Area Treatment RC&D Measure, Franklin County, Idaho.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Franklin County Road Critical Area Treatment RC&D Measure will control erosion and sediment damage on nine critically eroding sites along county roads. Planned treatments include a diversion above a critically eroding area, a sediment basin, enlarged road culverts, rock gabions, critical area plantings and grading and shaping.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the first page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, 16 U.S.C. 590 a–f, q.)

Dated: March 12, 1984.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 84–7884 Filed 3–22–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

Domestic Cargo Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of the collection of information in Part 291 of the Board's Economic Regulations for domestic all-cargo air carriers.

DATE: March 19, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673–5922

How Often the Collection of Information Must Be Filed: On occasion

Who is Asked or Required to Report: All-cargo carriers

Estimate of Number of Annual Responses: 75

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 85

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–7781 Filed 3–22–84; 8:45 am]

BILLING CODE 6320–01–M

Exemption for Air Taxi Operators

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval to extend the collection of air carrier traffic data on CAB Form 298–C "Report of Scheduled Passenger Operations of Commuter Air Carrier." OMB approval is required under the Paperwork Reduction Act of 1980.

DATE: March 19, 1984.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr., Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Office from Whom a Copy of the Collection if Information and Supporting Documents is Available: Robin A. Caldwell (202) 673–5922

How Often the Collection of Information Must Be Filed: Quarterly

Who is Asked or Required to Report: Commuter Air Carriers

Estimate of Number of Annual Responses: 968

Estimates of Number of Annual Hours Needed to Complete the Collection of Information: 6,776

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–7782 Filed 3–22–84; 8:45 am]

BILLING CODE 6320–01–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Permits filed under Subpart Q of the Board's Procedural Regulations; week ended March 16, 1984.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See, 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Mar. 14, 1984	42041	Horizon Air Industries, Inc. d/b/a Horizon Air and Horizon Airlines, c/o Stephen A. Alterman, 1050 Seventeenth Street, N.W., Twelfth Floor, Washington, D.C. 20036. Application of Horizon Air Industries, Inc. d/b/a Horizon Air and Horizon Airlines pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural requests a certificate of public convenience and necessity to engage in interstate and overseas transportation of persons, property and mail between and among any points in the United States and/or its territories. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 11, 1984.
Mar. 15, 1984	42042	Universal Airlines, Inc., c/o Harry A. Bowen, Bowen and Allen, 2020 K Street, N.W., Suite 350, Washington, D.C. 20006. Application of Universal Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to engage in charter interstate and overseas air transportation of persons, property and mail as follows: Between any point in any state of the United States, or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States, or the District of Columbia, or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 12, 1984.
Mar. 15, 1984	42043	Universal Airlines, Inc., c/o Harry A. Bowen, Bowen and Allen, 2020 K Street, N.W., Suite 350, Washington, D.C. 20006. Applications of Universal Airlines, Inc., pursuant to Section 401(d)(3) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to engage in foreign charter air transportation of persons and property as follows: Between any point in any state of the United States or the District of Columbia, or any United States territory or possession and (a) points in Canada, (b) points in Mexico, (c) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands, and any other foreign place located in the Gulf of Mexico or the Caribbean Sea; (d) points in Central and South America; (e) points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing; and (f) points in Greenland, Iceland, the Azores, Europe, Africa, and Asia as far east as (and including) India. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 12, 1984.
Mar. 16, 1984	42048	British Airways Board and British Airways, PLC, c/o William C. Clarke, Barrett Smith Schapiro Simon & Armstrong, 26 Broadway, New York, New York 10004. Application of British Airways Board and British Airways PLC pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations for amendment of the foreign air carrier permit held by British Airways Board (as to which there is pending before the Board in Docket 41935 an application for transfer to British Airways PLC with effect on April 1, 1984) to add authority for the holder to engage in scheduled foreign air transportation of persons, property and mail limited to air services conducted with combination aircraft, between Bermuda and Baltimore, Maryland. Answers may be filed by April 13, 1984.
Mar. 13, 1984	41880	Conrad Kallita and Connie Kallita Services, Inc., c/o Allen W. Markham, 4801 Mass. Ave., NW., Suite 400, Washington, D.C. 20016. Amendment No. 1 to the Application of Conrad Kallita and Connie Kallita Services, Inc. for a Section 418 all-cargo service certificate. Additional information. Answers may be filed by April 10, 1984.
Mar. 14, 1984	41972	40-Mile Air, Ltd., c/o Mr. Charles M. Warbelow, Post Office Box 539, Tok, Alaska 99780. Amended Certificate of Service to the Application of 40-Mile Air, Ltd., for a certificate of public convenience and necessity. Answers may be filed by April 11, 1984.
Mar. 16, 1984	41951	Airwest International, Inc., c/o Michael J. Roberts, Verner, Liipfert, Bernhard and McPherson, Suite 1000, 1660 L Street, N.W. Washington, D.C. 20036 Supplement to the Application of Airwest International, Inc. for a determination of fitness and a certificate of public convenience and necessity. Answers may be filed by April 13, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-7987 Filed 3-22-84; 8:45 am]
BILLING CODE 6320-01-M

[Docket 41520]

Airspur Helicopter, Inc., Fitness Investigation; Postponement of Reconvened Hearing

Notice is hereby given that the reconvened hearing in the above-entitled matter to be held on March 22, 1984, is postponed until further notice.

Dated at Washington, D.C., March 20, 1984.

John M. Vittone,
Administrative Law Judge.

[FR Doc. 84-7984 Filed 3-22-84; 8:45 am]
BILLING CODE 6320-01-M

[Order 84-3-75; Docket 41401]

Application for Certificate Authority of Aviation Associates Limited d.b.a. Westflight Aviation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (Order 84-3-75).

SUMMARY: The Board proposes to find Aviation Associates Limited d.b.a. Westflight Aviation fit, willing, and able to provide scheduled interstate and overseas air transportation of persons, property, and mail between all points in the United States, its territories and possessions. The complete text of this order is available, as noted below.

DATES: All interested persons wishing to respond to the Board's issuance of the proposed certificate shall file and serve upon all persons listed below no later than April 10, 1984, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESSES: Responses should be filed in Docket 41401 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 and should be served on all persons listed.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–3–75 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–3–75 to that address.

By the Civil Aeronautics Board: March 19, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–7988 Filed 3–22–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–3–76; Docket 41681]

Application of Baker Aviation, Inc. for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause order (84–3–76).

SUMMARY: The Board is proposing to find Baker Aviation, Inc., fit, willing, and able and to issue it a certificate under section 401 of the Act authorizing it to provide scheduled interstate and overseas air transportation of persons, property and mail between all points in the United States and its territories and possessions, and scheduled all-cargo authority between Ambler Buckland, Cape Lisburne, Deering, Kiana, Kivaline, Kobuk, Kotzebue, Noatak, Noorvik, Point Hope, Selawik, and Shungnak, Alaska. The complete text of this order is available as noted below.

DATE: All interested persons wishing to respond to the Board's issuance of the proposed certificate shall file, and serve upon all persons listed below no later than April 9, 1984, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support objections.

ADDRESSES: Responses shall be filed in Docket 41681, and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served on all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Phyllis Solomon, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–3–76 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–3–76 to that address.

By the Civil Aeronautics Board: March 19, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–7989 Filed 3–22–84; 8:45 am]

BILLING CODE 6320–01–M

Chisum Flying Service of Alaska, Inc., et al.; Commuter Fitness Determination

The Board is proposing to find the following carriers fit, willing and able to provide commuter air carrier service under Section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
84–3–78	Chisum Flying Service of Alaska, Inc.	Apr. 10, 1984.
84–3–72	Hobbs-Goldfarb Enterprises, Inc. d.b.a. Nu-West.	Apr. 9, 1984.

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data with the Special Authorities Division, Room 915, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

FOR FURTHER INFORMATION CONTACT: John McCamant for Order 84–3–78, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, (202) 673–5346 and Ms. Anne Stockvis for Order 84–3–72, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, (202) 673–5068.

By the Civil Aeronautics Board: March 19, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–7990 Filed 3–22–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–3–77; Docket 41990]

Fitness Investigation of Connie Kalitta Services, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause order (84–3–74).

SUMMARY: The Board is proposing to find that Connie Kalitta Services, Inc., meets the fitness standards of section 418 of the Federal Aviation Act to engage in domestic all-cargo air transportation.

DATE: Objections: All interested persons having objections to the Board's tentative fitness determination shall file, and serve upon all persons listed below, no later than April 10, 1984, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support objections.

ADDRESSES: Responses shall be filed in Docket 41990, and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served on the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Paul W. Wallig, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–3–74 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–3–74 to that address.

By the Civil Aeronautics Board: March 19, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–7991 Filed 3–22–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Management-Labor Textile Advisory Committee; Open Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held Thursday, April 12, in Room 6802 at 1:00 p.m., Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, D.C. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: March 20, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-7830 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-DR-M

President's Export Council; Subcommittee on Export Administration; Partially Closed Meeting

A meeting of the Subcommittee on Export Administration will be held April 4, 1984, 9:00 a.m.–3:00 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act of 1979 that deal with United States policies of encouraging trade with all countries with which the United States had diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session: 9:00–11:30.
Discussion on distribution licenses and economic impact.

Executive Session: 1:30–3:00.
Discussion of matters properly classified under Executive Order 12356, dealing with extraterritorially, OEA automation and licensing requirements.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved on February 2, 1983, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information, contact Debbie Kappler, (202) 377–1455.

Dated: March 19, 1984.

Willam T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-7828 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-DT-M

[A-583-010]

Final Determination of Sales at Less Than Fair Value: Acrylic Film, Strips and Sheets, at Least 0.030 Inch in Thickness From Taiwan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final determination.

SUMMARY: We have determined that acrylic film, strips and sheets, at least 0.030 inch in thickness from Taiwan (acrylic sheet), are being sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or are threatening to materially injure, a U.S. industry. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after January 11, 1984, and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

We have excluded Jiuh Mei Enterprise Co., Ltd. from this final determination.

EFFECTIVE DATE: March 23, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, D.C. 20230; telephone (202) 377–3003.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that acrylic sheet from Taiwan is being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) the Act).

The weighted-average margins on all sales are 6.74, 0.42 and 3.74 percent respectively from Chi Mei, Jiuh Mei and Hsin Hwa (the respondents). Since we have found *de minimis* margins for Jiuh Mei Enterprise Co., Ltd., we are excluding acrylic sheet manufactured and exported by this company from our final determination.

The overall weighted average-margin on all sales compared is 4.56 percent.

Case History

On July 28, 1983, we received a petition filed by E. I. du Pont de Nemours and Company, Inc. of Wilmington, Delaware. In accordance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioners alleged that acrylic sheets imported from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on August 17, 1983 (48 FR 38660). On September 21, 1983, the ITC found that there is a reasonable indication that imports of acrylic sheet are materially injuring, or are threatening to materially injure, a United States industry.

We presented a questionnaire on September 13, 1983, to the three respondents who actively participated in this investigation: Chi Mei Industrial Company (Chi Mei), Jiuh Mei Enterprise Company (Jiuh Mei) and Hsin Hwa Chemical Company (Hsin Hwa). These three firms are reported to account for more than 90 percent of the exports of acrylic sheet from Taiwan to the United States during the period of investigation. We later discovered that other acrylic sheet manufacturers, Shen Chuen Enterprise Co. of Kaohsiung and Year Lung Industrial Co. of Tainan, exported acrylic sheet to the United States, but we did not send them questionnaires. After extending the time for response at the request of the respondents, we received the responses on October 31, 1983. Subsequently, we received additional data and explanations in letters directed to portions of the response that were incomplete, inaccurate or unclear. Responses to

some of our inquiries were supplied during or after verification.

We published our preliminary determination, signed January 4, 1984, that acrylic film, strips and sheets from Taiwan were being sold, or were likely to be sold, at less than fair value. (49 FR 1410, January 11, 1984). this notice stated that if the investigation proceeded normally, we would make our final determination by March 19, 1984.

We conducted a verification in Taiwan between January 23 and January 31, 1984. We held a hearing on February 2, to allow the parties to address the issues orally. We received post-hearing briefs from all parties on or before February 17th.

Scope of Investigation

The merchandise covered by this investigation is acrylic film, strips and sheets, at least 0.030 inch thick. It consists of polymerized methyl-methacrylate monomer which is formed into film, strips or sheets by cell casting, continuouos casting or extrusion. Acrylic sheet may have a flat or patterned surface and may be transparent, translucent or opaque; and may be clear, white, black or colored. It is generally used as a glazing material and in lighting fixtures, laminated structures, signs, displays, chair mats and other fabricated items. It is currently classified under item numbers 771.4100 and 771.4500 of the *Tariff Schedules of the United States Annotated* (1983) (TSUSA). Chair mats may be cut to shape from rectangular acrylic sheets and, if cut to shape, should be classified under item number 774.55 or the TSUSA. Such chair mats and other manufactured items are not within the scope of this investigation, even if made from acrylic sheet.

We investigated sales of acrylic sheet from Taiwan during the period from February 1 to July 31, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the acrylic sheet to represent the United States price for the sales by each respondent because the merchandise was sold to unrelated purchasers in the United States. We calculated the purchase price for each manufacturer based on the c.i.f. or c. & f. (U.S. port) packed price. For all firms we increased quantities sold to account for actual amounts verified to have been sold.

In accordance with section 772(d)(1)(B) of the Act, we added amounts for duty drawback. For Chi Mei, we made deductions for inland freight in Taiwan, ocean freight, marine insurance where appropriate, export stamp tax, masking, export promotion fees and export brokerage.

For Jiuh Mei we added duty drawback. We made deductions for inland freight in Taiwan, ocean freight, marine insurance where appropriate, export stamp taxes, rebates, export promotion fees and export brokerage.

For Hsin Hwa, which is located in a foreign trade zone, the duty drawback is inapplicable. We made deductions for inland freight in Taiwan, ocean freight, marine insurance where appropriate, export stamp taxes, export promotion fees and export brokerage.

We preliminarily determined duty drawback claimed by each respondent by a formula mandated by the government of Taiwan. Part of the formula makes allowance for material lost as scrap. The scrap allowance, however, appeared to be excessive when compared to the actual scrap experience of one of the firms, as reported during our verification. Therefore, we have adjusted the claimed drawback amounts of each firm downward to reflect an appropriate amendment of scrap allowance in the formula.

Foreign Market Value

In accordance with § 353.3 of our regulations (19 CFR 353.3), we used sales in the home market to determine foreign market value for Chi Mei. . Because the respondents Jiuh Mei and Hsin Hwa reported no sales of acrylic sheet in the home market, we determined foreign market value based on sales in the third county in which they had the largest volume of sales of acrylic sheet, in accordance with § 353.5(c)(2) of our regulations (19 CFR 353.5(c)(2)). The appropriate third country markets were Australia for Jiuh Mei and Hong Kong for Hsin Hwa. For these two firms we calculated foreign market value based on c.i.f. or c. & f. (third country port) prices to unrelated purchasers.

For Chi Mei we deducted inland freight in Taiwan. We adjusted reported quantities downward to conform to verified data. We made circumstance of sale adjustments for differences between home market and U.S. credit expense, masking, advertising, and warranty expense, and after-sales warehousing, where appropriate. We made adjustments for packing differences between the U.S. and home market. We also made an adjustment for differences between commissions on sales to the United States and home market indirect selling expenses allowed as an offset to U.S. commissions in accordance with § 353.15(c) of our regulations.

For Jiuh Mei sales to Australia, we added duty drawback to make an adjustment comparable to the one we made under U.S. price in accordance with section 772(d)(1)(B) of the Act. We adjusted reported quantities upward to conform to verified data. We made deductions for inland freight in Taiwan, ocean freight, marine insurance, export stamp taxes, export promotion fees, and export brokerage. Packing was reported to be identical in both markets and therefore required no adjustment. For Hsin Hwa sales to Hong Kong, the sale calculations were made with the exception of duty drawback, which is not applicable because the company is located in a foreign trade zone, and adjustments for differences in warranty expense and credit expenses between the U.S. and third country markets.

For all manufacturers, we compared identical merchandise in the two markets, where possible. Where identical merchandise was not sold in both markets, we compared merchandise of identical grade, class and thickness, and similar in size. Where merchandise of identical thickness was not sold in both markets, we compared items of most similar thickness and made adjustment for differences in cost, based on differences in thickness in accordance with § 353.16 of our regulations.

We have disallowed an adjustment to price claimed by all three manufacturers for cost differences in producing different quantities of merchandise. The data submitted and the manufacturers' statements at verification indicate that quantity discounts do not exist. Furthermore, the data do not contain evidence of differences in price associated with differences in quantity as required by § 353.14 of our regulations.

We disallowed Chi Mei's claim for an adjustment for bad debt, which we had allowed in the preliminary determination. As we explained in the final antidumping determination of *Color Television Receivers from Taiwan* (49 FR 7628, 7633 March 1, 1984), "* * * Bad debt, by its very nature, is an indirect selling expense. Treasury, as early as 1972, rejected bad debt as a circumstance of sale adjustment." Chi Mei also claimed circumstance of sale adjustments for salesmen's travel and

entertainment expenses. We did not allow these adjustments in this final determination, because they are not directly related to the specific sales of the merchandise under investigation, as required by § 353.15 of our regulations. However, we did include these expenses in the indirect selling expenses, used as an offset to U.S. commissions. Chi Mei also claimed a circumstance of sale adjustment for advertising assumed on behalf of its customers. We did allow this adjustment, but only a prorated amount of that advertising expense verified as promoting acrylic sheet.

Chi Mei claimed a level of trade adjustment on the grounds that it acts as a distributor in the home market, while it sells to distributors in the U.S. We disallowed the claimed level of trade adjustment, because Chi Mei was unable to provide evidence that differences in price were due to differences in the level of trade.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making this determination by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and selected documents containing relevant information.

Respondent Hsin Hwa Comments

Comment 1: A number of margins calculated by the Department of Commerce (DOC) resulted from errors in data manipulation.

DOC Position: Both Hsin Hwa and we made errors in transcribing data used in our preliminary determination. We have made the appropriate corrections.

Comment 2: In the preliminary determination, DOC calculated ocean freight on gross weight, including packing. To determine ocean freight based on the net weight of the merchandise, it should be increased by 4.3 percent.

DOC Position: Hsin Hwa did not claim that the weight figures it provided in its questionnaire response reflected gross weight until after the verification. Since we did not verify that Hsin Hwa used gross weight for calculating ocean freight, we could not give consideration to the requested adjustment.

Comment 3: Marine insurance expense should be increased by 20 percent because Hsin Hwa cargo is insured at 120 percent of the CIF price.

DOC Position: we agree. We verified actual insurance practice to be as claimed by Hsin Hwa. Therefore, we have made the adjustment.

Comment 4: Sales to the United States are generally made in larger quantities than those used in the third country (Hong Kong) used to determine foreign market value. Average production runs are longer, due to larger quantities sold on average in the U.S. Merchandise is produced on a per order basis for all markets. Thus, foreign market value should be reduced by a factor reflecting the differences in costs associated with producing the different quantities.

DOC Position: All three respondents have claimed allowances based on differences in quantities produced for the home (or third country) market compared to the U.S. market. Such adjustments are typically made for quantity discounts, but the production cost differential must be reflected in lower prices for larger quantities. See 19 CFR 353.14(b).

The data for all three respondents establish that prices do not vary depending on quantities sold in either the U.S. or the market used to determine foreign market value. Unless the data satisfy this threshold requirement of our regulations, we cannot allow an adjustment for differences in the cost of production for different quantities.

Respondent Jiuh Mei Comments

Comment 1: Ocean freight claimed and allowed in the preliminary determination should be increased by 4.3 percent in both markets because Jiuh Mei had incorrectly reported gross weight rather than net weight figures. Ocean freight per sheet should be calculated on a net weight basis.

DOC Position: We verified Jiuh Mei's information and have made the suggested change.

Comment 2: In its questionnaire response, Jiuh Mei indicated that marine insurance should be computed on the gross price. In order to correct the error, marine insurance should be increased in the Australian market by 20 percent and in the U.S. market by 10 percent to reflect the fact that the insured values were greater than the gross price in each market.

DOC Position: We agree. This information was first received and supported at verification. We have incorporated the change.

Comment 3: A "commission" of 3 percent is given to the purchaser in all Australian sales of acrylic sheet by Jiuh Mei. Since a purchaser who takes title to the merchandise cannot receive a commission for its own purchases, the "commission" is, in effect, a rebate. Many U.S. transactions were also characterized by similar rebates. True commissions were paid on many other U.S. sales where the importer did not purchase for its own account. Both Australian and U.S. rebates should be treated as a reduction to sales price. Commissions on U.S. sales should not be deducted from sales price since, pursuant to 19 CFR 353.15(c), commissions are used as an offset to indirect selling expenses claimed as an adjustment to foreign market value. No indirect selling expenses were claimed.

DOC Position: Australian "commissions" were reported in Jiuh Mei's questionnaire response and were subsequently verified as rebates. U.S. rebates and commissions were not reported, but were found by the verifying officer on examining Jiuh Mei's records. An actual listing of claimed U.S rebates and true commissions was not submitted by Jiuh Mei until after verification. Inasmuch as this information has not been verified, we must resort to use of the best information available. Therefore, we conclude that the reported rebates could be applicable in all U.S. sales and have adjusted U.S. price accordingly.

Comment 4: An adjustment should be allowed for the lower average cost for producing greater quantities for sales to the U.S. market than for sales to Australia.

DOC Position: See Hsin Hwa comment 4.

Respondent Chi Mei Comments

Comment 1: DOC erred in calculating U.S price for merchandise ordered in the investigation period, but not shipped prior to completion of the questionnaire response. Expenses or additions related to foreign brokerage, foreign inland freight, ocean freight, duty drawback, etc. were listed as zero in Chi Mei's response. DOC's use of such sales without appropriate adjustments is contrary to the Act.

DOC Position: We agree. We have made the appropriate adjustments to these sales in making our final calculation.

Comment 2: DOC erred in its preliminary determination by selecting similar merchandise for comparison by varying thickness, while maintaining constant size. Section 771(16) of the Act requires that preference be given to merchandise that is approximately equal in commercial value for comparison. In this case a preference for use of constant thickness is required.

DOC Position: All three respondents claimed an adjustment for differences in thickness. In its response and subsequently, Chi Mei alone of the three respondents claimed benefit for an adjustment for differences in size. All three use the same process to manufacture acrylic sheet. Chi Mei's

claimed adjustments for size were small in comparison to those for thickness. Comparisons on the basis of identical thickness would clearly have been preferable to those on the basis of idential size considering statutory requirements. However, Chi Mei's size adjustment data were incomplete and unusable for adjustment in many of the comparisons of similar merchandise. Consequently, for the preliminary determination, we decided to compare sales where we did not have identical merchandise, on the basis of identical size and most similar thickness. This provided consistency in our comparisons since Chi Mei had provided cost adjustment information for almost all differences in thickness, but not for many differences in size. Subsequently, we reviewed Chi Mei's size adjustment methodology at verification by inspecting the manufacturing process and reviewing applicable accounting procedures. Furthermore, we discovered at verification that the size data used in calculating Chi Mei's adjustment factors are unreliable. In our opinion, the claimed adjustments were not supported by the actual process. It appears that, costs per square foot are the same for each thickness, so there is no need to adjust for size. For the preceding reasons, we have decided not to allow any claimed adjustment for differences in size in comparisons of similar merchandise. Since size differential costs are unsubstantiated, hence irrelevant in our comparisons, we have compared merchandise of identical thickness and similar size where identical merchandise is not available. Where no identical thickness was available for comparison, we have compared the most similar thicknesses and sizes, with appropriate adjustments for the cost of differences in thickness.

Comment 3: DOC used a factor in its preliminary determination computation that arbitrarily and capriciously reduced U.S. unit prices by 0.2 percent.

DOC Position: During our review we discovered three accidental errors in the program used in the preliminary determination. One operated in respondents' favor, and two did not. We have corrected all such errors for the final determination.

Comment 4: with the exception of inland freight, DOC verified the accuracy of all expenses and adjustments claimed.

DOC Position: We conducted a verification of Chi Mei's response and determined that much of the data was accurately reported. However, we also found that there were some inaccuracies in the data and that some claimed adjustments were unsupported.

Comment 5: DOC should correct its calcuations by adjusting for the increased freight to northern Taiwan found at verification.

DOC Position: We have verified actual freight costs and have made an appropriate correction.

Comment 6: DOC must adjust home market prices to reflect differences in the cost of producing smaller quantities associated with home market sales as compared with the larger quantities sold in the U.S.

DOC Position: Chi Mei's claimed adjustment has been denied. We have addressed this issue in resonse to Hsin Hwa comment 4.

Comment 7: DOC should not use a sale of a single sheet in Taiwan to compare with sales of hundreds of sheets in the U.S.

DOC Position: Although we agree that such a comparison is not desirable, as the Act directs us to compare identical merchandise in preference to similar merchandise regardless of quantity, there may be occasions when this is necessary. In this case, however, we are not aware of any instances in which we have made comparisons of this type.

Comment 8: Chi Mei should be allowed interest expense claimed for the average 105 days for which it deferred collection of funds in the home market.

DOC Position: We agree. An adjustment for differences in credit expenses, an expense directly related to particular sales, should reflect the actual differences in the extension of credit by a firm no matter now the seller chooses to finance those extensions. Our calculation of the credit costs incurred by the firm for sales in the home and U.S. markets is based upon actual data from the firm (e.g. the appropriate accounts receivable, sales accounts, borrowing records of the firm, etc.). For the purposes of this investigation, we have used the short-term borrowing rate to calculate actual credit costs.

If a firm could satisfactorily demonstrate and quantify actual costs directly attributable to extensions of credit on particular transactions, we would use the actual expense incurred to calculate the credit expense on those sales. However, in this investigation Chi Mei could not adequately demonstrate and quantify all costs incurred for extensions of credit on particular transactions. Therefore, for Chi Mei, we have computed home market interest expense by multiplying the short-term interest rate by the full transaction price, and have applied it to the average period between shipment and payment, which in this case if 105 days.

Comment 9: DOC should allow increased warranty expense found in the home market, and the after-sale warehousing expenses in northern Taiwan, bad debt, and salesmen's travel and entertainment expenses as claimed.

DOC Position: Increased warranty expenses and after-sale warehousing expenses were verified. Therefore, we have allowed warranty and after-sale warehousing expenses as circumstances of sale adjustments to foreign market value, in accordance with § 353.15 of our regulations. We determined bad debt to be unallowable as discussed in the Foreign Market Value section of this notice. Salesman's travel and entertainment expenses were not allowed as circumstance of sale adjustments because Chi Mei could not demonstrate that these expenses were directly related to specific sales under consideration, as required by § 353.15 of our regulations. We have, however, considered these as indirect selling expenses for use as an offset to commissions paid on U.S. sales, where appropriate.

Comment 10: Chi Mei is entitled to adjustments claimed for both differences in cost of production for similar merchandise in terms of size and for adjustments based on claimed differences in production quantities. There is no double counting.

DOC Position: Chi Mei is not entitled to either adjustment for reasons which we explained in responding to Hsin Hwa comment 4 and Chi Mei comments 2 and 6.

Comment 11: In the verification report, DOC cited discrepancies between the nominal sizes that Chi Mei reported for U.S. sales in our questionnaire response and actual sizes. These discrepancies systematically understated actual quantities of acrylic sheet sold by Chi Mei to the U.S. market. The "discrepancy" between sales quantity reported by Chi Mei and sales quantity calculated according to actual acrylic sheet dimensions was not a discrepancy nor a mistake. The quantity information provided corresponded exactly with the company's business records. Because of the large number of different sizes and thicknesses that Chi Mei sells to the United States, it is impractical to sell on the basis of actual size. Instead Chi Mei sells to the U.S. on the basis of nominal square feet for each size. There should be no adjustment to Chi Mei's quantities because that would distort actual transaction prices.

DOC Position: During verification we sampled invoices from three U.S. sales. In each instance, we discovered that reported nominal sizes understated the actual square footage of the sheets sold. Additionally, we sampled documents

from home market sales and found that, to a lesser degree, they tended to overstate quantities reported. Although we requested actual dimensions of all sizes as early as November, a complete and usable conversion table for U.S. sales was not supplied until after the Chi Mei verification. It was received too late for verification and application to our final determination. In addition, Chi Mei has yet to furnish a table for conversion of reported home market quantities to actual quantities delivered. Such a table was reported by Chi Mei to exist in a letter to DOC dated March 1, 1984, but it was not furnished.

Consequently, we have scaled all reported quantities sold by Chi Mei in the U.S. upwards by a factor which represents the best information available. This factor is the relative difference between "nominal" size and actual size in the most disadvantageous instance examined in the U.S. data. Similarly, we have scaled all reported quantities sold by Chi Mei in the home market downward by a factor developed from the relative difference between reported size and actual size in the most disadvantageous case reviewed in the home market data.

Rohm and Haas Comments

Comment 1: The DOC should recompute quantities sold by Chi Mei and by Hsin Hwa to the United States. Oversized sheets sold in the U.S. market, if accurately accounted for, would depress unit prices. Antidumping duties are imposed on the basis of differences in value, not differenes in cost.

DOC Position: We have adjusted U.S. quantities upward for Hsin Hwa and Chi Mei. For Hsin Hwa we were able to make this adjustment in accordance with verified data submitted. For treatment of Chi Mei, see our response to Chi Mei's Comment 11.

Comment 2: The DOC should have verified that the government of Taiwan has a policy of insuring a direct link between duty drawback for exported acrylic sheet and import duties imposed on monomer, a major ingredient of acrylic sheet. Thus, no duty drawback adjustment to United States price may be allowed for Chi Mei and Jiuh Mei, in accordance with our precedent set in an antidumping investigation involving sorbitol from France (47 FR 6459). The case handler stated that he only verified that Chi Mei's drawback for export of acrylic sheet to the U.S. in the six-month investigation period did not exceed duties paid for monomer in the same period. In the case of Jiuh Mei, relevant records had been destroyed by fire.

DOC Position: Contrary to Rohm and Haas's characterization of the linkage issue, DOC need not trace an input from import through export in order to allow drawback on import duties paid. This would be an unrealizable task. The linkage concept requires that there must be a reasonable link established between duties imposed and rebated. (*Bicycles from Taiwan: Final Determination of Sales at Less Than Fair Value*) (49 FR 31666, July 11, 1983). In the Sorbitol case, we disallowed the claimed rebate because it would have been granted by the EEC whether or not the raw material had been imported. In contrast, at verification in this investigation, we received copies of pertinent documents from Chi Mei, relating each application for duty drawback to import duties that the company had actually paid.

Our method of determining if there were adequate import duties paid to cover drawback on exports is governed by our test pursuant to the principle of substitutability, which is discussed in our response to comment 3, below.

As stated in the verification report, Jiuh Mei had a fire which closed its production facilities for months. We are not aware that records were destroyed. For Jiuh Mei, however, we are using sales of identical or substantially identical merchandise to its largest third country customer (Australia) for comparison to U.S. sales. Duty drawback enters the comparison uniformly on both sides of the equation, so that the issue of excessive drawback becomes moot as to Jiuh Mei. for Chi Mei, computations of dumping margins involving duty drawback result in increased U.S. prices, but do not affect home market prices.

Comment 3: Duty drawback should only be allowed to the extent that duty is levied against domestic sales. Since duPont has developed data that demonstrate that it is unlikely that domestically sold acrylic sheet was manufactured with imported monomer, domestic sales (like export sales) are not burdened by the cost of import duties. The purposes of the price adjustment in section 772(d)(1)(B) of the Act is to insure that the rebate of import duties does not create the false appearance of dumping margins that, in fact, do not exist. No duty drawback adjustment is necessary to allow a fair price comparison. In fact, the duty drawback adjustment distorts the price comparison.

DOC Position: We reported during our oral disclosure of verification that the domestic supplier of monomer offers it to acrylic sheet manufacturers at two prices. The higher price is for monomer used for domestically marketed acrylic products. The reason explained for the higher price is that constituents of monomer were imported and the supplier can sell monomer at a lower price for export use since the supplier receives duty drawback. The premise that acrylic sheet made with domestically produced monomer is not burdened by import duties is incorrect. Acrylic sheet, manufactured for the domestic market, is made with monomer that has been subject to duties whether purchased from local or foreign sources and these duties are not subject to drawback.

Monomer is a fungible commodity. We cannot identify whether the starting material in a finished sheet was domestic or imported. It is not necessary to challenge or agree with duPont's deduction that domestic sheet was made with domestically purchased monomer. We regard drawback claims to be reflective of duties paid on the imported raw material if there is evidence of sufficient imports of that raw material to account for exports of the manufactured product. Under this principle of "drawback substitution", we have found sufficient imports of monomer into Taiwan during the period of investigation to warrant adjustment for drawback of duties on exports of acrylic sheet from Taiwan. See *Steel Wire Rope from the Republic of Korea—Final Determination of Sales at Not Less than Fair Value* (48 FR 41616, September 16, 1983).

Petitioner duPont Comments

Comment 1: Since no duties are paid on monomer made by the local supplier of monomer, no duty drawback should be allowed for any monomer from that source.

DOC Position: DuPont's concern relates to the drawback substitution principle which is addressed in our response to Rohm and Haas's comment 3.

Comment 2: There should be no adjustment for differences in quantity. The cells have to be set up for each change regardless of whether the thickness changes. Cell building and color mixing are off-line operations.

DOC Position: We agree that there should be no adjustment for differences in quantity, although cell building and color mixing are on-line operations in Taiwan. See our response to Hsin Hwa comment 4 and Chi Mei comment 6.

Comment 3: Based on documents supplied in exhibits attached duPont's post-hearing brief, DOC should reexamine Chi Mei's response. Chi Mei

was quoting higher prices from a price list in the home market in the investigation period than it reported to DOC for the investigation period. Jiuh Mei appears to have higher selling prices in Australia than was reported. In Hong Kong, DOC has the burden of proving that Tai Shun Plastic and Electrical Enterprise Co. (Tai Shun), the leading distributor of acrylic sheet in Hong Kong, is not related to Hsin Hwa. Petitioner has given DOC documentation proving that Tai Shun is 20 percent Taiwanese owned.

DOC Position: If duPont wanted to draw our attention to inconsistencies between prices listed in the Chi Mei response, which duPont received in November 1983, and information contained in a telex to duPont dated March, 1983 (from a source unknown to us), it should have done so before we verified Chi Mei's response in mid-January 1984. On page 2 of Chi Mei's response, it says that although it has had a price list, actual sales prices depend on quantity, level of trade and other market factors. We verified that prices were established on a sale by sale basis, independent of the quantity or level of trade. Price lists from Chi Mei are not the basis of sale. Petitioner's other documents concerning Chi Mei, submitted with the post hearing brief, relate to indirect transactions in January 1984, which is outside the period of investigation. Furthermore, the information addressed in these exhibits concerns data provided in Chi Mei's response that has been verified to be correct through examination of that firm's accounts and records. If duPont wanted to direct our attention to Jiuh Mei's prices, it should have supplied information pertaining to Jiuh Mei on a timely basis. As to the alleged relationship between Tai Shun and Hsin Hwa, duPont has not provided evidence of such relationship. We do not bear the burden of disproving petitioner's unsupported belief that there is a relationship between Hsin Hwa and the Hong Kong distributor.

Comment 4: The verification procedure should be repeated because of failure to verify the correlation between duty collected and duty drawback.

DOC Position: See our response to Rohm and Haas comment 2.

Comment 5: Petitioner notes that Chi Mei understated quantities exported to the United States and overstated quantities sold in the home market. Petitioner objects to the fact that, at verification, DOC examined only six transactions where such discrepancies may appear.

DOC Position: With respect to understated quantities, see our response to Chi Mei's comment 11. We agree that we may have been able to determine more refined indicia to correct the Chi Mei errors found had we examined more transactions. However, we budgeted available time to do that which seemed most efficient in terms of verifying the great quantity of information contained in respondent's submissions. When we found non-uniform differences between reported and actual quantities affecting most or all the sales, there was no purpose in looking further because we could not verify all such differences in the time allotted.

Comment 6: Petitioner objects to DOC's refusal to pursue a cost of production investigation, which it requested 70 days prior to the date of final determination.

DOC Position: The petitioner has produced insufficient evidence to justify a cost of production investigation. DuPont's allegation was based on non-confidential information. At the time we received the allegation, we applied duPont's methodology to the confidential data contained in the questionnaire response. We determined that sales below cost were remotely possible for Chi Mei on a very few sales. We had no adequate information addressed to below cost sales of the other two respondents in Hong Kong and Australia. However, we applied Chi Mei's costs, developed from duPont's methodology, to Hsin Hwa and Jiuh Mei data without affirmative results.

DuPont's allegation was submitted only 70 days prior to the final determination. It required us to request additional information because we deemed the allegation to be weakly supported at that time. The additional data obtained several days later did not give us reasonable grounds to believe or suspect sales below cost in the home market and we also deemed the submission to be untimely.

Suspension of Liquidation

In accordance with section 733(d) of the Act, as of January 11, 1984, we instructed the United States Customs Service to suspend liquidation of entries of acrylic film, strips and sheets, at least 0.030 inch (0.76 mm.) thick from Taiwan that are entered, or withdrawn from warehouse, for consumption.

As of the date of publication of this notice in the **Federal Register**, the Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price except for Jiuh Mei Enterprise Co. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer	Weighted-average margin percentage
Jiuh Mei Enterprise Company	0.42
Hsin Hwa Chemical Company	3.74
Chi Mei Industrial Company	[illegible]
All Other Manufacturers/Producers/Exporters	[illegible]

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or threat of material injury does not exist, these proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on acrylic film, strips and sheets more than 0.030 inch thick from Taiwan entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 19, 1984.

[FR Doc. 84-7935 Filed 3-22-84; 8:45 am]

BILLING CODE [illegible]

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held April 17, 1984, at 10:00 a.m., Herbert C. Hoover Building, Room 1851, 14th Street and Constitution Avenue, NW., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to telecommunications equipment or technology.

The Committee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo 202–377–2583.

Dated: March 20, 1984.

Milton M. Baltus,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-7580 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Scoping Meeting on the Proposed Cordell Bank National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is examining Cordell Bank, located off the coast of northern California, for designation as a national marine sanctuary. NOAA will hold a public meeting to gather information to determine the range and significance of issues related to sanctuary designation and management. This meeting will be held from 7 till 10 p.m. in the Goether Room on April 25, 1984 at the California Academy of Sciences in San Francisco, California. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, (202) 634–4236.

ADDRESS: Sanctuary Programs Division, Office of Ocean and Coastal Resource Managment, National Ocean Service, NOAA, 3300 Whitehaven St., NW., Washington, D.C. 20235.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972 authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological, or esthetic values. The Secretary of Commerce has delegated the responsiblity for reviewing and evaluating national marine sanctuaries to the Sanctuary Programs Division within NOAA.

Cordell Bank is located 20 miles due west of the Point Reyes peninsula, and approximately 50 miles west-northwest of San Francisco, California. The site is outside state waters and is completely underwater. The area under consideration is 22 square nautical miles in size.

Cordell Bank is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. The Bank consists of a complete series of steep-sided ridges and narrow pinnacles on the edge of the continental shelf. It lies on a seafloor plateau 300-400 feet deep and rises to within about 115 feet of the surface. The prevailing California Current flows southward along the coast and is deflected by the Bank, causing the upwelling of nutrient-rich waters. This upwelling stimulates the growth of planktonic organisms and results in an exceptionally vigorous biological community. These characteristics support the entire food chain up to the larger species such as the seabirds, fish and marine mammals that are attracted to this locally productive environment.

Cordell Bank was nominated for sanctuary status in July 1981. On June 30, 1983, NOAA declared the site an active candidate for further consideration as a national marine sanctuary. NOAA will hold a public meeting to gather information to determine the range and significance of issues related to sanctuary designation and management. This meeting will be held from 7 till 10 p.m. in the Goether Room on April 25, 1984 at the California Academy of Sciences in San Francisco, California. All interested persons are invited to attend.

The steps in the designation process, including the scoping meeting, are preparation of a management and environmental impact statement; public hearings in the San Francisco Bay Area; and consultations with governmental agencies and other interested parties. These steps are required before the site can be forwarded for Presidential approval. The initiation of this process does not commit NOAA to the final designation of Cordell Bank as a national marine sanctuary.

The management plan specifies goals and objectives and describe programs for resource protection, research, and resource interpretation in the proposed sanctuary. Implementation of the management plan is analyzed in the environmental impact statement.

The upcoming April meeting represents the beginning of an open process for public participation in NOAA's development of a management plan and environmental impact statement. Opportunities to participate in developing the management plan will be provided through the public meeting, written comments on the draft environmental impact statement, and formal public hearings.

(Federal Domestic Assistance Catalog Number 11.419 Coastal Zone Management Program Administration)

Dated: March 19, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-7610 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Receipt of Application for Permit; Dr. Louis Herman

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Dr. Louis Herman (P166B), University of Hawaii at Manoa, Kewalo Basin Marine Mammal Laboratory, 1129 Ala Moana Blvd., Honolulu, Hawaii 96814.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Atlantic bottlenose dolphins (*Tursiops truncatus*)—4.

4. Type of Take: Captive maintenance for communication studies.

5. Location of Activity: Capture in Mississippi Sound, Gulf of Mexico.

6. Period of Activity: 3 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, The Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 16, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-7861 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Brighton Aquarium and Dolphinarium

On February 7, 1984, Notice was published in the **Federal Register** (49 FR 4541), that an application had been filed with the National Marine Fisheries Service by the Brighton Aquarium and Dolphinarium, Marine Parade and Madeira Drive, Brighton BN2 ITE Sussex, United Kingdom, for a permit to take two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purpose of public display.

Notice is hereby given that on March 16, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a permit for the above taking to the Brighton Aquarium and Dolphinarium, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: March 16, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-7858 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Gulf World, Inc.

On January 25, 1984, Notice was published in the **Federal Register** (49 FR 3108) that an application had been filed with the National Marine Fisheries Service By Gulf World, Inc., 15412 West Alt. Highway 98, Panama City Beach, Florida 32407, for a permit to take one (1) Atlantic bottlenose dolphin (*Tursiops truncatus*) for the purpose of public display.

Notice is hereby given that on March 16, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Public Display Permit to the Gulf World, Inc., subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida.

Dated: March 16, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation National Marine Fisheries Service.

[FR Doc. 84-7859 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; New York Aquarium

On January 20, 1984, Notice was published in the **Federal Register** (49 FR 2500) that an application had been filed with the National Marine Fisheries Service by the New York Aquarium, Boardwalk & West 8th Street, Brooklyn, New York 11224, for a permit to import three (3) beluga whales (*Delphinapterus leucas*) for public display.

Notice is hereby given that on March 16, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a permit for the import of three beluga whales to the New York Aquarium, subject to certain conditions set forth therein.

The permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts.

Dated: March 16, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-7860 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-22-M

Issuance of General Permit; Scan Ocean, Inc.

On March 16, 1984, a general permit to incidentally take marine mammals during commercial fishing operations in 1984 was issued to: Scan Ocean, Inc., 42 Rogers Street, Gloucester, Mass. 01930, in Category 1: Towed or Dragged Gear, to take 5 harbor seals (*Phoca vitulina*) and 10 cetaceans.

All takings are incidental to commercial fishing operations within the U.S. Fishery Conservation Zone, pursuant to 50 CFR 216.24.

This general permit is available for public review in the Office of the Assistant Administrator for Fisheries,

3300 Whitehaven Street NW., Washington, D.C.

Dated: March 16, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-7857 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-22-M

Fishery Conservation and Management; Receipt of Foreign Fishing Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.).

Send comments on applications to:

Fees, Permits, and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906, 617-231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901, 302-674-2331

David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 South Park Circle, Charleston, SC 29407, 803-571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809-753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813-228-2815

Joseph C. Greenly, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Stret, Portland, OR 97201, 503-221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 605 W. Fourth Avenue, 907-271-4064

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1608, Honolulu, Hawaii 98613, 808-523-1368

FOR FURTHER INFORMATION CONTACT: Shirley Whitted or John D. Kelly (Fees, Permits, and Regulations Division), 202-634-7432.

The Magnuson Act also requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1984 have been received between February 10, 1984, and March 20, 1984, from the Government(s), shown below.

Dated: March 21, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

Fishery codes and designation of regional councils which review applications for individual fisheries are as follows:

Code and fishery	Regional council
ABS Atlantic billfishes and [illegible]	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA Bering Sea and Aleutian Islands groundfish.	North Pacific.
GOA Gulf of Alaska	Do.
NWA Northwest Atlantic Ocean.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
SMT Seamount grondfish (Pacific Ocean).	Western Pacific.
SNA Snails (Bering Sea)	North Pacific.
WOC Pacific Groundfish (Washington, Oregon, and California).	Pacific.
PBS Pacific billfishes and sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Fishing operations	Activity code
Catching, processing, and other support	1
Processing and other support, only	2
Other support only	3
"Joint Venture" in support of U.S. vessels	4

Nation/vessel name/vessel type	Application No.	Fishery	Activity
Government of Japan:			
Biyo Maru, cargo/transport vessel	JA-84-0596	BSA, GOA, NWA, SMT, SNA	[illegible]
Chosei Maru No. 78, pot fishing vessel	JA-84-0838	SNA	1
Eastern Reefer, cargo/transport vessel	JA-84-0600	BSA, GOA, NWA, SMT	3
Ewa Maru No. 28, pot fishing vessel	JA-84-0820	SNA	1
Hoyo Maru No. 63, pot fishing vessel	JA-84-0862	SNA	1
Kayo Maru No. 8, pot fishing vessel	JA-84-1137	SNA	1
Katsbemi Maru, tanker fuel/water	JA-84-0597	BSA, GOA	3
Koholu Maru No. 18, pot fishing vessel	JA-84-0839	SNA	1
Kyoshin Maru, cargo/transport vessel	JA-84-0629	BSA, GOA	3
Mebah, cargo/transport vessel	JA-84-0108	BSA, GOA	3
Nanwa Maru No. 36, tanker fuel/water	JA-84-0598	BSA, GOA	[illegible]
Senkichi Maru No. 23, pot fishing vessel	JA-84-0848	SNA	1
Takashiro Maru No. 31, pot fishing vessel	JA-84-0856	SNA	1
Western Reefer, cargo/transport vessel	JA-84-0599	BSA, GOA, NWA, SMT	3
Government of the Netherlands:			
Emmely, cargo/transport vessel	NL-84-0017	NWA	[illegible]
M/V Arctic, cargo/transport vessel	NL-84-0019	NWA	3
Marleen, cargo/transport vessel	NL-84-0018	NWA	3
Government of Portugal:			
Joao Alvares Fagundes, large stern trawler	PO-84-0004	NWA	2, 4
Luis Ferreira de Carvalho, large stern trawler	PO-84-0005	NWA	2, 4
Government of Spain: Mar de Labrador, medium stern trawler	SP-84-0176	BSA	2, 4
Government of the U.S.S.R.:			
Armenya, large stern trawler	UR-84-0016	WOC	2, 4
Mys Orekhova, large stern trawler	UR-84-0017	WOC	2, 4
Karagach, large stern trawler	UR-84-0021	WOC	2, 4
Skalistyi, large stern trawler	UR-84-0052	WOC	2, 4
Pasionariya, large stern trawler	UR-84-0060	BSA, GOA	2, 4
Nadezhda, large stern trawler	UR-84-0061	WOC	2, 4
Mys Ratmanova, large stern trawler	UR-84-0078	WOC	2, 4
Kargat, large stern trawler	UR-84-0198	BSA, GOA	2, 4

Nation/vessel name/vessel type	Application No.	Fishery	Activity
Argonit, large stern trawler	UR-84-0224	WOC	2, 4
Marshal Rokossovskiy, cargo/transport vessel	UR-84-0274	BSA, GOA, WOC	3
Khudozhnik Dayneka, cargo/transport vessel	UR-84-0276	BSA, GOA, WOC	3
Pistolet, large stern trawler	UR-84-0561	WOC	2, 4
Mys Osipova, large stern trawler	UR-84-0565	BSA, GOA, WOC	2, 4
Khvostanyi, large stern trawler	UR-84-0710	WOC	2, 4
Rubinovyi, large stern trawler	UR-84-0716	WOC	2, 4
UST-Kut, tanker fuel/water	UR-84-0727	BSA, GOA, WOC	3
UST-Karsk, tanker fuel/water	UR-84-0728	BSA, GOA, WOC	3
Okhamit, tanker fuel/water	UR-84-0730	BSA, GOA, WOC	3
Mys Krumoiskiy, large stern trawler	UR-84-0738	WOC	2, 4
Vostochnyi Bereg, cargo/transport	UR-84-0761	BSA, GOA, WOC	3
Lukomorye, tanker fuel/water	UR-84-0763	BSA, GOA, WOC	3
Spravedlivyi, repair ship	UR-84-0764	BSA, GOA, WOC	3
Babykino, large stern trawler	UR-84-0765	WOC	2, 4
Kapitan Redkokasha, large stern trawler	UR-84-0766	WOC	2, 4
Slavianskii, large stern trawler	UR-84-0767	WOC	2, 4
Nikolaevskiy Karabel, large stern trawler		BSA, GOA, WOC	2, 4
Delegat	UR-84-0762	BSA, GOA, WOC	3

Portugal

Joint Venture—The government of Portugal has applied for fishing vessel permits to engage in joint venture activities with an American partner, Joint Trawlers (North America) Ltd., 63 Main Street, Gloucester, MA 01930. The application request that Portuguese vessels receive transshipment in the FCZ of U.S. harvested fish in the amount of 4,000 mt of *Illex* squid from domestic vessels. The joint venture is to take place June–October, 1984 in the Northwest Atlantic Ocean fishery.

Spain

Joint Venture (modification)—the applications published in the **Federal Register** December 2, 1983, at 48 FR 54410 between the government of Spain and the American partner, Alaska Salt Fish Corporation, Anchorage, Alaska, was modified to include an additional vessel, the *Mar de Labrador.*

United Soviet Socialist Republics

The USSR has applied for fishing vessel permits to engage in joint venture activities with the American partner, Marine Resources Company, 192 Nickerson #307, Seattle, WA 98109, Tele: 206/285–6424. The application requests that USSR vessels receive transshipments in the FCZ of U.S. harvested Pacific Whiting in the amount of 80,000 mt from domestic vessels. The joint venture is to take place April 15—October 15, 1984, in the Washington, Oregon, and California trawl fishery.

Joint Venture (modification)—The Joint venture applications published in the **Federal Register** December 2, 1983, at 48 FR 54410 for the USSR and the Marine Resources Company, Seattle, WA was modified to include four additional vessels: the *Mys Osipova, Pasionariya, Kargat* and *Nikolaevskiy Karabel.*

[FR Doc. 84-8080 Filed 3-22-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Import Control Level for Certain Man-Made Fiber Textile Products From the Republic of Korea

March 20, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 26, 1984. For further information contact Ross Arnold, International Trade Specialist (202) 377–4212.

Background

On January 13, 1984 a notice was published in the **Federal Register** (49 FR 1786) announcing that, on January 9, 1984 the United States Government had requested the Government of the Republic of Korea to enter into consultations concerning exports to the United States of man-made fiber luggage in Category 670 (only T.S.U.S.A. Nos. 706.4144 and 706.4152). During consultations held in February 1984 no agreement was reached on a mutually satisfactory level for Category 670 pt. The United States has decided, therefore, to control imports in this category at the level of 18,435,270 pounds for these products exported during the twelve-month period beginning on January 9, 1984 and extending through January 8, 1985. Should a different solution be reached in consultations with the Government of the Republic of Korea, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

SUPPLEMENTARY INFORMATION: On December 16, 1983 a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** (48 FR 55894) which established levels of restraint for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1984. In the letter which follows this notice an additional level is being established for man-made fiber luggage in Category 670 pt. (only TSUSA Nos. 706.4144 and 706.4152), during the twelve-month period which began on January 9, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 20, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does ont cancel, the directive of December 13, 1983 concerning cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during 1984.

Effective on March 26, 1984, paragraph 1 of the directive of December 13, 1983 is hereby further amended to include a level of 18,435,270 pounds [1] for man-made fiber

[1] The level of restraint has not been adjusted to reflect any imports exported after January 8, 1984.

textile products in Category 670 pt.[2] exported during the twelve-month period which began on January 9, 1984 and extends through January 8, 1985.

Textile products in Category 670 pt.[2] which have been exported to the United States prior to January 9, 1984 shall not be subject to this directive.

Textile products in Category 670 [2] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive. These products will also be exempt from the visa requirements until further notice.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-7829 Filed 3-22-84; am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will meet at Hanscom Air Force Base, Massachusetts on May 1–2, 1984.

The purpose of the meeting will be to review on-going projects in the field of Anti-Jam and Survivable communications. The meeting will convene at 8:00 a.m. to 5:00 p.m. each day.

The meeting concerns matters listed in Section 552(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-7824 Filed 3-22-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Chief of Naval Operations; Executive Panel Advisory Committee Strategic Planning Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Planning Task Force will meet on April 9–10, 1984, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of the meeting is to evaluate alternative strategic planning methods for developing future naval warfare capabilities. The entire agenda for the meeting will consist of discussions of key issues related to the rapid development and fielding of cost-effective, integrated warfighting capabilities. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Alexandria, Virginia 22311. Telephone: (703) 756–1205.

Dated: March 19, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-7819 Filed 3-22-84; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations; Executive Panel Advisory Committee Terrorism Task force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Terrorism Task Force will meet on April 16, 1984, from 9 a.m. to 5 p.m., at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of the meeting is to evaluate alternative U.S. strategies to combat state supported terrorism. The entire agenda for the meeting will consist of discussions of key issues related to terrorism and the formulation of an updated Navy Policy on Terrorism and Counter/Anti-Terrorism. The matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Alexandira, Virginia 22311. Telephone (703) 756–1205.

Dated: March 19, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer..

[FR Doc. 84-7822 Filed 3-22-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Man-in-the-Loop Targeting will meet on April 12, 1984, at the Applied Physics Laboratory, Johns Hopkins University, Laurel, Maryland. Sessions of the meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on April 12, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review material and presentations previously received by the Panel and to conduct a working session to draft the final report. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number: (202) 696–4870.

[2] In Category 670, only TSUSA Nos. 706.4144 and 706.4152.

Dated: March 18, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-7821 Filed 3-22-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Working Group on Amphibious Operations will meet on April 10 and 11, 1984, at the Office of Naval Research, Arlington, Virginia. The first session of the meeting will commence at 9:30 a.m. and terminate at 11:30 a.m. on April 10, 1984. The second session will commence at 11:30 a.m. and terminate at 4:30 p.m. on April 10, 1984. The third session will commence at 8:30 a.m. and terminate at 11:30 a.m. on April 11, 1984. All sessions of the meeting will be held in room 915, Office of Naval Research. The first session from 9:30 a.m. to 11:30 a.m. on April 10, 1984 will be open to the public. The remaining two sessions will be closed to the public.

The purpose of the meeting is to discuss amphibious doctrine and cover and deception. The open session will generally cover a presentation on amphibious doctrine. The remaining sessions of the meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order.The Secretary of the Navy has therefore determined in writing that the public interest requires that the second and third sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number: (202) 696-4870.

Dated: March 19, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-7820 Filed 3-22-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Working Group on Navy-Supported University Laboratories will meet on April 24, 1984, at the Naval Sea Systems Command, National Center Building #3, Arlington, Virginia. Sessions of the meeting will commence at 8:20 a.m. and terminate at 4:30 p.m. on April 24, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review the Navy's use of university laboratories in undersea warfare. All sessions of the meeting will involve presentations, related questions and discussion of classified undersea warfare information. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The Secratary of the Navy has therefore determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number: (202) 696-4870.

Dated: March 19, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 84-7823 Filed 3-22-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Desegregation of Public Education Program; Applications for New Projects

AGENCY: Department of Education.

ACTION: Extension of Closing Date for Transmittal of Applications for New Projects for Fiscal Year 1984—State Educational Agencies, National Origin Desegregation Assistance Projects.

SUMMARY: The February 21, 1984 closing date for transmittal of application from State educational agencies (SEAs) to provide national origin desegregation assistance is extended. The *New closing date is April 23, 1984.*

Authority for this program is contained in Title IV of the Civil Rights Act of 1964. (42 U.S.C. 2000c–2000c–5).

The program issues award to SEAs.

The purpose of the awards is to provide technical assistance, training, and advisory services to school districts in coping with the special educational problems caused by the desegregation of their schools based on national origin.

Closing Date For Transmittal Of Applications: Applications for new awards must be mailed or hand delivered by April 23, 1984.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.004C, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated Shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The regulations provide specific criteria for awards in 34 CFR 270.19 (formerly 45 CFR 180.19). Applications will be evaluated under these criteria. The Secretary approves only those applications that received a

score of at least 60 points on the criteria. The applicant should also refer to 34 CFR 270.11, 270.12, and 270.15 (formerly 45 CFR 180.11 180.12, and 189.15) in the development of the grant application.

SEAs that presently have national origin desegregation assistance awards are reminded that they must submit new applications for Fiscal Year 1984.

Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects which do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States which have established a process, designated a single point of contact, and have selected this program for review:

State	
Arkansas	Montana
California	Nebraska
Connecticut	Nevada
Delaware	New Hampshire
District of Columbia	New Jersey
Florida	New Mexico
Indiana	Oklahoma
Kentucky	Oregon
Louisiana	South Carolina
Michigan	South Dakota
Missouri	Tennessee
Trust Territory	Washington
Utah	Wisconsin
Vermont	Wyoming
Virginia	

Immediately upon receipt of this notice, applicants which are governmental entities must contact the appropriate State single point of contact to find out about and to comply with the States's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Because this is an extension of a previously established closing date, the Secretary has determined that 30 days is sufficient time for comment. Therefore, all comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by April 23, 1984 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (84.004), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone Number (202) 245–7913. (Proof of mailing will be determined on the same basis as applications.)

Please Note That the Above Address Is Not the Same Address as the one to Which the Applicant Submits its Completed Application. *Do Not Send Applications to the Above Address.*

Available Funds: Approximately $14,000,000 will be made available for approximately 110 SEA grants for race, sex, and national origin desegregation assistance. The average SEA award is projected to be $127,000. It is estimated that approximately 34 awards will be made for national origin desegregation assistance.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant. Applicants should be aware that the availability of funds for this competition is being contested in litigation in the United States District Court for the Northern District of Illinois, Eastern Division (*United States* v. *Board of Education of the City of Chicago*, Docket No. 80C 5124). Any obligation of these funds currently is enjoined by the court.

Application Forms: Application forms and program information packages are ready for mailing. They may be obtained by writing to the Equity Training and Technical Assistance Program Staff, U.S. Department of Education, 400 Maryland Avenue SW., Room 2011, FOB #6, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements, beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that applicants not submit information that is not requested.

(The application is approved under OMB Number 1810–0030, expiration date December 1984.)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Desegregation of Public Education Program, 34 CFR Part 270 (formerly 45 CFR Part 180), and

(b) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Further Information: For further information contact Curtis F. Coates, Section Chief, Equity Training and Technical Assistance Program Staff, U.S. Department of Education, 400 Maryland Avenue SW., Room 2011, FOB #6, Washington, D.C. 20202, Telephone: (202) 245–7965.

(42 U.S.C. 2000c–2000c–5)
(Catalog of Federal Domestic Assistance Number 84.004, Civil Rights Technical Assistance Programs)

Dated: March 20, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84–7874 Filed 3–22–84; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Interim Amendment of Procedures Governing Bonneville Power Administration Rate Adjustments

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice; Request for Comments.

BPA File No: EXP–84.

SUMMARY: On February 9, 1984, the United States Court of Appeals for the Ninth Circuit upheld, in their entirety, BPA's 1981 wholesale power and transmission rates. Central Lincoln Peoples' Utility District v. Johnson, Nos. 81–7622, *et al.* The court further held that BPA ratemaking proceedings are subject to the ex parte communication restrictions found in section 557(d) of the Administrative Procedure Act, 5 U.S.C. 557(d). BPA is seeking rehearing of the latter holding, because section 557 is inapplicable to BPA rate proceedings. Pending a change in the Court's decision, BPA must adopt new procedures so that BPA employees may meet with customers and others and otherwise conduct the agency's business during the time in which BPA's 1985 rate proposal is being developed.

Therefore, BPA is amending, on an interim basis, its Procedures Governing Bonneville Power Administration Rate Adjustments, 47 FR 6240 (February 10, 1982) to include procedures regarding ex parte communications. These procedures are effective immediately on publication, because the opportunity for prior written comment would be impracticable. However, comments will be received until April 30, 1984.

Responsible Official: John A. Cameron, Jr., Assistant General Counsel, is the official responsible for this revision of procedures.

DATES: The procedures are effective on publication. Comments will be received through April 30, 1984.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the address listed above, 503–230–3478. Oregon callers callers outside Portland may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3860.

Mr. Richard D. Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagehoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main St., Boise, Idaho 83707, 208–334–9138.

SUPPLEMENTARY INFORMATION: As a result of the Court's ruling in Central Lincoln II, BPA has cancelled or postponed numerous meetings with customers and individuals when the topic of such meetings may relate to present or future BPA rate proceedings. Under section 4(g)(1) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), however, the Administrator is directed explicitly to consult with BPA customers and other interested parties. This section provides:

> To insure widespread public involvement in the formulation of regional power policies, the * * * Administrator shall maintain comprehensive programs to—(A) inform the Pacific Northwest public of major power issues, (B) obtain public views concerning major regional power issues, and (C) secure advice and consultation from the Administrator's customers and others.

BPA may not overlook this responsibility to its customers and the public. Therefore, BPA is adopting this amendment to procedures for rate adjustments in order to provide guidance concerning ex parte restrictions. BPA must continue to meet individually with customers, customer groups, and others in order to secure the "advice and consultation" contemplated in the Northwest Power Act and in order to fulfill BPA's utility functions. Moreover, BPA encourages the written views of all individuals wishing to express themselves regarding BPA actions or proposals, including rates. As a matter of course, however, BPA will place any submitted written document into the appropriate record should the document concern rate issues.

The amendment does not apply ex parte restrictions to issues which are of independent significance outside of the rate case. BPA has a responsibility to alert the public as to important issues which face BPA outside of the rates arena, although these issues may become matters of discussion during subsequent section 7(i) proceedings. For example, BPA has recently provided the public an opportunity to comment on BPA's proposed budget and program levels. See 49 FR 5999, February 16, 1984. Although these program levels will eventually be reflected in the revenue requirement study in BPA's rates process, the preparation of BPA's budget is not an event which occurs under section 7 of the Northwest Power Act. Similarly, BPA has other activities which may be reflected in rates but are not directly rate-related, including but not limited to areas concerning load forecast; intertie access policy; nonfirm energy sales; conservation savings; average system cost methodology; customer service policy; fish and wildlife protection, mitigation and enhancement; billing credits; repayment study; transmission policy; transmission planning; capital investments; and hydroregulation studies. It is clear that BPA cannot cease vital communication in all areas simply because decisions may eventually be reflected in rates. Essentially all BPA decisions involve matters which may affect ratepayers. It is equally clear that BPA need not conduct a 7(i) proceeding on each and every decision which may eventually touch rates.

Moreover, BPA has a responsibility to alert its customers and the public as to specific rate issues which face BPA so that meaningful public participation may begin early. If the 7(i) process is to function intelligently and with wide public participation, the Public must be allowed the opportunity for early communication, for full education on the issues, and for development of issue resolution on the basis of regional consensus. To further these interests, BPA must and should act as a catalyst for the exchange of information and germination of ideas. To that end, the amendment makes clear that BPA will hold meetings with its customer groups and members of the public to discuss rate issues. BPA has clarified, however, that it will provide notice of those meetings and susequently prepare a summary of the substantive points discussed at any such meeting where BPA must meet individually with customers, customer groups, and others in order to secure advice and consultation. These summaries will be placed in appropriate official files for public review.

BPA's Amendment to its rate procedures follows:

Interim Amendment of Procedures Governing Rate Adjustments

(Sec. 7(i) of Pub. L. 96-501; 5 U.S.C. 553; and 5 U.S.C. 557)

Sec. 1010.5 Ex Parte Communications

In order to avoid all possibilities of prejudice, real or apparent, to the public interest and persons involved in Sec. 7(i) proceedings pending before BPA:

(a) Except as permitted in paragraph (b) of this section, no party or participant in any section 7(i) proceeding shall submit ex parte communications to the Administrator or any BPA employee regarding any matter pending before BPA in a section 7(i) proceeding. Neither shall the Administrator nor any BPA employee request or entertain such ex parte communications.

(b) For the purposes of this section, the term "ex parte communication" means an oral or written communication relative to the merits of a section 7(i) proceeding pending before BPA which is not on the public record and with respect to which reasonable prior notice to the parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this section. For purposes of this section, the terms "party" and "participant" also include counsel, agents, consultants, witnesses, employees and other representatives of such party or participant.

(c) The prohibitions contained in paragraph (a) of this section do not apply to a communication:

(1) Relating to matters of procedure only;

(2) From any person when otherwise authorized by law or other portions of these procedures;

(3) From or to the Federal Energy Regulatory Commission after coordination with BPA counsel;

(4) Which the parties agree may be made on an ex parte basis;

(5) Relating to exchanges of data in the ordinary course of business, data required to be exchanged pursuant to contracts, or data which would be available pursuant to Freedom of Information Act requests;

(6) Which relates solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents filed with BPA in a section 7(i) proceeding and which is made in the presence of or after coordination with BPA counsel; or

(7) Which is only secondarily the object of a section 7(i) proceeding for which BPA is statutorily responsible under provisions other than section 7 of the Regional Act; or which is eventually decided other than through a section 7(i) proceeding.

(d) The prohibitions contained in this section shall apply from the time at which BPA publishes a notice of intent to hold section 7(i) proceedings or publishes an initial proposal, whichever is earlier, or the person responsible for such communication has knowledge that one of these notices will be published.

(e) Any written material received by BPA which would otherwise be subject to the prohibition of paragraph (a) of this section automatically will be placed in the official record of the appropriate section 7(i) hearing.

(f) BPA will give reasonable public notice of any consultation sessions which BPA intends to hold with any customer group or member of the public when it reasonably appears that matters of substance relative to the merits of a section 7(i) proceeding will be discussed. For any such meeting held individually with customers, customer groups, and others, BPA will prepare a memorandum reciting the date of the meeting, persons in attendance, and a summary of issues discussed and positions taken. This memorandum will be placed in a public file separate from the material upon which the Administrator can rely in reaching a decision. This file will be available for review by any person through BPA's Public Involvement office.

(g) The Administrator or any BPA employee who receives an oral offer of any communication prohibited by paragraph (a) of this section shall decline to listen to such communication and shall explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he or she will not consider the communication. The recipient shall prepare a statement setting forth the substance of the communication and the circumstances thereof within 48 hours and deliver the statement to BPA's Office of General Counsel for compliance with the procedures established in paragraph (h) of this section.

(h) All statements reciting the substance of oral communications prohibited by paragraph (a) of this section must be delivered to the Hearing Officer for the appropriate section 7(i) proceeding who will place the statements in public files associated with the hearing, but separate from the material upon which the Administrator can rely in reaching a decision. The Hearing Officer will serve copies of these statements upon parties to the proceedings. The Hearing Officer will also serve a copy of the statements to the communicator and allow him or her a reasonable opportunity to file a response.

(i) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which are relevant to a particular section 7(i) proceeding should be filed with the Hearing Officer. The Hearing Officer will grant such requests only where the dictates of fairness so require. Likewise, requests for an opportunity to rebut, on the record, any facts or contentions contained in memorandum prepared pursuant to paragraph (f) of this section which are relevant to a particular section 7(i) proceeding also should be filed with the Hearing Officer. The Hearing Officer will grant such requests only upon a showing of good cause that the dictates of fairness so require.

Issued in Portland, Oregon, March 19, 1984.

Peter T. Johnson,

Administrator.

[FR Doc. 84-6982 Filed 3-22-84; 9:22 am]

BILLING CODE 6450-01-M

[Docket No. ER84-314-000]

Central Louisiana Electric Co.; Filing

March 20, 1984.

The filing Company submits the following:

Take notice that on March 9, 1984, Central Louisiana Electric Company (CLECO) tendered for filing an executed letter agreement that would extend the existing interconnection agreement between CLECO and the City of Morgan City, Louisiana until June 30, 1984. CLECO states that the filing will permit parties to negotiate a new interconnection agreement.

CLECO requests an effective date of July 1, 1983, and therefore requests waiver of the Commission's notice of requirements.

Any person desiring to be heard or to protest said filing shoud file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7894 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. CP84-270-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

March 19, 1984.

Take notice that on March 1, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-270-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of ITT Grinnell Corporation, (Grinnell) under authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 1 billion Btu of natural gas per day for Grinnell for a term of one year. Columbia states that the gas to be transported would be purchased from Trans-Continental Energy Corp. by Grinnell and that Grinnell would use those volumes as process gas in its Columbia, Pennsylvania, plant. Columbia states that it would receive the gas at existing delivery points on its system in Ohio and redeliver such gas to UGI Corporation, Inc., the distribution company serving Grinnell. Columbia states that the gas to be purchased by Grinnell involves gas supplies released by Columbia and that such supplies are subject to the ceiling price provisions of section 103 of the Natural Gas Policy Act of 1978.

Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent, exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt equivalent, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. Columbia also states that it is charging the Gas Research Institute Funding Unit.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7917 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-285-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

March 19, 1984.

Take notice that on March 6, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84-285-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Dana Corporation-Spicer Transmission Division (Dana Corp.) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 2 billion Btu of natural gas per day, less retainage, for Dana Corp. for a term of one year effective the date deliveries of gas commence hereunder. Columbia states that the gas to be transported hereunder would be purchased from John C. Mason by Dana Corp. and would be used as process gas and boiler fuel in Dana Corp.'s Ohio plant. Columbia indicates that the gas to be purchased by Dana Corp. involves gas supplies released by Columbia and that such supplies are subject to the ceiling price provisions of sections 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further stated that Columbia would receive the gas at existing delivery points in various counties in Ohio and redeliver such gas to Columbia Gas of Ohio, Inc., the distribution company serving Dana Corp.

Columbia states that it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent, exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission, and gathering charge, currently 44.93 cents per dt equivalent, exclusive of company-use and unaccounted-for gas, depending on whether Columbia's gathering facilities are involved. It is further stated that Columbia would retain for company-use and unaccounted-for gas a percentage of the gas delivered hereunder as reflected in Columbia's rate filings; this percentage is currently 2.85 percent.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7918 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-315-000]

Commonwealth Edison Co.; Filing

March 20, 1984.

The filing Company submits the following:

Take notice that on March 9, 1984, Commonwealth Edison Company (Commonwealth) tendered for filing proposed changes in its FERC Electric Tariff. The proposed changes revise the Electric Service Contract between Commonwealth and the City of St. Charles, Illinois, to provide for a new point of electric supply to the City by the

Company, and to provide for an increase in contract demand.

Commonwealth states that the date of energization is not firmly established at this time, the tariff sheets show a tentative effective date of April 14, 1984. Commonwealth therefore requests waiver of the Commission's notice requirements.

A copy of the filing has been served upon the City of St. Charles, Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7885 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-274-000]

Consolidated Gas Supply Corp.; Application

March 19, 1984.

Take notice that on March 1, 1984, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP84-274-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a limited-term sale of gas for resale to Eastern Shore Natural Gas Company (Eastern Shore), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell for resale up to 27,397 dt equivalent of natural gas per day, on an interruptible basis, to Eastern Shore for a period ending September 30, 1986. Applicant proposes to deliver the gas for the account of Eastern Shore to Transcontinental Gas Pipe Line Corporation (Transco) at Leidy Storage Pool, an existing point of interconnection between the facilities of Applicant and Transco. No new facilities would be needed. Further transportation and delivery arrangements would be the responsibility of Eastern Shore, it is stated. The source of the gas would be Applicant's general system supply, it is indicated. Applicant proposes to sell the gas to Eastern Shore at a rate equivalent to the calculated 100-percent load factor rate for Applicant's Rate Schedule RQ of its FERC Gas Tariff.

Applicant maintains that it has sufficient surplus gas supply and that the proposed sale would assist Applicant in maintaining a higher level of purchases from its pipeline suppliers.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7913 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-280-000]

Consolidated Gas Supply Corp., Application

March 19, 1984.

Take notice that on March 2, 1984, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP84-280-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of up to 360,000 dt equivalent of natural gas per year to Columbia Gas of Pennsylvania, Inc. (Columbia of Pennsylvania), and the construction and operation of the facilities necessary therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to sell the gas to Columbia of Pennsylvania on a yearly basis, terminating on December 31, 1993, subject to the terms of a limited-term contract with a proposed maximum delivery of 3,200 dt on a peak day and 986 dt on an average day. Applicant further states that the proposed sale would be on a firm basis at the rate specified in Applicant's Rate Schedule E of its FERC Gas Tariff, Third Revised Volume No. 1.

Applicant states that the gas would be made available to Columbia of Pennsylvania at a proposed new delivery point located at Cranberry Township, Butler County, Pennsylvania, where Applicant's existing Line No. 25 crosses an existing pipeline owned and operated by Columbia of Pennsylvania.

Applicant states that the proposed new delivery point would be known as the Warrendale Interconnection. Applicant will construct and operate the transfer facilities with the costs of construction being reimbursed by Columbia of Pennsylvania. Applicant estimates the costs of construction to be $166,300.00 with the construction possibly being done on a competitive basis by private contractors.

Applicant alleges that the proposed sale would supplement Columbia of Pennsylvania's supply in southwestern Pennsylvania, in order to meet the demands of its existing markets in the stated area over the given contract period. Also, Applicant states that it has surplus gas supply in excess of the quantities proposed to be sold. Applicant states that this sale would give it needed market flexibility, help it to maintain a higher level of purchases from its suppliers, and maintain a level of short-term demand enabling it to

promote natural gas exploration and development activities necessary for development of adequate long-term supplies.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7920 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-56-000]

Consumers Power Co. v. Trunkline Gas Co.; Complaint

March 20, 1984.

Take notice that on March 9, 1984, Consumers Power Company (Consumers) tendered for filing a Complaint against Trunkline Gas Company (Trunkline) seeking an extension of the interim minimum bill provided by a Settlement adopted by the Commission order dated July 8, 1983, in Docket Nos. RP81-103 and RP82-130.

The interim minimum bill adopted by the Commission excludes payment for variable costs not actually incurred by Trunkline. This Settlement resulted from Consumers' experience with high take-or-pay obligations and by its own terms will terminate on December 31, 1984.

Consumers asserts that the minimum bill provisions in Trunkline's FERC Gas Tariff, Original Volume No. 1, Rate Schedule P-2, require Consumers to take or pay 75% of the maximum daily contract quantity on an annual basis. If the interim minimum bill now currently in effect is not extended, the 75% take-or-pay obligation would be reinstated, and would cause great expense to Consumers. Consumers states that the expenditures involved would be of such a magnitude as to make compliance therewith commercially impracticable, and would substantially frustrate its purpose in entering into its contract with Trunkline, and would undermine its ability to serve its customers.

Consumers requests relief in the form of a ruling that the 75% take-or-pay provision in Trunkline's Rate Schedule P-2 is unjust, unreasonable, unduly discriminatory, contrary to the public interest, and contrary to national policy and law favoring conservation. It further requests an order granting a continuance of the interim bill provision currently in effect until such time as Trunkline makes a showing that some other minimum bill provision is required by the public interest, and finally, it requests such other and further relief as is just and reasonable.

With its Complaint, Consumers filed a Motion For Summary Disposition and a Request For Stipulation. Its Motion For Summary Disposition asserts that the 75% take-or-pay provision in Trunkline's Rate Schedule P-2 is *per se* unreasonable and that, as a matter of law, the extension of the interim bill should be granted.

The request for Stipulation filed with their Complaint requests that Trunkline stipulate as to the truth of certain matters of fact regarding the effect of the interim minimum bill provision on Trunkline's recovery of variable cost.

Consumers certifies that copies of its Complaint, Motion For Summary Disposition and Request For Stipulation have been served upon Trunkline.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 19, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7989 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-44-001]

Florida Gas Transmission Co.; Tariff Filing

March 20, 1984.

Public notice is hereby given that on March 12, 1984, Florida Gas Transmission Company (FGT) tendered for filing in the above-referenced docket First Revised Sheet Nos. 584 and 585.

On January 25, 1984, Florida Gas Transmission Company (FGT) filed in the above-referenced docket a transportation agreement dated February 10, 1981 between FGT and Southern Natural Gas Company relating to the transportation of natural gas from the Flomaton Field Area, Escambia County, Alabama to Washington Parish, Louisiana. Said filing consisted of Fourth Revised Sheet No. 1-D and Original Sheet Nos. 573 through 605 to its FERC Gas Tariff, Original Volume No. 3.

FGT files herein First Revised Sheet Nos. 584 and 585, which contain the rates reflected in the settlement rates approved by the Commission February 9, 1984 in Docket No. RP83-104-000. FGT requests that the Commission allow said tariff sheets to become effective on September 22, 1981, the same effective date as the January 25, 1984 filing.

Copies of the filing were served upon FGT's jurisdictional customers and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7896 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-673-007]

Kentucky Utilities Co.; Compliance Filing

March 19, 1984.

Take notice that on March 1, 1984, Kentucky Utilities Company (the Company) submitted for filing its Compliance Report pursuant to the Commission's Letter Order of January 16, 1984.

The Company's report shows the monthly billing determinants and revenues under prior and proposed rates; the monthly revenue refund; and a summary of such information for the total period. Interest was calculated at the applicable prime rate for each calendar quarter as published in the Federal Revenue Bulletins from the date the Company received the customer's payment through February 28, 1984—the date the refunds were made.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before March 28, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7921 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-14-003]

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

March 20, 1984.

Take notice that on March 9, 1984, Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing two substitute gas tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, both of which are dated as issued on March 2, 1984 proposed to become effective February 1, 1984, and identified as follows:

Substitute Thirty-second Revised Sheet No. 4
Substitute Twenty-ninth Revised Sheet No. 18

Lawrenceburg states that its revised tariff sheets were filed under its Purchased Gas Adjustment (PGA) Provision and in substitution for those previously approved by Commission Order issued February 9, 1984. Lawrenceburg states that its revision was required because of a change in the rates being tracked of Lawrenceburg's supplier, Texas Gas Transmission Corporation.

Copies of this filing were received upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before March 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7900 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-25-001]

Mountain Fuel Supply Co.; Change in FERC Tariff

March 19, 1984.

Take notice that on March 8, 1984, Mountain Fuel Supply Company (Mountain Fuel) tendered for filing a renewed request to have its Original Sheet No. 2-B, which involves an added incentive charge, to be accepted without the inclusion of a Gas Research Institute Charge (GRI).

Mountain Fuel states that Original Sheet No. 2-B was initially filed on November 22, 1983 in Docket No. RP84-25-000, and was accepted by a letter order dated December 20, 1983, subject to the inclusion of the GRI charge.

Mountain Fuel now requests that Original Sheet No. 2-B be accepted without the inclusion of the GRI charge.

Copies of its request have been served on interested pipeline companies and public service commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7922 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-16-002]

National Fuel Gas Supply Corp.; Compliance Filing

March 19, 1984.

Take notice that on March 9, 1984, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Forty-Fifth Revised Sheet No. 4, proposed to be effective February 1, 1984.

National states that the purpose of this revised tariff sheet is to comply with Commission order dated January 31, 1984, requiring National to reflect, *inter alia,* any downward modifications due to its pipeline suppliers' rates, the implementation of Order Nos. 93 and 93-A, and its company-owned production. National further states that Substitute Forty-Fifth Revised Sheet No. 4 reflects a decrease in National's rate of 39.16¢ per Mcf.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7923 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-505-003]

Natural Gas Pipeline Co. of America; Petition To Amend

March 19, 1984.

Take notice that on February 28, 1984, Natural Gas Pipeline Company of America (Petitioner), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP82-505-003 a petition to amend the order issued April 11, 1983, in Docket No. CP82-505-000 pursuant to section 7(c) of the Natural Gas Act so as to conform the authorization granted by such order to actual construction, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner indicated in its application in Docket No. CP82-505-000 that certain measuring facilities would be constructed at Pecan Lake in Cameron Parish, Louisiana, to effect the redelivery of gas to be transported for Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (collectively, Columbia). Petitioner asserts, however, that in order to implement the transportation for Columbia prior to long-term authorization in this docket, Petitioner entered into a best-efforts arrangement pursuant to provisions of Part 284 of the Commission's Regulations. It is stated that the Pecan Lake measuring facilities were constructed under Petitioner's blanket authorization in Docket No. CP82-402-000 and would be reported as required thereunder. Petitioner thus requests that the order herein be amended to delete the authorization to construct such facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7924 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE 84-2-000]

Nevada Power Co.; Application for Exemption

March 20, 1984.

Take notice that Nevada Power Company (NPC) filed an application on February 13, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984, information on the costs of providing electric service as specified in Subparts, B, C, D, and E of Part 290.

In its application for exemption NPC states, in part, that it should not be required to file the specified data for the following reasons:

The filing requirements of Section 133 of PURPA and the Public Service Commission of Nevada (PSCN) are comparable in many respects but useful only in the format required by PSCN for general rate case purposes.

Intervenors in recent NPC general rate cases adjudicated by PSCN have not requested the information contained in NPC's November 1, 1980 and June 30, 1982 PURPA filings.

PSCN is developing regulations to implement laws enacted by the State of Nevada requiring biennial data reporting addressing subjects such as load forecast, twenty year generation resources forecast, existing generation plant, and ten year historical load data.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Charles A. Lenzie, President, Nevada Power Company, 6226 West Sahara Avenue, P.O. Box 230, Las Vegas, Nevada 89151.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7901 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-367-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

March 19, 1984.

Take notice that on February 29, 1984, Northern Natural Gas Company, Division of InterNorth, Inc., (Northern) 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-367-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to abandon and remove 20 small volume measuring stations in the states of Minnesota, Kansas, and Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern has been advised by Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples) that 20 small volume measuring station customers no longer desire natural gas service and wish to have their meters removed.

Consequently, Northern is requesting permission and approval to abandon 20 small volume measuring stations as set forth in the appendix hereto. There would be no termination of service as a result of the abandonments, it is asserted. The estimated cost of removing such facilities is $9,791.00.

Any person or the Commission's staff may, with 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural

Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

1. Getty Oil-Geimeinhart Tank Battery.
2. Robert Alexander.
3. Mike Krueger.
4. Max Engler.
5. Loren F. Stauff.
6. E. Grunwald.
7. John Boyd.
8. Alice Packer.
9. George Jackson.
10. Dennis Anderson.
11. Enno Schmidt.
12. Stan Fansher.
13. Steven Svendsen.
14. George Jackson.
15. Lydia Johnson.
16. Twin City Freight.
17. Joe Dan Bryan.
18. Harold Stibal
19. Eddie Haynes (West Texas Gas).
20. Chevron Pipeline Company (West Texas Gas).

[FR Doc. 84-7825 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-274-000]

Northern States Power Co.; Revised Notice of Filing

March 20, 1984.

The filing Company submits the following:

Take notice that on February 13, 1984 and updated on March 8, 1984, Northern States Power Company (NSP) tendered for filing a supplement to certain NSP interconnection and interchange, partial requirements, and transmission service agreements.

NSP states that significant provisions of the supplement included reducing the amount of power and energy that certain customers must furnish NSP to compensate it for transformer and transformation losses. The supplement provides that NSP shall only be furnished one percent power and energy for each point of delivery instead of two percent, as provided for in previous agreements. Another provision of the supplement serves to modify the power factor provision of the existing agreements to conform it with that used for firm power requirements customers. Notice of the February 13, 1984 filing, was published in the **Federal Register** on February 21, 1984.

In addition, for eight of the contracts identified in the filing, the supplement increases the rate charged for Transmission Service. While provision of providing Transmission Service is included in these contracts, the provision is not operable. The service schedule included with the supplement for the eight contracts is identical to the service schedule on file with the Commission for other Transmission Service customers of NSP and as accepted for filing Docket No. ER83-90-000.

NSP requests an effective date of March 20, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7902 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-56-014]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

March 20, 1984.

Take notice that on March 13, 1984 Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Amended Substitute Seventh Revised Sheet No. 10-A
First Revised Sheet No. 71
First Revised Sheet No. 73
First Revised Sheet No. 74

The above referenced tariff sheets are revised to incorporate the terms of the Supplemental Stipulation and Agreement in Partial Settlement of Rate Proceeding (Agreement) as approved by Commission Order dated January 19, 1984 at Docket No. RP82-56-000. The Agreement provides for a change in: (1) the depreciable life of the facilities, (2) the related depreciation rate, and (3) revises the facility charge under Rate Schedule T-1 for the period October 1, 1983 through January 31, 1984.

An effective date of October 1, 1983 is requested for Amended Substitute Seventh Revised Sheet No. 10-A and First Revised Sheet Nos. 71, 73, and 74.

A copy of this filing has been mailed to Pacific Interstate Transmission Company and otherwise on all jurisdictional customers and affected state agencies.

Any persons desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before March 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7903 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-212-004 and CP83-214-001]

Northwest Pipeline Corp.; Petition To Amend

March 19, 1984.

Take notice that on February 27, 1984, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110-1526, filed in Docket Nos. CP83-213-004 and CP83-214-001 a petition to amend the Commission's order issued June 3, 1983, in Docket No. CP83-213-000, *et al.*, pursuant to section 7 of the Natural Gas Act so as to authorize a deferred exchange and a transportation of natural gas and granting permission and approval to abandon the sale and delivery of storage gas, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Northwest requests that the June 3, 1983, order be amended so as to grant permission and approval for Northwest to abandon the sale and delivery to The Washington Water Power Company (Water Power) under Rate Schedule SGS-1 of additional storage gas volumes in the amount of 100,000 therms daily and 3,805,000 therms seasonally. Northwest also requests authorization to exchange on a deferred basis such additional storage gas volumes with Westcoast Transmission Company Limited (Westcoast) at Sumas, Washington and to transport such exchanged gas to and from the Jackson Prairie Storage Project (Jackson Prairie) for Water Power.

Northwest explains that the requested authorization is necessary to enable Water Power to release to British Columbia Hydro and Power Authority (B. C. Hydro) additional Jackson Prairie storage capacity as provided under Phase I of the amended Storage Release agreement between Water Power and B. C. Hydro. Northwest states that the amendment to the deferred exchange agreement between Northwest and Westcoast and the transportation agreement between Northwest and Water Power extend the primary term of each agreement for an additional year through April 30, 1989, and link the daily and seasonal volumes to the daily and seasonal volumes made available to B. C. Hydro under the amended Storage Release.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before, April 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7926 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER78-490-000, ER78-490-002, ER80-673-000, ER80-673-001]

Ohio Power Co.; Compliance Filing

March 19, 1984.

Take notice that on March 9, 1984, American Electric Power (AEP) submitted for filing on behalf of Ohio Power Company (OPCO) its Compliance Report pursuant to the Commission's Opinion 170, issued June 3, 1983.

This compliance filing is to notify the Commission that there have been no transactions between Ohio Edison and OPCO that would impose any refund obligation on the part of Ohio Power Company under the above order.

AEP states that a copy of this filing has been sent to the Public Utilities Commission of Ohio and Ohio Edison Company.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regularory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, on or before March 28, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7927 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP79-80-027, et al.]

Overthrust Pipe Line et al.; Filing of Pipeline Refund Reports and Refund Plans

March 19, 1984.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 29, 1984. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary

Appendix

Filing date	Company	Docket No.	Type filing
4/5/80	Overthrust Pipe Line Co.	CP79-80-027	Report.
2/13/84	Algonquin Gas Transmission Co.	RP72-116-095	Do.
2/17/84	Southern Natural Gas Co.	RP82-116-010	Do.
2/21/84	National Fuel Gas Supply Corp.	RP85-136-038	Do.
2/29/84	Lawrenceburg Gas Transmission Co.	RP78-37-011	Do.

[FR Doc. 84-7928 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-313-000]

Pacific Power & Light Co.; Cancellation

March 20, 1984.

Take notice that on March 9, 1984, Pacific Power & Light Company (PP&L) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 235, effective November 17, 1983 and filed with the Federal Energy Regulatory Commission on January 20, 1984.

PP&L requests an effective date of January 25, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7904 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01

[Docket No. CP84-258-000]

Panhandle Eastern Pipe Line Co., Application

March 19, 1984.

Take notice that on February 27, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-258-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of the Citizens Gas and Coke Utility (Citizens), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests Commission authorization under section 7(c) of the Natural Gas Act to implement a certain transportation agreement between Panhandle and Citizens dated August 25, 1983, as amended January 26, 1984. Pursuant to this agreement, Panhandle proposes to transport on behalf of Citizens a daily volume of natural gas not to exceed 9,500 Mcf on an interruptible basis from existing points of receipt in Alfalfa and Garfield Counties, Oklahoma, and Defiance County, Ohio, to an existing interconnection of the facilities of Citizens and Panhandle in Marion County, Indiana.

The receipt points and the related maximum volumes are set forth as follows:

(a) 4,000 Mcf of gas per day from the Aminoil receipt point (Oklahoma),

(b) 3,500 Mcf of gas per day from the Transok receipt point (Oklahoma), and

(c) 1,500 Mcf of gas per day from the Defiance receipt point (Ohio).

The initial rates proposed to be charged for gas transported from (a) Oklahoma is 32.08 cents per Mcf and (b) Ohio is 4.01 cents per Mcf.

It is stated that transportation service commenced under the terms of the basic contract pursuant to the self implementing provisions of Part 284 of the Commission's Regulations (18 CFR 284.102) and was reported in Docket No. ST83-713. It is also stated that the subject gas is being produced by Citizens Resource Development Corporation, a wholly-owned subsidiary of Citizens.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7929 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2621-000, et al.]

Phillips Petroleum Co., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

March 20, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 4, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per manufacturer	Pressure base
G-2621-000, Mar. 5, 1984	Phillips Petroleum Co., 336 HS&L Building, Bartlesville, Okla. 74004.	Northern Natural Gas Co., Puckett-Devonian Field, Peace County, Tex.	(1)	
G-17447-000, CI67-1645-000, E, Feb. 29, 1984.	Phillips Oil Co. (successor in interest to Phillips Petroleum Co.), 336 HS&L Building, Bartlesville, Okla. 74004.	Transcontinental Gas Pipe Line Corp., Ship Shoal Block 32, Offshore Terrebonne, La.	(2)	15.025

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per manufacturer	Pressure base
CI66-53-001, D, Mar. 7, 1984	Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Northern Natural Gas Co., East Clark Area, Harper County, Okla.	(3)	
CI68-816-002, Mar. 2, 1984	Phillips Petroleum Co., 336 HS&L Building, Bartlesville, Oklahoma 74004.	Northern Natural Gas Co., Panhandle Area, Gray County, Tex.	(4)	
CI83-149-001, C, Mar. 5, 1984	Texaco Inc., P.O. Box 60252, New Orleans, La. 70160.	Natural Gas Pipeline Company of America, South Marsh Island, Block 236 Field, (OCS-G-4437) & Certain Portions of OCS-0310, Offshore La.	(5)	15.025
CI84-230-000 (G-15046), B, Feb. 27, 1984.	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77253.	El Paso Natural Gas Co., San Andres Devonian Field, Andrews County, Tex.	(6)	
CI84-235-000, A, Mar. 1, 1984	Tenneco Oil Co., Houston Oil & Minerals Corp., TINCO, Ltd., Tenneco Exploration, Ltd., and Tenneco Exploration III. Ltd., P.O. Box 2511, Houston, Tex. 77001.	South Jersey Gas Co., Eugene Island 215 D, Offshore Louisiana, South Marsh Island 116 A, Offshore Louisiana, Vermilion Block 50, Offshore Louisiana, High Island A-270-B, Offshore Texas, West Cameron 638 B, Offshore La.	(7)	14.73
CI84-236-000, A, Mar. 1, 1984	....do....	Citizens' Energy Corp., Eugene Island 215 D, Offshore Louisiana, South Marsh Island 116 A, Offshore Louisiana, Vermilion Block 50, Offshore Louisiana, High Island A-270-B, Offshore Texas, West Cameron 638 B, Offshore La.	(7)	14.73
CI84-237-000, (CI73-119), B, Mar. 2, 1984.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Transcontinental Gas Pipe Line Corp., Brazos Block A-1; Offshore Texas.	(8)	
CI84-238-000 (G-7078), B, Feb. 27, 1984.	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Columbia Gas Transmission Corp., Chapmanville Field, Logan County, W. Va.	(9)	
CI84-239-000 (CI80-125), B, Mar. 5, 1984.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700 Houston, Tex. 77046.	Transcontinental Gas Pipe Line Corp., Brazos Block A-1; Offshore, Texas.	(10)	
CI84-240-000, B, Mar. 5, 1984	Cordillera Corp., 2334 East Third Avenue, Denver, Colo. 80206.	Western Transmission Corp., Sugar Creek #1, Section 28, Township 19N, Range 90W, Carbon County, Wyo.	(11)	
CI84-241-000, B, Mar. 5, 1984	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., Post Office Box 2819, Dallas, Tex. 75221.	The Nueces Co., Mabel J. Bailey, N/2 Sec. 44, Blk. 1, W&WN Survey, Loving County, Tex.	(12)	
G-7160-001, D, Mar. 8, 1984	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77252.	Northern Natural Gas Co., a Division of InterNorth, Inc., Jalmat and Tubb Gas Pools, Lea County, N. Mex.	(13)	
G-10127-000, D, Mar. 8, 1984	....do....	Florida Gas Transmission Co., East Mustang Island Field, Offshore Nueces County, Tex.	(14)	
G-11229-001, D, Mar. 5, 1984	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., Post Office Box 2819, Dallas, Tex. 75221.	Southern Natural Gas Co., W. Williams #1 Well, Section 29, Township 12 North, Range 15 West, Desoto Parish, La.	(15)	
CI66-1083-001, D, Mar. 8, 1984	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77252.	Texas Gas Transmission Corp., West Lisbon Field, Claiborne Parish, La.	(16)	
CI84-242-000, A, Mar. 8, 1984	Pennzoil Producing Co., P.O. Box 2967, Houston, Tex. 77001.	Texas Eastern Transmission Corp., West Cameron Area, Blocks 252 and 253, Offshore Louisiana.	(17)	15.025
CI84-243-000, A, Mar. 8, 1984	Pennzoil Oil & Gas, Inc., P.O. Box 2967, Houston, Tex. 77001.	Texas Eastern Transmission Corp., West Cameron Area, Blocks 252 and 253, Offshore La.	(17)	15.025

[1] Applicant is filing under Gas Purchase Agreement dated February 8, 1952, amended by Supplemental Agreement dated January 23, 1953.
[2] Effective November 1, 1983, Phillips Petroleum Company assigned to Phillips Oil Company its interest in the Ship Shoal Block 32 Field Area, Offshore Terrebonne Parish, Louisiana.
[3] Last wells on the leases have been plugged and abandoned and the leases have expired.
[4] Applicant is filing to add additional delivery points.
[5] Applicant is filing under Gas Purchase Contract dated November 3, 1982 to add additional acreage.
[6] The University "DA" Lease was dedicated to the subject contract. There has been no production since April 30, 1981. The well was plugged and abandoned on October 19, 1981 and Amoco filed the Release of Oil and Gas Lease on February 22, 1982.
[7] Applicant is filing under Gas Purchase and Sales Agreement dated January 31, 1984.
[8] Last well on lease was plugged and abandoned on August 1, 1983 and the lease expired on October 31, 1983 for lack of production.
[9] Delivery of gas under the subject contract has become uneconomical due to the cost of replacing several miles of delivery line and maintaining compression necessary to deliver the gas into Buyer's high pressure line. The purchaser has agreed to release the gas from this contract and Columbia Gas of West Virginia, an interstate purchaser with a low pressure line in the vicinity, has agreed to purchase such gas.
[10] Last well plugged and abandoned August 1, 1983 and the lease expired October 31, 1983 for lack of production.
[11] The operation of the well is no longer economic in as much as the BLM has required the transmission line be buried at a cost in excess of $250,000.
[12] Primary term of contract expired January 1, 1980. There has been no production from the acreage under contract since 1971 and there are no plans for future production.
[13] Wells are not capable of producing natural gas at pressure sufficient to be delivered into Northern's pipeline after repeated swabbing and are fluid logged to the extent that deliverese can only be made to a low-pressure system as low marginal production.
[14] Gulf's records indicate that it never held a lease on any acreage in Tract Number 774 and that Tract Number 868 was never productive and the lease expired by its own term on July 2, 1977.
[15] Southern Natural Gas Company advises it is uneconomical to connect the W. Williams #1 Well to its system given the limited volume of gas and the cost of constructing the facilities required to take the gas.
[16] The partial expiration of the J.T. Gilbert, et al. lease at the end of the primary term of the lease which contained a Pugh clause.
[17] Applicant is willing to accept a certificate of public convenience and necessity conditioned in price to the applicable ceiling rates as established by the Natural Gas Policy Act of 1978.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 84-7905 Filed 3-22-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-248-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc. and Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Application

March 19, 1984.

Take notice that on February 21, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, referred as Applicants, filed in Docket No. CP84-248-000 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a transportation and exchange service between them, all as more fully set forth in the joint application which is on file with the Commission and open to public inspection.

Applicants propose, pursuant to the gas exchange agreement dated April 6, 1982, as amended January 11, 1983, that Tennessee would receive for the account of Arkla certain volumes of natural gas produced in Mississippi Canyon Block 148 (MC 148), offshore Louisiana. Applicants propose that one half of such volumes received by Tennessee would be exchanged with Arkla by delivery of such one half to Arkla's system for Tennessee's account. Applicants propose further that the remaining one half of volumes received by Tennessee would be transported by Tennessee for delivery to Arkla.

Tennessee proposes to receive a volume of gas, not to exceed 28,000 Mcf of natural gas per day, at a point of receipt in MC 148. It is stated that up to one half of such gas would be exchanged with Arkla, provided certain enumerated conditions are satisfied, by Tennessee's delivering volumes to Arkla at the following delivery points: (1) Arkla's 30 AD Line in Grady County, Oklahoma, and at other mutually agreeable points on that portion of Arkla's AD Line in Oklahoma, (2) mutually agreeable point(s) on Arkla's F-185 System in Gregg and Harrison Counties, Texas, (3) mutually agreeable point(s) on Arkla's Line A System in northern Caddo Parish, Louisiana, and southern Miller County, Arkansas, and (4) mutually agreeable point(s) on Arkla's F System and Line FT-3 System in Jackson, Bienville, Lincoln, Union, and Ouachita Parishes, Louisiana.

It is stated that the remaining volumes received by Tennessee at MC 148, and not exchanged at the locations above, less plant volume reduction, would be transported by Tennessee and delivered to Arkla at the following: (1) A point adjacent to Tennessee's existing pipeline in Ouachita Parish, Louisiana, (2) the outlet of the Champlin gasoline plant in the Carthage Field, Panola County, Texas, and (3) additional points in East Texas or North Louisiana as mutually agreed.

Applicants state that all gas received and delivered under the agreement would be at no charge to either party.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 285.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein just file a motión to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7930 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP68-146 and RP67-22; Docket No. CI66-821]

Tennessee Gas Pipeline Co. a Division of Tenneco, Inc. and Tenneco Oil Co.; Joint Petition for Relief From Reporting Requirements

March 19, 1984.

Take notice that on October 24, 1983, Tennessee Gas Pipeline Company and Tenneco Oil Company (Petitioners) jointly filed a petition for relief from the annual reporting requirements imposed by the FPC order of July 30, 1962 (43 FPC 292), as amended on May 1, 1970 (43 FPC 681), and on November 26, 1974 (52 FPC 1457).

Petitioners assert that they are required to submit specified annual production cost data that is used to evaluate lease transfers using a cost-of-service methodology. Their basis for relief from these requirements is that the cost-of-service methodology has been replaced by the first sale treatment provided by the Natural Gas Policy Act of 1978 (NGPA).

This first sale treatment, which allows interstate pipelines to receive maximum lawful prices for their own production, replaced the cost-of-service methodology by the Supreme Court's decision in *Public Service Commission v. Mid Louisiana Gas Co.*, — U.S. —, 103 S.Ct. 3024 (1983).

Petitioners assert that valuating the transfers of certain leases no longer necessitates the cost information that the current reporting requirements demand. Instead, the first sale treatment requires that the price for their own production cannot exceed the maximum legal price set under the NGPA.

Petitioners supplemented their October 24, 1983, filing with a letter dated February 23, 1984, stating that the cost of compliance with the reporting requirements is approximately seven thousand dollars ($7,000.00) per year.

Petitioners further assert that relief from the reporting requirements would not impair the Commission's ability to perform its duties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7931 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-277-000]

Trunkline Gas Co.; Application

March 19, 1984.

Take notice that on March 2, 1984, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-277-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation of natural gas for Panhandle Eastern Pipe Line Company (Panhandle) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to abandon certain transportation arrangements under agreements which were approved by Commission orders dated August 29, 1977, in Docket Nos. CP77-17-000 and CP77-92-000, and dated September 30, 1977, in Docket No. CP77-533. By order issued September 23, 1983, in Docket Nos. CP77-017-012, *et al.*, the Commission disallowed Panhandle's right to purchase gas from Northern Natural Gas Company, a division of InterNorth, Inc. (Northern), under the transportation and sales agreements among Panhandle, Trunkline and Northern which were authorized in Docket Nos. CP77-17-000, CP77-92-000 and CP77-533-000, it is explained. Accordingly, Applicant states that Panhandle no longer requires this transportation service. Applicant requests a retroactive effective date for the abandonment of September 10, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7915 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-214-000[1]]

United Gas Pipe Line Co.; Further Notice of Application

March 19, 1984.

Take notice that on January 27, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-214-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible sale of natural gas to an existing on-system, direct industrial customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization in Docket No. CP84-214-000 to make deliveries for interruptible sales of natural gas to Zapata Haynie Corporation (Zapata), an existing on-system, direct industrial customer located in Dulac and Cameron, Louisiana, and Moss Point, Mississippi. Specifically, United proposes to sell up to 8,920 Mcf of gas per day above the volumes under its existing sales agreement with Zapata. United further states that it intends to offer this service to Zapata only on such days as its supplies of natural gas exceed the demands of its customers, for firm service, taking into account storage volumes and the requirements for storage injection. It is indicated that the proposed sale would be made under United's Rate Schedule IRS 82-104, which requires Zapata to pay United the sum of 30 cents per Mcf plus the weighted average cost of gas (WACOG) per Mcf in United's system, as calculated according to the terms and conditions of Schedule S-82 for the period extending from July 1, 1983, until 7:00 a.m. on January 1, 1984. Commencing at 7:00 a.m. on January 1, 1984, and extending through January 1, 1985, the price paid by Zapata would increase to the sum of 50 cents per Mcf plus the WACOG per Mcf in United's system, as calculated above, it is further indicated.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motions to intervene are filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If motions for leave to intervene are timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] A Notice of Application in this proceeding was erroneously issued on March 6, 1984, in Docket No. CP84-213-000; the correct docket number is CP84-214-000. (49 FR 9258, March 12, 1984)

unnecessary for United to appear or be represented at the hearings.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-7916 Filed 3-22-84; 8:45 am]
BILLING CODE 6717-01-M

[Project Nos. 7742-000, et al.]

Hydroelectric Applications (Long Shoals Hydro, Inc., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7742-000.

c. Date Filed: October 20, 1983.

d. Applicant: Long Shoals Hydro, Inc.

e. Name of Project: Long Shoals.

f. Location: South Fork Catawba River, Lincoln County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles Mierek, P.E., Cortland Associates, Inc., 838 Arlington Drive, Tucker, Georgia 30084.

i. Comment Date: May 7, 1984.

j. Description of Project: The Long Shoals project would consist of: (1) An existing rockfill and concrete dam, approximately 300 feet long and 20 feet high; (2) two existing concrete powerhouses, each about 20 by 20 feet in plan dimension, one of which contains an existing 200 kW generating unit, and one powerhouse will contain a proposed 550 kW generating unit, for a total project capacity of 750 kW; (3) two existing tailraces about 200 and 250 feet long, respectively; (4) a transmission line about 100 feet long, to connect with the existing power grid; and (5) appurtenant facilities. The estimated average annual generation for the project is 4,100,000 kWh.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

2a. Type of Application: Exemption from licensing.

b. Project No.: 814-004.

c. Date Filed: August 1, 1980.

d. Applicant: Utah Power and Light Company.

e. Name of Project: Upper Beaver Project.

f. Location: Within Fishlake National Forest on the Beaver River in Beaver County, Utah.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705, and 2708 as amended).

h. Contact Person: Jody L. Williams, Utah Power and Light Company, P.O. Box 899, Salt Lake City, Utah 84110.

i. Comment Date: May 7, 1984.

j. Description of Project: The Upper Beaver Project is a constructed project operating pursuant to a license for Project No. 814. No change in the present operation is proposed. The project consists of the following existing facilities: (1) The 26.7-foot-long, 3.6-foot-high rockfilled timber crib diversion structure on the East Fork; (2) the 1,147-foot-long East Fork Conduit; (3) two timber headgates, each 4-foot-long by 2.5-foot-wide by 1.3-foot-high on Dry Hollow Creek; (4) the 1,759-foot-long Dry Hollow Conduit; (5) the 656-foot-long Spring Line Conduit; (6) the 39.5-foot-long, 4.2-foot-high rockfilled timber crib diversion structure on the South Fork; (7) the 9,453-foot-long South Fork Conduit; (8) the 160-foot-long, 29-foot-high rockfilled Merchant Valley Dam which is owned by the Applicant; (9) Merchant Valley Reservoir with a surface area of 1.4 acres and a storage capacity of 10 acre-feet; (10) a 15,791-foot-long main conduit; (11) a powerhouse containing 2 turbine/generator units, one of which will be rewound to increase the total installed capacity from 2,400 kW to 2,530 kW; (12) a 50-foot-long tailrace; and (13) appurtenant facilities.

The average annual generation is 9,090 MWh.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take the project.

Project energy is sold to the Applicant's customers.

l. This notice also consists of the following standard paragraphs: A1, B, C, D3a, A9.

3a. Type of Application: Exemption (5MW or Less).

b. Project No.: 7800-000.

c. Date Filed: November 4, 1983.

d. Applicant: Richard and Georgenia Wilkinson.

e. Name of Project: Prospect Creek Hydroelectric Project.

f. Location: On Prospect Creek in Sonders County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard and Georgenia Wilkinson, P.O. Box 848, Thompson Falls, Montana 59873.

i. Comment Date: May 7, 1984.

j. Description of Project: The proposed project would consist of: (1) A proposed reinforced concrete diversion structure that would be approximately 8 feet high; (2) a proposed penstock that would be approximately 4,000 feet long and 72-inches in diameter; (3) a proposed powerhouse containing 3 generating units rated at 1,850 kW, 775 kW, and 270 kW, respectively; (4) a proposed 2,400-volt transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project would be 8.5 GWh.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

4a. Type of Application: Preliminary Permit.

b. Project No.: 7903-000.

c. Date Filed: December 8, 1983.

d. Applicant: Waterfall Electric/Al Peters.

e. Name of Project: Squaw Creek.

f. Location: On Squaw Creek, near Town of Sisters, in Deschutes County, Oregon, and occupying lands within Deschutes National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Al Peters, 3182 S E Timberlake Drive, Hillsboro, Oregon 97123.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) A 7-foot-high concrete diversion dam at elevation 4,200 feet; (2) a 14,000-foot-long, 4-foot-diameter penstock; (3) a powerhouse containing one generating unit rated at 3.5 MW; (4) an access road; and (5) a 2-mile-long transmission line. The average annual energy generation is estimated to be 22 million kWh.

A preliminary permit, if issued, does not authorize any construction. Applicant seeks issuance of a preliminary permit for a term of 36 months, during which it would conduct engineering, economic, environmental, and feasibility studies, and prepare an FERC license application. No new roads

will be required to conduct the studies. The cost of the work is $15,000.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

5a. Type of Application: Preliminary Permit.

b. Project No.: 7846–000.

c. Date Filed: November 14, 1983.

d. Applicant: City of Cascade Locks and Public Utility District No. 1 of Skamania County.

e. Name of Project: Bonneville Lock and Dam Fish Attraction Project.

f. Location: At Bonneville Dam on the Columbia River, near Cascade Locks, in Multnomah County, Oregon, and Skamania County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Kenneth Hobson, City of Cascade Locks, P.O. Box 308, Cascade Locks, Oregon 97014.

i. Comment Date: May 21, 1984.

j. Description of Project: The proposed project would consist of four generating units at four sites at the fish attraction facilities of the U.S. Corps of Engineers' Bonneville Dam. The total installed capacity of the four sites is 11.6 MW and the average annual energy generation is estimated to be 63.4 million kWh.

A preliminary permit, if issued, does not authorize any construction. Applicant seeks issuance of a preliminary permit for 36 months, during which it would conduct economic, engineering, environmental, and feasibility studies, and prepare an FERC license application. The cost of the work is estimated to be $232,000.

k. Purpose of Project: Power would be sold to the Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

6a. Type of Application: Transfer of License.

b. Project No.: 2709–004.

c. Date Filed: January 26, 1984.

d. Applicant: Allegheny Electric Cooperative, Inc., and Pennsylvania Power Company.

e. Name of Project: Raystown.

f. Location: Juniata River, Huntingdon County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Anthony C. Adonizio, Allegheny Electric Cooperative, Inc., 212 Locust Street, P.O. Box 1266, Harrisburg, Pennsylvania 17108–1266.

i. Comment Date: April 27, 1984.

j. Description of the Proposed Transfer of License: The Applicants propose to transfer the license to Allegheny Electric Cooperative, Inc. because Pennsylvania Electric Company has determined that its share of the output of power from the project is not needed. The Raystown Project has not yet been constructed.

Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license.

Transferee is an Electric Cooperative Corporation organized under the laws of Pennsylvania.

k. This notice also consists of the following standard paragraphs: B.

l. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of this application. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon the representative of the Applicants specified herein.

7a. Type of Application: Preliminary Permit.

b. Project No: 8068–000.

c. Date Filed: February 8, 1984.

d. Applicant: Breeza Corporation.

e. Name of Project: South Madison.

f. Location: Kennebec River, town of Madison, Somerset County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Zoes Dimos, Breeza Corporation, Route 102, Londonerry, New Hampshire 03053.

i. Comment Date: May 21, 1984.

j. Description of Project: The proposed project would consist of: (1) A new 20-foot-high, 625-foot-long gated concrete spillway dam; (2) a 60-acre reservoir with no usable storage capacity at elevation 178.0 feet U.S.G.S. datum; (3) a new powerhouse located at the north abutment containing turbine-generators with a total rated capacity of 10,000 kW; (4) a transmission line; and (5) appurtenant facilities. The project would generate up to 50,000,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would perform surveys and geologic investigations including core sampling in the vicinity of the proposed dam axis, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for an FERC license, including an environmental report. Applicant estimates the cost of the work under the permit would be $100,000. No new roads are required for the core sampling. Any disturbed areas would be restored upon completion of sampling.

8a. Type of Application: Preliminary Permit.

b. Project No: 8067–000.

c. Date Filed: February 8, 1984.

d. Applicant: Breeza Corporation.

e. Name of Project: North Anson.

f. Location: Carrabassett River, town of North Anson, Somerset County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Zoes Dimos, Breeza Corporation, Route 102, Londonderry, New Hamsphire 03053.

i. Comment Date: May 21, 1984.

j. Description of Project: The proposed project would consist of: (1) A new 250-foot-long, 33-foot-high concrete gated spillway dam at the site of a breached dam; (2) a 20-acre reservoir with no usable storage capacity at elevation 293.0 feet U.S.G.S. datum; (3) a new powerhouse located at the north abutment containing turbine-generators with a total rated capacity of 2,800 kW; (4) a transmission line; and (5) appurtenant facilities. The project would generate up to 4,000,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license. Applicant seeks issuance of a preliminary permit for a period of 36

months, during which time it would perform surveys and geologic investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for an FERC license, including an environmental report. Applicant estimates the cost of the work under the permit would be $100,000.

9a. Type of Application: Preliminary Permit.

b. Project No: 7763–000.

c. Date Filed: October 25, 1983.

d. Applicant: Rainbow Lake Associates.

e. Name of Project: Joseph K. Robertson Hydropower Project.

f. Location: On North Fork of Cottonwood Creek, near Town of Redding, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, Senior Vice President, Diversified Products, No. 500 CFS Center, 324 South State Street, Salt Lake City, Utah 84111.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing 500-foot-long, 60-foot-high Trisdale Water Company's Musselbeck Dam; (2) a 36-inch-diameter, 3,500-foot-long penstock; (3) the existing 5-foot-wide, 6-foot-high, 7,000-foot-long Hoover Tunnel; (4) a 36-inch-diameter, 18,500-foot-long penstock; (5) a powerhouse with a total installed capacity of 3.5 MW; and (6) a 0.5-mile-long, 12-kV transmission line. The Applicant estimates that the average annual energy generation would be 20.4 GWh and sold to the local utilities.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $125,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

10a. Type of Application: Preliminary Permit.

b. Project No.: 7989–000.

c. Date Filed: January 18, 1984.

d. Applicant: CFS Hydroelectric Associates.

e. Name of Project: Faun Childers Hydroelectric.

f. Location: On Boulder Creek in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(5).

h. Contact Person: Mr. Joel Kirk Rector, CFS Hydroelectric Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, diversion structure at elevation 1,840 feet; (2) a 42-inch-diameter, 10,000-foot-long conduit; (3) a 42-inch-diameter, 7,000-foot-long penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 8,200 kW operating under a head of 1,300 feet; and (5) a one-mile-long transmission line connecting the powerhouse with an existing Pacific Gas and Electric Company's (PG&E) 12-kV transmission line, north of the powerhouse.

k. Purpose of Project: The estimated 25.6 million kWh of annual project energy would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

11a. Type of Application: Preliminary Permit.

b. Project No.: 8019–000.

c. Date Filed: February 1, 1984.

d. Applicant: CFS Hydroelectric Associates.

e. Name of Project: The Geraldine G. Lucas Hydroelectric.

f. Location: On Big Creek, within the Sierra National Forest in Fresno County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, CFS Hydroelectric Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (a) A 5-foot-high, diversion structure at elevation 2,960 feet; (b) a 10,500-foot-long, 24-inch-diameter penstock; (c) a powerhouse containing a single generating unit with a rated capacity of 4,500 kW, operating under a head of 1,270 feet; and (d) a 15-mile-long, 60-kV transmission line connecting the powerhouse with an existing Pacific Gas and Electric Company's substation south of the project.

k. Purpose of Project: The project's estimated 12.6 million kWh of annual project energy would be sold to a local municipal utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 7951–000.

c. Date Filed: January 3, 1984.

d. Applicant: Idaho Natural Energy, Inc.

e. Name of Project: South Fork Clearwater River.

f. Location: In the Nez Perce National Forest, on the South Fork Clearwater River, near Golden, in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jeff Burt, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) A 9-foot-high diversion structure at elevation 3040 feet; (2) a 27,000-foot-long, 6-foot-diameter penstock; (3) powerhouse containing two generators having a combined capacity of 11,000 kW and an annual generation of 47 GWh at elevation 2440 feet; and (4) a 10-mile-long transmission line to an existing line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 24-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $260,000.

k. Purpose of Project: Power may be marketed to the Washington Water Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13a. Type of Application: Preliminary Permit.

13b. Project No: 7875–000.

13c. Date Filed: November 25, 1983.

13d. Applicant: Tuolumne Regional Water District.

13e. Name of Project: Niagara Creek Hydroelectric project.

13f. Location: On Niagara Creek, near Town of Wagner, within Stanislaus National Forest in Tuolumne County, California.

13g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

13h. Contact Person: Mr. Gary N. Egger, General Manager, Tuolumne Regional Water District, P.O. Box 728, Sonora, California 95370.

13i. Comment Date: May 18, 1984.

13j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 20-foot-long diversion structure on Niagara Creek at elevation 6020.00 feet; (2) a 2-foot-diameter, 1,800-foot-long pipeline; (3) a 2-foot-diameter,

1,800-foot-long penstock; (3) a powerhouse with a total installed capacity of 2.9 MW; and (4) a 9-mile-long, 12-kV transmission line. The Applicant estimates that the average annual energy generated would be 8.3 million kWh and sold to the local utilities.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental, and economic studies, and also prepare an FERC license application at an estimated cost of $250,000.

13k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

14a. Type of Application: Amendment of License (New Capacity).

14b. Project No: 2307–001.

14c. Date Filed: January 12, 1984.

14d. Applicant: Alaska Electric Light and Power Co.

14e. Name of Project: Salmon Creek Project.

14f. Location: On Salmon Creek in the City and Borough of Juneau, Alaska.

14g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

14h. Contact Person: Mr. Corry Hildenbrand, Alaska Electric Light and Power Co., N. Franklin Street, Juneau, Alaska 99801.

14i. Comment Date: April 30, 1984.

14j. Description of Project: The proposed amendment would consist of: (1) A new 42-inch-diameter penstock connecting to the existing penstock above Powerhouse No. 2 by a 30-inch WYE Branch and two butterfly valves; (2) a new powerhouse adjacent to the existing Lower Powerhouse (No. 1) containing a single generating unit with a rated capacity of 6,700 kW; and (3) a new tailrace discharging into the existing tailrace. The estimated average annual energy output due to this addition is 31.5 million kWh.

14k. This notice also consists of the following standard paragraphs: B and C.

15a. Type of Application: License (Major).

15b. Project No: 3257–005.

15c. Date Filed: November 30, 1983.

15d. Applicant: Sunnyside Valley Irrigation District.

15e. Name of Project: Zillah.

15f. Location: Off of the U.S. Bureau of Reclamation's Sunnyside Canal on the Zillah Wasteway, near Zillah, on the Yakima River, in Yakima County, Washington.

15g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

15h. Contact Person: Mr. James W. Trull, Manager, Sunnyside Valley Irrigation District, P.O. Box 239, Sunnyside, Washington 98944.

15i. Comment Date: May 18, 1984.

15j. Description of Project: The proposed project would consist of: (1) The existing 16.9-mile-long segment of the USBR Sunnyside Canal between the Sunnyside Diversion Dam and the Zillah Wasteway; (2) the modification of the rotating drum screens; (3) the modification of the Zillah Wasteway Intake; (4) a 2,205-foot-long, 10.5-foot-diameter steel penstock; (5) a powerhouse containing one generating unit rated at 12 MW; (6) a tailrace; and (7) a 2.4-mile-long, 115-kV transmission line. The average annual energy generation is estimated to be 29.6 million kWh and the construction cost is estimated to be $17.5 million.

The application was filed pursuant to a preliminary permit.

15k. Purpose of Project: Power would be sold to Seattle City Light Department.

15l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D2.

16a. Type of Application: Preliminary Permit.

b. Project No.: 7933–009.

c. Date Filed: December 27, 1983.

d. Applicant: Warren Hydro Partners.

e. Name of Project: Caesar Creek Dam.

f. Location: On Caesar Creek in Warren County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bruce J. Wrobel, Mitex, Inc., 91 Newbury Street, Boston, Massachusetts 02116.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' Caesar Creek Dam and would consist of: (1) The existing 156-foot-long conduit, to be used as a power penstock; (2) a proposed powerhouse containing a single generating unit having a rated capacity of 3,000 kW; (3) interconnection with the existing transmission lines owned by the Dayton Power and Light Company; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 12 GWh.

k. Purpose of Project: The energy derived at the proposed project would be sold to an investor-owned or public utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of a application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

17a. Type of Application: Preliminary Permit.

b. Project No.: 7717–000.

c. Date Filed: October 11, 1983.

d. Applicant: Sanpete Water Conservancy District.

e. Name of Project: Narrows Project.

f. Location: On Gooseberry and Cottonwood Creeks in Sanpete County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David Peterson, P.O. Box 267, Mt. Pleasant, Utah 84647.

i. Comment Date: April 30, 1984.

j. Competing Application: Project No. 7409–000. Date Filed: June 28, 1983.

k. Description of Project: The proposed project would consist of: (1) The existing 117-foot-high Gooseberry Dam; (2) the existing 1,800-foot-long Narrows Tunnel, which connects Gooseberry and Cottonwood Creeks; (3) a proposed dam to be constructed on Gooseberry Creek which would divert water through the tunnel; (4) the reconstruction of a diversion structure which would divert water from Cottonwood Creek; (5) an elaborate penstock system consisting of four 32-inch-diameter penstocks having lengths of 10,560, 8,942, 9,731, and 13,150 feet; (6) four powerhouses each containing 1 or more generating units and having a *total* rated capacity of 9.2 MW; (7) 1 mile of new 12.46/72-kV transmission line, 7 miles of existing transmission line which would be upgraded to 46-kV to interconnect with the existing transmission line owned by Utah Power and Light Company; and (8) any appurtenant facilities. The Applicant estimates that the average annual energy output would be 29.5 GWh.

l. Purpose of Project: The most likely market for the energy derived at the proposed project would be the municipal power agencies within the Sanpete Water Conservancy District.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under

the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $35,000.

18a. Type of Application: Preliminary Permit.

b. Project No: 8017–000.

c. Date Filed: January 31, 1984.

d. Applicant: Colusa County, California.

e. Name of Project: East Park Dam Hydroelectric.

f. Location: At the existing Bureau of Reclamation's East Park Dam on Little Stony Creek in Colusa County, California..

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ferrel H. Ensign, Borcalli, Ensign and Buckley, Consulting Engineers, 3327 Longview Drive, North Highlands, California 95660.

i. Comment Date: April 27, 1984.

j. Competing Application: Project No. 7780–000. Date Filed: October 27, 1983.

k. Description of Project: The proposed project would consist of: (1) A pressurized steel penstock insert within the existing concrete outlet of the East Park Dam, extending 30 feet beyond the existing point of discharge; (2) a powerhouse containing a single generating unit with a rated capacity of 900 kW, operating under a head of 71 feet; and (3) a 2-mile-long, 21-kV transmission line connecting the project with an existing Pacific Gas and Electric Company (PG&E) transmission line west of the project.

l. Purpose of Project: The projects estimated 2.8 million kWh of energy would be sold to PG&E.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

19a. Type of Application: Preliminary Permit.

b. Project No: 7785–000.

c. Date Filed: October 31, 1983.

d. Applicant: Armand J. Brassard and John S. Woodward.

e. Name of Project: Crystal Falls Water Power.

f. Location: On Phillips Brook, in Coos County, Town of Stark (Crystal Village), New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Armand J. Brassard, Paris Road, R.F.D. 2, Box 79, Berlin, New Hampshire 03570.

i. Comment Date: April 27, 1984.

j. Competing Application: Project No. 7328–000; Date Filed: 6–2–83. Project No. 7896–000; Date Filed: 12–2–83.

k. Description of Project: The proposed project would consist of: (1) A new inlet structure; (2) a proposed 24-inch-diameter steel penstock approximately 2,900 feet in length; (3) a proposed powerhouse approximately 10 feet by 16 feet, housing three turbine/generator units with a total installed capacity of 150 kW; (4) a proposed 230-volt transmission line running underground 30 feet to a transformer pad; (5) a proposed 7,200-volt transmission line running underground for 150 feet; and (6) appurtenant facilities. Applicant estimates that the average annual energy generation would be 919,800 kWh.

l. Purpose of Project: Project energy will be sold to Public Service Company of New Hampshire.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $2,475.

20a. Type of Application: Preliminary Permit.

b. Project No: 8123–000.

c. Date Filed: February 22, 1984.

d. Applicant: Paris Hydro Associates.

e. Name of Project: Billings.

f. Location: Little Androscoggin River, Town of South Paris, Oxford County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: May 21, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 150-foot-long, 12-foot-high masonry dam with a concrete cap; (2) an existing 11-acre reservoir with a normal maximum water surface elevation of 343.0 feet M.S.L. with no usable storage capacity; (3) a new powerhouse located at the east dam abutment containing turbine-generators with a total rated capacity of 170 kW; (4) a 50-foot-long, 12.5-kV transmission line; and (5) appurtenant facilities. The project would generate up to 850,000 kWh annually. The dam is owned by the Town of South Paris, Maine.

k. Purpose of Project: Energy produced at the project would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would perform surveys and geologic investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State and local government agencies concerning the potential environmental effects of the project, and prepare an application for an FERC license, including an environmental report. Applicant estimates the cost of the work under the permit would be $36,000.

21 a. Type of Application: Preliminary Permit.

b. Project No: 8080–000.

c. Date Filed: February 13, 1984.

d. Applicant: High Rock Hydro Partners.

e. Name of Project: High Rock.

f. Location: On Fish Creek, Last Chance Creek, Discovery Creek and West Branch Feather River near Stirling City, in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David C. Auslam, Jr., 3327 Longview Drive, Suite 250, North Highlands, California 95660.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 10-foot-high, 40-foot-long diversion structure on the West Branch Feather River; (2) 4 diversion structures, 3 to 5-foot-high, 30-foot-long one each on the west and east branches of Fish Creek, one on Last Chance Creek, and one on Discovery Creek; (3) a 42-inch-diameter, 13,000-foot-long pipeline; (4) a 27-inch-diameter, 9,000-foot-long pipeline; (5) a 30-inch-diameter, 7,000-foot-long pipeline; (6) a 42-inch-diameter, 8,000-foot-long penstock; (7) a powerhouse located on the West Branch Feather

River at elevation 3,440 feet msl with a total installed capacity of 13.0 MW and producing an estimated average annual generation of 60 GWh; and (8) 2.5 miles of transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) 12-kV line. The proposed project would be located on Plumas National Forest and Diamond International Corporation lands. Project power would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 24-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $200,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

22a. Type of Application: Preliminary Permit.

b. Project No: 7966–000.

c. Date Filed: January 10, 1984.

d. Applicant: Mr. Maurice L. Albertson.

e. Name of Project: RMHL Hydro.

f. Location: On North St. Vrain Creek in Boulder County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Barbe Chambliss, Environmental Power Systems, Inc., 92 Atlantic Avenue, Aspen, Colorado, or Maurice L. Albertson, 203 Webber Building, Colorado State University, Fort Collins, Colorado 81611.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) The construction of a submerged rock-filled diversion structure; (2) a proposed 1,700-foot-long, 30-inch-diameter conduit; (3) a proposed 165-foot-long, 30-inch-diameter penstock; (4) a proposed powerhouse containing two generating units having a total rated capacity of 320 kW; (5) a new transmission line which would interconnect with the nearby 7.5-kV line owned by Estes Park Power and Light; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,125,000 kWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $70,000.

23a. Type of Application: Preliminary Permit.

b. Project No: 8066–000.

c. Date Filed: February 7, 1984.

d. Applicant: American Hydro Power Company.

e. Name of Project: Warrior Ridge Project.

f. Location: On the Juanita River in Huntingdon County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Peter A. McGrath, American Hydro Power Company, 4026 Chestnut Street, Philadelphia, Pennsylvania 19104.

i. Comment Date:

j. Description of Project: The proposed project would consist of: (1) The existing 27-foot-high, 810-foot-long Warrior Ridge Dam; (2) the existing 60-acre reservoir which impounds 310 acre-feet of gross storage at the spillway elevation of 658 feet m.s.l.; (3) an existing powerhouse to contain an installed generating capacity of 2.5 MW; and (4) appurtenant facilities.

The dam and appurtenant facilities are owned by the Pennsylvania Electric Company. The Applicant estimates the average annual energy production to be 11.4 GWh.

k. Purpose of Project: The Applicant intends to sell the total output generated to General Public Utilities/Penelec.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

24a. Type of Application: Preliminary Permit.

b. Project No: 7807–000.

c. Date Filed: November 4, 1983.

d. Applicant: Moran Associates.

e. Name of Project: Steven F. Christensen Project.

f. Location: On the Snake River in Teton County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, Moran Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: May 18, 1984.

j. Description of Projects: The proposed project would utilize the existing Bureau of Reclamation's Jackson Lake Dam and Reservoir and would consist of: (1) A new penstock utilizing the existing outlet works; (2) a new powerhouse containing turbine-generator units having a total rated capacity of 6,700 kW; (3) a tailrace returning flow to the river immediately downstream of the dam; (4) a new 34.5-kV transmission line, 300 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 20,000,000 kWh. Project energy would be sold to local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

24a. Type of Application: Preliminary Permit.

b. Project No: 8045–000.

c. Date Filed: February 3, 1984.

d. Applicant: James River-Groveton, Incorporated.

e. Name of Project: Brooklyn Project.

f. Location: Upper Ammonoosuc River, town of Groveton, Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Andrew E. Sims, Kleinschmidt and Dutting, P.O. Box 76, Pittsfield, Maine 04967.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would be composed of two developments: (1) The Brooklyn development consisting of: (a) An existing 90-foot-long, 10-foot-high rock filled timber crib dam topped by 3-foot-high flashboards with a 30-foot-long integral gate structure at the east

abutment; (b) an existing 18 acre-reservoir at elevation 880.6 feet U.S.G.S. datum with flashboards and no usable storage; (c) an existing forebay and a powerhouse to be refurbished to contain two turbine-generators with a total rated capacity of 500 kW; (d) a 50-foot-long transmission line; and (e) appurtenant facilities.

(2) The Red Dam development located 1 mile upstream from Brooklyn Development consisting of: (a) An existing 23-foot-high, 200-foot-long rock filled timber crib dam topped by 6-foot-high flashboards and an integral gate structure on the east and west abutments; (b) an existing 60 acre-reservoir at elevation 888.6 feet U.S.G.S. datum with flashboards installed and a usable storage capacity of 180 acre-feet; and (c) appurtenant facilities. The Red Dam Development would provide storage and stream regulation for the Brooklyn development

The project facilities are owned by the Applicant. The project would generate up to 2,000,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be sold to Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and cost of Studies under Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would perform surveys and geologic investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financial commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for an FERC license, including an environmental report. Applicant estimates the cost of the work under the permit would be $45,000.

26a. Type of Application: Preliminary Permit.

b. Project No.: 7704–000.

c. Date Filed: October 6, 1983.

d. Applicant: Enumclaw/Washington Associates.

e. Name of Project: Enumclaw/Washington Project.

f. Location: At the existing Army Corps of Engineers Mud Mountain Dam, on the White River, near Enumclaw, on the boundary of King and Pierce Counties, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(e).

h. Contact Person: Joel Kirk Rector, Enumclaw/Washington Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) A new intake structure, at the 1,015-foot-long Mud Mountain Dam, at elevation 1,200 feet; (2) a 1,450-foot-long, 8.5-foot-diameter penstock; (3) a powerhouse containing two generating units with a combined capacity of 4.8 MW and an annual energy production of 21.5 GWh; (4) a 200-foot-long, 12-foot-wide tailrace; and (5) a 650-foot-long, 12.5-kV transmission line to an existing line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $125,000.

k. Purpose of Project: Power will be marketed to local municipalities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

27a. Type of Application: License (Under 5 MW).

b. Project No.: 7444–001.

c. Date Filed: November 1, 1983.

d. Applicant: Willow River Hydro Associates.

e. Name of Project: Willow Falls Water Power Project.

f. Location: Willow River, St. Croix County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Philip M. Hoover, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: May 21, 1984.

j. Description of Project: The proposed project would be located at the Willow Falls Dam, which is owned by the Department of Natural Resources of the State of Wisconsin, and would consist of: (1) An existing reservoir with a surface area of 99.8 acres and with a storage capacity of 1,295 acre-feet; (2) an existing 160-foot-long and 60-foot-high reinforced concrete dam; (3) an existing 347-foot-long, 15-inch-diameter steel penstock; (4) a proposed powerhouse with the installation of one turbine/generator unit operating at a head of 93 feet for a total installed capacity of 1,200 kW; (5) a proposed 600-foot-long, 12-kV buried transmission line; and (6) appurtenant facilities. The Applicant estimates the average annual energy production to be 7.2 GWh.

k. Purpose of Project: The Applicant plans to sell the power generated to the Northern States Power Company whose lines run within one mile of the proposed project site.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

28a. Type of Application: Preliminary Permit.

b. Project No.: 7795–000.

c. Date Filed: November 2, 1983.

d. Applicant: Southern California Edison Company.

e. Name of Project: Bear Butte Hydroelectric.

f. Location: On Big Creek in Fresno County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John R. Burry, Vice President, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) A 212-foot-high gravity type dam at elevation 8,132 feet, forming; (2) a reservoir with gross storage capacity of 11,500 acre-feet; (3) a 72-inch-diameter, 12,500-foot-long pipeline; (4) a 48 to 60-inch-diameter, 4,000-foot-long penstock; (5) a powerhouse, to be located on the east shore of Huntington Lake, containing a single generating unit with a rated capacity of 19,650 kW, operating under a head of 1,182 feet; and (6) a 4⅛-mile-long, 33-kV transmission line connecting the project with the Applicant's existing Siphon Substation, west of the project.

k. Purpose of Project: The estimated 61 million kWh of project energy would be used by the Applicant to serve its customers.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

29a. Type of Application: Preliminary Permit.

b. Project No: 7882–000.

c. Date Filed: November 28, 1983.

d. Applicant: City of Des Moines, Iowa.

e. Name of Project: Red Rock Water Power Project.

f. Location: On the Des Moines River, in Marion County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Richard Wilkey, City Manager, City Hall, East First & Locust Streets, Des Moines, Iowa 50307.

i. Comment Date: April 27, 1984.

j. Competing Application: Project No. 7706–000 Date Filed: 10–7–83.

k. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed powerhouse containing 3 generating units having a total installed capacity of approximately 22,000-kW; (2) a proposed transmission line; and (3) appurtenant facilities. The estimated average annual energy output for the project would be 88,000,000 kWh.

1. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Application would decide whether to proceed with an applicant for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

30a. Type of Application: Preliminary Permit.

b. Project No: 7936–000.

c. Date Filed: December 29, 1983.

d. Applicant: Burke Dam Hydro Associates.

e. Name of Project: Burke Dam.

f. Location: on the James River in Botetourt County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Craig M. Lussi, 4105 Aspen Street, Chevy Chase, Maryland 20815.

i. Comment Date: May 21, 1984.

j. Description of Project: The proposed project would consist of: (1) The construction of a single 6-foot-high dam; (2) a proposed reservoir of negligible storage capacity and a surface area of 200 acres; (3) three proposed powerhouses located below the dam, Powerhouse #1 approximately 1500 feet south of the Kanawha Canal System's Marshall Tunnel, Powerhouse #2 will be located approximately 1.2 miles west of the dam, Powerhouse #3 will be located approximately 200 feet below the dam. The total rated capacity of the three powerhouses will be 6500 kW; (4) a proposed 12-foot-wide, 8-foot-deep canal to transport water to the tunnel and down to powerhouse #2; (5) a proposed 2-mile-long transmission line to interconnect with existing transmission lines; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 28 GWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be VEPCO.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

30m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct, and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $27,000.

31a. Type of Application: Preliminary Permit.

b. Project No: 7542–000.

c. Date Filed: August 22, 1983.

d. Applicant: Woodbury Associates.

e. Name of Project: Woodbury Power Project.

f. Location: On the Green River in Butler County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, Woodbury Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Green River Lock and Dam No. 4 and would consist of: (1) Reconstruction of the breached portion of the dam; (2) a new penstock and intake structure; (3) a new powerhouse containing turbine-generator units having a rated capacity of 5,000 kW; (3) a tailrace returning flow to the river a short distance downstream from the dam; (4) a new transmission line, approximately 1,500 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 22,500,000 kWh. Project energy would be sold to local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

32a. Type of Application: Preliminary Permit.

b. Project No: 7945–000.

c. Date Filed: January 3, 1984.

d. Applicant: Wyoming Natural Energy, Inc.

e. Name of Project: Sunlight Creek.

f. Location: On Sunlight Creek, near Cody, in Park County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jeff Burt, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) A new diversion structure, 6 feet high and 60 feet wide; (2) a new penstock, 54 inches in diameter and 29,500 feet long; (3) a new reinforced concrete powerhouse measuring 35 by 40 feet; (4) two new turbine/generator units each rated at 6 MW; (5) a new 55-kV transmission line 8 miles long; and (6) appurtenant electrical and mechanical facilities.

The proposed project would occupy approximately 83 acres of the Shoshone National Forest.

The estimated average annual generation of 50 million kWh would probably be sold to Pacific Power and Light Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $165,000.

33a. Type of Application: Exemption from Licensing (5 MW or Less).

b. Project No: 6938–001.

c. Date Filed: September 15, 1983.

d. Applicant: Thomas W. Weathers, II, Wilson B. Humphries Jr., and Roland M. Webb.

e. Name of Project: Pinecrest Lake.

f. Location: On South Fork Stanislaus River in Tuolumne County, California within the Stanislaus National Forest.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708, *as amended.*

h. Contact Person: Thomas Weathers, II, 31888 Highway 108, P.O. Box 68, Strawberry, California 95375.

i. Comment Date: April 26, 1984.

j. Competing Applications: The proposed project competes with preliminary permit applications for Project No. 6938–000 for which a public notice was issued on March 3, 1983, and expired on May 9, 1983, and Project No. 7347–000 for which a public notice was issued on August 3, 1983, and expired on September 15, 1983.

k. Description of Project: The proposed project would consist of: (1) A 21-inch-diameter, 727-foot-long penstock carrying water released from the existing 135-foot-high Pinecrest Lake Dam (the lake is also known as the Strawberry Reservoir) owned and operated by the Pacific Gas and Electric Company (PG&E) as a flow regulation component of Project No. 2130; (2) a powerhouse containing four generating units each with an installed capacity of 150 kW, operating under a head of 118 feet; (3) an afterbay located adjacent to the powerhouse; and (4) a 1400-foot-long, 17.2–kV transmission line connecting with an existing PG&E transmission line.

l. Purpose of Project: The estimated 3.1 million kWh produced annually by the proposed project would be sold to PG&E.

m. This notice also consists of the following standard paragraphs: A2, A9, B, C and D3a.

34a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7577–000.

c. Date Filed: September 2, 1983.

d. Applicant: Gene M. Peters.

e. Name of Project: Burton Creek.

f. Location: On Burton Creek, near Packwood, in Lewis County, Washington.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Mr. Calvin Patterson, Consulting Engineer, 2610 Evergreen Pt. Rd., Bellevue, Washington 98004.

i. Comment Date: April 30, 1984.

j. Description of Project: The proposed project would consist of: (1) A wood and concrete intake at elevation 1,640 feet; (2) an 1,830-foot-long, 16-inch-diameter penstock; (3) a powerhouse containing a single generator with a rated capacity of 800 kW and an annual energy production of 3.5 GWh at elevation 1,000 feet; (4) a 530-foot-long, 30-inch-diameter corrugated metal tailrace; and (5) a 620-foot-long, 13.8-kV transmission line to an existing P.U.D. transmission line.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3A.

35a. Type of Application: Exemption (5MW or Less).

b. Project No: 5545–002.

c. Date Filed: December 23, 1983.

d. Applicant: Stephen J. Gaber.

e. Name of Project: White Salmon Creek.

f. Location: On White Salmon Creek, near Glacier, in Whatcom County, Washington, and occupying U.S. lands in Mt. Baker National Forest.

g. Filed Pursuant to: Section 408, Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Stephen J. Gaber, 10 Canyon Lake Road, Deming, Washington 98244.

i. Comment Date: April 26, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 35-foot-long diversion structure at elevation 2,880 feet; (2) a 3-foot-diameter, 12,200-foot-long steel penstock; (3) a powerhouse containing one generating unit rated at 1.3 MW; (4) a tailrace; (5) two access roads, one 0.25-mile-long and one 1-mile-long; and (6) a 10-mile-long transmission line. The average annual energy generation is estimated to be 6.7 million kWh.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Power would be sold to Puget Sound Power and Light Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

36a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7940–000.

c. Date Filed: December 22, 1983.

d. Applicant: Stephen J. Gaber.

e. Name of Project: Price Creek.

f. Location: On Price Creek, near Glacier, in Whatcom County, Washington, and occupying U.S. lands in Mt. Baker National Forest.

g. Filed Pursuant to: Section 408, Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Stephen J. Gaber, 10 Canyon Lake Road, Deming, Washington 98244.

i. Comment Date: April 26, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 35-foot-long diversion structure at elevation 3,700 feet; (2) a 36-inch-diameter to 20-inch-diameter, 4,200-foot-long steel penstock; (3) a powerhouse containing one generating unit rated at 1.9 MW; (4) a tailrace; (5) two access roads; and (6) a 12-mile-long transmission line. The average annual energy generation is estimated to be 9.4 million kWh.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license Applicants that would seek to take or develop the project.

k. Purpose of Project: Power would be sold to Puget Sound Power and Light Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

37a. Type of Application: Exemption—5 MW or Less.

b. Project No: 7878–000.

c. Date Filed: November 28, 1983.

d. Applicant: William A. Curtis.

e. Name of Project: Hidden Springs.

f. Location: On Hidden Springs, a tributary of Billingsley Creek in Gooding County, Idaho near the Town of Hagerman.

g. Filed Pursuant to: Energy Security Act (16 U.S.C. 2705, 2708 as amended).

h. Contact Person: Mr. Vernon F. Ravenscroft, Consulting Associates, Inc., P.O. Box 893, Boise, Idaho 83701.

i. Comment Date: April 30, 1984.

j. Description of Project: The proposed project would consist of: (1) An intake structure at elevation 3,074 feet; (2) an 18-inch-diameter, 288-foot-long buried penstock; and (3) a powerhouse containing a single generating unit with a rated capacity of 73 kW, operating under a head of 60 feet. The project would connect to an existing 34.5-kV transmission line owned by Idaho Power Company.

The estimated average annual energy output would be 307,500 kWh.

Purpose of Exemption—An exemption, if issued, gives an Exemptee

priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power will be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

38a. Type of Application: 5 MW Exemption.

b. Project No: 8011–000.

c. Date Filed: January 30, 1984.

d. Applicant: Dodge Falls Hydro Corporation.

e. Name of Project: Dodge Falls.

f. Location: On the Conecticut River, in the towns of Ryegate, Caledonia County, Vermont and Bath, Grafton County, New Hampshire.

g. Filed Pursuant to: 16 U.S.C. 2705 and 2708.

h. Contact Person: Howard M. Moffett, Orr and Reno, One Eagle Square, P.O. Box 709, Concord, New Hampshire 03301.

i. Comment Date: April 27, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 485-foot-long, 15.5-foot-high, grouted rock-filled timber crib dam with an integral 375-foot-long spillway topped by two-foot-high flashboards; (2) an existing 4-mile-long, 290-acre reservoir at elevation 423.6 feet M.S.L. and a usable storage capacity of 590 acre-feet with flashboards; (3) an existing powerhouse on the west abutment to be refurbished with 6 new turbine-generators with a total rated capacity of 4,650 kW; (4) a 350-foot-long, 12-kV transmission line; and (5) appurtenant facilities. The project would produce up to 21,000,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be sold to Green Mountain Power Corporation.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license Applicants that would seek to take or develop the project.

39a. Type of Application: 5 MW Exemption.

b. Project No: 7982–000.

c. Date Filed: January 12, 1984.

d. Applicant: Donald A. Smith and Margaret E. Evans.

e. Name of Project: Celley Mill.

f. Location: Eastman Brook, town of Piermont, Grafton County, New Hampshire.

g. Filed Pursuant to: 16 U.S.C. 2705 and 2708.

h. Contact Person: Margaret E. Evans, Eastman Brook Hydro, P.O. Box 13, Piermont, New Hampshire 03779.

i. Comment Date: April 27, 1984.

j. Description of Project: The proposed project would consist of: (1) A new 3-foot-high, 20-foot-long concrete diversion structure; (2) a head pond at streambed elevation of 490 feet M.S.L. and no additional surface area or storage capacity; (3) a new 800-foot-long, 2-foot-diameter penstock; (4) a new powerhouse containing a single 130 kW turbine-generator; (5) a 100-foot-long transmission line; and (6) appurtenant facilities. The project would generate up to 626,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be sold to Connecticut Valley Electric Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

40a. Type of Application: Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity.

b. Project No: 7910–000.

c. Date Filed: December 12, 1983.

d. Applicant: Solar Research Corporation.

e. Name of Project: Milburnie Hydro Project.

f. Location: On the Neuse River in St. Matthews, Wake County, North Carolina.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Thomas C. Hough, Solar Research Corporation, 1700 Walnut Street, Suite 1024, Philadelphia, Pennsylvania 19103.

i. Comment Date: April 25, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 14-foot-high and 625-foot-long concrete dam; (2) a reservoir with an estimated storage area of 500 acre-feet; (3) a new powerhouse with a total installed capacity of 645 kW; (4) transmission lines; and (5) appurtenant facilities. The Applicant estimates the average annual generation to be 2,561 MWh. All power generated would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

l. Proposed Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

41a. Type of Application: Exemption (5 MW or Less).

b. Project No: 6803–000.

c. Date Filed: October 26, 1982.

d. Applicant: Snowbird, Ltd.

e. Name of Project: Little Cottonwood Creek/Coalpit Water Power Project.

f. Location: On the Little Cotton Creek, in Salt Lake County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Gale C. Carson, 594 SE Craven Road, Bend, Oregon 97702.

i. Comment Date: April 25, 1984.

j. Description of Project: The Applicant would utilize lands administered by the U.S. Forest Service. The proposed project would consist of: (1) A proposed 6-foot-high diversion structure; (2) a proposed 36-inch penstock; (3) a proposed powerhouse containing two generating units rated at 610 kW and 3,350 kW, respectively; (4) a proposed 25-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project would be 11,600,000 kWh.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

42a. Type of Application: 5MW Exemption.

b. Project No: 7959–000.

c. Date Filed: January 5, 1984.

d. Applicant: City of Soda Springs.

e. Name of Project: Soda Creek Hydro Project.

f. Location: On Soda Creek in Caribou County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act (Act) (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: David H. Clegg, Mayor, City of Soda Springs, 9 West Second South, Soda Springs, Idaho 83276.

i. Comment Date: April 30, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing diversion dam at El. 5841.8 feet m.s.l.; (2) an existing power canal, 3,636 feet long, to be extended approximately 800 feet; (3) a new intake structure and trashrack; (4) a new 42-inch penstock, approximately 400 feet long; (5) a new powerhouse containing a turbine-generator unit rated at 370-kW; (6) a tailrace returning flow to Soda Creek; (7) a new 12.5-kV underground transmission line, approximately 150 feet long, connecting to an existing line; and (8) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,900,000 kWh. Project energy would be utilized by the Applicant. Applicant has the real property interests required for the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

42a. Type of Application: 5 MW or less Exemption.

b. Project No: 7864–000.

c. Date Filed: November 21, 1983.

d. Applicant: Mac Hydro-Power Company.

e. Name of Project: Mule Creek Hydroelectric Project.

f. Location: On Mule Creek, near Town of Weaverville, within Shasta-Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Section 408 of the Federal Energy Security Act, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: Mr. H. L. Pete Childers, President, MacHydro-Power Company, Inc. 9200 Shanley Lane, Auburn, California 95603.

i. Comment Date: April 30, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) a 4-foot-high, 20-foot-long concrete diversion structure; (2) a 30-inch-diameter, 3,300-foot-long conduit; (3) a 30-inch diameter, 2,200-foot-long penstock; (4) a powerhouse with a total rated capacity of 740 kW; and (5) a 600-foot-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates that the average annual energy generation would be 1.6 million kWh.

The power generated by the proposed project will be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3(a).

44a. Type of Application: Exemption (5 MW or Less).

44b. Project No.: 7979–000.

44c. Date Filed: January 12, 1984.

44d. Applicant: Peter C. Graham.

44e. Name of Project: Foss Mill.

44f. Location: Marsh Stream, Town of Brooks, Waldo County, Maine.

44g. Filed Pursuant to: 18 U.S.C. 2705 and 2708.

44h. Contact Person: Mr. Joseph A. Sawyer, 26 Harden Avenue, Camden, Maine 04843.

44i. Comment Date: April 30, 1984.

44j. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high, 150-foot-long dam consisting of a 50-foot-long horseshoe shaped spillway section topped by 2-foot-high flashboards; (2) a 100-foot-long stop-log section; (3) an existing 20 acre reservoir with no usable storage capacity at elevation 413.0 feet M.S.L. with flashboards installed; (4) a new 16-foot-diameter, 12-foot-long penstock; (5) a new powerhouse located at the east dam abutment containing a single 15 kw turbine-generator; (6) a new 60-foot-long transmission line; and (7) appurtenant facilities. The project is owned by the Applicant. The project would generate up to 55,600 kWh annually.

44k. Purpose of Project: Energy produced at the project would be sold to Central Maine Power Company.

44l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

44m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license Applicants that would seek to take or develop the project.

45a. Type of Application: License for Unconstructed Major Project.

45b. Project No.: 6896–001.

45c. Date Filed: July 12, 1983.

45d. Applicant: Energy Growth Group and Butte Creek Improvement Company.

45e. Name of Project: Butte Water Power Project.

45f. Location: On Butte Creek near the City of Paradise in Butte County, California, within U.S. Bureau of Land Management (BLM) land.

45g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

45h. Contact Person: Keith Dunbar, Big Trees Engineering, 1183 Cedar Street, Suite 1, P.O. Box 1053, Arnold, California 95223.

45i. Comment Date: May 17, 1984.

45j. Competing Application: The proposed project competes with preliminary permit applications for Project No. 6896–000 for which a public notice was issued on January 10, 1983, and expired on March 16, 1983, and Project No. 7146–000 for which a public notice was issued on April 26, 1983, and expired on June 3, 1983.

45k. Description of Project: The proposed project would consist of: (1) A 15-foot-high, 70-foot-long reinforced concrete diversion structure on Butte Creek; (2) an intake structure; (3) a 66-inch-diameter, 17,500-foot-long conduit; (4) a 66-inch-diameter, 1,000-foot-long penstock; (5) a powerhouse containing two impulse-type, turbine generating units, operating under a head of 660 feet, with a total installed capacity of 10,800 kW; (6) a switch-yard; and (7) a 400-foot-long, 60-kV transmission line cnnecting the switchyard with the existing Pacific Gas and Electirc Company's (PG&E) 60-kV transmission line.

45l. Purpose of Project: The estimated 38,300 MWh produced annually by the proposed project would be sold to PG&E.

45m. This notice also consists of the following standard paragraphs: A3, A9, B, C.

46a. Type of Application: Preliminary Permit.

46b. Project No.: 7816–000.

46c. Date Filed: November 7, 1983.

46d. Applicant: Colonial Bay Corporation.

46e. Name of Project: Knightsville Dam.

46f. Location: On the Westfield River, in Hampshire County, near Huntington, Massachusetts.

46g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

46h. Contact Person: Abraham K. Wang, P. E., Colonial Bay Corporation, P.O. Box 62, Newtonville, Massachusetts 02160.

46i. Comment Date: May 17, 1984.

46j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Knightsville Dam and Reservoir and would consist of: (1) Four alternative penstock schemes—Alternative 1, 2, and 4: use of existing 16-foot-diameter, 600 feet long outlet tunnel; Alternative 3—a new 12-foot-diameter and 800-foot-long penstock; (2) a new concrete powerhouse approximately 30 feet by 50 feet, housing two turbine/generator units with total installed capacity of either 3,000 kW (for Alternatives 1, 2, and 3), and 1,500 kW (for Alternative 4); (3) a new tailrace structure approximately 50 feet wide and 40 feet

in length; (4) switchgear and stepup transformer; (5) a proposed 23,000-volt transmission line approximately 900 feet in length; and (6) appurtenant facilities. Applicant estimates that average annual energy generation would be 9,437,000 kWh for Alteratives 1, 2 and 3, and 4,718,000 kWh for Alternative 4.

46k. Purpose of Project: Project energy would be sold to the Western Massachusetts Electric Company.

46l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

46m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.

47a. Type of Application: License for Unconstructed Minor Project.

b. Project No.: 4669–002.

c. Date Filed: June 28, 1983.

d. Applicant: John L. Symons.

e. Name of Project: Rancho Riata.

f. Location: On Bishop Creek near town of Bishop in Inyo County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 719(r)–825(r)

h. Contact Person: John Symons, 2800 Audrey Lane, Bishop, California 93514.

i. Comment Date: May 21, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 4-foot-high regulating dam owned by Bishop Creek Water Company; (2) an intake structure; (3) a 36-inch-diameter, 8,800-foot-long penstock; (4) a powerhouse containing a single generating unit, operating under a head of 190 feet, with a total installed capacity of 400 kW; and (5) a 750-foot-long, 12.5-kV transmission line connecting with an existing 12.5-kV transmission line of Southern California Edison Company (SCE).

k. Purpose of Project: The estimated 2,300 MWh generated annually by the proposed project would be sold to SCE.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

48a. Type of Application: Preliminary Permit.

b. Project No.: 7541–000.

c. Date Filed: August 22, 1983.

d. Applicant: Buckhorn Associates.

e. Name of Project: Buckhorn Power Project.

f. Location: On the Kentucky River in Perry County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, Buckhorn Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: May 21, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Buckhorn Dam and Reservoir and would consist of: (1) A new penstock utilizing the existing outlet works near the right dam abutment; (2) a new powerhouse containing two turbine-generator units rated at 2,000 kW and 800 kW for a total rated capacity of 2,800 kW; (3) a tailrace returning flow to the existing stilling basin; (4) a new transmission line connecting to Kentucky Power Company lines; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 10,500,000 kWh. Project energy would be sold to the Kentucky Power Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

49a. Type of Application: Preliminary Permit.

b. Project No.: 7873–000.

c. Date Filed: November 25, 1983.

d. Applicant: Bethel Associates.

e. Name of Project: Crooked Creek Dam.

f. Location: On Crooked Creek, in Armstrong County, in the Town of Bethel, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Joel Kirk Rector, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Crooked Creek Dam and Reservoir and would consist of: (1) A proposed gated control intake tower; (2) a proposed 10-foot-diameter penstock 1640 feet long; (3) a proposed powerhouse 50-foot square housing one turbine/generator unit with a total installed capacity of 4,000 kW; (4) a proposed tailrace 200 feet long by 12 feet wide; (5) a proposed 69-kV transmission line, approximately one mile long; and (6) appurtenant facilities. Applicant estimates that the average annual energy would be 30,000,000 kWh.

k. Purpose of Project: The proposed market for the generated energy would be the Pennsylvania Electric Company or local municipalities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates that the cost of the studies under the permit would be $125,000.

50a. Type of Application: Preliminary Permit.

b. Project No.: 7946–000.

c. Date Filed: January 3, 1984.

d. Applicant: Colorado Natural Energy, Inc.

e. Name of Project: Animas River.

f. Location: On the Animas River, near Durango, in La Plata County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jeff Burt, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) A new diversion structure, 8 feet high and 125 feet long; (2) a new penstock, 72 inches in diameter and 15,500 feet long; (3) a new reinforced concrete powerhouse measuring 40 by 50 feet; (4) two new turbine/generator units each rated at 5.25 MW; (5) a new 55-kV transmission line 5 miles long; and (6) appurtenant electrical and mechanical facilities.

The proposed project would occupy approximately 42.5 acres of the San Juan National Forest.

The estimated average annual generation of 50 million kWh would be sold to a local electric utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $180,000.

51a. Type of Application: Declaration of Intention.

b. Project No.: EL83-33-000.

c. Date Filed: September 28, 1983.

d. Applicant: Diamond D. Ranch Partnership.

e. Name of Project: Diamond D. Ranch.

f. Location: On Loon Creek, in Custer County, Idaho.

g. Filed Pursuant to: Federal Power Act, Section 23(b), 16 U.S.C. 817(b).

h. Contact Person: John Demorest, 2836 North Beachwood Drive, Los Angeles, California 90068.

i. Comment Date: April 30, 1984.

j. Description of Project: The project consists of: (1) A small earth embankment impounding a small pond; (2) a 22-inch-diameter, 900-foot-long pipeline; (3) a powerhouse containing a generating unit rated at 100 kW; and (4) a local distribution grid.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over the project.

k. Purpose of Project: Power would be used on site.

l. This notice also consists of the following standard paragraphs: B, C, D2.

52a. Type of Application: Exemption Under 5 MW.

b. Project No.: 6154-003.

c. Date Filed: March 19, 1984.

d. Applicant: David G. DeMera.

e. Name of Project: Mill and Sulphur Creeks.

f. Location: On Mill and Sulphur Creeks near Dinsmore, in Humboldt County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. §§ 2705 and 2708 *as amended*.

h. Contact Person: Mr. David G. DeMara, Star Route 110-A Carlotta, California 95528.

i. Comment Date: April 27, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) Two 4-foot-high, 30-foot-long natural rock diversion structures at elevation 3,555 feet MSL, one each on Mill Creek and on Sulphur Creek; (2) a low-pressure pipeline connecting the two diversion structures; (3) a 24-inch-diameter, 9,600-foot-long steel pipeline/penstock; (4) a powerhouse located adjacent to the Van Duzen River at elevation 2,395 feet MSL containing two turbine-generator units with a total installed capacity of 1,470 kW and producing an estimated average annual generation of 2.7 GWh; and (5) 1,100 feet of 12.5-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) line. Project power would be sold to PG&E. The proposed project would be located on Six Rivers National Forest lands.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatt in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing

application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR§§ 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above name documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 20, 1984.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7892 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-194-000]

Small Power Producers; Energy Technology Engineering Center, Rockwell International Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 20, 1984.

On March 2, 1984, Energy Technology Engineering Center (ETEC), Rockwell International Corporation, Box 1449, Canoga Park, California 91304, submitted for filing an application for certification of a facility as a qualifying cogenerator facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility will be located at the ETEC Test Facilities, Woolsey Canyon Road, Santa Susana, California. Superheated steam, generated in the process of testing prototypes of commercial sodium-heated steam generators, will be utilized in a Rankine bottoming cycle to generate electricity at a maximum capacity of 30 magawatts. Natural gas and oil are the primary energy sources of the facility. To maximize the efficiency of the cogeneration system, a gas/oil-fired superheater will be utilized to increase the steam temperature just prior to entry into the steam turbine.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7897 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-196-000]

Small Power Producers Hydro Corporation of Pennsylvania; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 20, 1984.

On March 5, 1984, Hydro Corporation of Pennsylvania (Applicant), of 77 Franklin Street, Boston, Massachusetts, 02110 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 5 megawatt hydroelectric facility (P. 3307-002) will be located on the Tionesta Creek in Forest County, Pennsylvania.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7899 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-197-000]

Small Power Producers; Wells River Hydro Associates; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 20, 1984.

On March 5, 1984, Wells River Hydro Associates (Applicant), c/o Richard A. Norman, 89 State Street, 14th Floor, Boston, Massachusetts 02109, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The hydroelectric facility (P. 4700) will be located on the Wells River in Newberry, Orange County, Vermont. The electric power production capacity will be approximately 1,400 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7906 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5649-002]

The Bar 717 Ranch, Inc.; Surrender of Exemption From Licensing

March 20, 1984.

Take notice that The Bar 717 Ranch, Inc., Exemptee for the Corral Creek Project No. 5649 has requested that its exemption from licensing be terminated. The exemption from licensing for Project No. 5649 was issued on April 25, 1983. The project would have been located on Corral Creek in Trinity County, California.

The Exemptee filed the request on January 26, 1984, and the surrender of its exemption from licensing for Project No. 5649 is deemed accepted as of January 26, 1984, and effective as of 30 days after the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-7893 Filed 3-22-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2550-6]

Availability of Environmental Impact Statements Filed March 12 Through March 16, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840107, Final, FHW, VI, St. Thomas Island Transportation Improvements, Windward Passage Hotel to Raphune Hill, Charlotte Amalie, Due: Apr. 23, 1984.

EIS No. 840108, Final, MMS, AK, 1984 Diapir Field OCS Oil/Gas Sale No. 78, Leasing, Due: Apr. 23, 1984.

EIS No. 840109, Final, FHW, IN, Raymond Street Improvement, Kentucky Avenue to Shelby Street, Marion County, Due: Apr. 23, 1984.

EIS No. 840110, FSuppl, FHW, PA, I-78/LR-1045 Construction, HOOSection, Lehigh County, Due: Apr. 23, 1984.

EIS No. 840111, DSuppl, COE, LA, New Orleans to Venice Hurricane Protection, Plaquemines Parish, Due: May 7, 1984.

EIS No. 840112, Draft, COE, NY, Oneida Creek Watershed Flood Control Plan, Oneida and Madison Cos., Due: May 11, 1984.

EIS No. 840113, Final, FHW, NM, US 70 Improvements, Ruidoso-Hondo Valley Section, Lincoln County, Due: Apr. 23, 1984.

EIS No. 840114, Final, EPA, NC, Barrier Islands Wastewater Treatment Management, Grant, Dare, Carteret, and Brunswick Cos., Due: Apr. 23, 1984.

EIS No. 840115, Final, NPS, ID WA OR, Snake River, Wild and Senic River Study, Due: Apr. 23, 1984.

EIS No. 840116, Final, SCS, GA, Big Cedar Creek Watershed Flood Control Plan, Polk and Floyd Cos. Due: Apr. 23, 1984.

EIS No. 840117, Draft, COE, IL, Fox River and Tributaries Flood Control, McHenry, Kane, Kendall, and LaSalle Cos., Due: May 7, 1984.

EIS No. 840118, Draft, UMT, WA, Downtown Seattle Transit Project, King County, Due: May 7, 1984.

EIS No. 840119, Draft, BLM, WY, Platte River Resource Area, Resource Management Plan, Natrona, Converse, Goshen, and Platte Cos., Due: June 11, 1984.

EIS No. 840120, Final, AFS, APH, PRO, Gypsy Moth Suppression/Eradication Projects, CT, DE, ME, MD, MA, MI, NH, NJ, NY, PA, RI, VT, VA, WV, CA, IL, IN, MN, NC, SC, OH, OR, TN, WA, WI, Due: May 7, 1984.

Amended Notice:

EIS No. 840001, DSuppl, NRC, PA, Three Mile Island, Nuclear Station, Unit 2, Revised Estimates of Occupational Radiation Doses, Dauphin Co., Due: Apr. 2, 1984. Published FR 1-13-84. Review Extended.

Dated: March 20, 1984.

David Davis,

Action Director, Office of Federal Activities.

[FR Doc. 84-7853 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51511; T3H-FRL 2549-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are

discused in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twelve PMNs and provides a summary of each.

DATE: Close of Review Period:
PMN 84-483 and 84-484, June 6, 1984.
PMN 84-485, 84-486, 84-487, 84-489, 84-490, 84-491, 84-492, and 84-493, June 10, 1984.
PMN 84-494 and 84-495, June 11, 1984.
Written comments by:
PMN 84-483 and 84-484, May 7, 1984.
PMN 84-485, 84-486, 84-487, 84-489, 84-490, 84-491, 84-492, and 84-493, May 11, 1984.
PMN 84-494 and 84-495, May 12, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51511]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, D.C. 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-483

Manufacturer. Confidential.
Chemical. (G) Modified styrene/acrylic polymer.
Use/Production. (G) Used in preparation of a coating which will be industry applied to non-consumer articles. Prod. range: 15,000-70,000 kg/yr.
Toxcity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 35 workers, up to 8 hrs/da, up to 23 da/yr.
Environemntal Release/Disposal. 10-100 kg/batch released to land. Disposal by incineration and landfill.

PMN 84-484

Manufacturer. The Minnesota Mining and Manufacturing Company.
Chemical. (G) Monoether of polycyclic polyphenol.
Use/Production. (G) Polymer modifier, dispersive use. Prod. range: Confidential.
Toxicity Data. Actual oral: > 5 g/kg; Irritataion: Skin—Slight, Eye—Moderate; Ames Test: Negative; LC_{50} 96 hr (Fathead minnow): 2.6 mg/1; Skin sensitization: Sensitizer.
Exposure. Confidential.
Envoronmental Release/Disposal. .05 kg/batch released to water. Disposal by incineration and navigable waterway.

PMN 84-485

Manufacturer. Confidential.
Chemical. (G) poly(oxy-1,2-ethanediyl)alpha-acyl-w-alkyl.
Use/Production. (S) Industrial textile lubricant component for synthetic fiber manufacturing and processing. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Nonirritant, Eye—Slight to moderate.
Exposure. Manufacture: dermal, a total of 14 workers, up to 8 hrs/da, up to 94 da/yr.
Environmental Release/Disposal. 20-30 kg/batch released to air, 2-48 kg/batch to water with 50 kg/batch to land. Disposal by publicly owned treatment works (POTW) and landfill.

PMN 84-486

Importer. Confidential.
Chemical. (G) Unsaturated oxime.
Use/Import. (G) Highly dispersive use. Import range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 84-487

Manufacturer. Confidential.
Chemical. (G) Polyether ester.
Use/Production. (S) Industrial and commercial plasticizer for polymeric resins for use in articles such as wire/cable coatings, electrical tape, shoe soles, etc. Prod range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: 2.0 g/kg; Irritation: Skin—No irritation, Eye—Slight; BOD_{20}: 53% ThOD: 13%; LC_{50} 48 hr (Daphia magna): 15-20 mg/L LC_{50} 96 hr (Pimephales promelas): 5.1 mg/L.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Release to water. Disposal by landfill and navigable waterway after treatment.

PMN 84-489

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Oil field chemical. Prod range: Confidential.
Toxicity Data. No data on the PWN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84-490

Importer. Confidential.
Chemical. (G) Substituted aminofluorane.
Use/Production. (G) Dye for paper. Prod. range: Confidential.
Toxicity Data. Acute oral: >7,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames Test: Negative; Clarified sludge: >300 mg/1; TL_o, TL_{50} and TL_{100} 48 hr (Trout): >1,000 mg/1.
Exposure. Processing: inhalation, a total of 2 workers, up to 0.5 hr/da, up to 2 da/yr.
Environmental Release/Disposal. 0.5 kg/batch released to water. Disposal by POTW and navigable waterway.

PMN 84-491

Manufacturer. Confidential.
Chemical. (G) Substituted aliphatic acid halide.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84-492

Manufacturer. Confidential.
Chemical. (G) Substituted hydroxylamine.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 500 mg/kg; Acute dermal: 200 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: TA 100 and TA 1535: Positive.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84-493

Manufacturer. Confidential.
Chemical. (G) Cyclic diheteroatomic carbonyl compound.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute dermal: >541 mg/kg; Irritation: Skin—Mild, Ames Test: Negative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84-494

Manufacturer. Confidential.
Chemical. (G) Isophorone diisocyanate adduct of a polyether diol and a substituted alkanol.

Use/Production. (G) Component of formulations for an open, non-dispersive use. Prod. range: 3,000–6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 8 workers, up to 8 hrs/da, up to 85 da/yr.

Environmental Release/Disposal. 0.5–2.5 kg/batch released to land. Disposal by incineration and landfill.

PMN 84–495

Manufacturer. Confidential.

Chemical. (G) Vegetable oil, ester with aromatic carboxylic acid.

Use/Production. (G) Open, non-dispersive use or paper coating ingredient. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: derma, a total of 2 workers, up to 2 hrs/da, up to 1 da/yr.

Environmental Release/Disposal. Less than 1 kg/batch released to air. Disposal by POTW.

Dated: March 19, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–7850 Filed 3–22–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59151; BH–FRL 2550–1]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: April 9, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–59151]" and the specific TME number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 84–40

Close of Review Period. April 26, 1984.

Manufacturer. Confidential.

Chemical. (G) Substituted urea.

Use/Production. (G) Open, non-dispersive use. Prod. range: — Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

TME 84–41

Close of Review Period. April 27, 1984.

Manufacturer. Products Research & Chemical Corporation.

Chemical. (S) Polymer of ethanol, 2,2-thiobis, ethanol, 2 mercapto, oxirane, methyl, and benzene, isocyanato-.

Use/Production. (S) Sealing compound. Prod. range: 5,000 lbs/1 year.

Toxicity Data. Acute oral: > 5 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Non-mutagenic.

Exposure. Manufacture and use: dermal, a total of 99 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. No data submitted.

Dated: March 19, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–7849 Filed 3–22–84; 8:45 am]

BILLING CODE 6560–50–M

[FRL–2552–2]

Science Advisory Board (SAB) Executive Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given of a two day meeting of the Executive Committee of the Science Advisory Board on April 11–12, 1984 in Room 1101 West Tower, EPA Headquarters, 401 M Street, SW, Washington, D.C. The meeting will begin at approximately 9:15 on April 11 and will adjourn at noon of the second day.

The principal purpose of the meeting is to enable the Committee to be briefed on and to discuss the Office of Research and Development's proposed budget for Fiscal Year 1985; to discuss the status of Science Advisory Board review activities that are ongoing with EPA program offices; and to plan future SAB review actions.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board at (202) 382–4126 before close of business April 9.

Dated: March 14, 1984

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84–7876 Filed 3–22–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–351]

First Savings Association of Wisconsin, Milwaukee, Wisconsin; Final Action Approval of Post-Approval Amendment to Mutual-to-Stock Conversion Application

Notice is hereby given that on February 14, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to him by the Board, approved, a post-conversion amendment to Section VI.E.1 of the Plan of Conversion of First Savings Association of Wisconsin, Milwaukee, Wisconsin. The application for conversion had been approved by the Board by Resolution No. 81–150, dated March 16, 1981, as amended by Board Resolution No. 81–422, dated July 29, 1981, and by Board Resolution No. 81–471, dated August 19, 1981. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Steeet, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Dated: March 19, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-7807 Filed 3-22-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-352]

Mesa Federal Savings and Loan Association of Colorado, Grand Junction, Colorado; Final Action Approval of Conversion Application

Notice is hereby given that on February 16, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Mesa Federal Savings and Loan Association of Colorado, Grand Junction, Colorado, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Topeka, P.O. Box 176, Topeka, Kansas 66601.

Dated: March 19, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary

[FR Doc. 84-7808 Filed 3-22-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 10496]

Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement No. 10496 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required. Agreement No. 10496, among Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional and Transportacion Maritima Mexicana, S.A. is a joint service agreement referred to as the Mex-Bras Liner Service. The service recently commenced operations in the trade between East coast ports of Mexico and ports in Brazil within the Porto Alegre/Rio Grande-Fortaliza range, and now wishes to provide common carrier service to and from the port of San Juan, Puerto Rico, and ports in Brazil.

This Finding of No Significant Impact (FONSI) will become final within 20 days of publication of this Notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.8(b).

The FONSI is available from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-7809 Filed 3-22-84; 8:45 am]

BILLING CODE 6730-01-M

[Informal Docket Nos. 1404(I), 1405(I), 1409(I)]

Sensomatic Electronics Corp. v. Century Marine, Inc.; Order To Show Cause

By its three complaints filed with the Commission during December 22, 1983 and January 27, 1984, the Sensomatic Electronics Corp. (Sensomatic), of Deerfield Beach, Florida, claims a total of $9,541 of Century Marine, Inc. (Century), of South Ozone Park, New York, that sum representing various types of alleged freight overcharges arising from a number of shipments of Sensomatic's merchandise that Century took responsibility for transporting from the former's place of business in Deerfield Park to Moca, Puerto Rico, during the period February, 1981 through August, 1982. According to the title page of its tariff, Domestic Offshore Freight Tariff No. 2, FMC-F No. 2 on file with the Commission, Century is a non-vessel operating common carrier by water undertaking to provide transportation services for hire between specified U.S. Atlantic coast ports and Puerto Rico. Sensomatic is a manufacturer and distributer of electronic surveillance equipment. The three complaints were denominated Informal Dockets Nos. 1404(I), 1405(I) and 1409(I) and were referred to the Commission's Informal Dockets Activity for adjudication and decision pursuant to Subpart S—Informal Procedure for Adjudication of Small Claims (46 CFR 502.301 *et seq.*) of the Commission's Rules of Practice and Procedure (Rules or Rule). Should any or all of Sensomatic's allegations be proved correct then Century would stand in violation of Section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 844) (the Act), and Sensomatic would be entitled to an appropriate award of reparations plus simple interest thereon as mandated by the Commission's Rule 253.

In conformity with Rule 304(d), copies of each complaint were dispatched by certified mail to Century at 142-62 Rockaway Boulevard, South Ozone Park, New York 11436, the address appearing upon copies of all Century's bills of lading submitted by Sensomatic in relation to its various claims. According to the postal reciepts, several unknown individuals signed for, and ostensibly accepted, service of the complaints at that address. However, by letter dated February 15, 1984, the Settlement Officer to whom these dockets had been assigned was informed by Rush Air Freight, Inc., of New York, that it had received several "letters" addressed to Century but that it was their understanding that "Century * * * ceased operations approximately six months ago in the New York area.". The Commission's Bureau of Investigations reports that Century terminated its operations in August, 1983. Whether Century remains a viable corporate entity, and the location of its place of business now, if any, are unknown.

Given the circumstances, the Settlement Officer was compelled to conclude that service of the complaints was not accomplished in the manner required by the Commission's Rule, and that Sensomatic's attempt to have its complaints adjudicated for approximately two-thirds of the total dollar amount claimed was effectively thwarted.

Portions of Sensomatic's claims, however, allege that Century assessed and collected bunker surcharges amounting to $3,225.67 for which it had no tariff authority to do so. A review of the complaints reveals that Century did not have a tariff on file covering bunker surcharges.

Section 2 of the Act requires common carriers such as Century to file their tariffs of rates and charges with the Commission. Further, all amendments and additions to these tariffs must be filed as well. Lastly, and controlling here, "(N)or shall any common carrier . . . charge or demand or collect or receive a greater or less or different compensation for the transportation of . . . property . . . than the rates, . . . and/or charges which are specified in its [tariffs] filed with the [Commission] . . . and in effect at the time;".

Accordingly, and pursuant to Rule 66, Century is directed to show cause by the close of business, Monday, April 23, 1984, why:

(1) It should not be found to have violated Section 2 of the Act for

assessing Sensomatic bunker surcharges for the period January through May, 1982 without having the tariff authority to do so required by statute; and,

(2) As a consequence of (1), why Sensomatic should not be awarded reparation in the amount of $3,225.67 plus simple interests.

Reply to this order must be addressed to the Chief, Informal Dockets Activity, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573. In conformity with Rule 143, this Order shall be published in the **Federal Register.** By Order of the Commission.

Donald F. Norris,

Chief, Informal Dockets Activity.

[FR Doc. 84-7867 Filed 3-22-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review by OMB

March 19, 1984.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register,** but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediatly following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register.** This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Judy McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

SUPPLEMENTARY INFORMATION:

Request for Revision of Existing Reports

1. Report title: Report of Selected Deposits in Foreign Branches Held by U.S. Addressees.
Agency form number: FR 2050
Frequency: Weekly
Reporters: Foreign branches of U.S. banks and of Edge and Agreement corporations.
SIC Code: 602, 605
Small Businesses are not affected.
General description of report:
Respondent's obligation to reply is voluntary [12 U.S.C. 248(a), 355 and 461]; a pledge of confidentiality is promised [5 U.S.C. 552(b)(4)].

This report collects data from a selection of foreign branches of U.S. banks on overnight Eurodollars held by U.S. nonbank residents. Data are used in the construction of the monetary aggregates and in the analysis of liability management.

2. Report title: Monthy Report of Foreign Branch Assets and Liabilities
Agency form number: FR 2502
Frequency: Monthly
Reporters: Foreign branches of U.S. banks and of Edge and Agreement corporations.
SIC Code: 602, 605
Small businesses are not affected.
General description of report:
Respondent's obligation to reply is mandatory [12 U.S.C. 248(a), 353 et seq., 602, 625 and 3105(b)(2)]; a pledge of confidentiality is promised [5 U.S.C. 552 (b)(4) and (b)(8)].

This report is needed to provide a breakdown of foreign branch assets and liabilities by category of customer and by currency. Data are used for bank supervision and regulation purposes, and in the construction of the monetary aggregates and appropriate quarterly measures of U.S.—chartered banks' claims on and liabilities to foreign countries.

3. Report title: Quarterly Report of Foreign Branch Assets and Liabilities
Agency form number: FR 2502S
Frequency: Quarterly
Reporters: Foreign branches of U.S. banks and of Edge and Agreement corporations.
SIC Code: 602, 605
Small Businesses are not affected.
General description of report:
Respondent's obligation to reply is mandatory [12 U.S.C. 248(a), 353 et seq., 602, 625 and 3105(b)(2)]; a pledge of confidentiality is promised [5 U.S.C. 552 (b)(4) and (b)(8)].

This report gives a geographical breakdown of foreign branch assets and liabilities, which is vital to knowing, on an up-to-date basis, the extent to which residents of various countries have borrowed from U.S.—chartered banks or have placed funds with them.

Board of Governors of the Federal Reserve System, March 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7835 Filed 3-22-84; 8:45 am]

BILLING CODE 6210-01-M

Applications; Bank of Boston Corp.; Correction

This notice corrects a previous **Federal Register** Document (FR Doc. 84-6496) published at page 9270 of the issue for Monday, March 12, 1984. As part of the application by Bank of Boston Corporation, Boston, Massachusetts ("BOBC") to acquire RIHT Financial Corporation, Providence, Rhode Island ("RIHT"), BOBC has also applied to acquire HT Investors, Inc., Providence, Rhode Island ("HTI"), and investment advisory service subsidiary of RIHT's subsidiary bank. RIHT has filed an application under section 4(c)(8) of the Bank Holding Company Act, to acquire HTI from its subsidiary bank, Rhode Island Hospital Trust National Bank, Providence, Rhode, Island.

Board of Governors of the Federal Reserve System, March 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7831 Filed 3-32-84; 8:45 am]

BILLING CODE 6210-01-M

Applications; First Railroad & Banking Company of Georgia; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank or the offices of the Board of Governors not later than April 7, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Railroad & Banking Company of Georgia*, Augusta, Georgia; has applied through its wholly-owned subsidiary, CMC Group, Inc., Charlotte, North Carolina, to acquire Valley Finance Corporation, Roanoke, Virginia, and thereby engage in consumer finance activities in Roanoke, Virginia.

Board of Governors of the Federal Reserve System, March 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7832 Filed 3-22-84; 8:45 am]

BILLING CODE 6210-01-M

Applications; Harrison County Bancshares, Inc., et al.; Formations, Acquisitions, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 13, 1984.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Harrison County Bancshares, Inc.*, Bethany, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of National Bancshares, Inc., Bethany, Missouri, and thereby indirectly acquiring the First National Bank of Bethany, Bethany, Missouri.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Security National Bancorp, Inc.*, Shreveport, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Security National Bank of Shreveport, Shreveport, Louisiana.

2. *Texas Bancorp Shares, Inc.*, San Antonio, Texas; to acquire 100 percent of the voting shares of Texas Bank North, N.A., San Antonio, Texas, a *de novo* bank.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *United Bancorportion Alaska, Inc.*, Anhorage, Alaska; to acquire 99.85 percent of the voting shares of United Bank Alaska Soufheastern, Juneau, Alaska (in organization).

Board of Governors of the Federal Reserve System, March 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7833 Filed 3-22-84; 8:45 am]

BILLING CODE 6210-01-M

Applications; RIHT Financial Corp., et al.; Applications to engage de Novo in Permissable Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *RIHT Financial Corporation,* Providence, Rhode Island; to engage *de novo* through its subsidiary, RIHT Mortgage Corporation, in mortgage banking activities including the origination and sale of residential and commercial mortgages and in the servicing of residential and commercial mortgage loans.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr. Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Bankshares Corp. of S.C.,* Columbia, South Carolina; to engage *de novo* through its subsidiary, August Kohn and Company, Incorporated, in the origination of permanent and construction real estate loans and other extensions of credit such as would be made by a mortgage banking company; acting as agent for sale of insurance directly related to extensions of credit; and performing real estate appraisals. These activities would be performed in Columbia, Charleston, Spartanburg, and Beaufort, South Carolina, and other future locations. Comments on this application must be received not later than April 13, 1984.

Board of Governors of the Federal Reserve System, March 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7834 Filed 3-22-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 16.

Public Health Service

Office of the Assistant Secretary for Health

Subject: Evaluation of National Cause-of-Death Data—Concept Clearance—New
Respondents: State vital registration officials, and certifiers of death certificates
Subject: Evaluation of the National Center for Health Statistics Population-Based Surveys—Reproductive Health Survey—New
Respondents: Women between the ages of 15 and 44
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Contractors Information Collections—Regional Office Medicaid Quality Control Federal Re-review (0938-0210)—Revision
Respondents: State Medicaid agencies
Subject: Physicians' Practice Costs and Income Survey (0938-0284)—Revision
Respondents: A sample of practicing physicians nationwide
Subject: Contractors' Information Collections—Requests for accelerated Payment (0938-0289)—Extension/No Change
Respondents: Health care providers participating in Medicare
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Claims for Payment of Vocational Rehabilitation Services (0960-0310)—Extension/No Change
Respondents: State vocational rehabilitation agencies
Subject: Statement Regarding Marriage (0960-0017)—Revision
Respondents: Individuals
Subject: Application for a Social Security Number Card (Original, Replacement, or Correction) (0960-0066)—Extension/No Change
Respondents: Individuals
Subject: Annual Earnings Operation Direct Mail Followup Program Notes—New
Respondents: Selective social security beneficiaries
OMB Desk Officer: Milo Sunderhauf

Office of the Secretary

Subject: Health and Human Services Acquisition Regulations (HHSAR)—Part 315—Contracting by Negotiation—New
Respondents: State or local governments, business or other for-profit institutions, not-for-profit institutions
Subject: HHSAR—Part 316—Types of Contracts—New
Respondents: Certain HHS contractors
Subject: HHSAR—Part 323—Environment, Conservation, and Occupational Safety—New
Respondents: Certain HHS contractors
Subject: HHSAR—Part 324—Protection of Privacy and Freedom of Information—New
Respondents: Certain HHS contractors
Subject: HHSAR—Part 328—Bonds and Insurance—New
Respondents: Certain HHS contractors
Subject: HHSAR—Part 332—Contract Financing—New
Respondents: Certain HHS contractors
Subject: HHSAR—Part 333—Disputes and Appeals—New
Respondents: Certain HHS contractors
Subject: HHSAR—Part 337—Service Contracting—New
Respondents: Certain HHS contractors
Subject: HHSAR—Part 342—Contract Administration—New
Respondents: Certain HHS contractors
Subject: HHSAR—Part 352—Solicitation Provisions and Contract Clauses—New
Respondents: Certain HHS contractors
Subject: HHSAR—Part 370—Special Programs Affecting Acquisitions—New
Respondents: Certain HHS contractors
Subject: Public Health Service Acquisition Regulation (PHSAR) (Interim clearance)—New
Respondents: Certain HHS contractors
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503—Attn: (name of OMB Desk Officer).

Dated: March 16, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-7894 Filed 3-22-84; 8:45 am]

BILLING CODE 4151-04-M

Food and Drug Administration

Radiopharmaceutical Drugs Advisory Committee; Notice of Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Radiopharmaceutical Drugs Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on February 28, 1986, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: March 19, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-7808 Filed 3-22-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service, Health Resources and Services Administration

Health Professions and Nursing Student Loans; "Low Income Levels" for Loan Repayment, Health Careers Opportunity Grants and Nursing Special Project Grants

This Notice updates the income levels that are used to define a "low income family" for purposes of repayment of educational loans and for the support of training for individuals from disadvantaged backgrounds as provided for under section 787, Health Careers Opportunity Grants; and section 820, Nursing Special Project Grants of the Public Health Service Act.

Under sections 741(1) and 836(j) and the applicable program regulations, the Secretary of Health and Human Services may, subject to the availability of funds, repay all or part of an individual's educational loan made after November 17, 1971, to meet the costs of attending a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, or nursing if the Secretary determines that the individual meets all of the following:

(1) Failed, after November 17, 1971, to complete the health professions studies leading to the individual's first professional degree or to complete the specified nursing studies for which the loan(s) was made:

(2) Is in exceptionally needy circumstances:

(3) Is from a low income or disadvantaged family; and

(4) Has not resumed or cannot reasonably be expected to resume the course of study within 2 years following the date the individual ended the studies.

Sections 57.214(c) and 57.317(c) of the applicable program regulations (42 CFR Part 57, Subparts C and D) require the Secretary to publish annually in the **Federal Register** the low income levels which will be used in determining an applicant's eligibility for this repayment program. Aside from their use in determining whether an individual comes from a "low income family," these income levels, together with other relevant factors such as value of assets, unusual expenses, income available to the individual, etc., are also considered in determining whether an individual is "in exceptionally needy circumstances" or is from a "disadvantaged family."

The income figures below were taken from low income levels, published by the U.S. Bureau of Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then mutiplied by a factor of 1.3 for adaptation to the Health Professions and Nursing Student Loan Programs and other designated grant programs for which training for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1983.

Size of parents' family (includes only dependents listed on Federal income tax forms)	Income Level [1] (adjusted gross income for calendar year 1983)
1	$6,700
2	8,700
3	10,300
4	13,200
5	15,600
6 or more	17,500

[1] Rounded to $100.

Dated: March 16, 1984.

Robert Graham, M.D.,

Administrator.

[FR Doc. 84-7809 Filed 3-22-84; 8:45 am]

BILLING CODE 4165-15-M

Revision of Income Criteria for Eligibility for Uncompensated Services

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice.

SUMMARY: This notice announces the applicability of the recent revision of the Poverty Income Guidelines to uncompensated services programs administered by health care facilities pursuant to Titles VI and XVI of the Public Health Service Act.

DATE: The revision of the guidelines must be implemented by affected facilities on March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Martin J. Frankel, Director, Division of Facilities Compliance, Office of Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, Health Resources and Services Administration, 5600 Fishers Lane—Room 11–19, Rockville, Maryland 20857, Telephone 301 443–6512.

SUPPLEMENTARY INFORMATION: On February 27, 1984 (49 FR 7151), the annual revision of the Poverty Income Guidelines was issued, effective upon publication in the **Federal Register**. That revision affects, among others, health care facilities that have received construction assistance under Title VI or Title XVI of the Public Health Service Act, 42 U.S.C. 291, *et seq.*, and 42 U.S.C. 300q, *et seq.*, respectively. The regulations applicable to those facilities provide that the eligibility of persons for uncompensated services is to be determined in accordance with the current Poverty Income Guidelines of the Department of Health and Human Services, formerly published by the Community Services Administration (CSA). See 42 CFR 124.506(a). The statute which gave this Department authority to revise the guidelines also provides that any reference in law to the Poverty Income Guidelines constitutes a reference to, in this case, the present revision. Pub. L. 97–35, 683(c)(1). A discussion of the 30-day delay in the effective date can be found in the **Federal Register**, Volume 47, No. 79, page 17489, published on April 23, 1982.

Dated: March 10, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 84-7038 Filed 3-22-84; 8:45 am]

BILLING CODE 4165-15

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–84–1360]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Modernization Needs Study Sampling Form, CIAP Sub-Study, and Lead-Based Paint Sub-Study
Office: Policy Development and Research
Form number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments
Estimated Burden Hours: 5,384
Status: New
Contact: Mark Wynn, HUD, (202) 755–6437; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 8, 1984.

Dennis F. Geer,

Acting Director, Office of Information Policies and Systems.

[FR Doc. 84–7789 Filed 3–22–84; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 20007—Arkansas]

Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of a terminated oil and gas lease.

SUMMARY:

1. Federal oil and gas lease ES 20007 terminated automatically by operation of Law on May 1, 1983 (30 U.S.C. 188).

2. A petition for reinstatement of ES 20007 was filed to TXO, Production Corp. (Lessee) under section 31 D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

3. The Lessee has met all the following requirements of reinstatement:

(a) $500—Reimbursement of Department Administrative Cost.
(b) $230—Bank Rental Payments.
(c) $136—Estimated Publication Cost.

4. The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5.00 per acre per year, and royalty increased to 16⅔ percent beginning May 1, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Scoby, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 235–2851.

Pieter J. VanZanden,

Acting Eastern States Director.

[FR Doc. 7885 Filed 3–22–84; 8:45 am]

BILLING CODE 4310–GJ–M

[ES 18205—Mississippi]

Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of a terminated oil and gas lease.

SUMMARY:

1. Federal oil and gas lease ES 18205 terminated automatically by operation of Law on June 1, 1983 (30 U.S.C. 188).

2. A petition for reinstatement of ES 18205 was filed by Martin, Exploration Company (Lessee) under section 31 D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447)

3. The Lessee has met all the following requirements of reinstatement:

(a) $500—Reimbursement of Department Administration Cost.
(b) $108—Back Rental Payments.
(c) $136—Estimated Publication Cost.

4. The Lessee has excepted the following amended lease terms to be included as part of the proposed reinstated oil and gas lease ES 18205.

(a) Rental rate increased to $5.00 an acre per year, due on the anniversary date beginning June 1, 1983.
(b) Increase of royalty rate 16⅔ percent.

FOR FURTHER INFORMATION CONTACT: Ms. Robyn Meyer, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Va. 22304, (703) 235–3630.

Pieter J. VanZanden,

Acting Eastern States Director.

[FR Doc. 84–7886 Filed 3–22–84; 8:45 am]

BILLING CODE 4310–GJ

[OR–19472]

Oregon; Order Providing for Opening of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By order dated January 3, 1984, the Federal Energy Regulatory Commission vacated Power Project No. 2822, in its entirety, affecting 15,702.05 acres of land. This action will open 3,359.11 acres to such forms of disposition as may by law be made of national forest lands. The balance of 12,342.94 acres remain closed by other withdrawals or have been conveyed out of Federal ownership.

EFFECTIVE DATE: April 30, 1984.

ADDRESS: Inquiries concerning the lands should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office 503–231–6905.

SUPPLEMENTARY INFORMATION:

1. By order dated January 3, 1984, the Federal Energy Regulatory Commission vacated the land withdrawal for Power Project No. 2822, in its entirety. The areas included in the power project aggregate 15,702.05 acres.

2. At 8:30 a.m., on April 30, 1984, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the following described lands will be open to such forms of disposition as may by law be made of national forest lands. The lands have been and remain open to operation of the mining laws, including the mineral leasing laws.

Willamette Meridian

Siskiyou National Forest

T. 35 S., R. 10 W.,
Sec. 30, Lots 2, 3, and 4, E½SW¼, and SE¼.
T. 36 S., R. 10 W.,
Sec. 5, SW¼SW¼;
Sec. 6, S½SE¼;
Sec. 7, Lot 2, W½NE¼, and E½NW¼.
T. 35 S., R. 10½ W.,
Sec. 31, Lots 3 and 4, SW¼, and W½SE¼.
T. 35 S., R. 11 W.,
Sec. 20, Lots 1 and 2, and SW¼NW¼;
Sec. 23, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 26, W½;
Sec. 27, W½NE¼ and SE¼NE¼;
Sec. 33, Lots 1, 3, and 4;
Sec. 35, W½NW¼;
Sec. 36, S½S½.
T. 36 S., R. 11 W.,
Sec. 1, Lot 1;
Sec. 2, Lots 1, 2, 3, and 4, and SW¼NW¼;
Sec. 3, Lots 1, 2, 3, and 4, and SE¼NE¼;
Sec. 6, Lot 3, SE¼NW¼, E½SW¼, and SW¼SE¼;
Sec. 7, NW¼NE¼ and E½NW¼;
Sec. 8, SE¼SE¼;
Sec. 13, SW¼, W½SE¼, and SE¼SE¼;
Sec. 14, E½SE¼ and SW¼SE¼;
Sec. 22, NE¼NW¼;
Sec. 23, NW¼NE¼.

The areas described aggregate 3,359.11 acres in Curry and Josephine Counties, Oregon.

3. The balance of 12,342.94 acres will not be open to such forms of disposition as may by law be made of national forest lands because they are either within other existing withdrawals or have been conveyed out of Federal ownership.

Dated: March 15, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-7816 Filed 3-22-84; 8:45 am]

BILLING CODE 4310-84-M

[W-84014]

Wyoming; Proposed Conversion of Unpatented Oil Placer Mining Claims (East End Claim Nos. 3 and 4) to Noncompetitive Oil and Gas Lease

March 13, 1984.

Pursuant to section 31 and 17(c) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188) as amended by Title IV of the Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 987–451), a petition for conversion on Unpatented Oil Placer Mining Claims has been timely filed. The proposed lease has been assigned serial number W–84014. The claims to be converted are the East End No. 3 and East End No. 4 unpatented oil placer mining claims located in Hot Springs County, Wyoming. The description of the lands are as follows: T. 43 N., R. 73 W., 6th Principal Meridian, Wyoming. Section 31: Lots 1, 2, 3, 4, E½W½, containing 303.56 acres m/l.

This notice explains the reasons for the proposed conversion of the mining claims to a noncompetitive oil and gas lease. The two unpatented oil placer mining claims were validly located prior to February 25, 1920, they are currently producing oil, and they were deemed conclusively abandoned for failure to timely file instruments as required by Section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744). The statutory date of abandonment was October 22, 1979. Petro-Lewis Corporation on bahalf of Partnership Properties Co. has petitioned for the conversion. When issued, the lease will be in the name of Partnership Properties Co. The date of abandonment of the claim was prior to November 18, 1981; therefore, the proposed lease is conditioned to specifically exclude tar sands. The lessee has agreed to eight special lease terms in addition to the normal lease terms of a noncompetitive oil and gas lease. They include:

1. No occupancy or other surface disturbance will be allowed within 500 feet from live water and/or riparian habitat. This distance may be modified when specifically approved in writing by the District Manager, Bureau of Land Management.

2. No occupancy or other surface disturbance will be allowed on slopes in excess of 25% without written permission from the District Manager, Bureau of Land Management.

3. In order to minimize watershed damage during muddy and/or wet periods, the District Manager, Bureau of Land Management, may prohibit exploration, drilling or other development. This limitation does not apply to maintenance or operation of producing wells.

4. To maintain esthetic values, all semi-permanent and permanent facilities may require painting or camouflage to blend with the natural surroundings. The paint selection or method of camouflage will be subject to approval by the District, Manager, Bureau of Land Management.

5. Payment of royalty shall be not less than 12½% on production removed or sold from the unpatented oil placer mining claim including royalty on production since October 22, 1979.

6. Payment of rental of not less than $5 per acre or fraction of an acre per year, including back rentals accruing from October 22, 1979. Rental is due annually in addition to royalty.

7. This lease is conditioned to specifically exclude tar sands.

8. This lease is committed to East Warm Springs Unit that was approved November 6, 1975. All information pertaining to unit operations such as production reports, plans of development, plans of operation, etc., will be submitted to the District Manager, Worland, Wyoming, within thirty days after lease issuance. Any future information that is required to be submitted to the State of Wyoming by the authority of the unit agreement will be submitted concurrently to the District Manager, Worland, Wyoming.

The lessee has paid the required $500.00 administrative fee and will reimburse the Department for the cost of this **Federal Register** Notice. In addition, all back rental and royalty will be paid from October 22, 1979, current to the date the lease is issued.

Production reports have been submitted for the period from October, 1979-May, 1983. The production during this period totaled 56,754 barrels of oil. Production and sales reports from June, 1983, current to the date the lease is issued still need to be submitted. Once this is done the royalty due the Government at 12.5 percent will be calculated. This will be paid before the lease is issued. Rental is due in addition to royalty at $5.00 per acre or fraction thereof per year. This will also be calculated and paid before lease issuance. Since the lessee has met all the requirements for conversion of the unpatented oil placer mining claims as

set out in the laws referenced above, the Bureau of Land Management is proposing to issue lease W–84014 effective October 22, 1979.

Lynn Rust,

Acting Chief, Branch of Fluid Minerals.

[FR Doc. 84–7815 Filed 3–22–84; 8:45 am]

BILLING CODE 4310–33–M

Butte District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Butte District Advisory Council will be held Tuesday and Wednesday, April 24 and 25, 1984.

The meeting will begin at 1 p.m., April 24 in the conference room of the Butte District Office at 106 North Parkmont, Butte, Montana. The agenda will include: (1) Garnet RMP update; (2) an update on the Cooperative Management Agreement (CMA) program; (3) current status of the land adjustment program; (4) the BLM grazing fee study and grazing policy; and (5) a report on outfitter and guide policy and regulations.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make advance arrangements with the District Manager.

Summary minutes of the meeting will be maintained in the district office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: March 19, 1984.

Jack A. McIntosh,

District Manager.

[FR Doc. 84–7814 Filed 3–22–84; 8:45 am]

BILLING CODE 4310–DH–M

Colorado; Filing of Plats of Survey

March 14, 1984.

The plats of survey of the following described lands were officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., March 14, 1984.

The plat representing the dependent resurvey of a portion of the first Guide Meridian West (west boundary) and the metes-and-bounds survey of Private Land claims in T. 39 N., R. 8 W., New Mexico Principal Meridian, Colorado, Group No. 681, was accepted march 7, 1984.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

This plat representing the dependent resurvey of a portion of the subdivisional lines, in T. 1 S., R. 80 W., Sixth Principal Merdian, Colorado, Group No. 755, was accepted February 27, 1984.

The plat representing the dependent resurvey of a portion of the north boundary and subdivisional lines, T. 2 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 755, was accepted February 27, 1984.

The plat representing the dependent resurvey of a portion of the Tenth Guide Meridian West (east boundary), a portion of the north boundary and subdivisional lines, and the survey of the subdivision of sections 1, 2, and 12, T. 2 S., R. 81 W., Sixth Principal Meridian, Colorado, Group No. 755, was accepted February 27, 1984.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquires about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Timothy A. Kent,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 84–7817 Filed 3–22–84; 8:45 am]

BILLING CODE 4310–84–M

[OR–20243]

Oregon; Proposed Continuation of Withdrawal

The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of July 9, 1904, be continued in part for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The land involved is located at the Gerber Reservior approximately thirty-two miles east of Klamath Falls and contains 80 acres within Section 12, T. 39 S., R. 13 E., Willamette Meridian, Klamath County, Oregon.

The purpose of the withdrawal is to protect the Gerber Dam and the Klamath Reclamation Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal continuation. All interested persons who desire a public meeting for the purpose of being heard must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. If the State Director, Bureau of Land Management, determines that a public meeting will be held, the time and place will be announced.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

All communications in connection with the proposed withdrawal continuation should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 16, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–7812 Filed 3–22–84; 8:45 am]

BILLING CODE 4310–33–M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held on April 24, 1984.

On April 24 the meeting will begin at 9:00 A.M. in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

(1) A discussion of the Final Grazing Environmental Impact Statement and the Environmental Assessment on Areas of Critical Environmental Concern;

(2) An update on timber sale contract relief, current sales, and the Fiscal Year 1985 Timber Sale Plan;

(3) An explanation of the BLM budget process; and

(4) A response to the BLM's mobility-tenure policy.

The meeting of the advisory council is open to the public. Interested persons may make oral statements to the board between 9:30 a.m. and 4:30 p.m., on April 24, 1984, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by April 19, 1984. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the district office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Date Signed: March 13, 1984.

John Dutcher,

Acting District Manager.

[FR Doc. 84-7885 Filed 3-22-84; 8:45 am]

BILLING CODE 4310-23-M

[NM 50991]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, Robert E. Rupert, Executor of the Estate of Robert P. Rupert, petitioned for reinstatement of oil and gas lease NM 50991 covering the following described lands located in Sandoval County, New Mexico:

T. 20 N., R. 4 W., NPM,
Sec. 13; W½NE¼;
Sec. 14; NE¼, S½SE¼;
Sec. 19; SE¼;
Containing 480.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, July 1, 1983.

Date: March 12, 1984.

Charles W. Luscher,

State Director.

[FR Doc. 84-7882 Filed 3-22-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM 17253]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, Laguna Petroleum Corporation petitioned for reinstatement of oil and gas lease NM 17253 covering the following described lands located in Lea County, New Mexico:

T. 21 S., R. 38 E., NMPM,
Sec. 21, Lots 1, 2, W½NW¼;
Sec. 28, SW¼SW¼;
Sec. 30, E½E½;
Containing 371.04 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, January 3, 1983.

Dated: March 12, 1984.

Charles W. Luscher,

State Director.

[FR Doc. 84-7883 Filed 3-22-84; 8:45 am]

BILLING CODE 4310-FB-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the sixty-second meeting of the Board for International Food and Agricultural Development (BIFAD) on April 5, 1984.

The purpose of the meeting is to hear presentations on the Agricultural Research, Education and Extension project in Peru (by J. L. Apple, Jr. North Carolina State University); the international mission of the Cooperation Extension Service of the U.S. Department of Agriculture; and possibly other matters.

The meeting will begin at 9:00 a.m. and adjourn at 12:15 p.m. and will be held in Room 150, National Academy of Sciences Building, 2101 Constitution Avenue, NW., Washington, D.C. Enter building from C Street (between 21st and 22nd Streets, NW.) opposite the State Department Building. The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Mr. Leonard Yaeger, Deputy Assistant Administator for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, Washington, D.C. 20523, or telephone him at (202) 632-4871.

Dated: March 21, 1984.

Leonard Yaeger,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 84-8088 Filed 3-22-84; 8:45 am]

BILLING CODE 8116-01-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell, (202) 275-7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Revision
Bureau/Office: Office of Compliance & Consumer Assistance
Title of Form: Owner-operator Annual Report Form
OMB Form No.: 3120-0061
Agency Form No.: OCCA-143
Frequency: Annually
Respondents: Certain owner-operators transporting food and agricultural supplies
No. of Respondents: 400
Total Burden Hrs.: 20

Type of Clearance: Extension
Bureau/Office: Office of Compliance & Consumer Assistance

Title of Form: Annual Performance Report Form OCP–101
OMB Form No.: 3120–0006
Agency Form No.: OCP–101
Frequency: Annually
Respondents: Prospective Individual Shippers
No. of Respondents: 125
Total Burden Hrs.: 3,125
Type of Clearance: Reinstatement
Bureau/Office: Bureau of Accounts
Title of Form: Records Retention Regulations
OMB Form No.: 3120–0076
Agency Form No.: None
Frequency: No Report Due
Respondents: Record Keeping Requirement of Large Carriers
No. of Respondents: 3398 Record Keepers
Total Burden Hrs.: 33,980

James H. Bayne,
Acting Secretary.

[FR Doc. 84–7839 Filed 3–22–84; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 30382]

Rail Carrier; Columbia and Silver Creek Railroad; Notice of Exemption

Columbia and Silver Creek Railroad (CSCR) filed a notice of exemption concerning acquisition of an Illinois Central Gulf Line of Railroad from Soso, Jones County MS (ICG MP 141.8) to Taylorsville, Smith County, MS (ICG MP 131.5) a distance of 10.3 miles. That line had been approved for abandonment by the Commission in Docket No. AB–43 (Sub-No. 99)—*Illinois Central Gulf Railroad Company—Abandonment—in Smith and Jones Counties, MS,* (not printed) served June 27, 1983 and its acquisition by CSCR will not constitute a major market extension.

Accordingly, this transaction comes within that class of transactions specifically exempted from the necessity of prior Commission review and approval under 49 C.F.R. 1180.2(d)(1).

As a condition to use of this exemption, any employee affected by the purchase shall be protected pursuant to *New York Dock Ry.-Control-Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

Decided: March 13, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne
Acting Secretary.

[FR Doc. 84–7838 Filed 3–22–84; 8:45 am]
BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524 (b)(1), that the named corporations intends to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524 (b).

A. J. P. Stevens & Co., Inc.—Parent Corporation, 1185 Avenue of the Americans, New York, New York 10036.

B. Wholly-owned Subsidiaries:

1. Foote & Davies, Inc. (DE), 3101 McCall Drive, Atlanta, GA 30340.
2. Mid-America Webpress, Inc. (DE), 3700 N.W. 12 Street, Lincoln, NE 68501.
3. Children's Publishers Corp. (CA), 123 South Hill Street, San Francisco, CA 94005.
4. Foote & Davies Transport Co. (GA), 3101 McCall Drive, Atlanta, GA 30340.
5. Stevens Color Concepts, Inc. (GA), 560 Amsterdam Avenue, Atlanta, GA 30346.
6. Stevens Aviation, Inc. (DE), Greenville-Spartanburg Jetport, Greer, SC 29651.
7. J. P. Stevens & Co. (Canada), Ltd., 474 Attwell Drive, Rexdale, Ontario M9W 1M4.
8. J. P. Stevens International Sales, Inc. (DE), 1185 Avenue of the Americas, New York, NY 10036.
9. J. P. Stevens (Europe), Inc., 1185 Avenue of the Americas, New York, NY 10036.
10. J. P. Stevens & Co. Limited (Great Britain), 26 Dover Street, London, England WI.
11. Stevens Graphics, Inc. (GA), 713 Glenn St., SW., Atlanta, GA 30310.
12. Automated Graphics Unlimited, Inc. (GA) 880 Great Southwest Pkwy., Atlanta, GA 30336.
13. Books, Inc. (AL), 3625 McChord Street, Montgomery, AL 36109.
14. Carolina Ruralist Press, Inc. (NC), 314 East Eighth Street, Charlotte, NC 28202.
15. Courier Graphics, Inc. (KY), 4325 Old Shepardville Road, Louisville, KY 40218.
16. Florida Printers, Inc. (FL), 5190 S. W. 75th Avenue, Miami, FL 33155.
17. Oxmoor Press, Inc. (AL), 100 W. Oxmoor Road, Birmingham, AL 35201.
18. Ruralist Press, Inc. (GA), 713 Glenn St., SW., Atlanta, GA 30310.
19. Superior Type, Inc. (GA), 109 Alexander, NW., Atlanta, GA 30303.
20. Graphic Data Systems, Inc. (GA), 1819 Peachtree Rd., NE., Atlanta, GA 30309.
21. Computer Business Forms (DE), 2605 Phoenix Drive, Greensboro, NC 27406.
22. StevenStores, Inc. (DE), 2712 Laurens Road; Greenville, SC 29607.
23. Stevocknit, Inc. (DE), 1450 Broadway, New York, NY 10018.
24. Stevcoknit, Fabrics Co., Inc. (NY), 1450 Broadway, New York, NY 10018.
25. Carter Plant (DE), 601 Wilmington Road, Wallace, NC 28466.
26. Fayetteville Plant (NC), 902 Southern Avenue, Fayetteville, NC 28306.
27. Tuexdo Plant (DE), Highway 25, Tuxedo, NC 28784.
28. Ragan Plant (DE), Bessemer City Road, Gastonia, NC 28053.
29. SKT Research & Development and Workshop Corporation (CT), 1450 Braodway, New York, NY 10018.
30. Gray-Tred Mills, Inc. (AL), 106 W. Maple Avenue, Scottsboro, AL 35768.
31. Gloria Vanderbilt Creation, Inc. (DE), 1185 Avenue of the Americas, New York, NY 10036.
32. Ralph Lauren Home Furnishings, Inc. (DE), 1185 Avenue of the Americas, New York, NY 10036.
33. Stevens Direct Marketing, Inc. (DE), Commercial Drive, Greenville, SC 29607.
34. J. P. Stevens (Deutschland) G.m.b.H, Wanhemerstrase 39, 4000 Dusseldorf, W. Germany 30.

1. Parent corporation is : Versatube Corporation, 4755 Rochester Road, Troy, Michigan 48098.

2. Wholly Owned Subsidiary which will participate Embossed Door Corp. (Mich. Corp.) 5835 Martin Avenue, Detroit, Michigan 48210.

1. Parent corporation and address of principal office: Waverly Gravel & Ready-Mix Co., Inc. d.b.a. Shell Rock Sand and Gravel, Shell Rock, IA 50670

2. Wholly-owned subsidiary which will participate in the operations and State of incorporation: (i) Brent Industries, Inc. (a Iowa corporation).

James H. Bayne,
Acting Secretary.

[FR Doc. 84–7840n Filed 3–22–84; 8:45 am]
BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-No. 16)]

Intrastate Rail Rate Authority—Mississippi

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional certification.

SUMMARY: The Commission provisionally certifies the Mississippi Public Service Commission to regulate interastate rail transportation. To obtain final certification, Mississippi must take certain modifications of its standards

and procedures, as outlined in the full decision.

DATES: Provisional certification is effective on March 22, 1984. To retain the provisional certification and to obtain final certification, Mississippi must make the required modifications May 22, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free, (800) 424–5403.

Decided: March 15, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gardison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–7837 Filed 3–22–84; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of approval of rail cost adjustment factor.

SUMMARY: The Commission has decided to approve the cost index filed by the Association of American Railroads (AAR) under the procedures of Docket Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*. The application of the index produces a Rail Cost Adjustment Factor (RCAF) of 1.053. The second quarter 1984 RCAF is unchanged from that published for the first quarter 1984. No rate actions will be ordered.

EFFECTIVE DATE: March 21, 1984.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek (202) 275–0938; Douglas Galloway (202) 275–7278.

SUPPLEMENTARY INFORMATION: By decision served April 17, 1981 (46 FR 22594, April 20, 1981), we outlined the procedures for the calculation of the interim mid-quarter index of railroad costs and the methodology for the computation of the RCAF. AAR was required to calculate and submit the mid-quarter index to the Commission no later than 20 days before the end of each quarter.

By notice served December 19, 1983 (48 FR 56659, December 22, 1983), we stated that the labor portion of the index would be computed including labor costs for the Consolidated Railroad Corporation (Conrail) restated at national contract levels and actual labor costs for all other railroads included in the index. The labor index figures for the first quarter of 1984 were restated to include Conrail at the national contract level. This had the effect of computing the index in a manner similar to that proposed in our decision served June 20, 1983 and by the AAR in its petition for reconsideration dated October 7, 1983.

Our rationale for restating Conrail's labor costs at the national contract level is contained in a separate decision. That decision also notes that the first quarter 1984 RCAF was overstated by .001 because of computational errors, and should have been 1.052.

We find the RCAF for the second quarter 1984 is 1.053. This is unchanged from the published first quarter 1984 RCAF. No rate actions will be ordered.

INTERIM MID-QUARTER INDEX

Line No. and category	1982 weights (percent)	Fourth quarter 1983 actual	First quarter 1984 forecast [1]	Second quarter 1984 forecast
1. Salaries, wages and supplements	46.3	136.3	147.7	147.3
2. Fuel	11.3	101.3	100.8	98.9
3. Materials and supplies	10.4	103.6	102.3	102.5
4. Other expense	30.0	113.8	114.9	116.3
5. Weighted average:				
a. 1980=100 (1982 weights)		xxx	127.8	127.9
b. 1980=100 (1980 weights)		122.6	127.2	[3] 127.3
6. Rail cost adjustment factor [2] (10/1/82=100) (120.9=100)		[4] 1.014	1.052	1.053

[1] The first quarter 1984 index has been restated to correct errors in the computation of the railroad retirement portion of the salaries, wages and supplements category of the index.

[2] Linking is necessitated by a change of weights from 1980 to 1982. The following formula was used: 2nd quarter 1984 index (1982 weights) divided by 1st quarter 1984 index (1982 weights) times 1st Quarter 1984 index (linked index) equals linked index (1980 weights to 1982 weights) or 127.9 divided by 127.8 times 127.2 equals 127.3.

[3] The denominator was rebased to an October 1, 1982 level in accordance with the requirements of the Staggers Rail Act of 1980.

[4] For comparative purposes an RCAF for the fourth quarter 1983 is shown using actual data. The published RCAF is computed using forecasted data.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. Although this proceeding is not subject to Pub. L. 96–354, it is our opinion that it will not have a significant adverse impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Dated: March 16, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–7859 Filed 3–22–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Reinstatement

Employment and Training Administration
Reporting Under the Federal Supplemental Compensation Program
ETA–RC50; 1205–0193
Monthly; quarterly
State or local governments
1,796 responses; 1,183 hours; 5 forms

Information is used to monitor Federal Supplemental Compensation program activity and determine the impact of the FSC legislation.

Existing Collection in Use Without an OMB Control Number

Employment and Training Administration
Preliminary Estimates of Average Employer Tax Rates
ETA–RC75
Annually
State or local governments
53 responses; 13 hours

This information is collected from the State Employment Security Agencies (SESAs) each year to track changes in the taxing levels of the SESAs and their relative ranking, and to provide information to the Secretary of the Treasury as required by Section 3302(d)(7) of the Federal Unemployment Tax Act.

Revision

Employment Standards Administration
Employer's report of Injury or Occupational Illness/Physician's Report on Impairment of Vision
1215–0031; LS–202, 202a, 202b, 205, and 210
On occasion
Individuals or households; Businesses or other for profit organizations
39,156 hours; 5 forms

Forms are used to report injuries, periods of disability and medical treatment under the Longshoremen's and Harbor Worker's Compensation Act and its extensions.

Extension

Employment Standards Administration
Optional Use Payroll Form Under the Davis-Bacon Act (Form WH–347)
WH–347, 1215–0149
Weekly
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Small business or organizations
11,000,000 responses; 5,500,000 hours, 1 form

Report is used by contractors to certify payrolls in accordance with requirements of Copeland and Davis-Bacon Acts, attesting that proper wage rates and fringe benefits were paid; reviewed by contracting agencies to verify that rates are legal and that employees are properly classified (29 CFR 3.3, 5.5(a)(3)(ii)).

Existing Collection in Use Without an OMB Control Number

Occupational Safety and Health Administration
1,2-Dibromo-3-chloropropane
OSHA 252
On occasion
92 respondents; 237 hours
Businesses and other for profit small businesses or organizations

This information required to be collected is needed to monitor employee exposure to DBCP and to protect the health of employees exposed to DBCP in the workplace.

Signed at Washington, D.C., this 20th day of March, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–7868 Filed 3–22–84; 8:45 am]

BILLING CODE 4510–30–M; 4510–27–M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period of Idaho

This notice announces the beginning of a new Extended Benefit Period in Idaho, effective on March 18, 1984.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent state and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on March 3, 1984, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on March 18, 1984.

Information for Claimants

The duration of extended benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the

State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on March 19, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 84-7862 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Evon Industries, Inc., et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 12, 1984–March 16, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,067; Evon Industries, Inc., Camden, NJ

TA–W–14,917; Birdsboro Corp., Reading, PA

TA–W–14,889; Menasha Controls Corp., Menasha, WI

TA–W–14,919; Calgon Carbon Corp., Big Sandy Plant, Catlettsburg, KY

TA–W–14,774; Duval Corp., Carlsbad Property, Carlsbad, NM

TA–W–15,019; C. F. Nitrogen, Inc., Ahoskie, NC

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–14,994; Pittsburgh & Conneaut Dock Co., Conneaut, OH

TA–W–15,062; Ransburb Corp., Electro-Static Equipment Div., Indianapolis, IN

TA–W–14,971; Bay Shipbuilding Corp., Sturgeon Bay, WI

TA–W–14,998; Bessemer & Lake Erie Railroad, Conneaut Limestone Plant, Conneaut, OH

Affirmative Determinations

TA–W–14,890; RCA Corp., Consumer Electronics Div., Indianapolis, IN

A certification was issued covering all workers separated on or after July 18, 1982 and before December 31, 1982.

TA–W–14,898; General Electric Co., Video Products Business Div., Portsmouth, VA

A certification was issued covering all workers separated on or after January 1, 1983 and before August 1, 1983.

TA–W–15,111; Monongahela Connecting Railroad Co., Pittsburgh, PA

A certification was issued covering all workers separated on or after November 16, 1982.

TA–W–15,110; Mahoning Valley Railway Co., Youngstown, OH

A certification was issued covering all workers separated on or after November 16, 1982.

TA–W–15,109; Jackson County Iron Co., Black River Falls, WI

A certification was issued covering all workers separated on or after November 8, 1982.

TA–W–15,034; Warren Shirt Co., Lebanon, PA

A certification was issued covering all workers separated on or after January 1, 1983 and before December 31, 1983.

TA–W–14,999; U.S. Steel Corp., Great Lakes Fleet, Inc., Sault Ste. Marie Warehouse, Sault Ste. Marie, MI

A certification was issued covering all workers separated on or after September 9, 1982 and before January 1983.

TA–W–15,094; Utah International, Inc., Springer Mining Co., Winnemucca, NV

A certification was issued covering all workers separated on or after October 27, 1982 and before December 31, 1983.

TA–W–15,056; Fosteria Glass Co., Moundsville, WV

A certification was issued covering all workers separated on or after October 3, 1982.

I hereby certify that the aforementioned determinations were issued during the period March 12, 1984–March 16, 1984. Copies of these determinations are available for inspection in room 9120, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the avove address.

Dated: March 20, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-7887 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Bristol Brass Co., et al.

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 2, 1984.

Interested persons are invited to

submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 2, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 19th day of March 1984.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bristol Brass Co. (UAW)	Bristol, CT	3/12/84	3/6/84	TA-W-15,252	Brass rod and wire.
Brown Shoe Co. (ACTWU)	Ironton, MO	3/12/84	3/3/84	TA-W-15,253	Boots, scandals, outsoles, wedges, urethanesoles, plastic heels, moldings and pouring.
General Electric Indicating Devices, Inc. (company)	Caguas, P.R	3/14/84	3/6/84	TA-W-15,254	Assembly and testing of analog display measuring instruments and other electrical measuring devices.
Maryland Shipbuilding & Drydock Co. (Maryland Drydock Association)	Baltimore, MD	3/12/84	3/9/84	TA-W-15,255	Inert gas distribution systems and container storage systems.
National Iron Co. (USWA)	Duluth, MN	3/12/84	2/29/84	TA-W-15,256	Truck cranes and mining conveyor systems.
Rubin Brothers Footwear, Inc. (workers)	Waycross, GA	3/13/84	3/9/84	TA-W-15,257	Men's, women's and children's work-type shoes.
Xerox Corp., Washington Central Refurbishing Center (ACTWU).	Springfield, VA	3/9/84	3/6/84	TA-W-15,258	Refurbishing xerox copiers.
Xerox Corp., Washington Regional Distribution Center (ACTWU).	....do	3/9/84	3/6/84	TA-W-15,259	Distribution center (microfilmed copiers).

[FR Doc. 84-7886 Filed 3-22-84; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-14, 878; TA-W-14, 879]

Massey-Ferguson, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

In the matter of Massey-Ferguson, Inc.; Gear and Shaft Plant, Detroit, Michigan; Transmission and Axle Plant, Wayne, Michigan.

In **Federal Register** Doc. 84-628 appearing on page 1298 in the **Federal Register** of January 10, 1984, the following impact date, June 21, 1982 under Affirmative Determinations, Massey Ferguson, Inc. TA-W-14, 878 and TA-W-14, 879 in column 3 is corrected to read July 21, 1982.

Signed at Washington, D.C. this 19th day of March 1984.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-7885 Filed 3-22-84; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-14,878; TA-W-14,879]

Massey-Ferguson, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

According to Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on December 28, 1983 to workers and former workers of Massey-Ferguson, Incorporated's Gear and Shaft plant in Detroit, Michigan and Transmission and Axle plant in Wayne, Michigan. The Notice of certification was published in the **Federal Register** on January 10, 1984 (49 FR 1298).

The Department of Labor in its certification of Massey-Ferguson workers under petitions TA-W-14,878 and TA-W-14,879 established a termination date of December 1, 1983 because the Transmission and Axle plant (TA-W-14,879) ceased production about four months earlier in August 1983 and the Gear and Shaft plant (TA-W-14,878) ended production over a month earlier in October 1983. It was the Department's intent to include all production workers in both plants under the certification.

In a letter dated February 27, 1984, the United Automobile Workers informed the Department that Massey-Ferguson retained employees beyond the December 1, 1983 termination date for disassembling and shipping machinery and for other reasons and asked that the certification be amended to include those workers. Upon request, Massey-Ferguson officials provided additional information which confirmed that workers were retained at both installations beyond the December 1, 1983 termination date. Company officials also reported that several workers continued to work longer at the Gear and Shaft plant dismantling and shipping machinery.

Based on these additional findings an amended Notice of Certification for TA-W-14,878 and TA-W-14,879 is hereby issued as follows:

"All workers of the Gear and Shaft Plant in Detroit, Michigan of Massey-Ferguson, Incorporated engaged in employment related to the production of gears and shafts for tractors who became totally or partially separated from employment on or after July 21, 1982 and before June 1, 1984 and all workers of the Transmission and Axle Plant in Wayne, Michigan of Massey-Ferguson, Incorporated engaged in employment related to the production of transmission and axles for tractors who became totally or partially separated from employment on or after July 21, 1982 and before March 15, 1984 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 19th day of March 1984.

Robert A. Schaerfl,
Director, Office of Program Management, UIS.

[FR Doc. 84-7883 Filed 3-22-84; 8:45 am]
BILLING CODE 4510-30-M

U.S. Steel Corp.; Notice of Affirmative Determination Regarding Application for Reconsideration

In the matter of U.S. STEEL CORP., SUPPLY DIVISION, STEEL SERVICE CENTERS, TA-W-14,731—Brighton, Massachusetts, TA-W-14,732—Baltimore, Maryland, TA-W-14,734—Pittsburgh, Pennsylvania, TA-W-14,735—Cleveland, Ohio, TA-W-14,737—Cincinnati, Ohio, TA-W-14,738—Chicago, Illinois, TA-W-14,739—St. Paul, Minnesota, TA-W-14,740—Kansas City, Missouri, TA-W-14,741—St. Louis, Missouri, TA-W-14,743—Memphis, Tennessee, TA-W-14,744—Birmingham, Alabama, TA-W-14,745—Dallas, Texas, TA-W-14,746—

Houston, Texas, TA–W–14,747—Los Angeles, California.

By an application dated February 24, 1984, the United Steelworkers of American requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of the above cited locations of U.S. Steel Corporation's Steel Service Centers. The determination was published in the **Federal Register** on January 24, 1984 (49 FR 2970).

The application claims that recent Department of Labor certifications at plants of the U.S. Steel Corporation would provide a basis for the certification of workers at the above cited steel service centers, especially workers at the St. Paul, Minnesota service center which handles plate produced at the Gary Works where workers producing plate were certified for trade adjustment assistance benefits, TA–W–14,787.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 19th day of March 1984.

Harold Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 84–7884 Filed 3–22–84; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Adminstration

Advisory Committee on Sheltered Workshops, Subcommittee on Patient Worker Regulations; Meeting

A meeting of the Subcommittee on Patient Worker Regulations of the Advisory Committee on Sheltered Workshops will be held on April 10, 1984, beginning at 9:30 a.m. The meeting will be held in Room N3437A, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

The purpose of the meeting is to consider the problems which relate to the aging who work in residential facilities and may be subject to the provisions of the Fair Labor Standards Act (FLSA). Regulations Part 529, issued pursuant to the Act, govern the employment of the sick, aged, or mentally ill or defective in hospitals or institutions in which they are receiving care or treatment. Such individuals may be employed under certificates at wage rates below the statutory minimum otherwise required by FLSA. Such wages must, however, be at least commensurate with the individual's productivity.

The regulations were discussed at previous Advisory Committee meetings. Howeyer, the Committee has determined that the problems of the aging under these regulations may differ from those of other handicapped individuals and should be addressed at a special subcommittee meeting. Experts in the field of the aging will be afforded an opportunity to present their views to the Subcommittee.

The issues of particular interest to the Subcommittee include:

—The type and amount of participation in volunteer activities the aging in residential facilities should be allowed without being considered employees under FLSA;

—The conditions under which a group home for the aging should be considered similar to a family setting so that the residents who perform household chores need not be compensated for the work performed;

—The number of residents and number of hours worked per day or week which should be maximums for a family setting;

—Whether separate standards should be established for for-profit and nonprofit homes for the aging.

The public is invited to attend this meeeting. Written data, views, or arguments pertaining to the business before the Subcommittee must be received by the Committee's Secretariat prior to the meeting date. Those wishing to make formal oral presentations should also notify the Secretariat. Members of the public wishing to speak during the course of the meeting will be allowed to do so as time permits.

Inquiries concerning this meeting should be directed to: Arthur H. Korn, Secretariat for the Advisory Committee on Sheltered Workshops, Room C4316, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone no. 202/523–8727. This is not a toll free telephone number.

Signed in Washington, D.C., this 19th day of March, 1984.

Susan R. Meisinger,

Deputy Under Secretary.

[FR Doc. 84–7886 Filed 3–22–84; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–84–30–C]

Kermit Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Kermit Coal Company, P.O. Box 179, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 46–01602) located in Mingo County, West Virginia. The petition if filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet longs;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will

install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7706 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-11-C]

LJ's Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

LJ's Coal Corporation, P.O. Box 98, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 44-05668) located in Lee County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishing immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

FR Doc. 84-7707 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-12-C]

Lambert Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lambert Coal Co., Inc., P.O. Box 394, Nora, Virginia 24272 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 42 Mine (I.D. No. 44-04790) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long;

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7708 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-128-C]

M & S Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

M & S Coal Company, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 2 Slope (I.D. No. 36-06443) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. The mine is wet and virtually dust free. The upper area of the mine was deep and strip mined, leaving ventilation to the surface by means of abandoned slopes, cracks, fissures and strip pits. This creates a natural draft that would sweep noxious fumes to the surface away from the miners.

3. Petitioner states that the mine geology, undulation, thin coal and varying pitches make it impossible to wear the device while working. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. In addition, the wet conditions of the mine make it difficult to locate a suitable dry storage location for the self-rescuers.

4. Petitioner proposes to continue using the present filter-type self-rescuers as an alternative to providing self-contained self-rescuers, and states that this will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7709 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-35-C]

Maple Leaf Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Maple Leaf Coal Company, Box 146, Charmco, West Virginia 25958 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 54 Mine (I.D. No. 46-06066) located in Greenbrier County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7710 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-9-C]

Maple Meadow Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Maple Meadow Mining Company, Fairdale, West Virginia 25839 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Maple Meadow Mine (I.D. No. 46-03374) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7711 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-135-C]

Mishbucha Enterprises, Ltd.; Petition for Modification of Application of Mandatory Safety Standard

Mishbucha Enterprises, Ltd., Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Skidmore Slope (I.D. No. 36-04702) located in Columbia County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The distance from the mine portal to the actual working face is less than 2,000 feet; the mine can be evacuated in less than 15 minutes.

3. The mine is always damp to wet and there is only one piece of electrical equipment, which is a small pump located at the foot of the slope; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape out the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7712 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-18-C]

Mullins Enterprises, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mullins Enterprises, Inc., Route 2, Box 24, Pound, Virginia 24279 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. NO. 44-05570) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used only by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long;

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying the conditions of use for the unit and will

install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7713 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-23-C]

Partner Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Partner Coal Company, Inc., R.D. 4, Box 245, Apollo, Pennsylvania 15613 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Gilmur No. 1 Mine (I. D. No. 36-02372) located in Westmoreland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposed to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long.

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7714 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-121-C]

Potts Contracting Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Potts Contracting Co., Inc., R.D. #4, Box 350, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its 7 Foot Drift (I.D. No. 36-07289) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. The mine is damp to very wet. The upper area of the mine was deep and strip mined, leaving ventilation to the surface by means of abandoned slopes, cracks, fissures and strip pits. This creates a natural draft that would sweep noxious fumes to the surface away from the miners.

3. Petitioner states that the mine geology, undulation, thin coal and varying pitches make it impossible to wear the device while working. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. In addition, the wet conditions of the mine make it difficult to locate a suitable dry storage location for the self-rescuers.

4. Petitioner proposes to continue using the present filter-type self-rescuers as an alternative to providing self-contained self-rescuers, and states that this will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7715 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-4-C]

Sorokach Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Sorokach Coal Company, R.D. No. 2, Box 2665, Pottsville, Pennsylvania 17901 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its Buck Mountain Slope (I.D. No. 36-07498)

located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious of poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable and cold conditions in the already uncomfortable, wet mine.

7. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

9. Petitioner states that the proposed alternate method will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7716 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-110-C]

Scheib Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Scheib Coal Company, R.D. #1, Box 40-A, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Honey Slope (I.D. No. 36-05827) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. The mine is wet and virtually dust free. The upper area of the mine was deep and strip mined, leaving ventilation to the surface by means of abandoned slopes, cracks, fissures and strip pits. This creates a natural draft that would sweep noxious fumes to the surface away from the miners.

3. Petitioner states that the mine geology, undulation, thin coal and varying pitches make it impossible to wear the device while working. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. In addition, the wet conditions of the mine make it difficult to locate a suitable dry storage location for the self-rescuers.

4. Petitioner proposes to continue using the present filter-type self-rescuers as an alternative to providing self-contained self-rescuers, and states that this will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7717 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-154-C]

T.A.G. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

T.A.G. Coal Company, 836 W. Spruce Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Slope No. 11 (I.D. No. 36-07018) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The distance from the mine portal to the actual working face is less than 2,000 feet; the mine can be evacuated in less than 15 minutes.

3. The mine is always damp to wet and there is only one piece of electrical equipment, which is a small pump located at the foot of the slope; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape out the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7718 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-35-C]

Terry Eagle Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Terry Eagle Coal Company, Route 2, Box 900, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Cari Eagle No. 1 Mine (I.D. No. 46-05865) located in Nicholas County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015, Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 13, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7719 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-26-C]

True Energy, Inc.; Petition for Modification of Application of Mandatory Safety Standard

True Energy, Inc., P.O. Box 1740, Princeton, West Virginia 24740 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 14 Mine (I.D. No. 46-06404) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long;

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 13, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7720 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-109-C]

Valley Construction Co.; Petition for Modification of Application of Mandatory Safety Standard

Valley Construction Company, R.D. #1, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 6 Vein (I.D. No. 36-07289) located in Dauphin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is wet and virtually dust free. The upper area of the mine was deep and strip mined, leaving ventilation to the surface by means of abandoned slopes, cracks, fissures and strip pits. This creates a natural draft that would sweep noxious fumes to the surface away from the miners.

3. Petitioner states that the mine geology, undulation, thin coal and varying pitches make it impossible to wear the device while working. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. In addition, the wet conditions of the mine make it difficult to locate a suitable dry storage location for the self-rescuers.

4. Petitioner proposes to continue using the present filter-type self-rescuers as an alternative to providing self-contained self-rescuers, and states that this will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7721 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-51-C]

Z & Y Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Z & Y Coal Company, Box 148, Bickmore, West Virginia 25019 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Mine No. 6-A (I.D. No. 46-04305) located in Clay County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 16 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. detonators with iron leg wires 16 feet long;

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 23, 1984. Copies of the petition are available for inspection at that address.

Dated: March 14, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7722 Filed 3-22-84; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Programs

[Prohibited Transaction Exemption 84-19; Exemption Application No. D-2388 et al.]

Grant of Individual Exemptions; The Alaska Electrical Pension Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit

comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interest of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Alaska Electrical Pension Plan (the Plan) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 84–19; Exemption Application No. D–2388]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to Carr-Gottstein Properties, Inc. (CGP) by reason of the Plan's participation in a mortgage loan made by Washington Mortgage Company to CGP on August 16, 1976.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 6, 1984 at 49 FR 956.

EFFECTIVE DATE: This exemption is effective August 16, 1976.

Limited Scope of Exemption: Based upon the record submitted, the Department is granting an exemption from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, with respect to CGP. Thus, CGP will be relieved of its excise tax liability arising as a result of this transaction. The Department is not granting exemptive relief for any other aspect of the transaction, or for any other parties to the extent such parties may have engaged in prohibited transactions. In this connection, the Department is not providing exemptive relief from the restrictions of Title I of the Act to any fiduciary who caused the Plan to enter into the transaction, nor is the Department herein providing any exemptive relief from Title I or Title II of the Act for any financial institution which may have sold the participation in the mortgage loan to the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Alaska Laborers Employer Pension Trust (the Plan) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 84–20; Exemption Application No. D–3309]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to Ray W. Strand and Strand, Inc. by reason of the Plan's participation in a mortgage loan originated by the National Bank of Alaska to a partnership composed of Strand, Inc. and G&A Associates, for the period beginning April 5, 1976 through December 30, 1980.

For more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 6, 1984 at 49 FR 957.

EFFECTIVE DATES: This exemption is effective April 5, 1976 through December 30, 1980.

Limited Scope of Exemption: Based upon the record submitted, the Department is granting an exemption from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, with respect to Ray W. Strand and Strand, Inc. Thus, these parties will be relieved of their excise tax liability arising as a result of this transaction. The Department is not granting exemptive relief for any other aspect of the transaction, or for any other parties to the extent such parties may have engaged in prohibited transactions. In this connection, the Department is not providing exemptive relief from the restrictions of Title I of the Act to any fiduciary who caused the Plan to enter into the transaction, nor is the Department herein providing any exemptive relief from Title I or Title II of the Act for any financial institution which may have sold the participation in the mortgage loan to the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Wooley Tool and Manufacuting Division, Employees Profit Sharing Plan and Trust (the Plan) Located in Odessa, Texas

[Prohibited Transaction Exemption 84–21; Exemption Application No. D–4490]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of a parcel of real property located at 5407 Andrews Highway, Odessa, Texas to Wooley Tool and Manufacturing Division, provided that the terms and conditions of sale are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party. . .

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 6, 1984 at 49 FR 959.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (the Trust) Located in New York, NY

[Prohibited Transaction Exemption 84–22; Exemption Application No. D–4629]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) the prior commitment (the Commitment) to loan a portion of the Trust's assets under the management of Eastdil Advisers, Inc. (Eastdil) to Landmark Thirty-Four Ltd. (Landmark), a party in interest with respect to the Trust; (2) the funding of the Commitment (the Loan); (3) the proposed loan of additional amounts of the Trust's assets under the management of Eastdil to other parties in interest who are affiliates of Landmark in connection with the further development of certain real property, provided that all terms and conditions of the transactions are at

least as favorable to the Trust as those obtainable in transactions with unrelated parties.

EFFECTIVE DATE: The effective date of this exemption is (1) October 13, 1982 as to the Commitment; (2) December 15, 1983 as to the Loan; and (3) the date of the grant of this exemption as to any future loans.

Written Comments

A comment was received from the applicant indicating that effective January 1, 1984, the name of the Bell System Trust was changed to the Telephone Real Estate Equity Trust. The Department hereby incorporates such change into this final grant. Twelve written comments were received from Trust participants indicating opposition to the grant of the proposed exemption. However, the commentators failed to provide any explanation as to their opposition to the grant of the proposed exemption. Therefore, based on the record taken as a whole, the Department has determined to grant the exemption as proposed.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 19, 1983 at 48 FR 56123.

FOR FURTHER INFORMATION CONTACT: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

The Nassau County Carpenters' Vacation Fund (the Vacation Plan) Located in Westbury, New York

[Prohibited Transaction Exemption 84–23; Exemption Application No. D–3485]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the transfers by the Vacation Plan of: (1) $200,000 in uncommitted reserves to the Nassau County Carpenters' Welfare Fund (the Welfare Plan); and (2) $100,000 in uncommitted reserves to the Nassau County Carpenters' Pension Plan (the Pension Plan). (These plans are collectively referred to as the Plans.)

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 30, 1982 at 47 FR 53968.

Written Comments and Hearing Requests: As noted above, notice of the proposed exemption was published in the **Federal Register** on November 30, 1982 at 47 FR 53968. The notice stated that interested persons had the right to comment on the proposed exemption and request that a hearing be held. The Department received three comments on the proposed exemption including two requests for a hearing. One of the commentators withdrew his comments. Another commentator made no specific objection to the proposed exemption. The third commentator said he believed that the interest accrued on the uncommitted reserves should be passed on to the participants of the Vacation Plan in proportionate amounts. In response to the comment the applicant stated that the interest earned on the amounts in question was earned by the participants who cannot be located and will be paid to such participants upon proper application.

Notice of a hearing on this matter was published in the **Federal Register** on July 19, 1983 at 48 FR 32893. Although the hearing was to convene on October 3, 1983, the applicant failed to provide notice of the hearing to interested persons within the time period required. Therefore, another notice was published in the **Federal Register** on November 18, 1983 at 48 FR 52524. The purpose of the revised notice was to cancel the October 3, 1983 hearing and reschedule the hearing for January 16, 1984. By letter dated December 3, 1983, the applicant represented that notice of the rescheduled hearing was provided to interested persons.

The revised hearing notice stated that persons wishing to present oral comments at the hearing could notify the Department by January 13, 1984. The Department received no such comments. The revised notice also stated that persons who had not previously informed the Department of their desire to appear would be given an opportunity to offer their comments.

The Hearing: The hearing was convened as scheduled on January 16, 1984 in Room 3437 A and B of the Department of Labor Building in Washington, D.C.

Attending the hearing were representatives of the Department and representatives of the Vacation Plan. The representatives of the applicant made comments in favor of granting the exemption. Those individuals who had requested the hearing were not present.

After consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction;

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 20th day of March, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–7982 Filed 3–22–84; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2835 et al.]

Proposed Exemptions; The Teamsters Pension Trust Fund of Philadelphia and Vicinity and the Teamsters Health and Welfare Fund of Philadelphia and Vicinity, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income

Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Teamsters Pension Trust Fund of Philadelphia & Vicinity (the Pension Fund and the Teamsters Health and Welfare Fund (the Welfare Fund, Collectively, the Funds) of Philadelphia and Vicinity Located in Philadelphia, Pennsylvania

[Application Nos. D-2835 and D-2836]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the past loan (the Loan) of money by the Pension Fund to the Welfare Fund, a party in interest with respect to the Pension Fund, provided that the terms of the Loan were at least as favorable to the Pension Fund and the Welfare Fund as the Pension Fund would have obtained in an arm's-length transaction with an unrelated party.

Effective Date: If the proposed exemption is granted, the exemption will be effective July 31, 1975.

Summary of Facts and Representations

1. The Funds are administered by the trustees (the Trustees) in accordance with section 302(c)(5) of the Labor Management Relations Act of 1947, as amended. The same individuals are Trustees of both Funds. The Pension Fund, which had 34,894 participants as of December 31, 1980, is maintained pursuant to collective bargaining agreements between 15 locals of the Teamsters Union of Philadelphia & Vicinity and certain employers. The Welfare Fund, which had 27,233 participants as of December 31, 1980, is maintained pursuant to collective bargaining agreements between 16 locals of the Teamsters Union of Philadelphia & Vicinity and certain employers. The Welfare Fund is a contributing employer with respect to the Pension Fund. It is represented that twenty-five employees of the Welfare Fund are participants in the Pension Fund.

2. In 1974 and continuing into 1975, the Welfare Fund suffered serious cash flow difficulties as a result of decreased employer contributions, escalating medical costs and increased utilization. As a result of these financial difficulties, the Welfare Fund lacked sufficient financial resources to pay claims totalling more than $3,200,000.

3. On June 26, 1975, the Trustees acting on behalf of the Welfare Fund, voted unanimously to obtain the $4 million Loan from some source in order to meet the Welfare Fund's financial needs. The motion voted upon did not identify a specific lender. The Trustees determined that the Loan would be in the best interest of the Welfare Fund. On the same date, acting on behalf of the Pension Fund, the Trustees deadlocked on a motion for the Pension Fund to make the Loan at 8 percent interest over a period not to exceed three years and secured by certain specified assets of the Welfare Fund. To resolve the deadlock, the Trustees agreed to refer the matter to an impartial umpire in accordance with the provisions of the Pension Fund document. The impartial umpire selected was I. Herman Stern (the Arbitrator), Professor of Law at the Temple University School of Law, Philadelphia, Pennsylvania.

4. The Arbitrator was asked to decide whether the dispute was the proper subject matter for arbitration under section 302(c)(5)(B) of the Labor-Management Relations Act of 1947, as amended, and the Act and whether the Loan would constitute a prohibited transaction under the Act. On July 11, 1975, the Arbitrator concluded that the deadlock over the Loan was the proper subject of arbitration and the Loan would not constitute a prohibited transaction under the Act. The Arbitrator also determined that the proposed Loan was "... a sound one, amply secured by collateral, for a relative short period of time, and will provide a reasonable return on the principal." *In the Matter of Arbitration Concerning the Deadlock of the Trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity*, July 11, 1975, page 28.

5. Relying on the Arbitrator's decision, the Trustees agreed on July 21, 1975 to make the Loan from the Pension Fund to the Welfare Fund in installments beginning July 31, 1975. Principal on the Loan was due on or before August 31, 1978. Prior to establishing the interest rate on the Loan at 8 percent per annum the Trustees consulted with the Pension Fund's investment advisor, Wilfred Lumber, who advised them that generally the interest rate on short-term commercial loans such as the Loan would approximate the interest rate on medium term bonds, which was, at the

time, 8 percent. Mr. Lumber is currently Vice President and Vice Chairman of the Board of Shields Asset Management. Mr. Lumber had been employed for nineteen years by Bache Halsey Stuart Shields where he was First Vice President and Manager of the Pension & Welfare Fund Department. Prior to its execution, the Trustees also presented the terms of the Loan to the independent counsels of both Funds, neither of whom raised objection to the interest rate set on the Loan. In addition, Continental Bank and Trust Company, an area bank with a long standing business relationship with the Welfare fund, represents that, at the time, it would have made a loan similar to the Loan to the Welfare Fund at a fixed interest rate of 8 percent per annum. As of December 31, 1975, the Loan represented approximately 5 percent of the assets of the Pension Fund. A detailed loan agreement was executed in December 1975, incorporating the terms of the Loan contained in the minutes of the Trustees' meetings of June 26, 1975 and July 21, 1975. The Trustees obtained an option of counsel that a binding agreement was in effect between the Pension Fund and the Welfare Fund with respect to the Loan prior to initial disbursement of the Loan proceeds.

6. The applicant states that the Loan was fully collateralized by certain tangible assets of the Welfare Fund in accordance with the agreement, which provided that the value of the collateral (the Collateral) pledged must at all times be twice the amount of the remaining balance of the Loan. The Collateral included securities (the Securities) and a building (the Building) which was free and clear of encumbrances, located in Philadelphia, Pennsylvania. The Securities were appraised by Ernst & Whinney of Philadelphia, Pennsylvania at $7,174,063 as of December 31, 1975 and the Building was appraised by Albert M. Greenfield & Co. of Philadelphia, Pennsylvania at $2,300,000 as of June 6, 1975. Both appraisers were unrelated parties to the Funds. The applicant also states that the Collateral was reappraised annually and that the Collateral represented at least 200 percent of the Loan at all times during the term of the Loan. As a result, the Trustees represent that the terms of the Loan were in the best interests of the Pension Fund.

7. By 1978, the Welfare Fund's cash flow problems, which had necessitated the Loan in 1975, had been ameliorated. As a result, the Welfare Fund was able to restore some benefits that previously had been reduced and was able to repay the Loan on June 30, 1978.

8. The Department initiated an investigation of the Pension Fund and concluded in a letter to the Trustees in 1977 that the Loan constituted a transaction prohibited by section 406(b)(2) of the Act. The Trustees subsequently sought a declaratory judgment in the U.S. District Court for the Eastern District of Pennsylvania seeking to have the Department's letter declared null and void, and the District Court so declared. The Secretary of Labor appealed the District Court's declaratory judgment order to the U.S. Court of Appeals for the Third Circuit. The Court of Appeals reversed the District Court's order and remanded the case to the District Court with a direction to enter judgment in favor of the Secretary of Labor.[1] In its opinion, the Court of Appeals stated in *Cutaiar et al.* v. *Marshall,* 590 F.2d 523 (3d Cir. 1979):

> It is important to understand that this case involves no taint of scandal, no hint of self-dealing, no trace of bad faith. The violation was concededly a technical one, the result of a misunderstanding of the requirements of the newly enacted ERISA bolstered by the result of good faith submission of the dispute to impartial arbitration. Uncontradicted testimony before the District Court established that the terms of the transaction were fair and reasonable with respect to both plans. 590 F.2d at 528.

9. In summary the applicants represent that the Loan met the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Trustees agreed to make the Loan from the Pension Fund in reliance on the Arbitrator's opinion that the Loan was not a prohibited transaction and, further, that the Loan was a sound investment for the Pension Fund;

(b) The Trustees determined that the Loan would be in the best interests of both the Welfare Fund and the Pension Fund;

(c) The Loan constituted no more than approximately 5 percent of the Pension Fund's assets during the entire term of the Loan;

(d) The interest rate of 8 percent on the Loan was based upon advice provided to the Trustees by the Pension Fund's investment advisor, Wilfred Lumber and was approved by the independent counsels of both Funds; in addition, Continental Bank and Trust Company represents that it would have made a similar loan to the Welfare Fund at a fixed rate of 8 percent at the time the Loan was executed;

(e) The Loan was at all times secured by Collateral with a value of at least 200 percent of the outstanding balance of the Loan and was repaid in full by the Welfare fund prior to August 31, 1978; and

(f) Uncontradicted testimony before the U.S. District Court for the Eastern District of Pennsylvania established that the terms of the transaction were fair and reasonable with respect to both Funds.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523–8973. (This is not a toll-free number.)

Prince Georges Orthopaedic Assoc., P.A. Employees' Pension Plan and Trust (the Plan) Located in Clinton, Maryland

[Application No. D–4183]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) the proposed 50 percent participation by the Plan in a loan of $700,000 (the Loan) to the Woodyard Road Partnership (the Partnership), in which interests are owned by four shareholders (the Shareholders) of Prince Georges Orthopaedic Associates, P.A. (the Employer), the sponsor of the Plan, provided that the terms and conditions of the Loan are at least as favorable to the Plan as those it could obtain from an unrelated party; and (2) the personal guarantees of the Loan by the Shareholders to the extent of the Plan's participation therein.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with 40 participants and assets of $2,206,745 as of October 1, 1982. The Employer is a medical corporation which has been engaged in the practice of orthopaedic medicine since October, 1970. The trustees of the Plan are Drs. John Lynn and Francis Malone (the Trustees), who are employees of the Employer. The Employer's principal place of business is in the Southern Building (the Building) in

[1] Section 406(b)(2) of the Act provides that a fiduciary with respect to a plan shall not in his individual or any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. This exemption as proposed would grant relief from section 406(a) of the Act, violations of which were not addressed in litigation between the Department and the Trustees.

Clinton, Maryland. The Employer, among other tenants, leases space in the Building from the Building's owner, the Partnership. The Shareholders are the Trustees and Drs. Francis Fowler and Lee Haacker, each of whom owns a 16.23 percent interest in the Employer. The Shareholders also own a total of 8.69565 per cent of the Partnership. None of the shareholders is the managing partner of the Partnership and the Partnership's managing partner is Mr. Gilbert Giordano [Giordano], who is not related to the Plan or to the Employer.

2. In October, 1982 the Partnership approved a refinancing of the Building in order to return capital to investors. The Partnership seeks $700,000 for the refinancing. The Trustees propose the Plan's participation in the refinancing by investing $350,000 of Plan funds in the Loan of $700,000 to the Partnership. The Employer is requesting an exemption to permit the Plan's participation in the Loan and to permit the personal guarantees of the Loan by the Shareholders to the extent of the Plan's participation. The other half of the Loan, $350,000, will be contributed by the Iradj Sadeghian, M.D., P.A. Pension Plan (the Coinvestor), which is unrelated to the Plan and the Employer. The Loan will be secured by a duly recorded second deed of trust (the Second Trust) on the Building. The Plan's participation in the Loan will be further secured by the personal guarantees of the Shareholders, who represent that they have a collective net worth of approximately $1,000,000, and who will guarantee to the Plan the Partnership's repayment of the Loan to the extent of the Plan's 50 percent participation therein. The Loan will be evidenced by a deed of trust note bearing interest at the rate of 14 percent per annum. The principal of the Loan will be payable in seven annual installments of $100,000 and interest on unpaid principal will be payable in annual installments at the aforementioned rate. In the event that the legal or equitable title to the Building becomes vested in any entity other than the Partnership, then the full balance of principal and accrued interest shall become immediately due and payable.

3. The Plan and the Coinvestor will enter into a Participation Agreement (the Agreement) defining the respective rights of the Plan and the Coinvestor (the Parties) with respect to the Loan and the Second Trust. Under the Agreement, the Parties will have equal rights and obligations with respect to the Loan and the Second Trust. The Agreement will provide that the Parties shall each contribute the sum of $350,000 toward the Loan to the Partnership and that all payments of principal and interest by the Partnership will be divided equally between the Parties. In the event of the Partnership's default in the payment of any one of the required installments, whether principal of interest, the Agreement will provide that either of the Parties has the right to initiate foreclosure of the Second Trust. The Agreement will further provide that any and all expenses incurred in the administration and refinancing of the Loan or in the event of default by the Partnership, where such expenses are not reimbursed, will be borne equally by the Parties. All funds derived from any foreclosure of the Second Trust will be shared equally by the Parties.

4. The Second Trust will be subordinate only to an existing lien (the First Trust) on the Building. The First Trust is payable to Annapolis Federal Savings and Loan Association of Maryland. As of June 30, 1983, the balance due on the First Trust was $1,800,000 and final payment on the First Trust is due in 1994. The Employer represents that no party associated with the Partnership or the Plan holds any interest in the First Trust.

The Building was appraised on November 29, 1982 by John W. Fincham, M.A.I. (Fincham), an independent professional real estate appraiser whose office is located in Camp Springs, Maryland. Fincham represents that as of that date the Building had a fair market value of $4,247,000. The Employer represents that, based upon Fincham's valuation of the Building, taking into consideration the outstanding First Trust, the Second Trust will be secured by collateral worth approximately 168% of the Loan. The Employer represents that for the duration of the Loan the Building will be insured against all risks by the Partnersip for 100% of its full restoration or replacement costs with the Plan named as a loss payee to the extent of the Plan's interest in the Building.

5. The Trustees have appointed an unrelated Certified Financial Planner, Richard J. Behrer, CPA, CLU (Behrer), of Bethesda, Maryland, to act as an independent fiduciary on behalf of the Plan with respect to the proposed Loan. Behrer represents that he has substantial experience with qualified pension plans and with investments, such as the Loan, which are secured by interests in real property. Behrer has reviewed and analyzed the terms and conditions of the proposed Loan and the Participation Agreement and represents that the Plan's participation in the Loan would be in the best interests of the Plan. Behrer represents that the Plan's participation in the Loan will provide the Plan with a high rate of return at a very low risk to the Plan, and that the Plan's participation in the Loan will be adequately secured by the personal guarantees of the Shareholders and by the Building. Specifically, Behrer represents that it is not uncommon for first and second liens combined to secure loans of up to 85 percent of the value of the collateral property. The proposed loan will be among loans totalling only 58.9 percent of the Building's value. Throughout the Loan's seven-year term, Behrer will represent the Plan, monitor the Loan's repayment on behalf of the Plan, and take any action necessary to protect the Plan and its participants and beneficiaries in the event of the Partnership's default on the Loan. The Trustees have also appointed as a co-fiduciary on behalf of the Plan with respect to the Plan's proposed participation in the Loan an experienced, professional pension consultant, Alan N. Kanter, Esq. (Kanter), whose office is located in Baltimore, Maryland. Kanter represents that the Plan's proposed participation in the Loan is on terms and conditions which are in the best interests and protective of the participants and beneficiaries of the Plan.

6. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act will be satisfied because: (1) An independent fiduciary appointed by the Trustees has determined that the Plan's participation in the Loan will constitute a favorable investment for the Plan, providing the Plan with a high rate of return at a very loan risk, and that it will be in the best interests and protective of the Plan and its participants and beneficiaries; (2) the independent fiduciary will represent the Plan and monitor the repayment of the Loan on behalf of the Plan throughout the Loan's seven-year term; (3) a professional pension consultant, action as co-fiduciary on behalf of the Plan, has found the Loan to be in the best interests and protective of the Plan; (4) the Loan will be adequately secured by the Building, the value of which represents approximately 168 percent of the total indebtedness secured by the Building; (5) the Building will remain insured against risk of loss by hazard for its full replacement or restoration costs; and (6) the Loan will be further secured

to the extent of the Plan's participation therein by the personal guarantees of the Shareholders, whose combined net worth is represented to be in excess of $1,000,000.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone, (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption

Signed at Washington, D.C., this 20th day of March, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–7983 Filed 3–22–84; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by April 9, 1984.

ADDRESSES: Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Service Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506; (202–682–5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: Extensions or revisions are requested for current public use reports. Each entry issued by the Endowment contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Title: Basic State Grant Application Narrative Format
Form Number: OMB No. 3135–0027
Frequency of Collections: N/A
Respondents: State Arts Agencies
Use: Collection of information provides a basis for evaluation of application for funding.
Estimated Number of Respondents: 30
Estimated Hours for Respondents to Provide Information: 330

Title: Fellowship Grant Acceptance Agreement
Form Number: OMB No. 3135–0031
Frequency of Collections: N/A
Respondents: Individuals
Use: To make grant payment to fellowship recipient.
Estimated Number of Respondents: 70
Estimated Hours for Respondents to Provide Information: 350

Title: Jazz Study Fellowship Grant Program
Form Number: OMB No. 3135–0029
Frequency of Collections: On occasion
Respondents: Individuals and small organizations
Use: To establish grant agreement; to monitor and evaluate study activities of fellowship recipient.
Estimated Number of Respondents: 37
Estimated Hours for Respondents to Provide Information: 58

Peter J. Basso,

Director of Administration, National Endowment for the Arts.

[FR Doc. 84–7827 Filed 3–22–84; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export and Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export and import licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, notice

herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 19th day of March 1984, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Safeguards, Office of International Programs.

NRC EXPORT AND IMPORT APPLICATIONS

Name of applicant, date of application, date received and application number	Material type	Material in kilograms		End-Use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., Mar. 5, 1984, Mar. 8, 1984, XSNM02125.	19.95 percent enriched uranium.	52.650	10.504	To NUKEM for conversion and manufacturing of fuel elements for various reactors for the RERTR Program.	EURATOM.
Edlow International Co., Mar. 13, 1984, Mar. 14, 1984, XSNM02126.	5.70 percent enriched uranium.	3,760	139.56	Conversion and fabrication and ultimate return to U.S. for use in Sequoyah Unit 2.	United Kingdom.
Westinghouse Electric Corp., Mar. 8, 1984, Mar. 12, 1984, ISNM04002.	3.30 percent enriched uranium.	97,357	3,233	Fuel rods for fabrication into fuel assemblies for use at Seabrook Reactor.	From Belgium.

[FR Doc. 84-7914 Filed 3-22-84; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Export Nuclear Facilities for Materials

Correction

In FR Doc. 84-3955 appearing on page 5705 in the issue of Tuesday, February 14, 1984, make the following correction:

In the table, seventh entry (Transnuclear, Inc.), "XSNM02113 (Amend. 03)" should have read "XSNM01913 (Amend. 03)".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20758; File No. SR-PCC-84-04]

Self-Regulatory Organizations Filing of Proposed Rule Change by the Pacific Clearing Corporation

March 16, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 21, 1984, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change amends PCC's guidelines for approving foreign and domestic banks and trust companies as issuers of letters of credit for PCC participants fund purposes.[1]

First, PCC proposes to amend its procedures under Rule XXX, Section 1(b) relating to the approval of issuers. PCC proposes to require that any domestic issuer be regulated and examined by federal or state authorities having regulatory authority over banks or trust companies. This amendment should ensure that financial institutions eligible to be issuers include only those which are regulated and examined for safety and soundness by bank regulatory authorities, regardless of whether those institutions are considered to be "banks" under federal or state law.

Second, the proposal amends PCC's Application for Approval and Agreement of Issuers of Letter(s) of Credit by expanding the classes of eligible foreign issuers. Previously, a non-U.S. institution had to have a "P-1" rating Moody's Investor Service ("Moody's") or an "A-1" rating by Standard & Poor's Corporation ("S&P") for letters of credit issued to support commercial paper or other short-term obligations. If it did not satisfy this requirement, it nonetheless could apply to be an issuer, subject to limiting terms imposed by the PCC board. Under the proposal, a non-U.S. financial institution additionally may qualify as a letter of credit issuer if: (1) Any commercial paper or short-term obligations issued by the foreign institution's parent or an affiliated entity has a "P-1" Moody's rating or an "A-1" S&P rating; (2) any such commercial paper or short-term obligations issued by non-affiliated entities and supported or guaranteed by the non-U.S. institution has such a rating; or (3) the institution, its parent or an affiliated entity has an "Aaa" Moody's rating or a "AAA" S&P rating on its long-term obligations.[2] PCC States that without the proposal's modifications, many large, well-capitalized foreign financial institutions would be unable to qualify as letter of credit issuers.

PCC states that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended. In particular, PCC believes that the proposed rule change furthers Sections 17A(b)(3) (A) and (F) of the Act, in that it assures the safeguarding of securities and funds in the custody or control of PCC or for which PCC is responsible, by improving the standards for acceptance of letters of credit.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PCC-84-04.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed

[1] In making the amendments, PCC is responding to a January 19, 1984 letter from the Institute of Foreign Bankers, Inc., commenting on certain PCC standards for approving letter of credit issuers. *See* File No. SR-PCC-83-06, which was approved by the Commission in Securities Exchange Act Release No. 20615 (February 1, 1984), 49 FR 4574 (February 7, 1984).

[2] These additional PCC standards are based on those discussed in Securities Exchange Act Release No. 19954 (July 18, 1983), 48 FR 33578 (July 22, 1983) (File No. SR-OCC-83-13).

rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7648 Filed 3-22-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23249; 70-6961]

Connecticut Light and Power Co. et al.; Hearing

March 19, 1984.

In the Matter of The Connecticut Light & Power Co., Selden Street, Berlin, Conn. 06037; Western Massachusetts Electric Co., 174 Brush Hill Avenue, West Springfield, Mass. 01089; Proposal for pollution control financing; exception from competitive bidding.

The Connecticut Light and Power Company ("CL&P") and Western Massachusetts Electric Company ("WMECO"), electric utility subsidiaries ("Companies") of Northeast Utilities, a registered holding company, have filed an application-declaration pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

In order to meet certain environmental protection standards the Companies must acquire, construct, and install all or portion of the radioactive waste treatment systems and structures, non-radioactive waste treat systems, the pumphouse screenwash system, the sanitary system and the oily waste collection system ("Facilities") in connection with the Millstone Unit 3 nuclear electric generating station. CL&P and WMECO own 52.6115% and 12.2385%, respectively, of the Facilities. In connection therewith CL&P and WMECO propose to execute Financing Agreements ("Financing Agreements") with the Connecticut Development Authority ("Issuer") which would issue pollution control revenue bonds ("Bonds") in the principal amount of not more than $101,250,000 for CL&P Facilities and $23,750,000 for WMECO Facilities. The Bonds would be issued under separate CL&P and WMECO Indentures ("Indentures"), between the Issuer and a Trustee ("Trustee"). Pursuant to the Financing Agreements, the Issuer would loan to CL&P and WMECO the proceeds of the Bonds, and CL&P and WMECO would agree to make payments corresponding to the amounts needed to pay the principal, interest and premium, if any, on the Bonds as they became due.

The Financing Agreements and the Indentures would provide that monies receivable from CL&P and WMECO by the Issuer under the Financing Agreements are to be pledged and assigned to the Trustee. The Financing Agreements would also obligate CL&P and WMECO to pay the fees and charges of the Issuer and the Trustee.

The proceeds of the Bonds would be deposited with the Trustee. From a construction fund established under the Indentures, CL&P and WMECO would draw the proceeds of the Bonds to pay, or to reimburse the Companies for, a portion of the cost of acquiring, constructing and installing the Facilities.

The Bonds would be issued with a variable interest rate as either Floating Rate Demand Notes ("FRDN"), Annual Tender Bonds or 3-year Tender Bonds. With these types of securities the Companies and the Trustee would enter into Remarketing Agreements with one or more Remarketing Agents.

In order to obtain the benefit of high quality bond ratings for the Bonds, CL&P's and WMECO's obligations under the Financing Agreements would be secured by separate irrevocable standby letters of credit ("Letter of Credit") to be issued in favor of the Trustee in an amount equal to the principal amount of the Bonds plus an amount which would cover (i) one to seven months' interest on FRDN or seven months' interest on an Annual Tender Bond up to an assumed maximum 20 percent interest rate and (ii) to the extent not required for interest on the Bonds, amounts sufficient to reimburse the Issuer, the Trustee and the Remarketing Agents for costs that might be incurred if it were necessary to enforce their right under the various agreements. Pursuant to separate agreements ("Reimbursement Agreements"), CL&P and WMECO would agree to repay all amounts that are drawn under the Letter of Credit as well as certain fees and expenses. Delivery of the Letter of Credit would obtain for the Bonds a rating equivalent to the credit rating of that bank. The maturity of the Letter of Credit would be ten years from the date of issuance, but could be extended.

Upon the issuance of the Letter of Credit, CL&P and WMECO would pay the placement agents, a one-time fee of up to one and one-quarter per cent of the principal amount of the Bonds. So long as the Letter of Credit remains outstanding, CL&P and WMECO would be obligated to pay a letter of credit commission at a rate of not more than .75 per cent per annum payable quarterly in arrears on the amount available to be drawn under the Letter of Credit.

The Remarketing Agreement would provide that the Bonds would mature in not more than thirty years from the date of issuance, subject to the availability of the Letter of Credit and certain other conditions. Interest on the FRDN would be payable monthly or quarterly and for Annual Tender Bonds, it would be payable semi-annually in arrears unless the Bonds are converted to a fixed interest rate. The variable interest rate would be determined by the Remarketing Agent, in its sole discretion, and would be based on a 30-day (for FRDN) or one-year (for Annual Tender Bonds) yield evaluations at par of the securities of not less than 10 issuers of tax-exempt securities of the highest credit rating ("Kenny Index").

If FRDN were issued, the interest rate would be set either weekly, monthly or semi-annually. It would be based on the most recently published Kenny index. The Remarketing Agent would set the rate at the lowest level which would, in its judgment, having due regard for prevailing market conditions, produce, as nearly as practicable, a par bid for the Bonds. To facilitate this goal the Remarketing Agent would have the authority to adjust the interest rate on the Bonds within a range of twenty percent above and twenty percent below the most recently published Kenny index.

If Annual Tender Bonds were issued, the interest rate would be set annually, based on the Kenny index of one-year yield evaluations at par of issuers of comparably rated tax-exempt securities. If 3-year Tender Bonds were issued the interest rate would initially be set for three-year period. The Remarketing Agent would have the authority to adjust the interest rate on the Bonds within a range of twenty percent above and twenty percent below the most recently published annual Kenny index to produce as nearly as parcticable a par bid for the Bonds.

Each boadholder would have the option of tendering to the Remarketing Agent any event multiple of not less than $50,000 principal amount of the FRDN and $5,000 principal amount of Annual Tender Bonds for purchase. For FRDN the bonds may be presented to the Remarketing Agent at least seven

days prior notice. The Annual Tender Bonds may be presented to the Remarketing Agent once a year during a period lasting approximately 15 days which would begin approximately 30 days before an interest payment date. The Remarketing Agent would be obligated, upon receiving notice of a bondholder's intention to present its Bonds for purchase, to use its best efforts to secure other purchasers of Bonds having a principal amount equal to the principal amount of the bonds being tendered. The proceeds from any such new purchases of Bonds ("remarketing") would be used to pay the tendering bondholders the principal amount of and the accrued interest on the Bonds being tendered. Federal funds are to be used for all redemption and remarketing transactions. The Bonds, once tendered, would be held by the Trustee (or by a co-registrar) and the Remarketing Agent would continue to seek other purchasers for the tendered Bonds.

If the Remarketing Agent is unsuccessful in securing a purchaser for the tendered Bonds, the Trustee may draw upon the Letter of Credit for the funds required to pay the tendering bondholder the principal and accrued interest on the tendered Bonds.

On a one-time basis, the Companies could request that the Issuer alter the original terms of the Bonds to convert them from floating interest rates to a fixed interest rate. At the time of the proposed conversion, CL&P and WMECO would consider the necessity of procuring a Letter of Credit for the remaining term of the Bonds. The fixed interest rate on the Bonds would be determined at the time of the conversion and would be based upon yield evaluations at par of the securities of 20 issuers of tax-exempt securities having (i) a rating by Moody's Investors Service, Inc. or Standard & Poor's Corporation in the same category as the senior long-term unsecured debt of the particular Company or (at the Company's option) as of the bank providing the Letter of Credit and (ii) maturities equal to the remaining term of the Bonds. If the Companies were to exercise this right, the application-declaration would be amended to seek the Commission's approval of the fixed interest rate.

So long as the Bonds have a variable interest rate the Bonds would be redeemable at the election of the Issuer (to be exercised pursuant to the direction of the Companies), in whole or in part, at any permitted time, at a price of 100 percent of the principal amount of the Bonds to be redeemed, plus accrued interest. If the Bonds have been converted to a fixed-interest rate, the Bonds would be redeemable at the election of the Issuer (to be exercised pursuant to the direction of the Companies) in whole or in part at redemption prices to be determined and indicated in the Indentures.

CL&P and WMECO have elected to issue variable rate securities because of the significant interest savings (an estimated 450 to 600 basis points) under current market conditions that they expect to derive from the variable rates and because of the flexibility that the security offers. The flexibility of affording the Companies the right to direct the Issuer to redeem the Bonds at par when permitted upon 30 days notice and the Companies' option to request the Issuer to convert the Bonds to long-term fixed rate securities also make variable rate securities highly attractive.

The Bonds must be redeemed with accrued interest but without premium generally, in whole and not in part: (i) At CL&P's and WMECO's option if certain extraordinary events shall have occurred; (ii) if a determination is made that the interest on the Bonds is taxable for federal income tax purposes; and (iii) if a default were declared under the Indentures, the principal of all outstanding Bonds could be declared due and payable as provided in the Indentures.

The funds to be derived by CL&P and WMECO from loans under the financing Agreements would be applied to paying for reimbursing the Companies for their ownership shares of certain costs of the Facilities and to defray certain costs associated with this financing.

The Companies have requested that the Financing Agreements be excepted from the requirements of Rule 50 as inappropriate because the interest rate on such borrowings will be determined by reference to an issuance of securities (the Bonds) by the Issuer in a transaction which is not subject to the provisions of the Act.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 12, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7942 Filed 3-22-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13827; 812-5758]

Convertible Yield Securities, Inc., et al.; Hearings

March 16, 1984.

In the matter of Convertible Yield Securities, Inc., High Yield Securities, Inc., the Greenway Fund, Inc., and A I M Distributors, Inc., Eleven Greenway Plaza, Suite 1919, Houston, TX 77046; Filing of application for an order pursuant to section 6(c) of the act exempting applicants from the provisions of section 22(d) of the act and rule 22d-1 thereunder.

Notice is hereby given that Convertible Yield Securities, Inc., High Yield Securities, Inc., and The Greenway Fund, Inc. (Funds"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, and A I M Distributors, Inc. ("Distributor"), the principal underwriter of the Funds' shares (collectively with the Funds, "Applicants") filed an application on January 25, 1984, and an amendment thereto on March 14, 1984, for an order, pursuant to section 6(c) of the Act, exempting them and any Funds which Distributor may offer in the future from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder to the extent necessary to permit sales without a sales charge of Funds' shares, and of any funds which may in the future become one of the Funds offered with a sales charge by Distributor, to (a) any officer, director, trustee, general partner or employee of any investment company for which A I M Advisors, Inc. ("Advisor") acts as investment adviser, (b) any investment advisory, agency, custodial or trust account managed or administered by Advisor, A I M Management, Inc. ("Management") or A I M Capital Management, Inc. ("Capital") and (c) any officer, director, or employee of Management, Advisor, Capital or Disributor (including any employee benefit plan established for

such employees). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the applicable provisions.

Applicants state that Advisor, a Delaware corporation, is the investment adviser for the Funds. Management, the parent of Advisor and Capital, is also the parent corporation of Distributor, a Delaware corporation and the Funds' principal underwriter. The application indicates that Advisor and Distributor serve the Funds pursuant to written advisory and distribution contracts, respectively, with the Funds, and that the Funds have been and are now currently engaged in the continuous public offering of their shares through Distributor as the principal underwriter at the public offering prices set forth in their respective prospectuses. Applicants further state that the funds are sold through independent broker/dealers, and that the sales charge is designed to compensate these broker/dealers and their individual sales representatives for the effort put forth in making the customer contact, presenting the product, and securing the purchase of shares of one or more of the Funds.

Applicants propose to permit (a) any officer, director, trustee, general partner or employee of any investment company for which Advisor acts as investment adviser, (b) any investment advisory, agency, custodial or trust account managed or administered by Advisor, Management or Capital, and (c) any officer, director, or employee of Advisor, Management, Capital or Distributor (including any employee benefit plan established for such employees) to purchase shares of the Funds, and of any other registered investment companies which may hereafter be offered with a sales charge by Distributor for initial and subsequent investment, at the net asset value without the imposition of the sales charge otherwise applicable. The terms "officer", "director", "trustee", "general partner" or "employee" shall include any such person's spouse and minor children, and also include retired officers, directors, trustees, general partners and employees and their spouses and minor children (Collectively, all of the above persons to whom offers and sales without a sales charge are proposed to be made may be referred to herein as "Advisory Offerees").

The application indicates that under an order of exemption entered by the Commission ("Prior Order") on October 28, 1982 (Investment Company Act Release No. 12767), the qualified employees profit-sharing plan covering all of Management's employees may purchase shares of the Funds at net asset value and without a sales charge under certain conditions set forth in the Prior Order. Applicants state that, in addition, pursuant to Rule 22d–1(i), shares of the Funds, which are parties to this application, may be sold at net asset value, subject to certain conditions, to directors or officers of the Funds and to officers, directors, employees or sales representatives of Advisor or Distributor, or to any trust, pension, profit-sharing or any other benefit plan established for any of such persons, provided that these sales are made for investment purposes and that the shares will not be resold except through repurchase or redemption by or on behalf of the Fund. The term "employees" as defined include an employee's spouse and minor children and retired employees.

Applicants state that Capital provides advisory services to corporations, institutions and private accounts and has approximately $160 million in investments under management. However, Applicants assert that the management of small accounts is not practical because of difficulties in providing adequate portfolio diversification and because management costs are relatively high in relation to the size of the account. Applicants assert that investment companies such as the Funds would provide a very suitable alternative investment medium for such accounts, and that the flexibility of investment in the Funds, the detailed recordkeeping provided the investor, and other factors also make the Funds appropriate investment vehicles for larger accounts as well.

Applicants further assert that the ordinary selling expense which is incurred (i) by Distributor directly in calling upon broker/dealers and otherwise helping such firms to seek out and personally contact prospective investors and (ii) by such broker/dealers will not be incurred with respect to any of the types of sales covered by the application. Administrative and processing costs are expected to be minimal, and no extraordinary or distribution costs will be borne by the Funds.

Applicants submit that the sale of shares of the Funds at net asset value to Advisory Offerees may conflict with the provisions of Section 22(d) of the Act and Rule 22d–1 thereunder. Nevertheless, Applicants assert that investment by Advisory Offerees in shares of the Funds at net asset value pursuant to a uniform offer described in the prospectuses and statements of additional information of the Funds would not be inconsistent with the purposes underlying Section 22(d) of the Act. Specifically, Applicants argue that such purchases will not result in any unfair discrimination between purchasers of shares of the Funds.

Applicants represent that the proposed sales to Advisory Offerees would result in substantial economics sales effort and sales-related expense as compared with other sales in the normal channels of distribution. Advisory Offerees who are officers, directors or employees of Management, Advisor, Capital or Distributor (and, of course, those who are officers, directors, trustees, general partners or employees of registered investment companies), and Advisory Offerees who are investment advisory accounts of Management, Advisor or Capital, have or should have a basic understanding of the nature of an investment in an investment company as well as general familiarity with the Funds. Applicants submit that the common tie through Management and its three subsidiaries is the basis for a unique relationship of the Advisory Offerees to the Funds, and that substantial equities exist in favor of selling shares of the Funds to these Offerees without a sales charge since the customary selling expense would not be incurred by the Funds or the principal underwriter in connection with these sales.

Applicants state that no individual or in-person group sales solicitations or presentations concerning the Funds will be made. Advisory Offerees who are employees of Advisor, Management, Capital or Distributor ("Affiliated Employees") will at least annually receive a notice at their employer's expense concerning the availability of shares of the Funds at their net asset value. Applicants represent that this notice will describe the Funds and their investment objectives, indicate that investments would be at net asset value and detail the methods by which investments could be made. The notice will also indicate where additional information concerning the Funds can be obtained. A copy of the appropriate prospectus/es would be furnished prior to the time any Affiliated Employees would make an initial investment in a Fund. Applicants state further that each prospectus and related statement of additional information for the Funds will contain appropriate disclosure

concerning the ability of Affiliated Employees to make an investment in a Fund without a sales charge.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7936 Filed 3-22-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13828; 812-5737]

Greater Washington Investors, Inc.; Application for Order Exempting Applicant

March 16, 1984.

Notice is hereby given that Greater Washington Investors, Inc. ("Applicant"), 5454 Wisconsin Avenue, Chevy Chase, Maryland 20815, a closed-end, non-diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on December 23, 1983, and an amendment thereto on January 20, 1984, requesting a Commission order (1) pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Sections 18(d), 21(b), 23(a) and 23(b) of the Act, (2) pursuant to Section 17(b) of the Act, exempting Applicant from the provisions of Section 17(a)(3) of the Act, and (3) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting certain proposed transactions. The requested order would permit Applicant to maintain a stock option plan and grant options thereunder to its officers and key employees and to lend purchase money for the underlying stock upon exercise of such options. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions cited in the application.

Applicant states that it is a venture capital investment company and a small business investment company licensed under the Small Business Investment Act of 1958. Applicant further states that it has outstanding 2,948,257 shares held by approximately 3,000 shareholders and that Applicant's assets are valued at approximately $27.7 million. Applicant states that for many years it was subject to federal taxation as a regulated investment company under Section 851(a)(1) of the Internal Revenue Code (the "Code"). Applicant states further that, in October 1981, after passage of the Small Business Investment Incentive Act of 1980, Applicant elected to be regulated as a business development company in accordance with Section 54(a) of the Act. It is stated that Section 851 of the Code does not apply to business development companies and, as a result, the favorable tax treatment available to regulated investment companies under Subchapter M, Part I of the Code ("Subchapter M") is not available to such companies.

Applicant states that, in 1981, when it became a business development company, it had tax loss carryforwards available to it. Applicant states that it exhausted its tax loss carryforwards in 1983, and that it is in the best interests of Applicant's shareholders to have the provisions of Subchapter M apply to Applicant beginning in 1984. Accordingly, on December 23, 1983, Applicant withdrew its election to be a business development company under the Act.

Applicant states that it intends to become a business development company again if the Code is amended to permit such elections without the loss of Subchapter M treatment. Applicant maintains that it conducts its business so as to qualify as a business development company and that it intends to continue to conduct its operations and maintain its investment portfolio as if it were a business development company under the Act.

Applicant states that upon electing to be a business development company, Applicant adopted a stock option plan (the "Plan") in accordance with Section 61(a)(3)(B) of the Act. Applicant states further that the Plan has continued in effect, although its operation has been suspended by Applicant's Board of Directors (the "Board") pending consideration of the application. Applicant states that the Plan is administered by the Board, a majority of whose members are not "interested persons" as defined in Section 2(a)(19) of the Act. Applicant states that one member of the Board, who is also an officer of Applicant, has a financial interest in the Plan. Applicant states that the Board approved continuation of the Plan to enable Applicant to retain talented and experienced key employees familiar with the venture capital business and to attract other talented employees by enabling them to obtain an equity interest in Applicant as well as to provide additional incentive to obtain appreciation in Applicant's common stock. Applicant states that, in furtherance of these purposes, the Board may from time to time consider amendments to the Plan, including, subject to shareholder approval, amendments to increase the number of shares subject to the Plan.

Applicant states that, subject to limitations contained in the Plan, the Board determines the officers and other key employees to whom options will be granted, the number of shares covered by each option, the term of the option and limitations on the exercise thereof. Applicant states further that the specific issuance or grant of each option will be approved by a majority of the Board as defined in Section 57(o) of the Act. Applicant states further that, in approving an option for a Plan participant, the Board considers whether such option is in the best interests of Applicant and its stockholders. The Board also considers the then-present value of any options previously granted to such officer or key employee and the magnitude of the potential dilution of the pro rata interests of existing shareholders. Applicant represents that the potential for dilution is presently minimal because a maximum of 2.5% of Applicant's shares is subject to the Plan, and in any event, the option exercise price will be no less than 85% of the per-share net asset value of Applicant's common stock.

Applicant states that the Plan permits the grant of options covering 75,000 shares of Applicant's common stock. It is further stated that such shares constitute 2.5% of Applicant's outstanding shares and that options covering 71,000 shares have been granted to Applicant's officers and key employees.

Applicant states that the purchase price of shares under each option must be the higher of (a) the fair-market value of Applicant's common stock at the time the option is granted, or (b) 85% of the per-share net asset value as of the most recent determination of such value by Applicant's Board prior to the time the

option is granted. The Plan provides that "fair market value" shall be the mean between the highest bid and lowest asked prices of Applicants' shares as quoted on the Automated Quotation System of the National Association of Securities Dealers, Inc. for the date in question. Applicant represents that the Plan requires pricing the shares underlying the options in the manner prescribed by Section 63 of the Act.

According to Applicant, the purchase price to be paid upon exercise of each option must be paid in cash except that the Board of Directors may authorize Applicant to make a loan of the purchase price provided that the terms of any such loan must comply with Sections 57(j) and 62 of the Act. Applicant states that the Plan provides that all options issued pursuant to the Plan will have a term not to exceed ten years from the date the options are granted. It is stated that options granted under the Plan are not transferable by the option holders except by will or the laws of descent and distribution. Applicant states that the Plan limits the aggregate fair market value of the stock for which a person may be granted options in any calendar year to $100,000 plus any unused limit carryover to such year, and provides that an option under the Plan may not be exercised by an optionee while there is outstanding any stock option previously granted to such optionee under the Plan.

Applicant states that, under the Plan, all rights to exercise options shall terminate sixty days after an optionee ceases to be an employee of Applicant for any cause other than death, disability or retirement. Applicant states further that, if an optionee should retire or become disabled without having fully exercised an option, the optionee may exercise such option during the balance of its term within such period as may have been provided at the time of grant. If an optionee dies before the exercise of an option, the option shall be exercisable by the optionee's executors, administrators, legatees or distributees during the balance of its term but in no event more than one year after the optionee's death.

According to the application, continuing the Plan and lending purchase money to optionees acquiring the underlying stock would violate the provisions of Sections 17(a)(3), 18(d), 21(b), 23(a) and 23(b) of the Act, absent a Commission order. Also, because Applicants' key employees and officers are affiliated persons of Applicant, the operation of the Plan may be deemed to be a joint enterprise within the meaning of Section 17(d) of the Act and Rule 17d–1 thereunder.

Applicant asserts that the requested relief meets the standards of Section 6(c) of the Act. It is asserted that Congress has recognized that stock option plans are consistent with the public interest by enactment of Section 61(a)(3)(B) of the Act and that the Plan is consistent with the provisions of that section. Applicant believes that giving its key employees a proprietary interest in Applicant and an opportunity to achieve profits taxable at the favorable capital gain rate (as, for example, authorized by Section 422A of the Code) will motivate such employees to benefit shareholders by causing Applicant's common stock to appreciate. Moreover, Applicant asserts that to deny the Plan to Applicant would prevent it from being competitive in attracting and retaining capable management and would work to the detriment of Applicant's shareholders. Applicant asserts that, because it will again elect to be a business development company when doing so will not result in the loss of Subchapter M treatment, an undue hardship would be imposed on Applicant, its officers, Key employees and shareholders if Applicant were forced to abandon the Plan until favorable tax legislation is enacted. Applicant asserts that it should be permitted to continue operation of the Plan as if it were a business development company under the Act.

Applicant asserts that the terms of the Plan and granting of options thereunder also satisfy the standards of Section 17(d) of the Act and Rule 17d–1 thereunder because the Plan is consistent with the provisions, policies and purposes of the Act, and Applicant's participation under the Plan is not on a basis less advantageous than that of the other participants. Applicant asserts that because it is the grantor of the options, and the "required majority" (within the meaning of Section 57(o) of the Act) of the Board must authorize each option, Applicants' participation is on a basis more advantageous that that of the optionees.

Applicant further asserts that the requirements of Section 17(b) of the Act are met. Applicant states that the purchase price of the stock (which may be loaned to optionees) upon exercise of options granted pursuant to the Plan is the higher of the fair market value of the stock or 85% of the net asset value of the stock at the time the option was granted. Applicant asserts that the price is not unreasonable or unfair and does not involve overreaching by anyone. Applicant further asserts that the operation of the Plan and any loans to participants pursuant to the Plan are not inconsistent with Applicant's investment policy as recited in this registration statement and reports filed with the Commission.

As a condition to the granting of the order, Applicant undertakes to comply with the following:

(1) Applicant will elect to become a business development company as soon as reasonably practicable after the Code is amended to permit Applicant to retain its status as a regulated investment company following such election.

(2) Applicant will not have a profit sharing plan as described in Section 57(n) of the Act while the Plan is in effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 10, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–7939 Filed 3–22–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–20752; File No. SR–AMEX–84–7]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Disciplinary Action

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1984, the American Stock Exchange Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Rule 345 to permit summary disciplinary proceedings to be brought against employees of a member or member organization. The Exchange also proposes to delete Rule 521, which requires members to notify the Exchange of any disciplinary action taken against them. Rule 521 should have been repealed in 1980 when this requirement was restated in a uniform format in connection with amendments occasioned by the SEC's Options Study.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* Article V of the Constitution permits the Exchange to bring either a summary or formal disciplinary proceeding against a member, member organization or approved person. Summary proceedings are heard by a Disciplinary Committee consisting of three Exchange Officials and are intended to provide an expedited procedure to redress minor or technical violations of the Exchange's Constitution and Rules. All other disciplinary matters are the subject of formal charges which are presented before a Disciplinary Panel. Sanctions in summary proceedings are limited to a censure and/or a fine not to exceed $2,500, and a respondent has no right to appeal from the determinations of a Disciplinary Committee. Since its adoption in 1972, the summary hearing procedure has provided the Exchange with a fair and effective system for dealing with minor rule infractions.

However, Exchange Rule 345, which sets forth the disciplinary procedures for member or member firm employees who are not members or approved persons, only provides for the commencement of *formal* disciplinary proceedings. The Administration believes that similar efficiencies could be achieved if Rule 345 were amended to permit the Exchange to institute *summary* proceedings against member firm employees. Summary proceedings would be appropriate, for example, when the violation was inadvertent rather than intentional, a first-time rather than repeat violation, or a technical violation not involving public customers.

(b) *Basis.* The proposed rule changes are consistent with Section 6(b) of the Act in general and further the objectives of Sections 6(b)(6) and 6(b)(7) in particular by providing a mechanism for the appropriate discipline of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed Rule 345 change sets forth an internal procedure to redress minor or technical Exchange violations. The proposed Rule 521 deletion is a technical correction of Exchange rules. Neither change imposes nor relieves any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 14, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-7697 Filed 3-22-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20755; File No. SR-PSDTC-84-04]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Securities Depository Trust Company

March 15, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 21, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change amends PSDTC's rules and procedures for approving foreign and domestic banks and trust companies as issuers of letters of credit for PSDTC participants fund purposes.[1] First, PSDTC proposes to amend its procedures, with respect to Article XI, Section 11.1, relating to the approval of issuers. PSDTC proposes to require that any domestic issuer be regulated and examined by Federal or State authorities having regulatory

[1] In making these amendments, PSDTC is responding to a January 19, 1984 letter from the Institute of Foreign Bankers, Inc., commenting on certain PSDTC standards for approving letter of credit issuers. *See* File No SR-PSDTC-83-11, which was approved by the Commission in Securities Exchange Act Release No. 20616 (February 1, 1984), 49 FR 4576 (February 7, 1984).

authority over banks or trust companies. This amendment should ensure that financial institutions eligible to be issuers include only those which are regulated and examined for safety and soundness by bank regulatory authorities, regardless of whether those institutions are considered to be "banks" under Federal or State law.

Second, the proposal amends PSDTC's Application for Approval and Agreement of Issuers of Letter(s) of Credit by expanding the classes of eligible foreign issuers. Previously, a non-U.S. institution had to have a "P–1" rating from Moody's Investor Service ("Moody's") or an "A–1" rating by Standard & Poor's Corporation ("S&P") for letters of credit issued to support commercial paper or other short-term obligations. If it did not satisfy this requirement, it nonetheless could apply to be an issuer, subject to limiting terms imposed by the PSDTC board. Under the proposal, a non-U.S. financial institution additionally may qualify as a letter of credit issuer if: (1) Any commercial paper or short-term obligations issued by the foreign institution's parent or an affiliated entity has a "P–1" Moody's rating or an "A–1" S&P rating; (2) any such commercial paper or short-term obligations issued by non-affiliated entities and supported or guaranteed by the non-U.S. institution has such a rating; or (3) the institution, its parent or an affiliated entity has an "Aaa" Moody's rating or a "AAA" S&P rating on its long-term obligations.[2] PSDTC states that without the proposal's modifications, many large, well-capitalized foreign financial institutions would be unable to qualify as letter of credit issuers.

PSDTC states that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended. In particular, PSDTC believes that the proposed rule change furthers Sections 17A(b)(3) (A) and (F) of the Act, in that it assures the safeguarding of securities and funds in the custody or control of PSDTC or for which PSDTC is responsible, by improving the standards for acceptance of letters of credit.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–PSDTC–84–04.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–7941 Filed 3–22–84; 8:45 am]

BILLING CODE 8010–01–M

[2] These additional PSDTC standards are based on those discussed in Securities Exchange Act Release No. 19954 (July 18, 1983), 48 FR 33578 (July 22, 1983) (File No. SR–OCC–83–13).

[File No. 1–3132]

Self-Regulatory Organizations; Indianapolis Power & Light Co.; Unlisted Trading Privileges

March 16, 1984.

In the Matter of Indianapolis Power & Light Company, 4% Cumulative Preferred Stock, $100 Par Value; Securities Exchange Act of 1934, Section 12(d); Application to Terminate Unlisted Trading Privileges.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(f) of the Securities and Exchange Act of 1934 ("Act") and Rule 12(f)(3) promulgated thereunder, to withdraw the specified security from unlisted trading privileges on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for terminating unlisted trading privileges include the following:

Indianapolis Power & Light Company has determined to terminate unlisted trading privileges in the above stock on the Amex because of a very nominal and inadequate amount of trading that does not justify the expense of maintaining such unlisted trading privileges. The Amex has posed no objection in this matter.

Any interested person may, on or before April 6, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–7940 Filed 3–22–84; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Privacy Act for 1974; System of Records; Proposed Revision of Routine Uses

AGENCY: Selective Service System.

ACTION: Proposed revision of a System of Records.

SUMMARY: The Selective Service System proposes to revise a system of records by adding a routine use. The System pertains to information on the Registration Card Furnished by a registrant who registers after 1979.

Comment Date: Comments are due on or before April 23, 1984.

ADDRESS: Selective Service System. Attn: Management Services, Washington, D.C. 20435.

FOR FURTHER INFORMATION CONTACT: David A. Cox, Associate Director, Management Services, Selective Service System, Washington, D.C. 20435. Phone (202) 724–0872.

SUPPLEMENTARY INFORMATION: This System of Records (System Number SSS–10) appears at 45 FR 30587 (May 8, 1980) and was revised at 47 FR 8117 (February 24, 1982).

The proposed addition of a routine use of records maintained in the system, including category of user and the purpose of such use will read as follows: Department of Health and Human Services—for locations of parents pursuant to the Child Support Enforcement Act (42 U.S.C. 651 *et seq.*)

March 19, 1984.

Thomas K. Turnage,

Director of Selective Service.

[FR Doc. 84-7792 Filed 3-22-84; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish notice in the **Federal Register** that the agency has made such a submission.

DATE: Comments must be received on or before April 27, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible.

Copies: Copies of the proposed survey, the request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538;

OMB Reviewer: J. Timonthy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-4814.

Information Collection Submitted for Review:

Title: Survey of Research Capabilities for Historically Black Colleges and Universities

Freqency: One time, nonrecurring

Description of Respondents: Black Colleges and Universities

Annual Responses: 57

Annual Burden Hours: 57

Type of Request: New

Dated: March 16, 1984.

Elizabeth M. Zaic,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 84-7879 Filed 3-22-84; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-E]

Redelegation of Investment Activities; Director, Office of Investment etc.

I. Pursuant to the authority delegated to the Deputy Associate Administrator for Investment in Delegation No. 12-B (published in this issue of the **Federal Register**) authority relating to investment activities is hereby redelegated as follows:

A. Director, Office of Investment

To take any and all actions necessary to carry out the provisions of Title I, II, and III (with the exception of Section 310 of Title III) of the Small Business Investment Act of 1958, as amended, and the regulations thereunder as amended from time to time, except for final approval of applications for licensing, funding, and transfer of licenses, revocation of licenses, and all matters of first impression having significant impact on policy; including without limitation all necessary action in connection with making, servicing, administration, collection and sale of partially or fully disbursed SBIC related loans, obligations and property (real, personal or mixed, tangible, or intangible) held by or assigned to SBA and arising out of activities under said Act, and, in connection therewith to accept or reject offers for cash, excepting however, all settlement agreements and, liquidation type action and activities.

B. Director, Office of Special Guarantees

To take any and all actions necessary to carry out the provisions of Titles I and IV of the Small Business Investment Act of 1958, as amended, and the regulations thereunder as amended from time to time, except for final approval of agreements with sureties and applications for Pollution Control Financing Guarantees and all matters of first impression having significant impact on policy; including the following:

1. Lease Guarantee Activities

a. To take all necessary actions in connection with the administration and servicing of lease guarantees.

b. To process claims arising under lease guarantees.

2. Surety Bond Guarantee Activities

a. To guarantee sureties of small business against portions of losses resulting from breach of bid, payment or performance bonds on contracts up to the statutory limit.

b. To approve or decline all claim reimbursement requests from participating surety companies on contract defaults bonded with SBA guarantees.

c. To take all necessary actions in connection with establishing SBA loss reserves for potential liability on contract defaults under guaranteed bonds.

d. To negotiate agreements with sureties and revisions thereto for final approval of the DAA/I.

e. To approve or decline applications for guarantees received from participating surety and/or insurance companies.

f. To take all necessary actions in connection with the servicing, administration, collection and payment of claims arising under surety bond guarantees upon default.

g. To make size and eligibility determinations for the purposes of the surety bond guarantee program.

3. Pollution Control Financing Guarantee Activities

a. To decline or recommend approval of applications for pollution control financing guarantees authorized to be made by the Agency including reconsiderations thereof and to execute commitments and modifications thereto and guarantees pertaining to such financing.

b. To determine eligibility and make size determinations of applicants for polution control financing guarantees.

c. To take all necessary actions in connection with the servicing, administration, collection and payment of claims arising under the guarantees upon default of the small business.

d. To negotiate participation agreements with qualified companies and revisions thereto for final approval of the DAA/I.

e. To approve the investment of funds in the pollution control guarantee fund not needed for payment of operating expenses or for the payment of claims arising under the pollution control financing program in bonds or other obligations of, or other obligations guaranteed as to principal and interest by, the United States.

4. To amend, suspend or revoke authority delegated to any position listed below.

C. Special Assistant to Director, Office of Special Guarantees

1. To take all necessary actions in connection with the administration and servicing of lease guarantees.

2. To process claims arising under lease guarantees.

D. Chief, Surety Bond Guarantee Branch

1. To guarantee sureties of small business against portions of losses resulting from the breach of bid, payment or performance bonds on contracts up to the statutory limit.

2. To approve or decline all claim disbursement requests from participating surety companies on contract defaults bonded with SBA guarantees.

3. To take all necessary actions in connection with establishing SBA loss reserves for potential liability on contract defaults under guaranteed bonds.

4. To negotiate agreements with sureties and revisions thereto for final approval of the DAA/I.

5. To approve or decline applications for guarantees received from participating surety and/or insurance companies.

6. To take all necessary actions in connection with the servicing, administration, collection and payment of claims arising under surety bond guarantees upon default.

7. To make size and eligibility determinations for purposes of the surety bond guarantee program.

E. Claims Supervisor, Surety Bond Guarantee Branch

1. To approve or decline claim reimbursement requests not exceeding $24,999.99 from participating surety companies on contract defaults bonded with SBA guarantees.

2. To take all necessary actions connected with the surety's accountability to SBA for, and payment to SBA of, its share of surety's recoveries from Bond indemnitors on defaulted contracts.

F. Chief, Pollution Control Finance Guarantee Branch

1. To decline or recommend approval of applications for pollution control financing guarantees authorized to be made by the Agency including reconsiderations thereof and to execute commitments and modifications thereto and guarantees pertaining to such financings.

2. To determine eligibility and make size determinations of applicants for pollution control financing guarantees.

3. To take all necessary actions in connection with the servicing, administration, collection and payment of claims arising under the guarantees upon default of the small business.

4. To negotiate participation agreements with qualified companies and revisions thereto for final approval of the DAA/I.

II. This redelegation does not authorize anyone serving in the above positions:

A. To sell any primary obligations or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereof.

B. To deny liability of the Small Business Administration under terms of participation or guaranty agreement, or to initiate a suit for recovery from a participation or guaranty agreement.

C. To accept or reject a compromise settlement of an indebtedness owned to the Agency for a sum less than the amount due thereon. (Authority for compromise settlements is delegated to the Central Office Claims Review Committee, see Delegation of Authority 12A.)

III. The authority delegated herein may not be redelegated.

IV. The authority delegated herein may be exercised by any SBA employee officially designated as Acting in that position.

EFFECTIVE DATE: March 23, 1984.

Dated: March 16, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-7879 Filed 3-22-84; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-B; Revision 2]

Redelegation of Investment Activities; Financial Assistance

Delegation of Authority No. 12-B (36 FR 13787) as amended (40 FR 23125) is hereby superseded by Delegation of Authority No. 12-B (Revision 2). This revision reflects the organizational change made by the consolidation of the Financial Assistance and Investment activities.

I. Pursuant to the authority delegated by the Administrator to the Associate Administrator for Finance and Investment in Delegation of Authority No. 12 (Revision 2) (47 FR 14995), as amended (48 FR 9979, 48 FR 28599, 49 FR 5411) the following authority is hereby delegated to the Deputy Associate Administrator for Investment as follows:

A. To take any and all actions necessary to carry out the provisions of Titles I, II, III and IV (with the exception of Section 310 of Title III) of the Small Business Investment Act of 1958, as amended, and the regulations thereunder as amended from time to time, including without limitation all necessary action in connection with the making, servicing, administration, collection and sale of partially or fully disbursed SBIC related loans, obligations and property (real, personal or mixed, tangible, or intangible) held by or assigned to SBA and arising out of activities under said Act, and, in connection therewith, to accept or reject offers for cash, excepting however, all settlement agreements and liquidation type action and activities.

B. To take any and all actions necessary to carry out the provisions of Titles I and IV of the Small Business Investment Act of 1958, as amended, and the regulations thereunder as amended from time to time, including without limitation all necessary action in connection with the following:

1. Lease Guarantee Activities

a. To take all necessary actions in connection with the administration and servicing of reinsured lease rental guarantee insurance policies (hereafter referred to as "lease guarantees").

b. To process claims arising under lease guarantees.

2. Surety Bond Guarantee Activities

a. To guarantee sureties of small business against portions of losses resulting from breach of bid, payment, or performance bonds on contracts up to the statutory limit.

b. To approve or decline all claim reimbursement requests from participating surety companies on contract defaults bonded with SBA guarantees.

c. To take all necessary actions in connection with establishing SBA loss reserves for potential liability on contract defaults under guaranteed bonds.

d. To enter into agreements with participating surety and/or insurance companies and to modify and revise the same whenever necessary.

e. To approve or decline applications for guarantees received from participating surety and/or insurance companies.

f. To take all necessary actions in connection with the servicing, administration, collection and payment of claims arising under surety bond guarantees upon default.

g. To make size and eligibility determinations for the purposes of the surety bond guarantee program.

3. Pollution Control Financing Guarantee Activities

a. To approve or decline applications for pollution control financing guarantees authorized to be made by the Agency including reconsiderations thereof and to execute commitments and modifications thereto and guarantees pertaining to such financing.

b. To determine eligibility and make size determinations of applicants for pollution control financing guarantees.

c. To take all necessary actions in connection with the servicing, administration, collection and payment of claims arising under pollution control financing guarantees upon default of the small business.

d. To enter into participation agreements with qualified companies and to revise such agreements when necessary.

e. To approve the investment of funds in the pollution control guarantee fund not needed for payment of operating expenses or for the payment of claims arising under the pollution control financing program in bonds or other obligations of, or other obligations guaranteed as to principal and interest by the United States.

II. This redelegation does not authorize anyone serving in the above position:

A. To sell any primary obligations or other evidence of indebtedness owned to the Agency for a sum less than the total amount due thereof.

B. To deny liability of the Small Business Administration under terms of participation or guaranty agreement, or to initiate a suit for recovery from a participation or guaranty agreement.

C. To accept or reject a compromise settlement of an indebtedness owed to the Agency for a sum less than the amount due thereon. (Authority for compromise settlements is delegated to the Central Office Claims Review Committee, see Delegation of Authority 12A.)

III. The authority delegated herein may be redelegated.

IV. The authority delegated herein may be exercised by any SBA employee officially designated as Acting Deputy Associate Administrator for Investment.

EFFECTIVE DATE: March 23, 1984.

Dated: March 16, 1984.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 84-7880 Filed 3-22-84; 8:45

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Pine Belt Regional Airport, Laurel-Hattiesburg, Mississippi; FAA Approval of Noise Compatibility Program

AGENCY: Federal Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Pine Belt Regional Airport (PIB) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96–52 (1980. The FAA accepted the noise exposure maps for PIB submitted under Part 150 on August 17, 1983.

The PIB noise compatibility program was approved by the Administrator on February 10, 1984.

EFFECTIVE DATE: The effective date of the FAA's approval of the PIB noise compatibility program is February 10, 1984.

FOR FURTHER INFORMATION CONTACT: Elton, Jay, Civil Engineer, Jackson Airports District Office, P.O. Box 6111, Pearl Branch, Jackson, Mississippi 39208, (601) 960–4628. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has approved the noise compatibility program for Pine Belt Regional Airport, effective February 10, 1984.

Under Section 104(a) of the Aviation Safety and Noise Abatement (ASNA) Act of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reductions of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

PIB submitted to the FAA on December 9, 1982, noise exposure maps, descriptions and other documentation which were produced during an airport noise control and land use compatibility (ANCLUC) study conducted at PIB from January 1982 to December 1982. The PIB noise exposure map was accepted by FAA on August 17, 1983. Notice of that acceptance was published in the Federal Register on September 14, 1983.

The PIB ANCLUC study report contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdiction from the date of study completion to beyond the year 1987. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on August 17, 1983, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained four proposed actions for noise mitigation, both on and off the airport. The FAA has completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The program, therefore, was approved by the Administrator February 10, 1984. This approval is granted for the four specific program elements. On-airport actions include local approval, distribution, and public information activities related to the noise exposure map and noise compatibility program. It also includes maintaining status quo on no noise sensitive uses on airport property. Off-airport elements include acquisition of land or easements within noise impacted areas designated by the noise exposure maps and developing and implementing land use ordinances to assure compatible land use within noise impacted areas. FAA's approval of these noise compatibility measures involves the determination that the program actions to be implemented do not create an undue burden on interstate or foreign commerce, are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses, provide for revision when appropriate, and are consistent with the requirements of FAR Part 150, Appendix B. Such approval does not constitute FAA environmental approval of specific projects, nor does it represent a commitment to fund or implement elements of the program.

These determinations are set forth in detail in a Record of Approval endorsed by the administrator on *February 10, 1984.* The Record of Approval, as well as other evaluation materials and the

documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Pine Belt Regional Airport.

Issued in East Point, Georgia, March 8, 1984.

William J. McGill,

Manager, Airports Division, ASO-600.

[FR Doc. 84-7803 Filed 3-22-84; 8:45 am]

BILLING CODE 4910-13-M

Golden Triangle Regional Airport, Columbus-West Point-Starkville, Mississippi; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Golden Triangle Regional Airport (GTR) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). The FAA accepted the noise exposure maps for GTR submitted under Part 150 on August 17, 1983.

The GTR noise compatibility program was approved by the Administrator on February 10, 1984.

EFFECTIVE DATE: The effective date of the FAA's approval of the GTR noise compatibility program is February 10, 1984.

FOR FURTHER INFORMATION CONTACT: Elton Jay, Civil Engineer, Jackson Airports District Office, P.O. Box 6111, Pearl Branch, Jackson, Mississippi 39208, (601) 960-4628. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has approved the noise compatibility program for Golden Triangle Regional Airport, effective February 10, 1984.

Under Section 104(a) of the Aviation Safety and Noise Abatement (ASNA) Act of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

GTR submitted to the FAA on October 21, 1982, noise exposure maps, descriptions and other documentation which were produced during an airport noise control and land use compatibility (ANCLUC) study conducted at GTR from November 1981 to October 1982. The GTR noise exposure map was accepted by FAA on August 17, 1983. Notice of that acceptance was published in the **Federal Register** on September 14, 1983.

The GTR ANCLUC study report contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdiction from the date of study completion to beyond the year 1987. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on August 17, 1983, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained four proposed actions for noise mitigation, both on and off the airport. The FAA has completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The program, therefore, was approved by the Administrator February 10, 1984. This approval is granted for the four specific program elements. On-airport actions include local approval, distribution, and public information activities related to the noise exposure map and noise compatibility program. Off-airport elements include acquisition of land or easements within the areas adversely affected by noise. FAA's approval of these noise compatibility measures involves the determination that the program actions to be implemented do not create an undue burden on interstate or foreign commerce, are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses, provide for revision when appropriate, and are consistent with the requirements of FAR Part 150, Appendix B. Such approval does not constitute FAA environmental approval of specific projects, nor does it represent a commitment to fund or implement elements on the program.

These determinations are set forth in a Record of Approval, endorsed by the Administrator on *February 10, 1984.* The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Golden Triangle Regional Airport.

Issued in East Point, Georgia, March 8, 1984.

William J. McGill,

Manager, Airports Division, ASO-600.

[FR Doc. 84-7794 Filed 3-22-84; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 149—Airborne Distance Measuring Equipment (DME); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 149 on Airborne Distance Measuring Equipment (DME) to be held on April 11-13, 1984 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Sixth Meeting Held on January 11-13, 1984; (3) Report on Coordination with the European Organization for Civil Aviation Electronics (EUROCAE) Working Group 25; (4) Report on Coordination with RTCA Special Committee 151 on Airborne MLS Area Navigation Equipment; (5) Review of Comment Papers on CW Interference; (6) Review Task Assignments From Previous Meeting; (7) Review Seventh Draft of Committee Report on Minimum Operational Performance Standards for Airborne Distance Measuring Equipment; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on March 12, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-7804 Filed 3-22-84; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 153—Airborne VOR Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 153 on Airborne VOR Equipment to be held on April 9-10, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Second Meeting Held on January 9-10, 1984; (3) Review of Homework Assignments; (4) Review Comments Received on the Third Draft of the Committee Report on Minimum Operational Performance Standards for Airborne VOR Equipment; (5) Discuss Coordination on the VOR Minimum Operational Performance Standards with the European Organization for Civil Aviation Electronics (EUROCAE); (6) Assignment of Tasks; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on March 12, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-7795 Filed 3-22-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0222
Form Number: IRS Form 6047
Type of Review: Existing Regulation
Title: Windfall Profit Tax

Alcohol, Tobacco and Firearms

OMB Number: 1512-0386
Form Number: ATF REC 5330/1
Type of Review: Reinstatement
Title: Registered Importers of Implements of War on US Munitions List; Commercial Records of Acquisition and Disposition

OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Office of the Secretary

OMB Number: New
Form Number: None
Type of Review: Regular Submission
Title: Solicitation of Proposal Information for Award of Public Contracts

OMB Number: New
Form Number: None
Type of Review: Regular Submission
Title: Post-Contract-Award Information

U.S. Customs Service

OMB Number: 1515-0041
Form Number: Customs Forms 6059-B and C
Type of Review: Revision
Title: U.S. Customs Declaration

OMB Reviewer: Judy McIntosh, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: March 19, 1984.

Gary Kowalczyk,

Departmental Reports.

[FR Doc. 84-7852 Filed 3-22-84; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of art advisory panel.

SUMMARY: A closed meeting of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meeting will be held April 20 and 26, 1984.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:C:E:V, 1111 Constitution Avenue, NW., Room 2575, Washington, D.C. 20224, Telephone No. (202) 566-4138 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1976), that a closed meeting of the Art Advisory Panel will be held on April 20 and 26, 1984, beginning at 9:30 a.m. in Room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978. (43 FR 52122.)

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 84-7861 Filed 3-22-84; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Delegation Order No. 84-5 to the Deputy General Counsel

Pursuant to the authority vested in me as Director of this Agency by Reorganization Plan No. 2 of 1977, and by Executive Order 12048 of March 27, 1978, there is hereby delegated to the

Deputy General Counsel the following described authority:

1. The authority under the Freedom of Information Act (5 U.S.C. 552) to make determinations and responses concerning the granting of requests for records of the Agency.

2. The authority to redelegate any authority granted herein together with the power of further delegation.

3. Notwithstanding any other provision of this order, the Director may at anytime exercise any function or authority delegated herein.

4. All prior delegations of this authority remain in force. This delegation is effective immediately.

Dated: March 20, 1984.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 84-7889 Filed 3-22-84; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 58
Friday, March 23, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-400; Amdt. 2; 3-16-84]

Addition and Closure of Items to Closed Session of March 16, 1984 Meeting.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 28, 1984, 49 FR 7325.

TIME AND DATE: 10:30 a.m., March 16, 1984.

PLACE: Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

Discussion on United Kingdom. (BIA)
Discussion on Peru. (BIA)
Discussion on ECAC. (BIA)
Discussion on Spain. (BIA)
Discussion on Korea. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-7980 Filed 3-21-84; 10:25 am]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD

[M-402; Amdt. 2; 3-19-84]

Notice of addition and closure of item to the closed session of the March 19, 1984 meeting.

TIME AND DATE: 10:30 a.m., March 19, 1984.

PLACE: Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 19. Discussion on Japan. (BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, *The Secretary,* (202) 673-5068.

[FR Doc. 84-8041 Filed 3-21-84; 3:35 pm]

BILLING CODE 6320-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 7:55 p.m. on Friday, March 16, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution (1) making funds available for the payment of insured deposits in Seminole State National Bank, Seminole, Texas, which had been closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Friday, March 16, 1984; (2) appointing Seminole National Bank, Seminole, Texas, a newly-chartered subsidiary of First West Texas Bancshares, Inc., Midland, Texas, as the transfer agent for the Corporation for the payment of insured and fully secured deposits of the closed bank; and (3) making funds available for an advance payment to uninsured depositors and other general creditors of Seminole State National Bank equal to 55 percent of their uninsured claims.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 20, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-8051 Filed 3-21-84; 3:53 pm]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:00 a.m., Wednesday, March 28 through Friday, March 30, 1984.

PLACE: Aspen Institute at Wye Plantation, Queenstown, Maryland 21658.

STATUS: Closed.

MATTERS TO BE CONSIDERED: In the framework of panel, roundtable and seminar discussions, Governors, Reserve Bank Presidents and First Vice Presidents will informally exchange views on Federal Reserve System management practices for the future, including System internal organization, procedures, and personnel resources and structure for (a) supervisory and regulatory proposals recommended in the Report of the Vice President's Task Group on Regulation of Financial Services, and in other proposals; and (b) payments system services (including check, electronic, and securities services) and fiscal services.

Discussions will provide an informal forum for exchanging ideas. It is not intended that these discussions will determine or result in the joint conduct or disposition of official agency business, nor will any decisions be taken or positions formulated, so as to constitute a meeting within the meaning of the Government in the Sunshine Act. However, in view of the broad construction of the term "meeting" in *ITT World Communications* v. *FCC,* 669 F.2d 1219, notice is being given under the Act of a meeting that will be closed to public observation.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8000 Filed 3-21-84; 11:57 am]

BILLING CODE 6210-01-M

5

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, April 2, 1984, in Memphis, Tennessee, and at 8:00 a.m. on Tuesday, April 3, 1984, in Rooms A and B, 14th floor, U.S. Postal Service Southern Regional Headquarters, 1407 Union Avenue, Memphis, Tennessee. As indicated in the following paragraph, the April 2 meeting is closed to public observation. The April 3 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245–3734.

At its meeting on March 5, 1984, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for April 2. (See 49 FR 9300, March 12, 1984.) The agenda items of the meeting to be closed concern (1) strategic planning in connection with collective bargaining negotiations involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which are scheduled to expire in July 1984; and (2) consideration of the February 24, 1984, Recommended Decision of the Postal Rate Commission on E–COM rates (Docket No. R83–1).

Agenda

Monday Session, April 2 (Closed)

1. Strategic Planning—Collective Bargaining.

2. Consideration of Postal Rate Commission Recommended Decision of February 24, 1984, on E–COM Rate and Classification Changes [Docket No. R83–1].

Tuesday Session, April 3 (Open)

1. Minutes of the Previous Meeting, March 5–6, 1984.

2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)

3. Report on Finance Group Programs. (Mr. Coughlin, Senior Assistant Postmaster General for Finance, will brief the Board on developments in the Finance Group.)

4. Consideration of a contract for temporary consulting services for the Board of Governors.

5. Report of the Regional Postmaster General. (Mrs. Strange, Regional Postmaster General, will report on postal conditions in the Southern Region.)

6. Update on Environmental Impact Statement for Stamford, Connecticut.

7. Consideration of leased Voice Communications Network.

8. Consideration of Tentative Agenda for the May 7–8, 1984, meeting of the Board in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 84–8031 Filed 3–21–84; 2:15 pm]

BILLING CODE 7715-13-M

6

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 2:00 p.m., Monday, March 26, 1984.

PLACE: Board Room, 6th Floor. 1700 G St., NW., Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravelee, (202–377–6970).

MATTERS TO BE CONSIDERED: Brokered Deposits, Limitations on Deposit Insurance.

John F. Buckley, Jr.,

Acting Secretary.

[FR Doc. 84–8156 Filed 3–22–84; 3:09 p.m.]

BILLING CODE 6720-01-M

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federal register

Friday
March 23, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Connecticut: CT83–3021	June 3, 1983.
Iowa:	
IA84–4006	Feb. 17, 1984.
IA84–4011	Feb. 24, 1984.
Kansas: KS83–4064	Sept. 2, 1983.
Louisiana: LA84–4010	Mar. 9, 1984.
Minnesota:	
MN83–2001	Jan. 14, 1983.
MN83–2057	July 29, 1983.
New York: NY81–3034	June 5, 1981.
North Dakota: ND84–5006	Mar. 16, 1984.
Utah: UT83–5120	Sept. 30, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Illinois: IL82–2068 (IL84–5008)	Dec. 17, 1982.
Iowa: IA83–4033(IA84–4018)	Apr. 29, 1983.
Kentucky:	
KY82–1065(KY84–1009)	Oct. 15, 1982.
KY82–1066(KY84–1011)	Do.

Cancellation of General Wage Determination Decision

General Wage Determination Number FL84–1002, dated February 17, 1984 in 49 FR 6204, is cancelled. Agencies with dredging projects to which the cancelled decision would have been applicable should utilize the project determination procedure by submitting form SF–308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR Part 1, § 1.6(c)(2)(i)(A), the incorporation of the withdrawn decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

Signed at Washington, D.C. this 16th day of March 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. CT83-3021 - MOD. #13 (48 FR 25090 - June 3, 1983) STATEWIDE, CONNECTICUT	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Area 2	16.18	2.98+ 9.25%
Area 3	18.25	3.05+ 3.75%
Area 4	18.70	2.07+ 3.25%

DECISION #IA84-4006-MOD#5 (49 FR 6206 - February 17 1984) Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn & Polk Counties, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Plasterers:		
Zone 5	$12.50	

DECISION #IA84-4011-MOD#2 (49 FR 7068 - February 24 1984) Scott Co., Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Laborers:		
Group 1	13.18	2.70
Group 2	13.43	2.70
Group 3	13.68	2.70

DECISION #WS83-4064-Mod. 2 (48 FR 40087- Sept. 2, 1983)	Basic Hourly Rates	Fringe Benefits
Sedgwick, County, Kansas		
CHANGE:		
Bricklayers	$13.00	$1.78

DECISION #LA84-4010-MOD#1 (49 FR 9064-March 9,1984) Statewide, Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers:		
Zone 3	$16.10	$3.02
Electricians:		
Zone 2:		
Electricians	15.90	1.02+3%
Cable Splicers	16.40	1.02+3%
Zone 6:		
Electricians	16.15	1.15+ 3%
Cable Splicers	16.65	1.15+ 3%
Glaziers:		
Zone 3	16.62	1.41
Line Construction:		
Zone 6:		
Linemen, equipment operators	16.15	1.15+ 3%
Cable Splicers	16.65	1.15+ 3%
Plumber & Pipefitters:		
Zone 6:		
Journeymen	15.05	2.15

MODIFICATIONS P. 2

DECISION NO. MN83-2001 - MOD. #2 (48 FR 1910 - January 14, 1983) Anoka, Benton,...Winona, & Wright Counties, Minnesota	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters & Pildrivermen:		
Area 1	$17.41	$2.05
Area 2	16.47	
Area 3	15.02	1.45
Area 4	16.03	.85
Area 6	16.13	1.60
Area 7	15.58	2.15
Area 9	14.18	2.70
Area 11	15.48	1.40
Area 13	15.78	1.95
Area 15	15.98	2.15
Area 16	17.03	.70
Area 17	16.73	1.00
Cement Masons:		
Area 1	17.03	2.02
Area 2	14.45	.50
Area 8	16.70	
Ironworkers:		
Area 1	17.10	3.39
Area 2	14.97	3.85
Line Construction:		
Area 1:		
Linemen; Cable Splicers; Dynamiter; & Special Equipment Operator	16.74	11½%+ 1.00
Equipment Operators	14.39	11½%+ 1.00
Truck Driver; Groundman; & Pole Treating Truck Driver	11.58	11½%+ 1.00
Painters:		
Area 1:		
Brush & Roller	16.06	2.43
Structural Steel & Bridges	16.81	2.43
Area 2:		
Brush	12.[illegible]	1.59
Spray; Structural Steel	13.[illegible]	1.59
Area 6:		
Brush & Roller	15.40	1.62
Steel	15.65	1.62
Spray	15.90	1.62
Laborers:		
Area 1:		
Classes 1 through 6 fringe benefits only		2.60
Area 2:		
Classes 1 through 6 fringe benefits only		2.50
Area 3:		
Classes 1 through 6 fringe benefits only		1.45
Area 5:		
Classes 1 through 6 fringe benefits only		1.95

Change:	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators:		
Area 1:		
Group 1	$15.60	$2.40
Group 2	15.10	2.40
Group 3	14.93	2.40
Group 4	14.82	2.40
Group 5	12.86	2.40
Group 6	12.15	2.40
Area 2:		
Group 1	15.08	2.40
Group 2	14.57	2.40
Group 3	14.42	2.40
Group 4	14.30	2.40
Group 5	12.35	2.40
Group 6	11.65	2.40
Area 3:		
Group 1	13.42	2.40
Group 2	12.56	2.40
Group 3	12.38	2.40
Group 4	12.28	2.40
Group 5	10.97	2.40
Group 6	10.49	2.40
Truck Drivers:		
Area 1:		
Group 1	14.95	2.10
Group 2	14.40	2.10
Group 3	14.30	2.10
Group 4	14.00	2.10
Area 2:		
Group 1	12.87	2.10
Group 2	12.26	2.10
Group 3	12.13	2.10
Group 4	11.86	2.10
Area 4:		
Group 1	14.49	2.10
Group 2	13.80	2.10
Group 3	13.70	2.10
Group 4	13.45	2.10
Omit:		
Truck Drivers Classifications		
Add:		
Truck Drivers Classifications		

DECISION NO. MN83-2001 (Cont'd)

GROUP 1: Boom; Mechanic; Off-Road; Tractor Trailer; Truck Driver (Operation of Hand & Power Operated Winches); & Truck Trains
GROUP 2: Tri Axles (Including Four Axles)
GROUP 3: Bituminous Distributor; & Tandem Axles
GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Pilot Car; Self-Propelled Packer; Single Axles; Slurry Operator; Tank Truck (Gas, Oil, Road Oil & Water); Teamster & Stableman; Tractor Operator (Wheel Type Used for any Purpose)

The Following Classifications Shall Come Under The Appropriate Axle Rate Wage Group:
"A" Frame; Dry Batch Hauler; Dump; Ready-Mix Concrete; Slurry; Tank (Gas, Oil, Road Oil & Water)

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MN83-2038 - MOD. #2 (48 FR 20594 - May 6, 1983) Aitkin, Becker,...Wright & Yellow Medicine Counties, Minnesota		
Change:		
Electricians:		
Area 1	$15.75	$3+½%
Area 3:		
Electricians	15.93	32½%
Cable Splicers	16.48	32½%
Ironworkers:		
Area 1	14.97	3.85
Painters:		
Area 1:		
Brush	13.45	1.59
Sandblasters; Spray; Steel	14.45	1.59
Area 3:		
Brush	12.48	1.59
Sandblasters; Spray; Steel	13.48	1.59
DECISION NO. MN83-2057 - MOD. #2 (48 FR 34614 - July 29, 1983) Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, & Washington Counties, Minnesota		
Change:		
Carpenters; Millwrights; & Piledrivermen:		
Commercial Building:		
Millwrights	$18.36	$3.62

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MN83-2057 (Cont'd)		
Change:		
Roofers	$16.48	$2.77
Sprinkler Fitters:		
Carver Co.	16.47	3.23
Remaining Cos.	17.83	4.17
Laborers:		
Site Preparation, Excavation & Incidental Paving:		
Class 1	12.35	2.60
Class 2	12.50	2.60
Class 3	12.55	2.60
Class 4	12.70	2.60
Class 5	12.80	2.60
Class 6	13.05	2.60
Truck Drivers:		
Site Preparation, Excavation & Incidental Paving:		
Group 1	14.95	2.10
Group 2	14.40	2.10
Group 3	14.30	2.10
Group 4	14.00	2.10
Omit:		
Electricians		
Truck Drivers:		
Site Preparation, Excavation & Incidental Paving:		
Classifications		

DECISION NO. MN83-2057 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Add:		
Electricians:		
Anoka (Anoka & Fridley Twps. & cities of Andover, Anoka, Columbia Hgts., Coon Rapids, Fridley, Hilltop, Ramsey & Spring Lake Park), Carver, Hennepin, & Scott Counties:		
Commercial Building & Residential quarters over 3 stories:		
Electricians	$17.76	28½%
Cable Splicers	18.26	28½%
All New family dwellings up to & inclu. 4-plexes, & all residential remodeling, rewiring & repairing in apartment buildings up to & inclu. a 400 ampere service limited to 3 floors occupied as living quarters floors, & non-elevator apartment bldgs.	15.44	20½%
Anoka (Rem. of Co.) & Remaining Counties:		
Commercial Building & all new construction of multiple dwellings in excess of 4-plexes & all residential remodeling, rewiring, & repairing of any apartment project exceeding 8 units or 400 ampere service:		
Electricians	16.80	12½%+ 3.54
Cable Splicers	17.40	12½%+ 3.54

	Basic Hourly Rates	Fringe Benefits
Add:		
Electricians (Cont'd):		
All New single family dwellings with separate service, & multiple dwellings up to & inclu. 4-plexes; & to all residential remodeling, rewiring & repairing except that any single apartment project inclu. a change of main service entrance, shall not exceed 8 living units or 400 amps.	$14.30	23%
Truck Drivers:		
Site Preparation, Excavation & Incidental Paving:		
Classifications		

GROUP 1: Boom; Mechanic; Off-Road; Tractor Trailer; Truck Driver (Operation of Hand & Power Operated Winches); & Truck Trains
GROUP 2: Tri Axles (Including Four Axles)
GROUP 3: Bituminous Distributor; & Tandem Axles
GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Pilot Car; Self-Propelled Packer; Single Axles; Slurry Operator; Tank Truck (Gas, Oil, Road Oil & Water); Teamster & Stableman; Tractor Operator (Wheel Type Used for any Purpose)

The Following Classifications Shall Come Under The Appropriate Axle Rate Wage Group:
"A" Frame; Dry Batch Hauler; Dump; Ready-Mix Concrete; Slurry; Tank (Gas, Oil, Road Oil & Water)

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DECISION NO. UT83-5120 - Mod. #4
(48 FR 44992 - September 30, 1983)
Statewide, Utah

	Basic Hourly Rates	Fringe Benefits
Change:		
ELECTRICIANS:		
Cable Splicers	$20.30	$2.00+ 3-8/10%

DECISION NO. ND84-5006 - Mod. #1
(49 FR March 16, 1984)
Statewide, North Dakota

	Basic Hourly Rates	Fringe Benefits
Change:		
LABORERS:		
Group 1	$5.50	
POWER EQUIPMENT OPERATORS:		
Group 6	10.46	1.65

DECISION NO. NY81-3034
MOD. #6
(46 FR 30271 - June 5, 1981)
ONEIDA, NEW YORK

CHANGE:

Heading on Modification published in the Federal Register on March 9, 1984 from "DECISION NO. NY81-3035 - MOD. #4" to read "DECISION NO. NY81-3034 - MOD. #5"

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS	16.17	3.00+ a+b
ELEVATOR CONSTRUCTORS' HELPERS	11.32	3.00+ a+b
ELEVATOR CONSTRUCTORS' HELPERS (PROB)	8.085	
PLUMBERS & STEAMFITTERS	15.11	4.55

DATE: ILLINOIS
DECISION NUMBER: IL84-5008
Supersedes Decision No. IL82-2068, dated December 17, 1982 in 47 FR 56601
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

COUNTIES: MASION & ST. CLAIR
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.99	$2.76
BOILERMAKERS		
BRICKLAYERS: Caulkers; Cleaners; Pointers; & Stonemasons		
Madison County	16.35	2.25
St. Clair County	16.35	2.25
CARPENTERS:		
Madison County:		
Carpenters; Lathers; Millwrights; Piledrivermen; & Soft Floor Layers		
Commercial Building	16.785	2.90
Residential:		
Madison (Southern part bounded by Rte #4 on East, #143 on North, #111 on West & to the Place where #111 & Madison Co. Line Intersect excluding Bethalto & Godfrey) Co.	15.285	2.90
Madison (Rem. of Co.) Co.	15.935	2.90
St. Clair County:		
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Commercial Building	16.785	2.90
Residential:		
Freeburg	16.285	2.90
Chester	16.585	2.90
CEMENT MASONS	16.155	2.52
ELECTRICIANS:		
Madison (Alton & Vic.) Co.	17.86	3.44
Madison (Rem. of Co.) & St Clair Counties	19.20	2.83
ELEVATOR CONSTRUCTORS:		
Mechanics	14.19	2.89+a
Helpers	9.93	2.76+a
Helpers (Prob.)	50%JR	
GLAZIERS	15.81	7.00
IRONWORKERS	16.80	2.20
LABORERS:		
Madison Co.:		
Alton:		
Common	15.90	1.50
Laying Sewer & Sewer Work	16.00	1.50
Well Digging; Gunnite Machine; Gunnite Nozzle Operator; & Rip-Rapping	16.15	1.50
LABORERS (CONT'D)		
Wood River:		
Common	$14.90	$2.50
Laying Sewer & Sewer Work	15.00	2.50
Well Digging; Gunnite Machine & Nozzle Operator	15.15	2.50
Granite City, Madison, Venice, Nameoki & Mitchell:		
Common	15.25	2.15
Brick Mason & Plasterer's Tender	15.75	2.15
Cutting, Welding, Burning	15.525	2.15
Dynamite & Powdermen	16.775	2.15
Dynamite & Powdermen Tenders	15.775	2.15
Collinsville:		
Common	15.65	1.75
Mason & Plasterer's Tenders	16.15	1.75
Dynamite Men Tenders	16.20	1.75
Dynamite Men	16.95	1.75
Edwardsville:		
Common	16.35	1.05
Working on Sewer From Building to Main Sewer	16.45	1.05
Working in Main Sewer Ditch & Cutting w/a Torch	16.60	1.05
Plasterers' & Masons' Tenders	16.85	1.05
Dynamite, Powderman	17.875	1.05
Glen Carbon:		
Group 1	16.35	1.05
Group 2	16.60	1.05
Group 3	16.85	1.05
Group 4	17.95	1.05
Highland & St. Jacob:		
Group 1	16.65	.65
Group 2	16.90	.65
Group 3	17.15	.65
Group 4	18.25	.65
Livingston:		
Group 1	16.75	.55
Group 2	17.00	.55
Group 3	17.25	.55
Group 4	18.35	.55

	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D)		
Marine:		
Group 1	$17.05	$ .25
Group 2	17.30	.25
Group 3	17.55	.25
Group 4	18.65	.25
Troy & Vicinity:		
Group 1	16.25	.25
Group 2	16.50	1.05
Group 3	16.75	1.05
Group 4	17.85	1.05
St. Clair County:		
E. St. Louis & Vicinity:		
Common, Diamond point drill operator	15.25	2.15
Dynamite Men & Powder Men	16.775	2.15
Mason Tender	17.85	
Belleville & Vicinity:		
Common	14.70	2.70
Dynamite Men & Powder Men Working w/a Torch at Bottom of Sewer	16.20	2.70
O'Fallon, Mascoutah, Scott AFB, Shilo, Lebanon & Vicinity:	14.95	2.70
Common	15.95	1.45
Bottom Men on Sewer Work	16.20	1.45
Dynamite Men	16.80	1.45
Mason & Plasterers' Tenders	16.45	1.45
Freeburg & Vicinity:		
Common	12.40	1.135
Sewer Work	12.65	1.135
Mason & Plasterers' Tenders	12.90	1.135
Dynamite Men	14.00	1.135
New Athens & Vicinity:		
Group 1	14.65	2.65
Group 2	14.90	2.65
Group 3	15.15	2.65
Group 4	16.25	2.65
LATHERS: St. Clair County	14.735	.66

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Residential Repaint:		
Brush	$13.38	$1.85
Blast & Spray	14.38	1.85
Commerical Building & Residential (New) Construction:		
Brush	15.01	1.85
Blast & Spray	16.01	1.85
Industrial:		
Brush & Taping	15.72	1.85
Blast & Spray	16.72	1.85
PLASTERERS	17.775	
PLUMBERS & STEAMFITTERS:		
Madison (Alton & Portion N. of Mitchell) Co.	19.50	1.89+b
Madison (Granite City & Southern ½ of Co.), & St. Clair (E. St. Louis & Vic.) Cos.	15.85	4.48
St. Clair (Belleville & Vic.) Co.	17.60	2.60
ROOFERS:		
Kettlemen	12.65	2.05
Composition, Slate, Tile & Waterproofing	14.85	2.05
SHEET METAL WORKERS	15.64	2.36+9%
SPRINKLER FITTERS	16.67	2.83
TERRAZZO WORKERS	17.55	
TILE SETTERS	13.98	2.905
TILE SETTERS' FINISHERS	11.70	1.605
POWER EQUIPMENT OPERATORS:		
Master Mechanic	17.17	2.48
Group 1	16.67	2.48
Group 2	13.89	2.48
Group 3	13.24	2.48
Group 4	13.14	2.48
Group 5	12.89	2.48
Group 6:		
a	18.82	2.48
b	19.12	2.48
c	14.99	2.48
d	15.49	2.48
TRUCK DRIVERS:		
Group 1	14.325	1.15+c
Group 2	14.725	1.15+c
Group 3	14.925	1.15+c
Group 4	15.175	1.15+c

LABORERS CLASSIFICATIONS:

GROUP 1 - Unskilled
GROUP 2 - Workmen while cutting and burning with a torch: men working on the bottom of sewer trenches on the final grading, laying or caulking of preformed sectional sanitary or storm sewer pipe, including reinforced concrete tile, but not including box culverts, tin whistles or multiple culverts
GROUP 3 - Tenders to all brick and plaster masons
GROUP 4 - Dynamite men

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

GROUP 1 Cranes, Draglines, Shovels, Skimmer Scoops, Clamshells or Derrick Boats, Pile Drivers, Crane-Type Backhoes, Asphalt Plant Opers. Plant Opers., Ditching Machines or Backfillers, Dredges, Asphalt Spreading Machines, Heavy Duty Mechanic, Ass't. Master Mechanic, All Locomotives, Cableways or Tower Machines, Hoists 2 drum or more, Hoists-2 Drum or more, Hydraulic Backhoes, Ditching Machines or Backfiller Cherry Pickers, Overhead Cranes, Roller (Steam or Gas) Concrete Pavers, Excavators, Concrete Breakers, Concrete Pumps, Bulk Cement Plants, Cement Pumps, Derrick-Type Drills, Mixers (over 3 bags) and Boat Oprs., (25' & over), Motor Graders or Pushcats, Scoops or Tournapulls, Bulldozers, Endloaders or Fork-Lifts, Power Blade or Elevating Graders, Winch Cats, Boom Tractors, and Pipe Wrapping or Painting Machines, Drills (other than derrick type) 1-drum-hoists, Mud Jacks, Mixers (2 or 3 bags), Conveyors (2), Air Compressors (2), Water Pumps regardless of size (2), Welding Machines (2) Siphons or Jets (2), Winch Heads or Apparatus (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (Straight Tractor Only), Firemen on Stationary Boilers, Automatic Elevators, Form Grading Machines, Finishing Machines, Power-Sub-Grader or Ribbon Machine, Longitudinal Floats, Boat Oprs., (under 25 ft., conveyors (1), Distribution Oprs., On Trucks, Siphons or Jets (1) Winch Heads or Apparatuses (1), Light Plant (1) Mixers (under 2 bags)
GROUP 2 Air Compressor (1), Water Pumps regardless of size (1) Welding Machines (1)
GROUP 3 Firemen and Asphalt Spreader Oilers
GROUP 4 Heavy Equipment Oilers (truck cranes, dredges, monigans, large cranes, etc.)
GROUP 5 Oilers
GROUP 6
a. Engineers Operating under air pressure
b. Engineers Operating in air over 10 lbs. pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs. pressure

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SUPERSEDEAS DECISION

TRUCK DRIVERS CLASSIFICATIONS:

GROUP 1: Drivers on 2 Axles hauling less than 9 tons; Air Compresser & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

GROUP 2: 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Frame Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

GROUP 3: 2, 3 or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

GROUP 4: Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years and 6% of regular hourly rate for employee who has worked in business less than 5 years; 7 paid holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day After Thanksgiving; & Christmas Day

b. Paid Holiday: 4 Hours for Christmas Eve if holiday falls on Monday through Friday.

c. $51.00 per week.

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Iowa

COUNTIES: Statewide (except Black Hawk, Carro Gordo, Scott & Webster Cos.)

DECISION NO.: IA84-4018

DATE: Date of Publication

Supersedes Decision No. IA83-4033, dated April 29, 1983, in 48 FR 19568.

DESCRIPTION OF WORK: Highway Projects (does not include building structures in rest area projects & work on or pertaining to the Mississippi & Missouri Rivers)

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
ZONE 1 - Carpenters	$13.33	$2.10
Carpenters (creosote)	13.58	2.10
Piledrivermen	13.455	2.10
ZONES 2 & 3	11.22	1.38
ZONES 4 & 5	11.12	1.00
ZONE 6	8.78	.90
ZONE 7	8.53	
ZONES 8, 9 & 10	7.92	
CEMENT MASONS:		
ZONE 1	12.17	2.45
ZONES 2 & 3	11.22	1.38
ZONES 4 & 5	11.12	1.00
ZONE 6	8.78	.90
ZONE 7	8.53	
ZONES 8, 9 & 10	7.92	
LABORERS:		
ZONE 1 - GROUP 1	9.70	1.80
GROUP 2	9.82	1.80
GROUP 3	10.05	1.80
GROUP 4	9.99	1.80
GROUP 5	10.43	1.80
ZONES 2 & 3 - GROUP 1	9.91	1.30
GROUP 2	9.61	1.30
GROUP 3	9.41	1.30
ZONES 4 & 5 - GROUP 1	9.76	1.20
GROUP 2	9.46	1.20
GROUP 3	9.26	1.20
ZONE 6 - GROUP 1	7.00	.95
GROUP 2	6.70	.95
GROUP 3	6.50	.95
ZONE 7 - GROUP 1	7.00	.82
GROUP 2	6.35	.82
GROUP 3	5.90	.82
ZONES 8, 9 & 10 - GROUP 1	7.00	
GROUP 2	6.50	
GROUP 3	5.50	
POWER EQUIPMENT OPERATORS:		
ZONES 1 & 2 - GROUP 1	12.28	2.10
GROUP 2	11.55	2.10
GROUP 3	10.78	2.10
ZONE 3 - GROUP 1	11.65	2.78
GROUP 2	10.08	2.78
GROUP 3	8.90	2.78
ZONE 4 - GROUP 1	11.91	2.00
GROUP 2	11.26	2.00
GROUP 3	10.56	2.00

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D):		
ZONE 5 - GROUP 1	$11.40	$2.13
GROUP 2	9.79	2.13
GROUP 3	8.94	2.13
ZONE 6 - GROUP 1	9.64	1.10
GROUP 2	9.64	1.10
GROUP 3	9.25	1.10
GROUP 4	8.84	1.10
ZONE 7 - GROUP 1	9.03	.70
GROUP 2	8.54	.70
GROUP 3	8.11	.70
GROUP 4	7.31	.70
ZONES 8, 9 & 10 - GROUP 1	8.35	.70
GROUP 2	7.93	.70
GROUP 3	7.31	.70
GROUP 4	6.57	.70
TRUCK DRIVERS:		
ZONE 1:		
Single axle, jack & spreader, tandem axle euclid, power lift form truck & jack, jack & spreader trucks lowboys, tractor-trailer water pulls, tandem dump w/auxiliary end, dump trailer	10.27	1.75
Water pulls	10.62	1.75
Lumber carrier	10.82	1.75
ZONES 2 & 3	10.48	.85
ZONES 4 & 5	9.18	.75
ZONE 6	8.35	.65
ZONE 7	7.02	.35
ZONES 8,9 & 10	6.15	.35

ZONE 1 - City of Council Bluffs
ZONE 2 - Linn & Polk Cos.; City of Dubuque
ZONE 3 - City of Clinton
ZONE 4 - Cities of Ames & Iowa City
ZONE 5 - City of Burlington (including Burlington Ordnance Plant)
ZONE 6 - Pottawattamie Co. (area west of the eastern boundaries of Minden, York, Washington & Silver Creek Townships); Benton, Boone, Buchanan, Cedar, Clinton, Dallas, Delaware, Dubuque, Jackson, Jasper, Johnson, Jones, Madison, Marion, Marshall, Story, Warren Cos.; the Cities of Fort Madison, Keokuk, Muscatine & their abutting Municipalities (excluding the Cities of Ames, Clinton, Council Bluffs, Dubuque & Iowa City & their abutting municipalities
ZONE 7 - Des Moines, Louisa & Muscatine Cos. (excluding Cities of Burlington (including Burlington Ordnance Plant), Muscatine & abutting municipalities)
ZONE 8 - Allamakee, Appanoose, Bremer, Butler, Chickasaw, Clayton, Davis, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Henry, Howard, Iowa, Jefferson, Keokuk, Lee, Mahaska, Mitchell, Monroe, Poweshiek, Tama, Van Buren, Wapello, Washington, Winnebago, Winneshiek, Worth & Wright Cos. (excluding Cities of Keokuk, Fort Madison & abutting municipalities)
ZONE 9 - Adair, Adams, Audubon, Calhoun, Carroll, Cass, Clarke, Crawford, Decatur, Fremont, Greene, Guthrie, Harrison, Ida, Lucas, Mills, Monona, Montgomery, Page, Ringgold, Sac, Shelby, Taylor, Union, Wayne & Woodbury Cos. & Pottawattamie Co. (east of Minden, York, Washington & Silver Creek Townships)
ZONE 10 - Buena Vista, Cherokee, Clay, Dickinson, Emmet, Humboldt, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas & Sioux Cos.

LABORERS CLASSIFICATION DEFINITIONS - ZONE 1
GROUP 1 - General Laborers
GROUP 2 - Towboats & dredge deckhands
GROUP 3 - Rakers & Screedman on Asphalt; Mortar Mixers; Chain Saw Operators
GROUP 4 - Pipelayers; Concrete Saw Op.
GROUP 5 - Form Setters & Precast Manhole Setter, Inlet Builders & Manhole Setters

LABORERS CLASSIFICATION DEFINITIONS - ZONES 2 thru 10
GROUP 1 - Sandblasters;Powderman & blaster;Powderman tender;Pipelayer,sewer, water,telephone conduits,tec.;Sewer utility topman & laser Op.;Gunnite nozzleman;Diamond & core drills,powered by air;All work performed by Laborers working from a bos'n chair,swinging stage,tag line or block & tackle;Drill ops. of air tracs,wagon drills & similar drillings;Tree Climber;Form setters;Rakers;Automatic asphalt & concrete power curbing machines;Potmen,not mechanical;Timbermen;Underpinning & shoring;Caissons over 12' depth;Grade Checker & cutting torches on demolition work;Trenchers; Self-propelled vibrating compactors;Safety boat ops.
GROUP 2 - Power buggymen;Concrete & paving sawmen;Form line;Expansion joint assembler;Bottom man;Caulker,jointer & painter;Timber & chair-sawman; Mechanical grouters;Stresser or stretcherman on post tension or prestressed concrete on or off the job;Form tamper;Air,Gas,Electric tool ops.;Vibrator, barco hammer, paving breakers, spaders, tampers, electric drills, hammer & jack hammers; Tree groundman;chain tender;Drill tender;Tool room men & checkers;Sandblaster tender;Concrete processing material & monitors;Cement finisher tenders;Stringman or paving work & power broom op.
GROUP 3 - Fence erectors;Handling & placing of metal mesh,dowel bars, reinforcing bars & chairs Dumpmen & spotters;Carrying reinforcing rods;Corrugated culvert pipe;Stake chaser,seeding & mulching & planting of trees shrubs & flowers;Mechanic tenders;Group greaser tender;Water pumps (under 3'); Compressors (under 400 CFM); Common Labor;Carpenter tender & hot asphalt labor

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS - ZONES 1,2,3,4, & 5
GROUP 1 - Power Shovel, Crane,Backhoe & Dragline;Central Mix Plant;Dredge Engineer;Dredge Leverman;Paver or Spreader;Hoisting Engineer(steel erection); Motor Patrol;Piledriver Machine;Concrete Mixer;Tow or Push Boat;Master Mechanic; CMI Paver; CMI Subgrader(or equivalent);Asphalt Plant;Front Endloader; Scraper;Bulldozer;Push Cat;Tractor Pulling Scraper;Sideboom Tractor; Churn or Rotary Drill;Trenching Machine(Cleveland 80 or similar capacity);Asphalt Laydown; Asphalt Screed;Asphalt Heater-Planer Unit;Asphalt Roller;Self-propelled Elevating Grader or similar machine;Spreader(Concrete);Horizontal Boring Machine;Mechanics-Welders;Group Equip. Greaser;Concrete Pump;Self-propelled Curb Machine
GROUP 2 - Concrete Curb Breaking Machine;Concrete Widening Machine;Paving Breaker;Barber Greene,Haiss Loader or similar machine;Tractor-pulling ripper, disc,sheepsfoot or flat roller;Self-propelled Sheepsfoot Roller;Self-propelled Roller(other than asphalt);Distributor;Screening & Washing Plant;Self-propelled Vibrating Compactor;Trenching Machine(other than above);Steel Placing Machine;Conveyor;Finishing Machine(on concrete);Flexplane; Bullfloat;Form Grader;Water Wagon on Compaction
GROUP 3 - Boiler;Mechanical Broom;Oiler;Farm-type Tractor(pulling disc,harrow or roller);Welding Machine;Pump(other than dredge);Boom & Winch Truck;Compressor;Tank Car Heater(combination boiler & booster);Pumps on Well Points & Deep Wells for dewatering;Truck Crane Combination Driver-Oiler;Concrete Curbing Machine;Safety Boat;Batch Plant,dry;Light Plants;Compressors; Mechanical Heaters;Pumps;Welding Machines;Conveyors

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS - ZONES 6,7,8,9, & 10
GROUP 1 - Power Shovel;Crane;Backhoe(3/4 cu. yd. or larger);Dragline;Dredge Engineer & Leverman;Hoisting Engineer(steel erection);Motor Patrol(finish); Piledriver;Master Mechanic;Sideboom Tractor;Horizontal Boring Machine
GROUP 2 - Central Mix Plant;Paver or Self-propelled Spreader;Tow or Push Boat; CMI Paver,Subgrader or equivalent;Asphalt Plant;Scraper(over 12 cu. yd.); Bulldozer(finish);Push Cat;Mechanics-Welders;Churn or Rotary Drill;Trenching Machine(Cleveland 80 or similar capacity);Asphalt Laydown;Asphalt Screed; Asphalt Heater-Planer;Concrete Pump;Self-propelled Curb Machine
GROUP 3 - Motor Patrol(rough);Front End Loader (3 cu. yd. or over);Scraper (12 cu. yd. & under);Bulldozer(rough);Backhoe(under 3/4 cu. yd.);Asphalt Roller;Group Equip, Greaser;Concrete Curb Breaking Machine;Concrete Widening Machine;Paving Breaker;Barber Greene,Haiss Loader or similar machine; Crawler Tractor(pulling disc, sheepsfoot, ripper or flat roller);Self-propelled Sheepsfoot Roller;Self-propelled Roller;Distributor; Screening & Washing Plant;Self-propelled Vibrating Compactor;Trenching Machine(other than above);Steel Placing Machine;Conveyor;Finishing Machine(on concrete); Flex Plane;Bullfloat;Form Grader
GROUP 4 - Boiler;Mechanical;Boom;Oiler;Farm-type Tractor(pulling disc,harrow or roller);Welding Machine;Pump(other than dredge);Boom & Winch Trucks; Compressor;Tank Car Heater(combination boiler & booster);Pumps on Well Points & Deep Wells for dewatering;Truck Crane Combination Driver-Oiler; Concrete Curbing Machine;Safety Boat;Batch Plant,dry;Spreader attachments; Utility Tractor with attachments

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KENTUCKY COUNTY: BOYD
DECISION NUMBER: KY84-1009 DATE: DATE OF PUBLICATION
Supersedes Decision Number KY82-1065, dated October 15, 1982 in 47 FR 46229.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes & apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.50	$2.68
BOILERMAKERS	16.35	3.175
BRICKLAYERS & STONE MASONS	15.36	2.54
CARPENTERS	14.93	3.33
CEMENT MASONS & PLASTERERS	17.06	1.05
ELECTRICIANS:		
Wiremen	17.32	3.06+ 3%
Cable Splicers	18.19	3.06+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	17.26	2.59+a
Helpers	12.075	2.59+a
Probationary Helpers	8.625	
GLAZIERS	15.84	1.11
IRONWORKERS	17.23	3.61
LABORERS:		
Group 1	12.57	2.00
Group 2	12.72	2.00
Group 3	12.74	2.00
Group 4	12.77	2.00
Group 5	12.82	2.00
Group 6	13.07	2.00
Group 7	13.27	2.00
Group 8	13.77	2.00
LINE CONSTRUCTION:		
Linemen	18.46	2.35+ 3½%
Cable Splicers	20.31	2.35+ 3½%
Mechanical equipment operators	14.77	2.35+ 3½%
Groundmen	12.00	2.35+ 3½%

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush, Roller, Drywall Finishers, Tapers, Mittens or Rags, Paperhangers, Sandblast, Steamcleaning, & Drywall machine operators	$12.76	$3.26
PILEDRIVERMEN	15.32	3.33
PLUMBERS & PIPEFITTERS:		
Area 1 - within a 5 mile radius of 17th St. & Winchester Ave., Ashland, Ky.	15.71	4.60
Area 2 - over 5 miles & within a 15 mile radius of 17th St. & Winchester Ave., Ashland, Ky.	15.91	4.60
Area 3 - over 15 miles & within a 30 mile radius of 17th St. & Winchester Ave., Ashland, Ky.	16.11	4.60
POWER EQUIPMENT OPERATORS:		
CLASS A	14.97	2.18
CLASS B	12.23	2.18
CLASS C	11.46	2.18
ROOFERS:		
New Construction	13.50	.65
Re-roofing	9.30	.65
SHEET METAL WORKERS	16.89	2.89+ 3%
SPRINKLER FITTERS	16.47	3.23
TRUCK DRIVERS:		
Group 1	14.90	305.50b
Group 2	15.20	305.50b
Group 3	15.27	305.50b
Group 4	15.32	305.50b
Group 5	15.39	305.50b
Group 6	15.69	305.50b
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

FOOTNOTE 'a': Seven Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, & Christmas Day; Vacation Pay Credit: Employer contribution of 8% of the basic hourly rate for employees with 5 years or more of service, or 6% of the basic hourly rate for employees with 6 months to 5 years of service.

FOOTNOTE 'b': Per month, per employee

DEFINITIONS

LABORERS:
Group 1 - General laborers, carpenter tenders, cement finisher tenders, concrete men, wreckers & wall men, water boys, handlers of empty oxygen & acetylene bottles.
Group 2 - Hod carriers, mortar men, lather & plasterer tenders.
Group 3 - Wrapping, heating, & applying hot & cold tar on all pipes, applying tape on pipes, & operating tester.
Group 4 - Deck hand & scow man.
Group 5 - Jackhammer, power tools (electrical, gas, or air power), burning torch wagon, drill operators, handling of creosote material, signal men, & asphalt rakers.
Group 6 - Rock & powder men.
Group 7 - Sand hog or mucker, & tunnel miners.
Group 8 - Caisson workers

POWER EQUIPMENT OPERATORS:
Class A - Auto Patrol, Batcher Plant, Bituminous Paver, Cable Way, Central Compressor Plant, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Pump, Crane, Crusher Plant, Derrick, Derrick Boat, Ditching & Trenching Machine, Dragline, Dredge Operator, Dredge Engineer, Elevating Grader & all types of Loaders, Hoe type Machine, Hoist (1-drum when used for stack or chimney construction or repair), Hoisting Engine (2-drums or more), Locomotive, Motor Scraper, Carry-all Scoop, Bulldozer, Heavy Duty Welder, Mechanic, Orangepeel Bucket, Pile Driver, Power Blade, Motor Grader, Roller (bituminous), Scarifier, Shovel, Tractor Shovel, Truck Crane, Winch Truck, Push Dozer, High Lift, Fork Lift (regardless of lift height & except when used for masonry construction), All types of Boom Cats, Core Drill, Hopto, Tow or Push Boat, A-Frame Winch Truck, Concrete Paver, Gradeall, Hoist, Hyster, Pumpcrete, Ross Carrier, Boom, Tail Boom, Rotary Drill, Hydro Hammer, Mucking Machine, Rock Spreader attached to equipment, Scoopmobile, KaCal Loader, Tower Cranes (French, German & other types), Hydro Crane, Backfiller, Gurries, Sub-Grader.
Class B - All Air Compressors (over 900 CFM), Bituminous Mixer, Joint Sealing Machine, Concrete Mixer (under 21 cu. ft.) Form Grader, Roller (rock), Tractor (50 HP & over), Bull Float, Finish Machine, Outboard Motor Boat, Flexplane, Fireman, Boom type Tamping Machine, Truck Crane Oiler, Greaser on grease facilities servicing heavy equipment, Switchman or Brakeman, Mechanic Helper, Whirley Oiler, Self-Propelled Compactor, Tractair & Road Widening Trencher, Farm Tractor with attachments (except Backhoe, High Lift & End Loader), Elevator (when used to hoist building materials), Hoisting Engine (1-drum or buck hoist), Fork Lift (when used for for masonry construction), Well Points Grout Pump, Throttle-Valve Man, Tugger, Electric Vibrator Compactor.

DEFINITIONS - CONTINUED

POWER EQUIPMENT OPERATORS: (Cont'd)
Class C - Bituminous Distributor, Cement Gun, Conveyor, Mud Jack, Paving Joint Machine, Roller (earth), Tamping Machine, Tractors (under 50 HP), Vibrator, Oiler, Concrete Saw, Burlap & Curing Machine, Hydro-Seeder, Power Form Handling Equipment, Deckhand Steersman, Hydraulic Post Driver, Drill Helper.

TRUCK DRIVER:
Group 1 - Warehousemen, yardmen, truck helpers, pickups, station wagons, panel trucks, flat-body material truck (straight job), greasers, washers, tiremen, gas pump attendants, dump trucks (up to 5 cu. yd.)
Group 2 - Tank truck (straight), dump trucks (5 cu. yds. & over), agitator or mixer trucks (up to 5 cu. yds.) & flat bed tandems
Group 3 - Winch trucks, fork trucks, distributor trucks (front end & back end), truck crane, monirail truck
Group 4 - Material checker & receiver
Group 5 - Agitator or mixer truck (5 cu. yds. & over)
Group 6 - Tri-axle dump trucks, hydraulic lift tailgate truck & farm type tractors, end dumpsters, turnarockers, ross carriers, athey wagon on similar equipment, A-frame, hydro-lift, dual purpose trucks, semi-dump, semi-trailer (whether flat, rack or pole & hauled or pushed by truck or tractors), semi-tank & lowboy trailers, mechanic

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses 29 CFR 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: KENTUCKY COUNTIES: FAYETTE & FRANKLIN
DECISION NUMBER: KY84-1011 DATE: DATE OF PUBLICATION
Supersedes Decision Number KY82-1066, dated October 15, 1982, in 47 FR 46226.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes & apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.57	$3.07
BOILERMAKERS	18.05	1.175
BRICKLAYERS & STONE MASONS	13.30	1.30
CARPENTERS & SOFT FLOOR LAYERS	13.00	2.35
CEMENT MASONS:		
Commercial	14.00	
Lt. commercial (applies to bowling alley bldgs, banks (20,000 sq. ft. or less), churches, funeral homes, restaurants, fast food outlets, skating rinks, recreational bldgs (20,000 sq. ft. or less), storage (20,000 sq. ft. or less), shopping center (open face - 10 stories or less), retail stores, nursing homes, office bldgs. (20,000 sq. ft. or less), metal bldgs. (20,000 sq. ft. or less), all in plant work	12.50	
ELECTRICIANS	16.16	3%+ 2.95
ELEVATOR CONSTRUCTORS:		
Mechanics	16.73	3.00+a
Helpers	11.71	3.00+a
Probationary helpers	8.365	
GLAZIERS	15.45	b
IRONWORKERS	14.25	4.72
LABORERS:		
Group I	10.15	2.00
Group II	10.55	2.00
Group III	10.75	2.00
Group IV	10.85	2.00
Group V	11.35	2.00
Group VI	11.65	2.00
LINE CONSTRUCTION:		
Linemen & Equipment Operators	17.23	.85+ 8%
Cable Splicers	17.48	.85+ 8%
Groundmen - Truck drivers	13.78	.85+ 8%
Groundmen	12.92	.85+ 8%
MARBLE, TILE, & TERRAZZO WORKERS	12.60	1.30
MILLWRIGHTS & PILEDRIVERMEN	13.50	2.35
PAINTERS:		
Brush, Drywall finishers & tapers, & Paperhangers	10.95	.97
Steeple jack work, window jack work, & work in enclosed buildings over 35' in in height from permanent work area	11.45	.92
Sandblast & Spray	11.70	.92
PLUMBERS & PIPEFITTERS:		
Fayette County	16.68	2.30
Franklin County (West 3/4 of Co., including the City of Frankfurt):		
Pipefitters	17.10	3.22
Plumbers -		
Contracts $100,000.00 or less	11.70	3.30
Contracts over $100,000.00	17.08	3.30
Remainder of Franklin Co.	17.68	2.30
POWER EQUIPMENT OPERATORS:		
CLASS A	14.97	2.18
CLASS B	12.23	2.18
CLASS C	11.46	2.18
ROOFERS:		
Fayette Co.	12.15	1.52
Franklin Co.	12.00	1.75
SHEET METAL WORKERS	17.22	3.75
SPRINKLER FITTERS	16.47	3.23

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WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTE:
a - Seven Paid Holidays: NewYear's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, & Christmas Day; Vacation Pay Credit: Employer contribution of 8% of the basic hourly rate for employees with 5 years or more of service, or 6% of the basic hourly rate for employees with 6 months to 5 years of service.
b - ½ Day Pay (4 hrs.) for Christmas Eve if employee works 4 hours that day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

CLASSIFICATION DEFINITIONS - LABORERS:

Group I - General laborers, water boys, concrete pouring, concrete forms stripping & wrecking, hand digging & backfilling of ditches. clearing of right-of-ways & building sites, wood sheeting & shoring, signalman for concrete bucket, & general cleaning
Group II - All air tool operators, air track drills, asphalt rakers, barco tampers, batcher plant & scale man, chain saw, concrete saw, electric hand grinder, all electric bush & chipping hammers, flagman, forklift operators, form setter (street or highway), gunnite laborers, hand spiker, introflax burning rod, joint makers, mason tenders, pipe layers, plasterer tenders, powderman helpers, power driven Georgia buggies, power posthole digger, railroad laborers, sandblaster laborers, scow man & deck hand, signal man, sweeper & cleaner machines, vibrator operators, walk behind trenching machines, mortar mixer machines, water pumpman
Group III - Gunnite nozzleman & gunnite nozzle machine operator, sand blaster nozzleman, concrete or grout pumpman, plaster pumpman
Group IV - Powderman & blaster
Group V - Caisson Holes (8 ft. & over) pressure & free air Including tools
Group VI - Tunnel man & tunnel sand miner, cofferdam (pressure & free air), sand hog or mucker (pressure or free air)

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS:
Class A - Auto Patrol, Batcher Plant, Bituminous Paver, Cable Way, Central Compressor Plant, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Pump, Crane, Crusher Plant, Derrick, Derrick Boat, Ditching & Trenching Machine, Dragline, Dredge Operator, Dredge Engineer, Elevating Grader & all types of Loaders, Hoe type Machine, Hoist (1-drum when used for stack or chimney construction or repair), Hoisting Engine (2-drums or more), Locomotive, Motor Scraper, Carry-all Scoop, Bulldozer, Heavy Duty Welder, Mechanic, Orangepeel Bucket, Pile Driver, Power Blade, Motor Grader, Roller (bituminous), Scarifier, Shovel, Tractor Shovel, Truck Crane, Winch Truck, Push Dozer, High Lift, Fork Lift (regardless of lift height & except when used for masonry construction), All types of Boom Cats,Core Drill,Hopto, Tow or Push Boat, A-Frame Winch Truck, Concrete Paver, Gradeall, Hoist, Hyster, Pumpcrete, Ross Carrier, Boom, Tail Boom, Rotary Drill, Hydro Hammer, Mucking Machine, Rock Spreader attached to equipment, Scoopmobile, KeCal Loader, Tower Cranes (French, German & other types), Hydro Crane, Backfiller, Gurries, Sub-Grader.
Class B - All Air Compressors (over 900 CFM), Bituminous Mixer, Joint Sealing Machine, Concrete Mixer (under 21 cu. ft.) Form Grader, Roller (rock), Tractor (50 HP & over), Bull Float, Finish Machine, Outboard Motor Boat, Plexplane, Fireman, Boom type Tamping Machine, Truck Crane Oiler, Greaser on grease facilities servicing heavy equipment, Switchman or Brakeman, Mechanic Helper, Whirley Oiler, Self-Propelled Compactor, Tractair & Road Widening Trencher, Farm Tractor with attachments (except Backhoe, High Lift & End Loader), Elevator (when used to hoist building materials), Hoisting Engine (1-drum or buck hoist), Fork Lift (when used for for masonry construction), Well Points Grout Pump, Throttle-Valve Man, Tugger, Electric Vibrator Compactor.
Class C - Bituminous Distributor, Cement Gun, Conveyor, Mud Jack, Paving Joint Machine, Roller (earth), Tamping Machine, Tractors (under 50 HP), Vibrator, Oiler, Concrete Saw, Burlap & Curing Machine, Hydro-Seeder, Power Form Handling Equipment, Deckhand Steersman, Hydraulic Post Driver, Drill Helper.

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Part III

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers; Advanced Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS 62035; TSH-FRL 2528-7]

Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA issued a final rule which was published in the **Federal Register** of August 25, 1982 (47 FR 37342) that, among other provisions, authorized the indefinite use of certain electrical transformers containing polychlorinated biphenyls (PCBs) (PCB Electrical Use Rule). Although EPA had knowledge prior to August 25, 1982 of a major fire-related incident in Binghamton, New York involving a PCB-Transformer, EPA believed that fires involving this equipment were rare, isolated incidents. Thus, EPA did not consider the risks posed from fires when EPA made its determination that the continued use of electrical transformers containing PCBs did not pose unreasonable risks to public health or the environment.

Recent information from a May 1983 fire-related incident in San Francisco, California involving a PCB-Transformer and a September 1983 fire-related event in Chicago, Illinois involving a PCB-Transformer has brought into quesiton EPA's earlier assumption that fire-related events involving PCB-Transformers are rare and isolated occurrences.

The purposes of issuing this Advance Notice of Proposed Rulemaking (ANPR) are to solicit data specific to the risks posed by fires involving electrical transformers that contain PCBs and to solicit data on mechanisms for mitigating or eliminating these risks. Depending upon the results of EPA's analysis of these data, EPA may propose further control measures on the use of this equipment by October 1984.

DATES: Comments on the issues raised in this Notice must be submitted by May 22, 1984.

ADDRESSES: Comments should be submitted in triplicate to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket number OPTS–62035. Comments received in connection with this Notice will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E–107, Environmental Protection Agency, 401 M Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the use of PCBs after January 1, 1978. The statute does, however, set forth two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. Under section 6(e)(2) of TSCA, EPA may allow PCBs to be used in a "totally enclosed manner." A "totally enclosed manner" is defined by TSCA to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant, as determined by the Administrator by rule." TSCA also allows EPA to authorize the use of PCBs in a manner other than a totally enclosed manner if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

EPA promulgated a rule, which was published in the **Federal Register** of May 31, 1979 (44 FR 31514) to implement sections 6(e) (2) and (3) of TSCA. This rule is listed in the Code of Federal Regulations under 40 CFR Part 761. The rule, among other provisions, designated all intact, nonleaking capacitors, electromagnets, and transformers, other than railroad transformers, as "totally enclosed," thus permitting their use without specific authorizations or conditions. The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review a number of provisions of the rule, including the portion of the rule that designated all intact and nonleaking capacitors, electromagnets, and transformers as "totally enclosed." (*Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*. 636 F.2d 1267).

On October 30, 1980, the court, among other things, decided that there was insufficient evidence in the record to support the Agency's classification of transformers, capacitors, and electromagnets as totally enclosed. The court invalidated this portion of the rule, as well as a number of other provisions, and remanded the rule to EPA for further action.

As a consequence of the October 1980 decision, EPA undertook a number of rulemaking actions. The action relevant to the rule which is the subject of today's ANPR was published in the **Federal Register** of August 25, 1982 (47 FR 37342) (hereafter, PCB Electrical Use Rule). This rule amended the May 31, 1979 rule. The August 1982 amendment, among other provisions, authorized the continued use of PCB-Transformers (electrical transformers containing greater than 500 parts per million (ppm PCBs) in facilities involved in the handling of food or feed items until October 1, 1985, and, allowed the use of all other categories of non-railroad electrical transformers containing or contaminated with PCBs for the remainder of their useful lives. In its August 25, 1982 decision, EPA made a determination that authorizing the use of these transformers for the remainder of their useful lives did not present an unreasonable risk to public health or the environment for the following reasons:

1. EPA determined that if it did not authorize the use of PCBs in transformers, the costs to the public and United States industry would be billions of dollars, primarily as a result of the disruption of electrical service. EPA determined that the resulting reduction in risk would not outweigh these substantial costs.

2. EPA determined that the inspection and maintenance programs required under the rule reasonably reduced the exposure risks associated with the use of PCBs in PCB Transformers, and the servicing conditions prevented further PCB contamination of transformers.

3. EPA determined that releases of PCBs to the environment and exposure to humans and biological organisms from mineral oil transformers are minimal. EPA estimated that these transformers contain less than 0.15 percent of all the PCBs used in transformers and release less than one-half of a percent of these PCBs on an annual basis.

4. EPA determined that the costs associated with other risk reduction measures such as accelerated phase-out, reducing the PCB concentration in the dielectric fluid, or providing containment for transformers were not reasonable when compared to the potential reduction in release of PCBs achieved.

In evaluating the risks posed by the continued use of electrical transformers containing PCBs, EPA had considered

the exposure resulting from leaks and spills of PCB-containing dielectric fluid as constituting the principal route of release of PCBs to the environment for this equipment.

There was, however, an indication that fires involving transformers also could be responsible for the release of PCBs. For example, on February 5, 1981, in the Binghamton State Office Building in Binghamton, New York, a PCB-Transformer was involved in a fire in the basement of the building. Monitoring, completed after the fire, indicated the distribution of PCBs, polychlorinated dibenzofurans, and polychlorinated dibenzodioxins throughout the interior of the building. The distribution of PCBs (and suspected oxidation products) throughout the 18-story building occurred via two vertical ventilation shafts that ran the length of the building and opened into the transformer vault in the basement. At the time, however, EPA believed that fires involving transformers that contain PCBs were rare, isolated events. Thus, although EPA made determinations that the use of electrical transformers containing PCBs did not pose unreasonable risks to public health or the environment, EPA did not directly consider the public health and environmental risks posed from fire-related events. EPA also did not evaluate the cost of implementing risk reduction measures to mitigate the risks posed by fires involving this equipment or factor into its economic assessment certain now-identified costs associated with the continued use of these transformers, principally, the high costs of clean-up following these incidents. These costs reduce the benefits associated with the continued use of these transformers.

After promulgation of the 1982 rule, additional information came to EPA's attention that indicated that PCB-Transformer fires may occur more frequently than previously expected, and that PCB-Transformer fire hazards are not restricted solely to transformers located inside buildings. On May 15, 1983, in the One Market Plaza complex in San Francisco, California, a PCB-Transformer was involved in a smoky transformer vault fire. Monitoring completed after the fire indicated the presence of PCBs and polychlorinated dibenzofurans (PCDFs) in soot from this fire. Although the vault housing the transformer was located exterior to the building itself, unsealed conduits from the vault to the basement and outside air intake vents drew the contaminated smoke into the building and allowed for the distribution of the PCBs and polychlorinated dibenzofurans in the ductwork of the building.

The San Francisco incident, and an even more recent incident, in the First National Bank Building in Chicago, Illinois in September 1983, have prompted EPA to consider reassessing its earlier position on the expected frequency of fire-related incidents involving transformers that contain PCBs.

This Advance Notice of Proposed Rulemaking (ANPR) is the Agency's first step in formally assessing the public health and environmental risks posed by fires involving electrical transformers containing PCBs. If EPA determines that the risks posed by fires involving transformers that contain PCBs are sufficiently large, when weighed against the benefits of this equipment and the costs of control measures, then EPA will propose measures by October 1984 to reduce or eliminate these risks.

The purpose of this ANPR, then, is to present certain available information on the risks posed by fires involving transformers that contain PCBs, and, to solicit data in five major areas: (1) The risks posed to human health and the environment in the event of a fire-related accident involving an electrical transformer containing PCBs; (2) the probability of fire-related events occurring that involve electrical transformers that contain PCBs, and factors that may increase this probability; (3) the reactions and mechanisms of reactions involved in the formation of PCDFs and polychlorinated dibenzodioxins (PCDDs) in fire-related incidents involving electrical transformers containing PCBs; (4) the costs and nature of the cost incurred by the owner of a transformer involved in a fire-related event; and (5) the identification of available options for mitigating or eliminating the risks posed by fires involving electrical transformers containing PCBs as well as the costs and benefits associated with those options.

If EPA is not provided with adequate data, especially in the areas of the risks posed in the event of a fire, the probability of these fires occurring, and the costs associated with clean-up following these incidents, EPA will make its regulatory judgments based upon the data set forth in this document. These data indicate that PCB-Transformer fires pose relatively high risks, occur with unknown frequency and can result in relatively high clean-up costs.

II. Transformer Fire Risks

A. Case Studies

A primary source of information on the causes of and circumstances surrounding fires involving transformers containing PCBs are data compiled from three PCB-Transformer fires in Binghamton, New York; San Francisco, California; and Chicago, Illinois. In order to understand better the risks posed by the use of this equipment in the event of a fire, EPA has evaluated each of these incidents, and compared the circumstances surrounding each fire in order to determine what factors increased the risks posed from the fire, and what factors, if any, reduced the risks presented by the fire.

EPA assumes that the risks posed by a fire involving a PCB-Transformer are related to the degree of dispersion of toxic chemicals from the transformer into areas where people may be present. Thus, EPA expects that PCB-Transformer fires in buildings or near buildings may pose greater risks than PCB-Transformer fires in locations such as outdoor electrical substations. The Agency further assumes that the greater the dispersion of contaminants within a building, the greater the potential for exposure of humans to these contaminants, and therefore, the higher the risks. EPA has reached certain conclusions about the risks posed by transformer fires, based on these three case studies.

The three incidents discussed below are the three most well-characterized and well-researched incidents that EPA is aware of. EPA is soliciting similar information on other fire-related incidents involving transformers containing PCBs. A partial list of other less well-known and less well-researched incidents that EPA is aware of appears in Unit III.B. EPA is soliciting additional information on these incidents, as well as information on other incidents not included on this list.

1. *Binghamton, New York.* At 5:30 a.m. on February 5, 1981, a fire occurred in the switchgear adjacent to a PCB-Transformer in the basement mechanical room of the Binghamton State Office Building. This building is an 18-story office tower that was completed in 1973. Power to the building was supplied by two transformers which contained a coolant fluid consisting of 65 percent PCB (trade name Aroclor 1254) and 35 percent mixed tri- and tetrachlorinated benzenes.

Although the city fire departments responded within minutes, they did not enter the mechanical room until the power was disconnected to the

transformers approximately 50 minutes after the fire started. During this period, there was repeated electrical arcing and reports of loud explosions occurring in the mechanical room. Smoke generated by the fire was distributed by convection throughout the building through an open vertical shaft that started in the mechanical room and ran to the penthouse. This concrete block shaft contained the sheet metal duct for the exhaust air from the men's restrooms on all the floors. The shaft was not air tight, and allowed smoke to escape the space between the structural ceiling and the suspended ceiling on each floor of the building. As a result, the entire inside of the building was coated with black soot.

The probable source of the soot was combustion of the materials in the switch gear. The heat of the fire apparently caused a ceramic bushing to crack on one of the transformers, allowing approximately 180 gallons of insulating liquid to drain onto the floor in the vicinity of the fire. Photographs taken shortly after the fire was extinguished showed that the switch gear was completely destroyed, but there was little damage to the transformers. The mechanical room was heavily coated with soot, and puddles of liquid remained on the floor. The heat from the fire was sufficient to damage slightly a structural steel beam that was directly over the switch gear. However, the fire apparently did not spread to any material other than the switch gear itself.

Elevated levels of PCDFs in the soot were reported within a week after the fire. Comprehensive analyses of the soot were performed by Dr. David Stalling of the U.S. Fish and Wildlife Service, Columbia, Missouri, by Dr. Christopher Rappe of the University of Umea in Sweden, and by Dr. Pat O'Keefe of the New York State Department of Health Laboratories. These analyses reported the presence of PCDDs, PCDFs and polychlorinated biphenylenes (PCBPs), although the amounts found varied from sample to sample. Initial analyses of two soot samples by Smith *et al.* (Ref. 1) reported the presence of 2.8 and 2.9 ppm 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) and 124 and 273 ppm 2,3,7,8-tetrachlorodibenzofuran (2,3,7,8-TCDF). A more detailed analysis of a homogenized mixture of soot taken from throughout the building and used in animal feeding studies contained 7,200 ppm PCBs and the following concentrations of various homologs of PCDF: tetra-18 ppm, penta-21 ppm, hexa-2 ppm, hepta-3.5 ppm, and octa-0.74 ppm. Analysis of a single soot sample found 597 ppm total tetra-chlorinated dibenzofuran, 48 ppm 2,3,7,8-TCDF, 1.8 ppm total tetra-chlorinated dibenzodioxins, and 1.2 ppm 2,3,7,8-TCDD. Congener specific analysis of a different Binghamton soot sample found 2,3,7,8 substituted constituents to be the most predominant congeners within each of the levels of chlorination of both PCDFs and PCDDs. Additional sampling data on PCB, PCDF and PCDD levels found following the Binghamton fire, as well as additional information on the circumstances surrounding this incident are presented in the Versar report, "Exposure Assessment: Fires Involving PCB Transformers" (Ref. 1).

The Binghamton State Office Building remains closed to normal use. The building has been extensively cleaned by vacuuming and washing to remove the soot. Analysis of air samples, wipe samples from vinyl walls, and bulk samples of sprayed-on ceiling insulation have demonstrated that the ratio of the various toxic constituents is not constant from one matrix to another, and that the vaporization and redeposition processes are causing a gradual redistribution of the material within the building. Estimates of clean-up costs to date are between $15 and $20 million.

2. *San Francisco, California.* Shortly after 11:00 a.m. on May 15, 1983, a fire started in the sub-basement transformer vault of the One Market Plaza office building complex at the corner of Steuart and Mission Streets in San Francisco. The vault contained three transformers that were filled with Aroclor 1242 coolant liquid. Heavy black smoke issued from the sidewalk grating adjacent to the building for about three hours until the high voltage power to the transformer was interrupted by the utility. During this three-hour period, there was considerable vibration and loud noises occurring in the vault that were described by reporters at the scene as "explosions." No information is available on the size of the transformers, but it was reported that only one transformer leaked, and that after the fire there were 50 to 60 gallons of liquid in the vault, with the floor and walls of the vault caked with black soot and liquids dripping from the vault ceiling. The liquid remaining in the transformer contained 0.127 ppm tetrachlorodibenzofuran (TCDF) and no detectable tetrachlorodibenzo-p-dioxin (TCDD).

Smoke and soot from the transformer vault contaminated the adjacent switch gear room (through the bus duct) and small areas of the adjacent parking garage and workshop areas (through small cracks in the concrete block vault walls). Some of the heavy smoke issuing from the sidewalk grating was apparently pulled into the building through street level air makeup louvers and into the ventilating fans that supply air through the sub-basement, basement, plaza level, and floors 2 through 6 of the Steuart Street office tower. Tests later indicated that the contamination was limited to the basement, the air handling system through floor 6, and the exterior of the building. The upper floors of the Steuart Street Tower receive air from ventilating fans mounted in a penthouse above the 28th floor.

Air samples taken in the vault starting a week after the fire measured 320 to 1500 micrograms per cubic meter PCBs, depending on the rate of ventilation through the vault. (Ambient levels of PCBs in the atmosphere have been measured and range from about 0.1 to 9 nanograms per cubic meter.) The switch gear room adjacent to the vault had air concentrations as high as 98 micrograms per cubic meter before ventilation was started. The San Francisco Department of Public Health restricted access to any area having a level of PCBs in the air in excess of 1 microgram per cubic meter, or surface contamination in excess of 1 microgram PCBs per 100 square centimeters when sampled by wiping with a cloth wetted with octane. Although no samples collected in the offices on floors 2 through 6 were contaminated above these levels, the city requested that the ventilation system not be operated because of the possibility of spreading contamination to these clean areas. Without ventilation, these floors could not be occupied.

Analysis of the soot collected in the transformer vault and in the sub-basement adjacent to the wall of the transformer vault showed the presence of PCBs, TCDFs, and TCDDs. A soot sample taken adjacent to the vault showed the presence of 86,000 ppm PCBs, 28.9 ppm total TCDFs (6.3 ppm 2, 3, 7, 8–TCDF), and 0.324 ppm TCDD (0.059 ppm 2,3,7,8–TCDD). Additional sampling data on PCB, PCDF, and PCDD levels found as a result of the San Francisco fire are presented in the Versar report (Ref. 1).

The available reports on the analytical results from One Market Plaza do not specify the analytical procedures nor, in most cases, the detection limits of the procedures used. However, from a comparison of available information on the contents of the transformer and the amount of fluid spilled, and the levels of contaminants measured, it is apparent that the

conversion of PCBs to PCDFs occurred with about the same efficiency in both Binghamton and San Francisco.

Estimates of clean-up costs to date (provided by the Pacific Gas and Electric Company) are between $15 and $20 million.

3. *Chicago, Illinois.* On September 28, 1983, a fire occurred in a bus bar between a PCB-Transformer and the switch gear in a transformer vault under the plaza on the same block as the First National Bank Building in Chicago, Illinois. Although power to the transformer was cut after about 10 minutes, smoke continued to issue from the sidewalk grating for about 45 minutes. Inspection of the transformers after the fire was extinguished indicated that one of the four transformers in the vault had leaked approximately 15 gallons of coolant consisting of 65 percent Aroclor and 35 percent chlorinated benzenes. The source of the leak was a small hole in the transformer casing that was possibly caused by electrical arcing.

Significant PCB contamination was limited to the vault, the exhaust air ducts from the vault, and to the exterior surfaces of a small building adjacent to the transformer vent. The highest readings outside the vault and its exhaust system were on a window near the vault (497 micrograms per 100 square centimeters) and on an intake air well grille (752 micrograms per 100 square centimeters) and window (398 micrograms per 100 square centimeters). The transformer vault was adjacent to an underground parking garage and shared a ventilating system with the garage and a small adjacent building; however, none of these areas was heavily contaminated.

The First National Bank Building, about one-half block from the vault, was not contaminated. Although one fiberglass filter on an air intake vent on the fourth floor of the First National Bank Building was found to contain about 90 ppm PCBs, nearby filters did not show high levels. The building was evacuated when smoke was seen coming from a window vent; however, the smoke was later identified as the exhaust from an auxiliary diesel generator that started when power was shut off to the transformers.

No analyses were reported for PCDFs or PCDDs in the soot. A number of wipe samples were collected in the First National Bank Building and from the air supply intake near the transformer, but no PCDFs or PCDDs were found.

The First National Bank Building was evacuated at the time of the fire, but reoccupied the following day. Cleaning was limited to the transformer vault, its exhaust system, and the exterior of the small building next to the vault.

B. Conclusions Based on Case Studies

Based upon EPA's evaluation of the circumstances surrounding the Binghamton, New York; San Francisco, California; and Chicago, Illinois fires, EPA believes that fires involving PCB-Transformer present certain risks of exposure of humans and the environment to toxic contaminants such as volatilized PCBs and certain oxidation products of PCBs, including PCDF.

1. *Toxicity of PCBs and oxidation products found in soot.* In earlier rulemakings, EPA has already concluded that, based upon available information, persons exposed to PCBs can develop chloracne; and, that based on animal data, there is a potential for reproductive effects and developmental toxicity as well as oncogenicity in humans exposed to PCBs. Although the effects of chloracne are reversible, EPA does not consider this effect of exposure to PCBs to be insignificant (Ref. 2).

According to the September 12, 1980 Carcinogenic Assessment Group's (CAG's) Risk Assessment on 2,3,7,8-TCDD (Ref. 3), guaged by results of toxicity testing in animals for a variety of effects, 2,3,7,8-TCDD is one of the most toxic chemicals known. This substance was found in soot samples taken following the Binghamton and San Francisco transformer fires. LD_{50} values of 2,3,7,8-TCDD range from 0.6 micrograms per kilogram orally for the male guinea pig to 275 micrograms per kilogram dermally for the rabbit, which would classify this compound as supertoxic (Ref. 4). (The scale of acute toxicity ranges from practically nontoxic to supertoxic.) Deaths typically occur about one week or more after treatment. In chronic and acute oral 2,3,7,8-TCDD toxicity studies on several animal species, the liver, thymus, and spleen have consistently been the target organs. Liver damage, including necrotic and degenerative changes, lipid accumulation, and increased liver weight have been observed in mice, rats, and guinea pigs following 2,3,7,8-TCDD treatment. Atrophy of the thymus and spleen has also consistently been found in laboratory animals. Other effects of 2,3,7,8-TCDD ingestion include suppression of reproductive function in rats and disturbances of the hematopoietic system with occasional hemorrhaging in monkeys, rats, and mice (Ref. 3).

There are several cancer bioassay studies of 2,3,7,8-TCDD: (1) A Dow Chemical Company study (Kociba *et al.*, 1978) in male and female Sprague Dawley rats; (2) the Van Miller *et al.*, (1977) study in male Sprague Dawley rats; (3) the Toth *et al.* (1979) study in Swiss mice; (4) the National Cancer Institute (1980 a, b) studies in rats and mice; (5) the Pitot *et al.* (1980) promotion study in rats; and (6) the Kouri *et al.* (1978) cocarcinogenicity study in mice (Ref. 3).

In summary, according to the September 1980 CAG risk assessment (Ref. 3), carcinogenic responses have been induced in mice and rats at very low doses of 2,3,7,8-TCDD. In addition, 2,3,7,8-TCDD has been shown to be a very potent cancer promoter. These results, together with suggestive evidence in epidemiologic studies, constitute substantial evidence that 2,3,7,8-TCDD is likely to be a human carcinogen. In addition, on the basis of a Dow Chemical Company study on 2,3,7,8-TCDD, it appears that 2,3,7,8-TCDD is a more potent carcinogen than aflatoxin B_1, which is one of the most potent carcinogens known (Ref. 3).

Toxicological testing of polychlorinated dibenzofurans (PCDFs) has been more limited than testing of 2,3,7,8-TCDD. However, in a study designed to evaluate the comparative toxicity of PCBs and PCDFs, in rats, PCDFs were found to be more toxic than PCBs (Ref. 5). In particular, the results of this study indicate that PCDFs produced severe toxic effects on hematologic and thymic functions. In rats fed diets containing polychlorinated dibenzofurans, severe reduction in erythrocyte counts, hematocrit, and hemoglobin concentration occurred, and blood smears indicated hemolytic anemia.

Following the Binghamton fire, several researchers completed toxicological testing of soot samples in guinea pigs. Based on these studies using Binghamton State Office Building (BSOB) soot, EPA has concluded that multiple exposures to soot from PCB-Transformer fires have the potential to product toxicity in the thymus, the hematopoietic system, the salivary gland duct epithelial and, possibly, the liver (Ref. 6).

It is worth noting that thymic atrophy, bone marrow depletion, and diminished body weight gain, all effects of the subchronic administration of the BSOB soot have been routinely demonstrated in acute studies in guinea pigs using PCDFs and PCDDs (Ref. 6). In addition, the group of guinea pigs dosed with 231.1 ppm BSOB soot in he subchronic study exhibited symptoms characteristic of acute exposure to 2,3,7,8-TCDD and 2,3,7,8-TCDF which include skeletal muscle degeneration, fatty changes in

hepatocytes, and degeneration of gastrointestinal tract epithelium (Ref. 6).

One paper stated that the oral LD_{50} of the BSOB soot in guinea pigs is 410 milligrams per kilogram body weight (Ref. 6), which would classify this compound as vey toxic (Ref. 4).

2. *Discussion of formation of oxidation products from PCBs.* There is direct evidence of the formation of PCDFs and PCDDs from heating and burning commercial mixtures of PCBs and diluents. The direct evidence is from: (1) Laboratory experiments published in chemical and other literature, and (2) chemical analyses of materials at the sites where fires were known to involve transformers that contained PCBs. PCBs, PCDFs, and PCDDs were all found in some soot specimens from both the Binghamton and San Francisco fires. (PCDFs and PCDDs were not analyzed for in the soot from the Chicago fire.)

Laboratory studies provide the best available information on the conversion of pure PCBs to PCDFs. In these studies, a number of different PCB congeners and mixtures of congeners have been heated and the resulting materials analyzed for all PCDFs and PCDDs. Since a specific PCB compound reacts to form a limited number of PCDFs, the formation of PCDFs involves intramolecular elimination of three kinds of diatomic molecules, with or without some rearrangement of chlorine atoms on the remaining phenyl rings. From the products obtained in the PCB reactions, the diatomic molecules, hydrogen, hydrogen chloride, and chlorine, are formed from one hydrogen and/or chlorine atom in ortho positions on each of the two phenyl rings. The optimum temperature range for the published laboratory experiments was 600°C. Yields of PCDFs are in the percent range from 550°C to 600°C, but drop off to tenths of a percent at 500°C and 650°C.

The description and characterization of the chemical reactions occurring in a fire in which aroclors (or any other commercial mixtures of many PCB compounds) are burned is far more complex than the laboratory experiments. However, the same reactions observed in the laboratory should also occur in fire situations where the reactants and reaction conditions are similar to laboratory reaction conditions. Since the laboratory reaction that results in the formation of PCDFs from PCBs is intramolecular and an elimination, the effect of lower concentrations of PCBs (such as those present in mineral oil transformers) should have a minimal effect on the reaction rate or product yield at a given temperature. That is, the fact that less PCB is present means only that less total PCDF will be formed since low concentrations alone are not expected to have any effect on the reaction rate, mechanism of reaction, or product yield. There also appear to be few factors present in an uncontrolled fire situation which would cause the total destruction of PCBs and PCDFs or which would present other competing reactions to reduce the yield of PCDFs.

An uncontrolled fire of sufficient temperature (about 600°C) to burn materials containing PCBs can result in the formation of PCDFs as large as a percentage of the level of PCBs originally present in the material. Concentrations would vary with the volume of contained combustion gases or constituents of material containing particulate combustion solids. Although high temperature incineration is used to dispose of PCBs in oil, PCDFs and PCDDs have also been detected following the incineration of PCBs in oil. Incineration of PCBs requires at 1200°C temperature, a two-second residence time, and sufficient oxygen. As explained above, however, laboratory experiments indicate that the reaction temperature for the formation of PCDFs is optimized at around 600°C.

Commercial mixtures of PCBs frequently contain mixtures of chlorobenzenes as well as PCBs. Even "pure" PCB may have low concentrations of chlorobenzenes present as contaminants. Experiments have shown the formation of PCDFs and PCDDs from pyrolysis of mixtures of chlorobenzenes in air. Other chlorinated compounds including chlorophenols were also formed. Amounts of PCDFs ranged as high as tenths of a percent for mixtures of trichlorobenzenes. Tetra- and pentachloro-benzene mixtures formed amounts of PCDFs and PCDDs which were two orders of magnitude smaller than the amounts of these compounds formed by trichlorobenzene. PCDFs and PCDDs may also be formed from the chlorinated phenols observed in the pyrolysis of chlorinated benzenes. The reactions to form PCDFs and PCDDs are bimolecular and the experimental concentrations of chlorobenzenes were high. The reduced concentration of chlorobenzene as a contaminant in commercial uses of PCBs would probably not lead a substantial increases in the amounts of PCDFs and PCDDs formed from burning or heating the PCBs. The notable exceptions are commercial materials using chlorobenzenes as a solvent for concentrated PCBs, i.e., askarels. EPA believes that the PCDD levels found in the Binghamton soot samples resulted from the oxidation of chlorobenzenes. The low level PCDDs found following the San Francisco fire could have been associated with the possible presence of low concentrations of chlorobenzenes in the fluid, from past servicing operations. Information is not available on the products resulting from pyrolyzing chlorobenzene in commercial uses of PCBs, at different temperatures, in the range expected to be formed in uncontrolled burning.

With respect to possible burning or heating of commercial PCB mixtures at low concentrations in mineral oil, the flash point and fire point of the oil might increase the chances of having a fire start, and, once an oil fire starts, it is not unexpected that such a fire would provide suitable reaction conditions for producing PCDFs and PCDDs (if chlorobenzenes are present) from commercial PCBs. The flash points and fire points of both mineral oil and silicone oil could permit the heating of dissolved or dispersed PCBs to temperatures comparable to the temperatures used in published studies of these reactions. Thus, EPA expects that mineral oil equipment and other types of equipment contaminated with PCBs may also pose certain risks in the event of a fire from the perspective of the formation of toxic pyrolysis products.

Compared to mineral oil, the lower flash point and fire point of silicone oils (a potential substitute fluid for retrofilling PCB Transformers) might reduce the chances of having a fire start. But, once a silicone oil fire starts, it is not unexpected that such a fire would also provide suitable reaction conditions for producing PCDFs and PCDDs (when chlorobenzenes are present) from commercial mixtures of PCBs present in the transformers at low concentrations.

EPA is soliciting information concerning the identification and quantitation of residual chlorinated aromatic hydrocarbons, resulting from exposure to open flame burning of commercial formulations of transformer fluids containing PCBs and other chlorinated aromatic hydrocarbons. EPA is also soliciting information on conditions actually present in transformer locations, other than open flames, that can lead to the formation of residual chlorinated aromatic hydrocarbons. EPA is also soliciting information on substitute fluids and the chemical residues present following burning of these materials.

3. *Populations at risk from PCB-Transformer fires.* From its analysis of the three fires in Binghamton, San Francisco, and Chicago, EPA has

identified six populations that may be at risk in the event of a fire involving PCB-Transformers. The first group are persons present in a building or possibly in an adjacent building at the time of a fire. The second group are firemen and other emergency response personnel responding to the fire. The third group are onlookers present during the extinguishing of the fire, and the fourth group are persons involved in the clean-up following the fire. The final two groups are persons returning to the building following clean-up, and, persons exposed to equipment, automobiles, etc. that may have been contaminated during the fire.

In addition to these incidents posing certain risks to persons present in or around buildings involved in these fires, EPA believes that these incidents may also pose risks to other populations and to the environment. Specifically, depending upon the location and frequency of these incidents, EPA believes that the discharge of contaminated water (used to contain these fires) containing PCBs, PCDFs, and PCDDs into the water system could pose certain risks to other population groups as well. EPA is specifically soliciting data on the risks posed to humans and the environment from the discharge of water used to contain these fires. EPA solicits information on other potential populations that may be at risk in the event of a fire involving a transformer that contains PCBs.

4. *Potential for exposure to PCBs and oxidation products from fires.* Monitoring for PCBs, PCDFs and/or PCDDs was completed after the February 5, 1981 Binghamton fire, the May 15, 1983 San Francisco fire, and the September 28, 1983 Chicago fire. PCB contamination was found in all three incidents, and PCDFs and PCDDs were identified in soot samples from both the Binghamton and San Francisco fires (see Unit II.A. for summary of sampling data).

Sampling data accumulated following the Binghamton fire clearly indicates the potential for exposure to PCBs, PCDFs, and PCDDs by firemen, building occupants, and others in the vicinity of a PCB-Transformer fire. Sampling from the San Francisco fire also supports a determination that PCB-Transformer fires pose certain risks of exposure to PCBs, PCDFs, and PCDDs.

EPA solicits additional data on PCB, PCDF, and PCDD levels measured following PCB-Transformer fires.

5. *Factors that appear to increase risks posed by fires.* From EPA's preliminary analysis, it appears that PCB-Transformer fires may pose high risks when they occur near or inside buildings that when they occur in outdoor locations such as electrical substations. From this preliminary analysis, it also appears that one of the primary factors that contribute to the risks posed by fires involving transformers that contain PCBs in buildings in the presence of ventilation shafts or ductwork in the vicinity of a transformer that is involved in a fire. In both Binghamton and San Francisco, ventilation equipment or ductwork in the vicinity of the transformers significantly contributed to the dispersion of PCBs and certain oxidation products, including PCDD and PCDF into the building.

A second factor that appears to increase the risks posed by fires involving PCB-Transformers is the failure of protective devices such as circuit breakers to interrupt the flow of electricity into a transformer. In both Binghamton and San Francisco, there is evidence that suggests that power continued to be provided to these transformers for some time after the initial malfunction. There is speculation that this factor contributed to the formation of additional toxic pyrolysis products, by creating excess heat and other conditions conducive to the formation of these oxidation products.

A third factor that appears to increase the risks posed by fires involving PCB-Transformers if firemen being unaware that they are responding to a fire involving a PCB-Transformer. In both Binghamton and San Francisco, there is evidence to suggest that the firemen who initially responded to the fires were not aware that PCB-Transformers were involved. Thus, these firemen may not have followed certain precautions that might be considered to be appropriate given the potential risks posed in the course of extinguishing such a fire. For example, filmed accounts of the San Francisco fire indicate that heavy black smoke poured out of the underground sidewalk vault housing the PCB-Transformers. These same filmed accounts indicate that respiratory protection was not used by firemen present above the transformer vault during their response to the fire. Further, these filmed accounts also indicate the presence of several similarly unprotected civilian onlookers in the area during the extinguishing of the fire.

A related factor that may be relevant to the degree of risk posed by fires involving PCB-Transformers is the type of building in which the transformer is located. EPA believes that PCB-Transformer fires in office buildings and shopping malls may pose greater risks to the public, because of the concentration of people normally present in these types of buildings. Fires involving PCB-Transformers at industrial facilities may pose lesser risks, because fewer persons are generally present, and EPA expects that these transformers are often in places that are more open, where any malfunctions would be rapidly identified. EPA solicits comments on the relative risks posed by transformers located in office buildings, shopping malls, hotels and motels versus transformers located in industrial facilities or electrical substations.

Finally, EPA believes that there is one other factor that may increase the risks posed by PCB-Transformer fires. This factor is the lack of knowledge on the part of many persons, including firemen and other emergency response personnel, State and local authorities, and persons occupying these buildings about the potential risks posed in the event of a fire involving transformers that contain PCBs. In Binghamton, San Francisco, and Chicago, little structural damage occurred to the buildings as a result of these fires. For the most part, damage was limited to smoke damage. In these cases, a conscious decision was made by authorities at the scene to analyze for the presence of PCBs and certain oxidation products before allowing re-occupancy. Without this decision on the part of authorities present at the scene of other similar fires, it is possible that these other buildings may have been prematurely re-opened for occupancy.

Part of the reason for this general lack of knowledge about the risks posed in the event of PCB-Transformer fires may be the lack of a coordinated effort to accumulate information on similar fires when they occur. Currently, there is no EPA requirement that fires involving PCB-Transformers be reported to the Agency. EPA solicits comments on the benefits of maintaining an EPA PCB-Transformer Fire Reporting system as well as comments on other mechanisms for informing people of the hazards posed by these incidents.

EPA also solicits information from knowledgeable parties on its analysis of what factors increase the risks posed by fires involving PCB-Transformers as well as comments on other factors present during the Binghamton, San Francisco, and Chicago fires (or other fires) that may have increased the risks posed by these fires.

6. *Factors that appear to have decreased the risks posed by fires.* EPA believes that other factors may exist that, in contrast to the factors listed above, limit the risks posed by PCB-Transformer fires. That is, although the Binghamton and San Francisco fires are

considered to pose certain risks, both of these incidents had the potential to pose much greater risks. For example, one factor that limited the risks associated with the fires in Binghamton and San Francisco was the time of the fires. Both fires occurred during periods when these buildings were, for the most part, unoccupied. In contrast, the Chicago fire in September 1983 occurred in the First National Bank Building during a period of high occupancy. However, in this incident, power to the transformer was cut after about ten minutes. In Binghamton and San Francisco, the transformers remained energized for 50 minutes and three hours, respectively.

EPA is soliciting information on other factors that may have mitigated the risks posed by fires involving PCB-Transformers.

C. Clean-Up Costs Following PCB Transformer Fires

Given the well-established toxicity of PCBs, and the presence of materials that are more toxic than PCBs in the soot from a fire involving a PCB-Transformer, owners of PCB-Transformers involved in PCB-Transformer fires have invested up to $20 million each to ensure the safety of persons returning to occupy these buildings. For a full analysis of measures taken as part of the clean-up of the Binghamton fire, see "The Binghamton State Office Building Clean-up: a Progress Report Update, 1983" (Ref. 7), and "Investigation of the Contamination Remaining in the Binghamton State Office Building Following Completion of Preliminary Clean-up, October 20, 1982" (Ref. 8). These costs, for the clean-up and removal of contaminated materials containing PCBs, PCDFs, and PCDDs found after these incidents can be factored into the economic analysis of the benefits of the continued use of PCB-Transformers. Earlier analyses of the benefits of the continued use of these transformers, completed in support of the August 25, 1982 PCB Electrical Use Rule, did not take into consideration the costs of clean-up in the event of a PCB-Transformer fire.

In Unit V of this Notice, EPA has presented preliminary estimates of the costs of clean-up in combination with estimates of the probability of such an occurrence, and preliminary estimates of the costs of various control measures designed to mitigate or eliminate the risks posed by PCB-Transformer fires.

III. Probability of Fires Occurring Involving Transformers That Contain PCBs

A. The Number and Location of Transformers Containing PCB's

1. *Data contained in the August 25, 1982 rulemaking record.* Transformers are used extensively by electric utilities and other industries to transmit and distribute electric power efficiently. Some transformers designed for use with PCBs contain between 60 and 70 percent PCBs; others, designed to contain mineral oil dielectric fluid are contaminated with PCBs from past servicing and manufacturing activities.

An estimate of the number of utility owned PCB-Transformers was previously provided to EPA via an Edison Electric Institute and Utilities and Solid Waste Advisory Group (EEI/USWAG) survey of the utility industry. These data were presented in tabular form in the Proposed PCB Electrical Use Rule, published in the **Federal Register** of April 22, 1982 (47 FR 17426). In the August 25, 1982, PCB Electrical Use Rule, EPA used these data, in combination with existing data from an earlier rulemaking to estimate the total number of PCB-Transformers in service and to estimate the distribution of these transformers among utility and non-utility owners.

In the August 25, 1982 PCB Electrical Use Rule, EPA estimated that the utility industry owned approximately 39,000 in-service PCB-Transformers. EPA estimated that 22,469 of these transformers are located in non-substation locations, such as in and around buildings and industrial facilities. The 39,000 transformers represent about one-third of all PCB-Transformers in service. EPA estimated that about 90,000 PCB-Transformers are non-utility owned transformers. EPA also estimated that there are over 20 million mineral oil transformers in the electrical utility industry and about five million in all other applications. These mineral oil transformers may contain relatively low level PCBs (less than 500 ppm PCBs) as a result of contamination from past servicing activities.

2. *New information on PCB-Transformers.* In late September 1983, a major building owner in the United States, the Equitable Life Assurance Society of the United States (Equitable Life Assurance), approached EPA with information on PCB-Transformers present in its buildings. The survey conducted by Equitable Life Assurance indicates that of the over 500 buildings owned by this corporate building owner, approximately 36 sites are serviced by about 277 PCB-Transformers. Fifteen of these sites are office buildings, 13 are shopping malls, 5 are industrial facilities, and 3 are hotels or motels. Over 80 percent of the PCB-Transformers listed in this limited survey are owned by utilities (Ref. 8).

EPA believes that the estimates of the number of in-service PCB-Transformers used in the August 25, 1982 rule are still valid today. However, in order to evaluate fully the hazards posed by fires involving transformers containing PCBs, EPA needs more detailed information on PCB-Transformers. The data needed include data on: (1) The types of buildings in which PCB-Transformers are used, (2) the number of PCB-Transformers used in each building, (3) the ages of the transformers, (4) the ages of the buildings, (5) the location of the PCB-Transformers serving the buildings, and (6) the ownership of the PCB-Transformers. EPA solicits information from other building owners similar to that provided by Equitable Life Assurance, as well as from State and local municipalities.

EPA also solicits information on the costs of requiring PCB–Transformer owners to report to EPA the number and locations of PCB–Transformers.

B. Results From a Survey of EPA Regional Offices

In October 1983, EPA conducted a telephone survey of its regional offices across the United States in an attempt to obtain additional information on the frequency of fire-related events involving transformers that contain PCBs (Ref. 10). From this informal survey, EPA learned that in the period from February 1981 through September 1983, there were at least 15 fire-related incidents involving transformers that contained PCBs (this includes the Binghamton fire, the San Francisco fire, and the Chicago fire).

EPA uses the term "fire-related incident or event" because in many cases it is not clear whether an actual fire occurred in the vicinity of the transformer. However, there appears to be a full spectrum of fire-related events that can occur in the vicinity of a transformer. EPA believes that minor arcing with no apparent volatilization of PCBs or formation of oxidation products is at one end of the spectrum and a Binghamton-like event is at the other end of the spectrum. It is not clear whether conditions short of a Binghamton or San Francisco situation can also lead to the volatilization of PCBs and the formation and/or distribution of toxic oxidation products of PCBs. EPA solicits data on what other fire-related conditions, short of the

conditions present during fires like Binghamton or San Francisco, can also lead to the volatilization of PCBs and the formation and distribution of PCDFs, PCDDs, and other toxic oxidation products.

According to the results of this telephone survey, there were two fire-related incidents in region I (both in Boston, Massachusetts), three incidents in Region II (in New Jersey, Albany, New York, and Binghamton, New York), two incidents in Region IV (in Clearwater and Miami, Florida), one incident in Region V (in Chicago, Illinois), one incident in Region VI (in Corpus Christi, Texas), one incident in Region VII (in Kansas City, Kansas), two incidents in region VIII (in Denver, Colorado), and four incidents in Region IX (in California) (Ref. 10).

Thus, in a two-year period, without any formal EPA mechanism that required the reporting of fires involving transformers containing PCBs, fifteen incidents were reported to EPA regional offices. Detailed information on all of these incidents is not readily available. In many cases, monitoring for the presence and distribution of PCBs and pyrolysis products does not seem to have been undertaken.

The causes of these 15 fire-related incidents are also not always known. When causes were mentioned by survey respondents, they included: (1) Shortages in bus-bars, (2) switchgear malfunctions, (3) electrical shorts or arcing of the transformer, and (4) high voltage cable burning. One of the more disturbing incidents described by one of the regions was a case in which refuse present in the vicinity of a transformer caught fire as a result of sparks from an arcing transformer. The fire itself began in the refuse beneath the transformer, and, it eventually caused the rupture of the transformer casing.

EPA solicits additional data from knowledgeable parties on the circumstances surrounding the fire-related incidents described above. EPA also solicits information on the circumstances surrounding other incidents that EPA may not be aware of, especially information on the causes of the fires and the information and distribution of contaminants.

C. Other Estimates of Fire Frequency

Informal discussions between EPA representatives and representatives of the General Services Administration (GSA), regional fire departments, and the National Fire Administration have yielded some preliminary estimates of the frequency of fire-related incidents involving PCB-Transformers. EPA has obtained the following informal estimates: 3–4 fire-related incidents per 1,000 PCB-Transformers per year and 2–3 fire-related incidents involving PCB-Transformers per fire department per year.

If one assumes that there are 140,000 PCB-Transformers in service (as estimated by EPA in the August 25, 1982 PCB Electrical Use Rule), then, 3–4 fire-related incidents per year per 1,000 transformers would yield an estimate of between 420 and 560 fire-related incidents per year. If one assumes that all non-substation PCB-Transformers (114,469) are located in or around buildings, then, 3–4 fire-related incidents per year per 1,000 non-substation transformers would yield an estimate of between 342 and 456 PCB-Transformer fire-related incidents per year in buildings.

If one assumes that there is an average of 10 major fire department jurisdictions per State, and a total of at least 510 jurisdictions in the United States, then, a 2 or 3 fire-related transformer incidents per fire department yields an estimate of between 1,020 and 1,530 fire-related PCB-Transformer incidents per year.

In addition, from data collected in Finland on PCB-Transformer fires, the Director General of the Finnish Institute of Occupational Health (FIOH) estimated that there may be as many as 1,120 such incidents in the United States each year. This is based on the assumption that the frequency of fire-related events in the United States would be the same as that in Finland. EPA has contacted the Director General of FIOH to obtain additional data on the basis of his estimates.

Information compiled from the National Fire Incident Reporting System (NFIRS), a computerized data base managed by the National Fire Administration, indicates that there were 1,405 transformer fires in calendar year 1982. These data are not, however, specific to PCB-Transformers. EPA is in the process of obtaining access to this data base for purposes of determining the percentage of these fires that involved PCB-Transformers.

D. Range of Estimates of the Frequency of PCB-Transformer Fires

EPA has developed a range of preliminary estimates on the frequency of fire-related incidents involving PCB-Transformers. The lowest estimate is eight per year based on reports to EPA. The highest preliminary estimate, 1,530 fire-related incidents per year, is arrived at by assuming that fire departments throughout the United States respond to an average of 3 PCB-Transformer fire-related incidents each, per year.

Other preliminary estimates include: 560 incidents per year (assumes 4 fire-related incidents per year per 1,000 PCB-Transformers), 1,120 incidents per year (assumes probability of a fire in the United States is equal to the probability of a fire in Finland), and 1,405 incidents per year (assumes all transformer fires reported to the NFIRS are PCB-Transformer fires).

EPA solicits data on the validity of the estimates provided above, as well as data to support other estimates of the frequency of fire-related incidents involving electrical transformers that contain PCBs.

IV. Benefits of PCB Transformers and the Availability of Substitutes

A. Benefits of PCBs

PCBs were orginally used as dielectric fluid in electrical transformers primarily because of their fire-resistant properties. Traditionally, PCB-Transformers were placed in locations where concerns for fire safety were paramount. Even today, PCB-Transformers that are in storage for re-use are placed in or around buildings where fire safety is a concern. Other dielectric fluids, such as mineral oil, have superior electrical properties to PCBs, but their fire resistant properties are not as good as PCBs.

Thus, any consideration of phasing out PCB-Transformers must be accompanied by an analysis of the fire-resistant properties and potential toxicity of combustion products of substitute fluids. In addition, EPA must evaluate the adequacy of the electrical properties of these substitutes.

B. Substitute Transformers

In its August 1982 PCB Electrical Use Rule, EPA concluded that adequate substitutes exist for PCBs in indoor transformer locations. The following units summarize available information on the fire safety and electrical efficacy of substitute transformers, and discusses available information on the toxicity of substitute dielectric fluids in combustion situations.

There are six general types of substitutes for PCBs in transformers: Silicones, high-temperature hydrocarbons (HTH), chlorinated hydrocarbons, non-PCB askarels, fluorocarbons, and mineral oil. The following summarizes data available to EPA on the fire safety, toxicity in the event of a fire, and electrical efficacy of each type of substitute fluid.

There are several physical/chemical properties of substitute dielectric fluids that are used as a guide in determining fire safety. These properties are the

autoignition temperature, the flash point, and the fire point. The minimum temperature at which a fuel bursts into flames when the stimulus is thermal is referred to as the autoignition temperature. The temperature at which first flames appear from a free radical source such as an arc, spark, or flame is referred to as the flash point. The fire point is a slightly higher temperature at which flames are sustained. Currently, the National Electrical Code requires a minimum fire point of 300°C for unvaulted electrical transformers.

The property of having a fire point higher than 300°C allows classification of fluids as "less flammable transformer fluids" by Factory Mutual Research Corporation (FMRC). During the past few years, FMRC, with the assistance of industry and government, has developed a philosophy for hazard reduction, performed experimental and theoretical research, and has issued a test sequence for recognition of less flammable transformer fluids.

The first requirement of the FMRC is that the fluid have a fire point of at least 300°C. This temperature is sufficiently high to afford resistance to small ignition sources, such as matches, but is still low enough to be met by several classes of commercial fluids, including silicone oil.

The next requirement is that the transformer be located within a dam that is at least four times the area of the transformer tank and is deep enough to contain all the fluid in the event of a spill. Should the fluid become ignited, and it is assumed that it will be, and become fully involved in flames, this insures that the flames will not spread along the floor.

The final requirement is a maximum allowable rate of convective heat release. In a nonflammable building with nonflammable contents, the risk of extensive fire loss is mainly to the structure itself. If the ceiling over the fire is overheated, collapse of the roof could occur. Heat release rates have been measured by FMRC for several fluids.

1. *Silicones.* Silicones refer to a family of relatively inert liquid organosiloxane polymers used as electrical insulation. Although silicone-filled transformers have been used since 1972, in the last five years, their use has increased significantly. They are superior to mineral oil and non-PCB askarels in thermal stability and, unlike mineral oil, will not degrade to form sludge. They also have fire points above 300°C.

Combustion of silicones, whether by arc-induced explosion or spray mist ignition, produces fluocculant silicone dioxide particles and globules of silica-gels. Breakdown products during arcing in the absence of oxygen are silicone dioxide, hydrogen, and hydrocarbons. Water, carbon dioxide, and carbon monoxide are also produced in the presence of oxygen. Silicone fluids are self-extinguishing when burned in a pool, since a crust is formed which smothers the flames.

Silicone transformer fluids also have some disadvantages. They absorb moisture from the air very rapidly and extreme care must be taken to transfer the fluid without contact with the atmosphere in order to maintain proper electrical properties. Product literature from one silicone-fluid manufacturer roughly estimates that at 100°C, silicone fluids will circulate 5 or 6 times more slowly than askarel or mineral oil. This slower rate of circulation may have implications on the ability of the fluid to dissipate heat.

2. *High-temperature hydrocarbons (HTH).* EPA uses the term HTH to refer to mineral oils with a fire point higher than 300° C. This category of fluids includes high temperature esters that are primarily used in railroad transformers. The primary advantages of HTHs are high fire point, low toxicity, biodegradability, and the long usage history compared with other transformer oils. The higher fire point of HTH fluids mitigates somewhat the fire hazard normally associated with the use of mineral oil in indoor locations.

HTHs are refined from paraffinic-type base oil. Breakdown products from complete combustion during arcing in the absence of oxygen are hydrogen, carbon, and hydrocarbons. Products produced in the presence of oxygen include water, carbon dioxide, and hydrocarbons. Data are not available on the products of incomplete combustion of HTHs.

Ester HTHs are used primarily in railroad transformers or where transformers must start up under very cold conditions. Because there cost is higher than other HTHs and they offer no real advantages in indoor locations, it is likely that the paraffinic HTHs will be the materials of choice for these uses.

The viscosity of at least some HTHs decreases more rapidly than other transformer fluids under the action of increased temperatures associated with overloading. This property allows greater cooling during overload conditions.

The primary disadvantage associated with the use of HTHs is that they have a higher heat release rate than other substitutes. This mean that the HTHs will burn at over twice the temperature of silicone fluids, thus, potentially causing more damage in an indoor fire.

Another disadvantage of HTHs is the increased viscosity compared with that of mineral oils. This higher viscosity at normal operating loads causes slightly higher operating temperatures and could possibly shorten the life of the transformer.

3. *Chlorinated hydrocarbons.* Chlorinated hydrocarbons refer to a group of chlorinated aliphatic hydrocarbons. The primary chlorinated hydrocarbon being considered for use as a electrical insulating fluid is perchloroethylene. The primary advantage of perchloroethylene is its nonflammability.

Breakdown products from complete combustion during arcing include hydrogen, chloride, carbon, carbon monoxide, carbon dioxide, and water. Data are not available on the products of incomplete combustion of chlorinated aliphatic hydrocarbons.

4. *Non-PCB askarels.* Non-PCB Askarel is a generic term for a group of synthetic, fire-resistent, chlorinated aromatic hydrocarbons (chlorobenzenes) used as electrical insulating fluid. The primary advantages of the non-PCB askarels are their nonflammability and lower costs compared to HTHs and silicones. These fluids are treated the same as PCB-askarels in the National Electrical Code.

As mentioned in Unit II.B.2. of this Notice, however, experiments have shown the formation of PCDFs and PCDDs from the incomplete pyrolysis of mixtures of chlorobenzenes in air. Amounts of PCDFs ranged as high as tenths of a percent for mixtures of trichlorobenzenes.

5. *Fluorocarbons.* Fluorocarbons (specifically Freon 113) are being tested for use as a transformer fluid. EPA is soliciting information on the fire safety, electrical efficacy, and toxicity of freon fluids in fire situations.

6. *Mineral oil.* Mineral oil is a refined mineral insulating oil to which additives such as oxidation-inhibitor have been added. It is used in the vast majority of outdoor transformers.

If fire safety were not a consideration, mineral oil-filled transformers would probably be used in all applications. Mineral oils costs less than PCBs, have better heat transfer properties, are considerably lighter in weight, and form noncorrosive products under conditions of electrical arcing.

The major disadvantage of mineral oil is its flammability due to a low flash point. If arcing occurs, the complete combustion breakdown products are hydrogen, methane, other hydrocarbons, carbon monoxide, and water. Data are not available on the products of

incomplete combustion of mineral oil. The National Fire Code requires, with some exceptions, that oil-insulated transformers installed indoors be placed in vaults. Because of the cost of installing tranformers in vaults, this is a disadvantage of mineral oil transformers.

As concluded in EPA's August 25, 1982 PCB ELectrical Use Rule, EPA believes that adequate substitutes exist for PCBs in indoor transformer locations from the perspective of fire safety and electrical efficacy. EPA is soliciting information, however, on the toxicity of substitute transformer fluids in combustion situations. Specifically, EPA is soliciting data on the products of incomplete combustion of substitute dielectric fluids.

C. Retrofilling PCB Transformers

1. *Introduction.* Two general types of substitutes for PCBs in transformers stand out as the best retrofill candidates. These fluids are silicones and high temperature hydrocarbons (HTH). The principal questions to be considered are the cost of retrofill versus the value of the remaining life of the transformer and the qualification of the fluid as "less flammable" for insurance purposes. Other fluids, such as chlorinated hydrocarbons, fluorocarbon, and mineral oil, may be used in new transformers but are inappropriate for retrofilling because the design of the PCB-Transformers does not fit the properties of the fluids.

2. *Silicones.* There are six silicone fluids sold by six different companies for use as dielectric fluid. Four of the six fluids have been approved by Factory Mutual as "less flammable" fluids. Silicones have a higher viscosity than PCBs and are therefore not quite comparable as a coolant. For this reason, it is possible that transformers retrofilled with silicone would have to be derated. According to one silicone fluid manufacturer, if the transformer were fully loaded, a derating not exceeding five percent could be necessary.

It has been mentioned in the literature that a leaking problem could be created because silicone fluids are not compatible with silicone rubber gaskets and the coefficient of expansion of silicone fluids is 50 percent greater than that of PCBs. In actual practice, however, the silicone gaskets are replaced during retrofilling. Further, even though the coefficient of expansion is greater than that for PCBs, the greater solubility of the filler gas (nitrogen) in silicone eliminates that expected increase in pressure.

Experience with retrofilling PCB-Transformers since the issuance of the August 25, 1982 PCB Electrical Use Rule indicates that retrofilling with silicones to reclassify transformers as non-PCB is not practical at this time. In all, only one transformer retrofilled with silicone fluid has been able to reach and maintain levels under 50 ppm. Companies contacted during the past few months have all agreed that retrofilling to reach and maintain less than 50 ppm PCBs is not cost-effective. However, most thought that retrofilling to maintain levels under 500 ppm would be cost-effective in many cases.

3. *HTHs.* There are six HTH fluids sold be five companies that may be used as transformer dielectric fluids. There are also two products sold by two other companies that when mixed with other products may be used as HTH transformer fluids. Three of the six fluids are paraffinic-based oils and three are esters. As mentioned earlier, the three esters are more specialized for use in railroad transformers.

The other three fluids are more viscous than the silicones at lower temperatures, but thin more rapidly at higher temperatures. According to an HTH manufacturer, this property allows the transformers to be retrofilled with HTH without any derating. At lower normal load temperatures, however, the transformers do run hotter. These fluids are completely compatible with the materials that make up PCB-Transformers, and they are soluble in PCBs. Two of these fluids are approved by Factory Mutual as "less flammable transformer fluids," and the fire point of the third is over 300° C.

As with silicones, it does not seem practical to retrofill to maintain PCB concentrations under 50 ppm. However, it is possible and cost-effective in many cases to maintain concentrations under 500 ppm. The cost variables are about the same as for silicone fluids, except, HTH fluids require annual testing and possible filtering to remove moisture or particulates.

Because the paraffinic HTHs have high convective and radiant heat release rates, the owner's insurance company may recommend more stringent installation requirements.

EPA is soliciting comments on the information provided above pertaining to utilities' experience with retrofilling, and the ability practically to reduce PCB concentrations to below 50 ppm by retrofilling.

V. Regulatory Options for Reducing Risks

A. Preliminary Cost Effectiveness Analysis of Alternative Regulatory Options for PCB-Transformers

1. *Clean-up costs.* There are two categories of clean-up costs that EPA considered in evaluating the cost-effectiveness of various options for PCB-Transformer phase-out. The first category is the clean-up of spills from transformers. In its August 25, 1982 PCB Electrical Use Rule, EPA assumed that 0.2 percent of PCB Transformers failed each year, and that 47.7 percent of these failures resulted in spills. EPA assumed that an average of $6,540 was spent per year per spill.

The second category of clean-up costs is the costs associated with the clean-up of catastrophic failures. For purposes of the following analysis, EPA assumes a catastrophic failure rate of 0.01 percent per year, and that clean-up costs are $20 million per incident. These costs were not factored into the Agency's economic analysis completed for the August 25, 1982 PCB Electrical Use Rule. EPA presents a range of estimates of the probability of catastrophic failures in Unit III.C. These probabilities range from 0.0069 percent per year (about 8 incidents per year) through 1.34 percent per year (about 1,530 incidents per year). (Additional tables (that incorporate lower probabilities of catastrophic fires) are presented in the preliminary cost-effectiveness analysis completed for this ANPR (Ref. 11).)

EPA's estimate of clean-up costs associated with catastrophic events was derived from estimates provided from the Binghamton and San Francisco incidents. Further, in the analysis presented below, EPA assumes that little cost is normally associated with clean-up following non-PCB transformer fires in cases where little structural damage occurs to the building involved in the fire. EPA is soliciting data on the costs associated with clean-up following fires in transformers that do not contain PCBs.

2. *Comparison of clean-up costs versus phase-out costs.* The following table uses a population of 114,469 units (EPA's estimate of the number of non-substation PCB-Transformers) and an estimate of equipment life of 30 years, and compares phase-out costs to clean-up costs avoided if phase-out was implemented over a 5-year period, over a 10-year period, and over a 15-year period. EPA did not consider immediate phase-out because several persons indicated that manufacturing capacity was insufficient to allow for this option.

For a full description of the assumptions used in the following analysis, and for a more detailed analysis of phase-out costs versus clean-up costs avoided, see "Preliminary Study and Cost-Effectiveness Analyses of Alternative Regulations for Indoor PCB Transformers, February 1984" (Ref. 11).

TABLE I—PRELIMINARY COST-EFFECTIVENESS OF ALTERNATIVE PCB REGULATIONS FOR PHASE-OUT OF UTILITY-OWNED ASKAREL TRANSFORMERS

Regulation option	Cost [1]	Clean-up costs avoided [1]	PCB release avoided (pounds)
15-year phase-out	[illegible]	$195.1	[illegible],200
10-year phase-out	941.1	[illegible]	[illegible],400
5-year phase out	2,040.2	1,020.9	7[illegible],600

[1] In millions of dollars.

3. *Retrofilling.* EPA has completed a preliminary analysis of the costs of retrofilling PCB-Transformers to reduce PCB concentrations to below 500 ppm. EPA estimates that retrofill costs will range from $20,736 to $32,034 per transformer, depending upon the size of the transformer. These estimates do include the costs of disposal of PCB fluid, but do not include any consideration of a loss of efficiency or derating as a result of the retrofill.

An estimate of the total costs of requiring the retrofilling of all PCB-Transformers (114,469 in service non-substation transformers) to below 500 ppm is about $1.5 billion. This can be compared to an estimate of clean-up costs avoided of about $1.7 billion. This estimate of clean-up costs avoided assumes that retrofilled transformers that contain less than 500 pm PCBs that are involved in fire-related incidents would not result in the formation of PCDFs or PCDDs in sufficient quantities to trigger major clean-up efforts. EPA does not know whether this is a valid assumption. EPA is soliciting data on the potential for the former of PCDFs and PCDDs in PCB-Contaminated transformers.

EPA also completed a preliminary analysis of the costs of retrofilling of PCB-Transformers to reduce the concentration of PCBs to 6 percent. An estimate of the total costs of requiring retrofilling of all non-substation PCB-Transformers to 6 percent PCBs is about $1.3 billion. EPA is also soliciting data on the formation of PCDFs and PCDDs in this category of transformers. For additional information on the costs of requiring retrofiling, see "Preliminary Study and Cost-Effectiveness Analyses of Alternative Regulations for Indoor PCB Transformers, February 1984" (Ref. 11).

4. *Fire hazard inspections.* Following the transformer fire in San Francisco, the owner of the transformer involved in the fire (Pacific Gas and Electric Company (PG&E)) instituted a fire hazard related inspection program for PCB-Transformers. This program consisted of inspecting all network PCB-Transformers on a regular and frequent basis, using new techniques such as infrared sensors to detect potential defects ("hot spots") in the transformers and electrical equipment in the area of the transformers. In addition, for increased fire protection, PG&E installed secondary disconnect switches at PCB-Transformer locations.

EPA believes that completing transformer fire hazard inspections of PCB-Transformer locations may be the initial step in a program to reduce the likelihood of future fires involving this equipment and to mitigate risks associated with these fires should they occur. Other factors considered in a transformer fire hazard inspection might include a consideration of: The age of the transformer and the maintenance history, the location of the transformer, the location of ventilation equipment or ductwork in the vicinity of the transformer, and the presence of combustibles in a transformer vault or near a transformer location.

EPA is soliciting data on the effectiveness and costs of using infrared sensors to identify potentially faulty equipment. EPA is also soliciting data on the effectiveness and costs of other similar technologies, and information on the effectiveness and costs of installing and using secondary disconnect switches exterior to transformer locations. EPA is soliciting comments on its list of factors to be considered in fire hazard inspections, and comments on the ability to reduce the potential for fires by completing fire hazard inspections and instituting appropriate corrective measures. EPA is soliciting information on other factors that should be included in a PCB-Transformer fire hazard inspection, and information on the costs of conducting such inspections.

5. *Fire/smoke control technologies.* PG&E, in addition to completing fire hazard inspections, has committed to sealing off all openings through its network vaults. Presumably, this is being done to reduce the spread of smoke to areas adjacent to the transformer location in the event of a fire. EPA has obtained a preliminary range of estimates of the costs associated with sealing off transformer locations to reduce the spread of contaminated smoke. These estimates range from $2,000 to $5,000 per transformer location (Ref. 11).

In addition to closing off transformer locations through the use of sealants, EPA believes that the use of smoke detectors and other sensors in transformer locations to create an early warning system may be beneficial in mitigating the risks from fires involving transformers. Further, the use of a heat-sensitive or smoke-sensitive baffling system in ventilation ducts exiting the transformer location could reduce the spread of contaminants via this route. For additional information on the economics of implementing these types of risk reduction measures, see "Preliminary Study and Cost-Effectiveness Analyses of Alternative Regulations for Indoor PCB Transformers, February 1984" (Ref. 11).

EPA is soliciting information on available smoke and fire control technologies, their application to PCB-Transformer fire situations, their ability to reduce the risks associated with these fires, and the costs associated with installing these systems.

6. *Reporting of PCB-Transformer fires to EPA.* EPA is soliciting comments on the benefits of instituting a PCB-Transformer fire reporting system within the EPA. EPA believes that specifically requiring the reporting of these incidents would increase the general level of knowledge about how these incidents occur, the circumstances surrounding these incidents, and the nature and level of risks posed by these incidents. EPA is soliciting comments on the costs associated with requiring such reporting, and the benefits to public health from such a system. EPA solicits comments on the mechanics of such a system, including comments on considerations such as: (1) Who would be responsible for reporting the fire, (2) when the report must be filed, and (3) what types of information must be reported.

7. *Registration of PCB-Transformers with fire departments.* PG&E, in a telephone conversation with EPA, indicated that it routinely informs fire departments of the location of PCB-Transformers in the utility system. Representatives of the International Firefighters Association and representatives of fire departments have informally indicated to EPA their desire to see this practice instituted nationwide. EPA believes that the risks posed to firemen and bystanders during PCB-Transformer fires could be significantly reduced if the initial response team is aware that the fire involves a PCB-Transformer, and that there are certain risks associated with extinguishing such a fire.

EPA is soliciting comments on the effectiveness of supplying this information to fire departments from the perspective of reducing the risks posed from these incidents to firemen and bystanders. EPA is also soliciting data on the costs of providing these data to fire department jurisdictions.

B. Utilities That Have Made Decision Voluntarily to Phase Out PCB-Transformers

1. *PG&E.* PG&E has decided to replace its 839 PCB-Transformers in the San Francisco area on a priority basis by December of 1987. According to PG&E, 40 PCB-Transformers in vault locations are to be replaced by June 16, 1984, and 45 PCB-Transformers in 12 high-rise buildings are to be replaced by June 16, 1984. The remaining PCB-Transformers are to be removed by the December 1987 date.

In the interim, PG&E is completing PCB-Transformer fire hazard inspections, sealing openings in vaults, and placing secondary disconnect switches at PCB-Transformer locations.

2. *Florida Power and Light.* Florida Power and Light Company (FPLC) has also committed to replacing its 458 PCB-Transformers. In September 1983, FPLC announced its plans to spend more than $15 million in south Florida over a five-year period to replace this equipment. Details on the priority system for the removal of these transformers was not available to EPA, but, EPA is interested in obtaining this type of information.

3. *Boston Edison.* According to a letter dated August 5, 1983 from Boston Edison Company (BEC) to a property management firm, BEC is in the process of developing programs for the orderly elimination of PCB equipment from their system. BEC indicates that they have already begun the examination of transformer vaults in buildings for purposes of determining what work will be required and when it may be scheduled. EPA has no further details on BEC's decision or on its priority system for the removal of this equipment. EPA is soliciting additional information.

EPA is soliciting information from other utilities or building owners that have made the decision to remove PCB-Transformers from their present locations, and data on the basis for making the decisions to phase out this equipment.

VI. Summary of Data Needs for Proposed Rule

A. Risks Posed by Fires

1. *Number, location, and ownership of PCB-Transformers.* EPA is soliciting information on the types of buildings in which PCB-Transformers are used, the number of PCB-Transformers used in each building, the age of the buildings, the age of the transformers, the location of the PCB-Transformers serving the buildings, and the ownership of the transformers. EPA is also soliciting information on the location of PCB-Transformers other than those present in or directly servicing buildings.

2. *Populations exposed, types of chemicals, and levels of exposure.* EPA is soliciting information on populations potentially exposed to PCBs and PCB-oxidation products in the event of a fire, and the levels of chemicals to which the populations are potentially exposed.

3. *Routes of exposure to PCBs and oxidation products.* EPA is soliciting information on the potential routes of exposure to PCBs and their oxidation products in the event of a fire involving this equipment. EPA is soliciting information on the role of ventilation equipment and ductwork in the dispersion of PCBs and oxidation products from PCB-Transformers involved in fires.

4. *Representativeness of Binghamton and San Francisco data.* EPA is soliciting comments on its analysis of the Binghamton and San Francisco fires and on the representativeness of these fires from the perspective of evaluating the nature of the risks posed when a PCB-Transformer is involved in a fire-related incident.

5. *Information on the risks posed by the fire in Chicago.* EPA is soliciting additional data on the causes of and circumstances surrounding the September 1983 Chicago fire, as well as information on the risks posed from this incident.

6. *Information on other fire-related incidents involving PCB-Transformers.* EPA is soliciting data on other PCB-Transformer fire-related incidents in addition to data on Binghamton, San Francisco, and Chicago. EPA is soliciting data on the time, date, and location of the incident; the cause of the incident; the extent and avenue of smoke travel; the location of ventilation equipment relative to the location of the fire; the type of equipment involved in the incident; the age of the equipment; the type of building in which the incident occurred; the number of people present in the building at the time of the incident; the time elapsed between the beginning of the fire and the response of the fire department; the time required to de-energize the transformer; the effectiveness of the circuit breaker as a protection device in the incident; the potential for the formation of oxidation products such as PCDF and PCDD; levels of PCBs, PCDFs, PCDDs, and other oxidation and pyrolysis products measured in the building following the fire; the nature of any clean-up undertaken following the incident; and, the costs of clean-up following the incident.

7. *Factors that may increase/decrease the risks posed by PCB-Transformers in the event of a fire-related incident.* EPA is soliciting information on factors, such as the failure of protection devices, the location of ventilation equipment, the type of building in which a fire occurs, etc. that may increase the risks posed to humans and the environment from fires involving PCB-Transformers. In addition, EPA is soliciting information on factors that may decrease these risks.

8. *Exposures and risks resulting from contaminated water at fires.* EPA is soliciting comments on exposures and risks that may result from water contaminated at fires. Contaminated water may result from the application of water during firefighting, the rupturing of pipes under high temperatures, and possibly other sources including water from clean-up operations following the fire. Contaminated water may enter sewer systems (both sanitary and storm sewer systems) and may run off directly to surface water. Contamination of sewers, treatment works, sludges and surface water may result. EPA solicits information and data on the distribution of PCBs and other toxic chemicals through such routes, including the mode of distribution and environmental fate; actual or anticipated concentration levels in water, sludge, treatment systems and biota; adverse effects on and continuing risk to humans through drinking water or ingestion of contaminated food; risk to other organisms; threat to the operation of sewage treatment systems; and the costs of clean-up.

B. Frequency of Fire-Related Incidents

EPA is soliciting comments from building owners, fire departments, utilities, and other parties on the accuracy of EPA's nationwide estimates of the frequency of fire-related incidents involving PCB-Transformers. EPA is also interested in data on the frequency of these fires versus the age of the transformers involved.

C. Formation of Reaction Products

1. *The reaction products found following PCB-Transformer fires.* EPA is soliciting information on the types and levels of oxidation/pyrolysis/incomplete combustion products that are found following fire-related incidents involving PCB-Transformers.

2. *The reactions and mechanisms of reactions involved in the formation of reaction products.* EPA is soliciting information on the reactions and mechanisms of reaction involved in the formation of oxidation/pyrolysis/incomplete combustion products from PCB-Transformer fires.

3. *The potential for the formation of reaction products following fires involving PCB-Contaminated Transformers.* EPA is soliciting data on the potential for the formation of toxic reaction products from fires involving PCB-Contaminated Transformers.

D. Costs and Nature of Costs Associated With Clean-Up

EPA is soliciting information on the costs incurred by owners of PCB-Transformers involved in fire-related incidents. These costs include the costs of analysis, the costs of clean-up and removal of contaminated materials, the costs of lawsuits filed by damaged parties, and the costs of replacing the damaged vault and/or transformer(s) following the incident. EPA is also soliciting data on the size of the area cleaned, the levels remaining after clean-up, and other explanatory information on how clean-up money was spent, and why clean-up required the amount of money used.

E. Costs and Benefits of Regulatory Options

1. *Benefits of PCBs.* EPA is soliciting specific information concerning whether transformer fire incidents have been reduced over the past 40 years due to PCB usage, whether this usage has made a significant impact on reducing the dollar costs from building fires, and whether such usage has resulted in any appreciable saving of human life.

2. *Substitute transformers.* EPA is soliciting information on the toxicity of substitute dielectric fluids in the event of a fire.

3. *Retrofilling.* EPA is soliciting information on the fire safety, electrical efficacy and toxicity (in the event of a fire-related incident) of PCB-Transformers that have been retrofilled with non-PCB fluid. EPA is also soliciting comments on the PEDCo Environmental Inc. study of substitute transformers and dielectric fluids.

4. *Identifying high risk transformers.* EPA is soliciting information on what constitutes a high risk PCB-Transformer from the perspective of hazards posed in the event of a fire-related incident, and methods for identifying such a transformer. EPA is soliciting information on the costs associated with inspecting all PCB-Transformer locations to determine which PCB-Transformers would pose higher risks in the event of PCB-Transformers that may be considered to be high risk transformers.

5. *PCB-Transformer phase-out costs.* EPA is soliciting information on the costs to transformer owners of requiring the phase-out of all PCB-Transformers over 5-, 10-, or 15-year periods. EPA is also soliciting comments on the Putman Hayes and Bartlett Preliminary Study and Cost-Effectiveness Analyses of Alternative Regulations for Indoor PCB-Transformers (Ref. 11).

6. *Phase-out costs of high risk PCB-Transformers.* EPA is soliciting information on the costs to transformer owners of requiring the phase-out of PCB-Transformers that fall within the high risk categorization.

7. *Fire hazard inspection programs.* EPA is soliciting information on what factors should be included in a PCB-Transformer fire hazard inspection, and on the effectiveness of inspections and subsequent corrective measures in reducing the probability of fires and mitigating the risks posed when fires do occur. EPA is also soliciting information on the costs associated with completing these inspections and the costs associated with implementing corrective measures following inspection.

8. *Availability and effectiveness of early detection devices and smoke control technologies.* EPA is soliciting information on the effectiveness of early detection devices in reducing the risks associated with PCB-Transformer fire-related incidents. EPA is also soliciting information on the availability of smoke control technologies to reduce the spread of the contaminated smoke from fires involving PCB Transformers. EPA is soliciting data on the effectiveness of these technologies in the event of an electrical power failure, which often accompanies PCB-Transformer fire-related incidents.

9. *Effectiveness and costs of PCB-Transformer fire reporting system.* EPA is soliciting information on the costs and benefits of instituting an EPA PCB-Transformer fire reporting system.

10. *Registration of PCB-Transformers with fire department jurisdictions or with EPA.* EPA is soliciting data on the costs and benefits of registering PCB-Transformer fires with local fire departments or with regional offices of the EPA.

11. *Utilities that are phasing out PCB-Transformers.* EPA is soliciting information from all utilities that have made the decision to phase out PCB-Transformers. EPA is interested in obtaining information on the rationale for instituting these phase-out programs.

VII. References

(1) USEPA, OPTS, EED, Versar, Inc., "Exposure Assessment: Fires Involving PCB-Transformers" (January 1984).

(2) USEPA, OPTS, HERD, "Response to Comments on Health Effects of PCBs submitted by the Chemical Manufacturers Association and the Edison Electric Institute" (August 19, 1982).

(3) USEPA, Carcinogenic Assessment Group, "The Carcinogenic Assessment Group's Risk Assessment on (2,4,5-Trichlorophenoxy) Acetic Acid (2,4,5,-T) (2,4,5,-Tricholorophenoxy) Propionic Acid (Silvex) 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)" (September 12, 1980).

(4) Casarett and Doull, (1975) "Toxicology the Basic Science of Poisons," MacMillan Publishing Co., Inc., pp. 23–25.

(5) Oishi, S, Morita, M., Fukuda, H., (1978) "Comparative Toxicity of Polychlorinated Biphenyls and Dibenzofurans in Rats," Toxicology and Applied Pharamacology, 43, 13–22.

(6) USEPA, OPTS, HERD, "The Toxicity of Soot From PCB Transformer Fires" (December 20, 1983).

(7) OGS, (1983) "The Binghamton State Office Building Clean-up: A Progress Report Update," Albany, NY: New York State Office of General Services (January 1983).

(8) Versar, "Investigation of the Contamination Remaining in the Binghamton State Office Building Following Completion of Preliminary Clean-up" (October 20, 1982).

(9) The Equitable Life Assurance Society of the United States, Letter to David Dull, EPA, "Equitable Life Assurance Survey" (October 4, 1983).

(10) USEPA, OPTS, EED, "Summary of Regional Data on PCB-Transformer Fires" (October 19, 1983).

(11) USEPA, OPTS, ETD, PHB, "Preliminary Study and Cost-Effectiveness Analyses of Alternative Regulations for Indoor PCB Transformers" (February 1984).

(12) USEPA, OPTS, ETD, PEDCo Environmental, Inc., "Substitutes for PCBs for Use in Indoor Electrical Transformers" (January 1984).

(13) Mitre Corporation, "Environmental Assessment of PCBs in the Atmosphere," Tables 5–11 and 5–13 (April 1976).

(14) Buser, Hans Rudolf, "Formation of Polychlorinated Dibenzofurans (PCDFs) and Dibenzo-p-Dioxins (PCDDs) from the Pyrolysis of Chlorobenzenes" (1979).

(15) Buser, Hans Rudolf, "Formation of Polychlorinated Dibenzofurans (PCDFs) from the Pyrolysis of PCBs" (1978).

(16) Buser, Hans Rudolf, "Formation of Polychlorinated Dibenzofurans (PCDFs) from the Pyrolysis of Individual PCB Isomers" (1979).

VIII. Rulemaking Record

EPA is issuing the following list of documents which constitutes the record for this rulemaking, and requests comments on any other documents that should be included. Documents will continue to be added to the record as

appropriate, including information submitted in response to this rule.

A. Previous Rulemaking Records

(1) Official rulemaking record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibition Rule" published in the **Federal Register** of May 31, 1979 (44 FR 31514).

(2) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Disposal and Marking Final Regulation" published in the **Federal Register** of February 17, 1978 (43 FR 7150).

(3) Official rulemaking record from Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution, and Use in Closed and Controlled Waste Manufacturing Processes" published in the **Federal Register** of October 21, 1982 (47 FR 46980).

(4) Official rulemaking record from Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment" published in the **Federal Register** of August 25, 1982 (47 FR 37342).

B. Support Documents

(1) USEPA, OPTS, EED, Telephone Communications between Denise Keehner, EPA, and Peter Gillson, GSA, "Frequency and Nature of PCB Transformer Fires" (October 5, 1983).

(2) USEPA, OPTS, EED, Telephone Communications between Denise Keehner, EPA, and David Endicott, National Fire Administration, "Data in the National Fire Incident Reporting System for 1982" (November 10, 1983).

(3) USEPA, OPTS, EED, Telephone Communications between Denise Keehner, EPA, and Gary Girod, Ventura County Fire Protection District, "Frequency of PCB-Transformer Fires" (August 22, 1983).

(4) USEPA, OPTS, EED, Telephone Communications between Denise Keehner, EPA, and Meg Pietrasz, Pacific Gas and Electric, "Information on PCB-Transformer Fire in San Francisco" (December 1, 1983).

(5) United States Department of Energy, Center for Fire Research, "Development of Flammability Criteria for Transformer Dielectric Fluids" (March 1980).

(6) Pacific Gas and Electric Company, Letter to Mr. Harry Seraydarian, USEPA Region IX, "PCB Transformer Fire in San Francisco" (June 20, 1983).

(7) Pacific Gas and Electric Company, Letter to Mayor Dianne Feinstein, "Plan to Remove PCB-Transformers" (June 16, 1983).

(8) USEPA, OPTS, EED, Record of Meeting between EPA and Dow Corning, "Retrofilling and PCB-Transformer Fires" (September 20, 1983).

(9) Chemical Regulation Reporter, Article on PCB-Transformer Fires, "U.S. Can Expect 1,120 Transformer Fires Each Year, Finnish Scientist Tells NIEHS" (September 23, 1983).

(10) Jorma Rantanen, Director General, Institute of Occupational Health, Letter to Don Clay, EPA, "Incidence of PCB-Transformer Fires" (November 23, 1983).

(11) USEPA, OPTS, EED, Record of Meeting between Bob Westin of Versar and Denise Keehner, EPA, "PCB-Transformer Fires Issue" (week of September 26, 1983).

(12) USEPA, OPTS, EED, Telephone Communication between Leo Kokoszka, EPA and Steve Farrow, USEPA Region VIII, "PCB-Transformer Fires and Related Incidents" (October 18, 1983).

(13) Buser, H. R. (1979), "Formation of Polychlorinated Dibenzofurans (PCDFs) and Dibenzo-p-dioxins (PCDDs) from the Pyrolysis of Cholorobenzenes," Chemosphere No. 6, 415–424.

(14) The New York Times, "Florida Utility Will Replace Transformers Made With Toxic PCB's" (Thursday, September 8, 1982).

(15) USEPA, Office of Water Regulations and Standards, Criteria and Standards Division, "Ambient Water Quality Criteria for 2,3,7,8-Tetracholordibenzo-p-dioxin" (February 1984).

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements, Environmental protection.

Dated: March 15, 1984.

William D. Ruckelshaus,

Administrator.

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Part IV

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Indiana, Kentucky, Massachusetts, Mississippi, New Hampshire, Virginia; Final Rules

Approval and Promulgation of Implementation Plans; Illinois, New Hampshire, New Jersey, New York, Ohio, Rhode Island; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2549-5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA today is approving a revised sulfur dioxide (SO_2) emission limitation for Indiana-Michigan Electric Company's Breed Generating Station. At the request of Indiana, EPA proposed this action as a revision to the Indiana State Implementation Plan (SIP) on March 15, 1983 (48 FR 11092) and received several comments. After review of these comments, EPA is approving the revised emission limit because it continues to assure the attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS) in Sullivan County.

EFFECTIVE DATE: April 23, 1984.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Robert B. Miller at (312) 886-6031 before visiting the Region V Office).

U. S. Environmental Protection Agency, Air and Radiation Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Clean Air Act (CAA), the Administrator of EPA determined the status of attainment of the NAAQS for SO_2[1] in each area of Indiana (43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978)). EPA determined that Sullivan County, the County in which IMEC's Breed Plant is located, was attaining the NAAQS. On June 26, 1979 Indiana submitted a revised SO_2 plan for all counties in Indiana which established a 6.0 lbs/MMBTU emission limit for all existing fuel combustion sources in the State, except for certain site specific limits set forth in an appendix to the regulation. On March 12, 1982, EPA approved this regulation, recodified at 325 IAC Article 7, with certain exceptions (47 FR 10860).

325 IAC Article 7 provides that Indiana may adopt operating permits which contain site specific emission limits less stringent than those contained within 325 IAC Article 7, as long as the NAAQS are protected with the less stringent limits. These relaxed limits supersede those in 325 IAC Article 7 and must be submitted to EPA as revisions to the SIP. Pursuant to this provision, Indiana adopted an operating permit for Breed that contained a 9.57 lbs/MMBTU SO_2 emission limit and submitted it to EPA on February 26, 1981. In response to deficiencies noted by EPA, the permit was resubmitted on June 22, 1982 with additional data.

The technical information submitted included computer dispersion modeling and data from continuous ambient SO_2 monitors operated by IMEC in the neighborhood of the Breed Plant. The modeling data indicated that the NAAQS are maintained in Sullivan County at the new emission limit of 9.57 lbs/MMBTU as well as in the neighboring State of Illinois. The ambient data did not show any violations of the NAAQS either.

In order to investigate the effect of the relaxation on the nearby Vigo County SO_2 nonattainment area, EPA performed some additional modeling. This analysis shows that the addition of Breed's contribution to the modeled impacts from the Vigo County sources does not result in a violation of the 24-hour SO_2 NAAQS (the constraining standard) on any day modeled. Therefore, EPA concluded that the Breed revision will not interfere with the ability of the Vigo County SO_2 SIP to ensure attainment and maintenance of the SO_2 NAAQS in Vigo County.

Finally, because Breed is located in an area designated attainment for the SO_2 NAAQS and the proposed revision is less stringent than the generally applicable 6.0 lbs/MMBTU emission limit in 325 IAC Article 7, certain provisions of the PSD regulations (40 CFR 51.24 & 52.21) could be applicable. SIP relaxations must be reviewed for PSD increment consumption if the PSD baseline has been triggered in the affected area. However, there have been no SO_2 PSD sources in Sullivan County or in any county in Indiana which have a one $\mu g/m^3$ annual impact on Sullivan County. Therefore, the PSD baseline date has not been triggered. Consequently, relaxing the SO_2 SIP limit for Breed will not consume PSD increment and the PSD regulations' requirement for an increment consumption analysis is not applicable. Based on these data, EPA proposed to approve the 9.57 lbs/MMBTU emission limit for Breed on March 15, 1983 (48 FR 11092).

EPA received comments in response to this proposal from the States of New York and Massachusetts, the Province of Ontario (through the Canadian Embassy), the National Resources Defense Council, Incorporated (NRDC), and counsel for Indiana & Michigan Electric Company (IMEC). A summary of these comments and EPA's responses are as follows:

Comment: Several commenters felt that EPA did an inadequate job of determining whether the Indiana SIP, as revised, will cause or contribute to impermissible levels of interstate air pollution (section 110 (a)(2)(E)) in that EPA's review was limited to Breed, in isolation from the cumulative impact of other sources in Indiana and other states. In addition, New York held that EPA did not comply with section 406(d)(2) in that it did not require that the State SIPs be updated within one year of the 1977 amendments to the CAA with all new requirements (e.g., new interstate pollution abatement provisions).

The commenters recommend that EPA reject the Breed SIP proposal and instead require an interstate impact analysis to determine the long range cumulative impacts of the Indiana SIP, including the impact of downwind SO_2 and particulate levels. This analysis should be based on the use of the best available long range air pollution model.

Response: The courts of appeals have consistently concluded that EPA is only required to consider emissions from individual instead of aggregated sources when making section 110(a)(2)(E) determinations. In *Connecticut* v. *EPA*, 656 F.2d 902, 909 (2d Cir. 1981), the Second Circuit held that the Agency was not required to investigate the potential

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[1] The primary SO_2 NAAQS is violated when, in a calendar year, either: 1) the annual arithmetic mean value of a site's SO_2 concentration exceeds 80 micrograms per cubic meter of air (80 $\mu g/m^3$) (the annual primary standard), or 2) the maximum 24-hour concentration of SO_2 at any site exceeds 365 $\mu g/m^3$ more than once (the 24-hour primary standard). The secondary SO_2 NAAQS is violated when the maximum 3-hour concentration at any site exceeds 1,300 $\mu g/m^3$ more than once.

interstate impacts of multiple pollution sources in New York, where a new limitation was granted to only two facilities. Quoting *Ohio Environmental Council* v. *EPA*, 593 F.2d 24, 30 (6th Cir. 1979), the Court noted that, for purposes of a revision application [under section 110(a)(3)(A)], "the proper inquiry is directed to the emission of a particular source of pollution . . ." Id. The Second Circuit recently reaffirmed this position in *State of Connecticut* v. *EPA*, et al., 696 F.2d 147, 168 (2nd Circuit 1982). The Sixth Circuit in *New York* v. *Administrator, U.S. Environmental Protection Agency*, Slip Opinion, Case No. 82–3126 (6th Cir. July 1, 1983) ruled that the EPA is not required to consider the cumulative impact of all State SO_2 sources when approving an emission limitation for a single source.

Finally, implicit in New York's references to section 406(d)(2) is the contention that, because the CAA interstate transport requirements allegedly were not satisfied, section 406(d)(2) requires EPA to disapprove the proposed Breed emission limit and conduct additional interstate impact inquiries. However, because EPA has found that this SIP revision does satisfy the requirements of section 110(a)(2)(E), no section 406(d)(2) issue arises.

Even if this revision did not satisfy section 110(a)(2)(E), section 406(d)(2) imposes no affirmative duty upon EPA to revise a SIP, but merely sets deadlines for certain SIP revisions that are required by the CAA or by regulations issued by the Administrator. Therefore, there is no derivative duty under section 406(d)(2) to revise the Indiana plan.

Comment: New York and NRDC commented that neither Indiana nor EPA have provided an adequate record on interstate impacts on which to base a determination under section 110(a)(2)(E) because the record did not determine the effect of the relaxation at distances beyond 50 kilometers (km).

Response: The administrative record for this action contains EPA's analysis for interstate impacts. This thorough analysis provides a sound basis for a section 110(a)(2)(E) determination. The analysis employed a model approved for this type of generic situation by EPA, because it has been shown to accurately predict air quality impacts in areas such as this one. The commenters are once again essentially concerned that EPA did not directly estimate the impact on ambient SO_2 and TSP levels in New York (and other eastern States) from the Breed plant and from all sources governed by the Indiana SIP. It is EPA's position that long range transport models which attempt to estimate single source or cumulative impacts at great distances from the source(s) have not been validated to a sufficient degree to allow use for general regulatory purposes.

Consequently, EPA must continue to rely on the analyses performed with the already accepted guideline model to support this action. These analyses predict that approval of the 9.57 lbs/MMBTU limit for Breed will not interfere with attainment of the primary SO_2 standards within the range of the analyses in Indiana or Illinois and imply that approval will not interfere with attainment elsewhere.

EPA's position was recently affirmed in a similar situation by the Sixth Circuit in *New York* v. *Administrator, U.S. Environmental Protection Agency, supra*, which found that the EPA did not act arbitrarily or capriciously in basing its analysis of the interstate effect on short-range modeling, as long as EPA's own guidelines are followed.

Comment: New York noted that EPA has relaxed SO_2 emission limits for at least 17 other power plants in the midwest. NRDC and New York assert that these actions have increased total pollutant loading being exported from the midwestern states to the East.

Response: Although the actions cited are indeed relaxations from the previously federally approved allowable SO_2 SIP limits, these SIP revisions in almost all cases merely allow the continued use of the power plants' present fuel supply. Therefore, the actual emissions from these sources are not expected to increase. In fact, a few of the SIP revisions cited will result in a decrease from historical actual emissions because the revised limits, although higher than their previous federally approved limits, are more stringent than their present fuel quality. Moreover, as discussed earlier, EPA need not evaluate the cumulative impacts of these other sources when acting on the SIP revision for the Breed Station.

Comment: New York submitted numerous documents which it feels squarely present the problems caused by long range transport of sulfur into New York. The documents include trajectory analyses, modeling studies, monitor/observation data analyses, etc. which conclude that:

(a) The interstate movement of SO_2 and sulfates to New York from the Breed plant, and the midwest in general, is causing or substantially contributing to violations of the TSP NAAQS in New York (based on long range transport modeling, monitoring data analysis, trajectory analyses, studies of visibility degradation, . . .),

(b) Restriction in SO_2 emissions will result in decreased sulfate levels downwind,

(c) Health impacts result from sulfates and severe economic losses are attributable to acid deposition; both can be linked to midwest SO_2 emissions, and

(d) Local sources cannot account for the elevated sulfate levels in New York.

Response: Most importantly, the studies presented by the commenter do not attempt to specifically estimate the impact of the Breed plant on air quality levels in New York. Several of the studies do suggest that sulfates significantly contribute to TSP levels in New York and that air flow trajectories at times of high sulfate concentrations indicate air mass passage over the midwest coal consumption area upwind of New York. Several long range modeling studies cited by the commenter provide estimates of contribution of individual states' SO_2 emissions to New York's sulfate levels. However, uncertainties associated with the transformation, transport and deposition processes and their incorporation into these models greatly detract from the utility of the modeling results.

Observational evidence presented by the commenter of visibility degradation and of sulfate levels which significantly contribute to violations of the TSP NAAQS are sound indicators that a regional sulfate problem exists. The study showing reduced sulfate measurements surrounding smelters in the southwest during periods of labor strikes is not necessarily analogous to the present situation (because of differences in meteorology, terrain, atmospheric chemistry and other factors between the southwest and the midwest/northeast U.S.) and provides little guidance for the degree of control, if any, required from Breed or other Midwestern plants to reduce excessive sulfate levels (and attendant problems).

In summary, New York provides ample evidence that sulfates pose a problem in the northeast and that midwestern emissions contribute to the problem. However, it has not been shown that Breed significantly contributes to the problem (or even the extent that other Indiana and midwestern sources contribute). It is this inability to quantify the extent and the specifics of the long range transport and transformation problem which prompts EPA to continue its accelerated research program to allow better characterization of the processes involved and a better understanding of the effects. Only in this manner can an effective means of control be devised.

Comment: New York felt that EPA's analysis of air pollution impacts was improperly restricted to the immediate area of the Breed plant. The Guideline on Air Quality Models is cited as support that models applicable to distances beyond 50 km are available and can be used on a case-by-case basis. Thus, EPA did not rely on its authoritative Guideline, has not performed the required analysis, and EPA's proposed action on Breed is without the necessary factual basis.

Response: The Guideline on Air Quality Models does acknowledge that in some cases it may be appropriate to employ air quality modeling to consider a source's impact at distances greater than 50 km from the source. However, no longer range SO_2 models have yet been approved by EPA for general, routine regulatory use. While the Agency is presently reviewing these models for possible inclusion in the Guideline, currently approved models for general regulatory use are considered valid only within a distance of 50 km from the source in question. The long range transport models require further scrutiny and careful adaptation prior to adoption for routine use in SIP revisions. In the event that a state wishes to use a longer range model (predicting concentrations at a distance greater than 50 km from the source) prior to its inclusion in the Guideline, whether for PSD or any other regulatory purpose, the long range transport model must undergo a meticulous and comprehensive adaptation to the unique circumstances at hand. This adaptation must occur on a case-by-case basis, and must encompass an evaluation using existing emissions and existing meteorological and air quality data, among other factors, to verify its validity for a particular application.

The modeling actually conducted in this case comprised an adequate basis for EPA to conclude that the requirements of section 110(a)(2)(E) were satisfied. It was unnecessary for EPA to attempt to effect an individual case adaptation of a non-reference model for Breed Station.

Comment: New York noted that EPA has previously contended that it is not necessary to examine the impact of the SO_2 SIP on downwind TSP levels because the SIP revision involves only SO_2 emissions and because a sulfate standard does not exist. In these responses, EPA has ignored the transformation of SO_2 to sulfate particulates and the fact that sulfate particles are included in TSP. The CAA requires controlling primary and secondary or precursor pollutants if this is necessary to attain the NAAQS.

Response: The previous EPA responses were intended to address New York's specific concerns about sulfate levels in New York. EPA has always acknowledged the scientific reality of the transformation of SO_2 to sulfates and is aware that sulfate particles are included in measurements of TSP. EPA did not specifically address the impact on TSP levels due to increases in SO_2 emissions because the state of the art of long range transport and transportation models has not progressed to the point that validated estimates of SO_2 to sulfate transformation can be made. EPA has not yet adopted or approved any models that can accurately predict particulate concentrations resulting from SO_2 emissions. Such models have never been used or approved in any regulatory action. Currently approved models estimate particulate matter concentrations caused by particulate matter emissions, and SO_2 concentrations caused by SO_2 emissions. Applying sulfate conversion models in a regulatory context before completion of EPA's evaluation would be premature.

The Sixth Circuit Court recently upheld the EPA in a similar situation where in *New York* v. *Administrator, U.S. Environmental Protection Agency, supra,* it found that EPA did not violate the CAA in approving a revision to an SO_2 limitation by limiting its analysis to the revision's impact on SO_2 concentrations only.

Comment: New York stated that EPA, in similar rulemakings, has discounted and disregarded, without any substantive evaluation, the technical evidence submitted by New York into the rulemaking record. The CAA does not impose on downwind states a burden to undertake the necessary investigation to make the required finding under section 110(a)(2)(E). Numerous studies (e.g., ORBES, National Commission on Air Quality findings, independent data analyses, modeling/monitoring studies from the scientific literature) link violations of the TSP standards in New York to sulfates derived from out-of-state sources of SO_2. EPA's proposal for Breed does not respond to any of these studies although they have been brought to EPA's attention in previous rulemakings.

Response: EPA has not discounted or disregarded without reason any evidence submitted by New York in this or similar rulemaking actions. As discussed earlier, none of the information submitted by the commenter quantifies the individual Breed plant contribution to high SO_2 or TSP levels in New York or other distant states. Furthermore, each study contained in New York's submittal provides a methodology which, although potentially suitable, has not yet withstood the requisite scrutiny for regulatory use. After careful consideration of the documents supplied by the commenter, it is EPA's position that further scientific research is necessary before any measures are taken, if any are determined appropriate, to alleviate the problems raised by New York. As new evidence becomes available from the accelerated federally funded research program presently underway, EPA and the scientific community should be in a better position to address the long range transport and transformation issue. EPA is not required to act in the face of inconclusive and as yet unvalidated scientific evidence.

Comment: New York noted that EPA has asserted that long range models are inadequate "for regulatory purposes" and that this justifies a refusal to make a long range determination under section 110(a)(2)(E), which New York asserts is required. New York believes that EPA should recognize its continuing obligation to review and apply updated and more sophisticated information related to modeling. Further, documents supplied by New York demonstrate that EPA has the necessary and technical and analytical tools to assess and determine the interstate pollution aspects of SIP. For example, New York cites a list of 21 long range transport models that are fully operational or in the development stages. EPA has provided no analysis or discussion that there are no long-range models suitable for regulatory use and should adopt the best available model to address the issue (as has been done by EPA for short-range modeling).

Response: EPA modeling guidelines are outlined in the "Guideline on Air Quality Models" (April 1978), in "Regional Workshops on Air Quality Modeling: A Summary Report" and other memoranda. EPA is presently evaluating public comments on a proposed revision to the Guideline on Air Quality Models and will also be initiating a public hearing process on about 30 candidate air quality models submitted by various groups in response to an EPA solicitation for new models. Several long range models were submitted and are presently being considered for incorporation into the Guideline.

Presently, the above referenced Workshop Summary Report indicates that a few long range transport models (e.g., MESOPUFF, MESOPLUME, MESOGRID) may be considered on a case-by-case basis as refined models within their established limitations whenever the PSD regulations require impacts from new sources in Class I areas to be considered. However, EPA has not supported use of such models for general regulatory purposes. No model on New York's list of 21 models is presently considered by the Agency as appropriate for routine regulatory use in the instance of Breed or in any other case without first undergoing the rigorous adoptation, evaluation and validation process described earlier. Although EPA is presently analyzing a number of models which purport to be capable of predicting pollutant concentrations at distances exceeding 50 km from the source, no such models have yet been validated and approved for general regulatory use. Because the processes of transformation, transport and deposition and the extent of health and welfare effects are vital to the understanding of the problems cited by New York, additional ongoing research in these areas as sponsored by EPA and others, as well as the iterative standardized air quality modeling process continually conducted under section 320, including the continual revision process for the Modeling Guideline, are the appropriate mechanisms for addressing New York's concerns at the present time. EPA can analyze New York's 21 suggested models in a much more manageable fashion in the generic modeling refinement processes noted above than in individual SIP revisions.

Comment: New York specifically requested EPA to conduct regional air pollution modeling to determine long range impacts of the Breed plant.

Response: As discussed earlier, ongoing research is intended to clarify the technical issues involved in the long range transport question. Presently, it is premature to apply current models because it is not reasonably possible to confidently apportion individual source or selected area contributions to TSP/SO_2 levels in New York from midwestern sources.

Comment: NRDC expressed concern about the role that relaxations such as Breed have played in exacerbating the acid rain problem. NRDC stated that recent SO_2 relaxations are in violation of the Memorandum of Intent (MOI) signed with Canada in 1980 that called on both the U.S. and Canada to reduce emissions of SO_2 and oxides of nitrogen (NO_x) while treaty negotiations are underway. Ontario requested that the spirit of the MOI be adhered to and increased emissions from Breed should not be allowed.

Response: The applicable section of the MOI agreement is that both governments should "promote vigorous enforcement of existing laws and regulations . . . in a way which is responsive to the problems of transboundary air pollution." EPA is approving this revision after reviewing it against the requirements of section 110, as interpreted in recent cases in the Sixth and Seventh Circuits, which are the relevant legal requirements specified in the MOI.

Additionally, it is not expected that the revised limit for Breed, which is essentially a worst case, status-quo limit, will result in an increase in actual emissions, because the utility has stated that it does not expect to change its coal supply. Consequently, this action should have no effect on the acid deposition phenomenon. Therefore, this rulemaking action is entirely consistent with the letter and the spirit of the MOI agreement.

The Commonwealth of Massachusetts and the Province of Ontario provided comments similar to those of New York and NRDC which question the advisability of EPA relaxing SO_2 emission limits when a massive body of evidence indicates that increased sulfur emissions are directly linked to increased acid precipitation. These comments are responded to by the discussions above of the New York and NRDC comments.

IMEC submitted comments in favor of the proposed revision and stated that:

(a) Based on the actual coal data from 1974–1982, the sulfur content in the fuel has not varied appreciably and IMEC stated their intention to continue use of the same fuel supply. IMEC does not expect actual emissions to increase and, because plant usage was lower in 1981 and 1982, actual SO_2 emissions have substantially decreased.

(b) The 9.57 lbs/MMBTU limit is not a relaxation of the federally approved emission limit. IMEC does not believe that EPA's March 12, 1982 rule-making which adopted a 6.0 lb/MMBTU limit was effective since this SIP revision was pending at the time of EPA's final action on the 6.0 lbs/MMBTU emission limit (see *Indiana and Michigan Electric Company* v. *EPA*, No. 82–1733, Seventh Circuit).

Response: EPA believes that the revised Breed emission limit was not pending at the time of EPA's approval, in part, of 325 IAC Article 7, and, therefore, 325 IAC Article 7 applies to Breed. However, in any case, EPA notes that today's action approving a 9.57 lbs/MMBTU emission limit should moot the question whether 325 IAC Article 7's 6.0 lbs/MMBTU emission limit is applicable to Breed.

Finally, IMEC submitted after the close of the public comment period briefs which have been filed by IMEC and EPA in *New York* v. *Gorsuch*, No. 82–1717 (7th Cir., appeal docketed May 3, 1982). In IMEC's brief, it argues that the Clean Air Act does not require the analysis of the cumulative impact of various sources on distant States, that the prior SO_2 regulations are currently unenforceable in Indiana, that EPA has adequately addressed New York's interstate concerns within the record of EPA's approval of 325 IAC Article 7, and that New York has not presented credible evidence that Indiana sources adversely affect New York air quality. EPA does not necessarily agree with all positions advocated by IMEC in its brief. However, all substantive issues relative to Breed raised by IMEC in its brief have been addressed earlier in today's notice.

Conclusion on Revision to Sulfur Dioxide Limit

The public comments made by the State of New York, Commonwealth of Massachusetts NRDC, Province of Ontario, and IMEC do not provide any technical basis for EPA to revise its position announced in the proposed rulemaking notice. That is, the revised SO_2 emission limit for Breed has been shown to protect the NAAQS through an acceptable air quality modeling analysis. Therefore, EPA today is approving a 9.57 lbs/MMBTU SO_2 emission limit for the Breed facility. All provisions in 325 IAC Article 7, as approved in part on March 12, 1982, which are applicable to Breed, other than the general 6.0 lb/MMBTU emission limit, remain applicable.

The Office of Management and Budget has exempted this rulemaking from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide,

Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of Section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: March 15, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. Section 52.770 is amended by adding paragraph (c)(43) as follows:

§ 52.770 Identification of plan.

* * * * *

(c)* * *

(43) On February 26, 1981 and June 22, 1982, Indiana submitted a 9.57 lbs/MMBTU sulfur dioxide emission limit for IMEC's Breed Generating Station in Sullivan County. This limit supersedes that approved at paragraph (c)(19).

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[FR Doc. 84-7947 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[KY-002; A-4-FRL 2549-2]

Approval and Promulgation of Implementation Plans; Disapproval of Revised SO_2 Limit for Bell, Clark, and Woodford Counties; Approval of Revised SO_2 Limit for Pulaski County; Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today disapproving a revised sulfur dioxide (SO_2) emission limit for utility boilers in Bell, Clark, and Woodford Counties, Kentucky. EPA is approving the revised SO_2 emission limit the State adopted for Pulaski County, Kentucky. All of these counties are classified as attainment for the SO_2 National Ambient Air Quality Standards (NAAQS). The sources involved are coal-fired power boilers subject to Kentucky Regulation 401 KAR 61:015, Existing Indirect Heat Exchangers. EPA's approval and disapproval actions are based upon the requirement of the Clean Air Act. Based upon the modelling, the violations being disapproved would cause violations of the short term (3-hr.) ambient standard. The intended effect is to disallow the relaxations in those areas where the standards would be violated and to allow the relaxations in the county where no violations of the standards are expected.

DATES: These actions are effective April 23, 1984.

ADDRESSES: Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005

Environmental Protection Agency, Air Management Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Kentucky Department for Environmental Protection, Division of Air Pollution Control, 18 Reilly Road, Bldg. #2 Fort Boone Plaza, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Melvin Russell of EPA's Air Management Branch at the above address, or by telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: The Commonwealth of Kentucky submitted to EPA a State Implementation Plan (SIP) revision relaxing the SO_2 emission limit for indirect heat exchangers having a design input greater than 250 MBTU/hr. in Bell, Clark, Woodford and Pulaski Counties. The applicable regulation is Kentucky regulation 401 KAR 61:015, Existing Indirect Heat Exchangers. The revision was duly adopted by the Commonwealth on June 6, 1979, after adequate public hearing in accordance with State and Federal requirements, and submitted to EPA by Kentucky's Department for Natural Resources and Environmental Protection (DNREP) on June 29, 1979. Additional information was submitted by Kentucky on September 14, 1981, in response to EPA's request.

The State SIP terminology identifies Bell, Clark, and Woodford Counties as Class II counties, and Pulaski County as a Class III county.

Appendix B to the Kentucky regulation changes the SO_2 emission limit from 1.8 pounds per million BTU (lbs./MBTU) to 2.3 lbs./MBTU for the boilers in Bell, Clark, and Woodford Counties (State Class II counties) and from 3.2 to 3.3 lbs./MBTU in Pulaski County (State Class III county).

Modelling indicates the following results at the 2.3 lbs./MBTU and 3.3 lbs./MBTU emission limits:

1. Violation of the 24-hour primary and the 3-hour secondary SO_2 NAAQS in Bell County.
2. Violation of the 3-hour secondary SO_2 NAAQS in Clark County.
3. Violation of the 3-hour secondary SO_2 NAAQS in Woodford County.
4. Attainment of the SO_2 NAAQS in Pulaski County.

The affected facilities are as follows:

1. Kentucky Utilities Company's (KU) Pineville Plant in Bell County (Pineville, Kentucky).
2. KU's Tyrone Plant in Woodford County (Versailles, Kentucky).
3. Eastern Kentucky Power's (EK) Dale Plant in Clark (Ford, Kentucky).
4. EK's Cooper Plant in Pulaski County (Burnside, Kentucky).

The Pineville boiler has a capacity of 37.5 megawatts (MW); the Tyrone boiler has a capacity of 76 MW. Both of these boilers are peaking units, relegated to standby service. The Dale boiler has a capacity of 172 MW; the Cooper boiler has a capacity of 354 MW. Both of these units are regular-use base-load units.

On September 22, 1982 (47 FR 41768), EPA proposed to approve the revised SO_2 limit for Pulaski County and to disapprove the revised SO_2 limits for the other three counties. One party submitted written comments.

Below are the comments received and an explanation of the response:

Comment: Because the Dale plant has stacks shorter than the nearby terrain, any modeling technique applied is very questionable. Application of the Valley model, in particular, is inappropriate here.

Response: EPA recognizes the uncertainty of modeling in complex terrain like that surrounding the commenter's facility. The Agency has nonetheless determined that results derived from the Valley model are sufficiently reliable to be used as a basis for determining the adequacy of emission limits to protect ambient SO_2 standards in such terrain. While the Valley model is currently the only model included in EPA's modeling *Guideline* that is suitable for use in this terrain, the Guideline does permit use of other models validated for application on a case-by-case basis. Since neither Kentucky nor the commenter took advantage of this alternative approach by offering a more appropriate model, EPA properly relied here on the Valley model.

Comments: Kentucky's September 14, 1981, submittal indicates that the Dale plant is a regular-use base-load unit. Since that submittal was made, operation of the Dale plant has changed and current planning does not call for total operation for any extended length of time.

Response: The change in the plant's total operation for an extended length of time does not change the short-term ambient impact. Based on the modeling, the plant would cause violations of the short-term (3-hr.) ambient standard. Therefore if the plant operates at its allowable emissions for only three hours, there could be violations of the ambient air quality standard.

Comment: The proposed disapproval for Clark County should be reevaluated.

Response: EPA has again reviewed the Kentucky submittal and supporting documentation and determined that the September 22, 1982, proposal to disapprove the revised SO_2 emission limit for Clark County is appropriate.

Action: Based on the above, EPA today disapproves Kentucky's revised SO_2 emission limit for Bell, Clark, and Woodford Counties. EPA approves the revised SO_2 emission limit for Pulaski County.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the EPA Region IV office (see address above).

The Director of the Federal Register approved the incorporation by reference of the Kentucky State Implementation Plan on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution, control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particular matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: March 15, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart S—Kentucky

1. In § 52.920 is amended by adding paragraph (c)(38) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(38) Revised SO_2 limit for large coal-fired boilers in Pulaski County, submitted on June 29, 1979, by the Kentucky Department for Natural Resources and Environmental Protection.

2. A new § 52.928 is added as follows:

§ 52.928 Control strategy: Sulfur oxides.

The revised SO_2 emission limit for large coal-fired boilers in Bell, Clark, and Woodford Counties, submitted on June 29, 1979, is disapproved since it does not provide for attainment and maintenance of all SO_2 NAAQS. The limit approved by EPA on May 10, 1976 (41 FR 19105), remains the limit applicable to these sources.

[FR Doc. 84-7851 Filed 3-22-84; 8:45 am]
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40 CFR Part 52

[OAR-FRL-2549-3]

Approval and Promulgation of Implementation Plans; Temporary Sulfur-in-Fuel Revision for Reed and Barton Silversmiths in Taunton, Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the Massachusetts State Implementation Plan (SIP) which will allow Reed and Barton Silversmiths in Taunton, Massachusetts to increase the sulfur content of its residual fuel oil for up to 30 months. The burning of less expensive, higher sulfur content fuel oil will provide this source with some of the capital needed to implement permanent energy conservation measures.

EFFECTIVE DATE: March 23, 1984.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene (617) 223-5133.

ADDRESS: Copies of the Massachusetts submittal, which is incorporated by reference, are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 2313, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20460 and the Department of Environmental Quality Engineering, 8th Floor, One Winter Street, Boston, Massachusetts 02108.

SUPPLEMENTARY INFORMATION: On October 31, 1983, the Massachusetts DEQE submitted a SIP revision for Reed and Barton Silversmiths, in Taunton, Massachusetts. The revision allows the burning of 2.2% sulfur fuel oil in their boilers for 30 months or less. During this time period, Reed and Barton Silversmiths has committed to implement permanent energy conservation measures. The facility will use the savings realized during the temporary (30 months or less) utilization of less expensive 2.2% sulfur fuel oil to defray the costs of implementing the permanent energy conservation measures. The facility will return to burning 1.0% sulfur fuel oil by September 23, 1986 and may not reapply for a second temporary sulfur relaxation.

Background

This temporary sulfur-in-fuel revision is being approved pursuant to the provisions of Regulation 310 CMR 7.19, "Interim Sulfur-in-Fuel Limitation for Fossil Fuel Utilization Facilities Pending Energy Conservation Measures." EPA approved the addition of this regulation to the Massachusetts SIP on March 19, 1981 (46 FR 17551). It specifies the requirements and conditions which sources must meet in order to qualify for temporary sulfur-in-fuel relaxations and the procedures which the Massachusetts Department of Environmental Quality Engineering (DEQE) must use to determine that the emissions will not violate any National Ambient Air Quality Standards (NAAQS). Only sources rated at less than 250 million Btu per hour heat input, which are currently burning residual fuel oil, and have made a commitment to either (a) convert to an alternate fuel, or (b) implement conservation measures, are eligible for a temporary sulfur-in-fuel revision not to exceed 30 months. Further details on the requirements of Regulation 310 CMR 7.19 and EPA's

reasons for approving it were discussed in a Notice of Proposed Rulemaking (NPR) published on December 16, 1980 (45 FR 82675). In the NPR, EPA also proposed approval of all individual sources that meet the eligibility requirements of this regulation.

EPA Evaluation

EPA has determined that the DEQE has approved Reed and Barton Silversmiths' request to burn higher sulfur fuel oil in accordance with the provisions of Regulation 310 CMR 7.19, and agrees that no air quality standards will be violated by the temporary burning of 2.2% sulfur fuel oil at this facility.

EPA received no comments on its December 16, 1980 (45 FR 82675) proposal to approve individual sources of sulfur-in-fuel relaxations, and DEQE received no comments on its proposed approval of the temporary sulfur-in-fuel relaxation at the Reed and Barton Silversmiths facility in Taunton. Since the public has had these other opportunities to comment, and since the Reed and Barton Silversmiths facility is a small source (each piece of equipment is less than 250 million Btu per hour heat input), EPA is taking final action today to approve this SIP revision without first publishing a new proposed rulemaking. EPA believes that publishing a new NPR is unnecessary. EPA finds good cause for making this action effective immediately because the implementation plan is already in effect under State law and imposes no additional regulatory burden.

Final Action

EPA is approving the proposed temporary sulfur-in-fuel relaxation revision for Reed and Barton Silversmiths.

Under U.S.C. Section 605(b), the Administrator has certified that this action will not have significant economic impact on a substantial number of small entities (see 48 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today).

This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

Authority: Sec. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by Reference for the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 8, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52, Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

Section 52.1120, paragraph (c) is amended by adding paragraph (61) as follows:

§ 52.1120 Identification of Plan.

* * * * *

(c) * * *

(61) A revision submitted on October 31, 1983, allowing the burning of 2.2% sulfur content fuel oil at the Reed and Barton Silversmiths facility in Taunton, Massachusetts for a period of up to 30 months, commencing on March 23, 1984.

[FR Doc. 84-7955 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL 2375-8]

Approval and Promulgation of Implementation Plans; Temporary Sulfur-in-Fuel Revision for Stanley Woolen Company, in Uxbridge, Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the Massachusetts State Implementation Plan (SIP) which will allow Stanley Woolen Company, in Uxbridge, Massachusetts to increase the sulfur content of its residual fuel oil. The burning of less expensive, higher sulfur content fuel oil will provide this source with some of the capital needed to implement permanent energy conservation measures.

EFFECTIVE DATE: March 23, 1984.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, (617) 223-5131.

ADDRESSES: Copies of the Massachusetts submittal, which is incorporated by reference, are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 2111, JFK Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20406; Office of the Federal Register, 110 L Street NW., Room 8401, Washington, D.C. 20406 and the Department of Environmental Quality Engineering, Eighth Floor, One Winter Street, Boston, Massachusetts 02108.

SUPPLEMENTARY INFORMATION: On May 3, 1983 the Massachusetts DEQE submitted a SIP revision for Stanley Woolen Company in Uxbridge, Massachusetts. The revision allows the burning of 2.2% sulfur fuel in one boiler (maximum thermal input rated at 14,625,000 Btu per hour) for 30 months or less. During this time period, Stanley Woolen Company has committed to implement the following permanent energy conservation measures: 1. Replacing one of the existing natural draft rotary cup type fired H.R.T. boilers to a type consistent with modern, combustion technology, 2. Closing or blocking off 200 of the 558 windows at the facility, 3. Repairing and installing double pane glass on the remaining 358 windows at the facility, and 4. Initiating various plant operating changes to include: (a) Lowering of steam operating pressure, (b) installing a time clock boiler operating control to allow for off-peak shut downs, (c) installing steam supply zone control. This will reduce the fuel use by approximately 67,500 gallons per year. The facility will use the savings realized during the temporary (30 months or less) utilization of less expensive 2.2% sulfur fuel oil to defray the costs of implementing the permanent energy conservation measures.

Background

This temporary sulfur-in-fuel revision is being approved pursuant to the provisions of Regulation 310 CMR 7.19, "Interim Sulfur-in-Fuel Limitation for Fossil Fuel Utilization Facilities Pending Conversion to an Alternate Fuel or Implementation of Permanent Energy Conservation Measures." EPA approved the addition of this regulation to the Massachusetts SIP on March 19, 1981 (46 FR 17551). It specifies the requirements and conditions which sources must meet in order to qualify for temporary sulfur-in-fuel relaxations and the procedures which the Massachusetts Department of Environmental Quality Engineering (DEQE) must use to determine that the emissions will not violate any National Ambient Air Quality Standards (NAAQS). Only sources rated at less than 250 million Btu per hour heat input,

which are currently burning residual fuel oil, and have made a commitment to either a) convert to an alternate fuel or b) implement conservation measures, are eligible for a temporary sulfur-in-fuel revision not to exceed 30 months. Further details on the requirements of Regulation 310 CMR 7.19 and EPA's reasons for approving it were discussed in a Notice of Proposed Rulemaking (NPR) published on December 16, 1980 (45 FR 82675). In the NPR, EPA also proposed approval of all individual sources that meet the eligibility requirements of this regulation.

EPA Evaluation

EPA has determined that the DEQE has approved Stanley Woolen Company's request to burn higher sulfur fuel oil in accordance with the provisions of Regulation 310 CMR 7.19, and agrees that no air quality standards will be violated by the temporary burning of 2.2% sulfur fuel oil at this facility.

EPA received no comments on its December 16, 1980 (45 FR 82675) proposal to approve individual sources for sulfur-in-fuel relaxations, and DEQE received no comments on its proposed approval of the temporary sulfur-in-fuel relaxation at the Stanley Woolen Company facility in Uxbridge. Since the public has had these other opportunities to comment, and since the Stanley Woolen Company facility is a small source (each piece of equipment is less than 250 million Btu per hour heat input), EPA is taking final action today to approve this SIP revision without first publishing a new proposed rulemaking. EPA believes that publishing a new NPR is unnecessary. EPA finds good cause for making this action effective immediately because the implementation plan is already in effect under State law and imposes no additional regulatory burden.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Final Action

EPA is approving this sulfur-in-fuel relaxation revision for Stanley Woolen Company.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons, Incorporation by reference.

Dated: March 15, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

PART 52—[AMENDED]

Part 52 Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

Section 52.1120 is amended by adding paragraph (c)(59) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(59) A revision submitted on May 3, 1983, allowing the burning of 2.2% sulfur content fuel oil at the Stanley Woolen Company, a facility in Uxbridge, Massachusetts for a period of up to 30 months, commencing on March 23, 1984.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7410))

[FR Doc. 84-7952 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[MS-006; A-4-FRL 2370-8]

Approval and Promulgation of Implementation Plans; Revised SO_2 Limit for United Cement Company and NSPS Regulations; Mississippi

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On December 10, 1982, the Mississippi Department of Natural Resources (DNR) submitted a revision to its State Implementation Plan (SIP) relaxing the sulfur dioxide emission limit for the kiln of the United Cement Company in Artesia, Mississippi. This revised limit had been adopted by the State on December 7, 1982. The intended effect of this regulation will be to relax the emission limit that the United Cement Co. will be required to meet. This regulation will have no effect on the National Ambient Air Quality Standards.

Also on December 10, 1982, the Mississippi DNR submitted a New Source Performance Standard (NSPS) regulation which enabled the State to adopt by reference all NSPS categories that had been promulgated by EPA as of December 8, 1982. Mississippi used this regulation to adopt six NSPS categories and submitted them for EPA's approval on December 23, 1982.

EPA has determined that these changes meet all applicable requirements, and therefore approves them today as SIP revisions.

DATES: This action will be effective May 22, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005

Air Management Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

Bureau of Pollution Control, Mississippi Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi.

FOR FURTHER INFORMATION CONTACT: Ms. Denise W. Pack, Air Management Branch, EPA Region IV, at the above address, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: On December 10, 1982, the Mississippi Department of Natural Resources submitted revisions in its State Implementation Plan. The revisions are as follows:

1. *Revised Sulfur Dioxide (SO_2) emission limit for United Cement Company in Artesia.* The United Cement Company (UCC) operates a kiln that is subject to the State's new process equipment SO_2 limit of 500 ppm. The kiln cannot meet this emission limit. Source testing has shown that the kiln emits 700 ppm while burning gas and 1800 ppm while burning coal. Upon approval of this revision the company will switch back to burning coal. Mississippi's Air Quality Regulations (APC-S-1, Section 4.2(a)) require existing process equipment to meet a limit of 2000 ppm, and provide for the Mississippi Commission of Natural Resources to modify the 500 ppm limit for new process equipment. On December 7, 1982, the Commission adopted, in the form of an operating permit, a revised SO_2 limit of 2000 ppm for the United Cement Company's Artesia kiln.

EPA's review of this submittal and the accompanying modeling data indicate that the National Ambient Air Quality Standards (NAAQS) will not be violated by the relaxation. However, the switch

to coal will consume a portion of the Class II PSD increment in the area. Since the facility was capable of burning coal and did in fact burn coal prior to 1975, the switch does not constitute a major modification under the PSD regulations.

The following table compares with the NAAQS the concentrations of SO_2 predicted by the CRSTER model for the facility. The table also shows the percentage of the PSD increment that will be consumed by this relaxation.

NAAQS for sulfur oxides	Predicted concentration	Percentage of PSD increment consumed	Distance from facility
Primary:			
80 μg/m³ [annual arithmetic mean].	2.7 μg/m³	68.5	1.0 km NE.
365 μg/m³ (max. 24-hour).	69.7 μg/m³	[illegible]	1.0 km NE.
Secondary:			
1300 μg/m³ (max. 3-hour).	304.7 μg/m³	[illegible]	1.0 km NE.

2. *New Source Performance Standards.* Mississippi also submitted an amendment to its Air Quality Regulations (APC–S–1, Section 6.3) which enables the DNR to adopt by reference all NSPS categories that had been promulgated by EPA as of December 8, 1982. (Mississippi adopts NSPS by reference to be able to enforce them and thus qualify for a delegation of authority from EPA. The Agency made an initial delegation of NSPS authority to Mississippi in November 1981 on this basis.)

3. *Adoption of NSPS categories.* After adopting the new enabling regulation, the Mississippi DNR adopted by reference the following NSPS (40 CFR Part 60):

a. Surface Coating of Metal Furniture, Subpart EE.

b. Lead-Acid Battery Manufacturing Plants, Subpart KK.

c. Phosphate Rock Plants, Subpart NN.

d. Industrial Surface Coating: Large Appliances, Subpart SS.

e. Metal Coil Surface Coating, Subpart TT.

f. Asphalt Processing and Asphalt Roofing Manufacture, Subpart UU.

Through this adoption by reference the above NSPS become State-enforceable.

Action. EPA has reviewed these submittals and found them to comply with all Federal requirements. Therefore, EPA announces its approval of these changes in Mississippi's SIP: (1) Revised sulfur dioxide limit for United Cement Company, Artesia; (2) NSPS enabling regulations; and (3) adoption by reference of six NSPS source categories.

This action is being taken without prior proposal because Mississippi's regulations are noncontroversial and EPA anticipates no comments on them. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1984. This action may not be challenged later in proceedings to enforce its requirements.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

Note.—The Director of the Federal Register approved the incorporation by reference of the Mississippi State Implementation Plan on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: March 15, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart Z—Mississippi

Section 52.1270 is amended by adding paragraph (c)(15) as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(15) Revised SO_2 limit for United Cement Company's Artesia kiln, and NSPS enabling regulation submitted on December 10, 1982, and adoption of six categories of NSPS submitted on December 23, 1982, by the Mississippi Bureau of Pollution Control.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7410))

[FR Doc. 84–7950 Filed 3–22–84; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[Docket No. NH1103; OAR–FRL–2549–4]

Approval and Promulgation of Implementation Plans; Sulfur-in-Fuel Revisions; New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions originally submitted by the State of New Hampshire in 1973 and 1975 concerning sulfur-in-oil requirements. These revisions raise the statewide sulfur-in-oil limit for eligible sources from 1.0% sulfur by weight to 2.2% (2.42 pounds of sulfur dioxide per million Btu) in the New Hampshire portion of the Androscoggin Valley Interstate Air Quality Control Region and to 2.0% (2.2 pounds of sulfur dioxide per million Btu) in all other parts of the State. New Hampshire regulations, adopted in 1973 and 1975, have allowed the continuous burning of higher sulfur fuels. The state regulations were never approved by EPA as part of the Federal SIP. No increases in actual emissions are expected to occur as a result of EPA's approval of these revisions. Currently there are no violations of the National Ambient Air Quality Standards for sulfur dioxide. The intended effect of these revisions is to bring federal requirements in concert with State requirements. These revisions do not apply to ten identified sources which will be the subject of future SIP revisions to be submitted by New Hampshire.

EFFECTIVE DATE: April 23, 1984.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2111, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street SW., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408; and the New Hampshire Air Resources

Agency, Health and Welfare Building, Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Betsy Horne, (617) 223–5130.

SUPPLEMENTARY INFORMATION: On March 23, 1983 (48 FR 12109), EPA published a Notice of Proposed Rulemaking (NPR) for regulatory changes to the New Hampshire SIP which raise the allowable sulfur content of No. 5 and No. 6 residual oils and crude oil used, purchased or sold for use in stationary combustion sources within the State. The December 21, 1982, submittal allowed the use of 2.2% sulfur content residual fuel oil in the New Hampshire portion of the Androscoggin Valley Interstate Air Quality Control Region and 2.0% sulfur content oil in all other parts of the State, by all but eight fuel burning sources. The original excluded sources were:

1. International Packings Corp., Bristol.
2. Dartmouth College, Hanover.
3. Hinsdale Products Co., Inc., Hinsdale.
4. Groveton Paper Co., Northumberland.
5. James River Corp./Cascade Division, Gorham.
6. Velcro USA, Inc., Manchester.
7. ATC Petroleum, Newington.
8. Anheuser-Busch, Inc., Merrimack.

The revisions and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. Only one comment was received, from the New Hampshire Air Resources Agency, during the public comment period on the NPR. As a result of an air impact analysis of a modification to the Hoague-Sprague Corporation facility in West Hopkinton, on March 29, 1983, the State requested that this source be withdrawn from these revisions. Accordingly, this source has been added to the list of excluded sources.

As a note of clarification, this approval also excludes a tenth source, the Manchester Steam facility of the Public Service Company. Because this source presently is not in operation and has been closed since November 1, 1981, the approvability of use of higher sulfur fuel by this facility under these revisions was not pursued. This source will have to be approved in a subsequent SIP revision prior to burning oil with greater than 1% sulfur content.

The New Hampshire Air Resources Agency has negotiated amended permits for five of the ten excluded sources and has submitted these revised permits to EPA for approval with accompanying compliance demonstrations. In another section of today's **Federal Register**, we are proposing to approve these five sources for inclusion in this action and therefore will allow them to continue burning the higher sulfur oil. For three other sources, however, acceptable compliance demonstrations have not been submitted. These sources are Groveton Paper, James River/Cascade, and Anheuser-Busch. In the interim period until a SIP revision allowing the use of higher sulfur oil has been approved, EPA will formulate enforcement strategies for these three sources.

Sources are already burning oil at the sulfur levels approved today. These levels were permissible under New Hampshire regulations since 1973 and 1975. Thus, no increases in actual emissions are expected to result from approval of these revisions.

Final Action

EPA is approving the revisions to burn higher sulfur oil by those sources in New Hampshire which are the subject to these revisions.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, and Intergovernmental relations.

Authority: Secs. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 15, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart EE—New Hampshire

1. Section 52.1520, paragraph (c) is amended by adding paragraph (26) as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(26) **Revisions to CHAPTER Air 400, Section Air 402.02 (formerly Regulation No. 5), raising the allowable sulfur-in-oil limit for all but ten sources, were submitted by New Hampshire on July 12, 1973, April 11, 1975, December 21, 1982 and March 29, 1983. The excluded sources are:**

1. International Packings Corp., Bristol.
2. Dartmouth College, Hanover.
3. Hinsdale Products Co., Inc., Hinsdale.
4. Groveton Paper Co., Northumberland.
5. James River Corp./Cascade Division, Gorham.
6. Velcro USA, Inc., Manchester.
7. ATC Petroleum, Newington.
8. Anheuser-Busch, Inc., Merrimack.
9. Hoague-Sprague Corp., West Hopkinton.
10. Public Service Co., Manchester Steam, Manchester.

§ 52.1531 [Reserved]

2. Section 52.1531, *Control strategy: Sulfur oxides* is removed and reserved.

[FR Doc. 84–7854 Filed 3–22–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[EPA Docket No. AH017VA; (A–3–FRL 2376–5)]

Approval of Revision to the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Secretary of Commerce and Resources submitted to the Environmental Protection Agency an amendment which allows an increase in the sulfur dioxide emissions from fuel burning sources in State Region VII (the Virginia portion of the National Capital Interstate Air Quality Control Region). Section 4.51(b) of the Virginia Regulations is being changed to allow an increase in the sulfur content of coal from 0.75% to 1.0%. This notice announces EPA's approval of the (SO_2) SIP revision as submitted. This revision, which will provide for greater use of the available coal, rather than oil, while having a minimal impact on air quality, meets all of the necessary requirements of the Clean Air Act and 40 CFR Part 51.

EFFECTIVE DATE: April 23, 1984.

ADDRESSES: Copies of this SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20460
U.S. Environmental Protection Agency, Air Management Branch (3AW13), Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Mr. Harold A. Frankford
Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW. (Waterside Mall), Washington, D.C. 20460
Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, Attn: Mr. John M. Daniel, Jr.

FOR FURTHER INFORMATION CONTACT:
Mr. Harold A. Frankford at the Region III address stated above or telephone 215/597–8392.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1978, the Commonwealth of Virginia submitted numerous revisions to its State Implementation Plan (SIP). EPA has acted on all but one of the proposed revisions. The remaining revision deals with a change to section 4.51(b) of Virginia's regulations and provides for an increase in the allowable sulfur dioxide emissions from coal burning sources in State Region VII (the Virginia portion of the National Capital Interstate Air Quality Control Region). This Notice will address only the revision to section 4.51(b).

The Commonwealth submitted a Certification of Public Hearing dated August 15, 1978, stating that letters were sent on or about June 12, 1978 to the District of Columbia, Maryland, Tennessee, and the Environmental Protection Agency notifying them of the proposed SIP revision and the Public Hearing dates. Also, the hearings were advertised in the *Richmond Times—Dispatch* on June 14, 1978 and in at least one paper of general circulation in Virginia's seven Air Quality Control Regions. Public Hearings were held on July 14, 1978 in Richmond and on July 17, 1978 in each of the other six AQCR's.

On May 21, 1980, EPA published a Notice of Proposed Rulemaking, 45 FR 34018, stating that the Administrator proposed to disapprove the proposed revision because the Commonwealth had failed to submit a control strategy demonstration, as required by 40 CFR 51.13, showing the effect of this emissions relaxation on sulfur dioxide levels in the National Capital Interstate AQCR. As a result of the proposed rulemaking action, EPA received three comments regarding section 4.51(b). One, a letter from the Commonwealth of Virginia dated June 16, 1980, stated that the required control strategy demonstration was in preparation and would be submitted by October 1, 1980. Second, a letter from Potomac Electric Power Company dated June 20, 1980, urged EPA to suspend action rather than disapprove the proposed revision pending submittal of the required control strategy demonstration. Third, a letter dated June 20, 1980 from the District of Columbia's Bureau of Air and Water Quality stated that the Bureau had not received 30-day notice of the public hearings as required by 40 CFR 51.5(b)(5), that they concurred with the proposed disapproval of Section 4.51(b), and, should a control strategy demonstration be submitted, that such material must be subject to a public comment period before being approved by EPA.

As a result of these comments and the Commonwealth's agreement to submit a control strategy demonstration, EPA published a Final Rulemaking Notice, on October 8, 1980, 45 FR 66789, suspending further action on this revision pending a receipt of the demonstration.

Subsequent Modeling Analyses

After several meetings and conversations with representatives of the Commonwealth, it was decided that EPA would perform the necessary modeling analysis and control strategy demonstration.

Region III performed the modeling study using the MPTER model, with one year of meteorological data, for all grids except Quantico and Pepco Potomac River. Since only one year of data was used, the highest rather than the second-highest estimated concentrations were used to determine if the NAAQS will be attained. Five major receptor grids were analyzed, one for each of the five major sources affected by the SIP revision. Each grid was a polar grid having 180 receptors and specifically designed to analyze the maximum impacts from the specific source, although emissions from all fourteen sources were included in each model run. Because of the very different nature of the Vepco Possum Point turbines, a sixth grid was developed specifically for those emissions.

The following sources were modeled at 1.0% sulfur fuel (as per the proposed SIP revision) and maximum capacity: Pepco Potomac River, Virginia Heat and Refrigeration, Department of Correction, VEPCO Possum Point, and the Quantico Marine Base. Other sources were modeled at actual 1979 emissions: Pepco Chalk Point, Pepco Dickerson, Pepco Benning Road, Pepco Buzzard Point, Capital Power, GSA West, GSA Central, Walter Reed, and Howard University.

The ISCST and Valley models were used to estimate air quality impacts in the vicinity of the Quantico Marine Base. The ISCST model predicts air quality at a specified array of receptor locations around that source. Aerodynamic downwash is accounted for by that model and was accounted for in this modeling analysis. The Valley model was also applied because the effluent plume may intercept terrain. The Standard Valley screening assumptions were made: F stability, 2.5 m/sec wind speed, six hours of persistent meteorological conditions.

In the ISCST modeling analysis, five years of meteorological data were used (1967–1971 Quantico surface data and Sterling Dulles upper air data). Using five years of data permits the use of the highest second-high predicted SO_2 concentrations for determining compliance with NAAQS.

In the Spring of 1981, the Potomac Electric Power Company requested a temporary variance to burn 2.0% sulfur coal during the coal strike. Although the strike ended before the Commonwealth processed the variance, PEPCO had performed a control strategy demonstration in support of the variance request and this modeling analysis was submitted to EPA on March 30, 1982 in support of the proposed SO_2 relaxation.

As the Commonwealth had already reviewed and approved this analysis, EPA decided not to perform a second in-depth analysis for the PEPCO grid but simply to review the material on-hand and determine its acceptability.

PEPCO applied the EPA CRSTER model. EPA reviewed the model inputs and found the modeling approach to be consistent with EPA guidelines.

The modeling analyses are discussed in detail in the Technical Support Document. These in-depth modeling analyses have demonstrated that no violations of the sulfur dioxide NAAQS will result from the approval of the proposed SIP revision.

Notice of Proposed Rulemaking/Public Comments

Upon completion of the modeling analysis, EPA concluded that the revised SO_2 emissions limitation would not cause violation of the NAAQS for SO_2. Accordingly, on February 15, 1983, 48 FR 6725, EPA proposed approval of the Virginia SIP revision. During the 30-day public comment period, EPA received public comments from the State of Connecticut concerning the validity of the assumptions and the results of the modeling analysis. Connecticut

questioned the use of one year's worth of meteorological data in the modeling analysis, as five years' worth is generally recommended. Connecticut also pointed out that a previous modeling analysis performed by EPA using the 1.0% sulfur limitation had predicted possible SO_2 violations near sources sited on the Potomac River, and therefore questioned the more recent findings of no SO_2 violations.

EPA responds to these comments as follows: First, EPA's use of one year's worth of meteorological data, along with the use of the highest estimated concentration level, is consistent with current Agency guidelines on modeling procedures (EPA Document 1.2–080). Second, EPA considers the earlier modeling analysis to be invalid because the nature of the diffusion characteristics assumed in the earlier model were incorrectly applied to the sources which were predicted to cause SO_2 violations. EPA has more recently determined that the air diffusion characteristics in the proximity of these sources, because of their location near a large body of water (the Potomac River), are more representative of rural conditions, rather than the urban conditions assumed in the earlier modeling analysis. Therefore, EPA considers the more recent modeling analysis performed for there sources to be more appropriate.

EPA Actions

Based on the above evaluation, EPA approves the amended section 4.51(b) of the Virginia Regulations as a revision of the Virginia SIP. The Administrator's decision to approve the revision is also based on a determination that the amendment meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans. Accordingly, this notice amends 40 CFR 52.2420 (Identification of Plan) of Subpart VV (Virginia) by adding paragraph (c)(76) to incorporate this revision into the approved Virginia SIP.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Pursuant to the provisions of 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals under Section 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this section is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air Pollution Control, Ozone, Sulfur oxide, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Dated: March 15, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Virginia was approved by the Director of the Federal Register on July 1, 1982.

PART 52—[AMENDED]

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart VV—Virginia

1. In 52.2420, Identification of Plan, is revised by adding paragraph (c)(76) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(76) Amendments to Section 4.51(b) of the Virginia Air Pollution Control Board Regulations submitted on September 20, 1978 by the Commonwealth of Virginia.

[FR Doc. 84–7863 Filed 3–22–84; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2548-6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing rulemaking on a revision to the Illinois State Implementation Plan (SIP) for sulfur dioxide (SO_2). This action, if finally approved provides a new SO_2 emission limitation for Pekin Energy which is located in the Peoria Major Metropolitan Area. This action is based on a May 3, 1983 request by the State of Illinois, and supporting modelling analyses provided by the State which demonstrates that this new emission limitation for Pekin Energy will not cause or contribute to a violation of the SO_2 National Ambient Air Quality Standard.

DATE: Comments must be received by April 23, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Randolph O. Cano, at (312) 886-6035 before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch (5AP-26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air Programs Branch (5AP-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035

SUPPLEMENTARY INFORMATION: On March 24, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed State Implementation Plan (SIP) revision which requested that USEPA remove the conditional approval of the Part D Illinois SIP relating to SO_2 in the Pekin area because it is now attainment for the pollutant SO_2. USEPA was also requested to reclassify Peoria and Tazewell Counties to attainment for the pollutant SO_2. In response to comments from USEPA, IEPA requested on May 3, 1983, that USEPA incorporate newly revised Illinois Pollution Control Board (IPCB) Rule 204(f)(2) into the Illinois SIP for sulfur dioxide. This proposed rulemaking concerns the incorporation of IPCB Rule 204(f)(2) into the Illinois SIP for sulfur dioxide. The State's request to redesignate Peoria and Tazewell Counties and to consider the sulfur dioxide control strategy approval condition satisfied are the subjects of separate **Federal Register** notices.

Rule 204(f)(2) was adopted by the Illinois Pollution Control Board (IPCB) as part of a February 24, 1983 Order of the Board (R80-22). Rule 204(f)(2) provides that existing industrial sources not equipped with flue gas desulfurization (FGD) systems as of December, 1980, located in the Peoria Major Metropolitan Area shall not exceed 5.5 pounds of sulfur dioxide per million BTU of actual heat input. The rule's reference to sources with FGD systems recognizes that several industrial boilers in the Peoria area which already are equipped with FGD systems need a more stringent SO_2 emission limit than 5.5 lbs/MMBTU to prevent violations of the SO_2 National Ambient Air Quality Standards (NAAQS).

Effectively, this revised rule relaxes the federally approved SO_2 emission limit of one relatively large source, Pekin Energy (formerly CPC International, Inc.), and of two minor sources (WABCO and Pabst) from 1.8 lbs./MMBTU to 5.5 lbs./MMBTU. The remaining industrial boilers covered by Rule 204(f)(2) already have federally approved SO_2 emission limits of 5.5 lbs/MMBTU. Pekin Energy operates three coal-fired boilers with a combined maximum capacity near 800 MMBTU/hr actual heat input. Pekin Energy is located in Pekin Township, Tazewell County which is currently designated as primary nonattainment for SO_2. For the reasons discussed below, redesignation to attainment for SO_2 in Pekin Township is being proposed in a separate **Federal Register** notice. The two minor sources (WABCO and Pabst have approximately 60 MMBTU/hr actual heat input boilers each) are located in Peoria Township, Peoria County. USEPA proposes to take no action on this rule at this time as it applies to these two sources.

The modeling analyses contained in the State's technical support materials demonstrate that the revised emission limit for Pekin Energy will not cause or contribute to a violation of the SO_2 National Ambient Air Quality Standards.

These analyses also show that the SO_2 emission limits contained in revised Rule 204(f)(2) and the federally approved SO_2 limits for the electrical utility SO_2 sources in the Peoria area will attain and maintain the SO_2 NAAQS in Cincinnati, Pekin and Elmgrove Townships in Tazewell County, and Logan and Limestone Townships in Peoria County. Therefore, EPA is proposing redesignation of these five townships which are currently nonattainment to attainment for SO_2 in a separate **Federal Register** notice. The recent improvement in SO_2 air quality in this area is directly attributable to substantial emission reductions at several electrical generating plants in the area through their compliance with their federally approved 1.8 lbs/MMBTU emission limit. The modeling analyses predict violations of the SO_2 NAAQS elsewhere in the Peoria area attributable to several industrial boilers equipped with FGD systems which have a 1.8 lbs./MMBTU emission limit. Pekin Energy does not contribute to these modeled violations. Because Pekin Energy was in compliance with their previous 1.8 lbs./MMBTU emissions limit, the revision to a 5.5 lbs./MMBTU will result in an increase in emissions (i.e. potential increase of up to 3,000 tons per year). Any increase in emissions resulting from the revised emission limit for Pekin Energy will not consume the Prevention of Significant Deterioration (PSD) increment because the baseline date in this area has not yet been triggered. Consequently, Pekin Energy's emissions are included in the PSD baseline concentration for the area. Because Pekin Energy's area of significant SO_2 impact does not extend beyond Peoria and Tazewell Counties, located in the central part of Illinois, the revision will not have a significant impact on SO_2 (or TSP) levels in other States. USEPA, therefore, proposed to approve the incorporation of IPCB Rule 204(f)(2) as it applies to all the Pekin sources except for two sources in Peoria Township (WABCO and Pabst). CPA will take action on Rule 204(f)(2) as it applies to the two sources after EPA receives additional information from Illinois concerning the SO_2 air quality in Peoria Township.

Under 5 U.S.C. 605(b) I have determined that this action if finally approved will not have a significant impact on a substantial number of small entities. This action only approves a regulation previously adopted by the State. Although no action is taken on the application of this regulation to two entities, no new requirements are imposed.

The technical support provided by the State and USEPA's rationale for proposing approval are available for

inspection at the USEPA Region V office listed in the front of this proposed rulemaking.

All interested persons are invited to submit written comments on the proposed SIP revision and USEPA's proposed approval. Written comments received by the date specified above will be considered in the development of USEPA's final rule. After review of all comments submitted, the Administrator will publish USEPA's final action on this proposed rule in the **Federal Register**. Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget for review.

(Sec. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a)

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: July 22, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc: 84-7959 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[Docket No. NH-1440; OAR-FRL-2548-4]

Approval and Promulgation of Implementation Plans; Sulfur-in-Fuel Revisions for Five Sources; New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan revisions submitted by the State of New Hampshire. These revisions will revise the sulfur-in-fuel limits for five sources from 1% sulfur by weight to 2% (2.2 pounds of sulfur dioxide per million Btu). These sources were excluded from recent revisions to the statewide sulfur-in-fuel limit. These sources were excluded because the New Hampshire Air Resources Agency was in the process of amending their operating permits to ensure no violations of the NAAQS. The intended effect of this action is to allow these sources to burn the higher sulfur fuel under the statewide regulation.

DATE: Comments must be received on or before April 23, 1984.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Stephen S. Perkins, (617) 223-4866.

SUPPLEMENTARY INFORMATION: On November 1, 1983, the New Hampshire Air Resources Agency submitted revisions to its State Implementation Plan (SIP). These revisions would allow an increase in the sulfur-in-fuel content from no more than 1.0% sulfur by weight to no more than 2% at the following sources:

1. International Packing Corp., Bristol
2. Velcro USA, Inc., Manchester
3. Dartmouth College, Hanover
4. Sprague Energy-Atlantic Terminal Corp., Newington
5. Hoague-Sprague Corp., Hopkinton

These sources were excluded from recently approved revisions to the statewide sulfur-in-fuel limit. The New Hampshire Air Resources Agency has negotiated amended permits with these sources to ensure that there will be no violations of National Ambient Air Quality Standards (NAAQS).

Background

On July 12, 1973, April 11, 1975, and December 21, 1982, the New Hampshire Air Resources Agency submitted revisions to its SIP to raise the allowable sulfur content of No. 5 and No. 6 residual oils and crude oil used, purchased, or sold for heat or power generation. The revisions allow the use of oil with no more than 2.2% sulfur by weight in the New Hampshire portion of the Androscoggin Valley Interstate Air Quality Control Region, and oil with no more than 2.0% sulfur by weight in all other parts of the state. Eight fuel burning sources were excluded from these revisions including International Packing, Velcro USA, Dartmouth College and ATC Petroleum, which is now called Sprague Energy. These sources were excluded because the New Hampshire Air Resources Agency was in the process of amending their operating permits to ensure no violations of the NAAQAS.

On March 23, 1983 (43 FR 12109), EPA proposed to approve these revisions for all but the eight sources. We said that they would be the subject of future revisions. During the comment period, the New Hampshire Air Resources Agency requested that a ninth source, Hoague-Sprague, be added to the list of excluded sources. In another section of today's **Federal Register**, EPA has given final approval to the statewide revisions, while excluding these sources.

Amended Permits and Technical Support

The New Hampshire Air Resources Agency has submitted amended operating permits for the five sources that ensure no violations of the NAAQS for sulfur dioxide (SO_2) when higher sulfur fuel is burned. The permit conditions and technical support for each source are described below.

1. International Packing Corp. Previous modeling with EPA's ISC model predicted NAAQS violations because of building downwash from short stacks. International Packing was required to raise its stacks to the good engineering practice (GEP) formula height of 12.5 m. This stack height increase has been completed. ISC modeling for the new stack height predicts no NAAQS violations.

2. Velcro USA, Inc. Previous ISC modeling also predicted NAAQS violations because of building downwash. Velcro USA was required to raise its stack to 18 m. The GEP formula height is 28 m. This stack height increase has also been completed. ISC modeling for the new stack height shows no NAAQS violations.

3. Dartmouth College. Previous elevated terrain modeling with EPA's VALLEY model predicted violations of the NAAQS. Dartmouth has agreed to an operating condition that restricts its maximum hourly steam output to 164,000 pounds, which is 95% of maximum capacity. The New Hampshire Air Resources Agency has inspected this facility and found Dartmouth to be in compliance with the operating restriction. VALLEY modeling of this restricted capacity shows no NAAQS violations.

4. Sprague Energy-Atlantic Terminal Corp. Previous modeling with ISC predicted NAAQS violations due to building downwash from short stacks. Sprague Energy was required to raise two existing stacks to 14 m. The GEP formula height is 15 m. This stack height increase will be completed by January 31, 1984. Sprague Energy also agreed to permit conditions restricting it to firing any three of four boilers at one time, or to the burning of 1.5% sulfur oil if it operates all four boilers. ISC modeling shows no NAAQS violations under these conditions.

5. Hoague-Sprague Corp. Previous building downwash modeling with ISC and elevated terrain modeling with

VALLEY predicted NAAQS violations. Hoague-Sprague was required to raise one of its stacks to 23 m. The GEP formula height is 34 m. This stack height increase has been completed. Hoague-Sprague also agreed to an operating condition that restricts it to firing only one boiler at any time. ISC and VALLEY modeling predicts no NAAQS violations under these conditions.

These sources are actually burning oil at the sulfur levels proposed for approval. These levels have been permissible under New Hampshire regulations since 1975. Therefore, these revisions will not result in increases in actual emissions and will not result in the consumption of any Prevention of Significant Deterioration (PSD) increment. Instead, the emissions from these sources are included in the baseline for SO_2. An analysis of interstate impacts also showed that these revisions will not interfere with attainment or maintenance of the NAAQS in any other state.

Stack Height Issues

In a recent decision, the United States Court of Appeals for the District of Columbia Circuit remanded portions of EPA's stack height regulations to the Agency for promulgation of new regulations governing credit to be given for stack height increases in certain situations. *Sierra Club* v. *EPA*, 719 F. 2d 436 (1983). The raising of the height of the stacks at International Packing, Velcro USA, Sprague Energy and Hoague-Sprague in order to provide for attainment of the NAAQS for SO_2 is not inconsistent with that decision. The maximum height of any of these stacks after they are raised will be 23 m, which is 42 m below the *de minimis* stack height in EPA's regulations. 40 CFR 51.1(ii)(1) (1982). The Court of Appeals did not address the *de minimis* height, nor did any of the petitioners take issue with it.

Proposed action

EPA is proposing to approve the revisions to burn higher sulfur oil for International Packing Corp.; Velcro USA, Inc.; Dartmouth College; Sprague Energy-Atlantic Terminal Corp.; and Hoague-Sprague Corp.

Under 5 U.S.C. Section 605(b), the Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of Sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. These revisions are being proposed pursuant to Sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: January 27, 1984.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 84-7949 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[Region II Docket No. 13; OAR-FRL-2549-1]

Approval and Promulgation of State Implementation Plans; Revisions to the State of New Jersey Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces the receipt of a request from the State of New Jersey to revise its implementation plan. If approved by the Environmental Protection Agency (EPA), this revision would allow U.S. Gypsum Co. to burn fuel oil with a sulfur content of 2.0 percent, by weight, at either Boiler #1, #2 or #3 at its Clark, New Jersey plant. This revision will remain in effect until March 31, 1985 or until Boiler #4 is ready to burn coal, whichever occurs first. Emissions of sulfur dioxide from coal burning will be restricted to 0.3 pounds per million BTU gross heat input. Allowance for a temporary increase in the sulfur content of fuel oil used in the boilers at the U.S. Gypsum's Clark plant is part of New Jersey's program to provide incentives for industries to convert from fuel oil or natural gas to coal with stringent SO_2 control. Under New Jersey and EPA requirements such actions may not cause a violation of any national ambient air quality standards or Prevention of Significant Deterioration increments.

DATE: Comments must be received on or before April 23, 1984.

ADDRESSES: All comments should be addressed to: Jacqueline E. Schafer, Regional Administrator, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278.

Copies of the proposal are available for public inspection during normal business hours at:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278.

New Jersey Department of Environmental Protection, Division of Environmental Quality, John Fitch Plaza, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Room 1005, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: On April 14, 1983, the State of New Jersey Department of Environmental Protection (DEP) submitted to the Environmental Protection Agency (EPA) a proposed revision of its State Implementation Plan (SIP). This proposal, if approved by EPA, would allow the U.S. Gypsum Co. in Clark, New Jersey temporarily to burn fuel oil with a higher sulfur content than normally allowed under the SIP. Subchapter 9, "Sulfur in Fuels," of Title 7, Chapter 27 of the New Jersey Administrative Code normally allows the use of fuel oil with 0.3 percent sulfur content, by weight, in the area in which Clark is located. However, Section 9.5 of this regulation, "Incentive for conversion to coal or other solid fuel," allows certain coal converting sources of sulfur dioxide to burn, for up to three years, fuel oil with a higher sulfur content as long as the use of the higher sulfur content fuel does not cause a violation of the national ambient air quality standards or the Prevention of Significant Deterioration (PSD) increments. DEP proposes to allow the use of 2.0 percent sulfur content fuel oil at U.S. Gypsum Co. in either Boiler #1, #2, of #3 until March 15, 1985 or until Boiler #4 is converted to burn coal, whichever occurs first. Sulfur dioxide emissions from the burning of coal will be limited to 0.3 pounds per million BTU gross heat input through the use of limestone fluidized bed injection. In addition, a baghouse particulate control system will be installed.

The State has submitted an air quality modeling analysis which shows that U.S. Gypsum's use of 2.0 % sulfur fuel will cause no violations of national ambient air quality standards or PSD increments. In addition, the State has

executed an Administrative Consent Order with the Company that prescribes the length of time and conditions under which U.S. Gypsum can burn higher sulfur content fuel oil. A notice of the Consent Order has been published in a local newspaper.

Based on its review of this material EPA proposes to approve the State's proposed SIP revision. This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted on whether this SIP revision should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed SIP revision will be based on whether it meets the requirements of Section 110 of Clean Air Act and EPA regulations at 40 CFR Part 51.

Comments received by April 23, 1984 will be considered in EPA's final decision. All comments received will be available for inspection at the Region II Office of EPA at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under 5 U.S.C. Section 605(b), the Regional Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this proposed rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7600))

Dated: July 20, 1983.

Jacqueline E. Schafer,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 84-7956 Filed 3-22-84: 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[Region II Docket No. 19; OAR-FRL-2548-5]

Approval and Promulgation of Implementation Plans; Proposed Revision to the New York State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces receipt of a request from the State of New York to revise its State Implementation Plan and EPA's proposed approval of this revision. If approved by the Environmental Protection Agency, this revision would renew, in modified form, a temporary relaxation of the sulfur content limitation applicable to certain fuel burning sources located in the Southern Tier East, Central, and Champlain Valley (Northern) Air Quality Control Regions. Generally, the sources affected are those with a heat input capacity under 250 million Btu per hour. The relaxation, technically known as a "special limitation," would allow the sources to use fuel oil with a maximum sulfur content of 2.8 percent, by weight, until June 30, 1984.

DATES: Comments must be received on or before April 23, 1984.

ADDRESSES: All comments should be addressed to: Jacqueline E. Schafer, Regional Administrator, U.S. Environmental Protection Agency, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

Copies of the State's request are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Air Programs Branch—Room 1005, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: On October 19, 1983 the Environmental Protection Agency (EPA) received a proposed revision to the New York State Implementation Plan (SIP). Additional supporting material and clarification was submitted by the New York State Department of Environmental Conservation (DEC) on November 4, 1983. This revision provides for the renewal, in modified form, of a State-initiated fuel oil sulfur content relaxation ("special limitation") for certain fuel burning sources in the Southern Tier East, Central, and Champlain Valley (Northern) Air Quality Control Regions (AQCRs). The original "special limitation" was approved by EPA on October 27, 1977 (42 FR 56607) and an extension was approved on August 20, 1980 (45 FR 55482). The latest "special limitation" expired on December 31, 1982. The reader is referred to these two notices for historical background to today's action.

"Special limitations" are authorized by Section 225.2 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Section 225.2 allows the Commissioner of DEC to promulgate special sulfur-in-fuel limitations for oil combustion sources which do not have a total heat input in excess of 250 million BTU per hour and solid fuel combustion sources which do not have a total heat input in excess of 100 million BTU per hour. (NOTE: The heat input ceiling is applicable to sources located at one or more adjacent properties owned or operated by a single party). "Special limitations" cannot exceed 3.0 percent, by weight, for oil combustion sources of 2.8 pounds per million BTU gross heat content for solid fuel combustion sources, and can be promulgated only for sources in areas where ambient air quality standards for sulfur dioxide are being met and the Commissioner determines that the use of such fuel would not significantly degrade air quality.

State Submittal

The State's proposed renewal of the "special limitation" would allow the following sources to use oil with a maximum sulfur content of 2.8 percent, by weight, until June 30, 1984:

- All oil combustion sources in the Central, Champlain Valley (Northern), and Southern Tier East AQCRs, with a maximum heat input capacity of less than 50 million BTU per hour, *except those located in Broome and Onondaga Counties;*
- The following oil combustion sources in the Central, Champlain Valley (Northern), and Southern Tier East AQCRs, which have maximum heat input capacities of 50 to 250 million BTU per hour:

Alco Power Inc., Auburn, Cayuga County
Auburn Correctional Facility, Auburn, Cayuga County
Chicago Pneumatic Tool, Frankfort, Herkimer County
Rome Cable Division, Rome, Oneida County
Rome Division, Rome, Oneida County
Revere Ware, Rome, Oneida County
Rome Developmental Center, Rome, Oneida County
St. Luke's Hospital, New Hartford, Oneida County
Aerospace Electronics, Utica, Oneida County

Oneida Silversmiths, Sherrill, Oneida County
Foster Paper, Utica, Oneida County
Masonic Home, Utica, Oneida County
West End Brewing, Utica, Oneida County
St. Elizabeth's Hospital, Utica, Oneida County
Bossert Manufacturing Co., Utica, Oneida County
House of Good Samaritan Hospital, Watertown, Jefferson County
Carthage Paper Makers, Carthage, Jefferson County
Queen's Dairy Farm, Pierpoint Manor, Jefferson County
Crowley Foods, Orleans, Jefferson County
Mercy Hospital, Watertown, Jefferson County
Crown Zellerback, Carthage, Jefferson County
Fiber Industries, Beaver Falls Lewis County
Kraft Foods, Lowville, Lewis County
Burrows Paper Corp., Lyonsdale, Lewis County
Pajco Products, Lowville, Lewis County
Sheffield Products, Norwich, Chenango County
Norwich Pharmaceutical, Norwich, Chenango County
Dellwood Foods, Delhi, Delaware County
Kraft, Inc., Walton, Delaware County
Woodbourne Correctional Facility, Woodbourne, Sullivan County
Kiamesha Concord, Inc., Thompson, Sullivan County
Sunmount Development Center, Tupper Lake, Franklin County
Easton Mills, Easton, Washington County
Great Meadows Correctional, Comstock, Washington County
General Electric (Small Industrial Capacitors Division), Fort Edward, Washington County
Scott Paper, Fort Edward, Washington County
UM & M (Decora Division), Fort Edward, Washington County
Greenwich Mills, Greenwich, Washington County
Noroton Pulp and Machine, Greenwich, Washington County
General Electric (Power Capacitor Division), Hudson Falls, Washington County
Diamond International, Plattsburgh, Clinton County
Georgia Pacific, Plattsburgh, Clinton County
Imperial Paper, Plattsburgh, Clinton County
Ayerst Laboratories, Rouses Point, Clinton County
Champlain Valley Physicians Hospital, Plattsburgh, Clinton County
Sealright Co., Fulton, Oswego County
Oswego Oil Terminals, Oswego, Oswego County
Power Authority of the State of New York, Scriba, Oswego County
Armstrong World Industries, Volney, Oswego County
State University of New York at Oswego, Oswego, Oswego County
General Foods, Fulton, Oswego County
Hammermill, Oswego, Oswego County
St. Lawrence University, Canton, St. Lawrence County
Groveton Paper, Gouverneur, St. Lawrence County
Groveton Paper, Natural Dam, St. Lawrence County
Reynolds Metals, Massena, St. Lawrence County
Chagrin Fibers, Norfolk, St. Lawrence County
Potsdam Paper Corp., Potsdam, St. Lawrence County
Kraft, Inc., Canton, St. Lawrence County

Ths sulfur content limitation applicable to all other oil combustion sources, under the generic requirements of the SIP, would remain at 2.0 percent, by weight. No "special limitation" is proposed for any coal combustion source.

The State's SIP revision submittal consists of the following:

- Public hearing documents defining the terms of the "special limitation;"
- Further elaboration and clarification of the proposed revision; and
- A technical support document evaluating the air quality impact of the revision.

The State's SIP revision request was submitted in accordance with all EPA requirements under 40 CFR Part 51. These include the need for public hearings, which were held by the State on May 24, 25 and 26, 1983.

EPA's Findings and Proposed Action

In order for EPA to approve the SIP revision, the State had to demonstrate, using acceptable procedures for evaluating the air quality impact, that the revision would not cause or contribute to any contravention of national ambient air quality standards or PSD increments.

EPA has reviewed the material submitted by DEC and proposes to approve the "special limitations" in the three AQCRs in accordance with the Commissioner's Order. The air quality impact analysis carried out by the State is consistent with EPA modeling guidelines and demonstrates that no national ambient air quality standard or PSD increment would be contravened.

The air quality analysis performed by the State indicated that the air quality impact of five potential candidates for using 2.8% sulfur fuel oil would cause violations of ambient air quality standards. Consequently, the State excluded the following five sources from burning 2.8% sulfur content fuel oil:

Clinton Correctional Facility, Dannemora, Clinton County
Newton Falls Paper Mill, Inc., Newton Falls, St. Lawrence County
Stevens and Thompson, Paper Co., Middle Falls, Washington County
Colgate University, Hamilton, Madison County
Burrows Paper Corp., Little Falls, Herkimer County

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted as to whether this proposed revision to the New York State Implementation Plan should be approved or disapproved. The Administrator's decision to approve or disapprove will be based on the requirements of Section 110(a)(2) (A)–(K) of the Clean Air Act and EPA regulations in 40 CFR Part 51.

Interested persons are invited to comment on the subject proposal and on whether it meets Clean Air Act requirements. Comments received by April 23, 1984 will be considered in EPA's final decision. All comments received will be available for inspection at the Region II office of EPA, at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under 5 U.S.C. 605(b), the Administrator has certified that approvals of SIP revisions do not have a significant economic impact on a substantial number of small entities. [See 46 FR 8709].

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Sec. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Dated: November 23, 1983.

Jacqueline E. Schafer,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 84–7958 Filed 3–23–84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[OAR–FRL–2548–8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to revise the Federal Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the B.F. Goodrich plant and the Ohio Edison Company's Beech Street power station in Summit County, Ohio. EPA's approval is based on an urban modeling analysis submitted by the State to support the revision. The analysis demonstrates that this revision will not interfere with the attainment and maintenance of the SO_2 National Ambient Air Quality Standards. This action proposes to revise the B.F. Goodrich SO_2 emission limits form 5.54 lbs. SO_2/MMBTU to 7.0 lbs. SO_2/MMBTU. In addition, EPA is proposing to revise the Ohio Edison Beech Street Plant emission limit from 2.79 to 0.0 since the plant is permanently shut down.

DATE: Comments on EPA's proposed action must be received by April 23, 1984. Requests for a public hearing on this revision must be received by no later than April 9, 1984.

ADDRESSES: Copies of the Docket 5A–83–3 are on file at the following addresses for review. (It is recommended that you telephone Debra Marcantonio at (312) 886–6088 before visiting the Region V office)—U.S. Environmental Protection Agency, Region V, Air And Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed rule and requests for a hearing should be addressed to: (Please submit an original and five copies if possible)—Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTRACT: Debra Marcantonio, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the Ohio Environmental Protection Agency (Ohio EPA) submitted a request for a revision to the SO_2 emission limitation for the B.F. Goodrich South Main Street Plant in Summit County, Ohio. The submittal was intended as a request for a revision to the current Federal SIP, which was promulgated by EPA on December 5, 1979 (44 FR 69928). Additional technical support was submitted to EPA on April 15, 1983.

Ohio EPA requested that EPA revise the emission limit for coal-fired Boilers #27 and #32 at the B.F. Goodrich facility from 5.54 lbs SO_2/MMBTU to 7.0 lbs SO_2/MMBTU. The current Federal limit of 0.51 lbs SO_2/MMBTU for Boiler #31 and the nonsimultaneous operating restriction for Boilers #27 and #32 currently in the SIP are not being revised.

To determine if the 7.0 lbs SO_2/MMBTU limit will provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), B.F. Goodrich performed a RAM urban modeling analysis. The results of the analysis demonstrate that the proposed revision will not interfere with the attainment and maintenance of the SO_2 NAAQS. Therefore, EPA is proposing to promulgate this revision to the Ohio SO_2 SIP. Further discussion of the modeling analysis is contained in the technical support document for this revision, which is available for review at the Region V Office.

The emission inventory prepared by the State and used in the modeling attainment demonstration, omitted the Ohio Edison Beech Street Plant since it is permanently shut down. Therefore, as part of the proposed rulemaking, EPA is also revising the limit for the Ohio Edison Beech Street Plant from 2.79 lbs SO_2/MMBTU to 0.00 SO_2/MMBTU.

Impact on Attainment and Prevention of Significant Deterioration (PSD) in Other States

EPA also reviewed the proposed B.F. Goodrich revision for consistency with Section 110(a)(2)(E) of the Clean Air Act. Due to present limitations on modeling, the modeling for the revision was limited to a 50 km radius around the B.F. Goodrich plant. There is no other state within 50 km of the plant. Furthermore, although the revision would increase allowable emissions from the B.F. Goodrich plant by 1227 tons per year, the revision is not expected to result in an increase in actual emissions from historical levels. Therefore, the revision will not affect PSD increment consumption.

The modeling for this revision demonstrated that 3-hour and 24-hour ambient SO_2 concentrations resulting from B.F. Goodrich's emissions decrease markedly within a short distance from the plant and fall well below the corresponding ambient standards. Therefore, in EPA's judgment, the revision would not contribute substantially to SO_2 nonattainment in any other state.

Under 5 U.S.C. Section 605(b), the Administrator has certified that this source-specific revision to the Federal SIP does not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The office of management and budget has exempted this rule from the requirements of section 3 of executive order 12291.

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Section 110 of the Clean Air Act, as amended) (42 U.S.C. 74101)

Dated: September 7, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–7948 Filed 3–22–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[OAR–FRL–2548–7]

Approval and Promulgation of Implementation Plans; Sulfur Dioxide Revision for Narragansett Electric Company, South Street Station; Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to approve State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions will allow for the burning of coal with a sulfur content not to exceed 1.21 pounds per million BTU (lbs/MMBTU) on a 30-day rolling average and 2.31 lbs/MMBTU on a 24-hour average at the Narragansett Electric Company (NECo) South Street Station (South Street) in Providence, Rhode Island. As part of this action, EPA is proposing to approve Section 8.3.4, "Large Fuel Burning Devices Using Coal," of Rhode Island Regulation 8 as it applies to South Street. The intended effect of these actions is to approve Rhode Island's request that the proposed sulfur-in-coal limits for South Street be incorporated into its federally approved SIP. This action is taken pursuant to Section 110 of the Clean Air Act.

DATE: Comments must be received on or before April 23, 1984.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air

Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 2312, JFK Federal Building, Boston, MA 02203 and at the Division of Air and Hazardous Materials, Cannon Building, Room 204, 75 Davis Street, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: John Pollack, (617) 223–4867, FTS 223–4867.

SUPPLEMENTARY INFORMATION: On July 19, 1983, the Chief of the Division of Air and Hazardous Materials of the Rhode Island Department of Environmental Management (RIDEM) requested that EPA approve proposed revisions to the SIP. These revisions will allow for the burning of coal with a sulfur content not to exceed 1.21 lbs/MMBTU on a 30-day rolling average and 2.31 lbs/MMBTU on a 24-hour average at South Street. These revisions will approve Section 8.3.4, "Large Fuel Burning Devices Using Coal," of Rhode Island Regulation 8 as it applies to existing fuel burning devices at South Street.

Amendments to Rhode Island Regulation 8, "Sulfur Content of Fuels," were approved by EPA on March 29, 1983 (48 FR 13026). The amendments provided for temporary variances from sulfur-in-fuel emission limits for small fuel burning sources (less than 250 MMBTU per hour) which committed to energy conversion (from oil) or conservation measures, and for the bubbling of emissions from small sources to achieve cost effective control strategies.

Section 8.3.4 allows for the burning of coal under certain conditions at fuel burning sources greater than 250 MMBTU per hour and has not previously been approved by EPA. This section is now being proposed for approval only as it applies to existing fuel burning devices at South Street, and at the request of the State, in order that the State Regulation and the federally approved SIP will be the same. There are no existing fuel burning sources in the State except for South Street which are eligible under Section 8.3.4, and South Street is being submitted as a source specific SIP revision. For any new major fuel burning source greater than 250 MMBTU per hour, or for the addition of a fuel burning device greater than 250 MMBTU per hour to an existing source, the federal New Source Performance Standards (NSPS) and the State New Source Review /PSD Regulations will supersede Section 8.3.4. Therefore, Section 8.3.4 does not provide for a generic approval for large sources (greater than 250 MMBTU per hour) to burn coal. EPA approval of source specific SIP revisions will still be required in order for large sources to burn coal.

This approval will not affect the bubble under which South Street currently operates when burning residual fuel oil (46 FR 5980). Under this bubble, South Street is allowed a sulfur-in-oil limit of 1.21 lbs/MMBTU (2.2% S oil) when the nearby NECo Manchester Street Station is burning natural gas or not operating. Otherwise, South Street is limited to the previously approved SIP sulfur-on-oil limit of 0.55 lbs/MMBTU (1.0% S oil).

Prior to approving a revision to a SIP, EPA must determine that the proposed actions will not violate applicable National Ambient Air Quality Standards (NAAQS) or Prevention of Significant Deterioration (PSD) increments. Towards this end, a modeling analysis in support of the proposed revision was performed by NECo after consultation with both EPA and the State.

The EPA ISCST model was used including significant terrain below stack top, building induced downwash from the nearby Manchester Street Station, multiple source impacts, and urban effects. Five years of hourly surface meteorological data from Green Airport in Providence, Rhode Island along with upper air data from Chatham, Massachusetts were used. In addition to South Street and Manchester Street Station, all major sources of sulfur dioxide (SO_2) within 20 kilometers (km) of South Street were included in the ISCST analysis. These consisted of eight additional sources in Rhode Island and one in Massachusetts. Furthermore, two Massachusetts power plants beyond 20 km, the Brayton Point and Montaup Stations, were included in the modeling analysis. The maximum annual average and highest second-high 24-hour and 3-hour average SO_2 concentrations monitored in Providence for the three-year period 1979–1981 were selected as background values in the NAAQS analyses.

EPA's review of the NAAQS analyses showed that the NAAQS for SO_2 would not be violated as a result of burning coal meeting the proposed sulfur limits at South Street. NECo also performed a modeling analysis to determine the PSD increment for SO_2 that would be consumed by the burning of coal meeting the proposed sulfur limits at South Street. EPA's review of the PSD analysis showed that available PSD increments for SO_2 would not be exceeded.

EPA's detailed reviews of these modeling analyses are contained in a Technical Support Document. Copies of EPA's Technical Support Document along with NECo's modeling analyses submitted by the RIDEM are available for public inspection at the locations listed in the ADDRESSES section.

Whenever NECo burns coal at South Street under this revision, the current Rhode Island emission limit for total suspended particulates (TSP) of 0.1 lbs/MMBTU must be met at all times. While NECo has not yet proposed how it would meet the TSP emission limit while burning coal, EPA's approval of the sulfur relaxation in no way frees NECo from the obligation of meeting this limit.

Proposed Action

EPA is proposing to approve:

1. Changes to the Rhode Island SIP for SO_2 that would allow for the burning of coal with a sulfur content not to exceed 1.21 lbs/MMBTU on a 30-day rolling average and 2.31 lbs/MMBTU on a 24-hour average at South Street.

2. Section 8.3.4 of Rhode Island Regulation 8 as it applies to existing fuel burning sources at South Street.

Under 5 U.S.C. Section 605(b), the Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of Sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. These revisions are being proposed pursuant to Sections 110(a) and 301(a) of the Clean Air Act, as amended (42 USC 7410(a) and 7601(a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: August 24, 1983.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 84–7957 Filed 3–22–84; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
March 23, 1984

Part V

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Central Gulf of Mexico; Oil and Gas Lease Sale 81; Notice

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UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Central Gulf of Mexico
Oil and Gas Lease Sale 81
Part 1
(April 1984)

1. Authority. This Notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Boulevard, Metairie, Louisiana 70002. Bids may be delivered in person to the above address during normal business hours (8:00 a.m. to 4:00 p.m., c.s.t.), until the Bid Submission Deadline at 10:00 a.m., c.s.t., April 23, 1984. Hereinafter, all times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted on April 24, 1984, the day of Bid Opening. Delivery by mail should be addressed to P.O. Box 7944, Metairie, Louisiana 70010 and must be received by the Bid Submission Deadline. Bids received by the Regional Manager later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the Regional Manager prior to 10:00 a.m., April 23, 1984. Bids may not be withdrawn unless written withdrawal is received by the Regional Manager prior to 8:30 a.m., April 24, 1984. Bid Opening Time will be 9:00 a.m., April 24, 1984, at the Hyatt Regency New Orleans, 500 Poydras Plaza, Ballrooms D and E, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 48 FR 45318, on October 4, 1983.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease, Central Gulf of Mexico Sale 81 (insert map number(s), map name(s), if applicable, and block number(s)), not to be opened until 9:00 a.m., c.s.t., April 24, 1984," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease, Central Gulf of Mexico Sale 81, NH 16-4, Mobile, Block 898, not to be opened until 9:00 a.m., c.s.t., April 24, 1984." For those blocks which must be bid upon together as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portions of a block or bidding unit will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing. Partnerships also need to

submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. All documents must be executed in conformance with signatory authorizations on file. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point; e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $150 or more per acre or fraction thereof. All leases awarded from this sale will provide for a yearly rental payment of $3 per acre or fraction thereof. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. The bidding systems to be utilized for this sale apply to blocks or bidding units as shown on map 2 (see paragraph 12). The following bidding systems will be used:

(a) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

(b) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982) and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid will be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves

(b) Outer Continental Shelf Official Protraction Diagrams:

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $150 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations, may be returned to the person submitting that bid by the Regional Manager and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

For this lease sale, the Minerals Management Service will implement procedures for the electronic funds transfer (EFT) payment of four-fifths of the cash bonus bid and the first year's annual rental for each lease issued. Detailed instructions on making EFT payments will be provided by the Regional Manager when bidders are qualified to submit bids at the sale.

The following procedures for the payment of four-fifths of the cash bonus and the first year's annual rental by EFT will be in effect for successful bidders at this sale, based on the final rule published in the Federal Register on March 8, 1984, at 49 FR 8602-8606.

Bidders are required to submit the balance of the bonus and the first year's annual rental payment by EFT utilizing the Federal Reserve Communications System (FRCS) and the Treasury Financial Communications System, payable to the U.S. Department of the Interior--Minerals Management Service. Each successful bidder must have its bank transfer the balance of the bonus payment and the first year's annual rental through the FRCS to the account of the U.S. Treasury at the Federal Reserve Bank of New York. The Federal Reserve Bank of New York must receive the EFT payment no later than noon, Eastern Standard Time, on the eleventh business day after receipt of the lease forms for execution. The term "business day" is defined as a day on which the Gulf of Mexico Regional Office is open for business.

11. Leasing Maps and Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps and Official Protraction Diagrams which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14):

(a) Outer Continental Shelf Leasing Maps--Louisiana Nos. I through 12. This is a set of 27 maps which sells for $17.

(b) Outer Continental Shelf Official Protraction Diagrams:

NH 16-4	Mobile	(approved April 19, 1983).
NH 16-7	Viosca Knoll	(approved December 2, 1976).
NH 15-12	Ewing Bank	(approved December 2, 1976).
NH 16-10	Mississippi Canyon	(approved December 2, 1976).
NG 15-3	Green Canyon	(approved December 2, 1976).
NG 16-1	Atwater Valley	(approved November 10, 1983).
NG 15-6	Walker Ridge	(approved December 2, 1976).
NG 16-4		(approved December 2, 1976).

These sell for $2 each.

12. Description of the Areas Offered for Bids.

(a) Acreages of full and partial blocks occurring at the meeting of map borders appear on the Leasing Maps and Official Protraction Diagrams. Acreages of split blocks on the Federal/State boundary appear on the set of drawings entitled "Split Blocks--Central Gulf of Mexico," available from the Gulf of Mexico Regional Office (see paragraph 14). Where part of any of the above full, partial, or split blocks is under lease (as indicated below), the acreage available for leasing at this sale is listed in the document entitled "Central Gulf of Mexico Lease Sale 81, Open Acreages for Blocks with Aliquots Under Lease," available from the Gulf of Mexico Regional Office. A list entitled "8(g) Boundary Blocks" is also available from the Regional Office.

(b) References to maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico Regional Office:

Map 1 entitled "Stipulations, Lease Terms, and Bidding Systems" refers largely to lease terms, stipulations, and warning areas.

Map 2 entitled "Stipulations, Lease Terms, and Bidding Systems" refers largely to bidding systems and bidding units.

Map 3 entitled "Detailed Maps to Biologically Sensitive Areas" pertains to areas referenced in Stipulation No. 2.

(c) In several instances, two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having more than one block must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their acreages appears on map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11 except for those blocks or partial blocks described as follows:

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DESCRIPTIONS OF BLOCKS LISTED REPRESENT ALL FEDERAL ACREAGE LEASED UNLESS OTHERWISE NOTED

Initial Pass

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West Cameron

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(SW¼)
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(SW¼SW¼)
22
23
28–
(N½; N½N½S½
Zone 2)
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41 (E½)
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(NW¼NW¼)
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47 (NW¼)
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West Cameron (continued)

69 (N½)
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West Cameron (continued)

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194 (S½)
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West Cameron (continued)

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West Cameron, West Addition

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West Cameron, West Addition (continued)

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West Cameron, South Addition

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West Cameron, South Addition (continued)

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West Cameron, South Addition (continued)

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East Cameron

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9–
(E½SW¼;
SE¼, Zone 2)
14–
(E½NW¼; NE¼)
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East Cameron (continued)

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83 (NW¼)
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119 (N½)
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East Cameron (continued)

160 (E½)
161
178
185
187
194–
(E½E½SE¼)
195 (S½)
196
198
202
203
204–
(N½N½)
213
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East Cameron, South Addition

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East Cameron, South Addition (continued)

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Vermilion

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46 (N½)
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Vermilion (continued)

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101 (S½)
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161
162
164–
(E½NE¼SW¼;
NE¼SE¼SW¼;
S½NE¼SE¼;
W½SE¼;
SE¼SE¼)
166
167
170

Vermilion (continued)

171
178–
(W½NW¼NW¼;
SW¼NW¼;
N½NW¼SW¼)
179
182
185
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191
197
198
201
202
204
214
215
216
217–
(SW¼;
W½W½SE¼)
218–
(E½SE¼;
E½NW¼SE¼;
NE¼SW¼SE¼)
219
220
221
222
223
224
225–
(E½NE¼;
NE¼SE¼)
226
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Vermilion, South Addition

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Vermilion, South Addition (continued)
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Vermilion, South Addition (continued)
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S. Marsh Island, North Addition
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213
214
215
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218
219
220
221–
(Landward of lease 0310 stip. line)
222
223
224
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230–
(Landward of lease 0310 stip. line)
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241–
(Landward of lease 0310 stip. line)
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S. Marsh Island, North Addition (continued)
249
250
252
253–
(Landward of lease 0310 stip. line)
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S. Marsh Island
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S. Marsh Island, South Addition (continued)
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S. Marsh Island, South Addition (continued)
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Eugene Island
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Eugene Island (continued)
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91 (E½)
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113A
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128A
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129A
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Eugene Island (continued)
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211
212
214–
(W½W½E½; W½)
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247 (S½)
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252
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254 (S½)
255 (S½)
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Eugene Island, South Addition
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269
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287–
(S½; S½N½)
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Eugene Island, South Addition (continued)
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301 (S½)
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Eugene Island, South Addition (continued)
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Ship Shoal
13
14
15
16
25–
(Seaward of Zone 2)
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63
64 (W½)
68
69
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71 (W½)
72
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80
81
82
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85
86
87 (N½)
90
91
92
93
94–
(S½NE¼; SE¼ Zone 3)
98
99
102
104

Ship Shoal (continued)
107
108
112
113
114
115
117 (N½)
118 (N½)
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Ship Shoal (continued)
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223
224
225 (N½)
229
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Ship Shoal, South Addition
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291–
(N½; SE¼)
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Ship Shoal, South Addition (continued)
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South Timbalier
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16
21
22
23
24
26
27–
(N½; N½SW¼)
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44
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50
51–
(Seaward of Zone 3)
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South Timbalier (continued)
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188 (NW¼)
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South Timbalier (continued)
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South Timbalier, South Addition
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South Timbalier, South Addition (continued)
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South Pelto
1
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17
18
19 (W½)
20
21
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24
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Bay Marchand
2
3

Grand Isle
15
16
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18
19
20
21
22
23
24
25
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27
29 (N½)
31
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42
43
44 (N½)
45
46
47

Grand Isle (continued)
48
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Grand Isle, South Addition
86
90
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118

West Delta
17
18
21–
(S½N½S½; S½S½)
22 (E½)
23
24
26
27
28
29
30
31
32
33
34
35–
(Seaward of Zone 3)
36
38
39
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41

West Delta (continued)
42
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79
80 (N½; N½S½; SW¼SW¼)
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West Delta, South Addition
117
118
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West Delta, South Addition (continued)
140
143
147
148
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152

South Pass
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8
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27
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33
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38
42–
(Seaward of the Zone 2 Line and/or the 1975 Decree Line)
43
44
45
46
48
49
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51
54
55–
(Seaward of 1965 Decree Line)
56
57
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59
60
61

South Pass, South & East Addition
62
64
65
66–
(Seaward of 1965 Decree Line)
67
69
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77

South Pass, South & East Addition (continued)
78
82
83
84
86
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93
94

Main Pass
6
7–
(N½; N½S½; Seaward of 1975 Decree Line)
18 (S½)
19
27
28
29
30
37
38
39
40
41
42
43–
(N½; W½NE¼SW¼; NW¼SW¼)
44–
(SE¼NE¼; NE¼SE¼)
55
56
57
58
59–
(Portion Landward of Zone 3 Line)
62
63
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73
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96

Main Pass (continued)
98
100
102
103
106–
(N½N½; N½S½N½; SE¼SE¼NE¼; E½E½SE¼)
107–
(N½NE¼NE¼; NE¼NW¼NE¼; W½W½E½, W½)
108
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111
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123
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125
126
127 (N½)
128
129
132
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142
143
144
145
148
149
150
151
152–
(Seaward of 1965 Decree Line)
153

Main Pass, South & East Addition
154
155
160
161
164
165
169

Main Pass, South & East Addition (continued)
170
172
173
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Breton Sound
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Breton Sound (continued)
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Chandeleur
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Chandeleur, East Addition
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Mobile
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779
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Viosca Knoll
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942
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987

Ewing Bank
304
305
306
349
350
438
482
525
526
658

Ewing Bank (continued)
743
744
781
782
784
785
787
788
789
790
824
825
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Mississippi Canyon
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Mississippi Canyon (continued)	Mississippi Canyon (continued)	Green Canyon (continued)	Green Canyon (continued)
197	409	16	117
240	410	18	133
241	414	19	134
267	441	21	135
268	485	23	136
280	493	24	137
281	494	29	138
283	495	39	139
285	573	52	140
309	575	53	141
310	576	54	142
311	617	59	148
312	618	60	153
316	642	62	154
322	663	63	161
323	686	65	179
324	687	66	180
325	707	67	181
329	711	68	182
354	713	69	183
355	751	70	184
356	756	71	185
357	801	72	192
358	809	73	205
363	839	89	228
365	852	90	235
366	853	91	236
370		92	237
397	Green Canyon	97	245
398		98	249
399	4	102	294
400	8	104	313
401	9	105	320
402	10	109	334
405	11	110	428
407	13	111	471
408	14	112	472
		116	473
			517

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Although currently unleased and shown on the OCS Official Protraction Diagram Mobile NH 16-4 (Approved October 10, 1972; Revised December 21, 1977; Revised April 19, 1983), no bids will be accepted on the following blocks:

Mobile---Blocks	629 through 633
	671 through 679
	681
	686 through 688
	718 through 720
	722
	729 through 732
	765 through 768
	809 through 816
	818 through 820

In addition to the foregoing, no bids will be accepted on the following unleased blocks located in military operating area W-155:

NH 16-7 Viosca Knoll

79	214
80	255
81	256
82	257
123	258
124	299
125	300
126	301
167	302
168	343
169	344
170	345
211	387
212	388
213	389

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on map 1 and will be on Form MMS-2005 (August 1982). Copies of the lease form are available from the Gulf of Mexico Regional Office.

(b) The applicability of Stipulations 1 through 6 that will be included in leases resulting from this sale is shown on map 1 and supplemented by references in this Notice.

Stipulation No. 1--Cultural Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archaeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Manager (RM) believes a cultural resource may exist in the lease area, the RM will notify the lessee in writing. The lessee shall then comply with subparagraph (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RM, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archaeologist and geophysicist, shall be based on an assessment of data from remote-sensing surveys and other pertinent cultural and environmental information. The lessee shall submit this report to the RM for review.

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(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RM that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation conducted by an archaeologist and geophysicist, using survey equipment and techniques deemed necessary by the RM. A report on the investigation shall be submitted to the RM for review.

(3) If the RM determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, he will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RM has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the lease, the lessee shall report the discovery immediately to the RM. The lessee shall make every reasonable effort to preserve the cultural resource until the RM has told the lessee how to protect it.

Stipulation No. 2--Protection of High Relief Banks.

(This stipulation will be included in leases located in the areas so indicated on maps 1 and 3 entitled "Central Gulf of Mexico Lease Sale 81, Stipulations, Lease Terms, and Bidding Systems," and "Detailed Maps of Biologically Sensitive Areas," respectively. The high relief banks with their appropriate "no activity" isobaths are listed below.)

Bank Name	Isobath (meters)
18 Fathom Lump	85
Bouma Bank	85
Rezak Bank	85
Sidner Bank	85
Sonnier Bank	85
Sackett Bank	85
Ewing Bank	85
Diaphus Bank	85
Alderdice Bank	80
Parker Bank	85
Fishnet Bank	76
Jakkula Bank	85
Sweet Bank 1/	85
28 Fathom Bank	85
29 Fathom Bank	64
Bright Bank	85
Greyer Bank 2/	85
MacNeil Bank 2/	82

No structures, drilling rigs, or pipelines will be allowed within the isobaths of the banks listed above.

Operations within the area shown as "1-Mile Zone" on map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters from the bottom.

1/ The Sweet Bank Stipulation will contain only this sentence: "No structures, drilling rigs, or pipelines will be allowed within the 85-meter isobath."

2/ Western Gulf of Mexico bank with portion of 3-Mile Zone in Central Gulf of Mexico.

Operations within the area shown as "3-Mile Zone" on map 3 shall be restricted as specified in either (1) or (2) below at the option of the lessee.

(1) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(2) The operator (lessee) shall submit a monitoring plan. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall designate that the monitoring investigations will be conducted by qualified, independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Regional Manager (RM) on a schedule established by the RM, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the RM shall require shunting as specified in subparagraph (1) above or other appropriate operational restrictions.

Stipulation No. 3--Live Bottom Areas.

(This stipulation will be included in leases located in the areas indicated on map 1 described in paragraph 12.)

Prior to any drilling activity or the construction or placement of any structure for exploration or development on this lease, including but not limited to well drilling and pipeline and platform placement, the lessee will submit to the Regional Manager (RM) a bathymetry map, prepared utilizing remote sensing and/or other survey techniques. This map will include interpretations for the presence of live bottom areas within a minimum of 1,820 meters radius of a proposed exploration or production activity site.

For the purpose of this stipulation, "live bottom areas" are defined as those areas which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, seagrasses, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or whose lithotope favors the accumulation of turtles, fishes, and other fauna. If it is determined that the remote sensing data indicate the presence of hard or live bottom areas, the lessee will also submit to the RM photodocumentation of the sea bottom near proposed exploratory drilling sites or proposed platform locations.

If it is determined that live bottom areas might be adversely impacted by the proposed activities, then the RM will require the lessee to undertake any measure deemed economically, environmentally, and technically feasible to protect live bottom areas. These measures may include, but are not limited to, the following:

(a) the relocation of operations to avoid live bottom areas;

(b) the shunting of all drilling fluids and cuttings in such a manner as to avoid live bottom areas;

(c) the transportation of drilling fluids and cuttings to approved disposal sites; and

(d) the monitoring of live bottom areas to assess the adequacy of any mitigation measures taken and the impact of lessee initiated activities.

Stipulation No. 4--Military Warning Areas.

(This stipulation is required of the lessee for operations within each warning area, as shown on map 1 described in paragraph 12.)

Warning Areas Command Headquarters
Central Planning Area

Warning Areas	Warning Areas Command Headquarters
W-155	Naval Air Training Command Training Wing Six Naval Air Station Pensacola, Florida
W-453	Air National Guard Training Site Gulfport, Mississippi
W-92	Naval Air Station New Orleans, Louisiana

(a) Hold Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any Agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table above.

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Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by an act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the [illegible] to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors, emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the table above to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities, conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emission shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors, or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic into the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the table above, on utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating into the warning areas at all times.

Stipulation No. 5--Suspension of Production.

(This stipulation will be included in leases on blocks in water depths of 400-900 meters as shown on map 1 described in paragraph 12.)

The Director shall suspend or temporarily prohibit production or any other operation or activity pursuant to this lease if such suspension or cessation of operations or activities is necessary to complete operations or activities described in a development and production plan approved by the Regional Manager pursuant to 30 CFR 250.34.

Stipulation No. 6--Military Impact Zone.

No surface structures or drilling rigs will be allowed at any time within the below listed blocks located in military operating area W-155.

[illegible]				
34	38	210	386	434
35	78	254	431	
36	122	298	432	
37	166	342	433	

14. Information to Lessees.

(a) There is available from the Gulf of Mexico Regional Office a set of drawings entitled "Split Blocks--Central Gulf of Mexico," depicting the State-Federal boundary, including the acreage on the Federal side of the line. For complete information on any of the above subjects mentioned in this Notice, including copies of the various documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Regional Supervisor for Leasing and Environment at the address stated in paragraph 2, either in writing or by telephone (504) 837-4720.

(b) Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et. seq.), as amended; or in connection with the Louisiana Offshore Oil Port (LOOP) for blocks 57 and 59, Grand Isle area. U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended..

(c) Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) Bidders are advised that in accordance with section 16 of each lease offered, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a net profit share payment.

(e) For those blocks identified as having lease terms with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the Minerals Management Service either an exploration plan, where required, or a general statement of exploration intention prior to the end of the ninth lease year.

(f) Revisions of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should those changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, August 1982), would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5 (a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulation requirements will be deemed to be part of the existing affirmative action forms.

(g) Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Mississippi Canyon area, as shown on map 1 described in paragraph 12. These areas were used to dispose of ordnance of unknown composition and quantity. The western-most area has not been used for over 15 years. Water depths in this area range from 185 to 675 meters. The eastern-most area was last used for ordnance disposal in 1970. Water depths in this area range from 750 to 1,525 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

The U.S. Air Force has released an indeterminable amount of unexploded ordnance throughout Eglin Water Test Areas 1 and 3. The exact location of the unexploded ordnance is unknown, and lessees are advised that all lease blocks included in this sale within these water test areas should be considered potentially hazardous to drilling and platform and pipeline placement.

(h) Federal regulation (30 CFR 250.34) requires a lessee to conduct shallow hazards and other geological and geophysical surveys that are necessary for the evaluation of activities to be carried out under a proposed exploration or development/production plan or activities being carried out under an approved plan. Data collection by the lessee on a lease and, when necessary, off a lease, will be analyzed and submitted by the lessee and then reviewed and, when necessary, reanalyzed by the Regional Manager (RM) to ensure that drilling, development, and production activities can be conducted in an acceptable manner with minimum acceptable risk or damage to human, marine, and coastal environments. Based on the review and analysis of the data received and other available data and information, the RM either approves or requires modification to an exploration or development/production plan or application for permit to drill, or recommends that the Director, Minerals Management Service, temporarily prohibit or suspend the conduct of exploration or development/production activities, according to provisions of the OCS Lands Act, as amended, and appropriate regulations. Existing regulations authorize the RM to take whatever steps are necessary to assure safe operations offshore, whether shallow hazards are delineated before or after the lease sale.

[FR Doc. 84-7854 Filed 3-23-84; 8:45 am]
BILLING CODE 4310-MR-C

15. OCS Orders

Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

Director, Minerals Management Service
William D. Bettenberg

Approved:

Secretary of the Interior
William Clark
MAR 20 1984
Date

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UNITED STATES
DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
Central Gulf of Mexico

Notice of Leasing Systems, Sale 81

Section 8(a)(8)(43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA), as amended, requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 81, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA, as amended. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA, as amended. It has been chosen for certain deeper water blocks proposed for the Central Gulf of Mexico (Sale 81) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

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The specific blocks to be offered under each system are shown on Map 2 entitled "Central Gulf of Mexico (Sale 81) Stipulations, Lease Terms, and Bidding Systems, Final." This map is available from the Gulf of Mexico Regional Office, Minerals Management Service, 3301 North Causeway Boulevard, Metairie, Louisiana 70002.

Director, Minerals Management Service
William D. Bettenberg

Approved: MAR 20 1984

Secretary of the Interior
William Clark

[FR Doc. 84-7855 Filed 3-23-84; 8:45 am]
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Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

1984-85 Migratory Game Hunting Regulations (Preliminary); Proposed Rulemaking, Public Hearings and Meetings

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Proposed 1984–85 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking public hearings and meetings.

SUMMARY: The Service proposes to establish hunting seasons, daily bag and possession limits, and shooting hours for designated groups or species of migratory game birds in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands during 1984–85. The Service annually prescribes migratory bird hunting regulations. These regulations provide hunting opportunity, a popular form of outdoor recreation, to the public and aid Federal and State governments in the management of migratory game birds.

DATES: The comment period for proposed regulations frameworks for Alaska, Hawaii, Puerto Rico, and the Virgin Islands will end on June 21, 1984; for other early season proposals (seasons opening before October 1) on July 16, 1984; and for late season proposals (seasons opening on or about October 1 or later) on August 17, 1984. Public Hearings: Early Season Regulations, including those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands—June 21, 1984, at 9 a.m.; Late Season Regulations—August 1, 1984, at 9 a.m.

Meetings of the following Councils will be held on March 25, 1984: Atlantic Flyway Council, 9 a.m.; Mississippi Flyway Council, 9 a.m.; Central Flyway Council, 8:30 a.m.; Pacific Flyway Council, 8:30 a.m.; National Waterfowl Council, 3 p.m.

ADDRESSES: Comments and requests to testify at the hearings may be mailed to Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received may be inspected from 8 a.m. to 4 p.m. at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

Both public hearings will be held in the Auditorium, Interior Department Building, 18th and C Streets, NW., Washington, D.C.

Council meetings will be held at the Boston Park Plaza Hotel, Boston, Massachusetts as follows: Atlantic Flyway Council, Room 413, 4th Floor; Mississippi Flyway Council, Arlington Room, Mezzanine Level; Central Flyway Council, Room 436, 4th Floor; Pacific Flyway Council, Room 433, 4th Floor; and National Waterfowl Council, Arlington Room, Mezzanine Level.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (AC 202–254–3207).

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service proposes to establish hunting seasons, bag and possession limits, and shooting hours for migratory game birds during 1984–85 under §§ 20.101 through 20.107 of Subpart K of 50 CFR Part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. During the 1984–85 hunting season, regulations are proposed for certain designated members of the avian families *Anatidae* (ducks, geese, brant and swans); *Columbidae* (doves and pigeons); *Gruidae* (cranes); *Rallidae* (rails, coots, and gallinules); and *Scolopacidae* (woodcock and snipe). These proposals are described under Proposed 1984–85 Migratory Game Bird Hunting Regulations (Preliminary) in this document

Notice of Intention to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons, daily bag and possession limits, and shooting hours for certain designated groups or species of migratory game birds for 1984–85 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Factors Affecting Regulations Process

This is the first in a series of proposed and final rulemaking documents for migratory bird hunting regulations. Proposed season frameworks, shooting hours, and daily bag and possession limits are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year.

The proposals set forth here and the schedule by which more detailed proposals for these and other species will be developed depend upon a number of factors. Among these are the times when various annual population, habitat, and harvest surveys are conducted and results are available for analysis; times of migration and other biological considerations; and times during which hunting may be allowed. The regulatory process for migratory game birds is strongly influenced by the times when the best and latest information is available for consideration in the development of regulations. For these reasons, the overall regulations process for hunting seasons and limits is divided into the following segments: (1) Regulations for migratory game birds in Alaska, Puerto Rico, the Virgin Islands, and Hawaii; (2) seasons in the remainder of the United Stats opening prior to October 1 (early seasons); and (3) seasons opening in the remainder of the United States about October 1 and later (late seasons). Regulations development for each of the three categories will follow similar but independent schedules. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to adjust their licensing and regulatory mechanisms and, on the other hand, the lack before late July of current data on the status of most waterfowl.

Publication of Regulatory Documents.

The establishment of migratory bird hunting regulations in the United States involves a series of regulatory announcements published in the **Federal Register** in accordance with the Administrative Procedure Act. The publication of these documents is divided into three phases, as follows:

1. *Proposed rulemakings*—proposals to amend Subpart K (and other subparts when necessary) of 50 CFR Part 20, including supplementary proposed migratory game bird hunting regulations, and/or regulations frameworks which prescribe season lengths, bag and possession limits, shooting hours, and

outside dates within which States may make season selections.

2. *Final rulemakings—frameworks.* Final migratory game bird regulations frameworks which prescribe season length, bag and possession limits, shooting hours and outside dates within which States may make season selections.

3. *Final rulemakings—season selections.* Amendments to the various specific sections of Subpart K (and other subparts when necessary) of 50 CFR Part 20 based on the final regulations frameworks and on season selections communicated by the States to the Service.

Major steps in the 1984–85 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram.

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1984 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS

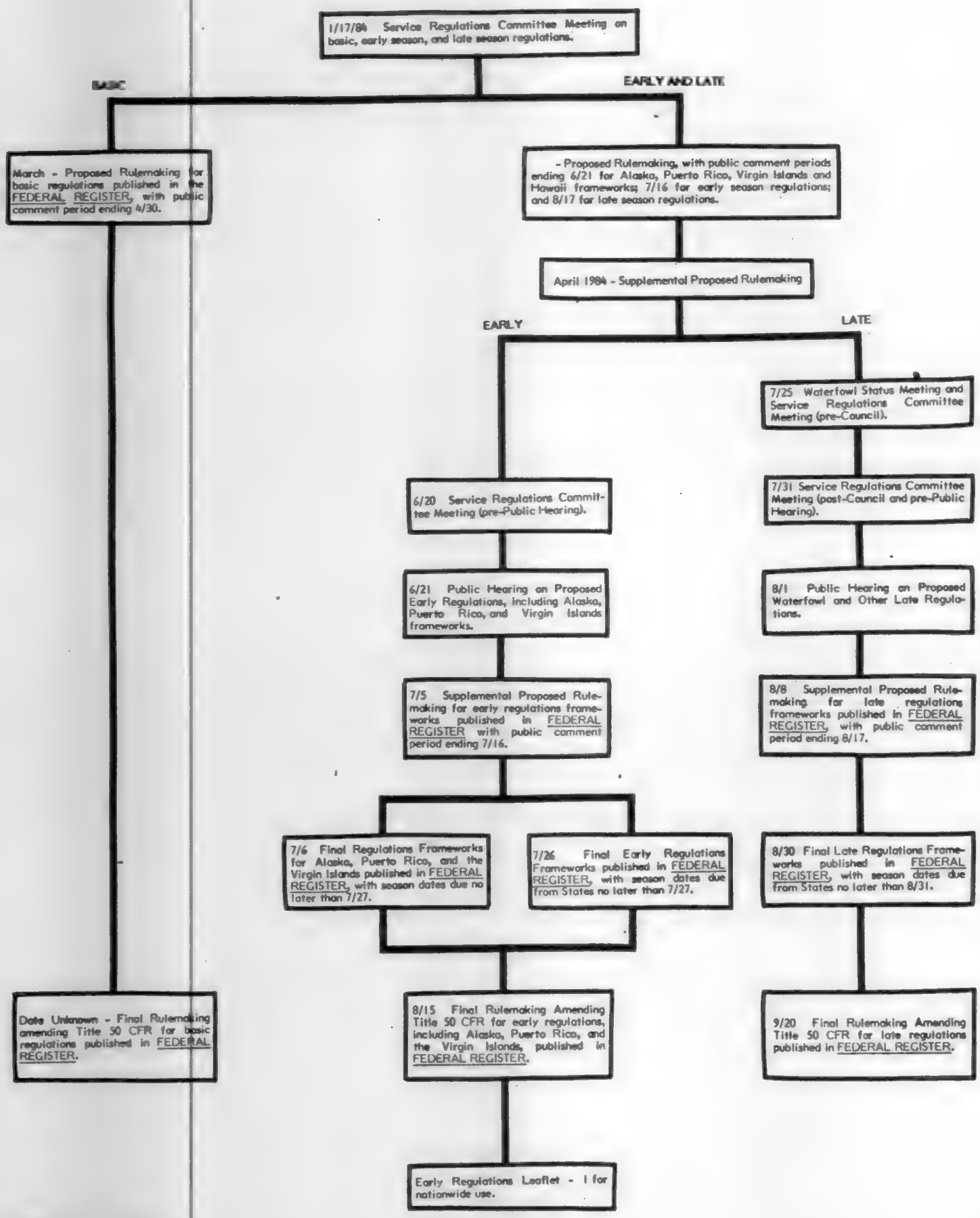

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All dates shown for frameworks and seasons in the Service's regulatory documents are inclusive.

Non-toxic shot regulatory proposals and final regulations are published separately under § 20.21 of Subpart C and § 20.108 of Subpart K.

Objectives of the Migratory Bird Hunting Regulations. The objectives of these annual regulations are as follows:

1. To provide an opportunity to harvest a portion of certain migratory game bird populations by establishing legal hunting seasons.

2. To limit harvest of migratory game birds to levels compatible with their ability to maintain their populations.

3. To avoid the taking of endangered or threatened species so that their continued existence is not jeopardized, and their conservation is enhanced.

4. To limit of other protected species where there is reasonable possibility that hunting is likely to adversely affect their populations.

5. To provide equitable hunting opportunity in various parts of the country within limits imposed by abundance, migration, and distribution patterns of migratory game birds.

6. To assist, at times and in specific locations, in preventing depredations on agricultural crops by migratory game birds.

The management of migratory birds in North America is international in scope, and involves other nations, notably Canada and Mexico. Within the United States, other Federal agencies, State conservation agencies, national and regional conservation groups, universities, and the public provide much support to the achievement of these objectives.

Data Used in Regulatory Decisions

The establishment of hunting regulations for migratory game birds in the United States during the 1984–85 season will take into consideration available population information, data from harvest surveys, and information on habitat conditions. Consideration will also be given to accumulated data and trends. The main sources of data result from operational surveys conducted by the U.S. Fish and Wildlife Service in cooperation with the Canadian Wildlife Service, Direccion General de la Floray Fauna Silvestres of Mexico, State and Provincial wildlife agencies, and others. The Service will also consider technical information provided by consultants of the four waterfowl flyway councils. The information from these sources will be analyzed by the U.S. Fish and Wildlife Service with an opportunity for the public to review and provide comments on management rationales and proposed regulations, either in public hearings, by correspondence, or other communications.

Various surveys are used to ascertain the status, condition, and trends of migratory game bird populations. These include annual surveys of major waterfowl wintering habitats in the United States and in portions of Mexico each January; aerial surveys of major waterfowl production areas in the United States and Canada in May and early June for breeding population data, and again in July for production information; nationwide surveys in the United States and Canada of waterfowl hunters and the waterfowl harvest, including their geographical and temporal distributions, and species, age, and sex composition of the harvest; and band recovery information. Waterfowl breeding pair and production surveys also provide information on the abundance, duration, and quality of water and other habitat conditions in major production areas. Information on waterfowl populations and habitat conditions outside the aerial survey area is furnished by cooperating State, Provincial, and private agencies. Banding information provides insight into shooting pressures sustained by migratory game bird populations under different population levels and types of regulations. When viewed over many years, information on harvests and regulations is useful for predicting approximate harvest levels which may result from various regulation changes.

Many of the surveys conducted primarily for ducks also provide information on geese. In addition, satellite imagery is used to monitor the rate at which snow and ice disappear from subarctic and arctic breeding grounds traditionally used by most species and the greatest numbers of North American geese. Field observations of geese in the fall and winter also provide information on the production success of the past breeding season. Special populaton surveys are undertaken for many identifiable populations of geese throughout the year.

An annual call-count survey conducted nationwide in the United States in late May and early June provides information on the breeding population of mourning doves. Information from past years and the current year is used to establish population trends. An annual singing-ground survey is conducted throughout the woodcock breeding range in the eastern United States and Canada. Insight into production success is obtained from wing-collection surveys of woodcock hunters in the United States and Canada; data from these surveys indicate the age and sex composition of the harvest and its geographical and temporal distribution. Accumulated and current data are examined for possible long-term trends in population size and productivity. Information on white-winged dove populations in Texas and the Southwest is provided by cooperating State agencies. Spring surveys of sandhill cranes are conducted annually with emphasis on the key staging area of the species along the Platte River in cental Nebraska. The Service also solicits information on these and other species from knowledgeable individuals. Last year the Service initiated a study to determine if its Waterfowl Harvest Survey can be adjusted to measure harvest trends in migratory shore and upland game birds.

Definitions of Flyways

Flyways are bilogical-ecological units frequently used for reference in setting hunting regulations on many migratory game birds. These are defined as follows:

Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; Colorado and Wyoming east of the Continental Divide; Montana east of Hill, Chouteau, Cascade, Meagher and Park Counties; and New Mexico east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Pacific Flyway: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher, and Park, and all counties west thereof. Flights of most migratory game birds breeding or produced in Alaska are more strongly oriented to this flyway than to the other flyways.

Hearings

Two public hearings pertaining to 1984–85 migratory bird hunting regulations are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 21 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, on C Street,

between 18th and 19th Streets, NW., Washington, D.C. This hearing is for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged doves, rails, gallinules, and common snipe. Proposed hunting regulations will be discussed for these species plus regulations for sandhill cranes in some States; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; mourning doves in Hawaii; September teal seasons; other duck seasons in September; and special sea duck seasons in the Atlantic Flyway. On August 1 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl and other migratory game birds not previously discussed at the June 21 public hearing. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, or telephone AC 202–254–3207. Those wishing to make statements should file copies of them with the Director before or during each hearing.

Public Comments Solicited

Based on the results of current migratory game bird studies and having due consideration of all data and views submitted by interested parties, the amendments resulting from these proposals will specify open seasons, shooting hours, and bag and possession limits for doves, pigeons, rails, gallinules, woodcock, common snipe, coots, cranes, and waterfowl; coots, cranes, common snipe and waterfowl in Alaska; sea ducks in coastal waters of certain eastern States; migratory game birds in Puerto Rico and the Virgin Islands; and mourning doves in Hawaii.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals.

Final promulgation of migratory bird hunting regulations will take into consideration all comments received by the Director. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments as follows:

For comments on Proposed 1984–85 Migratory Game Bird Hunting Regulations (preliminary) write to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C. The Service will acknowledge but may not respond in detail to each comment. Specific comment periods will be established for each of the three series of proposed rulemakings. All relevant comments will be accepted through the closing date of the last comment period on the particular proposal under consideration. As in the past, the Service will summarize all comments received during the comment period and respond to them

Flyway Council Meetings

The Service published a final rule in the **Federal Register** dated December 22, 1981 (46 FR 62077) which established certain procedures in the development of the annual migratory bird hunting regulations. This rule took effect on January 21, 1982. One provision is to publish notification of meetings of waterfowl flyway councils where Department officials will be in attendance. In this regard, Departmental representatives will be present at the following spring meetings of the various flyway councils:

DATES: March 25, 1984—Atlantic Flyway Council, 9 a.m., Mississippi Flyway Council, 9 a.m., Central Flyway Council, 8:30 a.m., Pacific Flyway Council, 8:30 a.m., National Waterfowl Council, 3 p.m.

ADDRESS: Council meetings will be held at the Boston Park Plaza Hotel, Boston, Massachusetts, as follows: Atlantic Flyway Council, Room 413, 4th Floor; Mississippi Flyway Council, Arlington Room, Mezzanine Level; Central Flyway Council, Room 436, 4th Floor; Pacific Flyway Council, Room 433, 4th Floor; National Waterfowl Council, Arlington Room, Mezzanine Level.

NEPA Consideration

In 1975 the Service determined that the annual migratory bird hunting regulations constituted a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. Consequently, the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was prepared and filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. These have addressed regulations for various species of migratory game birds and hunting strategies, including a 5-year cooperative study of stabilized duck hunting regulations currently underway in the United States and Canada. The 1975 FES is out of print but copies of the various environmental assessments which supplement it are available upon request from the Office of Migratory Bird Management (address given previously).

Endangered Species Act Consideration

Prior to issuance of the 1984–85 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act) to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

In complying with these requirements during the 1981–82 regulatory development cycle, and with Office of Management and Budget concurrence, the Service prepared a Determination of Effects, a Preliminary Regulatory Impact Analysis (PRIA), a Final Regulatory Impact Analysis (FRIA), and a Memorandum of Law. For further information see the **Federal Register**: March 25, 1981, at 46 FR 18669; August 17, 1981, at 46 FR 41739; August 21, 1981, at 46 FR 42643; and September 18, 1981, at 46 FR 46543. The rules for the 1981–82 hunting season were determined to be "major," because the expenditures arising from these regulations exceed

$100 million annually and represent a major Federal action.

An updated FRIA, focusing on waterfowl hunting, was completed by the Service on March 3, 1983. New economic information was utilized from the *1980 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* which indicated that hunters expended $638 million for migratory bird hunting in 1980. The Service estimated the expenditures for waterfowl hunting in 1980 to be $317 million (adjusted to 1981 dollars).

A Determination of Effects approved by the Assistant Secretary, Fish and Wildlife and Parks, on February 29, 1984 concluded that the hunting frameworks being proposed for 1984–85 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, the Service recently prepared an update of the 1981 Final Regulatory Impact Analysis for use in the development of the 1984–85 migratory bird hunting regulations to incorporate new economic information and waterfowl hunter activity and harvest information for the 1982–83 season. The summary of the 1984 update of the 1981 FRIA follows:

> Stabilized regulations were again in effect during the 1983–84 season. New information which can be compared to that appearing in the 1983 update of the 1981 FRIA includes estimates of the 1982 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1982–83 hunting season. The data indicate that fall flights decreased in the Pacific and Atlantic Flyways, increased in the Central Flyway, and remained the same in the Mississippi Flyway. Hunter activity, both in numbers of hunters hunter days, decreased as did the fall flight for the United States. This again demonstrates that non-regulatory factors, e.g., weather, local availability of ducks, habitat conditions, and local economy, affect hunter participation and the resulting benefits of duck hunting to the economy.

Copies of the supplemental FRIA are available upon request from the Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Morton M. Smith, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief, AC 202–254–3207.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife, Exports, Imports, Transportation.

The rules that eventually will be promulgated for the 1984–85 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Proposed 1984–85 Migratory Game Bird Hunting Regulations (preliminary)

The following general frameworks and guidelines for hunting certain waterfowl, sandhill cranes, mourning doves, white-winged doves, Zenaida doves, scaly-naped pigeons, band-tailed pigeons, gallinules, rails, coots, common snipe, and woodcock during the 1984–85 season are proposed. Changes or possible changes, when noted, are in relation to 1983–84 final frameworks or regulations. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive. In connection with certain items, information is provided about proposals for change already submitted to the Service or expected to be submitted in the near future. Service views on these and other items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later. These and the Service's responses or comments follow the frameworks being proposed.

Stabilized Regulations for Duck Hunting. During the 1980–81 hunting season, the Service implemented a program of stabilized regulations (numbers of hunting days and limits) for ducks in the United States. On July 1, 1980, the Service advised in the **Federal Register** (at 45 FR 44546) that it planned to take this action in connection with an evaluation program to be conducted in cooperation with the Canadian Wildlife Service. The study was described at that time, and is repeated for informational purposes as follows:

> At the Public Hearing held on August 2, 1979, to review the proposed waterfowl and other late hunting season regulations, the Canadian Wildlife Service announced its intention to initiate a new waterfowl management program that had been developed cooperatively with the Provinces of Alberta, Manitoba, and Saskatchewan. A major element of this program is the stabilization of waterfowl hunting regulations for five years. The Service, in responding to the Canadian statement, noted that annual changes in hunting regulations constitute a source of difficulty in understanding the population dynamics of waterfowl, particularly the relationship between regulations and harvest rates. It also noted the advantages of the two nations jointly implementing a study of stabilized regulations.
>
> Duck bag limits and season lengths have not been markedly altered among years in the United States for some time. The objectives of this approach have been to hold hunting opportunity reasonably constant, but within a range that would not result in an overharvest of any population, and to provide an opportunity to define more precisely the relationships between regulations and harvest.
>
> During the past few months, the Service has been discussing a cooperative study with Canadian Wildlife Service aimed at investigating more thoroughly the impact of environmental variables on waterfowl populations. To this end, the Service proposes to initiate a program in which hunting regulations during the next five years in each of the Flyways would be maintained at the same general levels as during the 1979–80 hunting season. The focus of the program would be primarily on ducks, and on seasons and bag limits. Consideration will be given to special situations regarding particular species or other aspects of the regulations. An environmental assessment is in preparation in which the proposed program will be examined in more detail, and criteria to be used in guiding it will be defined. The assessment will be made available for public review as soon as possible. The Service proposes to conduct the program in cooperation with the State wildlife agencies and the Canadian Wildlife Service. The program will provide a unique opportunity to study the impact of hunting on North American waterfowl, and to initiate or redirect studies relating to other aspects of waterfowl poopulation dynamics.

Copies of the assessment noted above are available from the Office of Migratory Bird Management. The hunting regulations for the 1980–81 season incorporated the concept of regulations stability and represent the first year of a five-year study. The Service proposes to continue with the program of stabilized regulations during the 1984–85 hunting season, the fifth year of study.

Migratory Bird Hunting on Indian Reservations

In the April 5, 1983 **Federal Register** (48 FR 14701–14702), the Service announced its intention to further review and consider the matter of

migratory bird hunting on Indian Reservations, and procedures for establishing regulations pertaining to such hunting. At that time, the Service noted receipt of a letter from the White Earth Reservation Business Committee, White Earth, Minnesota, requesting (in essence) that Indian Tribes on Reservations with reserved hunting and fishing rights be permitted to have migratory bird hunting seasons that are not bound exclusively by the regulations applying to the States in which they are located. Among other things, it was proposed in the White Earth letter that where such seasons differed from those in effect in the States, they would be considered to be experimental and appropriate studies would be conducted to document impacts. Based on the results of such studies, a decision could be made about appropriate hunting seasons for these areas. The Service has subsequently received additional communications on this matter, including a letter from the Leech Lake Reservation Business Committee, Cass Lake, Minnesota. These communications reflect a desire for greater flexibility and more direct involvement in the management of migratory birds and migratory bird hunting by Indians on Indian Reservations.

In previous years, Indian Reservations have been expected to observe the same migratory bird hunting regulations that apply elsewhere in the States where the Reservations are located. These regulations are a fundamental part of the national conservation and management program for migratory birds and are developed in accordance with general regulations frameworks established at the Federal level by the Fish and Wildlife Service. The regulations are established each year following an extensive public review and comment process described elsewhere in this document.

The current legal framework for Federal and State authority for managing migratory birds dates back some 65 years to the Migratory Bird Treaty Act of 1918. Specifically, the Act (as amended) authorizes and directs the Secretary of the Interior to determine when, to what extent, and by what means hunting may be allowed and to adopt suitable regulations permitting and governing the hunting. Also, it expressly provides that States and Territories may make and enforce laws or regulations deemed necessary and advisable for the conservation of migratory birds. Although a role for Indian Reservations is not specifically recognized in the Act or in the procedures for implementing it, the Service believes it appropriate to consider the extent to which the exercise of reserved, on-reservation hunting rights of Indians can be accommodated consistent with the conservation requirements and intent of the Act. Accordingly, the Service proposes to initiate an effort in the 1984–85 hunting season to determine the extent to which additional flexibility can be provided for migratory bird hunting by Indians on Indian Reservations consistent with the Federal responsibility for the conservation of the species involved.

Keeping in mind the clear conservation need for a comprehensive and coordinated approach to the management of a migratory resource such as migratory birds, the Service will undertake this effort in consultation with representatives of the Indian Reservations that may be involved, and the wildlife management authorities in the States where they are located. Consultation and coordination also will be maintained with the Flyway Councils and other appropriate interest groups. On this basis, the Service will consider proposals for hunting seasons on Indian Reservations that differ from those in the surrounding State(s). In doing so, the Service proposes to generally observe the zoning criteria described in the May 25, 1977 **Federal Register** (42 FR 28671). Since these criteria were established with States, rather than Indian Reservations in mind, their application to the latter shall be considered a limited exception to the original intended use for purposes of further study and evaluation. Specifically, it is proposed that the following guidelines will be observed.

1. The proposals shall describe the specific seasons to be implemented and shall be accompanied by a detailed evaluation plan describing what changes in harvest may be anticipated, how the changes will be measured and evaluated, and what steps will be taken to accommodate any significant impacts that may occur.

2. For purposes of implementing such a proposal, the Indian Reservation to which it applies shall be designated as a reserved hunting right zone within the State where it is located.

3. Such zones, and the regulations applied to them, shall be considered experimental until their effects are adequately defined and understood.

4. Hunting regulations for such reserved hunting right zones may differ from those in the surrounding State(s) with respect to the times when hunting seasons may occur for the various migratory game birds for which hunting is permitted under Federal regulations. In all other respects (e.g., season length, bag limits, and other basic regulations), the regulations shall be consistent with those established by the Fish and Wildlife Service in the general frameworks for migratory bird hunting.

5. These expermental season dates within reserved hunting right zones shall apply only to Tribal members on Indian Reservations. Non-Indian hunters will continue to be subject to the regulations established for application elsewhere in the State.

The Service proposes to amend 50 CFR Part 20 as follows

1. *Shooting hours.* (No change.) Basic shooting hours beginning one-half hour before sunrise and ending at sunset are proposed with the option that more restrictive shooting hours within this framework may be selected by the States or may be established for special seasons.

2. *Framework dates for ducks and geese in the continental United States.* (No change.) The Service proposes that these frameworks are to be generally the same as during the 1983–84 season: From October 1, 1984, to January 20, 1985 for the Atlantic Flyway; from the Saturday nearest October 1, 1984 to January 20, 1985 for the Mississippi Flyway; from the Saturday nearest October 1, 1984 through the Sunday nearest January 20, 1985 for the Central and Pacific Flyways with the following exceptions:

(a) Sea ducks: in designated sea duck hunting areas in the Atlantic Flyway—September 15, 1984 through January 20, 1985.

(b) September teal season: September 1 through September 30, 1984, in specified areas.

(b) Special scaup season: October 1, 1984, through January 31, 1985, in specified areas.

(d) Experimental duck seasons: In Florida, Kentucky, Tennessee, and Iowa, 5-consecutive-day duck seasons may be selected in September; Mississippi may select a closing date of January 31, 1985.

(e) Snow (including blue) and white-fronted geese: In Louisiana, between October 1, 1984, and February 14, 1985, in zones established for duck hunting seasons.

(f) Snow geese: In the Atlantic Flyway, October 1, 1984, through January 31, 1985. In New Mexico, October 1, 1984, through February 12, 1985.

(g) Canada geese: In New York (including Long Island), Rhode Island, Connecticut, New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and a

designated area in southeastern Pennsylvania; the Canada goose season framework extends to January 31, 1985.

(h) Pacific Flyway brant: October 20, 1984, through February 17, 1985.

(i) Alaska waterfowl: September 1, 1984, through January 26, 1985.

Additional information. The Chairman of the Central Flyway Council notified the Service that the Council is preparing a proposal for extending season frameworks for snow geese into February for both the Central and the Mississippi Flyways. The proposal will be submitted at a later date. Also, four States have requested or indicated that they will submit requests this year for extending the duck hunting season frameworks to permit duck hunting to begin substantially earlier than October 1 (Michigan) or continue substantially later than January 20 (Alabama, Georgia and South Carolina).

Response. The Service defers action on these proposed season framework extensions pending receipt and evaluation of additional information including evaluation of an experimental framework extension currently under study in Mississippi, and Flyway Council review and recommendations.

3. *Black ducks.* (No change) No changes in seasons and bag limits from those in effect in 1983–84 are proposed at this time pending an evaluation of 1983–84 changes in hunting regulations implemented during the 1983–84 hunting season. Evaluation of black duck hunting regulations is a continuing objective of the Service and has been in progress for several years. In 1983 a program to further restrict harvest of black ducks was developed and initiated in cooperation with State wildlife agencies, Flyway Councils, and private organizations. The program and alternatives were discussed in an Environmental Assessment, *Proposed Hunting Regulations on Black Ducks, 1983,* which is available upon request to the U.S. Fish and Wildlife Service (MBMO), Washington, D.C. 20240.

Additional information. New Jersey has proposed that the hen mallard be established as a 25 point bird experimentally in the State during the 1984–85 waterfowl season.

Response. The Service defers action on this proposal pending further consideration of the potential impact of such a change on mallard and black duck harvest. This proposal, if adopted, would increase the bag limit and encourage additional harvest of mallards at a time when the stabilized regulations study, which calls for no significant changes in season length and bag limit, is in progress. The proposed change would direct increased hunting pressure toward the mallard hen at a time when efforts are being undertaken to reduce the harvest of black ducks. While it should not be automatically assumed that increased hunting of mallard hens will necessarily affect the harvest of black ducks this possibility should be further considered and evaluated in the light of any similarity of appearance problems that may be determined to occur. At this time, the Service is of the view that consideration of changes in mallard harvest regulations for the Atlantic Flyway should be deferred until such time as a mallard management plan, including guidelines for harvest strategies has been adopted for the flyway.

4. *Wood ducks.* (No change.) In 1977 regulations for this species were changed to permit southeastern States the option of an early October hunting season during which no special bag and possession limits applied under conventional regulations; under point system regulations, the species was placed in the mid-point category. The criteria for such seasons were described in the **Federal Register** dated May 25, 1977 (42 FR 26669), and are summarized and updated for informational purposes:

The southeastern United States is defined as Virginia, Kentucky, Tennessee, Arkansas, and Louisiana and all States east thereof in the Atlantic and Mississippi Flyways. The Service proposes to again consider regulations aimed at additional wood duck harvest in the southeastern States only within the following guidelines:

(a) In 1984 States in the southeastern United States may split their regular duck hunting season in such a way that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15.

(b) During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway in 1984 shall apply to wood ducks, and under the point system, the point value for wood ducks shall be reduced from the high to the mid-point category. For other species of ducks daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations.

(c) In addition, the extra teal option available to States in the Atlantic and Mississippi Flyways that select conventional regulations and do not have a September teal season may be applied during the period.

(d) This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

(e) This special provision for wood ducks shall be regarded as experimental, and subject to annual and final evaluations by participating States of population, harvest, banding, and other available information.

(f) The experiment shall be conducted for a specified time period to be agreed upon between the Service and participating States.

The Service proposes to retain this option for the 1984 season.

Additional information. By letter of February 10, 1984 the State of Alabama requested an increased bag limit for wood ducks throughout the hunting season in that State on the basis that Alabama is a major wood duck production State, and the birds are under-harvested. State officials feel that a larger bag limit would increase hunter and landowner interest in the welfare and increase of the species. No data were supplied in support of the request.

Response. The Service defers action on this request pending receipt of additional information and evaluation, and Flyway Council review and recommendations.

5. *Sea ducks.* (No change.) A maximum open season of 107 days for taking scoter, eider, and oldsquaw ducks is proposed during the period between September 15, 1984, and January 20, 1985, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia. Such areas shall be described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Any State desiring its sea duck season to open in September must make its

selection no later than July 27, 1984. Those States desiring their sea duck season to open after September may make their selection at the time they select their waterfowl seasons.

Additional information. By letter of January 12, 1984, the State of Delaware requested that consideration be given to increasing the daily bag limit on sea ducks from 7 to 10. No information in support of the request was provided.

Response. The Service defers action on this request pending receipt of additional information and evaluation, and Flyway Council review and recommendations.

6. *September teal season.* (No change.) An open season on all species of teal may be selectged by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Shooting hours are from sunrise to sunset daily. The season may not exceed 9 consecutive days with a bag limit of 4 teal daily and 8 in possession. States must advise the Service of season dates and special provisions to protect non-target species by July 27, 1984.

7. *Extra teal option.* (No change.)

(a) States in the Atlantic Flyway (except Florida), not selecting the point system may select an extra teal limit of no more than 2 blue-winged or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

(b) States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season.

These extra limits are in addition to the regular duck bag and possession limits.

8. *Experimental September Duck Seasons.* (No change.) Final reports on the experimental duck seasons in Tennessee, Kentucky, and Florida are due this year; however, because most data from last year's experimental season will not be available by the time this year's regulations are established, regulatory provisions in effect during the studies will continue through the 1984 season. The experimental duck season in Iowa is scheduled through 1984 with the final report due in 1985.

Tennessee, Kentucky, and Florida September Duck Seasons: Experimental 5-consecutive-day duck seasons may be selected in September by Tennessee, Kentucky, and Florida subject to the following conditions:

1. In Kentucky and Tennessee the seasons will be in lieu of September teal seasons;

2. In all States, the daily bag limit will be 4 ducks, no more than 1 of which may be of a species other than teal or wood duck, and the possession limit will be double the daily bag limit; and

3. Additional information to be gathered by the States to evaluate the experiment will include hunter and harvest surveys, banding, and population surveys.

Iowa: An experimental 5-consecutive-day duck season may be selected in September subject to the following conditions:

(1) The season may commence no earlier than September 17.

(2) All ducks legal during the regular duck season may be taken during the September segment of the season.

(3) Daily bag and possession limits during the September segment of the season will be the same as those in effect during the regular duck season.

Additional information. By letter of January 12, 1984, the State of Delaware requested that consideration be given to allowing a 5-day duck season in late September without penalty to the regular 1984–85 duck season. No data were supplied in support of the request.

Response. The Service defers action on this request pending receipt and evaluation of additional information, including evaluation of the experimental September seasons currently under study, and Flyway Council review and recommendations.

9. *Special scaup season.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must occur between October 1, 1984, and January 31, 1985, all dates inclusive.

2. The season must occur outside the open season for any other ducks except sea ducks.

3. The season is limited to areas mutually agreed upon between the State and the Service prior to August 31, 1984, and

4. These areas must be described and delineated in State hunting regulations.

5. In lieu of a special scaup-only season, Vermont may, for the Lake Champlain Area, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to special scaup seasons elsewhere.

10. *Extra scaup option.* (No change.) As an alternative to a special scaup-only season, States in the Atlantic, Mississippi, and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed for special scaup seasons. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

11. *Mergansers.* (No change.) States in the Atlantic and Mississippi Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The bag limit is 5 mergansers daily and 10 in possession. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks. The restriction on hooded mergansers of 1 daily and 2 in possession is continued in the Atlantic, Mississippi, and Central Flyways.

12. *Canvasback and redhead ducks.* (No change.) No changes in seasons and bag limits from those in effect in 1983–84 are proposed at this time pending evaluation of changes in canvasback hunting regulations implemented during the 1983–84 hunting season. The Service previously initiated a program whereby the focus of harvest regulations was changed from one of areas closure to one of restrictive bag limits, and an experimental canvasback season was implemented in portions of the closed area in the Atlantic Flyway when established criteria were met. These actions and alternatives were presented in an Environmental Assessment, *Proposed Hunting Regulations on Canvasback Ducks, 1983,* which is available upon request to the U.S. Fish and Wildlife Service (MBMO), Washington, D.C. 20240.

13. *Zoning.* (No change.) States of the Atlantic, Mississippi, and Central Flyways may divide their States into zones for establishing different hunting seasons in accordance with criteria described in the **Federal Register** dated May 25, 1977 (42 FR 26671). The criteria for zoning are as follows:

1. The establishment of any of these zones shall be considered experimental until the effects of the zoning are more clearly defined and understood.

2. The primary purpose of the zoning shall be to provide more equitable

distribution of harvest opportunity for hunters throughout a State.

3. Proposed zones and season dates shall not substantially change the pattern of harvest distribution among the States within a flyway.

4. Zoning shall not detrimentally change the harvest distribution pattern among species or populations at either the State or Flyway level.

5. Each zoning proposal shall include a detailed evaluation plan describing how changes in harvest will be measured, and what steps will be taken to compensate for any significant changes that might occur.

6. Each zoning proposal shall include an evaluation of anticipated changes due to zoning. If on the basis of this evaluation the Service and the State agree that no significant increase in harvest is likely, the zoning experiment may be conducted without a reduction in season length for each zone, pending further evaluation. If the evaluation indicates that a significant increase in harvest is likely, an appropriate reduction in season length compared to what would be permitted without zoning shall be made for each zone.

7. Where two or more adjoining States in a flyway may be involved simultaneously in zoning experiments, consideration shall be given to the possibility of consolidating zones.

Memoranda of Agreement have been signed between the Service and each State participating in experimental zoning.

States in the Atlantic and Central Flyways, in lieu of zoning, may split their seasons for ducks and geese into two or three segments.

Additional information. In a January 23, 1984 letter, the State of Michigan informed the Service they intend to discuss with the Mississippi Flyway Council and Technical Section changes in their boundary between the northern and southern waterfowl hunting zones.

By letter of February 15, 1984, the State of Ohio advised the Service that they have requested review by the Mississippi Flyway Council of a proposal for 3 waterfowl zones in Ohio for the 1984–85 season.

Response. The Service defers action on these items pending receipt of additional information and review and recommendation by the Mississippi Flyway Council.

14. *Goose and brant seasons.* The Canadian Wildlife Service, State conservation agencies, the four waterfowl flyway councils, and others traditionally provide population and harvest information useful in setting annual regulations for geese and brant. The midwinter survey, the past season's waterfowl harvest surveys and satellite imagery and ground studies for May and June of 1984 will provide additional information. While no changes from 1983–84 regulations are proposed at this time, the following proposed general regulations are subject to revision as additional information becomes available.

Atlantic Flyway. (No change). Seasons and bag limits are to be generally the same as last year pending receipt of additional information and recommendations. That is, between October 1, 1984, and January 20, 1985, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland, and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons on Canada geese; the daily bag and possession limits are 3 and 6 geese, respectively. However, in the area comprised of New York (including Long Island), Rhode Island, Connecticut, New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I–80 to the New Jersey line, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1985. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with a possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut will be 3 and 6, respectively. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season on Canada geese within the October 1, 1984, to January 20, 1985, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina (in designated areas) may select a 43-day season for Canada geese within a December 20, 1984, to January 31, 1985, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. The season is closed on Canada geese in Florida and Georgia. States may, in lieu of zoning, split their goose season into two or three segments.

Between October 1, 1984, and January 31, 1985, States in the Atlantic Flyway may select 90-day seasons on snow geese (including blue geese); the daily bag and possession limits may not exceed 4 and 8 geese, respectively.

Between October 1, 1984, and January 20, 1985, States in the Atlantic Flyway may select 50-day seasons for Atlantic brant; the daily bag and possession limits are 2 and 4 brant, respectively.

Environmental assessments prepared in 1975 articulate the management rationale being followed for Atlantic brant and greater snow geese. A greater snow goose plan was completed in 1981, and a flyway Canada goose management plan has been developed by the Atlantic Flyway Council.

Mississippi Flyway. (No change.) Seasons and bag limits for Canada geese to be generally the same as last year, that is, not to exceed 70 days and bag limits not to exceed 2 daily and 4 in possession, pending additional information and recommendations. Seasons and bag limits for specific populations of Canada geese, snow geese (including blue geese), and white-fronted geese are to be determined later when more information is available.

Harvests of the Eastern Prairie and Mississippi Valley Populations of Canada geese in this flyway are controlled by quota allocations. Specific quotas will be established after population management objectives, recent population information, probable production, and expected fall flights have been taken into consideration. It is intended that the entire quota can be safely taken without detriment to the population, and that such harvests are appropriate considering population objectives. Goose seasons in quota areas end when the quota has been achieved and the season terminated by State action, emergency order under § 20.26 of CFR 50, or when the permissible number of hunting days has expired. Specific procedural information for season closures of quota areas will be included in the final regulations.

Additional information. The Mississippi Flyway Council is currently revising the management plan for the Mississippi Valley Population of Canada geese. Any proposed regulatory changes resulting from the revision will be described in a supplemental proposed rulemaking.

By letter dated January 23, 1984, the State of Michigan informed the Service they intend to discuss with the Mississippi Flyway Council and

Technical Section changes in the Upper Peninsula (UP) experimental goose season to include the addition of 5 counties and all species of geese in the bag limit. They will also discuss adding 5 southwestern Michigan counties to their 107-day season to aid in the control of depredating and nuisance resident Canada geese.

Response. Since the changes under consideration could impact the management of Mississippi Valley and Tennessee Valley populations of Canada geese they should be viewed in the light of management plans for these populations. The Service defers action on these items pending additional information and evaluation, and review and recommendations by the Flyway Council.

Central Flyway. (No change.) Seasons and bag limits for Canada, whitefronted, Ross', and snow geese (including blue geese) are deferred pending additional information and recommendations. No significant changes from those in effect in 1983–84 are anticipated at this time.

Pacific Flyway. (Change.) Available information indicates that substantial declines in populations of dusky Canada geese, Pacific Flyway white-fronted geese, cackling Canada geese and, to a lesser extent, Pacific brant have occurred in recent years. Dusky Canada goose numbers have undergone a recent decline associated with continuing changes in breeding habitat following a 1964 earthquake, a recent increase in depredation of goose nests by several kinds of predators, and an unexpected increase in harvest. For whitefronts and cacklers, high levels of harvests on both breeding and wintering grounds are believed to be the cause of declines. As a result of these declines restrictive changes in regulations were implemented in 1979 and continued in subsequent years. Factors affecting numbers and winter distribution of Pacific brant are more complicated, but the population is believed to have been affected by habitat changes and locally high harvests. Pending consultation with representatives from affected States, the Pacific Flyway Council, and other interested organizations and individuals, the Service proposes to not open the season on cackling Canada geese, insofar as practical considering management objectives for other subspecies of Canada geese, and to further restrict the harvest of Pacific Flyway Population white-fronted geese throughout their range in the United States. More detailed proposals for harvest restrictions on cackling Canada geese and white-fronted geese are to be developed in consultation with the affected States and the Pacific Flyway Council and will be published later. Decisions regarding dusky Canada geese and Pacific brant are deferred pending additional information and recommendations from the Pacific Flyway Council.

Seasons and bag limits for other Pacific Flyway geese are to be generally the same as last year, that is, not to exceed 93 days with overall goose bag limits not to exceed 6 daily and in possession. Specific season frameworks, season lengths, and daily bag limits for geese are deferred pending additional information and recommendations.

15. *Whistling swan.* (No change.) The following frameworks for whistling swans are proposed. In South Dakota an open season for taking a limited number of whistling swans may be selected subject to the following conditions:

(1) Except in the Central Flyway portion of Montana, the season must run concurrently with the duck season; in the Central Flyway portion of Montana, the season must run concurrent with the goose season;

(2) In Utah, no more than 2,500 permits may be issued authorizing each permittee to take 1 whistling swan;

(3) In Nevada, no more than 650 permits may be issued authorizing each permittee to take 1 whistling swan in either Churchill, Lyon, or Pershing Counties;

(4) In Montana (Pacific Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 whistling swan in either Teton or Cascade Counties;

(5) In Montana (Central Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 whistling swan;

(6) In North Dakota, no more than 1,000 permits may be issued authorizing each permittee to take 1 whistling swan;

(7) In South Dakota, no more than 500 permits may be issued authorizing each permittee to take 1 whistling swan;

(8) States must employ a method to assure that hunters validate their harvest.

Additional information. On August 1, 1983 the Service Regulations Committee was informed of North Carolina's intent to propose an experimental swan hunt in that State in 1984 with the endorsement of the Atlantic Flyway Council. The Council urged the Service to favorably consider such a hunt which it believes is consistent with proper management of the population.

Response. The Service defers action on this matter until such time as a specific proposal has been received and evaluated. The question of swan hunting in the Atlantic Flyway was addressed in the June 17, 1983, **Federal Register** (48 FR 27806). At that time, the Service noted that such proposals should be considered in the light of public attitudes toward swan hunting. The Service is of the view that this remains an important factor that must be considered in dealing with proposals for swan hunting in the Atlantic Flyway.

16. *Sandhill cranes.* (No change.) Pending evaluation of harvest data from the 1983–84 season, seasons for hunting sandhill cranes may be selected within specified areas in Arizona, Colorado, Kansas, New Mexico, Texas, Oklahoma, North Dakota, South Dakota, Montana, and Wyoming with no substantial change in dates from the 1983–84 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes, except in experimental season areas in Arizona and Wyoming where the limit is 2 cranes per season for 200 and 250 permit holders, respectively, and in the experimental season areas of New Mexico where the limit is 3 cranes per season for 345 permit holders. The provision for a Federal sandhill crane hunting permit is continued in all the above areas except experimental season areas in Arizona, New Mexico, and Wyoming.

17. *Coot bag limit.* (No change.) Within the regular duck season, States in the Alantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 and a possession limit of 30 coots. States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules.

18. *Gallinules.* (No change.) States in the Atlantic and Mississippi Flyways may select hunting seasons between September 1, 1984, and January 20, 1985, of not more than 70 days. Central Flyway States may select hunting seasons between September 1, 1984 and January 22, 1985, of not more than 70 days. Any State may split its gallinule season without penalty. The daily bag and possession limits may not exceed 15 and 30, respectively. States may select gallinule seasons at the time they select their waterfowl seasons. In this case, daily bag and possession limits will remain the same.

States in the Pacific Flyway must select their gallinule hunting seasons within the waterfowl seasons. A gallinule season selected by any State or portion thereof in the Pacific Flyway may be the same as but not exceed its waterfowl season, and the daily bag and possession limits may not exceed 25 coots and gallinules, singly or in the aggregate of the two species.

19. *Rails.* (No change.) The States included herein may select seasons between September 1, 1984, and January 20, 1985, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and king rails

1. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 or 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

2. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly or in the aggregate of the two species.

3. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia rails

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

20. *Common snipe.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons between September 1, 1984, and February 28, 1985, not to exceed 107 days, except that in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia the season must end no later than January 31. Seasons between September 1, 1984, and February 28, 1985, not exceeding 93 days, may be selected in the Pacific Flyway portions of Montana, Wyoming, Colorado, and New Mexico.

All States in the Pacific Flyway, except those portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway, must select their snipe season to run concurrently with their regular duck season. In these Pacific Flyway States, except portions of the four States noted previously, it will be unlawful to take snipe when it is unlawful to take ducks.

Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season into two segments.

States or portions thereof in the Atlantic, Mississippi, and Central Flyways may defer selection of snipe seasons until they choose their waterfowl seasons in August. In that event, the daily bag and possession limits will remain the same but shooting hours must conform with those for watefowl.

21. *Woodcock.* (No change.) States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with daily bag and possession limits of 5 and 10, respectively, to occur between September 1, 1984 and February 28, 1985. States in the Atlantic Flyway, may select hunting seasons of not more than 65 days with daily bag and possession limits of 5 and 10, respectively, to occur between October 1, 1984 and February 28, 1985, except the season must end no later than January 31, 1985 in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Deleware, Maryland, and Virginia.

Any State may split its woodcock season without penalty. New Jersey may select woodcock hunting seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 55 days.

The October 1 opening in the Altantic Flyway continues an action, implemented in 1982, for providing additional protection to woodcock populations that were significantly and detrimentally affected by a severe blizzard in April 1982. The October 1 opening was designed to assist recovery of the populations by reducing early season (pre-migratory) harvests in the important breeding areas that were affected by the blizzard. Populations in these areas had recovered only partially in 1983. Pending evidence of further recovery, it is considered advisable to continue the October 1 opening in 1984. In addition, the woodcock population in the Atlantic Flyway as a whole has been in a continuing decline in recent years. This further indicates the desirability of continuing a delayed framework opening date. The Service will further consider woodcock hunting regulations in the Eastern Region when results of the 1984 singing-ground survey and the 1983–84 woodcock wing collection survey are available.

22. *Band-tailed pigeons.* (No change.)

Pacific Coast States (California, Oregon, and Washington). These States may select hunting seasons not to exceed 30 consecutive days between September 1, 1984, and January 15, 1985. The daily bag and possession limits may not exceed 5 band-tailed pigeons.

California may zone by selecting hunting seasons of 30 consecutive days for each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

2. The remainder of the State.

Nevada may select for the counties of Carson City, Douglas, and Lyon and experimental season and limits the same as those selected by California for Alpine County. Each hunter must have in possession a valid band-tailed pigeon hunting permit.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1984. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide it State into a North and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1, and November 30, 1984, in the North Zone, and October 1 and November 30, 1984, in the South Zone, hunting seasons not to exceed 20 consecutive days in each zone may be selected.

23. *Mourning doves.* (No change.) Beginning in 1982, a program of generally uniform frameworks was implemented in all 3 mourning dove management units. For the 1983 season, States were offered an option of a season length of 70 half or full days with a daily bag and possession limit of 12 and 24, respectively, or a season length of 60 half or full days with a daily bag and possession limit of 15 and 30, respectively. States were allowed to select hunting zones without penalty and to split the season into not more than 3 time periods.

The Service proposes to offer these options again during the 1984 hunting season, pending results of the call-count survey and receipt of additional information and recommendations.

Between September 1, 1984, and January 15, 1985, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit: All States east of the Mississippi River and Louisiana.

1. Shooting hours between one-half hour before sunrise to sunset daily.

2. Hunting seasons of not more than 70 full or half days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As an alternative, seasons not exceeding 60 full or half days and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three time periods.

3. As an option to the above, Alabama, Georgia, Illinois, Louisiana, and Mississippi may elect to zone their States as follows:

A. Two zones per State as described in 48 FR 35103.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may run consecutively or be split into not more than three periods.

C. The hunting seasons in the South Zones of these States may commence no earlier than September 20, 1984.

Additional information. By letter of January 12, 1984 the State of Delaware requested that the Service permit options of either a 70-day season with a 15-bird daily bag limit or a 90-day season with a 12-bird daily bag limit. No data were provided in support of this request.

Response. The Service defers action on this request pending receipt of additional information and Atlantic Waterfowl Council review and recommendation.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

1. Shooting hours between one-half hour before sunrise to sunset daily.

2. Hunting seasons of not more than 70 days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As as alternative, seasons not exceeding 60 days, and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three periods.

3. In New Mexico, daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 under the alternative), singly or in the aggregate of the two species.

4. In addition to the basic framework and the alternative, Texas may divide the State into two or three zones for purposes of dove hunting in accordance with zoning proposals previously approved by the Service and the Central Flyway Council. The various zones are described in 48 FR 35103.

Under the two zone option, the following conditions apply:

A. The hunting season may be split into not more than two periods.

B. The North Zone may have a season of not more than 70 (or 60 under the alternative) days between September 1, 1984, and January 20, 1985.

C. The South Zone may have a season of not more than 70 (or 60 under the alternative) days between September 20, 1984, and January 20, 1985. In that portion of Texas where white-winged dove hunting is allowed, the mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves. However, the remaining days must be within the September 20, 1984–January 20, 1985, period.

Under the three zone option, the following conditions apply:

A. The hunting season may be split into not more than two periods, except in that portion of Texas where white-winged dove hunting is allowed, the mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves.

B. Each zone may have a season of not more than 70 (or 60 under the alternative) days. The framework dates are to be those included in the original proposal from Texas dated December 18, 1979. These dates are:

Panhandle Zone—between September 1, 1984 and January 20, 1985.

Central Zone—between the first Saturday on or after September 8, 1984 and January 20, 1985.

Rio Grande Zone—between September 20, 1984 and January 20, 1985.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

1. Shooting hours of one-half hour before sunrise to sunset daily.

2. Hunting seasons of not more than 70 full days with daily bag limits not to exceed 12 and 24 doves, respectively, which may run consecutively or be split into not more than three periods.

3. As an alternative, except in Arizona, seasons not exceeding 60 days and limits of 15 to 30 doves, respectively, may run consecutively or be split into not more than 3 periods.

24. *White-winged doves.* (No change). Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1984, and daily bag limits as stipulated below.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

Nevada, in the counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for that portion of the State where the species occurs. The daily bag and possession limits may not exceed 10 and 20 white-winged doves, respectively. The season may be split within the overall time frame.

In addition, Texas may also select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1984, and January 25, 1985, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 2 may be whitewings. The possession limit of both species in the aggregate may not exceed 24 (or 30 under the alternative), of which not more than 4 may be whitewings.

Florida may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1984, and January 15, 1985, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings. The possession limit of both species in the aggregate may not exceed 24 (or 30 under the alternative), of which not more than 8 may be whitewings.

Additional information. By letter of December 30, 1983, the State of Texas requested that the Service allow a limited hunting season on white-tipped (white-fronted) (*Leptotila verreauxi*) doves to run concurrently with Texas' special four-day white-winged dove

season. An aggregate daily bag of 10 white-winged and white-tipped doves to include no more than two white-tipped doves was requested as well as the standard 12 mourning doves during this special four-day season.

Response. The Service defers action on this request pending receipt of additional information and Flyway Council review and recommendations.

25. *Migratory bird hunting seasons in Alaska.* (Possible change.) In 1977, by mutual agreement, the service and the Alaska Department of Fish and Game initiated a study of stabilized hunting regulations for the 5-year period, 1977 through 1981. Background information on this experiment was given in the **Federal Register** dated March 10, 1977 (42 FR 13317). Alaska submitted its final report of the study on December 31, 1981, and requested that it be permitted to continue setting stabilized regulations in conjunction with the stabilized duck hunting experiment underway in the remainder of the Pacific Flyway. The 1982–83 Alaska frameworks contained the stabilization feature. The Service proposes to allow Alaska to maintain stabilized duck hunting frameworks during the 1984–85 season.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1984–85

Outside Dates: Between September 1, 1984, and January 26, 1985, Alaska may select seasons on waterfowl, snipe, and sandhill cranes, subject to the following limitations:

Shooting Hours: One-half hour before sunrise to sunset daily.

Hunting Seasons:

Ducks, geese, and brant—107 consecutive days in the Pribolof and Aleutian Islands, except Unimak Island; 107 days in the Kodiak (State game management unit 8) area and the season may be split without penalty; 107 consecutive days in the remainder of Alaska, including Unimak Island. Exception: the season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be white-fronted or Canada geese, singly or in the aggregate of these species. In addition to the basic limit, there is a daily bag limit of 6 and a possession limit of 12 Emperor geese.

Brant—A daily bag limit of 4 and a possession limit of 8.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 2 and a possession limit of 4.

Additional information. Pending consultation with representatives from Alaska, other affected states, the Pacific Flyway Council, and other interested organizations and individuals, the Service proposes to not open the season on cackling Canada geese, insofar as practical considering management objectives for other subspecies of Canada geese, and to further restrict the harvest of Pacific Flyway Population white-fronted geese throughout their range in the United States, including Alaska. A more detailed proposal for harvest restrictions on cackling Canada geese, white-fronted geese and possibly dusky Canada geese and Pacific brant is to be developed in consultation with the affected states and the Pacific Flyway Council and will be published later.

Justifications for the actions relating to goose season restrictions were previously stated under Item 14.

26. *Migratory game birds in Puerto Rico and doves and pigeons in the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Seasons Dates for Hunting Migratory Birds in Puerto Rico, 1984–85

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Ducks, Coots, Gallinules, and Snipe

Outside Dates: Between November 5, 1984, and February 28, 1985, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks, coots, common gallinules, and common snipe. The season may be split into 2 segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—Not to exceed 6 daily and 12 in possession.

Common gallinules—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, coots, gallinules, and snipe is prescribed in the following areas:

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1984, and January 15, 1985, as follows.

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Closure Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to

Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Puerto Rican plain pigeon (*Columba inornata wetmorei*) locally known as "Paloma Sabanera," which is known to be present in the above locale in small numbers and which is presently listed as an endangered species under the Endangered Species Act of 1973.

Additional information. The Service has received correspondence from the World Society for the Protection of Animals and the Humane Society of the United States questioning the propriety of migratory bird hunting regulations in Puerto Rico, and requesting information on matters relative to the establishment of such regulations. Their primary concerns relate to the effect of hunting on protected species of migratory birds in Puerto Rico. Appropriate officials of the Commonwealth of Puerto Rico have been alerted to the questions and concerns that have been raised. The Service will further review these matters in consultation with Puerto Rican officials. The review will be directed toward identifying actions presently underway, as well as additional actions that may be needed to improve migratory bird management in Puerto Rico.

Proposed Framework for Selecting Open Season Dates For Hunting Migratory Birds in the Virgin Islands, 1984–85

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Ducks

Outside Dates: Between December 1, 1984, and January 31, 1985, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*);l fulvous whistling (tree) duck (*Dendrocygan bicolor*), and the masked duck (*Oxyura dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1984, and January 15, 1985, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local names for certain birds

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Ground dove (*Columbia passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

27. *Migratory game bird seasons for falconers.* (No change.)

Proposed Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season, or falconry season) exceed 107 days for a species in one geographical area.

28. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with regulations set by the State of Hawaii as has been done in the past and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1984, and January 15, 1985, the length may not exceed 60 full days; and the daily bag and possession limits may not exceed 10 and 20 doves, respectively. Other applicable Federal regulations relating to migratory game birds shall also apply.

Dated: March 13, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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Contract Services for Drug Dependent Federal Offenders Authorization Act of 1983. (Mar. 20, 1983; 98 Stat. 66) Price: $1.50

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To designate the week beginning May 6, 1984, as "National Correctional Officers Week". (Mar. 20, 1984; 98 Stat. 92) Price: $1.50

H.R. 4194 / Pub. L. 98-239
To extend the expiration date of section 252 of the Energy Policy and Conservation Act (Mar. 20, 1984; 98 Stat. 93) $1.50

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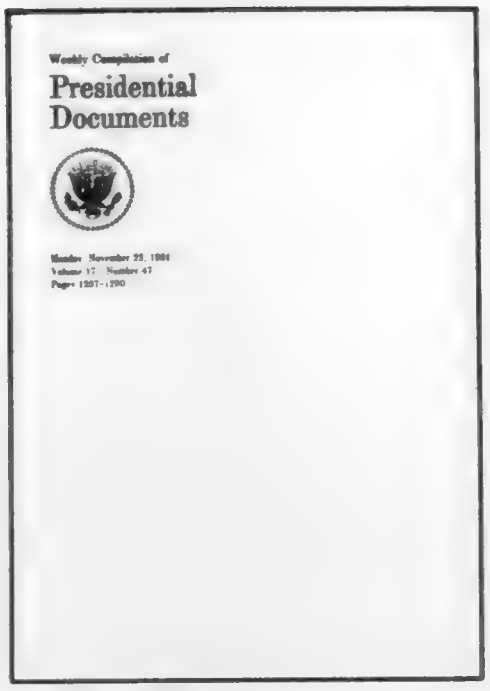

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Monday, March 26, 1984

Presidential Documents

Title 3—

The President

Proclamation 5167 of March 22, 1984

National Social Work Month, 1984

By the President of the United States of America

A Proclamation

It is appropriate that Americans express our appreciation to the many thousands of dedicated men and women in all parts of our Nation who have devoted their lives to helping those in need. For more than a century, social workers have been committed to the betterment and general welfare of all our society. They have helped implement social services with creativity, resourcefulness, and true professionalism.

It is within our local communities that the real contribution to the welfare of our citizens is made. Those closest to the problem—the social workers in State and local governments, area agencies, and private and voluntary organizations—are usually the most qualified persons to decide what help is needed and the best way to provide it. In this way, they carry on and enhance our proud American heritage of neighbors helping neighbors, and people helping people.

In recognition of the many contributions of the social work profession to the welfare of our society, the Congress, by Senate Joint Resolution 112, has authorized and requested the President to proclaim the month of March 1984, as "National Social Work Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of March 1984, as National Social Work Month. I ask all our citizens to join in this recognition and to search their hearts for ways in which they too can help their fellow Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-8213
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Presidential Documents

Proclamation 5168 of March 22, 1984

National Safe Boating Week, 1984

By the President of the United States of America

A Proclamation

Americans increasingly look to the water for recreation and relaxation. This year, approximately one-quarter of us will enjoy boating in one or more of its many and varied forms. Therefore, it is important that all those involved in recreational boating observe proper safety practices, know and obey rules of safe boating, and show courtesy and consideration on the water.

In addition, all boaters should wear personal flotation devices while on the water. Seventy-five percent of those who died in boating accidents last year might have been saved had they worn these devices, according to United States Coast Guard instructions.

The theme of this year's "National Safe Boating Week" emphasizes the dangers of combining alcohol consumption with boat operation. The use of alcohol and other intoxicating substances is a major factor in boating accidents and fatalities. Boat operators who drink impair their ability to recognize and react to hazards and thereby endanger not only themselves but also others on the water. The use of even small amounts of alcohol can significantly reduce an operator's judgment and boat handling skills. This is particularly true as fatigue caused by sun, glare, noise, wind, and boat motion intensifies the effects of alcohol. Through the observance of "National Safe Boating Week, 1984," Americans should be alerted to these dangers.

In recognition of the need for boating safety, the Congress enacted the joint resolution of June 4, 1958 (36 U.S.C. 161), as amended, authorizing and requesting the President to proclaim annually the week commencing on the first Sunday in June as National Safe Boating Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning June 3, 1984, as National Safe Boating Week.

I also invite the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, and the Mayor of the District of Columbia to provide for the observance of this week.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

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Presidential Documents

Executive Order 12468 of March 22, 1984

Presidential Advisory Council on the Peace Corps

By the authority vested in me as President by the Constitution and statutes of the United States, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Presidential Advisory Council on the Peace Corps.

(b) The Council shall be composed of no more than 15 persons, who shall be appointed by the President. The President shall designate a member to serve as Chairman of the Council and a member to serve as Vice Chairman. Members shall serve at the pleasure of the President.

Sec. 2. *Functions.* (a) The Council shall advise the President and the Director of the Peace Corps on initiatives needed to promote the purposes of the Peace Corps Act and actions of the Peace Corps which do so.

(b) The Council shall submit simultaneously to the President and the Director of the Peace Corps an annual report on its review of Peace Corps activities, its recommendations concerning those activities, and the activities of the Council.

Sec. 3. *Administration.* (a) The heads of the Executive agencies shall, to the extent permitted by law, provide the Council with such information as may be necessary for the effective performance of its functions.

(b) Members of the Council shall not receive compensation for their work on the Council. While engaged in the work of the Council, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) The Director of the Peace Corps shall, to the extent permitted by law and subject to the availability of funds, provide the Council with such administrative services, funds, facilities, and other support services as may be necessary for the effective performance of its functions.

Sec. 4. *General Provisions.* (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act which are applicable to the Council, except that of reporting annually to the Congress, shall be performed by the Director of the Peace Corps, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Council shall terminate two years from the date of this Order, unless sooner extended.

Ronald Reagan

THE WHITE HOUSE,
March 22, 1984.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 631

Great Plains Conservation Program

AGENCY: Soil Conservation Service (SCS), USDA.

ACTION: Final rule.

SUMMARY: SCS is revising its regulations for implementing the Great Plains Conservation Program (GPCP) which operates in the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. This is a revision of the present GPCP rules published November 18, 1975 (40 FR 53370). The regulations were revised to simplify them and allow more decisions to be made at the state level.

EFFECTIVE DATE: March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Dennie G. Burns, Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 to implement Executive Order 12291 and has been classified "nonmajor." Peter C. Myers, Chief, Soil Conservation Service, has determined that this action: (1) Will not affect the national economy by $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; (2) will not have a significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets; (3) will not have a significant economic impact on a substantial number of small entities; and (4) will not have a significant adverse impact on the environment.

The environmental assessment of the federally-assisted action indicates that the program will not cause significant local, regional or national adverse impacts on the environment. As a result of these findings, Mr. Peter C. Myers, Chief, has determined that the preparation and review of an environmental impact statement is not needed for this program.

The rule will govern a program of technical and financial assistance in which participation is voluntary. Thus, it will not impose an unnecessary regulatory, information, or compliance burden on small businesses, organizations, or governmental jurisdictions as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601).

The Great Plains Conservation Program is authorized by the Soil Conservation and Domestic Allotment Act as amended by Pub. L. 84–1021, 70 State. 1115; Pub. L. 91–118, 83 Stat. 194; and Pub. L. 96–263 (16 U.S.C. 590p(b)).

The Soil Conservation and Domestic Allotment Act, as amended, authorizes the Secretary of Agriculture to assist farmers and ranchers to prepare and implement a land use and treatment program that will help prevent or reduce the effects of the erratic climate of the Great Plains area. The Great Plains Conservation Program provides financial and technical assistance to land users who have developed acceptable conservation plans for the entire farm or ranch operating unit.

The Secretary of Agriculture has delegated authority for administration of the Act to the Chief of the Soil Conservation Service (SCS).

Proposed revision of the rules was published September 8, 1983, 48 FR 40522. SCS evaluated the proposed rules in light of comments received. Eighteen responses were received during the 60-day comment period ending November 7, 1983. Paperwork required by this part has been approved under OMB number 058–0013.

Comments not addressed below were editorial in nature and were considered as appropriate.

Comment: The rule should provide for assignment of cost-share payments to vendors of conservation material and services.

Response: The rule does not prohibit use of assignment of payments to vendors. Payments directly to vendors by SCS have been discontinued by policy. SCS may approve exceptions in justified cases.

Comment: One comment expressed that actual starting of the work on the land should be possible as soon as a contract is signed.

Response: Starting the work is appropriate as soon as the participant and the contracting officer have signed the contract. SCS believes it is not proper to cost share for work which was accomplished before both parties signed the contract.

Comment: One comment favored the continuation of contracts only for the entire operating unit and one comment favored contracts on part of the operating unit.

Response: SCS will continue to contract only for complete operating units (see § 631.1).

Comment: One comment stated that the definitions of "designated county" and "designated conservationist" indicated that these were tools of targeting.

Response: The definitions of "designated county" and "designated conservationist" are not intended to change the past concepts of these terms. The authorizing statute specifies that counties within the Great Plains states are to be designated if they are susceptible to serious wind or water erosion (see § 631.2).

Comment: Four comments favored the proposed coordination with Farmers Home Administration (FmHA) as written. Two comments indicated it would be better to handle coordination with FmHA through a memorandum of understanding between SCS and FmHA.

Response: The rule will stand as written. SCS believes that it is advantageous for the applicant to be responsible for coordination between SCS and FmHA (see § 631.3).

Comment: County program committees should have an input into county practice lists.

Response: It is intended that the county program committee have input into county practice lists (see § 631.7).

Comment: For administrative simplicity, there should be only one allowable cost-share percentage for each practice.

Response: The rules provide for flexibility of cost-share percentages to allow program managers the option of establishing cost-share percentages commensurate with public benefits and private benefits (see § 631.8).

Comment: One commenter questioned whether the 80 percent cost-share rate is perhaps too high, with the large number of requests for GPCP cost sharing.

Response: Eighty percent is the maximum rate. SCS believes that 80 percent is needed on some practices or components that have a high public value and little or no financial benefit to the participant. We anticipate that most practice components will be cost shared at less than 80 percent (see § 631.8).

Comment: One comment recommended allowing for local agencies to provide technical assistance.

Response: SCS agrees. The word "local" has been included in the appropriate place (see § 631.9).

Comment: Specifications in effect at the time the contract is signed should apply for the entire contract period.

Response: The rules state that the applicable technical guide will be used. Time lapse between planning and application, and between changing technology and changes in local laws has shown that it is best to use current specifications. SCS may approve exceptions in justified cases (see § 631.9).

Comment: One commenter expressed concern about penalties for failure to maintain practices for life span.

Response: Failure to maintain a practice would be dealt with as a contract violation according to the terms of the contract. (see § 631.11)

Comment: Several comments reviewed supported the proposed rule as written regarding maintenance. One comment suggested that the rule should be made stronger and one comment suggested that the emphasis on maintenance is not needed.

Response: SCS believes that emphasis is needed on practice maintenance. The rule will remain as written. (see § 631.11)

Comment: Concern was expressed that negotiated mutually accepted solutions would avoid the purpose of accepted specifications.

Response: It is not intended that the contracting officer would compromise standards and specifications by negotiation. The rule as written is intended to recognize that the contracting officer is to make an effort to resolve disputes informally. (see § 631.13)

Comment: Concern was expressed about protection of the government in cost-shared practices where the land under contract is sold.

Response: Land being sold is a loss of control of the operating unit. Violation information attached to each contract will state that a producer who sells land under contract must either repay cost shares received or have the purchaser to assume responsibilities of the contract.

List of Subjects in 7 CFR Part 631

Grant programs (agriculture), Grant programs (natural resources), Soil conservation, Technical assistance, and Water resources.

Accordingly 7 CFR Part 631 is revised to read as follows:

PART 631—GREAT PLAINS CONSERVATION PROGRAM

Subpart A—General Provisions

Sec.

6631.1 Purpose.
6631.2 Definitions.
6631.3 Administration.
6631.4 Program applicability.
6631.5 Land user eligibility.
6631.6 Land eligible for the program.
6631.7 Conservation treatment eligible for cost sharing.
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Subpart B—Contracts

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6631.11 Conservation practice maintenance.
6631.12 Cost-share payments.
6631.13 Disputes and appeals for matters other than contract violations.
6631.14 Contract violations.

Subpart C—Miscellaneous

6631.20 Setoffs.
6631.21 Compliance with regulatory measures.
6631.22 Access to operating unit.
6631.23 State conservationist's authority.

Authority: 16 U.S.C. 590p(b).

Subpart A—General Provisions

§ 631.1 Purpose.

(a) The Great Plains Conservation Program (GPCP) is a special program targeted to the total conservation treatment of farm or ranch units with the most severe soil and water resources problems. The purpose of the program is to assist farm, ranch and other land users to make changes in their cropping systems and land uses which are needed to conserve, develop, protect, and utilize the soil and water resources of their lands. This purpose is achieved by controlling erosion, conserving water, and adjusting land use to mitigate climatic, soil, topographic, flood, saline and other natural hazards.

(b) Program participation is voluntary and is carried out by applying a conservation plan encompassing an entire operating unit. A conservation plan is developed with the land user in consultation with the local conservation district and is used to establish a GPCP contract. This contract provides for cost sharing between the land user and the Secretary of Agriculture for applying needed land use adjustments and conservation treatment within a specified time schedule. The program is supplemental to, not a substitution for, other programs in the Great Plains area.

§ 631.2 Definitions.

The terms defined shall have the following meaning in this part and in all contracts, forms, documents, instructions, and procedures in connection therewith, unless the contract or subject matter requires otherwise.

Applicant. A land user who has requested in writing to participate in the GPCP.

Area conservationist. The SCS employee who is the supervisor with primary responsibility for quality control. This person serves as contracting officer if designated by the state conservationist.

Chief. The Chief of the Soil Conservation Service (SCS), USDA.

Conservation district (CD). A conservation district, soil conservation district, soil and water conservation district, natural resource district, or similar legally constituted body with which the Secretary of Agriculture cooperates pursuant to the Soil Conservation and Domestic Allotment Act. The members of governing bodies of these organizations may be known as supervisors, directors, or commissioners.

Conservation plan. A written record of the land user's decisions regarding planned land use and treatment, including estimates of extent and cost. The timing of applications for each practice and/or identifiable unit is scheduled in the conservation plan.

Conservation practice. A specific treatment which is planned and applied according to SCS standards and specifications as a part of a resource management system for land, water, and related resources.

Contract. A legal document that binds both the participants and the federal government to carry out the terms and conditions of the conservation plan. The contract forms the basis for GPCP sharing the costs of implementing the conservation plan.

Contracting officer. The SCS employee authorized to sign GPCP contracts on behalf of SCS.

County program committee. A group of Federal, State, and local officials selected by the designated conservationist. The committee provides ideas to the designated conservationist regarding program development and interagency program coordination.

Designated county. A county within a Great Plains state that the Chief has designated for participation.

Designated conservationist. A district conservationist or other SCS employee who the state conservationist has designated to be responsible for administration of the GPCP in a designated county.

District conservationist. The SCS employee assigned to direct and supervise SCS activities in one or more conservation districts.

Great Plains area. The area comprising those counties within the Great Plains states designated for GPCP participation.

Great Plains states. Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Identifiable unit. A discernibly distinct component of a conservation practice.

Land user. An individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other nonpublic legal entity having control of a unit of land. This definition includes two or more persons having a joint or common interest.

Life span. The period of time specified in the contract and/or operation and maintenance agreement during which the resource management systems of component practices are to be maintained and used for the intended purpose. Most practices will have a useful life beyond the specified life span.

Operation and maintenance agreement. A document signed by both the participant and the contracting officer outlining the operation and maintenance requirements for applied conservation treatment.

Operating unit. A parcel or parcels of land, whether contiguous or noncontiguous, constituting a single management unit for agricultural purposes.

Other land. Nonagricultural land on which erosion must be controlled to protect agricultural land and which can be covered by contract.

Participant. A land user who is a party to a GPCP contract.

Resource management system. A combination of conservation practices identified by the land or water use that, if installed, will protect or improve the soil or water resource base.

Specifications. Minimum quantity or quality requirements established by SCS to meet the standard for a specific conservation practice.

State conservationist. The SCS employee authorized to direct and supervise SCS activities within the state.

State program committee. A group of Federal, state, and local officials selected by the state conservationist. The committee provides ideas to the state conservationist regarding program development, coordination, general policies, and operating procedures of GPCP in the state.

Technical assistance. Guidance provided to land users regarding the use and treatment of soil, water, plant, animal, and related resources. This assistance may include conservation plan formulation, application, and maintenance and is usually confined to those activities which the recipient could not reasonably be expected to do without specialized assistance.

Technical guide. A document containing detailed information on the conservation of soil, water, plant, animal, and related resources applicable specifically to the area for which it is prepared.

§ 631.3 Administration.

(a) SCS is responsible for the administration of the Great Plains Conservation Program (GPCP).

(b) The program shall be carried out in close cooperation with interested Federal, state, and local government units and organizations. The program in designated counties shall be coordinated with the long-range program of conservation districts operating in such counties and with other USDA activities.

(c) Applicants who have USDA-Farmers Home Administration (FmHA) loans must furnish to SCS satisfactory evidence that the conservation plan used as a basis for the GPCP contract is compatible with assistance provided by FmHA. Such evidence may consist of written acknowledgement by the authorized FmHA official that the GPCP conservation plan is compatible with the farm management plan prepared for FmHA program purposes.

§ 631.4 Program applicability.

The program is applicable only to designated counties within the Great Plains states. County designation is a responsibility of the SCS Chief.

§ 631.5 Land user eligibility.

Any land user in a designated county may file an application for participation in the GPCP with the SCS field office. A land user who develops an acceptable conservation plan in cooperation with SCS and the conservation district that is in compliance with the terms and conditions of the program is eligible to sign a contract.

§ 631.6 Land eligible for the program.

The program is applicable to: (a) Privately owned land, (b) nonfederally owned public land under private control for the contract period and included in the participant's operating unit, and (c) federally owned land, if installation of conservation practices would directly benefit nearby or adjoining privately owned land of persons who maintain and use the Federal land.

§ 631.7 Conservation treatment eligible for cost sharing.

(a) The state conservationist, in consultation with the state program committee, shall select the resource management systems, conservation practices, or identifiable units eligible for GPCP cost sharing in the state.

(b) The designated conservationist, in consultation with the county program committee, shall select from the state list the eligible conservation systems, practices, or identifiable units eligible for GPCP cost sharing in the county.

§ 631.8 Cost-share rates.

(a) The Federal rate may not exceed 80 percent.

(b) The maximum Federal rate (percentage) within each state for each practice or identifiable unit shall be established by the state conservationist.

(c) The maximum rate (percentage) for each county is established by the designated conservationist not to exceed the state rate (percentage).

(d) The rate (percentage) established by a state conservationist or a designated conservationist shall not exceed the amount necessary and appropriate to apply conservation treatment.

§ 631.9 Conservation plan.

(a) An applicant is responsible for developing a conservation plan, in cooperation with the conservation district, that protects the resource base in a manner acceptable to SCS. This plan will be used as a basis for developing a contract. Conservation treatment is to be planned and implemented as a resource management system.

(b) The applicant decides how the land will be used and selects the

resource management systems that will achieve the applicant's objectives and provide protection of soil, water, and related resources acceptable to SCS. Eligible practices may be included in the conservation plan to enhance fish and wildlife and recreation resources, promote the economic use of land, and reduce or control agriculture-related pollution.

(c) Technical assistance will be provided by SCS, as needed by the land user. SCS may utilize the services of private, local, state, and other Federal agencies in discharging its responsibilities for technical assistance.

(d) Participants are responsible for accomplishing the conservation plan and may use all available sources of assistance, including other USDA programs that are consistent with the conservation plan.

(e) All conservation practices scheduled in the conservation plan are to be carried out in accordance with the applicable SCS technical guide.

Subpart B—Contracts

§ 631.10 Contracts.

(a) To participate in the program, an applicant must enter into a contract agreeing to implement a conservation plan. All persons who control or share control of the operating unit for the proposed contract period must sign the contract or one person with power-of-attorney may sign the contract for all persons. The applicant must provide the contracting officer with satisfactory evidence of control of the operating unit for the life of the proposed contract.

(b) Contracts may be entered into not later than September 30, 1991. The contract shall be for a period needed to establish the conservation treatment scheduled in the conservation plan and must extend at least 3 years but not more than 10 years.

(c) Contracts may be transferred or modified by mutual consent. The transferee assumes full responsibility for the contract including operation and maintenance of all land treatment installed under the contract. Also included are payments made under the contract to the participant or preceding participants before and after the transfer.

(d) Contracts may be terminated by mutual consent or by SCS for cause.

§ 631.11 Conservation practice maintenance.

(a) Each participant is obligated to maintain the resource management systems or conservation practices applied under the contract for the duration of the contract. Practices installed before execution of the contract are to be maintained as specified in the contract.

(b) If the life span of the practices or resource management systems extends beyond the period of the contract, state conservationists may make the operation and maintenance of those practices or systems a condition of the contract. The length of such operation and maintenance shall extend for the expected life span.

§ 631.12 Cost-share payments.

(a) Federal cost sharing shall be adjusted so that the combined cost share by Federal and state government or subdivision of a state shall not exceed 100 percent of the cost.

(b) Cost-share payments for completing resource management systems or a practice or an identifiable unit according to specifications will be made by SCS as specified in the contract or as adjusted according to § 631.12(a).

§ 631.13 Disputes and appeals for matters other than contract violations.

(a) If an applicant or a participant disagrees with a determination made by the district conservationist, the person must notify the contracting officer in writing on the nature, extent, and reasons for the disagreement. The contracting officer will review the circumstances and attempt to negotiate a mutually acceptable solution. If a negotiated solution is not possible, the state conservationist will review the facts and notify the landowner of the decision.

(b) An applicant/participant may appeal to the Chief regarding a state conservationist's decision concerning a dispute. The appeal must be in writing, setting forth the applicant/participant's disagreement with the state conservationist's decision and must be made within 30 days of the state conservationist's decision. The Chief will review the facts of the appeal and notify the applicant/participant of the decision. The Chief's decision will constitute the final administrative determination within SCS.

§ 631.14 Contract violations.

Contract violations, determinations and appeals will be handled in accordance with the terms of the contract and attachments thereto. Violations involving fraud are to be handled in accordance with current USDA regulations.

Subpart C—Miscellaneous

§ 631.20 Setoffs.

(a) If any participant to whom compensation is payable under the program is indebted to U.S. Department of Agriculture (USDA), or any agency thereof, or is indebted to any other agency of the United States, and such indebtedness is listed on the county claim control record maintained in the office of the county ASC committee, the compensation due the participant shall be set off against the indebtedness. Indebtedness owing to USDA, or any agency thereof, shall be given first consideration. Setoffs made pursuant to this section shall not deprive the participant of any right to contest the justness of the indebtedness involved, either by administrative appeal or by legal action.

(b) Participants who are indebted to this program for any reason will be placed on the USDA claim control record promptly by the state conservationist after the participant has been given opportunity to pay the debt.

§ 631.21 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall save the United States harmless from any infringements upon the rights of others or from any failure to comply with applicable laws or regulations.

§ 631.22 Access to operating unit.

Any authorized SCS representative shall have the right to enter an operating unit for the purpose of ascertaining the accuracy of any representations made in a contract or leading up to a contract, and as to the performance of the terms and conditions of the contract. Access shall include the right to measure acreages, render technical assistance, and inspect any work undertaken under the contract.

§ 631.23 State conservationist's authority.

The state conservationist may take the initiative to revise or require revision of any determination made by the contracting officer or the district conservationist in connection with the program, except that the state conservationist may not revise any

executed contract other than as may specifically be authorized herein.

Peter C. Myers,

Chief, Soil Conservation Service.

January 30, 1984.

[FR Doc. 84-7998 Filed 3-23-84; 8:45 am]

BILLING CODE 3410-16-M

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7 CFR Part 660

Cooperative Relationships and Arrangements; Removal of Part

March 8, 1984.

AGENCY: Soil Conservation Service, USDA.

ACTION: Final rule; removal of rule.

SUMMARY: This rule removes and reserves 7 CFR Part 660, Cooperative Relationships and Arrangements, as the material in this part is covered in the Federal Assistance Regulations of the Department of Agriculture.

EFFECTIVE DATE: March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Wayne F. Maresch, Director, Administrative Services Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, or telephone (202) 447-5111.

SUPPLEMENTARY INFORMATION: 7 CFR Part 660 was formulated in 1974 based on existing statutes, policies, authorities, and circumstances. Since that time, a statute has been enacted and implemented that defines procurement and Federal assistance, and the U.S. Department of Agriculture has published Federal assistance regulations. This Part was essentially superseded by these issuances; and therefore no longer serves a purpose.

On September 7, 1983, SCS published a proposal to remove and reserve 7 CFR Part 660 (48 FR 40389). No comments were received on the proposal.

List of Subjects in 7 CFR Part 660

Technical assistance, Water resources, Grant programs—natural resources.

PART 660—[RESERVED]

Accordingly, 7 CFR 660 is removed and reserved.

David G. Unger,

Associate Chief.

[FR Doc. 84-7997 Filed 3-23-84; 8:45 am]

BILLING CODE 3410-16-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 559; Navel Orange Regulation 597, Amdt. 2]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 599 establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period March 30–April 5, 1984. Regulation 597, Amendment 2, increases the quantity of such oranges that may be shipped during the period March 16–22, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: Section 907.599 becomes effective March 30, 1984, and § 907.597 is effective for the period March 16–22, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the Act.

These actions are consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on September 27, 1983. The committee met again publicly on March 20, 1984 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information on views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. Section 907.899 is added as follows:

§ 907.899 Navel Orange Regulation 599.

The quantities of navel oranges grown in California and Arizona which may be handled during the period March 30, 1984, through April 5, 1984, are established as follows:

(a) District 1: 1,900,000 cartons;

(b) District 2: Unlimited cartons;

(c) District 3: Unlimited cartons;

(d) District 4: Unlimited cartons.

2. Section 907.897 Navel Orange Regulation 597 (49 FR 9408) paragraphs (a) through (d) are hereby revised to read:

§ 907.897 Navel Orange Regulation 597.

(a) District 1: 2,000,000 cartons;

(b) District 2: Unlimited cartons;

(c) District 3: Unlimited cartons;

(d) District 4: Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 21, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-8052 Filed 3-23-84; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 83-029F]

Imported Products; Restoration of Czechoslovakia to the List of Countries Eligible for Importation of Meat Food Products into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On December 30, 1983, the Food Safety and Inspection Service (FSIS) published an immediately effective interim rule relisting the country of Czechoslovakia as one from which meat food products may be imported into the United States under the Federal Meat Inspection Act (FMIA). The interim rule set forth the reasons for Czechoslovakia's initial delistment and outlined the steps taken by the Czechoslovakian government to prevent the export of products containing PCB above the permitted tolerance. FSIS solicited comments on the interim rule. No comments were received. FSIS has determined that the interim rule shall be made a final rule.

EFFECTIVE DATE: April 25, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Grace Clark, Director, Foreign Programs Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6971.

SUPPLEMENTARY INFORMATION:

Executive Order 12211

The Food Safety and Inspection Service has determined that this interim final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effects on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) since there is currently only one domestic importer of Czechoslovakian meat products.

Background

On December 30, 1983, FSIS published in the **Federal Register** (48 FR 57475) an interim final rule, effective immediately, relisting Czechoslovakia as a country from which meat food products may be imported into the United States. In April 1983, Czechoslovakia was removed from the list of countries from which meat products might be imported into the United States as a result of polychlorinated biphenyl (PCB) residue violations in exported pork products (48 FR 19358). The Czechoslovakian government subsequently took steps to locate the source of the problem and implemented controls to prevent the export of products containing PCB above the permitted tolerance. The Administrator, FSIS, subsequently determined that the Czechoslovakian meat inspection system is in compliance with the FMIA's requirement that foreign inspection systems be at least equal to that of the United States.

Comments on the Interim Rule

FSIS did not receive any comments in response to the interim final rule.

Final Rule

After careful consideration of all relevant information available to FSIS, the Administrator has determined that the interim rule should be published as a permanent regulation as set forth below.

List of Subjects in 9 CFR Part 327

Meat inspection, Imported products.

PART 327—[AMENDED]

1. The authority citation for Part 327 is as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

§ 327.2 [Amended]

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) is amended by adding Czechoslovakia in alphabetical order to the list of countries eligible to export products into the United States.

Done at Washington, DC, on March 14, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-7999 Filed 3-23-84; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

Financial Protection Requirements and Indemnity Agreements; Facility Form Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is adding statements to its regulations that would indicate that the text of the Facility Form policy, including any codified amendatory endorsement or change to the policy, is an example of a contract that has been "accepted" as evidence of financial protection but that other variations on the text would be considered by the Commission. This action, which is discussed in Section 1, is intended to remove the misimpression that the Commission requires its nuclear power reactor licensees to maintain financial protection containing the exact language presented in the text of the Facility Form policy. Section 2 of the Notice contains two amendatory endorsements that modify certain definitions in the Facility Form policy. Section 3 contains the standard secondary master policy form which is published for codification and which certain licensees are maintaining as secondary financial protection. Finally, Section 4 contains other minor changes to conform certain sections of 10 CFR Part 140 both to Pub. L. 94-197 and the Atomic Energy Act of 1954, as amended.

DATE: This amendment becomes effective April 23, 1984.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-9884.

SUPPLEMENTARY INFORMATION: *Section 1*—In a proposed rule published on October 19, 1983 (48 FR 48474), the Commission sought comment on its decision to continue to publish Appendices A through H to 10 CFR Part 140 with certain clarifying statements made to Appendix A. (Appendix A is the Facility Form policy furnished by certain licensees as evidence of financial protection; Appendices B through H, except for Appendix F, are standard form indemnity contracts executed by the Commission and its licensees). This new language would state that the codified text of the Facility Form policy and amendatory endorsements to the policy were merely

examples of contracts that the Commission would consider acceptable as proof of financial protection, but that other variations of the text would be considered as well. This language would remove the misimpression that the Commission was placing its imprimatur on all of the language in the text of the Facility Form.

The Commission's decision to continue publishing the Appendices to 10 CFR Part 140 was made after considering the comments received in connection with a Notice of Proposed Rulemaking published in the **Federal Register** on March 4, 1983 (48 FR 9284). That Notice sought public comment on the question of deleting Appendices A through H to 10 CFR Part 140. Eighteen comments were received on the Notice, and all of the commenters argued against removing the Appendices from the regulations.

Six comments have been received in response to the Notice published on October 19, 1983. Commenters included the nuclear insurance pools, trade organizations and utilities, and law firms representing utilities. One commenter supported the proposed rule. Another commenter opposed the rule as published because he believed it would allow insurance Commissioners in each State to adopt different approved policy forms. The remaining four commenters, supporting the proposed rule, suggested two minor revisions which the Commission has adopted to remove present ambiguities in the proposed rule. The first modification conforms the introductory paragraph to § 140.91, Appendix A, to the modifications made in § 140.15. This clarifies the Commission's intent that variations to the standard form of nuclear liability insurance policy for a particular facility may be submitted by the licensee for that facility. The second change adds the words "and its other statutory duties" to the last sentence of the introductory paragraph of Section 140.91 to reflect the fact that the Commission has authority under subsection 170b. of the Atomic Energy Act to consider matters other than "public protection."

Section 2—Two amendatory endorsements are also published in final form in this rule. These endorsements, NE–50 and NE–51, which were published for comment in the **Federal Register** on February 18, 1981 (46 FR 12750), modify the definition of "insured shipments" to conform to the change made in the statutory definition of "byproduct material" in Pub. L. 95–604, the Uranium Mill Tailings Radiation Control Act of 1978, and also relieve the insurers of liability arising out of inspections. Both changes are contained in one endorsement, NE–51, that is used for policies issued before January 1, 1981. Endorsement NE–50 has been used with policies issued on or after January 1, 1981.

Section 3—In order to implement the provisions of Pub. L. 94–197, the Commission is publishing for codification in 10 CFR Part 140 a standard master policy form which the Commission has determined to be adequate proof that a licensee is maintaining the necessary secondary financial protection required by subsection 170b. of the Atomic Energy Act of 1954, as amended. This standard master policy form was submitted by the Nuclear Energy Liability-Property Insurance Association (NEL–PIA), the predecessor organization to American Nuclear Insurers (ANI), one of the two liability insurance pools. (An additional policy identical to the published policy has been submitted by the Mutual Atomic Energy Liability Underwriters (MAELU), the other liability insurance pool, but will not be published separately.)

Since August 1, 1977, the Commission has utilized a binder furnished by these two insurance pools as evidence of adequate secondary financial protection. The binder is almost identical to the standard master policy form and in the Commission's view meets all the requirements for implementation of Pub. L. 94–197.

Both the master secondary financial protection policy and the accompanying certificate of insurance, which names the utility insureds, establish the terms and conditions under which the insureds are responsible for the payment of the retrospective premium and, in addition, establish the liability of the insurance pools for the non-payment of the premiums in the event of default by the insureds. The secondary financial policy establishes the conditions under which the retrospective insurance premium becomes payable and contains additional terms and conditions to (1) establish the total contingent liability of the insuring companies in the event of retrospective premium defaults; (2) establish the requirements with which the insureds must comply in notifying the insuring companies of a nuclear incident; (3) establish the right of recovery by the insuring companies for any policy; and (4) cancel the policy for both the insuring companies and insureds.

On April 6, 1979, the Commission published for comment a proposed rule in the **Federal Register** (44 FR 20709) which contained the standard master policy form submitted by NEL–PIA. Only two letters of comment were received in response to this notice of proposed rulemaking. The first, submitted by NEL-PIA on behalf of both NEL-PIA and MAELU, simply provided editorial corrections. These changes have been incorporated in the secondary financial protection policy. The second letter of comment was submitted by Ropes and Gray, a law firm representing Yankee Atomic Electric Company, Connecticut Yankee Atomic Power Company, Vermont Yankee Nuclear Power Company and the several joint owners of the Seabrook Project. This letter suggested certain detailed changes in the secondary financial protection policy that the commenter believed would be advisable to clarify situations where multiple licensees own a single reactor. Basically, the Ropes and Gray position is that the secondary financial protection policy, as proposed, is at variance with subsection 170b. of the Atomic Energy Act of 1954, as amended, by not making a clear distinction between the concept of an "aggregate assessment against 'each facility' and the pro rata retrospective premiums charge against each licensee."

The Commission has analyzed the Ropes and Gray position and does not agree with it. Subsection 170b. does not differentiate between a license issued to a single utility and a license issued to more than one utility for the operation of a jointly owned reactor. The financial protection requirement applies to all co-licensees included under the term "licensee" as a unit and not separately to each of the co-licensees.

Ropes and Gray raises an additional concern in its comments relating to the "joint and severally liable" issue. The argument is made that placing a "joint and severally" obligation upon a public utility is in effect a lending of credit by one utility to another utility. Such an obligation, it is asserted, may require prior approval by either Federal of state governmental agencies. The Commission does not agree with this position. The lending of credit concern was discussed by public power representatives during hearings held in late 1975 by the Joint Committee on Atomic Energy on H.R. 8631, the bill that was enacted into law as Pub. L. 94–197. The thought was expressed at that time that the retrospective premium system might be construed to be in violation of some State constitutions, which prohibit a municipal utility from lending its credit or making expenditures for other than public purposes. The Joint Committee Report accompanying H.R. 8631 stated:

Furthermore, the deferred premium should not be interpreted as establishing a responsibility by one licensee for a liability or debt of another. The potential deferred premiums are considered by the Joint Committee to have fundamentally the same status as any other such insurance premium. The bill authorizes the Commission to establish a maximum limit on the amount of deferred premiums which can be charged to a facility in any one year. The purpose of this provision is to clarify the status of the premiums and to ensure that they cannot be construed as the lending of credit by any licensee and thus raise constitutional problems for some publicly owned utilities.'

Section 4—Finally, although the cost of investigating the settling liability claims and defending suits for damage is retained as part of financial protection, i.e., both primary and secondary insurance, the final rule modifies certain sections of 10 CFR Part 140 in conformance with Pub. L. 94–197 to exclude these costs from government indemnity. The amendments to Part 140 also include clarifying modifications, that were not in the proposed rule, to the definitions of the terms "financial protection" and "in the course of transportation" as used in the forms of indemnity agreements.

Paperwork Reduction Act Statement

This effective rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0039.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule affects in part two named nuclear liability insurance underwriting pools. These two pools are the only ones in the United States writing nuclear liability policies, and do not fall within the definition of a small business found in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Part 140, Code of Federal Regulations, are published as a document subject to codification.

The authority citation for this document is:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13 and 140.13a are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161o, 68 Stat. 905, as amended (42 U.S.C. 2201(o)).

PART 140—[AMENDED]

1. Section 140.15(a)(1) is revised to read as follows:

§ 140.15 Proof of financial protection.

(a)(1) Licensees who maintain financial protection in whole or in part in the form of liability insurance shall provide proof of financial protection that consists of a copy of the liability policy (or policies) together with a certificate by the insurers issuing the policy stating that the copy is a true copy of the currently effective policy issued to the licensee. The licensee may furnish proof of financial protection in the form of the nuclear energy liability insurance policy set forth in § 140.91 or in any other form acceptable to the Commission.

* * * * *

2. An introductory paragraph is added to § 140.91 to read as follows:

§ 140.91 Appendix A—Form of nuclear energy liability policy for facilities.

While the text of the policy which follows is exemplary of a contract acceptable to the Commission as evidence of the financial protection required of the licensee by section 170 of the Atomic Energy Act of 1954, as amended, variations on this text submitted by the licensee also will be considered by the Commission in determining whether the licensee meets the financial protection requirements of the Act. The full text of the policy is published solely for the purpose of completeness. Publication of this text should not be construed as a Commission endorsement of any particular provision pertaining solely to the business relationship between the insurers and the insureds or to any other matter not within the Commission's statutory jurisdiction under the Atomic Energy Act.

* * * * *

3. Section 140.91, Appendix A, is amended by adding the following endorsements to read as follows:

NE–80 (1/1/80), Amendatory Endorsement (Indemnified Nuclear Facility)

It is agreed that:

I. In Insuring Agreement III:

"DEFINITIONS"

A. The first sentence of the definition of "nuclear facility" is amended to read: "nuclear facility" means "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or by Mutual Atomic Energy Liability Underwriters.

B. The definition of "indemnified nuclear facility" is replaced by the following: "indemnified nuclear facility" means

(1) "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or by Mutual Atomic Energy Liability Underwriters, or

(2) any other nuclear facility, if financial protection is required pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, with respect to any activities or operations conducted thereat;

C. Solely with respect to an "insured shipment" to which this policy applies as proof of financial protection required by the Nuclear Regulatory Commission. Subdivision (2) of the definition of "nuclear energy hazard" is amended to read:

(2) The nuclear material is in an insured shipment which is away from any other nuclear facility and is in the course of transportation, including the handling and temporary storage incidental thereto, within

(a) The territorial limits of the United States of America, its territories or possessions, or Puerto Rico; or Canal Zone; or

(b) International waters or airspace, provided that the nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above and there are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except a deviation in the course of said transportation for the purpose of going to or returning from a port or place of refuge as the result of an emergency.

D. The definition of "insured shipment" is replaced with the following:

"insured shipment" means shipment of source material, special nuclear material, spent fuel or waste, or tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, herein called "material," (1) to the facility from any location except an indemnified nuclear facility, but only if the transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or (2) from the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose

'Joint Committee on Atomic Energy, Report No. 94–648, November 10, 1975, p.11.

other than the continuation of its transportation.

E. As used herein, "financial protection" has the meaning given it in the Atomic Energy Act of 1954, as amended.

II. Insuring Agreement IV is replaced by the following:

IV. APPLICATION OF POLICY. This policy applies only to bodily injury or property damage (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured, not later than ten years after the end of the policy period.

III. Condition 2 is replaced by the following:

2. INSPECTION: SUSPENSION. The companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject of this insurance and any property insurance afforded the insured through American Nuclear Insurers. If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such condition be corrected without delay. In the event of noncompliance with such request, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuation of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend this insurance with respect to named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

Neither the right to make such inspections and examinations nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation. In consideration of the issuance or continuation of this policy, the insured agrees that neither the companies nor any pesons or organizations making such inspections or exminations on their behalf shall be liable with respect to injury to or destruction of property at the facility, or any consequential loss or expense resulting therefrom, or any loss resulting from interruption of business or manufacture, arising out of the making of or a failure to make any such inspection or examination, or any report thereon, or any such suspension of insurance, but this provision does not limit the contractual obligations of the companies under this policy or any policy affording the insured property insurance through American Nuclear Insurers.

IV. Condition 4 is replaced by the following:

4. LIMITATION OF LIABILITY: COMMON OCCURRENCE. Any occurrence or series of occurrences resulting in bodily injury or property damage arising out of the radioactive, toxic, explosive or other hazardous properties of

(a) nuclear material discharged or dispersed from the facility over a period of days, weeks, months or longer and also arising out of the properties of other nuclear material so discharged or dispersed from one or more other nuclear facilities insured under any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association, or

(b) source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under this policy and also arising out of such properties of other source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under one or more other Nuclear Energy Liability Policies (Facility Form) issued by Nuclear Energy Liability Insurance Association, shall be deemed to be a common occurrence resulting in bodily injury or property damage caused by the nuclear energy hazard.

With respect to such bodily injury and property damage (1) the total aggregate liability of the members of the Nuclear Energy Liability Insurance Association under all Nuclear Energy Liability Policies (Facility Form), including this policy, applicable to such common occurrence shall be the sum of the limits of liability of all such policies, the limit of liability of each such policy being as determined by Condition 3 thereof, but in no event shall such total aggregate liability of such members exceed $124,000,000; (2) the total liability of the companies under this policy shall not exceed that proportion of the total aggregate liability of the members of Nuclear Energy Liability Insurance Association, as stated in clause (1) above, which (a) the limit of liability of this policy, as determined by Condition 3, bears to (b) the sum of the limits of liability of all such policies issued by such members, the limit of liability of each such policy being as determined by Condition 3 thereof.

The provisions of this condition shall not operate to increase the limit of the companies' liability under this policy.

V. The second paragraph of Condition 12, "Other Insurance," is amended to read:

If the insured has other valid and collectible insurance (other than such concurrent insurance or any other nuclear energy liability insurance issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters to any person or organization) applicable to loss or expense covered by this policy, the insurance afforded by this policy shall be excess insurance over such other insurance; provided, with respect to any person who is not employed at and in connection with the facility, such insurance as is afforded by this policy for bodily injury to an employee of the insured arising out of and in the course of his employment shall be primary insurance under such other insurance.

VI. Paragraph (c) of Condition 16, "Company Representation," is amended to read:

(c) Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this policy to be given to the companies may be given to such agent, at its office at the Exchange, Suite 245, 270 Farmington Avenue, Farmington, Connecticut 06032, with the same force and effect as if given directly to the companies. Any requests, demand or agreements made by such agent shall be deemed to have been made directly by the companies.

Effective Date of this Endorsement ——— 12:01 a.m. Standard Time to form a part of policy No. ———.

Issued to ——— For the subscribing companies.

Date of Issue ———.

By ——— General Manager.

Endorsement No. ———

NE–50 (1/1/81)

NE–51 (1/1/81)—Amendment of Definition of Condition 2 "Inspection; Suspension" and "Insured Shipment"

(Indemnified Nuclear Facility)

It is agreed that:

(1) Condition 2 "Inspection; Suspension" is replaced by the following:

2. Inspection; Suspension. The companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject of this insurance and any property insurance afforded the insured through American Nuclear Insurers. If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such conditions be corrected without delay. In the event of noncompliance with such requests, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuation of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend this insurance with respect to the named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

Neither the right to make such inspections and examinations nor the making thereof nor advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation. In consideration of the issuance or continuation of this policy, the insured agrees that neither the companies nor any persons or organizations making such inspections or examinations on their behalf shall be liable with respect to injury to or destruction of

property at the facility, or any consequential loss or expense resulting therefrom, or any loss resulting from interruption of business or manufacture, arising out of the making of or a failure to make any such inspection or examination, or any report thereon, or any such suspension of insurance, but this provision does not limit the contractual obligations of the companies under this policy or any policy affording the insured property insurance through American Nuclear Insurers.

(2) The definition of "insured shipment" in Insuring Agreement III, "Definitions," is replaced by the following: "insured shipment" means a shipment of source material, special nuclear material, spent fuel, waste, or tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content herein called "material," (1) to the facility from any location except an indemnified nuclear facility, but only if the transportation of the material is not by predetermination to be interrupted by removal from a transporting conveyance for any purpose other than the continuation of its transportation, or (2) from the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

Effective Date of this Endorsement ——— 12:01 a.m. Standard Time to form a part of Policy No. ———

Issued to ——— For the subscribing companies.

Date of Issue ———.

By ——— General Manager.

Endorsement No.———

NE–51 (1/1/81)

§ 140.92 [Amended]

4. In § 140.92, Appendix B, Article I, paragraph 2 is revised to read as follows:

2(a) For facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, and except when otherwise specifically provided, "amount of financial protection" means the amount specified in Item 2a. and b. of the Attachment annexed hereto, as modified by paragraph 8, Article II, with respect to common occurrences, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan for deferred retrospective premium charges).

(b) For all other facilities, and except where otherwise specifically provided, "amount of financial protection" means the amount specified in Item 2a. and b., of the Attachment annexed hereto, as modified by paragraph 8, Article II, with respect to common occurrences.

5. In § 140.92, Appendix B, Article I, the prefatory language of paragraph 5 is revised to read as follows:

5. "In the course of transportation" means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

* * * * *

6. In § 140.92, Appendix B, Article II, paragraph 8(d), is revised to read as follows:

(d) As used in this paragraph 8., Article II, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c. of the Act in which agreement the nuclear incident is defined as a "common occurrence." As used in this paragraph 8., Article II, "the obligations of the licensee" means the obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment, and the reasonable costs incurred by the insurers in investigating and settling claims and defending suits for damage.

7. In § 140.92, Appendix B, Article III, paragraph 3 is removed.

8. In § 140.92, Appendix B, Article III, paragraph 4 is revised to read as follows:

4(a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and all other applicable agreements; or (2) an amount equal to the sum of $160,000,000 and the amount available as secondary financial protection.

9. In § 140.92, Appendix B, Article IV, paragraph 1, is revised to read as follows:

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnity under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

* * * * *

10. In § 140.92, Appendix B, Article VIII, is amended by adding prefatory language before paragraph 1 and revising paragraph 1 to read as follows:

The following provisions are applicable to each licensee operating a facility designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more;

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2a and b of the Attachment annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges); *Provided, however,* That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $5 million with respect to any single nuclear incident nor exceed $10 million within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

§140.93 [Amended]

11. In § 140.93, Appendix C, Article I, paragraph 2 is revised to read as follows:

2(a) For facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, and except where otherwise specifically provided, "amount of financial protection" means the amount specified in Item 2 of the Attachment annexed hereto, as modified by paragraph 8, Article II, with respect to common occurrences, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred retrospective premium charges).

(b) For all other facilities, and except where otherwise specifically provided, "amount of financial protection" means the amount specified in Item 2 of the Attachment annexed hereto, as modified by paragraph 8,

Article II, with respect to common occurrences.

12. In § 140.93, Appendix C, Article I, the prefatory language of paragraph 5 is amended to read as follows:

5. "In the course of transportation" means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

* * * * *

13. In § 140.93, Appendix C, Article III, paragraph 3 is removed.

14. In § 140.93, Appendix C, Article III, paragraph 4 is revised to read as follows:

4(a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and to all other applicable agreements; or (2) an amount equal to the sum of $160,000,000 and the amount available as secondary financial protection.

15. In § 140.93, Appendix C, Article IV, paragraph 1, is revised to read as follows:

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

16. In § 140.93, Appendix C, Article VIII is amended by adding prefatory language before paragraph 1 and revising paragraph 1 to read as follows:

The following provisions are applicable to each licensee operating a facility designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more:

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges). *Provided, however,* That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $5 million with respect to any single nuclear incident nor exceed $10 million within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

§ 140.94 [Amended]

17. In § 140.94, Appendix D, Article I, the prefatory language of paragraph 4 is amended to read as follows:

4. "In the course of transportation" means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

18. In § 140.94, Appendix D, Article I, paragraph 6, is revised to read as follows:

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident, except, (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

19. In § 140.94, Appendix D, Article II, paragraph 3 is removed.

20. In § 140.94, Appendix D, Article II, paragraph 6, is revised to read as follows:

6. With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $160,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170c. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

21. In § 140.94, Appendix D, Article III, paragraph 1, is revised to read as follows:

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other persons indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

§ 140.95 [Amended]

22. In § 140.95, Appendix E, Article I, the prefatory language of paragraph 4 is amended to read as follows:

4. "In the course of transportation" means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material

to the location or from the location provided that:

* * * * *

23. In § 140.95, Appendix E, Article I, paragraph 6 is revised to read as follows:

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident, except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

24. In § 140.95, Appendix E, Article III, paragraph 3, is removed.

25. In § 140.95, Appendix E, Article III, paragraph 4, is revised to read as follows:

4(a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $250,000.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $160,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" mean each agreement entered into by the Commission pursuant to subsection 170c of the Act in which agreement the nuclear incident is defined as a "common occurrence."

26. In § 140.95, Appendix E, Article IV, paragraph 1, is revised to read as follows:

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

27. In § 140.107, Appendix G, Article I, the prefatory language of paragraph 4 is amended to read as follows:

4. "In the course of transportation" means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

28. In § 140.107, Appendix G, Article II, paragraph 6(d), is revised to read as follows:

(d) As used in this paragraph 6., Article II and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c. of the Act in which agreement the nuclear incident is defined as a "common occurrence." As used in this paragraph 6., Article II, "the obligations of the licensee" means the obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment, and the reasonable costs incurred by the insurers in investigating and settling claims and defending suits for damage.

29. In § 140.107, Appendix G, Article III, paragraph 3, is removed.

30. In § 140.107, Appendix G, Article III, paragraph 4 is revised to read as follows:

4(a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $160,000,000.

31. In § 140.107, Appendix G, Article IV, paragraph 1, is revised to read as follows:

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

§ 140.108 [Amended]

32. In § 140.108, Appendix H, Article I, the prefatory language of paragraph 4 is revised to read as follows:

4. "In the course of transportation" means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

33. In § 140.108, Appendix H, Article II, paragraph 3, is revised to read as follows:

3. Any obligations of the licensee under paragraphs 1 and 2 of this Article, and subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability shall not in the aggregate exceed the amount of financial protection with respect to any nuclear incident.

34. In § 140.108, Appendix H, Article III, paragraph 3, is removed.

35. In § 140.108, Appendix H, Article III, paragraph 4 is revised to read as follows:

4(a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable

for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $160,000,000.

36. In § 140.108, Appendix H, Article IV, paragraph 1, is revised to read as follows:

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other persons indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnity under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting defense.

37. A new §140.109, Appendix I, is added as follows:

§140.109 Appendix I.

Nuclear Energy Liability Insurance Association

Master Policy No. ——

Nuclear Energy Liability Insurance

(Secondary Financial Protection)

Named Insured: Each person or organization designated in Item 1 of a *certificate*.

Policy Period: Beginning on the first day of August, 1977, and continuing to the effective date and time of the cancellation or other termination of this policy, eastern standard time.

Limits of Liability: The amount of retrospective premium actually received by the companies plus the amount of the companies' contingent liability, if any, pursuant to Conditions 2, 3, and 4.

Date of Issue ——————————

Authorized Representative ——————————

In consideration of the payment of the annual premium, in reliance upon the statements in the *certificates* and subject to the limits of liability, conditions and other terms of this Master Policy, the undersigned members of Nuclear Energy Liability Insurance Association (hereinafter called the "companies"), each for itself, severally and not jointly, and in the respective proportions herein set forth, and the *insureds* named in the *certificates*, agree as follows:

INSURING AGREEMENTS

I. Nuclear Energy Liability Insurance

(Secondary Financial Protection)

To pay on behalf of or to the *insured* or to the *insured's* workers' compensation carrier all sums payable as *excess losses* to which this Master Policy applies.

II. Definitions

"bodily injury" means bodily injury, sickness or disease, including death resulting therefrom, sustained by any person.

"certificate" means a Certificate of Insurance, including Declarations and Bond for Payment of Retrospective Premiums, issued to be a part of this Master Policy.

"common nuclear occurrence" means any occurrence or series of occurrences causing *bodily injury* or *property damage* arising out of the radioactive, toxic, explosive, or other hazardous properties of *nuclear material*

(a) discharged or dispersed from a nuclear reactor described in Item 3 of a *certificate* over a period of days, weeks, months, or longer, or

(b) discharged or dispersed from a nuclear reactor described in Item 3 of a *certificate* over a period of days, weeks, months or longer and also arising out of such properties of *nuclear material* so discharged or dispersed from one or more other nuclear reactors described in Item 3 of other *certificates*, or

(c) in the course of transportation for which protection is afforded (or would be afforded but for exhaustion of its limit of liability) under the *primary financial protection* described in Item 4 of a *certificate* and also arising out of such properties of nuclear material in the course of transportation for which protection is afforded (or would be afforded but for exhaustion of its limit of liability) under the *primary financial pretection* described in Item 4 of one or more other *certificates*.

"damages and claim expenses" includes sums estimated by the companies to be payable under this policy and payments made by the companies under this Master Policy:

(a) in settlement of claims and in satisfaction of judgments against the *insureds* for damages because of *bodily injury* or *property damage;*

(b) for (1) costs taxed against an *insured* in any suit against the *insured* seeking damages payable under the terms of this Master Policy and interest on any judgment therein, (2) premiums on appeal bonds and bonds to release attachments in any such suit and (3) reasonable expenses, other than loss of earnings, incurred by the *insured* at the companies' request;

(c) for expenses incurred in the investigation, negotiation, settlement and defense of any claim or suit including, but not limited to, the cost of such services by salaried employees of the companies, fees and expenses of independent adjusters, attorneys' fees and disbursements, expenses for expert testimony, inspection and appraisal of property, examination, X-ray or autopsy or medical expenses of any kind;

(d) for expenses incurred by the companies in investigating a *nuclear incident* or in minimizing its effects;

(e) for all other expenses of the companies in fulfilling their obligations under this Master Policy, provided that such expenses are reasonable and necessary.

"excess losses" means all *damages and claim expenses*

(a) because of *bodily injury* or *property damage* to which a *certificate* applies, and

(b) which are excess of all sums paid or payable as estimated by the companies under all applicable *primary financial protection.*

"extraordinary nuclear occurrence" has the meaning given it in the Atomic Energy Act of 1954, or in any law amendatory thereof.

"insured" means any person or organization identified in Item 1 or 2 of a *certificate.*

"nuclear incident" means

(a) an *extraordinary nuclear occurrence*, or

(b) a *common nuclear occurrence*, or if neither of these,

(c) an occurrence or series of occurrences, including continuous or repeated exposure to substantially the same general conditions, causing *bodily injury* or *property damage* arising out of the radioactive, toxic, explosive, or other hazardous properties of *nuclear material.*

"nuclear material" means *source material, special nuclear material* or *byproduct material.*

"primary financial protection" means the insurance policies or other contracts identified in Item 4 of a *certificate* and includes any amendment thereto which is consented to by the companies pursuant to Condition 6 of this Master Policy.

"property damage" means physical injury to or destruction or radioactive contamination of property, and loss of use of property so injured, destroyed or contaminated, and loss of use of property while evacuated or withdrawn from use because possibly so contaminated or because of imminent danger of such contamination.

"source material", *"special nuclear material"*, and *"byproduct material"* have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.

III. Application of Policy

Insurance is provided by this Master Policy only through a *certificate.* No insurance is afforded with respect to *bodily injury* or *property damage* caused prior to August 1, 1977 by a *nuclear incident.*

CONDITIONS

1. Annual Premium

The named insureds designated in a *certificate* shall pay to the companies the annual premium for each calendar year or part thereof.

Such annual premium shall be determined by the companies and stated in a written notice mailed to the first named insured shown in Item 1 of a *certificate*, and shall be due and payable as stated in such notice.

2. Retrospective Premium

The named insureds designated in a *certificate* shall pay to the companies retrospective premium in the event of *excess losses* due to *bodily injury* or *property damage* caused during their *certificate* period by a *nuclear incident* arising out of or in connection with a nuclear reactor described in Item 3 of the *certificate* or in Item 3 of any other *certificate*. The amount of retrospective premium due under each *certificate* shall be determined by multiplying such *excess losses* by the ratio of the maximum retrospective premium payable with respect to the *nuclear incident* under the *certificate* to the total of the maximum retrospective premiums payable with respect to the *nuclear incident* under all such *certificates*.

If any portion of the *bodily injury* or *property damage* to which this Master Policy applies is caused during any portion of a *certificate* period by a *nuclear incident*, the retrospective premium the named insureds designated in such *certificate* are obligated to pay shall be determined as if all *bodily injury* or *property damage* to which this Master Policy applies caused by the *nuclear incident* had been caused during the *certificate* period of such *certificate*.

The maximum retrospective premium that the named insureds designated in a *certificate* shall pay to the companies for all *excess losses* arising out of any one *nuclear incident* is the amount stated in Item 7 of their *certificate*.

In the event of two more *nuclear incidents*, the maximum amount of retrospective premium that shall be due from and payable by the named insureds in one calendar year shall not exceed twice the amount stated in Item 7 of their *certificate*. Any amount in excess thereof shall be paid in subsequent calendar years as billed by the companies.

In addition, an allowance for applicable premium taxes shall be determined by the companies and paid to them by the named insureds at the time retrospective premiums are due and payable.

After a *nuclear incident* resulting in *excess losses*, the companies shall mail to the first named insured designated in Item 1 of a *certificate* written notice of the retrospective premium and allowance for premium taxes then due under such *certificate*. Such notice shall also constitute notice to all other named insureds designated in such *certificate*. The named insureds shall pay directly to the Nuclear Energy Liability Insurance Association the retrospective premium and allowance for premium taxes stated in the notice. The notice shall specify a date no earlier than 60 days after mailing by which time payment is to be received by the Nuclear Energy Liability Insurance Association.

The companies shall at least annually review their estimate of *excess losses* arising out of the *nuclear incident* and shall adjust the retrospective premium and allowance for premium taxes accordingly. If the amount due from the named insureds is increased, written notice shall be mailed to the first named insured in accordance with the foregoing paragraph; if deceased the companies shall return the excess to the first named insured.

The obligation of the named insureds to pay retrospective premium and the allowance for premium taxes for *excess losses* arising out of a *nuclear incident* shall continue until the named insureds have paid the maximum retrospective premium stated in Item 7 of their *certificate* plus allowance for premium taxes.

The companies shall send to the Nuclear Regulatory Commission summaries of their estimates of *excess losses* arising out of the *nuclear incident* and their computations of retrospective premium and the allowance for premium taxes due.

All retrospective premium (but not the allowance for premium taxes) received by the companies is to be held by the companies separate from the companies' other assets and is to be used by the companies only for the purpose of paying *excess losses*. Any investment income received by the companies from such retrospective premium shall accrue to the benefit of the named insureds. This paragraph shall not apply to any retrospective premium received by the companies as reimbursement for any funds expended pursuant to Condition 4.

No commission will be paid with respect to retrospective premium and allowance for premium taxes.

3. Limit of Liability

Regardless of the number of

(a) persons or organizations who are *insureds* under this Master Policy, or

(b) claims made and suits brought against any and all *insureds*, or

(c) policies or contracts of *primary financial protection* or *certificates* which apply to the *nuclear incident*, or

(d) years this Master Policy and any *certificate* shall continue in force,

the total liability of the companies under this Master Policy for all *excess losses* arising out of any *nuclear incident* shall not exceed the amount of retrospective premium actually received by the companies pursuant to Condition 2 with respect to such *nuclear incident* plus the companies' contingent liability, if any, as determined by Condition 4. Reimbursement of the companies for funds expended pursuant to Condition 4 shall not operate to increase the total liability of the companies.

4. Contingent Liability of the Companies

The companies have a contingent liability under this Master Policy for payment of *excess losses* but only if, and to the extent that, the retrospective premium due under one or more *certificates* is not paid. In the event of any such failure to pay retrospective premiums, the companies' obligations under this Condition 4 are limited as follows:

Regardless of the number of *nuclear incidents* which cause *bodily injury* or *property damage* to which this Master Policy applies, the number of years this Master Policy is in force, the number of *certificates* issued or in effect, or the number of annual premiums paid or payable.

(a) the total contingent liability of the companies for all *excess losses* arising out of two or more *nuclear incidents* shall not exceed $46,500,000;

(b) subject to the above provision (a), the total contingent liability of the companies for all *excess losses* arising out of any one *nuclear incident* shall not exceed $23,250,000;

(c) subject to the above provisions (a) and (b), the maximum amount to be paid by the companies in any one calendar year because of contingent liability for *excess losses* shall not exceed $23,250,000.

If a named insured designated in a *certificate* shall become insolvent or be adjudged bankrupt, the companies' obligation under this Condition 4 shall not apply to the failure of any named insured designated in such *certificate* to pay retrospective premium with respect to *excess losses* because of *bodily injury* or *property damage* caused after the date of such insolvency or bankruptcy.

5. Investigation, Defense or Settlement of Claims or Suits

Subject to the provisions of any written agreement between the companies and the Nuclear Regulatory Commission, the companies shall defend any claim or suit alleging *bodily injury* or *property damage* caused by a *nuclear incident* and seeking damages which are payable under this Master Policy, and may make such investigation and settlement of any claim or suit as they deem expedient. In no event shall the companies be obligated to pay any claim or judgment or to defend any claim or suit after the companies have paid the amount of retrospective premium actually received for *excess losses* arising out of the *nuclear incident* plus the amount of their contingent liability, if any.

6. Primary Financial Protection

Regardless of the number of policies or contracts of *primary financial protection* applicable to a *nuclear incident*, the limit of liability of all such policies or contracts shall be deemed to be exhausted when the sums paid under all such policies or contracts are equal to the lesser of (1) the sum of the limits of liability available under all such primary financial protection or (2) one hundred forty million dollars.

The named insured designated in a *certificate* shall maintain in full effect during the currency of such *certificate* the *primary financial protection* described therein, except for any reduction of the limit of liability of such *primary financial protection* solely as the result of sums paid thereunder. Failure of the named insureds to comply with the foregoing shall not invalidate this Master Policy, but in the event of such failure the companies shall be liable only to the extent that they would have been liable and the named insureds complied therewith.

In the event that the limit of liability of the *primary financial protection* is reduced, such names insureds shall immediately inform the companies thereof and make all reasonable efforts to reinstate such limit.

Upon the companies' request the named insureds shall provide the companies with a certified copy of any policy or other contract

of *primary financial protection*. No amendment of the *primary financial protection* shall increase, extend or broaden the insurance provided by this Master Policy unless the companies agree to the amendment by an endorsement issued to form a part of this Master Policy.

7. Interest To Be Paid by Named Insured on Retrospective Premium and Allowance for Premium Taxes in Default

If retrospective premium or allowance for premium taxes is not paid when due by the named insureds designated in item 1 of a *certificate*, such named insureds shall be obligated to pay, in addition to the amount in default, interest thereon during the period of default. Such interest shall be computed at an annual rate equal to the sum of (a) three percent plus (b) a rate of interest equal to Moody's Average Public Utility Bond Yield described in the issue of Moody's Bond Survey current on the date that the retrospective premium and allowance for premium taxes were due. The annual rate of interest shall be adjusted monthly during the period of default to reflect any revisions of Moody's Average Public Utility Bond Yield described in the issue of Moody's Bond Survey current on the first business day of each such month.

The interest so received shall be used to pay to. the companies interest at the annual rate described above for any funds the companies have paid pursuant to Condition 4. Any balance remaining shall accrue to the benefit of named insureds not in default as if it were investment income on retrospective premium.

8. Notice of Nuclear Incident, Claim or Suit

In the event of *bodily injury* or *property damage* to which this Master Policy applies or of a *nuclear incident* which may give rise to claims therefor, written notice containing particulars sufficient to identify the *insured* and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the *insured* to Nuclear Energy Liability Insurance Association or the companies as soon as practicable. If claim is made or suit is brought against the *insured*, the *insured* shall immediately forward to Nuclear Energy Liability Insurance Association or the companies every demand, notice, summons or other process received by or on behalf of the *insured*.

9. Assistance and Cooperation of the Insured

The *insured* shall cooperate with the companies and, upon the companies' request, attend hearings and trials and assist in making settlements, in securing and giving evidence, in obtaining the attendance of witnesses and in the conduct of any legal proceedings in connection with the subject matter of this insurance. The *insured* shall not, except at the *insured's* own cost, make any payment, assume any obligation or incur any expense.

10. Action Against Companies

No action shall lie against the companies or any of them unless, as a condition precedent thereto, the *insured* shall have fully complied with all the terms of this Master Policy, nor until the amount of the *insured's* obligation to pay shall have been finally determined either by judgment against the *insured* after actual trial or by written agreement of the *insured*, the claimant and the companies.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Master Policy to the extent of the insurance afforded by this Master Policy. No person or organization shall have any right under this Master Policy to join the companies or any of them as parties to any action against the *insured* to determine the *insured's* liability, nor shall the companies or any of them be impleaded by the *insured* or the *insured's* legal representative. Except as provided in Condition 4, bankruptcy or insolvency of the *insured* or of the *insured's* estate shall not relieve the companies of any of their obligations hereunder.

11. Subrogation

In the event of any payment under this Master Policy, the companies may participate with the *insured* and any underlying insurer in the exercise of all the *insured's* rights of recovery against any person or organization liable therefor. Prior to knowledge of *bodily injury* or *property damage* to which this Master Policy applies or of a *nuclear incident* which may give rise to claims therefor, the *insured* may waive in writing any right of recovery against any person or organization. After such knowledge, the *insured* shall not waive or otherwise prejudice any such right of recovery but shall do everything necessary to secure such rights. Recoveries shall be applied first to reimburse any person or organization (including the *insured*) that may have paid any amount with respect to liability in excess of the limit of the companies' liability hereunder; then to reimburse the companies up to the amount paid hereunder; and lastly to reimburse anyone entitled to claim the residue, if any. A different apportionment maybe made by agreement signed by all parties affected.

Reasonable expenses incurred in the exercise of rights of recovery shall be apportioned in the ratio of the respective losses for which recovery is sought. The companies shall, after deducting all of their expenses in securing recovery, apply the net amount of recoveries made by the companies as a credit in determining the amount of *excess* losses.

12. Other Insurance

This insurance shall be excess insurance over *primary financial protection*.

This insurance is concurrent with insurance afforded by a Master Policy—Nuclear Energy Liability Insurance (Secondary Financial Protection) issued to the named insured by Mutual Atomic Energy Liability Underwriters, hereinafter called "concurrent insurance." The companies shall not be liable under this Master Policy for a greater proportion of *excess losses* than the applicable limit of liability described in Condition 3 bears to the sum of (a) such limit plus (b) the applicable limit of liability of such concurrent insurance.

If the *insured* has other valid and collectible insurance (other than *primary financial protection* or concurrent insurance) applicable to *excess losses* covered by this Master Policy, the insurance afforded by this Master Policy shall be primary insurance under such other insurance.

13. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Master Policy or estop the companies from asserting any right under the terms of this Master Policy; nor shall the terms of this Master Policy be waived or changed, except by endorsement executed by Nuclear Energy Liability Insurance Association on behalf of the companies and issued to form a part of this Master Policy.

14. Assignment

Assignment of interest by the named insured shall not bind the companies until their consent is endorsed hereon; if, however, the named insured shall die or be declared bankrupt or insolvent, this Master Policy shall cover such named insured's legal representative, receiver or trustee as an *insured* under this Master Policy, but only with respect to such legal representative's, receiver's or trustee's liability as such, and then only provided written notice of the legal representative's, receiver's or trustee's appointment as such is given to the companies within ten days after such appointment.

15. Custodian of the Policy—Nuclear Regulatory Commission

The named insureds have designated the Nuclear Regulatory Commission as the custodian of this Master Policy and any endorsements thereto.

16. Cancellation

The first named insured designated in Item 1 of a *certificate* may cancel such *certificate* by mailing to the companies and the Nuclear Regulatory Commission written notice stating when, not less than thirty days thereafter, such cancellation shall be effective.

The companies may cancel any *certificate* by mailing to the first named insured designated in Item 1 of such *certificate* written notice stating when, not less than ninety days thereafter, such cancellation shall be effective; provided that in the event of non-payment of any annual premium, retrospective premium or allowance for premium taxes due under a *certificate*, such *certificate* may be canceled by the companies by mailing to the first named insured designated therein written notice stating when, not less than thirty days thereafter, such cancellation shall be effective.

The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and time of cancellation stated in the notice shall become the end of the *certificate* period. Delivery of such written notice, either by the first named insured designated in Item 1 of a *certificate* or by the companies, shall be equivalent to mailing.

A copy of the companies' cancellation notice shall be mailed to the Nuclear Regulatory Commission, but mailing such copy is not a condition of cancellation.

If a *certificate* is canceled, the earned portion of the annual premium shall be computed pro-rata. Adjustment of the annual premium, if any, may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

Cancellation or termination of any *certificate* shall not terminate the obligation of a named insured to pay retrospective premium and the allowance for premium taxes as provided in such named insured's *certificate* and Condition 2 of this Master Policy.

This Master Policy shall terminate automatically on the effective date and time of cancellation or termination of the last *certificate* in effect.

17. Company Representation

(a) Any notice, sworn statement or proof of loss which may be required by the provisions of this Master Policy may be given to any one of the companies, and such notice, statement or proof of loss so given shall be valid and binding as to all companies.

(b) In any action or suit against the companies, service of process may be made on any one of them and such service shall be deemed valid and binding service on all companies.

(c) Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this Master Policy to be given to the companies may be given to such agent, at its office at The Exchange, Suite 245, 270 Farmington Avenue, Farmington, Connecticut—06032 with the same force and effect as if given directly to the companies. Any requests, demands or agreements made by such agent shall be deemed to have been made directly by the companies.

18. Authorization of First Named Insured

Except with respect to compliance with the obligations imposed on the *insured* by Conditions 8, 9, 10 and 11 of this Master Policy, the first named insured designated in Item 1 of a *certificate* is authorized to act for every other person and organization insured under such *certificate* in all matters pertaining to this insurance.

19. Changes in Subscribing Companies and in Their Proportionate Liability

The members of Nuclear Energy Liability Insurance Association subscribing this Master Policy, and the proportionate liability of each, may change from time to time.

Each company subscribing this Master Policy upon its issuance shall be liable only for its stated proportion of any obligation assumed or expense incurred under this Master Policy because of *bodily injury* or *property damage* caused during the period from the effective date of this Master Policy to the close of December 31 next following. For each subsequent calendar year, beginning January 1 next following the effective date of this Master Policy, the subscribing companies and the proportionate liability of each such company shall be stated in an endorsement issued to form a part of this Master Policy, duly executed by the President of Nuclear Energy Liability Insurance Association on behalf of each such company, and mailed or delivered to the Nuclear Regulatory Commission.

20. Declarations

By acceptance of this Master Policy, the named insureds designated in a *certificate* agree that the statements in such *certificate* are their agreements and representations, that this Master Policy and such *certificate* are issued in reliance upon the truth of such representations and that this Master Policy and such *certificate* embody all agreements between such named insureds and the companies or any of their agents relating to this insurance.

In witness whereof each of the subscribing companies has caused this Master Policy to be executed on its behalf by the Nuclear Energy Liability Insurance Association and duly countersigned on the first page by an authorized representative.

For the Subscribing Companies of
NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION
By:

Burt C. Proom,
President.

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Certificate No. ———————
Forming Part of Master Policy No. ———————

Certificate of Insurance Declarations and Bond for Payment of Retrospective Premiums

Certificate of Insurance

This is to certify that the persons and organizations designated in Item 1 of the Declarations are named insureds under the Master Policy—Nuclear Energy Liability Insurance (Secondary Financial Protection), herein called the "Master Policy," issued by Nuclear Energy Liability Insurance Association.

Such insurance as is provided by the Master Policy applies, through this *certificate*, only:

(a) to the *insureds* identified in Items 1 and 2 of the Declarations,

(b) for the *certificate* period stated in Item 6 of the Declarations,

(c) to *bodily injury* or *property damage*

(1) with respect to which the *primary financial protection* described in Item 4 of the Declarations would apply but for exhaustion of its limit of liability as described in Condition 6 of the Master Policy, and

(2) which is caused during the *certificate* period stated in Item 6 of the Declarations by a *nuclear incident* arising out of or in connection with the nuclear reactor described in Item 3 of the Declarations, and

(3) which is discovered and for which written claim is made against the *injured* not later than ten years after the end of the *certificate* period stated in Item 6 of the Declarations. However, with respect to *bodily injury* or *property damage* caused by an *extraordinary nuclear occurrence* this subparagraph (3) shall not operate to bar coverage for *bodily injury* or *property damage* which is discovered and for which written claim is made against the *insured* not later than twenty years after the date of the *extraordinary nuclear occurrence*.

Declarations

Item 1. Named insureds and addresses:
(a)
(b)

Item 2. Additional *insureds:*

Any other person or organization who would be insured under the *primary financial protection* identified in Item 4 of the Declarations but for exhaustion of the limit of liability of such *primary financial protection*.

Item 3. Description and location of nuclear reactor:

Item 4. (a) Identification of *primary financial protection* applicable to the nuclear reactor and limit(s) of liability thereof:

Nuclear Energy Liability Insurance Association's Policy NF–	$108,500,000
Mutual Atomic Energy Liability Underwriters' Policy MF–	$31,500,000

(b) The following endorsements, attached to the *primary financial protection* policies listed in Item 4(a) also apply to the insurance afforded by the Master Policy through this *certificate* as though they were attached hereto:

(1) Waiver of Defense Endorsement (Extraordinary Nuclear Occurrence) and

(2) Supplementary Endorsement—Waiver of Defenses—Reactor Construction at the Facility.

(c) The limits of liability provided under the *primary financial protection* specified in Item 4(a) above are not shared with any other reactor except as follows:

Item 5. Limits of Liability: The amount of retrospective premium actually received by the companies plus the amount of the companies' contingent liability, if any, pursuant to Conditions 2, 3 and 4 of the Master Policy.

Item 6. *Certificate* Period: Beginning at 12:01 a.m. on ——————— and continuing to the effective date and time of cancellation or termination of the Master Policy or this *certificate*, whichever first occurs, eastern standard time.

Item 7. Maximum retrospective premium (exclusive of allowance for premium taxes) payable pursuant to Condition 2 of the Master Policy with respect to each *nuclear incident:* $3,875,000.

Item 8. Premium payable pursuant to Condition 1 of the Master Policy for the period from ——————— through December 31 following: $———.

BOND FOR PAYMENT OF RETROSPECTIVE PREMIUMS

Know All Men By These Presents, that the undersigned do hereby acknowledge that they are named insureds under the Master Policy described in the above Certificate of Insurance and Declarations. The named insureds do hereby convenant with and are held and are firmly bound to the members of Nuclear Energy Liability Insurance Association subscribing the Master Policy (hereinafter called the "companies") to pay

the companies all retrospective premiums and allowances for premium taxes which shall become due and payable in accordance with the Master Policy, as it may be changed from time to time, with interest on such premiums and allowances for taxes to be computed at the rate provided in the Master Policy from the date payment thereof is specified to be due the companies in written notice to the first named insured as provided in Condition 2 of the Master Policy until paid;

And it is hereby expressly agreed that copies of written notices of retrospective premiums and allowances for premium taxes due and payable or other evidence of such amounts due and payable sworn to by a duly authorized representative of the companies shall be prima facie evidence of the fact and extent of the liability of the named insureds for such amounts;

And it is further expressly agreed that the named insureds will indemnify the companies against any and all liability, losses and expenses of whatsoever kind or nature (including but not limited to interest, court cost, and counsel fees) which the companies may sustain or incur (1) by reason of the failure of the named insureds to comply with the convenants and provisions of this Bond and (2) in enforcing any of the convenants or provisions of this Bond, or any provisions of the Master Policy relating to such convenants or provisions;

For the purpose of recording this agreement, a photocopy acknowledged before a Notary Public to be a true copy hereof shall be regarded as an original.

The preceding Certificate of Insurance, Declarations and Bond form a part of the Master Policy. Cancellation or termination of the Master Policy or the Certificate of Insurance shall not affect the named insured's obligations under the policy or the Bond to pay the retrospective premiums and allowances for premium taxes, as provided in this *Certificate* and Condition 2 of the Master Policy.

In witness whereof, the named insureds have caused the Declaration and the Bond for Payment of Retrospective Premiums to be signed and sealed by a duly authorized officer, to be effective ———— eastern standard time.

Attest or Witness
Named Insureds:
By ————————————
(Seal)
(Signature of Officer)

————————————
(type or print Name & Title of Officer)
Date: ————————————

In witness whereof, the companies subscribing the Master Policy have caused the Certificate of Insurance and the Declarations to be signed on their behalf by the President of Nuclear Energy Liability Insurance Association to be effective ———— eastern standard time, and countersigned below by a duly authorized representative.

For the Subscribing Companies of Nuclear Energy Liability Insurance Association.
By: President ————————————
Countersigned by ————————————
(Authorized Representative)
Dated at Bethesda, Md. this 19th day of March 1984.

For the Nuclear Regulatory Commission.
William J. Dircks,
Executive Director for Operations.

[FR Doc. 84-7945 Filed 3-23-84; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket No. 84-9]

Data Processing by National Banks

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Comptroller of the Currency ("Office") has revised its Interpretive Ruling 7.300 (12 CFR 7.3500), which states the Office's opinion on the data processing services which a national bank may perform for itself and others. As revised, the ruling sets forth a general analytical framework for deciding questions regarding the permissibility of particular data processing services. In doing so, the revised ruling restates, but does not change in a substantive manner, the analytical framework contained in the previous version of the ruling. The revised ruling does not contain specific examples or lists of permissible activities. The Office has determined that such examples or lists are not appropriate due to the imprecision of terms and the rapid pace of change in the data processing industry. The revised ruling also does not contain an interpretation of the applicability of statutory antitying prohibitions to bank data processing activities. Such an interpretation has been deleted from the ruling because it is no longer needed given the experience banks have acquired since the ruling was last revised in 1974.

EFFECTIVE DATE: April 25, 1984.

FOR FURTHER INFORMATION CONTACT: Alan Priest, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, 490 L'Engant Plaza East, SW., Washington, D.C. 20219, Telephone: (202) 447-1880.

SUPPLEMENTARY INFORMATION: On June 16, 1980, the Office published an Advance Notice of Proposed Rulemaking ("ANPR") in the **Federal Register** (45 FR 40813) which solicited comments on a series of preliminary issues raised in connection with a possible revision of Interpretive Ruling 7.3500 (12 CFR 7.3500), which sets forth the Office's opinion on the permissible scope of data processing services which may be performed by national banks. On October 19, 1982, the Office published a Proposed Rule in the **Federal Register** (47 FR 46528). In that publication, the Office summarized the comments it received in response to the ANPR. Based on its analysis of those comments, its assessment of national bank involvement in the data processing industry and its interpretation of applicable law, the Office proposed the revision of the interpretive ruling adopted in this Final Rule.

As described in greater detail in the Proposed Rule, the revision retains the analytical framework adopted by the Office in 1974 for deciding the permissibility of specific data processing activities by national banks. This analytical framework provides that "a national bank may use data processing equipment and technology to perform for itself and others all services expressly or incidentally authorized under the statutes applicable to national banks." In addition to restating this general rule, the revised ruling also explicitly states what is implicit in the above-quoted general rule, *i.e.*, that, in general, the Office views data processing as a technology rather than as a service distinct or different from the underlying services or functions to which the service is applied. The Office believes that the explicit statement of this view adds clarity to the interpretive ruling.

As also described in greater detail in the Proposed Rule, the revision deletes several specific examples from the interpretive ruling. These specific examples have been misinterpreted by some parties and may be outdated due to changes in the data processing industry. The examples have been deleted, rather than revised, because the Office believes that specific examples are inappropriate given the imprecision of terms and rapid pace of change in the data processing industry. Finally, the revised ruling deletes an interpretation of the applicability to national bank data processing activities of statutory prohibitions against tying arrangements, reciprocal dealing and price discrimination by national banks. Although there was a need for a codified opinion on the applicability of these statutory prohibitions when the ruling was last revised in 1974, the Office believes that the experience national banks have acquired since that time regarding these issues has ended that need.

Summary of Public Comments on the Proposed Ruling

Seven parties responded to the Office's request for comments on its proposed interpretive ruling. Three commenters were national banks, one was a national bank's data processing subsidiary, and one was a private attorney. The two remaining commenters were a bank trade association and a data processing trade association.

The commenters were generally in favor of the proposed revision. The three national banks and the national bank data processing subsidiary all fully supported the revision. The banking trade association also supported the proposed ruling. The data processing trade association, while noting its past and ongoing legal disputes with the Office concerning certain data processing activities of national banks, neither supported nor opposed the proposed ruling. The private attorney, who opposed the ruling on the grounds that it lacked specificity, urged the Office to adopt instead a rule paralleling the Federal Reserve Board's Regulation Y.

The comments contained several specific suggestions in addition to the private attorney's suggestion to adopt a ruling paralleling Regulation Y. The banking trade association suggested that the term "data processing" be replaced by the term "information processing and communication" in order to "clarify the fact that evolving technology has provided much broader opportunities to process and communicate all types of information. * * *" The banking trade association also suggested that the retention of an antitying opinion in the ruling, although unnecessary in most circumstances, may be useful to banks which are just beginning to engage in data processing activities. The association also noted that the continuing concerns of non-bank providers of data processing services" would support retention of the antitying opinion.

The Office's Decision

After carefully considering the comments it has received in response to its Proposed Rule, the Office has determined to adopt the ruling as proposed. As described in greater detail above and in the Proposed Rule, the Office believes that this revision eliminates unnecessary or confusing provisions in the ruling while retaining the ruling's essential element, *i.e.*, the general analytical framework for determining the permissibility of specific data processing activities.

In determining to adopt the ruling as proposed, the Office has rejected the option to adopt a ruling that parallels Regulation Y. As discussed in the Proposed Rule, Regulation Y interprets and applies the provisions of the Bank Holding Company Act, a statute applicable to holding companies and their non-banking subsidiaries. Those entities are not subject to the incidental powers provision of the National Bank Act (12 U.S.C. 24(Seventh)). The primary purpose of Interpretive Ruling 7.3500 is to interpret the applicability of *section 24(Seventh)* to the data processing activities of national banks. This purpose cannot be achieved by revising the interpretive ruling to conform to regulations designed to govern the activities of entities which are not even subject to the incidental powers provision. Furthermore, Regulation Y very specifically lists and describes permissible data processing activities. As noted above, the Office has determined not to adopt this approach due to the imprecision of terms and the rapid pace of change in the data processing industry.

In determining to adopt the ruling as proposed, the Office has carefully evaluated the banking trade association's comments on the value of an antitying interpretation in light of the concerns of non-bank providers of data processing services and the needs of banks beginning data processing activities. The Office has determined that these factors do not support retention of the antitying interpretation. Regarding the needs of banks which are just beginning to enter into data processing activities, the Office notes that entering into any new activity will require banks to conduct background research regarding a multiplicity of factors, including the applicable statutory restrictions. Elimination of a codified interpretation of the applicability of antitying provisions to data processing will, like many other aspects of the deregulatory process, somewhat increase banks' responsibility in this regard. However, the Office is confident that banks are well equipped and willing to manage this responsibility, particularly if the alternative is a more lengthy and complex body of regulations. Regarding the concerns of non-bank suppliers of data processing services, the Office notes that the trade association which represents these entities did not object in its comment to the deletion of the antitying interpretation. The Office also notes in this regard that the elimination in no way modifies the statutory antitying prohibition. Nor does it indicate that the Office has lowered its commitment to enforcing these prohibitions.

Finally, in determining to adopt the ruling as proposed, the Office has not opted for replacing the term "data processing" with the term "information processing and communication." The Office notes in this regard that it has never adopted a restrictive or highly technical definition of "data." Therefore, the Office does not believe that use of that term will inhibit banks from utilizing newly developing technologies in performing services expressly or incidentally authorized under the statutes applicable to national banks. Therefore, in order to avoid the confusion that a change in terminology may create, the Office has determined to continue to use the term "data processing" in the interpretive ruling. The Office will review this decision should it become evident that the term, as used in the data processing industry, has taken on a limited and technical meaning which has caused national banks unnecessary doubts concerning their ability to utilize new technologies.

Special Studies: Because the Regulatory Flexibility Act does not apply to interpretive rulings, no regulatory flexibility analysis has been prepared for this revised interpretive ruling. The Office is of the opinion that this interpretive ruling is not a "major rule" under Executive Order 12291. The Office has received no comments expressing disagreement with this opinion. Therefore, the Office has not prepared a Regulatory Impact Analysis. The proposed interpretive ruling will not require national banks to expend any funds or to file reports and will not cause an increase in their prices or costs.

List of Subjects in 12 CFR Part 7

National banks, Incidental powers, Data processing.

PART 7—[AMENDED]

For the reasons set forth in the preamble, 12 CFR Part 7 is amended by revising § 7.3500 as follows:

1. The authority citation for Part 7 is as follows:

Authority: R.S. 324 *et seq.*, as amended; 12 U.S.C. 1 *et seq.*

2. Section 7.3500 of 12 CFR Part 7 is revised to read as follows:

§ 7.3500 Use of data processing equipment and furnishing of data processing services.

It is the opinion of the Comptroller that, in general, data processing is a

technology rather than a service distinct or different from the underlying services or functions to which the technology is applied. A national bank may use data processing equipment and technology to perform for itself and others all services expressly or incidentally authorized under the statutes applicable to national banks.

Dated: December 16, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84-7974 Filed 3-23-84; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 15

[Docket No. R-84-1158; FR-1820]

Production or Disclosure of Material or Information

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: The Secretary is amending HUD regulations on the production of material requested under the Freedom of Information Act and demands for information made on employees by subpoena or other order by a court or other authority. These changes are intended to make it clear than neither an employee or files of the Office of Inspector General is covered by the Secretary's production and disclosure regulations, but rather by new regulations being issued by the Inspector General of HUD elsewhere in today's issue of the **Federal Register**.

EFFECTIVE DATE: May 8, 1984.

FOR FURTHER INFORMATION CONTACT: David White, Assistant General Counsel for Administrative Law, Room 10252, (202) 755-7137, or Phillip L. Schulman, Assistant General Counsel, Inspector General and Administrative Proceedings, Room 10270, (202) 755-5557, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

24 CFR Part 15 contains HUD's regulations on access to records under the Freedom of Information Act, as well as procedures for Department employees to follow when presented with a subpoena or demand for material by a court or other authority.

In other final rule documents published elsewhere in today's issue of the **Federal Register**, the Inspector General is adding three Parts to a new Chapter XII of Title 24 of the Code of Federal Regulations. One document, Part 2000, sets out the organization, function, and delegation of authority of the Office of Inspector General. Two documents adopt regulations specific to the Office of Inspector General (OIG) and its handling of requests for information. In Part 2002 of these regulations, the Inspector General references portions of the Freedom of Information Act regulations of the Secretary contained in Part 15, and adopts new sections which relate directly to the Office of Inspector General. In Part 2004, the Inspector General adopts regulations covering its employees or former employees who are presented with a subpoena or demand for information or material by a court or other authority. These regulations are analogous to the regulations of the Secretary of HUD contained in Subpart H of Part 15.

This document. This rule makes technical amendments to Part 15 of the Office of the Secretary's regulations to make it clear that not all Freedom of Information Act (FOIA) requests nor all employees of the Department are covered by Part 15. These amendments exclude OIG from Department-wide FOIA regulations (and refer the reader to 24 CFR Part 2002) and exclude OIG files and OIG employees from the Department-wide procedures on the production of documents in response to a court order (and refer the reader to 24 CFR Part 2002).

It also makes technical corrections to § 15.14 and § 15.61. Paragraph (b)(1) of § 15.14 is amended to clarify that fees are charged for searching for and reproducing requested documents. This is stated elsewhere in the section, but has caused some confusion. Therefore, the Department has decided to repeat both terms "search" and "reproduction" in the lead-in language to the table of fees. Section 15.61 is amended by correcting out-of-date references to the "Assistant General Counsel for Finance and Administrative Law" to the "Assistant General Counsel for Administrative Law." It is the intention of these rules that both the public and employees of the Department will have better notice concerning the procedures they should follow to request the production of information.

This final rule excludes the employees of the Inspector General from the Department's procedures that are followed in the event of a demand for production or disclosure of material. It therefore only relates to internal agency procedure and under 5 U.S.C. 553(b)(A). the Department need not publish a notice of proposed rulemaking. As a matter of policy, HUD frequently provides for public participation in rulemakings otherwise exempt. However, the Department has determined because no rights of the public are involved in this rulemaking that good cause exists for issuing this rule in final form immediately.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rule Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

Consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that the rule has no significant economic impact on a substantial number of small entities because it concerns employees' conduct.

This rule was listed as item S-9-83 in the Department's Semi-Annual Agenda of Regulations published on October 17, 1983 (48 FR 47418, 47425), under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 15

Classified information, Freedom of information.

Accordingly, 24 CFR Part 15 is amended as follows:

PART 15—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. Section 15.2 is revised to read as follows:

§ 15.2 Purpose and applicability.

This part contains the regulations of the Department implementing 5 U.S.C. 552. It informs the public about where and how the Department's records and information may be obtained from its organizational units as defined in § 15.1(d). Part 15 applies to all organizational units, except that its applicability to the Office of Inspector General is subject to the provisions of Parts 2002 and 2004 of this title and its applicability to the Office of Interstate Land Sales Registration is subject to the provisions of § 1700.30 of this title.

2. In §15.14, paragraph (b)(1) is revised to read as follows:

§ 15.14 Fees.

* * * * *

(b) * * *

(1) Search and reproduction time for each quarter hour in excess of the first quarter hour:

(i) Clerical, $2.00.

(ii) Professional, $4.00.

Whenever possible, clerical time shall be used to process requests.

§ 15.61 [Amended]

* * * * *

3. In § 15.61, all references to "Assistant General Counsel for Finance and Administrative Law" are changed to read "Assistant General Counsel for Administrative Law."

4. By revising § 15.71 to read as follows:

§ 15.71 Purpose and scope.

This subpart contains the regulations of the Department concerning procedures to be followed when a subpoena, order, or other demand (hereinafter referred to in this subpart as a "demand") of a court or other authority is issued for the production or disclosure of: (a) Any material contained in the files of the Department, (b) any information relating to material contained in the files of the Department, or (c) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his or her official duties or because of his or her official status. For purposes of this subpart, the term "employee of the Department" includes officers and employees of the United States appointed by, or subject to the supervision of, the Secretary, but does not include officers and employees covered by Part 2004 of this title. Also for purposes of this subpart, "files of the Department" do not include files of the Office of Inspector General covered by Part 2004 of this title.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 19, 1984.

Samuel R. Pierce, Jr.,

Secretary of the Department of Housing and Urban Development.

[FR Doc. 84-8088 Filed 3-23-84; 8:45 am]

BILLING CODE 4210-32-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 220

[Docket No. R-84-1088; FR-1480]

Mortgage Insurance and Insured Improvement Loans for Urban Renewal and Concentrated Development Areas; Eligibility Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule

SUMMARY: This rule adopts as final the interim rule published in the **Federal Register** on August 4, 1983 at 48 FR 35393. The interim rule implemented a statutory change which authorized the use of the Section 220 mortgage insurance program in areas designated by the Secretary, where concentrated housing, physical development, and public service activities are being carried out in a coordinated manner under a locally developed strategy for neighbor hood improvement, conservation or preservation. The interim rule amended the Section 220 single family and multifamily mortgage insurance regulations to reflect this change and to describe the matters that are to be addressed in the locally developed strategy for neighborhood improvement, conservation or preservation.

This final rule makes no change in the provisions of the interim rule.

EFFECTIVE DATE: May 8, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Bornscheuer, Insured Loan Processing Branch, Multifamily Housing Development, Room 6132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410; (202) 755-6500; or John J. Coonts, Director, Single Family Development Division, Room 9270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6720. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: Section 311 of the Housing and Community Development Act of 1980 amended Section 220 of the National Housing Act to expand the range of areas in which the Secretary is authorized to insure mortgages under Section 220. The interim rule published in the **Federal Register** on August 4, 1983 at 48 FR 35393 amended Part 220 to implement those statutory changes with respect to both the Section 220 single family and multifamily mortgage insurance programs.

The interim rule invited public comments for a 60-day period ending October 3, 1983. The Department received no comments. This rule adopts the interim rule as final.

Section 220 was specifically designed to aid in the elimination of slums and blighted conditions and to prevent the deterioration of residential property by financing the construction or rehabilitation of projects and dwellings located in a federally approved urban renewal or code enforcement area or in an urban area undergoing rehabilitation as a result of a disaster. Currently, most urban renewal projects and code enforcement programs have been either substantially completed or closed out. Expanding program eligibility to areas designated by the Secretary where coordinated revitalization or conservation activities are undertaken should restore Section 220 as a viable development financing mechanism.

The interim rule amended §§ 220.5 and 220.502 to authorize the Secretary to insure mortgages under Section 220 in areas in which concentrated housing, physical development, and public service activities are being or will be carried out in a coordinated manner. Those sections, as amended, also described the elements of the locally developed strategy for neighborhood improvement, conservation, or preservation. The strategy must:

(1) Provide for combination of physical improvements, necessary public facilities and services, housing programs, private investment and citizen self-help activities appropriate to the needs of the area;

(2) Coordinate public and private development efforts;

(3) Provide sufficient resources to produce substantial long-term improvements in the area within a reasonable period of time, taking into account the severity of the area's problems.

The field office accepts a request from local governments for designation of an area as an eligible area under § 220.5(e).

The field offices' designation is based on a determination that the locally developed strategy for neighborhood improvement, conservation or preservation meets the standards set out in these sections.

The interim rule also made conforming amendments to §§ 220.10, 220.20 and 220.506.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under Section 605(b) (the Regulatory Flexibility Act, 5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule makes changes which should be beneficial to all program participants including small entities.

This rule is listed at 48 FR 47438 as Item H–47–81 in the Department's Semiannual Agenda of Regulations published on October 17, 1983, under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.139.

List of Subjects in 24 CFR Part 220

Home improvements, Mortgage insurance, Urban renewal, Rental housing, Loan programs: housing and community development, Projects.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENTS LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

Accordingly, the interim amendment to 24 CFR Part 220, published on August 4, 1983 (48 FR 35393) is hereby adopted as final without change.

Authority: Section 220, National Housing Act, 12 U.S.C. 1715k.

Dated: March 19, 1984.

Shirley M. Wiseman,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84–8082 Filed 3–23–84; 8:45 am]

BILLING CODE 4210–27–M

Office of Inspector General

24 CFR Ch. XII and Part 2000

[Docket No. R–84–1025; FR–1651]

Organization, Functions, and Delegations of Authority

AGENCY: Office of Inspector General, HUD.

ACTION: Final rule.

SUMMARY: This document establishes Chapter XII of Title 24 of the Code of Federal Regulations for publication of material by the Inspector General of HUD. It also adds a new Part 2000, which sets out the organization, functions and delegations of authority of the Office of Inspector General. The amendments are necessary to reflect the statutory establishment of the Office of Inspector General by the Inspector General Act of 1978.

EFFECTIVE DATE: May 8, 1984.

FOR FURTHER INFORMATION CONTACT: Phillip L. Schulman, Assistant General Counsel, Office of General Counsel, Department of Housing and Urban Development, Room 10270, Washington, D.C. 10410, (202–755–5557). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This rule concerns the organization, functions and authority of the Office of Inspector General (OIG). The function of OIG is to conduct audits and investigations of HUD programs and activities for the purpose of determining their efficiency and effectiveness and to prevent and detect fraud and abuse. The rule discusses the organization of the central office as well as that of the regional offices. In addition, it enumerates the Inspector General's statutory and non-statutory duties and authorities.

In 1972, the Secretary established the Office of Inspector General. The function of that office was to plan and administer comprehensive internal and external audit programs and conduct investigations with authority to inquire into all programs and administrative activities of the Department and related activities of beneficiaries of Departmental programs. On January 29, 1972, the Secretary delegated specific duties and authorities to the Inspector General. They were published in the **Federal Register** on August 14, 1974 (39 FR 29212).

In 1978, Congress enacted the Inspector General Act of 1978 (Pub. L. 95–452) which statutorily established Offices of Inspectors General in several Departments. The Act provides the Inspector General with specific duties and authorities. Although it did not include all the duties and authorities previously delegated by the Secretary, the remaining delegated duties do not conflict with the Act and continue in effect. In addition, on December 1, 1980, a delegation of authority was executed authorizing the Inspector General to issue such rules and regulations as may be necessary to carry out the functions, powers and duties of the Office of Inspector General. This was published in the **Federal Register** on January 9, 1981 (46 FR 2389). The non-statutory duties and authorities which were not incorporated into the Act appear in § 2000.3(b) of this rule.

Because this rule relates to internal agency organization and management the Department is exempt from publishing a notice of proposed rulemaking as normally required by the Administrative Procedures Act (5 U.S.C. 553(a)(2)).

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulation 24 CFR Part 50 which implements section 102(2)(C) of the

National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that the rule has no significant economic impact on a substantial number of small entities because it concerns agency organization.

This rule was listed as item IG–1–83 in the Department's Semi-Annual Agenda of Regulations published on October 17, 1983 (48 FR 47418, 47425) under Executive Order 12291 and the Regulatory Flexibility Act.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 24 CFR Part 2000

Organization and functions (government agencies)

Accordingly, Title 24, CFR is amended by adding a new Chapter XII and Part 2000 as follows:

1. A new Chapter XII is added, as follows:

CHAPTER XII—OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (PARTS 1200–1299)

2. Part 2000 is added to read as follows:

PART 2000—ORGANIZATION, FUNCTIONS AND DELEGATIONS OF AUTHORITY

Sec.

2000.1 General statement.
2000.2 Duties.
2000.3 Authorities.
2000.4 Semi-annual reports.
2000.5 Headquarters organization.
2000.6 Regional organization.
2000.7 Requests for service.
2000.8 Delegations of authority.
2000.9 Succession of authority.

Authority: Inspector General Act of 1978 (5 U.S.C. App.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Delegation of Authority published on January 9, 1981 (46 FR 2389).

§ 2000.1 General statement.

(a) The Inspector General Act of 1978, (Pub. L. 95–452, 5 U.S.C. App.), (the Act) established an Office of Inspector General (OIG) in various Executive Branch Departments and agencies, including the Department of Housing and Urban Development (HUD). The Act provided explicit statutory basis for the Office of Inspector General which had been created by the Secretary of HUD (Secretary) in 1972.

(b) The function of OIG is to conduct audits and investigations of HUD programs and activities. The audits and investigations are designed to determine the efficiency and effectiveness of HUD's programs and to prevent and detect fraud and abuse. The OIG is also charged with the responsibility of keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the operation of HUD programs and the necessity for and progress of corrective action.

(c) The Inspector General (IG) or, in his or her absence, the person acting in that capacity, reports directly to the Secretary or his or her designee and shall not report to or be subject to the supervision of any other officer of HUD. As such, the Inspector General is an independent official of HUD and is free from any undue influence or constraints in performing his or her functions. The Inspector General:

(1) Cannot be prevented or prohibited from initiating, carrying out or completing any audit or investigation or from issuing any related report or subpoena during an audit or investigation; and

(2) Can report matters to Congress without either prior agency clearance or the imposition of any restrictions which might influence or alter the subject matters being reported.

§ 2000.2 Duties.

(a) The IG has the following duties and responsibilities concerning the programs and operations of HUD:

(1) To conduct, supervise and provide policy direction for audits and investigations relating to the programs and operations of HUD;

(2) To review existing and proposed legislation and regulations and make recommendations to the Secetary and the Congress on the impact such laws or regulations will have on the economy and efficiency of program administration or on the prevention and detection of fraud and abuse in the programs and operations of HUD;

(3) To recommend policies for and conduct activities disigned to promote economy and efficiency in HUD programs and to prevent and detect fraud and abuse in such programs;

(4) To recommend policies for and conduct activities designed to coordinate relationships between HUD and other Federal agencies and State and local governments with respect to (i) promoting economy and efficiency in HUD programs and detecting fraud and abuse in such programs and (ii) identifying and prosecuting participants in such fraud and abuse; and

(5) To keep the Secretary and Congress fully and currently informed by means of the reports which are required in § 2000.4 and otherwise on fraud, abuse, deficiencies, and other such problems relating to the operation of HUD programs; to recommend corrective action concerning such problems; and to report on the progress of actions taken to correct such problems.

(b) In carrying out such duties specified in the Act and in paragraph (a)(1) of this section the IG shall:

(1) Comply with standards which are established by the Comptroller General of the United States for audits of Federal establishments, programs, and functions;

(2) Establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(3) Ensure that any work done by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (b)(1) of this section.

(c) In carrying out the duties enumerated in the Act and in paragraph (a) of this section, the IG shall avoid duplication of, and ensure effective coordination with, the activities of the Comptroller General of the United States.

(d) In carrying out the duties enumerated in the Act and in paragraph (a) of this section, the IG shall report expeditiously to the Attorney General whenever the IG has reasonable grounds to believe there is a violation of Federal criminal law.

§ 2000.3 Authorities.

(a) In carrying out the provisions of the Act, the IG is authorized to:

(1) Have access to all records, reports, audits, reviews, documents, papers, recommendations or other material available to the Department which relate to programs and operations for which the IG has responsibility;

(2) Make such investigations and reports relating to the administration of programs and operations of the Department as are in the judgment of the IG necessary or desirable;

(3) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, data and other documentary evidence necessary in the performance of duties and responsibilities specified in the Act and in § 2000.2. (Procedures other than subpoenas shall be used to obtain

documents and information from other federal Agencies.);

(4) Receive and investigate complaints or information from any HUD employee concerning (i) possible violations of law or regulations; (ii) mismanagement; (iii) gross waste of funds; (iv) abuse of authority; or (v) substantial and specific dangers to the public health and safety;

(5) Have direct access to the Secretary for any purpose pertaining to the performance of the duties specified in the Act or in § 2000.2(a)(2);

(6) Select, appoint, and employ necessary officers and employees in OIG in accordance with laws and regulations governing the civil service including a Deputy Inspector General, an Assistant Inspector General for Audit (AIGA) and an Assistant Inspector General for Investigation (AIGI);

(7) Obtain services which are authorized by 5 U.S.C. 3109 and which relate to the employment of experts and consultants;

(8) Enter into contracts and other arrangements for audits, studies, analyses and other services with public agencies and private persons and make such payments as may be necessary to carry out the provisions of the Act to the extent, and in such amounts, as may be provided in an appropriation Act.

(b) In addition to the above statutory duties, responsibilities and authorities, the following, have been delegated to the Inspector General by the Secretary:

(1) To issue regulations necessary to carry out OIG's responsibilities and duties (46 FR 2389);

(2) To refer to the Merit Systems Protection Board (MSPB) cases or matters that involve a violation or possible violation of the Hatch Act (5 U.S.C. 7321–27), and to transmit to MSPB information and materials pertaining to violations or alleged violations;

(3) To refer to the United States Secret Service, Department of the Treasury, cases or matters that involve the alleged forgery of United States Treasury checks or alleged irregularities with regard to imprest funds, and to transmit to the United States Secret Service information and material pertaining to the alleged forgeries or irregularities;

(4) To receive directly from:

(i) The Department of Justice, any reports concerning action taken on criminal matters referred by HUD on the basis of an OIG investigation;

(ii) The MSPB, any reports concerning action on matters referred by HUD in accordance with paragraph (b)(2) of this section;

(iii) The United States Secret Service, Department of the Treasury, any reports concerning action taken on matters referred by HUD in accordance with paragraph (b)(3) of this section;

(iv) The Federal Bureau of Investigation, information requested by HUD with respect to a person who is presently, or is prospectively to be, employed or retained in an advisory capacity; information with respect to the arrest of an employee; reports of investigation; and information and materials relating to any other investigative or audit matters not specified in this paragraph or paragraph (b)(5) or (d); of this section;

(5) To maintain direct exchange of information and materials with the Organized Crime and Racketeering Section, Criminal Division, Department of Justice;

(6) To develop and direct the Department Personnel Security Program under the requirements of Executive Order 10450, entitled "Security Requirements for Government Employment" (18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936.).

(7) To develop and publish minimum standards, procedures, specifications, and to implement instructions for the administration of Executive Order 12356, entitled "National Security Information" (47 FR 14874, 3 CFR, 1982 Comp., p. 166.).

(c) In addition to the authorities enumerated in paragraphs (a) and (b) of this section IG may exercise additional powers as may be authorized by Congress, the Secretary, or other governmental units.

(d) Authority excepted. Notwithstanding any delegation of authority in paragraph (b) of this section neither the Inspector General nor the Deputy Inspector General is authorized to:

(1) Refer any case or matter or to transmit information or material directly to the Department of Justice with respect to violations or possible violations of the Civil Rights Act of 1968 (42 U.S.C. 3601);

(2) Exercise the power in Executive Order 10450 to:

(i) Waive the requirements for completion of full investigations before assumption by applicants or employees of critical-sensitive positions;

(ii) Suspend, with or without pay, or reassign or detail temporarily to a non-sensitive position, and then remove, any employee from a sensitive position. (5 U.S.C. 7532);

(iii) Reinstate or restore individuals suspended or removed for national security reasons. (5 U.S.C. 3571).

(e) Authority to redelegate. The IG is authorized to redelegate to employees of OIG any of the power or authority delegated under this section, except the IG may not delegate the authority to issue subpoenas described in paragraph (a)(3) of this section or the rulemaking authority listed in paragraph (b)(1) of this section.

§ 2000.4 Semiannual reports.

(a) In addition to the duties enumerated in § 2000.2, the IG shall prepare a semiannual report no later than April 30 and October 31 of each year. Each report shall summarize the activities of the OIG for the preceding six-month period ending March 31 and September 30 and shall include but is not limited to:

(1) A description of significant problems, abuses and deficiencies relating to the administration of HUD programs and operations during the reporting period and a description of the recommendations made to correct such problems;

(2) Identification of significant recommendations described in previous semiannual reports on which corrective action has not yet been completed;

(3) A summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(4) A summary of each report regarding information unreasonably refused or not provided made during the reporting period to the Secretary under section 6(b)(2) of Act; and

(5) A list of each audit report completed by the office during the reporting period.

(b) The semiannual report shall be transmitted to the Secretary no later than April 30 and October 31 of each year and shall be submitted by the Secretary to the appropriate Congressional committee or subcommittee within thirty calendar days after receipt of the report, together with a report by the Secretary containing any comments that the Secretary may deem appropriate.

(c) Within 60 days of the transmission of a semiannual report to Congress, the Secretary shall make the report available to the public upon request and at a reasonable cost;

(d) Notwithstanding the responsibility of the IG to prepare semiannual reports, the IG shall report immediately to the Secretary when the IG becomes aware of serious or flagrant problems, abuses, or deficiencies relating to the programs and operations of HUD. The Secretary shall transmit any such report to the appropriate congressional committee or subcommittees within seven calendar days, together with a report by the Secretary containing any comments which the Secretary deems appropriate.

§ 2000.5 Headquarters organization.

(a) The IG has a Headquarters Office in Washington, D.C. and Regional offices throughout the Nation. The Headquarters Office consists of the immediate office of the Inspector General and three operational units, the Office of Audit, the Office of Investigation, and the Office of Fraud Control and Management Operations. The immediate office of the Inspector General consists of the Inspector General, the Deputy Inspector General and a Special Assistant. The function of the Deputy is to assist the Inspector General in the performance of duties and responsibilities and to assume those duties and responsibilities when the Inspector General is absent.

(b) *Operational Units.* (1) The Office of Audit is headed by the Assistant Inspector General for Audit (AIGA). The AIGA is responsible to the Inspector General primarily for supervising and coordinating the performance of all OIG auditing activities relating to the Department's programs and operations and recommending corrective action concerning abuses and deficiencies. Two divisions assist in carrying out these functions: (i) The Audit Operations Division and (ii) the Technical Services Division.

(2) The Office of Investigation is headed by the Assistant Inspector General for Investigation (AIGI). The AIGI is responsible to the Inspector General for supervising the performance of all OIG investigations and investigative activities relating to the Department's programs and operations. Two divisions assist in carrying out these functions: (i) the Headquarters Operations Division and (ii) the Field Operations Division.

(3) The Office of Fraud Control and Management Operations is headed by the Assistant Inspector General for Fraud Control and Management Operations (AIG–FCMO). The AIG–FMCO is responsible to the Inspector General for carrying out OIG's programs concerning the prevention and detection of fraud, waste, and mismanagement, for implementing certain administrative activities in support of internal OIG operations and the Act, for writing the IG's semiannual report to Congress and for conducting evaluations of trends and patterns in program deficiencies and controls. Three divisions assist in carrying out these functions: (i) The Fraud Control Division, (ii) the Management Information Division, and (iii) the Analysis and Evaluation Division.

§ 2000.6 Regional organization.

(a) The Regional Offices of Inspector General consist of the Office of the Regional Inspector General for Audit (RIGA) and the Office of the Regional Inspector General for Investigation (RIGI). The address for each Regional Office is listed in paragraph (d) of this section.

(b) *RIGA.* Each RIGA is responsible for conducting and supervising the performance of all OIG auditing activities relating to the Department's programs and operations within the assigned geographic area and for maintaining liaison on audit matters with Regional Administrators, Area Field Managers, and Service Office Supervisors.

(c) *RIGI.* Each RIGI is responsible for supervising the performance of all OIG investigative activities relating to the Department's programs and operations within the assigned geographic area and for maintaining liaison on investigation matters with United States Attorneys, FBI Field Offices, and officials and staff of the HUD Field Offices, within the assigned geographic area.

(d) *Regional offices and territories served.*

Region	Territory
Boston Regional Office, Department of Housing and Urban Development, Federal John F. Kennedy Building Boston, Mass.	Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island.
New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, New York, N.Y. 10278.	New York, New Jersey, Puerto Rico.
Philadelphia Regional Office, Department of Housing and Urban Development, Curtis Building, 625 Walnut Street, Philadelphia, Pa. 19106.	Pennsylvania, Delaware, Maryland, Virginia, District of Columbia, West Virginia.
Atlanta Regional Office, Department of Housing and Urban Development, Richard B. Russell Federal Bldg., 75 Spring Street, S.W., Atlanta, Ga. 30303.	Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida.
Chicago Regional Office, Department of Housing and Urban Development, 300 South Wacker Drive, Chicago, Illinois 60606.	Wisconsin, Illinois, Indiana, Ohio, Michigan, Minnesota.
Fort Worth Regional Office, Department of Housing and Urban Development, 221 W. Lancaster Street, P.O. Box 2905, Fort Worth, Tex. 76113.	New Mexico, Texas, Oklahoma, Arkansas, Louisiana.
Kansas City Regional Office, Department of Housing and Urban Development, Professional Building, 1103 Grand Street, Kansas City, Mo. 64106.	Kansas, Nebraska, Iowa, Missouri.
Denver Regional Office, Department of Housing and Urban Development, Executive Tower Building, 1405 Curtis Street, Denver, Colo. 80202.	Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota.
San Francisco Regional Office, Department of Housing and Urban Development, #1 Embarcadero Center, San Francisco, Calif. 94111.	California, Nevada, Arizona, Hawaii.
Seattle Regional Office, Department of Housing and Urban Development, 3003 Arcade Plaza Building, 1321 Second Avenue, Seattle, Wash. 98101.	Washington, Oregon, Idaho, Alaska.

§ 2000.7 Requests for service.

Any person may direct a request for audit or investigative services to:

(a) The Regional Inspector General for Audit or the Regional Inspector General for Investigation having jurisdiction for the geographic area involved;

(b) The Assistant Inspector General for Audit or the Assistant Inspector General for Investigation; or

(c) The Inspector General.

§ 2000.8 Delegations of authority

(a) Except as indicated in paragraph (b) of this section, Assistant Inspectors General listed in § 2000.5 are authorized to take any necessary actions to carry out their assigned functions provided that such action has been delegated by the IG. This authority may be redelegated.

(b) Assistant Inspectors General and Regional Inspectors General are not authorized to:

(1) Issue subpoenas, or

(2) Release information in OIG files in response to a demand or subpoena of a court or other authority without the prior approval of the Inspector General.

(c) With respect to any duties delegated by the IG, the IG reserves the right to perform such duties.

§ 2000.9 Succession of authority.

In the absence or temporary incapacity of the Inspector General, the following individuals, successively, according to availability, shall act in the capacity of the Inspector General: Deputy Inspector General, Assistant Inspector General for Audit, Assistant Inspector General for Investigation and Assistant Inspector General for Fraud Control and Management Operations.

Dated: March 19, 1984.

Charles L. Dempsey,

Inspector General.

[FR Doc. 84–8063 Filed 3–23–84: 8:45 am]

BILLING CODE 4210–32–M

24 CFR Part 2002

[Docket No. R-84-1024; FR 1650]

Availability of Information to the Public

AGENCY: Office of Inspector General, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts regulations to govern response to requests made to the Office of Inspector General under the Freedom of Information Act. The rule is intended to assist the Office of Inspector General in carrying out its responsibilities under the Inspector General Act of 1978 and to make clear the procedure the public is to follow in requesting material under the Freedom of Information Act.

EFFECTIVE DATE: May 8, 1984.

FOR FURTHER INFORMATION CONTACT: Phillip L. Schulman, Assistant General Counsel, Office of General Counsel, Department of Housing and Urban Development, Room 10270, Washington, D.C. 20410, (202) 755-5557. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Inspector General Act of 1978 (the Act) (Pub. L. 95-452, 5 U.S.C. App.) was enacted to "create independent and objective units" to perform various investigative and monitoring functions in several Executive agencies of the Federal Government, including the Department of Housing and Urban Development (HUD). This Act confers broad authority upon the Inspector General to conduct investigations and audits without interference from the agency head.

The Inspector General of HUD is establishing a new chapter in the Code of Federal Regulations, which will contain regulations specifically applicable to the responsibilities of the Office of the Inspector General. (See final rule documents establishing Chapter XII and adding Parts 2000 and 2004 elsewhere in this issue of the **Federal Register**.)

This rule establishes a new Part 2002, which explains the procedures for requesting information from the Office of Inspector General (OIG) under the Freedom of Information Act. Part 2002 is similar to the Department's Freedom of Information Act (FOIA) regulations found at 24 CFR Part 15. Section 2002.1 states that Part 15 is generally applicable to the Office of Inspector General regulations, and specifically identifies those sections of Part 15 which apply. In general, most changes concern terminology. For example, authority to review a FOIA request made to the Department is vested in the "head of the appropriate organizational unit"; authority to review a FOIA request made to the Office of Inspector General is vested in the appropriate Assistant Inspector General.

There are a few substantive differences in the regulations and they are noted below. First, the Office of Inspector General establishes specific locations to which FOIA requests must be submitted, which are different from the Department's locations. Second, before denying a FOIA request, a HUD official obtains the concurrence of the appropriate field or headquarters, counsel; the appropriate Assistant Inspector General obtains the concurrence of the legal counsel for the Office of Inspector General before denying a request. And, third, denial of a FOIA request for a HUD record is reviewed by the General Counsel; denial of a FOIA request for an OIG record is reviewed by the Inspector General.

In addition, technical amendments to Part 15 also appear in today's **Federal Register**, providing notice to CFR users that there are now regulations in Chapter XII to which they may need to refer.

This rule is a rule of agency procedure, and as such is exempt from the proposed rulemaking requirement of the Administrative Procedure Act as provided for in 5 U.S.C. 553(b)(A). The Freedom of Information Act (5 U.S.C. 552(a)(4)) requires an agency to propose amendments which affect the fees to be charged in providing information under a Freedom of Information Act request. However, the fees appearing in this rule are the same as those appearing in 24 CFR Part 15. As a matter of policy, the Department frequently provides for public participation in rulemakings otherwise exempt. Since this rule does not affect substantive rights of the public, the Inspector General has determined that good cause exists for issuing this rule in final form immediately.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule has no significant impact on a substantial number of small entities, because it pertains only to procedural matters associated with requests for information, and does not increase the burden on any person or entity requesting such information.

This rule was listed as item number IG-1-82 in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47418, 47470) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 2002

Freedom of information.

Accordingly, 24 CFR is amended by adding a new Part 2002 to read as follows:

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.

2002.1 Scope of the part and applicability of other HUD regulations.
2002.3 Request for records.
2002.5 Records produced upon request when reasonably described.
2002.7 Fees.
2002.9 Time limitations.
2002.11 Authority to release records or copies.
2002.13 Authority to deny requests for records and form of denial.
2002.15 Effect of denial of request.
2002.17 Administrative review.

Authority: Inspector General Act of 1978 (5 U.S.C. App.); section 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)), Delegation of Authority, January 9, 1981 (46 FR 2389).

§ 2002.1 Scope of the part and applicability of other HUD regulations.

(a) *General.* This part contains the regulations of the Office of Inspector General of HUD which implement the Freedom of Information Act (5 U.S.C. 552). It tells the public how to request records and information from the Office of Inspector General and explains the procedure to use if a request is denied. Requests for documents made by subpoena or other order are governed

by procedures contained in Part 2004 of this chapter. In addition to the regulations in this part, the following provisions of Part 15 of this title covering the production or disclosure of material or information apply (except as limited in paragraph (b) of this section) to the production or disclosure of material in the possession of the Office of Inspector General:

Sec.
15.1 Definitions.
15.3 Statement of policy.
15.11 Publication in the Federal Register.
15.12 Materials not published in the Federal Register.
15.21 Exemptions authorized by 5 U.S.C. 552.
15.31 Information Centers.
15.32 Information officers.
15.33 Material in Department Central Information Center.

(b) *Limited applicability of some sections of Part 15.* Sections 15.12 and 15.33 of this title describe Department material generally available for public inspection and copying in one or more Department Information Centers. To the extent the Information Centers listed in § 15.31 of this title maintain Office of Inspector General material of this type, Part 15 applies and members of the public may seek assistance at these centers. A request for specific documents made under the Freedom of Information Act must be made using the procedures identified in this Part 2002.

(c) *Use of the term "Department."* For purposes of this part, when the word "Department" is used in §§ 15.12, 15.31, 15.32 and 15.33 of this title, the term means "Department" as defined in § 15.1 of this title. When the word "Department" is used in §§ 15.3, 15.11 and 15.21 of this title, the terms means Office of Inspector General.

(d) *Request for declassification and release of classified material.* Section 15.81 of this title contains the provisions for requesting declassification and release of declassified material.

§ 2002.3 Request for records.

(a) A request for Office of Inspector General records may be made in person during normal business hours at the Regional Offices listed in § 2000.6(b) of this chapter. A written request may be addressed to the Office of Inspector General, Department of Housing and Urban Development, Washington, D.C. 20410, or to a particular Regional office. Although oral requests may be honored, a requester may be asked to submit the request in writing.

(b) Each request must reasonably describe the desired record including the name, subject matter, and number or date, where possible, so that the record may be identified and located. The request should include the name, address and telephone number of the requester. In order to enable the Office of Inspector General to comply with the time limitations set forth in § 2002.9, both the envelope containing a written request and the letter itself should clearly indicate that the subject is a Freedom of Information Act request.

(c) The request must be accompanied by the fee or an offer to pay the fee as determined in § 2002.7. At its discretion, the Office of Inspector General may refuse to furnish records before receipt of the required fee.

(d) Copies of available records will be made as promptly as possible. Copying service will be limited to not more than 10 copies of any single page. Records which are published or available for sale need not be reproduced.

§ 2002.5 Records produced upon request when reasonably described.

(a) When a request is made which reasonably describes a record of the Office of Inspector General (see § 2002.3) which has been stored in the National Archives or other record center of the General Services Administration, the record will be requested by the Office of Inspector General if it otherwise would be available under this part.

(b) Every effort will be made to make a record in use by the staff of the Office of Inspector General available when requested, and such availability will be deferred only to the extent necessary to avoid serious interference with the business of the Office of Inspector General.

§ 2002.7 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) Except as otherwise provided, fees will be charged for copies of records furnished under this part and for time spent in locating and reproducing them in accordance with the following fee schedule:

(1) Search and reproduction time for each quarter hour in excess of the first quarter hour:

Clerical	$2.00
Professional	$4.00

Whenever possible, clerical time will be used to process requests.

(2) Copies of documents, xerox or equivalent, page size up to 8½ by 14 inches, per page: $.10.

(c) When a response to a request requires services or materials other than those described in paragraph (b) of this section, charges will be assessed to recover the actual costs of such services and material to the Office of Inspector General. Such charges may include the costs (at rates charged users within HUD) of programming services, computer time, and teleprocessing connect time.

(d) No charge will be assessed when the amount due, in the aggregate, totals less than $5.00.

(e) No charge will be made for time spent in resolving legal or policy issues affecting access to records of known contents.

(f) Ordinarily no charge for search time will be assessed when the records requests are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, a fee will be charged.

(g) Where it is anticipated that the fee chargeable under this part will exceed $25.00 and the requesting party has not indicated in advance a willingness to pay so high a fee, the requesting party will be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification will offer the requesting party the opportunity to confer with an Office of Inspector General representative for the purpose of reformulating the request to meet that party's needs at a reduced cost.

(h) The official authorized to grant access to records may waive or reduce the applicable fee where special circumstances, including but not limited to the public interest, warrant such waiver or reduction. A determination that furnishing the records at a waived or reduced cost is in the public interest will ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester. These determinations will be subject to administrative review as provided in § 2002.17 after the decision on the request for access has been made.

(i) Payment of fees under this section must be made in cash or by U.S. money order or by certified bank check payable to the Treasurer of the United States.

§ 2002.9 Time limitations.

(a) Upon receipt of a request for records, any of the Assistant Inspectors General listed in § 2000.5 of this chapter, as appropriate, will determine within ten working days whether to grant the request. The appropriate Assistant Inspector General will notify the requester immediately in writing of the determination, the reasons for the

determination and the right of the person to request a review by the Inspector General of HUD of an adverse determination.

(b) The time of receipt for processing a request for records purposes is the time it is received by the appropriate office for review. If a request is misdirected by the requester, the Office of Inspector General or Department official who receives the request will promptly refer it to the appropriate office and will advise the requester about the delayed time of receipt.

(c) A determination with respect to a request for review by the Inspector General of HUD under § 2002.17 will be made within 20 working days after receipt and will be communicated immediately to the person requesting review.

(d) If the Office of Inspector General grants the request for records, the records will be made available promptly to the requester.

(e) In unusual circumstances as specified in this paragraph, and subject to the concurrence of the Inspector General of HUD, the time limits prescribed in either paragraph (a) or (c) of this section may be extended. Any extension will be in writing to the requester and will include reasons for the extension and the date on which the disposition of the request will be sent. No extension will be for more than ten working days. As used in this paragraph, "unusual circumstances" means (but only to the extent necessary to the proper processing of the particular request) that there is a need:

(1) To search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(2) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) For consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more offices of the Office of Inspector General having a substantial interest in the subject matter of the request.

§ 2002.11 Authority to release records or copies.

Any of the Assistant Inspectors General of HUD listed in § 2000.5 of this chapter or appointed designees, as appropriate, is authorized to release any record (or copy) pertaining to activities for which he or she has primary responsibility, unless disclosure is clearly inappropriate under this part. No authorized person may release records for which another officer has primary responsibility without the consent of the officer or his or her designee.

§ 2002.13 Authority to deny requests for records and form of denial.

The Assistant Inspectors General described in § 2002.11 may deny a request for a record. Any denial will:

(a) Be in writing;

(b) State simply the reasons for denial;

(c) State that review of the denial by the Inspector General of HUD may be requested;

(d) Set forth the steps for obtaining review consistent with § 2002.17; and

(e) Be signed by the Assistant Inspector General responsible for the denial.

Before a denial, the appropriate Assistant Inspector General or designee will obtain the concurrence of legal counsel for the Office of Inspector General.

§ 2002.15 Effect of denial of request.

Denial of a request shall terminate the authority of the Assistant Inspector General or his or her designee to release or disclose the requested record, which thereafter may not be made available except with express authorization of the Inspector General of HUD.

§ 2002.17 Administrative review.

(a) Review is available only from a written denial of a request for a record issued under § 2002.13 and only if a written request for review is filed within 30 days after issuance of the written denial.

(b) A review may be initiated by mailing a request for review to the Inspector General of HUD, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8256, Washington, D.C. 20410. Each request for review must contain the following:

(1) A copy of the request, if in writing;

(2) A copy of the written denial issued under § 2002.13; and

(3) A statement of the circumstances, reasons, or arguments advanced in support of disclosure of the original request for the record.

In order to enable the Inspector General of HUD to comply with the time limitations set forth in § 2002.9, both the envelope containing the request for review and the letter itself should clearly indicate that the subject is a Freedom of Information Act request for review.

(c) Review will be made promptly by the Inspector General of HUD on the basis of the written record described in paragraph (b) of this section. Before a denial, the Inspector General will obtain the concurrence of legal counsel for the Office of Inspector General.

(d) The time of receipt for processing of a request for review purposes is the time it is received by the Inspector General of HUD. If a request is misdirected by the requester and is received by one other than the Inspector General, the Office of Inspector General or Department official who receives the request will forward it promptly to the Inspector General and will advise the requester about the delayed time of receipt.

(e) The decision after review will be in writing, will constitute final agency action on the request, and, if the denial of the request for records is in full or in part upheld, the Inspector General will notify the person making the request of his or her right to seek judicial review under 5 U.S.C. 552(a)(4).

Dated: March 19, 1984.

Charles L. Dempsey,

Inspector General.

[FR Doc. 84-8085 Filed 3-23-84; 8:45 am]
BILLING CODE 4210-32-M

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24 CFR Part 2004

[Docket No. R-84-1023; FR 1649]

Production in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Office of the Inspector General, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts regulations to govern the production or disclosure of material in response to subpoenas or demands of courts or other authorities made on officers or employees of the Office of the Inspector General of the Department of Housing and Urban Development. The rule is intended to assist the Office of the Inspector General in carrying out its responsibilities under the Inspector General Act of 1978, and to make clear procedures for employees or former employees to follow if presented with a demand for material.

EFFECTIVE DATE: May 8, 1984.

FOR FURTHER INFORMATION CONTACT: Phillip L. Schulman, Assistant General Counsel, Office of General Counsel, Department of Housing and Urban Development, Room 10270, Washington, D.C. 20410, (202) 755-5557. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Inspector General Act of 1978 (the Act) (Pub. L. 95-452, 5 U.S.C. App.) was

enacted to "create independent and objective units" to perform various investigative and monitoring functions in several Executive agencies of the Federal Government, including the Department of Housing and Urban Development (HUD). This Act confers broad authority upon the Inspector General to conduct investigations and audits without interference from the agency head.

Existing HUD regulations in 24 CFR Part 15, Subpart H, set out procedures for present or former HUD employees to follow when presented with a subpoena or other demand of a court or other authority for the production or disclosure of HUD-related material. This final rule establishes comparable procedures within regulations issued by the Inspector General, which apply when the demand is made of employees or former employees of HUD's Office of Inspector General (OIG) with respect to OIG-related documents.

These separate regulations are being issued to make it clear that the inspector General, rather than the Secretary, makes the decision with respect to the disclosure of OIG-related material. Existing HUD regulations and the OIG regulations issued today are substantially equivalent.

In a companion document issued by the Secretary of HUD and appearing elsewhere in today's issue of the **Federal Register**, 24 CFR Part 15, Subpart H—Production in Response to Subpoenas or Demands of Courts or Other Authorities—is being amended to make it clear that employees of the OIG are not covered by Subpart H of Part 15.

Since this final rule states the procedures to be followed in the event of a demand for production or disclosure of material, it relates to internal agency management and procedures. Thus, under 5 U.S.C. 553(a)(2) and 553(b)(A) the Department need not publish a notice of proposed rulemaking. As a matter of policy, HUD frequently provides for public participation in rulemakings otherwise exempt. However, the Department has determined, because no rights of the public are involved in this rulemaking, that good cause exists for issuing this rule in final form immediately.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals industries, Federal, State and local government agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulation 24 CFR Part 50 which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

Under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that the rule has no significant economic impact on a substantial number of small entities because it is only a procedural rule concerning employees' conduct.

This rule was listed as item IG–2–82 under the Office of the Inspector General in the Department's Semi-Annual Agenda of Regulations published on October 17, 1983 (48 FR 47418, 47470) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 2004

Administrative practice and procedure.

Accordingly, 24 CFR is amended by adding a new Part 2004 to read as follows:

PART 2004—PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES

Sec.

2004.1 Purpose and scope.
2004.3 Production or disclosure prohibited unless approved by the Inspector General.
2004.5 Procedure in the event of a demand for production or disclosure.
2004.7 Procedure in the event of an adverse ruling.

Authority: Inspector General Act of 1978 (5 U.S.C. App.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Delegation of Authority, January 9, 1981 (46 FR 2389).

§ 2004.1 Purpose and scope.

This part contains regulations which apply to the Office of Inspector General and which concern procedures to be followed when a subpoena, order or other demand (hereinafter referred to as a "demand") of a court or other authority is issued for the production of documents or disclosure of testimony concerning: (a) Any material contained in the files of the Office of Inspector General, (b) any information relating to material contained in the files of the Office of Inspector General, or (c) any information or material which an individual acquired while an employee of the Office of Inspector General as a part of the performance of official duties or because of his or her official status. For purposes of this part, the term "employee of the Office of Inspector General" includes all officers and employees of the United States appointed by, or subject to the supervision of, the Inspector General.

§ 2004.3 Production or disclosure prohibited unless approved by the Inspector General.

Without prior approval of the Inspector General, no employee or former employee of the Office of Inspector General shall, in response to a demand of a court or other authority, produce any material contained in the files of the Office of Inspector General, or disclose any information relating to material contained in the files of the Office of Inspector General, or disclose any information or produce any material acquired as a part of the performance of official duties or because of official status.

§ 2004.5 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Office of Inspector General for the production of material or the disclosure of information described in § 2004.1, he or she shall notify immediately the Inspector General and the Office of General Counsel. If possible, the Inspector General shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If oral testimony is sought by the demand, the party seeking testimony, or his or her attorney, must furnish to the Inspector General an affidavit, or if that is not feasible, a statement setting forth a summary of the testimony desired.

(c) If response to the demand is required before the instructions from the Inspector General are received, the United States Attorney, or such other attorney as may be designated for the purpose, will appear with the individual upon whom the demand has been made. The attorney will furnish the court or other authority with a copy of the regulations contained in this part and will inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt

consideration of the Inspector General. The court or other authority shall be respectfully requested to stay the demand pending receipt of the requested instructions from the Inspector General.

§ 2004.7 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request by the Inspector General made in accordance with § 2004.3(c), or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Inspector General not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462).

Dated: March 19, 1984.

Charles L. Dempsey,

Inspector General.

[FR Doc. 84-8064 Filed 3-23-84; 8:45 am]

BILLING CODE 4210-32-M

Office of the Secretary

24 CFR Parts 3700, 3710 and 3720

[Docket No. R-84-1157; FR-1924]

Removal of Chapter XXII—New Community Development Corporation

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule removes Chapter XXII—New Community Development Corporation from Title 24 of the Code of Federal Regulations, reflecting the abolishment of the New Community Development Corporation (NCDC).

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Assistant General Counsel, Room 10248, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6550. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD is removing 24 CFR Chapter XXII—New Community Development Corporation from the Code of Federal Regulations because Section 474 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, repealed several sections under Title IV of the Housing and Urban Development Act of 1968, 42 U.S.C. 3901, and Title VII of the Housing and Urban Development Act of 1970, 42 U.S.C. 4501, which gave HUD the authority to operate the New Communities Program.

One of the repealed sections, 42 U.S.C. 4532, had created a New Community Development Corporation with a Board of Directors chaired by the HUD Secretary. By statute, NCDC administered certain functions under Title VII, and all other functions under Title IV and Title VII were administratively delegated by the HUD Secretary to NCDC (36 FR 5304, March 19, 1971). Before the repeal of 42 U.S.C. 4532, the Secretary had redelegated NCDC's functions with respect to grants under Section 107 of the Housing and Community Development Act of 1974 (48 FR 11776, March 21, 1983), surplus land disposition under Section 414 of the Housing and Urban Development Act of 1969 (48 FR 24211, May 31, 1983) and supplemental grants under Section 718 of the Housing and Urban Development Act of 1970 (48 FR 24211, May 31, 1983). Upon repeal, the Secretary redelegated all remaining functions under the New Communities Program to the Assistant Secretary for Community Planning and Development (48 FR 55340, December 12, 1983 and 49 FR 3935, January 31, 1984).

Part 3700 contains the bylaws of NCDC, which are no longer relevant. Part 3710 explains the procedures for assistance under Title IV, and Part 3720 explains the procedures for assistance under Title VII. These parts explain the application, approval and monitoring procedures for New Community projects developed with the proceeds of HUD-guaranteed debt obligations. These procedures are obsolete, since no applications for guarantees were processed after 1975 and none of the 13 projects that received guarantees are still being developed as HUD-approved New Communities. The remaining functions under the New Communities program consist of debt collection and payment of guarantees which are beyond the scope of Parts 3710 and 3720. The rights and obligations of the Secretary with respect to the issuers and holders of guaranteed debt obligations are set forth in the debt obligations themselves and related trust indentures.

Note that until a recent published restructuring of HUD's rules, the contents of Chapter XXII, being removed in this rulemaking, were located in 24 CFR Chapter VII. (See 49 FR 6712, February 23, 1984.)

Notice and public procedure are considered impracticable and unnecessary because HUD's removal of Chapter XXII is an internal administrative housekeeping matter that will not affect any person's substantive rights. Accordingly, the Department has determined that notice and public procedure are unnecessary and this document is being published as a final rule.

HUD's removal of Chapter XXII is the kind of internal administrative procedure that 24 CFR 50.20(k) excludes from the requirements in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. Since no person's rights or obligations are affected by this rule, it would have no economic impact.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983, 48 FR 47429, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 3700

Organization and functions (Government agencies), New communities.

24 CFR Parts 3710 and 3720

Grant programs: housing and community development, Loan programs: housing and community development, New communities, Securities, Community development, Housing.

Accordingly, the Department amends Title 24 of the Code of Federal Regulations by removing Chapter XXII in its entirety.

Authority: Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: March 19, 1984.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 84-7975 Filed 3-23-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1 and 156

[CGD 79-160]

Special Requirements for Cargo Lightering Operations

AGENCY: Coast Guard, DOT.

ACTION: Final rule

SUMMARY: This final rule establishes regulations for the lightering of oil and hazardous material cargoes in bulk from one vessel to another in the marine environment surrounding the United States. The rule requires vessels engaged in lightering to hold a Certificate of Inspection, or for foreign vessels a Certificate of Compliance (or Tank Vessel Examination Letter); and to comply with MARPOL 73/78 (The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto). The rule also requires lightering vessels to give pre-arrival notices and report certain incidents; and delegates the authority to establish lightering zones to the Coast Guard District Commander.

DATE: These regulations are effective April 26, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Clayton W. Evans, Project Manager, Office of Marine Environment and Systems (G-WPE/3), Room 1611, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C., 20593, (202) 426-9578. Normal office hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 3715 of Pub. L. 98-89 (97 Stat 526), which was formerly Section 17 of The Port and Tanker Safety Act of 1978 (R.S. 4417a), requires the Secretary of the Department in which the Coast Guard is operating to prescribe regulations for the lightering of oil and hazardous materials which takes place in the navigable waters of the United States or in the marine environment if the cargo is destined for a port or place subject to the jurisdiction of the United States. Congress took this action in response to an increased number of tank vessel casualties, an increasing number of lightering operations, and increasing public awareness of these activities.

A notice of Proposed Rulemaking (NPRM) regarding lightering was published on May 31, 1979 (44 FR 31486). Comments on this proposal reflected a wide variety of opinion on the subject of lightering and ranged from suggestions for very minimal or no regulation of lightering operations to requests for a total prohibition on lightering within 200 miles of land and complex licensing and permit fee systems. Many of the equipment and performance requirements in the original proposal were found restrictive or inappropriate. Additionally, lightering superintendent and personnel experience and qualifications required in the NPRM were considered too selective.

The comments were carefully evaluated, and the Coast Guard also observed lightering operations in the Gulf of Mexico. As a result of the comments received and the Coast Guard's observations, it became apparent that the proposal should be simplified, and a Supplemental Notice of Proposed Rulemaking issued.

Offshore lightering has decreased approximately 60 percent from 1979 levels and this is additional incentive to simplify the regulations. Contributing to this decline are: The decreased use of foreign crude oil, increased costs of supertanker operation, and opening of the Louisiana Offshore Oil Port (LOOP) that now receives Very Large and Ultra Large Crude Carriers. Despite these decreases, there will be a continuing need to regulate offshore lightering. For example, in 1981 two substandard tankships were denied entry into port by Coast Guard Captains of the Port and subsequently lightered their cargoes beyond the contiguous zone. Accordingly, pollution prevention requirements must be placed upon vessels lightering offshore.

On September 9, 1983, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (48 FR 40741) and invited comments. It contained substantial changes to the notice of proposed rulemaking that was published on May 31, 1979. Fourteen written comments were received from oil industry, shipping and Government interests. There was one request for a public hearing. A public hearing will not be held, because the Coast Guard is satisfied that all significant issues raised by public comment have been addressed in the final rule.

The final rule requires vessels engaged in lightering to hold a Certificate of Compliance (or Tank Vessel Examination Letter); and to comply with MARPOL 73/78 (The International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978 relating thereto). The rule also requires lightering vessels to give pre-arrival notices and report certain incidents, and delegates the authority to establish lightering zones to the Coast Guard District Commander.

Drafting Information

The principal persons involved in drafting this final rule are: LT Clayton W. Evans, Project Manager, Office of Marine Environment and Systems, and LCDR William B. Short, Project Attorney, Office of the Chief Counsel.

Discussion of the Comments

One comment indicated casualty, spill and transfer statistics do not support the need for lightering regulations. Additionally, if established, uniform rules were not desirable. This comment also indicated specific requirements, left up to the Coast Guard District Commander for offshore lightering, and the Captain of the Port for lightering in U.S. waters, would be more appropriate. The Coast Guard agrees that the available information shows a good record of safety and pollution prevention in cargo lightering operations. The regulations, however, are required by 46 U.S.C. 3715, and supported by the need to prevent substandard tank vessels from lightering beyond the contiguous zone. The regulations have been constructed as simply as possible, without sacrificing essential pollution prevention requirements. The District Commander has been given a large measure of responsibility to ensure local needs are addressed, by establishing lightering zones when they prove necessary.

Two comments stated the Coast Guard has underestimated the number of vessel lighterings conducted annually The decline in offshore lightering activity from 1979 levels has been examined in consultation with industry. The Coast Guard recognizes, however, that the number of annual lightering operations fluctuates widely (now between 150-500 operations annually), depending on demand for petroleum and other factors.

One comment suggested the title of Part 156 be revised to indicate that it pertains to hazardous materials, as well as oil. This suggestion has been adopted in the final rule.

One comment indicated a need for a dedicated support vessel present during lightering operations, for safety and pollution response. The Coast Guard

understands that the majority of lightering operations do have a support vessel present. In the absence of such a vessel, other methods for tending fenders, for example, and staging pollution response equipment are being used.

Section 156.200 Applicability

Five comments pointed out that, as written, applicability included vessels in all navigable waters, (including harbors and inland), and that the actual intention of the regulations was to govern offshore lightering. This has been corrected in the final rule. The subpart will apply to vessels which engage in oil and hazardous materials lightering in the marine environment beyond the baseline from which the breadth of the territorial sea is measured. The subpart will not apply to lightering operations involving public vessels.

Section 156.205 Definitions

Ten comments pointed out the definition of hazardous material included oil, and therefore, lightering of oil required application to the Commandant of the Coast Guard 90 days prior to the planned start of transfer (§ 156.210(b)). The final rule has been clarified. Lightering of hazardous materials, other than oil, will be subject to the prior approval of the Commandant.

One comment indicated the term "vessel to be lightered" could be construed to include semi-submersible drilling rigs and offshore supply vessels. Drilling platforms of any nature have been exempted in the final rule. If an offshore supply vessel transfers only cargo intended for use as fuel or lubricant aboard the receiving vessel, it is also exempted from the lightering regulations.

One comment stated "vessel to be lightered" should read "ship to be lightered" to conform with the internationally accepted terminology. The Coast Guard recognizes that the definition of "ship" under MARPOL 73/78 does include barges. The lightering regulations however are not issued under MARPOL 73/78, and for clarity the term "vessel to be lightered" is retained in the final rule.

Section 156.210 General

Five comments indicated the 90 day advance notice to the Commandant required prior to each transfer of hazardous materials was not realistic. Advance notice of 90 days to the Commandant for each transfer was not intended, and the 90 day requirement has been deleted in the final rule. The Commandant will issue "blanket" prior approval for the lightering of hazardous materials. Vessels lightering hazardous materials then must give the pre-arrival notice required in § 156.215. Lightering of oil does not require prior Commandant approval. Persons now engaged in the lightering of hazardous materials, other than oil, should request Commandant approval as soon as possible after the effective date of the final rule. The information required in all requests to lighter hazardous materials, other than oil, is included in the final rule.

Three comments stated U.S. vessels which were not required to carry an International Oil Pollution Prevention (IOPP) Certificate must obtain one to engage in lightering. The language in this paragraph has been clarified. Only those U.S. oil tankers of 150 gross tons and above and other U.S. ships of 400 gross tons and above, that engage in voyages to ports or offshore terminals under the jurisdiction of other parties to MARPOL 73/78, are required to carry a valid IOPP Certificate.

One comment indicated "equivalent documentation" of compliance with MARPOL 73/78 was vague in its requirement. Parties not signatory to MARPOL 73/78 whose vessels engage in voyages to MARPOL 73/78 signatory countries must have on board a certificate very similar to the IOPP Certificate (§ 151.21(b)). "Equivalent documentation" is accepted terminology for this certificate.

Section 156.215 Pre-Arrival Notices

Eight comments said the 24 hour pre-arrival notice was unreasonable in an emergency or in the event of changing plans. This paragraph has been amended to allow for immediate notification in the event of emergency lightering, and additional notification to the Captain of the Port if the estimated time of arrival in the lightering location changes by more than six hours.

One comment stated the vessel to be lightered frequently does not know the name of the service vessel or the quantity of cargo required by the refinery. The Coast Guard is satisfied that the names of service vessels are available to the master, owner or agent of the vessel to be lightered. Only notice of "the approximate amount" of cargo on board is required, not the amount to be offloaded.

Section 165.220 Reporting of Incidents

Three comments indicated the service vessel often does not know of the activity on the vessel to be lightered, and placing the incident reporting responsibility upon the service vessel is not reasonable. The Coast Guard believes that events such as fire, explosion, collision, grounding or similar emergency, which pose a threat to the vessels involved, as well as the discharge of cargo during lightering, are of such magnitude that the service vessel would be aware of their occurrence. This requirement has been retained in the final rule.

One comment suggested that the word "cargo" in §156.220(b) be replaced with "oil or hazardous substance" in describing the discharges that must be reported. This clarification has been incorporated into the final rule.

Section 156.225 Designation of Lightering Zones

The use of lightering zones has been clarified in the final rule. When a lightering zone has been designated, lightering operations in a given geographic area may only be conducted within the designated lightering zone.

Section 156.230 Factors Considered in Designating Lightering Zones

Two comments said that under deteriorating weather conditions some lightering zones could become restrictive, and flexibility for such contingencies must be included when zones are established. The Coast Guard recognizes that provisions for unfavorable wind and sea conditions must be considered when lightering zones are established, and these will be addressed by the District Commander.

One comment requested that proximity of a lightering zone to National Parks, Wilderness Systems and other allied national lands be considered in establishing a lightering zone. In the final rule these lands have been included as factors to be considered.

Final Evaluation and Environmental Assessment

The Coast Guard has evaluated this final rule under Executive Order 12291 and the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" (DOT Order 2100.5 dated 22 May 1980), and has determined that it is neither a major nor a significant rulemaking. The cost of the regulations to the marine industry is anticipated to be so minimal that further evaluation is not necessary. As stated in the Supplemental Notice of Proposed Rulemaking, the only industry costs arising from this rulemaking are those for the required notices, estimated to be approximately five dollars per notice, or in total, less than $5,000 per year.

This rule will require vessels engaged in lightering to give a pre-arrival notice, and report cargo spills and serious casualties. The collection of information requirements contained in the rule have been approved by the Office of Management and Budget (OMB) under Section 3504(h) of the Paperwork Reduction Act, Pub. L. 96-511 and have been assigned OMB control number 2115-0539.

The Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354, September 19, 1980 (5 U.S.C. 603). The companies involved in lightering are generally large oil companies. The costs have been identified and are minimal.

This action will not produce a significant impact on the environment. It is designed to prevent degradation of the environment from spills during lightering activity.

The Final Evaluation and Environmental Assessment are available for inspection at the Marine Safety Council (G-CMC/44), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426-1477.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 156

Oil pollution.

PART 1—[AMENDED]

In consideration of the foregoing the Coast Guard amends Chapter I of Title 33, Code of Federal Regulations as follows:

1. By adding paragraph § 1.05-1(g)(2) to read as follows:

§ 1.05-1 General.

* * * * *

(g) * * *

(2) The designation of lightering zones.

* * * * *

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

2. By revising the authority citation for Part 156 to read as follows:

Authority: Sec. 2, Pub. L. 92-500, 86 Stat. 868, (33 U.S.C. 1321(j)(1)(C) and (D)), E.O. 11735, 3 CFR, 1971-1975 COMP., p. 793; 49 CFR 1.46(m). Subpart B is issued under Pub. L. 98-89, (46 U.S.C. 3715); 49 CFR 1.46(n)(4).

3. By revising the heading of Part 156 to read "Oil and Hazardous Material Transfer Operations".

4. By designating § 156.100 through § 156.170 as "Subpart A—Pollution Prevention Regulations for Oil Transfer Operations.

5. By revising § 156.100 to read as follows:

§ 156.100 Applicability.

This subpart applies to the transfer of oil on the navigable waters or contiguous zone of the U.S. to, from, or within any vessel and to or from a public vessel with a capacity of 250 or more barrels of that oil, except that this subpart does not apply to the transfer operation within or on a public vessel.

6. By revising § 156.105 to read as follows:

§ 156.105 Definitions.

The definitions in § 154.105 of this chapter apply to this subpart.

7. By adding a new "Subpart B" to read as follows:

Subpart B—Special Requirements for Lightering of Oil and Hazardous Material Cargoes

Sec.
156.200 Applicability.
156.205 Definitions.
156.210 General.
156.215 Pre-arrival notices.
156.220 Reporting of incidents.
156.225 Designation of lightering zones.
156.230 Factors considered in designating lightering zones.

Subpart B—Special Requirements for Lightering of Oil and Hazardous Material Cargoes

§ 156.200 Applicability.

This subpart applies to vessels which engage in oil and hazardous materials lightering operations in the marine environment beyond the baseline from which the territorial sea is measured, when the cargo lightered is destined for a port or place subject to the jurisdiction of the United States. This subpart does not apply to lightering operations involving public vessels. Within the contiguous zone and navigable waters of the United States these rules are in addition to the rules in Subpart A of this Chapter, as well as the rules in 33 CFR Part 155 and the applicable sections of 33 CFR Part 157.

§ 156.205 Definitions.

(a) In addition to the terms defined in this section, the definitions in § 154.105 of this chapter apply to this subpart.

(b) As used in this subpart:

"Hazardous material" means any liquid material or substance which is:

(1) Flammable or combustible; or

(2) Designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321);

(3) Designated a hazardous material under section 104 of the Hazardous Materials Transportation Act (49 U.S.C. 1803).

"Lightering" or "Lightering operation" means the transfer of a cargo of oil or a hazardous material in bulk from one vessel to another, including all phases of the operation from the beginning of the mooring operation to the departure of the service vessel from the vessel to be lightered, except when that cargo is intended only for use as fuel or lubricant aboard the receiving vessel.

"Marine environment" means the navigable waters of the United States, the waters of any area over which the United States asserts exclusive fishery management authority, and the waters over the Outer Continental Shelf of the United States.

"Oil" means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"Service vessel" means the vessel which receives a cargo of oil or a hazardous material from another vessel in a lightering operation.

"Vessel to be lightered" means the vessel which transports a cargo of oil or a hazardous material to a place within the marine environment for transfer of that cargo to another vessel for further transport to a port or place subject to the jurisdiction of the United States. The term "vessel to be lightered" does not include drilling rigs, or offshore supply vessels transferring cargo intended for use as fuel or lubricant aboard the receiving vessel.

§156.210 General.

(a) No vessel may transfer oil or hazardous materials in a port or place subject to the jurisdiction of the United States, if the cargo has been lightered from another vessel, unless:

(1) The regulations in this subpart have been complied with;

(2) Both the vessel to be lightered and service vessel have, on board, at the time of transfer, a valid Certificate of Inspection, Certificate of Compliance, or a Tank Vessel Examination Letter, as would have been required under 46 U.S.C. 3710 or 3711, had the transfer taken place in a port or place subject to the jurisdiction of the United States; and

(3) The vessel to be lightered has on board, at the time of transfer, an International Oil Pollution Prevention (IOPP) Certificate or equivalent

documentation of compliance with Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), as would be required by Part 151 of this chapter for vessels in navigable waters of the United States. The IOPP Certificate or documentation of compliance shall be that prescribed by § 151.19 and § 151.21 of this chapter, and shall be effective under the same timetable as specified in § 151.19.

(b) Lightering operations involving hazardous materials, other than oil, may be conducted only with the specific approval of the Commandant. A request to lighter hazardous materials, other than oil, must be submitted to Commandant (G–WPE) prior to the planned beginning of lightering operations. The request must include the information described in § 156.215(a) to the extent known, for the initial transfer, and the estimated frequency of subsequent lightering operations. After the entry into force of Annex II to MARPOL 73/78, vessels lightering hazardous materials shall carry an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk (1973), if required by Annex II to MARPOL 73/78, or equivalent documentation of compliance with the annex.

§156.215 Pre-arrival notices.

(a) The master, owner or agent of each vessel to be lightered must give at least 24 hours advance notice to the Captain of the Port nearest the lightering location or zone, prior to arrival in the lightering location or zone. This advance notice must include:

(1) The vessel's name, call sign or official number, and registry:

(2) The cargo type (if oil) or shipping name (if hazardous material) and approximate amount on board;

(3) The number of transfers expected;

(4) The lightering location or zone to be used;

(5) The estimated time of arrival in the lightering location or zone;

(6) The estimated duration of transfer operations; and

(7) The name and destination of service vessel(s).

(b) In the event the estimated time of arrival in the lightering location or zone changes by more than six hours, the Master, owner or agent of each vessel to be lightered must advise the Captain of the Port of this change as soon as possible.

(c) Where lightering is conducted as a result of collision, grounding, tank rupture or any similar emergency, immediate notice must be given to the Captain of the Port.

§ 156.220 Reporting of incidents.

(a) An immediate report must be made to the nearest Captain of the Port, by the service vessel, if fire, explosion, collision, grounding or any similar emergency, which poses a threat to the vessels involved, occurs during lightering.

(b) Any discharge of oil or hazardous material into the water shall be reported, by the service vessel, in accordance with the procedures specified in § 151.15 of this chapter.

§ 156.225 Designation of lightering zones.

The District Commander is delegated the authority to designate lightering zones and their operating requirements, where they are necessary for safety or environmental protection. When a lightering zone has been designated, lightering operations in a given geographic area may only be conducted within the designated lightering zone.

§ 156.230 Factors considered in designating lightering zones.

The following factors are considered in designating a lightering zone:

(a) The findings of the environmental analysis or, if prepared, the Environmental Impact Statement;

(b) The proximity of the zone to:

(1) Shipping lanes;

(2) Vessel traffic schemes or vessel separation systems;

(3) Anchorages;

(4) Fixed structures;

(5) Designated marine sanctuaries;

(6) Commerical and recreational fishing areas;

(7) Environmentally sensitive areas; and

(8) Designated units of the National Park System, National Wild and Scenic Rivers System, National Wilderness Preservation System, properties included on the National Register of Historic Places and National Registry of Natural Landmarks, and National Wildlife Refuge System.

(c) The traditional use of areas for lightering operations;

(d) The normal weather and sea conditions in the areas, and their effect on lightering operations, and the fate of possible cargo discharges;

(e) The depth of water and underwater obstructions that may adversely impact anchorages and clearance of vessels;

(f) Other relevant safety, environmental, or economic data.

I. S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 84–7730 Filed 3–23–84; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: March 21, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, N.W. Washington, D.C. 20420, (202–389–3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to

assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA and Federal Housing Administration loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819(f) and (g) of title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending sections 36.4212(a)(1), (2), and (3), and 36.4311(a), (b), and (c), and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: March 20, 1984.

By direction of the Administrator:

John W. Hagan, Jr.,

Deputy Chief Benefits Director.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective March 21, 1984, 15 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective March 21, 1984, 14½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective March 21, 1984, 14½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13 per centum per annum, effective March 21, 1984, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 13 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13¼ per centum per annum, effective March 21, 1984, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 13¼ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective March 21, 1984, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 14½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not

preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the Veterans Administration shall bear interest at the rate of 13 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 14½ percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 84-8032 Filed 3-23-84; 8:45 am]

BILLING CODE 8325-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC-002; A-4-FRL 2551-3]

Approval and Promulgation of Implementation Plans; North Carolina: 1982 Revision to Charlotte CO Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 3, 1983 (48 FR 5052), EPA proposed to approve North Carolina's revision to its carbon monoxide (CO) State Implementation Plan (SIP) for the Charlotte area since the revision meets the requirements of the Clean Air Act and EPA policy. There were no public comments in response to the proposal. At the time of the proposal, portions of the SIP dealing with the inspection/maintenance program and commitments to certain transportation control measures (TCM's) were lacking, although the draft versions had been found to be approvable. These remaining portions of the SIP still have not been officially submitted, but North Carolina has submitted a schedule for submitting them by May 1, 1984. EPA is approving this schedule and the other officially submitted portions of the SIP. EPA, however, is not yet finding that the SIP as a whole meets the requirements of the Act. EPA will approve the total plan only if North Carolina submits the missing elements.

DATE: This action is effective April 25, 1984.

ADDRESS: Copies of the revision are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, Atlanta, GA 30365.

Air Quality Section, Division of Environmental Management, NC Department of Natural Resources and Community Development, P.O. Box 26787, Raleigh, NC 27611.

FOR FURTHER INFORMATION CONTACT: Tom Lyttle, EPA, Region IV, Air Management Branch at 404/881-2864 (FTS: 257-2864).

SUPPLEMENTARY INFORMATION: The 1977 Amendments added a new Part D to Title I of the Clean Air Act. Under this Part, the States were required to revise their SIP's for all nonattainment areas and submit the revisions to EPA by January 1, 1979 (Section 171-178 of the Act; Section 129(c) (uncodified) of Pub. L. 95-95). The revised plans were to provide for attainment by December 31, 1982, unless the State demonstrated that they could not attain either the ozone or CO standard by that date despite the implementation of all reasonably available control measures (Sections 172(a)(1), 172(a)(2)), and requested an extension.

If EPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987. States receiving such extensions were to submit a second SIP revision that provides for attainment by the approved attainment date and complies with all of the Part D requirements (Section 172(c)). These second SIP revisions had to be submitted by July 1, 1982 (Section 129(c) (uncodified), Pub. L. 95-95).

North Carolina submitted its initial SIP revision for the Charlotte CO nonattainment area in June 1979. The State requested that EPA extend the attainment date for the CO standard in this area to December 31, 1987. EPA granted this request and approved the initial plan revision on March 19, 1981 (46 FR 17556). North Carolina submitted its 1982 CO SIP revision on June 17, 1982. A full discussion of the SIP revision and of EPA's evaluation was contained in the February 3, 1983, proposal notice and will not be repeated in detail here.

The 1982 revision utilized a localized modeling analysis to demonstrate attainment of the CO standard at various "hot spot" intersections in the Charlotte area. After adoption of I/M and various site-specific TCM's, attainment of the CO standard by 1987 was demonstrated for all "hot spot" intersections.

Most portions of the SIP revision meet all requirements for approval by EPA. However, two portions of the SIP dealing with I/M and with TCM commitments have not been submitted officially. EPA proposed approval of the I/M portion of the plan on February 3, based on the draft I/M plan submitted in September 1982. These regulations were adopted by the North Carolina Department of Motor Vehicles in September 1982, and the I/M program has been in operation since December 1, 1982. The SIP also lacked commitments from the North Carolina Department of Transportation (NCDOT) to fund certain intersection improvements necessary to meet the CO standard. We have since received letters from NCDOT and the North Carolina Department of Natural Resources and Community Development (NCDNRCD) committing to the construction of these intersection improvements and identifying funding for them.

The SIP revision originally included construction of two parallel roads to assist in meeting the CO standard. NCDNRCD performed an analysis of the impact of these two parallel facilities which indicates they are not necessary to expeditious attainment of the CO standard. As a result, North Carolina intends to delete these two road construction projects from the SIP. Because deletion of the parallel facilities will not affect expeditious attainment of the CO standard, EPA concurs with the deletion of these two projects. The analysis performed by NCDNRCD will be adopted as a part of the SIP.

In a letter dated December 12, 1983, NCDNRCD informed us that a public hearing on these two outstanding items will be held on January 31, 1984. After a 30-day comment period, these remaining items will be adopted by the Environmental Management Commission on April 12, and submitted promptly within 20 days thereafter.

A 45-day comment period was provided following the February 3, 1983, proposal to approve the SIP revision. No comments were received during that time.

Final Action

EPA has found that most portions of North Carolina's 1982 CO SIP revision meet all requirements of the Clean Air Act and EPA policy. The remaining portions, which EPA has reviewed in draft form, will meet all requirements if North Carolina submits them as final SIP revisions. Moreover, North Carolina has submitted a schedule calling for the submittal of the missing elements by May 1, 1984. EPA is approving this

schedule and the other, fully-submitted portions of the SIP. EPA, however, is not acting today on the revision as a whole. EPA will not approve the revision as a whole until North Carolina submits an acceptable final I/M program and acceptable final TCM commitments. If the official submittal is consistent with the draft submittal for these two items, EPA will approve the plan in full.

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Note.—Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relation, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

(Secs. 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: March 16, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart II—North Carolina

1. In § 52.1770 is amended by adding paragraph (c)(37) as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the date specified.

* * * * *

(37) 1982 revision of the Part D plan for the Mecklenburg County CO nonattainment area, submitted on June 17, 1982, by the North Carolina Department of Natural Resources and Community Development, which does not include an I/M program and commitments to transportation control measures.

[FR Doc. 84-8025 Filed 3-23-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Docket No. AW049VA; A-3-FRL 2552-1]

Approval and Promulgation of Implementation Plans; Approval of a Revision to the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Commonwealth of Virginia has submitted a Consent Agreement and Order for an alternative emissions reduction plan (also referred to as a "bubble") for the Reynolds Aluminum Company's Bellwood reclamation facility located in Chesterfield County, Virginia. The bubble will allow an increase of total suspended particulate (TSP) from some individual sources while calling for the decrease of others.

The overall effect of the changes in TSP emissions will result in an overall reduction of TSP emissions from the facility. EPA has reviewed this bubble and has concluded that it meets all of the requirements of the Clean Air Act, 40 CFR Part 51, and EPA's Emission Trading Policy of April 7, 1982. Therefore, EPA approves this bubble as a revision of the Virginia State Implementation Plan (SIP).

EFFECTIVE DATE: April 25, 1984.

ADDRESSES: Copies of the revision and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Management Branch, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Guaghan.

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, VA 23219, Attn: Mr. John M. Daniel, Jr.

Public Information Reference Unit, EPA Library, Room 2922, U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460.

The Office of the Federal Register, 1100 L. Street NW., Room 8401, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mr. Harold A. Frankford at the Region III address stated above or telephone 215/597-8392.

SUPPLEMENTARY INFORMATION:

Background/Description of Revision

On April 1, 1983, the Commonwealth of Virginia submitted to EPA an alternative emissions reduction plan (also referred to as a "bubble") for the Reynolds Aluminum Company's Bellwood reclamation facility located in Chesterfield County. A Consent Agreement and Order containing the terms of the bubble has been agreed to by the Reynolds Metals Company and the Virginia State Air Pollution Control Board.

Under the terms of the bubble, casthouse melting furnaces #2, #4, and #5 will be limited to 6.25 pounds per hour (lb/hr) for TSP emissions as opposed to the SIP-allowable emission of 8.85 lb/hr. At the same time, the bubble would allow TSP emissions from the Herreshoff process of 11.00 lb/hr. The Herreshoff process includes the Hereshoff furnace, charring kiln, "B" mill, carbon separater and screening operations. The allowable SIP emission limit of 17.25 lb/hr would equal the SIP-allowable TSP emissions limitations from the Bellwood reclamation plant. The Order specifies the emission limits for the Herreshoff furnace, the casthouse melting furnaces, the charring kiln and the screening operation. Pre-bubble actual emissions from the casthouse melting furnaces have been 3.30 lb/hr and 24.45 lb/hr from the Herreshoff process. Therefore, actual emissions under this bubble will decrease by at least 10.50 lb/hr (27.75–17.25).

The visible emissions from the casthouse melting furnaces/charring kiln baghouse complex stacks and from the screening operations stacks may not exceed 10% opacity and are subject to the requirements of Section 4.02, Virginia Air Pollution Control Regulations. The State Order also contains provisions for stack testing, emissions testing, recordkeeping and monthly procedures, operation of equipment by trained personnel, and maintenance of air pollution control equipment, including an inventory of bags and other spare parts.

In order to assure that this bubble would not violate National Ambient Air Quality Standards (NAAQS) for TSP, the State performed a modeling analysis using the single source CRSTER model. The results show that the bubble will not cause any significant annual or 24 hour impacts on ambient TSP levels in the Chesterfield County area. This county is presently designated as "better than national standards" for TSP. See 40 CFR 81.347, 40 FR 55258 (1981).

Certification of Public Hearing

The Commonwealth of Virginia has certified that a public hearing, required by 40 CFR 51.4, was held on January 4, 1983 in the Chesterfield Courthouse, Virginia.

Proposed Rulemaking Notice

On November 22, 1983, 48 FR 52754, EPA proposed to approve this bubble for the Reynolds Aluminum Company's Bellwood reclamation facility. Comments on the proposed variance were requested at that time. During the 30-day public comment period, no comments were received.

EPA Evaluation/Action

EPA considers this TSP bubble to be a Level I emissions trade under EPA's proposed Emissions Trading Policy Statement (47 FR 15076, April 7, 1982), as the following criteria are met: (1) All of the stacks are located within 250 meters of each other; (2) the stacks handling the increased emissions are higher (and are within GEP limits) than the stacks handling the sources with decreasing emissions; (3) there is no net allowable or actual emissions increase; and (4) no complex terrain is within the area of significant impact. When meeting the above conditions, Level I bubbles do not require an air qualify modeling analysis. EPA considers the CRSTER modeling performed by Virginia to be acceptable as a supplementary air quality analysis.

Under the proposed Emissions Trading Policy Statement, States may use SIP-allowable emissions as the trading baseline, if proper consideration of Prevention of Significant Deterioration (PSD) increment consumption is assured. This bubble relies on an allowable emissions trading baseline. As indicated above, the emission limitations under this bubble will bring all of the affected facilities into compliance by requiring a net reduction in actual emissions. Accordingly, total actual emissions will be lower than the total actual emissions of the last several years. Due to this, the bubble will not consume PSD increment.

Conclusion

In view of the above evaluation, the Administrator approves the above alternative emissions reduction plan for TSP at the Reynolds Aluminum Company's Bellwood reclamation facility as a revision to the Virginia State Implementation Plan. EPA is approving this revision as it meets the requirements of Section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51.

General

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

(42 U.S.C. 7401–7462)

Dated: March 16, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Virginia was approved by the Director of the Federal Register on July 1, 1982.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart VV—Virginia

Section 52.2420(c)(83) is added as follows:

§ 52.2420 [Amended]

* * * * *

(c) The Plan revision listed below was submitted on the date specified * * *

(83) Approval of an alternative emissions reduction plan for total suspended particulates at the Reynolds Aluminum Company's Bellwood reclamation facility located in Chesterfield County, Virginia submitted on April 1, 1983 by the Commonwealth of Virginia.

[FR Doc. 84–8021 Filed 3–23–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[A–10–FRL 2551–7]

Designation of Areas for Air Quality Planning Purposes; Revision to the State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice, EPA announces its approval of revisions to nonattainment boundaries for total suspended particulates (TSP) in Pocatello and Soda Springs, Idaho. The reduction in the size of the two nonattainment areas is based on documentation submitted by the Idaho Department of Health and Welfare (IDHW) pursuant to Section 107(d) of the Clean Air Act. Air quality data and emission reductions achieved through control strategy implementation support these boundary changes.

EFFECTIVE DATE: March 26, 1983.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch, M/S 532, Environmental Protection Agency (10A–83–4), 1200 Sixth Avenue, Seattle, Washington 98101–3188.

State of Idaho, Department of Health and Welfare, 450 W. State Street, Boise, Idaho 83720.

FOR FURTHER INFORMATION CONTACT: Michael J. Schultz, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442–1985 (FTS) 399–1985.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 1983 (48 FR 50361) EPA proposed approval of boundary changes for the Pocatello and Soda Springs TSP primary standard nonattainment areas. Two corrections to this proposal were published on November 29, 1983 (48 FR 53721). These two **Federal Registers** may be consulted for additional background information and a discussion of the two nonattainment areas.

II. Response to Comments

A 30-day public comment period was provided following publication of the proposed rulemaking. Comments were received from two companies in Idaho. One commentor suggested that the Soda Springs nonattainment boundary not be changed but the entire area be redesignated to "unclassifiable." Arguments for this position focused on uncertainty of air quality data. The commenter argued that: (1) Certain special study ambient data from 1979 and earlier was ignored, (2) ambient monitoring data was not collected to confirm that part of the nonattainment area now meets primary standards, (3) recent data from two industry operated monitors was ignored, (4) data showing continuing violations of primary standards is from a monitor that may be improperly sited and thus the data is questionable, and (5) EPA incorrectly identified emission increases for two sources.

EPA concurs with many of the statements made by the commentor, but not with the logic presented and conclusions reached. EPA's response to each of the above arguments are as follows: (1) EPA agrees that data was ignored from a certain special purpose monitor for the purposes of this redesignation analysis. This data was purposely omitted since monitoring at the site was discontinued in 1979 after it was determined that the monitor did not meet EPA siting criteria. (2) As pointed out, no recent data exists to document that primary TSP standards are being met where a special study monitor showed violations of the 24-hour standard in 1978–79. However, EPA has every reason to believe that at least primary standards are now being met at this site since the adjacent industrial facility has reduced its particulate emissions by 87% and the specific source of fugitive emissions which appeared to cause high readings was eliminated. (3) Again EPA agrees that certain industry generated data was ignored. However, neither of the two monitors in question meet quality assurance requirements. Further, data from one of the monitors showed a violation of the primary standard in 1982. (4) EPA disagrees with the commentor that the monitor in the Conda area showing recent violations of primary standards has siting problems. Past EPA investigations of this claim have shown that the monitor does meet EPA siting criteria. (5) EPA understands that reported increases in emissions from industrial operations in Conda were in fact due to improved inventory procedures and not due to actual increase in emissions. Nonetheless, ambient data shows the Conda area to be exceeding primary TSP standards.

The second commentor supported our proposed approval of smaller boundaries for the two primary standard nonattainment areas but contended that EPA should not have retained the larger boundaries for the secondary standard nonattainment areas. The commentor felt that ambient data supported a much smaller secondary standard nonattainment area for Pocatello and possibly for Soda Springs as well.

EPA proposed the subject boundary revisions because of a request and justification submitted by the IDHW. Air quality data provided with the IDHW request supported the proposed boundary revisions.

EPA policy requires that redesignations to attainment, that are not supported by dispersion modeling, be supported by a minimum of eight calender quarters of ambient data showing no violation of the applicable standards. Documentation submitted by IDHW did not include dispersion modeling and did show violations of secondary standards within the preceding eight quarters. In both Soda Springs and Pocatello, one or more monitors located outside the proposed nonattainment boundary but inside the original larger boundary had violations of secondary standards. Thus, the State had no basis for requesting and EPA had no basis for approving the smaller, revised boundaries as being appropriate for both primary and secondary TSP nonattainment.

III. Final Action

EPA approves the revised smaller boundaries for primary standard TSP nonattainment areas in Pocatello and Soda Springs—Conda, Idaho. The previous boundaries shall remain in effect for nonattainment of secondary standards. Detailed boundary descriptions and maps are contained in the docket.

Pursuant to the provisions of 5 U.S.C. 605(b) I certify that attainment status redesignations under Section 107(d) of the Clean Air Act will not have a significant economic impact on a substantial number of small entities (46 FR 8709 January 27, 1981). This rule constitutes an attainment status redesignation under Section 107(d) within terms of the January 27 certification. This action imposes no regulatory requirements but only changes area air quality designations. Any regulatory requirements which may become necessary as a result of this action will be dealt with in a separate action.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Secs. 107(d) and 301(a) of the Clean Air Act as amended (42 U.S.C. 7407(d) and 7601(a))

Dated: March 16, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40, Code of Federal Regulations should be amended as follows:

Subpart C—Section 107 Attainment Status Designations

In § 81.313, the following status designation table for total suspended particulates is revised to read as follows:

§ 81.313 Idaho

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Idaho TSP				
Silver Valley (Shoshone County)			×	
Pocatello—12 square mile industrial area east of Pocatello	×	×		
Pocatello—336 square mile area from Schiller at the east to Inkom at the west, including Pocatello.				
Soda Springs—4½ square mile area encompassing Conda and the surrounding industrial area.	×			
Soda Springs—86 square miles area encompassing Soda Springs, Conda, and the industrial area in between.		×		
Lewiston	×			×
Remainder of State				

[FR Doc. 84-8020 Filed 3-23-84: 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 145

[WH-FRL 2552-3]

Arkansas Oil and Gas Commission; Underground Injection Control; Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of state program.

SUMMARY: The State of Arkansas has submitted an application under Section 1425 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Class II oil and natural gas related injection wells. After careful review of the application and comments received from the public, the Agency has determined that the State's injection well program for Class II wells meets the requirements of Section 1425 of the Act. Therefore, this application covering Class II injections is approved.

EFFECTIVE DATE: March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Shirley Augurson, Groundwater Protection Section, Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270. PH: (214) 767-9903. Copies of EPA's summary response to public comment are available at the above address.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which in his judgment a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The SDWA was amended on December 5, 1980, to include Section 1425, which establishes an alternative method by which a State may obtain primary enforcement responsibility for those portions of its UIC program related to the recovery and production of oil and natural gas (Class II wells). Specifically, instead of meeting the Federal Regulations (40 CFR Parts 124, 144, and 145) and related Technical Criteria and Standards (40 CFR Part 146), a State may demonstrate that its program meets the more general statutory requirements of Section 1421(b)(1) (A) through (D) and represents an effective program to prevent endangerment of underground sources of drinking water.

The State of Arkansas was listed as needing a UIC program on September 25, 1978 (43 FR 43420). The State submitted an application under Section 1425 on June 17, 1983, for the approval of a UIC program governing Class II injection wells to be administered by the Arkansas Oil and Gas Commission (AOGC). EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the UIC program submitted by the AOGC on June 29, 1983 (47 FR 5262). A public hearing was held in El Dorado, Arkansas, on August 11, 1983. After careful review of this application and comments received from the public, I have determined that the Arkansas UIC program submitted by the AOGC for Class II injection wells meets the requirements of Section 1425 of the SDWA, and hereby approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of Arkansas. The requirements of this program include State statutes and regulations set forth at: Arkansas Statute 53; 101 *et al.*; 82; 1901 *et al.*, as amended by Act 523 (1981), and State of Arkansas General Rules and Regulations of the Oil and Gas Commission as amended March 22, 1983, as amended February 20, 1984.

Since this action simply adopts as the Federal program the State laws and regulations already in effect, EPA is publishing this approval effective immediately. This will enable Arkansas to begin immediately issuing UIC permits for Class II injection wells under the Federally approved program.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 145, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1425 of the Safe Drinking Water Act of the application by the Arkansas Oil and Gas Commission will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

(42 U.S.C. 300)

Dated: March 19, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-8018 Filed 3-23-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 145

[WH-FRL 2547-6]

Connecticut Department of Environmental Protection; Underground Injection Control; Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of state program.

SUMMARY: The State of Connecticut has submitted an application under Section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for all classes of injection wells meets the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: April 25, 1984.

FOR FURTHER INFORMATION CONTACT: Jerome J. Healey, Water Supply Branch, Environmental Protection Agency.

Region I, JFK Federal Building, Boston, Massachusetts 02203. PH: (617) 723–6486.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Connecticut was listed as needing a UIC program on March 19, 1980 (45 FR 17632). The State submitted an application under Section 1422 on September 29, 1983, for a UIC program to be administered by the Connecticut Department of Environmental Protection (CDEP). On December 20, 1983, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the CDEP (48 FR 56244). Neither requests for public hearing nor requests to offer testimony at such hearings were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest. After careful review of the application, I have determined that the Connecticut UIC program for Classes I, II, III, IV, and V injection wells submitted by the CDEP meets the requirements established by the Federal regulations pursuant to Section 1422 of the SDWA and, hereby, approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of Connecticut. The requirements of this program include State statutes and regulations set forth at: Conn. Gen. Stat. sections 1–19, 22a–6, 22a–7, 22a–16, 22a–19, 22a–20, 22a–137, 22a–416, 22a–423, 22a–430, 22a–431, 22a–435, 22a–438, 52–107, and Conn. Agencies Regs: 22a–430–8.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 145, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water Supply.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Connecticut Department of Environmental Protection will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

(42 U.S.C. 300)

Dated: March 19, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–8019 Filed 3–23–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 260, 262 and 271

[SWH–FRL 2553–1]

Hazardous Waste Management System: General; Standards for Generators of Hazardous Waste; State Hazardous Waste Program Requirements; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule on the Uniform Hazardous Waste Manifest regulations that appear at pages 10490–10507 in the **Federal Register** of Tuesday, March 20, 1984, (45 FR 10490). This action is necessary to correct technical errors.

FOR FURTHER INFORMATION CONTACT: Carolyn K. Barley, (202–382–5235).

The following corrections are made in FR Document 84–7166 appearing on 10490 in the issue of March 20, 1984:

1. On page 10493, column one, first paragraph, first sentence under E. Implementation Date "after September 20, 1984" is corrected to read "on September 20, 1984."

2. On page 10493, column three, first full paragraph, second sentence "15,000 or two percent or more of the shipments are interstate." is corrected to read "30,000 or two percent more of the shipments are interstate."

3. On page 10495, column three, second full paragraph, third sentence "that only one uniform manifest is required" is corrected to read "that only one manifest is required".

4. On page 10498, column two, first full paragraph, third sentence "(e.g., "* * * and the laws/regulations of the State regulations of the State of (name of State)" is corrected to read "(e.g., "* * * and the laws/regulations of the State of (name of State)".

5. On page 10499, second column, item 8 at the bottom of the page "the federal identification (in item 16); " is corrected to read "the federal certification (in item 16); ".

* * * * *

Lee M. Thomas,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 84–8083 Filed 3–23–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 260, 262, 271

[SWH–FRL 2314–4]

Hazardous Waste Management System: General; Standards for Generators of Hazardous Waste; State Hazardous Waste Program Requirements

Correction

In FR Doc. 84–7166 beginning on page 10490 in the issue of Tuesday, March 20, 1984, make the following corrections:

1. On page 10490, in the first column, under **FOR FURTHER INFORMATION CONTACT,** in the second line, "Wastes" should read "Waste".

2. On page 10491, in the first column, fifth line from the bottom, "the preamble" should read "this preamble".

3. On page 10507, in the first column, in the first line, § 271.10(f)(1), "forms" should read "form".

BILLING CODE 1505–01–M

40 CFR Part 704

[OPTS-82007A; TSH-FRL 2446-2]

Chlorinated Terphenyl; Submission of Notice of Manufacture or Importation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule requires that the Environmental Protection Agency (EPA) be notified of any manufacture or importation of chlorinated terphenyl, a chemical recommended for testing by the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act. Manufacture or importation by a small business (as defined in 40 CFR 704.3(s)) is exempt from this notice requirement. The purpose of the notice requirement is to alert the Agency if the chemical will be manufactured in, or imported into the United States, and to ensure that EPA has the opportunity to investigate the health and environmental impacts of such activity.

EFFECTIVE DATE: May 25, 1984.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

The Agency is promulgating a rule under section 8(a) of the Toxic Substances Control Act (TSCA) requiring notice of any current manufacture or import of chlorinated terphenyl and notice of any proposed manufacture or import. TSCA section 8(a) authorizes the Administrator to promulgate rules under which each person (other than a small manufacturer or processor) who manufactures or processes or who proposes to manufacture or process a chemical substance or mixture shall submit such reports as the Administrator may reasonably require.

Under this rule, which was proposed in the **Federal Register** of April 29, 1983 (48 FR 19419), the reporting requirement consists of a notice to EPA stating that a person is manufacturing or proposing to manufacture chlorinated terphenyl, or is importing or proposing to import chlorinated terphenyl as a chemical substance in bulk or as part of a mixture. The notice also would include information on uses, production quantities, and chemical composition. If EPA is notified of chlorinated terphenyl manufacture or import, the Agency will reconsider the need for action to require testing under section 4 of TSCA or for control of the reported activity.

II. Reasons for This Rule

A. ITC Concerns

The Interagency Testing Committee (ITC) designated the category of polychlorinated terphenyls for testing consideration in April 1978 (43 FR 16684). Chlorinated terphenyl is a member of this category and is the only member of the category on the TSCA Chemical Substance Inventory. Other members of the category are subject to Premanufacture Notification under section 5 of TSCA.

The ITC recommended that polychlorinated terphenyls be tested for carcinogenicity, mutagenicity, teratogenicity, other chronic health effects, and for environmental effects. The recommendations were based on (1) a chemical structure similar to PCBs, (2) increasing quantities imported after domestic production stopped in 1972, (3) wide environmental dispersion from polychlorinated terphenyls' use in waxes for investment casting, (4) chlorinated terphenyl residues found in human blood, fat and milk, and in samples of water and sludge, (5) an indication from available data of a potential for bioaccumulation, and (6) no data on suspected carcinogenic, mutagenic, and teratogenic effects, with incomplete characterization of chronic health and environmental effects.

Chlorinated terphenyl is produced commercially by chlorination of commercial terphenyl, and is a mixture of ortho-, meta-, and para-terphenyl. As a commercial product, chlorinated terphenyl is a mixture of chloroterphenyls having varying numbers and arrangements of chlorine atoms. Commercial-grade chlorinated terphenyl is a light yellow crystalline solid. Chlorinated terphenyl is identified by Chemical Abstract Service registry number 61788-33-8.

Chlorinated terphenyl has been used during this century for various commercial purposes. Before 1973, chlorinated terphenyl was used primarily as a plasticizer in adhesives, inks, sealants, caulking compounds, and waxes. Peak domestic production occurred in 1971 when about 20 million pounds were produced. However, Monsanto, the sole domestic producer, discontinued chlorinated terphenyl production in 1972 because of concern over the environmental effects of the chemically similar polychlorinated biphenyls (PCBs). After that time, chlorinated terphenyl was imported and used mainly in waxes for investment casting. According to information supplied by the United States Customs Service under Customs Information Exchange 36/72, chlorinated terphenyl was last imported into the United States in November 1979. A 1976 European Economic Community (EEC) law banned its use except under certain conditions such as closed-system electrical equipment. Currently, chlorinated terphenyl is not known to be manufactured anywhere.

Chlorinated terphenyl is very similar in chemical structure to PCBs and could have toxicological properties similar to PCBs. PCBs have a very stable chemical structure, so they persist in the environment. Chlorinated terphenyl, likewise, is known to persist in the environment, and potentially has similar adverse effects as PCBs. However, inadequate data are available on the health and ecological effects of chlorinated terphenyl. PCBs and chlorinated terphenyl were widely used and dispersed into the environment before their potential and real adverse effects were recognized; they are now ubiquitous in the environment, resulting in wide range human exposure.

In addition, the commercial chlorinated terphenyl previously manufactured and imported was normally contaminated by PCBs (.05-5 percent). Thus, the manufacture of chlorinated terphenyl is indirectly controlled by section 6(e) of TSCA and the regulations thereunder. That section severely restricts the manufacture, processing, distribution in commerce, or use of PCBs. The history and specific requirements of the rules implementing section 6(e) are explained in the following editions of the **Federal Register**: 44 FR 31514 (May 31, 1979), 47 FR 17426 (April 22, 1982), 47 FR 24976 (June 8, 1982), 47 FR 37342 (August 25, 1982), and 47 FR 46980 (October 21, 1982) (requirements are listed in 40 CFR Part 761).

B. EPA Considerations and Response to Comments

Because domestic production and importation of chlorinated terphenyl apparently has ceased, EPA has concluded that the section 4 testing recommended by the ITC is not warranted at present (see EPA's response to the ITC 46 FR 54482).

In EPA's response to the ITC, several alternatives to testing were discussed and comments were requested on the alternatives. Five alternatives were outlined: (1) Develop a significant new

use rule (SNUR) under section 5(a); (2) list chlorinated terphenyl under section 5(b)(4) in combination with a SNUR (triggering notification requirements under section 5); (3) develop a section 8(a) reporting rule; (4) list chlorinated terphenyl under section 5(b)(4) in combination with a section 8(a) rule and thus require small businesses to report also; and (5) take no further action on chlorinated terphenyl since it appears to be adequately controlled by the PCB regulations. See 48 FR 19420 for a discussion of these alternatives and why EPA chose to propose a section 8(a) rule to track chlorinated terphenyl.

In response to EPA's proposal to subject chlorinated terphenyl to a section 8(a) reporting rule, comments were received from the Chemical Manufacturers Association (CMA) and the Natural Resources Defense Council, Inc. (NRDC).

CMA supports EPA's use of section 8(a) to track chlorinated terphenyl and all other chemicals designated by the ITC for testing consideration but not now produced or imported in measurable quantities. While EPA believes that a section 8(a) rule is appropriate for tracking chlorinated terphenyl because of the reasons stated in the proposal, other chemicals recommended by the ITC that are found to be not produced or imported may be more appropriately subject to a SNUR or section 5(b)(4) listing (with an accompanying SNUR and section 8(a) rule). Alternatively, EPA may decide that some of these chemicals require no follow-up activity. A chemical's production and use history, other regulations (both foreign and domestic), existing health and environmental effects data, and its likelihood of manufacture in the future (especially by small business), are all factors that must be considered in addition to the lack of current production. Thus, the facts surrounding each chemical must be examined before proposing a particular course of action; a section 8(a) rule will not always be the outcome.

Finally, CMA seems to suggest that EPA must develop a full scientific record before subjecting a chemical to a SNUR or section 5(b)(4) listing and that section 8(a) can monitor future commercial activities without making risk determinations that unjustifiably restrict future manufacture or use.

EPA will not forgo the use of a SNUR or section 5(b)(4) listing in the absence of a full scientific record. If EPA has sufficient data to show that a chemical may pose an unreasonable risk for example, the Agency would be justified in pursuing section 5(b)(4) listing. Very few chemicals have full scientific records. Waiting until records are fully developed would needlessly delay appropriate regulatory action.

While in partial agreement with EPA's decision to track chlorinated terphenyl with a section 8(a) rule, NRDC believes that chlorinated terphenyl should also be subject to section 5(b)(4) listing and an accompanying SNUR. EPA rejected this alternative and its reasoning is set forth at 48 FR 19420 and 19421. However, some additional discussion is appropriate.

For a chemical that is no longer in commercial use, NRDC is recommending three rulemakings: A section 8(a) rule, a section 5(b)(4) listing, and a SNUR. NRDC's scheme would appear to reserve section 8(a) reporting for chlorinated terphenyl's previous uses, in waxes for investment casting, tooling compounds, etc., and the SNUR for unknown new uses, which conceivably could be any use not identified in EPA's section 8(a) proposal. Since chlorinated terphenyl would be on the section 5(b)(4) list under NRDC's scheme, any person wanting to manufacture chlorinated terphenyl for any significant new use would be required to submit data that show that "the intended significant new use of the chemical substance will not present an unreasonable risk of injury to health or the environment."

The NRDC scheme has merit only if it is likely that chlorinated terphenyl will be manufactured for new uses; as stated in the proposal, EPA believes that this is unlikely. If chlorinated terphenyl were manufactured again for known uses, e.g., investment casting, then, except for the exemption of small businesses, EPA's and NRDC's schemes would yield the same data because chlorinated terphenyl's inclusion on the section 5(b)(4) list would have no impact since there is no data-generating link between section 5(b)(4) and section 8(a) as there is with a SNUR. Placing a chemical on the section 5(b)(4) list does, however, allow EPA to remove the small manufacturer exemption from section 8(a) rules. While this does not require a different level of reporting, as does the section 5(b)(4) and SNUR link, it does expand the respondent population. However, EPA believes that small businesses are unlikely to manufacture chlorinated terphenyl because of the expense of preparing chlorinated terphenyl free of PCB contamination and the need to manufacture large quantities to capture lost markets (see 48 FR 19420).

Thus, in the absence of the likelihood of new uses, NRDC's scheme would in effect mirror EPA's approach. However, NRDC's scheme would be resource intensive and require EPA to develop three rules instead of one.

NRDC's comments close with the statement that "it [EPA] does not seem to recognize that if use and exposure levels had been high enough at this time, all requisite section 4(a) findings could have been made and a test rule issued."

It was just this recognition that led us to propose that chlorinated terphenyl be tracked with a section 8(a) rule. In the event production is resumed for any use, EPA will consider a section 4 test rule or other regulatory action.

III. Requirements

This rule requires notice of any current or proposed manufacture or import of chlorinated terphenyl. Chlorinated terphenyl means a chemical substance, CAS No. 61788-33-6, comprised of various proportions of chlorinated ortho-, meta-, and para-terphenyl. Chlorinated terphenyl is produced by the chlorination of terphenyl. Consequently, the reaction product of the chlorination process (which under TSCA is a chemical substance) is composed of the mixed chlorinated isomers of terphenyl.

Persons who propose to manufacture or import chlorinated terphenyl must notify EPA within 15 days of the date they make this decision. Persons who are manufacturing or importing chlorinated terphenyl on the effective date of the rule must submit a notice within 30 days of the effective date. The notice must include company name and address, principal technical contact, and, to the extent that it is known to or reasonably ascertainable by the company, a description of the use or intended use of the chlorinated terphenyl; chemical composition information (including PCB impurity level); estimated production volume; and, as appropriate, the proposed date for initiating manufacture or import. This rule does not require testing to determine chemical composition information. However, for subsequent rules, similar information may be required to be submitted which EPA believes is reasonably ascertainable even if it involves testing to determine the information.

After receiving notice of current or proposed manufacture or import, EPA will carry out a follow-up investigation to determine whether the activity may present a risk to health or the environment. If a significant risk may result, EPA will consider additional regulatory action to investigate or control the proposed chlorinated terphenyl activity.

The codified material following this preamble will appear in Part 704 of Title 40 of the Code of Federal Regulations. Part 704 was recodified in the **Federal Register** of May 25, 1983 (48 FR 23420). The scope and compliance, general definitions, exemptions, and confidentiality claim sections of the proposal are now part of Subpart A of recodified 40 CFR Part 704. Therefore, this material will not be published again today. Persons should familiarize themselves with Part 704 so that they are aware of all the provisions of this rule.

IV. Exempt Persons

Small manufacturers and importers are not subject to this rule. The small business exemption standards are set out in the rule and have been designed to reduce the paperwork burden on small chemical manufacturers, while ensuring that EPA will receive a sufficient amount of chemical use, production, and exposure information to support an assessment of chemical risks. EPA believes that these standards serve the purpose of this rule. The rule also exempts persons who manufacture or import chlorinated terphenyl solely for research and development, as part of an article, or as a byproduct or impurity.

EPA is exempting importers of articles from this rule for several reasons. Past imports of chlorinated terphenyl were only in bulk form, and importing of the chemical in articles is unlikely. In addition, EEC countries forbid production of chlorinated terphenyl for use in articles, and known imports of chlorinated terphenyl originated in an EEC country. Moreover, EPA believes that it would be a significant and needless burden on importers of articles to try to ascertain if they contain chlorinated terphenyl. The exemption also is consistent with previous Agency reporting provisions for the Inventory (42 FR 64572 *et seq.*) and the Premanufacture Notification Regulations (48 FR 21722 *et seq.*).

EPA is exempting manufacture and import of chlorinated terphenyl as a byproduct because it was the intentional use of chlorinated terphenyl in products which caused the wide environmental dispersion of chlorinated terphenyl. EPA is not aware of any chemical manufacture that would lead to the production of chlorinated terphenyl as a byproduct. Chlorinated terphenyl may have been manufactured as a byproduct during the production of PCBs, but since the manufacture of PCBs has been banned, any manufacture of chlorinated terphenyl as a byproduct from this source has ceased.

This rule does require reporting from importers of mixtures containing chlorinated terphenyl. Since TSCA defines manufacture as importation, EPA considers an importer of a mixture as the manufacturer of each chemical substance contained in the mixture. Therefore a person intending to import a mixture containing chlorinated terphenyl is required by this rule to submit a notice to EPA. An importer of a mixture may be exempt from reporting if the small business exclusion is applicable. Thus, if a person with annual sales of less than $40 million but more than $4 million is importing a mixture containing chemicals A and B, the importer is a small manufacturer and need not submit notice to EPA. However, if chemical A is subject to a section 8(a) rule, and more than 45,400 kilograms of chemical A were imported, (not 45,400 kilograms of mixture AB), then the small business exclusion would no longer apply and the importer must submit notice.

V. Confidentiality

Any person submitting a notice may claim any part or all of the notice as confidential. Information which is claimed confidential will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2.

VI. Economic Impact

EPA estimates that compliance costs will range from $225–$716 for each notice. The cost estimate for Data Acquisition below assumes that the data are known to or reasonably ascertainable by the person submitting the notice. It does not include the laboratory cost of determining isomeric ratios for example. Costs include:

Data Acquisition	$107–$430
Notice Preparation (Typing)	17–51
Managerial Review	101–235
Total	225–716

Because available information shows that there was only one manufacturer and one importer of chlorinated terphenyl, EPA expects to receive few notices under this rule.

Because the cost of this rule is expected to be low and because it will effectively alert the Agency to commercial activity involving a potentially hazardous chemical, thereby allowing EPA to take appropriate action to require testing or control risks, the Agency believes that this action will benefit the public.

Upon receipt of a notice under this rule, EPA will decide what, if any, further information gathering, testing, or control actions are needed. Estimates of the costs of some possible actions are included in the economic support document that is contained in the public record for this rule. The actual costs of such actions will be assessed by EPA in the development of the appropriate follow-up rulemaking.

VII. Public Record

EPA has established a public record (docket number OPTS–82007) for this rulemaking document which, along with a complete index, is available for inspection in Rm. E–107, 401 M St., SW., Washington, D.C., 20460, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. Following is a list of the documents which constitute the record for this rulemaking. Public comments on the proposed rule are not individually listed, but will be available upon request in the OPTS Reading Room. EPA requests that it be notified of any additions to or deletions from this record within the next 30 days.

(1) Polychlorinated Terphenyls; Response to the Interagency Testing Committee (46 FR 54482) and all commments received thereon.

(2) 2nd Report of the Interagency Testing Committee (ITC) (43 FR 16684).

(3) Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions Rule (44 FR 31514).

(4) Polychlorinated Biphenyls (PCBs); Use in Electrical Equipment; Proposed Rules (47 FR 17426).

(5) Chlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution, and Use in Closed and Controlled Waste Manufacturing Processes; Proposed Rule (47 FR 24976).

(6) Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment (47 FR 37342).

(7) Chlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes (47 FR 46980).

(8) Economic Analysis of Section 8(a) Rule on Chlorinated Terphenyl.

(9) Economic Analysis of Final Section 8(a) Rule on Chlorinated Terphenyl.

VIII. Regulatory Assessment Requirements

A. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of

Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Once the requirements have been approved and assigned an OMB control number a technical amendment to this rule will be published in the **Federal Register**.

B. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. Only two companies manufactured or imported chlorinated terphenyl since 1971. Currently, no company is known to manufacture or import chlorinated terphenyl. This rule also contains a small manufacturer exemption (see definitions "Small Manufacturer"). Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 95–354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy. It is expected to have an annual cost of less than $2,000. It does not have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

IX. List of Subjects in 40 CFR Part 704

Environmental protection, Hazardous materials, Imports, Recordkeeping and reporting requirements.

Dated: March 16, 1984.

William D. Ruckelshaus,

Administrator.

PART 704—[AMENDED]

Therefore, 40 CFR Part 704 is amended as follows:

1. By redesignating the existing Subpart E as Subpart D.

2. By adding a new § 704.85 to read as follows:

§ 704.85 Chlorinated terphenyl.

(a) *Definitions.* (1) "Chlorinated terphenyl" means a chemical substance, CAS No. 61788–33–6, comprised of chlorinated ortho-, meta-, and paraterphenyl.

(2) "Extent of chlorination" means the percent by weight of chlorine for each isomer (ortho, meta, and para).

(3) "Isomeric ratio" means the ratios of ortho-, meta-, and parachlorinated terphenyls.

(4) "Polychlorinated biphenyl" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees.

(5) "Small manufacturer" means a manufacturer (importers are defined as manufacturers under TSCA) who meets either of the following standards under this rule:

(i) First standard. A manufacturer of an existing chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual production volume of a particular chemical substance at any individual site owned or controlled by the manufacturer is greater than 45,400 kilograms (100,000 pounds), the manufacturer shall not qualify as small for purposes of reporting on the production of that chemical substance at the site, unless the manufacturer qualified as small under paragraph (a)(5)(ii) of this section.

(ii) Second standard. A manufacturer of an existing chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of chemicals produced by that manufacturer.

(b) *Persons who must report.* Except for small manufacturers and as provided in § 704.5, the following persons are subject to the rule:

(1) Persons who manufacture or propose to manufacture chlorinated terphenyl.

(2) Persons who import (importers) or propose to import chlorinated terphenyl as a chemical substance in bulk or as part of a mixture.

(c) *What information to report.* Persons subject to this rule as described in paragraph (b) of this section must notify EPA of current or proposed manufacture or import of chlorinated terphenyl. The notice must include, to the extent that it is known to the person making the report or is reasonably ascertainable, the following information:

(1) Company name and address.

(2) Name, address, and telephone number of principal technical contact.

(3) A description of the use(s) or intended use(s) for chlorinated terphenyl.

(4) A description of the isomeric ratio and extent of chlorination of the chlorinated terphenyl and the impurity level of polychlorinated biphenyls.

(5) The quantity (by weight) manufactured or imported within 12 months prior to the effective date of the rule, if any, and the estimated quantity (by weight) to be manufactured or imported for the first three years following the date of the report or the date of the intended start of production, whichever occurs later.

(6) The proposed date for the initiation of manufacturing or importation of chlorinated terphenyl, if appropriate.

(d) *When to report.* Persons who are manufacturing or importing chlorinated terphenyl on the effective date of the rule must notify EPA within 30 days of the effective date of the rule. Persons who propose to manufacture or import chlorinated terphenyl must notify EPA within 15 days after making the management decision described in § 704.3(p).

(e) *Where to send reports.* Notices must be submitted by certified mail to the United States, Environmental Protection Agency, Document Processing Center, P.O. Box 2070, Rockville, Md. 20852. Attn: Chlorinated terphenyl notification.

[FR Doc. 84–8023 Filed 3–23–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket HM–145D; Amdt. Nos. 171–78, 172–90]

Hazardous Waste Manifest; Shipping Papers

Correction

In FR Doc. 84–7167 beginning on page 10507 in the issue of Tuesday, March 20, 1984, make the following correction:

On page 10510, in the third column, in the third line in § 172.205(a), "Forms" should read "Form".

BILLING CODE 1505–01–M

Proposed Rules

Federal Register
Vol. 49, No. 59
Monday, March 26, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 991

Hops of Domestic Production; Proposed Marketing Policy for the 1984–85 Marketing Year; Proposed Salable Quantity and Allotment Percentage; Extension of Time for Transferring Allotment Bases; and Waiver of Bona Fide Effort Requirement

AGENCY: Agricultural Marketing Service, USDA

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of hops that may be freely marketed from the 1984 crop, extend the date for producers to transfer allotment bases, and waive the bona fide effort requirement for the 1984–85 marketing year. These marketing policy actions are under the marketing order for domestic hops, and should promote orderly marketing of hops for 1984–1985 marketing year.

DATE: Written comments should be submitted by April 5, 1984.

ADDRESS: Comments should be sent to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material should be submitted, and they shall be made available for public inspection at the office of the Hearing Clerk, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank Mr. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposal is being published with less than a 60-day comment period because handlers and growers are making preparations for handling and growing 1984-crop hops. To enable handlers and growers to make these preparations in a timely fashion, it is critical that they know as soon as possible what salable quantity and allotment percentage will be effective for the 1984–85 marketing year. Also, growers should be given additional time after April 1 to transfer allotment bases so they can plan their operations accordingly.

The proposed establishment of a salable quantity and allotment percentage, the extension of time for producers to transfer allotment base, and suspension of the bona fide effort requirement, are in accordance with the provisions of Marketing Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These proposed actions were recommended by the Hop Administrative Committee which works with the Department in administering the marketing order program.

Pursuant to §§ 991.36 and 991.37 of the order, the salable quantity and allotment percentage for the 1984–85 marketing year, which begins August 1, 1984, and based upon a recommendation of the Committee, and the following estimates:

(1) Total domestic consumption of 39,500,000 pounds of hops;

(2) Minus imports of 12,000,000 pounds of hops, to result in domestic consumption of U.S. hops of 27,500,000 pounds;

(3) Plus total exports of 34,000,000 pounds of hops, to equal 61,500,000 pounds total usage of U.S. hops;

(4) Plus 2,000,000 pounds to adjust for weight loss of hops processed into pellets and extract;

(5) Minus inventory adjustment of 5,282,000 pounds;

(6) Plus an adjustment of 11,119,000 pounds to provide for adequate supplies should some producer allotments not be fully produced; and

(7) This results in a salable quantity for the 1984–85 marketing year of 69,337,000 pounds.

The salable percentage of 115 percent is computed by substracting from this salable quantity a total of 1,177,000 pounds for additional allotment bases for hops of the Fuggle variety granted pursuant to § 991.38(b) and § 991.138(c) and dividing the remainder by 59,269,877 pounds, the total of all other allotment bases.

Section 991.146(c) of Subpart—Administrative Rules and Regulations (7 CFR 991.130–991.938) currently provides that a producer can transfer all or part of his allotment base to another producer only if the transfer is effective prior to the issuance of annual allotment to the transferor or prior to April 1, whichever is earlier. The delay in the establishment of the salable quantity and allotment percentage for the 1984–85 marketing year makes it necessary to extend the April 1 cut-off date to May 1 for the 1984 calendar year. This would enable growers to transfer base under the order and complete their growing plans for the 1984–85 marketing year. This proposal is pursuant to § 991.46 of the order.

Pursuant to § 991.38(a)(5) of the order, the right of each producer to retain all or part of his allotment base depends on his continuing to make a bona fide effort to produce his annual allotment. If a producer fails to make a bona fide effort to produce his annual allotment, his allotment base must be reduced by an amount equivalent to the unproduced proportions. Subparagraph (5) also authorizes the Committee, with approval of the Secretary, to waive the bona fide effort requirement.

The Committee recommended waiving the bona fide effort requirement for the 1984–85 marketing year because it concluded that its implementation would result in additional and unneeded production. Currently, the hop market is inactive and an oversupply of hops exists, and enforcement of the bona fide effort requirement for the 1984–85 marketing year could further depress the market.

Notice was published in the **Federal Register** (49 FR 1380) January 11, 1984, inviting interested persons to submit proposals by March 12, 1984, to amend the order. That time has since been

extended to April 10, 1984 (49 FR 9740). The proposals contained in this notice are independent of that action and should not be considered to establish any precedent for actions taken in subsequent marketing years. Any findings and conclusions on proposals to amend the hop marketing order will be based on the record compiled at public hearings in the formal rulemaking proceeding.

List of Subjects in 7 CFR Part 991

Marketing agreements and orders, and Hops.

PART 991—[AMENDED]

Therefore, the proposal is to amend Subpart—Administrative Rules and Regulations (7 CFR 991.130–991.938) by amending §§ 991.146(c) and 991.938 and adding a new § 991.222 as follows: (§§ 991.222 and 991.938 will not be published in the Code of Federal Regulations).

1. Section 991.146(c) is revised to read as follows:

§ 991.146 Transfer of allotment bases.

* * * * *

(c) Whenever a producer transfers all or part of his allotment base to another producer, annual allotment referable to such transferred allotment base, or part thereof, shall be issued to the transferee only if the transfer is effective prior to the issuance of an annual allotment to the transferor or prior to April 1, whichever is the earlier: *Provided,* That for the 1984 calendar year that date shall be May 1 instead of April 1.

2. A new § 991.222 is added to read as follows:

§ 991.222 Allotment percentage and salable quantity for hops during the marketing year beginning August 1, 1984.

The allotment percentage during the marketing year beginning August 1, 1984, shall be 115 percent, and the salable quantity shall be 69,337,000 pounds.

3. Section 991.938 is revised to read as follows:

§ 991.938 Waiver of bona fide effort requirement for the 1984–85 marketing year.

The bona fide effort requirement provided for in § 991.38(a)(5) shall be waived for the 1984–85 marketing year beginning August 1, 1984.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated March 19, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 84–8011 Filed 3–23–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–44–78; EE–17–81]

Cooperative Hospital Service Organizations; Computation of "Income" of an Electric Cooperative Under Section 501(c)(12); Public Hearings on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearings on proposed regulations.

SUMMARY: This document provides notice of public hearings on proposed regulations relating to cooperative hospital service organizations and proposed regulations relating to the computation of "income" of an electric cooperative under section 501(c)(12) of the Internal Revenue Code of 1954.

DATES: The public hearings will be held on Thursday, May 31, 1984, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, May 17, 1984.

ADDRESS: The public hearings will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments on the proposed regulations relating to cooperative hospital service organizations should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE–44–78), Washington, D.C. 20224. The requests to speak and outlines of oral comments on the proposed regulations relating to electric cooperatives under section 501(c)(12) should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE–77–81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subjects of the public hearings are:

1. Proposed regulations under section 501(e) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, January 11, 1984 (49 FR 1384).

2. Proposed regulations under section 501(c)(12) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Tuesday, January 10, 1984 (49 FR 1244).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearings. Persons who have submitted written comments within the time prescribed in the respective notices of proposed rulemaking and who also desire to present oral comments at the respective hearing on such proposed regulations should submit, not later than Thursday, May 17, 1984, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Jonathan P. Marget,

Acting Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 84–8061 Filed 3–23–84; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 301

Corporate Estimated Income Tax; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations which provide guidance to corporations with respect to estimated tax requirements. Changes to the applicable tax law were made by the Omnibus Reconciliation Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Equity and Fiscal Responsibility Act of 1982. The regulations would provide corporations with the guidance needed to comply with applicable provisions of these acts.

DATES: Written comments and requests for a public hearing must be delivered by May 25, 1984. Generally, these regulations are proposed to be effective for taxable years beginning after December 31, 1982. The regulations providing guidance to "large

corporations" are proposed to be effective for taxable years beginning after December 31, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–228–82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George T. Magnatta of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 111, Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3294).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 6152, 6164, 6654, and 6655 of the Internal Revenue Code of 1954 and to the Regulations on Procedure and Administration (26 CFR Part 301) under section 6655 of the Code. These amendments are proposed to conform the regulations to section 1111 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499; 94 Stat. 2681), section 731 of the Economic Recovery Tax Act of 1981 (Pub. L. 97–34; 95 Stat. 346), and section 234 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248; 96 Stat. 503) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

General Rules

A corporation is required to make payments of estimated tax if it reasonably expects to have an estimated tax liability for the taxable year of $40 or more (*see* section 6154). Generally, a corporation is required to pay a percentage of its current year's tax liability in quarterly estimated tax installments. Under section 6655, if a corporation fails to pay its estimated tax installment when due and does not meet any exception to an underpayment, the corporation is subject to a penalty for underpayment of estimated taxes. The amount of the penalty is determined at the rate established under section 6621.

Under prior law, the penalty with respect to any underpayment of any installment was not imposed in any case where the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equalled or exceeded the amount which would have been due had the estimated tax been based on any of the following: (1) The tax shown on the return for the preceding taxable year, if a return showing a tax liability was filed for the preceding taxable year and such preceding year was a taxable year of 12 months; (2) the tax computed at the rates applicable to the current taxable year but using the facts and law applicable to the preceding taxable year; or (3) 80 percent of the taxes which would have been due if the corporation's taxable income for specified preceding periods of the taxable year were annualized (annualization exception).

Additionally, for taxable years beginning prior to 1983, a corporation could elect under section 6152 to pay only half of its unpaid tax 2½ months after the end of its taxable year and the remaining one-half 3 months later.

The Omnibus Reconciliation Act of 1980 amended section 6655 to provide that, in order to come within exception (1) (relating to the preceding year's tax) or (2) (relating to the preceding year's facts and law), described above, a large corporation's estimated tax payments must in no event be less than 60 percent of the current year's tax. The Economic Recovery Tax Act of 1981 further amended section 6655 to provide that for taxable years beginning in 1984 and thereafter exceptions (1) and (2) are no longer available to large corporations. A transitional rule provides that for taxable years beginning in 1981, 1982, or 1983, a large corporation's estimated tax payments shall in no event be less than 60 percent, 65 percent, and 75 percent, respectively, of the current year's tax in order to come within exception (1) or (2). Exception (3) (relating to the annualization of income) is still available to a large corporation.

For purposes of section 6655, a corporation is considered a large corporation if it (or its predecessor) had taxable income of at least $1 million or more in any of the 3 taxable years immediately preceding the taxable year involved ("testing period").

In determining a corporation's taxable income for any of the taxable years during the testing period, the proposed regulations provide that items which may be carried back under other Code provisions (*e.g.*, those described in sections 172 and 1212) from one of the years in the testing period to another year in the testing period are taken into account. Additionally, if a corporation's taxable income for a year during the testing period is redetermined during that testing period, by reason of an examination by the Internal Revenue Service or otherwise, such redetermination shall be taken into account in determining whether the corporation is "large" for its present taxable year. Any items that are carried forward under other Code provisions are also taken into account in determining a corporation's taxable income during the testing period.

In the case of component members of a controlled group of corporations (as defined in section 1563), the proposed regulations provide that the $1 million amount for any taxable year in the 3-year testing period is divided equally among the component members of such group unless all of such component members consent to an apportionment plan providing for an unequal allocation of such amount. There are special rules for the computation of taxable income for a year in the 3-year testing period where a transaction described in section 351 or section 381(a) occurs.

For taxable years beginning after December 31, 1982, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) increases from 80 percent to 90 percent the amount of a corporation's current tax liability that must be paid in installments. If a corporation makes estimated tax payments of at least 80 percent of its tax liability, the penalty for underpayment of estimated taxes is imposed at three-quarters of the full rate on underpayments determined under section 6621.

Similarly, TEFRA increases from 80 percent to 90 percent the amount of taxes that must be paid under the annualization exception.

An additional exception to the underpayment penalty is added by TEFRA. This new exception applies to a corporation with recurring seasonal income. Under this exception, income may be annualized by assuming that income earned in the current year is earned in the same pattern as in the 3 preceding taxable years. Thus, if a corporation pays its estimated tax installments as if taxable income for the taxable year is earned in the same seasonal pattern as in the preceding 3 years, no penalty for underpayment will be imposed. This exception is available to a large corporation.

TEFRA repealed section 6152 as it applies to corporations. The proposed regulations reflect this change.

Finally, the proposed regulations provide guidance with respect to how a corporation must compute its taxable income for a period of less than a full taxable year when using the annualization exceptions to the underpayment penalty.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and

public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Non-Application of Executive Order 12291

The Treasury Department has determined that this proposed regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is George T. Magnatta of the Legislation and Regulation Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.6151–1—1.6165–1

Income taxes, Administration and procedure, Payment of tax.

26 CFR 1.6654–1—1.6696–1

Income taxes, Administration and procedure, Penalties, Additions to tax.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Parts 1 and 301 are as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. Paragraph (a)(1) of § 1.6152–1, relating to privilege of corporation to elect to make installement payments, is amended by removing "ending on or after December 31, 1954," and adding "beginning before January 1, 1983," in lieu thereof.

Par. 2. Paragraph (a) of § 1.6164–4 is revised to read as follows:

§ 1.6164–4 Payment of remainder of tax where extension relates only to part of the tax.

(a) *Time for payment.* If an extension of time relates only to part of the tax, the time for payment of the remainder of the tax shall be considered to be the date of which payment would have been required if such remainder had been the tax.

* * * * *

Par. 3. Paragraph (a) of § 1.6164–8 is revised to read as follows:

§ 1.6164–8 Payments on termination.

(a) *In general.* If an extension of time under section 6164 is terminated with respect to any amount either (1) by the filing of a new statement by the taxpayer under section 6164 (e) extending the time for payment of a lesser amount than was extended in a prior statement, or (2) by action of the district director under section 6164(f) after making an examination of the statement filed by the corporation, no further extension of time may be made under section 6164 with respect to such amount. The time for payment of such amount shall be the date on which payment would have been required if there had been no extension with respect to such amount.

* * * * *

Par. 4. Paragraph (d)(1)(i) of § 1.6654–2 is revised to read as follows:

§ 1.6654–2 Exceptions to imposition of the addition to the tax in the case of individuals.

* * * * *

(d) *Determination of taxable income for portion of taxable year*—(1) *In general.* (i) In determining the applicability of the exceptions described in paragraph (a) (2) and (3) of this section, there must be a reasonably accurate determination of the amount of income and deductions for the calendar months in the calendar year preceding the installment date as of which the determination is made, that is, for the period terminating with the last day of the third, fifth, or eighth month of the taxable year. See paragraph (e) of § 1.6655–2 (relating to a similar requirement with respect to corporations) for special rules to be used in computing such income and deductions.

* * * * *

Par. 5. Section 1.6655–1 is revised to read as follows:

§ 1.6655–1 Addition to the tax in the case of a corporation.

(a) *In general.* Section 6655 imposes an addition to the tax under chapter 1 of the Code in the case of any underpayment of estimated tax by a corporation (with certain exceptions described in section 6655 (d) and (e)). This addition to the tax is in addition to any applicable criminal penalties and is imposed whether or not there was reasonable cause for the underpayment.

(b) *Amount of underpayment*—(1) *Installments for taxable years beginning before January 1, 1983.* In the case of an installment for a taxable year beginning before January 1, 1983, the amount of the underpayment for any installment date is the excess of—

(i) 80 percent of the tax shown on the return for the taxable year or, if no return was filed, 80 percent of the tax for such year, multiplied by the percentage of estimated tax required to be paid on or before the installment date, over

(ii) The amount, if any, of the installment paid on or before the last prescribed for such payment.

(2) *Rate of addition and period of underpayment—Installments due for taxable years beginning before January 1, 1983.* With respect to an amount of underpayment determined under paragraph (b)(1) of this section, the amount of the addition is determined at the annual rate referred to in the regulations under section 6621 upon the underpayment of any installment of estimated tax for the period from the date such installment is required to be paid until the 15th day of the 3rd month

following the close of the taxable year, or the date such underpayment is paid, whichever is earlier. For purposes of determining the period of the underpayment, (i) the date prescribed for payment of any installment of estimated tax shall be determined without regard to any extension of time, and (ii) a payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under paragraph (b)(1)(i) of this section for such date, shall be considered a payment of the previous underpayment, if any.

(3) *Installments for taxable years beginning after December 31, 1982.* In the case of an installment for a taxable year beginning after December 31, 1982, the amount of the underpayment for any installment date is the excess of—

(i) 90 percent of the tax shown on the return for the taxable year or, if no return was filed, 90 percent of the tax for such year, multiplied by the percentage of estimated tax required to be paid on or before the installment date, over

(ii) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(4) *Rate of addition and period of underpayment—Installments due for taxable years beginning after December 31, 1982.* (i) Except as provided in paragraph (b)(4)(ii) of this section, with respect to an amount of underpayment determined under paragraph (b)(3) of this section, the amount of the addition is determined at the annual rate referred to in the regulations under section 6621 upon the underpayment of any installment of estimated tax for the period of the underpayment.

(ii) In any case where there would be no underpayment if "80 percent" in paragraph (b)(3) of this section, were substituted for "90 percent" each place it appears, the addition to tax shall be 75 percent of the amount otherwise determined under section 6621 and paragraph (b)(4)(i) of this section.

(iii) The period of the underpayment of any installment shall run from the date the installment was required to be paid until the 15th day of the 3rd month following the close of the taxable year, or the date such underpayment is paid, whichever is earlier. For purposes of determining the period of the underpayment, (A) the date prescribed for payment of any installment of estimated tax shall be determined without regard to any extension of time, and (B) a payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under paragraph (b)(3)(i) of this section for such date, shall be considered a payment of the previous underpayment, if any.

(5) *Definition of term "tax".* The term "tax" as used in paragraph (b)(1)(i) and (3)(i) of this section means the excess of—

(i) The tax imposed by section 11 or 1201(a), or subchapter L of chapter 1 of the Code, whichever is applicable, over

(ii) The sum of—

(A) The credits against tax provided by part IV of subchapter A of chapter 1 of the Code, plus

(B) [Reserved].

(6) *Special rules for consolidated returns.* For special rules relating to the determination of the amount of the underpayment in the case of a corporation whose income is included in a consolidated return, see § 1.1502–5(b).

(c) *Statement relating to underpayment.* If there has been an underpayment of estimated tax as of the installment date prescribed for its payment and the taxpayer believes that one or more of the exceptions described in § 1.6655–2 or § 1.6655–3 precludes the assertion of the addition to the tax under section 6655, it should attach to its income tax return for the taxable year a Form 2220 showing the applicability of any exception upon which the taxpayer relies.

(d) *Examples.* The method prescribed in paragraph (b) (3) and (4) of this section may be illustrated by the following examples:

Examples (1). X, a corporation which reports on a calendar year basis, anticipates that its estimated tax for 1983 will be in the amount of $54,000. It makes payments of $13,500 each on April 15, 1983, June 15, 1983, September 15, 1983, and December 15, 1983. On March 15, 1984, X files its income tax return showing a tax imposed of $70,000, with a total of $5,000 of allowable credits against tax. The addition to tax under section 6655(a) is computed as follows:

(1) Tax as defined in (b)(5) of this section ($70,000–$5,000)	$65,000
(2) 90% of item (1)	58,500
(3) Amount of estimated tax required to be paid on each installment date (25% of $58,500)	14,625
(4) Deduct amount paid on each installment date	13,500
(5) Amount of underpayment for each installment date (item (3) minus item (4))	1,125

(6) Addition to tax, assuming that none of the exceptions provided by section 6655 (d) and (e) and §§ 1.6655–2 and 1.6655–3 are applicable, and assuming the addition is computed at the rate of 11 percent per annum applicable to periods of underpayment under section 6621:

(i) First installment (period 4–15–83 to 3–15–84)	$113.27
(ii) Second installment (period 6–15–83 to 3–15–84)	92.64
(iii) Third installment (period 9–15–83 to 3–15–84)	61.54
(iv) Fourth installment (period 12–15–83 to 3–15–[illegible]	30.77
(v) Total of items (i) through (iv)	298 [illegible]

Since X Corporation paid at least 80% of the tax due in equal quarterly installments, the amount of the addition under section 6655(a)(2) is $223.67 (*i.e.*, 75 × $298.22).

Example (2). Y, a corporation which reports on a calendar year basis, anticipates that its estimated tax for 1983 will be in the amount of $70,000. It makes no payments on April 15, 1983, June 15, 1983, and September 15, 1983, but makes a payment of $63,000 on December 15, 1983. On March 15, 1984, Y files its income tax return showing a tax imposed of $70,000. The addition to tax under section 6655(a) is computed as follows:

(1) Tax as defined in (b)(5) of this section	$70,000
(2) 90% of item (1)	63,000

	First, second, and third installments	Fourth installment
(3) Amount of estimated tax required to be paid on each installment date (25% of $63,000)	$15,750	$15,750
(4) Amount paid on each installment date	0	63,000
(5) Amount of underpayment for each date	15,750	0

(6) Addition to tax, assuming that none of the exceptions provided by section 6655 (d) and (e) and §§ 1.6655–2 and 1.6655–3 are applicable, and assuming the addition is computed at the rate of 11 percent per annum applicable to periods of underpayment under section 6621:

(i) First installment (period 4–15–83 to 12–15–83)	$1,158.16
(ii) Second installment (period 6–15–83 to 12–15–83)	868.62
(iii) Third installment (period 9–15–83 to 12–15–83)	431.94
(iv) Fourth installment	0
(v) Total of items (i) through (iv)	2,458.72

Par. 6. Section 1.6655–2 is revised to read as follows:

§ 1.6655–2 Exceptions to imposition of the addition to the tax in the case of corporations.

(a) *In general.* The addition to the tax under section 6655 will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax

were the least of the following amounts—

(1) The amount of tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a year of 12 months and a return showing a liability for tax was filed for such year;

(2) An amount equal to a tax determined on the basis of the tax rates for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year, in the case of a corporation required to file a return for such preceding taxable year; or

(3) An amount equal to 90 percent (80 percent in the case of a taxable year beginning on or before December 31, 1982) of the tax determined by placing on an annual basis the taxable income for—

(i) The first 3 months of the taxable year, in the case of the installment required to be paid in the 4th month,

(ii) Either the first 3 months or the first 5 months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the 6th month,

(iii) Either the first 6 months or the first 8 months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the 9th month, and

(iv) Either the first 9 months or the first 11 months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the 12th month.

The taxable income so determined shall be placed on an annual basis by first multiplying it by 12, and then dividing the resulting amount by the number of months in the taxable year for which the taxable income was so determined.

(b) *Special rules.* (1) In the case of a taxpayer whose taxable year consists of 52 or 53 weeks in accordance with section 441(f), the rules prescribed by paragraph (b) of § 1.441–2 shall be applicable in determining—

(i) Whether a taxable year was a year of 12 months for purposes of paragraph (a)(1) of this § 1.6655–2, and

(ii) When the 3-month period, or the 3- or 5-month period, or the 6- or 8-month period, or the 9- or 11-month period (whichever is applicable) commences for purposes of paragraph (a)(3) of this § 1.6655–2.

For example, if a taxable year begins on December 26, 1982, taxable income for the first 6 months of such year, for purposes of paragraph (a)(3) of this § 1.6655–2, shall be taxable income for the period beginning on December 26, 1982, and ending on June 30, 1983, since such taxable year is deemed to commence on January 1, 1983, under section 441(f).

(2) If the end of any accounting period employed by the taxpayer (*e.g.*, any of either thirteen 4-week periods or four 13-week periods) does not correspond to the termination date of the applicable 3-month, or 3- or 5-month, or 6- or 8-month, or 9- or 11-month period, taxable income for the applicable period shall equal—

$(a+(b\times c+d))$,

where

a = taxable income from the beginning of the taxable year to the close of the accounting period ending immediately before the termination date of the applicable 3-month, or 3- or 5-month, or 6- or 8-month, or 9- or 11-month period,

b = number of days from the close of the accounting period ending immediately before the termination date of the applicable 3-month, or 3- or 5-month, or 6- or 8-month, or 9- or 11-month period to the close of the applicable 3-month, or 3- or 5-month, or 6- or 8-month, or 9- or 11-month period,

c = taxable income from the beginning of the taxable year to the close of the accounting period within which the termination date of the applicable 3-month, or 3- or 5-month, or 6- or 8-month, or 9- or 11-month period falls, minus a, and

d = number of days between the termination dates of the accounting period ending immediately before the termination date of the applicable 3-month, or 3- or 5-month, or 6- or 8-month or 9- or 11-month period and the accounting period within which the termination date of the applicable 3-month, or 3- or 5-month, or 6- or 8-month, or 9- or 11-month period falls.

Thus, for example, a taxpayer whose taxable year consists of 52 or 53 weeks in accordance with section 441(f) has a taxable year beginning on December 26, 1982, and thirteen 4-week accounting periods are employed in determining taxable income. Taxable income from December 26, 1982, to the close of the 4-week accounting period ending on June 11, 1983, is $200,000, and taxable income from December 26, 1982, to the close of the 4-week accounting period ending on July 9, 1983, is $228,000. Under the provisions of this paragraph (b)(2), taxable income for the 6-month period ending on June 30, 1983, is $219,000 (*i.e.*, ($200,000 + (19 × 28,000 ÷ 28)).

(c) *Meaning of terms*—(1) *Meaning of term "tax".* For the purpose of the exceptions described in paragraph (a) of this section, the term "tax" means the excess of—

(i) The tax imposed by section 11 or 1201 (a), or subchapter L of chapter 1 of the Code, whichever is applicable, over

(ii) The sum of—

(A) The credits against tax provided by part IV of subchapter A of chapter 1, plus

(B) [Reserved].

For purposes of paragraph (a)(2) of this section, the amount of tax paid from recomputing a prior year's investment credit under section 47 is a fact shown on the return for the preceding taxable year and is included in computing the prior year's tax. For example, X Corporation timely filed its 1977 income tax return. The return showed no taxable income, but it included an amount of tax from recomputing a prior year's investment credit. For 1978, X had taxable income and a liability for income tax. X was required to pay its tax in installments under section 6154, but made no installment payments. X is subject to the addition to tax for underpayment of estimated tax imposed by section 6655(a), because X failed to pay, on or before the prescribed installment due dates, an amount equal to the tax resulting from the recomputation of the prior year's investment credit.

(2) *Credits against tax.* The credits against the tax allowed by part IV of subchapter A of chapter 1 are—

(i) In the case of the exception described in paragraph (a)(1) of this section, such credits shown on the return for the preceding taxable year,

(ii) In the case of the exception described in paragraph (a)(2) of this section, such credits shown on the return for the preceding taxable year, except that if the amount of any such credits would be affected by any change in rates, the credits shall be determined by reference to the rates applicable to the current taxable year, and

(iii) In the case of the exception described in paragraph (a)(3) of this section, such credits computed under the law and rates applicable to the current taxable year.

The provisions of paragraph (c)(2)(ii) of this section are illustrated by the following example:

Example. Assume that during a taxable year within which the graduated tax rates in section 11 are lowered, Corporation X has an underpayment of estimated tax. One-fourth of the taxable income of Corporation X for the taxable year preceding that in which such underpayment occurs was from sources within foreign country Y and the remainder of the taxable income was from sources within the United States. The return of Corporation X for such preceding year shows taxable income of $325,000 and a tax, without regard to any credits, of $163,500. For such preceding year, Corporation X paid more taxes to foreign country Y than may be allowed as a credit under section 33 by reason of the

limitation of section 904. The credit allowed by section 33 on account of taxes paid to foreign country Y may not, under section 904, exceed one-fourth of the tax without regard to any credits, or $40,875. The tax for the preceding year, computed by using the rates applicable to the year during which the underpayment occurs, would be reduced to $147,250, and the limitation under section 904 on the credit allowed under section 33 for taxes paid to foreign country Y would be reduced to $36,812.50, for purposes of determining the applicability of the exception described in paragraph (a)(2) of this section. Therefore, the exception described in paragraph (a)(2) of this section will be applicable if, on or before the date prescribed for such payment, the total amount paid by Corporation X equals or exceeds the amount which would have been required to be paid by such date if the estimated tax were $110,437.50 ($147,250 less $36,812.50).

(3) *Definition of return for the preceding taxable year.* For the purpose of the exceptions described in paragraph (a) (1) and (2) of this section, the term "return for the preceding taxable year" means the income tax return for such year which is required by section 6012(a)(2). However, if an amended return has been timely filed, then the term "return for the preceding taxable year" means the income tax return as amended and as timely filed.

(d) *Examples.* The application of the exceptions to the imposition of the addition to tax is illustrated by examples employing the following statement of facts:

Statement of Facts

Y, a corporation which reports on a calendar year basis, expected that it would have an estimated tax liability of $62,000 for its taxable year ending December 31, 1983. Y is not a "large corporation" (see section 6655 (i) and § 1.6655–4). Y paid four installments of estimated tax, each in the amount of $15,500 (25 percent of $62,000), on April 15, 1983, June 15, 1983, September 15, 1983, and December 15, 1983, respectively. Y reported a tax liability of $88,900 on its return due March 15, 1984, with no credits against tax. There was an underpayment in the amount of $4,502.50 on each of the four installment dates, determined as follows:

(1) Tax as defined in paragraph (c)(1) of this section	$88,900.00
(2) 90% of item (1)	80,110.00
(3) Amount of estimated tax required to be paid on each installment (25% of $80,010)	20,002.50
(4) Deduct amount paid on each installment date	15,500.00
(5) Amount of underpayment for each installment date	4,502.50

The application of each exception described in paragraph (a) of this section is determined as follows:

(1) Assume Y reported a liability of $74,900 on its return for the taxable year ending December 31, 1982. If the exception described in paragraph (a)(1) of this section were to apply, the amount which would have been required to be paid on or before each of the four installment dates would be 25 percent of $74,900, or $18,725. Since this amount exceeds the amount actually paid on each installment date, $15,500, the exception does not apply.

(2) Assume that the facts shown on the return for the previous year (1982) showed Y to have a taxable income of $184,167 and no credits against tax. The amount of tax determined under paragraph (a)(2) of this section and the amounts required to be paid on or before each installment date are as follows: the tax liability on the basis of the 1983 rates but on the basis of the calendar year 1982 return is $64,467; the amount which would have been required to be paid on or before each of the four installment dates is 25 percent of $64,467, or $16,116.75. Since this amount exceeds the amount actually paid on each installment date, $15,500, the exception described in paragraph (a)(2) of this section does not apply.

(3) The total amount of all payments of estimated tax actually paid on or before the installment dates of April 15, 1983, June 15, 1983, September 15, 1983, and December 15, 1983, are $15,500, $31,000, $46,500, and $62,000, respectively. Assume Y determined that its taxable income for the first 3, 5, 6, 8, 9, and 11 months was $45,000, $90,000, $105,000, $145,000, $160,000, and $195,000 respectively. The income for each period is annualized as follows:

$45,000×12÷3=$180,000
$90,000×12÷5=$216,000
$105,000×12÷6=$210,000
$145,000×12÷8=$217,500
$160,000×12÷9=$213,333.33
$195,000×12÷11=$212,727.27

(i) To determine whether the installment payment made on April 15, 1983, equals or exceeds the amount which would have been required to have been paid if the estimated tax were equal to 90 percent of the tax computed on the annualized income for the 3-month, period, the following computation is necessary:

	[illegible] months
(1) Annualized income	$180,000.
(2) Tax on item (1)	[illegible]
(3) 90% of item (2)	[illegible]
(4) 25% of item (3)	14,073.75

Since the total amount of estimated tax actually paid on the first installment date (*i.e.*, $15,500) exceeds the amount required to be paid on this date if the estimated tax were 90 percent of the tax determined by placing on an annualized basis the taxable income for the first 3-month period, the exception described in paragraph (a)(3) of this section applies, and no addition to tax will be imposed for the installment paid on April 15, 1983.

(ii) To determine whether the installment payments made on or before June 15, 1982, equal or exceed the amount which would have been required to have been paid if the estimated tax were equal to 90 percent of the tax computed on the annualized income for either the 3- or 5-month period, the following computation is necessary:

	3 months	[illegible] months
(1) Annualized income	[illegible]	[illegible]
(2) Tax on item (1)	[illegible]	79,110
(3) 90% of item (2)	[illegible]	71,199
(4) 50% of item (3)	28,147.50	[illegible]

Since the total amount of estimated tax actually paid on the second installment date (*i.e.*, $31,000) exceeds the amount required to be paid on such date if the estimated tax were 90 percent of the tax determined by placing on an annualized basis the taxable income for the first 3- or 5-month period for the taxable year, the exception described in paragraph (a)(3) of this section applies, and no addition to tax will be imposed for the installment paid on June 15, 1983.

(iii) To determine whether the installment payments made on or before September 15, 1983, equal or exceed the amount which would have been required to have been paid if the estimated tax were equal to 90 percent of the tax computed on the annualized income for either the 6- or 8-month period, the following computation is necessary:

	6 months	[illegible] months
(1) Annualized income	$210,000.	217,500
(2) Tax on item (1)	[illegible]	[illegible]
(3) 90% of item (2)	68,715	71,820
(4) 75% of item (3)	51,536.25	[illegible]

Since the total amount of estimated tax actually paid on or before the third installment date (*i.e.*, $46,500) does not equal or exceed the amount required to be paid on such this date if the estimated tax were 90 percent of the tax determined by placing on an annualized basis the taxable income for the first 6- or 8-month period, the exception described in paragraph (a)(3) of this section does not apply, and an addition to tax will be imposed with respect to the underpayment of the September 15, 1983, installment unless another exception applies to this installment payment.

(iv) To determine whether the installment payments made on or before December 15, 1983, equal or exceed the amount which would have been required to have been paid if the estimated tax were equal to 90 percent of the tax computed on the annualized income for either the 9- or 11-month period, the following computation is necessary:

	[illegible] months	11 months
(1) Annualized income	$213,333.33	212,727.27
(2) Tax on item (1)	[illegible]	77,604.54
(3) 90% of item (2)	[illegible]	[illegible]
(4) 100% of item (3)	70,095	[illegible]

Since the total amount of estimated tax actually paid on or before the fourth installment date (*i.e.*, $62,000) does not equal or exceed the amount required to be paid on such date if the estimated tax were 90 percent of the tax determined by placing on an annualized basis the taxable income for the first 9- or 11-month period, the exception described in paragraph (a)(3) of this section does not apply, and an addition to tax will be imposed with respect to the underpayment of

the December 15, 1983, installment unless another exception applies to this installment payment.

(e) *Determination of taxable income for portion of taxpayer year when using annualization exceptions*—(1) *In general.* In determining the applicability of the exception described in paragraph (a)(3) of this section (relating to the annualization of income) and the exception described in § 1.6655–3 (relating to annualization of income for corporations with seasonal income), there must be a reasonably accurate determination of the items of income, gain, loss, deduction, and credit properly includible under the taxpayer's method of accounting for the appropriate period, that is, for the first 3, 5, 6, 8, 9, or 11 months of the taxable year. Generally, deductions which are not properly accruable during an applicable installment period because all the events which fix the fact of a liability have not yet occurred or because the amount of the deduction cannot be estimated with reasonable accuracy are not taken into account in that period for purposes of the annualization exception, even if such amounts are accruable by the end of the taxable year.

(2) *Exception for recurring expenditures.* (i) When a taxpayer has a history of incurring a specific category of expense, which, while attributable to income earned throughout the year, has not become a fixed liability until the end of the taxable year, the taxpayer may take into account for each installment period the amount of such expense properly allocable to such period provided—

(A) The amount so allocated to a particular installment period is determinable with reasonable accuracy, and

(B) The amount of the item so allocated is properly deductible by the taxpayer during the taxable year under the taxpayer's method of accounting.

(ii) The provisions of paragraph (e)(2)(i) of this section may be illustrated by the following example:

Example. Corporation X, a calendar year taxpayer, used the accrual method of accounting. X has historically adopted a program at the beginning of each taxable year which provides for the distribution of year-end cash bonuses to its employees. The aggregate amount of bonuses to be distributed is determined at the beginning of the taxable year. In accordance with this program, the amount of the bonus payable to each employee is to be determined by the management in December. Under the provisions of subparagraph (2)(i), X may allocate a portion of the total amount of such year-end bonus to each installment period since X can determine that amount with reasonable accuracy and the amount of the bonus is properly deductible during X's taxable year under its method of accounting.

(3) *Items that substantially impact taxable income but cannot be determined accurately by the installment due date.* In determining the applicability of the annualization exceptions described in paragraph (a)(3) of this section and § 1.6655–3, reasonable estimates may be made from existing data for items that substantially impact income when the amount of such items cannot be determined accurately by the installment due date. Examples of these items are the LIFO index for taxpayers using the dollar-value LIFO inventory method, the deferred gross profit for taxpayers with revolving charge accounts, intercompany adjustments for taxpayers that file consolidated returns, and the liquidation of a LIFO layer at the installment date that the taxpayer reasonably believes would be replaced at the end of the year. Thus, for example, reasonable estimates by a taxpayer using the dollar-value LIFO method of accounting would be made by interpolating from an available inflation index for the same months in the previous year to calculate the cost of goods sold in the present period of less than a full taxable year if no reliable inflation index for the present period is available. See also § 1.6654–2(d) (1) and (2).

(4) *Events arising after installment due date which were not reasonably foreseeable.* Events arising subsequent to the installment due date which cause the taxpayer's computation of its taxable income for the short period to be understated will not result in a recomputation of its taxable income for the short period. The preceding sentence applies only if at the time the installment payment is made, based on all the facts and circumstances, it was not reasonably foreseeable that these subsequent events would occur. Thus, for example, assume that Congress enacts retroactively effective legislation which causes the taxable income for the applicable 3-month, or 3- or 5-month, or 6- or 8-month, or 9- or 11-month period to be understated. This event, which occurred after the applicable installment due date, will not result in a recomputation of a corporation's taxable income for the applicable installment period because such an event was unforeseeable.

Par. 7. Section 1.6655–3 is revised to read as follows:

§ 1.6655–3 Additional exception for corporation with recurring seasonal income.

(a) *In general*—(1) *Additional exception for corporations with recurring seasonal income.* Except as provided in paragraph (b)(4) of this section, for taxable years beginining after December 31, 1982, notwithstanding section 6655(b) (relating to the general rule for amount of underpayment of estimated tax) and section 6655(d) (relating to the exceptions to the underpayment of estimated tax), the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds 90 percent of the applicable amount determined under subparagraph (2) of this paragraph.

(2) *Applicable amount.* To determine the applicable amount—

(i) Total the taxable income for all months during the taxable year preceding the filing month (as defined in paragraph (b)(3)),

(ii) Divide the amount in paragraph (a)(z)(i) of this section by the base period percentage (as defined in paragraph (b)(1)) for all months during the taxable year preceding the filing month,

(iii) Determine the tax (as defined in § 1.6655–2(c)(1)) on the amount determined in subdivision (ii),

(iv) Multiply the amount determined in subdivision (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(b) *Definition and limitation on application of exception*—(1) *Base period percentage.* The base period percentage for any period of months shall be the average of the three percentages calculated by dividing—

(i) The taxable income for the corresponding months in each of the 3 preceding taxable years, by

(ii) The taxable income for each of the 3 preceding taxable years.

(2) *Determination of base period percentage in a year in which there occurs a transaction to which section 381 applies.* (i) In a year in which there occurs a transaction to which section 381 applies, the acquiring corporation's taxable income shall be the sum of—

(A) The taxable income of the acquiring corporation for its taxable year, plus

(B) The taxable income of the distributor or transferor corporation (or corporations) for that portion of the acquiring corporation's taxable year up to and including the date of distribution or transfer (as defined in § 1.381(b)–1 (b)).

(ii) The corresponding monthly taxable income of the acquiring corporation in a year in which there occurs a transaction to which section 381 applies shall be the sum of—

(A) The corresponding monthly taxable income of the acquiring corporation, plus

(B) The corresponding monthly taxable income of the distributor or transferor corporation (or corporations) for those months of the acquiring corporation's taxable year up to and including the date of distribution or transfer (as defined in § 1.381(b)–1 (b)).

(3) *Filing month.* The term "filing month" means the month in which the installment is required to be paid. A corporation must make estimated tax payments in installments in accordance with the provisions of section 6154(b). Thus, for example, a corporation which, before the 1st day of the 4th month of its taxable year, reasonably expects its estimated tax for such taxable year to be $40 or more, must make quarterly installments of estimated tax on or before the 15th day of the 4th, 6th, 9th, and 12th months of its taxable year.

(4) *Limitation on use of exception for corporations with recurring seasonal income.* This section shall apply only if the base period percentage (as defined in paragraph (b)(1) of this section) for the same 6 consecutive months of the 3 preceding taxable years equals or exceeds 70 percent.

(c) *Illustration.* The provisions of this section may be illustrated by the following example:

Example. Y, a corporation which reports on a calendar year basis, expected that it would have an estimated tax liability of $1,380,000 for its taxable year ending December 31, 1983. Y therefore paid four installments of estimated tax, each in the amount of $345,000 (25 percent of $1,380,000), on April 15, 1983, June 15, 1983, September 15, 1983, and December 15, 1983, respectively. Y reported a tax liability of $1,539,150 on its return due March 15, 1984, with no credits against tax. Under the general provision of section 6655 (b), there was an underpayment in the amount of $1,308.75 on each of the four installment dates, determined as follows:

(1) Tax as defined in section 6655 (d)	[illegible]
(2) 90% of item (1)	1,385,235.00
(3) Amount of estimated tax required to be paid on each installment (25% of $1,385,235.00	346,308.75
(4) Deduct amount paid on each installment date under general rule of section 6655 (b)	[illegible]
(5) Amount of underpayment for each installment date under general rule of section 6655 (b)	1,308.75

(b) Y corporation wants to determine if it qualifies under the exception of this section. Y Corporation determines that its monthly taxable income for the preceding 3 taxable years and for the current taxable year 1983 is as follows:

	January	February	March	April	May	June
1980	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	$20,000
1981	[illegible]	170,000	170,000	130,000	[illegible]	[illegible]
1982	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1983	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

	July	August	September	October	November	December
1980	[illegible]	$10,000	$10,000	[illegible]	[illegible]	[illegible]
1981	21,000	19,000	[illegible]	20,000	[illegible]	[illegible]
1982	40,000	40,000	40,000	[illegible]	[illegible]	[illegible]
1983	70,000	60,000	50,000	[illegible]	[illegible]	[illegible]

Y Corporation must initially determine if its base period percentage for the same 6 consecutive months of the 3 preceding taxable years equals or exceeds 70 percent (*see* section 6655(e)(3)(C) and § 1.6655–3(b)(4)). By using its taxable income for the first 6 months of 1980, 1981, and 1982, Y qualifies since its base period percentage is 87.5 percent (which exceeds 70 percent) computed as follows:

(1) Taxable income for first 6 months of 1980	$420,000
(2) Total taxable income for 1980	[illegible]
(3) Divide item (1) by item (2)	[illegible]
(4) Taxable income for first 6 months of 1981	[illegible]
(5) Total taxable income for 1981	[illegible]
(6) Divide item (4) by item (5)	[illegible]
(7) Taxable income for first 6 months of 1982	[illegible]
(8) Total taxable income for 1982	1,920,000
(9) Divide item (7) by item (8)	.875
(10) Add items (3), (6), and (9)	2.625
(11) Divide item (10) by 3	[illegible]

(c) To determine whether the installment payment made on April 15, 1983, equals or exceeds 90 percent of the applicable amount (computed under the rules of section 6655(e)(2) and § 1.6655–3(a)(2)) for the 3-month period, the following computation is necessary:

(1) Taxable income for first 3 months of 1983	[illegible]
(2) Taxable income for first 3 months of 1980 ($270,000) divided by total taxable income for 1980 ($480,000)	.5625
(3) Taxable income for first 3 months of 1981 ($540,000) divided by total taxable income for 1981 ($960,000)	[illegible]
(4) Taxable income for first 3 months of 1982 ($1,090,000) divided by total taxable income for 1982 ($1,920,000)	[illegible]
(5) Add items (2), (3), and (4) and divide by 3	.5642
(6) Divide item (1) by item (5)	3,420,772.76
(7) Determine the tax on item (6)	1,553,305.48
(8) Taxable income for first 4 months of 1980 ($340,000) divided by total taxable income for 1980 ($480,000)	[illegible]
(9) Taxable income for first 4 months of 1981 ($670,000) divided by total taxable income for 1981 ($960,000)	[illegible]
(10) Taxable income for first 4 months of 1982 ($1,360,000) divided by total taxable income for 1982 (1,920,000)	[illegible]
(11) Add items (8), (9), and (10) and divide by 3	.7048
(12) Multiply item (7) by item (11)	1,094,769.76
(13) 90% of item (12)	[illegible]

(d) To determine whether the installment payment made on or before June 15, 1983, equals or exceeds 90 percent of the applicable amount (computed under the rules of section 6655(e)(2) and § 1.6655–3(a)(2)) for the 5-month period, the following computation is necessary:

(1) Taxable income for first 5 months of 1983	[illegible]
(2) Taxable income for first 5 months of 1980 ($400,000) divided by total taxable income for 1980 ($480,000)	[illegible]
(3) Taxable income for first 5 months of 1981 ($795,000) divided by total taxable income for 1981 ($960,000)	[illegible]
(4) Taxable income for first 5 months of 1982 ($1,600,000) divided by total taxable income for 1982 ($1,920,000)	[illegible]
(5) Add items (2), (3), and (4) and divide by 3	[illegible]
(6) Divide item (1) by item (5)	3,547,378.55
(7) Determine the tax on item (6)	1,611,544.13
(8) Taxable income for first 6 months of 1980 ($420,000) divided by total taxable income for 1980 ($480,000)	.875
(9) Taxable income for first 6 months of 1981 ($840,000) divided by total taxable income for 1981 ($960,000)	.875
(10) Taxable income for first 6 months of 1982 ($1,680,000) divided by total income for 1982 ($1,920,000)	.875
(11) Add items (8), (9), and (10) and divide by 3	.875
(12) Multiply item (7) by item (11)	1,410,101.11
(13) 90% of item (12)	1,269,091.00

(e) To determine whether the installment payment made on or before September 15, 1983, equals or exceeds 90 percent of the applicable amount (computed under the rules of section 6655(a)(2) and § 1.6655–3(e)(2)) for the 8-month period, the following computation is necessary:

(1) Taxable income for first 8 months of 1983	[illegible]
(2) Taxable income for first 8 months of 1980 ($440,000) divided by total taxable income for 1980 ($480,000)	.9167
(3) Taxable income for first 8 months of 1981 ($880,000) divided by total taxable income for 1981 ($960,000)	.9167
(4) Taxable income for first 8 months of 1982 ($1,760,000) divided by total taxable income for 1982 ($1,920,000)	.9167
(5) Add items (2), (3), and (4) and divide by 3	.9167
(6) Divide item (1) by item (5)	[illegible]
(7) Determine the tax on item (6)	1,610,599.79
(8) Taxable income for first 9 months of 1980 ($450,000) divided by total taxable income for 1980 ($480,000)	.9375
(9) Taxable income for first 9 months of 1981 ($90,000) divided by total taxable income for 1981 ($960,000)	.9375
(10) Taxable income for first 9 months of 1982 ($1,800,000) divided by total taxable income for 1982 ($1,920,000)	.9375
(11) Add items (8), (9), and (10) and divide by 3	.9375
(12) Multiply item (7) by item (11)	[illegible]
(13) 90% of item (12)	1,358,943.57

(f) To determine whether the installment payment made on or before December 15, 1983, equals or exceeds 90 percent of the applicable amount (computed under the rules

of section 6655(e)(2) and § 1.6655–3(a)(2)) for the 11-month period, the following computation is necessary:

(1) Taxable income for first 11 months of 1983	$3,376,080
(2) Taxable income for first 11 months of 1980 ($470,000) divided by total taxable income for 1980 ($480,000)	.9792
(3) Taxable income for first 11 months of 1981 ($940,000) divided by total taxable income for 1981 ($960,000)	.9792
(4) Taxable income for first 11 months of 1982 ($1,880,000) divided by total taxable income for 1982 ($1,920,000)	.9792
(5) Add items (2), (3), and (4) and divided by 3	.9792
(6) Divide item (1) by item (5)	3,441,584.97
(7) Determine the tax on item (6)	1,562,879.09
(8) 90% of item (7)	1,406,591.18

The total amounts of all payments of estimated tax actually paid on or before the installment dates of April 15, 1983, June 15, 1983, September 15, 1983, and December 15, 1983, are $345,000, $690,000, $1,035,000, and $1,380,000, respectively. Since the total amounts of estimated tax actually paid on the first, second, third, and fourth installment dates does not equal or exceed the amounts required to be paid on such dates if the estimated tax were 90 percent of the applicable amount (computed under the rules of section 6655(e)(2) and § 1.6655–3(a)(2)) for the first 3-month period, first 5-month period, first 8-month period, and first 11-month period of the taxable year, the exception described in section 6655(e) and this section does not apply, and the addition to the tax with respect to the underpayment for all installments will be imposed unless another exception (*see* § 6655(d)) applies with respect to these installments.

Par. 8. A new § 1.6655–4 is added immediately following § 1.6655–3 to read as follows:

§ 1.6655–4 Estimated tax payments in the case of large corporations.

(a) *Elimination of certain exceptions to underpayment penalty for large corporations.* For taxable years beginning after December 31, 1983, section 6655(d) (1) and (2) and § 1.6655–2(a)(1) and (2) (relating to exceptions to underpayment of estimated tax) shall not apply to large corporations (as defined in paragraph (e) of this section). However, the exception relating to the annualization of income (*see* section 6655(d)(3) and § 1.6655–2(a)(3)) remains available to large corporations for taxable years beginning after such date. For taxable years beginning after December 31, 1982, the additional exception for corporations with recurring seasonal income is available to large corporations (*see* section 6655 (e) and § 1.6655–3).

(b) *Transitional rule; minimum percentage requirement.* For taxable years beginning before January 1, 1984, in the case of large corporations, the amount treated as estimated tax for the taxable year under section 6655(d) (1) and (2) shall in no event be less than the minimum estimated tax (as defined in paragraph (c)). Payment by a large corporation of less than the minimum estimated tax is an underpayment of estimated tax to which the addition to tax provided under section 6655 (a) applies unless an exception provided under section 6655(d)(3) and § 1.6655–2(a)(3) and section 6655(e) and § 1.6655–3 (for taxable years beginning after 1982) applies.

(c) *Minimum estimated tax defined.* For purposes of this section, the term "minimum estimated tax" means—

(1) For taxable years beginning after December 31, 1980, and before January 1, 1982, an amount which is not less than 60 percent of the tax shown on its income tax return for such year or, if no return was filed for such year, 60 percent of the tax for such year;

(2) For taxable years beginning after December 31, 1981, and before January 1, 1983, an amount which is not less than 65 percent of the tax shown on its income tax return for such year or, if no return was filed for such year, 65 percent of the tax for such year; and

(3) For taxable years beginning after December 31, 1982, and before January 1, 1984, an amount which is not less than 75 percent of the tax shown on its income tax return for such year or, if no return was filed for such year, 75 percent of the tax for such year.

(d) *Payment in installments.* Every large corporation required to make payments of minimum estimated tax for a taxable year must make payments in installments in accordance with the provisions of section 6154(b). Thus, for example, a large corporation which, before the 1st day of the 4th month of the taxable year, reasonably expects its estimated tax for such taxable year to be $40 or more, shall make quarterly installments of its minimum estimated tax on or before the 15th day of the 4th, 6th, 9th, and 12th month of its taxable year.

(e) *Large corporation*—(1) *In general.* For purposes of this section, a corporation is a large corporation if the corporation (or a predecessor corporation) had taxable income of at least $1 million for any of the 3 taxable years immediately preceding the taxable year involved ("testing period"). For purposes of this section, a predecessor corporation is the distributor or transferor corporation in a transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies.

(2) *Short taxable year.* In the case of a corporation (or predecessor corporation) which had a short taxable year for any of the 3 taxable years immediately preceding the taxable year involved, for purposes of determining whether the $1 million amount referred to in paragraph (e)(1) of this section is equaled or exceeded, the "taxable income" for the short taxable year shall be computed by—

(i) Multiplying by 12 the taxable income for the short taxable year, and

(ii) Dividing the resulting amount by the number of months in the short taxable year.

(3) *Component members of controlled group.* (i) For purposes of applying paragraph (e)(1) of this section to any of the 3 taxable years immediately preceding the taxable year involved with respect to corporations that are component members of a controlled group of corporations (as defined in section 1563(a)) for such taxable year, the $1 million amount shall be divided equally among the component members of such group unless all of such component members consent to an apportionment plan providing for an unequal allocation of such amount. The procedure for making and filing this plan shall be the same as the procedure used for making and filing an apportionment plan under section 1561. See section 1561 and the regulations thereunder. The provisions of section 6655(i) and this section shall not apply to component members of a controlled group for any taxable year in which the aggregate taxable income of the component members of the controlled group is less than $1 million.

(ii) In the case of any corporation which was a component member of a controlled group of corporations at any time during the 3 preceding taxable years but is not a member of such group during its current taxable year, taxable income for the 3 preceding taxable years shall be determined as if such corporation were not a member of a group at any time during those years. With respect to the controlled group, the taxable income of its former member shall not be taken into account in determining such group's taxable income for any of the 3 preceding taxable years in making a determination whether such group is a "large corporation" for the current taxable year.

(4) *Computation of taxable income in year where there occurs a transaction to which section 381 applies.* (i) For purposes of determining whether an acquiring corporation had taxable income of $1 million or more for a year in which there occurs a transaction to which section 381 applies, its taxable income shall be the sum of—

(A) The taxable income of the acquiring corporation for its taxable year, plus

(B) The taxable income of the distributor or transferor for that portion of the acquiring corporation's taxable year up to and including the date of distribution or transfer (as defined in § 1.381 (b)–1 (b)).

(ii) For purposes of determining whether a transferor or distributor corporation had taxable income of $1 million or more for a year in which there occurs a transaction to which section 381 applies, its taxable income shall be reduced by the amount of its taxable income for that portion of its taxable year corresponding to the acquiring corporation's taxable year up to and including the date of distribution or transfer (as defined in § 1.381(b)–(b)).

(5) *Consolidated returns.* [reserved].

(6) *Illustration.* The provisions of subparagraphs (1) and (4) of this paragraph (e) may be illustrated by the following example:

Example. X Corporation and Y Corporation are calendar year taxpayers. In 1983 Y Corporation acquires all of the assets of X Corporation in a transaction to which section 381 applies. Y Corporation's taxable income for both 1981 and 1982 was less than $1 million. X Corporation's taxable income for 1983 is determined under subparagraph (4) to be $300,000 for that portion of the acquiring corporation's taxable year up to and including the date of transfer. Y Corporation's taxable income for 1983 is $800,000. Under the provisions of subparagraph (4), Y Corporation's 1983 taxable income for purposes of determining whether it is a large corporation for taxable year 1984 is $1,100,000 (*i.e.*, $800,000+$300,000). If Y Corporation's 1983 taxable income as determined under subparagraph (4) had been less than $1 million but X Corporation's taxable income in 1981 or 1982 had been $1 million or more, then Y Corporation would be a large corporation for taxable year 1984 since X Corporation is a predecessor corporation.

(7) *Effect on a corporation's taxable income of items which may be carried back to a prior taxable year.* (i) In determining whether a corporation (or predecessor corporation) is a "large corporation" for its present taxable year, that is, whether it had taxable income of $1 million or more during any of the 3 taxable years preceding its present taxable year ("testing period"), items which could be carried back under other Code provisions (*e.g.*, those described in sections 172 and 1212) from one of the years in the testing period to another year in the testing period shall be taken into account. Additionally, if a corporation's taxable income for a year during the testing period is redetermined during that testing period, by reason of an examination by the Internal Revenue Service or otherwise, such redetermination shall be taken into account in determining whether the corporation is a large corporation for its present taxable year. Any items which are carried forward under other Code provisions shall also be taken into account in determining a corporation's taxable income.

(ii) The provisions of paragraph (e)(7)(i) of this section may be illustrated by the following example:

Example. X Corporation's taxable income for taxable years 1981 and 1982 was $1 million. Therefore, X was a large corporation for 1982 and 1983. X incurred a net operating loss in 1983 which was carried back under section 172 to taxable years 1981 and 1982. This carryback reduced X's taxable income for both 1981 and 1982 to below $1 million. For taxable year 1984, X is not a large corporation since the net operating loss sustained during one of the years in the 3-year testing period may be carried back to the other years in the 3-year testing period. However, this net operating loss which is carried back does not affect X's large corporation status for taxable years 1982 and 1983 because the 1983 net operating loss was not sustained during the respective 3-year testing periods for 1982 and 1983.

Par. 9. Section 1.6655–5 is redesignated as § 1.6655–6, and a new § 1.6655–5 is added to read as follows:

§ 1.6655–5 Short taxable years in the case of corporations.

(a) *In general.* The provisions of section 6655, with one exception described in paragraph (b) of this section and with certain modifications relating to the application of subsections (d) and (e) thereof which are explained in paragraphs (c) and (d) of this section, are applicable in the case of a short taxable year for which a payment of estimated tax is required to be made.

(b) *Exception to payment of estimated tax.* In the case of a short taxable year, no payment of estimated tax is required if the short taxable year is either—

(1) A period of less than 4 months, or

(2) A period of 4 or more months but less than 12 months and the requirements of section 6154(a) are not met before the 1st day of the last month in the short taxable year.

For purposes of this section a taxable year of 52 or 53 weeks shall be deemed a period of 12 months in the case of a corporation which computes its taxable income in accordance with the election permitted by section 441(f).

(c) *Rules as to application of section 6655(d).* In any case in which the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in determining the tax—

(1) Shown on the return for the preceding taxable year (for purposes of section 6655(d)(1)):

(2) Based on the current year's rates but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year (for purposes of section 6655(d)(2)); or

(3) Computed by placing taxable income for a portion of the current year on an annual basis under section 6655(d)(3):

the tax will be reduced by multiplying it by the number of months in the short taxable year and dividing the resulting amount by 12. The application of the exception provided in section 6655(d)(3) shall be determined as if the estimated tax were 90 percent of the tax so reduced (80 percent of the tax so reduced for taxable years beginning before January 1, 1983).

(d) *Rules as to application of section 6655(e).* In any case in which the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in determining the applicable amount under section 6655(e)(2), this amount will be reduced by multiplying it by the number of months in the short taxable year and dividing the resulting number by 12. The application of the exception provided in section 6655(e) shall be determined as if the estimated tax were 90 percent of the applicable amount so reduced.

(e) *Preceding taxable year a short taxable year.* If "the preceding taxable year" referred to in section 6655(d)(2) was a short taxable year, the tax computed on the basis of the facts shown on the return for such preceding year, for purposes of determining the applicability of the exception described in section 6655(d)(2), shall be the tax computed on the annual basis in the manner described in section 443(b)(1) (prior to its reduction in the manner described in the last sentence thereof). If the tax rates for the taxable year with respect to which the underpayment occurs differ from the rates applicable to the preceding taxable year, the tax determined in accordance with the preceding sentence shall be recomputed using the rates applicable to the year with respect to which the underpayment occurs.

Par. 10. Paragraph (a)(1) of § 1.6655–6 as redesignated is amended by removing "Section 6655(g)" and adding "Section 6655(h)" in lieu thereof. Paragraph (a)(6) of § 1.6655–6 as redesignated is amended by removing "§ 1.6655–1 through § 1.6655–3" and adding

"§ 1.6655–1 through § 1.6655–5" in lieu thereof.

PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

Par. 11. Section 301.6655–1 is revised to read as follows:

§ 301.6655–1 Failure by corporation to pay estimated income tax.

For regulations under section 6655, see §§ 1.6655–1 to 1.6655–6, inclusive of this chapter (Income Tax Regulations).

These amendments are proposed to be issued under the authority contained in section 7805 of the Internal Revenue Code (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84–7770 Filed 3–25–84; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL 2544–6]

Approval and Promulgation of Implementation Plans; Yuba, Sutter and Butte Counties; Air Pollution Control Regulations; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The counties of Yuba, Sutter and Butte have adopted New Source Review (NSR) Rules on June 14, 1983; July 12, 1983; and July 26, 1983 respectively. The three rules are almost identical and satisfy EPA's requirement for NSR. The three rules regulate construction and operation of new and modified major sources of nonattainment pollutants. The rules were submitted as State Implementation Plan (SIP) revisions on the following dates: Yuba, August 2, 1983; Sutter, August 30, 1983; and Butte, October 4, 1983. In this Notice, EPA is proposing to approve the submitted rules with certain changes in the Butte rule and with the exception of Sections 202 and 203 of the Butte rule which will be disapproved.

DATE: Comments may be submitted by April 25, 1984.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, Air Operations Branch, New Source Section, Environmental Protection Agency Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of EPA's Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office at the above address and at the following locations:

California State Air Resources Boards, 1102 "Q" Street, Scramento, CA 95814
Yuba County APCD, 938 14th Street, Marysville, CA 95901
Sutter County APCD, 142 Garden Highway, Yuba City, CA 95991
Butte County APCD, 316 Nelson Avenue, Oroville, CA 95965

FOR FURTHER INFORMATION CONTACT: Willard Chin, New Source Section, Air Operations Branch, Air Management Division, Environmental Protection Agency, Region 9 (415) 974–8216.

SUPPLEMENTARY INFORMATION:

Background

The rules under consideration are almost verbatim versions of the NSR portion of the NSR/PSD rule developed by the California Air Pollution Control Officer's Association (CAPCOA) and the California Air Recources Board. This model NSR/PSD rule was approved by EPA Region 9, the Office of General Counsel and the Office of Air Quality and Planning Standards. (See EPA Memo: California New Source Siting Rule, December 10, 1982.) EPA requires NSR rules for pollutants for which an area is designated nonattainment. Yuba and Sutter Counties are designated nonattainment for ozone, and Butte County is designated nonattainment for ozone and carbon monoxide.

NSR—Part D of the Clean Air Act (Section 171 to 173) and 40 CFR 51.18 define the requirements for NSR programs, which apply to nonattainment pollutants. The most important requirements are that local NSR rules and programs require applicants for new sources or modifications to: (a) meet the Lowest Achievable Emission Rate, (b) provide reductions at least equal to the emission increase (offsets) and consistent with RFP, and (c) certify that all major sources they own in the State comply with all air pollution emission limitations. The Yuba, Sutter and Buttle Counties currently administer the NSR program under their conditionally approved Rule.

Description of Regulations

In response to the NSR requirements, Yuba, Sutter and Butte submitted SIP revisions to rules 4.6, 4.6, and 4.5 respectively. The three rules are almost identical and include the following sections.

Part 100 General
Part 200 Exemptions
Part 300 Definitions
Part 400 Requirements
Part 500 Administrative Requirements
Part 600 Calculations
Part 700 Power Plants
Part 800 Cogeneration and Resource Recovery Projects
Part 900 Air Quality Impact Analysis (Butte rule only)

The rule will require nonattainment pollutant sources to undergo a review process to obtain the permits to construct and operate. The provisions outlined above require source applicants to submit the necessary technical analysis to demonstrate that the regulations (such as control technology and offsets) are fulfilled.

Evaluation

EPA has evaluated the regulation to determine whether they satisfy all of the criteria for an NSR program. The Yuba, Sutter and Butte county regulations do meet EPA regulations. The rules will: (1) require pre-construction review of the sources which would be subject to the federal guidelines; (2) require certification of statewide compliance and (3) require application of LAER and offsets in a manner consistent with EPA's NSR requirements (40 CFR 51.18).

As previously mentioned, the submittal rules are near verbatim adoption of the NSR portion of PSD/NSR CAPCOA rule. The substantive differences between the Yuba, Sutter and Butte rules and the December 1982 CAPCOA (NSR only) rule are few. The new provisions include: Sections 402.3, "Use of Emissions Credits from Shutdowns" and 316, "Definition of Reconstruction;" both are required to fulfill EPA regulations. The other new provision is an exemption for seasonal TSP sources from BACT; however, all three counties are designated attainment for TSP. If there is a change in the TSP designation, EPA will then reassess this provision of the rule. The use of effective stack height for the Impact Table provision is not an issue in any of the three rules. The Sutter and Yuba rules do not have the Impact Table provision; the Butte rule does have the table, but it contains language which corrects the deficiencies of previous CAPCOA rules.

All three Districts have made a commitment not to exempt federally defined major sources or major modifications from EPA's permit review requirements. The assurances were made in each of the District's Resolution of Adoption.

The three rules are evaluated in EPA's technical support document which is available at the location listed in the **ADDRESSES** section of this Notice.

It should be noted that Yuba, Sutter and Butte Counties are rural ozone areas and thus exempted from the Clean Air Act, Section 173(1)(B) requirements for hydrocarbon sources.

However, there are three remaining issues in the Butte rule. Two of the deficiencies can be remedied if the District: (1) Revises Section 402.2 of the rule to add the requirement to meet Reasonable Further Progress (RFP) and (2) includes in the District's Resolution of Adoption or in a letter to EPA, a commitment not to use Section 201 to exempt sources from the LAER requirement.

The third issue will require a more complex resolution. Sections 202 and 203 exempt cogeneration and resource recovery sources from offsets requirements. The District is nonattainment for CO so in order to use this exemption, an approvable growth allowance to mitigate CO emissions from cogeneration or resource recovery sources must be developed (See EPA memo: California New Source Siting Rule, December 10, 1982). No growth allowance exists at this time; therefore, EPA proposes to disapprove the exemption provisions. If however, an approvable growth allowance is submitted and incorporated in the SIP prior to final rulemaking, EPA will approve the exemption.

Proposed Action

EPA proposes to approve, under Section 110 and Part D of the Clean Air Act, the Yuba, Sutter and Butte NSR rules, provided that changes noted above are made in the Butte rule and to disapprove Sections 202 and 203 of the Butte rule. Sections 202 and 203 can only be approved if the District submits an approvable growth allowance for the applicable sources.

Under Executive Order 12291, today's action is not major. It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA response are available for public inspection at the locations listed in the **ADDRESSES** section of the notice.

List of Subjects in 40 CFR Part 52

Environmental Protection Agency, Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709). The disapproval portion of today's action will also not have a significant economic impact on a substantial number of small entities. The NSR rules apply only to major sources (100 tons per year). At the present time, there are no major sources of carbon monoxide in operation in Butte County. The disapproval will only affect future sources of carbon monoxide locating in the urban Chico area of Butte County (Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations in California, 40746 FR September 9, 1983).

Authority: Sections 110, 129, 171 to 173, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7503 and 7601(a)).

Dated: November 3, 1983.

John Wise,

Acting Regional Administrator.

[FR Doc. 84-8027 Filed 3-23-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL 2551-4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Deficiency.

SUMMARY: The EPA today notifies the State of Indiana that its State Implementation Plan (SIP) for sulfur dioxide (SO_2) is substantially inadequate to assure the attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS) in three counties. These are Porter, Warrick, and Wayne, EPA is giving the State of Indiana 60 days to provide it with a schedule for correcting these deficiencies for Porter and Warrick Counties and one year to submit enforceable strategies for these counties which assure the attainment and maintenance of the SO_2 NAAQS. EPA is requiring a plan for Wayne County (the only one of these counties which has been designated nonattainment) within 60 days of today's notification.

DATES: Schedules for correcting the SIP deficiencies for Porter and Warrick Counties are due by May 25, 1984. Enforceable strategies for Porter and Warrick Counties must be submitted by March 25, 1985. Enforceable strategies for Wayne County are due by May 25, 1984.

ADDRESSES: Copies of the documents associated with this notice are available for inspection at: (it is recommended that you telephone Robert B. Miller at (312) 886-6031 before visiting the Region V Office).

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On January 31, 1972 and April 11, 1972, Indiana submitted a plan intended to assure the attainment and maintenance of the SO_2 NAAQS throughout the State.[1] This plan included the first SO_2 regulation submitted to EPA called APC 13. EPA approved in part and disapproved in part the plan and regulation as the Indiana SO_2 State Implementation Plan on March 31, 1972 (37 FR 10842).

The State submitted a revised plan, including a revised APC 13 (1972 APC 13), on September 15, 1972. EPA approved this regulation and plan in toto as the Indiana SO_2 SIP on May 14, 1973 (38 FR 12696). This revised plan required SO_2 sources throughout most of the State to limit their emissions to between 1.2 poinds of SO_2 per million British Thermal Units (lbs/MMBTU) and 6.0 lbs/MMBTU, depending upon the size and location of the source. Compliance with 1972 APC 13 was required no later than 1975.

Under section 307 of the Clean Air Act, various Indiana utilities petitioned the U.S. Court of Appeals for the Seventh Circuit to review EPA's approval of 1972 APC 13.[2] The Court generally upheld EPA's approval of the plan. It did note, however, that the "reasonableness" of state plans may be challenged in state courts.

On December 5, 1974, Indiana submitted a new APC 13 (1974 APC 13). This regulation replaced for State purposes 1972 APC 13 and, when combined with the nonattainment designation regulation APC 22 (which was submitted on October 3, 1974), required existing sources in Dearborn, Lake, Marion, and Warrick Counties

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[1] The primary SO_2 NAAQS are violated when, in a calendar year, either: (1) The annual arithmetic mean value of monitored SO_2 concentration exceeds 80 micrograms per cubic meter of air (80 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of SO_2 at any site exceeds 365 $\mu g/m^3$ more than once (the 24-hour primary standard). The secondary SO_2 NAAQS is violated when the maximum 3-hour concentration at any site exceed 1,300 $\mu g/m^3$ more than once.

[2] See *Indiana & Michigan Electric Co.* v. *EPA*, 509 F.2d 839 (7th Cir. 1975).

and all new sources to limit their emissions to between 1.2 lbs/MMBTU and 6.0 lbs/MMBTU. Emission limits were removed for all other existing sources. All sources in Lake County were required to comply by 1975, and sources in Dearborn, Marion, and Warrick Counties by 1978. EPA partially approved this regulation on August 24, 1976 (41 FR 35677) for all counties except Jefferson, Laporte, Porter, Vigo, and Warrick. For these five counties only, the SIP remained 1972 APC 13.

The utilities challenged Indiana's adoption of 1972 APC 13 and 1974 APC 13 through the State courts, which ultimately held that both of these regulations were improperly adopted at the State level and were void.[3] Notwithstanding the State Courts invalidation of these regulations, EPA believed at this time that these regulations were still effective at the Federal level.

In 1977 the Clean Air Act was amended by adding the nonattainment area[4] requirements of Part D.[5] In response to these requirements, on June 26, 1979 Indiana submitted a revised SO_2 regulation (1979 APC 13), which applied both in designated nonattainment areas and throughout the remainder of the State. This regulation replaced for State purposes 1974 APC 13. The 1979 APC 13 was recodified as 325 IAC Article 7 and resubmitted on October 6, 1980. EPA conditionally approved 325 IAC Article 7 on March 12, 1982 (47 FR 10825) and May 13, 1982 (47 FR 20586) for most Indiana Counties. However, EPA disapproved the regulation for Dearborn, Jefferson,[6] Porter, Warrick, and Wayne Counties. It took no action on the regulation as it applies to Floyd County. For Jefferson, Porter, and Warrick Counties the SIP remained 1972 APC 13 and for Dearborn, Floyd, and Wayne Counties the SIP remained 1974 APC 13.

In 1982 the Sierra Club sought under the section 304 citizens' enforcement provisions of the Act to enforce 1972 APC 13 against an electrical generating facility in Jefferson County and 1974 APC 13 against an electrical generating facility in Dearborn County. The U.S. District Court for the Southern District of Indiana held that these two regulations were not enforceable as a portion of the SIP and the U.S. Court of Appeals for the Seventh Circuit affirmed.[7] This finding is based on State court decisions which held that the regulations were invalid from their inception because they had never been properly adopted at the State level. Because the regulations are unenforceable, the SIP for these six counties is inadequate, i.e., there are significant SO_2 sources in these counties with no enforceable emission limitations which assure attainment and maintenance of the standards.

The State State has been working on revised strategies for all of these counties, except Wayne, and has submitted plans for three of them, Dearborn, Floyd, and Jefferson, covering all sources. For Floyd County, EPA proposed on May 26, 1982, to approve 325 IAC Article 7, because it protects the primary SO_2 standards, but notified the State under section 110(a)(2)(H) that the regulation is inadequate to protect the secondary standard. EPA will take final action on this proposal for Floyd County in the future. On April 30, 1982, Indiana submitted a revised plan for Jefferson County which consists of source specific emission limits for one source and 325 IAC Article 7 for the remainder. On November 16,1 983, Indiana submitted a revised strategy for Dearborn County which consists of source specific emission limits on three sources and 325 IAC Article 7 for the remainder. Both the Dearborn and Jefferson County plans involve changes in stack configurations. EPA will propose action on these plans in a future **Federal Register** notice. At that time, EPA will determine if the Dearborn and Jefferson County strategies are approvable under section 123 of the Clean Air Act.[8]

The State has advised EPA that it is enjoined at this time by a City of Richmond suit from work on the Wayne County plan.[9] EPA proposed to disapprove the Wayne County plan on February 3, 1983 (48 FR 4972) because of the State's failure to submit an adequate Part D plan. However, on November 2, 1983 (48 FR 50686) EPA revised its policy on the consequences of failure to attain the NAAQS by the end of 1982, and stated that it would issue section 110(a)(2)(H) notices of inadequacy and calls for SIP revision instead of proposed disapprovals in such cases. Today's action affecting Wayne County should be considered a follow-up to the November 2, 1983 policy revision in that it issues such a notice.

Finally, the State has been actively working on revised plans for Porter and Warrick Counties but, as of December 1, 1983, has not submitted approvable plans for these counties. Because Porter and Warrick Counties are not designated nonattainment, EPA did not propose any action on those counties' plans in the February 3, 1983 notice.

Finding and Call for Revision

Based on the Seventh Circuit Court's *Sierra Club* decision, EPA finds that there are no federally enforceable emission limits in six counties in Indiana; Dearborn, Floyd, Jefferson, Porter, Warrick, and Wayne. Normally this would require new plans to be developed for all six of these counties. However, in three (Dearborn, Floyd, and Jefferson) of the counties, EPA currently has complete plans before it on which EPA has not taken final action. Therefore, EPA is not formally notifying the State of Indiana of SIP inadequacy and calling for SIP revisions in these three counties at this time. If EPA ultimately disapproves any substantive part of the plan for either Dearborn, Floyd, or Jefferson Counties, the Agency will at that time issue a notice of SIP inadequacy for the County(s) in question and call for a SIP revision under section 110(a)(2)(H).

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[3] See *Indiana Environmental Management Board v. Indiana-Kentucky Electric Corp.*, 393 N.E. 2d 213 (Ind. App. 1979).

[4] EPA designated, among others, a portion of Wayne County nonattainment; Dearborn, Jefferson, Porter, and Warrick Counties "unable to be classified"; and Floyd County attainment for the primary SO_2 NAAQS on March 3, 1978 (43 FR 8962) and October 5, 1978 (45093). It proposed to redesignate Jefferson County nonattainment for the primary SO_2 NAAQS on January 27, 1981 (46 FR 8588). EPA will take further action on the Jefferson County redesignation in a future **Federal Register** notice. On September 2, 1983, EPA notified Indiana that an SO_2 redesignation request to nonattainment may be warranted for (among other) Dearborn, Floyd, Porter and Warrick Counties and, under section 107 of the Clean Air Act, requested all available SO_2 data for these counties. EPA will make a determination as to Dearborn, Floyd, Porter, and Warrick Counties' attainment status upon review of the State's data and response.

[5] The requirements for an approvable Part D SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

[6] EPA disapproved 325 IAC Article 7 for Jefferson County in a separate rulemaking at 46 FR 8473 (January 27, 1981).

[7] See *Sierra Club v. Indiana-Kentucky Electric Corporation and Indiana & Michigan Electric Company*, 716 F.2d 1145 (7th Cir. 1983).

[8] The U.S. Court of Appeals for the District of Columbia Circuit has recently disapproved portions and remanded to the Agency portions of EPA's policy for implementing the "tall stack" provisions of section 123 of the Clean Air Act. See *Siegra Club v. EPA*, Slip Op., Nos. 82-1384, 82-1412, 82-1845, and 82-1889 (D.C. Cir. Oct. 11, 1983). Based on this decision, EPA is currently reviewing its policy for implementing section 123. Although the attainment demonstrations submitted in support of the Dearborn and Jefferson County SO_2 strategies complied with EPA's previous policy (47 FR 5864, February 8, 1982), the strategies may no longer be approvable. The State of Indiana should be aware of this potential problem and that it may have to develop new strategies for Dearborn and Jefferson Counties if EPA's previous stack height credit policy is changed as it applies to these counties.

[9] See *Indiana Air Pollution Control Board v. City of Richmond*, No. 1283-S 472, Slip Op., (Ind. December 30, 1983).

EPA is, however, notifying the State of Indiana under section 110(a)(2)(H) of the Clean Air Act that the SIP is substantially inadequate to assure attainment and maintenance of the NAAQS in the other three Counties: Porter, Warrick, and Wayne. In keeping with the time frame suggested in EPA's policy on section 110(a)(2)(H) notifications in nonattainment areas,[10] EPA is giving the State of Indiana under section 110(c)(1)(C) 60 days to submit a schedule for submission of enforceable plans and regulations for Porter and Warrick Counties. Submission of the final plans can be no later than one year from today.

Because Wayne County is a designated nonattainment area and its Part D plan is now well over four years overdue, the plan itself for this county is required within 60 days of today's notice. This time frame is detailed in the November 2, 1983 **Federal Register** notice. If EPA does not receive in a timely manner either acceptable schedules or plans for Porter, Warrick and Wayne Counties, it will disapprove the State plans and develop plans itself under section 110(c)(1) of the Clean Air Act, propose them, and, after considering public comments, promulgate them. Additionally, EPA will consider the appropriateness of imposing the funding restrictions of section 176(b) for the failure to implement under section 110 the requirement for a revised implementation plan.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the EPA Region V Office listed above.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, particulate matter carbon monoxide, Hydrocarbons, Intergovernmental relations.

This notice is issued under authority of Section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: March 16, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-8028 Filed 3-23-84; 8:45 am]

BILLING CODE 6560-50-M

[10] See EPA's post-1982 SIP policy statement (November 2, 1983, 48 FR 50685).

40 CFR Part 52

[A-6-FRL 2550-8]

Plan for Exxon U.S.A. Baytown Refinery, Baytown, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing approval of the Exxon U.S.A. Baytown Refinery Alternative Emission Reduction Plan ("Bubble") as a revision to the Texas State Implementation Plan (SIP). The Bubble uses replacement of leaded gasoline in two (2) storage tanks and light naphtha in a third with relatively nonvolatile lube distillate in lieu of controls on five (5) other fixed roof storage tanks; three (3) in laktane and two (2) in heptane service. The use of a process change to produce emission reduction credits is consistent with EPA's Emission Trading Policy Statement of April 7, 1982 (47 FR 15076).

DATE: Comments must be received by April 25, 1984.

ADDRESSES: Copies of the State's submittals are available for review during normal business hours at the following locations:

Texas Air Control Board, 6330 Hwy 290 East, Austin, Texas 78723

Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270

FOR FURTHER INFORMATION CONTACT: John R. Hepola, Chief, State Implementation Plan Section, Air Branch, Air & Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION: On May 13, 1983 the State of Texas submitted a revision to the Texas SIP for an Alternative Emissions Reduction Plan for the Exxon U.S.A. Baytown Refinery in Baytown, Texas. The submittal contained certification that adequate notice and a public hearing were provided for the proposed alternative controls. EPA is proposing to approve the revision and invites comments from all interested persons. Comments received within 30 days of the publication of this notice will be considered by EPA.

Background

At the Baytown Refinery, Exxon is proposing to change the service of two (2) storage tanks containing leaded gasoline and one (1) tank containing light naphtha over to storage of heavy, relatively nonvolatile lube distillate. The emission reduction credits earned from this service change would be applied in lieu of placing controls on five (5) smaller, fixed roof tanks. Three (3) of the uncontrolled tanks contain laktane (octane), and the remaining two (2) contain heptane. The revised limits for the Exxon Baytown Refinery are as follows:

Source (tank No.)	Previous RACT limits (tons VOC per year)[1]	New emission limits (tons VOC per year)	Net change in emissions (tons VOC per year)
[illegible]	0.75	3.83	+3.08
91	0.75	3.83	+3.08
92	0.75	3.83	+3.08
[illegible]	1.43	11.50	+10.07
[illegible]	1.43	11.50	+10.07
715	19.92	0.11	-19.81
720	0.81	0.06	-0.75
1072	12.00	[illegible]	-11.92
[illegible]	37.84	34.74	-3.10

[1] Emission estimates based on use of emission factors from EPA Publication AP-42, Section 12 Part 4.3 "Storage of Organic Liquids."

Review

The proposed bubble was reviewed against the proposed Emissions Trading Policy Published in the **Federal Register** on April 7, 1982 (47 FR 15076). EPA has reviewed the State's submittal and developed an Evaluation Report.[1] This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 Office and the other address listed above. Briefly, the review is summarized below.

To qualify for approval as an Alternate Emissions Reduction, the proposed reductions must be surplus, enforceable, permanent, and quantifiable. First, the reductions are surplus because credit is only given for emissions reductions beyond the Texas requirements for Reasonably Available Control Technology (RACT).[2] The

[1] EPA Review of the Exxon Bubble in October 1983.

[2] EPA proposed to approve all portions of the ozone attainment demonstration for Harris County, Texas on February 3, 1983 (48 FR 5114), except the vehicle inspection/maintenance (I/M) portion. EPA indicated in that notice that no changes are needed in the stationary source control provisions Texas submitted for the County. Based on that proposal, EPA is proposing to treat Harris County as an ozone nonattainment area with an approved demonstration for purposes of acting on this emissions trade. Under the proposed Emissions Trading Policy Statement and the notice of August 31, 1983 soliciting comment on certain aspects of the policy (48 FR 39580), the proper trading baseline in such areas is the set of requirements in the approved plan. For the facilities involved in this trade, the Harris County plan requires RACT. Therefore, the RACT baseline relied on in this trade is appropriate. Final action on this bubble, however, is contingent on whether EPA finally approves the Harris County demonstration.

credits for emission reductions were achieved by a process change and gasoline production cutbacks. The trade will not result in any increase in tankage throughput. Exxon has indicated that should gasoline production increase again there would be no increased throughput to other tanks. In any event, EPA has determined that the maximum increase possible in emissions due to such an increased throughput would be less than .1 ton per year.

Second, the limits in the bubble are enforceable because TACB, through Executive Order, has established enforceable emission requirements for each tank. Since the documents will be a part of the Texas SIP, they will be federally enforceable.

Third, upon approval, the new emission limits become a permanent part of the federally enforceable SIP.

Fourth, EPA has determined that the emissions involved are quantifiable in the creation of emission reduction credits.

The proposed bubble also meets the further criteria given in the Emissions Trading Technical Issues Document published in the April 7, 1982 **Federal Register** (47 FR 15076) and which are as follows:

1. Emissions trades must involve the same pollutant. Volatile Organic Compound (VOC) emissions increases from one source are traded for even greater decrease in VOC emissions from another source under the proposed trade.

2. All uses of Emission Reduction Credits must satisfy ambient tests. EPA considers pound for pound trades of VOC emissions to have no net impact on the environment. Therefore, since the Exxon bubble is such a trade with a surplus of 3.10 tons per year of decreased VOC emissions it meets this requirement.

3. Trades should not increase net baseline emissions in nonattainment areas. Net emissions of the proposed bubble after the trade will be lower than the RACT baseline approved by EPA for Harris County in the 1979 SIP (45 FR 19231). In addition the trade is consistent with the reasonable further progress portion of the 1982 SIP for Harris County (48 FR 5114).

4. Emissions trades should not increase hazardous pollutants. The only emissions involved in this trade that are covered under section 112 of the Clean Air Act (NESHAPS) are benzene emissions. Under this trade, however, benzene emissions would decrease.

5. Emissions trades connot be used to meet technology based requirements. The Exxon Baytown Refinery is an existing source so NSPS, BACT and LAER do not apply.

The Exxon bubble meets all of the criteria for an acceptable bubble as outlined in the April 7, 1982 **Federal Register** policy statement. Therefore EPA is proposing to approve this alternative emission reduction plan.

Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certifies that the attached rule will not have a significant economic impact on a substantial number of small entities since it proposes no new requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 1291.

This notice of approval is issued under the authority of section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Corbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated October 28, 1983.

Dick Whitting,

Acting Regional Administrator.

[FR Doc. 84-8022 Filed 3-23-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 67

[Docket No. FEMA-6592]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premimum rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts

flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67.

Flood insurance, Flood plains.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet	
				Existing	Modified
Connecticut	Norwich, City, New London County.	Trading Cove Brook	At confluence with Thames River	*13	*14
			Approximately 350' downstream of West Thames Street	*13	*14
		Thames River	Downstream corporate limits	*13	*14
			Shipping Street (extended)	*14	*15
			Confluence with Yantic and Shetucket Rivers	*14	*15
		Yantic River	Confluence with Thames River	*14	*15
		Shetucket River	Confluence with Thames River	*14	*15
			Upstream of State Highway 2	*14	*15
		Spaulding Pond Brook	Confluence with Shetucket River	*14	*15
		Tributary F	Confluence with Thames River	*13	*15

Maps available for inspection at the City Hall, Norwich, Connecticut.

Send comments to Honorable Charles Whitty, City Manager of Norwich, City Hall, Norwich, Connecticut 06360.

Georgia	(C) Atlanta, Fulton and DeKalb Counties.	Chattahoochee River	About 0.63 mile downstream of Bankhead Highway	*762	*766
			About 0.40 mile upstream of Interstate Route 75	*782	*778
		Lenox Road Tributary	At mouth	None	*823
			About 0.64 mile upstream of the mouth	None	*829
		Proctor Creek	At mouth	*782	*788
			About 0.4 mile upstream of Bolton Road	*770	*788
		Whetstone Creek	At mouth	*770	*773
			Just downstream of Marietta Road	*788	*773
		East Fork Whetstone Creek	At mouth	None	*773
			Just downstream at Adams Drive	None	*773
		Peachtree Creek	At mouth	None	*774
			Just downstream of Ridgewood Road	None	*774

Maps available for inspection at the Bureau of Highways and Streets, 3rd Floor, City Hall, 68 Mitchell Street SW, Atlanta, Georgia.

Send comments to Honorable Andrew J. Young, Mayor, City of Atlanta, 68 Mitchell Street SW, Atlanta, Georgia 30335.

Georgia	City of Warner, Robins, Houston County.	Bay Gall Creek	About 500 feet upstream of mouth	*283	*283
			About 1,300 feet upstream of mouth	*285	*285
			Just downstream of Richard Russell Parkway	*None	*293
			Just upstream of Moody Road	*296	*296
			About 1,500 feet upstream of Moody Road	*303	*303
		Howard Branch	At mouth	*301	*301
			At confluence with Robins Run	*316	*316
			About 5,750 feet above the mouth	*355	None
		Robins Run	At confluence with Howard Branch	None	*316
			About 1,700 feet upstream of Angus Boulevard	None	*337

Maps available for inspection at the Engineering Department, City Hall Building, 700 Watson Boulevard, Warner Robins, Georgia.

Send comments to Honorable Foy S. Evans, Mayor, City of Warner Robins, P.O. Box 1466, Warner Robins, Georgia 31099.

Illinois	Village of Crestwood, Cook County.	Crestwood Drainage Ditch East	Just upstream of Cicero Avenue	*601	None
			Just upstream of Kostner Avenue	*610	None
		Tinley Creek	Just upstream of 127th Street	*597	*595
			Just upstream of Central Avenue	*600	*604
			About 900 feet upstream of Elementary Christian School Road	*606	*609

Maps available for inspection at the Village Office, 13840 South Cicero Avenue, Crestwood, Illinois 60445.

Send comments to Honorable Chester Stanczak, Mayor, Village of Crestwood, 13840 South Cicero Avenue, Crestwood, Illinois 60445.

Illinois	City of Joliet, Will County	Rock Run North	Approximately 0.5 mile downstream of Essington Road	*576	*576
			Approximately 0.3 mile upstream of Theodore Street	None	*584
		Sunnyland Drain	Approximately 1.9 miles above confluence with DuPage River.	*602	*602
			Approximately 950 feet upstream of confluence of Sunnyland Drain Tributary.	*606	*608
		Sunnyland Drain Tributary	At confluence with Sunnyland Drain	*602	*602
			Just upstream of Hennepin Drive	*602	*603
			Just upstream of U.S. Route 30	*608	*606
		St. Francis Academy Creek	Just upstream of Theodore Street	None	*627
			Approximately 1,150 feet upstream of Theodore Street	None	*654
		St. Anne School Tributary	Just upstream of Theodore Street	None	*627
			Approximately 800 feet upstream of Catherine Street	None	*654
		Rock Run Tributary No. 2	At confluence with Rock Run North	None	*575
			Approximately 860 feet upstream of West Ridge Lane	None	*585

Maps available for inspection at the Office of the Director of Community and Economic Development, City Hall, 150 West Jefferson Street, Joliet, Illinois 60431.

Send comments to Honorable John Bourg, Mayor, City of Joliet, City Hall, 150 West Jefferson Street, Joliet, Illinois 60431.

Nebraska	City of Beatrice, Gage County	Indiana Creek	At confluence with Big Blue River	*1,260	*1,259
			At 1,600 feet upstream of Highway 77	*1,262	*1,263
			At 23,360 feet above confluence with Big Blue River	*1,272	*1,273
		Big Blue River	Approximately 3,600 feet above confluence with Bear Creek (at downstream limit of detailed study).	*1,253	*1,253
			At confluence with Indian Creek	*1,260	*1,259

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

[redacted]	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet	
				Existing	Modified
			Approximately 11,600 feet above confluence with Indian Creek (at upstream limit of detailed study).	*1,261	*1,261

Maps available for inspection at the City Clerk's Office, 205 North Fourth Street, Beatrice, Nebraska 68310.

Send comments to Honorable Allan O. Grell, Mayor, City of Beatrice, City Hall, 205 North Fourth Street, Beatrice, Nebraska 68310.

New Jersey	New Milford, Borough, Bergen County.	Hackensack River	Corporate limits at New Bridge Road (upstream side)	*8	*9
			River Edge Road (upstream side)	*11	*10
		Hirschfeld Brook	Upstream of Prospect Avenue	*13	*14
		French Brook	New Bridge Road (upstream side)	None	*18
			Floral Court (upstream side)	None	*30
			Boulevard	None	*34
			Upstream corporate limits	None	*56

Maps available for inspection at the Borough Hall, 930 River Road, New Milford, New Jersey.

Send comments to Honorable Donato Longo, Mayor of New Milford, 930 River Road, New Milford, New Jersey 07646.

Oregon	Junction City (City of), Lane County.	Willamette River	Intersection of East 6th Avenue and Birch Street	*326	*325

Maps available for review at City Hall, 680 Greenwood, Junction City, Oregon.

Send comments to Honorable Douglas C. Sweetland, Mayor, City of Junction City, P.O. Box 245, Junction City, Oregon 97448.

West Virginia	Ripley, City, Jackson County	Mill Creek	Approximately 400' downstream of Interstate Route 77	*599	*597
			Confluence of Sycamore Creek	*602	*601
			Downstream of U.S. Route 21 (limit of flooding affecting community).	*606	*605

Maps available for inspection at the City Hall, 113 South Church Street, Ripley, West Virginia

Send comments to Honorable Ronald Whiting, Mayor of Ripley, 113 South Church Street, Ripley, West Virginia 25271.

Wisconsin	Unincorporated Areas of Jefferson County	Rock River	At Lake Koshkonong	*787	*784
			About 1.3 miles downstream of County Highway P	*832	*830
			At upstream county boundary	*847	*846
		Oconomowoc River	At mouth	*842	*841
			About 2.1 miles upstream of Elm Drive (county boundary).	*849	*848
		Crawfish River	At mouth	*791	*788
			Just downstream of County Highway A	*792	*792
		Bark River	At mouth	*789	*786
			Just downstream of County Highway D	*789	*786
		Whitewater Creek	At mouth	*789	*786
			About 3,300 feet downstream of Fremont Road (county boundary).	*799	*799

Maps available for inspection at the County Courthouse, 320 South Main Street, Jefferson, Wisconsin 53549.

Send comments to Honorable Willard D. Heusen, County Administrator, County Courthouse, 320 South Main Street, Jefferson, Wisconsin 53549.

The proposed base flood elevations for selected locations are:

PROPOSED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
Arizona	Cochise County (Unincorporated Areas)	Babocomari River	150 feet downstream of State Highway 90	*4,266
		Greenbush Draw	75 feet upstream of Bisbee Naco Highway	*4,567
		Line 1	80 feet upstream of confluence with Greenbush Draw	*4,555
		Line 2	40 feet upstream of 4th Street	*4,591
		Line 3	10 feet upstream of Southern Pacific Railroad	*4,578
		Palm Groove Wash	120 feet upstream of Southern Pacific Railroad	*3,960
		Whitewater Draw	100 feet upstream of U.S. Highway 80	*3,919
		Stream 1	10 feet upstream of U.S. Highway 666	*3,942
		San Pedro River	Intersection of San Pedro River and center of Interstate 10.	*3,510
		Stream E	50 feet upstream of El Camino Rancho	*4,548
		Stream E Tributary	50 feet upstream of El Camino Rancho	*4,570
		Stream J	20 feet upstream of State Highway 92	*4,598
		Stream J Tributary	350 feet upstream of confluence with Stream J	*4,692

Maps available for inspection at County Engineering Department, Cochise County Courthouse, Bisbee, Arizona.

Send comments to the Honorable V.L. Thompson, Administration Building, Cochise County Courthouse, Bisbee, Arizona 85603.

Arizona	Graham County (Unincorporated Areas)	Black Rock Wash	50 feet upsteam of Southern Pacific Railroad	*2,718
		Cottonwood Wash	50 feet upstream of Southern Pacific Railroad	*2,854
		Mud Hollow Creek	At intersection with Cluff Ranch Road	#2
		Ash Creek	At intersection with Dodge-Nevada Canal	#1
		Gila River	100 feet downstream of North Eight Avenue	*2,895
		Frye Creek	300 feet downstream of confluence with Frye Creek Tributary.	*3,070
		Frye Creek Tributary	1,500 feet upstream of confluence with Frye Creek	*3,069
		Cactus Flat	100 feet upstream of U.S. Highway 666	*3,110
		San Simon River	At intersection with upper Solomonville Road	*2,980

PROPOSED BASE FLOOD ELEVATIONS—Continued

[illegible]	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet [illegible]
		Jacobson Creek Tributary	100 feet downstream of intersection with Mohawk Drive.	*3,274
		Jacobson Creek	600 feet upstream of confluence with Marijilda Wash	*3,096
		Marijilda Wash	At intersection with Roadrunner Street	*3,155

Maps available for inspection at the Engineering Department, Graham County Courthouse, Safford, Arizona.

Send comments to the Honorable Hugh Hamman, Graham County Courthouse, Safford, Arizona 85546.

California	Walnut Creek (City), Contra Costa County.	Homestead Creek	25 feet upstream from center of Seven Hills Ranch Road	*103
		Walnut Creek	25 feet upstream from center of Southern Pacific Railroad.	*123
		Walnut Creek Shallow Flooding	Center of intersection of Trinity Avenue and North Main Street	*135
		Tice Creek Shallow Flooding	West end of Brentwood Court	*165
		Shallow Flooding	West end of Westwood Court	*150
		East Branch Homestead Creek	25 feet upstream of center of Hacienda Drive	*134
		Pine Creek	10 feet upstream from center of Deerpark Drive	*146
		Tice Creek	50 feet upstream from center of Orchard Lane	*158
		San Ramon Creek	60 feet upstream from center of Cross Creek Road	*168
		San Ramon Creek Shallow Flooding.	Center of intersection of North Main Street and Olympic Boulevard.	*146

Maps available for inspection at the Department of Community Development, 1666 North Main Street, Walnut Creek, California.

Sent comments to the Honorable Richard Hildebrand, 1666 North Main Street, Walnut Creek, California 94596

Colorado	Denver (City) Denver County	Clear Creek	Intersection of the stream and the center of West 52nd Avenue	*5,267
		Bear Creek	50 feet upstream from the center of South Sheridan Boulevard (State Highway 65).	
		Cherry Creek	30 feet upstream from the center of Lanmer Street	*5,196
			50 feet upstream from the center of South Holly Street	*5,373
		Lakewood Gulch	Intersection of the stream and the center of Perry Street.	*5,267
		Lakewood Gulch Overflow	60 feet east along West 13th Avenue from the intersecion of West 13th Avenue and West Myrtle Place.	*5,195
		Dry Gulch (Lakewood Gulch Tributary).	Intersection of the stream and the center of Perry Street.	[illegible]
		Harvard Gulch	Intersection of South Marion Street and Wesley Avenue	*5,328
			Intersection of South Broadway Street and Iliff Avenue	[illegible]
		Harvard Gulch Overflow	Intersection of South Corona Street and Wesley Avenue	*5,325
			Intersection of Wesley Avenue and South Ogden Street.	[illegible]
		Dry Gulch (Harvard Gulch Tributary).	Intersection of Harvard Avenue and South Pearl Street	*5,305
			Intersection of Harvard Avenue and South Washington Court.	#2
		West Harvard Gulch	Intersection of West Water Avenue and South Zuni Street.	*5,346
			100 feet northeast along West South Platte River Drive from the culvert at West Harvard Gulch.	#1
		Goldsmith Gulch	Intersection of Mexico Avenue and Colorado Drive	*5,410
			Intersection of South Tamarac Drive and Princeton Avenue	*5,526
			Intersection of South Monaco Street Parkway and Iowa Avenue.	#2
		Southmoor Park Tributary	Intersection of the stream and the center of Eastman Avenue.	*5,486
		Sanderson Gulch	Intersection of the stream and the center of West Arkansas Avenue.	*5,280
			Intersection of West Florida Avenue and South Raritan Street.	#1
		Weir Gulch	Intersection of South Weir Drive and South Vrain Street.	*5,316
		Dakota Avenue Tributary	Intersection of West Alaska Place and South Yates Street	#1
		First Avenue Tributary	Intersection of West 1st Avenue and Stuart Street	*5,302
		Sand Creek	50 feet upstream from the center of Quebec Street	*5,230
			100 feet west along Smith Road from its intersection with Havana Street.	#3

Maps available for inspection at Wastewater Management Division, 3840G York Street, Denver, Colorado and Planning Department, 1445 Cleveland Place, Denver, Colorado.

Send comments to the Honorable Federico Pena, 1437 Bannock Street, Denver, Colorado 80202.

Colorado	Florence (Town), Fremont Coounty	Arkansas River	Intersection of Santa Fe Avenue and West Seventh Street.	*5,150
		Coal Creek	Intersection of East Fourth Street and Petroleum Avenue	*5,161
		Coal Creek East Overflow	Intersection of East Main Street (Colorado Highway 115) and Robinson Avenue.	*5,173
		Coal Creek West Overflow	Intersection of Santa Fe Avenue and West Main Street.	*5,175
		Oak Creek	Intersection of Houston Avenue and West Second Street	*5,190

PROPOSED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
Maps available for inspection at Town Hall, 300 W. Main, Florence, Colorado.				
Send comments to the Honorable Charles McCall, 300 W. Main, Florence, Colorado 81226.				
Connecticut	Danielson, Borough, Windham County	Quinebaug River	Downstream corporate limits	*169
			Upstream of dam	*194
			Upstream corporate limits	*196
		Five Mile River	Confluence with Quinebaug River	*183
			Upstream of dam	*224
			Upstream corporate limits	*224
Maps available for inspection at the Community Development Office, 13 Center Street, Danielson, Connecticut.				
Send comments to honorable Fred Hillman, President of the Borough of Danielson, Danielson, Connecticut 06239.				
Connecticut	Putnam, City, Windham County	Little River	Confluence with Quinebaug River	*231
			Upstream of dam	*342
			Approximately 1,000 feet upstream of corporate limits	*271
		Quinebaug River	Downstream corporate limits	*226
			Upstream of dam located approximately 450' downstream of Providence Street.	*278
			Upstream corporate limits	*293
Maps available for inspection at the Office of the City Clerk, City Hall, Putnam, Connecticut.				
Send comments to Honorable Stanley Ozog, Mayor of the City of Putnam, City Hall, Putnam, Connecticut 06260.				
Connecticut	Woodstock, Town, Windham County	English Neighborhood Brook	Approximately 280 feet upstream of State Route 197 (downstream crossing).	*356
			Upstream State Route 169	*391
			Upstream of dam	410
			Approximately .7 mile upstream of upstream crossing of State Route 197.	*471
		Mill Brook	Upstream of New Sweden Road	*571
			Confluence with Mascraft Brook	*571
		Mascraft Brook	Confluence with Mill Brook	*571
			Confluence with Taylor Brook	*580
		Taylor Brook	Confluence with Mascraft Brook	*582
			Approximately .3 mile upstream of State Route 171	583
		Bungee Brook	Brockway Road (extended)	*535
			Downstream of State Route 171	*557
		Little River	Downstream corporate limits	*286
			Upstream of dam	*290
			Upstream State Route 171	*294
			Downstream of Stone Bridge Road	*294
		Peake Brook	Confluence with Little River	*294
			Upstream of Peake Brook Road	*296
			Downstream of Butts Road	*325
Maps available for inspection at the Office of the First Selectman, Town Hall, Woodstock, Connecticut.				
Send comments to Honorable Clarence H. Child, First Selectman for the Town of Woodstock, P.O. Box 123, Town Hall, Woodstock, Connecticut 06281.				
		WITHLACOOCHEE RIVER BASIN		
		Southeast Fruitland Park Segment		
Florida	City of Leesburg, Lake County	Ponding Area 07-3	Approximately 2,600 ft. along Tally Road north of the intersection of Griffin Road and Tally Road, then approximately 50 feet northwest.	*75
		Ponding Area 07-7	Approximately 400 ft. northeast of State Highway 44A (Griffin Road) and Thomas Avenue intersection.	*75
		Ponding Area 07-7	Approximately 400 ft. southwest of State Highway 44A (Griffin Road) and Thomas Avenue intersection.	*75
		Lake Okahumpka Segment		
		Dyches Lake	Approximately 600 ft. south of State Highway 44 (West Main Street) and State Highway 44A intersection.	*80
		Ponding Area Q2-1	Approximately 1,500 ft. north of State Highway 468 and State Highway 44 (West Main Street) intersection.	*78
		Ponding Area Q3-2	Approximately 1,000 ft. southwest of Dyches Lake	*79
		Ponding Area Q3-3	Approximately 100 ft. southwest of State Highway 468 and State Highway 44 (West Main Street) intersection	*75
		Ponding Area Q3-4	Northwest corner of State Highway 44 (West Main Street) and State Highway 44A (Griffin Road) intersection.	*79
		Ponding Area Q4-6	Approximately 3,500 ft. southwest of State Highway 468 and Seaboard Coast Line Railroad intersection.	*81
		ST. JOHNS RIVER BASIN		
		Lake Harris Segment		
		Lake Hollywood	Approximately 2,000 ft. northwest of State Highway 468 and Seaboard Coast Line Railroad intersection.	*75
		Ponding Area K1-1	Approximately 700 ft. southeast of State Highway 468 and Seaboard Coast Line Railroad intersection.	*73
		Ponding Area K1-2	Northwest corner of State Highway 468 and Seaboard Coast Line Railroad intersection.	*75
		Ponding Area K1-3	Northeast corner of Sumter Street and State Highway 29 (14th Street) intersection.	*75
		Ponding Area K1-4	Approximately 1,000 ft. southeast of State Highway 44 (East Main Street) and State Highway 33 (Dixie Avenue) intersection.	*78

PROPOSED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
		Lake Lucerne	Northeast corner of 12th Street and State Highway 33 (Dixie Avenue) intersection.	*75
			Lake Griffin Segment	
		Ponding Area G1-2	Approximately 500 ft. northwest of Oak Drive and Dixon Street intersection.	*70
		Ponding Area G9-2	Approximately 400 ft. north of Moss Street and Center Street intersection.	*75
	Maps available for inspection at City Hall, 504 West Orange, Leesburg, Florida 32749-0630.			
	Send comments to Mr. Rex Taylor, City Manager, or Mr. Greg Belizeau, Assistant City Manager, City Hall, P.O. Box 630, Leesburg, Florida 32749-0630			
Florida	City of Mascotte, Lake County	Little Bluff Lake	Entire Shoreline	*100
		Dukes Lake	Entire Shoreline	*100
		Gallows	Entire Shoreline	*105
	Maps available for inspection at City Hall, 122 North Sunset Avenue, Mascotte, Florida 32753.			
	Send comments to Mayor William Harb or Margaret Chapman, City Clerk, City Hall, P.O. Box 56, Mascotte, Florida 32753.			
Florida	Town of Montverde, Lake County	Lake Apopka	Entire Shoreline	*69
		Lake Apopka Area (J-1-1)	Entire Shoreline	*75
		Lake Florence	Entire Shoreline	*85
	Maps available for inspection at Town Hall, 904 Seventh Street, Montverde, Florida 32756.			
	Send comments to Mayor Tony Mancuso or Sandy Baker, Town Clerk, Town Hall, P.O. Box 8, Montverde, Florida 32756.			
Idaho	Ada County (Unincorporated Areas)	Boise River	25 feet upstream of centerline of crossing of Linder Road.	*2,516
			Intersection of Demeyer Road and Kent Lane	*2,616
		South Fork, Boise River, Eagle Island.	Intersection of Clear Creek Drive and Avenidaba Drive.	*2,531
		South Fork, Boise River, Right Overbank.	100 feet downstream of stream crossing of Linder Road.	*2,516
		Dry Creek	Intersection of Floating Feather Road and Eagle Road	[illegible]
		Seaman Gulch	150 feet upstream from stream crossing of Hill Road	*2,647
		Pierce Gulch	Intersection of Hill Road and Pierce Park Lane [illegible] feet upstream from stream crossing of Hill Road.	[illegible] *2,653
		Stuart Gulch	At stream crossing of City of Boise corporate limits	[illegible]
		Hulls Gulch	At stream crossing of City of Boise corporate limits	*2,669
		Cottonwood Creek	At stream crossing of Shaw Mountain Road	[illegible]
		Warm Springs Creek	10 feet downstream of centerline of stream crossing of Barber Road.	[illegible]
		Maynard Gulch	60 feet upstream from stream crossing of County Highway 21.	*2,842
		Highland Gulch	160 feet upstream from stream crossing of County Highway 21.	[illegible]
		Tenmile Creek	180 feet upstream from stream crossing of Hubbard Road.	[illegible]
		Tenmile Creek, Creek Overbank	100 feet southeast of intersection of Columbia Road and Cloverland Road.	*2,736
		Polecat Gulch	Intersection of Collister Drive and Outlook Avenue	#2
	Maps available for inspection at the Engineering Department, 650 Main Street, Boise, Idaho.			
	Send comments to the Honorable Bill Gratton, 650 Main Street, Boise, Idaho 83702.			
Idaho	Horseshoe Bend (City), Boise County	Payette River	50 feet upstream from the center of State Highway 55	*2,597
		Shafer Creek	200 feet east of the center of intersection of Main Street and Fourth Street.	*2,611
	Maps available for inspection at City Hall, Horseshoe Bend, Idaho.			
	Send comments to the Honorable Doyle D. Woods, P.O. Box 248, Horseshoe Bend, Idaho 83629.			
Idaho	Salmon (City), Lemhi County	Lemhi River	Intersection of Confederate Drive and North Charles [illegible]	[illegible]
		Salmon River	Intersection of Salmon River and center of U.S. Highway 93.	[illegible]
	Maps available for inspection at City Hall, Salmon, Idaho.			
	Send comments to the Honorable Bill Miller, P.O. Box 770, Salmon, Idaho 83667.			
Illinois	(Uninc.) Bureau County	Illinois River	About 1.7 miles downstream of State Route 26	[illegible]
			About 2.0 miles upstream of State Route 89	[illegible]
		Walnut Creek	About 3,700 feet downstream of Main Street	[illegible]
			Just downstream of County Route 8	[illegible]
	Maps available for inspection at the County Highway Building, Rt. 34 E., Princeton, Illinois.			
	Send comments to Honorable George Gonigan, Chairman, Bureau County Board, Bureau County Courthouse, Princeton, Illinois 61356.			
Illinois	City of Byron, Ogle County	Rock River	About 1 mile downstream of State Route 72	[illegible]
			Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	[illegible]
	Maps available for inspection at the Clerk's Office, City Hall, 120 N. Union Street, Byron, Illinois.			
	Send comments to Honorable Lyle Blanchard, Mayor, City of Byron, City Hall, 120 N. Union Street, Byron, Illinois 61010.			
Illinois	(C) Monticello, Piatt County	Sangamon River	About two miles downstream of Bridge Street	*644
			About 0.5 mile upstream of Bridge Street	*647
		North Unnamed Creek	At mouth	*646
			About 1,150 feet upstream at State Street	*668
		South Unnamed Creek	Just upstream of Hamilton Street	[illegible]
			About 200 feet upstream Chase Street	[illegible]
		Tributary to South Unnamed Creek	Just upstream of Marion Street	[illegible]
			About 450 feet upstream of Williams Street	*668

PROPOSED BASE FLOOD ELEVATIONS

[illegible]	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
Maps available for inspection at City Hall, Monticello, Illinois.				
Send comments to Honorable Phillip Blankenburg, Mayor, City of Monticello, City Hall, 211 N. Hamilton, Monticello, Illinois 61856.				
Illinois	(V) Pulaski, Pulaski County	Mississippi River	Within community	*337
Maps available for inspection at the Hellig Fertilizer Service, Pulaski, Illinois.				
Send comments to Honorable Jack Roberts, Mayor, Village of Pulaski, Village Hall, Pulaski, Illinois 62978.				
Illinois	(Uninc.) Putnam County	Illinois River	About 0.5 mile downstream of State Route 18	*461
			About 1.9 mile upstream of State Route 89	*466
Maps available for inspection at the Zoning Office, County Courthouse, Hennepin, Illinois.				
Send comments to Honorable John Peterson, Chairman County Board, Putnam County Courthouse, Hennepin, Illinois 61327.				
[illegible]	(T) Brookville, Franklin County	Whitewater River	About 0.75 mile downstream of Seventh Street	*622
			About 0.42 mile upstream of Seventh Street	*630
		East Fork Whitewater River	Just downstream of U.S. Route 52	*622
			Just downstream of State Route 101	*624
Maps available for inspection at the Municipal Building, 634 Main Street, Brookville, Indiana.				
Send comments to Honorable Loren Murphy, Town Board President, Town of Brookville, Municipal Building, 634 Main Street, Brookville, Indiana 47012.				
Kansas	(C) Greeley, Anderson County	South Fork Pottawatomie Creek	About 1.1 mile downstream of Missouri Pacific Railroad	*888
			Just downstream of Missouri Pacific Railroad	*889
			Just upstream of Missouri Pacific Railroad	*894
			Just downstream of U.S. Route 169	*[illegible]
Maps available for inspection at City Hall, Greeley, Kansas.				
Send comments to Honorable Charles Yaw, Mayor, City of Greeley, City Hall, Greeley, Kansas 66033.				
[illegible]	Yarmouth, Town, Cumberland County	Royal River	At confluence with Casco Bay	*10
			East Main Street (upstream side)	*14
			At U.S. Route 1	*43
			Downstream of dam immediately downstream of North Elm Street.	*65
			Approximately .22 mile upstream of Maine Central [illegible]	*82
		Casco Bay	Entire shoreline of Cousins River	*10
			Shoreline at Vails Road extended	*12
			Shoreline at Blaney Point on Cousins Island	*12
			Shoreline at Sunset Point Road extended	*10
			Shoreline at Sea Spray Reach extended	*13
			Shoreline at Hillcrest Avenue extended (Cousins [illegible])	*10
			Shoreline at Wharf Road (Cousins Island)	*15
			Shoreline at northern tip of Lanes Island	*13
Maps available for inspection at the Office of Harold Hutchinson, Town Engineer, Yarmouth, Maine.				
Send comments to Honorable Richard Hay, Chairman of the Yarmouth Town Council, P.O. Box 455, Yarmouth, Maine 04096.				
Maryland	Chesapeake Beach, Town, Calvert County.	Chesapeake Bay	Entire shoreline within coummunity	*9
Maps available for inspection at the Town Hall, Chesapeake Beach, Maryland.				
Send comments to Honorable Gerald Donovan, Mayor of the Town of Chesapeake Beach, Town Hall, P.O. Box 458, Chesapeake Beach, Maryland 20732.				
Michigan	(Twp) Eureka Montcalm County	Flat River	Just upstream of county boundary	*778
			Just downstream of River Road	*791
			Just downstream of Wise Road	*821
Maps available for inspection at the Town Hall, 9322 Greenville Road, Greenville, Michigan.				
Send comments to Honorable Dale Linton, Township Supervisor, Eureka, Town Hall, 9322 Greenville Road, Greenville, Michigan 48838.				
Michigan	City of Hudsonville, Ottawa County	Rush Creek	Just upstream of Chessie System	*610
			At confluence of Buttermilk Creek	*616
		Buttermilk Creek	Just downstream of Van Buren Street	*626
			About 2,150 feet upstream of New Holland Street	*651
Maps available for inspection at City Hall, 5713 Belson Drive, Hudsonville, Michigan.				
Send comments to Honorable [illegible] Edson, Mayor, City of Hudsonville, City Hall, 5713 Belson Drive, Hudsonville, Michigan 49426.				
Missouri	(C) Chamois, Osage County	Missouri River	Within Community	*534
Maps available for inspection at City Hall, Chamois, Missouri.				
Send comments to the Honorable Harry Ames, Mayor, City of Chamois, City Hall, Chamois, Missouri 65024.				
Missouri	City of Gasconade, Gasconade County	Missouri River	At the confluence of the Gasconade River	*524
			About 4,800 feet upstream of the confluence of the Gasconade River.	*525
Maps available for inspection at City Hall, Gasconade, Missouri.				
Send comments to Honorable Joseph Teclu, Mayor, City of Gasconade, City Hall, Box 39, Gasconade, Missouri 65036.				
[illegible]	City of Ironton, Iron County	Knob Creek	At confluence with Stouts Creek	*[illegible]
			Just upstream of Polk Street	*[illegible]
			At confluence of West Branch Knob Creek	*934
		West Branch Knob Creek	Within corporate limits	*934
		Lateral B	About 320 feet downstream of Lake Drive	*944
			About 925 feet upstream of Lake Drive (at Gravel Road)	*970
		Stouts Creek	At confluence of Knob Creek	*[illegible]
			About 800 feet upstream of Main Street	*[illegible]
			At confluence of Shepherds Mountain Lake Outflow	*[illegible]
			About 0.4 mile upstream of confluence of Shepherds Mountain Lake Outflow (at western corporate limits).	*[illegible]

PROPOSED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
	Maps available for inspection at City Hall, 123 N. Main, Ironton, Missouri.			
	Send comments to Honorable Jack F. Mayes, Mayor, City of Ironton, City Hall, 123 N. Main, Ironton, Missouri 63650.			
Montana	Stillwater County (Unincorporated Areas)	Butcher Creek	125 feet upstream from center of Cemetery Road	*4,224
		East Rosebud Creek	100 feet upstream from center of State Highway 78	*4,475
		Fiddler Creek	130 feet upstream from center of County Road	*5,137
		Fishtail Creek	100 feet upstream from State Highway 419	*4,576
		Ingersoll Creek	125 feet upstream from center of upstream crossing of Ingersoll Creek Road.	[illegible]
		Rosebud Creek	65 feet upstream from center of Grove Street	*4,033
		Sheep Creek	70 feet downstream from center of Church Street	[illegible]
		Side Channel, West Fork, Stillwater River.	Center of downstream crossing of State Highway 419	*4,815
		Stillwater River	25 feet downstream from center of Firemans Road	*3,624
			Center of State Highway 420	[illegible]
		West Fork, Stillwater River	Center of State Highway 419	*4,846
		West Rosebud Creek	Center of State Highway 419	*4,446
	Maps available for inspection at the County Planning Office, Stillwater County Courthouse, 4th Floor, Columbus, Montana.			
	Send comments to Honorable Ezra Rickman, P.O. Box 147, Columbus, Montana 59019.			
New Jersey	Garfield, City, Bergen County	Passaic River	Confluence with Saddle River	*19
			Monroe Street (upstream side)	*20
			Downstream of Outwater Lane	*21
			Downstream of Dundee Dam	[illegible]
			Upstream corporate limits	[illegible]
		Saddle River	Midland Avenue	*19
			Upstream corporate limits	[illegible]
	Maps available for inspection at the City Administrator's Office, City Hall, Outwater Lane, Garfield, New Jersey.			
	Send comments to Honorable Thomas J. Duch, Mayor of the City of Garfield, City Hall, Outwater Lane, Garfield, New Jersey 07026.			
New Jersey	Lodi, Borough, Bergen County	Saddle River	Downstream corporate limits	[illegible]
			Passaic Avenue (upstream side)	*26
			U.S. Route 46 (upstream side)	*31
			Upstream corporate limits	[illegible]
	Maps available for inspection at the Borough Hall, 1 Memorial Drive, Lodi, New Jersey.			
	Send comments to Honorable Chris M. Paci, Mayor of the Borough of Lodi, Borough Hall, 1 Memorial Drive, Lodi, New Jersey 07644.			
New York	Elmira, City, Chemung County	Chemung River	Downstream corporate limits	*847
			Madison Avenue upstream	[illegible]
			Upstream corporate limits	[illegible]
		Left Bank: Newtown Creek (before levee overtopping).	Confluence with Chemung River	[illegible]
			East Avenue upstream	*856
			Industrial Park Boulevard	[illegible]
			Upstream corporate limits	[illegible]
		Right Bank: Newtown Creek (after levee overtopping).	Confluence with Chemung River	[illegible]
			East Avenue upstream	[illegible]
			Industrial Park Boulevard	[illegible]
			Upstream corporate limits	[illegible]
		Diven Creek	Entire stream within community	[illegible]
		McCann's Tributary	Entire stream within community	[illegible]
	Maps available for inspection at City Hall, Church Street, Elmira, New York.			
	Send comments to Honorable Joseph Satori, Elmira City Manager, City Hall, Church Street, Elmira, New York 14901.			
New York	Olive, Town, Ulster County	Esopus Creek	Approximately 535' downstream of CONRAIL	*614
			Upstream of State Route 28A bridge	*638
			Approximately .29 mile upstream of Nissen Road bridge.	*662
	Maps available for inspection at the Town Clerk's Office, Supervisor's Office, and the Town Library, Olive, New York.			
	Send comments to Honorable E. Lee Denman, Olive Town Supervisor, Town Hall, West Shokan, New York 12494.			
North Dakota	Grand Forks (City) Grand Forks County	English Coulee	At the intersection of Columbia Road and Gateway Drive.	[illegible]
			At the intersection of Royal Drive and Baron Boulevard.	[illegible]
	Maps available for inspection at City Engineer's Office, 440 2nd Avenue, North, Grand Forks, North Dakota.			
	Send comments to the Honorable H. C. Wessman, P.O. Box 1518, Grand Forks, North Dakota 58206.			
Ohio	(V) Harrison, Hamilton County	Whitewater River	About 10,400 feet downstream of Indiana-Ohio State boundary.	[illegible]
			About 9,200 feet upstream of Indiana-Ohio State boundary.	*517
		Dry Fork of Whitewater River	Within community	*544
	Maps available for inspection at the Building Commissioner's Office, Harrison, Ohio.			
	Send comments to Honorable Archie E. Mason, Mayor, Village of Harrison, Community Center, 300 George Street, Harrison, Ohio 45030.			
Oregon	Coos County (Unincorporated Areas)	Coquille River at Coquille	Intersection of Coquille River and center of State Highway 425.	*21
		Coquille River at Riverton		
		Coquille River at Arago	400 feet upstream of confluence Coquille River and Iowa Slough.	*19
			Intersection of Hall Creek and River Road	[illegible]
		South Fork Coquille River at Myrtle Point.	225 feet upstream of Spruce St. Bridge	*40
		Millicoma River	Confluence of Woodruff Creek and Millicoma River	[illegible]
		East Fork Millicoma River	Confluence of East Fork Millicoma River and Marlow Creek.	*34
		West Fork Millicoma River	Intersection of West Fork Millicoma River and center of Coos River Highway 241.	*34
		Tenmile Creek	50 feet upstream of U.S. Highway 101	*18

PROPOSED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
		Pacific Ocean South of Coos Bay	Pacific Ocean at the mouth of Coos Bay	*13
		Coos Bay	At Cape Arago Highway	*8
			Intersection of Horsetail Road and U.S. Highway 101 and State Highway 9.	*8
			Intersection of Catching Slough Road and U.S. Highway 241.	*9

Maps available for inspection at Planning Department, Coos County Courthouse, Coquille, Oregon.

Send comments to the Honorable Robert Emmet, Coos County Courthouse, Coquille, Oregon 97423.

Pennsylvania	Atglen, Borough, Chester County	Valley Creek	Downstream corporate limits	*445
			Newport Pike (upstream side)	*454
			Upstream corporate limits	*461
		Officers Run	Confluence with Valley Creek	*455
			State Route 41 (upstream side)	*461
			CONRAIL (upstream side)	*482
			Upstream corporate limits	*516

Maps available for inspection at the Borough Building, Atglen, Pennsylvania.

Send comments to Honorable George Stuppy, Chairman of the Atglen Borough Supervisors, P.O. Box 250, Atglen, Pennsylvania 19310.

Pennsylvania	Charlestown, Township, Chester County	Pickering Creek	Downstream corporate limits	*133
			Upstream of Phoenixville Pike (State Route 29)	*153
			Approximately 200' downstream of Charlestown Road	*186

Maps available for inspection at the Secretary's Office, Charlestown Elementary School, Charlestown, Pennsylvania.

Send comments to Honorable John Garvin, Chairman of the Charlestown Township Supervisors, R.D. 1, Box 119, Malvern, Pennsylvania 19355.

Pennsylvania	West Caln, Township, Chester County	Birch Run	Approximately 2,330 feet downstream of confluence of Tributary to Birch Run.	*549
			Martins Corner Road (upstream side)	*558
			Approximately 50 feet upstream of South Martins Corner Road.	*613
		West Branch Brandywine Creek	Downstream corporate limits	*364
			Approximately 4,000 feet upstream of downstream corporate limits.	*384
			Hibernia Road (upstream side)	*443
		Tributary to West Branch Brandywine Creek.	Downstream corporate limits	*589
			Access Road (upstream side)	*600
			Telegraph Road (upstream side)	*626
			Approximately 760 feet upstream of Telegraph Road	*643
		Indian Spring Run	Downstream corporate limits	*485
			Compass Road (upstream side)	*507
			Cambridge Road (upstream side)	*531
			Approximately 3,700 feet upstream of Cambridge Road	*564
		Tributary to Indian Spring Run	Downstream corporate limits	*485
			Compass Road (upstream side)	*507
			Approximately 2,400 feet upstream of Compass Road	*531

Maps available for inspection at the Township Building, West Caln, Pennsylvania.

Send Comments to Honorable Gerald G. Bonsall, Chairman of the West Caln Township Supervisors, P.O. Box 175, Wagontown, Pennsylvania 19376.

Rhode Island	Narragansett, Town, Washington County	Narragansett Bay	Shoreline at northern corporate limits	*15
			Shoreline at Nassau Avenue (extended)	*17
			Shoreline at Nancock Road (extended)	*23
			Shoreline at Bonnet Point Road (extended)	*27
			Shoreline at Bonnet Point	*20
			Shoreline at Anawan Drive (extended)	*19
			Shoreline at Whale Rock Road (extended)	*23
		Rhode Island Sound	Shoreline at Cormorant Point	*19
			Shoreline at Wood Avenue (extended)	*18
			Shoreline at Narragansett Avenue (extended)	*20
			Shoreline at Hazard Avenue (extended)	*18
			Shoreline at Newton Avenue (extended)	*21
			Shoreline at Pennsylvania Avenue (extended)	*23
			Shoreline at Point Judith	*19
		Block Island Sound	Shoreline at Ocean Road (extended)	*18
			Shoreline at Jupeter Street (extended)	*28
			Shoreline at western corporate limits	*17
		Pettaquamscutt River	Shoreline at Middle Bridge Road	*11
			Shoreline at Star Drive West (extended)	*16
		Point Judith Pond	Shoreline at Harbour Island Road (extended)	*12
			Shoreline at Barnacle Road (extended)	*11

Maps available for inspection at the Town Hall, 5th Avenue, Narragansett, Rhode Island.

Send comments to Honorable W. J. Loontjens, President of the Narragansett Town Council, Town Hall, 5th Avenue, Narragansett, Rhode Island 02882.

Texas	City of Cities, Municipal Utility District No. 2, Fort Bend County.	Oyster Creek	Just upstream of the Eastern corporate limits (approximately 3700 feet upstream of Blair Road.	*70
			Just downstream of the Western corporate limits (approximately 100 feet downstream of Missouri Pacific Railroad.	*72

Maps available for inspection at City of Cities Municipal Utility District Office, 518 Sugarcreek Boulevard, Sugarland, Texas 77478.

Send comments to Mr. James Davidson, President, Board of Directors or Ms. Dorothy Painter, Business Manager, P.O. Box 46, Sugarland, Texas 77478.

Texas	Ft. Bend County Levee Improvement District No. 3	Oyster Creek	Approximately 200 feet upstream of Blair Road	*68
			Approximately 1600 feet upstream of Colonial Park Road.	*72
			Just upstream of Oyster Creek Dr.	*73

PROPOSED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at Vinson and Elkins Law Firm, 2800 First City Tower, Houston, Texas 77002.				
Send comments to Mr. Bob Dare, Chairman, or Mr. Jimmy Thompson, Board of Directors, c/o Vinson and Elkins Law Firm, 2800 First City Tower, Houston, Texas 77002				
Texas	Fort Bend County Municipal Utility District No. 2.	Keegans Bayou	At. Harris-Fort Bend County Line (Approximately 600 feet downstream of Belknap Road).	[illegible]
Maps available for inspection at Vinson and Elkins, Law Firm, 2837 First City Tower, Houston, Texas 77002-6760.				
Send comments to Mr. Karl K. Walters, President, Municipal Utility District No. 2, 19343 King Ranch Lane, Sugarland, Texas 77478 or Mr. John L. Potts, District Engineer, c/o Bernard Johnson Incorporated, 5050 Westheimer, Houston, Texas 77050.				
Utah	Murray (City) Salt Lake County	Big Cottonwood Creek	Intersection of Vagabond Drive and Nashua Street	*4,264
		Little Cottonwood Creek	Center of Myrtle Street, 200 feet east of its intersection with State Street (U.S. Highway 89, 91, and Alternate 50)	*4,278
Maps available for inspection at City Hall, 5461 South State Street, Murray, Utah.				
Send comments to the Honorable Larell D. Muir, 5461 South State Street, Murray, Utah 84107.				
Utah	Riverton (City) Salt Lake County	Jordan River	50 feet upstream from the center of 12600 South Street (State Highway 71)	*4,337
Maps available for inspection at City Hall, 12891 South 1700 West, Riverton, Utah.				
Send comments to the Honorable Dale Farr Gardiner, 12891 South 1700 West, Riverton, Utah 84065.				
Utah	South Jordan (City) Salt Lake County	Jordan River	10 feet upstream from North Jordan Canal Diversion structure 150 feet upstream from center of 10,600 South Street.	*4,305 *4,311
		Dry Creek	40 feet upstream from center of 10,000 South Street	*4,359
		Willow Creek	40 feet upstream from center of Galena Canal	*4,358
Maps available for inspection at City Hall, 1600 West 10400 South, South Jordan, Utah.				
Send comments to the Honorable T. K. Edmunds, 1600 West 10400 South, South Jordan, Utah 84063.				
Utah	Salt Lake County (Unincorporated Areas).	Jordan River	200 feet downstream from the center of Redwood Road. A point 100 feet west of the center of Jordan River, approximately 2400 feet downstream from the center of Redwood Road.	*4,215 *4,210
		Emigration Creek	70 feet upstream from the center of Skycrest Lane	[illegible]
			30 feet upstream from the center of Burr Fork Road	[illegible]
		Burr Fork	At the confluence with Emigration Creek and Killyon Canyon.	[illegible]
		Parleys Creek	40 feet upstream from the upstream end of the culvert under Interstate Highway 215.	*4,595
		Mill Creek	Intersection of Highland Drive (State Highway 152) and Murphys Lane.	*4,407
			85 feet upstream from the center of 2300 East Street	*4,804
		Big Cottonwood Creek	50 feet downstream from the center of Kingsrow Drive	*4,335
			60 feet upstream from the center of Holladay Cottonwood Road.	*4,640
		Little Cottonwood Creek	40 feet upstream from the center of the East Jordan Canal.	*4,452
			10 feet upstream from the center of Oak Creek Drive	*4,657
		Dry Creek	120 feet upstream from the center of 700 East Street (State Highway 71).	*4,491
			25 feet upstream from the center of Dimple Dell Road	*5,017
		Willow Creek	200 feet upstream from the upstream end of the culvert under 11700 South Street (located in the City of Sandy).	*4,697
Maps available for inspection at Public Works Department, Flood Control & Water Quality Division, 2033 South State Street, Salt Lake City, Utah.				
Send comments to the Honorable Bart Barker, 2033 South State Street, Salt Lake City, Utah 84111.				
Utah	Sandy (City), Salt Lake County	Jordan River	10 feet upstream from the center of the North Jordan Canal Diversion Dam.	*4,305
		Dry Creek	50 feet upstream from the center of the Jordan and Salt Lake City Canal.	*4,409
		Willow Creek	80 feet upstream from the center of Hidden Valley Club Drive.	*4,601
			80 feet upstream from the center of Kathy Drive	*4,791
Maps available for inspection at City Hall, 800 East 100 North, Sandy, Utah.				
Send comments to the Honorable Lawrence P. Smith, 800 East 100 North, Sandy, Utah 84070.				
Utah	South Salt Lake (City), Salt Lake County	Mill Creek	30 feet downstream from the center of 300 East Street.	*4,257
		Shallow Flooding	Center of the ramp from southbound Interstate Highway 15 to eastbound 2100 South Street, 50 feet along the ramp from 2100 South Street.	*4,227
Maps available for inspection at City Hall, 2500 South State Street, South Salt Lake, Utah.				
Send comments to the Honorable James W. Davis, 2500 South State Street, South Salt Lake, Utah 84115.				
West Virginia	Beckley, City, Raleigh County	Whitestick Creek	Downstream corporate limits	[illegible]
			Just downstream 1st crossing Chessie System	[illegible]
			Upstream 3rd crossing Chessie System	*2,273
			Upstream City Avenue	[illegible]
		Tributary to Whitestick Creek	Approximately 1,500 feet upstream confluence with Whitestick Creek.	[illegible]
			Approximately 4,100 feet upstream confluence with Whitestick Creek.	*2,324

PROPOSED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)

Maps available for inspection at the Building Inspector's Office, Beckley, West Virginia.

Send comments to Honorable Charles F. Shoemaker, Mayor of the City of Beckley, P.O. Box Drawer AJ, Beckley, West Virginia 25801.

West Virginia	Mingo County	Tug Fork	Downstream County boundary	*622
			Upstream Norfolk and Western Railway, 2nd crossing	*629
			Confluence of Parsley Beg Branch	*635
			Confluence of Pigeon Creek	*641
			Confluence of Road Branch	*648
			Upstream County Route 52/19	*653
			Confluence of Buffalo Creek	*660
			Approximately 1.5 miles upstream of confluence of Sugartree Creek at County boundary.	*664
			Approximately .75 mile downstream of confluence of Lick Creek at County boundary.	*674
			Confluence of Murphy Branch	*678
			Upstream Norfolk and Western Railway, 4th crossing	*687
			Upstream of confluence of Ferrell Branch	*692
			Confluence of Little Blackberry Creek	*705
			Confluence of Thacker Creek	*712
			Upstream State Route 49	*723
			Confluence of Sand Branch	*733
			Confluence of Scarberry Branch	*742
			At upstream Norfolk and Western Railway, 9th crossing.	*759
			Confluence of Grant Branch	*772
			Downstream of confluence of Laurel Branch	*781
			Confluence of Alum Creek	*797
			Confluence of Ben Creek	*822
			Approximately 1.5 miles upstream of confluence of Ben Creek.	*846
			Confluence of Turkey Creek	*876
			Approximately 1.75 miles upstream of confluence of Turkey Creek.	[illegible]
		Marrowbone Creek	At upstream County boundary	*920
			At downstream County boundary	*623
			Upstream of Private Road and confluence of Cane Branch.	*637
			At confluence of Picklelwo Branch	*649
			At confluence of Barkcamp Branch	*678
			Upstream of County Route 2/2	*705
			Approximately .83 mile upstream of confluence of Little Laurel Branch.	*749
		Pigeon Creek	At confluence with Tug Fork	*641
			At confluence of Old House Branch	*642
			Upstream State Route 65, 2nd crossing	*656
			Upstream Norfolk and Western Railway, 3rd crossing	*661
			Upstream County Route 65/16	*673
			Confluence of Hell Creek	[illegible]
			Downstream of confluence of Elk Creek	*716
			Approximately .81 mile upstream of confluence of Pigeonroost Creek.	*740
			Approximately 0.1 mile downstream of County Route 49/1.	*777
			Confluence of Evans Ferrell Branch	*826
			Upstream County Route 9	*862
			Approximately 1.0 mile upstream of County Route 9	[illegible]
			Approximately 1.7 miles upstream of County Route 9	*922
			Upstream County Route 52/24	*952
			Upstream County Route 52/25	[illegible]
			Approximately 0.9 mile upstream of County Route 52/25.	*1,021
			Approximately 0.2 mile upstream of confluence of Spice Branch.	*1,058
			Confluence of Longtail Lick Branch	*1,094
			Approximately 0.1 mile downstream of confluence of Rover Branch.	*1,127
			Upstream County Route 52/26	*1,158
			Confluence of Little Muncy Branch	*1,192
			Approximately 0.04 mile upstream of confluence of Grant Branch.	*1,232
		Laurel Fork	Confluence of Pigeon Creek	*641
			Confluence of Right Fork	*646
			Upstream of sixth crossing of County Route 3/5	*676
			Confluence of Toms Branch	*700
			Upstream of County Route 3	*723
			Approximately 0.2 mile upstream of confluence of Lick Branch.	*756
			Upstream of Laurel Lake Dam	*789
			Confluence of Laurel Branch	[illegible]
			Approximately 0.1 mile upstream of confluence of Paw Paw Branch.	[illegible]
			Approximately 0.8 mile upstream of confluence of Paw Paw Branch.	*857
		Trace Fork	Confluence with Pigeon Creek	[illegible]
			Upstream State Route 65, 2nd crossing	*716
			Approximately 0.1 mile upstream of confluence of Duncan Fork.	*731
		Rockhouse Fork	Approximately 0.1 mile downstream of County boundary.	*764
			Upstream County Route 65/5, 2nd crossing	*794
			Confluence of Upper Curry Branch	*825
			Approximately 0.7 mile downstream of County Route 65/15.	[illegible]
			Upstream County Route 65/15	*891
			Approximately 0.1 mile upstream of most upstream private road.	[illegible]

PROPOSED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Buffalo Creek	Confluence with Tug Fork	*669
			Approximately 50 feet upstream of County Route 14/2	*667
		[illegible] Creek	Upstream of County boundary at Matewan	*708
			Approximately 0.2 mile upstream of County Route 9/3	*739
			Upstream of County Route 9/11	*770
			Upstream of County Route 6, third crossing	*811
			Approximately 0.8 mile upstream of County Route 6, 3rd crossing.	*846
			Approximately 1.4 miles upstream of County Route 6, 3rd crossing.	*881
			Confluence of Chafin Branch	*919
			Approximately 0.2 mile upstream of County Route 6, 4th crossing.	*948
			Approximately 0.6 mile upstream of County Route 6, 4th crossing.	*978
			Confluence of Marks Branch	*1,004
			Approximately 180 feet upstream of confluence of Double Camp Fork.	*1,032
		Guyandotte River	Downstream County boundary	*788
			Confluence of Harrys Branch	*801
			Upstream County Route 52/4	*846
			Upstream of abandoned railroad bridge	*863
			At most upstream County boundary	*889
		Gilbert Creek	Downstream County boundary	*871
			Confluence of Axe Branch	*900
			Upstream of footbridge and confluence of Big Fork	*937
			Approximately 0.4 mile upstream of Norfolk and Western Railway.	*977 *1,007
			Approximately 0.5 mile downstream of confluence of Old House Branch.	*1,042
			Confluence of Old House Branch	*1,150
			Approximately 106 feet upstream of County Route 13/2.	
		Horsepen Creek	Confluence with Gilbert Creek	*881
			Approximately 0.8 mile upstream of County Route 13	*908
			Confluence of Browning Fork	*932
			Approximately 0.7 mile upstream of confluence of Browning Fork.	*978
			Confluence of Smith Branch	*1,016
			Approximately 320 feet upstream of confluence of Coon Branch.	*1,108
		West Fork Twelvepole Creek	Approximately .14 mile downstream of confluence of Shell Branch.	*825 *854
			Confluence of Camp Branch	*893
			Approximately 0.4 mile upstream County Route 3/12, 1st crossing.	*1,028
			Approximately 85 feet upstream of most upstream crossing of County Route 3/2.	
		Mosses Fork	Confluence with West Fork Twelvepole Creek	*1,039
			Approximately 300 feet upstream of County Route 3/2	*1,060
			Approximately 0.3 mile upstream of County Route 3/2, 2nd crossing.	*1,096
			Approximately 1.1 miles upstream of confluence with West Fork Twelvepole Creek.	*1,129

Maps available for inspection in the basement of the Mingo County Courthouse, East 2nd Avenue, Williamson, West Virginia.

Send comments to Honorable Ronald J. Rumora, President of the Mingo County Commissioners, P.O. Box 1197, Williamson, West Virginia 25661.

West Virginia	Raleigh County	New River	Approximately 1.78 miles downstream of confluence of Sewell Branch.	*1,242
			Upstream of confluence of Sewell Branch	*1,261
			Upstream of confluence of Mill Branch	*1,321
			Upstream of confluence of Big branch	*1,335
		Piney Creek	At confluence of Beaver Creek	*2,099
			At confluence of Whitestick Creek	*2,123
			Upstream of Shriver Avenue (1st upstream crossing)	*2,147
			Upstream of Chessie System bridge (4th upstream crossing).	*2,203
			Upstream of Fitzpatrick Dam	*2,221
			Upstream of confluence of Crab Orchard Creed	*2,231
			Upstream of confluence of Turkey Branch	*2,248
			Upstream of confluence of Soak Creek	*2,253
			Upstream of Norfolk and Western Railway (1st upstream crossing).	*2,256
			Upstream confluence of Take In Creek	*2,272
			Upstream of Norfolk and Western Railway (4th upstream crossing).	*2,284
			Upstream of County Route 40	*2,296
			Upstream of County Route 44 (1st upstream crossing)	*2,305
			Approximately 450' upstream of Norfolk and Western Railway (5th upstream crossing).	*2,319
		Paint Creek	At downstream County boundary	*1,642
			Upstream of State Route 23	*1,657
			Upstream of confluence of Sand Branch	*1,706
			Upstream of confluence of Davis Branch	*1,788
			Upstream of confluence of Left Hand Fork	*1,808
			Approximately 1.16 miles upstream of confluence of Left Hand Fork.	*1,865
		Beaver Creek	At confluence with Piney Creek	*2,060
			Upstream of Blue Jay Road	*2,120
			Upstream of County Route 19–27	*2,150
			Upstream of Blue Jay Road (2nd upstream crossing)	*2,225
			Upstream of Chessie System dam	*2,267
			Approximately 1.46 miles upstream of Chessie System dam.	*2,291

PROPOSED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in [illegible] ground, *Elevation in feet (NGVD)
		Little Beaver Creek	At confluence with Beaver Creek	*2,144
			Upstream of State Route 307	*2,175
			Upstream of County Route 22	*2,235
			Upstream of most upstream Access Road	*2,270
		Pinch Creek	Approximately 1.06 miles downstream of County Route 27.	*2,400
			At confluence of Squealing Fork	*2,428
			At confluence of Tributary No. 1 to Pinch Creek	*2,445
			0.68 mile upstream of County Route 28	*2,500
		Crab Orchard Creek	At confluene with Piney Creek	*2,231
			Upstream State Route 16	*2,279
			Approximately .56 mile upstream of confluence of Tributary to Crab Orchard Creek.	*2,321
		Sand Branch	At confluence with Paint Creek	*1,706
			Confluence of North Sand Branch	*1,768
		North Sand Branch	Confluence with Sand Branch	*1,768
			Downstream County Route 6	*1,850
			Approximately 1.25 miles upstream of confluence of Maple Fork.	*2,065
			Approximately 3.18 miles upstream from the confluence of Maple Fork.	*2,281
		Whitestick Creek	Confluence with Piney Creek	*2,123
			Downstream of Beckley corporate limits (1st upstream crossing).	*2,220
			Upstream Chessie System bridge (4th upstream crossing).	*2,273
			Downstream City Avenue	*2,284
			At Mill Road	*2,325
			At Whitestick Avenue	*2,332
			.55 mile upstream County Route 16	*2,353
		Glade Creek	Downstream County Route 31	*2,828
			Upstream of confluence of Farley Creek	*2,866
			At confluence of Oak Creek	*2,870
		Oak Creek	At confluence of Glade Creek	*2,870
			Interstate 77 (upstream side) (1st upstream crossing)	*2,895
			Approximately 0.71 mile upstream Interstate Route 77 (2nd upstream crossing).	*2,919
		Tributary 1 to Pinch Creek	Confluence with Pinch Creek	* 2,445
			Approximately 0.34 mile upstream of confluence with Pinch Creek.	* 2,450
		Tributary 2 to Pinch Creek	At confluence with Pinch Creek	* 2,477
			Approximately 65' upstream of County Route 22	* 2,510
		Squealing Fork	At confluence with Pinch Creek	* 2,426
			Approximately 0.28 mile upstream of confluence with Pinch Creek.	* 2,483
		Farley Creek	Just upstream of confluence with Glade Creek	* 2,866
			Approximately 1.77 miles upstream confluence with Glade Creek.	* 2,905
		Maple Fork	At confluence with North Sand Branch	* 1,859
			Approximately 1 mile above confluence with North Sand Branch.	* 1,968
			Approximately 2.35 miles upstream of confluence with North Sand Branch.	* 2,030
		Tributary to Crab Orchard Creek	Confluence wiht Crab Orchard Creek	* 2,291
			Approximately .64 mile upstream of confluence with Crab Orchard Creek.	* 2,393
		Stover Fork	Confluence with Crab Orchard Creek	* 2,258
			Approximately 1.86 miles above confluence with Crab Orchard Creek.	* 2,365
		Left Hand Fork	Confluence with Paint Creek	* 1,806
			Approximately 1.11 miles above confluence with Paint Creek.	* 1,980
		Take In Creek	Confluence with Piney Creek	* 2,272
			Approximately .74 mile upstream of confluence with Piney Creek.	* 2,300
		Lampkin Branch	Confluence with Piney Creek	* 2,302
			Approximately 0.51 mile upstream of confluence with Piney Creek.	* 2,340
		Laurel Creek	Confluence with Piney Creek	* 2,299
			Approximately 0.63 mile upstream of confluence with Piney Creek.	* 2,316
		Bowyer Creek	Confluence with Piney Creek	* 2,296
			Approximately 1,800 feet upstream of confluence with Piney Creek.	* 2,300
		Dixons Branch	Confluence with Paint Creek	* 1,655
			Confluence of Right Fork	* 1,721
			Approximately 0.38 mile upstream of confluence of Right Fork.	* 1,785
		McKinney Branch	Approximately 950 feet upstream confluence with Flat Top Lake.	* 2,933
			Approximately 200 feet upstream Interstate Route 77 [illegible]	* 2,965
			Approximately 1.32 miles upstream from Interstate Route 77 southbound.	* 3,007
		Tributary to McKinney Branch	At confluence with McKinney Branch	* 2,966
			Approximately 0.42 mile upstream of confluence with McKinney Branch.	* 2,979

Maps available for inspection at the Raleigh County Planning and Zoning Office, 1557 Harper Road, Beckley, West Virginia.

Send comments to Honorable Sterling Lewis, President of the Raleigh County Commissioners, Box AN, Beckley, West Virginia 25802–2836.

Wisconsin	(C) Lodi, Columbia County	Spring Creek	About 0.6 mile downstream of Fair Street	*805
			Just downstream of Portage Street	*816
			Just upstream of Main Street	*823
			Just upstream of Riddle Road	*833

Maps available for inspection at the Mayor's Office, City Hall, 113 S. Main Street, Lodi, Wisconsin.

Send comments to Honorable Donovan E. Ireland, Mayor, City of Lodi, City Hall, 113 S. Main Street, Lodi, Wisconsin 53555.

Wisconsin	Village of Rock Springs, Sauk County	[illegible]	About 0.63 mile downstream of State Highway 136	*870
			About 0.15 mile upstream of Chicago and Northwestern Railroad	*872
		Narrows Creek	At mouth	*871
			About 1.04 miles upstream of State Highway 136	*872

Maps available for inspection at the Village Clerk's Office, Village Hall, Rock Springs, Wisconsin.

Send comments to Honorable Roger Frambs, Village President, Village of Rock Springs, Village Hall, 1001 Holtz Street, Rock Springs, Wisconsin 53961.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration).

Issued: March 16, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-8005 Filed 3-23-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6581]

Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the City of Temple, Bell County, Texas.

Due to recent engineering analysis, this proposed rule revises the proposed modified determinations of base (100-year) flood elevations published in the **Federal Register** at 49 FR 1772 on January 13, 1984, and hence supersedes those previoulsy published proposed rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Muncipal Building, Temple, Texas.

Send comments to: Honorable John F. Sammons, Jr., Mayor of Temple, Municipal Building, 702 East Houston, Temple, Texas 76501.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: Proposed modified base (100-year) flood elevations are listed below for selected locations in the City of Temple, Bell County, Texas, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67.

Flood insurance, Flood plains.

The proposed modified base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in Feet (NGVD)	
		Existing	Modified
Little Elm Creek Tributary No. 1	Upstream of Tower Road	[illegible]	[illegible]
	Downstream face of Tower Road bridge	[illegible]	[illegible]
	Approximately 1,500 feet downstream of Tower Road	[illegible]	[illegible]
Bird Creek	Upstream of corporate limit at Nugent Road	none	[illegible]
	Approximately 1,000 feet upstream of corporate limit	none	[illegible]
Little Elm Creek Tributary No. 2	Downstream of Atchison Topeka and Santa Fe Railroad	none	[illegible]
	Downstream of Old U.S. Highway 81	none	[illegible]

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: March 16, 1984

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-8006 Filed 3-23-84; 8:45 am]

BILLING CODE 6715-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-231; FCC 84-86]

Increasing the Availability of FM Broadcast Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM channels in various parts of the United States as the first stage of implementation of BC Docket 80-90, which concerns the Increase of Availability of Commercial FM Broadcast Assignments. This action is taken to propose 684 FM allotments in order to provide new or additional local service.

DATES: Comments must be filed on or before May 14, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of implementation of BC Docket No. 80-90 to increase the availability of FM Broadcast Assignments; MM Docket No. 84-231.

Adopted: March 1, 1984.

Released: March 14, 1984.

By the Commission.

Introduction

1. In this proceeding, the Commission takes the first step towards implementing BC Docket No. 80-90 [1] by listing 684 communities as proposed locations for new FM channel assignments. We intend to proceed with these proposals as we typically do in FM channel assignment cases (see §§ 1.411 *et seq.*, and 73.202 *et seq.* of the Commission's Rules) with some variations as discussed below. After setting forth the background to this proceeding, this *Notice* describes how the list of proposed channel assignments was generated, sets forth the procedures for filing comments and counterproposals, and discusses other issues related to the application process for these proposed assignments.

Background

2. The Commission's current FM channel assignment rules were adopted approximately two decades ago and have remained substantially unchanged. However, during that period, a significant growth in FM service has spawned an increased demand for new stations, particularly in those communities lacking aural service. In recent years, the demand for new FM service has far outstripped the availability of FM frequencies in many areas of the country. Recognizing this situation, the Commission initiated Docket 80-90 proposing changes in its FM channel assignment rules. Those changes, in addition to providing for a substantial increase in the number of FM stations, were designed to protect the service areas of existing stations to the extent provided by the Commission's technical rules. The *Report and Order* adopted rules which:

(1) Allowed Class A stations (previously confined to 20 channels) to operate on any of the 60 Class B/C channels;

(2) Created a new class of station in Zones I and I-A (Class B1) and two new classes in Zone II (Class C1 and C2);

(3) Required existing stations to meet minimum facility requirements within three years or be reclassified according to the station's actual operating facilities; and

(4) Converted the FM service rules to the metric system.

An amended distance separation table incorporating the classes of stations was also adopted. Further, the *Report and Order* modified the rules governing "major" and "minor" modifications to station authorizations. Previously, all modifications changing the area within a station's predicted 1 mV/m field strength contour by 50 percent or more were considered major. However, because the distance separation requirements are based upon the use of maximum facilities, applications to increase facilities in order to maintain the classification of an existing station shall now be processed as "minor." [2]

3. The *Report and Order* anticipated that a significant demand for new stations would be unleashed as a result of adoption of the new rules. Typically, the Commission initiates separate rule making proceedings for each petition filed to amend the FM Table of Assignments. However, it was deemed impractical to follow such a procedure here, where in excess of 1,000 new stations could be added producing a potential of several thousand petitions and counterproposals. In the *Report and Order*, we recited the Commission policy to respond to requests for new stations as quickly as possible and to minimize backlogs of mutually exclusive petitions. We noted, however, that the existing staff resources were inadequate to do so in light of the expected heavy demand for newly available stations. Accordingly, the effective date of the new rules was delayed pending the availability of sufficient staff resources. These resources were provided in Congressional action on our FY 1984 budget on November 14, 1983. Thus, as provided in the *Report and Order* the effective date of the new rules will be the date of adoption of the instant *Notice* in this "omnibus" proceeding, March 1, 1984. This date is particularly important to licensees of Class B and C stations currently operating below the minimum specifications of 25 kw (Class B) and 100 kw and 300 meters (984 ft.) HAAT (Class C) which may wish to submit applications to upgrade their facilities in order to retain their Class B or C status. Failure to apply for minimum facilities by March 1, 1987 will subject all such Class B and Class C stations to reclassification.

4. The Commission has also considered several requests for reconsideration of portions of the *Report and Order* in Docket 80-90. In the accompanying *Memorandum Opinion and Order* (see fn. 1) the Commission addresses concerns expressed on behalf of existing Class B and C stations which are currently operating with lesser facilities than required by the new rules.[3] In this regard, the petitions requested that the Commission extend the time period within which existing stations must upgrade their facilities in order to avoid downward classification and during which they will receive additional protection from new allotments. The Commission reiterated

[1] *Report and Order*, 48 FR 29486, pub. June 27, 1983; *Memorandum Opinion and Order*, 49 FR ——, pub. March —, 1984.

[2] Subsequently in a separate rule making proceeding (MM Docket 83-1377), *Notice of Proposed Rule Making*, 49 FR 1252, published January 10, 1984, the Commission proposed to designate all changes in a station's power, height and antenna location as minor. Only modifications in frequency or station location would continue to be processed as major.

[3] These licensees have opted for lesser facilities for a variety of reasons, including the use of facilities necessary to serve their communities, financial considerations, real estate availability, local zoning restrictions, and air hazard determinations by the Federal Aviation Administration.

its previous determination that affording the requested protection would adversely affect the possibility of additional allotments under the new rules. However, the Commission also declared that it does not intend to overly restrict the licensees' opportunities to improve their facilities during the three year grace period. Accordingly, after noting factors such as the lack of available land, zoning restrictions, and air hazard considerations which could limit Class C stations from upgrading at their present sites, the Commission will provide all Class C stations a 10-mile "buffer zone," effective during the three year grace period, to enhance the possibility of upgrading.[4] This distance was selected in order to provide a reasonable "protected area" in which existing Class C licensees could relocate while not unduly restricting the potential number of new stations possible under the new rules.

How the List Was Generated

5. By this *Notice* we adopt, with some modifications, the Stations Requirements List developed for the Second Session of the Administrative Conference on AM Broadcasting in Region 2.[5] Originally the list included some 3,000 communities having no local aural services; containing one or more daytime-only AM stations; or needing minority or public radio stations. That list has been reduced to approximately 1,400 communities for the purposes of this omnibus proceeding. We have eliminated all communities already having one or more fulltime radio stations except those identified as needing minority or public radio service. We have also updated the list to exclude those communities which have been allocated FM or fulltime AM stations or have pending proceedings for such stations. The remaining communities fall within the following classifications:

"L" denotes communities with no local service and are located more than 10 miles from cities with populations of at least 25,000 (noncommercial FM stations, many of which are low-powered, 10-watt stations were not taken into account for this purpose).

"A" denotes communities which have daytime-only AM stations and are located more than 10 miles from cities with populations of at least 25,000.

"M" denotes communities for which the National Black Media Coalition ("NBMC") asserted the existence of a need for stations to serve the minority population (Black, Hispanic, American Indian, Alaska Native, or Asian/Pacific Islander).[6]

"P" denotes communities for which the National Public Radio ("NPR" network asserted the existence of a need for noncommercial educational radio service which cannot be satisfied within the reserved portion (88–92 MHz) of the FM band.[7]

The number of participating communities considered in our study according to the category designations were as follows:

658 type "L" communities;
352 type "A" communities;
321 type "M" communities; and
70 type "P" communities.

6. With the aid of a computer program the Commission initially determined which of these communities could be allotted FM channels consistent with the distance protections to existing stations. In order to optimize allotments, the program model included the capability to impose a site restriction. For purposes of this calculation, the maximum amount a new station of a given class was allowed to vary from the center city coordinates is shown in the following Table:

Class	Distance (in miles)
A	5.0
B1	10.0
B	15.0
C2	15.0
C1	20.0
C	25.0

7. Furthermore, the class of a potential assignment depended upon community population. For purposes of selecting the class allowed a community we set forth the following criteria:

Population	Largest class	Smallest class
Less than 10,000	A	A
More than 10,000 but less than 300,000	B or C	A
More than 300,000	B or C	B1 or C2

Another consideration in the structure of the computer model was the ability to make one allocation available for each community before any community could obtain a second channel. Although not all communities were able to be designated a first channel, such exclusion did not occur as a result of another community being considered for a second channel. On the other hand, in some cases the choice of a higher class of assignment for communities over 10,000 population did preclude the availability of a first channel to some smaller cities. After the maximum number of communities were given one channel, extra channels were allotted by the program so as to maximize the number of assignments.

8. A computer run was then accomplished considering all L, A, M and P type communities without priority given to any category; however, communities listed in multiple categories were given additional weight. In this run a 10-mile buffer zone was applied. the following results were obtained for the 1,396 communities:

590 (42%) had no possibility of a new channel due to current assignments in the FM band.
684 (49%) were allotted new channels.
122 (9%) were denied new channels.[8]

9. Where two communities could only receive the same or conflicting adjacent channels, the model chose the larger of the two communities. For example, Clearfield, Utah, had only Channel 290A available to it, while Layton, Utah, had only Channel 291A available to it. Since these allotments are mutually exclusive, and Layton's population is larger (22,900 vs. 18,000), the program chose Layton.

10. In selecting a channel suitable only for a Class A station at some of the larger communities (see para. 7, *supra.*), the computer did not consider unique configurations of a community which may cause some doubt as to the provision of a city grade signal (70 dBu or 3.16 mV/m). See Section 73.315(a) of the Commission's Rules. Due to the selection process and the availability of channels elsewhere, it is possible that channels suitable for higher classes of stations of channels are available and actually needed in order to comply with city grade signal requirements.

[4] We note that approximately 20% of all Class C stations are currently at minimum antenna height and not subject to reclassification. However we intend to maintain the 10 mile buffer area for these stations during the pendency of this proceeding to enable us to more expeditiously evaluate the counterproposals.

[5] See Appendix B, footnote 1, of the *Report and Order, supra.*

[6] On October 1, 1980, NBMC submitted a preliminary listing of a minority demand for new stations in the Top 100 markets. The list was submitted in BC Docket 79–164, and entitled *Initial Comments of the National Black Media Coalition in Response to Interim Report and further Notice of Inquiry.* The goal of the study was to identify the markets in which minority ownership was underrepresented. A supplemental filing was submittedon January 26, 1981, entitled *Additional Hispanic-Owned Stations Needed for Market Parity: A Supplement to "Demand for New Minority-Owned Radio Stations."* This submission describes the need for additional Hispanic and Black owned stations based on population estimates for 1980. Both filings were considered in this proceeding.

[7] NPR submitted a list of desired assignments designed to meet the demands for public radio in response to a request from the Advisory Committee on Radio Broadcasting, Subgroup on Radio Spectrum Allocations as an appendix to the *Report on New Station Demand and Viability,* dated december 17, 1980. NPR compiled its list based on the following priorities: (1) A first public radio service for every part of the United states, (2) a second such service, (3) a local service for every city over 100,000 population.

[8] These communities were denied new channels based on a priority scheme which is explained in paragraph 9, *infra.*

Proponents should consider this requirement and other transmitter location problems when stating they intend to apply for a proposed allotment. A special showing of city grade service may be requested in some circumstances.

Procedure for Filing Comments and Counterproposals

11. During the period set forth (see para. 21 *infra*) interested parties may submit comments in support of or in opposition to one or more of the proposed channel allotments. In every case, in order for the Commission to give further consideration to a community proposed in this *Notice*, there must be an expression of interest in applying for the proposed channel allotment at the comment stage.

12. Parties may also submit counterproposals for new allotments. Such counterproposals must include:

(1) A statement by the party that it would apply for the requested channel if it is allotted;

(2) The category which applies to the proposal—Provision for: (a) First or second aural service;[9] (b) First local service; (c) First fulltime local service; (d) Minority service;[10] (e) Public radio service; and

(3) A distance separation showing indicating (a) That the channel can be allotted consistent with the distance requirements to all existing allotments and stations; and (b) That there is, in fact, a short-spacing to one or more of the Commission's proposed allotments as set forth herein.

Any counterproposal which is not mutually exclusive or which does not specify one of the above categories will not be considered in the context of this omnibus proceeding. Instead, the request will be returned without prejudice and may be refiled at the conclusion of this docket. Upon receipt of the counterproposal, the Commission's staff will examine the technical aspects of the filing for compliance with the distance sepasations and for mutual exclusivity. If acceptable, the proposal will be entered into the Commission's computer. Once the comment deadline has passed and all counterproposals have been entered, a list will be released specifying which communities are being considered for new allotments and eliciting reply comments on the various proposals. We shall announce a reply comment period when this second list of proposals is released. Since not all communities can be accommodated with new channels, the reply comment period is offered to provide an opportunity to compare conflicting proposals. Replies should address the comparative needs of the communities.

Evaluation of Proposals

13. The criteria used by the Commission in evaluating conflicting proposals was recently set forth in the companion proceeding, *Revision of FM Assignment Policies and Procedures* (BC Docket 80-130) 90 F.C.C. 2d 88 (1982). In that proceeding the Commission recognized that as the FM service has matured over the last two decades, there was no longer a need to adhere to rigid standards of priorities in order to compare the benefits of conflicting proposals. Rather most areas of the country already have established FM radio services and those lacking local service were not unaware of the FM medium. Nevertheless, the Commission indicated that it would continue to give emphasis to local service. *Supra* at 92. The priorities which were adopted in that proceeding are as follows:

(1) First full-time aural service;
(2) Second full-time aural service;
(3) First local service; and
(4) Other public interest matters.

(Co-equal weight would be given to priorities (2) and (3))

14. It is our intention to convert these priorities to objective numerical factors for application by the computer program. Thus, each community proposed in this *Notice* or accepted as a counterproposal will have a priority weight assigned to it for purposes of the computer run. Interested parties are urged to comment on the appropriate numerical weighting factors. Because there are few areas remaining with no or only one aural service, the provision of first or second aural service would play a decisive role in very few situations in this proceeding. Nevertheless, we believe that this factor remains an important consideration under Section 307(b) of the Communications Act of 1934, as amended. Thus, where first or second service can be shown (see fn. 8, *supra*.) we believe those proposals should receive the highest numerical weight. First local service and first local nighttime service are also significant public interest factors under Section 307(b) and should be weighted accordingly. Finally, provision of service to minority populations and public radio service are public interest matters which are specifically entitled to weight in our considerations. To help focus public comment in this area, we propose and invite comments on the following priority weighting factors:

First aural service	4
Second aural service	3
First local service	3
First fulltime local service	2
Minority or public radio service	2

The weight accorded each community will be equal to that given for the highest priority category for that community.[11]

15. As between communities with equal weighting factors, the one which is the more populous will be preferred. Thus concerning the example in para. 9, *supra.*, where Clearfield, Utah and Layton, Utah both fall into the same category [(L) no local service)] Layton, as the more populous community would receive the allotment. Within the minority category the respective minority populations as set forth in the 1980 U.S. Census will be the general standard for selection. Finally, it is our intention to review the computer's allotment selection to insure that the mechanistic application of these ranking standards do not yield anomolous results.

Procedure for Filing Applications

16. We shall complete the omnibus proceeding by the issuance of a *Report and Order* allotting channels to those communities selected under the process set forth in paragraphs 14 and 15, *supra.* Upon adoption of the *Report and Order*, applications will be accepted for some of the assignments. In order to maintain control of the application processing we intend to stagger the effective dates of the channel assignments thereby spreading out the filing of applications for the newly available channels. The order of availability could be based on any of several factors including: (1) Geographic regions, by states; (2) alphabetical, by communities; (3) largest communities, by population; (4) channel numbers (221–300). Commentors are urged to address these or other methods of making the new channels available for application.

17. At the termination of this proceeding, we intend to accept petitions for rule making to assign FM channels as we have done in the past. As long as the number of petitions

[9] Proponents claiming such service should submit a showing pursuant to the method set forth in *Roanoke Rapids, N.C.*, 9 F.C.C. 2d 672 (1967) and *Anamosa, Iowa*, 46 F.C.C. 2d 520 (1974).

[10] For purposes of this omnibus proceeding, we have defined the term "minority service" to apply to a city with a significant minority population which the interested party plans to serve.

[11] A proposal which falls into more than one category would be given an enhanced priority value by the addition of a factor equal to one-tenth the priority value of the additional category. Thus, a proposal that would provide a first aural service from a community with no local station and provide a minority service in that community would get a priority factor of 4.5 under the weighting factors suggested above. That is, 4 for first aural service, 0.3 for first local service and 0.2 for minority service.

received are at a manageable level, we will process each request in a separate proceeding. However if the number of petitions becomes unmanageable, it is possible that a second omnibus proceeding could be conducted based on the petitions on hand.

Other Matters

18. In the *Notice of Inquiry and Notice of Proposed Rule Making* in BC Docket No. 82–538, 47 FR 38937, published September 3, 1982, we considered a broad range of problems faced by daytime-only AM licensees. One such problem involved the relative handicap these licensees may encounter in comparative licensing proceedings for FM channels newly allotted to their principal communities. Existing comparative criteria could entitle competing applicants for such FM facilities to a diversification preference over daytime-only licensees [12], thus potentially foreclosing a means by which these experienced broadcasters could expand their service to the public. Because the instant proceeding involves numerous FM channel allotments to communities now served by daytime-only stations, we believe it appropriate to inquire whether daytime-only stations should be granted special consideration in this comparative context and, if so, what should be the nature of that consideration. One possible remedy would be to simply disregard the daytime-only facility for purposes of making diversity determinations in comparative proceedings involving an FM channel in the daytime-only station's principal community. This approach would enhance daytime-only braodcasters' capacity to compete with other applicants by removing the negative diversity consequences that would normally result from their ownership of daytime-only facilities. However, daytime-only stations that are not licensed to the same community as the proposed FM channel would be considered for diversity purposes. Another possible remedy on which we seek comments is whether it would be desirable to designate a preference to licensees of daytime-only stations over other competing applicants for an FM channel newly assigned to the same community. Further, we request comments on whether it should be necessary for the licensee of the daytime-only station to divest itself of the AM station as a prerequisite to the licensee being granted a preference for an FM channel or being given neutral diversity treatment. See *WHW Enterprises, Inc.*, 89 FCC 2d 799 (1982).

19. *Regulatory Flexibility Act.*

I. *Reason for Action.* This action derives from BC Docket 80–90. In this proceeding we have proposed various FM channel allotments for public comment to elicit support or opposition to these particular locations and to determine whether there are communities in greater need of an affected frequency.

II. (a) *Objective.* This proceeding will elicit comments on the need for the proposed FM channel allotments based on statements of support or on proposals which demonstrate a greater need in another community.

(b) *Legal Basis.* The legal basis for eliciting comments is Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

III. *Description, Potential Impact and Number of Small Entities Affected.* Small entities could be affected in two ways. Those small businesses already holding licenses for radio stations could suffer increased competition in their markets. Many small businesses will be interested in applying for one or more of the proposed allotments to be made available at the termination of this proceeding. It is unknown how many small entities may be affected either favorably or adversely.

IV. *Federal Rules Which Overlap, Duplicate or Conflict with the Proposed Rules.* None.

V. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent With Stated Objectives.* None.

20. It is ordered that the Secretary SHALL SEND a copy of this *Notice of Proposed Rule Making* to the Small Business Administration.

Proposed List of Communities

21. Accordingly, it is proposed to amend § 73.202(b) of the Commission's Rules, the FM Table of Assignments, for the following communities listed in the Appendix.

22. Authority is found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules.

23. Interested parties may file comments on or before May 14, 1984. The reply comment date will be announced when the list of proposed assignments generated by the counterproposals is released.

24. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any such comment constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

The following list of communities includes the channels presently assigned and those which we are now proposing for assignment. Where a site restriction is necessary in order for the particular channel to conform to the distance separation requirements, we have indicated that information in parenthesis. The site restrictions are expressed in miles and with the bearings. In addition we have indicated the instances where a particular assignment will need the concurrence of Canada or Mexico (to be requested by the Commission). The particular channel listed for many of the communities does not represent the only channel that can be assigned. Where applicable we have selected the channel with the smallest site restriction or the highest class available.

[12] *See Policy Statement on Comparative Hearings*, 1 F.C.C. 2d 393 (1965).

City	Channel No.		Concur- required
	[illegible]	Proposed	
[illegible]			
Alabaster		247A	
Anniston	263	250A, 263	
Bay Minette	288A	288A, 293A (1.6 SE)	
Brundige		234A (3.7 NE)	
Cordova		225A	
Dothan	238, 259	239, 259, 273A (1.2 NW)	
Elba		266A	
Eutaw		275A	
Florence	297	241A (3.2 W), 297	
Fort Rucker		226A	
Linden		287A	
Mobile	225, 235, 241, 248, 260	225, 235, 241, 248, 260, 290A	
Montgomery	222, 255, 270, 277	222, 241A (3.1 S), 255, 270, 277	
Selma	261A, 265A	226A (3.9 E), 261A, 265A	
Talladega	224A	224A, 248A	
Tallassee		247A (4.4 NE)	
Vernon		293A	
Winfield		290A (4.1 SW)	
[illegible]			
Anchorage	247, 251, 255, 263, 267, 271, 276A, 281, 287* 293, 298 261A.	225, 247, 251, 255, 263, 267, 271, *276A, 281, 287, 293, [illegible]	
Bethel	261A	261A, 300A	
[illegible]			
Buckeye		295A	Mexico.
Chinle		297A	
Flagstaff	225, 230, 248	225, 230, 248, 291A	
Globe	262	247A (1.1 N), 262	Mexico.
Kearny		291A	Mexico.
Orabi		267A	
[illegible]			
Phoenix	233, 238, 245, 254, 260, 268, 273	233, 238, 245, 254, 260, 268, 273, 290A (0.9 SW)	Mexico.
San Carlos		280A	Mexico.
Sierra Vista	265A	265A, 269A (0.6 W)	Mexico.
Tuba City		252A	
Tucson	225, 229, 235, 241, 258, 298	225, 229, 235, 241, 258, 271A (3.2 NW), 298	Mexico.
Window Rock		264A	
Yuma	226, 236, 265A	226, 236, 250A, 265A	Mexico.
[illegible]			
Beebe		268A (3.8 E)	
Cabot		273A	
Clarendon		295A	
Dermott		289A (3.1 S)	
El Dorado	240A, 257A, 276A	227A (3.8 NE), 240A, 257A, 276A	
England		243A	
Eudora		268A	
Glenwood		284A	
Hamburg		230A	
Hardy		284A (2.8 NW)	
Helena	276A	233A, 276A	
Horses Bend		291A	
Little Rock	231, 239, 253, 279	231, 239, 253, 279, 294A	
Malvern		290A	
Marianna		297A (4.5 E)	
Marked Tree		229A	
North Crossett		274A (3.3 NE)	
Pine Bluff	222, 235, 257A	222, 235, 257A, 267A	
Taxarkana	296A	259A, 296A	
Trumann		294A	
[illegible]			
Atwater		223A (4.5 SW)	
Avenal		291A	
Bakersfield	221A, 231, 243, 268, 296A, 300	221A, 231, 243, 261A, 268, 296A, 300	
China Lake		278A	
Chowchilla		227A	
Colusa		243A (0.8 N)	
Crescent North		249	
East Hemet		267A	Mexico.
[illegible]		265A (2.1 SW)	
Earlimart		263A	
Firebaugh		276A (4.5 E)	
Ford City		270A	
George		264A	Mexico.
Gonzales		287A (2.6 SW)	
Hanford	279, 298	233A (4.5 SW) 279, 298	Mexico.
Independence		292A	
Kingsburg		292A (3.9 E)	
Lake Isabella		283A	
Lenwood		287A	Mexico.
Lindsay		277A	
Madera	221A	221A, 234A (1 W)	
McFarland		275A	
Mendota		272A (4.7 NW)	
Merced	248, 268	248, 268, 299A	
Modesto	272A, 277, 281	230A, 272A, 277, 281	
Orange Cove		261A (4 NE)	
Orland		294A	
Oxnard	252A, 284	252A, 271A (1.3 S), 284	Mexico.
Rio Dell		299A	
Rohnerville		294A	
Sacramento	233, 241, 245, 253, 263, 266, 293, 300	233, 241, 245, 253, 263, 278A, 266, 293, 300	

City	Channel No.		Concurrence required
	Present	Proposed	
Salinas	264, 273, 280A	250A (2.7 SW) 264, 273, 280A	
San Jacinto		[illegible]A	Mexico
San Luis Obispo	227, 241, 251	227, 241, 251, 279A	
Santa Barbara	229, 248, 260, 277	[illegible]29, 248, 260, 277, [illegible]81 (5.4 N)	
Santa Rosa	261A, 269A	[illegible]9A, 261A, [illegible]9A	
Searles Valley		296A	
Soledad		[illegible]2A	
South Oroville		[illegible]5A (2.3 NE)	
Visalia	225, 246	225, 241A (4.5 SW), 246	
Winton		254A	
Colorado:			
Brush	296A	292A, 296A	
La Junta	221A	[illegible]1A, [illegible]5A	
Las Animas		[illegible]7A	
Pueblo	245, 255, 260, 264, 296A, 300	245, 255, 260, 264, 283C1 (10 SW), 296A, 300	
Connecticut:			
Coventry		[illegible]9A (0.9 E)	
New London	265A	[illegible]4A, [illegible]5A	
Pawcatuck		[illegible]3A	
Stafford Springs		[illegible]5A	
Delaware:			
Lewes		290A	
Milford	249A	249A, 267A, 267A (5 SE)	
Florida:			
Century Village		[illegible]8A	
Chattahoochee		227A (2.5 SE)	
Chiefland		[illegible]3A	
Daytona Beach	233, 270	233, 270, 277A	
Edgewater		226A (0.7 NW)	
Englewood		282C2 (12.4 SE)	
Fort Myers	237A, 245, 270	229A (3.1 NE), 237A, 245, 270	
Gifford		259A	
Graceville		271A (3.3 SW)	
Key West	223, 228A, 254, 258, 296A	223, 228A, 254, 258, 296A, 300A	
Marianna	265A	265, 265A	
Monticello		270A	
Orlando	222,243, 262, 266	222, 243, 255A (2.3 NW), 262, 266	
Pensacola	231, 264, 268, 297	231, 264, 268, 291A, 297	
Quincy	269A, 285A	269A, 274A, 285A	
Tallahassee	235, 240A, 255, 276A, 281	235, 240A, 255, 276A, 281, 298C1 (20 SW)	
Watertown		289A (0.9 NE)	
Georgia:			
Albany	242, 269A, 283	242, 269A, 279A, 283	
Arco		[illegible]0A	
Ashburn		[illegible]1A	
Bainbridge	247	247, 280A	
Calhoun		300A (3.4 NE)	
Cuthbert		[illegible]4A	
Douglasville		273A (2.6 S)	
Eatonton		264A (2.5 SE)	
Fort Valley	[illegible]2A	248A (0.9 NW), 292A	
Hogansville		248A (1.1 S)	
Lafayette		239A	
Lakeland		[illegible]4A	
Lyons		223A (4.6 SE)	
Macon	256, 279A, 287, 300	256, 287, 300	
Milledgeville	272A	222A, 272A	
Millen		275A	
Montezuma		223A	
Royston		[illegible]9A	
Statesboro	264A	[illegible]1A, [illegible]0A (3.6 NW)	
Sylvester		271A	
Valdosta	225, 240A, 244A, 266	225, 240A, 244A, 266, 290A (1 NW)	
Hawaii:			
Honolulu	226, 230, 234, 238, 248, 253, 258, 262	226, 230, 234, 238 248, 253, 258, 262, 290	
Idaho:			
American Falls		261A	
Buhl		248A	
Gooding		253A	
Illinois:			
Bushnell		271A	
Carlyle		264A	
Carterville		236A (1.9 NE)	
Casey		286A	
Champaign	269, 248	233, 248, 290A	
Coal City		[illegible]4A	
Decatur	236, 257A, 275	226A (2.3 SW), 236, 257A, 275	
Dwight		255A	
Fairbury		[illegible]8A	
Farmington		239A (3.6 NW)	
Galena		298A (2.7 N)	
Galva		273A	
Hamilton		282A	
Henry		247A	
Hillsboro		260A (0.7 NW)	
Kankakee	224A, 260	224A, 236A (2.0 W), 260	
Lewiston		274A	
Marseilles		273A	
Marshall		281A (4.4 E)	
Mason City		231A	
McLeansboro		283A	
Nashville		295A	

City	Channel No. Present	Channel No. Proposed	Concurrence required
Newton		290A	
Nokomis		287A	
[illegible]		291A	
Oregon		263A (0.8 N)	
Peoria	227, 289, 295	227, 250A, 289, 295	
Pinckneyville		282A (1.1 W)	
Polo		299A	
Spring Valley		271A	
Villa Grove		223A	
Indiana:			
Anderson	250	230A, 250	Canada
Attica		239A	
Austin		287A (3.0 S)	
Berne		287A	Canada
Bicknell		289A (4.4 SE)	
Bloomfield		266A (1.5 SW)	
Bremen		266A (1.5 SW)	
Clinton		230A	
Corydon		243A (1.0 NW)	
Delphi		275A	
Dunkirk		248A	Canada.
Evansville	281, 287	281, 287, 291B1 (5.4 SE)	
Fort Branch		268A (4.3 W)	
Fort Wayne	236, 247, 269A, 280A	236,242B1 (8 E), 247, 269A, 280A	Canada.
Garrett		278A	Canada
Grissom		279A	Canada.
Hanover		282A	
Indianapolis	226, 234, 238, 277, 283, 289, 300	226, 234, 238, 242A, 277, 283, 289, 300	
Mitchell		273A	
Mount Vernon		298A	
Nappanee		245A	Canada.
Noblesville		254B1 (2.0 NW)	Canada.
South Bend	225, 268 276A, 280A	225, 268, 276A, 280A, 292A (4.4 NE)	Canada.
Iowa:			
Anamosa		234A	
Audubon		290A	
Belle Plaine		239A	
Cresco		[illegible]	
Des Moines	227, 235, 247, 262, 273	227, 235, 247, 262, 273, 298C2 (2.7W)	
Eagle Grove		297A (3.2 SW)	
Eldora		258A (0.7 SE)	
Grinnell		294A (3 N)	
Hawarden		270A (3.4 N)	
Jefferson		255A	
New Hampton		236A (0.9 NW)	
Orange City		295A (3.9 NW)	
Rock Rapids		230A	
Sac City		286A	
Sibley		262A	
West Union		258A (4.4 E)	
Winterset		239	
[illegible]			
Augusta		263A (1.5 NW)	
Fredonia		281A	
Galena		236A	
Girard		266A (0.6 SE)	
Herington		241A (1.8 N)	
Holton		267A	
Kansas City	231, 251	222A (2.5 SE) 231, 251	
Kingman		232A	
Medicine Lodge		240A	
North Fort Riley		273C2 (5.6 E)	
Plainville		235A	
Topeka	247, 262, 295, 299	223A (4.5 W), 247, 262, 295, 299	
Winfield	232A	232A, 254A	
Kentucky:			
Beaver Dam		274A	
Berea		300A	
Buffalo		256A	
Burkesville		253A	
Cave City		294A (2.1 NW)	
Cumberland		247A	
Eminence		242A	
Harlan		286A	
Hawesville		289A	
Irvine		291A	
Lancaster		286A	
Lawrenceburg		273A	
Lexington	225, 233, 251	225, 233, 251, 283A	
Lexington-Fayette		222A	
Louisa		248, 259, 263C2 (8.3 E), 272A, 276A, 280A, 295	
Louisville	248, 259, 272A, 276A, 280A, 295	274A	
Manon		259A	
Mt. Vernon		278A	
Radcliff		275A	
Salyersville		289A	
Shelbyville		286A (1.6 NW)	
Shepherdsville		287A (4.5 S)	
Vancleve		291A (2.5 NW)	
Whitley City			

City	Channel No.		Concurrence required
	Present	Proposed	
Williamsburg		274A	
Louisiana:			
Alexandria	226, 245, 262	226, 245, 262, 287A	
Arcadia		223A (3.6 SE)	
Bastrop	232A, 261A	232A, 261A, 277A	
Berwick		229A (2.7 SE)	
Bunkie		282A (1.3 NW)	
Buras Triumph		233A	
Crowley	275	271A (4.4 S), 275	
DeQuincy		267A (1.1 NE)	
Homer		260A	
Jonesville		286A	
Lafayette	233, 260	233, 260, 290A (2.7 W)	
Lake Arthur		297A	
Lake Charles	241, 258, 279	241, 258, 279, 287C2 (14.6 SE)	
Larose		262A	
Mansfield	224A	224A, 247A	
Monroe	270, 281, 291	270, 281, 287A, 291	
New Iberia	256	225A (3.1 SE), 256	
North Fort Polk		250A	
Opelousas	296A	238A, 296A	
Rayne		294A (4.7 E)	
Reserve		235A	
Ruston	298	239A, 298	
Shreveport	229, 233, 243, 261A, 266	229, 233, 243, 261A, 266, 275C2 (13.5 W)	
South Fort Polk		294A	
Vivian		239A	
Washington		284A (3.5 N)	
Welsh		229A (4.7 N)	
Maine			
Dexter		297A	Canada.
Fairfield		232A (4.4 N)	Canada.
Kittery		287A	Canada.
Madison		248A (3.1 N)	Canada.
Mexico		264A (4.1 NE)	Canada.
Pittsfield		271A (2.0 E)	Canada.
Topsham		238A (3.8 S)	Canada.
Van Buren		251A	Canada.
Winslow		237A	Canada.
Maryland:			
Crisfield		245A	
Pocomoke City	273	273, 293A	
Salisbury	232A, 288A	232A, 255A, 288A	
Westernport		224A	
Massachusetts:			
Athol		260A	Canada.
Great Barrington		251A (1.6 E)	Canada.
Newburyport		271A (3.8 NW)	Canada.
Orange		247A (4.1 NE)	Canada.
South Yarmouth		280A	
Springfield	226, 234, 271	226, 234, 250A, 271	
Turners Falls		230A	Canada.
Michigan:			
Benton Harbor	260	235A (3.8 SW), 260	Canada.
Bessemer		223A	Canada.
Buchanan		256A (2.9 W)	Canada.
Gladstone		272A	Canada.
Grand Rapids	229, 239, 245, 250, 267, 275, 281, 289	229, 239, 245, 250, 255A (1.4 W), 267, 275, 281, 289	Canada.
Hartford		279A (4.5 E)	Canada.
K.I. Sawyer		248A	Canada.
Kalamazoo	271, 293, 299	223A, 271, 293, 299	Canada.
Kingsford		255A	Canada.
Laurium		235A	Canada.
Muskegon	283, 295	283, 295, 300A	Canada.
Negaunee		256A	Canada.
Portage		243A	Canada.
Saginaw	251, 292A, 296A	251, 283A, 292A, 296A	Canada.
Vassar		247A (1.1 NW)	Canada.
Wurtsmith		237A	Canada.
Minnesota:			
Babbitt		294A (3.2 NW)	Canada.
Caledonia		234A	
Chisholm		263A	Canada.
Granite Falls		234A	
Hoyt Lakes		267A	Canada.
Jackson		289A	
La Crescent		274A	
Lakeville		289A (4.1 N)	
Le Sueur		241A (4.5 N)	
Mora		237A	Canada.
New Prague		238A (4.8 SE)	
Silver Bay		265A	Canada.
Sleepy Eye		287A (2.7 S)	
Spring Valley		286A	
Springfield		297A	
Staples		234A	Canada.
Stewartville		235A	
Tracy		286A	
Two Harbors		282A	Canada.
Wells		239A	

City	Channel No. Present	Channel No. Proposed	Concurrence required
[redacted]			
Bay St. Louis		233A (3.7 N)	
Belzoni	296A	225A, 296A	
[redacted]arksdale	269A, 292A	243A, 269A, 292A	
Cleveland	224A, 280A	224A, 230A, 280A	
Columbus	276A, 280A	235C2 (1.0 SW), 276A, 280A	
Durant		282A	
Greenville	250, 264	250, 264, 284C2 (10.4NW)	
Greenwood	256	256, 273A	
Hollandale		279A (1.4 SW)	
Holly Springs	224A	224A, 235A	
Indianola	288A	277A, 288A	
Laurel	262, 272A	251A (4.8 SE), 262, 272A	
Lexington	292A	271A, 292A	
Lucedale		2295A	
Macon		263A	
Marks		225A	
Meridian	246, 267	236A, 246, 267	
Monticello		271A (1.4 E)	
Natchez	236	236, 247A	
Okolona		294A	
Rosedale		226A, (2.0 SW)	
Senatobia	237A	237A, 294A	
Shaw		245A	
State College		282A	
Vicksburg	254, 294	254, 266A (0.6 W), 294	
Water Valley		268A (2.8 SW)	
Wiggins		250A	
Yazoo City	221A	221A, 229A (4.6 E)	
[redacted]			
Ava		258A	
Boone Terre		282A	
Cameron		223A	
Chaffee		284A	
Charleston		291A (0.6 NW)	
[redacted]		291A (1.4 N)	
East Prairie		287A	
Fayette		223A	
Hermann		267A	
Ironton	224A	224A, 269A	
Lamar		258A (4.9 W)	
Macon		260A	
Marceline		222A	
Mt. Vernon		294A	
Perryville		294A	
Piedmont	285A	248A (0.5 W), 285A	
Slater		261A (2.1 N.E.)	
Southwest City		263A	
St. James		258A (0.7 SE)	
Warrenton		260A (2.1 SW)	
Washington		283A (5.0 SW)	
[redacted]			
Columbia Falls		240A	Canada.
Conrad		229A	Canada
West Yellowstone		243A	
Nebraska:			
Genng		262A	
Gothenburg		264A	
Omaha	222, 231, 241, 253, 260, 264, 283	222, 231, 236A, 241, 253, 260, 264, 283	
Plattsmouth		289A	
Valentine	241	225A, 241	
West Point		300A	
[redacted]			
Hawthorne		229A	
New Hampshire:			
Farmington		293A (2.3 SE)	Canada
Lebanon		230A	Canada
Somersworth		254A	Canada
New Jersey			
Atlantic City	236, 240A, 245, 279	236, 240A, 245, 279, 297B1 (3.2 S)	@
Beachwood		253A (3.9 E)	
North Cape May		230A (3.9 SE)	
Vitas		254A	
Wildwood Crest		222A (2.0 SW)	
Woodbine		225A	
New Mexico			
Alamogordo	32A, 288A	32A, 240A, 288A	Mexico
Albuquerque	222, 227, 231, 242, 258, 262, 277, 300	222, 227, 231, 242, 258, 262, 267A (4.4 SE), 277, 300	
Carlsbad	221A, 281	221A, 258A, 281	Mexico
Clovis	256, 260, 298	256, 260, 268A, 298	
Farmington	225, 245, 271	225, 239A, 245, 271	
Gallup	229, 233, 256	229, 233, 241A, 256	
Grants	237A	237A, 250A	
Las Vegas	265A	265A, 271A	
Rosewell	235, 246, 263	229A, 235, 246, 263	Mexico
Santa Fe	238, 247, 281, 286, 290	238, 247, 270A (1.6 E), 281, 286, 290	
Silver City	224A	224A, 233A	Mexico
Taos	269A	233A, 269A	
White Rock		268A (1.1 NW)	

City	Channel No.		Concurrence required
	Present	Proposed	
New York:			
Arlington		241A	
Avon		227A (3.8 NW)	Canada
Boonville		236A	Canada
Canajoharie		232A	Canada
Canisteo		270A	Canada
Catskill		286A	Canada
Center Moriches		241A (2.6 N)	
Clyde		229A	Canada
Dannemora		278A	Canada
Dansville		230A (1.0 SW)	Canada
Delhi		262A	Canada
Dolgeville		234A (1.5 NW)	Canada
Fort Edward		236A	Canada
Fort Plain		266A	Canada
Fredonia		243A (4.5 SE)	Canada
Granville		294A	Canada
Homer		241A	Canada
Hoosick Falls		248A (5.0 SW)	Canada
Mechanicville		267A (1.4 NW)	Canada
New Paltz		247A (4.7 SE)	Canada
Palmyra		259A	Canada
Phoenix		271A (0.8 SW)	Canada
Plattsburgh	260	260, 294A (3.2 W)	Canada
Poughkeepsie	221A, 268, 284	221A, 268, 284, 297A (4.2 E)	Canada
Ravena		242A	Canada
Rochester	223, 243, 250, 255, 263, 267, 280A	223, 243, 250, 255, 263, 267, 274A (3.0 NW), 280A	Canada
Sandy Creek		294A	Canada
Syracuse	226, 233, 265A, 275, 300	226, 233, 265A, 275, 290A (1.6 E), 300	Canada
Utica	245, 254, 282, 297	245, 254, 263A, 282, 297	Canada
Warrensburg		230A (3.7 NW)	Canada
Waterloo		253A (3.2 SW)	Canada
Whitehall		234A	Canada
North Carolina:			
Camp Lejeune		266A (2.7 SW)	
Elizabethtown		289A	
Fairbluff		299A (0.7 NW)	
Jacksonville	221A, 288A	221A, 254A, 288A	
Louisburg		273A	
Marshall		282A	
Murphy		282A	
New Bern	270, 293	231A, 270, 293	
Raleigh	234, 241, 268	234, 241, 268, 275A (2.6 W)	
Rocky Mount	221A, 264	221A, 253A (3.2 S), 264	
Rose Hill		284A	
St. Pauls		295A (5.0 W)	
Warrenton		297A (4.6 N)	
Wilmington	247, 260, 265A, 274	247, 260, 265A, 274, 287A	
Windsor	249A	249A, 255A	
North Dakota:			
Beulah		250A	Canada
Langdon		239A	Canada
Ohio:			
Ada		226A	Canada
Barnesville		271A (0.8 W)	Canada
Coal Grove		246A	Canada
Columbus	222, 234, 242, 246, 250, 259, 285A	222, 234, 242, 246, 250, 255A, 259, 285A	Canada
Crestline		254A	Canada
Crooksville		297A	Canada
Delaware		300A	Canada
Delta		297A (2.8 N)	Canada
Edgewood		273A (1.5 S)	Canada
Gibsonburg		241A (2.0 E)	Canada
Greenfield		248A	Canada
Hicksville		294A	Canada
Lima	249A, 271, 285A	249A, 271, 285A, 298A, (2.4 SW)	Canada
Loudonville		299A	Canada
Loveland		247A	Canada
Mansfield	287, 291	239A (1.9 S), 287, 291	Canada
Marysville		289A	Canada
Montpelier		283A (3.5 S)	Canada
North Baltimore		300A (4.9 SE)	Canada
Nelsonville		298A	Canada
Oak Harbor		247A	Canada
Paulding		259A	Canada
Ripley		258A	
Shadyside		239A	Canada
St. Marys		277A	Canada
Swanton		293A	Canada
Troy		245A (2.9 SE)	Canada
Uhrichsville		260A (3.9 NE)	Canada
Union City		248A	Canada
Wauseon		245A	Canada
Willard		245A (4.7 S)	Canada
Woodsfield		226A	Canada
Oklahoma:			
Antlers		282A	
Bixby		287A	
Commerce		259A	
Cordell	257A	229A, 257A	

City	Channel No		Concurrence required
	Present	Proposed	
Fairview		288A	
Heavener		233A	
Haileyville		286A (4.3 SE)	
Hollis		249A	
Lawton	237A, 251, 268	237A, 251, 268, 297C2 (6.8 SW)	
Lindsay		286A	
Sayre		227A	
Tishomingo		289A	
Wagoner		271A	
Walters		229A	
Wilburton		279A	
Oregon:			
Ashland		300C1	
Milton-Freewater		250A	
Myrtle Point		231A	
Nyssa		254A	
Oakridge		221A (1.2 SW)	
Reedsport		221A	Canada.
Seaside		234A	
Sutherlin		266A	
Pennsylvania:			
Barnesboro		278A (2 N)	Canada.
Berwick		278A (2.1 NE)	Canada.
Brockway		263A	Canada.
Curwensville		223A	Canada.
Edinboro		250A (4.8 NE)	Canada.
Erie	260, 272A, 279, 292A	235A, 260, 272A, 279, 292A	Canada.
Everett		298A (2.8 N)	Canada.
Johnsonburg		277A (3.1 SW)	Canada.
Lewisburg		242A	Canada.
Lykens		263A	Canada.
Masontown		295A (4.6 SE)	
McConnellsburg		279A	Canada.
Mexico		223A	Canada.
Morgantown		227A	Canada.
Millersburg		255A (3.7 NE)	Canada.
Mount Carmel		259A (2. N)	Canada.
Mount Union		258A	Canada.
Northumberland		297A (1.5 NW)	Canada.
Oliver		235 (1.8 SW)	Canada.
Patton		230A (3.4 NE)	Canada.
Philipsburg		290A (4.5 NW)	Canada.
Port Allegany		235A	Canada.
Portage		289A	Canada.
Renovo		226A	Canada.
Reynoldsville		293A	Canada.
Scranton	267, 285A, 296A,	258A (2.1 NE), 267, 285, 296A	Canada.
Shenandoah	288A	288A, 300A (2.3 NE)	Canada.
Spangler		226A	Canada.
Sugar Creek		298A (1.9 N)	Canada.
Rhode Island:			
Wakefield-Peacedale		274A (4.3 E)	
South Carolina:			
Bishopville		229A (0.5 SW)	
Charleston	236, 245, 278	236, 245, 284A (3.3 NW), 278	
Clinton		277A (4.5 N)	
Conway	281	229A (2.4 S), 281	
Georgetown	249A, 292A	231A, 249A, 292A	
Hemingway		271A (4.3 W)	
Kershaw		291A (2.9 W)	
Kingstree	252A	252A, 286A (4.5 SW)	
Lone		290A	
Manon	222A	232A, 263A	
New Ellenton		274A (3.8 NW)	
Orangeburg	280A, 294	275A (0.9 E), 280A, 294	
St. Matthews		230A (0.7 SW)	
Sumter	267	234A, 267	
Walterboro	265A	265A, 287A (2 SE)	
Williston		294A	
South Dakota:			
Canton		273A	
Chamberlain		252A	
Lead		222A	
Mission		264A	
Pine Ridge		243A	
Redfield	279	256A, 279	
Tennessee			
Celina		229A	
Englewood		287A	
Jackson	276A, 281	268A, 276A, 281	
Jellico		294A	
Knoxville	248, 278, 299	248, 278, 283A (1.1 S), 299	
Loudon		256A (2.4 NW)	
Mountain City		264A	
Parsons		247A (4.2 SW)	
Ripley	237A	231A (4.5 NW), 237A	
Rockwood		230A	
Rogersville		290A	
Selmer	288A	230A, 288A	
Spring City		281A (4.6 SE)	
Tazewell		231A	

City	Channel No.		Concurrence required
	Present	Proposed	
Wartburg		254A	
Texas:			
Abilene	257A, 264, 286, 300	233C2 (5.1 SE), 257A, 264, 286, 300	
Beaumont	231, 236, 248, 300	231, 236, 248, 273C2 (6.9 E), 300	
Beeville	285A	223A, 285A	Mexico.
Bowie		264A	
Bryan	252A, 285A	241C2 (12 NW), 252A, 285A	
Cameron	276A	276A, 282A (1.0 NW)	
Carrizo Springs	228A	221A, 228A	Mexico.
Clarksville		222A	
Corpus Christi	230, 236, 243, 256, 260	230, 234A (5. N), 236, 243, 256, 260	Mexico.
Daingerfield		282A	
Del Rio	232A, 242	232A, 242, 255A	Mexico.
Eagle Pass	224A	224A, 229A (2.1 NE)	Mexico.
Edna		269A	
Electra		245A	
Elgin		291A (4.2 N)	
Fnona		238A	
Hamlin	279	246A, 279	
Hemphill		222A	
Hondo		290A (3.2 S)	Mexico.
Jacksboro		229A	
Jefferson		295A	
Killeen	227, 288A	227, 288A, 297A	
Laredo	224A, 235, 251	224A, 235, 251, 266A	Mexico.
Longview	[redacted]	247A, 289	
Midland	222, 227, 277, 294	222, 227, 277, 290A, 294	Mexico.
Morton		251A	
Odessa	245, 250, 256	245, 250, 256, 300C1 (17.4 S)	Mexico.
Palacios		264A (1.5 W)	Mexico
Pearsall	237A	231A, 237A	[redacted].
Pecos	252A	229A, 252A	Mexico.
Plainview	247, 280A	247, 280A, 289A	
Port Isabel		266A	Mexico.
Post		290A	
Raymondville	269A	269A, 289A (1.5 NW)	Mexico.
Rockdale		255A	
San Angelo	225, 230, 234, 248, 254, 298	225, 230, 234, 248, 254, 270C1, 298	Mexico.
San Augustine		260A	
San Diego		290A	Mexico.
Tahoka		253A (1. SE)	
Trinity		264A	
Tyler	221A, 226, 268	221A, 226, 268, 297C2 (9. S)	
Uvalde	272A, 285A	223A, 272A, 285A	Mexico.
Victoria	236, 254, 300	236, 254, 291A, 300	Mexico.
Wichita Falls	225, 260, 277, 292A	225, 236A, 260, 277, 292A	
Winters	240A	240A, 260A	Mexico
Utah:			
Delta		252A	
Nephi		223A	
Roosevelt		228A	
Virginia			
Bedford		290A (1.8 SW)	
Bridgewater		290A	
Broadway		243A	
Charlottesville	224A, 237A, 248	224A, 237A, 241A, 248	
Chase City		260A	
Chesapeake-Portsmount-Virginia Beach	235	235, 271A (1.1 SW)	
Churchville		295A	
Clincho		259A	
Emporia		250A (4.8 W)	
Exmore	296	291A, 296	
Gloucester Point		256A (0.6 NE)	
Lawrenceville	288A	255A, 288A	
Lynchburg	252A, 261A, 269A	227A (4. NW), 252A, 261A, 269A	
Mount Jackson		229A	
Narrows		267A (3.2 NW)	
Petersburg	237A, 257A	237A, 257A, 262A (4 W)	
Richmond	233, 251, 271, 279, 293	233, 251, 266A, 271, 279, 293	
Roanoke	222, 235, 256	222, 235, 256, 273A (1.4 E),	
Saltville		291A (3 SE)	
South Boston	248	248, 294A (1.6 NW)	
West Point		300A	
Washington:			
Camas		234A (4.8 N)	Canada.
Dayton		223A	[redacted]
Medical Lake		233A	[redacted]
Yakima	233, 252A, 257A, 281, 297	233, 252A, 257A, 281, 289A (3 1 NW), 297	Canada.
West Virginia:			
Bridgeport		289A	
Charleston	241, 248, 260, 265A, 274	223A (1.7 NE), 241, 248, 260, 265A, 274.	
Fisher		298A	
Mannington		274A	Canada.
Matewan		293A	
Mount Gay-Shamrock		234A (4 NE)	
Point Pleasant		258A	Canada
Salem		238A	Canada
White Sulphur Springs		263A	
Wisconsin			
Algoma		243A	Canada

City	Channel No.		Concur-rence required
	Present	Proposed	
Auburndale		260A	
Black River Falls		259A	
Bloomer		291A (3. SE)	
Brookfield		267A	
Brillion		242A	
Columbus		253A (3.6 NE)	
Evansville		290A (4 SW)	
Mayville		259A (2.1 NW)	
Oconomowoc		283A (3.9 SE)	
Oconto Falls		280A (5. W)	Canada.
Peshtigo		241A (0.6 W)	Canada.
Plymouth		292A	
Wyoming:			
Kemmerer		297A	
Puerto Rico			
Naguabo		247A	

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS-80, Notice No. 1]

Transportation of Hazardous Liquids by Pipeline; Regulation of Intrastate Pipelines

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The existing Federal safety standards for pipelines transporting hazardous liquids apply to pipelines operating in interstate or foreign commerce. This notice proposes to extend the applicability of these standards to include pipelines transporting hazardous liquids that affect interstate or foreign commerce. The Hazardous Liquid Pipeline Safety Act of 1979 requires this action to provide for consistent State regulation of risks associated with intrastate transportation of hazardous liquids.

DATE: Interested persons are invited to submit written comments on this proposal by May 25, 1984. Late filed comments will be considered as far as practicable.

ADDRESS: Comments should identify the docket and notice numbers and be submitted in triplicate to the Dockets Branch, Materials Transportation Bureau, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. All comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m. working day.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, (202) 426-2392, regarding the content of this proposal, or the Dockets Branch (202) 426-3148, regarding copies of this proposal or other information in the docket.

SUPPLEMENTARY INFORMATION:

Requirement for Regulation

Section 203(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. 2002) requires the Secretary of Transportation to establish minimum Federal Safety standards for the pipeline transportation of hazardous liquids in or affecting interstate or foreign commerce. Prior to enactment of the HLPSA, the Department's jurisdiction over hazardous liquid pipelines was derived from the Transportation of Explosives Act (18 U.S.C. 831-835), which applied only to carriers engaged in interstate or foreign commerce in the United States. The HLPSA repealed this Act and granted the Secretary enlarged safety jurisdiction to include pipelines in Puerto Rico and pipelines that are not in interstate or foreign commerce, called intrastate pipelines.

The legislative history of the HLPSA shows that Congress intended Federal safety regulation of intrastate pipelines not only to control the risk of transporting hazardous liquids, but also to provide continuity among State regulations through the establishment of a Federal minimum level of pipeline safety. Currently, in the absence of Federal minimum standards, safety regulation of intrastate hazardous liquid pipelines is open to all States or municipalities, with the potential for inconsistent regulations from State to State. In § 203(d) of the HLPSA, Congress foreclosed this undesirable possibility by providing that "Any State agency may adopt additional or more stringent safety standards for intrastate pipeline facilities and the transportation of hazardous liquids associated with such facilities if such standards are compatible with the Federal standards issued under this title."

In adopting this limited Federal preemption of the exercise of State regulatory powers, Congress was guided by similar preemptive language in § 3 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. 1672). The clear purpose was to establish a uniform Federal policy governing State safety regulation of pipelines transporting hazardous materials in gas or liquid form that are subject to the two statutes. This purpose will be realized upon issuance of Federal safety standards for intrastate hazardous liquid pipelines.

Under the NGPSA, MTB has established minimum Federal safety standards for intrastate gas pipelines (49 CFR Part 192). These standards provide the basis for well developed State-run safety regulatory programs for intrastate gas pipelines. The HLPSA has a similar purpose with respect to intrastate hazardous liquid pipelines. In addition to the continuity required by section 203 of the HLPSA, section 205 of the Act encourages State agencies to take the lead in regulating intrastate hazardous liquid pipelines, paralleling the role for State agencies regarding natural gas pipelines under the NGPSA. Like the gas programs, the section 205 programs are to be a cooperative effort, with State agencies adopting applicable Federal safety standards under State laws. Also, State agencies that so participate become eligible for Federal funding of up to 50 percent of their program costs. To meet these objectives under section 205 of the HLPSA, minimum Federal safety standards applicable to intrastate hazardous liquid pipelines must be issued. (It should be noted, however, that Congress has not appropriated funds for State programs. Furthermore, adoption by MTB of the standards being

proposed does not mean that funds will become available or be sought by MTB. Funding is a matter that can be considered only in the context of future Federal budget proposals and appropriation proceedings.)

In summary, prior to enactment of the HLPSA, there was no Federal statute guiding State safety regulation of intrastate pipelines transporting hazardous liquids. Because the HLPSA: (1) Has extended the Department's regulatory authority to include intrastate pipelines, (2) has provided for State participation in the safety regulation of intrastate pipelines together with possible Federal funding of part of the State safety programs, and (3) has made Federal preemption and participation contingent upon adoption by the Department of minimum Federal safety standards, MTB believes there is a clear Congressional intent for Federal intrastate hazardous liquid pipeline safety standards.

Choice of Standards

MTB's experience with the pipeline industry shows that intrastate pipelines are designed, constructed, tested, maintained, and operated in the same manner as interstate pipelines. Further, most intrastate operators voluntarily utilize the current Federal safety standards now applicable to interstate facilities or the industry code, ANSI B31.4, upon which the Federal standards were based, totally or in part as their safety standards. Consequently, MTB proposes that the exising Federal safety standards in Part 195 for interstate pipelines transporting petroleum, petroleum products, or anhydrous ammonia be adopted as appropriate safety standards for intrastate pipelines carrying these commodities.

MTB reissued the Federal safety standards in Part 195 under the authority of the HLPSA on July 27, 1981, (46 FR 38357). The Supplementary Information in the reissuance document set forth, among other things, the distinction between interstate and intrastate pipeline facilities and MTB's plans to apply Part 195 to intrastate pipelines. MTB said the Federal regulations would not be applied to intrastate pipelines for at least two years to allow the States time to amend or adopt the necessary authorizing statutes and time to consider whether they should assume the intrastate regulatory responsibility or leave it to the Federal government. In responses to the reissuance document, both the American Petroleum Institute (API), speaking for the petroleum industry, and the National Transportation Safety Board (NTSB) argued against the two year period and urged quick application of the existing Federal safety standards to intrastate pipelines. Clearly, the API and NTSB comments solidly support the proposition that the existing Federal safety standards for interstate pipelines are the appropriate standards for intrastate pipelines.

Status of State Programs

Since Part 195 was reissued, the MTB has formally solicited the participation of all of the States, the District of Columbia, and the Commonwealth of Puerto Rico in a Federal/State program as provided in Section 205 of the HLPSA. Fifteen States (Texas, California, Wyoming Pennsylvania, Kansas, New Mexico, Montana, Ohio, North Dakota, Arkansas Arizona, New York, Iowa, Nevada, and Hawaii) currently have enabling legislation to regulate intrastate liquid pipelines. Seven States (Louisiana, Oklahoma, Mississippi, Alabama, West Virginia, Washington, and Wisconsin) are considering enactment of the necessary legislation. The remaining States, the District of Columbia, and the Commonwealth of Puerto Rico have not as yet expressed an interest in safety regulation of intrastate liquid pipelines. MTB estimates that total of 11,000 miles of intrastate pipelines would be affected by this rulemaking proceeding (another 33,000 miles of intrastate pipelines would be excepted from the applicability of Part 195 by § 195.1(b)). Of this total, approximately 64 percent are in the fifteen states which have legislation enabling the States to regulate intrastate pipelines. Further, the States seeking the necessary legislation have an additional 24 percent of the total intrastate pipelines, making possible the regulation of the great bulk of the affected intrastate pipelines via Federal/State programs.

Proposed Amendments

Only minor changes are needed in the text of Part 195 to make the Federal safety standards for hazardous liquid pipelines applicable to intrastate pipelines and to provide for various extended compliance times beyond the proposed overall effective date of 30 days; following publication of the final rule. On the whole, these changes would establish identical safety standards for interstate and intrastate pipelines. It is not the purpose of this rulemaking proceeding to examine the need for or merits of particular standards. While comments in this regard cannot be ignored if they impact intrastate pipelines, MTB intends to handle substantive matters involving the appropriateness of individual standards in separate proceedings involving both interstate and intrastate pipelines.

Gathering Lines. Movement of hazardous liquids through gathering lines in rural areas is outside the scope of the HLPSA. Under the existing regulatory language, MTB does not apply Part 195 to any part of a gathering system that is in a rural area even though other parts of the same system are in nonrural areas. To make sure that the language limiting the scope of Part 195 is consistent with this regulatory intent, MTB is proposing a clarifying change to § 195.1(b)(4). For interstate pipelines and intrastate pipelines, § 195.1(b)(4) would be amended to provide that Part 195 does not apply to "transportation of a hazardous liquid in those parts of an onshore pipeline system that are located in rural areas between a production facility and an operator trunkline reception point.

With regard to interstate pipelines, there has not been a serious problem under the existing § 195.1(b)(4) in distinguishing rural from non-rural areas or in distinguishing a gathering line from a trunkline. MTB is concerned, however, that these distinctions may be more of a problem for intrastate pipelines, since there is a significant number of rural intrastate gathering lines in the United States. Therefore, MTB would appreciate comments on the distinction between rural and nonrural and the point that marks the end of a gathering line and the beginning of a trunkline. If the comments indicate a significant problem in distinguishing intrastate gathering lines or in distinguishing rural from non-rural, MTB will make an appropriate change to § 195.1(b)(4) as it applies to intrastate pipelines (other than the change discussed above) either in the final rule or through a separate rulemaking proceeding.

The following gives a section-by-section discussion of the proposed changes:

Section 195.1 Applicability. This section currently limits the application of Part 195 to interstate hazardous liquid pipelines (referred to as those which are subject to the jurisdiction of the Federal Energy Regulatory Commission) and those hazardous liquid pipelines which are on the Outer Continental Shelf. The MTB proposes to extend the applicability of Part 195 to intrastate hazardous liquid pipelines by addition of the term "in or affecting interstate or foreign commerce" to identify the pipeline facilities and transportation to which the regulations would apply. The use of Federal Energy Regulatory Commission (FERC) jurisdiction to refer to interstate pipelines would be deleted

from § 195.1. The new language comports with the language of the HLPSA in order to make sure that the distinction between interstate and intrastate pipelines under the regulations is the same as under the HLPSA. Although FERC's list of jurisdictional pipelines will continue to provide some indication of whether a particular pipeline is interstate or intrastate, as defined below, an "interstate pipeline" is one that is used "in interstate or foreign commerce" while an "intrastate pipeline" is one that affects such commerce but is not an "interstate pipeline." The HLPSA defines "interstate or foreign commerce" as "commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof."

The regulations currently apply to the transportation of petroleum, petroleum products, or anhydrous ammonia. No change is proposed to this group of regulated commodities. Also, as provided in § 195.1(b), the regulations currently do not apply to certain forms of transportation, including those portions of gathering lines located in rural areas and low stress level pipelines. Other than the clarifying change discussed above regarding rural gathering lines, no change is proposed to the exceptions for these unregulated forms of transportation.

A new paragraph (c) woud except intrastate pipelines from the accident reporting requirements of Subpart B and the recordkeeping requirements of §§ 195.266, 195.310, and 195.404. More is said about this later under "Information Collection."

Section 195.2 Definitions. Because the terms "interstate pipeline" and "intrastate pipeline" are needed to apply the Part 195 regulations to intrastate pipelines, these terms are defined. The definitions of "interstate pipeline" and "intrastate pipeline" parallel the definition of like terms in Section 202 of the HLPSA.

Section 195.300 Scope. This section would be changed to specifically include onshore steel intrastate pipelines constructed before (30 days after publication of the final rule) which transport highly volatile liquids (HVL) among those pipelines to which the hydrostatic testing subpart applies. To make the section easier to read, the proposed revised section is presented in a listing format.

Section 195.302(b) General Requirements. Paragraph (b) would be changed to require that onshore steel intrastate pipelines which transport HVL and are constructed before (30 days after publication of the final rule) meet the hydrostatic test requirements of Subpart E unless operating pressure is reduced. Intrastate pipelines that do not transport HVL that are constructed before (30 days after publication of the final rule) would not be required to meet the hydrostatic test requirements of Subpart E. For existing pipelines in HVL service when the rules being proposed are issued, MTB is proposing a one year period for planning and scheduling the hydrostatic testing or pressure reduction and a five year period for conducting the hydrostatic testing. These periods are consistent with the compliance periods established for similar HVL interstate pipelines.

Section 195.401 General Requirements. Paragraph (c) would be changed to require that intrastate pipelines upon which construction is begun after (29 days after publication of the final rule) be designed and constructed (including hydrostatic testing) in accordance with Part 195. Also, this section would be redrafted to make it easier to read.

Section 195.402 Procedural Manual for Operating, Maintenance, and Emergencies. This section would not become effective with respect to intrastate pipelines until two years after publication of the final rule to provide a reasonable period for preparation of the procedural manual, training employees, and installing equipment. This extended compliance period would be stated in the effective date of the final rule rather than incorporated into § 195.402.

Section 195.406 Maximum Operating Pressure. Paragraph (a)(5) would be changed to limit the maximum operating pressure of onshore steel intrastate pipelines transporting HVL which are constructed before (30 days after publication of the final rule) but not hydrostatically tested under Subpart E. Operating pressure would be limited to 80 percent of a prior test or operating pressure.

Section 195.414 Cathodic Protection. Paragraph (a) would be changed to permit the same 3-year lead time for cathodic protection of coated intrastate pipelines as was provided for coated interstate pipelines. Paragraph (b) would be changed to permit the same 5-year lead time for corrosion control of bare intrastate pipelines as was provided for bare interstate pipelines. Paragraph (c) would be changed to permit the same 3-year lead time for corrosion control of breakout tank areas and buried station piping on intrastate pipelines as was provided for interstate pipelines. Paragraph (d) would be deleted as unnecessary.

Section 195.414(b) refers to §§ 195.416 (f) and (g) as required remedies for corroded pipe. Interested persons should note that MTB has proposed to revise § 195.416(g), which concerns isolated pitting (see 48 FR 46589, Oct. 13, 1983). If the proposed change to § 195.416(g) is adopted, it should apply to intrastate pipelines that may become subject to Part 195 as a result of this proceeding. Therefore, the proposal to revise § 195.416(g) as set forth in 48 FR 46589 is hereby made part of this rulemaking proceeding.

Classification. These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979) based on a Draft Evaluation of the economic impact of this proposal, a copy of which is in the docket. Based on the Draft Evaluation, the agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Information Collection. The information collection requirements of 49 CFR Part 195 (i.e., the accident reporting requirements of Subpart B as well as the recordkeeping requirements of §§ 195.266, 195.310, and 195.404) are currently under review to determine which may create an unnecessary burden and whether any changes are appropriate. Consequently, none of the existing information collection requirements is proposed to be adopted for intrastate pipelines at this time. Upon completion of the review, separate proceedings will be used to propose identical information collection requirements for interstate and intrastate pipelines. In the interim, an exception from the information collection requirements would be included under § 195.1(c) for intrastate pipelines.

List of Subjects in 49 CFR Part 195

Interstate pipeline, Intrastate pipeline, Pipeline safety.

PART 195—[AMENDED]

In view of the foregoing, the MTB proposes to amend 49 CFR Part 195 in the following manner:

1. By revising § 195.1 (a) and (b)(4) and adding a new paragraph (c) to read as follows:

§ 195.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to pipeline facilities and the transportation of hazardous liquids associated with those facilities in or affecting interstate or foreign commerce, or on the Outer Continental Shelf.

(b) * * *

(4) Transportation of a hazardous liquid in those parts of an onshore pipeline system that are located in rural areas between a production facility and an operator trunkline reception point;

* * * * *

(c) Subpart B of this part and §§ 195.266, 195.310, and 195.404 do not apply to intrastate pipelines.

2. By adding two new definitions to § 195.2 to read as follows:

§ 195.2 Definitions.

* * * * *

"Interstate pipeline" means a pipeline used in the transportation of hazardous liquids in interstate or foreign commerce.

"Intrastate pipeline" means a pipeline to which this part applies that is not an interstate pipeline.

* * * * *

3. By revising § 195.300 to read as follows:

§ 195.300 Scope.

This subpart prescribes minimum requirements for hydrostatic testing of—

(a) Newly constructed steel pipeline systems;

(b) Existing steel pipeline systems that are relocated, replaced, or otherwise changed;

(c) Onshore steel interstate pipelines constructed before January 8, 1971, that transport highly volatile liquids; and

(d) Onshore steel intrastate pipelines constructed before (30 days after publication of the final rule) that transport highly volatile liquids.

However, this subpart does not apply to movement of pipe covered by § 195.424.

4. By revising § 195.302(b) to read as follows:

§ 195.302 General requirements.

* * * * *

(b) No person may transport a highly volatile liquid in an onshore steel interstate pipeline constructed before January 8, 1971, or an onshore steel intrastate pipeline constructed before (30 days after publication of final rule) unless the pipeline has been hydrostatically tested in accordance with this subpart or, except for pipelines subject to § 195.5, its maximum operating pressure is established under § 195.406(a)(5). Dates to comply with this requirement are:

(1) For onshore steel interstate pipelines in highly volatile liquid service before September 8, 1980—

(i) Planning and scheduling of hydrostatic testing or actual reduction in maximum operating pressure to meet § 195.406(a)(5) must be completed before September 15, 1981; and

(ii) Hydrostatic testing must be completed before September 15, 1985, with at least 50 percent of the testing completed before September 15, 1983.

(2) For onshore steel intrastate pipelines in highly volatile liquid service before (publication of the final rule)—

(i) Planning and scheduling of hydrostatic testing or actual reduction in maximum operating pressure to meet § 195.406(a)(5) must be completed before (one year after publication of the final rule); and

(ii) Hydrostatic testing must be completed before (5 years after publication of the final rule) with at least 50 percent of the testing completed before (3 years after publication of the final rule).

* * * * *

5. By revising § 195.401(c) to read as follows:

§ 195.401 General requirements.

* * * * *

(c) Except as provided by § 195.5, no operator may operate any part of any of the following pipelines unless it was designed and constructed as required by this part:

(1) An interstate pipeline on which construction was begun after March 31, 1970.

(2) An interstate offshore pipeline located between a production facility and an operators trunkline reception point on which construction was begun after July 31, 1977.

(3) An intrastate pipeline on which construction was begun after (29 days after publication of the final rule).

6. By revising § 195.406(a)(5) to read as follows:

§ 195.406 Maximum operating pressure.

(a) * * *

(5) In the case of onshore HVL interstate pipelines constructed before January 8, 1971, or onshore HVL intrastate pipelines constructed before (30 days after publication of the final rule), that have not been tested under Subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline was subjected for four or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted. (See § 195.302(b) for compliance schedules for HVL interstate pipelines in service before September 8, 1980, and for HVL intrastate pipelines in service before (publication of final rule).)

* * * * *

8. By revising § 195.414 to read as follows:

§ 195.414 Cathodic protection.

(a) No operator may operate an interstate pipeline after March 31, 1973, or an intrastate pipeline after (3 years after 1 day before effective date of the final rule), that has an external surface coating material, unless that pipeline is cathodically protected. This paragraph does not apply to breakout tank areas and buried pumping station piping.

(b) Each operator shall electrically inspect each bare interstate pipeline before April 1, 1975, and each bare intrastate pipeline before (5 years after effective date of the final rule) to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide cathodic protection. Section 195.416 (f) and (g) apply to all corroded pipe that is found.

(c) Each operator shall electrically inspect all breakout tank areas and buried pumping station piping on interstate pipelines before April 1, 1973, and on intrastate pipelines before (3 years after effective date of the final rule) as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

(49 U.S.C. 2002; 49 CFR 1.53 and Appendix A of Part 1 and Appendix A of Part 106)

Issued in Washington, D.C. on March 20, 1984.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 84-7996 Filed 3-23-84; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

Ocean Salmon Fisheries Off the Coast of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings.

SUMMARY: This notice sets forth the schedule of the forthcoming public hearings of the Pacific Fishery Management Council (Council), for the 1984 ocean salmon fishing season regulations off of the coasts of

Washington, Oregon, and California. The Council was established by the Magnuson Fishery Conservation and Management Act Magnuson Act (Pub. L. 94–265, as amended), and these hearings are being held in accordance with Section 302 (h)(3) of the Magnuson Act.

DATES: Written comments are invited through April 6, 1984. Public hearings are scheduled to begin at 7:00 p.m. on March 27 through March 29, 1984.

ADDRESSES: Written comments should be sent to the Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201. Copies of the 1984 salmon states report and the Council's regulation options are available at this address.

The public hearings are scheduled to begin at 7:00 p.m. and will be held at the following locations:

March 27: Seattle Marriott, 3201 S. 176th Street, Seattle, Washington; Thunderbird Motor Inn, N. & S. Umpqua Room, 1313 N. Bayshore Drive, Coos Bay, Oregon

March 28: Astoria Middle School, Lunchroom, 1100 Klaskanine Avenue, Astoria, Oregon; Holiday Inn, 245 S. Airport Boulevard, S. San Francisco, California

March 29: Idaho Department of Fish & Game, Conference Room, 500 S. Walnut Street, Boise, Idaho

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Greenley, Executive Director, at the Portland, Oregon, address above or telephone 503–221–6352.

SUPPLEMENTARY INFORMATION: These hearings deal with options for the 1984 ocean salmon fishing regulations off the coasts of Washington, Oregon, and California selected by the Council for public review. The Council will meet on April 11–12 at the Holiday Grosvenor Hotel in San Francisco to consider the input from the public hearings and written comments, and hear additional comments from its advisors and the public. The Council will then develop its recommendations for the 1984 ocean salmon fishing season regulations for submission to the Secretary of Commerce.

Dated: March 21, 1984.

Roland Finch,
Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-8112 Filed 2-23-84; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 59
Monday, March 26, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL AERONAUTICS BOARD

Announcement of Approval of Reporting Requirements by the Office of Management and Budget

On February 28, 1984, the Office of Management and Budget approved the extension of the following reporting requirements under the the Paperwork Reduction Act (44 U.S.C. 35):

Reporting requirements under Article 67 of the Chicago Convention of 1944, as established by the International Civil Aviation Organization—approved through January 31, 1985, under OMB No. 3024–0044.

Dated: March 20, 1984.

Robin A. Caldwell,

Chief, Information Management Division, Office of Comptroller.

[FR Doc. 84–8044 Filed 3–23–84; 8:45 am]

BILLING CODE 6320–01–M

Order Establishing Standard Foreign Fare Level

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Board establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. The SFFL thus computed becomes the benchmark for measuring the statutory nonsuspend zone similar to the zone of reasonableness established by the Airline Deregulation Act and set forth in sec. 1002(d) of the Federal Aviation Act of 1958, as amended. Order 80–2–69 established the first interim SFFL and subsequent Order 84–1–124 established the currently effective two-month SFFL applicable through March 31, 1984.

In establishing the SFFL for the two-month period starting April 1, 1984, we have projected nonfuel costs based on the year ended September 30, 1983 and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Board.

By Order 84–3–88 fares may be increased by the following adjustment factors over the October 1, 1979 level:

Atlantic, 1.1985
Western Hemisphere, 1.2055
Pacific, 1.1409
Canada, 1.2225

Copies of the Boards' order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Robert I. Stein, (202) 673–5116.

By the Civil Aeronautics Board: March 21, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8042 Filed 3–23–84; 8:45 am]

BILLING CODE 6320–01–M

CIVIL RIGHTS COMMISSION

Arkansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 4:00 p.m., on April 18, 1984, at the Winthrop Rockefeller Foundation, Conference Room, 308 E. 8th Street, Little Rock, Arkansas 72202. The purpose of the meeting is to discuss the Education Subcommittee's plans for a project focusing on education related issues in Arkansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Marcia McIvor, at (501) 442–0600 or the Southwestern Regional Office at (512) 229–5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 21, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–8061 Filed 3–23–84; 8:45 am]

BILLING CODE 6335–01–M

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 7:30 p.m. and will end at 9:30 p.m., on April 26, 1984, at the Connecticut Education Association, 21 Oak Street, Hartford, Connecticut 06106. The purpose of the meeting is to continue work on the follow-up report on battered women in Hartford.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Judith Holmes, at (203) 243–9761 or the New England Regional Office at (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 20, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–7979 Filed 3–23–84; 8:45 am]

BILLING CODE 6335–01–M

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m., on April 9, 1984, at the YWCA on the Mall, Room 236, 1130 Nicollet Avenue, Minneapolis, Minnesota 55403. The purpose of the meeting is to discuss the Committee's proposed project on the access of language minorities to community mental health service and to review allegations of civil rights problems encountered by medical students.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Ruth Meyers, at (218) 726–7235 or the Midwestern Regional Office at (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 20, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-1979 Filed 3-23-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Open Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held Wednesday, April 11, 1984 at 10:30 a.m. on the 30th floor of the headquarters of the American Association of Importers and Retailers, 11 West 42nd Street, New York, New York. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: March 21, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-8067 Filed 3-23-84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of Public Meeting and Public Hearing.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), will hold a public meeting and a public hearing on the following topics:

Public Meeting: Discuss reports of the swordfish, surf clam/ocean quahog, gear conflict, groundfish, foreign fishing and scallop oversight committees; reports on the Mid-Atlantic Council meeting and joint meeting of the New England and Mid-Atlantic Executive Committees; as well as other fishery management and administrative matters.

Public Hearing: Discuss the proposed amendment to the Sea Scallop Fishery Management Plan.

DATES: *Public Meeting:* The meeting will convene on Tuesday, April 3, 1984, at approximately 10:00 a.m., and adjourn on Wednesday, April 4, at approximately 12:00 noon. The meeting may be lengthened or shortened, or agenda items rearranged, depending on progress on the agenda.

Public Hearing: The public hearing will convene on Tuesday, April 3, 1984, at approximately 1:30 p.m., and adjourn at approximately 2:30 p.m., on the same day.

ADDRESS: The meeting will take place at Howard Johnson's Motor Lodge, Portsmouth, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Rte. 1), Saugus, Massachusetts 01906, Telephone: 617-231-0422.

SUPPLEMENTARY INFORMATION: For information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Director.

Dated: March 21, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-8071 Filed 3-23-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Officials of the Government of Mexico Authorized To Issue Export Visas and Exempt Certifications for Certain Cotton, Wool, and Man-Made Fiber Textiles and Textile Products

March 21, 1984.

The Government of Mexico has notified the United States Government that it is changing the list of officials authorized to issue export visas and exempt certifications for cotton, wool, and man-made fiber textiles and textile products, which are subject to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended. A copy of the revised list follows this notice. This list cancels and supersedes all previous such lists.

FOR FURTHER INFORMATION CONTACT: Bill Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377-4212).

SUPPLEMENTARY INFORMATION: On May 20, 1981, a letter dated May 15, 1981 to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements was published in the **Federal Register** (46 FR 27516) which established a new export visa requirement and exempt certification for certain cotton, wool, and man-made fiber textile products, produced or manufactured in Mexico and exported to the United States. One of the requirements is that the visas and exempt certifications must be signed by an official authorized by the Government of Mexico. The Government of Mexico has amended the list of officials authorized to issue these documents.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Officers Authorized by the Government of Mexico To Issue Visa and Exempt Certifications for Certain Textile Products Exported to the United States

Tomas Rodriquez Weber
Julia Medina Medina
Ruben Resendiz Perez
Cecilio Gutierrez Chavez
Azael Noe Cisneros Lara
Miguel Angel Rivera Villasenor
Jose Manuel Martinez Ayala
Carlos Perez Iglesias
Alirio Jose del Angel Lascano
Jose H. Delgado Gonzalez
Hugo H. Villarrael Pena
Saturnino Lopez Hidalgo
Gildardo Valenzo Miranda
Hector Hernandez Hernandez
Arnulfo Pulgarin Soto
Miquel Franco Gutierrez
Hector Palacios Gavira
Domingo Yorio Saqui
Carlos F. Ostos O.
Jose M. Marrufo Rejon
Jorge Jure Cejin
Hermenegildo Gervantes Martinez
Francisco Lastra Bastar
Adan Ravelero Vazquez
Gerardo Solis Laredo
Ernesto B. Ascencio Esparza
Jose Luis Ferretis Martinez
Rogelio Lopez Lucio
Jorge Luis Robles Contreras
Alma Rosa Curiel Montiel
Arguimiro Reyes Genis
Delfino Gonzalez Munoz
Serafin Martinez Cruz
Javier Inzunza Angulo
Bolivar Hernandez Garza
Maria Margarita Aparicio Hernandez
Hedilberto Cobos Rodriquez
Jose Serralta Hernandez

[FR Doc. 84-8068 Filed 3-23-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday & Tuesday, 16 & 17 April 1984.

Times: 0830–1700 hours, both days (Open).

Place: 16 April, the Pentagon, Washington, D.C.; 17 April, Aberdeen Proving Ground, Maryland.

Agenda: The Manning a Ready Force Subpanel of the Army Science Board 1984 Summer Study on Leading and Manning Army 21 will meet for briefings and discussions in the Pentagon addressing the following: (1) Steps to improve the personnel mobilization and readiness of the total force; (2) evaluation of the Quality of Life factors on readiness. The subpanel will visit Aberdeen Proving Ground to discuss technological thrusts that will significantly alter considerations for the Army in the 21st Century. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84–8047 Filed 3–23–84; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday, 16 April 1984.

Times: 0830–1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Personnel Factors Subpanel of the Army Science Board 1984 Summer Study on Leading and Manning Army 21 will meet for classified briefings and discussions. Briefings will cover how the Aviation School participates in the concept development process and how human considerations, manpower, personnel, and training are being integrated into the AH–64 Apache weapon system. Discussions of specific weapons system performance will occur throughout the meeting. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, Subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84–8048 Filed 3–23–84; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Intent To Prepare a Supplement to the 1977 Final Environmental Impact Statement for the ELF Communications System, Clam Lake, Wisconsin, and Republic, Michigan

This notice serves to advise that the Naval Electronic Systems Command intends to prepare a supplement to the 1977 Final Environmental Impact Statement for the Extremely Low Frequency (ELF) Communications System. The ELF Communications System includes an ELF Transmitter Facility installed near Clam Lake, Wisconsin, in 1968–69 which will be upgraded, and an ELF Transmitter Facility to be installed near Republic, Michigan.

This notice is furnished to obtain suggestions and information from other agencies and the public on the issue of biological and health effects of ELF electromagnetic fields. Comments and submission of information of scientific merit are solicited. Written comments should be received no later than April 25, 1984.

Written comments should be addressed to: Commander, Naval Electronic Systems Command, Washington, D.C. 20363 (Attn: Captain R. L. Koontz, PME 110E).

Dated: March 21, 1984.

William F. Roos, Jr.,

LT, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–8016 Filed 3–23–84; 8:45 am]

BILLING CODE 3810–AE–M

Final Notice of Decision To Construct an Ammunition Wharf in Outer Apra Harbor, Guam, Mariana Islands

Pursuant to the provisions of the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) (§ 1505.2 of Title 40, Code of Federal Regulations), the Department of the Navy announces its decision to construct a new ammunition wharf in the outer Apra Harbor to replace the existing wharf which conflicts with existing and potential uses of the Commercial Port of Guam. The Final Environmental Impact Statement (EIS) for this project was filed on January 10, 1984. The U.S. Department of Commerce (National Marine Fisheries Service) and the U.S. Department of the Interior (Fish and Wildlife Service) were cooperating agencies.

The Navy's existing ammunition handling wharf was constructed during World War II on the Glass Breakwater in Outer Apra Harbor. In the early 1960's, the Commercial Port of Guam was relocated to a site within the explosive safety zone of this wharf. Because of the restrictions imposed by the safety zone, the Commercial Port is not able to grow to its full economic potential. The Navy will construct a new ammunition wharf at Adotgan Point on the Orote Peninsula. A new wharf at this site will accommodate the Navy's new fast combat support ships, will free the Commercial Port from the present safety zone restrictions, and will be a suitable location to homeport an ammunition ship with its appropriate safety zones.

In selecting a site for a new ammunition wharf, over twenty potential sites around Guam were evaluated. Four sites showed promise: Sella Bay, Tarague Beach, Orote Peninsula, and the Glass Breakwater. The first two sites were eliminated due to land use conflicts, adverse environmental effects, and other considerations. In 1974, plans for an ammunition wharf between Orote Point and Orote Island were prepared, but the project was dropped from the Federal construction budget in 1978. The final EIS evaluated the effects of a new ammunition wharf at the two remaining sites: near Adotgan Point on Orote Peninsula, and near the end of the Glass Breakwater. The Adotgan Point site is situated on a coral reef at the base of a steep limestone cliff. The Glass Breakwater site is located on the man-made breakwater which encloses a portion of Apra harbor. Alternative construction methods were compared in terms of cost and environmental effects. The No Action alternative was also evaluated.

The Adotgan Point site is selected, since it has better overall operational characteristics, better security, and would eliminate ammunition truck traffic from the Commercial Port. The Navy has judged the Glass Breakwater site to be impracticable since it would be extremely costly to reinforce the breakwater to provide sufficient protection to the wharf and road from damage by high waves. It would not satisfy the Navy's goal to separate, wherever possible, military and civilian activities, especially those involving handling ammunition. Furthermore, it

would be unsuitable for homeporting an ammunition ship.

Constructing a wharf at the Adotgan Point site will adversely impact approximately 14.7 acres of high quality coral reef, and the access road will pass through native limestone forest. The Navy and the Government of Guam have signed a Memorandum of Understanding (MOU) regarding mitigating measures, including the use of silt curtains, controlled blasting to minimize shock waves, transplanting selected organisms out of the construction area, and avoiding a stand of rare trees. As compensation for the loss of habitat at Adotgan Point, the MOU provides for the establishment of Ecological Reserve Areas on the southerly cliffs of Orote Peninsula and at Haputo Point and reef. Additionally, a wharf and road at Adotgan Point would adversely affect the scenic quality of the area. A memorandum of Agreement between the Navy and the Guam Historic Preservation officer admits unavoidable visual impacts but are deemed acceptable in view of the significance of the project.

There are no substantial issues remaining to be resolved with respect to this project. The cooperating agencies have accepted the Adotgan Point site conditional on the mitigation and compensation measures incorporated in the final EIS. Some of these measures require continued coordination between the cooperating agencies for implementation. Specifically, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be given an opportunity to review and comment on the Research Use and Management Master Plans for the Ecological Reserve Areas that are to be established as part of this project.

Dated: March 21, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-8030 Filed 3-23-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Desegregation Assistance Center Program; Final Designation of Service Areas

AGENCY: Department of Education.

ACTION: Notice of Final Designation of Service Areas for the Desegregation Assistance Center Program.

SUMMARY: The Secretary designates the service areas for the Desegregation Assistance Center (DAC) program for race, sex, and national origin desegregation assistance. The service areas define the geographical area for which each DAC is responsible for providing technical assistance and training. Geographical service areas are used to insure that DAC projects are responsive to the desegregation related needs of local education agencies of various regions of the country.

EFFECTIVE DATE: This notice of designation of service areas will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Curtis F. Coates, Section Chief, Equity Training and Technical Assistance Program, U.S. Department of Education, FOB#6, Room 2031, 400 Maryland Avenue SW., Washington, D.C. 20202, Phone: (202) 245-2181.

SUPPLEMENTARY INFORMATION: The DAC program awards grants to public and private nonprofit organizations (except State education agencies and school boards). The DACs provide technical assistance and training to local education agencies in a DAC's designated service area. The purpose of this assistance is to help local education agencies, upon their request, to solve problems resulting from race, sex, and national origin desegregation.

On December 20, 1983, a Notice of Proposed Designation of Service Areas for the Desegregation Assistance Center Program was published in the **Federal Register** (48 FR 56256). The public had 30 days to submit written comments on the proposed designation of DAC service areas. Three comments were received on the proposed designation of one of the DAC service areas. The Secretary has decided to retain, without change, the service areas that were proposed in the notice published in the **Federal Register** on December 20, 1983.

Authority for this program is contained in Title IV of the Civil Rights Act of 1964, as amended, Pub. L. 88-352. (20 U.S.C. 2000c—2000c-5).

Comments and Responses

The following comments were submitted in response to the proposed notice.

Comment: Three commenters suggested that a separate national origin DAC service area should be established for Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, and Connecticut because the needs of these States cannot be effectively met by a national origin DAC that is also responsible for providing assistance to New York, New Jersey, Puerto Rico, and the Virgin Islands.

Response: No change has been made. Given the limited amount of funds anticipated to be available for all DAC projects in Fiscal Year 1984, the Secretary believes that the administrative cost of establishing an additional DAC would only serve to reduce the level of services that DACs will be able to provide. Since DAC awards are made, in part, on the basis of a management plan that shows promise of providing effective assistance throughout the service area, the concerns of any State or States about the assistance a DAC is providing can be addressed through the application selection process and by subsequent project monitoring to insure that all States are being effectively assisted.

The Secretary will, however, undertake a study of the Desegregation of Public Education program in 1984. The study will include an examination of the DAC service areas to determine whether or not the current service areas continue to be cost effective and responsive to the needs of local education agencies in various regions of the country. The concerns of the commenters will also be taken into account when the study is conducted. If the study indicates that changes to the DAC service areas should be made, those changes will be proposed for Fiscal Year 1985, provided that funds are appropriated for the program.

(a) *Service areas for race desegregation assistance:*

(i) Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island.

(ii) New York, New Jersey, Puerto Rico, Virgin Islands.

(iii) Pennsylvania, Delaware.

(iv) Maryland, Virginia, West Virginia, District of Columbia.

(v) Kentucky, Tennessee, North Carolina, South Carolina.

(vi) Mississippi, Alabama, Georgia, Florida.

(vii) Minnesota, Wisconsin, Michigan.

(viii) Illinois, Indiana.

(ix) Ohio.

(x) Iowa, Nebraska, Kansas, Missouri.

(xi) Arkansas, Louisiana, Oklahoma.

(xii) New Mexico, Texas.

(xiii) North Dakota, South Dakota, Montana, Colorado, Wyoming, Utah.

(xiv) California, Arizona, Nevada.

(xv) Hawaii, Guam, American Samoa, Trust Territory of the Pacific Islands,

Commonwealth of the Northern Mariana Islands.

(xvi) Oregon, Washington, Idaho.

(xvii) Alaska.

(b) *Service areas for sex desegregation assistance:*

(i) Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island.

(ii) New York, New Jersey, Puerto Rico, Virgin Islands.

(iii) Pennsylvania, Delaware, Maryland, Virginia, West Virginia, District of Columbia.

(iv) North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Kentucky, Tennessee.

(v) Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota.

(vi) Texas, Louisiana, Oklahoma, Arkansas, New Mexico.

(vii) Iowa, Nebraska, Kansas, Missouri.

(viii) North Dakota, South Dakota, Montana, Colorado, Wyoming, Utah.

(ix) California, Nevada, Arizona.

(x) Hawaii, Guam, American Samoa, Trust Territory of the Pacific Islands, Commonwealth of the Northern Mariana Islands.

(xi) Oregon, Washington, Idaho.

(xii) Alaska.

(c) *Service areas for national origin desegregation assistance:*

(i) Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Puerto Rico, Virgin Islands.

(ii) Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Kentucky, Tennessee, Georgia, Alabama, Mississippi, Florida.

(iii) Ohio, Indiana, Illinois, Michigan, Minnesota, Wisconsin, Missouri, Kansas, Iowa, Nebraska.

(iv) Texas, Louisiana, Arkansas.

(v) Montana, North Dakota, South Dakota, Wyoming, Colorado, Utah, Oklahoma.

(vi) New Mexico, Arizona, Nevada.

(vii) Southern California (that part of California south of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties).

(viii) Northern California (that part of California not included in Area (vii)).

(ix) Washington, Oregon, Idaho.

(x) Hawaii, Guam, Trust Territory of the Pacific Islands, American Samoa, Commonwealth of the Northern Mariana Islands.

(xi) Alaska.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's specific plans and actions for this program.

(Catalog of Federal Domestic Assistance No. 84.004D Civil Rights Technical Assistance—DAC Program)

Dated: Mardch 7, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-8045 Filed 3-23-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

United Nations Institute for Training and Research; Grant Award

AGENCY: Department of Energy.

ACTION: Notice of grant award.

SUMMARY: The Department of Energy has awarded a three-year $25,000 grant to the United Nations Institute for Training and Research (UNITAR) for continued partial support, in conjunction with several other nations and international corporations, of the UNITAR Information Centre for Heavy Crude and Tar Sands. The Centre will research and compile information on heavy crude and tar sands deposits throughout the world, related laws, international legal issues, and on state of the art for extraction and refining and other associated functions. In accordance with 10 CFR 600.7(b), eligibility for this grant award was restricted to UNITAR because no other organization is presently collecting and disseminating this information on a world-wide basis.

FOR FURTHER INFORMATION CONTACT: Nancy W. Gorman, MA–452.1, U.S. Deparment of Energy, Office of Procurement Operations, 1000 Independence Ave., SW, Washington, D.C. 20585, 252–9738.

Issued in Washington, D.C., on March 19, 1984.

William A. Vaughn,

Assistant Secretary Fossil Energy.

[FR Doc. 84-7970 Filed 3-23-84; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Notice of Proposed Section 7(b)(2) Implementation Methodology, Public Hearings, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice.

BPA File Number: 7(b)(2)–84.

BPA requests that all comments and documents that become part of the Official Record compiled in the process of implementing section 7(b)(2) be identified with the file number designation 7(b)(2)–84.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) confirms BPA's obligation to establish and revise BPA's rates for the sale and transmission of electric power. Section 7(b)(2) of the Northwest Power Act provides that "after July 1, 1985, the projected amounts to be charged for firm power for the general requirements of public body, cooperative, and Federal agency customers, exclusive of amounts charged such customers under subsection (g) for the costs of conservation, resource and conservation credits, experimental resources and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, the Administrator" makes a set of assumptions outlined in the remainder of section 7(b)(2). These assumptions hypothetically remove the effects of certain provisions in the Northwest Power Act. In order to implement the provisions in section 7(b)(2) BPA has formulated a proposed methodology that specifies how BPA will conduct the section 7(b)(2) rate test.

The implementation of section 7(b)(2) in any given BPA rate proceeding can require two distinct steps. The first step is to compare a projection of BPA rates developed under all the provisions of the Northwest Power Act, but without considering the effects of section 7(b)(2) (the program case), with a projection of BPA rates developed under the assumptions outlined in section 7(b)(2) (the 7(b)(2) case). Both projections are of rates applicable to public body, cooperative, and Federal agency customers (7(b)(2) customers) and are based on the costs of power required to serve the general requirements of those customers over a five-year period.

If the projected rates in the program case are determined to be higher than those in the 7(b)(2) case, then the second step is required. The rates for the 7(b)(2) customers being developed in the BPA rate proceedings must be reduced and the difference allocated to other BPA rates pursuant to section 7(b)(3) of the Northwest Power Act. This potential reallocation must be made within the framework of sound ratemaking principles and of BPA's statutory obligations.

BPA has published a proposed legal interpretation of section 7(b)(2), and has provided copies of a proposed section 7(b)(2) rate test methodology to potential parties to the impending section 7(b)(2) hearings process. This **Federal Register** notice serves to initiate a formal hearings process for the section 7(b)(2) methodology under section 7(i) of the Northwest Power Act.

Opportunities will be available for intersted persons to review the proposed section 7(b)(2) methodologies, to participate in hearings, and to submit written comments. Any written comments received before the end of the hearings and the transcripts of the hearings will become part of the Official Record. Consideration of comments may result in the final section 7(b)(2) methodology differing from the initial proposal presented in this Notice.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Rates, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, 503–230–5651.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so. The notification must be received by April 6, 1984, and should be addressed as follows: Hearing Officer, APR, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Customers of BPA who provide notice are parties of right. Others may become parties by demonstrating in their notice and at the prehearing conference that they would represent a significant and otherwise unrepresented interest. The notice should contain: (1) The name of the person or entity claiming status as a party; (2) the person who will be representing the party; (3) whether the person or entity claiming status as a party has a contractual relationship with BPA that could be affected by the proposed section 7(b)(2) methodology; and (4) if no contractual interest exists, the interest the person believes would be served by their being a party. All timely applications will be ruled on by the Hearing Officer.

A prehearing conference, required by the procedures pertaining to rate proceedings, is tentatively scheduled to be held before the Hearing Officer at 9:00 a.m. on April 10, 1984, in the BPA Headquarters Building, Room 464, 1002 NE. Holladay, Portland, Oregon. Registration for the prehearing conference wil begin at 8:30 a.m.

It is expected that during the prehearing conference, hearing dates will be set for the presentation of direct cases, rebuttal cases, cross-examination, and briefs. A notice of the location, dates, and times of the hearings will be mailed to all parties of record. Although the Hearing Officer ultimately is responsible for establishing hearing dates, BPA has proposed a schedule for consideration by the Hearing Officer and the parties. This schedule is as follows:

April 10, 1984: BPA Prefiles Testimony
April 30, 1984: Parties Prefile Testimony
May 14, 1984: Rebuttal Testimony Filed
May 29–June 5, 1984: Cross-Examination
June 15, 1984: Opening Briefs Due
June 26, 1984: Tentative Decision

In addition, the computer model that reflects the tentative decision will be made available July 17, 1984.

Written comments may be submitted until the close of the hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478; Oregon caller outside Portland may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Sute 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3860.

Mr. Richard D. Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–34–9138.

SUPPLEMENTARY INFORMATION:

I. Applicable Legislation

BPA's statutory authrity to establish and revise rates for the sale and transmission of electric power is expressed in the Bonneville Project Act of 1937, as amended (16 U.S.C., section 832 e and f, 1976); the Flood Control Act of 1944 (16 U.S.C., section 825 *et seq*, 1976); the Regional Preference Act (16 U.S.C. section 837 *et seq*, 1976); the Federal Columbia River Transmission Act (16 U.S.C., seciton 838 g and h, 1976); and the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C., section 839 *et seq, Supp. V., 1981). Section 7 of the Northwest Power Act confirms BPA's obligation to develop rates for wholesale power. Section 7(b)(2) requires that "after July 1, 1985, the projected amounts to be charged for firm power for the general requirements of public body, coopertive and Federal agency customers, exclusive of amounts charged such customers under subsection (g) for the costs of conservation, resource and conservation credits, experimental resources and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, the Administrator" makes a set of assumptions outlined in the remainder of section 7(b)(2). The assumptions listed in section 7(b)(2) hypothetically remove the effects of certain provsions in the Northwest Power Act.*

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act provides procedures for encouraging the particpation of the public in the development of BPA's rates. In order to give the public notice of how it could participate in BPA's rate adjustments and to elaborate on the procedures set out in section 7(i), BPA published "Procedures Governing Bonneville Power Adminstration (BPA) Rate

Adjustments" by **Federal Register** notice (46 FR 6240, February 10, 1982). These procedures were used in the 1983 wholesale power and transmission rate filings. These procedures, as they may be amended, will be applicable to the section 7(i) hearings on the section 7(b)(2) methodology.

The Northwest Power Act prescribes a **Federal Register** notice announcing the proposed rates or rate-related issue; one or more hearings; the opportunity to submit written views, data, questions, and arguments outside the hearings; and a decision by the BPA Administrator based on the record developed during the rate process. BPA's Procedures (cited above) expand these requirements.

The process begins with publication of this notice. The Procedures further provide for a prehearing conference if scheduled by the Hearing Officer. A prehearing conference has been tentatively scheduled before the Hearing Officer at 9:00 a.m. on April 10, 1984, in Room 464 of the BPA Headquarters Building, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m., and the conference will commence at 9:00 a.m.

Issues for discussion at the prehearing conference may include disputes concerning status as a party, discovery, the scope of cross-examination, hearing schedules, and other pertinent matters. BPA will prefile the testimony of its witnesses at the prehearing conference.

BPA may also convene one or more public field hearings at certain locations throughout the region. The purpose of these hearings would be to present to interested members of the public a synopsis of BPA's proposal and to receive comments, views, and opinions from the general public. The public's comments would be subject to cross-examination by the parties and BPA. Presentation of testimony and evidence from formal parties would not be allowed at these sessions. The hearings would be at times and locations to be announced.

BPA finds it necessary to distinguish between "participants in" and "parties to" the hearings. During field hearings, BPA receives comments, views, opinions, and information from "participants," who are defined in the procedures as interested persons who may express their views at a hearing, but who may not cross-examine other witnesses, participate in the prehearing conference, or serve or be served with documents. Participants may request materials presented during the hearings. Participants' written rebuttal will be made part of the official record. The "participants" category of interest has been established to give the public the maximum opportunity to participate and have its views considered without assuming the obligations incumbent upon the "parties."

The second category of interest is that of a "party." A party may be either a party of right because of its legal and/or contractual relationship with BPA, and hence, its direct interest, or it may be a person seeking to represent a significant and otherwise unrepresented interest in the hearings. Parties may participate in prehearing conferences, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties may also be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where two or more parties have substantially like interests and positions, the Hearing Officer may, to expedite the hearing, order appropriate limitations on the number of attorneys or parties appearing *pro se* who will be permitted to cross-examine witnesses as well as file motions and objections on behalf of such parties. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

The Official Record will include, among other things, the transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

III. Major Concepts and Issues

A. Definitions

This section contains definitions applicable to section 7(b)(2). Terms identified in the Northwest Power Act have the same meaning in this proposal, unless further defined.

1. *7(b)(2) Customers.* Those firm power customers of BPA that are listed in section 7(b)(2) of the Northwest Power Act as subject to the rate test, viz, public bodies, cooperatives, and Federal agencies.

2. *Within or Adjacent.* Relating to direct service industrial (DSI) customers' loads determined in accordance with section 7(b)(2)(A) to be geographically within or adjacent to the service territories of 7(b)(2) customers.

3. *Forestcast DSI Loads.* Those loads of direct service industries that are forecast to be served by BPA, during any future period, pursuant to section 5(d)(1) of the Northwest Power Act.

4. *Relevant Rate Case.* The wholesale power rate adjustment proceeding being conducted at the time the projections for section 7(b)(2) are made, and in which any adjustment to rates in accordance with section 7(b)(2) may be reflected.

5. *7(b)(2) Case.* The entire process of projecting rates for the relevant five-year period under the provisions of section 7(b)(2) of the Northwest Power Act, including specific data, assumptions, and results.

6. *Program Case.* The entire process of projecting rates to be charged in the future under the provisions of the Northwest Power Act other than section 7(b)(2), including specific data, assumptions, and results.

7. *Relevant Five-Year Period.* The test year of the relevant rate case, plus the ensuing four years.

8. *7(b)(2) General Requirements.* For the purpose of this methodology, the public body, cooperative and Federal agency customers' electric power assumed to be purchased from BPA in the 7(b)(2) case. General requirements only include power purchased from BPA under section 5(b) of the Northwest Power Act; section 5(c) purchases from BPA are not included.

9. *Applicable 7(g) Costs.* The costs identified in section 7(g) of the Northwest Power Act that are also listed in section 7(b)(2), viz, conservation, resource and conservation credits, experimental resources and uncontrollable events.

B. Introduction

BPA has developed the proposed methodology to implement section 7(b)(2) by concurrently following three paths. One path was the interpretation of the legal provisions of section 7(b)(2) of the Northwest Power Act. After an informal consultation process with interested parties, BPA published a "Notice of Proposed Legal Interpretation of section 7(b)(2) of the Northwest Power Act; Request for Comments" in the **Federal Register** (49 FR 2811, January 23, 1984). The notice opened a comment period, which ended February 15, 1984, followed by a reply comment period, which ended February 29, 1984.

The second path was the development of a computer model to perform the section 7(b)(2) rate test. The criteria for choosing a model for the rate test also were discussed in an informal consultation process with interested

persons. BPA will use its Supply Pricing Model (SPM) for this purpose.

The third path was the preparation and release of a proposed rate test methodology. BPA mailed copies of its "Section 7(b)(2) Proposed Rate Test Methodology" to interested persons and potential parties to the section 7(b)(2) implementation process on February 29, 1984. The document described the proposed statutory interpretation, the modeling effort to date, and how they interrelate; and described how the results of the model will be used to perform the rate test, how an amount to be reallocated in the rate test year will be determined, and how that dollar amount will be treated in the rate development process.

Each of the three paths will be described in more detail below.

C. Statutory Interpretation

The Notice of Proposed Legal Interpretation that BPA prepared and published in the Federal Register on January 23, 1984, served to initiate the formal process of resolving the basic legal issues necessary to implement section 7(b)(2). The notice presented BPA's proposed interpretation of the statute, incorporating principles of statutory construction, review of the legislative history, and consideration of views expressed in the series of informal meetings with interested persons. The scope of the notice was limited to those issues that relied on the statutory language or legislative intent for resolution. The remaining modeling and rate test result application issues are resolved in the proposed rate test methodology and/or in the computer model and its documentation.

Briefly, BPA proposed to interpret section 7(b)(2) as follows:

1. The five-year rate test period will consist of the test year for the relevant rate case plus the ensuing four years.

2. Only the assumptions specified in section 7(b)(2) and any unavoidable consequences or secondary effects of those assumptions will be considered to determine 7(b)(2) customers' power costs in the section 7(b)(2) case.

3. The costs of conservation, resource and conservation credits, experimental resources, and uncontrollable events (section 7(g) costs) will be included in the program case when the projections of loads and rates are made. The final program case power costs will then be reduced by the applicable section 7(g) costs for comparison with the section 7(b)(2) case power costs.

4. The direct service industrial (DSI) loads that are located within or adjacent to the service areas of 7(b)(2) customers will be assumed, in the 7(b)(2) case, to be served by those customers beginning July 1, 1985, unexpired DSI contracts with BPA notwithstanding.

5. The entire amount of DSI load included in the general requirements of the 7(b)(2) customers will be assumed to be served as firm load in the 7(b)(2) case.

6. Information contained in Appendix B to the Senate Report, S. Rept. No. 272, 96th Congress, First Session (1979) (Appendix B) will be used to identify DSI loads within or adjacent to geographic service boundaries of public bodies and cooperatives.

7. To determine Federal base system resources not obligated to "other" entities under existing contracts in the 7(b)(2) case, the DSI load which is not within or adjacent to the service areas of preference customers will be assumed to be served by investor-owned (private) utilities only as the DSI power sales contracts with BPA expire.

8. Three types of resources will be assumed to be available to serve 7(b)(2) customers' loads when the Federal base system (FBS) resources are exhausted in the 7(b)(2) case: (a) The resources actually acquired by BPA from the 7(b)(2) customers in the relevant rate case; (b) the resources owned or purchased by the 7(b)(2) customers that are not dedicated to their own regional loads; and (c) generic resources of whatever size required to serve the preference customers' remaining load, at the average cost of all new resources acquired by BPA from non-7(b)(2) customers during the relevant five-year period. The resources listed in (a) and (b) will be "stacked" in order of cost and assumed to be used as needed to meet loads, least cost first. Should additional resources be needed to serve 7(b)(2) customers' loads, they will come from category (c).

D. Modeling Process

1. *Model Selection.* Performing the section 7(b)(2) rate test requires the use of a computer model to project BPA's wholesale and regional retail electricity rates over the five-year test period for both the program case and the 7(b)(2) case. BPA and interested persons considered the two identified options for choosing a model: A new model could be developed; or one of the existing models in the region, modified for the assumptions necessary to perform the section 7(b)(2) rate test, could be used. Several existing programs model the wholesale and retail ratesetting processes in a manner conducive to reflecting the assumptions required for the two test cases. In addition, time and staff requirements to construct a new model would be prohibitive. Therefore, the decision was made to project the test rates using an existing model.

The requirement that the rate test be conducted over a five-year period precluded the use of the models that are currently used to develop BPA's rate proposals. These models require extremely detailed information and are designed to produce rates for a single test year. Use of these models to produce projections for an additional four years would be administratively infeasible. Extensive effort would be required to project each item of test year data over the additional four years. Even if such an effort were practicable, it is not self-evident that the results would be more plausible than results from a more simplified approach in which data are aggregated for projection purposes and some processes are not modeled in detail. Therefore, BPA decided to use one of the existing models that would simulate the results of the rate development models for the test year on a simplified, but reasonably accurate, basis. In addition, the model used for the rate test must allow reasonable projections of rates for the additional four years in a straightforward and timely manner. Other criteria considered as the basis for the selection of an appropriate model include: the model's adaptability to the rate test assumptions, BPA staff's working knowledge of the model's structure and code, and the model's flexibility for use in other analyses performed by BPA.

BPA's Supply Pricing Model (SPM) was selected under these criteria to perform the section 7(b)(2) rate test. The SPM was developed by BPA, and BPA has used it extensively to project rates for use in midterm and long term load forecasting. It has also been used to analyze the rate impacts of alternative policies and actions. As a result, BPA staff has considerable knowledge of the model. It is already an integral part of BPA's planning process, and its structure is flexible enough to incorporate the rate test assumptions.

The following subsections provide a brief description of the SPM and how it works. A more complete description can be found in the documentation for the model.

2. *Supply Pricing Model.* The SPM is a computer-based model that simulates the BPA ratesetting process and the ratesetting processes of the Pacific Northwest's retail electric utilities. BPA originally developed the model to analyze the probable rate impacts of proposed BPA policy and of alternative policies. The SPM can produce, in conjunction with BPA's electricity

demand forecasting models, long term projections of annual rates and midterm projections of monthly retail rates. Wholesale rates for priority firm power, industrial firm power, new resource firm power, and nonfirm energy, plus the fully allocated cost of surplus firm power, are estimated by the SPM. It also produces retail rates for the residential, commercial, and industrial sectors of both private and publicly owned (public) utilities in the region.

a. *Background.* The current version of the SPM evolved from BPA's original energy model, the Integrated Supply/Demand Model (ISDM), which was developed in 1976. The ISDM combined the relationship between the demand and the supply of electricity, linked by the price of electricity, into a single model. The demand portion of that model was based on a methodology prepared by National Economic Research Associates, Inc. (NERA) for the Pacific Northwest Utilities Conference Committee (PNUCC). The supply and pricing portions of the ISDM were developed by BPA in 1976. The ISDM was used to analyze policy alternatives for the 1979 Rate Environmental Impact Statement (EIS). The ISDM forecasted both loads and rates. The supply and pricing portions were subsequently removed from the ISDM and became the SPM. BPA continues to revise the SPM to reflect the changing conditions and policies in the region. A major modification was the incorporation of the load, resource, and rate provisions of the Northwest Power Act.

In conjunction with BPA's demand models, the SPM is used to produce BPA's long-term and midterm load forecasts. In addition, the SPM has been used to analyze the impacts of BPA's proposed wholesale power rates in each Rate EIS since 1979. The SPM is also used to analyze the rate impacts of BPA policy decisions. For example, the rate impacts of options for terminating, delaying construction, or completing as scheduled the Washington Public Power Supply System nuclear plants were analyzed with the SPM.

The following sections describe how the SPM develops rate projections by simulating BPA's wholesale power ratesetting process and retail utilities' ratesetting processes.

b. *Load/Resource Balance.* The SPM determines a load/resource balance for the entire region. The capability of on-line hydro facilities under critical water and the available energy from on-line thermal resources are compared with loads for the public, private, and Federal systems. The loads of all regional utilities which cannot be served by their own resources are assumed to be served by BPA. The SPM adds previously identified (named) resources not currently on-line on their currently scheduled date of commercial operation. When additional resources are needed, BPA's Least Cost Mix Model (LCMM) may be used to identify generic new resources (including conservation). If resources are insufficient to serve the loads, the SPM adds short term purchase power to balance loads and resources. If resources exceed firm loads in any year, the surplus may be assumed to be sold at its fully allocated cost or in the nonfirm energy market, or both.

The SPM develops three resource pools to serve BPA loads, as specified in the Northwest Power Act: (a) Federal base system (FBS); (b) Exchange; and (c) New Resources. The FBS is defined as consisting of all Federal hydro resources and thermal resources acquired by BPA under contracts prior to the date the Northwest Power Act was passed. The Water Budget, which enhances downstream migration of anadromous fish by providing certain levels of streamflows and which results in reduced firm energy generation capability of the Federal hydro system, is assumed to be implemented in FY 1984. Exchange resources are those resources acquired by BPA from regional utilities under the residential and small farm load exchange provided for in the Northwest Power Act. New resources are all other generating resources acquired by BPA.

The resource pools are used by the SPM in order of priority as specified in the Northwest Power Act to serve each of the three rate pools: (a) Priority Firm Power (PF) as described in section 7(b); (b) Industrial Firm Power (IP) described in section 7(c); and (c) New Resource Firm Power (NR) described in section 7(f). Beginning in 1985, the SPM incorporates the melding of the costs of resource pools that serve the IP and NR loads to reflect changes specified by the Northwest Power Act.

c. *Revenue Requirements.* The SPM calculates BPA's revenue requirement for each year of the projection period by projecting individual resource cost components and other BPA costs. Interest and amortization on Federal resources are determined through a simplified repayment simulation. These annual payments are combined with the annual costs of fuel, operation and maintenance, and replacements, which are escalated over time, to project total generation costs. Payments on the debt for the net-billed portions of the Washington Public Power Supply System nuclear plants are entered into the SPM directly. In addition, the cost of exchange resources is determined on an annual basis from the average system cost of all the private utilities and participating public utilities. Finally, the budgeted annual expenditures for transmission, conservation, administrative and general expenses, fish and wildlife expenses, and payments of any deferral of interest payments to the Treasury are added to determine the total revenue requirement in each year.

d. *Cost of Service.* The SPM assigns costs to the resources used to meet both BPA and regional loads and then develops rates based on those resource costs. The costs allocated to each of BPA's three rate pools are determined by the costs of the resource pools that serve each rate pool. PF customers are served first with FBS resources. IP and NR customers are served primarily with exchange and new resources. Conservation costs and all other costs that are not specific to any resource pool are allocated as they are in the most current BPA rate filing. The cost of service step of the SPM assumes resource operation under critical water conditions.

e. *Rate Design.* The SPM makes several adjustments to the allocated costs of service to calculate the final BPA rates. The cost of service assumption of critical water is adjusted to average water for the rate design step, resulting in the assumption of availability of nonfirm energy from the Federal hydro system. Nonfirm energy is allocated to specified nonfirm energy markets in the following order of priority: (a) displacement of regional high cost thermal generation; (b) service to the first quartile of the DSI load; (c) export to the Pacific Southwest; and (d) displacement of generation from regional low cost thermal resources. The revenues from the sale of nonfirm energy are based on the average nonfirm rate from the most current BPA rate filing escalated at the same rate as that for the variable costs of a baseload coal plant. The projected revenues are allocated uniformly to loads served by FBS and new resources. The rates are also adjusted to account for the insufficiency of revenues recovered from power sold under contracts employing fixed rates and from the sale of surplus firm power.

After 1984, the IP and NR rate pools are allocated resource costs as a single rate pool. However, the IP rate is not based on these costs, but is set at the higher of: (a) The PF rate plus the "typical margin" included in the public utility retail industrial rate; or (b) the IP rate in effect during the 1985 contract

year. The difference between the costs allocated to the IP rate pool and the revenue recovered from that load is allocated uniformly to all the rate pools. Finally, the rates are adjusted to reflect the value of the reserves provided by BPA restriction rights on DSI loads.

f. *Retail Rates.* Projections of average retail electricity rates or prices are required as inputs to the load forecasting models to develop the forecast of regional electricity sales. Long-term retail rates are calculated in the SPM for public and private utilities for each consuming sector: residential, commercial, and industrial. To develop rates for private utilities, the SPM considers the utilities' own generation costs, transmission costs, costs of power purchases from BPA, and other appropriate costs to calculate the private utility average system cost. The SPM calculates private utility commercial and industrial rates on the basis of this average system cost. However, the private residential rate reflects the benefits of the residential and small farm load exchange. Public utility retail rates are based on the melded cost of their BPA purchase power and their own generation and transmission costs. For both private and public utilities, distribution costs associated with each customer group are added to derive the final retail rates.

For nongenerating public utilities, monthly retail rates are calculated by State for use in forecasting midterm loads. The rate projection is the sum of BPA's PF rate and state-level distribution costs. Monthly retail rates for generating public utilities are calculated on a regional basis. This projection reflects their own generation costs, purchases from BPA, transmission costs, and distribution costs.

The following two subsections describe the assumptions to be incorporated into the SPM in order to calculate the two projections of rates that will be compared in the section 7(b)(2) rate test.

3. *The Program Case.* The program case is the five-year projection of power costs for serving the general requirements of the 7(b)(2) customers conforming with all the provisions of the Northwest Power Act, but without considering the effects of section 7(b)(2). The program case will be developed as a simulation of the BPA rate proposal results for the test year and a projection of the rates for the ensuing four years based on the test year rate proposal methodology and data. All the rate proposal determinations, decisions, and assumptions for the test year regarding revenue requirements, loads, resources, cost allocation, and rate design will be input or modeled as accurately as possible in the SPM. Input data for the ensuing four years will be consistent with or extrapolated from test year data. Ratemaking methodologies, such as those based on the "post-85" rate directives in the Northwest Power Act and those used to allocate costs and revenue adjustments to BPA customer classes, will be unchanged over the five-year rate test period.

A load forecast is developed for every BPA rate proposal independently from any requirements for implementing section 7(b)(2). This forecast is for the test year of the rate proposal and for at least the following four years to accommodate hydrogeneration studies. It will also include estimates of programmatic conservation savings for the forecast period. This forecast will provide the load estimates for the program case.

Regional resource generation studies are also conducted for BPA's rate proposals. These studies determine the capability of BPA's and the region's hydro and thermal resources under critical water conditions. The results of these studies as applied to the test year of the rate proposal will be used in the program case as the basis for the full five-year period. The test year results will be held constant except as modified to reflect the start of commercial operation of generating resources beyond the test year and for the planned effect or expiration of relevant contracts. Nonfirm hydroelectric generation will be based on the same water conditions used for the test year and assumptions about the level of surplus firm power sales for the program case will be the same as those made for the rate proposal.

To the extent possible, BPA revenue requirements data will be taken directly from test year data from the rate proposal. Published projections of these costs will be used where available. When they are unavailable, the costs will be projected over the five-year period using estimates of future inflation and real cost escalation and accounting for planned additions to the region's power system.

Finally, the methodologies for allocating costs and revenue adjustments among BPA's customer classes used in BPA's rate proposal will be modeled in the SPM. These methodologies will be assumed to remain the same for the five-year period.

The methodologies and data from the rate proposal cannot be described in detail in this document. They are properly rate case determinations that are outside the scope of the methodology for implementing section 7(b)(2). The section 7(b)(2) methodology must be flexible enough to incorporate the methodologies and data from the rate proposal for which the section 7(b)(2) rate test is being conducted. These methodologies and data, as part of a BPA rate filing are, in turn, subject to review and comment pursuant to section 7(i) of the Northwest Power Act. The section 7(b)(2) methodology can only require that the rate proposal methodologies and data be modeled or incorporated as accurately as possible, which would be subject to examination during the section 7(i) process for the rate proposal.

In summary, the program case will be BPA's best projection of its rates without considering the effects of section 7(b)(2). The exact methodology for the rate calculation in the program case cannot be determined until BPA has prepared its rate proposal. However, the SPM will be modified to reflect the methodology as completely as possible in producing the program case when the rate test is conducted for the rate proposal.

4. *The 7(b)(2) Case.* The language of section 7(b)(2) not only directs BPA to conduct a rate test for the 7(b)(2) customers, but also provides a considerable amount of direction as to how the rate test is to be conducted. The Notice of Legal Interpretation published by BPA in the **Federal Register** provides BPA's interpretation of the language in section 7(b)(2) and of the direction it provides in developing the 7(b)(2) case rate projection. A major point in this interpretation is the general approach to the 7(b)(2) case. Based on this, the 7(b)(2) case will be modeled in the same way as the program case, except where section 7(b)(2) provides specific assumptions that modify the program case or where those assumptions lead to unavoidable secondary effects. The remainder of this section outlines how the 7(b)(2) case rate projection for the five-year test period will be developed.

a. *Load Forecast.* The initial loads that will be used in the 7(b)(2) case will be the same as those used in the program case, except that they will not include estimates of programmatic conservation savings. However, a major premise behind the inclusion of section 7(b)(2) in the Northwest Power Act is that the future rates projected in the program case and in the 7(b)(2) case would differ. It would be unrealistic and unjustified to assume that these differing rates would not have an effect on the loads for the two cases. Therefore, if the 7(b)(2) case rate projection results differ significantly from the program case results, the 7(b)(2) case rates may be

used to generate a new load forecast using the same demand models that were used to generate the rate proposal load forecast. A new 7(b)(2) case rate projection would then be developed with the new loads.

b. *DSI Loads.* DSI loads will be input on a plant-by-plant basis, even though the SPM treats them in aggregate. The plants will be flagged to indicate whether they are within or adjacent to the service area of any 7(b)(2) customer based on the list contained in Appendix B. If a DSI leaves the region or is no longer served by BPA, its loads will not be assumed to transfer from BPA service to utility service. Any DSI served by a utility other than BPA in the program case will continue to be served by that utility in the 7(b)(2) case. However, if a DSI plant is forecast not to operate due to economic conditions under the program case, but projected electric rates are low enough under the 7(b)(2) case to allow a forecasted level of operation, then the load associated with that level of plant operation may be included in the 7(b)(2) case load forecast.

All "within or adjacent" DSI loads will be included in the general requirements of the 7(b)(2) customers from the start of the five-year period. DSI loads not "within or adjacent" will remain BPA loads until their pre-Northwest Power Act power sales contracts would have expired, at which time they are assumed to be served by private utilities. The forecasted operating levels of the DSI's that are transferred to public and private utilities are assumed to be served as firm loads. Those DSI's being served by BPA receive the same quality of service as in the program case.

c. *Resources.* The residential and small farm power exchange is eliminated in the 7(b)(2) case. The FBS and any additional resources, as defined in section 7(b)(2), are the only resources available to serve the general requirements of the 7(b)(2) customers. However, the amount of FBS resources will be reduced by any contractual obligations on these resources that were in existence prior to passage of the Northwest Power Act. These contractual obligations include the power sales contracts with those DSI's that are not "within or adjacent," and the Washington Public Power Supply System Nuclear Plant (WNP) No. 1 Hanford Exchange contract with the private utilities. As these contracts expire, the amount of the FBS available to serve the general requirements of the 7(b)(2) customers will increase. As a result of this priority to FBS power, with no costs of additional resources included, the projected rates applicable to the pre-Northwest Power Act contracts could be lower than the projected rates for the 7(b)(2) customers. Also, 7(b)(2) case adjustments for reserve benefits that are discussed below would not be allocated to the loads under those contracts.

If FBS resources, after meeting contractual obligations, are insufficient to meet the general requirements of the 7(b)(2) customers, then three types of additional resources can be added to serve those loads. These additional resources are defined in section 7(b)(2) and are: (a) Actual and planned resource acquisitions by BPA from 7(b)(2) customers consistent with the program case; (b) 7(b)(2) customer resources not currently dedicated to their regional load; and (c) generic resource at the average cost of actual and planned resources acquisitions by BPA from non-7(b)(2) customers consistent with the program case. These resources will include any conservation programs undertaken or acquired by BPA. They will be assumed to come on-line to meet the remaining general requirements of the 7(b)(2) customers after FBS service in order of least cost first.

d. *Financing Benefits.* Section 7(b)(2)(E)(i) requires that BPA assume that quantifiable monetary savings to 7(b)(2) customers resulting from reduced public utility financing costs for the three types of non-FBS resources described above were not achieved. Therefore, any additional resources required to serve the general requirements of 7(b)(2) customers will not reflect the financing cost reductions implicit in resource acquisitions in the program case.

In order to quantify these financing reductions, BPA is contracting for the services of Wertheim and Company, BPA's financial advisor. If additional resources are required in the 7(b)(2) case, a list of these resources will be sent to Wertheim, containing cost and sponsor information for each resource. For those resources actually acquired by BPA from the 7(b)(2) customers under the program case, Wertheim will estimate the financing costs for the resource sponsor under current market conditions assuming that BPA had not acquired the resource output. The differential between this cost estimate and the actual financing costs will be included in the cost of the additional resources in the 7(b)(2) case. For those resources actually acquired by BPA from non-7(b)(2) customers, a proxy public utility sponsorship will be assumed for the resources. This public sponsorship will be assumed to be a company formed for resource construction with equal ownership and participation by all the region's public utilities. Wertheim will estimate the financing costs of the resources with and without BPA acquisition of resource output, assuming the proxy public sponsorship described above. Finally, when the detailed financing cost and sponsor information is not available for planned resources, Wertheim will follow the same procedures, assuming the proxy public sponsorship. Any reductions in financing costs determined from this analysis will be added back to the total cost of the resource in the 7(b)(2) case.

e. *Reserve Benefits.* Section 7(b)(2)(E)(ii) requires BPA to assume that "* * * the quantifiable monetary savings, during such five-year period, to the public body, cooperative and Federal Agency customers resulting from reserve benefits as a result of the Administrator's actions under this Act were not achieved." Reserve benefits are a result of BPA's restriction rights on DSI loads provided for in the DSI's power sales contracts. The DSI's currently receive a credit to their rate based on the value of the reserves provided by these restriction rights. In the 7(b)(2) case, these restriction rights are lost as the DSI's transfer to public and private utilities and are assumed to be served as 100 percent firm loads. Public and private utilities would have to incur the costs of providing an equivalent amount of reserves from another source. Therefore, it will be assumed that public utilities will incur a level of costs equal to the value of reserves as determined in BPA's rate proposal from those DSI's that are within or adjacent to public utility areas. The value of reserves determination is currently based, in large part, on the cost of an alternative reserve resource. The cost of the resource used in this determination will be extrapolated for the remaining four years of the rate test for inclusion in the 7(b)(2) customers' costs under the 7(b)(2) case.

f. *Surplus Firm and Nonfirm Sales.* The load and resource situation in the 7(b)(2) case will be considerably different from that in the program case. The increase in the region's firm load due to the 100 percent firm service to non-BPA DSI loads, a potentially different load forecast for the 7(b)(2) case, and a potentially different set of resources all imply that a different level of surplus firm power may be projected for the 7(b)(2) case than for the program case. There is nothing in the language of

section 7(b)(2) which would indicate that BPA should assume a different level of surplus firm sales at fully allocated cost in the 7(b)(2) case than in the program case. However, due to the potentially different forecasts of surplus firm power for the two cases, the level of assumed surplus firm sales will be limited to the size of the projected surplus. In addition, any sales of surplus firm power projected to be made in the program case to serve the first quartile of DSI loads that are "within or adjacent" will not be made in the 7(b)(2) case. Therefore, the level of surplus firm sales assumed for the 7(b)(2) case will be the same as that assumed for the program case, unless restricted by the surplus size in the 7(b)(2) case or a change in the status of DSI first quartile purchases.

Nonfirm energy generation of the region's hydroelectric system will also be assumed to be the same as in the program case. However, the nonfirm energy markets will be adjusted in the 7(b)(2) case to reflect the reduction in the size of the DSI first quartile and the potential change in the amount of displacable new resource generation.

g. *Summary.* The 7(b)(2) case will differ from the program case only as required by the assumptions listed in section 7(b)(2) and their unavoidable secondary effects. Figure 1 is a simple schematic of how the 7(b)(2) case will be developed. The residential and small farm load exchange is eliminated. "Within or adjacent" DSI loads are served by 7(b)(2) customers as a 100 percent firm load. The general requirements of the 7(b)(2) customers are served with FBS resources after pre-Northwest Power Act contractual obligations are met. Additional resources are brought on-line if required to serve the general requirements. The costs of these additional resources are adjusted to reflect the reduction in financing costs received by 7(b)(2) customers under the Northwest Power Act. Finally, 7(b)(2) customers' power costs are adjusted to reflect the cost of replacing the reserves provided by BPA's DSI restriction rights.

The SPM will produce rate projections in the 7(b)(2) case for three firm power rates. The first is the rate that applies to pre-Regional Act contracts. These contracts, including DSI's still served by BPA, are served with the FBS and the rate is based on FBS costs and additional non-7(b)(2) related cost and revenue adjustment allocations.

FIGURE 1

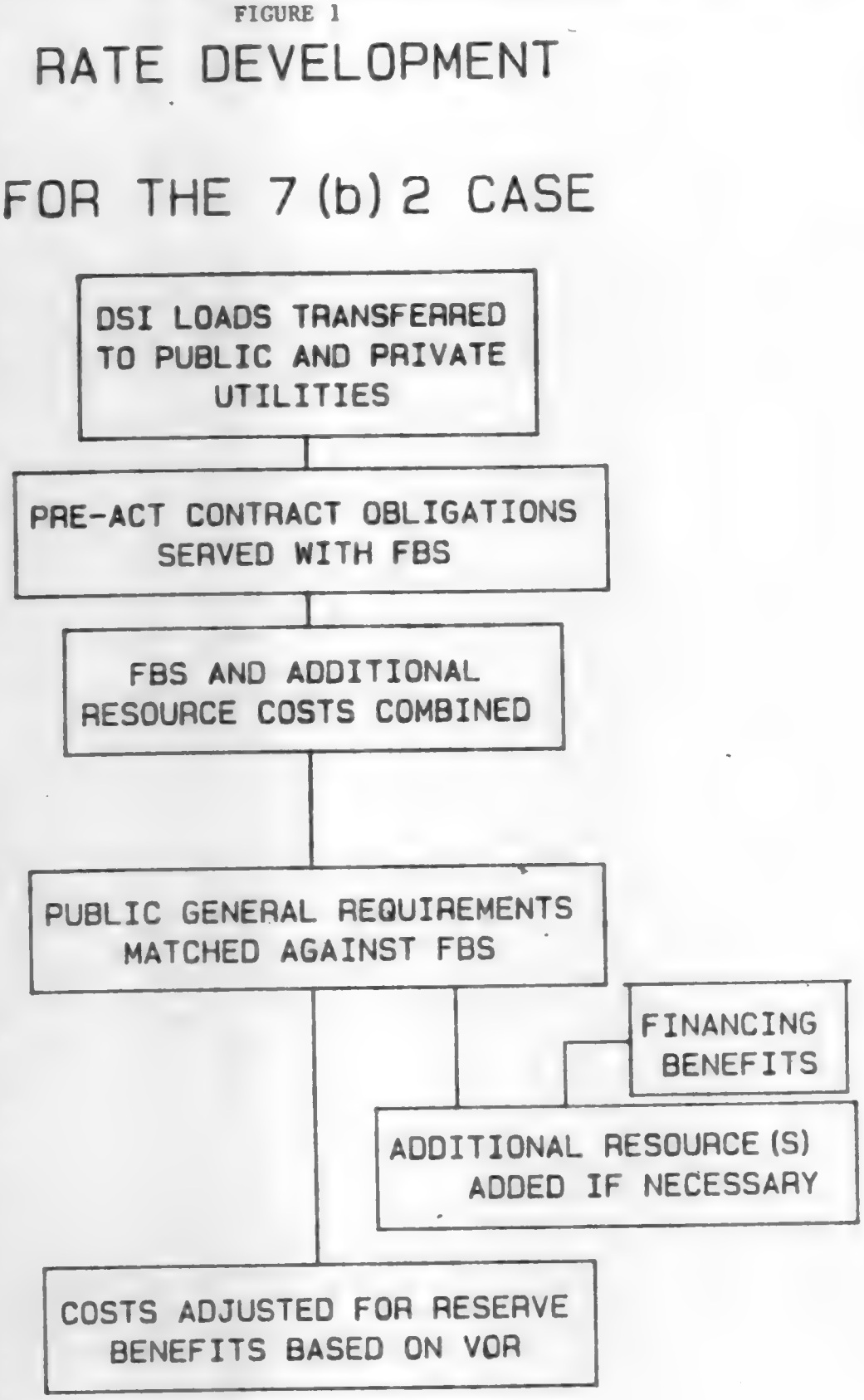

The second rate (7(b)(2) rate) is that applied to the general requirements of the 7(b)(2) customers. This rate is based on the costs of the FBS and additional resources. It also includes adjustments for financing and reserve benefits, as well as the non-7(b)(2) related cost and revenue adjustment allocations.

The third rate is for sales of surplus firm. It will be based on the costs of surplus resources and the non-7(b)(2) related cost and revenue adjustment allocations. No sales comparable to those made under the New Resource Firm Power rate are assumed to be made.

It should be noted that the SPM projects rates on an average energy basis. Therefore, firm capacity sales are not accounted for and costs that would be allocated to this class of service are allocated to other firm power customer classes. This practice may not unduly bias the rate test, however, since the same procedure is used in both cases.

E. Comparison of Projection Amounts

For each of the two cases, program and 7(b)(2), the SPM will produce a projection of annual average energy rates for the five-year rate test period. These two rate projections will be compared to determine if a reallocation of costs pursuant to section 7(b)(3) is required. The relevant rate projection for the comparison from the program case is BPA's Priority Firm Power rate applicable to the general requirements of the 7(b)(2) customers. The relevant rate projection from the 7(b)(2) case is BPA's rate to the 7(b)(2) customers.

Each projection will consist of five annual rates. This implies that no differences in seasonality will be measured in the rate test. However, there is no obvious reason to indicate that the two rate projections should or would exhibit significantly different seasonality. Therefore, the use of annual projections should not bias the results. The SPM also does not classify costs between capacity and energy. This could obscure certain load factor relationships between the two cases. Where these relationships are demonstrated to be significant, adjustments may be made to correct them.

The PF rate in the program case will be developed in the same manner that it is in BPA's rate proposal. BPA's 7(b)(2) rate in the 7(b)(2) case will include the costs of resources required to serve the 7(b)(2) customers, along with all other costs and revenue adjustments not excluded by assumptions in section 7(b)(2). These costs and revenue adjustments include BPA administrative and general costs, fixed rate contract revenue deficiencies, and surplus firm power revenue deficiencies.

Prior to comparison with 7(b)(2) rates from the 7(b)(2) case, the projected PF rates from the program case will be reduced by the applicable section 7(g) costs listed in section 7(b)(2) that were included in the PF rate projection. All the costs of BPA conservation programs, billing credits, experimental resources, and uncontrollable events that were allocated to the PF rate will be subtracted. This reduced PF rate projection will then be compared to the 7(b)(2) rate projection to determine if the 7(b)(2) rate projection is higher, on average, than the program case projection.

An alternative to comparing the per unit rates in the two cases would be to compare the total allocated costs of serving the general requirements of the 7(b)(2) customers in the two cases. The general requirements in the 7(b)(2) case include the "within or adjacent" DSI loads that are included in the program case. In a situation where the per unit cost was the same between the two cases, the difference in loads alone would lead to different total costs. The intent of section 7(b)(2) was to protect the ratepayers served by 7(b)(2) customers and not to protect the 7(b)(2) customers from the financial impacts of load growth. Therefore, per unit rates are compared, rather than total costs.

The comparison of the two projections is complicated by the requirement of a five-year rate test period. It is possible that the 7(b)(2) rate could be higher than the PF power rate in one year of the period and lower in another. Therefore, the weighting that is applied to each year of both projections is significant in making the comparison.

Two reasonable alternatives exist for this weighting process. The first is to weight all five years equally and to compare a simple average of the rates over the five-year period for each case. The second alternative is to discount the results for each of the five years back to the test year for the rate proposal and to compare an average of the discounted present values of the rate projections for the two cases.

The comparison between the program case and the 7(b)(2) case rate projections should consider the time value of money; i.e., any rate differential is worth less to the 7(b)(2) customers the farther into the future it appears. The alternative of comparing the average of the discounted present values of the five-year rate projection for each case will meet this criterion. If the average of the five years of discounted present valued 7(b)(2) rates is less than that of the PF rates then the determination of an amount of costs to be reallocated in BPA's rate proposal is required.

F. Determination of Test Year Amount

If it is determined that the results of the rate test require a reallocation of costs for BPA's rate proposal, then the amount to be credited to the 7(b)(2) customers and reallocated to BPA's other customers must be calculated. This credit should reflect the fact that it is a one-year adjustment that is based on a five-year determination, and should also reflect the comparison method used to determine the need for the credit. Any number of methods could be used to determine the credit, many of which would result in no test year adjustment, but would defer the adjustment to future periods. However, the two criteria cited above indicate that the appropriate method would be to base the credit on the five-year average of the difference between the net present valued rate projections for the two cases. This difference would then be multiplied by the general requirements of the 7(b)(2) customers for the rate proposal test year to determine the reduction in the 7(b)(2) customers' test year costs.

G. Conclusion

The section 7(b)(2) rate test, up to and including the point where the test year amount is determined, is conducted outside the mainstream of BPA's rate development process. While the rate test reflects the assumptions used in the rate proposal, the rate test has no impact on BPA rates until the test year amount is included in BPA rate design. At this point, any adjustment made to reflect the rate test results in BPA rates must be done within the overall framework of the rate development process and of BPA's ratemaking objectives and statutory requirements. Therefore, the section 7(b)(2) rate test will be conducted and a test year amount determined as outlined in section 7(b)(2). The test year amount will then be included as a step in BPA's rate design process, consistent with other statutory provisions and BPA's ratemaking objectives.

Issued in Portland, Oregon, on March 19, 1984.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 84-8087 Filed 3-23-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 2550-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Water Programs

Title: Wastewater Solvent Management Plan (EPA 1123).

Abstract: Several industrial categories of the effluent guidelines limit businesses as to the amount of toxic organic compounds they may discharge in wastewater. A discharger may obtain a waiver from toxic organics monitoring by certifying to the control or permit authority (the publicly owned treatment works, State agency or EPA) that the business uses a solvent management plan to control toxic organics.

Respondents: Businesses.

* * * * *

Agency PRA Clearance Requests Completed by OMB

EPA 0865, EPA Performance Audit Program for Evaluation of Ambient and Source Air Measurements, was approved March 5, 1984 (OMB #2080-0006).

EPA 1006, Phase III Groundwater Monitoring Implementation Study, was approved March 2, 1984 (OMB #2050-0026).

EPA 1045, National Contingency Plan, Subpart H—Dispersants, was approved March 1, 1984 (OMB #2050-0031).

EPA 1156, NSPS for Synthetic Fiber Production Facilities, was approved March 2, 1984 (OMB #2060-0059).

EPA 1165, Request for EDB Related Data, was approved January 13, 1984 (OMB #2090-0008).

Comments on all parts of this notice should be sent to:

David Bowers (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, SW., Washington, D.C. 20460,

and

Wayne Leiss, Carlos Tellez or Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washingtin, D.C. 20503

Dated: March 19, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-7844 Filed 3-23-84; 8:45 am]

BILLING CODE 6560-50-M

Region 6; Approval of PSD Permits

[A-6-FRL 2552-4]

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-74M-1—General Portland, Incorporated; cement manufacturing facility located in New Braunfels, Comal County, Texas; modifies TX-74 to: (1) increase the allowable emission rate for NO_x from 131 lbs/hr to 744 lbs/hr for the Phase I & II kiln stacks, and (2) decrease the SO_2 emission rate from 499 lbs/hr to 250 lbs/hr; issued on August 16, 1983.

2. PSD-TX-102M-2—Phillips Petroleum Company; petroleum refinery located on State Highway 119, approximately 3 miles northeast of Borger, Hutchinson County, Texas; modifies TX-102M-1 to coincide with the existing Texas state construction permits; issued on August 23, 1983.

3. PSD-TX-145M-1—Alamo Cement Company; Portland cement plant located on FM Road 1604, approximately 14 miles northeast of San Antonio, Bexar County, Texas; modifies TX-145 to: (1) incorporate a finish mill, and (2) revise the existing emission limitations to reflect an achievable rate; issued on December 14, 1983.

4. PSD-TX-193M-2—Badische Corporation; neopentyl glycol chemical plant located at 602 Copper Road, Freeport, Brazoria County, Texas; modifies TX-193M-1 to allow for a less stringent fugitive monitoring plan for volatile organic compounds (VOC); issued on November 7, 1983.

5. PSD-TX-214M-2—Gulf Refining and Marketing Company; petroleum refinery located in Port Arthur, Jefferson County Texas; modifies TX-214M-1 to authorize the shut down of heaters B-1A, B-1B, and B-1C, at Ethylene Unit 1542, instead of heater AVU 148; issued on September 30, 1983.

6. PSD-TX-331M-4—Sigmor Refining Company; petroleum refinery located at 301 Leroy Street, Three rivers, Live Oak County, Texas; modifies TX-331M-1 to allow for: (1) an increase in the capacity of the visbreaker, alkylation, and fluid catalytic cracking units, (2) elimination of six other units, and (3) changes in the wording of the Specific Conditions to coincide with state permit; issued on August 29, 1983.

7. PSD-TX-332M-1—Texas Eastman Company; hydrocarbon cracking plant located approximately 5 miles southeast of Longview, Harrison County, Texas; modifies TX-332 to install: (1) a new hydrocarbon cracking unit, and (2) a new organic chemical manufacturing facility; issued on July 14, 1983.

8. PSD-LA-392—Clark Oil—Mt. Airy Refinery; petroleum refinery located on the east bank of the Mississippi River at river mile 144.5, Mt. Airy, St. John the Baptist Parish, Louisiana; permit authorizes: (1) the modification of the existing crude and vacuum units to a visbreaker complex, and (2) the addition of a Claus sulfur recovery unit; issued on December 22, 1983.

9. PSD-TX-410M-1—Airco Carbon; graphite electrode manufacturing facility located approximately 8 miles northwest of Seadrift, Calhoun County, Texas; modifies TX-410 to reflect the current, as built condition of the coker plant; issued on December 7, 1983.

10. PSD-TX-432M-1—Champlin Petroleum Company; cryogenic natural gas expander plant located approximately 4 miles northeast of Carthage, Panola, County, Texas; modifies TX-432 to reflect the design of the plant as built; issued on July 12, 1983.

11. PSD-TX-436M-1—Marathon Oil Company; natural gas plant located approximately 2.5 miles southwest of Iraan, Pecos County, Texas; modifies TX-436 to reflect the final design of the plant; issued on August 25, 1983.

12. PSD-TX-458—BF Goodrich Company; permit issued for the construction of a polyvinyl chloride manufacturing facility to be located on Miller Cut-Off Road in LaPorte, Harris County, Texas; issued on December 13, 1983.

13. PSD-TX-474—Exxon Company, U.S.A.; petroleum refinery located at 2800 Decker Drive, Baytown, Harris County, Texas; permit authorizes the

installation of a Flexicoking Unit and associated facilities for feed preparation and product processing; issued on July 22, 1983.

14. PSD–TX–480—Central Power and Light Company; J. L. Bates Power Station located approximately 3 miles east of Penitas, Hidalgo County, Texas; permit authorizes the construction of two 70 MW natural gas/distillate fuel-fired gas turbines for peaking purposes; issued on September 2, 1983.

15. PSD–TX–481—Central Power and Light Company; Laredo Power Station located approximately 3.3 miles north of Laredo, Webb County, Texas; permit authorizes the construction of two 70 MW natural gas/distillate fuel-fired gas turbines for peaking purposes; issued on October 12, 1983.

16. PSD–TX–483—Goodyear Tire and Rubber Company; synthetic rubber plant located at 2000 Goodyear Drive, Houston, Harris County, Texas; permit authorizes the construction of a steam generation facility; issued on November 14, 1983.

17. PSD–TX–485—Amerada Hess Corporation; injection gas processing plant located approximately 4 miles northwest of Seminole, Gaines County, Texas; permit authorizes the addition of a sulfur recovery unit; issued on October 21, 1983.

18. PSD–TX–487—El Paso Products Company; Benedum Cryogenic Expander Plant located on State Highway 349, approximately 7 miles north of Rankin, Upton County, Texas; permit authorizes the addition of three compressors and expanded use of an additional compressor; issued on October 27, 1983.

19. PSD–TX–491—Temple-Eastex, Incorporated; pulp and paper mill located approximately 2 miles southeast of Evadale, Jasper County, Texas; permit authorizes the construction of a wood and woodwaste-fired steam generating boiler; issued on NOvember 9, 1983.

20. PSD–TX–493—CoGen Lyondell, Incorporated; synthetic organic chemical manufacturing facility located at 8520 Sheldon Road, approximately 2 miles north of Channelview, Harris County, Texas; permit authorizes the construction of a cogeneration facility; issued on November 3, 1983.

21. PSD–TX–494—Mid Plains Pipeline Company, Incorporated; permit authorizes the construction of a natural gas processing plant to be located approximately 10 miles northwest of Post, Garza County, Texas; issued on July 18, 1984.

22. PSD–TX–499—Applied Energy Services, Incorporated; permit authorizes the construction of a petroleum coke-fired cogeneration plant to be located on the south side of the Houston Ship Channel in Pasadena, Harris County, Texas; issued on September 23, 1983.

23. PSD–LA–502—Reynolds Metals Company; coke calcining plant located approximately 5 miles north of Baton Rouge, East Baton Rouge Parish, Louisiana; permit authorizes the construction of a rotary kiln and associated material handling operations to increase the production capacity by 265,000 tons per year; issued on November 2, 1983.

24. PSD–LA–506—Trancontinental Gas Pipe Line Corporation; natural gas compressor Station 45 located approximately 15 miles north of Lake Charles, Beauregard Parish, Louisiana; permit authorizes the addition of a 2,250 H.P. natural gas-fueled reciprocating compressor engine; issued on October 14, 1983.

25. PSD–LA–510—Crystal Oil Company; Missionary Lake gas processing plant located in Hosston, Caddo Parish, Louisiana; permit authorizes the additional flaring of acid gases generated in the amine unit; issued on October 19, 1983.

26. PSD–LA–512—Dow Chemical U.S.A.; chemical complex located on State Highway 1, approximately 10 miles south of Baton Rouge near Plaquemine, Iberville Parish, Louisiana; permit authorizes the addition of a new coal gasification synfuel facility; issued on October 3, 1983.

27. PSD–OK–553—Energy Transportation System, Incorporated; permit authorizes the construction of a coal slurry dewatering plant to be located approximately 7 miles east of Red Rock, Noble County, Oklahoma; issued on July 1, 1983.

28. PSD–OK–559—ARCO Oil and Gas Company; Healdton Area Production Facility (three crude oil producing units) located approximately 2.5 miles west of Healdton, Caster County, Oklahoma; permit authorizes the installation of a 4900 hp dual fuel-fired reciprocating engine; issued on August 19, 1983.

29. PSD–TX–602—Solano Gas Processing, Incorporated; permit authorizes the construction of a gas processing plant to be located approximately 6 miles southeast of Asherton, Dimmit County, Texas; issued on August 3, 1983.

30. PSD–TX–605—Capitol Cogeneration Company; permit issued for the construction of steam-electric cogeneration units A, B, and C to be located within the Clear Lake Plant of the Celanese Chemical Company located approximately 8 miles east of Pasadena, Harris County, Texas; issued on August 23, 1983.

31. PSD–TX–606—GENTEX (formerly Power Resources Systems of Texas, Ltd.); permit authorizes the construction of a steam and electric power cogeneration plant to be located at 400 Davison Road in Pasadena, Harris County, Texas; issued on November 14, 1983.

32. PSD–TX–614—Oasis Pipeline Company; gas compressor station located on FM Road 1927, approximately 3.5 miles south of Pyote, Ward County, Texas; permit authorizes the addition of three 1100 hp gas-fired compressor engines; issued on December 14, 1983.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Documents pertaining to these permits are available for public inspection upon request at the following location: Environmental Protection Agency, Region 6, Air and Waste Management Division, 1201 Elm Street, InterFirst Two Building, Dallas, Texas 75270.

This notice will have no effect on the National Ambient Air Quality Standards.

FOR FURTHER INFORMATION CONTACT: Jack Divita (214) 767–2746.

Dated: March 13, 1984.

Dick Whittington, P.E.,

Regional Administrator, Region 6.

[FR Doc. 84–8028 Filed 3–23–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–53059; TSH–FRL 2551–5]

Premanufacture Notices; Monthly Status Report for February 1984

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly

summary. This is the report for February 1984.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E–107 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments are to be identified with the document control number "[OPTS–53059]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland–Hamnett Chemical Control Division (TS–794), Office of Toxic Substances, Enviromental Protection Agency, Rm. E–229, 401 M Street, SW., Washington, DC 20460, (202–382–3736).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during February; (b) PMNs received previously and still under review at the end of February; (c) PMNs for which the notice review period has ended during February; (d) chemical substances for which EPA has received a notice of commencement to manufacture during February and (e) PMNs for which the review period has been suspended. Therefore, the February 1984 PMN Status Report is being published.

Dated: March 16, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

PREMANUFACTURE NOTICES MONTHLY STATUS REPORT FEBRUARY 1984

I. 91 Premanufacture Notices Received During the Month

PMN No	Identity/generic name	FR citation	Expiration date
84-[illegible]	Generic name: Polyaromatic urethane poly (unsaturated) ester	49 FR 6991 (2/24/84)	May 13, 1984.
84-[illegible]	Generic name: Polyimide-anhydride-olefin	49 FR 6991 (2/24/84)	May 9, 1984.
84-374	Polymer of: Neopentyl glycol; phthalic anhydride; adipic acid; isophthalic acid benzoic acid; trimethylol propane	49 FR 4981 (2/9/84)	Apr. 30, 1984.
84-375	Generic name: Sodium salt of alkyl dithiocarbamates	49 FR 4981 (2/9/84)	Do.
84-376	Generic name: Aryl esters of alkyl dithiocarbamates	49 FR 4981 (2/9/84)	Do.
84-377	Generic name: Organotungsten compound	49 FR 4981 (2/9/84)	May 1, 1984.
84-378	Generic name: Aromatic sulfonate of substituted heteropolycycle	49 FR 6161 (2/17/84)	May 2, 1984.
84-379	Generic name: Aromatic sulfonate of substituted heteropolycycle	49 FR 6161 (2/17/84)	Do.
84-380	Generic name Aromatic sulfonate of substituted heteropolycycle	49 FR 6161 (2/17/84)	Do.
84-381	Generic name: Polyphenyl ether	49 FR 6161 (2/17/84)	Do.
84-382	2-propenoic acid 3-(2-hydroxyethoxy) 3-oxypropyl ester	49 FR 6161 (2/17/84)	May 5, 1984.
84-383	Generic name: Linseed based alkyd	49 FR 6161 (2/17/84)	May 6, 1984.
84-384	Generic name: Substituted cyclohexane and cyclohexene esters	49 FR 6161 (2/17/84)	Do.
84-385	Generic name: Substituted phenylmagnesium chloride	49 FR 6161 (2/17/84)	Do.
84-386	Generic name: Substituted phenylmagnesium chloride	49 FR 6161 (2/17/84)	Do.
84-387	Generic name: Substituted benzyl alcohol	49 FR 6161 (2/17/84)	Do.
84-388	Generic name: Reaction product of a phenolformaldehyde polymer, a carbocyclic anhydride, and an amine	49 FR 6161 (2/17/84)	Do.
84-389	Generic name: Urethane acrylate	49 FR 6161 (2/17/84)	Do.
84-390	Generic name: Benzoic acid, 2-[(6-[(4-chloro-6-[(4-((substituted)azo)phenyl)amino)-1,3,5-triazin-2-yl)amino)-1-hydroxy-3-sulfo-2-naphthalenyl)azo-, chromium complex.	49 FR 6161 (2/17/84)	Do.
84-391	Generic name: Cuprate(5-), [5-hydroxy-2-[[4-[[5-hydroxy-6-[(2-methoxy-5-(substited)phenyl]azo]-7-sulfo-2-naphthalenyl]amino)-6-[(3-sulfophenyl)amino)]-1,3,5-triazin-2-yl]amino]-6-[(2-hydroxy-5-sulfophenyl)[—azo-1,7-naphthalene-disulfonato(7—)], pentasodium.	49 FR 6162 (2/17/84)	Do.
84-392	Generic name: Alkoxylated cycloaliphatic	49 FR 6162 (2/17/84)	May 7, 1984.
84-393	Generic name: 2-Chloro-N-methyl-N-substituted acetamide	49 FR 6162 (2/17/84)	Do.
84-394	Generic name: Polymer of ethylene oxide, propylene oxide, and aliphatic isocyanate	49 FR 6162 (2/17/84)	Do.
84-395	Generic name: Dimer acids dicarboxylic acid, diamines polyamide resin	49 FR 6162 (2/17/84)	May 8, 1984.
84-396	Dipentaerythritol, adipic acid ester	49 FR 6162 (2/17/84)	Do.
84-397	Polymer of: Hydroxy ethyl acrylate, isophorone diisocyanate, Duracarb 122	49 FR 6991 (2/24/84)	May 9, 1984.
84-398	Generic name: Starch, 2 diethylaminoethylether hydrochloride	49 FR 6991 (2/24/84)	Do.
84-399	Generic name: Blocked amine	49 FR 6991 (2/24/84)	Do.
84-400	Generic name: Titanium (4+) alcohol complex	49 FR 6991 (2/24/84)	May 12, 1984.
84-401	Generic name: Titanium (4+) alcohol complex	49 FR 6992 (2/24/84)	Do.
84-402	Generic name: Titanium (4+) alcohol complex	49 FR 6992 (2/24/84)	Do.
84-403	Generic name: Rosin-modified phenolic resin	49 FR 6992 (2/24/84)	Do.
84-404	Generic name: Modified alkyd resin	49 FR 6992 (2/24/84)	Do.
84-405	Generic name: Ammonium salt of substituted phosphoric acid	49 FR 6992 (2/24/84)	Do.
84-406	Lead cyanamide	49 FR 6992 (2/24/84)	May 13, 1984.
84-407	On the inventory		
84-408	Generic name: 4-(alkylphenylcarbonyloxy)-benzoic acid, alkylphenyl ester	49 FR 6992 (2/24/84)	Do.
84-409	Generic name: 4'-alkylbiphenylcarboxylic acid, (4-alkylphenyl) ester	49 FR 6992 (2/24/84)	Do.
84-410	Generic name: Alkylbenzoic acid, 4-alkylphenyl ester	49 FR 6992 (2/24/84)	Do.
84-411	Generic name: Alkylbenzoic acid, 4-alkylphenyl ester	49 FR 6992 (2/24/84)	Do.
84-412	Generic name: Alkylbenzoic acid, 4-alkylphenyl ester	49 FR 6992 (2/24/84)	Do.
84-413	Generic name: Alkylbenzoic acid, 4-alkylphenyl ester	49 FR 6992 (2/24/84)	Do.
84-414	Generic name: Alkylbenzoic acid, 4-alkylphenyl ester	49 FR 6993 (2/24/84)	Do.
84-415	Chemically exfoliated vermiculite	49 FR 6993 (2/24/84)	Do.
84-416	Dimethylbis(N-ethylacetamido)silane	49 FR 6993 (2/24/84)	Do.
84-417	Generic name: Substituted phenol	49 FR 6993 (2/24/84)	May 15, 1984.
84-418	Generic name: Methyl ester of dicarboxylic acid	49 FR 7654 (3/1/84)	May 16, 1984.
84-419	Generic name: Triazine derivative	49 FR 7654 (3/1/84)	Do.
84-420	4-(4,5-dihydro-4-(5-hydroxy-3-methyl-1-(4-sulfophenyl)-1H-pyrazol-4-yl)methylene)-3-methyl-5-oxo-1H-pyrazol-1-yl-benzenesulfonic acid-dipotassium salt	49 FR 7655 (3/1/84)	Do.
84-421	Generic name: Bis(alkylcarbomonocycle)spiro-heterocycle	49 FR 7655 (3/1/84)	May 20, 1984.
84-422	Generic name: Blocked isocyanate	49 FR 7655 (3/1/84)	May 21, 1984.
84-423	Generic name: Polyamidoamide resin	49 FR 7655 (3/1/84)	Do.
84-424	Generic name: Polyester resin	49 FR 7655 (3/1/84)	Do.
84-425	Generic name: Alkyl arylphosphonium salt	49 FR 7655 (3/1/84)	Do.
84-426	Generic name: Modified rosin, metal salt	49 FR 7655 (3/1/84)	Do.
84-427	Generic name: Saturated aromatic and aliphatic polyester polyols	49 FR 7655 (3/1/84)	Do.
84-428	Generic name: Saturated aromatic and aliphatic polyester polyols	49 FR 7655 (3/1/84)	Do.
84-429	Generic name: Saturated aromatic and aliphatic polyester polyols	49 FR 7655 (3/1/84)	Do.
84-430	Generic name: Saturated aromatic and aliphatic polyester polyols	49 FR 7655 (3/1/84)	Do.

I. 91 Premanufacture Notices Received During the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
84-431	Generic name: Saturated aromatic and aliphatic polyester polyols	49 FR 7655 (3/1/84)	Do
84-432	Generic name: Saturated aromatic and aliphatic polyester polyols	49 FR 7655 (3/1/84)	Do
84-433	Generic name: Saturated aromatic and aliphatic polyester polyols	49 FR 7655 (3/1/84)	Do.
84-434	On the inventory		
84-435	Generic name: Formulation of naphthoquinone, diazidesulphonic acid esters and phenolformaldehyde resins	49 FR 7655 (3/1/84)	June 6, 1984
84-436	Cyano ethyl pullulan	49 FR 7656 (3/1/84)	May 21, 1984
84-437	Generic name: Amine adduct of epoxy resin	49 FR 7656 (3/1/84)	Do
84-438	Generic name: Alkyl butanamide	49 FR 7656 (3/1/84)	May 22, 1984.
84-439	Generic name: Substituted cyclopropane-carboxylic acid	49 FR 7656 (3/1/84)	Do
84-440	Generic name: Styrene acrylic polymer	49 FR 7656 (3/1/84)	Do
84-441	Generic name: Amine adduct of epoxy resin	49 FR 9013 (3/9/84)	May 23, 1984
84-442	Generic name: Epoxy-modified urethane polymer	49 FR 9014 (3/9/84)	May 26, 1984
84-443	On the inventory		
84-444	Generic name: Modified, maleated metal resinate	49 FR 9014 (3/9/84)	Do
84-445	Generic name: Substituted ketone	49 FR 9014 (3/9/84)	Do
84-446	Generic name: Substituted ketone	49 FR 9014 (3/9/84)	Do
84-447	Generic name: Substituted amine	49 FR 9014 (3/9/84)	Do
84-448	Generic name: Substituted aldehyde	49 FR 9014 (3/9/84)	Do
84-449	Generic name: Terpene ester	49 FR 9014 (3/9/84)	Do
84-450	Generic name: Hydrolysis product of terpene	49 FR 9014 (3/9/84)	Do
84-451	Generic name: Phenoxazin imine	49 FR 9014 (3/9/84)	Do
84-452	Generic name: Poly(vinyl-acrylate)	49 FR 9015 (3/9/84)	May 27, 1984
84-453	Generic name: Thiadiazole derivative	49 FR 9015 (3/9/84)	Do
84-454	Generic name: Substituted mercapto triazole	49 FR 9015 (3/9/84)	Do
84-455	Generic name: Substituted tetrazole	49 FR 9015 (3/9/84)	Do
84-456	Generic name: Substituted benzimidazole/benzoxazole	49 FR 9015 (3/9/84)	Do
84-457	Generic name: Alkyd resin	49 FR 9015 (3/9/84)	Do
84-458	Generic name: Carboxylic acid derivatives of polyalkylene glycols	49 FR 9015 (3/9/84)	Do
84-459	Generic name: Modified metal carboxylate	49 FR 9015 (3/9/84)	Do
84-460	Copper ferrocyanide salt of C. I. basic green I and C. I. basic yellow I	49 FR 9015 (3/9/84)	Do
84-461	Copper ferrocyanide salt of C. I. basic blue II	49 FR 9015 (3/9/84)	Do
84-462	Generic name: Substituted urethane ester	49 FR 9015 (3/9/84)	May 28, 1984
84-463	Generic name: Modified alkyd resin from fatty acids, carbomonocyclic acids and alkane diols	49 FR 9015 (3/9/84)	Do.
84-464	Generic name: Halogenated aromatic ether	49 FR 9015 (3/9/84)	Do
84-465	Generic name: Substituted urea	49 FR 9015 (3/9/84)	Do

II. 53 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	Identity/generic name	FR citation	Expiration date
84-313	Generic name: Poly alkylene polyol	49 FR 1768 (1/13/84)	Apr. 2, 1984
84-314	Generic name: Partially oxidized polysaccharide	49 FR 1768 (1/13/84)	Do.
84-315	Generic name: Polymer of alkyl and heteromonocyclic amines and an alkanedioic acid	49 FR 1768 (1/13/84)	Do.
84-316	Generic name: Polyester polyol	49 FR 2526 (1/20/84)	Apr. 4, 1984
84-317	5-Oxa-2-methyl-7-phenyl-2-heptene	49 FR 2526 (1/20/84)	Apr. 7, 1984
84-318	[4-(4-methylphenylthio)phenyl]phenylmethanone	49 FR 2526 (1/20/84)	Apr. 8, 1984
84-319	Crude oat oil	49 FR 2526 (1/20/84)	Do
84-320	Generic name: Saturated polyester	49 FR 2526 (1/20/84)	Do
84-321	Generic name: Polyether ester acid, compound with amine	49 FR 2527 (1/20/84)	Apr. 9, 1984.
84-322	Generic name: Organosiloxane copolymer	49 FR 2527 (1/20/84)	Do
84-323	Generic name: Urea-aldehyde resin	49 FR 2527 (1/20/84)	Apr. 10, 1984.
84-324	Generic name: Isoindolyl derivative of aromatic heterocycle	49 FR 2527 (1/20/84)	Do
84-325	Generic name: Vinylpolymer, aldehyde cross-linked	49 FR 2527 (1/20/84)	Do.
84-326	Generic name: Bis(polyalkylaminetriphenyl)-bis(aminoalkyl)benzene	49 FR 2527 (1/20/84)	Do
84-328	Generic name: Modified linseed alkyd	49 FR 3524 (1/27/84)	Apr. 15, 1984
84-329	Generic name: Substituted heteropolycyclic sulfonic acid	49 FR 3524 (1/27/84)	Do.
84-330	Generic name: Substituted aryl heteropolycycle sulfonic acid, sodium salt	49 FR 3524 (1/27/84)	Do
84-331	Generic name: Terephthalic acid, polymer with polytetramethylene ether glycol and alkanediols	49 FR 3524 (1/27/84)	Do
84-332	Generic name: Acrylic ester copolymer	49 FR 3524 (1/27/84)	Do
84-333	Generic name: Acrylic ester copolymer	49 FR 3524 (1/27/84)	Do
84-335	Generic name: Metal carboxylate	49 FR 3524 (1/27/84)	Apr. 16, 1984
84-336	Polymer of: Melamine formaldehyde, o,p toluenesulfonamide, methyl glucoside, sodium hydroxide, guanidine carbonate, magnesium bromide	49 FR 3524 (1/27/84)	Do
84-337	Polymer of: Phenol, nonyl phenol, formaldehyde, methyl glucoside, sodium carbonate, ammonium sulfamate	49 FR 3524 (1/27/84)	Do.
84-338	Polymer of: Melamine, formaldehyde, methyl glucoside, sodium hydroxide, guanidine carbonate	49 FR 3524 (1/27/84)	Do
84-339	Polymer of: Phenol, nonyl phenol, formaldehyde Reax 27D, methyl glucoside, sodium carbonate	49 FR 3524 (1/27/84)	Do.
84-340	Polymer of: Phenol, nonly phenol, formaldehyde Reax 27D, sodium carbonate	49 FR 3525 (1/27/84)	Do
84-345	Generic name: Unsaturated aliphatic ester	49 FR 4256 (2/3/84)	Apr. 18, 1984
84-346	Generic name: Copolymer of acrylic acid and acrylic acid esters	49 FR 4256 (2/3/84)	Do
84-347	Generic name: Fluorinated polyamide	49 FR 4256 (2/3/84)	Do
84-348	Generic name: Substituted phosphonium chloride, cadmium complex	49 FR 4256 (2/3/84)	Do
84-349	Generic name: Substituted phosphonium borate	49 FR 4256 (2/3/84)	Do
84-350	Generic name: Substituted phosphonium chloride	49 FR 4256 (2/3/84)	Do
84-351	Generic name: Substituted benzophenone	49 FR 4256 (2/3/84)	Do
84-352	Generic name: Cellulose ester	49 FR 4256 (2/3/84)	Apr. 22, 1984
84-353	Generic name: Quinone-imine dye	49 FR 4256 (2/3/84)	Do
84-354	Generic name: Substituted substituted benzsulfonic acid	49 FR 4256 (2/3/84)	Apr. 23, 1984
84-355	Generic name: Substituted substitute benzenesulfonic acid	49 FR 4256 (2/3/84)	Apr. 24, 1984.
84-356	Generic name: Disubstituted dichloro sulfonated heteropolycycle	49 FR 4257 (2/3/84)	Do
84-357	Generic name: Substituted arylamino substituted benzenesulfonic acid	49 FR 4257 (2/3/84)	Do
84-358	2,2-bis(4-(3-di(cocoalkylpolyoxyethyl)amino-2-hydroxy)phenyl)propane, ethoxylated	49 FR 6161 (2/17/84)	Apr. 25, 1984
84-360	Generic name: Substituted nonyl phenol polymer	49 FR 4980 (2/9/84)	Do
84-361	Generic name: Substituted cyclohexane	49 FR 4980 (2/9/84)	Apr. 26, 1984
84-362	Generic name: Poly amido-amine	49 FR 4980 (2/9/84)	Do
84-364	Generic name: Amine adduct of fatty acid glycidyl ester	49 FR 4980 (2/9/84)	Do
84-365	Generic name: Vinyl ether monomer	49 FR 4980 (2/9/84)	Apr. 29, 1984.
84-366	Generic name: Vinyl ether monomer	49 FR 4981 (2/9/84)	Do.
84-367	Generic name: Vinyl ether monomer	49 FR 4981 (2/9/84)	Do
84-368	Generic name: Substituted styrene, substituted acrylate, derivatized copolymer	49 FR 4981 (2/9/84)	Do
84-369	Benzenemethanaminium: 4-ethenyl-N-dodecyl-N,N-dimethyl chloride	49 FR 4981 (2/9/84)	Do.

II. 53 Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
84-370	Generic name: (Substituted-heterocycle)alkylamine derivative	49 FR 4981 (2/9/84)	Do.
84-371	Generic name: Polymer of acrylate and methacrylate esters	49 FR 4981 (2/9/84)	Do.
84-372	Generic name: 4-(substituted cycloalkyl)-alkoxybenzene	49 FR 4981 (2/9/84)	Do.
84-373	Generic name: 4-(substituted cycloalkyl)-alkoxybenzene	49 FR 4981 (2/9/84)	Do.

III. 56 Premanufacture Notices for Which the Notice Review Period Has Ended During the Month

[Expiration of the notice review period does not signify that the chemical has been added to the inventory]

PMN No.	Identity/generic name	FR citation	Expiration date
[illegible]	Generic name: Trisubstituted aniline	48 FR 29049 (6/24/83)	Feb. 29, 1984.
[illegible]	Generic name: Acridine, 9-phenyl	48 FR 37700 (8/19/83)	Feb. 21, 1984.
[illegible]	Generic name: Polyether polyurethane	48 FR 38890 (8/26/83)	Feb. 16, 1984.
[illegible]	Generic name: Mixed castor amide with diethylene triamine	48 FR 40783 (9/9/83)	Feb. 26, 1984.
[illegible]	Generic name: Mixed castor amide with amino ethyl ethanol amine	48 FR 40783 (9/9/83)	Do.
83-1157	Generic name: Substituted oxirane	48 FR 41642 (9/16/83)	Feb. 3, 1984.
[illegible]	Generic name: Substituted alkyl halide	48 FR 43399 (9/23/83)	Feb. 5, 1984.
83-1227	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.
[illegible]	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.
[illegible]	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.
[illegible]	Generic name: Substituted phenol-formaldehyde condensate	48 FR 50953 (11/4/83)	Feb. 23, 1984.
[illegible]	Generic name: Substituted anthraquinone ammonium salt	48 FR 50953 (11/4/83)	Do.
[illegible]	Generic name: Polyester polycarboxylate salt	48 FR 50954 (11/4/83)	Feb. 5, 1984.
[illegible]	Carboxylic acid, C_8-C_{36} mono and C_8-C_{36} dipolymers with neopentyl glycol and propylene glycol	48 FR 52506 (11/18/83)	Feb. 1, 1984.
[illegible]	Generic name: 2-ethyl-2(hydroxymethyl)-1,3-propanediol; benzoic acid; substituted propanediol; 1,3-bezenedicarboxylic acid; cyclic oxo-benzene carboxylic acid; mixed vegetable oils and polymer.	48 FR 52506 (11/18/83)	Do.
[illegible]	Acriflavine hydrochloride	48 FR 52506 (11/18/83)	Feb. 4, 1984.
[illegible]	4,4'-(1,2-ethanediyldiimino)bis-3-pentene-2-one	48 FR 52506 (11/18/83)	Do.
[illegible]	Generic name: Tetrasubstituted dithiadiphosphetane	48 FR 52506 (11/18/83)	Feb. 5, 1984.
[illegible]	Generic name: Chromophore substituted polyoxyalkylene	48 FR 52506 (11/18/83)	Do.
[illegible]	Generic name: Trisubstituted amino thophene	48 FR 52506 (11/18/83)	Do.
[illegible]	Generic name: A derivitzed olefinic polymer	48 FR 52506 (11/18/83)	Feb. 6, 1984.
[illegible]	Generic name: Thermoplastic polyurethane	48 FR 53162 (11/25/83)	Feb. 7, 1984.
[illegible]	Generic name: Thermoplastic polyurethane	48 FR 53162 (11/25/83)	Do.
[illegible]	Generic name: Thermoplastic polyurethane	48 FR 53162 (11/25/83)	Do.
[illegible]	Generic name: Vegetable oil polyamide resin	48 FR 53162 (11/25/83)	Feb. 11, 1984.
84-210	Generic name: 4-substituted benzoyl chloride	48 FR 53162 (11/25/83)	Do.
84-211	Generic name: 3,7-bis(di-substituted amino)-5-(substituted phenyl) phenazinium salt	48 FR 53162 (11/25/83)	Do.
84-212	Generic name: 3,7-bis(di-substituted amino)-5-(substituted phenyl) phenazinium salt	48 FR 53162 (11/25/83)	Do.
84-213	Generic name: 2,8-phenazinediamine, tetra-substituted-5,10-dihydro-10-(substituted-phenyl)-5-(4-substituted) benzoyl	48 FR 53162 (11/25/83)	Do.
84-214	Generic name: Reaction products of quinone and amine	48 FR 53163 (11/25/83)	Feb. 12, 1984.
84-215	2-Butenedioic (E)-, ditridecyl ester	48 FR 54394 (12/2/83)	Feb. 15, 1984.
84-217	Generic name: Phosphonium catalyst	48 FR 54394 (12/2/83)	Do.
84-218	Generic name: Modified polyester	48 FR 54394 (12/2/83)	Feb. 19, 1984.
[illegible]	Generic name: Modified alkyd polymer	48 FR 54394 (12/2/83)	Do.
[illegible]	Generic name: Benzenesulfonic acid, 4-[[4-substituted]-3-methyl-5-oxo-2-pyrazolin-1-yl]-, salt	48 FR 54395 (12/2/83)	Do.
[illegible]	Generic name: Ethoxylated alkyl quartemary amine	48 FR 54395 (12/2/83)	Feb 20, 1984.
[illegible]	Generic name: Urethane bisoxazolidine	48 FR 54395 (12/2/83)	Do.
[illegible]	Generic name: Aromatic sulfonate of substituted heteropolycycle	48 FR 55332 (12/12/83)	Feb 22, 1984.
[illegible]	Generic name: Polyesteramide resin	48 FR 55332 (12/12/83)	Do.
[illegible]	Generic name: 1,3 benzenedicarboxylic acid polymer with 1,4-benzenedicarboxylic acid adipic acid and polyols	48 FR 55332 (12/12/83)	Feb. 25, 1984.
84-227	Generic name: Fatty acids, esters with polyol	48 FR 55332 (12/12/83)	Do.
[illegible]	Generic name: Modified copolymer of alkenoic esters and substituted alkenoic esters with styrene	48 FR 55333 (12/12/83)	Do.
[illegible]	Zinc ammonium phosphate	48 FR 55333 (12/12/83)	Do.
[illegible]	Zinc magnesium orthophosphate	48 FR 55333 (12/12/83)	Do.
84-231	Generic name: Aliphatic polycarbonate diol	48 FR 55333 (12/12/83)	Do.
[illegible]	Generic name: Alkyd resin	48 FR 55333 (12/12/83)	Feb. 26, 1984.
[illegible]	Silicon aluminum oxynitride	48 FR 55333 (12/12/83)	Do.
[illegible]	Generic name: Diisocyanate polymer with polyether polyols	48 FR 55333 (12/12/83)	Feb. 27, 1984.
[illegible]	Generic name: Diisocyanate polymer with polyether polyols	48 FR 55333 (12/12/83)	Do.
[illegible]	Generic name: Diisocyanate polymer with polyether polyols	48 FR 55333 (12/12/83)	Do.
84-237	Generic name: Hydroxyalkiene-bis-[trialkly ammonium chloride]	48 FR 55333 (12/12/83)	Do.
[illegible]	Generic name: Alkenyltrialkylammonium phosphate	48 FR 55333 (12/12/83)	Do.
[illegible]	Generic name: Amine derivative of a fatty acid condensation polymer	48 FR 55333 (12/12/83)	Do.
[illegible]	Generic name: Trisubstituted benzoxazolium salt	48 FR 55333 (12/12/83)	Feb 28, 1984.
84-241	Generic name: Trisubstituted benzoxazolium salt	48 FR 55333 (12/12/83)	Do.
84-242	Generic name: Copolymer of acrylates and methacrylates	48 FR 55917 (12/16/83)	Feb. 29, 1984.

IV. 43 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Chemical identification	FR citation	Date of commencement
[illegible]	Octanamine, N,N-dimethyl-, phosphate salt	45 FR 67758 (10/14/80)	May 19, 1981.
81-455	4-trifluoromethoxyphenylisocyanate	46 FR 47295 (9/25/81)	Jan. 12, 1984.
81-604	2-chlorobenzamide	46 FR 60055 (12/8/81)	Jan. 27, 1984
[illegible]	Generic name: Polymer of a vegetable oil derivative, alkane diols, and a carbomonocyclic anhydride	47 FR 26995 (7/2/82)	Dec. 12, 1983.
[illegible]	Polymer of: isophorone diisocyanate, 2-hydroxy ethyl acrylate, silicone fluid	47 FR 49073 (10/29/82)	Jan. 24, 1984.
83-57	Generic name: Polymer of isophorone diisocyante, polyhdroxyalkane, and an alkyl alkanoate	47 FR 49073 (10/29/82)	Nov. 10, 1983
83-327	Generic name: Blocked isocyanate	48 FR 72 (1/3/83)	Jan. 28, 1984.
[illegible]	Generic name: Benzenesulfonic acid, amnochlorotnazinylamino-carboxychlorophenyl-pyrazolonylazo-	48 FR 5305 (2/4/83)	Feb 6, 1984
83-412	Generic name: Substituted pyridinium, chloride	48 FR 5305 (2/4/83)	Jan. 30, 1984.
83-413	Generic name: Modified epoxy polymethacrylate resin	48 FR 5305 (2/4/83)	2nd week of January 1984
[illegible]	Generic name: Styrene, acrylate methacrylate copolymer	48 FR 8344 (2/28/83)	Jan. 10, 1984
83-512	Generic name: Polymer of amino-alkyl-carbo-monocycle, hexamethylene diisocyanate, propylene oxide, alkane triol, alkan-one, and [illegible] diol	48 FR 10469 (3/11/83)	Jan. 25. 1984

IV. 43 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Chemical identification	FR citation	Date of commencement
83-529	Generic name: Dicarboxylic acid, polyamine polymer.	48 FR 10470 (3/11/83)	Jan. 30, 1984
83-596	Generic name: Modified acrylic polymer.	48 FR 15181 (4/7/83)	Do
83-608	Generic name: Substituted bis substituted benzene aminium, dichloride.	48 FR 16331 (4/15/83)	Do
83-609	Generic name: Substituted benzenesulfonic acid, sodium salt and substituted benzenesulfonic acid.	48 FR 16331 (4/15/83)	Do
83-640	Generic name: Disubstituted benzenamine.	48 FR 17386 (4/22/83)	Jan. 13, 1984
83-658	Generic name: Trisubstituted benzenamine.	48 FR 204899 (5/6/83)	Jan 16, 1984
83-897	Generic name: Polymer of ethylene oxide, maleic anhydride and alkane polyol and polymer of ethylene oxide, maleic anhydride and alkane-poylol, ammonium salt.	48 FR 32382 (7/15/83)	Jan. 30, 1984
83-947	Generic name: 1-hydro-carbyl pyridinium halide.	48 FR 33533 (7/22/83)	Jan 24, 1984
83-1044	Generic name: Hydrogen <2-[a-[2-hydroxy-3,5-substituted phenylazol-arylhydrazino]-5-substituted aryl]cuprate, sodium salt.	48 FR 37700 (8/19/83)	Feb. 13, 1984
83-1091	Generic name: Reaction product of: mixed aliphatic and amino aliphatic alcohols and dimer diisocyanate and 1,1'-methylene bis [4-isocyanatel]-cyclohexane..	48 FR 40782 (9/9/83)	On or about Jan 19, 1984
83-1102	Generic name: Aliphatic acid ester of N-alkyl perfluoro sulfonamido alkanol.	48 FR 41639 (9/16/83)	On or about Feb 22, 1984
83-1106	Generic name: Polyester of phthalic anhydride and lower glycols.	48 FR 41639 (9/16/83)	Jan. 18, 1984
83-1160	Generic name: Substituted heterocycle.	48 FR 41642 (9/16/83)	Feb. 8, 1984
83-1168	Generic name: Monosubstitutedbenzyl chloride.	48 FR 41643 (9/16/83)	Jan. 19, 1984
83-1169	Generic name: Monosubstitutedbenzythiosulfate salt	48 FR 41643 (9/16/83)	Do
83-1170	Generic name: Monosubstitutedbenzysulfonyl-	48 FR 41643 (9/16/83)	Jan 20, 1984
83-1220	Generic name: Monosubstitutedbenzylsulfonamide.	48 FR 43399 (9/23/83)	Jan 26, 1984
83-1310	ymercaptopropyl methyl dimethoxy silane.	48 FR 45843 (10/7/83)	Jan 25, 1984
84-37	Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-(2-amino-2-methyl)ethoxy-, ether with 1,2,3-propanetriol (3:1).	48 FR 48866 (10/21/83)	Feb. 21, 1984
84-43	Generic name: Fatty acid mercaptan acrylic copolymer	48 FR 50952 (11/4/83)	Feb. 10, 1984.
84-45	Generic name: Acrylic urethane polymer.	48 FR 50952 (11/4/83)	Feb. 13, 1984
84-52	Generic name: Vinylpyrrolidone copolymer.	48 FR 50952 (11/4/83)	On or about Feb 10, 1984
84-53	Generic name: Vinylpyrrolidone copolymer.	48 FR 50952 (11/4/83)	Do
84-71	Generic name: Substituted pyridinium chloride.	48 FR 50954 (11/4/83)	Feb 7, 1984
84-73	Generic name: Polyester polycarboxylate salt.	48 FR 50954 (11/4/83)	Feb. 7, 1984
84-78	Generic name: Substituted benzaldehyde.	48 FR 50954 (11/4/83)	Jan. 18, 1984
84-100	Generic name: Ester of substituted, unsaturated acid.	48 FR 50945 (11/4/83)	Feb. 8, 1984
84-101	Generic name: Ester of substituted, unsaturated acid.	48 FR 50945 (11/4/83)	Do.
84-177	Generic name: Ester of substituted cyclohexene.	48 FR 50950 (11/4/83)	Do.
84-178	Generic name: Ester of substituted cyclohexene.	48 FR 50950 (11/4/83)	Do.
84-190	Generic name: Chromophore substituted polyoxy-alkylene.	48 FR 52504 (11/18/83)	84 Nov 19, 1984.

V. 65 Premanufacture Notices for Which the Review Period Has Been Suspended

PMN No.	Identity/generic name	FR citation	Date suspended
80-146	Phosphorodithioic acid *O,O*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters, zinc salt	45 FR 49153 (7/23/80)	Sept. 17, 1980
80-147	Phosphorodithioic acid *O,O*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters	45 FR 49153 (7/23/80)	Do.
82-60	Generic name: Zinc, *O,O*-bis alkylphosphoro dithioate	47 FR 5932 (2/9/82)	Apr. 15, 1982
82-387	Phosphordithioic acid, *O,O*, secondary butyl and isooctyl mixed esters	47 FR 25401 (6/11/82)	July 30,1982
82-388	Phosphorodithioic acid, *O,O*, secondary butyl and isooctyl mixed esters, zinc salt	47 FR 25401 (6/11/82)	July 30, 1982
83-1	Generic name: Polyhalogenated aromatic alkylated hydrocarbon	47 FR 46371 (10/18/82)	Oct. 22, 1982
83-333	Generic name: Reaction product of polycycle-sulfonic acid salt with phosphorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite alkali.	48 FR 73 (1/3/83)	Mar. 14, 1983
83-401	Generic name: Naphthalenetrisulfonic acid, chlorortriazinylamino-methoxymethylphenylazo-	48 FR 5304 (2/4/83)	Aug. 18, 1983
83-418	Generic name: Benzenedisulfonic acid, chlorotriazinylaminodimethylphenylazo-sulfo-naphthaleneazo-	48 FR 5306 (2/4/83)	Do.
83-461	Generic name: Substituted alkoxy silane	48 FR 7300 (2/18/83)	Apr. 25, 1983
83-634	Generic name: Substituted mono azo aromatic	48 FR 17365 (4/22/83)	July 5, 1983.
83-669	Generic name: Chromium complex of substituted phenolazosulfonaphthol with naphtholazosulfonaphthol	48 FR 20490 (5/6/83)	Aug. 5, 1983.
83-677	Generic name: Chromium complex of substituted alkylaminoformimidphenol with sulfonaphtholazo-sulfophenylpyrazolone	48 FR 20491 (5/6/83)	Do
83-755	4-hydroxy-6-phenylaminonaphthalene-2-sulfonic acid	48 FR 24967 (6/3/83)	Aug. 17, 1983.
83-770	Generic name: Cobalt complex of a substituted phenolazonaphthol	48 FR 24968 (6/3/83)	Aug. 15, 1983
83-771	Generic name: Chromium complex of substituted phenolazoalkylarylamino-formimidphenol with sulfonaphthylazosulfonaphthol	48 FR 24968 (6/3/83)	Do
83-831	Generic name: Disazo solvent red dye	48 FR 29055 (6/24/83)	Sept 9, 1983
83-845	Generic name: Tetrasodium salt of μ-(2-(2-hydroxy-3-nitro-5-sulfo-phenylazo)-2 -(2-hydroxy-5-substituted-3-sulfphenylazo)-3,3 disulfo-6,6 -iminodi-1-naphtholate-(0,0 ,O',O') (8⁻))dicopper(II)acid.	48 FR 30434 (7/1/83)	Sept. 16, 1983
83-850	Generic name: Metal complexed substituted aromatic azo compound	48 FR 30435 (7/1/83)	Sept. 21, 1983
83-875	4-(2-cyano-4-nitrophenylazo)-[N-(2-cyanoethyl)-N-(2-phenoxyethyl)amino]benzene	48 FR 31462 (7/8/83)	Do
83-876	4-(2-cyano-4-nitrophenylazo)-[N,N-bis(2-propionyloxyethyl)amino]-3-chlorobenzene	48 FR 31462 (7/8/83)	Do.
83-913	Generic name: Copper sulfonylphenazopolyhydroxy phenazobenzoate	48 FR 32383 (7/15/83)	Oct. 1, 1983
83-1006	Generic name: (Amino)-(hydroxy)-(substituted)-(substituted) naphthalenedisulfonic acid, and (amino)-(hydroxy)-(substituted)-(substituted) naphthalenedisulfonic acid, salts with sodium and potassium.	48 FR 36648 (8/12/83)	Oct. 14, 1983
83-1007	Generic name: (Substituted)-(substituted)-hydroxy-naphthalenesulfonic acid, sodium salts	48 FR 36648 (8/12/83)	Do
83-1012	Generic name: Bis(sulfophenylchlorotriazine-aminosulfophenylazo) hydroxyaminodisulfonaphthalene	48 FR 36648 (8/12/83)	Oct. 24, 1983
83-1018	Generic name: Substituted-naphthalene tetradisulfonic acid, bis[(substituted-hydroxyphenylazo)phenyl]derivative	48 FR 36649 (8/12/83)	Do.
83-1029	Generic name: Substituted heterocycle	48 FR 37699 (8/19/83)	Nov 3, 1983
83-1033	Generic name: C_{6+} carboxylic acid	48 FR 37700 (8/19/83)	Dec. 8, 1983
83-1157	Generic name: Substituted oxirane	48 FR 41642 (9/16/83)	Feb 2, 1984
83-1162	Generic name: Substituted pyridine	48 FR 41643 (9/16/83)	Nov 29, 1983
83-1163	Generic name: Substituted pyridine	48 FR 41643 (9/16/83)	Do.
83-1222	Generic name: Substituted alkyl halide	48 FR 43399 (9/23/83)	Feb. 2, 1984
83-1227	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do
83-1228	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.
83-1229	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do
83-1248	Generic name: Substituted anthraquinone	48 FR 43400 (9/23/83)	Dec 9, 1983
83-1274	Acetamide, 2-chloro-N-chloromethyl-N-(2-ethyl-6-methylphenyl)	48 FR 44901 (9/30/83)	Do
84-7	N,N,N,N', -tetraglycidyl-1,3-bisaminomethyl cyclohexane	48 FR 48813 (10/14/83)	Dec. 21, 1983
84-15	Generic name: Substituted heterocyclic metal complex	48 FR 48854 (10/21/83)	Jan. 3, 1984
84-18	1(1,1.dimethylethoxy)-propan-2-ol	48 FR 48854 (10/21/83)	Jan. 6, 1984
84-27	Generic name: Polyol carboxylate ester	48 FR 48865 (10/21/83)	Dec 28, 1983
84-64	Generic name: Substituted-phenylamino mono-chloro-triazinylamino sulfophenylazo-substituted disulfonaphthalenylazo-naphthalene-disulfonic acid, hexasodium salt.	48 FR 50953 (11/4/83)	Jan. 5, 1984
84-68	Generic name: Substituted anthraquinone aryl amine	48 FR 50953 (11/4/83)	Dec 28, 1983
84-93	Generic name: Substituted-1H-isoindol-1-one	48 FR 50955 (11/4/83)	Jan 12, 1984

V. 65 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED—Continued

PMN No.	Identity/generic name	FR citation	Date suspended
84-98	Generic name: Hydroxylalkyl ether	48 FR 50945 (11/4/83)	Jan. 11, 1984.
84-102	Generic name: Substituted aromatic	48 FR 50945 (11/4/83)	Jan. 16, 1984.
84-105	Generic name: Halogenated alkene	48 FR 50945 (11/4/83)	Jan. 12, 1984
84-106	Generic name: Halogenated alkane	48 FR 50945 (11/4/83)	Do.
84-107	Generic name: Halogenated alkane	48 FR 50945 (11/4/83)	Do.
84-111	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Jan. 9, 1984
84-112	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-113	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-114	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-115	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do
84-116	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-117	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-151	Reaction of: diethylene triamine, Cardura E, Cardura glycidyl ether, urea	48 FR 50949 (11/4/83)	Jan. 13, 1984
84-176	Generic name: Aliphatic tricl ester methacrylate	48 FR 50950 (11/4/83)	Do.
84-180	Generic name: Polyether acrylate ester	48 FR 50951 (11/4/83)	Do.
84-181	Generic name: Aliphatic acrylate ester	48 FR 50951 (11/4/83)	Do.
84-182	Generic name: Polyether acrylate	48 FR 50951 (11/4/83)	Do.
84-183	Generic name: Aliphatic ester methacrylate	48 FR 50951 (11/4/83)	Do.
84-184	Generic name: Aliphatic ester methacrylate	48 FR 50951 (11/4/83)	Do.
84-224	Generic name: Alkoxylated bisphenol A, inorganic ester, monoethanolamine salt	48 FR 55332 (12/12/83)	Jan. 20, 1984.
84-253	Generic name: Blocked isocyanate modified epoxy resin	48 FR 56846 (12/23/83)	Feb. 24, 1984.

[FR Doc. 84-8024 Filed 3-23-84; 8:45 am]

BILLING CODE 6560-50-M

[A-5-FRL 2544-7]

Prevention of Significant Quality Deterioration (PSD) Permit To; Wisconsin Power & Light Company

AGENCY: U.S. Environmental Protection Agency (U.S. EPA), Region V.

ACTION: Notice.

SUMMARY: U.S. EPA announces approval of a revision to the Prevention of Significant Air Quality Deterioration permit for a 400 megawatt generating unit (Unit 5) at the Wisconsin Power & Light Company Edgewater Station in Sheboyan, Wisconsin.

ADDRESSES: Copies of the Permit are available at the following addresses for inspection. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396 before visiting the Region V Office.)

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

Comment should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, U.S. EPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On April 26, 1977, U.S. EPA, Region V, issued a Prevention of Significant Deterioration (PSD) permit for a 400 megawatt generating unit (Unit 5) at the Wisconsin Power & Light Company (WP&L) Edgewater Station in Sheboygan, Wisconsin. This permit contained several conditions, including an allowable Total Suspended Particulates (TSP) emission limitations for Unit 3 (0.002 lb/MMBTU) and Unit 4 (0.02 lb/MMBTU).

On April 22, 1983, WP&L requested U.S. EPA to make the following modifications to the PSD permit for Unit 5:

1. revise the TSP limit for Units 3 and 4 to 0.13 lb/MMBTU,
2. include a sulfur limit of 2.15 percent (annual average) for Units 3 and 4 (as required by the Wisconsin Public Service Commission) and,
3. require Continuous Emission Monitors (CEMs) for opacity and SO_2 (as required by WDNR Order NS-79-60-05 (March 16, 1979)), to be installed no later than 180 days from the effective date of the revised permit.

To support the increased TSP limits for Units 3 and 4, WP&L provided a reference screening analysis demonstrating that the increase in allowable emissions from these two units (coupled with the operation of Unit 5 at its allowable emission limit (0.1 lb/MMBTU) and the required retirement of Units 1 and 2) will attain the TSP National Ambient Air Quality Standards (NAAQS) and PSD increments. In this analysis, Units 3 and 4 (which are serviced by a new common 168m stack) were modeled at the applicable grandfathered Good Engineering Practice (GEP) physical stack height of 110m and the stack exit diameter, velocity, and temperature associated with the new stack. This approach was consistent with U.S. EPA's February 8, 1982, GEP Stack Height Regulations.

U.S. EPA approves the requested modifications, with one clarification. The CEM condition was expanded to say: "Opacity and SO_2 CEMs shall be installed in the common stack connecting Units 3 and 4, no later than 180 days from the date of this permit and WP&L shall have the CEMs certified within 60 days after the installation. Thereafter, quarterly excess emission reports shall be submitted to the Wisconsin DNR."

During the public comment period, only WP&L submitted comments. WP&L noted that two opacity CEMs will be installed, one in each unit's ductwork leading to the common stack. The opacity reading for the common stack will be produced using an electonic combiner that ratios and corrects the individual readings from each duct. WP&L asked that the permit wording be clarified to reflect this monitoring system.

U.S. EPA accepts the proposed opacity monitoring system and has modified the permit to say only that "* * * CEMs shall be installed to monitor emissions from the common stack connecting Units 3 and 4 * * *". Consequently, the full set of conditions in the modified permit are as follows:

1. Each of the existing units 3 and 4 at the Edgewater Generating Station shall not exceed emission limitation of 0.13 pounds of particulate matter and 6.7 pounds of sulfur dioxide (SO_2) per million British thermal unit (MMBTU) of heat input. Sulfur limit in the coal used in Unit 3 and 4 shall be limited to 2.15 percent on an annual average basis. (This limit should not replace the existing 6.7 pounds of SO_2 per MMBTU limit in the permit.)

2. Unit 5 must meet emission limitations of 0.1 pounds of particulate matter per MMBTU heat input and 1.2 pounds of SO_2 per MMBTU heat input. These limitations are equivalent to the New Source Performance Standards (40 CFR Part 60) for fossilfuel fired steam generating units and are defined as best available control technology. This condition is required by 40 CFR § 52.21(d)(2)(ii).

3. WP&L may not alter the design stack parameters identified in its application including, but not limited to, exit gas temperature, exit gas velocity, stack diameter (inside top) and stack height. The air quality analysis relies heavily on the combination of stack parameters, control devices, and emission limitation and any change in those factors could change the results of the air quality analysis. Therefore, design changes in Unit 5 must receive the prior written authorization of U.S. EPA.

4. Units 1 and 2 must be retired from service on or before the start up of Unit 5. WP&L has planned retirement of those units and the air quality analysis was conducted accordingly.

5. Opacity and SO_2 continuous emission monitors (CEMs) shall be installed to monitor emissions from the common stack connecting Units 3 and 4, no later than 180 days from the date of this permit and WP&L shall have CEMs certified within 60 days after the installation. Thereafter, quarterly excess emission reports shall be submitted to WDNR.

Note, on October 11, 1983, the U.S. Court of Appeals for the District of Columbia reversed portions of U.S. EPA's February 3, 1982, Stack Height Regulations and ordered the Agency to reconsider other portions. Among the portions subject to reconsideration are the need for demonstrations for increasing existing stack heights and the definition of dispersion technique (e.g. merged stacks). The previous air quality analysis for the WP&L Units PSD permit is affected by both of these issues.

To address the potential impact of the Court decision, U.S. EPA has taken an alternative conservative approach that does not take credit for the increase in physical stack height and the stack merging for Units 3 and 4. Using this approach, Units 3 and 4 were remodeled with their original stack heights and stack exit parameters. The reanalysis followed the same general procedure used in the original screening analysis. It was found that the increase in TSP concentrations was only slightly above significance levels and was small enough to preserve the original attainment demonstration.

Thus, the revised TSP limits are still approvable despite the Court decision on the GEP regulations. (Please note that U.S. EPA is not acting on the original 6.7 lbs/MMBTU SO_2 limit for Units 3 and 4 in this notice. Nevertheless, these limits are not affected by the Court decision since the modeling performed to set this limit assumed no credit for the increase in physical and effective stack height associated with the new common stack. In addition, the annual average sulfur limit is being required for reasons other than protection of the SO_2 NAAQS. Thus, this limit is not based on any modeling which may have assumed credit for the new common stack for Units 3 and 4.)

Under Section 307(b)(1) of the Clean Air Act, judicial review of the PSD permit is available only by the filing of a petition for review in the Ninth Circuit Court of Appeals within 60 days of today.

Under Section (b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in Civil or Criminal proceedings brought by U.S. EPA to enforce these requirements.

Dated: March 6, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84-8017 Filed 3-23-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Emergency Training Center, Board of Visitors for the National Fire Academy; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy (NFA).

Date of meeting: April 10, 1984.

Place: 1984 Metro Chiefs Conference, Marriott Hotel, Orlando, Florida.

Time: 7-10 p.m.

Proposed agenda: April 10: Open meeting—no agenda.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Building N, National Emergency Training Center, Emmitsburg, MD. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: March 12, 1984.

Fred J. Villella,

Associate Director for Training and Fire Programs, National Emergency Training Center.

[FR Doc. 84-8003 Filed 3-23-84; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-696-DR]

Texas; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Texas (FEMA-696-DR), dated January 7, 1984, published at 49 FR 1935, January 16, 1984 and related determinations.

DATED: March 20, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

The notice of a major disaster for the State of Texas dated January 7, 1984, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 7, 1984:

The Counties of Dimmit and Zavala for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-8004 Filed 3-23-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0485]

Private Sector Adjustment Factor

AGENCY: Board of Governors.

ACTION: Approval of methodology for calculating the Private Sector Adjustment Factor for 1984.

SUMMARY: The Board has approved the methodology for calculating the Private Sector Adjustment Factor (PSAF) for 1984. The PSAF is a recovery of the imputed costs which takes into account the taxes that would have been paid and the return on capital that would have

been provided had the Federal Reserve's priced services been furnished by a private business firm. The estimated recovery through the PSAF in 1984 will be $5.8 million .

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Robinson, Associate Director (202/452–3806) or Earl G. Hamilton, Assistant Director (202/452–3974), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452–3625), Daniel L. Rhoads, Attorney (202/452–3711), or Robert G. Ballen, Attorney (202/452–3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

The Monetary Control Act of 1980 (Title I of Pub. L. 96–221) provides that over the long run, fees for the Federal Reserve's priced services are to be based upon costs, including the "taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm." The Private Sector Adjustment Factor ("PSAF") is the vehicle that facilitates the imputation of these taxes and capital costs to the Federal Reserve.

In October 1983 the Board requested comment on a proposal to revise the methodology used to calculate the PSAF for 1984. The proposed revisions included:

—Use of the direct determination method for establishing the asset base used for computing the PSAF.
—Expansion of the sample used to calculate the PSAF from the the 12 to the 25 largest bank holding companies.
—Calculation of the Federal Reserve's asset base to reflect the value of assets expected to be acquired and disposed of in 1984.
—Removal of the financing costs of net adjustment float from the asset base because such float is priced explicitly.
—Recovery of the estimated sales taxes that would have been paid on the purchase of certain goods and services if the Reserve Banks were subject to such taxes.
—Recovery of expenses incurred by Board staff working directly on the development of priced services and inclusion of the portion of the Board assets employed in this specific activity in the PSAF asset base.
—Capitalization of Federal Reserve leases that become effective on or after January 1, 1984, that meet the criteria for capitalization as set forth in PSAF Statement 13.

In addition to these revisions, the Board requested comment on an alternative method of determining the income tax rate used in calculating the PSAF. It was estimated that the net effect of these proposed changes would be to require a recovery of approximately $56.2 million through the PSAF in 1984. The Board also requested comment on a proposed adjustment to the method for calculating earnings credits on clearing balances to take into account reserve requirements the Reserve Banks would be subject to if they were subject to reserve requirements.

Analysis of Comments. A total of 45 commenters responded to the Board's request for comment, including seven Reserve Banks. Of the 38 non-Reserve Banks comments, 32 were received from banks and bank holding companies and four from banking industry trade groups. Responses were also received from one thrift institution and one congressman. A majority of the commenters discussing specific issues agreed that the proposals concerning the use of the direct determination method, calculation of the Federal Reserve's asset base to reflect the value of assets to be acquired and disposed of in 1984, recovery of estimated sales taxes, recovery of estimated expenses incurred by Board staff working directly on the development of priced services, and the inclusion of the capitalized leases in the asset base used to calculate the PSAF were appropriate. The majority of commenters also supported the exclusion of shipping expenses from the PSAF calculation. Commenters were divided on the issues of the bank holding company model and its expansion from the twelve to the 25 largest bank holding companies, the tax rate methodology, the continued use of book values as the basis of asset base calculation, and the exclusion of net adjustment float from the short-term asset base.

Objections to the proposal stemmed mainly from opposition to the Federal Reserve's use of bank holding companies as the model for estimating an imputed cost of capital, tax rate, and the short term assests to be included in the PSAF calculation.

A. *Choice of Model*—Thirty-four commenters discussed the Board's proposal to continue using large bank holding companies as the model upon which to construct the PSAF and to expand the sample size from the twelve largest bank holding companies to the 25 largest bank holding companies. Seventeen commenters supported the use of the bank holding company model on the basis that the model represented those institutions that the Federal Reserve directly competed with in the provision of priced services. Several commenters supported expanding the sample size from the 12 largest bank holding companies to the 25 largest bank holding companies, stating that the expansion would present a more accurate representation of the market.

Seventeen commenters were opposed to the use of bank holding companies as the model and stated that data processing corporations were the most appropriate model. These commenters believe that the priced service business of the Federal Reserve Banks most closely resembles the services offered by data processing corporations. They also believe that using a large bank holding company model is inappropiate because the large majority of a bank holding company's activities are unrelated to the services the Federal Reserve Banks offer. Many of the commenters who opposed the proposal stated that if the Federal Reserve was going to continue the use of bank holding companies as the model, it would have to include more assets like cash and cash items in the process of collection to make the pro forma balance sheet of the Federal Reserve System consistent with consolidated bank holding company balance sheets.

The Board carefully considered alternative models such utilities, bank holding companies, and data processing companies. Determining whether the cost of capital that the Federal Reserve would actually incur in the market would be higher or lower than that associated with bank holding companies, or any other industry model, involves the consideration of a number of factors, particularly in view of the Federal Reserve's unique blend of public and private characteristics. The Board believes that an analysis of all reasonable alternatives strongly reinforces the view that the bank holding company model is the most reasonable and logical choice.

The Board recognizes, as some commenters pointed out, that bank holding companies engage in numerous activities other than correspondent bank services. However, the correspondent services of bank holding companies most closely resemble the priced services activities of the Federal Reserve, and large banking organizations are the major—and for many services virtually the only—direct competitors of the Federal Reserve. Therefore, since the correspondent operations of a bank holding company have the same cost of capital that accrues to the bank holding company as a whole, the Board believes it is appropriate to impute capital costs to the Federal Reserve based on the capital costs an structure of bank holding companies.

Certain aspects of the Federal Reserve's provision of priced services are more analogous to utilities or government-sponsored enterprises, which have a lower cost of capital than that implied by the bank holding company model. The Federal Reserve was directed by the Congress to provide an adequate level of service nationwide and must, therefore, serve all depository institutions regardless of size or location. Moreover, reflecting the Federal Reserve's public role, it should not be an aggressive, high growth, profit maximizing entity. It should, of course, earn an reasonable rate of return—a test that seems more than adequately provided for in the use of the bank holding company model.

The principal alternative to the bank holding company model suggested by a number of commenters is the use of a model based on data processing companies. The argument that nonbank data processors would privide a better model than bank holding companies rests on two major assumptions: First, these firms provide payments services that are similar to those of the Federal Reserve Banks; and, second, a stand-alone Federal Reserve priced service entity would have the financial characteristics of those data processing companies.

Given the disparities between the services of data processing companies and the services provided by the Federal Reserve, data processors are not the appropriate model for the PSAF. A thorough review of the activities of six data processors suggested by some of the commenters clearly indicates that the assertion of similar activities is not supported by the facts. All six of these firms provide a wide variety of computer-related services in many fields unrelated to the financial industry. As a result, the fortunes of these data processors are tied to developments in activities far removed from the Federal Reserve. Moreover, the data processors incur none of the basic costs associated with the business of banking, such as the cost of associated vault space or protection equipment for securities safekeeping operations or the cost of specialized equipment and transportation necessary for processing and delivering checks.

To the very limited extent that the activities of the data processors are at all comparable to those of the Federal Reserve, they generally only perform a portion of the services provided by the Federal Reserve. For example, the data processors perform only one step in the payments process—the recording and transfer of payments information. The Federal Reserve, in contrast, performs many, and in some cases all, of the steps that take place as payments are made. The large banks that are subsidiaries of bank holding companies, either directly or through joint ventures, provide virtually every service offered by the Federal Reserve.

Finally, the six data processors specifically suggested by some commenters apparently do not subscribe to the view that their activities are similar to those of the Federal Reserve. None of these six firms includes the Federal Reserve as a competitor in the discussion of competitors section of its Form 10–K filed with the Securities and Exchange Commission. Further, only one of the six has ever commented on a single occasion on any of the Federal Reserve's pricing proposals, with that comment limited to a narrow point unrelated to the PSAF. Finally, no data processor commented on the proposed 1984 PSAF methodology. The one bank service corporation that commented on the proposal supported the use of large bank holding companies as the appropriate model.

The second argument for the data processing company model is that the capital structure and returns of these companies should constitute the Federal Reserve's financial operating targets. It is clear that these firms are high-growth, technologically oriented operations—a fact suggested by the variability of their stock prices relative to stock prices generally. However, the Board does not believe that it should be the objective of the Federal Reserve to mirror the performance of these specialized firms; to suggest that the Federal Reserve should conduct its priced services with a view toward achieving financial objectives of that nature would seem to be in conflict with the very essence of the Federal Reserve's historical and public interest payments mechanism operations.

With regard to the application of the bank holding company model, twelve commenters supported expanding the model size to include the 25 largest bank holding companies, but some suggested that the sample include those bank holding companies that are most heavily involved in the correspondent banking business. An analysis indicates that the use of a sample comprised of the 25 largest correspondent banks ranked by "due to" balances has virtually no impact on the PSAF.

Another issue raised by some commenters stems from the fact that the market price of the stock of certain bank holding companies used in the model is well below the book value of such stock. As a result, suggestions have been made that the return on equity implied for the Federal Reserve by this model is too low. Specifically, some commenters argued that pre-tax and after-tax income targeted by the Federal Reserve should result from an income stream that would be large enough to equate market and book value of stock.

In response to this comment, the cost of equity component of the PSAF was calculated for several samples of bank holding companies with differing relationships of market value to book value for their stock. The calculations indicate that the holding companies with the highest market-to-book ratios had higher returns on equity than the companies with the lowest ratios. Overall, however, the absolute amount of the differences were relatively small. In order to create a more regionally diverse sample and avoid distortions in the PSAF calculation due to institutions at the extremes, the Board believes it is reasonable to use the sample of the 25 largest bank holding companies. However, to avoid unusual distortions, the bank holding companies with the lowest and the highest returns on equity will be eliminated from the 25 company sample before the actual calculations are made. Should changing market-to-book relationships imply any material affect on PSAF recoveries, the choice of the 25 largest bank holding companies as the basis for the PSAF calculation will be reevaluated.

There are other factors that constrain in the income stream generated by the Federal Reserve's priced service operations. The most significant of these is that the Federal Reserve does not have the same "profit maximization" objectives as a private firm. For example, the Federal Reserve's priced service operations have limited investment opportunity. Specifically, the Federal Reserve's investments are, by assumption, limited to Treasury bills, whereas any profit maximizing firm would hold a substantial portion of its investments in higher yielding instruments.

B. *Book Value of Physical Assets*—Twenty-five commenters discussed the use of book value of physical assets in the calculation of the PSAF. Thirteen commenters supported the use of book value to determine the value of physical assets as being consistent with the practices in the private sector and among bank holding companies.

Twelve commenters opposed the use of book value and supported the use of current market value to determine the value of physical assets, many stating that a book value system used for

accounting or tax purposes is inappropriate for pricing, investment, or production decisions. Several commenters noted that the use of book value causes geographic distortions between Federal Reserve Districts with new buildings and those with old buildings, and suggested that the Federal Reserve follow Financial Accounting Standards Board (FASB) Statement number 33 which requires reporting of assets at current value.

The Board continues to believe that the practice of using book value for physical asset valuation is appropriate. The practice of using book value for property, plant, and equipment is consistent with banking industry practice and with generally accepted accounting principles. Moreover, establishing financial performance standards based upon historical costs is a prevalent practice throughout the private sector. Furthermore, under the provisions of FASB Statement number 33 (the accounting profession's current methodology for supplementary disclosure of inflation-adjusted financial data), if assets were revalued to reflect market value rather than book value, an adjustment would also have to be made in income. Finally, since a market value accounting system does not exist, the Federal Reserve—like all other entities—has no practical choice other than the use of net book values.

The use of market valuation of physical assets has theoretical appeal because the use of net book value by the Federal Reserve or the banking industry could result in distortions and inefficiences if book values were far removed from market values. Such does not appear to be the case with respect to the Federal Reserve.

Approximately one-third of the physical assets used by the Federal Reserve in the provision of priced services is equipment. The great bulk of such assets is computers and related equipment for which the market value does not appear greater than its book value—in fact, the book value appears to be much greater than market value for this equipment. For example, there are two computer models owned by the Federal Reserve that, as a result of technological innovation, have a market value that is $9–10 million less than their book values.[1]

With respect to Reserve Bank buildings, the best proxy for market value available to the Federal Reserve is the alternative use of space; that is, what rent could the Federal Reserve obtain for its space or what would the Federal Reserve have to pay if the priced service operations were moved out of a Federal Reserve Bank's building to other comparable space. The Federal Reserve faces a practical problem, however, when making comparisons of book and market values of its space because, in general, only a portion of a Reserve Bank's facility is used for priced service operations and space costs are charged through the Federal Reserve's Planning and Control System (PACS) at one rate for all activities—priced and nonpriced within a building—regardless of location. Thus, prime space, which is typically not used for priced services, may tend to be undervalued whereas less than prime space for priced service activities may tend to be overvalued.

Analysis of the space costs [2] the Federal Reserve imposes on its internal operations (based on PACS standard rates) and prevailing commercial space rentals in all cities in which the Federal Reserve maintains operations shows that there are Reserve offices with PACS space costs above and below local market rates. However, in an overall weighted average cost basis, the PACS charge (including PSAF) per square foot for Reserve Banks is $16.83, well within the weighted average market range of $13.41 to $20.90. Further, of the nearly one million square feet in the Federal Reserve devoted to check operations, approximately 30 percent is rented—primarily for RCPC's—thus explicitly reflecting the market rate in these locations. It therefore appears that continued use of book value for calculating the PSAF is reasonable. Board staff will continue to monitor this matter closely.

C. *Income Taxes*—The Board requested public comment on whether to use an income tax rate based on taxes actually paid, or a tax rate which takes into account deferred taxes, for the income tax rate used in the PSAFF calculation.[3] Three commenters supported the Board's present methodology. Ten commenters supported inclusion of deferred taxes as being a better representation of the tax liability of a private company, if effective tax rates for bank holding companies were used. Twenty-three commenters stated that marginal tax rates were more appropriate.

Deferred taxes arise principally from accelerated depreciation. Including the effect of deferred taxes would increase the tax rate used for purposes of the PSAF in some years and decrease the tax rate inother years. (The effect of excluding dererred taxes for 1984 is to increase the dollars to be recovered through the PSAF by $1.3 million). Over time, it is likely that the effect of using dererred taxes would balance out. Because it is administratively complex to include deferred taxes in the PSAF calculation, (e.g., separate depreciation schedules would have to be developed), it is reasonable that the PSAF computation not take into account deferred taxes.

With regard to the use of marginal tax rates, the taxes actually paid by the bank holding companies in the model—or by most other firms—are not at the maximum marginal tax rate. Therefore, while the Federal Reserve would use the marginal tax rate for prospective investment analysis purposes, it would not be appropriate to use the marginal tax rate for purposes of calculating the PSAF.

In order to judge the reasonableness of the tax rate developed from the model, the income taxes the Federal Reserve would actually pay in 1984 if the Federal Reserve was subject to income taxes was approximated. This analysis suggests that even without the benefits of (1) investment tax credits from any year other than the year for which taxes are being calculated, (2) tax benefits from accelerated depreciation applicable to the Federal Reserve, and (3) the normal tax minimization efforts that businesses follow, a 38.6 percent tax rate appears appropriate. If any allowance for the three factors cited above were made, the actual tax rate might be considerably lower than 38.6 percent.

Some commenters suggested the Federal Reserve look at domestic tax rates of bank holding companies for purposes of determining its assumed tax liability because the Federal Reserve's priced services are entirely domestic. A study on financial institutions prepared by staff of the Joint Committee on Taxation showed that, for 20 large commercial banks, the average U.S. effective tax rate for the most recent year studied, 1981, was 2.7 percent.[4] The

[1] The Reserve Banks intend to use this equipment for the length of time originally contemplated in the depreciation schedules.

[2] Cost of space to be recovered through pricing includes utilities, depreciation, taxes, housekeeping and building maintenance labor, the supervision of that labor, and the PSAF.

[3] In the past, the tax rate used in the PSAF calculation was based on the rato of current income taxes (Federal, state and local) to total income of the bank holding companies included in the sample. Deferred taxes were excluded from this ratio. An adjustment was made to the tax rate to exclude any benefits that banks derive from holding tax exempt state and local government securities.

[4] Staff of Joint Committee on Taxation, Committee on Finance, Taxation of Banks and Thrift Institutions, 12 (Joint Comm. Print, March 11, 1983).

corresponding foreign and worldwide average effective rates were 38.1 and 24.5 respectively. The 2.7 percent and 24.5 percent effective tax rates are significantly lower than the 38.6 percent effective tax rate in the PSAF calculation.

D. *Direct Determination of Assets*—Seventeen commenters supported the proposal to replace the expense ratio method for asset determination with the direct determination method based on PACS, stating that it would be a more precise measurement of the assets used in the production of priced services. Concern was expressed by six commenters over the data structure of PACS, and the allocations of assets between priced and non-priced services. These commenters urged the Board to make available to the public details of the asset allocation between priced and non-priced services embodied in PACS. One commenter opposed the proposal stating that PACS would underallocate assets to the priced services.

The original PSAF methodology apportioned all long-term assets, and certain short-term assets such as materials and supplies, deferred charges and other receivables on the basis of the ratio of operating expenses for priced services (less shipping) to total priced and non-priced operating expenses (less shipping) to total priced and non-priced operating expenses (less shipping). This approach resulted in apportioning approximately 40 percent of the total book value of assets to the priced service assets base to be financed via the PSAF.

It is important, however, that shared (joint-purpose) assets and single-purpose assest be precisely linked to priced services so that a priced service asset base accurately and fully identifies assets employed in the provision of priced services. The direct determination method relies essentially on PACS cost accounting to link single-purpose assets directly to priced and non-priced services, thus determining more precisely the priced service asset base. In addition, PACS provides the same information for assets, such as buildings and centralized computers, that are used jointly in the provision of priced and non-priced services. For example, depreciation is included in total occupancy costs, which are redistributed to all PACS activities. Because depreciation is linked directly to assets carried on the Federal Reserve's balance sheet, the assets can be linked to the production of priced and non-priced services.

For illustrative purposes, the check processing operation currently occupies approximately 13 percent of total System floor space. Therefore, 13 percent of the net book value of buildings is directly attributable to the check service. In addition, the amount of space occupied by each support activity and each overhead service whose costs are redistributed or allocated to the check service is known. Since the precentage of expenses that each support and each overhead service redistributed or allocated to check as a percentage of total expenses is also known, that percentage rate can be used to determine the additional building values to be attributable to the check service. As a result, a total of 22 percent of the net book value of building assets can be attributed to the check service and included in the priced service asset base. Similar calculations are made for other long-term assets. This process, followed for each of the Federal Reserve's priced services, ultimately produces a priced service asset base that includes all assets directly identified with a priced service and the appropriate portion of shared assets that relate to priced services.

E. *Board of Governors Assets and Expenses*—The Board proposed that expenses incurred by Board staff in the development of prices be subject to recovery. Nineteen commenters supported this proposal. Eight of these commenters stated that the allocation should also include expenses and assets indirectly related to priced services, such as planning, budgeting, review, monitoring, policy making and control. Several commenters noted that the proposal paralleled private sector practices.

The Board believes it is appropriate to include expenses incurred by Board staff working on the development of priced services ($1.9 million) in the expense subject to recovery and the Board assets employed in this activity ($.5 million) in the PSAF asset base, begining in 1984. However, the Board believes it would be inappropriate to impose expenses associated with the Board's supervisory responsibilities over Reserve Banks when the Federal Reserve does not assess charges on member banks and bank holding companies for other types of supervisory activities.

F. *Sales Taxes*—Twenty-seven comments were received on the proposal to include in the PSAF an estimate of sales taxes that would have been paid by the Reserve Banks had they not had a statutory exemption. Twenty-five commenters supported the proposal. Two commenters opposed including sales taxes on the basis that sales tax is not a cost incurred by Reserve Banks.

The Board believes that an allowance for sales taxes the Federal Reserve Banks would have paid were they subject to such taxes should be included as a cost of providing priced services. For 1984, the total Federal Reserve sales tax attributed to priced services is approximately $4.9 million.

G. *Shipping Expenses*—Thirteen commenters discussed the proposal to exclude shipping expenses from the PSAF calculation. Eleven commenters supported the exclusion of shipping expenses, and two commenters stated that shipping expenses should be included.

The assets employed in the production of shipping services are not Federal Reserve assets, but rather are owned by the various carriers with whom the Reserve Banks deal. When priced service assets are determined directly instead of on an expense ratio basis, the removal of shipping expenses from the calculation has no effect on total recoveries. Staff expenses of managing shipping services are recovered through overhead allocations as well as direct allocations to priced service activities. Accordingly, the Board determined not to include shipping expenses in the calculation of the PSAF.

H. *Date for the Asset Base Estimate*—Eighteen respondents discussed the Board's proposal that the asset base for the year in which the PSAF would apply be adjusted to reflect the value of the assets expected to be acquired and disposed of in that year. Seventeen commenters supported the proposal, stating that it would be an improvement over the current method of using the average asset base from the previous year and would be more consistent with private sector practices. Two commenters opposed the proposal; one commenter stated it was inconsistent with cost theory used in the private sector.

The Board has determined that adjusting the asset base used in applying the PSAF for the value of assets expected to be acquired or disposed of in the year for which the PSAF would apply better reflects the actual assets used to provide priced services. Further, it appears that this modification would parallel private sector practices. Accordingly, the Board has adopted the procedure as proposed.

I. *Leased Assets*—Fourteen commenters supported the proposal that all leases becoming effective on or after January 1, 1984, and meeting criteria of FASB Statement number 13 be capitalized for purposes of determining the PSAF. Several commenters stated the proposal was in accord with

industry practice and generally accepted accounting standards. Other commenters discussed leased assets in terms of the impact of leases on capital structure. They stated that leased assets do not appear on the Federal Reserve's books, but, that if a private entity were to issue debt, lenders would regard lease obligations as if they were debt and adjust that entity's capital structure accordingly. In their opinion, high levels of leases preclude high levels of debt.

The Board has determined to include the value of all Federal Reserve leases that become effective on or after January 1, 1984, that meet the criteria for capitalization as set forth in FASB Statement number 13 in the calculation of the PSAF. This amount is expected to be $1.5 million. Of this amount, it is anticipated that $0.9 million is related to priced service activities. Since the financing costs (interest payments) associated with these leases are explicitly reflected in the operating expenses to be recovered through pricing, there would be no effect upon the PSAF or the costs to be recovered if these leases were capitalized. Furthermore, these leases would not affect the Federal Reserve's debt/equity ratio as asserted by some of the commenters in view of the *de minimus* level of capitalized leases. The amount of leases entered into prior to January 1, 1984, that satisfy the requirements of FASB Statement number 13 is small and no adjustments appear necessary.

J. *Short-Term Assets*—1. *Float.* Sixteen commenters discussed the proposal to remove the financing costs of new adjustment float from the asset base used for the PASF calculation. Ten commenters supported the proposal in view of the fact that the value of all Federal Reserve check float will be recovered through service fees in 1984. Six commenters were opposed to the proposal. A few commenters suggested that float be financed at either the short-term rate applicable to the bank holding companies in the model or the rate equivalent to the imputed weighted average cost of capital computed in the PASF calculation.

The Board determined that it is appropriate to remove the financing costs of net adjustment float from the asset base to be financed via the PSAF since the value of Federal Reserve check float will be recovered fully through explicit pricing in 1984. In view of the self-financing characteristics inherent in recovering float value through explicit pricing, inclusion of financing costs for net adjustments float in the Federal Reserve's asset base would result in a double recovery. With regard to the suggestion that float be financed by alternative rates, the MCA requires interest of items credited prior to collection to be charged at the Federal funds rate.

2. *Cash Items.* Several commenters stated that the level of short-term assets was two low and that a large short-term asset, cash items in the process of collection (CIPC), has been omitted from the pro forma balance sheet. These commenters also tied the inclusion of CIPC to the requirement that commercial banks must maintain 5 percent of assets as capital, stating that a bank holding company model, if applied consistently, would require the Federal Reserve to comply with capital guidelines established by the Federal Reserve and the Comptroller of the Currency for large banks and bank holding companies.

The Federal Reserve, by virtue of its check processing operations, has large amounts of cash items in the process of collection each day. The difference between cash items in the process of collection and deferred availability items is float, the value of which must be recovered under the Monetary Control Act. Cash items in the process of collection that are offset by deferred availability items are costless and thus need not be financed by the PSAF or otherwise. Therefore, insofar as the Federal Reserve's overall net income is concerned, the only "cost" associated with cash items in the process of collection arises from the net balances created which, in accordance with the MCA, are effectively priced at the Federal funds rate.

As several commenters stated, the gross amount of cash items typically is included on the balance sheet of a commercial bank, and a commercial bank's gross cash items are subject to regulatory capital guidelines. By extension, it was suggested that a five percent primary capital ratio, if applied to a Federal Reserve balance sheet that included the gross amount of cash items, would require considerably more capital than provided for in the PSAF calculation.

The Federal Reserve does not believe this conclusion is warranted. First, cash items are not a risk asset—a fact that is implicitly recognized in the development of regulatory capital guidelines. Second, cash items represent only 4 percent of the total assets of the banking organizations in the sample. If these items were removed from the total assets of commercial banks, the resulting primary capital ratio guideline would be increased to about 5.2 percent. The comparable ratio of equity to total assets on the Federal Reserve's pro forma balance sheet is about 9 percent. Consequently, when the primary capital ratio is adjusted to take account of cash items in the process of collection, it appears that the Federal Reserve's capital provided for in the PSAF calculation is reasonable.

3. *Clearing Balances.* The Board also had proposed to adjust the method for calculating earnings credits on clearing balances to take into account reserve requirements applicable had similar balances been held at a correspondent bank. Thirteen commenters supported the proposal.

If a respondent's balance is maintained at a correspondent bank, the correspondent would be required to maintain reserves on the balances held. In most cases, the correspondent would be at a marginal reserve requirement ratio of 12 percent. Generally, the correspondent bank takes its marginal reserve requirement into account when it calculates the earnings credit on the respondent's balances. The respondent, however, would receive an additional benefit from being able to deduct balances held at the correspondent from its reservable transaction accounts. Accordingly, it is appropriate to take this into account in calculating earnings credits on clearing balances.

The Board has determined to adjust the method used for calculating earnings credits to reflect the reserve requirements that would apply if the balances had been held with a correspondent bank. Each respondent's balance would be reduced by an imputed net interbank reserve requirement. This would be calculated as the 12 percent requirement that a correspondent would be subject to, less the reserve saving to the respondent if it could deduct the balance from reservable transaction accounts. Preliminary estimates indicate that this would reduce the rate at which depository institutions are paid earnings credits on clearing balances by about 7 percent. At the same time, an imputed reserve burden of 12 percent would be imposed upon the Federal Reserve's revenues from clearing balances.

K. *District vs. National PSAF*—Three commenters advocated that the Federal Reserve use a district rather than a national PSAF. These commenters argued that such a policy would more directly and fully recognize differences in costs among Reserve cities, and thus help to promote a more competitive environment.

The Federal Reserve believes that a national PSAF is appropriate for several reasons. First, the Federal Reserve's

electronic payment services are priced on a national basis to recognize the national nature of such services. This approach has broad support among private banking organizations. Thus, a district PSAF would be incompatible with the underlying nature of these services and the current approach to the pricing of such services.

Second, while check processing and definitive securities operations are priced at the district level, even these services are, in many ways, national in nature. For example, almost 50 percent of the checks and 70 percent of the coupons processed by the Federal Reserve are handled by more than one office.

Third, where district prices are used, such prices already reflect the effect of local costs for wages, utilities, property, taxes, and other factors of production. Moreover, the costs of capital to the Federal Reserve (as, for example, the interest rates it would pay on debt) would be uniform and national. Thus, the use of a district PSAF, would, as a practical matter, mean only that the distribution of the quantity of capital among Federal Reserve Districts would change. Such a change would not have a material impact on actual prices but would introduce a major element of complexity into pricing and price schedules. Indeed, under this approach, the quantity of capital first would have to be divided among national and district services and then, for district services, be determined for each of the Federal Reserve's 48 offices. The result would be a massive matrix of PSAF's, which would be an administrative nightmare.

Fourth, as best can be judged, private organizations—including banks—typically do not vary their prices on the basis of the specific capital resources used to produce a specific service at a specific location. The fees for a checking account, for example, generally do not vary depending on whether the account is held at a very high-rent central city location or a suburban or rural branch. Thus, the local PSAF would imply a standard of performance in the Federal Reserve which appears to be at odds with conventional business practices.

Finally, the characteristics of many capital assets used by Federal Reserve Banks are fixed by national policies and standards. For example, security standards for buildings, automation standards, and standards calling for redundant back-up operating systems influence the capital base at all Federal Reserve offices in ways that result in capital resources that are different than might be the case if each Federal Reserve office were a stand-alone entity. In short, because the Federal Reserve Banks are part of a national system, many of their activities are national in scope and are influenced by national policies. Consequently, reflecting this reality, it is appropriate to have a single, uniform PSAF for all Reserve Banks.

L. *FDIC Insurance*—Several commenters expressed the view that the PSAF should include the Federal deposit insurance assessment that would apply to the Federal Reserve if its deposits were Federally insured. A review of the pro forma balance sheet for Federal Reserve priced service operations shows that approximately $1.7 billion of clearing balances would be subject to the Federal deposit insurance assessment if the Federal Reserve were a member of the FDIC. Because virtually all correspondent banks are members of the FDIC, it is reasonable for the Federal Reserve to add to the PSAF the deposit insurance expense that otherwise would have been incurred by the Federal Reserve.

Applying the formula for calculating the Federal deposit insurance assessment based on the Federal Reserve's pro forma balance sheet results in a Federal deposit insurance assessment of $1.2 million.

Board Action

After analysis of the comments received on the proposed modifications to the methodology for calculating the PSAF for 1984, the Board has determined that the most appropriate model from which to impute taxes and the costs of capital for Reserve Banks consists of a sample of large bank holding companies. The Board has also decided to expand the sample size of the model from the 12 largest bank holding companies to the 25 largest bank holding companies. However, to prevent distortions, the Board has determined that the best performing bank holding company and the worst performing bank holding company of the 25 in the sample should be excluded from the calculations.

The Board has also approved the following adjustments to the methodology for calculating the PSAF:

—Employ the direct determination methodology for establishing the asset base used for computing the PSAF.
—Include in the priced services asset base for 1984 the net effect of those assets expected to be acquired and disposed of during the year.
—Recover the estimated sales taxes that would have been paid on the purchases of certain goods and services were Reserve Banks subject to such taxes.
—Include those portions of expenses and fixed assets of the Board of Governors related to the development of priced services.
—Include an imputation for FDIC insurance assessment.
—Remove the financing costs of net adjustment float from the asset base because such float is now priced explicitly.

As a result of these changes, the estimated dollars to be recovered through the PSAF in 1984 will be $58.8 million. If the current methodology were used for 1984, the PSAF recovery would be $53.6 million.

The Board has also adopted the proposed adjustment to the method for calculating earnings credits on clearing balances to take into account reserve requirements the Reserve Banks would be subject to if they were subject to reserve requirements. This adjustment, however, will require substantial modifications to Reserve Banks' existing software. Therefore, implementation of this action will take place when the necessary modifications have been made later this year.

Factors bearing on the calculation of the PSAF such as capital structure changes in the large bank holding companies or changes in their cost of capital will be closely monitored and changes to the methodology for calculating the PSAF to take such changes into account will be considered where appropriate.

By order of the Board of Governors of the Federal Reserve System, March 20, 1984.

William W. Wiles,

Secretary of the Board.

TABLE 1.—*Summary of Changes From Proposed 1984 PSAF*

Total PSAF recoveries—October public comment	[illegible]
Change due to:	
Reclassification of Board of Governors expenses	+1.9
Inclusion of Federal deposit insurance assessment	+1.2
Updating prospective evaluation of assets for 1984	+0.2
Change in treatment of leasehold improvements	+0.1
Inclusion of prepaid expenses other	+0.4
Change in value of materials and supplies	+0.3
Updating capital structure	−0.8
Updating financing rates through 3rd quarter 1983	−0.7
PSAF recoveries for 1984	58.8

TABLE 2.—*Derivation of the 1984 PSAF*

A. Assets to be financed:[1]	
Short-term	$32.3
Long-term	[2]273.8
Total	306.1
B. Weighted average cost of:	
1. Capital Structure:[3]	
Short-term debt (percent)	10.6
Long-term debt (percent)	[illegible]
Equity (percent)	61.0
2. Financing rates/costs:[3]	
Average rates paid by the bank [illegible] companies included in the sample:	
Short-term debt (percent)	[illegible]
Long-term debt (percent)	10.14

TABLE 2.—*Derivation of the 1984 PSAF*—Continued

Pre-tax equity (percent)[4]	[illegible]
3. Elements of capital costs:	
Short-term debt $32.3 × 9.23%	[illegible]
Long-term debt $87.1 [illegible] × 10.14%	[illegible]
Equity $186.7 [illegible] × 20.90%	[illegible]
Total	[illegible]
C. Other required PSAF recoveries:	
Sales Taxes	4.9
Federal deposit insurance assessment	1.2
Board of Governors expenses	1.9
Total	8.0
D. Total PSAF recoveries	[illegible]
As a percent of capital	19.21
As a percent of expenses [5]	15.25

[1] Priced service asset base is based on direct determination of assets method.
[2] Consists of total long-term assets less capital leases which are self-financing.
[3] All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 31.8 percent are assumed to be financed by long-term debt, and 68.2 percent by equity.
[4] The pre-tax rate of return on equity is based on average after-tax rates of return on equity for the bank holding company sample, adjusted by the effective tax rate to yield the pre-tax rate of return on equity.
[5] Systemwide 1984 budgeted priced service expenses less shipping were $365.8 million.

TABLE 3.—1984 PSAF

	Revised	Preliminary
I. Assets to be financed (million):		
Current	[illegible]	$27.1
Long-term	[illegible]	[illegible]
II. Cost of capital:		
Short-term debt rate (percent)	[illegible]	9.48
Long-term debt rate (percent)	10.14	10.01
Pre-tax equity rate (percent)	20.90	21.25
Weighted average cost of capital (percent)	[illegible]	17.20
III. Tax rate (percent)	[illegible]	[illegible]
IV Capital structure:		
Short-term debt (percent)	10.6	[illegible]
Long-term debt (percent)	[illegible]	[illegible]
Equity (percent)	[illegible]	[illegible]
PSAF:		
Recovery	[illegible]	[illegible]
As percent of capital	19.21	[illegible]
As percent of expenses	15.25	14.51

TABLE 4.—CHANGES BETWEEN 1984 PRELIMINARY AND 1984 REVISED BALANCE SHEET

	Revised 1984	Preliminary 1984
Short-term assets:		
Imputed reserve requirements on clearing balances	$147.4	
Investment in marketable securities	1,080.6	$1,000.0
Receivables	23.7	[illegible]
Materials and supplies	4.3	1.9
Prepaid expenses	4.3	1.6
Net items in process of collection (float)	477.0	
Total short-term assets	1,737.3	1,027.1
Long-term assets:		
Premises [1]	176.7	[illegible]
Furniture and equipment	[illegible]	87.7
Leases and leasehold improvements	2.4	
Total long-term assets	274.7	[illegible]
Total assets	2,012.0	1,296.0
Short-term liabilities:		
Clearing balances	1,228.0	1,000.0
Balances arising from early credit of uncollected items	477.0	

TABLE 4.—CHANGES BETWEEN 1984 PRELIMINARY AND 1984 REVISED BALANCE SHEET—Continued

	Revised 1984	Preliminary 1984
Short-term debt [2]	32.3	27.1
Total short-term liabilities	1,737.3	1,027.1
Long-term liabilities:		
Obligation under capital leases	[illegible]	
Long-term debt [2]	[illegible]	79.1
Total long-term liabilities	[illegible]	79.1
Total liabilities	1,825.3	1,106.2
Equity [2]	186.7	[illegible]
Total liabilities and equity	2,012.0	1,296.0

[1] Includes an allocation of $0.5 million in Board of Governors' assets to priced services.
[2] Imputed figures representing the means through which certain priced service assets are financed.

[FR Doc. 84-7971 Filed 3-23-84; 8:45 am]
BILLING CODE 6210-01-M

Sevier County Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 16, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Sevier County Bancshares,* Inc., Sevierville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Sevier County Bank, Sevierville, Tennessee.

2. *Shamrock Holdings, Inc.,* Evergreen, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of The Union Bank, Repton, Alabama.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alliance Bancorp,* Danville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Danville State Bank, Danville, Indiana.

2. *Valley Banc Services Corp.,* Antioch, Illinois; to become a bank holding company by acquiring 82 percent of the voting shares of Hinckley State Bank, Hinckley, Illinois.

c. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Newport Bancshares, Inc.,* Newport Arkansas; to acquire at least 90 percent of the voting shares of Planters and Stockman Bank, Pocahontas, Arkansas.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Underwood Holding Company, Inc.,* Underwood, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank, Underwood, North Dakota.

2. *Elysian, Inc.,* Elysian, Minnesota; to become a bank holding company by acquiring 81.2 percent of the voting shares of Elysian State Bank, Elysian, Minnesota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Ban-Corporation,* Rock Port, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of the following bank holding companies: Ridgeway Bancshares, Inc., Bethany, Missouri, and thereby indirectly acquiring Farmers National Bank, Bethany, Missouri; 100 percent of the voting shares of Security Bancshares, Inc., Gallatin, Missouri, and thereby indirectly acquiring Bank of Gallatin, Gallatin, Missouri, and Albany State Bank, Albany, Missouri; and 100 percent of the voting shares of New Hampton Bancshares, Inc., New Hampton, Missouri, and thereby indirectly acquiring First State Bank of New Hampton, New Hampton, Missouri.

F. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President)

400 South Akard Street, Dallas, Texas 75222:

1. *New Dumas Bancshares, Inc.*, Dumas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Moore Bancshares Corporation, Dumas, Texas, and thereby indirectly acquiring First State Bank of Dumas, Dumas, Texas.

2. *Weatherford National Bancshares, Inc.*, Weatherford, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Weatherford National Bank, Weatherford, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7972 Filed 3-23-84; 8:45 am]

BILLING CODE 6210-01-M

Independent Bankers Financial Corporation, et al.; Applications To Engage De Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1984.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Bankers Financial Corporation*, Dallas, Texas; to make, acquire or service for its own account or for the account of others loans, such as would be made, for example, by any commercial, mortgage or consumer finance company.

2. *Independent Bankers Financial Corporation*, Dallas, Texas; to engage through its subsidiary, Independent Bankers Marketing Corporation, in providing management consulting advice, including but not limited to, market development, advertising programs, and public relations to non-affiliated bank and non-bank depository institutions.

Board of Governors of the Federal Reserve System, March 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7973 Filed 3-23-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Control Technology Assessment of Fermentation Processes, Field Study of Hearing in Impulse and Continuous Noise-Exposed Workers; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Control Technology Assessment of Fermentation Processes

Dated: April 11, 1984.
Times: 9:00 a.m. to 2:00 p.m.
Place: Conference Room C, 555 Ridge Avenue, Cincinnati, Ohio 45213.
Purposes: To review a project which will document control techniques currently used in large-scale fermentation processes (specifically enzyme operations) and identify effective controls for fermentation applications.

Additional information may be obtained from: Kenneth F. Martinez, Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-4295, Commercial: 513/684-4295.

Field Study of Hearing in Impulse and Continuous Noise-Exposed Workers

Date: April 30, 1984.
Time: 9:00 a.m. to 4:00 p.m.
Place: Room B-56, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
Purpose: To review a project which is a field study of hearing thresholds in workers exposed to impulse and continuous noise.

Additional information may be obtained from: Ms. Nadine Dickerson, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-3283, Commercial: 513/684-8283.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: March 16, 1984.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 84-7982 Filed 3-23-84; 8:45 am]

BILLING CODE 4160-19-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exclusion of the Bureau of Indian Affairs and the Office of Territorial and International Affairs Programs From Coverage Under E.O. 12372, "Intergovernmental Review of Federal Programs"

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of exclusion.

SUMMARY: The Department indicated in a notice published in the **Federal Register** on June 24, 1983 (48 FR 29235), that a list of the Indian and Territories programs which are not covered by the Executive Order would be published in a separate **Federal Register** notice at a later date. The list of programs is below.

Catalog No.	Program name	Administering bureau
15.103	Indian Social Services—Child Welfare Assistance.	Bureau of Indian Affairs.
15.106	Indian Employment Assistance.	Do.
15.113	Indian Social Service—General Assistance.	Do.
15.114	Indian Education—Higher Education Grant Program.	Do.
15.123	Indian Loans—Claims Assistance.	Do.
15.124	Indian Loans—Economic Development.	Do.

Catalog No.	Program name	Administering Bureau
15.130	Indian Education—Assistance to Schools.	Do.
15.141	Indian Housing Assistance	Do.
15.142	Self Determination Grants—Indian Tribal Governments.	Do.
15.143	Training and Technical Assistance—Indian Tribal Governments.	Do.
15.144	Indian Child Welfare Act—Title II Grants.	Do.
15.875	Economic and Political Development of the Territories and the Trust Territory of the Pacific Islands.	Office of Territorial and International Affairs.

FOR FURTHER INFORMATION CONTACT: Office of Acquisition and Property Management, Division of Acquisition and Grants, 18th and C Streets, NW., Washington, D.C. 20240, (202) 343–6431.

Dated: March 14, 1984.

Richard R. Hite,

Deputy Assistant Secretary of the Interior.

[FR Doc. 84-8035 Filed 3-23-84; 8:45 am]

BILLING CODE 4310-10-M

Presidential Commission on Indian Reservation Economies; Public Hearings and Site Visits

AGENCY: Presidential Commission on Indian Reservation Economies, Department of the Interior.

ACTION: Notice of Meetings.

SUMMARY: This notice set forth the dates, time and location of forthcoming hearings and site visits of the Presidential Commission on Indian Reservation Economies for April, 1984:

1. *April 9, 1984 (Monday)—Hearing.* Wahweap Lodge, Page, Arizona; Time: 9:00 a.m.—5:00 p.m.
2. *April 10, 1984 (Tuesday)—Hearing.* Navajo Nation, Window Rock, Arizona; Time: 9:00 a.m.—5:00 p.m.
3. *April 26, 1984 (Thursday)—Hearing.* Cavanaugh's Inn at the Park, West 303 N. River Drive, Spokane, Washington 99201; Time: 9:00 a.m.—5:00 p.m.
4. *April 27, 1984 (Friday)—Site Visits.* Nez Perce—Reservation, Lapwai, Idaho.

Coeur D'Alene—Reservation, Plummer, Idaho.

The purpose of the hearings will be to receive both oral and written testimony from Indian leaders, Indian businessmen and other representatives from the tribal, public and private sectors concerning the development and sustainment of viable economic enterprises within Indian reservation environments. The site visits will enable the Commission to witness first hand both problems and successes associated with economic and business development on Indian reservations.

Parties interested in testifying at a hearing should present their testimony in writing either in advance of the hearing or at the onsite registration for the hearing. An oral summary of the testimony may be given at the hearing. Those desiring to submit written testimony and make an oral presentation should submit in writing a brief statement of the general nature of the testimony to be presented, the names and addresses of proposed participants and an indication of the approximate time required to make their presentation. This information should be sent to Sandra Gjelde, Office of Public Hearings, Presidential Commission on Indian Reservation Economies, Suite 765, 1717 H Street, Northwest, Washington, D.C. 20006. Questions regarding testimony or registration procedures may also be directed to Ms. Gjelde at (202) 653–2436. The agenda for oral testimony will be completed five days in advance of each hearing.

Any person attending a hearing who has not requested an opportunity to speak five days in advance of the meeting, will be allowed to make an oral presentation at the conclusion of the hearing, if time permits and at the discretion of the Co-Chairman.

FOR FURTHER INFORMATION CONTACT: Eric Rudert, Deputy Director, Presidential Commission on Indian Reservation Economies, 1717 H Street, Northwest, Suite 765, Washington, D.C. 20006. Telephone (202) 653–2436.

Eric Rudert,

Deputy Director, Presidential Commission on Indian Reservation Economies.

[FR Doc. 84-7987 Filed 3-23-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[W-71185]

Wyoming; Proposed Continuation of Withdrawal

Correction

In the issue of Thursday, March 8, 1984, on page 8686 in the third column, a correction to FR Doc. 84–4953 appeared. The land description in the last line was inaccurate. It should read "NW¼SE¼".

BILLING CODE 1505-01-M

Office of Surface Mining Reclamation and Enforcement

Availability of Draft Environmental Impact Statement and Public Hearing for the Proposed John Henry No. 1 Mine, King County, Washington

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of draft environmental impact statement and public hearing.

SUMMARY: The Office of Surface Mining (OSM) is making available for public review and comment a draft environmental impact statement (EIS) on Pacific Coast Coal Company's proposed John Henry No. 1 mine, east of the city of Black Diamond, King County, Washington. The draft EIS analyzes the impacts on the human environment that would result from surface coal mining operations at this proposed mine and evaluates the two alternative actions of approval, with or without conditions, and disapproval that OSM could take on the permit application for this mine in accordance with the Surface Mining Control and Reclamation Act of 1977. The EIS will assist OSM in making its decision on this application. OSM is accepting written comments and will conduct a public hearing to receive oral comments on the draft EIS.

DATES: *Comment period.* Written comments on the draft document must be received by 4:00 p.m., May 21, 1984.

Public hearing. A public hearing will be held starting at 7:00 p.m. on May 2, 1984, and will continue until all who desire to speak have been heard.

ADDRESSES: *Written comments.* Send or hand-deliver to Allen D. Klein, Administrator, Attn: Charles Albrecht, OSM, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

Public hearing. A public hearing will be held in the Multipurpose Room of Black Diamond Elementary School, Black Diamond, Washington.

Availability of Copies: Copies of the draft EIS may be obtained from Allen D. Klein, Administrator, Attn: Charles Albrecht, Office of Surface Mining, Western Technical Center, Second Floor, Brooks Towers, 1020 15th Street, Denver Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, Chief, Environmental Analysis Branch, OSM, Western Technical Center, 1020 15th Street, Denver, Colorado 80202 (telephone: 303–837–5421).

SUPPLEMENTARY INFORMATION:

Written Comments

Written comments should be as specific as possible. OSM appreciates all comments, but those most useful and likely to influence decisions in the preparation of the final EIS are those which will provide facts and analyses to support any recommendations or conclusions. OSM cannot assure that written comments received after the

time indicated under "**DATES**" will be considered or included in the preparation of the final EIS.

Public Hearing

Filing of a written statement by commenters at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions, which could be asked to clarify or to elicit more specific information from the person commenting. A public hearing will continue on the specified date until all persons who are present in the audience and wish to comment have been heard. Commenters will be limited to 10 minutes of oral testimony per person.

Abstract of the Draft EIS

Pacific Coast Coal Company proposes to mine a maximum of 385,000 tons per year of run-of-mine coal at peak production levels or 5.32 million tons over 16.2 years at its John Henry No. 1 mine. The proposed minesite is located partly within the city limits of Black Diamond, Washington. A coal processing facility capable of producing 250,000 tons of clean coal per year is also proposed. Approximately 363 acres would be distrubed during the life of the mine. Reclamation (spoil backfilling and contouring, topsoil replacement, and vegetation planting) would be completed within 19 years of commencement of the mining operation. The applicant has proposed a 32.5-acre, 250-foot-deep lake; OSM has made no decision on whether the new lake, in the current location of Mud Lake, would meet regulations pertaining to restoration of approximate original contour and postmining land use objectives. There is one other small surface coal mine operating in the immediate vicinity of the proposed John Henry No. 1 mine; no plans for other coal mine development in the area are known, although additional coal reserves exist in the area. The John Henry No. 1 mine would have moderately significant social and economic impacts upon the community of Black Diamond, Washington, and the residents of unincorporated King County adjacent to the mine. In addition, impacts to topography, surface and ground water, soils, vegetation, and wildlife resources would be moderately significant. Impacts on other resources would not be significant, in that the capacity of those resources to meet anticipated uses would largely be maintained during mining or would be restored by reclamation.

Dated: March 20, 1984.

Allen O. Perry,

Acting Assistant Director, Technical Services and Research.

[FR Doc. 84-7994 Filed 3-23-84; 8:45 am]

BILLING CODE 4310-05-M

[Federal Lease Nos. W-0311810, W-0312311, and W-0313668]

Availability of Draft Environmental Impact Statement and Public Hearing on the Proposed East Gillette Federal Mine, Campbell County, Wyoming

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of the draft environmental impact statement (OSM–EIS–15) and public hearing.

SUMMARY: The Office of Surface Mining (OSM) is making available for public review and comment a draft environmental impact statement (EIS) on the proposed East Gillette Federal mine, Campbell County, Wyoming. This EIS has been prepared to assist the Department in making a decision on Kerr-McGee Coal Corporation's application to surface mine coal east of the city of Gillette, Wyoming. OSM is accepting written comments, and will conduct a public hearing to receive oral comments, on the draft EIS. All interested parties are invited to attend this hearing to give their comments.

DATES: *Comment period.* Written comments on the draft EIS must be received by 4:00 p.m. (Mountain standard time), May 29, 1984, at the location listed below under "**ADDRESSES.**"

Public hearing. A public hearing on the draft EIS will be held on May 8, 1984, at 7:00 p.m. (local time) at the location listed below under "**ADDRESSES.**"

ADDRESS: *Written comments.* Hand deliver or mail to Allen D. Klein, Administrator, Attn: Charles Albrecht, Office of Surface Mining, Western Technical Center, Second Floor, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

Public hearing. A public hearing on the draft EIS will be held the Campbell County Recreation Center (West Entrance), 1000 Douglas Highway, Gillette, Wyoming.

Availability of Copies: Copies of the draft EIS may be obtained from the Allen D. Klein, Administrator, Attn: Charles Albrecht, Office of Surface Mining, Western Technical Center, Second Floor, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, Chief, Environmental Analysis Branch (Telephone: 303–837–5421) at the location given under "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

Written comments

Written comments should be as specific as possible. OSM appreciates all comments, but those most useful and likely to influence decisions in the preparation of the final EIS are those which provide facts and analyses to support any recommendations or conclusions. OSM cannot assure that written comments received after the time indicated under "**DATES**" or at locations other than that listed under "**ADDRESSES**" will be considered or included in the preparation of the final EIS.

Public hearing

Filing of a written statement by commenters at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions, which could be asked to clarify or to elicit more specific information from the person commenting. The public hearing will continue on the specified date until all persons who are present in the audience and wish to comment have been heard. Commenters will be limited to 10 minutes of oral testimony per person.

Background

Kerr-McGee Coal Corporation proposes to mine an average of 11 million tons of coal per year, or 256 million tons of coal over a 25-year period, at its East Gillette Federal mine. The proposed mine would disturb 2,604 acres of land. Six coal mines are currently in operation, and one more is proposed for operation, in the general vicinity of Kerr-McGee's proposed mine. The Secretary of the Interior must make a decision on Kerr-McGee Coal Corporation's permit application package in accordance with the Surface Mining Control and Reclamation Act of 1977. The draft EIS evaluates the two alternative actions that ISM could take on this permit application package. These actions are approval of the mining plan, with or without conditions, and issuance of a Federal permit to mine coal, and disapproval of the mining plan, in which case no Federal permit to mine coal would be issued. The EIS analyzes the impacts on the human environment that would result from approval of the mining plan and issuance of a Federal

permit to mine coal by OSM for Kerr-McGee Coal Corporation's proposed mine. If approved, mining and related activities at the East Gillette Federal mine would have major short-term impacts upon the vegetation and visual resources of the area. Impacts to certain socioeconomic resources of the area would be moderate. If start-up of the operation were delayed for several years, the impacts to the socioeconomic environment could be major owing to a cumulative effect with other mining operations in the area. Mining would have major long-term impacts upon geologic strata and soils. Impacts to air quality, topography, transportation, and ground water would be moderate. Other impacts would be typical of those resulting from surface coal mining operations in northeastern Wyoming and would be minor.

Dated: March 20, 1984.

Allen O. Perry,

Acting Assistant Director, Technical Services and Research.

[FR Doc. 84-7985 Filed 3-23-84; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than (ten days after publication). Comments may also be addresseed to, and copies of the submissions obtained from the Reports Management Officer, Ms. Melita E. Yearwook, (202) 632-3378, IRM/MMP, Room 708B, SA-12, WAshington, D.C. 20523.

Date Submitted: March 14, 1984.

Submitting Agency: Agency for International Development.

OMB Number: None.

Form Number: NA.

Type of Submission: New.

Title: Matching Grant Schedule.

Purpose: This collection specifies the selection criteria and proposal format for applications by private voluntary organizations for matching Grants to be awarded in the coming year.

Reviewer: Francine Picoult (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: March 14, 1984.

Fred D. Allen,

Acting Chief, Mandated Management Programs.

[FR Doc. 84-8034 Filed 3-23-84; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket Nos. 30376 and 30377]

Amherst Industries, Inc., et al., Exemption From 49 U.S.C. 10905(f)(4); the Landisville Railroad, Inc., Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10505, the Interstate Commerce Commission exempt Landisville Railroad, Inc., from Subtitle IV of 49 U.S.C. for the acquisition and operation of a 3-mile segment of track located in Lancaster County, PA. Because the acquisition is pursuant to an intracorporate transfer, it was unnecessary to grant an exemption from the provision of 49 U.S.C. 10905(f)(4) which would otherwise prohibit the transfer of rail property acquired under 49 U.S.C. 10905 for a period of 5 years.

DATES: This exemption shall become effective on April 25, 1984. Petitions for stay must be filed by April 5, 1984, and petitions for reconsideration must be filed by April 16, 1984.

Send pleading to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: William Jackson, 3426 North Washington Blvd., Post Office Box 1240, Arlington, VA 22210

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: February 16, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8012 Filed 3-23-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30397]

Burlington Northern Railroad Company, Abandonment Exemption, In Hennepin County, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Cimmission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by Burlington Northern Railroad Company of 3.44 miles of rail line in Hennepin County, MN, between milepost 0.00 near Hopkins and milepost 3.44 near Hopkins Jct., subject to employee protective conditions.

DATES: This exemption shall become effective on April 25, 1984. Petitions for stay must be filed by April 5, 1984, and petitions for reconsideration must be filed by April 16, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30397 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Thomas A. Ehlinger, 176 E. Fifth St., St. Paul MN 55101

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7545.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: March 19, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8014 Filed 3-23-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30399]

Cliffside Railroad Company-Exemption-Purchase of Track From Seaboard System Railroad, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition by Cliffside Railroad Company 4.14 miles of track of Seaboard System Railroad, Inc., in Rutherford County, NC, from the requirements of 49 U.S.C. 11343.

DATES: This exemption shall become effective on April 25, 1984. Petitions for stay must be filed by April 5, 1984, and petitions for reconsideration must be filed by April 16, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30399 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Charles M. Rosenberger, Esq., 500 Water Street, Jacksonville, FL 32202
(3) Neil W. Koonce, Esq., 1201 Maple Street, Greensboro, NC 27405

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll free (800) 424–5403.

Decided: March 19, 1984.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–8013 Filed 3–23–84; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 30414]

Iowa Northern Railway, Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Iowa Northern Railway from the provisions of 49 U.S.C. 11301 in connection with issuance of 53,500 shares of $10 par stock and two promissory notes totalling $330,000.

DATES: This exemption is effective on March 26, 1984. Petitions to reopen must be filed by April 16, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30414 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington DC 20423
(2) Petitioner's representative: Peter A. Gilbertson, Suite 350, 1575 Eye Street, NW., Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–8015 Filed 3–23–84; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 1–5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register** February 27, 1980 (45 FR 12769), will meet on April 11, 1984 starting at 10:00 a.m. in Room 104A, of the Department of Agriculture, Administration Building, Independence Avenue, SW. between 12th and 14th Streets, Washington, D.C. 20250. The meeting will be open to the public.

The agenda provides for:

I. Call to Order
II. Approval of Minutes of October 12, 1983
III. Announcements
IV. Proposed Changes to Articles of Organization
V. Level II Statistical Program
VI. Reports:
  A. Medical Records Issue
  B. Interdisciplinary Committee on Hazard Abatement
  C. Proposed Safety Managers' Meeting
  D. Policy Paper on Occupational Health Issues
VII. Adjournment

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business April 6, 1984, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the council at the meeting should submit a written request to be heard by close of business April 6, 1984. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presention and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Consitution Avenue, NW., Room N3613, Washington, D.C. 20210. telephone (202) 523–9329.

Signed at Washington, D.C., this 21st day of March 1984.

Thorne G. Auchter,

Assistant Secretary.

[FR Doc. 84–8010 Filed 3–23–84; 8:45 am]
BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84–26]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Form Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed form, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by April 5, 1984. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS:

Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, D.C. 20546

Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT:

Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453–2921, or Kenneth Allen, OMB, (202) 395–3785.

Report

Title: Space Transportation System; Duty-Free Entry of Space Articles.

Control Number: 2700–A031.

Type of Request: New.

Frequency of Report: As required.

Type of Respondent: Individuals or households; state or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

Annual Responses: Unknown.

Annual Reporting Hours: Nominal.

Abstract-Needs/Uses: This collection of information will provide guidance on the use of the Administration's authority to certify that space articles may be imported duty-free. The data collected will enable NASA to monitor and evaluate the extent of applications for benefits and the conformance of statutory requirements of Pub. L. 97–446 for duty-free entry of space materials into the U.S.

Dated: March 20, 1984.

L. W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 84-7983 Filed 3-23-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Determination of Renewal

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, I have hereby determined that the 12 advisory committees listed below are necessary and are in the public interest in connection with the performance of duties imposed upon the National Science Foundation by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Advisory Committee for Astronomical Sciences
Advisory Committee for Atmospheric Sciences
Advisory Committee for Chemistry
Advisory Committee for Earth Sciences
Advisory Committee for Engineering
Advisory Committee for International Programs
Advisory Committee for Materials Research
Advisory Committee for Ocean Sciences
Advisory Committee for Physics
Advisory Committee for Polar Programs
Advisory Committee for Policy Research and Analysis and Science Resources Studies
Advisory Committee for Industrial Science and Technological Innovation

Authority for these advisory committees shall expire on March 30, 1986, unless the Director of the National Science Foundation formally determines that continuance is in the public interest.

Dated: March 21, 1984.

Edward A. Knapp,

Director

[FR Doc. 84-8038 Filed 3-23-84; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Advisory Committee for Computer Research; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), it is hereby determined that the establishment of the Advisory Committee for Computer Research is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to Section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

Name of Committee: Advisory Committee for Computer Research.

Purpose: To provide advice, recommendations, and oversight concerning the directions for and impacts of the Foundation's support of computer research.

Effective Date of Establishment and Duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation.

Membership: The membership of this Committee shall be fairly balanced in terms of the points of view represented and the Committee's function. Members will be chosen so as to be reasonably representative of the scientific and engineering communities supported by the research directorates of the Foundation. Due consideration will be given to achieving representation from women and minority scholars, the handicapped, and different geographical regions of the country.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463), Foundation policy and procedures, GSA Interim Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

March 20, 1984.

Richard Nicholson,

Acting Deputy Director.

[FR Doc. 84-8036 Filed 3-23-84; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Advisory Committee for Mathematical Sciences; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), it is hereby determined that the establishment of the Advisory Committee for Mathematical Science is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to Section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

Name of Committee: Advisory Committee for Mathematical Sciences

Purpose: To provide advice, recommendations, and oversight concerning the directions for and impacts of the Foundation's support of mathematical science.

Effective Date of Establishment and Duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation.

Membership: The membership of this Committee shall be fairly balanced in terms of the points of view represented and the Committee's function. Members will be chosen so as to be reasonably representative of the scientific and

engineering communities supported by the research directorates of the Foundation. Due consideration will be given to achieving representation from women and minority scholars, the handicapped, and different geographical regions of the country.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463), Foundation policy and procedures, GSA Interim Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

March 21, 1984.

Edward A. Knapp,

Director.

[FR Doc. 84–8037 Filed 3–23–84; 8:45 am]
BILLING CODE 7555–01–M

Committee Management; Notice of Establishments

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I have determined that the establishment of the 40 Advisory Committees listed below are necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Directorate for Engineering

Advisory Committee for Chemical and Process Engineering (CPE)

Purpose: Provides advice, recommendations, and counsel on major goals and policies pertaining to chemical and process engineering activities and programs. It also provides oversight concerning support for research and research-related activities in the various programs in the CPE Division.

Membership: Consists of not more than 17 persons eminent in their respective fields of endeavor or specification as related to the areas of interest of the Division.

Advisory Committee for Civil and Environmental Engineering (CEE)

Purpose: Provides advice, recommendations, and counsel on major goals and policies pertaining to engineering activities and programs. It also provides oversight concerning support for research and research-related activities in the CEE Division.

Membership: Consists of not more than 15 persons eminent in their respective fields of endeavor or specification as related to the areas of interest of the Division.

Advisory Committee for Earthquake Hazard Mitigation (EHM)

Purpose: Provides advice, recommendations, and counsel on major goals and policies pertaining to engineering activities and programs. It also provides oversight concerning support for research and research-related activities in the Division of Civil and Environmental Engineering.

Membership: Consists of not more than 17 persons eminent in their respective fields of endeavor or specification as related to the areas of interest of the Earthquake Hazard Mitigation Section.

Advisory Committee for Electrical, Computer, and Systems Engineering (ECSE)

Purpose: Provides advice, recommendations, and counsel on major goals and policies pertaining to electrical, computer, and systems engineering activities and programs. It also provides oversight concerning support for research and research-related activities in the ECSE Division.

Membership: Consists of not more than 17 persons eminent in their respective fields of endeavor or specification as related to the areas of interest of the Division.

Advisory Committee for Mechanical Engineering and Applied Mechanics (MEAM)

Purpose: Provides advice, recommendations, and counsel on major goals and policies pertaining to activities and programs within and related to the MEAM Division. It also provides oversight concerning support for research and research-related activities in the Programs of Fluid Mechanics, Heat Transfer, Solid Mechanics, Mechanical Systems, and Production Research as well as any other Programs that are added to the Division in the future.

Membership: Consists of not more than 13 members. Appointees shall be eminent in the respective fields which shall be related to Programs of the Division.

Directorate for Astronomical, Atmospheric, Earth, and Ocean Sciences

Advisory Panel for Ocean Sciences Research

Purpose: To review and evaluate specific proposals requesting NSF support for research and research-related activities in physical and biological oceanography, marine chemistry, and submarine geology and geophysics.

Membership: Consists of approximately 18 persons selected from the scientific community in ocean sciences.

Earth Sciences Proposal Review Panel

Purpose: Provides advice and recommendations concerning the scientific merit of unsolicited research proposals and research-related proposals received by the Foundation in the earth sciences area.

Membership: Consists of approximately 20 persons selected from the scientific community in earth sciences.

Directorate for Biological, Behavioral, and Social Sciences

Division of Behavioral and Neural Sciences

Advisory Panel for Social and Cultural Anthropology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Social and Cultural Anthropology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 5 persons selected from the scientific community in Social and Cultural Anthropology.

Advisory Panel for Archaeology and Physical Anthropology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Archaeology and Physical Anthropology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 8 persons selected from the scientific community in Archaeology and Physical Anthropology.

Advisory Panel for Anthropological Systematic Collections

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in anthropological Systematic Collections. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 5 persons selected from the scientific community in Anthropological Systematic Collections.

Advisory Panel for Linguistics

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Linguistics. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 6 persons selected from the scientific community in Linguistics.

Advisory Panel for Memory and Cognitive Processes

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Memory and Cognitive Processes. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 6 persons selected from the scientific community in Memory and Cognitive Processes.

Advisory Panel for Psychobiology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Psychobiology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 10 persons selected from the scientific community in Psychobiology.

Advisory Panel for Social and Developmental Psychology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Social and Developmental Psychology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 6 persons selected from the scientific community in Social and Developmental Psychology.

Advisory Panel for Sensory Physiology and Perception

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Sensory Physiology and Perception. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 9 persons selected from the scientific community in Sensory Physiology and Perception.

Advisory Panel for Molecular and Cellular Neurobiology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Molecular and Cellular Neurobiology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 8 persons selected from the scientific community in Molecular and Cellular Neurobiology.

Advisory Panel for Integrative Neural Systems

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Integrative Neural Systems. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 6 persons selected from the scientific community in Integrative Neural Systems.

Advisory Panel for Developmental Neurosciences

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Developmental Neurosciences. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 8 persons selected from the scientific community in Developmental Neurosciences.

Division of Biotic Systems and Resources

Advisory Panel for Systematic Biology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Systematic Biology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 10 persons selected from the scientific community in Systematic Biology.

Advisory Panel for Population Biology and Physiological Ecology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Population Biology and Physiological Ecology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 10 persons selected from the scientific community in Population Biology and Physiological Ecology.

Advisory Panel for Ecology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Ecology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 9 persons selected from the scientific community in Ecology.

Advisory Panel for Ecosystem Studies

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Ecosystem Studies. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 9 persons selected from the scientific community in Ecosystem Studies.

Division of Social and Economic Science

Advisory Panel for Political Science

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Political Science. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of 6 persons selected from the scientific community in Political Science.

Advisory Panel for Economics

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Economics. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of 9 persons selected from the scientific community in Economics.

Advisory Panel for Geography and Regional Science

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Geography and Regional Science. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of 5 persons selected from the scientific community in Geography and Regional Science.

Advisory Panel for Law and Social Sciences

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Law and Social Sciences. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 6 persons selected from the scientific community in Law and Social Sciences.

Advisory Panel for Decision and Management Science

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Decision and Management Science. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 6 persons selected from the scientific community in Decision and Management Science.

Advisory Panel for History and Philosophy of Science

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in History and Philosophy of Science. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 8 persons selected from the scientific community in History and Philosophy of Science.

Advisory Panel for Regulation and Policy Analysis

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Regulation and Policy Analysis. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 5 persons selected from the scientific community in Regulation and Policy Analysis.

Advisory Panel for Measurement Methods and Data Resources

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Measurement Methods and Data Resources. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 7 persons selected from the scientific community in Measurement Methods and Data Resources.

Advisory Panel for Sociology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Sociology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 7 persons selected from the scientific community in Sociology.

Division of Physiological, Cellular, and Molecular Biology

Advisory Panel for Instrumentation

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Instrumentation. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 11 persons selected from the scientific community in Instrumentation.

Advisory Panel for Development Biology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Developmental Biology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 22 persons selected from the scientific community in Developmental Biology.

Advisory Panel for Cell Biology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Cell Biology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 18 persons selected from the scientific community in Cell Biology.

Advisory Panel for Regulatory Biology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Regulatory Biology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 15 persons selected from the scientific community in Regulatory Biology.

Advisory Panel for Cellular Physiology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Cellular Physiology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 15 persons selected from the scientific community in Cellular Physiology.

Advisory Panel for Metabolic Biology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Metabolic Biology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 15 persons selected from the scientific community in Metabolic Biology.

Advisory Panel for Biochemistry

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Biochemistry. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 13 persons selected from the scientific community in Biochemistry.

Advisory Panel for Biophysics

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Biophysics. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 13 persons selected from the scientific community in Biophysics.

Advisory Panel for Genetic Biology

Purpose: The primary purpose is to review and evaluate specific proposals requesting NSF support for research and research-related activities in Genetic Biology. Additionally, the Panel provides oversight, general advice, and policy guidance.

Membership: Consists of approximately 26 persons selected from the scientific community in Genetic Biology.

Balanced Membership: The membership on the Advisory Committees will be fairly balanced in the terms of the points of view represented and the committees'

functions. Members will be chosen so as to insure a balance of subspecialty competence, geographical distribution, and representation of women, minorities, and the handicapped.

Establishment and Duration: The Advisory Committees are effective on the date the charters are filed with the Director, NSF, and the standing committees of Congress having legislative jurisdiction of the National Science Foundation. The Advisory Committees will continue for 2 calendar years from the date of this filing.

Advisory Committee Operation: The Advisory Committees will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463); Foundation policy and procedures; General Services Administration Interim Regulation on Advisory Committee Management; and other directives and instructions issued in implementation of the Act.

Waiver

On March 2, 1984, the National Science Foundation published a notice in the **Federal Register** announcing that 17 committees due to expire on March 1, 1984 were being extended until March 30. The General Services Administration concurred in this extension to allow sufficient time for review of the Foundation's proposed committee structure. The restructuring involved separately chartering subcommittees and terminating their parent committees. To prevent disruption of meeting schedules, anticipated meetings of parent committees have been scheduled as meetings, of the appropriate subcommittees. The GSA Committee Management Secretariat's has waived the 15-day waiting period for charter filing, pursuant to the publication of this notice. All etablishments and renewals will be filed on March 30, 1984.

March 21, 1984.

Edward A. Knapp,

Director.

FR Doc. 84–8039 Filed 3–23–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published February 21, 1984 (49 FR 6420). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. Those Subcommittee meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the April 1984 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

**Qualification Program for Safety-Related Equipment,* March 29, 1984, Washington, DC. The Subcommittee will review the status of Generic Issue A–46, "Seismic Qualification of Equipment for Operating Reactors" and review details of the NRC Electrical Equipment Qualification and Plant Aging Research Programs. Notice of this meeting was published February 29, 1984 (49 FR 7480).

**Class 9 Accidents,* March 30, 1984—Postponed.

**Extreme External Phenomena,* April 4, 1984, Washington, DC. The Subcommittee will review the generic methodology for developing design basis severe winds for SEP plants and review the specific application to Ginna.

**Emergency Core Cooling Systems,* April 24, 1984, Washington, DC. The Subcommittee will continue the review of the joint NRC/B&W/EPRI integral test program.

**Emergency Core Cooling Systems,* April 25, 1984, Washington, DC. The Subcommittee will continue the review of the General Electric SAFER ECCS EM Code.

**Qualification Program for Safety-Related Equipment,* April 25, 1984, Washington, DC. The Subcommittee will discuss qualification and maintenance of electrical terminal blocks.

**Air Systems,* April 26, 1984, Washington, DC. The Subcommittee will review general design for compressed air systems, chilled water systems, and the prioritization of Generic Safety Issues related to heating, ventilating, and air conditioning in nuclear power plants.

**Combined Indian Point 1 and 2 and Reliability and Probabilistic Assessment,* April 26, 1984 (tentative), Washington, DC. The Subcommittee will discuss the Indian Point PRA, the issues addressed in the recent ASLB hearing on Indian Point, and severe accident issues associated with Indian Point.

**Class 9 Accidents,* April 27, 1984, Washington, DC. The Subcommittee will discuss the final Severe Accident Policy Statement.

**Reactor Operations,* May 3, 1984, Washington, DC. The Subcommittee will review AEOD's Trends and Patterns Program Plan and have a discussion of methods that will allow ACRS to hear reports of significant plant operating experience.

**Maintenance Practices and Procedures,* May 8, 1984, Washington, DC. The Subcommittee will review the NRC Integrated Maintenance Task Action Plan and continue review of maintenance practices and procedures.

**Safety Research Program,* May 9, 1984, Washington, DC. The Subcommittee will review the proposed NRC Safety Research Program and Budget for FY 1986–1987 and gather information for use by the ACRS in its preparation of the ACRS report to the Commission on the related matter.

**Braidwood Nuclear Power Plant,* May 9, 1984, Washington, DC. The Subcommittee will primarily review the QA/QC aspects of Byron/Braidwood plants.

**Fort St. Vrain,* May 17, 1984, Longmont, CO. The Subcommittee will review plant operating experience.

**Metal Components,* May 17 and 18, 1984, Washington, DC. The Subcommittee will discuss reactor coolant water chemistry and its effects on material behavior, and review the status of pressurized thermal shock and BWR pipe cracking matters.

**River Bend Nuclear Power Plant,* date to be determined, St. Francisville, LA. The Subcommittee will review the application of the Gulf States Utilities for an operating license.

**Regulatory Activities,* June 12, 1984, Washington, D.C. The Subcommittee will review Regulatory Guide 1.35, Rev. 3, "Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containment Structures;" Regulatory Guide 1.35.1, "Determining Prestressing Forces for Inspection of Prestressed Concrete Containments;" and proposed

general revisions to Appendix J to 10 CFR 50.

Safety Research Program, June 13, 1984, Washington, D.C. The Subcommittee will continue the review of the proposed NRC Safety Research Program and Budget for FY 1986–1987 and also to discuss a draft ACRS report to the Commission on the related matter.

Millstone Unit 3, Date to be determined (late July), Waterford, CT. The Subcommittee will review the application of the Northeast Nuclear Energy Company for an operating license.

Westinghouse Water Reactors, Date to be determined, Washington, D.C. The Subcommittee will continue review of the Westinghouse Advanced Pressurized Water Reactor for Preliminary Design Approval. This meeting will be closed.

ACRS Full Committee Meeting

April 5–7, 1984: Items are *tentatively* scheduled.

*A. *Ginna Nuclear Power Plant*—Full term operating license.

*B. *Maintenance Policy and Practice*—Briefing regarding maintenance policies and practices in the nuclear industry.

*C. *Passive Containment System*—Discuss proposed ACRS activities regarding the request for a preapplication review of the Passive Containment System.

*D. *Meeting with NRC Commissioners*—Meeting with NRC Commissioners to discuss ACRS comments on the proposed NRC Safety Research Program for FY 1985, ACRS participation in quality assurance/quality control activities, establishment of an NTSB type board to evaluate nuclear power plant accidents/incidents and ACRS participation in the risk assessment of the Indian Point Nuclear Station (tentative).

*E. *Activities of NRC Regional Offices*—Briefing by NRC Regional Administrator.

*F. *Appointment of ACRS Members*—Candidates proposed for appointment to the Committee will be discussed.

*G. *Severe Accident Policy Statement*—Briefing regarding status of proposed NRC policy statement regarding consideration of severe accidents in the regulatory program.

*H. *Reports of Designated ACRS Subcommittees*—Subcommittees will report on the status of assigned activities including topics such as decay heat removal from nuclear power plants.

*I. *Performance of Undervoltage Trip Attachments*—Representatives of the NRC Staff will brief the Committee on a proposed NRC Bulletin regarding performance of undervoltage trip attachments on circuit breakers in nuclear plants.

*J. *Regulatory Guide 1.97, Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident*—Briefing regarding status of implementation.

May 10–12, 1984—Agenda to be announced.

June 14–16, 1984—Agenda to be announced.

Dated: March 21, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-8057 Filed 3-23-84; 8:45 am]

BILLING CODE 7590-01-M

Issuance of Director's Decision on Integrated Containment Leak Rate Testing at Commercial Nuclear Power Facilities

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision pursuant to 10 CFR 2.206 concerning the petitions dated November 29, 1983 and the addendum dated January 6, 1984 filed by Mr. Edward M. Gogol alleging inadequacies in the conduct of integrated leak rate testing at U.S. nuclear power reactors, including specifically La Salle Units 1 and 2 and Byron Unit 1.

The petitions and addendum allege severe errors, defects and loopholes in the integrated leak rate testing method now in use. A variety of relief is requested including placing La Salle Unit 1 in cold shutdown, ceasing further construction and licensing activities with respect to La Salle Unit 2 and Byron Unit 1, shutting down reactors with insufficient evidence of adequate containment leak rate testing and making available to the public all leak rate test data from the La Salle, Byron, and Cook plants. The Director, Office of Nuclear Reactor Regulation, has determined to deny petitioner's requests pursuant to 10 CFR 2.206.

The reasons for this decision are explained in the "Director's Decision under 10 CFR 2.206" (DD–84–6) which is available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. 20555, and at the local public document rooms for the La Salle County and Byron Stations, located respectively at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348 and the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 16th day of March 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-8055 Filed 3-23-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I

The Consumers Power Company (CPC) (the licensee) is the holder of Facility Operating License No. DPR–6 which authorizes operation of the Big Rock Point Plant, located in Charlevoix County, Michigan, at a rated power level of 240 megawatts (thermal). This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section III.G.3 of Appendix R to 10 CFR Part 50 requires fire detection and a fixed fire suppression system in areas for which alternate shutdown capability is provided. By letter dated October 20, 1983, Consumers Power Company requested and exemption from Section III.G.3 of Appendix R to 10 CFR Part 50 for the condsensate pump room and the turbine generator room.

For the condensate pump room the licensee requested an exemption from the Section III.G.3 requirement for a fixed fire suppression system. The licensee based the request on the following arguments. The condensate pump room is separated from the rest of the rooms on the same floor (elevation 593') by 2-hour fire barriers. The combustible loading in the area is light. A fire detection system and manual fire suppression equipment are provided in the room.

The staff's review of the licensee's arguments indicates that the factors cited by the licensee provide reasonable assurance that a fire in the condensate pump room would be promptly detected and extinguished, and that a fire in the area would not threaten safety equipment in adjacent fire areas. The alternate shutdown capability to be provided independent of the condensate pump fire area assures that even if this area suffers a major fire, safe shutdown

can still be achieved. The staff concludes that the installation of a fixed fire suppression system would not significantly increase the level of fire protection in this area.

Based on our evaluation, we conclude that the existing fire protection in conjunction with alternate shutdown capability for the condensate pump room provides a level of fire protection equivalent to the technical requirements of Section III.G.3 of Appendix R, and therefore, the exemption should be granted.

For the turbine generator room, the licensee requested an exemption from the Section III.G.3 requirements for a fire detection system and a fixed fire suppression system. The licensee based the request on the following argument. The turbine generator room is separated from the remainder of the plant by 3-hour rated fire barriers. The fire loading throughout the area is light. Where there are concentrations of combustibles, automatic sprinkler systems are provided. These areas include, the reactor feedwater pumps, the hydrogen seal oil unit and control cabinet, the main condenser, pipe tunnel, electric shop, and temporary stock room. Manual fire fighting equipment is available in the area.

The staff agrees that the factors cited by the licensee show that any fires might be expected to occur in this area would be promptly detected and extinguished and would not threaten safety equipment in adjacent fire areas. As with the condsensate pump room, an alternate shutdown system independent of the turbine generator room assures that safe shutdown can be achieved even if a major fire occurred in this room. On this basis the installation of a fixed fire suppression system would not significantly increase fire protection in this area.

Based on our evaluation, we conclude that the existing fire protection in conjunction wit h alternate shutdown capability for the turbine gnerator room provides a level of fire protection equivalent to the technical requirements of Section III.G.3 of Appendix R, and therefore, the exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, these exemptions are authorized by law and will not endanger life or property or the common defense and security, are otherwise in the public interest. Therefore, the Commission hereby grants the following exemptions:

1. An exemption to Section III.G.3 to exclude the condensate pump room from the requirement for a fixed fire suppression system.

2. An exemption to Section III.G.3 to exclude the turbine generator room from the requirement for a fire detection system and a fixed fire suppression system.

The Commission has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the action.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 20th day of March 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-8064 Filed 3-23-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354-OL; ASLBP No. 83-492-05 OL]

Public Service Electrical and Gas Company, et al.; Hope Creek Generating Station, Unit 1; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Public Service Electric and Gas Company, et al.* (Hope Creek Generating Station, Unit 1), Docket No. 50-354-OL, is hereby reconstituted by appointing Administrative Judge David R. Schink in place of Administrative Judge James A. Carpenter.

As reconstituted, the Board is comprised of the following Administrative Judges:

Marshall E. Miller, Chairman
Dr. Peter A. Morris
Dr. David R. Schink

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is:

Administrative Judge David R. Schink, Department of Oceanography, Texas A&M University, College Station, Texas 77840

Dated at Bethesda, Maryland, this 20th day of March, 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-8056 Filed 3-23-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office Of Management And Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

New

EDGAR Questionnaire

No. 270-284

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance a voluntary questionnaire to public reporting issuers seeking information about the electronic equipment they use in preparation of Commission filings. The Commission will use the information to determine electronic filing system specifications which will permit the greatest number of issuers to file information electronically.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Dated: March 20, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8007 Filed 3-23-84; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

March 20, 1984.

In the Matter of Applications of the Midwest Stock Exchange, Inc. for unlisted trading privileges in certain securities; Securities Exchange Act of 1934.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted

trading privileges in the following stocks:

URS Corporation
Common Stock, $.25 Par Value (File No. 7–7395)
Guilford Mills, Inc.
Common Stock, $.02 Par Value (File No. 7–7396)
Sea Containers Ltd.
Common Stock, $.01 Par Value (File No. 7–7397)
Fansteel Inc.
Common Stock, $5 Par Value (File No. 7–7398)
Advanced Systems Inc.
Common Stock, $.10 Par Value (File No. 7–7399)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 10, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8009 Filed 3–23–84; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–7567]

URS Corp.; Application To Withdraw

March 20, 1984.

In the Matter of URS Corporation, Common Stock, $.25 Par Value, 8¾% Convertible Subordinated Debentures (due 2008); notice of application to withdraw from listing and registration.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified securities from listing and registration of the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

1. The common stock and debentures of URS Corporation ("Company") are listed and registered on the Amex. Pursuant to a Registration Statement on Form 8–A which became effective on February 23, 1984, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock and debentures on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock and debentures from listing and registration on the Amex and shall have no effect upon the continued listing of the stocks on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before April 10, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8008 Filed 3–23–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23251; 70–6860 and 70–6698]

American Electric Power Co., Inc. et al.; Hearings

March 19, 1984.

In the Matter of American Electric Power Company, Inc., AEP Generating Company, 1 Riverside Plaza, Columbus, Ohio 43216; Indiana & Michigan Electric Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801; Proposal To Amend Revolving Credit Agreement, Capital Funds Agreement and Owners' Agreement.

American Electric Power Company, Inc. ("AEP"), a registered holding company, Indiana & Michigan Electric Company, an electric utility subsidiary of AEP, and AEP Generating Company ("AEGCo"), a wholly-owned generating subsidiary of AEP, have filed post-effective amendments to their application-declarations in these proceedings pursuant to Sections 6(a), 7, 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder. These proceedings are hereby consolidated.

By order dated March 24, 1982 (HCAR No. 22429) AEGCo was authorized to acquire and I&M was authorized to sell a 35% undivided interest in the two units of the Rockport Generating Station ("Rockport Plant"), which is currently under construction in Spencer County, Indiana. By order dated Februry 18, 1982 (HCAR No. 22392) Kentucky Power Company ("KPCo"), also a wholly-owned subsidiary of AEP, was authorized to acquire from I&M a 15% undivided interest in the Rockport Plant. I&M, AEGCo and KPCo are parties to an Owners' Agreement, dated as of March 31, 1982, pursuant to which AEGCo and KPCo are obligated to acquire and pay for their respective ownership interests.

By orders dated March 24, 1982 (HCAR No. 22429), February 16, 1983 (HCAR No. 22857) and February 9, 1984 (HCAR No. 23218) AEGCo was authorized to issue and reissue unsecured promissory notes evidencing borrowings in the aggregate principal amount of up to $450 million at any one time outstanding through December 31, 1989, from a group of ten commercial banks pursuant to a revolving credit agreement ("Revolving Credit Agreement"), as amended. Borrowings by AEGCo under the Revolving Credit Agreement, together with other funds available to AEGCo, including funds made available by AEP pursuant to a capital funds agreement ("Capital Funds Agreement"), as amended, are applied to construction costs for the Rockport Plant and to pay AEGCo's proportionate share of "equalization payments" with respect to previous construction costs by I&M. As of February 21, 1984, AEGCo has outstanding notes evidencing borrowings under the Revolving Credit Agreement in the aggregate principal amount of $150 million.

By order dated June 13, 1983 (HCAR No. 22973), AEGCo was authorized to borrow up to $300 million from one or more commercial banks at any time through March 31, 1984, pursuant to one or more long-term fixed-rate loan agreements ("Term Loan Agreement"), and to enter one or more "interest rate swap" agreements at any time through March 31, 1984, with respect to up to $300 million principal amount of unsecured notes issued or to be issued to a group of commercial banks by AEGCo pursuant to the Revolving Credit Agreement. The June 13, 1983 order, as modified December 30, 1983 (HCAR No.

23192), specifies that aggregate borrowings pursuant to the Term Loan Agreement and the Revolving Credit Agreement (with or without any related "interest rate swap") may not exceed $450 million, and that AEGCo must reduce the aggregate commitments of the banks under the Revolving Credit Agreement by the amount of any borrowings under the Term Loan Agreement maturing after June 30, 1989. It further specifies that AEGCo may enter into "interest rate swap" agreements having a term extending not later than December 31, 1989, the final maturity date of all borrowings under the Revolving Credit Agreement. As of February 21, 1984, AEGCo has issued $225 million principal amount of long-term unsecured fixed-rate promissory notes to several commercial banks pursuant to Term Loan Agreements.

KPCo's performance of its obligations under the Owners' Agreement has been suspended since September 1982 pending the resolution of various legal challenges to the authorization by the Kentucky Public Service Commission allowing KPCo to acquire and own a 15% undivided interest in the Rockport Plant. Since that time, AEGCo, in accordance with the Owners' Agreement, has paid all construction costs associated with the two units of the Rockport Plant. If KPCo is not permitted to acquire its 15% interest, and AEGCo shall acquire its 35% interest, then I&M will be obligated for construction expenditures associated with a 65% undivided ownership interest in the plant, rather than its intended 50% undivided ownership interest. The organization of AEGCo and proposed sale of 35% undivided interest in the two units of the Rockport Plant to AEGCo was part of a plan that was intended to reduce I&M's direct ownership of the two units of the Rockport Plant to an undivided 50% interest, thereby limiting the associated financing burdens on I&M.

Unit No. 1 of the Rockport Plant is scheduled to be placed in commercial operation in late 1984. It is expected that the date when steam is generated in the boiler and fed to the turbine of Unit No. 1 for testing ("Initial Turbine Roll Date") may occur as early as August, 1984. Under the Owners' Agreement, the Initial Turbine Roll Date is the last date upon which AEGCo and KPCo must acquire their respective interests. Accordingly, AEGCo and I&M propose to amend the Owners' Agreement to provide that, in the event that KPCo is ultimately denied authority to acquire and own it 15% undivided interest in the Rockport Plant, or a decision is made that the likelihood of KPCo's performance prior to the Initial Turbine Roll Date is impractical and unlikely in light of the current status of regulatory proceedings and other legal challenges, AEGCo's interest shall be increased from 35% to 50%, and KPCo's interest shall be reduced to and remain at zero. Under these conditions, AEGCo, rather than I&M, would pay the Rockport construction costs associated with the additional 15% interest previously planned for KPCo.

A proposed amendment to the Owners' Agreement provides, among other things, that AEGCo shall reimburse KPCo directly for construction costs previously incurred by KPCo (approximately $50 million) and that KPCo shall acknowledge the reduction of its interest under the Owners' Agreement to zero.

AEP and AEGCo also propose to amend the Capital Funds Agreement, under which AEP must provide AEGCo funds to perform its obligations under the Owners' Agreement. Further, in such event, I&M and AEGCo propose to amend the Unit Power Agreement, under which AEGCo has agreed to make available to I&M and I&M has agreed to pay for the right to receive all power to which AEGCo may be entitled at the Rockport Plant. The amendments are intended to reflect the increased obligations of AEP and I&M, under the Capital Funds and Unit Power Agreements.

The overall limitation of AEGCo's borrowing authority was intended to provide AEGCo with sufficient source of external debt financing, based on the assumption that AEGCo would acquire and own a 35 percent undivided interest in the Rockport Plant. In the event that AEGCo becomes obligated to acquire and own a 50 percent interest in the two units of the Rockport Plant, AEGCo's needs for external funds in 1984 will increase substantially. Specifically, it is projected that AEGCo's need for borrowed funds will exceed $600 million by the end of 1984. Accordingly, AEGCo now requests that the Commission increase the overall limitation on AEGCo's borrowing authority under the Term Loan Agreement and the Revolving Credit Agreement (with or without any "interest rate swap") from $450 million at any one time outstanding to $650 million at any one time outstanding.

It is further proposed that the Commission extend AEGCo's authorization to borrow pursuant to the Term Loan Agreement and to enter into "interest rate swap" agreements through December 31, 1985. As of February 21, 1984, AEGCo has borrowed $225 million pursuant to nine separate Term Loan Agreements; it has not entered into any "interest rate swap" agreements. AEGCo continues to believe that it is in its best interests to "fix" up to $300 million of its debt requirements in the form of long-term borrowings under the Term Loan Agreement if and when interest rates become more favorable, and to enter into one or more "interest rate swap" arrangements with respect to up to $300 million principal amount of borrowings under the Revolving Credit Agreement when terms generally available are more attractive. No other terms or conditions of the Term Loan Agreement or proposed "interest rate swap" agreement are hereby affected.

The amended application-declarations and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 9, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended application-declarations, as filed or as they may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8073 Filed 3-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23250; 31-799]

Evmar Oil Corp.; Application To Be Declared Not To Be a Holding Company

March 19, 1984

Evmar Oil Corp. ("Evmar"), 450 Park Avenue, New York, New York 10022, has filed with this Commission an application and an amendment thereto pursuant to Section 2(a)(7) of the Public Utility Holding Company Act of 1935 ("Act") requesting that the Commission declare Evmar not to be a holding company.

Evmar, a privately-held Texas corporation, states that it purchased 841,400 shares of the common stock of Midlands Energy Company ("Midlands") between December 21, 1983, and February 3, 1984, an amount equal to approximately 9.6% of Midlands' voting securities. On March 3 it purchased 323,000 shares, under an option acquired February 9, thereby increasing its ownership to approximately 13.3% of the 8,755,031 outstanding shares.

KN Energy, Inc., ("KN") a retail gas utility company in Kansas and Nebraska and a pipeline company, owned through subsidiaries oil and gas properties and related businesses. In December 1983, these subsidiaries were transferred to Midlands and all the stock of Midlands was distributed to the shareholders of KN. On February 22, 1984, Midlands purchased from KN a retail gas distribution business serving about 10,000 customers in and around Fremont, Nebraska. It has also acquired more than 5% of the outstanding voting securities of Tennessee-Virginia Energy Corp., a gas utility company providing retail service in eastern Tennessee and southwestern Virginia.

Section 2(a)(7) of the Act defines a holding company as "any company which directly or indirectly owns, controls, or holds with power to vote [10%] or more of the voting securities of a public-utility company * * * unless the Commission * * * by order declares such company not to be a holding company." That section further provides that the Commission shall by order so declare if it finds the applicant "(i) does not alone or pursuant to [arrangements with others] * * * directly or indirectly control a public-utility [company] * * * by any means or device whatsoever, (ii) is not an intermediary company through which such control is exercised, and (iii) does not, direclty or indirectly, exercise (either alone or pursuant to [arrangements with others] such a controlling influence over the management or policies of any public utility [company] * * * as to make it necessary or appropriate in the public interest or for the protection of investors and consumers that the applicant be subject to the obligations, duties, and liabilities imposed in [the Act] upon holding companies."

Evmar states the order is essential to avoid any impediment under the Act to its acquisition of additional shares. It had suggested to the president of Midlands a leveraged buy out but its proposal was rejected. Midlands has alleged, in a pending action against Evmar (U.S.D.C. Colo., 84–399) that Evmar is seeking control.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 16, 1984, to Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing and will receive a copy of any notice or order issued. After said date, the application may be granted, or the Commission may take such other action as may be appropriate.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8075 Filed 3-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13808A; 812-5778]

Merrill Lynch Basic Value Fund, Inc., et al.; Correction

March 20, 1984.

Errata

This is to correct an error made in Investment Company Release No. 13808 issued March 6, 1985, In the Matter of Merrill Lynch Basic Value Fund, Inc., et al., 633 Third Avenue, New York, New York 10017. In the above referenced notice of filing of application it was stated that interested persons may request a hearing until 5:30 p.m., March 3, 1984. The expiration of the notice period should have read 5:30 p.m., March 30, 1984.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8080 Filed 3-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20773; SR-BSE-83-10]

Self-Regulatory Organization; Boston Stock Exchange, Inc., Order Approving Proposed Rule Change

March 20, 1984.

The Boston Stock Exchange, Inc. ("BSE") One Boston Place, Boston, MA 02108, submitted on August 15, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to amend its disciplinary rules as set forth in Chapter XXX of the BSE Constitution. The proposal includes provisions for the following, among other things: (i) Notice requirements for a statement of charges; (ii) the selection of hearing panels; (iii) the disqualification of panelists for conflicts of interest; (iv) the parties' right to counsel; (v) the parties' right to object to panelists for cause; (vi) the parties' right to records; (vii) the conduct of the hearing, including admissibility of evidence, the requirement of testimony under oath, and the examination of witnesses; (viii) stipulation agreements; (ix) the requirement of a decision in writing; and (x) the imposition of penalties.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20624, February 6, 1984) and by publication in the **Federal Register** (49 FR 5405, February 13, 1984).[1] No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8079 Filed 3-23-84; 8:45 am]

BILLING CODE 8010-01-M

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[1] On December 22, 1983, the BSE filed with the Commission an amended insert for publication in the **Federal Register**.

[Release No. 20764; File No. SR-CBOE-84-9]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc.

March 19, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1984, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange proposes to establish a fee of $25 in payment for the fingerprints collected and processed and identification photographs taken by the Exchange in connection with its membership application procedures. According to the Exchange, the proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for a reasonable fee that is equitably allocated among its members.

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-84-9.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8078 Filed 3-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20766; SR-CSE-84-1]

Self-Regulatory Organization; Cincinnati Stock Exchange; Order Approving Proposed Rule Change

March 20, 1984.

The Cincinnati Stock Exchange ("CSE") 209 Dixie Terminal Building, Cincinnati, Ohio 45202, submitted on January 25, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend CSE Rule 11.9 by changing the minimum net capital requirements for the CSE's contributing and designated dealers to the greater of $50,000 or the amount required under Rule 15c3-1 of the Act. Currently, CSE contributing and designated dealers must maintain a minimum net capital of at least $250,000 and $500,000, respectively, computed pursuant to Rule 15c3-1. According to the CSE, the proposed net capital requirements for CSE market makers would be comparable to the minimum net capital levels required by other regional exchanges for their registered specialists.[1] In addition, the CSE states that the proposed change will further competition by permitting more market makers to become members of the CSE, thereby broadening the market open to investors.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20618, February 3, 1984) and by publication in the **Federal Register** (49 FR 5407, February 13, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8077 Filed 3-23-84; 8:45 am]

BILLING CODE 8010-01-M

[1] The minimum net capitalization required, for example, for specialists of the Midwest Stock Exchange ("MSE") and the Pacific Stock Exchange ("PSE") is the greater of either (i) equity sufficient to carry a specified position in a specialist's assigned stock(s) or (ii) liquid assets of a required minimum dollar amount. The minimum dollar requirement for MSE specialists is $50,000 under MSE Article XI, Rule 3(b) and, for PSE specialists, is $100,000 pursuant to PSE Rule V, Section 2(a). In addition, the minimum liquidating equity required by each dealer-specialist of the Boston Stock Exchange ("BSE") is $80,000 pursuant to BSE Chapter XXII, Section 2(b). The provisions of Rule 703 of the Philadelphia Stock Exchange ("Phlx") are also comparable to the CSE's proposed requirements in that the Phlx rule provides that each member or member organization must comply with net capital requirements prescribed by SEC Rule 15c3-1.

[Release No. 34-20768; File No. SR-NASD-84-7]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Amendments to Code of Procedure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 12, 1984, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association proposed to amend Section 12(b) of the Code of Procedure for Handling Trade Practice Complaints by increasing to $2,500 the maximum fine which may be imposed by the summary complaint procedure. The present maximum fine is $1,000.

The Association proposed to amend the Explanation of the Board of Governors following Section 13 of this Code of Procedure to permit the resolution of a disciplinary action prior to the issuance of a complaint by means of a Letter of Acceptance, Waiver and Consent without requiring a respondent to make a formal admission to violations. The present procedure

requires a Letter of Admission, Waiver and Consent including a formal admisstion to violations.

II. Self-Regulatory Organization's Statement Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendments to the Code of Procedure for Handling Trade Practice Complaints are designed to fulfill the responsibility of the Association under Section 15A of the Securities Exchange Act of 1934, as amended, to "Provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Association of any person with respect to access to services offered by the Association or a member thereof.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or others

The Association did not solicit nor did it receive comments on the proposed amendments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or
B. Institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be aviailable for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 20, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8079 Filed 3-23-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20767; SR-NYSE-83-11]

Self-Regulatory Organization; New York Stock Exchange, Inc.; Filing of Amendment to Proposed Rule Change and Order Approving Proposed Rule Change

March 20, 1984.

The New York Stock Exchange, Inc. ("NYSE" or "Exchange"), 11 Wall Street, New York, NY 10005, submitted on April 23, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to modify portions of NYSE Rules 495C.10 and 499.10 relating to conflicts of interest involving NYSE-listed corporations or corporations applying for listing on the NYSE. The proposal would delete provisions stating that the Exchange should look for and consider possible conflicts of interest involving listees or prospective listees, their management, and principal stockholders.[1] The proposed amendments would leave the review and oversight of such matters primarily to the discretion of the listees and prospective listees. The proposal suggests no particular method of resolution, but states that a corporation's audit committee or a comparable body could be considered as the forum for review and oversight of potential conflict of interest situations.

In Amendment No. 2 to the proposed rule change, filed with Commission on February 21, 1984, the NYSE further amended Rule 495C.10 to state: (i) That the Exchange believes that a publicly owned company of the size and character appropriate for listing on the Exchange should be able to operate on its own merit and credit standing, and it should be free from the suspicion which may arise when business transactions are consummated with insiders; and (ii) that corporations applying for NYSE listing will be asked to confirm that they will appropriately review and oversee related party transactions on an on-going basis, and that the NYSE will continue to review proxy statements and other SEC filings disclosing related party transactions and to send reminder notices to listed companies where these situations seem to persist.[2]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19759, May 12, 1983) and by publication in the **Federal Register** (48 FR 22667, May 19, 1983). No comments were

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[1] The possible conflicts could include, for example, the leasing of property to or from a listed company, interests or options in subsidiaries of a listee, or interests in businesses that are competitors, suppliers, or customers of a listee.

[2] These amendments were also included in a letter submitted to the Commission by the NYSE in response to recommendations by the Commission staff that the NYSE continue to monitor compliance by NYSE listed companies with Exchange policy regarding conflicts of interest. *See* letter from Richard A. Grasso, Executive Vice President, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated February 8, 1984. In that letter, the Exchange stated further that (i) it will no longer require the elimination of potential conflicts of interest situations in prospective or currently listed companies; (ii) such evaluation would become the responsibility of the particular companies; (iii) in extreme circumstances, where it appears a corporation is disregarding the Exchange's modified policy concerning related party transactions, the corporation's suitability for continued listing under NYSE Rule 499 will be reviewed by the Exchange; and (iv) the Exchange will publicize the policy modification at the time it becomes effective and continue coverage in the NYSE Listed Company Manual (Section 307).

received with respect to the proposed rule filing.

This release also provides notice of Amendment No. 2 to the proposed rule change filed on February 21, 1984. Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–NYSE–83–11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission, in reviewing this proposal, requested further information from the NYSE about the procedures the NYSE currently is using to administer its conflict of interest rules, about any specific actions the NYSE has taken over the last two years (June 1, 1981 through June 3, 1983) to reduce or eliminate specific conflict situations, and about any instance where a corporation was denied listing or was delisted due to a conflict.[3] The NYSE responded that its procedures in administering its conflict rules include: (i) an initial review by the Exchange when a company is first being considered for listing, and (ii) ongoing periodic reviews by the Exchange after a company has been listed.[4] The NYSE stated that its general policy in dealing with conflict situations has been to insist that they be eliminated, either immediately or by agreement within a specific period, usually within two to five years following listing. The Exchange, however, stated that it never had occasion to seek a delisting or suspension over a conflict issue.

In connection with this filing, the NYSE has emphasized that its conflict policy was developed in the late 1950s at which time few companies had non-management directors or audit committees.[5] The NYSE has further stated that its approach to a conflicts problem has not been to determine whether a particular conflict may be beneficial or harmful to a company but simply to insist on its elimination. Accordingly, the NYSE claims that its policy has operated to eliminate conflicts even in cases where conflicts may have been fair and even beneficial to NYSE listees and their shareholders.

The NYSE now believes that the submission of conflict issues to independent audit committees or comparable bodies whose members are familiar with a company's internal arrangements and with the particular matters in question, would mark a more flexible and more appropriate response than a simple prohibition.[6] The Exchange has noted that, under the proposed rule changes, it would continue to consider conflict situations involving prospective listees in light of all pertinent facts and that it would retain its existing authority under NYSE Rule 499.10 to suspend or delist companies for non-compliance with Exchange policy.

The Commission views the proposed rule change, as amended, as continuing to provide sufficient protection to investors with respect to conflicts of interest within current or prospective NYSE listed companies. As originally developed in the 1950s, the NYSE conflicts policy was not designed to necessarily prohibit all conflict relationships. Rather, the policy in its current form provides only that the Exchange review and assess possible conflict situations involving listees or prospective listees and their management. As a practical matter, in administering this policy the NYSE has found it difficult to provide the flexible case-by-case review and evaluation of potential conflict situations perhaps envisioned when the policy was originally adopted. Instead, as noted above, the NYSE has in most cases simply prohibited conflicts or at most provided a period of time for listees to eliminate conflicts.

To provide the flexibility necessary to administer the NYSE's conflict objectives, the Commission believes it is appropriate, in the first instance, to permit conflict of interest situations to be evaluated and monitored by the particular corporation rather than the Exchange. The Commission believes that review by independent corporate bodies such as audit committees should prove adequate to assure that the corporation is operating free from suspicion that related party transactions are injuries to the corporation's integrity or financial condition. The Commission believes, however, that the Exchange must monitor compliance with stated Exchange policy by listed companies. In addition, continued review by the Exchange of corporate proxy statements and other filings with the Commission is essential to permit the Exchange to ensure such compliance. Amendment No. 2 to the proposed rule change adequately addresses these concerns. In particular, the Commission notes that the NYSE, in Amendment No. 2, reaffirms its policy that companies of the size and character appropriate for NYSE listing should be free from the suspicion that may arise from related party transactions. Finally, the Commission notes that NYSE Rule 499 will continue to permit the Exchange to delist a company in the event that a company disregards Exchange policy with respect to conflicts of interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

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[3] *See* letter from Richard T. Chase, Assistant Director, Division of Market Regulation, to Richard A. Grasso, Executive Vice President, NYSE, dated June 3, 1983.

[4] *See* letter from Richard A. Grasso, Executive Vice President, NYSE, to Richard T. Chase, Assistant Director, Division of Market Regulation, dated August 22, 1983 ("August 22, 1983 letter"). The Exchange noted in this letter that its sources for discovering potential conflicts tend to be the companies' own proxy statements and periodic reports to the Commission, and secondarily certain disclosures required under Section 104.01(8) of the NYSE Company Manual.

For the period extending from June 1, 1981 through June 3, 1983, the NYSE stated that it had reviewed for Exchange eligibility 186 companies of which it found 36 companies to have a total of 48 conflict situations. Of those 36 companies, 25 pursued NYSE listing by agreeing to eliminate their conflicts under specific terms. Of the remaining 11 companies, 6 failed to qualify for listing on other grounds, 4 qualified but did not pursue listing, and one qualified but declined to eliminate its conflicts. With respect to companies already listed on the Exchange during the period in question, 2 companies reportedly were advised by the Exchange to eliminate existing conflicts and are currently in the process of doing so.

[5] NYSE Rule 495H, adopted March 9, 1977, requires that each domestic company with common stock listed on the Exchange must maintain an audit committee "comprised solely of directors independent of management and free from any relationship that, in the option of its Board of Directors, would interfere with the exercise of independent judgment as a committee member."

[6] *See* August 22, 1983 letter, at pages 6–7. The Exchange emphasized that it has not developed a "lack of interest . . . in conflict situations" but that the "frontline responsibility to monitor and control conflict situations" should reside with "independent directors on the boards of listed companies and on the Audit Committees."

applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission views the proposed rule change as consistent with Section 6(b)(5) under the Act in that it is designed to protect investors and the public interest.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 2 in that the amendment is largely technical in nature and is for the purpose of clarifying provisions already contained in NYSE's rules as they are proposed to be amended. The amendment in part states NYSE policy already expressed in Section 307 of the NYSE Listed Company Manual with respect to conflicts of interest. In addition, it clarifies the NYSE's procedures in connection with monitoring compliance with the proposed Exchange policy.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8074 Filed 3-23-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Kanawha County, West Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, in cooperation with the West Virginia Department of Highway (WVDOH), is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Kanawha County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Gale W. Macklay, District Engineer, Federal Highway Administration, 550 Eagan Street, Charleston, West Virginia 25301. Telephone (304) 348-2065, (FTS: 930-5931).

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the West Virginia Department of Highways (WVDOH) will be preparing an Environmental Impact Statement on a proposal to construct a four-lane bridge and approach roadways across the Kanawha River connecting WVA 61 at Chelyan and US 60 at Quincy in Kanawha County, West Virginia. The total bridge length is 1700 feet to 2800 feet (depending on the alternative), in addition to the brige approaches. The proposed project is intended to provide a link between WV Route 61 and US Route 60, to replace the existing structure built in 1928 which is considered structurally deficient, to improve traffic flow and provide a more convenient acccess to and from the West Virginia Turnpike at the Chelyan Interchange.

Probable environmental effects of the proposed project include relocation of businesses and residences, potential for disruption of neighborhoods and possible 4(f) involvement based on existing historic significance of the Chelyan Bridge.

Six possible build alternatives as well as a no-build alternative are under consideration at this time.

FHWA and WVDOH will coordinate the proposed project with the Metropolitan Planning Agency and consult with other government agencies on their areas of responsibility. In addition, the following agencies will be requested to be cooperating agencies: U.S. Coast Guard, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Department of the Interior, Fish and Wildlife Service, Department of Housing and Urban Development and the Advisory Council on Historic Preservation. A scoping meeting is to be held but details have not been determined at this time.

To ensure that the full range of issues related to the proposed action are addressed and the significant issues are identified, comments and suggestions are invited from interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction.)

Issued on March 19, 1984.

Gale W. Macklay,

District Engineer, Charleston, West Virginia.

[FR Doc. 84-7977 Filed 3-23-84; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; New Castle and Kent Counties, Delaware

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in New Castle and Kent Counties, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. A. George Ostensen, Field Operations Engineer, Federal Highway Administration, Delaware Division, 300 S. New St., Room 2101, Dover, Delaware 19901. Telephone: (302) 734-5323. Mr. Raymond M. Harbeson, Jr., Project Manager, Delaware Department of Transportation, P.O. Box 778, Dover, Delaware 19903. Telephone (302) 736-4642.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Delaware Department of Transportation (DelDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to construct approximately 40 miles of four land divided, limited access highway in New Castle and Kent Counties, Delaware. The proposed facility will serve to releive U.S. Route 13, the main north-south route thru Delaware. The proposed facility would extend from south of Dover in Kent County to the vicinity of Delaware Routes 7 and 13 in new Castle County.

Various studies for alternate routes to U.S. Route 13 have been conducted since the mid to late 60's. These studies considered numerous alternatives; but, for various reasons, were never implemented. As part of this study, these previous studies will be reviewed and an updated look at possible alignments will be pursued. Alternatives to be considered will include (1) taking no action (no build), (2) improvements on existing alignment, (3) improvements on new alignment, and (4) a combination of (2) and (3).

A program of public involvement and coordination with Federal, State and Local agencies will be initiated. It is envisioned that involvement with the public and other agencies will continue throughout the development of the project. Scoping meetings will be held later this year.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed top the FHWA or DelDOT at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205.

Highway Research Planning and Construction. The state intergovernmental review contacts established under Executive Order 12372 (former A–95 processes) regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Manuel A. Marks,

Division Administrator, Dover, Delaware.

[FR Doc. 84–7976 Filed 3–23–84; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petition(s) for Exemption or Waiver of Compliance

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition(s) are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before May 7, 1984, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 5101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Yakima Valley Transportation Company

(Waiver Petition Docket Number SA–84–1)

The Yakima Valley Transportation Company (YVT) seeks a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231). The YVT seeks a permanent waiver of compliance with § 231.30(g) of the regulation for a Whiting TM4500 "Trackmobile". Section 231.30(g) requires that each locomotive used in switching service must have four (4) horizontal end handholds. The YVT indicates that it seeks this waiver because due to its special limited type operation, the installation of horizontal end handholds required by § 231.30(g) is not necessary for the safe operation of the Trackmobile. The YVT also indicates that the granting of such a waiver of compliance would be in the public interest and will not adversely affect public safety.

Louisville, New Albany and Corydon Railroad Company

(Waiver Petition Docket Number SA–84–3)

The Louisville, New Albany and Corydon Railroad Company (LNAC) seeks a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231). The LNAC seeks a permanent waiver of compliance with § 231.30 of the regulation for one 1951 General Electric 45-ton diesel locomotive. Section 231.30 requires that locomotives used in switching service be equipped with specified safety appliances. The LNAC indicates that it seeks this waiver because the switching step modifications necessary for § 231.30 compliance are not economically justifiable due to their limited resources and type of operation.

Ferdinand Railroad Company

(Waiver Petition Docket Number SA–84–4)

The Ferdinand Railroad Company (FRDN) seeks a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231). The FRDN seeks a permanent waiver of compliance with § 231.30 of the regulation for one 1951 General Electric 45-ton diesel locomotive. Section 231.30 requires that locomotives used in switching service be equipped with specified safety appliances. The FRDN indicates that it seeks this waiver because the locomotive modifications necessary for § 231.30 compliance are not economically justifiable due to their limited type operation.

Yakima Valley Transportation Company

(Waiver Petition Docket Number LI–84–1)

The Yakima Valley transportation company (YVT) seeks a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229). The YVT seeks a permanent waiver of compliance with 229.93(c) and 229.125(a) of the regulation for one Whiting TM4500 "Trackmobile". Section 229.93(c) requires that locomotives be equipped with a fuel safety cut-off device that can be hand operated from clearly marked locations, one inside the cab and one on each exterior side of the locomotive. Section 229.125(a) establishes minimum standards for front and rear headlights on locomotives. The YVT indicates that it seeks this waiver because due to its slow speed, limited type operation, the granting of such a waiver would be in the public interest and will not adversely affect public or railroad safety.

Louisville, New Albany and Corydon Railroad Company

(Waiver Petition Docket Number LI–84–2)

The Louisville, New Albany and Corydon Railroad Company (LNAC) seeks a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229). The LNAC seeks a permanent waiver of compliance with § 229.123 of the regulation for one 1951 General Electric 45-ton diesel locomotive. Section 229.123 requires that each lead locomotive shall be equipped with an end plate that extends across both rails, a pilot, or a snowplow. The LNAC indicates that it seeks this waiver because due to their limited operation, the locomotive modifications necessary for § 229.123 compliance would be a great hardship economically.

Ferdinand Railroad Company

(Waiver Petition Docket Number LI–84–3)

The Ferdinand Railroad Company (FRDN) seeks a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229). The FRDN seeks a permanent waiver of compliance with § 229.123 of the regulation for one 1951 General Electric 45-ton diesel locomotive. Section 229.123 requires that each lead locomotive shall be equipped with an end plate that extends across both rails, a pilot, or a snowplow. The FRDN indicates that it seeks this waiver

because due to their limited operation, the locomotive modifications necessary for § 229.123 compliance are not economically justifiable.

Port Bienville Railroad

(Waiver Petition Docket Number LI–84–4)

The Port Bienville Railroad (PBVR) seeks a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229). The PBVR seeks a permanent waiver of compliance with § 229.23(a) of the regulation for one General Electric 45-ton diesel locomotive. Section 229.23(a) requires that at each periodic inspection, a locomotive shall be positioned so that a person may safely inspect the entire underneath portion of the locomotive. The PBVR indicates that its seeks this waiver because although no inspection pit is available, the railroad feels the locomotive can be safely inspected.

Burlington Northern Railroad

(Waiver Petition Docket Number RSFC–84–1)

The Burlington Northern Railroad (BN) seeks a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The BN seeks a temporary waiver of compliance with § 215.121(d) of the regulation for 5,304 freight cars. Section 215.121(d) requires that a railroad may not place or continue in service a car if, after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The BN indicates that it seeks this waiver because, although 12,523 freight cars have already been retrofitted, complete § 215.121(d) compliance is not expected until August 31, 1984.

Chessie System Railroads

(Waiver Petition Docket Number RSFC–84–2)

The Chessie System Railroads seek a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The Chessie System Railroads seek a temporary waiver of compliance with § 215.121(d) of the regulation for 959 freight cars in active service. Section 215.121(d) requires that a railroad may not place or continue in service a car if, after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The Chessie System Railroads indicate that they seek this waiver because complete § 215.121(d) compliance achieved by practical retrofitting is not expected until June 30, 1985.

Chicago and North Western Transportation Company

(Waiver Petition Docket Number RSFC–84–3)

The Chicago and North Western Transportation Company (CNW) seeks a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The CNW seeks a temporary waiver of compliance with § 215.121(d) of the regulation for 674 freight cars in active service. Section 215.121(d) requires that a railroad may not place or continue in service a car if, after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The CNW indicates that it seeks this waiver because considering the current practical retrofitting effort, complete § 215.121(d) compliance is not expected until July 1, 1985.

Atchison, Topeka and Santa Fe Railway Company

(Waiver Petition Docket Number RSFC–84–4)

The Atchison, Topeka and Santa Fe Railway Company (ATSF) seeks a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The ATSF seeks temporary waiver of compliance with § 215.121(d) of the regulation for 3,607 freight cars. Section 215.121(d) requires that a railroad may not place or continue in service a car if, after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The ATSF indicates that it seeks this waiver because considering the current practical effort to retrofit 37 cars per week, complete § 215.121(d) compliance is not expected until December 31, 1985.

Union Pacific Railroad Company

(Waiver Petition Docket Number RSFC–84–5)

The Union Pacific Railroad Company (UP) seeks a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The UP seeks a temporary waiver of compliance with § 215.121(d) of the regulation for 1,561 freight cars in active service. Section 215.121(d) requires that a railroad may not place or continue in service a car if, after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The UP indicates that it seeks this waiver because considering the current practical effort to retrofit 90 cars per week, complete § 215.121(d) compliance is not expected until September 1, 1984.

Seaboard System Railroad

(Waiver Petition Docket Number RSFC–84–6)

The Seaboard System Railroad (SBD) seeks a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The SBD seeks a temporary waiver of compliance with § 215.121(d) of the regulation for 1,860 freight cars. Section 215.121(d) requires that a railroad may not place or continue in service a car if, after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The SBD indicates that is seeks this waiver because "the proliferation of cars in storage contributes to the problem of locating all needing modification", thus, complete § 215.121(d) compliance is not expected until December 31, 1984.

Missouri Pacific Railroad Company

(Waiver Petition Docket Number RSFC–84–7)

The Missouri Pacific Railroad Company (MP) seeks a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The MP seeks a temporary waiver of compliance with § 215.121(d) of the regulation for 359 freight cars in active service. Section 215.121(d) requires that a railroad may not place or continue in service a car if, after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The MP indicates that it seeks this waiver because considering the current practical retrofit effort, complete section 215.121(d) compliance is not expected until December 31, 1984.

Southern Pacific Transportation Company

St. Louis Southwestern Railway Company

(Waiver Petition Docket Number RSFC–84–8)

The Southern Pacific Transportation Company (SP) and the St. Louis Southwestern Railway Company (SSW) seek a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The SP and SSW seek a temporary waiver of compliance with § 215.121(d) of the regulation for 4,932 freight cars in active service. Section 215.121(d) requires that a railroad may not place or continue in service a car if, after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The SP and SSW indicate that they seek this waiver because considering the current practical retrofit effort of 52 cars per week, complete § 215.121(d) compliance is not expected until December 31, 1985.

Consolidated Rail Corporation

(Waiver Petition Docket Number RSFC–84–10)

The Consolidated Rail Corporation (CR) seek a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The CR seek a temporary waiver of compliance with § 215.121(d) of the regulation for 2,745 freight cars. Section 215.121(d) requires that a railroad may not place or continue in service a car if, after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The CR indicates that ninety percent of these cars are in storage and these cars will be retrofitted before being placed in active service. The CR also indicates that it seeks this waiver because it would be "most uneconomical . . . to attempt to sort out the cars needing retrofit from the bulk of the cars which are in storage". The CR requests an extension of compliance until December 31, 1985.

Issued in Washington, D.C., on March 19, 1984.

Joseph W. Walsh,

Associate Administrator

[FR Doc. 84–8072 Filed 3–23–84; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

National Highway Safety Advisory Committee; Public Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. I), notice is hereby given of a hearing to be held by the Driver Related Issues Subcommittee of the National Highway Safety Advisory Committee. The hearing will address issues related to the elderly driver. The hearing will take place on April 12 and 13, from 8:30 a.m. to 5:00 p.m., in room 8236 of the DOT Headquarters Building, 400 Seventh Street, SW., Washington, D.C.

Individuals or organizations interested in presenting testimony before the Subcommittee should contact Kathy Hasse, Committee Management, NHTSA, on telephone 202–426–2870, in order to arrange for time on the agenda. Presentations will be limited to 15 minutes.

All meetings are open to the interested public, but may be limited to the space available. Members of the public may present a written statement to the Committee at any time. This meeting is subject to the approval of the appropriate DOT officials. Additional information and full agenda may be obtained from the NHTSA Executive Secretariat, 400 Seventh Street, SW., Room 5221, Washington, D.C. 20590, telephone 202–426–2870.

Issued in Washington, D.C. on: March 21, 1984.

Robert E. Doherty,

Executive Secretary.

[FR Doc. 84–8040 Filed 3–23–84; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular, Public Debt Series—No. 8–84]

Treasury Notes of March 31, 1988; Series L–1988

Washington, March 21, 1984.

1. Invitation for Tenders

1. 1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,000,000,000 of United States securities, designated Treasury Notes of March 31, 1988, Series L–1988 (CUSIP No. 912827 QQ 8). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2. 1. The securities will be dated April 2, 1984, and will bear interest from that date, payable on a semiannual basis on September 30, 1984, and each subsequent 6 months on March 31 and September 30 until the principal becomes payable. They will mature March 31, 1988, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2. 2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3. 1. Tenders will be received at Federal Reserve Banks and Branches

and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, March 27, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, March 26, 1984, and received no later than Monday, April 2, 1984.

3. 2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3. 3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3. 4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3. 5. A noncompetitive bidder may not have entered into an agreement, or make an agreement with respect to the purchase or sale or other disposition of any noncompetitive awards of this issue in this auction prior to the designated closing time for receipt of tenders.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, April 2, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, March 29, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt.

Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5. 4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84-8149 Filed 3-25-84; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular, Public Debt Series—No. 9-84]

Treasury Notes of April 15, 1991; Series E-1991

Washington, March 21, 1984.

1. Invitation for Tenders

1. 1. The Secretary of the Treasury, under the authority of Chapter 31, of Title 31, United States Code, invites tenders for approximately $5,250,000,000 of United States securities, designated Treasury Notes of April 15, 1991, Series E-1991 (CUSIP No. 912827 QR 6). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2. 1. The securities will be dated April 4, 1984, and will bear interest from that date, payable on a semiannual basis on October 15, 1984, and each subsequent 6 months on April 15 and October 15 until the principal becomes payable. They will mature April 15, 1991, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2. 2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, March 28, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 27, 1984, and received no later than Wednesday, April 4, 1984.

3. 2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3. 3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3. 4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3. 5. A noncompetitive bidder may not have entered into an agreement, or make an agreement with respect to the purchase or sale or other disposition of any noncompetitive awards of this issue in this auction prior to the designated closing time for receipt of tenders.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to

the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Wednesday, April 4, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, April 2, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as reqired on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5. 4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84-8150 Filed 3-23-84; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular, Public Debt Series—No. 10-84]

Treasury Bonds of 2004

Washington, March 21, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $3,750,000,000 of United States securities, designated Treasury Bonds of 2004 (CUSIP No. 912810 DH 8). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated April 5, 1984, and will bear interest from that date, payable on a semiannual basis on November 15, 1984, and each subsequent 6 months on May 15 and November 15 until the principal becomes payable. They will mature May 15, 2004, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts.

Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, March 29, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, March 28, 1984, and received no later than Thursday, April 5, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalties; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. A noncompetitive bidder may not have entered into an agreement, or make an agreement with respect to the purchase or sale or other disposition of any noncompetitive awards of this issue in this auction prior to the designated closing time for receipt of tenders.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 95.000. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Goverment accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Thursday, April 5, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, April 3, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5. 4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84-8151 Filed 3-23-84; 8:45 am]

BILLING CODE 4810-40-M

[Number 101-30]

Designation of Assistant Secretary (Administration) To Act as "Head of the Agency" for Procurement Matters

Pursuant to the authority vested in me as Secretary of the Treasury by Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, 393), as amended (41 U.S.C. Chapter 4), particularly 41 U.S.C. 252, and 31 U.S.C. 321(b), and pursuant to the provisions of 41 U.S.C. 259, it is hereby ordered as follows:

1. The Assistant Secretary (Administration) is hereby designated to act as the Head of the Agency with respect to procurement. The Assistant Secretary (Administration) shall:

a. Prescribe and publish the Treasury Acquisition/Procurement Regulation and other directives pertaining to procurement including, but not limited to, those incorporated in 48 CFR Chapter 10.

b. Delegate to appropriate officials within the Office of the Secretary and bureaus of the Department authority to appoint Contracting Officers for the United States of America.

c. Make all determinations and findings required by statute or regulation to be made by the Head of the Agency.

2. The authority delegated herein shall be exercised in accordance with the applicable limitations and requirements of the Federal Property and Administrative Services Act, as amended; the Federal Acquisition Regulation, 48 CFR Chapter 1; the applicable portions of the Federal Property Management Regulations, 41 CFR Chapter 101; as well as other relevant statutes and regulations.

3. This Order becomes effective on April 1, 1984, at which time Treasury Department Order No. 208 (Revision 4), dated June 29, 1977, will be superseded.

Dated: March 7, 1984.

Donald T. Regan,

Secretary.

[FR Doc. 84-8001 Filed 3-23-84; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 59
Monday, March 26, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Consumer Product Safety Commission	1-3
Federal Energy Regulatory Commission	4

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, March 21, 1984.

LOCATION: Eighth Floor Conference Room, 1111-18th Street NW., Washington, D.C.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement matter OS #3572

The Commission will consider issues related to enforcement matter OS #3572.

(For a recorded message containing the latest agenda information call: 301-492-5709.)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland 20207.

Sheldon D. Butts,

Deputy Secretary.

March 22, 1984.

[FR Doc. 84-8146 Filed 3-22-84; 2:31 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 27, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Kerosene Heaters: Voluntary Standard Status

The staff will brief the Commission on the status of activities to upgrade existing voluntary standards for kerosene heaters. Representatives of Underwriters' Laboratories and the National Kerosene Heater Association will also address the Commission.

(For a recorded message containing the latest agenda information call 301-492-5709.)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

March 22, 1984.

[FR Doc. 84-8146 Filed 3-22-84; 2:31 pm]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 28, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the public:

MATTERS TO BE CONSIDERED:

1. Indoor Air Quality: Status Report

The staff will brief the Commission on a status report on the Indoor Air Quality Monitoring Study in 40 homes at Oak Ridge National Laboratory (ORNL).

2. Crib Hardware: 30(d) Rule, Final

The Commission will consider issues related to failures of hardware on cribs and a final rule under Section 30(d) of the Consumer Product Safety Act, which transfers the regulation of risks of injury associated with crib hardware failures from the Federal Hazardous Substances Act to the Consumer Product Safety Act.

Closed to the public:

3. Enforcement Matter OS #4112

The Commission will consider enforcement matter OS #4112.

(For a recorded message containing the latest agenda information call: 301-492-5709.)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland 20207.

Sheldon D. Butts,

Deputy Secretary.

March 22, 1984.

[FR Doc. 84-8148 Filed 3-22-84; 2:31 pm]

BILLING CODE 6355-01-M

4

FEDERAL ENERGY REGULATORY COMMISSION

March 21, 1984.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5, U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: 10:00 a.m., March 28, 1984.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda

788th Meeting—March 28, 1984: Regular Meeting (10:00 a.m.)

CAP-1: Project No. 7315-000, Carson Hydro
CAP-2: Project No. 82-008, Alabama Power Company
CAP-3:
Project Nos. 4024-002, 003, 004, 6439-001 and 002, Gregory Wilcox
Project No. 6423-001 and 002, et al., Uncompahgre Valley Water Users Association and Montrose Partners
CAP-4: Project No. 6954-002, Hydro Power Development, Inc.
CAP-5: Project No. 2861-004, Robert W. Shaw
CAP-6: Project No. 4412-004, Thornton Lake Resource Company
CAP-7: Project No. 7258-001, China Flat Company
CAP-8: Project No. 7123-001, W. B. Deoreo and R. J. McLaughlin
CAP-9: Project No. 5279-003, Yankee Power Company
CAP-10: Project Nos. 346-014 and 469-002, Minnesota Power & Light Company
CAP-11: Project No. 6477-011, Western Hydro Electric, Inc.
CAP-12: Project No. Omitted
CAP-13: Project No. Omitted
CAP-14: Docket No. ER84-117-001, Philadelphia Electric Company
CAP-15: Docket No. ER84-131-001, Kansas Gas and Electric Company
CAP-16: Docket No. ER84-450-004, Union Electric Company
CAP-17: Docket No. ER81-187-005, Public Service Company of New Mexico
CAP-18: Docket No. QF84-126-000, Reynolds Irrigation District
CAP-19: Docket Nos. ER81-736-003, ER83-192-002 and ER83-248-003 (Phase I), Central Illinois Public Service Company

CAP–20: Docket No. EL81–14–003, American Municipal Power-Ohio, Inc. and the City of St. Marys, Ohio v. the Dayton Power & Light Company
CAP–21: Docket No. ER83–351–000, the Dayton Power and Light Company
CAP–22: Docket No. ER84–9–000 and ER84–10–000, Philadelphia Electric Company
CAP–23:
Docket No. ER83–342–000, Vermont Electric Power Company, Inc.
Docket No. ER83–343–000, Vermont Yankee Nuclear Power Company

Consent Miscellaneous Agenda

CAM–1: Docket Nos. RM–83–2–000, RM83–2–001, RM83–2–002 and RM83–2–003, Fees Applicable to Natural Gas Pipeline Rate Matters
CAM–2: Docket No. RM82–25–000, RM82–25–001 and RM82–25–002, Fees Applicable to Producer Matters Under the Natural Gas Act
CAM–3: Docket No. RM79–76–224 (Colorado-35 Addition), High-Cost Gas Produced From Tight Formations
CAM–4:
Docket No. GP84–5–001, Stowers Oil and Gas Company, et al.
Docket No. GP84–7–001, Northern Natural Gas Company, Division of Internorth, Inc.
CAM–5: Docket No. GP84–21–000, Sonat Exploration Company

Consent Gas Agenda

CAG–1: Docket Nos. RP83–35–012 and 013, RP81–109–000, RP82–37–000 and RP74–41–016, et al., Texas Eastern Transmission Corporation
CAG–2: Docket No. RP74–41–032 (RP78–87 and RP81–102), Texas Eastern Transmission Corporation
CAG–3: Docket Nos. RP81–130–009, 010 and 011; RP83–25–009, 010; TA82–2–42–011, 012; TA83–1–42–003 and 004, Transwestern Pipeline Company
CAG–4: Docket No. RP84–38–002, Transcontinental Gas Pipe Line Corporation
CAG–5:
Docket No. TA84–1–16–001 (PGA84–1), National Fuel Gas Supply Corporation
Docket No. GP84–17–000, National Fuel Gas Supply Corporation
CAG–6: Docket No. TA84–2–41–000 (PGA84–2), Southwest Gas Corporation
CAG–7: Docket No. TA84–2–33–000 (PGA84–2), El Paso Natural Gas Company
CAG–8: Docket No. TA84–2–7–000 (PGA84–2), Southern Natural Gas Company
CAG–9: Docket No. TA84–2–62–000 (PGA84–1), Pacific Offshore Pipeline Company
CAG–10: Docket No. TA84–2–31–000 (PGA84–3), Arkansas Louisiana Gas Company
CAG–11: Docket Nos. TA84–2–37–000 and 001 (PGA84–2), Northwest Pipeline Corporation
CAG–12: Omitted
CAG–13: Docket No. TA84–2–42–000 (PGA84–3), Transwestern Pipeline Company
CAG–14: Docket No. TA84–2–34–000 (PGA84–2) Florida Gas Transmission Company
CAG–15: Docket No. TA84–2–40–000 (PGA84–2), Raton Natural Gas Company
CAG–16: Docket No. RP84–53–000, Ozark Gas Transmission System
CAG–17: Docket No. RP84–10–001, Peoples Natural Gas Company, a Division of Internorth, Inc.
CAG–18: Docket No. RP73–35–011, Trunkline Gas Company
CAG–19: Docket No. TA84–1–34–000 (PGA84–1), Florida Gas Transmission Company
CAG–20: Docket No. RP81–38–007, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG–21: Docket No. TA84–1–46–000, Kentucky West Virginia Gas Company
CAG–22: Docket No. TA84–1–55–000 (PGA84–1), Mountain Fuel Resources, Inc.
CAG–23: Docket No. RP83–24–007, Alabama-Tennessee Natural Gas Company
CAG–24: Docket No. RP83–30–000, Transcontinental Gas Pipe Line Corporation
CAG–25: Omitted
CAG–26: Docket No. TA84–1–24–000, Equitable Gas Company
CAG–27: Docket No. TA84–1–48–000, ANR Pipeline Company
CAG–28: Docket No. RP84–35–001, Consolidated Gas Supply Corporation
CAG–29:
Docket No. CP74–314–008, El Paso Natural Gas Company
Docket No. CP76–327–000, Northwest Pipeline Corporation
Docket No. CI77–526–000, Sun Oil Company, et al.
CAG–30:
Docket No. G–3653–007, et al., Sun Exploration and Production Company, et al.
Docket No. G–3711–006, et al., Breton Resources Company, et al.
Docket Nos. CI83–337–003 and CI83–350–003, Exxon Corporation
CAG–31: Docket No. CI79–501–001, the Offshore Company
CAG–32: Docket No. CI78–851–005, Chevron U.S.A. Inc.
CAG–33:
Docket No. CI84–148–001, TBP Offshore Company
Docket No. CI84–168–001, Mobil Producing Texas and New Mexico Inc.
CAG–34:
Docket No. CP73–184–002, Colorado Interstate Gas Company, a Division of Colorado Interstate Corporation
Docket No. CI73–485–002, CIG Exploration, Inc.
CAG–35: Docket Nos. RI74–188–027 and RI75–21–002, Independent Oil & Gas Association of West Virginia
CAG–36: Docket Nos. RI74–188–026 and RI75–21–022, Independent Oil & Gas Association of West Virginia
CAG–37: Docket No. CP84–69–000, United Gas Pipe Line Company
CAG–38: Docket No. CP81–114–000, Panhandle Eastern Pipe Line Company and Trunkline Gas Company
CAG–39:
Docket Nos. CP77–321–004, CP78–241–003 and CP79–73–002, Southern Natural Gas Company
Docket No. CP77–421–019, Transcontinental Gas Pipe Line Corporation
CAG–40: Docket No. CP77–435–005, Transcontinental Gas Pipe Line Corporation
CAG–41: Docket No. CP81–81–002, Sea Robin Pipeline Company and Transcontinental Gas Pipe Line Corporation
CAG–42: Docket No. CP83–60–001, Arkansas Louisiana Gas Company
CAG–43: Docket No. CP83–518–000, Arkansas Louisiana Gas Company, a Division of Arkla, Inc.
CAG–44: Docket No. CP77–363–008, National Fuel Gas Supply Corporation and Columbia Gas Transmission Corporation
CAG–45: Docket No. CP78–41–002, Columbia Gas Transmission Corporation and Equitable Gas Company
CAG–46:
Docket No. CP84–46–000, Southern Natural Gas Company
Docket No. CP84–175–000, Crown Zellerbach Corporation
CAG–47: Docket Nos. CP83–193–000 and 001, Mountain Fuel Supply Corporation
CAG–48: Docket No. CP84–197–000, United Gas Pipe Line Company

Power Agenda

I. Licensed Project Matters

P–1: Project Nos. 3610–003 and 004, Banister Development, Ltd.
P–2: Project No. 5766–000, Frank B. Nichols
P–3: Project No. 6617–000, Olympus Energy Corporation
P–4: Project No. 7172–000, Douglas Water Power Company
P–5: Project No. 2959–002, City of Seattle, Washington
P–6:
Project No. 5403–000, Puget Sound Power & Light Company
Project No. 6220–000, Weyerhaeuser Company

II. Electric Rate Matters

ER–1: Docket No. ER84–244–000, Vermont Yankee Nuclear Power Corporation
ER–2: Docket No. ER84–241–000, Southern California Edison Company
ER–3: Docket No. ER84–210–000, Southern Company Services, Inc.
ER–4: Docket Nos. ER81–287–003 and ER81–341–005, Kentucky Utilities Company
ER–5: Docket No. EL84–6–000, the Attorney General of the Commonwealth of Massachusetts, the Department of Public Utilities of the Commonwealth of Massachusetts, the Attorney General of the State of Rhode Island Division of Public Utilities and Carriers v. New England Power Company

Miscellaneous Agenda

M–1: Reserved
M–2: Reserved
M–3: Omitted
M–4: Docket No. GP84–11–000, Texas General Land Office
M–5:
(A) Docket No. RM79–67–000, Procedures Governing Applications for Special Relief Under Sections 104, 106 and 109 of the Natural Gas Policy Act of 1978
(B) Docket No. RI76–130–000, et al., A. O. Phillips Estatge, et al.
(C) Docket No. CI77–244–000, et al., Clark Oil Producing, et al.

(D) Docket No. RM84-8-000, Ashland Oil Inc., et al.
M-6: Docket No. SA80-72-000, Humko Chemical, a Division of Witco Chemical Corporation

Gas Agenda

I. Pipeline Rate Matters

RP-1: Docket Nos. OR78-1-022, 023 and 024 (Quality Bank), Trans Alaska Pipeline System
RP-2: Docket Nos. RP83-113-006, 007, 008, 009 and 010, Pacific Gas Transmission Corporation
Docket Nos. RP83-135-001, 002 and 003, Pacific Interstate Transmission Company
Docket Nos. RP83-136-001 and 002, Pacific Offshore Pipeline Company
Docket No. RP83-139-002, El Paso Natural Gas Company
Docket No. RP81-130-007, Transwestern Pipeline Company
Docket No. RP84-28-000, Pacific Interstate Offshore Company
RP-3: Docket Nos. TA84-1-17-002 (PGA84-1, IPR84-1 and DCA84-1), and RP83-102-000, Texas Eastern Transmission Corporation
RP-4: Docket Nos. RP79-23-018 and RP79-24-011, Distrigas of Massachusetts Corporation and Distrigas Corporation
RP-5: Docket Nos. TA80-2-21-003, 004, 005 and 006, Columbia Gas Transmission Corporation, et al.
RP-6: Docket No. RP84-1-001, ANR Pipeline Company
RP-7: Docket Nos. RP80-2-000, 008, 009, 010 and RP83-65-000, Alabama-Tennessee Natural Gas Company
RP-8: Docket No. TA82-1-59-000, Northern Natural Gas Company
RP-9: Omitted
RP-10: Docket No. TA84-2-5-000 (PGA84-2), Midwestern Gas Transmission Company

II. Producer Matters

CI-1: Reserved

III. Pipeline Certificate Matters

CP-1: Omitted
CP-2: Docket Nos. CP84-56-000, CP83-374-002 and CP83-378-002, Texas Gas Transmission Corporation

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8090 Filed 3-22-84; 9:43 am]

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Monday
March 26, 1984

Part II

Department of Defense

48 CFR Ch. 2
DoD FAR Supplement; Final Rule

DEPARTMENT OF DEFENSE

48 CFR Ch. 2

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulation (FAR) establishes (i) a single regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds; and (ii) the Federal Acquisition Regulations System consisting of the FAR and agency acquisition regulations that implement or supplement the FAR. The FAR and the DoD FAR Supplement will replace the Defense Acquisition Regulation (DAR) and will be effective for new solicitations issued on or after April 1, 1984. Provisions and clauses in the FAR and the DoD FAR Supplement shall not be included in solicitations issued prior to April 1, 1984. The DAR will remain in effect for those solicitations issued prior to April 1, 1984.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulation Council, OUSDRE(AM)(DARS), OUSDRE(M&RS), Room 3D 139, Pentagon, Washington, D.C. 20301, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

Note.—Copies of the DoD FAR Supplement in the **Federal Register**, looseleaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Suggestions or other comments concerning this reformatting of existing DoD acquisition policies and procedures should be addressed to: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM)(DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301, telephone (202) 697–7266. The DoD FAR Supplement will be effective April 1, 1984.

List of Subjects in 48 CFR Chapter 2

Government procurement.

For the reasons stated in the preamble, there is established in the Code of Federal Regulations Title 48—Federal Acquisition Regulations System, Chapter 2—Department of Defense, to read as furnished in this document.

APRIL 1984 EDITION

Foreword

The Department of Defense Supplement to the Federal Acquisition Regulation (FAR) is issued under statutory authorities of the Secretary of Defense. The FAR and the DoD FAR Supplement will replace the Defense Acquisition Regulation (DAR) and will be effective for new solicitations issued on or after 1 April 1984. Provisions and clauses in the FAR and this Supplement shall not be included in solicitations issued prior to 1 April 1984. Those provisions and clauses shall be included in solicitations issued on or after 1 April 1984, but need not be included in solicitations already in process of preparation when their inclusion would cause an undue delay in the solicitation.

The DAR, FAR, and DoD FAR Supplement contain directions to DoD contracting personnel as to (i) what provisions, clauses and cost principles are authorized for DoD contracts and (ii) what other procedures and actions they must follow in awarding and administering DoD contracts. Contracts will be administered in accordance with the provisions set forth therein, e.g., a contract citing the FAR cost principles will be administered in accordance with applicable paragraphs of the FAR and this DoD FAR Supplement. The noncontractual procedures to be followed by DoD contracting personnel will, for the most part, be as directed by the FAR and this Supplement on 1 April 1984. But many contracts will be affected by both the DAR and the FAR. As an example, a contract resulting from a solicitation issued before 1 April may require administration based on the DAR clauses and cost principles while the actions of the contracting officer relating to contract reporting, contract close-out, and other such matters, are as directed by the FAR (to the extent nothing in the contract requires otherwise). Applicable DAR appendices, manuals, and supplements are referenced in the Table of Contents and continue in use until they are updated, cancelled or superseded.

Certain DAR deviations have been authorized without established terms. Others have been, or may be, approved for terms extending beyond the effective date of the FAR. All such deviations shall, notwithstanding their stated terms, terminate no later than the effective date of the FAR. The foregoing does not affect DAR deviations incorporated in contracts awarded prior to the FAR's effective date.

The DoD FAR Supplement contains material that implements the FAR, as well as supplementary material that is unique to the Department of Defense. This Supplement is not a stand-alone document and must be read in conjunction with the FAR.

Prior to the effective date of this document, a Defense Acquisition Circular (DAC) will be published to update it to reflect current legislation and DoD acquisition policy. The first change to this Supplement will be numbered Defense Acquisition Circular 84–1 and later DACs will be numbered in the same series (e.g., 84–2).

Consistent with the FAR, this document generally represents a restructuring and reformatting of current DAR policy. Due to the compressed nature of the DAR-to-FAR conversion, inadvertent errors may have been made. A form for correcting errors in the FAR and this Supplement such as misspelled words, omitted words or lines, or errors in format, is attached. Please do not use this form for submission of suggested revisions to the content of this Supplement. Proposed revisions to the FAR and this Supplement will be submitted by DoD personnel in accordance with departmental procedures. Other interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

Requests for copies of the Regulation should be made through normal departmental distribution sources or directly to the Government Printing Office, Washington, D.C. 20402.

James T. Brannan,

Director, Defense Acquisition Regulatory Council.

EDITORIAL NOTE

The Department of Defense FAR Supplement is also printed by the DAR Council in looseleaf format. The loose leaf edition formed the basis for this CFR edition. Because the codification structure used in the loose leaf edition does not conform to the structure required to ensure codification in Chapter 2 of Title 48, Code of Federal Regulations, the Office of the Federal Register has redesignated the DoD FAR supplement to meet its codification requirements.

In general, the major redesignations are of two types.

1. The Office of the Federal Register has assigned Chapter 1 (Parts 1–99) of Title 48 CFR to the jointly issued FAR regulations. Supplementing agency regulations are to be issued in Chapters 2 to 99 of Title 48. OFR has assigned Chapter 2 (consisting of Parts 200–299) to the Department of Defense for its DoD FAR Supplement. Since the loose leaf DoD FAR Supplement uses the exact same numbers as the basic FAR regulations, the OFR has found it necessary to renumber all DoD FAR Supplement units by incrementing the Part numbers by 200. Thus, in the loose leaf edition a citation to 4.105 of the DoD FAR Supplement would become 204.105 in the CFR edition; a citation to 45.505.14 (a) (3)

in the loose leaf would become 245.505–14 (a) (3) in the CFR edition.

2. The FAR provides for both implementing and supplementing agency regulations, and adopts an editorial convention known as the "Rule of 70" to distinguish supplementary regulations for which there is no corresponding counterpart. (See 48 CFR 1.303). The FAR only describes supplementation down to the subsection unit level. In some cases, supplemental material in subdivisions below the section or subsection level (i.e., (a), (a)(1), (a)(1)(i), or (a)(1)(i)(A)) may be indicated by use of (70) through (89) in the DoD FAR Supplement.

The CFR has a standardized paragraphing structure as specified in 1 CFR 21.11(h) which sets up a hierarchy of paragraphs using alphabetic characters, arabic numerals and lower case roman numerals. For example, 1.1 (d) (3) (iv) or 3.5 (g) (17) (ii). Because the DoD FAR Supplement's use of (70), (71) etc., does not follow sequentially the specified CFR codification style, OFR has adopted a convention for use with the DoD FAR Supplement. For purposes of the **Federal Register** and the **Code of Federal Regulations** publications, an "S–" is added within the parenthesis to indicate supplemental material. For example, 204.804–1(S–70) or 204.804–5(a)(S–70).

Title 48 of the Code of Federal Regulations is amended by establishing Chapter 2 to read as follows:

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Note: The text of the Appendices, Manuals, and Supplements to the DoD FAR Supplement are not published in the Federal Register or the Code of Federal Regulations.

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SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 201.1—Purpose, Authority, Issuance

201.101 Purpose.

The Department of Defense FAR Supplement is issued by the Under Secretary of Defense for Research and Engineering by direction of the Secretary of Defense and in coordination with the Secretaries of the Army, Navy and Air Force, and the Director of the Defense Logistics Agency. It establishes for the Department of Defense uniform policies and procedures, implementing and supplementing the Federal Acquisition Regulation.

201.103 Applicability.

(a) This supplement applies to all purchases and contracts made within and outside the United States (but see 201.405) for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations). This supplement and the FAR also apply to purchases and contracts made in support of foreign miltary sales without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

(b) Neither the FAR nor this supplement applies to transportation services purchased by transportation requests, transportation warrants, bills of lading, and similar transportation forms. Purchase of these excepted transportation services shall be in accordance with specific regulations and instructions issued by the Military Traffic Management Command, Military Sealift Command, Military Airlift Command, and the Departments.

201.104 Issuance.

201.104–1 Publication and Code arrangement.

This regulation is issued as Chapter 2 of Title 48, CFR. Other chapters are reserved for Departmental acquisition regulations that implement or supplement this regulation. It is also available in a loose-leaf edition.

201.104–2 Arrangement of regulations.

(a) This regulation is numbered according to whether the information implements or supplements the FAR. The differentiation is made by using the numbers 70–89 as new parts, subparts, sections, or subsections when supplementation is required. Implementing coverage uses the same numbers as the FAR material implemented. Numbers 1–69 have been reserved to the FAR. A series of numbers beginning with 7000 is used for provisions and clauses.

(1) A new Part 70 is used in the DoD FAR Supplement for new material which is not coverd by the FAR and is a distinct part only applicable to the Department of Defense.

(2) A new Subpart 225.72 could be used as the third subpart supplementing FAR Part 25, with Subparts 225.70 and 225.71 having preceded it.

(3) A new Section 225.173 could be used as the fourth section supplementing FAR Sections that begin with 25.101. In this case, the FAR can only be numbered through 25.169.

(4) A new Section 225.101–79 could be used as the 10th subsection supplementing FAR Subsections that begin with FAR 25.101–1.

(5) A new Subsection 252.225–7001 could be used as the second clause supplementing the FAR clauses prescribed by Part 25 beginning with 252.225–1. The number 7000 is used because of the potential existence of more than 20 clauses supplementing a given part over the lifetime of the FAR.

(6) Departmental supplementation of the FAR or this regulation will use the same rules, except that numbers 90 and above are reserved for supplementary material, and 9000 and above are reserved for supplementary clauses.

(c) *References and citations.*

(2) This regulation may be referred to as the Department of Defense Federal Acquisition Regulation Supplement or the DoD FAR Supplement. Cross reference to the FAR in this regulation will cite "FAR" followed by the appropriate part, subpart, etc.

References to this regulation will be without a name or acronym prefix. References to FAR citations in this supplement should be read to include the corresponding paragraphs of this supplement and any additional authorizations, restrictions, policies or procedures they may contain. For example, the words "* * * when authorized under FAR Part 25 * * *" include authorities granted under both FAR Part 25 and Part 225 of this supplement.

201.104-3 Copies.

Copies of the DoD FAR Supplement in loose-leaf and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201-1 The two Councils.

(a) The Defense Acquisition Regulatory (DAR) Council shall maintain the FAR and the DoD FAR Supplement.

(c) The composition and operation of the DAR Council shall be as prescribed by DoD Directive 5000.35.

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(S-70) Defense Acquisition Circulars.

(1) In accordance with the authority in FAR 1.301, a Defense Acquisition Circular, supplementary to this regulation, shall be published as often as may be necessary or advisable for distribution to all recipients of this regulation. Material to be published in each Defense Acquisition Circular shall first be approved by the Defense Acquisition Regulatory Council.

(2) The purposes of the Defense Acquisition Circular are:

(i) To promulgate as rapidly as possible selected material revising this regulation.

(ii) To disseminate material applicable to procurement which is not suitable for insertion in this regulation, but which may have the effect of a directive to, or be of importance and interest to its recipients; and

(iii) To supplement this regulation as may be necessary to reduce the size and frequency of issue of subsidiary Departmental procurement instructions.

(3) Unless otherwise indicated in the introductory language preceding an item, each item in Defense Acquisition Circulars will remain in effect until specifically canceled.

(4) Statements in Defense Acquisition Circulars to the effect that the material published therein is "effective upon receipt" or upon a specified date, or that changes set forth in the circular are "to be used upon receipt," mean that any new or revised clauses or forms included in the circular shall be included in invitations for bids and requests for proposal issued thereafter, unless a different meaning is expressed in the circular. However, unless otherwise provided in the circular, the new or revised clauses or forms need not be included in solicitations already in process of preparation where their inclusion would cause an undue delay in the solicitation.

(5) As a convenience to the Departments and to insure early and wide dissemination, selected DoD policy promulgations of general interest to contracting activities are republished as DAC items. Unless otherwise indicated, subsequent cancellation of such DAC items is not to be construed as cancellation of the underlying policy. Cancellation of such policy will normally be accomplished by separate and specific OSD action.

201.304 Agency control and compliance procedures.

(b)(1) The Departments and their subordinate organizations shall not issue instructions (including directives, regulations, policies, or procedures), contract forms or contract clauses implementing or supplementing the FAR or this regulation, unless permitted by one of the following and if consistent with (b)(2) below:

(i) Internal procurement management instructions, such as designations and delegations of authority, assignments of responsibilities; work flow procedures, and internal reporting requirements;

(ii) Any special contract clause of a nonrepetitive nature designed specifically to accomplish the peculiar requirements of an individual procurement, provided a clause relating to the subject matter is not set forth in the FAR or this regulation;

(iii) A variation of any contract clause which is set forth in the FAR or this regulation but not for use verbatim, provided that such variation is not inconsistent with the intent, principle and substance of the FAR or DoD FAR Supplement clause or related coverage of the subject matter;

(iv) Interim instructions, including service test of new techniques or methods of procurement, having an effective duration not exceeding six months (unless approved for a longer period by the DAR Council) which are essential:

(A) To meet current operational needs, provided the instructions are submitted prior to issuance or immediately thereafter for consideration by the DAR Council; or

(B) To effect greater efficiency in procurement management, provided the instructions authorized are submitted for approval of the DAR Council prior to issuance;

(v) Procurement procedures specifically identified as being essential for carrying out the peculiar needs of specialized commodity areas when authorized by: for the Army, Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research, Development and Acquisition); for the Navy, Deputy Chief of Naval Material for Contracts and Business Management; for the Air Force, Director of Contracting and Manufacturing, Office of the Deputy Chief of Staff (Research, Development and Acquisition); for the Defense Logistics Agency, Executive Director, Contracting, or the Executive Director for Contract Management; for the National Security Agency, the Director; for the Defense Communications Agency, the Director; for the Defense Nuclear Agency, the Deputy Director, Operations and Administration; for the Defense Mapping Agency, the Staff Director of Logistics; and notification is given to the DAR Council immediately upon such authorization for the purpose of determining whether such procedures should be included in this regulation, or the FAR;

(vi) Procurement instructions specifically identified as being essential for carrying out the peculiar needs of overseas commands when authorized by the cognizant unified commander and notification is given to the DAR Council immediately upon such authorization for the purpose of determining whether such instructions should be included in this regulation or the FAR;

(vii) Material expressly determined by the DAR Council to be inappropriate for FAR or DoD FAR Supplement coverage, but appropriate for inclusion in Departmental publications.

(2) Instructions issued in accordance with (a) above shall not contain material which unnecessarily duplicates, is inconsistent with, or increases or restricts the use of, any authority contained in this regulation or the FAR.

(c) Each Department shall establish procedures to screen all instructions (including directives, regulations, policies or procedures), contract forms, and contract clauses issued pursuant to (a) and (b) above to assure strict compliance with this paragraph, and to

determine if the subject matter is appropriate for inclusion in this regulation or the FAR.

201.371 USEUCOM Supplement.

A supplement, entitled USEUCOM Supplement, is applicable to all purchasing officers of the Department of Defense in the North Atlantic-Mediterranean area, including all of Europe. The USEUCOM Supplement and changes thereto are developed by USEUCOM and concurred in by the Offshore Procurement Policy Coordinating Committee representing the purchasing offices in that area and, after adoption and approval by the Defense Acquisition Regulatory Council, are published and distributed by the Headquarters, United States European Command, as an integral part of this Regulation. In addition, Headquarters USEUCOM publishes Tabs to the USEUCOM Supplement which contain source and informational material (such as government-to-government agreements and tax information) and which do not require approval by the DAR Council.

Subpart 201.4—Deviations From the FAR

201.402 Policy.

(a) The FAR and the DoD FAR Supplement are not intended to stifle the development of new techniques or methods of procurement. Innovation to attain desirable objectives will occasionally necessitate deviations from this regulation and the FAR, and it is the responsibility of contracting officers to request such deviations whenever they are required in the best interest of the Government. For the purpose of this paragraph, a deviation shall be considered to be any of the following:

(1) When a contract clause is set forth in the FAR or DoD FAR Supplement for use verbatim, use of a contract clause covering the same subject matter which varies from the FAR or DoD FAR Supplement coverage, or use of a collateral provision which modifies either the clause or its prescribed application constitutes a deviation; however, in the case of a purchase or contract of an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, such contract clauses may (subject to the direction of authority above the level of the contracting officer) be modified if no change in intent, principle, or substance is made (offshore contracting activities shall keep the cognizant unified commander advised of significant deviations effected under this subparagraph (a)(1);

(2) When a contract clause is set forth in the FAR or this regulation but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle and substance of the FAR or DoD FAR Supplement clause or related coverage of the subject matter;

(3) Omission of any mandatory contract clause;

(4) When a Standard, DD, or other form is prescribed by the FAR or a Department of Defense Directive, use of any other form for the same purpose;

(5) Alteration of a Standard, DD, or other form (other than Departmental forms), except as authorized by the FAR, this regulation, or a Department of Defense Directive;

(6) When limitations are imposed in FAR, this regulation, or a Department of Defense Directive, upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, including but not limited to the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration or settlement of contracts, the imposition of lesser or greater limitations;

(7) When a policy, procedure, method or practice of conducting procurement actions of any kind at any stage of the procurement process is covered by the FAR or this regulation, any policy, procedure, method or practice which is inconsistent with that set forth;

(8) Issuance of any instructions described in 201.304 (including an instruction for any additional contract clause, form, or type, or additional procurement policy, procedure, method of practice, not covered in the FAR, this regulation or in Department of Defense Directives) unless permitted under 201.304;

(9) A contract saving clause whereby the parties are committed to a contract modification in the event of changes in controlling statutes or regulations during the term of the contract. Any such saving clause shall require approval pursuant to 201.404.

(b) Requests for approval of any deviation from the FAR or this regulation shall be forwarded to the approving authority through procurement channels. Each submission shall contain as a minimum:

(1) Identification of the FAR or DoD FAR Supplement requirement from which deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A copy of any pertinent document, including forms or clauses and the proposed contractor's request, if any;

(5) A statement of the period of time for which the deviation is needed; and

(6) Detailed reasons supporting the request.

201.403 Individual deviations.

(a) Except where elsewhere prohibited, deviations from the FAR or this supplement or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures, provided such circumstances justify a deviation, and written notice of such deviation, describing its nature and the basis for its justification, is furnished to each of the following:

The Deputy Under Secretary (Acquisition Management), OUSD(R&E) Attention: DAR Council, Washington, DC 20301

The Assistant Secretary of the Army (RDA), Attn: DAR Council Policy Member, The Pentagon, Washington, DC 20310

The Assistant Secretary of the Navy (S&L), Attn: DARS Staff, Crystal Plaza, Bldg. 5, Washington, DC 20360

The Director of Contracting and Manufacturing Policy, Attn: AF/RDC (DAR), The Pentagon, Washington, DC 20330

Executive Directorate, Contract Management, Defense Logistics Agency, Attn: DLA-AA, Cameron Station, Alexandria, VA 22314

Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

(b) Examples of deviations from certain provisions of the FAR or this regulation not permitted under (a) above, although affecting only one contract or procurement, are:

(1) Provisions required by statute or executive order;

(2) Subpart 227.4;

(3) Subpart 231.1;

(4) Subpart 231.2;

(5) Part 232 (except 232.7, 232.8, and the Payment clauses in 232.1).

201.404 Class deviations.

Except as authorized in 201.403, deviations from this supplement or a Department of Defense Directive will not be effected unless approved in advance by the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management), (DUSD(AM)); provided, however that unanimous approval by the members of the DAR Council will constitute approval of the DUSD(AM) of all matters except those involving major

policy. Written requests for such approval will be submitted to the DUSD(AM) through the DAR Council as far in advance as exigencies of the situation will permit.

201.405 Deviations pertaining to treaties and executive agreements.

(b) and (c) Notwithstanding 201.403 and 201.404, deviations from the FAR or this supplement that are required in order to comply with a treaty or executive agreement to which the United States is a party are authorized in accordance with FAR 1.405 (b) and (c).

(d) A copy of the text of any deviation authorized under FAR 1.405 (b) or (c) shall be submitted to the DAR Council.

(e) If a deviation required to comply with a treaty or an executive agreement is not authorized by FAR 1.405 (b) or (c), the request for deviation shall be submitted to the DAR Council for consideration.

Subpart 201.6—Contracting Authority and Responsibilities

201.601 Responsibility of each contracting activity.

Except as otherwise prescribed by procedures of each respective Department, the Head of a Contracting Activity is responsible for acquisitions under or assigned to his activity.

201.602 Authority of contracting officers.

Contracting officers at contracting offices are authorized to enter into contracts for supplies or services on behalf of the Government, and in the name of The United States of America, by formal advertising, by negotiation, or by coordinated or interdepartmental procurement; and, when authorized under FAR Part 42, to administer such contracts. This authority is subject to the requirements, consistent with this supplement and the FAR, imposed by the appointing authority. Contracting officers at contract administration offices are, except as provided in FAR Part 42, authorized to perform the applicable contract administration functions and to perform additional procurement functions when delegated by the contracting office.

201.670 Ratification of unauthorized commitments.

201.670–1 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the Government. Subject to the limitations in 201.670–4 below, the Head of the Contracting Activity may ratify an unauthorized commitment, *provided:*

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The Head of the Contracting Activity could have granted authority to enter into the commitment at the time it was made and still has the power to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

201.670–2 Definitions.

"Ratification," as used in this section, means the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

201.670–3 Procedures.

(a) The authority of 201.670–1 above may be delegated in accordance with Departmental procedures, *provided,* that in no case shall this authority be delegated below the Chief of the Contracting Office.

(b) DoD components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebat" claims.

201.670–4 Limitations on Exercise of Authority.

The authority in 201.670–1 above may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(d) Funds are available and were available at the time the unauthorized commitment was made;

(e) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

201.670–5 Nonratifiable Commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 202—DEFINITIONS OF WORDS AND TERMS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 202.1—Definitions

202.1 Definitions.

"Department of Defense" means the Office of the Secretary of Defense and the Military Departments.

"Department" or "Military Department" includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the Defense Mapping Agency, and the National Security Agency.

"Head of the agency" means the Under Secretary or any Assistant Secretary of the Army, Navy and Air Force, and the Director and Deputy Director of the Defense agencies, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, the Under Secretary of Defense (Research and Engineering) shall exercise the authority for Defense agencies.

(a) *Contracting activities* include:

For the Army:

Office of the Deputy Assistant Secretary (Acquisition), Assistant Secretary of the Army (Research, Development and Acquisition);

Directorate of Procurement & Production, Headquarters, U.S. Army Materiel Development and Readiness Command;

U.S. Army Armament Munitions and Chemical Command;

U.S. Army Missile Command;

U.S. Army Electronics Research and Development Command;

U.S. Army Communications-Electronics Command;

U.S. Army Troop Support Agency;

U.S. Army Troop Support and Aviation Materiel Readiness Command;

U.S. Army Tank-Automotive Command;

U.S. Army Aviation Research and Development Command;

U.S. Army Training and Doctrine Command;

U.S. Army Test and Evaluation Command;

U.S. Army Forces Command;

U.S. Army Health Services Command;

Military District of Washington, U.S. Army;

U.S. Army, Europe;
National Guard Bureau;
Office of the Chief of Engineers;
U.S. Army Communications Command;
Office of The Surgeon General;
U.S. Army Western Command;
Military Traffic Management Command;
U.S. Army Ballistic Missile Defense Systems Command;
Office of the Assistant Deputy Chief of Staff for Operations and Plans (Command, Control, Communications and Computers); and
Eighth U.S. Army.
For the Navy:
Office of Acquisition and Contract Policy, Office of the Assistant Secretary of the Navy, Shipbuilding and Logistics.
Headquarters, Naval Material Command;
Office of the Deputy Chief of Naval Material (Contracts and Business Management);
Naval Air Systems Command;
Naval Data Automation Command;
Naval Electronic Systems Command;
Naval Facilities Engineering Command;
Naval Sea Systems Command;
Naval Supply Systems Command;
Office of Naval Research;
Navy Aviation Supply Office;
Military Sealift Command;
Ships Parts Control Center;
Headquarters, United States Marine Corps; and
Installations and Logistics Department, Headquarters, U.S. Marine Corps.
For the Air Force:
HQ USAF, Director of Contracting and Manufacturing Policy;
Air Force Logistics Command;
Air Force Systems Command;
Strategic Air Command;
Tactical Air Command;
Air Force Communications Command;
Military Airlift Command;
Air Training Command;
Pacific Air Forces;
United States Air Forces in Europe;
Alaskan Air Command; and
Space Command.
For the Defense Logistics Agency:
Office of the Executive Director, Contract Management;
Office of the Executive Director, Contracting;
Defense Supply Centers; and
Defense Personnel Support Center.
For the Defense Communications Agency:
Headquarters, Defense Communications Agency; and
Defense Commercial Communications Office.
For the Defense Nuclear Agency:
Headquarters, Defense Nuclear Agency.
For Defense Mapping Agency:
Headquarters, Defense Mapping Agency, Logistics Office.
For the National Security Agency:
Headquarters, National Security Agency.
For the Defense Supply Service—Washington:
Director, Defense Supply Service—Washington.

(b) "Contracting activity" also includes any other contracting activity hereafter established. The number and designation of particular contracting activities of any Military Department may be changed by directive of the Secretary.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.000 Scope of part.

Reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities shall be made by each Department in accordance with procedures set forth in 209.472 and Departmental procedures. Such reports are specified by 203.103–2, 203.203, 203.301, 203.409, and 203.502 of this Part.

Subpart 203.1—Safeguards

203.101 Standards of conduct.

203.101–3 Agency regulations.

The applicable Department of Defense directive on Standards of Conduct is DODD 5500.7. See AR 600–50 for the Army; SECNAV Instr. 5370.2E of 29 November 1967, for the Navy; AFR 30–30, for the Air Force; DLAR 5500.1, for the Defense Logistics Agency; DCA Inst. 220–50–1, for the Defense Communications Agency; DNA Inst. 5500.7A, for the Defense Nuclear Agency; and DMA Inst. 5500.1, for the Defense Mapping Agency.

203.103 Independent pricing.

203.103–2 Evaluating the certification.

(b)(3) Whenever an offer is rejected under FAR 3.103–2(b) (1) or (2), or the certificate is suspected of being false, the matter shall be reported in accordance with 203.000 as well as being reported to the Attorney General in accordance with FAR 3.303.

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the gratuities clause.

Suspected violations of the Gratuities clause shall be reported in accordance with 203.000 and Departmental procedures.

203.204 Treatment of violations.

Procedural requirements for hearings under the Gratuities clause are set out in Appendix D.

Subpart 203.3—Reports of Identical Bids and Suspected Antitrust Violations

203.301 General.

(b) Suspected antitrust violations shall be reported in accordance with 203.000 and Departmental procedures.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the convenant against contingent fees.

(b) When the chief of the contracting office has reviewed the facts and found evidence or basis for suspicion of fraud or other criminal conduct, the matter shall be reported in accordance with 203.000 and Departmental procedures.

203.410 Records.

Where the receipt of new Standard Form 119 makes previously received information obsolete, the obsolete information may be destroyed if its retention is no longer needed for enforcement purposes.

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.

Suspected violations of the Antitrust Kickback Act shall be reported in accordance with 203.000 and Departmental procedures.

203.570 Implied endorsement by military resale activities.

The contracting officer shall include the clause at 252.203–7000 in all solicitations and contracts for supplies purchased for resale to preclude any implied endorsement by military resale activities of commercially advertised products.

PART 204—ADMINISTRATIVE MATTERS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 204.2—Contract Distributon

204.201 Procedures.

(e) One copy of each of the following type contracts and of each modification thereto shall be distributed to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed

in the DCAA Directory—Headquarters and Field Offices):

(1) Cost reimbursement

(2) Time-and-materials

(3) Labor-hour

(4) Fixed price contracts with provisions for redetermination, incentives, economic price adjustment, or cost allowability

(5) Any other contract which requires audit service. (If there is a question as to the appropriate DCAA field audit office, contracting officers may request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office.)

(f) Two copies shall be distributed directly to the contract administration office cognizant of each manufacturing location where contract administration services will be required (see DoD Directory of Contract Administration Services Components 4105.59H), when administration of the contract is performed at other than the place of manufacture.

204.202 DoD distribution requirements.

(a) The contracting officer executing a contract or modification is responsible for complete distribution of the document.

(b) Except as provided in this paragraph and FAR 4.201(a), the procuring contracting officer shall maintain the original executed procurement document in the official contract file. The original of each modification executed by the ACO or TCO shall be provided to the PCO. Unless otherwise directed by the department concerned, the original executed provisioning orders shall be maintained by the office issuing the orders.

(c) In addition to the distribution in FAR 4.201, copies of contracts (including agreements) shall be distributed as specified below:

(1) Four copies to the contract administration office (distribution shall be effected simultaneously with the copy furnished under FAR 4.201(b);

(2) one copy to each consignee indicated in the contract (a transshipping terminal is not a consignee);

(3) one copy to the appropriate transportation office when required by FAR 42.1402, and additional copies as required by Departmental regulations;

(4) ten copies to the MIPR initiating activity in the case of coordinated procurement;

(5) one copy to the CAO ADP point, except when the DoDAAD code (see DoD Directory 4105.59H) is the same as that of either the CAO or payment office.

(d) When a payment office is added to, or changed under, an existing contract by modification, a copy of the basic contract and all modifications thereto shall be furnished to the added/new payment office. A copy of the modification affecting such addition or change shall also be furnished to the original or losing payment office. When a contract administration office, an accounting office and finance office (funding office), a consignee or other activity is added by a modification, the contracting officer shall determine the extent to which each activity is concerned with the basic contract and modifications and make distribution accordingly.

(e) Distribution of modifications issued pursuant to 204.7004–3(a)(2)(B) and 204.7004–4(b)(2) may be limited to the following:

(1) Contractor;

(2) Receiving Activity;

(3) Contract Administration Office;

(4) Payment Office;

(5) CAO ADP point in accordance with (c)(5) above.

(f) Distribution of overhead rate agreements may be limited to the contractor and the executing contracting officer.

(g) Distribution of contract modifications generated by mechanical means (computer program) may be limited to the following:

(1) Contractor, one copy;

(2) CAO, one copy;

(3) New Payment Office, one copy

(4) PCO, one copy;

(5) Funding Activities, one copy to each.

Subpart 204.6—Contract Reporting

204.670–1 Scope.

This section prescribes uniform reports which are required to be prepared by purchasing and contract administration offices in order to meet the requirements of the Federal Procurement Data System and provide management with necessary information to help formulate, change or measure the effectiveness of acquisition policy.

204.670–2 Definitions.

As used in 204.671 and 204.672 the following terms have the meanings stated below.

"Contracting Action" means any written action obligating or deobligating funds in connection with the purchasing, renting, leasing, or otherwise obtaining supplies, services, or construction. The term includes: preliminary contractual instruments; letter contracts; definitive contract, including notices of award; purchase orders; BPA calls; imprest fund purchases; SF 44 purchases; job orders; task orders; delivery orders; contingency orders; administrative notices; communciation services authorizations (CSA's); production lists; priced exhibits; other orders against existing contracts; and contract modification such as change orders or agreements, supplemental agreements, funding changes, option exercises, and notices of termination or cancellation.

"Purchasing Office" means any office which awards or executes a contracting action when that action is accomplished by the PCO. Included in the term are activities which place orders under DoD contracts, under another agency contract, or under GSA Federal Supply Schedule, when such action is not taken in conjunction with an assigned contract administration responsibility.

"Contract Administration Office" means the office which awards or executes a contracting action as defined above when such action is accomplished by an ACO on behalf of the PCO who assigned contract administration responsibility to that office, including actions taken by a TCO relating to the settlement of terminated contracts.

204.670–3 DUNS Number.

Contracting Officers shall insert in solicitations exceeding the small purchase limit the provision at 252.204–7004 to request the offeror to supply his Data Universal Numbering System (DUNS) Number.

204.670–4 Distribution of defense subcontracts placed overseas.

To assist DoD monitoring of arms cooperation agreements with friendly governments, the clause at 252.204–7005 shall be inserted in any contract for other then commercial items to be awarded which is expected to exceed $500,000, or when any modification increases the amount of a contract to more than $500,000. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to such modification. This clause shall not be inserted in contracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs) and subsistence.

204.671 Individual procurement action report (DD Form 350).

204.671–1 Scope.

This Section prescribes the reporting on DD Form 350 of individual contracting actions in excess of $25,000. This reporting requirement has been assigned Report Control Symbol: DD–DR&E(M) 1014.

204.671-2 Purpose.

The DD Form 350 is used to collect data on contract placement statistics within DoD. The data gathered by means of the DD Form 350 are used for reporting the size and distribution of DoD procurement actions; types of contracts used; methods used in contracting; numbers and amount of contracts placed with categories of contractors such as small, small disadvantaged, and women-owned small business concerns; the negotiation authority used; the extent of competition achieved; and other essential facts about contract actions over $25,000 written by DoD. In many respects, the data summarized from the DD Form 350 are used to measure the efficiency and adequency of the way in which the DoD procurement program is executed. The data serve as the basis for internal DoD reports as well as reports to other departments of the executive branch, Congress, GAO, etc. They frequently provide a basis for new or revised procurement policies. Therefore, it is most important that accurate and complete data be reported in a timely manner through the DD Form 350.

204.671-3 Applicability and coverage.

(a) DD Form 350 consist of 6 parts. Part A identifies the report and the reporting activity. Part B identifies the transaction: contract number, contractor, dollars, product, etc. Part C gathers data concerning contracting procedures and methodology. Part D gathers data relating to the placement of the contract and to several statutory requirements relating to DoD procurements. Part E is set aside for departmental or higher authority use. Part F identifies the cognizant reporting official.

(b) DD Form 350 shall be prepared (typewritten or machine produced equivalent) for each contracting action obligating or deobligating more than $25,000 which is executed by a component of the Department of Defense except as indicated in (d) below. At the option of the headquarters of the Departments, purchasing offices may submit an automated record in lieu of a DD Form 350, *Provided,* that the contract file reflects such information on a separate worksheet or print-out for each individual contracting action in excess of $25,000.

(c) Multiple reports are required for a single action when both the Foreign Military Sales Program and other programs are involved (see 204.671-5(b)(12)). Multiple reports may be required if more than one type of contract is involved (see 204.671-5(c)(6)(ii)).

(d) DD Form 350 shall not be prepared for the following contracting actions:

(1) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange Service. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(2) Transactions for leased communications placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO).

(3) Transactions for purchase of land, or rental or lease of real property.

(4) Orders from GSA Stock and the GSA Consolidated Purchase Program.

(5) Transactions which involve Government bills of lading or transportation requests.

(6) Grants for basic research with educational institutions and other nonprofit organizations.

(7) Orders placed against indefinite delivery type contracts entered into by the Defense Fuel Supply Center and the Military Sealift Command. The estimated value of the orders to be placed in each fiscal year against each contract shall be reported on a separate DD Form 350 in the appropriate fiscal year by the Defense Fuel Supply Center and Military Sealift Command for their respective contracts.

(8) Orders placed against indefinite delivery type contracts entered into by the Military Traffic Management Command for stevedoring services. Orders under each such contract shall be consolidated quarterly and the cumulative dollar amount reported on a single DD Form 350.

(9) Awards to individuals in support of dependent schools, e.g., principals and teachers. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350.

(10) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract.

(11) Orders placed of resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10-500. Orders under each such contract shall be consolidated monthly and cumulative dollar amounts reported on a single DD Form 350 in accordance with departmental regulations.

(12) Vouchers processed by the U.S. Army Contracting Agency, Europe (USACAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 in accordance with departmental regulations.

204.671-4 Due date and distribution.

(a) The signed original of each DD Form 350 shall be forwarded by the purchasing office within 3 working days after the date on which the dollars were actually obligated or deobligated by the contracting office, with the following exceptions:

(1) For those Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the signed original of the DD Form 350 shall be forwarded within 10 working days.

(2) For actions executed in the month of September only, prescribed due dates are extended 10 calendar days for the forwarding of reports in order to assure complete coverage of all contracting actions occurring in the fiscal year.

(b) Corrected reports shall be distributed in exactly the same manner as original reports.

(c) DD Forms 350 shall be submitted as unclassified documents. If necessary, the commodity description (Item B8D) may be omitted and the work "classified" inserted in lieu thereof. In addition, enter 9999 in Block B8A and zeros (000) in Blocks B8D and B8C. Should further modification of coding of items on DD Form 350 be deemed necessary for security classification purposes, the appropriate department offices identified in (d) below shall be contacted for special instructions.

(d) Distribution of DD Form 350 shall be as follows:

(1) Army purchasing offices (except for Engineer Civil Functions purchasing offices) to HQDA(JDHQ-SV-W-P), Washington, D.C. 20310.

(2) Army Engineer Civil Functions purchasing offices to HQDA(DAEN-PRP), Washington, D.C. 20314.

(3) Navy purchasing offices as directed by COMNAVSUP(SUP-024).

(4) Air Force purchasing offices as directed by HQUSAF.

(5) Defense Logistics Agency purchasing offices to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Attn.: DLA-PA, Alexandria, VA 22314.

(6) All other purchasing offices of the Department of Defense shall forward the signed originals to HQDA(JDHQ-SV-W-P), Washington, D.C. 20310.

(e) Purchasing offices shall prepare DD Form 350 for contracting actions in excess of $25,000 which are reportable in accordance with 204.671-3 and are

accomplished by contract administration offices. To facilitate such reporting, the ACO or TCO, within one working day after the action date, shall transmit to the purchasing office on whose behalf the action was taken a copy of the contractual instrument clearly annotated in the heading in large block letters as the "DD FORM 350 REPORTING COPY". The purchasing office shall prepare and submit the DD Form 350 within 3 working days after the receipt of this "REPORTING COPY".

204.671–5 Instructions for completion of DD Form 350.

(a) *Part A of DD Form 350.*

(1) *Item A1, Type of report.*

(i) If this is an original report, enter Code zero in Item A1 and complete sections A through F as appropriate.

(ii) If it is necessary to cancel a previously submitted report in its entirety, i.e., the report should not have been submitted, then enter Code 1 in Item A1 and complete Items A2, A3, and B1 only.

(iii) To change any data elements on a previously submitted report, enter Code 2 in Item A1, enter in Items A2, A3, and B1 the same codes that were entered on the report being changed, and enter the corrected codes in each other item being corrected. Leave all other items blank. If it is necessary to change Items A2, A3, or B1 on a previously submitted report because a code was incorrect, that report must be cancelled and a new "original" report submitted.

(2) *Items A2, Report number.*

(i) Each purchasing office shall assign to DD Form 350 a unique 4-position number with alpha or numeric characters. It more than one activity within a purchasing office utilizes the same reporting office code, the purchasing office shall assign separate clocks of numbers to each such activity in order to prevent duplication of report numbers.

(ii) If Item A1 is coded 1 or 2 (a cancelling or correcting action), then enter the report number assigned to the report being cancelled or corrected.

(3) *Item A3, Purchasing office code.* Enter in Item A3 the code assigned to the purchasing office in accordance with DoD Procurement Coding Manual, Volume III.

(4) *Item 4A, Name of purchasing office.* Enter in the space provided sufficient detail to establish the identity of the purchasing office submitting the report.

(b) *Part B, DD Form 350.*

(1) *Item B1, Contract number.* Enter either, left justified, the Department of Defense contract number or, for orders under contracts awarded by other Federal agencies, the contract number of that Federal agency.

(i) For DoD contracts, enter the basic (13 alpha-numeric character) procurement instrument identification number (PIIN) that was assigned in accodance with 204.70. Contracts numbered under exceptions permitted by 204.7001 shall include the identification of the purchasing office and the fiscal year in accordance with 204.7003–1 (a) and (b) and Appendix N, plus 5 characters. Do not enter other supplementary procurement instrument numbers as part of the contract number; such numbers shall be entered in Item B2. Also, do not enter dashes, slants, or similar punctuation marks, and do not show spaces between numbers or letters in the PIIN.

(ii) For other agency contracts, enter the contract number of the Federal agency as it appears in the contractual instrument, except that spaces between characters shall not be shown, and dashes, slants, and other punctuation marks shall not be entered (e.g., for GS–OOS–27773, enter GS00S27773; for GP–16251 A, enter GP16251A, etc.).

(2) *Item B2, Modification, order or other supplementary procurement instrument identification number.* If applicable, enter the supplementary procurement instrument identification number (up to 13 characters) that was assigned in accordance with 204.7004 or other identification permitted by 204.7004 or other identification permitted by 204.7001.

(3) *Item B3, Action date.* Enter the year, month and day when a mutually binding agreement was reached. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, enter 2 January 1984 as 840102. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the fund availability or the date when the contract becomes effective (see 204.671–5(b)(13)(iii) and (viii)).

(4) *Item B4, Contractor identification information.*

(i) *Item B4A, DUNS number.* Enter the 9-position number assigned by Dun and Bradstreet, Inc. (excluding dashes) that identifies the contractor establishment receiving the award. This DUNS Contractors Establishment Number should be for the division or plant identified. For contracts placed with the Canadian Commercial Corporation, enter "208891788" in Item B4A. For contracts placed with the Small Business Administration pursuant to the Small Business Act—Pub. L. 85–536, Section 8(a), enter the DUNS code for the small business firm which will be performing under the contract. The DUNS Contractor Establishment Number is available from one of the following sources:

(A) The offeror's response to the solicitation;

(B) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable 9-digit number;

(C) If not provided by the successful offeror, the Federal Procurement Data Center (FPDC) DUNS Contractor Identification File, Alphabetical Listing shall be consulted.

(D) If this listing has no entry for the establishment, the applicable 9-digit number shall be obtained by contacting a Dun and Bradstreet, Inc. representative at the following commercial telephone numbers: 215–776–4388/4389/4390/4391. All requestors should provide the following information:

a. Name of requesting purchasing office;

b. Purchasing location (city/town; state/country) and commercial telephone number (including area code);

c. Name of individual making the request;

d. The total number of requests, if more than one; and

e. Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, and zip code, if applicable, as displayed in Items B4B and B4C.

(ii) *Item B4B, Contractor name.* In the space provided, enter the name (including division name) of the contractor.

(iii) *Item B4C, Contractor address.* In the space provided enter the address of the contractor. Include street address (and/or P.O. Box), city/town, state/country, and zip code, if applicable.

(5) *Item B5, Principal place of performance.*

(i) Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, place of mining, or place where a service is preformed for the Government, including military installations. If more than one location is involved, show the location involving the largest dollar amount of procurement. Do not show more than one location in Item B5. Do not leave the "name" portion of Item B5 blank.

(A) For purchase from regular dealers (FAR 22.601), the place of performance shall be the dealer's location if shipment is made from stock, or the subcontractor's location if shipment is made from a subcontractor's plant.

(B) For construction contracts, report the actual site of construction.

(C) For architect-engineering contracts, report the planned site of the construction.

(D) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(E) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

(ii) *Item B5A.* Enter the city or place code from Federal Information Processing Standard (FIPS) Publication 55, "Names of Populated Places and Related Entities of the States of The United States", of the principal place of preformance. If the city or locality is not listed in FIPS Publication 55, find the nearest county in FIPS Publication 55, and enter the 3-digit numeric county code, preceded by 2 zeros. Leave this item blank for Washington, D.C., foreign countries, and United States possessions or territories other than Puerto Rico.

(iii) *Item B5B.* Enter the state or country code from U.S. Department of Commerce, National Bureau of Standards (NBS) Letter Circular (LC) 1067, "Codes for Names of Countries and Outlying Areas of the United States", of the principal place of performance. For Washington, D.C., enter "11" and leave Item B5A blank.

(iv) *Item B5C.* Enter the name of the principal place of performance. If the location is the same as for Item B4C, enter the work "same".

(6) *Item B6, Type of obligation.* This item is used to identify the nature of the amount to be entered in Item B7. Enter Code 1 to show an obligation; Code 2 to show a deobligation.

(7) *Item B7, Total dollars (obligated/deobligated).* Enter the new amount of funds obligated or deobligated by the contractual instrument being reported. Enter whole dollars only.

(8) *Item B8, Principal product or service.*

(i) *Item B8A, FSC or Service Code.* Enter a Federal Supply Classification Code, a Research, Development, Test and Evaluation (RDT&E) Code, or a Service Code in accordance with Section I, Volume I of the Department of Defense Procurement Coding Manual (DoD 4105.61M). Each DD From 350 must contain a 4-character entry for this item. If more than one classification is applicable to the procurement action, enter the one accounting for the largest dollar volume of procurement.

(A) *Research, Development, test, and evaluation. (RDT&E)* is defined in FAR 35.001. Each DD Form 350 action for RDT&E shall be assigned, a code beginning with the letter "A" in accordance with Section I, Part A of the referenced coding manual. Do not assign RDT&E codes of the procurement (including rental or lease) of equipment, supplies, or services separately purchased in support of RDT&E work. Procurement of services or supplies that is incidental to the fulfillment of RDT&E work, but does not require contractor RDT&E performance, shall be coded in accordance with Parts B and C, Section I of the referenced coding manual, even though such purchases are in support of RDT&E work and RDT&E funds are cited. In no case shall RDT&E codes be assigned for orders under GSA Federal Supply Schedule contracts.

(B) *Services.* All services (except RDT&E actions) and lease or rental of equipment or facilities shall be coded in accordance with Part B, Section I of the referenced coding manual. Each category is assigned a series of 4-character codes for specific types of services and construction.

(C) *Supply.* Procurement of supply items shall be assigned a Federal Supply Classification (all numeric) Code from Part C, Section I of Volume I of the referenced coding manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 aslo may be used as a reference in identifying the correct 4-character code. Lease or rental of equipment/facilities should be coded as a service in accordance with Part B, Section I of the referenced coding manual.

(ii) *Item B8B, DD Claimant program code.* Enter the appropriate DDCP code that identifies the commodity described in Item B8D. Claimant Program Codes are defined in Section III, Volume I of the referenced coding manual. If the description in Item B8D is for research development, the objective of the research and development shall control the DDCP code to be entered; e.g., if the objective of the research and development is a guided missile, enter code A20. If the description in Item B8D is for research that cannot be identified with a particular claimant program, enter Code A10. Contracts for ship repair, inspection, and repair as necessary (IRAN), modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible. Equipment rental (including rental of automated data processing equipment (as defined at Part 70) and utility services shall be coded S10. If a particular claimant program cannot be identified, enter code S10 for services and code C9E for supplies or equipment.

(iii) *Item B8C, system or equipment code.* Enter the appropriate weapons system or equipment code in accordance with Section II, Volume I of the referenced coding manual. If a weapon system or equipment code is not applicable, enter 3 zeros. This reporting requirement is not applicable to the Defense Logistics Agency.

(iv) *Item B8D, name or description.* Enter the name or brief description of commodity or service. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified, if a code name, such as Minuteman, Polaris, Trident, Pershing, etc., or an identifying programs number; e.g., WS–107A, can be used without classifying the report.

(9) *Item B9, Consulting services contract.* Enter Code 1 if the services being acquired are consulting services as defined in FAR 37.201; otherwise enter Code 2.

(10) *Item B10, Multi-year contract.* Enter code 1 if this report concerns multiyear contracting for supplies or services pursuant to FAR 17.1; otherwise enter Code 2.

(11) *Item B11, Total multi-year value.* Enter the estimated multiyear contract value if Item B10 is coded 1 and Item B13 is coded 1 or 3; otherwise, leave blank.

(12) *Item B12, Foreign military sales.* Enter Code 1 if the contracting action is under Foreign Military Sales arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. If not, enter code 2. If only part of a contracting action is for foreign military sales, that part (if in excess of $25,000) shall be reported on one DD Form 350, and the other part (if in excess of $25,000) shall be reported on a second DD Form 350. If this item is coded 1, do not complete Parts C and D.

(13) *Item B13, Kind of contracting action.* Enter one of the available codes as appropriate. Do not complete Parts C and D of DD Form 350 if Item B13 is coded 6 or 7.

(i) *Code 1—Initial letter contract.* Enter this code when a new letter contract is executed. (For a letter contract which is designated as a modification of an existing contract, enter Code A.)

(ii) *Code 2—Definitive contract superseding letter contract.* Enter this code when applicable. (For a definitive modification which supersedes a letter contract designated as a modification of an existing contract, enter Code A.)

(iii) *Code 3—Definitive contract (including notice of award).* Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Also enter code 3 for a modification which is the initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons. Use this code for definitive contract awards under the Small Business Administration 8(a) Program.

(iv) *Code 4—Order under DoD basic ordering agreement.* Enter this code when reporting orders or modifications to order under basic ordering agreements, priced exhibits and production lists entered into by a DoD Component.

(v) *Code 5—Order under DoD contract.* Enter this code when reporting orders or modifications to orders against indefinite delivery type contracts, DLA schedules, job orders, task orders, and the like where firm obligations are created by the issuance of such documents and where the basic contract was awarded by a DoD Component. Use this code for orders placed under DoD contracts with the Small Business Administration 8(a) Program. Also use this code for procurements from Workshops for the Blind or Other Severely Handicapped.

(vi) *Code 6—Order under GSA Federal Supply Schedule.* Enter this code for all procurements (including modifications) under the GSA Federal Supply Schedule Contracts (see FAR 8.4). Also enter this code for all contracting actions (including modifications) under GSA ADP Schedule Contracts and GSA Area Contracts for Utility Services.

(vii) *Code 7—Action with another Federal agency.* Enter this code for all procurements (including definitive contracts, orders, and contract modifications) from or through other Federal agencies (except General Services Administration), such as the Government Printing Office, Federal Prison Industries, Veterans Administration, Tennessee Valley Authority, and the Department of Treasury, Agriculture and Energy.

(viii) *Code A—Additional work, new agreement.* Enter this code when additional work is acquired by means of a supplemental agreement as follows:

(A) Bilateral modifications which increase the scope of work of existing contracts, including letter contracts.

(B) Modifications which are the initial citation and obligation of funds for a supplemental agreement to increase quantities or extend performance that was awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(ix) *Code B—Additional work, other.* Enter this code when additional work is acquired by means of modification to the basic contract as follows:

(A) Exercise of options for increased quantities or extended performance.

(B) Incremental yearly buys under multiyear contracts.

(C) Amendment to letter contracts, supplemental agreements, and other modifying actions which add work and are made pursuant to the terms of existing contracts.

(x) *Code C—Funding action.* Enter this code for amendments to letter contracts and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multiyear contracts), increasing the estimated cost on cost-reimbursement contracts, and repricing actions covering incentive price revision, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons (see (iii) and (viii) (B) above). For funding actions involving the kind of contracting actions covered in (iv), (v), (vi), and (vii) above, Codes 4, 5, 6, and 7 shall be used as appropriate.

(xi) *Code D—Change order.* Enter this code when reporting changes orders issued pursuant to the "Changes", "Differing Site Conditions", or similar provisions of existing contracts.

(xii) *Code E.* Enter this code of Termination for default.

(xiii) *Code F.* Enter this code for Termination for convenience.

(xiv) *Code G.* Enter this code for cancellation.

(c) *Part C of DD Form 350.* The following rules apply to each of the items listed in Part C of DD Form 350: If Item B12 is coded 1 or if Item B13 is coded 6 or 7, leave all items in this Part C blank. If Item B13 is coded 1 through 4, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item. If Item B13 is coded 5, or B through G, enter the same code in each item in Part C that was reported on the DD Form 350 to the original contract governing this transaction. If a DD Form 350 to the original contract was not submitted because a DD Form 350 was not required, enter the code which is applicable to the original contract governing this transaction.

(1) *Item C1, Synopsis in Commerce Business Daily.* Enter code 1 if a synopsis of the proposed action was prepared and transmitted in accordance with FAR 5.2. If not, enter code 2.

(2) *Item C2, Reason not synopsized.* Enter the applicable code as follows (see FAR 5.201):

Code and Reason

0 Original estimate less than $10,000;
1 The procurement for security reasons is of a classified nature;
2 Procurement of perishable subsistence when made by placement of an order under a contract covered by FAR 16.5;
3 Procurement is for utility services and only one source is available;
4 Procurement which is of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at FAR 5.203;
5 Procurement to be made by an order placed under an existing contract covered by FAR 16.5;
6 Procurement to be made from another Government department or agency, including procurements from the SBA using the authority of section 8(a) of the Small Business Act, or a mandatory source of supply such as an agency for the blind under the blind-made products program;
7 Procurement that results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicted proposal would improperly disclose the originality of thought or innovativeness of the proposed research;
8 Procurement for which a foreign government reimburses the Department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such international agreement or treaty;
9 When it has been determined in writing by the Secretary with the concurrence of the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

(3) *Item C3, Method of contracting.* Enter code 1 when accomplished by

formal advertising; enter code 2 when accomplished by negotiation, including restricted advertising actions and modifications made pursuant to the provisions of Pub. L. 85–804. When code 1 is entered, no entries shall be made in Items C4 and C5.

(4) *Item C4, Negotiation authority.* This item shall be completed where Item C3 was coded 2. Enter the code below which corresponds to the negotiation exception of 10 U.S.C. 2304(a) (see FAR 1015.201–15.217) cited as the negotiation authority.

Code and Negotiation Authority

0101 Labor Surplus Area Set-aside (FAR 15.201)
0102 Unilateral Small Business Set-aside (FAR 15.201)
0200 Public Exigency (FAR 15.202)
0400 Personal or Professional Services (FAR 15.204)
0500 Services of Educational Institutions (FAR 15.205)
0600 Purchases Outside the United States (FAR 15.206)
0700 Medicines or Medical Supplies (FAR 15.207)
0800 Supplies Purchased for Authorized Resale (FAR 15.208)
0900 Perishable or Nonperishable Subsistence Supplies (FAR 15.209)
1001 Sole Source of Supply (FAR 15.210)
1002 Patent Rights or Copyrights (FAR 15.210)
1003 No Responsive Bids Received (FAR 15.210)
1004 Remaining Requirements (FAR 15.210)
1005 Public Utility Services (FAR 15.210)
1006 Films, Motion Pictures, Manuscripts (FAR 15.210)
1007 Technical Nonpersonal Services (FAR 15.210)
1008 Studies or Surveys (FAR 15.210)
1009 Nature or Amount of work unknown (FAR 15.210)
1010 Rates Established by Law or Regulations (FAR 15.210)
1011 Commercial Transportation (FAR 15.210)
1012 Services Relating to Perishable Subsistence (FAR 15.210)
1013 Inadequate Specifications (FAR 15.210)
1014 Storage of Household Goods (FAR 15.210)
1015 Replacement Parts (FAR 15.210)
1016 Sole Source Facilities Contract (FAR 15.210)
1017 Additional Construction Same Site (FAR 15.210)
1018 Foreign Military Sales (FAR 15.210)
1019 Reserved for Departmental Instructions
1020 Reserved for Departmental Instructions
1021 Reserved for Departmental Instructions
1022 Reserved for Departmental Instructions
1023 Reserved for Departmental Instructions
1024 Reserved for Departmental Instructions
1025 Reserved for Departmental Instructions
1026 Not otherwise applicable
1100 Experimental, Developmental or Research Work (FAR 15.211)
1200 Classified Purchases (FAR 15.212)
1300 Standardization and Interchangeability of Parts (FAR 15.213)
1400 Substantial Initial Investment or Extended Preparation (FAR 15.216)
1500 Negotiation After Advertising (FAR 15.214)
1600 In the Interest of National Defense (FAR 15.217)
1701 Joint Small Business Set-Aside (FAR 15.217)
1702 Otherwise Authorized by Law (FAR 15.215)
1703 Repurchase Following Default (FAR 15.217)

(5) *Item C5, Extent of competition in Negotiation.*

(i) This item shall be completed where Item C3 was coded 2. Enter the code below which corresponds to the extent of competition in the negotiated action:

Code and Extent of Competition

1 Price competition
2 Design or technical competition
3 Follow-on after price competition
4 Follow-on after design or technical competition
5 Other noncompetition
6 Non-competition based on catalog or market price
7 Competition not applicable

(ii) Definitions of the Extent of Competition Codes:

(A) *Price competition, Code 1.*

(a) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices (including catalog or market prices). In addition, a contract may also be reported as "price competition" even though only one offer is received, when offers are solicited from at least 2 responsible offerors who normally contend for contracts of the same or similar items. Where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, use Code 5. Actions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider in the content of the response of the solicitation, the contract history of the items purchased, and other relevant information, and shall exercise sound judgment in reporting actions as "price competition". In no case shall cost-reimbursement type contracts be coded 1. Even though catalog or market prices were offered, if the criteria for "price competition" as specified here have been met, then enter Code 1.

(b) Multiple awards in such areas as subsistence, clothing, and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition", even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition".

(B) *Design or technical competition, Code 2.* Design or technical competition is present when 2 or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts and many initial contracts for new military weapons fall into the category of design or technical competition.

(C) *Follow-on after price competition, Code 3, and follow-on after design/technical competition, Code 4.* A follow-on contract means a new procurement (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor to continue or augment a specific military program in instances where such placement was necessitated by prior procurement decisions. An example of a follow-on contract is one which by force of circumstances had to be awarded to a contractor who was just completing a research development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor because he furnished the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (i.e., price or design or technical shall be reported as Code 3 or 4, as appropriate). Follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis shall be reported as Code 5.

(D) *Other noncompetition, Code 5.* A contracting action shall be reported other noncompetition if there was no competition in the award, the work involved was not a follow-on procurement reportable as Code 3 or 4 above, and the reasonableness of price was not based on established catalog or

market prices reportable as Code 6. Also, use this code to report actions where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item.

(E) *Noncompetition and based on catalog or market price, Code 6.* A contracting action shall be reported Code 6 if there was no competition in the award and the reasonableness of price was based on established catalog or market prices of commercial item sold in substantial quantities to the general public as defined in (FAR 15.804–3(c). If the award involved catalog or market prices and the criteria for "price competition" as specified in (c)(5)(ii)(A) above have been met, enter Code 1 versus Code 6.

(F) *Not applicable, Code 7.* The following action shall be entered as Code 7:

(a) Awards for brand name items for commissary resale;

(b) Awards to nonprofit institutions;

(c) Awards to regulated monopolies for utilities "where the price negotiated is based on prices set by law or regulation"; and,

(d) Awards made pursuant to Section 8(a), Small Business Act (15 U.S.C. 637(a)).

(c) *Item C6, Type of contract.*

(i) Enter the code below which corresponds to the type of contract provided of in the provisions of the action reported.

Code	Type of Contract
A	Fixed Price Redetermination: Type A
B	Fixed Price Redetermination: Type B
J	Firm Fixed Price
K	Fixed Price economic price adjustment
L	Fixed Price incentive with performance incentive
M	Fixed Price incentive without performance incentive
R	Cost Plus Award Fee
S	Cost Contract
T	Cost Sharing
U	Cost Plus Fixed Fee
V	Cost Plus incentive fee—with performance incentive
W	Cost Plus incentive fee—without performance incentive
Y	Time and materials
Z	Labor Hour

(ii) *Multiple contract types.* Where the action involves more than one type of contract, the predominant type based on dollar shall be entered. However, if any nonpredominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the action. The total of the DD Forms 350 so reported shall equal the total contract action.

(iii) *Letter contracts.* When reporting original letter contracts and amendments thereto, enter the code of the type of contract that will be used when the letter contract is converted to a definitive contract.

(d) *Part D of DD Form 350.* The following rules apply to each of the items listed in Part D of DD Form 350: If Item B12 is coded 1 or if Item B13 is coded 6 or 7, leave all items in this part blank. If Item B13 is coded 1 through 4, or A, coding of all items in this Part D shall be accomplished in accordance with the coding instructions for that item, and the status of the concern, such as its size or ownership, shall be determined as of the date of the award. If Item B13 is coded 5, or B through G, enter the same code in each item in Part D that was reported on the DD Form 350 to the original contract governing this transaction. If a DD Form 350 to the original contract was not submitted because a DD Form 350 was not required, enter the code which is applicable to the original contract governing this transaction.

(1) *Item D1, Type of business.*

(i) Enter Code 1 if the award was made to a domestic large business concern, and the place of performance (Item B5C) is within the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

(ii) Enter Code 2 if the award was made to a small business concern as defined in FAR 19.101 and the place of performance (Item B5C) is within the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

(iii) Enter Code 3 if the award is made to a foreign concern (FAR 25.101).

(iv) Enter Code 4 if the award is made to a domestic large or small business concern and the place of performance (Item B5C) is outside the United States, its possessions, Puerto Rico or the Trust Territory of the Pacific Islands.

(v) Enter Code A, B, C, D, or E if the award was made to a nonprofit institution and the place of performance (Item B5C) was within the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. A nonprofit institution not organized for profit, no part of the net earnings of which inure to the benefit of any private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature, and state, local, and other non-Federal Government agencies. Enter Code A if the contractor is an educational institution, Code B if a hospital, Code C if a workshop of the blind or other severely handicapped and the action is an acquisition from the Procurement List FAR 8.703 Code D if a workshop for the blind or other severely handicapped and the action is not an acquisition from the Procurement List (Optional Placement) FAR 8.173, and Code E for all other nonprofit institutions.

(d)(2) *Item D2, Reason not awarded to small business concern.* If the action was not awarded to a small business concern, enter an appropriate code from the available codes below. Otherwise, leave blank.

(i) Use Code 1 if there was no known small business source.

(ii) Use Code 2 if there was no known small business source but it was not solicited for a bid or proposal.

(iii) Use Code 3 if a small business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but received an award of the portion bid on.

(iv) Use Code 4 if a small business concern was solicited but the low or most advantageous offer was not from small business. Enter Code 4 if a small business concern was not willing to accept award of a set-aside portion of an action at the price offered as determined by the price the Government would otherwise have had to pay.

(v) Use Code 5 if not awarded to small business for any other reason.

(3) *Item D3, Small disadvantaged business.*

(i) Enter Code 1 if the contractor is not a small disadvantaged business concern in accordance with the representation required in FAR 19.304(a).

(ii) Enter Code 2 if the contract was awarded to the U.S. Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act (FAR 19.8).

(iii) Enter Code 3 if the award is not an SBA 8(a) award but is made to a firm determined to be a small disadvantaged business concern in accordance with the representation required in FAR 19.304(b).

(4) *Item D4, Reason not awarded to small disadvantaged business concern.* If the action was not awarded to a small disadvantaged business concern, enter an appropriate code from the available codes below. Otherwise, leave blank.

(i) Use Code 1 if there was no known small disadvantaged business source.

(ii) Use Code 2 if there was a known small disadvantaged business source but it was not solicited for a bid or proposal.

(iii) Use Code 3 if a small disadvantaged business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but received an award for the portion bid on.

(iv) Use Code 4 if a small disadvantaged business concern was solicited but the low or most advantageous offer was not from a small disadvantaged business concern.

(v) Use Code 5 if not awarded to a small disadvantaged business for any other reason.

(d)(5) *Item D5, Women-owned small business.*

(i) Enter Code 1 if the contractor's response to FAR 52.219–3 indicates the firm is not a women-owned small business.

(ii) Enter Code 2 if the response to FAR 52.219–3 indicates in the affirmative that the contractor is a women-owned small business.

(iii) Enter Code 3 if the information is not available because the contractor did not complete the certification under FAR 52.219–3.

(6) *Item D6, Small business set-aside preference.*

(i) Enter Code 1 if the solicitation/award was not totally or partially set aside for small business pursuant to FAR 19.502–2, FAR 19.502–3, and 20.70.

(ii) Enter Code 2 if the solicitation/award was totally set aside for small business pursuant to FAR 19.502–2.

(iii) Enter Code 3 if the solicitation/award was partially set aside for small business pursuant to FAR 19.502–3 and 20.70.

(7) *Item D7, Subcontracting plan for small and small disadvantaged businesses.* Enter the appropriate code as follows:

(i) Enter Code 1 if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.706).

(ii) Enter Code 2 if the subcontracting plan was not required for other reasons e.g., the action was awarded to a small business firm or the dollar value of the award was less than the cited threshold (FAR 19.708(b)).

(iii) Enter Code 3 if the subcontracting plan was required but the incentive provisions referenced in FAR 19.708(c) were not included.

(iv) Enter Code 4 if the subcontracting plan was required and incentive provisions specifically pertaining to subcontracting with small and small disadvantaged business referenced in FAR 19.708(c) were included.

(8) *Item D8, Small Business Innovation Research (SBIR) Program.* Enter the appropriate code as follows:

(i) Enter Code 1 if the action is *not* in support of the Small Business Innovation Research Program (Pub. L. 97–219).

(ii) Enter Code 2 if the action is related to a Phase I contract in support of the Small Business Innovation Research Program (Pub. L. 97–219).

(iii) Enter Code 3 if the action is related to a Phase II contract in support of the Small Business Innovation Research Program (Pub. L. 97–219).

(9) *Item D9, Labor Surplus Area (LSA) Preference.* The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code 2, 3, 4, 5, or 6 is entered, the entry in Item B5C must be a location which on the date of the action is located within a labor surplus area.

(i) Enter Code 1 if no preference was given to labor surplus area concerns.

(ii) Enter Code 2 when reporting the labor surplus portion of a combined set-aside (219.502–70).

(iii) Enter Code 3 if the action was awarded to a concern in a labor surplus area wherein preference was given under partial labor surplus area set-aside procedures 220.7003 except if set-aside preference resulted from a combined small business/labor surplus area set-aside as set forth in (d)(9)(ii) above.

(iv) Enter Code 4 if the action was awarded to a concern in a labor surplus area and tie bid preference (FAR 15.407–6) was given.

(v) Enter Code 5 when reporting an award that it totally set-aside for labor surplus areas, but with no further preference as to whether it is a large or small business firm.

(vi) Enter Code 6 when reporting an award that is totally set aside for labor surplus area concerns which are also small business concerns.

(10) *Item D10, Subject to labor standards statutes.* Enter the appropriate code as follows:

(i) Enter Code 1 if subject to the provisions of the Walsh-Healey Act, Manufacturer (see FAR 22.6).

(ii) Enter Code 2 if subject to the provisions of the Walsh-Healey Act, Regular Dealer (see FAR 22.6).

(iii) Enter Code 3 if subject to the provisions of the Service Contract Act, as amended (see FAR 22.6).

(iv) Enter Code 4 if subject to the Davis-Bacon Act.

(v) Enter Code 5 if not subject to any of the statutory requirements above.

(11) *Item D11, Certificate of current cost of pricing data.* Enter Code 1 if a certificate of current cost or pricing data (see FAR 15.804–4) was obtained, Code 2 if the certificate was not obtained, or Code 3 if the requirement was waived.

(12) *Item D12, Trade data relating to products or components not manufactured in the United States or services performed by foreign concerns.*

(i) *Item D12A, Number of offerors.* Enter the number of offerors of end-products not manufactured in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. If zero, enter 0; if greater than 9, enter 9.

(ii) *Item D12B, Buy American Act percent difference.* If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number (i.e., for 5%, enter 05; for 11%, enter 1). If the evaluation factor under the Buy American Act is not used, enter 2 zeros (00).

(iii) *Item D12C, Country of origin.* Enter appropriate country code shown as follows:

(A) If the product shown in Item B8D is manufactured in the U.S. and more than 50% of the cost of all its components is not manufactured in the U.S., enter the letter A and the 2-digit code of the country/area providing the greatest part of such components, as shown in NBS LC 1067, "Codes for Names of Countries and Outlying Areas of the United States".

(B) If the product is manufactured, mined, or grown outside the U.S., enter the letter B and the 2-digit code of the country/area of origin, as shown in NBS LC 1067.

(C) If a service shown in Item B8A is performed by a foreign concern (see FAR 25.101) enter the letter B and the country/area code of the concern, as shown in NBS LC 1067.

(D) In all other cases, leave this item blank.

(13) *Item D13, Contract financing (progress payments or advance payments).* Enter the appropriate code as follows if Item C6 is coded A, B, J, K, L, or M.

(i) Enter Code 1 if the action contains the clause at 7–104.35(a) or (b).

(ii) Enter Code 2 if the action contains the clause at 7–104.35(c).

(iii) Enter Code 3 if the action is for either shipbuilding or construction and percentage-of-completion-progress-payment financing is provided (see FAR 32.102(e)).

(iv) Enter Code 4 if the action provides Unusual Progress Payments or Advance Payments (see FAR 32.4, and FAR 32.501–2).

(v) Enter code 5 if none of the above apply.

(e) *Part E, DD Form 350.*

For departmental or higher authority use.

(f) *Part F, DD Form 350.*

(f)(1) *Item F1, Name of contracting officer or representative.* Enter name (Last, First, MI) of the contracting officer or representative.

(f)(2) *Item F2, Signature.* Contracting Officer or Representative.

(f)(3) *Item F3, Telephone number.* Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

(f)(4) *Item F4, Date.* Enter date (Yr/Mo/Da) that DD Form 350 Report is submitted.

204.672 Monthly procurement summary (DD Form 1057).

204.672-1 Scope.

This Section prescribes the reporting on DD Form 1057 of contracting actions of $25,000 or less each. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 204.671-2. This reporting requirement has been assigned Report Control Symbol: DD-DR&E (M) 1015.

204.672-2 Applicability and coverage.

(a) A DD Form 1057 shall be prepared (typewritten or machine reproduced) by each purchasing officer of the Department of Defense to which a reporting office code has been assigned in the DoD Procurement Coding Manual, Volume III. The DD Form 1057 shall cover all contracting actions of $25,000 or less. Separate codes may be assigned to an installation, base, or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of procurement, such as base and central procurement, or RDT&E and non-RDT&E procurement. Subject to the approval of the organizations listed in 204.672-3 a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Form 1057 shall include all debit or credit contracting actions of $25,000 or less involving:

(1) Appropriated funds;

(2) Contract authorizations;

(3) Stock or other revolving funds which are replenished or reimbursed from appropriated funds;

(4) Appropriated funds transferred to the Departments, such as Military Assistance Program funds; and,

(5) Appropriated funds obligated pursuant to provisions of Pub. L. 85-804.

(c) The report shall exclude actions of $25,000 or less which:

(1) Involve nonappropriated funds;

(2) Are delivery orders against indefinite delivery type contracts entered into by the Defense Fuel Supply Center; Defense Fuel Supply Center shall report the estimated total cost of indefinite delivery type contracts;

(3) Are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;

(4) Are placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO). These actions are covered by other reporting instructions;

(5) Are orders on GSA stores depots;

(6) Involve Government bills of lading or transportation request; and

(7) Are for purchase of land, or rental or lease of real property.

204.672-3 Due date and distribution.

(a) In addition to instructions given in (b) through (f) below for purchasing offices of specified Departments and Agencies, the following instructions are applicable to all purchasing offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, purchasing offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date is extended by 10 additional calendar days, but the cut-off date must be as of 30 September.

(2) Negative reports shall be submitted if a purchasing office has not transacted a reportable action during the month.

(3) Letter of transmittal is not required.

(b) Army purchasing offices shall distribute DD Form 1057 as follows:

(1) The original (except from Army Engineer Civil Functions purchasing offices) shall be forwarded to HQDA (JDHQ-SV-W-P), Washington, D.C. 20310.

(2) Army Engineer Civil Functions purchasing offices shall forward the original to HQDA (DAEN-PRP), Washington, D.C. 20314. A copy is not required for HQDA.

(c) Navy purchasing offices shall forward the original DD Form 1057 as directed by COMNAVSUP (SUP-024).

(d) Air Force contracting offices shall forward the original DD Form 1057 as directed by HQ USAF/RDC.

(e) Defense Logistics Agency purchasing offices shall forward the original DD Form 1057 to Executive Director, Contract, Defense Logistics Agency, Cameron Station, Alexandria, VA 22314, ATTN: DLA-PA.

(f) All other purchasing offices of the Department of Defense shall forward the original DD Form 1057 to HQHA (JDHQ-SV-W-P), Washington, D.C. 20310.

(g) Contracting actions of $25,000 or less which are reportable in accordance with 204.672-2 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate purchasing office listed in Appendix N.

(2) Purchasing offices shall include data for such instruments in their reports on DD Form 1057.

204.672-4 Terms used.

The Terms used on DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350.

204.672-5 Instructions for completion of the DD Form 1057.

(a) *Heading.*

(1) *Month ending.* Enter the year, month and day indicating the ending date of the month reported. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, for the month ending 30 April 1984, enter 840430.

(2) *Purchasing office and mailing address.* Enter sufficient detail to establish the identity of the purchasing office submitting the report.

(3) *Reporting office code.* Enter the code assigned to the purchasing office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item A3 of DD Form 350.

(4) *Number of actions.*

(i) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (a)(4)(ii) below, each call or order under a blanket purchase agreement, imprest fund, requirements type contract, or indefinite delivery indefinite quantity contract shall be counted as an action. A definite quantity indefinite delivery contract shall be counted once at the time of award, and orders under such contracts shall not be counted. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(ii) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $25,000, the

action shall be reported on DD Form 350 rather than DD Form 1057):

(A) Meals and lodging;

(B) Automatic deliveries, such as bread, milk, and ice cream;

(C) Utilities, such as, electricity, gas, and telephone. (Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on utilities contracts for all Naval Shore Establishments).

(5) *Dollar value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. For example, $2,510.10 or $2,510.90 shall be reported as $2,510. Do not enter $2,510.00 or $2,510.—. If the net amount is a decrease, enter the symbol "CR" immediately following the amount to signify a credit entry. Do not enter parentheses or dashes.

(b) *Section A, Contracting actions.*

(1) Enter under Lines 1 through 4, the number and value of actions of $25,000 or less according to type of contractor (i.e., small business, large business, educational and nonprofit institutions), and for work outside the U.S., in accordance with instructions in (b) (2), (3), (4), and (5) below.

(2) Enter on Lines 1.a, 2.a., 3.a., and 4.a., the number and dollar amount of those contracting actions accomplished by formal advertising.

(3) Enter on Lines 1.b., 2.b., and 4.b., the number and dollar amount of those negotiated contracting actions considered for competition where price competition or design or technical competition was present in accordance with the criteria set forth in 204.671–5(c)(5)(ii) (A) and (B).

(4) Enter on Lines 1.c., 2.c., and 4.c., the number and dollar amount of those negotiated contracting actions accomplished where competition was not present as covered in 204.671–5(c)(5)(ii) (C), (D), and (E).

(5) Enter on Lines 1.d., 2.d., and 4.d., the number and dollar amount of those negotiated contracting actions meeting the requirements of 204.671–5(c)(5)(ii)(F) which are excluded from the competition base.

(6) Enter on Line 3.b., the number and dollar amount of contracting actions accomplished by negotiation.

(7) Enter under Line 5, and on Lines 6 and 7, the number and dollar amount of contracting actions as appropriate.

(c) *Section B, Negotiation authority 10 U.S.C.*

(1) Enter the number and dollar amount of negotiated contracting actions of $25,000 or less according to the authority of 10 U.S.C. 2304(a) which was used. The totals of Lines 1 through 17 in Section B shall equal the sums of the entries on Lines 1.b., 1.c., 1.d., 2.b., 2.c., 2.d., 3.b., 4.b., and 4.d. in Section A.

(2) Enter on Line 3.a., the number and dollar value of actions of $10,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are not small business-small purchase set-asides in accordance with FAR 13.105.

(4) The following provision is applicable only to U.S. Army Troop Support Agency Activities. In lieu of separately tabulating nonfood/food transactions for commissary resale items that are reportable under negotiation authority 10 U.S.C. 2304(a) (8) and (9), a ratio of the total shall be reported as follows:

(i) Enter 26% of the total actions on Line 8 and 74% on Line 9.

(ii) Enter 37% of the total dollar value on Line 8 and 63% on Line 9.

(d) *Section C, Research development, test and evaluation actions.* (These actions are also reported in Sections A and B). Enter the number and dollar amount of contracting actions of $25,000 or less of research, development, test and evaluation work on Lines 1 through 4. Do not include purchases of supplies or services that are incidental to the fulfillment of RDT&E work but do not require contractor RDT&E performance.

(e) *Section D, Selected other actions.*

(1) Enter on Line 1.a., the number and dollar amount of awards made to small disadvantaged business concerns that were made through the Small Business Administration pursuant to the Small Business Act—Pub. L. 85–536, Section 8(a). Entries on this line shall also be reflected on Line 17.b. of Section B.

(2) Enter on Line 1.b., the number and dollar amount of awards made directly to small disadvantaged business concerns.

(3) Enter on Line 2, the number and dollar amount of awards shown in Section A that were made to women-owned small businesses.

(f) *Adjustments.* Revised DD Form 1057 reports shall not be submitted; but the amounts of corrections or adjustments, if required, shall be included in the report of the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "CR" following the amount to signify a credit entry.

204.673 Report of individual contract profit (DD Form 1499)

204.673–1 Scope.

This section prescribes the reporting on DD Form 1499 of cost and profit plans on contract actions of $500,000 or more, negotiated by specified contracting offices. The form provides a basis for analyzing profit patterns and weighted guidelines objectives on defense contracts. As used in this section, the term *cost* includes target cost as well as estimated cost, and the term *profit* includes fee.

204.673–2 Applicability.

DD Form 1499 shall be prepared by each contracting office of the—

(a) Army Materiel Development and Readiness Command, Ballistic Missile Defense Systems Command, Defense Supply Service, Washington, and U.S. Army Corps of Engineers;

(b) Air Force Logistics and Systems Commands; and

(c) Naval Air, Sea, and Electronic Systems Commands, Naval Facilities Engineering Command, Naval Regional Contracting Office, Philadelphia. The form also shall be prepared by the following Navy activities of the Naval Supply Systems Command: Navy Aviation Supply Office, Philadelphia; Navy Ships Parts Control Center, Mechanicsburg; and Naval Regional Contracting Office, Long Beach. Contracting offices located outside the United States, its possessions, and Puerto Rico, under the jurisdiction of the above-mentioned commands, are exempt from this reporting requirement.

204.673–3 Coverage.

(a) A DD Form 1499 shall be prepared by the contracting offices described in 204.673–2 for each negotiation of a contractual agreement involving a separate cost and profit that together total $500,000 or more. This negotiated total may agree, but not necessarily, with the amount obligated by the contractural instrument. The instrument may be a new definitive contract, an indefinite delivery-type contract, the definitization of a letter contract, or order under a basic ordering agreement, a supplemental agreement, or any other action in which the contracting officer and contractor negotiate an estimated cost and profit. If, in connection with a fixed-price-type contract or contract modification, the contracting officer requires the contractor to submit cost or pricing data pursuant to FAR 15.804–2 a DD Form 1499 shall be prepared showing the contracting officer's best estimate of cost and profit.

(b) If more than one profit rate applies to a negotiation and the amount for each rate is $500,000 or more, a separate DD Form 1499 shall be used to report data for each rate. If the dollar amount for any profit rate of a multirate negotiation is less than $500,000, the data for the amount below $500,000 shall not be reported. If the separation of a contract into different rates produces no portion

of $500,000 or more, a report on DD Form 1499 shall not be submitted.

(c) If any reportable negotiation includes a cost or cost-sharing portion or a firm fixed-price portion not reportable pursuant to (a) above, that portion shall not be reported on DD Form 1499. If the application of this provision fragments an action so that an otherwise reportable portion is less than $500,000, that portion shall not be reported on DD Form 1499.

(d) A DD Form 1499 shall be submitted if the above conditions are met, even though price competition was used, weighted guidelines were not used, or a supplemental agreement involving cost and profit was executed without changing the profit rate applicable to the basic contract.

204.673–4 Due Date and Distribution.

(a) Contracting offices shall prepare DD Form 1499 as soon as possible after the date of action, assemble the reports for the month of action, and forward the reports in duplicate within 10 days after the close of the month as follows:

(1) *Army:* HQDA (JDHQ–SV–W–P), Washington, D.C. 20310:

(i) Contracting offices under the jurisdiction of DARCOM and the BMDS Command shall report through U.S. Army Material Development and Readiness Command, Attn: DRCPP–SC, 5001 Eisenhower Avenue, Alexandria, VA 22333;

(ii) Contracting offices under the jurisdiction of the U.S. Army Corps of Engineers shall report through the Office, Chief of Engineers, HQDA (DAEN–PRP), Washington, D.C. 20314.

(2) *Navy:* Headquarters, Naval Material Command, Attn: MATO8C1D, Washington, D.C. 20360.

(3) *Air Force:* AFLC/ACOCD, Wright-Patterson Air Force Base, Ohio 45433.

(b) Prior to submission of DD Form 1499, contracting offices shall review the form and associated contract files sufficiently to insure that all reportable transactions are reported and that reports are complete and accurate.

(c) DD Form 1499 shall be submitted as an unclassified document. If the reporting office considers it necessary to apply a security classification to a DD Form 1499, a communication relating the reasons for the classification shall be submitted to the Office of the Assistant Secretary of Defense (Comptroller), Attn: Directorate for Information Operations and Control, through the appropriate organization in (a) above. In no case shall security classification be considered a reason for not reporting on DD Form 1499.

(d) The reporting requirements of this part are assigned RCS:DD–R&E(M)1215.

204.673–5 Specific entries on DD Form 1499.

(a) *Department.* Enter Army, Navy, or Air Force, as appropriate.

(b) *Item 1, Report No.* Each contracting office identified by a separate number in the item 5 code block shall enter a four-digit number assigned consecutively starting with 0001 at the beginning of each fiscal year. This number shall be followed by the last two digits of the fiscal year. Numbers with less than four significant digits shall be preceded by zeros; e.g., the fourth report in fiscal year 1977 would be numbered 0004–77. This number identifies a specific DD Form and is not related to any DD Form 350 number.

(c) *Item 2, Contract No.* Enter the contract number in items 2.a., b., c., and d., in the manner prescribed for DD Form 350 in 4.671–5(e).

(d) *Item 3, SPIIN.* Enter in item 3 any order, supplemental agreement, or other modification number in the manner prescribed in 4.671–5(b)(2).

(e) *Item 4, Date of action.* Enter in numeric terms the year and month (e.g., 77–03 for 1977 March) when a mutually binding agreement was reached on the estimated cost and profit. For example, this may be the date when—

(1) A new definitive contract was awarded,

(2) A letter contract was definitized,

(3) A supplemental agreement was executed,

(4) A change order was definitized, etc.

(f) *Item 5, Contractor office name.* Enter the name of the contracting office submitting the report, and enter in the item 5 code space, the symbol or number assigned to that contracting office in the DoD Procurement Coding Manual, Volume III.

(g) *Item 6, Type of pricing action.* Enter in the item 6 code space Code A for the first reporting action pertaining to a contract, i.e., the award of a new definitive contract, a definitive contract superseding a letter contract, or an indefinite delivery-type contract. Enter Code B for all other types of actions, including orders under basic ordering agreements.

(h) *Item 7, Contracting identification.* Enter the complete name of the concern and, if applicable, the name of the division to which the award was made. Enter in the item 7 code space the first six digits of the contractor code as shown in the DoD Procurement Coding Manual, Volume II. If the contractor is not listed in the manual, no code shall be entered by the contracting office.

(i) *Item 8, Principal place of performance.* Enter the actual location of the plant or place of business where the items will be produced or the service rendered in accordance with instructions in 204.671–5(b)5. Enter in the item 8 code space the city and state codes shown for the contractor at the specified location in the DoD Procurement Coding Manual, Volume II. If the contractor's name is not listed in the manual, or is listed for a location or locations other than the one reported, no code shall be entered by the contracting office.

(j) *Item 9, Federal supply class or service code.* Enter the appropriate Federal Supply Class or Service Code from the DoD Procurement Coding Manual, Volume I, in accordance with instructions prescribed for item 10A of DD Form 350 in.

(k) *Item 10, DD claimant program No.* Enter in the item 10 code space the code from the DoD Procurement Coding Manual, Volume I, Section III, that describes the commodity or service called for by the contract.

(l) *Item 11, Weighted guidelines category.* Enter in the item 11 code space only one of the Codes A, B, C, or D, to identify the weighted guidelines applicable to the reported action.

(m) *Item 12, Type of contract.* Enter in the item 12 code space only one of the codes A, J, K, L, R, U, or V to show the pricing provisions applicable to the reported action. If more than one type of pricing applies to a single negotiation, the provisions of 204.673–3 (c) and (d) apply. That is, separate DD Forms 1499 shall be prepared for each type of pricing involving a cost and profit totaling $500,000 or more. DD Forms 1499 shall not be prepared for types of pricing with less than aggregate cost and profit of $500,000, cost-no-fee, or firm fixed-price without a negotiated cost and profit.

(n) *Item 13, Netgotiation summary.*

(1) Enter dollar amounts applicable to lines a. through f. as proposed by the contractor, the Government's objective, and the negotiated amounts. These entries shall be to to the nearest whole dollar; do not show cents, or make entries involving cent positions. For example, $568,035.54 shall be entered as $568,036 and not as $568,036.00; $500,400.49 shall be entered as $500,500.

(2) The dollar entries shall reflect the entire reportable amounts negotiated in the contractural agreement, not merely the portion obligated. Thus, awards contemplating incremental funding shall be reported as total negotiated cost and profit at the time of initial award, not as the amounts initially obligated. However, amounts applicable to options for additional quantities shall be

excluded unless the options are exercised. When options are exercised, a report shall be submitted if the amounts meet the dollar threshold of 204.673–3.

(3) For cost-plus-award-fee (CPAF) contracts, only the base fee shall be reported.

(4) For indefinite delivery-type contracts, the amounts reported shall reflect the best estimate of the annual requirement on the first reportable delivery order.

(5) Enter on line g. the cost of money percentage rate proposed by the contractor, obtained from the block 1 of the CASB–CMF form. The objective and negotiated rate will be the cost of money percentage rate used on the DD Form 1861.

(o) *Item 14, Weighted guidelines profit factors (see DD Form 1547).* If weighted guidelines are used, show the measurement base and profit/fee dollars in whole numbers in accordance with (n) above. If the weighted guidelines are not used to develop the prenegotiation profit objective, enter the measurement bases on line a. and complete only lines e., f., and g. The manufacturing guidelines adjustment, line a. (11), shall be completed only for contracts coded A in item 11 and must equal 30 percent of the amount entered on line a. (10). The cost of money adjustment, line e., shall be completed for all contracts coded as B, C, or D in item 11 and must equal the objective amount in item 13.b.

Subpart 204.7—Contractor Records Retention

204.706 Microfilming records.

204.706–1 General.

(d)(2) The ACO, with advice of DCAA, may agree to a lesser retention period where the contractor has established adequate internal controls including continuing surveillance over the microfilm system.

Subpart 204.8—Contract Files

204.801 General.

(c)(3) Purchasing and contract administration offices shall file in the contractor general file those documents accumulated or created by them which pertain in general to a contractor or prospective contractor, and those which relate to two or more contracts and which due to their nature should not or need not be filed with an individual contract file. (As appropriate, however, copies of such documents are filed with or cross-referenced in the related contract files.) This file shall include, as applicable, preaward surveys, reports, correspondence, and other records documenting the contractor's capabilities, past performance, accounting system, pricing method, quality assurance procedures, labor policies, insurance programs, and equal opportunity and comparable policies, programs, and systems that serve as a general source of information on a contractor's current and future capability or responsibility.

(c)(S–70) *Contract Cross Reference/Locator File.* This file consists of Contract Cross Reference Data Forms (DD Forms 1592) maintained as prescribed in 204.802–73.

204.802 Contract files.

(a)(1) Authenticated or conformed copies of contractual instruments and signed or official record copies of correspondence, memoranda, and other documents shall be used in compiling the official files. Authenticated copies are documents shown to be genuine by certification as a true copy by signature of an authorized person or by official seal. Except to the extent that contract clauses or specifications are incorporated by reference, conformed copies are complete and accurate copies of the contractual instrument, including the date of execution and the names and titles of signatories. Documents reproduced by fast-copy process that deteriorates when exposed to excessive heat or light shall not be included in the official file.

(c)(4) When the bulk of the material is unclassified, classified material relating to the same contract shall be maintained in a separate file folder and container, and the unclassified folder marked or cross-referenced to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any of the documents in the folder.

204.802–70 Use of standard file folders for drawer and shelf filing.

(a) For all short duration contracts and for small purchase files, standard letter-size folders shall be used. For complex long-duration high-dollar value contracts, heavy individual or 6-part partitioned folders, with front and back flaps, two dividers, expansion gussets between flaps and dividers, and fasteners mounted at the top of the insides of the flaps and on each side of the dividers, may be used.

(b) Loose dividers (file inserts), pre-punched at the top for fastening documents, may be used for subdividing material within the same folder when special folders are not used.

204.802–71 Filing of documents.

(a) Documents relating to a specific contract and described in FAR 4.803(a), (b) and (c) should normally be placed in chronological order in an "OFFICIAL FILE" folder or folders. Each folder shall be marked or labeled with the procurement instrument identification number and, when more than one folder is required for the same contract, with information as to the file segment. Other identifying data, such as the contractor's name, should be added only when needed to facilitate filing and locating.

(1) A separate folder need not be established for each subcontract, mechanized small purchase, or small dollar value contract, on which little or no administration is required; these should be filed in numerical sequence within the same folder.

(2) When a single folder is used, basic procurement documents and all modifications ordinarily should be filed on the left side of the folder and all other material on the right side. As volume warrants, a contract file may be subdivided further, either within the folder or by using additional folders, as appropriate. The following are examples:

(i) For the purchasing office, by pre-contract documents, basic contract, contract modifications, termination documents, general correspondence, and other; and

(ii) For the contract administration office, by basic contract, contract modifications, quality assurance and progressing and production surveillance, property administration and plant clearance, termination documents, and general correspondence. Documents shall be arranged chronologically within each section or folder.

(3) When it is impractical to file certain documents in the official case folder because of their bulk or use, they may be maintained separately in other suitable containers, but they shall be handled as "OFFICIAL FILES" and cross-referenced in the contract case file.

(4) Documents relating to two or more contracts may be filed in one contract file and cross-referenced in the others, or enough copies reproduced to provide for filing one in each related contract file. Other pertinent documents of a more general nature may be filed separately in the contractor general file and cross-referenced in the contract file.

(b) Documents described in 204.801(c)(3) and relating generally to the contractor rather than to a specific contract shall be placed in a folder labeled with the contractor's name. When necessary, additional folders may

be used and the material subdivided by subject, such as general, production, termination, property control, and performance.

204.802-72 Arrangement of files.

(a) Contract file folders normally should be arranged numerically by contract serial number. Under the Department of Defense uniform procurement instrument identification numbering system (see 204.70), the 10th through the 13th digits are the serial number. Large numbers of contract files (10,000 or more) are best arranged by the terminal digit filing method, using the four-digit serial number. When special circumstances warrant, contract folders may be arranged alphabetically by contractor's name, by commodity, or by type of contract, and thereunder numerically.

(b) Contractor general file folders shall be arranged alphabetically by name of the contractor.

204.802-73 Contract cross reference/locator system.

(a) Contract administration offices shall maintain a contract cross reference/locator system, manual or mechanized as appropriate. For a manual system, Contract Cross Reference Data (DD Form 1592), which is a two-part carbon interleaved form, shall be used as follows:

(1) For a prime contract, one set shall be prepared, the original filed alphabetically by contractor's name, and the duplicate filed numerically by contract number, using the terminal digit filing method when contract files are so maintained;

(2) For a subcontract, two sets shall be prepared, one set filed as in (a)(1) above, and the other set filed by subcontractor's name and subcontract number;

(3) Additional information as necessary shall be included under "Remarks," such as dollar value, contract type, brief description of item or service, special or limited administration requirements, secondary inspection office, and security classification.

(b) Offices, other than contract administration offices, which require a contract cross-reference/locator system to meet reference requirements or other special needs also shall use the system prescribed in (a) above.

204.803 Contents of contract files.

(a) *Contracting office contract file.*

(a)(8) Drawings and specifications should be included with the solicitation or referenced therein.

(a)(23) Exceptions or exemptions from the Buy American Act or appropriations act restrictions.

(a)(37) When applicable, a Contract Completion Statement (DD Form 1594) shall be included.

(a)(38) Termination documents include—

(i) Recommendation or request to terminate together with reason for terminating, and, in the case of major contracts, plans therefore.

(ii) Review board actions accomplished by the purchasing office.

(iii) Copy of termination notice.

(iv) Documents supporting termination actions taken when terminated for default, such as notice of possible termination, show cause letter and reply, and record of conferences, if any.

(v) Record of repurchase, including written demand to contractor for excess costs.

(a)(S-70) *Verification of requirements.*

(b) *Contract Administration Office contract file.* The extent to which the following list shall apply depends upon the type of contract, dollar value, and functions assigned to the contract administration office.

(b)(3) This includes the Contract Security Classification Specification (DD Form 254).

(b)(14) Progressing, expediting, and production surveillance records (these are to be maintained separately to facilitate their early disposal as prescribed in FAR 4.805(g)). They include such records as—

(i) Production plans and delivery schedules.

(ii) Progress or status reports.

(iii) Advice of delays or delinquencies, and of corrective and production follow-up actions.

(iv) Documents reflecting deliveries or production completion.

(b)(15) Quality assurance/control (inspection) records used in planning, conducting, and recording product verifications, testing, reviewing quality programs and plans, evaluating procedures and processes or technical performance, and effecting corrective actions, where required (these records are to be maintained separately for earlier disposal); they include:

(i) Quality assurance records, such as:

(A) Reference to Contractor's Quality Program document, and disapproval if any.

(B) Subcontract inspection control records (request for source inspection, and waiver of usual inspection procedure).

(C) Inspection requests, agreements, and assignments.

(D) Requests for waivers and deviations, and copy of approvals or disapprovals, if any (including Material Review Board decisions).

(E) Required inspection and test reports.

(ii) Quality control (inspection) records, such as:

(A) Quality program review reports (procedures and processes evaluation, periodic quality assurance survey).

(B) Government inspection and test reports.

(C) Authority to ship and acceptance documents (e.g., DD Form 1384, Transportation Control and Movement Document; DD Form 250, Material Inspection and Receiving Report; DD Form 1155, Order for Supplies or Services/Request for Quotations); routing requests and orders, and shipment copies of bills of lading (DD Form 250 may be excluded when maintained in paying office file and paying office is located at the contract administration office).

(D) Reports of unsatisfactory material and corrective actions, and reports of damaged or improper shipments.

(E) Other papers necessary to document the quality control or inspection function.

(b)(16) Property administration records used in the administration of Government property provisions of the contract (these are to be maintained separately for disposition). These include—

(i) Contract number, type of contract, and contractor name and address.

(ii) Name and dates of tenure of administrative contracting officer(s) and property administrator(s).

(iii) End item(s) and points of inspection and acceptance.

(iv) Record of contract clauses, amendments and changes pertaining to Government property.

(v) Record of contract clauses pertaining to contractor's liability.

(vi) Record of written approval of contractor's property control system or withdrawal of approval and cause, dates system approval reinstated, and deviations granted.

(vii) Listing and type of subcontracts which involve Government property or reference to location of such information.

(viii) Record of secondary administration assignments.

(ix) Record of system surveys performed, deficiencies found and corrective action taken.

(x) Record of property audits and inspections.

(xi) Record of findings and determination that inventory adjustments are reasonable.

(xii) Records of investigation and recommendations of the property administrator, and written advice of the administrative contracting officer on cases involving contractor's liability for Government property lost, damaged, destroyed, or consumed in unreasonable quantities.

(xiii) Original of final property administration clearance statement executed by the property administrator or other relief from assignment documentation.

(xiv) Reports relating to Government property.

(xv) Correspondence, messages, memoranda of calls and visits, and any additional documents pertinent to Government property.

(b)(17) Documentation regarding termination actions for which the contract administration office is responsible, including, as appropriate—

(i) Termination authority and instructions.

(ii) Copy of termination notice.

(iii) Record of initial meeting with contractor.

(iv) Contractor's request, and approval thereof if other than inventory basis is to be used.

(v) Settlement Proposal.

(vi) Application for Partial Payment and approval thereof, together with record of security required.

(vii) Record of the examination of prime contractor and subcontractor proposals, including engineering analysis, audit report or waiver, and request therefore.

(viii) Request to plant clearance office for action on inventory schedules.

(ix) Request from prime contractor for authority to settle subcontractor proposals without approval or ratification of contracting officer, and actions thereon.

(x) Recommendations by prime contractor covering subcontractor's proposal.

(xi) Approval of subcontractor's proposed settlements.

(xii) Record of plant clearance actions, such as verification of and determination of allocability and allowability of inventory schedules, record of inventory redistribution and disposal actions including diversion, screening, scrap determination, sale, abandonment, donation, and storage, as appropriate.

(xiii) Contracting officer's negotiations memorandum (presentation to Settlement Review Board).

(xiv) Required approvals by Settlement Review Board or others.

(xv) Settlement agreement, including record of any exceptions and, when agreement was not reached, a copy of determination by the contracting officer and written supporting evidence.

(xvi) Documents supporting termination actions taken when termination for default, such as notice of possible termination, copy of show cause letter and reply, and record of conference.

(b)(20) When applicable, this includes the Contract Completion Statement (DD Form 1594).

(c) *Paying Office contract file.*

(c)(2) Supporting documents may include:

(i) Shipment, acceptance, or receiving reports, such as DD Forms 250 and 1155 (Note: file DD Forms 250 and 1155 as a separate file series when it will facilitate compilation of contract status and statistical reports), and

(ii) Authorizations for advance and progress payments.

204.804–1 Closeout by the office administering the contract.

(a)(S–70) *Closed contracts.* Firm Fixed Price Unilateral Purchase Orders are closed when evidence of physical completion is received by the PCO. All other contracts are closed when they are physically complete and when all administrative actions are taken, including the accomplishment of one of the two Contract Completion Statements, DD Form 1594 or MILSCAP Format Identifier PK9.

(a)(S–71) Time standards established in FAR 4.804(a) are based upon the time required for closing the majority of contracts. It is recognized that delays beyond the above standards may occur (such as in the case of terminations). Where delays occur, contracts shall be reported in accordance with 204.804–4.

204.804–4 Physically completed contracts.

Status of Physically Completed Unclosed Contracts. Contract Administration Offices shall advise the appropriate procuring contracting officers within 15 days after the end of the month following the month in which a physically completed contract has not been closed within the time periods specified in FAR 4.804–1. This advice shall include the reasons for the delay, and the target date which has been set for closing. If the contract is not closed by the target date specified, the contract administration office shall, unless information is requested earlier by the PCO, advise the PCO of the reasons for the further delay and the new target date. MILSCAP Format Identifier PKX, Unclosed Contract Status, shall be used to provide this advice to the PCO when MILSCAP procedures apply.

204.804–5 Detailed procedures for closing out contract files.

(a)(S–70) *When Purchasing Office administers the contract.* When the purchasing office administers a contract, that office is responsible for insuring that all required purchase actions and contract administration have been completed, utilizing as necessary DD Form 1597, Contract Closeout Check List, and DD Form 1593, Contract Administration Completion Record. When all required actions have been completed, the purchasing office shall prepare DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, for all contracts in excess of $10,000. The Contract Completion Statement shall be made a part of the official contract file. For all contracts not in excess of $10,000, the contracting officer shall include in the contract file a statement that all contract actions have been completed. The completed form or statement is authority for closing out of the contract file. The file shall be closed out as provided in 204.804–70(a)(2).

(a)(S–71) *When Purchasing Office does not administer the contract.* When the purchasing office does not administer a contract, that office, upon receipt of DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, from the Contract Administration Office (see 204.804–5(b)(3)) shall insure that all actions required of the Purchasing Office have been completed, shall then complete Item 10 of the DD Form 1594, or where the MILSCAP PK9 is used, prepare a statement that all contract actions have been completed, and shall make the completed form or statement a part of the official contract file. The completed form or statement is authority for closing out the purchasing office contract file. Closeout of the file shall be effected as provided in 204.804–70(a)(2). The date in Item 9d of DD Form 1594, or Columns 59–65 of the MILSCAP Format Identifier PK9, Contract Completion Statement, shall be used as the closeout date for file purposes, except that the date in Item 10e of DD Form 1594 or the date of the closeout statement when the MILSCAP PK9 is received shall be used when completion of any pending significant purchasing office action extends more than three months beyond the date shown in Item 9d of DD Form 1594 or Columns 59–65 or the MILSCAP PK9. In the latter case, the purchasing office shall advise the contract administration office of the revised closeout date by sending a reproduced copy of the completed DD Form 1594, or by preparation of MILSCAP Format

Identifier PKZ, Contract Closeout Extension.

(b) With respect to all contracts which the contract administration office administers, that office is responsible for insuring that all contract administration has been completed and for initiating closeout action. The organizational element to which this responsibility is assigned shall proceed as follows upon determination or advice (such as by final DD Form 250 or other final report) that the contract has been fully performed (including final payment) or has been terminated completely:

(1) Prepare DD Form 1597, Contract Closeout Check List, when necessary to determine that all required actions have been accomplished.

(2) If appropriate, initiate DD Form 1594, Contract Administration Completion Record, to obtain statements from other organizational elements certifying completion of actions required of each (normally a single copy should be routed in turn to offices concerned, but separate forms may be routed when necessary, such as when closeout actions may be complex and extensive or when offices are at different locations).

(3) Upon determination of final completion, process MILSCAP Format Identifier PK9 or complete Items 1 through 9 of DD Form 1594 certifying that all contract administration office actions have been fully and satisfactorily accomplished, and forward the original of the form to the purchasing office (which will utilize it to close out its contract file).

(4) Retain one copy of the completed form, which is authority for closing out the contract administration file.

204.804–70 Review, separation, and retirement of completed contract files.

(a) Upon determination of contract completion under the procedures outlined in FAR Section 4.804 and 4.804 above, each office shall review all files pertaining to the individual contract as described below. For disposal criteria, see FAR 4.805.

(1) *Duplicate or working contract case file*—Remove any original or official file copies of documents and place them in the appropriate "official" file; destroy immediately any remaining material, or segregate and mark it for early disposal.

(2) *Official contract case file*—Remove folder for completed contract from the active file series, mark each folder or folder tab "Completed *(Date)*" and place folder in completed (inactive) contract file series; separate series should be established for contracts of $10,000 or less and for contracts of more than $10,000, to facilitate later disposal.

(3) *Cross reference/locater file*—remove any contract cross reference data forms relating to the completed contract, mark each "Completed *(Date)*" and place them in completed (inactive) cross reference/locator file series for later disposal.

(b) *Review of contractor general files.* Each office shall review contractor general files at least once annually and—

(1) Remove obsolete and superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of contractor's current or future capability, performance, or programs, and documents relating to a contractor who is no longer a possible source of supplies, services, or technical assistance) and dispose as authorized.

(2) Remove any documents pertaining only to completed contracts, place those not routine in nature in inactive contractor file for later disposal and immediately dispose of routine documents as authorized.

(c) *Retirement of completed files.* Completed files series shall be cut off at least annually, and new series begun to facilitate destruction in blocks—normally annual blocks. The cut-off series shall be held in the office maintaining the records for an additional period not to exceed one year and then stored locally in recordholding or staging areas, if available, until they are eligible for destruction (see FAR 4.805); when such space is not available, the files shall then be transferred to the General Services Administration Federal Records center servicing the area. Completed cross reference/locator files shall be held locally until eligible for destruction.

204.805–70 Disposal of duplicate or working contract or contractor files.

Duplicate copies of official file documents and extraneous materials not required or appropriate for filing in official files shall be destroyed as soon as they have served their purpose, when actions which the file facilitated have been taken, or upon physical completion or final payment under the contract, as appropriate. In no case shall such copies be retained for longer than one year after final payment under the contract. However, pricing review files containing documents related to reviews of contractor price proposals, subject to certification of cost or pricing data (see FAR 15.804–2), shall not be destroyed before the expiration of 6 years from the date of final payment under the contract. If conditions exist, however, which do not permit cross-referencing the pricing review file to the official contract file to determine the date of final payment, the pricing review file will, in that case, be retained for 9 years following completion of the proposal review.

204.805–71 Disposal of contract cross reference/locator files.

Completed contract cross reference/locator files shall be destroyed at the same time as the related contract file, or when they are no longer required as contract cross-reference/locator.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7001 Scope.

This subpart prescribes procedures for assigning identifying numbers to all contracts and to other instruments related thereto, including solicitation documents and delivery orders, issued pursuant to this supplement. This subpart does not apply to procurement instruments issued by the Defense Commercial Communications Office, Defense Communications Agency. The provisions of this subpart are optional where the procurement instrument will be completely administered by the purchasing office or the consignee, except that as a minimum such instrument numbers shall not exceed 19 characters (excluding hyphens) for the procurement instrument identification number including any supplemental modification or other identification number, and such instrument numbers shall commence with the identification of the purchasing office and the fiscal year, in accordance with 204.7003–2 (a) and (b) and Appendix N.

204.7002 Policy.

(a) The uniform procurement instrument identification (hereafter referred to as PII) numbering system as prescribed in this subpart shall be used for instruments of the types listed in 204.7003–1(c), 204–7004–2, 204–7004–3, and 204–7004–4.

(b) Numbers, including Federal Supply Contract Numbers and any prescribed supplementary numbers, shall be placed in spaces provided on the applicable procurement forms, with major elements separated by dashes; for example, DABE01–66–M–0001. If a space is not otherwise provided, the prescribed numbers shall be placed in the upper right-hand corner of the form.

(c) Alpha-numeric characters, other than those prescribed in this subpart, shall not be used as a part of the PII numbering system. If other identification is required in accordance with

Departmental procedures, it shall be placed on the procurement instrument in such a location as to clearly separate it from the PII number prescribed herein.

204.7003 Basic procurement instrument identification number.

204.7003–1 Elements of number.

The basic PII number should be retained unchanged for the life of the particular instrument and shall consist of 13 alpha-numeric characters positioned as follows:

(a) The first 6 positions shall commence with the capital letters assigned to the Department preparing the instrument as follows:

DA Department of the Army
F Department of the Air Force
DCA Defense Communications Agency
N Department of the Navy (except Marine Corps)
M Marine Corps
DLA Defense Logistics Agency
DNA Defense Nuclear Agency
DMA Defense Mapping Agency
DCPA Defense Civil Preparedness Agency

The remainder of the first 6 positions shall be the alpha-numeric characters which, together with the Departmental identification shown above, identify the activity preparing the instrument. All 6 positions shall be used. If necessary, nonsignificant zeros shall be placed between the Department identifier and the activity identifier. A listing of applicable numbers is contained in Appendix N.

(b) The 7th and 8th positions shall be the last two digits of the fiscal year in which the PII number is assigned.

(c) The 9th position shall be a capital letter assigned to indicate the type of instrument code, as follows:

A Blanket Purchase Agreements
B Invitation for Bid
C Contracts, including Letter Contracts, contracts incorporating basic agreements, and contracts providing subsequent provisioning, but excluding Indefinite Delivery Type Contracts
D Indefinite Delivery Type Contracts
E Facilities Contract
F Delivery orders placed with or through other Government Departments or agencies or against contracts placed by such Departments or agencies (i.e., outside the Department of Defense and including blind-made supplies)
G Basic Ordering Agreements
H Agreements, including Basic Agreements
L Lease Agreement
M Purchase Order—manual (assign W when numbering capability of M becomes exhausted during a fiscal year
N Notice of Intent to Purchase
P Purchase Order—automated (assign V when numbering capability of P becomes exhausted during a fiscal year)
Q Request for Quotation—manual
R Request for Proposal
S Sales Contract
T Request for Quotation—automated (assign U when numbering capability of T becomes exhausted during a fiscal year).

The letters X, Y and Z are reserved for Departmental use.

(d) The 10th through 13th positions shall be the serial number of the instrument. A separate series of serial numbers may be used for any type of instrument listed in (c) above. Each such series of PII numbers for the same activity shall commence with the number 0001 at the start of each fiscal year. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with an alpha in the first (or first and second) position followed by the three (or two) position numeric serial number. The following alpha-numeric sequence shall be used (the letters I and O shall not be used):

A001 through A999, B001 through B999, and so on to Z001 through Z999;

Then AA01 through AA99, AB01 through AB99, and so on to AZ01 through AZ99;

Then BA01 through BA99, BB01 through BB99, and so on to BZ01 through BZ99; and so on to

ZA01 through ZA99, ZB01 through ZB99, and so on to ZZ01 through ZZ99.

204.7003–2 Illustration of number.

The following illustrates the configuration of the PII number as prescribed in 204.7003.

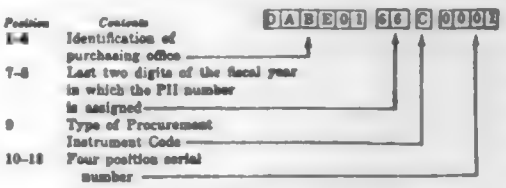

204.7004 Supplementary procurement instrument identification numbers.

204.7004–1 Uses of the number.

Supplementary numbers, used in conjunction with basic PII numbers, shall be employed to identify:

(a) Amendments to solicitation documents;

(b) Modifications of contracts and agreements (Provisioned Item Orders will be treated and numbered as modifications); and

(c) Calls/orders under contracts (except Federal Supply Schedule contracts), under basic ordering agreements and under blanket purchase agreements.

204.7004–2 Amendments to solicitation documents.

Amendments to each solicitation document shall be sequentially numbered by use of a four position numeric serial number supplementary to the basic PII number, commencing with 0001.

204.7004–3 Modifications of contracts and agreements.

(a) Contract modifications, as defined in FAR Subpart 43.1, and modifications to agreements shall be numbered by use of a six-position alpha-numeric number supplementary to the 13-position basic PII number as follows:

(1) The first position shall be a capital letter identifying the issuing office and the type of modification as indicated below:

A Contract Administration Office modifications
P Purchasing Office modifications

(2) The second through sixth positions shall be a serial number. The second and third positions may be alpha or numeric, except that the letters K, L, M, N, P, S, T, U, V, W, X, Y and Z are excluded and reserved for the express purposes as follows:

(i) For a definitized letter contract the second position shall be a Z; in other words, the letter Z will be used only for that modification which represents the definitized contract. The serial numbers of modifications occurring after the definitization will continue the sequence in the manner provided in this paragraph, without the letter Z.

(ii) Only the letters T, U, V, W, X, or Y may be used in the second position when a modification is issued providing initial shipping instructions or amending those shipping instructions previously issued in those cases in which the contract provides delivery FOB origin and no price change is involved. Modifications shall be serially numbered by each issuing activity. The foregoing is not mandatory on purchase offices that issue and control all modifications.

(iii) The letter S only may be used in the second position when a modification is issued providing initial or amended shipping instructions in those cases in which the contract provides delivery FOB destination or the contract provides delivery FOB origin and a price change is involved. Each modification shall be serially numbered.

(iv) The letters K, L, M, N P, and Q are reserved for the exclusive use of the Air Force only in the second position for a Provisioned Items Order. Provisioned Items Orders shall be serially numbered by each issuing activity.

(v) The fourth through sixth positions shall always be numeric. A separate series of serial numbers shall be used for each type modification listed in (a)(1) and (2)(ii), (iii), and (iv) above. The modifications issued by an activity for a

contract shall be numbered as set forth below:

Normal Modification	Provisioned Items Order (Reserved for exclusive use by the Air Force only)	Shipping Instructions
00001–[illegible] then AC001–AZ999 BD001–[illegible] and so on to HX01–H9999 then JX001–JZ999 then R0001–R9999 then AA001–HZ999 then JA001–JZ999 then RA001–RZ999	KI001–KW99 KA0001–KZ999 L0001–L9999 LA001–LZ999 M0001–M9999 MA001–MZ999 N0001–N9999 NA001–NZ999 P0001–PW99 PA001–PZ999 Q0001–Q9999 QA001–QZ999	S0001–S9999 SA001–SZ999 T0001–T9999 TA001–TZ999 U0001–U9999 UA001–UZ999 V0001–V9999 VA001–VZ999 W0001–W9999 WA001–WZ999 X0001–X9999 XA001–XZ999 Y0001–Y9999 YA001–YZ999

(3) ARZ999 is the six-position alpha-numeric number to be utilized the first time the office of administration or disbursement is being changed by use of computer generated modifications initiated by a CAO. The second change will utilize ARZ998, the third change ARZ997, and so forth. This method will only be utilized when mass changes are required.

(b) Supplementary identification numbers for modifications shall be assigned in consecutive chronological sequence by each issuing office authorized to issue modifications. To assure chronological assignment, modification numbers shall be assigned only after it has been determined that a modification is to be issued.

204.7004–4 Delivery orders under indefinite delivery type contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.

(a) Delivery orders under indefinite delivery type contracts (orders), orders under basic ordering agreements (orders), and calls under blanket purchase agreements (calls) shall be identified by a four-position alpha-numeric "call/order serial number" which is supplementary to the 13-position basic PII number.

(1) Calls/orders issued by the purchasing office identified in the basic PII number shall be assigned numeric call/order serial numbers, beginning with 0002 through 9999.

(2) Calls/orders issued by an office other than the purchasing office identified in the basic PII number shall be assigned alpha-numeric call/order serial numbers as follows:

(i) The first and second position shall be the alpha-numeric call/order serial number assigned to Appendix N to the activity issuing the call/order. The letters A, I, O, and P shall not be used in the first position; however, A and P may be used in the second position.

(ii) The third and fourth positions shall be a serial number assigned by the issuing activity. The first call or order issued each contract or agreement shall be numbered 01. After the serial number 99 is used, a uniform series of numeric/alpha, alpha/numeric, and finally alpha serial numbers shall be assigned as follows (the letters I and O shall not be used):

1A, 1B, and so on to 1Z, then 2A, 2B, and so on to 2Z, and so on to
9A, 9B; and so on to 9Z, followed by
A1, A2, and so on to A9, then B1, B2, and so on to B9, and so on to
Z1, Z2, and so on to Z9, followed by
AA, AB, and so on to AZ, then BA, BB, and so on to BZ, and so on to
ZA, ZB, and so on to ZZ.

(b) If it is necessary to modify a call/order, a two-position alpha-numeric suffix (know as the call/order modification indicator) shall be added to the supplementary PII number as follows (the letters I and O shall not be used):

(1) Modification to a call/order—issued by the purchasing office, excluding any modification providing shipping instructions in those cases described in (b) (2) and (3) below—01, 02, and so on through 99, then B1—B9, BA—BZ, C1, and so on through NZ and Z1 through ZZ;

(2) Modification to a call/order issued by a purchasing office providing initial or amended shipping instructions in those cases in which the call/order provides for delivery FOB destination or delivery FOB orgin and a price change is involved— P1, P9, PA—PZ, Q1—Q9, QA—QZ, etc., through TZ;

(3) Modification to a call/order issued by a purchasing office providing initial shipping instructions or amending those shipping instructions previously issued in those cases in which the call/order provides delivery FOB origin and no price change is involved—U1—U9, UA—UZ, V1—V9, VA—VZ, and so on through YZ; and

(4) Modifications to a call/order issued by a Contract Administration Office (CAO) will begin with 1A, 1B, and so on to 1Z; then 1A, 2B, and so on to 2Z; and so on to 9A, 9B, and so on to 9Z, followed by A1, A2, and so on to A9; then AA, AB, and so on through AZ.

AZ will be utilized the first time a modification is generated by mechanical means (computer program) to change the name of the administration office or disbursing office. The second change will utilize AY, the third change AX, and so forth. This method will only be utilized when mass changes are required.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7101 Scope of subpart.

This subpart prescribes procedures for establishing and numbering all items of supplies or services set forth in contracts and in other documents related thereto issued pursuant to this supplement.

204.7102 Policy.

(a) These procedures provide criteria for establishing and numbering contract line items, contract subline items, exhibits, exhibit line items, and exhibit subline items.

(b) The procedures prescribed in this subpart shall be used in contracts (as defined in FAR 2.1) and in provisioning and other documents which are expected to become parts of contracts.

(c) When practicable, these procedures also shall be used in solicitations and other contractual documents.

(d) These procedures are mandatory for all contracts except as follows:

(1) When no postaward contract administration function on the specific contract is assigned to any office listed in DoD Directory of Contract Administration Services Components;

(2) Indefinite delivery type contracts for petroleum products under which posts, camps, and stations issue delivery orders for such products for their own use; or

(3) Communication Service Authorizations issued by the Defense Commercial Communications Office, Defense Communications Agency.

(e) For cost-reimbursement type contracts, the provisions of this subpart apply except for the requirements in 204.7103–1(a)(1) and 204.7104.2(c)(2) for a single unit price or single total price or amount for each contract line or subline item.

(f) For maintenance and repair service type contracts in which firm prices for elements of the total price of an item are established but the number and quantity of such elements performed in order to determine the final item price to be paid are not known until performance (for example, a labor-hour contract), the provisions of this subpart apply except for the requirements in 204.7103–1(a)(1) and 204.7104–2(c)(2) for separate contract line items or subline items because of unit price differences for individual quantities of a line item or subline item. In lieu of establishing separate contract line items or subline items because of price differences, contractual documents for these types of contracts may be structured to reflect a

firm or estimated total item amount for each such line or subline item only (omitting unit price).

204.7103 Contract line items.

204.7103–1 Criteria for establishing.

(a) Requirements for supplies or services shall be established as contract line items. Each contract line item shall:

(1) Have, or be anticipated to have, a single unit price or, if no unit price is established, a single total price or amount (unless associated subline items of other than an informational nature are separately priced in accordance with 204.7104–2(c)(2), in which case, no price shall be assigned to the contract line item, except for informational purposes unit prices and/or amounts may be entered in parentheses within the item description block); however, the unit price may be entered as "NSP" (not separately priced); *Provided,* the price of this item is included in the unit price of another contract line item;

(2) Be separately identifiable, i.e., no more than one National Stock Number, one item description, one Manufacturer's Part Number, etc., for a supply line item, or no more than one Scope of Work, one Description of Services, etc., for a services line item (unless this identification is provided by associated subline items of other than an informational nature; in which case, a general narrative description shall be assigned to the contract line item number and the subline item shall include the actual detailed identification in accordance with 204.7104–2(c)(3); and

(3) Have a separate delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule) unless there are associated subline items of other than an informational character that meet this requirement. (When a requirement has multi-delivery dates or multi-destinations or multi-performance dates/points, that factor alone shall not require but does not preclude establishment of more than one contract line item. However, when more than one delivery date and/or more than one destination are identified to a single contract line item, the delivery schedule will specify delivery dates for the item by the destination when established, or individual contract line items may be established for each destination and/or delivery date and/or requisition.)

(b) As an alternative to setting forth in the Schedule an extensive list of contract line items, they may be shown in a contract exhibit as exhibit line items (see 204.7105 and 204.7106). In these cases, a Contract Line Item Number (CLIN) which references the exhibit will be assigned in the schedule and shall specify the exhibit identifier. Contract line items for provisioned spares shown on a contract exhibit and data items shown on DD Form 1423, Contract Data Requirements List, when used as an exhibit, shall specify the exhibit identifiers.

(c) Requirements for test model approval under the development phase or for first article approval under the production phase (whether the requirement is for first article delivery for Government testing or for first article approval test report delivery based on contractor testing) shall require the establishment of a separate contract line or subline item for each item of supply or service (one Scope of Work, one Performance Description, one National Stock Number, one Manufacturer's Part Number, one drawing and piece number) unless the test model or first article consists of a lot composed of a mixture of items, in which case a single contract line or subline item may be established for the lot.

(d) Requirements expressing contractor responsibilities for which a separate price is not established or contained in the price of a supply or service line item but for which the contractor may be entitled to payment, shall not be assigned a contract line or subline item number, but shall be identified in the contract schedule. Examples of such requirements are transportation, packaging and handling, reusable containers, and state and/or local taxes. If it is determined that a separate price is to be established for these requirements, they shall meet the criteria in (a) above or in 204.7104–2(c) and shall be established as a line or subline item.

204.7103–2 Procedures for numbering.

(a) Contract line items within a contract shall consist of 4 numeric digits 0001 through 9999 and shall be numbered sequentially but not necessarily consecutively. Unless there is a valid reason to the contrary, the identical line item number assigned to an item in a solicitation pursuant to 204.7102(c) shall be assigned to that item when an award is made. Any given contract line item number shall not be assigned more then once in a contract, and line item numbers beyond "9999" shall not be used.

(b) When a contract line item contains subline items, each such subline item shall be numbered by adding to the basic line item number, two alphabetic or two numeric characters as specified in 204.7104.

204.7104 Contract subline items.

204.7104–1 General.

Contract subline items provide a further subdivision of the basic contract line item when it is necessary for contract performance or administration purposes to separately identify subordinate requirements. There are only two categories of contract sublines.

(a) The first category comprises those subline items that are included in the procurement instrument for information purposes only and are identified by a numeric suffix. These subline items are an integral part of the associated contract line item but shall not be scheduled separately for delivery, separately identified for shipment or performance, or separately priced for payment purposes.

(b) The second category comprises those subline items that have a separate delivery schedule, require separate identification at the time of shipment or performance and/or are separately priced for payment purposes. These subline items are identified by an alpha suffix.

204.7104–2 Criteria for establishing.

(a) Subline items included in procurement instruments for informational purposes only (numeric suffix) shall be established at the discretion of the contracting officer. This type of subline item identifies information that relates directly to and is an integral part of the contract line item; e.g., parts of an assembly or parts of a kit. Such subline items shall not have a separate delivery schedule, a separate price for payment purposes or require separate identification at the time of shipment or performance. Informational quantities, prices or amounts determined by the contracting officer as necessary to satisfy management requirements may be identified to such subline items provided that such quantities, prices or amounts are set forth in parentheses within the Supplies/Services (item description) column of the contractual document (i.e., not within the quantity and price columns).

(b) Subline items that have a separate delivery schedule, require a separate identification at the time of shipment, and/or are separately priced for payment purposes (alpha suffix) shall be established in lieu of line items at the discretion of the contracting officer. This category subline item shall be established whenever a capability must be provided to accumulate separately identified price and/or quantity data at the contract line item level. For instance,

this category subline may be used to identify:

(1) Identical items that are to be paid from more than one accounting classification (unless separate contract line items have been established for each accounting classification or accounting classifications have been identified to each consignee in the contract line item delivery schedule in accordance with 204.7108);

(2) Items of an identical nature where different sizes have been assigned discrete Federal supply stock numbers and/or different prices;

(3) Individually payable items such as packaging costs that pertain to a contract line item but are not included in the contract line item price (in this case, item description, price and quantity data for the line item also are to be entered as a separate subline item);

(4) Individual delivery dates and/or destinations and/or requisitions when multiple delivery dates, destinations and/or requisitions are designated in the procurement instrument for a contract line item; or

(5) Parts of an assembly or parts of a kit when the parts have a separate delivery schedule, require separate identification at the time of shipment or performance, and are separately priced for payment purposes.

Whenever subline items of this category (alpha suffix) are established, the associated contract line item shall serve only as a common denominator for the accumulation of management data by the procuring activity and all requirements for the associated contract line item will be identified as subline items. (All shipments and payment will be made at the subline item level.)

(c) Subline items in the alpha suffix category ((b) above) shall:

(1) Have a separate (i.e., subline item level) delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule); and

(2) Have or be anticipated to have a single unit price or, if no unit price is established, a single total price or amount (When all subline items for a particular contract line item are identical services or supply items that have identical unit prices, the unit price and total amount (extended unit price for all subline items) may be shown at the contract line item level, or the unit price may be shown at the contract line item level and the extended amounts shown at subline item level, or the unit price and total amounts may be shown at subline item level, but only one of these methods may be used for a contract line item and its associated subline items. However, if any subline item has a different unit price than the remainder of the subline items, all subline items shall be separately priced and the contract line item shall not be priced. In this latter instance, subline items that are not separately priced but must be separately identified for shipment and management purposes may indicate a unit price of "NSP" (not separately priced); *provided*, the price of this item is included in the unit price of another subline item or different contract line item. The clause set forth in 2052.204–7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered. In no instance will the contract line item/subline item structure be constructed in such a way as to require the identification of contractor products or services (shipment or performance) at the subline item level and contractor payment at the contract line item level); and

(3) Be separately identifiable (i.e., no more than one National Stock Number, one Item Description, one Manufacturer's Part Number, etc., for a supply subline item, or no more than one Scope of Work, one Description of Services, etc.) for a services subline item.

204.7104–3 Procedures for numbering.

(a) When contract subline items are established within a contract line item, the total effort shall be assigned a contract line item number and each subline item shall be assigned a contract subline item number.

(b) Contract subline items established within a contract line item for information purposes only (204.7104–1(a) and 204.7104–2(a)) shall be numbered by adding to the contract line item number two numeric characters commencing with ":01" and continuing through "99." No such designation shall be assigned more than once to the same contract line item number within a procurement instrument. The two supplemental numeric characters shall be placed immediately following the contract line item number without separation by spaces or special characters. Example follows:

Item No.	Supplies/Services	Quantity	Unit	Unit price (dollars)	Amount (dollars)
0002	158/EE Periscope Adapter System. NSN–2040–00–916–2842, including one set of the following for each system.	12	Each	72,831	873,972
000201	Indicator and Control Box (1 ea)				
000202	Well Junction Box (1 ea)				
000203	Remote Indicator Box (ECM RM) (1 ea)				
•	• • • • •				
000210	Set Dip Loop Cables (1 ea)				

NOTE: In the above instance, the delivery schedule will identify the contract line item (not the subline items) and all shipments and payments will be at the contract line item level. Shipment documents and payment vouchers will not identify subline items.

(c) Contract subline items established to identify contractual requirements that have a separate delivery schedule, require identification at the time of shipment or accomplishment and/or are separately priced for payment purposes (see 204.7104–1(b) and 204.7104–2(b)) shall:

(1) Be numbered by adding to the contract line item number two alphabetic characters commencing with "AA" and continuing through "ZZ." (The letters "I" and "O" shall not be used.) Contract sublines shall be numbered sequentially but not necessarily consecutively. No such designation shall be assigned more than once to the same contract line item number within a contract;

(2) Be sequenced within a contract line item as follows: AA, AB, AC through AZ; then BA, BB, BC through BZ; and continuing, if necessary, through ZZ; and

(3) Be constructed by placing the two supplemental alphabetic characters immediately following the contract line item without separation by spaces or special characters. For example, with contract line item number "0001" the first three contract subline items, if consecutive, would be numbered "0001AA," "0001AB," and "0001AC."

Examples of correct line item structures in this category are shown on the following pages.

Example 1: Subline items structured to identify destinations for identical items, identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Apbl, Rotor, Helicopter.				
	PRON A1-9-63821-M1-M1 ACR: AA				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501.	10	EA	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RRD: 325 PROJ: 502.	10	EA	100.00	1,000.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.	15	EA	100.00	1,500.00

Example 2: Subline items structured to identify destinations for identical items, not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Apbl, Rotor, Helicopter.				
	PRON A1-9-63821-M1-M1 ACR: AA				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501.	10	EA	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RRD: 325 PROJ: 502.	20	EA	99.00	1,980.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.	30	EA	98.00	2,940.00

Note: Difference in prices for identical items is due to separate destinations for FOB destination delivery.

Example 3: Subline items structured to identify different sizes of an item that are identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies services	Quantity	Unit	Unit price	Amount
0013	Boots Insulted, Cold Weather White, Type II, Class 1		PR	[illegible]	$13,422.50
0013AA	8430-00-655-5541 Size 5N	50			
0013AB	8430-00-655-5544 Size 8N	70			
0013AC	8430-00-655-5551 Size 9N	30			
0013AD	8430-00-655-5535 Size 9R	200			

Note: Unit price and total amount shown at line item level rather then at subline item level, as authorized by 204.7104-2(c)(2), when all subline items of a line item are identically priced.

Example 4: Subline items structured to identify different sizes of an item that are not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.)

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0002	Body Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I.				
0002AA	First Article	1	LO	NSP	
0002AB	8470-00-141-0935, Medium Regular	1936	SE	$331.77	$642,306.72
0002AC	8470-00-141-0936, Large Regular	825	SE	355.77	[illegible]
0002AD	8470-00-141-0937, Medium Long	1,237	SE	346.77	[illegible]
0002AE	8470-00-141-0938, Large Long	804	SE	365.77	294,079.08

Note.—First Article entered as "Lot" in accordance with 204.7103-1(c).

Example 5: Subline items structured to provide the capability for relating subordinate separated priced packaging costs to the overall contract line item (Separate delivery schedules shall be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the contract line item.)

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001	6105-00-635-6568 50380 Ref. No. 63504-WZ Armature Motor ACR: AA.				
0001AA	6105-00-635-6568 50380 Ref. No. 63504-WZ Armature Motor.	2	EA	$2,895.87	5,791.74

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001AB	Packaging	2	EA	289.58	579.16

Example 6: Subline items structured to identify different accounting classifications for identical items (Delivery schedule shall be established for each subline item, not the contract line item.)

Accounting and Appropriation Data

AJ: 17X1505183503150691000000192B000000000000000000
AK: 17X1505183703175691000000192B000000000000000000
AL: 17X1505193503143691000000192B000000000000000000

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0002	Pulse Decoder KY-312/A5Q-19		EA	$3,037.40	
0002AA	Pulse Decoder KY-312/A5Q-19ACR: AJ	2			$6,074.80
0002AB	Pulse Decoder KY-312/A5Q-19ACR: AK	6			18,224.40
0002AB	Pulse Decoder KY-312/A5Q-19ACR: AL	2			6,074.80

Note: Unit price may be shown at line item level and total amounts shown at subline item level, as authorized by 204.7104-2(c)(2), when all subline items of a line item are identically priced.

Example 7: Subline items structured to identify parts of an assembly (Delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0003	Automatic Degaussing System Consisting of: (2 ea @ $52,061; $104,122 total).				
0003AA	Switchboard	2	EA	$52,061.00	$104,122.00
0003AB	Remote Control Panel	2	EA	NSP	
0003AC	Power Supply (M Coil) SSM Type (145 Amps, 220 V DC).	2	EA	NSP	
0003AF	Power supply (A Coil) SSM Type (118 Amps, 220 V DC)	2	EA	NSP	

Note: In the above instance, the price of all other subline items indicated by "NSP" is included in the Switchboard. The clause set forth in 252.204-7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

Example 8: Subline items structured to identify parts of a kit (Delivery schedule and price shall be established for each identified part at the subline item level, not for the kit at the contract line item level.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0031	Conversion Kit to Convert Torpedo MK 45 Mod 0 to Torpedo MK 45 Mod 1 (50 Kt @ $10,868.52; $543,426 total).				
0031AA	Integrator Assy LD 620106	50	EA	$10,868.52	$543,426.00
0031AB	Pulse Generator Assy LD 587569	50	EA	NSP	
0031AC	Drive Shaft Assy LD 587559	50	EA	NSP	
0031BF	Actuator Panel Assy LD 542924	50	EA	NSP	

Note: In the above instance, the price of all other subline items indicated by "NSP" is included in the Integrator Assembly. The clause set forth in 252.204-7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

204.7105 Contract exhibits.

204.7105-1 Definition.

"Exhibit" means a document attached to a procurement instrument, referenced by its capital letter identifier in a line or subline item in the procurement instrument Schedule, which establishes deliverable requirements in the attached document as an alternative to establishing an extensive list of line or subline items in the procurement instrument Schedule.

204.7105-2 Criteria for establishing.

(a) As an alternative to setting forth in the Schedule an extensive list of contract line or subline items (e.g., spare parts lists), a contract line item may be established referencing a document attached to the contract which shall be designated an exhibit. The exhibit shall set forth as exhibit line items what would otherwise be shown as contract line items. When exhibits are used, the following shall apply:

(1) Each exhibit shall apply to one contract line or subline item only; however, more than one exhibit may apply to a single contract line item.

(2) DD Form 1423 (Contract Data Requirements List) may be used as an exhibit or as an attachment. If used as an exhibit, the exhibit identifier (204.7105-3) shall be entered in the "TO EXHIBIT" line in the upper left corner of the form (the "ATCH NR" line shall be left blank), one contract line or subline item shall be established in the Schedule which reflects the exhibit, and the standard procedures for identifying exhibits prescribed in 204.7105-3 below and for numbering exhibit line and subline items prescribed in 204.7106 shall be followed. If the DD Form 1423 is used as an attachment, a numeric attachment number shall be entered in the "ATCH NR" line in the upper left corner of the form (the "TO EXHIBIT" line shall be left blank) and a separate contract line or subline item shall be established in the Schedule for, and which references, each deliverable sequence number of data on the DD Form 1423.

(3) Contract line or subline items in the Schedule which reference an exhibit shall not contain unit prices or total amounts, except when necessary to reflect the amount of funds for actual or estimated requirements to satisfy the management needs of the individual procuring activity. When unit prices or total amounts are shown to satisfy a management need, such prices or amounts shall be set forth in parentheses within the item description block of the contractual document (i.e., not within the unit price or amount columns).

(b) As an alternative to setting forth in the Schedule an extensive list of contract subline items, a contract subline item may be established which references an exhibit in the same manner as for a contract line item.

(c) The term "Exhibit" shall not be used to identify any other attachment to a procurement instrument. When

contract line items or subline items refer to a document attached to a procurement instrument which establishes a deliverable requirement, such as spare parts or data on a DD Form 1423, this document shall be termed an Exhibit. When other types of documentation are appended to or incorporated by reference in a procurement instrument, such documentation shall be referred to as an "Attachment" or other term identifying it as appended documentation. Such documentation may be attached to a contract exhibit, provided such documentation does not identify a deliverable requirement which is not established by a contract or exhibit line or subline item.

204.7105–3 Procedures for identifying.

Exhibits shall be identified by either a single or double capital letters. The letters "I" and "O" shall not be used. Exhibit identifiers need not be assigned consecutively, nor sequentially, but they shall not be duplicated within a procurement instrument and shall always appear in the first or first and second positions of all applicable "Exhibit Line Item Numbers" (see 204.7106). Each page of the exhibit shall have the procurement instrument identification number, exhibit identifier, and applicable contract line or subline item number cited thereon.

204.7106 Exhibit line and subline items.

204.7106–1 Criteria for establishing.

Criteria for the establishment of exhibit line and subline items shall be the same as for establishing contract line and subline items (see 204.7103–1 and 204.7104–2, respectively).

204.7106–2 Procedures for numbering.

(a) Exhibit line items within an exhibit shall be assigned four-position numbers. The exhibit identifier (see 204.7105–3) is used for the first or first and second positions; the remaining positions are assigned sequentially within each exhibit using alpha and numeric characters. The letters "I" and "O" shall not be used. Exhibit line item numbers shall be sequenced as set forth in 204.7106–3, except that numeric numbering may be employed in those cases where such numbering is adequate to meet the criteria established by 204.7106–1.

(b) Exhibit subline items shall be numbered in the same manner as specified for contract subline items (see 204.7104–3).

204.7106–3 Sequence of exhibit line item numbers.

TWO-POSITION SERIAL NUMBER FOR DOUBLE-LETTER EXHIBIT IDENTIFIER

Cumulative No. of Line Items	Serial Number Sequence
1–33	01 thru 09, then 0A thru 0Z, then
34–67	10 thru 19, then 1A thru 1Z, then
68–101	20 thru 29, then 2A thru 2Z, then
102–135	30 thru 39, then 3A thru 3Z, then
136–169	40 thru 49, then 4A thru 4Z, then
170–203	50 thru 59, then 5A thru 5Z, then
204–237	60 thru 69, then 6A thru 6Z, then
238–271	70 thru 79, then 7A thru 7Z, then
272–305	80 thru 89, then 8A thru 8Z, then
306–339	90 thru 99, then 9A thru 9Z, then
340–373	A0 thru A9, then AA thru AZ, then
374–407	B0 thru B9, then BA thru BZ, then
408–441	C0 thru C9, then CA thru CZ, then
442–475	D0 thru D9, then DA thru DZ, then
476–509	E0 thru E9, then EA thru EZ, then
510–543	F0 thru F9, then FA thru FZ, then
544–577	G0 thru G9, then GA thru GZ, then
578–611	H0 thru H9, then HA thru HZ, then
612–645	J0 thru J9, then JA thru JZ, then
646–679	K0 thru K9, then KA thru KZ, then
680–713	L0 thru L9, then LA thru LZ, then
714–747	M0 thru M9, then MA thru MZ, then
748–781	N0 thru N9, then NA thru NZ, then
782–815	P0 thru P9, then PA thru PZ, then
816–849	Q0 thru Q9, then QA thru QZ, then
850–883	R0 thru R9, then RA thru RZ, then
884–917	S0 thru S9, then SA thru SZ, then
918–951	T0 thru T9, then TA thru TZ, then
952–985	U0 thru U9, then UA thru UZ, then
986–1019	V0 thru V9, then VA thru VZ, then
1020–1053	W0 thru W9, then WA thru WZ, then
1054–1087	X0 thru X9, then XA thru XZ, then
1088–1121	Y0 thru Y9, then YA thru YZ, then
1122–1155	Z0 thru Z9, then ZA thru ZZ.

THREE-POSITION SERIAL NUMBERS FOR DOUBLE-LETTER EXHIBIT IDENTIFIER

Cumulative No. of Line Items	Serial Number Sequence
1–33	001 thru 009, then 00A thru 00Z, then
34–67	010 thru 019, then 01A thru 01Z, then
68–101	020 thru 029, then 02A thru 02Z, then
102–135	030 thru 039, then 03A thru 03Z
136–305	and so on to
306–339	090 thru 099, then 09A thru 09Z, then
340–373	0A0 thru 0A9, then 0AA thru 0AZ, then
374–407	0B0 thru 0B9, then 0BA thru 0BZ, then
408–441	0C0 thru 0C9, then 0CA thru 0BZ
422–1121	and so on to
1122–1155	0Z0 thru 0Z9, then 0ZA thru 0ZZ, then
1156–1189	100 thru 109, then 10A thru 10Z, then
1190–1223	110 thru 119, then 11A thru 11Z, then
1224–1257	120 thru 129, then 12A thru 12Z
1258–1461	and so on to
1462–1495	190 thru 199, then 19A thru 19Z, then
1496–1529	1A0 thru 1A9, then 1AA thru 1AZ, then
1530–1563	1B0 thru 1B9, then 1BA thru 1BZ
1564–2277	and so on to
2278–2311	1Z0 thru 1Z9, then 1ZA thru 1ZZ, then
2312–2345	200 thru 209, then 20A thru 20Z, then
2346–2379	210 thru 219, then 21A thru 21Z, then
2380–2413	220 thru 229, then 22A thru 22Z
2414–2617	and so on to
2618–2651	290 thru 299, then 29A thru 29Z, then
2652–2685	2A0 thru 2Z9, then 2ZA thru 2ZZ, then
2686–2719	2B0 thru 2B9, then 2BA thru 2BZ
2720–3433	and so on to
3434–3467	2Z0 thru 2Z9, then 2ZA thru 2ZZ, then
3468–3501	300 thru 309, then 30A thru 30Z
3502–10,403	and so on to
10,404–10,437	900 thru 909, then 90A thru 90Z, then
10,438–10,471	910 thru 919, then 91A thru 91Z
10,710–10,743	980 thru 999, then 98A thru 98Z, then
10,744–10,777	9A0 thru 9A9, then 9AA thru 9AZ, then
10,778–10,811	9B0 thru 9B9, then 9BA thru 9BZ
10,812–11,525	and so on to
11,526–11,559	9Z0 thru 9Z9, then 9ZA thru 9ZZ

204.7107 Contract modifications.

Items of supplies or services set forth in contract or exhibit modifications shall reflect the applicable line or subline item numbers, if any, appearing in the basic contract, except in those instances when the nature of the modification necessitates re-identification of a partial quantity of an existing contract line item or exhibit line item. Situations described below are intended to furnish guidance as to when a new line or subline item number should or should not be assigned as the result of a contract modification.

(a) Modification applying to definitized items (firm price of item is included in the contract or, if this modification establishes additional quantities of items already included in the contract, the price of the item in the modification is the same as in the contract or, if this is a new item, the modification contains a firm price):

(1) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.

(2) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 204.7103–1(a)(2) and 204.7104–2(c)(3)). and the unit price change is averaged to provide a revised single unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.

(3) If the modification adds a new item of supply or services to the contract or exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.

(4) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and changes other than delivery date and/or, ship to mark for data, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(b) Modifications applying to undefinitized items (although a requirement for this item has already been included in the contract or previous exhibit a firm price has not been negotiated or, if this modification establishes additional quantities of an item, the price of the item in the modification is not firm or if this modification adds a new item for which the firm price has not been established):

(1) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.

(2) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 204.7103–1(a)(2) and 204.7104–2(c)(32)), and the unit price change is averaged to provide a revised single estimated unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.

(3) If the modification adds a new item of supply or service to the contract or exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.

(4) If the modification is undefinitized (price) and increases the quantity of an existing definitized (price) contract or exhibit line or subline item, the next unused contract or exhibit line or subline item number will be assigned to the increased quantity.

(5) If the modification increases the quantity of an existing but undefinitized (price) contract or exhibit line or subline item, the original line item number may be retained if the same unit price applies to the total quantity (existing plus increase) of the line item; if the unit price of the increased quantity differs from that of the existing quantity, the next unused contract or exhibit line item or subline item number will be assigned to the increased quantity.

(6) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and definitizes price, the definitized portion shall retain the original contract or exhibit line or subline item number. The undefinitized portion shall be assigned the next unused contract or exhibit line or subline item number; however, if the same item on another existing contract or exhibit line or subline item has already been definitized and the newly definitized quantity is definitized at the same unit price as the existing definitized quantity, or an average definitized unit price is established for the new and the existing definitized quantities, then the undefinitized portion may retain its existing line item number and the newly definitized quantity may be added to the contract or exhibit line item for the previously definitized quantity.

(7) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and does not change the delivery schedule nor definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(c) In any event, all items of supplies or services appearing in modifications and exhibits shall be established and numbered in accordance with the uniform numbering procedures prescribed in this subpart. If subline numbers are assigned, all requirements for the associated contract or exhibit line item will be identified as subline items, and the contract or exhibit line item will serve only as a common denominator for the accumulation of management data.

204.7108 Contract Accounting Classification Reference Number (ACRN).

204.7108–1 General.

As a method of relating the long line accounting classification citation number to detail line item scheduled information, the Accounting Classification Reference Number (ACRN) shall be utilized in all contracts assigned for the contract administration to the Defense Contract Administration Services, DLA, and to Plant Cognizance Repesentatives of the Military Departments and Agencies.

204.7108–2 Criteria for establishing.

This two position alpha/numeric control code is required for Military Standard Contract Administration Procedures (MILSCAP) processing, and may also be used in contracts administered by each Service/Agency. Under MILSCAP, the ACRN is required to associate the Accounting Classification Trailer Record, the Supplies Schedules Data Record and the Services Line Item Data Record with the long line accounting classification. The reference number is also used to associate the various record formats of the Contract Payment Notice as described in Chapter 9 of the MILSCAP Manual, DoD 4105.63–M.

204.7108–3 Procedures for using the Accounting Classification Reference Number (ACRN).

(a) The ACRN will be any combination of a two position alpha/numeric code assigned discretely to each accounting classification within each contract. The letters "I" and "O" shall not be used.

(b) This code will be shown as a detached prefix to the long line accounting classification number in the Accounting and Appropriation Data block and/or Section K (Contract Administration Data) of the contract, except that accounting classification numbers included in the contract only for the information of the Transportation Officer for citation on Government bills of lading for shipment at Government expense of items on an f.o.b. origin contract need not be prefixed with an ACRN. In the case of modifications to contracts/orders which have been previously assigned a long line accounting classification number(s), only the ACRN(s) assigned to that number(s) need be shown in the Accounting and Appropriations Data block and/or Continuation Sheet(s) of the modification.

(c) If more than one ACRN is assigned in the contract, the ACRN shall also be shown in the contract Schedule as follows:

(1) The ACRN shall be shown adjacent to the identity code of each "Ship To/Mark For," unless the procedure in (c) (2) or (3) below is used. Only one ACRN may be assigned to the same "Ship To/Mark For" within the same contract line or subline item number, except in rare cases when multiple accounting classifications apply to a single unit so the quantity cannot be subdivided to relate to a single accounting classification. In such case, the contract shall provide sufficient information under the heading "Payment Instructions for Multiple Fund Accounting Citations" to permit proper payment and fund accounting;

(2) If only one accounting classification applies to a subline item, the ACRN may be shown in the Supplies/Services column near the subline item description;

(3) If only one accounting classification applies to a line item, the ACRN may be shown in the Supplies/Services column near the line item description; and

(4) The ACRN shall be shown in the contract Schedule in the following manner: ACR:1D

(5) For cost-reimbursement type contracts, the provisions of this paragraph (c) do not apply.

(d) The purchasing office executing a contract, basic ordering agreement, or blanket purchase agreement is responsible for control of assignment of ACRNs pertaining thereto. Contract or agreement provisions which provide for the issuance of contract modifications (including provisioned item order modifications), calls, orders, or work requests by organizations other than the purchasing office executing the contract or agreement will contain instructions for ACRN assignment. This may be accomplished by individual assignments

as funds are cited, by assignment of blocks of ACRNs to offices authorized to issue contract modifications, calls, orders or work requests or by some other appropriate method. In no case, however, will an ACRN apply to more than one long line accounting classification in a contract. The authority to control ACRN assignment shall not be delegated to another office by the purchasing office issuing the contract or agreement.

204.7109 Indefinite delivery type contracts.

(a) When an indefinite delivery type contract includes provisions wherein the price of an item is determined at the time a delivery order is issued based on such factors as the quantity to be ordered (e.e., 10–99 at $1.00, 100–249 at $.98, and 250 or more at $.95), the FOB provision, the destination, or the type pack required in the delivery order, it shall not be necessary to assign a separate line item number in the indefinite delivery type contract to each price for the same item. Each line or subline item in the individual delivery order, however, shall cite only one of the unit prices in the indefinite delivery type contract.

(b) Except as noted in (a) above, criteria for contract line item assignment (see 204.7103) shall be applicable to indefinite delivery type contracts.

PART 205—PUBLICIZING CONTRACT ACTIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

205.001 Policy.

(c) Small business specialists in each purchasing office are responsible for screening all proposed procurements and for recommending action to be taken with respect to publicizing such procurements in accordance with the requirements of this subpart. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

Subpart 205.1—Dissemination of Information

205.101 Methods of Disseminating Information.

(a)(2) *Displaying in Public Place.* A copy of each solicitation for an unclassified procurement in excess of $5,000 which provides at least 10 calendar days for submission of offers shall be displayed at the contracting office and, if appropriate, at some additional public place from the date issued until 7 days after bids or proposals have been opened. But see Part 13 for small purchases.

205.102 Availability of Solicitations.

(a)(1) In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the acquisition, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed acquisitions normally do not require voluminous specifications or drawings. With regard to classified acquisitions, the foregoing instructions apply to the extent consistent with Departmental security instructions and procedures.

(4)(i) When the purchase activity is not in possession of complete sets of specifications, plans and drawings (as in some procurements of airframes, shipbuilding, or major weapons systems), or the drawings and specifications are classified, or are so voluminous that display and distribution in accordance with prescribed procedures is impracticable, the solicitation shall contain notice of this fact and of the location at which the specifications, plans, or drawings may be examined.

Subpart 205.2—Synopses of Proposed Contracts

205.201 General.

(b) *Commodity assignments.* When an item is assigned or is within a Federal Supply Class assigned for procurement in FAR Subpart 17.5 and is purchased by other than the assigned Department, the synopsis shall cite the applicable purchase exclusion number from 208.7101–1 or 208.7101–2.

(S–70) Publication of Procurement Less Than $10,000. When recommendation by procurement personnel or the small business specialist, and approved by the contracting officer, proposed procurement less than $10,000 may be publicized in the *Commence Business Daily.*

205.202 Exceptions.

The following need not be publicized in the Synopsis:

(i) The procurement for security reasons is of a classified nature;

(ii) Procurement of perishable subsistence when made by placement of an order under a contract by FAR 16.5;

(iii) Procurement is for utility services and only one source is available;

(iv) Procurement which is of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at FAR 5.203;

(v) Procurement to be made by an order placed under an existing contract covered by FAR Subpart 5.2;

(vi) Procurement to be made from another Government Department or agency including procurements from the SBA using the authority of Section 8(a) of the Small Business Act, or a mandatory source of supply, such as an agency for the blind under the blind-made products program;

(vii) Procurement that results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and pubication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research;

(viii) Procurement for which a foreign government reimburses the Department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty;

(ix) When it has been determined in writing by the Secretary, with the concurrence of the Administrator of the Small Business Administration, that advances notice is not appropriate or reasonable.

205.203 Time of synopsizing.

When synopsis is required, contracting offices shall not issue a competitive solicitation until at least 15 days after the date of publication of a proper notice of the procurement action in the *Commerce Business Daily*; *Provided;* That, in the case of research and development procurements, the interval shall be 30 days from the date of publication. Contracting officers may presume that notice has been published 5 days (2 days if electronically transmitted) following transmittal of the synopsis to the *Commerce Business Daily.*

205.204 Presolicitation notices.

See FAR 14.205—(c) and 15.404(b).

205.205 Special situations.

(c)(1) Each procurement to be made in the United States, its possessions, or Puerto Rico for which the total fee (including phases and options) is expected to be $10,000 or more shall be synopsized in accordance with 205.207(d)(S–71).

(c)(2) A notice of procurements with fees not expected to be less than $10,000, or to be made outside the United States, its possessions, or Puerto Rico, shall be displayed at the contracting office and need not be publicized in the *Commerce Business Daily*.

(c)(S–70) For procurements with an estimated total fee of $300,000 and which require notification to Congress in accordance with 10 U.S.C. 2807, no public announcement shall be made until two weeks after Congress has been notified.

205.207 Preparation and transmittal of synopses.

(b)(1) The first line of the text will state the number of the synopses being sent. Synopses will be numbered consecutively by the reporting activity during the calendar year, using a new series of numbers for each year.

(d)(2) When referenced, Numbered Note 12 will appear in the *Commerce Business Daily* as follows:

Note 12: One or more of the items under this procurement may be subject to the requirements of the Agreement on Government Procurement approved and implemented in the United States by the Trade Agreements Act of 1979. All offers shall be in the English language and in U.S. dollars. The solicitation procedure is open; that is, all interested suppliers may submit an offer.

(End of Note)

(d)(S–70) If the synopsis is for a sole source contract, the synopsis shall include reference to Numbered Note 22. The Numbered Note will appear in the *Commerce Business Daily* as follows:

Note 22: This procurement is for supplies or services for which the Government intends to solicit and negotiate with only one source. Interested persons are invited to identify their interest and capability to respond to the requirement or to submit proposals in responses to this notice. This notice of intent is not a request for competitive proposals. A determination by the Government not to open the requirement to competition based upon response to this notice is solely within the discretion of the Government. Information received as a result of the notice intent will normally be considerd solely for the purpose of determinng whether to conduct a competitive procurement. Nevertheless, the sole source may not presume that the solicitation will be amended in the event that competitive proposals are received if the solicitation, as issued, is sufficient to support a competitive procurement. In that case, award may be made pursuant to the solicitation's terms. In accordance with Pub. L. 98–72, the contracting officer will not commence negotiations for award of a contract until at least 30 days have elapsed from the date of this notice.

(End of Note)

(d)(S–71) Each notice publicizing procurement or architect-engineer services shall be headed *"R. Architect-Engineer Services"*. The project shall be listed with a brief statement concerning the location, scope of service required, the significant evaluation criteria and the relative order of importance the Government attaches thereto, the estimated construction cost range (see FAR 36.204), the construction cost limitation (see FAR 36.205), the type of contract proposed, the estimated start and completion dates, and the date by which responses to the notice must be received, including submission of Standard Form 255, if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. The foregoing data shall be followed by the statement *"Firms desiring consideration shall submit appropriate data as described in Numbered Note 62. This is not a request for a proposal"*. The name of the responsible procurement office should follow together with the complete address and telephone number. The numbered note will appear in one issue each week of the *Commerce Business Daily* as follows:

Note 62: Architect-engineer firms which meet the requirements described in this announcement are invited to submit: (1) a Standard Form 254, Architect-Engineer and Related Services Questionnaire; (2) a Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, when requested; and (3) any requested supplemental data to the procurement office shown. Firms having a current Standard Form 254 on file with the procurement office are not required to resubmit this form. Firms responding to this announcement before the closing date will be considered for selection, subject to any limitations indicated with respect to size and geographic location of firm, specialized technical expertise or other requirements as listed. Following an initial evaluation of the qualification and performance data submitted, three or more firms considered to be the most highly qualified to provide the services required will be chosen for interview. The Department of Defense policy for selection of architect-engineer firms is not based upon competitive bidding procedures, but rather upon the professional qualifications necessary for the satisfactory performance of the professional services required, subject to the following additional considerations: (1) specialized experience of the firm in the type of work required; (2) capacity of the firm to accomplish the work in the required time; (3) past experience, if any, of the firm with respect to performance on Department of Defense contracts; (4) location of the firm in the general geographical area of the project, provided that there is an appropriate number of qualified firms therein for consideration; and (5) volume of work previously awarded to the firm by the Department of Defense, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms including minority-owned firms and firms that have not had prior Department of Defense contracts. Firms desiring to register for consideration for future projects administered by the procurement office (subject to specific requirements for individual projects are encouraged to submit annually a statement of qualifications and performance data, utilizing Standard Form 254, Architect-Engineer and Related Services Questionnaire.

(End of Note)

Note 62 is a *Commerce Business Daily* standard Numbered Note which applies to all DoD notices publicizing procurement of architect-engineer services. When the notice is used in accordance with FAR 2055.205(C), the substance of the Numbered Note shall be included.

Subpart 205.3—Synopses of Contract Awards

205.301 General.

(a) Except for classified awards, all awards of contracts to be performed in whole or in part within the United States, in excess of $25,000, which are likely to result in the award of subcontracts, shall be promptly published in the *Commerce Business Daily*, "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards."

205.302 Preparation and transmittal of synopses of awards.

(b) The synopsis of contract awards shall also contain the following information:

(S–70) the classification code (4-digit) applicable to the procurement action;

(S–71) a clear and concise description of the supplies or services being procured, including a national stock number or a service stock number when assigned.

(S–72) the quantity of each item;

(S–73) the name, size status ((S) for small business and (L) for large business), and the full address of the contractor.

205.303 Announcement of contract awards.

(a) *Public announcement.* Information on proposed contractual actions over $3 million shall be submitted in writing in accordance with Departmental/Agency procedures. Report Control Symbol DD–LA–(AR) 1279 applies. Departments will submit reports to the Office of the Assistant Secretary of Defense (Public Affair) by the close of business the day before contract award is proposed.

(S–70) *Congressional notification.* In accordance with Departmental procedures, Departments shall notify the appropriate Members of Congress (Senator and Representatives in whose state and district the proposed contractor is located and, if different, in whose state and district the work is to be performed) of contract awards of over $3 million concurrent with the public announcement described in (a) above.

Subpart 205.4—Release of Information

205.404–1 Release procedures.

(b)(1) Classified Information shall be released through existing security channels in accordance with DoD Industrial Security Regulation (DoD 5220.22R).

205.404–2 Announcements of long-range acquisition estimates.

Activities publishing long-range procurement estimates shall, publicize them in the *Commerce Business Daily* by forwarding to the address listed in FAR 5.207 an announcement reflecting the fact that a long-range procurement estimate has been published and citing the address of the office from which a copy of the estimate can be obtained. Each announcement should be prepared substantially as the following example.

"The Defense Personnel Support Center has published an estimate of equipment and footwear procurement requirements for and Quarters FY . These estimates, *which are subject to revision and are in no way binding on the Government,* may be obtained, by request, from the Defense Personnel Support Center (ATTN: Procurement and Production Directorate), 2800 South 20th Street, Philadelphia, Pennsylvania 19101."

Subpart 205.5—Paid Advertisements

205.501 Definitions.

(a) *Media* means any vehicle used to convey an advertising message; it includes newspapers, magazines, trade and professional journals, special printed media, radio and television;

(b) *Newspaper* means a publication printed and distributed at stated intervals to convey news and includes trade journals which carry news in addition to technical matter.

(c) *Space* means the space purchased for advertising messages in printed media, and the time purchased for advertising messages on radio or television broadcasts;

205.502 Authority.

(a) The authorization shall specify the limitations, if any, of the authority granted. Administrative duties involved in accomplishing the advertising may be delegated in writing, personally signed by the delegate, setting forth the extent of the administrative duties involved. A copy of the instrument delegating authority to advertise and a copy of the instrument assigning administrative duties thereunder will either be attached to the first voucher submitted for payment or shall be forwarded immediately upon issuance to the General Accounting Office address to which records of the Department are submitted for audit purposes. When authority to advertise has been delegated by the Secretary of the Department concerned, a reference to the authorizing directive on the advertisement order is acceptable in lieu of attaching a copy of the authority to the payment voucher. Copies of such instruments also shall be attached to the duplicate voucher submitted to the paying office.

(1) Special or general authority to place advertisements in newspapers must be secured in advance by the use of DD Form 1535, Request/Approval for Authority to Advertise. Special authority permits the publication of a given advertisement a specified number of times in designated newspapers. General authority permits the publication of such advertisements during a designated fiscal year as may be required.

(2) Requests for authority to place advertisements in newspapers shall be submitted through channels to the Secretary or his designee.

(b) Unless the Secretary of the Department concerned determines otherwise, DD Form 1535 is not required as authority to place advertisements in media other than newspapers. Paid advertisements to recruit civilian personnel shall be subject to the limitations in Section 332–1–9 of the Federal Personnel Manual.

205.504 Use of advertising agencies.

(b) The services of the advertising agencies include but are not limited to counseling as to the selection of the media for insertion of the advertisement; contacting the media in the interest of the Government agency concerned; placing of insertion orders; selection and ordering of typography; copywriting; and preparation of rough layouts.

Part 206 [Reserved in FAR]

SUBCHAPTER B—ACQUISITION PLANNING

PART 207—ACQUISITION PLANNING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 207.1—Acquisition Plans

207.102 Policy.

The Departments shall preform coordinated planning as prescribed by FAR Subpart 7.1 and this supplement for those acquisitions which meet the criteria and thresholds in 207.103(a)(2).

207.103 Agency-head responsibilities.

(a)(1) The acquisition planning provided for herein and in FAR Subpart 207.1 applies to the more complex and costly programs to procure hardware developed and produced to satisfy the need for modern military equipment. These acquisition planning principles may also be adapted to the acquisition of all supplies and services. Although some degree of acquisition planning is necessary to buy shoes, subsistence, or other common items of supply, the detailed planning described herein and in FAR Subpart 207.1 is not applicable to such items.

(a)(2) Acquisition plans shall be prepared for—

(i) Development acquisitions (see FAR 35.001) whose total contractual cost is estimated at $2,000,000 or more, and

(ii) Production and service acquisitions whose contractual cost is estimated at $15,000,000 for all years or $5,000,000 for any fiscal year. These plans shall include the contents described in FAR 207.105, as appropriate.

(a)(3) Acquisition plans for acquisitions described in (a)(2)(i) and (ii) above should be keyed to the Department of Defense Five Year Defense Program, applicable budget submissions, and the Decision Coordinating Paper/Program Memorandum, as appropriate.

(a)(4) The criteria and thresholds in (a)(2) above do not preclude the

preparation of acquisition plans for any acquisition, whether short-range or long-range, when determined necessary by the Departments.

(a)(5) Acquisitions which represent a final buyout, a one-time buy, or small, repetitive buys (see FAR 7.102) are exempt from the requirements of (a)(2) and (4) above.

(b) Acquisition plans meeting the criteria and thresholds of (a)(2) above, shall be prepared on a system basis covering the major items of hardware/equipment to be developed/produced including Government-furnished equipment and system support. Other acquisition plans may be written on either a system or individual contract basis.

(c) The Departments shall ensure that the principles of FAR Subpart 7.1 and this Subpart are used as appropriate.

(d) The program manager, or other official responsible for the program concerned has overall responsibility for the requisite acquisition planning as this official has for all other planning for the program. The contracting officer or the contracting officer's designee shall support this official by preparing and maintaining the acquisition plan. The contracting officer shall enlist the aid of cognizant engineering, production, logistics, quality assurance, maintenance and other functional staff business management personnel at command and subordinate buying activity levels as required. The head of the contracting activity, or the chief contracting official of the buying activity, in coordination with the program manager, must ensure that the objectives of the acquisition plan are realistic and achievable and that solicitations and contracts will be appropriately structured to equitably distribute technical, financial, and economic or business risks, consistent with the program phase of the acquisition, the technical requirements and needs of the specific program, and salient business and legal constraints. All personnel engaged in the management of the acquisition process, including program, technical and financial personnel, are essential to the comprehensive acquisition planning and preparations necessary to achieve the acquisition objectives. These personnel must be made cognizant of their responsibilities and actively participate in the development and preparation of the acquisition plan, if acquisition planning is to be successful.

(e) Acquisition plans shall be reviewed and approved in accordance with Departmental procedures.

(f)(1) *Design-to-cost criteria and thresholds.*

(i) Design-to-cost principles shall be applied—

(A) in all acquisitions for major defense systems (DoD Directive 5000.1) unless exempted by the Secretary of Defense, and

(B) to the acquisition of systems, subsystems, and components below the thresholds for major defense systems to the extent prescribed in DoD Directive 5000.28, and in accordance with Departmental proceduers. (See DoDD 5000.28 for the policies and procedures applicable to design-to-cost.)

(ii) In solicitations and contracts including design-to-cost principles, consideration should be govern to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DoDD 4105.62). This is to facilitate product development at the lowest life-cycle-cost consistent with mandatory schedule and performance requirements. (For the relationship of design-to-cost to value engineering, see FAR 48.105)

(2) *Life-cycle-cost criteria.*

(i) Since the cost of operating and supporting a system or equipment over its useful life is substantial and, in many cases, greater than the acquisition cost, it is essential that such costs be considered in development and acquisition decisions in order that proper consideration can be given to those systems or equipments that will result in the lowest life-cycle-cost to the Government. Guidelines, including representative detailed procedures for implementing life-cycle-costing are contained in the following documents published by the Under Secretary of Defense for Research and Engineering:

(A) LCC–1, DoD Life-Cycle-Costing Procurement Guide (Interim);

(B) LCC–2, DoD Life-Cycle-Costing Casebook; and

(C) LCC–3, Life-Cycle-Costing Guide for System Acquisitions (Interim).

(g) The following format is illustrative of an acquisition plan and is designed merely to give guidance in the preparation of acquisition plans. It may be modified to suit the acquisition being planned as well as the phase of program formulation. The narrative portion of the acquisition plan should be brief but comprehensive. It should provide not only the background necessary to understand the acquisition but also a plan for contracting for the item or system, including the rationale and assumptions upon which the plan is predicated. It should reference other documents where applicable. The milestone chart introduces discipline into the planning process by identifying in graphic form the points at which critical decisions must be made and time factors that must be observed when action is necessary to produce an item or to make a competitive buy possible. The chart not only forces consideration of all factors involved but it also provides a visual portrayal of the decisions necessary to achieve objectives and indicates the time at which they should be made. The milestone chart portrays the step-by-step planning and normally covers the period from advance development through delivery of the production items. The chart tells the story of time, cost and quantity of required items, illustrating milestones which must be recognized in the decision making process. However, it is important to recognize that the format of the milestone chart is flexible, because the same milestones may not be present in every acquisition program.

ILLUSTRATIVE ACQUISITION PLAN FORMAT

ACQUISITION PLAN NO.

PROGRAM _____

PROGRAM MANAGER

DESCRIPTION OF PROGRAM/SYSTEM/COMMODITY, ETC.

_____

_____

APPROVED:

CONTRACTING REPRESENTATIVE

DATE ———

PROGRAM MANAGER ————

DATE ———

(Address each of plan content elements in FAR 7.105(a) and (b) and 207.105, as appropriate.)

ILLUSTRATIVE MILESTONE CHART FORMAT [RESERVED]

207.104 General procedures.

(c) See Appendix J when an acquisition plan is used to support a determination and findings (D&F).

207.105 Contents of written acquisition plans.

In addition to the contents prescribed by the FAR, acquisition plans should include the following, as appropriate:

(a) *Acquisition background and objectives.*

(a)(7) *Risks.* As appropriate, discuss the effect of business base changes of major contractors' workload on program cost.

(a)(S–70) *Applicability of a Decision Coordinating Paper (DCP), program memorandum Defense System*

Acquisition Review Council (DSARC), and/or internal service reviews. Describe the options set forth in the DCP/Program Memorandum and delineate which option the acquisition plan supports. Delineate the DSARC and/or internal service reviews on the milestone chart.

(a)(S–71) *Approval for operational use.* Indicate the date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(a)(S–72) *Milestone chart attachment depicting the objectives of the acquisition.* Provide a chart in general accordance with the sample milestone chart at 207.103(g).

(a)(S–73) *Milestones for updating the acquisition plan.* Indicate when the plan will be updated. Updates should be scheduled to coincide with DSARC reviews and the transition from one phase to another (full-scale development to production).

(b) *Plan of action.*

(b)(5) *Authority for contracting by negotiation.* See Appendix J for the information required to be included in the acquisition plan if the plan is to be used to support a determination and findings (D&F).

(b)(6) *Budgeting and funding.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(b)(13) *Logistics considerations.*

(i) Describe the extent of integrated logistic support planning to date, including references to approved plans.

(ii) In discussing the reliability and maintainability (R&M) objective, including warranties, discuss the mission profile, R&M program plan, R&M predictions, redundancy, qualifed parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies.

(b)(S–70) *Acquisition approach for each proposed contract.* If not elsewhere described in the plan, describe the acquisition approach for each proposed contract, including the following, as appropriate.

(i) Item description.

(ii) Estimated cost.

(iii) Proposed sources and basis for selection.

(iv) Source selection procedures. If formal source selection procedures will be used, discuss milestones for development of the plan and provide a general overview of how the selection is to be conducted.

(v) Contract type. Provide rationale for recommendation of contract type.

(vi) Negotiation authority recommended. Discuss basis for recommendation of negotiation exception (see FAR 207.105(b)(5)).

(vii) Repurchase data. Provide a complete discussion of use of repurchase data to increase competition, including funding available for repurchase data and the contractual approach to acquiring such data, including proprietary rights and patent considerations.

(viii) Other considerations, as applicable.

(ix) Alternative acquisition approaches considered. Briefly discuss the merits and shortcomings of other approaches.

(x) Milestones for the contract cycle. Address those steps in FAR 7.105(b)(19) and any others, as appropriate.

Subpart 207.3—Contractor Versus Government Performance

207.302 General.

(d) DoD activities shall not convert a commercial activity to performance by a private contractor without having first conducted a cost comparison which demonstrates that contract performance is more economical.

207.304 Procedures.

(a)(3) In addition to the FAR requirement for the contracting officer to review the Performance-Oriented Work Statement (PWS), the contracting officer shall work in conjunction with the functional activity in the preparation of the PWS.

207.307 Appeals.

(b) The contracting officer shall forward requests for review of any discrepancy in the cost comparison to the preparer of the in-house cost estimate, for consideration in accordance with departmental procedures.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

(a) The contracting officer shall obtain rationale, as prescribed by FAR 7.401 and 7.402, supporting the decision to lease or purchase from the requiring activity. This rationale shall be retained in the contract file.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

208.002 Use of other government supply sources.

(f) The GSA has responsibility of the disposition of strategic and critical materials which are in excess of national stockpile requirements. These materials are primarily metals, ores, chemicals and similar raw material items, and are listed and described in a GSA Bulletin which is disseminated to contracting activities through Departmental channels. Prior to initiating acquisitions of materials which are listed as being available for transfer from the GSA, the contracting activity should screen the list to determine whether the requirement may be met through transfer of materials from the GSA. Due consideration should be given to the quantity, quality and location of the material, and to the timeliness of its availability. Detailed information on these excess materials is available from the Property Management and Disposal Service, General Services Administration, Washington, D.C. 20405.

(g) It is the policy of the Department of Defense (see Pub. L. 86–777) to obtain its requirement of helium as follows:

(1) Bulk helium requirements (tank car lots) shall be acquired either directly from the Department of Interior (Bureau of Mines) or from private helium distributors which establish and maintain their eligibility in accordance with Bureau of Mines Regulations. Copies of the current list of eligible private helium distributors may be obtained from the Bureau of Mines, Helium Operations, P.O. Box H4372 Herring Plaza, Amarillo, Texas 79101;

(2) Helium in cylinders or trailers shall be acquired from the Department of Interior (Bureau of Mines) either direct or through General Services Administration Federal Supply Schedule contracts. Department of Defense activities will make a determination annually as to whether or not helium in cylinders and trailers will be obtained directly from the Bureau of Mines or through Federal Supply Schedules. If a determination is made that it is more economical to obtain such helium through Federal Supply Schedules, the estimated requirements will be processed to GSA. Once estimated requirements are processed to GSA, the resultant Federal Supply Schedule (FSG 68, Part III, section G) is mandatory on the requiring activities for the contract period.

208.002–70 Acquisition from the Department of Energy (DOE).

(a) *General.* This subpart covers the acquisition of material and supplies from the DOE.

(b) *Acquisition of radioisotopes and enriched stable isotopes.*

(1) DOE F Form 5400.3, "U.S. DOE Isotope Order Blank", and NRC Form 313, "NRC Application for Byproduct Material License", shall be used for the acquisition of radioisotopes and enriched stable isotopes from any of the DOE laboratories. No other type of order blank, purchase order, or contract shall be used in lieu of these forms.

(2) In the acquisition of radioisotopes, NRC Form 313 shall be filed with the Chief, Materials Licensing Branch Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission, Washington, D.C. 20555. If the application meets all regulatory requirement and applicable standards, NRC Form 374, "U.S. Nuclear Regulatory Commission Byproduct Materials License," will be issued to the applicant by the Radioisotopes Licensing Branch, Nuclear Regulatory Commission. After receipt of the NRC Form 374, a complete DOE F Form 5400.3 (in duplicate, if the contracting office desires to receive an accepted copy of the form back from the supplier), the license (NRC Form 374), and a Standard Form 1103, "U.S. Government Bill of Lading", shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(3) The "Terms and Conditions" on the reverse side of the DOE F Form 5400.3 shall control all requisitions for radioisotopes and enriched stable isotopes acquired by the Departments from the DOE National Laboratories.

(4) NRC Form 313, "NRC Application for Byproduct Material License", shall be requisitioned directly from: United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, D.C. 20555. DOE F Form 5400.3 shall be acquisitioned directly from: Oakridge, TN 37830 (commercial telephone 615–574–6984) or Mound Facility, Monsanto Research Corporation, P.O. Box 32, Miamisburg, OH 45342 (commercial telephone 513–865–3501).

Subpart 208.3—Acquisition of Utility Services

See Supplement No. 5, Procurement of Utilities Services.

Subpart 208.4—Ordering From Federal Supply Schedules

208.402 Applicability.

(b) The subpart does not apply to items under the cognizance of the Defense Personnel Support Center.

208.404–1 Mandatory use.

(a) *Urgent requirements.* If delivery is offered in a shorter time than the maximum stated in the Schedule, but later than that required by the purchase request, the contracting officer shall ascertain from the activity initiating the purchase request whether the offered delivery is acceptable. This procedure need not be followed when transportation time from the contractor's shipping point or time required for inquiry and reply make conformance impracticable. When multiple award schedules are involved, the purchasing office need query only one contractor after considering the requirements of FAR 208.405–1.

208.404–2 Optional use.

(a)(S–70) DoD activities shall consider optional schedules as another source of supply to assure that purchase of supplies and services of the type contained in such schedules are really to the best advantage of the Government, price, delivery and other factors considered.

208.404–3 Requests for waivers.

(a) If such waiver is not granted, the case shall be referred to the Head of the Contracting Activity or his deputy, or to such higher authority as may be required by the Departments, and in the case of the Air Force, Commanders of AFLC Air Logistics Centers who shall make the final decision as to whether the nonschedule item will be purchased and shall promptly notify the Commissioner, Federal Supply Service, and the Purchasing Office, of the decision reached.

(b) When supplies or services are to be procured from other sources and the situation will not permit the delay incident to following the normal channels of obtaining a waiver from the General Services Administration prior to purchase, such waiver shall not be requested. In emergency situations, the head of the office initiating the purchase request, or his designated representative, shall furnish to the purchasing office a signed statement identifying the supplies or services to be purchased, and explaining why similar items listed in the applicable Federal Supply Schedule will not meet the specific requirements. The purchasing office shall, within 15 days of the date of purchase, furnish such statement to the Commissioner, Federal Supply Service, General Services Administration.

208.404–70 Applicability of Listed Federal Supply Schedules.

Supplies and services covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense. Some of the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. (But see 208.470–6 for mandatory use of GSA Term Contracts for maintenance, repair, rehabilitation and reclamation of personal property.) The Schedules should be checked for complete details concerning the exceptions.

(a) MANDATORY NATIONALLY

FSC Group	FSC Class	Title of Schedule	Remarks
25		VEHICULAR EQUIPMENT COMPONENTS, Part I	No Exceptions.
	2520	Clutch Facings (Metallic).	
	2530	Brake Linings (Metallic).	
	2540	Tire Chains.	
26		PNEUMATIC TIRES AND INNER TUBES, Part II	No Exceptions.
	2610	Highway, Off-Highway and Industrial.	
26		PNEUMATIC TIRES, Part V	No Exceptions.
	2610	Motorcycle, Emergency/Pursuit and Agricultural.	
35		SERVICE AND TRADE EQUIPMENT, Part I	No Exceptions.
	3540	Sealing and Packaging Machinery.	
	3590	Heat and Cold Process and Laminating Presses.	
35		SERVICE AND TRADE EQUIPMENT, Part III	No Exceptions.
	3550	Vending Machines.	

(a) MANDATORY NATIONALLY—Continued

FSC Group	FSC Class	Title of Schedule	Remarks
36		SPECIAL INDUSTRY MACHINERY, Part II	Not Mandatory on DoD for the following items: 51-1, 51-1-1, 51-1-2, 51-1-3, 51-2, 51-3, 51-60, 51-61, 51-62, 51-104, 51-105, 51-106, 51-110, 51-110-1, 51-111, 51-112, 51-113, 51-114, 51-115, 51-125, 51-125-1, 51-126, 51-127, 51-146, 51-165, 51-166, 51-167 and 51-2017.
	3610	Lithographic Printing Plates and Solutions; Masters, Spirit Duplication, Thermal Process; Printing Duplicating and Book Binding Equipment.	
	3615	Pulverizing, Pulping and Shredding Machines.	
36		SPECIAL INDUSTRY MACHINERY, Part IV	Not Mandatory on DoD for the following items: 51-4, 51-5, 51-6, 51-10, 51-11, 51-12, 51-28, 51-29, 51-30, 51-32, 51-43, 51-44, 51-45, 51-46, 51-47, 51-48, 51-52, 51-53, 51-54, 51-55, 51-55-1, 51-56 and 51-57.
	3610	Copying Equipment, Supplies and Services.	
37		LAWN AND GARDEN EQUIPMENT, PART II, Section A	No Exceptions.
	3750	Lawnmowers, Mowers, Shredders, Edgers, Trimmers, etc.	
41		AIR CONDITIONING EQUIPMENT, Part I	No Exceptions.
	4120	Window Types and Remote Air-Cooled Condenser Units.	
45		SANITATION EQUIPMENT, Part II	No Exceptions.
	4540	Security Incinerators and Accessories.	
	6665	Replacement Pyrometer.	
51		TOOLS	Mandatory on DoD only for items in FSCs 5120 and 5130.
	5120	Hand tools, Nonpowered.	
	5130	Hand Tools, Powered. Note: This Schedule also includes certain items in FSCs 3220, 3405, 3413, 3415, 3416, 3417 and 3439.	
	5180	Pneumatic, hydraulic, powder actuated, gasoline engines	No Exceptions.
52		MEASURING TOOLS	No Exceptions.
	5210	Measuring Tapes.	
53		ABRASIVES	No Exceptions.
	5345	Belts, Disks and Stones.	
	5350	Cloth, Grain and Paper.	
58		COMMUNICATION EQUIPMENT, Part III, Section A	Mandatory on DoD, except FSC 5830.
	5800	Electronic Megaphones.	
	5835	Semi-Professional Audio Recording Equipment.	
58		COMMUNICATION EQUIPMENT, Part III, Section B	Mandatory on DoD, except FSC 5820.
	5820	Professional Video Recording Equipment.	
	5835	Professional Audio Recording Equipment.	
59		COMMUNICATION SUPPLIES, Part V	No Exceptions.
	5820	Tape, Video.	
	5835	Sound Recording Tape, Magnetic Tape Cartridges.	
	7430	Magnetic Cards.	
	7045	Electronic Data Processing Tape (widths other than ½").	
59		COMMUNICATION SUPPLIES, Part V, Section C	No Exceptions.
	5835	Instrumentation Recording Tape, Standard and High Resolution.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section H	No Exceptions.
	6830	Fire Extinguishing Fluorocarbons.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section J	No Exceptions.
	6830	Argon, Missile Checkout, NSN 6830-00-882-1793.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section K	Mandatory on DoD for Destinations listed in the Schedule.
	6830	Oxygen: Aviator's Breathing.	
70	-	DATA PROCESSING STORAGE AND RELATED EQUIPMENT, Part X	No Exceptions.
	5820	Video Tape Storage, Handling and Transportation Equipment.	
	5835	Audio, Instrumentation, and other Tape Storage, Handling, and Transportation Equipment.	
	7045	ADP Storage and Handling Equipment.	
	7110	Cabinets and Desks, Card Punch and Programmers.	
	7430	MTST Magnetic Tape Cartridge Storage.	
70		DATA PROCESSING SUPPLIES, Part XI. Edp ¼" wide, 800, 1600 and 6250 bpi	No Exceptions.
71		HOUSEHOLD FURNITURE Part I, Section A	No Exceptions.
	7105	Ranch Style. Note: This Schedule also includes FSCs 7195 and 7520.	
71		HOUSEHOLD FURNITURE, Part I, Section B	No Exceptions other than those items obtainable from FPI Schedule of Products.
	7105	Early American and Eighteenth Century English and American Reproductions.	
71		HOUSEHOLD FURNITURE Part II, Section A	Not Mandatory on DoD for index items 331 through 436.
	7105	Upholstered Living Room.	
71		HOUSEHOLD FURNITURE Part II, Section B	No exceptions other than those items obtainable from FPI Schedule of Products.
	7105	Modular Multiple Seating Units, Wood and Metal.	
71		HOUSEHOLD FURNITURE Part III	No Exceptions.
	7105	Danish, Traditional and Modern Styles.	
71		HOUSEHOLD FURNITURE, Part IV	No Exceptions.
	7105	Rattan Style.	
71		OFFICE FURNITURE, Part V, Section C	No Exceptions.
	7110	Steel Vertical blueprint Filing Cabinets, Roll Drawing Files, High Density and movable shelf Filing Systems.	
71		HOUSEHOLD FURNITURE, Part VII, Section A	Not Mandatory on DoD for items covered by Military Specifications or items obtainable from FPI Schedule of Products.
	7105	Metal, Indoor-Outdoor, Hospital and Quarters and Recreation Room.	
	7110	Lobby Use and Reception Room.	
71		HOUSEHOLD FURNITURE, Part VII, Section B	Not Mandatory on DoD for items covered by Military Specifications or items obtainable from FPI Schedule of Products.
	7105	Metal Frame Dormitory Furniture for Quarters Use.	
71		FURNITURE, Part X, Sections A and B	Not Mandatory on DoD for Self-Edged Tables or items obtainable from FPI Schedule of Products.
	7105	Section A—Classroom Furniture, Student Chairs, Desks and Tables; Teachers	
	7125	Chairs and Desks.	
	7105	Section B—Special Purpose Furniture, Cafeteria Tables and Chairs, Lockers,	
	7110	Training and Conference Tables & Chairs.	
	7125		
71		OFFICE FURNITURE, Part XI, Section B	No Exceptions.
	7110	Security Filing Cabinets, Safes, Vaultdoors, and Map and Plan Files.	
71		OFFICE FURNITURE, METAL AND WOOD, Part XII	No Exceptions.
	7110	Executive Modern, Wood and Metal.	
71		LIBRARY FURNITURE, Part XIII, Section A	No Exceptions.
	7195	Wood Shelving and Wood & Metal Case goods.	
71		LIBRARY FURNITURE, Part XIII, Section B	No Exceptions.
	7195	Metal Shelving.	
71		HOUSEHOLD FURNITURE, Part XV	No Exceptions other than those items obtainable form FPI Schedule of Products.
	7105	Traditional Wood, and Composite metal and Wood.	
71		HOUSEHOLD FURNITURE, Part XVI, Section A	No Exceptions.

(a) MANDATORY NATIONALLY—Continued

FSC Group	FSC Class	Title of Schedule	Remarks
	7105	Table Desk.	
58		COMMUNICATION SUPPLIES, Part V, Section	No Exceptions.
	5831	¼ Audio Recording Tape and reel and hubs.	
58		COMMUNICATION EQUIPMENT, Part VII	Not Mandatory on DoD for Rental, Repair and Maintenance of Government owned Equipment.
	5820	Radio Transmitting/Receiving equipment, tone/voice paging systems, and antennas.	
61		BATTERIES, Part III	Mandatory on DoD, except Index Numbers 14 through 22.
61		Batteries and Dry Cells for: Alarm Systems, Emergency Lighting, Flashlights and Lanterns, Telephone Circuits, Tube Radios, Walkie Talkie and Paging Systems.	
	6140	Nickel Cadmium Batteries.	
62		LIGHTING FIXTURES AND LAMPS, Part I	Not Mandatory on the Dept. of Army, Air Force for any item covered by Army/Military Specification.
	6250	Household and Quarters Lamps.	
62		LIGHTING FIXTURES AND LAMPS, Part II	No Exceptions.
	6230	Light Sets, Emergency and Auxiliary.	
62		LIGHTING FIXTURES AND LAMPS, Part III	No Exceptions.
	6240	Fluorescent and Incandescent.	
6230	07	LIGHTING FIXTURES AND LAMPS	No Exceptions.
	6240	Electric Lamps.	
	6750	Photographic Lamps.	
66		INSTRUMENTS AND LABORATORY EQUIPMENT, Part III	No Exceptions.
	6645	Time Recorders, Date and Time Stamps, Card Racks.	
67		MICROPHOTOGRAPHIC EQUIPMENT AND SUPPLIES, Part IV, Section B	Mandatory on DoD, except for items: 21-4(a), 21-4(b), 21-4(c), 21-6, 21-7, 21-12-1, 21-12-2, 21-12-3, 21-21, 21-21(a), 21,-22, 21-22(a), 21-40, 21-41 and NSN 6750-00-606-1067.
	6720	Microfilm Cameras.	
	6730	Microfilm Projectors and Readers.	
	6740	Microphotographic Equipment.	
	6750	Microphotographic Supplies.	
	6700	Microfilm Cartridges and Magazines.	
	7530	Microfilm Print Paper.	
	7070	Microfilmed Library Systems.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Sections E and F	No Exceptions.
	6830	Compressed and Liquefied Gases. Section E—Refrigerant Gases. Section F—Sulfur and Hexafluoride.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section G	Mandatory on DoD for Destinations listed in the Schedule.
	6830	Helium.	
71		HOUSEHOLD FURNITURE, Part XVI, Section B	No Exceptions.
	7105	Motel Type.	
71		FURNITURE, Part XXII	No Exceptions.
	7105	Lounge and Reception Room.	
72		AHOUSEHOLD AND COMMERCIAL FURNISHINGS, Part I, Section	Not Mandatory on DoD for Deck Covering and other items required for use aboard Vessels.
	7220	Carpets, Rugs, Carpet Tile and Carpet Cushions.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part I, Section B	Not Mandatory on DoD for Deck Covering and other items required for use aboard Vessels.
	7220	Floor Coverings, Tile Linoleum and Vinyl Sheet.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part I, Section C	Not Mandatory on DoD for Deck Covering and other items required for use aboard Vessels.
	7220	Entranceway Carpet Mats and Matings.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part II	Mandatory on DoD for Window Shades only, FSC 7230.
7230	8305	Window Shades, Cloth and Vinyl.	
74		OFFICE MACHINES, Part I	Not Mandatory on DoD for Repair Parts, Rental, Repair, Maintenance and Exchange Allowances.
	7430	Electric Typewriters, Composing, Photocomposing and Word Processing Machines. (See FSC Group 74, Part V for Manual Typewriters).	
74		OFFICE MACHINES, Parts II and III	Not Mandatory on DoD for Repair Parts, Rental, Repair and Maintenance.
	7420	Accounting and Calculating Machines.	
	7450	Office Type Dictating and Transcribing Machines.	
	7490		Miscellaneous Office Machines
74		VISIBLE RECORD EQUIPMENT, Part IV	Not Mandatory on DoD for Rental, Repair and Maintenance.
	7460	Control Boards, Files and Frames.	
74		OFFICE MACHINES, Part V	No Exceptions.
	7430	Manual Typewriters and Repair Parts. (See FSC Group 74, Part I for Electric Typewriters).	
75		OFFICE SUPPLIES, Part I, Section A. (Supplements 1 and 2)	No Exceptions.
	7510	Office Supplies (includes certain items of Art and Drafting supplies), and Label Tape, Pressure Sensitive Adhesive.	
	7690	Label Marking Tape.	
75		OFFICE SUPPLIES AND DEVICES, Part I, Section B. (Supplements 1, 2 and 3.)	No Exceptions.
	7520	Office Devices and Accessories.	
	7510	Tape, Pressure Sensitive.	
	8135	Tape, Pressure Sensitive, Packaging and Packing.	
	9310	Cardboard Stock.	
75		OFFICE SUPPLIES, Part I, Section C	No Exceptions.
	7530	Special Use Paper; Drawings and Tracing; Graph; Paperboard; Index Sheet Set and Plastic Sheets.	
75		OFFICE SUPPLIES, Part IV	No Exceptions.
	7810	Rubber Stamps.	
75		OFFICE SUPPLIES, Part V	No Exceptions; however plain envelopes for use in the District of Columbia shall be procured from GPO in accordance with Title 44 USC, Section 225.
	7530	Envelopes: Making, Printed and Plain.	
75		TABULATING CARDS, Part VIII	No Exceptions.
	7530	Tabulating Cards, Aperture Cards and Copy Cards.	
76		PUBLICATIONS, Part I	No Exceptions.
	7610	Books, Pamphlets, Dictionaries, Maps, Atlases, Charts and Globes.	
76		LAW BOOKS AND TAX AND OTHER REGULATORY REPORTING PERIODICALS, Part II.	No Exceptions.
	7610	Law Books.	
	7600	Tax and Other Regulatory Reporting Periodicals.	
77		HOME ENTERTAINMENT EQUIPMENT, Part I	No Exceptions.
	7740	Phonograph Records; Tapes; (8) Track Cartridge and Cassettes.	
77		HOME ENTERTAINMENT EQUIPMENT, Part III	No Exceptions.
	7730	TVs, Radios, Phonos, Combination Sets and Related Accessories.	
78		RECREATIONAL AND ATHLETIC EQUIPMENT, Part I, Section A	No Exceptions.
	7310	Athletic and Sporting Equipment.	

(a) MANDATORY NATIONALLY—Continued

FSC Group	FSC Class	Title of Schedule	Remarks
78		ATHLETIC AND RECREATIONAL EQUIPMENT, Part I, Section B	No Exceptions.
	7820	Games and Toys.	
	7830	Recreational and Gymnasium Equipment.	
78		ATHLETIC AND RECREATIONAL EQUIPMENT, Part I, Section C	No Exceptions.
	7820	Outdoor Recreational Equipment.	
	7930		
79		CLEANING EQUIPMENT AND SUPPLIES	No Exceptions.
	7910	Vacuum Cleaners, Carpet Shampooers, Floor Polishing and Scrubbing Machines.	
80		PAINT, Part I, Section A	No Exceptions.
	8010	Tree Marking.	

(b) MANDATORY WITHIN THE SPECIFIED GSA GEOGRAPHICAL AREAS

FSC Group	FSC Class	Title of Schedule	Remarks
42		FIREFIGHTING EQUIPMENT AND SUPPLIES, Part I	Not Mandatory on DoD for Fire Hose or NSNs 4210-00-251-7904 and 4210-00-720-1815.
	4210	Fire Extinguishers, Accessories and Fire Hose.	
	4720		
67		PHOTOGRAPHIC SUPPLIES Part II, Section B	Mandatory on Dod for items 19-1, 19-2 and 19-6 only.
	6750	Sensitized and Chemical Supplies.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section A	Mandatory on DoD activities located within the specified GSA Geographical Areas other than Region 3, except for items procured through DPSC.
	6505	Medical Gases.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section B	Mandatory on DoD activities located within the specified GSA Geographical Areas other than Region 3, except for items procured through DPSC.
	6830	Industrial Gases.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section C	Mandatory on DoD activities located within the specified GSA Geographical Areas other than Region 3, except for items procured through DPSC.
	6830	Dry Ice.	
87		AGRICULTURAL SUPPLIES, Part I	No Exceptions.
	8710	Forage and Feed.	
87		AGRICULTURAL SUPPLIES, Part IV	No Exceptions.
	8730	Seed.	
89		SUBSISTENCE, Part III	No Exceptions.
	8960	Ice.	
1G			
721		SERVICES	Mandatory on DoD activities located within the specified GSA Geographical Areas, except for Custodial Contracts.
	7213	Wiping Cloth Service.	

(c) MANDATORY IN GSA AREAS OTHER THAN REGION 3

FSC Group	FSC Class	Title of Schedule	Remarks
68		CHEMICALS AND CHEMICAL PRODUCTS, PART III, SECTIONS A, B, C, AND D	Mandatory on DOD Activities located within the specified GSA Geographical Area other than Region 3 except for items procured through the Defense Personnel Support Center.
	6505	Medical Gases.	
	6830	Industrial Gases; Compressed and Liquefied.	
96		RECRUITING AIDS, Part V, Section A	Mandatory for requirements of recruiting commands; not for requirements of other DoD activities.
	9905	Advertising and Promotional Aids.	

208.404-71 Establishment or revision of federal supply schedules mandatory upon DOD.

(a) *Policy.* The Administrator of General Services Administration has agreed that the concurrence of the Office of Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense, or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense, or making any other changes in such Schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than $1,000 per year, except where—

(1) The item is a part or accessory incidental to a basic item;

(2) The item is a component of a unit assembly;

(3) The item has a demonstrated need to fill out a range of colors, sizes or other characteristic; or

(4) The item involves a contract for services.

(b) *Procedures.* Requests for the establishment of or a change in a Federal Supply Schedule mandatory on elements of the Department of Defense shall be forwarded to the Executive Director, Contracting, Defense Logistics Agency, for coordination with the Departments. Such proposals normally shall be forwarded in sufficient time to provide three months for consideration by all interested elements of the Department of Defense and General Services Administration prior to the desired effective date. In the event action on such proposals is desired in a shorter period of time, a minimum of 35 days for consideration should be anticipated. These proposals will be distributed to the representatives of the Departments and General Services Administration engaged in the Federal Supply Schedule review program, as appropriate, for comment or concurrence. Any questions will be jointly considered before final action is taken. If the Departments and General Services Administration representatives cannot reach agreement on a question raised, the question will be forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) for resolution.

208.405 Ordering office responsibilities.

208.405-1 Ordering from multiple-Award schedules.

(c) When purchase of an item of foreign origin is specifically required, the using activity shall furnish the procuring activity sufficient information to permit the determination required by FAR Part 25 to be made.

208.405-2 Order placement.

(S-70) Oral orders not to exceed $10,000.

(1) *General.* Purchasing offices are authorized to make procurements not in excess of $10,000 by oral orders from Federal Supply Schedule contractors. Ordering activities shall obtain an agreement from the contractor that for each shipment under an oral order he will furnish a delivery ticket, in the number of copies required by each purchasing office, which shall contain the following information:

(i) Contract number;

(ii) Order number under the contract;

(iii) Date of order;

(iv) Name and title of the person placing order;

(v) Itemized listing of supplies or services furnished; and

(vi) Date of delivery or shipment.

(2) *Payment.* Optional methods of invoicing are permissible. An individual invoice accompanied by a receipted copy of the related delivery ticket may be submitted for payment. Alternatively, a summarized monthly invoice covering all oral orders made during the month, accompanied by a receipted copy of each delivery ticket or a statement by the contracting officer that the supplies have been received by the Government, may be submitted for payment. The monthly billing procedure is preferred when numerous oral orders may be placed.

(S-71) Imprest funds (petty cash method). In buying commodities where cash payment is advantageous, the imprest funds method (see FAR 13.5) is authorized; *Provided,* the order does not exceed $150 ($300 under emergency conditions), and the contractor agrees to such a procedure.

208.470 Acquisition from GSA sources.

208.470-1 Applicability.

This subsection applies to the procurement of supplies available from General Services Administration stock for delivery in the contiguous United States, including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous states for supply action in accordance with instructions prescribed by the Departments. This subsection may be applied optionally in Alaska and Hawaii. It does not apply in any event to any order which amounts to $25.00 or less, or to:

(a) Any subsistence or medical item which is under the cognizance of the Defense Personnel Support Center;

(b) Any item which is being purchased for resale; or

(c) Any item used by commissaries for operation and maintenance that is available through local purchase at a price lower than from GSA stock.

This subsection also applies to the mandatory use of General Services Administration services and term contracts for the maintenance, repair, rehabilitation, and reclamation of all personal property described in 208.470-6, in the United States, Puerto Rico and the Virgin Islands. Services of this type which are available from Federal Prisons Industries and Agencies for the Blind will be procured under the provisions of FAR Subparts 8.6 and 8.7.

208.470-2 Procurement from General Services Administration stock.

It is the policy of the Department of Defense that for an item which has been decentralized for local purchase and which is available from the General Services Administration stock, such items will be ordered from GSA unless delivery requirements cannot be met. The mandatory provisions of Department of Defense, General Services Administration Interagency Purchase Assignments (208.7106) are not applicable to decentralized items which are within these assignments and which are available from the stock. Such items will be ordered in accordance with the above-stated policy.

208.470-3 GSA supply catalog.

The General Services Administration Supply Catalog sets forth, among other things, information with respect to some of the items of supply carried in stock, prices, and delivery information, and a listing of the General Services Administration regional offices. The catalogs do not list all of the items carried in stock. Items within the classes assigned to GSA in accordance with DoD/GSA agreements and not recorded in the management data lists of the Federal catalog publications as managed by another service or agency and not recorded for decentralized procurement, should be requisitioned from GSA. Copies of the GSA Supply Catalog may be obtained by completing GSA Form 457 (FSS Publications Mailing List Application) and mailing it to the GSA Centralized Mailing Lists Service, Building 41, Denver Federal Center, Denver, Colorado 80225. GSA Form 457 may be obtained from the GSA Centralized Mailing Lists Service by letter or by telephoning 303-234-4195.

208.470-4 General Services Administration regional offices.

The General Services Administration regional offices, located in the cities listed below, serve the areas indicated in the GSA Supply Catalog guide. The addresses shown are the mailing addresses to which all orders and correspondence should be forwarded.

GSA Region and Address

(a) Boston, MA—John W. McCormack, Post Office & Courthouse, Boston, MA 02109.

(b) New York, NY—26 Federal Plaza, New York, NY 10007.

(c) Philadelphia, PA—Ninth & Market Streets, Philadelphia, PA 19107.

(d) Atlanta, GA—75 Spring Street, SW, Atlanta, GA 30303.

(e) Chicago, IL—230 S. Dearborn Street, Chicago, IL 60604.

(f) Kansas City, MO—1500 East Bannister Road, Kansas City, MO 64131.

(g) Fort Worth, TX—819 Taylor Street, Fort Worth, TX 76102.

(h) Denver, CO—Denver Federal Center, Bldg. 41, Denver, CO 80225.

(i) San Francisco, CA—525 Market Street, San Francisco, CA 94105.

(j) Auburn, WA—General Services Administration Center, Auburn, WA 98002.

(k) National Capital—7th & D Streets, S.W., Washington, DC 20407.

208.470-5 Order for supplies.

Orders for supplies from the General Services Administration shall be submitted in accordance with the Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4140.17-M).

208.470-6 Mandatory sources for maintenance, repair, rehabilitation and reclamation of personal property.

General Services Administration regional offices provide facilities for maintenance, repair, rehabilitation and reclamation of Government-owned personal property and, in addition, have Term Contracts with commercial concerns for similar services. These contracts are published as General Services Term Contracts. When requirements exceed the in-house capabilities of a Departmental activity or installation, or it is otherwise required that outside sources be used, it is mandatory that General Services Administration sources for such services be used except when:

(a) The items involved are military weapons systems, specialized military support equipment, or specialized technical or scientific equipment;

(b) Such services are available from the Federal Prison Industries or

Agencies for the Blind or Other Severely Handicapped;

(c) The required services are covered by warranty or other preexisting contract;

(d) Delivery requirements for repair and refinishing services cannot be met (the provisions of FAR 8.404–1 are applicable when determining whether a General Services Administration source can meet the delivery requirements);

(e) The required services are not within the scope of the existing GSA Term Contract or a waiver is first obtained from the GSA Regional Property Management and Disposal Service office administering the contract (such waivers are not required when the exigency of the procurement will not permit delay; however, telephonic clearances will be given by GSA in appropriate cases); and

(f) The requiring activity is outside the geographic area covered in the GSA Term Contract. (Normally, this area extends no more than a 15-mile radius from the contractor's location. Each contract specifies the area covered which may in some cases extend beyond that distance.)

208.470–7 Personal property covered under mandatory GSA term contracts.

The items of personal property listed below are indicative of those for which General Services Administration sources are mandatory for maintenance, repair, rehabilitation, and reclamation services. They are not all inclusive. For detailed listings, see the latest Federal Supply Catalog entitled "Guide to Sources of Supply and Service." Copies are available from GSA Regional Office and should be obtained by each installation and activity that may have need of such services. Copies of existing GSA Term Contract for these services are routinely forwarded by each GSA Regional Office to all affected Government activities within the respective regions.

Sample List of Items

Adders, calculators, and comptometers
Fire extinguishers (Industrial and Commercial)
Furniture (office, household, quarters, institutional and hospital type)
Household appliances
Mattresses
Motors and generators (Industrial and Commercial)
Tires (except for aircraft)
Typewriters (manual and electric)
Watches and clocks (Industrial and Commercial)

208.470–8 Order for services.

Orders for maintenance, repair, rehabilitation, or reclamation services from General Services Administration sources shall be placed as follows:

(a) *GSA repair facility.* A delivery order on Order for Supplies or Services/Request for Quotations (DD Form 1155) shall be submitted to the General Services Administration regional office which normally serves the procuring activity. Each delivery order which is subject to fiscal year limitations necessitating GSA procurement action to be completed not later than September 30 shall contain a notation to that effect.

(b) *Commercial sources.* Delivery orders on DD Form 1155 will be placed directly with contractors pursuant to GSA Term Contracts.

(1) *Inspection and Acceptance.* Arrangements for inspection and acceptance shall be the responsibility of the ordering agency, except when the GSA Term Contract specifically provides for source inspection by GSA.

(2) *Default Terminations.* The GSA contracting office shall be notified each time an order is terminated for default in accordance with contract provisions.

Subpart 208.70—Coordinated Procurement

208.7000 Applicability.

Although the Department of Defense Coordinated Procurement Program includes items assigned to one or more of the Departments or the General Services Administration for integrated materiel management, the procedures set forth in this Part apply to items assigned for purchase responsibility only, and not to those in the integrated materiel management program. The latter items will be obtained in accordance with current supply procedures.

208.7001 Definitions.

As used in this Part, the following terms have the meanings set forth below.

"Acceptance of MIPR" means DD Form 448–2 (Acceptance of MIPR) executed by a Procuring Department as notice to the Requiring Department that an MIPR has been received and accepted for procurement action.

"Coordinated procurement" means (a) procurement by procurement activities, within the 48 contiguous States and the District of Columbia, of certain supplies to satisfy the requirements (including overseas requirements) of all Departments in compliance with assignment responsibilities set forth in Subpart 208.71; (b) procurement assignments made by the respective Unified Commanders in Alaska, Hawaii, and outside the United States, regardless of funds utilized; and (c) procurement assignments made in accordance with 208.7018. It does not include procurements made in Alaska, Hawaii, or outside the United States which do not fall within (a) or (b) above.

"Direct citation procurement (Category II Method of Funding)" means a procurement having separate identification of the items and citing the funds of the Requiring Department, and may be accomplished by combining the requirements of two or more Departments under one contract with separate schedules showing the quantities, prices, dollar amounts, and citation of funds of each Requiring Department, or by placing separate contracts for each department.

"Integrated materiel management items" means items assigned to one Department of the General Services Administration for entire Department of Defense management. Such management normally includes responsibility for computation of requirements, funding, budgeting, storing, issuing, cataloging, standardizing and procuring functions.

"Military service managed items" means items which are within Federal Supply Classes assigned to the Defense Logistics Agency or the General Services Administration but which are retained for supply management by the Requiring Department.

"Procuring department" means the Department or the General Services Administration whichever is assigned the procurement responsibility for the supplies.

"Purchase request" means the following types of authorized purchase requisitions: (a) Military Interdepartmental Purchase Request (MIPR) (DD Form 448); and (b) Requisition for Coal, Coke, and Briquettes (DD Form 416).

"Reimbursable procurement (Category I Method of Funding)" means the procurement of supplies for a Requiring Department on a contract funded by the Procuring Department, without separate identification of the items or separate citation of funds of the Requiring Department, with subsequent delivery to and reimbursement by the Requiring Department.

"Requiring department" means the Department originating a requisition or purchase request for supplies.

208.7002 Responsibilities under coordinated procurement.

The Procuring Department is generally responsible for the following under coordinated procurement:

(a) Operational phases of procurement planning (phasing the submission of requirements, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders in such a manner as to assure meeting the needs of the Requiring Departments at the lowest possible price to the Government, and at the same time avoiding unnecessary peaks and valleys of production);

(b) Purchasing;

(c) Performing or arranging through a contract administration office for contract administration, including followup and expediting of inspection and transportation; and

(d) Acquisition of licenses under patents or other proprietary rights covering the subject matter of the procurement and the settlement of patent infringement claims arising out of the procurement; approval of the Departments whose funds are to be charged for acquisition of licenses or settlement of claims shall be obtained.

208.7003 General principles governing implementation procurement assignments.

208.7003–1 Standard format-development and promulgation of implementing procedures.

Implementation of procurement assignments shall be in accordance with Enclosure 1 of Department of Defense Instruction 4115.1, dated October 14, 1968 (and amendments thereof), Subj: Department of Defense Coordinated Procurement Program—Purchase Assignments (NAVSUPINST 4215.4B).

208.7003–2 Relationship between research and development and coordinated procurement.

Items are not subject to procurement assignment until they have reached the production stage.

208.7003–3 Small dollar value purchases.

Requirement of small dollar value shall be procured in accordance with the provisions of the approved implementing procedures covering the particular assignment. Such implementing procedures shall normally provide a small dollar limitation of $2,500; however, in special situations, the limit may very depending upon the commodity area any may be expressed either in a higher or lower dollar value, by tonnage, less-than-carload lot quantities, or other units, as appropriate. Such implementing procedures shall clearly state that requirements of a value of quantity less than the prescribed limitations shall, wherever feasible, be procured by the Requiring Department. A MIPR for a military type item need not contain such a notation. The Procuring Department shall not return a MIPR submitted in accordance with the foregoing, but shall procure such items.

208.7003–4 Emergency.

In case of emergency, when the exigencies of the situation will not permit the delay incident to following the normal channels of coordinated procurement, purchases may be made without the prior authorization of the Procuring Department. When an emergency purchase is made, one copy of the contractual instrument, bearing or accompanied by a statement of the emergency, shall be transmitted promptly to the purchasing activity of the Procuring Department (the coordinated procurement assignee). The provisions of this paragraph will not normally be used for stock replenishment. These emergency procedures do not apply to the purchase of integrated materiel management items as described by 208.7001. Emergency purchase of such items is covered by 208.7101–2(d).

208.7003–5 Department of defense manufacturing establishment.

When procurement assignments have been made for items required by manufacturing establishments of the Departments, these items shall be obtained through the facilities of the Procuring Department unless such action will unduly hinder or delay production. When procurements are made other than through the Procuring Department, one copy of the contractual instrument bearing or accompanied by a statement of the circumstances necessitating such procurement shall be transmitted prompty to the purchasing activity of Procuring Department. This paragraph is not applicable when purchases are made pursuant to 208.7003–3 above.

208.7003–6 Consolidation of requirements.

The primary objective of coordinated procurement is to obtain for the Government maximum economy through the consolidation of requirements and the elimination thereby of competitive purchases among the Departments. The Procuring Department shall, to the extent consistent with the delivery schedule of the Requiring Department, consolidate in one contract its own requirements for the same or similar, items plus all requirements via MIPRs or other purchase requests.

208.7004 Items in short supply.

When shortages develop in the market for supplies being purchased and requirements have been submitted by more than one Department, the normal procedure shall be to resolve the problem on a Departmental level between or among the Departments based on priorities for the supplies. If agreement cannot be reached, the subject shall be referred to the Deputy Under Secretary of Defense for Acquisition Management for decision.

208.7005 Transfer of uncompleted contracts.

208.7005–1 Effect of assignment of procurement responsibility.

As a general rule, when the procurement responsibility for a commodity or class of commodities is assigned to one Department, or the General Services Administration, uncompleted contracts of any other Department, or the General Services Administration, for any commodity or class of commodities will not be transferred but will continue to be administered by the Procuring Department of Defense Contract Administration Services as appropriate.

208.7005–2 Contracting officers under transferred contracts.

In the case of any contract transferred, or to be transferred, to any Department, the successor to the contracting officer for each such contract shall be the Head of the Procuring Activity (or any contracting officer thereof) to which the administration of any such contract is assigned, and any such successor shall have all of the rights and responsibilities of a contracting officer under such transferred contract.

208.7006 Purchase authorization.

208.7006–1 MIPRs or other authorized purchase requests.

(a) Military Interdepartmental Purchase Requests (MIPRs) or other authorized purchase requests when received by the Procuring Department shall be the authority to procure the supplies or nonpersonal services in accordance with single department procurement assignments or agreements between the Departments concerned as provided in 208.7018. The Procuring Department is authorized to create obligations against the funds cited in a MIPR without further referral to the Requiring Department. The Procuring Department has no responsibility to determine the validity of a stated requirement in an approved MIPR; however, it should bring apparent errors in the requirement to the attention of the Requiring Department.

(b) When purchase requests other than MIPRs (see 208.7001) are used as

the basis for procurement, the general procedures prescribed for processing, amending, accepting and terminating requirements on MIPRs as prescribed in other paragraphs of this subpart shall normally be followed, except as otherwise agreed to by the Departments involved.

208.7006–2 Use of advance MIPRs.

(a) An Advance MIPR is an unfunded MIPR provided to the procuring activity in advance of the formal funded MIPR whereby initial steps in planning procurement action can begin at an earlier date.

(b) Advance MIPRs may be used only when the Procuring Department and the Requiring Department agree that the procedure may be beneficial in placing the procurement and obtaining the requirements in a more timely manner.

(c) Advance MIPRs shall not be released to a procuring activity until proper approval of the requirement is obtained.

(d) When Advance MIPRs are used, the DD 448 shall be prominently marked "Advance MIPR."

(e) For urgent requirements, the Advance MIPR may be in the form of an electrically transmitted message.

(f) On the basis of an Advance MIPR, the Procuring Department may take the initial steps toward establishing a contract, such as obtaining internal coordination, preparing a procurement plan, and making a Determinations and Findings. The extent of such action may be determined by the procuring Departments. However, contracts shall not be awarded on the basis of Advance MIPRs.

208.7006–3 Determinations and findings.

(a) *General.*

(1) When coordinated procurement is by negotiation, the Procuring Department, except as provided in (a)(2) below, shall make the required determinations and findings. The Requiring Department shall furnish with the purchase request the information required by the Procuring Department to develop the determinations and findings.

(2) When coordinated procurement is negotiated pursuant to 10 U.S.C. 2304(a)(13) and FAR 15.213, the Requiring Department shall make the determinations and findings in accordance with FAR 15.213(c)(3). When the Requiring Department is responsible for securing Secretarial approval under 10 U.S.C. 2304(a)(16) and FAR 15.217, the MIPR shall contain a statement that the required determinations and findings has been executed for the specific case in question or program involved. In both instances the Requiring Department shall preserve the original determinations and findings with supporting data as required by 215.3 except that two copies shall be attached to the MIPR or purchase request in the Procuring Department's contract file.

(b) *Foreign End Products.* Where a foreign end product is specified by the Requiring Department, that Department is responsible for determining that a domestic source end product is not available as required by FAR 25.108 and FAR 25.302. Two copies of the determination that a domestic source end product is not available shall be furnished to the Procuring Department with the MIPR.

208.7006–4 Delivery schedules.

(a) In submitting MIPRs the Requiring Department should take into consideration the normal administrative lead time of the particular commodity in order to insure delivery by the date required. The time of delivery or performance is an essential element for inclusion in a contract and must be clearly stated in each MIPR. Delivery and performance schedules on MIPRs shall be designed to meet the requirements of the particular procurement and must be realistic (see FAR 12.1). If the delivery schedule, as set forth in a MIPR, is unrealistic or cannot be accepted by the Procuring Department, the DD Form 448–2 "Acceptance of MIPR" will be so annotated (see 208.7009–3). Changes in the requested delivery schedule shall be accomplished in accordance with 208.7008–5.

(b) When a short delivery schedule is mandatory, the MIPR shall be marked "URGENT" in bold letters. The Requiring Department's justification for the "URGENT" marking shall be stated on the MIPR or attached thereto, in order to enable the Procuring Department to apply any necessary expediting techniques to assure the required delivery.

208.7006–5 Specifications, drawings, and other purchase data.

The Requiring Department shall furnish to the Procuring Department a list (or copies) of specifications, drawings, and other data, as appropriate, required for the procurement. If Federal, Military, Departmental, or other specifications, or drawings or data are available to the Procuring Department and referenced in the MIPR, they need not be furnished by the Requiring Department (but see FAR 46.407). Required changes in such purchase data shall be accomplished as set forth in 208.7006–5.

208.7006–6 Utilization of existing department of defense assets.

The Requiring Department is responsible for insuring compliance with FAR 8.001 prior to submitting military interdepartmental purchase requests for procurement action.

208.7006–7 Options for increased quantities.

If the Requiring Department desires an option to purchase an additional quantity, the MIPR shall so stipulate and shall contain a justification therefore.

208.7007 Funds and payments.

208.7007–1 Citation of appropriation and funds of Requiring Department—Category II method of funding.

Except as provided in 208.7007–2, contracts and orders for other than integrated supply management materiel shall cite the specific fund citation(s) and the MIPR number of the Requiring Department. The Procuring Department shall determine which type of funding (direct citation or reimbursable procurements) shall be used.

208.7007–2 Citation of funds of Procuring Department—Category I method of funding.

Under the conditions listed below, only the funds of the Procuring Department shall be cited in the consolidated contracts; and the contracts and orders thereunder shall provide for payment by the Procuring Department or by the Defense Contract Administration Services as appropriate:

(a) Delivery is from existing inventories of the Procuring Department;

(b) Delivery is by diversion from existing contracts of the Procuring Department which cite the funds of the Procuring Department;

(c) Production or assembly is through government work orders in Government-owned plants;

(d) Allocation of production quantities among users from one or more contracts for which the identity of specific quantities of the end item to individual contracts is not feasible at teh time of MIPR acceptance;

(e) Procurement of the end items involves separate procurement of components to be assembled by the Procuring Department;

(f) Payments will be made without reference to deliveries of end items; e.g., cost-reimbursement type contracts and fixed-price contracts with progress payment clauses; or

(g) It is not feasible and economical to use Category II method of funding.

208.7007–3 Disbursement.

When the contract is funded with DoD funds and is to be administered by the Defense Contract Administration Services, the Procuring Department shall cite as the disbursement office the Defense Contract Administration Services Region Disbursing Office (see 242.102). If the contract is not administered by the Defense Contract Administration Services, the Procuring Department shall cite as the disbursement office the payment office designated by the Requiring Department (see 208.7008–1).

208.7007–4 Authorization for exceeding MIPR estimates.

Each MIPR shall indicate on its face whether or not the total MIPR estimate may be exceeded by the purchasing office, and if affirmative, by what amount. The additional amount shall not be more than $20,000, or 10% of the total estimated MIPR amount, whichever is less.

208.7008 Preparation and use of DD Form 448 (MIPR).

DD Form 448 is substantially self-explanatory. Information provided in MIPRs shall be arranged in Uniform Contract Format to the extent feasible. If desired, each Department may overpricing fixed repetitive information.

208.7008–1 Special instructions.

(a) *MIPR Number.* The MIPR number will consist of:

(1) The requiring agency identification code as prescribed in the DoD Activity Address Directory (DoDAAD), DoD 4000.25D;

(2) The last digit of the fiscal year; and

(3) The number of the particular MIPR (numbered consecutively by the requiring activity). Amendments will be numbered with the MIPR number suffixed with the amendment number assigned in consecutive numbered sequence.

(b) Appropriate checks in Item 9 shall be accomplished in compliance with Department of Defense policy which requires interdepartmental screening of items in accordance with FAR 8.001 to determine stock availability within other Departments prior to preparation of a DD Form 448. Items which are determined to be available from stocks of other Departments shall be requisitioned as follows:

(1) Items within the scope of MILSTRIP (see DoD 4140.17–M (MILSTRIP) of 1 May 1964, as amended) shall be obtained by use of DD Form 1348/1348m, DoD Single Line Item Requisition System Document;

(2) Items not covered by MILSTRIP shall be obtained by use of DD Form 1149, Requisition and Invoice/Shipping Document. If a Procuring Department determines after receipt of a MIPR that the items can be supplied from stock, the MIPR shall be used for effecting supply from such stock.

(c) Normally a MIPR shall be restricted to one major end item, including its required spare parts, ground support equipment, and similar related items: MIPRs for other than major end items normally shall be limited to items within a single Federal Supply Classification.

(d) Attachments to MIPRs (Item 10) must be prepared in sufficient numbers so that each copy of a MIPR submitted to the Procuring Department is complete with a copy of all attachments. "Ship To and Mark For" addresses in shipping instructions shall include the clear text identification and DoDAAD code if assigned.

(e) Item 13 is used to identify the name and address of the office to receive invoices and make payment only if the resulting contract is not to be paid by the Defense Contract Administration Services in accordance with 208.7007–3, and the office to receive invoices and make payment is known at the time of preparation of the MIPR. If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code that office. If payment is to be made by an office other than the office to which the invoice is to be mailed (Item 13), the name, address, and DoDAAD code of the payment office shall be set forth in detail as an attachment to the MIPR. If multiple offices are to receive invoices and make payment, the names and addresses of those offices shall be set forth as an attachment to the MIPR, including the DoDAAD code of each payment office. Whenever the payment office(s) is included in an attachment, an appropriate reference to the attachment will be included in Item 13. If the names and addresses of those offices are to be provided to the Procuring Department after preparation of the MIPR, the DoDAAD code also shall be provided for each payment office.

(f) Allotment data for the procurement of supplies shall be entered in Item 14. Allotment data for the transportation of supplies at Government expense, if cited in the MIPR in accordance with 208.7017 shall be entered in Item 12. Each citation in Item 14 shall be set forth in the appropriate space in the following manner:

(1) *ACRN.* If the Accounting Classification Reference Number procedure of 204.7108 are used in the MIPR to relate allotment data to the MIPR item or delivery, the ACRN for each fund citation in Item 14 shall be entered. (The Procuring Department is not required to use in the resulting contract the ACRN assigned to a fund citation in the MIPR).

(2) Appropriation. Will be shown in the ten positions as follows:

(i) First and second positions shall be the Treasury Department number identifying the Department or Agency to which the appropriation applies or has been transferred.

(ii) Third and fourth positions shall be the Treasury Department number identifying the Department or Agency from which an appropriation has been transferred; shall be blank if no transfer is involved.

(iii) Fifth and sixth positions shall identify the Appropriation Fiscal Year. For multiple-year appropriations, the fifth position shall be the last digit of the first year of availability and the sixth position shall be the last digit of the final year of availability. For annual appropriations the fifth position shall be blank and the sixth position shall be the "X".

(iv) Seventh through tenth positions shall be the Treasury Department appropriation serial number.

(3) *Limit/Subhead.* Up to four characters; if less than four characters, leave empty spaces blank.

(4) *Supplemental Accounting Classification Data.* Shall not exceed 36 characters. Enter in accordance with Departmental or Agency regulations.

(5) *Accounting Station.* Shall show the six character DoDAAD code of the accounting station (not used with Navy and Marine Corps funds).

(6) *Amount.* Enter the amount for each fund citation if more than one allotment is cited.

(7) Additional Citations. If space is required for additional fund citations, they shall be set forth in the same manner as an attachment to the MIPR and a reference to the attachment will be included on the form.

(g) Requiring Activities shall provide MILSTRIP requisition data prescribed in Appendix B of the MILSTRIP Manual, for each line item which is to be delivered to each "ship to" address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(h) The Requiring Activity will furnish estimated weight, cube and dimensions for each line item or a statement that such data are not available and the reasons therefor.

208.7008–2 Cutoff dates for submission of Category II (direct citation) MIPRs.

(a) Unless otherwise agreed between the Departments, a cutoff date of 31 May of each year is established for the receipt of MIPRs citing expiring appropriations which must be obligated by 30 September of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the Requiring Department will communicate with the Procuring Department prior to submission to ascertain whether or not it will be possible for the Procuring Department to execute a contract or otherwise obligate the funds by the end of the fiscal year. Procuring Departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the Procuring Department that all such funds are not to be construed as restrictive in the processing of MIPRs when it is within the capabilities of the Procuring Department to execute contracts or otherwise obligate the funds prior to the end of the fiscal year.

(b) MIPRs citing continuing appropriations are not restricted by law to time limits for obligation; therefore, the cutoff date of 31 May is not applicable to such MIPRs and procurement action should continue regardless of whether obligation will be accomplished before or after the end of the fiscal year. However, as the timely accomplishment of obligations is a factor affecting delivery of material, every effort must be made by the Procuring Department to obligate available funds as soon after receipt of the MIPR as is possible.

208.7008–3 Notification of inability to obligate.

On 1 August of each fiscal year, the Procuring Department will advise the Requiring Department of any Category II (direct citation) MIPRs on hand citing expiring appropriations on which they will be unable to obligate the funds prior to the fund expiration date. If an unforeseen situation develops after 1 August which will prevent execution of a contract, the Procuring Department will notify the Requiring Department of that fact by the most expeditious means and return the MIPR accompanied by a letter of transmittal authorizing purchase by the Requiring Department including the reason that procurement could not be accomplished.

208.7008–4 Number of copies of MIPRs with attachments to be submitted.

Unless otherwise agreed by the Departments, the original and six copies of each MIPR, all complete with attachments, shall be forwarded to the Procuring Department. When copies of specifications, drawings or other data are to be furnished with MIPRs (see 208.7006–5), the number of copies of such data to be furnished shall be as agreed upon by the Requiring and Procuring Departments.

208.7008–5 Changes to MIPRs.

(a) Normally, changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. However, a MIPR amendment for increased quantities of items specified in the original MIPR may be used when it is known that the original MIPR requirements have not been released for solicitation but then only after coordination and agreement with the Procuring Department. Changes may be initially provided by expeditious means such as telegraphic message but shall be confirmed by a MIPR amendment. Requirements for additional line items of supplies or services not provided for in the original MIPR shall be submitted as a new MIPR.

(b) Only those items of the DD Form 448 that are applicable to the change, revision, etc., being written, which vary or deviate from the data shown on the basic MIPR or prior amendment thereto will be filled out. All other items will have "n/c" inserted to reflect no change. However, basic information in items 1 through 8 must always be shown.

(c) A MIPR amendment is not required for change of a disbursing office set forth on a DoD funded MIPR when the resultant contract is assigned for contract administration to a Defense Contract Administrative Services Region. Such change may be made by the DCASR by issuance of an administrative change order; copies of which will be provided to the PCO for transmittal to the requiring activity.

208.7008–6 Requests for additional funds.

When the Procuring Department requires additional funds to complete procurement actions for the Requiring Department, the request for additional funds must identify the exact items involved and the reason why additional funds are required. The Requiring Department shall take expeditious action to provide such funds by an amendment to the MIPR or to reduce requirements accordingly. In case of any anticipated delay in furnishing required additional funds, the Procuring Department will be advised accordingly.

208.7009 Acceptance of MIPR.

As soon as practicable, but not later than 30 days after receipt of a MIPR, the Procuring Department shall formally accept the MIPR by DD Form 448–2, "Acceptance of MIPR." If this time limit cannot be met, the Requiring Department shall be informed of the reason for the delay and the anticipated date the MIPR will be accepted. In any event, Category I MIPRs must be accepted in writing by the Procuring Department prior to the expiration of funds cited. When accepted for reimbursable procurement, the executed DD Form 448–2 is the authority for the Requiring Department to record the obligation of funds. When accepted for direct citation procurement, the accomplished date and a conformed copy of the contract will be the authority to record the obligation. The accepting activity of the Procuring Department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for actions among other procurement activites.

208.7009–1 Qualified acceptance.

Where contingencies, price revisions or variations in quantities are anticipated by the Procuring Department under reimbursable procurement, the acceptance will be so annotated on DD Form 448–2. When the acceptance is qualified, the Procuring Department will periodically advise the Requiring Department prior to submission of billings, of any changes in the acceptance figure so that an amendment to the MIPR may be issued by the Requiring Department and the appropriate adjustment may be made to the recorded obligation to reflect the current price.

208.7009–2 Non-Qualified acceptance.

If the acceptance of a MIPR is not qualified by the Procuring Department for anticipated contingencies under reimbursable procurement, the price on the acceptance will be final and will be billed at time of delivery.

208.7009–3 Preparation and use of DD Form 448–2 (acceptance of MIPR).

(a) DD Form 448–2 is substantially self-explanatory; however, certain details are defined below. Only pertinent items should be accomplished.

(1) Check the specific terms in Item 6 under which the MIPR is being accepted (see 208.7007–3).

(2) If any one of the MIPR line items is not accepted, Item 7 will be checked and the affected MIPR line item number and reason recorded in Item 13.

(3) Items 8 and 9 will be used only:

(i) When Item 6c acceptance is indicated, (identify the MIPR line item numbers that will be provided under each method of financing in numbers that will be provided under each method of financing in Items 8a and 9a respectively); or

(ii) If quantities or estimated costs cited in a MIPR require adjustment (the affected MIPR line item numbers will be listed together with the adjusted quantities or estimated costs in the columns provided under Items 8 and 9 as may be appropriate).

(4) Whenever a MIPR is accepted in part or in total under Category II (direct citation) method of financing, the Procuring Department will forecast in Item 10 the approximate date that contractual placement is expected to be accomplished.

(5) Enter the total amount of funds in Item 11 required by the Procuring Department to fund the MIPR items, as accepted.

(6) Complete Item 12 only in those cases where the amount recorded in Item 11 is not in agreement with the amount recorded in Item 5. This will serve either as (i) request on the Requiring Department to issue a MIPR amendment to provide the additional funds required, or (ii) authority for the Requiring Department to withdraw the available excess funds. When funds of two or more appropriations are involved, proper breakdown information will be provided in Item 13.

(7) Item 13 will be used to record (i) justification, by MIPR line item, for any additional funds required; (ii) explanation for rejection of MIPR whether in part or in total; (iii) appropriation and subhead data cited on the MIPR; and (iv) such other data as may be pertinent.

(b) DD Form 448–2 shall be executed for all MIPR amendments involving an adjustment of funds or delivery schedule, and in all other cases only when requested by the Requiring Department.

(c) The Requiring Department will be furnished four copies (one signed) of each accomplished DD Form 448–2 unless otherwise agreed between the Departments.

208.7009–4 Withdrawal of funds.

(a) When the Procuring Department accepts a MIPR for reimbursable procurement in a lesser amount than authorized on the MIPR, the DD Form 448–2 is the authorization for the Requiring Department to withdraw such excess funds by MIPR amendment. Upon receipt of the final billing (SF 1080) and a subsequent determination that all items requested on the MIPR have been delivered and billed in an amount less than the MIPR, the Requiring Department may adjust their fiscal records accordingly without authorization from or notice to the Procuring Department.

(b) When the Procuring Department has accepted a MIPR for direct citation procurement, and initial contract placement is completed, any unused funds remaining on the MIPR become excess and are no longer authorized for use of the Procuring Department. Any such excess funds will be immediately reported to the Requiring Department. Although the Procuring Department is prohibited from further use of such excess funds, the Requiring Department will confirm the withdrawal of excess funds by the issuance of a MIPR amendment.

208.7010 Components of end items.

208.7010–1 Contractor-furnished components.

In the procurement of end items where the contractor normally secures all components thereof from his own source (not Government-furnished), the procurement assignment does not apply to the component items required by such contractor.

208.7010–2 Government-furnished components.

In the procurement of end items where the Government furnishes components which are covered by a procurement assignment, such components shall be procured in accordance with the procurement assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Procuring Department or is authorized in accordance with subpart 208.71.

208.7010–3 Purchase of components over and above those initially purchased with the end item.

The procurement of components covered by a procurement assignment, over and above those initially purchased with the end item, shall be effected in accordance with the procurement assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Procuring Department or is authorized in accordance with 208.7100.

208.7011 Distribution of contracts and order. (See 204.201(c)(3)).

208.7012 Cancellation of requirements.

(a) *Direct citation procurement.* When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall so notify the Procuring Department by telegraphic notice. In the event that the Procuring Department has not entered into a contract for the supplies and services to be canceled, the Requiring Department shall be immediately notified to that effect. Upon receipt of such notification, the Requiring Department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the canceled items.

(1) In the event that the items to be canceled have already been placed under contract, the following procedures will apply. As soon as practicable but in any event within 45 days after receipt of the notice of cancellation from the Requiring Department, the Procuring Contracting Officer shall issue a Termination Data Letter to the Requiring Department (original and 4 copies) which will contain as a minimum the information set forth below.

SUBJECT: Termination Data Re:
Contract No. _____
Termination No. _____
Contract _____
TO:

(a) As termination act is now in progress on the above contract, the following information is submitted:

(1) Brief description of items terminated.

(2) You are notified that the sum of $—— is available for release under the subject contract which sum represents the difference between $——, the value of items terminated under subject contract, and $—— estimated to be required for settlement of the terminated contract. The estimated amount available required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:

MIPR NO. —— ACCOUNTING CLASSIFICATION —— AMOUNT

Total available for release at this time $——

(b) You are requested to forward an amendment to MIPR —— on DD Form 448 to reflect the reduced quantity and amount of funds available for release.

(c) Periodic examinations (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

_____

(Signature of Procuring Contracting Officer)

(2) Periodic examinations of the termination proceedings will be accomplished no less often than every 60 days by the termination contracting officer to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required to consummate settlement, prompt action will be taken

to notify the purchasing office, which will amend the Termination Data Letter accordingly. A MIPR amendment to reflect the reinstatement of funds shall be processed by the Requiring Department within 30 days after the amended Termination Data Letter requesting reinstatement of funds has been received from the purchasing office.

(3) If required, an amendment to the MIPR covering final removal of any remaining excess funds with respect to terminated quantities shall be prepared by the Requiring Department upon receipt of its copy of the Termination Settlement Agreement.

(b) *Reimbursable procurement.* When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall notify the Procuring Department by telegraphic notice. Within 30 days, the Procuring Department shall notify the Requiring Department as to the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the Requiring Department shall issue a MIPR amendment to reduce the quantities and funds accordingly.

(c) *Termination by default.* When the Procuring Department exercises authority to terminate for default (see FAR Part 49), that Department will query the Requiring Department as to whether the supplies or services to be terminated are still required so that repurchase action can be undertaken.

(1) The Requiring Department will not obligate funds on a contract terminated for default until such time as a contractual supplemental agreement of settlement or other written evidence from the Procuring Department as to release of funds is received.

(2) On the repurchase action, the Procuring Department will not exceed the unliquidated funds on the defaulted contract without the provisions of additional funds by the Requiring Department.

208.7013 Administrative costs.

The Procuring Department shall bear, without reimbursement therefor, the administrative costs incidental to its procurement of supplies for another Department. However, when a procurement responsibility is transferred from one Department to another Department, funds appropriated or to be appropriated for defraying the administrative costs of such procurement responsibility shall be made available to the successor Procuring Department which shall assume budget cognizance at the earliest possible date.

208.7014 Inspection.

Policies and procedures concerning inspection and acceptance for use in conjunction with this subpart are set forth in FAR Part 46 of this Regulation.

208.7015 Execution of contracts.

Generally, the Procuring Department shall execute a single contract where an award embodying the requirements of more than one Department is made to a single contractor.

208.7016 Status reporting.

(a) The Procuring Department shall maintain an appropriate system of MIPR followup so that the Requiring Department may be informed of the current status of their requests. In addition, an appropriate system of followup shall be maintained by the contract administration office so that the Procuring Department may be currently informed as to contractor performance and in turn to insure that the Requiring Department is apprised of the status of contracts resulting from MIPRs.

(b) If requested by the Requiring Department, the Procuring Department will furnish the Requiring Department a copy of the solicitation document for materiel management status information when the request is satisfied through the use of direct citation of funds (Category II Method of Funding).

(c) Any reimbursement billings, shipping documents, contractual documents, project orders or related documentation furnished to the Requiring Department will identify the Requiring Department's MIPR number, quantities of items, and funds covered thereby.

208.7017 Transportation of supplies.

The Requiring Department is responsible for advising the Procuring Department or the Transportation Officer in the Contract Administration Office, as appropriate, the appropriate fund account chargeable for transportation costs in effecting delivery of supplies at Government expense. The Requiring Department shall accomplish this by either citing the fund account on each MIPR or providing the appropriate fund account to the Transportation Officer of the office administering the contract, at the commencement of each fiscal year, for citation on the Government bill of lading. In every instance, the Government bill of lading, which is generally issued by the Transportation Officer in the responsible Contract Administration Office, shall show the Requiring Department as the Department to be billed, and the appropriate fund account designated by that Department.

208.7018 Procurement agreements.

(a) This paragraph establishes policy as authorized in 10 U.S.C. 2308 with regard to agreements between the Departments or other agencies for procurement of commodities or services not assigned in accordance with 208.71.

(b) 10 U.S.C. 2308 provides that Department Heads by agreement may make assignments and delegations of procurement responsibilities from one Department to another or may create joint or combined offices to exercise procurement functions and responsibilities.

(c) Agreements may be made on either a one-time basis or a continuing basis. The submission of a MIPR by a requiring activity and its acceptance by the purchasing activity of another Department, even though based on oral communication, shall establish a one-time agreement. Delegated procurement responsibilities of a continuing nature shall be considered for coordinated procurement assignment. However, all agreements of a continuing nature shall be formalized, implemented, and distributed among the activities concerned even though not considered suitable for coordinated procurement assignment.

Subpart 208.71—Commodity Assignments

208.7100 Assignment authority.

The commodity assignments set forth below have been made by the Deputy Under Secretary of Defense for Acquisition Management to the Military Departments. Also included are assignments to the General Services Administration made by the Deputy Under Secretary of Defense for Acquisition Management in accordance with DoD/GSA Agreements. The letter "P" appearing after an FSC Code indicates a partial FSC assignment. There may be specific items within any of the assignments which have been designated for DoD Integrated Materiel Management to other than the coordinated procurement assignee. Such items will be purchased by the DoD Integrated Materiel Manager.

208.7100–1 Exclusions—Military Department assignments (Except DLA).

General exclusions to applicability of commodity assignments made to a Military Department (except Defense Logistics Agency) are:

(a) Emergency procurements, as determined by the Requiring Department;

(b) Procurements not in excess of $2,500 per line item;

(c) Procurements of items authorized for local purchase; pursuant to mutual agreement between the assignee and the other users;

(d) Items in a research and development stage; and

(e) Item subject to rapid design changes, or to continuous redesign or modification during the production or operational use phases which necessitate continual contact between industry and technical personnel of the requiring service to insure that the item procured is exactly that which is required.

208.7100–2 Exclusions—DLA and GSA assignments.

(a) *Optional Exclusions.* With respect to commodity assignments made to the Defense Logistics Agency or the General Services Administration, the following categories of service-managed items within an assigned class may be purchased by the Departments of the Army, Navy, or Air Force at their option:

(1) Items in a research and development stage—This exception permits the Military Departments to contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). The term "research and development" as used herein relates only to procurements described in FAR Part 35. Generally, this exception can be used only when the procurement is covered by research and development funds; and

(2) Items peculiar to Nuclear Ordnance Materiel, because of design characteristics or because of test-inspection requirements which are controlled by the Department of Energy (DOE) or by the DoD to insure reliability of nuclear weapons.

(i) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of Agency control, or to any item which requires test or inspection conducted or controlled by DOE or DoD. The Defense Nuclear Agency will have DoD procurement responsibility for all items assigned for integrated management in accordance with DoD Directive 5105.31.

(ii) This exception does not cover items used for both nuclear ordnance and other purposes if such items are not subject to the special testing procedures.

(3) Items to be procured under the authority of a Determination and Findings issued pursuant to 10 U.S.C. 2304(a)(12) and FAR 15.212, Classified Purchases (i.e., purchases or contracts classified "Confidential" or higher, or where because of other considerations, a contract should not be publicly disclosed);

(4) Items to be procured under the authority of a Determination and Findings issued pursuant to 10 U.S.C. 2304(a)(14) and FAR 15.216, Technical or Specialized Supplies, Requiring Substantial Initial Investment or Extended Period of Preparation For Manufacture; and

(5) Items which are directly related to a weapon/defense/space system and which are design-controlled by, and procured from either the system manufacturer or a manufacturer of a major subsystem thereof;

(i) This exception is intended to cover a specific and relatively small portion of "weapon/defense/space system" related items. An exempted item must meet two conditions. First, it must be directly related to the weapon system. Secondly, it must be both design controlled and procured from the system or major subsystem contractor.

(ii) The exception is intended, for example, to permit a Service to contract for an item which it procures from an airframe manufacturer (as sole source), provided the airframe manufacturer is responsible for the design of the item. It would likewise pertain to a component of a Government-furnished engine to be installed in the airframe, if the Service procures the component from the engine manufacturer and the engine manufacturer has design cognizance of the item.

(iii) The exception is not intended to cover the broad category of weapons related items but only that portion which is both procured from and design controlled by the system or major subsystem contractor.

(6) Items subject to rapid design changes or to continuous redesign or modification during the production and/or operational use phases which necessitate continual contact between industry and technical personnel of the Requiring Department to insure that the item procured is exactly what is required.

(i) This exception permits the Military Departments to contract for items of highly unstable design. Its use must be predicated on a determination that it is clearly impractical, both from a technical and contracting viewpoint, to refer the procurement to DLA or GSA. Thus, the possibility of a number of design changes occurring during the course of the contract is not in itself sufficient evidence for retention of the procurement. Neither is the fact that a procurement would possibly qualify for placement as a negotiated contract. Conversely, a procurement for an item covered by a reasonably firm specification which can be placed under the formal advertised procedure is prima facie evidence that the use of the exception is not valid.

(ii) This exception also applies to items requiring compatibility testing as a contract requirement, provided that such testing requires continual contact between industry and technical personnel of the Requiring Department.

(7) Containers procured only with items for which they are designed; and

(8) Emergency procurements, as determined by the Requiring Department:

(i) This exception permits the Services to make emergency procurements (valued at over $2,500) in the context of 208.7003–4 when the exigencies of the situation will not permit the delay incident to follow the normal channels of coordinated procurement.

(ii) As a general rule, this exception should cover items only when they are readily available from commercial inventories or in current production. It should not be used with extended production leadtime.

(iii) Unless the item is immediately available from a commercial source, emergency procurements should be coordinated with the cognizant DLA Center or GSA Support Region by telephone or other rapid communication prior to proceeding with the local procurement. This will serve the interests of the Requiring Department for the following reasons:

(A) The need may be satisfied immediately by diversion from a current DLA or GSA contract;

(B) The Center or the GSA Support Region may arrange to satisfy the requirement from other Military Department stocks or DLA/GSA stocks recently delivered under a DLA or GSA contract; and

(C) The Center or GSA Support Region may be able to "add on" to an existing DLA or GSA contract and obtain the material faster than the Requiring Department could by a unilateral procurement.

(9) Procurements of military service-managed or noncataloged items not in excess of $2,500 per line item—This exception permits the Military Departments to procure a line item which does not exceed a value of $2,500. It does not apply to a line item valued at $2,500 or under which is included in a Federal Supply Schedule mandatory for use by DoD activities; and

(10) Noncatalog items in the nature of a one-time buy and not contemplated as an item in the supply system:

(i) This exception is intended to permit the Military Departments to contract for a nonrecurring requirement for a noncataloged item. "Not contemplated as an item in the supply system" as a practical matter means that the item is not in the supply system nor is such anticipated. This exception could cover a part or component for a prototype and such part or component may be stock numbered at a later date.

(ii) This exception may not be used to cover purchases of recurring requirements for an item based solely on the fact that the item is not stock numbered nor may it be used to purchase items which have only slightly different characteristics from previously cataloged items.

(b) *Defense Logistics Agency and General Services Administration responsibility to procure excluded items upon request.* Items other than nuclear ordnance materiel which may be purchased by the other Military Departments at their option under (a) above shall be procured by DLA or GSA at the requests of the Military Departments.

(c) *Exclusions to Defense Logistics Agency or General Services Administation assignments by agreement.* The Military Departments shall process to the appropriate DLA center or GSA Support Region for procurement those service-managed items which do not meet the exception criteria set forth in (a) above, unless by mutual agreement between the cognizant Military Service Inventory Manager and the DLA Center concerned, or the GSA Support Region, the item is determined to be most satisfactorily procured on a Military Service basis. The Military Departments shall insure that subsequent procurements of items previously classified as exceptions under (a) above do in fact continue to meet the exception criteria at the time of the subsequent procurement. Otherwise, such procurements shall be forwarded to DLA or GSA for purchase.

(d) *Exclusions for local purchase of integrated materiel managed items.* Requiring Departments may purchase at their option any DLA or GSA centrally managed, commercially available item provided:

(1) In the case of an emergency requirement, such as a work stoppage, the purchase action is limited to immediate-use quantity, or

(2) In the case of routine requirements, the total line item value does not exceed $10.00 and local purchase is determined to be the most economical method of supply.

208.7101 Department of the Army.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment).

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).

1005 P* Guns, through 30mm. This partial FSC assignment applies to guns, through 30mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns; MK 11 and MK 12, 20mm gun; and aircraft gun mounts.

1010 P* Guns, over 30mm, up to 75mm. This partial FSC assignment applies to guns, over 30mm and up to 75mm, and parts and equipment therefor, as listed in Department of the Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns and aircraft gun mounts.

1015 P* Guns, 75mm through 125mm. This partial FSC assignment applies to guns, 75mm through 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns.

1020 P* Guns over 125mm through 150mm.

1025 P* Guns over 150mm through 200mm.

1030 P* Guns over 200mm through 300mm.

1035 P* Guns over 300mm. These partial FSC assignments apply to guns, over 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. They do not apply to naval ordnance type guns.

1040 Chemical Weapons and Equipment.

1055 P* Launchers, Rocket and Pyrotechnic. This partial FSC assignment applies to launchers, rocket and pyrotechnic, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and airborne type, with the exception of 2.75 inch Rocket Launchers which are included in this partial FSC assignment to the Department of the Army.

1090 P Assemblies Interchangeable Between Weapons in Two or More Classes. This partial FSC assignment applies to the following items:

National Stock Number Nomenclature

1090–563–7232 Staff Section, Class.

1090–699–0633 Staff Section.

1090–796–8760 Power Supply.

1090–885–8451 Wrench Corrector.

1090–986–9707 Reticle Assembly.

1095 P* Miscellaneous Weapons. This partial FSC assignment applies to miscellaneous weapons, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type; line throwing guns (which are under DoD Coordinated Procurement assignment to the Department of the Navy); and aircraft type miscellaneous weapons.

1210 P* Fire Control Directors.

1220 P* Fire Control Computing Sights and Devices.

1230 P* Fire Control Systems, Complete.

1240 P* Optical Sighting and Ranging Equipment.

1250 P* Fire Control Stabilizing Mechanisms.

1260 P* Fire Control Designating and Indicating Equipment.

1265 P* Fire Control Transmitting and Receiving Equipment, Except Airborne.

1285 P* Fire Control Radar Equipment, Except Airborne.

1290 P* Miscellaneous Fire Control Equipment. The above nine partial FSC assignments apply to fire control equipment, as listed in Department of the Army Supply Maunals/Catalogs. They do not apply to naval ordnance type and aircraft type.

1305 P* Ammunition, through 30mm. This partial FSC assignment applies to ammunition through 30mm as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and ammunition for the MK 11 and MK 12, 20 mm gun.

1310 P* Ammunition, over 30mm up to 75 mm. This partial FSC assignment applies to ammunition, over 30mm up to 75mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and to 40mm ammunition (which is under DoD procurement assignment to the Navy.) The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1315 P* Ammunition 75mm through 125mm. This partial FSC assignment applies to ammunition, 75mm through 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1320 P* Ammmunition, over 125mm. This partial FSC assignment applies to ammunition over 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1325 P* Bombs. This partial FSC assignment applies to Bombs as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy assigned Bombs as shown in list of assignments to the Navy; however, the Department of the Army is responsible for the procurement of fillers and the loading, assembling and

packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling and packing in excess of Navy owned capacity.

1330 Grenades.

1340P Rockets and Rocket Ammunition. This partial FSC assignment applies to:
66mm Rocket, HEAT, M72.
2.75 Rocket FFAR, Service and Practice.
Heads MK5 and Mods (HEAT).
HE, M151.
HE, XM229 (17 lb Warhead).
HE, XM157 (Spotting Red).
HE, XM158 (Spotting Yellow).
MK61 Practice (5 lb Slug).
XM230 Practice (10 lb).
Motors MK4 and Mods (High Performance Aircraft).
MK40 and Mods (Low Performance Aircraft).
3.5 In. Rocket Heat, M35.
Practice, M36.
Smoke, WP M30.
4.5 In. Motor, Drill, M24.
HE, M32.
Practice, M33. Incendiary and toxicological rockets, as listed in Army Supply Bulletins.
It does not apply to Navy assigned rockets as shown in list of assignments to the Navy. However, the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.

1345 Land Mines.

1365 Military Chemical Agents.

1370 P Pyrotechnics. This partial FSC assignment does not apply to shipboard and aircraft pyrotechnics.

1375 P Demolition Materials. This partial FSC assignment is applicable to Blasting Agents and supplies such as:
Bangalore torpedo.
Blocks, demolition.
Caps, blasting, electric and nonelectric:
Charge, cratering.
Charge, shaped and demolition.
Chests, demolition platoon and squad.
Cord detonating.
Demolition equipment sets, with ancillary items.
Detonators, all types.
Dynamite.
Firing Devices.
Fuze, safety.
Kit, demolition.
Lighter, fuse.
Machine blasting.
Primer, percussion cap.
It does not apply to Navy underwater demolition requirements.

1376 P Bulk Explosives. This partial FSC assignment is applicable to solid propellants and explosives such as:
Ammonium Picrate (Explosive D) JAN–A–166A.
Trinitrotoluene (TNT) MIL–T–248A.
Tetryl JAN–T–339.
Pantacrythrite Tetranitrate (PETN) JAN–P–387.
RDX.
Composition B.
Composition B–3.
Pentolite, 50.
Composition C–3.
Composition A–3.
Composition A–4.
Nitroguanidine (Picrate).
It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.

1377 P Cartridge and Propellant Actuated Devices and Components. This partial FSC assignment is applicable to the following devices;
(Reserved pending Services agreement as to items which shall be included in this assignment.)

1380 Military Biological Agents.

1390 P* Fuzes and Primers. This partial FSC assignment applies to Fuzes and Primers for Army assigned ammunition.
It does not apply to naval ordnance type, which is under DoD procurement assignment to the Department of the Navy; and guided missile fuzes.

2210 Locomotives.

2220 Rail Cars.

2240 Locomotive and Rail Car Accessories and Components.

2250 Track Materials, Railroad.

2310 P Passenger Motor Vehicles.

2320 P Trucks and Truck Tractors. The above two partial Federal Supply Class Assignments apply to tactical vehicles; trucks over 10,000 pounds Gross Vehicle Weight (GVW); and the following types of vehicles:
Bus, convertible to ambulance;
Truck, 4 x 4, convertible to ambulance;
Truck, 4 x 4, dump, 9,000 GVW, with cut-down cab.
These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Procurement assignment, and airport crash rescue vehicles, which are under DoD Coordinated Procurement assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DoD Coordinated Procurement to the General Services Administration.

2330 P Trailers. This partial FSC assignment does not apply to two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semitrailers which are not under DoD Coordinated Procurement assignment, and airport crash rescue trailer units which are under DoD Coordinated Procurement assignment to the Department of the Air Force.

2340 P Motorcycles, Motor Scooters, and Bicycles. This partial FSC assignment does not apply to bicycles and tricycles.

2350 Tanks and Self-propelled Weapons.

2430 Tractors, Track Laying, High Speed.

2510 P** Vehicular Cab, Body, and Frame Structural Components.

2520 P** Vehicular Power Transmission Components.

2530 P** Vehicular Brake, Steering, Axle, Wheel, and Track Components.

2540 P** Vehicular Furniture and Accessories.

2590 P** Miscellaneous Vehicular Components.

2610 Tires and Tubes, Pneumatic, except Aircraft.

2630 Tires, solid and cushion.

2640 Tire Rebuilding and Tire and Tube Repair Materials.

2805 P** Gasoline Reciprocating Engines, except Aircraft; and Components.

2910 P** Engine Fuel System Components, Nonaircraft.

2920 P** Engine Electrical System Components, Nonaircraft.

2930 P** Engine Cooling System Components, Nonaircraft.

2940 P** Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.

2990 P** Miscellaneous Engine Accessories, Nonaircraft.

4210 P Fire Fighting Equipment. This partial FSC assignment applies only to equipment developed by or under the sponsorship of the Department of the Army.

4230 P Decontaminating and Impregnating Equipment. This partial FSC assignment applies only to items peculiar to chemical warfare.

4240 P Safety and Rescue Equipment. This partial FSC assignment applies only to military respiratory protective equipment for chemical warfare.

5805 P Telephone and Telegraph Equipment. This partial FSC assignment applies only to military (wire) equipment, field type.

5815 P Teletype and Facsimile Equipment. This partial FSC assignment applies only to military (wire) equipment, field type.

5820 P Radio and Television Communication Equipment, except Airborne. This partial FSC assignment applies to non-tactical, off-the-shelf, commercially available radio and television equipment and supplies used by the Armed Forces Radio and Television Stations including equipment and supplies used by the Armed Forces for closed TV circuit educational and training programs.

5830 P Intercommunication and Public Address Systems: Except Airborne. This partial FSC assignment applies only to military (wire) equipment, field type.

6135 P Batteries, Primary. This partial FSC assignment applies to MIL type, dry cell batteries, only.

6625 P Electrical and Electronic Properties Measuring and Testing Instruments. This partial FSC assignment applies only to instruments for testing military (wire) equipment, field type.

6645 P Time Measuring Instruments. This partial FSC assignment applies to the following watches; aircraft instrument panel clocks; cases and spare parts therefore: Master navigation watches; pocket watches; stop watches; second setting wrist watches; wrist watches; athletic timers; aircraft clocks; aircraft panel clocks; mechanical aircraft clocks; navigation watch cases; pocket watch cases; watch holders; watch case assemblies and watch movements.

6660 P Meteorological Instruments and Apparatus. Each Department is assigned procurement responsibility for those systems, instruments and end items in

FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6665 P Hazard-Detecting Instruments and Apparatus. This partial FSC assignment applies only to items peculiar to chemical warfare.

6695 P Combination and Miscellaneous Instruments. This partial FSC assignment applies to jewel bearings only.

6820 P Dyes. This partial FSC assignment applies only to items peculiar to chemical warfare.

6910 P Training Aids. This partial FSC assignment applies only to items peculiar to Army assignments under weapons, fire control equipment, ammunition and explosives and chemical and biological warfare.

6920 P Armament Training Devices. This partial FSC assignment applies to armament training devices as listed in DA Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons in DA Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It not apply to clay pigeons.

6940 P Communication Training Devices. This partial FSC assignment applies only to code training sets, code practice equipment, and other telephone and telegraph training devices.

8130 P Reels and Spools. This partial FSC assignment applies only to reels and spools for military (wire) equipment, field type.

8140 P Ammunition Boxes, Packages, and Special Containers. This partial FSC assignment applies only to boxes, packages and containers peculiar to Army assignments under ammunitions, explosives, and chemical and biological warfare as listed in DA Catalog SC 8140 IL and SC 8140 ML.

* For purposes of procurement. Naval Ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance procured from the Army).

** This partial FSC assignment apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC–2805 applies to military standard engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these Federal Supply Classes are assigned to the Defense Supply Agency (Defense Construction Supply Center).

206.7102 Department of the Navy.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment.).

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 for assignment of certain commercially developed radio sets to the Department of the Navy (i.e., developed without the use of government funds.).

1095 P Miscellaneous Weapons. This partial FSC assignment applies to line throwing guns only.

1310 P Ammunition, over 30mm up to 75mm. This partial FSC assignment applies only to reels and spools for military.

1325 P Bombs. This partial FSC assignment applies to armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlets, and the MK 43, Target Detecting Device. With respect to this assignment the Department of the Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control-smoke and incendiary munitions and for other loading, assembling and packing in excess of Navy-owned capacity.

1340 P Rockets and Rocket Ammunition. This partial FSC assignment applies to:

Fuze, Rocket, V.T., MK93–0.

2.25 In. Rocket SCAR, Practice.
Heads MK3 and Mods.
Motors MK15 and Mods.
MK16 and Mods.

5 In. Rocket HVAR, service and practice.
Heads MK2 and Mods (common) MK6 and Mods (GP).
MK4 and Mods (smoke) MK25 and Mods (ATAR).
Motors MK10 and Mods.

5 In. Rocket FFAR service and practice.
Heads MK24 and Mods (General Purposes).
MK32 and Mods (Shaped Charged).
MK26 and Mods (Illum).
Motor MK16 and Mods.

With respect to this assignment the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.

1390 P Fuzes and Primers. This partial FSC assignment applies to fuzes and primers for Navy assigned ammunition.

1550 P Drones. This partial FSC assignment applies only to Drone, Model BQM34E.

1905 P Combat Ships and Landing Vessels. This partial FSC assignment applies to landing vessels only.

1910 P Transport Vessels, Passenger and Troop. This partial FSC assignment applies to ferryboats only.

1920 Fishing Vessels.

1925 Special Service Vessels.

1930 Barges and Lighters, Cargo.

1935 P Barges and Lighters, Special Purpose. This partial FSC assignment does not apply to Derricks, Pile Drivers, Rock Cutters, Concrete Mixing Plants, Mechanical Bank Grader Barges, Other Bank Revetment Barges, and Barge Power Plans.

1940 Small Craft.

1945 P Pontoons and Floating Docks. This partial FSC assignment applies only to Naval Facilities Engineering Command Type Pontoons.

1950 Floating Drydocks.

1990 P Miscellaneous Vessels. This partial FSC assignment applies to commercial sailing vessels only.

2010 Ship and Boat Propulsion Components.

2020 Rigging and Rigging Gear.

2030 Deck Machinery.

2040 Marine Hardware and Hull Items.

2060 Commercial Fishing Equipment.

2090 Miscellaneous Ship and Marine Equipment.

2820 P Steam Engines, Reciprocating, and Components. This partial FSC assignment applies to Marine Main Propulsion Steam Engines only.

2825 P Steam Turbines and Components. This partial FSC assignment applies to Marine Steam Turbines only.

4210 P Fire Fighting Equipment. This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of Navy.

4410 P Industrial Boilers. This partial FSC assignment applies only to Boilers for use aboard those ships assigned to the Navy for coordinated procurement.

4420 P Heat Exchangers and Steam Condensers. This partial FSC assignment applies only to Heat Exchangers for use aboard those ships assigned to the Navy for coordinated procurements.

4925 P Ammunition Maintenance and Repair Shop Specialized Equipment. This partial FSC assignment applies to sets, kits and outfits of tools and equipment for explosive ordnance as defined in pertinent Military Service regulations and documents.

5821 P Radio and Television Communication Equipment, Airborne. This partial FSC assignment applies only to the following commercially developed radio sets. (The term "commercially developed" means that no government funds were provided for development purposes.) HF–101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113; ARC–94, 102, 105, 110, 112, 119, 120; MRC–95, 108; VC–102, 104, 105, 108, 109, 110, and components of the foregoing including the 490T antenna coupler.

6125 P Converters, Electrical, Rotating. This partial FSC assignment applies only to Motor-Generator Sets for use aboard ships assigned to the Navy for coordinated procurement.

6320 P Shipboard Alarm and Signal System. This partial FSC assignment applies only to Alarm Systems; Fire Alarm Systems; Indicating Systems; Telegraph Systems (Signal and Signaling) (Less Electronic Type) for use aboard ships assigned to the Navy coordinated procurement.

6605 P Navigational Instruments. This partial FSC assignment applies only to lifeboat and raft compasses; aircraft sextants; Hand Leads (Soundings); Lead Reels; Sounding Machines and Pelorus Stands for use aboard ships assigned to the Navy for coordinated procurement.

6645 P Time Measuring Instruments. This partial FSC assignment applies to the following instruments, cases and spare parts therefor:

Chronometers including gimbal, padded and make break circuit.
Clocks, Alarm; boat; deck; direct reading; electrical; floor; interval timer; marine; mechanical; master control; master program; master regulating; mechanical message center; nurses; program; shelf; stop; wall; watchman's.
Counters, time period.
Meters; engine running time; hour recording; and electrical time totalizing.
Timers; bombing; engine hours; sequential; stop; and program.
Program control instrument.
Cases; chronometer, including gimbal and padded; chronometer carrying; makebreak circuit chronometer.
Cans; chronometer shipping and storage.
Clock keys; clock movements; clock motors.

6650 P Optical Instruments. This partial FSC assignment applies only to Stands, telescope, for use aboard ships assigned to the Navy for coordinated procurement.

6660 P Meterological Instruments and Apparatus. Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the develoment.

6665 P Hazard-Detecting Instruments and Apparatus. This partial FSC assignment applies only to Hazard Determining Safety Devices, for use aboard ships assigned to the Navy for coordinated procurement.

8140 P Ammunition Boxes, Packages, and Special Containers. This partial FSC assignment applies only to boxes, packages and containers for 40mm ammunition.

208.7103 Department of the Air Force.

Federal Supply Class Code and Commodity

FCS ("P" after the FSC number indicates a partial FSC assignment).
Electronic Equipment.
Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).

1550 P Drones. This partial assignment applies only to the following model drones: Model 147; Model 154; BQM 34A and MQM 34D.

2320 P Trucks and Truck Tractors. This partial FSC assignment applies only to Airport Crash Rescue Vehicles.

2330 P Trailers. This partial FSC assignment applies only to Airport Crash Rescue Trailer Units.

4210 P Fire Fighting Equipment. This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.

6660 P Meteorological Instruments and Apparatus. Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment the developing Department is the Department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6710 P * Cameras, Motion Picture. This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.

6720 P * Cameras, Still Picture. This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.

6730 P * Photographic Projection Equipment. This partial FSC assignment does not apply to 35 mm Theater Projectors.

6740 * Photographic Developing and Finishing Equipment.

6760 * Photographic Equipment and Accessories.

6780 * Photographic Sets, Kits, and Outfits.

8820 P Live Animals Not Raised For Food. This partial FSC assignment applies only to the following types of working dogs: scout, sentry, patrol, mine/tunnel, tracker, detector-narcotic/contraband, sledge, bloodhound, water dog and patrol/detector.

* This partial FSC assignment does not apply to Photographic Equipment controlled by the Congressional Joint Committee on Printing, and Micro-Film Equipment and Supplies.

208.7104 Defense Logistics Agency.

Federal Supply Class Code		Commodity	DSA Center *
FSC ("P" after the FSC number indicates a partial FSC assignment.)			
[illegible]		Right of Way Construction and Maintenance Equipment, Railroad.	DCSC
2410		Tractor, Full Track, Low Speed	DCSC
2420		Tractors, Wheeled	DCSC
[illegible]	P *	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
[illegible]	P *	Vehicular Power Transmission Components.	DCSC
2530	P *	Vehicular Brake, Steering, Axle, Wheel and Track Components.	DCSC
[illegible]	P *	Vehicular Furniture and Accessories.	DCSC
[illegible]	P *	Miscellaneous Vehicular Components.	DCSC
[illegible]	P *	Gasoline Reciprocating Engines, Except Aircraft; and Components.	DCSC
[illegible]		Diesel Engines and Components	DCSC
[illegible]		Miscellaneous Engines and Components.	DCSC
[illegible]	P *	Engine Fuel System Components, Nonaircraft.	DCSC
[illegible]	P *	Engine Electrical System Components, Nonaircraft.	DCSC
[illegible]	P *	Engine Cooling System Components, Nonaircraft.	DCSC
[illegible]	P *	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
[illegible]	P *	Miscellaneous Engine Accessories, Nonaircraft.	DCSC
3020		Gears, Pulleys, Sprockets and Transmission Chain.	DCSC
3030		Belting, Drive Belts, Fan Belts, and Accessories.	DCSC
[illegible]		Miscellaneous Power Transmission Equipment.	DCSC
3110		Bearings, Antifriction, Unmounted.	DSC
[illegible]		Bearings, Plain Unmounted	DSC
[illegible]		Bearings, Mounted	DSC
3210		Sawmill and Planing Mill Machinery.	DGSC
[illegible]		Woodworking Machines	DGSC
[illegible]		Tools and Attachments for Woodworking Machinery.	DGSC
3405	P *	Saws and Filing Machines	DGSC
3408	P *	Machining Centers and Way-Type Machines.	DGSC
3410	P *	Electrical and Ultrasonic Erosion Machines.	DGSC
3411	P *	Boring Machines	DGSC
3412	P *	Broaching Machines	DGSC
3413	P *	Drilling and Tapping Machines	DGSC
3414	P *	Gear Cutting and Finishing Machines.	DGSC
3415	P *	Grinding Machines	DGSC
3416	P *	Lathes	DGSC
3417	P *	Milling Machines	DGSC
3418	P *	Planers and Shapers	DGSC
3419	P *	Miscellaneous Machine Tools	DGSC
3422	P *	Rolling Mills and Drawing Machines.	DGSC
3424	P *	Metal Heat Treating Equipment	DGSC
3426	P *	Metal Finishing Equipment	DGSC
3431		Electric Arc Welding Equipment	DGSC
3432	P *	Electric Resistance Welding Equipment.	DGSC
3433	P *	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436	P *	Welding Positioners and Manipulators.	DGSC
3438	P *	Miscellaneous Welding Equipment.	DGSC
3439	P *	Miscellaneous Welding, Soldering and Brazing Suppliers and Accessories.	DGSC
3441	P *	Bending and Forming Machines	DGSC
3442	P *	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443	P *	Mechanical Presses, Power Driven.	DGSC
3444	P *	Manual Presses	DGSC
3445	P *	Punching and Shearing Machines.	DGSC
3446	P *	Forging Machinery and Hammers	DGSC
3447	P *	Wire and Metal Ribbon Forming Machinery.	DGSC
3448	P *	Riveting Machines	DGSC
3449	P *	Misc. Secondary Metal Forming and Cutting Machines.	DGSC
3450	P *	Machine Tools, Portable	DGSC
3455	P *	Cutting Tools for Machine Tools	DGSC
3456	P *	Cutting and Forming Tools for Secondary Metal Working Machines.	DGSC
3460	P *	Machine Tool Accessories	DGSC
3461	P *	Accessories for Secondary Metalworking Machinery.	DGSC
3465	P *	Production Jigs, Fixtures and Templates.	DGSC
3470	P *	Machine Shop Sets, Kits, and Outfits.	DGSC
3510		Laundry and Dry Cleaning Equipment.	DGSC
3520		Shoe Repairing Equipment	DGSC
[illegible]		Industrial Sewing Machines & Mobile Textile Repair Shops.	DGSC
[illegible]		Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611	P *	Industrial Marking Machines	DGSC
3620	P *	Rubber and Plastics Working Machinery.	DGSC
3635	P *	Crystal and Glass Industries Machinery.	DGSC
3650	P *	Chemical & Pharmaceutical Products Manufacturing Machinery.	DGSC
3655		Gas Generating and Dispensing Systems, Fixed or Mobile.	DGSC
3660	P *	Industrial Size Reduction Machinery.	DGSC
3680	P *	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685	P *	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC

Federal Supply Class Code	Commodity	DSA Center [8]
3693 P [9]	Industrial Assembly Machines	DGSC
3694 P [9]	Clean Work Stations, Controlled Environment & Related Equipment.	DGSC
3695	Miscellaneous Special Industry Machinery.	DGSC
3710	Soil Preparation Equipment	DCSC
3720	Harvesting Equipment	DCSC
3740	Pest, Disease, and Frost Control Equipment.	DCSC
3770	Saddlery, Harness, Whips and Related Animal Furnishings.	DCSC
3805	Earth Moving and Excavating Equipment.	DCSC
3810	Cranes and Crane-Shovels	DCSC
3815	Crane and Crane-Shovel Attachments.	DCSC
3820	Mining, Rock Drilling, Earth Boring, and Related Equipment.	DCSC
3825	Road Clearing and Cleaning Equipment.	DCSC
3830	Truck and Tractor Attachments	DCSC
3835	Petroleum Production and Distribution Equipment.	DCSC
3895	Miscellaneous Construction Equipment.	DCSC
3910	Conveyors	DCSC
3920	Materials Handling Equipment, Nonself-Propelled.	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled.	DCSC
3940	Blocks, Tackle, Rigging, and Slings.	DISC
3950	Winches, Hoists, Cranes, and Derricks.	DCSC
3990	Miscellaneous Materials Handling Equipment.	DGSC
4010	Chain and Wire Rope	DISC
4020	Fiber Rope, Cordage and Twine	DISC
4030	Fittings for Rope, Cable and Chain.	DISC
4110	Refrigeration Equipment	DGSC
4120	Air Conditioning Equipment	DGSC
4130	Refrigeration and Air Conditioning Components.	DGSC
4140	Fans, Air Circulators, and Blower Equipment.	DGSC
4210 P [9]	Fire Fighting Equipment	DCSC
4220	Marine Lifesaving and Diving Equipment.	DCSC
4310	Compressors and Vacuum Pumps.	DCSC
4320	Power and Hand Pumps	DCSC
4330	Centrifugals, Separators, and Pressure and Vacuum Filters.	DCSC
4440	Driers, Dehydrators, and Anhydrators.	DCSC
4450	Industrial Fan and Blower Equipment.	DCSC
4460	Air Purification Equipment	DCSC
4510	Plumbing Fixtures and Accessories.	DCSC
4520	Space Heating Equipment and Domestic Water Heaters.	DCSC
4530	Fuel Burning Equipment Units	DCSC
4540	Miscellaneous Plumbing, Heating and Sanitation Equipment.	DCSC
4610	Water Purification Equipment	DCSC
4620	Water Distillation Equipment, Marine and Industrial.	DCSC
4630	Sewage Treatment Equipment	DCSC
4710	Pipe and Tube	DCSC
4720	Hose and Tubing, Flexible	DCSC
4730	Fittings and Specialities; Hose, Pipe and Tube.	DCSC
4810	Valves, Powered	DCSC
4820	Valves, Nonpowered	DCSC
4830	Lubrication and Fuel Dispensing Equipment.	DCSC
5280	Sets, Kits, and Outfits of Measuring Tools.	DGSC
5305	Screws	DISC
5306	Bolts	DISC
5307	Studs	DISC
5310	Nuts and Washers	DISC
5315	Nails, Keys and Pins	DISC
5320	Rivets	DISC
5325	Fastening Devices	DISC
5330	Packing and Gasket Materials	DISC
5335	Metal Screening	DISC
5340	Miscellaneous Hardware	DISC
5355	Knobs and Pointers	DISC
5360	Coil, Flat and Wire Springs	DISC
5365	Rings, Shims and Spacers	DISC
5410	Prefabricated and Portable Buildings.	DCSC
5420	Bridges, Fixed and Floating	DCSC
5430	Storage Tanks	DCSC
5440	Scaffolding Equipment and Concrete Forms.	DCSC
5445	Prefabricated Tower Structures	DCSC
5450	Miscellaneous Prefabricated Structures.	DCSC
5510	Lumber and Related Basic Wood Materials.	DCSC
5520	Millwork	DCSC
5530	Plywood and Veneer	DCSC
5560	Fencing, Fences and Gates	DCSC
5680 P	Miscellaneous Construction Materials. This partial FSC assignment applies only to airplane landing mat. (Also, see footnote 1 at end of list relative to purchase of DSA managed items in GSA assigned classes.)	DESC
5905	Resistors	DESC
5910	Capacitors	DESC
5915	Filters and Networks	DESC
5920	Fuses and Lightning Arrestors	DESC
5925	Circuit Breakers	DESC
5930	Switches	DESC
5935	Connectors, Electrical	DESC
5940	Lugs, Terminals and Terminals Strips.	DGSC
5945	Relays, Contractors, and Solenoids.	DESC
5950	Coils and Transformers	DESC
5955	Piezoelectric Crystals	DESC
5960	Electron Tubes and Associated Hardware.	DESC
5961	Semiconductor Devices and Associated Hardware.	DESC
5962	Microelectronic Circuit Devices	DESC
5965	Headsets, Handsets, Microphones and Speakers.	DESC
5970	Electrical Insulators and Insulating Materials.	DGSC
5975	Electrical Hardware and Supplies	DGSC
5977	Electrical Contact Brushes and Electrodes.	DGSC
5985	Antennas, Waveguides, and Related Equipment.	DESC
5990	Synchros and Resolvers	DESC
5995	Cable, Cord, and Wire Assemblies: Communication Equipment.	DGSC
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC
6110	Electrical Control Equipment	DGSC
6115 P [9]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers: Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6505 [4]	Drugs, Biologicals, and Official Reagents.	DPSC
6508 [4]	Medicated Cosmetics and Toiletries.	DPSC
6510 [4]	Surgical Dressing Materials	DPSC
6515 [4]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520 [4]	Dental Instruments, Equipment, and Supplies.	DPSC
6525 [4]	X-ray Equipment and Supplies: Medical, Dental and Veterinary.	DPSC
6530 [4]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540 [4]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545 [4]	Medical Sets, Kits, and Outfits	DPSC
6630	Chemical Analysis Instruments	DGSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6650	Geophysical and Astronomical Instruments.	DGSC
6660	Scales and Balances	DGSC
6675	Drafting, Surveying and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies	DGSC
6810 [7]	Chemicals	DPSC [6] DGSC
6820	Dyes	DGSC
6830	Gases: Compressed and Liquefied.	DGSC
6840	Pest Control Agents and Disinfectants.	DGSC
6850 [1]	Miscellaneous Chemical Specialties.	DPSC DGSC
7210	Household Furnishings	DPSC
7310	Food Cooking, Baking and Serving Equipment.	DGSC
7320	Kitchen Equipment and Appliances.	DGSC
7360	Sets, Kits and Outfits: Food Preparation and Serving.	DGSC
7610	Books and Pamphlets	DGSC
7690	Sheet and Book Music	DGSC
7690	Miscellaneous Printed Matter	DGSC
8110	Drums and Cans	DGSC
8120	Commercial and Industrial Gas Cylinders.	DGSC
8125	Bottles and Jars	DGSC
8305	Textile Fabrics. FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	DPSC
8310	Yarn and Thread	DPSC
8315	Notions and Apparel Findings. FSC 8315 does not include coated cloth tape used exclusively in the repair of lighter than air envelopes.	DPSC
8320	Padding and Stuffing Materials	DPSC
8325	Fur Materials	DPSC
8330	Leather	DPSC
8335	Shoe Findings and Soling Materials.	DPSC
8340	Tents and Tarpaulins	DPSC
8345	Flags and Pennants	DPSC
8405	Outerwear, Men's	DPSC
8410	Outerwear, Women's	DPSC
8415	Clothing, Special Purpose. FSC 8415 includes all submarine clothing.	DPSC
8420	Underwear and Nightwear, Men's.	DPSC
8425	Underwear and Nightwear, Women's.	DPSC
8430	Footwear, Men's	DPSC
8435	Footwear, Women's	DPSC
8440	Hosiery, Handwear, and Clothing Accessories, Men's.	DPSC
8445	Hosiery, Handwear, and Clothing Accessories, Women's.	DPSC
8450	Children's and Infants' Apparel and Accessories.	DPSC
8455	Badges and Insignia	DPSC
8460	Luggage	DPSC
8465	Individual Equipment	DPSC
8470	Armor, Personal	DPSC
8475	Specialized Flight Clothing and Accessories.	DPSC
8905 [4]	Meat, Poultry, and Fish	DPSC
8910 [1]	Dairy Foods and Eggs	DPSC
8915 [1]	Fruits and Vegetables	DPSC
8920 [1]	Bakery and Cereal Products	DPSC
8925 [1]	Sugar, Confectionry and Nuts	DPSC
8950 [1]	Jams, Jellies, and Preserves	DPSC

Federal Supply Class Code	Commodity	DSA Center [6]
8935 [7]	Soups and Bouillons	DPSC
8940 [7]	Special Dietary Foods and Food Specialty Preparations.	DPSC
8945 [7]	Food Oils and Fats	DPSC
8950 [7]	Condiments and Related Products.	DPSC
8955 [7]	Coffee, Tea, and Cocoa	DPSC
8960 [7]	Beverages, Nonalcoholic	DPSC
8970 [7]	Composite Food Packages	DPSC
8975 [7]	Tobacco Products	DPSC
9110	Fuels, Solid	DFSC
9130	Liquid Propellants and Fuels, Petroleum Base.	DFSC
9140	Fuel Oils	DFSC
9150	Oils and Greases: Cutting, Lubricating, and Hydraulic.	DFSC
9160	Miscellaneous Waxes, Oils, and Fats.	DFSC
9320	Rubber Fabricated Materials	DGSC
9330	Plastics Fabricated Materials	DGSC
9340	Glass Fabricated Materials	DGSC
9350	Refractories and Fire Surfacing Materials.	DGSC
9390	Miscellaneous Fabricated Nonmetallic Materials.	DGSC
9420 P	Fibers: Vegetable, Animal and Synthetic. This partial FSC assignment applies only to raw cotton and raw wool.	DPSC
9430 P	Miscellaneous Crude Animal Products, Inedible. This partial FSC assignment applies only to crude hides.	DPSC
9505	Wire, Nonelectrical, Iron and Steel.	DISC
9510	Bars and Rods, Iron and Steel	DISC
9515	Plate, Sheet, and Strip: Iron and Steel.	DISC
9520	Structural Shapes, Iron and Steel.	DISC
9525	Wire, Nonelectrical, Nonferrous Base Metal.	DISC
9530	Bars and Rods, Nonferrous Base Metal.	DISC
9535	Plate, Sheet, Strip, and Foil: Nonferrous Base Metal.	DISC
9540	Structural Shapes, Nonferrous Base Metal.	DISC
9545	Plate, Sheet, Strip, Foil and Wire: Precious Metal.	DISC
9620 P	Minerals, Natural and Synthetic. This partial FSC assignment applies only to crude petroleum and crude shale oil.	DFSC
9925	Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930	Memorials, Cemeterial and Mortuary Equipment and Supplies.	DGSC
9999	Miscellaneous Items	DGSC

[1] These assignments do not apply to items decentralized by the DLA Center Commander, i.e., designated for purchase by each Military Department, and to those items in DLA assigned Federal Supply Classes, which may be assigned to GSA for supply management. In addition, see 8.7100-2 which describes conditions under which a Military Service may purchase (contract for) Military Service supply managed items in DLA assigned Federal Supply Classes. See notes 2 and 3 below for further exceptions pertaining to certain DLA assignments.

[2] DLA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2805, 2910, 2920, 2930, 2940 and 2990 do not apply to repair parts peculiar to combat and tactical vehicles, which are assigned for coordinated procurement to the Department of the Army. In addition, the assignment in FSC-2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar thereto, which are assigned for coordinated procurement to the Department of the Army.

[3] This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a Military Department. The procurement responsibility for such equipment is assigned to the Department which developed or sponsored its development.

[4] The Defense Logistics Agency has procurement responsibility for all the items in the Classes of FS Group 65. In addition, DLA has procurement responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-Group 65 Classes where the Military medical services have the sole or prime interest in such items. The specific item coverage of these Non-Group 65 items is published in the DoD Section of the Federal Supply Catalog for Medical Material C3-1 through C3-12, inclusive.

[5] This assignment includes Health and Comfort items listed in AR 700-23. It also includes resale items for commissary stores (including brand name items).

[6] DLA Centers are identified as follows:
DCSC—Defense Construction Supply Center.
DESC—Defense Electronics Supply Center.
DFSC—Defense Fuel Supply Center.
DGSC—Defense General Supply Center.
DISC—Defense Industrial Supply Center.
DPSC—Defense Personnel Support Center.

[7] DFSC is responsible for procurement of only petroleum base items in FSC 6810 and FSC 6850.

[8] This partial assignment applies only to secondary items not identified as IPE. Such secondary items are listed in the applicable Federal Supply Catalog Management Data Lists of each respective Service.

[9] This partial FSC assignment in FSC 6115 does not apply to Mobile Electric Power Generating Sources (MPECS). The procurement direction responsibility for MEPCS is assigned to the DoD Project Manager, Mobile Electric Power by DoD Directive 4120.11. DoD components desiring to use other than the DoD Standard Family of Generator Sets, contained in MIL-STD 633, shall process a Request for Deviation in accordance with Joint Operating Procedures, AR 700-101, AFR 400-50, NAVMATINST 4120.100A, MCO 11310.8c and DLAR 4120.7, Subject: Management and Standardization of Mobile Electric Power Generating Sources, prior to initiating procurement.

208.7105 Defense Nuclear Agency.

Federal Supply Class Code and Commodity

1105 Nuclear Bombs.
1110 Nuclear Projectiles.
1115 Nuclear Warheads and Warhead Sections.
1125 Nuclear Demolition Charges.
1127 Nuclear Rockets.
1130 Conversion Kits, Nuclear Ordnance.
1135 Fuzing and Firing Devices, Nuclear Ordnance.
1140 Nuclear Components.
1145 High Explosive Charges, Propellants, and Detonators: Nuclear Ordnance.
1190 Specialized Test and Handling Equipment, Nuclear Ordnance.
1195 Miscellaneous Nuclear Ordnance.

* In addition to the above, assignments to DNA include all items for which DNA has integrated management responsibility in accordance with DoD Directive 5105.31.

208.7106 General Services Administration.

Federal Supply Class Code and Commodity

FSC ("P" after FSC number indicates partial FSC assignment.)
2310 P Passenger Motor Vehicles.
2320 P Trucks and Truck Tractors. The above two partial Federal Supply Class Assignments apply to all commercial passenger carrying vehicles and trucks up to 10,000 pounds Gross Vehicle Weight (GVW) except the following types which are assigned for DoD Coordinated Procurement to the Department of the Army.
Bus, convertible to ambulance.
Truck, 4 x 4, convertible to ambulance.
Truck, 4 x 4, dump, 9,000 pounds GVW, with cut-down cab.
(See Army Coordinated Procurement assignments in FSC 2310 and FSC 2320.)
3540 Wrapping and Packaging Machinery.
3550 Vending and Coin Operated Machines.
3590 Miscellaneous Service and Trade Equipment.
3750 Gardening Implements and Tools.
5110 Hand Tools, Edged, Nonpowered.
5120 Hand Tools, Nonedged, Nonpowered.
5130 Hand Tools, Power Driven.
5133 Drill Bits, Counterbores, and Countersinks: Hand and Machine.
5136 Taps, Dies and Collects: Hand and Machine.
5140 Tool and Hardware Boxes.
5180 Sets, Kits and Outfits of Hand Tools.
5210 Measuring Tools, Craftmen's.
5345 Disks and Stones, Abrasive.
5350 Abrasive Materials.
5610 Mineral Construction Materials, Bulk.
5620 Building Glass, Tile, Brick and Block.
5630 Pipe and Conduit, Nonmetallic.
5640 Wallboard, Building Paper, and Thermal Insulation Materials.
5650 Roofing and Siding Materials.
5670 Architectural and Related Metal Products.
5680 P** Miscellaneous Construction Materials.
7105 Household Furniture.
7110 Office Furniture.
7125 Cabinets, Lockers, Bins and Shelving.
7195 Miscellaneous Furniture and Fixtures.
7220 Floor Coverings.
7230 Draperies, Awnings, and Shades.
7240 Household and Commercial Utility Containers.
7290 Miscellaneous Household and Commercial Furnishings and Appliances.
7330 Kitchen Hand Tools and Utensils.
7340 Cutlery and Flatware.
7350 Tableware.
7410 Punched Card System Machines.
7420 Accounting and Calculating Machines.
7430 Typewriters and Office-type Composing Machines.
This FSC assignment does not apply to machines controlled by the Congressional Joint Committee on Printing.
7450 Office-type Sound Recording and Reproducing Machines.
7460 Visible Record Equipment.
7490 Miscellaneous Office Machines.
This FSC assignment does not apply to equipment controlled by the Congressional Joint Committee on Printing.
7510 Office Supplies.
This FSC assignment does not apply to Office Supplies, including special inks, when DoD requirements of such items are procured through Government Printing Office channels.
7520 Office Devices and Accessories.
This FSC assignment does not apply to office devices and accessories when DoD requirements of such items are procured through Government Printing Office channels.
7530 Stationery and Record Forms.
This FSC assignment does not apply to Stationery and Record Forms when DoD requirements of such items are procured through Government Printing Office channels including those items covered by term contracts issued by GPO for tabulating cards and marginally punched continuous forms.
7710 Musical Instruments.
7720 Musical Instrument Parts and Accessories.
7730 Phonographs, Radios, and Television Sets: Home Type.
7740 Phonograph Records.
7810 Athletic and Sporting Equipment.
7820 Games, Toys, and Wheeled Goods.
7830 Recreational and Gymnastic Equipment.
7910 Floor Polishers and Vacuum Cleaning Equipment.
7920 Brooms, Brushes, Mops and Sponges.

7930 Cleaning and Polishing Compounds and Preparations.
8010 Paints, Dopes, Varnishes, and Related Products.
8020 Paint and Artists Brushes.
8030 Preservative and Sealing Compounds.
8040 Adhesives.
8105 Bags and Sacks.
8115 Boxes, Cartons and Crates.
8135 Packaging and Packing Bulk Materials.
8510 Perfumes, Toilet Preparations and Powders.
8520 Toilet Soap, Shaving Preparations and Dentifrices.
8530 Personal Toiletry Articles.
8540 Toiletry Paper Products.
8710 Forage and Feed.
8720 Fertilizers.
8730 Seeds and Nursery Stock.
9310 Paper and Paperboard.
9905 Signs, Advertising Displays, and Identification Plates.
9910 Jewelry.
9915 Collectors' Items.
9920 Smokers' Articles and Matches.

*These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned Federal Supply Classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data Lists. In addition, see 208.7100–2 which describes conditions under which a Military Service may purchase (contract for) Military Service Supply managed items in GSA assigned Federal Supply Classes.

**This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

Subpart 208.72—Procurement for NASA

208.7200 Authorization and policy.

(a) NASA is authorized by Public Law 85–568 to use the procurement services, personnel, equipment and facilities of the Departments with their consent, with or without reimbursement, and on a similar basis to cooperate with the Departments in the use of procurement services, equipment and facilities.

(b) The Department will cooperate fully with NASA in making their procurement services, equipment, personnel and facilities available on the basis of mutual agreement.

(c) The Departments will not claim reimbursement for administrative costs incident to procurements for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Department concerned will use its own methods, except when required by the terms of the agreement involved.

(e) The Departments normally will use their own funds when procuring supplies or services for NASA, or performing services, and will not cite NASA funds on any Defense obligation or payment document.

208.7201 NASA purchase request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form Number 523) will be used by NASA for requesting procurement of supplies or services, from all activities of the Departments.

(b) Except as provided in (d) below, within 30 days after receipt of a NASA-Defense Purchase Request, the Department concerned will forward to the initiator of the request a DD Acceptance of MIPR Form, DD Form 448–2, in quadruplicate in accordance with instructions contained in 208.7009. Each DD Form 448–2 will show the action being taken or to be taken to fill the requirement and the name and complete address of the Department of Defense procurement activity for future direct contact by the initiator.

(c) To the extent feasible, all documents including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer Between Appropriations and/or Funds) billings will reference the NASA-Defense Purchase Request Number and the item number when appropriate.

(d) Acceptance by the Department is not required for NASA-Defense Purchase Request covering deliveries of common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

208.7202 Changes in estimated total prices.

When a Department determines that the estimated total price (Block 9, NASA Form 523) of the items to be procured for NASA is not sufficient to cover the required reimbursement, or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, an amendment to the NASA-Defense Purchase Request will be forwarded to the procuring activity.

208.7203 Inquiries.

Inquiries and correspondence will be directed to the NASA originating office.

208.7204 Payments.

Payments to the Departments for supplies and services furnished or procured for NASA will be effected on the basis of Standard Form 1080 billings submitted to the NASA office designated in Block 11 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Billings will be supported in the same manner as billings between Departments.

Subpart 208.73—Miniature and Instrument Ball Bearings

208.7301 Definitions.

"Domestic manufacture" means miniature and instrument ball bearings manufactured in the United States or Canada. When a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada.

"Miniature and instrument ball bearings" are all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics.

208.7302 Policy.

It has been determined that defense requirements for miniature and instrument ball bearings must be procured from domestic manufacturing sources to the maximum extent practicable. Accordingly, all procurements of miniature and instrument ball bearings and all procurements of items containing miniature and instrument ball bearings shall include, except as provided in 208.7303 below, a requirement that such ball bearings delivered under the contract be of domestic manufacture only.

208.7303 Procedures.

(a) The clause set forth at 252.208–7000, Required Sources for Miniature and Instrument Ball Bearings, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being procured does not contain miniature or instrument ball bearings;

(2) When the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured miniature or instrument ball bearings;

(3) In small purchases using small purchase procedures, other than in purchase of bearings as the end item;

(4) Purchases of standard commercial items, other than—

(i) Those which are intended for use as components or subassemblies of defense equipments or systems (e.g., repair parts) or

(ii) Purchases of bearings as the end item; or

(5) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract which includes the clause required by (a) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic ball bearings, and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using ball bearings of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic ball bearings or subassemblies or parts is necessary.

The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic bearings.

Subpart 208.74—Precision Components for Mechanical Time Devices

208.7401 Definitions.

"Domestic manufacture" means precision components for mechanical time devices manufactured in the United States or Canada. When a mechanical timing assembly is involved, all components of the assembly must also have been manufactured in the United States or Canada.

"Precision components for mechanical time devices" are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 64 rms. Examples of such precision components include: gears, pinions, posts, and plates. Precision components subject to the provisions of this subpart are those which are included in fuzes, boosters, and aircraft clocks in the following Federal Supply Classes:

FS class and description	
1306	Ammunition through 30mm
1310	Ammunition, over 30mm up to 75mm
1315	Ammunition, 75mm through 125mm
1320	Ammunition over 125mm
1325	Bombs
1330	Grenades
1340	Rockets and Rocket Ammunition
1345	Land Mines
1390	Fuzes and Primers
6645	Time Measuring Instruments (aircraft clocks only)

208.7402 Policy.

It has been determined that defense requirements for precision components for mechanical time devices must be procured from domestic manufacturing sources to the maximum extent practicable. Accordingly, all procurements of precision components for mechanical time devices and all procurements of items containing precision components for mechanical time devices shall include, except as provided in 7403 below, a requirement that such components delivered under the contract be of domestic manufacture only.

208.7403 Procedures.

(a) All procurements of items in the Federal Supply Classes listed above or any subassembly, component, or part thereof shall provide that precision components for mechanical time devices, in the quantities and of the type and sizes (including tolerances) required to produce the end item being supplied, be of domestic manufacture and incorporated into the items delivered by the contractor and subcontractor at every tier. To accomplish this, the clause set forth at 252.208–7001, Required Sources for Precision Components for Mechanical Time Devices, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being procured does not contain precision components for mechanical time devices;

(2) When the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured precision components for mechanical time devices;

(3) In small purchases using small purchase procedures, other than in purchase of precision components for mechanical time devices as the end item;

(4) Purchases of standard commercial items, other than—

(i) Those which are intended for use as components or subassemblies of defense equipment or systems (e.g., repair parts); or

(ii) Purchases of precision components for mechanical time devices as the end item; or

(5) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract which includes the clause required by (a) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic precision components for mechanical time devices and either:

(1) The production of such subassemblies or end items in performance of all or a part of the contract using precision components for mechanical time devices of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic precision components for mechanical time devices or subassemblies or parts is necessary.

The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic components.

Subpart 208.75—High-Purity Silicon

208.7501 Definitions.

"Domestic manufacture" means high-purity silicon manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such silicon (polycrystal and single crystal) incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

"High-purity silicon" is N or P type and has a resistivity greater than 3000 ohm—centimeter.

208.7502 Policy.

It has been determined that defense requirements for High-Purity Silicon must be acquired from qualified domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of high-purity silicon and all acquisitions of items containing high-purity silicon shall include, except as provided in 208.7503 below, a requirement that such high-purity silicon and high-purity silicon incorporated in items containing high-purity silicon delivered under the contract be of domestic manufacture only.

208.7503 Procedures.

(a) The clause set forth at 252.208–7002, Required Sources for High Purity

Silicon, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being acquired does not contain high-purity silicon;

(2) In small purchases using small purchase procedures, other than in purchase of high-purity silicon as the end item;

(3) Purchase of standard commercial items, other than purchases of high-purity silicon as the end item; or

(4) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract, the contracting officer may waive the requirements set forth at 252.208–7002, Required Sources for High Purity Silicon. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic high-purity silicon, and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using high-purity silicon of domestic manufacture would interfere with the normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic high-purity silicon is necessary. The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic high-purity silicon.

PART 209—CONTRACTOR QUALIFICATIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 209.1—Responsible Prospective Contractors

209.103 Policy.

(S–70) *Acquisition from concerns in qualifying countries.*

(1) Awards to concerns in qualifying countries are subject to this subpart and other sections of this Supplement concerning NATO participating country sources.

(2) A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of FAR 9.104–4 as the basis for his determination under FAR 9.103.

209.104 Standards.

209.104–3 Application of standards.

(c) *Satisfactory performance record.*

(c)(2) Quality is a significant consideration in determining satisfactory performance. Quality defects of a critical or repetitive nature without adequate and timely corrective action, including repair or replacement of items, shall also be presumptive of inability to meet this requirement. DoD components shall assure that contracts are not awarded to contractors with a history of providing supplies or services of an unsatisfactory quality.

(S–70) In cases where the firm proposed by CCC is so accepted, pre-award survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, he shall request from CCC and any other sources whatever additional information or plant surveys he may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the pre-award survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

209.105 Procedures.

209.105–70 Current information.

(a) Maximum practicable use shall be made of currently valid information on file or within the knowledge of personnel in the Department of Defense. Each Deaprtment, shall at such level and manner as it deems appropriate, maintain useful records and experience data for the guidance of contracting officers in the placement of new procurement, and shall inform its contracting officers and the other Departments of the means of access thereto. Notwithstanding this direction contract administration offices shall maintain files of information reflecting upon the ability of contractors to perform Government contracts successfully.

(b) Any purchasing office becoming aware of circumstances which, for any reason, casts doubt upon the ability of a contractor to perform contracts successfully, shall immediately advise the cognizant contract administration office. A contract administration office, upon being notified by a purchasing office of unfavorable information affecting a contractor under its cognizance, or upon developing unfavorable information during the course of contract administration activities, shall advise the purchasing offices of the other Departments. When a contract administration office is requested to perform a pre-award survey and it has been notified of the existence of unfavorable information relative to the contractor, it shall obtain the details including full supporting information. Careful and full consideration shall be given such information.

(c) In addition to the requirements of FAR 9.105–1, pre-award surveys shall be requested and conducted in accordance with Appendix K, Pre-Award Survey Procedures. For preaward survey assistance for contracts requiring performance of Contract Administration Services (CAS) on military installations, see 242.270.

209.106 Pre-award surveys.

209.106–70 Audit responsibilities for pre-award surveys and reviews.

Pre-award surveys of potential contractors' competence to perform proposed contracts shall be managed and conducted by the contract administration office. When information is required on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, such information shall always be obtained by the ACO from the auditor. The contract administration office shall be responsible for advising the PCO on matters concerning the contractor's financial competence or credit needs.

Subpart 209.2—Qualified Products

209.204 Justification for including qualification requirements.

The specification preparing activity's (SPA) parent agency authorized to make the approval required by FAR 9.204 is as follows:

In the Army, Headquarters, U.S. Army Materiel Development and Readiness Command, (DRCMT–S);

In the Navy, the Chief of Naval Material;

In the Air Force, Departmental Standardization Office (SAF/ALG);

In the Defense Logistics Agency, the Executive Director, Contracting;

In the National Security Agency, the Director of Procurement;

In the Defense Communication Agency, the Director;

In the Defense Nuclear Agency, the Deputy Director, Operations and Administration; and

In the Defense Mapping Agency, the Staff Director of Logistics.

Subpart 209.3—First Article Testing and Approval

209.302 General.

The Government may require that first articles be manufactured using the same facilities and the same production processes, methods and materials, with which the item is to be produced for the contract (see 209.308 below).

209.303 Use.

(b)(1) The term "processes" as used in FAR 9.303(b)(1) includes materials or production facilities.

209.305 Risk.

This authorization may be given to a contractor only after approval at a level higher than the contracting officer (See FAR 9.308).

209.306 Solicitation requirements.

(i) The Government's estimate shall be documented in the contract file.

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209–3 or 52.209–4, as appropriate, may be included by the Contracting Officer whenever:

(i) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(ii) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(iii) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.403 Definitions.

"Authorized Representative" means an official who has been designated by and authorized to act on behalf of the Secretary concerned for the purposes of this subpart (see 209.470) including, but not limited to, acting as a debarring or suspending official.

209.404 Consolidated list of debarred, suspended, and ineligible contractors.

(c)(4) At a minimum, each Department shall maintain records relating to each contractor it has debarred or suspended that contain the following information:

(i) The contractor's name and address;

(ii) The cause of the action (see FAR 9.406–2 and FAR 9.407–2);

(iii) The effective date of the action and, in the case of debarments, the termination date for each listing; and

(iv) The name and telephone number of the Department's point of contact for the action.

209.405 Effect of listing.

(a)(1) Prior to initiating a pre-award survey or any of the procurement actions set forth in FAR 9.405, the consolidated list shall be reviewed. Bids received from any listed contractor in response to an Invitation for Bids shall be opened, entered on the Abstract of Bids, and rejected unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception. Proposals, quotations or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception.

(2) When a Department makes an exception, a notice describing the exception shall be forwarded to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason include: (i) the property or services to be acquired are available only from the listed contractor; (ii) the urgency of the requirement dictates that the Department deal with the contractor; (iii) the contractor and the Department have entered an agreement covering the same events which resulted in the listing and the agreement includes a decision by the Department not to debar or suspend the contractor; and (iv) for such other reasons related to the national defense which required continued business dealings with the listed contractor.

209.406 Debarment.

209.406–1 General.

(S–70) If no suspension is in effect under FAR 209.407 at the time dabarment is proposed by a Department, bids or proposals shall not be solicited from, contracts shall not be awarded to, existing contracts shall not be renewed or otherwise extended with, and subcontracts shall not be consented to or approved for the contractor by any DoD component pending a debarment decision unless the Secretary concerned or his authorized representative states in writing the compelling reason to do so.

209.406–3 Procedures.

(c)(7) For purposes of this FAR subsection, "agency" includes all DoD components. The Secretary concerned or his authorized representative may, however, make an exception in accordance with 209.406–1(S–70).

209.470 Authorized representatives.

For the purpose of FAR Subpart 9.4 the authorized representatives of the Secretaries are:

(a) In the Army, an Assistant Judge Advocate General;

(b) In the Navy, the Chief of Naval Material;

(c) In the Air Force, the Deputy Chief of Staff, Research, Development and Acquisition;

(d) In the Defense Logistics Agency, the General Counsel;

(e) In the National Security Agency, The Director;

(f) In the Defense Communications Agency, the General Counsel;

(g) In the Defense Nuclear Agency, the Director; and

(h) In the Defense Mapping Agency, the General Counsel.

209.471 Interchange of information.

Debarment or suspension of a contractor by one Department can have an adverse impact on the missions of other Departments with which the contractor does business. Accordingly, if it appears that there is the potential for such an adverse impact, the cognizant debarring or suspending official should solicit the comments of those Departments that he believes could be affected before taking action. A Department that believes it could be affected by the proposed action should comment directly to the cognizant debarring or suspending official. If several Departments independently are contemplating a debarment or suspension action against the same contractor, consideration should be given to designating one Department as the lead agency for making the decision.

209.472 Reporting.

209.472–1 Situations where reports are required.

A report incorporating the information required by 209.472–2 shall be prepared by the contracting officer when:

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2;

(b) A report is required by 203.000;

(c) A report is required by 203.409 (contingent fees);

(d) A report is required by FAR 49.106 (termination settlements);

(e) Buy American Act violations are suspected (see FAR 25.204); or,

(f) A contractor is suspected of attempting to evade the prohibitions or

debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

209.472-2 Contents of reports.

Each report prepared pursuant to this subsection shall contain the name and telephone number of the individual assigned to the case as the point of contact for the activity making the report, and shall include substantially the following information, where available:

(a) Name and address of the contractor;

(b) Names of the principals, officers, partners, owners, or managers;

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(d) Description of the contract or contracts concerned, including the contract number, and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;

(e) The status of vouchers;

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;

(g) Whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts;

(h) A complete summary of all pertinent evidence;

(i) A recommendation as to the continuation of all current contracts with a full explanation of the reason for such recommendation, or if no recommendation is made, the reason therefor;

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;

(k) The comments and recommendations of the contracting officer and of each successive echelon as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, and (3) the period of any debarment; and,

(l) As an enclosure, a copy of the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation, such as affidavits, copies of investigative reports and certified copies of indictments and judgments.

209.472-3 Addressees and copies of reports.

Reports shall be submitted in three complete copies, including inclosures, to the authorized representatives of the Secretaries concerned, unless otherwise provided by Departmental procedures. Additional copies without enclosures may be required by Departmental procedures for other addresses.

209.473 Procurement outside United States.

209.473-1 General.

The foregoing provisions of this subpart shall be applied by overseas commanders to procurement outside the United States and its possessions, whenever possible, and as modified by the following provisions, with due consideration to laws or customs of the foreign countries concerned.

209.473-2 Responsibilities and area coverage.

The Commander in Chief, United States European Command (CINCEUR), the Commander in Chief, Pacific (CINCPAC) and the Commander in Chief, Southern Command (CINCSOUTH), or the Commanders of a component command which each of these unified commanders may designate, shall establish and maintain a consolidated list of offshore suppliers to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The CINCEUR consolidated list will include names in the North Atlantic and Mediterranean areas, including all of Europe, North Africa, and the Middle East. The CINCPAC consolidated list will include names in the Far East and Pacific Ocean areas, excluding the United States and its possessions. The CINCSOUTH consolidated list will include names in Central and South America, excluding possessions. All other overseas commanders shall utilize and contribute to such lists as appropriate to their geographical location or areas in which they award contracts. Lists shall not be established or maintained except as provided above.

209.473-3 Information contained on overseas lists.

The list shall show as a minimum the following information:

(a) Names and addresses of those contractors to whom contracts shall not be awarded and from whom bids or proposals shall not be solicited (Names will be set forth alphabetically with appropriate cross reference where more than one name is involved in a single action or where a parent contractor in one country is known to control subsidiaries, branches, or agencies in the same or other countries.);

(b) Basis or authority for each action;

(c) Extent of restrictions imposed;

(d) Termination date for each debarred listing; and

(e) Originating activity, component, or agency.

209.473-4 Maintenance and distribution of lists.

The lists shall be kept current by issuance of notices of additions or deletions and by periodic reprinting. Copies of the lists shall be distributed to contracting officers as the unified commanders and their component commanders direct. CINCEUR, CINCPAC, and CINCSOUTH shall exchange lists directly. Copies shall also be furnished the Deputy Under Secretary of Defense (Acquisition Management), OUSDRE, the Assistant Secretary of Defense (International Security Affairs), and the authorized representative of the Secretaries.

209.473-5 Basis of addition of contractors to lists.

In addition to the names of offshore contractors which may be included on the lists as falling into the categories outlined in FAR 9.405, the names of contractors abroad shall be included on the list in the following additional categories:

(a) Those who are "designated nationals" under the Foreign Assets Control Regulations;

(b) Those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to have engaged in improper East-West trade activity;

(c) Those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to be ineligible because they do not meet the political or security criteria;

(d) Those found by the United States Diplomatic Mission or a Country Team (consisting of members of the United States Diplomatic Mission in the country or countries in which the contractors are located) to be ineligible because they do not meet the labor-political criteria; and,

(e) Those who for other causes of a serious and compelling nature are so designated by the unified commander.

209.473-6 Treatment to be accorded contractors in debarred or ineligible status.

The provisions of FAR 9.405 shall be complied with, if applicable. In addition,

contracts shall not be awarded to, nor shall bids or proposals be solicited from or furnished to contractors abroad which come within the categories in 209.473–5. With respect to 209.473–5(a), and exception may be made only by the Secretary of the Treasury. With respect to 209.473–5(b), (c), and (d), an exception may be made by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative.

209.473–7 Causes and conditions for which unified commanders may place names on the consolidated list.

CINCEUR, CINCPAC, and CINCSOUTH, or their designated component commanders are authorized to place on the list names of contractors doing business within the areas for which they are responsible, for any of the causes and under the conditions set forth in 209.473–5 and 209.473–6. Overseas commanders or unified commanders overseas other than CINCEUR, CINCPAC, and CINCSOUTH are similarly authorized to place on the list the names of contractors in their command areas and shall promptly notify CINCEUR, CINCPAC, or CINCSOUTH as appropriate, of such action, furnishing the information required by 209.473–3. CINCEUR, CINCPAC, or CINCSOUTH shall add the names to his consolidated list. The listing shall operate to deny contracts and subcontracts (when Government approval is required) to such contractors throughout the Department of Defense. Unified commanders shall be notified of the action based on causes and under conditions set forth in 209.473–5 and 209.473–6 through the "Economic Defense List", transmitted by the Department of Commerce through State Department channels, which contains the names of contractors affected or by direct communication from the Office of the Assistant Secretary of Defense (International Security Affairs).

209.473–8 Liaison with United States diplomatic missions.

The Chief of the United States Diplomatic Mission, or such attache or other officer as he directs, in the country where the contractor concerned is located, shall be notified of actions contemplated under the foregoing paragraphs which may have important political significance. In cases of contemplated action against a branch or subsidiary in one or more countries, the Chief of the United States Diplomatic Mission in each country, including that in which the parent or principal is located, will be notified.

209.474 Use of lists.

(a) Due to the length of the lists, the numerous revisions, and the distances involved, as well as the infrequent contracting by offices with suppliers outside their respective areas, the United States, CINCEUR, CINCPAC, and CINCSOUTH consolidated lists shall not be distributed to contracting officers outside the area covered by the respective lists. However, no contracts shall be awarded by contracting officers to suppliers without ascertaining that the names of the contractors involved do not appear on the consolidated list for the geographical area in which the contractor is located. All lists shall be held for reference in each of the Departments, and in offices designated by CINCEUR, CINCPAC, and CINCSOUTH, and shall be utilized in accordance with procedures established by them.

(b) When a contracting officer becomes aware that a prospective contractor proposes to furnish products of a concern that has been placed on an overseas list in accordance with 209.473–5 (a), (c), or (e), the matter shall be referred to the authorized representatives of the Secretaries concerned.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

210.004 Selecting Specifications or Descriptions for Use.

(b)(3)(i) *General.*

(A) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by FAR 10.004(b) and 210.006(a) and in accordance with 210.004(b)(3) (ii) and (iii). The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. When feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced. If modifications to manufactures' standard products to meet the purchase description requirements are anticipated, a minimum of 30 calendar days shall be allowed between issuance of the solicitation and opening of bids or receipts of proposals, *provided* that periods of less than 30 days may be set in cases of urgency.

(B) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, when interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(a) Complete common generic identification of the item required;

(b) Applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(c) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known).

(C) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the invitation for bids or request for proposals as being that of the particular named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

(ii) *Invitations for bids.*

(A) Except as provided in (b)(3)(ii)(C) below, when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the invitation, for completion by the bidder:

Bidding on:
Manufacturer's Name _____
Brand _____
No. _____

(B) In addition, the clause at 52.210–7000, Brand Name or Equal, shall be included.

(C) When component parts of an end item are described in the invitation for bids by a "brand name or equal" purchase description and the contracting officer determines that application of the clause in (b)(3)(ii)(B) above to such component parts would be impracticable, the requirements of (b)(3)(ii)(A) above shall not apply with respect to such component parts. In such

cases, if the clause is included in the Invitation for Bids for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" does not apply to the following component parts. (List the component parts as to which the clause does not apply.)

In the alternative, if the contracting officer determines that the clause in (b)(3)(ii)(B) above should apply to only certain such component parts, the requirements of (b)(3)(ii)(A) above shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" applies to the following component parts: (List the component parts to which the clause applies.)

(D) When an invitation for bids contains "brand name or equal" purchase descriptions, bidders who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, invitations for bids may require the submission of bid samples in the case of bidders offering "or equal" products.

(iii) *Bid evaluation and award.*

(A) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award when the contracting officer determines in accordance with the terms of the clause at 252.210–7000 that the offered products are equal in all material respects to the products referenced. Bids shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(B) Award documents shall identify, or incorporate by reference an identification of, the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances when the description of the end item contains "brand name or equal" purchase descriptions of component parts or of accessories related to the end item, and the clause at 252.210–7000 was applicable to such component parts or accessories (see 210.004(b)(3)(ii)(C)).

(iv) *Procedure for negotiated procurements.*

(A) The policies and procedures prescribed in 210.004(b)(3) (i) and (iii) for formally advertised procurements shall be generally applicable to negotiated procurements.

(B) The clause at 252.210–7000 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

210.008 Identification and availability of specifications.

(g)(1) A Department of Defense Single Stock Point (DODSSP) has been established at the Naval Publications and Forms Center in Philadelphia for unclassified Federal, Military and other specifications and standards (including commercial) listed in the Department of Defense Index of Specifications and Standards (DODISS) and data item descriptions listed in the Department of Defense Acquisition Management Systems and Data Requirements Control List (AMSDL) DODD 5000.19–L, Volume II.

(2) Purchasing activities may obtain copies of the DODISS and the AMSDL, as well as all unclassified specifications and standards (including commercial) listed in the DODISS, and data item descriptions listed in the AMSDL by sending DD Form 1425 to the DODSSP.

210.011 Solicitation provisions and contract clauses.

(S–70) The contracting officer shall insert the provision at 252.210–7001 in addition to the provision at FAR 52.210–2, Availability of Specifications Listed in the DoD Index of Specifications and Standards (DODISS), in all solicitations containing data item descriptions.

(S–71) Specifications and standards not listed in the DODISS, and plans, drawings, and other pertinent documents (including new or revised Federal or Military specifications and standards not yet listed in DODISS) and data item descriptions not listed in DoD Directive 5000.19–L, Volume II, normally shall be furnished with the solicitation. When this is not feasible because of the bulk of the documents, the limited number of copies available, or for some other good reason, the contracting officer shall insert a provision substantially similar to the provision at 252.210–7002, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD Directive 5000.19–L, Volume II, and Plans, Drawings, and Other Pertinent Documents or the provision at 252.210–7003, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents, as appropriate.

Part 211—Acquisition and Distribution of Commercial Products [No DoD FAR Supplement]

PART 212—CONTRACT DELIVERY OR PERFORMANCE

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 212.1—Delivery or Performance Schedules

212.102 Factors to consider in establishing schedules.

(b)(S–70) *Construction.* When economies to the Government would result by excluding certain specified periods of time from contractor performance in computing the completion date, the solicitation shall contain the clause in 252.212–7000, Exclusion of Periods in Computing Completion Schedules.

212.103 Supplies or services.

(S–70) Solicitations shall generally indicate either a desired term of performance or a completion date. In cases where development of a tangible item by a given date is urgent, solicitation shall indicate such urgency. Generally, solicitations to conduct research exploratory development work will specify a level of effort for a term of performance. However, solicitations calling for a specific item in the category of such exploratory or advanced development will specify a completion date. A contractor may propose an alternate term of performance or completion date without disqualification of his proposal.

212.104 Contract clauses.

(a)(2) The clauses at FAR 52.212–1 and FAR 52.212–2 can also be used in contracts for research, development facilities, time and material and labor hours.

(a)(3) The clauses at FAR 52.212–1 and FAR 52.212–2 can also be used in contracts for research, development facilities, time and material, and labor hours.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

(b) The contracting officer shall insert the clause at FAR 52.212–5 in all construction contracts in excess of $25,000 except cost-plus-fixed-fee

contracts, or those where the contractor cannot control the pace of the work. Use of the liquidated damages clause is optional for contracts of $25,000 or less.

Subpart 212.3—Priorities, Allocations, and Allotments

212.302 General.

(S–70) *DoD Priorities and Allocations Manual.*

Department of Defense implementation of all rules and regulations published by the Bureau of Domestic Commerce (BDC), of the Department of Commerce for which the Department of Defense is delegated administrative responsibility is published in the Priorities and Allocations Manual promulgated by Department of Defense Instruction 4400.1. Authorized deviations to the priorities and allocations rules and regulations is likewise published in the Manual.

Subpart 212.4—Variation in Quantity

212.401 Supply contracts.

(a) The permissible variation in the procurement of small quantities of subsistence may be stated in the Schedule as follows:

(1) Standard pack items purchased on a package, carton, can or other than pound basis: maximum variation for 250 units or less—nearest full shipping container.

(2) Nonstandard pack items other than carcass meats not purchased on a package, carton, or can basis: maximum variation for 250 pounds or less—nearest piece or shipping container.

(3) Carcass meats: maximum variation for 500 pounds or less—nearest piece, quarter, side or carcass.

Subchapter C—Contracting Methods and Contract Types

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 213.1—General

213.104 Procedures.

(a) Installation or activity transportation facilities may be used for delivery from local suppliers to the purchasing installation only after consideration of the following methods:

(1) Supplier delivery.

(2) Common carrier.

(3) Parcel post.

(4) Other mail classes.

(b) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 225.001) is not required unless determined to be in the best interests of the Government.

213.106 Competition and price reasonableness.

(b) *Purchases over $1,000.* Display in a public place of written requests for quotation which provide at least 10 calendar days for submission of quotes and which have an estimated value in excess of $5,000 is encouraged. Display of such requests below that value is permitted.

(c) *Data to support small purchases over $1,000.* If a separate form is used for documentation of price reasonableness, DD Form 1784, Small Purchase Pricing Memorandum, shall be used.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of blanket purchase agreements.

213.203–2 Clauses.

(a) *Form.*

(1) Except as provided in (a)(2) below, blanket purchase agreements shall be prepared and issued on DD Form 1155 (Order for Supplies or Services/Request for Quotations). Either the "General Provisions", DD Form 1155r, or the "Reverse of Order for Supplies or Services/Request for Quotations-Foreign", DD Form 1155r–1, as applicable, shall be used. Other applicable provisions of the blanket purchase agreement shall be set forth on the Standard Form 36 (Continuation Sheet) or on a blank sheet of paper. Clauses authorized in 213.505–2(S–73)(1) which are mandatory for use in purchases over $10,000 shall be included in blanket purchase agreements that permit the placement of individual calls valued at more than $10,000. Additionally, the following provisions may be applicable:

(i) The Contract Work Hours and Safety Standards Act—Overtime Compensation clause at FAR 52.222–4 shall be added unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(ii) When the agreement is for the intended purchase of services covered by the Service Contract Act of 1965, as amended, the clause at FAR 52.222–40 shall be substituted for Clause 15 of the General Provisions and the procedures in FAR 22.1005 complied with, unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(iii) When the agreement is for the intended purchase of supplies, the Walsh-Healey Public Contracts Act clause at FAR 52.222–20 shall be added, unless the agreement limits the aggregate total dollar amounts of orders to be placed thereunder to $10,000; and

(iv) When the agreement is for the intended purchase of supplies, the applicable Equal Opportunity Clause at FAR 52.222–26 shall be added.

(2) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence."

(b) *Numbering.* Enter the Procurement Instrument Identification (PII) number as prescribed in Subpart 204.70.

(c) *Negotiation authority.* The Schedule of each agreement shall be annotated as follows:

(1) The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C. 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), or 10 U.S.C. 2304(a)(17).

(2) If for the purchase of subsistence: The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C. 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), 10 U.S.C. 2304(a)(9) or 10 U.S.C. 2304(a)(17).

(3) This annotation shall not be duplicated on forms used to document individual calls, although the specific authority for the call may be cited therein.

213.204 Purchase under blanket purchase agreements.

(b) A blanket purchase agreement may not be used when a call exceeds $10,000, except that BPA calls up to $25.000 may be placed by Inventory Control Points and calls for subsistence are unlimited as to dollar value. When synopsis is required by Subpart 205.2, purchases of $10,000 and above shall not be issued until 30 days after either publication of the synopsis or issuance of a solicitation, as appropriate.

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

(a) Individual orders do not exceed $25,000, except that for purchases of brand name commissary resale subsistence and commercial type medical supplies for direct shipment overseas, the procedure may be used without dollar limitation.

Subpart 213.4—Imprest Fund

213.402 General.

(a) *Authority.* Commanders of installations and of activities with

purchasing authority are authorized to approve the establishment of imprest funds. The number of imprest funds at an installation shall be kept to a minimum, and one imprest fund should be sufficient in most instances. Exceptions to this general rule may be justified for isolated activities when the location of the established fund is not readily accessible.

(b) *Amount of imprest funds.* The amount of each fund shall be established on the basis of the estimated monthly payments therefrom and the need for replenishment without undue administrative burden, but shall not exceed $5,000. A review shall be made at least quarterly to ensure that the fund is not in excess of actual needs, and necessary adjustments shall be made.

(c) *Imprest fund cashiers.*

(1) Imprest fund cashiers must be appointed by the head of an installation or activity to make authorized cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. An imprest fund cashier should be established at a convenient location on the installation or activity for the purpose of making payments to vendors or carriers, e.g., in "Central Receiving." Disbursing officers and individuals responsible for originating, approving and processing requirements are not eligible for appointment as imprest fund cashiers. Exceptions to this rule may be granted by the major headquarters exercising control over the installation or activity. In no event shall an imprest fund cashier have access or control of more than one imprest fund.

(2) Each appointment and termination of appointment shall be approved by the head of the installation or activity. After approval, administrative orders signed by the appropriate authority shall be issued. Appointment orders shall contain the following:

(i) Name of individual and duty station;

(ii) Identification of disbursing station for which the cashier will act, including the accounting number assigned thereto;

(iii) Specific duties to be performed;

(iv) Effective date; and

(v) Amount and location of fund.

An alternate cashier may be appointed (see (c)(3) below) on the same order as the principal. Two copies of the orders shall be furnished to cashiers, and one copy each to the disbursing office and the installation or activity purchasing office.

(3) An alternate imprest fund cashier may be appointed to provide service during the absence of the principal cashier. Appointment requirements for principal cashiers shall apply to alternate cashiers. In planned absences of the principal cashier, cash may be advanced by the principal to the alternate in any amount up to the limit of the fund. The principal shall obtain a signed cash receipt from the alternate. Upon resumption of his duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers and residual cash. In the unforeseen absence of the principal cashier, funds may be advanced to the alternate in the normal manner by the disbursing officer. These funds shall be in addition to the amount currently advanced to the principal cashier under the established fund, but shall not exceed the amount of the fund. Upon return of the principal cashier, the alternate shall return paid receipts, subvouchers, and residual cash, to the disbursing officer.

213.404 Conditions for use.

(a) Imprest funds may also be used for small purchase when:

(1) The supplies or services are available for delivery within 60 days, whether at the supplier's place of business or at destination.

(2) The purchase does not require detailed technical specifications or technical inspection.

(b) Imprest funds may also be used for payment of:

(1) Charges for local delivery, parcel post (including c.o.d. postal charges) and line haul or inter-city transportation charges of $75.00 or less for supplies ordered for payment from imprest funds when the vendor is requested to arrange for delivery.

(2) C.O.D. charges for supplies ordered for payment from imprest funds.

(3) Civilian volunteers for participation in approved medical research projects.

(c) The conditions for use specified in (a) and (b) above do not preclude the use of imprest funds for other expenditures not related to small purchases (e.g., travel advances, travel expenses, transportation charges, and purchases of postage stamps and transportation tokens or passes), when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for:

(1) Payments of salaries and wages.

(2) Advances, other than those authorized in 213.402.

(3) Cashing of checks or other negotiable instruments.

213.405 Procedures.

(a) *Receipt of material.*

(1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales document "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. A supplier's sales document, a receipted Standard Form 1165 (Receipt for Cash—Subvoucher), DD Form 1155 (Order for Supplies or Services/Request for Quotations), or DD Form 1348–1 (DoD Single Line Item Release/Receipt Document) may be used to record the receipt of purchases made from the imprest fund and shall be processed in the same manner. The minimum information specified in 213.404(b) above shall be included in the document used to record the receipt of purchases.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advance arrangement may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certification of receipt and acceptance of material shall be obtained on one of the documents as indicated in (a)(1) above. Receipt for cash payment (see (e) below) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangement for pick up of material is not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(b) *Advance of funds.* Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165, or an equivalent receipt form. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall "void" the interim receipt for cash. Cash so advanced should be accounted for daily, but under unusual circumstances, cash may be advanced for longer periods.

(c) *Certification of cash payment.* The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment

shall be stamped with a certification containing the following information:

(1) Statement that cash payment was received in full.

(2) Amount paid.

(3) Date of payment.

(4) Signature and title of supplier or his agent receiving the cash payment.

Alterations or corrections to documents tendered for payment shall be initialed by the person making the change. Changes in the amount paid shall be initialed by the individual receiving payment.

(d) *Responsibilities of imprest fund cashier.*

(1) Pending receipt of material, the imprest fund cashier shall keep a file of purchase request documents covering imprest fund purchases. Prior to payment, or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for purchases of $15 or less, the imprest fund cashier shall complete the cash receipt document and have the person receiving the fund sign this document. Receipt for U.S. parcel post c.o.d. charges should be obtained on Standrd Form 1165. When receipt cannot be obtained for c.o.d. purchases, imprest fund cashiers located in foreign countries are authorized to certify on the receipt document, "Delivered by (name of post office or carrier) no receipt given." The c.o.d. label shall be removed from the parcel and affixed to the receipt document in support of the reimbursement voucher. Imprest fund cashiers at any location may accept a signed c.o.d. receipt to support the subvoucher if the carrier refuses to sign a Government form.

(2) After completion of settlement transaction, each subvoucher shall be numbered consecutively and this number placed on the original of the paid receipt documents. These subvouchers will support the cashier's claim for reimbursement of the imprest fund. The imprest fund cashier will not request duplicate receipt documents nor retain such documents if provided.

(3) When total charges stated on the sales document are paid, without deduction of discounts offered and earned, or without correction of minor billing errors, action will be taken to obtain a refund from the supplier. Collection action may be waived for refunds of one dollar or less.

(e) *Payments.*

(1) *C.O.D.* Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or his agent and obtain the certification of cash payment as set forth in 213.405(d)(1).

(2) *Receipt from common carrier or post office.* When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office of common carrier. Such receipt will be supported by copies of the applicable sales documents, if available.

(3) *Periodic payments.* When a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by FAR 13.404.

(4) *Failure to Ship C.O.D.* When material is ordered c.o.d. but is shipped by the supplier subject to payment by check, Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal), may be used to make payment. Under these circumstances, the receiver shall prepare the necessary certification of receipt and forward the receipted document through the imprest fund cashier, for attachment of the supporting documents which authorized the shipment and submission to the disbursing officer for payment.

(f) *Reimbursement of imprest funds.*

(1) The imprest fund shall be reimbursed by use of Standard Form 1129 (Reimbursement Voucher) supported by cashier's subvouchers. The imprest fund cashier shall prepare and submit Standard Form 1129 in triplicate to the disbursing officer as freqently as necessary, but not less often than monthly. At the close of the fiscal year, a reimbursement voucher covering all remaining subvouchers through 30 September shall be submitted before the closing of the allotment accounts for the month. When required, subvouchers shall be summarized by account to complete the accounting classification block of Standard Form 1129 and submitted to the disbursing officer for reimbursement of the imprest fund. One copy of Standard Form 1129 shall be retained by the imprest fund cashier pending the return of the "paid" copy of the form with the reimbursement checks or currency in the amounts requested by the cashier. When the imprest fund is reimbursed by mail, or when long delays in the reimbursement are encountered, the imprest fund cashier may retain copies of subvouchers until reimbursement is accomplished. When copies are retained, they shall be placed in a sealed envelope identified to the reimbursement voucher involved. When reimbursement is received, the sealed envelope will be presented to the official who signed the Administrative certificate on the Standard Form 1129 for destruction.

(2) When a supplier refunds cash prior to the submission of Standard Form 1129 covering such payment, the imprest fund cashier shall accept the refund, return the money to the imprest fund, and enter the amount of the refund on the original of the supplier's receipt. When the refund is made subsequent to the submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount of the refund on the retained copy of the reimbursement voucher, promptly submit the refund to the disbursing officer, and obtain a receipt.

(g) *Accounting.* Recordkeeping for the imprest fund shall be as simple as possible consistent with the maintenance of adequate controls. A file of supplier's receipts for amounts paid and not yet vouchered for reimbursement, and copies of paid reimbursement vouchers ordinarily will suffice for the record of the imprest fund cashier.

(h) *Review.* The imprest fund cashier shall be required to account for the established fund at any time, by cash on hand, paid supplier's receipts, unpaid reimbursement vouchers, and interim receipts for cash. Unannounced inspections, including cash counts are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the Comptroller or Chief Accounting Officer of the installation, where such positions exist, but in any case by individuals, excluding the disbursing officer advancing the funds and subordinates of the imprest fund cashier.

Subpart 213.5—Purchase Orders

213.502 Unpriced purchase orders.

(c) Unpriced purchase orders may be issued by using DD Form 1155.

213.503 Obtaining contractor acceptance and modifying purchase orders.

(b) Standard Form 30 shall be used to modify the purchase order for administrative or other changes.

(1) Modifications making administrative changes such as the

correction of typographical errors, changes in paying office, and changes in accounting and appropriation data do not require contractor acceptance. In addition, the issuance of no cost Amended Shipping Instructions (ASIs) which modify unilateral purchase orders and which have been concurred in by the contractor by telephone or letter do not require contractor acceptance by signature on the Standard Form 30.

(2) To otherwise modify a purchase order prior to commencement of performance and within the scope of the original order, a unilateral modification may be issued on a Standard Form 30. The modification may not be unilaterally issued unless:

(i) The modification reflects the contractor's written or oral confirmation of the proposed revision(s). Unilateral modifications may include withdrawal of all or part of the original purchase order.

(ii) Block 11a of the Standard Form 30 is annotated to reflect the issuance of an authorized unilateral modification.

(3) To otherwise modify the purchase order, and if not previously included in the purchase order, the Additional General Provisions (Clauses 16–19 of DD Form 1155r) shall be incorporated by reference in the Standard Form 30, Amendment of Solicitation/Modification of Contract, and the contractor's acceptance obtained by signature on the Standard Form 30. Subsequent changes pursuant to the Changes clause shall not require contractor acceptance. However, other modifications outside the scope of the Changes clause, such as the addition of the Government Property clause, shall require contractor acceptance by signature on the Standard Form 30.

213.505 Purchase order and related forms.

213.505–2 Agency order forms in lieu of optional Forms 347 and 348.

(S–70) Negotiated purchases of supplies, nonpersonal services and construction not in excess of $25,000 may be effected by using DD Form 1155, Order for Supplies or Services/Request for Quotations, and its ancillary forms. Standard Form 44, Purchase Order-Invoice-Voucher, may also be used for material and non personal services purchases not in excess of $2,500.

(S–71) The DD Form 1155 provides for the arrangement of information in fixed locations, including sequential numbering of all blocks, and within certain of these blocks, a code box for inserting alpha-numeric codes. The uniform arrangement of data and the provision for codes facilitates manual and automated processing of contractual documents and interchange of information between purchasing offices and contract administration activities.

(S–72) *Forms.*

The following forms may be used to issue purchase orders:

(1) DD Form 1155, Order for Supplies or Services/Request for Quotations, which, when used with DD Form 1155r in accordance with 213.505–2(S–73)(1), or with DD Form 1115r–1 in accordance with 213.505–2(S–73)(2), as appropriate, provides in one document—

(i) A purchase order, a blanket purchase agreement, a delivery order under a contract or delivery order on Government agencies outside the Department of Defense;

(ii) A receiving and inspection report;

(iii) A property voucher;

(iv) A public voucher; and

(v) A document for acceptance by the supplier.

(2) Standard Form 36, Continuation Sheet, provides additional space, or a blank sheet of paper may be used.

(3) DD Form 1155c–1, Commissary Continuation Sheet, (for use on an optional basis), provides columns suited for commissary procurements.

(4) Standard Form 30, Amendment of Solicitation/Modification of Contract, shall be used in all modifications to DD Form 1155 (see 213.503).

(5) The foregoing forms may be used as snap-out manifold forms, as cut sheets, as reproducible masters, or automatically printed. In addition, DD Form 1155r or DD Form 1155r–1 may be printed on the reverse of DD Form 1155.

(S–73) *Conditions for use.*

(1) *Use as a Purchase Order of Not More Than $25,000 in the United States, its Possessions, and Puerto Rico.* The *United States,* when used in a geographical sense, means the States and the District of Columbia. Possessions, in a geographical sense, include the Virgin Islands, the Swan Islands, Guantanamo Bay, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the Guano Islands, but do not include Puerto Rico, leased bases, or trust territories. Definitions of the *United States,* in a contractual sense, vary according to individual laws, orders or regulations. DD Form 1155 is authorized for negotiated purchases of not more than $25,000 within the United States, its possessions, and Puerto Rico, *provided,*

(i) The procurement is unclassified, except that DD Form 1155 may be used for classified procurement if:

(A) The Security Requirements clause in FAR 52.204–2 is inserted in the schedule.

(B) DD Form 254, Contract Security Classification Specification, (see FAR 4.403(c) and FAR 53.204–1) is incorporated in the purchase order.

(C) The contractor's acceptance of the purchase order is obtained by use of DD Form 1155r at the time of issuance of the order.

(ii) No clause covering the subject matter of any clause set forth in this supplement, other than clauses on DD Form 1155r and clauses referred to in this paragraph (213.505–2(S–73)(a)(1)) and in FAR 13.502, Unpriced Purchase Order, FAR 13.503, Obtaining Contractor Acceptance and Modifying the Purchase Order, FAR 46.301, Contractor Inspection Requirements, FAR 46.302, Standard Inspection Requirements, and FAR 46.504, Certificate of Conformance, is to be used.

(iii) When the order specifies the delivery of data, one of the clauses in 52.227, Rights in Technical Data and Computer Software, shall be used as appropriate in accordance with the instructions contained in 227.4.

(iv) When required by FAR 25.7, the clause, Certain Communist Areas, in FAR 52.225–11 shall be used.

(v) When required by FAR 12.4, the clause in FAR 52.212–9, Variation in Quantity, shall be used.

(vi) When required by FAR 32.111 the clause in 52.232.7000, Invoices, shall be used.

(vii) When the order is assigned to other than the purchasing office for adminstration, or if otherwise desired by the purchasing office, the clause, Material Inspection and Receiving Report in 52.246–7000, shall be used.

(viii) When Government property having an acquisition cost in excess of $50,000 is to be furnished (for use in performance of an order or for repair), the appropriate Government Property clause or clauses in FAR 52.245–1, 2, 3, or 19 shall be inserted in the Schedule. When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the order or for repair, the Government-Furnished Property (Short Form) clause in FAR 52.245–4 shall be inserted in the Schedule, *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on the DD Form 1155r.

(ix) When the order is for Military Assistance Program items, the United States Products Certificate (Military Assistance Program), at 252.225–7008, and the clause, United States Products (Military Assistance Program), in 252.225–7009, shall be inserted in the

Schedule, and Clause 6, Foreign Supplies, of the General Provisions shall be deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(x) [Reserved]

(xi) The clauses, New Material, (FAR 52.210–5) and Used, Reconditioned, Residual Inventory and Former Government Surplus Property (FAR 52.210–6 and 7), may be used in accordance with the provisions of FAR 10.010 and FAR 10.011.

(xii) When the order is for mortuary services;

(A) The following clauses shall be inserted in the Schedule:

a. The Specifications clause in 252.237–7104;

b. The Delivery and Performance clause in 252.237–7107;

c. The Subcontracting clause in 252.237–7108;

d. The Professional Requirements clause in 252.237–7111;

e. The Facility Requirements clause in 252.237–7112;

f. The Preparation History clause in 252.237–7113;

g. The Inspection of Services clause in FAR 52.246–4.

(B) The Additional Default Provision clause in 252.237–7109 shall be inserted in the Schedule, with the following substitutions for paragraph (a) and the first sentence of paragraph (b) of that clause:

"(*1*) This clause supplements the "Termination for Default" clause of this contract.

(*2*) This contract may be terminated for default by written notice if during the performance of this contract:"

(C) The Changes clause in FAR 52.243–1 shall be substituted for paragraph 16 of the Additional General Provisions on DD Form 1155r.

(xiii) [Reserved]

(xiv) When required by 225.70, the clauses 252.225–7005, Preference for Certain Domestic Commodities, 252.225.7004(a), Preference for Domestic Specialty Metals (Major Programs), and 252–225–7004(b), Preference for Domestic Specialty Metals, shall be added.

(xv) When required by FAR Subpart 22.10, the clause, Service Contract Act of 1965, at FAR 52.222–41 for service contracts in excess of $2,500, or FAR 52.222–40 for service contracts not in excess of $2,500, shall be added.

(xvi) When required by FAR 47.305–6, the clause, Clearance and Documentation Requirements-Shipments to DoD Air or Water Terminal Transportation Points at FAR 52.247–52 shall be added.

(xvii) In accordance with FAR 46.805, the clause in FAR 52.246–23, Limitation of Liability, or FAR 52.246–25, Limitation of Liability—Services, may be inserted.

(xviii) When the order requires the use of a Government bill of lading or mailing indicia, the clause, FOB Origin-Government Bills of Lading or Prepaid Postage, at FAR 52.242–10 or FOB Origin-Government Bills of Lading or Indicia Mail, at FAR 52.242–11, shall be added.

(xix) [Reserved]

(xx) [Reserved]

(xxi) At the contracting officer's discretion, the clause, Duty-Free Entry—Qualifying Country End Products and Supplies, at 252.225–7003 may be used (see 225.605(S–72)).

(xxii) When required by FAR 22.305, the Contract Work Hours and Safety Standards Act—Overtime Compensation—General, clause in FAR 52.222–4 shall be added.

(xxiii) [Reserved]

(xxiv) [Reserved]

(xxv) When required by FAR 19.508(c), the Notice of Total Small Business Set-Aside clause in FAR 52.219–6 shall be added.

(xxvi) The changes authorized by Appendix U, para. 16–402.2 shall be incorporated when construction procedures are negotiated in accordance with FAR 36.401(c).

(xxvii) When required by FAR 47.305–4, the clause, FOB Destination, in FAR 52.247–34, and the clause, FOB Destination—Evidence of Shipments, in FAR 52.247–48, shall be added.

(xxviii) When required by 208.7303, the clause, Required Sources for Miniature and Instrument Ball Bearings, in 252.208–7000 shall be added.

(xxix) When required by 208.7403, the clause, Required Sources for Precision Components for Mechanical Time Devices, in 252.208–7001 shall be added.

(xxx) In accordance with 225.7312, all orders for the purchase of goods or services for Military Assistance Program (MAP), International Military Education Training (IMET) and Foreign Military Sales (FMS) shall include the clause, Exclusionary Policies and Practices of Foreign Governments, in 252.225–7013.

(xxxi) As required by FAR 22.1408, insert the clause, Affirmative Action for Handicapped Workers, in FAR 52.222–36.

(xxxii) If the order is to involve materials of a hazardous nature, include the clause, Hazardous Material Identification and Material Safety Data, in FAR 52.223–3, as prescribed in FAR 23.303.

(xxxiii) When the order involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders, the clause in 252.213–7001, Returnable Gas Cylinders, shall be added. A similar clause may also be used in orders for other supplies involving reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers, when the contractor is to retain title to the containers.

(xxxiv) In orders, except those exempted by FAR 22.807(a) or (b)(2) through (4), insert the Equal Opportunity clause in FAR 52.222–26.

(xxxv) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case indentifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA.

(xxxvi) The clause, Delivery of Excess Quantities of $100 or Less, in FAR 52.212–10, may be used in accordance with instructions at FAR 12.403(b).

(xxxvii) For orders requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the U.S./Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(xxxviii) The Walsh-Healey Public Contracts Act clause in FAR 52.222–20 shall be used in each order for supplies that exceeds $10,000 and is otherwise subject to the act, in accordance with FAR 22.603.

(xxxix) Unless excepted under FAR 22.1302 or FAR 22.1308, the clause in FAR 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans, shall be in all orders of $10,000 or more.

(xl) The clause, Utilization of Small Business and Small Disadvantaged Business Concerns, in FAR 52.219–8 shall be in all orders exceeding $10,000 except those which will be performed entirely outside the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or for orders which are for services personal in nature.

(xli) [Reserved]

(xlii) The clause Affirmative Action Compliance Requirements for Construction, in FAR 52.222–27 shall be inserted in orders exceeding $10,000 in accordance with FAR 22.810, unless excepted under FAR 22.807.

(xliii) The Equal Opportunity clause in FAR 52.222–26 shall be included in architect-engineering contracts and is applicable to contractors who have been or are awarded Federal contracts and/

or subcontracts which have an aggregate value in excess of $10,000. The clause is also applicable unless exempted under the rules, regulations and relevant orders of the Secretary of Labor (41 CFR, Ch. 60).

(xliv) Unless exempted by FAR 22.810, the clause, Certification of Nonsegregated Facilities, FAR 52.222–21 shall be inserted in orders exceeding $10,000 and is applicable to orders, subcontracts and agreements with applicants who are themselves performing Federally assisted construction contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.

(xlv) In accordance with FAR 22.810, the clause, Previous Contracts and Compliance Reports, in FAR 52.222–22 shall be inserted in all contracts that exceed $10,000.

(xlvi) Except for construction orders, the clause, Affirmative Action Compliance, in FAR 52.222–25 shall be inserted in all contracts that include the Equal Opportunity clause, in accordance with FAR 22.810.

(xlvii) Unless exempted by FAR 22.807, the clause, Notification of Visa Denial, FAR 52.222–29, shall be included in all orders to be performed in or on behalf of a foreign country.

(xlviii) In accordance with FAR 22.810, insert the clause, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, in FAR 52.222–23, in applicable solicitations involving construction in excess of $10,000. Follow the provision's parenthetical instructions for inserting the applicable construction trade(s), percentage goals, and geographical description of the covered area.

(xlix) In accordance with FAR 19.508(a), insert the clause, Notice of Small Business-Small Purchase Set-Aside, in FAR 52.219–4, in all requests for quotations and purchase orders of $10,000 or less, which are subject to small purchase procedures, unless excepted under FAR 13.105.

(2) *Use as a purchase order of not more than $25,000 outside the United States, its possessions, and Puerto Rico.* DD Form 1155 and 1155r–1, with executed contractor's acceptance when required, are authorized for negotiated purchases of not more than $25,000 when such purchases are for supplies and services procured and used outside the United States, its possessions, and Puerto Rico, *provided:*

(i) The procurement is unclassified.

(ii) No clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth in DD Form 1155r–1, are to be used, except that—

(A) The Disputes clause at FAR 52.233–1 is inserted in the Schedule unless the contract is exempt pursuant to FAR 33.003.

(B) When the order is translated into another language, the Schedule shall contain the provision in 252.213–7000.

(C) When Government property having acquisition cost in excess of $50,000 is to be furnished (for use in performance of an order or for repair), the Government Property clause in FAR 52.245–2 shall be inserted in the Schedule in accordance with instruction in FAR 45.106. When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the order or for repair, the Government-Furnished Property (Short Form) clause in FAR 52.245–4 shall be inserted in the Schedule in accordance with instructions in that paragraph, *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on DD Form 1155r–1.

(D) A commercial warranty clause may be used in accordance with FAR 46.706.

(E) When required by 225.70 one of the clauses in 252.227–7005, Preference for Certain Domestic Commodities; or 252.227–7004(a), Preference for Domestic Specialty Metals (Major Programs); or 252.227–7004(b), Preference for Domestic Specialty Metals, shall be added. In purchases in excess of $2,500, the clause, Certain Communist Areas, in FAR 52.225–11 shall be inserted in the Schedule when acceptance of supplies, services, or construction is to take place outside the United States, its possessions or Puerto Rico. FAR 25.603 provides that supplies from the Communist areas of North Korea, Vietnam or Cuba may be acquired only in unusual situations; for example, in an emergency or when supplies are not available from any other source and a substitute supply is not acceptable. In such situations, the contracting officer shall determine for small purchases that there is need for an exception in accordance with Departmental procedures.

(F) The clause, Delivery of Excess Quantities of $100 or Less, in FAR 52.212–10 may be used in accordance with instructions at FAR 12.403(b).

(F) Unless exempted by FAR 22.807, the clause, Notification of Visa Denial, at FAR 52.222–29, shall be included in all orders to be performed in or on behalf of a foreign country.

(H) In accordance with FAR 25.302, the statement in FAR 52.225–6 or 7 to provide reporting of the balance of payments consequences of Defense procurement, will be placed on the face of applicable purchase orders.

(I) The contracting officer may delete the Taxes clause from the DD Form 1155r–1 in purchases under $1,000 if he determines that the administrative burden of securing relief from such taxes would be out of proportion to the relief obtained, *provided,* that such clause shall be included in all orders in support of NATO infrastructure programs involving the expenditures of funds under Section 503(b) of the Foreign Military Sales Act of 1968. (see FAR 29.402 on use of foreign taxes clauses).

213.505–70 Instructions for entries on DD Form 1155 and Standard Form 36.

(a) The instructions herein are mandatory for the preparation of orders if administration is assigned: (1) to DCAS, or (2) to a non-DCAS office listed in the DoD Directory of Contract Administration Services Components and the contractor is located in the continental United States or Canada.

(b) The organizational entity codes (address codes) referenced throughout Part 13 are as follows:

(1) *Codes published in DoD Activity Address Directory (DODAAD), DoD 4000.25D.* These codes will be used for Government entities in Blocks 6, 7, 9, 14, 15, and 19. However, the "Ship To" (Block 14) and "Ship To"/"Mark For" (Block 19) (viii) and (xi)) shall use a DODAAD code for non-Government entities for shipments to satisfy MILSTRIP requisitions for that non-Government entity. Foreign Military Sales (FMS) and Military Assistance Program (MAP), "Ship To"/"Mark For" (Block 14) shall use a Military Assistance Program Address Directory (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.38–D.

(2) *Codes published in Handbook of Non-Government Organizations for MILSCAP H8–1/H8–2 Handbooks.* These codes will be used for non-Government entities in Blocks 9, 14, and 19, except for the condition as noted in (b)(1) above.

(c) The right hand columns designate by alpha code the activities responsible for completing certain blocks on the DD Form 1155. The legend is "C" for contractor, "P" for purchasing office, and "—" for not applicable.

TITLE AND INSTRUCTIONS FOR ENTRIES

Block No.		Applicable to—		
		RFQ	PO	DO
1	*Contract/Purchase Order Number*—Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in Subpart 204.70.	—	P	P
2	*Delivery Order Number*—Enter PII number for delivery orders as prescribed in Subpart 204.70.	—	—	P
3	*Date of Order*—Enter the date of the order, i.e., 2 position numeric year, 3 position alpha month and 2 position numeric day. For example: 71 Sep 30.	—	P	P
4	*Requisition/Purchase Request Number*—Enter the applicable number authorizing the purchase. When the number differs by line item it will be listed in the schedule and this block annotated "see schedule".	P	P	P
5	*Certified for National Defense Under DMS Reg 1*—Enter the appropriate claimant program number as defined in Volume I, Section III of the DoD Procurement Coding Manual.	—	P	P
6	*Issued By*—Insert the name and address of the issuing office. In the Code Block, insert the appropriate DODAAD code for the issuing office. Directly below the address insert: Buyer/Symbol, followed by the appropriate buyer's name and routing symbol. Directly below the Buyer/Symbol insert: Phone: followed by the buyer's phone number and extension.	P	P	P
7	*Administered by*—Enter the name and address of the DCAS or military activity responsible for administration service. The "DoD Directory of Contract Administration Services Components" No. 4105.59H contains the complete listing of activities performing contract administration services. On purchase orders retained by purchasing offices for administration this block may be marked "see block 6." Enter in the code block the organizational entity code (address code) of the administration services office. In the lower right or left-hand corner, insert Criticality Designator code (see FAR 42.1105).	—	P	P
8	*Delivery FOB*—Indicate the FOB point by checking applicable box	P	P	P
9	*Contractor/Quoter*—(i) Enter the full business name and address of the contractor or quoter. Enter in the first code block the organizational entity code (address code) of the contractor. (ii) If it is known that all the work covered by the order is to be performed at an address different than the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the appropriate address code for that facility, i.e., H8–1/H8–2 code for a nongovernment entity or DODAAD code for a government entity (DODAAD codes shall be used only to indicate "performed at" locations for orders specifying services at a government location.) If it is known that multiple facilities are involved, i.e., when the work covered by the order is performed both at the contractor's address and one or more other facilities, or when all the work is to be performed at two or more facilities other than the contractor's address), indicate the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Standard Form 36 Continuation Sheet and mark the facility code block with "See Schedule." For orders specifying services which will be performed at locations other than the contractor's address, the locations shall be indicated as required above.	P	P	P
10	*Delivery to FOB Point by*—If a single date of delivery is applicable to the entire order it shall be entered in this block. Multiple delivery dates will be listed in the schedule and this block annotated "See Schedule".	P	P	P
11	*Small Business*—Check if the contractor/quoter is a small business concern as defined in FAR 19.	C	P	P
	Minority Business—Check if the contractor/quoter is a minority business enterprise as defined in FAR 52.219–2.	C	P	P
12	*Discount Terms*—Enter the discount for prompt payment in terms of percentages and corresponding days allowed. The percentage will be expressed in whole numbers and decimals. For example: 3.25%—10 days; 0.50%—20 days.	C	P	—
13	*Mail Invoices to*—Enter a reference to the block number containing the appropriate address to which invoices are to be mailed. When not contained in blocks 6, 7, 14 or 15 insert in block 18 "See Schedule".	—	P	P
14	*Ship to*—If a single ship to point is applicable to the entire order the name and address of that point may be entered in this block. Multiple ship to points will be shown in the schedule and this block annotated "See Schedule".	P	P	P
15	*Payment Will be Made by*—Enter the name and address of the activity making payment. For purchase orders assigned to DCAS see the "DoD Directory of Contract Administration Components No. 4105.59H for the DCAS Regional Office authorized to make payment. Enter in code block, the organizational entity code (address code) of the paying activity	—	P	P
16	*Type of Order*—Indicate by checking the appropriate box whether order is a purchase or delivery order. If a purchase order, further entries are made as follows: (i) Indentify the type of quotation, i.e., oral, letter or TWX on which the order is based. (ii) When the Fast Payment procedure is applicable, indicate by checking the appropriate box. (iii) Check the box when acceptance of the purchase order by the Contractor is desired and indicate the number of copies of the order to be returned to the issuing office.	—	P	P
17	*Accounting and Appropriation Data*—Enter the accounting classification applicable to the order. Enter the Accounting Classification Reference Number(s) in accordance with 4.71.	—	P	P
18	*Item Number*—Enter an item number for each item of supply or service separately identified in accordance with Subpart 204.71.	P	P	P
19	*Schedule of Supplies/Services*—The Schedule contains several elements of data. In order to accomplish standardization objectives, it will be necessary to treat and enter separately certain elements of data as indicated below. Though the order and arrangement of data in the schedule is only mandatory for purchase and delivery orders assigned to DCAS or Plant Cognizance Representatives for administration, it is encouraged, in order to establish uniformity, that this format be adopted for all orders.	P	P	P
	(i) *National Stock Number (NSN)*—Total Item Quantity for the line or subline item number followed by the appropriate National Stock Number or the word "non" if an NSN has not been assigned. On the same line and adjacent to NSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue unit price, and dollar amount of the stock number or item cited (see entries for blocks 20, 21, 22 and 23).	P	P	P
	(ii) *Item Identification*—Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR 10. If multiple accounting classifications apply to the contract, enter the Accounting Classification Reference Number in accordance with Subpart 204.71.	P	P	P

TITLE AND INSTRUCTIONS FOR ENTRIES—Continued

	Block No.	Applicable to—		
		RFQ	FO	DO
	(iii) *Quantity Variance*—Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.	P	P	P
	(iv) *Inspection/Acceptance*—Enter the point at which inspection/acceptance will take place...	P	P	P
	(v) *Preservation and Packaging*—Enter the preservation and packaging requirements for the item described. These requirements may be expressed in terms of MIL-STD-726 codes or reference to applicable specifications. 1st Example: MIL STD 726 PRES/PACK: B/10/1/00/2/10/c/00/21/3/22/4/3/2/00. 2nd Example: Preservation and packaging shall be in accordance with instructions below DGSP P-54 in lieu of level "c" requirement.	P	P	P
	(vi) *Packing*—When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements. 1st Example: Packing. Preserved and packaged items shall be packed Level (A, B, or C depending on destination) in accordance with MIL-STD-794; 2nd Example: Packing. Preserved and packaged items shall be packed level (A, B, or C) in accordance with DESC. Manual 4100./.	P	P	P
	(vii) *Unitization*—When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds. Example 1: Items packed for shipment shall be unitized in accordance with MIL-STD-147. Example 2: Nonperishable subsistence, packed as specified shall be unitized in accordance with MIL-L-3507BC Type (I or II) Class (A through F for Type I, A through D for Type II.) Supplemental waterproofing requirements of Appendix II (are/are not) applicable.	P	P	P
	(viii) *Ship to*—Enter the organizational entity code (address code) of the ship to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the Accounting Classification Reference Number in accordance with Subpart 204.71. When several items are to be shipped to the same point, the code will be listed; but, it will not be necessary to repeat the clear text address.	P	P	P
	(ix) *Delivery Date*—When multiple delivery dates apply, enter the required date of delivery on the same line with Ship to Code.	P	P	P
	(x) *Mark For*—Enter the organizational code (address code) on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.	P	P	P
20	*Quantity Ordered/Accepted*—Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship to point within the line item.	P	P	P
21	*Unit*—Enter the unit of measure applicable to the line items described	P	P	P
22	*Unit Price*—Enter the unit price applicable to the line item described	—	P	P
23	*Amount*—Enter the extended dollar amount (quantity x unit price) for each line item	—	P	P
24	*Contracting/Ordering Officer*—The contracting/ordering officer's signature will be entered in this block.	—	P	P
25	*Total Amount*—Enter the total dollar amount for all line items on the order	—	P	P
26-42	These blocks are utilized in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.			

213.505-71 Use of DD Form 1155 as a public voucher.

DD Form 1155 is authorized for use as a public voucher:

(a) Not exceeding $25,000 when the form is used as a purchase order,

(b) Without monetary limitation when the form is used as a delivery order, and

(c) Without monetary limitation as the basis for payment of an invoice against blanket purchase agreements, or basic ordering agreements with a firm price has been established.

PART 214—FORMAL ADVERTISING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 214.2—Solicitation of Bids

214.201 Preparation of invitations for bids.

Reserved, pending determination to what extent guidance may be necessary.

214.202 General rules for solicitation of bids.

214.202-1 Bidding time.

(a) *Policy.* For potential sources in participating countries, see 225.7403(a); for sources in FMS/offset arrangement countries, see 225.7310(c)(2); and for sources in defense cooperation countries, see 225.7502.

214.202-5 Descriptive literature.

(b) *Policy.* It may be appropriate to require descriptive literature in the acquisition of highly technical or specialized equipment, where considerations such as design or style are important in determining acceptability of the product.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, the requirements of FAR 14.202-5 are met by inserting in the invitation for bids the brand names provision at 252.210-7000.

214.205 Solicitation mailing lists.

214.205-1 Establishment of lists.

(a) For special instructions relative to the establishment of a Research and Development Bidders Mailing List, see Supplement No. 4, "Procedures for Submission of Applications to be Placed on Research and Development Bidders Mailing Lists."

214.205-5 Release of solicitation mailing lists.

(a) When it is necessary to dispatch identical information by means of electrical transmission to prospective bidders or offerors, the electrically transmitted message, when released for communications handling, shall be marked "BOOK MESSAGE—TRANSMIT A SINGLE ADDRESS MESSAGE" to preclude prospective bidders or offerors knowing the names of others solicited. However, information as to sources solicited may be made available to other Government agencies, at their specific request and upon the condition that the list will not be made available for inspection prior to award to anyone outside the Government.

214.207 Pre-bid conference.

A pre-bid conference may be used only when approved at a level higher than the contracting officer. All interested parties, including representatives from qualifying country sources, shall be invited to the pre-bid conference. (See 225.7403(a), 225.7310(c)(2), and 225.7502.)

214.208 Amendment of invitation for bids.

(a) Pen and ink entries, deletions, or alterations shall not be made in an invitation for bids after it has been reproduced for issue to prospective bidders. Any changes required to the IFB shall be made by standard Form 30.

214.270 Master solicitation.

A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DoD. The document is prepositioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(a) The master solicitation shall not be used unless repetitive purchases are anticipated.

(b) The master solicitation shall not include nonessential or infrequently used provisions.

(c) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of FAR or DoD FAR Supplement clauses. The master solicitation may include FAR Part 52 clauses and DoD FAR Supplement clauses.

(d) Copies of a master solicitation shall be made available upon request.

(e) Each individual solicitation shall reference the date of the current master solicitation and any changes thereto. Significant revisions or a significant number of revisions should result in a reissuance of the entire master solicitation.

(f) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(g) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result. Approval by the Head of the Contracting Activity is required.

Subpart 214.4—Opening of Bids and Award of Contract

214.406 Mistakes in bids.

214.406–3 Other mistakes disclosed before award.

(e) Authority for making a determination under FAR 14.406–3(a), (b), (c), and (d) may be delegated, without power of redelegation, as follows:

(1) Department of the Army: To the Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research, Development and Acquisition); General Counsel of the U.S. Army Materiel Development and Readiness Command; General Counsel of the Office of the Chief of Engineers; Chief, Contract law Division, Office of The Judge Advocate General, Headquarters, Department of the Army.

(2) Department of the Navy: To the Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; the Deputy Commander Purchasing, Naval Supply Systems Command Headquarters.

(3) Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(4) Defense Logistics Agency: The Counsel and Assistant Counsel.

(5) National Security Agency: Director of Procurement.

(6) Defense Communications Agency: The Counsel.

(7) Defense Nuclear Agency: The Counsel.

(8) Defense Mapping Agency: The Counsel.

(g)(3)(iv) Supporting evidence (such as work sheets, or other data used in preparing the bid) of the existence of the mistake and manner in which it occurred, and supporting evidence of the bid actually intended, shall be submitted with the bidder's written request.

(h) A signed copy of the administrative determination authorizing withdrawal or modification of the bid made in accordance with FAR 14.406–3 shall accompany the appropriate finance center copy of the contract award.

214.407 Award.

214.407–1 General.

(c)(3) When two or more awards are made to a single bidder on an invitation, the copy of the successful bid marked "original" will be attached to the appropriate finance center copy and a copy marked "duplicate" will be attached to the retained office copy of the first award issued. Succeeding awards will be inscribed to indicate the number of the award to which the original and duplicated bids are attached. This is necessary for legal review and auditing the General Accounting Office.

214.407–3 Prompt payment discounts.

If the acquisition is one regarding which bidders may offer prompt payment discounts, the discounts provision in 252.214–7000 shall be included in the solicitation.

214.407–6 Equal low bids.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

214.408 Information to bidders.

214.408–2 Award of classified contracts.

Disposition action shall be taken in accordance with the industrial Security Manual, (DoD 5220.22–M).

Subpart 214.5—Two-step Formal Advertising

214.503 Procedures.

214.503–1 Step one.

(a) Requests for technical proposals may be in the form of letter.

(i) The written notification to offerors required by FAR 14.503–1(i) shall advise offerors of the discontinuance of two-step formal advertising and the reason therefor.

214.503–2 Step two.

(a)(3) The statement required by FAR 14.503–2(a)(3) should be set forth in the item description by a provision substantially in the form of the following example:

Radio Antenna, in accordance with Exhibit No.——dated——(use other description of specifications as appropriate), and your Technical Proposal——(insert specific identification of the bidder's proposal, including any revision thereof as finally accepted), incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of provisions of said Exhibit (or specifications).

PART 215—CONTRACTING BY NEGOTIATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 215.1—General Requirements for Negotiation

215.104 Authorization and approval.

(c) Business clearances or approvals shall be obtained as prescribed by applicable departmental procedures.

215.105 Competition.

(S–70) *Responsibility of requirements and other logistics personnel in purchasing offices.* Personnel other than the contracting officer, who determine type, quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable and exert a material effect upon prices. Failure to determine requirements in sufficient time to allow: (i) a reasonable period for preparation of requests for proposals; (ii) preparation of quotations be offerors; (iii) contract negotiation and preparation; or (iv) adequate manufacturing lead time; causes delays in deliveries and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided, since they generally increase prices or restrict desired competition.

215.170 Records and reports of negotiated contracts.

In addition to the records and reports described in FAR 4.8 and this Supplement 215.211 and 215.217, each department is required to maintain a record of the total value of all contracts negotiated by it during each fiscal year under each of the circumstances permitting negotiation enumerated in FAR 15.2. These records, and reports based thereon, are maintained through the Department of Defense procurement reporting system described in Subpart 204.6.

215.171 Aid to small business and disadvantaged business concerns in negotiated acquisitions.

When negotiation is conducted, consideration shall be given to the size and minority status of the business concerns, and when subcontracting is consistent with the best interest of the Government, the extensive use of subcontractors shall be a favorable factor (See Part 219 and Subpart 217.1).

215.172 Aid to labor surplus area concerns in negotiated acquisitions.

When negotiation is conducted, consideration shall be given as to whether the prospective supplier is a labor surplus area concern (See Part 220).

215.173 Negotiation of initial production contracts for technical or specialized military supplies.

(a) The production of important new technical or specialized military supplies generally involves development, evaluation, and initial production phases. Examples of such supplies are tanks, radar, guided missiles, aircraft, rockets, and equipment of similar complexity; major components of such equipment as the foregoing; and any items of technical or specialized nature necessary for the use, maintenance or operation of such equipment. Contracting officers shall avoid, wherever practicable, awarding initial production contracts for supplies until completion of the development and evaluation phases. At the time of placing the initial production contract, it is essential that the Government be completely free to select the contractor as the best interest of the Government may dictate. In the placement and administration of research or development contracts, no commitments shall be made to contractors with respect to obtaining subsequent production contracts. Acquisition of initial production quantity of an item shall not be initiated until the item has been approved for service use unless prior approval has been obtained. When justified by special circumstances, acquisition of production quantities in advance of approval for service use may be authorized for the Departments of the Army and Air Force by Heads of the Contracting Activity, and for the Department of the Navy by the appropriate authority set forth in SECNAV Instruction 3900.30 and 3960.2.

(b) In connection with the foregoing it may be in the best interest of the Government that the initial production contract for technical and specialized supplies be placed with the contractor responsible for the development of the design for such supplies. Accordingly, it is essential that, in placing such initial production contracts, an analysis be made of the importance to be attached to the following considerations:

(1) Extensive preliminary research and development work which can be put to most effective use in production by the resarch and development contractor for any of the following reasons:

(i) A need for adaptation of the newly developed equipment for quantity manufacture, and for introduction of advanced production methods, together with a significant interrelationship between the design engineering and production engineering, which will yield best results from the standpoint of performance, reliability, and producibility; or

(ii) The substantial time and money which would be required for another contractor to indoctrinate and train his engineering staff in the specialized techniques or novel design concepts which have been employed, thereby adding to production lead time.

(2) Continuing improvement of the equipment, concurrent with production which can be most effectively accomplished by a single contractor because of the advantages of unified responsibility and close coordination of improved design features with production processes and equipment.

(3) Substantial time and effort which have been already expended by the development contractor in developing a prototype.

(4) The advantages to be gained through obtaining production drawings, e.g., detailed manufacturing, process, and assembly drawings, with rights to use for acquisition purposes at the earliest possible date for competitive reprocurement purposes by placing production engineering contracts and the first production contract with the developer (see (d) below).

(c) When it is in the Government's interest to award the initial production contract to the development contractor, price alone should not be allowed to dictate an award elsewhere unless a fair and reasonable price cannot be negotiated with the development contractor, or unless the price advantaged in award to another supplier is so substantial as to outweigh the other factors involved. This 215.173 is not to be construed to require or to prevent competitive pricing. Initial production contracts shall not be awarded to development contractors who do not have fully adequate and available financial, technical and production resources.

(d) The number of items to be acquired under an initial production contract will be established only after considering all pertinent factors, including the practical minimum quantity suitable to permit the development of the production design and a data package adequate to establish competitive acquisition of the item at the earliest practicable date.

(e) To the extent practicable, the initial production contract should also provide for the furnishing of an initial supply of special testing equipment, special tools, demonstration sets, and manuals required for operation, maintenance and training.

215.174 Abstract of offers.

The abstract of offers required by FAR 4.803(a)(10) shall be prepared on Abstract of Offers (SF Form 1409) or Abstract of Offers-Construction (SF Form 1419) appropriately modified (see FAR 53.2) to include all the information necessary for evaluation (but see FAR 15.413 and FAR 15.610). These forms need not be used in the case of acquisition from a single source of supply, for research and development, for the chartering of vessels by the Military Sealift Command, for the acquisition of coal and petroleum products by the Defense Fuel Supply Center, or for perishable subsistence items by the Defense Personnel Support Center.

Subpart 215.2—Negotiation Authorities

215.202 Public exigency.

(b) *Application.* The following are illustrative of circumstances with respect to which the authority of 10 U.S.C. 2304(a)(2) may be used:

(1) Supplies, services or construction needed at once because of fire, flood, explosion, or other disaster;

(2) Essential equipment for, or repair to, a ship when such equipment repair is needed at once for compliance with the orders of the ship;

(3) Essential equipment for, or repair to, aircraft grounded or about to be

grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft;

(4) Construction needed at once to preserve a structure or its contents from damage;

(5) Essential equipment for, or repair to, missiles or missile support equipment, when such equipment or repair is needed at once to preclude impairment of launch capabilities or mission performance;

(6) Purchase requests citing an issue priority designator under the Uniform Material Movement and Issue Priority system (UMMIPS), which may justify negotiation under this or other negotiation authority, but in such cases the specific circumstances must be set forth in the determination and findings; or

(7) Purchase requests citing "Electronic Warfare QRC Priority" as the priority designator.

215.210 Impracticable to secure competition by formal advertising.

(b) *Application.*

(14) The applicable agency regulation within DoD referred to in FAR 15.210(b)(14) is Joint Regulation DoD 4500.34–R.

215.212 Technical equipment requiring standardization and interchangeability of parts.

(b) *Application.*

(2)(ii) The phrase "during combat or other emergency" applies to the end of FAR 15.213(b)(2)(ii) within DoD.

(3)(ii) Within DoD, the "agency standardization program" referred to in FAR 15.213(b)(3)(ii) is the Defense Standardization Program.

(5) The period of standardization shall not exceed 6 years. In addition to this period bearing a reasonable relationship to the life of the equipment, it shall also be related to the anticipated rate of change in design and interchangeability of components. Actions taken under the authority of FAR 15.213 and this Section shall be recorded and reviewed by the originating department at a level designated by the approving authority, at least once every two years to determine whether the standardization should be continued, revised, or cancelled. The redesign or redesignation of a model which has been standardized will not require revision or cancellation of standardization approval if interchangeability of parts of the new model with those of the model standardized is not affected in any significant respect.

215.215 Otherwise authorized by law.

(b)(2) *Application.* The authority of this paragraph shall be used only if, and to the extent, approved for any Department and in accordance with Departmental procedures.

215.270 Records and reports for purchases for experimental, development or research work and purchases in the interest of national defense or industrial mobilization.

Each department is required to maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of FAR 15.211 and FAR 15.217, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the Department of Defense acquisition reporting system described in Subpart 204.6.

Subpart 215.3—Determinations and Findings to Justify Negotiation

215.302 General.

(c) As an example of reasonable variations in estimated quantities, if at the time a D&F is submitted for approval, historical evidence indicates the possibility of increased quantities, e.g., requirements of other Departments, and Military Assistance Program requirements, at the time of negotiation, the supporting data and the D&F may provide for limited additional quantities. Similarly, a provision may be included authorizing increased quantities if negotiations reveal that additional quantities can be acquired under the approved program and within available funds.

215.304 Content.

Additional guidance to that contained in FAR 15.304 for the preparation of a justification for negotiation in support of a D&F is set forth in Appendix J. A D&F with respect to negotiation of an individual contract or class of contracts should conform generally to the appropriate format set forth in Appendix J.

215.307 Signatory authority.

The Agency Head may also make any of the determinations, and written findings in support thereof, that may be made by the head of any contracting activity signing as a chief officer responsible for contracting or by a contracting officer. Determinations, and findings in support thereof, not required to be made by higher authority may be made with respect to individual purchases or contracts by the head of a contracting activity signing as chief officer responsible for contracting. D&Fs for acquisition by negotiation with respect to coordinated acquisition shall be made in accordance with Subpart 208.70. Whenever Table 15–1 of FAR 15.307 limits authority to sign a D&F to the agency head (see Subpart 2.1), the Under Secretary of Defense Research and Engineering shall exercise the authority with regard to any procurement proposed by a defense agency.

215.370 Responsibility for preparing the D&F.

The contracting officer is responsible for preparing the D&F. Requirements and technical personnel are responsible for the accuracy and adequacy of the factual information supporting the findings. Supporting information within the functional areas of requirements and technical personnel shall be furnished to the contracting officer in writing.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.402 General.

(f) Examples of circumstances under which an oral solicitation may be used include those listed in 215.202(b). However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. Should the issuance of a resulting contractual instrument be unduly delayed, following oral solicitation, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

215.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

Reserved, pending determination to what extent guidance may be necessary.

215.410 Amendment of solicitations before closing date.

Requests for quotations may be amended by letter.

215.411 Receipt of proposals and quotations.

215.411–70 Maintenance and disposition of proposals and quotations.

Both solicited and unsolicited proposals shall be maintained and disposed of pursuant to FAR 4.803.

215.414 Forms.

(a) Letter RFPs and RFQs may also be used provided they otherwise comply with the requirements of FAR and this regulation.

(b) In the acquisition of subsistence, DPSC Form 300, Order for Subsistence, may be used for award purposes.

215.470 Master solicitation.

A master solicitation for negotiated contracts may be established, maintained, and utilized in accordance with 214.270.

Subpart 215.5—Unsolicited Proposals

215.504 Advance guidance.

(b)(2) Agencies shall, where applicable, in addition to the requirements of FAR 15.504(b)(2), also make available to potential offerors of unsolicited proposals requirements concerning cost sharing (see 235.003(b)).

215.506 Agency procedures.

215.506–1 Receipt and initial review.

(c) In addition to the requirements of FAR 15.506–1(c), agencies shall advise offerors of the disposition or intended disposition of the material submitted as the unsolicited proposal. The agency shall not deny reconsideration of a timely and appropriately revised or supplemented proposal which meets the requirements of FAR 15.506–1(a). When it is determined that a meritorious unsolicited proposal is not related to the mission of the recipient agency or may be of interest to other agencies in addition to the recipient agency, the recipient agency may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal.

215.507 Contracting methods.

(b)(S–70). When so limited by an applicable DoD Appropriation Act, contracts for studies, analyses, or consulting services (see FAR 37.2) may be entered into on the basis of an unsolicited proposal only when the head of the contracting activity or his designee (no lower than the chief of the contracting office) determines that:

(i) As a result of thorough evaluation, only one source is found fully qualified to perform the proposal work; or

(ii) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(iii) The purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support; except that this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense who has been confirmed by the Senate, determines that the award of such contract is in the interest of national defense.

Subpart 215.6—Source Selection

215.603 Purpose.

(d) In addition, source selection procedures are designed to ensure selection of the source whose proposals in the best interests of the Government, price and other factors considered.

215.607 Disclosure of mistakes before award.

(c)(3) Authority to make the determination is delegated to the head of the contracting activity with authority to redelegate to the chief of the contracting office.

215.613 Alternative source selection procedures.

"Four-Step" Source Selection Procedures are as follows:

(a) *General.*

(1) The Four-Step process, briefly described, is the (i) submission and evaluation of the offeror's technical proposal; (ii) submission and evaluation of the offeror's cost proposal; (iii) establishment of the competitive range and selection of the apparent successful offeror; and (iv) negotiation of a definitive contract.

(2) The conventional process differs in that (i) offerors' technical and cost proposals are submitted and evaluated simultaneously; (ii) definitive contracts are negotiated with all offerors in the competitive range; and (iii) the contractor is selected. One additional difference in the two processes involves discussion of proposal deficiencies. In the Four-Step process, deficiencies are not revealed to the individual offerors, while in the conventional process protracted discussions may evolve around proposal deficiencies.

(3) These procedures are designed primarily to: focus attention on technical excellence, maintain the integrity of each offeror's proposal, provide visibility of discriminating features between proposals, reduce the opportunity for buy-ins, preclude the opportunity for the use of auctioning techniques and assure a disciplined and orderly process in the selection of sources. To this end, early and open dialogue, e.g., pre-solicitation notices and conferences, pre-proposal conferences, informal solicitations and the tailoring of specifications, is encouraged to establish a better understanding of the Government's needs.

(4) Following the technical evaluation and discussions, cost/price proposals are obtained from each offeror together with any necessary clarifications of technical proposals. Subsequent to the receipt of the cost/price proposals and any technical clarifications, a competitive range is established. Those proposals outside the competitive range are eliminated at this point and the offerors so notified. Limited discussions are then held with the remaining offerors on their cost/prices proposals and any technical clarifications. Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified when it is determined to be no longer in the competitive range.

(5) At the completion of technical and cost price discussions, a common cut-off date of the receipt of final technical and cost/price proposals based upon those discussions is then established and the remaining offerors so notified. An evaluation is then made of each offeror's total proposal and a single offeror is normally selected for negotiation of a contract (see 215.613(h)(7)). In order to release proposal teams at the earliest practical date, all offerors are notified of the contractor selected.

(6) A definitive contract is then nogotiated with the selected offeror and contract award accomplished. These negotiations must be completed in a timely manner and must not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

(b) *Applicability.* These procedures may be used at the discretion of the Contracting Officer for competitively negotiated research and development acquisitions with an estimated value of two million dollars or more. They may also be used for any other acquisition when approved in accordance with Departmental procedures subject to the restrictions below. Use of these procedures is not appropriate when Government evaluation of initial proposals, without discussion of proposal deficiencies, will be sufficient to determine the best overall offer to the Government. Acquisitions for which these procedures are not used shall follow the procedures of FAR 15.6.

(c) *Restrictions.* These procedures should not be used for acquisitions in which the necessity to conduct

extensive negotiations is anticipated. These procedures shall not be used for any acquisitions which:

(1) Are negotiated pursuant to FAR 15.202;

(2) Are solely for personal or nonpersonal services;

(3) Are for architect-engineer services; or

(4) Have an estimated value of less than two million dollars.

(d) *Procedures.* Acquisitions subject to this paragraph shall be conducted in accordance with the following procedures:

(1) *Solicitations.* Solicitations shall be developed in accordance with FAR 15.4 and shall include the following special requirements and instructions:

(i) A general statement explaining the concept and procedures to be used in the selection of a contractural source of the proposed acquisition.

(ii) The relative importance of technical/system performance criteria.

(iii) A notification that any proposals which are unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the proposed contractual requirements and may be grounds for the rejection of the proposal.

(iv) A schedule of planned source selection events including, but not limited to, specific dates for the submission of both technical and cost/price proposals.

(v) Provisions requiring sequential submission of separate technical and cost/price proposals.

(vi) Requirements for the technical proposal to include, where appropriate, identification of trade-offs among performance, production costs, operating and support costs, schedule and logistic support factors; and requirements for cost estimates which illustrate the impact of these trade-offs. In addition, requirements of the technical proposal to include information necessary to indicate that the design to cost and operating and support cost objectives, when used, would be achieved when the item(s) enters production.

(vii) Requirements for the cost proposal to include the detailed, substantiating cost information pertaining to the performance of the contemplated contract and other detailed data necessary for evaluation of cost factors to be considered in the source selection decision.

(viii) A statement that both technical and cost/price discussions will be limited as set forth in (f)(2) (ii) and (iii) below.

(ix) A notification that negotiations will be conducted only with the selected offeror, and that offerors should represent their most favorable technical and cost/price proposals initially.

(e) *Step one—evaluation and discussion of technical proposals.* A detailed evaluation shall be accomplished on all technical proposals received based upon the established criteria in the solicitation. Upon completion of the initial evaluation, limited discussions shall be conducted with all offerors for the purpose of achieving maximum understanding and clarification of the contents of the proposal. During such discussions, offerors shall not be advised of deficiencies in their proposals. A deficiency is defined as that part of an offeror's proposals which would not satisfy the Government's requirements. Offerors shall be advised of areas of their proposal in which the intent or meaning is unclear or for which additional substantiating data is required for evaluation. When necessary for complete understanding of proposals, clarifications and/or additional substantiating data may be requested concerning those areas of an offeror's proposal when there is uncertainty that a deficiency exists. In most cases, clarification of proposals and additional substantiating data, if required, will be included by offerors with their cost/price proposals in Step Two. When it is apparent from the proposals received that the Government's requirements have been misinterpreted, clarification shall be provided to all offerors to ensure complete understanding.

(f) *Step two—evaluation and discussion of cost price proposals.*

(1) Following the technical evaluation and discussions, complete, fully documented cost/priced proposals and clarifications, if required, of technical proposals shall be obtained. Each proposal shall be evaluated and those which have a no reasonable chance for award may be eliminated from the competition at this point and the offerors notified that they are outside the competitive range and will be given no further consideration.

(2) Limited discussions as indicated herein shall then be conducted with all remaining offerors in connection with their respective cost/price proposals, either on an element-by-element basis or in their entirety. These discussions may include (i) rectification and/or correction of inconsistencies or mathematical errors; (ii) correlation of elements of cost with their respective technical efforts, in order to assess the extent of realism in the cost proposal; and (iii) discussion necessary to ensure a complete understanding of the Government's requirements, what is being offered (including delivery schedules, trade-offs among performance, design to cost, life cycle cost, and logistics support factors) and other contract terms. An offeror shall not be advised during these discussions that its proposal or any of its elements are either too high or too low. When discussions of technical proposals are required they shall be limited as stated in (f)(2)(ii) above.

(3) Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified (i) when the proposal was initially included in the competitive range because it might have been susceptible of being made acceptable, or (ii) because there was uncertainty whether it was in the competitive range, and in either case, through discussions relating to ambiguities and omissions it becomes clear that the proposal should not have been included in the competitive range initially.

(g) *Step three—common cut-off.*

(1) A common cut-off date for receipt of technical and cost/price proposal clarifications or substantiations shall be established and all participants so notified in accordance with FAR 15.611.

(2) Offerors shall be informed that any changes incorporated in the final proposal must be fully substantiated. Supporting data must provide traceability to the causative technical, business, or financial conditions that brought about any change. Lump sum reductions in cost/price shall not be accepted without supporting rationale.

(3) After the common cut-off date, requirements shall not be imposed for additional proposals or revisions to submitted technical or cost proposals without the prior approval of an official at a level no lower than that of a Head of a Contracting Activity (HCA). Auctioning through repetitive calls for offers is strictly prohibited.

(4) Final detailed negotiations leading to the bilateral execution of a definitive contract shall be deferred until after the selection of an offeror for final contract negotiations.

(h) *Selection of an offeror for final contract negotiations.*

(1) Complete evaluation of all factors in accordance with the criteria set forth in the solicitation, including cost/fee or price, shall be conducted with careful regard for security procedures and good business practice.

(2) Based upon the offeror's latest total acceptable technical and cost proposals, selection of a single source shall be made for the conduct of final negotiations leading to a definitive contract. (This does not preclude selecting more than one source when multiple sources are desired; e.g., competitive prototypes.) Procedures for waiver of this requirement are at (h)(7) below.

(3) Proposals unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the contract requirements and may be grounds for rejection of the proposal.

(4) The selection will be based on an integrated decision, involving consideration of technical approach, capability, management, design to cost, operating and support cost objectives, historical performance, price/cost and other factors.

(5) Following selection of the best offeror, all competitors shall be notified of the source to be awarded the contract, subject to negotiation of a satisfactory definitive contract.

(6) The source selection decision is conditional in that award of a fully negotiated contract to the selected offeror must be accomplished within a period of time prescribed by the source selection authority. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

(7) Proposed contracts may be negotiated with two or more offerors within the competitive range, if the HCA makes a written determination that a final selection of a single source should not be made until such proposed contract have been negotiated. Such determination shall not be made solely for the purpose of maintaining a competitive environment. However, such a determination may be based, for example, on unique situations where there are no significant discriminating technical or cost features between two or more offerors. Notification of such determination shall be provided to OUSDRE(AM) through Departmental procedures.

(i) *Step four—final negotiations and contract award.* Final negotiations leading to bilateral execution of a single definitive contract will be conducted only with the selected offeror except when multiple negotiations are authorized by the HCA. Final negotiations shall include the disclosure and resolution of all technical deficiencies and all unsubstantiated areas of cost. Negotiations shall not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event that such changes are necessary, the procedures in FAR 15.806 shall be followed. The final negotiated contract must represent a reasonable probability that the Government's requirements will be satisfied at a fair and reasonable cost/fee or price.

(j) *Debriefings.* Formal debriefings shall be conducted after contract award, in accordance with FAR.

Subpart 215.7—Make-Or-Buy Programs

215.704 Items and work included.

The minimum dollar threshold within DOD referred to in FAR 15.704(b) is $500,000.

215.706 Evaluation, negotiation, and agreement.

(d) Contracting officers shall also give primary consideration to the effect of the proposed make-or-buy program on the contemplated type of subcontract.

215.707 Incorporating make-or-buy programs in contracts.

(a)(2) The contracting officer may exclude the make-or-buy program from (i) cost-plus-incentive-fee contracts to which FAR 15.707(b) is applicable and (ii) from cost-plus-incentive fee contracts having a cost incentive which provides for a swing from target fee of at least 3 percent and a contractors' overall share of cost of at least 10 percent (authority may be requested (see FAR Subpart 1.4) to exclude the make-or-buy program from other cost-plus-incentive-fee contracts having different incentive and cost-sharing patterns, whenever the contracting officer finds that such other contracts provide sufficient incentive for control of costs).

Subpart 215.8—Price Negotiation

215.802 Policy.

(b)(2) (This prohibition neither prevents the negotiation of indirect costs and other rates applicable to several contracts nor prohibits FPRA's applicable to several contracts.)

215.803 General.

(b) When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition, and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

(d) When products are sold in the open market, costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly, where competition may be ineffective or lacking, estimated costs plus estimated profit are not the only pricing criteria. In some cases, the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fee, as in research and development projects where the contractor is willing to share part of the costs. In other cases, price may be controlled by competition. The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors. When negotiations indicate the need for using other than a firm fixed-price contract, there should be compatibility between the type of contract selected and the contractor's accounting system.

215.804 Cost or pricing data.

215.804-2 Requiring certified cost or pricing data.

(a)(1)(ii) The term "price adjustment" or "pricing adjustment" means the aggregate increases and/or decreases in costs plus applicable profits.

(2) Partial or limited data may be requested when less than complete cost analysis (e.g., analysis of only specific factors) will provide a reasonable pricing result on awards under $500,000 without the submission of complete cost or pricing data. The contracting officer shall request only that data which he considers adequate to support the limited extent of the cost analysis required and he will not require certification.

(b)(1) Cost of pricing data shall not be required merely in anticipation of postaward review of the contract.

(2) If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

215.804-3 Exemption from or waiver of submission of certified cost or pricing data.

(a)(1) When economic price adjustment provisions are included in competitive procurements, see FAR 16.203-2(b).

(b)(2)(ii) An example of a determinative advantage is where substantial costs, such as start-up or

other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position.

(3) Examples of a price "based on" adequate price competition are: (i) exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with FAR 17.207(d); and (ii) an item normally is procured competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition.

(c)(6) In addition, cost or pricing data may be requested, if necessary, where there is such a disparity between the quantity being procured and the quantity for which there is such a catalog or market price that pricing cannot reasonably be accomplished by comparing the two.

(7) In determining exemptions, it is the item under consideration that must meet the test. The ultimate objective is to achieve fair and reasonable prices for items bought. Altered terms, minor configuration changes, extra inspection requirements, or quantity differences are adequate reasons for pricing items differently from catalog or market prices.

(e)(3) In anticipation of repetitive procurements of a catalog item, the PCO or the cognizant ACO may make special arragements of submission of the exemption claim. The submission need not be on a Standard Form 1412, but shall include any data required by the form and include or incorporate by reference all the applicable definitions, representations and rights included in the form. Government approval of the exemption claim shall set forth the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the continuation of the exemption. Such approval may be extended to other Government purchasing offices with their concurrence. A copy of each waiver shall be sent to the Assistant Deputy Under Secretary for Acquisition, Office of Under Secretary of Defense, Research and Engineering.

215.804–4 Certificate of current cost or pricing data.

(c) The data on numerous minor material items each of which by itself would be insignificant may be reasonably available only as of a cut-off date prior to agreement on price because the volume of transactions would make the use of any later data impracticable. Furthermore, except where a single item is used in substantial quantity, the net effect of any changes to the prices of such minor items would likely be insignificant.

215.804–6 Procedural requirements.

(b)(2) The following may be used with the SF 1411:

(i) When Contract Cost Data Reports are required by the purchase request, the contractor shall be required to submit DD Forms 1921 and/or 1921–1 to support the SF 1411. The DD Forms 1921 shall be prepared in accordance with the Contractor Cost Data Reporting (CCDR) System (Army—AMCP 715–8, Navy—NAVMAT P5241, and Air Force—AFLCP/AFSCP 800–15). The contractor supporting data shall be prepared in such a manner as to support each cost element on the DD Form 1921–1.

(ii) *Contract Pricing Proposal Supporting Schedules* may be devised by contracting offices to require such supporting data to the foregoing forms as is considered necessary and reasonable through knowledge of industry, company or commodity practices.

(c) To the extent possible, the understanding should relate to the contractor's formal estimating system. Notwithstanding the foregoing, significant matters important to contractor management and to the Government and any related data within the contractor's organization or the organization of a subcontractor or prospective subcontractor would be expected to be current on the date of agreement on price and, therefore, will be treated as reasonably available as of that date. Although changes in the labor base or in prices of major material items are generally significant matters, no hard and fast rule can be laid down since what is significant can depend upon such circumstances as the size and nature of the procurement.

(e) The referral to higher authority shall also include a complete statement of the attempts made to resolve the matter, including (1) steps taken to secure essential cost or pricing data, (2) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, and (3) any assurances offered, such as agreements to adequately safeguard information furnished.

(f) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and for gaining an advantage over competitors in negotiations for future procurements, it is important to know whether the offeror intends to absorb any portion of these costs or whether he plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on procurements (including spare parts or other support items).

(g)(3) In addition to submitting cost or pricing data from the prospective subcontractor most likely to be awarded the subcontract, the contractor shall submit other data pertaining to subcontract costs, including other subcontractor quotations. Failure by the contractor to submit subcontract cost or pricing data may be cause for disqualification of the contractor from further consideration for award of the proposed contract.

215.804–7 Defective cost or pricing data.

(b)(2) In the absence of evidence to the contrary, the natural and probable consequence of defective data is an increase in the contract price in the amount of the defect plus related burden and profit or fee; therefore, unless there is a clear indication that the defective data were not used, or were not relied upon, the contract price should be reduced in that amount. In establishing that the defective data caused an increase in the contract price, the contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(d) An auditor's advisory report of postaward reviews of cost and pricing data may result either from a specific request of a contracting officer or from audit action initiated independent of a contracting officer's request.

(e) In exercising the Government's rights in such cases, the contracting officer will consider the varying circumstances discussed below.

(e)(S–70) In some instances, the prime contractor may have reached agreement on price with a subcontractor before the prime contractor and the Government agree on a definitive price. This might occur, for example, if the prime contractor commenced performance under an unpriced action such as a letter

contract. In such cases, the subcontractor's cost or pricing data must be submitted with the prime contractor's submission. If any such subcontractor data are subsequently found to be defective, the prime contract is subject to price adjustment in the same manner as would be the case if any other cost or pricing data submitted by the prime contractor proved to be defective.

(e)(S–71) The Government and the prime contractor will normally agree on the price of a contract prior to final agreement on price between the prime contractor and his subcontractor. In such cases, the prime contract price will be based, in part, on subcontract cost estimates. The prime contractor will be expected to support his subcontract cost estimates with subcontractor cost or pricing data. The prime contract price will be subject to adjustment on the basis of defective subcontractor cost or pricing data submitted prior to agreement on the prime contract price if:

(i) Such subcontractor data were not accurate, complete, or current as of the date certified in the prime contractor's Certificate of Cost or Pricing Data, or in some cases were not accurate as submitted by the subcontractor, and

(iii) The prime contract price was increased by a significant sum because of such defective subcontractor data.

(f) Conditions may be prescribed by: the Office of the Assistant Secretary of the Army (Research, Development and Acquisition), for the Army; Chief of Naval Material (DCNM for Contracts and Business Management), for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters, USAF (AF/RDC), for the Air Force; and the Executive Director, Contracting, for the Defense Logistics Agency.

(2) Although the action is taken under those price reduction clauses rather than under Part 231 as a practical matter the result is the same, i.e., the increased costs will be disallowed under cost-type contracts or not considered as actual costs for final pricing of redeterminable or incentive-type contracts. The action is taken under the price reduction clauses because not only will the increased costs be disallowed or not considered as actual costs but also the fixed-fee or target profit included in the initial price may be subject to reduction in accordance with (1) and (2) of 215.804–7(e) above.

215.804–8 Contract clauses.

The requirement for inclusion of the specified clauses in contracts with foreign governments or agencies may be waived in exceptional cases by the Agency head (see FAR 15.804–3(i)). The contracting officer shall also include the clause at FAR 52.215–22 when obtaining partial cost or pricing data in accordance with 215.804–2(a)(2).

(S–70) The clause at 252.215–7000 shall be included in all solicitations and contracts which include a clause at FAR 52.215–23, FAR 52.215–24, or at FAR 52.215–25. The Contracting Officer may insert a lesser dollar amount, if appropriate.

(S–71) The contracting officer shall insert the clause at 252.215–7001, Pricing of Adjustments, in solicitations and contracts for supplies, services, and construction when a fixed-price contract is contemplated.

215.805 Proposal analysis.

215.805–1 General.

(a) The contracting officer should also note the following:

(a)(S–70) Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting.

(a)(S–71) For certain acquisitions, it may be necessary to convene a formal "Should Cost" (see FAR 15.810) team of specialists to evaluate the contractor's cost projections, supporting standards, and other in-plant management, operational and performance practices, on which cost projections are based.

(a)(S–72) Contract auditors are professional accountants who, although organizationally independent, are the principal advisors to contracting officers on contractor accounting and contract audit matters. Contract audit services are available in two forms:

(i) Audit reports setting forth the results of auditors' reviews and analyses of cost data submitted by contractors as part of pricing proposals, reviews of contractors' accounting systems, estimating methods, and other related matters; and

(ii) "On-the-spot" personal consultation and advice to contracting and contract administration personnel in connection with analyses of contractors' cost representations and related matters by liaison auditors stationed at contracting and contract administration offices. (DCAA provides procurement liaison auditors (PLAs) at most major procurement and contract administration offices to facilitate the receipt and use of audit service and to provide accounting and audit advice as to whether or not audit review of a price proposal should be waived.)

(b) Some form of price or cost analysis is required in connection with every negotiated procurement action. The method and degree of analysis, however, is dependent on the facts surrounding the particular procurement and pricing situation. The extent of cost analysis should be that necessary to assure reasonableness of the pricing result, taking into consideration the amount and complexity of the proposed contract. Normally, a sound conclusion as to value cannot be made on the basis of cost analysis alone. Depending on the information available, a price arrived at by cost analysis should be corroborated through price analysis techniques.

215.805–2 Price analysis.

(b) To provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as time of prior purchases, specifications, quantities ordered, time for delivery, Government-furnished materials, and experienced trends of improvement in production efficiency. It must also be recognized that such comparison may not detect an unreasonable current quotation unless the reasonableness of the prior prices was established and unless changes in the general level of business and prices have been considered.

215.805–4 Technical analysis.

Technical analyses by the Plant Rep/ACO and his team shall be based on their knowledge of such factors as production, quality assurance, engineering and manufacturing practices and techniques, and information as to plant capacity, scheduling, engineering and production "know-how," Government property, make-or-buy considerations, and industrial security, particularly as these relate to practices of the specific prospective contractor.

215.805–5 Field pricing support.

(a)(1) Information of the type described in (a)(1) (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontracts items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or

forecast overhead rates, prescribed in an existing advance agreement.

(vi) Current labor rates, overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours. It should be borne in mind that no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.—to which the rates apply.

(2) The Plant Rep/ACO, as well as the contract auditor, will be responsible for providing a complete and accurate field pricing report to the PCO. (See FAR 15.810(e) for field pricing reports submitted on acquisitions where should-cost analysis is conducted.) To accomplish this end, the Plant Rep/ACO must:

(i) In concert with the auditor and in consideration of his workload, establish a deadline for the auditor's input, subject to date adjustments when considered necessary (adjustments will be coordinated by the Plant Rep/ACO with the PCO and the contract auditor);

(ii) Identify areas for special consideration (these are areas in addition to those specified by the PCO);

(iii) Arrange for exchanges of technical and audit information; and

(iv) Be fully responsive to a request for technical information from the auditor.

(c)(1)(S–70) When field pricing reviews are required, contracting officers should note the following:

(A) The Plant Rep/ACO is the team manager for all PCO requests for field pricing support. Therefore, the PCO shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Representative (Plant Rep) for the Services and the Administrative Contracting Officer (ACO) for DCAS(DLA). A copy of the request will also be sent to the cognizant audit activity.

(B) In sole source procurements, when the contracting officer knows in advance that field pricing support will be required, he shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. In addition, he may require the contractor to provide copies of his proposal direct to the Plant Rep/ACO and auditor. In this event the PCO shall, as soon as possible after receipt of the contractor's proposal, identify those specific areas for which field pricing support is required.

(C) Where audit reports are received on procurement actions that are subsequently canceled or unsuccessful, the cognizant auditor shall be notified in writing.

(d) The efforts of all field pricing support team members are complementary, advisory and also offer an excellent check and balance of the various analyses imperative to the PCO's final pricing decision. Therefore, it is essential that there be close understanding, cooperation and communication to ensure the exchange of information of mutual interest during the period of analysis. While they shall review the data concurrently when possible, each shall render his services within his own area of responsibility. For example, on quantitative factors (such as labor hours), the auditor may find it necessary to compare proposed hours with hours actually expended on the same or similar products in the past as reflected on the cost records of the contractor. From this information he can often project trend data. The technical specialist may also analyze the proposed hours on the basis of his knowledge of such things as shop practices, industrial engineering, time and motion factors, and the contractor's plant organization and capabilities. The interchange of this information will not only prevent duplication but will assure adequate and complementary analysis.

(e) The terms "audit review" and "audit" refer to examinations by contract auditors of contractors' statements of actual or estimated costs to the extent deemed appropriate by the auditors in the light of their experience with contractors and relying upon their appraisals of the effectiveness of contractors' policies, procedures, controls, and practices. Such audit reviews or audits may consist of desk reviews, test checks of a limited number of transactions, or examinations in depth, at the discretion of the auditor. The contract auditor is responsible for submission of information and advice, based on his analysis of the contractor's books and accounting records or other related data, as to the acceptability of the contractor's incurred and estimated costs.

(e)(6) Reports of technical analysis and review should be furnished to the auditor at the earliest possible date and at least five days prior to the due date of the audit report to enable the auditor to include the financial effect of technical findings in the audit report (for example, the necessary computations of dollar amounts arising from changes in proposed kinds and quantities of materials, labor hours, etc.). In the event the technical analyses are not available in time to be reflected in the audit report, the audit report shall so state, and this shall be made known to the Plant Rep/ACO so that comments may be incorporated in his submission to the PCO. If technical analyses are received later by the auditor, he shall issue a supplemental report if the status of the negotiation is such that a report would serve a useful purpose. The original of all technical reports received by the auditor shall be made a part of the audit report submitted to the Plant Rep/ACO.

(e)(7) When the PCO determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, he shall, with the advice of the contract auditor and the Plant Rep/ACO, assure that necessary corrective action is initiated prior to the award of such contract. The auditor is responsible for performing that part of reviews and cost analyses which requires access to the contractor's books and financial records supporting proposed cost or pricing data, regardless of the dollar amount involved.

(e)(8) During the course of the examination, the Plant Rep/ACO and the auditor shall each confer with the contractor to fully understand the basis for each item in the contractor's proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The Plant Rep/ACO (price analyst or negotiator) shall query the auditor or technical personnel about matters in audit or technical reports which appear to need clarification. When developing the Plant Rep/ACO statement to the PCO transmitting audit and technical reports, comments or observations shall be added about pertinent matters whether or not covered in the audit or technical reports. However, it is not contemplated, for example, that the price analyst or negotiator should attempt an examination of the contractor's accounting records for this purpose since the contract auditor has this responsibility.

(i) If in the opinion of the PCO, Plant Rep/ACO, or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), such reviews should be fully coordinated with the Plant Rep/ACO having cognizance of the prime contractor before being initiated. If a review is required of a subcontract proposal, the prime Plant Rep/ACO shall forward the request to the subcontract ACO with an information copy to the subcontract auditor. In the event a lower tier subcontract proposal

requires review, the request should be coordinated in sequence with the Plant Rep/ACO's at higher tiers in the subcontract chain. The resulting pricing reports, including any audit reports, shall be forwarded by the subcontract Plant Rep/ACO to the prime Plant Rep/ACO with an information copy to the prime auditor. If the review is of a lower tier subcontract proposal, the report shall be transmitted through the Plant Rep/ACO's in the subcontract chain.

(j) The appropriate contract administration activities will be notified by the HCA when review and evaluation of subcontractors' proposals will require extensive field pricing assistance in connection with the acquisition of a major new weapon system, or require special or expedited action by field pricing personnel and such action if being, or has been, delayed.

215.806 Subcontract pricing considerations.

(S–70) Other subcontract pricing considerations include:

(1) Subcontract costs and pricing arrangements are significant elements to be considered during negotiation of prime contracts and during contract administration.

(2) Basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, for subcontract prices, and for subcontract performance. The contracting officer who is responsible for negotiating the contract price with the prime contractor must have adequate knowledge of these elements as they affect prime contract prices.

(3) Contractors' "make-or-buy" programs and proposed subcontracts must be reviewed in accordance with FAR Subpart 15.7 and with FAR Part 44. Information from these reviews should be used in evaluating subcontract costs when negotiating prime contract prices. The contracting officer, when appropriate, should secure from the contractor information concerning:

(i) The prime contractor's purchasing practices; and

(ii) The principal components to be subcontracted and the prospective or actual subcontractors, including (A) the extent of competition obtained or to be obtained, (B) the basis for the subcontract costs included in the contract pricing proposal (SF 1411), (C) any contractor cost or price analyses of subcontract proposals, including the cost or pricing data submitted by subcontractors, (D) the pricing arrangement contemplated or negotiated, and (E) the extent or subcontract supervision.

(4) The PCO is responsible for the reasonableness of the prime contract price which includes satisfying himself as to the reasonableness of the subcontract costs included in the prime contract price. Field pricing support from the Plant Rep/ACO cognizant of the prime contractor is generally required in determining reasonableness of the prime contract price. In some instances, it may be necessary to obtain field pricing support of proposed subcontracts. On the basis of a request from the PCO and/or advice from members of the field pricing team, the ACO cognizant of the prime contractor may request field pricing support from the ACO cognizant of the prospective subcontractor. These actions will be taken in accordance with 215.805–5.

(5) If the prime contractor's analysis is not considered adequate, the ACO will return the analysis package to the contractor for re-accomplishment indicating areas of inadequacy. In this case, the prime contractor will accomplish or cause the accomplishment of the additional review and resubmit the package to the ACO.

(6) When subcontracts have been placed on a price redetermination or fixed-price incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced the amount included for subcontracting is reasonable, e.g., where realistic cost or pricing data on subcontract efforts are available. However, even though the available cost data are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices that are lower than those predicted in redetermining the prime contract price, other circumstances may require the prompt negotiation of the final contract price. In such a case, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification a statement substantially as follows:

> Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract. (List Subcontracts)

(7) In considering cost-plus-fee subcontracts, the contracting officer shall make every effort to insure that fees under such subcontracts never exceed the fee limitations indentified in 215.903(d).

(8) The prime contractor may submit subcontractor claims for exemption at any time to the contracting officer for an advance review of their acceptability, but otherwise the prime contractor shall submit them with its proposal or request for subcontract consent; or other action by the contracting officer, whichever comes first.

215.807 Prenegotiation objectives.

(b) Prenegotiation objectives will be documented in accordance with Departmental procedures.

215.808 Price negotiation memorandum.

(a)(4) Comments should also be included on the current status of their contractor systems (e.g., estimating, accounting, compensation, etc.) to the extent that they impacted and were considered in the negotiation.

(10) The following applies to documentation of profit or fee negotiated:

(i) Since the profit objective is the contracting officer's pre-negotiation evaluation of the total estimated profit under the proposed contract, the amounts set forth for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective, and from a detailed application of the weighted guidelines method to each element of the Contractor's Input to Total Performance as anticipated prior to negotiation. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes of the Contractor's Input to Total Performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained. The profit earned as a result of contract performance will generally vary from that anticipated at the time of negotiation.

(ii) When the weighted guidelines method is not used because of unusual pricing situations (see Subpart 215.9), the contract file shall be documented to support the exceptions.

(iii) DD Form 1547 (see Subpart 215.9) may be used in the Price Negotiation Memorandum, *Provided* that the rationale used in assigning the various rates is fully documented.

(iv) See also 215.807(c).

215.809 Forward pricing rate agreements.

(e) Indirect costs commonly known as overhead are defined and described in FAR 31.203. Criteria for treatment and application of indirect costs to contracts are also set forth in FAR 31.203. To assure a reasonable approximation and allocation of indirect costs on an equitable basis to individual contracts, negotiators shall utilize audited indirect cost data or negotiated indirect cost rates, when available, in connection with negotiation of contracts and shall not, unless authorized by the head of the contracting activity, seek preferential indirect cost rates. If there is any question with respect to audited indirect cost data or negotiated indirect cost rates, or if such are not available, the negotiator should normally use the advisory services of the cognizant Department of Defense auditor.

(e)(2) In assessing changed conditions, the ACO will consider: (i) the type of contract contemplated; (ii) whether the dollar amount of the proposed contract action would significantly change the rates in the agreement; (iii) whether the performance period of the proposed contract action is significantly different from the period to which the rate agreement applies; and (iv) any new data or other information that may raise a question as to the acceptability of the rates.

(f) When procurement representatives have received notice that changed conditions negate FPRA's, individual procurement actions should not be delayed.

215.810 Should-cost analysis.

(b) A should-cost review will be made in connection with the procurement of a system or item which will require a DSARC approval, unless the contracting officer makes written determination that the potential savings to be realized do not justify the expense of such a should-cost review.

215.811 Estimating systems.

(a)(S–70) The establishment, maintenance, and consistent use of formal cost estimating systems by contractors is to the mutual benefit of the Government and industry, particularly where a large portion of the contractor's business is defense work and there are a number of significant proposals requiring review. Procuring activities and contract administration activities are required to furnish full support to a program of encouraging major defense contractors to formalize and follow good estimating procedures. It is recognized that estimating procedures will vary among contractors, and may vary between plants or divisions of a contractor due to differences in products, size and methods of operations, production vs. research, and other factors. While formal systems do not eliminate the need for judgmental factors to be applied by contractors in developing cost proposals, they do provide a sound foundation for the systematic and orderly application of these judgment factors to specific proposals.

(a)(S–71) Reviews and reports shall be accomplished as a joint contract audit and contract administration office team effort, with the contract auditor designated as its head. Reviews shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract administration activities. The program established by the contract audit activity shall be coordinated with the appropriate contract administration activity to assure that team membership includes qualified technical specialists, and that adequate personnel resources are made available to accomplish the program.

215.870 Procedures for identifying contractors' unallowable costs.

(a) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and FAR Part 31 will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that:

(1) A greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings and claims;

(2) They expedite the negotiation process; and

(3) They may reduce the scope of reviews performed by audit and other technical and procurement personnel.

(b) The responsible Federal Contract Audit organization shall review contractors' procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant ACO, and, as appropriate, PCOs having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices and techniques for:

(1) Assignment of responsibilities within the contractor's organization for reviewing and approving claims against the Government;

(2) Identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(3) Identification and computation of directly associated costs;

(4) Assurance that unallowable and directly associated costs are not included in estimated costs proposed, or incurred amounts claimed by the contractor;

(5) Coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(6) Assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(c) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

215.871 Estimated data prices (DD Form 1423).

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons:

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

(3) Use of factors or rates on some portions of the data;

(4) Application of common effort to two or more data items;

(5) Differences in data preparation methods among offerors.

For these and other reasons, data price estimates should not be used for contract pricing purposes without further analysis.

(c) The contracting officer shall assure that the contract does not include a requirement for data which the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror furnishes any certification required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

(d) In the case of procurements of $100,000 or over, the contracting officer, after agreeing upon a negotiated contract price, will adjust the estimated prices in Blocks 26 of the original DD Form 1423 for the data items listed thereon to equal the amount included in the related priced contract line or subline item(s) for the data item(s). Adjusted DD Form 1423 will be maintained so as to be available at each procuring activity. The detachable portion of the DD Form 1423 (Blocks 17–26) with the estimated or adjusted prices shall not appear in the contract.

(e) When printing is to be procured as an integral part of a contract for other supplies or services, each requirement in the contract for printing shall be listed as a separate line item on DD Form 1423; and the approval or waiver obtained pursuant to Subpart 208.8 shall be appropriately identified.

215.872 Capital investment incentives.

(a) *General.* Although the DoD profit policy is normally sufficient encouragement to increase contractor investment, it is recognized that situations will arise when additional incentives may be appropriate. In these individual cases, a special Capital Investment Incentive clause may be negotiated and included in contracts for research, development, and/or production of weapon systems or material to provide incentives to contractors to invest in severable plant equipment capital assets. Such clause must be tailored to the requirements of the individual situation, and then only after a careful analysis of the benefits in each case is made, to assure optimum results are obtained for the Government. This clause would become operative in the event that the contract or program is terminated or funds are not provided in subsequent fiscal years for the planned acquisition upon which the investment decision was based. Such clause may permit the Government to acquire specific capital investments at no more than the depreciated value. This value may be determined by considering a combination of investment incentives, income tax credits or incentives, and allowable depreciation costs pursuant to cost principles established in FAR Part 31.

(b) *Scope.*

(1) This technique is designed to transfer to the Government some of the risk associated with acquisition of certain capital assets by contractors. Its purpose is to cover only specifically identified cost-effective capital assets. It is not to be used to override the general policy that all facilities needed for the performance of Government contracts will be provided by the contractor as set forth in FAR Part 45.

(2) Capital assets which may be covered by such an investment clause are subject to the following criteria:

(i) Includes only severable industrial plant equipment, and other types of severable plant equipment with a unit value in excess of $10,000, including associated accessories which would be capitalized in accordance with the contractor's disclosed accounting practices, but excluding real property;

(ii) The capital investment would not otherwise be made by the contractor except to substantially benefit the program(s) involved;

(iii) The overall savings that will accrue to the Government on the program(s) for covered equipment exceed the related investment costs by a margin sufficient to make the acquisition economically viable;

(iv) The savings that will result from use of this equipment, as developed under (c) below, will be reflected in the pricing of the individual contracts.

(c) *Determination.* Prior to implementing this investment clause, the contracting officer shall make a written determination that the contractor will not make the investment without the use of this technique. This determination should be detailed and include the following elements:

(i) Consideration of the alternatives of acquiring such equipment through the manner listed in FAR 45.302;

(ii) An analysis of the costs of the investment and the overall cost savings to the Government, including the payback quantities and/or payback periods;

(iii) An assessment of the degree of competition present for the proposed requirement. If a competitive environment is present, the competition may cause the firms to consider bearing the total risks for the investments. When this technique is to be used, it shall be a factor in the source selection evaluation criteria;

(iv) An assessment stating the rationale why the DoD profit policy is insufficient motivation for the investment;

(v) Other considerations which should be addressed are:

(A) Effect upon the contractor's make or buy plan;

(B) Subcontractor participation in the investment technique;

(C) Consistency of depreciation rates with FAR 31.205.11;

(vi) Any other matter which has a bearing on the investment plan.

(d) *Limitations.*

(1) This investment incentive is designed primarily for DOD program which are listed in the Five Year Defense Program (FYDP) and designated as Defense System Acquisition Review Council (DSARC) Programs, in accordance with DOD Directive 5000.1, "Acquisition of Major Defense Systems." This incentive may also be extended to other DOD programs provided approval is obtained from the Secretary of the Department. The programs must provide for a sufficient buy to allow for amortization of the planned investment.

(2) The fiscal authority who commits funds to the resultant contract must certify that the following actions have been accomplished:

(i) The Approval Authority (see (g)(1) below) has approved by fiscal year the amount of contingent Government liability;

(ii) The Approval Authority has notified the Congress in advance that the technique will be used on contracts for a specific weapon system or material program element. Unless there are unusual circumstances, this notification will be included in the justification material submitted to the Congress in support of authorization and appropriation requests. A copy of the notification shall be retained in the contract file.

(3) *Negotiation requirements.*

(1) Since this investment incentive is predicated on the written determination specified in paragraph (c) above, the impact on contract cost will be recognized in the price(s) negotiated.

(2) In order for items of plant equipment to be covered, they must be listed (nomenclature and value) in the Capital Investment Incentive clause. The items of equipment can be incorporated in the contract using either or both of the following procedures:

(i) When the exact value and nomenclature of the item of plant equipment is known at the time of negotiations, it shall be listed in the investment clause at the time of the contract award. The contractor's proposal should reflect the impact on cost and other benefit to the Government that will accrue from use of the equipment in order to comply with Pub. L. 87–653;

(ii) If the exact value and nomenclature of each investment is not known at the time of negotiations and it can be mutually agreed that certain categories of plant equipment would benefit the Government, an additional provision to the investment clause should be used. This additional provision shall stipulate the conditions which the individual items of plant equipment must meet to be subsequently incorporated into the investment clause and shall establish the requirement for the contractor to submit financial and other justification necessary for the contracting officer to make the determination specifed in (c) above. Such items of equipment will be incorporated into the contract by supplemental agreement and the price revised, as appropriate; *Provided:* (A) they meet the contractual conditions and (B) the equipment value, when added to the value of previously covered equipment, will not exceed the stated dollar ceiling.

(3) The limit of the Government's contingent liability is subject to negotiation. Provision should be made to assume only that liability which is sufficient to motivate the contractor to invest.

(4) Application of the weighted guidelines in subpart 215.9 should reflect the assumption of risk by the parties associated with items covered by this technique.

(f) *Contractual requirements.* In order to incorporate this investment incentive, a special contractual Capital Investment clause shall be developed. Such a clause should include but not be limited to the following:

(1) A listing of the exact nomenclature and value of each item of plant equipment covered.

(2) A provision for additions to the listing after contract award, if appropriate. Such provision shall establish the conditions that must be met, the categories of equipment that will be covered, and the requirement for such additions to be incorporated by contract modification. This provision should allow for removal of an item from coverage at the request of the contractor with the concurrence of the contracting officer.

(3) Criteria for ascertaining when this special provision can be invoked as well as the criteria which will cancel the Government's contingent liability under the clause such as end-item quantity thresholds and performance dates, whichever occurs first.

(4) The dollar ceiling of the value of covered items as well as the Government's contingent liability by fiscal year.

(5) A specific method to establish the price to the Government at which each item would be acquired if this special provision is invoked.

(6) A provision that within 30 days of a Government decision that provides a basis for the contractor to invoke the special provision, the contracting officer shall notify the contractor in writing that the event has occurred and its date of occurrence. Further, the provision shall require that within 90 days after notification by the contracting officer, the contractor must provide to the contracting officer, in writing, a list of the specific investments which he desires to have the Government acquire. This list shall not include any investments which have not been incorporated into the investment clause of the contract prior to the contracting officer's notice to the contractor.

(7) A provision that once the contractor requests the Government to buy any equipment covered by the investment clause, the Government has the right to buy any and/or all other equipment covered by the clause whether the contractor requests it to do so or not.

(8) A provision for deferral of Government acquisition of those items of equipment needed for contract or program completion.

(9) A provision that the investment clause be carried over to successor contracts until the Government's responsibility to acquire the equipment expires.

(10) A provision that a supplemental agreement shall be executed for any equipment acquired by the Government under this special clause.

(11) A provision that as a condition of Government acquisition, the equipment shall be in good operating condition.

(12) Criteria for providing disposition instructions should the special provision for capital investment be exercised. Identify which party is to bear the cost of restoration, storage, disconnect and removal, packing and transportation upon removal of the equipment. The provisions of FAR 45.6 shall apply unless the contract provides specific exception thereto.

(13) A provision that in the event this special clause is invoked, the limitation stated in FAR 31.205–39 does not prevent acquisition or any payment for the covered equipment.

(14) A provision that this special clause for capital investment shall not apply in the event of contract termination for default.

(15) Provide that this investment clause can be made applicable to subcontracts, if appropriate benefits, as outlined in paragraph (b) above, are available. Provision must be made for Government approval, as outlined in paragraph (c) above, of all equipment for which the Government may assume contingent liability as well as a provision that the clause can be invoked only as a direct flow down from the prime's ability to invoke the clause.

(16) A provision that establishes the extent to which the contractor may use this equipment for other business.

(g) *Administration.*

(1) Approval for use of this investment incentive for contigent liabilities must be obtained from the Secretary of the Military Department or the Director of DLA. Authority up to $50 million may be delegated no lower than the Commander, AFSC, AFLC, NMC, DARCOM.

(2) In the event that it becomes apparent that the contingent liability resulting from the use of this technique will become an actual obligation, the approval authority shall be notified and immediate steps shall be taken to obtain sufficient funds to cover the obligation. These funds must be made available at the time the actual obligation materializes, to preclude a violation of the Anti-Deficiency Act.

Subpart 215.9—Profit

215.901 General.

(c) Furthermore, low average profit rates on defense contracts overall are detrimental to the public interest. Effective national defense in a free enterprise economy requires that the best industrial capabilities be attracted to defense contracts. These capabilities will be driven away from the defense market if defense contracts are characterized by low profit opportunities. Consequently, negotiations aimed merely at reducing prices by reducing profits, with no realization of the function of profit, cannot be condoned. For each contract in which profit is negotiated as a separate element of the contract price, the aim of negotiation should be to employ the profit motive so as to impel effective contract performance by which overall costs are economically controlled. To this end, the profit

objective must be fitted to the circumstances of the particular acquisition, giving due weight to each of the effort, risk, facilities investment, and special factors set forth in this subpart. This will result in a wider range of profits which, in many cases, will be significantly higher than previous norms.

215.902 Policy.

(a)(1) The weighted guidelines method shall be used as the structured approach for determining profit or fee in accordance with 215.905 and the following:

(i) The weighted guidelines method provides contracting officers with a technique that will insure consideration of the relative value of the appropriate profit factors in the establishment of a profit objective and the conduct of negotiations; and a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these profit factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys, and the like. Except as set forth in 215.902(a)(2), the weighted guidelines method shall be used in the negotiation of all contracts where cost analysis is performed for:

(A) The manufacturing of supplies and equipment;

(B) Research and development as described in FAR Part 35, encompassing research, exploratory development, advanced development, engineering development, and operational systems development;

(C) Services as described in FAR Part 37.

a. The profit objective for manufacturing contracts shall be computed, except as indicated in *e.* below, using the manufacturing weighted guidelines method, which provides profit opportunity based on facilities capital investment.

b. The profit objective for research and development contracts shall be computed using the research and development weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

c. The profit objective for service contracts shall be computed using the service contract weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

d. In determining whether a particular contract shall be classified as manufacturing, research and development, or services, primary reliance shall be placed on the nature of the work to be performed, as indicated by the coding for Item B8A of the DD Form 350 (see DOD 4105.61–M, Department of Defense Procurement Coding Manual, Volume 1), notwithstanding the appropriation or negotiation authority used. The following guidelines shall apply:

1. Manufacturing Weighted Guidelines. Contracts coded under Section I, Part C, Supplies and Equipment.

2. Research and Development Weighted Guidelines. Contracts coded under Section I, Part A, Research, Development, Test and Evaluation, except for contracts coded as AD2–, Defense Services, and A–6, Management and Support.

3. Services Weighted Guidelines. Contracts coded under Section I, Part B, Other Services and Construction; and under Section I, Part A, as AD2– and as A—. Note, however, that there are blanket exceptions for certain services (see 215.902(a)(2)).

e. The categories listed above are intended to be used as a point of departure in determining which weighted guidelines method applies. Many contracts for research and development and for services will require a significant amount of facilities for efficient contract performance. When this is the case, the manufacturing weighted guidelines method shall be used. Similarly, certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities. In such cases, the research and development weighted guidelines method shall be used. Contracting officers shall apply sound judgment in determining which weighted guidelines method is most appropriate for a particular contracting situation. The difference in profit objectives that would result from the application of alternative weighted guidelines methods shall not be a consideration in making this determination.

f. In determining whether a significant amount of facilities is required for efficient contract performance, the contracting officer should assess the facilities needed, including contractor owned and leased and Government owned. When there is a relatively small amount of facilities capital cost of money allocated to the contract because some facilities are provided through operating leases and by the Government, this does not necessarily mean that an insignificant amount of facilities is required for efficient contract performance.

g. When a method other than the manufacturing weighted guidelines method is used to establish the prenegotiation profit objective, the profit objective shall be reduced by the amount of facilities capital cost of money allowed in accordance with 231.205–10. On cost-plus-award-fee contracts, the base fee shall be reduced by the amount of facilities capital cost of money or the contract shall contain a provision to disallow the cost.

(ii) The contractor's proposal should include cost information for evaluation and a total profit figure. Contractors shall not be required to submit the details of their profit objectives but they shall not be prohibited from doing so if they desire. Elaborate and voluminous presentations are neither required nor desired and may indicate a low index of cost effectiveness, which fact itself shall be taken into consideration by the contracting officer.

(iii) The negotiation process does not contemplate or require agreement on either estimated cost elements or profit elements, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation. If the difference between the contractor's profit objective and the contracting officer's profit objective is relatively small, no discussion of individual factors may be necessary. If the negotiating parties' objectives are relatively far apart, a disclosure of weightings and rationale by both parties may be made concerning the total assigned to contractor effort, contractor risk, facilities investment, and special factors. By thus developing a mutual understanding of the logic of the respective positions, an orderly progression to final agreement should result. Simultaneous, not sequential, agreement will be reached on cost, any incentive profit-sharing formulas or limitation on profits, and price. The profit objective is a part of an overall negotiation objective which, as a going-in objective, bears a distinct relationship to the target cost objective and any proposed sharing arrangement. Since the profit is merely one of several interrelated variables, the Government negotiator shall not complete the profit negotiation without simultaneously agreeing on the other variables. Specific agreement on the exact weights or values of the individual factors is not required and shall not be attempted.

(iv) The prime contractor may use the weighted guidelines or a structured approach that discriminates among different levels of investment if the acquisition would be subject to the weighted guidelines under a prime contract. (For applicability, see 230.570–1(c).) If the acquisition falls into one of the exceptions to the weighted guidelines (see 215.902(a)(2)), the prime contractor may use another method to establish profit objectives. In the absence of structured approach that discriminates among different levels of investment, similar to the weighted guidelines, the profit objective will be reduced by the amount of facilities capital cost of money allowed in accordance with FAR 231.205–10.

(v) The following factors shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each factor shall be used in all instances where the weighted guidelines method is used.

	Weight ranges		
	Manufacturing*	R&D	Services
A. CONTRACTOR EFFORT			
Material Acquisition:			
Subcontract Items	1 to 5%	1 to 5%	1 to 5%.
Purchased Parts	1 to 4%	1 to 4%	1 to 4%.
Other Material	1 to 4%	1 to 4%	1 to 4%.
Engineering: Direct Labor	9 to 15%	9 to 15%	N/A.
Manufacturing: Direct Labor	5 to 9%	5 to 9%	N/A.
Services:			
Direct Labor	N/A	N/A	5 to 15%.
Overhead	N/A	N/A	4 to 8%.
Other: General Management	6 to 8%	6 to 8%	6 to 8%.
B. CONTRACTOR RISK	0 to 8%	0 to 7%	0 to 4%.
C. FACILITIES INVESTMENT	16 to 20%	N/A	N/A.
D. SPECIAL FACTORS			
Productivity	See 15.905–[illegible].	N/A	N/A.
Independent Development	1 to 4%	1 to 4%	N/A.
Other	−5 to +5%	−5 to +5%	−5 to +5%.

*An adjustment factor of .7 is applied to the results of the Contractor Effort evaluation to arrive at the dollar profit objective for this factor (see DD Form 1547).

(vi) Under the weighted guidelines method, the contracting officer shall first measure the "Contractor's Effort" by the assignment of a profit percentage, within the designated weight ranges, to each element of contract cost recognized by the contracting officer. Although certain classifications of acceptable cost, including travel, subsistence, facilities, test equipment, special tooling, Federal manufacturers' excise taxes, and royalty expenses, may have been historically excluded from the base upon which profit has been computed, they shall not be excluded when using the weighted guidelines method. Not to be included for the computation of profit as part of the cost base is the amount calculated for the cost of money for facilities capital. How this cost is determined and how it will be applied and administered is fully set forth in 230.70.

(vii) The suggested categories under the Contractor's Effort are similar to those on the Contract Pricing Proposal (SF 1411). Often, individual proposals will be in a different format, but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(viii) After computing a total dollar profit for the Contractor's Effort, the contracting officer then shall add the specific profit dollars assigned for cost risk, facilities investment risk, and special factors. Weighted Guidelines Profit/Fee Objective (DD Form 1547) is to be used, as appropriate, to facilitate the calculation of this profit objective.

(ix) The weighted guidelines method was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the weighted guidelines method can be used as a basis for arriving at fee objectives for nonprofit organizations. Therefore, the policy of the Department of Defense is to use the weighted guidelines method, as modified in (a)(1)(ix)(B) below, to establish fee objectives that will stimulate efficient contract performance and attract the best capabilities of nonprofit organizations to defense-oriented activities. The modifications shall not be applied as deductions against historical fee levels but to the fee objective for such a contract, as calculated under the weighted guidelines method.

(A) For purposes of this subparagraph, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(B) For contracts with nonprofit organizations where fees are involved, the following adjustments are required in the weighted guidelines method.

a. An adjustment of −1% of the total effort shall be assigned in all cases where the manufacturing weighted guidelines method is used. An adjustment of −3% of the total effort shall be assigned in all cases where the research and development or services weighted guidelines method is used.

b. The weight range under "Contractor Cost Risk" shall be −1% to 0% in lieu of 0% to 8% for contracts with those nonprofit organizations, or elements thereof, identified by the Secretary of Defense or the Secretary of a Department (or their respective designees) as receiving sustaining support on a cost-plus-a-fixed-fee basis from a particular Department or Agency of the Department of Defense.

(x) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluating them as set forth herein.

(i) Under the following listed circumstances, other methods for establishing profit objectives may be used:

(A) Architect-engineering contracts;

(B) Management contracts for operation and/or maintenance of Government facilities;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of material supplied by subcontractors;

(E) Termination settlements;

(F) Cost-plus-award-fee contracts;

(G) Contracts not expected to exceed $500,000; and

(H) Unusual pricing situations where the weighted guidelines method has been determined to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the head of the contracting activity.

(ii) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth above and that application of the manufacturing weighted guidelines will result in an equitable profit objective, other methods for establishing the profit objective may be used. These

methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

215.903 Contracting officer responsibilities.

(b) In analyzing profit, contracting officers should consider the following:

(1) When cost analysis is performed pursuant to 215.805–3, profit consideration shall be in accordance with the objectives set forth below. The Government should establish a profit objective for contract negotiations, which will—

(i) Motivate contractors to undertake more difficult work requiring higher skills and reward those who do so;

(ii) Allow the contractors an opportunity to earn profits commensurate with the extent of the cost risk they are willing to assume;

(iii) Motivate contractors to provide their own facilities and financing and to establish their competence through development work undertaken at their own risk and reward those who do so; and

(iv) Reward contractors for productivity increases.

The weighted guidelines method set forth in 215.902 for establishing profit objectives is designed to provide reasonably precise guidance in applying these principles. This method, properly applied, will tailor profits to the circumstances of each contract in such a way that long-range, cost-reduction objectives will be fostered, and a spread of profits will be achieved that is commensurate with varying circumstances.

(2) Development of a profit objective should not begin until after a thorough—

(i) Review of proposed contract work;

(ii) Review of all available knowledge regarding the contractor, including capability reports, audit data, preaward survey reports and financial statements, as appropriate; and

(iii) Analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost.

(3) A profit objective is that part of the estimated contract price objective or value which, in the judgment of the contracting officer, is appropriate for the acquisition being considered, covering the profit or fee element of the price objective. This objective should realistically reflect the total overall task to be performed and the requirements placed on the contractor. Prior to the negotiation of a contract, change order, or contract modification where cost analysis is undertaken, the negotiator shall develop a profit objective. The weighted guidelines method, if applicable, shall be used for developing this profit objective.

(f) In cases where the change or modification calls for substantially different work, then the basic contract profit and the contractor's effort may be radically changed and a detailed analysis is necessary. Also, if the dollar amount of the change or contract modification is very significant in comparison to the contract dollar amount, a detailed analysis shall be made.

215.905 Profit-analysis factors.

215.905–1 Common factors.

(a) This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and materials into the final product called for in the contract. This is a recognition that, within a given performance output or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows.

(1) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials, including special tooling. This evaluation shall include consideration of the number of orders and suppliers and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will obtain the material and tooling by routine orders from readily available supplies (particularly those of substantial value in relation to the total contract cost) or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements. Consideration shall be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out subcontracts from sole sources through the introduction of competition. These determinations shall be made for purchases of raw materials or basic commodities, purchases of processed material, including all types of components of standard or near standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In the application of this criterion, it should be recognized that the contribution of the prime contractor to his purchasing program may be substantial. This may apply in the management of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative. Recognized costs proposed as direct material costs, like scrap charges, shall be treated as material for profit evaluation. If the intracompany transfers are accepted at price, they shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead. Normally, the lowest unadjusted weight for direct material is 2%. A weighting of less than 2% would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor.

(2) Analysis of the engineering, manufacturing, and service labor items of the cost content of the contract shall include evaluation of the comparative quality and level of the engineering talents, manufacturing and service skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration shall be given to the amount of notable scientific talent or unusual or scarce engineering talent needed in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance and the corresponding need for engineering supervision and coordination shall be evaluated. Similarly, the variety of manufacturing labor skills required and the contractor's manpower resources for meeting these requirements shall be considered. Service contract labor shall be evaluated in a like manner by

assigning higher weights to engineering or professional-type skills and lower weights to semiprofessional or other type skills required for contract performance. A weighting in excess of 10% for service contract labor will be justified normally only when the quality, skill, and experience of the service contract labor warrant a corresponding weighting under a research and development contract.

(3)(i) Analysis of conversion related indirect costs and general management (FAR 15.905–1(a)(4)) includes the evaluation of the makeup of these expenses and how much they contribute to contract performance. This analysis shall include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements shall be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these overhead pools shall be evaluated to determine whether they are routine expenses, like utilities, depreciation, and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to these overhead expenses differs from the method used in assigning values of the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(ii) It is not necessary that the contractor's accounting system break down the overhead expenses within the classifications of engineering overhead, manufacturing overhead, and general and administrative expenses, unless dictated by cost accounting standards (CAS). The contractor whose accounting system only reflects one overhead rate on all direct labor need not change the system (if CAS-exempt) to correspond with the above classifications. In evaluating such a contractor's overhead rate, the contracting officer can break out the applicable sections of the composite rate which can be classified as engineering overhead, manufacturing overhead, and general and administrative expenses, and follow the appropriate evaluation technique.

(iii) There is a critical factor to consider in the determination of profit in this area. Management problems surface in various degrees and the management expertise exercised to solve them shall be considered as an element of profit. For example, a new program for an item that is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons shall be adjusted downward as many of the problems shall have been solved. In any event, an evaluation shall be made of the underlying managerial effort involved on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses with each acquisition of substantially the same product with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, the weight assigned may be used for future contracts with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or until the factors discussed in (a)(3)(iii) above are relevant.

(4) See (a)(3) above.

(b) In evaluating contract cost risk, contracting officers should also consider the following:

(1) This factor reflects the policy of the Department of Defense that contractors bear an equitable share of contract cost risk, and to compensate them for the assumption of that risk. A contractor's risk associated with costs to perform under a Government contract is usually minimal under cost-reimbursement type contracts. However, as acquisition progress from basic research through follow-on production and supply contracts, the use of increased contractor-risk-assumption-type contracts is appropriate for increasing the contractor's responsibility for performance. The generally accepted progression of the acquisition spectrum ranging from basic research through supply acquisitions and from cost to firm fixed-price contracts, is shown below:

Type of effort	Type of contract
1. Basic Research	Cost, CPFF.
2. Applied Research	Cost, CPFF.
3. Exploratory Development	Cost, CPFF.
4. Advanced Development	CPFF, CPAF.
5. Engineering Development	CPFF, CPAF, CPIF.
6. Operational System Development	CPIF, CPAF, FPI.
7. First Production	FPI.
8. Follow-on Production	FPI, FFP.
9. Supply	FFP.

(2) In developing the prenegotiation profit objective, the contracting officer will need to consider strongly the type of contract anticipated to be negotiated and the associated contractor risk when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This is one of the most important factors in arriving at prenegotiation profit objectives.

(3) Evaluation of this risk requires a determination of (i) the degree of cost responsibility the contractor assumes, (ii) the reliability of the cost estimates in relation to the task assumed, and (iii) the complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, such risks on the part of the contractor as reputation, losing a commercial market, losing potential profits in other fields, or any risk on the part of the contracting activity, such as the risk of not acquiring an effective weapon, are not within the scope of this factor.

(4) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk by contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract, requiring only that the contractor use his best efforts to perform a task, and firm fixed-price contract for a complex item. A cost-plus-fixed-fee contract reflects a minimum assumption of cost responsibility, whereas a firm fixed-price contract reflects a complete assumption of cost responsibility.

(5) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior production experience assists the contractor in preparing reliable cost estimates on new contracts for similar equipment. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(6) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(7) Contractors are likely to assume greater cost risk only if contracting officers objectively analyze the risk incident to proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract will not justify a reward for risk in excess of 0.5%, nor will a firm fixed-price contract justify a reward of less

than the minimum on the weighted guidelines. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges:

(i) Type of contract and percentage ranges for profit objectives developed by using the manufacturing weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%.
Cost-Plus-Incentive Fee	
With Cost Incentives Only	1 to 2%.
With Multiple Incentives	1.5 to 3%.
Fixed-Price-Incentive	
With Cost Incentives Only	3 to 5%.
With Multiple Incentives	4 to 6%.
Prospective Price Redetermination	4 to 6%.
Firm Fixed-Price	6 to 8%.

(ii) Type of contract and percentage ranges for profit objectives developed by using the research and development weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%.
Cost-Plus-Incentive Fee	
With Cost Incentives Only	1 to 2%.
With Multiple Incentives	1.5 to 3%.
Fixed-Price-Incentive	
With Cost Incentives Only	2 to 4%.
With Multiple Incentives	3 to 5%.
Prospective Price Redetermination	3 to 5%.
Firm Fixed-Price	5 to 7%.

(iii) Type of contract and percentage ranges for profit objectives developed by using the service contract weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%.
Cost-Plus-Incentive Fee	1 to 2%.
Fixed-Price-Incentive	2 to 3%.
Firm Fixed-Price	3 to 4%.

(A) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed-price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract cost responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive contract. In such a pricing environment, the contracting officer may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(B) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It can cause risk to increase or decrease in terms of both cost and performance. This consideration shall be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation, as a result, may be below the range that would otherwise apply for the contract type being proposed. This situation will be found to exist only in a few extraordinary situations under circumstances of (i) a follow-on production contract, in which a substantial portion of the total contract costs represents a single subcontract or a few subcontracts, (ii) the fullest incentive reward and penalty feature on cost performance having been passed by the prime contractor to the subcontractor. In an acquisition in which all of these circumstances are found to exist, a lower than usual profit weight may be applied to the aggregate of all recognized costs including the subcontract portion. The contract cost risk evaluation shall not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of contractor's risk, since this can result eventually in a lessening of the amount of work let on subcontracts.

(C) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, and unpriced orders, under BOAs, consider the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances and not be just the portion of costs incurred, or percentage of work completed, prior to definitization.

(D) Time and material, labor hour, and overhaul contracts priced on a time and material basis shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

(E) In determining the contract cost risk percentage under CONTRACTOR RISK in profit factors of the weighted guidelines provided in 215.902(a)(1), it is appropriate to consider additional risks associated with foreign military sales (FMS). To be recognized, an additional cost risk factor shall be demonstrated by the contractor to be significant and over and above that normally present in DoD contracts for similar items. If an additional cost risk factor associated with FMS is recognized, the total profit under the CONTRACTOR RISK Section shall not exceed the limits set forth in FAR 15.903(d) for different types of contracts. For example, when the manufacturing weighted guidelines method is used, the limitation will be 0.5% for CPFF contracts, 3% for CPIF contracts, 6% for FPI contracts, and 8% for FFP contracts. The additional cost risk factor shall not apply to FMS made from inventories or stocks nor to acquisitions made under DoD cooperative logistics support arrangements.

(c) See 215.905–2.

(d) This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Sixteen to 20% of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the contracting officer shall consider in evaluating this risk are:

(1) The overall cost effectiveness of the facilities employed;

(2) Whether the facilities are general purpose or special purpose items;

(3) The age of the facilities;

(4) The undepreciated value of the facilities;

(5) The relationship of the remaining writeoff life of the investment and the length of the program(s) or contract(s) on which the facilities are employed; and

(6) Special contract provisions that reduce the contractor's risk of recovery of facilities capital investment (termination-protection clauses, multiyear cancellation ceilings, etc.). To assist in evaluating new investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities are part of an approved investment plan and that achievable benefits to the Government will result from the investment. New

industrial facilities and equipment shall receive maximum weight when they—

(i) Are to be acquired by the contractor primarily for defense business;

(ii) Have a long service life;

(iii) Have a limited economic life due to limited alternative uses; and

(iv) Reduce the total life cycle cost of the products produced for the Department of Defense.

To the extent that the new investment represents routine replacement of existing assets, a lesser weight shall be assigned.

(e) See 215.905–2.

(f) See 215.905–2.

215.905–2 Additional factors.

(a) *Productivity.*

(1) *General.* A key objective of the DoD profit policy is to reduce the cost of defense preparedness by incentivizing defense contractors' investment in modern cost-reducing facilities and other improvements in efficiency. To the extent that costs serve as the basis for pricing (both cost and profit), success in reducing costs can serve, in turn, to reduce profit dollars opportunity. For example, a fixed-price incentive-type contract is typically used for the first production contract of a major weapon system program. The incentive to increase productivity and reduce cost within one contract works against a contractor on follow-on production contracts because the reduced level of cost becomes a part of the basis for pricing subsequent contracts. In order to mitigate the loss of profit dollars opportunity that occurs when costs are reduced due to productivity gains, a special "Productivity Reward" may be included in the prenegotiation profit objective of a pending acquisition under certain circumstances.

(2) *Applicability criteria.* The "Productivity Reward" may be applied when the following criteria are met:

(i) The pending acquisition involves a follow-on production contract.

(ii) Reliable actual cost data is available to establish a fair and reasonable cost baseline.

(iii) Changes made in the configuration of the item being acquired are not of sufficient magnitude to invalidate price comparability.

(3) *Implementation procedures.* The amount of productivity reward for a given contract is based on the estimated cost reduction that can be attributed to productivity gains. Set forth below are principles and procedures that apply to estimating cost reductions and calculating the productivity reward:

(i) The contractor shall prepare and support the cost reduction estimate.

(ii) The overall contract cost decrease shall be based on estimated decreases measured at the unit cost level.

(iii) The lowest average unit cost (exclusive of profit) for a preceding production run shall serve as the unit cost baseline.

(iv) A technique shall be employed to determine that portion of the cost decrease attributable to productivity gains as opposed to the effects of quantity differences between the base contract and the pending acquisition.

(v) When the parties agree that the estimated overall contract cost decrease is materially affected by price level differences between the base period and the current point in time, an economic price adjustment may be applied to the estimate.

(vi) The productivity reward shall be calculated by multiplying the contract cost decrease due to productivity gains by the base profit objective rate.

(vii) The degree of review and validation of the data supporting the productivity reward calculation shall be commensurate with the materiality of this profit element in relation to the overall price objective. There may be several methods advanced, by both contracting officers and contractors, to quantify productivity gains. Any technique may be acceptable; *Provided* it takes into account equitably the principles and procedures listed above.

(b) *Independent development.* Contractors who develop items that have potential military application without Government assistance are entitled to special profit consideration on those items as a special profit factor to be considered within the weighted guidelines in arriving at a profit objective. One to 4% of recognized cost is established as the normal range of value for this profit factor. The criteria for selection of the specific percentage shall be the importance of the development in advancing defense purposes, the demonstratable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources.

(c) *Other factors.* A composite percentage weight within the range of −5% to +5% of the basic profit objective may be assigned to other profit factors in arriving at the total profit objective. These other profit factors, which may apply to special circumstances or particular acquisitions, relate to contractor participation in the Government's Small Business, Small Disadvantaged Business, and Labor Surplus Programs, and to special situations not specifically set forth elsewhere in these guidelines. Participation that is rated as merely satisfactory shall be assigned a weight of zero, generally. Evidence of energetic support may justify a plus weight, and poor support a negative weight. Special situations may be assigned either a plus or minus weight, depending on the particular circumstances of the acquisition.

(1) *Small business and small disadvantaged business participation.* The contractor's policies and procedures that energetically support Government small business and small disadvantaged business subcontracting programs, pursuant to FAR 19, shall be given favorable consideration. Any unusual effort that the contractor displays in subcontracting with small business or small disadvantaged business concerns, particularly for development-type work likely to result in later production opportunities, and the overall effectiveness of the contractor in subcontracting with and furnishing assistance to such concerns shall be considered. Conversely, failure or unwillingness on the part of the contractor to support Government small business or small disadvantaged business policies shall be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(2) *Labor surplus area participation.* A similar review and evaluation (as required in (c)(1) above) shall be given to the contractor's policies and procedures supporting the Government's Labor Surplus Area Program, pursuant to FAR 20. In particular, favorable consideration shall be given to a contractor who (i) makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (ii) promotes maximum subcontractor utilization of certified eligible concerns, as defined in FAR 20.101.

(3) *Energy Conservation.* Favorable consideration shall be given to the contractor's initiatives and accomplishments in the conservation of energy.

(4) *Special Situations.* Particular situations may justify use of a profit factor other than those specifically identified in these guidelines. These situations shall be identified and the reason(s) for their use documented in the records of price negotiation. Examples of such situations include contractor effort to exploit additional production cost-reduction opportunities or to improve or develop new product/manufacturing technologies to reduce production cost.

Subpart 215.10—Preaward and Postaward Notifications, Protests and Mistakes

215.1001 Notification to Offerors.

(b)(1) Within DoD, the threshold for notification is $25,000 in accordance with 10 U.S.C. 2304(g).

(b)(2) Procurements processed under small purchase procedures are exempt from the requirements of FAR 15.1001(b)(2).

(c) Within DoD, the threshold for notification is $25,000 in accordance with 10 U.S.C. 2304(g).

215.1002 Debriefing Of Unsuccessful Offerors.

(a) Debriefings shall be provided at the earliest feasible time after contract award. They shall be conducted by purchasing office officials familiar with the rationale for the selection decision and contract award.

215.1070 Classified Information.

Classified information shall be furnished only in accordance with regulations governing classified information.

PART 216—TYPES OF CONTRACTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 216.1—Selecting Contract Types

216.101 General.

(a) In addition, the role of profit in selecting contract type includes the following:

(1) Profit, generally, is the basic motive of business enterprise. Both the Government and its defense contractors should be concerned with harnessing this motive to work for the effective and economical contract performance required in the interest of national defense. To this end, the parties should seek to negotiate and use the contract type best calculated to stimulate outstanding performance. The objective should be to insure that outstandingly effective and economical performance is met by high profits, mediocre performance by mediocre profits, and poor performance by low profits or losses. The proper application of these objectives on a contract by contract basis should normally result in a range of profit rates.

(2) Success in harnessing the profit motive begins with the negotiation of sound performance goals and standards. This objective is met if the contractor either benefits or losses in relation to achieving or failing to achieve realistic targets. When award is based on effective price competition, there is reasonable assurance that the contract price represents a realistic pricing standard, including a profit factor which reflects an appropriate return to the contractor for the financial risk assumed in undertaking performance at the competitive price. In the absence of competitive forces, however, the contract type selected should provide for a profit factor that will tie profits to the contractor's efficiency in controlling costs and meeting desired standards of performance, reliability, quality, and delivery. Therefore, in noncompetitive situations, the degree to which available cost estimates are realistic, and the degree of uncertainty affecting the work to be performed, should be carefully considered in determining which type of contract should be selected and how it should be used.

(3) The policies in (a) (1) and (2) above required that the contractor assume a reasonable degree of cost responsibility as early in contract performance as is possible. This can be achieved only through vigorous contract administration and effort on the part of both parties to assure timely pricing. Particularly in fixed-price type contracts providing the price revisions, delays in pricing actions by either party may distort the type of contract which has been agreed upon and such delays must be avoided.

(4) When a contract type providing for a reasonable degree of contractor cost responsibility cannot be negotiated on a timely basis, due to the contractor's unwillingness to assume reasonable risk, profits should be negotiated so as to reflect this fact.

(4) When a contract type providing for a reasonable degree of contractor cost responsibility cannot be negotiated on a timely basis, due to the contractor's unwillingness to assume reasonable risk, profits should be negotiated so as to reflect this fact.

(5) Notwithstanding the validity of profit as a motivating factor in general, there are situations, particularly in the early stages of research and development, in which the profit motive may be secondary. Harnessing the profit motive at the early stages of such procurements may not be effective or desirable in view of the high degree of technical and cost risk associated with performance or consistent with achieving desired technical objectives. The contracting officer's objective should still be "effective and economical performance," but the relative weight of these factors must be kept in balance (see 216.104(S–71)). Of course, outstanding performance can still be rewarded under a research and development contract, by proper application of incentive techniques.

(6) The firm fixed-price contract is the most preferred type for harnessing the profit motive because the contractor accepts full cost responsibility, and the relationship between cost control and profit dollars is established at the outset of the contract. Accordingly, when a reasonable basis for firm pricing exists (see 216.202), the firm fixed-price contract shall be used, because its use under these circumstances will provide the contractor with a maximum profit incentive to control the costs of performance. However, the contracting officer must be alert to the fact that in certain situations the use of special contract incentive provisions may be more appropriate. While maximum incentive to a contract exists in a firm fixed-price contract, the basis for the application of firm fixed-price is the knowledge that the price has been arrived at either through competition or through sound pricing techniques which keep pricing uncertainties to a minimum. When contracting for research and development, or when price competition is not present, and (i) when the cost or pricing data available does not permit sufficiently realistic estimates of the probable cost of performance, or (ii) uncertainties surrounding the contract performance cannot be sufficiently identified to evaluate their impact on price, the use of a type of contract other than firm fixed-price should be considered. For example, a profit incentive to control costs can be achieved through use of the fixed-price incentive contract, and to a lesser degree, the cost-plus-incentive-fee contract, when appropriate target costs and incentive arrangements can be negotiated.

(b) The specific type of contract should be determined by the degree of risk in contract performance. When the risk is minimal or can be predicted with an acceptable degree of certainty, a firm fixed-price contract is preferred. However, as the uncertainties become more significant, other fixed price or cost type contracts should be employed to accommodate these uncertainties and to avoid placing too great a cost risk on the contractor.

216.104 Factors in selecting contract types.

(S–70) *Stability of Design.* Other factors to consider are stability of design, which in turn may influence such subordinate considerations as the adequacy and firmness of specifications, and the availability of relevant

historical pricing data and prior production experience and adequacy of the contractor's estimating system.

(S–71) Other factors based on development stage.

(1) *Research and development (R&D).* The selection of the appropriate contract type is, in the final analysis, the responsibility of the contracting officer. However, because of the importance of technical considerations at the R&D stage, the choice of contract type shall not be made without obtaining the recommendations of cognizant technical personnel. Generally, the selection of contract type should also be discussed with prospective contractors. Where appropriate, R&D solicitations should permit prospective contractors to propose an alternative contract type. Any counterproposal must be supported by the contractor's rationale for his choice. The contracting officer shall include a statement in the file, setting forth his rationale for the type of contract ultimately selected. The categories of Research, Exploratory Development, Advanced Development, Engineering Development and Operational Systems Development, represent the spectrum of the R&D cycle and were so designated to provide an appropriate breakdown of R&D effort for management purposes. Each category has a prime technical or functional objective and certain distinctive features. It should not be inferred, however, that each category is a discrete step in the R&D process with a clear beginning and end entirely separate and distinct each from the other. In the latter categories of development, it is possible for different parts of a project to fit several different category definitions. Thus, a project properly categorized as Engineering Development may include subsystem work or elements of work that are, because of their particular technical state of development, truly Advanced Development, or in rare cases, even Exploratory Development. Again, the contract must be selected to fit the work required, not selected solely on the basis of the classification of the overall program.

(2) *Research and exploratory development.* The categories of Research and Exploratory Development form a logical grouping of the R&D process at one end of the spectrum. In Research and Exploratory Development contracting, the nature of the work, the usual lack of definitive requirements, the inability to measure technical objectives, the inability to measure risk, the amount of government technical direction and control desired, the lack of competition, and whether the contractor will be an educational institution, commercial company, or a not-for-profit organization, may be primary consideration in choosing the type of contract. Price is not necessarily the primary factor in determining the contract type. While no restriction exists on the type of contract which may be used, the nature of the work in these categories most frequently necessitates the negotiation of a CPAF, CPFF term, cost-no-fee, or cost-sharing contract. In cases where the level of contractor effort desired can be identified and agreed upon in advance of performance, negotiation of a firm fixed-price level of effort contract may be appropriate. Incentive type contracts should not be used unless the contractor and Government agree that an incentive arrangement is desirable, can be effective, and, upon completion, can be evaluated in terms of the incentives.

(3) *Advanced development.* The primary objective of Advanced Development is to determine and demonstrate, experimentally, the acceptability of the technical, economic, logistic and operational characteristics of one or more advanced concepts considered suitable for solution of a clearly stated military problem or technical objective. Advanced development provides the development effort which couples the inventory of science, technological and feasibility concepts derived from research and exploratory development to the end use oriented engineering and operational system developments. Included in this is the experimental demonstration of advanced technologies, equipment, subsystems, or systems, as well as the study, design, development, test and evaluation of advanced or innovated hardware, equipment or instrumentation necessary to provide a basis for selection among alternatives. It includes systems analyses trade-off studies, cost effectiveness analyses and particularly exploratory technological effort directly responsive to the objectives of the specific advanced development. Further, it includes conceptual effort required to generate the information to satisfy the prerequisites to initiation of system development wherein advanced development efforts are aimed at risk reduction and providing feasibility—often referred to as the validation phase or prototype phase. It is in this category that the first significant hardware for test is developed. In this broad category of work, selection of the best contract type should be made only after careful identification of the specific nature of the work required. No restriction exists as to the type of contract that may be used for work in this category. The nature of the work, however, often necessitates the use of CPFF completion type contracts. Incentive contracts can be effectively used in this category when realistic, measurable targets can be identified and program success can be predicted with a reasonable degree of accuracy. Contracts with only cost incentive should not be used in procurement where, at the outset, it can be expected that there will be a large number of major technical changes in the project or where actions beyond the control of the contractor may influence the just determination of the contractor's achievement. Competition may be used in these efforts for risk reduction, design innovation and cost reduction.

(4) *Engineering development and operational systems development.* Engineering and Operational Systems Development, because of many similarities, from a logical grouping in the spectrum of R&D categories. These categories, the ultimate aim of which is production and development, include all effort the primary objective of which is the enginneering design and final engineering demonstration of the technical, economic, logistic and operational characteristic of an experimentally feasible and acceptable system, equipment, subsystem, component or process judged to be the optimum solution to clearly stated military problems or technical objectives. In Engineering Development, such effort is founded on the probability of eventual procurement for inventory and use, and, therefore, includes effort leading to the demonstration of acceptability for such procurement. Operational Systems Development effort has the primary objectives of producibility demonstation and R&D support of final service test of the logical and operational development of an acceptable system, equipment, subsystem or component, approved for procurement and operational deployment or otherwise specifically approved for inclusion in this category. It may include the building of one or more production prototypes utilizing all processes, tooling, and test equipment considered for the production process thereby constituting a demonstration and qualification of the production process. Even when the overall project is in Engineering or Operational System Development, there may be integral supporting tasks that are still in the Advanced Development stage and the contract type for these tasks should be selected accordingly. The type of contract selected should be decided on

the basis of major factors such as: (i) the definitiveness of the project at this stage and its bearing on the accuracy of cost estimates; (ii) the completion schedule required for satisfactory operational deployment; (iii) the degree of risk and uncertainty expected; (iv) the ability to establish meaningful and measureable incentives; (v) the need for effort overlapping that of earlier development stages; (vi) the desirability of firm technical direction by the Government and (vii) the degree of configuration control to be exercised. Any one or combination of these factors could have a direct bearing on the type of contract selected. Cost reimbursement type contracts are preferred to all development efforts and particularly for major defense systems. When risk has been reduced to the extent that realistic pricing can occur, fixed price type contracts should be used, e.g., when a program has reached the final stages of development and technical risks are minimal. The use of letter contracts shall be minimized.

Subpart 16.2—Fixed-Price Contracts

216.203–4 Contract clauses.

(a) In addition, the clause should normally be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date.

(b) In addition, the clause should normally be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date.

(c)(1) in addition, the clause shall be limited to contracts in which the price exceeds $50,000 and the period of performance exceeds six months unless its use otherwise is approved by the Chief of the contracting office. An appropriate modification of the clause may be used in advertised procurements. Further, the clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(4) of the clause upon approval by the chief of the contracting office.

(3) The following sample format illustrates a type of schedule description that may be used:

The following types of labor and material are subject to price adjustment pursuant to the "Economic Price Adjustment—Labor and Material" clause of this contract.

CONTRACT ITEM NO. 1

Type of labor and material	Rates of pay and material prices	Quantities and direct purchase of procurement
Drill press operator.	$3.00/hour, no fringe benefits included	
	$3.00	20 min—$1.00.
Welder	$2.75/hour .05/hour—vacation pay .20/hour—pension plan	
	$3.00	10 min—$0.50.
Copper sheet	$0.40/lb.	2 lb.—$0.80.
Purchased parts:		
(1) ABC tube X5721.	$1.00 each	3 ea.—$3.00.
(2) XYZ part #9348.	$0.50 each	10 ea.—$5.00.

(c)(4) Also, the specific terms and conditions of the authorized clause are not applicable, a modified economic price adjustment clause to cover increases or decreases in the actual costs incurred by the contractor for labor or materials may be included if it is consistent with the above guidelines and is approved by the department concerned.

(iv) Make the full amount of decrease in the labor rates and fringe benefits or unit prices for materials.

(d)(3) The following factors may be considered in preparing a price adjustment clause meeting the criteria above including construction of appropriate indices:

(i) The clause should not be overly complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor);

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance;

(iv) The clause must have a positive and accurate identification of the applicable index(es) upon which adjustments will be based and provide appropriate economic fluctuation in the event of the discontinuance of the publication of the movement of the designated index. This might include the substitution of another index if the time remaining would so justify and an appropriate index is reasonably available, or some other method for repricing of the remaining portion of the work to be performed. There should not normally be any need to make an adjustment in the event computation of the identified index is altered; however, provision may be made to adjust the economic fluctuation computations in the event there is such a substantial alteration to the method of computing the index as to negate the original intent of the parties. When an index to be used is subject to revision (e.g., the Bureau of Labor Statistic Producer Price Indexes), the economic price adjustment clause shall further specify that any economic price adjustment shall be based upon the applicable revised index;

(v) An index should be structured to encompass a large sample of relevant items yet bear a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to the contract performance, yet must be significantly broad so as to assure the minimal effect of any single company, including the anticipated contractors.

(vi) Construction of an index is largely dependent upon two general series published by the U.S. Department of Labor, Bureau of Statistics (BLS). These are the industrial Commodities portion of the Producer Price Index and the Wage and Income Series by Standard Industrial Classification for labor. Since there are no BLS published series currently available that relate directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., such composite indices from major portions of the two series described above should be made.

(vii) Normally not more than two indices should be used, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should provide for adjustment from the beginning of the contract or from such period of time that the rate of expenditure is commensurate with the administrative cost and effort to adjust, but it should not provide for adjustment beyond the original contract performance period.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to total contract price) in lieu of actual cost incurred. In the event the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix of labor and material

and rate of expenditure by percentage, shall be determined by the PCO in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited in order that all companies may compete on an equal basis. If the clause is to be used in a noncompetitive procurement, the labor and material allocations as determined by the PCO may be subject to negotiation and agreement. For multi-year contracts, there should be established predetermined expenditure profile tables for each of the annual increments in the multi-year buy, with each of the second and subsequent year tables being cumulative to reflect the total expenditures for all increments funded through the latest multi-year funding.

(xi) The clause should state that percentage of the contract price subject to price adjustment. Normally, adjustments would not be applied to the profit portion of the contract. Additionally, the labor and material portions of the contract must be examined to exclude any areas that do not require adjustment. It may not be necessary, for example, to include all subcontracting as being subject to economic price adjustment because some of the subcontracting could be for shorter periods of time during the early life of the contract and, would be covered therefor, by firm priced subcontracting. It may be possible to exclude certain areas of overhead from economic price adjustment protection; for example, depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges are illustrated as some of the areas that should be examined in detail. In the same manner, consideration should be given to the necessities to include economic fluctuation protection covering that portion of labor for the period of time for which a definitive union agreement exists without additional factoring for such things as cost of living increases. Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuation in the economy. That portion of the contract which is determined to be proper for economic fluctuation protection shall then be allocated to specific periods of time (e.g., quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events positive for price adjustments. Adjustments should be of such a frequency so as to afford the contractor appropriate economic relief without at the same time creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges, above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified except in the event of partial termination of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(4) Consistent with the factors set forth above, the contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

(5) When economic price adjustment provisions are included in contracts that do not require submission of cost or pricing data as provided for in 215.804–3, it will be the responsibility of the contracting officer to obtain adequate information to establish the base line from which adjustments will be made. In addition, the contracting officer may require verification of the data submitted to the extent considered necessary to permit reliance upon it as a reasonable base line.

216.203–70 Fixed-price contracts with economic price adjustment.

(a) *Price adjustment for basic steel, aluminum, brass, bronze or copper mill products.* The price adjustment clause at 252.216–7000 is authorized for use in fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when an established catalog or market price exists for the particular product being procured and has been verified in accordance with criteria in 215.804–3(c). The 10 percent figure in paragraph (c)(1) of the clause shall not be exceeded unless approved by the Chief of the Contracting Office. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with the criteria set forth in FAR 15.804–3 and as required by paragraph (c)(4) of the clause.

(b) *Price adjustment for nonstandard steel items.* The price adjustment clause at 252.216–7001 is authorized for use in fixed price supply contracts when:

(1) The contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause; and

(2) The items being procured are nonstandard steel items made wholly or in part of standard steel mill items.

When this clause is included in invitations for bids, Note (8) of the clause is inapplicable and shall be omitted. Invitations for bids or requests for proposals shall instruct bidders or offerors to complete all blanks in accordance with the applicable notes. When the clause is to provide for adjustment based on the contractor's "established price" (see paragraphs (a) and (d) of the clause and Note (8) of the clause), the established price shall be verified in accordance with 215.804–3 prior to contract award. When the clause is to provide for adjustment on another basis (see Note (9) of the clause), that price must be verified. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with criteria set forth in FAR 15.804–3 (but see Note (8) of the clause) and as required by paragraph (f) of the clause. The 110% figure in paragraph (e) of the clause shall not be exceeded unless approved by the Chief of the Contracting Office.

216.206 Fixed-ceiling price contracts with retroactive price redetermination.

216.206–1 Description.

The redetermined price should be negotiated so as to give weight to the management effectiveness and ingenuity exhibited by the contractor during performance, and the basis for such negotiation should be fully discussed with the contractor when this type of contract is negotiated. Because the price is redetermined on a completely retroactive basis, this contract type (except for the price ceiling) does not provide the contractor with a calculable

incentive for effective cost control. Once established, the ceiling price is subject to adjustment only if required by the operation of other contract clauses (see FAR 16.201).

216.207 Firm-fixed-price, level-of-effort term contracts.

216.207-1 Description.

This type of contract can be a useful tool, particularly in the Research and Exploratory Development categories when the work cannot be clearly defined and the level of effort desired can be identified and agreed upon in advance of performance.

Subpart 216.3—Cost-Reimbursement Contracts

216.301 General.

216.301-2 Application.

While cost reimbursement contracts are particularly useful for procurements involving substantial amounts, e.g., estimated cost of $100,000 or more, the parties may agree in a given case to use this type of contract to cover transactions in which the estimated costs are less than $100,000.

216.303 Cost sharing contracts.

(b) *Application.* Cost sharing contracts are for use in research or development procurements.

216.306 Cost-plus-fixed-fee contracts.

(b) *Application.* In addition to the conditions of FAR 16.301–2 being present, a cost-plus-fixed-fee contract is suitable when:

(1) A cost-reimbursement type of contract is found necessary in accordance with 216.301–2;

(2) The parties agree that the contract should be fee bearing;

(3) Where the level of effort required is unknown; and where measuring achievements in contract performance does not lend itself to the subjective evaluation required in CPAF contracts;

(c)(S–70) This type of contract normally should not be used in the development of major weapons and equipment, once prerequisite preliminary exploration, studies, and risk reductions have indicated a high degree of probability that the development is achievable and the Government generally has determined its desired performance objectives and schedule of completion. The cost-plus-fixed-fee contract shall not be used for procurements categorized as either Engineering Development or Operational System Development; which have completed the Validation Phase except with the approval of the Head of a Contracting Activity or his designee, it may be used in these categories for individual procurements, ancillary to the development of a major weapons system or equipment, where the purpose of the procurement is clearly to determine or solve scientific problems associated with the major weapon system or equipment.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402-2 Technical performance incentives.

Increases in profits or fees resulting from the use of incentive provisions are made only because cost, performance, or other contractual goals or standards have been surpassed.

(S–70) *Description.* A contract with a performance incentive is one which incorporates an incentive to the contractor to surpass stated performance targets by providing for increases to the extent that such targets are not met. Salient features and considerations in the use of this type of contract are as follows:

(1) "Performance," as used in this paragraph refers not only to the performance of the article being procured, but to the performance of the contractor as well. Performance which is the minimum which the Government will accept shall be mandatory under the terms of the Completion form contract and shall warrant only the minimum profit or fee related thereto. Performance which meets the stated targets will warrant the "target" profit or fee. Performance which surpasses these targets will be rewarded by additional profit or fee. The incentive feature (providing for increases or decreases, as appropriate) is applied to performance targets rather than performance requirements.

(2) The incentive, when applied to the product, should relate to specific performance characteristics, such as range of a missile, speed of an aircraft or ship, thrust of an engine, maneuverability to a vehicle, and fuel economy. However, high overall performance of the end item is the primary objective of such contracts. Accordingly, the incentive feature should reflect a balancing of the various characteristics which together account for overall performance, so that no one characteristic will be exaggerated to the detriment of the end item as a whole. When applied to the performance of the contractor, the incentive should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

(3) Since performance tests generally are essential in order to determine the degree of attainment of performance targets, the control must be as specific as possible in establishing test criteria, such as conditions of testing, precision of instrumentation, and interpretation of test data.

(S–71) *Application.* Contracts with performance incentives are suitable for use in procurements where it is desired to provide the contractor with an incentive in the form of financial reward for surpassing stated performance targets, counter-balance by a penalty in the form of decreased profit or fee for failure to achieve such targets. Performance incentives are particularly appropriate for inclusion in contracts for major weapons and equipment, both in development when desired performance objectives are known and the fabrication of prototypes for test and evaluation is required, and in production where there is potential for improved performance that would be highly desirable to the Government. Effort always should be made in these procurement situations to include a performance incentive in the contract. Performance incentives present complex problems in contract administration and should be negotiated and administered by contracting officers with full cooperation of Government engineering and pricing specialists.

216.403 Fixed-price incentive contracts.

(b)(3) *Application.* Separate incentive provisions may be made applicable to individual line items of a contract, e.g., when dissimilar work is best incentivized by use of separate formulas.

(c) *Limitations.* In no case should such contracts be used where the sole or principal purpose is to shift substantially all cost responsibility to the Government. Further, in no case shall the firm target profit or formula for final profit and price be established independently.

216.403-2 Fixed-price incentive (successive targets).

(a)(1) This formula does not apply for the life of the contract but simply is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula for fixing the firm target profit should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.404 Cost-reimbursement incentive contracts.

216.404–1 Cost-plus incentive fee contracts.

(b) *Application.* Where it is highly probable that the development is feasible and the Government generally has determined its desired performance objectives, the cost-plus-incentive-fee contract should be used in conjunction with performance incentives in the development of major systems, and in other development programs where use of the cost and performance incentive approach is considered both desirable and administratively practical. Range of fee and the fee adjustment formula should be negotiated so as to give appropriate weight to basic procurement objectives. For example, in an initial product development contract, it may be appropriate to negotiate a cost-plus-incentive-fee contract providing for relatively small increases, or decreases in fee tied to the cost incentive feature, balanced by the inclusion of performance incentive provisions providing for significant upward or downward fee adjustment as an incentive for the contractor to meet or surpass negotiated performance targets. Conversely, in subsequent development and test contracts, it may be more appropriate to negotiate an incentive formula where the opportunity to earn additional fee is based primarily on the contractor's success in controlling costs. With regard to the cost incentive provisions of a contract, the minimum and maximum fees, and the fee adjustment formula, should be negotiated so as to provide an incentive which will be effective over variations in costs throughout the full range of reasonably foreseeable variations from target cost. Whenever this type of contract, with or without the inclusion of performance incentives, is negotiated so as to provide incentive up to a high maximum fee, the contract also shall provide for a low minimum fee, which may even be a "zero" fee or, in rare cases, a "negative" fee.

216.404–2 Cost-plus-award-fee contracts.

(a) *Description.* The CPAF contract is a cost reimbursement type of contract with special fee provisions. It provides a means of applying incentives in contracts which are not susceptible to finite measurements of performance necessary for structuring incentive contracts. Award fee may be earned in whole or in part. The number of criteria used and the requirements which are represented will differ widely from one contract to another. Therefore, when determining criteria and rating plans the using activity should be flexible and select a plan which will motivate the contractor in a positive way to improve performance. Evaluations are furnished to the contractor to afford him an opportunity to comment on the evaluation findings. The decision that award fee has been earned is based on the reports of performance made by the Government personnel knowledgeable with respect to the contract requirements.

(b) *Application.* The CPAF contract is suitable for:

(1)(S–70) Level of effort contracts for performance of services where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement; and

(1)(S–71) Work which would have been placed under another type of contract is the performance objectives could be expressed in advance by definite milestones, targets or goals susceptible of measuring actual performance.

(b)(S–70) *Weighted guidelines.* The weighted guidelines method shall not be applied to CPAF contracts with respect to either the base (fixed) fee or the award fee.

(b)(S–71) *Fee.* The amount of the base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee, and the maximum fee (base fee plus award fee) shall not exceed the limitations stated in FAR 15.903.

(b)(S–72)(i) *Evaluation.* The contract should provide for evaluation at stated intervals during contract performance, so that the contractor will periodically be made aware of the quality of his performance and will know in which areas improvement is expected. Partial payment of fee will generally correspond to the evaluation periods. This will make effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

(ii) Consideration may be given to (A) constituting a board to evaluate the contractor's performance and determine the amount of the award fee or recommend an amount to the contracting officer and, (B) to afford the contractor an opportunity to present matters on his own behalf.

(iii) The contract shall set forth those criteria to be used in evaluating the contractor's performance to arrive at the award fee. See examples of such criteria set forth in charts below.

(b)(S–73) *Disputes.* The contract shall expressly exclude from the operation of the Disputes clause any dispute over the amount of the award fee.

(c)(S–70) *Limitations.* The CPAF contract shall not be used as an administrative technique to avoid CPFF contracts when the criteria for CPFF contracts apply, nor shall a CPAF contract be used to avoid the effort of establishing objective targets so as to make feasible the use of a CPIF type contract.

(c)(S–71) The CPAF contract shall not be used where the contract amount, period of performance or the benefits expected are insufficient to warrant the additional administrative effort or cost.

(c)(S–72) The CPAF contract shall not be used for procurements categorized as either Engineering Development or Operational System Development which have undergone contract definition, except that where it may be more advantageous to do so, it may be used in these categories for individual procurements, ancillary to the development of a major weapon system or equipment, where the purpose of the procurement is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(S–70) *Other application of the award fee provision.* In certain cases, it may be desirable to motivate and reward a contractor for management performance over and above that which can be objectively measured and incentivised under other forms of government contracts. For example, logistics support, quality, timeliness, cooperation, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation. In such cases, the "award amount" portion of the fee applicable to the CPAF contract is an ideal method for incorporation of these additional incentives into government contracts; the "base fee" or fixed amount portion would not be applicable in these procurements. When approved by the Chief of the Contracting Office, the "award amount" portion of the CPAF contract may be used in conjunction with other types and kinds of contracts for Government's benefit. An Award Review Board shall be appointed at each appropriate installation or activity. Procedures shall be established for the conduct of the evaluation. Further, the award fee provision shall not be used in conjunction with other types and kinds of contracts when the administrative effort or costs for evaluation exceed the benefits to be derived from the use of this arrangement.

Examples of Criteria

(Examples on Following Pages)

PERFORMANCE EVALUATION REPORT CRITERIA

		Submarginal 0–60	Marginal 61–70	Good 71–80	Very Good 81–90	Excellent 91–100
A Time of Delivery.	(A–1) Adherence to plan schedule.	Consistently late on 20% of plans.	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification.	Meets plan schedule	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A–2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A–3) Plan Maintenance.	Does not complete interrelated systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and interrelated plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.
B Quality of Work.	(B–1) Work Appearance.	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. prepared incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B–2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type & standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated question-some areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B–3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. reqmts. considering systems aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.
	(B–4) Liaison Effectiveness.	Indifferent to requirements of associated activities, related systems, and Shipyard advice.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assist. for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.
	(B–5) Independence and Initiative.	Constant surveillance req'd. to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job, free of incompatibilities with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
C Effectiveness in Controlling and/or Reducing Costs.	(C–1) Utilization of Personnel.	Planning of work left to designers on drafting boards.	Supervision acts & reviews goals for designers.	System planningby supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system correlation
	(C–2) Control Direct Charges (Except labor)..	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimated absorbs service demands by Shipyard.
	(C–3) Performance to Cost Estimates.	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds original est. on change orders 10% time and meets original design costs.	Exceeds original est. on change orders 5% time.	Never exceeds estimates of original package or change orders.

CONTRACTOR PERFORMANCE EVALUATION REPORT

Ratings

Excellent	(91–100)
Very good	(81– 90)
Good	(71– 80)
Marginal	(61– 70)
Submarginal	(0– 60)

Period of ..... 19.....
Contract Number.....
Contractor.....
Date of Report.....
PNS Technical Monitor/s....
.....

Category	Criteria	Rating	Item factor	Evaluation rating	Category factor	Efficiency rating
A.....	TIME OF DELIVERY					
	A–1 Adherence to Plan Schedule.....	.....	×.40=	.....		
	A–2 Action on Anticipated Delays.....	.....	×.30=	.....		
	A–3 Plan Maintenance.....	.....	×.30=	.....		
		Total Item Weighed Rating.....			×.30=	
B.....	QUALITY OF WORK			.....		
	B–1 Work Appearance.....	.....	×.15=	.....		
	B–2 Thoroughness and Accuracy of Work.....	.....	×.30=	.....		
	B–3 Engineering Competence.....	.....	×.20=	.....		
	B–4 Liaison Effectiveness.....	.....	×.15=	.....		
	B–5 Independence and Initiative.....	.....	×.20=	.....		
		Total Item Weighed Rating.....			×.40=	
C.....	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS					
	C–1 Utilization of Personnel.....	.....	×.30=	.....		
	C–2 Control of all Direct Charges other than labor.....	.....	×.30=	.....		

Category	Criteria	Rating	Item factor	Evaluation rating	Category factor	Efficiency rating
	C-3 Performance to Cost Estimate		×.40=		×.30=	
		Total Item Weighed Rating				
		TOTAL WEIGHED RATING				
		Rated by:				
		Signature(s)				

NOTE: Provide supporting data and/or justification for below average or outstanding item ratings.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(d) For items with a shelf-life of less than six months, consideration will be given to use of indefinite type contracts with orders to be placed either (i) directly by the users, or (ii) by central purchasing offices with deliveries direct to users. When it is desired to authorize the use of the fast pay procedure for orders not in excess of $10,000, the special data required by FAR 13.3 shall be included in the contract. The required clause in FAR 52.213–1 shall be modified for this purpose to refer to delivery orders and to the appropriate contract clause of the indefinite delivery type contract for the preparation of invoices.

216.502 Definite quantity contracts.

(S–70) Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user. Further advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need to be ordered only after actual needs have materialized;

(3) The obligation of the Government is limited; and

(4) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

216.503 Requirement contracts.

(S–70) Advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need be ordered only after actual needs have materialized;

(3) When production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;

(4) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and

(5) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.601 Time-and-material contracts.

(b)(2) Material handling costs may include all indirect costs, including general and administrative expense, allocated to direct materials in accordance with the contractor's usual accounting practices consistent with Part 231. Such material handling cost should include only costs clearly excluded from the labor hour rate. This type of contract does not afford the contractor any positive profit incentive to control the cost of materials or to manage his labor force effectively. This type of contract may be used in the procurement of (i) engineering and design services in connection with the production of supplies; (ii) the engineering, design and manufacture of discs, jigs, fixtures, gauges, and special machine tools, (iii) repair, maintenance or overhaul work; and (iv) work to be performed in emergency situations.

216.603 Letter contracts.

216.603–2 Application.

(c) Letter contracts shall be specifically negotiated and, as a minimum, shall include the appropriate clauses from Part 252. Whether executed on Standard Form 26 or Standard Form 30, a definitized contract will be numbered as a modification of the letter contract as provided in Subpart 208.70.

Subpart 16.7—Agreements

216.702 Basic agreements.

(b) *Application.* The use of the basic agreement contemplates the coverage which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirements of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement as required or applicable.

(3) To minimize modification, revisions to FAR involving changes in authorized contract clauses utilized in basic agreements will provide appropriate direction with respect to any required modifications of basic agreements and to the extent possible, modifications will be required only in matters resulting from changes in statutes or Executive Orders.

(b)(S–70) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts. A basic agreement shall be used to cover all subsequent procurements which fall within its scope. Provisions of the basic agreement, including supplements thereto, shall be incorporated into the formal contractual document covering the particular procurement by referring therein to the number of the basic agreement and each of its supplements. The reference "Basic Agreement No.—, as amended," shall not be used.

(b)(S–71) Basic agreements generally shall be utilized only in connection with negotiated contracts. An existing contract may be amended by a supplemental agreement affecting new procurement without incorporating the most recent basic agreement only if all clauses then required by statute, Executive Order, and this Regulation are included in the contract or the proposed supplemental agreement.

(b)(S–72) Supplemental agreements negotiated pursuant to the terms of an existing contract and not involving new procurement may, if determined to be in the interest of the Government, amend the existing contract to conform to a subsequently executed or supplemented basic agreement.

(b)(S–73) Clauses pertaining to subjects not covered in a basic agreement but applicable to the contract being negotiated shall be included in the contract as if no basic agreement existed.

(b)(S–74) Where a clause which was included in the basic agreement pursuant to a deviation must be replaced by a revised clause, the revised clause may deviate to the same extent as the original clause if the revision is not related to the deviation, and if the deviation has not expired or been rescinded.

(b)(S–75) If a letter contract has been entered into under a basic agreement

which thereafter was superseded by a new basic agreement, or amended by supplemental agreement, the contractual instrument which definitizes such letter contract shall incorporate the superseding basic agreement or supplemental agreement, as applicable. If the basic agreement has been terminated without being superseded, or has expired, the definitive contract which supersedes the letter contract shall incorporate the clauses required by statute, Executive Order, or this Regulation.

(S–70) *Content and form.*

Basic agreements shall contain a set of "General Provisions." These general provisions shall include two groups of clauses. The first group, identified as "Part A", shall include all of the clauses made mandatory by statute, Executive Order, the FAR and this Supplement, for use in negotiated Government contracts, and shall be made a part of each formal contractual document. The second group, identified as "Part B", shall consist of clauses which may be made a part of each formal contractual document, depending upon their applicability to the particular procurement. The format set forth below may be adapted to fit specific circumstances.

BASIC AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND ———.

This Agreement is entered into as of the — day of ———, 19— between the United States of America, hereinafter called the "Government", represented by the Contracting Officer, ——— and ———, a corporation organized and existing under the laws of the State of ———, herein called "Contractor."

The clauses and provisions of Parts A and B hereinafter set forth have been agreed upon by the parties hereto for use in negotiated ——— type contracts and in letter contracts contemplating conversion to ——— type contracts, between parties, entered into on or after the date of this Agreement, and prior to its termination. It is further agreed that (i) the clauses and provisions set forth in Part A are mandatory clauses and shall, by reference or attachment, be incorporated in each contract awarded pursuant to this Agreement, and (ii) the clauses and provisions set forth in Part B are to be similarly incorporated in such contracts only when applicable and agreed to by the parties for each individual contract.

This Agreement, including Parts A and B hereof, may be amended only by mutual agreement of the parties, and the Agreement may be terminated in its entirety by either party upon thirty (30) days written notice to the other party, except that this Agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, amendment or addition to this Agreement which is required by statute, Executive Order, or the FAR and this Supplement. No deletion, modification, addition to, or termination of, this Agreement shall affect any contracts theretofore entered into between the parties in which this Agreement or a portion thereof has been incorporated by reference.

This Agreement shall be reviewed, as a minimum annually before the anniversary of its effective date, and revised to conform with all requirements of statutes, Exective Orders, or the FAR and this Supplement. This revision shall be evidenced by an agreement modifying this Basic Agreement or by the issuance of a superseding Basic Agreement.

This Agreement shall not be referred to by the Contractor in bids submitted in response to invitations for bids nor become a part of any contract placed through the process of formal advertising.

In WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written:

UNITED STATES OF AMERICA

By _____

(Contracting Officer)

_____

(Name of Company)

By _____

(Title)

216.703 Basic ordering agreements.

(b) *Application.* If after a competitive solicitation of quotations or proposals from the maximum number of qualified sources, other than a solicitation accomplished by use of Standard Form 33, it is determined that the successful responsive offeror holds a basic ordering agreement, the terms of which are either identical to those of the solicitation or different in a way that could have no impact on price, quality or delivery, and if it is determined further that issuance of an order against the basic ordering agreement rather than preparation of a separate contract would not be prejudicial to the other offerors. In situations covered by the foregoing, the choice of firms to be solicited shall be made in accordance with normal procedures, without regard to which firms hold basic ordering agreements; firms not holding a basic ordering agreement shall not be precluded by the solicitation from proposing or quoting; and the existence of a basic ordering agreement shall not be a consideration in source selection.

(c) *Limitations.* The clause in 252.213–1 shall be modified to refer to orders and to the appropriate clause of the basic ordering agreement for the preparation of invoices when fast pay is desired on orders less than $25,000. The basic ordering agreement shall specify the point at which each order becomes a binding contract. For example, the agreement may provide either (1) that issuance of an order gives rise to a contract immediately, (2) that a contract arises upon the contractor's failure to reject the order within a specified number of days, or (3) that a contract arises when the contractor accepts the order in a specified manner, such as by postcard, telegram, letter, signing and returning a copy of Standard Form 26 or DD Form 1155.

(c)(S–70) As a general rule, prices should be established prior to authorizing the contractor to begin work. However, where the contractor is allowed to begin work prior to pricing in accordance with this paragraph, the contractor and the contracting officer shall proceed with pricing as soon as practicable. The basic ordering agreement shall provide that failure to reach agreement on price in such circumstances will constitute a dispute subject to the procedures of the Disputes clause.

(c)(S–71) To minimize modifications, revisions to FAR involving changes in authorized contract clauses, utilized in basic ordering agreements shall provide appropriate direction with respect to any required modifications of basic ordering agreements; and, to the extent possible, modifications shall be required only in matters resulting from changes in statutes, or Executive Order.

(c)(S–72) The basic ordering agreement shall list one or more activities which are authorized to issue orders under the agreement. Any activity so named may issue orders specifying the supplies or services required. Orders shall be issued on DD Form 1155 or Standard Form 26 and shall incorporate by reference the provisions of the basic ordering agreement.

(d)(1)(S–70) The contracting officer issuing an order under a basic ordering agreement shall be responsible for assuring compliance with the provisions of all limitations of this section.

(d)(3)(ii) However, incentive provisions consistent with this part are permitted.

PART 217—SPECIAL CONTRACTING METHODS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 217.1—Multiyear Contracting

217.101 Definitions.

"Property," as used in this subpart means items of supplies, including but not limited to systems, subsystems, major equipment, components, parts, materials, supplies, and the advance acquisition thereof, and commercial and noncommercial items.

217.102 Policy.

217.102-2 General.

(a) Multiyear contract quantities are budgeted for and financed in accordance with the applicable program year as reflected in the DoD Five-Year Defense Program.

217.102-3 Objectives.

(a)(S-70) Implementation of the industrial preparedness program for planned items with planned producers;

(d)(4) The decision not to request dual proposals must also take into account the determinations required by 217.103-1(b) (S-70) or (S-71).

217.103 Procedures.

217.103-1 General.

(a)(1) The use of such a contract will promote the national security of the United States.

(b)(1) For exceptions to this paragraph see 217.104-70 for multiyear contracting of specified services, and 217.104-71 for multiyear contracting of supplies and services of the maintenance and operation of family housing.

(b)(S-70) A multiyear contract may not be executed in the case of services, until a written determination has been made by the HCA or his designee that (i) there will be a continuing requirement for the services and incidental supplies, consonant with current plans for the proposed contract period; (ii) the furnishing of such services and incidental supplies will require a substantial initial investment in plant or equipment or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force, or other substantial startup costs; and (iii) the use of such a contract will promote the best interest of the United States by encouraging effective competition and promoting economies of operation.

(b)(S-71) A multiyear contract may not be executed in the case of property, until a written determination has been made by the Secretary or his designee that the criteria specified in FAR 17.103-1 have been met.

(d)(1) Such ceilings shall be expressed in the schedule and shall be a not-to-exceed amount to apply alike to all bidders or offerors.

217.103-2 Solicitations.

Solicitations for multiyear contracts should be appropriately structured to reflect any selected variations to standard multiyear techniques allowed by FAR 17.102-3(d).

217.103-4 Awards.

(c) Prior to award of a multiyear contract, the contracting officer shall verify that findings made in accordance with 217.103-1(b) (S-70) or (S-71) remain valid and shall annotate the findings document accordingly.

217.103-70 Funding of multiyear contracts.

Before any multiyear contract that contains a clause setting forth a cancellation ceiling in excess of $100 million may be awarded, the Secretary shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives, and such contract may not then be awarded until the end of a period of 30 calendar days beginning on the date of such notification. Departments shall establish reporting procedures. Copies of the notification shall be submitted to the Office of the Secretary of Defense, OUSDRE(AM), and Deputy Assistant Secretary of Defense, OASD(C) (P/B). Departments shall also comply with any notification requirements or restrictions contained in annual authorization or appropriation acts.

(a) The planning and coordination of multiyear acquisition strategies should begin sufficiently early to permit required integration of the acquisition into the Planning Programming and Budgeting System (PPBS). The degree of integration and the extent of data required will vary with the type and size of the program. Guidelines shall be included, as required, in DoD and Service instructions for preparing program objective memoranda (POM) submissions and budget estimate submissions (BES).

(b) Policies and procedures for the funding of procurements within the procurement title of the DoD Appropriation Act are contained in DoD Directive (DoDD) 7200.4, Full Funding of DoD Procurement Programs.

217.104 Related areas.

217.104-70 Multiyear contracting of services under Pub. L. 90-378.

(a) Under Pub. L. 90-378 (10 U.S.C. 2306(g)), the Department of Defense is authorized to enter into multiyear acquisitions for the following listed services, to obtain requirements which are not in excess of the Five-Year Defense Program and for which funds are limited by statute for obligation during the fiscal year in which the contract is executed:

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training necessitating high quality instructor skills (for example, pilot and other aircrew members; foreign language training); and

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal). However, such acquisitions shall be entered into for no more than a 5-year period and only when such acquisitions are consistent with the policies of and satisfy the requirements set forth in FAR 17.101 through 17.105. The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October-30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" throughout 217.104-70 shall be considered to mean "fiscal year".

217.104-71 Multiyear acquisition of supplies and services under Pub. L. 91-142.

(a) Under Section 512 of Pub. L. 91-142, the Department of Defense is authorized to enter into contracts for periods of no more than 4 years for supplies and services required for the maintenance and operation of family housing for which funds would otherwise be available only within the fiscal year for which appropriated. Such acquisitions shall be entered into only when they are consistent with the policies and satisfy the requirements set forth in FAR 17.101 through 17.105. The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October-30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" shall be considered to mean "fiscal year".

Subpart 217.2—Options

217.203 Solicitations.

(a) When the contracting officer knows or anticipates that the option may be exercised to fulfill Foreign Military Sales (FMS) commitments and when the Government and the contractor are able to negotiate a price in advance for FMS requirements, the solicitation and contract shall notify contractors of the Government's intent in this regard and shall identify the FMS requirements (see 217.208(d)). When the contracting officer knows or anticipates that the option may be exercised to fulfill FMS requirements and the

Government and the contractor are unable to negotiate any additional cost or profit considerations attributable to FMS included in until a specific country or countries are subsequently identified, the solicitation and contract shall advise contractors that the U.S. Government will identify the foreign country for the purpose of negotiating an equitable price adjustment for any additional cost or profit considerations attributable to FMS included in (see 217.208(d)). Such notification shall not be placed in solicitations and contracts for the establishment or replenishment of DoD inventories or stocks or acquisitions made under DoD Cooperative Logistics Support Arrangements.

(g)(2) The Chief of the Contracting Office is the person authorized to make the approval cited in FAR 17.203(g)(2).

217.206 Evaluation.

(a) The Chief of the Contracting Office is the person authorized to make the determination referred to in FAR 17.206(a).

(b) The contracting officer may consider the option quantity in the award evaluation for types of contracts other than those discussed in FAR 17.206 (a) and (b) if—

(1) The determination in FAR 17.206(a) was made before issuance of the solicitation; and

(2) Departmental approval procedures are followed.

217.207 Exercise of options.

(c)(2) An FMS commitment undertaken by the United States Government on behalf of a foreign country constitutes the type of need described in FAR 17.207(c)(2). In such cases, the contract shall expressly provide for the Government's right to exercise the option for FMS purposes (see 217.203(a)).

217.208 Solicitation provisions and contract clauses.

(d) The contracting officer shall insert the clause at 252.217–7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, in solicitations and contracts when the inclusion of such a clause is appropriate (see 217.203(a)). This clause shall also be inserted in solicitation and contracts, as appropriate, when the clauses described in FAR 17.208 (e), (f) or (g) are inserted in solicitation and contracts.

Subpart 217.5—Interagency Acquisitions Under the Economy Act

217.502 General.

(a) For purposes of FAR 17.502, the designee of the head of the requesting agency within DoD is the contracting officer unless otherwise directed by departmental regulations.

(b) Except as provided in FAR Subpart 7.3, it is the policy of the Department of Defense not to place Government agencies in direct competition with commercial sources.

(c) An order for services shall not be placed with a department or agency when such services can be performed as conveniently or more economically by private contractors.

217.503 Determination requirements.

(b) In addition to the requirements of FAR 17.503(b), the determination shall also include a finding that the services cannot be performed as conveniently or more economically by private contractors.

217.504 Ordering procedures.

(b) Invitations for bids and requests for proposals shall not be sent to Government agencies. Orders for supplies and services placed within a department shall be in accordance with procedures prescribed by that department. Delivery orders may be placed on DD Form 1155.

Subpart 217.6—Management and Operating Contracts

The provisions of FAR Subpart 17.6 are not applicable within DOD.

Subpart 217.70—Exchange of Personal Property

217.7000 Scope of subpart.

This subpart prescribes contracting policy and procedures governing the use by Department of Defense components of the exchange authority of Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), when exchange is accomplished concurrently with procurement. The Act authorizes the exchange of personal property and the application of the exchange allowance to the acquisition of similar property. Exchange policy, authority, applicability, and limitations are governed by the Federal Property Management Regulations issued by the Administrator for General Services, and by Department of Defense Instruction 4140.51, "Exchange of Nonexcess Personal Property in the Department of Defense."

217.7001 Definitions.

"Exchange (trade-in) property" means property not in excess of the needs of the owning DoD component, but eligible for replacement because of obsolescence, unserviceability, or other valid reason, that is exchanged and applied as whole or partial payment allowance toward the acquisition of similar items.

"Similar items" in exchange transactions means both the item being acquired and the item being replaced. Both must fall within one of the single generic categories listed in 217.7003–1, and the item being acquired must be designed and constructed for the same specific purpose as the item being replaced.

217.7002 Policy.

It is DoD policy to use exchange processing for replacing eligible nonexcess items. It shall be used to the maximum extent possible when such transactions foster the economical and efficient accomplishment of an approved program.

217.7003 Categories of property eligible for exchange and categories of property ineligible for exchange.

217.7003–1 Property eligible for exchange.

Nonexcess personal property in the categories listed below is eligible for exchange. However, in the exchange of such property, both the item to be acquired and the item to be replaced must fall within a single number category. Categories of property not listed below or not included in 17.7003–2 are also eligible for exchange if designed and constructed for the same specific purpose.

1. Agriculture products, processed foods, and forage.
2. Ammunition and ammunition components.
3. Animals and animal products.
4. Batteries, storage.
5. Cards, tabulating.
6. Ditching machines.
7. Dozer blades.
8. Drill presses.
9. Drugs, biologicals, and official reagents.
10. Earth augers.
11. Graders, self-powered and towed.
12. Lathes.
13. Machines, adding and calculating.
14. Machines, addressing and mailing.
15. Machines, dictating and transcribing.
16. Machines, duplicating.
17. Machines, punched card, bookkeeping, tabulating, and accounting.
18. Milling machines.
19. Mixers, concrete, portable or truck mounted.
20. Pile drivers.
21. Plows, snow, motor.
22. Road rollers, wheeled and sheepsfoot.

23. Saws, circular or band.
24. Scrapers, earth moving, self-powered.
25. Scrapers, earth moving, towed.
26. Sedans, station wagons, coupes, limousines.
27. Shovels, power.
28. Spreaders, aggregate and line.
29. Tractors, warehouse.
30. Tractors, wheeled or crawler, with or without special attachments, up to 65 h.p.
31. Tractors, wheeled or crawler, with or without special attachments, 65 h.p. and up.
32. Trailers, general purpose, multiple axle.
33. Trailers, general purpose, single axle.
34. Trailers, tank mounted.
35. Trucks, forklift.
36. Trucks, general purpose, cargo and construction, 12,500 GVW and up (including truck tractors, dump, and multiple drive).
37. Trucks, general purpose and utility, up to 12,500 GVW (including suburbans, carryalls, and sedan deliveries)
38. Trucks, straddle.
39. Trucks, tank (special purpose truck on which the tank is integral part of the construction).
40. Trucks, warehouse, platform, electric and gasoline powered.
41. Typewriters, manual and electric.

217.7003–2 Property ineligible for exchange.

Items that are found in any of the FSCGs listed below are not eligible for handling under exchange procedures without the prior approval of the General Services Administration. (Such approval shall accompany the purchase request):

10 Weapons
11 Nuclear ordnance
12 Fire control equipment
14 Guided missiles
15 Aircraft, and airframe structural components*
16 Aircraft components and accessories*
17 Aircraft launching, landing, and ground handling equipment
20 Ship and marine equipment
22 Railway equipment
31 Bearings
32 Woodworking machinery and equipment, except lathes, milling machines, and saws, circular or band
34 Metalworking machinery, except drill presses, lathes, milling machines, and saws, circular or band
40 Rope, cable, chain, and fittings
41 Refrigeration and air conditioning equipment
42 Fire fighting, rescue, and safety equipment
44 Furnace, steam plant, and drying equipment; and nuclear reactors
45 Plumbing, heating, and sanitation equipment
46 Water purification and sewage treatment equipment
47 Pipes, tubing, hoses, and fittings
48 Valves
51 Hand Tools
53 Hardware and abrasives
54 Prefabricated structures and scaffolding
55 Lumber, millwork, plywood, and veneer
56 Construction and building materials
68 Chemicals and chemical products, except medicinal chemicals
71 Furniture
75 Office supplies and devices, except cards, tabulating
83 Textiles, leather, and furs
84 Clothing and individual equipment

*These line items shall be exchanged directly when the Military Departments rely on a contract with a manufacturer for full spare parts support for commercial type aircraft.

217.7004 Procedures.

217.7004–1 Offering property for exchange.

(a) Sale of nonexcess personal property is not authorized pursuant to this Part. The objective in exchanging nonexcess personal property shall be to acquire new property from an offeror whose offer will be most advantageous to the Government, price and other factors considered. When acquiring new property concurrent with offering exchange property, formal advertising shall be used, except that—

(1) Property may be exchanged through negotiation, obtaining maximum practicable competition, in accordance with applicable laws and regulations.

(2) When the personal property is required to be acquired against a mandatory Federal Supply Schedule Contract, the property shall be acquired against such contract, regardless of whether the exchange can be effected under such contract.

(b) The following notation shall be included in the solicitation:

> The property described in item number(s) ———, is being offered in accordance with the exchange provisions of Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c)).

(c) A minimum of 14 calendar days should be allowed in Continental United States (CONUS) for the inspection of property being offered for exchange. For exchanges outside Continental United States, the minimum inspection period should normally be 21 calendar days.

217.7004–2 Purchase request and certification.

In connection with an acquisition involving exchange, the purchase request must be accompanied by a certification that the property is eligible for exchange and complies with all conditions and limitations specified in DODI 4140.51 including a written administrative determination of economic advantage which shall indicate—

(a) The anticipated economic advantage to the Government resulting from the use of the exchange authority.

(b) That exchange allowances shall be applied toward or in partial payment for the items to be acquired.

(c) That if required, the exchange property has been rendered safe or innocuous, or has been demilitarized.

217.7005 Exchange of exchange property.

Each solicitation listing exchange property, in addition to asking for prices for the new items being acquired, shall request offers in terms of exchange (trade-in allowance) for the exchange property listed. The solicitation shall provide for award(s) which are in the best overall interest of the Government. Exchanges may only be effected with the successful offeror. Thus, if the lowest net price to the Government of the property to be procured (i.e., the price of the new property less the amount offered for the exchange property) results from an offer by a supplier of the new property who agrees to accept the exchange property as a trade-in, a single award would be made which would cover both the acquisition by the Government of the new property and the disposal of the exchange property by trade-in. If, however, the lowest net price to the Government results from a low offered price from a supplier of the new property, without exchange of the exchange property, award shall be made to the low offeror to purchase the new property and the exchange shall not be made.

Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

Reserved, guidance will be included prior to 1 April 1984.

Subpart 217.72—Acquisition of Component Parts

217.7201 Privately developed items.

217.7201–1 General.

It is Department of Defense policy:

(a) To make all procurements on a competitive basis to the maximum practicable extent, and

(b) To provide an incentive to industry creativity by honoring the rights in data resulting from private development and by limiting the demands for such data to that which is essential for Government purposes.

It is important that the efforts directed toward increasing competition do not demand or use privately developed data in a manner which is contrary to the policies and procedures established in FAR Part 27. Accordingly, when the two policies stated above produce situations which require the contracting officer to decide whether to procure data for future competitive procurement, the provisions of Part 227, as supplemented by this paragraph, shall govern.

217.7201-2 Specific procurement methods.

(a) When Defense requirements are for items which are available from more than one source as a result of either licensing, competitive copying, or independent, the contracting officer shall seek full and free competition for such items.

(b) When the Government desires to purchase privately developed items but does not have necessary data with unlimited rights for use in a specification for competitive procurement, the contracting officer shall use one of the following alternative procedures with reference in the order of this listing (see also 217.7203).

(1) When practical, procurement shall be competitive using performance or other specifications, including purchase descriptions, which do not contain data developed at private expense to which the Government does not have unlimited rights. Procurement in this basis will normally not provide items of identical design. However, it frequently is not necessary that items of identical design be purchased. There are two methods of competitive procurement which may provide items of the same or of similar design and suitable performance. One of these is purchased by two-step formal advertising. The other is by the use of "brand name or equal" purchase descriptions. To encourage participating by technically oriented firms that are desirous of offering their privately developed products in competition with similar articles, procuring activities should consider incorporating a requirement in the IFB or RFP for a bid sample to be used for evaluation purposes only (see 210.004(b)(3)(i)).

(2) When items of design or composition similar or identical to a privately developed item are required and it is determined that competitive procurement is not practicable, procurement should be on a noncompetitive basis from the firm which developed or designed the item or process or its licensees, *provided* productive capacity and quality are adequate and price is fair and reasonable.

(3) When additional sources are required for items of design or composition similar or identical to a privately developed item in order to meet total current or mobilization requirements, and the procedures in (b)(1) above cannot practicably be used to create additional sources, the developer should be encouraged to license others to manufacture such items. Procuring activities should also consider the specific acquisition by the Government of the necessary rights in data. When complex technical equipment is involved and the establishment of satisfactory additional sources will require, in addition to data, technical assistance from the primary source, consideration should be given to the use of the leader company procurement technique (see FAR Subpart 17.4).

(4) As a last alternative, a design specification may be developed by the Government through inspection and analysis of the product (i.e. reverse engineering) and used for competitive procurement. Reverse engineering shall not be used unless significant cost savings can be reasonably demonstrated and the action is authorized by the Head of the Contracting Activity. In the case of the Air Force this authority may be delegated to the Commanders of the Air Force Systems Command Divisions and Centers and the Air Force Logistics Command Air Logistics Centers.

217.7201-3 Purchase of patented items when Government is a licensee.

Award of a contract shall not be refused to a bidder/offeror merely because he is not the owner of or a licensee under any patent involved in the procurement. If, at the time a solicitation is issued, the Government is obligated to pay royalties applicable to the proposed procurement because of a pre-existing license agreement between the Government and a patent owner, the solicitation shall so state and shall: (a) Identify the patents and specify the royalty rate; and (b) advise that an amount equal to the royalty which the Government will be required to pay under the license agreement will be added as an evaluation factor to each bid/offer unless the bidder/offeror includes in his bid/offer a statement that he is the owner of or a licensee under the patents.

217.7202 Component Breakout.

217.7202-1 Scope of paragraph.

(a) This section sets forth guidance of making decisions on whether or not components should be purchased by the Government directly and furnished to an end item contractor as Government-furnished material, for incorporation in the end item. This paragraph, however, does not pertain to all such decisions, but only to those which deal with whether components that have been included as contractor-furnished material in a previous procurement of the end item should be "broken out" from a forthcoming end item procurement for direct Government purchase. Thus, except as set forth in, this paragraph does not pertain to the initial Government-furnished equipment/contractor-furnished equipment decisions that must be made at the inception of a procurement program.

(b) Parts procured for replenishment are not covered by this paragraph, but are governed by Supplement 6, Replenishment Parts Breakout Program.

(c) This paragraph applies to procurements of weapons systems or other items of major equipment involving components whose direct purchase by the Government may result in substantial net cost savings over the life of the procurement program. Accordingly, it will seldom be applicable to a procurement of such a system or item of less than $1,000,000. The term "component," as used in this paragraph, includes subsystems, assemblies, subassemblies, and other major elements of an end item, but does not include elements of relatively small annual purchase value.

217.7202-2 Policy.

Whenever it is anticipated that the prime contract for a weapons system or other major end item will be awarded without adequate price competition, and the prime contractor is expected to acquire a component without such competition, it is Department of Defense policy to break out that component if:

(a) Substantial net cost savings will probably be achieved; and

(b) Such action will not jeopardize the quality, reliability, performance or timely delivery of the end item. The desirability of breakout should also be considered (regardless of whether the prime contract or the component being purchased by the prime contractor is on the basis of price competition) whenever substantial net cost savings will result

(1) from greater quantity purchases or (2) from such factors as improved logistics support through reduction in varieties of spare parts and economies in operations and training through standardization of design. Primary breakout consideration shall be given to those components of the end item representing the highest annual procurement costs and offering the largest potential net savings through breakout.

217.7202-3 Responsibility for component breakout selection, review and decision

The program manager, project manager, project officer, program director, or other official responsible for the material program concerned, supported by a project team (to include the Small Business Specialist, cognizant engineering, production, logistics, maintenance and other appropriate personnel, and the contracting officer or his designee), shall be responsible for:

(i) Earmarking as susceptible to breakout those components potentially conforming to the criteria and policy set forth herein;

(ii) Conducting the breakout review and evaluation described in 217.7202-4;

(iii) Making the decision whether or not to break out the component; and

(iv) Preparing records explaining such decisions in compliance with 217.7202-5.

217.7202-4 Breakout guidelines.

(a) Each decision on whether or not to break out a component must embrace (1) assessment of the potential risks of degrading the end item through such contingencies as delayed delivery and reduced reliability of the component, (2) calculation of estimated net cost savings (i.e., estimated purchase savings less any offsetting costs), and (3) analysis of the technical, operational, logistic and administrative factors involved. As to each of these, the decision must be supported by adequate explanatory information, including an assessment by, and consultation with, the end item contractor when feasible.

(b) In deciding whether a component should be broken out, the guidelines set forth below (in the form of questions) should be considered. Answers will rarely be "positively yes" or "positively no" but usually "probably yes" or "probably no", with the degree of probability governed by the facts of the particular case. The decisions will depend largely upon the degree and significance of the risks to quality performance, reliability and timely delivery of the end item which would be involved in breakout and upon the estimated overall cost savings. Where the risks, if any, are acceptable and breakout is expected to result in substantial overall costs savings, the component should be broken out. On the other hand, if such risks are unacceptable, the components should not be broken out.

(1) Are the design of the component (and the design of the end item insofar as it will affect the component) sufficiently stable that further design or engineering effort by the end item contractor in respect to the component is unlikely to be required?

(2) Is a suitable data package available with rights to use if for Government procurement? (Note that breakout may be warranted even though competitive procurement is not possible.)

(3) Can any problems of quality control and reliability of the component be resolved without requiring effort by the end item contractor?

(4) Is it anticipated that requirements for technical support (i.e., functions such as development of proposed detailed specifications; development of test requirements to prove design adequacy or compliance with design; monitoring tests to assure compliance with established requirements; definition of quality assurance requirements for production of articles; and analysis and correction of service-revealed deficiencies) heretofore performed by the end item contractor will be negligible? If not, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support, or can such support be obtained from the end item contractor (even though the component is broken out) or other source?

(5) Can breakout be accomplished without causing unacceptable difficulties in logistics support (e.g., by jeopardizing requisite standardization of components)?

(6) Can breakout be accomplished without causing over fragmentation of the end item that might materially impede administration, management, and performance of the end item contract (e.g., by unduly complicating production scheduling or identifying (and fixing responsibility for) end item failure that may be caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to break out a component and to acquire it from a new source, can advance procurement funds be made available to provide that source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it known that it is going to be) purchased directly by the Government as a support item in the supply system or as GFE in other end items?

(11) Would the financial risks and other responsibilities being assumed by the prime contractor that will have to be assumed by the Government if the item is broken out be acceptable?

(12) Will breakout result in substantial net cost savings? Estimates of probable savings in cost, should be developed for each case on its own facts, with consideration given to any estimated offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(c) If application of the guidelines in (b) above reveals conditions currently unfavorable to breakout, the feasibility of eliminating such conditions should be considered. For example, where adequate technical support is not available from Government resources, or similar assistance must be obtained in order to successfully accomplish breakout, consideration should be given to the procurement of the necessary services, such as product assurance suitability services, from the end item contractor or other qualified source.

217.7202-5 Records and review procedure.

The records of the purchasing activity shall contain documentation of:

(a) Those components which have been reviewed and determined to have no potential for breakout;

(b) Those components which have been reviewed and earmarked as being susceptible to breakout pursuant to 217.7202-3; and

(c) Those components for which a decision to breakout has been made.

Documentation of these three categories, and for those components once earmarked but no longer considered susceptible to breakout, shall be signed by the cognizant project manager or other designated official and reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision. Components that have been earmarked for potential breakout shall be reviewed well in advance of each successive procurement, with a decision

made as to whether the component will be broken out for the ensuing procurement. Such reviews, made preferably in the course of requirements determination, but in any event before procurement of the requirement is initiated, shall be repeated until a final decision on whether or not to breakout is reached, and shall be documented. When breakout is delayed or postponed, the documentation shall include a description of the actions required to accomplish breakout, identify the activities responsible for such actions, and indicate the fiscal year when breakout should be effected.

217.7203 Procurement of parts.

(a) Any part, subassembly, or component (hereinafter called "part") for military equipment, to be used for replenishment of stock, repair, or replacement, must be procured so as to assure the requisite safe, dependable, and effective operation of the equipment. Where it is feasible to do so without impairing this assurance, parts should be procured on a competitive basis, as in the kind of cases described in (b) below. However, where this assurance can be had only if the parts are procured from the original manufacturer of the equipment or his supplier, the procurement should be restricted accordingly, as in the kind of cases described in (c) below. Centrally managed replenishment parts for military systems and equipment (except replenishment parts acquired under other specifically defined initial support programs or acquired through local purchase) are governed by Supplement 6, the Replenishment Parts Breakout Program.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available with the right to use for procurement purposes (or can be made so available in keeping with the policies in FAR Part 27 are to be procured on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible of separate procurement, such as resistors, transformers, generators, spark plugs, electron tubes, or other parts having commercial equivalents.

(c) Parts not within the scope of (b) above generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data (including any necessary data developed at private expense), test results, and quality assurance procedures, are available with the right to use for procurement purposes (or can reasonably be made so available in keeping with the policies in FAR Part 27 to assure the requisite reliability and interchangeability of the parts, and acquisition on a competitive basis would be consistent with the assurance described in (a) above. In assessing this assurance, the nature and function of the equipment of which the part is needed should be considered. Parts qualifying under this criteria are normally sole source or source controlled parts (see MILSTD 100) which exclusively provide the performance, installation and interchangeability characteristics required for specific critical applications. To illustrate, acceptable tolerances for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive contracting for the former but not for the latter. The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known.

(d) When an award is made to a source that has not previously produced the item, the cognizant Government inspection activity and the appropriate contract administration office should be notified by the contracting office that the contractor will be producing the item for the first time.

Subpart 217.73—Special Commodities

217.7301 Bakery and dairy products contracts.

217.7301-1 Scope.

This section sets forth special policies and requirements for acquisition of perishable bakery and dairy products.

217.7301-2 Plant locations.

Prior to award of a contract for perishable bakery or dairy products the contractor must identify the plant or plants at which any manufacturing or processing will occur and from which shipment will be made. The plants named by the successful contractor shall be listed in the Schedule.

217.7301-3 Chemical and microbiological requirements (fresh dairy foods).

(a) *Chemical requirements.* Fresh dairy foods shall meet the chemical requirements for each fresh dairy food specification cited in the contract on the date of award.

(b) *Microbiological requirements.* Milk and milk products as defined in DLAM 8200.1, shall meet microbiological requirements stated in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

(c) *Cultured products.* Cultured products shall meet the coliform requirements as specified in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

(d) *Solicitation and contract requirements.* The requirements of (a), (b) and (c) above shall be expressed in solicitations and contracts for fresh dairy products.

217.7301-4 Containers and equipment (milk dispensing).

If the contractor is to furnish cabinets for dispensing milk from bulk containers, a notice so stating shall be included in the Schedule of solicitations and resultant contracts. The notice shall state (a) the number of dispenser cabinets required, or a reasonably accurate estimate thereof, (b) whether metal stands for the cabinets are required, (c) the number of cabinets required with a capacity of two containers each, and (d) the number required with a capacity of three containers each.

217.7301-5 Contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts for perishable bakery and dairy products when an indefinite delivery type contract (see FAR 16.5) is to be used.

(1) 252.217-7300, Delivery Vehicles.

(2) 252.217-7301, Time of Delivery. When an indefinite quantity contract is to be used, rather than a requirements contract, the contracting officer shall use the clause as modified by its Alternate I.

(3) 252.217-7302, Change in Plant Location, (see 217.7301-2).

(4) 252.217-7303, Sanitary Conditions. When an indefinite quantity contract is used, rather than a requirements contract, the contracting officer shall use the clause as modified by its Alternate I.

(5) 252.217-7304, Remedies Under Delivery Orders. When delivery orders are to be placed by an activity other

than the activity which awarded the contract, and in order to establish authority in the ordering officer under the Changes, Extras, Inspection, Default (Fixed Price Supply and Service), and Disputes clauses, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the following clauses, substantially the same as the clauses prescribed below, in solicitations and indefinite delivery contracts for perishable dairy products.

(1) 252.217–7305, Examination and Testing.

(2) 252.217–7306, Deficiency Adjustment. The formulas prescribed in the clause may be modified to accommodate purchasing or ordering activities which do not have access to the Department of Agriculture reports cited therein.

(3) 252.217–7307, Warning.

(4) 252.217–7308, Suspension. When an indefinite quantity contract is used, rather than a requirements contract, the contracting officer shall use the clause with its Alternate I.

(5) 252.217–7309, Default.

(6) 252.217–7310, Reinstatement.

(c) The contracting officer shall insert the clause at 252.217–7311, Code Dating, in solicitations and indefinite delivery type contracts for perishable bakery and dairy products when a Schedule or specification provision requires the labels of one or more items to show the date of pasteurization, manufacture, production, or processing, and in order to permit the use of a coding system.

(d) The contracting officer shall insert the clause at 252.217–7312, Marking, in solicitations and indefinite delivery contracts for perishable bakery and dairy products except when a provision is inserted in the Schedule specifically requiring supplies to be marked in accordance with MIL–STD–129, Marking for Shipment and Storage.

(e) The contracting officer shall insert the clause at 252.217–7313, Responsibility for Containers and Equipment, in solicitations and indefinite delivery contracts for perishable bakery and dairy products when the contractor is to provide reusable containers and equipment.

(f) The contracting officer shall insert the clause at 252.217–7314, Containers and Equipment, in solicitations and indefinite delivery contracts for perishable bakery and dairy products when the contractor is to furnish cabinets for dispensing milk from bulk containers (see 217.7301–4).

Subchapter D—Socioeconomic Programs

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 219.1—Terms and Size Standards

219.102–6 Size standards for transportation industries.

(c) No concern offering to provide local and/or long distance trucking, warehousing and/or packing and crating, and/or freight forwarding will be denied small business status for the purpose of Government acquisition solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded $7 million during its most recently completed fiscal year.

Subpart 219.2—Policies

219.201 General policy.

(b)(1) The Director of Small and Disadvantaged Business Utilization is responsible for the development of overall DoD small business and disadvantaged business goals and for consulting with SBA regarding the establishment of such goals.

(2) Departmental Directors of Small and Disadvantaged Business Utilization are responsible for the development of small business and disadvantaged business utilization goals for subordinate elements within their department. These goals will be further assigned by these subordinate elements as appropriate, such as engineer district offices or individual contracting divisions within a central contracting activity or major commodity command.

(3) Heads of contracting activities are responsible for the attainment of assigned small business and disadvantaged business utilization goals.

(4) Within 60 days after the conclusion of each fiscal year, the Secretaries of the Military Departments and the Directors of Defense agencies shall report to the Secretary of Defense on the extent of participation by small business concerns and disadvantaged business concerns in contracts awarded by their Department. Such report shall contain appropriate justifications for failure to meet goals established by the Office of the Secretary of Defense, as well as actions planned to increase the rate of participation by such firms in future contract awards. The Office of the Secretary of Defense will submit information to SBA concerning any failure to meet established goals and actions to be taken to improve future performance.

(d)(1) Small and disadvantaged business utilization specialists shall be appointed by name, in writing, for contracting activities, contract administration offices, and other such offices, as the Departments consider appropriate. They shall be responsible directly to the appointing authority and shall not be subject to the direction of contracting, contract administration, or technical personnel. The appointing authority, without power of redelegation, is as follows:

(i) Army—Commanders of major commands, Commanders of major subordinate commands, and installation, post, camp, station or activity commanders. For each major command, one specialist will be appointed as the Associate Director for Small and Disadvantaged Business Utilization, reporting directly to the Commander or the second-in-command. The Associate Director will have primary responsibility for the effective implemention of the Army's small business, disadvantaged business utilization, labor surplus area and other socio-economic business programs within the Command. The Associate Director for Small and Disadvantaged Business Utilization Policy at Major Command Headquarters other than at the Materiel Development and Readiness Command (DARCOM), Office, Chief of Engineers (OCE), Forces Command (FORSCOM), Training and Doctrine Command (TRADOC), may be assigned on a part-time basis.

(ii) Navy—Head of a contracting activity or the official in charge of an activity having purchase authority of $10,000 or more, or in charge of a contract administration activity;

(iii) Air Force—Commander of each central procurement activity; the Wing/Base Commander of each local purchasing activity and the Chief of each contract administration activity. In addition, an Executive for Small and Disadvantaged Business Utilization shall be appointed by the Commander of each Major Air Command in the United States, not mandatorily reporting directly to the Commander but having ready access to such person, who will have primary responsibility for the effective implementation of the Air Force small business, small disadvantaged business utilization and labor area programs(s) within the Command;

(iv) Defense Logistics Agency—Commanders of Defense Supply Centers, Commanders, Defense Contract Administration Services Regions and

Commanders of other DLA contracting activities;

(v) National Security Agency—the Director;

(vi) Defense Communications Agency—the Director;

(vii) Defense Nuclear Agency—the Director;

(viii) Defense Mapping Agency—Director; directors of subordinate components.

A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the appropriate Department or Agency Office of Small and Disadvantaged Business Utilization (219.201(S–71)). In addition to performing that portion of the specific program outlined in (d)(2) below that is normally performed in the activity to which he is assigned, the small and disadvantaged business utilization specialist shall advise the head of the activity and shall perform such additional functions as are prescribed for him in furtherance of the overall small business, small disadvantaged business utilization and labor surplus area programs. A small and disadvantaged business utilization specialist shall be appointed on a full-time basis in all activities having sufficient business or program responsibility to justify such action. When the volume of contracting does not warrant assignment of a full time small and disadvantaged business utilization specialist, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over collateral responsibilities.

(2) A small and disadvantaged business utilization specialist (SADBU), appointed pursuant to the above, shall: Perform the following duties, as determined to be appropirate to the activity by the appointing officer or by the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization. The SADRU shall:

(i) Maintain a program designed to locate capable small business, small disadvantaged business and labor surplus area business sources for current and future acquisitions, through SBA or other methods;

(ii) Coordinate inquiries and requests for advice from small business, small disadvantaged business and labor surplus area business concerns on acquisition matters;

(iii) Review acquisitions to insure maximum opportunity for participation by small and disadvantaged business, women-owned, and LSA, and to make recommendations for set-aside and 8(a) awards (see 19.501(c));

(iv) When small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to insure that necessary specifications or drawings of the current or future acquisitions, as appropriate, are available;

(v) Review acquisition programs for possible breakout of items suitable for acquisition from small business concerns;

(vi) Insure that financial assistance available under existing regulations is offered and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts;

(vii) Participate in determinations concerning responsibility of a prospective contractor whenever small business concerns are involved;

(viii) Participate in the evaluation of a prime contractor's small business, labor surplus, and small disadvantaged business subcontracting plans;

(ix) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the small business program;

(x) Assure that participation of small business concerns is accurately reported;

(xi) Bring to the attention of the Department Director or Staff Director for Small and Disadvantaged Business Utilization possible contracting opportunities in labor surplus area;

(xii) Make available to SBA copies of solicitations when so requested;

(xiii) When a bid from a small business, small disadvantaged business or labor surplus area firm has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(xiv) Participate in government-industry conferences to assist small business, small disadvantaged business and labor surplus area concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Minority Business Opportunity Committee meetings;

(xv) Advise potential suppliers how they can obtain information about formal advertising and negotiated acquisitions and that they can subscribe to the Commerce Business Daily as a source of information on proposed acquisitions;

(xvi) Brief his commander at least once quarterly concerning the status of the installation's small business, small disadvantaged business utilization and labor surplus area programs in relation to goals and objectives established by higher headquarters;

(xvii) Participate in the development, implementation and review of automated contracting systems to assure that the interests of small business, small disadvantaged business and labor surplus area firms are fully considered with particular reference to FAR 19.202–4(c), FAR 19.501(c), and FAR 19.502;

(xviii) Assist program managers as early as possible in the development cycle of major system aquisitions and system programs as pertains to the small business programs;

(xix) Assist contracting officers in establishing criteria for and determining acceptability of small business and small disadvantaged business concerns subcontracting plans submitted by prime contractors;

(xx) Assure that the installation's small business, small disadvantaged business and labor surplus area business programs are frequently publicized in the appropiate media;

(xxi) Assure that the organization maintains a list of products and services which have been placed on repetitive small business set-aside;

(xxii) Provide small business, small disadvantaged business and labor surplus area firms information regarding assistance available from Federal agencies such as the Small Business Administration, Office of Minority Business Enterprise, Bureau of Indian Affairs, Office of Economic Development, National Science Foundation, Department of Labor and others including state, trade, and other associations;

(xxiii) Be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, small disadvantaged business and firms located in labor surplus areas;

(xxiv) Recommend to his Commander the activity small business and disadvantaged business utilization overall goals and goals to be placed on subordinate contracting offices;

(xxv) Participate in interagency programs relating to small business, small disadvantaged business and labor surplus area matters as authorized by the Director of SADBU; and

(xxvi) Advise and assist contracting officers in discharging their responsibilities by:

(A) Monitoring and reviewing contractor performance to determine compliance with small and disadvantaged small business subcontracting plans;

(B) Developing and maintaining records and reports that reflect such compliance or noncompliance.

(S–70) *Office of the Secretary of Defense Directors.*

(1) *Director of Small and Disadvantaged Business Utilization.* The Director of Small and Disadvantaged Business Utilization reports directly to the Deputy Secretary of Defense and is responsible for the overall management and direction of the DoD small business, disadvantaged business utilization, and labor surplus area programs and for advising the Secretary of Defense and the Deputy Secretary of Defense in matters relating to these programs. To that end, the Director will provide guidance to the Departments and periodically review the direction and implementation of their activities in promoting contract awards to small business, small disadvantaged business, and labor surplus area concerns.

(2) *Director of Small Business and Economic Utilization Policy.* The Director of Small Business and Economic Utilization Policy is responsible for the establishment, implementation, and execution of DoD small business and labor surplus area programs. Negotiations with the SBA, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning small business and labor surplus area policy, programs, and DoD goals shall be conducted by the Director of Small Business and Economic Utilization Policy or, with authorization, by representatives of the Departments. The Director of Small Business and Economic Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding small business and labor surplus area matters.

(3) *Director of Disadvantaged Business Utilization Policy.* The Director of Disadvantaged Business Utilization Policy is responsible for the establishment, implementation, and execution of the DoD socially and economically disadvantaged business utilization program. Negotiations with the Small Business Administration, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning disadvantaged business utilization policy, programs, and DoD goals shall be conducted by the Director for Disadvantaged Business Utilization Policy or, with authorization, by representatives of the Departments. The Director of Disadvantaged Business Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding disadvantaged business utilization matters.

(S–71) *Departmental Directors of Small and Disadvantaged Business Utilization.*

(1) Each department or agency shall maintain an Office of Small and Disadvantaged Business Utilization as follows:

(i) Army—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Pentagon, Washington, D.C. 20310;

(ii) Navy—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, D.C. 20360;

(iii) Air Force—Director, Office of Small and Disadvantaged Business Utilization, DCS/RD&A, Pentagon, Washington, D.C. 20330;

(iv) Defense Logistics Agency—Staff Director, Office of Small and Disadvantaged Business Utilization, Code DLA–U, Cameron Station, Alexandria, VA 22314;

(v) National Security Agency—Director, Office of Small and Disadvantaged Business Utilization, Fort Meade, MD 20755;

(vi) Defense Communications Agency—Director, Office of Small and Disadvantaged Business Utilization, Code 280, Washington, D.C. 20035;

(vii) Defense Nuclear Agency—Director, Office of Small and Disadvantaged Business Utilization (Code OAFR), Washington, D.C. 20305;

(viii) Defense Mapping Agency—Director, Office of Small and Disadvantaged Business Utilization, Headquarters, Washington, D.C. 20305.

(2) Each Departmental Office of Small and Disadvantaged Business Utilization shall be managed by a Director who shall be appointed by the Secretary of the department and shall be responsible to and report directly to the Secretary or Under Secretary of the Department. Directors of Defense agencies shall appoint a Staff Director for Small and Disadvantaged Business Utilization who shall be responsible to and report directly to the Director or his Deputy.

(3) The primary responsibility of the Director or Staff Director of each Office of Small and Disadvantaged Business Utilization shall be in matters concerning small business, small disadvantaged business utilization, and labor surplus areas. The Director or Staff Director advises the Secretary on small business, small disadvantaged business utilization and labor surplus area matters, implements such DoD programs within the Department or Agency and represents the Department or Agency in negotiations with other Departments or Governmental agencies on small business, small disadvantaged business utilization and labor surplus area matters. The Director or Staff Director will exercise supervisory authority over Department or Agency Small and Disadvantaged Business Utilization Specialists regarding small business, disadvantaged business utilization and labor surplus area matters. Appointment of Small and Disadvantaged Business Utilization Specialists shall be made after consultation with the Director or Staff Director of the Office of Small and Disadvantaged Business Utilization of the Department or Agency involved. In addition, such Director shall be afforded an opportunity to comment upon, and contribute to the performance evaluations of the Specialists for the contracting activities and contract administration offices or major organizational elements of the Department involved, including pay pursuant to the Civil Service Reform Act of 1978.

(S–72) *Small Business Technical Advisor.*

(1) The Military Departments shall assign small business technical advisors to assist each resident SBA Procurement Center Representative in the performance of his duties.

(2) A Small Business Technical Advisor (SBTA) shall be a full-time employee of the contracting activity and shall be well qualified, technically trained, and familiar with the supplies or services acquired at the activity.

(3) The principal duty of this advisor shall be to assist the SBA Procurement Center Representative in his duties and functions relating to Sections 8 and 15 of the Small Business Act. Providing such assistance shall take precedence over any other collateral duties that may be the responsibility of the SBTA.

219.202-1 Encouraging small business participation in acquisitions.

The Departments to the extent consistent with the best interests of the Government and in order to broaden the industrial base shall:

(a) Attempt to locate additional qualified small business suppliers by all appropriate methods including use of the assistance of SBA, particularly where only a limited number of small business concerns are on bidders' mailing lists;

(b) Give wide publicity to contracting methods and practices;

(c) Publicize proposed acquisitions by use of advance notices or other appropriate methods (see FAR 5.2);

(d) Include all established and qualified potential small business suppliers on mailing lists;

(e) Send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used pursuant to FAR 14.205-4, at least a *pro rata* number of small business concerns shall be solicited;

(f) Divide proposed acquisition of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible, establish delivery schedules which will encourage small business participation;

(g) Examine each major acquisition to determine the extent to which small business subcontracting should be encouraged or required;

(h) Use small business concerns to the maximum extent feasible as planned producers in the Industrial Readiness Planning Program; and

(i) Maintain liaison with Federal, State (including Governor's Commissions), and local agencies and other organizations for the purpose of providing information and assistance to small business concerns.

219.202-5 Data collection and reporting requirements

Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained by the use of DD Form 350 (Individual Procurement Action Report), DD Form 1057 (Monthly Procurement Summary by Purchasing Office), Standard Form 294 (Subcontracting Report for Individual Contracts), and Standard Form 295 (Summary Subcontract Report), as appropriate.

Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

(b) The contracting activity Small and Disadvantaged Business Utilization Specialist shall be the activity focal point for interface with the SBA.

219.402 Small business administration procurement center representatives.

(b) The SBA procurement center representative's request for access to contract information will be processed through the activity's Small and Disadvantaged Business Utilization Office.

Subpart 219.5—Set-asides for small business

219.501 General.

(c) The Small and Disadvantaged Business Utilization Specialist is responsible for reviewing those acquisitions not set-aside or not acquired through small business-small purchase set-aside. The SADBU shall, prior to the issuance of solicitation or contract modifications (except those which exercise an option), (1) for additional supplies or services in excess of $5,000 which have not been set-aside under FAR 19.502, or (2) for a dissolved small business-small purchase set-aside in excess of $5,000 (FAR 13.105), review the acquisition and the contracting officer's justification for not making a set-aside or for dissolving a small business-small purchase set-aside. The SADBU shall make recommendation to the contracting officer for set-aside, as appropriate, on an individual acquisition, or class of acquisition, or portion thereof. In automated contracting systems, such reviews will be accomplished prior to entering the item into the automated system after which no further review of the individual acquisition will be necessary if the automated system is so programmed that any changes in the acquisition of the item satisfy the provisions of FAR 19.502-2. Disagreements between the specialist and the contracting officer on proposed set-aside actions for small business shall be resolved under FAR 19.505. Disagreements on small business-small purchase set-asides shall be resolved under FAR 13.105.1(d)(2) by the contracting officer.

(d) All cases involving the noninitiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of FAR 19-505.

(g) This procedure is applicable to DoD.

219.502 Setting aside acquisitions.

219.502-1 Requirements for setting aside acquisitions.

Department of Defense activities follow the order of precedence in 219.504. Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set-aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

219.502-2 Total set-asides.

Where multiyear contracting procedures are appropriate, total set-asides may be made in connection therewith.

219.502-4 Methods of conducting set-asides.

(a) Contracts for total (including combined small business/LSA) or partial set-asides entered into by conventional negotiation or by "Small Business Restricted Advertising" are negotiated acquisitions and shall cite as authority 10 U.S.C 2304(a)(1) in the case of a unilateral determination or U.S.C. 2304.(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

219.502-70 Combined small business—labor surplus area set-asides.

(a) In the acquisition of certain items, the objectives of both the Small Business Act and Defense Manpower Policy (DMP) No. 4 may be attained in a single acquisition. Under this procedure, the total required quantity of an item would be set aside for exclusive participation by small business firms and a portion of that total quantity would be further set-aside for award to small business concerns which are also LSA firms.

(b) For acquisitions exceeding $25,000 the use of this combined small business-LSA set-aside procedure shall be considered. This procedure shall be used in preference to all others when the proposed acquisition meets the criteria for:

(1) Total small business set-aside (FAR 19.502-2), and

(2) A partial LSA set-aside (220.7003(a)).

(c) Contracts utilizing this procedure may be entered into by "Small Business Restricted Advertising," the preferred method, (FAR 15.201) or by conventional negotiation. This set-aside procedure may be used in multi-year contracting (FAR Subpart 17.1). Solicitations shall provide that offers may be submitted by small business firms only and that a part of the total requirement is further set-aside for LSA firms which are also small business concerns. Offers received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(d)(1) In combined small business-LSA set-asides each solicitation shall contain the clause at 252.219–7001, Notice of Combined Small Business Labor Surplus Area Set Aside (except see (d)(2) below).

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause at 252.219-7002, Notice of Combined Small Business Labor Surplus Area Set Aside, Alternate, may be used.

(e)(1) After the award price for the non-LSA set-aside portion has been determined, negotiations may be conducted for the LSA set-aside portion. Acquisition of the LSA set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-LSA set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the foregoing clause; *provided* that, when equal low offers are received on the non-LSA set-aside portion from concerns which are equally eligible for the LSA set-aside portion, the concern which is awarded the non-LSA set-aside portion (under the equal low bid procedure of 214.407–6) shall have first priority with respect to negotiations for the LSA set-aside portion. The LSA set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds, or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses at FAR 52.215–1, Examination of Records by Comptroller General, and at FAR 52.215–2, Audit—Negotiation.

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (1) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses at FAR 52.215–1, Examination of Records by Comptroller General, and at FAR 52.215–2, Audit—Negotiation, applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (e) (2) and (3) above. Also, the award shall reference in Block 26 of the Standard From 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of Subpart 204.6, the non-LSA-set-aside portion shall be reported separately. (See FAR 19.507 for automatic dissolution of set-asides.)

219.503 Setting aside a class of acquisitions.

(d) The contracting officer may initiate withdrawal of an individual acquisition or modification of a class set-aside by giving written notice to the activity's SADBUS and the SBA procurement center representative. In case of disagreement, the matter will be resolved under the procedures in FAR 19.506(b).

219.504 Set-aside program order of precedence.

(b) The following order of precedence applies to DoD:

(1) Combined small business/LSA set-aside 219.502–70)

(2) Partial set-aside for LSA firms (220.7003(a))

(3) Total set-aside for small business firms (FAR 19.502–2)

(4) Partial set-aside for small business (FAR 19.502–3)

219.505 Rejecting set-aside recommendations.

(a) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set-aside the contracting officer shall promptly either:

(1) Concur in the recommendation, or

(2) Disapprove, stating in writing his reasons for disapproval.

If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist. In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see 219.201(d)(1)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be decision final, and if the decision approves the action of the contracting officer, the small busi-

ness specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or his designee as identified in 219.201(c)(S–71). The specialist's signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

(b) The head of the contracting activity's designee shall be at a level no lower than the chief of the contracting office.

(d) The matter shall be forwarded with full justification of the action taken through normal channels.

(e) Should it be determined that a decision cannot be made within 30 business days, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, Office of the Deputy Secretary of Defense.

(f) The contracting officer must determine that contracting action must proceed without delay in order to protect the public interest. The contracting officer's statement shall be approved at a level above the contracting officer.

219.506 Withdrawing or modifying set-asides.

(b) Disagreements between the contracting officer and the Small and Disadvantaged Business Utilization Specialist will be resolved in accordance with the procedures in 219–505.

219.508 Solicitation provisions and contract clauses.

(d) When using the clause at FAR 52.219–7, the contracting officer shall insert the clause at 252.219–7003, Determining the Set-Aside Award Price.

(S–70) The contracting officer shall insert the clause at 252.219–7004, Eligibility for Preference as a Labor Surplus Concern, in solicitations and contracts for partial small business set-asides under FAR 19.502–3, for Combined Small Business—Labor Surplus Area Set-Asides under 219.502–70, and for partial set asides for Labor Surplus Area Concerns under 220.7003.

Subpart 219.6—Certificates of Competency and Determinations of Eligibility

219.602 Procedures.

219.602–1 Referral.

(a) A preaward survey shall be conducted prior to a determination by a contracting officer that a small business concern is not responsible on a proposed award. The contracting officer will refer the matter directly to the SBA, or he may notify the preaward survey activity to refer the matter to the SBA, whichever is more expeditious (e.g., where the surveying activity is nearer to the cognizant SBA office). The activity that refers the matter to the SBA shall maintain close liaison. If the activity does not hear from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter was referred to determine whether a Certificate of Competency (CoC) is being processed. When the PCO has requested the preaward survey activity to refer the matter to SBA, that activity shall keep the PCO advised of significant developments, including the results of any inquiry to the SBA at the end of the 5-working day period, and any new or additional facts that warrant a change in the preaward survey activity's findings.

219.602–3 Resolving differences between the agency and the Small Business Administration.

(a) Prior to final SBA action, the PCO (or the preaward survey activity when authorized to act as his representative) will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the cases. Copies of significant data developed by SBA that are pertinent to the case will be available, upon request, to the PCO or his representative at such a meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or his representative, but such files will not be released outside of SBA. Personnel from a contracting office or surveying activity who participated in a preaward survey of the prospective contractor or other personnel having cognizance of the survey shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the Departments through a complete exchange of preaward information developed by each agency.

(b)(2) If the contracting officer intends to appeal a proposed CoC issuance, upon receipt of initial notification from the SBA Central Office that it concurs with its Regional Office, the contracting officer shall immediately inform the Department or Agency Director or Staff Director of Small and Disadvantaged Business Utilization identified in 219.201(c)(S–71). If the Department elects to present a formal appeal to HQ SBA, a factual case shall be prepared as expeditiously as possible and processed through Departmental channels for approval at the Secretarial level prior to presenting the matter to HQ SBA. Any competent level of review within the Department or Agency may conclude that a formal appeal should not be made and that the contract should be awarded to the small business concern in question without a CoC or that a CoC should be accepted and the award made. If such action is taken, the contracting officer and HQ SBA shall be advised accordingly.

219.670 Quarterly reporting.

The Departmental Director or Staff Director of Small and Disadvantaged Business Utilization, identified in 219.201(c)(S–71), shall be informed by the contracting activity Small and Disadvantaged Business Utilization Specialist, in writing, on a quarterly basis, of all certificate of competency cases initiated during a particular quarter and of the final disposition made on cases during the quarter, including the number and dollar value of CoC's issued during the period. The information shall include company name, item being acquired, solicitation number, dollar value of the contract, and the date the case was submitted to SBA. In addition, advice and data will be furnished for all cases where (a) the small business concern elects not to file an application for a CoC; or (b) SBA declines to issue a CoC; or (c) the contracting activity reverses the preaward survey activity's negative finding concerning responsibility, withdraws the request for the CoC, and makes the award. This reporting requirement is assigned RCS DD–DR&E(Q)1152.

Subpart 219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

219.703 Eligibility requirements for participating in the program.

(a) The SBA Size Appeals Board has final authority to determine the eligibility of a concern to be designated as a small business. The contracting

officer, in connection with small business subcontracting requirements, may question the prime contractor concerning a written representation of small business status, or the refusal to accept such written representation by either the prime contractor or a subcontractor, of a concern offering as a subcontractor on a particular acquisition. Other interested parties may also question such representation or refusal. If the matter(s) cannot be resolved, the contractor (prime or sub) is responsible for referring it for a size determination to the SBA Regional Office in which region the concern submitting the written representation has its principal office.

219.706 Responsibilities of the cognizant administrative contracting officer.

(a) *Evaluation of subcontract reports.* The ACO is responsible for reviewing, evaluating, and approving master subcontracting plans. In the evaluation of subcontract reports, the SADBU Specialist shall support the ACO in evaluating a contractor's performance and compliance with its subcontract plans. The original of the Standard Form 294, Subcontracting Report for Individual Contracts, and a copy of the Standard Form 295, Summary Subcontract Report, and reports of periodic reviews of contractor performance shall be retained by the cognizant SADBU Specialist. These reports together with other pertinent information shall be used as a basis for advising the ACO as to contractor's compliance with subcontracting plans.

219.708 Solicitation provisions and contract clauses.

(b) The contracting officer shall include the clause at 252.219–7000, Small Business and Small Disadvantaged Business Subcontracting Plan (Master Plans), in all solicitations and contracts that contain the clause at FAR 52.219–9.

Subpart 219.8—Contracting With the Small Business Administration (the 8(a) Program)

219.809 Preparing the contracts.

219.809–1 General.

(a) The negotiation authority to be cited is 10 U.S.C. 2304(a)(17).

PART 220—LABOR SURPLUS AREA CONCERNS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 220.70—Labor Surplus Area Policy and Procedures

220.7000 Scope.

As authorized by FAR 20.201–2, this subpart sets forth Department of Defense policy and procedures with respect to aiding labor surplus areas in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. This subpart implements Defense Manpower Policy No. 4B, 23 May 1980 (44 CFR Part 331), and the Small Business Act as amended (15 U.S.C. 631), and U.S. Department of Labor Regs (20 CFR Part 654). Defense Manpower Policy No. 4B states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

220.7001 General policy.

Except as provided in 220.7005 with respect to depressed industries, it is the policy of the Department of Defense to aid Labor Surplus Areas (LSA) by placing contracts with LSA concerns, to the extent consistent with procurement objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with LSA concerns. In carrying out this policy, and to accommodate the small business policies of Part 19, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns, and (iii) small business concerns which are not LSA concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of contracting activities and chiefs of purchasing and contract administration offices are responsible for the effective implementation of the Labor Surplus Area Program within their respective offices. Responsibility for administration of the program shall be assigned to small business specialists appointed pursuant to Part 19.

220.7002 Application of policy.

(a) Within the policy set forth in 220.7001, the following shall be applied to contracts which are estimated to exceed $25,000:

(1) Negotiated contracts shall, where acquisition objectives permit, be awarded to labor surplus area concerns; *provided,* that in no case shall price differentials be paid for the purpose of carrying out this policy;

(2) When appropriate, acquisitions shall be made from LSA concerns by partial set-aside procedures, in accordance with 220.7003 (but no total set-aside shall be made for LSA concerns) and such set-asides shall be given preference over any small business set-aside;

(3) Each Department shall assure that information identifying LSA is disseminated promptly to contracting personnel;

(4) When less than a complete bidders list is to be used pursuant to 214.205–4, at least a *pro rata* number of prospective LSA concerns shall be solicited;

(5) Subcontracting with concerns in LSA shall be encouraged in accordance with 220.7004.

(6) See 225.103 regarding purchase from qualifying country sources where LSA set-asides are involved.

(b) Records of the total value of all contracts in excess of $25,000 placed with LSA concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described Subpart 204.6. Accordingly, each Department, in soliciting bids and proposals for any contract estimated to exceed $25,000 shall request from any offeror, or other source, any information needed to determine whether the offeror is a LSA concern. Contract files shall be documented to indicate the extent to which LSA concerns were considered and the action taken with respect thereto.

220.7003 Partial set-asiders for labor surplus area concerns.

(a) *General.*

(1)(i) In accordance with the policy set forth in 220.7001 and 220.7002 (see also 219.504) a portion of each acquisition shall be set aside for LSA concerns if:

(A) The acquisition is severable into two or more economic production runs or reasonable lots; and

(B) One or more LSA concerns are expected to qualify as LSA concerns and to have the capability to furnish a severable portion of the acquisition at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that offers will be received from only two concerns with capability (one concern which will not qualify as a LSA concern and one concern which will qualify as a LSA concern) unless authorized by the Head of the Contracting Activity on a case-by-case basis. Before reaching this conclusion, the contracting officer shall consult with the LSA specialist and may make advance inquires to determine the number and expected classification of interested concerns.

(ii) In determining whether a proposed procurement is susceptible to division into two or more economic production runs or reasonable lots, consideration should be given to the following factors and any others deemed appropriate:

(A) Price and procurement history of the items,

(B) Open industry capacity,

(C) Startup cost including special tooling requirements,

(D) Delivery schedule, and

(E) Nature of item and quantity being procured.

Before a portion or portions, constituting more than 50% of the total requirement may be set aside, a determination must be made that there is a reasonable expectation the action proposed will not result in the payment of a price differential. The determination and supporting information will be made part of the contract file.

(iii) In furtherance of the policy to assure that a fair proportion of procurements is placed with small business concerns, each LSA set-aside shall provide that, in addition to LSA concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to LSA concerns. In this respect, see the provisions of 220.7003(b)(2)(i) for notice to offerors, and 220.7003(b)(2)(ii) for conduct of set-aside negotiations.

(2) None of the following is, in itself, sufficient cause for not making a set-aside:

(i) A large part of previous procurements of the item in question has been placed with LSA concerns;

(ii) The item to be purchased is on an established planning list under the Industrial Readiness Planning Program;

(iii) The item to be purchased is on a Qualified Products List;

(iv) A period of less than 30 days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of offers;

(v) The procurement is classified; or

(vi) LSA concerns are receiving a fair proportion of contracts.

(3) Procurement of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set aside for LSA. Identification of the supplies covered by the Program will be in accordance with Departmental procedures.

(b) *Set-aside procedures.*

(1) When a portion of a procurement is to be set aside, the procurement shall be divided into a non-set-aside portion and set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion of this Part will be such as to make the maximum use of the capacity of LSA concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(2)(i) In procurements involving set-asides pursuant to this Part, each solicitation and resulting contract shall contain the clause in 252.220–7000, Notice of Labor Surplus Area Set-Asides, (except see (b)(2)(ii) below).

(ii) When experience indictes that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause in 252.220–7001, Notice of Labor Surplus Area Set-Asides, may be used.

(iii) See 219.508(S–70) for use of the clause at 252.219–7004 for preference as a Labor Surplus concern.

(3)(i) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the clauses required by 220.7003(b)(2) (i) and (ii) above; *provided* that, when equal low offers are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedure of 214.407–6 shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations, FAR 15.201 or 15.210 as to negotiation. Since considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see FAR 12.101) to ensure that it is realistic in the light of all relevant factors including the capabilities of LSA concerns.

(ii) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (A) agreement as to the established set-aside price for the available set-aside quantity, (B) agreement as to the required delivery, (C) agreement that all other terms and conditions of the original solicitation will apply to the set-aside award, and (D) agreement to inclusion of the clauses *"Examination of Records by the Comptroller General"* in FAR 52.215–1 and *"Audit Negotiation"* in FAR 52.215–2.

(iii) When the award of the non-set-aside portion has been made to a concern which is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (A) include a reference to the contractor's letter offering on the set-aside quantity, (B) state the price and delivery schedule applicable to the set-aside quantity, and (C) include the clauses *"Examination of Records by Comptroller General"* in FAR 52.215–1 and *"Audit Negotiation"* in FAR 52.215–2 applicable to the set-aside portion only. Copies of all pertinent documents, including the signed offer, should be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(iv) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (b)(3)(ii) and (iii) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard

Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient. For purposes of Subpart 204.6, the non-set-aside and set-aside portions shall be reported separately.

(c) *Withdrawal of set-asides.* If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

(d) *Contract authority.* Contracts for set-aside made under this shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes, see FAR 15.201(b)(1)(i) for contracts awarded to labor surplus area concerns and FAR 15.201(b)(1)(ii) for contracts awarded to small business concerns which are not labor surplus area concerns.

220.7004 Subcontracting with labor surplus area concerns.

(a) *General policy.*

(1) It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defense subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in 220.7001 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

(2) To more effectively carry out the Government's policy objectives stated in (a) above, prime contractors and subcontractors having labor surplus area subcontracting programs must be informed of (i) the Government's evaluation of their efforts in carrying out an effective labor surplus area subcontracting program, (ii) any specific noted deficiencies in their Labor Surplus Area Subcontracting Programs, and (iii) any areas of outstanding achievement where they may have exceeded contractual requirements. To motivate a contractor to improve his program, he should be advised in general terms as to the type of actions which will result in a reward, penalty, or no impact on profit or fee actions. Any evaluation and remarks to the contractor which has exceeded contractual requirements, must be documented to furnish a basis for evaluation in connection with future awards.

(b) *Labor surplus area subcontracting program.* The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. These obligations are in addition to those required by the minority business enterprise subcontracting program and the small business subcontracting program, FAR Subpart 19.7. In contracts which range from $25,000 to $500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in 220.7004(c)(1). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause required by 220.7004(c)(2) to undertake a number of specific responsibilities designed to ensure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

(c) *Required clauses.*

(1) The clause at FAR 52.220–3, Utilization of Labor Surplus Area Concerns, shall be inserted in all contracts which may exceed $25,000, except:

(i) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands;

(ii) Contracts for services which are personal in nature;

(iii) Contracts for construction; and

(iv) Contracts with the petroleum and petroleum products industry.

(2) The clause at FAR 52.220–4, Labor Surplus Area Subcontracting Program, shall be included in all contracts which may exceed $500,000, but which contain the clause required by (a) above and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, shall be urged to accept the clause.

220.7005 Depressed industries.

(a) *General.* When an entire industry is depressed, the Director of the Federal Preparedness Agency of the General Services Administration may, under Defense Manpower Policy No. 4, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by the Federal Preparedness Agency and such industries will be given special treatment as specified therein.

(b) *Petroleum and petroleum products industry. (Notification No. 58).* There shall be no labor surplus area set-asides in this industry.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 222.1—Basic Labor Policies

222.101 Labor Relations.

222.101–1 General.

(S–70) Authorization shall be obtained from Departmental headquarters prior to initiating any contact on labor relation matters with a national office of any labor organization, Government department, agency or other governmental organization and shall promptly notify such headquarters of each contact by the national office of any of these organizations.

(S–71) All problems arising out of the industrial labor relations of contractors and all communications with contractors, labor organizations or Federal agencies relative thereto shall be handled in accordance with the procedures prescribed in this Section. Industrial security matters concerning contractor employees are governed by the DoD Industrial Security Regulation 5220.22R and the DoD Industrial Security Manual 5220.22M.

(S–72) Approval of the Office of the Deputy Under Secretary of Defense R&E(AM) will be obtained on major policies relating to all labor relations matters. Recommendations for plant seizure or injunctive action relating to potential or actual work stoppages and resolution of inter-service disagreements are examples of major policy actions.

(S–73) [Reserved]

(S–74) Questions involving FAR Part 22 or other contractor labor relations matters may be addressed to the appropriate departmental/agency headquarters labor advisor:

For the Army: Assistant Secretary of the Army (RDA), Attention: Labor Advisor

For the Navy: Chief of Naval Material, Attention: Contractor Labor Relations Advisor

For the Air Force: Headquarters, United States Air Force/RDC–LA, Attention: Special Assistant for Labor Affairs

For the DLA: Headquarters, Defense Logistics Agency; For all matters excepting strikes and disputes-Executive Directorate contracting, Attention: DLA–PA; For matters involving strikes and disputes-Executive Director Contract Management, Attention: DLA–AP

For the DCA: Headquarters, Defense Communications Agency, Attention: Counsel

For the DMA: Headquarters, Defense Mapping Agency, Attention: Staff Director of Logistics

For the DNA: Headquarters, Defense Nuclear Agency, Attention: Deputy Director of Operations and Administration

For the NSA: Headquarters, National Security Agency, Attention: Director of Procurement

222.101–2 Contract pricing and administration.

(S–70) Nothing in FAR 22.101–1 should be construed to relieve a contracting office from the responsibility to achieve efficient contract pricing and administration.

(S–71) Inspection personnel in the discharge of their duties, consistent with the policy of FAR 22.101–1(b), shall refrain from taking or expressing a position upon the merits of any dispute between labor and private management.

222.101–3 Reporting labor disputes.

When an interference is likely to occur, the CAO shall notify the purchasing offices, their Heads of Contracting Activities and their Departmental headquarters labor relations office (see listing at 222.101–1(S–74)). Further dissemination of labor dispute information shall be made by the CAO as requested by the Departmental headquarters labor relations offices. Labor disputes should be reported on DD Form 1507, Work Stoppage Report. An initial report should be submitted when a work stoppage due to a labor dispute is imminent or when such work stoppage occurs and thereafter when a significant changes occurs in the dispute situation. This reporting requirement is assigned RCS DD I&L (AR) 1153 (See 253.303–70–DD–1507).

222.101–4 Removal of items from contractors' facilities affected by work stoppages.

(a) It is the policy of the Department of Defense with respect to the movement of items from facilities affected by work stoppages to avoid the use of force or the appearance of force and to prevent the occurrence of incidents which will detrimentally affect relations with labor and management.

(b) Materials which the contractor is unable to deliver because of a work stoppage at the plant, and the delivery of which is urgent and critical to an important program, and may be obtained in accordance with procedures set forth below:

(1) The procuring contracting officer, upon the direction of the Departmental Headquarters Labor Relations Office, (see listing at 222.101–1(S–74)) shall furnish a written request for removal of the material to Contract Administration Office (CAO) having cognizance over the plant. The Commander of the cognizant CAO, his representative or the Headquarters Labor Relations Advisor shall attempt to work out an arrangement agreeable to both management and the labor representatives involved for shipment by normal means of urgently required material: Prior to making any removal, the Departmental Headquarters Labor Relations Office will solicit the opinion of the National Office of the Federal Mediation and Conciliation Service or other appropriate mediation agency as to the effect the movement of items would have on negotiations. The procuring contracting officer's request will include the following:

(i) A statement as to the urgency and criticality of the system, subsystem or item needed;

(ii) Description of items to be moved (Nature of item, amount, approximate weight and cubic feet, contract number, item number, etc.);

(iii) Mode of transportation by which items are to be moved if different from contract and whether by Government or commercial bill of lading; and

(iv) Destination of material if different than contract.

(2) If an arrangement in accord with (i) cannot be made, the Commander of the CAO or his representative, after obtaining approval from the Departmental Headquarters Labor Relations Office, may seek the concurrence of parties to the dispute to permit movement of the required material by military vehicles with military personnel to the extent needed. On receipt of such concurrences, he may proceed to make necessary arrangements to move the material.

(3) If satisfactory arrangements under (i) and (ii) cannot be made, the matter shall be referred to the Departmental Headquarters Labor Relations Office with the information required by 222.101–70(b). If that office is unsuccessful in obtaining the voluntary concurrences of the parties for movement of the material involved and further action to obtain the material is deemed necessary, the matter shall be referred to the DUSD, R&E(AM).

(4) Upon review and vertification that the material is urgently or critically needed and cannot be moved with the consent of the parties, the DUSD, R&E(AM) may request the Secretary of the Department to order removal of the material from the plant or plants involved.

222.101–70 Impact of labor disputes on defense programs.

(a) Each Department shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements, considering among others the following factors:

(1) Whether the dispute involves a product, project (including construction) or service which must be obtained in order to meet schedules of urgently needed military programs or requirements; or

(2) Whether alternative sources of supply for the product, project, or service involved are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Within each department, the contracting activity involved shall obtain and develop data reflecting the impact of a dispute on requirements and programs. Upon determining the impact, the Head of the Contracting Activity shall submit through appropriate channels a report of his findings, together with recommendations, to the headquarters labor relations office originally notified pursuant to FAR 22.101–3. Such report shall be in narrative form and shall include the following information:

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A statement indicating the degree of impact, relating specific items or construction involved to the programs or requirements affected;

(3) Identity of alternate sources available to furnish supply or service within the time required; and

(4) A description of any action taken to reduce impact.

(c) Reports of impact shall be made to the Office of the Deputy Under Secretary of Defense, R&E(AM).

(1) Upon specific request; or

(2) When considered by the Department to be of sufficient urgency to warrant the attention of the Deputy Under Secretary.

(d) Report submitted in accordance with (c) above shall be developed by the headquarters labor relations office concerned and shall cover the following areas of fact, as appropriate:

(1) *Description of military program, project, or service*—Identify item, project, or service which will be or is being affected by the work stoppage, describing its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials identify the end item(s) for which used.

(2) *Requirements and assets*—State requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For *production programs* include requirements for each using military service. Where applicable, state in detail production schedules, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For *projects*, describe the potential adverse effects of a delay in meeting schedules and explain how a security disadvantage would result from such a delay. Attention should be given to feature any relative loss in balance of strength vis-a-vis potential enemies' capabilities.

(iii) For *services*, describe how a loss or interruption affects ability to support defense operations in terms of traffic requirements, assets, testing programs, etc.-

(3) *Possible measures to minimize strike impact*—Describe:

(i) Capabilities, if any, to substitute items or to use alternate sources. (Note how many other facilities are available and the relative capabilities of such facilities in meeting total requirements.);

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) Feasibility of transfer of assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion: Impact on operations of a 15–30, of a 30–60, and of a 60–90 day work stoppage*—Degree of criticality of a program, project, or service resulting from a work stoppage will be projected on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the time required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101–71 Procurement of stevedoring services during labor disputes.

When stevedoring services are furnished by a contractor to a Department, and the performance under the contract, although urgently required, is delayed through a labor dispute, the following procedures shall be utilized in the order or priority listed. Each successive procedure shall be used only when the preceding steps are inadequate.

(a) An attempt shall be made to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(b) Vessels shall be diverted to alternate ports able to provide necessary stevedoring services.

(c) Consideration shall be given to contracting with reliable alternative sources of supply within the stevedoring industry.

(d) Civil Service stevedores shall be utilized to perform the work therefore performed by contract stevedores.

(e) Military personnel shall be utilized to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(f) When the exigencies of a situation require deviation format the procedures outlined above, the Departmental headquarters labor advisor (see listing at 222.101–1(S–74)) shall be promptly notified.

222.102 Federal and state labor requirements.

222.102–70 Applications by contractors for relaxation of requirements.

(a) Departments shall not initiate applications of any kind for suspension or relaxation of labor requirements without prior coordination of the departmental headquarter labor advisor (see listing at 222.101–1(S–74)). They may, however, support such applications by contractors or suppliers when all of the following circumstances and conditions have been met:

(1) The interested contractor or supplier has filed his application for relaxation of the laws, orders or regulations involved with the appropriate Governmental official charged with the enforcement of such labor requirements applicable to the contract involved;

(2) The required products or services are in short supply and unless the application is granted, production schedules for critically needed military material cannot be met;

(3) There is no alternative source of supply reasonably available to furnish the products or services within the period of time delivery is required;

(4) There is no practicable possibility of taking remedial action (such as recruiting, training, and more effective utilization of manpower) as an alternative to relaxation of applicable Governmental labor requirements;

(5) The apparent supply of labor, and in particular of critical skills, is limited, and it is not practicable to set up new production lines or to use additional facilities as an alternative to the relief requested; and

(6) The granting of the application will not result in an excessive increase in hours or work, an unreasonable curtailment of rest and lunch periods, an undesireable impairment of working conditions, or otherwise adversely affect the productivity of the facility involved.

(b) Requests for authority to support an application on behalf of a contractor or supplier shall be submitted to the Departmental headquarters labor advisor (see listing at 222.101–1(S–74)). Such requests shall contain the following information:

(1) The facilities and services involved and affected;

(2) Provision(s) of law which require relaxation;

(3) Criticality or relative scarcity of the material;

(4) Circumstances necessitating the relaxation (for example, a shortage in the local supply of skilled labor);

(5) Remedial action being taken by the manufacturer (e.g., training, recruiting, more effective utilization of manpower);

(6) The most limited relaxation of the requirement necessary for completion of the specific work; and

(7) The approximate period of time required for completion of the work.

(c) Consistent with the limitations of security and the foregoing requirements, contract information may be furnished to the appropriate Governmental official, upon his request, in connection with an application of a contractor or supplier for relaxation of a labor requirement as to the execution of a contract in pursuance of a military procurement program.

222.103 Overtime.

222.103–4 Approvals.

The Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research Development and Acquisition), for the Army; the Deputy Chief of Naval Material (Contracts and Business Management), for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters, USAF, for the Air

Force; the Executive Director for Contracting, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Assistant to the Director for Administration, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, of the Defense Mapping Agency; are authorized, without power of delegation, to designate without power of redesignation, offices and civilian officials for the purpose of approving overtime premiums at Government expense. Such approval may be for an individual contract, project, or program, or for a plant, divisions, or company, as most practicable, and shall ordinarily be prospective, but may be retroactive when justified by the circumstances. When two or more purchasing offices have current contract at a single facility, and the approval of overtime by one purchasing office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a purchasing office may relay on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another purchasing office.

Subpart 222.4—Labor Standards for Contracts Involving Construction

This Subpart has been reserved pending development of appropriate coverage in FAR Subpart 22.4 to reflect recent changes in Department of Labor Regulations. Coverage on this subject matter will be provided prior to the FAR effective date.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604–4 Regulatory exemptions.

(c) In addition to the requirements contained in FAR 2.604–2(c) regarding head of agency requests to the Secretary of Labor for exemption of contracts or classes of contracts from any or all stipulations of the Walsh-Healey Public Contracts Act, all applications for such exemptions shall (1) contain pertinent data (including a statement of justification) and recommendation and (2) be submitted through contract channels to the departmental headquarters labor relations advisor (see listing at 222.101–1(S–74)).

222.609 Regional Jurisdictions of the Department of Labor, Wage and Hour Division.

In contrast to FAR 22.609, the regional office locations set forth below contain both street addresses and telephone numbers.

(a) *Boston Region*—For the States of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 1612C, John F. Kennedy Federal Building, Government Center, Boston, MA 02203 (telephone: 617–223–2035).

(b) *New York Region*—For the States of New York and New Jersey and for Puerto Rico and the Virgin Islands: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, New York, NY 10036 (telephone: 212–971–5451).

(c) *Philadelphia*—For the States of Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 704C, 1317 Filbert Street, Philadelphia, PA 19107 (telephone: 215–597–9633).

(d) *Atlanta Region*—For the States of Florida, Georgia, North Carolina, South Carolina, Tennessee, Alabama, Kentucky, and Mississippi: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 331, 1371 Peachtree Street, NE, Atlanta, GA 30309 (telephone; 404–526–5801).

(e) *Chicago Region*—For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Regional Administrator, Employment Standards Administration, U.S. Department of Labor U.S. Courthouse and Federal Office Building, Room 742, 219 South Dearborn Street, Chicago. IL 60604 (telephone: 312–353–7280).

(f) *Dallas Region*—For the States of Texas, New Mexico, Oklahoma, Arkansas, and Louisiana: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 13F12, 1100 Commerce Street, Dallas, TX 75202 (telephone: 214–749–2037).

(g) *Kansas City Region*—For the States of Missouri, Kansas, Nebraska, and Iowa: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 2000, Federal Office Building, 911 Walnut Street, Kansas City, MO 64102 (telephone: 816–374–5384).

(h) *Denver Region*—For the States of Colorado, North Dakota, South Dakota, Utah, Wyoming, and Montana: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 246, 232 New Customshouse, 721 19th Street, Denver, CO 80202 (telephone: 303–837–4613.

(i) *San Francisco Region*—For the States of California, Nevada, Arizona, and Hawaii, and for Guam, and various Pacific Islands: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10431, San Francisco, CA 94102 (telephone: 415–556–1318).

(j) *Seattle Region*—For the States of Washington, Oregon, Idaho, and Alaska: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 2008 Smith Tower, 506 Second Avenue, Seattle, WA 98104 (telephone: 206–442–1536).

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.

222.804–2 Construction.

(b) Requests for instructions shall be forwarded through contracting channels to: Labor Advisor, OASA(RDA), for the Army; the cognizant field office of the Naval Facilities Engineering Command, for the Navy; Director of Contracting and Manufacturing Policy, Headquarters USAF, for the Air Force; Executive Director for Contracting, for the Defense Logistics Agency; Director of Procurement, for the National Security Agency: the Counsel, for the Defense Communications Agency; Director, Acquisition Management, for the Defense Nuclear Agency; Staff Director of Logistics, for the Defense Mapping Agency and the Assistant Director for Administrative Services for the Defense Civil Preparedness Agency.

222.805 Procedures.

(a)(2) A listing of Department of Labor regional offices can be found at 222.609 (in using the listing, replace "Wage and Hour Division" with "Office of Federal Compliance Programs").

222.806 Inquiries.

(b) Matters requiring the attention of OFCCP, Washington, D.C. Headquarters shall be forwarded to the departmental labor advisor (see listing at 222.101–1(S–74)) for referral to the Director, OFCCP.

222.807 Exemptions.

(c) The contracting officer's justification for exemption, shall be submitted through appropriate contracting channels to the departmental labor advisor (see listing at 222.101(S–74)) for departmental coordination and submission, if favorably endorsed, to the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management) (DUSD, R&E(AM)). If the request is submitted under FAR 222.807(a)(1), the DUSD, R&E(AM) shall forward it to the Secretary of Defense for granting of the exemption, and if the exemption is granted, shall notify the Director, OFCCP within 30 days of such action. If the request is submitted under FAR 22.807(a)(2) or FAR 22.807(b)(5), the DUSD, R&E(AM) shall forward it to the Director, OFCCP.

Subpart 222.10—Service Contract Act of 1965

222.1003 Applicability.

(e) *Requests for determinations and exemptions.*

(1) The contracting officer shall direct requests for determination of applicability of the Act or determination of the applicability or appropriateness of Department of Labor Wage determinations of the departmental labor advisor (see listing at 222.101–1(S–74)).

(2) The contracting officer shall submit in writing requests for exemption from the Act through contracting channels, as appropriate, to the departmental labor advisor (see 222.101–1(S–74)). The labor advisor shall effect necessary departmental coordination and submit the request, if endorsed, to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

222.1006 Clauses for contracts over $2,500.

(S–70) *Potential application clause.* The contracting officer shall insert the clause at 252.222–7000, Potential Application of the Service Contract Act, As Amended (Fixed Price), (SEP 1979) in solicitations and contracts for overhaul and modification of equipment, which are considered by the contracting office to be subject to the Walsh-Healey Public Contracts Act rather than the Service Contract Act, as amended. In paragraph (c) of the clause, "60 days" may be substituted for "30 days".

(S–71) *Minimum wages and fringe benefits.* The contracting officer shall insert the clause at 252.222–7001, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, in solicitations and contracts when-

(1) The Clause at FAR 52.222–41 applies;

(2) The contract resulting from the solicitation succeeds an ongoing contract for substantially the same services;

(3) The incumbent contractor has negotiated or is negotiating a CBA with some or all of its service employes; an

(4) All applicable Department of Labor wage determinations have been requested but not received.

222.1007 Notice of intent to make a service contract.

(e) Requests, other than routine requests to check the status of the submitted Notice of Intention to Make a Service Contract and Response to Notice (SF–98/98(a)), to the Department of Labor, Washington, D.C. headquarters is not authorized other-than-routine requests shall be made through the departmental labor advisor (see listing at 222.101–1(S–74)) who, if the request is justified, shall contact cognizant Department of Labor headquarters officials regarding the request.

(S–70)(1) If the SCA wage determination requested in accordance with FAR 22.1007(a) is not received in time for inclusion in the solicitation, and absent an incumbent contractor union agreement, the contracting officer should proceed using the latest wage determination included in the existing contract, if any. If a new wage determination is subsequently received 10 or more days prior to the opening of bids or the date established for the initial receipt of proposals, the solicitation must be amended accordingly. However, if a new wage determination is received less than 10 days before the opening of bids or the date established for the initial receipt of proposals, it shall be included in the solicitation only when there is a reasonable time to notify offerors thereof.

(2) In those cases involving an incumbent contractor operating under a collective bargaining agreement, the wage determination in the incumbent's contract shall not be included in any solicitation that must be released without a new SCA wage determination. Instead, using the solicitation provisions as prescribed at 222.1006(S–71), offerors shall be informed that—

(i) The economic terms of such agreement(s) will apply to the contract and should be considered in developing an offer; however,

(ii) Pursuant to Department of Labor Regulations at 29 CFR 4.1c, and subject to the conditions set forth in FAR 22.1007(f) and 222.1008–1, the economic terms of any agreement entered into subsequent to this solicitation might apply to the contract.

(3) The contracting officer shall notify, in writing, the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, of each case when compelled to proceed without a new wage determination due to a delayed response from the Department of Labor. An information copy of each such notice shall be forwarded to the appropriate departmental labor advisor (see 222.101–1(S–74)).

222.1008 Wage determinations and collective bargaining agreements.

222.1008–1 Before award.

(a) Solicitations and contracts for more than $2,500 shall contain an attachment (wage determination or appropriate revisions thereto) issue by the Administrator in response to the notice required under FAR 22.1007(a), setting forth the minimum wages and fringe benefits for service employees to be employed thereunder. However, wage determinations and revisions thereto shall *not* apply:

(1) Where no collective bargaining agreement exists and wage determinations or revisions are received less than 10 days before the opening of bids or date established for the initial receipt of proposals, unless the contracting officer finds that there is a reasonable time to notify bidders or offerors thereof;

(2) Where a collective bargaining agreement does exist and (i) the contracting agency has received notice of the existence thereof less than 10 days before bid opening or commencement of performance of a negotiated contract, option, or contract extension, *and* (ii) the contracting officer determines that there is not reasonable time to incorporate a new wage determination in the solicitation, *and* (iii) the notices required by FAR 22.1007(a) and (f) have been given.

222.1009 Notice of award.

Two copies of SF 99 shall be prepared for contracts of $2,500 or more but less than $25,000 containing the clause in FAR 52.222–41; for the initial order (if less than $25,000) under an indefinite-type contract or basic ordering agreement containing the clause in FAR 52.222–41; and for the initial purchase (if less than $25,000) under a blanket purchase agreement containing the clause in FAR 52.222–41. The address for

the Department of Labor office cited is Washington, D.C. 20210.

(S–70) *Individual Procurement Action Report (DD Form 350).* The contracting officer shall not report to the Department of Labor awards of service contracts of $25,000 or more containing the clause in FAR 52.222–41 and initial orders/calls of $25,000 or more under indefinite delivery-type contracts, basic ordering agreements, and blanket purchase agreements containing the clause in FAR 52.222–41. SF 99 information pertinent to such contracts and agreements is contained in DD Form 350 Data Input which is accessible to the Department of Labor via the Federal Procurement Data System.

222.1011 Hearings.

(a) The contracting officer shall submit a request for a hearing to the departmental labor advisor (see listing at 222.101–1(S–74)) who shall effect necessary departmental coordination and forward the request, if endorsed, to the Department of Labor.

222.1012 Withholding of contract payments.

Generally, sums withheld shall be forwarded immediately to the Department of Labor for payment to employees unless otherwise directed by the Department of Labor.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a request for waiver under FAR 22.1303(a) and (b) via appropriate procurement channels to the departmental or agency headquarters contractor labor relations advisor (see 222.101–1(S–74)) for listing of advisors). If the waiver request is justified, the advisor shall endorse the request and forward it to the ODUSD, R&E(AM) (CP) for waiver by the Secretary of Defense. Only the Secretary of Defense may make waivers under FAR 22.1303.

222.1306 Complaint procedures.

Each complaint received shall be forwarded by the contracting officer as indicated in FAR 22.1306. Also, the contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a request for waiver under FAR 22.1403 (a) and (b) via appropriate procurement channels to the departmental or agency headquarters contractor labor relations advisor (see 222.101–1(S–74) for listing of advisors). If the waiver request is justified, the advisor shall endorse the request and forward it to the ODUSD, R&E(AM) (CP) for waiver by the Secretary of Defense. Only the Secretary of Defense may make waiver under FAR 222.1403.

222.1404 Department of Labor notices.

To assist the contracting officer in obtaining appropriate notices to be furnished the contractor, a listing of Department of Labor regional offices is located at 222.609 (for this purpose, replace "Wage and Hour Division" with "Office of Federal Contract Compliance Programs").

222.1406 Complaint procedures.

Each complaint received shall be forwarded by the contracting officer as indicated in FAR 12.1406 (see 222.609 for listing of Department of Labor regional/area offices). Also, the contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.70—Safety and Health Regulations for Shipyard and Related Employment

222.7001 Safety and health regulations.

The Secretary of Labor has promulgated safety and health regulations for shipyard and related employment pursuant to the authority of Pub. L. 85–742, 72 Stat. 835 (approved August 23, 1958) amending section 41 of the Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941). These regulations are set forth in Title 29, Code of Federal Regulations, Subtitle B, Part 1915.

222.7002 Applicability.

These regulations apply to ship repair and shipbuilding or related work, as defined therein, performed within the Federal maritime jurisdiction on the navigable waters of the United States, including any dry dock or marine railway.

222.7003 Contract clause.

The Master Agreement for Repair and Alteration of Vessels includes a clause entitled "U.S. Department of Labor Safety and Health Regulations for Ship Repairing" directing the attention of the contractor to the applicability of these regulations. Similar clauses should be included in shipbuilding and ship conversion contracts.

222.7004 Administration and enforcement.

The responsibility for compliance with the U.S. Department of Labor Regulations is placed upon employers, any of whose employees are engaged in any ship repair, shipbuilding, or related employment aboard any vessel upon the navigable waters of the United States, including any dry dock or marine railway. Consequently, prime contractors or subcontractors or both may be responsible for compliance with these regulations. Insofar as the Government is concerned, the responsibility for the administration and enforcement of these regulations is with the U.S. Department of Labor. Contractors or employees who inquire concerning applicability or interpretation of the foregoing regulations shall be advised that rulings concerning such matters fall within the jurisdiction of the U.S. Department of Labor and shall be given the address of the appropriate field office of the Bureau of Labor Standards of the U.S. Department of Labor.

Subpart 222.71—Fair Labor Standards Act of 1938

222.7101 Basic statute.

The Fair Labor Standards Act of 1938 (Act of June 30, 1938; 29 U.S.C. 201–219), as amended, provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division in the Department of Labor for purposes of interpretation and enforcement (including investigations and inspections of Government contractors), and prohibits oppressive child labor. Said Act applies to all employees, unless otherwise exempted, who are engaged in (a) interstate commerce or (b) any closely related process or occupation essential to such production.

222.7102 Suits against government contractors.

Payments made pursuant to the provisions of the Fair Labor Standards Act are usually reimbursable under cost or cost-plus-a-fixed-fee contracts. Consequently, each Department has a direct interest in claims and suits under said Act which are made or brought in connection with such contracts. In this connection, procedures have been established, by agreement between the

Department of Justice on the one hand and the Departments on the other hand, governing the defense of such Fair Labor Standards Act suits. These procedures in general contemplate the defense of Fair Labor Standards Act suits by private counsel employed by the contractor, the employment of whom is approved by the Department concerned. These procedures must be followed if contractors are to be reimbursed for the amount of any judgment under said Act, or for any litigation expenses (including the reasonable fees of such private counsel).

222.7103 Rulings on applicability or interpretation.

Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

Part 223—Environmental, Conservation and Occupational Safety [No DoD FAR Supplement]

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 224.1—Protection of Individual Privacy

224.102 General.

(a)(1) The Act applies to systems of records on individuals when, for example:

(i) Determinations on benefits are made by Federal agencies;

(ii) Records are maintained for administrative functions of the Federal agency such as personnel, payroll, etc.; or

(iii) Health records are maintained by an outside contractor engaged to provide health services to agency personnel.

(2) The Act does not apply to systems of records on individuals when:

(i) Records are maintained by the contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government;

(ii) An agency contracts with a state or private educational organization to provide training, and the records generated on contract students pursuant to their attendance (admission forms, grade reports) are similar to those maintained on other students and are commingled with their records on other students.

224.103 Procedures.

(b)(2) Implementation of the requirements of the Privacy Act is located in DoD Directive 5400.11 (see Appendix P).

Subpart 224.2—Freedom of Information Act

224.202 Policy.

Implementation of the requirements of the Freedom of Information Act is located in DoD Directive 5400.7 and DoD Regulation 5400.7–R (see Appendix L).

PART 25—FOREIGN ACQUISITION

Coverage on Part 25: Subject Matter will be provided prior to the FAR effective date.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 27—PATENTS, DATA, AND COPYRIGHTS

Patents, Data, and Copyrights has been reserved pending final development of FAR Part 227. Coverage on Part 227 subject matter will be provided prior to the FAR effective date.

PART 228—BONDS AND INSURANCE

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

228.001 Definitions.

"Fidelity bond" means a bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty on the part of an employee. A blanket fidelity bond covers all employees, except those expressly excluded by written endorsement on the bond.

"Forgery bond or policy" (Depositors Form) means a bond or policy which secures the person or persons named therein up to the amount stated for losses caused by the forging or altering of a check, draft, or similar instrument issued by or purporting to have been issued by any of the insureds, and for losses resulting from a check or draft having been obtained from the insureds through impersonation.

"Purchased insurance" means insurance purchased from insurers independent of and external to the contractor.

"Self-insurance" means the assumption or retention of the risk of loss, whether voluntarily or involuntarily, by the contractor. Self-insurance includes the deductible portion of purchased insurance. Insurance provided by captive insurers; i.e., insurers owned by or under the control of the contractor, is self-insurance except that if the captive insurer sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive forces, then the insurance will be considered purchased insurance. This definition applies only to contracts subject to the provisions of the Cost Accounting Standard (CAS) 416 or to contracts not subject to the provisions of CAS 416 when the contractor elects to establish a program of self-insurance (FAR 31.205–19(a)). Self-insurance is not recognized on contracts not subject to the provisions of CAS 416 unless the contractor makes such an election.

Subpart 228.1—Bonds

228.102 Performance and payment bonds for construction contracts.

228.102–1 General

(a) The requirement of a performance and payment bond has been waived for all cost-reimbursement type construction contracts. In unusual circumstances, either or both bonds may be required of a prime contractor, subject to approval by the Chief of the Contracting Office. Contracting officers shall, however, require a cost-reimbursement type prime contractor to obtain a payment bond from his subcontractor in favor of the prime contractor, in an amount sufficient to assure payment of suppliers of labor and materials for any fixed-priced construction subcontract exceeding $25,000. In such a case, a performance bond in an equal amount should also be obtained if available at no additional cost.

228.103 Performance and payment bonds for other than construction contracts.

228.103–1 General.

Subcontract bonds shall not be executed on Standard Forms 25 and 25–A, or on DD Form 1673. The forms set forth in FAR 53.228 are authorized and may be adapted to fit specific cases.

228.103–2 Performance bonds.

(a)(1) Subject to the general policy stated in FAR 28.103–2, determinations that performance bonds will be required in specified classes of cases (e.g., for particular types of supplies or services) may be made (i) for the Army, by the Director and Deputy Director of Procurement and Production, US Army

Materiel and Development Command, and by all Heads of Contracting Activities not subordinate to that command; (ii) for the Navy, by the Chief of Naval Material; (iii) for the Air Force, by the Director of Contracting and Manufacturing Policy, DCS/RD&A; (iv) for the Defense Logistics Agency, by the Executive Director, Contracting; (v) for the National Security Agency, by the Director of Procurement; (vi) for the Defense Nuclear Agency, by the Director; (vii) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); and for the Defense Mapping Agency, by the Staff Director of Logistics. A copy of each such determination covering a class of cases shall be forwarded to the Office of Under Secretary of Defense (Research and Engineering) for information.

(a)(4) The contracting officer shall insert the provision at 252.228–7004, Bonds or Other Security, as well as the clause at FAR 252.228–1, Bid Guarantee, in solicitations for dismantling, demolition, or removal of improvements in accordance with 237.302.

228.105 Other types of bonds.

228.105–70 Fidelity and forgery bonds.

Fidelity and forgery bonds are not generally required in any procurement. However, in connection with cost-reimbursement contracts for supplies, construction, or for operation of government-owned plants, such bonds may be required when necessary for the protection of the Government or the contractor, or when it is considered desirable to obtain the investigative and claims services of a surety company. Approval for requiring these bonds shall be obtained, (a) for the Army, by the Head of a Contracting Activity; (b) for the Navy, by the Chief of Naval Material (MAT 0242); (c) for the Air Force, by the Air Force Logistics Command (PMC); (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director, and (h) for the Defense Mapping Agency, by the Staff Director of Logistics.

228.106 Administration.

228.106–2 Substitution of surety bonds.

A new surety bond may be substituted when approved, (a) for the Army, by The Judge Advocate General; (b) for the Navy, by the Chief of Naval Material; (c) for the Air Force, by the Air Force Logistics Command; (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director; and (h) for the Defense Mapping Agency, by the Staff Director of Logistics. When so approved and authorized by Departments other than the Air Force, the principal and surety of the original bond will be notified that the original bond will not be considered as security for any default occurring after the date of acceptance of the new bond. When approved by the Air Force, authority to relieve an original surety of liability for default occurring subsequent to the date of approval of a substitute bond will be obtained from the Commander, Air Force Logistics Command, prior to giving such notification.

228.106–70 Review of bonds and notification of surety.

All bonds will be reviewed by the contracting officer to ascertain that the bond is in the penal sum required and, when appropriate, properly describes the contract. Additional review, approval, and distribution of bonds and consents of surety will be accomplished by each military department. When a contractor is performing his contract in such a manner as to lead to default, timely notification to the surety may result in action by the surety that will avoid a default. Therefore, on all such contracts, the surety shall be promptly notified of any failure by the contractor to perform (see FAR 49.402–4(a)).

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The following describes the Department of Defense Special Casualty Insurance Rating Plan, the National Defense Projects Rating Plan.

(a) *Special casualty insurance rating plan.* The National Defense Projects Rating Plan is available for application on both domestic and foreign contracts, which meet the eligibility requirements set forth herein. This plan provides a special rating formula for the purchase of the casualty insurance coverages listed in FAR 28.307–2 (a) through (c), and is mandatory as to contracts which meet the use and eligibility standards in (c) below. Construction subcontractors whose contracts provide that the prime contractor shall furnish insurance, and whose operations are at the project site, shall be included automatically in the prime contractor's rating plan policies for similar coverage. Construction subcontractors whose operations are away from the project site shall be included in the prime contractor's rating plan.

(b) This plan is effected by endorsements attached to standard insurance policy forms for workmen's compensation, employer's liability, general liability, and automobile liability. The rating plan provides for a fixed deposit premium, for a reduced rate of current premium payments, for yearly adjustments of the premium depending upon loss experience during the period, and for final adjustment of the premium based upon the experience of the entire period covered by the policies. The final adjustment may be deferred for a maximum of 68 months after expiration of the policies. The total adjusted premium is the sum of the following:

(1) A fixed charge which is a percentage of the standard premium and is to compensate the insurance company for general expenses other than those referred to hereafter;

(2) Modified losses, which are the losses paid or incurred, multiplied by a conversion factor of 201.12 to compensate the insurance company for claim department expense;

(3) Allocated claims expenses, which are expenses for claims services not of the type ordinarily rendered by the insurer's claim department, such as actual expenditures for attorney's fees and other trial or hearing expenses in connection with litigated cases;

(4) Special assessments imposed by the applicable jurisdiction for purposes such as second injury funds, rehabilitation funds, maintenance of workmen's compensation commissions, etc.; and

(5) Actual premium taxes.

Each of the above adjustments are subject to review by authorized representatives of the Department concerned, and the total adjusted premium derived therefrom, cannot exceed a maximum premium which is a percentage of the standard premium developed by use of manual rates issued or approved by the appropriate rating organization. In general, the plan is a variation of commercially available insurance rating plans, but has been specifically developed to meet the requirements of the Departments.

(c) The rating plan shall be applied to all eligible defense projects where such application is determined by the Heads of Contracting Activities, for the Department of the Army; the Chief of Naval Material, Attn: Contract Insurance Branch, for the Department of the Navy; Air Force Systems Command,

administrative contracting officers, for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA–AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; to be in the best interest of the Government. The rating plan may be applied to cost-reimbursement type contracts and also, in appropriate cases, to fixed-price contracts with price redetermination provisions. A defense project is eligible for application of a plan when (i) eligible Government contracts represent, at inception of the plan, at least 90 percent of the payroll for total operations at the specific locations of the project; and (ii) the annual premium for insurance is estimated to be at least $10,000. A defense project may include contracts awarded by more than one Department to the same contractor.

(d) The following agreement shall be used for accomplishing the assignment to the Government of the interest in return premiums, premium refund, etc., on insurance policies issued under the National Defense Projects Rating Plan, upon termination or completion of the contract, when the Government has assumed the payment of the contractor's obligation for futher premium payment under such policies:

Special Casualty Insurance Rating Plan Assignment-Assumption of Premium Obligations

It is agreed that 100 percent* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy _____ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent* of the premiums under said policies.

* In the event the Government has less than a 100% interest in premium refunds or dividends, the assignment shall be appropriately modified to reflect the percentage of interest and of the extent of the Government's assumption of additional premium obligation.

This agreement, upon acceptance by the prime contractor, the United States of America and the Company shall be effective from _____

Accepted _____ (Date)

_____
(Name of Insurance Company)

By _____
(Title of Official Signing)

Accepted _____ (Date)
United States of America

By _____
(Authorized Representative)

Accepted _____ (Date)

_____
(Prime Contractor)

By _____
(Authorized Representative)

(e) Since the Federal Tort Claims Act provides protection for employees of the Government while driving government-owned vehicles within the scope of their employment, the National Defense Projects Rating Plan shall exclude coverage for such employees. The following endorsement shall be attached to automobile liability coverage provided under the plan:

It is agreed that such insurance as is afforded by the policy with respect to the ownership, maintenance or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United States of America, any of its agencies, or any of its officers or employees.

228.305 Overseas workers' compensation and war hazard insurance.

(d) Requests for waivers shall be submitted through channels (1) for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (RDA); (2) for the Navy, to the Chief of Naval Material; (3) for the Air Force, to the Directorate of Contracting and Manufacturing Policy, Headquarters USAF: (4) for the Defense Logistics Agency, to the Deputy Director, Contract Administration Services, Attn: DCAS–AF; (5) for the Defense Communications Agency, to the Chief, Contract Management Division; (6) for the Defense Nuclear Agency, to the Chief, Office of Procurement; and (7) for the Defense Mapping Agency, to the Staff Director of Logistics. The request for waiver shall include the following:

(i) Name of contractor;

(ii) Business mailing address of contractor;

(iii) Contract number;

(iv) Date of award;

(v) Geographic location where the contract will be performed;

(vi) Name of insurance company providing the Defense Base Act coverage;

(vii) Nationality of employees to whom waiver is to apply; and

(viii) Reason for waiver.

(e)(1) If the Defense Base Act has been waived with respect to some or all of the contractor's employees, the benefits of the War Hazards Compensation Act will also have been waived as to such employees. In case of such waivers, the contractor shall provide protection against the risk of work injury or death (workmen's compensation type coverage) for the benefit of such waived employees. Insurance for this purpose as in any other case should be obtained at competitive rates in line with the policies of FAR Part 31, particularly if there has been a waiver and the insurance has been or is to be obtained to comply with workmen's compensation or equivalent statutes of a foreign country.

(2) The contractor shall also assume liability to such waived employees and their beneficiaries for war hazard injury, death, capture or detention. At the option of the Government, either the costs of this liability or the reasonable cost of insurance against this liability shall be allowed as a cost under the contract. When the clause at FAR 52.228–4 is required and if it is decided by the Head of the Contracting Activity or designee that the contractor shall not purchase insurance against this liability, the contracting officer shall insert the clause at 252.228–7000, Reimbursement for War Hazard Losses.

228.306 Insurance under fixed-price contracts.

(a) *General.*

(1) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in (a)(2) below, include the clause at 252.228–7001, Ground and Flight Risk.

(2)(i) In paragraph (b) of the clause at 252.228–7001, certain of the defined terms may be modified by insertion of appropriate additional definitions in the contract in accordance with the following. The purpose of the clause is to have the Government to assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the contract as set forth below.

(A) Since the standard definition of "aircraft" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(B) The definition of "in the open" may be modified to include "hush houses", test hangars, and comparable structures, and other designated areas;

(C) "Contractor's premises" shall be expressly defined and shall be limited to those locations where aircraft, as defined in the clause, may be located during and for the performance of the contract. "Contractor's premises" may include, but are not limited, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(ii) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause, if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. The Government shall not assume such risks if the aircraft is being acquired in connection with a Foreign Military Sale and the foreign government involved has not agreed to assume such risks. If it is determined not to assume such risks, the clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risks shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the Flight Risks clause in 252.228–7002, suitably adapted for use in a fixed-price type contract, shall be used.

(iii) Subparagraph (d) of the clause in 252.228–7001 may be varied to provide for government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

228.307 Insurance under cost-reimbursement contracts.

228.307–1 Group insurance plans.

(a) *Prior approval requirement.* Group insurance plans under cost-reimbursement contracts shall be submitted for approval to the Heads of Contracting Activities, for the Department of the Army; the Chief of Naval Material for the Department of the Navy; Air Force Systems Command, administrative contracting officers, for the Department of the Air Force; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Director, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency. For the Defense Logistics Agency such plans shall be submitted for approval to the Directors, Directorate of Contract Administration, DCASR New York (DCRN–C), DCASR Chicago (DCRI–C), or DCASR Los Angeles (DCRL–C), as appropriate.

(S–70) The Defense Department Group Term Insurance Plan is available for use by cost-reimbursement type contractors. A contractor is eligible only if the number of covered employees is 500 or more, and (i) the contractor is wholly engaged in operations under eligible contracts, or (ii) 90 percent or more of the payroll of contractor's operations to be insured under the Plan arises under eligible contracts. Insurance policies under this plan shall be submitted for approval to the Heads of Contracting Activities, for the Department of the Army; the Chief of Naval Material, for the Department of the Navy; Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA–AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency.

228.307–2 Liability.

(S–70) *Aircraft flight risk.*

(1) Cost-reimbursement-type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in (2) below, include the clause at 252.228–7002, Flight Risks.

(2) In the clause, the definition of "aircraft" may be appropriately modified if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

228.309 Contract clauses for workers' compensation insurance.

(S–70) The Contracting Officer is authorized to insert the clause at 252.228–7003, Capture and Detention, when the employees of a contractor are subject to capture and detention under circumstances which may be outside the scope of the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

228.311 Solicitation provision and contract clause on insurance liability under cost reimbursement contracts.

(S–70) *Contract clause for construction.* The Contracting Officer shall insert the clause at 252.228–7005, Insurance, in accordance with 236.573.

Subpart 228.70—Indemnification

228.7000 General.

Indemnification under research and development contracts against unusually hazardous risks is covered in 235.070(a). Indemnification under Pub. L. 85–804 is covered in FAR Subpart 50.4. Indemnification under contracts involving both research and development and work that cannot be so classified is covered in 235.070(b) and 250.403–70.

Subpart 228.71—Accident Reporting and Safety

228.7101 Accident reporting.

The Contracting Officer may insert the clause at 252.228–7006, Accident Reporting and Investigation Involving Aircraft, Missiles and Space Launch Vehicles, in solicitations and contracts which involve or are in connection with the manufacture, modification, overhaul or repair of aircraft, missiles or space launch vehicles.

228.7102 Safety precautions for ammunition and explosives.

(a) The safety requirements of DoD 4145.26M, "DoD Contractors' Safety Manual for Ammunition, Explosives, and Related Dangerous Material" are to be applied to all contracts involving ammunition or explosives. To accomplish this policy, all solicitations and resulting contracts involving the development, testing, storage, manufacture, modification, renovation, demilitarization, packaging, transportation, handling, disposal, inspection, repair or other use of ammunition and explosives shall include the clause set forth in 252.228–

7007, Safety Precautions for Ammunition and Explosives. The clause is not to be included in contracts solely because of:

(1) Insert components containing no explosives, active chemicals or pyrotechnics, or

(2) Flammable liquids, acids or other chemicals are intended for initiation, propulsion or detonation as an integral or component part of an ammunition or explosive end item or weapon system.

(b) It is essential that contracts containing the above clause be administered in such a manner as to assure safety without unnecessary application of the requirements of the Manual to contractor operations or facilities not directly involved. As provided in the clause, the requirements of the manual are to be applied only to the contractor's operation relating to ammunition and explosives.

(c) Omission of the clause from solicitation and contracts referred to in (a) above or waiver of mandatory requirements of the Manual prior to contract award must be approved by the HCA or his sole designee. When mandatory requirements of the Manual are to be waived prior to award, the specific requirements to be waived must be set forth in the solicitation or by modification there to. Care must be taken to assure that the waivers grated are compatible with sound safety principles.

(d) In contracts involving shipments of ammunition and explosives by military aircraft or to an aerial part of embarkation, add Alternate I to the basic clause.

PART 229—TAXES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 229.1—General

229.101 Resolving tax problems

(a) Agency-designated legal counsel are responsbile for resolving tax issues affecting the agency. Within the Department of Defense, these agency-designated legal counsel are: Chief, Contract Law Division, Office of the Judge Advocate General, for the Army; the General Counsel, for the Navy; the General Counsel, for the Air Force; the General Counsel, for the Defense Logistics Agency; the General Counsel, for the National Security Agency; the General Counsel, for the Defense Communications Agency; the General Counsel, for the Defense Nuclear Agency; and the General Counsel, for the Defense Mapping Agency.

(b) and (c) Within the Department of Defense, a contractor having a cost-reimbursement type contract or a fixed-price type contract containing a tax escalation clause may be directed, after coordination with the appropriate agency-designated legal counsel through the Department of Defense Tax Policy and Advisory Group, to litigate the applicability of a particular tax. In such cases, guidance will be issued in Defense Acquisition Circulars informing purchasing activities of the litigation, the need for special contract clauses covering the tax in question, and instructions to be given contractors regarding nonpayment, payment, protest or other specific treatment of the tax. In addition, similar guidance may be furnished concerning an anticipated repeal or reduction in the rate of a tax. It is particularly important that this guidance be considered by those negotiating incentive type contracts in order that the tax in question may be treated separately in the establishment of a target price.

229.101-70 Resolving foreign tax relief issues.

(a) The definitions, policies, and responsibilities of the DoD Foreign Tax Relief Program are set forth in DoD Directive 5100.64, and that Directive and applicable implementing regulations or instructions should be consulted by contracting activities prior to the initiation of foreign procurement. Implementing instructions within the Services and DoD agencies are as follows:

Department of the Army Regulation AR 27-70;

Department of the Navy Instruction SECNAVINST 5840.5;

Department of the Air force Regulation AFR 110-18;

Defense Communications Agency Instruction 100-50-6;

Defense Contract Audit Agency Regulation 5110.2;

Defense Mapping Agency Instruction 5500.2;

Defense Nuclear Agency Instruction 5100.64; and

Defense Logistics Agency Regulation 5500.6.

(b) In addition, the following Unified Commands have issued management procedures to guide and coordinate the administration of the foreign tax relief program throughout their respective area commands—

Commander in Chief, European Command (USCINCEUR) EUCOM DIRECTIVE 45-8;

Commander in Chief, Atlantic Command (CINCLANT) CINCLANTINST 5840.2A;

Commander in Chief, Pacific Command (CINCPAC) CINCPACINST 5840.2B

As regards Canada and Greenland, Commander, SPACE COMMAND Regulation 110.1.

(c) Questions relating to the implementation of the DoD Foreign Tax Relief Program shall first be referred to the designated Commanding Officers below. Several foreign countries or areas have been designated, pursuant to subsection E.7 of DODD 5100.64, to make and maintain a current tax law study, serve as a single point of contact for U.S. contracting officers and contracting activities for the investigation and resolution of specific foreign tax relief matters, and to serve as a liaison point with the responsible diplomatic mission and local foreign tax authorities:

Country or area	Designated Commanding Officer
Australia	Commander in Chief, Pacific Rep., Australia.
Azores	Commander, U.S. Forces, Azores.
Bahrain	Commander in Chief, U.S. Naval Forces, Europe.
Belgium	Commander in Chief, U.S. Army, Europe.
Bermuda	Commanding Officer, U.S. Naval Air Station, Bermuda.
Canada	Commander, Space Command.
Caribbean Islands (including Bahamas).	Commander, Antilles Defense Command.
Denmark	Commander in Chief, U.S. Air Forces, Europe.
Ethiopia	Commander in Chief, U.S. Army, Europe.
France	Commander in Chief, U.S. Army, Europe.
Germany	Commander in Chief, U.S. Army, Europe.
Greece	Commander in Chief, U.S. Air Forces, Europe.
Greenland	Commander, Space Command.
Iceland	Commander, Iceland Defense Force.
Iran	Commander in Chief, U.S. Army, Europe.
Italy	Commander in Chief, U.S. Naval Forces, Europe.
Japan	Commander, U.S. Forces, Japan.
Korea	Commander, U.S. Forces, Korea.
Luxembourg	Commander in Chief, U.S. Army, Europe.
Morocco	Commander in Chief, U.S. Naval Forces, Europe.
Netherlands	Commander in Chief, U.S. Air Forces, Europe.
New Zealand	Commander, U.S. Naval Support Forces, Antarctica.
Norway	Commander in Chief, U.S. Air Forces, Europe.
Philippines	Commander in Chief, Pacific Rep., Philippines.
Portugal	Commander in Chief, U.S. Naval Forces, Europe.
Spain	Commander in Chief, U.S. Air Forces, Europe.
Taiwan	Commander, U.S. Military Assistance Command, Thailand.
Turkey	Commander in Chief, U.S. Air Forces, Europe.
United Kingdom	Commander in Chief, U.S. Air Forces, Europe

(d) The activity initially raising the tax issue shall, in turn, refer unanswered questions on the DoD Foreign Tax Relief

Program to its agency designated legal counsel listed at 229.101.

Subpart 229.2—Federal Excise Taxes

229.202 General exemptions.

(b) *Certificate of export to a possession or to Puerto Rico.* The following form of exemption certificate shall be used as proof of export or shipment to a possession or to Puerto Rico:

Certificate of Export

(For use by purchasers of articles for export or shipment to a possession under Section 4221(a)(2), Internal Revenue Code of 1954)

———19———

(Name of Contractor)

The undersigned does hereby certify that———(quantity and description of supplies)———which were purchased for export, or for shipment to a possession of the United States or to Puerto Rico, under Contract No.———, were in fact exported to a foreign country, or shipped to a possession of the United States or to Puerto Rico, and a copy of the documents pursuant to which the supplies were shipped, is being retained in the files of——— (official address of office).

(Signature)

(Title)

(Address)

(d) *Exemption certificate for supplies for vessels of war.* The following form of exemption certificate shall be used in claiming an exemption for supplies for vessels of war (including aircraft).

Exemption Certificate

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels under Section 4041(g)(1) and 4221(d)(3), Internal Revenue Code)

———19———

(Name of Contractor)

The undersigned hereby certifies that he is an authorized agent of the United States of America and that the article or articles specified in the accompanying orders, or a specified below, or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of a foreign nation, including aircraft owned by the United States or by a foreign nation and constituting a part of the armed forces thereof.

The undersigned understands that if the article or articles are used for any purpose other than as stated in this certificate, or are resold or otherwise disposed of, the purchaser must report such fact to the manufacturer; or, in the case of special motor fuel, that if the fuel is sold or used otherwise than as stated in 4041(g) of the Internal Revenue Code, liability for the tax upon such sale or use will attach. The undersigned also understands that the purchases must be prepared to establish by satisfactory evidence the purposes for which the article was used.

The fraudulent use of this certificate for the purpose of securing exemption from the payment or adjustment of taxes will subject the guilty party to a fine of not more than $10,000 or imprisonment for not more than five (5) years, or both, together with cost of prosecution.

(Signature)

(Title)

(Address)

(S–70) *Federal tax exemptions-other exemptions.*

(1) Pursuant to Title 26, Section 4293, the Secretary of the Treasury may authorize exemption for specific taxes imposed on particular articles or services purchased for the exclusive use of the United States when such impositions will cause substantial burden or expense which can be avoided by granting a tax exemption and when the full benefit of such exemption will accrue to the United States. The Secretary of Treasury has authorized tax exemptions from taxes imposed in the following Articles and Services:

(i) Communication Supplies and Services for the Exclusive Use of the United States;

(ii) Air Transportation of Persons and Property; and,

(iii) Manufacture of Trucks and Production or Purchase of Tread Rubber.

(2) Pursuant to Title 26, Section 4483(b), the Secretary of the Treasury has authorized exemption from the Federal excise tax imposed by Section 4481 of the Internal Revenue Code on the use of heavy highway vehicles on the public highways in the United States when the use of such heavy highway vehicles is by the United States and whether or not such highway vehicles are owned by the United States.

Subpart 229.3—State and Local Taxes

229.303 Application of State and local taxes to government contracts and subcontractors.

(a)(1) It is DoD policy that DoD contract shall not contain contract clauses expressly designating prime contractors of cost-type contracts to be performed within the United States as agents of the Government to purchase supplies for the purposes of avoiding state and local taxes. This policy was adopted to preclude the inclusion of contract clauses designed to avoid otherwise validly impose state or local taxes.

(2) Although circumstances may exist under which a contractor is an agent of the Government, even in the absence of a contract clause expressly designating the contractor as such, these circumstances are exceedingly rare. Before any DoD activity may contend that any of its contractors are agents of the Government for the purpose of claiming immunity from state and local sales and use taxes, the matter will be referred to the Office of the Secretary of Defense (OSD), Under Secretary of Defense (R&E) for review to ensure that DoD policy is compiled with and that the agency contention is fully in accord with the pertinent legal principles and precedents. Each case forwarded will be reviewed by the head of the agency before referral to OSD. The referral will include all pertinent data on which an agency contention is based, together with a thorough analysis of all relevant legal precedents.

(3) Whenever clauses, procedures and business practices are cited by DoD activities to support the contention that a contractor is an agent of the Government for the purpose of immunity from a state or local sales or use tax, contracting activities should whenever possible, devise alternative clauses, procedures and practices for future use which will accomplish their intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from state or local sales or use taxes. Therefore, any referral to OSD will include comment on the extent to which alternate clauses, procedures or practices may be utilized to accomplish the intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from state and local sales and use taxes.

Subpart 229.4—Contract Clauses

229.402 Foreign contracts.

229.402–1 Foreign fixed-price contracts.

(S–70) The contracting officer shall insert a clause substantially as shown at 252.229–7000, Fixed-Price, Into-Plane, Fuel Contracts at Overseas Locations, in solicitations and contracts when a fixed-price contract is contemplated for into-Plane fueling at overseas locations.

229.402–70 Use of foreign tax clauses

(a) *Exclusion of specific taxes from the contract price.* The contracting officer shall not attempt to provide a contractor or prospective contractor information as to foreign taxes or duties normally applicable to the acquisition.

The contracting officer shall, however, at the time of negotiation of a contract to be performed in a country or area listed in 229.101–70(c) obtain from the appropriate Designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt under the provisions of applicable international agreements or foreign law. Information obtained by the contracting officer regarding exemptions shall be made available to the contractor or prospective contractor and retained as part of the contract file.

(b) *Tax exemption certificates and other assistance.* During the administration of the contract, the contracting officer shall, as appropriate, issue tax exemption certificates or use other procedures, if available, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price. If, in accordance with its contract, the contractor notifies the contracting officer that a tax or duty has been assessed by a foreign government on the contractor which could result in an increase in the contract price, the contracting officer shall immediately seek advice and assistance in accordance with 229.101–70(d).

PART 230—COST ACCOUNTING STANDARDS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 230.1—General

230.103 Cost Accounting Standards Board (CASB) publications.

Copies of the CASB Standards, Regulations, and Interpretations are contained in Appendix O.

Subpart 230.4—CAS Administration

230.401 Responsibility.

(a) In accordance with FAR Part 30, Cost Accounting Standards, and FAR Part 31, Contract Cost Principles and Procedures, the cognizant contract auditor shall be responsible for making recommendations to the ACO as to whether:

(1) A contractor's Disclosure Statement, submitted as a condition of contracting, adequately describes the actual or proposed cost accounting practices as required by Pub. L. 91–379, 50 U.S.C. App. 2168, as implemented by the Cost Accounting Standards Board;

(2) A contractor's disclosed cost accounting practices are in compliance with FAR Part 31 and applicable cost accounting standards;

(3) A contractor's or subcontractor's failure to comply with applicable cost accounting standards or to follow consistently his disclosed cost accounting practices has resulted, or may result, in any increased cost paid by the Government; and

(4) A contractor's or subcontractor's proposed price changes, submitted as a result of changes made to previously disclosed or established cost accounting practices, are fair and reasonable.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7001 Policy.

(a) It is the policy of the Department of Defense to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the performance of defense contracts. The recognition of contractor investments in the development of the profit objective will result in a profit objective based on a combination of effort, risk, and investment factors.

(b) Separate recognition shall be given to the cost of capital and the special risk associated with the facilities capital employed for defense contract purposes.

(1) The risk aspect of facilities capital employed shall be recognized as a part of profit when the profit objective is established in accordance with the guidelines set forth in 215.905–1(d).

(2) Cost of money for facilities capital will be recognized as an allowable cost in those negotiated defense contracts priced on the basis of cost analysis (See FAR 31.205–10(a)).

230.7002 Definitions, measurement and allocation.

Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital" (See Appendix O), establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB–CMF with instructions. This Subpart adopts the techniques of CAS 414 as the approved methods of measurement and allocation of facilities cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this Subpart from the same data bank and programs.

30.7003 Estimating business unit facilities capital and cost of money.

The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS.414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB–CMF. Three elements are required to develop cost of money factors: business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury pursuant to Pub. L. 92–41. These elements are discussed below.

(a) *Business unit facilities capital data.* The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of (1) the new book value of facilities recorded on the accounting records of the business unit, (2) the capitalized value of leases (See FAR 31.205–2 and FAR 31.205–36) and (3) the net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403. Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (See FAR 31.205–17).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB–CMF and the same rate must be used on the DD Form 1861 to determine Contract Facilities Capital Employed (See 230.7004 below). Where actual costs are

used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred cost will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in the pre-negotiation profit objectives. Actual CMF's are required when it is necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and FAR 31.205–10.

230.7004 Contract facilities capital estimates.

(a) After the appropriate Forms CASB–CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861 "Contract Facilities Capital and Cost of Money" has been provided for this purpose and, when properly completed, becomes a connecting link between the Forms CASB–CMF and DD Form 1547 "Weighted Guidelines Profit/Fee Objectives". An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective must be available. The procedure is similar to applying overhead rates to appropriate overhead allocations bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Forms CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB–CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or pre-negotiation cost objective, and are listed against each separate Form CASB–CMF. Each allocation base is multiplied by its corresponding cost of money factor to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, the Contract Facilities Capital Employed can be determined by dividing the contract Cost of Money by that same rate. DD Form 1861 is designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to DD Form 1547.

230.7005 Pre-award facilities capital applications.

Facilities Capital Cost of Money and Capital Employed as determined above, are applied in establishing cost and price objectives as follows:

(a) *Cost of money.*

(1) *Cost objective.* The special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a pre-negotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with the profit guidelines set forth in 215.905–1(d).

230.7006 Post award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205–10 the new factor should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Forms CASB–CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

230.7007 Administrative procedures.

(a) Contractor submission of Forms CASB–CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (See FAR 15.809) and evaluated as complementary documents and procedures. Separate Forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's submissions may nevertheless be made annually or with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) When a contracting officer uses the Weighted Guidelines method of determining a profit objective under the criteria of 215.902 DD Form 1861 "Contract Facilities Capital and Cost of Money" after evaluating the contractor's cost proposal and determining this prenegotiation cost objective, but before completing a DD Form 1547 "Weighted Guidelines Profit/Fee Objective". When available, a computer generated form is acceptable, provided all essential elements of data are included and identified as DD Form 1861 data. At his option, a PCO may request the cognizant ACO to complete the DD Form 1861 in connection with normal field pricing support under FAR 15.805, and include it in his field pricing report with appropriate evaluation comments and recommendations.

(c) A final Form CASB–CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7101 Policy.

It is the policy of the Department of Defense to recognize a contractor's investment in capital facilities while

these are being constructed, fabricated, or developed for the contractor's own use. This recognition is made through the allowance of an imputed cost of money amount which is (a) calculated in accordance with 230.7103 below, (b) capitalized along with the other costs of the asset for which the investment is made, and (c) allocated to Department of Defense contracts in accordance with 230.7104.

230.7102 Definitions.

The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (See Appendix O).

(a) *Intangible capital asset.* An asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

230.7103 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 230.7102(c)) to the representative investment amount (see 230.7102(d)).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7102(d)(1)(i) or 230.7102(d)(2)(1) the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 230.7102(d)(2)(ii) or 230.7102(d)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month (Note: Under this method, the cost of money calculation is made monthly and the total for the cost accounting period is the sum of the monthly calculations).

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7104 Composition and allocation of costs.

(a) The cost of money for a tangible capital asset determined in accordance with 230.7102 and 230.7103 shall be capitalized along with the other construction, fabrication, or development cost of that asset for purposes of depreciation pursuant to FAR 31.205–11.

(b) The cost of money for an intangible capital asset determined in accordance with 230.7102 and 230.7103 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 cost of money is allocated to construction, fabrication, or development effort in accordance with 230.70 it will be recognized and considered an element of total construction costs and be included in all calculations of the asset's representative investment amount.

230.7105 Limitations.

If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

230.7106 Preaward capital employed application.

An offset to the profit objectives as set forth in FAR 15.9 required for CAS 417 cost of money.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 231.1—Applicability

231.101 Objectives.

Pursuant to FAR 31.101 and to reflect DoD policy, the DAR Council has granted certain exceptions to FAR Part 31 cost principles. These exceptions are set forth in this supplement.

231.103 Contracts with commercial organizations.

(S–70) The FAR and this supplement apply to purchases and contracts made by the DoD in support of Foreign Military Sales (FMS) (see 201.103). Accordingly, the cost principles and procedures in FAR 31.2, as supplemented, shall be used in pricing FMS contracts (see 225.7304 and 225.7305).

Subpart 231.2—Contracts With Commercial Organizations

231.201 General.

The contracting officer shall insert the clause at 252.231–7000, Supplemental Cost Principles, in all solicitations and contracts, except acquisitions made under the small purchase procedures in FAR Part 13.

231.205–10 Cost of money.

(a)(2)(i) The contractor's capital investment must also be measured, allocated to contracts, and costed in accordance with 230.70.

(ii) The contractor must also maintain records to demonstrate compliance with (i) above.

(b)(2)(i)(A) The cost of money must be calculated, allocated to contracts, and costed in accordance with 230.70.

(B) The contractor must also maintain records to demonstrate compliance with (b)(a)(i)(A) above.

231.205–18 Independent research and development and bid and proposal costs.

(c) The total amount of IR&D/B&P costs allocated to DoD contracts shall not exceed the total of expenditures for IR&D/B&P projects with a potential relationship to a military function or operation. For contracts which do not provide for cost determinations on a historical basis, the requirement will be considered to have been met if the estimated IR&D/B&P costs allocated to the contract do not exceed its proportionate share of the total estimated costs of IR&D/B&P with a potential relationship to a military function or operation. IR&D/B&P costs will be considered to satisfy the potential relationship requirement when the contractor can demonstrate that the effort under a proposed contract or grant would have a potential relationship to a military function or operation. The potential relationship of IR&D/B&P will be determined by the contracting officer, and the results of the determination will be made available to the contractor. For additional allowability requirements affecting Foreign Military Sales (FMS) contracts, see 225.7304.

231.205–22 Lobbying costs.

For DoD contracts, the following lobbying cost principle is substituted for the lobbying cost principle contained in FAR 231.205–22:

(a) For the purpose of this section, lobbying is defined as any activity, including legislative liaison, or communication which is intended or designed to influence, directly or indirectly, or to engage in any campaign to encourage others to influence members of any legislative body, their staffs, or the staffs of their committees to favor or oppose legislation, appropriations or other actions of the legislative body, its members, or its committees. Lobbying activity includes, but is not limited to, all forms of communications for the above-mentioned purposes by the contractor, its employees, or its agents with the legislative body, its members, and staffs of members and committees.

(b) The costs of lobbying as defined herein, including the applicable portion of the salaries of the contractor's employees and the fees of individuals or firms engaged in lobbying, on behalf of the contractor (whether or not the individuals or firms are registered as lobbyists under any applicable law) are unallowable. In addition, the directly associated costs (FAR 231.201–6) of lobbying are unallowable.

231.205–38 Selling costs.

Additional allowability requirements for Foreign Military Sales (FMS) contracts are contained in 225.7304 and 225.7305.

PART 232—CONTRACT FINANCING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 232.1—General

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or state of completion will be confined to contracts for construction, shipbuilding and ship conversion, alteration or repair.

232.108 Financial consultation.

The contract financing offices are: the Chief of Contract Financing, Office of the Comptroller of the Army; the Executive Assistant Comptroller for Banking, Cash Management, Contract Financing and Compensation Systems, Assistant Comptroller of the Navy for Financial Management; the Chief of Banking and Contract Financing, Directorate of Accounting, Air Force Accounting and Finance Center; and the Comptroller, Defense Logistics Agency. For other Departments, the contracting financing office will be within the Office of the Agency Comptroller.

232.111 Contract clauses.

(a), (b), (c) and (d) See DAC 76–42, Item I, for authorized modifications with respect to payment due dates.

(S–70) The contracting officer shall insert the clause at 252.232–7000, Invoices, in solicitations and contracts for supplies and services when a fixed price contract is contemplated.

232.170 Responsibilities.

232.170–1 Organization.

The financing function should be separated from the procurement function, but close cooperation should be preserved at all times. For progress payments, contract financing officers will ordinarily participate in the development of appropriate regulations and standard contract provisions designed to avoid undue risk to the Government, and in specific cases involving policy questions or unusual financing arrangements.

232.170–2 Resolution of disagreements.

If a disagreement arises between the financing office and the procuring activity on financing provisions, the matter will be referred to and resolved in the higher echelons of the authority responsible for both financing and procurement functions.

232.170–3 Responsibility, administration, contract finance committee.

The Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) has the responsibility for insuring uniform administration of financing. Only policy issues or important procedural problems shall be referred to the Office of the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management). Usual financing operations shall be the responsibility of the Departments.

(a) Responsibility for financing in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function, with the focal point for such activities at Departmental headquarters. Contract financing offices may be established at the operational level determined by the Departments.

(b) There shall be a Contract Finance Committee composed of a representative of the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) as chairman, a representative of the Assistant Secretary of Defense (Comptroller), and two representatives of each Military Department and DLA (one representing procurement and one representing the contract finance office). The Committee shall meet upon call by the Chairman or when requested by a member. The Committee shall advise and assist the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) in assuring proper and uniform application of

policies, procedures and forms. The Committee may recommend to the Secretary of Defense through the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) further policy directives on financing matters. The Committee shall be responsible for the formulation, revision and promulgation of uniform contract financing regulations.

232.171 Deviations.

Actions in the exercise of the judgment and discretion allowed by these regulations are not deviations. Actions contrary to or inconsistent with these regulations constitute deviations. Deviations will be permitted only in exceptional circumstances, after the proposed deviation has been presented to the Contract Finance Committee and a recommendation obtained, and the approval of the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) or his designated representative has been given. This procedure will also be followed for amendments to these regulations.

232.172 Financial responsibility of contractors.

Procuring activities must give due regard to the financial capabilities of potential suppliers. Financial difficulties encountered by contractors and subcontractors may disrupt production schedules; cause wastage of manpower and materials; and if connected with guaranteed loans, advance payments or progress payments, result in monetary loss to the Government. If financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continued production, even though monetary losses may be likely.

232.173 Financial information and analysis.

(a) The necessity for financial information and analysis of the financial capability of contractors vary with the circumstances of particular cases. Judgment must be used in accumulating and evaluating data. Financial analysis would serve little useful purpose when providing customary progress payments:

(1) For contractors who are known from experience to be fairly relied upon to perform their contracts satisfactorily;

(2) For contractors who are in a satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are within the normal sales volume of the contractor. In such cases, the financial evaluation may consist of scrutiny of the contractor's balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as detailed as necessary to fit the circumstances.

(b) Obtaining and analyzing data on a contractor's financial capability is of particular importance when:

(1) The contractor is a new supplier,

(2) The contractor has not supplied the item (or a similar item) within the preceding twelve months,

(3) The contractor is a newly organized concern,

(4) The contractor is on a list requiring pre-award clearances or special clearance prior to award,

(5) The contractor is on any current list indicating current or post contract defaults or delinquencies,

(6) The contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on Government or commercial work,

(7) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or,

(8) There are any facts or circumstances which support reasonable doubts as to the contractor's financial capability to perform.

232.174 Appropriate information.

The kinds of information and data that may be appropriate in particular cases are outlined below. Only those items which are appropriate to a particular case are required. The purpose of obtaining this data is to gain a full understanding of the propriety and reasonable necessity for contract financing, for evaluation of a contractor's ability to perform contracts without loss to the Government, and for informed judgment related to terms, conditions and protective provisions that may be appropriate for the protection of the Government.

(a) Balance sheet and income statement for the recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; latest available interim balance sheet and income statement of the current fiscal year; a separate statement of amounts of defense and commercial sales. If audited reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; if a proprietorship, partnership or joint venture, personal financial statements of proprietor, partners, or members of joint venture and description of individual liabilities of partners or members of joint venture on contracts of partnership or joint venture;

(b) Summary history of contractor and its principal management personnel, indicating particularly any past insolvencies of the contractor or a predecessor or of the officers, partners, or proprietors; also a description of its products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor or its affiliates; also, if a corporation, list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past two years; also past and projected dividends, unless obtained with (a) above;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see 232.174–1 and 232.174–2);

(g) Estimated income statements and estimated balance sheets (see 232.174–3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability; and required or contemplated payments,

including (1) loans and credits, (2) advances and progress payments, (3) projected equity capital increases, (4) deferred trade credit, if any, (5) creditor subordinations or standbys, and (6) mortgages, liens, pledges, assignments, conditional sales, lease/purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated;

(k) Status of all tax accounts, particularly Federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of Federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by Sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate (1) leases, deferred purchased arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor, (2) insurance maintained and to be maintained, (3) contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock, (4) delinquencies on contracts, subcontracts or purchase orders, and status thereof, (5) pending or anticipated liability for contract price refunds, or for renegotiation, or for other Government claims, (6) anticipated losses on contracts, (7) contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened, (8) aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable, (9) obsolescence of inventory and method of valuing inventory, (10) aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items, (11) adequacy of reserves for depreciation, (12) analysis of surplus;

(m) Significant ratios such as (1) inventory to annual sales, (2) inventory to current assets, (3) liquid assets to current assets, (4) liquid assets to current liabilities, (5) current assets to current liabilities, and (6) net worth to debt;

(n) Comments and opinion of audit agency concerning contractor's accounting system and controls, and available audit agency analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this 232.174.

232.174-1 Cash flow forecast and estimated financial statements.

In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated income statements and estimated balance sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgement as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess or projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor. Many contractors will have such projects readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

232.174-2 Realistic assumptions.

Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. Most important of these assumptions are the—

(1) Estimated amounts and timing of purchases of materials, parts, components, subassemblies, services, and payments therefor;

(2) Estimated amounts of timing of purchases of machinery and equipment, other production or test facilities, other fixed assets, and purchases or production of special tooling, and payments therefore;

(3) Schedule of fixed cash charges, such as debt installments, interest, rentals and taxes;

(4) Projected manufacturing and production schedules;

(5) Projected shipments, or delivery acceptances;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

The assumptions underlying cash forecasts should be checked for reasonableness and realism—with the contractor, Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources)—as may be prudent in the circumstances of the case.

232.174-3 Estimated income statements and balance sheets.

The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated income statement covering the same period serves to tie in the anticipated cash transactions with the estimated sales and expense activity, and culminates in the estimated balance sheet position. The estimated income statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance.

232.175 Interpretations.

It is important that these regulations and contract clauses be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of these regulations arises, an advance opinion should be obtained from the procurement policy office at the headquarters of the Department primarily interested. If the circumstances do not reasonably permit requesting an advance opinion, report of an interpretation made should be made to the appropriate Departmental headquarters procurement policy office. That office should obtain the views of interested offices of the other Departments, including the contract financing offices (232.108). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of these regulations, appropriate revision of these regulations will be considered. Changes and additions to these regulations will be developed by the Contract Finance

Committee (see 232.170–3(b) and 232.171).

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

(a) The Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency, among others, are designated as "guaranteeing agencies" within the Department of Defense.

232.304 Procedures.

232.304–1 Application for guarantee.

(a) Guaranteed loans will be used primarily for working capital purposes and not for facilities expansion. Guarantees are not precluded where a relatively small portion of the loan might be used for facilities expansion of a minor or incidental nature, provided that the contractor's financial condition is such that the facilities expansion will not impair repayment of the guaranteed loan.

232.304–2 Certificate of eligibility.

(a) Contracting officers are expected to immediately take appropriate steps for the determination of eligibility. Their findings and report, including certificate of eligibility where appropriate, should be submitted to the contract financing office within the guaranteeing agency.

(c) The Department that has the preponderance of interest on the basis of the dollar amount of unfilled and unpaid balances (without regard to the existence of progress payments and without regard to the issuance or nonissuance of certificates of eligibility on particular contracts) on contracts and subcontracts will be the guaranteeing agency. Contracts with advance payments will be included only if the guaranteed loan will liquidate the advance payment. Service procurement contracts are deemed those of the purchasing department. If the application is approved and a guarantee agreement is executed, the guaranteeing agency will bear all losses and expenses and receive all revenues under the guarantee. In exceptional cases, one Department may act for others through a sharing arrangement. If preponderance of interest should shift to another Department during the guaranteed loan period, actions on requests for increases in amount or extension of maturity will ordinarily be taken by the Department with the current preponderance of interest. However, the new guarantee should simply replace the former guarantee so as not to disturb or impair any security for the existing loan. The existing loan agreement and collateral security instruments should be appropriately revised. The contract financing office of the Department which authorized the existing guaranteed loan will transfer the file to the contract financing office of the Department with the current preponderance of interest. If the loan is in distress with foreseeable losses, and the purpose of the request is for the purpose of orderly liquidation of the loan to reduce the amount of the loss, the Department which guaranteed the loan will take action.

232.304–70 Guraranteed loans for an extended period of time.

It is not the policy of the Department of Defense to continue furnishing assistance in the form of guaranteed loans over an extended period of time unless it is reasonably necessary to obtain required products.

Subpart 232.4—Advance Payments

232.409 Contracting officer action.

232.409–1 Recommendation for approval.

The departmental contract financing office (see 32.108) shall prepare the documents required by FAR 32.409–1(e)&(f). This is necessary to assure uniform application of this subpart as required by FAR 32.402(e)(1).

232.410 Findings, determination, and authorization.

(a) Modifications to incorporate special facts and circumstances are permitted.

(b) In cases where the procedure for advance payments without a special bank account is to be used in accordance with 232.470, insert the following paragraph instead of paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410.

(4) The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for advance payments. These include provisions that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. Such security is deemed to be adequate.

232.412 Contract clause.

(S–70) The contracting office shall insert the clause at 252.232–7001, Advance Payments Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit educational or research and development institution. Normally this will include all cost reimbursement type contracts with the particular institution.

(S–71) The contracting office shall insert the clause at 252.232–7002, Disposition of Payment, in contracts when the payments under the contract are to be made by a disbursing officer other than the disbursing office designated in the advance payment pool agreement.

232.470 Procedure for advance payments to nonprofit educational and research and development institutions without a special bank account.

In view of the nonprofit position of educational and certain research institutions and the Government objective of strengthening the research capabilities of these institutions, interest-free advance payments in reasonable amounts may be authorized, when prudent and practical, to finance experimental, research and development contracts. The advance payments may be made directly to the institutions without the use of either a special bank account or letter of credit under the procedure described below:

(a) The contracting officer shall advise the departmental contract financing office upon the award of any cost-type contract to an institutions with an advance payment pool arrangement (see 232.471).

(b) The agreement set forth at 232.472 will be used. These arrangements will allow advance payments directly to the contractor to meet its contractual cash needs for the shortest practical periods of time to cover contract performance. The contractor shall periodically determine its cash requirements for contract(s) performance and submit requests for advance payments, in an acceptable format with supporting information as prescribed by the administering office, to the designated approving official who shall determine the necessity for the advance payment. If the approving official concurs with the amount of advance payment requested by the contractor, the request will be promptly approved and forwarded to the designated disbursing office for payment. In the event that the approving official determines that the amount of advance payments requested for the specified period is in excess of the needs, the request will be approved and forwarded to the disbursing office for payment of only the amount needed. The approving official shall act promptly, in accordance with the contract or pool agreement terms and departmental procedures, to resolve any disagreement on the unapproved portion of the request.

(c) The contractor shall submit cost reimbursement vouchers on a monthly basis for the contract(s) being financed by advance payments to the disbursing office designated in the contract. The

proceeds from the payments that would otherwise be due the contractor shall be applied in liquidation of the outstanding advance payments. If the proceeds exceed the outstanding advance payments, the remaining balance shall be paid to the contractor.

(d) The advance payments shall be requested, approved, and paid based on estimates. There may be a variance between the contractor's estimated and actual cash requirements for each period. These variances represent over-or-under financing by the Government and could become significant. Consequently, these variances must be identified and taken into consideration with each new request for an advance payment. This is a joint responsibility of the contractor and the approving official.

232.471 Pooled advance payments.

An advance payment pool arrangement is an instrument for conveniently financing the performance of more than one contract, held by a single contractor. The agreement is separate from the contracts financed under it. It is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one DOD purchasing office, DOD procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more DOD procuring activities respectively. Advance payment pool agreements may be established under the statutes mentioned in FAR 232.401 and will be in accordance with the procedure that follows for arrangements with nonprofit institutions. Advance payment pool arrangements with other than nonprofit organizations shall be in accordance with the specific directions of the departmental contract financing office.

232.471-1 Distinction between pool contracts and designated pool contracts.

An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool agreement is based upon the contractor's financing requirements for a group of DOD contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are normally not made on each separate contract, but can be made on and charged against one or more contracts, so as to supply the monetary requirements of smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a "designated pool contract." All other contracts financed by the pool agreement are called "pool contracts."

232.471-2 Advance payment pool agreement—special features.

The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are:

(a) The advance payment pool agreement specifies one or more designated pool contract, and provides for substitution from time to time of new or different contracts as the designated pool contract(s);

(c) The advance payment pool agreement defines the contracts included as pool contracts, and provides for inclusion of them as they are awarded;

(d) All payments under the pool contracts and designated pool contracts are made into a special bank account, except where the procedure for advance payments without a special bank account is to be used in accordance with 232.409-3 and 232.470. Where a special bank account is not used, payments otherwise due the contractor are applied in liquidation of the outstanding advance payments; and

(e) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

232.471-3 Liquidation—designated pool contracts—administering office.

It is imperative for each advance payment pool that effective arrangements be made to ensure that the advances outstanding do not exceed the amount authorized in the advance payment pool agreement and that timely liquidation is accomplished. For each pool agreement, there shall be a single administering office, and to the extent possible, there should be a single disbursing office for all of the contracts in the pool, especially those contracts which are designated pool contracts.

232.471-4 Advance payment pool—understandings.

Advance payment pools including contracts of more than one Military Department require approval from the contract financing office of each department concerned. The following guidance is provided:

(a) Requests to establish an advance payment pool agreement may be initiated by the contractor, the contracting officer, chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool includes contracts of more than one Military Department, the authorizing Department should be the one having a preponderant interest in the contractor's unfinished contracts. The Military Department with the preponderant interest is the Department with the largest dollar value of the contractor's unfinished contracts. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long-term contract of a nonpreponderant Department as the designated pool contract, or where it is reasonably expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Situations may occur in which the remaining payments available on pool contracts are not sufficient to liquidate the outstanding advance. These circumstances will not affect the normal practice of offsetting mutual debits and credits. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, in proportion to the contract prices of the designated pool contracts.

(d) Normally, records will not be maintained to show separately the amount of advance payments invested in each one of the separate contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of advance payment pools.

232.472 Agreement for advance payments without special bank account.

An agreement with a nonprofit educational or research and development institution for pooled advance payments without a special bank account is constructed by making the following changes to the Advance Payments clause at 252.232–12.

(a) Change the clause title to "Advance Payment Pool Agreement Without Special Bank Account."

(b) Throughout the clause text: Change all occurrences of the word "contract" to "agreement."

(c) Add the following preamble immediately below the title:

This agreement is entered into this ——— day of ———, 19— between the United States of America (the government), represented by ————————, and ———————— (insert institution name and appropriate identification information) (hereinafter referred to as the "contractor").

(d) In paragraph "(a)(2)," in the blank space left for the amount, insert the following:

* * * the amount stated in the Designations and Determinations paragraph hereof or the aggregate of the total unpaid designated pool contracts' prices, whichever is less.

(e) Delete paragraph (b) and insert the following:

(b) Amount of Advance Payments.

(1) The Contractor shall determine the estimated amount of advance payment(s) necessary to meet the requirements of paragraph (c) herein entitled "Use of Funds" to cover performance of the pool contract(s). This determination shall be pursuant to written instructions provided by the Administering Office (see Designations and Determinations paragraph herein) relative to the (i) shortest practical period for which advance payments will be provided, (ii) format and frequency of requests for advance payments, and (iii) data required in support of each request. The estimate shall be adjusted for the amount by which actual cash expenditures for prior period performance of the pool contract(s) exceeded or was less than the advance payments provided for such performance. The Contractor shall submit its estimate and supporting data in a request for advance payment(s) to the Approving Official designated in writing by the Administering Office for advance payments. The request should be submitted sufficiently early to permit review, approval, and disbursement of the required advance payment(s) by the time the funds are actually needed by the Contractor.

(2) The Approving Official will review the Contractor's advance payment requirements to determine the reasonableness thereof, and if concurrence is given, the request will be approved and the Disbursing Office designated (see Designations and Determinations paragraph herein) will be notified by the Approving Official to make payment. If the Approving Official determines that the advance payment requested by the Contractor is in excess of cash requirements for performance of pool contract during the specified period of time, the Approving Official will approve an amount based on such determination and notify the Disbursing Office of the reduced amount. Upon any such reduction, the Approving Official will immediately notify the Administering Office for this advance payment pool agreement in writing, with a copy to the Contractor, of the amount requested, the amount approved, and the reasons for reduction. The Administering Office will determine whether additional funds will be advanced to the Contractor.

(3) Upon notification of the approved request, the Disbursing Office will draw a Treasury check payable to the Contractor for the amount authorized by the Approving Official and mail such check to the Contractor in time to be received on or about the date the funds are required for contract performance.

(f) Delete paragraph (c) and insert the following:

(c) *Use of funds.* Advance payments hereunder are to be used by the Contractor solely for the purpose of making payments for direct materials, direct labor, and administrative and overhead expenses allowable in accordance with the provisions of the pool contracts, or for the purpose of reimbursing the Contractor for such payments. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(g) Delete the last sentence of paragraph (d).

(h) Delete paragraph (e) and insert the following:

(e) *Liquidation.* The Contractor will submit monthly cost reimbursement vouchers in accordance with the payment provisions of the pool contracts. The Government shall withhold payments of such vouchers due the Contractor and apply the amounts withheld against the Contractor's obligation to repay advance payments made hereunder and interest charges thereon until such advance payments and interest charges shall have been fully liquidated. Upon completion or termination of the advance payment pool agreement, the balance of liquidated advance payments shall be deducted from any amount otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(i) Add the following to the last sentence of paragraph (f)(2):

* * * except as provided in the Liquidation and Default paragraphs herein.

(j) Add the following sentence at the end of paragraph (f)(2):

If interest is required, the interest will be calculated in accordance with paragraph (f) herein.

(k) Delete from paragraph (f)(3):

* * * the higher of (i) the published prime rate of the banking institution (depository) in which the special bank account is established or (ii) * * *

(l) Delete paragraphs (g) and (h).

(m) Change paragraph letters (i) through (p) to (g) through (n).

(n) Delete old paragraph (m) and insert the following:

(k) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together; and (2) if requested, other information concerning the operation of the Contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(o) Add the following new paragraphs:

(o) *Designations and determinations:*

(1) *Amount.* The amount of advance payments at any time outstanding shall not exceed $——— of the aggregate of the total undisbursed obligation of the designated pool contract, whichever is less.

(2) *Administering office.* The office administering advance payments: ———————

(3) *Disbursing office.* The office making advance payments under this Agreement: ———————

(4) *Approving office.* The approving office shall be ————————.

(p) *Limiting date.* Advance payments made hereunder are to finance all pool contracts subject to this Agreement, including amendments issued thereunder which result in increasing the contract price, that are executed on or before ———————— (insert a date, normally not more than two years in the future).

(p) Add the following at the conclusion of the agreement:

Signatures and official titles:
For the Contractor:
————————————(name)
————————————(title)
————————————(date)
For the United States:
————————————(name)
————————————(title)
————————————(date)

Subpart 232.5—Progress Payments Based on Costs

232.501 General.

232.501–1 Customary progress payment rates.

(a) The customary progress payment rate applicable to Foreign Military Sales requirements is 95% for other than small businesses, and 100% for small businesses. The customary progress payment rate for flexible progress payments is the rate determined by use of the CASH II computer program in accordance with the requirements of 232.502–1(S–71). Except for contracts which contain both U.S. and FMS

requirements, no more than one progress payment rate or liquidation rate is applicable to a contract at any point in time.

232.501-2 Unusual progress payments.

(a) Contracting officers shall not modify contracts to authorize unliquidated unusual progress payments in excess of $25,000,000 without the prior written consent of the Office of The Deputy Under Secretary of Defense (Research and Engineering). All other unusual progress payment provisions shall be coordinated by the departmental contract financing office, with the Department of Defense Contract Finance Committee.

232.501-3 Contract price.

(b) For purposes of making progress payments, the contract price may exceed the funds obligated under the contract if the contract contains an appropriate Limitation of Funds clause. In such cases, the progress payments shall be limited to the lesser of the applicable percentage of the contract price, or 100% of the funds obligated.

232.502 Preaward matters.

232.502-1 Use of customary progress payments.

(S-70) *Customary FMS progress payments.*

(1) FMS progress payments shall be applicable to Department of Defense acquisitions on behalf of foreign governments or international organizations pursuant to Section 22 of the Arms Export Control Act (FMS requirements).

(2) FMS progress payments are not applicable to:

(i) Acquisitions for replenishment of U.S. Government inventories or stocks, and

(ii) Acquisitions made under DoD cooperative logistic support arrangements.

(S-71) *Customary flexible progress payments.*

(1) Paying progress payments assists in financing a contractor's performance and reduces the contractor's investment in its work in progress inventory. The actual investment held by a contractor in work in process inventory is influenced by a number of factors in addition to progress payments, such as delivery schedules, cash management practices, and Government payment practices. Progress payments amounts that are determined by using uniform, standard progress payment rates (i.e., 90% or 95%) are insensitive to these factors influencing investment and, as a consequence, result in investments by contractors in work process inventory that vary among contractors and across contracts; on the other hand, flexible progress payment rates (expressed as a percentage that will be applied to costs to determine the amount payable as a progress payment in the same manner as uniform, standard progress payment rates) are designed to tailor more closely the progress payment rate to the cash needs for financing performance of a particular contractor for a given contract.

(2) For flexible progress payments, cash needs are measured and projected in relation to investment underlying the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor to complete performance of the contract, and the contractor's investment is the weighted average of the amount not paid by the Government. The Department of Defense (DoD), as a matter of policy, has concluded that a contractor should retain at least a 5% investment in work in process inventory over the live of the contract. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than 5%. This progress payment rate is to be determined by the DoD Cash Flow Computer Model. In no event will the progress payment rate be greater than 100%, or less than the uniform, standard progress payment rate that would have been applied to the contract absent flexible progress payments.

(3) Contracting officers shall use a flexible progress payment rate in lieu of the uniform standard rates if:

(i) The contractor requests the use of flexible progress payments rates,

(ii) The contractor agrees to the requirements of this section, and

(iii) The criteria in paragraph (a)(5) below are met.

(4) The flexible progress payment rate shall be determined through application of the DoD Cash Flow Computer Model, available to contracting officers on the COPPER IMPACT computer time sharing network under the computer file name "CASH II." The model takes into account key cash flow factors, such as contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. Operating instructions and cash flow data requirements are retrievable within the model in a conversational mode. Contractors may obtain copies of the DoD Cash Flow Computer Model User's Guide from the Defense Technical Information Center, Building 5, Cameron Station, Alexandria, VA 22314. Contracting officers shall not grant contractor access to Government leased COPPER IMPACT time sharing computer network.

(5) Contractors who submit certified cost pricing data, as defined in FAR 15.804-2, for negotiated fixed-price contracts in excess of $1 million may request flexible progress payments. Formally advertised contracts are not eligible for flexible progress payments. Flexible progress payments are not available for contracts awarded and performed entirely outside of the United States, its possessions and territories.

(6) Contractors will furnish to the contracting officer cash flow data in the form and context specified by the DoD Cash Flow Computer Model. These data include: actual and projected incurred cost broken down by element of cost and by month for the duration of the contract, float times for each element of cost, progress payment receipts and delivery payment receipts and associated contract prices and profit percentage. Contracting officers will verify the cash flow data in accordance with normal procedures used to verify contractor cost and pricing data. Administrative contracting officers are encouraged to establish advance agreements at contractor locations for float and payment lag which are common to several contracts. Such agreements should be established when administratively practical.

(7) A redetermination of the flexible progress payment rate shall be made upon the request of the Government or contractor if measurement of the contractor's cumulative investment in work in process inventory using actual and projected cash flow data indicates an investment level above 7% or below 3%. The cash flow computer model is designed to generate a progress payment rate that yields a target investment of 5%, based on a weighted average. Accordingly, there should normally be no need to request actual and projected contract cash flow data unless delivery schedules are revised, Government progress payment lag times are substantially changed from those used in the establishment of the progress payment rate, or substantial new work (e.g., option) is added to the contract.

(8) As noted in FAR 32.504, the standards for progress payments to subcontractors ought to be the same as those applicable to prime contractors. Accordingly, subcontractors who request a flexible progress payment rate, meet the criteria in paragraph (a)(5) above and agree to the requirements of

this section are to receive a flexible progress payment rate. The subcontract flexible progress payment rate will be determined by the prime contractor without regard to the progress payment rate in the prime contract. The DoD Cash Flow Computer Model and associated procedures will be used by the prime contractor and a reasonable review of the cash flow data provided by the subcontractor will be made.

(9) When flexible progress payments are contemplated for use on a definitive contract superseding a letter contract or an unpriced BOA order, the applicable standard progress payment clause at FAR 52.232–16 shall be used until definitization.

232.502–2 Contract finance office clearance.

Deviation from the Progress Payment clause, policy and procedures prescribed in FAR Part 32 and this Supplement shall be authorized only by the Office of The Deputy Under Secretary of Defense (Research and Engineering), in accordance with 232.171.

232.502–4 Contract clauses.

(S–70) The contracting officer shall insert the clause at 252.232–7003, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress payments and contains FMS requirements.

(S–71) The contracting officer shall insert the clause at 252.232–7004, Flexible Progress Payments, when a flexible progress payment rate is used in the contract.

232.503 Postaward matters.

232.503–1 Contractor requests.

Subject to the specific requirements of agency procedures, contractor requests for progress payments may be submitted by computer generated equivalents of the Standard Form 1443.

232.503–6 Suspension or reduction of payments.

(g) *Loss contracts.*

(S–70) *Loss ratio adjustment procedures.* The following procedures shall be followed whenever the adjustments required by FAR 32.503–6 (f) and (g) are made:

(i) Except as provided in paragraph (g)(S–70)(ii) below, the loss ratio adjustment shall be calculated by the contracting officer using the procedures in FAR 32.503–6(g) by preparation of a supplementary analysis to the contractor's request for progress payments;

(ii) The Contractor may be requested to prepare the supplementary analysis as an attachment to the progress payment request, when the contracting officer determines, after a review, that the contractor's methods of estimating the Costs to Complete are reliable, accurate, and not susceptible to improper influences, prejudicial to the Government's interests; and

(iii) In order to maintain an audit trail, and permit verification of calculations, the loss ratio adjustment shall not be made by alteration or replacement of the data on the contractor's original request for progress payment (SF 1443 or computer generated equivalent).

Subpart 232.6—Contract Debts

232.600 Scope.

This subpart provides additional guidance for the collection of contract debts, the charging of interest thereon, the deferral of payments, the compromise and termination of claims, and the reporting of contractor bankruptcies.

232.601 Definition.

Unless otherwise indicated in this subpart, the contract financing office within each military department and DLA is the "responsible official" for purposes of FAR Subpart 32.6.

232.605 Responsibilities and cooperation among government officials.

(b) A disbursing officer has primary responsibility for determining the amount and collection of contract debt whenever overpayments or erroneous payments have been made. The disbursing officer also has such primary responsibility when the amounts due and dates for payment are fixed by the terms of the contract itself, and copy of such contract has been furnished to the disbursing officer with notice to collect as amounts become due. Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract, including finance and accounting officers at installations where integrated accounting is in effect.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the debt record mantained by a contracting officer shall be closed by appropriate reference to the date of transfer. When a disbursing officer is primarily responsible for collection, the record of the debt shall be maintained until payment or advice of collection is received. In all cases transferred to a contract financing office, that office shall establish and maintain an accounts receivable record showing all pertinent information relating to the debt, including an indebtedness and payment record reflecting current status, to be closed upon collection or compromise, or referral of the case to the General Accounting Office or to the Department of Justice.

(d) In the absence of a deferment agreement made by the contract financing office, a report of indebtedness will be made to the General Accounting Office upon failure to effect collection within a reasonable period, generally not to exceed 180 days from the date the debt is established.

(e) Before a debt is placed on the Hold-Up List (see 232.173), or before distribution of a new listing, the office undertaking to effect collection may sometimes request other offices having dealings with the contractor on other contracts, whether contracting officers or disbursing officers, to withhold payments on contracts, for application on the debt. Government personnel are expected to cooperate and assist in the fulfillment of such requests, giving due regard, however, to the effect of abrupt cessation of payments on the operations of the contractor, performance of the contracts, and the interest of the United States in such contracts. In the making of these requests to other offices, and in complying with such requests, care will be taken at all times to avoid overcollection or duplicate collection. Each check to liquidate indebtedness pursuant to such requests will be drawn payable to "(contractor's name (or office designated for contract administration))," and transmitted to the disbursing officer on the contract under which the indebtedness arose, and will be accompained by a statement sufficient to identify the indebtedness to which it is to be applied. Appropriate notice of the deduction will be given to the contractor concerned, by the agency making the deduction.

232.610 Demand for payment of contract debt.

(a) Demands for payment of contract debts resulting from other than a termination of default shall be made by the office which first determines an amount due, whether it be the Contract Administration Office, the Contracting Office, the Disbursing Office, or the selling office/agency, and will be handled in accordance with the regulations of the department or agency to which that office is assigned. A copy of the demand shall be provided to the payment office cited in the contract and designated to receive payment. Demands for payment of contract debts resulting from a termination for default,

e.g., excess costs, unliquidated progress payments, and liquidated damages, shall be made by the Procuring Contracting Officer and shall direct the debtor to make payment to an office of the Procuring Department. If this action will result in the payment being made to a payment office other than the one cited in the contract, the assigned ACO will issue a contract modification designating the new payment office.

232.613 Deferment of collection.

(S–70) Deferment requests will be forwarded as soon as possible to the contract financing office of the Department concerned. Such requests shall be supported by adequate identifying and explanatory information, including relevant memoranda and correspondence, accounting data, amounts and dates of any collections, name and location of disbursing office and, if applicable, the assignee, date of filing of appeal or of action with the Claims Court, information on hand concerning financial condition of the contractor, and recommendations for action on the deferment request. Incident to its review and action of a deferment or installment proposal, the contract financing office may request additional information, as well as other assistance needed from the transmitting office. Such requested information and assistance will be furnished promptly so that final action on the proposed deferment or installment may be taken by the contract financing office without unnecessary delay. Whenever deemed appropriate by the contract financing office, it may deal directly with the contractor concerning collection or deferment of the debt.

(S–71) When the contract financing office enters into a deferral agreement or a compromise, it will furnish copies to the appropriate contracting officer and disbursing officer when deemed necessary.

(S–72) When the contract financing office denies a deferral request, or does not reach agreement with a contractor on a deferment, it will give timely notice to the appropriate contracting officer when deemed necessary.

232.614 Interest.

232.614–1 Interest charges.

(c) The interest rates established by the Secretary of the Treasury will be published in the **Federal Register** every 6 months. The current rate may also be obtained from the Departmental contract financing office representative.

232.616 Compromise actions.

Department of Defense authority under the cited statute and joint regulations has been delegated to the Departments. Within each Department, for those debts covered by this subpart authority to act in conformity to the cited statute and joint regulations has been delegated to the contract financing office.

232.617 Contract clause.

(a)(7) The following further exceptions have been established:

(i) contracts for instructions of military personnel or ROTC personnel at civilian schools, colleges, and universities;

(ii) basic agreements with telephone companies, under which communications services and facilities will be ordered, and purchases under such agreements; and

(iii) transportation contracts with common carriers for common carrier services, e.g., common carrier transportation services procured by transportation requests, transportation warrants, bills of lading, and similar transportation forms.

(S–70) Contractors and contracts mentioned in FAR 32.617 (a) (2) through (5), and other contractors in exceptional circumstances, may be exempted from the administrative interest charges required by this subpart when so agreed by the DoD Contract Finance Committee, with the approval of the Under Secretary of Defense (Research and Engineering) or his representative.

232.670 Transfer of responsibility for debt collection.

(a) Transfer of the debt case will be made to the contract financing office upon the expiration of 45 days without full collection after the date of initial demand, whether or not postponement has been requested. Debt cases under contracts terminated for default shall be transferred to the contract financing office of the Procuring Department. Debt cases transferred to the contract financing office of the Procuring Department under contracts terminated for default shall not include that portion of a debt related to actions where a disbursing officer has primary responsibility. All debt cases where the disbursing officer has primary responsibility shall be transferred to the contract financing office of the disbursing office's department. Other types of debt cases shall be transferred to the contract financing office or other office of the Department which first determines an amount to be due in accordance with the regulations of that Department.

(b) The transfers required above will not be made for amounts less than $800.00. However, it is incumbent on contracting officers and disbursing officers to effect collection whenever and by such means as are practicable.

(c) The contract financing office of each military department shall take appropriate actions to effect collection of debts referred to it. This includes administration of deferment agreements; causing debts to be listed on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List;" to remove names from the "Hold-Up List;" to determine administrative uncollectibility; and to refer debts to the General Accounting Office or the Department of Justice as appropriate. Within each Department, no arrangement for installment or deferral of payments may be made without the approval of the contract financing office. Acting in conformity to the standards stated in this subpart, those offices may approve or deny deferment proposals transmitted to them or made directly to them by contractors, or approve such proposals on prescribed conditions.

(d) Responsibility for assuring effective administration in accordance with this subpart shall be in the Under Secretary of Defense (Research and Engineering). Responsibility for effective administration under this subpart in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function. The DoD Contract Finance Committee shall advise and assist the Under Secretary of Defense (Research and Engineering) in assuring proper application of policies and the development of procedures hereunder, and in the formulation of such further instructions on this subject as may appear desirable. That Committee is responsible for this section and will develop and promulgate herein supplemental instructions on this subject.

232.671 Bankruptcy reporting.

For those debts covered by this subpart, claims in bankruptcy, insolvency, or in proceedings for reorganization or rearrangement will be furnished to the Department of Justice. These claims are (a) those which have been transferred to a contract financing office; (b) those on their way to a contract financing office at inception of bankruptcy or insolvency proceedings; (c) those pending and not forwarded to a contract financing office at inception of bankruptcy or insolvency proceedings; and (d) those which are the consequence of bankruptcy or insolvency proceedings. Information on a bankruptcy, insolvency, reorganization

or rearrangement will be provided as soon as possible by the office or origin of a debt to that office within a Department designated to receive such information. Proof of claim, with pertinent supporting data and documentation shall be furnished to the Department of Justice by the contract financing office or by such other office as may be designated within a Department. All claims arising under the same contract will be filed by the procuring department which awarded the contract. Information, reports, and proof of claim under this paragraph are not expected on debts of less than $600.

Subpart 232.7—Contract Funding

232.705 Contract Clauses.

232.705-2 Clauses for limitation of cost or funds.

(a) When a contract is of the installment type, the clause at FAR 52.232-20, Limitation of Costs, may be appropriately modified.

(c) When a contract is of the installment type, the clause at FAR 52.232-22, Limitation of Funds, may be appropriately modified.

Subpart 232.8—Assignment of Claims

232.800 Scope of subpart.

Note: 31 U.S.C. 203 has been recodified at 31 U.S.C. 3727 by Public Law 97-258.

232.803 Policies.

(b) Only DOD contracts for personal services may prohibit the assignment of claims (see FAR 32.806(b) for appropriate clause).

(d) For purposes of DOD contracts, a national emergency shall be deemed to exist (see 50 U.S.C. 1651(a) (4) and (5)). Departments, in accordance with their procedures, may exclude a no set-off commitment when they determine it is in the Government's interest.

232.806 Contract clauses.

(a)(2) When the clause at FAR 52.232-32 is used, the contracting officer shall also insert Alternate I, unless excluded under FAR 32.803(d).

PART 233—DISPUTES AND APPEALS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

233.013 Obligation to continue performance.

(a) The acquisitions of aircraft, naval vessels, missiles, tracked combat vehicles, and related electronic systems shall include the alternate paragraph (h). In addition, the alternate (h) may also be used in those contracts or classes of contracts when it has been determined, in accordance with Department procedures, that it is essential because of unusual circumstances in which the performance of a contract may be so vital to the national security or to the public health and welfare that performance must be guaranteed even in the event of a dispute that may be characterized as a claim relating to, as opposed to arising under, the contract. Examples of the types of unusual circumstances when continued performance may be determined to be vital to the national security or public health and welfare include the acquisition of weapons, support systems, and related components other than those listed above, or other essential supplies or services whose timely reprocurement from other sources would be impracticable. The determination to use the alternate paragraph (h) in other situations shall be made by the head of the contracting activity responsible for the acquisition involved.

233.014 Contract clause.

The contracting officer may use Alternate I under the conditions set forth in 233.013(a) above.

233.070 Claims for interest penalties under the Prompt Payment Act.

(a) The Prompt Payment Act (Public Law 97-177) provides that a contractor will be paid interest penalties when certain payments by the Government are not made on time or when discounts are taken for payments that are not made within the discount period. The act applies to payments made on contracts awarded on or after 1 October 1982. Under the act, interest penalties are due if the contractor is not paid for delivery of complete items of supplies or services within 15 days after the required payment date (within 3 days for meat or meat food products and within 5 days for perishable agricultural commodities). Interest penalties are also due on the unpaid portion of discount payments made after the discount period. Claims for interest penalties not paid may be made under the Contract Disputes Act.

(b) The required payment date for purposes of the Prompt Payment Act is the date on which payment is due under the terms of the contract or, if a specific date on which payment is due is not established by the contract, 30 days after the later of the date on which a proper invoice is received in the designated paying office or the date on which the supplies or services are accepted. The required payment date for meat and meat food products is not later than the 7th day after delivery, and for perishable agricultural commodities is not later than the 10th day after delivery, unless another date is specified in the contract. The required payment date for improperly taken discounts is the last day of the discount period.

(c) Interest penalties begin to accrue on the day after the required payment date and end on the date on which payment of the amount due is made. Interest penalties do not continue to accrue under the Prompt Payment Act after the filing of a claim for such penalties under the Contract Disputes Act or for more than one year. Interest penalties also do not accrue under the Prompt Payment Act when payment is not made within the prescribed period after the required payment date because of a dispute over the amount of the payment or other allegations concerning compliance with the contract.

Subpart 233.70—Certification Under Section 813 of Public Law 95-485

233.7000 Certification of requests for adjustment or relief exceeding $100,000.

(a) Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Public Law 95-485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Public Law 85-804, and similar requests exceeding $100,000. This certification must be signed by a senior company official in charge at the plant or location involved. Although the law only requires submission of the certification with requests exceeding $100,000, even if the requirement is not set forth in the contract, the clause contained at 252.233-7000, Certification of Requests for Adjustments or Relief Exceeding $100,000, shall be inserted in all contracts expected to exceed $100,000 in value.

(b) Submission of the Section 813 certification is required in addition to any certification required by the Truth in Negotiations Act and by FAR 15.804-4.

(c) Section 6(c) of the Contract Disputes Act, Public Law 95-563, also requires the certification of claims. The Section 813 certification described above is due when the claim or request for relief is first asserted to the Government. However, the certification under the Contract Disputes Act is due only after a dispute has come into being and the contractor submits a written claim for the purpose of obtaining a contracting officer's decision. A single certification, using the language

prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, can be used to comply with both statutes in those situations where the first assertion of a claim or request for relief coincides with the inception of a contract dispute.

(d) In determining when the dollar thresholds requiring a Section 813 certification described above are met, the aggregate amount of both the increased and decreased costs shall be used. (See 215.804–2(a)(1) (ii).)

Subchapter F—Special Categories of Contracting

PART 234—MAJOR SYSTEM ACQUISITION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

234.000 Scope of part.

Department of Defense implementation of OMB Circular A–109, Major System Acquisitions, is contained in DoD Directive 5000.1, Major System Acquisitions, and DoD Instruction 5000.2, Major System Acquisition Procedures.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

235.001 Definitions.

The following terms and categories relating to "research and development" are those set forth by the Department of Defense for management of RDT&E programs. However, the term "research and development" as used in this regulation ordinarily encompasses only the Research, Exploratory Development, Advanced Development, Engineering Development, and Operational Systems Development categories below. Generally, it does not cover the management and support category. For example, construction of recreational facilities at an installation used exclusively or generally for research and development would not be acquisition of "research and development" under this regulation. Nevertheless in an exceptional case, depending upon the particular facts, some kinds of work within management and support could be "research and development" within this regulation:

"Advanced development" means all effort directed toward projects which have moved into the development of hardware for test. The prime result of this type of effort is proof of design concept rather than the development of hardware for service use. Projects in this category have a potential military application.

"Educational or other nonprofit organization" means any corporation, foundation, trust, or institution operated for purposes of higher education or whose primary purpose is the conduct of scientific research, nor organized for profit and no part of whose net earnings inure to the profit of any private shareholder or individual.

"Engineering development" means those projects in full-scale engineering development for Service use but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects and program control will be exercised by review of individual projects.

"Exploratory development" means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study programming and planning efforts. It would thus include studies, investigations and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

"Management and support" means all effort directed toward support of installations or operations required for general research and development use. Included would be military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contract-operated, would be assigned to appropriate projects or as a line item in the Research Exploratory Development, or Advanced Development Program areas, as appropriate.

"Operational system development" means those projects still in full-scale engineering development but which have received approval for production through DSARC or other action, or production funds have been included in the DoD budget submission for the budget or subsequent fiscal year. All items in this area are major line items projects which appear as RDT&E Costs of Weapons Systems Elements in other programs. Program control will thus be exercised by review of the individual projects.

"Research" means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for (a) subsequent exploratory and advanced developments in Defense related technologies, and (b) new or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

"Unsolicited proposal" means a research or development proposal which is made to the Government by a prospective contractor without prior formal or informal solicitation from a contracting activity. Also see FAR subpart 15.5.

235.003 Policy.

(a) *Use of contracts.* Grants are authorized under 42 U.S.C. 1891 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense directives as implemented in Departmental procedures.

(b) *Cost sharing.* Cost sharing under DoD contracts is encouraged in accordance with Federal Management Circular, FMC 73–3: "Cost Sharing on Federal Research," in the acquisition of basic and applied research. This paragraph provides guidelines for participation by contractors, both profit and nonprofit, in the cost of research supported by DoD.

(b)(S–70) *Scope.*

(i) These guidelines are applicable to all research contracts.

(ii) These guidelines need not be applied to development projects (i.e., projects for which the principal purpose is the production of, or design, testing or improvement of, products, materials devices, systems of methods). However, contracting officers may apply some or all of these guidelines to development contracts.

(b)(S–71) *Cost participation by contractors.*

(i) Participation by contractors in the cost of conducting research projects is intended to serve the mutual interests of the DoD and the contractors by helping

to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by contractors.

(ii) Contractors shall be encouraged to contribute to the cost of performing research unless it is concluded that a request for cost sharing would not be appropriate because of any one of the following:

(A) The particular research objective or scope of effort for the contract is specified by the Government rather than proposed by the contractor; this would usually include any formal Government request for proposals for a specific project;

(B) The research effort has only minor relevance to the commercial activities of the contractor, and the organization is proposing to undertake the research primarily as a service to the Government; or

(C) The contractor has little or no outside sources of funds from which to make a cost contribution. Cost sharing should generally not be requested if cost sharing would mean that the Government would have to provide funds through some other means (such as fees) to enable the contractor to cost share. It should be recognized that those contractors who are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(b)(S–72) *Amount of cost sharing.* When cost sharing is required, the amount of cost participation by the contractor may vary in accordance with a number of factors relating to the contractor's organization (profit or nonprofit), and the character of the research effort. The amount of cost participation should reflect the mutual agreement of the parties. Factors which the contracting officer may consider in any negotiations with contractors regarding the amount of cost participation, include the following:

(i) Cost participation by educational institutions and other not-for-profit or nonprofit contractors should normally be at least 1% of total contract cost. In many cases cost sharing of less than 5% of total project cost would be appropriate in view of the contractor's nonprofit status and limited ability to recover the cost of such participation from non-Federal sources. However, in some cases, it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(ii) The amount of cost participation by commercial contractors should depend to a large extent on whether the research effort or results are likely to enhance the contractor's capability, expertise or competitive position, and the value of such enhancement to the contractor. It should be recognized that those contractors who are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Government contracts. Therefore, cost participation by commercial contractors could reasonably range from as little as 1% or less of the total project cost, to more than 50% of total project cost.

(iii) If the contractor will not acquire title to or the right to use inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost sharing than in cases in which the contractor acquires such rights.

(iv) A relatively low degree of cost sharing may be appropriate if, in the view of the contracting officer, an area of research requires special stimulus in the national interest.

(v) A fee or profit will usually not be paid if the contractor is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing a normal fee or profit on the research. However, if the research is expected to be of only minor value to the contractor, it may be appropriate for the contractor to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the contract.

(b)(S–73) *Administration.*

(i) Cost participation may be accomplished by a contribution to either direct or indirect costs, provided that such costs would otherwise be allowable in accordance with any cost principles applicable to the contract, and that the costs are not charged to the Government under any other grant or contract.

(ii) The amount of cost participation by a contractor may be determined for each individual research contract or, if the contracting officer desires, for the aggregate of all or some of the contractor's research projects supported by DoD. When the amount of cost sharing is determined for individual projects, the contracting officer may consider the contractor's participation over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another year. If the amount of the contractor's cost sharing is to be determined for the aggregate of all or some of DoD's projects, relatively high contributions on some projects may be offset by relatively low contributions on other projects.

(c) *Recoupment.* The policy and procedures in Subpart 235.71 apply with respect to the recovery of nonrecurring costs on commercial sales of defense products and technology. Also, see Part 225 for guidance on recovery of nonrecurring research, development, test and evaluation costs when acquisitions are made for foreign military sales customers.

235.004 Publicizing requirements and expanding research and development sources.

(a) In addition to the requirements of FAR 35.004(a), where the contracting mission warrants it, Research and Development Bidders Mailing Lists will be established by purchasing activities in accordance with Supplement No. 4, Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists.

(a)(2) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns for research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research or development work in fields in which the contracting activity is interested. In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's need concerning research and development programs consideration for specific future acquisition actions. Normally, this information shall be provided, as early as practicable, to SBA representatives assigned to a contracting activity and shall cover the Government's requirements for each proposed research and development acquisition exceeding $25,000. To the maximum extent feasible, SBA shall be afforded a

minimum of 15 working days to provide pertinent information concerning qualified potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by such acquisitions. Full evaluation shall be given to any such information in selecting qualified sources. Sources recommended by SBA for a specific acquisition shall be solicited. Exception to the policy of providing SBA a minimum 15 working day interval to recommend additional qualified small research and development sources for a proposed acquisition will be permitted only in those cases where the head of the contracting activity or the HCA's designated representative advises the SBA representative that such action would result in unjustifiable delay.

235.005 Work statement.

(d)(6) Other considerations peculiar to the work to be performed include—

(i) Technical considerations, such as any known specific phenomena or techniques, and

(ii) A detailed description of the technical requirements and subordinate tasks (the emphasis on the detailed description of the technical requirements and subordinate tasks shall be on achievement of performance, operational and support requirements, rather than specifying detailed procedures or methods of accomplishment).

235.006 Contracting methods and contract type.

(a) Acquisition by negotiation may not be necessary in research and development acquisitions. Two-step formal advertising (see FAR 14.5) may be appropriate, for example, in the case of an advanced developmental project.

235.007 Solicitations.

(a) Through its research and development programs, the Department of Defense must seek the most advanced scientific knowledge attainable and the best possible equipment, weapons, and weapon systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances and schedules. Second, it means continuing efforts to increase the number of qualified sources, and to encourage participation by small business concerns, as well as others, in Defense research and development (see also FAR 9.104).

(5) Other relevant factors include review of information obtained as a result of synopsis of the requirement or other advance publicity (FAR 35.004(a)(1)).

(b) Sources that become known as a result of synopsis or other means of publicizing requirements shall be solicited only if such sources possess the necessary security clearance. When a source not initially solicited requests a copy of a solicitation and such source has been technically evaluated within the past six months and determined not qualified, he may be so advised and his request denied. In the event such source has not been technically evaluated within the past six months, a copy of the request for proposal shall be furnished but only after advice has been given to the source making the request as to the reasons for the limited solicitation and, as appropriate, the unlikelihood of any other source being able to qualify for a contract award under the circumstances. The formal solicitation process is not the only method of entering into contracts for research and development. The ongoing research and development work pursued in industrial laboratories is producing ideas and products of interest to the Government; this is especially true in the exploratory and advanced development segment of the research and development spectrum. In the R&D areas where there has been unique and significant industrial accomplishment by a specific concern, the establishment of specifications for solicitation of others may defeat the purpose of taking advantage of this industrial initiative. In such cases, see FAR 35.007(i). In all acquisitions of research and development in which no small business source was solicited for a proposal, a statement shall be included in the solicitation file setting forth the reasons for not soliciting small business. Where there is no substantial question as to the choice of the source, as set forth in (b)(1), (2) and (3) below, solicitations may be limited to a single source:

(1) As a result of thorough evaluation, only one source is found fully qualified to perform the proposed work.

(2) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source.

(3) Where the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support.

(c) The requirements of FAR 35.007(c) apply only as applicable to a specific acquisition. Solicitations shall also provide offerors the opportunity to indicate the appropriate specifications and standards and to specify the way they will be applied and tailored to achieve the objectives, desired results and comply with the requirements stated in the solicitation.

(g) In soliciting proposals for the conduct of research and exploratory development, it may be desirable for the Government to furnish prospective contractors with certain information elaborating on the proposed statement of work, in order to permit optimum response by offerors and to allow more timely and comparable evaluation of proposals by the Government. This information normally should consist of the Government's estimate of the scientific and technical man-effort, or other reasonable indicators, it envisions when it is not possible to describe the magnitude of the proposed work to a sufficiently definitive degree. For example, the estimated effort may be expressed in terms of numbers of man-months or years in particular occupational categories. This technique may be appropriate in cases of contractors for research studies, investigations, or laboratory scale evaluations of feasibility where the Government desires to limit the scope of effort or depth of research. Where the degree of effort type of information is furnished, it should be made clear that such information is advisory only and is not cause for restricting what the contractor believes to be a meritorious technical proposal.

(i) Under the circumstances discussed in FAR 35.007(i) and subject to 215.2 and 215.5, the contracting officer may discuss new ideas or products, encourage submission of proposals and negotiate with prospective sources without a formal solicitation.

235.008 Evaluation for award.

(a) Before determining the technical competence of prospective contractors, and recommending to the contracting officer the concern or concerns that they consider most technically competent, cognizant technical personnel shall consider all the evaluation factors set forth in the solicitation (see FAR 35.007(e) for examples of evaluation factors).

(e) Proposals for cost reimbursement type or fixed price type contracts may be penalized during evaluation to the degree that the estimated cost is unrealistically low. The contracting officer, in accordance with FAR 15.1001, shall notify of that decision those

offerors whose proposals or offers have been determined to be unacceptable.

(e)(S–70) *Evaluation of price and costs.*

(i) While cost or price should not be the controlling factor in selecting a contractor for a research or development contract, cost or price should not be disregarded in the choice of the contractor.

(ii) Price analysis generally considers the overall reasonableness of the proposals in relation to the total contemplated expenditures and the extent and nature of the task scheduled to be accomplished. In most research and development contracts, the inability to define specifications and the nature of the end items prevent the effective use of certain techniques of price analysis, such as comparisons with prior quotations and current prices and evaluations in terms of quantitative yardsticks. The conclusions reached by price analysis techniques must be supported by cost analysis procedures, used to examine the details of the offerors' proposals.

(iii) The analysis of cost factors begins with an evaluation of the reliability of the offeror's cost estimating procedures and the dependability of his cost controls, as demonstrated by his history of cost management in the performance of other contracts or by his establishment of sound practice for this purpose. The cost analysis proceeds with a critical examination of the composition of each cost element in terms of its expected application to the objectives of the contract, and its conformance to the accepted principles of allocability and reasonableness. (See FAR 31.3 and FAR 31.201). A Government cost estimate may help in projecting tools for these purposes and may develop the expected incidence of various cost factors in relation to performance phases, planned segments, or identification "milestones." This estimate should provide a summary forecast of the time, effort, materials, equipment, and services necessary to accomplish the research or development objective. The comparison and reconciliation of the Government cost estimate with the offeror's cost estimate for the same phases, segments, or events should bring into focus any areas of excessive or insufficient emphasis and provide a foundation for meaningful discussions with the offeror.

(iv) Special care should be exercised to comply with FAR 31.205–1 and FAR 31.205–18 in the allowance of advertising costs under FAR 31.311–1.

(e)(S–71) *Documentation.* Contract files for research and development acquisition shall be fully documented to include the basis and reasons for the selection of the sources solicited and for the award. Such documentation should be adequate to justify the selection of the contractor over others whose proposals, from the standpoint of some single factor (such as lower estimated costs or short performance time), might appear more advantageous to the Government (see FAR 4.1).

235.010 Scientific and technical reports.

(a) Scientific and technical reports are documents written for the permanent record to document results obtained from and recommendations made on scientific and technical activities relating to a single project, task or contract, or relating to a small group of closely connected efforts within the Department of Defense Research and Development Program. A completed Report Documentation Page (DD Form 1473) is to be included in each copy of a scientific or technical report required by the contract (see Part 53). Whenever a scientific or technical report is required as a product of the Research, Development Test and Evaluation Effort, the contracting officer will assure that the requirement for a completed DD Form 1473 is clearly stated and that a complete DD Form 1473 is included with each copy of the required scientific and technical reports. Scientific and technical reports should be reproduced as economically as practicable, consistent with the reporting needs of the Government.

(b) Copies of scientific and technical reports resulting from DoD contracts are furnished to the Defense Technical Information Center (DTIC) which provides a central service for the interchange of scientific and technical information of value to the Department of Defense and its contractors. Organizations may become eligible for this service by registering in accordance with Defense Logistics Agency Regulation 4185.10, Certification and Registration for Access to DoD Defense Technical Information, which is available from the Defense Technical Information Center, Cameron Station, Alexandria, Virginia 22314.

235.011 Data.

(a) The data clauses as required by Subpart 227.4 usually provide, among other things, for the reproduction and use for any purpose of the Government of any or all of the information to be provided under the contract. Contracting officers shall require contractors to furnish all such information resulting from research and development contracts.

235.014 Government property and title.

(b) The basic requirements to be observed by the Departments for establishing and maintaining control over Government Property are set forth in Part 245.

(1) In determining whether to grant the approval to the contractor, the contracting officer shall determine that the proposed acquisition is essential to performance of the contract. Approval may be granted either on a line item basis or for clearly defined classes of items.

(c) Headquarters, Air Force Systems Command (AFSC) (PMPR), Andrews Air Force Base, Maryland 20334, is responsible in the Department of Defense for obtaining and maintaining files of Letters of Assurance from nonprofit institutions of higher education and other nonprofit institutions which provide for the agreement specified in FAR 35.014(c). AFSC (PMPR) will distribute, and periodically update, a list of institutions which furnished a Letter of Assurance. Contracting organizations may request a copy of this list; or at any time, inquire as to whether a particular institution has furnished the required Letter of Assurance. If transfer of title to equipment is contemplated and the contractor has not furnished a Letter of Assurance, the contracting office will request, in writing, that AFSC (PMPR) obtain a Letter of Assurance from the contractor. This request must give the complete mailing address of the contractor.

235.015 Contracts for research with educational institutions and nonprofit organizations.

(b) *Basic agreements.*

(2) The responsibility for negotiating Basic Agreements with appropriate educational institutions and nonprofit organizations for DoD, except designated Federal Contract Research Centers (FCRC), is assigned to the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia 22217. Copies of the agreements will be maintained by the Office of Naval Research and provided to DoD and other purchasing activities upon their request. The Office of Naval Research will periodically provide a listing of current Basic Agreements to the DAR Council for publication in a DoD FAR Supplement Circular. The need for special clauses should not preclude the purchasing office from utilizing these basic agreements. The Basic Agreement is incorporated by reference in Section I contract clauses, of the contract. Special clause requirements may be

incorporated into Section H—Special Provisions, of the contract.

(S–70) *Special use allowances for research facilities acquired by educational institutions.*

(1) *Definitions.*

"Research facility" means real property, other than land, and includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with agencies of the Department of Defense; and

"Special use allowance" means a negotiated direct or indirect allowance for buildings, structures, and real property, other than land, computed at an annual rate in excess of the rate which normally would be allowed under FAR Subpart 31.3.

(2) *Policy.* The expanding requirements of the Department of Defense for the performance of scientific research programs by educational institutions may create special situations wherein the acquisition or construction of additional research facilities by such institutions is essential for the effective performance of scientific research programs of major importance to the Department of Defense. Educational institutions are expected to furnish facilities required for the performance of Defense contracts, and the extent of reimbursement by the Government for the research programs of such institutions shall be governed by the principles set forth in FAR Subpart 31.3 However, in certain limited situations an educational institution may be unable to provide capital for new laboratories or other expanded facilities necessitated by Defense contracts unless the institution is given Governmental assistance in return for the risks and expenses it assumes in acquiring or constructing such facilities. Special use allowances constitute a means for recognizing these risks and expenses on the part of the educational institution and also provide a basis for permitting essential governmental research programs to go forward. The resort to special use allowances as provided by this paragraph is an extraordinary type of arrangement and constitutes an exception to the provisions for normal use allowances contained in FAR 31.311–10. Any specific agreement providing for a special use allowance shall be negotiated on a case-by-case basis using the criteria established herein.

(3) *Authorization of special use allowances.* The head of a contracting activity may approve special use allowances for the acquisition of construction costs of research facilities financed by educational institutions only when all of the following conditions are met:

(i) The research facility is essential to the performance of Department of Defense contracts;

(ii) The program requirements cannot be met practically and effectively by existing facilities, either Government or non-Government;

(iii) The proposed agreement for the special use allowances represents a sound business arrangement;

(iv) It is undesirable or impractical for the Government to provide Government-owned facilities for the performance of the research; and

(v) The proposed use of the research facility is consonance with the underlying objective of the Government in granting the special use allowance.

(4) *Negotiation and administration of contracts providing for special use allowance.* The negotiation and administration of contracts providing for special use allowances are subject to the conditions set forth in (S–70)(4)(i) through (S–70)(4)(xiii) below:

(i) The terms of the agreement for special use allowances authorized herein shall be specified or incorporated by reference in the applicable contracts.

(ii) When the special use allowance is based on the total acquisition cost, no normal use allowance or other use or depreciation charge will apply during the special allowance period nor after the educational institution has recovered the total acquisition cost under Government contracts or from other users. When the special use allowance is based on less than total acquisition cost of the research facility, the agreement will specify whether any normal use allowance or other use or depreciation charge will apply to the balance during the special use allowance period; however, no more than the normal use allowance computed in accordance with FAR Subpart 31.3 may be applied thereafter to the balance.

(iii) During the period of the special use allowance, and for subsequent periods to the extent agreed upon, the research facility shall be available for Government research use on a priority basis over non-Government use. Any significant use during such period other than which justified the special use allowance shall be subject to prior consent of the cognizant approval authority specified in (S–70)(3) above.

(iv) Special use allowances are applicable only in years in which the Government has contracts in effect with the educational institution for research to be conducted in the facility. The Government has no liability to the educational institution for the special use allowance in any year in which there is no Government contract. In any year when the level of research effort under Government contracts has been reduced to a point where the special use allowance is excessive in relation to the extent of the Government research funding, the parties may negotiate a special use allowance for that year at a mutually acceptable rate.

(v) When more than one Government contract is to be performed in the research facility, special use allowances generally should be allocated to using contracts on an equitable basis.

(vi) If during the period when a special use allowance is in effect, any substantial use is made of the research facility for parties other than the Government, only an allocable share of the special use allowance shall be charged to the Government.

(vii) Special use allowances shall not include any maintenance, utilities, or other operational costs.

(viii) Generally, the period for which a special use allowance is authorized shall be at least ten years. However, a shorter period of time is authorized where the total amount to be allowed is less than acquisition cost for the research facility.

(ix) Reimbursements under contracts for special use allowances shall not commence until the research facility is occupied and used for research under the contract. However, equitable adjustments may be made in the special use allowance during the construction period if the research facility is partially used for research under the contract.

(x) Determination of the amount of a special use allowance shall be based on the comparative need for the research facility by the Department of Defense and by the educational institution. In no event shall the institution be paid more than the acquisition costs.

(xi) In establishing the annual special use allowance, due consideration shall be given to rental costs for similar space in the area where the research facility is to be located.

(xii) No payment shall be made to the educational institution for costs of land or interest charges on capital, used or borrowed, for the acquisition of the research facility.

(xiii) Information copies of each special use allowance agreement negotiated shall be furnished to each authorizing official specified in (S–70)(3) and to the Deputy Under Secretary (Research and Advanced Technology), Office of the Under Secretary of Defense for Research and Engineering.

235.070 Indemnification against unusually hazardous risks.

(a) *Indemnification under research and development contracts.*

(1) *Use of clause.* Pursuant to the authority of 10 U.S.C. 2354 and when authorized by the Secretary concerned (or his designee under 10 U.S.C. 2356), a contract for research and development, or both, may provide for indemnification of the contractor and subcontractors against:

(i) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(ii) Loss of or damage to the contractor's property, to the extent that such liability, loss or damage—

(A) Results from a risk that the contract defines as "unusually hazardous",

(B) Arises out of the direct performance of the contract, and

(C) Is not compensated by insurance or otherwise.

When authorization has been obtained, the appropriate clause prescribed in 235.071 (a) or (b) shall be used.

(2) Each contract containing a clause authorized by (a) above shall clearly define the specific unusually hazardous risks to which the clause applies. This definition shall be submitted for approval with the request for authorization to grant indemnification. The definition may be included as an additional paragraph of the clause or inserted elsewhere in the contract. The fact that one or more risks under a contract may be appropriately define as unusually hazardous does not justify so defining other risks of contract performance which are not in themselves unusually hazardous; neither does it preclude indemnification of such other risks under other appropriate authority.

(b) *Indemnification under contracts involving both research and development and work that cannot be so classified.* Certain contracts require a substantial amount of research and development work as well as a substantial amount of work that cannot be so classified. When indemnification is to be provided for such contracts, an appropriate clause, utilizing the authority of both 10 U.S.C. 2354 and Pub. L. 85–804 may be used. In such cases, the use of Pub. L. 85–804 to provide indemnification is limited to work which cannot be indemnified pursuant to 10 U.S.C. 2354 and is subject to compliance with the provisions of FAR Subpart 50.4.

235.071 Contract clauses.

(a) The contracting officer shall insert the clause at 252.235–7000, Indemnification Under 10 U.S.C. 2354—Fixed Price, as provided for in 235.070.

(b) The contracting officer shall insert the clause at 252.235–7001, Indemnification Under 10 U.S.C. 2354—Cost Reimbursement, as provided for in 235.070.

(c) The contracting officer shall insert the clause at 252.235–7002, Recovery of Nonrecurring Costs on Commercial Sales, as provided for in 235.7103(a).

(d) The contracting officer shall insert the clause at 252.235–7003, Care of Laboratory Animals, in all contracts in compliance with law and in furtherance of the Department of Defense policy that all aspects of investigative programs involving the use of experimental or laboratory animals be humanely conducted in accordance with recognized principles. The clause shall be included in all contracts awarded in the United States, its possessions, and Puerto Rico which may involve the use of such animals.

(e) The contracting officer shall insert the clause at 252.235–7004, Frequency Authorization, in any contract which calls for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

Subpart 235.70—Short Form Research Contract

Reserved, guidance will be included prior to 1 April 1984.

Subpart 235.71—Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology

235.71 Scope.

This subpart sets forth policy and procedures established in DoD Directive 2140.2 for the recovery of no recurring costs on commercial sales by contractors of products, components, and related technology developed with DoD appropriations or, in special cases, with Foreign Military Sales (FMS) funds. The objective of recovery is to ensure that a customer pays a fair share of the nonrecurring investment cost incurred by the Department of Defense or a foreign government.

235.7101 Policy.

(a) It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to products, and/or a fair price for its contribution to the development of related technology, when the products are sold, and when technology relating to the manufacture of the products is sold or licensed, to a foreign government, international organization, foreign commercial firm, or domestic organization (here referred to as "customers").

(b) Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under an FMS case where subsequent customers purchase the same specialized feature(s). However, the U.S. Government will not collect this recoupment on behalf of a foreign government beyond 8 years from the date of the acceptance of the original DoD Offer and Acceptance (DD Form 1513) that included the nonrecurring investment.

235.7102 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(1) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(2) Nonrecurring production cost.

(3) RDT&E and nonrecurring production costs for special features under a foreign military sale when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components that individually meet the above thresholds, recoupment will be made on a component when it is sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

235.7103 Procedures.

(a) To assure the recovery of investment in nonrecurring costs and related technology, the clause in 252.235–7002, Recovery on Non Recurring Costs on Commercial Sales, shall be included in all RDT&E and production contracts and subcontracts of $1 million or more as prescribed at 235.071(c). This clause requires the contractor and qualifying subcontractors to pay to the U.S. Government the amounts established by the U.S. Government in the event of the contractor's commercial sale of products, or sale or license of related technology, that meet the thresholds of 235.7102.

(b) If the recoupment charge has been previously established, the contracting office, at the time of each commercial sale, shall determine if there have been significant changes in factors or assumptions used to compute the original charge (for example, changes in identifiable RDT&E cost of the anticipated production run). When significant changes are identified, the contracting office shall submit a request in accordance with departmental procedures to the Office of the Secretary of Defense (see (c) below) for authority to make appropriate changes in nonrecurring cost recoupment charges. Such revised charges shall not be retroactively applied to past sales or to sales that have been consummated by a written contract between the parties.

(c) If the recoupment charge has not been previously established, the contracting office shall expeditiously obtain a charge determination from the office in each DoD component that is responsible for establishing the charge. The Office of the Secretary of Defense must approve certain charges, as follows:

(1) The Director, Defense Security Assistance Agency (DSAA)—nonrecurring cost unit recoupment charges for the sale of major defense equipment (as defined in 252.235–7002).

(2) The Under Secretary of Defense for Research and Engineering (USDRE)—all technology charge determinations.

(d) The amount to be reimbursed to the U.S. Government for the commercial sale of products and components and for the sale or license of technology is provided for in 252.235–7002 and in DoD Directive 2140.2.

235.7104 Deviations.

(a) A DoD component, a foreign government, or a Defense contractor (vice president or higher) may request deviation, in whole or in part, from assessing the charges prescribed here for a commercial sale when it is considered to be in the best interest of the United States to satisfy a demonstrable right of the manufacturer or the purchaser or to obtain advantage to the Department of Defense. Consideration may also be given to nonmonetary returns that are advantageous to national security, foreign policy, and the public interest.

(b) Requests for deviation associated with product sales under foreign sales shall be submitted through channels to the Director of the Defense Security Assistance Agency. Requests for deviation for product sale charges to domestic organizations and requests for deviation for technology sales shall be submitted to the Under Secretary of Defense for Research and Engineering. A request for deviation from the otherwise appropriate charges shall contain:

(1) A summary statement of the facts;

(2) The Benefits expected, with justification;

(3) The specific areas to which the deviation would apply; and

(4) Calculations necessary to ascertain the extent of any monetary involvement and how the calculations are to be handled by either the DoD component or the contractor, as appropriate.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 236.1—General

236.102 Definitions.

"Construction Activity" means an activity, at any organizational level of the Military Departments, which has responsibility for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities, and which receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

236.103 Methods of contracting.

(a) Overseas contruction may be procured by means of formal advertising provided that the Head of a Contracting Activity, or his designee, determines that the use of formal advertising, in strict accordance with FAR Part 14, is practicable and advantageous to the United States as to a specific country or other geographic area outside the United States, its possessions, and Puerto Rico.

236.170 Sources of construction services.

Generally, military construction in the United States shall be performed by contract. The following exceptions to this policy are authorized:

(a) Military construction units, other military personnel and Civil Service maintenance personnel may:

(1) Perform construction in periods of emergency arising from fire, flood, explosion, pestilence or other disaster to provide essential facilities for shelter, safety, and protection of personnel and property.

(2) Perform construction where the isolated location of the work makes it impracticable to obtain qualified contractors.

(3) Perform construction where the necessity for obtaining security clearances for contractor personnel introduces unacceptable delays in operational schedules.

(b) Military construction units may perform construction in addition to that set forth in (a) above, but only when the integrity of the unit will be maintained and the project will contribute to the training of the unit of its wartime mission.

(c) Military personnel, other than military construction units, may, in addition to (a), above:

(1) Perform construction in connection with welfare and recreational facilities intended for their own use.

(2) Perform repair incident to maintenance:

(i) When required for reasons of security.

(ii) For disciplinary action arising from military offenses.

(iii) For training and maintaining competence in recognized trade skills.

(iv) In and around the barracks which they themselves occupy or are about to occupy.

(d) Civil Service maintenance forces may, in addition to (a), above:

(1) Perform construction where the work is of a minor nature.

(2) Perform construction where conditions are such that it is impracticable to prepare plans and specifications.

(3) Perform construction where the work must be performed intermittently to avoid disrupting other important operations.

(4) Perform repair incident to maintenance.

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.*

(1)(S–70) The contracting officer shall also prepare a performance evaluation report for each construction contract of $10,000 or more when any element of performance was either unsatisfactory or outstanding.

(c) *Distribution and use of performance reports.*

(1) The original of the performance evaluation report for every contract will be retained by the activity preparing the report for a minimum of six years after date of the report. In addition, the reviewing official will forward a copy of the following reports:

(i) Reports with an overall unsatisfactory evaluation.

(ii) Reports which cite outstanding performance, and

(iii) Reports for all contracts in excess of $200,000 to the:

Office of the Chief of Engineers, ATTN: DAEN-PR
Pulaski Building
Washington, DC 20314

This office is responsible for establishing procedures and practices which will assure appropriate distribution and utilization of performance evaluation data within the Departments.

(2) Performance evaluations of construction contractors shall be used in making responsibility determinations. In the selection of fully qualified responsible contractors for future awards or negotiation of construction contracts above $1,000,000, the contracting officer shall also obtain from the central data bank the following:

(i) A record of the number of contracts and the total dollar amount for all satisfactory evaluations; and

(ii) Complete transcripts of all performance evaluations showing unsatisfactory performance either on individual elements or overall evaluation, or remarks on outstanding performance. These transcript(s) or statement(s) may be obtained for smaller awards.

236.203 Government estimate of construction costs.

(c) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below. If the procurement is by formal advertising (except two-step formal advertising) a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

236.205 Statutory cost limitations.

(c) A bid or proposal containing prices that exceed applicable statutory cost limitations shall be rejected, unless for construction of cold storage or regular (general purpose) warehousing, barracks for enlisted personnel or bachelor officer's quarters, and the determination of the Assistant Secretary of Defense, Manpower, Reserve Affairs and Logistics (MRA&L) has been obtained that the limitations on construction costs in the annual Military Construction Act shall not apply as impracticable.

236.206 Liquidated damages.

A liquidated damages clause shall be included in all contracts in excess of $25,000 except cost-plus-fixed-fee contracts or those where the contractor cannot control the pace of the work. Use of a liquidated damages clause is optional for contracts of $25,000 or less. Where such a provision is used, the clause set forth in FAR 52.212–5 shall be included in the invitation for bids or request for proposals. Where different completion dates for separate parts or stages of the work are specified in the contract, this clause should be revised appropriately to provide for liquidated damages for delay of each separate part or stage of the work. The minimum amount of liquidated damages should be based on the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, such as the cost of substitute facilities, the rental of buildings, or the continued payment of quarters allowances, an amount for such items should also be included.

236.270 Minimum standards for responsible prospective contractors.

In evaluating the responsibility of a prospective contractor, the contracting officer shall consider whether a bid bond has been furnished and performance and payment bonds are to be furnished. Prior to underwriting bid performance and payment bonds, it is normal practice for each surety company to conduct a prequalification survey which examines, verifies and evaluates the contractor's financial resources, technical expertise for the type work involved, management and organization ability, current workload, and capability to complete the contract in the required time. Normally, the contracting officer is not expected to duplicate this effort in conducting the pre-award survey, but should emphasize in addition thereto the evaluation of information which is uniquely available to the Government, such as the Consolidated List of Debarred, Suspended, and Ineligible Contractors (see FAR 9.404), contractor experience lists, and performance evaluations on present or previous contracts with the Government. More extensive pre-award surveys should be conducted when the project requires unique or unusual construction expertise or when information available to the contracting officer indicates that the contractor may not be responsible (see FAR 9.104). The responsibility for determination of the extent of pre-award survey appropriate to the circumstances rests with the contracting officer. Where the prospective contractor is a joint venture, the sum of its financial resources and the individual capacities of all its members will be used in determining the responsibility of the joint venture.

236.271 Expediting construction contracts.

No expediting action, advancing the completion date and involving additional costs under a contract funded under the provisions of the annual Military Construction Appropriation Act or any similar legislations, shall be taken without the prior approval of the Assistant Secretary of Defense (MRA&L).

236.272 Cost-plus-fixed fee contracts.

Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee construction contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (MRA&L), setting forth the reasons therefore, is obtained.

236.273 Prequalification of bidders and offerors.

(a) The prequalification procedures are used when it is necessary to assure timely and efficient performance of critical construction projects by limiting bidding or offers to concerns of proven competence to perform in the required manner. The result of a prequalification is a list of constructors who are determined to be qualified to perform a specific construction contract.

(b) The Head of a Contracting Activity may authorize the prequalification when he determines in writing that a construction project is of such urgency or complexity as to require prequalification.

(c) Procedures to be used shall be approved by the Head of a Contracting Activity. They shall provide, in connection with small business concerns, that:

(1) If the qualifying authority is of the opinion that a small business concern is not qualified for reasons relating to responsibility, the recommendation of the appropriate Small Business Regional Office shall be requested;

(2) If the office expresses the opinion that the concern appears to have the requisite responsibility, it shall be permitted to submit a bid or offer, and

(3) If a small business concern is found to be non-responsible, the procedures prescribed by FAR 19.6 shall be followed.

Subpart 236.3—Special Aspects of Formal Advertising in Construction Contracting

236.303 Invitation for bids.

(c)(S–70) *The Cost Limitations provision* (see 236.580–1 and 252.236–7081).

(S–70) If it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for a first or base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In such case, the invitation shall include a provision substantially as prescribed at 236.580–2, and the low bidder and the bid items to be awarded shall be determined as therein provided. The contracting officer, prior to the opening of bids, shall determine and record in the contract file the amount of funds available for the project. The amount so recorded shall be controlling for determining the low bidder but may be increased for determining the bid items to be awarded to him; *Provided* that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.401 Use of negotiated contracts.

(b)(2) See 236.103(a).

236.402 Price Negotiation.

(S–70) *Profit or fee.*

(1) *Fixed-price construction and architect-engineer contracts.* The guidance set forth in FAR 15.9, while not required, may be used in considering profit as an element of price under fixed-price construction and architect-engineer contracts.

(2) *Cost-reimbursement type construction contracts.*

(i) The fees of prime contractors under cost-plus-fixed-fee construction contracts shall be negotiated in accordance with Departmental procedures which have been approved by the Assistant Secretary of Defense (MRA&L).

(ii) The target fee of prime contractors in incentive fee contracts shall be established using the criteria and fee schedules provided for under Departmental procedures as a guide in conjunction with the reasonableness of the target cost, the maximum and minimum fees to be established and the fee adjustment formula.

(iii) Limitations of fees for cost-reimbursement type contracts are set forth in FAR 15.903(d).

(3) *Cost-plus-fixed fee contracts.* Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee architect-engineer contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (MRA&L), setting forth the reasons therefore, is obtained.

Subpart 236.5—Contract Clauses

236.501 Performance of work by the contractor.

(a) The contractor shall be required to perform not less than 15 percent on housing and not less than 20 percent on other work.

236.570 Additional clauses.

Section 236.571 through 236.578 present additional clauses for insertion in contracts for construction and architect-engineer services.

236.571 Clauses.

The following Clauses are required in fixed-price construction contracts and solicitations.

236.571–1 Composition of contractor.

The contracting officer shall insert the clause at 252.236–7000, Composition of Contractor, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571–2 Modification proposals-price breakdown.

The contracting officer shall insert the clause at 252.236–7001, Modification of Proposals-Price Breakdown, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571–3 Contract drawings, maps and specifications.

The contracting officer shall insert the clause at 252.236–7002, Contract Drawings, Maps and Specifications, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571–4 Shop drawings.

The contracting officer shall insert the clause at 252.236–7003, Shop Drawings, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.572 Clauses.

The following clauses will be inserted in fixed-price construction contracts and solicitations as set forth below.

236.572–1 Contract prices—bidding schedule.

The contracting officer shall insert the clause at 252.236–7004, Contract Prices—Bidding Schedule, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract is to contain only unit prices for specified items.

236.572–2 Salvage materials and equipment.

The contracting officer shall insert the clause at 252.236–7005, Salvage Materials and Equipment, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will involve Government furnished property which is to be salvaged and reused.

236.572–3 Misplaced material.

The contracting officer shall insert the clause at 252.236–7006, Misplaced Material, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will involve work near or on navigable waterways.

236.572–4 Identification of employees.

The contracting officer shall insert the clause substantially as set out at 252.236–7007, Identification of Employees, in solicitations and contracts when a fixed-price construction contract is contemplated and identification of employees is required for security or other reasons.

236.572–5 Superintendence of subcontractors.

The contracting officer shall insert the clause at 252.236–7008, Superintendence of Subcontractors, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will be for work of a highly technical and complicated nature requiring extraordinary control by the contractor of the several parts of the work, or the contract will cover work spread over several places on the site of work.

236.572–6 Payment for mobilization and preparatory work.

The contracting officer shall insert one of the clauses at 252.236–7009 (see below) in solicitations and contracts when a fixed-price construction contract is contemplated which will contain a

separate bid item for mobilization and preparatory work with the approval of the Head of the Contracting Activity.

(a) In major construction contracts requiring major or special items of plant and equipment or large stockpiles of material which are considered to be in excess of the type, kind and quantity presumed to be normal equipment of a contractor qualified to undertake the work, insert the clause at 252.236–7009(a), Payment for Mobilization and Preparatory Work, Payment Item No. ——.

(b) In contracts involving major mobilization expense or plant equipment and material other than such as are covered in (a) above, which is occasioned by the location or nature of the work such as mobilization at an offshore location or towing a dredge to a remote location, insert one of the following clauses:

(1) When it is expected demobilization will occur at the time of contract completion or shortly thereafter, insert the clause at 252.236–7009(b)(1), Mobilization and Demobilization, Payment Item No. ——.

(2) When there is a likelihood that there will be substantial time lapse between demobilization and final payment under the contract due to such contractual requirements as clean-up or seeding of a disposal area, insert the clause at 252.236–7009(b)(2), Mobilization and Demobilization, Payment Item No. ——.

(c) The percentage of the lump sum price, for mobilization and demobilization in paragraph (a) of the clauses at 252.236–7009(b) (1) and (2), attributed to mobilization should generally be 60 percent and the remaining 40 percent considered to be the cost of demobilization. These percentages may be varied to reflect the situation contemplated under the particular contract, but in no event should mobilization exceed 80 percent of the payment item.

236.572–7 [Reserved]

236.572–8 Airfield safety precautions.

The contracting officer shall insert the clause at 252.236–7011, "Airfield Safety Precautions," in solicitations and contracts when a fixed-price construction contract is contemplated which is to be performed on or near airfields.

236.572–9 Contractor prepared network analysis system.

(a) The contracting officer is authorized to insert a clause substantially as set forth at 252.236–7012, "Contractor Prepared Network Analysis System," in solicitations and contracts when a fixed-price construction contract is contemplated in accordance with the instructions in (b) below. Since the clause is broad in scope, modifications thereto will be necessary to accommodate individual project requirements.

(b)(1) (See Paragraph (b)(2).) The requirements pertaining to the identification of separate buildings and features and to the minimum number of activities may be deleted for projects where this information is not needed. This portion should always be used when more than one line item is being constructed under a single contract to provide data for Government costing purposes. The column showing the minimum number of activities per building or feature may be deleted if not considered necessary.

(2) (See Paragraph (b)(3).) The requirement for time scaling the summary network diagram may be deleted. The use of time scaling provides a more easily comprehended diagram for those not intimately familiar with a project and hence is of value to higher level management. It is also of considerable value for evaluating the utilization of resources of manpower and equipment and the scheduling of those activities which have slack available. On the other hand, revisions are much more difficult to make on time scaled diagrams requiring considerable if not complete redrafting. This makes time scaling more expensive to maintain and may result in delays in submitting diagrams. The advantages to management as against the possibility of additional cost and delay in submission must be considered in deciding whether time scaling should be included. If time scaling is omitted, references thereto in paragraph (e) should also be deleted.

(3) (See Paragraphs (b)(4) and (b)(7).) Any items may be included or deleted as project requirements and local computer capabilities indicate. It should be noted that many computer system programs are written so as to provide only part of the information listed, and it is probable that there is no single program which will provide all. The listings should be revised to require only the minimum necessary for project management.

(4) (See Paragraph (b)(6)(i).) Two means of estimating the computing time required can be used, (i) based on normal work days (excluding Saturdays, Sundays and holidays), or (ii) based on calendar days. This paragarph should be retained if the former method is to be used. If the latter method is to be used, this paragraph should be deleted and the following inserted at the end of paragraph (b)(2):

In calculating activity durations, Saturdays, Sundays, holidays, and normal inclement weather should be considered.

(5) (See Paragraph (b)(6)(ii) and (iii).) Requirements for manpower loading and list of equipment will be deleted unless the nature of the project is such as to make their inclusion necessary for proper surveillance by the resident engineer. When these requirements are deleted here, references thereto in other sections should also be deleted.

(6) (See Paragraph (c).) The times allowed for the various submissions may be revised to fit individual project requirements based on project duration and complexity.

(7) (See Paragraph (e).) The time for submission of periodic reports may be changed based on project requirements. Normally, reports will be required twice a month with payments made once a month based on the work shown as accomplished in the last two reports.

(8) (See Paragraph (f).) For partially completed activities, a relatively broad estimate of the portion completed is normally adequate, for example, 25%, 50%, 75% or 100%, and the clause may be changed accordingly. Due to the multiplicity of activities and their normally small dollar value, a more precise evaluation frequently may be impractical. On activities with significant costs, a more precise estimate should be used.

(9) (See Paragraphs (g), (h) and (i).) The sheet size of diagrams and number of copies of report to be submitted may be revised to suit individual project requirements.

236.572–10 Government-prepared network analysis system.

The contracting officer is authorized to insert the clause at 252.236–7013, "Government-Prepared Network Analysis System," in solicitations and contracts when a fixed-price construction contract is contemplated in accordance with the following instructions:

(a) (See Paragraph (a).) This paragraph shall be used when the project is of long duration and a schedule of the first two months' operation is necessary for controlling the project until the "Construction Progress Schedule" is submitted. The blank will be filled in with the number of days desired. This pragraph will be deleted when the contruction project is of short duration.

(b) (See Paragraph (b).) Proper number of days for submittals shall be inserted by the contracting officer.

(c) Paragraphs (c)(1) and (c)(2) shall be modified to agree with detail and

type of network analysis system the Government proposes to prepare.

236.573 Clauses.

The following clauses are required in cost-reimbursement construction contracts and solicitations.

236.573-1 Statement of work.

The contracting officer shall insert the clause at 252.236-7014, Statement of Work, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-2 Estimated cost, performance period.

The contracting officer shall insert the clause at 252.236-7015, Estimated Cost, Performance Period, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-3 Direct payments.

The contracting officer shall insert the clause at 252.236-7016, Direct Payments, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-4 Approved construction plant.

The contracting officer shall insert the clause at 252.236-7017, Approved Construction Plant, in solicitations and constracts when a cost-reimbursement construction contract is contemplated.

236.573-5 Insurance.

The contracting officer shall insert the clause prescribed at 228.311-70 in solicitations and contracts when a cost reimbursement construction contract is contemplated.

236.574 Option for supervision and inspection services.

The contracting officer shall insert the clause at 252.236-7018, Option for Supervision and Inspection Services, in solicitations and contracts when a fixed-price architect-engineer contract is contemplated, and supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

236.575 Notice and approval of restricted designs.

The contracting officer is authorized to insert the clause at 252.236-7019, Notice and Approval of Restricted Designs, in solicitations and contracts when a fixed-price architect-engineer contract is contemplated in accordance with 236.7202-6.

236.576 Patent indemnity.

The contracting officer shall insert the clause at 252.236-7050(a), Patent Indemnity, in accordance with 236.7202-3(a), and the clause at 252.236-7050(b), Items Excluded from Patent Indemnity, in accordance with 236.7202-3(b).

236.577 Rights in shop drawings.

The contracting officer shall insert the clause at 252.236-7051, Rights in Shop Drawings, in accordance with 236.7205-1(b).

236.578 Architectural designs and data-government rights.

The contracting officer shall insert the clause at 252.236-7052(a), Government Rights (Unlimited), in accordance with 236.7205-1(a), or the clause at 252.236-7052(b), Drawings and Other Data to Become Property of Government, in accordance with 236.7203(c) and 236.7205-1(a)(2).

236.580 Solicitation provisions.

This section prescribes additional solicitation provisions applicable only to construction contracting.

236.580-1 Cost limitations.

The contracting officer shall insert the provision at 252.236-7081, Cost Limitations, if the solicitation contains one or more items subject to statutory cost limitations, except when a waiver has been granted pursuant to FAR 36.205.

236.580-2 Additive or deductive items.

The contracting officer shall insert the provision at 252.236-7082, Additive or Deductive Items, under the conditions set forth at 236.303(S-70).

Subpart 236.6—Architect-Engineer Services

236.602 Selection of firms for architect-engineer contracts.

236.602-1 Selection criteria.

(a)(6) The volume of work previously awarded to the firm by the Department of Defense shall also be considered, with the object of effecting an equitable distribution of Department of Defense architect-engineer contracts among qualified architect-engineer firms, including small and small disadvantaged business firms, and firms that have not had prior Department of Defense contracts.

(S-70) For contracts estimated to cost more than $2,500, criteria which will be used to evaluate the qualifications of the architect-engineer firms to be considered should be established in advance. In addition to the general considerations listed in FAR 36.601, the criteria should be specific as to desired qualifications, size and expertise of staff, required past experience, and, as appropriate, esthetic considerations, special conceptual or design elements, and related factors. The information contained in the DD Form 1391 for the construction project, if applicable, should be used in preparing the criteria. The criteria shall be set forth in the public announcement as required by FAR 5.20.

236.602-2 Evaluation boards.

(a) Preselection boards are authorized. A preselection list of the maximum practicable number of qualified firms shall be prepared by a preselection board from data described in FAR 36.603 and other pertinent information which may be available, and the list shall be approved by the head of the construction activity, or his designee. Preparation of preselection lists for contracts estimated to cost more than $10,000, and selections for contracts estimated to cost more than $2,500, shall be accomplished by formally constituted boards consisting of at least three members.

236.602-4 Selection authority.

(a) All selection actions, including preselection, shall be under the cognizance of the construction activity responsible for the work.

(c) Approval authorities shall not add firms to any selection report. If the firms on a submitted selection report are deemed to be unqualified or the list is considered inadequate for other reasons, the approval authority shall record the reasons and return the report through channels to the preselection board for the preparation of a revised report. However, the finding that certain firms on the selection report are unqualified shall not preclude approval of the report provided that a minimum of three firms remain. In such cases the reasons for finding a firm or firms unqualified shall be recorded and reports may be approved with respect to the three or more qualified firms remaining.

(S-70) *Special approval of selections.* Special approval shall be required for certain selections as indicated below:

(1) When the estimated cost of a contract to be awarded by a field activity exceeds $200,000, the selection shall require the approval of the next higher organizational level of the construction activity;

(2) When a firm, to which a field contracting office has previously awarded contracts totaling over $200,000 during the current calendar year, has been selected for an additional award to be made by the same contracting office, the selection shall require, prior to negotiation with the firm, the approval

of the next higher organizational level of the construction activity;

(3) When a selection is made by the Army Corps of Engineers, the Naval Facilities Engineering Command, or the Air Force Directorate of Civil Engineering for a contract whose estimated cost is $500,000 or more, the selection shall require the approval of the Chief of Engineers, the Commander, Naval. Facilities Engineering Command, or the Director of Civil Engineering, respectively, or their designees;

(4) When supplemental work to be added to an existing contract will bring the total contract cost to any of the various levels of approval noted above, the selection for such work shall require approval as indicated for the appropriate level (such approval is not required for supplemental work accomplished pursuant to the Changes clause of the contract); and

(5) When approval of a selection for a contract has been obtained at a particular approval level, further approval shall not be required for the selection of the same firm to accomplish supplemental work under that contract, unless the total cost of the basic contract plus all supplemental work is an amount requiring approval of the selection at the next higher approval level.

236.604 Performance evaluation.

(a) *Preparation of performance reports.*

(1) For each contract over $10,000 awarded, a performance evaluation report shall be prepared by the cognizant construction activity. Such reports may also be prepared for contracts of lesser amounts. For contracts of over $10,000, the construction activity shall distribute the SF 1421 to all other offices within the region or geographical area as listed in the book, "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense," and to the Washington, D.C. Headquarters of their respective construction activities. The SF 1421 shall be filed and utilized in a manner similar to the qualifications data (Standard Form 254).

(c) *Distribution and use of performance reports.* For the purposes of receiving and distributing architect-engineer qualification and performance data, the United States is divided into regions, and the rest of the world into general geographic areas. These regions and areas are described and delineated in a booklet entitled, "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense," which is published by the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) and is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, or from DoD construction activities.

236.605 Government cost estimate for architect-engineer work.

(a) An independent Government estimate of the cost of architect-engineer services shall be prepared for each proposed contract or contract modification expected to exceed $10,000.

236.606 Negotiatons.

(S–70) Negotiations shall be conducted with the first selected architect-engineer until a price which is fair and reasonable and not in excess of the Government estimate, revised to correct errors of fact or judgment, has been obtained. Where the negotiations result in a price in excess of the Government estimate, as revised, the contracting officer shall terminate the negotiations and request a proposal from the architect-engineer next in order of preference.

(S–71) In no event shall a contract for architect-engineer services for the preparation designs, plans, drawings and specifications exceed the statutory limitation of six percent (6%) of the estimated construction costs of the project. If the contract also covers any other type services than the preparation of designs, plans, drawings and specifications, the part of the contract price for such other services shall not be subject to the six percent (6%) limitaions.

(S–72) Modifications. Where the modification involves work not initially included in the contract, the limitation on the total contract price set forth in 236.606–71 is applicable, as applied to the revised total estimated construction costs. Where redesign is required and the contract is modified, the following method shall be used to insure that the six percent (6%) statutory limitation is not exceeded:

(1) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;

(2) The contract cost for the original design will be added to the contract cost for redesign; and

(3) The total contract design cost obtained by (S–72)(2) above will be divided by the total construction cost obtained by (S–72)(1) above. The resulting percentage may not exceed the six percent (6%) statutory limitation.

Subpart 236.70—Construction in Foreign Countries

236.7001 General.

Construction in foreign countries includes construction anywhere outside the United States, its possessions and Puerto Rico. In contracts which are entered into with foreign contractors or are for performance in foreign countries, the term "United States" will appear before the word "Government."

236.7002 Technical agreements.

When construction is contemplated in a foreign country, the Office of the Chief of Engineers, Department of the Army, or the Naval Engineering Facilities Command, Department of the Navy, as appropriate, should be invited to participate in the negotiations of any technical working agreement with a foreign government concerning the construction. This agreement negotiated between appropriate officials of the United States and the foreign government should, to the extent feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction required by the laws, regulations and customs of the United States and the foreign government relating to:

(a) The acquisition of all necessary rights;

(b) The expeditious, duty free importation of labor, material and equipment;

(c) The payment of taxes applicable to contractors, personnel, materials and equipment;

(d) The applicability of workmen's compensation laws and other labor laws to citizens of the United States, citizens of the host country and citizens of other countries;

(e) The provisions of utility services;

(f) The disposition of surplus materials and equipment;

(g) The handling of claims and litigation; and

(h) Any other problems which can be foreseen and appropriately resolved by such agreement.

236.7003 Labor laws of host country.

Contractors shall comply with the applicable labor laws of the host country. Exemption from such laws shall be sought by means of treaty, executive agreement or express authorization from proper officials, where compliance with the laws is impractical or serves no useful purpose.

Subpart 236.71—Termination of Contracts

236.7100 Scope.

This subpart sets forth policies and instructions unique to construction and architect-engineer contracts relating to termination of such contracts through default or for the convenience of the Government.

236.7101 Contractor inventory.

This subpart and FAR 45.6 cover the disposition of all contractor inventory generated under construction and architect-engineer contracts. It applies to termination inventory and to any other inventory which is:

(a) Excess because of a contract modification; or

(b) Excess under a price revision type contract; and the cost thereof is included in the contractor's claim for an equitable adjustment or revision in price. It also applies to all property which is excess to the requirements of a cost-reimbursement type contract and includes excess Government-furnished property under any type contract.

236.7101-1 Inventory schedules.

In addition to the requirements contained in FAR 45.606, construction equipment shall be submitted on separate schedules.

236.7101-2 Allocability of contractor-acquired property on inventory schedules.

It is the responsibility of the contracting officer to determine that all property listed on inventory schedules is qualitatively and quantitatively allocable to the terminated contract or the terminated portion thereof, taking into consideration any work in place. Also, where applicable, the contracting officer must determine that the difference between the cost of allocable property on the inventory schedules and the total cost of property included in the settlement has been incorporated in the work or consumed in the performance thereof.

236.7101-3 Contractor's certificate-property incorporated in work.

Each contractor whose settlement proposal includes the cost of property (materials, etc.) incorporated into the work shall execute a certificate to the effect that all property not accounted for on the inventory schedules has been incorporated into the work or consumed in the performance thereof.

236.7101-4 Inventory at construction site.

Every effort will be made by the contracting officer to relieve the contractor, as promptly as possible, of the responsibility for the preservation and protection of termination inventory located at the construction site. Property, including construction equipment, which is not to be included on inventory schedules shall be removed by the contractor as promptly as possible.

236.7101-5 Screening of contractor inventory.

Inventories of construction materials and equipment shall be screened in accordance with FAR 45.608 in the Army, by the Corps of Engineers; in the Navy, by the Naval Facilities Engineering Command; and in the Air Force, by the Director, Civil Engineering.

Subpart 236.72—Patents, Data, and Copyright

236.7200 Scope.

This subpart sets forth policies, instructions, and contract clauses pertaining to patents, data, and copyrights unique to the procurement of construction and architect-engineer services. The provisions of FAR Part 27 as they relate to supplies are applicable when the procurement is of construction materials or supplies as such, as distinguished from construction as defined in FAR 36.102. Similarly, the provisions of FAR Part 27 as they relate to research and development apply when one of the purposes of the procurement is experimental, developmental or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction. When the proposed contract calls for either (a) experimental, developmental, or research work, or (b) supplies and materials, in addition to either construction or architect-engineer work, the pertinent provisions of FAR Part 27 shall be added to the contract pursuant to instructions contained in this subpart. In such cases, the contract shall indicate clearly which of the clauses apply only to the experimental, developmental, or research work, or to the supplies and materials being procured, and which apply only to the construction or architect-engineer work.

236.7201 Authorization and consent.

The Authorization and Consent clause shall be included in all contracts for construction materials or supplies and in all construction contracts, except when both complete performance and delivery (if any) are to be accomplished outside the United States, its possessions, or Puerto Rico. Normally, an authorization and consent clause shall not be included in an architect-engineer contract; however, the clause shall be included in architect-engineer contracts which require the delivery of models, samples, or other products, or which may require the use of patented devices or processes to test or perform any part of the work, under the architect-engineer contract, except where the contract is to be performed wholly outside the United States, its possessions, or Puerto Rico.

236.7202 Patent indemnification of Government by contractor.

236.7202-1 General.

A patent indemnity clause shall not be included in contracts calling solely for architect-engineer or experimental, developmental, or research work in the field of construction.

236.7202-2 Patent indemnity clauses in supply contracts.

The clauses required by FAR Part 27 relating to the procurement of supplies are applicable when the procurement is solely for construction materials or supplies.

236.7202-3 Patent indemnity clause in construction contracts.

(a) Except when performance is to be accomplished outside the United States, its possessions, and Puerto Rico, all contracts in excess of $25,000 calling for "construction" shall contain the clause at 252.236-7050(a).

(b) If it is determined that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods which are nonstandard, noncommercial or special, the contract may list them in the specifications and may expressly exclude them from the patent indemnification by inserting in the contract the clause at 252.236-7050(b).

236.7202-4 Waiver of indemnity by the Government.

Exemption of specific patents from the patent indemnity provisions of the clauses prescribed in 236.7202-2 and 236.7202-3(a) shall be made only upon the authorization of the Secretary concerned or his authorized representative.

236.7202-5 Notice and assistance.

Subject to the prohibitions of FAR Part 27, all contracts calling for construction work shall include the Notice and Assistance Regarding Patent and Copyright Infringement clause.

236.7202-6 Approval of restricted designs.

Specifications for construction should allow for maximum latitude in the use of various types of commercially available products, materials, equipment or processes which will meet objective

Government requirements. However, Government requirements may necessitate, or the architect-engineer may contemplate the use of structures, products, materials, equipment or processes which are available only from a sole source. In such event the architect-engineer should report to the contracting officer the items known to him to be sole source, and the reasons therefore, and advise the contracting officer of the extent to which such items are considered necessary to meet the Government's requirements. This will make possible timely planning and arrangements for the use of sole-source items, or where appropriate, consideration of alternate items. This procedure is not intended to restrict the use of patented or copyrighted items, but is meant to give the Government an opportunity to consider whether the specifications being drawn by the architect-engineer, in regard to any one item, are unnecessarily restricted, according to objective Government requirements, to a single sole item. The procedure is primarily for use in instances where the proposed design is expected to be conventional or standard and where the design may be used in subsequent procurements. For this purpose, the clause in 252.236–7019 may be inserted in architect-engineer contracts.

236.7203 Patent rights.

(a) Any construction or architect-engineer contract which calls for or can be expected to involve the design, for use in the construction or operation of a Government facility, or novel structures, machines, products, materials, processes, or equipment, and any contract having as one of its purposes the performance of experimental, developmental, or research work or test and evaluation studies involving such work should include a patent rights clause in accordance with the policy and guidance of FAR Part 27.

(b) Any construction or architect-engineer contract which calls for or can be expected to involve only standard types of construction to be built by previously developed equipment, methods, and processes shall not include a patent rights clause. The term "standard types of construction" as used herein means construction in which the distinctive features, if any, in all likelihood will amount to no more than:

(1) Variations in size, shape or capacity of otherwise structurally orthodox and conventionally acting single structural members or multi-member structural groupings; or

(2) Purely artistic or esthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, which may or may not be sufficiently novel or meritorious to qualify for protection under the design patent or copyright laws. Rights of the Government in and to any such distinctive design or copyright features, as distinguished from inventions of a mechanical or functional nature resulting from an architect-engineer contract or from a contract for construction involving architect-engineer services are provided for in the clause at 252.236–7052(b) entitled, "Drawings and Other Data to Become Property of Government."

(c) Construction and architect-engineer contracts which require the development of novel structures, machines, products, equipment, materials or processes shall include the clause in 252.236–7052(b) in addition to the appropriate "Patent Rights" clause prescribed by FAR Part 27.

236.7204 Patent royalties.

The provisions of FAR Part 27, Concerning Patent Royalties are applicable to contracts for construction or construction supplies.

236.7205 Acquisition and use of plans, specifications and drawings.

236.7205–1 Architectural designs and data clauses for architect-engineer or construction contracts.

(a) *Plans and specifications and as-built drawings.*

(1) Except as provided in (a) (2) below, insert the "Government Rights (Unlimited)" clause in 252.236–7052(a) in contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(2) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, esthetic or other special reasons the Government does not want duplicated by anyone else, the Government may desire to acquire exclusive control of the data pertaining to such design. In those cases only where the contracting officer determines for the foregoing reasons that it is desirable to maintain exclusive control over the design and data, the "Drawings and Other Data to Become Property of Government" clause shall be used. If the contract is for architect-engineer services, the "Government Rights (Unlimited)" clause at 252.236–7052(a) shall be deleted and the clause at 252.236–7052(b) substituted therefor. If the contract is for construction involving architect-engineer services, the clause in 252.236–7052(b) shall be included.

(b) *Shop drawings for construction.* In procuring shop drawings for construction, the Govenment shall obtain the unlimited rught to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in contracts calling for delivery of such drawings, insert the clause in 252.236–7051.

236.7205–2 Data clauses for construction supplies and research and development.

The provisions of FAR Part 27, relating to the acquisition of data and rights therein in connection with the procurement of supplies and materials and research and development are applicable where the procurement is confined to either construction supplies and materials or experimental, developmental, or research work, or both. In some circumstances the right to use such data, including drawings, may be limited in accordance with appropriate paragraphs of FAR Part 27.

236.7205–3 Mixed contracts.

Where the proposed contract calls for either (a) experimental, developmental, or research work, (b) supplies and materials, or (c) both, in addition to either construction or architect-engineer work, the pertinent clauses prescribed by FAR Part 27, shall be included in the contract, in addition to the appropriate clause or clauses prescribed by 236.7205–1. In such cases, the contract shall indicate clearly that the clauses prescribed by FAR Part 27, apply only to the experimental, developmental, or research work, or only to the supplies and materials being procured, or to both, and that the appropriate clause or clauses prescribed by 236.7205–1 apply only to the construction or archtect-engineer work.

PART 237—SERVICE CONTRACTING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 237.1—Service Contracts-General

237.104 Personal services contracts.

(b) Also see 237.104(S–70)(b) for additional authority required by Defense activities for use of 5 U.S.C. 3109.

(S–70) Procurement of the personal services of experts or consultants.

(a) *Scope.* This subsection sets forth policy and procedures for the procurement by contract, pursuant to 5 U.S.C. 3109, of the personal services of

individual experts or consultants (including stenographic reporting services) from individuals and from firms, regardless of the terms of contract arrangements or whether with an individual expert or consultant or a firm employing such individuals. This subsection does not govern employment of individual experts or consultants by excepted appointment: the requirements for such employment are set forth in the Federal Personnel Manual, Chapter 304, "Employment of Experts and Consultants" and the regulations of the respective Departments. In addition, this subsection does not govern policy and procedures for advisory committees and their membership; the requirements for advisory committees are set forth in OMB Circular A–63, "Review of Federal Advisory Committees". Expert or consultant services as used in this subsection involve personal services contracts issued pursuant to 5 U.S.C. 3109 and may also involve "consulting" services subject to FAR 37.2 and 237.270 of this supplement.

(b) *Statutory authority.*

(1) Authority for the procurement by contract of the personal services of experts and consultants is found in 5 U.S.C. 3109, as implemented by annual appropriation acts or by other legislation. Most contracts for expert or consultant services are executed by the Departments pursuant to the authority contained in the General Provisions of the Annual Department of Defense Appropriation Act.

(i) 5 U.S.C. 3109 provides:

(a) For the purpose of this section—

(1) "agency" has the meaning given it by section 5721 of this title; and

(2) "appropriation" includes funds made available by statute under section 849 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) the provisions of this title governing appointment in the competitive service;

(2) Chapter 51 and subchapter III of chapter 53 of this title; and

(3) Section 5 of title 41, except in the case of stenographic reporting services by an organization. However, an agency subject to chapter 51 of subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized the procurement of the services.

(ii) Typical of the language which is enacted each year in the General Provisions of the Department of Defense Appropriation Act implementing 5 U.S.C. 3109 in Section 703 of the Act of December 21, 1979 (Pub. L. 96–154; 93 Stat. 1139), which provides:

During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with Section 3109 of Title 5, United States Code, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty stations and return as may be authorized by law: Provided, that such contracts may be renewed annually.

(2) Contracts with individuals or firms for the personal services of experts or consultants are usually negotiated, normally under the authority of 10 U.S.C. 2304(a)(4), as implemented by FAR 15–204.

(c) *Definition of experts and consultants.*

(1) The terms "experts" and "consultants" shall include those persons who are exceptionally qualified, by education or by experience, in a particular field to perform some specialized service. For the purpose of this subsection, an "expert" is an individual who is a recognized professional or highly skilled practitioner normally used to perform an operation function rather than to provide advisory or consulting services. A "consultant" is an individual who primarily serves in an advisory capacity in a particular field, rather than in the performance or supervision of an operating function (or functions). Depending on how they are used individuals may be either experts or consultants.

(2) Stenographic reporting services by individuals is included in the term "expert or consultant services" for purposes of procurement by contract under this subsection.

(d) *Policy.* The proper use of experts and consultants is a legitimate and economical way to improve Government services and operations. Activities of the Departments can be strengthened by utilizing the highly specialized knowledge and skills of such individuals. However, the personal services of experts and consultants shall not be used to perform duties which can be performed by regular employees, to fill positions which call for full-time continuing employees, or to circumvent competitive civil service procedures and Classification Act pay limits.

(e) *Limitations on use of expert or consultant authority.* Obtaining the personal services of individual experts or consultants by contract, pursuant to 5 U.S.C. 3109, is subject to the following limitations:

(1) The employment of individual experts or consultants shall be by contract only when the services required cannot be obtained by excepted appointment in accordance with personnel regulations.

(2) The nature of the duties to be performed must be temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no contract shall be entered into for longer than one year at a time.

(3) Procurement of the services must be advantageous to the national defense.

(4) Such services shall not be used when existing facilities of the particular Department are adequate or when personnel with the necessary skills can be obtained through normal civil service appointment procedures.

(5) Procurement of such services by contract shall not be used as a means of circumventing manpower space ceilings.

(6) Preference shall not be given to former Government employees per se.

(7) Consultant services shall not under any circumstances be used to specifically aid in influencing or enacting legislation.

(f) *Contracts crossing fiscal years.* Because the implementing appropriation act authorizing the procurement of expert and consultant services expires and must be renewed each fiscal year—even in cases where funds could properly be obligated to a contract calling for services in parts of two fiscal years—unless it calls for an end product which cannot feasibly be subdivided for separate performances in each fiscal year. No contract shall cross fiscal years unless authorized to do so in accordance with 237.104(S–70)(g). This paragraph shall apply equally to personal services contracts with individuals and with firms.

(g) *Authorization to enter into contracts: "Determinations and findings".*

(1) All contracts to be entered into pursuant to 5 U.S.C. 3109 for the personal services of experts or consultants must be authorized in writing by a Determinations and Findings (D&F) signed in accordance with Departmental regulations. Ordinarily each contract shall be separately authorized. However, when the determinations can appropriately be made with respect to a class of

contracts, the authorizing official may issue blanket authority for that class of contracts by signing a class D&F.

(2) Each D&F shall authorize a contract or class of contracts to be entered into during a stated period not to exceed one year, which ordinarily shall be within one fiscal year. A D&F may be issued during one fiscal year to authorize a contract or class of contracts to be entered into during the following fiscal year, provided the determinations are reasonably expected to hold true at the time the contract or contracts are to be entered into and provided that either the D&F is made contingent upon enactment of implementing legislation or implementing legislation of the next fiscal year has already been enacted.

(3) Each D&F shall contain the following:

(i) A brief description of the services authorized to be procured, including for individual D&Fs the estimated time of performance and the estimated cost;

(ii) A determination by the authorizing official with respect to the particular contract or class of contracts that:

(A) The duties to be performed are of a temporary or intermittent nature;

(B) Procurement of the services is advantageous to the national defense;

(C) The existing facilities of his Department are inadequate to furnish the services;

(D) It is not feasible to obtain personnel with the necessary skills through normal civil service appointment procedures;

(E) A nonpersonal services contract is not practicable; and,

(F) Any other determination required by applicable statutes has been made;

(iii) A citation of statutory authority, namely 5 U.S.C. 3109 and (except where (g)(3)(vii) below, is applicable) appropriate implementing legislation; the latter may be the current annual Department of Defense Appropriation Act, a current temporary Department of Defense appropriation enactment, or other appropriate legislation;

(iv) A grant of authority to procure the required services and, if desired, to extend the contract;

(v) The condition that the necessary funds must be available for obligation;

(vi) The condition that no contract may be entered into for longer than one year at a time;

(vii) An added condition, in cases where the D&F covers a period for which implementing legislation has not yet been enacted, that at the time the procurement is entered into there must be in effect a law authorizing the procurement pursuant to 5 U.S.C. 3109 and requiring no further Secretarial action than that required by the implementing legislation current at the time the D&F is issued;

(viii) Where appropriate, authorization to contract across fiscal years (see 237.104(S–70)(f)), and in such cases, where the implementing authority cited is annual legislation, an added condition that in the event the implementing authority is not renewed for the following fiscal year the contracting officer shall terminate the contract in accordance with its terms; and

(ix) The date of expiration of the authority granted by the D&F.

(h) *Requests for determinations and findings.* Requests for authorization to procure the personal services of experts or consultants, pursuant to 5 U.S.C. 3109, whether from individuals or from firms, must contain statements required by Departmental regulations to support the determinations. The responsibilities of the various organizational levels in the Departments with respect to requests for D&Fs are also set forth in Departmental regulations.

(i) *Contracts with individual experts or consultants.*

(1) *Method and amount of payment.* The contract may provide for compensation at rate for time actually worked (e.g., amount per day, per week, per month, etc.) or it may provide for performance of a specific task at a fixed price, or it may provide for nominal compensation. The amount or rate of payment will be determined on a case-by-case basis, taking into account (among any other relevant factors) the relative importance of the duties to be performed, the stature of the individual in his specialized field, comparable pay positions under the Classification Act or other Federal pay systems, rates paid by private employers, and rates previously paid other experts or consultants for similar work. Compensation for personal services is subject to the limitation in 237.104(S–70)(1).

(2) *Benefits.* When an individual expert or consultant is furnishing personal services and the contract provides for a regularly scheduled tour of duty during each administrative work week, the contract shall also provide that the contractor will be accorded the same paid annual and sick leave benefits as those to which he would be entitled under Departmental personnel regulations if he were employed by excepted appointment during the period of the contract. The contract may also provide for similar benefits (e.g., paid holidays, paid administrative leave), but these shall in no event exceed those to which the individual would be entitled under excepted appointment. No benefits shall be accorded the contractor which are not specifically provided for in the written contract. The contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

(3) *Taxes.* When the individual is to render personal services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment), and federal income witholding tax. It may also be necessary to report or withhold state income tax under 5 U.S.C. 84b. The contracting officer shall take appropriate steps in coordination with the cognizant civilian personnel office to have deductions and reports made where required by law.

(4) *Conflict of interest.* The contracting officer shall ensure that individual experts or consultants who are to render personal services under contract familiarize themselves with Executive Order 11222, May 8, 1965, "Prescribing Standards of Ethical Conduct for Government Officers and Employees", 30 FR 6469 (1965), and that they comply with it and with Departmental regulations implementing it.

(5) *Administrative treatments.* Individual experts or consultants who are to render personal services under contract are charged against personnel ceilings in the same way as experts and consultants employed by excepted appointment. Also, the cognizant civilian personnel office must maintain certain records on individual experts and consultants who render personal services. Therefore, the contracting officer shall effect necessary coordination with the coginzant civilian personnel office before award of a contract for personal services and may also designate the appropriate personnel office as his representative for the purpose of administering contract provisions relating to benefits, obtaining necessary data from contractor for tax withholding purposes, and administering applicable conflict of interest provisions.

(j) *Contracts with firms for expert or consultant services.* When contracts with firms for the services of specified individual experts or consultants are considered to be personal services contracts (see FAR 37.104), payment for the services of each expert or consultant is subject to the guidelines in 237.104(S–70)(i) and the limitations in 237.104(S–70)(e). Contracts with firms for consulting or other management support services, where those services are nonpersonal in nature, are not entered into pursuant to the authority of this subsection and should not specifically address individual compensation by the firm or with any other rights or

obligations as between the firm and these individuals, but should deal only with rights and obligations as between the Government and the firm.

(k) *Contracts for stenographic reporting services.*

(1) Stenographic reporting services normally are provided by regular civilian employees appointed under the usual civil service procedures. However, under certain circumstances these services may be procured by contract from individuals or firms (pursuant to 5 U.S.C. 3109, if personal) as where there are variable requirements or insufficient qualified personnel, and necessity or economy to the Government demand.

(2) Such contracts shall normally be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary materials (typewriter, paper, bindings, etc.).

(3) Contracts for stenographic reporting services may be considered to be for nonpersonal services, and therefore not subject to the provisions of this subsection, *provided* that:

(i) They are written in accordance with (b) above;

(ii) They do not involve ordinary, day-to-day stenographic or secretarial services;

(iii) They do not involve direct or indirect Government supervision of contractor employees; and

(iv) They involve temporary or intermittent requirements.

(l) *Limitation on payment for personal services.*

(1) When the personal services of individual experts or consultants are being procured pursuant to 5 U.S.C. 3109, payment of the services of each expert or consultants shall not exceed the highest rate fixed by the Classification Act pay schedule for grade GS–15-or, in the case of professional engineering services primarily involving research and development or professional services involving physical or natural sciences or medicine, the highest rate payable to a GS–18. In addition, the contract may provide for such per diem and travel expenses as would be authorized for a Government employee, including actual transportation and per diem in lieu of subsistence while the expert or consultant is traveling between his home or place of business and his official duty station.

(2) If a fixed-price contract which is predominantly for nonpersonal services also includes personal services, the requirements of (a) above are applicable to the personal services if it is feasible and practicable to price them separately.

(m) *Modification of contracts.* When supplemental agreements or change orders are required which substantially change the basis upon which the D&F was made, such as to revise substantially the scope of work or time limitations, or to apply additional funds, authorization shall be requested in the same way as authorization to procure the services by contract in the first place.

(n) *Extension of contracts.*

(1) A contract may provide for extension for a maximum of one year each time-by written notification to the contractor from the contracting officer.

(2) A contract shall not be extened unless either a new D&F has been issued, or the D&F authorizing the original contract (or a prior extension) has not yet expired and specifically authorizes the extension, or an unexpired class D&F covering that type of contract is in effect, (also see, 237.104(S–70)(f)).

(3) Extension of a contract legally creates a new contract; therefore, extension of a contract is improper unless all the requirements and limitations of this subsection have been complied with.

237.106 Funding and term of service contracts.

Categories of service contracts funded by annual appropriations that are authorized to extend beyond the end of the fiscal year of the annual appropriation used are as follows:

(a) A one year contract for maintenance of tools or facilities if authorized under the current Department of Defense Appropriations Act;

(b) A multi-year service contract;

(c) A one-year requirements or indefinite quantity contract, as defined in FAR 16.503 and FAR 16.504, in which any specified minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (but see FAR 32.705–1(b)); or

(d) A contract for the personal services of experts or consultants entered into in accordance with 237.104(S–70), or a contract for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year.

Subpart 237.2—Consulting Services

237.204 Policy.

(S–70) For personal services contracts for or with individual consultants the requirements of 237.104(S–70) apply.

(S–71) For proposed contracts to be awarded as a result of an unsolicited proposal, the limitations of 215.507(b)(S–70) apply.

237.205 Management controls.

237.205–70 Responsibilities of the contracting officer.

(a) The contracting officer is also responsible, in coordination with the requiring/sponsoring activitiy, for determining whether a proposed contract requirement regardless of dollar value, is for services as defined in 237.270 of this document. The contracting officer's determination shall be final. In this regard the contracting officer, in coordination with the sponsor and the supporting comptroller, should assure that funds provided are proper to the category of service required.

(b) Prior to issuing any solicitation for the services covered by 237.270, the contracting officer shall assure that the applicable provisions of this part have been adhered to and that documentation required is complete and included in the official contract file.

(c) The contracting officer shall assure that the following written evaluations are included in each contract file (these evaluations shall normally be prepared by the sponsoring/requiring activity), when services as defined in FAR 37.201 or 237.270 herein are acquired:

(1) An evaluation discussing the timeliness and quality of performance and the contractor's compliance with the statement of work and terms of the contract, and;

(2) At contract completion, an evaluation documenting the use made of the services or products obtained and their value to the sponsoring organization.

(d) The contracting officer is responsible for timely and accurate reporting of contract actions for services described in this subpart. Contract awards for consulting services are reported on DD Form 350 under Item B9 as well in Item B8A.

237.205–71 Departmental procedures.

(a) Departments shall ensure that for all contract actions for services defined in FAR 37.201 and 237.270 of this supplement:

(1) Each requirement is appropriate; fully justified in writing; does not unnecessarily duplicate any previously performed work or services; and is approved in advance in accordance with (b) below and Departmental procedures.

(2) Work statements are specific and complete to the maximum extent practicable, and specify a fixed period

of performance of the services to be provided;

(3) Contracts are competitively awarded to the maximum extent practicable to ensure that prices are reasonable (see 215.507(b)(S–70) with regard to proposed contracts resulting from unsolicited proposals);

(4) Appropriate disclosure is required of, and warning provisions are given to, prospective contractors to avoid conflicts of interest;

(5) Contracts are properly administered and monitored to ensure that performance is satisfactory;

(6) Contract reports prominently display on the cover of the report the following information:

(i) Name and business address of the contractor;

(ii) Contract number;

(iii) Contract dollar amount;

(iv) A statement as to whether the contract was competitively or non-competitively awarded; and,

(v) Name of the sponsoring individual in the agency and his/her office identification and location; and

(7) The sponsoring element, at contract completion, documents the use made of the services or products obtained and their value to the sponsoring organization.

(b) Departments shall further ensure that the approval of the need for the use of the services defined in FAR 37.201 and 237.270 is based on the policy and guidelines contained in this section, and that, for actions greater than $50,000 the approval authority is not below the SES manager or General or Flag Officer level, except when 0–6 personnel are filling such command or management positions or have subordinate SES personnel.

237.270 Studies and analyses and professional and management services.

(a) *Definitions.*

"Professional and Management Services" means services of a "white collar" professional nature, e.g., preparation of reports or documentation, software development, development of logistics support plans, and other similar tasks, in support of management and control of programs.

"Studies and Analyses" means the broad class of intellectual activities characterized by the application of the tools of analysis to address a wide range of problems. Studies are analytic examinations used to support DoD decision-makers and activities. Studies contribute to greater understanding of relevant issues and provide one means for addressing those matters facing the Department of Defense. Studies and support of studies include development of data bases, models, and methodologies. Results of studies are documented products including oral and written briefings, formal reports, and computer products. Excluded from the scope of this definition are the following categories:

(i) Basic and applied research, development, and technology demonstrations;

(ii) Architect and engineering studies related to construction projects;

(iii) Value engineering;

(iv) System fabrication;

(v) System test;

(vi) Operational test and evaluation;

(vii) Technology development;

(viii) Clinical medicine;

(ix) Project/program planning or monitoring;

(x) Automatic data processing services;

(xi) National Foreign Intelligence Program;

(xii) General Defense Intelligence Program.

(b) Contract awards for these services are generally reported on the DD Form 350 under FSC Code R400 or R500 series. Management and support services for research and development activities should also be recorded appropriately under these codes.

(c) The management controls stated at FAR 37.205 and 237.205–70 herein also apply to these services.

Subpart 237.3—Dismantling, Demolition, or Removal of Improvements

237.302 Bonds or other security.

If the contracting officer determines that it is in the best interest of the Government to require the contractor to furnish a performance bond or other security, the "Bid Guarantee" clause at FAR 252.228–1 and the "Bonds or Other Security" provision at 252.228–7004 shall be included in the solicitation.

237.304 Contract clauses.

(S–70) *Statement of work.* The contracting officer shall insert the clause at 252.237–7000, "Statement of Work," in solicitations and contracts for dismantling, demolition or removal of improvements in order to specify the property to be dismantled, demolished or removed, the dates of commencement and completion of the work, requirements for conditioning, handling and storing property retained by the Government, and applicable bond requirements.

(S–71) *Composition of contractor.* The contracting officer shall insert the clause at 252.236–7000, "Composition of Contractor," in solicitations and contracts for dismantling, demolition or removal of improvements to specify that if the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable for compliance with all provisions of the contract.

(S–72) *Misplaced material:* The contracting officer shall insert the clause at 252.236–7006, "Misplaced Material," in solicitations and contracts for dismantling, demolition or removal of improvements when the contract involves work on or near navigable waterways in order to set forth the contractor's responsibility for misplaced material.

(S–73) *Identification of employees.* The contracting officer shall insert the clause at 252.236–7007, "Identification of Employees," in solicitations and contracts for dismantling, demolition or removal of improvements when necessary for security or other reasons to require the contractor to furnish employee identification.

Subpart 237.70—Engineering and Technical Services

237.7001 Definitions.

"Contractor engineering and technical services" means the furnishing of advice, instruction, and training to Department of Defense personnel, by commercial or industrial companies, in the installation, operation, and maintenance of Department of Defense weapons, equipment, and systems. This includes transmitting the knowledge necessary to develop among those Department of Defense personnel the technical skill required for installing, maintaining and operating such equipment in a high state of military readiness.

(a) *Contract Field Services (CFS)* means those engineering and technical services provided on site at defense locations by the trained and qualified engineers and technicians of commercial or industrial companies.

(b) *Contract Plant Services (CPS)* means those engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components, in the manufacturer's own plants and facilities.

(3) *Field Service Representatives* means those employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

237.7002 Contracting for engineering and technical services.

(a) *General.* Every contract calling for engineering and technical services, whether it calls for only those services or whether it calls for those services in connection with the furnishing of an end item, shall show those services in connection with the furnishing of an end item, shall show those services as a separate and identifiable line item separately priced. The contract shall contain definitive specifications for the services and shall show the man-months involved.

(b) *Personal services.* Notwithstanding FAR 237.104, in the event unusual requirements involving essential mission accomplishment necessitate the procurement of contract field services (CFS) which appear to be personal services, those services may be obtained by contract for an interim period if that particular procurement is specifically authorized by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics).

Subpart 237.71—Mortuary Services

237.7100 Scope.

Acquisition procedures peculiar to contracts for mortuary services (the care of remains) of military personnel within the United States are set forth in this subpart. These procedures may be used as guidance in areas outside the United States in procuring such services for both deceased military and civilian personnel.

237.7101 Method of acquisition.

(a) *Acquisitions by requirements type contract.* By agreement among the military activities involved, one military activity in each geographical area shall contract for the estimated requirements for the care of remains for all activities in the area. Acquisition shall be by use of a requirements type contract (see FAR 16.503) when the estimated annual requirements for the individual activity concerned, or for the activities using one contract, are 10 or more. Except where negotiation is authorized under FAR Subpart 15.2, such contracts shall be formally advertised.

(b) *Acquisitions by purchase order.* Where no contract exists, such services shall be obtained by use of DD Form 1155, "Order for Supplies and Services/Request for Quotations," and DD Form 1155r, "General Provisions" (see FAR 13.5), inserting in the Schedule the clauses prescribed in 213.505–2.

(c) *Solicitation planning.* Bids or offers for annual requirements for the next fiscal year shall be solicited in sufficient time to permit award prior to the beginning of the fiscal year.

(d) *Area of performance.* Each contract for care of remains (except Port of Entry Requirements contracts) shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or other features as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

(e) *Distribution of contracts.* In addition to normal contract distribution, three copies of each contract shall be furnished to each activity authorized to use it, and two copies to each of the following:

(1) HQDA (DAAG–PED), Alexandria, VA 22331.

(2) Bureau of Medicine and Surger, Department of the Navy (MED 3134), 23nd and E Streets, NW., Washington, DC 20372.

(3) Headquarters, AFMPC/MPCCM, Randolph AFB, TX 78150.

237.7102 Schedule formats.

(a) *Schedule format for other than port, of entry requirements contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations and contracts for other than port of entry requirements. The estimated quantities are only illustrative.

Item No.	Supplies, services, and [illegible]	Estimated quantity	Unit	Unit price	Amount
0001	For a [illegible] size casket, supplies and services in accordance with specifications	10.	Each.		
[illegible]	Shipping [illegible] conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	2.	Each.		
[illegible]	For an oversized casket, supplies and [illegible] services in accordance with specifications.	4.	Each.		
[illegible]	Shipping [illegible] conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	1.	Each.		
0005	For transportation of remains, in accordance with specifications and as provided for in paragraphs (b) and (c) of the "Area of Performance" Clause of the Contract.	200 [illegible] miles.	[illegible] mile.)		

Additional items may be added (in numerical sequence), as required.

(b) *Schedule format for port of entry requirements contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations and contents for port of entry requirements. The estimated quantities are only illustrative.

Item No.	Supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
0001	For standard size casket, supplies and services in accordance with specifications.	[illegible]	Each	.....	.....
0002	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	17	Each	.....	.....
0003	For an oversized casket, supplies and services in accordance with specifications.	5	Each	.....	.....
0004	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	3	Each	.....	.....
0005	For inspection and/or reprocessing of casketed remains prior to delivery to selected common carrier.	[illegible]	Each	.....	.....
0006	For transportation of remains between _____ and processing facility.	31	(Loaded trip each.)	.....	.....
0007	For transportation of remains between processing facility and selected common carrier or National Cemetery as indicated below:	.....	(Loaded trip each.)	.....	.....
	X	[illegible]		.....	.....
	Y	10		.....	.....
	Z	[illegible]		.....	.....
0008	For transportation of remains between processing facility and any point within 100 miles as designated by the contracting officer.	.....		.....	.....

Additional items may be added (in numerical sequence), as required.

237.7103 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 252.237–7100, Award to Single Bidder, in formally advertised solicitations for mortuary services contracts.

(b) The contracting officer shall insert the provision at 252.237–7101, Award to Single Offeror, in negotiated solicitations for mortuary services contracts.

(c) The contracting officer shall insert the following clauses in mortuary services solicitations and contracts except those for port of entry requirements:

(1) 252.237–7102, Requirements;

(2) 252.237–7103, Area of Performance;

(3) 252.237–7104, Specifications;

(4) 252.237–7105, Using Activities;

(5) 252.237–7106, Delivery Orders and Invoices;

(6) 252.237–7107, Delivery and Performance;

(7) 252.237–7108, Subcontracting;

(8) 252.237–7109, Additional Default Provision;

(9) 252.237–7110, Group Interment;

(10) 252.237–7111, Professional Requirements;

(11) 252.237–7112, Facility Requirements;

(12) 252.237–7113, Preparation History.

(d) Except for the "Area of Performance" and the "Facility Requirements" clauses, the contracting officer shall insert all of the clauses in (c) above, as well as the Government-Furnished Property (Short Form) clause at FAR 52.245–4 in port of entry solicitations and contracts for mortuary services.

Subpart 237.72—Laundry and Dry Cleaning Services

237.7200 Scope.

This subpart contains instructions for the preparation and use of contracts for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7201 General policy.

Except for laundry and dry cleaning services acquired under small purchase procedures, the normal method of contracting for laundry and dry cleaning services shall be by formal advertising.

237.7202 Selection of count of articles or weight (unsorted or presorted) basis.

Laundry services in support of hospitals may be acquired on the basis of (a) a count of articles or (b) by bulk weight. Acquisitions by weight may be on either a pre-sorted (bag type) or unsorted (simple bulk weight) basis. The basis of acquisition shall be at the discretion of the requiring activity in conjunction with advice of the contracting officer based on consideration of such factors as price, administrative costs, aseptic requirements, risk of contamination/cross-contamination, volume and nature of articles to be serviced. All other laundry and dry cleaning services shall be acquired on a count of articles basis.

237.7203 Schedule format.

Set forth below are examples of schedule formats suitable for use in solicitations. The estimated quantities are only illustrative.

(a) Count of articles.

Item No.		Item	Estimated quantity for contract period	Unit	Unit price	Estimated amount
		LOT I *Laundering*				
0001	Pillowcase (P)		100,000	Each		
0002	Nurses Uniform, with belt	(S) (P) (OH)*	25,000	Each		
0003	Slippers		50,000	Pair		

Item No.	Item	Estimated quantity for contract period	Unit	Unit price	Estimated amount
	LOT II *Dry Cleaning*				
0004	Curtains	500	Each		
0005	Trousers (P)	5,000	Each		
	LOT III** *Individual Laundry*				
0006	Individual bundle (26 piece)	1,000	Each		
0007	Individual bundle (13 piece)	1,000	Each		
***					

* (S)—Starched, (P)—Pressed, (OH)—Item delivered on hanger (hanger included in Unit Price), and ( ) Other instructions as required.
** Include in contracts containing the Individual Laundry clause at 252.237-7206.
*** See Subpart 204.71 for Line Item Numbering Procedures.

(b) Bulk weight (unsorted).

Item No.	Item	Estimated quantity of serviced laundry for contract period	Unit	Unit price	Estimated amount
0001	Laundry services for the items listed below *	100,000	Lb		
	*The following articles are to be serviced. Separate prices are not to be submitted for these articles:				
	Towels, hand	40,000	Lb	NSP	
	Sheets	40,000	Lb	NSP	
	Wash cloths	20,000	Lb	NSP	

(c) Bulk weight (bag type).

Item No	Item	Estimated quantity of serviced laundry for contract period	Unit	Unit price	Estimated amount
0001	BAG TYPE I (Patient items; sheets, pillow cases.)	200,000	Lb		
0002	BAG TYPE II (Terry Type: Towels, wash cloths.)	100,000	Lb		
0003	BAG TYPE III (Surgical items: masks, caps, shirts.)	80,000	Lb		
0004	BAG TYPE IV CONTAMINATED (May include any or all items in above listed bag types.)	75,000	Lb		

237.7204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a provision similar to that set forth at 252.237-7200, Instructions to Bidders (Count of Articles), in solicitations for laundry and dry cleaning services when such services are to be provided on a count of articles basis.

(b) The contracting officer shall insert a provision similar to that set forth at 252.237-7201, Instructions to Bidders (Bulk Weight), in solicitations for laundry services when such services are to be provided on a bulk weight basis.

(c)(1) The contracting officer shall insert the clause at 252.237-7202, Count of Articles, in solicitations and contracts for laundry and dry cleaning services to be provided on a count of articles basis.

(2) When laundry and dry cleaning services are to be provided to individual personnel on a count of articles basic, the contracting officer shall use the clause with its Alternate I.

(d) The contracting officer shall insert the clause at 252.237-7203, Loss or Damage (Count of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count of articles basis.

(e) The contracting officer shall insert the following clauses, substantially the same as the clauses prescribed below, in solicitations and contracts for laundry services to be provided on a bulk weight basis:

(1) 252.237-7204, Weight of Articles (Bag Type), for bag type laundry;

(2) 252.237-7205, Weight of Articles (Unsorted), for unsorted laundry;

(3) 252.237-7206, Loss or Damage (Weight of Articles);

(4) 252.237-7207, Maximum Weight Loss.

(f) The contracting officer shall insert the clause at 252.237-7208, Individual Laundry, in solicitations and contracts for laundry services to be provided to individual personnel.

(g) The contracting officer shall insert the clause at 252.237-7209, Special Definitions of Government Property, in solicitations and contracts for laundry and dry cleaning services.

Subpart 237.73—Educational Service Agreements

237.7300 Scope.

This subpart prescribes acquisition procedures for agreements with established schools, colleges, or universities, or other educational institutions for educational services using the institution's facilities, standard courses, and prevailing tuition and fees applicable to the general public. As used in the Part, "facilities" does not include the institution's dining rooms or dormitories. Also, as used in the subpart, "fees" does not include charges for meals or lodging. Tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program, are not included under this subpart. Except in connection with the detailing of commissioned officers to law schools pursuant to 10 U.S.C. 2004, no agreement

shall be made under this subpart which will provide for, or results in, payments of Government funds for tuition or other expenses in connection with training in any legal profession.

237.7301 Educational service agreement.

An educational service agreement is one which calls for educational services to be provided under the following conditions:

(a) The Government pays all normal tuition and fees for educational services provided to a student by the contractor under its regularly established schedule of tuition and fees applicable to all students generally; and

(b) Enrollment is at the contrator's institution under his regular rules and in courses and curricula which the institution offers to all students meeting the contractor's admission requirements, with no special courses or special fees applicable to Government students.

237.7302 Method of acquisition.

(a) An educational service agreement is not a contract, but is a continuing offer which may be accepted by the Government by the placing of requests for services. Each request for services results in a separate contract.

(b) The terms of the educational service agreement provide that requests for services are negotiated under the authority of 10 U.S.C. 2304(a)(5) when the contractor is in the United States, its possessions, or Puerto Rico, or 10 U.S.C. 2304(a)(6) if elsewhere.

237.7303 Duration.

Educational service agreements shall be for an indefinite duration and shall remain in effect until terminated. However, the issuing activity shall establish procedures to review each educational service agreement at least once each year (with due regard to the institution's academic calendar and at least 30 days before the beginning of a term) for the purpose of incorporating changes to reflect requirements of any Statute, Executive Order, or this regulation. If the parties do not agree on such required changes, the contracting officer shall terminate the agreement in accordance with its terms.

237.7304 Format and clauses for educational service agreements.

Educational service agreements authorized by this Subpart shall be on locally reproduced forms consisting of a cover page, general provisions, schedule, and signature page, in the format set forth in this paragraph. The contracting officer may add to the schedule any other provisions necessary to describe the requirements of the Department, as long as such provisions do not contradict any of the general provisions or schedule provisions prescribed by this paragraph or otherwise alter the concept of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

(a) *Cover page.* The cover page shall contain the following provisions and necessary information to complete the provisions.

Educational Service Agreement

Agreement No. ——.

1. This agreement entered into on the — day of ————, 19—, between the United States of America, hereinafter called the "Government", represented by the Contracting Officer, and (name of institution), an educational institution located at ———— (City) ———— (State), herein after called the "Contractor", is for educational services to be provided to Government personnel at the Contractor's institution. The parties intend that the Contractor shall provide instruction with standard offerings of courses available to the public and shall receive payment for services rendered in accordance with the Contractor's schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

2. This agreement may be amended only by mutual consent of the parties.

3. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by Statutes, Executive Orders, the Federal Acquisition Regulation, or the DoD FAR Supplement; such changes will be evidenced by a modification to this agreement or by a superseding agreement. If the parties fail to agree upon any such change, the Government will terminate this agreement.

4. This agreement shall commence on the effective date above and shall continue until terminated.

5. The estimated annual cost hereunder is $————; however, this estimate is for administrative purposes only and shall not impose any obligation on the Government to request any services or to make any payment except as provided herein.

6. Requests for services hereunder are negotiated under the authority of 10 U.S.C 2304(a)(5) when the contractor is in the United States, its possessions, or Puerto Rico, or (6) if elsewhere.

7. Advance payments are authorized by 31 U.S.C. 529i.

8. Submit invoices to: ———— (Name and Address of Activity).

9. This agreement consists of this cover page, a Schedule of ———— (number of pages) pages, General Provisions of ———— (number of pages) pages, and a Signature Page.

(b) *Schedule provisions.*

Schedule Provisions

1. *Ordering procedures and services to be provided.*

(a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision thereof.

(b) The Government will request educational services under this agreement by delivery to the Contractor of (insert type of request that will be used; e.g., delivery order, official Government order, or other written communication) containing the number of this agreement and designating as students at the Contractor's institution under this agreement one or more Government-selected persons who have already been accepted for admission under the Contractor's usual standards of admission.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as regular non-Government students (hereinafter called civilian students).

(d) Upon enrolling each student pursuant to this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees:

(i) Determine the resident or nonresident status of the student and notify the student and the contracting officer of such determination, and if there is an appeal of such determination, process the appeal in accordance with the Contractor's standard procedures and notify the appellant of the result; and

(ii) Make the above determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student pursuant to this agreement prior to the effective date of a request for such services in the form specified above.

2. *Change in curriculum.* The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course as offered by the Contractor without the Contractor's consent.

3. *Payment.*

(a) The Government shall pay the Contractor the regularly established tuition and fees which the Contractor charges civilian students pursuing the same or similar curricula, except for any tuition and fees which this agreement specifically excludes. The Contractor shall have the right to change any tuition and fees, provided that the Contractor publishes such revisions in a catalog or otherwise publicly announces such revisions and applies them uniformly to all students pursuing the same or similar curricula as Government students enrolled under this agreement. The Contractor shall provide the Contracting Officer notice of such changes prior to their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to Government students.

(c) If the Contractor regularly charges higher tuition and fees for students who are not residents of the state in which the Contractor is located, the Contractor may charge the Government such regularly established nonresident tuition and fees for those Government students who are in fact nonresidents. The Government shall not claim resident tuition and fees for any

student solely on the basis of his residing in the state as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees (which may include (i) penalty fees for late registration or change of course occasioned by action of the Government and (ii) mandatory health fees and health insurance charges) which relate directly to enrollment as a student and are a consequence of his being a student. The Contractor shall not charge the Government for permit fees, such as vehicle registration or parking fees, unless specifically authorized in the request placed hereunder. In addition to the above, the Contractor shall not make any charge under this agreement for any equipment, refundable deposits, or any items or services (such as computer time) related to student research. However, any flat rate charge applicable to all students registered for research and which appears in the Contractor's publicly announced fee schedule shall be chargeable under this agreement.

(e) Normally the Contractor shall not directly charge individual students for application fees or any other fee roperly chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor shall reimburse the student in full for any such fee when the Contractor receives payment therefor under this agreement.

(f) For each term in which the Contractor enrolls students under this agreement the Contractor shall submit —— copies of an invoice listing charges for each student separately. Contractors shall submit invoices within —— days after the start of the term it covers and shall include:

(i) Agreeement number and inclusive dates of the term to which the invoice applies;

(ii) Name of each student;

(iii) Schools which charge by credit hour shall list each course of each student;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school);

(v) Breakdown of charges for each student, identifying each element; e.g., Credit Hours: $———, Tuition: $———, Application Fee: $———, Labor Fee (Chem 300): $———, Contractor shall show the *total of fees for each student and grand total for all students listed on the invoice.*

(g) If unforeseen events require additional charges which are otherwise payable in accordance with the Contractor's published tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. In either case the Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(h) The Contractor shall apply to subsequent invoices submitted under this agreement any credits resulting from withdrawal of students, or from any other cause in accordance with its standard procedures. Such credits should appear on the first invoice submitted after the action resulting in such credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of students.*

(a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government shall furnish —— copies of such orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If such withdrawal occurs prior to the end of a term, the Government shall pay any tuition and fees due for the current term in which the student may be enrolled, and the Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for civilian students in effect on the effective date of such withdrawal.

(d) Withdrawal of students by the Government shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

5. *Transcripts.* Within a reasonable period of time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to such other address as the Contracting Officer may specify) one copy of an official transcript showing all work by the student at the Contractor's institution until such withdrawal or graduation.

6. *Student teaching.* Awarding of fellowships and assistantships by the Contractor to students attending school under this agreement is not anticipated. In the case of graduate students, however, should both the student and the Contractor deem it to be in the best interests of the student for him to assist in the teaching program of the institution, the Contractor may provide nominal compensation for such students' part-time service in accordance with the Contractor's established practices and procedures for other students of similar accomplishment in that department or field. Such compensation shall be applied as a credit against any invoices presented for payment for any period in which he performed the part-time teaching service.

7. *Termination of agreement.*

(a) Either party may terminate this agreement by giving thirty (30) days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the Contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students pursuant to Schedule Provision 4 shall not be considered a termination within the meaning of this provision.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

(c) *General provisions.*

General Provisions

1. *Definitions.* Insert the clause at FAR 52.202–1, Definitions, with the following additional paragraphs.

(d) The word "term" means the period of time into which the Contractor divides the academic year for purposes of instruction; this includes "semester," "trimester," "quarter," or any similar word the Contractor may use.

(e) The word "course" means a series of lectures or instructions, and/or laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401 or Surveying. Normally, student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(f) The word "curriculum" means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(g) The word "catalog" means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(h) The word "tuition" means the amount of money charged by an educational institution for instruction, not including fees as defined below.

(i) The word "fees" means those applicable charges directly related to enrollment in the Contractor's institution. This shall not include any permit charge (e.g., parking, vehicle registration or charges for services of a personal nature (e.g., food, housing, laundry) unless specifically called for in the request placed hereunder.

2. *Gratuities.* Insert the clause at FAR 52.203–3.

3. *Covenant against contingent fees.* Insert the clause at FAR 52.203–5.

4. *Officials not to benefit.* Insert the clause at FAR 52.203–1.

5. *Approval of contract.* Insert clause from FAR 52.204–1 in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

6. *Order of precedence.* Insert clause from FAR 52.215–18.

7. *Conflicts between agreement and catalog.* Insert the following clause:

Conflicts Between Agreement and Catalog

To the extent of any inconsistency between the provisions of this agreement and any catalog or other document incorporated in this agreement by reference or otherwise or

any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

8. *Disputes.* Insert the clause at FAR 52.233–1.

9. *Convict labor.* Insert the clause at FAR 52.222–3.

10. *Equal opportunity.* In accordance with FAR 22.802, 22.807, and FAR 22.810 insert the appropriate clause from FAR 52.222–26.

11. *Assignment of claims.* Insert the following clause:

Assignment of Claims

No claim under this agreement shall be assigned.

12. *Examination of records by Comptroller General.* In accordance with the requirements of FAR 52.215–1 insert the clause therein.

13. *Alterations in contract.* Insert the clause at FAR 52.252–4 in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

(d) *Signature page.* The signature page shall be in the following format:

Agreement No. ———.

Signature Page

In Witness Whereof, the parties hereunto have executed this agreement as of the day and year first above written.

The United States of America

By: ———

(Contracting Officer)

Activity ———

Location———

(Name of Contractor)

By: ———

(Title)———

Subpart 237.74—Communication Services

237.7401 Definitions.

"Appropriate Governmental Regulatory Body" means the Federal Communications Commission, any state-wide regulatory body, or any body with less than state-wide jurisdiction when operating pursuant to state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this subpart.

"Common Carriers" means any person, partnership, association, joint-stock company, trust governmental body, or corporation engaged in the business of providing communications services to the general public, normally authorized or franchised by the Federal Communications Commission (FCC) or other appropriate governmental body.

"Communications Services" means those services provided by all types of systems and facilities connected therewith that employ electric or electromagnetic signals to transmit information between two or more points by means of radio, wire, cable, satellite, and other media. Included are telephone, telegraph, teletypewriter, remote writing, remote display, data transmission, facsimile and television transmission services, as well as terminal devices, switches, private branch exchanges, transmission facilities and other components of the systems that supply these services. Also included are all local, post, camp, station or long distance services, as well as all fixed or mobile facilities that are interconnected to systems providing these types of services.

"Foreign Carrier" means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by an appropriate United States governmental regulatory body and not doing business as a citizen of the United States, which provides communications services outside the territorial limits of the United States.

"Noncommon Carrier" means any entity other than a common carrier which offers communications facilities, services or equipment for lease.

237.7402 Applicability.

This subpart applies to acquisition of communications services from communications common carriers regulated by the Federal Communications Commission or an appropriate governmental regulatory body. In addition, except as otherwise specifically provided, this subpart provides guidelines for the acquisition of all other communications services (e.g., from nonregulated common carriers, noncommon carriers and foreign carriers) but is not mandatory for use in such acquisitions.

237.7403 Policy.

In accordance with instructions contained in Department of Defense directives and implementing departmental regulations concerning the operation of commercial and industrial type activities, and specifically with those concerning the sources for communications services, the Department of Defense generally procures communications services of a kind offered by common carriers, including equipment and facilities incidental to those services, from common carriers in accordance with tariff provisions, and at tariff rates established with the Federal Communications Commission (FCC) or with other appropriate governmental regulatory bodies unless cost or operational requirements dictate otherwise.

237.7404 Regulatory bodies.

(a) The Federal Communications Commission (FCC) and other appropriate governmental regulatory bodies generally publish rules and regulations governing the operations of common carriers and prescribe accounting principles to be employed in the establishment of rates. Notwithstanding other provisions of this Supplement, the regulations, practices, and decisions of the FCC and other appropriate governmental regulatory bodies concerning rates, cost principles, and accounting practices shall be recognized in the procurement of communications services from common carriers. With respect to those issues concerning common carrier services (1) on which the appropriate governmental regulatory body has not expressed itself, (2) over which the appropriate governmental regulatory body has declined jurisdiction, or (3) as to which there is no appropriate governmental regulatory body to make a decision, specific provisions should be made in the contract for adoption of FCC-approved practices or the generally accepted practices of the industry.

(b) Since the Department of Defense frequently requires unusual or special communications services advancing the "state of the art," Defense Department activities frequently move into areas which the cognizant governmental regulatory bodies have not explored. In such situations, the Defense Department frequently is the sole or primary user of many of a given common carrier's offerings. In addition, because of the large volume or normal services which the Defense Department requires, the day-to-day decisions of governmental regulatory bodies may have a vast dollar impact upon it. It is not Defense Department policy to duplicate the efforts of appropriate governmental regulatory bodies or to act as a second regulatory body. On the other hand, the Defense Department's self interest requires that it act as an informed and intelligent consumer, seeing to it that its sidde of the case is presented to the cognizant bodies and working with the common carriers to ensure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. Every effort should be made to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the Government's position in advance. Nevertheless, in the event actions short of litigation are not productive or just, reasonable or otherwise lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, legal actions

should be initiated and vigorously pursued. All contacts with the regulatory bodies should be through cognizant counsel in accordance with established Departmental and Defense Communications Agency procedures.

(c) Upon receipt of tariff information received in accordance with 252.237–7411, Tariff Information, the contracting officer shall immediately provide copies to the cognizant counsel.

237.7405 Sources for communications services.

237.7405–1 Common carriers.

(a) Generally, communication services shall be procured from the communication common carrier authorized by the appropriate regulatory body to operate within the service area in which the services are required.

(b) Although normally only one carrier is authorized to provide a specific type of service at any given location, there are locations at which no single communication common carrier has the exclusive right to provide the required service. When this is the case and more than one common carrier is authorized and can provide the required service, the procurement shall be made from the source offering the lowest cost to the Government, if practicable. If this is not practicable, the contract file shall be documented as to the reasons for selection of another source (e.g., unique ability to meet service date; more timely and effective maintenance; security reasons; system integrity). In any event, special assembly items and entire communications systems shall be acquired on a competitive basis to the maximum extent practicable; and every effort should be made to exclude from the service contract any provisions which would require the Government to leasc from the source of service any associated and related items such as circuits, circuit extensions, and terminal equipment.

237.7405–2 Noncommon carriers.

While communications services generally shall be acquired from common carriers; they may be acquired from noncommon carriers when equipment and the services function as a complete communication system or are an integral part of a communication system. Equipment and services shall be considered an integral part of a communication system if the combination of equipment and services is necessary to perform the desired services.

237.7405–3 Foreign carriers.

The acquisition of communication services within or between foreign countries and the acquisition from a foreign carrier of communication services from a foreign country to the Unites States present problems beyond the scope of this subpart. Frequently, foreign carriers are owned by the Government of the country in which they operate, and their methods of doing business are prescribed by the foreign Government. In many countries, an international agreement with the host country prescribes guidelines for how the Defense Department will obtain communication services. In addition, there are frequently severe problems with taxes on communications in foreign countries. In other countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for communication services. As a general rule in foreign countries, rates and practices should be spelled out in as much detail as possible in a contractual document. It consistently has been Defense Department policy not to pay discriminatory rates and to pay no more for communication services in a foreign country than does the military of that country. Special problems with communications procurement in foreign countries should be channeled to higher headquarters for resolution with the assistance of State Department representatives as appropriate.

237.7406 Who may acquire communication services.

(a) The general authority of the Head of a Contracting Activity contained in FAR 1.601 includes the acquisition of communication services. In addition, the Administrator, General Services Administration, has delegated to the Secretary of Defense under the terms of the Federal Property and Administrative Services Act, as amended, authority to enter into contracts for communication services extending beyond the fiscal year, but not longer than ten years under the following circumstances:

(1) The Government obtains lower rates, larger discounts, or more favorable conditions of service than those available under a contract for a definite term not extending beyond the current fiscal year; or

(2) Nonrecurring or termination charges payable under contracts for a definite term not extending beyond the current fiscal year are eliminated or reduced; or

(3) The carrier refuses to render the desired service except under contract for a definite term extending beyond the current fiscal year.

(b) The secretary of Defense has delegated the authority to him by the Administrator, GSA, to the Secretaries of the Military Departments and the Director, Defense Communications Agency, who have in turn delegated it to the following (with power of redelegation):

(1) For the Department of the Army: The Commanding General, United States Army Communications Command; and the Commanding General, United States Continental Army Command.

(2) For the Department of the Navy: The Commander, Naval Facilities Engineering Command;

(3) For the Department of the Air Force: The Deputy Chief of Staff, Research Development and Acquisition; and the Director of Contracting and Manufacturing Policy, DCS/RD&A, HQ USAF;

(4) For the Defense Communications Agency: The Chief, Defense Commercial Communications Office;

(5) For the Defense Logistics Agency: For the leasing of local telecommunications facilities and services, Commanders of DLA centers, depots, and DCAS regions; and

(6) For the Defense Nuclear Agency: For contracts not in excess of $1,000,000, The Commander, Field Command, DNA.

(c) The ten-year limitation of (a) above does not apply to "general contracts" (see 237.7408) but to obligating the Government for a longer period than ten years by orders placed under the general contract.

237.7407 Cost of pricing data.

(a) Rates or preliminary estimates quoted by a common carrier for tariffed services are considered to be prices set by regulation within the provisions of Pub. L. 87–653, even if the tariff will not be established until after execution of the contract. Accordingly, except as provided in (b), common carriers are not required to submit cost or pricing data prior to award of contracts for tariffed services. On the other hand, rates or preliminary estimates quoted by a common carrier for nontariffed service or by a noncommon carrier for any service are not considered to be prices set by regulation; and the provisions of Pub. L. 87–653 and FAR 15.804 shall be applied accordingly.

(b) Even when not required by Pub. L. 87–653, certified cost or pricing data shall be obtained whenever the contracting officer is unable to determine that the prices are reasonable on the basis of price analysis (see FAR 15.805–2). However certified cost or pricing data shall not be required to support annual recurring costs below $5,000 and nonrecurring costs or basic termination liabilities below $10,000. Situations in which cost or pricing data

may be found necessary within the above policy are:

(1) A tariff, whether filed or contemplated to be filed is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(2) A tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(3) More than one commercial source (one or more of which is a noncommon carrier) can offer the desired service but price competition is not considered adequate;

(4) To support the reasonableness of special assembly rates and charges;

(5) To support the reasonableness of special construction and equipment charges;

(6) To support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(7) To support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination of Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(c) Cost or pricing data need not be obtained for each order in the case of services obtained by delivery order under a general call type contract which is negotiated for use by Government ordering activities and includes detailed and approved price schedules as a part of the general contract.

(d) As to the form and detail of cost or pricing data, the following will apply:

(1) For data submitted by common carriers, the data may be in the same form and detail normally submitted to the governmental regulatory body having jurisdiction over the carrier in question; provided, this form and detail is sufficient for the Government to make an adequate evaluation.

(2) For data submitted by other than common carrier, the data should be that required by FAR 15.8.

(e) In the case of noncommon carriers or common carriers quoting for services not to be furnished pursuant to tariff, the contracting activity shall require that the cost or pricing data be accompanied with a certificate as required in FAR 15.804–4. In the case of a common carrier furnishing service pursuant to a tariff filed or to be filed, the contracting activity shall require that data submitted pursuant to (b) above be accompanied with a certificate that to the best of the company's knowledge the data are accurate, complete, and a statement that either:

(1) The rates for services in question are based on these data which will be used or are currently being used to justify the tariff for such service; or

(2) The rates for services in question are not based on these data but are based upon filed tariffs.

The contracting activity shall inform carriers required to furnish cost or pricing data under this subparagraph (e) that the data and certifications will be used by the Government, if appropriate, in any subsequent proceedings relative to this tariffed service.

(f) If any noncommon carrier or any common carrier providing a service not to be furnished pursuant to tariff refuses to furnish cost or pricing data required under this paragraph, applications for waiver shall be processed in accordance with FAR 15.804.

237.7408 Type of contract.

237.7408–1 General.

Generally, the procurement of communication services is facilitated by a contractual arrangement which (a) permits the activities served to order services directly from time to time as specific requirements are developed; and/or (b) provides a written instrument of understanding between the Department of Defense or a contracting activity and the contractor which sets forth the basis under which future procurements will be entered into as required during the term of the agreement.

237.7408–2 General agreements.

General agreements, referred to as "general contracts" within the communication industry, are widely used to facilitate awards for communication services. Such an instrument is not a contract, but rather represents a written instrument of understanding executed between a procurement activity and a communications contractor which sets forth the negotiated contract clauses and other matters which shall be applicable to future procurements entered into between the parties during the term of agreement. The general agreement together with the order issued thereunder (see 237.7408–3) represents the contract. General agreements shall not be used in any manner to restrict available competition. All general agreements will be executed in the name of the United States Government.

237.7408–3 Communication Service Authorization (CSA).

DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute (when the volume of transactions necessitates preparation of orders by other than manual process, a format suitable for an electronic data processing system may be used in lieu of DD Form 428, provided that all essential elements of the DD Form 428 are incorporated) shall be used to order services under the general contract and to modify, cancel, or terminate services when a CSA has been used to establish the service. As a general rule, prices should be established prior to authorizing the contractor to begin work. However, when the contractor is allowed to begin work prior to pricing in accordance with this paragraph, an estimated price or ceiling shall be included; and the contractor and the contracting officer shall proceed with definitive pricing as soon as practicable. In addition, a CSA may be issued which includes a ceiling or a series of ceilings for the states services. Normally, this type of CSA is called a "maximum limit authorization" in the communications industry. This maximum limit authorization also may provide, in addition to the established ceilings, limited authority to designated individuals to effect modifications in service within the dollar ceilings by the use of work orders designated for this purpose. Each CSA issued under a general agreement shall be subject to such reviews, approvals and determinations and findings specified in this Supplement as would be applicable if the CSA were a contract entered into apart from the general contract.

237.7408–4 Federal Supply Schedule contracts.

General Services Administration Federal Supply Schedule contracts covering communication services, including equipment and facilities incidental to the services, are optional for use by the Department of Defense and may be used in accordance with FAR 8.404 when it is not more advantageous to negotiate a separate contract. The DD Form 428 may be used as a delivery order.

237.7409 Funding of Communication Service Authorizations (CSA) under general contracts.

(a) Funding is a comptroller responsibility and shall be handled in accordance with appropriate Department of Defense comptroller related directives and departmental implementations thereof. The guidelines in (b) through (e) below are provided for the contracting officer's information.

(b) In acquisitions of communication services, unlike other types of acquisitions, obligations are usually recorded when the service starts or if and when a cancellation or termination

is ordered. The funds are not obligated by the "general contract," but are ordinarily obligated by CSAs issued under the "general contracts" (see 252.237–7408, Ordering of Facilities and Services—Common Carriers).

(c) Each individual CSA establishes a basis for the obligation of funds to cover recurring charges for services to be provided during the fiscal year in which the CSA is issued, together with such onetime charges as are applicable to those services.

(d) The same CSA continues to be the basis for the obligation of funds when the same services are required to be continued into subsequent fiscal years. However, obligation of funds for recurring charges for such subsequent fiscal years must be subject to the availability of appropriations therefor; and in the event funds are not appropriated, a cancellation or termination CSA must be issued.

(e) The contracting officer, through his comptroller, must insure that funds are available at the time service is provided or at the time a cancellation or termination CSA is issued. FAR 32.702–2 does not apply to the issuance of CSAs.

237.7410 Special construction.

237.7410–1 General.

(a) Special Construction, as defined by tariffs, normally involves the furnishing of some special service or facility by a common carrier incident to the performance of the basic service. Under a given tariff, this may include (1) moving or relocating specified equipment, (2) providing temporary facilities, (3) expediting provision of facilities, or (4) providing channel facilities which must be specially constructed to meet the requirements of the Government. The procurement of "special construction," as that term is used in the communication industry, shall be governed by the provisions of this part and shall not ordinarily be subject to the provisions of FAR Part 36.

(b) Special construction costs may take the following forms:

(1) Contingent liability for utilizing the services for a shorter period of time than the specified minimum to reimburse the contractor for his unamortized nonrecoverable costs and usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A onetime special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation change.

(c) When a common carrier submits a proposal or quotation of charges which indicates that special construction will be necessary, he shall be required to submit a detailed special construction proposal as well. All special construction proposals shall be analyzed to (1) determine the adequacy of the proposed construction; (2) disclose excessive or duplicative construction; and (3) when different forms of charge are possible, insure that the form most advantageous to the Government is provided for.

(d) When possible, special construction charges should be analyzed and approved prior to provision of the service. If, because of operational requirements, prior approval is not possible and a contractor is authorized to proceed, a ceiling cost for the special construction shall be imposed. Special construction charges must be approved and authorized prior to total payment thereof.

(e) Special construction provisions shall be administered by the contracting officer issuing the CSA. This involves administration of the cost and payment provisions, recording the unamortized termination liabilities (if any), and monitoring minimum service charges, (MSC) reuse of MSC facilities—all in coordination with the requiring Department, office or agency and with the Defense Contract Audit Agency, as appropriate.

237.7410–2 Applicability of construction labor standards to CSAs for special construction.

(a) The construction labor standards in FAR 22.4 ordinarily do not apply to "special construction." However, if the special construction includes construction (as defined in FAR 36.102) of a public building or public work, the construction labor standards may be applicable. Applicability must be determined under FAR 22.402.

(b) Individual CSAs which are subject to construction labor standards under FAR 22.402 shall specifically recite that fact.

237.7411 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling or wiring of an item or items of equipment to provide service that cannot be provided with equipment normally employed for general use.

(b) Special assembly rates and charges shall be based on estimated costs and shall be negotiated prior to commencement of service whenever possible. When it is not possible to negotiate in advance, the initial rates and charges shall be preliminary and tentative only and shall be subject to adjustment to the extent appropriate at the time that final rates and charges are negotiated.

237.7412 Cancellation and termination.

(a)(1) Cancellation is the discontinuance of a requirement subsequent to the placing of an order, but prior to initiation of service.

(2) Termination is the discontinuation of a service for the convenience of the Government after the service has been initiated.

(b) Cancellation or termination charges shall be determined in accordance with the provisions of the applicable tariff or contract.

(c) At the conclusion of a cancellation or termination settlement negotiation, the contracting officer shall document the contract file as to the principal elements involved in the settlement and in a manner which will enable reviewing authorities to understand the appropriateness of the proposed settlement.

(d) Pursuant to the Cancellation or Termination of Orders clause, partial payments on cancellation or termination claims may be made prior to settlement under the applicable policy and procedures of FAR 49.112–1

237.7413 Contract clauses.

(a) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract for communications services with a common or a noncommon carrier is contemplated.

(1) The clause at 252.237–7400, Definitions (Communications);

(2) The clause at 252.237–7401, Patent Indemnity (Communications);

(3) The clause at 252.237–7402, Access;

(4) The clause at 252.237–7403, Amendment of Contract; and

(5) The clause at 252.237–7404, Obligation of the Government.

(b) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract for communications services with a common carrier is contemplated.

(1) The clause at 252.237–7405, Authorization and Consent—Common Carriers;

(2) The clause at 252.237–7406, Continuation of Orders;

(3) The clause at 252.237–7407, Facilities and Services to be Furnished—Common Carriers;

(4) The clause at 252.237–7408, Ordering of Facilities and Services—Common Carriers;

(5) The clause at 252.237–7409, Rates, Charges, and Services—Common Carriers;

(6) The clause at 252.237–7410, Payment—Common Carriers;

(7) The clause at 252.237–7411, Tariff Information;

(8) The clause at 252.237–7412, Cancellation or Termination of Orders—Common Carriers;

(9) The clause at 252.237–7413, Reuse Arrangements;

(10) The clause at 252.237–7414, Submission of Cost or Pricing Data—Common Carriers;

(11) The clause at 252.237–7415, Audit and Records—Common Carriers; and

(12) The clause at 252.237–7416, Term and Termination of Contract—Common Carriers.

(c) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract with a common or a noncommon carrier is contemplated and when special construction charges are expected:

(1) The clause at 252.237–7417, Special Construction and Equipment Charges; and

(2) The clause at 252.237–7418, Title to Communication Facilities and Equipment.

Subpart 237.75—Services of Students at Research and Development Laboratories

237.7500 Scope.

This subpart prescribes procedures for the acquisition by contract under the authority of 10 U.S.C. Section 2360, of the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories.

237.7501 Definitions.

For the purpose of this subpart, the following terms are defined:

"Institution of Higher Learning." An institution of higher learning means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution located in the United States, its possessions, and Puerto Rico with an accredited education program approved by an appropriate accrediting body and offering a program of study at any level beyond that of high school.

"Nonprofit Organization." A nonprofit organization means any organization described by Section 501(c)(3) of Title 26 of the United States Code which is exempt from taxation under Section 501(a) of Title 26.

"Student." A student means an individual who is enrolled (or has been accepted for enrollment) prior to the term of the student technical support contract and remains in good standing at an institution of higher learning in a curriculum designed to lead to the granting by that institution of a recognized degree, during the term of the contract.

"Technical Support." Technical support means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include services of an administrative or clerical nature.

237.7502 Policy.

These contracts shall not be used solely to circumvent personnel ceilings or to provide for an increase in the civilian workforce.

237.7503 General.

Pursuant to this subpart, acquisition of services of students at institutions of higher learning generally shall be acquired by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government to do so, however, contracts may be made directly with students.

(a) *Special considerations.* Any contract entered into pursuant to this subpart shall be considered to be a nonpersonal service contract for the purposes of FAR Part 13. Such contracts are not subject to the provisions of FAR 19.202, 19.501, 19.508(a), or FAR 13.105.

(b) *Contract Authority.* Contracts under this subpart are negotiated acquisitions and shall cite 10 U.S.C. 2304(a)(17) and 10 U.S.C. 2360 as authority.

237.7504 Contract clauses.

Any contract with an individual student made pursuant to this subpart shall contain the clauses at FAR 52.232–3, Payments Under Personal Services Contracts, and FAR 52.249–12, Termination (Personal Services).

PART 238—FEDERAL SUPPLY SCHEDULE CONTRACTING

No DoD FAR Supplement.

PART 239—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

(See Part 270.)

Subchapter G—Contract Management

PART 242—CONTRACT ADMINISTRATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 242.1—Interagency Contract Administration and Audit Services

242.101 Policy.

(d) *Reimbursement.*

(1) Except as noted in (d)(2) and (3) below, reimbursement for services shall be required from non-DoD organizations covered by this part as the current standard rate determined by the Assistant Secretary of Defense (Comptroller).

(2) Reimbursement is not required for quality assurance, inspection, and contract audit services under an effective reciprocal agreement which provides for such services to be rendered on a no-charge basis.

(3) Reimbursement is not required for services performed under contracts awarded by the Small Business Administration in accordance with FAR Subpart 19.9.

(4) Request for exceptions other than those noted in (d)(2) and (3) above shall be submitted to the ASD (Comptroller) for resolution or approval when it can be shown that such exceptions are in the best interests of the U.S. Government.

242.102 Procedures.

(S–70) *Department of National Defense Production (Canada).*

(1) Department of Defense components shall, upon direct request, provide contract administration services to the Department of National Defense Production (Canada). Performance for other Canadian Government organizations shall be in accordance with 242.102–70(b).

(2) Performance without charge of contract administration services by the Department of Defense components is provided for in 225.7105 concerning Canadian purchases.

(S–71) *Foreign governments and international agencies.*

(1) *Performance of services in the United States.* Department of Defense contract administration services

components shall, on receipt of requests from the DoD Central Control Point, provide contract administration services to foreign governments and international organizations who are making direct purchases from United States producers. "Direct purchase" is the purchase of defense supplies in the United States by a foreign government or contractor or international organization in which the supplies are purchased through commercial channels for use by the foreign government or international organization.

(2) *Operations of DoD Central Control Point (CCP).* Requests from foreign governments and international organizations shall be forwarded to the Defense Contract Administration Services Region (DCASR), New York, NY, which is the designated CCP. The CCP will—

(i) Determine that the request is from a friendly foreign government or from an international agency in which the United States is a participant;

(ii) Determine that the services requested are consistent with Department of Defense mutual security program policies (questions as to eligibility of foreign governments or international organizations to receive services from DoD contract administration services components will be referred to the Assistant Secretary of Defense (International Security Affairs));

(iii) Assure that the reimbursement arrangements are consistent with 42.101(d);

(iv) Determine that the requested services can be provided, and acknowledge receipt of the request;

(v) Distribute the procurement documents and related material to the cognizant contract administration services component, receive statements of costs from performing contract administration services components, bill the foreign governments or international organizations for services rendered, and distribute the remittance when received.

(S–72) *Performance of services outside the United States.* When services are performed by Department of Defense contract administration services personnel outside the United States, the levels of technical capability and the administrative procedures, not already prescribed in existing laws or Department of Defense policies, shall be in accordance with arrangements suitable and acceptable to the United States country teams or commanders of unified and specified commands, as appropriate.

(S–73) *Payment for services rendered.* Department of Defense components shall pay for services rendered at the rate established by the performing activity for such services, except where formal agreements provide for reciprocal performance without reimbursement. When services are requested from foreign governments and international organizations, DoD components should check with the Office of the Assistant Secretary of Defense (Comptroller) to determine whether any reciprocal agreements are in effect which would preclude payment for services requested.

Subpart 242.2—Assignment of Contract Administration

242.203 Retention of contract administration.

(a) When any field contract administration service is required, the contract will be assigned for administration regardless of dollar value.

(1) The purchasing office may retain responsibility for administration of contracts listed below:

(i) Contracts of or in support of the National Security Agency;

(ii) Contracts for coal or bulk petroleum;

(iii) Research and development contracts;

(iv) Grants;

(v) Contracts for flight training;

(vi) Contracts for headstones and gravemarkers;

(vii) Contracts for industry technical representatives;

(viii) Contracts for consultant support services;

(ix) Geodetic mapping, air charting, and information center contracts;

(x) Base, post, camp, and station purchases;

(xi) Contracts for operation or maintenance of, or installation of equipment at radar or communications network sites, e.g., SAGE, BMEWS, JCSAN, WHITE ALICE, etc.;

(xii) Communications service contracts;

(xiii) Contracts for installation, operation and maintenance of spacetrack sensors and relays;

(xiv) Dependents Medicare Program contracts;

(xv) Stevedoring contracts;

(xvi) Contracts for construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;

(xvii) Architect-engineer (A–E) contracts;

(xviii) Contracts for airlift and sealift—Military Airlift Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts;

(xix) Contracts for subsistence supplies;

(xx) Ballistic missile site contracts—supporting administration of these contracts may be performed at missile activation sites during the installation, test, and checkout of the missiles and associated equipment; and

(xxi) Contracts for operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

(b) To avoid duplication of field contract administration capability, except for the performance of (a)(2)(xviii) and (xx) above, contract administration personnel from the purchasing office shall not be located at contractors' facilities. If field assistance from a DoD contract administration services component is needed in the administration of these contracts, such assistance will be requested by assignment of supporting contract administration to the contract administration offices listed in DoD Directory 4105.59–H as cognizant of the contractor's facility (facilities) at which the supporting contract administration function(s) is required. Specific instructions as to the assistance needed will be furnished. If field assistance is needed in the performance of the major portion of applicable contract administration functions, the contract will be reassigned to the cognizant contract administration office.

242.204 Supporting contract administration.

(a) Generally, the office for performing supporting functions shall be selected from the list in DoD Directory 4105.59–H. However, in special circumstances (for example, when contractor's worksite is a military base), a component of a military command not listed in DoD Directory 4105.59–H may be selected to perform supporting contract administration when prior coordination between the offices concerned has indicated that such an arrangement is feasible and that adequate resources are available, but see 242.270. Where supporting contract administration is required on a contractor purchase order or subcontract which includes FMS requirements, the requesting CAO shall clearly indicate "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity, and related DoD prime contract number and contract line/

subline item number. When more than one FMS case is involved, the information shall be provided for each.

242.205 Designation of the Paying Office.

(a) *Defense contract administration services disbursing office.* Contracts assigned to an office of Defense Contract Administration Services for administration shall also specify disbursement by the cognizant Defense Contract Administration Services Regional Office if funded with DoD funds (i.e., Department codes 17 (Navy), 21 (Army), 57 (Air Force), 97 (OSD, including Defense Agencies), and 43 (Civil Defense). For any other department or agency funds, the payment office serving that department or agency must be cited for the portion of the contract covered by non-DoD funds, even though the contract is otherwise wholly administered by the DCASR.

(b) *Other disbursing office(s).* Any contract not assigned to a Defense Contract Administration Services Office for administration shall designate a disbursing office in accordance with Departmental or Agency regulations. Such contract, if issued for requirements of more than one Department or Agency, may provide for payment by more than one disbursing office.

(c) *Disbursement for Air Force missile propellant contracts.* The Department of the Air Force shall retain the disbursement function on all contracts for Air Force missile propellants.

242.270 Contracts requiring performance of contract administration services (CAS) on military installations.

(a) Contract administration functions on a military installation are normally performed by the installation commander who is responsible for its continued operation as a military base. Where work on the military installation is unrelated to the base mission and requires skills and resources which exceed the installation commander's capability, DCAS shall, upon request by the relevant service, provide the required contract administration functions. When a contractor's normal place of industrial operation is located on a military base because of the availability of real estate or the existence of an industrial facility on that base, DCAS shall have cognizance of that facility, unless cognizance has otherwise been assigned to a Military Department in accordance with DoDI 4105.59.

(b) The Military Departments shall coordinate their Departmental contract administration efforts so as to avoid mixed contract administration arrangements which result when more than one CAS activity performs CAS at the same military installation.

(c) DCAS shall provide preaward survey assistance for post, camp, and station work performed on military installations. The purchasing office and the DCAS preaward survey monitor shall jointly determine the scope of the survey and individual responsibilities.

(d) All requests from the Military Departments for Defense Logistics Agency/Defense Contract Administration Services support under (a) above should be coordinated to ensure availability of the capability and resources for performing requested functions.

Subpart 242.3—Contract Administration Office Functions

242.302 Contract administration functions.

(a)(11) (ii) and (iii) For those contractors with which the Tri-Service Contracting Officer negotiates advance agreements pursuant to FAR 42.10, he shall have full authority for determinations related to CAS 420.

(S–70) Perform industrial readiness and mobilization production planning field surveys and schedule negotiations.

(S–71) Perform post award surveillance of contractor progress toward demonstration of Cost/Schedule Control Systems to meet the Cost/Schedule Control Systems Criteria, provide assistance in the review and acceptance of contractors' Cost/Schedule Control Systems, and perform contractors' accepted systems. The contracting officer shall insert the clauses at 252.242–7001, Notice of Cost/Schedule Control Systems, and 252.242–7002, Cost/Schedule Control Systems, when required by DoDI 7000.2.

(S–72) Monitor the contractor's costs as prescribed under FAR 242.302(a).

(S–73) In connection with classified contracts, administer those portions of the Industrial Security Program designated as ACO responsibilities in the ISR and ISM. (See Appendix C, Industrial Security Regulation, DoD 5220.22–R, for partial listing of primary responsibilities (also see FAR 4.401).)

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors' facilities.

(a) If access to classified information will be involved, the contractor must be given advance notice, in writing, as required by the Industrial Security Regulation (DoD 5220.22–R).

Subpart 242.5—Postaward Orientation

242.501 General.

The need for a postaward orientation conference normally will be established as a result of substantive review and analysis of the contract by the Contract Administration Office. However, the contracting officer or technical representative of the purchasing office may initiate the request for a conference. A conference of Government personnel normally shall be held prior to notifying and conferring with the contractor to assure that the Government position on all matters is established.

242.503–1 Postaward conference arrangements.

(a)(2) the agenda of the postaward conference may include such matters as are indicated on DD Form 1484.

242.503–2 Postaward conference procedure.

The chairperson shall use the DD Form 1484 in conducting the conference to assure that all significant matters are covered.

242.503–3 Postaward conference report.

The chairperson may use the DD Form 1484 as the summary report where appropriate.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

(a)(1) If a particular corporate complex does not meet the criteria for the establishment of a CACO, but a Department believes a CACO assignment is required, such determination requires approval of the Secretary of his designee.

(2) When a corporate entity has divisions under the contract administration cognizance of more than one Department, CACO assignments shall be determined by the Department concerned. When agreement cannot be reached, the matter shall be referred to the DUSD(AM), Office of Under Secretary of Defense, Research and Engineering, for resolution.

242.603 Responsibilities.

The CACO shall be responsible for the negotiation of advance agreements for independent research and development costs and bid and proposal costs except when this responsibility is assigned in the master list published annually in a Defense Acquisition Circular for Tri-Service Department negotiation. Departmental Tri-Service

contracting activities may delegate such negotiations to established CACOs.

Subpart 242.7—Indirect Cost Rates

242.705 Final indirect cost rates.

242.705-1 Contracting officer determination procedure.

(a)(1) When a multi-divisional contractor has a CACO, the decision as to whether final overhead rate negotiations will be on a coordinated or centralized basis will be made jointly by the CACO and the individual ACO's based upon the degree of centralization within the contractor complex and the requirements of the parties concerned. When negotiations are conducted on a coordinated basis, individual ACO's are responsible for coordinating with the CACO to assure consistency of cost determinations.

(b)(1) In addition to submitting a final indirect cost proposal to the contracting officer, the contractor shall also submit a copy of the proposal to the cognizant auditor.

(b)(3) Particularly when there is a significant difference of opinion between the Government and contractor concerning the allowability or reasonableness of indirect costs or the acceptability of the bases used in developing the overhead rates, representatives of the audit activity, the technical activity, and the contracting officer will discuss the areas of disagreement prior to the negotiation conference with the contractor. Special attention should be directed to those issues which impact prospective and subsequent final overhead rate determinations. Such issues should be resolved in order to preclude repetitive consideration of the same items.

242.705-2 Auditor determination procedure.

(b)(2)(iii) The agreement shall be signed by the contractor and the auditor-in-charge.

(b)(2)(v) If, under the auditor determination procedure agreement with the contractor cannot be reached, the auditor, in addition to submitting an advisory audit report to the contracting officer pursuant to FAR 42.705-2(b)(iv), will issue DCAA Form 1 detailing the items of exception to which the contractor can submit a request in writing to the cognizant ACO to reconsider the auditor's determination.

242.705-3 Educational institutions.

(a)(3) In addition to following the procedure in FAR when negotiating postdetermined final indirect cost rates, the contracting officer shall also follow the guidance in 242.705-1(b).

242.706 Distribution of documents.

(a) One executed copy of the overhead rate agreement will be furnished to the contractor, the cognizant CACO (if assigned), the cognizant ACO, and the cognizant auditor. In addition, copies will be distributed to other Departments, and (upon specific request) any other interested Government agencies. Departments may make further distribution to activities within their departments and shall insert one copy in each contractor general file (see S-101.2 and S2-102.4).

(b)(1) One copy of the overhead negotiation memorandum, if prepared under contracting officer determination procedures, or the audit report, if prepared under auditor determination procedures, will be furnished to the cognizant CAO (if assigned), the cognizant ACO, and the cognizant auditor. Upon specific request, a copy will be furnished to other Departments or Government agencies.

Subpart 242.8—Disallowance of Costs

242.801 Notice of intent to disallow costs.

(e) A Corporate Administrative Contracting Officer (CACO) need not obtain the approval of local cognizant ACOs for items of corporate expense.

242.803 Disallowing costs after incurrance.

(a) *Contracting officer receipt of vouchers.* This procedure is applicable only for Cost-Reimbursement Type Contracts involving Canadian Contractors (see 225.7104(c)).

(1) On contracts with the Canadian Commercial Corporation (CCC), CCC will certify and forward the invoice with Standard Form 1034 (Public Voucher) to the ACO for further processing and transmittal to the disbursing officer.

(2) On contracts placed directly with Canadian firms, invoices, as provisionally approved by the ASB/DSS auditor and accompanied by Standard Form 1034 (Public Voucher), are forwarded to the ACO for further processing and transmittal to the disbursing officer. In the event that costs claimed are suspended or disapproved, the ACO shall issue the DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved" to the contractor. DCAA Form 1 will be processed in the same manner as indicated in FAR 42.803(b)(3) with regard to contractor appeals.

(b) *Auditor receipt of vouchers.*

(1) and (2) The contract auditor is the authorized representative of the contracting officer for these functions, except that vouchers are approved for provisional payment and transmitted to the cognizant disbursing officer (but see 242.803(a) for certain Canadian contracts). DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved", shall be used for this purpose. In addition, the contracting officer may direct the issuance of DCAA Form 1 with respect to any cost that he has reason to believe should be suspended or disapproved. The contract auditor will approve fee portions of vouchers for provisional payment in accordance with the contract schedule and any instructions received from the administrative contracting officer. Completion vouchers shall be forwarded to the ACO for approval and transmittal to the cognizant disbursing officer.

Subpart 242.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

242.1005 Lead negotiating agency responsibilities.

(b) The technical evaluation, performed or arranged for by the lead negotiating agency, shall include an opinion as to the potential relationship of the proposed IR&D program to relevancy requirements established under 231.205-18.

(c) The contractor shall be provided a contracting officer's determination concerning the potential relationship of proposed IR&D/B&P projects to the relevancy requirements established under 231.205-18.

242.1006 Conducting negotiations.

(a) In negotiating ceilings, the contracting officer shall pay attention to the determination of the potential relationship of the company's IR&D/B&P to a military function or operation.

242.1007 Content of advance agreements.

Advance agreements negotiated in accordance with this subpart shall include, where appropriate:

(S-70) A statement that a relevancy review has been performed and a determination made that the Government's allocable share of the negotiated ceiling(s) passes the relevancy test at the time of negotiation.

(S-71) For those companies meeting the threshold requirements, a provision that the recovery of IR&D/B&P costs under Government contracts shall not exceed the lesser of (i) such contracts' allocable share of incurred costs up to the total ceiling or (ii) the amount of incurred costs having a potential relationship to a Government function or operation.

242.1008 Administrative appeals.

Each Department will establish an appeals hearing group consisting of an acquisition member, who shall be chairman, a technical member and a legal member. Determinations of the appeals group shall be the final and conclusive determination of the Department of Defense. Members shall be appointed as follows:

(S–70)(1) *For the Army.* The Deputy Assistant Secretary (Acquisition) will appoint the acquisition member. The Deputy Assistant Secretary (Research, Development and Systems) will appoint the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(S–70)(2) *For the Navy.* The Principal Deputy Assistant Secretary (Shipbuilding and Logistics) will appoint the acquisition member. The Principal Deputy Assistant Secretary (Research, Engineering and Systems) will appoint the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(S–70)(3) *For the Air Force.* The Deputy Assistant Secretary (Acquisition Management) will appoint the acquisition member. The Deputy Assistant Secretary for Systems will appoint the technical member. The Assistant General Counsel (Procurement) will appoint the legal member.

(S–70)(4) *For the Defense Logistics Agency (DLA).* The Director, DLA (or the Deputy Director, DLA) will appoint the acquisition member, the technical member, and the legal member.

Subpart 242.11—Production Surveillance and Reporting

242.1101 General.

Delinquency includes—

(a) Actual failure by the contractor, that is, his failure, regardless of reason, to meet the contract delivery or performance schedule; and

(b) Potential failure by the contractor, that is, his failure, regardless of reason, to maintain such progress in contract performance as is required to meet his contract delivery or performance schedule.

242.1104 Surveillance requirements.

(a)(S–70) *Initial contract review.*

(i) The contract administration office shall, during initial contract review, assign contracts to production surveillance or review categories as follows:

(A) Category 1 is conducted by an industrial specialist or other person qualified to assess the contractor's plan for production and evaluate progress toward the successful accomplishment of that plan. This type of effort is adaptable to contracts which have a production/performance lead time of at least several months, and which entail identifiable milestone or pacing events against which progress may be measured. Contracts assigned this category should include those contracts which are of the complexity described under FAR 42.1104(a) and have a Criticality Designator A or are with a contractor which has either a history of generally poor production performance or a poor performance history on the same or similar supplies or services as those on the current contract.

(B) Category 2 is conducted by personnel qualified to assess information provided by the contractor in terms of delivery probability. They may be assisted by industrial specialists or other technically qualified personnel who will visit the production facility when there is probability of failure by the contractor to deliver or perform according to schedule, or when contractor-furnished information is questionable, or when contractor-furnished information is questionable, or in other occasions when the assistance of technical personnel may contribute to the avoidance or minimizing of a delinquency. This category of surveillance entails, as a minimum, a written or telephonic reminder to the contractor in advance of the required delivery or performance date(s) including inquiry as to whether he will perform on schedule or as to the cause and duration of any anticipated delay, and periodic followup and expediting of supplies or services not delivered or performed on time. This category is adaptable to contracts which warrant surveillance effort by the Government in advance of the required due date. Any contract with a Criticality Designator A not assigned to Category 1 shall be assigned to Category 2. All Criticality Designator B contracts and those Criticality Designator C contracts placed with contractors having a history of generally poor production performance also shall also be assigned to this category.

(C) Category 3 is conducted by the same personnel assigned Category 2 contracts. This category of surveillance entails inquiry and expediting effort after a failure to delivery or perform within the contract schedule has occurred, and periodic followup. It may involve assistance by technical personnel.

(ii) Regardless of assigned category, if a contract is reported by DD Form 375, Production Progress Report, as delinquent or anticipated to become delinquent, the surveillance efforts will provide continuous knowledge of the status of the problems causing the delinquency and of the corrective efforts being taken.

(iii) If Category 1 is assigned to a contract, the contract administration office shall also:

(A) Review the contract in conjuction with any preaward survey (see FAR 9.1) to ascertain what contract performance difficulties may be expected.

(B) Determine the extent of postaward orientation required in the production area (see FAR 42.5).

(C) Determine any special procedures to be followed.

(b) The contract administration office shall determine, in accordance with FAR 42.1104(a), the extent of production surveillance required regardless of dollar value.

(d) After deliquency has occurred, and before the PCO has determined the action to be taken, it is particularly important that surveillance be limited to fact finding to avoid waiver of the contract delivery and performance schedules.

242.1105 Assignment of criticality designator.

(a) The assigned designator may be changed only by the purchasing office. Ordinarily, unilateral purchase orders shall be assigned Criticality Designator C.

(b) DoD contract items on which a priority 01, 02, 03, or 06 (if emergency supply of clothing) has been assigned based on DoDD 4410.6, Uniform Material Movement and Issue Priority System and nonstocked items which otherwise meet the criteria for Force Activity Designator 1 and Urgency or Need Designator A thereunder shall fall under Criticality Designator A.

242.1106 Reporting requirements.

(b)(1) If the contractor's report indicates that the contract schedule will be met and the contract administration office is required.

(2) If, on the other hand, either the contractor forecasts delivery or performance failure, or the contract administration office does not concur in the contractor's no failure report, and in either case the delay is expected to be for more than 30 days, or purchasing office action, in any case, is deemed necessary, the contract administration office shall add an endorsement and forward a copy to the purchasing office and to the inventory control manager unless otherwise specified in the contract, within 4 working days after

receipt of the contractor's report. The endorsement shall include:

(i) Comments as to nonconcerrence, if applicable;

(ii) Action taken by the contractor and by the Government to overcome the anticipated or actual delinquency.

(iii) Action required—a positive recommendation to the purchasing office of the action necessary to correct the delinquency, including any realistic schedule revision which can be met by the contractor and the extent to which the contractor may have excusable cause of delay. When other actions are indicated, such as those leading to default termination, the contract administration office shall indicate specific dates by which Government action should be taken to preserve the Government's rights.

(c) *Reports initiated by contract administration offices.* Reports may be furnished by use of:

(1) DD Form 375–2, or DLA Form 1654 (Test), Delay in Delivery (Flash Notices); or

(2) DD Form 375, Production Progress Report and DD Form 375c (continuation).

242.1107 Contract clause.

(b)(1) Contract schedule provisions supporting the clause at FAR 52.242–2 shall contain but not be limited to instructions relative to:

(i) The frequency and timing (normally 5 working days after each reporting period of reporting);

(ii) The contract line items, exhibits, or exhibit line items for which reporting is required;

(iii) Offices and mailing addresses to which reports shall be sent including the purchasing office, the contract administration office (3 copies), status control activities and inventory managers, if appropriate; special requirements as to codes and formats.

(2) When reporting an actual or potential delinquency, the contractor-prepared DD Form 375c shall, as a minimum, contain the following data:

(i) Problem—a statement of the difficulty, the reasons therefor, and whether caused by the Government or the contractor;

(ii) Items and quantities affected;

(iii) Date of commencement of the anticipated or actual delinquency;

(iv) Action taken by the contractor to overcome the anticipated or actual delinquency.

(v) Estimated recovery date based upon evaluation of the factors contributing to the delinquency; and

(vi) A realistic schedule revision which can be met by the contractor. In the absence of an actual or potential delinquency, the DD Form 375c may be used to provide any information which the contractor deems appropriate.

Subpart 242.12—Novation and Change-of-Name Agreements

242.1203 Processing agreements.

(b)(1) The list of contracts required by FAR 42.1204(c)(2) will be included with the notice. Notice shall be provided to the Departments and Defense Agencies and NASA having contracts with the contractor or contractors concerned. Notice shall include the list of contracts required by FAR 42.1204(c)(2). Each list need contain only those contracts issued by purchasing offices of the addressee. Such notice shall be transmitted to the appropriate addressee listed below. In the case of contracts awarded by Departments or agencies not listed below, the notice shall be furnished directly to the cognizant contracting or contract administration office.

Department of the Army: HQ, U.S. Army Material Development and Readiness Command, ATTN: DRCGC-P, 5001 Eisenhower Avenue, Alexandria, VA 22333

Department of the Navy: Chief of Naval Material, ATTN: MAT 023D, Washington, DC 20360

Department of the Air Force: HQ, U.S. Air Force Systems Command, ATTN: PMP, Washington, DC 20331

Defense Logistics Agency, ATTN: DLA-PPR, Cameron Station, Alexandria, VA 22314

National Aeronautics and Space Administration, Assistant Administrator for Procurement, ATTN: HR, Washington, DC 20546

(c) Where substantial alterations or additions to the formats shown at FAR 42.1204(e) and FAR 42.1205(b) are considered appropriate by the cognizant ACO processing the proposed agreement, coordination will be made with the appropriate addressees listed above involved prior to execution. Any objection shall be resolved before the agreement is executed. If, for any reason, NASA indicates a desire to consummate a separate agreement with the contractor, the cognizant ACO shall continue to process the agreement only for the Departments and Defense agencies concerned.

(e)(S–70) In addition to the distribution prescribed in FAR 42.1203(e), two copies of the agreement will be sent to the appropriate addresses listed in (b)(1) above. When the ACO responsible for the corporate office is the cognizant ACO, one copy will be distributed to each CAO responsible for contract administration at a plant or division. The CAO will, in turn, reproduce and distribute copies for each of its affected contracts. Each purchasing office will reproduce the necessary number of copies of the administrative change and will make distribution as determined necessary by that office. Reproduction and distribution of copies for CAOs will be accomplished by the ACO who executed the administrative change.

(e)(S–71) Novation and change-of-name agreements amending contracts and basic agreements for storage and related services for personal property of military and civilian personnel shall be forwarded to the cognizant area command of the Military Traffic Management Command as set forth below for execution without regard to other provisions.

Commander, Eastern Area, Military Traffic Management Command, ATTN: MTE-PPS, Bayonne, NJ 07002

Commander, Western Area, Military Traffic Management Command, Oakland Army Base, ATTN: MTW-PPS, Oakland, CA 94625

(f) NASA contracts shall not be included in this list since NASA will issue its own administrative change. A total of 2 copies of the administrative change, with the list of contracts affected, shall be furnished to the appropriate addressee(s) listed in (b)(1) above. Each list need contain only those contracts issued by purchasing offices of the addressee.

Subpart 242.14—Traffic and Transportation Management

242.1402 Volume movements within the Continental United States.

(a)(1)(i) On FMS shipments, the aggregate will be 200,000 pounds or more.

(a)(2)(S–70) As soon as production schedules and planned destinations have been established, the contracting officer should report this information to the transportation office serving the purchase office. The transportation office will review the contracts and report planned volume movements in accordance with Chapter 201 of the Military Traffic Management Regulation (AR55–355, NAVSUP PUB 444 (Rev), AFM 75–2, MCO P4600 14A, DLAR 4500.3) (MTMR).

(S–71) The purchasing office shall forward a copy of the volume movement report to the contract administration office. The transportation office serving the CAO shall submit a volume movement report when:

(A) It is determined, upon review of the contract, that no volume movement report has been submitted by the purchasing office.

(B) Movement requirements are refined or changed to such a degree that

a revised volume movement report should be submitted.

(S–72) On FMS shipments the volume movement report should also include the destination country, foreign forwarder, and port of embarkation, if known.

242.1403–1 U.S. Government bills of lading (GBLs).

(a) See 242.1472 for procedures whereby contractors shall obtain GBLs.

242.1403–2 Contractor-prepaid commercial bills of lading.

(a)(S–70) The term commerical bill of lading (CBL) includes the use of any commercial form or procedure.

(a)(S–71) Appendix V of the MTMR contains the list of carriers and carrier associations that have entered into agreements with MTMC to provide the required transportation under commerical forms and procedures within CONUS.

(S–70) Contract clause. The contracting officer shall insert the clause at 252.242–7000, Submission of Commercial Freight Bill to the General Services Administration for Audit, when transportation costs are to be reimbursed to the contractor under a cost reimbursement type contract.

242.1404–2 Contract clauses.

(a) The clause at FAR 52.242–10 will not be included in those f.o.b. origin supply or service contracts containing the Fast Payment Procedure clause, FAR 52.213–1.

(b) The clause at FAR 52.242–11 will not be included in those f.o.b. origin supply or service contracts containing the Fast Payment Procedure clause, FAR 52.213–1.

(S–70) When the clauses at FAR 52.242–10 or FAR 52.242–11 are used in DoD contracts, the contract or ordering instrument shall instruct contractors desiring to obtain GBLs under paragraph (b) of those clauses to submit DD Form 1659, Application for United States Government Bills of Lading/Domestic Route Order/Export Traffic Release.

242.1405 Discrepancies incident to shipment of supplies.

(S–70) Improper markings or consignment deficiencies may result in misdirected shipments or additional handling or stowing of shipments, or affect identification of contents which necessitates opening of containers.

(S–71) The administrative procedures required in Chapter 221 of the Military Traffic Managment Regulation govern the actions to be taken with respect to discrepancies caused by carriers.

242.1470 Routing, tracing, and expediting shipments.

(a) Routing of military freight consists of determining a mode of transportation and the carrier which will effect safe and timely delivery of supplies at the lowest overall costs.

(b) Tracing is the procedure used for locating unduly delayed shipments.

(c) Expediting is the procedure used when a shipment is urgently needed at destination or when congestion is likely to occur on the lines of the carriers over which the shipment is to move.

(d) Methods for tracing or expediting shipments are outlined in Chapter 220, Military Traffic Management Regulation.

242.1471 Demurrage and detention charges.

(a) Demurrage is a fixed charge made by rail carriers on cars held by, or for, a consignor or consignee for loading, unloading, or for any other purpose. A contractor who detains cars for these reasons is required to pay the carrier's published tariff charges for demurage. Generally, carrier demurrage rules allow a definite period called "free time" for loading or unloading cars or for any other purpose, and impose a definite per day per car charge for cars held beyond this period. The free time allowed is usually 48 hours for loading or unloading cars and 24 hours when cars are held for reconsignment, diversion, reshipment, or held in transit on orders of the shipper or consignee. Normally, the free time starts from the first 7 a.m. (excluding Saturdays, Sundays, and holidays) after placement of the car.

(b) Detention is the term used when motor carrier equipment is held by, or on behalf of, a shipper or cosignee beyond a reasonable period allowed for loading, unloading, forwarding directions, or for any other purpose. Motor carrier detention rules and charges are not uniform and are published in individual carrier or agency tariffs. Detention charges are usually based on an hourly rate.

(c) Procedures involving payment or collection of demurrage or detention charges are contained in paragraph 219010 of the Military Traffic Management Regulation.

242.1472 DD Form 1659 (1 Apr 70), Application for U.S. Government Bill(s) of Lading/Domestic Route Order/Export Traffic Release.

DD Form 1659 shall be prepared by the contactor for submission of advance shipping data to the cognizant contract administration office. In response, the transportation office shall furnish the required U.S. Government bill of lading, Domestic Route Order or Export Traffic Release when necessary, required for use in connection with Government contract.

Subpart 242.70—Monitoring Contractors' Costs

242.7000 Scope.

This subpart sets forth guidelines for monitoring the policies, procedures, and practices used by contractors to control direct and indirect costs related to Government business. These procedures are intended to eliminate duplication in monitoring contractors' costs.

242.7001 Purpose.

To ensure the most efficient and economical performance of DoD contracts, it is essential that contract costs be managed effectively. Contractors are responsible for managing and controlling their direct and indirect costs. However, DoD components need to systematically monitor the management of such costs to assure that contractors are fulfilling their responsibilities.

242.7002 Application.

A formal program of Government monitoring of contractor policies, procedures, and practices to control costs should be conducted at:

(a) All major contractor locations where—

(1) Sales to the Government are expected to exceed $50 million during the contractor's next fiscal year on other than firm-fixed-price and fixed-price-with-escalation contracts:

(2) The Government's share of indirect costs for such sales is at least 50 percent of the total of such indirect costs; and

(3) A contract administration office has been established at the location.

(b) Other critical locations with significant Government business where specifically directed by the HCA. Decisions to implement or terminate cost monitoring should be based upon sound estimates of Government business for the coming year and not upon minor interim volume fluctations. This does not preclude action to start or stop the program during a given year where there is a significant change in volume and the anticipated new level of business is expected to remain stable for a reasonable period of time.

242.7003 Designation of a Cost Monitoring Coordinator.

A member of the contract administration office (CAO) cognizant of a contractor location shall be designated as the Cost Monitoring Coordinator (CMC) after the location

has been identified as qualified under 242.7002 for application of this program. Depending upon the circumstances, the designee may be the ACO or any other staff member whose normal function relates to evaluation of contractor performance.

242.7004 Responsibilities of the Cost Monitoring Coordinator.

(a) In performing his assigned contract administration duties, the Plant Rep/ACO acts as a high-level manager calling upon the various specialists established within DoD to review and report on those areas that fall within their respective areas of expertise. It is not intended that the Plant Rep/ACO duplicate the functional capabilities or work of such specialists. Likewise, the CMC in the contract administration organization will fully utilize the work of these specialists in monitoring contractor costs through coordination with their various organizations.

(b) The CMC shall be responsible for:

(1) Preparing and maintaining an annual consolidated written plan and schedule for reviewing contractor operations from coordinated long-range plans established by each team member including the DCAA auditor. This composite plan and schedule will assure cost monitoring responsibilities are being fully implemented and that the technical and professional expertise of various organizational units of the CAO are used without duplication of effort or skills;

(2) Coordinating the performance of the cost monitoring effort of the organizational units of the CAO;

(3) Coordinating the cost monitoring efforts of the CAO with those of the DCAA auditor;

(4) Advising the head of the CAO of situations where the contractor should correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of Government contracts, and recommending corrective action, including issuance of formal written notices to the contractor advising of specific costs which may not be allowed if incurred;

(5) Coordinating CAO actions to assure that the procuring contracting officer, project manager, the head of the procuring activity, DCAA, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of Government contracts;

(6) Coordinating actions to assist the CAO, DCAA, and other Government personnel in obtaining access to pertinent contractor policies, procedures, and related data, and obtaining the assistance of the head of the CAO when such access is being denied or impaired;

(7) Maintaining an inventory of CAO, DCAA, and other Government reports on significant issues relating to monitoring costs;

(8) Continuously monitoring the status of recommendations made to the contractor concerning cost performance stemming from all Government reports. While contractors are responsible for managing their direct and indirect costs, the CMC monitors the contractors' effort through this task. In the event agreement is not reached on a recommendation and the cost or principle involved is sufficiently important, the CMC should prepare for the ACO's consideration, a *Notice of Intent to Disallow or Not Recognize Costs;*

(9) Maintaining current organizational charts of the operations identifiable to the contractor's functional centers of his cost control systems.

(c) The plan required by (b)(1) above must be tailored to the contractor, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at an early stage so that preventive action can be taken. Reviews required by this supplement and the contracting officer must be included in the plan.

242.7005 DCAA auditor responsibility.

DCAA audit offices are responsible for performing all necessary contract audit for DoD and providing accounting financial advisory service regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration. The auditor is responsible for submitting information and advice based on his analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs, as well as for reviewing the financial and accounting aspects of the contractor's cost control systems. The auditor is also responsible for performing that part of reviews and such analysis which requires access to the contractor's financial and accounting records supporting proposed costs or pricing data. This does not preclude the Program Manager, PCO, Plant Rep/ACO, or their technical representatives from requesting any data from, or reviewing records of, the contractor (such as CSCS/C data, lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities. The CAO will utilize the auditor's services whenever such expertise is needed, particularly regarding the contractor's financial management reports, books, and records.

242.7006 Procedure.

(a) *Selecting operations for review.* It is not possible to review all elements of a contractor's entire operation each year. Therefore, the CMC, together with the auditor, is to select for review those operations that have the greatest potential for charging Government contracts with significant amounts of unacceptable costs. To select these cost-risk areas on a sound and orderly basis, an overview must first be obtained of the contractor's entire operation. Before the beginning of each Government fiscal year, the CMC should arrange for a joint meeting between CAO, DCAA, and other directly interested Government representatives to coordinate selection of the areas to be reviewed during the coming year. The following data will be used in the selection process:

(1) The contractor's forecasts for the coming year supporting direct and indirect costs by functional centers of his cost control system and the results of the latest survey performed of such systems (DCAA responsibility);

(2) Detailed organizational charts for the contractor's entire operation (CAO responsibility);

(3) An outline of the contractor's accounting system to understand the flow of costs by function (DCAA responsibility);

(4) The determination of Government participation in the dollars attributable to the operations and cost accounts under consideration (DCAA responsibility);

(5) A complete list of recent reviews and audits performed by CAO, the DCAA, and other Government representatives that would effect the selection of areas to be reviewed in the current year. This listing should show outstanding weaknesses and deficiencies in the contractor's operations (CAO responsibility);

(6) Evidence of under and overstaffing (CAO–DCAA responsibility);

(7) Significant departures from established contractor productivity standards (CAO responsibility);

(8) Major financial variances from forecasts in prior years (DCAA responsibility);

(9) Evidences of idle or underused capacity (CAO–DCAA responsibility).

(b) *Planning for reviews.* The primary purpose of the joint meeting described above is to develop a mutually acceptable annual plan for reviewing the contractor's operation. The plan should provide coverage for each significant operational area of the contractor over a period of two to three years and should be modified to reflect any changed conditions during subsequent meetings. The schedule and resource limitations of participating organizantions will be considered in preparing the annual plan. The plan will identify the organizations having the primary responsibility for performing the reviews:

(1) The CAO will review the technical aspects of contractor operations requiring minimal of no access to contractors' financial and accounting records and will sign reports on these reviews;

(2) DCAA will review the financial and accounting aspects of contractor operations requiring minimal or no technical considerations and will sign reports on these reviews;

(3) The CAO and DCAA will jointly perform reviews requiring significant CAO and DCAA expertise. Reports resulting from these reviews will be signed by the heads of the respective local organizations.

Some operations reviews such as the purchasing (CAO) and estimating system reviews (DCAA) are assigned to the responsible reviewing organization. These assignments will continue to be recognized. All others will be performed according to the above criteria. The annual plan will be formally approved by heads of the local CAO and the DCAA resident offices.

(c) *Joint Review.*

(1) *Objective.* The objectives of joint CAO–DCAA reviews of contractor operations are:

(i) To optimize the utilization of DCAA–CAO personnel in performing selected operations reviews; and

(ii) To generate joint reports of the reviews that contain findings, conclusions, and recommendations mutually agreed upon by the DCAA auditor and the CAO to improve the effectiveness and economy of contractor operations.

(2) *Exist conference with contractor.* During the course of the review, there may be several informal briefings with contractor management personnel to exchange information. Every opportunity should be afforded each party, to either update the information provided or to conduct additional reviews to preclude misconceptions that could develop as a result of obtaining incomplete or inaccurate data. An exist conference with contractor management personnel provides the opportunity to explain CAO/DCAA findings, conclusions and recommendations. On joint reviews, the ACO or his representative shall arrange the exist conference with the contractor. Both CAO and DCAA will be represented at the exist conference.

(d) *Reports.* All reports prepared separately or jointly by DCAA or CAS personnel will be forwarded through the ACO to the contractor. While these review reports are advisory to the ACO, the ACO has responsibility to assure that (i) appropriate recognition is given to the results of such reviews in any contract negotiations and (ii) the contractor implements appropriate corrective actions. In event of any dispute with the contractor, the ACO has the ultimate responsibility and authority to effect final settlement.

Subpart 242.71—Voluntary Refunds

242.7100 General.

A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. Where it is desired to solicit a voluntary refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all data relevant thereto to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

242.7101 Solicited refunds.

Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property, or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus voluntary refund shall not be requested, unless the overcharge or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Secretary concerned.

242.7102 Disposition of voluntary refunds.

(a) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(b) In cases where the refund is to be made by check rather then by an adjustment in the contract price, the check shall be made payable to the office designated for the contract administration and shall be forwarded immediately to the comptroller of the appropriate Department or other Departmental officer responsible for the control of funds. When forwarded, the check shall be accompanied by a letter identifying it is a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

PART 243—CONTRACT MODIFICATIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 243.1—General

243.104 Notification of contract changes.

(a) No unilateral change will be made in the terms and conditions of a contract except for changes identified as such in writing and signed by the contracting officer pursuant to the "Changes" clause or other clause in the contract. Government representatives shall avoid conduct (written or oral communications, actions and inactions) that could constitute an unauthorized unilateral change in the terms and conditions of a contract. When a contracting officer or other Government representative, by conduct, causes a contractor to perform changed work, such conduct may be the basis for a claim by the contractor. Examples of such Government conduct include: furnishing defective Government specifications; requiring adherence to delivery schedules when a contractor is

entitled to a time extension; denying a contractor the opportunity to employ a permissible method or sequence of work; or erroneously requiring a contractor to perform contrary to his correct interpretation of the contract requirements. Government representatives shall act promptly to resolve such situations as soon as they are made known to the Government.

(b)(1) Only the Procuring Contracting Officer (PCO) is authorized to take the actions prescribed in paragraphs (c) and (d) of the clause at FAR 52.243–7, except when the PCO expressly delegates in writing any or all of such actions to the Administrative Contracting Officer (ACO).

(2) In exceptional cases, the PCO may designate a "specifically authorized representative" to issue directions and interpretations as provided in the clause contained in FAR 52.243–7 when he anticipates that continuity of the contractor's performance for a particular phase or task under a contract is so important that no delay or diminution of performance is acceptable. If such a designation is made, the notice of designation shall: (i) Be in writing and furnished promptly to the contractor, the ACO, and the "specifically authorized representative," and (ii) clearly prescribe the scope and duration of authority of the "specifically authorized representative," *Provided,* however, that such designated authority in no event shall exceed the authority of the PCO. All directions, communications, interpretations, orders and similar conduct of a "specifically authorized representative" shall be reduced to writing as promptly as possible after their occurrence and copies thereof shall be furnished to the contractor and to the PCO and ACO. No notice of designation, however, shall be issued retroactively to confirm directions earlier communicated by a representative of the Government. The PCO shall promptly countermand any directions of "specifically authorized representative" which exceed his designated authority. A sample of such designation is:

I, John Doe, Contracting Officer, pursuant to (a) of the Notification of Changes clause in Contract N000000–83–0001 hereby designate Ralph Roe, quality assurance representative resident at the contractor's facility as my representative empowered to communicate directions, interpretations, determinations and orders concerning qualification test specification No. ABCD dated 6 August 1979 during the forthcoming qualification testing of the XYZ weapon system between 29 November and 4 December 1983.

243.105 Availability of funds.

(S–70)(1) It is the policy of the Department of Defense that unexpended dollar balances determined to be excess to known contractual requirements shall be released promptly. Contracting officers shall monitor contract fund status and take action to reduce the dollar balance of contracts when determined to be in excess of the amounts necessary for payment of outstanding contract requirements.

(2) To accomplish such determination, consultation with contractors and coordination between contracting offices and CAOs may be required to properly establish funding levels. A determination may be based upon, but is not limited to: (i) contractually required funding reports; (ii) fund status reviews; (iii) advice from the contractor; (iv) advice from the buying office, CAO, or DCAA; (v) examination of vouchers or invoices; and (vi) a review of contract progress. Upon determination of excess funds, contracting officers shall take appropriate action to assure such funds are removed from contracts as expeditiously as possible. For release of funds excess to a termination claim, see FAR 49.105–2 and 49.604.

243.170 Identification of FMS contract modifications.

If the modification adds FMS requirements, identify the modification by clearly stamping or otherwise indicating the "FMS Requirement" on the face of the modification and specify within the modification each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA, for such added FMS items.

Subpart 243.2—Change Orders

243.201 General.

(a) Fair and economical processing of change orders does not occur automatically merely by issuance of an authorized change order. Procedures are necessary to:

(1) Establish the authority of the Government to request a contractor to originate a change or to evaluate a Government proposed change;

(2) Promote the policy of forward pricing of changes when feasible;

(3) Require the contractor to submit and to certify cost or pricing data in support of his equitable adjustment;

(4) Provide that contractor-originated changes of less than a specified magnitude may be made without price adjustment;

(5) Provide for recording of and accounting for segregable direct costs of changed work in support of equitable adjustment claims; and

(6) Equitably adjust the contract in a single, final and complete supplemental agreement.

243.202 Authority to issue change orders.

(S–70) *Originating engineering change proposals.*

(a) Engineering changes may be originated by either party to the contract. The Government needs to obtain detailed information supporting and documenting the proposed change; to evaluate the technical, cost and schedule effects of implementing the change; and to price the change in advance when possible. The clause at 252.243–7000 may be used to require a contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change.

(b) The clause at 252.242–7000 includes a sample of an optional paragraph (c) supplementing the basic clause to discourage a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing such changes.

243.204 Administration.

(S–70) *Correction or revision.* Upon receiving a copy of the change order from the PCO, the ACO shall review it to assure that its provisions are compatible with the status of performance. For example, if the contractor has progressed beyond the effective point specified in the change order, the ACO shall determine the earliest practical point at which the change order could be made effective and advise the PCO accordingly. Correction, revision or supersession of a change order shall be made by issuing another change order. The definitizing supplemental agreement shall cite both change orders.

(S–71) *Responsibility for negotiation of equitable adjustments.* Except for those change orders assigned to the ACO, the PCO shall be responsible for negotiating all equitable adjustments resulting from change orders, including the execution of supplemental agreements in Standard Form 30, Amendment of Solicitation/Modification of Contract. The ACO shall forward to the PCO the contractor's proposal, together with an analysis thereof. Except at the specific request of the PCO, the analysis shall not include the negotiation of any element of the contractor's proposal, although obvious mistakes may be called to the contractor's attention. Differences between the contractor's proposal and the results of the analysis made by the

contract administration office shall be called to the attention of the PCO.

(S–72) *Use of supplemental agreements.* Supplemental agreements are used:

(1) To reflect the agreement reached in the negotiation of change orders;

(2) In preference to a change order when a supplemental agreement is considered feasible, even though authority exists to accomplish the modification by change order;

(3) To definitize letter contracts;

(4) To reflect other agreements of the parties modifying the terms of contract; and

(5) To definitize provisioned items orders.

(S–73) *Modifications to letter contracts.*

(1) Modifications to letter contracts shall be accomplished under the same policies and procedures as those applicable to definitive contracts.

(2) Bilateral modifications (supplemental agreements) issued prior to definitizing a letter contract may be processed in the same manner as the letter contract, i.e., the PCO may sign prior to the contractor.

243.205 Contract clauses.

(S–70) The contracting officer may insert the clause at 252.243–7000, Engineering Change Proposals, under the conditions at 243.202(S–70)(a).

(S–71) The contracting officer shall insert the clause at 252.243–7001, Pricing of Adjustments, in solicitations and contracts when a fixed-price type contract is contemplated.

Subpart 243.3—Forms

243.301 Use of forms.

(a)(2)(ii) The SF 30 shall be used in connection with termination actions as follows:

(A) *Notice of termination for convenience of the Government.* SF 30 shall be used as the initial or confirming notice, and shall include the information outlined in FAR 49.601–2, appropriately modified as required. If the termination is partial, the line items and quantities affected by the termination shall be identified to the extent practicable. If the termination is complete, line item identification may be omitted, since the contract is considered to be physically completed upon issuance of a notice of complete termination. (See DAR Supplement 2 (S2–301.1).) The same modification number and effective date shall be assigned to the initial and confirming modification.

(B) *Notice of termination for default.* SF 30 shall include all information outlined in FAR 49.402–3(g), including the statement that the modification constitutes a decision of the contracting officer from which the contractor has the right of appeal pursuant to the Disputes clause, if the contracting officer has determined that failure to perform was not excusable. If the notice does not include the decision of the contracting officer, the decision, when made, shall be issued in letter form pursuant to FAR 49.402–3(k).

(C) *Amendment to termination notice.* Each amendment to a termination notice, including rescission of the termination, reinstatement of items or quantities previously terminated, or termination of additional items or quantities, shall be issued on SF 30.

(D) *Conversion of default termination to convenience.* If a termination for default is subsequently converted to a termination for convenience of the Government, either by a decision of the contracting officer or by a decision of ASBCA on an appeal filed by the contractor, the converted designation shall be reflected on SF 30. The effective date of the termination for default shall be indicated in the modification as the effective date of the convenience termination.

(E) *Determination of contracting officer.* SF 30 shall be used to reflect a determination of the amount due in settlement of a contract terminated for convenience:

(*a*) In cases where the contractor has lost the right of appeal for failure to submit a timely settlement proposal in accordance with the Termination clause; and

(*b*) To confirm the determination, if the contractor does not appeal the decision of the TCO.

SF 30, prepared pursuant to (a)(2)(ii)(E)(*b*) above, shall indicate the same effective date as the letter determination previously issued. Block 12 of the modification may be limited to a reference to the letter determination and a statement of the net amount determined to be due in settlement of the termination. To assure sequential numbering of modifications, a Supplementary Procurement Instrument Identification Number shall not be assigned to the letter determination.

(a)(S–70) Three copies of Standard Form 30 should be sent to the contractor with instructions to return the original and one copy.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.

This subpart sets forth the DoD requirements for conducting a contractor purchasing system review (CPSR) under the direction of a purchasing system analyst (PSA). When deemed necessary, Contractor Purchasing System Review Boards may be established in accordance with Departmental procedures. If no board is to be convened, the report shall be forwarded directly to the ACO by the CPSR team captain. If it is determined that a review board is necessary, the report of the CPSR team shall be reviewed and evaluated by the board, which shall make appropriate recommendations to the ACO.

244.302 Requirements.

(b)(1) *Initial review.* An initial review is a complete, intensive, first-time analysis of a contractor's purchasing system.

(2) *Subsequent review.* A subsequent review is an analysis of a contractor's purchasing system, performed to validate the adequacy of the system.

(i) Plants in which there is a full-time resident PSA shall receive, after an initial review, continuing surveillance equivalent to a subsequent review on an annual basis or continuing surveillance with subsequent reviews at 3-year intervals.

(ii) Plants in which there is no resident PSA shall receive, after initial review, surveillance through on-site visits (44.304), and a subsequent review in alternate years. The contracting officer may call for a subsequent review prior to the regularly scheduled review if circumstances indicate the need.

(3) *Special reviews.* A special review is an investigation of specific weaknesses identified in any contractor's purchasing system, using the same techniques followed in performing an initial or subsequent review. The ACO, or the PSA, with the concurrence of the ACO, may initiate special review of any contractor's purchasing system in connection with deficiencies revealed as a result of:

(i) The initial or subsequent review, or continuing indepth surveillance;

(ii) The review of subcontracts submitted under the notification and consent to subcontract requirements of contract clauses;

(iii) Major changes in the contractor's purchasing policies, procedures, or key personnel;

(iv) Changes in plant workload or type of work; or

(v) Information provided by Government personnel.

In conducting special reviews, the same criteria used in initial or subsequent reviews shall be applied to the area being examined. The summary report format will be used as appropriate.

(4) *Followup review.* A followup review is an investigation performed when a contractor's purchasing system approval is withheld or withdrawn, to determine whether a contractor has implemented the recommendations of the ACO and corrected the deficiencies revealed by any purchasing system review. The techniques used in making an initial or subsequent review are employed in the followup review. If approval of a contractor's purchasing system is withheld or withdrawn, a followup review shall be made as soon as evidence is received from the contractor that the factors leading to the action have been corrected. Whether this followup review consists of a complete reexamination of the contractor's purchasing system or is confined to the areas found deficient shall be a matter of judgment and will depend on the time lapse between the notice to the contractor of withholding or withdrawal of approval and the followup review. The summary report format will be used as appropriate.

244.303 Extent of review.

Supplement 1 contains additional guidance for conducting CPSR's on Defense contractors.

244.304 Surveillance.

(a) Each Military Department and the Defense Logistics Agency will establish controls to assure maintenance of a viable surveillance program.

(b) The surveillance plan shall specifically include the contractor response for corrective action to the recommendations made by the ACO as a result of an initial or indepth subsequent purchasing system review and the Government's planned surveillance tests of the contractor's corrective implementation. The surveillance plan shall provide procedures for informing the contractor of surveillance findings and related recommendations; for followup, as necessary, to effect recommended improvements; and when warranted by the findings, for rescinding approval of the contractor's purchasing system. The contractor must make available the necessary procedures and data to permit adequate surveillance.

(1) The surveillance plan shall encompass pertinent phases of the contractor's purchasing system (Preaward/Postaward/Performance/Contract Completion) and pertinent operations which impact the contractor's purchasing and subcontracting. As considered necessary, surveillance shall include:

(i) Determination and limitation of requirements;

(ii) Advance planning (market testing, source development, performance evaluations, program objectives, make-or-buy);

(iii) Solicitation of proposals (development of solicitations, statement of work, specifications/drawings, facility surveys, financial analysis, preaward audits, terms and conditions, selection of contract type, establishing a competitive base, socio-economic consideration, bidders lists, presolicitation and indoctrination of potential bidders);

(iv) Proposal evaluations (cost, technical, and management considerations);

(v) Source selection (restrictive clauses, flowdown of prime contract provisions, compliance with Public Law 87–653, "Truth in Negotiations Act," compliance with Public Law 91–379, "Cost Accounting Standards," cost/price analysis/assist audits and cost studies, progress payments to subcontractors, changes in technical content of statement of work, factfinding and bidders conference);

(vi) Provisioning, management influence and overriding consideration, documentation, compliance with FAR 9.104–4 and other provisions of this Supplement concerning Subcontractor Responsibility;

(vii) Management approvals;

(viii) Advance notification and consent requirements;

(ix) Early definition (TWX and letter contracts);

(x) Change control (timely and effective action);

(xi) Engineering;

(xii) Schedules;

(xiii) Production;

(xiv) Material control;

(xv) Quality control and quality assurance;

(xvi) Management reporting (advance payments, progress payments, cost performance, funding requirements discounts, milestone and progress reports);

(xvii) Management support (residencies, secondary administration, buyer control of commitments, buyer's role, subcontract management, subcontract modification, expediting, transportation, subcontractor system surveillance);

(xviii) Contract completion (termination partial or complete, stopwork orders, default actions, excusable delays);

(xix) Closeout actions;

(xx) Postaward audits; and

(xxi) Performance evaluation and reports (thorough review of all areas, including documentation for future business).

(2) The plan shall give appropriate consideration to the data furnished by the contractor when providing the required advance notification of intent to place certain subcontracts.

(3) Surveillance tests that require audit effort should be accomplished for the ACO by the contract auditor in conjunction with other audit duties.

(4) Certain subcontractors may require additional surveillance because of the emphasis in the flowdown of system acquisition policies in subcontracts, with particular concern for subcontractor cost, schedule, and technical performance. The contracting officer, the PSA, the review team, and/or subcontract management personnel may request assistance of the contract administration office having cognizance over the subcontractor to provide supplementary information as a means of verifying the information obtained from the contractor's records and, if needed, the request will call for a complete report on the subcontractor's purchasing system.

244.305 Granting, withholding, or withdrawing approval.

An exist conference shall be held with the contractor at completion of the inplant review. At that time, the contractor should be given the review team's recommendations signed by the ACO. The contractor shall be requested to furnish his plan for accomplishing the necessary actions within 15 days.

244.305-2 Notification.

(c) If at any time other than during a CPSR, recommendations are made for improvement of an approved system, the contractor shall be requested to furnish within 15 days of such notification a concurrence or position with respect to the recommendations.

244.307 Reports.

After receipt of the complete report (Parts I and II), the ACO, within 5 days, shall review and evaluate the report, prepare a letter to the contractor stating the status of the purchasing system, and provide copies of the report and the letter to those described in FAR 44.307 and such others as approved by the ACO. One copy of the summary report (Part I only) shall be sent to a contracting office when requested. Also,

where there is a resident PSA assigned to the contractor's plant, the cognizant CAS organization has the option of preparing only a summary report, which shall be distributed in accordance with FAR 44.307. A copy of the ACO's letter to the contractor, setting forth the status of the purchasing system, shall be attached to the summary report.

PART 245—GOVERNMENT PROPERTY

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 245.3—Providing Government Property To Subcontractors

245.301 Definitions.

"Agency-peculiar property," as used in DoD, means military property and includes end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.

"Facilities Project" means an undertaking by the Government to provide facilities to a contractor for the performance of a Government contract or subcontract or to modernize or replace facilities for the same purpose.

"Industrial Plant Equipment" (IPE) is that part of plant equipment with an acquisition cost of $5,000 or more; used for the purpose of cutting, abrading, grinding, shaping, forming, joining, testing, measuring, heating, treating, or otherwise altering the physical, electrical or chemical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations; and IPE is further identified by noun name in the following Joint DoD Handbooks:

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS

[NOTE.—Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402]

FSC	Title	Army	Navy	Air Force	DLA	Marine Corps
3424, 4430	Industrial Furnaces & Ovens, Volume 1 and 2.	SB 708-4430-1	NAVSUP Pub 5502	AFM 78-8	DLAH 4215.4	MCO P4870.8B
6635	Physical Properties Testing Equipment	SB 708-6635-1	NAVSUP Pub 5504	AFM 78-10	DLAH 4215.6	MCO P4870.10C
6636	Environmental Chambers	SB 708-6636-1	NAVSUP Pub 5505	AFM 78-14	DLAH 4215.10	MCO P4870-14C
3422, 3428	Rolling Mills, Drawing Machines & Metal Finishing Equipment.	SB 708-3400-2	NAVSUP Pub 5510	AFM 78-15	DLAH 4215.12	MCO P4870.16C
3450, 3460	Portable Machine Tools & Metalworking Machinery Accessories.	SB 708-3400-3	NAVSUP Pub 5511	AFM 78-16	DLAH 4215.13	MCO P4870.17B
6610, 6670	Scales, Balances & Optical Instruments	SB 708-6600-2	NAVSUP Pub 5516	AFM 78-25	DLAH 4215.18	MCO P4870.22B
3680	Foundry Equipment	SB 708-3680-1	NAVSUP Pub 5517	AFM 78-23	DLAH 4215.19	MCO P4870.23A
6630, 6640	Chemical Analysis & Laboratory Instruments.	SB 708-6600-3	NAVSUP Pub 5529	AFM 78-38	DLAH 4215.30	MCO P4870.35B
3620	Rubber and Plastics Working Machinery	SB 708-3620-1	NAVSUP Pub 5534	AFM 78-26	DLAH 4215.35	MCO P4870.40B
3611, 3693, 3695	Marking, Assembly, and Miscellaneous Industry Machinery.	SB 708-3600-2	NAVSUP Pub 5535	AFM 78-28	DLAH 4215.36	MCO P4870.41B
3650	Chemical & Pharmaceutical Products Manufacturing Machinery.	SB 708-3650-1	NAVSUP Pub 5536	AFM 78-45	DLAH 4215.37	MCO P4870.42A
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment.	SB 708-4940-1	NAVSUP Pub 5537	AFM 78-48	DLAH 4215.38	MCO P4870.43A
3690, 4925	Specialized Ammunition and Ordnance Machinery.	SB 708-4900-1	NAVSUP Pub 5538	AFM 78-49	DLAH 4215.39	MCO P4870.44A
3405	Metalworking Saws & Filing Machines	SB 708-3405-1	NAVSUP Pub 5539	AFM 78-34	DLAH 4215.40	MCO P4870.47B
3418	Planers and Shapers (Includes Shapers, formerly Part of FSC 3419).	SB 708-3418-1	NAVSUP Pub 5540	AFM 78-37	DLAH 4215.41	MCO P4870.48A
3431, 3432, 3433, 3435, 3436	Welding, Heat Cutting, and Metalizing Equipment.	SB 708-3400-4	NAVSUP Pub 5541	AFM 78-39	DLAH 4215.42	MCO P4870.49A
3408, 3410	Machining Centers, Way Type Machines, Electrical and Ultrasonic Erosion Machines.	SB 708-3400-5	NAVSUP Pub 5542	AFM 78-41	DLAH 4215.43	MCO P4870.50B
3419	Miscellaneous Machine Tools	SB 708-3400-6	NAVSUP Pub 5547	AFM 78-46	DLAH 4215.44	MCO P4870.51A
3413	Drilling and Tapping Machines	SB 708-3413-1	NAVSUP Pub 5548	AFM 78-50	DLAH 4215.45	MCO P4870.53B
3411, 3412, 3414	Boring Machines, Broaching Machines, Gear Cutting and Finishing Machines.	SB 708-3400-7	NAVSUP Pub 5549	AFM 78-51	DLAH 4215.46	MCO P4870.55A
3441, 3442, 3443, 3445, 3446, 3447, 3448, 3449.	Secondary Metal Forming and Cutting Machines.	SB 708-3400-81	NAVSUP Pub 5551	AFM 78-53	DLAH 4215.48	MCO P4870.56A
3416	Metalworking Lathes	SB 708-3416-1	NAVSUP Pub 5552	AFM 78-54	DLAH 4215.49	MCO P4870.57A
5860	Stimulated Coherent Radiation Devices (Lasers).	SB 708-5860-1	NAVSUP Pub 5553	AFM 78-55	DLAH 4215.50	MCO P4870.58B
3415	Grinding Machines	SB 708-3415-1	NAVSUP Pub 5554	AFM 78-56	DLAH 4215.51	MCO P4870.59
3417	Milling Machines	SB 708-3417-1	NAVSUP Pub 5555	AFM 78-57	DLAH 4215.52	MCO P4870.60A
3670	Specialized Semiconductor, Microelectronic Circuit Board Manufacturing Machinery.	SB 708-3670-1	NAVSUP Pub 5557	AFM 78-58	DLAH 4215.53	MCO P4870.61

"Other Plant Equipment" (OPE) is that part of plant equipment, regardless of dollar value, which is used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations, but excluding items categorized as IPE.

"Provide," as used in the context of such phrases as "Government property provides to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

245.302 Providing facilities.

245.302-1 Policy.

(S-70) A facilities contract shall be terminated when the Government production and research property covered thereby is no longer required for the performance of Government contracts or subcontracts, unless such termination is detrimental to the Government's interests. The contractor shall not be granted the unilateral right, at his election, to extend the time during which he is entitled to use the property provided under the facilities contract.

245.302-70 Securing approval for facilities projects.

(a) The Secretaries of the Military Departments or their designees and the Directors of Defense Agencies may approve requests for Government-owned facilities projects if—

(1) The facilities projects that are funded from procurement appropriations will be approved on a location basis and shall not exceed $5 million for all property efforts (expansion, modernization, rehabilitation, etc.) during one fiscal year;

(2) It is a research and development-funded project that will not exceed $3 million per fiscal year; or

(3) The total plant and equipment investment cost to support a specific major system or subsystem (including ammunition-related project request) will not exceed $25 million during the projected acquisition or maintenance effort. (Approval authority shall not be redelegated lower than the level of Assistant Secretary.) Approval may be granted only when there is compliance with all provisions of this regulation and DoD Directive 4275.5, "Acquisition and Management.

(b) All projects which will exceed the above limitations will be submitted to the Under Secretary of Defense for Research and Engineering for approval.

(c) Facilities projects that involve real property transactions shall not be undertaken prior to reporting such transactions to the Committees on Armed Services of the House of Representatives and the Senate, as required by 10 U.S.C. 2662, and during the 30-day period prescribed therein. Further, Congress must be notified in advance of starting any construction regardless of cost. If not included in the annual budget, submission to all appropriate Congressional Committees will be made by using DD 1391 Forms.

245.302-71 Providing industrial plant equipment (IPE).

(a) Prior to acquiring IPE, having an item acquisition cost of $10,000 or more, DoD Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Defense Industrial Plant Equipment Center, Memphis, Tennessee 38114, to ascertain whether existing reallocable Government-owned facilities can be utilized. If the requested facilities are numerically controlled, DD Form 1342, Section VI (page 2), shall be prepared and submitted with the DD Form 1419. No acquisition of any listed item shall be made until a certificate of nonavailability is received from the Defense Industrial Plant Equipment Center (DIPEC). However, prior to issuing a certificate of nonavailability, DIPEC shall determine if technical data (e.g., parts listings, maintenance, overhaul and repair manuals, wiring diagrams, etc.) are available. If it is determined that such data is not available at the time of issuance of the nonavailability certificate for equipment, DIPEC may request, by an appropriate instruction in block 51 of DD Form 1419, that an additional set of technical (maintenance) data be acquired with the new facilities when they are obtained. This additional set of data shall be delivered to the repository address specified by DIPEC in block 51 of DD Form 1419. In addition to acquiring technical (maintenance) data for new facilities, a description of the features of numerically controlled facilities on DD Form 1342, Section VI (page 2), shall also be acquired.

(b) Acquisition of new numerically controlled facilities shall include the requirement for the builder to complete Section VI of DD Form 1342 in triplicate, affix one copy to inside of numerical control cabinet door in a manner to preclude removal or destruction, place two copies in an envelope, and tape to door near the first copy. When warranted by the urgency of the situation, requests for screening may be submitted to DIPEC by whatever means determined expedient. When submitting urgent screening requirements other than on a DD Form 1419, the following elements of information must be furnished for each item of equipment:

(1) Requisition number;

(2) PEC/NSN;

(3) Description data sufficient to enable DIPEC to make an urgency determination of availability;

(4) Date item required;

(5) Name and address of requiring agency;

(6) Contract number and program;

(7) Statement as to whether item is for production or mobilization, replacement or modernization, whether item will be procured if not available from DIPEC, and date of availability from procurement;

(8) Assigned urgency rating; and

(9) Estimated cost.

(c) Upon notification of availability by DIPEC, a DD Form 1419 will be submitted to DIPEC for each item accepted by the requestor. However, if DIPEC does not have the item available, or cannot furnish the item within the time specified by the requestor, DIPEC will furnish a statement of nonavailability including a certificate number. This statement will be the official Certificate of Nonavailability and will confirm that the plant equipment item has been screened against the idle inventory.

245.302-72 Providing ADPE as government property.

The proposed acquisition of automatic data processing equipment by a contractor shall be submitted through the Administrative Contracting Officer to Headquarters, Defense Logistics Agency, ATTN: Defense ADP Resource Office (DARO), Cameron Station, Alexandria, VA 22314, in accordance with DoD Manual 4160.19-M.

245.303 Providing material.

245.303-2 Procedures.

When the contractor is to be responsible for preparing requisitioning documentation, the contract shall require such documentation to be prepared in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP)" (see Appendix H).

245.306 Providing special tooling.

245.306-2 Acquiring special tooling.

(S-70) Criteria for waiving special tooling provisions in subcontracts.

In determining whether rights to acquire special tooling from the subcontractors are not of substantial interest to the Government so as to permit the omission of special tooling provisions from the affected subcontracts pursuant to paragraph (k) of the clause at FAR 52.245-17, the contracting officer shall consider the factors listed in FAR 45.306-2. It is desirable that such determination be made before execution of the contract, to the extent practicable, in which case the price shall reflect the authorized omission of special tooling provisions in any affected subcontract. If this question is presented to the contracting officer after execution of the contract, he shall condition his determination upon securing the contractor's consent to an equitable reduction in the contract price to reflect any reduction in the price of the affected subcontracts resulting from the omission of such provisions.

Subpart 245.4—Contractor Use and Rental of Government Property

245.401 Policy.

The prior approval of the contracting officer having cognizance of Government production and research property is required for any use, whether Government or non-Government, to insure that the

Government receives adequate consideration and that no unfair competitive advantage is crated to the benefit of the contractor or subcontractor. Government use is in support of performance of US Government contracts (including foreign military sales) and non-Government use is all other use (including direct commercial sales to either domestic or foreign customers, and independent research and development).

245.402 Authorizing use of Government production and research property.

(a) A contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer shall request the latter to give his concurrence in such use. If concurrence is denied, the matter shall be raised to a level higher than the contracting officer.

245.403 Rental—use and charges clause.

(a) The Use and Charges clause shall be included in the contract under which the facilities are accountable.

(b) The policies and procedures of Recovery of Nonrecurring Costs in DoD Directive 2140.2, shall apply to the recovery of a fair share of DoD cost for special tooling and special test equipment. Where the recoupment thresholds are not met, charges for special tooling and special test equipment shall be assessed by an equitable method when determined by the cognizant contracting officer to be administratively practicable.

245.405 Contracts with foreign governments or international organizations.

(a) A contractor may use Government production and research property on work for foreign governments and international organizations only upon written approval of the contracting officer having cognizance of the property. Such approval shall be granted only if such use will not interfere with foreseeable requirements of the United States, and if:

(1) The work is undertaken as a DoD Foreign Military Sale; or

(2) In the case of a direct commercial sale, the foreign country or international organization would be authorized to place the contract with the Department concerned under the Arms Export Control Act.

(b) The Use and Charges clause shall not be applicable to wholly Government-owned plants operated by private contractors on a fee basis. In such cases, any sales to foreign countries or international organizations will require an asset use charge (see (c) below) in place of the Use and Charges clause.

(c) In those circumstances where the Secretary or designee determines that a special rental agreement or the Use and Charges clause is not appropriate or is impractical, and Government facilities are to be used for foreign military sales, an asset use charge will be computed and assessed by the DoD officials responsible for preparation of the DoD Offer and Acceptance (DD Form 1513).

(d) When a particular foreign government or international organization has funded the acquisition of specific production and research property, no rental charges, asset use charges, or nonrecurring recoupments shall be assessed that foreign government or international organization for the use of such property.

(e) Requests for waivers or reduction governments of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through procurement channels. Approval may be granted only by the Director, Defense Security Assistance Agency for particular sales which would, if made, significantly advance U.S. Government interests in North Atlantic Treaty Organization (NATO) standardization, or foreign procurement in the United States under coproduction arrangements.

(f) Rental charges for the use of U.S. Government production and research property on commercial sales of Defense items to the Government of Canada are waived through 31 July 1985.

245.407 Non-government use of plant equipment.

(a) Non-Government of Industrial Plant Equipment (IPE) exceeding 25% requires prior approval of the Assistant Secretary of the Army (RD&A), Assistant Secretary of the Navy (S&L), Assistant Secretary of the Air Force (RD&L),or the Director of the Defense Logistics Agency. This authority shall not be redelegated without formal OUSDRE(AM) approval. Requests requiring Departmental level approval should be submitted by the contractor to the cognizant contract administration office at least six weeks in advance of the projected use and shall include:

(1) The total number of active IPE items involved and the total acquisition cost thereof; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each item the nomenclature, plant equipment code, year of manufacture, and the acquisition cost.

The percentage of non-Government use shall be computed on the basis of the time available for use. For this purpose the contractor's normal work schedule as represented by the scheduled production shift hours shall be used. The base time period for determining percentages for non-Government use shall be neither less than three months or more than one year. Non-Government use of IPE located at a single plant may be averaged for all items used having a unit acquisition cost of less than $25,000. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis. Approving officials shall retain for periodic review, sufficient documentation of the circumstances justifying non-Government use approvals.

Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505-5 Records of plant equipment.

(a) DD Form 1342 may be used as a source document for setting up prescribed records.

245.505-6 Special reports of plant equipment.

The contractor shall prepare a DD Form 1342 for each item of equipment identified as Industrial Plant Equipment (IPE), including items which, though part of a manufacturing system, would otherwise qualify as industrial plant equipment. Section VI (page 2) of the DD Form 1342 will be prepared for each item of IPE with numerically controlled features. General purpose components of special test equipment, which would otherwise qualify as IPE, should not be reported until there is no longer a requirement for the test equipment. The DD Form 1342, including Section VI, as appropriate, will be prepared in accordance with instructions contained in AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE), at the time (a) of receipt and acceptance of accountability by the contractor; (b) major changes as specified by DLAM 4215.1 occur in the data initially submitted to DIPEC: (c) IPE is no longer required for the purpose authorized or provided; or (d) disposal is completed. The DD Form 1342 prepared at the time IPE is no longer required for the purpose authorized or provided shall reflect all changes in data not previously reported to DIPEC. The contractor shall retain the original of each DD Form 1342 which may be used as the official

property record. Copies of the DD Form 1342, including Section VI, as appropriate, shall be forwarded directly to DIPEC through the property administrator. Each DD Form 1342 will be prepared and forwarded within 15 working days after the events which created the need for its preparation and forwarding. AR 700–43/NAVSUP PUB 5009/AFM 78–9/DLAM 4215.1 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (see 245.301).

245.505–14 Reports of Government property.

(a) The contractor's property control system shall provide annually the total acquisition cost of Government facilities in the following classifications:

(1) Land right therein;

(2) Other real property, including utility distribution systems, buildings, structures, and improvements thereto;

(3) IPE required to be reported to DIPEC;

(4) Other plant equipment (OPE). The contractor shall furnish to the property administrator, as of 30 September of each year, a report by contract, of the total acquisition cost of Government (DoD) facilities and the quantity of the IPE for which the contractor is accountable in each of the above classifications. This shall include facilities at subcontractor plants and at alternate locations for which the prime contractor is accountable. Reports shall be prepared on DD Form 1662 (Report of Government (DoD) Facilities), and furnished to the property administrator in duplicate no later than 20 October of each year.

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.600 Scope of subpart.

In connection with reporting, redistribution, and disposal of contractor inventory, 245.71 prescribes Forms, Instructions, and Reports applicable to DoD plant clearance actions.

245.601 Definitions.

"Controlled substances" means any of the following:

(1) Narcotic (opium), depressant, stimulant (demerol), or hallucinogenic drug (marijuana) or substance;

(2) Any other drug or substance found by the Attorney General to require control as provided by Title II of the Compehensive Drug Abuse Prevention and Control Act of 1970; or

(3) Any other drug or substance required to be controlled by the U.S. by international treaty, convention or protocol.

"Demilitarization" means the act of destroying the military offensive or defensive characteristics inherent in certain types of equipment or material so as to prevent their further military or lethal use.

245.604 Restrictions on purchase or retention of contractor inventory.

(S–70) A contractor, when authorized to sell contractor inventory, shall not sell such inventory to persons known by him to be: (1) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for or within the Defense Property Disposal Program, or for the disposal of contractor inventory; (2) a member of the Armed Forces of the United States, including the United States Coast Guard, whose duties include any functional or supervisory responsibility for or within the Defense Property Disposal Program, or for the disposal of contractor inventory; or (3) an agent, employee or immediate member of the household of personnel in (S–70) (1) and (2) above.

(S–71) The authority of a contractor to approve a sale, purchase, or retention at less than cost, by a subcontractor, and the authority of a subcontractor to sell, purchase, or retain at less than cost, contractor inventory with the approval of the next higher-tier contractor does not include authority to approve:

(1) A sale by a subcontractor to the next higher-tier contractor or to an affiliate of such contractor or of the subcontractor; or

(2) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(S–72) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

245.606–3 Acceptance.

(a) If the schedules are acceptable, the plant clearance officer shall, within 15 days, execute and transmit to the contractor a DD Form 1637, Notice of Acceptance of Inventory.

245.606–5 Instructions for preparing and submitting schedules of contractor inventory.

(See 245.7001–4 for specific duties and responsibilities of DoD plant clearance officers.)

(d) *General instructions for completing forms.*

(4) For purposes of indicating condition of the property, the codes indicated below should be used in combination with the disposal condition codes (1–9, X, and S). Use a letter and a number (such as A1 or F7) or two letters (such as SS):

A. New, used, repaired, or reconditioned property which is serviceable and issuable to all customers without limitations or restriction. Includes material with more than 6 months shelf-life remaining.

B. New, used, repaired, or reconditioned property which is serviceable and issuable for its intended purpose but which is restricted from issue to specific units, activities, or geographical areas by reason of its limited usefulness or short service-life expectancy. Includes material with 3 through 6 months shelf-life remaining.

F. Economically reparable property which requires repair, overhaul, or reconditioning. Includes reparable items which are radioactively contaminated.

H. Property which has been determined to be unserviceable and does not meet repair criteria.

S. Property that has no value except for its basic material content.

245.607 Scrap.

245.607–70 Pre-inventory scrap determinations.

The contractor may request the plant clearance officer to make a pre-inventory scrap determination of inventory considered by the contractor to be without value except as scrap. These pre-inventory scrap determinations shall be based on on-site surveys. If the contractor's scrap recommendation is approved, the contractor may make a single descriptive entry on an inventory schedule covering that property and indicating its approximate total cost. If the plant clearance officer determines that any of the property listed by the contractor as scrap is serviceable, usable, or salvable, the contractor shall, in accordance with this determination, submit appropriate inventory schedules. If the determination is made subsequent to the submission of a scrap inventory schedule, the contractor shall be required to submit revised inventory schedules in proper form.

245.607–71 Segregation.

Property determined to be scrap shall be segregated by the contractor to the extent necessary to assure the highest net proceeds. In appropriate cases, when approved by the plant clearance officer, these sales may be consolidated with the contractor's sales of scrap generated from his other work.

245.607–72 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not

processed under this Part. Production scrap and production spoilage may be disposed of through the contractor's approved scrap procedure. In addition, worn, broken mutilated, or otherwise rejected parts excess to overhaul and repair contracts, may be similarly processed with the approval of the plant clearance officer.

(b) A plant clearance case shall not be established for property which is disposed of through the contractor's approved scrap procedure.

(c) The contractor's scrap and salvage procedures, particularly the sales aspects thereof, shall be reviewed by the plant clearance officer prior to its approval by the property administrator. The plant clearance officer shall assure that the procedure contains adequate requirements for inspection and examination of items to be disposed as scrap. When the contractor's approved scrap procedure does not require physical segregation and disposition of Government-owned from contractor-owned scrap, care shall be exercised to assure that a contract change, which generates a large quantity of property, does not result in an inequitable return to the Government. In these cases, a determination shall be made as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and this supplement.

(e) Silver, gold, platinum, palladium, rhodium, iridium, osmium and ruthenium; scrap bearing such metals; and items containing recoverable quantities thereof will be reported to the Defense Property Disposal Service, DPDS–R, Federal Center, Battle Creek, Michigan 49016, for disposition instructions.

245.608 Screening of contractor inventory.

245.608–1 General.

(b) The 75th day shall be designated as the automatic release date (ARD) by the plant clearance officer. The full 90-day period shall be designated as the Screening Completion Date (SCD). Plant clearance officers will designate two dates on all screening documents, the 75th day as the ARD and the 90th day as the SCD, neither of which shall be .xtended.

245.608–7 Reimbursement of costs for transfer of contractor inventory.

Costs incident to movement of IPE under the direction and control of the Defense Industrial Plant Equipment Center shall be borne by the Defense Logistics Agency.

245.608–70 Contractor inventory redistribution system (CIRS).

Serviceable and usable contractor inventory of the type listed on SF Forms 1428, Inventory Schedule B or SF Forms 1434, Inventory Schedule E, having a National Stock Number (NSN) and a line item acquisition value (acquisition value of each unit times the number of units) in excess of $50, or having no NSN and a line item acquisition value in excess of $500 shall be processed as follows:

(a) The 90-day screening period normally applies and the plant clearance officer establishes the ARD and SCD; and

(b) Two copies of the SF Form 1428, SF Form 1434, or authorized substitutes will be transmitted by Standard Form 120 to the Defense Industrial Plant Equipment Center (DIPEC), Attn: DIPEC–SSB; and

(c) DIPEC will return an annotated copy of each SF Form 1428 or 1434 received to the plant clearance officer with a Notification of Receipt form attached. This notification will inform the plant clearance officer which items were processed, and not accepted, or are now available for local area screening; and

(d) Property submitted for CIRS-processing will be subjected to a 30-day DoD screening period. The requiring activity within the requiring Department shall have requisitioning priority over other activities within that requiring Department and over the procuring Department when the requiring and procuring Departments are different. DIPEC reports items not requisitioned to the General Services Administration on the 31st day, unless the plant clearance officer provided special instructions to the contrary on the Standard Form 120; and

(e) DIPEC will issue shipping instructions on DD Form 1348–1 to the plant clearance officer. The plant clearance officer shall reroute requisitions received directly from the requisitioner to DIPEC during the first 45 days of the screening period. Requisitions received by DIPEC or by the plant clearance officer after the 45th day of the screening cycle shall be forwarded directly to the General Services Administration; and

(f) The plant clearance officer will instruct the contractor to send one copy of the completed DD Form 1348–1 to DIPEC, Attn: DIPEC–SSB, when shipment has been made; and

(g) Unless the contracting officer directs otherwise, motor vehicles generated under Army and Navy contracts shall be screened through CIRS.

245.608–71 Procedures for industrial plant equipment.

(a) *Reporting idle industrial plant equipment.* Industrial plant equipment (IPE) having an acquisition cost of $5,000 or more shall be listed on DD Form 1342, DoD Property Record. The DD Form 1342 shall be prepared by the contractor and submitted to the assigned Government property administrator for appropriate review and transmittal to the plant clearance officer. If the IPE has numerically controlled features, the contractor shall prepare and submit DD Form 1342, Section VI (page 2), Numerically Controlled Machine Data. Upon receipt of an acceptable DD Form 1342, the plant clearance officer will designate the 75th day from that date as the ARD, with the 90th day from that date as the SCD. The ARD will be entered in block 24 of the DD Form 1342 and shall not be extended, except as provided in (c) below. The plant clearance officer will forward copies of the DD Form 1342 to the Defense Industrial Plant Equipment Center, Memphis, TN 38114, for all IPE in condition codes other than "X." Condition code "X" IPE shall be processed in accordance with agency procedures. The DD Form 1342 shall be forwarded to DIPEC within 15 working days after becoming idle. No other distribution of this form will be made by the plant clearance officer.

(b) *Screening—first through 30th day.* DIPEC shall screen excess IPE against all requirements submitted by Department of Defense activities, including Department of Defense reserve requirements, with priority being given to requirements of the owning Department through the 30th day. DIPEC will issue a shipping instruction containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions for items selected to the appropriate contract administration office.

(c) *Screening—31st through 75th day.* On the 31st day, DIPEC will forward excess data to the applicable General Services Administration regional office for Federal utilization screening through the 75th day. During the period from the 31st through the 75th day, the General Services Administration will approve requests from any agency of the

Government on a "first come-first served" basis, and will approve and forward transfer orders containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Service Administration will forward copies of the approved transfer orders to DIPEC.

(d) *Screening—76th through 90th day.* During this period the General Services Administration will provide for the screening of all remaining IPE for possible donation. The General Services Administration will receive and approve donation applications for IPE and will forward approved donation applications, containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved donation applications to DIPEC.

(e) If a Department of Defense requirement develops after the 90th day and the item is still available, the item will be shipped against such requirement, unless the plant clearance officer has justified and compelling reasons for not making the shipment.

(f) Items of plant equipment with an acquisition cost of less than $5,000, and items of plant equipment with an acquisition cost of more than $5,000 not qualifying as IPE, as defined in 245.301, shall not be reported to DIPEC but shall be reported and screened in accordance with FAR 45.608 and this supplement.

(g) The plant clearance officer shall, when IPE has been transferred, donated, sold, destroyed, abandoned, or other disposition taken, assure that the contractor prepares a DD Form 1342 for submission to DIPEC through the property administrator within 15 working days. In the case of a transfer of the IPE, assure that the Shipment Status Card or a copy of the completed shipping document is sent to DIPEC.

245.609 Donations.

(S–70)(1) Classification of eligible donees in order of precedence and approval requirements are:

(i) for property schedules transmitted to GSA—

(A) *Public airports.* Donations approved during the first five days of the donation screening period. State or local public airport donations require approval of an appropriate official of the Federal Aviation Administration, Department of Transportation, and GSA.

(B) *Service educational activities (SEA).* SEA's have the same order of precedence as in (S–70)(2) below. Approval required of their national headquarters and GSA.

(C) *Educational, public health, and civil defense institutions and organizations.* Donations approved on a first-come, first-served basis with public airports and SEAs, during the last 10 days of the donation screening period. GSA has the over-all responsibility for selecting property determined to be usable and necessary for educational, public health and civil defense purposes, including research for any such purposes. Surplus property is screened and distributed for educational, public health, and civil defense purposes by State Agencies for Surplus Property (SASP). Approval of GSA is required.

(ii) For property screened in accordance with FAR 45.608, public airports, SEAs, and SASP screen and select property for donation approval by GSA on a first-come, first-served basis.

(iii) *Public bodies.* Surplus property may be donated to public bodies in lieu of destruction or abandonment in accordance with FAR 45.611.

(2) In addition to the activities indicated in (a) above, a Department may donate, without expense to the United States, certain material not needed by the Department of Defense to veterans' organizations, soldiers' monument associations, state museums, and incorporated museums operated and maintained only for educational purposes, whose charter denies them the right to operate for profit. For guidance as to limitations and requirements for donation to these activities, see Chapter III, Part 3, DoD 4160.21–M.

245.610 Sale of surplus contractor inventory.

245.610–1 Responsibility.

(a) *Property under DoD control.*

(1) *General.*

(i) It is the Department of Defense policy that when surplus contractor inventory is to be disposed of by means of sale, such sale will be conducted by the contractor in possession in accordance with procedures provided in this Section. The contractor is required to use best efforts to sell contractor inventory in the manner, at the times, to the extent, and at the prices approved by the plant clearance officer. The contractor is not required to extend credit to any purchaser.

(ii) Surplus contractor inventory included in the contractor's inventory schedules which has not been utilized or donated under FAR 45.609, or retained at cost pursuant to FAR 45.605, shall be sold in accordance with (a)(2) below at any time after notification by the plant clearance officer that screening has been accomplished. Any such purchase, retention, or sale shall be subject to the approval of the plant clearance officer.

(iii) *Description of Property.* Description of property must be adequate for identification by prospective bidders. Accuracy is essential and commercial terminology desirable. The original manufacturer and brand name shall be included, if appropriate. When property is boxed or packaged, information as to type of packaging shall be included.

(iv) *Condition.* Condition shall be stated as "used" or "unused" and shall not be described as new. If unused property is still in manufacturer's original containers, a statement to that effect shall be included. Appropriate qualifying statements shall supplement the basic noun description, i.e., "well preserved," some surface rust," "repairs required," etc. Condition codes shall not be used. Because of its non-specific meaning to the trade, the term "salvage" risks downgrading of the property in the bidder's viewpoint and shall not be used.

(v) *Lotting* shall be in accordance with the following:

(A) Unused items shall be lotted by make or manufacturer, except when quantities or dollar values are small;

(B) Commercially similar items shall be lotted together when practicable;

(C) Used and unused items shall be lotted separately, unless the quantity, value, or nature is such that it is uneconomical to sell separately;

(D) Within the bounds of economical considerations, the size of lots shall be influenced by an effort to encourage bidding by small businesses or individuals;

(E) No lot shall be so small that the administrative cost of selling will be disproportionate to the anticipated proceeds;

(F) An alternative bid for groups of items or for the entire offering may be solicited by use of an additional item described as follows:

Item ——— (Alternate Bid). This item consists of all property listed and described in Items ——— to ———, inclusive. Award under this item may be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items ——— to ———, inclusive.

(vi) *Basis of sale* shall be:

(A) *Unit price basis.* Items offered for sale shall require the bid price to be stated in terms of the quantity or weight

generally applied by industry in the commercial sale of such items.

(B) *Lot price basis.* When a sales offering is made on a lot price basis, bids shall be requested only for the entire lot. Use of the lot price basis shall be held to a minimum, since it precludes adjustments. The lot price basis shall be used only when property cannot be sold by unit measure or the potential monetary recovery is small.

(vii) *Format of invitation.* In large sales, a summary list of items offered shall be set forth and used as an item bid sheet, with detailed item descriptions on attached sheets.

(viii) *Bidder's lists.* The plant clearance officer shall assure that commodity bidder's lists sufficient to obtain adequate competition in the sale of contractor inventory are maintained. The plant clearance officer may obtain additional listings, as required, from the Defense Property Disposal Service (DPDS–R), Federal Center, Battle Creek, Michigan 49016. Use of listings maintained by DPDS is encouraged when extremely large quantities of property, special commodities, or unusual geographic location is involved.

(ix) *Auction, spot bid, and retail sales.* Auction, spot bid, and retail sales shall be utilized for selling contractor inventory, unless approved on an individual case basis by the departmental headquarters of the administering activity.

(x) *Market impact.* Contracting Officers or plant clearance officers shall submit data to the Defense Logistics Services Center (DLSC) relative to the proposed sale of machine tools of any one type on hand at any single location in minimum condition A1, A2, or A4, with a total acquisition cost exceeding $250,000. Sales data shall include the Plant Equipment Code (PEC) number, noun description, quantity, location of property, and the proposed method of sale. DLSC shall advise the contracting officer or plant clearance officer within five working days whether or not sale proposal is approved. Priority for sales approval shall be given in those instances when plant clearance or other expedited actions are involved.

(2) *Competitive sales.*

(i) *General.* Surplus contractor inventory shall be offered for sale on a competitive basis except as provided in (a)(3) below. To the extent feasible, subcontractors and suppliers should be solicited when additional competition is likely to result. The plant clearance officer shall provide the contractor with instructions relative to the method of soliciting bids and the basis for offering the property for sale (i.e., serviceable or scrap). In determining the sales method to be used, the plant clearance officer shall consider the expected sales proceeds (based on previous experience and current market) versus the cost of conducting the sale. When it is determined that an individual sale will be uneconomical, the material to be sold shall be combined with other material offered for sale, disposed of through the contractor's approved production generated scrap disposal procedure or abandoned. Case files will be documented to show the basis for the decision. The contractor's overall program, including all forms and procedures, shall be evaluated by the plant clearance officer and shall be subject to surveillance. To the extent necessary, the plant clearance officer may reserve the right to approve individual sales offerings prior to distribution. When the plant clearance officer determines that sale services are required, such services will be arranged for by the plant clearance officer directly with the organization requested to provide the services. The plant clearance officer will justify and document this need. These documents shall be a part of the plant clearance case file. The agreement reached will provide for the Defense Property Disposal Office or General Services Administration Regional Office to return total proceeds to the plant clearance officer for crediting in compliance with FAR 45.610–3.

(ii) *Solicitation of bids.* Contractors shall solicit bids by formal invitations, unless informal bid procedures have been approved by the plant clearance officer as provided in (a)(2)(ii)(B) below:

(A) *Formal bid procedures.*

Bids shall be solicited a minimum of 15 calendar days in advance of the opening of bids to allow bidders an adequate opportunity to inspect the property and prepare and formally submit bids;

Invitations shall be circulated to a sufficient number of prospective bidders to assure wide competition, including the original suppliers and those prospective bidders designated by the plant clearance officer and the contractor;

In addition to mailing or delivering a notice of the proposed sale to all prospective bidders, the contractor may supplement this sales method by—

Displaying a notice of the proposed sale in appropriate public places;

Displaying a notice of the proposed sale in appropriate trade journals or magazines; or

Publishing a notice of the proposed sale in a newspaper of general circulation in the locality in which the property is located, when the results of such paid commercial advertising is expected to justify the additional expenses involved.

When the acquisition cost of property to be sold at one time, at one place, is $250,000 or more, notice of each such proposed sale shall be transmitted to the U.S. Department of Commerce, Commerce Business Daily Office, Sales Section, P.O. Lock Box 5999, Chicago, Illinois 60680. The notice shall be sent at as early a date as possible in advance of the sale but at least 20 days prior to the date when the bids will be opened, or, in the case of spot bid or auction sale, when the sale will be conducted. Such notice shall be transmitted by fastest mail available and shall be in synopsis form suitable for printing directly from the text so transmitted without editing or condensing. Double space lines will be used to describe each sales action; and the length of the line should be approximately 65, but not to exceed 69 character spaces and will contain the following information in the order listed: the name and address of the contractor who will issue the invitation; the name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained; a description of the property to be sold; when deemed desirable, the total estimated acquisition cost; the number of the invitation or sale; the date of the sale or bid opening, the types of sale, i.e., sealed bid, spot bid, or auction; and the location(s) of the property. The utmost care should be exercised in describing the types of property to be sold in order to assure interest by the maximum number of potential buyers but, at the same time, condense the information so that minimum space in the Department of Commerce publication will be required for printing. Where the acquisition cost is less than $250,000 such notice may be transmitted, when considered desirable, in accordance with the procedures prescribed above.

(B) *Informal bid procedures.* When the amount or value of the property is not large enough to warrant preparation of a formal notice of the proposed sale or other special circumstances are present, invitations to bid may, with the approval of the plant clearance officer, be issued orally, by telephone or by other informal media, so long as the element of competition is maintained and each such sale is fully documented to include a record of solicitations and written confirmation of informal bids. Any bid by the contractor or its employees shall be submitted to the plant clearance officer prior to

solicitation of bids by the contractor from other prospective bidders.

(iii) *Formal invitations.* Sale by formal invitation shall include as a minimum general sale terms and conditions provided in 245.7102–6(a) and, when necessary, special conditions in 245.7102–6(b). The plant clearance officer or his representative shall be present to witness bid openings. Within two working days after bid opening, the contractor shall submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative. All awards shall be subject to the approval of the plant clearance officer as indicated in (a)(2)(iv) below.

(iii) *Bid reservations.* All invitations for bid shall reserve the right to reject any or all bids and shall require payment of the full purchase price prior to delivery of the property to the purchaser.

(iv) *Approval of sale.* Bids shall be evaluated by the plant clearance officer to establish that the sale price is fair and reasonable in the light of reasonable knowledge or test of the market, due regard being given to current prices for products for which quotations are published and to the circumstances, nature, condition, quantity, and location of the property. Current market price appraisal or price received may be obtained from DPDS upon request. Awards shall be approved to that responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who would not be eligible to enter into a sales contract with the Department of Defense in accordance with the provisions of the Consolidated List of Debarred, Suspended, and Ineligible Contractors. If it is determined that a compelling reason exists to make an award to a contractor on the Consolidated List, the plant clearance officer shall request approval from the departmental headquarters of the administering activity.

(vi) *Award by contractor.* The plant clearance office shall notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of sale, and release the property to the purchaser. The contractor shall provide the plant clearance office with evidence of delivery reflecting actual quantities released to the purchaser.

(3) *Negotiated sales.*

(i) Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the procuring department or the plant clearance officer determines and documents in accordance with FAR 15.304 and 245.613(d), as appropriate, that the use of this method of sale is essential to expeditious plant clearance, or is otherwise justified on the basis of circumstances enumerated below, *provided,* that the Government's interest are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the property was offered for competitive sale. Specific conditions justifying negotiated sales are:

(A) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(B) When no acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(C) When property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(D) When the disposal will be to states, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(E) When the specialized nature and limited use potential of the property would create negligible bidder interest;

(F) When removal of the property would result in a significant reduction in value, or the accrual of disproportionate expenses in handling; or

(G) When it can be clearly established that such action is essential to the Government's interests.

(ii) In those instances when the procuring department has concluded that it is appropriate to sell production equipment to the contractor in possession by means of noncompetitive negotiated sale, the department will provide the CAO with the required sales justification including any special sales provisions that may be appropriate.

(4) *Applicability of antitrust laws.* When contractor inventory with an acquisition cost of $3,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interest, the Department concerned shall promptly notify the Attorney General and the Administrator, General Services Administration, of the proposed disposal and the probable terms or conditions thereof. Prior to approving or effecting the proposed disposition, the plant clearance officer shall obtain antitrust clearance by transmitting the following information relative to the proposed sale through departmental channels of the administering activity for submission by that activity to the Department of Justice and the General Services Administration: Report Control Symbol DD DR&E(AR) 1492 has been assigned for this reporting requirement.

(i) Location and description of property (specifying the tonnage, if scrap);

(ii) Proposed sale price of property (explaining the circumstances if proposed purchaser was not highest bidder);

(iii) Acquisition cost of property of Government;

(iv) Manner of sale, indicating whether by—

(A) Sealed bid (specifying number of purchasers solicited and bids received),

(B) Auction or spot bid (stating how sale was advertised), or

(C) Negotiation (explaining why property was not offered for sale by competitive bid);

(v) Proposed purchaser's name, address, and trade name (if any), under which he is doing business;

(vi) If a corporation, give name of state and date of incorporation, and name and address of—

(A) Each holder of 25 percent or more of the corporate stock,

(B) Each subsidiary, and

(C) Each company under common control with proposed purchaser;

(vii) If a partnership, give—

(A) Name and address of each partner, and

(B) Other business connections of each partner;

(viii) Nature of proposed purchaser's business, indicating whether its scope is local, statewide, regional, or national;

(ix) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);

(x) Estimated net worth of proposed purchaser; and

(xi) Proposed purchaser's intended use of property. Disposition shall be withheld pending receipt of advice from the Attorney General as to whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises that the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws, such disposition will not be made. When property with a total acquisition cost of $3,000,000 or more is offered for sale on a competitive bid basis, the condition of sale specified in 245.7102–6(b)(viii) shall be included in the invitation for bid. When the sale is not competitive, the

prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General. The purchaser on either a competitive or noncompetitive sale shall be required to complete a questionnaire, providing the information outlined in (a)(4) (v) through (xi) above.

(5) *Foreign Contractor Inventory.*

(i) To prevent diversion, transshipment, or re-export of contractor inventory located in foreign countries to prohibited destinations and the use of such inventory adversely to the interests of the United States, the sale or other disposition of such inventory by the contractor, including sales to foreign governments, shall be made in accordance with (a)(5) (ii) and (iii) below.

(ii) Sales contracts or other documents for passing title to foreign contractor inventory shall contain the following certificate:

> The Purchaser certifies that the property covered by this contract will be used in ———— (insert name of country). In the event resale or export is to be effected by the Purchaser of any of the property, acquired at a price in excess of One Thousand United States Dollars ($1,000) or its equivalent in other currency at the official rate of exchange, the Purchaser agrees to obtain the approval of ———— (insert name and address of Sales Contracting Officer).

(iii) The sales contracting officer shall approve sales contracts and requests for approval of resales or exports only if:

(A) The proposed purchaser's name does not appear on the Consolidated List of Debarred, Suspended and Ineligible Contractors, and

(B) If the sales contract contains a provision prohibiting exports by purchasers and subpurchasers to communist areas, as listed in FAR 25.702.

(iv) Any disposals of foreign contractor inventory by the United States Government, as distinguished from disposal by a contractor, shall be in accordance with the security trade control regulation on foreign excess sales, and regulations dealing with integrity and reliability checks.

(v) Generally, disposal activities of the Military Departments shall be utilized to accomplish the disposition of surplus contractor inventory located in foreign countries except Canada. Contractor-conducted sales may be authorized, *provided* the interests of the Government are adequately protected.

245.610-3 Proceeds of sale.

(S-70) When payments are due the contractor under the applicable contract, and unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be credited to the Government as part of the settlement agreement, or otherwise credited to the price or cost of the work covered by the contract, or applied in the manner directed by the contracting officer. The plant clearance officer will maintain an open suspense record until he has verified that credit has in fact been applied, unless another Government representative has specifically assumed this responsibility.

(S-71) Proceeds from contractor-conducted sales which have not been credited as provided in (S-70) above shall be collected by the contractor and remitted to the plant clearance officer.

(S-72) All proceeds of sale remitted to the plant clearance officer shall be delivered to the designated disbursing officer by means of DD Form 1131, Cash Collection Voucher, within two working days after receipt. Transmittals shall identify the procurement contract by number and name of the contractor.

245.613 Property disposal determinations.

Written determinations supporting disposal actions in the following categories shall be made and placed in the plant clearance case file:

(a) Salvage determination;

(b) Scrap determinations (not required for production scrap);

(c) Abandonment and/or destruction determinations;

(d) Disposal by noncompetitive sale; and

(e) Other actions considered necessary by the plant clearance officer.

Determinations shall be recorded on DD Form 1641, Disposal Determination/Approval.

Subpart 245.70—Appointment of Property Administrator

245.7001 Appointment of property administrator.

245.7001-1 Selection, appointment and termination.

The selection, appointment and termination of appointment of property administrators shall be made in writing by the Head of a Procuring Activity or designee for the Defense Logistics Agency and by the head of the contract administration office or designee for the other Departments. In selecting qualified property administrators, the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

245.7001-2 Evaluation criteria.

In considering experience, training and education, the following shall be evaluated:

(a) Experience in accounting, material control, inventory control and allied functions;

(b) Formal education or specialization in such areas as evaluating, monitoring, administering, or coordinating industrial property programs or implementing plans and policies in support of diversified property control system; and

(c) Knowledge of the provisions of this and other applicable regulations.

245.7001-3 Assignment of contracts for property adminstration.

(a) All Department of Defense contracts under which Government property will be provided and which will be performed at a single location by a contractor shall be assigned to a single property administrator.

(b) Each contract under which Government property will be provided to the contractor will be assigned to a property administrator by the CAO. The assignment document shall contain the (1) name and address of the contractor, (2) PII (contract) number, and (3) type of contract.

(c) The assignment shall be terminated when:

(1) It has been determined that no Government property has been or will be furnished or acquired; or

(2) The contract is reassigned to another CAO or to another property administrator.

245.7001-4 Duties and responsibilities of plant clearance officer.

The plant clearance officer shall be responsible for:

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules and DD Form 1342;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting transfer and donation actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for effecting property disposal actions;

(h) Determining method of disposal;

(i) Surveillance of contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, inventory control manager, other federal agencies, or higher headquarters in all actions

relating to the proper and timely disposal of contractor inventory;

(l) Approving method of sale, evaluating bids, and approving sale prices for contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses on contractor-conducted sales;

(n) Securing anti-trust clearance, as required; and

(o) Advising the contractor officer on all property disposal matters.

Subpart 245.71—Forms, Instructions, and Reports

245.7101 Forms.

The forms listed below are prescribed for use in the performance of plant clearance actions covered in FAR Subpart 45.6 and Subpart 245.6.

245.7101-1 Standard Form 97.

Standard Form 97, Certificate of Release of a Motor Vehicle (agency record copy), will be executed by the contracting officer and furnished to the purchaser. Plant clearance officers will process Standard Form 97 in connection with transfers, donations, and sales of motor vehicles. Precautionary measures will be taken to prevent unauthorized persons from obtaining these forms. (245.7102-6)

245.7101-2 DD Form 1131.

DD Form 1131, Cash Collection Voucher, shall be used to remit proceeds of sale to the appropriate disbursing officer.

245.7101-3 DD Form 1149.

DD Form 1149, Requisition and Invoice Shipping Document, shall be used for transfers and donations of excess or surplus contractor inventory, except IPE shall ordinarily be shipped by DD Form 1348-1, provided that any donation of IPE may be shipped via DD Form 1149.

245.7101-4 DD Form 1342.

DD Form 1342, DOD Property Record, shall be used to report idle industrial plant equipment to DIPEC for worldwide screening.

245.7101-5 DD Form 1640.

DD Form 1640, Request for Plant Clearance, shall be used to request plant clearance assistance or transfer plant clearance.

245.7101-6 DD Form 1638.

DD Form 1638, Report of Excess and Surplus Contractor Inventory, shall be used to provide a uniform reporting system of essential management data reflecting the scope and effectiveness of the contractor inventory utilization and disposal program.

245.7101-7 DD Form 1641.

DD Form 1641, Disposal Determination/Approval, shall be used to support disposal determinations.

245.7101-8 DD Form 1635.

DD Form 1635, Plant Clearance Case Register, provides a permanent numerical listing of plant clearance cases and shall be maintained by each office performing a plant clearance function. The space provided on the right-hand side of the form may be used for additional columns and headings considered essential by management officials. In those instances when the plant clearance register has been mechanized, a mechanized form may be used in lieu of the DD Form 1635.

245.7101-9 DD Form 1348-1.

DD Form 1348-1, DOD Single Line Item Release/Receipt Document, shall be used for all transfers of idle Industrial Plant Equipment and Contractor Inventory Redistribution System (CIRS) inventory when directed by DIPEC.

245.7102 Instructions.

Additional instructions are provided below for completing the forms or reports prescribed in this Section.

245.7102-1 Instructions for performing inventory verification and determination of allowability.

The following instructions shall be observed in verifying inventory schedules:

(a) *Allocability.* Determine allocability of inventory by reviewing contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include:

(1) Material which would not have been required for completion of the terminated or modified portion of the contract;

(2) Material in quantities indicating an unreasonable anticipation of contract requirements; or

(3) Material which might be utilized on the continuing portion of the contract, or diverted to other work of the contractor, either commercial or Government. Utilize sound judgment and experience gained during the life of the contract in detecting common items. In addition review—

(i) Contractor's purchase orders for current procurement of similar material,

(ii) Contractor's plans and orders for current and scheduled production.

(iii) Contractor's stock record cards, and

(iv) Contractor's bills of material prepared for items similar to the terminated or modified items.

(b) *Quantity.* Assure that the quantities of inventory available are in accordance with the quantities listed on the inventory schedules. While a complete physical count of each item of inventory normally need not be performed, sufficient checks to assure that the quantities are accurate shall be performed.

(c) *Condition.* Assure that the condition of the inventory is in accordance with that shown on the inventory schedules.

245.7102-2 DD Form 1638.

DD Form 1638, Report of Excess and Surplus Contractor Inventory, shall be used by all contract administration offices having plant clearance responsibility for reporting cases under which disposition of contractor inventory actually has been effected. Cases transferred to other offices will not be included. Only the column total for each line of this report will be completed, unless the departmental headquarters of the administering activity desires a breakout of DIPEC-controlled property and directs completion of other column. Reports shall be prepared on a quarterly basis covering report periods ending 31 March, 30 June, 30 September, and 31 December, and shall be submitted in duplicate to the Departmental Headquarters of the administering activity, no later than 10 working days after the close of the report period. This reporting requirement is assigned Report Control Symbol DD(I&L)(Q)1430. All items on the report are self-explanatory except as follows:

(a) *Line 1.* Insert exact totals from line 7 of preceding report.

(b) *Line 2.* Insert net increase or decrease due to shortage, overages, errors, or withdrawals (other than purchases or retentions at cost).

(c) *Line 3.* Insert totals representing all excess inventory reported by the contractors for plant clearance purposes during reporting period.

(d) *Line 4.* Insert total of lines 1, 2, and 3.

(e) *Line 5.* Insert totals representing all plant clearance cases completed during the reporting period. Cases shall not be reported as completed until physical removal (or other final disposition) has been accomplished. Acquisition cost must equal acquisition cost on line 19.

(f) *Line 8.* Insert amount which contractor in possession is retaining or withdrawing at full acquisition cost.

(g) *Line 9.* Insert full acquisition cost in appropriate column, and in "Proceeds" column insert the acquisition cost less approved handling, transportation, or restocking charges.

(h) *Line 10.* Insert total acquisition cost of all transfers accomplished during the reporting period. On lines 10A through 10H, insert subtotals representing value of transfers to each service or agency indicated. Line 10 represents the total of the individual amounts shown on lines 10A through 10H. Caution should be taken to exclude the amount on lines 10A through 10H when obtaining the grand total on line 19 of the several columns of Section II.

(i) *Lines 12 through 14.* Insert gross proceeds. When approved costs of sale are reimbursed from proceeds, net proceeds shall be identified in "Remarks".

(j) *Line 15.* Insert acquisition cost of inventory sold by the contractor with proceeds applied as a credit to overhead.

(k) *Lines 16 and 18.* Lines 16 and 18 may be used to identify and report transactions not otherwise identified.

(l) *Line 19.* Insert total of lines 8 through 18. Acquisition cost must equal acquisition cost on line 5.

245.7102–3 Instructions for establishing a plant clearance case.

Upon receipt of acceptable inventory schedules or DD Form 1342 from the contractor or from other Government sources provided by this Part, the plant clearance officer shall assign a plant clearance case number in accordance with 245.7102–4 and establish a plant clearance case file. The case number, contractor's name, and contract number shall be identified on the case folder. Termination inventory shall be identified with the work "Termination" on the outside of the case folder to insure priority handling. Separate submissions of inventory schedules and DD Forms 1342, applicable to one contract at the same location, shall be consolidated, whenever possible, under one plant clearance case. The plant clearance case file, as a minimum, shall contain the following:

(a) Copy of inventory schedules or DD Form 1342 (The copy of the inventory schedule will be annotated by the plant clearance office to reflect all disposal actions accomplished. Upon completion of all plant clearance actions, this copy should reflect disposition of all inventory reported for plant clearance action.);

(b) Copy of letters or transmittal documents forwarding contractor inventory to the appropriate screening activity;

(c) Copies of all shipping instructions, correspondence, or other instructions directing the disposition of contractor inventory, or evidence of no requirements;

(d) Copies of all shipping documents accomplishing transfer or shipment of contractor inventory;

(e) Copy of Inventory Verification Survey or other forms evidencing completion of allocability review;

(f) Copies of appropriate forms authorizing donation;

(g) Copies of all appropriate forms evidencing the sale of contractor inventory;

(h) Appropriate documentation indicating proper disposition of any proceeds resulting from plant clearance action;

(i) Copies of all other correspondence or forms bearing on disposal actions concerned with the case;

(j) Copies of all pertinent correspondence and approvals concerning Property Disposal Review Board cases, and antitrust clearance, when required; and

(k) Copy of Inventory Disposal Report.

245.7102–4 Instructions for assigning plant clearance case number.

(a) The plant case number shall consist of a three-part, 11-digit number constructed as follows:

(1) The first part shall be a six digit (alphanumeric combination), as shown in the DoD Activity Address Directory assigned to the contract administering activity.

(2) The second part, digits 7 through 10 shall consist of the following: 7th through 9th digits—Consecutively numbered serial number, locally assigned, using alpha and numeric characters commencing with 001 at the beginning of each calendar year, and continuing as necessary through ZZZ.

(3) The third part, 11th digit, will be a single alpha code to identify the Department:

C—Army
Q—Navy
E—Air Force
L—Marine Corps
U—Defense Logistics Agency
N—Defense Nuclear Agency
M—Defense Mapping Agency
S—National Aeronautics and Space Administration
O—Non-DoD Activities

(b) Combined, the plant clearance case number assigned by the plant clearance officer will be in accordance with the following examples: "S4403A–0010–Q" and "54403A–ZZZ2–Q"

(1) "S4403A" indicates that the Dallas Defense Contract Administration Services Region is designated as the office to which the plant clearance officer is assigned.

(2) "0010" indicates that this is the first case established by the Dallas Defense Contract Administration Services Region in calendar year 1970 and "ZZZ2" the 8199th case in calendar year 1972.

(3) "Q" indicates that the Navy is the owning military service.

(c) The plant clearance case number assigned will be recorded on DD Form 1635, Plant Clearance Case Register, which will provide a permanent numerical listing of plant clearance cases.

245.7102–5 Form letter for transmitting DD Form 1342 to DIPEC.

The following minimum information shall be included in the letter:

(1) The number of DD Form 1342 included;

(2) Automatic Release Date;

(3) Screening Complete Date;

(4) Contractor's name and address;

(5) Procurement Instrument Identification (Contract) Number;

(6) The name and address of the procuring activity that awarded the facility or other type contract which permitted the contractor to acquire the industrial plant equipment;

(7) The location of the industrial plant equipment;

(8) Total acquisition cost;

(9) A note stating that the ARD will not be extended;

(10) A note substantially as follows:

All requests for transfer or shipment must indicate appropriate fund citation for packing, crating, and handling charges. Government Bills of Lading (GBL) should be furnished when possible. If shipments will be accomplished by other than a GBL, DIPEC must cite transportation funds; and

(11) A signature block containing the name of the plant clearance officer.

245.7102–6 General sales terms and conditions, and special conditions of sale.

(a) The following general sales terms and conditions shall be included, as a minimum, in contractor-conducted sales by formal invitation:

(1) *Inspection.* The Bidder is invited, urged, and cautioned to inspect the property to be sold prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.

(2) *Condition and location of property.* Unless otherwise specifically provided in the Invitation, all property listed

therein is offered for sale "as is" and "where is." If it is provided therein that the Contractor shall load, then "where is" means f.o.b. conveyance at the point specified in the Invitation. The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property or its fitness for any use or purpose. Except as provided in Conditions No. (8) and (10), no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

(3) *Consideration of bids.* The Bidder agrees that his bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (sixty (60) calendar days if no period is specified by the Contractor or by the Bidder, but not less than ten (10) calendar days in any case) and that during such period his bid will remain firm and irrevocable. The right is reserved to reject any or all bids, to waive any technical defects in bids, and unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the Invitation otherwise provides, bids may be submitted on any or all items. However, unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item. In case of error in the extension of prices, unit prices will govern.

(4) *Payment.* The Purchaser agrees to pay for property awarded to him in accordance with the prices quoted in his bid. Payment of the full purchase price, subject to any adjustment pursuant to Condition No. (8), must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made pursuant to Condition No. (8), payment must be completed immediately subsequent to such adjustment. The balance of the purchase price after applying the total bid deposit made by the Purchaser (if a bid deposit was required) under the Invitation (or otherwise the full purchase price) shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor reserves the right to apply any bid deposits made under this Invitation by a Bidder against any amounts due to the Contractor under a contract awarded by him under this Invitation for Bid. In those instances where the total sum becoming due to the Contractor from the Purchaser on a contract awarded to him under the Invitation is less than the total amount deposited with his bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

(5) *Title.* Unless otherwise specified in the Invitation, title to the items of property sold hereunder shall vest in the Purchaser as and when full and final payment is made, except that if the Invitation provides that loading will be performed by the contractor, title shall not vest until such payment and loading are completed. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing, a certificate of release, Standard Form 97, Certificate of Release of a Motor Vehicle, executed by the Contracting Officer (or a State certificate of title), shall be furnished for each vehicle and piece of equipment.

(6) *Delivery and removal of property.* Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title of the property in him. Delivery shall be made at the designated location, and the Purchaser shall remove the property at his expense within the period of time originally specified in the Invitation or within such additional time as may be allowed by the Contractor. The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by the removal operations of the Purchaser. If the Purchaser is permitted by the Contractor to remove the property after the expiration of the period prescribed or allowed for removal, the Contractor, without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge.

(7) *Default.* If the successful Bidder fails to make full payment, to remove property on the specified date, or to comply with any other terms and conditions thereof, the right is reserved to sell or otherwise dispose of any or all such property and to charge losses and expenses incidental thereto to the account of the defaulting Bidder. The bid deposit (if required in the Invitation) shall be applied against any such losses and expenses.

(8) *Adjustment for variation in quantity or weight.* When property is sold on a "unit price" basis, the Contractor reserves the right to vary the quantity or weight delivered by fifteen percent (15%) from the quantity or weight listed in the Invitation; and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted upwards or downward in accordance with the unit price and on the basis of the quantity or weight actually delivered. No adjustment for variation shall be made where property is sold on a "price for the lot" basis.

(9) *Weighing.* When weighing is necessary to determine the exact purchase price hereunder, the Purchaser shall arrange for and pay all expenses of weighing material. All switching charges shall be paid by the Purchaser. When removal is by truck, weighing shall be subject to supervision and accomplished on (i) contractor scales, (ii) certified scales, or (iii) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales or by other means acceptable to the railroad for freight purposes. Approved weighing shall establish the exact purchase price and govern the making of full payment thereon.

(10) *Risk of loss.* After mailing notice of award and prior to the date specified for removal, the Contractor shall be responsible only for the exercise of reasonable care for the protection of the property. After passage of title and after the date specified for removal of the property or any extension approved in writing by the Contractor, all risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser.

(11) *Limitation on contractor and government liability.* The measure of Contractor and Government liability in any case when liability of Contractor and Government to the Purchaser has been established shall not exceed refund of such portion of the purchase price as the Contractor may have received.

(12) *Oral statements and modifications.* Any oral statement or representation by any representative of the Contractor changing or supplementing the contract or any condition thereof is unauthorized and shall confer no right upon the Purchaser.

(13) *Eligibility of bidders.* The Bidder certifies that he is not: (i) a civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (ii) a member of the Armed Forces of the United States, including the United States Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (iii) an agent, employee or immediate member of the household of personnel in (a)(13) (i) and (ii) above.

(14) *Claims liability.* The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale or the property site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

(b) The following special conditions of sale shall be included in contractor-conducted sales by formal invitation, as required, or at the specific request and direction of the plant clearance office:

(1) *Demilitarization.* When demilitarization of property by the Purchaser is required, whether on or off the contractor or Government premises, the following special conditions shall be included in the invitation for bids on property located in the United States or outside the United States, as appropriate—

(i) *Demilitarization.* Item(s) ——— are required to be demilitarized by the Purchaser in the manner and to the degree set forth below: ———

(A) Insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense Demilitarization Manual, DoD 4160.21–M–1 for property located in the United States.

(B) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21–M–1.

(ii) *Demilitarization on government premises.* The property requiring demilitarization shall not be removed from Government premises and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization and further agrees to do any necessary work to restore the working area to its present condition after completely removing the demilitarized property.

(iii) *Demilitarization on other than government premises.* The property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization.

(iv) *Failure to demilitarize.* If the Purchaser fails to demilitarize the property being sold herein in accordance with the terms of the contract, the contractor may, at his option and upon ten (10) days written notice (calculated from date of mailing) to the Purchaser:

(A) Repossess the property, complete the demilitarization thereof, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor prior to the return of the property to the Purchaser all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(B) Repossess the property, complete the demilitarization thereof, resell the property, and charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs incurred by the Contractor in repossessing, demilitarizing, and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(C) Repossess the property and resell it under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these excess costs for the original purchase price, if any, to the defaulting Purchaser. Should the cost to the Contractor of repossessing and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees, to pay these excess costs to the Contractor.

(2) *Performance bond.* When work, other than loading, is to be performed by the purchaser and it is considered necessary to insure performance by the purchaser, a performance bond shall be required. Generally, the amount of each performance bond shall be 100% of the estimated cost of the work to be performed. If a requirement for a 100% performance bond would be disadvantageous to the contractor or to the Government, the amount may be reduced to not less than 50% of the estimated cost of the work to be performed. The execution of a performance bond in a specified amount shall be required, as follows:

Performance Bond. Within ten (10) days after notice of award, the Purchaser shall furnish a performance bond in the sum of $——— to cover the Purchaser's obligations and undertakings herein. Such bond shall remain in full force and effect during the term of the contract any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until such time as the bond has been received.

(3) *Liability and insurance.* The following shall be required when the work to be performed by the purchaser warrants a special condition of sale:

Liability and Insurance. The Purchaser shall at his own expense procure and maintain during the term of the contract insurance as follows:

(i) Standard workmen's compensation and employer's liability insurance such as may be proper under State and Federal statutes. However, upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law, the Contractor may waive this requirement.

(ii) Bodily injury liability insurance in the amount of not less than $300,000 any one occurrence.

(c) Property damage liability insurance including any and all property, whether or not in the care, custody, or control of the Purchaser.

(4) *Dangerous property.* A warning of potential danger shall be included in all cases when it cannot be certified that the property is completely innocuous. The following condition shall be used for this purpose:

Dangerous Property. Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or his employees, or to any other person, arising from or

incident to the purchaser of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

(5) *Controlled substances.* The sale of any controlled substance, e.g., narcotics, stimulants, depressants, hallucinogenic drugs, shall be subject to the following special conditions:

Controlled Substances. Bids will be rejected unless the Bidder submits the following certification with his bid: "The undersigned represents and warrants that he is registered under The Comprehensive Drug Abuse Prevention and Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances either as a medical practitioner, dealer or manufacturer of controlled substances."

Narcotic Drug and Chemicals. Bids will be rejected unless the Bidder submits the following certification with his bid: "The undersigned represents and warrants that he is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics."

(6) *Radioactive material.* The following condition shall be used whenever there is the possibility that the property offered for sale is capable of emitting ionized radiation:

Radioactive Material. Purchasers are warned that the property may be capable of emitting ionized radiation in varying degrees. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or his employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from any and all such claims. As a safety precaution, the Purchaser should warn future possessors or users of the property that it may be capable of emitting ionized radiation.

(7) *Scrap warranty.* The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

Scrap Warranty. The Purchaser represents and warrants that the property will be used only as scrap, in its existing condition or after further preparation, and will not be resold until (a) scrapping has been accomplished, or (b) the Purchaser obtains an identical warranty from any subsequent purchaser.

(8) *Antitrust clearance.* When a sales offering includes property with an acquisition cost of $3,000,000 or more, the following condition shall be included:

Antitrust. To comply with Section 207 of the Federal Property and Administrative Services Act of 1949, as amended, when property offered for sale has an acquisition cost of $3,000,000 or more, or when the property consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to sixty (60) days for acceptance of his bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not tend to create or maintain a situation inconsistent with the antitrust laws.

(9) *Small business representation.* The following provision shall be included in the general sales terms and conditions for all formal sales invitations covering contractor conducted sales of surplus industrial plant equipment.

Bidder Represents:
(Check appropriate box)
(a) That he (—) is, (—) is not, a small business concern.
(b) For definitions and applicable size standards, see FAR Subpart 19.1 and Code of Federal Regulations, Title 13, Part 121, as amended.
(End of provision)

(c) The following special conditions of sale may be added at the option of the contractor:

(1) *Sales and use tax liability.* If the purchase of the property is subject to a state sales or use tax, a special condition of sale shall be included stipulating that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

(2) *Safety, security, and fire regulations.*

(3) *Bid deposits.*

(4) *Other special conditions.* All other special conditions of sale considered necessary by the Contractor shall be subject to the prior approval of the plant clearance officer. Approval shall be granted, *provided,* the prescribed conditions of sale are not altered or affected thereby and the interest of the Government is not adversely affected.

PART 246—QUALITY ASSURANCE

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 246.1—General

246.101 Definitions.

"Calibration", is the comparison of a measurement system or device of unverified accuracy to a measurement system or device of known or greater accuracy to detect and correct any variation from required performance specification of the unverified measurement system or device.

"Metrology", is the science of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

"Quality", means the composite of material attributes including performance features and characteristics of a product or service to satisfy a given need.

"Quality Assurance", is a planned and systematic pattern of all actions necessary to provide adequate confidence that adequate technical requirements are established; products and services conform to established technical requirements; and satisfactory performance is achieved.

"Quality Audit", is a systematic examination of the acts and decisions with respect to quality in order to independently verify or evaluate the operational requirements of the Quality program or the specification or contract requirements of the product or service.

"Quality Program", is a program which is developed, planned, and managed to carry out cost effectively all efforts to effect the quality of materials and services from concept through validation, full-scale development, production, deployment, and disposal.

246.102 Policy.

(S–70) The Departments shall develop and manage a cost effective quality program to assure that all services provided and products designed, developed, purchased, produced, stored distributed, operated, maintained, or disposed of, by contractors for the Department of Defense, conform to specified requirements.

(S–71) The Departments will plan and implement a quality program as an integral part of all phases of the acquisition and support process, and will conduct quality audits to assure the attainment of quality products and services.

(S–72) The Government shall determine the type and extent of Government contract quality assurance actions required, based upon the particular acquisition.

(1) These actions may include:

(i) Inspection of supplies and services;

(ii) Review of the contractor's inspection system, quality program, or other means employed by the contractor to control quality and to comply with contract requirements:

(iii) Maintenance of Government records to reflect actions, deficiencies, and corrective measures; and

(iv) Review and evaluation of quality data, including reports from the user, to initiate required corrective actions or to adjust Government contract quality assurance actions.

(2) The Government shall hold contractors responsible for the quality of products and services by means of:

(i) Contract provisions that place responsibility on contractors;

(ii) The Government's exercising its right to reject or return contractor-responsible defective items for repair, correction or replacement; and

(iii) Warranty clauses, when appropriate.

(3) The Government shall consider the use of:

(i) Contractual means for encouraging excellence in the conduct of contractor-responsible quality efforts;

(ii) Incentive fee or award fee arrangements for achieving quality goals;

(iii) Reduced Government surveillance when contractor's quality performance so indicates; and

(iv) Other noncontractual motivation techniques.

(4) Contractors shall be provided maximum flexibility in establishing efficient and effective quality programs within specified contractual requirements.

246.103 Contracting office responsibilities.

The contracting office may conduct, in conjunction, where necessary, with the activity responsible for technical requirements, product-oriented surveys and evaluations to determine the adequacy of the technical requirements relating to quality and product conformance to design intent. The contracting office may arrange with the contract administration office to participate in pre-award surveys, post-award, and preproduction conferences, and first article testing. The contracting office may aid the contract administration office in the transition from research and development to production, aid the technical activity in improving the quality requirements in contracts when first designed for competitive acquisition, and aid in ascertaining the source of difficulties associated with user experience reports.

246.104 Contract administration office responsibilities.

(d) Written instructions from the contracting office shall be continued as prescribed until any recommendation has been acted upon by the contracting office (also see FAR 46.103(c)).

246.170 Organization responsible for technical requirements.

(a) The activity responsible for technical requirements (e.g., specifications, drawings and standards) is responsible for prescribing inspection, testing, or other contract quality requirements that are essential to assure the integrity of products and services.

(b) To the extent feasible, alternative but substantially equivalent inspection methods shall be provided in order to obtain wide competition and low cost. Contractor-recommended alternatives may be authorized when in the interest of the Government and after approval by the activity responsible for technical requirements.

(c) The activity responsible for technical requirements may also prepare instructions regarding the type and extent of Government inspections pertaining to contracts for specific supplies or services that are complex or for which unusual requirements have been established. Such instructions shall be kept to a minimum taking into account the policy contained in 246-474(b). Normally, issuance of these instructions will not be appropriate for standard commercial items except when items having critical characteristics are being purchased. After issuance of these instructions, production problems, product-oriented visits, user experience and input from the contract administration office shall be analyzed periodically to determine whether conditions warrant a change in type and extent of the inspection requirements. Such analysis may result in decreasing or increasing Government inspection. These instructions shall be prepared on a contract-by-contract basis and shall not be issued:

(1) As a substitute for incomplete contract quality requirements;

(2) Where the contract does not impose equal or greater inspection requirements on the contractor;

(3) Encompassing broad or general designations such as "all requirements", "all characteristics", or "all characteristics in the classification of defects";

(4) On routine administrative procedures; or

(5) Specifying continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(d) In the preparation of such instructions, the technical activity shall consider, to the extent available and applicable, such factors as:

(1) The past quality history of the contractor;

(2) The criticality of the material acquired in relation to its ultimate use considering such factors as reliability, safety and interchangeability;

(3) Problems encountered in the development of the product;

(4) Problems encountered in the acquisition of the same or similar material;

(5) Previously generated feedback data from receiving, testing or using activities; and

(6) Other contractor's experience in overcoming manufacturing problems.

When knowledge of the determining factors, which resulted in the requirement for Government inspection, would be useful to the contract administration office in performing the contract quality assurance function, these factors should be provided to the contract administration office.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202-3 Higher-level contract quality requirements.

(S-70) Inspection System Requirement is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain an inspection system in accordance with a Government specification. This requirement shall be referenced in contracts when technical requirements are such as to require control of quality by in-process as well as final end-item inspection, including control of such elements of the manufacturing process as measuring and testing equipment, drawings and changes, inspection, documentation and records. The objectives and essential elements of an inspection system are prescribed in MIL-I-45208, which shall be referenced in contracts when an inspection system requirement has been established.

(S-71) Quality Program Requirement is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain a quality program in accordance with a Government specification. Such a requirement shall be established when the technical requirements of the contact are such as to require control of work operations, in-process controls, and inspection, as well as attention to other factors (e.g., organizations, planning, work instructions, documentation control, advanced metrology). The objectives and essential elements of a quality program are prescribed in MIL-Q-9858 which shall be referenced in contract when a quality program requirement has been established.

246.203 Criteria for use of contract quality requirements.

(c) *Criticality.* Whether peculiar or common, purchases of critical items must have contract quality requirements.

246.204 Application of criteria.

For DoD the following table implements FAR 46–204, Table 46–1, for higher-level contract quality requirements:

TABLE 46–1—CONTRACT QUALITY REQUIREMENTS GUIDE

Item		Type of contract	
Technical description	Complexity	Application	Quality requirement
Commercial	Complex	Critical	MIL-I-45208
Military-Federal	Non-complex	Critical	MIL-I-45208
Military-Federal	Complex	Non-Critical Peculiar	MIL-I-45208
Military-Federal	Complex	Critical	MIL-Q-9858

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

The contracting officer shall insert the clause at 252.246–7000, Material Inspection and Receiving Report, in solicitations and contracts when delivery of a separate and distinct object or entity, whether separately priced or not, is anticipated. However, when contract administration is retained by the contracting office, the clause is not required in the following situations unless the use of a MIRR is desired by the contracting officer:

(a) Contracts effected under FAR Part 13;

(b) Negotiated subsistence contracts;

(c) Contracts for fresh milk and related fresh dairy products;

(d) Contracts for which the end item is a scientific or technical report;

(e) Research and development contracts not requiring the delivery of separately priced end items;

(f) Base, post, camp or station contracts;

(g) In overseas areas when the contracting officer determines that the preparation and distribution of DD Form 250 by the contractor would be impracticable, the contracting office shall arrange for the contractor to provide the information necessary for the preparation of the DD Form 250 by the contract administration personnel; and,

(h) Contracts for services when hardware is not acquired as an item in the contract, e.g., level of effort type contracts; field service type contracts, etc.

A MIRR is not required when indefinite delivery type contracts are placed by central contracting offices which authorize only base, post, camp or station activities to issue orders, provided that such contracts and orders are not assigned for administration.

246.371 Inspection records.

Inspection records referenced in the following FAR clause paragraphs include any data analysis or summary of records used by the contractor to complement his inspection system: 252.246–2(b), 252.246–4(b), 252.246–5(b), 252.246–6(b), 252.246–7(a), 252.246–8(b), 252.246–10(b), and 252.246–12(b).

Subpart 246.4—Government Contract Quality Assurance

246.405 Subcontracts.

Selective evaluation of the contractor's control of his subcontractors may be requested by the contract administration office responsible for the contract in order to provide that office with additional assurance that supplies being received from subcontractors conform to quality requirements. Communications between contract administration offices concerning contract quality assurance actions to be performed shall be through Government channels. Requests for selective evaluation shall indicate Government contract quality actions to be performed, e.g., specific characteristics, processes and procedures to be verified, tests to be witnessed, and records, reports, and certificates to be evaluated.

246.406 Foreign governments.

(S–70) *FMS Requirements.*

If a contractor's purchase order or subcontract includes FMS requirements and "quality assurance only" is requested at source, the requesting CAO shall clearly indicates "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity and related DoD prime contract number and contract line/subline item number. When more than one FMS case is involved, the information shall be provided for each.

(S–71) *Quality assurance among NATO countries.*

(1) NATO Standardization Agreement (STANAG) 4107-Mutual Acceptance of Government Quality Assurance sets forth procedures, terms and conditions under which mutual government quality assurance of military material and services is to be performed by the national authority of one NATO country on request of another NATO country, or a NATO organization. This agreement, with certain reservations, has been ratified by the United States and other nations in the North Atlantic Treaty Organization. The Military Departments may request NATO countries to perform quality assurance in accordance with STANAG 4107. Military Departments will also perform quality assurance in accordance with STANAG 4107 when requested by a NATO country. As a reservation to STANAG 4107, the U.S. Government reserves the right to require reimbursement for work performed for other NATO countries and organizations. 242.102–70(d) applies.

(2) NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications, provides for the application of Allied Quality Assurance Publications (AQAP's). Its annexes furnish a list of AQAP's and the criteria for the application of those AQAP's which are contractually required in contracts between NATO countries.

(S–72) *International military sales (Non-NATO).*

Department of Defense components shall:

(1) Perform quality assurance (QA) services on international military sales contracts or in accordance with existing agreements;

(2) Assure conformance to technical and quality requirements of international military sales contracts;

(3) Keep Government personnel and contractors informed on the use of QA publications; and,

(4) Specify appropriate quality requirements in contracts awarded to other countries, and delegate QA services to the host government whenever satisfactory services are available, as appropriate.

246.470 Quality assurance by other agencies.

Under Pub. L. 85–726 (72 Stat. 776, 49 U.S.C. 1423), the Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with the issuance and continuation of various certificates applicable to the design, manufacture, and airworthiness criteria of certain types of commercial aircraft and of aircraft equipment and accessories. The FAA evaluations are not a substitute for normal Department of Defense evaluations of the contractor's quality assurance measures. Actual records of such FAA evaluations may be of benefit, however, and should be utilized to maximum advantage by the contract administration office. That office is responsible for assuring that the supplies and services conform to the terms of the contract and that any required certificates and approvals are in the possession of the contractor prior to acceptance.

246.471 Contract administration of special commodities.

246.471-1 Subsistence.

(a) Any Federal activity capable of assuring wholesomeness and quality in food, including medical service personnel of the Military Departments, may be designated by the purchasing office to perform Government contract quality assurance actions on a reimbursable basis when appropriate, for subsistence contract items.

(b) The following is an explanation of particular terms used in this section:

(1) Subsistence—food for, and provisions to be used in, feeding of personnel and animals;

(2) Medical Service Personnel—officers and enlisted personnel of the Medical Services of the Departments of the Army, Navy, and Air Force designated to perform the required inspections of subsistence;

(3) Wholesomeness of Food—that characteristic possessed by a food product which promotes good health and well being in the consumer; and

(4) Quality of Food—the required elements or characteristics stated in the specification or other contractual document which the food must possess to comply with the desired degree of excellence exclusive of those characteristics required to assure wholesomeness.

(c) The Surgeons General of the Military Departments are responsible of the acceptance criteria, technical requirements, and inspection procedures needed to assure wholesomeness of foods. Wholesomeness assurance measures will include but not be limited to:

(1) Establishment of standards of tolerances to evaluate wholesomeness.

(2) Inspection of sources for sanitation including sources of component items when required;

(3) Approval of manufacturing processes to assure wholesomeness is incorporated and used; and

(4) Use of test and examination techniques during processing or for the finished item to detect unsanitary practices or unwholesome food.

(d) Maximum utilization shall be made of existing inspection and grading services of other Federal agencies to perform contract quality assurance actions in processing plants economically and efficiently. However, an adequate Government contract quality assurance workload shall be retained for training of medical service personnel and to provide a base for rotation of personnel between the continental United States and overseas.

246.471-2 Petroleum.

The contract administration office may authorize the release of petroleum supplies without requiring the signing or stamping of shipping papers by a representative of the contract administration office, if the alternative procedures of 246.473(b) are used. In that event on petroleum servicing contracts for receiving, storing, and issuing Government-owned petroleum products, the contractor shall be required to type or stamp and to sign the following statement on each copy of the shipping papers:

> I certify that the above supplies were (a) in the quality indicated, (b) taken from Government-owned and approved stocks, and (c) loaded into inspected and approved containers. This shipment was released in accordance with paragraph 46-471-2 under authorization of (Name and title of the authorized representative of the Contract Administration Office) in a letter dated (Date of authorizing letter).
>
> (Signature and Title of Contractor's designated official.)

246.471-3 Construction projects.

(a) On-site inspection of buildings and other structures is normally performed by the Military Department responsible for their construction.

(b) Government contract quality assurance actions for construction materials and supplies acquired for military and civil works projects shall be performed by the contract administration office in accordance with this Section.

(c) The functions in (a) and (b) above will be performed so as to assure compatibility of buildings and structures and installed equipment.

246.472 Inspection stamping.

(a) There is one Department of Defense inspection approval marking design for identification of material which has been inspected for conformance to only a portion of the contract quality requirements, and another for material which has been completely inspected for all contract quality requirements at source. The designs and their uses are as follows:

(1) *Partial (Circle) Inspection Approval Stamp.* This stamp is circular and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has been subjected to only a portion of the contract quality requirements applicable to the material at the time and place of Government contract quality assurance. Partial inspection approval stamping shall identify, for Government personnel, material which complies and all contract quality requirements applicable at the time and place of Government contract quality assurance, excepting those listed as uninspected on the associated Material Inspection and Receiving Report (DD Form 250), packing list, or comparable document.

(2) *Complete (Square) Inspection Approval Stamp.* This stamp is square and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has satisfied all contract quality requirements. Complete inspection approval stamping shall identify, for Government personnel, material which is in complete conformance with all contract quality requirements applicable to the material at the time and place of inspection. Complete inspection approval establishes that material which once was partially approved has subsequently received complete approval. One imprint of the square stamp will void multiple imprints of the circle stamp.

(b) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or lost routing tickets adequately serves to provide the necessary indication status and to control or facilitate the movement of material. No material shall be stamped in such a way as to damage the material.

(c) The placing of a Department of Defense Inspection Approval Stamp upon material does not mean that the material has been accepted by the Government. Acceptance is ordinarily evidenced by execution of the acceptance certificate on the applicable inspection and receiving report.

(d) NASA Publications include detailed policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) Quality Status Stamps. When requested by NASA Centers, the Government representative shall use NASA Quality Status Stamps and apply the procedures of current NASA requirements for all NASA delegations.

246.473 Authorizing shipment of supplies.

(a) *General.* Ordinarily, a representative of the contract administration office shall sign or stamp the shipping papers accompanying Government source-inspected supplies of both prime contracts and subcontracts to release them for shipment. In accordance with the criteria in 246.473(b), however, an alternative procedure may be used in which the contractor assumes the

responsibility of the release for shipment of such supplies inspected at his or his subcontractor's facilities, just as the contractor may be given the authority of other functions pertaining to the control of quality. When this alternative procedure is used, it will release Department of Defense manpower for technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative procedures—contractor release for shipment.*

(1) The contract administation office may give the contractor authorization in writing to release supplies for shipment when:

(i) The stamping or signing of the shipping papers by a representative of the contract administration office impairs the operation of a planned Government contract quality assurance program or places an unreasonable demand on the Government representative's time; and

(ii) There is sufficient continuity of production to permit the establishment of a systematic and continuing Government evaluation of the contactor's control of quality; and

(iii) The contractor has a record of satisfactory product quality including quality pertaining to preparation for shipment.

(2) When there is an indication that the conditions in (b)(1)(i) (ii) or (iii) above no longer prevail, the authorization shall be withdrawn in writing.

(3) When the alternative procedure is used, the contractor shall:

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s) or on an attachment thereto:

> The supplies comprising this shipment have been subjected to and have passed all examinations and tests required by the contract, were shipped in accordance with authorized shipping instructions, and conform to the quality, identity and condition called for in contractual requirements and to the quantity shown on this document. This shipment was released in accordance with paragraph 246.475 of the DoD FAR for authorizing Shipment of Supplies under authorization of (Name and Title of the authorized representative of the Contract Administration Office) in a letter dated (Date authorizing letter).
>
> (Signature and Title of Contractor's designated official), and

(ii) Release and process, in accordance with established instructions, the DD Form 250 (Material Inspection and Receiving Report) or any other receiving report authorized by this Supplement.

246.474 Government contract quality assurance actions.

(a) *Planning.*

(1) Government contract quality assurance actions to determine a contractor's compliance with contract quality requirements shall be systematically planned, taking into consideration the relative importance of the product and the variety of tasks required of the available resources. Systematic planning shall include:

(i) Review and analysis of pre-award surveys, post-award conferences, technical data packages, and first article approvals;

(ii) Identification of the specific products, processes and procedures to be subjected to Government contract quality assurance as well as the specific characteristics of such products, processes, or procedures to be verified (in the absence of identification of specific characteristics by the purchasing office, those established by the contractor will be used to the maximum extent possible);

(iii) Provisions for effective distribution and utilization of the Government's efforts and resources between inspection of products and inspection of the contractor's methods of regulating quality; and provisions for keeping and using records.

(2) Planning to determine the extent of Government contract quality assurance actions shall include as a minimum:

(i) Possible effect of failure on health or safety of personnel, or on associated or related equipment;

(ii) Tactical, strategic, or technical importance;

(iii) Complexity and the need for required reliability;

(iv) Pertinency, completeness, and reliability of the contractor's quality records;

(v) Previous quality history of the contractor; and

(vi) Unit cost.

(b) *Implementation.*

(1) Determination of conformance to contract quality requirements shall be made on the basis of objective evidence of quality. In determining the acceptability of supplies or services, the contract administration office shall make optimum use of quality data generated by contractors. To the extent that contractor quality data are available and reliable, as determined by the contract administration office, such data shall be used to adjust the amount of Government contract quality assurance to a minimum consistent with proper assurance that the supplies or services accepted conform to contract quality requirements.

(2) When the contract requires the contractor to conduct particularly expensive tests involving destruction of supplies, extended periods of time for conducting the tests, or other factors contributing to high-testing costs, the tests shall be coordinated between the contractor and the Government to the maximum extent practicable to avoid the need for later independent Government examination and testing.

(3) The following basic actions shall be taken to determine the contractor's compliance with the contract quality requirements:

(i) Review and evaluation of the contractor's inspection procedures;

(ii) Review and evaluation of the contractor's selection, calibration, maintenance, and use of gauges and measuring and test equipment;

(iii) Review and evaluation of the contractor's quality records; and

(iv) Performance of product verification inspection by the Government.

(4) Because of configuration, innumerable design characteristics, and life and reliability requirements, the quality of complex supplies and equipment cannot be adequately evaluated by inspection only; such supplies and equipment must be produced under regulated conditions if adequate assurance of product quality is to be realized. Systematic control of manufacturing processes by the producer is an essential prerequisite for assuring the quality of such items. It is also essential that the Government verify systematically that such control is, in fact, established and maintained by contractors.

(5) The Government, under the Inspection clause at FAR 52.246–2, reserves the right to charge to the contractor any additional cost of Government inspection and test when supplies are not ready at the time such is requested by the contractor or when reinspection or retest is necessitated by prior rejection. When a contract contains this clause, a record shall be maintained of the additional cost occasioned the Government by the delay, reinspection or retest. Such record shall include a description of any delay, the reasons for any reinspection or retest and a statement of the hours spent by the Government, including wait time, as well as the cost of any applicable travel and transportation. When the Quality Assurance Representative considers that the circumstances warrant the assessment of the additional costs occasioned the Government by the delay, reinspection or retest, he shall forward his

recommendation together with the record of additional costs to the contracting officer. If the contracting officer determines that such additional costs should be charged to the contractor, he shall notify the contractor, in writing, of his determination to exercise the Government's right under the Inspection clause and demand payment of such costs in accordance with the collection procedures established under FAR Subpart 32.6. In arriving at any such recommendation and determination, consideration should be given to the frequency of such delay, reinspection or retest under both current and prior contracts; the cause of such delay, reinspection or retest; and the expense of recovering the additional costs. Charges for such delay, reinspection or retest normally should not be assessed when such delay, reinspection or retest occurs only occasionally, or results from causes beyond the contractor's control, or when the expense of recovery outweighs the costs to be recovered. Costs shall be determined at the standard DoD reimbursable rate in effect at the time of the delay, reinspection or retest.

(c) *Maintenance of government records.* Suitable records shall be maintained by the contract administration office as part of the performance records of contractors in order to reflect:

(1) The nature of all Government contract quality assurance actions, including when appropriate the number of observations made and the number and type of deficiencies;

(2) Decisions regarding the acceptability of the products, the processes, and the requirements, together with action taken to correct deficiencies; and;

(3) Distribution of Government contract quality assurance effort.

(d) *Quality evaluation data.* The contract administration office shall establish a system providing as a minimum for the collection, evaluation and use of quality date developed by the contractor during manufacture and by the Government through contract quality assurance actions and reports by users during initial use phase, where available. The objectives of the system are to:

(1) Provide a foundation of technical actions aimed at maintaining and making needed improvements in the quality characteristics of both current and future products (subject to military requirements and cost considerations);

(2) Upgrade the methods and practices used to assure quality during manufacture, delivery, and use of the item;

(3) Provide a basis for managerial decisions relative to the allocation of Government contract quality assurance resources among different products and activities; and

(4) Determine production source capabilities as measured by product quality.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

Appendix I, Material Inspection and Receiving Report, contains procedures and instructions for the use, preparation, and distribution of the Material Inspection and Receiving Report (MIRR) (DD Forms 250 Series) and suppliers commercial shipping/packing lists used to evidence Government contract quality assurance (see FAR 46.401).

246.671 Policy.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document contract quality assurance, acceptance of supplies and services, and shipments. They are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities. MIRRs shall not be used for:

(1) Shipments by subcontractors where direct shipment is not made to the Government; or

(2) Shipment of contractor inventory.

(b) The provisions of Appendix I are applicable to supplies or services acquired by the Department of Defense (DoD) when the Material Inspection and Receiving Report clause (see 252.246–7000) is included in the contract (see 246.370).

(c) When the Department of Defense provides contract quality assurance and/or acceptance services for non-DoD activities, the MIRR shall be prepared in accordance with Appendix I unless otherwise specified in the contract.

Subpart 246.7—Warranties

246.701 Definitions.

"Acceptance", as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Non-Complex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services; means the execution of an official document (e.g., DD Form 250) by an authorized representative of the Government. The above clauses shall be modified accordingly in DoD contracts.

246.704 Authority for use of warranties.

The Chief of the Purchasing Office must approve use of warranty, except for commercial items (see FAR 246.709), firm fixed price and fixed price with economic price adjustment contracts containing quality assurance provisions that reference MIL–I–45208 or MIL–Q–9858; construction contracts when the warranties contained in federal, military or construction guide specifications applicable to a given construction project are used; and technical data, unless the warranty provides for extended liability (see 246.770).

246.705 Limitations.

(a) The contracting officer shall not include warranties in cost reimbursement contracts except for those warranties contained in the FAR clauses at FAR 52.246–3, Inspection of Supplies—Cost Reimbursement; FAR 52.246–8, Inspection of Research Development—Cost Reimbursement; and at 252.246–7001, Warranty of Technical Data.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* If items delivered under the contract are to be stamped or marked, it shall be done in accordance with MIL Standard 129, "Marking of Shipments".

246.708 Warranties of technical data.

The contracting officer shall consider the factors contained in 246.703 in deciding whether to provide for warranties of technical data and whether there should be an extended liability provision (see 252.246–7001, Warranty of Technical Data, Alternates I and II). Particular emphasis should be placed on whether the extended liability is justified by (a) the likelihood that correction or replacement of the nonconforming data, or a price adjustment in lieu thereof, will not afford adequate protection to the Government, and (b) the effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.770 Special contract clauses.

In accordance with 246.708, the contracting officer may insert a clause substantially the same as the clause at 252.246–7001, Warranty of Technical Data, in solicitations and contracts when a fixed-priced or cost-reimbursement contract is contemplated that will require data to be furnished. When this clause is not used, technical data is warranted under the clauses at FAR 52.246–3, Inspection of Supplies—Cost Reimbursement; FAR 52.246–6, Inspection—Time-and-Material and

Labor Hour; FAR 52.246-6, Inspection of Research and Development—Cost Reimbursement; and FAR 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design criteria.

(a) If extended liability is desired and a firm fixed-price contract is contemplated, the contracting officer may use the clause with its Alternate I.

(b) If extended liability is desired and a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate II.

PART 247—TRANSPORTATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5030.25, DoD FAR Supplement 201.301.

Subpart 247.1—General

247.103 Transportation documentation and audit regulation (TDA).

(b)(2) Appendix N of the MTMR contains the list of carriers and carrier associations that have entered into agreements with MTMC to provide the required transportation under commercial forms and procedures within CONUS.

247.104-3 Cost-reimbursement contracts.

Section 10721 rates are not applicable on Foreign Military Sales (FMS) shipments. However, on stock fund items from a manufacturer to a depot, Section 10721 rates do apply, unless it is clear that the quantity in a specific transportation unit will be delivered to an FMS purchaser. When it is known that a portion of the material in a transportation unit will be delivered to an FMS purchaser, that portion will be shipped on a separate bill of lading and Section 10721 rates will not apply.

247.104-5 Citations of Government rate tenders.

(a) DoD shippers within CONUS use Section IX, Chapter 214 of the MTMR for instructions pertaining to commercial bills of lading to be converted to GBLs.

247.105 Transportation assistance.

(b)(1) The term transportation assistance/traffic management advice includes any and all transportation factors, such as freight rates (for evaluation of bids or routing purposes), other transportation costs, transit agreements, time in transit, or port capabilities.

(2) MTMC is responsible for the performance of traffic management functions within CONUS, including the direction, control, and supervision of all functions incident to the effective and economical acquisition and use of freight and passenger transportation services from commercial for-hire transportation companies, including rail, highway, air, inland waterway, coastwide and intercoastal carriers. Therefore, requests for assistance, rates or other cost factors pertaining to transportation matters other than those outlined above should be directed to the appropriate military activity, i.e., the Military Airlift Command (MAC), Military Sealift Command (MSC) or Headquarters of the Military Service sponsoring the cargo (see 247.372).

(3) The locations and geographical areas of jurisdiction of each area headquarters of the Military Traffic Management Command (MTMC) are listed in Chapter 108 of the MTMR.

(4) Requests for assistance, rates or other costs applicable to shipments of bulk petroleum via ocean tanker transportation should be obtained from the Military Sealift Command.

(5) Requests for assistance, rates or other costs applicable for supplies to be shipped between points outside of the continental United States, including Alaska and Hawaii, shall be obtained from the Headquarters of the Military Service which sponsors the cargo. Requests should be directed as follows:

(i) *Army:* Deputy Chief of Staff for Logistics, Department of the Army, ATTN: LOG/MM-SSB, Washington, D.C. 20315.

(ii) *Navy:* Navy Supply Systems Command, Code 05, Washington, D.C. 20390.

(iii) *Air Force:* Applicable Overseas Air Force Command.

(iv) *Marine Corps:* Director, Transportation Division, HQ, U.S. Marine Corps, COS, Washington, D.C. 20380.

(6) Requests for rates and related costs for the evaluation of bids or proposals shall include the bid opening or proposal due date and the expected date of initial shipment, if established (see 247.373).

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.270 Stevedoring contracts.

247.270-1 Scope of section.

Acquisition procedures peculiar to stevedoring are set forth in this subsection. This section, however, does not contain or cross reference all provisions of this regulation applying to service contracts which shall be adhered to where applicable.

247.270-2 Definition.

Stevedoring is the loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel, or the breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

247.270-3 Method of acquisition.

Acquisition of stevedoring services shall be made by formal advertising pursuant to 10 U.S.C. 2304(a) whenever such method is feasible and practicable under existing conditions and circumstances even though such conditions and circumstances would otherwise satisfy the requirements of FAR Part 15.

247.270-4 Type of contract.

Normally, stevedoring services will be contracted for by means of an indefinite quantity type contract. Contracts for single job stevedoring services may be made when no indefinite quantity contract is available to fulfill the requirements.

247.270-5 Technical provisions.

(a) Since conditions vary at different ports and sometimes within the same port, standard technical provisions covering all phases of stevedoring operations are impractical. If car loading and unloading or other dock and terminal work will be performed under a stevedoring contract, technical provisions appropriate for such dock and terminal work should be added to the contract as separate items of work.

247.270-6 Evaluation of bids and proposals.

(a) *General.* Contractors shall be required to include in their bids and proposals tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions. Schedules of man-hour rates which apply to services not covered by commodity rates or to work performed under hardship conditions shall also be required.

(b) *Analysis of tonnage or commodity rates.*

(1) The price quoted for handling a ton (weight or measurement) of a specified commodity is a commodity rate. This rate is computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity which can be handled in one hour. The gang cost consists of the following:

(i) The total hourly wages paid to the men in the gang in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port;

(ii) Payments of workmen's compensation, social security taxes, unemployment insurance, taxes, and

liability and property damage insurance; and

(iii) General and administrative expenses and profit.

(2) The direct costs shall be verified by the contracting officer. Since the negotiated stevedoring contract is designed to minimize the contractor's risk, the contractor's gang cost should contain no allowance for contingencies and the profit rate should be less than is granted in the usual fixed-price contract. The estimated number of tons of the specified commodity which can be handled in one hour is based on the contractor's experience and should be compared with the records of experience at the required activity. The evaluation of bids and proposals shall include an extension of the quoted commodity rates against the payable tonnage estimated to be handled for each commodity.

247.270–7 Analysis of man-hour and equipment rental rates.

Man-hour rates shall be established for every category of labor expected to be necessary to perform services required under the contract. The development of man-hour rates follows a pattern similar to the method used in arriving at a gang cost. Specifically, it is composed of the basic wage rate of the man, workmen's compensation, social security taxes, insurance, general and administrative expenses, and profit. The evaluations of bids and proposals shall include an extension of the quoted man-hour rates against the estimated man-hour requirements for each artisan classification. Rates for equipment rental shall be extended against estimated equipment hours.

247.270–8 Award of contract.

The award shall be made to the responsible contractor who offers the lowest overall acceptable bid or proposal after evaluating the total estimated cost of tonnage to be moved at commodity rates and estimated cost at man-hour rates.

247.270–9 Contract clauses.

(a) The contracting officer shall insert the clauses at 252.247–7000, Scope of Contract, and 252.247–7001, Schedule of Rates in solicitations and contracts for stevedoring services, as appropriate to the contracting situation. While these clauses, containing technical provisions, cover most situations adequately, the various provisions may be deleted, added to, modified, or rearranged as necessary to meet local conditions.

(b) The contracting officer shall insert the clause at 252.247–7002, Price Escalation, in formally advertised solicitations and contracts for stevedoring services.

(c) The contracting officer shall insert the clause at 252.247–7003, Revision of Prices, in negotiated solicitations and contracts for stevedoring services.

(d) The contracting officer shall insert the clause at 252.247–7004, Changes, in solicitations and contracts for stevedoring services, in lieu of the clause at FAR 52.243–1—Alternate I.

(e) The contracting officer shall insert the clause at 252.247–7005, Termination, in solicitations or contracts for stevedoring services when it is desired that the contract may be terminated by either party.

(f) The contracting officer shall insert the clause at 252.247–7006, Indefinite Quantities-Fixed Charges, in solicitations and contracts for stevedoring services when the contract will provide for the payment of "Fixed Charges."

(g) The contracting officer shall insert the clause at 252.247–7007, Indefinite Quantities-No Fixed Charges, in solicitations and contracts for stevedoring services when the contract will not provide for the payment of "Fixed Charges."

(h) The contracting officer shall insert the clauses at 252.247–7008, Employees of Contractor; 252.247–7009, Removal of Contractor's Employees; and 252.247–7010, Liability and Insurance, in solicitations and contracts for stevedoring services.

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271–1 Scope of section.

Acquisition procedures peculiar to the preparation of personal property for shipment or storage and for the performance of intra-area movement or intra-city movements are set forth in this section. This section, however, does not contain or cross reference all provisions of this regulation applying to service contracts which shall be adhered to where applicable.

247.271–2 Policy.

(a) *Annual contracts.* Services for the preparation of personal property for shipment or storage and for the performance of intra-area movement normally shall be obtained by requirements contracts awarded as a result of formal advertising. Such contracts shall be on a calendar year basis except for noncontinuous requirements for shorter periods. Award of contracts should be made prior to 1 November of each year.

(b) *Area of performance.* The solicitation shall define clearly each area of performance. One or more areas may be established; but, the number should be held to a minimum consistent with local conditions. Each schedule may provide for the same or different areas of performance. An area shall be determined in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or any other features as lines of demarcation. Determination as to the number of areas thereof shall take into consideration such matters as total volume, size of overall area and isolated areas of high population density which will be serviced. Frequently used terminals will be specifically identified and considered as being included in each area of performance described in the solicitation.

(c) *Use of pre-bid conference.* In accordance with provisions of FAR 14.207, the use of pre-bid conference shall be considered and is encouraged.

(d) *Appropriate post-award orientation of contractors.* Contracting officers will assure that in accordance with FAR 42.503, each successful contractor is provided appropriate post-award orientation.

(e) *Maximum requirements-minimum capability.* The quantities established by the contracting officer in the Estimated Quantities clauses must be realistic. He must be assured that the Government's minimum acceptable daily capability will provide for at least the maximum authorized individual weight allowance as prescribed by the Joint Travel Regulations. Extreme caution must be exercised to ensure that the established minimum acceptable daily capability does not preclude the submission of bids by small but otherwise acceptable bidders.

247.271–3 Procedure.

(a) *Single CONUS military installations or activities assigned total multi-service personal property areas of responsibility.*

(1) When two or more military installations or activities are assigned personal property responsibilities for a given area, one military activity shall contract for the estimated requirements of all activities in a contiguous area. The activity shall be designated by mutual agreement of the installation commanders concerned.

(2) The Commander, Military Traffic Management Command (MTMC), shall designate the contracting activity when local commanders are unable to reach an agreement as to the activity to be designated.

(b) *Additional services and excess requirements.*

(1) *Excess requirements.* Excess requirements are those services which exceed the contractors' capabilities available under contracts. When excess requirements exist, they may be obtained by using small purchase procedures (see FAR Part 13).

(2) *Additional services.* Additional services include, but are not limited to, attempted pickups or deliveries, handling in and out, hoisting or lowering of articles, drayage to or from residences outside area of performance, extra long carry, carrying of pianos or organs, re-weighing, waiting time, special packaging, loading or unloading of railroad cars to include bracing and blocking and unbracing and unblocking as required. At the option of the contracting officer, additional services may be obtained by:

(i) Inclusion as items within the contract; provided, they are not used in the evaluation of bids (see 252.247–7100); and

(ii) Using Small Purchase Procedures (see FAR Part 13). Prices for additional services may be predetermined with the contractor or negotiated on a case-by-case basis.

(3) *Ordering of additional services.* Additional services other than attempted pickup or delivery will be performed by the contractor only upon authorization of the contracting officer regardless of the method of purchase. To the maximum extent possible, additional services required incident to an order should be identified prior to placement of the order or during the premove survey when applicable.

(c) *Contract distribution.* In addition to the distribution requirements of FAR Subpart 4.2, one copy of each contract will be furnished as follows:

(1) CONUS personal property shipping activities forward to the MTMC Personal Property Office having jurisdiction over the respective activity. These offices are: Commander, Military Traffic Management Command, Eastern Area, ATTN: MTE–PP, Bayonne, New Jersey 07002; and Commander, Military Traffic Management Command, Western Area, ATTN: MTW–PP, Oakland, California 94626.

(2) Personal property shipping activities in the European and Pacific areas forward to the appropriate Military Traffic Management Command Field Office. Other overseas personal property shipping activities forward to the Commander, Military Traffic Management Command, ATTN: MT–PPQ, Washington, D.C. 20315.

247.271–4 Solicitation provisions, schedule formats, and contract clauses.

(a) *Solicitation provisions and schedule formats.* Solicitation provisions and schedules may be revised as appropriate if negotiation procedures are employed.

(1) The contracting officer shall insert the provision at 252.247–7100, Evaluation of Bids, in solicitations for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement. When "additional services" items are added to any schedule, the contracting officer shall insert the provision at Alternate I (also see 247.271–3(b)).

(2) The contracting officer shall insert the provision at 252.247–7101, Award, in solicitations for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement.

(3) The contracting officer shall insert the provision at 252.247–7102, Estimated Quantities, in solicitations and resulting contractual instruments for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement.

(4) The contracting officer shall insert the schedules at 252.247–7103 in solicitations and resulting contractual instruments for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement. When a requirement does not exist for an item or sub-item in a schedule, that item or sub-item number, in its proper numerical sequence, will be indicated and the statement "No Requirement" added. Within Schedules I (Outbound) and II (Inbound), item numbers have been reserved to permit the contracting officer to include additional items as may be required by local conditions. Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regulations. All generic terminology, schedule and item numbers in proper sequence shall follow those contained in the basic format. All other modifications, other than those authorized herein, of schedule format will be processed as a request for deviation in accordance with Subpart 201.4. When it is determined to be in the best interest of the Government to have both outbound and inbound services within a given area of performance furnished by the same contractor, the contracting officer may modify the schedule format to combine both services in a single schedule; however, items shall follow the same sequential order as in the basic format. Whenever FED SPEC PPP–B–580 containers are specified in a schedule, containers listed in MTMC Pamphlet 55–12, dated 12 October 1978, may be substituted.

(b) *Contract clauses.* The contracting officer shall insert the clauses set forth below in solicitations and contracts for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement (except see 247.271–3(b)). Overseas commands, except those in Alaska and Hawaii, may modify these clauses when necessary to conform with local practices and country (including political subdivisions thereof) laws and regulations.

(1) 252.247–7104, Scope of Contract.

(2) 252.247–7105, Period of Contract. When the period of performance is less than a calendar year, the clause shall be modified to show the appropriate beginning and ending. However, the date for the end of the contract period shall not be later than 31 December of the year in which the contract is awarded.

(3) FAR 52.216–18, Ordering. In addition to the designation of each ordering activity, the individuals authorized to place orders for each activity shall be identified by name or position title. When provisions are made for the placement of oral orders in accordance with FAR 16.506(b), required documentation of such oral orders will be in accordance with Departmental instructions.

(4) 252.247–7106, Ordering Limitation.

(5) 252.247–7107, Contract Areas of Performance.

(6) 252.247–7108, Requirements. The contracting officer shall insert the clause at FAR 52.216–21 except that paragraph (f) of the clause shall be deleted and the paragraph (f) at 252.247–7108 shall be inserted in its place.

(7) 252.247–7109, Facilities. Also see FAR 28.3 regarding insurance policies.

(8) 252.247–7110, Performance.

(9) 252.247–7111, Time Requirements.

(10) 252.247–7112, Demurrage.

(11) 252.247–7113, Vans.

(12) 252.247–7114, Drayage.

(13) 252.247–7115, Liability.

(14) 252.247–7116, Erroneous Shipments.

(15) 252.247–7117, Additional Marking Instructions.

(16) 252.247–7118, Weight Certificates.

(17) 252.247–7119, Report of Lost/Damaged Material.

(18) 252.247–7120, Subcontracting.

(19) 252.247–7121, Additional Services.

Subpart 47.3—Transportation in Supply Contracts

247.301-2 Participation of transportation officers.

See FAR 47.105(b) for information concerning additional traffic management assistance.

247.301-3 Using the Defense Transportation System (DTS).

Contractual documents shall specify that the contractor shall not ship directly to a consolidation or containerization point (CCP) without authorization from the designated contract administration office.

247.305-10 Packing, marking and consignment.

(a)(1) Consignment instructions shall include, as a minimum, the clear text and coded MILSTRIP data as follows:

(i) Department of Defense Activity Address Director (DODAAD), Military Assistance Program Address Director (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.308–D or H8–1/H8–2 code of consignee and clear text identification of consignee and destination;

(ii) Project code, when applicable;

(iii) Transportation Priority (TP);

(iv) Required Delivery Date (RDD); and

(v) Coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code. Non-MILSTRIP shipments shall include data similar to (a)(1)(i) through (iv) above and the applicable portion of (a)(1)(v), together with the notation "Non-MILSTRIP".

(2) In addition to the data requirements of (a)(1)(i) through (v) of (1) above, amended shipping instructions shall include the following when appropriate:

(i) Name of the activity originally designated, from which the stated quantities are to be deducted; and

(ii) Any other features of the amended instructions not contained in the basic contract.

(b) For contracts assigned for any contract administration function listed in FAR Subpart 42.3 to any office listed in DoD 4105.59–H, DoD Directory of Contract Administration Services Components, such instructions shall include the modification serial number and, if a new line item is created by the issuance of shipping instructions, the new line item number and the existing line item number if affected.

(c) For diversions of petroleum, oil and lubricant (POL) products overseas to new destinations, instructions issued by an office other than that issuing the contract or delivery order and issued by telephone, teletype or telegram are exempted from the requirement to include the modification serial number and the new line item number in such instructions.

(d) See 247.371.

247.306-2 Lowest overall transportation costs.

(a) See 247.105 for information concerning sources for the lowest available freight and related accessorial and incidental charges.

(b) See 247.372 and 247.373.

247.370 DD Form 1384 (1 Apr 66), Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD Regulation 4500.32–R, MILSTAMP.

247.371 The Standard Form 30, Amendment of Solicitation/Modification of Contract.

When complete consignment instructions are not initially known (See 247.305–10) Form 30 will be used to issue or amend consignment instructions and when necessary, to confirm consignment instructions issued telephonically, via teletype or telegram. When issued to confirm delivery instructions the Form 30 will:

(a) Be stamped or marked "CONFIRMATION" in block letters and shall specify in detail those instructions being confirmed.

(b) Contain no changes to the instructions being confirmed. The confirming Standard Form 30 shall be processed as follows:

(1) For contracts assigned for any contract administration function listed in Subpart 242.3 to any office listed in DoD 4105.59–H within five working days;

(2) For diversions of petroleum, oil and lubricants (POL) products overseas to new destinations within 30 days of instructions being confirmed.

(3) Other contracts—

(i) Telephone—within five working days; and

(ii) Teletype or telegraph—consolidate on a monthly basis.

247.372 DD Form 1653 (1 Mar 68), Transportation Data for IFBs and RFPs.

DD Form 1653 which will contain recommendations to the PCO concerning f.o.b. terms best suited for the procurement, and other suggested transportation provisions for inclusion in the IFB/RFP, shall be completed upon request of the PCO by the transportation specialist, for association with the appropriate purchase request. When appropriate, DD Form 1653 will also include information on combined port handling and transportation charges to be included in the IFB/RFP in connection with export shipments.

247.373 DD Form 1654 (1 Mar 68), Evaluation of Transportation Cost Factors.

DD Form 1654 permits procurement personnel to furnish basic information to the transportation office for development of transportation cost factors which shall be used by the procuring contacting officer in the evaluation of f.o.b. origin bids or proposals.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.503 Applicability.

(S–70) For the purpose of this subpart, the following geographic areas are established:

(1) *North Atlantic:* Includes Eastern Canada from the United States border to Goose Bay, Labrador; and Narsarssuak, Greenland.

(2) *U.S. East Coast:* Includes the eastern United States from the Canadian border to (and including) Key West, Florida.

(3) *U.S. Gulf:* Extends from (but excluding) Key West, Florida, to the Mexican border.

(4) *Caribbean:* Includes Bermuda; Bahamas; Cuba; Puerto Rico, Haiti; Dominican Republic; Jamaica; Windward and Leeward Islands; Trinidad; the eastern coast of Mexico; the eastern coast of Central America; and the northern coast of South America up to (and including) French Guiana.

(5) *Eastern South America:* Includes the eastern coast of South America from (but excluding) French Guiana to Cape Horn.

(6) *North Europe:* From the northern boundary of Portugal includes northern Atlantic and Biscay ports of Spain; Bordeaux/Hamburg range; Scandinavian and Baltic Sea Ports; England, Wales, Scotland and Ireland; Iceland.

(7) *Mediterranean:* Includes Azores; Canary Islands; Morocco; Spanish Morocco; Mediterranean ports extending from Gibraltar to Suez Canal; ports on Adriatic and Aegean Sea, Sea of Marmora and Black Sea; and Atlantic ports of Portugal and Spain from Gibraltar to the northern boundary of Portugal.

(8) *West Africa:* Includes the western coast of Africa from northern boundary of Rio de Oro to southern boundary of Angola and includes the Cape Verde Islands, Ascension Island and St. Helena.

(9) *South and East Africa:* Includes the southern and eastern coast of Africa and Madagascar from southern boundary of Angola on the west coast and around the south and east coast to Cape Guardafui between the Gulf of Aden and the Indian Ocean.

(10) *South Asia:* Extends from Suez to but excluding New Guinea. Includes the shores of the Red Sea; shore of the Gulf of Aden; the northern shores of the Indian Ocean including extensions such as the Persian Gulf; the East Indies including Borneo, the Celebes, etc., but excluding the Philippines and New Guinea; and the Malay Peninsula excluding Thailand.

(11) *New Guinea-Australia:* Includes Australia; New Guinea; Tasmania; New Zealand and Melanesia (comprising generally the Admiralty Islands, New Ireland, New Britain, the Solomons, New Hebrides and New Caledonia).

(12) *East Asia:* Includes the ports of the mainland and islands of East Asia from and including Thailand to and including Japan; includes the Philippines, Formosa, the Ryukyu Islands and the Bonins.

(13) *Hawaii-Central Pacific:* Hawaiian Islands; Wake/Marcus; and Oceania and Micronesia (comprising generally Palau, Marianas, Carolines, Gilberts, Fijis, Marquesas, Tuamotu Archipelago, etc., but excluding oceanic island possessions of South American countries).

(14) *Alaska and Aleutian Islands:* Includes the western coast of Canada and Alaska (including the Aleutian Islands) south of Cape Prince of Wales.

(15) *U.S. Northwest:* Includes all Oregon and Washington ports.

(16) *U.S. West Coast:* Includes all California.

(17) *Western Mexico and Central America:* Includes the western coast of Mexico and the western coast of Central America.

(18) *Western South America:* Includes the western coast of South America from (and including) the Republic of Colombia to Cape Horn, and the Pacific Islands possessions of South American countries.

(19) *Exempt Areas:*

(i) Alaska north of Cape Prince of Wales.

(ii) Greenland, except Narsarssuak.

(iii) Northern and eastern Canada from Goose Bay, Labrador, to Alaska.

(iv) Ports and facilities under security restrictions in otherwise nonexempt areas.

(v) Antarctica.

(S–71) The procedures set forth at FAR 47.506 and 47.506 below are applicable to all ocean shipments of supplies except:

(1) Shipments in vessels assigned to United States Navy fleets other than the Military Sealift Command;

(2) Shipments which originate or terminate in "exempt areas" as established in (S–70) above;

(3) Shipments which originate and terminate in the same geographic area; provided, however, that supplies of the type described in FAR 47.503(a)(1) shall be transported in United States flag vessels to the extent such vessels are available at fair and reasonable United States-flag rates.

247.506 Procedures.

(S–70) Except for those supplies obtained for nonreimbursable contributions to foreign assistance programs for which the ocean transportation is to be provided by and at the expense of the recipient government, ocean transportation and supplies owned by the Government and in the possession of either a Department, or a contractor, or subcontractor of any tier, of a Department, will be provided by the Military Sealift Command. Upon receipt of advice from the contracting officer, the Military Sealift Command shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with this subpart and applicable regulations. The Commander of the Military Sealift Command or his designated representative is authorized to make any determination as to availability of United States-flag vessels required to assure such proper utilization.

247.507 Contract clauses.

(a) Forward the applicable shipping document specified in the clause set forth at FAR 52.247–64 to the Department of the Navy (Commander, Military Sealift Command, ATTN: MT–5), Washington, D.C. 20390, for shipments made under arrangements by the contractor or by a Government agency other than the Military Sealift Command.

(S–70) The contracting officer shall insert the clause at 252.247–7200, Ocean Transportation of Government-Owned Supplies, in solicitations and contracts which may involve ocean transportation or property owned by the Government and in the possession of the contractor or any of his subcontractors, including any contract under which title to property may pass to the Government prior to shipment.

PART 249—TERMINATION OF CONTRACTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 249.1—General Principles

249.102 Notice of termination.

See 243.301(a)(1)(S–70) for use of the Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, in providing notice of termination and amendment of the termination notice.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105–1 Termination status report.

Upon receipt of the termination notice, it is the responsibility of the contract adminisration office to prepare DD Form 1598, Contract Termination Status Report, and transmit two copies to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible. In addition, these reports shall be furnished on a quarterly basis for the quarters ending March, June, September, and December, within 30 days after the end of the respective quarter, and upon closing of the termination case. This reporting requirement is assigned Report Control Symbol: DD(I&L)(Q&AR) 1411.

249.108 Settlement of subcontract settlement proposals.

249.108–4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) However, no industrial plant equipment included in such inventory shall be disposed of prior to screening pursuant to FAR 45.6.

(e) However, industrial plant equipment, the cost of which is included in determining the amount of the claim, shall not be disposed of prior to screening pursuant to FAR 45.6.

249.109 Settlement agreements.

249.109–7 Settlement by determination.

See 243.301(a)(S–70) for use of the Standard form 30 (SF 30), Amendment of Solicitation/Modification of Contract, to reflect a determination of the amount due.

249.110 Negotiation memorandum.

(a)(1) *Format for termination contracting officer's settlement memorandum for fixed-price type contract terminated for convenience of the Government.* This memorandum shall be addressed to a reviewing authority or the file as appropriate.

Contractors and subcontractors should be encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

Part I—General Information

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of both contractor and Government personnel who participated in the negotiation.

2. *Description of Terminated Contract.*

a. Date of contract and contract number.

b. Type of contract (*e.g.*, fixed price, or fixed price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination clauses (cite FAR/DoD FAR Supplement designation or other special provisions).

3. *Termination Notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Statement whether contractor stopped work on effective termination date. If he did not, furnish details. Also state whether subcontracts were terminated promptly by the contractor.

e. Statement as to diversion of common items and return of goods to suppliers, if any.

f. Furnish information as to contract performance and timely deliveries on part of contractor.

Part II—Contractor's Settlement Proposal

1. *Date and Amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Basis of Claim.* State whether claim was filed on inventory, total cost or other basis. Explain approval granted in connection with submission on other than inventory basis.

3. *Examination of Proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Contractor's Claim

Prepare a summary substantially as follows:

(Where field recommendations are to be considered, expand the format to include such recommendations.)

AUDITOR'S RECOMMENDATION

	Contractor's Proposal	Dollars accepted	Cost questioned	Unresolved items	TCO negotiated amount
Item Claimed:					
1. Contractor's costs as set forth on Settlement Proposal, Metals, Raw materials, etc...					
Total					
2. Profit					
3. Settlement Expense					
4. Total					
5. Settlement with Subs					
6. Acceptable Finished Product					
7. Gross Total					
8. Disposal and Other Credits					
9. Net Settlement					
10. Partial, Progress & Advance Payments					
11. Net Payment Requested					

Part IV—Discussion of Settlement

1. *Contractor's Cost.*

a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration with respect to each item.

b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included therein.

c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

e. Comment on any unadjusted contractual changes which are included in the settlement.

f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.

g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.

2. *Profit.* Explain the basis and factors considered in arriving at a fair profit.

3. *Settlement Expenses.* Comment on and summarize those expenses not included in audit review.

4. *Subcontractor's Settlements.*

Number of Settlements . . . Net Amount

Approved by Termination Contracting Officer _____

Concluded by contractor under delegation of authority

No Cost Settlements _____

Total _____

5. *Partial Payments.* Furnish total amount of partial payments, if any.

6. *Progress or Advance Payments.* Furnish total of unliquidated amounts, if any.

7. *Claims of the Government Against the Contractor Included in Settlement Agreement Reservations.* List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion thereof.

8. *Assignments.* List any assignments, giving name and address of assignee.

9. *Disposal Credits.* Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. *Plant Clearance.* State whether all plant clearance action has been complete and all inventory sold, retained or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearance. Consolidated closing plant clearance report is attached.

11. *Government Property.* State whether all Government property has been accounted for.

12. *Special Tooling.* If involved, furnish comment on disposition.

13. *Summary of Settlement.* Summarize the settlement in tabular form substantially as follows:

TABULAR SUMMARY FOR COMPLETE OR PARTIAL TERMINATION—Continued

	Amount claimed	Allowed amount
Prime Contractor's Charges (before disposal credits)	$	$
Plus: Subcontractor charges (after disposal credits)		
Gross Settlement	$	$
Less: Disposal Credits—Prime	XXXXX	
Net Settlement	$	
Less: Prior Payment Credits (This Settlement)		
Previous Partial Settlements		
Other Credits or Deductions		
Total		$
Net Payment		
Total Contract Price (Complete Termination)		$
CPIT (for partial termination): Less: Total Payments to date		
Net Payment from this Settlement		
Fund Reserved for Reservations		
Final Contract Price (Terminated Portion for partial termination)		$
Reduction in Contract Price		

14. *Exclusions.* Describe any proposed reservation of rights to the Government or to the contractor.

Part V—Recommendation

1. *Recommendation.* Include statement as to the amount of the gross settlement and recommendation that it is fair and reasonable to the Government and the contractor.

2. *Signature.* The Contracting Officer will sign and date the memorandum.

(End of Memorandum)

(2) *Format for termination contracting officer's settlement memorandum for cost-reimbursement type contracts.* This memorandum shall be addressed to a reviewing authority or the file as appropriate. This format may be appropriately modified and used to cover subcontract settlements.

Part I—General Information

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of contractor and Government personnel who participated in the negotiation.

2. *Description of Terminated Contract.*

a. Date of contract and contract number.

b. Type of contract.

c. General description of contract items.

d. State total contract cost and fee data if complete termination.

e. Furnish reference to the contract termination clauses (cite FAR/DoD FAR Supplement —— or other special provisions).

3. *Termination Notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial, items terminated, estimated costs and fee data applicable to items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Explain scope of the settlement as to whether settlement concerns fee only or whether costs are also included.

Part II—Contractor's Settlement Proposal

1. *Date and Amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Examination of Proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Settlement

1. *Summary.* Summarize the proposed settlement in tabular form substantially as shown in Attachments A and B. Partial settlements may be summarized on Attachment B.

2. *Comments.* Furnish comments in amplification of tabular summaries.

a. Summary of Final Settlement (see Attachment A).

(1) If the auditor's final report was not available for consideration, state the circumstances.

(2) Explain how the fixed fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.

(5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on an unusual item of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.

(9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken thereon.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show settlements with subcontractors by breakdown as follows:

	Number of settlements	Total dollar amount
Approved by Termination Contracting Officer		
Concluded by contractor under delegation of authority.		
No Cost Settlements		
Total		

(12) The following summary will be followed where settlement includes costs and fixed fee in a complete termination.

Gross Settlement	$
Less: Disposal credits	
Net Settlement	
Less: Prior Payments	
Other credits or deductions	
Total	
Net Payment	
Total contract estimated cost plus fixed fee	
Less: Net settlement	
Estimated reserve for exclusions	
Final contract price (Consisting of $— for reimbursement of costs and $— for adjusted fixed fee)	
Reduction in contract price (credit)	

(13) *Plant Clearance.* Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (DD Form 1636, Inventory Disposal Report).

(14) *Government Property.* State whether all Government property has been accounted for.

Part IV—Recommendation

1. *Recommendation.* Set forth the amount of the proposed negotiated settlement and make recommendation that the settlement is fair and reasonable to the Government and the contractor and as such should be approved.

2. *Signature.* The termination contracting officer and negotiator will sign and date the memorandum.

SUMMARY OF SETTLEMENT—COST TYPE CONTRACT [1]

Contract No. ————

Termination No. ————

	Amount claimed	Amount allowed
1. Previous Reimbursed Costs—Prime and Subs	$	$
2. Previous Unreimbursed Costs		
3. Total Cost Settlement	$	$
4. Previous Fees Paid—Prime	$	$
5. Previous Fees Unpaid—Prime		
6. Total Fee Settlement	$	$
7. Gross Settlement		
	$	$
	$	$
Less: Deductions not reflected in Items 1–7		
a. Disposal credits	$	
b. Other charges against contractor arising from contract	$	
8. Net Settlement	$	
Less: Prior Payment credits		
9. Net Payment	$	
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):		
Aggregate gross amount of previous settlements	$	
Aggregate net amount of previous partial settlements	$	
Aggregate net payment provided in previous partial settlements	$	
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements.	$	

[1] Use applicable portion for partial settlement.

Attachment A

UNREIMBURSED COSTS SUBMITTED ON DD FORM 547[1]

Costs	Amounts claimed by contractor's proposal	Auditor's Recommendation		TCO's computation
		Cost questioned	Unresolved items	
1. Direct material				
2. Direct labor				
3. Indirect factory expense				
4. Dies, jigs, fixtures and special tools				
5. Other costs				
6. General and administrative expense				
7. Fee				
8. Settlement expense				
9. Settlements with subs				
10. Total costs (Items 1–9)				

[1] Expand the format to include recommendations of technical personnel as required.

Attachment B

(End of Memorandum)

Subpart 249.4—Termination for Default

249.402 Termination of fixed-price contracts for default.

249.402-3 Procedure for default.

See 243.301(a)(1)(70) for use of the Standard Form 30 (SF 30), Amendment of Solicitations/Modification of Contract, in providing notice of termination.

Subpart 249.6—Contract Termination Forms and Formats

249.601 Notice of termination for convenience.

See 243.301(a)(1)(70) for use of the Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, in providing notice of termination.

Subpart 249.70—Special Requirements

249.7001 Terminated contracts with Canadian Commercial Corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (1) the Letter of Agreement between the Department of Defense Production (Canada) and the United States Department of Defense (see Appendix T.201, Canadian Agreements); (2) policies in T.201 and Part 49; and (3) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination proposal of Canadian Commercial Corporation shall be submitted in the form prescribed in FAR 49.602 and shall reflect the amount of settlements with subcontractors. The letter transmitting the proposal shall certify that (1) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (2) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of FAR 49.603.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to T.201. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commerical Corporation to the TCO for screening in accordance with the provisions of FAR 45.6. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination proposals submitted by the United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DCASR, Cleveland) for settlement in accordance with this Part and T.201. Upon

completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination proposal submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

249.7002 Prior notification of significant contract terminations.

(a) Prior Defense Department clearance of the information release is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor. Coordination of the timing of the notice to the contractor and release of information to Congress or the public is the responsibility of each Department through its liaison point designated in (d) below. In a labor surplus area, a lesser number than 100 may be significant, and if so, such information release should be similarly cleared.

(b) The following information will be submitted to the appropriate Departmental liaison point:

(1) Contract number, date, type of contract;

(2) Name of company;

(3) Nature of contract or end item;

(4) The reasons for the termination;

(5) Contract price of items terminated;

(6) Total number of contractor employees, involved including the Government's estimate of the number who may be discharged;

(7) Statement of anticipated impact on the company and the community (identify); identify area labor category; whether contractor is large or small business, and include any known impact on hardcore disadvantage employment programs;

(8) Total number of subcontractors involved as well as the impact in this area, if known; and

(9) Draft (unclassified) of suggested press release of information.

(c) Clearance to release the information will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance to release, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required.

(d) The Departmental liaison points for prior clearance to release information on significant terminations are as follows:

Army—OSA, OCLL (SACLL), ASA (I&L) (copy)
Navy—Chief of Legislative Affairs (OLA–N)
Air Force—HQ USAF (AF/RDC)
Defense Logistics Agency—DLA–PC
Defense Communications Agency—Contract Management Division (Code 260)
Defense Nuclear Agency—Chief, Office of Procurement, OATR
Defense Mapping Agency—DMA/LO

(e) Liaison offices of Departments will act promptly on the request for clearance to release information (not later than two working days after receipt) to avoid the accrual of termination costs.

(f) This reporting requirement is assigned Report Control Symbol: DD(I&L) (AR) 1412.

249.7003 Special termination costs.

(a) The clause at 252.249–7000, Special Termination Costs, is authorized for use in an incrementally funded contract when:

(1) The contract term is two years or more;

(2) The contract is estimated to require total RDT&E financing in excess of $100 million;

(3) Adequate resources are available within existing appropriated amounts to cover the contingent reserved liability for special termination costs in the event of contract termination; and

(4) The use of the clause in the contract is approved by the Secretary of the Department concerned or his designee. The clause may be used in circumstances other than those in (a)(1) and (2) above when approved by the Secretary of the Department concerned or his designee. Any addition to the categories of special termination costs listed in paragraph (a)(1) through (4) of the clause in 252.249–7000 shall be processed in accordance with 201.404.

(b) The contractor and the contracting officer shall agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Such amount shall be inserted in the clause.

(c) A provision allowing for negotiated adjustments of the amount reserved for special termination costs may be inserted as paragraph (d) of the clause. Contract provisions for periodic adjustments by mutual agreement of the parties may be established based on, among other things, (1) set time periods within the contract, (2) the Government's incremental assignment of funds to the contract, or (3) the time when certain performance milestones are accomplished by the contractor. Provisions for such adjustments may be considered desirable in contracts containing unusually long performance periods, or in contracts where the contractor's cost risk associated with the contingent special termination costs, in the event of Government termination, fluctuates extensively over the period of the contract, depending on the scope of work to be performed during a certain period of the contract, or the amount of funds to be assigned to the contract during any one increment.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

250.001 Definitions.

"Agency head," as used within this part by the Department of Defense, does not include heads of defense agencies.

"Secretarial level," as used within this part by the Department of Defense, means an official at or above the level of an Assistant Secretary (or his Deputy) of Defense or of the Army, Navy, or Air Force, and a Contract Adjustment Board established by the Secretary concerned.

Subpart 250.1—General

50.103 Deviations.

For purposes of this section, "defense agencies" include the Departments of the Army, Navy, and Air Force, as well as agencies within the Office of the Secretary of Defense.

250.104 Reports.

Departmental and agency supplements will designate officials responsible for preparing and processing the reports required by this section.

250.105 Records.

(S–70) *Record of requests and dispositions.*

(1) *General.* In order that adequate records of actions by each Department pursuant to the Act may be maintained, 250.303(S–71) requires the preparation of a preliminary record when each request is filed for an adjustment under FAR Subpart 50.3, and 250.308(S–70) requires the preparation of a final record indicating the disposition of the request. This paragraph describes in detail the information which should be included in these records. A suggested format for the records is shown in 250.105(S–70)(4). It is designed so that the information required for the preliminary and final record with respect to each request may be combined on the same form. Departmental and agency supplements will designate the offices or officials responsible for preparing, submitting, receiving, and maintaining all records required by this part. Records required

by this supplement shall be maintained in the Departments of the Army, Navy, and Air Force by their respective Contract Adjustment Boards and in the Headquarters of the defense agencies.

(2) *Preliminary records.* Each preliminary record prepared pursuant to 250.303(S–71) should contain the following information:

(i) *Type of record.* The fact that the record is a preliminary record should be indicated.

(ii) *Date of contractor's request.* The date on the face of the contractor's request for adjustment should be inserted.

(iii) *Date received by government.* The date the request for adjustment is received in any Government office to which the contractor may properly submit his request should be inserted.

(iv) *Name and address of contractor.* The full and correct name and address of the contractor filing the request should be inserted. If the contractor is a small business, this fact should be indicated.

(v) *Name and address of the contractor's representative, if any.* If a particular named person (employee, attorney, etc.) is the point of contact with the contractor, his full name and address should be inserted.

(vi) *Cognizant contracting officer or office.* The contracting officer administering the contract for which an adjustment was requested or, if none, the contracting officer or office cognizant of the request should be inserted.

(vii) *Procuring activity.* The name of the procuring activity with jurisdiction over the contracting officer or official referred to in (6) above, should be inserted.

(viii) *Property or service involved.* A brief description of the item being procured or services being rendered should be inserted.

(ix) *Extent of performance as of date of request.* A brief indication, as of the date of the request, of the degree of completion of the contract should be inserted; for example, 50 percent completed, or performance not yet begun; if work is completed, indicate date of completion and whether final payment has been made.

(x) *Contract number and date.* The identifying numbers and dates of the contracts for which an adjustment is requested should be inserted. If there is no contract, then the word "None" should be inserted. If the question arises under a letter of intent, then that fact and the date of such letter should be inserted.

(xi) *Advertised or negotiated.* Whether the contract was entered into pursuant to advertising or negotiation should be indicated. If negotiated, the specific authority should be indicated; example: "Neg. — 10 U.S.C. 2304(a)(14)".

(xii) *Type of contract.* The type of contract involved (see FAR Part 16) should be inserted; e.g., FFP (firm fixed-price), FPI (fixed-price incentive), CPFF (cost-plus-fixed-fee), or T&M (time and materials).

(xiii) *Category of case.* Whether the request involves an amendment without consideration, a mistake, or an informal commitment should be indicated. If the case involves two or more categories, each should be indicated; however, the most significant category involved should be listed first.

(xiv) *Amount or description of request.* If the request is expressed in dollars, as a change in price, then that fact should be inserted as follows: "$5,250 increase" or "$5,250 decrease." If the request seeks an adjustment which cannot be expressed in monetary terms, then some brief description of it should be inserted, such as "Cancellation" or "Modification of Terms." The fact that an adjustment is not easily expressed in dollar terms should not deter an estimate if such an estimate is made by the contractor in his request.

(xv) *Date of this record.* The date on which the record is signed and forwarded should be inserted.

(xvi) *Signature.* The record should be signed by an authorized representative of the reporting authority.

(3) *Final records.* Each final record prepared pursuant to 250.306 (S–70) should contain the information listed in (S–70)(2) (ii) through (xvi) above, and, in addition, should contain the following information:

(i) *Type of record.* The fact that the record is a final record should be indicated.

(ii) *Action below secretarial level.* The disposition of the case, the office which took action, and the date thereof should be inserted. The disposition should be indicated as: "withdrawn," "denied," "approved," or "forwarded." If the request was approved in whole or in part, the dollar amount or nature of the action should be indicated in a manner similar to that described in 250.105 (S–70)(2)(xiv). The date should correspond with the date of the Memorandum of Decision or of the letter forwarding the request to the Board.

(iii) *Action by contract adjustment board and date.* The disposition of the case by the Contract Adjustment Board and the date thereof should be indicated in a manner similar to that described in (S–70)(2) above.

(iv) *Implementation and date.* The contractual action or correspondence which implements the decision of the approving authority or of the Board should be inserted as follows: "amendment," "new contract," or "letter of denial."

(4) *Sample format.* The preliminary and final records described in (S–70) (2) and (3) above may be prepared in a format substantially as follows:

☐ PRELIMINARY	RECORD OF REQUEST FOR ADJUSTMENT PUBLIC LAW 85–804	FINAL ☐
DATE OF REQUEST		DATE RECEIVED BY GOVERNMENT
CONTRACTOR'S NAME AND ADDRESS		☐ SMALL BUSINESS
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY		
COGNIZANT CONTRACTING OFFICER OR OFFICE		PROCURING ACTIVITY
PROPERTY OR SERVICE INVOLVED		EXTENT OF PERFORMANCE AS OF DATE OF REQUEST
CONTRACT NUMBER	DATE	ADVERTISED OR NEGOTIATED / TYPE OF CONTRACT
CATEGORY OF CASE		AMOUNT OR DESCRIPTION OF REQUEST
ACTION BELOW SECRETARIAL LEVEL		DATE
ACTION BY CAB		DATE
IMPLEMENTATION		DATE
ADDITIONAL DATA OR REMARKS		
DATE THIS RECORD SIGNED	SIGNATURE	

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.

(b) Authority to approve actions under FAR Subpart 50.4—Residual Powers, obligating $50,000 or less may not be delegated below the level of the Head of the Contracting Activity (but see FAR 50.201(d) for indemnification authority).

(S–70) *Authority delegated:*

(1) *Departments of the Army, Navy, and the Air Force.* Delegations and levels of authority for actions by the Departments of the Army, Navy, and Air Force under the Act and the Executive Order are contained in their departmental supplements.

(2) *Defense agencies.* Subject to the restrictions on delegations of authority in FAR 50.201 and 50.201 above, the Directors of the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the National Security Agency, and the Defense Mapping Agency may exercise and further delegate authority under the

Act and the Executive Order. Levels of such authority are contained in defense agency supplements. Recommendations for approval of actions in excess of the authority delegated by this paragraph will be submitted to the Under Secretary of Defense, Research and Engineering.

(3) *Approvals.* Authorities may be delegated and redelegated only with the written approval of the Secretary of Director concerned.

250.202 Contract Adjustment Boards.

(S–70) *Organization and authority.*

(1) *Organization.* A Contract Adjustment Board has been established within the Departments of the Army, Navy, and Air Force by the Secretary. Such Boards consist of a Chairman and not less than two nor more than six other members, one of whom may be designated the Vice-Chairman. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total Board membership constitutes an action of the Board. Alternates may be appointed to act in the absence of members.

(2) *Authority.* The Contract Adjustment Board in each Department has been given authority to approve, authorize and direct appropriate action under the standards set forth in FAR Subpart 50.3 in any case submitted to it, by an official designated to submit cases, and to make all determinations and findings which are necessary or appropriate. When deemed necessary to the exercise of the foregoing authority, such Boards may authorize any appropriate action not precluded by FAR 50.203, including the modification or release of any obligations.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.

(S–70) *Filing of requests.* If a request is filed with an administrative contracting officer, it shall be forwarded promptly to the procuring contracting officer for appropriate action. If such filing is impracticable, requests will be deemed to be properly filed if filed with the following addresses for forwarding to the cognizant contracting officer:

(1) *In the Army:* The Head of Contracting Activity listed in Part 202 appearing to be cognizant of the contract or commitment involved;

(2) *In the Navy:* The Head of Contracting Activity listed in Part 202 appearing to be cognizant of the contract or commitment involved;

(3) *In the Air Force:* Commander Air Force Logistics Command, ATTN: PPC, Wright-Patterson Air Force Base, Ohio;

(4) *In the Defense Logistics Agency:* Commanders of the Defense Supply Center concerned;

(5) *In the Defense Communications Agency:* Director, DCA, ATTN: Code 260;

(6) *In the Defense Nuclear Agency:* Director, DNA, ATTN: OAPR;

(7) *In the National Security Agency:* Director, NSA; and

(8) *In the Defense Mapping Agency:* Director, DMA, ATTN: LO.

(S–71) *Record of request.* At the time the request is filed, a preliminary record as described in 250.105(S–70)(2) shall be prepared by, and forwarded within 30 days after the close of the month in which prepared, to those officials designated pursuant to 250.105(S–70)(1).

250.305 Processing cases.

(S–70) *Processing cases by Contract Adjustment Board.*

(1) *Statement to Board.* Cases to be submitted for consideration of the cognizant Contract Adjustment Board shall be forwarded by means of a letter signed by the officer or official responsible for the case. The letter shall state:

(i) The nature of the case;

(ii) The basis for the Board's authority to act;

(iii) The findings of fact essential to the case (see FAR 50.304) arranged chronologically with cross references to supporting enclosures;

(iv) The conclusions drawn from applying the standards for deciding cases, as set forth in FAR subpart 50.3, to the findings of fact; and

(v) The disposition recommended, and, if contractual action is recommended, the opinion of the signer that such action will facilitate the national defense.

The letter shall enclose copies of the contractor's request, the evidentiary materials, and all endorsements, reports and comments of cognizant Government officials. The letter and enclosure shall be in duplicate.

(2) *Amendments without consideration under FAR 50.302–1(a).* A letter to the Board recommending an amendment without consideration under the standards of FAR 50.302–1(a) should, in addition to the requirements of paragraph (a) above, ordinarily cover, with supporting data as appropriate, the findings and conclusions with respect to all of the items set forth in FAR 50.304(b) and, in addition, findings as to:

(i) The contractor's performance record, including the quality of product, rate of production and promptness of deliveries;

(ii) The importance to the Government, particularly to the operating forces, of the performance of the contract by the contractors and the importance of the contractor to the national defense;

(iii) Forecast of future contracts with the contractor; and

(iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

(3) *Forwarding to Boards.* Cases to be submitted to the Boards will be forwarded through channels in accordance with departmental supplements.

(4) *Processing by Boards.* Upon receipt of cases, the Contract Adjustment Boards, each in accord with its own procedures, shall render decisions as expeditiously as practicable. The chairman shall sign a Memorandum of Decision disposing of the case, which shall be dated and shall contain the information required by FAR 50.306. The Memorandum of Decision shall omit any information classified "Confidential" or higher. The Board's decision will be communicated to the appropriate officer or official for implementing action.

250.306 Disposition.

(S–70) Record of disposition.

(1) In each case when the request for relief is denied or approved below the Secretarial level, each of the following documents shall be submitted to the office designated pursuant to 250.105–(S–70)(1) within 30 days after the close of the month during which it is executed:

(i) Two copies of the Memorandum of Decision;

(ii) One copy of the contractual document implementing any decision approving contractual action (not to be submitted in the case of the Army); and

(iii) One copy of a final record, as prescribed in 250.105–(S–70)(3) prepared by the office designated pursuant to 250.105–(S–70)(1).

(2) When a Contract Adjustment Board decision is implemented, the documents listed in (S–70)(1) (ii) and (iii) above shall be prepared and submitted to the Board by the activity which forwarded the case to the Board.

Subpart 250.4—Residual Powers

250.403–70 Indemnification under contract involving both research and development and work that cannot be so classified.

Certain contracts require a substantial amount of research and developmental work as well as a substantial amount of work that cannot be so classified. When indemnification is to be provided for

such contracts, an appropriate clause, utilizing the authority of both 10 U.S.C. 2354 and Pub. L. 85–804 may be used. In such cases, the use of Pub. L. 85–804 to provide indemnification is limited to work which cannot be indemnified pursuant to 10 U.S.C. 2354 and is subject to compliance with FAR subpart 50.4. Indemnification pursuant to the authority of 10 U.S.C. 2354 is covered by 235.070.

Subpart 250.70—Act and Executive Order

250.7000 Scope.

This subpart sets forth in full the Act and Executive Order.

250.7001 Act of August 28, 1958, as amended.

(Public Law 85–804); 72 Stat. 972, as amended by 87 Stat. 605 (1973); 50 U.S.C. 1431–1435, as amended:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations as prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this Section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein. The authority conferred by this Section may not be utilized to obligate the United States in any amount in excess of $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60 day period, a resolution disapproving such obligation. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60 day period.

Sec. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304(a)(15), title 10, United States Code, or under section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, or;

(f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

Sec. 3(a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

Sec. 4(a) Every department and agency acting under authority of this Act shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall—

(1) name the contractor;

(2) state the actual costs or estimated potential cost involved;

(3) describe the property or services involved; and

(4) state further the circumstances justifying the action taken. With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

Sec. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate."

250.7002 Executive Order 10789 of November 14, 1958.

(23 FR 8897) as amended by Executive Order 11051, dated 27 September 1962, Executive Order 11382 of November 28, 1967, and Executive Order 11610 of July 22, 1971:

"AUTHORIZING AGENCIES OF THE GOVERNMENT TO EXERCISE CERTAIN CONTRACTING AUTHORITY IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS AND PRESCRIBING REGULATIONS GOVERNING THE EXERCISE OF SUCH AUTHORITY.

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act, and as President of the United States, and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

Part 1—Department of Defense

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, the national defense will be facilitated thereby.

(a) The limitation in paragraph 1 to amounts appropriated and the contract authorization provided therefor shall not apply to contractual provisions which provide that the United States will hold harmless and indemnify the contractor against any of the claims or losses set forth in subparagraph (b), whether resulting from the negligence or wrongful act or omission of the contractor or otherwise (except as provided in subparagraph (b)(2)). This exception from the limitations of paragraph 1 shall apply only to claims or losses arising out of or resulting from risks that the contract defines as unusually hazardous or nuclear in nature. Such a contractual provision shall be approved in advance by an official at a level not below that of the Secretary of a military department and may require each contractor so indemnified to provide and maintain financial protection of such type and in such amounts as is determined by the approving official to be appropriate under the circumstances. In deciding whether to approve the use of an indemnification provision and in determining the amount of financial protection to be provided and maintained by the indemnified contractor, the appropriate official shall take into account such factors as the availability, cost and terms of private insurance, self-insurance, other proof of financial responsibility and workmen's compensation insurance. Such approval and determination, as required by the preceding two sentences, shall be final.

(b)(1) Subparagraph (a) shall apply to claims (including reasonable expenses of litigation and settlement) or losses, not compensated by insurance or otherwise, of the following types:

(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property;

(B) Loss of, damage to, or loss of use of property of the contrtactor;

(C) Loss of, damage to, or loss of use of property of the Government;

(D) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or subcontractors, or (ii) from such arrangements and further indemnification arrangements between the subcontractor at any tier, *provided* that all such arrangements were entered into pursuant to regulations prescribed or approved by the Secretaries of Defense, the Army, the Navy, or the Air Force.

(2) Indemnification and hold harmless agreements entered into pursuant to this subsection, whether between the United States and a contractor, or between a contractor and a subcontractor, or between two subcontractors, shall not cover claims or losses caused by the willful misconduct or lact of good faith on the part of any of the contractor's or subcontractor's directors or officers or principal officials which are (i) claims by the United States (other than those arising through subrogation) against the contractor or subcontractor, or (ii) losses affecting the property of such contractor or subcontractor. Regulations to be prescribed or approved by the Secretaries of Defense, the Army, the Navy or the Air Force shall define the scope of the term *"principal officials"*.

(3) The United States may discharge its obligation under a provision authorized by subparagraph (a) by making payments directly to subcontractors or to third persons to whom a contractor or subcontractor may be liable.

(c) A contractual provision made under subparagraph (a) that provides for indemnification must also provide for—

(1) notice to the United States of any claim or action against, or of any loss by, the contractor or subcontractor which is covered by such contractual provision; and

(2) control or assistance by the United States, at its election, in the settlement or defense of any such claim or action.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: *Provided*, That the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the invention, development, or production of, or research concerning, any such property or services, including, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

5. Proper records of all actions taken under the authority of the act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

(a) name the contractor;

(b) state the actual cost or estimated cost involved;

(c) describe the property or services involved; and

(d) state further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this order shall be assigned except in accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended.

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona-fide employees or bona-fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the government shall have the right to annul this contract without liablity or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

11. Except as provided in the act of September 1966 (80 Stat. 850), contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts. Before exercising the authority provided in the Act of September 27, 1966, (80 Stat. 850), the Secretaries of Defense, the Army, the Navy, or the Air Force, or their designees, shall first determine that all reasonable efforts have been made to include the clause prescribed above and that alternate sources of supply are not reasonably available.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits of fees;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304(a)(15) of title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 2036), as amended, the Davis-Bacon Act (49 Stat. 1101), as amended, the Copeland Act (48 Stat. 948), as amended, and the Eight Hour Law (37 Stat. 137), as amended, if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

Part II— Extension of Provisions of Paragraphs 1–14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury
Department of the Interior
Department of Agriculture
Department of Commerce
Department of Transportation
Atomic Energy Commission
General Services Administration
National Aeronautics and Space Administration
Tennessee Valley Authority
Government Printing Office

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to this agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part 1 of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under section 302(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

DWIGHT D. EISENHOWER"

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 251.1—Contractor Use of Government Supply Sources

251.100 Scope of subpart.

FAR Subpart 251.1 and this Subpart are applicable to the acquisition of supplies to be delivered in the United States, its possessions, or Puerto Rico. (The use of GSA sources by grantees is not authorized.)

251.102 Authorization to use Government supply sources.

(e) The following is the form of authorization to the contractor:

Subject: Authorization to Purchase from Government Supply Sources.
(Contractor's Name) ————————
(Address) ————————

1. You are hereby authorized to utilize Government sources in performing Contract No. ——— for the Department of ——— as follows:

(Insert applicable purchasing authority given to the contractor.)

2.a. Purchase Orders Under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules. Orders will be placed in accordance with the terms and conditions of the attached Schedule(s) and this authorization. A copy of the authorization shall be attached to the order (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor) and the order shall contain the following statement:

This order is placed under written authorization from ——— dated ——— (*———). In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

b. Requisitioning from GSA or DoD. Orders will be placed in accordance with the Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) or Military Standard Requisitioning and Issue Procedures (MILSTRIP), as appropriate, and this authorization. Orders shall include the activity address code cited in paragraph 5 below. Bills will not be issued by Government supply sources until after the supplies have been shipped. Payment shall be made promptly upon receipt of billings.

3. Insert other provisions, as necessary.

4. This authority hereby granted is not transferable or assignable.

5. The DoD Activity Address Directory (DODAAD) (DLAH 4140.1, AR 725–60–1, MCO P4420.2H, CG 364, AFM 75–6, NAVSUP PUB 5544)** Activity Address Code to which this Authorization applies is ———.

6. This authorization expires ———.
(Contracting Officer) ————————

(e)(3)(ii) In addition to the procedure and form authorized by FAR 251.102(e)(3)(ii), contractors are also authorized to use DD Form 1155 when requisitioning from the VA.

251.103 Ordering from government supply sources.

(b) "Contracting agency" as used in FAR 251.103(b) shall be construed to mean the contracting officer.

251.104 Furnishing assistance to contractors.

(b)(2) GSA Form 457 may be obtained from the GSA regional office serving the area in which the requesting activity is located.

251.106 Title.

(b) With DoD, title to property having an acquisition cost of $5,000 or less shall vest in the contractor under the circumstances prescribed in FAR 251.106(b).

251.107 Contract clause.

The contracting officer shall insert the clause at 252.251–7000, Ordering from Government Supply Sources, in solicitations and contracts which include the clause at FAR 251.251–1.

Subpart 251.2—Contractor Use of Interagency Motor Pool Vehicles

251.202 Authorization.

(a)(2) See FAR 28.307–2(c), and FAR 28.308 and 28.001 for policy on contractor insurance and self-insurance, respectively, and FAR 31.205–19 for allowability of insurance costs.

(5) Paragraph (e) of the clause at 252.251–7001 satisfies the requirement of FAR 51.202(a)(5) for the written statement required by that paragraph.

251.205 Contract clause.

The contracting officer shall insert the clause at 252.251–7001, Use of Interagency Motor Pool Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251–2.

* Insert "a copy of which is attached," or "a copy of which you have on file," or other suitable language, as appropriate.

** The sponsoring service assumes responsibility for monitoring and controlling all activity address codes utilized in the letters of authority.

SUBCHAPTER H—CLAUSES AND FORMS

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using Part 252.

(b) *Numbering.*

(2) *Provisions of clauses that supplement the FAR.*

(ii) Provisions and clauses in this supplement are not preceded by the assigned CFR chapter number. The sequential numbers are "7000" or higher, not to exceed "8999." Sequential numbers "9000" and higher are reserved for departmental supplementation (see 201.104–2).

(f) *Dates.* Provisions and clauses in this supplement that were formerly in the DAR bear the DAR date when the provision or clause was transferred verbatim to this supplement.

252.106 Derivations of FAR provisions and clauses.

Provisions and clauses in this supplement derived from the DAR do not include derivation notations.

Subpart 252.2—Texts of Provisions and Clauses

252.270 Scope of subpart.

This subpart sets forth the texts of all DoD FAR Supplement provisions and clauses and for each, gives a cross-reference to the location in the DoD FAR Supplement that prescribes its use.

252.203–7000 Advertising and coupon redemption for military resale activities.

As prescribed at 203.570, insert the following clause:

ADVERTISING AND COUPON REDEMPTION FOR MILITARY RESALE ACTIVITIES (APR 1974)

The Contractor will not represent in any manner, expressed or implied, that the products purchased hereunder are approved or endorsed by any element of the United States Government. Any advertisement by the Contractor, including price-off coupons, which refers to a military resale activity, shall contain the following statement:

"This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

(End of clause)

252.204–7000 Contract schedule subline items not separately priced—withholding of billing and payment.

As prescribed at 204.7104–2(c)(2), insert the following clause:

CONTRACT SCHEDULE SUBLINE ITEMS NOT SEPARATELY PRICED—WITHHOLDING OF BILLING AND PAYMENT (NOV 1970)

If the unit price of any contract subline or exhibit subline item contained in the Schedule of this contract is not separately priced ("NSP" entered as the unit price column), and the unit price for such subline item is included within the unit price of a related subline item, payment shall not be made nor shall the Contractor invoice the Government for any portion of a contract line item or exhibit line item which contains an "NSP" subline until the total quantity of all related contract subline items or exhibit subline items have been delivered and accepted. This clause is not applicable to technical data.

(End of clause)

252.204–7004 Data Universal Numbering System (DUNS) number reporting.

As prescribed at 204.670–3, insert the following provision:

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER REPORTING (DEC 1980)

In the block with its name and address, the offeror should supply the Data Universal Numbering System (DUNS) Number applicable to that name and address. The DUNS Number should be preceded by "DUNS:". If the offeror does not have a DUNS Number, it may obtain one from any Dun and Bradstreet branch office. No offeror should delay the submission of its offer pending receipt of its DUNS Number.

(End of provision)

252.204–7005 Overseas distribution of defense subcontracts.

As prescribed at 204.670–4, insert the following clause:

OVERSEAS DISTRIBUTION OF DEFENSE CONTRACTS (JUN 1982)

(a) For each subcontract or modification thereof which exceeds $10,000, where the principal place of performance is outside the United States or its territories and possessions, the Contractor agrees to furnish the information listed below on a quarterly basis to Director of Information, Operations and Reports, Washington, D.C. 20301.

(i) Name and address of prime contractor (or subcontractor required to report).

(ii) Prime contract number.

(iii) Name and address of overseas subcontractor. (This item is important for discussion of trade balances with other countries, but submission of this information is not mandatory.)

(iv) Subcontract number (including modification number) being reported.

(v) Dollar amount of this action (enclose decommitments in parentheses).

(vi) Principal place of subcontract performance.

(vii) Type of supply or service.

(b) The required information, if any, shall be as of the last day of the calendar year quarter and submitted within ten (10) days of the end of each quarter.

(c) The prime Contractor agrees to insert a provision substantially similar to this in all first-tier subcontracts over $100,000 except subcontracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs), and subsistence. The prime Contractor shall also identify the applicable prime contract number to the subcontractor for reporting purposes.

(End of clause)

252.208–7000 Required sources for miniature and instrument ball bearings.

As prescribed at 208.7303(a), insert the following clause:

REQUIRED SOURCES FOR MINIATURE AND INSTRUMENT BALL BEARINGS (JUL 1971)

(a) For the purpose of this clause:

"Domestic manufacture" means manufacture in the United States or Canada and, when a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada; and

"Miniature and instrument ball bearings" are all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain miniature and instrument ball bearings that are of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest. In the event a waiver is granted, the Contractor agrees to acquire for non-Government use, domestically manufactured miniature and instrument ball bearings of a like quantity and type.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no miniature or instrument ball bearings.

(End of clause)

252.208–7001 Required sources for precision components and mechanical time devices.

As prescribed at 208.7403(a), insert the following clause:

REQUIRED SOURCES FOR PRECISION COMPONENTS FOR MECHANICAL TIME DEVICES (AUG 1971)

(a) For the purpose of this clause:

"Domestic manufacture" means manufacture in the United States or Canada, and, when a mechanical timing assembly is involved, all precision components of the assembly must also have been manufactured in the United States or Canada.

"Precision components for mechanical time devices" are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 65 rms. Examples of such precision components include: gears, pinions, posts, and plates.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain precision components for mechanical time devices that are of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest. In the event a waiver is granted, the Contractor agrees to acquire, for non-Government use, domestically manufactured precision components for mechanical time devices of a like quantity and type.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no precision components for mechanical time devices.

(End of clause)

252.208-7002 Required sources for high-purity silicon.

As prescribed at 208.7503(a), insert the following clause:

REQUIRED SOURCES FOR HIGH-PURITY SILICON (JUN 1983)

(a) For the purpose of this clause:

"Domestic manufacture" means high-purity silicon manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such high-purity silicon incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

"High-purity silicon" is N or P type and has a resistivity greater than 3000 ohm-centimeter.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain high-purity silicon of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract or purchase order which involves the purchase of an item or subassembly containing high-purity silicon.

(End of clause)

252.210-7000 Brand name or equal.

As prescribed at 210.004(b)(3)(ii)(B), insert the following provision:

BRAND NAME OR EQUAL (APR 1973)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this Invitation for Bids have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bid offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the Invitation for Bids.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the Invitation for Bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid, as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall (i) include in his bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of provision)

252.210-7001 Availability of descriptions listed in DoD Directive 5000.19-L, Volume II.

As prescribed at 210.011 (S-70), insert the following provision:

AVAILABILITY OF DESCRIPTIONS LISTED IN DOD DIRECTIVE 5000.19-L, VOLUME II (APR 1984)

Copies of the Acquisition Management Systems and Data Requirements Control List, DoD Directive 5000.19-L, Volume II, may also be ordered from the supply point listed herein. When requesting a data item description, the request shall cite the applicable data item number set forth in the solicitation.

(End of provision)

252.210-7002 Availability of specifications and standards not listed in DODISS, data item descriptions not listed in Department of Defense Directive 5000.19-L, Volume II, and plans, drawings, and other pertinent documents.

As prescribed at 210.011 (S-71), insert the following provision:

AVAILABILITY OF SPECIFICATIONS AND STANDARDS NOT LISTED IN DODISS, DATA ITEM DESCRIPTIONS NOT LISTED IN DOD DIRECTIVE 5000.19-L, VOLUME II, AND PLANS, DRAWINGS, AND OTHER PERTINENT DOCUMENTS (JUN 1977)

The specifications, standards, plans, drawings, descriptions and other pertinent documents cited in this solicitation may be obtained by submitting request to:

(Activity) _____

(Complete Address) _____

Requests should give the number of the solicitation and the title and number of the specification, standard, plan, drawing or other pertinent document requested, exactly as cited in this solicitation.

(End of provision)

252.210-7003 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.

As prescribed at 210.011(S-71), insert the following provision:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS, STANDARDS, PLANS, DRAWINGS, DATA ITEM DESCRIPTIONS, AND OTHER PERTINENT DOCUMENTS (JUN 1977) The specification, standards, plans, drawings, descriptions, and other pertinent documents cited in this solicitation may be examined at the following locations:

_____

(Insert Complete Address)

(End of provision)

252.212-7000 Exclusion of periods in computing completion schedules.

As prescribed at 212.102(b), insert the following clause:

EXCLUSION OF PERIODS IN COMPUTING COMPLETION SCHEDULES (JAN 1965)

No work will be required during the period between ——— and ——— inclusive and such period has not been considered in computing the time allowed for completion. The Contractor may, however, perform work during all or any part of this period upon giving prior written notice to the Contracting Officer. If the work performed during such period is less than * (——— cubic yards) (the average monthly work necessary to complete the contract within the time specified) and the Contracting Officer maintains an inspection force during this period to inspect the work, the Contractor will be charged the percentage of the cost of maintaining such force that his work is less than * (——— cubic yards) (the average monthly work necessary to complete the contract within the time specified).

(End of clause)

252.213–7000 Inconsistency between English version and translation of contract.

As prescribed at 213.505–2(S–73)(2)(ii)(B), insert the following provision:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (APR 1966)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of clause)

252.213–7001 Returnable gas cylinders.

As prescribed at 213.505–2(S–73)(1)(xxxiii), insert the following clause:

RETURNABLE GAS CYLINDERS (OCT 1966)

(a) Cylinders shall remain the property of the Contractor but will be loaned without charge to the Government for a period of thirty (30) days* after the date of delivery of the cylinders to the f.o.b. point specified in the contract. Beginning with the first day after the expiration of the thirty (30) day loan period to and including the day the cylinders are delivered to the Contractor where the original delivery was f.o.b. origin or to and including the date the cylinders are delivered or are made available for delivery to the Contractor's designated carrier in the case where the original delivery was f.o.b. destination, the Government shall pay the Contractor a rental of ——— dollars ($———) per cylinder per day, regardless of type or capacity.

(b) This rental charge will be computed separately for cylinders of different types, sizes, and capacities, and for each point of delivery named in the contract. A credit of thirty (30) cylinder days will accrue to the Government for each cylinder, regardless of type or capacity, delivered by the Contractor. A debit of one (1) cylinder day will accrue to the Government for each cylinder for each day after delivery to the f.o.b. point specified in this contract. At the end of the contract, if the total number of debits exceeds the total number of credits, rental shall be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no rental charges will be made for the cylinders. No rental shall accrue to the Contractor in excess of the replacement value per cylinder specified in (c) below.

(c) For each cylinder lost or damaged beyond repair, while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid therefor:

(i) Oxygen cylinders of 100–110 cubic foot capacity $———;

(ii) Oxygen cylinders of 200–220 cubic foot capacity $———;

(iii) Acetylene cylinders of 100–150 cubic foot capacity $———; and

(iv) Acetylene cylinders of 230–300 cubic foot capacity $———.

(d) Cylinders lost, or damaged beyond repair, and paid for by the Government shall become the property of the Government, subject to the following: If any lost cylinder is located within ——— (insert period of time) after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with (a) above, beginning at the expiration of the thirty (30) day loan period specified in (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

252.214–7000 Discounts.

As prescribed at 214.407–3, insert the following provision:

DISCOUNTS (APR 1984)

Prompt payment discounts will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(End of provision)

252.215–7000 Pricing of adjustments.

As prescribed at 215.804–8(S–70), insert the following clause:

PRICING OF ADJUSTMENTS (APR 1984)

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other clause of this contract, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation and the DoD FAR Supplement in effect on the date of this contract.

(End of clause)

252.216–7000 Economic price adjustment—basic steel, aluminum, brass, bronze or copper mill products.

As prescribed at 216.203(S–70)(a), insert the following clauses:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE OR COPPER MILL PRODUCTS (AUG 1978)

(a) The Contractor warrants that the unit price stated herein for ——— is not in excess of the Contractor's applicable established price in effect on the date set for opening of bids (or the contract date if this is not a contract entered into by means of formal advertising) for like quantities of the same item. The term "unit price" excludes any part of the price which reflects requirements for preservation, packaging and packing beyond standard commercial practice. The term "established price" means one which (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public and (2) meets the criteria of FAR 15.804–3. Such price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list, or schedule price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price shall be decreased by the same percentage that the said established price is decreased. Such decrease shall apply to items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify on each invoice that each unit price stated therein reflects all decreases required by this clause, or shall certify on the final invoice that all price decreases required by this clause have been applied in the manner herein required.

(c) If the Contractor's applicable established price is increased after the date set for opening of bids (or the contract date, if this is not a contract entered into by means of formal advertising), the corresponding contract unit price shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased and the contract shall be modified accordingly, *provided* that:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed ten percent (10%) of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within 10 days thereafter, but if not, the effective date of increased unit price shall be the date of receipt by the Contracting Officer of such request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date

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* (Delete inapplicable provision).

* The time period may be modified to comply with the customary commercial practice for the particular type of container being rented.

of the increased contract unit price unless the Contractor's failure to deliver before such date results from causes beyond the control and without the fault of negligence of the Contractor, within the meaning of the "Default" clause of this contract.

(4) No modification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase in the applicable established price has been verified by the Contracting Officer.

(d) Within 30 days after receipt of the Contractor's written request the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of such cancellation, except that the Contractor may thereafter deliver any items which the Contractor certifies, by notice received by the Contracting Officer within 10 days after the Contractor receives the cancellation notice, were completed or in the process of manufacture at the time of receipt of such cancellation notice, and the Government shall pay for such items so delivered at the contract unit price increased to the extent provided by (c) above. Any standard steel supply shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(e) Pending any cancellation of this contract as provided in (d) above and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for such deliveries at the contract unit price increased to the extent provied by (c) above.

(End of clause)

252.216-7001 Economic price adjustment—nonstandard steel items.

As prescribed at 216.203 (S–70)(b), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (AUG 1978)

(a) The term "established price" as used in this clause is one which (1) is an established catalog or market price of a commercial item sold in substantial quantities to the general public and (2) meets the criteria of Federal Acquisition Regulation 215.804–3. Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list, or scheduled price. (But see Note (8)).

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be ——— percent, and the proportion of the contract unit price attributable to the cost of steel shall be ——— percent. *(See Note (1)).*

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight time hourly earnings of the Contactor's employees in the ——— shop of the Contractor's ——— plant *(see Note (2))* for any particular month. The word "month" as used herein means "calendar month;" *provided,* however, that if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of ———, 19— *(see Note (3))*, the month immediately preceding and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of supplies is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established price *(see Note (8))* including all applicable extras of $——— per ——— [*see Note (4)*] for ——— *(See Note (5))* on ———, 19—, [*See Note (6)*] and the "current steel index," which shall be the Contractor's established price *(see Note (8))* of said item including all applicable extras in effect ——— days *(see Note (7))* prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery be made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (1) the amount (representing the adjusted cost of labor) obtained by multiplying ——— percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (2) the amount (representing the adjusted cost of steel) obtained by multiplying ——— percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (3) the amount equal to ——— percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to cost of steel and which is therefore not subject to revision *(see Note (1))* ; *provided,* however, that any revised contract unit price made pursuant to the provisions of this clause shall in no event exceed one hundred and ten percent (110%) of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit prices, if any, to be made pursuant to this clause, the Contractor shall be paid the contract unit price for deliveries made. Within thirty days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (1) the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index" and (2) the Contactor's established prices (*see Note (8)*) including all applicable extras for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer, the Contractor shall make available his records used in the computation of the labor indices. After the reciept of such certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with the provisions of this clause, and this contract shall be modified accordingly. However, no modification to this contract shall be made pursuant to this clause until the revised established price (*see Note (8)*) has been verified by the Contracting Officer.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which the delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and steel indices under paragraphs (c) and (d) hereof; *provided,* however, that as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any steel item for default of the Contractor, any price revision shall be limited to the quantity of such item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered; *provided,* however, that in the case of the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

Notes

(1) Bidder insert the same percentage figures for the corresponding blanks in paragraphs (b) and (e)(1) and (2). In paragraph (e)(3), bidder insert the percentage representing the difference between the sum or the percentages inserted in paragraph (b) and (100 percent.

(2) Bidder identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Bidder insert the month of bid opening, or the month in which the Contractor submitted his proposal if this is a negotiated contract.

(4) Bidder insert the unit price and unit measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Bidder identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Bidder insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotitated contract.

(7) Bidder insert the number of days which represents the Contractor's best estimate of the period of item required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) In negotiated procurements of nonstandard steel items, when there is no "established price" or when it is not desirable to use such price, this paragraph may refer to another appropriate price basis, such as an established interplant price.

(End of clause)

252.217-7000 Exercise of option to fulfill foreign military sales commitments.

As prescribed at 217.208(d), insert the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS (APR 1984)

The U.S. Government may exercise the option or options under the option clause of this contract to fulfill Foreign Military Sales commitments undertaken by the U.S. Government on behalf of a foreign country. At the date of exercise of the option, the U.S. Government will identify the foreign country for the purpose of negotiating an equitable price adjustment for any additional cost or profit considerations attributable to Foreign Military Sales included in 225.7304 and paragraph 215.905-1(b)(7)(iii)(E) of the DoD FAR Supplement. Failure to agree to such an equitable adjustment shall be treated as a dispute within the meaning of the clause of this contract titled "DISPUTES".

(End of clause)

252.217-7300 Delivery vehicles.

As prescribed at 217.7301-5(a)(1), insert the following clause:

DELIVERY VEHICLES (APR 1967)

The supplies delivered under this contract shall be transported in clean, closed vehicles. The vehicles shall be maintained in a sanitary condition to prevent contamination of the supplies and shall be equipped to maintain any temperature requirement prescribed in the specification or elsewhere in this contract. The vehicles shall be subject to inspection by the Government at all reasonable times and at all places, including the plant of the Contractor. Supplies tendered for acceptance in vehicles which are not sanitary, or which are not equipped to maintain any prescribed temperatures, may be rejected without further inspection.

(End of clause)

252.217-7301 Time of delivery.

As prescribed at 217.7301-5(a)(2), insert the following clause:

TIME OF DELIVERY (APR 1967)

Individual written delivery orders issued or oral delivery orders placed under this contract shall specify the locations to which deliveries shall be made and the quantities for each location. Deliveries will be completed within the hours prescribed in the Schedule of this contract and on the days specified by the order. Orders which call for delivery within less than twenty-four (24) hours from the time the Contractor receives said orders shall be governed by paragraph (e) of the clause entitled "Requirements."

(End of clause)

ALTERNATE I

If an indefinite quantity contract is used, rather than a requirements contract, the following shall be substituted for the last sentence of the basic clause:

The Contractor shall not be required to deliver within less than ——— hours from the time the Contractor receives a delivery order.

253.217-7302 Change in plant location.

As prescribed at 217.7301-5(a)(3), insert the following clause:

CHANGE IN PLANT LOCATION (APR 1967)

The performance of any work under this contract at any place other than that named in this contract is prohibited unless specific written advance approval is obtained from the Contracting Officer.

(End of clause)

252.217-7303 Sanitary conditions.

As prescribed at 217.7301-5(a)(4), insert the following clause:

SANITARY CONDITIONS (APR 1967)

(a) All plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of supplies under this contract, and all supplies (as the term "supplies" is defined in paragraph (a) of the clause entitled "Inspection of Supplies (Fixed Price") delivered under this contract, shall meet the sanitary standards, including bacteriological requirements, prescribed by the specifications cited elsewhere in this contract.

(b) All plant facilities machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of supplies under this contract shall be subject to inspection and test by the Government at all places and at all reasonable times.

(c) The Government shall notify the Contractor in writing of any failure to meet the sanitary standards, including bacteriological requirements, prescribed by this contract. If such failure has not been corrected within three (3) days from the date the Contractor receives said notice, the whole or any part of this contract may be terminated for default or, at the option of the Contracting Officer, the Contractor's right to perform under this contract may be partially or wholly suspended for not less than ten (10) days, and for such longer period of time as the Contracting Officer deems appropriate to permit correction of such failure. A suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. If the Contractor does not correct the failure to meet the sanitary standards, including bacteriological requirements, within any suspension period specified by the Contracting Officer, the Government may terminate the unexpired portion of this contract for default without allowing additional time for correction, notwithstanding paragraph (a)(2) of the clause entitled "Default (Fixed Price Supply and Service)."

(End of clause)

ALTERNATE I

If an indefinite quantity contract is used, rather than a requirements contract, the following shall be inserted in paragraph (c) of the basic clause after the third sentence:

The quantity of supplies designated in the Schedule as "Minimum" shall be reduced, in the event of a suspension, by an amount proportionate to the ratio between the number of days the Contractor's right to perform is suspended and the number of days in the contract period. The quantity of supplies designated as "Maximum" shall not be reduced.

252.217-7304 Remedies under delivery orders.

As prescribed at 217.7301-5(a)(5), insert the following clause:

REMEDIES UNDER DELIVERY ORDERS (APR 1967)

All rights and remedies afforded to the Government under the provisions of this contract may be exercised and enforced by the Government with respect to each written or oral delivery order placed under this contract.

(End of clause)

ALTERNATE I

If delivery orders are to be placed by an activity other than the activity which awarded the contract, the following may be added to the basic clause to establish authority in the ordering officer under the

Changes, Extras, Inspection, Default (Fixed Price Supply and Service), and Dispute clauses for the administration of individual delivery orders:

For the purpose of the exercise of the Government's rights and remedies under one or more individual delivery orders, the term "Contracting Officer" as used in the "Changes," "Extras," "Inspection of Supplies—Fixed Prices," "Default (Fixed Price Supply and Service)," and "Disputes" clauses, shall include the person executing or placing said order or orders.

252.217-7305 Examination and testing.

As prescribed at 217.7301–5(b)(1), insert the following clause:

EXAMINATION AND TESTING (DEC 1969)

(a) The Government examination and testing of dairy products shall be in accordance with the DoD Handbook No. H–57, "Supplement A—Procurement Quality Assurance for Fresh Dairy Products." The Contract agrees that a lot consists of a day's production of the type of product delivered or intended to be delivered. Whether sampling is conducted at origin or at destination, the Contractor agrees that the results of the tests performed using the samples selected in accordance with DoD Handbook No. H–57, Supplement A, will apply to the entire contract quantity of each type product delivered on the date specified at the time of sampling and that the results will be used in determining the weighted average of butterfat, milk solids non-fat, and total solids for the monthly period.

(b) The Government reserves the right to test all products to be delivered under the contract. Samples selected by the Government at origin shall be furnished at the expense of the Contractor and shall be considered to be representative of all the products delivered to the Government from the lot sampled. The Contractor shall certify the quantity of all products delivered from lots sampled at origin. Samples selected by the Government at destination shall be furnished at the expense of the Government and shall be considered to be representative of all of that type of product delivered to the Government on the date sampled.

(c) When samples are selected from containers of ½ gallon size or smaller, the entire content of the container shall constitute the sample; when samples are selected from containers larger than ½ gallon, a ½ pint sample shall be withdrawn for laboratory analysis.

(d) When the butterfat, milk solids, non-fat or total solids of any type of product as determined by chemical analysis is less than required by this contract, the Contractor shall reimburse the Government for the deficiency in the amount determined pursuant to the clause entitled "Deficiency Adjustment." For this purpose the butterfat, milk solids non-fat, and total solids content of the entire quantity of each type of product delivered during a monthly period shall be deemed to be the weighted average of the result of the tests of all samples thereof selected during said period. If the butterfat, milk solids non-fat, or total solids content of any type of product in any monthly period, as determined by a chemical analysis of at least two (2) samples, is less than required by this contract, the Contractor shall reimburse the Government for the deficiency in an amount determined pursuant to the clause entitled "Deficiency Adjustment." Deficiencies so computed, totaling $25 or less during a monthly accounting period will not be assessed. Monthly periods commence on the first (1st) day of the contract period and on the same day of each succeeding calendar month thereafter. The butterfat, milk solids non-fat, and total solids contents of one type of product will not be averaged with or offset against the content of another type of product, and the content of products delivered in any one monthly period will not be averaged with or offset against the content of products delivered in any other monthly period. No payment will be made for butterfat, milk solids non-fat, and total solids content in excess of the amount required by this contract.

(End of Clause)

252.217-7306 Deficiency adjustment.

As prescribed at 217.7301–5(b)(2), insert the following clause:

DEFICIENCY ADJUSTMENT (DEC 1969)

(a) The amount to be paid by the Contractor to the Government as consideration for the acceptance of supplies deficient in butterfat, milk solids non-fat, or total solids, pursuant to the clause entitled "Examination and Testing," shall be determined in accordance with the following formulas:

(1) *Butterfat:* Subtract the total pounds of butterfat delivered from the total pounds of butterfat required to be delivered, and multiply the remainder by the butterfat value.

(2) *Milk solid non-fat.* Subtract the total pounds of milk solids non-fat delivered from the total pounds of milk solids non-fat required to be delivered, and multiple the remainder by the milk solids non-fat value.

(3) *Total solids.* To the total solids add any shortages for butterfat, milk solids non-fat, previously price adjusted and subtract from the total solids required to be delivered. Multiply the remainder by the milk solids non-fat value.

(B) The term "butterfat value" shall mean the average Chicago top "Wholesale Selling Price" of Grade A, 92 score butter during the monthly period for which the deficiency is computed, as reported in the Weekly Dairy Comments, Dairy and Poultry Market News, published by the Department of Agriculture, Consumer and Marketing Service, Chicago, Illinois, multiplied by 1.30. The term "milk solids non-fat value" shall mean the average Chicago top price for "Commercial sales, Extra Grade, Nonfat Dry Milk, Spray (bags)" during the monthly period for which the deficiency is computed, as reported in the aforementioned Weekly Dairy Comments, multiplied by 1.45.

(c) The Contractor shall certify the tare weights of all containers on the shipping documents, and furnish a copy thereof to the Government inspector(s) at destination(s). The tare weight of dispenser containers shall include all parts of the container delivered as a unit, including lids, tubes, and seals. If different types of containers with different tares are included in a single delivery, the Contractor shall furnish the tare weight and identifying characteristics of each type of container. Volume and net weight shortages of any line item, revealed by inspecting a representative sample of said line item, shall be adjusted for payment by the receiving installation for the entire quantity of the line item delivered on the day the shortage is discovered. For the purpose of determining net weight, the following will apply:

(1) The weight factor of 8.8 pounds per gallon will be used for chocolate flavored milk and chocolate flavored drink.

(2) The weight factor of 8.6 pounds per gallon will be used for milk whole fresh, buttermilk fluid, milk whole fresh cultured, and milk skim fresh.

(3) The weight factor of 8.5 pounds per gallon will be used for fresh cream eighteen percent (18%) butterfat or less, half-and-half fresh, and cream sour cultured.

(4) The weight factor of 8.4 pounds per gallon will be used for all creams with a butterfat percentage or more than eighteen percent (18%).

(5) Other items such as cottage cheese, butter and so forth, shall be weighed in accordance with the weight stated on the container.

(6) For ice cream and frozen desserts, weight shall be determined based on applicable commodity specification.

(d) The foregoing is an agreed method for the adjustment of prices of noncomplying products, and is without prejudice to the Government's right to terminate for default or to pursue any other remedy under this contract or as provided by law.

(End of clause)

252.217-7307 Warning.

As prescribed at 217.7301–5(b)(3), insert the following clause:

WARNING (DEC 1969)

The Government shall notify the Contractor orally or in writing of any failure to meet sanitary standards, or when two of the 1st four consecutive lots tested are nonconforming for the same specification requirement. Oral notifications will be confirmed in writing. When this notice is based on product nonconformance, it shall be in effect so long as two of the last four consecutive lots tested exceed the same limit of the specification. An additional sample shall be taken within fourteen (14) days of such notice, but not before three (3) days have elapsed.

(End of clause)

252.217-7308 Suspension.

As prescribed at 217.7301–5(b)(4), insert the following clause:

SUSPENSION (DEC 1969)

The Contractor's right to perform may be suspended when three out of the last five consecutive lots tested are nonconforming for the same specification requirement. This suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension

of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such a manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. It is the responsibility of the Contractor to use the period of suspension to effect corrections of deficiencies and to notify the Government when such corrections are completed. Concurrently with initial notification, or any time after notification, but prior to correction of deficiencies and notification to the Government thereof, the Contractor's right to perform under this contract may be partially or wholly suspended immediately if such failure results in the production of a product which is considered to be a health hazard. Any suspension shall not exceed ten (10) days.

(End of clause)

ALTERNATE I

If an indefinite quantity contract is used, rather than a requirements contracts, the following shall be added to the basic clause:

The quantity of supplies designated in the Schedule as "Minimum" shall be reduced, in the event of a suspension, by an amount proportionate to the ratio between the number of days the Contractor's right to perform is suspended and the number of days in the contract period. The quantity of supplies designated as "Maximum" shall not be reduced.

252.217-7309 Default.

As prescribed at 217.7301-5(b)(5), insert the following clause:

DEFAULT (DEC 1969)

If the Contractor does not correct the deficiencies within this period of suspension, the Contracting Officer may terminate the unexpired portion of this contract for default without allowing additional time for correction; notwithstanding subparagraph (a)(2) of the clause entitled "Default (Fixed Price Supply and Service)."

(End of clause)

252.217-7310 Reinstatement.

As prescribed at 217.1703-5(b)(6), insert the following clause:

REINSTATEMENT (DEC. 1969)

When the Contractor's right to perform has been suspended for product nonconformances, this right may be reinstatement only after the Contractor certifies, in writing, that corrective action has been taken, and the Government has verified that the Contractor has taken corrective action to its satisfaction and has so notified the Contractor in writing.

(End of clause)

252.217-7311 Code dating.

As prescribed at 217.7301-5(c), insert the following clause:

CODE DATING (APR 1967)

A code may be used to comply with the requirement set forth in the Schedule or specifications of this contract for showing a date on the labels of items delivered hereunder, *provided* that, prior to the use of a code, a written explanation thereof is furnished to the Contracting Officer and approved by him in writing. No changes in the code symbols, code system or explanation thereof, shall be made without the advance written approval of the Contracting Officer.

(End of clause)

252.217-7312 Marking.

As prescribed at 217.7301-5(d), insert the following clause:

MARKING (APR 1967)

Notwithstanding any specification references to MIL-STD-129, commercial markings are acceptable.

(End of clause)

252.217-7313 Responsibility for containers and equipment.

As prescribed at 217.7301-5(e), insert the following clause:

RESPONSIBILITY FOR CONTAINERS AND EQUIPMENT (APR 1967)

The Contractor shall maintain all reusable containers and equipment in a sanitary condition and in a good state of repair and working order. At the time of each delivery, the Contractor shall remove from the premises of the Government all empty reusable containers, unless the Contracting Officer grants permission in writing for less frequent removal. The Government shall not be liable for any damage to, or loss or destruction of, containers and equipment furnished by the Contractor.

(End of clause)

252.217-7314 Containers and equipment.

As prescribed at 217.1703-5(f), insert the following clause:

CONTAINERS AND EQUIPMENT (APR 1967)

(a) Dispenser containers and filling equipment used by the Contractor in the performance of this contract, and any refrigerated bulk milk dispenser cabinets furnished by the Contractor, shall comply with MIL-STD-175, "Minimum Sanitary Standards for the Equipment and Methods for Handling of Milk and Milk Products in Bulk Milk Dispensing Operations," as amended.

(b) Any bulk milk dispenser cabinets required by the Schedule to be furnished by the Contractor shall be installed, serviced, and maintained to the satisfaction of the Contracting Officer. All responsibility for the supply, installation, maintenance, and removal thereof, including labor and material costs, and for any damage thereto or loss or destruction, shall remain with the Contractor.

(c) When, and for as long as, the Contractor fails to furnish bulk milk dispenser cabinets or milk dispenser containers as required in the Schedule, or does not properly service, maintain, and repair said dispenser cabinets, so that milk cannot be dispensed as needed by the Government, the Contractor shall deliver a sufficient quantity of milk in half-pint containers to satisfy orders for milk dispenser containers, at the price per gallon for milk dispenser containers.

(d) Any contamination, spoilage, leakage, or other loss of any contents of a dispenser container due to functional failure of the dispenser cabinets or dispenser containers, except for a general power failure at the Government installation, shall be replaced immediately by the Contractor without cost to the Government.

(e) The tare weight of dispenser containers required to be certified in accordance with paragraph (b) of the clause entitled "Examination and Testing" shall include all parts of the container delivered as a complete unit, including lids, tubes, and seals.

(End of clause)

252.219-7000 Small business and small disadvantaged business subcontracting plan (master plans).

As prescribed at 219.708(b), insert the following clause:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (MASTER PLANS) (APR 1984)

Master plans, referred to in FAR 52.219-9 must be approved by the contractor's contract administration office. (End of clause)

252.219-7001 Notice of combined small business-labor surplus area set-aside.

As prescribed at 219.502-70(d)(1), insert the following clause:

NOTICE OF COMBINED SMALL BUSINESS—LABOR SURPLUS AREA SET-ASIDE (JUN 1978)

(a) *General.*

(1) Offers under this procurement are solicited from small business concerns only and the procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of the Government procurement is placed with small business concerns. Offers received from firms which are not smll business concerns shall be considered nonresponsive and shall be rejected.

(2) Part of this procurement, identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set aside for award only to one or more LSA concerns, which are also small business concerns, and, to a limited extent, to small business concerns which do not qualify as LSA concerns. Award of the LSA setaside portion will be made after awards have been made on the non-LSA set-aside portion.

(b) *Definitions.*

(1) A "small business concern" is a concern, including its affiliates which is indepently owned and operated, is not dominant in the field of operation in which it is making on offer on Government contracts,

and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offer in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor surplus area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4 and Executive Order 10582."

(3) *Labor surplus area concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures.*

(1) *Determining eligibility:*

(i) To be eligible to participate in the LSA set-aside portion of this procurement, a labor surplus area concern which is also a small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non-LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining priority for award:* Labor surplus concerns which are also small business concerns and other small business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. Small business concerns which are also labor surplus area (LSA) concerns.

Group 2. Small business concerns which are not labor surplus area (LSA) concerns. Within each of the above groups, offers on the LSA set-aside portion will be requested from concerns in the order of their offers on the non LSA set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total LSA set-aside portion.

(3) *General rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the LSA set-aside shall be made at the highest unit price for each item awarded on the non LSA set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-LSA set-aside portion. The LSA set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-LSA set-aside award price.

(ii) *Award price involving foreign end products* (see FAR Part 25).

(A) When the highest award price on the non-LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non-LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non-LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which, after application of the evaulation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non LSA set-aside portion, adjusted or reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining offers and processing LSA set-aside awards.*

(A) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the LSA set-aside quantity at the highest unit price awarded in the non-LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing reguations.

(B) When an unaccepted low offer is involved: if *a.* a responsive offer is submitted on the non LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non LSA set-aside portion, but cannot be accepted (e.g., because of "all-or-none" or other quantity limitations, or because the offer is nonresponsible), and *b.* at the time of negotiation for the LSA set-aside portion, the offer could be accepted (e.g., because the LSA set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed.

Step one. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless the concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of *a.* and *b.* above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non-LSA set-aside portion on any quantity of the LSA set-aside portion, remaining after Steps One, Two, Three and Four have completed.

Step six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of areas of performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section — of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted this offer, the offeror may change the areas in which he proposes to perform, *provided*, that he so notifies the contracting officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section — of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50 %) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of costs to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section — of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements contract.* Only one award will be made for each item or sub-item of the non-LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business-Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

252.219-7002 Notice of combined small business—labor surplus area set-aside—alternate.

As prescribed at 219.502-70(d)(2), insert the following clause:

NOTICE OF COMBINED SMALL BUSINESS—LABOR SURPLUS AREA SET-ASIDE—ALTERNATE (JUN 1978)

(a) *General.*

(1) Offers under this procurement are solicited from small business concerns only and the procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of the Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(2) Part of this procurement, identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set aside for award only to one or more LSA concerns, which are also small business concerns, and, to a limited extent, to small business concerns which do not qualify as LSA concerns. Award of the LSA set-aside portion will be made after awards have been made on the non-LSA set-aside portion.

(b) *Definitions.*

(1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor surplus area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4B and Executive Order 10582."

(3) *Labor surplus area concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures.*

(1) *Determining eligibility:*

(i) To be eligible to participate in the LSA set-aside portion of this procurement, a labor surplus area concern which is also a small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non-LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining priority for award:* Labor surplus concerns eligible under (1) above will participate in the LSA set-aside in the following order of priority:

Group 1. Small business concerns which are also LSA concerns. A concern in this group which has received an award on the non-LSA set-aside portion of an item shall first be requested to offer the same percentage of the LSA set-aside portion. If a percentage of the LSA set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Small business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 1, the same procedure shall be followed for Group 2.

(3) *Determining the LSA set-aside award price:*

(i) *General rule:* Subject to the exceptions listed in (ii) and (iii) below, award under the LSA set-aside shall be made at the highest unit price for each item awarded on the non-LSA set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-LSA set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-LSA set-aside portion of an item was made on such a conditioned offer. When offers on the non-LSA set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately The LSA set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-LSA set-aside award price.

(ii) *Award price involving foreign end products (see Part 25 of FAR and DoD FAR supplement).*

(A) When the highest award price on the non-LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non-LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non-LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-LSA set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining offers and processing LSA set-aside awards.*

(A) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the LSA set-aside quantity at the highest unit price awarded on the non-LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically disolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(B) When an unaccepted low offer is involved: if (I) a responsive offer is submitted on the non-LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-LSA set-aside portion, but cannot be accepted (e.g., because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the LSA set-aside portion, the offer could be accepted (e.g., because the LSA set-aside quantity is large enough that the quantity limitations could be compiled with or because the offeror has now become responsible), then the following procedures shall be followed.

Step one. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non-LSA set-aside portion on any quantity of the LSA set-aside portion, remaining after Steps One, Two, Three and Four have been completed.

Step six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) *Determining the LSA set-aside quantity:*

(i) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non LSA set-aside portion of an item on which an offer was made to the total quantity of the LSA set-aside portion of that item.

(ii) If a concern offers on two or more items on the non LSA set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the LSA set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the non-LSA set-aside portion that could have been awarded to the total of these items on the LSA set-aside portion.

(iii) Notwithstanding the foregoing, if the entire LSA set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the LSA set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item still remaining.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of areas of performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section K of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section K of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section K of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements contract.* Only one award will be made for each item or sub-item of the non LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business-Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

252.219-7003 Determining the set-aside award price.

As prescribed at 219.508(d), insert the following clause:

DETERMINING THE SET-ASIDE AWARD PRICE (APR 1984)

In determining the price for the set-aside portion when the clause at FAR 252.219-7, Notice of Partial Small Business Set-Aside, is included herein, the following procedures will be used:

(a) *General rule.* Subject to the exceptions listed in (b) and (c) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evalution of the highest non-set-aside award price.

(b) *Award price involving foreign end products (see Part 25 of the FAR and DoD FAR supplement.*

(1) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns submitting foreign end products in which case the general rule applies.

(2) Award under the set-aside to a concern offering a foreign end product, when the highest award price on the non-set-aside portion is established by a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(c) *Obtaining offers and processing set-aside awards.*

(1) When an unaccepted low offer is not involved; if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in FAR 19.202-3 will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion. If any part of the set-aside portion is not taken by eligible small business concerns, the partial set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(2) When an unaccepted low offer is involved; if (i) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted

(e.g., because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (ii) at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed:

Step one. Eligible concerns (in the order of priority in FAR 19.202–3) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in FAR 19.202–3) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the set-aside, Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of (c)(2) (i) and (ii) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer, in turn, from lowest to highest.

Step five. Eligible concerns in the order of priority in FAR 19.202–3 will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed.

Step six. If the entire set-aside portion is not taken by eligible small business concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(End of clause)

252.219–7004 Eligibility for preference as a labor surplus concern.

As prescribed at 219.508(S–70), insert the following clause:

ELIGIBILITY FOR PREFERENCE AS A LABOR SURPLUS CONCERN (JUNE 1978)

Each offeror desiring to be considered for award as a labor surplus area (LSA) concern on the set-aside portion of this procurement, specified elsewhere in the schedule, shall indicate below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price:

Name of Company:————————
Street Address:————————
City/County:————————
State:————————

(If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price.)

CAUTION: Failure to list the location of manufacture or production and the percentage, if required, of cost to be incurred at each location will preclude consideration of the offeror as a LSA concern.

(End of clause)

252.220–7000 Notice of labor surplus area set-aside.

As prescribed at 220.7003(b)(2)(i), insert the following clause:

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (JUN 1978)

(a) *General.* Part of this procurement, identified in the Schedule as the "set-aside portion," has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as LSA concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) *Determining eligibility.*

(i) To be eligible to participate in the set-aside portion of this procurement, a concern must submit a responsive offer on the non-set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining priority for award.* Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns.

Group 2. Other LSA concerns.

Group 3. Small business concerns which are not LSA concerns.

Group 4. Other business concerns which are not LSA concerns.

Within each of the above groups, offers on the set-aside portion will be requested from concerns in the order of their offers on the non-set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total set-aside portion.

(3) *Determining the set-aside award price.*

(i) *General rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(ii) *Award price involving foreign end products, (See Part 25 of the FAR and Part 225 of the DoD FAR supplement)*

(A) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products in which case the general rule applies.

(B) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining offers and processing set-aside awards.*

(A) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lower price awarded on the non-set-aside portion.

(B) When an unaccepted low offer is involved: if *a.* a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted higher unit price awarded on the non-set-aside portion, but cannot be accepted (e.g., because of "all-or-none," or other quantity limitations, *or* because the bidder is nonresponsible), and *b.* at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the bidder has now become responsible), then the following procedures shall be followed:

Step one. Eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a

quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three. Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However,* the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of *a.* and *b.* above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion or any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided,* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 beginning with the lowest offeror on the non-set-aside portion at prices no higher than the lowest price awarded on the non-set-aside portion.

Step six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(c) *Definitions.*

(1) "Labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4B and Executive Order 10582."

(2) "Labor surplus area concerns," means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus area. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract prices.

(3) "Small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns; *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement.* The offeror agrees that if awarded a contract as a LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of areas of performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section K of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled *"Eligibility for Preference as a Labor Surplus Area Concern"* in Section K of the solicitation, the address(es) when costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section K of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

252.220–7001 Notice of labor surplus area set-aside—alternate.

As prescribed at 220.7003(b)(2)(ii), insert the following clause:

NOTICE OF LABOR SURPLUS AREA SET-ASIDE—ALTERNATE (APR 1984)

(a) *General.* Part of this procurement, identified in the Schedule as the "set-aside portion," has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as LSA concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) *Determining eligiblity.*

(i) To be eligible to participate in the set-aside portion of this procurement, a concern must submit a responsive offer on the non-set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining priority for award.* Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns. A concern in this group which has received an award on the non-set-aside portion of an item shall first be requested to offer the same percentage of the set-aside portion. If a percentage of the set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Other LSA concerns. If a quantity of an item remains unawarded after negotiations have been completed with concerns in Group 1, the same procedure shall be followed for Group 2.

Group 3. Small business concerns which are not LSA concerns. If a quantity of an item remains unawarded after negotiations with concerns in Group 2, the same procedure shall be followed for Group 3.

Group 4. Other business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 3, the same procedure shall be followed for Group 4.

(3) *Determining the set-aside price.*

(i) *General rule.* Subject to the exception listed in (ii) and (iii) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-set-aside portion of an item was made on such a conditioned offer. When offers on the non-set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and price offered for each quantity under each item shall be considered separately. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(ii) *Award price involving foreign end products (See Part 25 of the FAR and Part 225 of the DoD FAR supplement)*

(A) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating

the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products in which case the general rule applies.

(B) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining offers and processing set-aside awards.*

(A) When an unaccepted low offer is not involved: If there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

(B) When an unaccepted low offer is involved: If *a.* a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (e.g., because of "all-or-none," or other quantity limitations, or because the bidder is nonresponsible), and *b.* at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with or because the bidder has now become responsible), then the following procedures shall be followed:

Step one. Eligible concerns (in the order of priority in (2) above), excluded Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three. Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However,* the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of *a.* and *b.* above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

Step six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) *Determining the set-aside quantity.*

(i) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non-set-aside portion of an item on which an offer was made to the total quantity of the set-aside portion of that item.

(ii) If a concern offers on two or more items on the non-set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the non-set-aside portion that could have been awarded to the total of these items on the set-aside portion.

(iii) Notwithstanding the foregoing, if the entire set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item still remaining.

(c) *Definitions.*

(1) "Labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4B and Executive Order 10582."

(2) "Labor surplus area concerns" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(3) "Small business concern" is a concern, including its affilitates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement.* The offeror agrees that if awarded a contract as an LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed by a first tier subcontractor a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of areas of performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section K of his offer the geographical areas in which he proposes to perform, or cause to be performed a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposed to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section K of this solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section K of the solicitation will preclude consideration of the offeror as an LSA concern.

(f) *Requirements contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

252.222-7000 Potential application of the service contract act, As Amended (Fixed Price).

As prescribed at 222.1006(S-70), insert the following clause:

POTENTIAL APPLICATION OF THE SERVICE CONTRACT ACT, AS AMENDED (FIXED PRICE) (SEP 1979)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) In the event that during the performance of this contract, it is determined by appropriate authority that the provisions of the Service Contract Act of 1965, as amended, apply to any of the work covered by this contract, the Contracting Officer may unilaterally implement such determination by requiring payment of the appropriate wage and fringe benefit scale, and the Contractor agrees to comply with such implementation. In the event that compliance with the Contracting Officer's direction results in any increase in the labor rates paid under this contract, the Contractor agrees to enter promptly into negotiations to reflect such an increase. Such contract adjustment shall be limited to increases in wages or fringe benefits affected by the above determination, and the concomitant increases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for profit, or for general administrative costs or overhead.

(c) Within 30 days of receipt of the applicable wage and fringe benefit scale, the Contract will submit a proposal for any contract price change to the Contracting Officer. With the submission of his proposal for adjustment, the Contractor shall also submit, if requested by the Government, all necessary and pertinent data used by him in preparing the proposal upon which he received the original award of this contract. The Contracting Officer or his authorized representative shall be access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under this contract.

(d) This clause shall be deemed to constitute the exclusive contractual remedy of the Contractor for adjustment arising out of the decision to apply the Service Contract Act, as amended, to work covered by this contract. Failure of the parties to reach an understanding as to such adjustment shall be considered a dispute subject to the Disputes clause of the contract.

(End of clause)

252.222-7001 Service Contract Act (SCA) minimum wages and fringe benefits.

As prescribed at 222.1006(S-71), insert the following clause:

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (SEP 1979)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor (DOL). If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor _____ and the _____ (union). Copies of the agreement can be obtained from the Contracting Officer. Pursuant to DOL Regulation, 29 CFR 4.1c the economic terms of that agreement (or any new CBA negotiated ten or more days prior to the opening of bids, or the commencement of the contract in the case of negotiated contracts, exercise of options, or extensions) will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined, after a hearing pursuant to section 4(c) of the SCA, that they are substantially at variance with the wages prevailing in the area.

(End of clause)

252.228-7000 Reimbursement for war hazard losses.

As prescribed at 228.305(e)(2), insert the following clause:

REIMBURSEMENT FOR WAR HAZARD LOSSES (JUL 1968)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workmen's Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

(i) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(ii) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by the Contracting Officer, the Contractor shall convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, The Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of clause)

252.228-7001 Ground and flight risk.

As prescribed at 228.306(a)(1), insert the following clause:

GROUND AND FLIGHT RISK (OCT 1975)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open", during "operation", and in "flight", as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(A) Aircraft (including (I) complete aircraft, and (II) aircraft in the course of being manufactured, disassembled, or reassembled; provided, that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government; and

(B) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract; including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; provided, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the . . .* With respect to land based aircraft "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises; with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp or the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises, provided, however, that aircraft off the contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contractor, or landings approved by . . .* in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the . . .* and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(vi) The term "flight crew member" means the pilot, the co-pilot and unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defensive systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the . . .* finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the contractor shall act promptly to correct such conditions, regardless of whether he agrees that such conditions are in fact unreasonable. To the extent that the Contracting officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs he incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of the contract entitled "Disputes".

(3) If the . . .* finds that the Contractor failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such terminations to be effective at 12:01 A.M. on the fifteenth day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made in the contract price to compensate the Contractor for any additional costs he incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly. Any dispute as to whether the Contractor failed to act promptly to correct such conditions, or as to the reasonableness of the time for correction of such conditions, or as to such equitable adjustment, shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(4) In the event the Government's assumption of risk under this clause is terminated in accordance with (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the clause of this contract, if any, entitled "Government Property" until the Government's assumption of risk is reinstated in accordance with (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, or not, and the . . .* shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks, and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of, such aircraft:

(i) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open, and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the contractor's business, or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract);

(ii) Sustained during flight if the flight crew members conducting such flight have not been approved in writing by the . . .*;

(iii) While in the course of transportation by rail, or by conveyance, on public streets, highways, or waterways, except for Government-fufnished property;

(iv) To the extent that such damage, loss or destruction is in fact covered by insurance;

(v) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage consists of reasonable wear and tear or deterioration, or results from inherent vice in such property, this exclusion shall not apply; or

(vi) Sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss, or destruction, is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e) With the exception of damage to, or loss or destruction of aircraft in "flight", the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft "in the open" or during "operation" resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) below shall not include the dollar amount of the risk assumed by the Contractor under this paragraph. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss is smaller) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage to, or loss or destruction of, aircraft while in his possession or control, except to the extent that the subcontract, with the prior written

approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order and further, except in cases covered by (e) above, the Contractor should furnish to the . . . a statement of:

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering any part of the interest in such commingled property. Except in cases covered by (e) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing his obligations under this paragraph (h) and this contract shall be modified in writing accordingly.

(i) If prior to delivery and acceptance by the Government any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss or destruction, the Government shall either (1) require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage, or (2) shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the Contractor to complete the aircraft (or any work to be performed on said aircraft) together with anticipated profit, if any, on any such uncompleted work, and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damage, lost, or destroyed aircraft, or any remaining parts thereof; and, if additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor. Failure of the parties to agree upon an equitable adjustment or upon the amount to be paid in the event of termination of the contract with respect to any aircraft, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(j) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the . . .*, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

* In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1A, Defense Logistics Agency Regulation 8210.1, dated 5 October 1971, subject: Requirements for Contractor Operating Procedures and Flights Crews, enclosure 1.

252.228–7002 Flight risks.

As prescribed at 28.307–2(S–70)(1), insert the following clause:

FLIGHT RISKS (OCT. 1975)

(a) Notwithstanding any other provision of this contract, and particularly subparagraph (g)(1) of the "Government Property" clause and paragraph (c) of the "Insurance—Liability to Third Persons" clause, the Contractor shall not (i) be relieved of liability for, damage to, or loss or destruction of, aircraft sustained during flight, or (ii) be reimbursed for liabilities to third persons for loss of or damage to property, or for death or bodily injury, which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by . . .*. (See footnote at end of clause.)

(b) For purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto; *provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the . . .*. (See footnote at end of clause.) As to land based aircraft, "flight" shall commence with the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.

(iii) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) If any aircraft is damaged, lost, or destroyed during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the estimated cost (exclusive of any fee) of this contract, whichever is less, and if the Contractor is not liable for the damage, loss or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (i) in the estimated cost, delivery schedule, or both, and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, his employees, or any subcontractor, which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(End of clause)

* In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity

designated in combined regulation identified as Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1A, Defense Logistics Agency Regulation 8210.1, dated 8 October 1971, subj: Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

In the foregoing clause, the definition of "aircraft" may be appropriately modified in the Schedule if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

252.228–7003 Capture and detention.

As prescribed at 228.309(S–70), insert the following clause:

CAPTURE AND DETENTION (JUN 1968)

(a) As used in this clause:

(1) "Captured person" means any employee of the Contractor—

(i) Who is assigned to duty outside the United States for the performance of this contract, and

(ii) Who is found to be missing from his place of employment under circumstances that make it appear probable that his absence is due to the action of the force of any power not allied with the United States in a common military effort, or who is known to have been taken prisoner, hostage, or otherwise detained by the force of any such power, whether or not such person is actually engaged in his employment at the time of capture; *Provided* that at the time the person was captured and detained the person was either:

(A) Engaged in activity directly arising out of the course of his employment under this contract, or

(B) Captured in an area in which the captured person was present only because such presence was required in order to perform this contract;

(2) A "period of detention" begins with the day of capture and continues until the captured person is returned to his place of employment, or to the United States, or is able to be returned to the jurisdiction of the United States, or until his death is in fact established or legally can be presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever shall occur first;

(3) "United States" comprises geographically the fifty states and the District of Columbia; and

(4) "War Risk Hazards Compensation Act" refers to the statute compiled in Chapter 12 of Title 42, U.S. Code (sections 1701–1717), as amended.

(b) If pursuant to an agreement entered into prior to the capture, the Contractor is obligated to pay and shall have paid benefits to a captured person, or his dependents, on account of his detention, the Government will reimburse the Contractor for such payments up to an amount which will equal the lesser of (i) the total wage or salary (computed at the rate being paid at the time of capture) due from the Contractor to the captured person for the period of detention, of (ii) that amount which would have been payable to such person if the detention had occurred under circumstances wherein the benefit provisions of the War Risk Hazards Compensation Act would have been applicable.

(c) The period of detention shall not be considered as time spent in the performance of this contract, and the Government shall not be obligated to make payment under this contract on account of such person for the period of the detention except as provided in this clause.

(d) The obligation of the Government to make payments provided for by this clause shall be applicable to the entire period of detention except that it is expressly conditioned upon and subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive the earlier expiration, completion or termination of this contract.

(e) The Contractor shall not be reimbursed under the provisions of this clause for payments made to employees for a period of detention during which the employees were entitled to compensation for capture and detention under the War Risk Hazards Compensation Act, as amended.

(End of clause)

252.228–7004 Bonds or other security.

As prescribed at 228.103–2(a)(4), insert the following provision:

BONDS OR OTHER SECURITY (APR 1977)

A bid guarantee in the penal sum of $——— must accompany the bid. Within ten (10) days after receipt of a notice of award, the Contractor shall furnish a performance bond (Standard Form 25) in the penal sum of $——— and payment, in full, of any sum due the Government. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds will be accepted. Individual sureties will be accepted if each such surety deposits with the Contracting Officer cash, bonds, or notes of the United States, or certified check drawn to the order of the office designated for contract administration, or such other security as the Contracting officer may deem necessary, for the required amount of the guaranty, under the agreement that the collateral so deposited shall remain in the possession and control of the Treasurer of the United States until the completion of the contract. The formal contract and notice to proceed will be issued on receipt of an acceptable performance bond and payment of any sum due the Government.

(End of provision)

252.228–7005 Insurance.

As prescribed at 228.311(S–70), insert the following clause:

INSURANCE (JAN 1965)

(a) The Contractor shall procure and thereafter maintain such bonds and insurance in such forms and such amounts comments and for such periods of time as the Contracting Officer may require in writing and shall be reimbursed for the cost thereof.

(b) In every instance where this contract requires the United States to reimburse the Contractor for the payment of the premium on a bond or insurance policy, the bond or insurance policy shall contain an endorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

(c) The Contractors shall give the Contracting Officer or his representative immediate notice in writing of any suit or action filed against the Contractor arising out of the performance of this contract and of any claim against the Contractor the cost and expense of which are reimbursable under the provisions of the Clause entitled "Allowable Cost and Payment," and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request to the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government, of all Contractor's rights and claims except against the Government, arising from or growing out of such asserted claims, and if required by the Contracting Officer, shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor.

(End of clause)

252.228–7006 Accident reporting and investigation involving aircraft, missiles, and space launch, vehicles.

As prescribed at 228.7101, insert the following clause:

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (JAN 1969)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled under or in connection with this contract.

(b) If the Government elects to conduct an investigation of the accident, the Contractor will cooperate fully and assist the Government's personnel until the investigation is completed.

(c) The Contractor will include a clause in each of his applicable subcontracts to require subcontractor cooperation and assistance in accident investigation under this clause.

(End of clause)

252.228–7007 Safety precautions for ammunition and explosives.

As prescribed at 228.7102(a), insert the following clause:

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (SEP 1970)

(a) As used in this clause:

(1) "Ammunition" and "explosives" shall have the meaning set forth in DoD

Contractors' Safety Manual for Ammunition, Explosives, and Related Dangerous Materials, DoD 4145.26M;

(2) "Accident" means an event causing damage or injury involving ammunition or explosives which results in one or more of the following:

(i) One or more fatalities,*

(ii) One or more disabling injuries,*

(iii) Ten or more non-disabling injuries,*

(iv) Damage to Government property exceeding $10,000,

(v) Production interruption exceeding twenty-four (24) hours.

(b) The Contractor shall comply with the DoD Contractor's Safety Manual for Ammunition, Explosives and Related Dangerous Materials (DoD Manual 4145.26M), in effect on the date of the solicitation for this contract, as it relates to ammunition and explosives, and any other additional or more stringent requirements included in the schedule of this contract.** If the Contracting Officer notifies the Contractor of any noncompliance with such Manual, or schedule provisions, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action within the time specified by the Contracting Officer, the Contracting Officer may at any time remove Government personnel whenever the Contractor is in noncompliance with the safety requirements of this clause. Either action by the Contracting Officer shall not entitle the contractor to an adjustment of the contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule. However, should direction to cease performance be issued or Government personnel be removed and it is later determined that the Contractor had, in fact, complied with the Manual, or schedule provisions, the Contractor shall be entitled to an equitable adjustment in delivery schedule, in contract price, or both, in accordance with the procedures provided for in the clause of this contract entitled "Changes".

(c) The Contractor shall immediately notify the Contracting Officer after an accident involving ammunition or explosives. The Contractor shall also, in accordance with this contract or as required by the Contracting Officer, conduct an investigation and submit a written report of the accident to the Contracting Officer.

(d) Neither the requirements of this clause nor any act or failure to act by the Government in surveillance or enforcement thereof shall affect or relieve the Contractor of responsibility for the safety of his personnel and his property and for the safety of the general public in connection with the performance of this contract, or impose or add to any liability of the Government for such safety. The Contractor is not entitled to rely on the requirements of this clause or on any Government surveillance or enforcement in accordance with DoD 4145.26M in discharging the Contractor's responsibility.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in every subcontract hereunder which involves ammunition and explosives as defined in (a) above.

(f) Nothing contained herein shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with the performance of this contract.

*As defined in American National Standards Institute, Safety Standard, entitled "USA Standard Method of Recording and Measuring Work Injury Experience, Z16.1", in effect on the date of the solicitation.

**The Contracting Officers shall not reference in the schedule of the contract ammunition and explosive safety publications of DoD components in their entirety. Contracting Officers shall select and identify in the schedule of the contract applicable paragraphs or portions of such publications. Where contract performance will occur on a military installation, Contracting Officers may also include necessary regulations of the installation covering ammunition and explosives applicable to performance on the installation.

(End of clause)

ALTERNATE I (SEP 1970)

As prescribed at 228.7102(d), add the following paragraph:

(g) The Contractor shall comply with the requirements for a shipper's certificate set forth in the manual entitled "Packaging and Handling of Dangerous Materials for Transportation by Military Aircraft" (U.S. Government Printing Office Catalog Number D 301.7:71/4/2, also identified as AFM 71-4/TM-38-250/NAVAIR 15-03-500-MCO P4030.10/DSAM 4145.3).

252.229-7000 Fixed-price, into-plane, fuel contracts at overseas locations.

As prescribed at 229.402-1(S-70), insert the following clause:

FIXED-PRICE, INTO-PLANE, FUEL CONTRACTS AT OVERSEAS LOCATIONS (JAN 1979)

(a) As used throughout this clause, the following terms shall have the meanings set forth below:

(1) The term "direct tax" means any foreign tax, duty, fee, or like charge, directly applicable to the completed supplies or service covered by this contract. It includes any foreign tax, duty, fee, or like charge, directly applicable to the importation, exportation, production, manufacture, distribution, transportation, storage, withdrawal from storage, handling, receipt, sale, or delivery of such supplies or services. The term does not include unemployment compensation taxes; social security taxes; income taxes; excess-profits taxes; capital stock taxes; property taxes, except such property taxes as are assessed either on completed supplies covered by this contract or on the Contractor's interest in or use of Government-owned property supplied under this contract; and such other taxes as are not within the definition of the term "direct tax" as set forth in this paragraph. If this contract provides for the furnishing of supplies in Puerto Rico, the term "direct tax" also includes the U.S. import tax on petroleum.

(2) The term "nonrefundable tax" means any direct tax which the Contractor is required to pay and, in respect to which, he is unable to obtain a refund or drawback.

(b) The contract prices do not include any direct tax.

(c) The Contractor shall use all reasonable efforts to collect all refunds or drawbacks due to the Contractor, either in its own right or under any rights and privileges arising out of this contract, of any direct tax which the Contractor is required to pay or bear the burden of.

(d) The Government shall reimburse the Contractor for any nonrefundable tax. Contractor invoices for such reimbursement shall be submitted separately on a monthly basis and, when applicable, shall show credit deductions for all refunds or drawbacks received by the Contractor.

(e) Prior to submitting an initial invoice for any nonrefundable tax, the Contractor shall furnish the Contracting Officer, for approval, a written statement in quadruplicate showing the nature of the refundable tax, the unit rate thereof in U.S., dollars per U.S. gallon, and the airport and grade of product involved. The Contractor shall notify the Contracting Officer by a written statement in quadruplicate of any changes in said unit rates and of any additional nonrefundable tax. The Contracting Officer will inform the Accounting and Finance Office of his approval or disapproval of the rates for which reimbursement is sought. All invoices for any nonrefundable tax submitted by the Contractor shall be forwarded by the Contractor directly to the Accounting and Finance Officer, Attn: Examination Section, DLA Administrative Support Center, Cameron Station, Alexandria, Virginia, 22314, who will certify the invoices for payment only in accordance with unit rates for such taxes as approved by the Contracting Officer.

(f) The provisions of this paragraph (f) shall apply only to the extent that this contract is performed within any of the following foreign countries: Australia, the Bahamas, Bahrain, Barbados, Belgium, Canada, Republic of China, Denmark (including Greenland), Ethiopia, Federal Republic of Germany (including West Berlin), France, Greece, Iceland, Iran, Italy, Japan, Republic of Korea, Luxembourg, the Netherlands, New Zealand, Norway, Panama, the Philippines, Portugal (including the Azores), Saudi Arabia, Spain, Thailand, Trinidad and Tobago, Turkey, the United Kingdom (including Anegada Island, Antigua Island, Ascension Island, Bermuda, British Indian Ocean Territories (Diego Garcia), Mahe Island, and Turks and Caicos Island), and Yugoslavia. The contract price, including the price in subcontracts, does not include any tax or duty which the Government of the United States and the Government of any of the foregoing countries have agreed shall not apply to expenditures in that country by the United States. If any such tax or duty has been included in the contract price through error or otherwise, the contract price shall be correspondingly reduced.

(End of clause)

252.231-7000 Supplemental cost principles.

As prescribed at 231.201, insert the following clause:

SUPPLEMENTAL COST PRINCIPLES (APR 1984)

When the allowability of costs under this contract are determined in accordance with Subpart 41.2 of the Federal Acquisition Regulation, the allowability of costs shall also be determined by the Contracting Officer in accordance with Subpart 231.2 of the DoD FAR Supplement in effect at the date of this contract.

(End of clause)

252.232-700 Invoices.

As prescribed at 232.111(S-70), insert the following clause:

INVOICES (OCT 1982)

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

(1) Invoice date;

(2) Name of contractor;

(3) Contract number (including order number, if any), contract line item number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total;

(4) Shipment number and date of shipment (bill of lading number and weight of shipment will be shown for shipments on Government bills of lading);

(5) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment);

(6) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice; and

(7) Any other information or documentation requires by other provisions of the contract (such as evidence of shipment).

Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Pub. L. 97-177):

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which a check for such payment is dated;

(3) Payment terms (e.g., "net 20") offered by the Contractor will not be deemed a "required payment date;" and

(4) The following periods of time will not be included;

(i) after receipt of an improper invoices and prior to notice of any defect or impropriety, but not to exceed 15 days (or any lesser period established by this contract); and

(ii) between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

(End of clause)

252.232-7001 Advance payment pool.

As prescribed at 232.412(S-70), insert the following clause:

ADVANCE PAYMENT POOL (APR 1984)

Notwithstanding other provisions of this contract, advance payments will be made for the work called for hereunder in accordance with the Determinations, Findings and Authorization for advance payments dated ————. Payments made pursuant to this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement, as it may be amended from time to time, between the United States of America and ———— (insert the name of the contractor), which agreement is hereby incorporated by reference with the same force and effect as though fully set forth herein.

(End of clause)

252.232-7002 Disposition of payments.

As prescribed at 232.412(S-71), insert the following clause:

DISPOSITION OF PAYMENTS (APR 1984)

Payment will be by a dual payee Treasury check drawn payable to the contractor or the ———— (insert name of the disbursing officer designated in the advance payment pool agreement) and forwarded to the ———— (insert name of the disbursing office designated in the advance payment pool agreement) for appropriate disposition.

(End of clause)

252.232-7003 Progress payments for foreign military sales acquisitions.

As prescribed at 232.502-4(S-70), insert the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS (APR 1984)

If this contract includes FMS requirements, the contractor shall submit progress payment requests in accordance with the following:

(a) The contractor shall submit a separate progress payment request for each separate progress payment rate in this contract.

(b) The contractor shall submit a supporting schedule showing the amount of each request distributed to each country's requirements in the contract. This schedule shall also show the contract line items and total prices thereof applicable to each separate progress payment rate.

(c) Each progress payment request shall:

(1) Identify the contract requirements to which it applies, (i.e., FMS or U.S.).

(2) Be calculated on the basis of the prices, costs (including estimated costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies. The contractor in preparing these requests shall distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232-7004 Flexible progress payments.

As prescribed at 232.502-4(S-71), insert the following clause:

FLEXIBLE PROGRESS PAYMENTS (APR 1984)

This contract is subject to flexible progress payment procedures. The progress payment rate of this contract is ——%, and this percentage applies in lieu of the uniform, standard progress payment rate and liquidation rate of the "Progress Payments" clause. The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model, (dated ————), using five percent (5%) as the targeted rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract. If actual and projected case flow data generated during performances of this contract reveal that the progress payment rate will result in an investment in work in process inventory by the Contractor in excess of seven percent (7%), or less than three percent (3%), the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model that was used initially in this contract will be used for any redetermination permitted by this clause. In no event will the progress payment rate be less than the uniform, standard progress payment rate that would have applied to this contract absent flexible progress payment procedures, and in no event will the progress payment rate be greater than one hundred percent (100%).

(End of clause)

252.233-7000 Certification of requests for adjustment or relief exceeding $100,000.

As prescribed at 233.7000, insert the following clause:

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (FEB 1980)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(Official's Name)————————————

(Title)————————————

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(1) requests for routine contract payments; for example, those for payment for accepted supplies and services, routine vouchers under

cost-reimbursement type contracts, and progress payment invoices; and.

(2) final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

252.235-7000 Indemnification under 10 U.S.C. 2354—fixed price.

As prescribed at 235.071(a), insert the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354—FIXED PRICE (APR 1974)

(a) Pursuant to the authority to 10 U.S.C. 2354, notwithstanding any other provisions of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury (including sickness or disease), or loss of, damage to, or loss of use of property;

(2) Loss of or damage to property of the Contractor, and loss of use of such property, but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of property of the Government; to the extent that such a claim, loss or damage (i) arises out of the direct performance of this contract; (ii) is not compensated by insurance or otherwise; and (iii) results from a risk defined in this contract to be unusually hazardous. Any such claim, loss, or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for any such claim, loss or damage that results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement (except for subcontracts which are covered by paragraph (d) below) unless such assumption of liability has been specifically approved by the Contracting Officer; (or in contracts with the Department of the Navy, *The Department.)*

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. Such payments shall be made from funds as stated in 10 U.S.C. 2354. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve sumilar indeminification of lower tier subcontractors upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall entitle the Contractor or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims. The Government shall indemnify the Contractor with respect to his obligation to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or persons to whom the subcontractors may be liable.

(e) If insurance coverage maintained by the Contractor on the date of the execution of this contract is reduced, the liability of the Government under this clause shall not, by reason of such reduction, be increased to cover risks theretofore insured, unless the Contracting Officer consents thereto in consideration of an equitable adjustment to the Government, if appropriate, of the price in a fixed-price contract, or the fee in a cost-reimbursement type contract, in such amount as the parties may agree.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any occurence, action or claim he learns of that reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, paticipate in, and supervise the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required, in regard to such settlement or defense.

(g) The Contractor shall procure and maintain, to the extent available, such insurance against unusually hazardous risks as the Contacting Officer (or in contracts with Department of the Navy, *The Department)* may from time to time require or approve. All such insurance shall be in such form, in the amounts, for the periods of time, at such rates, and with such insurers, as the Contracting Officer (or in contracts with Department of the Navy, *The Department) may from time to time require or approve. The obligations of the Government under this clause shall not apply to claims, loss or damage to the extent that insurance is available and is either required or approved pursuant to this paragraph. The Contractor shall be reimbursed the cost of any such insurance in excess of that maintained by the Contractor as of the date of this contract, to the extent the cost thereof is properly allocable to this contract and is not included in the contract price.*

(End of clause)

252.235-7001 Indemnification under 10 U.S.C. 2354—cost reimbursement.

As prescribed at 235.071(b), insert the following clause.

INDEMNIFICATION UNDER 10 U.S.C. 2354—COST REIMBURSEMENT (APR 1974)

(a) Pursuant to the authority of 10 U.S.C. 2354, notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury (including sickness or disease), or loss of, damage to, or loss of property;

(2) Loss of or damage to property of the Contractor, and loss of use of such property, but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of property of the Government; to the extent that such a claim, loss or damage (i) arises out of the direct performance of this contract; (ii) is not compensated by insurance or otherwise; and (iii) results from a risk defined in this contract to be usually hazardous. Any such claim, loss, or damage within deductible amounts of Contractors's insurance shall not be covered under this clause.

(b) The Government shall not be liable for any such claim, loss or damage that results from willful misconduct or lack of good faith on th part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all or the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement (except for subcontracts which are covered by paragraph (d) below) unless such assumption of liability has been specifically approved by the Contracting Officer, (or in contracts with the Department of the Navy, *The Department).*

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. Such payments shall be made from funds as stated in 10 U.S.C. 2354. The rights and obligations of the parties under this

clause shall survive the termination, expiration, or completion of this contract.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of papers, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of lower tier subcontractors upon the same terms and conditions. Subcontractors providing for indemnification within the purview of this clause shall entitle the Contractor or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(e) If insurance coverage maintained by the Contractor on the date of the execution of this contract is reduced, the liability of the Government under this clause shall not, by reason of such reduction, be increased to cover risks theretofore insured, unless the Contracting Officer consents thereto in consideration of an equitable adjustment to the Government, if appropriate, of the price in a fixed-price contract, or the fee in a cost-reimbursement type contract, in such amount as the parties may agree.

(f) In addition to the Contractor's responsibilities under the "Insurance—Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (1) promptly notify the Contracting Officer of any occurrence he learns of that reasonably may be expected to involve indemnification under this clause, (2) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (3) to the extent required by the Government, permit and authorize the Government to direct, participate in, and supervise the settlement or defense of any such claim or action. The cost of insurance (including self-insurance), covering a risk defined in this contract as unusually hazardous, shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) The "Limitation of Cost" clause of this contract does not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost, Fee, and Payment" clause of this contract.

(h) For purposes of this clause, a claim, loss or damage shall be considered to have arisen out of the direct performance of this contract if the cause for such claim, loss or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(End of clause)

252.235-7002 Recovery of nonrecurring costs on commercial sales.

As prescribed in 235.071(c), insert the following clause:

RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES (FEB 1980)

(a) Definitions.

(1) *Commercial sale* means a sale to a customer (either foreign or domestic) other than the U.S. Government by a defense contractor of products, technology, material, services, and/or development or production techniques that were originally developed, improved, or produced using DoD appropriations/funds.

(2) *Domestic organization* means any U.S. nongovernmental organization or private commercial firm.

(3) *Technology* means a collection of information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or material. It may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

(4) *Nonrecurring research, development, test, and evaluation (RDT&E) costs* are those costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration. This includes costs of any engineering change proposal initiated prior to date of the contract with the customer, as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either Procurement or Operations and Maintenance appropriations to improve the product.

(5) *Nonrecurring production costs* are those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run from which delivery is to be made, which would normally be expensed against a production run. These nonrecurring costs include such costs as preproduction, special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing, and evaluation.

(6) *"Special" RDT&E and nonrecurring production costs* are those incurred for and paid by an FMS customer in developing a special feature or unique requirement under a DoD Offer and Acceptance (DD Form 1513).

(7) *Fair market price of technology*, such as that sold or licensed under a licensing or technical assistant agreement, is a price negotiated between a buyer and seller when the monetary return to the seller is primarily determined by the buyer's need for the technology and the potential market for the product(s) produced from the technology.

(8) *Model* is the generic term applied to a basic item and all modifications to that item. The model can generally be identified by a basic alphanumeric designation, such as a ship hull series, an equipment or system series, an airframe series, or a vehicle series. Recoupment within a model series is identified by determining total nonrecurring investment (RDT&E or production, as appropriate) applicable to that model series estimated to be produced for DoD requirements, FMS, and commercial sales.

(9) *Major defense equipment*, as applicable herein, means any item of significant combat equipment on the United States Munitions List having a nonrecurring research and development cost of more than $50 million or a total production cost of more than $200 million.

(b) In the event the Contractor intends to enter into domestic or foreign commercial sales for items in this contract, or essentially similar items, or enter into license or technical assistance agreements for the technology developed under this contract, he shall promptly notify the Contracting Officer (or the original DoD Contracting Officer in the event the contract is closed) to obtain the applicable nonrecurring recoupment charge.

(1) The Contractor agrees that, with respect to (2) below, he will:

(i) Reimburse the U.S. Government for a fair share of U.S. Government expenditures for nonrecurring costs applicable to the items, or, in the case of technology, the Government's proportionate share of the fair market price of the technology for the commercial customer. In the event that the current charge is unavailable, the Contractor will submit information required to support the development of the appropriate charge.

(ii) Reimburse a fair share of nonrecurring costs related to a special feature or product paid by a foreign government or international organization under a U.S. Government Foreign Military Sales case where the Contractor enters into a commercial sale or license agreement for the same or similar special feature or product.

(2) The Government will require reimbursement under the provisions of this clause when:

(i) The Government's investment in research, development, test, and evalution (RDT&E) equals or exceeds $5 million.

(ii) The Government's investment in nonrecurring production costs equals or exceeds $5 million.

(iii) A foreign government's RDT&E and nonrecurring production costs for a special feature or product equal or exceed $5 million (when requested under an FMS case and agreed to by the U.S. Government).

(iv) Reimbursement for investment costs below the thresholds in (i) through (iii) are specifically approved by the Secretary of Defense or his designee.

(3) For each commercial sale of the item, the amount to be reimbursed to the U.S. Government for nonrecurring costs shall be determined by dividing the total nonrecurring costs incurred and projected to be incurred by the total production quantity of the item, past and projected, including the production quantity for the Department of Defense (or FMS purchaser in the case of special feature or product recoupment), and multiplying the result by the quantity involved in each

commercial sale or license agreement. In principle, for defense equipment for which several model designators exist, the nonrecurring costs and the total production quantity should be accumulated over the entire range of models and major subsystems that are basically similar to the model and subsystems being sold. In a combination FMS and commercial sale of a product, the Contractor agrees to reimburse the Government for the nonrecurring costs associated with the commercial portion of the customer's purchase.

(4) For each commercial sale of technology, these factors will be considered in determining fair market price: (i) the costs incurred by the Department of Defense in developing the technology being considered for sale; (ii) the costs that would be incurred by the buyer in independently developing the technology; and (iii) the estimated dollar value of the product(s) that will be produced by the buyer upon transfer of the technology. In the case of sale or license of technology to a domestic organization, the fair market price will be the lower of either a fair share of the DoD investment cost indentified to the development of the technology or a proportionate share of the fair market price for the technology based on demand or the potential monetary return on investment. For sales or licenses of technology to foreign commercial customers, this price will be the greater of these two alternatives. The foregoing domestic pricing criterion will only be applied if the prospective commercial purchases agrees that, in the event the technology is transferred from the prospective purchaser to a foreign recipient prior to its becoming generally available, the domestic purchases will provide further payment to the Government on the basis of the foreign pricing criterion.

(c) The determination by the Government of the amount to be reimbursed pursuant to this clause shall not be subject to the Disputes clause.

(d) In the case of a commercial sale to a foreign government or international organization that qualifies for U.S. Government Foreign Military Sales, the Contractor agrees to inform his customer that any Defense-furnished goods, services, and transportation (i.e., DoD support costs) can be provided only by means of a Foreign Military Sales case (DoD Offer and Acceptance, DD Form 1513) executed by the U.S. Government and the customer. The foreign government, at its option, may designate the Contractor to act as its agent in executing the Foreign Military Sales case and/or to receive possession or performance of the goods, services, or transportation.

(e) In the event of a commercial sale of items developed under this contract, or essentially similar items, or sale or license of technology relating thereto, the Contractor agrees to relieve the Government for any and all loss or liability that might result from the contractor's use of Government data, tooling, test equipment or facilities.

(f) Notwithstanding the provisions of the clauses of this contract entitled "Patent Rights—Retention by the Contractor" and "Rights in Technical Data and Computer Software," the Contractor agrees that his rights to enter into production for commercial sales of the items or essentially similar items, or to sell or license related technology, are expressly contingent upon compliance with the provisions of this clause, provided that the Secretary of Defense or his designee may waive the Government's rights under this clause, in whole or in part, whenever he determines that such action would be in the best interests of the Government.

(g) The substance of this provision shall be placed in all subcontracts for components, or items which can be sold commercially and which meet, or are expected to meet, the thresholds set forth herein.

(End of clause)

252.235–7003 Care of laboratory animals.

As prescribed at 235.071(d), insert the following clause:

CARE OF LABORATORY ANIMALS (APR. 1974)

(a) Before undertaking performance of any contract involving the use of laboratory animals the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Pub. L. 89–544, Laboratory Animal Welfare Act, 24 August 1966 as amended by Pub. L. 91–579, Animal Welfare Act of 1970, 24 December 1970. The Contractor shall furnish evidence of such registration to the contracting officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a) above.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animals Resources, National Academy of Sciences—National Research Council, and in the United States Department of Agriculture's regulations and standards issued under the Public Laws enumerated in (a) above. In case of conflict between standards, the higher standard shall be used. Contractor reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, NAS–NRC, and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of 24 August 1966, as amended (Pub. L. 89–544 and Pub. L. 91–579).

Note: The Contractor may request registration of his facility an a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which his research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Office, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland 20782.

(End of clause)

252.235–7004 Frequency authorization.

As prescribed at 235.071(e), insert the following clause:

FREQUENCY AUTHORIZATION (OCT 1966)

(a) Authorization of radio frequencies required in support of this contract shall be obtained through the Contracting Officer by the Contractor or subcontractor in need thereof. Frequency management procedures prescribed in the Schedule of this contract shall be followed in obtaining radio frequency authorization.

(b) For any experimental, developmental or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phases of contractural performance. DD Form 1494, "Application for Frequency Allocation", shall be used for this purpose and shall be prepared in accordance with instructions contained on the form.

(c) This clause including this paragraph (c), shall be included in all subcontracts which call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

252.236–7000 Composition of contractor.

As prescribed at 236.571–1, insert the following clause:

COMPOSITION OF CONTRACTOR (JAN 1965)

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

252.236–7001 Modification of proposals—price breakdown.

As prescribed at 236.571–2, insert the following clause:

MODIFICATION OF PROPOSALS—PRICE BREAKDOWN (APR 1968)

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a smiliar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

(End of clause)

252.236–7002 Contract drawings, maps and specifications.

As prescribed at 236.571–3, insert the following clause:

CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS (JAN 1965)

(a) One set of sepia of large scale contract drawings, maps and specifications will be furnished the Contractor without charge except applicable publications incorporated into the technical provisions by reference. Additional sets will be furnished on request at the cost of reproduction. The work shall conform to the following contract drawings and maps, all of which form a part of these specifications and are available in the office of

(Address) _____

Title, File, and Drawing No.

(b) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

(End of clause)

252.236–7003 Shop drawings.

As prescribed at 236.571–4, insert the following clause:

SHOP DRAWINGS (OCT 1976)

(a) The term "shop drawings" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate his approval or disapproval of the shop drawings and if not approved as submitted shall indicate his reason therefore. Any work done prior to such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for compiling with the requirements of this contract, except with respect to variations described and approved in accordance with (c) below.

(c) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation(s), he shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

(d) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated herein) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated herein) of all shop drawings will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

252.236–7004 Contract prices—bidding schedules.

As prescribed at 236.572–1, insert the following clause:

CONTRACT PRICES—BIDDING SCHEDULES (APR 1968)

Payment for the various items listed in the Bidding Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and materials, and for performing all operations required to complete the work in conformity with the drawings and specifications. All costs for work not specifically mentioned in the Bidding Schedule shall be included in the contract prices for the items listed.

(End of clause)

252.236–7005 Salvage materials and equipment.

As prescribed at 236.572–2, insert the following clause:

SALVAGE MATERIALS AND EQUIPMENT (JAN 1965)

The Contractor shall maintain adequate property control records for all materials or equipment specified to be salvaged. These records may be in accordance with the Contractor's system of property control, if approved by the property administrator. The Contractor shall be responsible for the adequate storage and protection of all salvaged materials and equipment which are broken or damaged during salvage operations as the result of his negligence, or while in his care.

(End of clause)

252.236–7006 Misplaced material.

As prescribed at 236.572–3, insert the following clause:

MISPLACED MATERIAL (JAN 1965)

Should the Contractor during the progress of the work, lose, dump, throw overboard, sink, or misplace material, plant, machinery, or appliance, which in the opinion of the Contracting Officer may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with the utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, to the Contracting Officer or inspector, and when required shall mark or buoy such obstructions until the same are removed. Should he refuse, neglect, or delay compliance with the above requirements, such obstructions may be removed by the Contracting Officer, and the cost of such removal may be deducted from any money due or to become due to the Contractor, or may be recovered under his bond. The liability of the Contractor of the removal of a vessel wrecked or sunk without fault or negligence shall be limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et seq.).

(End of clause)

252.236–7007 Identification of employees.

As prescribed at 236.572–4, insert the following clause:

IDENTIFICATION OF EMPLOYEES (JAN 1965)

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Office. All prescribed identification shall immediately be delivered to the Contracting Officer for cancellation upon the release of any employee. When required by the Contracting Officer the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

(End of clause)

252.236–7008 Superintendence of subcontractors.

As prescribed at 236.572–5, insert the following clause:

SUPERINTENDENCE OF SUBCONTRACTORS (JAN 1965)

(a) The Contractor shall be required to furnish the following, in addition to the superintendence required by the general Provision entitled "SUPERINTENDENCE BY THE CONTRACTOR":

(i) If more than 50% and less than 70% of the value of the contract work is subcontracted, one superintendence shall be provided at the site and on the Contractor's payroll to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

(b) If the Contracting Officer, at any time after 50% of the subcontracted work has been completed, finds that satisfactory progress is being made, he may waive all or part of the above requirement for additional superintendence subject to the right of the Contracting Officer to reinstate such requirements if at any time during the progress of the remaining work he finds that satisfactory progress is not being made.

(End of clause)

252.236-7009 Payment for mobilization and preparatory work.

As prescribed at 236.572.6, insert one of the following clauses:

(a) PAYMENT FOR MOBILIZATION AND PREPARATORY WORK, PAYMENT ITEM NO. ——— (MAR 1979)

(a) Payments will be made under this contact on the actual expenditures made by the Contractor for mobilization and preparatory work under payment Item No. ——— as follows: The Contractor may submit to the Contracting Officer certified accounts of the actual payments made by him for construction plant exceeding $10,000 in value per unit, as appraised by the Contracting Officer at the site of the work, acquired for the execution of the work; for the transportation of all plant and equipment to the site; for material purchased for the prosecution other contract, but not to be incorporated in the work; for construction of camps, access roads or railroads, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities and construction yards, and for personal services and hire of plant on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of the contract. Accounts so submitted must be accompanied by certificate of the Contractor, supported by receipted bills or certified copies of payrolls and freight bills, showing that he has acquired said construction plant and material free from all encumbrances and agreement that it will not be removed from the site and that structures and facilities prepared or erected of the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work without the written permission of the Contracting Officer. If the Contracting Officer finds that said construction plant, material, equipment and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract and that the said preparatory work has been done with proper economy and efficiency, payment, less the prescribed retained percentage, will be made therefore to the Contractor. Payment for construction plant, material and structures and facilities prepared or erected for prosecution of the contract work shall not exceed the cost thereof to the Contractor less the estimated value upon the completion of the contract as determined by the Contracting Officer. In no event shall such payment exceed 100% of the cost to the Contractor of any such items which have no appreciable salvage value and 75% of the cost to the Contractor of such items which have an appreciable salvage value. The findings of the Contracting Officer as to the suitability and value of the construction plant, equipment, materials, structures of facilities shall not be subject to appeal.

(b) Payments for mobilization and preparatory work will be made in accordance with (a) above, and such payments will be deducted from the contract price for Item No. ——— "Mobilization and Preparatory Work" until the total amount thus charged to this item reduces this item to zero after which no further payments will be made under this item. If the total of such payments made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract. The retained percentage will be paid in accordance with the clause of this contract entitled "Payments to Contractor".

(End of clause)

(b)(1) MOBILIZATION AND DEMOBILIZATION PAYMENT ITEM NO. ——— (JAN 1965)

(a) All costs connected with the mobilization and demobilization of all of the contractor's dredging plant equipment will be paid for at the contract lump sum price for this item. ——— percent (——%) of the lump sum price will be paid to the Contractor upon completion of his mobilization at the work site. The remaining ——— percent (——%) will be included in the final payment for work under this contract.

(b) In the event the Contracting Officer considers that the amount in this item (—— %), which represents mobilization, does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment of actual mobilization costs, as determined by the Contracting Officer at the completion of mobilization and payment of the remainder of this item in the final payment under this contract. The determination of the Contracting Officer is not subject to appeal.

(End of clause)

(b)(2) MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. ——— (OCT 1975)

(a) All costs connected with the mobilization and demobilization of all of the Contractor's dredging plant and equipment will be paid for at the contract lump sum price for this item. ——— percent (——%) of the lump sum price will be paid to the Contractor upon completion of his mobilization at the work site. The remaining ——— percent (——%) will be paid to the Contractor upon completion of demobilization.

(b) In the event the Contracting Officer considers that the amount in this item (—— %), which represents mobilization and (—— %) which represents demobilization, does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment of actual mobilization costs, as determined by the Contracting Officer at the completion of mobilization, and actual demobilization costs, as determined by the Contracting Officer at the completion of demobilization, and payment of the remainder of this item in the final payment under this contract. The determination of the Contracting Officer is not subject to appeal.

(End of clause)

Note: The percentage of the lump sum price for mobilization and demobilization in paragraph (a) of the above clauses at 252.236-7009(b) (1) and (2), attributed to mobilization should generally be 60% and the remaining 40% considered to be the cost of demobilization. These percentages may be varied to reflect the situation contemplate under the particular contract, but in no event should mobilization exceed 80% of the payment item.

252.236-7011 Airfield safety precautions.

As prescribed at 236.572-8, insert the following clause.

AIRFIELD SAFETY PRECAUTIONS (APR 1968)

(a) The operation of all aground equipment (mobile or stationary), the placement of all materials, and the performance of all work, upon and in the vicinity of all airfields, shall be done in accordance with this clause. The requirements of this clause are in addition to any other safety requirements of this contract.

(b) For purposes of this clause the following definitions shall apply.

(1) "Landing Areas" means the following:

(i) The primary surfaces which are comprised of the surface of the runways, the runway shoulders, and the lateral safety zones (the length of each primary surface is the same as the runway length; the width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline)*); (see footnote at end of clause)

(ii) The "clear zone" beyond the ends of each runway—i.e., the extension of the "primary surface" for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, i.e., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons plus the area 125 feet in width extending beyond each such edge all around the aprons.

(2) "Safety precaution areas" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continuous upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established

airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plant is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the innter horizontal surface (which is the horizontal plant 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plant 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white square of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicble after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

252.236–7012 Contractor-prepared network analysis system.

As prescribed at 236.572–9, insert the following clause:

CONTRACTOR-PREPARED NETWORK ANALYSIS SYSTEM (APR 1968)

The progress chart to be prepared by the Contractor pursuant to the clause entitled "Schedules for Construction Contractor", shall consist of a network analysis system as described below. In preparing this system the scheduling of construction is the responsibility of the Contractor. The requirement for the system is included to assure adequate planning and execution of the work and to assist the Contracting Officer in appraising the reasonableness of the proposed schedule and evaluating progress of work.

(a) An example of one of the numerous acceptable types of network analysis systems is shown in Appendix I of Corps of Engineers Regulation ER 1–1–11 entitled "Network Analysis System", single copies of which are available to bona fide bidders on request. Other systems which are designed to serve the same purpose and employ the same basic principles as are illustrated in Appendix I will be accepted subject to the approval of the Contracting Officer.

(b) The system shall consist of diagrams and accompanying mathematical analyses. The diagrams shall show elements of the project in detail and the entire project in summary.

(1) Diagrams shall show the order the interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. The basic concept of a network analysis diagram will be followed to show how the start of a given activity is dependent on the completion of preceding activities and its completion restricts the start of following activities.

(2) Detailed network activities shown on detailed or subnetwork diagram shall include, in addition to construction activities, etc. submitted and approval of samples of materials and shop drawings, the procurement of critical materials and equipment, fabrication of special material and equipment and their installation and testing. All activities of the Government that affect progress and contract required dates for completion of all or parts of the work will be shown. The detail of information shall be such that duration times of activities will range from three (3) to thirty (30) days with not over two percent (2%) of the activities exceeding these limits. The activities which comprise the following separate buildings and features shall be separately identifiable by coding or use of subnetworks or both:

Building or feature ————————
Minimum number activities ————————

The selection and number of activities shall be subject to the Contracting Officer's approval. Detailed networks, when summary networks are also furnished, need not be time scaled but shall be drafted to show a continuous flow from left to right with no arrows from right to left. The following information shall be shown on the diagrams for each activity: preceding and following event numbers, description of the activity, cost, and activity duration.

(3) Summary Network. If the project is of such size that the entire network cannot be readily shown on a single sheet, a summary network diagram shall be provided. The summary network diagram shall consist of a minimum of fifty activities and a maximum of one hundred and fifty activities, and shall be based on and supported by detailed diagrams. Related activities shall be grouped on the network. The critical path shall be plotted generally along the center of the sheet with channels with increasing float placed towards the top or bottom. The summary network shall be time scaled using units of approximately one-half inch equals one week or other suitable scale approved by the Contracting Officer. Weekends and holidays shall be indicated. Where slack exists, the activities shall be shown at the time when they are scheduled to be accomplished.

(4) The mathematical analysis of the network diagram shall include a tabulation of each activity shown on the detailed network diagrams. The following information will be furnished as a minimium for each activity:

(i) Preceding and following event numbers (numbers shall be selected and assigned so as to permit identification of the activities with bid items);

(ii) Activity description:

(iii) Estimated duration of activities (the best estimated available at time of computation);
(iv) Earliest start date (by calendar date);
(v) Earliest finish date (by calendar date);
(vi) Scheduled or actual start date (by calendar date);
(vii) Schedules or actual finish date (by calendar date);
(viii) Latest start date (by calendar date);
(ix) Latest finish date (by calendar date);
(x) Slack or float;
(xi) Monetary value of activity;
(xii) Responsibility for activity (Prime contractor, subcontractors, suppliers, Government, etc.);
(xiii) Manpower required;
(xiv) Percentage of activity completed;
(xv) Contractor's earnings based on portion of activity completed; and
(xvi) Bid item of which activity is a part.

(5) The program or means used in making the mathematical computation shall be capable of compiling the total value of completed and partially completed activities and subtotals from separate buildings or feature listed in paragraph (b)(2).

(6) In addition to the tabulation of activities, the computation will include the following data:
(i) Identification of activities which are planned to be expedited by use of overtime or double shifts to be worked including Saturdays, Sundays and holidays;
(ii) On-site manpower loading schedule;
(iii) A description of the major items of construction equipment planned for operations of the project. (The description shall include the type, number of units and unit capacities. A schedule showing proposed time equipment will be on the job keyed to activities on which equipment will be used shall be provided); and
(iv) Where portions of the work are to be paid by units costs, the estimated number of units in an activity which was used in developing the total activity cost.

(7) The analysis shall list the activities in sorts or groups as follows:
(i) By the preceding event number from lowest to highest and then in the order of the following event number;
(ii) By the amount of slack, then in order of preceding event number;
(iii) By responsibility in order of earliest allowable start dates; and
(iv) In order of latest allowable start dates, then in order of preceding event numbers, and then in order of succeeding event numbers.

(c) Submission and approval of the system shall be as follows:
(1) A preliminary network defining the Contractor's planned operations during the first sixty (60) calendar days after notice to proceed will be submitted within ten (10) days. The Contractor's general approach for the balance of the project shall be indicated. Cost of activities expected to be completed or partially completed before submission and approval of the whole schedule should be included.
(2) The complete network analysis consisting of the detailed network mathematical analysis (on-site manpower loading schedule, equipment schedule) and network diagrams shall be submitted within forth (40) calendar days after receipt of notice to proceed.

(d) The Contractor shall participate in a review and evaluation of the proposed network diagrams and analysis by the Contracting Officer. Any revisions necessary as a result of this review shall be resubmitted for approval of the Contracting Officer within ten (10) calendar days after the conference. The approved schedule shall then be the schedule to be used by the Contractor for planning, organizing and directing the work and for reporting progress. If the Contractor thereafter desires to make changes in his method of operating and scheduling he shall notify the Contracting Officer in writing stating the reasons for the change. If the Contracting Officer considers these changes to be of a major nature he may require the Contractor to revise and submit for approval, without additional cost to the Government, all or the affected portion of the detailed diagrams and mathematical analysis and the summary diagram to show the effect on the entire project. A change may be considered of a major nature if the time estimated to be required or actually used for an activity or the logic of sequence of activities is varied from the original plant to a degree that there is a reasonable doubt as to the effect on the contract completion date or dates. Changes which affect activities with adequate slack time shall be considered as minor changes, except that an accumulation of minor changes may be considered a major change when their cumulative effect might affect the contract completion date.

(e) The Contractor shall submit at intervals of fifteen (15) calendar days a report of the actual construction progress by updating the mathematical analyses. Revisions causing changes in the detailed network shall be noted on the summary network, or a revised issue of affected portions of the detailed network furnished. The summary network shall be revised as necessary for the sake of clarity. However, only the initial submission or completion revisions need be time scaled. Subsequent minor revision need not be time scaled.

(f) The report shall show the activities or portions of activities completed during the reporting period and their total value as basis for the Contractor's periodic request for payment. Payment made pursuant to the General Provision entitled "Payments to Contractor" will be based on the total value of such activities completed or partially completed after verification by the Contracting Officer. The report will state the percentage of the work actually completed and schedules as of the report date and the progress along the critical path in terms of days ahead or behind the allowable dates. If the project is behind schedule, progress along other paths with negative slack shall also be reported. The Contractor shall also submit a narrative report with the update analysis which shall include but not be limited to a description of the problem areas, current and anticipated, delaying factors and their impact, and an explanation of corrective actions taken or proposed.

(g) Sheet size of diagrams shall be 30 by 42 inches. Each updated copy shall show a date of the latest revision.

(h) Initial submittal and complete revisions shall be submitted in six (6) copies.

(i) Periodic reports shall be submitted in four (4) copies.

(End of clause)

252.236–7013 Government-prepared network analysis system (APR 1968).

As prescribed at 236.572–10, insert the following clause:

GOVERNMENT-PREPARED NETWORK ANALYSIS SYSTEM (APR 1968)

The progress chart prepared by the Contractor pursuant to the clause entitled "Schedules for Contruction Contracting" will include the following:

(a) The Contractor shall submit to the Contracting Officer a chart showing the initial progress schedule covering the first sixty (60) days of his construction operations within —— days after receipt by him of the Notice to Proceed.

(b) The Contractor shall submit a chart showing the construction progress schedule in accordance with the clause entitled "Schedules for Construction Contracting" for the entire work under this contract within —— days after receipt of the Notice to Proceed.

(c) In addition to the above information the Contractor will also provide information of the Government to prepare and maintain a surveillance system and verify progress payments using the network analysis system of scheduling as described in Appendix I of the Corps of Engineers Regulation, ER 1–1–11, entitled "Network Analysis System", single copies of which are available to bona fide bidders upon request. In preparing this data the scheduling is the responsibility of the contractor. The requirement is included to assure adequate planning and execution of the work and to assist the Contracting Officer in appraising the reasonableness of the proposed schedule and evaluating the progress of the work. The data shall include, but not be limited to:

(1) A description of the Contractor's detailed construction plan of the project including the cost or weighted value, the order and interdependence, and the estimated duration of the activities which make up the project. Data shall be in sufficient detail to permit preparation of the network and schedule analysis by the Government.

(2) Revisions and updating of the data on scheduling with reasons for the revisions, as required by the Contracting Officer, shall be furnished by the Contractor in a timely and progressive manner to assist the Government in keeping the network and schedule analysis in a current working status.

(d) Pursuant to the General Provision entitled "Payments to Contractor", progress payments will be made on the basis of weighted value or cost assigned to each activity or group of activities as related to the total contract cost of the activity.

(End of clause)

252.236–7014 Statement of work.

As prescribed at 236.573–1, insert the following clause:

STATEMENT OF WORK (JAN 1965)

The Contractor shall furnish all labor, materials, equipment, and services (except those furnished by the Government) for the construction of (insert a brief description of the project) in accordance with the drawings and specifications or instructions attached hereto as Appendix "A" and made a part hereof, or to be furnished hereafter by the Contracting Officer and subject in every detail to his supervision, direction, and instructions.

(End of clause)

252.236–7015 Estimated cost, performance period.

As prescribed at 236.573–2, insert the following clause:

ESTIMATED COST, PERFORMANCE PERIOD (JAN 1965)

It is estimated that the construction cost of work required under this contract will be ——— Dollars, ($———), exclusive of the Contractor's fee, and that the work herein contracted for will be ready for utilization by the Government on or before——19—. It is expressly understood, however, that neither the Government or the Contractor guarantees the correctness of either of these estimates.

(End of clause)

252.236–7016 Direct payments.

As prescribed at 236.573–3, insert the following clause:

DIRECT PAYMENTS (JAN 1965)

(A) *To Suppliers, Laborers, and Mechanics.* If bills for purchase of material, machinery or equipment, or payrolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor hereunder are not paid promptly by the Contractor or subcontractor, as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor an amount equivalent to the amount of any such bill or payroll. Should the Contractor neglect or refuse to pay such bills or payrolls or to direct any subcontractor to pay such bills or payrolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or payrolls directly, and in such event a deduction equal to five percent (5%) of the amount so paid directly shall be made from the Contractor's fee.

(b) *To Common Carriers.* The Government reserves the right to pay directly to common carriers any or all freight charges on construction plant, materials and supplies.

(End of clause)

252.236–7017 Approved construction plant.

As prescribed at 236.573–4, insert the following clause:

APPROVED CONSTRUCTION PLANT (JAN 1965)

Upon approval of the Contracting Officer, construction plant furnished by the Contractor will be shown in the attached Appendix "B" or modification thereto.

(End of clause)

252.236–7018 Option for supervision and inspection services.

As prescribed at 236.574, insert the following clause:

OPTION FOR SUPERVISION AND INSPECTION SERVICES (APR 1972)

At any time prior to six (6) months after satisfactory completion and acceptance of the work to be furnished hereunder, the Government at its option, may direct, by a written order, the Architect-Engineer to perform any part or all of the supervision and inspection services provided under Appendix A. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

(End of clause)

252.236–7019 Notice of approval of restricted designs.

As prescribed at 236.575, insert the following clause:

NOTICE OF APPROVAL OF RESTRICTED DESIGNS (APR 1972)

In the performance of this contract, the contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer the contractor shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the contractor to be available only from a safe source. As to any such design or specification the Architect-Engineer shall report to the Contracting Officer giving the reason or reasons why it is considered necessary to so restrict the design or specification.

(End of clause)

252.236–7050 Patent indemnity.

(a) *Patent Indemnity.* As prescribed at 236.576, insert the following clause:

PATENT INDEMNITY (JUN 1974)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder.

(End of clause)

(b) *Items excluded from patent indemnity.* As prescribed at 236.576, insert the following clause:

ITEMS EXCLUDED FROM PATENT INDEMNITY (APR 1966)

The "Patent Indemnity" clause of this contract shall not apply to the following (Specifically identify the items to be excluded).

(End of clause)

252.236–7051 Rights in shop drawings.

As prescribed at 236.577, insert the following clause:

RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.236–7052 Architectural designs and data—government rights.

As prescribed at 236.578, insert one of the following clauses, if appropriate:

(a) GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the government a paid-up licence throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

(b) DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or contruction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the

project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.236-7081 Cost limitation.

As prescribed at 236.580-1, insert the following provision:

COST LIMITATION (1974 APR)

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (ii) exceed the cost limitations unless such limitations have been waived by the Under Secretary of Defense (Research and Engineering) prior to award.

(End of provision)

252.236-7082 Additive or deductive items.

As prescribed at 236.580-2, insert the following provisions:

ADDITIVE OR DEDUCTIVE ITEMS (1968 APR)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000 and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case, all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid and any combination of his additive or deductive bid for which funds are determined to be available at the time of the award. *Provided* that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

252.237-7000 Statement of work.

As prescribed by 237.304(S-70), insert the following clause:

STATEMENT OF WORK (OCT 1976)

(a) The Contractor shall furnish all labor, material and equipment and perform all work required for the dismantling, demolition and removal, or both, of———(identify properly)———

(b) The work shall be commenced——— and shall be completed not later than———

(c) All property retained by the Government will be conditioned, handled and stored by the Contractor in such manner and place as prescribed in the specifications.

(End of clause)

ALTERNATE I (OCT 1976)

In accordance with FAR 37.302, where the contractor is required to furnish a performance bond or other security in an mount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property during the performance of the contract, the following paragraph (d) shall be added to the above clause:

(d) A performance bond or other security in the penal sum of ——— dollars ($———) shall be furnished by the Contractor.

252.237-7100 Award to single bidder.

As prescribed at 237.7103(a), insert the following provision:

AWARD TO SINGLE BIDDER (OCT 1965)

Subject to the provisions contained herein, award shall be made to a single bidder. Bids must include unit prices for each item listed in order that bids may be properly evaluated. Failure to do this shall be cause for rejection of the entire bid. Bids shall be evaluated on the basis of the estimated quantities shown, and award shall be made to that responsible bidder whose total aggregate price is low.

(End of provision)

252.237-7101 Award to single offeror.

As prescribed at 237.7103(b), insert the following provision: services:

AWARD TO SINGLE OFFEROR (OCT 1983)

Subject to the provisions contained herein, award shall be made to a single offeror. Offers must include unit prices for each item listed in order that offers may be properly evaluated. Failure to do this shall be cause for rejection of the entire offer. Offers shall be evaluated on the basis of the estimated quantities shown. Discussions may be held with those offerors determined to be within the competitive range, and award shall be made to that responsible offeror whose total aggregate offer is determined to be in the best interest of the Government.

(End of provision)

252.237-7102 Requirements.

As prescribed at 237.7103(c) and (d), insert the following clause:

REQUIREMENTS (OCT 1965)

(a) This is a requirements contract for the supplies or services specified in the Schedule, and for the period set forth in this contract. Delivery of supplies or performance of services shall be made only as authorized by orders issued in accordance with the clause entitled "Delivery Orders and Invoices." The quantities of supplies or services specified herein are estimates only and are not purchased hereby. Except as may be otherwise provided herein, in the event the Government's requirements for supplies or services set forth in the Schedule do not result in orders in the amounts or quantities described as "estimated" or "maximum" in the Schedule, such event shall not constitute the basis for an equitable price adjustment under this contract.

(b) The Government shall order from the Contractor all the supplies, services, and transportation set forth in the Schedule which are required to be purchased by the Government activity named herein, and the Contractor shall furnish to the Government such supplies, services, and transportation as may be ordered by the Contracting Officer. The Government, however, reserves the right not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other cogent reason. In the event of an epidemic or other emergency, the Contractor shall not be required to provide services in excess of the capacity of his facilities.

(End of clause)

252.237-7103 Area of performance.

As prescribed at 237.7103(c), insert the following clause:

AREA OF PERFORMANCE (APR 1974)

(a) The area of performance is specified in Attachment 1 to this contract. This contract includes taking possession of the remains at the place where they are located, transporting them to the Contractor's place of preparation, and transporting them thereafter to a place designated by the Contracting Officer. The Contractor shall not be entitled to reimbursement for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(b) If remains are located outside the area of performance, the Government may call on the Contractor or obtain the services elsewhere. If the Government calls on the Contractor, the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance. If the Government elects to

have the remains brought into the area of performance by some other means, it may require the Contractor to perform after the remains are within the area of performance.

(c) The Government may require the Contractor to deliver remains to any point within one hundred (100) miles of the area of performance. In this case, the Contractor shall be paid the amount per mile indicated in the Schedule for a number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

252.237-7104 Specifications.

As prescribed at 237.7103 (c) and (d), insert the following clause:

SPECIFICATIONS (OCT 1965)

Armed Services Specifications Care of Remains of Deceased Personnel, hereinafter referred to as "Specifications" are attached hereto and made a part of this contract.

(End of clause)

252.237-7105 Using activities.

As prescribed at 237.7103 (c) and (d), insert the following clause:

USING ACTIVITIES (OCT 1965)

Contracting Officers of the following activities may order services and supplies under this contract:

_____

_____

_____

(End of clause)

252.237-7106 Delivery orders and invoices.

As prescribed at 237.7103 (c) and (d), insert the following clauses:

DELIVERY ORDERS AND INVOICES (OCT 1965)

Delivery orders for supplies or services shall be issued by the Contracting Officer and shall set forth (i) the supplies or services being ordered; (ii) the quantities to be furnished; (iii) delivery or performance dates; (iv) place of delivery or performance; (v) packing and shipping instructions; and (vi) the address to which invoices for services rendered under this contract shall be sent. Amendments to delivery orders may be made by the Contracting Officer issuing the order. Each delivery order or change order shall cite the funds from which payment for the supplies or services ordered shall be made.

(End of clause)

252.237-7107 Delivery and performance.

As prescribed at 237.7103 (c) and (d), insert the following clause:

DELIVERY AND PERFORMANCE (OCT 1965)

Except as otherwise herein provided, the Contractor shall furnish the material ordered and perform the services specified in each case as promptly as possible but in no event later than thirty-six (36) hours after the Contractor has received notification to remove the remains, exclusive of the time necessary for the Government to inspect and check results of preparation. The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed seventy-two (72) hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237-7108 Subcontracting.

As prescribed at 237.7103 (c) and (d), insert the following clause:

SUBCONTRACTING (OCT 1965)

No contract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted for without the written approval of the Contracting Officer. This provision does not apply to contracts of employment between the Contractor and his personnel.

(End of clause)

252.237-7109 Additional default provision.

As prescribed at 237.7103 (c) and (d), insert the following clause:

ADDITIONAL DEFAULT PROVISION (OCT 1965)

(a) This clause supplements the "Default (Fixed Price Supply and Service)" clause of this contract.

(b) This contract may be terminated for default by written notice without the ten (10) day notice specified under (a)(2) of the "Default (Fixed Price Supply and Service)" clause if during the performance of this contract:

(1) The Contractor, through circumstances reasonably within his control or that of persons in his employ, performs any act or acts under or in connection with this contract, or fails in the performance of any service under this contract and such acts or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, either by his own act or through persons in his employ, solicits relatives or friends of the deceased to purchase supplies or services not provided for under this contract. (The Contractor may furnish supplies or arrange for services not provided for under this contract, only where such other supplies or services are voluntarily requested, selected and paid for by the representatives of the deceased.);

(3) The services, or any part thereof, to be performed under this contract are, without the written authorization of the Contracting Officer, performed by an individual, partnership, corporation, or other person or business association whatsoever, other than the Contractor to whom this contract is awarded, his employees and members of the firm;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor advertises in any way that he has a contract for mortuary services with the Government.

(c) All other provisions of the "Default (Fixed Price Supply and Service)" clause shall apply to a termination made pursuant to this "Additional Default Provision" clause.

(End of clause)

252.237-7110 Group interment.

As prescribed at 237.7103 (c) and (d), insert the following clause:

GROUP INTERMENT (OCT 1965)

Payments to the Contractor for supplies and services provided for remains to be interred as a group shall be made on the basis of the number of caskets furnished rather than on the basis of the number of persons in the group.

(End of clause)

252.237-7111 Professional requirements.

As prescribed at 237.7103 (c) and (d), insert the following clause:

PROFESSIONAL REQUIREMENTS (OCT 1965)

The Contractor shall meet all state and local licensing requirements and shall furnish the highest quality of professional services. Preparation and transportation of remains shall be performed in accordance with all applicable Federal, state, and local health laws, statutes, and regulations. The Contractor shall obtain and furnish all necessary health department and shipping permits at no additional cost to the Government, and shall insure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

252.237-7112 Facility requirements.

As prescribed at 237.7103 (c) and (d), insert the following clause:

FACILITY REQUIREMENTS (OCT 1965)

The Contractor's building shall have complete facilities for maintaining the highest standards of solemnity, reverence, and assistance to the family, and for prescribed ceremonial services. The preparation room shall be clean, sanitary, and adequately equipped. The Contractor shall have, or be able to obtain, catafalques, church trucks and equipment for Protestant, Catholic, and Jewish services. The funeral home, furnishings, grounds and surrounding area shall be carefully maintained so as to present a clean and well-kept appearance.

(End of clause)

252.237-7113 Preparation history.

As prescribed at 237.7103 (c) and (d), insert the following clause:

PREPARATION HISTORY (OCT 1965)

For each body prepared, or in the case of group interment for each casket handled, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237-7200 Instruction to bidders (count of articles).

As prescribed at 237.7204(a), insert the following provision:

INSTRUCTION TO BIDDERS (COUNT OF ARTICLES) (OCT 1981)

(a) Bids must include unit prices for each item in a lot. Unit prices must include all costs to the Government of providing the services, including pickup and delivery charges. Failure to bid on any item in a lot shall be cause for rejection of the bid on that lot. Bids shall be evaluated on the basis of the estimated quantities stated in the invitation. Subject to the provision contained herein, award generally shall be made to a single bidder for all lots. The Government reserves the right, however, to award by individual lot when the Contracting Officer determines that this is more advantageous to the Government.

(b) Upon application to the Contracting Officer, types of articles to be serviced may be inspected prior to bidding.

(End of provision)

252.237-7201 Instruction to bidders (bulk weight).

As prescribed at 237.7204(b), insert the following provision:

INSTRUCTION TO BIDDERS (BULK WEIGHT) (OCT 1981)

(a) Bids must be submitted on a unit price per pound of serviced laundry. Unit prices must include all costs to the Government of providing the service, including pickup and delivery charges. Bids shall be evaluated on the basis of the estimated pounds of serviced laundry stated in the invitation. Subject to the provision contained herein, award generally shall be made to a single bidder for all lots. The Government reserves the right, however, to award by individual lot when the Contracting Officer determines that this is more advantageous to the Government.

(b) Upon application to the Contracting Officer, types of articles to be serviced may be inspected prior to bidding.

(End of provision)

252.237-7202 Count of articles.

As prescribed at 237.7204(c)(1), insert the following clause:

COUNT OF ARTICLES (APR 1967)

(a) The Contractor shall be liable for return of the number and kind of articles furnished for service under this contract, in accordance with the count of the Contracting Officer, or the number and kind of articles agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractor's invoice.

(End of clause)

ALTERNATE I (APR 1967)

As prescribed at 237.7204(c)(2), add the following paragraph (c) to the basic clause:

(c) Individual laundry bundle delivery tickets shall be provided by the Contractor as specified in the clause entitled "Individual Laundry" of the Contract Clauses of this contract.

252.237-7203 Loss or damage (count of articles).

As prescribed at 237.7204(d), insert the following clause:

LOSS OR DAMAGE (COUNT OF ARTICLES) (OCT 1981)

(a) The Contractor shall indemnify the Government for any property delivered to the Contractor for servicing under this contract which is lost, or which is damaged and, in the opinion of the Contracting Officer, cannot be repaired satisfactorily. In either of these events, the Contractor shall pay to the Government the value thereof in accordance with Federal Supply Schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and just price. Credit shall be allowed for any depreciation in the value of the property at the time of loss or damage, and the parties hereto shall determine the amount of the allowable credit. If the parties fail to agree upon the value of the property, or fail to agree on the amount of credit due, the dispute shall be determined as provided in the clause hereof entitled "Disputes."

(b) In case of damage to any property which the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the property at his expense in a manner satisfactory to the Contracting Officer.

(End of clause)

252.237-7204 Weight of articles (bag type).

As prescribed at 237.7204(e)(1), insert the following clause:

WEIGHT OF ARTICLES (BAG TYPE) (OCT 1981)

(a) The Contractor shall be liable for the return of the articles furnished for service under this contract.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer, shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractor's invoice.

(c) Prior to Contractor pickup of articles for service under this contract, the Contracting Officer shall ensure that each bag contains only articles within a single bag type as specified in the Schedule. The Contracting Officer shall ensure each bag is weighed and that this weight and bag type are identified on the bag. The bag shall always be included in this weight. This weight and the bag type shall be verified by the Contractor who shall record the verified weight and bag type on the delivery ticket. One copy of the delivery ticket shall be retained by the Government.

(d) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

(End of clause)

252.237-7205 Weight of articles (unsorted).

As prescribed at 237.7204(e)(2), insert the following clause:

WEIGHT OF ARTICLES (UNSORTED) (OCT 1981)

(a) The Contractor shall be liable for the return of the articles furnished for service under this contract.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer, shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractors invoice.

(c) Prior to Contractor pickup of articles for service under this contract, the Contracting Officer shall ensure each bag is weighed and that this weight is identified on the bag. The bag shall always be included in this weight. This weight shall be verified by the Contractor who shall record the verified weight on the delivery ticket. One copy of the delivery ticket shall be retained by the Government.

(d) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer shall ensure that this weight is verified at time of delivery.

(End of clause)

252.237-7206 Loss or damage (weight of articles).

As prescribed at 237.7204(e)(3), insert a clause substantially as follows:

LOSS OR DAMAGE (WEIGHT OF ARTICLES) (OCT 1981)

(a) The Contractor shall indemnify the Government for any property delivered to the Contractor for servicing under this contract which is lost, or which is damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily. In either of these events, the Contractor shall pay to the Government the value thereof in accordance with the price of ——* per pound. The Contractor shall only be required to pay the Government for any losses which exceed the maximum weight loss allowable by the clause hereof entitled "Maximum Weight Loss." If the parties fail to agree on the amount of credit due, the dispute shall be determined as provided in the clause hereof entitled "Disputes."

(b) In the case of damage to any property which the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the property at his expense in a manner satisfactory to the Contracting Officer.

* Insert reasonable per pound price based on the average per pound value of the property to be serviced. When the contract requires laundry services on a bag type basis, reasonable per pound prices shall be identified by bag type.

(End of clause)

252.237-7207 Maximum weight loss.

As prescribed at 237.7204(e)(4), insert the following clause:

MAXIMUM WEIGHT LOSS (OCT 1981)

The maximum weight loss allowable in servicing the laundry is ——* percent of the weight recorded on delivery tickets, as set forth in the clause entitled "Weight of Articles," when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the clause hereof entitled "Loss or Damage."

* Insert applicable percentage not to exceed eight percent (8%).

(End of clause)

252.237-7208 Individual laundry.

As prescribed at 237.7204(f), insert the following clause:

INDIVIDUAL LAUNDRY (APR 1967)

(a) The Contractor shall provide laundry service on both a unit bundle and on a piece-rate bundle basis for individual personnel when required by this contract. The total number of pieces listed in the column "Estimated Quantity" in the Schedule is the estimated amount of individual laundry for this contract, but does not constitute any representation as to the amount of individual laundry to be required. Individuals may elect whether they shall patronize the laundry services. Services covered by this provision shall be on a weekly basis, and the schedule for pickup and delivery shall be as specified elsewhere in this contract. Charges for individual laundry shall be on a per unit bundle or a piece-rate basis as indicated on the form, to be furnished by the Contractor, accompanying the bundle at time of pickup.

(b) The maximum number of pieces to be allowed per bundle is as specified in the Schedule and as follows: *

(1) Bundle consisting of twenty-six (26) pieces including laundry bag. This bundle shall contain approximately —— of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(2) Bundle consisting of thirteen (13) pieces including laundry bag. This bundle shall contain approximately —— pieces of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(c) Individual laundry bundles shall be accompanied by forms listing the items contained therein, prepared by the patrons concerned. Forms on individual laundry bundles shall clearly identify unit bundle or piece-rate bundle as applicable when both services are provided by this contract.

* The number of pieces and the composition of a bundle may be revised by the Contracting Officer prior to advertising to meet local conditions.

(End of clause)

252.237-7209 Special definitions of government property.

As prescribed at 237.7204(g), insert the following clause:

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (APR 1967)

(a) The term "Government-furnished property," as used in this contract, means any supplies or facilities furnished to the Contractor by the Government for use in connection with the performance of this contract, but does not include the articles delivered to the Contractor to be laundered or dry cleaned.

(b) The term "Government-owned property," as defined in his contract, means all of the articles delivered to the Contractor to be laundered or dry cleaned, expressly including any articles which may actually be owned by individual Government personnel.

(End of clause)

252.237-7400 Definitions (communications).

As prescribed at 237.7413(a), insert the following clause:

DEFINITIONS (COMMUNICATIONS) (APR 1971)

(a) The term "Communication Service Authorization" (CSA) means an order for services or facilities under this contract.

(b) The term "Appropriate Governmental Regulatory Body" means the Federal Communications Commission, any state-wide regulatory body, or any body with less than state-wide jurisdiction when operating pursuant to state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this contract.

(End of clause)

252.237-7401 Patent indemnity (communications).

As prescribed at 237.7413(a), insert the following clause:

PATENT INDEMNITY (COMMUNICATIONS) (APR 1971)

The Patent Indemnity clause in this contract shall apply only to individual CSAs over $5,000 issued under this contract and covering those communications services and facilities which normally are or have been sold or offered for sale by the Contractor to the public, or which can be provided over commercially available equipment, or which involve relatively minor modifications thereto.

(End of clause)

252.237-7402 Access.

As prescribed at 237.7413(a), insert the following clause:

ACCESS (APR 1971)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to contractor furnished facilities, provided that if by reason of military necessity the Governmment is unable to permit access, the Government at its own risk, and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when Contractor access is not permitted, cost attributable to loss of or damage to the equipment due to the fault or negligence of the Government shall be reimbursed to the Contractor at mutually acceptable rates. Failure to agree shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(End of clause)

252.237-7403 Amendment of contract.

As prescribed at 237.7413(a), insert the following clause:

AMENDMENT OF CONTRACT (APR 1971)

Upon thirty (30) days written notice, either party may request reconsideration of this contract for the purpose of revision to conform with requirements of law or to provide for mutually acceptable changes.

(End of clause)

252.237-7404 Obligation of the Government.

As prescribed at 237.7413(a), insert the following clause:

OBLIGATION OF THE GOVERNMENT (APR 1971)

The Government incurs no monetary liability under this instrument. The Government's liability shall arise, if appropriate, upon the issuance of a CSA pursuant to the terms of this instrument.

(End of clause)

252.237-7405 Authorization and Consent—Common Carriers.

As prescribed at 237.7413(b), insert the following clause:

AUTHORIZATION AND CONSENT—COMMON CARRIERS (APR 1971)

The Government hereby gives authorization and consent (without prejudice to its rights of indemnification, if these rights are provided for in this contract) for all use and manufacture, in the performance of any order placed under this contract for communication services and facilities for which rates, charges, and tariffs are not established by a governmental regulatory body, or any part thereof or any amendments thereto or any subcontract thereunder (including any lower tier subcontract), of any United States patented invention (a) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or (b) utilized in the machinery, tools, or methods

the use of which necessarily results from compliance by the Contractor or the using subcontractor with (1) specifications or written provisions now or hereafter forming a part of the contract, or (2) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(End of clause)

252.237-7406 Continuation of orders.

As prescribed at 237.7413(b), insert the following clause:

CONTINUATION OF ORDERS (APR 1971)

All orders heretofore issued by ——— under Contract Number ———, dated ——— are transferred to this contract and shall continue in full force and effect as though placed under this contract. Orders currently in effect which were heretofore issued by the above Department under other contracts of that Department with the Contractor may likewise be transferred to this contract.

(End of clause)

252.237-7407 Facilities and services to be furnished—common carriers.

As prescribed at 237.7413(b), insert the following clause:

FACILITIES AND SERVICES TO BE FURNISHED—COMMON CARRIERS (APR 1971)

(a) The Contractor shall furnish any classes of services or facilities that he offers or furnishes under public tariffs.

(b) When it is mutually agreed that the Contractor shall furnish nontariffed services, such services may be ordered in the manner provided in the clause entitled "Ordering of Facilities and Services." These may include the engineering, installation, alteration or maintenance of facilities owned either by the Contractor or by the Government, and may be located on or off Government premises or at any of its establishments.

(c) The Contractor agrees to interconnect his facilities with any Government-owned or furnishesd communications equipment, facilities or transmission media, in accordance with established technical criteria for assuring continuity of service and/or traffic without damage to or degradation of commercial facilities, upon request of the Contracting Officer.

(End of clause)

252.237-7408 Ordering of facilities and services—common carriers.

As prescribed at 237.7413(b), insert the following clause:

ORDER OF FACILITIES AND SERVICES—COMMON CARRIERS (APR 1971)

All services and facilities furnished, as provided in the clause entitled "Facilities and Services to be Furnished—Common Carriers," shall be ordered by the Contracting Officer on numbered CSAs referring to this contract and specifying the services and facilities desired, the premises involved, the address where bills for service shall be sent, the Disbursing Officer, and any other pertinent details. Acceptance of orders by the Contractor shall be acknowledged by (a) commencing performance or (b) written acceptance by a duly authorized representative. The Contractor shall sign and promptly return the order to the Government when required by the Contracting Officer. Orders pursuant to this clause which are unacceptable to the Contractor shall be returned to the Contracting Officer within ——— days of receipt stating the reasons therefor.

(End of clause)

252.237-7409 Rates, charges, and services—common carriers.

As prescribed at 237.7413(b), insert the following clause:

RATES, CHARGES, AND SERVICES—COMMON CARRIERS (APR 1971)

(a) The services and facilities furnished hereunder shall be in accordance with all applicable tariffs, rates, charges, rules, regulations or requirements (1) lawfully established by an appropriate governmental regulatory body; and (2) applicable to service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of an appropriate governmental regulatory body. For nontariffed services which are furnished, the Government shall be charged at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(b) Recurring charges for services and facilities furnished under this contract shall, in each case, commence with satisfactory establishment of service or provision of facilities or equipments and are payable monthly in arrears.

(c) Subject to the "Cancellation or Termination of Orders—Common Carriers" clause, the Government may discontinue the use of any service or facilities furnished hereunder at any time. Upon discontinuance, the Government shall pay to the Contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(d) Expediting charges are expenditures necessary to secure services earlier than those services normally would be provided, such as costs of overtime pay, or special shipment. Expediting charges shall be paid only when (1) payment thereof is provided for in the tariff established by an appropriate regulatory authority or (2) such charges are specially authorized in an expediting CSA. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor.

(e) When the services normally provided are technically unacceptable and the requirement necessitates the development, fabrication or manufacture of special equipment, the Government may provide such equipment or may direct the Contractor to procure the equipment or facilities upon a competitive basis to the extent practicable.

(f) If any time the Government defers or changes its orders for any of the services hereunder but does not cancel or terminate them, the amount paid or payable to the Contractor for providing the services deferred or modified shall be equitably adjusted in accordance with applicable tariffs filed by the Contractor with the regulatory commission and in effect at the time of the deferral or change, or if no tariffs are in effect, by written agreement between the Government and the Contractor. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause.

(End of clause)

252.237-7410 Payment—common carrier.

As prescribed at 237.7413(b), insert the following clause:

PAYMENT—COMMON CARRIER (APR 1971)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the provisions of CSAs issued under this contract, the rates and charges for such services and facilities as set forth in the clause entitled "Rates, Charges and Service."

(End of clause)

252.237-7411 Tariff information.

As prescribed at 237.7413(b), insert the following clause:

TARIFF INFORMATION (APR 1971)

(a) A copy of the Contractor's current existing tariffs (including changes) shall be furnished promptly to the Contracting Officer upon request. As early as possible prior to the filing of any application to a Federal, state or any other regulatory agency seeking the establishment of, or changes in, rates, charges, services, or any other regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, the Contractor shall notify the Contracting Officer thereof and shall furnish a copy of the application. Upon request therefor, the Contractor shall furnish a copy of all information, material and data developed or prepared in support of or in connection with such application.

(b) The Contractor also shall notify the Contracting Officer of any such application which may be filed with an appropriate governmental regulatory body by anyone other than the Contractor which affects or will affect the rate or conditions of services rendered or to be rendered promptly after the Contractor himself learns of that application. The foregoing requirements shall apply also to all such applications pending on the effective date of this contract.

(End of clause)

252.237-7412 Cancellation or termination of orders—common carriers.

As prescribed at 237.7413(b), insert the following clause:

CANCELLATION OR TERMINATION OF ORDERS—COMMON CARRIERS (APR 1971)

(a) In the event the Government cancels, in whole or in part, any of the services which the Contractor is requested to provide under this contract, prior to the time such services are made available to the Government, or in the event that the Government terminates any of these services, in whole or in part, after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs which the Contractor has reasonably incurred in specially providing facilities and equipment the use of which is canceled or terminated and for which the Contractor has no foreseeable reuse. The amount of reimbursement shall be determined in the manner set forth in (b), (c) or (d) below.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this contract, in whole or in part, shall be determined in accordance with applicable tariffs governing cancellation and termination charges which are filed by the Contractor with an appropriate governmental regulatory body and are in effect on the date of termination, and which provide specific cancellation or termination charges for the facilities and equipment involved or set forth the manner in which such charges will be determined.

(c) The amount of the Government's liability upon cancellation or termination, in whole or in part, of any of the services ordered under this contract, which are not subject to an appropriate governmental regulatory body, shall be determined in accordance with a mutually agreed schedule as contained in the applicable Communication Services Authorization (CSA).

(d) If no such applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA, the Government's liability shall be determined at the time of cancellation or termination of the facilities and equipment in accordance with the following settlement procedures:

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as he may require, certified inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the "Basic Cancellation or Termination Liability" for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use his best efforts to sell such property or facilities when the Contractor has no foreseeable reuse or when the Department has not exercised its option to take title under the clause entitled "Title to Communications Facilities and Equipment." Any proceeds of such sale shall be applied in reduction of any payments to be made by the Government to the Contractor under a cancellation or termination settlement.

(3) Actual nonrecoverable costs shall be recorded in accordance with the established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, in accordance with generally accepted accounting procedures applicable to the provision of communication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) except any such costs for which the Government may have directly reimbursed the Contractor under the clause entitled "Special Construction and Equipment Charges." From the Contractor's installed cost, there shall be deducted the net salvage value (salvage value less cost of removal). In determining such net salvage, due consideration shall be given to foreseeable reuse by the Contractor of the facilities and equipment and due allowance shall be made for the cost of dismantling, removal, reconditioning and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The "Basic Cancellation Liability" is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are canceled. The "Basic Termination Liability" is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. The liability period shall be established as mutually agreed to but will not exceed ten (10) years.

(6) When the "Basic Cancellation or Termination Liability" established by the CSA is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvable in the settlement, the Contractor shall reimburse the Government for the value thereof.

(8) The Contractor agrees that in no event shall any costs be included which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and no cancellation or termination charge shall be made if such charge is not ordinarily made by the Contractor with respect to similar facilities or equipment furnished under similar circumstances.

(e) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments on account against costs incurred by the Contractor in connection with the canceled or termination portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments is within the amount to which the Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest at the rate of six percent (6%) per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Govenment; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of the cancellation or termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(End of clause)

252.237-7413 Reuse arrangements.

As prescribed at 237.7413(b), insert the following clause:

REUSE ARRANGEMENTS (APR 1971)

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that communications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge. The "Basic Termination Liability" applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse in place of canceled or terminated facilities or equipment, no charge shall apply and the basic cancellation or termination liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Govenment is obligated to pay a munimum service charge.

(End of clause)

252.237-7414 Submission of cost or pricing data—common carriers.

As prescribed at 237.7413(b), insert the following clause:

SUBMISSION OF COST OR PRICING DATA—COMMON CARRIERS (APR 1971)

The Contractor agrees to provide certified cost or pricing data, as requested by the Contracting Officer whenever:

(a) the services are nontariffed services;

(b) a tariff, whether filed or contemplated to be filed, is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(c) a tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(d) more than one commercial source (one or more of which is a common carrier) can offer the desired service but price competition is not considered adequate;

(e) required to support the reasonableness of special assembly rates and charges;

(f) required to support the reasonableness of special construction and equipment charges;

(g) required to support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(h) required to support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(End of clause)

252.237-7415 Audit and records—common carriers.

As prescribed at 237.7413(b), insert the following clause:

AUDIT AND RECORDS—COMMON CARRIERS (APR 1972)

(a) For the purpose of verifying the accuracy of the cost or pricing data submitted pursuant to the clause entitled "provision of Cost or Pricing Data—Common Carrier," the Contracting Officer or his authorized representative shall, (1) until the expiration of three (3) years from the date of the submission of the data which forms the basis for a recurring or nonrecurring charge, or (2) until the expiration of the period of contingent liability with respect to such contingent liability, have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of the certification of the data.

(b) The Contractor shall maintain such books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the direct and indirect costs which were the basis for the pricing of the CSA. The foregoing constitute "Records" for the purpose of this clause.

(c) The Contractor shall insert the substance of this clause in subcontracts awarded hereunder which furnish the basis for charges referred to in (a) hereof, unless its omission is authorized by the Contracting Officer.

(End of clause)

252.237-7416 Term and termination of contract—common carriers.

As prescribed at 237.7413(b), insert the following clause:

TERM AND TERMINATION OF CONTRACT—COMMON CARRIERS (JUL 1976)

This contract shall be effective for an initial term commencing—— * and ending September 30, 19—— ** and shall continue in force thereafter from year to year, unless and until terminated by either party at any time upon not less than sixty (60) days' prior written notice to the other. Termination shall be applicable prospectively only and shall not operate as a cancellation of any orders previously issued or outstanding.

(End of clause)

252.237-7417 Special construction and equipment charges.

As prescribed at 237.7413(c), insert the following clause:

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (APR 1971)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

252.237-7418 Title to communication facilities and equipment.

As prescribed at 237.7413(c), insert the following clause:

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (APR 1971)

Notwithstanding payment by the Government of any of the Contractor's costs of constructing communication facilities and equipment, title to all Contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

252.242-7000 Submission of commercial freight bill to the General Services Administration for audit.

As prescribed at 242.1403-2, insert the following clause:

SUBMISSION OF COMMERCIAL FREIGHT BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (FEB 1976)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the

General Services Administration—FZATR
Chester A. Arthur Building
Washington, D.C. 20406

(or the ACO if specified) individual commercial freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of $500.00.

(End of clause)

252.242-7001 Notice of cost/schedule control systems.

As prescribed at 242.302(S-71), insert the following provision:

NOTICE OF COST/SCHEDULE CONTROL SYSTEMS (APR 1974)

(a) The offeror shall submit a comprehensive plan for compliance with the attached criteria (DoDI 7000.2, Performance Measurement for Selected Acquisitions) for the internal Cost/Schedule Control Systems which are and/or will be operational for any contract resulting from this solicitation, and which includes the C/SCSC clause set forth at 252.242-7001 of the DoD FAR Supplement. The offeror shall identify his existing management systems separately from

* Insert the effective date of the contract.
** Insert the current fiscal year.

proposed modifications to meet the criteria. The plan shall:

(1) describe the management systems and their application in all major functional cost areas such as engineering, manufacturing and tooling, as related to development of the work breakdown structure, planning, budgeting, scheduling, work authorization, cost accumulation, measurement and reporting of cost and schedule performance, variance analysis, and baseline control;

(2) describe compliance with each of the criteria, preferably by cross-referencing appropriate elements in the description of systems with the items in the checklist for C/SCSC contained in AFSCP/AFLCP 173–5, DARCOM–P 715–5, NAVMAT P–5240, Cost/Schedule Control Systems Criteria Joint Implementation Guide;

(3) identify the major subcontractors, or major subcontracted effort in the event major subcontractors have not been selected, planned for application of the criteria;

(4) describe the proposed procedure for administration of the criteria as applied to subcontractors.

(b) If the Contractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, evidence of such may be submitted in lieu of the comprehensive plan mentioned above. In such event, the Contracting Officer will determine the extent to which such systems shall be reviewed to assure continued compliance with the criteria.

(c) The offeror shall provide information and assistance as requested by the Contracting Officer for evaluation of compliance with the cited criteria.

(d) The offeror's plan for Cost/Schedule Control Systems will be evaluated prior to contract award. Upon acceptance of the Cost/Schedule Control Systems, a description of the accepted systems will be referenced in the contract.

(e) Subcontractor selection for application of the C/SCSC will be by agreement between the prime contractor and the Government. The prime contractor will contractually require the selected subcontractors to comply with the criteria. However, demonstrations and reviews of these selected subcontractors' management systems may be performed by the procuring authority when requested by either the prime or subcontractor.

(End of provision)

252.242–7002 Cost/schedule control systems.

As prescribed at 242.302(S–71), insert the following clause:

COST/SCHEDULE CONTROL SYSTEMS (MAR 1979)

(a) The Contractor shall establish, maintain and use in the performance of this contract Cost/Schedule Control Systems meeting the attached criteria (DoDI 7000.2, Performance Measurement for Selected Acquisitions). Prior to acceptance by the Contracting Officer and within ninety (90) (or as otherwise agreed to by the parties) calendar days after contract award, the Contractor shall be prepared to demonstrate the operation of his systems to the Government to verify that the proposed systems meet the established criteria set forth above. As a part of the demonstration, review and acceptance procedure, the Contractor shall furnish the Government a description of the Cost/Schedule Control Systems applicable to this contract in such form and detail as indicated by the AFSC/AFLCP 173–5, DARCOM–P 715–5, NAVMAT P–5240 Cost Schedule Control Systems Criteria Joint Implementation Guide, hereinafter referred to as the guide, or required by the Contracting Officer. The Contractor agrees to provide access to all pertinent records, data and plans as requested by representatives of the Government for the conduct of the review.

(b) The description of the management systems accepted by the Contracting Officer, identified by the title and date, shall be referenced in the contract. Such systems shall be maintained and used by the Contractor in the performance of this contract.

(c) Contractor changes to the accepted systems shall be submitted to the Contracting Officer for review and approval. The Contracting Officer shall advise the Contractor of the acceptability of such changes within sixty (60) days after receipt from the Contractor. When systems existing at time of contract award do not comply with the criteria, adjustments necessary to assure compliance will be effected at no change in contract price or fee.

(d) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or his duly authorized representative for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from accepted systems discovered during contract performance shall be corrected as directed by the Contracting Officer.

(e) The Contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the Contractor and as set forth in the schedule of this contract, shall meet the Cost/Schedule Control Systems criteria as set forth in the guide and shall incorporate in all such subcontracts adequate provisions for demonstration, review, acceptance and surveillance of subcontractors' systems, to be carried out by the Government when requested by either the prime or subcontractor.

(f) If the Contractor or subcontractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, the Contracting Officer may waive all or part of the provisions hereof concerning demonstration and review.

(End of clause)

252.243–7000 Engineering change proposals.

As prescribed at 243.205(S–70), insert the following clause:

ENGINEERING CHANGE PROPOSALS (APR 1984)

(a) The Contracting Officer may at any time, in writing, request the Contractor to prepare and submit an Engineering Change Proposal (ECP) as that term is defined in MIL–STD–480, within the scope of this contract, as hereafter set forth. Upon receipt of such request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by paragraph 4 of MIL–STD–480.

(b) Any Contractor ECP shall set forth a "not to exceed" price* and delivery adjustment or a "not less than" price* and delivery adjustment, acceptable to the Contractor if the Government subsequently orders such ECP. If ordered, the equitable increase shall not exceed, nor shall the equitable decrease be less than, such "not to exceed" or "not less than" amounts.** This paragraph does not preclude any revision(s) or correction(s) of an ECP in accordance with paragraphs 4.10 and 4.11 of MIL–STD–480. Concurrently with the submission of any ECP under this contract in which the proposed aggregate cost is $500,000 or greater, the Contractor shall submit to the Contracting Officer a completed SF 1411. At the time of agreement upon the price of the ECP, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of clause)

ALTERNATE I (APR 1984)

As prescribed at 243.202–70(b), insert the following paragraph:

(c) If the price* adjustment proposed for any Contractor-originated ECP (excluding any Government-requested ECP or Value Engineering Change Proposal) is *** (percent of the contract price*) (or $***) or less, such change shall be made at no adjustment of the contract price*.

252.243–7001 Pricing of adjustments.

As prescribed at 243.205(S–71), insert the following clause:

PRICING OF ADJUSTMENTS (APR 1984)

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other clause of this contract, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation and the DoD FAR Supplement in effect on the date of this contract.

(End of clause)

252.246–7000 Material inspection and receiving report.

As prescribed at 246.370, insert the following clause:

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* Use term suitable to type of contract.

** In cost-reimbursement type contracts, replace this sentence with the following sentence: "Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost."

*** To be negotiated.

MATERIAL INSPECTION AND RECEIVING REPORT (DEC 1969)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by Appendix I, "Material Inspection and Receiving Report" (see DoD FAR Supplement 46.670).

(End of clause)

252.246-7001 Warranty of data.

As prescribed at 246.770, insert the following clause:

WARRANTY OF DATA (NOV 1974)

(a) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, product support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specification or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three (3) years after completion of the delivery of the line item of data (as identified in DD Form 1423) of which the data forms a part; or any longer period specified in the contract.

(c) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) The following remedies shall apply to all breaches of the above warranty provided that the Government notifies the Contractor of the breach in writing within the warranty period.

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, he may:

(i) by written notice, direct the Contractor to correct or replace at his expense the nonconforming technical data promptly; or

(ii) if he determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment in lieu of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under (1)(i) above, the Contracting Officer may, within a reasonable time of such refusal or failure:

(i) by contract or otherwise, correct or replace the nonconforming technical data and charge the Contractor the cost occasioned to the Government thereby; or

(ii) elect a price or fee adjustment in lieu of correction or replacement.

(3) The remedies set forth in this clause represent the exclusive means by which the rights conferred on the Government by this clause may be enforced.

(f) The provisions of this clause apply anew to that portion of any technical data which is corrected or furnished in replacement under (d)(1)(i) above.

(End of clause)

ALTERNATE I (NOV 1974)

As prescribed at 246.770, insert the following paragraph:

(3) In addition to the remedies specified under (d) (1) and (2) above, Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 75% of the target profit. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. Damages due the Government under the provisions of this warranty shall not be considered as an allowable cost. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, provided that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

ALTERNATE II (NOV 1974)

As prescribed at 246.770, insert the following paragraph:

(3) In addition to the remedies specified under (1) and (2) above, the Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 10% of the total contract price. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, provided that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

252.247-7000 Scope of contract.

As prescribed at 247.270-9(a), insert the following clause:

SCOPE OF CONTRACT (AUG 1984)

(a) *General.* The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at ——— upon the terms and conditions hereinafter set forth for the term of this contract, beginning ——— and ending ———; *Provided*, however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

(b) *Contractor's Duties.*

(1) *Loading.* In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area; also from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks, in the order directed by and in a manner satisfactory to the Contracting Officer.

(2) *Discharging.* In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area; also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

(3) *Handling Explosives.* In addition to (1) and (2) above, the following provisions are applicable to the loading and discharging of explosives:

(a) In loading explosives the Contractor shall perform all the stevedoring services

necessary for the breaking-out and discharging from railroad cars, trucks and/or lighters alongside ship or from place of rest on pier, transporting to the vessel, and property loading, stowing and normal securing and chocking in the vessel in a manner directed by applicable U.S. Coast Guard, Army, or Navy regulations.

(b) In discharging explosives the Contractor shall perform all stevedoring services necessary for discharging cargo from the vessel to place of rest on pier or the transporting to and loading into railroad cars, trucks and/or lighters. The Contractor shall also prepare and line the cars for handling the cargo (except the laying of new flooring) and shall brace, secure, cut bands, and lash the cargo in the cars in accordance with applicable regulations and shall place "explosives" placards on the cars prior to release, and shall close and seal all doors.

(c) The furnishing and preparation of gates, studs, new flooring, etc., for blocking railroad cars, as well as prefabrication of blocking in the vessel's hold, will be at the expense of the Government.

(d) The Contractor shall not be compensated for standby time when caused by slow-up or delay of one of his operations, which delay directly affects the other operations, such as delay in loading railroad cars, or in discharging from ship's hatches, unless such slow-up or delay was beyond the control and without the fault or negligence of the Contractor. This does not include the time required for shifting cars. No standby time will be allowed unless previously approved by the Contracting Officer.

(4) *Cargo Assembly Area.* The term "cargo assembly area" as used in this contract, is defined as ——— feet from either extremity of the vessel and for a distance ——— feet from the vessel inboard side.

(c) *Damage Reports.* In all instances where cargo, vessel, vessel equipment or Government equipment sustains damage through handling by the Contractor's employees, a full report of the fact and the extent of such damage shall be submitted by the Contractor to the Contracting Officer within twenty-four (24) hours following the occurrence of such damage.

(d) *Rigging and Unrigging.* When the ship's gear is used for handling cargo, the Contractor, at his own expense, shall rig and unrig all gear, including the rigging and unrigging of heavy-lift gear when the heavy-lift booms are used, and shall hoist, lower and secure hatch tents when necessary; *Provided,* however, that where any one set of gear is rigged for handling less than one hundred (100) payable tons of cargo on a commodity rate basis, the Contractor shall be compensated on an extra-labor basis for the rigging and unrigging of such set of gear. Rigging and unrigging shall include topping, lowering, and trimming of booms. When the Contractor is required to perform any rigging and unrigging services for the purpose of performing extra labor services or performs any such services at the request of the Contracting Officer for any purpose other than loading or discharging cargo on a commodity rate basis, he shall be compensated therefor at extra labor rates. When the Contractor is required to break out booms from collars or boom rest, or to reeve guys on topping lifts through blocks, he shall be compensated therefor on an extra-labor basis.

(e) *Opening and Closing Vessel.* The Contractor shall, at his own expense, remove and replace tarpaulins, battens, hatch covers, and beams with respect to all decks and deep tanks both during loading unloading operations and when necessary because of weather or working conditions, as directed by the Contracting Officer; *Provided,* however, that the opening and closing on any one hatch shall be performed on an extra-labor basis where less than one hundred (100) payable tons are to be loaded and/or discharged at the commodity rate on any hatch so worked, and also where the Contractor is required to open and close the vessel for the purpose of performing extra-labor services. The removing, handling, replacing, or setting of reefer plugs during the handling of cargo in any or all refrigerated or chilled space aboard the vessel is included in the basic commodity rate, except where the complete operation is on an extra-labor basis. When the Contractor is required to open or close reefer plugs more than once in any four (4) hour shift because of a change in orders or type of cargo, he shall be compensated therefor on the basis of fifteen (15) minute detention time for men in gangs, including equipment drivers and gang foremen.

(f) *Docking, Undocking and Shifting of Vessels.* The Contractor shall, when requested by the Contracting Officer, furnish men to handle lines for docking, undocking, and shifting of vessels, and the Government shall compensate the Contractor therefor on an extra-labor basis.

(g) *Shifting Barges, Lighters, Scows, and Car Floats.* Barges, lighters, scows, and car floats will be placed alongside the vessel without cost to the Contractor. When they are shifted from hatch to hatch, the Contractor shall do so at his own expense unless operational conditions make movement by ship's gear impracticable in which event the operation shall be at the expense of the Government.

(h) *Gear Supplied by Government.* The Government, at its own expense, shall furnish and maintain in good working order the following: blocks on booms, booms, heavy lift cranes, wire and rope falls rigged, gant-lines rigged on booms, hatch tents, lighters and floating derricks, lights on wharves and vessels, pallet boards, power and steam necessary, preventers on booms, and winches. Floating derricks and heavy lift dock cranes will not be used when, in the opinion of the Contracting Officer, the ship's equipment can be used satisfactorily.

(i) *Gear Supplied by Contractor.* The Contractor shall perform an efficient stevedoring operation and, except as provided in (h) and (j) of clause, shall at his own expense, furnish all necessary and proper gear, including the following: ammunition gear (when handling ammunition and explosives), roller conveyors, hooks, cargo nets, save-all nets, rollers, skids, chain slings, platform slings, wire and rope slings (except heavy-lift slings used in connection with shore or floating heavy-lift cranes), drag lines, spreaders, hand-trucks, machinery dollies, trailers, lift trucks, tractors, and tractor cranes; *Provided,* however, that the Contractor shall be compensated for furnishing mobile equipment in accordance with the applicable schedule in the "Schedule of Rates" clause of this contract, whenever such equipment is furnished in connection with services performed on an extra-labor basis.

(j) *Rental of Mobile Equipment.*

(1) The Contractor, when directed by the Contracting Officer to supply extra-labor services, shall upon request of the Contracting Officer also supply and maintain the necessary mobile equipment to the extent available, and the Contractor shall be compensated therefor at the rates set forth in the applicable schedule of the "Schedule of Rates" clause of this contract.

(2) Upon request, the Government will supply mobile equipment, if available, to the Contractor, and the Government shall be compensated therefor at the rates set forth in the applicable schedule of the "Schedule of Rates" clause of this contract.

(3) If the Government supplies mobile equipment to the Contractor for use in performing extra-labor services, no charge shall be made by the Government for the use of such mobile equipment.

(k) *Transportation of Gear by Contractor.* The Contractor will transport his own gear and equipment when necessary at his own expense, except transportation of said gear and equipment shall be at Government expense when the vessel is loading and unloading in stream, or at any other location inaccessible to trucks.

(l) *Tiering.* If cargo tiered on the pier or in the cargo assembly area is beyond the reach of the Contractor's equipment, the Government will break it down at the place of tiering so that it can be handled by the Contractor's equipment. No charge will be made by the Contractor for removing cargo from piles within the reach of his equipment. The tiering of cargo above reach of the Contractor's equipment will be at Government expense. When the Contractor is required to break down cargo tiered above the reach of his equipment or to tier cargo beyond the reach of his equipment, the Government will compensate the Contractor therefor on an extra-labor basis.

(m) *Dunnage.* The loading, shifting within the same hatch, and laying of all dunnage (including cordwood, tarpaulins, matting and reefer stripping) necessary to properly stow and secure the vessel's cargo and reverse the operation when discharging the vessel's cargo, is included in the basic commodity rate.

(n) *Other Work.*

(1) *Lashing and Securing.* The Contractor shall, at his own expense, lash and secure all cargo below deck when loaded on a commodity-rate basis, as directed by the Contracting Officer. Lashing and securing of cargo below deck which was loaded in an extra-labor basis and the lashing of all on-deck cargo will be done at extra-labor rates. The Government will supply lumber, wire, turn-buckles, and other equipment as may be required for dunnaging, securing, and shoring cargo in all instances.

(2) *Unlashing and Unsecuring Cargo.* When cargo is discharged on a commodity-rate basis the Contractor shall, at his own expense, unlash all cargo on deck and below deck and shall remove all tomming, chocking tank beds, and all types of double dunnage flooring, except false decks, as directed by the Contracting Officer. The unlashing and unsecuring of cargo on deck and below deck, if discharged on an extra-labor basis, will be done at extra-labor rates.

(3) *Carpenter Work, Welding and Burning.* All necessary carpenter work and welding and burning shall be at the expense of the Government.

(o) *Tonnage Figures and Invoices.* The weight ton referred to in this contract is a ton of two thousand two hundred forty (2,240) pounds, and the measurement ton is a ton of forty (40) cubic feet. Where rates are provided on both a weight and measurement basis, the Contractor shall be paid on the basis of a manifested ton, whichever produces the greater tonnage, the weight ton of two thousand two hundred forty (2,240) pounds or the measurement ton of forty (40) cubic feet. The maximum measurement tonnage upon which compensation is to be computed for any manifested item of cargo for any single lift shall be one hundred fifty (150) tons. The Government will furnish the Contractor a breakdown of cargo loaded or discharged according to the commodity list, or, at the option of the Contracting Officer, manifests will be furnished. Invoices of each vessel loaded or discharged will be submitted by the Contractor not later than ten (10) days after receipt of tonnage figures or manifests. Progress payments for services performed on each vessel may be made upon approval of the Contracting Officer, *Provided*, that such progress payments shall not exceed ninety percent (90%) of the direct labor cost to the Contractor of the services upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as to be satisfactory to the Contracting Officer. No services will be paid for by the Government other than those specifically enumerated herein and provided for in the rate schedule of this contract or elsewhere in this contract.

(p) *Hardship (Unusual Conditions).* If the Contracting Officer determines that due to unusual vessel, dock, or cargo conditions, the loading or unloading of any particular cargo at the basic commodity rates will work a hardship upon the Contractor, he may so certify in writing (in advance, if possible) and authorize the compensation to the Contractor for loading or unloading such cargo at the extra-labor rates set forth in the applicable schedule in the "Schedule of Rates" clause of this contract. Unusual conditions will include, but not be limited to, inaccessibility of ship's cargo gear to place of stowage, side port operations, and small quantities of cargo in any one hatch.

(q) *Detentions.*

(1) Detention (sometimes referred to as "stand-by time" or "waiting-time") is time lost as a result of the stoppage, or inability to start, of loading or discharging of cargo due to causes beyond the control and without the fault or negligence of the Contractor, including, but not limited to, a breakdown of the vessel's equipment or Government-furnished gear, bad weather, non-readiness of the vessel, non-arrival of cargo, or non-availability of equipment required to be furnished by the Government.

(2) When cargo is worked on a commodity rate basis the Contractor shall, without limitation, absorb each detention of minutes or less; but the Government shall pay the Contractor at detention rates for men in gangs, including equipment drivers and gang bosses, for each detention in excess of minutes including the first minutes thereof.

(3) When loading or discharging of cargo is performed on an extra-labor basis, the Government will pay the Contractor at extra-labor rates for the first minutes of each detention and will pay the Contractor on a detention rate basis for all time of each detention except the first minutes.

(4) Minimum time is defined as the time in addition to time actually worked for which the Contractor is required to pay his employees to comply with minimum time requirements of labor agreements applicable to the Contractor and his employees. The Government shall pay the Contractor for minimum time at detention rates.

(5) If any detention or minimum time, as defined in (1) and (4) above, is due to the fault of the Contractor or the failure of the Contractor to comply with proper instructions of the Contracting Officer, the entire time resulting therefrom shall be at the expense of the Contractor.

(r) *Extra Labor.* The Contractor shall, when directed by the Contracting Officer, supply extra labor for miscellaneous services when not occasioned by the fault or negligence of the Contractor, and shall be compensated therefor on an extra-labor basis. Among the miscellaneous services for which such extra labor may be required, but not by way of limitations, are the following: ammunition handling (when commodity rate does not apply); cleaning vessel's holds and decks; handling excess dunnage and debris; handling mail and baggage; rehandling, removing or shifting cargo; removing or securing tank lids when secured by more than four (4) bolts for each lid; handling ship's stores and material.

(s) *Overtime Rates.* The Contractor shall order out men for overtime work only with the approval of the Contracting Officer. When approved by the Contracting Officer, and in accordance with such approval, the Contractor shall be paid for all overtime services, in addition to the applicable commodity rates, or man-hour rates, at the overtime differential rates set forth in the applicable schedules of the "Schedule of Rates" clause of this contract. Overtime periods will be determined in accordance with the prevailing collective bargaining agreements applicable to the Contractor and his employees.

(t) *Penalty Rates.* Except where the applicable commodity rates or man-hour rates expressly include cargo penalties, the Contractor shall be compensated for penalties, where payable under applicable collective bargaining agreements, at the rates set out in the penalty rate schedule of the "Schedule of Rates" clause of this contract.

(u) *Traveling Time.* When the Contractor is required to pay traveling time to the men employed, the Contractor shall be compensated therefor at the rates specified in the applicable schedule of the "Schedule of Rates" clause of this contract.

(v) *Transportation of Men and Other Allowances.* When the Contractor is required by applicable collective bargaining agreements to pay allowance for subsistence, quarters, and rail, bus, or boat fares in transporting the men employed, the Contractor shall be compensated therefor at the rates specified in the applicable schedule of the "Schedule of Rates" clause of this contract, or, if the contract contains no such schedule, at the actual out of pocket cost to the Contractor.

(w) *Income for Handling Lighters, Cars, etc.* Any and all income derived from sources other than provided for in this contract for the handling of cargo direct to or from lighters, barges, scows, trucks, and railroad cars, and to or from ships under this contract, will be for the account of the Contractor and shall be collected by the Contractor. Collection of this income by the Contractor is reflected in the commodity rates.

(End of clause)

252.247-7001 Schedule of rates.

As prescribed at 247.270-9(a), insert the following clause:

SCHEDULE OF RATES (AUG 1984)

(a) *Commodity Rates.* The Contractor will be compensated for services, except those specified elsewhere in this contract, at the commodity rates listed herein which are based on straight time rates of pay only. The rates named in Columns A and B are based on normal operations involving use of ship's gear.

SCHEDULE I—COMMODITY TONNAGE RATES

Commodity List	Loading A Ship's Gear 2240# 40c/f	Discharging B Ship's Gear 2240# 40c/f

NOTE: List only commodities justifying a specific rate.

(b) *Miscellaneous Hourly Rate Schedules.*

TABLE OF SCHEDULES (RATE PER HOUR)

Rating	Extra Labor Straight Time Rate—Sched II	Travel Time & Detentions in Non-Explosive Area—Sched III	Overtime Differential—Sched IV	Explosive Straight Time Rate—Sched V	Travel Time & Detentions in Explosive Area—Sched VI	Explosive Overtime Differential—Sched VII	Premium Meal Hour Differential—Sched VIII	
							Non-Explos.	Explos.
Longshoremen								
Winch Drivers								
Hatch Tenders								
Fork-lift Operators								
Jitney Operators								
Crane Operators								
Ship Foremen								
Supercargoes								
Head Clerks								
Clerks								
Checkers								
Walking Bosses								
Asst. Ship Foremen								
Crane Foremen								

(c) *Stevedoring Cargo Penalty Rates-Schedule IX.* Penalty differentials relative to types of workers, cargo, and working conditions will be determined in accordance with the applicable collective bargaining agreements and the Contractor will be compensated therefor at the following penalty differential rates:

Cargo Carrying Straight Time Penalty of:	Rates per Man per hour		
	S/T	O/T	Premium Meal Hour

(d) *Equipment Rental-Schedule X.*

Type of Equipment	Rates per Hour*
Tractor	
Fork-lift trucks	
Cranes up to 10 tons with operator and oiler.	
Cranes from 10 to 20 tons with operator and oiler.	
Ross lumber carriers	
Miscellaneous small gear per gang.	Rates per gang per hour:

*Rates per hour include fuel, lubricants, and maintenance.

252.247-7002 Price escalation.

As prescribed at 247.270-9(b), insert the following clause:

PRICE ESCALATION (AUG 1964)

(a) The Contractor warrants that the prices set forth in this contract are based upon the wage rates, allowances, and conditions as set forth in the collective bargaining agreements between him and his labor employees which are in effect as of and which are generally applicable to the port where work under this contract is performed and are applicable to operations by the Contractor on non-Government work as well as under this contract. The Contractor further warrants that the prices herein do not include any allowance for any increase to his costs to perform the contract that may thereafter become effective pursuant to the terms of said collective bargaining agreements or that may result from the modification(s) of said collective bargaining agreements thereafter made effective.

(b) If, during the performance of this contract, there are from time to time increases or decreases in the wage rates, allowances, fringe benefits and conditions pertaining to its direct labor employees pursuant to the provisions of the aforesaid collective bargaining agreements or as a result of effective modifications thereto which increase or decrease his costs to perform this contract, the Contractor shall notify the Contracting Officer thereof within sixty (60) days of receipt of notice of such increase or decrease. Such notice shall include the Contractor's proposal for an adjustment in the contract commodity, activity, or man-hour prices to be negotiated in accordance with paragraph (c) below, and shall be accompanied by data, in such form as the Contracting Officer may require, explaining (i) the causes, (ii) the effective date, and (iii) the amount of the increase or decrease of the Contractor's proposal for such adjustment.

(c) Promptly upon receipt of any notice and data described in (b) above, the Contractor and the Contracting Officer shall negotiate an adjustment, and the effective date thereof, in the contract commodity, activity, or man-hour prices; provided, however, no adjustment upward in excess of percent per annum of the existing commodity, activity, or man-hour prices will be allowed, except as provided in the "Changes" clause of this contract. Increases or decreases in the contract prices shall reflect, in addition to the direct labor costs and variable indirect labor costs, the concomitant increases or decreases in the following costs: social security and unemployment compensation taxes and workman's compensation insurance. No adjustment may be made to increase the dollar amount allowances of the Contractor's profit. The agreed-upon adjustment, the effective date thereof, and the appropriately revised commodity, activity, or man-hour prices for services set forth in the schedule of rates, shall be set forth in a supplemental agreement to this contract. Failure of the parties to agree to an adjustment under this clause shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) Notwithstanding the foregoing, there shall be no adjustment for any increase or decrease in the quantities of labor that the Contractor contemplated for each specific commodity except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five (5) days after award, the accounting data and computations used by the Contractor to determine his estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(e) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor or that he has given notice of all such decreases in compliance with (b) above.

(End of clause)

252.247-7003 Revision of prices.

As prescribed at 247.270-9(c), insert the following clause:

REVISION OF PRICES (AUG 1964)

(a) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements and on other conditions in effect on the date of this contract. Such prices may be increased or decreased in accordance with this clause.

(b) *Demand for Negotiation.* At any time, and from time to time, subject to the limitations specified in this clause, either the Government or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract. No such demand shall be made before ninety (90) days after the date of this contract, and thereafter neither party shall make a demand having an effective date within ninety (90) days of the effective date of any prior demand; *Provided, however,* That this limitation shall not be applicable in the event that during any ninety (90) day period there is a "wage adjustment" as hereinafter defined. The term "wage adjustment," as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which shall

substantially affect the cost of performing this contract and which shall be generally applicable to the port where work under this contract is performed and shall be applicable to operations by the Contractor on non-Government work as well as to work under this contract. Each demand shall specify a date (identical with or subsequent to the date of the delivery of the demand) as to which the revised prices shall be effected as to services performed thereon and thereafter. This date is hereinafter referred to as the "effective date of the price revision." Any demand under this clause, if made by the Contractor shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (c) of this clause. If the demand is made by the Government, such statements and data will be furnished by the Contractor within thirty (30) days of the delivery of the demand.

(c) *Submission of Data.* At the time or each of the times specified or provided for in paragraph (b) of this clause, the Contractor shall submit:

(i) A new estimate and breakdown of the unit cost and the proposed prices for the services to be performed under the contract after the effective date of the price revision, itemized in connection with the original negotiations of the contract;

(ii) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(iii) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(iv) A statement of the experienced costs of performance hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and

(v) Any other relevant data usually furnished in the case of negotiations of prices under a new contract.

The Government may make such examination of the Contractor's accounts, records, and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.* (1) Upon the filing of the statements and data required by (c) of this clause, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for services to be rendered on and after the effective date of the price revision. Negotiations for price revisions under this clause shall be conducted on the same basis, employing the same types of data, including without limitation, comparative prices, comparative costs, and trends thereof, as in the negotiation of prices under a new contract: *Provided however,* That if the prices in the contract were arrived at as a result of competitive negotiation, the contract prices shall not be revised upward except upon the basis of, and as justified by changes in conditions occurring after the contract was entered into.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised price to be effective with respect to services rendered on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

(e) *Disagreements.* If, within thirty (30) days after the date on which the statements and data are required pursuant to paragraph (b) of this clause to be filed (or such further period as may be fixed by written agreement), the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be disposed of in accordance with the "Disputes" clause of this contract, and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this clause.

(f) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price revision shall be paid upon all services performed, subject to appropriate later revisions made pursuant to (d) or (e) of this clause.

(g) *Retroactive Changes in Wages or Working Conditions.* In the event of a retroactive wage adjustment the Contractor or the Contracting Officer may request an adjustment in the prices fixed in this contract, and such adjustment will be made to the extent equitable; *Provided, however,* That the prices applicable to services performed subsequent to the date of the request for price adjustment shall not be adjusted under this paragraph, it being the intent that any price adjustment under this paragraph shall cover the period prior to such request. Such request by the Contractor shall be made within thirty (30) days of such retroactive wage adjustment and shall be supported by:

(i) An estimate of the changes in cost occasioned by the retroactive wage adjustment;

(ii) Completed information upon which such estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

Subject to the foregoing limitation as to the time of making a request hereunder, completion or termination of this contract shall not affect or impair the Contractor's right under this paragraph. Such adjustment shall be by mutual agreement between the Contracting Officer and the Contractor. The adjusted prices, and the manner of making adjustments with respect to services theretofore paid for, shall be incorporated in an amendment to this contract to be executed by the Contractor and the Contracting Officer. In case of disagreement concerning any question of fact including whether any adjustment should be made, or the amount of such adjustment, such disagreement will be resolved in accordance with the "Disputes" clause of this contract. The Contractor shall give written notice to the Contracting Officer of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. Such notice shall be given within twenty (20) days after such request, or if request has occurred prior to execution of this contract, at the time of execution of this contract.

(End of clause)

252.247-7004 Changes.

As prescribed at 247.270-9(d), insert the following clause:

CHANGES (AUG 1984)

The Contracting Officer may, at any time by written order, and without notice to the sureties, make changes within the general scope of this contract. If any such change causes an increase or decrease in the cost of the performance of any part of the work under this contract, an equitable adjustment shall be made in the contract price or in the applicable schedule or rates and the contract shall be modified in writing accordingly. Any claims by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

252.247-7005 Termination.

As prescribed at 247.270-9(e), insert the following clause:

TERMINATION (SEP 1978)

(a) This contract may be terminated at any time by either party hereto upon sixty (60) days, or such number or days as may be otherwise provided in the Schedule, notice in writing to the other. Termination under this clause shall not affect, or relieve any part of, any obligation or liability that may have accrued prior to such termination.

(b) Upon termination of the contract under (a) above, or as provided in the "Default" clause of this contract, the Contractor shall be paid any sum due the Contractor for services performed under this contract to the date of such termination, and in the event of partial termination shall be paid in accordance with the terms of this contract for any services furnished under the portion of the contract that is not terminated; *Provided, however,* any such payments shall be without prejudice to any claim which the Government may have against the Contractor under the "Default" clause of this contract or otherwise, and the Government shall have the right to offset any such claims against such payment.

(End of clause)

252.247-7006 Indefinite quantities—fixed charges.

As prescribed at 247.270-9(f), insert the following clause:

INDEFINITE QUANTITIES—FIXED CHARGES (AUG 1984)

The amount of work and services which the Contractor may be ordered to furnish and the Government to accept hereunder, shall be

the amount which shall from time to time be ordered hereunder by the Contracting Officer. In any event, however, the Government is obligated to compensate the Contractor the monthly lump sum specified in Schedule entited "Fixed Charges," for each month or portion thereof the contract remains in effect.

(End of clause)

252.247-7007 Indefinite quantities—no fixed charges.

As prescribed at 247.270-9(g), insert the following clause:

INDEFINITE QUANTITIES—NO FIXED CHARGES (AUG 1964)

The amount of work and services which the Contractor may be ordered to furnish and the Government to accept hereunder, shall be the amount which shall from time to time be ordered hereunder by the Contracting Officer. In any event, however, the Government shall order, during the term of this contract, work or services having an aggregate value at the prices listed in the schedules made a part hereof of not less than one hundred dollars ($100.00).

(End of clause)

252.247-7008 Employees of contractor.

As prescribed at 247.270-9(h), insert the following clause:

EMPLOYEES OF CONTRACTOR (AUG 1964)

All employees of the Contractor employed in performance of work under this contract shall be employees of the Contractor at all times and not of the Government. The Contractor shall comply with the Social Security Act, the Longshoremen's and Harbor Worker's Compensation Act, and such Workmen's Compensation Laws and Unemployment Insurance Laws of the state where the work is performed as shall be applicable to work performed hereunder and the Contractor shall comply with all other relevant legislation, state and Federal.

(End of clause)

252.247-7009 Removal of contractor's employees.

As prescribed at 247.270-9(h), insert the following clause:

REMOVAL OF CONTRACTOR'S EMPLOYEES (OCT 1965)

The Contractor agrees to utilize only experienced, responsible and capable people in the performance of the work. The Contracting Officer may require that the Contractor remove from the Government job employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interests of military security.

(End of clause)

252.247-7010 Liability and insurance.

As prescribed at 247.270-9(h), insert the following clause:

LIABILITY AND INSURANCE (JAN 1977)

(a) The Contractor shall be:

(i) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(ii) Responsible for, and hold the Government harmless from, loss of or damage to property not included in (i) above; and

(iii) Responsible for, and hold the Government harmless from, bodily injury and death of persons, occasioned either in whole or in part by the negligence or fault of the Contractor, his officers, agents, or employees in the performance of work under this contract. For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable. The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor. Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the "Disputes" clause of this contract. The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations.

(b) The Contractor shall not be responsible to the Government for and does not agree to hold the Government harmless from loss or damage to property or bodily injury to or death of persons if:

(i) The unseaworthiness of the vessel or failure or defect of the gear or equipment furnished by the Government contributed jointly with the fault or negligence of the Contractor in causing such damage, injury or death, and the Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment, or through the exercise of due diligence could not otherwise have avoided such damage, injury, or death;

(ii) The damage, injury or death resulted solely from an act or omission of the Government or its employees or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(c) The Contractor shall at his own expense procure and maintain insurance during the term of this contract, as follows:

(i) Standard Workman's Compensation and Employer's Liability Insurance and Longshoremen's and Harbor Workers' Compensation Insurance, or such of these as may be proper under applicable state or Federal statutes. The Contractor may however, be self-insured against the risk of this subparagraph (i), if he has obtained the prior approval of the Contracting Officer. This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as such self-insurer under applicable provision of law.

(ii) Bodily Injury Liability Insurance in an amount of not less than $300,000 on account of any one occurrence.

(iii) Property Damage Liability Insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 on account of any one occurrence.

(d) All policies of insurance required under the terms of this contract shall, by appropriate endorsement or otherwise, provide that no cancellation thereof shall be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice thereof has been given to the Contracting Officer.

(e) Satisfactory evidence of the required insurance endorsed as required in (d) above, shall be filed with the Contracting Officer prior to the performance of any work under this contract.

(f) The Contractor shall, at his own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a codefendant of the Contractor, arising out of or as a result of the Contractor's performance of work under this contract, whether or not such suit, demand, claim, or action arose out of or was the result of the Contractor's negligence. This shall not prejudice the right of the Government to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interests of the United States.

(g) It is expressly agreed that the provisions contained in (c) through (f) of this clause shall not in any manner limit the liability or extent of liability of the Contractor as provided in (a) and (b) of this clause.

(h) In the event that the Contractor is indemnified, reimbursed, or relieved for any loss or damage to Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prevent the Government's right to recover against third parties for any such loss, or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(End of clause)

252.247-7100 Evaluation of bids.

As prescribed at 247.271-4(a)(1), insert the following provision:

EVALUATION OF BIDS (FEB 1983)

(a) Bids will be evaluated on the basis of total aggregate price of all items within an area of performance under a given schedule. A bidder must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that schedule. Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the schedule.

(b) In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $250 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be

for the items and combinations of items which result in the lowest aggregate to the Government, including such administrative costs.

(End of provision)

ALTERNATE I (FEB 1968)

As prescribed at 247.271–4(a)(1), insert the following paragraph:

(c) Notwithstanding (a) above, when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

252.247–7101 Award.

As prescribed at 247.271–4(a)(2), insert the following provision:

AWARD (APR 1977)

Award shall be made to the qualified low bidder by area under each of the specified schedules to the extent of his stated guaranteed daily capability as provided herein and the clause entitled "Estimated Quantities." The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government. The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

252.247–7102 Estimated quantities.

As prescribed at 247.271–4(a)(3), insert the following provision:

ESTIMATED QUANTITIES (MAY 1970)

(a) The quantities shown by area of performance for each item in this solicitation are the Government's estimates of requirements which may be ordered during the period of the contract.

(b) The Government's estimated maximum daily requirements, excluding Saturday; Sunday; National, State and local holidays are listed below by area of performance within each schedule. Bidders must complete the "Bidder's Guaranteed Daily Capability," which must equal or exceed the Government's minimum acceptable daily capability, for all items within an area of performance for which they submit bids. Failure to do so will render the bid nonresponsive.

	Government's Est Maximum Daily Capability	Government's Minimum Acceptable Daily Capability	Bidder's Guaranteed Daily Capability
Outbound (Schedule I) Area	GCWT.....	GCWT.....	GCWT
Inbound (Schedule II) Area	GCWT.....	GCWT.....	GCWT
Intra-City Area (Schedule III) Area	GCWT.....	GCWT.....	GCWT

(Repeat for each area listed)

(End of provision)

252.247–7103 Schedule formats.

As prescribed at 247.271–4(a)(4), insert the following clause:

SCHEDULE FORMATS (APR 1984)

Schedule I—Outbound Services

Item 1. Complete Service-Outbound (HHGs). Services shall include premove survey, servicing of appliances, disassembly of furniture if required, preliminary packing, inventorying, tagging, wrapping, padding, packing and bracing of household goods in Government owned and furnished shipment containers (Shipping Container FED SPEC PPP–B–580 or Air Cargo) at owner's residence, or at Contractor's facility when ordered by the Contracting Officer, properly securing and sealing for shipment, weighing, obliterating old marking, strapping, and drayage of the container within area of performance. Service shall include loading of shipment on line-haul carrier's equipment at the Contractor's facility. When containers will not accommodate all articles of any lot, loose articles shall be packed in the said containers before any over-packed articles are placed therein. Overflow articles which require packing and containerization shall be paid for under Item 3.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. At owner's residence:				
(1) Container, FED SPEC PPP–B–580.	.....	GCWT.....	.....	.....
(2) Air Cargo Container.	.....	GCWT.....	.....	.....
b. At Contractor's Facility:				
(1) Container, FED SPEC PPP–B–580.	.....	GCWT.....	.....	.....
(2) Air Cargo Container.	.....	GCWT.....	.....	.....

(Repeat a. and b. above for additional areas as needed.)

Item 2. Outbound (HHGs From Non-Temporary Storage). Service shall be the same as Item 1 except that: (i) Household goods shall be picked up at a non-temporary storage facility and transported to Contractor's facility; or (ii) household goods shall be delivered to Contractor's facility; and (iii) premove survey, servicing of appliances, preliminary packing and accessorial services shall not be provided. Overflow articles requiring containerization will be paid for under Item 3.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Pickup by Contractor:				
(1) Container, FED SPEC PPP–B–580.	.....	GCWT.....	.....	.....
(2) Air Cargo Container.	.....	GCWT.....	.....	.....

AREA———Continued

	Est Annual Qty	Unit	Unit Price	Total
b. Delivered to Contractor:				
(1) Container, FED SPEC PPP–B–580.	.....	GCWT.....	.....	.....
(2) Air Cargo Container.	.....	GCWT.....	.....	.....

(Repeat a. and b. above for additional areas as needed.)

Item 3. Complete Service-Outbound (HHGs-Overflow Articles and HHGs Shipments Requiring Other Than PPP-B-580 or Air Cargo Containers). Service shall be the same as Item 1 or Item 2 except that the loose articles may be drayed to Contractor's facility when ordered by the Contracting Officer for containerization in Government-approved, Contractor-furnished containers.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Overseas Pack:				
(1) Overflow and Oversize Articles*.	.....	GCWT.....	.....	.....
(2) Other Shipments.	.....	GCWT.....	.....	.....
b. Domestic Pack:				
(1) Overflow and Oversize Articles*.	.....	GCWT.....	.....	.....
(2) Other Shipments.	.....	GCWT.....	.....	.....

(Repeat a. and b. above for additional areas as needed.)

*The overflow box will be of lesser size than specified in FED Spec PPP–B–580 and must be limited to one per shipment. Oversize boxes are limited to use for items which exceed the dimensions of and cannot be accommodated in a household goods shipping container (Fed Spec PPP–B–580), therefore requiring a specially built box. One or more of this type may be required per shipment. These boxes will be constructed in accordance with Military Specification PPP–B–601, Style A or B and, in addition, will be caulked during assembly.

Item 4. Complete Service-Outbound (Unaccompanied Baggage). Service includes inventorying, packing in Government approved containers, weighing, strapping, obliteration of old marking and marking of unaccompanied baggage. Service shall be performed at owner's residence. (Service may be performed at Contractor's facility when ordered by the Contracting Officer.) Drayage, if required, will be ordered by the Contracting Officer.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Government-Furnished Containers:				
(1) Drayage Included.	.....	GCWT.....	.....	.....
(2) Drayage Not Included.	.....	GCWT.....	.....	.....
b. Contractor-Furnished Containers:				
(1) Drayage Included.	.....	GCWT.....	.....	.....
(2) Drayage Not Included.	.....	GCWT.....	.....	.....

Item 5. Outbound Service-Unaccompanied Baggage Packed by Owner. Service shall include weighing, strapping, banding, obliterating old markings, and marking. Service may include (when necessary) containerization in outer shipping containers as ordered by the Contracting Officer. Drayage, if required, will be ordered by the Contracting Officer.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Containerization Not Required:				
(1) Drayage included.		GCWT		
(2) Drayage Not included.		GCWT		
b. Containerization Required:				
(1) Drayage included.		GCWT		
(2) Drayage Not included.		GCWT		

(Repeat a. and b. above for additional areas as needed.)

Item 6. Goods of Extraordinary Value (Hi-Value). Service shall include inventorying (each item), packing in Government-approved, Contractor-furnished container(s), marking, banding, weighing, and cubing at owner's residence. In jurisdictions where local law prohibits the certification of portable scales, a weight certificate will not be required. Drayage, if required, will be ordered by the Contracting Officer.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Drayage Included		GCWT		
b. Drayage Not Included		GCWT		

(Repeat for additional areas as needed.)
See clause entitled "Drayage" for explanation.

Item 7. Storage. Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges shall not commence earlier than the sixth (6) workday following date of transportation officer's receipt of notification of completion of containerization service. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 8. Containers. Under this item, the Contractor shall supply the following types of containers when ordered:

AREA———

	Est Annual Qty	Unit	Unit Price	Total
Container, FED SPEC PPP-B-[illegible].		GCWT		
Air Cargo, FED SPEC PPP-B-500.		GCWT		

(Repeat for additional areas as needed.)

Item 9. Remarking and Coopering Service.

a. *Remarking for Shipments for Reconsignment or Diversion.* Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
		ea piece		

(Repeat for additional areas as needed.)

b. *Coopering.* Service shall consist of repair of containers not to exceed 30% of total area of shipping container or cost of repairs will not exceed 50% of the container replacement cost as necessary when ordered by the Contracting Officer. Minor repair, such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		ea piece		

(Repeat for additional areas as needed.)

Items 10–14 Reserved (See DoD FAR Supplement 247.271-4(a)(4).)

RECAPITULATION SCHEDULE I

Schedule Total—Area ——— $———
(Repeat for each area listed.)

SCHEDULE II—INBOUND SERVICES

Item 15. Complete Service-Inbound (HHGs). Service shall include drayage to owner's residence, decontainerization and unpacking of loaded containers of household goods and placing goods in appropriate rooms as directed by owner or his designated representative, servicing appliances, assembly of any disassembled articles and removing shipping containers, barrels, boxes/crates and debris from owner's residence and drayage of empty containers to Contractor's or Government facility as directed by Contracting Officer.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 16. Complete Service-Inbound (HHGs). Service shall be same as Item 15 except that drayage of shipment to residence is not required.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 17. Complete Service-Inbound (HHGs). Service shall be same as Item 15 except removal of items from outer container will be at the Contractor's facility and articles will be drayed to owner's residence. This service will be performed only upon order of the Contracting Officer.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 18. Inbound Service-Contractor Facility (HHGs). Service shall include removal of items from outer shipping container(s) at the Contractor's facility and delivery of articles to property owner, motor van carrier or commercial non-temporary storage Contractor at the Contractor's facility.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 19. Complete Service-Extra-ordinary Value Items. Service includes decontainerization and unpacking of containers at owner's residence, and removal of shipping containers and debris from the residence. Drayage, if required, will be ordered by the Contracting Officer.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
a. Drayage Included		GCWT		
b. Drayage Not Included		GCWT		

(Repeat for additional areas as needed.)

Note: See clause entitled "Drayage" for explanation.

Item 20. Complete Service-Inbound (Unaccompanied Baggage). Service shall include drayage of unaccompanied baggage containers to owner's residence, unpacking of containers and removal of all shipping containers and debris from the residence.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
.....	.....	GCWT	.....	.....

(Repeat for additional areas as needed.)

Item 21. Complete Service-Inbound (Unaccompanied Baggage). Service shall be same as Item 20 except that drayage to residence is not required.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
.....	.....	GCWT	.....	.....

(Repeat for additional areas as needed.)

Item 22. Inbound Service-Contractor Facility (Unaccompanied Baggage). Service shall include removal of unaccompanied baggage from outer shipping containers for pickup by the owner at the Contractor's facility.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
.....	.....	GCWT	.....	.....

(Repeat for additional areas as needed.)

Item 23. Storage. Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges under this item shall not commence earlier than the sixth (6th) workday following date of notification to transportation officer of arrival of shipment. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
.....	.....	GCWT	.....	.....

(Repeat for additional areas as needed.)

Item 24. Remarking/Coopering Service.

a. *Remarking of Shipments for Reconsignment or Diversion.* Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
.....	.....	GCWT	.....	.....

(Repeat for additional areas as needed.)

b. *Coopering.* Service shall consist of repair of containers not to exceed 30% of total area of shipping container or cost of repairs will not exceed fifty percent (50%) of the container replacement cost as necessary when ordered by the Contracting Officer. Minor repair such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
.....	.....	ea piece	.....	.....

(Repeat for additional areas as needed.)

Items 25–28 Reserved (See DoD FAR Supplement 247.271–4(a)(4).)

RECAPITULATION SCHEDULE II

Schedule Total—Area ——— $———

SCHEDULE III—INTRA-CITY AND INTRA-AREA MOVERS

Item 29. Complete Service for Intra-City and Intra-Area Moves. Service shall include a premove survey, servicing of appliances, packing at owner's residence to protect household goods properly during transit, tagging of items, inventorying, loading, weighing, drayage, unloading, unpacking, and placing of each article in owner's residence (new) as directed by owner or his designated representative and removal of all empty containers and material from residence. Service shall be in conformance with provisions of MIL–STD–212D, except that all service shall be performed within times stipulated in clause entitled "Time Requirements."

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
.....	.....	NCWT	.....	.....

(Repeat for additional areas as needed.)

Item 30. Storage. Storage of articles shall be furnished incident to services performed under Item 29 when ordered by the Contracting Officer. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
.....	.....	NCWT	.....	.....

(Repeat for additional areas as needed.)
(Insert when required.)

RECAPITULATION SCHEDULE III

Schedule Total-Area ——— $———.
(Repeat for each area listed.)

(End of clause)

252.247–7104 Scope of contract.

As prescribed at 247.271–4(b)(1), insert the following clause:

SCOPE OF CONTRACT (APR 1977)

The Packing and Containerization Contractor, hereafter referred to as Contractor, shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall (i) furnish all materials except Government-owned containers (Container, Federal Specification PPP–B–580 and Air Cargo), all equipment, plant and labor; and (ii) perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage; stenciling; cooperage; drayage of personal property in connection with other services; and decontainerization of inbound shipments of personal property. Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading method.

(End of clause)

252.247–7105 Period of contract.

As prescribed at 247.271–4(b)(2), insert the following clause:

PERIOD OF CONTRACT (MAY 1970)

This contract shall begin 1 January 19— and shall end 31 December 19—, both dates inclusive, *Provided,* however, that any work ordered before, and not completed by, the expiration of this contract period shall be governed by the terms of this contract. Orders requiring commencement of performance more than 15 days after the expiration date shall not be placed under this contract.

(End of clause)

252.247–7106 Ordering limitation.

As prescribed at 247.271–4(b)(4), insert the following clause:

ORDERING LIMITATION (MAY 1970)

Ordering for items of supplies or services required will be placed under this contract by the Government and performed by the Contractor holding the initially awarded contract, to the extent of his guaranteed maximum daily capability. However, the Contractor may accept an additional quantity in excess of his capability to accommodate a single order. Orders for additional requirements will be placed with and performed by the next higher Contractor to the extent of his guaranteed maximum daily capability in a like manner. This procedure will be repeated until the Government's total daily requirement is fulfilled. In the event this procedure does not fulfill the Government's total daily requirement, additional orders may be offered under the contract to Contractors without regard to their guaranteed maximum daily capability.

(End of clause)

252.247–7107 Contract areas of performance.

As prescribed at 247.271–4(b)(5), insert the following clause:

CONTRACT AREAS OF PERFORMANCE (MAY 1970)

(a) All areas of performance described in (b) below will be considered to include the Contractor's facility regardless of geographical location.

(b) Service shall be performed within the following defined areas of performance which include terminals identified therein: (Define each area of performance as required; see DoD FAR Supplement 247.271–2(b).

(End of clause)

252.247–7108 Requirements.

As prescribed at 247.271–4(b)(6), insert the following paragraph:

REQUIREMENTS (APR 1984)

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order; and the rights and obligations of the Contractor and the Government respecting those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period of this contract.

(End of clause)

252.247–7109 Facilities.

As prescribed at 247.271–4(b)(7), insert the following clause:

FACILITIES (DEC 1982)

(a) As the minimum standard for qualifications of a Contractor's warehouse, it must have either (i) an acceptable automatic sprinkler system; or (ii) a supervised fire detection and reporting system. Installed fire protective systems must be accredited by the cognizant fire insurance rating organization for insurance rate credit. Additionally, the facility will be protected by an adequate water supply for fire fighting and a fire department which is responsive 24 hours a day. Statements from the cognizant fire insurance rating organization, municipal fire department, or local authority, having jurisdiction, will be used as a basis for determining the sufficiency or adequacy of a fire fighting water supply and the responsiveness of a fire department to protect a facility.

(b) The following information shall be furnished by the Contractor upon receipt of award:

Evidence of the following kinds and minimum amounts of insurance covering work herein to be performed by the Contractor. The Contractor shall maintain at least the minimum coverage stated below* throughout the contract period. Each policy shall contain an endorsement that cancellation or material change in the policy shall not be effective until after a 30-day written notice is furnished to the Contracting Officer.

(1) Workmen's Compensation Insurance $*———.

(2) Comprehensive General Liability Insurance $*——.

(3) Automobile Liability Insurance $*———

(End of clause)

*The insurance coverage specified in FAR 28.307–2 is the minimum insurance required. Additional coverage and higher limits may be required by the Contracting Officer.

252.247–7110 Performance.

As prescribed at 247.271–4(b)(8), insert the following clause:

PERFORMANCE (APR 1977)

(a) The services called for hereunder shall be performed in conformance with the latest issue of MIL–STD 212, "Preparation of Household Goods for Shipment or Storage and Related Services," in effect on date of solicitation, for Schedules I and II, unless otherwise directed by the Contracting Officer. The following are desired minimum stowage factor standards in stuffing of shipping containers:

(1) For Federal Specifications PPP–B–580 containers—5.7 net lbs. per gross cubic foot of container cube.

(2) For air cargo containers—8.9 net lbs. per gross cubic foot of container cube. Failure to meet the above standards may be cause for rejection of the service performed unless the Contractor can demonstrate the standards cannot be met. (The term "stuffing" as related to containers means loading of personal property into shipping containers.)

(b) Labor employed to perform pickup and delivery, inventorying, packing, crating, weighing, marking, loading, drayage, unpacking, blocking, bracing, and other services described herein shall be competent in the performance of such services.

(c) Inventory of shipment shall be accomplished pursuant to provisions of the latest issue of MIL–STD 212 in effect on date of solicitation.

(d) All services shall be performed in accordance with the priority order established by the Contracting Officer.

(e) MIL–STD 212, "Military Standard-Preparation of Household Goods for Shipment and Storage and Related Services," and applicable specifications referred to therein are available for reference in the local procurement or transportation offices.

(f) When pickup of shipments is part of line-haul service, the Contractor shall perform loading on freight carrier's equipment at Contractor's facility.

(End of clause)

252.247–7111 Time requirements.

As prescribed at 247.271–4(b)(9), insert the following clause:

TIME REQUIREMENTS (MAY 1970)

(a) The Contractor shall commence containerization of household goods or unaccompanied baggage at owner's residence or Contractor's facility on the date specified by the Contracting Officer. If containerization is ordered at Contractor's facility, the household goods or unaccompanied baggage shall be picked up on the date and within the hours specified. Unless a longer period is authorized by the Contracting Officer, the maximum containerization time allowed at the Contractor's facility shall be three (3) working days following specified pickup date for household goods and two (2) working days following specified pickup date for unaccompanied baggage.

(b) The Contracting Officer or his designated representative shall normally give the Contractor notice to commence containerization or to pick up household goods or baggage shipments at least twenty-four (24) hours prior to the date specified.

(c) Delivery or removal of household goods or unaccompanied baggage to or from owner's residence, or containerization of household goods or unaccompanied baggage at owner's residence, shall commence between the hours of 8:00 a.m.–12m. (noon) or 12m (noon)–5:00 p.m. as specified, Monday through Friday, officially declared National, State or local holidays excluded. The Contracting Officer may authorize performance of services at other times when agreed to by the owner or his authorized agent and the Contractor.

(d) The Contractor shall accept and pick up inbound shipments of household goods, or unaccompanied baggage, effect delivery thereof to the destination, and shall unload and unpack the same on the date and within the hours specified by the Contracting Officer during the working hours set forth above. The Contractor will notify the Contracting Officer upon arrival of a shipment but not later than the morning of the next workday. Delivery shall be effected within two (2) working days following date of receipt or notification of arrival unless otherwise specified.

(End of clause)

252.247–7112 Demurrage.

As prescribed at 247.271–4(b)(10), insert the following clause:

DEMURRAGE (MAY 1970)

The Contractor shall be liable for all demurrage, detention, or other charges accruing as a result of his failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

252.247–7113 Vans.

As prescribed at 247.271–4(b)(11), insert the following clause:

VANS (MAY 1970)

Vans used in transporting unpacked and uncrated furniture shall be of the closed type and shall be supplied with sufficient clean pads, covers, and any other equipment to protect personal property adequately during transit and delivery. Vehicles used in transporting containerized personal property may be the open type; *Provided*, a weatherproof tarpaulin is used to protect the shipment.

(End of clause)

252.247–7114 Drayage.

As prescribed at 247–271–4(b)(12), insert the following clause:

DRAYAGE (APR 1977)

(a) Drayage under the Schedules of Items in this contract shall include all outbound or inbound hauling of loose articles.

containerized shipments and empty Government containers within the area of performance as defined in the clause entitled, "Contract Areas of Performance." Each area includes the Contractor's facility, storage warehouse other than Contractor's facility, frequently used air and surface transportation terminals, military installation shipping offices and ocean or river terminals/piers. The price of each item of service includes drayage within the area awarded, unless otherwise provided in the item.

(b) Repositioning of empty Government containers within the contractual area of performance, shall be as directed by the Contracting Officer or his designated representative at no additional cost to the Government.

(End of clause)

252.247-7115 Liability.

As prescribed at 247-271-4(b)(13), insert the following clause:

LIABILITY (JUL 1980)

(a) "Article" means any shipping piece or package and its contents.

(b) If notified within one (1) year after delivery that the owner has discovered loss or damage to his property, the Contractor agrees to indemnify the owner for loss of or damage to the owner's property which arises from any cause while it is in the Contractor's possession as follows:

(i) Non-negligent Damage. The Contractor shall indemnify owners for any loss of or damage to their property which results from any cause, other than the Contractor's negligence, at a rate not to exceed sixty cents ($.60) per pound per article.

(ii) Negligent Damage. When loss or damage is caused by the negligence of the Contractor, he shall be liable for the full cost of satisfactory repair or for the current replacement value of the article. The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(c) In the absence of evidence or supporting documentation which places liability on a carrier or another Contractor, the destination Contractor will be presumed to be liable for the loss or damage of which it is timely notified.

(End of clause)

252.247-7116 Erroneous shipments.

As prescribed at 247.271-4(b)(14), insert the following clause:

ERRONEOUS SHIPMENTS (MAY 1977)

(a) It shall be the responsibility of the Contractor at his expense to have articles of personal property which he inadvertently packed with goods of other than the rightful owner forwarded to the rightful owner by the quickest means of transportation, as selected by the Contracting Officer.

(b) Further, it shall be the responsibility of the Contractor to insure that all shipments have been stenciled correctly. When a shipment is forwarded to an incorrect address due to incorrect stenciling by the Contractor or his personnel, the shipment shall be returned with the least possible delay to its rightful owner by a mode of transportation selected by the Contracting Officer. The Contractor shall be liable for all costs incurred including charges for preparation, drayage and transportation.

(c) It shall be the responsibility of the Contractor to deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. Pieces of one lot not included in delivery and remaining at Contractor's facility after the departure of the original shipment shall be forwarded to the owner with the least possible delay by a mode of transportation selected by the Contracting Officer or his designated representative. The Contractor shall be liable for all additional transportation costs incurred in excess of what it would have cost the Government had the entire lot been shipped at the same time.

(End of clause)

252.247-7117 Additional marking instructions.

As prescribed at 247.271-4(b)(15), insert the following clause:

ADDITIONAL MARKING INSTRUCTIONS (MAY 1970)

(a) All containers of professional books, papers or equipment shall be stenciled "Professional Books, Paper, Equipment" and their weights shall be shown separately on packing lists.

(b) Unaccompanied baggage containers shall be marked as such.

(End of clause)

252.247-7118 Weight certificates.

As prescribed at 247.271-4(b)(16), insert the following clause:

WEIGHT CERTIFICATES (MAY 1970)

A weight certificate, in triplicate, from a certified scale or weightmaster shall be submitted to the transportation officer for all outbound shipments.

(End of clause)

252.247-7119 Report of lost/damaged material.

As prescribed at 247.271-4(b)(17), insert the following clause:

REPORT OF LOST/DAMAGED MATERIAL (APR 1977)

It shall be the responsibility of the Contractor when making delivery to prepare a separate report listing all articles lost or damaged and describing such loss or damage. This report will be forwarded to the transportation officer within seven (7) working days after the delivery of the goods.

(End of clause)

252.247-7120 Subcontracting.

As prescribed at 247.271-4(b)(18), insert the following clause:

SUBCONTRACTING (MAY 1970)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved Subcontractor shall meet the minimum standards required by this contract.

(End of clause)

252.247-7121 Additional services.

As prescribed at 247.271-4(b)(19), insert the following clause:

ADDITIONAL SERVICES (APR 1977)

Additional services not included in the schedule, but required for satisfactory completion of services ordered under this contract shall be provided at a rate not in excess of the rate for like services as contained in applicable Military Rate Tenders or in the absence of a Military Rate Tender, applicable tariff in effect at time of order.

(End of clause)

252.247-7200 Ocean transportation of government-owned supplies.

As prescribed at 247.507(S-70), insert the following clause:

OCEAN TRANSPORTATION OF GOVERNMENT-OWNED SUPPLIES (NOV 1963)

The Contractor shall advise the Contracting Officer of any proposed transportation by ocean vessels of Government-owned property in the possession of the Contractor or his subcontractors (including property under which title will pass to the Government prior to such transportation). Such property shall subsequently be transported only on United States-flag vessels as directed by the Contracting Officer.

(End of clause)

252.249-7000 Special termination costs.

In accordance with 249.7003(a), insert the following clause:

SPECIAL TERMINATION COSTS (FEB 1975)

(a) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in his estimate of costs incurred or to be incurred, any amount for special termination costs, as herein defined, to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government. The Contractor agrees to perform this contract in such a manner that his claim for such special termination costs will not exceed $———. The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount. Special termination costs are defined as costs only in the following categories:

(1) severance pay as provided in FAR 31.205-6(g);

(2) reasonable costs continuing after termination as provided in FAR 31.205-42(b);

(3) settlement of expenses as provided in FAR 31.205-42(g);

(4) costs of return of field service personnel from sites as provided in FAR 31.205-35 and FAR 31.205-46(c); and

(b) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum

amount payable therefore by the Government.

(c) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

252.251-7000 Ordering from government supply sources.

As prescribed at 251.107, insert the following clause:

ORDERING FROM GOVERNMENT SUPPLY SOURCES (APR 1984)

(a) Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules shall follow the terms of the applicable schedule and authorization and include with each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor) and

(2) The following statement:

This order is placed under written authorization from ———— dated ————. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(3) The complete address(es) to which the contractor's mail, freight, and billing documents are to be directed.

(b) If a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization, the contractor shall report the circumstances to the General Services Administration, FFN, Washington, D.C. 20406, with a copy to the authorizing office.

(c) Contractors placing orders under nonmandatory schedule contracts and requirements contracts issued by GSA, Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services shall follow the terms of the applicable contract and the procedures in (a)(1), (2), and (3) above.

(d) Contractors placing orders for Government stock shall—

(1) Comply with the requirements of the contracting officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948-A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of their contracts; and

(4) Pay bills from Government supply sources promptly upon receipt of billings.

(e) Authorizations for subcontractors to utilize Government supply sources shall be requested only by the prime contractor and shall not be granted without approval of the prime contractor.

(End of clause)

252.251-7001 Use of interagency motor pool vehicles and related services.

As prescribed in 251.205, insert the following clause:

USE OF INTERAGENCY MOTOR POOL VEHICLES AND RELATED SERVICES (APR 1984)

(a) Authorized contractors shall submit requests for interagency motor pool vehicles and related services in writing to the appropriate GSA regional Customer Service Bureau, Attention: Motor Equipment Activity; except that requests for more than five vehicles shall be submitted to General Services Administration, FTM, Washington, D.C. 20406, and not to the regions. Each request shall include the following:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and period of use.

(3) A list of the contractor's employees who are authorized to request vehicles and related services.

(4) A listing of the make, model, and serial numbers of contractor-owned or leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) Contractors requesting unusual quantities of vehicles should do so as far in advance as possible to facilitate availability.

(c) Contractors authorized to use interagency motor pool vehicles and related services shall comply with the requirements of 41 CFR 101-39 and the operator's packet furnished with each vehicle.

(d) Contractors shall establish and enforce suitable penalties for their employees who use or authorize the use of Government vehicles for other than performance of Government contracts.

(e) The contractor shall assume, without the right of the reimbursement from the Government, the cost or expense of any use of motor pool vehicles and services not related to the performance of the contract.

(f) Authorizations for subcontractors to utilize interagency motor pool vehicles and related services shall be requested only by the prime contractor and shall not be granted without the approval of the prime contractor.

(End of clause)

252.270-7000 Warranty exclusion and limitation of damages.

As prescribed at 270.310(a), insert the following clause:

WARRANTY EXCLUSION AND LIMITATION OF DAMAGES (FEB 1983)

Except as expressly set forth in writing in this agreement, or except as provided in the Contractor Representation clause, if applicable, and except for the implied warranty of merchantability, there are no warranties expressed or implied. In no event will the contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, Section 2-715, in effect in the District of Columbia as of January 1, 1973; i.e., Consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and need of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

252.270-7001 Contractor representation.

As prescribed at 270.310(b), insert the following clause:

CONTRACTOR REPRESENTATION (APR 1984)

Unless the Contractor expressly states otherwise in his proposal, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the system/item proposed is capable of meeting those requirements. However, once the system/item is accepted by the Government, contractor responsibility under this clause ceases. In the event of any inconsistency between the detailed specification and the functional specification contained in the solicitation, the former will control.

(End of clause)

252.270-7002 Fixed price options.

As prescribed at 270.310(c), insert the following clause:

(The data required for the "fill-ins" should be suitably highlighted, and inapplicable bracketed portions should be deleted.)

FIXED PRICE OPTIONS (APR 1984)

(a) This solicitation is being conducted on the basis that known requirements extend beyond the initial contract period (and exceed the basic quantity*) to be awarded, but due to the unavailability of funds, including statutory limitations on obligations of funds, the options cannot be exercised at the time of award of the initial contract. There is a reasonable certainty that funds will be available thereafter to permit exercise of the options. Because realistic competition for the option periods (and quantity*) is impracticable once the initial contract is awarded, it is in best interest of the Government to evaluate options in order to eliminate the possibility of a "buy-in".

(b) In order to safeguard the integrity of the Government's evaluation and because the Government is required to acquire ADPE and related items on the basis of fulfilling the systems-life requirement at the lowest overall cost, price and other factors considered, requirements for optional periods (and additional quantities*) as well as initial requirements will be evaluated for award on a fixed-price basis. Since the systems or items to be acquired under the solicitation have an expected life of ** months (hereafter referred to as "system life" or "item life", as appropriate), and since lowest system (item) life costs are synonymous with lowest overall costs, the contract resulting from a solicitation will contain options at fixed prices for renewals for subsequent periods based on fiscal years throughout the projected system (item) life (and options at fixed prices for all stated optional quantities of supplies or services not included in the initial requirements*). Despite the foregoing,

offerors are reminded that although the evaluation that will lead to contract award of the initial contract, as well as the exercise of the options, is dependent not only on the continued existence of the requirement and the availability of funds but also on an affirmative determination that each exercise of an option is in the best interest of the Government.

(c) Options included in offers submitted in response to this solicitation will be evaluated as follows:

(1) *Firm Fixed Prices.* To be considered acceptable under the solicitation, offerors must offer (i) fixed prices for the initial contract period for the initial systems or items being acquired, (ii) fixed prices or prices which can be finitely determined for each separate option renewal period, which prices must remain in effect throughout that period, and (iii) fixed prices or prices which can be finitely determined for all required option quantities.*

(2) *Evaluation of Prices.* Offers will be evaluated for purposes of award by adding the total prices of all optional periods (and all stated optional quantities*) to the total price for the initial contract period covering the initial system or items. These prices will be adjusted by the appropriate discount factors shown in *** of the solicitation document. Evaluation of option prices will not obligate the Government to exercise the options. Offers which do not include fixed or determinable system (item) life prices cannot be evaluated for the total systems-life requirement and will be rejected. Offers which meet the mandatory requirements will be evaluated on the basis of lowest overall cost to the Government, price and other factors considered. Evaluated optional features, if any, will also be evaluated.

(3) *Separate Charges.* Separate charges, in any form, are not solicited. Offers containing any charges for failure to exercise any option will be rejected.

(d) Selection of an offer shall be made on the basis of lowest overall cost, price and other factors considered, to the Government provided that the contract price reasonably represents the value of bona fide fiscal year requirements, rather than representing, to any extent, a portion of any other fiscal year's requirements. This determination with respect to the contract price shall be made after consideration of such factors as commercial catalog prices for short-term leases, offeror system startup expenses, multiyear price protection, assured system-life availability of equipment, software, and vendor support. If a determination is made that an offer does not meet these criteria, that offer cannot be accepted for award.

(e) Award of an initial contract will not obligate the Government to exercise any contractual option. Prior to exercising any option, the Government will make a determination that (i) funds are available, (ii) the requirement covered by the option fulfills an existing need of the Government, and (iii) the exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(f) Failure to exercise an option shall not obligate the Government to pay any charges other than the contract price including exercised options.

(End of clause)

* Delete when inapplicable.

** Insert the specific number of months applicable to the solicitation.

*** Insert location in the solicitation where appropriate discount factors and the contemplated payment schedule are specified.

252.270-7003 Option to extend the term of the contract.

As prescribed at 270.310(d), insert the following clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT (APR 1984)

This contract is renewable at the prices stated elsewhere in the contract, at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor by the first day of each fiscal year of the Government or within 30 days after funds for that fiscal year become available, whichever date is the later; *provided,* that the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least **** days before this contract is to expire. Such a preliminary notice of intent to renew shall not be deemed to commit the Government to renewals. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ** months.

(End of clause)

** Insert the specific number of months applicable to the solicitation.

**** Insert 30 days unless a longer period is appropriate.

252.270-7004 Option for increased quantities.

As prescribed at 270.310(e), insert the following clause:

OPTION FOR INCREASED QUANTITIES (FEB 1983)

The Government may increase the items called for herein by the quantities stated and at the unit prices specified elsewhere in this contract. The Contracting Officer may exercise this option at any time within the period specified in the contract by giving written notice to the Contractor. Delivery of items added by exercise of this option shall be in accordance with the delivery schedule set forth elsewhere in this contract.

(End of clause)

252.270-7005 Discontinuance repricing.

As prescribed at 270.310(f), insert the following provision:

DISCONTINUANCE REPRICING (APR 1984)

(a) By the incorporation of this solicitation provision, the Government indicates its willingness to incorporate into the resulting contract the clause at 252.270-7006, Discontinuance of Rental and Repricing, which is an alternative to standard termination for convenience procedures in appropriate circumstances.

(b) The following example illustrates the operation of the clause:

—Monthly rental price for the period in which the discontinuance date falls for the discontinued item as stated in the contract. $90

—Monthly rental price for the item effective at the time of initial award of the system contract as stated in the vendor's ADP schedule contract (or the established commercial catalog price at the same time, if lower or if no ADP schedule contract effective. $120

—Months of rental prior to the discontinuance date during the initial or option contract period of performance in which the discontinuance date occurs. $10

—Rental charges earned during the applicable period of performance (10×$90) $900

—Discontinuance charges to be added at discontinuance date ($120−$90×10) $300

—Total rental charges plus discontinuance charges ($900+$300). $1,200

—Ceiling on total of rental changes and discontinuance repricing charges (12×$90). $1,080

—Total price during period for the discontinued item ($1,080 ceiling lower than total rental earned plus discontinuance charges). $1,080

(c) Offeror election. The undersigned offeror ——— agrees to, ——— declines, the incorporation of the Discontinuance of Rental and Repricing clause in any contract which may result from this solicitation.

(End of provision)

252.270-7006 Discontinuance of rental and repricing.

As prescribed at 270.310(g), insert the following clause:

DISCONTINUANCE OF RENTAL AND REPRICING (APR 1984)

(a) The Government may, in lieu of a termination under the Termination for Convenience of the Government clause of this contract, during the initial or any option period of performance of this contract, discontinue rental of any equipment or software on a date specified in a written notice provided to the Contractor not less than 30 days prior to the specified discontinuance date. The Government may discontinue the rental on shorter notice when agreed to by the Contractor.

(b) In the event of discontinuance of rental under (a) above, the Government shall pay termination repricing charges to the Contractor as computed in accordance with this paragraph (b). The charges shall be the remainder obtained by subtracting the contract monthly rental price effective at the discontinuance date for the discontinued equipment or software item from the monthly rental price for the item under the GSA/ADP schedule contract or the established commercial catalog price, whichever is less, effective at the time of award of the contract's initial period of performance, multiplied by the number of months the item was rented during the particular contract period of performance (initial or option) in which the discontinuance was effective.

provided, in no event shall the total of termination repricing charges and the contract rental price for the number of months the item was rented during the period in which discontinuance was effective exceed the contract price for the item for the entire period.

(c) The provisions of this clause shall prevail when notice pursuant to this clause is made.

(End of clause)

252.270–7007 Rights in privacy safeguards.

As prescribed at 270.904, insert the following clause:

RIGHTS IN PRIVACY SAFEGUARDS (APR 1984)

(a) The details of any and all safeguards that the Contractor may design or develop under this contract shall become and remain the property of the Government and shall not be published or disclosed in any manner without the express written consent of the Government.

(b) The details of any and all safeguards that may be revealed to the Contractor by the Government in the course of performing under this contract shall not be published or disclosed in any manner without the express written consent of the Government.

(End of clause)

252.270–7008 Access to contractor facilities and records—privacy safeguards inspection.

As prescribed at 270.904, insert the following clause:

ACCESS TO CONTRACTOR FACILITIES AND RECORDS—PRIVACY SAFEGUARDS INSPECTION (APR 1984)

(a) The Government shall, following presentation of advance written notice of ——— days be afforded full, free, and uninhibited access to all facilities and installations, and to all technical capabilities and operations, and to all documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(b) In the event that new or unanticipated threats or hazards are discovered by either the Government or the contractor, or that existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards with final determination of appropriateness being made by the Government. The cost of such changes or corrections shall be a matter of negotiation. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

(End of clause)

252.270–7009 American standard code for information interchange (ASCII) system requirements.

As prescribed at 270.1103(a)(1), insert the following clause:

AMERICAN STANDARD CODE FOR INFORMATION INTERCHANGE (ASCII) SYSTEM REQUIREMENTS (APR 1984)

The system, upon receiving a hardware or software command, shall accept data on magnetic tape, paper tape, or any other input media covered by an approved Federal Information Processing Standards Publication (FIPS PUB) in ACSII code and collating sequence prescribed in FIPS PUB 1–1 and in the format prescribed in FIPS PUBS 2, 3–1, 25, 50, or other applicable FIPS PUBS. Such data may be translated, if necessary, into a form that the proposed equipment can internally process provided that upon receiving a hardware or software command the proposed equipment can produce the processed data on magnetic tape, paper tape, and other output media in the ACSII code and collating sequence prescribed in FIPS PUB 1–1 and in the format prescribed in FIPS PUBS 2, 3–1, 25, 50, or other applicable FIPS PUBS.

(End of clause)

252.270–7010 Punched paper tape readers and punches.

As prescribed at 270.1103(a)(2), insert the following clause:

PUNCHED PAPER TAPE READERS AND PUNCHES (APR 1984)

Punched paper tape equipment shall be capable of reading and punching in the prescribed American Standard Code for Information Interchange (ASCII) code and format specified in FIPS PUBS 1–1 and 2.

(End of clause)

252.270–7011 Recorded magnetic tape for information interchange (800 CPI, NRZI).

As prescribed at 720.1103(a)(3), insert the following clause:

RECORDER MAGNETIC TAPE FOR INFORMATION INTERCHANGE (800 CPI, NRZI) (APR 1984)

All 9-track digital magnetic tape recording and reproducing equipment employing ½-inch wide tape at the recording density of 800 characters per inch (CPI), including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 3–1.

(End of clause)

252.270–7012 Rectangular holes in 12-row punched cards.

As prescribed at 270.1103(a)(4), insert the following clause:

RECTANGULAR HOLES IN 12-ROW PUNCHED CARDS (FEB 1983)

All punching or reading equipment utilizing 12-row 3¼-inch punched cards used in data processing, communications, and similar operations shall be capable of punching and reading rectangular holes of a size and location specified in FIPS PUB 13.

(End of clause)

252.270–7013 Hollerith punched card code.

As prescribed at 270.1103(a)(5), insert the following clause:

HOLLERITH PUNCH CARD CODE (APR 1984)

All punching or reading equipment utilizing 12-row 3¼-inch wide, rectangular hole punched cards used in data processing, communications, and similar operations shall be capable of punching or reading the Code for Information Interchange, FIPS PUB 1–1, or one of the approved Subsets of the Standard Code for Information.

(End of clause)

252.270–7014 Subsets of the standard code for information interchange.

As prescribed at 270.1103(a)(6), insert the following clause:

SUBSETS OF THE STANDARD CODE FOR INFORMATION INTERCHANGE (APR 1984)

Printers; display devices; data acquisition, preparation, and transcription devices; data communication terminal devices; punched card equipment; and other data processing or communications equipment not requiring the 128-character set of the Federal Code of Information Interchange, FIPS PUB 1–1, shall conform to one of the approved character Subsets of the Standard Code for Information Interchange, FIPS PUB 15. Printers of the "chain" or "train" or other replaceable symbol technology may also be provided with optional subsets having a different number of characters from those specified in FIPS PUB 15 in order to increase the printer's repertoire of symbols or the printer's speed as required for local use, provided the ability to interchange information by the selected character subpart (FIPS PUB 15) is retained in the data processing system.

(End of clause)

252.270–7015 Flowcharts, symbols, and their usage in information processing.

As prescribed at 270.1103(a)(7), insert the following clause:

FLOWCHARTS, SYMBOLS, AND THEIR USAGE IN INFORMATION PROCESSING (FEB 1983)

All new information processing system documentation involving the use of flowcharts that may result from this solicitation shall comply with FIPS PUB 24.

(End of clause)

252.270–7016 Recorded magnetic tape for information interchange (1600 CPI, Phase Code 0).

As prescribed at 270.1103(a)(8), insert the following clause:

RECORDED MAGNETIC TAPE FOR INFORMATION INTERCHANGE (1600 CPI, PHASE CODE O) (APR 1984)

All 9-track digital magnetic tape recording and reproducing equipment and employing

½-inch wide tape at the recording density of 1,600 characters per inch (CPI) phase encoded, including associated programs, shall provide the capability to accept and generate recorded tape in compliance with the requirements set forth in FIPS PUB 25.

(End of clause)

252.270-7017 One-inch perforated paper tape for information interchange.

As prescribed at 270.1103(a)(9), insert the following clause:

ONE-INCH PERFORATED PAPER TAPE FOR INFORMATION INTERCHANGE (APR 1984)

All one-inch wide perforated paper tape and related 8-channel paper tape punch and reading equipment which are utilized in Federal information processing systems, communication systems, and associated terminals employing perforated paper tape equipment, shall provide the capability to accept and generate tape in compliance with the requirements set forth in FIPS PUB 26.

(End of clause)

252.270-7018 Take-up reels for the one-inch perforated tape for information interchange.

As prescribed at 270.1103(a)(10), insert the following clause:

TAKE-UP REELS FOR THE ONE-INCH PERFORATED TAPE FOR INFORMATION INTERCHANGE (APR 1984)

All one-inch perforated tape take-up reels and related devices employing such reels, including paper tape readers, punches, and related tape-handling equipment, which are used in Federal information processing systems and associated equipment employing such devices, shall provide the capability to accept one of the two types of reels specified in FIPS PUB 27.

(End of clause)

252.270-7019 Software summary for describing computer programs and/or automated data systems.

As prescribed at 270.1103(a)(11), insert the following clause:

SOFTWARE SUMMARY FOR DESCRIBING COMPUTER PROGRAMS AND/OR AUTOMATED DATA SYSTEMS (APR 1984)

All documentation of computer programs and/or automated data systems shall include completed Standard Form (SF 185) summaries as described by FIPS PUB 30.

(End of clause)

252.270-7020 Optical character recognition equipment.

As prescribed at 270.1103(a)(12), insert the following:

OPTICAL CHARACTER RECOGNITION EQUIPMENT (APR 1984)

All applicable Optical Character Recognition (OCR) equipment or services shall comply with the provisions of FIPS PUB 32-1. Applicable OCR equipment also includes data input devices such as typewriters, line printers, and CRT displays. Applicable services include date preparation and processing information represented in OCR form.

(End of clause)

252.270-7021 Character set for handprinting.

As prescribed at 270.1103(a)(13), insert the following clause:

CHARACTER SET FOR HANDPRINTING (APR 1984)

All applicable Optical Character Recognition (OCR) equipment or services which are capable of reading handprinted material shall comply with FIPS PUB 33. The applicable services include data preparation and processing of information represented in OCR form.

(End of clause)

252.270-7022 Code extension technique in 7 or 8 bits.

As prescribed at 270.1103(a)(14), insert the following clause:

CODE EXTENSION TECHNIQUE IN 7 OR 8 BITS (APR 1984)

All coded character sets which require control function and/or graphic symbols that are not included in the 128 characters of ASCII shall be implemented through the use of the code extension methods and techniques as described in FIPS PUB 35.

(End of clause)

252.270-7023 Graphic representation of the control characters of ASCII (FIPS PUB 1-1).

As prescribed in 270.1103(a)(15), insert the following clause:

GRAPHIC REPRESENTATION OF THE CONTROL CHARACTERS OF ASCII (FIPS PUB 1-1) (APR 1984)

All applicable equipment that prints or displays graphic representations of any or all the control characters of ASCII (FIPS PUB 1-1) or of the characters "space" or "delete" shall comply with the requirements set forth in FIPS PUB 36. This standard also applies to equipment that prints these graphic representations on media such as perforated tape, punched cards, or listings.

(End of clause)

252.270-7024 Data Encryption Standards (DES).

As prescribed at 270.1103(a)(16), insert the following clause:

DATA ENCRYPTION STANDARDS (DES) (APR 1984)

In the event that a data encryption requirement is specified, such encryption shall be accomplished in accordance with FIPS PUB 46. Implementations of the Standard embodied in products or services offered, that are asserted to have an encryption capability in conformance with FIPS PUB 46, shall have the capability validated by the National Bureau of Standards prior to being proposed. Arrangements for validation may be made with the Systems and Software Division, National Bureau of Standards, Washington, DC 20234.

(End of clause)

252.270-7025 Recorded magnetic tape for information interchange, 6250 characters per inch (CPI) (246 CPMM), group coded recording.

As prescribed in 270.1103(a)(17), insert the following clause:

RECORDED MAGNETIC TAPE FOR INFORMATION INTERCHANGE, 6250 CHARACTERS PER INCH (CPI) (246 CPMM), GROUP CODED RECORDING (APR 1984)

All applicable digital magnetic tape recording and reproducing equipment which employs ½-inch wide (12.7mm) magnetic computer tape at the recording density of 6250 characters per inch (246 characters per millimeter) group coded recording, including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 50.

(End of clause)

252.270-7026 Magnetic tape cassettes for information interchange (3.810mm (0.150 inch) tape at 32 BPMM (800 BPI, PE).

As prescribed at 270.1103(a)(18), insert the following clause:

MAGNETIC TAPE CASSETTES FOR INFORMATION INTERCHANGE (3.810MM (0.150 INCH) TAPE AT 32 BPMM (800 BPI, PE) (APR 1984)

All magnetic tape cassette recording and reproducing equipment which employs 3.810mm (0.150 inch) wide magnetic tape at the recording density of 32 bits per millimeter (800 bits per inch) using phase encoding techniques, including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 51.

(End of clause)

252.270-7027 Recorded magnetic tape cartridge for information interchange, 4-track, 6.30mm (0.25 inch), 63 BPMM (1600 BPI) phase encoded.

As prescribed at 270.1103(a)(19), insert the following clause:

RECORDED MAGNETIC TAPE CARTRIDGE FOR INFORMATION INTERCHANGE, 4-TRACK, 6.30MM (0.25 INCH) 63 BPMM (1600 BPI) PHASE ENCODED (APR 1984)

All magnetic tape cartridge recording and reproducing equipment which employs 6.30 millimeter (0.25 inch) wide magnetic tape with one, two, or four independent serial data tracks at recording densities of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in the code and format as specified in FIPS PUBS 1-1 and 52.

(End of clause)

252.270-7028 Description of computer magnetic tape file properties.

As prescribed at 270.1130(a)(20), insert the following clause:

DESCRIPTION OF COMPUTER MAGNETIC TAPE FILE PROPERTIES (APR 1984)

All magnetic tape used to transmit coded information to the Federal Government shall include completed Standard Form 277 describing magnetic tape file properties as set forth in FIPS PUB 53.

(End of clause)

252.270-7029 Computer output microform (COM) formats and reduction ratios, 16mm and 105mm.

As prescribed at 270.1103(a)(21), insert the following clause:

COMPTUTER OUTPUT MICROFORM (COM) FORMATS AND REDUCTION RATIOS, 16MM and 105MM (FEB 1983)

All applicable equipment or services that may result from this solicitation that produce computer generated microforms using plain-type faces shall be in compliance with FIPS PUB 54.

(End of clause)

252.270-7030 Input/output (I/O) channel interface.

As prescribed at 270.1103(a)(22), insert the following clause:

INPUT/OUTPUT (I/O) CHANNEL INTERFACE (APR 1984)

Unless otherwise excluded, as specified in FIPS PUB 60-1, or unless a waiver is granted following the waiver procedures specified in FIPS PUB 60-1, ADP systems and peripheral subsystems that may result from this solicitation, and for which operational specifications FIPS PUBS (such as FIPS PUBS 62 and 63) have been issued and are in effect, shall conform to FIPS PUB 60-1. The correct operation of these systems' conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform with the FIPS PUB 60-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 60-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7031 Channel level power control interface.

As prescribed at 270.1103(a)(23), insert the following clause:

CHANNEL LEVEL POWER CONTROL INTERFACE (APR 1984)

Unless otherwise excluded as specified in FIPS PUB 61-1 by reference to FIPS PUB 60-1 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 60-1, ADP systems and peripheral subsystems that may result from this solicitation, and for which operational specifications FIPS PUBS (such as FIPS PUB 62 and 63) have been issued and are in effect, shall conform to FIPS PUB 61-1. The correct operation of these systems' conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 61-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 61-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7032 Operational specification for magnetic tape subsystems.

As prescribed at 270.1103(a)(24), insert the following clause:

OPERATIONAL SPECIFICATION FOR MAGNETIC TAPE SUBSYSTEMS (APR 1984)

Unless otherwise excluded, as specified in FIPS PUB 62 by reference to FIPS PUB 60-1 or unless a waiver is granted following the procedures specified in FIPS PUB 62, ADP systems and magnetic tape subsystems that may result from this solicitation shall conform to FIPS PUB 62. The correct operation of these systems' conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation test equipment at any interface required to conform to FIPS PUB 61-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 62. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7033 Operational specifications for rotating mass storage subsystems.

As prescribed at 270.1103(a)(25), insert the following clause:

OPERATIONAL SPECIFICATIONS FOR ROTATING MASS STORAGE SUBSYSTEMS (APR 1984)

Unless otherwise excluded, as specified in FIPS PUB 63 by reference to FIPS PUB 60-1, or unless a waiver is granted following the waiver procedures specified in FIPS PUB 63, ADP systems and rotating mass storage subsystems that may result from this solicitation must conform to FIPS PUB 63. The correct operation of these systems' conforming interfaces must be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7034 BASIC language compilers.

As prescribed at 270.1103(a)(26), insert the following clause:

BASIC LANGUAGE COMPILERS (APR 1984)

BASIC compilers offered as a result of this solicitation shall implement Federal Standard Minimal BASIC, as well as any additional language elements as specified elsewhere in the requirements document (insert reference here).

(End of clause)

252.270-7035 FORTRAN language compilers.

As prescribed at 270.1103(a)(27), insert the following clause:

FORTRAN LANGUAGE COMPILERS (APR 1984)

FORTRAN compilers offered as a result of this solicitation shall implement all of the language elements of the level of Federal Standard FORTRAN specified elsewhere in this requirements document (insert reference here), as well as any additional language elements as specified elsewhere in this document (insert reference here). The compiler shall enable the user to monitor any statement appearing in the source program that does not conform syntactically to the specifications of Federal Standard full FORTRAN.

(End of clause)

252.270-7036 Magnetic tape labels and file structure information interchange.

As prescribed at 270.1103(a)(28), insert the following clause:

MAGNETIC TAPE LABELS AND FILE STRUCTURE INFORMATION INTERCHANGE (FEB 1983)

Information processing systems using 9-track tape drives and new tape label processing facilities that will be part of an information processing system shall be capable of generating and processing tape labels and file structures that conform to one of the four levels of FIPS PUB 79 if the information processing system either generates or accepts magnetic tapes for information interchange. Offerors shall specify the level of conformance and certify that a copy of the current users manual is on file with the National Bureau of Standards as required by FIPS PUB 79.

(End of clause)

252.270-7037 Data Encryption Standard (DES) modes of operation.

As prescribed at 270.1103(a)(29), insert the following clause:

DATA ENCRYPTION STANDARD (DES) MODES OF OPERATION (APR 1984)

Equipment and services that implement the Data Encryption Standard and are intended for use in the cryptographic protection of sensitive but unclassified computer data, shall use one or more of the modes of operation specified in FIPS PUB 81.

(End of clause)

252.270-7038 Microform readers.

As prescribed at 270.1103(a)(30), insert the following clause:

MICROFORM READERS (FEB 1983)

Microform readers offered as a result of this solicitation that display computer-generated microforms conforming to FIPS PUB 4 shall comply with the provisions of FIPS PUB 84.

(End of clause)

252.270-7039 Optical character recognition (OCR) inks.

As prescribed at 270.1103(a)(31), insert the following clause:

OPTICAL CHARACTER RECOGNITION (OCR) INKS (APR 1984)

Inks and preprinted forms shall be required to conform to the provisions of FIPS PUB 85 if they will be read by OCR techniques and if the interchange of machine-readable information between different systems may be required.

(End of clause)

252.270-7040 Optical character recognition (OCR) printers, readers and printed forms.

As prescribed at 270.1103(a)(32), insert the following clause:

OPTICAL CHARACTER RECOGNITION (OCR) PRINTERS, READERS AND PRINTED FORMS (APR 1984)

OCR printers, readers and printed forms shall conform to the provisions of FIPS PUB 89, when the interchange of machine sensible information between different systems is required as specified elsewhere herein.

(End of clause)

252.270-7041 Digital magnetic tape cassette equipment and associated programs.

As prescribed at 270.1103(a)(33), insert the following clause:

DIGITAL MAGNETIC TAPE CASSETTE EQUIPMENT AND ASSOCIATED PROGRAMS (APR 1984)

All digital magnetic data cassette recording and reproducing equipment which employ dual track, complementary return-to-bias (CRB), four-states recording techniques on 3.81mm (0.150 in) tape, including associated programs, shall provide the capability to accept and generate recorded tape cassettes in compliance with the requirements set forth in the Federal Standard as stated in FIPS PUB 91 and as may be specified elsewhere herein.

(End of clause)

252.270-7042 Acquisition and validation of COBOL compilers.

As prescribed at 270.1103(a)(34), insert the following clause:

ACQUISITION AND VALIDATION OF COBOL COMPILERS (APR 1984)

(a) COBOL compilers offered as a result of the requirements set forth in this solicitation shall be identified as implementing all of the language elements of at least one of the levels of Federal Standard COBOL as specified in FIPS PUB 21-1. Implementation must provide a facility for the user to optionally specify a level of Federal Standard COBOL for monitoring the source program at compile time. Monitoring may be specified for any level at or below the highest level for which a compiler is implemented and shall consist of an analysis of the syntax used in a source program against the syntax included in the level specified for monitoring. Any syntax not conforming to the specified level will be identified through a diagnostic message in the source program listing. The diagnostic message will contain at least the identification of the source program line number for each nonconforming syntax and identify the level of Federal Standard COBOL that supports the syntax or indicates that the syntax is nonstandard COBOL.

(b)(1) In addition to the specified mandatory COBOL compiler requirements stated in the specification portion of this solicitation, all COBOL compilers brought into the Federal inventory as a result of this solicitation, the most recent release of which has not been previously tested, shall be tested using the official COBOL Compiler Validation System (CCVS). The results of the validation shall be used to confirm that the compiler meets the specified requirements of the designated level of FIPS PUB 21-1, Federal Standard COBOL. To be considered responsive, the vendor shall:

(i) Certify in the proposal that all COBOL compilers offered in response to this solicitation have been submitted for validation; and

(ii) Agree to correct all deviations from the standard reflected in the Validation Summary Report (VSR) not previously covered by a waiver. All deviations shall be corrected within 12 months from the date of contract award unless a shorter period is specified elsewhere in the solicitation. If an interpretation of the standard is required that will invoke the procedures set forth in FIPS PUB 29, such requests for interpretation shall be made within 30 calendar days after contract award.

(2) Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29 shall be completed within 12 months of the date of formal notification of the interpretation to the contractor. Failure to make required corrections within the time provisions set forth above shall be deemed a failure to deliver required software. The liquidated damages as specified for failure to delivery either operating system or other software shall apply. In addition, such failure falls within the purview of the default clause. If the required corrections are not made within the time provisions specified above, subsequent proposals submitted to the Government offering the deficient COBOL compilers or subsequent uncorrected versions thereto shall be considered nonresponsive.

(End of clause)

252.270-7043 Acquisition of COBOL programs and/or programming services.

As prescribed at 270.1103(a)(35), insert the following clause:

ACQUISITION OF COBOL PROGRAMS AND/OR PROGRAMMING SERVICES (APR 1984)

Business-oriented computer application programs (i.e., those applications or programs that emphasize the manipulation of characters, files, and input/output as contrasted with those concerned primarily with computation of numeric values) offered or prepared as a result of the requirements set forth in this solicitation shall be written using one of the levels of Federal Standard COBOL as defined in FIPS PUB 21-1, including optional language elements, if any, as specified herein. If services provided include compilation(s), compilers used to perform these services shall be validated.

(End of clause)

252.270-7044 Delayed validation of compilers.

As prescribed at 270.1103(a)(36), insert the following clause:

DELAYED VALIDATION OF COMPILERS (APR 1984)

In addition to the compiler requirements specified elsewhere in this document, all compilers for Federal Standard programming languages brought into the Federal inventory as a result of this document and those compilers used by vendors to develop programs or provide services shall be tested using the official Compiler Validation System (CVS).

The results of the validation shall be used to confirm that the compiler meets the requirements of the applicable Federal Standard specified elsewhere in this document. To be considered responsive, the vendor shall:

(1) Certify in the proposal that all Federal Standard programming language compilers offered in response to this document have been submitted for validation or have been previously validated and listed in the latest Federal Software Testing Center (FSTC) Certified Compiler List. Proof of current validation will be provided in the form of a Certificate of Validation from the FSTC. Unless specified elsewhere in the requirements document, proof of submission for validation will be in the form of a letter from the FSTC scheduling the validation.

(2) Agree to correct all deviations from the applicable Federal Standard reflected in the Validation Summary Report (VSR) not previously covered by a waiver. All deviations must be corrected within 12 months from the date of contract award unless otherwise specified elsewhere in this document. If an interpretation of the Federal Standard is required that will invoke the procedures set forth in FIPS PUB 29-1, such a request for interpretation shall be made within 30 calendar days after contract award. Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29-1 shall be completed within 12 months of the date of formal notification to the contractor of the approval of the interpretation. Proof of correction in either case will be in the form of a Certificate of Validation from the FSTC for the corrected compiler. Failure to make required corrections within the time limits set forth above shall be deemed a failure to deliver required software. Any liquidated damages as specified for failure to deliver the

operating system or other software shall apply.

(End of clause)

252.270–7045. Interchange of machine processable data between and among agencies.

As prescribed at 270.1103(a)(37), insert the following clause:

INTERCHANGE OF MACHINE PROCESSABLE DATA BETWEEN AND AMONG AGENCIES (FEB 1983)

All application programs resulting from this solicitation that have been identified as those that will be interchanged, or that will record data that will be interchanged with Federal Agencies, state and local governments, industry, and the public, shall implement the following applicable approved Federal Information Processing Standards (FIPS):

FIPS PUB 4 Calendar Date.
FIPS PUB 5–1 States and Outlying Areas of the United States.
FIPS PUB 6–3 Counties and County Equivalents of the States of the United States and the District of Columbia.
FIPS PUB 8–4 Standard Metropolitan Statistical Areas.
FIPS PUB 9 Congressional Districts of the United States.
FIPS PUB 10–2 Countries, Dependencies, and Areas of Special Sovereignty.
FIPS PUB 58 Representations of Local Time of the Day for Information Interchange.
FIPS PUB 59 Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.
FIPS PUB 66 Standard Industrial Classification (SIC) Codes.
FIPS PUB 70 Representation of Geographic Point Locations for Information Exchange.

(End of clause)

252.270–7046 Synchronous high speed data signaling rates between data terminal equipment and data communication equipment.

As prescribed at 270.1103(b)(1), insert the following clause:

SYNCHRONOUS HIGH SPEED DATA SIGNALING RATES BETWEEN DATA TERMINAL EQUIPMENT AND DATA COMMUNICATION EQUIPMENT (FEB. 1983)

All applicable equipment or services resulting from the solicitation that are employed with synchronous data communication equipment designed to operate on binary coded information over wideband communication channels shall comply with FIPS PUB 47/FED–STD 1001.

(End of clause)

252.270–7047 Bit sequencing of the code of information interchange in serial-by-bit data transmission.

As prescribed at 270.1103(b)(2), insert the following clause:

BIT SEQUENCING OF THE CODE OF INFORMATION INTERCHANGE IN SERIAL-BY-BIT DATA TRANSMISSION (FEB 1983)

All applicable equipment or services that may result from this solicitation, transmitting in a serial-by-bit, serial-by-character mode, shall be capable of bit sequencing as prescribed in FIPS PUB 16–1/FED–STD 1010 for the transmission of the Standard Code for Information Interchange, and FIPS PUB 1–1 at the interface between data terminal equipment and data communication equipment.

(End of clause)

252.270–7048 Character structure and character parity sense for serial-by-bit data communication in the code for information interchange.

As prescribed at 270.1103(b)(3), insert the following clause:

CHARACTER STRUCTURE AND CHARACTER PARITY SENSE FOR SERIAL-BY-BIT DATA COMMUNICATION IN THE CODE FOR INFORMATION INTERCHANGE (FEB 1983)

All applicable equipment that may result from this solicitation, transmitting in a serial-by-bit, serial-by-character mode synchronous or asynchronous mode, shall be capable of transmitting the character structure and sense of character partially prescribed in FIPS PUB 17–1/FEB-STD 1012 for the transmission of the Standard Code for Information Interchange, FIPS PUB 1–1 at the interface between data terminal equipment and data communications equipment.

(End of clause)

252.270–7049 Character structure and character parity sense for parallel-by-bit data communications.

As prescribed at 270.1103(b)(4), insert the following clause:

CHARACTER STRUCTURE AND CHARACTER PARITY SENSE FOR PARALLEL-BY-BIT DATA COMMUNICATION (FEB 1983)

All applicable equipment or services that may result from this solicitation, transmitting in a parallel-by-bit, serial-by-character mode, shall be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 18–1/FED–STD 1012, when transmitting the Standard Code for Information Interchange, FIPS PUB 1–1, or an approved Federal subset (FIPS PUB 15) at the interface between data terminal equipment and data communication equipment.

(End of clause)

252.270–7050 Synchronous signaling rates between data terminal and data communication equipment.

As prescribed at 270.1130(b)(5), insert the following clause:

SYNCHRONOUS SIGNALING RATES BETWEEN DATA TERMINAL AND DATA COMMUNICATION EQUIPMENT (FEB 1983)

All applicable equipment or services resulting from this solicitation that are employed in conjunction with synchronous data communication equipment designed to operate on binary encoded information in either serial or parallel fashion over voice grade communication channels of nominal 4kHz bandwidth shall comply with FIPS PUB 22–1/FEB-STD 1013.

(End of clause)

252.270–7051 Data link control-synchronous bit-oriented data.

As prescribed at 270.1103(b)(6), insert the following clause:

DATA LINK CONTROL-SYNCHRONOUS BIT-ORIENTED DATA (APR 1984)

All equipment or services using synchronous, bit-oriented data communications offered as a result of this solicitation shall implement the class of procedures specified in FIPS PUB 71/FED–STD 1003A.

(End of clause)

252.270–7052 Time and frequency reference information in telecommunications systems.

As prescribed at 270.1103(c)(1), insert the following clause:

TIME AND FREQUENCY REFERENCE INFORMATION IN TELECOMMUNICATIONS SYSTEMS (FEB 1983)

All applicable telecommunications facilities and systems that are offered or used as a result of this solicitation shall be referenced to the time and frequency standard specified in FED–STD 1002.

(End of clause)

252.270–7053 Coding and modulation requirements for nondiversity 2400 bit/second modems.

As prescribed at 270.1103(c)(2), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR NONDIVERSITY 2400 BIT/SECOND MODEMS (FEB 1983)

All nondiversity 2400 bits per second modems offered as a result of this solicitation for use with 4kHz channels derived from either switched networks or dedicated lines shall comply with FED–STD 1005.

(End of clause)

252.270–7054 Coding and modulation requirements for 4800 bit/second modems.

As prescribed at 270.1103(c)(3), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR 4800 BIT/SECOND MODEMS (FEB 1983)

All 4800 bits per second modems (and equipment containing the 4800 bits per second modems) offered as a result of this solicitation for use with nominal 4kHz analog channels shall comply with FED–STD 1006.

(End of clause)

252.270–7055 Coding and modulation requirements for duplex 9600 bit/second modems.

As prescribed at 270.1103(c)(4), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR DUPLEX 9600 BIT/SECOND MODEMS (FEB 1983)

All duplex 9600 bits per second modems offered as a result of this solicitation for use by nominal 4kHz analog transmission channels shall comply with FED–STD 1007.

(End of clause)

252.270–7056 Coding and modulation requirements for duplex 600 and/or 1200 bit/second modems.

As prescribed at 270.1103(c)(5), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR DUPLEX 600 AND/OR 1200 BIT/SECOND MODEMS (FEB. 1983)

All two-wire duplex 600 bits per second and/or 1200 bits per second modems (except those to be acoustically coupled to telephone instruments) offered as a result of this solicitation for use with nominal 4kHz analog channels shall comply with FED–STD 1008.

(End of clause)

252.270–7057 Electrical characteristics of balanced voltage digital interface circuits.

As prescribed at 270.1103(c)(6), insert the following clause:

ELECTRICAL CHARACTERISTICS OF BALANCED VOLTAGE DIGITAL INTERFACE CIRCUITS (FEB. 1983)

All equipment using balanced voltage digital interface circuits that is offered as a result of this solicitation shall comply with the electrical characteristics addressed by FED–STD 1020A.

(End of clause)

252.270–7058 Electrical characteristics of unbalanced voltage digital interface circuits.

As prescribed at 270.1103(c)(7), insert the following clause:

ELECTRICAL CHARACTERISTICS OF UNBALANCED VOLTAGE DIGITAL INTERFACE CIRCUITS (FEB. 1983)

All equipment using unbalanced voltage digital interface circuits that is offered as a result of this solicitation shall comply with the electrical characteristics addressed by FED–STD 1030A.

(End of clause)

252.270–7059 Group 2 facsimile apparatus for document transmission.

As prescribed at 270.1103(c)(8), insert the following clause:

GROUP 2 FACSIMILE APPARATUS FOR DOCUMENT TRANSMISSION (FEB. 1983)

All Group 2 facsimile apparatus offered as a result of this solicitation for use with voice-band analog circuits shall comply with FED–STD 1061.

(End of clause)

252.270–7060 Protection against compromising emanations.

As prescribed at 270.1003(c), insert the following clause:

PROTECTION AGAINST COMPROMISING EMANATIONS (APR. 1984)

The Contractor shall certify in his bid/proposal that computer equipment, as specified by the Government, to be provided or used under this contract has been accredited to meet the appropriate security requirements of the National Communications Security Subcommittee on Compromising Emanations (SOCCE) National TEMPEST standards (NACSEM No. 5100 or NACSIM No. 5100A, "Compromising Enamations Laboratory Test Standard, Electromagnetics (U)") or other specified standard and, upon request of the contracting officer, shall provide documentation supporting this accreditation. Notwithstanding the existence of valid accreditations of equipment(s) prior to award of contract, the Government may, as part of its inspection and acceptance, conduct such additional tests at the installation site or contractor's facility to ensure that equipment/systems delivered or used under the contract satisfy the security standards of NACSEM 5100, NACSIM 5100A, or other approved standards as specified elsewhere in this solicitation/contract. Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clauses, the contractor shall correct or replace, at no cost to the Government, accepted equipment/systems found to be deficient within one year after proper installation. This applies regardless of f.o.b. point or the point of acceptance of the deficient equipment/systems. Should a modification to the delivered equipment be made by the contractor, the one-year period is applied to the modification upon its proper installation.

(End of clause)

PART 253—FORMS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 253.1—General

253.170 Forms for use in DoD acquisition.

This part contains illustrations of Department of Defense Acquisition Forms. The DoD Forms illustrated in this Part are presented in numerical order to provide a ready source of reference. Some DD Forms that were previously illustrated in the DAR have been converted to Standard Forms and are published in the FAR or are published in the FAR as DD Forms. A few have been deleted. The Table of Contents of this Part has been annotated with the status of all DD Forms previously published in the DAR. Except as may be otherwise indicated in this DoD FAR Supplement, all DD Forms illustrated in this Part may be continued on (a) bond paper, or (b) specially constructed continuation sheets (e.g., DD Form 250c). Continuation sheets shall be annotated in the upper right-hand corner with the number of the form being continued and the serial page number of the total pages being prepared (e.g. page 5 of 15).

Editorial Note: Department of Defense Acquisition Forms are not published in the **Federal Register** or the Code of Federal Regulations. A list containing DoD Form numbers and titles follows 253.270.

Subpart 253.2—Use of Forms

253.270 Use of Forms.

Pending final reorganization of the material that was in DAR Section XVI, that material shall be retained as is and used to the extent that it is not inconsistent with explicit instructions of the FAR or this Supplement.

Editorial Note: Department of Defense Acquisition Forms are not published in the **Federal Register** or the Code of Federal Regulations. For the convenience of the user, the list set forth below includes section numbers, form numbers and titles.

53.303–70–DD–250 DD Form 250: Material Inspection and Receiving Report.
53.303–70–DD–250c DD Form 250c: Material Inspection and Receiving Report—Continuation Sheet.
53.303–70–DD–250–1 DD Form 250–1: Tanker/Barge Material Inspection and Receiving Report.
53.303–70–DD–346 DD Form 346: Raw (Basic Processed) and Semi-Fabricated Stock Form.
53.303–70–DD–347 DD Form 347: Bill of Materials for—Sub-Contracted Parts—Purchased Parts—Government-Furnished Property.
53.303–70–DD–350 DD Form 350: Individual Procurement Action Report.
53.303–70–DD–375 DD Form 375: Production Progress Report.
53.303–70–DD–375c DD Form 375c: Production Progress Report (Continuation).
53.303–70–DD–375–2 DD Form 375–2: Delay in Delivery (Flash Notice).
53.303–70–DD–416 DD Form 416: Purchase Request for Coal, Coke or Briquettes.
53.303–70–DD–428 DD Form 428: Communication Service Authorization.
53.303–70–DD–448 DD Form 448: Military Interdepartmental Purchase Request.
53.303–70–DD–448–2 DD Form 448–2: Acceptance of MIPR.
53.303–70–DD–558–1 DD Form 558–1: Bidder's Mailing List Application Supplement.
53.303–70–DD–879 DD Form 879: Statement of Compliance.
53.303–70–DD–882 DD Form 882: Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause).
53.303–70–DD–1057 DD Form 1057: Monthly Procurement Summary of Actions $25,000 or Less.

53.303–70–DD–1114 DD Form 1114: Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.
53.303–70–DD–1131 DD Form 1131: Cash Collection Voucher.
53.303–70–DD–1149 DD Form 1149: Requisition and Invoice/Shipping Document.
53.303–70–DD–1155 DD Form 1155: Order for Supplies or Services/Request for Quotations.
53.303–70–DD–1155r DD Form 1155r: General Provisions.
53.303–70–DD–1155r–1 DD Form 1155r–1: Reverse of Order for Supplies or Services/Request for Quotations—Foreign.
53.303–70–DD–1155c–1 DD Form 1155c–1: Order for Supplies or Services (Commissary Continuation Sheet).
53.303–70–DD–1342 DD Form 1342: DoD Property Record.
53.303–70–DD–1348 DD Form 1348: DoD Single Line Item Requisition System Document (Manual).
53.303–70–DD–1348m DD Form 1348m: DoD Single Line Item Requisition System Document (Mechanical).
53.303–70–DD–1348–1 DD Form 1348–1: DoD Single Line Item Release/Receipt Document.
53.303–70–DD–1384 DD Form 1384: Transportation Control and Movement Document.
53.303–70–DD–1419 DD Form 1419: DoD Industrial Plant Equipment Requisition.
53.303–70–DD–1423 DD Form 1423: Contract Data Requirement List.
53.303–70–DD–1425 DD Form 1425: Specifications and Standards Requisition.
53.303–70–DD–1473 DD Form 1473: Report Documentation Page.
53.303–70–DD–1484 DD Form 1484: Post-Award Conference Record.
53.303–70–DD–1499 DD Form 1499: Report of Individual Contract Profit Plan.
53.303–70–DD–1507 DD Form 1507: Department of Defense Work Stoppage Report.
53.303–70–DD–1524–5 DD Form 1524–5: Pre-Award Survey of Offeror Part V—Monitor Report.
53.303–70–DD–1535 DD Form 1535: Request/Approval for Authority To Advertise.
53.303–70–DD–1547 DD Form 1547: Weighted Guidelines Profit/Fee Objective.
53.303–70–DD–1564 DD Form 1564: Pre-Award Patent Rights Documentation.
53.303–70–DD–1565 DD Form 1565: Request for Authorization of Additional Classification and Rate.
53.303–70–DD–1566 DD Form 1566: Statement and Acknowledgment.
53.303–70–DD–1567 DD Form 1567: Labor Standards Interview.
53.303–70–DD–1568 DD Form 1568: Labor Standards Investigation Summary Sheet.
53.303–70–DD–1592 DD Form 1592: Contract Cross Reference Data.
53.303–70–DD–1593 DD Form 1593: Contract Administration Completion Record.
53.303–70–DD–1594 DD Form 1594: Contract Completion Statement.
53.303–70–DD–1597 DD Form 1597: Contract Closeout Check-List.
53.303–70–DD–1598 DD Form 1598: Contract Termination Status Report.
53.303–70–DD–1635 DD Form 1635: Plant Clearance Case Register.
53.303–70–DD–1637 DD Form 1637: Notice of Acceptance of Inventory.
53.303–70–DD–1638 DD Form 1638: Report of Excess and Surplus Contractor Inventory.
53.303–70–DD–1639 DD Form 1639: Scrap Warranty.
53.303–70–DD–1640 DD Form 1640: Request for Plant Clearance.
53.303–70–DD–1641 DD Form 1641: Disposal Determination/Approval.
53.303–70–DD–1651 DD Form 1651: Industrial Equipment Modernization Program—Post Analysis Report.
53.303–70–DD–1653 DD Form 1653: Transportation Data for IFBs and RFPs.
53.303–70–DD–1654 DD Form 1654: Evaluation of Transportation Cost Factors.
53.303–70–DD–1659 DD Form 1659: Application for U.S. Government Bill(s) of Lading/Export Traffic Release.
53.303–70–DD–1660 DD Form 1660: Management Control Systems Summary List.
53.303–70–DD–1662 DD Form 1662: Report of Government (DOD) Facilities.
53.303–70–DD–1664 DD Form 1664: Data Item Description.
53.303–70–DD–1665 DD Form 1665: Solicitation, Offer, and Award (Overseas).
53.303–70–DD–1707 DD Form 1707: Information to Offerors or Quoters.
53.303–70–DD–1784 DD Form 1784: Small Purchase Pricing Memorandum.
53.303–70–DD–1861 DD Form 1861: Contract Facilities Capital and Cost of Money.
53.303–70–DD–2025 DD Form 2025: Packaging Change Recommendation/Approval.

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 270—ACQUISITION OF COMPUTER RESOURCES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 270.1—General

270.101 Procurement authorities.

(a) *General Services Administration.* Pub. L. 89–306, 40 U.S.C. 759, authorizes and directs the Administrator of the General Services Administration to provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment (ADPE) (see Subpart 270.2) by Federal agencies, subject to the fiscal and policy control of the Office of Management and Budget (OMB). Policies and procedures for acquisitions for which procurement authority is vested in GSA are contained in Subpart 270.3.

(b) *10 U.S.C. 2315.* Section 908 of the DoD Authorization Act, 1982 (Pub. L. 97–86) added Section 2315 to Title 10, United States Code which provides that the provisions of 40 U S.C. 759 are not applicable to DoD procurements of ADPE systems, components, and services if the function, operation or use:

(1) Involves intelligence activities;

(2) Involves cryptologic activities related to national security;

(3) Involves the command and control of military forces;

(4) Involves equipment that is an integral part of a weapon or weapon system; or

(5) Is critical to the direct fulfillment of military or intelligence missions, excluding routine administrative and business applications (including payroll, finance, logistics, and personnel management applications). Policies and procedures for acquisitions under 10 U.S.C. 2315 are contained in Subpart 270.4.

(c) *Other acquisitions of computer resources.* Certain acquisitions do not fall within the scope of either (a) or (b) above. Such acquisitions include computer systems and components, including computer items modified to Government specifications at the time of production, which are specially designed (not configured) to the extent that:

(1) They cannot be used to process a variety of problems or applications; or

(2) They can only be used as an integral part of a non-computer system. In addition, acquisitions by DoD contractors, acquisition of printing services utilizing computer technology, acquisition of computers as an integral part of a non-computer system, and acquisition of computer support services fall within the scope of these "other acquisitions." Policies and procedures for these "other acquisitions" are contained in Subpart 270.6, FAR Part 8.8, or Subpart 270.5.

270.000 Scope.

This Part prescribes the policies and procedures for Department of Defense (DoD) and its contractors' acquisition of computers, computer components, software, maintenance services, certain other services, and computer supplies. Separate subparts address acquisition when the procurement authority is vested in the General Services Administration, or is within the provisions of 10 U.S.C. 2315, or when the acquisition does not fall within the scope of either General Services Administration or 10 U.S.C. 2315 authority.

(d) *Software.* The authority to acquire commercially available software (see 270.200) is vested in the General Services Administration and shall be acquired in accordance with Subpart 270.3 unless within the scope of 10 U.S.C. 2315, in which case the commercially available software shall be acquired in accordance with Subpart 270.4. Acquisitions of all other software shall be in accordance with Subpart 270.5.

Subpart 270.2—Definitions

270.200 Scope of subpart.

The definitions in this subpart apply only to acquisition within the scope of Part 270.

"Automatic Data Processing Equipment (ADPE)" means general purpose, automatic data processing components and the equipment systems created from them, regardless of use, size, capacity or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed (rather than configured) for any specific application.

"ADP Fund" means a financing mechanism administered by GSA and which, subject to GSA approval, is available without fiscal year limitation for financing the acquisition of ADPE and related items by lease, purchase, transfer, or otherwise.

"Agency Procurement Request (APR)" means a request by a DoD component for GSA to contract for ADPE, commercially available software, or maintenance services or for GSA to delegate the authority to contract for these items.

"Benchmark" means a problem or series of problems used to evaluate the performance of computers and/or software relative to the contract specifications.

"Computer Equipment" means electronic devices which perform logical, arithmetic, or storage functions through the use of software.

"Commercially Available Software" means software developed at private expense and available in the commercial market through lease or purchase (including licensing arrangements) from a concern representing itself to have ownership and/or marketing rights in the software. Software which is furnished as part of the computer but, is separately priced from the computer, is included in this category.

"Conversion Costs" means those costs that are directly related to the conversion from installed computer resources to replacement computer resources. In addition to project management costs, conversion costs shall include, but are not limited to:

(a) Conversion of the following software by reprogramming, recoding, or translation:

(1) Existing software written in Federal standard or other ANSI standard higher-level language;

(2) Application software written in assembly or other nonstandard languages that will continue to meet essential agency mission needs without redesign, provided that continued use of the nonstandard software can be justified and the file is documented with the justification prior to incorporation into the software conversion study;

(3) Mission-essential application software to be developed for operational use before the replacement is installed (or before commercial computer services are procured), provided the software is written in Federal standard or other ANSI standard languages;

(b) Conversion of data bases, data base design changes, and data base management systems to the extent necessary to permit the continued use of existing application software;

(c) Firmware required solely to permit the continued use of application software;

(d) Site preparation and modifications to installed environmental controls;

(e) Parallel operation of the old system during the conversion process, including offsite data processing support;

(f) Travel and training expenses, including pay and fringe benefits of Government employees during attendance at formal classroom training courses; and

(g) Other general and user expenses directly related to the conversion effort; e.g., conversion planning, preparation and management, additional supplies, and any additional general-purpose software required to support the conversion.

"Delegation of Procurement Authority (DPA)" means a written notification from GSA to a DoD component in response to an APR, granting contracting authority to the DoD component.

"Equipment Technology Update" means an acquisition resulting from an obsolescence review of an ADPE system which establishes that it would be more economic and efficient over the remaining systems life to replace some or all components of that system. This type of acquisition does not necessarily require a current requirements analysis or software conversion study.

"Evaluated Optional Features" means those contractual conditions and technical requirements which are established in the solicitation but which do not have to be bid (offered) in order to be responsive (acceptable). Each evaluated optional feature in the solicitation must reflect its relative value to the Government.

"Maintenance Services" means those examinations, testing, repair, or part replacement functions performed to:

(a) Reduce the possibility of malfunction (preventive maintenance);

(b) Correct a malfunction (remedial maintenance); or

(c) Modify in a minor way (field engineering change or field modification).

"Noncompetitive Procurement" means a procurement for which the minimum needs are so restrictive that there is only one known manufacturer capable of satisfying the minimum needs. Included in this type of procurement are:

(a) Sole source procurements; and,

(b) Specific make and model procurements (notwithstanding the fact that there may be more than one bid (offer) thus creating price competition).

"Obsolescence Review" means a review to determine whether existing computer resources are economically or technically obsolete. Indications of economic and technical obsolescence include:

(a) Maintenance service or parts are becoming unavailable or are no longer being provided by the original equipment manufacturer (OEM);

(b) An operating system is or will no longer be supported by the OEM;

(c) Degradation in equipment reliability;

(d) Maintenance costs are accounting for an increasingly greater portion of operating costs;

(e) Energy consumption, including necessary environmental control, is relatively high;

(f) System throughput and processing turn-around are too slow, and flexibility is limited for the mission requirement;

(g) The equipment is two or more production cycles behind the present product line.

"Remote Terminal Emulation" means a means of evaluating the teleprocessing performance of an ADPE system by use of components external to the ADPE system under evaluation. Workload is introduced to the ADPE system by components external to the ADPE system and the performance of the ADPE system is recorded for evaluation to determine the teleprocessing performance of the ADPE system.

"Software" means a series of instructions, in a form acceptable to a

computer, which causes a computer to perform specified operations.

"Software Conversion Study" means a study of the effort and costs required to convert software from the existing computer system to the replacement computer system.

"Specifications" means specifications for the acquisition of computer resources. Such specifications may consist of one or more of the following types:

(a) *Brand-name or equal.* The purchase description refers to one or more specific commercial products identified by brand name and make or model number or other appropriate nomenclature by which such products are offered for sale to the public by the particular manufacturer, producer, or distributor. These purchase descriptions should set forth those salient physical, functional, or other characteristics of the brand name product(s) which are essential to meet the needs of the Government. Prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(b) *Equipment performance requirements.* A statement of those minimum use output requirements such as the amount of data that needs to be stored or processed within a given time and operational reliability, supplemented to the extent necessary with hardware factors (devoid of as much specific vendor orientation as possible) such as, cycle time, computing speed, tape read and/or write speed, printer speed, size of memory, expandibility (modularity), and related software which are a measure of the operating capability of equipment and which, when applied to the functional specifications, provided a quantitative measure of the operating time and capacity required to process the applications involved on that equipment.

(c) *Functional specifications.* The delineation of the objectives which the system is intended to accomplish and the data processing requirements underlying that accomplishment. A description of the data processing requirements should include a description of the data output and its intended uses, the data input, the data files and record content, the volumes of data, the processing frequencies, timing, and such other factors as may be necessary to provide a full description of the system.

(d) *Plug compatible.* A plug (plug-to-plug) compatible purchase description is similar to a brand name or equal purchase description. The purchase description refers to one or more specific commercial products identified by brand name and make or model number or other appropriate nomenclature and sets forth those salient physical, functional, or other characteristics of the brand name product(s) which are essential to meet the needs of the Government. Unlike an item offered under a brand name or equal purchase description, a plug compatible item need not perform its functions in essentially the same manner as the referenced product; however, it must perform the same functions as the referenced product.

(e) *Specific make and model.* A purchase description under which only a specific manufacturer's make and model (or other appropriate nomenclature by which such products are offered for sale to the public by the particular manufacturer, producer, or distributor) is acceptable.

"Systems or Items Life" means a forecast or projection of the period of time that begins with the installation of the systems or items and ends when the need for such systems or items has terminated. Systems or items life is established by the Government on the basis of requirements and is usually set forth in the solicitation. Systems or items life is not necessarily synonymous with the actual life of the systems or items.

Subpart 270.3—Acquisitions Under General Services Administration (GSA) Authority

270.300 Scope of Subpart.

This Subpart sets forth policies and procedures for contracting by the Department of Defense for automatic data processing equipment, commercially available software, maintenance services, and certain other services and supplies, when procurement authority is vested in the General Services Administration (GSA).

270.301 Policy.

(a) Pub. L. 89–306, 40 U.S.C. 759, authorizes and directs the Administrator of the General Services Administration to provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment (ADPE) by Federal agencies, subject to the fiscal and policy control of the Office of Management and Budget (OMB). The statute specifically provides that the authority conferred upon the Administrator of the General Services Administration shall not be construed as to impair or interfere with the determination by agencies of their individual requirements or the use made of ADPE or components thereof by an agency.

(b) The authority cited in (a) above does not extend to those acquisitions described in 270.101 (b) and (c). These acquisitions shall be accomplished in accordance with 270.4 and 270.5.

270.302 Procurement authority.

This Section prescribes the applicable procedures when procurement authority is vested in the General Services Administration.

270.302–1 Application.

When a requirement exists for ADPE, commercially available software, or maintenance services, as defined in 270.2, an Agency Procurement Request (APR) must be submitted to the GSA prior to the initiation of any contract action, unless the requirement meets an exception set forth below. In response to an APR, the GSA may contract or issue a Delegation of Procurement Authority (DPA). For the procedures to be followed in submitting the APR, see 270.303–1. At the option of the DoD Component, abbreviated procedures promulgated by GSA may be substituted for those described herein.

270.303–2 Exceptions.

Contracts may be made without the prior approval of the GSA under the following conditions:

(a) *Automatic data processing equipment.* Except for contracts involving the GSA ADP Fund (see 270.321), excess leased ADPE (see 270.14), or the acquisition of hardware monitors for measuring computer system performance, DoD may contract for ADPE without prior approval of GSA, provided that at least one of the following conditions is met:

(1) The contract will occur by placing a delivery order against an applicable GSA requirements contract;

(2) The contract will occur by placing a delivery order against a GSA Schedule contract, provided that:

(i) The order is placed under the terms and conditions of the contract;

(ii) The order is within the maximum order limitation (MOL) of the applicable contract;

(iii) The total purchase price of the item(s) covered by the order does not exceed $300,000.

(Note: Even though the item(s) are to be rented or leased, the purchase price shall be used to determine if the dollar value of the order falls within the $300,000 threshold); and

(iv) The requirements set forth in 270.314 on the use of GSA Schedule contracts for ADP are met; or

(3) The value of the contract does not exceed:

(i) $2,500,000 purchase price, or $1,000,000 annual rental charge (including attendant maintenance costs) for a competitive procurement;

(ii) $250,000 purchase price, or $100,000 annual rental charge (including attendant maintenance costs) for a noncompetitive procurement.

(4) The acquisition is an "equipment technology update" (see 270.2) action resulting from a comparative cost analysis made in connection with an obsolescence review (see 270.2) if:

(i) The situation reviewed was limited to processing existing workload on installed old technology equipment;

(ii) The resulting technology update capability will not exceed the reviewed old technology capability by more than 50 percent;

(iii) An immediate increase in economy and efficiency can be realized without significant disruption in the continuing satisfaction of the need; and

(iv) Either (A) no new, replacement, or augmented equipment system is known or planned beyond the existing system life for the reviewed ADP equipment system or (B) a new, replacement, or augmented equipment system has been identified and is definitively planned for acquisition action on a competitive basis, but the contract award will be far enough in the future to allow significant economy and efficiency to be realized in the interim period.

(b) *Software.* After compliance with 270.1304, DoD may contract for commercially available software, including software performance monitoring packages, for use with ADPE without approval of GSA or the Federal Computer Performance Evaluation and Simulation Center (FEDSIM), provided that at least one of the following conditions is met:

(1) The contract will occur by placing a delivery order against an applicable GSA requirements contract;

(2) The contract will occur by placing a delivery order against an applicable nonmandatory GSA Schedule contract under the terms and conditions of that contract;

(3) The procurement is to be made by normal solicitation procedures and the total value of the procurement, for the specific software package(s), does not exceed:

(i) $1,000,000 for competitive acquisitions; or

(ii) $100,000 for noncompetitive acquisitions; or

(4) The software is provided with and is not separately priced from the ADPE.

(c) *Maintenance services.* The DoD may contract for maintenance services without approval of GSA when:

(1) Such services are available under the terms and conditions of an applicable GSA Schedule contract; or

(2) The maintenance charges do not exceed $1,000,000 annually for a competitive procurement, or $100,000 annually for a noncompetitive procurement.

(d) *Services.* GSA approval is not required for other services.

270.303 Contracting procedures.

This section sets forth the procedures for performing contracting when procurement authority is vested in the GSA. Prior to issuance of the solicitation, the contracting officer shall insure that a DPA has been obtained, or that the acquisition falls within one of the exceptions.

270.303-1 Submission(s) of agency procurement requests (APR).

If it is determined that the conditions of the contemplated contracting action are not covered by the blanket delegation of contracting authority provisions of 270.302, or if the conditions of the action change during the contracting process so that those provisions become inapplicable, two copies of the APR and other applicable documents shall be forwarded to the General Services Administration (KMA), Washington, DC 20405. The APR shall be signed by an official who has been authorized to initiate the acquisition action. In addition, the APR shall contain the name and telephone number of an individual within the DoD Component who shall act as the point of contact for GSA. The APR shall include, as applicable:

(a) *DoD component information.* DoD Component name, address, names and telephone numbers of appropriate officials.

(b) *Project title and description.*

(1) Name or designation of the ADPE system.

(2) Description of the requirement. Indicate whether it is a new, an addition to, or a modification of a current ADPE system.

(3) Estimated system/item life.

(4) Estimated system/item life cost.

(5) Locations (city and state) which require user access to the ADPE system or where the equipment is to be installed, if appropriate.

(6) Fiscal year and quarter during which the solicitation is expected to be released.

(7) Expected contract award date.

(c) *Contracting action planning.*

(1) Budgeted value of the acquisition in the request to OMB, indicating whether implicitly or explicitly described, including fiscal year involved.

(2) A summary of the alternatives considered to meet the requirement, the related costs and the basis for the alternative(s) selected.

(3) If the GSA Teleprocessing Services Program (TSP) is used as the source of supply, indicate the contracting arrangement contemplated (Multiple Award Schedule (MAS) or Basic Agreement (B/A), and type (full, interactive, or remote batch)).

(4) Conclusions of the performance evaluation for the currently installed ADPE system, when applicable.

(5) A statement that available resources have been screened and none are available to satisfy the requirement.

(6) Documentation regarding telecommunications, when applicable.

(7) Conclusions of the software conversion study, when applicable.

(8) Unique software, maintenance, and support requirements, if any.

(9) Evidence that site construction/modification by GSA is or is not required. One of the following statements shall be used for this purpose:

(i) The acquisition of this equipment will not require site construction or modification by GSA; or

(ii) The acquisition of this equipment will require site construction/modification by GSA which must be completed by (*date*) and notification and information, as applicable, has been/will be submitted to GSA on (*date*).

(10) One of the following statements regarding the Privacy Act of 1974:

(i) Equipment or services identified by this request will not be used to operate a system of records on individuals to accomplish an agency function.

(ii) Equipment or services identified by this request will be used to operate a system of records on individuals to accomplish an agency function and all applicable provisions of the Privacy Act have been complied with.

(11) A brief description of the primary agency programs that the equipment or services will support.

(12) Computer security requirements, where applicable, as certified by the responsible official.

(d) *Acquisition strategy.*

(1) Description of conversion management planning actions.

(2) Type of specification.

(3) The basis and documentation to support the use of brand name or equal, plug compatible, or specific make and

model specification, when applicable (see 270.2).

(4) The basis and documentation to support a contemplated noncompetitive action, when applicable. Specifically, the justification must address:

(i) The critical service, unique features, or mandatory requirements dictated by the intended use that limits the acquisition to a noncompetitive procurement (the overriding necessity of these competition-limiting requirements shall be clearly identified);

(ii) The steps taken which led to the conclusion that no other known or probable source of supply exists; and

(iii) The factors which preclude the development of specifications or the determination of the requirement in a form suitable for competition.

(5) The documentation to support a dedicated teleprocessing system strategy, when applicable.

(6) If the GSA TSP is used as the source of supply, source selection information, as follows:

(i) List of requirements (mandatory and evaluated optional features, if any);

(ii) Other elements to be evaluated;

(iii) Summary description of any benchmark and the method for developing cost information from the benchmark results, or a description of how cost information will be determined if a benchmark is not used; and

(iv) The method to be used for combining all cost elements to determine the lowest overall system-life cost.

(7) If remote terminal emulation is to be used, provide justification as set forth in 270.320.

(e) *Exceptions or deviations.* Provide a statement that all applicable regulations have been reviewed and complied with, or identify and justify deviations.

(f) *Remarks.* Provide additional information concerning any of the above items or other special conditions associated with the action deemed necessary for understanding of the APR.

(g) *References.* Provide references to relevant past GSA authorizations, meetings, telephone discussions, etc.

(h) *Supplemental submissions.* If, prior to award, the requirement or any of the contract planning or strategy elements of an APR change materially from data submitted in the APR, irrespective of whether before or after authorization is received from GSA to proceed, promptly provide a supplementary APR submission to GSA containing pertinent information and referencing the basic APR.

270.303-2 GSA action on APR.

(a) After review of the APR and the documentation submitted, and subject to the right of the DoD Component to determine its individual ADPE, commercially available software, and maintenance requirements, including the development of specifications for and the selection of the types and configurations of equipment needed, the Assistant Administrator for Information Resources Management, GSA or his designee, will:

(1) Delegate to the DoD Component authority to contract;

(2) Delegate to the DoD Component the authority to contract and provide for GSA participation in the contracting to the extent deemed necessary under the circumstances; or

(3) Provide for the contracting by GSA, or otherwise obtain the requirement on behalf of the DoD Component.

(b) A copy of the APR and the GSA response and other related documentation prescribed by the DoD Component shall be made a part of the contract file. Action will be taken by GSA within 20 workdays after receipt of full information contained in an APR or supplement thereto. Upon expiration of this 20-workday period, plus 5 calendar days for mail lag, the DoD Component may proceed with the acquisition as if a DPA had, in fact, been granted. This 20-workday period is subject to written modification by GSA in the event that, after review of the APR data, it is found not to contain the full information required. To establish a common understanding of the 20-workday period, GSA will provide written vertification within this period that identifies the date of receipt of the APR or supplemental data. In the event that unusual circumstances surrounding the acquisition dictate that a longer period of time is required for GSA to complete its appraisal, it will so notify the DoD Component and, under these circumstances, the automatic DPA rule shall not apply.

(c) APR submissions to GSA are not required to exercise a renewal option within the systems life of a previous authorization.

(d) Changes within the scope of a change provision in the contract do not require an additional DPA (including purchase orders under the Multiple Award Schedule (MAS) or contracts using the Basic Agreement (B/A) in the TSP). Any changes shall be within the systems life of the requirement as specified in the APR. A new DPA is required when requirements exceed the contract quantities (including options) by more than 25 percent.

270.303-3 GSA contracting for DoD.

When GSA acquires ADPE or related items for DoD, the contracting is a joint endeavor. In this case the DoD Component shall:

(a) Submit documentation to GSA including the requirement, systems or items life, the technical specification, and justification to support negotiated contracting;

(b) Prepare the technical portion of the solicitation and define any unique requirements;

(c) Provide necessary technical personnel (and contracting personnel, if desired) as members of the contract negotiating team;

(d) Prepare a selection plan and submit it to the GSA contracting officer prior to issuance of the solicitation;

(e) Evaluate proposals from a technical point of view and arrange for offerors' oral presentations, when appropriate;

(f) Provide copies of correspondence to the GSA contracting officer when authorized to communicate directly with offerors;

(g) Determine the technical capability of the items offered to meet the requiring activity's requirements, technical specifications, and systems or items life. This responsibility shall include the determination of whether the proposals are technically acceptable or unacceptable. The results of these determinations shall be transmitted to the GSA contracting officer to enable the contracting officer to take appropriate action with the offerors;

(h) Select the lowest overall cost item(s) and transmit this information with the necessary supporting documentation to the GSA contracting officer. In the event a conclusive judgment cannot be made on the basis of lowest overall cost, a determination and findings to this effect shall be prepared before any other factors are used as a basis for selection;

(i) Provide the following administrative information to the GSA contracting officer along with the data required in (h) above:

(1) Finance data (e.g., paying office, and fund citation);

(2) Contract distribution list and addresses; and

(3) Identity of the successor contracting office.

(j) Assist the GSA contracting officer in debriefing offerors, when debriefings are requested;

(k) If required, place the delivery order(s);

(l) Accomplish any other task not included above which will further the joint contracting objective or expedite

completion of the contract action at the DoD Component's discretion and with GSA concurrence; and

(m) Administer the contract in accordance with the terms and conditions thereof.

270.304 Small purchases.

The provisions of Part 213 apply when the aggregate amount of any one requirement for ADPE, commercially available software, or maintenance services does not exceed $25,000 annually. ADP schedule contracts may be used to procure FSC Group 70 items.

270.305 Restrictions on the use of simulation in the ADPE contracting process.

(a) Data structured for simulation purposes shall not be the only means of describing data processing requirements in solicitation documents. Simulation data shall be accompanied by a narrative description of the objectives, workload, and any available application logic diagrams.

(b) Solicitation documents should not be structured in such a way as to require offerors to use a specific computer system simulator in order to submit their offers. When offerors submit computer simulation as part of their offers, they shall be required to describe clearly the simulation use and the make and model of the computer on which the simulation was run.

(c) Offers should not be considered nonresponsive or unacceptable solely on the basis of simulation results.

(d) Procedures for simulation and computer performance evaluation services are prescribed in Departmental procedures.

270.306 Publicizing contract actions.

(a) To ensure that appropriate competition is obtained, synopses of proposed contracts for ADPE, commercially available software, and maintenance services shall be publicized in the Commerce Business Daily (CBD) in accordance with the provisions of FAR Part 5. Notwithstanding the exception under FAR 5.202, a requirement which may result in an order against a GSA ADP Schedule contract shall be synopsized in accordance with 270.314 and 270.315.

(b) The GSA centralized Bidders Mailing List (BML) for Federal Supply Classification (FSC) Group 70 may be used for competitive ADPE and commercially available software and maintenance service acquisitions. DoD Components may obtain the GSA BML by a written request to the General Services Administration (8BR), Building 41, Denver Federal Center, Denver, Colorado 80225. The request shall include the applicable class and BML code number(s), listed below:

7010–0001	ADPE Configuration
7020–0001	ADP Central Processing Unit (CPU, Computer), Analog
7021–0001	ADP Central Processing Unit (CPU, Computer), Digital
7022–0001	ADP Central Processing Unit (CPU, Computer), Hybrid
7025–0001	Memory-Magnetic Storage
7025–0002	Magnetic Tape Subsystems
7025–0003	Magnetic Disk Subsystems
7025–0004	Printers, High Speed (ADP)
7025–0005	Paper Tape Devices
7025–0007	Interactive Display
7025–0008	Interactive Graphics
7025–0009	Interactive Hard Copy
7025–0010	Other ADP Input/Output and Storage Devices
7030–0001	ADP Software—Operating System
7030–0002	ADP Software—Application Programs
7030–0003	ADP Software—Data Base Management Programs
7030–0004	Other ADP Software
7035–0001	ADP Accessorial Equipment
7040–0001	Punched Card Equipment
7045–0002	ADP Support Equipment
7050–0001	ADP Components

The GSA BML may be used for subsequent contracting for items in the class and BML code, provided the solicitation is released to industry within 90 days following receipt of the BML in question.

(c) 41 CFR 150 shall be cited as the authority for the request. For further information concerning the above classes, DoD Components should contact General Services Administration (KEC), Washington, DC 20405.

(d) To contract for ADP maintenance services, agencies may obtain the GSA BML for Standard Industrial Group 0739, BML Code 4, by written request to the addressee indicated in (b) above. 41 CFR 150 shall be cited as the authority for requesting the BML.

(e) Maximum advantages shall be taken of the latest technological advances in the ADPE field to ensure that the Government's needs are met at the lowest overall cost. To encourage industry to offer proposals which permit the Government to take full advantage of technology and to ensure that specifications are clear and complete, DoD Components may provide proposed specifications to industry for comment prior to formal solicitation. A copy should be furnished to all prospective offerors scheduled to receive the solicitation. Industry should be given a minimum of 30 calendar days to submit written comments and at least 60 days for complex acquisitions. Comments and the disposition thereof shall be retained in the contract file.

270.307 Evaluation factors.

(a) Solicitations shall identify all factors, including conversion costs, that will be considered in the evaluation of offers. The evaluation factors shall be applied to the mandatory technical requirements and the evaluated optional features (e.g., specific software packages, compatible input-output devices), where applicable. Where evaluated optional features are included in a solicitation, their value to the Government shall be expressed in dollars, points, or any other reasonable indicator as an evaluation factor.

(b) While acquisition price is usually considered to be the most significant factor, the circumstances of a particular acquisition may require that other additional factors be taken into consideration. These include, but are not limited to:

(1) Technical approach;

(2) Previous experience in complex acquisitions;

(3) Management organization;

(4) Prior success at satisfying technical and delivery requirements;

(5) Post-award support capability;

(6) Ability to deliver technologically current software; and

(7) Maintenance costs.

Contracting officers shall ensure that these and all other relevant factors, as required by other parts of this Subpart, are expressly stated in the solicitation.

(c) Unless waived in accordance with Departmental procedures and subject to the type of funds available (e.g., O&M, Procurement, etc.), the contracting officer shall solicit and evaluate, over the projected systems life, all forms of financing an acquisition. These include:

(1) Purchase.

(2) Lease: vendor retains title to the items throughout system's life.

(3) Lease With Option to Purchase (LWOP): the Government leases items with options to purchase at a later date.

(4) Lease to Ownership Plan: the Government leases items for a specified period in accordance with applicable funding statutes after which lease payments cease and title is transferred to the Government. When solicitation of these various financing methods is appropriate, offerors may submit any or all of them. The contract file shall be documented with the results of the analysis performed on the financing methods received.

(d) Other factors to be considered in evaluating proposals include:

(1) Residual value of purchased ADPE at the conclusion of systems life.

(2) Present value of money (discounted for the systems life) in

accordance with procedures established by the DoD Components.

270.308 Commercially available software contracts.

When acquiring commercially available software, contracting officers should have the following objectives:

(a) Avoid restrictive clauses that limit the use of the software to a specific system, installation, or organization;

(b) Incorporate a clause that will permit other Government agencies to obtain the software under the contract being negotiated;

(c) Obtain additional quantity discounts should any other Government agency acquire the same software under the contract; and

(d) Ensure that the contractor is contractually obligated to support and maintain the software in subsequent years.

270.309 Determination of selection factors.

The prices offered for the systems or items life and conversion costs, whether based on prices offered or a Government estimate, shall be included in determining the lowest overall cost. The following are examples of other factors to be considered:

(a) Economic benefits clearly attributable to increased productivity.

(b) Direct savings that would accrue from the release of rented ADPE, discontinuance of services, or reduction in energy or telecommunications costs.

(c) Indirect savings derived from reductions in other than ADPE or services cost, such as space and/or personnel support expenses.

(d) Benefits from implementing new applications which otherwise would have to be deferred.

(e) Economic advantages resulting from providing the capability to accommodate projected increases in workload without contracting for further augmentation, replacement of the ADPE, or acquisition services.

(f) Potential savings due to the availability of software already developed and available from the Federal inventory or commercial marketplace that could be used to meet additional requirements.

(g) Proven reliability of the equipment and operating system software in similar operating environments.

(h) The continued availability of operating system software support and maintenance services beyond the initial system/item life that would enhance the probability of reutilization of the ADPE within the Government.

(i) The potential for supporting other agencies through the ADP sharing program.

270.310 Contract clauses.

In addition to the other clauses required by the FAR on the DoD FAR Supplement, the clauses prescribed below shall be used in all solicitations and contracts for ADP equipment, software and maintenance services and certain other services for which GSA has delegated procurement authority either by DPA or by regulation.

(a) *Warranty exclusion and limitation of damages.*

The contracting officer shall insert the clause at 252.270–7000, Warranty Exclusion and Limitation of Damages, in solicitations and contracts for ADP equipment, commercially available software, maintenance, and related supplies, unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

(b) *Contractor representation.*

The contracting officer shall insert the clause at 252.270–7001, Contractor Representation, in solicitations and contracts for ADP equipment items or systems when the Government's requirement is set forth in whole or part by functional specifications and the contract amount is expected to exceed $100,000.

(c) *Fixed-price options.*

(1) The use of option(s) to extend the contract period and/or to acquire additional quantities may be in the best interest of the Government when the conditions of FAR 17.206 are met. The evaluation of options motivates price competition on a system/item life basis and eliminates the long-term effects of a buy-in. One-time charges (startup and other nonrecurring costs), such as documentation, manuals, initial training requirements, etc., may be significant for a particular solicitation. An offeror may intend to absorb some portion of these costs or may plan to recover (amortize) them in possible "follow-on" awards. Incumbent offerors could enjoy a competitive advantage since it may not be necessary to recover them in a single contract. In addition, offerors with relatively broader markets and/or stronger financial resources tend to have greater flexibility with respect to any one individual procurement action. The evaluation of system/item life prices promotes greater competition by evening out these advantages and encourages lower system/item life pricing.

(2) *Separate charges.*

(i) When considering options, care should be exercised in making the distinction between: (A) Discontinuance charges (i.e., termination settlement compensation including negotiated contractual payment provisions) for discontinuance during the initial contract period or during an exercised option period, (B) separate charges for the Government's failure to exercise an option to extend the contract term or to acquire additional quantities, and (C) contracting for evaluated optional features, which is outside the scope of this subsection.

(ii) A payment that reflects the addition of a separate charge to a contract price is illegal if the charge, when added to the contract price, exceeds the amount that reasonably represents the value of bona fide fiscal year requirements. (See 31 U.S.C. 665a, 31 U.S.C. 712a, and 41 U.S.C. 11.) To preclude the payment of these illegal charges (because of the nonexercise of options), when options are to be incorporated into a contract, separate charges in any form shall not be solicited and offers containing any charges for the Government's failure to exercise any option will be rejected as provided by the clause entitled "Fixed-Price Options" prescribed below.

(3) *Discontinuance of lease/rental of equipment or software.* When the Fixed-Price Options clause is used, the Government and the contractor may find it mutually advantageous to incorporate a special provision containing specific notice and settlement terms to cover discontinuance of rental of equipment or software during the contract period. The clause entitled "Discontinuance of Rental and Repricing" (see example at 252.270–7006) may be used for this purpose. The special "Discontinuance of Rental and Repricing" clause provides notice of discontinuance and settlement payment terms. A means is provided to determine those charges within a ceiling that ensures that the value of the discontinued requirement and the contract value of the requirement for the revised contract period are reasonable. It provides the opportunity for a lower price by covering the risk of discontinuance with specified repricing provisions. Neither the incorporation of this clause in the contract nor the calculation and comparison of potential discontinuance charges shall be considered an evaluation factor.

(4) The contracting officer shall insert the clause at 252.270–7002, Fixed-Price Options, in solicitations and contracts when a fixed-price contract is contemplated; the solicitation is for ADP equipment, commercially available software, or maintenance services

requirements that will extend beyond the initial fiscal year; and an option to extend the contract period and/or to acquire additional quantities may be in the best interests of the Government. When the Fixed-Price Options clause is used, the solicitation shall also specify:

(i) The system/item life;

(ii) The present-value methodology, including payment schedule, that will be used for purposes of award evaluation; and

(iii) The option periods of performance and option quantities, as appropriate.

(d) *Options to extend the term of the contract.* The contracting officer shall insert the clause at 252.270–7003, Option to Extend the Term of the Contract, in solicitations and contracts when the clause at 252.270–7002, Fixed-Price Options, is used.

(f) *Options for increased quantities.* The contracting officer shall insert the clause at 252.270–7004, Option for Increased Quantities, in solicitations and contracts when the solicitation includes the provision at 252.270–7002, Fixed-Price Options, and the known requirements exceed the basic quantity to be awarded (also see FAR 17.2).

(g) *Discontinuance repricing.* The contracting officer may insert the provision at 252.270–7005, Discontinuance Repricing, in solicitations when a fixed-price contract is contemplated and conditions in 270.310(c)(3) are applicable. The provision contains boxes that provide the offeror an election to agree to or decline the inclusion of the clause at 252.270–7006, Discontinuance of Rental and Repricing.

(h) *Discontinuance of rental and repricing.* The contracting officer shall insert the clause at 252.270–7006, Discontinuance of Rental and Repricing, when the solicitation includes the provision at 252.270–7005, Discontinuance Repricing (also see 270.310(c)(3)).

270.311 Use of GSA regional support services contracts.

GSA establishes and makes available for the use of other agencies a variety of regional ADP support services contracts. These contracts may include such areas as software development and programming, production of computer-output microfilm, and data entry. DoD Components should consult with their GSA/OIRM regional office to determine the scope and availability of these contracts. These sources of supply should be used if it is determined that they will meet the user's need at the lowest overall cost, price and other factors considered. The following information is generally descriptive of these contracts:

(a) These regional requirements contracts are mandatory for the GSA and the contractor. They are optional for use by DoD Components whose requirements fall within the scope of these contracts.

(b) DoD Components that wish to use these contracts have the responsibility to develop, jointly with GSA regional personnel, a statement of their work and deliverables. The GSA regional personnel serve as contract administrators on the contracts.

(c) Task orders are negotiated by GSA and the Component with vendors based upon services and deliverables specified by the requesting component. GSA contract administrators ensure that contract provisions are met and services are delivered as negotiated.

(d) DoD Components reimburse GSA through the ADP Fund for services received under the requirements contracts.

270.312 Contracting for ADP supplies.

ADP supplies shall be contracted for in accordance with the following procedures:

(a) EDP tape and instrumentation tape—the provisions of FAR 8.404 apply.

(b) Tabulating machine cards—the provisions of FAR 8.404 apply.

(c) Marginally punched continuous forms—the provisions of FAR 8.802 apply.

(d) Other ADP supplies—the provisions of FAR 8.404 apply in the event the supplies are included in either mandatory or nonmandatory Federal Supply Schedules.

270.313 Use of GSA schedule contracts for certain ADP related equipment.

Certain specific key-strike function-limited office information resources equipment, not defined as ADPE, is available under GSA nonmandatory ADP schedule contracts. The provisions of 270.314 apply to these equipment items classified under Federal Supply Classification (FSC) 7435, except that a DAP is not required.

270.314 GSA nonmandatory schedule contracts.

A large number of items of ADPE, commercially available software, and maintenance service are available under nonmandatory GSA Schedule contracts, subject to the following:

(a) *General.* When a nonmandatory schedule contract is used, a specific Delegation of Procurement Authority from GSA is not required even though the order may be for a noncompetitive requirement; however, the existence of nonmandatory ADP Schedule contracts shall not eliminate the requirement for maximum practicable competition in acquiring ADPE, commercially available software or maintenance services. Requirements shall be synopsized in accordance with 270.315 (also see FAR part 5). Also, the availability of items under ADP Schedule contracts shall not detract from acquiring the items, including peripheral equipment or items for augmenting an existing system, from a number of different sources if this action is in the best interest of the Government. Suitable equipment must be considered whether or not this equipment is on an ADP Schedule contract. All schedule contracts that might satisfy the requirement shall be considered; or, the acquiring activity may choose to prepare a solicitation to secure goods or services at lower overall costs to the Government. Costs of the contracting process should be considered. If ADPE, commercially available software or maintenance services are acquired under an ADP Schedule at other than the lowest delivered price available for identical or similar items under any other ADP Schedule contract, DoD Components shall justify the action and retain the justification and supporting data in the contract file. The following are examples of factors that may be used in support of such justifications:

(1) Special features of one item, not provided by comparable items, are required for effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Time of delivery in terms of actual need cannot be met by a contractor offering a lower price.

(5) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points, will produce savings in the long run which are greater than the difference in prices.

(b) *Initial acquisition of ADPE.* Whether for purchase, lease or rental, orders for ADPE may be placed under ADP Schedule contracts, provided that:

(1) The purchase price of the items covered (even though they are rented or leased) does not exceed $300,000; and

(2) The intent to place an order with a purchase value in excess of $50,000, excluding maintenance, is synopsized in the CBD at least 15 calendar days before placing the order and the contract file is

documented with the results of the synopsis. If a written response is received from responsible sources that desire to compete on the requirement, the file also shall be documented with evidence that use of the selected ADP Schedule contract, including the method of financing (e.g., purchase, lease) is the lowest overall cost alternative, price and other factors considered. This process may require the issuance of a formal solicitation.

(c) *Continued lease or rental of installed ADPE and software.* GSA Schedule contracts may be used for the continued lease or rental of installed equipment and software, provided that:

(1) A DPA is obtained before issuing the annual renewal if the ADP Schedule purchase price exceeds $300,000 and the synopsis results indicate that equipment is available from a source other than the schedule contract. If the original requirement was evaluated and priced on a systems life basis (i.e., if the price of successive renewals was considered as an evaluated cost in the original acquisition selection), then renewals of installed equipment under an extended rental plan during the originally planned systems life do not require synopsizing or a DPA from GSA.

(d) *Conversion from lease to purchase of installed ADPE.* A specific delegation of procurement authority must be obtained from GSA before issuing an order to purchase ADPE with a net purchase order price of more than $300,000 when identical, i.e., specific make and model, or suitable substitute equipment is available from a source other than the schedule contractor. Requirements shall be synopsized for a least 15 calender days if the net value of the purchase option exceeds $50,000.

(e) *Acquisition of commercially available software and maintenance services.* Orders may be issued for these services, provided that the contract file supports use of the Schedule contract as being in the best of interest of the Government. Requirements shall be synopsized when the annual charges exceed $50,000.

270.315 Synopsis of GSA schedule actions.

(a) As a minimum, the synopsis shall include the description of the item(s) required, quantity, delivery date and location, period of lease/rental, if applicable, and any other information to assist vendors in responding to the synopsis. The synopsis shall indicate that no contract award will be made on the basis of quotation/proposals or other information received in response to the notice since the synopsis of intent to place a delivery order against a schedule contract cannot be considered a request for quotations/proposals. If, however, the only responses to a CBD notice of intent to place such an order are from vendors offering use of their schedule contracts, and technical acceptability can be established by examination of contractor literature, then the contracting officer may place a delivery order in accordance with 270.314.

(b) the schedule order synopsis technique provides DoD Components with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and additional product and cost information as might be submitted by offerors in response to the CBD notification. It is critical that the synopsis process, if used to determine the feasibility of placing a delivery order against an ADP Schedule contract, elicit sufficient information for the contracting officer to determine the need to prepare a formal solicitation. If responses indicate that soliciting is desirable or required, the contracting officer:

(i) If solicitation is for the purpose of comparing proposals with ADP Schedule contracts, *shall ensure* that terms and conditions of the solicitation are substantially the same as those contained in the Schedule contract(s) contemplated for use. The vendor(s) having the ADP Schedule contract(s) shall be included as an addressee(s) of the solicitation since it often is interested in furnishing required items by use of locally awarded contracts. This procedure will permit the vendor(s) to further discount Schedule prices since GSA does not consider this to be a price reduction requiring subsequent adjustment of prices listed in the Schedule contract(s) for all future users.

(ii) *Shall evaluate* offers and ADP Schedule contracts equally. Some offerors may not accept solicitation terms and conditions similar to those that schedule vendors have incorporated into their GSA contracts. The contracting officer shall act in a manner most advantageous to the Government by either awarding a contract or placing an order against a GSA ADP Schedule contract. The contract file shall be documented to justify the action taken.

270.316 Use of GSA ADP requirements contracts.

GSA makes selected ADPE and commercially available software available through requirements contracts. When ADPE and software which satisfy requirements are available from GSA requirements contracts, this source shall be the primary source of supply in accordance with the provisions of the contract. Copies of the contracts are distributed to recipients of the GSA ADP Schedule for FSC Group 70, Part 1. Additional copies are available from the General Services Administration (8BR), Building 41, Denver Federal Center, Denver, Colorado 80225. Some of these requirements contracts specify that GSA is responsible for the allocation of ADPE or software. In these cases, authorization shall be obtained from GSA (KED), Washington, DC 20405, before placing an order. ADPE or commercially available software which is functionally similar to that on a requirements contract shall not be acquired from another source until the activity (a) documents the contract file as to why the requirements contract could not be used, and (b) obtains a delegation of procurement authority from GSA, unless the contract is within the exceptions noted.

270.317 Compatibility-limited requirements.

(a) Unless demonstrated by other circumstances, a requirement for an augmentation or replacement acquisition that is limited to ADPE and/or software compatible with the installed system shall be:

(1) Supported by a software conversion study (see 270.318), as applicable;

(2) Justified on the basis of mission-essential data processing requirements, and economy and efficiency; and

(3) Acquired in accordance with the requirements of this subpart.

(b) Compatibility-limited requirements tend to restrict competition and, therefore, shall not be made mandatory solely for reasons of economy or efficiency. When conversion and other costs associated with acquiring noncompatible offers from responsible offerors that will meet the requirement at the lowest overall cost, price and other factors considered, the evaluation shall determine if acquisition of compatible systems is most advantageous to the Government. Solicitation of noncompatible offers can be restricted under an equipment technology update justified by an obsolescence review (see 270.2).

(c) The following factors shall be considered in determining whether the incorporation of compatibility-limited requirements is justified for the replacement acquisition:

(1) The essentiality of existing software, without redesign, to meet critical mission needs. For example, the continuity of operations may be so

critical that conversion is not a viable alternative.

(2) The additional risk associated with conversion if compatibility-limited specifications are not used and the extent to which the Government would be injured, financially or otherwise, if the conversion to the new ADP system fails.

(3) The additional adverse impact of factors such as delay, lost economic opportunity, and less than optimum utilization of skilled professionals if compatibility-limited specifications are not used.

(4) The steps being taken to foster competitive conditions on the augmentation or replacement acquisition.

(5) The off-loading of selected applications programs to commercial data processing service facilities as an alternative to conversion.

(6) The extent of essential parallel operations, i.e., need to continue operations of the old system in parallel with the new system until it can fully support the mission needs.

(7) The continuation of ADP services for selected application programs with the present commercial ADP services contractor as an alternative to conversion of all programs in the present ADPE resource system.

(8) The feasibility of competing conversion requirements to be performed on a guaranteed basis under a competitive solicitation that couples the conversion effort and ADP services in a single contract, including consideration of the basis for and calculation of liquidated damages provisions for conversion performance failure.

(d) The justification that supports the use of compatibility-limited specifications (i.e., plug-compatible or brand name or equal purchase descriptions) shall be submitted with the APR in accordance with 270.303–1 when the use of these specifications is contemplated.

270.318 Software conversion studies.

(a) Software conversion studies are performed to ensure that the user's needs are met at the lowest overall cost, price and other factors considered. This includes cost and other factors associated with conversion activities. A software conversion study is not required when one of the following conditions exists:

(1) Initial acquisition where no software currently exists;

(2) Acquisition of computer peripherals only;

(3) Exercise of a purchase option under a lease; or

(4) Acquisition of a compatibility-limited replacement system as the result of a comparative cost analysis made in connection with an obsolescence review.

(b) A software conversion study shall be made for each augmentation or replacement ADPE acquisition when either one of the two following conditions exists:

(1) The estimated purchase price of the equipment system or the estimated system life cost is expected to exceed $2,500,000; or

(2) The cost of conversion is to be used as the primary justificaton for a noncompetitive requirement when the estimated value of the acquisition exceeds $300,000.

(c) A DoD component may elect to conduct its own comprehensive software conversion study, use contractual sources to accomplish the study, or request the GSA Federal Conversion Support Center (FCSC) to perform the study.

(d) The software conversion study shall be included in the contract file and shall be submitted with the APR to GSA.

(e) When contracting for a software conversion study, the statement of work shall provide the following as a minimum:

(1) Problem definition;

(2) Inventory of current system components;

(3) Description of the operating system environment;

(4) Inventory of application programs and data files to be converted;

(5) Feasible equipment contracting approaches (including acquiring plug-compatible or noncompatible equipment, as appropriate) with schedules for both the acquisition and conversion effort;

(6) General description of the target environment, including system hardware and software, performance requirements, and any constraints on the functional definition of the requirement;

(7) If applicable, approach to accomplish any eventual conversion; and

(8) A requirement for the contractor to recommend actions to be taken to reduce cost and risk in any future conversions.

(f) Studies for acquisitions below the thresholds stated in 270.318(b) above shall be based on Government estimates determined in accordance with Departmental procedures. The contract file shall be documented to record the estimates and the method of computation.

(g) Costs directly related to the conversion of the installed ADPE, software, data bases, files, and telecommunications software to the replacement system, and project management costs, shall include, but are not limited to:

(1) Conversion of the following software by reprogramming, recoding or translation:

(i) Existing software written in Federal standard or other ANSI standard higher-level language;

(ii) Application software written in assembly or other nonstandard languages that will continue to meet essential mission needs without redesign, provided that continued use of the nonstandard software can be justified and the file documented with the justification prior to incorporation into the software conversion study;

(iii) Mission-essential application software to be developed for operational use before the replacement is installed (or before commercial ADP services are procured), provided that the software is written in Federal standard or other ANSI standard language.

(2) Conversion of data bases, data base design changes, and data base management systems to the extent necessary to permit the continued use of existing application software;

(3) Firmware required solely to permit the continued use of application software;

(4) Site preparation and modifications to installed environmental controls;

(5) Parallel operation of the old system during the conversion process, including off-site data processing support;

(6) Travel and training expenses, including pay and fringe benefits of Government employees during attendance at formal classroom training courses; and

(7) Other general and user expenses directly related to the conversion effort; e.g., conversion planning, preparation and management supplies, and any additional general-purpose software required to support the conversion.

(h) The useful life of application software is limited by changes in data processing requirements, operating system software, and equipment technology. Generally, the life expectancy of this software, without redesign or reprogramming, is in the range of 5 to 10 years. Accordingly, the updating of application software for these reasons must be considered regardless of whether these programs are converted from one ADPE system architecture to another. The costs incurred for the redesign of application software in technology updating are not bona fide conversion costs and they

shall not be evaluated as such. These technology updating costs include:

(1) The conversion of existing software, data bases which are to be redesigned;

(2) Purging duplicate or obsolete software, data bases, and files;

(3) Development of documentation for existing application software; and

(4) Improvements in management and operating procedures.

(i) Standard cost factors, such as those contained in the OMB Cost Comparison Handbook (Supplement No. 1 to OMB Circular A-76), shall be used to the maximum practicable extent in preparing conversion cost studies and estimates. These cost factors may be supplemented by industry or Component-developed cost factors, as necessary.

270.319 Use of benchmarks in low-dollar ADPE systems acquisitions.

(a) Mandatory benchmarks shall not be used in solicitations for ADPE systems with a purchase value of less than $300,000 unless there is no other acceptable means of validation. When the use of benchmarks is necessary, solicitations shall not require the running of "worst case" benchmark programs (e.g., programs that require extensive reprogramming or conversion) unless these programs are representative of the using activity's actual or anticipated data processing needs.

(b) For ADPE systems with a purchase value of $300,000 or less, the following validating methods shall be considered:

(1) Validation of performance by the technical evaluation of proposed ADPE and software; or

(2) Evaluation of an operational ADPE installation processing a similar workload on comparable equipment.

270.320 Use of remote terminal emulation in ADPE systems acquisitions.

(a) Each Component shall determine whether or not to authorize use of remote terminal emulation during each ADPE system procurement and should use the GSA Handbook, "Use and Specifications of Remote Terminal Emulation in ADP System Acquistions," before making its determination.

(b) When remote terminal emulation is authorized in an ADPE system acquisition, the DoD Component:

(1) Shall follow all mandatory procedures contained in the GSA Handbook (the handbook may be obtained from the General Services Administration (KEC), Washington, DC 20405);

(2) Shall not require remote terminal emulation capabilities that are not explicitly defined in the GSA Handbook;

(3) May declare an offer unacceptable in an negotiated procurement if the offeror fails to provide the remote terminal emulation capabilities required by the solicitation; and

(4) Shall not require an offeror to conduct a bench mark test using remote terminal emulation at the component's site.

(c) Components shall not authorize the use of remote terminal emulation in ADP service contracting actions, except for:

(1) Dedicated teleprocessing requirements; and

(2) Unusually large and complex share-teleprocessing requirements.

(d) Authority to deviate from the requirements of (b) above shall be obtained prior to synopsis or release of the solicitation, in accordance with Departmental procedures.

(1) To request a deviation, requiring activities shall provide a detailed technical description and justification for each specific deviation desired.

(2) If authority to deviate is granted, the contracting officer shall promptly provide to potential offerors detailed instructions specifying all mandatory remote terminal emulation capabilities not defined in the GSA Handbook and the exact manner in which each emulation benchmark test must be conducted. A notice indicating the availability of these materials shall be published in the Commerce Business Daily (CBD) at least 60 calendar days before the release of the solicitation document.

270.321 ADP fund.

(a) The GSA ADP Fund is a revolving fund available for financing the purchase and, under certain circumstances, lease and maintenance of ADP equipment and/or commercially available software. When approved by GSA, the ADP Fund may be used to obtain maintenance services for ADPE leased from GSA through the ADP Fund.

(b) When an evaluation of offers indicates purchase as the lowest overall cost alternative, but the funds committed to the purchase are inadequate or are not of the proper type. The contracting officer shall notify the requiring or other Department-designated activity of the savings to be realized if items are purchased rather than leased. This activity, upon ensuring that funds are not available, shall make an inquiry to GSA for the use of the ADP Fund. If the ADP Fund is not available, the activity shall notify the contracting officer that the ADP Fund is not available and that the next lowest overall cost alternative should be selected.

(c) If the GSA ADP Fund is used, the activity shall negotiate and execute a payback arrangement with the GSA.

270.322 Exchange/"Sale" of ADPE.

(a) When it is determined that Government-owned ADPE should be replaced, exchange/"sale" should be considered. Exchange/"sale" is a means of transferring the equipment to be replaced to another Government agency, with reimbursement, or to the supplier of the replacement ADPE for a trade-in allowance on the contract price so that the proceeds can be applied in whole or in part payment for the replacement ADPE. "Sale" relates to the proceeds obtained from another Government agency whereas "exchange" relates to the trade-in allowance offered by contractors. The proceeds of "sale" or the exchange allowance shall be applied toward the acquisition of replacement ADPE. In addition to the requirements in this subpart, compliance with Subpart 217.70 and DOD Manual 7950.1–M is required.

(b) The contracting officer, working with the reutilization activity, is responsible for complying with the following conditions in completing an exchange/"sale" transaction.

(1) The ADPE system/item to be "sold" or exchanged must be similar to the ADPE system/item to be acquired;

(2) The ADPE system/item must be needed in the continuing satisfaction of the ADP requirement;

(3) One system/item must be acquired to replace another similar system/item, except in situations where lesser or greater number of systems/items must be acquired to perform all or substantially all of the functions which the trade-in system/item would otherwise perform; and

(4) A written administrative determination must be made by the requiring activity that the exchange allowance or the proceeds of the "sale" will be applied in acquiring the replacement ADPE and that the exchange/"sale" transaction will foster the economic and efficient accomplishment of a continuing requirement.

(c) The normal steps in the execution of an acquisition authorizing an exchange transaction are specified herein.

(1) Offers shall be solicited both on an exchange (trade-in for allowance) or no exchange (no trade-in) basis. The Government shall retain the option to

exercise any exchange offer at the time of award.

(2) The exchange ADPE shall be listed and described in the solicitation document with the following information included as a minimum: a brief description of each item of ADPE, name of manufacturer, equipment type, model number, and the appropriate condition code and a translation of that condition code. The contracting schedule must allow sufficient time for the screening of the exchange ADPE within the Government prior to contract award.

(3) Immediately upon receipt of offers, the highest exchange offer (if any) shall be determined and used to initiate screening pursuant to 270.14. Notification shall be given to the Defense Automation Resources Office (DARO) on SF 120, Report of Excess Personal Property. The following notation shall be displayed prominently on the original and 5 copies of the SF 120.

Exchange/"Sale" Property

A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of sale to the acquisition of similar items.

The following additional information shall be submitted with the SF 120:

(i) The identity of the offeror of the exchange;

(ii) The type of replacement equipment;

(iii) The method of acquisition for the replacement equipment;

(iv) The anticipated purchase price for the replacement equipment;

(v) The DPA number assigned by GSA for the replacement equipment, if applicable; and

(vi) The name and telephone number of the contracting officer.

(4) Offers shall be evaluated using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made irrespective of whether the replaced ADPE is exchanged.

(5) Before an award is made, the results of screening shall be considered. If another Government agency wishes to acquire the replaced equipment, the exchange shall not be made. In this event, the contract price will not include the exchange allowance since this amount will be realized by the sale of the equipment to the requesting agency. The actual sale price to the requesting agency will equal the exchange allowance (if any) of the successful offeror.

(6) If no Government agency wishes to acquire the replaced equipment, the contract price will include the exchange allowance (if any). If no exchange allowance was offered by the successful contractor, the replaced equipment shall be handled in accordance with 270.14.

270.323 Conflicts between this subpart and the DPA.

When contracting for ADPE, commercially available software, maintenance services, supplies, and certain other services under a DPA from the GSA, the provisions of the delegation shall take precedence over any conflicting provisions of this subpart and need not be processed as a deviation.

270.324 Acquisition assistance.

Assistance in any phase of the contracting process covered by this subpart may be obtained by contacting:

Army

U.S. Army Computer Systems Selection and Acquisition Agency, Alexandria, VA 22331

HQDA (DAMO–C4Z–K), The Pentagon, Washington, DC 20310

Navy

ADP Selection Office, Washington, DC 20374

Naval Data Automation Command, Code 11, Washington, DC 20374

Air Force

Air Force Computer Acquisition Center, Hanscom AFB, MA 01731

HQ USAF (AF/RDC), Washington, DC 20330

Defense Logistics Agency

Defense Logistics Agency, ADP/T (DARO), Cameron Station, Alexandria, VA 22314

Subpart 270.4—Acquisitions Under 10 U.S.C. 2315 Authority

270.400 Scope of subpart.

This subpart is applicable to acquisition of automatic data processing equipment or services if the function, operation, or use involves, as its primary purpose, one or more the following:

(a) *Intelligence systems.* Computer resources for the intelligence community for the research and development of, or use in, its intelligence activities.

(b) *Cryptologic systems related to national security.* Computer resources for the research and development of, or use in, cryptologic activities authorized by the National Security Agency.

(c) *Command and control of military forces.* Computer resources for research and development of, or use in:

(1) The National Military Command System;

(2) Worldwide Military Command and Control System;

(3) DoD Component Command and Control Systems.

(d) *Integral part of a weapons system.* Computer Resources:

(1) Physically a part of, dedicated to, or essential in real time to, performance of the mission of weapon systems;

(2) Used for specialized training, diagnostic testing and maintenance, simulation, or calibration of weapons systems;

(3) Used for research and development of weapons systems.

(e) *Critical to the direct fulfillment of military or intelligence missions.* Computer resources in, or used in the research and development of:

(1) Systems that will deploy as mission support in a combat environment;

(2) War planning systems;

(3) Environmental systems supporting military missions, e.g., weather, oceanographic, or satellite systems;

(4) Projects the existence of which are classified;

(5) Warning, surveillance, reconnaissance and electronic warfare systems;

(6) Mapping, charting, and geodesy systems;

(7) Airlift, sealift, and port facilities systems;

(8) Military communication systems; or

(9) Logistics systems which provide direct support to operating forces or provide direct support to maintenance of weapons systems (e.g., organic supply, software support facilities for weapon systems, contracting, accounting, disbursement and budgeting, etc.).

270.401 Determination of applicability.

Determinations as to the applicability of this subpart shall be made in accordance with DoD Component procedures.

Subpart 270.5—Acquisition Under Other Authorities [Reserved]

Subpart 270.6—Acquisition of ADPE by DoD Contractors

270.600 Scope of subpart.

(a) This subpart is applicable to contractor acquired ADPE as defined in FAR 31.001, except as components of end items delivered to the Government.

(b) If a contractor acquires ADPE for the account of the Government or if title to the equipment will pass to the Government, the acquisition must be approved as provided in 270.601 and FAR Part 45.

(c) If a contractor leases ADPE, and the lease will not be for the account of the Government or title will not pass to the Government, and the total cost is to be allocated to one or more Government contracts requiring the determination or negotiation of costs, the acquisition must be approved in accordance with the procedures of 270.601 and FAR Part 45.

(d) If a contractor leases ADPE (see 270.2) with an annual cost in excess of $500,000 and more than 50 percent of the cost is allocated to Government contracts requiring the negotiation or determination of costs, the acquisition must be approved in accordance with the procedures of 270.603.

(e) The provisions of 270.602 relating to providing reused equipment to DoD Contractors are applicable regardless of the manner of acquisition or dollar amount.

270.601 DoD component approvals.

(a) Requests for approval of acquisitions of the types outlined in 270.600 (b) and (c) must be submitted through the administrative contracting officer (ACO) to the procuring contracting officer (PCO) who awarded the contract that gave rise to the need for the computer equipment. Prior to the submission to the PCO, the ACO shall comply with 270.602. The PCO will obtain any approvals required by DoD Component procedures.

(b) The supporting documentation for these acquisitions should clearly indicate the best method of financing the acquisition which is in the Government's best interests, that is:

(1) Leasing, either operating or capital, or

(2) Purchase.

(c) The PCO shall consider providing the computer equipment to the contractor as Government-furnished equipment. Factors to be considered include:

(1) Increased ability to realize economies, efficiencies, and to obtain greater competition;

(2) Timeliness;

(3) Impact upon the contractor's ability to perform his contract responsibilities, and

(4) Type of funds available.

The determination shall be made part of the contract file or, if required by DoD Component procedures, transmitted to the appropriate official for approval.

(d) Upon approval of the contractor's requirement, written confirmation shall be provided through the ACO to the contractor.

270.602 Providing reused computer equipment to DoD contractors.

(a) When DoD contractor has a requirement for computer equipment exclusively for use as facilities, special test equipment, plant equipment or material, under one or more Government contracts, the contractor shall submit a DD Form 1419 with documentation attached as required by 270.604 to the ACO.

(b) The ACO shall forward the approved requirements to the Defense Logistics Agency, Defense Automation Resources Office (DARO), Cameron Station, Alexandria, VA 22314 in accordance with DOD 7950.1–M. The DARO response shall be provided to the PCO.

270.603 Review and approval of contractor-acquired computer equipment used for commercial and government contracts.

(a) In accordance with FAR 31.205–2, if the total cost of leasing computer equipment at a contractor's plant, division, or cost center is expected to exceed $500,000 in any 12-month period and more than 50 percent is to be allocated to Government contracts requiring the negotiation or determination of costs, the ACO shall, prior to approving lease costs:

(1) Conduct an initial and an annual review thereafter of the contractor's system(s) for the purpose of evaluating:

(i) The reasonableness, from the technical standpoint, of the contractor's configuration;

(ii) The existing capability and need to continue leasing, regardless of whether the term of the lease was renewed or otherwise extended by the contractor (see 270.604 for documentation required); and

(2) Arrange for submission by the contractor to the ACO of any proposed lease of a new system and any proposed major change to an existing system, for advance determination of the reasonableness of the resulting cost (see 270.604 for documentation required). A "major change" is any addition or substitution of computer equipment which will result in a net annual cost increase in excess of $50,000.

(b) After the initial review of any proposed lease of a new system or major change, and after each annual review, the ACO shall either enter into an advance agreement with the contractor pursuant to FAR 31.109 to provide a basis for concurrence in the proposed lease, or, in the alternative, notify the contractor of the Government's nonconcurrence and of any consequent cost disallowance contemplated.

270.604 Contractor documentation.

This subsection specifies the documentation DoD contractors shall submit to support acquisitions of computer equipment. When the documentation has previously been submitted to DCAA, a copy of that submission may be used or, if voluminous, reference to it is acceptable. Documentation previously submitted does not have to be resubmitted; only updated as necessary. The ACO may waive specific documentation requirements below when they are not considered relevant to the acquisition.

(a) *Inventory and analysis of utilization of existing installed computer equipment.*

(1) List each component by manufacturer, type, and model number.

(2) Location(s).

(3) Furnish installation date(s) by component.

(4) Give type of acquisition, i.e., operating lease, capital lease, purchase, Government-furnished, or lease back.

(5) Furnish component reliability data for the past 12 calendar months. Indicate hours each component was available for use versus hours unavailable for use. Indicate preventive and remedial maintenance hours.

(6) Identify and describe each data system supported; indicate computer time for each system and the related contract(s) or task(s) involved.

(7) Identify any system which has been acquired to comply with a contract requirement. The contract number, clause identification and extract of wording requiring a specially configured or specific computer shall be available for Government review.

(b) *Documentation supporting and justifing need for and benefits to be derived from new system(s) or major change(s) to existing systems.*

(1) Furnish advance planning documentation covering useful life of these systems. This documentation shall provide information to support useful life decisions and also provide a basis for entering into advance understandings as provided at FAR 31.109.

(2) List specific objectives or requirements (generally in the form of a functional specification).

(3) At the option of the Government furnish functional block diagrams of the present and proposed configuration.

(4) Briefly describe the major applications to be processed and appropriate background information to explain the need.

(5) If applicable, list or summarize projects by short title and Research and Development (R&D) project number.

(6) Indicate estimated monthly main frame use hours for each major application or project for the expected retention period.

(7) Indicate software requirements.

(8) Indicate telecommunications requirements.

(c) *Competitive selection of computer equipment.* The following shall be submitted for new requirements which will be competitively acquired. It shall be made available for annual reviews.

(1) Show names and addresses of sources solicited, indicate those submitting proposals.

(2) Indicate which, if any, proposals were not acceptable and explain why.

(3) Show cost comparisons for operating lease, capital lease, lease-with-option-to-purchase, and purchase, for all acceptable proposals.

(4) Attach a copy of the solicitation, a copy of each acceptable proposal, a copy of each proposal's evaluation, and a copy of the selection report. When proposals are voluminous, a summary may be submitted to the Government; actual proposals will be kept on file and be available to the Government.

(5) State whether the selected computer equipment will provide the lowest overall cost to the Government over the useful life. If not, explain the rationale for its selection over that which would have provided the least cost.

(d) *Noncompetitive selection of computers.* Include alternatives considered or state why none are feasible. Show the equipment configuration selected including manufacturer, type, and model number of each component, feature, and device. Show cost comparisons for operating lease, capital lease, or purchase for the equipment configuration selected.

(e) *Cost.* State the resulting increase or decrease in monthly costs to the Government.

(f) *Lease versus purchase analysis.*

(1) Pursuant to FAR 31.205–2, provide a lease/purchase analysis by component for the selected computer equipment when an operating lease is the selected method of acquisition. A suggested format for this analysis is shown at the end of this subpart.

(2) The use of a realistic, Useful Life, Present Value and Residual Value analysis for each component is critical.

270.605 Contractor use of computers for non-government purposes.

The prior written permission of the contracting officer (or, the official prescribed in procedures of the DoD Components, if the expected cost is in excess of $500,000 for any 12-month period) is required for any non-Government use of computer equipment provided to the contractor which was acquired under one or more Government contracts negotiated on the basis of cost data. This approval may be granted if FAR 45.407(b) is satisfied and no additional costs are incurred by the Government.

270.606 Purchase option credits for contractor-acquired computers.

(a) When leased ADPE is used on a Government contract(s) and the total cost is charged to the Government under a cost-reimbursement contract(s), the contracting officer shall require the contractor to include a provision in the rental contract stating that the Government shall have the initial option to utilize any purchase credits or other benefits earned through rental payments. This applies regardless of whether the acquisition qualifies as an operating lease or capital lease.

(b) When leased ADPE is used on a cost-reimbursement type Government contract(s) requiring the determination or negotiation of costs, and less than 100 percent of the cost of the equipment is charged to the Government, the contracting officer should obtain for the Government at the time that the initial annual review is conducted, the right to accrued purchase credits if the contractor elects not to exercise its purchase option. Accordingly, negotiation objectives shall include the following when less than 100 percent of the cost of the equipment is absorbed by the Government:

(1) The contractor should be encouraged to incorporate in its equipment lease the right to assign accrued purchase credits to the Government;

(2) The contracting officer should obtain for the Government, if possible, the right of first refusal on accrued purchase credits if the contractor elects not to exercise its purchase option; and

(3) A 120-day advance notice should be provided to the ACO when the contractor intends to terminate its equipment lease if the Government has rights in accrued purchase credits.

(c) The ACO shall report the availability of such credits in accordance with the procedures for the reuse of computer equipment as prescribed by DoD Manual 7950.1–M and the respective DoD component implementations thereof.

(d) If the Government decides to take advantage of the benefits, the provisions of 270.1401(c) apply.

270.607 Reuse of computers, software, and associated spare parts.

Excess computers, software, and associated spare parts in the possession of contractors, whether leased or Government-owned, will be reported in accordance with Part 245 and DoD Manual 7950.1–M. Computers, software, and associated spare parts with an initial acquisition cost below $1,500 are subject to special procedures in DoD Manual 7950.1–M.

270.608 Technical assistance.

Technical assistance in implementing this subpart shall be provided as necessary to the contracting officer by the DoD component having CAS cognizance for the contractor.

Subpart 270.7—Telecommunications Resources

270.701 General.

Acquisitions of telecommunications resources by the DoD are governed by the Statement of Areas of Understanding Between the Department of Defense and the General Services Administration, dated November 27, 1950 which appears at 15 FR 8226, December 1, 1950. The text of that agreement is as follows:

Statement Of Areas Of Understanding Betweeen Department Of Defense and General Services Administration

(1) The areas of understanding herein set forth were worked out pursuant to order of the President of July 1, 1949, directed to the Secretary of Defense, the Director, Bureau of the Budget, and the Administrator of the General Services Administration.

(2) The areas of understanding with respect to communications services are:

(a)(1) As used in this statement, with respect to comunications services: "Area contracts" are contracts providing for the furnishing of a communication service to all, or substantially all, activities of the Government located within a specified area, executed by GSA or by another agency designated by GSA.

(a)(2) As appropriate for contractual and operational matters: "Department of Defense" means one or more of the military departments.

(b) The basic principle in the procurement of communications services is that all such services shall be procured or provided at the minimum total cost of the Government consistent with requirements for capacity, efficiency of operation, reliability of service, security, and programmed activities. These requirements must be determined by the using agency.

(c) Close coordination and cooperation between the GSA and the Department of Defense shall be maintained to obtain the maximum economy consistent with the requirements for service.

(d) Communications services for activities of the Department of Defense occupying properly controlled or operated by another Federal agency will be procured or provided by the General Services Administration or by the operating agency unless, in the opinion of the Department of Defense, the procurement or provision thereof by the Department of Defense is necessary in the interest of military operations, exercise of command and/or National Security.

(e) Communications services for the Department of Defense, in localities within an area where these services are or may become available under a General Services Administration contract, will be procured under a General Services Administration area contract when such a procedure is of benefit to the Government as a whole and does not adversely affect Military operations, exercise of command and/or National Security. In all other instances, communication services required by the Department of Defense will continue to be procured under a standardized National Defense contract. Copies of or data on contracts executed by the Department of Defense for communications facilities and services will be furnished to the GSA upon request unless distribution is inadvisable for reasons of security.

(f) Except as provided in paragraphs 2 (d) and (e) above, all communication facilities and services for activities of the Department of Defense will be provided or procured by the Department of Defense.

(g) The Department of Defense will provide for complete coordination of all communication services procured or provided by it for all activities of the Department of the Army, Navy (including Marine Corps) and Air Force, and for maximum economy consistent with requirements.

(h) Joint use of telephone facilities such as private branch exchanges is to be encouraged whenever such use will result in efficient and economical service: provided that, in the opinion of the Department of Defense, no interference with military operations or violations of military security will result.

(i) It is recognized that rapid written communications for the Government as a whole can best be obtained by independent military and civilian agency systems, with these systems cooperating with each other. These systems, however, may interchange traffic where such interchange is efficient, and economical and practicable, provided that in the opinion of the Department of Defense there is no interference with movement of military traffic, and the handling of civilian traffic does not necessitate the utilization of additional facilities and personnel by the Department of Defense.

(j) Except as otherwise provided herein, the GSA will represent Executive Agencies, including the Department of Defense, in proceedings involving communications before municipal, State and Federal regulatory bodies in all rate cases and matters associated therewith.

Exceptions

(1) In those instances where the Department of Defense has the sole Government interest in a proceeding involving communications before a regulatory body, the Department of Defense will conduct the representation on behalf of all Executive Agencies of the United States Government. The Department of Defense and the General Services Administration in pending or proposed proceedings will advise each other of action taken or to be taken that may have effect upon or be of interest or assistance to each other. Such representations conducted by the Department of Defense shall be subject to overall coordination by General Services Administration. This shall not preclude representation for the Department of Defense by the General Services Administration when such representation is requested by the Department of Defense and is mutually agreeable.

(2) In those instances where the Department of Defense does not have sole Government interest in a proceeding involving communications before a regulatory body, the Department of Defense will conduct the representation on behalf of all Executive Agencies whenever representatives of the Department of Defense and the General Services Administration agree that conduct of the representation by the Department of Defense is in the best interest of the Government. Such representation conducted by the Department of Defense shall be subject to overall coordination by the General Services Administration.

(3) Except as pertains to the applications of pertinent provisions of section 5, Pub. L. 211, 81st Congress.

(k) Liaison between the Department of Defense and the General Services Administration for all matters involving representation of Executive Agencies in proceedings involving communications before regulatory bodies shall be maintained between the Office of General Counsel, General Services Administration and the Office of General Counsel, Department of Defense.

(l) Liaison with respect to policy matters concerning this arrangement and matters pertinent thereto except as provided in paragraph k, will be maintained between the Chief, Public Utilities Branch, Public Building Service, General Services Administration and Chief, Electronics Division, Munitions Board of the Department of Defense and for operational and contractual matters between designated representatives of the General Services Administration and of the Department of Defense.

(m) This area of understanding is applicable to communications services within the Continental United States, Hawaii, Puerto Rico and the Virgin Islands. The Department of Defense shall be exempt from action taken by the Administrator with respect to communications services under Section 201(a) of Pub. L. 152 in other geographic areas.

270.702 Policy.

Acquisitions of telecommunications resources shall be accomplished in accordance with the Statement of Understanding set forth in 270.701.

Subpart 270.8—Use of the GSA Teleprocessing Service Program (TSP)

270.800 Scope.

The TSP is a GSA program that DoD Components may use to acquire remote data processing services through use of Multiple Award Schedules (MAS) (see 270.802–1) and Basic Agreements (BA) (see 270.802–2).

270.801 Applicability.

(a) When a requirement analysis indicates that remote data processing services are available in the commercial market to satisfy a requirement, the DoD Component should consider the TSP as a source of supply.

(b) DoD contractors or subcontractors may use the TSP.

(c) Covered TSP services include interactive, remote batch processing, and a combination of these (full services), as well as related support services incidental to the teleprocessing performed by commercial firms. These include:

(1) Training services that are limited to the unique features of a particular teleprocessing service;

(2) Technical Assistance/Analyst Services (TA/AS) specifically related to the firm providing teleprocessing services. Such services are limited to assisting users on network operations, special features that may influence application system design, communication interfaces with contractor networks, or other areas incidental to the use of the firm's software packages;

(3) Use of the TSP firm's premium (extra charge) software packages related to a teleprocessing requirement as limited in paragraph (e);

(4) Use of the TSP firm's data bases related to a teleprocessing requirement;

(5) Furnishing network documentation;

(6) Conversion of Government-controlled files and application programs when initiating performance or changing firms under a TSP contracting arrangement as provided in paragraph (g).

(d) *Excluded services.* Facilities management, the lease or purchase of ADPE and predominantly local batch processing services are excluded.

(e) *Limitations on TA/AS and premium software packages.* Technical assistance/analyst services and use of premium software packages (paragraphs (c) (2) and (3) above) have dollar limitations that are reflected in both the MAS and BA. Acquisition of these types of services, that exceed the established limitations, should be on a competitive

basis. The dollar limitations for each teleprocessing requirement are 10 percent of the total value of the requirement per fiscal year, not to exceed $100,000 per year for TA/AS and $25,000 per year per premium software package. The DoD Component shall obtain authorization from the GSA TSP contracting officer before placing a purchase order under a MAS or awarding a contract under a BA which includes requirements that exceed the above limitations.

(f) *Conversion under TSP.* Services associated with conversion of files and application programs may be included in a MAS purchase order or BA contract at the option of the DoD Component, provided that:

(1) A determination is made, when the conversion requirement is estimated to exceed $75,000, that more extensive competition is not practicable,

(2) Each participating firm, when the MAS method is selected and the teleprocessing requirement includes conversion services, is required to propose the conversion portion of the requirement or be eliminated from consideration.

(3) The description of an individual TSP conversion requirement identifies, as a minimum, the number of programs to be converted, source computer system, the number of lines of code to be converted by language, the number of files to be converted by organizational type (e.g., index sequential, sequential, random, DBMS), a description of the complexity and level of documentation of the files and programs, redocumentation requirements, training requirements, and specific testing and acceptance criteria for the converted programs and files.

(4) Offerors are provided an opportunity to inspect the available documentation of all programs and files pertinent to the conversion effort, subject to necessary limitations for the protection of personal, proprietary, or other sensitive data.

(5) Offers for conversion services are solicited and awarded on a separate line item, firm fixed-price basis. Under the MAS method, participating firms do not quote conversion services rates in their schedule pricelist; rather, a firm offer is made for each particular requirement.

(6) Order placements or contract awards, when teleprocessing requirements include conversion services, are based on lowest overall costs, price and other factors considered.

(g) *Software redesign or programming.* Software redesign or programming services are not always available in the MAS and BA. Programming of linkage or bridge routines between multiple software packages under $5,000 annually per requirement are generally available. Other application programming can be included in a TSP BA contract provided the DoD Component requests and receives specific authorization from the GSA contracting officer.

270.802 Methods of acquiring GSA TSP services.

The GSA TSP includes two methods of acquiring services, either of which may be used as appropriate. Neither of these methods allows cost-reimbursement contracting.

270.802-1 Multiple award schedule (MAS).

GSA periodically establishes a multiple award schedule which includes firm rates for services. The MAS provides for incremental discounts based on each firm's total MAS dollar volume of services delivered Government-wide. The MAS terms and conditions can only be modified by GSA. Under the provisions of the schedule, a firm may modify the services offered through a MAS amendment. The MAS may be used for justified noncompetitive requirements. Policies and procedures for using the GSA MAS are contained in the GSA TSP Handbook (see 270.802-4).

270.802-2 Basic agreement (BA).

(a) GSA periodically establishes a BA under which GSA negotiated terms and conditions are made available for use in soliciting proposals and awarding contracts for TSP services. The BA terms and conditions can be submitted only by GSA. Properly justified noncompetitive contracting actions may be conducted under the BA when a requirement within the TSP scope cannot be justified under the MAS.

(b) Dedicated teleprocessing systems requirements may be included in a BA solicitation under the TSP provided:

(1) The APR includes appropriate documentation to support a system requirement configuration, or a specific part thereof, which is to be solicited solely on a dedicated-system basis. This provision does not apply when a DoD Component expresses willingness to evaluate a dedicated-system alternative proposal to a proposal priced on a resources-used (unit rate) basis.

(2) When dedicated-system proposals are to be solicited and evaluated as an alternative to resources-used type proposals, evaluation criteria shall be sufficient to adequately compare a dedicated system pricing offer with resources-used (unit rates) offers. The solicitation documentation shall provide that an offeror submitting a dedicated-system proposal may submit a resources-used proposal. Contract awards made on a system-life basis shall provide for an annual Government review of workload and usage and reserve the right to select on a prospective basis the more favorable of the contractor's dedicated-system or resources-used pricing modes.

270.802-3 GSA TSP guidance.

(a) Guidance concerning the GSA TSP may be obtained from the General Services Administration (KED), Washington, DC 20405 or from any GSA regional office.

(b) The Teleprocessing Services Program (TSP) Handbook provides procedures to be followed by Federal agencies in acquiring services within the TSP scope. The handbook is not a regulation. A limited number of copies of the handbook are available without charge to all Federal agencies by written request to GSA (KED), Washington, DC 20405 or any GSA regional office. Major revisions or new editions of the handbook are announced in GSA bulletins.

270.803 Procedures for acquiring GSA TSP services.

(a) *Agency procurement requests.* DoD Components shall submit an APR to GSA to acquire GSA TSP services unless the acquisition is below $2,000,000 competitive, or $200,000 noncompetitive, annually.

(b) *Evaluation and source selection.* Source selection shall be based on a technical and a system-life cost evaluation.

(1) Technical evaluation factors shall be limited to mandatory service requirements and those evaluated optional features that have been assigned relative values (expressed in dollars, points, or any other reasonable indicators). Evaluated optional features should not exceed 20 percent weighting value in the total evaluation.

(2) The lowest overall cost shall be used in evaluation and source selection, price and other factors considered. Conversion cost shall be included in system-life evaluations. Contractor prices instead of Government estimates shall be used in the Government's overall estimate of conversion in computing the system-life costs.

(3) For requirements over $300,000 annually, benchmark results shall be used to determine costs for all technically qualified firms. The benchmark package should be available to offerors at least 45 calendar days before benchmark performance. The use

of benchmarks may be considered in selections under $300,000 annually because different amounts of connect, input/output and CPU time, for example, will be required by different contractor systems to accomplish the same work load. The selection of the benchmark work-load is critical to the source selection because it will evaluate the contractor's billing algorithm, a significant factor in cost determination. Under either the MAS or BA, a copy of the benchmark used for cost evaluation in the selection process shall be retained for periodic performance evaluation purposes over the system life of the requirement. If a benchmark is not used, the cost shall be derived by a calculation of the various categories of the work-load estimate or other adequate techniques. FEDSIM has developed a synthetic benchmark for remote batch applications called the "Resource Driver Program" which can be considered (see 270.12).

(4) Prices, rates, and discounts for MAS selections shall be obtained by contacting any GSA/OIRM regional office. Other costs for selections under the MAS shall be derived directly from the pricelists.

(c) *Low cost acquisition.* When the system-life estimated cost does not exceed $10,000 annually, the MAS method provides a simplified procedure that agencies use for selecting teleprocessing services.

270.804 GSA review of selections under the GSA TSP.

GSA reserves the right to review any TSP selection action under the MAS or BA, either before or after award. Consequently, contractor selection and contracting documentation shall be retained for a period of two years after selection.

Subpart 270.9—Privacy for Computer Systems

270.901 Applicability.

This subpart applies to computer systems acquired by a DoD Component or Government contractor.

270.902 Requirements.

FAR Part 24 prescribes policies and procedures for complying with the Privacy Act of 1974 (5 U.S.C. 552a).

270.903 DoD component responsibilities.

In addition to the requirements of FAR 24.103, contracting officers shall ensure that contracts subject to the Privacy Act require the submission of necessary reports and notices required by DoD Component implementation of OMB Circular A–108.

270.904 Contract clauses.

In addition to the clause at FAR 52.224–2, contracting officers may insert the clauses at 252.270–7007, Rights in Privacy Safeguards, and 252.270–7008, Access to Contractor Facilities and Records—Privacy Safeguards Inspection, in solicitations and contracts when acquiring equipment, software, or services subject to the Privacy Act.

Subpart 270.10—Security for Computer Systems

270.1000 Scope of subpart.

This subpart applies to all computer acquisitions regardless of the authority under which acquired.

270.1001 Policy.

(a) Specifications for the acquisition of ADPE, software, maintenance services, and supplies are required to be certified by the requiring agency as meeting the agency security needs in accordance with Departmental regulations. These requirements are in addition to provisions concerning protection of the privacy of individuals (see 270.9 and FAR 24.1).

(b) Specifications or other requirements statements for solicitations shall include, when applicable:

(1) DoD Component rules of conduct that a contractor and the contractor's employees shall be required to follow;

(2) A list of the anticipated threats and hazards that have been determined by risk analysis that the contractor must guard against;

(3) A description of the safeguards that the contractor is required to provide;

(4) The standard applicable to the contractual requirement (see 270.11);

(5) The test methods, procedures, criteria, and inspection system (or the requirement to submit proposals therefore) necessary to verify and monitor the operation of the safeguards during contract performance and acceptance and to discover and counter any new threats or hazards;

(6) The requirement for periodically assessing the security risks involved and advising potential users of the level of security provided;

(7) Proposed contractual clauses or provisions, as necessary, to provide for the foregoing; and

(8) A description of the personnel security requirements.

270.1002 Security program for automatic data processing facilities.

(a) DoD Components are required to organize and maintain an ADP system security program to ensure the protection, confidentiality, and integrity of the Government's investment in the ADP system, including associated ADPE, data, computer media, and software. This program should be applied to contractors as appropriate. DoD Components' internal directives and procedures for the physical security of computer facilities should consider the standards and guidelines that appear in the following Department of Commerce publications:

(1) FIPS PUB 31, Guidelines for Automatic Data Processing Physical Security and Risk Management;

(2) FIPS PUB 29, Glossary for Computer Systems Security;

(3) FIPS PUB 41, Computer Security Guidelines for Implementing the Privacy Act of 1974;

(4) FIPS PUB 46, Data Encryption Standard;

(5) FIPS PUB 48, Guidelines on Evaluation of Techniques for Automated Personnel Identification; and

(6) FIPS PUB 65, Guideline for Automatic Data Processing Risk Analyses.

(b) NBS Publications List 91 outlines a number of additional NBS computer security publications.

270.1003 Security against compromising emanations.

(a) If computer equipment to be acquired is to be used to process classified information, a determination as to whether or not the equipment is required to provide protection against compromising emanations, as required by Departmental procedures, shall be provided to the contracting officer by the requiring activity. If such protection is required, the contracting officer shall require that equipment delivered under the contract shall comply with an established National TEMPEST standard (e.g., NACSEM 5100, NACSIM 5100A) or a standard used by other authority, as identified by the requiring activity.

(b) If contracts are to be awarded which require the performance of ADP services involving classified data, programs, etc., the requiring activity shall advise the contracting officer on whether or not to require Defense contractors performing these services to use equipment meeting the requirements specified in (a) above. The requiring activity shall also provide information concerning any requirement for marking of TEMPEST-certified equipment (especially if to be reused), and the means of validating TEMPEST equipment compliance with required standards.

(c) *Contract clause.* The contracting officer shall insert a clause similar to the clause at 252.270–7060, Protection Against Compromising Emanations, in solicitations and contracts when acquiring computer equipment or systems to be used to process, transmit, store, retrieve or display information requiring protection under the National Security or Atomic Energy Acts, as amended. Other necessary material developed by DoD Components may be invoked in the clause as appropriate when a contractor is to perform automated services involving material requiring protection against compromise.

(d) The contracting officer shall insure that Section E of the contract (Inspection and Acceptance) requires validation of the equipment's TEMPEST compliance with the established standard. This is accomplished by one of three methods:

(1) Determining that the equipment is listed or certified for listing on the Preferred Products List (PPL) published quarterly by the Subcommittee on Compromising Emanations (SCOCE). This list is available from the local TEMPEST official;

(2) If compliance with a TEMPEST standard other than NACSEM 5100 or NACSIM 5100A is required, the requiring activity's cognizant TEMPEST official shall determine the compliance of the delivered equipment with the standard; or

(3) Actual testing and certification by the DoD Component's cognizant TEMPEST activity.

(e) In addition to the local TEMPEST official, information on the TEMPEST program, equipment qualification, etc., may be obtained from the following:

For the Army: TEMPEST Coordination Officer, Major Command Headquarters, or Commander, U.S. Army Intelligence and Security Command, ATTN: IAOPS–OP–P, Arlington Hall Station, Arlington, VA 22212.

For the Navy: Commander, Naval Security Group Command, ATTN: Code G65, 3801 Nebraska Avenue, N.W., Washington, DC 20390.

For the Air Force: TEMPEST Officer, Major Command Headquarters, or AFCSC/EPV, San Antonio, TX 78243.

For the Marine Corps: Commandant of the Marine Corps, Headquarters, Marine Corps, ATTN: Code CCTS, Washington, DC 20380.

For the office, Secretary of Defense and Defense Agencies not listed below: Office of the Joint Chiefs of Staff, ATTN: TC3S–JTR, The Pentagon, Washington, DC 20301.

For the Defense Intelligence Agency: Director, Defense Intelligence Agency ATTN: OS–2, Washington, DC 20301.

For the Defense Communications Agency: Mr. Wheeler W. Hatch, Defense Communications Agency, ATTN: B315, Washington, DC 20305.

For the Defense Logistics Agency: Director, Defense Logistics Agency, ATTN: Command Security Office (DLA–T1), Cameron Station, Alexandria, VA 22314.

For the Defense Nuclear Agency: Director, Defense Nuclear Agency, ATTN: ISSO, Washington, DC 20305.

For the Defense Investigative Service: Defense Investigate Service, Directorate for Industrial Security, ATTN: V0410, 1900 Half Street, N.W., Washington, DC 20324.

For the Defense Mapping Agency: Defense Mapping Agency, Building 56, USNOBS, Washington, DC 20305.

Subpart 270.11—Standards

270.1100 Scope of subpart.

This subpart provides for implementation of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED–STD) and Joint FIPS/FED–STD for computer equipment subject to Subpart 270.3. These standards may also be used for computer equipment subject to Subparts 270.4 and 270.5.

270.1101 Policy.

(a) Under the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(f) and Executive Order 11717), the Secretary of Commerce is authorized to establish uniform Federal Information Processing Standard Publications (FIPS PUB) to be met by Federal agencies, including the Department of Defense, in acquiring ADP equipment and software as defined in 270.2. Prior to the award of any contract for these items, contracting officers shall assure that the otherwise successful offeror satisfies the applicable FIPS PUB requirements specified in the solicitations.

(b) The Defense Communications Agency and the U.S. Army Communications-Electronics Command (CECOM) are responsible for developing and/or promulgating all guidance on communications standards, regardless of source or origin, applicable to DoD that Defense communications systems must meet when being acquired. These include NATO, international and national standards, industry, Federal and military standards. Acquisition shall be made only from those sources that comply with the communications standards contained in the solicitations.

(c) In order to maximize competition by promoting standardization and compatibility among vendors of commercially available automatic data processing equipment (ADPE), the National Bureau of Standards (NBS), Department of Commerce, has established and maintains listings of equipment that it has verified as having conformed to, or having been excluded from, certain FIPS. These standards apply to the acquisitions of:

(i) All new and replacement ADP systems not otherwise excluded in FIPS PUBS 60–1, 61, 62, and 63;

(ii) Computer peripheral equipment acquired to replace existing peripheral equipment or to augment ADP systems that employ interfaces conforming to the Input/Output Channel Interface Standards (FIPS PUBS 60–1, 61, 62, and 63); and

(iii) Peripheral equipment acquired to replace existing peripheral equipment or to augment ADP systems that do not conform to FIPS PUBS 60–1, 61, 62, and 63, but for which the hardware and software necessary to conform to these standards are commercially available.

(d) Though the NBS qualification procedures occur in advance and independent of any specific action, maximum practicable opportunity shall be given to prospective contractors to qualify products during the preaward process. Contracting officers may obtain both the lists of equipment which qualify as satisfying the NBS standards and those excluded from this verification procedure by writing the Director, Center for Computer System Engineering, Institute for Computer Science and Technology, National Bureau of Standards, Washington, DC 20234. Offerors may obtain verification procedures for compliance testing from this address, Attention: Verification of I/O Channel Level Interface Standards.

270.1102 Waivers.

(a) The waiver procedure for FIPS for computer equipment subject to 270.3 is set forth in the particular FIPS PUB. For some standards, a waiver approval is required from the Secretary of Commerce prior to issuance of solicitations.

(b) The waiver provisions of FAR 9.206–1(c)(3) do not apply to those items subject to (a) above. Waiver procedures are specified by the DoD components. Communication standards in the MIL STD 188-series are mandatory for use within DoD.

270.1103 Solicitation provisions and contract clauses.

(a) *Federal information processing standards.* The contracting officer shall insert the following provisions and clauses, as applicable (see 270.1101 above), in solicitations and contracts for automatic data processing equipment, software and supplies, unless a waiver has been obtained in accordance with DoD Component procedures (see 270.1102 above):

(1) 252.270–7009, American Standard Code for Information Interchange (ASCII) System Requirements; to specify the code and character set for use in information processing systems and associated communications and related equipment.

(2) 252.270–7010, Punched Paper Tape Readers and Punches; when acquiring equipment which punches or reads perforated tape.

(3) 252.270–7011, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI); when acquiring 9-track ½-inch wide, 800 characters-per-inch magnetic tape equipment.

(4) 252.270–7012, Rectangular Holes in 12-Row Punched Cards; when acquiring equipment or services involving the reading or punching of 3¼-inch cards.

(5) 252.270–7013, Hollerith Punched Card; when acquiring punched card machines (PCM) used to punch or read 12-row 3¼-inch wide cards utilizing rectangular holes.

(6) 252.270–7014, Subsets of the Standard Code for Information Interchange; when acquiring ADPE which does not require the full 128-character set required by FIPS PUB 1–1.

(7) 252.270–7015, Flowcharts, Symbols, and Their Usage in Information Processing; when flowcharts of information processing systems are part of the documentation to be delivered to the Government.

(8) 252.270–7016, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Code 0); when acquiring tape drives as described in the clause.

(9) 252.270–7017, One-inch Perforated Paper Tape for Information Interchange; when acquiring one-inch paper tape or associated equipment.

(10) 252.270–7018, Take-up Reels for the One-inch Perforated Tape for Information Interchange; when acquiring one-inch perforated tape take-up reels or related equipment.

(11) 252.270–7019, Software Summary for Describing Computer Programs and/or Automated Data Systems; when the ADP acquisition involves documentation of computer programs and/or automated data systems.

(12) 252.270–7020, Optical Character Recognition Equipment; when acquiring Optical Character Recognition (OCR) equipment, or services relating thereto, except as described in 270.1103(a)(13) below.

(13) 252.270–7021, Character Set for Handprinting; when acquiring Optical Character Recognition (OCR) equipment requiring data entry of handprinted material.

(14) 252.270–7022, Code Extension Technique in 7 or 8 Bits; when the acquisition allows for the submission of coded character sets that are not included in the standard 128 characters of the American Standard Code for Information Interchange (ASCII).

(15) 252.270–7023, Graphic Representation of the Control Characters of ASCII (FIPS PUB 1–1); when acquiring equipment that prints or displays any of the control characters of the ASCII.

(16) 252.270–7024, Data Encryption Standard (DES); when (i) there is a requirement for data encryption, (ii) a DoD component decides that cryptographic protection is required, and (iii) the data are not classified according to either the National Security Act or the Atomic Energy Act.

(17) 252.270–7025, Recorded Magnetic Tape for Information Interchange, 6250 Characters Per Inch (CPI) (246 CPMM, Group Coded Recording); when acquiring tape drives as described in the clause.

(18) 252.270–7026, Magnetic Tape Cassettes for Information Interchange (3.810MM (0.150 Inch) Tape at 32BPMM (800 BPI), PE); when acquiring magnetic tape cassette equipment as described in the clause.

(19) 252.270–7027, Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30MM (0.25 Inch), 63 BPMM (1600 BPI) Phase Encoded; when acquiring magnetic tape cartridge equipment as described in the clause.

(20) 252.270–7028, Description of Computer Magentic Tape File Properties; when the acquisition involves delivery of coded information on magnetic tape.

(21) 252.270–7029, Computer Output Microform (COM) Formats and Reduction Ratios, 16MM and 105MM; when the acquisition involves computer generated microforms.

(22) 252.270–7030, Input/Output (I/O) Channel Interface; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 60–1 controls.

(23) 252.270–7031, Channel Level Power Control Interface; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 61–1 controls.

(24) 252.270–7032, Operational Specification for Magnetic Tape Subsystems; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 62 controls.

(25) 252.270–7033, Operational Specifications for Rotating Mass Storage Systems; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 63 controls.

(26) 252.270–7034, BASIC Language Compilers; when an acquisition includes a BASIC compiler.

(27) 252.270–7035, FORTRAN Language Compilers; when an acquisition includes a FORTRAN compiler.

(28) 252.270–7036, Magnetic Tape Labels and File Structure Information Interchange; when acquiring information processing systems that will either generate or accept magnetic tapes for information interchange.

(29) 252.270–7037, Data Encryption Standard (DES) Modes of Operation; when acquiring ADPE and ADP services subject to the GSA approval requirements contained in Subpart 270.3, and the Data Encryption Standard (DES) described at 270.1103(a)(16) above.

(30) 252.270–7038, Microform Readers; when acquiring microform readers to be used in conjunction with computer-generated microform conforming to the clause at 252.270–7029.

(31) 252.270–7039, Optical Character Recognition (OCR) Inks; when local purchase is authorized for optical character recognition (OCR) ink and preprinted forms that will be read by OCR techniques when the interchange of machine readable information between different systems will be required.

(32) 252.270–7040, Optical Character Recognition (OCR) Printers, Readers and Printed Forms; when acquiring optical character recognition (OCR) printers, readers and printed forms subject to the clause at 252.270–7020.

(33) 252.270–7041, Digital Magnetic Tape Cassette Equipment and Associated Programs; when acquiring magnetic tape casset equipment or associated programs specified in the clause.

(34) 252.270–7042, Acquisition and Validation of COBOL Compilers; when the acquisition includes a COBOL compiler.

(35) 252.270–7043, Acquisition of COBOL Programs and/or Programming Services; when the acquisition involves delivery of a program written in COBOL.

(36) 252.270–7044, Delayed Validation of Compilers; when delayed validation of compilers is necessary or advantageous.

(37) 252.270–7045, Interchange of Machine Processable Data Between and Among Agencies; when a contract will involve the acquisition of programs to be interchanged with state and local governments, industry and the public.

(b) *Joint Federal Information Processing/Federal Telecommunications Standards (FIPS–FED/STD).* The contracting officer shall insert the following clauses, as applicable, in solicitations and contracts for automatic data processing equipment

(ADPE), software and services subject to Subpart 270.3, *provided* that the requiring activity determines that no other standards apply to the telecommunication aspects of the requirements, and compliance with FIPS PUB 1–1 is required:

(1) 252.270–7046, Synchronous High Speed Data Signaling Rates Between Data Terminal Equipment and Data Communications Equipment; when an acquisition involves data terminal and ADPE which is (i) employed with synchronous data communication equipment, and (ii) designed to operate on binary encoded information over wideband communication channels having greater band width than the normal 4kHz commonly used in analog voice transmission.

(2) 252.270–7047, Bit Sequencing of the Code of Information Interchange in Serial-by-Bit Data Transmission; when acquiring equipment or services requiring the transmission of data in a serial-by-bit, serial-by-character mode.

(3) 252.270–7048, Character Structure and Character Parity Sense for Serial-by-Bit Data Communication in the Code for Information Interchange; when acquiring equipment where transmission of data is a serial-by-bit, serial-by-character synchronous or asynchronous mode is to occur.

(4) 252.270–7049, Character Structure and Character Parity Sense for Parallel-by-Bit Data Communication; when acquiring equipment or services for the transmission of data in a parallel-by-bit, serial-by-bit mode, in order to prescribe the character structure and sense of character requirements.

(5) 252.270–7050, Synchronous Signaling Rates Between Data Terminal and Data Communication Equipment; when acquiring equipment or services that are to employ voice communication facilities, in order to prescribe the transfer rate for binary coded information in synchronous serial or parallel form.

(6) 252.270–7051, Data Link Control-Synchronous Bit-Oriented Data; when acquiring equipment or services using synchronous, bit-oriented data communications, in order to prescribe data link control procedures.

(c) *Federal Telecommunications Standard.* The contracting officer shall insert the following clauses, as applicable, in solicitations and contracts involving acquisition of ADP and telecommunications equipment and software subject to Subpart 270.3, unless it is determined by the requiring activity that other standards are appropriate;

(1) 252.270–7052, Time and Frequency Reference Information in Telecommunications Systems; when acquiring telecommunications systems or facilities which are totally funded by one or more Government contracts.

(2) 252.270–7053, Coding and Modulation Requirements for Nondiversity 2400 Bit/Second Modems; when acquiring, by lease or purchase, 2400 bits per second (bps) modems for use over analog transmission channels other than those derived from high-frequency radio facilities.

(3) 252.270–7054, Coding and Modulation Requirements for 4800 Bit/Second Modems; when acquiring 4800 bits per second (bps) modems to be used with nominal 4kHz analog channels.

(4) 252.270–7055, Coding and Modulation Requirements for Duplex 9600 Bit/Second Modems; when acquiring duplex 9600 bits per second (bps) modems for use with "four-wire" nominal 4kHz analog transmission channels.

(5) 252.270–7056, Coding and Modulation Requirements for Duplex 600 and/or 1200 Bits/Second Modems; when acquiring duplex 600 and/or 1200 bits per second (bps) modems to be used with 4kHz analog transmission channels terminated by "two-wire" circuits.

(6) 252.270–7057, Electrical Characteristics of Balanced Voltage Digital Interface Circuits; when there is a requirement to acquire equipment which must satisfy the electrical characteristics of balanced voltage digital interface circuits employed for the interchange of serial binary information which is conveyed at the direct current (DC) baseband level at signaling rates of up to 10 megabits per second.

(7) 252.270–7058, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits; when there is a requirement to acquire equipment which must satisfy the electrical characteristics of unbalanced voltage digital interface circuits employed for the interchange of serial binary information conveyed at the direct current (DC) baseband level of signaling rates of up to 100 kilobits per second.

(8) 252.270–7059, Group 2 Facsimile Apparatus for Document Transmission; when acquiring Group 2 facsimile equipment.

Subpart 270.12—The Federal Computer Performance Evaluation and Simulation Center

270.1201 The Federal Computer Performance Evaluation and Simulation Center.

(a) *General.* The Federal Computer Performance Evaluation and Simulation Center (FEDSIM) is operated by the Department of the Air Force under a delegation of authority from the Administrator of the General Services Administration. It provides technical assistance, support, and services on a reimbursable basis for simulation, analysis, and performance evaluation of automatic data processing systems and is the primary source for those services.

(b) *Services available.*

(1) Services available nationally are comprised of FEDSIM resources and FEDSIM-monitored contractual services for computer services simulation and preformance evaluation. These services include simulation languages and packages for computer system simulations, software and hardware monitors for computer system performance evaluation, and special software programs designed to support computer system simulation and performance evaluation efforts, such an accounting systems analysis and workload modeling. The Center's services also include ADP support services such as those provided by simulation analysts.

(2) The services that the Center provides are intended to be temporary in nature and in response to specific questions or problems. A continuous simulation and performance evaluation program in support of individual user operations is not intended.

(c) *Policy for obtaining FEDSIM services.*

(1) FEDSIM shall be considered as the primary source of supply for ADP simulation and computer performance evaluation requirements, services, and products, including but not limited to, computer systems simulators and hardware and software monitors.

(2) The Center advises agencies whether (i) FEDSIM resources or FEDSIM contracts are available; (ii) and ADP schedule is available as a source of supply; or (iii) a new acquisition action is necessary.

(3) If the Center is unable to fulfill the requirement or if the requirement can be more economically fulfilled through commercial sources, the agency may acquire the services.

(d) *Procedures for obtaining FEDSIM services.*

(1) DoD components requiring ADP simulation, computer performance evaluation assistance, hardware performance monitors, software performance monitoring packages, or other computer performance evaluation products or services, shall contact the Center. The mailing address is: Department of the Air Force, Federal Computer Performance Evaluation and Simulation Center (FEDSIM), Washington, DC 20330.

(2) The Center, consistent with the lowest cost alternative or combination of alternatives, will take one of the following four actions:

(i) Provide services from its own resources on a reimbursable basis to the requesting agency.

(ii) Acquire, on a reimbursable basis, the necessary support from commercial sources for the requesting agency.

(iii) Advise the requesting agency's acquisition activity how to acquire necessary support from the ADP schedule or other existing contractual instruments or how to initiate an acquisition action for the services.

(iv) Recommend to GSA that GSA acquire required resources for the requesting agency (where unusual legal or acquisition policy issues so dictate).

(3) If no action involving a request for services is taken by the Center within 20 workdays after acknowledgment of receipt of full information from an agency, the agency may proceed without further references to the Center.

Subpart 270.13—Sharing of Computer Resources

270.1300 Scope of subpart.

This subpart provides direction relating to use of existing resources as an alternative to the acquisition of additional resources.

270.1301 Policy.

DoD Components are required to consider sharing and use of existing resources in accordance with DoD Manual 7950.1–M, Departmental procedures, and OMB Circular A–121 as an economical and efficient means of meeting their needs.

270.1302 Government-wide sharing procedures.

(a) DoD Components shall not initiate the process of selection and acquiring resources unless it has first made a reasonable effort to determine that the required capability cannot be met economically and efficiently by using existing resources on a shared basis. If the result of screening is unsuccessful, the basis for this determination shall be documented in the contract file.

(b) DoD Components are required to include a statement relative to this screening procedure when submitting agency procurement requests (APRs).

270.1303 Federal Data Processing Centers (FDPCs).

(a) *Services available from FDPCs.* FDPCs provide many ADP services and ADP support services. GSA, through informational bulletins, will announce the availability of specific services and associated costs.

(b) *Point of contact.* Activities that require any FDPC services that have not been provided through the procedures set forth in 270.1302 may contact General Services Administration (KMA), Washington, DC 20405, or the appropriate FDPC.

270.1304 Federal Software Exchange Program.

The Federal Software Exchange Program is operated by GSA or its authorized representative pursuant to the overall policy guidance and direction of GSA. The program applies to common-use software developed or revised by either Government or contractor personnel. It is not applicable to software that is classified, developed at private expense, or developed with revolving funds where reimbursement of all costs is required. It is not applicable to software to which the Government does not possess full rights of ownership. For the purpose of this subpart, common-use software is that which:

(a) Deals with problems common to many agencies, that would be useful to other agencies, and is written in such a way that minor variations in requirements can be accommodated without significant programming effort. Examples of such software are: management business applications, computer systems support and utility programs, simulators, scientific or engineering applications, programming aids which are application-independent, and bibliographic or textual programs;

(b) Has been tested and proven operational for at least 90 days and is maintained by or for a Federal agency; and

(c) Is composed of stand-alone subroutines, programs, or subsystems; i.e., not dependent on special or unique hardware options or software features unless such options or features can be readily translated or simulated for hardware other than the original and can be similarly useful on different hardware.

270.1304–1 Procedures.

(a) DoD Components having requirements for software that they plan to acquire from commercial sources shall screen existing Federal ADP software resources by reviewing the Federal Software Exchange Catalog or by obtaining assistance from the Federal Software Exchange Center (FSEC) to meet its software requirements.

(b) Programs or systems listed in the Federal Software Exchange Catalog are available through the FSEC, which will contact the contributing agency for the requested documentation and/or programs.

(c) The FSEC will make a copy of both the documentation and the program to be kept on file for future requests. The FSEC will provide the software package to the requesting agency at the published price.

270.1304–2 Federal Software Exchange Center.

The functions of the Federal Software Exchange Center (FSEC) include:

(a) Maintaining a central library of summary descriptions of common-use programs and systems, including a complete index of this inventory and master copies of requested programs, systems and documentation.

(b) Editing, screening, and compiling agency abstracts of common-use programs or systems submitted for exchange by Federal agencies.

(c) Functioning as a central point of contact with agencies for information and dissemination of available software.

(d) Publishing and distributing the basic Federal Software Exchange Catalog with periodic updates.

(e) Assisting Federal agencies in identifying currently available software to satisfy their requirements.

(f) Assisting agencies in obtaining information concerning technical problems with software released through FSEC.

(g) Notifying agencies of changes to software obtained through FSEC.

270.1304–3 DoD Components requirement.

DoD components are required to:

(a) Continually review software within the agency to identify programs or systems which would be of use to other agencies meeting the criteria set forth in 270.1304 and notify FSEC of changes and programs no longer maintained.

(b) Submit abstracts of programs meeting the criteria in 270.1304 to FSEC, National Technical Information Service, Springfield, VA 22151, on Standard Form SF 185, Federal Information Processing Standard Software Summary. Common-use programs and systems meeting the specified criteria will be described and reported to FSEC on a continuing basis.

(c) Notify FSEC, using SF 185, of changes to software previously reported. Such changes should have been adequately tested to ensure the effective performance of the software.

(d) Notify FSEC, using SF 185, of previously reported programs that the agency no longer maintains. (Reports shall be made within 30 days after terminating maintenance.)

270.1304–5 Federal Software Exchange Catalog availability.

The Federal Software Exchange Catalog of common-use programs and systems may be obtained from the National Technical Information Service, Springfield, VA 22151. Revisions of the catalog are published quarterly.

Subpart 270.13—Reuse of Equipment

270.1400 Scope of subpart.

This subpart sets forth policies and procedures regarding the reuse of computer equipment.

270.1401 Reassignment of computer equipment within DoD.

(a) The policies and procedures relating to the reassignment of computer equipment within the Department of Defense is contained in DoD Manual 7950.1–M, Defense Automation Resources Management Program.

(b) Installed Government-leased computer equipment need not be physically replaced by reassigned Government-owned computer equipment if retention of the leased computer equipment is more economical. In these circumstances, the agency should initiate action to return Government-owned computer equipment to the manufacturer/supplier in exchange for the title to the leased computer equipment.

(c) The reassignment of Government-leased computer equipment that is no longer required for the purpose and use for which it was originally acquired is a sole-source contracting action and, therefore, must be accomplished as such.

(d) The use of computer equipment for cannibalization for a parts source of supply shall not be made until excess reutilization requirements of other agencies are determined.

270.1402 Excess or exchange/"sale" computer equipment.

Each DoD component shall report Government-owned or -leased computer equipment that is excess to its needs or Government-owned computer equipment that is contemplated to be replaced pursuant to the exchange/"sale" authority in accordance with DoD 7950.1–M. Policies and procedures for reporting exchange/"sale" of computer equipment are contained in DoD 7950.1–M.

270.1403 Reutilization of excess and exchange/"sale" computer equipment.

(a) DoD components shall be responsible for determining whether their ADP requirements can be efficiently and economically satisfied by using excess ADP equipment. To obtain maximum reutilization and to minimize the acquisition of the new computer equipment, excess and exchange/"sale" computer equipment shall be made available for transfer to other Federal agencies in accordance with DoD 7950.1–M.

(b) Excess auxiliary or accessorial computer equipment with an original acquisition cost (OAC) of $1,500 or less shall be made available for transfer to other Federal agencies.

(c) Any need for excess (but not obsolescent-excess) computer equipment expressed by a Federal agency shall take precedence over surplus disposal, provided such need is made known prior to shipment, or delivery in case of donation, or prior to contract award in case of "sale".

(d) Without exception, holding agencies shall solicit both requesting agency "sale" and vendor exchange (trade-in) offers when using exchange/"sale" authority (see 270.322).

270.1404 Considerations for use of excess Government-owned or leased computer equipment.

(a) *Government-owned excess computer equipment.* DoD components shall consider excess Government-owned computer equipment as a replacement for installed leased computer equipment or in meeting new requirements if the excess Government-owned computer equipment has the capability to fulfill the requirement and represents the lowest overall cost to the Government. The reutilization of excess Government-owned computer equipment is not a contracting action.

(b) *Government-leased excess computer equipment.*

(1) The reutilization of excess leased computer equipment is an acquisition and requires that a sole-source justification be prepared or the equipment be selected as a result of a competitive solicitation.

(2) Since excess leased computer equipment accrues substantial purchase option credits, agencies shall consider this equipment as replacement for installed leased computer equipment which has accrued fewer credits to the Government. This type of replacement shall not be considered a contracting action.

270.1405 Use of the ADP fund.

(a) Government-owned excess ADPE systems or items with a GSA estimated fair market value of at least $250,000 will be screened by GSA for possible reutilization. GSA will incorporate appropriate systems or items in the availability list. These systems or items will be leased to agencies by the ADP Fund at 50 percent of the fair market value determined by GSA. Ownership of the equipment will remain with the GSA ADP Fund.

(b) When leased excess ADPE with purchase option credits can satisfy agency data processing requirements, GSA will consider using the ADP Fund to purchase the equipment for the requesting agency when purchase is in the best economic interest of the Government and the agency does not have purchase funds available.

(c) DoD components may seek use of the ADP Fund for acquisition of exchange/"sale" ADPE if it is determined that the acquisition is economically advisable, the following requirements are met, and the DoD component can certify that:

(1) It has complied with applicable provisions of 270.302;

(2) It does not have funds programmed, nor can it reprogram funds for this purpose; and

(3) It cannot divert funds planned for other ADPE acquisitions with lesser rates of return, if any, for this purpose.

(d) When a DoD component proposes to request transfer of exchange/"sale" ADPE which it desires to acquire through the ADP Fund, the requesting activity shall submit a letter of intent to the General Services Administration (KXM), Washington, DC 20405. This letter shall include the projected period of equipment use; the requested terms of reimbursement, e.g., quarterly reimbursement for 3 years; the agency point of contact (with address and telephone number); and the shipping address, instructions, and fund citations for transportation and ADP Fund reimbursement. In addition, the requestor shall submit certifications that demonstrate the agency's compliance with the conditions listed in paragraph (c) of this section.

(e) The use of the ADP Fund for acquisitions of exchange/"sale" ADPE must be approved by GSA before a holding agency may honor the requesting agency's hold.

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Part III

Department of Education

34 CFR Parts 706, 707, and 708
Regional Educational Laboratories and Research and Development Centers Program; Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 706, 707, and 708

Regional Educational Laboratories and Research and Development Centers Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations for the implementation of Section 405(f) of the General Education Provisions Act (GEPA), as amended. Under the proposed regulations, the National Institute of Education could make awards for planning and institutional operations of regional educational laboratories and research and development centers.

DATE: Comments must be received on or before April 25, 1984.

ADDRESS: Comments should be addressed to Mr. Donald R. Fischer, National Institute of Education, Department of Education, 1200 19th St., NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Mr. Donald R. Fischer, (202) 254–7180.

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Education (NIE) currently supports seven regional educational laboratories and ten research and development (R&D) centers located throughout the country, in accordance with section 405(f) of the General Education Provisions Act (GEPA), as amended, 20 U.S.C. 1221 *et seq.* With the exception of the Educational Technology Center, which was established in 1983, the existing laboratories and centers are the remaining organizations of a nationwide network of twenty laboraories and ten centers established by the U.S. Office of Education in the mid-1960's. Over the years, some of the original institutions closed as a result of evaluations of their work, increasing competition for available funds, changes in federal policy, and other circumstances.

The current awards for the existing laboratories and centers, excepting the Education Technology Center, are scheduled to expire during 1985. Through committee report language, the Congress has recently indicated its desire that NIE conduct an open competition for future laboratory and center awards. See the Conference Report accompanying the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35 (H.R. Rep. No. 208, 97th Cong., 1st Sess. at pp. 729–730 (1981)) and the Senate Report accompanying the Urgent Supplemental Appropriations Act of 1982, Pub. L. 97–216 (S. Rep. No. 402, 97th Cong., 2d Sess. at p. 58 (1982)). This will be the first open competition for multiple institutional awards since the regional educational laboratories and research and development centers were established almost twenty years ago. To help insure that laboratories and centers continue to serve the public needs, in June 1983, NIE held eleven public meetings to allow the public to express their views on educational research, issues, problems, needs, and priorities of each region of the country as part of NIE's planning for future support of the regional educational laboratories and R&D centers. Additional comments came from selected NIE sponsored planning activities, including a study group on laboratory issues, four study groups on center issues, a national panel on the upcoming laboratory and center competitions, and technical advisors. These comments were helpful to NIE in developing proposed regulations to govern competitions for laboratory and center awards.

Regional Educational Laboratories

Regional educational laboratories are intended to help improve education by identifying and helping to meet educational research and development needs in specified regions of the country and by promoting the use in the regions of research and development results from all sources.

The current seven laboratories sponsored by NIE are governed by boards of directors that reflect the many interests of educational groups in the regions. Although the specific activities of individual laboratories may vary considerably, they generally—

- Identify concerns and priorities through regionally representative governance and advisory structures;
- Conduct applied research and development in pursuit of those priorities;
- Provide technical assistance to the region;
- Facilitate communication among educational agencies and individuals in the region;
- Promote the regional use of R&D results from all sources; and
- Disseminate nationally the results of their own activities. Current laboratories, their locations, and the composition of the region served by each are as follows:
- Appalachia Educational Laboratory, Inc. (AEL), Charleston, WV (AL, KY, OH, PA, TN, VA, WV).
- Far West Laboratory for Educational Research and Development (FWL), San Francisco, CA (CA, NV, UT).
- Mid-continent Regional Educational Laboratory (McREL), Kansas City, MO (CO, KS, MO, NE, ND, SD, WY).
- Northwest Regional Educational Laboratory (NWREL), Portland, OR (AK, HI, ID, MT, OR, WA, American Samoa, Guam, Micronesia, Northern Marianas).
- Research for Better Schools, Inc. (RBS), Philadelphia, PA (DE, NJ, PA).
- Southwest Educational Development Laboratory (SEDL), Austin, TX (AR, LA, MS, NM, OK, TX).
- Southwest Educational Laboratory (SWRL), Los Alamitos, CA (AZ, CA, NV).

Note.—As alternatives to full laboratory services following the discontinuance of funding to CEMREL, McREL and AEL provide interim services to IL, IN, IA, KY, MI, MN, MO, OH, TN, and WI. AEL also provides limited services to FL, GA, NC, and SC. RBS provides limited services to MD. The following States do not receive any services from a laboratory: CT, DC, ME, MA, NH, NY, PR, RI, VT, and VI.

Research and Development Centers

Research and development centers provide national research leadership in educational problem areas that are of national importance. An R&D center is responsible for establishing strategies and programs in pursuit of its mission through consultation with scholars and practitioners in its field and in collaboration with NIE staff. The current ten centers sponsored by NIE focus their resources on particular priorities or problem areas over the long term. These priorities include evaluation, educational finance and governance, the social organization of schools, educational policy and management, higher education management systems, learning research and development, education and work, teacher education, and student diversity in schooling.

Center research is typically long-term and multi-disciplinary, costituting an integrated program of complementary activities. Each center works actively with a national advisory panel of scholars, educators, and policymakers to guide and review its direction and performance. Implied in the notion of leadership are key responsibilities that each center strives to carry out: (1) Encouraging excellence in research and related activities, (2) breaking new ground in areas where progress in education is needed, (3) participating in national networks of scholars and practitioners working on similar problems, and (4) making the results of research available in forms that are most useful to practitioners and policymakers.

Current R&D centers and their locations are as follows:

- Center for Educational Policy and Management (CEPM), University of Oregon, Eugene, OR.
- Center for Social Organization of Schools (CSOS), The Johns Hopkins University, Baltimore, MD.
- Center for the Study of Evaluation (CSE), University of California, Los Angeles, CA.
- Educational Technology Center, Harvard University, Cambridge, MA.
- Institute for Research on Educational Finance and Governance (IFG), Stanford University, Stanford, CA.
- Learning Research and Development Center (LRDC), University of Pittsburgh, Pittsburgh, PA.
- National Center for Higher Education Management Systems (NCHEMS), Boulder, CO.
- National Center for Research in Vocational Education (NCRVE), Ohio State University, Columbus, OH.
- Research and Development Center for Teacher Education (RDCTE), University of Texas, Austin, TX.
- Wisconsin Center for Education Research (WCER), University of Wisconsin, Madison, WI.

Proposed Rules

The proposed rules would permit awards for planning or institutional operations of laboratories and centers. These rules are organized in three parts. Part 706 describes general provisions applying to both laboratory and center awards. Part 707 decribes specific provisions applying only to laboratories. Part 708 describes specific provisions applying only to centers.

Subpart C of Part 707 and Subparts B and C of Part 708 are designated as reserved. These subpart headings are standard in EDGAR and are included only to avoid a break in sequence. The Secretary does not contemplate at this time adding any provisions to these three subparts. Any provisions added in the future would constitute a revision of these proposed regulations.

Part 706 (Regional Educational Laboratories and Research and Development Centers: General Provisions) includes:

(a) *Subpart A—General*

The purpose of the program is described in the proposed regulations under § 706.1.

Section 706.2 in the proposed regulations identifies those agencies, institutions, and individuals eligible for awards under the Regional Educational Laboratories and Research and Development Centers Program.

Section 706.3 identifies the two (2) types of awards that the Secretary may make under this program: grants and contracts.

Section 706.4 identifies the regulations—in addition to Parts 706, 707, and 708—that apply to awards under this program. For grants, these include the Education Department General Administration Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78. For contracts, these include Federal procurement regulations in 41 CFR Chapters 1 and 34.

EDGAR definitions and other definitions that apply to the program are listed in § 706.5

(b) *Subpart B—What Kinds of Projects Does the Secretary Fund Under This Program?*

Section 706.11 in the proposed regulations establishes the two (2) purposes for which the Secretary may fund awards under this program: planning and institutional operations.

For each competition, the Secretary may select one or more funding priorities by choosing priorities or combinations of priorities from those listed in § 706.12. The mission of a center in each competition for a center award must embody the priorities selected by the Secretary for that competition. This list includes the following twenty-six (26) priorities: learning; teaching; educational technology; instructional processes and materials, including textbooks and computer software for instruction; preparation and training of educational personnel; organization and management of schools, including effective school administration and leadership; evaluation and school indicators, including testing and measurement; governance of education, including school board policies and practices; educational finance; dissemination and knowledge utilization in education; change and improvement processes in education; student achievement and educational standards, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate; home, family, and community influences in education; education, work, and careers; desegregation, busing, and their impact on educational equity and excellence; English literacy, including reading, writing, and language skills; mathematics; science; foreign languages; preschool education; elementary education; secondary education; adolescent education; postsecondary education; adult and continuing education; and education of special populations, including the educationally disadvantaged, the handicapped, and the academically gifted and talented. See § 75.1095 of EDGAR for a discussion of priorities.

In the case of competitions for center awards, the Secretary selects from the 26 priorities listed in § 706.12 the specific priorities or combinations of priorities that will be used to compete R&D centers. For example, one competition could be limited to teaching and the preparation and training of educational personnel in English literacy, mathematics, and science. Another competition could have as its priority the learning and teaching of mathematics and science at the elementary education level. Section 706.12, however, does not specify which of the 26 priorities will be used in formulating the missions for center competitions. The Secretary intends to make fewer center awards than the number of priorities listed in these regulations. The Secretary intends to annouce the specific priorities upon which the missions of individual centers are based and upon which center awards will be competed in a notice published in the **Federal Register**.

In the case of competitions for laboratory awards, the majority of activities described in an application or proposal will constitute a reponse to regionally defined needs. The Secretary may also encourage or require an applicant or offeror to describe in its application or proposal specific activities based on one or more priorities or combinations of priorities of national significance. The Secretary intends to encourage, rather than require, specific priorities of this kind. The Secretary announces, in a notice published in the **Federal Register**, the specific priorities that an applicant or offeror is encouraged or required to address.

(c) *subpart C—How Does One Apply for An Award?*

Section 706.21 describes the assurances that an applicant or offeror for an award for institutional operations must make.

Information needed for a multi-year project for institutional operations is described in § 706.22.

(d) *Subpart D—How Does the Secretary Make an Award?*

Section 706.31 establishes the general process for evaluating an application using the selection criteria. The Secretary announces, for each competition, the applicable selection criteria, listed in §§ 707.31, 707.32, 708.31, and 708.32. The maximum score possible for the selection criteria in each section is 100 points, including 15 reserved points. The Secretary announces how these reserved points

will be distributed for each competition through publication of a notice in the Federal Register. The criterion on budget and cost effectiveness carries no points in the proposed regulations. If the competition is for grants for planning or institutional operations, the Secretary distributes a minimum of 5 of the 15 reserved points for the criterion on budget and cost effectiveness. If the competition is for contracts for planning or institutional operations, technical evaluators do not evaluate the business portion of proposals. For this reason, no points are assigned to the criterion on budget and cost effectiveness if contracts are used.

Section 706.32 describes the standards and procedures, in addition to those in 34 CFR 75.217, which the Secretary may use to determine which applications for grants for institutional operations will be selected for funding. (Proposals for contracts will receive awards based on the procedures described in 41 CFR 34–3.51.)

In any competition for laboratory and center grants, the Secretary intends, although he is not required, to select groups of experts that will consist of three or more peers of the applicants and that will have a majority of peers who are not employees of the Federal Government. See 34 CFR 75.217(a). (The Secretary indends to use peers as technical evaluators to the same extent in reviewing proposals for laboratory and center contracts.)

(1) Groups of experts use the selection criteria for laboratories in § 707.32 or the selection criteria for centers in § 706.32 to evaluate applications. See 34 CFR 75.217(b).

(2) After applications are evaluated by the groups of experts, the Secretary prepares a rank ordering of the applications based solely on the evaluations of the groups of experts. See 34 CFR 75.217(c). Under § 706.32 of the proposed regulations, the Secretary plans to select the best of these applications for further consideration rather than simply determining at that time the order in which applications will be funded. See 34 CFR 75.217(d). In determining which applications will receive further consideration, the Secretary uses the standards and information described in 34 CFR 75.217(d). In any competition for awards for institutional operations, the Secretary in most cases intends to select no more than the top three applications for further consideration. Under § 706.32(a)(1), applications not selected for further consideration are returned to applicants with an explanation of why they were not selected.

(3) The Secretary may conduct site visits, under § 706.32(a)(2), to all applicants whose applications were selected for further consideration in order to get additional information on both the activities described in the applications and the capability of applicants to conduct the activities. After site visits are completed, § 706.32(a)(3) permits the Secretary to conduct written or oral discussions about the activities proposed, their associated costs, and other relevant topics with all applicants whose applications have been selected for further consideration. These discussions may focus on ambiguities, uncertainties, and deficiencies in the application. The Secretary does not reveal to the applicant information about other applications or information that could give the applicant a competitive advantage over another. Those applicants receiving further consideration are then informed that discussions are underway and that a final application is required by a deadline date applying to all applicants.

(4) The Secretary may review all final applications using the same procedures that were used earlier to review initial applications. The Secretary makes the final selection of awards in accordance with 34 CFR 75.217(d). Proposed § 706.32(b) permits the Secretary to consider the relationship between the technical merit of an application and its cost in comparison to other applications in making the final selection of applications for funding.

If one or more planning grants are to be made, the Secretary follows the procedures for selecting new grants described in 34 CFR 75.217. Section 706.33 describes the additional factors that the Secretary may consider in selecting an application for a planning grant: (1) the relationship between the technical merit of an application and its cost in comparison to other applications, and (2) the extent to which funding an application would contribute to a collection of laboratory and center planning awards that is both diverse and balanced and that addresses the most significant problems of American education.

If one or more planning contracts are to be awarded, the Secretary follows the procedures in 41 CFR 34–3.511. to select the proposal(s) offering the greatest advantage to the Government, price and other factors considered. In addition, under § 706.33(b), the Secretary may take into account the extent to which funding a proposal contributes to a collection of laboratory and center planning awards that is both diverse and balanced and addresses the most significant problems of American education.

(e) *Subpart E—What Conditions Must Be Met by a Grantee or Contractor?*

Section 706.41 states that a grantee or contractor receiving a laboratory award for institutional operations must meet the post-award requirements for laboratories described in § 707.41, and that a grantee or contractor receiving a center award for institutional operations must meet the post-award requirements for centers described in § 706.41. An applicant or offeror is not required to meet these requirements at the time that it submits an application or proposal. After receiving an award for institutional operations, however, the grantee or contractor must immediately take the necessary steps to bring itself into compliance with the provisions of all requirements.

Part 707 (Regional Educational Laboratories) includes:

(a) *Subpart A—General*

Section 707.1 states that the regulations in this part and the regulations in Part 706 apply to laboratory awards.

(b) *Subpart B—What Kinds of Activities Does the Secretary Fund under This Program?*

Section 707.11 describes the regions for laboratories and how the Secretary determines and announces regions. Three alternatives for laboratory regions are presented for public comment in the Special Issues section at the end of this preamble. If funding to a particular laboratory is discontinued, § 707.11 permits the Secretary to arrange for the continuation of laboratory services to all States.

(c) *Subpart C—How Does One Apply for an award?* [Reserved]

(d) *Subpart D—How Does the Secretary Make an Award?*

For laboratory awards for planning, the Secretary uses the selection criteria in § 707.31. For laboratory awards for institutional operations, the Secretary uses the selection criteria in § 707.32.

(e) Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

The six (6) post-award requirements that must be met by a grantee or contractor receiving a laboratory grant or contract for institutional operations are described in § 707.41. The grantee or contractor is required to (1) be incorporated as a non-profit organization, (2) establish and maintain a board of directors subject to no higher governing board and representing the varied educational constituencies of the region, (3) facilitate communication in the region, (4) identify concerns and

priorities through governing and advisory structures representing the region and help regional clients do the same, (5) conduct research and development on regional needs, and (6) promote the use of research and development results from all sources, both inside and outside the region.

In the case of requirements (1) and (2), an institution of higher education with its own board of trustees could not meet this post-award requirement without taking steps to establish an independent, non-profit organization over which the board of trustees has no ultimate authority. A similar action would be required in the case of a consortium of chief State school officers. The consortium would have to establish an independent, non-profit organization with a regionally representative board of directors in order to meet these requirements.

Part 708 (Research and Development Centers) includes:

(a) *Subpart A—General*

Section 708.1 states that the regulations in this part and the regulations in Part 706 apply to center awards.

(b) *Subpart B—What Kinds of Activities Does the Secretary Fund under This Program?* [Reserved]

(c) *Subpart C—How Does One Apply for an Award? [Reserved]*

(d) *Subpart D—How Does the Secretary Make an Award?*

For center awards for planning, the Secretary uses the selection criteria in § 708.31. For center awards for institutional operations, the Secretary uses the selection criteria in § 708.32.

(e) *Subpart E—What Conditions Must Be Met by a Grantee or Contractor?*

The two (2) post-award requirements that must be met by a grantee or contractor receiving a center grant or contract for institutional operations are described in § 708.41. The requirements are to (1) provide national research leadership according to the mission of the center and (2) establish and maintain an advisory panel representing the nation as a whole.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations do not impose requirements that will have a significant economic impact on the limited number of small entities that may participate in this program.

Invitation To Comment

General Comments

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received by the end of the comment period will be considered in the drafting of final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 645, Brown Building, 1200 19th Street, NW, Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Special Issues

The Secretary particularly invites comments on three alternatives regarding the designation of geographic regions to be served by laboratories under this program. All alternatives provide coverage to the entire country and assign each State to only one region.

The first alternative for the most part designates regions as they are currently composed. In addition, it adds four regions that encompass (a) the States in the Northeast that are not currently served by a laboratory, (b) a group of States in the Southeast, most of which are not currently served by a laboratory, (c) a group of States in the Great Lakes area, and (d) a group of States in the Rocky Mountain and Southwest areas of the country. Under this first alternative the regions are designated as follows:

(1) Connecticut, Maine, Massachusetts, New Hampshire, New York, Puerto Rico, Rhode Island, Vermont, Virgin Islands.

(2) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania.

(3) Kentucky, Tennessee, Virginia, West Virginia.

(4) Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina.

(5) Illinois, Indiana, Michigan, Ohio, Wisconsin.

(6) Arkansas, Louisiana, Oklahoma, Texas.

(7) Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.

(8) Arizona, Colorado, New Mexico, Utah, Wyoming.

(9) California, Nevada.

(10) Alaska, American Samoa, Guam, Hawaii, Idaho, Montana, Northern Marianas, Oregon, Trust Territory of the Pacific Islands, Washington.

The second alternative also groups States in clusters similar to those of the currently served regions. Major differences include (a) a larger region in the West and (b) a separate region in the Pacific Basin. Under this second alternative the regions are designated as follows:

(1) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.

(2) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania.

(3) Kentucky, Ohio, Tennessee, Virginia, West Virginia.

(4) Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Virgin Islands.

(5) Illinois, Indiana, Iowa, Michigan, Minnesota, Wisconsin.

(6) Arkansas, New Mexico, Oklahoma, Texas.

(7) Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Wyoming.

(8) Arizona, California, Nevada, Utah.

(9) Alaska, Idaho, Montana, Oregon, Washington.

(10) American Samoa, Guam, Hawaii, Trust Territory of the Pacific Islands.

The third alternative being considered is to create a significantly larger number of regions (approximately 14 to 16 regions) than currently exist, with each new region composed of three to four States. Under this alternative the regions are not designated at this time, but the Secretary requests comments on both the notion of more regions of smaller size and the composition of these regions.

The Secretary invites comments on other appropriate designations of laboratory regions in addition to the three alternatives presented in this preamble.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Paperwork Reduction Act of 1980

The information collection requirements contained in these proposed rules, including § 706.22, will

be sent to OMB for review under the provisions of Section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Comments concerning information requirements *only* should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

List of Subjects in 34 CFR Parts 706, 707, and 708

Colleges and universities, Education, Educational research, Grant programs—education, Local education agencies, Nonprofit organizations, State education agencies.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: March 21, 1984.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Development)

The Secretary proposes to revise Title 34 of the Code of Federal Regulations by adding new Parts 706, 707, and 708:

1. The Secretary proposes to add a new Part 706 to read as follows:

PART 706—REGIONAL EDUCATIONAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS PROGRAM: GENERAL PROVISIONS

Subpart A—General

Sec.

706.1 What is the Regional Educational Laboratories and Research and Development Centers Program?
706.2 What parties are eligible to apply for an award under this program?
706.3 What types of awards does the Secretary make under this program?
706.4 What regulations apply to this program?
706.5 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

706.11 For what purposes does the Secretary make an award under this program?
706.12 What priorities does the Secretary establish for this program?

Subpart C—How Does One Apply for an Award?

706.21 What assurances must an applicant or offeror make?
706.22 What information is needed for a multi-year project for institutional operations?

Subpart D—How Does the Secretary Make an Award?

706.31 How does the Secretary evaluate an application or a proposal?
706.32 What procedures and standards may the Secretary use to determine which applications for grants for institutional operations will be selected for funding?
706.33 What additional standards may the Secretary use to select an application or a proposal for a planning award?

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

706.41 What requirements must be met by a grantee or contractor?

Authority: Sec. 405 (e) and (f) of the General Education Provisions Act, as amended (20 U.S.C. 1221e (e) and (f)).

Subpart A—General

§ 706.1 What is the Regional Educational Laboratories and Research and Development Centers Program?

This program establishes regional educational laboratories and research and development centers to plan or conduct educational research and development, and related activities.

(20 U.S.C. 1221e (e) and (f))

§ 706.2 What parties are eligible to apply for an award under this program?

(a) The Secretary may make awards for institutional operations to—

(1) Regional educational laboratories established by public agencies or private nonprofit organizations; and

(2) Research and development centers established by institutions of higher education or by interstate agencies established by compact which operate subsidiary bodies established to conduct postsecondary educational research and development.

(20 U.S.C. 1221e(f))

(b) The Secretary may make awards for the planning of a laboratory or center to public or private organizations, institutions, agencies or individuals.

(20 U.S.C. 1221e(e))

§ 706.3 What types of awards does the Secretary make under this program?

The Secretary may award grants and contracts under this program.

(20 U.S.C. 1221e (e) and (f); 3474; 31 U.S.C. 9005)

§ 706.4 What regulations apply to this program?

(a) *Grants.* The following regulations apply to grants under this program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 706 and in 34 CFR Parts 707 and 708.

(b) *Contracts.* The following regulations apply to contracts under this program:

(1) Chapters 1 and 34 of Title 41 of the Code of Federal Regulations.

(2) The regulations in this Part 706 and in 34 CFR Parts 707 and 708.

(20 U.S.C. 1221e (e) and (f); 3474)

§ 706.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Contract
Department
EDGAR
GEPA
Grant
Nonprofit
Private
Public
Secretary
State

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Center" means an educational research and development center funded under Section 405(f) of GEPA.

"Educational research and development" means all research and related functions, including, but not limited to, basic and applied research, development, demonstration, dissemination, evaluation, policy studies, implementation, and technical assistance.

"Institute" means the National Institute of Education.

"Institution of higher education" means a college or university, located in any State, which conducts research and training in fields related to the mission of a research and development center.

"Institutional operations" means the activities of a laboratory or center conducted under a long-term plan approved by the Institute.

"Laboratory" means a regional educational laboratory funded under this program.

"Mission" means the long-range goal or goals of a laboratory or center.

"Planning" means activities related to the planting of a laboratory or center.

(20 U.S.C. 1221e (e) and (f); 3474)

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

§ 706.11 What purposes does the Secretary make an award under this program?

The Secretary makes awards under this program for the purpose of planning or institutional operations or both.

(20 U.S.C. 1221e (e) and (f))

§ 706.12 What priorities does the Secretary establish for this program?

For each competition, the Secretary may select one or more funding priorities by choosing from the following individual priorities or combinations of these:

(a) Learning.

(b) Teaching.

(c) Educational technology.

(d) Instructional processes and materials, including textbooks and computer software for instruction.

(e) Preparation and training of educational personnel.

(f) Organization and management of schools, including effective school administration and leadership.

(g) Evaluation and school indicators, including testing and measurement.

(h) Governance of education, including school board policies and practices.

(i) Educational finance.

(j) Dissemination and knowledge utilization in education.

(k) Change and improvement processes in education.

(l) Student achievement and educational standards, including students' motivation to learn, their failure to learn, and their failure of attend school and graduate.

(m) Home, family, and community influences in education.

(n) Education, work, and careers.

(o) Desegregation, busing, and their impact on educational equity and excellence.

(p) English literacy, including reading, writing, and language skills.

(q) Mathematics.

(r) Science.

(s) Foreign languages.

(t) Preschool education.

(u) Elementary education.

(v) Secondary education.

(w) Abolescent education.

(x) Postsecondary education.

(y) Adult and continuing education.

(z) Education of special populations, including the educationally disadvantaged, the handicapped, and the academically gifted and talented.

Note.—EDGAR establishes the method for applying priority. See 34 CFR 75.105 (annual priorities).

(20 U.S.C. 1221e(e) and (f); 3474

Subpart C—How Does One Apply for an Award?

§ 706.21 What assurances must an applicant or offeror make?

In its application or proposal, an applicant or offeror for an award for institutional operations shall make assurances that the laboratory or center involved will—

(a) Be responsible for the conduct of research and development activities;

(b) Prepare a long-range plan relating to the conduct of such research and development activites;

(c) Disseminate information developed as a result of such research and development activities, including new educational methods, practices, techniques, and products;

(d) Provide technical assistance to appropriate educational agencies and institutions; and

(e) Provide training for individuals, emphasizing training opportunities for women and members of minority groups, in the use of new educational methods, practices, techniques, and products developed in connection with those activities.

(20 U.S.C. 1221e(f))

§ 706.22 What information is needed for a multi-year project for institutional operations?

In addition to the information required in 34 CFR 75.117, an application or proposal for a multi-year project for institutional operations must contain a mission statement for the proposed institution as a whole. The mission statement must describe goals and objectives and discuss how they relate to the specific activities described in the application or proposal.

(20 U.S.C. 1221e(f); 3474)

Subpart D—How Does the Secretary Make an Award?

§ 706.31 How does the Secretary evaluate an application or a proposal?

(a) For each competition the Secretary uses the applicable selection criteria in §§ 707.31, 707.32, 708.31, or 708.32 to evaluate applications and proposals for new awards under this program.

(b) The maximum score for all the criteria in each section is 100 points, including 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses with the criterion.

(d) For any competition the Secretary distributes 15 points among the criteria listed in the applicable section.

(20 U.S.C. 1221e(e) and (f); 3474)

§ 706.32 What procedures and standards may the Secretary use to determine which applications for grants for institutional operations will be selected for funding?

(a) To determine which applications will be selected for funding for grants for institutional operations, the Secretary may use the following procedures:

(1) After following the procedures in 34 CFR 75.216 and 75.217(a) through (c), the Secretary uses the standards in 34 CFR 75.217(d) to select applications for further consideration. The Secretary returns an application not selected to the applicant with an explanation of why that application was not selected for further consideration.

(2) The Secretary may conduct site visits to all of the applicants selected for further consideration. The Secretary conducts these site visits to obtain further information on both the activities described in the applications and the capability of the applicants to perform the work.

(3)(i) After site visits are completed, the Secretary conducts written or oral discussions on the work to be performed, the cost of the work, and other relevant topics with all applicants selected for further consideration.

(ii) The Secretary discusses with each applicant the ambiguities, uncertainties, or deficiencies, if any, in its application. The Secretary gives each applicant a reasonable opportunity to support, clarify, correct, improve, or otherwise revise its application. In discussions with an applicant, the Secretary does not identify areas in which another applicant has apparently received a higher evaluation, or otherwise provide information which could give the applicant a competitive advantage over other applicants. The Secretary may require more than one round of discussions with all the applicants. In deciding on the type, duration, and extent of the discussions, the Secretary considers the time available, the expense and administrative limitations, and the size and significance of the grants to be awarded.

(iii) The Secretary advises each applicant that—

(A) Discussions are being conducted;

(B) Applicants are required to submit a final application; and

(C) The final application, including any revisions, must be submitted by a deadline that applies to all of the applicants.

(4) The Secretary may, in accordance with the procedures in 34 CFR 75.217(a) through (c), conduct a review of all final applications submitted under paragraph (a)(3) of this section.

(b) In making grants under this section, the Secretary may consider the relationship between the technical merit of an application and its cost in comparison to other applications.

(20 U.S.C. 1221e(f); 3474)

§ 706.33 What additional standards may the Secretary use to select an application or a proposal for a planning award?

(a) *Grants.* In making grants for planning, the Secretary may consider—

(1) The relationship between the technical merit of an application and its cost in comparison to other applications; and

(2) The extent to which funding an application would contribute to a collection of laboratory and center planning awards that is both diverse and balanced and that addresses the most significant problem of American education.

(b) *Contracts.* In awarding contracts for planning, the Secretary may consider the extent to which a proposal contributes to a collection of laboratory and center planning awards that is diverse and balanced and that addresses the most significant problems of American education.

(20 U.S.C. 1221e(e); 3474)

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

§ 706.41 What requirements must be met by a grantee or contractor?

A grantee or contractor receiving a laboratory award for institutional operations shall meet the post-award requirements described in § 707.41; a grantee or contractor holding a center award for institutional operations shall meet the post-award requirements described in § 708.41.

(20 U.S.C. 1221e(f); 3474)

2. The Secretary proposes to add a new Part 707 to read as follows:

PART 707—REGIONAL EDUCATIONAL LABORATORIES

Subpart A—General

Sec.

707.1 What regulations apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Fund under This Program?

Sec.

707.11 What geographic regions do the laboratories serve?

Subpart C—How Does One Apply for an Award? [Reserved]

Subpart D—How Does the Secretary Make an Award?

707.31 What are the selection criteria for laboratory awards for planning?

707.32 What are the selection criteria for laboratory awards for institutional operations?

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

707.41 What requirements must be met by a grantee or contractor?

Authority: Sec. 405 (e) and (f) of the General Education Provisions Act, as amended (20 U.S.C. 1221e (e) and (f)).

Subpart A—General

§ 707.1 What regulations apply to this program?

The regulations in this part and the regulations in 34 CFR Part 706 apply to awards for regional educational laboratories.

(20 U.S.C. 3474)

Subpart B—What Kinds of Activities Does the Secretary Fund under This Program?

§ 707.11 What geographic regions do the laboratories serve?

(a) The laboratories established under this program serve the following geographic regions:

[Reserved]

Note.—Three alternatives for geographic regions are presented for public comment in the preamble to these regulations.

(b) For each competition for laboratory awards, the Secretary announces which one or more of the geographic regions designated in § 707.13(a) will be served.

(c) In the event that funding of a particular laboratory under this program is discontinued, the Secretary may arrange for the continuation of laboratory services to all States.

(20 U.S.C. 1221e(e) and (f); 3474)

Subpart C—How Does One Apply for an Award? [Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 707.31 What are the selection criteria for laboratory awards for planning?

The Secretary uses the following criteria to evaluate applications and proposals for laboratory awards for planning:

(a) *Understanding of the educational settings and issues in the region.* (25 points)

(1) The Secretary reviews each application or proposal for information that shows the extent to which the applicant or offeror understands the educational settings and issues in the region.

(2) The Secretary looks for information that shows—

(i) Knowledge of the strengths and needs of the educational systems—public and private, elementary, secondary, and postsecondary—in the region;

(ii) An understanding of significant trends expected to influence education in the region over the next half decade;

(iii) Knowledge of the capabilities of existing organizations that provide research, dissemination, training, and assistance to educational agencies in the region and how a laboratory can complement their work; and

(iv) An understanding of the barriers and challenges facing a laboratory in the region and ways of overcoming them.

(b) *Organizational ability to conduct planning and design tasks.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the organizational ability of the applicant or offeror to conduct the required planning and design tasks.

(2) The Secretary looks for information that shows—

(i) Successful experience in planning or conducting multi-state activities related to educational research and development; and

(ii) Existing relationships in the region giving the applicant or offeror access to important regional groups of clients and contributing to cooperative planning activities.

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant or offeror plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant or offeror will address the problems of groups that have been

traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the key personnel the applicant or offeror plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant or offeror, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant or offeror provides.

(e) *Budget and cost effectiveness.* (0 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(3) In a grant competition, this criterion is assigned at least 5 points.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See EDGAR, § 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows that the applicant or offeror plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant or offeror plans to use are adequate; and

(ii) The equipment and supplies that the applicant or offeror plans to use are adequate.

(20 U.S.C. 1221e(e) and (f); 3474)

§ 707.32 What are the selection criteria for laboratory awards for institutional operations?

The Secretary uses the following criteria to evaluate applications and proposals for laboratory awards for institutional operations

(a) *Understanding of and responsiveness to regional needs.* (10 points)

(1) The Secretary reviews each application or proposal for information that shows the applicant's or offeror's understanding of and responsiveness to the needs of the region.

(2) The Secretary looks for information that shows—

(i) An understanding of current and projected educational conditions and needs in the regions;

(ii) Adequate mechanisms and procedures for assessing the educational research and development needs and capabilities of the region and for determining laboratory priorities; and

(iii) An analysis of strategic options and a plan for responding to regional needs.

(b) *Strength of relationships with the region.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the strength of the applicant's or offeror's relationships with the region to be served.

(2) The Secretary looks for information that shows—

(i) A governing board whose composition reflects regional interests and constituencies;

(ii) A governing board designed to take an active role in setting policy;

(iii) A governance structure that provides the organizational autonomy necessary for neutrality, balance, and equity in the selection of clients and the delivery of services;

(iv) The quality, extent, and feasibility of proposed collaborative relationships with appropriate organizations, such as—

(A) Public education agencies at State, intermediate, and local levels;

(B) Educational research and development agencies;

(C) Organizations providing assistance in the use of research outcomes;

(D) Clearinghouses;

(E) Professional associations;

(F) Institutions of higher education;

(G) Community-based organizations;

(H) Business and industry; and

(v) Successful prior work and commitments for future work with such organizations.

(c) *Institutional capacity.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the applicant or offeror to sustain a long-term, high-quality, and coherent program of research and services.

(2) The Secretary looks for information that shows—

(i) Adequate organizational mechanisms and procedures for managing work internally and in collaboration with other institutions;

(ii) Adequate procedures for quality control and self-evaluation; and

(iii) Adequate plans for effecting improvement in organizational performance and staff development during the project period.

(d) *Plan of operation.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant or offeror plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant or offeror will address the problems of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) A logical relationship between proposed activities and statements of regional needs and priorities;

(vii) Coherence of work within and among program activities;

(viii) The extent of which the proposed activities complement related efforts inside and outside the region;

(ix) The anticipated contribution of the work to educational improvement; and

(x) Appropriate provisions for sequencing and pacing work activities.

(e) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the key personnel the applicant or offeror plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant or offeror, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant or offeror provides.

(f) *Budget and cost effectiveness.* (0 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(3) In a grant competition, this criterion is assigned at least 5 points.

(g) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See EDGAR, § 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each applicant or proposal for information that shows that the applicant or offeror plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant or offeror plans to use are adequate; and

(ii) The equipment and supplies that the applicant or offeror plans to use are adequate.

(20 U.S.C. 1221e (e) and (f); 3474)

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

§ 707.41 What requirements must be met by a grantee or contractor?

A grantee or contractor receiving a laboratory grant or contract for institutional operations shall meet the following post-award requirements. The grantee or contractor—

(a) Must be incorporated as a non-profit organization;

(b) Shall establish and maintain a board of directors that is subject to no higher governing board and that represents the varied educational constituencies of the region;

(c) Shall facilitate communication among educational agencies and individuals in the region;

(d) Shall identify concerns and priorities through regionally representative governing and advisory structures and activities that help regional clients define their needs;

(e) Shall conduct applied research, development, and related activities to address regional needs; and

(f) Shall promote the use in the region of research and development results from all sources inside and outside the region, including the laboratory.

(20 U.S.C. 1221e(f))

3. The Secretary proposes to add a new Part 708 to read as follows:

PART 708—RESEARCH AND DEVELOPMENT CENTERS

Subpart A—General

Sec.

708.1 What regulations apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program? [Reserved]

Subpart C—How Does One Apply for an Award? [Reserved]

Subpart D—How Does the Secretary Make an Award?

Sec.

708.31 What are the selection criteria for center awards for planning?

708.32 What are the selection criteria for center awards for institutional operations?

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

708.41 What requirements must be met by a grantee or contractor?

Authority: Sec. 405 (e) and (f) of the General Education Provisions Act, as amended (20 U.S.C. 1221e (e) and (f)).

Subpart A—General

§ 708.1 What regulations apply to this program?

The regulations in this part and the regulations in 34 CFR Part 706 apply to awards for research and development centers.

(20 U.S.C. 3474)

Subpart B—What Kinds of Activities Does the Secretary Fund under This Program? [Reserved]

Subpart C—How Does One Apply for an Award? [Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 708.31 What are the selection criteria for center awards for planning?

The Secretary uses the following criteria to evaluate applications and proposals for center awards for planning:

(a) *Mission and strategy.* (25 points)

(1) The Secretary reviews each application or proposal for information that shows the extent to which the applicant or offeror understands the state of knowledge and practice with respect to the problem area and priorities of the center for which the applicant is applying or the offeror is proposing.

(2) The Secretary looks for information that shows—

(i) Understanding of the mission of the proposed center;

(ii) Knowledge of relevant research and theory;

(iii) Knowledge of relevant problems in educational practice;

(iv) Familiarity with relevant strategies of research, development, and dissemination; and

(v) Familiarity with strategies for relating to other organizations in educational research, development, and practice.

(b) *Institutional capacity.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the applicant or offeror to sustain a long-term, high-quality, and coherent program of research, development, and dissemination.

(2) The Secretary looks for information that shows—

(i) Strong support from the applicant or offeror, demonstrating the existence of appropriate organizational structures and a commitment to provide the services of appropriate faculty or staff members from the applicant's or offeror's organization;

(ii) Inclusion of an appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant or offeror; and

(iii) The past successes of the applicant or offeror in collaborating with other individuals and organizations to conduct educational research and development.

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant or offeror plans to use its resources and personnel to achieve each objective; and

(iv) A clear description of how the applicant or offeror will address the problems of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the key personnel the applicant or offeror plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant or offeror, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant or offeror provides.

(e) *Budget and cost effectiveness.* (0 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(3) In a grant competition, this criterion is assigned at least 5 points.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See EDGAR, § 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows that the applicant or offeror plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant or offeror plans to use are adequate; and

(ii) The equipment and supplies that the applicant or offeror plans to use are adequate.

(20 U.S.C. 1221e(e) and (f); 3474)

§ 708.32 What are the selection criteria for center awards for institutional operations?

The Secretary uses the following criteria to evaluate applications and proposals for center awards for institutional operations:

(a) *Mission and strategy.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the extent to which the applicant's or offeror understands the state of knowledge and practice in the problem area of the center's mission.

(2) The Secretary looks for information that shows—

(i) Understanding of the mission of the proposed center;

(ii) A program of work that will contribute to the development of relevant theory;

(iii) Potential of the proposed project to advance practice in significant ways;

(iv) The applicant's or offeror's awareness of the problems of special populations with respect to the mission of the proposed center;

(v) A selection of strategies of research, development, and dissemination that are likely to be effective;

(vi) Establishment of effective working relations with other organizations in educational research, development, and practice; and

(vii) Promising long-range plans for developing an appropriate and coherent program of educational research, development, and dissemination.

(b) *Institutional capacity.* (25 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the applicant or offeror to sustain a long-term, high-quality, and coherent program of research, development, and dissemination.

(2) The Secretary looks for information that shows—

(i) Strong support from the applicant or offeror, demonstrating the existence of appropriate organizational structures and a commitment to provide the services of appropriate faculty or staff members from the applicant's or offeror's organization;

(ii) Inclusion of an appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant or offeror;

(iii) the past successes of the applicant or offeror in collaborating with other individuals and organizations to conduct educational research and development.

(iv) Structure and governance arrangements likely to provide appropriate direction, quality control, and cost-effective management; and

(v) Plans for effecting improvement in organizational performance and staff development during the period of award.

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project related to the purpose of the program;

(iv) The way the applicant or offeror plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant or offeror will address the problems of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application or proposal for information that shows the qualifications of the key personnel the applicant or offeror plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant or offeror, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant or offeror provides.

(e) *Budget and cost effectiveness.* (0 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adquate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(3) In a grant competition, this criterion is assigned at least 5 points.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See EDGAR, § 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application or proposal for information that shows that the applicant or offeror plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant or offeror plans to use are adequate; and

(ii) The equipment and supplies that the applicant or offeror plans to use are adequate.

(20 U.S.C. 1221e(e) and (f); 3474)

Subpart E—What Conditions Must Be Met by a Grantee or Contractor?

§ 708.41 What requirements must be met by a grantee or contractor?

A grantee or contractor receiving a center grant or contract for institutional operations shall meet the following post-award requirements. The grantee or contractor shall—

(a) Provide national research leadership with respect to the mission of its center; and

(b) Establish and maintain a nationally representative advisory panel.

(20 U.S.C. 1221e(f))

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Monday
March 26, 1984

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

AGENCY: Public Health Service, HHS.

ACTION: Amendments to Final Regulations.

SUMMARY: This rule amends the regulations implementing grants for predoctoral, graduate, and faculty development education programs in family medicine to conform with definitional changes made by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) and the Commonwealth Covenant to Establish Northern Mariana Islands (Pub. L. 94–241). An amendment to remove a reference to a health systems agency review is also included. Additional changes are made for clarification purposes. These amendments are technical and nondiscretionary in nature.

EFFECTIVE DATE: These amendments are effective March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Daniel N. Masica, M.D., Acting Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857; 301 443–6190.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, with the approval of the Secretary, Department of Health and Human Services, is amending Subpart Q to Part 57 of Title 42 of the Code of Federal Regulations which was published in the **Federal Register** on October 16, 1980 (45 FR 68890). These regulations implement section 786(a) of the Public Health Service Act.

This rule amends the regulations to:

—Clarify the definition of family medicine by specifying that osteopathic general practice is included. Also, the misspelling of "provided" is changed to "provides."

—Clarify the definition of "Osteopathic internship program" by changing the current wording of "intern" to "internship."

—Correct the definition of "Residency training program" by substituting the new name of the accrediting body for allopathic graduate medical programs from "Liaison Committee on Graduate Medical Education" to the "Accreditation Council for Graduate Medical Education."

—Revise the definition of "School of medicine or osteopathy" to reflect a reference change from "section 772(b)" to "section 701 (4) and (5)" in accordance with Pub. L. 97–35.

—Revise the definition of "State" to comply with Pub. L. 94–241, which changed the status of the Northern Mariana Islands from "territory" to "a Commonwealth."

—Add clarifying language in the project requirements section to:

(1) In paragraph (a)(3), correct an earlier omission to include trainees and faculty as components for evaluation.

(2) In paragraph (a)(4), correct the misspelling of the word "ambulatory," improve the diction by deleting "when an" and substituting "in which," and changing the word "portion" to read "portions."

(3) In paragraph (b)(4)(iii)(C), change the references from "preceptorship" to "assistantship" in each place the word "preceptorship" is mentioned.

(4) In paragraph (c)(7), delete reference to "resident" and substitute the word "trainee" in order to reflect the more accurate meaning of the graduate trainee involved.

—Correct language in the evaluation section by changing in paragraph (1) the reference to the section of the regulations on project requirements from § 57.1605 to § 57.1604.

—Delete the section on what health planning requirements must be met since the health system agency review for training grant programs is no longer required.

—Renumber the three sections immediately following the deleted § 57.1608.

—Cite the Office of Management and Budget (OMB) numbers in those sections which contain recordkeeping and reporting requirements.

Paperwork Reduction Act

Section 57.1604 of the final regulations and the application forms and instructions for these grant programs have been approved by the OMB under the Paperwork Reduction Act of 1980 (OMB Approval Numbers are 0915–0060 for the competing application form and 0915–0061 for the continuation application form).

Regulatory Flexibility Act and Executive Order 12291

The Department of Health and Human Services has determined that these technical amendments will not significantly impact on small business and, therefore, do not require preparation of Regulatory Flexibility Analysis under the Regulatory Flexibility Act, Pub. L. 96–354.

These changes amend final regulations which govern a financial assistance program in which participation is voluntary and Federal support is provided to enable grantees to meet the regulatory project requirements. A regulatory impact analysis is not warranted because any costs will not approach the threshold criteria for major rules under Executive Order 12291. That is, they will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Justification for Omitting Notice of Proposed Rulemaking

These amendments conform these regulations to Pub. L. 97–35 and 94–241 and make minor nonsubstantive changes to sections 57.1602, 57.1604, 57.1605, 57.1608, 57.1609, and 57.1610. The Secretary has therefore determined, according to 5 U.S.C. 553 and Department policy, that it would be unnecessary to follow proposed rulemaking procedures or to delay the effective date of these regulations.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Education facilities, Educational study program, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart Q is revised and adopted as set forth below.

Dated: December 8, 1983.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: March 2, 1984.

Margaret M. Heckler,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.379, Grants for Graduate Training in Family Medicine, No. 13.896, Grants for

Predoctoral Training in Family Medicine and No. 13.895, Grants for Faculty Development in Family Medicine—

* * * * *

Subpart Q—Grants for Predoctoral Graduate, and Faculty Development Education Programs in Family Medicine

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 786(a) of the Public Health Service Act, 90 Stat. 2316 (42 U.S.C. 295g-6(a)).

1. Section 57.1602 is amended by revising the following definitions to read as follows:

§ 57.1602 Definitions.

* * * * *

"Family medicine" means the field of medicine, including osteopathic general practice, in which the physician:

(a) Serves as a physician of first contact with families and with patients of all ages and provides a means of entry into the health care system;

* * * * *

"Osteopathic internship program" means an internship which emphasizes family medicine and is approved by the American Osteopathic Association.

* * * * *

"Residency training program" means:

(a) A residency program in family practice which is fully or provisionally Accredited by the accreditation Council for Graduate Medical Education; or

* * * * *

"School of medicine or osteopathy" means a public or private nonprofit school which provides training leading respectively to a degree of doctor of medicine or to a degree of doctor of osteopathy and which is accredited as provided in section 701 (4) and (5) of the Act.

* * * * *

"State" means any one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

* * * * *

2. In § 57.1604, paragraphs (a)(3), (a)(4), (b)(4)(iii)(C) and (c)(7) are revised and a parenthetical statement concerning the Office of Management and Budget approval is added at end of the section.

§ 57.1604 What requirements must a project meet?

(a) * * *

(3) Each project must systematically evaluate the educational program including trainees and faculty preceptors, the administration of the program and the degree to which program and educational objectives are met.

(4) Each project, other than a faculty development project, must use ambulatory care settings where family medicine is practiced and in which an adequate portion of the clinical training is conducted.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(C) engage in the assistantship full time for at least eight consecutive weeks. Stipend support from grant funds may be given to trainees who are receiving academic credit for the assistantship only when the three conditions above are met and, additionally, when the trainees incurs extraordinary living expenses, due to participation in the assistantship.

* * * * *

(c) * * *

(7) Each intern or resident must serve a sufficient number of families and individual patients with a variety of health care needs to provide the trainee with a broad clinical experience.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915–0060 and 0915–0061)

3. Section 57.1605 is amended by revising (a)(1) as follows:

§ 57.1605 How will applications be evaluated?

(a) * * *

(1) The degree to which the proposed project provides for the project requirements in § 57.1604;

* * * * *

§ 57.1606 [Removed]

4. Section 57.1606 *What health planning requirements must benefit?* is removed in its entirety.

5. Section 57.1609 is renumbered as § 57.1606 *What additional Department regulations apply to grantees?*

6. Section 57.1610 is renumbered as § 57.1609 *What other audit and inspection requirements apply to grantees?*

7. Section 57.1611 is renumbered as § 57.1610 *Additional conditions.*

[FR Doc. 84-8089 Filed 3-23-84; 8:45 am]

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H.J. Res. 200 / Pub. L. 98-240

Designating March 21, 1984, as "National Single Parent Day". (Mar. 21, 1984; 98 Stat. 94) Price: $1.50

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CFR CHECKLIST

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[1] No amendments to these volumes were promulgated during the period Apr. 1, 1982 to March 31, 1983. The CFR volumes issued as of Apr. 1, 1982 should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

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Presidential Documents

Title 3—

The President

Proclamation 5169 of March 22, 1984

Loyalty Day, 1984

By the President of the United States of America

A Proclamation

As Americans, we enjoy a rich heritage of freedom. How fortunate we are that the founders of this great country were committed to the ideal that all people share inalienable rights to life, liberty, and the pursuit of happiness. This ideal has been the inspiration for many generations of Americans in the building of what is today the greatest and most prosperous Nation in the world.

The people of the United States cherish their liberties and recognize that our freedoms of conscience and action are at the heart of the unique American tradition. To preserve this great tradition, it is important for us all to pause from time to time to rededicate ourselves to the democratic ideals which have served us so well.

For this purpose, the Congress, by joint resolution approved July 18, 1958 (72 Stat. 369, 36 U.S.C. 162), has designated May 1 of each year as Loyalty Day, a day for the reaffirmation of loyalty to the United States of America and for the recognition of the heritage of American freedom.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1, 1984, as Loyalty Day and call upon all Americans and patriotic, civic, and educational organizations to observe that day with appropriate ceremonies. I also call upon all government officials to display the flag of the United States on all government buildings and grounds on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority; Procurement Executive

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority of the Department of Agriculture to designate a Procurement Executive.

EFFECTIVE DATE: March 27, 1984.

FOR FURTHER INFORMATION CONTACT: Anthony E. Cooch, Procurement Analyst, Procurement Division, Office of Operations, U.S. Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–6864.

SUPPLEMENTARY INFORMATION: On March 17, 1982, the President issued Executive Order 12352 calling for significant Federal procurement reforms. The Executive Order mandated that the heads of Executive Agencies buying products and services from the private sector designate a Procurement Executive. This document makes that designation within the Department of Agriculture to the Director of the Office of Operations.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public rulemaking procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisons of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise stated.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by adding paragraph (c)(8) to read as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(c) * * *

(8) Pursuant to Executive Order 12352, designate a Procurement Executive for the Department and delegate responsibility for the following:

(i) Prescribing and publishing Departmental procurement policies, regulations, and procedures.

(ii) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(iii) Designating contracting officers.

(iv) Establishing clear lines of contracting authority.

(v) Evaluating and monitoring the performance of the Department's procurement system.

(vi) Managing and enhancing career development of the procurement work force.

(vii) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied.

(viii) Determining areas of Department-unique standards and developing unique Department-wide standards.

(ix) Acting as the advocate for competition.

(x) Certifying to the Secretary that the procurement system meets approved standards.

(xi) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met.

(xii) Redelegating, as appropriate, the authority in § 2.25(c)(8)(i) to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation.

(xiii) Redelegating the authorities in § 2.25(c)(8) (ii), (iii), (iv), (vi), (vii), and (ix) to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.76 is amended by adding paragraph (a)(10) to read as follows:

§ 2.76 Director, Office of Operations.

(a) * * *

(10) Pursuant to Executive Order 12352, the Director, Office of Operations, is designated as Procurement Executive for the Department with responsibility for the following:

(i) Prescribing and publishing Departmental procurement policies, regulations, and procedures.

(ii) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(iii) Designating contracting officers.

(iv) Establishing clear lines of contracting authority.

(v) Evaluating and monitoring the performance of the Department's procurement system.

(vi) Managing and enhancing career development of the procurement work force.

(vii) Participating in the development of Government-wide procurement policies, regulations, and standards and

determining specific areas where Government-wide performance standards should be established and applied.

(viii) Determining areas of Department-unique standards and developing unique Department-wide standards.

(ix) Acting as the advocate for competition.

(x) Certifying to the Secretary that the procurement system meets approved standards.

(xi) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met.

(xii) Redelegating, as appropriate, the authority in § 2.76(a)(10)(i) to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation.

(xiii) Redelegating the authorities in § 2.76(a)(10) (ii), (iii), (iv), (vi), (vii), and (ix) to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

Dated: March 21, 1984.

For Subpart C:

John R. Block,

Secretary of Agriculture.

Date: March 21, 1984.

For Subpart J:

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 84-8186 Filed 3-26-84; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Parts 911 and 915

Limes Grown in Florida; Avocados Grown in South Florida; Amendment of Subparts—Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the rules and regulations issued under these marketing orders to require that handlers provide adequate facilities for the grading and preparation of limes and avocados for market as a condition for registration with the committees. The rule is designed to facilitate proper inspection and certification procedures under these orders and improve administrative operations.

DATES: Effective date: April 1, 1984. Comments due: April 26, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This interim rule is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida, and under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Florida Lime Administrative Committee, and the Avocado Administrative Committee and upon other available information. It is hereby found that this action would tend to effectuate the declared policy of the Act.

This interim rule would require any person applying to either committee for certification as a registered handler to agree to provide facilities which the committees determine to be adequate for the grading and preparation of limes and avocados for market. In addition, handlers currently certified by the committees desiring to maintain their registered handler status would also be required to agree to provide such facilities. Under the marketing orders, inspection and certification of limes and avocados by Federal-State inspectors is mandatory whenever grade, size, and other requirements are in effect. The rule is designed to assure the adequacy of facilities for grading and preparing fruit for market and thereby facilitate the required inspection.

Under § 911.10 and § 915.10 of the orders, the sale or delivery of limes and avocados to handlers for preparation of the fruit for market is exempt from regulations if such handlers are registered with the committees. The purpose of registration is to aid the committees in the effective administration of the provisions of these orders. The rule requiring handlers to maintain adequate facilities for grading and preparing fruit for market is consistent with that purpose.

The Secretary finds that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this interim rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the modification of handler registration requirements at an open meeting, at which the committees, without opposition, recommended issuance of the requirements specified in the interim rule to become effective April 1, 1984. Handlers have been apprised of this rule's provisions and the effective date. To effectuate the declared purposes of the Act it is necessary to make the interim rule effective as specified. The interim rule provides a 30-day comment period. A longer comment period would be contrary to the public interest, as any comments on the effect of the rule need to be received within 30 days, so that any necessary changes can be made promptly in the handler registration requirements. All comments received will be considered prior to finalization of this interim rule.

List of Subjects

7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

7 CFR Part 915

Marketing Agreements and orders, Avocados, Florida.

PART 911—[AMENDED]

PART 915—[AMENDED]

The interim rule amends § 911.120 by revising paragraphs (a)(10), (b), and (e); and amends § 915.120 by revising paragraphs (a)(11), (b), and (e), to read as follows:

§ 911.120 Handler registration.

(a) * * *

(10) An agreement to provide adequate facilities for the grading and preparation of limes for market, and to comply with all other requirements of this part, including rules and regulations issued thereunder.

(b) Upon receipt of an application for registration, the Florida Lime

Administrative Committee shall make such investigation as may be appropriate, and shall issue the applicant a certificate of registration, if the applicant has facilities determined by the committee to be adequate for the grading and preparation of limes for market, and if it appears that the applicant may reasonably be expected to handle limes in accordance with the requirements of this part, including all rules and regulations issued thereunder.

* * * * *

(e) The committee shall suspend the certificate of registration issued pursuant to this section of any handler who (1) fails to provide facilities determined by the committee to be adequate for the grading and preparation of limes for market, (2) fails to pay assessments as required under the provisions of this part, or (3) fails to render reports as prescribed pursuant to the provisions of this part. The committee shall advise the handler in writing of the pending suspension and shall specify the time such suspension shall become effective. Upon determination by the committee that the handler has satisfied the requirements with respect to providing adequate facilities, paying assessments, and filing reports, and it appears to the committee that the handler may reasonably be expected thereafter to handle limes in accordance with the provisions of this part, including all rules and regulations thereunder, the committee shall lift such suspension.

§ 915.120 Handler registration.

(a) * * *

(11) An agreement to provide adequate facilities for the grading and preparation of avocados for market, and to comply with all other requirements of this part, including rules and regulations issued thereunder.

(b) Upon receipt of an application for registration, the Avocado Administrative Committee shall make such investigation as may be appropriate, and shall issue the applicant a certificate of registration, if the applicant has facilities determined by the committee to be adequate for the grading and preparation of avocados for market, and if it appears that the applicant may reasonably be expected to handle avocados in accordance with the requirements of this part, including all rules and regulations issued thereunder.

* * * * *

(e) The committee shall suspend the certificate of registration issued pursuant to this section of any handler who (1) fails to provide facilities determined by the committee to be adequate for the grading and preparation of avocados for market, (2) fails to pay assessments as required under the provisions of this part, or (3) fails to render reports as prescribed pursuant to the provisions of this part. The committee shall advise the handler in writing of the pending suspension and shall specify the time such suspension shall become effective. Upon determination by the committee that the handler has satisfied the requirements with respect to providing adequate facilities, paying assessments, and filing reports, and it appears to the committee that the handler may reasonably be expected thereafter to handle avocados in accordance with the provisions of this part, including all rules and regulations thereunder, the committee shall lift such suspension.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 22, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–8200 Filed 3–26–84; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1729

Electric System Planning and Design

AGENCY: Rural Electrification Administration.

ACTION: Final rule.

SUMMARY: This rule amends 7 CFR Chapter XVII, Rural Electrification Administration (REA) Regulations, Electric System Design and Construction, by adding Part 1729, Electric System Planning and Design. Sections 1729.6, Compliance with National Electrical Safety Code, and 1729.10, Permitted Deviations from REA Construction Standards, are covered by this action.

This action is part of REA's ongoing effort to codify all of the agency's regulations into the Code of Federal Regulations. Sections 1729.6 and 1729.10 contain rules which are presently contained in REA Bulletin 40–7, National Electrical Safety Code—ANSI C2, 1981 Edition, and REA Bulletin 61–10, Powerline Contacts by Eagles and Other Large Birds. This action will consolidate REA's rules on electric system planning and design into a single, more usable document. This action will reduce the paperwork burden on REA borrowers and consulting engineering firms. This will be accomplished by eliminating the requirement for REA to grant specific approval for deviations by borrowers from REA construction standards under two specific circumstances.

REA Bulletin 40–7 and REA Bulletin 61–10 are rescinded by this action.

EFFECTIVE DATE: March 24, 1984—The incorporation by reference of the publication mentioned in this rule has been approved by the Director, Office of the Federal Register, effective March 24, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Dedman, Engineering Standards Division, Rural Electrification Administration, Room 1263–S, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–9086. The Final Impact Statement describing the options considered in developing this rule and the impact of implementing the chosen option is available on request from Mr. Dedman at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.), the Rural Electrification Administration (REA) is amending 7 CFR Chapter XVII, REA Regulations, Electric System Design and Construction, by adding Part 1729, Electric System Planning and Design. This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and, therefore, has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees.

Background

The Rural Electrification Administration (REA) maintains regulations pertaining to system design and construction for REA electric borrowers. These regulations are contained in 7 CFR Chapter XVII. Part 1729, Electric System Planning and Design, contains rules, policies, requirements and procedures to be followed in the planning and design of electric distribution, transmission, and generation systems or facilities financed with assistance from REA.

Section 1729.6, Compliance with National Electrical Safety Code, requires REA borrowers to construct their electric systems in accordance with the *latest effective edition* of the National Electrical Safety Code (NESC). REA rules concerning the NESC have been contained in REA Bulletin 40–7, National Electrical Safety Code. Bulletin 40–7 historically has been revised, upon the publication of each new edition of the NESC, to require REA borrowers to construct and operate their systems in accordance with that individual edition of the NESC. This rule rescinds Bulletin 40–7.

Section 1729.10, Permitted Deviations from REA Construction Standards, sets out two specific circumstances under which REA borrowers may deviate from REA construction standards without being required to seek specific approval from REA. When required by REA or other authorities, borrowers may make specific modifications to distribution line structures to protect raptors from contact with energized wires. REA Bulletin 61–10, Powerline Contacts by Eagles and Other Large Birds, presently contains REA rules on raptor protection. This rule rescinds REA Bulletin 61–10. Also, when necessary, borrowers may modify the REA standard transformer connections in accordance with Rule 97D2 of the NESC.

Interested parties were given sixty (60) days in which to express their views on the proposed rule. The December 16, 1983, notice in the **Federal Register** elicited one comment on the proposed rule.

An REA electric borrower commented that, "Part 1729.10(a) has the potential to cause undue costs to the borrower when it appears that Federal, state and local authorities would have the veto power over any project unless built to raptor specifications. I feel a more realistic approach would be to have REA create a rule which would define 'areas frequented by eagles' to take care of any problem in this area."

In § 1729.10, REA is not defining environmental policy or requirements. REA's environmental regulations are proposed for codification in 7 CFR Part 1794, Environmental Policies and Procedures. Section 1729.10 merely relieves borrowers from seeking REA approval for the use of nonstandard structures for raptor protection when such protection is required by other agencies having permit or license authority over the proposed construction. An appropriate change is being made in § 1729.10(a) to clarify this point.

In view of the above, Part 1729 is added to 7 CFR Chapter XVII to read as follows:

PART 1729—ELECTRIC SYSTEM PLANNING AND DESIGN

Subparts A–B [Reserved]

Subpart C—Electric System Design

Sec.
1729.6 Compliance with National Electrical Safety Code.
1729.7–9 [Reserved]
1729.10 Permitted Deviations from REA Construction Standards.

Authority: 7 U.S.C. 901 et seq. and 7 U.S.C. 1921 et seq.

Subparts A–B [Reserved]

Subpart C—Electric System Design

§ 1729.6 Compliance with National Electrical Safety Code.

(a) All borrowers' new lines and substations shall be constructed and operated in accordance with the requirements of the National Electrical Safety Code (NESC). The applicable edition of the NESC to be followed shall be the latest edition which is effective in accordance with the provisions of that edition. Where local regulations or other REA requirements are more stringent, those requirements shall govern.

(b) The Administrator of REA will consider specific requests to approve construction which is not in accordance with the NESC if the borrower provides evidence satisfactory to the Administrator that an exception is necessary or desirable and in the interests of the Government and the borrower.

(c) Overhead distribution circuits shall be constructed with not less than the Grade C strength requirements as described in Section 26, Strength Requirements, of the NESC when subjected to the loads specified in NESC Section 25, Loadings for Grades B, C, and D. Overhead transmission circuits shall be constructed with not less than the Grade B strength requirements as described in NESC Section 26.

§§ 1729.7–9 [Reserved]

§ 1729.10 Permitted deviations from REA construction standards.

(a) *Structures for Raptor Protection.* Standard distribution line structures may not have the extra measure of protection needed in areas frequented by eagles and other large birds (raptors) to protect such birds from electric shock due to physical contact with energized wires. Borrowers are allowed to deviate from REA construction standards to provide for raptor protection in the design of overhead line structures in those cases where such protection is required by (1) REA of (2) a Federal, state or local authority with permit or license authority over the proposed construction. Structures which are designed for raptor protection shall be in accordance with *Suggested Practices for Raptor Protection on Powerlines—The State of the Art in 1981*, published by the Raptor Research Foundation, Inc., provided, however, that such structures shall be in accordance with the National Electrical Safety Code unless a specific waiver has been granted by the REA Administrator. Copies of this publication may be purchased from the Raptor Research Foundation, Inc., c/o Department of Veterinary Biology, University of Minnesota, St. Paul, Minnesota 55101. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference has been approved by the Director of the Office of the Federal Register. Any deviation from the REA construction standards for the purpose of raptor protection, which is not in accordance with the above report, must be approved by REA prior to construction.

(b) *Transformer neutral connections.* Where it is necessary to separate the primary and secondary neutrals to provide the required electric service to a consumer, the REA standard transformer connections may be modified in accordance with Rule 97D2 of the National Electrical Safety Code.

List of Subjects in 7 CFR 1729

Electric utilities, Engineering standards, Incorporation by reference.

Dated: March 8, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84–8201 Filed 3–26–84; 8:45 am]
BILLING CODE 3410–15–M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

Interest on Deposits; Advertising of Multiple Rate Accounts

[Docket No. R–0513]

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board of Governors has issued a policy statement concerning potentially misleading advertising practices for time deposits used as investments for Individual Retirement

Accounts. The Board believes that advertisements for time deposits that state in large type an initial rate that is effective for a period of a few months and then state in smaller type a lower rate that will be effective for the remaining term of the time deposit can be misleading to consumers. Such advertisements should state both rates in type of equal size in order not to be regarded as misleading, and include a conspicuous statement of the average effective annual yield. In addition, advertisements for deposits to be used in connection with Individual Retirement Accounts should not refer to contributions to such accounts as "tax-free" or "tax-exempt." This action was taken to assure that depository institutions provide meaningful and accurate information and to assist consumers to make comparisons of interest rates being offered on time deposits.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202–452–3625), or Paul S. Pilecki, Senior Counsel (202–452–3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Board has issued the following policy statement concerning advertisements for time deposits that have split, fixed interest rates and for accounts to be used as investments for Individual Retirement Accounts.

Advertising of Multiple Rate Time Deposits and Individual Retirement Accounts

(a) The following advertising practice for deposits or accounts to be used as investments for Individual Retirement Accounts (IRAs) has come to the attention of the federal financial institution regulatory agencies with specific statutory authority to regulate advertising for deposits or other accounts. The advertisements display a rate of, perhaps, 15 percent in two to three inch type. In smaller, usually standard size, type, the advertisements state that the rate is paid only through a fixed date two or three months hence or for the first two or three months of the term of the account. For the remaining term of the account, which typically will be two to three years, the rate to be paid will be much lower, for example, 10.5 or 11 percent. In some cases, the maturity of the account is stated in bold type of a size similar to the higher interest rate.

(b) The Board believes that such advertisements are misleading and are in violation of § 217.6(g) of Regulation Q (12 CFR 217.6(g)), which states that a member bank shall not make any advertisement related to interest paid on deposits that is inaccurate or misleading or that misrepresents its deposit contracts. In this regard, the display of a rate in substantially larger type than the rate that will apply for the predominant part of the term of the account is confusing to depositors and misrepresentative of the deposit contract. Moreover, such advertisements do not give meaningful information to consumers because the annual average effective yield over the life of the instrument will differ from the rates stated. (The staff of the Board has previously advised member banks that it regards any advertisement for a time deposit that states an annual rate of simple interest in excess of the average effective annual yield as inaccurate, misleading, and misrepresentative of their deposit contracts. ¶ 2–411.1 *Federal Reserve Regulatory Services.*)

(c)(1) Advertisements for time deposits where more than one rate is paid would not be regarded as misleading if each rate to be paid on the account is stated in the advertisement in type of equal size together with a conspicuous statement as to the length of time for which each rate is effective. This applies to accounts where: (i) It is known in advance what the rates to be paid throughout the life of the account will be; and (ii) the initial rate to be paid is higher than subsequent rates. In addition, such advertisements must include a conspicuous statement of the average effective annual yield for the deposit which assumes compounding of interest at least annually.

(2) For accounts subject to a variable interest rate that is determined by an index, the initial interest rate may be advertised; however, the advertisement must also include a conspicuous statement as to: (i) The time period for which such rate applies; and (ii) the method by which the rates will be determined for future periods and the time period for which such rates will apply.

(3) For accounts that offer an initial fixed rate to be followed by a variable rate determined by an index during the remainder of the term of the account, the method of determining the variable rate shall be stated in type of the same size as the fixed rate. In addition, the time periods for which the initial fixed rate and subsequent rates apply must be conspicuously stated.

(d) It is also misleading and inaccurate for advertisements to refer to an IRA as a tax-free investment. Contributions to, and earnings on, IRAs are deferred from federal income taxes rather than exempt from taxes. Accordingly, such advertisements should not use the terms "tax-free" or "tax-exempt," or other similar language.

By order of the Board of Governors, March 22, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-8223 Filed 3-26-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-ASW-56; Amdt. 39-4826; Predecessor Docket No. 69-EA-151]

Airworthiness Directive; Sikorsky S-61 Series Helicopters Certificated in All Categories

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective to all known persons a new airworthiness directive (AD), which was previously made effective to all known operators of the Sikorsky S-61 series helicopters, by individual telegrams. This AD supersedes an existing airworthiness directive, AD 69-25-05, Amendment 39-889, effective December 10, 1969. This new AD incorporates the requirements of the original AD and adds requirements. The AD is needed because of a recent report from a user of this type helicopter that a rotary wing head shaft nut was found cracked during a routine inspection and was not within the approved Rockwell hardness range. Also, investigation revealed that one vendor failed to properly stress relieve bake the nuts after cadmium plating.

DATES: Effective March 27, 1984, to all persons except those persons to whom it was made immediately effective by telegram dated December 30, 1983.

Compliance schedule—As prescribed in body of AD.

Incorporation by reference of certain publications in 14 CFR 39.13 approved by the Director of the Federal Register on March 19, 1984.

ADDRESSES: The applicable service bulletin may be obtained from United Technologies Corporation, (Sikorsky Aircraft), North Main Street, Stratford, Connecticut 06602, ATTN: S-61

Commercial Product Support Department.

Copies of the service bulletin are contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Cheryl McCabe, Airframe Section, Boston Aircraft Certification Branch, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7335.

SUPPLEMENTARY INFORMATION: On December 30, 1983, telegraphic AD T–84–01–51 was issued and made effective immediately upon receipt to all known operators of the Sikorsky S–61 series helicopters certificated in all categories. This AD was issued because of a recent report received from a military user of this type helicopter that a Sikorsky rotary wing head shaft nut was found cracked during a routine inspection and was not within the approved Rockwell hardness range. Also, investigation revealed that one vendor failed to properly stress relieve bake the nuts after cadmium plating. This AD supersedes an existing airworthiness directive, AD 69–25–05, Amendment 39–869 (34 FR 19545), effective December 10, 1969. AD 69–25–05 was issued to inspect nuts for cracks and for proper hardness on Sikorsky Model S–61 helicopters. This new AD incorporates the requirements of the original AD and adds a requirement to bake certain nuts at 375°F±25° for a minimum of 3 hours, provided no cracks are found during an inspection and a proper Rockwell hardness is found. Failure of the nut due to cracks may eventually lead to loss of the main rotor head.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, good cause existed for making the AD effective immediately to all known U.S. operators of Sikorsky Model S–61 series helicopters by individual telegrams dated December 30, 1983.

Since the situation still exists, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations.

Approximately 12 U.S. aircraft could be affected by the requirements of this AD for an estimated one-time cost impact of $1,550 per aircraft.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Sikorsky Aircraft: Applies to Model S–61 series aircraft certificated in all categories.

Compliance required within the next 25 hours' time in service after the effective date of this AD, unless already accomplished.

As a result of finding a crack in a rotary wing head shaft nut and finding the nut had improper Rockwell hardness and because of possible incomplete processing of these nuts, P/N S6110–21082–0, accomplish the following:

(a) Fluorescent magnetic particle inspect and Rockwell hardness test the rotary wing head shaft nut, in accordance with Section B of Sikorsky Service Bulletin No. 61B10–14, dated November 3, 1969, as revised by Sikorsky Message Number CST–P–83–171, Revision 2, dated December 5, 1983. Visible magnetic particle inspection and Rockwell hardness test in accordance with Section B of the service bulletin may be used as an alternate to fluorescent magnetic particle inspection and Rockwell hardness test.

(b) Any nut with cracks or not within the proper hardness range specified in Sikorsky service documents specified in paragraph (a) of this AD must be replaced before further flight with a nut that has been inspected in accordance with paragraph (a) of this AD and baked and marked in accordance with paragraph (c) of this AD, or with a Sikorsky provided nut inspected and marked in accordance with this AD.

(c) Any nut not cracked and with proper hardness as specified in the Sikorsky service documents must be baked at 375° F ± 25° F for a minimum of 3 hours and marked in accordance with the Sikorsky service documents specified in paragraph (a) of this AD.

(d) Alternate inspections, processes, or other means of compliance which provide an equivalent level of safety to this AD must be approved by the Manager, Boston Aircraft Certification Branch, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 08103. In accordance with FAR 21.197, flight is permitted to a base where the requirements of this AD may be accomplished.

Sikorsky Service Bulletin No. 61B10–14, dated November 3, 1969, and Sikorsky message Number CST–P–83–171, Revision 2, dated December 5, 1983, identified and described in this directive are incorporated herein and made a part hereof pursant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to United Technologies Corporation, Sikorsky Aircraft, North Main Street, Stratford, Connecticut 06602, ATTN: S–61 Commercial Product Support Department. These documents also may be examined in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective Mar. 27, 1984 as to all persons except those persons to whom it was made immediately effective by the telegram dated December 30, 1983, which contained this amendment.

This amendment supersedes Amendment 39–889 (34 FR 19545), AD 69–25–05, which became effective December 10, 1969.

(Sec. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised, Pub. L. 97–449, January 12, 1983]; and 14 CFR 11.89.)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 20, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Note.—The incorporation by reference provisions of this document were approved by the Director of the Federal Register on Mar. 19, 1984. The referenced documents are available at the Federal Register.

Issued in Fort Worth, Texas, on March 1, 1984.

C. R. Melugin, Jr.

Director, Southwest Region.

[FR Doc. 84–8089 Filed 3–26–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 84–63]

Adding St. Vincent and The Grenadines to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Customs Regulations by adding St. Vincent and The Grenadines to the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money. The Department of State informed Customs that there is satisfactory evidence that no discriminatory duties of tonnage or imposts are being imposed in ports of St. Vincent and The Grenadines upon vessels belonging to citizens of the U.S. Or on their cargoes. Therefore, privileges regarding exemption from the payment of discriminatory duties upon vessels registered in St. Vincent and The Grenadines which enter U.S. ports are granted by the U.S. to take effect retroactively to October 27, 1979, the date that St. Vincent and The Grenadines became independent.

EFFECTIVE DATE: October 27, 1979.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money", on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. 141). Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money.

By letters dated September 23, and December 7, 1983, the Department of State informed the Customs Service that the Government of St. Vincent and The Grenadines has not imposed any discriminatory duties or imposts on either U.S. vessels or their cargoes since that nation gained independence on October 27, 1979. The Department of State is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.22, Customs Regulations. Therefore, the State Department recommended that St. Vincent and The Grenadines be added, effective retroactively to October 27, 1979, to the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money. On January 10, 1984, the Director, Carriers, Drawback and Bonds Division, determined that, effective October 27, 1979, St. Vincent and The Grenadines should be added to the list in § 4.22.

By virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), the President has delegated the authority to grant this exemption to the Secretary of the Treasury by E.O. 10289, September 17, 1951, as amended by E.O. No. 10882, July 18, 1960 (3 CFR, 1959–1963 Comp., Ch. II). By Treasury Department Order 165–25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to sections 4.22 and other sections of the Customs Regulations relating to lists of nations entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82–201), dated October 13, 1982, the Commissioner delegated authority to grant this exemption and to amend these sections to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

Finding

On the basis of the information received from the Secretary of State, as described above, it has been determined that the United States is in possession of satisfactory evidence regarding the absence of discriminatory duties of tonnage or imposts imposed on U.S. vessels in ports of St. Vincent and The Grenadines. Therefore, St. Vincent and The Grenadines is added to the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money as of October 27, 1979.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, cargo vessels, maritime carriers, vessels.

Regulations Amendment

To reflect this change, § 4.22, Customs Regulations (19 CFR 4.22), is amended by inserting, in alphabetical order between "Sri Lanka" and "Surinam, Republic of", the words "St. Vincent and The Grenadines." To the list of nations entitled to exemptions from special tonnage taxes.

(R.S. 251, as amended, 4219, as amended, 4228, as amended, 4255, as amended, sec. 3, 23 Stat. 119, as amended, sec. 624, 46 Stat. 759, (19 U.S.C. 66, 1624, 46 U.S.C. 5, 121, 128, 141))

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of section 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96–354, the "Regulatory Flexibility Act." That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: March 19, 1984.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 84–8159 Filed 3–26–84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-84-1160; FR-1969]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on Section 235 insured loans for lower income families. This final rule is designed to bring the maximum permissible financing charges in this program into line with other competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: March 21, 1984.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief, Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-7270). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The following amendment to 24 CFR Chapter II has been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 home mortgage insurance program has been raised from 12.50 percent to 13.00 percent.

The amendment is reflected in the addition of a new section under Part 235—24 CFR 235.9. Section 203.20, which was incorporated by reference in Part 235, is no longer included in that Part because the interest rate under 24 CFR 203.20 is now agreed upon by the mortgagor and mortgagee, in accordance with section 404 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, approved November 30, 1983 (1983 Act). The 1983 Act provided, however, at section 404(b)(12)(C), that a mortgage to be insured under section 235 of the National Housing Act shall "bear interest at a rate not to exceed such percent per annum * * * as the Secretary finds necessary to meet the mortgage market, * * *" The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (December 15, 1982), amending 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendment made by this rule falls within the categorical exclusion set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in doemestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for small increase in the mortgage interest rate in a program of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47418) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs—housing and community development.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Accordingly, the Department amends 24 CFR Part 235 as follows:

1. In Part 235, add a new § 235.9 to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages insured on or after March 21, 1984.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the date of each installment.

Authority: (Section 3(a), 82 Stat. 113; 12 U.S.C. 1709-1; Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

Dated: March 20, 1984.

Shirley M. Wiseman,

General Deputy Assistant Secretary for Housing Federal Housing Commissioner.

[FR Doc. 84-8225 Filed 3-26-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Executive Office for United States Attorneys

28 CFR Part 16

Production or Disclosure of Material or Information

AGENCY: Executive Office for United States Attorneys, Justice.

ACTION: Final rule.

SUMMARY: These directives delegate authority to respond to requests pursuant to the Freedom of Information Act and the Privacy Act of 1974 to the United States Attorney for District of Columbia, from the Director, Executive Office for United States Attorneys, for those records in the custody and control of the United States Attorney for the District of Columbia.

EFFECTIVE DATE: March 27, 1984.

FOR FURTHER INFORMATION CONTACT: Susan A. Nellor, Assistant Director, Legal Services, Executive Office for United States Attorneys, Room 1627,

Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530 (202–633–4024).

List of Subjects in 28 CFR Part 16

Administrative practice and procedure; Freedom of information.

PART 16—[AMENDED]

1. Part 16, Subpart A, Title 28 of the Code of Federal Regulations is amended by designating the title to the existing Appendix to Subpart A as Appendix A, and by adding an additional Appendix to Subpart A to read as follows:

Appendix B to Subpart A—Delegation of Authority

(a) By virtue of the authority vested in me by Section 16.5(b) of Title 28 of the Code of Federal Regulations, I hereby delegate authority to the United States Attorney for the District of Columbia to:

(1) Respond initially to requests;

(2) Grant and deny access to records;

(3) Communicate directly with the Office of Information and Privacy concerning administrative appeals; and

(4) Prepare affidavits, litigation reports, and other necessary documents in preparation for civil litigation in suits pursuant to 5 U.S.C. 552(4)(B).

(b) This authority is limited to those records which are under the custody and control of the United States Attorney for the District of Columbia. The authority delegated herein may be redelegated.

(c) This directive is effective immediately.

2. Part 16, Subpart D, Title 28 of the Code of Federal Regulations is amended by designating the title to the existing Appendix to Subpart D as Appendix A, and adding an additional Appendix to Subpart D to read as follows:

Appendix B to Subpart D—Delegation of Authority

(a) By virtue of the authority vested in me by Section 16.45(a) of Title 28 of the Code of Federal Regulations, I hereby delegate authority to the United States Attorney for the District of Columbia to:

(1) Respond initially to requests;

(2) Grant and deny access to records;

(3) Communicate directly with the Office of Information and Privacy concerning administrative appeals; and

(4) Prepare affidavits, litigation reports, and other necessary documents in preparation for civil litigation in suits pursuant to 5 U.S.C. 552a(g)(1)(B).

(b) This authority is limited to those records which are in the systems of records under the custody and control of the United States Attorney for the District of Columbia. The authority delegated herein may be redelegated.

(c) This directive is effective immediately.

Dated: March 8, 1984.

William P. Tyson,

Director, Executive Office for United States Attorneys.

[FR Doc. 84–8109 Filed 3–26–84; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–V–FRL 2553–3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: As required by Section 110(a) of the Clean Air Act and the October 5, 1978, promulgation of National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258) the State of Illinois has submitted the State ambient lead standard as a revision to the State Implementation Plan.

The purpose of this notice is to announce receipt of the State lead standard and take final rulemaking action.

DATE: This action is effective May 29, 1984, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of this revision to the Illinois SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Maggie J. Greene, at (312) 886–6029, before visiting the Region V Office).

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch (5AP–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Maggie J. Greene, Air Programs Branch, EPA, Region V, Chicago, Illinois 60604, (312) 886–6029

SUPPLEMENTARY INFORMATION: On October 5, 1978, National Ambient Air Quality Standard (NAAQS) for lead were promulgated by the U.S. Environmental Protection Agency (USEPA) (43 FR 46258). Both the primary and secondary standards were set at a level of 1.5 micrograms lead per cubic meter of air (μg lead/m^3) maximum arithmetic mean as averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (the Act), requires each States to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

The State of Illinois submitted the State ambient lead standard as a proposed revision to the State Implementation Plan on August 19, 1983. In so doing, the State has treated lead consistently with other criteria pollutants that are subject to enforceable state regulations. EPA published final rulemaking on the Illinois lead SIP except for the Granite City area on March 22, 1982 (47 FR 12164) and proposed approval of the lead SIP for the Granite City area on December 29, 1983 (48 FR 57324). Further, such rulemaking is required for approval of the Illinois lead SIP for the entire State including the Granite City area which does not yet have a fully approved lead SIP.

The ambient lead standard was adopted as Illinois Pollution Control Board (IPCB) Rule 313 in a July 26, 1983, Opinion and Order of the Board. Rule 313 provides as follows:

(a) *Standard.* The ambient air quality standards for lead and its compounds are 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter.

(b) *Measurement Method.* For determining conformance with the ambient air quality standards for lead and its compounds, lead and its compounds shall be measured by the atomic absorption spectrometry or equivalent method as described in 40 CFR Part 50, Appendix G (1982).

The State lead air quality standard is as stringent as the Federal standard and the measurement method to determine compliance with the standard is equivalent to the Federal method described in 40 CFR Part 50, Appendix G, for the determination of lead in suspended particulates matter collected from ambient air. USEPA, therefore, approves it for incorporation in the Illinois SIP.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on May 29, 1984. However, if we receive notice by April 26, 1984 that someone wishes to submit critical comments, *then* USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new

rulemaking by proposing the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1983.

This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: March 21, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

Subpart O—Illinois

1. Section 52.720 is amended by adding subparagraph (c)(45) as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(45) On August 19, 1983, the State of Illinois submitted a revision to the Illinois State Implementation Plan in the form of a July 26, 1983, Order of the Illinois Pollution Control Board (R82–12). This Order creates Rule 313 which establishes 1.5 micrograms per cubic meter, maximum arithmetic mean, averaged over a calendar quarter as the State's ambient air quality standard for lead. The Board also adopted, as part of Rule 313, a measurement method for determining compliance with the standard.

* * * * *

[FR Doc. 84–8145 Filed 3–26–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–IX–FRL 2553–5]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve changes to the State of Nevada Department of Conservation and Natural Resources (NDCNR) rules and regulations for air pollution control submitted by the Governor of Nevada as revisions to the Nevada State Implementation Plan (SIP). These revisions are administrative and retain the previous emission control requirements. EPA reviewed these rules with respect to the Clean Air Act and determined that they should be approved.

DATE: This action is effective May 29, 1984.

ADDRESSES: A copy of the revisions is available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

Public Information Reference Unit, Environmental Protection Agency, Library, 401 "M" Street, S.W., Room 2404, Washington, D.C. 20460

Library, Office of the Federal Register, 1100 "L" Street, N.W., Room 8401, Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Thomas Rarick, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7641.

SUPPLEMENTARY INFORMATION: On October 26, 1982 and September 14, 1983, the NDCNR submitted the Nevada Administrative Code "Air Pollution Control" to EPA as a SIP revision. The revision submitted on October 26, 1982 represents a codification of the previously approved "Nevada Air Quality Regulations." The revised rules are as follows and were submitted on the indicated dates:

October 26, 1982

445.430 Definitions.

445.431 "Acid mist".
445.432 "Act".
445.433 "Administrator".
445.434 "Affected facility".
445.435 "Air-conditioning equipment".
445.436 "Air contaminant".
445.437 "Air pollution".
445.439 "Alternative method".
445.440 "Aluminum equivalent".
445.441 "Ambient air".
445.442 "Anode bake plant".
445.443 "Asphalt concrete plant".
445.444 "Atmosphere".
445.445 "Barite".
445.446 "Barite Dryer".
445.447 "Barite Grinding Mill".
445.451 "Basic oxygen process furnace".
445.453 "Bituminous coal".
445.454 "Blast furnace".
445.455 "Blowing tap".
445.456 "Brass or bronze".
445.457 "British thermal units".
445.458 "Calcine".
445.459 "Calcium carbide".
445.460 "Calcium silicon".
445.461 "Capture system".
445.462 "Charge chrome".
445.463 "Charge Period".
445.464 "Coal".
445.465 "Coal preparation plant".
445.466 "Coal processing and conveying equipment".
445.467 "Coal refuse".
445.468 "Coal storage system".
445.469 "Coke burn-off".
445.470 "Colemanite".
445.471 "Colemanite Processing Plant".
445.472 "Combustible refuse".
445.474 "Commercial fuel oil".
445.475 "Complex source".
445.476 "Condensate".
445.477 "Confidential information".
445.480 "Continuous monitoring system".
445.481 "Control device".
445.482 "Converter".
445.483 "Copper converter".
445.484 "Custody transfer".
445.485 "Cyclonic flow".
445.486 "Day".
445.487 "Diesel fuel".
445.488 "Director".
445.489 "Direct shell evacuation system".
445.490 "Drilling and production facility".
445.491 "Dross reverberatory furnace".
445.492 "Dryer".
445.493 "Dust handling equipment".
445.494 "Dusts".
445.495 "Electric arc furnace".
445.496 "Electric furnace".
445.497 "Electric smelting furnace".
445.498 "Electric submerged arc furnace".
445.499 "Emission".
445.500 "Emission Unit".
445.501 "Equivalent method".
445.502 "Equivalent P_2O_5 feed".
445.503 "Equivalent P_2O_5 stored".
445.504 "Excess Emissions".
445.509 "Ferrochrome silicon".
445.510 "Ferromanganese silicon".
445.511 "Ferrosilicon".
445.512 "Floating roof".
445.513 "Fossil-fuel".
445.514 "Fossil fuel-fired steam generating unit".

445.515 "Fresh granular triple superphosphate".
445.516 "Fuel".
445.517 "Fuel-burning equipment".
445.518 "Fuel gas".
445.519 "Fuel gas combustion device".
445.522 "Furnace charge".
445.523 "Furnace cycle".
445.524 "Furnace power input".
445.525 "Garbage".
445.526 "Granular diammonium phosphate plant".
445.527 "Granular triple superphosphate storage facility".
445.528 "Heat time".
445.529 "High-carbon ferrochrome".
445.530 "High level of volatile impurities".
445.531 "High Terrain".
445.532 "Hydrocarbon".
445.533 "Incinerator".
445.534 "Isokinetic sampling".
445.535 "Kilogram-calorie".
445.536 "Lead".
445.537 "Local air pollution control agency".
445.539 "Low Terrain".
445.542 "Malfunction".
445.543 "Meltdown and refining".
445.544 "Meltdown and refining period".
445.546 "Molybdenum".
445.547 "Molybdenum Processing Plant".
445.548 "Monitoring device".
445.549 "Multiple chamber incinerator".
445.551 "Nitric acid production unit".
445.552 "Nitrogen oxides".
445.554 "Nuisance".
445.555 "Odor".
445.556 "One-hour period".
445.557 "Opacity".
445.558 "Open burning".
445.559 "Operating permit".
445.560 "Ore".
445.561 "Owner or operator".
445.562 "Particular matter".
445.563 "Pathological wastes".
445.564 "Person".
445.565 "Petroleum".
445.566 "Petroleum liquids".
445.567 "Petroleum refinery".
445.568 "Pneumatic coal-cleaning equipment".
445.570 "Portland cement plant".
445.572 "Potroom".
445.573 "Potroom group".
445.574 "Precious Metal".
445.575 "Precious Metal Processing Plant".
445.576 "Primary aluminum reduction plant".
445.577 "Primary control system".
445.578 "Primary copper smelter".
445.579 "Primary lead smelter".
445.580 "Primary zinc smelter".
445.581 "Process equipment".
445.582 "Process gas".
445.583 "Process upset gas".
445.584 "Process weight".
445.585 "Process weight rate".
445.586 "Product change".
445.587 "Proportional sampling".
445.589 "Reference conditions".
445.590 "Reference method".
445.591 "Refinery process unit".
445.592 "Registration certificate".
445.593 "Reid vapor pressure".
445.594 "Reverberatory furnace".
445.595 "Reverberatory smelting furnace".
445.596 "Ringelmann chart".
445.597 "Roaster".
445.598 "Roof monitor".
445.599 "Run".
445.600 "Run-of-pile triple superphosphate".
445.601 "Salvage operation".
445.602 "Secondary control system".
445.603 "Secondary lead smelter".
445.604 "Shop".
445.605 "Shop opacity".
445.608 "Silicomanganese".
445.609 "Silicomanganese zirconium".
445.610 "Silicon metal".
445.611 "Silvery iron".
445.612 "Single chamber incinerator".
445.614 "Sinter bed".
445.615 "Sintering machine".
445.616 "Sintering machine discharge end".
445.617 "Six-minute period".
445.618 "Slag".
445.619 "Smelting".
445.620 "Smelting furnace".
445.621 "Smoke".
445.622 "Solid waste".
445.624 "Stack," "chimney".
445.626 "Standard ferromanganese".
445.627 "Startup".
445.629 "Steel production cycle".
445.630 "Stop order".
445.631 "Storage vessel".
445.632 "Structure Building, Facility or Installation".
445.633 "Submerged fill pipe".
445.634 "Sulfuric acid plant".
445.635 "Sulfuric acid production unit".
445.636 "Superphosphoric acid plant".
445.637 "Tapping".
445.638 "Tapping period".
445.639 "Tapping station".
445.640 "Thermal dryer".
445.641 "Thermit process".
445.642 "Total flourides".
445.643 "Total smelter charge".
445.644 "Transfer and loading system".
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445.646 "True vapor pressure".
445.647 "Uncombined water".
445.648 "Vapor recovery system".
445.649 "Violation".
445.650 "Volatile organic compounds".
445.651 "Waste".
445.652 "Weak nitric acid".
445.653 "Wet garbage".
445.654 "Wet-process phosphoric acid plant".
445.655 "Abbreviations".
445.660 Severability.
445.662 Confidential information.
445.663 Concealment of emissions prohibited.
445.664 Pollution control equipment: Operation; modification; removal.
445.665 Hazardous emissions: Order for reduction or discontinuance.
445.666 Plan for reduction of emissions.
445.667 Excess emissions: Scheduled maintenance; testing; malfunctions.
445.682 Testing and sampling.
445.685 Monitoring systems: Verification of operation status.
445.686 Monitoring systems: Performance evaluations.
445.687 Monitoring systems: Components contracted for before September 11, 1979.
445.688 Monitoring systems: Adjustments.
445.689 Monitoring systems: Measurement of opacity.
445.690 Monitoring systems: Frequency of operation.
445.691 Monitoring systems: Recordation of data.
445.692 Monitoring systems: Records; reports.
445.693 Alternative monitoring procedures.
445.694 Emission discharge information.
445.695 Schedules for Compliance.
445.696 Notice of violations; appearance before commission.
445.697 Stop orders.
445.698 Appeal of director's decision: Application forms.
445.699 Violations: Administrative fines.
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Registration Certificates and Operating Permits

445.704 Registration certificates and operating permits required.
445.705 Exemptions.
445.706 Application date; payment of fees.
445.707 Registration certificates: Prerequisite; application; fee; issuance, denial; expiration.
445.712 Operating permits: Prerequisite; application; fee; issuance, denial; posting.
445.713 Operating permits: Renewal.
445.714 Operating permits: Replacement of lost or damaged permits.
445.715 Operating permits: Revocation.
445.716 Operating permits: Change of location.

Visible Emissions

445.721 Maximum opacity of emissions.
445.723 Existing copper smelter.

Emissions of Particulate Matter

445.729 Process weight rate for calculating emission rates.
445.730 Colemanite flotation processing plants.
445.731 Fuel-burning equipment using indirect heat transfer.
445.732 Industrial sources.
445.734 Fugitive dust.

Sulfur Emissions

445.742 Sulfur emission.
445.743 Calculation of total feed sulfur.
445.746 Other sulfur emitting processes.

Open and Incinerator Burning

445.753 Open burning.
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Supplementary Control Systems

445.764 Reduction of employees' pay because of use of system prohibited.

Miscellaneous Provisions

445.844 Odors.
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445.732 Industrial sources.
445.808 Barite grinding mills.
445.815 Molybdenum processing plants.
445.816 Processing plants for precious metal.
445.843 Standards of quality for ambient air.
445.846 Organic solvents and other volatile compounds.

These rules revisions are administrative and do not affect current emission control requirements. The above mentioned rules reflect (1) a renumbering change, (2) expanded procedures for the issuance of a notice of violation, (3) maximum visible emission limits at 20% opacity not to exceed three minutes in any one hour, (4) process weight rates, (5) emission limits for particulate matter and sulfur compounds, and (6) guidelines for the prevention and control of fugitive dust and for open and incinerator burning.

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, EPA is required to approve or disapprove these regulations as SIP revisions. All rules submitted have been evaluated and found to be in accordance with EPA policy and 40 CFR Part 51. EPA's detailed evaluation of the submitted rules is available at the Region 9 office.

It is the purpose of this notice to approve all the rule revisions listed above and to incorporate them into the Nevada SIP. This is being done without prior proposal because the revisions are noncontroversial, have limited impact, and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, the approval will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of Nevada was approved by the Director of the **Federal Register** on July 1, 1982.

Authority: Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601(a)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by Reference.

Dated: March 21, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Supart DD of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart DD—Nevada

1. Section 52.1470 is amended by adding paragraphs (c)(25) and (c)(26) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c)* * *

(25) The following amendments to the plan were submitted on October 26, 1982, by the Governor.

(i) Amendments of Chapter 445 of the Nevada Administrative Code.

(A) New or amended Sections 445.430–445.437, 445.439–445.447, 445.451, 445.453–445.472, 445.474–445.477, 445.480–445.504, 445.509–445.519, 445.522–445.537, 445.539, 445.542–445.544, 445.546–445.549, 445.551, 445.552, 445.554–445.568, 445.570, 445.572–445.587, 445.589–445.605, 445.608–445.612, 445.614–445.622, 445.624, 445.626, 445.627, 445.629–445.655, 445.660, 445.662–445.667, 445.682, 445.685–445.700, 445.704–445.707, 445.712–445.716, 445.721, 445.723, 445.729–445.732, 445.734, 445.742, 445.743, 445.746, 445.753, 445.754, 445.764, 445.844, and 445.845.

(26) The following amendments to the plan were submitted on September 14, 1983, by the Governor.

(i) Amendements to Chapter 445 of the Nevada Administrative Code.

(A) New or amended Sections 445.732, 445.808 (paragraphs (1), (2) (a–c), and (3)–(5)), 445.815 (paragraphs (1), (2) (a) (1 & 2), and (3)–(5)), 445.816 (paragraphs (1), (2) (a–i), and (3)–(5)), 445.843, and 445.846 (paragraphs (1), (3), and (4)).

[FR Doc. 84–8143 Filed 3–26–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 264 and 265

[SWH–FRL–2552–5]

Hazardous Waste Disposal Facilities; Availability of Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: The Environmental Protection Agency today notices the availability of two draft Technical Resource Documents for public comment. The documents are (1) *Solid Waste Leaching Procedural Manual* (SW–924), and (2) *Soil Properties, Classification, and Hydraulic Conductivity Testing* (SW–925). Technical Resource Documents provide state-of-the-art summaries of technologies and evaluation techniques determined by the Agency to constitute acceptance engineering designs, practices, and procedures. The documents may be used for information and guidance by owners and operators of facilities that treat, store, and dispose of hazardous and non-hazardous waste in landfills, surface impoundments waste piles, and land treatment facilities. These Technical Resource Documents will therefore assist in the implementation of 40 CFR Parts 264 and 265 hazardous waste management regulations by helping owner/operators and permit officials to identify and evaluate technologies that can be used to prevent potential harm to human health and the environment and to comply with the regulations.

DATES: Comments on the draft Technical Resource Documents must be submitted on or before June 25, 1984.

ADDRESS: Comments should be addressed to Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. All communications should identify the document title and SW number, (e.g., *Solid Waste Leaching Procedure Manual* (SW–924)).

Copies of the draft reports are available for reading at the EPA Library Public Information Reference Unit (Room 2904) and Subtitle C Docket Room (Room S212), both located at 401 M Street, S.W., Washington, D.C. 20460, as well as at all Regional Office Libraries, Monday through Friday during the hours of 9:00 a.m. to 4:30 p.m. A limited number of personal copies of the documents may be obtained by calling the RCRA Hotline, at (800) 424–9346 (toll free) or at (202) 382–3000.

FOR FURTHER INFORMATION CONTACT: Arthur Day, Office of Solid Waste (WH–565E), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 382–4680.

SUPPLEMENTARY INFORMATION: Subtitle C of the Resource Conservation and Recovery Act (RCRA), Section 3004, required the Environmental Protection Agency (EPA) to promulgate regulations

setting performance standards for owners and operators of facilities that treat, store, and dispose of hazardous wastes. 40 CFR Part 265 addresses the standards applicable to owners and operators of interim status facilities, while 40 CFR Part 264 regulates new and existing facilities.

Both 40 CFR Parts 264 and 265 prescribe performance standards with which owners and operators must comply. In order to facilitate implementation of these standards, the EPA has developed a series of guidance documents. There are three types of documents including Technical Guidance Documents, Permit Guidance Manuals, and Technical Resource Documents. The latter present technologies and evaluation techniques which the EPA staff views as good engineering designs, practices, and procedures. Their focus is broad in scope, as they do not specifically interpret the design requirements as set forth in the regulations. The engineering techniques presented are merely suggestions.

Availability announcements of eight Technical Resources Documents were made in the May 6, 1983 **Federal Register** (40 FR 20440). Today's notice announces the availability of two additional Technical Resource Documents for public comment.

A *Solid Waste Leaching Procedure Manual* is a technical guide analyzing a batch leaching procedure for laboratory use with various kinds of waste that will help to predict the quality and composition of leachate from certain wastes under field conditions. *Soil Properties, Classification and Hydraulic Conductivity Testing* is a compilation of 16 available laboratory and field testing methods for the measurement of hydraulic conductivity (permeability) of both saturated and unsaturated soils and includes background information on soil classification, soil water, and soil compaction. The Technical Resource Document is intended to supplement Method 9100. The Agency requests comment on the accuracy and completeness of the information presented and encourages commenters to suggest remedies and alternatives should inaccuracy or incompleteness be identified.

Dated: February 22, 1984.

Jack McGraw,

Deputy Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 84-8144 Filed 3-26-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 467

[WH-FRL-2539-7]

Aluminum Forming Point Source Category, Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Correction

AGENCY: Enviornmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting several errors in the effluent limitations guidelines, pretreatment standards and new source performance standards for the aluminum forming point source category which appeared in the **Federal Register** on October 24, 1983 (48 FR 49126). This document corrects errors in both the preamble and 40 CFR part 467 including the compliance date for pretreatment standards for existing sources.

EFFECTIVE DATE: March 27, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Janet K. Goodwin at (202) 382-7126.

SUPPLEMENTARY INFORMATION: On October 24, 1983, EPA published final effluent limitations guidelines and standards for the aluminum forming point source category (40 CFR Part 467; 48 FR 49126). Both the preamble and regulation contained several errors. These errors are discussed briefly below and are corrected by this notice.

A typographical error was made in the compliance date for Pretreatment Standards for Existing Sources (PSES): the correct compliance date is October 24, 1986. Both the "**DATES**" section of the preamble and 40 CFR 467.04 are corrected by this notice.

An omission was made in the "Applicability" section of the final rule, 40 CFR 467.01(a) which states, in pertinent part, that surface treatment of aluminum is excluded from regulation under the metal finishing guidelines in 40 CFR Part 433 when performed as an integral part of aluminum forming. This sentence should indicate that surface treatment of aluminum is also excluded from the electroplating regulations at 40 CFR Part 413. Although the proposed rule specifically stated that these operations were excluded from 40 CFR Part 413 (see 47 FR 52648; November 22, 1982), the reference to 40 CFR part 413 was inadvertently dropped in the final aluminum forming regulation at 40 CFR 467.01(a). This error is corrected by this notice. Thus, the EPA has excluded from Part 413 and included under Part 467 any surface treatment of aluminum if performed as an integral part of the aluminum forming process.

This notice adds a new section, 40 CFR 467.05, that states that removal allowances pursuant to 40 CFR 403.7(a) may be granted for toxic metals limited in 40 CFR 467 when used as indicator pollutants. The Agency's intent regarding the granting of such removal allowances was explicitly stated in the preamble to the final rule (see, 48 FR 49133; October 24, 1984); however, regulatory language to this effect was inadvertently omitted from the final rule. This omission is corrected by this notice.

The Best Practicable Technology (BPT) and Best Available Technology (BAT) monthly average limitations for the pollutant aluminum are incorrect in some subparts. Shortly before promulgation a correction was made in the calculation of the treatment effectiveness concentration value used to determine the maximum for monthly average limitations for the pollutant aluminum. It in no way affects the technology basis of the regulations and only slightly affects the stringency of the regulation. This correction was reflected in some but not all of the limitations before promulgation. This notice corrects the maximum for monthly average values for the pollutant aluminum for BPT and BAT.

The core allowances for the Rolling with Neat Oils Subcategory were improperly identified. The limitations and standards for the *Core With an Annealing Furnace Scrubber* were listed as the limitations and standards for the *Core Without an Annealing Furnace Scrubber*. Likewise, the limitations and standards for the *Core Without an Annealing Furnace Scrubber* were listed as the limitations and standards for the *Core With an Annealing Furnace Scrubber*. This notice corrects the error.

Appendices B, C, D, E, and F which list pollutants excluded from regulation for specific reasons contained several errors; in many instances, the errors consist of misspelled pollutant listings or inaccurate numerical identifications. In a few cases, pollutants were properly listed as excluded from regulation but were improperly listed in a particular Appendix or were listed twice. These errors are corrected by this notice.

Also, the pollutant "vinyl chloride" was inadvertantly included in the list of organic pollutants considered for regulation and in the definition of Total Toxic Organics (TTO) at 40 CFR § 467.02(p). This pollutant was not detected in any wastewater sample and is thus excluded from regulation pursuant to Paragraph 8(a)(iii) of the Settlement Agreement in *NRDC* v. *Train*, 8 ERC 2120 (D.D.C. 1976).

modified, 12 ERC 1833 (D.D.C. 1979). By the notice, the pollutant is deleted from the definition of TTO and listed in Appendix B as excluded from regulation because it was not detected. This correction in no way affects the mass standards for TTO because vinyl chloride was not detected and thus not included in the data used to calculate TTO.

A typographical error caused the units in the regulation to be printed as Mg/off-kg with a capital letter m rather than mg/off-kg with a lower case letter m. Similarly a typographical error caused the use of a number one instead of lower case letter l in many cases where the expression l/kkg was used. This notice corrects these typographical errors.

Dated: February 29, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

The following corrections are made to FR Doc 83–28157, the Aluminum Forming Point Source Category; Effluent Limitations Guidelines; Pretreatment Standards and New Source Performance Standards published in the **Federal Register** on October 24, 1983 (48 FR 49126).

1. On page 49126, column one, the second paragraph under **DATES**, in the last sentence, "The compliance date for pretreatment standards for existing sources (PSES) is October 24, 1983" is corrected to read, "The compliance date for pretreatment standards for existing sources (PSES) is October 24, 1986".

2. On page 49128, column two, in the second complete paragraph, the ninth line, "(47 FR 34079, July 27, 1983)" is corrected to read, "(48 FR 34079, July 27, 1983)".

3. On page 49130, column three, the first complete paragraph, the first sentence, "porcelain enameling" is corrected to read, "porcelain enameling wastewaters".

4. On page 49131, column one, the second complete paragraph, the first sentence, "BTP" is corrected to read, "BPT".

5. On page 49131, column one, in the third complete paragraph, the last sentence, "The limitation" is corrected to read, "The limitations".

6. On page 49131, column two, on the sixth line from the top, "the available data including data including the preproposal data and is 179 1/kkg (43 gal/ton)" is corrected to read, "the available data including the preproposal data and is 179 l/kkg (43 gal/ton)".

7. On page 49131, column two, in the first complete paragraph, the last sentence, "13,912 1/kkg" is corrected to read, "13,912 l/kkg".

8. On page 49131, column two, in the second complete paragraph, the second sentence, "15,900 1/kkg" is corrected to read, "15,900 l/kkg".

9. On page 49131, column two, in the third complete paragraph, on line sixteen, "The BPT regulatory flow of 1,478 1/kkg" is corrected to read, "The BPT regulatory flow of 1,478 l/kkg".

10. On page 49131, column two, in the fourth complete paragraph, on line five, "45 1/kkg" is corrected to read, "45 l/kkg".

11. On page 49131, column three, in the first complete paragraph, the last sentence, "5.5 1/kkg" is corrected to read, "5.5 l/kkg".

12. On page 49131, column three, in the second complete paragraph, the first sentence, "1.964 1/kkg" is corrected to read, "1.964 l/kkg".

13. On page 49131, column three, in the third complete paragraph, last sentence, "1,555 1/kkg" is corrected to read, "1,555 l/kkg".

14. On page 49131, column three, in the fourth complete paragraph, first sentence, "1,329 1/kkg (298 gal/ton)" is corrected to read, "1,329 l/kkg (319 gal/ton)".

15. On page 49131, column three, in the fourth complete paragraph, on line thirteen, "1329 1/kkg (319 gal/ton)" is corrected to read, "2,609 l/kkg (626 gal/ton)".

16. On page 49132, column one, the second line, "$84.4 million" is corrected to read, "$48.4 million".

17. On page 49132, column one, in the second complete paragraph, the last sentence, "179 1/kkg" is corrected to read, "179 l/kkg".

18. On page 49132, column one, in the third complete paragraph, the last sentence, "1,391 1/kkg" is corrected to read, "1,391 l/kkg".

19. On page 49132, column one, in the fourth complete paragraph, the last sentence, "193.9 1/kkg" is corrected to read, "193.9 l/kkg".

20. On page 49132, column two, in the fourth line, "45 1/kkg (11 gal/ton), 1,230 1/kkg (295 gal/ton), 1,964 1/kkg (0.471 gal/ton) and 5.5 1/kkg (1.3 gal/ton)" is corrected to read, "45 l/kkg (11 gal/ton), 1,478 l/kkg (355 gal/ton), 1.964 l/kkg (0.471 gal/ton) and 5.5 l/kkg (1.3 gal/ton)".

21. On page 49132, column three, paragraph two, on line four "29.000 kg/yr" is corrected to read, "29,000 kg/yr".

22. On page 49132, column three, in the second complete paragraph, on line fifteen, "pollutants discharged after BPT" is corrected to read, "pollutants discharged after BAT". On line twenty of the same paragraph, "removal of approximately 1 kg (2.2 lb)" is corrected to read, "removal of approximately 0.3 kg (0.6 lb)".

23. On page 49133, column one, on line six, "298 1/kkg" is corrected to read, "298 l/kkg". In the same paragraph, on line twenty-seven, the last sentence, "allow installation of small end-of-pipe" is corrected to read, "allow installation of smaller end-of-pipe".

24. On page 49133, column two, line one, "109 kg per year lb/yr) of aluminum" is corrected to read, "109 kg per year (240 lb/yr) of aluminum".

25. On page 49133, column two, in the first complete paragraph, line five, "POTW The" is corrected to read, "POTW. The".

26. On page 49133, column three, in the first complete paragraph, line seven, "0.01 mg/1" is corrected to read, "0.01 mg/l".

27. On page 49134, column one, on line twenty-eight, "drawing with emulsions or soaps subcategory less than" is corrected to read, "drawing with emulsions or soaps subcategory that manufacture less than".

28. On page 49134, column two, in the second complete paragraph, line ten, "$1.039 million for PSNS" is corrected to read, "$1.039 million for PSES". In the same paragraph, last sentence, "Since PSES costs are approximately the same as the PSES costs" is corrected to read, "Since PSNS costs are approximately the same as the PSES costs".

29. On page 49134, column two, in the fourth complete paragraph, last sentence, "There are" is removed.

30. On page 49135, column three, on the fifth line, "that NSPS and PSNS will continue a barrier" is corrected to read, "that NSPS and PSNS will constitute a barrier".

31. On page 49137, column two, in the third complete paragraph, last sentence, "not" is corrected to read, "no".

32. On page 49138, column one, on line three, "(1) The data is too small" is corrected to read, "(1) The data base is too small".

33. On page 49140, column one, in the fourth complete paragraph, first sentence, "plans" is corrected to read, "plants".

34. On page 49140, column two, in the fourth complete paragraph, last sentence, "4.45 μg/l to 6.43 μg/l" is corrected to read, "4.5 mg/l to 6.43 mg/l".

35. On page 49141, column three, in the first complete paragraph, line eighteen, "$284,200 per year" is corrected to read, "$283,200 per year".

36. In Appendix B which begins on page 49145, "088 vinyl chloride" is inserted to follow, "063 N-nitrosodi-n-propylamine" in the lists for Subparts A

and B in column one, Subpart D in column two, Subpart E in column three, and Subpart F in column one, page 49146.

37. On page 49145, column one, Appendix B, in the list for Subpart A, "041 -bromophenyl phenyl ether" is corrected to read "041 4-bromophenyl phenyl ether".

38. On page 49145, column two, Appendix B, in the list for Subpart C, "036 2,6-dinitrotolune" is corrected to read, "036 2,6-dinitrotoluene".

39. On page 49145, column two, Appendix B, in the list for Subpart D, "006 carbon tetrachloride" is removed.

40. On page 49145, column two, Appendix B, in the list for Subpart D, "028 3,3'-dichlorobenzene" is corrected to read, "028 3,3'-dichlorobenzidine".

41. On page 49145, column two, Appendix B, in the list for Subpart D, "033 1,3-dichloropropoylene" is corrected to read, "033 1,3-dichloropropylene".

42. On page 49146, column one, Appendix C, in the list for Subpart C, "037 1,2-diphenylhydrazine" is removed.

43. On page 49146, column two, Appendix C, in the list for Subpart C, "072 benzo(a)anthracene (1,2-benzanthracene)" is inserted to follow, "057 2-nitrophenol".

44. On page 49146, column two, Appendix C, in the list for Subpart D, "072 benzo(a)anthracene (1,2-benzanthracene)" is inserted to follow, "057 2-nitrophenol".

45. On page 49146, column two, Appendix C, in the list for Subpart E, "015 1,1,2,2-trichloroethane", is corrected to read, "015 1,1,2,2-tetrachloroethane".

46. On page 49146, column two, Appendix C, in the list for Subpart E, "029 1,-dichloroethylene" is corrected to read, "029 1,1-dichloroethylene".

47. On page 49146, column two, Appendix C, in the list for Subpart E, "037 1,2-diphenylhydrazine" is removed.

48. Appendix D which begins on page 49146, in the list for Subpart F on page 49147 column two, "067 butyl benzyl phtholate" is corrected to read, "067 butyl benzyl phthalate".

49. On page 49147, column two, Appendix E, in the list for Subpart E, "004 benzene" is removed.

50. On page 49147, column two, Appendix E, in the list for Subpart E, "034 2,4-dimethylephenol" is corrected to read "034 2,4-dimethylphenol".

51. On page 49147, column three, Appendix E, in the list for Subpart F, "051 chlofodibromomethane" is corrected to read, "051 chlorodibromomethane".

52. In Appendix G which begins on page 49148 "088 vinyl chloride" is removed from the following lists: Subparts A and B in column one and two respectively, Subparts C and D in column two and three respectively, and Subpart E in column three.

53. On page 49148, Appendix G, "072 benzo(a)pyrene" is corrected to read "073 benzo(a)pyrene" in the following lists: Subparts A and B in column one, Subparts C and D in column two and three respectively, and Subpart E in column three.

54. Also in Appendix G, on page 49149, column one, in the list for Subpart F, "037 1,2-diphenylhydrazine" is inserted to follow, "035 2,4-dinitrotoluene".

55. On page 49149, column one, Appendix G, in the list for Subpart F, "073 benzo(a)pyrene" is inserted to follow, "070 diethyl phthalate", and "088 vinyl chloride" is removed.

PART 467—[CORRECTED]

56. In 40 CFR 467.01(a) on page 49150, column one, line 13, "under the Metal Finishing provisions of 40 CFR Part 433" is corrected to read, "under the Electroplating and Metal Finishing provisions of 40 CFR Parts 413 and 433".

57. In 40 CFR 467.01, the note which follows paragraph c in the first column of page 49150, "This paragraph is promulgated as an Interim Rule" is corrected to read, "This paragraph is promulgated as an Interim Final Rule".

58. In 40 CFR 467.02, on page 49150, column three, paragraph (p) is corrected with the removal of "vinyl chloride" from the list of organic pollutants.

59. In 40 CFR 467.03(a)(2), on page 49151, column one, "will not be used in the aluminum process" is corrected to read, "will not be used in the aluminum forming process".

60. In 40 CFR 467.03(b), on page 49151, column one, "As an alternative to monitoring" is corrected to read, "As an alternative monitoring".

61. In 40 CFR 467.03(c), on page 49151, column one, "discharge limits in direct discharge" is corrected to read, "discharge limits in direct discharge permits and for pretreatment standards. Compliance with the monthly discharge limit is required regardless of the number of samples analyzed and averaged."

62. In 40 CFR 467.04, on page 49151, column one, the compliance date for PSES is corrected to read, "October 24, 1986".

63. On page 49151, column one, following 40 CFR 467.04, add a new section, 40 CFR 467.05 to read as follows:

§ 467.05 Removal Allowances for Pretreatment Standards.

Removal allowances pursuant to 40 CFR Part 403.7(a) may be granted for the toxic metals limited in 40 CFR Part 467 when used as indicator pollutants.

64. In 40 CFR 467.12, on page 49151, column two, under *Core Without an Annealing Furnace Scrubber*, "Mg/off-kg (pounds per/million off-pounds)" is corrected to read, "Mg/off-kg (lb/million off-lbs)".

65. In 40 CFR 467.12, on page 49151, column two, the table heading, "*Core Without an Annealing Furnace Scrubber*" is corrected to read, "*Core With an Annealing Furnace Scrubber*".

66. In 40 CFR 467.12, page 49151, the term "Mg/off-kg (pounds per/million off-pound)" is replaced with, "mg/off-kg (lb/million off-lbs)" each time it appears. This term appears in the tables labelled: *Core With an Annealing Furnace Scrubber, Continuous Sheet Casting Spent Lubricant, Solution Heat Treatment Contact Cooling Water,* and *Cleaning or Etching Bath.*

67. In 40 CFR 467.12, on page 49151, column two, the table heading, "*Core With an Annealing Furnace Scrubber*" is corrected to read, "*Core Without an Annealing Furnace Scrubber*".

68. In 40 CFR 467.12, on page 49151, column three, under *Continuous Sheet Casting Spent Lubricant,* the maximum for monthly average for aluminum, "0.0062" is corrected to read, "0.0063".

69. In 40 CFR 467.12, on page 49151, column three, under *Solution Heat Treatment Contact Cooling Water,* the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

70. In 40 CFR 467.12, on page 49151, column three, under *Cleaning or Etching Bath,* the maximum for monthly average for aluminum, "0.562" is corrected to read, "0.573".

71. The term, "Mg/off-kg (pounds per million off-pounds)" is replaced with, "mg/off-kg (lb/million off-lbs)" each time it appears.

This term appears in the following Tables:

Section	Pages	Column	Title of table
467.12	49152	1	*Cleaning or Etching Rinse.*
		1	*Cleaning or Etching Scrubber Liquor.*
467.13	49152	1	*Core Without an Annealing Furnace Scrubber.*
		2	*Core With an Annealing Furnace Scrubber.*
		2	*Continuous Sheet Casting Spent Lubricant.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		2	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber Liquor.*
467.14	49152	3	*Core Without an Annealing Furnace Scrubber.*

Section	Pages	Column	Title of table
	49153	1	*Core With an Annealing Furnace Scrubber.*
		1	*Continuous Sheet Casting Spent Lubricant.*
		1	*Solution Heat Treatment Contact Cooling Water.*
		2	*Cleaning or Etching Bath.*
		2	*Cleaning or Etching Rinse.*
		2	*Cleaning or Etching Scrubber Liquor.*
467.15	49153	3	*Core Without an Annealing Furnace Scrubber.*
		3	*Core with an Annealing Furnace Scrubber.*
		3	*Continuous Sheet Casting Lubricant.*
		3	*Solution Heat Treatment Contact Cooling Water.*
	49154	1	*Cleaning or Etching Bath.*
		1	*Cleaning or Etching Rinse.*
		1	*Cleaning or Etching Scrubber Liquor.*
467.16	49154	2	*Core Without an Annealing Furnace Scrubber.*
		2	*Core With an Annealing Furnace Scrubber.*
		2	*Continuous Sheet Casting Lubricant.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber.*
467.22	49155	1	*Core.*
		2	*Direct Chill Casting Contact Cooling Water.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		2	*Cleaning or Etching Bath.*
		2	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber Liquor.*
467.23	49155	3	*Core.*
	49156	1	*Direct Chill Casting Contact Cooling Water.*
		1	*Solution Heat Treatment Contact Cooling Water.*
		1	*Cleaning or Etching Bath.*
		1	*Cleaning or Etching Rinse.*
		2	*Cleaning or Etching Scrubber Liquor.*
467.24	49156	2	*Core.*
		2	*Direct Chill Casting Contact Cooling Water.*
		3	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber Liquor.*
467.25	49157	1	*Core.*
		1	*Direct Chill Casting Contact Cooling Water.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		2	*Cleaning or Etching Bath.*
		2	*Cleaning or Etching Rinse.*
		2	*Cleaning or Etching Scrubber.*
467.26	49157	3	*Core.*
		3	*Direct Chill Casting Contact Cooling Water.*
		3	*Solution Heat Treatment Contact Cooling Water.*
	49158	1	*Cleaning or Etching Bath.*
		1	*Cleaning or Etching Rinse.*
		1	*Cleaning or Etching Scrubber.*
467.32	49158	2	*Core.*
		2	*Extrusion Press Leakage.*
		3	*Direct Chill Casting Contact Cooling Water.*
		3	*Press Heat Treatment Contact Cooling Water.*
		3	*Solution Heat Treatment Contact Cooling Water.*
	49159	1	*Cleaning or Etching Bath.*
		1	*Cleaning or Etching Rinse.*
		1	*Cleaning or Etching Scrubber Liquor.*
		1	*Degassing Scrubber Liquor.*
467.33(c)	49159	2	*Core.*
		2	*Extrusion Press Leakage.*

72. In 40 CFR 467.12, on page 49152, column one, under *Cleaning or Etching Rinse*, the maximum for monthly average for aluminum, "43.69" is corrected to read, "44.52".

73. In 40 CFR 467.12, on page 49152, column one, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for aluminum, "49.93" is corrected to read, "50.88".

74. In 40 CFR 467.13, on page 49152, column one, the table heading, *"Core Without an Annealing Furnace Scrubber"* is corrected to read, *"Core With an Annealing Furnace Scrubber"*.

75. In 40 CFR 467.13, on page 49152, column two, the table heading, *"Core With an Annealing Furnace Scrubber"* is corrected to read, *"Core Without an Annealing Furnace Scrubber"*.

76. In 40 CFR 467.13, on page 49152, column two, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "6.396" is corrected to read, "6.518".

77. In 40 CFR 467.13, on page 49152, column two, under *Cleaning or Etching Bath*, the maximum for monthly average for aluminum, "0.562" is corrected to read, "0.573".

78. In 40 CFR 467.13, on page 49152, column three, under *Cleaning or Etching Rinse*, the maximum for monthly average for aluminum, "4.368" is corrected to read, "4.45".

79. In 40 CFR 467.13, on page 49152, column three, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for aluminum, "6.070" is corrected to read, "6.186".

80. In 40 CFR 467.14, on page 49152, column three, the table heading, *"Core Without an Annealing Furnace Scrubber"* is corrected to read, *"Core With an Annealing Furnace Scrubber"*.

81. In 40 CFR 467.14, on page 49153, column one, the table heading, *"Core With an Annealing Furnace Scrubber"* is corrected to read, *"Core Without an Annealing Furnace Scrubber"*.

82. In 40 CFR 467.15, on page 49153, column three, the table heading, *"Core Without an Annealing Furnace Scrubber"* is corrected to read, *"Core With an Annealing Furnace Scrubber"*.

83. In 40 CFR 467.15, on page 49153, column three, the table heading, *"Core With an Annealing Furnace Scrubber"* is corrected to read, *"Core Without an Annealing Furnace Scrubber"*.

84. In 40 CFR 467.15, on page 49153, column three, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for chromium, "0.090" is corrected to read, "0.90".

85. The tables titled, *"Cleaning or Etching Scrubber"* are corrected to read, *"Cleaning or Etching Scrubber Liquor"* wherever they appear. This title appears in the following sections:

Section	Page	Column
467.15	49154	1
467.16	49154	3
467.25	49157	2
467.26	49158	1
467.35	49161	3
467.36	49162	2
467.45	49163	3
467.46	49164	2
467.55	49167	2
467.56	49168	1
467.65	49171	1
467.66	49171	3

86. In 40 CFR 467.16, on page 49154, column two, the table heading, *"Core Without an Annealing Furnace Scrubber"* is corrected to read, *"Core With an Annealing Furnace Scrubber"*.

87. In 40 CFR 467.16, on page 49154, column two, the table heading, *"Core With an Annealing Furnace Scrubber"* is corrected to read, *"Core Without an Annealing Furnace Scrubber"*.

88. In 40 CFR 467.16, on page 49154, column three, under *Cleaning or Etching Scrubber*, the maximum for monthly average for cyanide, "0.15" is corrected to read, "0.16".

89. In 40 CFR 467.22, on page 49155, column one, under *Core*, the maximum for monthly average for aluminum, "0.408" is corrected to read, "0.416".

90. In 40 CFR 467.22, on page 49155, column two, under *Direct Chill Casting Contact Cooling Water*, the maximum for monthly average for aluminum, "4.18" is corrected to read, "4.26".

91. In 40 CFR 467.22, on page 49155, column two, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

92. In 40 CFR 467.22, on page 49155, column two, under *Cleaning or Etching Bath*, the maximum for monthly average for aluminum, "0.562" is corrected to read, "0.573".

93. In 40 CFR 467.22, on page 49155, column two, under *Cleaning or Etching Rinse*, the maximum for monthly average for aluminum appearing near the top of the third column, "43.69" is corrected to read, "44.52".

94. In 40 CFR 467.22, on page 49155, column three, under *Cleaning or Etching Scrubber Liquor*, the maximum for any one day for aluminum, "103.24" is corrected to read, "102.24".

95. In 40 CFR 467.22, on page 49155, column three, under *Cleaning or Etching Scrubber Liquor*, the maximum for monthly average for aluminum, "49.93" is corrected to read, "50.88".

96. In 40 CFR 467.23, on page 49155, column three, under *Core,* the maximum for monthly average for aluminum, "0.41" is corrected to read, "0.42".

97. In 40 CFR 467.23, on page 49156, column one, under *Direct Chill Casting Contact Cooling Water,* the maximum for monthly average for aluminum, "4.18" is corrected to read, "4.26".

98. In 40 CFR 467.23, on page 49156, column one, under *Solution Heat Treatment Contact Cooling Water,* the maximum for monthly average for aluminum, "6.40" is corrected to read, "6.52".

99. In 40 CFR 467.23, on page 49156, column one, under *Cleaning or Etching Rinse,* the maximum for monthly average for aluminum, "4.37" is corrected to read, "4.45".

100. In 40 CFR 467.23, on page 49156, column two, under *Cleaning or Etching Scrubber Liquor,* the maximum for monthly average for aluminum, "6.07" is corrected to read, "6.19".

101. In 40 CFR 467.24 on page 49156, column two, under, *Core,* the maximum for monthly average for cyanide, "0.010" is corrected to read, "0.011".

102. In 40 CFR 467.25 on page 49157, column two, under, *Solution Heat Treatment Contact Cooling Water,* the maximum for any one day for cyanide, "0.56" is corrected to read, "0.59".

103. In 40 CFR 467.25, on page 49157, column two, under *Solution Heat Treatment Contact Cooling Water,* the maximum for monthly average for zinc, "1.24" is corrected to read, "1.25".

104. In 40 CFR 467.32, on page 49158, column two, the BPT effluent limitations under *Core* are corrected to read, as follows:

The maximum for any one day for oil and grease, "7.28" is corrected to read, "7.32".

The maximum for monthly average for oil and grease, "4.37" is corrected to read, "4.39".

The maximum for any one day for suspended solids, "14.92" is corrected to read, "15.0".

The maximum for monthly average for suspended solids, "7.10" is corrected to read, "7.13".

105. In 40 CFR 467.32, on page 49158, column two, under *Extrusion Press Leakage,* the maximum for monthly average for aluminum, "4.64" is corrected to read, "4.73".

106. In 40 CFR 467.32, on page 49158, column three, the BPT effluent limitations for *Direct Chill Casting Contact Cooling Water* are corrected to read as follows:

The maximum for monthly average for chromium, "0.27" is corrected to read, "0.24".

The maximum for monthly average for cyanide, "0.18" is corrected to read, "0.16".

The maximum for monthly average for zinc, "0.90" is corrected to read, "0.81".

The maximum for monthly average for aluminum, "4.64" is corrected to read, "4.26".

The maximum for monthly average for oil and grease, "17.74" is corrected to read, "15.95".

The maximum for monthly average for suspended solids, "28.82" is corrected to read "25.92".

The maximum for any one day for suspended solids, "60.60" is corrected to read, "54.49".

107. In 40 CFR 467.32, on page 49158, column three, under *Press Heat Treatment Contact Cooling Water,* the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

108. In 40 CFR 467.32, on page 49158, column three, under *Solution Heat Treatment Contact Cooling Water,* the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

109. In 40 CFR 467.32, on page 49159, column one, under *Cleaning or Etching Bath,* the maximum for monthly average for aluminum, "0.562" is corrected to read, "0.573".

110. In 40 CFR 467.32, on page 49159, column one, under *Cleaning or Etching Rinse,* the maximum for monthly average for aluminum, "43.69" is corrected to read, "44.52".

111. In 40 CFR 467.32, on page 49159, column one, under *Cleaning or Etching Scrubber Liquor,* the maximum for any one day for aluminum, "103.24" is corrected to read, "102.24".

112. In 40 CFR 467.32, on page 49159, column one, under *Cleaning or Etching Scrubber Liquor,* the maximum for monthly average for aluminum, "49.93" is corrected to read, "50.88".

113. In 40 CFR 467.32, on page 49159, column two, under *Degassing Scrubber Liquor,* the maximum for monthly average for aluminum, "8.20" is corrected to read, "8.35".

114. In 40 CFR 467.33(b) which appears on page 49159, column two, "There shall be no discharge of wastewater pollutants from the degassing operation" is corrected to read, "There shall be no discharge allowance for wastewater pollutants from the degassing operation".

115. In 40 CFR 467.33(c), on page 49159, column two, in the table labelled *Core,* "BPT effluent limitations" is corrected to read, "BAT effluent limitations".

116. In 40 CFR 467.33(c), on page 49159, column two, under *Core,* the maximum for any one day for aluminum, "2.18" is corrected to read, "2.19".

117. In 40 CFR 467.33(c), on page 49159, column two, under *Core,* the maximum for monthly average for aluminum, "1.08" is corrected to read, "1.09".

118. In 40 CFR 467.33(c), on page 49159, column two, in the table labelled *Extrusion Press Leakage,* "BPT effluent limitations" is corrected to read, "BAT effluent limitations".

119. The term, "Mg/off-kg (lb/million off-lbs)" is replaced with "mg/off-kg (lb/million off-lbs)" each time it appears in the following tables:

Section	Pages	Column	Title of table
467.33(c)	49158	3	*Direct Chill Casting Contact Cooling Water.*
		3	*Press Heat Treatment Contact Cooling Water.*
		3	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
	49160	1	*Cleaning or Etching Rinse.*
		1	*Cleaning or Etching Scrubber Liquor.*
467.34(b)	49160	1	*Core.*
		2	*Extrusion Press Leakage.*
		2	*Direct Chill Casting Contact Cooling Water.*
		2	*Press Heat Treatment Contact Cooling Water.*
		3	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber Liquor.*
467.35	49161	1	*Core.*
		1	*Extrusion Press Leakage.*
		1	*Direct Chill Casting Contact Cooling Water.*
		2	*Press Heat Treatment Contact Cooling Water.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		2	*Cleaning or Etching Bath.*
		2	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber.*
467.36	49161	3	*Core.*
		3	*Extrusion Press Leakage.*
	49162	1	*Direct Chill Casting Contact Cooling Water.*
		1	*Press Heat Treatment Contact Cooling Water.*
		1	*Solution Heat Treatment Contact Cooling Water.*
		1	*Cleaning or Etching Bath.*
		2	*Cleaning or Etching Rinse.*
		2	*Cleaning or Etching Scrubber.*
467.44	49162	3	*Core.*
		3	*Forging Scrubber Liquor.*
		3	*Solution Heat Treatment Contact Cooling Water.*
	49163	1	*Cleaning or Etching Bath.*
		1	*Cleaning or Etching Rinse.*
		1	*Cleaning or Etching Scrubber Liquor.*
467.45	49163	2	*Core.*
		2	*Forging Scrubber Liquor.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber.*
467.46	49164	1	*Core.*
		1	*Forging Scrubber Liquor.*
		1	*Solution Heat Treatment Contact Cooling Water.*
		1	*Cleaning or Etching Bath.*
		2	*Cleaning or Etching Rinse.*
		2	*Cleaning or Etching Scrubber.*
467.52	49164	3	*Core.*
		3	*Continuous Rod Casting Contact Cooling Water.*

Section	Pages	Column	Title of table
	[illegible]	1	*Solution Heat Treatment Contact Cooling Water.*
		1	*Cleaning or Etching Bath.*
		1	*Cleaning or Etching Rinse.*
		1	*Cleaning or Etching Scrubber Liquor.*
467.53	[illegible]	2	Core.
467.54	[illegible]	1	*Continuous Rod Casting Spent Lubricant.*
		1	*Continuous Rod Casting Contact Cooling Water.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		2	*Cleaning or Etching Bath.*
		2	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber Liquor.*
467.55	[illegible]	3	Core.
		3	*Continuous Rod Casting Lubricant.*
	[illegible]	1	*Continuous Rod Casting Contact Cooling Water.*
		1	*Solution Heat Treatment Contact Cooling Water.*
		1	*Cleaning or Etching Bath.*
		1	*Cleaning or Etching Rinse.*
		2	*Cleaning or Etching Scrubber.*
467.56	[illegible]	2	*Continuous Rod Casting Lubricant.*
		3	*Continuous Rod Casting Contact Cooling Water.*
		3	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
	[illegible]	1	*Cleaning or Etching Scrubber.*
467.62	[illegible]	2	Core.
		2	*Continuous Rod Casting Spent Lubricant.*
		2	*Continuous Rod Casting Contact Cooling Water.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber Liquor.*
467.63	[illegible]	1	Core.
		1	*Continuous Rod Casting Spent Lubricant.*
		1	*Continuous Rod Casting Contact Cooling Water.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		2	*Cleaning or Etching Bath.*
		2	*Cleaning or Etching Rinse.*
		2	*Cleaning or Etching Scrubber Liquor.*
467.64	[illegible]	3	Core.
		3	*Continuous Rod Casting Spent Lubricant.*
		3	*Continuous Rod Casting Contact Cooling Water.*
467.64	[illegible]	1	*Cleaning or Etching Bath.*
		1	*Cleaning or Etching Rinse.*
467.65	[illegible]	2	Core.
		2	*Continuous Rod Casting Lubricant.*
		2	*Continuous Rod Casting Contact Cooling Water.*
		3	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
467.66	49171	1	Core.
		2	*Continuous Rod Casting Lubricant.*
		2	*Continuous Rod Casting Contact Cooling Water.*
		2	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
		3	*Cleaning or Etching Scrubber Liquor.*

120. In 40 CFR 467.33(c), on page 49159, column three, under *Direct Chill Casting Contact Cooling Water,* the maximum for monthly average for aluminum, "4.18" is corrected to read, "4.26".

121. In 40 CFR 467.33(c), on page 49159, column three, under *Press Heat Treatment Contact Cooling Water,* the maximum for monthly average for aluminum, "6.40" is corrected to read, "6.52".

122. In 40 CFR 467.33(c), on page 49159, column three, under *Solution Heat Treatment Contact Cooling Water,* the maximum for monthly average for aluminum, "6.40" is corrected to read, "6.52".

123. In 40 CFR 467.33(c), on page 49159, column three, under *Cleaning or Etching Bath,* the maximum for monthly average for aluminum, "0.56" is corrected to read, "0.58".

124. In 40 CFR 467.33(c), on page 49160, column one, under *Cleaning or Etching Rinse,* the maximum for monthly average for aluminum, "4.37" is corrected to read, "4.45".

125. In 40 CFR 467.33(c), on page 49160, column one, under *Cleaning or Etching Scrubber Liquor,* the maximum for monthly average for aluminum, "6.07" is corrected to read, "6.19".

126. In 40 CFR 467.34(a), on page 49160, "There shall be no discharge of wastewater pollutants from the degassing operation" is corrected to read, "There shall be no discharge allowance for wastewater pollutants from the degassing operation".

127. In 40 CFR 467.34(b), on page 49160, column one, "from the core shall not" is corrected to read, "from the core and ancillary operations except those listed in paragraph (a) shall not".

128. In 40 CFR 467.34(b), on page 49160, column one, the new source performance standards for the *Core* are corrected as follows:

The maximum for monthly average for chromium, "0.057" is corrected to read "0.051".

The maximum for any one day for suspended solids, "5.08" is corrected to read, "5.10".

129. 40 CFR 467.35 which appears on page 49160, column three, is corrected by redesignating and revising the introductory text as (a) and by adding paragraphs (b) and (c) to read as follows:

§ 467.35 Pretreatment standards for existing sources.

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

(b) There shall be no discharge allowance for wastewater pollutants from the degassing operation.

(c) The mass of wastewater pollutants from the core and ancillary operations except those identified in paragraph (b), introduced into a POTW shall not exceed the following values:

* * * * *

130. In 40 CFR 467.35, on page 49161, column one, under *Core,* the maximum for any one day for oil and grease, "6.78" is corrected to read, "6.80".

131. In 40 CFR 467.35, on page 49161, column two, the pretreatment standards for existing sources for the *Cleaning or Etching Bath* are corrected as follows:

"Aluminum" corrected to read, "TTO".

The maximum for any one day entry for TTO, "1.15" is corrected to read, "0.124".

The maximum for monthly average entry for TTO, "0.59" is corrected to read, "—".

The pollutant listed, "Oil and grease" is corrected to read, "Oil and grease (alternate monitoring parameter)".

The entry for "Suspended Solids" is removed.

The entry for "pH" is removed.

The footnote is removed.

132. 40 CFR 467.36 which appears on page 49161, column three, is corrected by redesignating and revising the introductory text as (a) and by adding paragraphs (b) and (c) to read as follows:

§ 467.36 Pretreatment standards for new sources.

(a) Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

(b) There shall be no discharge allowance for wastewater pollutants from the degassing operation.

(c) The mass of wastewater pollutants from the core and ancillary operations except those identified in paragraph (b) introduced into a POTW shall not exceed the values set forth below:.

* * * * *

133. In 40 CFR 467.36, on page 49161, column three, under the *Core,* the maximum for any one day for TTO, "0.23" is corrected to read, "0.24". In the same table, the maximum for monthly average for zinc, "0.14" is corrected to read, "0.15".

134. In 40 CFR 467.36, on page 49162, column two, under *Cleaning or Etching Rinse,* the maximum for any one day for oil and grease (alternate monitoring

parameter), "139.10" is corrected to read, "13.91". In the same table, the maximum for monthly average for oil and grease (alternate monitoring parameter), "139.10" is corrected to read, "13.91".

135. In 40 CFR 467.44, on page 49162, column three, under *Forging Scrubber Liquor,* the maximum for monthly average for zinc, "0.40" is corrected to read, "0.04".

136. In 40 CFR 467.44, on page 49163, column one, the new source performance standards for *Cleaning or Etching Bath* are corrected as follows:

The maximum for any one day for aluminum, "0.772" is corrected to read, "1.094".

The maximum for monthly average for aluminum "0.376" is corrected to read, "0.485".

The maximum for any one day for suspended solids, "—" is corrected to read, "2.69".

The maximum for monthly average for suspended solids "—" is corrected to read, "2.15".

137. In 40 CFR 467.44, on page 49163, column one, under *Cleaning or Etching Rinse,* the maximum for any one day for aluminum, "8.00" is corrected to read, "8.5". In the same table, the maximum for monthly average for aluminum, "2.92" is corrected to read, "3.77".

138. In 40 CFR 467.44, on page 49163, column one, under *Cleaning or Etching Scrubber Liquor,* the maximum for any one day for aluminum, "8.33" is corrected to read, "11.81". In the same table, the maximum for monthly average for aluminum, "4.06" is corrected to read, "5.24". Also, in the same table, the footnote references are removed from the entry for suspended solids and inserted in the entry for pH.

139. In 40 CFR 467.45, on page 49163, column two, under *Solution Heat Treatment Contact Cooling Water,* the maximum for any one day for chromium, "0.896" is corrected to read, "0.897".

140. In 40 CFR 467.45, on page 49163, column three, under *Cleaning or Etching Bath,* the maximum for any one day for TTO, "1.23" is corrected to read, "0.123".

141. In 40 CFR 467.46, on page 49164, column one, *Solution Heat Treatment Contact Cooling Water,* the maximum for monthly average for TTO, "0.86" is corrected to read, "—".

142. In 40 CFR 467.52, on page 49164, column three, under *Core,* the maximum for monthly average for suspended solids, "0.971" is corrected to read, "0.972".

143. In 40 CFR 467.52, on page 49164, column three, under *Continuous Rod Casting Spent Lubricant,* "Mg/off-kg (lbs/million off-lbs)" is corrected to read, "mg/off-kg (lb/million off-lbs)".

144. In 40 CFR 467.52, on page 49164, column three, the BPT limitations for *Continuous Rod Casting Spent Lubricant* are corrected to read as follows:

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (lbs/million off-lbs) of aluminum rod cast	
Chromium	0.00040	0.00035
Cyanide	0.00057	0.00024
Zinc	0.00287	0.0012
Aluminum	0.0127	0.0053
Oil and Grease	0.0393	0.0236
Suspended Solids	0.0605	0.0383
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

145. In 40 CFR 467.52, on page 49165, column one, under *Solution Heat Treatment Contact Cooling Water,* the maximum for monthly average for aluminum, "24.20" is corrected to read, "24.66".

146. In 40 CFR 467.52, on page 49165, column one, under *Cleaning or Etching Scrubber Liquor,* the maximum for monthly average for oil and grease, "198.80" is corrected to read, "190.8".

147. The term "Mg/off-kg (lb/million off-lbs" is replaced by "mg/off-kg (lb/million off-lbs)" each time it appears in the following tables:

Section	Pages	Column	Title of table
467.53	49165	II	*Continuous Rod Casting Spent Lubricant.*
		2	*Continuous Rod Casting Contact Cooling Water.*
		II	*Solution Heat Treatment Contact Cooling Water.*
		3	*Cleaning or Etching Bath.*
		3	*Cleaning or Etching Rinse.*
		II	*Cleaning or Etching Scrubber Liquor.*
467.54	49166	1	*Core.*

148. In 40 CFR 467.53, on page 49165, column two, under *Continuous Rod Casting Contact Cooling Water,* the maximum for monthly average for cyanide, "0.023" is corrected to read, "0.024".

149. In 40 CFR 467.54, on page 49166, column one, under *Continuous Rod Casting Spent Lubricant,* the maximum for any one day for zinc, "0.0002" is corrected to read, "0.002". In the same table, the maximum for monthly average for suspended solids, "0.03" is corrected to read, "0.024".

150. In 40 CFR 467.54, on page 49166, column two, under *Cleaning or Etching Rinse,* the maximum for any one day for suspended solids, "20.67" is corrected to read, "20.87".

151. In 40 CFR 467.55, on page 49167, column one, under *Continuous Rod Casting Contact Cooling Water,* the maximum for any one day for chromium, "0.853" is corrected to read, "0.086". In the same table the maximum for any one day for cyanide, "0.562" is corrected to read, "0.057".

152. In 40 CFR 467.55, on page 49167, column one, under *Cleaning or Etching Bath,* the maximum for any one day for TTO, "0.13" is corrected to read, "0.124".

153. In 40 CFR 467.55, on page 49167, column two, under *Cleaning or Etching Scrubber,* the maximum for any one day for TTO, "1.33" is corrected to read, "1.34".

154. In 40 CFR 467.56, on page 49167, column two, under *Core,* "Mg/off-kg (lb/per million off-lbs)" is corrected to read, "mg/off-kg (lb/million off-lbs)".

155. In 40 CFR 467.56, on page 49167, column three, the pretreatment standards for new sources for *Continuous Rod Casting Contact Cooling Water,* are corrected to read as follows:

Pollutant or pollutant property	PSNS	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (lbs/million off-lbs) of aluminum rod cast	
Chromium	0.072	0.029
Cyanide	0.039	0.016
Zinc	0.196	0.082
TTO		0.134
Oil and Grease (alternate monitoring parameter)	1.94	1.34

156. In 40 CFR 467.62, on page 49168, column two, under *Core* the maximum for monthly average for aluminum, "1.47" is corrected to read, "1.50".

157. In 40 CFR 467.62, on page 49168, column two, under *Continuous Rod Casting Spent Lubricant,* the maximum for monthly average for cyanide, "0.0002" is corrected to read, "0.0003".

158. In 40 CFR 467.62, on page 49168, column two, under *Continuous Rod Casting Spent Lubricant,* the maximum for monthly average for aluminum, "0.006" is corrected to read, "0.007". In the same table, the entry for suspended solids, "0.038" is corrected to read, "0.039".

159. In 40 CFR 467.62, on page 49168, column three, under *Solution Heat Treatment Contact Cooling Water,* the maximum for any one day for aluminum, "49.54" is corrected to read, "49.55". In the same table, the maximum for monthly average for aluminum, "24.19" is corrected to read, "24.66".

160. In 40 CFR 467.63, on page 49169, column one, under *Continuous Rod Casting Contact Cooling Water,* the

maximum for any one day for chromium, "0.085" is corrected to read, "0.086". In the same table the maximum for monthly average for cyanide of "0.023" is corrected to read, "0.024".

161. In 40 CFR 467.63, on page 49169, column two, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for chromium, "0.896" is corrected to read, "0.897".

162. In 40 CFR 467.64, on page 49169, column three, under the *Core*, the maximum for any one day for cyanide, "0.093" is corrected to read, "0.094". In the same table, the maximum for monthly average for aluminum, "1.26" is corrected to read, "1.27".

163. In 40 CFR 467.64, on page 49169, column three, under *Continuous Rod Casting Spent Lubricant*, the maximum for monthly average for aluminum, "0.0051" is corrected to read, "0.0053".

164. In 40 CFR 467.64, on page 49170, column one, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for chromium, "0.760" is corrected to read, "0.754".

165. In 40 CFR 467.64, on page 49170, column one, under *Solution Heat Treatment Contact Cooling Water*, the maximum for any one day for cyanide, "0.405" is corrected to read, "0.408".

166. In 40 CFR 467.64, on page 49170, column one, under *Cleaning or Etching Rinse*, "USPS" is corrected to read, "NSPS". In the same table, the maximum for any one day for oil and grease, "13.911" is corrected to read, "13.91".

167. In 40 CFR 467.64, on page 49170, column one, under *Cleaning or Etching Scrubber Liquor*, "mMg/off-kg (lb/million off-lbs)" is corrected to read, "mg/off-kg (lb/million off-lbs)".

168. In 40 CFR 467.65, on page 49170, column two, under *Continuous Rod Casting Contact Cooling Water*, the maximum for any one day for chromium, "0.085" is corrected to read, "0.086". In the same table, the maximum for monthly average for cyanide, "0.023" is corrected to read, "0.024". Also in the same table, the maximum for monthly average for zinc, "0.118" is corrected to read, "0.119".

169. In 40 CFR 467.65, on page 49170, column three, under *Solution Heat Treatment Contact Cooling Water*, the maximum for monthly average for zinc, "1.24" is corrected to read, "1.25".

170. In 40 CFR 467.65, on page 49171, column one, under *Cleaning or Etching Scrubber*, the maximum for any one day for TTO, "1.33" is corrected to read, "1.34".

171. In 40 CFR 467.66, on page 49171, column two, the pretreatment standards for new sources for *Continuous Rod Casting Contact Cooling Water* are corrected to read as follows:

Pollutant or pollutant property	PSNS	
	Maximum for any 1 day	Maximum for monthly average
	Mg/off-kg (lbs/million off-lbs) of aluminum rod cast	
Chromium	0.072	0.029
Cyanide	0.039	0.016
Zinc	0.196	0.082
TTO	0.134	
Oil and Grease (alternate monitoring parameter)	1.94	1.94

172. In 40 CFR 467.65, on page 49170, column two, under *Core*, the maximum for monthly average for chromium, "0.84" is corrected to read "0.084".

[FR Doc. 84-8092 Filed 3-26-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2542]

43 CFR Parts 3100, 3200, 3400 and 3500

Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; and Leasing of Minerals Other Than Oil and Gas; Amendment Changing the Collection Process for Mineral Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will amend the existing regulations covering the procedures for collection of bonus and rental payments required in connection with mineral leases issued by the Bureau of Land Management. The final rulemaking will transfer most bonus and rental collections after the payment for the initial lease year to the Minerals Management Service. This final rulemaking is being issued to comply with the requirements of the Federal Oil and Gas Royalty Management Act of 1982 and a Memorandum of Understanding between the Bureau of Land Management and the Minerals Management Service.

EFFECTIVE DATE: April 26, 1984.

ADDRESS: Any inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: This final rulemaking will implement the provisions of the Federal Oil and Gas Royalty Management Act ob 1982 (30 U.S.C. 1701-1757) and a Memorandum of Understanding between the Bureau of Land Management and the Minerals Management Service dealing with the question of remittances in connection with mineral leases issued by the Bureau of Land Management. Basically, the final rulemaking changes the provisions in the existing regulations requiring that all bonus and rental remittances made in connection with mineral leases be made to the Bureau of Land Management. Under this final rulemaking, normally only the initial bonus, first year's rental and all required fees will be remitted to the Bureau of Land Management, with all subsequent payments being remitted to the Minerals Management Service. The change made by the final rulemaking will permit the Minerals Management Service to better meet its responsibility of providing the highest possible return from mineral leases granted by the United States.

The change is being issued as a final rulemaking because it is an administrative change, one that imposes no new burdens on the public. Holders of mineral leases will continue to have to remit required payments, but with the amendment being made by this final rulemaking, most post-lease issuance bonus and rental remittances will be made to the Minerals Management Service, rather than to the Bureau of Land Management. The final rulemaking excepts leases on six categories of lands from the requirement that most post-lease issuance bonus and rental remittances be paid to the Service, but will continue to be paid to the Bureau. The holders of the approximately 3,000 leases covered by this exception have been notified that they will continue to make their payments to the Bureau.

The principal author of this proposed rulemaking is Robert C. Bruce, Office of Legislation and Regulatory Management, Bureau of Land Management, assisted by the staff of the Deputy Director for Energy and Mineral Resources, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will impact equally on all entities, large or small. The impact will be insignificant since it only requires a change in the agency within the Department of the Interior to whom required remittances payable after lease issuance are made in connection with mineral leases issued by the Bureau of Land Management. Unless the amount of the remittances is changed under the terms of the lease or under authority granted the Secretary of the Interior, the remittances will be unchanged.

The final rulemaking contains no additional information collection requirements requiring approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3470

Coal, Mineral royalties, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3500

Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 226), the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Groups 3100, 3200, 3400 and 3500, Subchapter C of Title 43 of the Code of Federal Regulations are amended as set forth below.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 20, 1984.

PART 3100—[AMENDED]

1. Section 3103.1–1 is revised to read:

§ 3103.1–1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

2. Section 3103.1–2(a) is revised to read:

§ 3103.1–2 Where submitted.

(a)(1) All filing fees for lease applications or offers or for applications for approval of an instrument of transfer and all first-year rentals and bonuses for leases issued under group 3100 of this title shall be paid to the proper BLM office. In addition, all second-year and subsequent rentals for non-producing leases covering: Coos Bay Wagon Road; Oregon and California Grant; BLM National Grasslands; National Petroleum Reserve—Alaska; the south half of the Red River, Oklahoma; or acquired Taylor Grazing Act lands shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals for non-producing leases not covered by paragraph (a)(1) of this section shall be paid to the Service.

* * * * *

§ 3103.2–2 [Amended]

3. Section 3103.2–2 is amended by amending the introductory paragraph of the section by inserting after the phrase "proper BLM office" in the three places it appears and the phrase "improper BLM office", the one place it appears the phrase,"or the designated Service office, whichever is appropriate," and by removing the period at the end of the last complete sentence in the introductory paragraph and adding the phrase ", except that during the period April 1, 1984, through March 31, 1985, payments made improperly to either the Bureau or Service shall be forwarded to the appropriate agency."

§ 3103.3–2 [Amended]

4. Section 3103.3–2(c) is amended by removing the phrase "until the lease accounts on the non-participating acreage are returned to the Bureau of Land Management".

§ 3108.2–1 [Amended]

5. Section 3108.2–1 is amended by:

A. Amending paragraph (a) by inserting after the phrase "proper BLM office", where it appears, the phrase "or the designated Service office, as appropriate,"; and"

B. Amending paragraph (b) by:

(1) Amending the first sentence of the paragraph by inserting a comma after the word "bill" and after the word "officer";

(2) Amending the third sentence of the paragraph by inserting after the phrase "authorized officer" the phrase "or the designated Service office, as appropriate" and by removing the phrase "on a form approved by the Director"; and

(3) Amending the fourth sentence of the paragraph by inserting after the phrase "proper BLM office" the phrase "or the Service, as appropriate".

PART 3200—[AMENDED]

6. Section 3205.1–1 is revised to read:

§ 3205.1–1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—the Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

7. Section 3205.1–2 is revised to read:

§ 3205.1–2 Where submitted.

(a)(1) All filing fees for lease applications or offers or for applications for approval of an instrument of transfer and all first-year rentals and bonuses for leases issued under group 3200 of this title shall be paid to the proper BLM office. In addition, all second-year and subsequent rentals and deferred bonus amounts payable after the first year for non-producing leases covering: Coos Bay Wagon Road; Oregon and California Grant; National Grasslands; the south half of the Red River, Oklahoma; or acquired Taylor Grazing Act lands shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals and deferred bonus amounts payable after the initial payment for leases not covered by paragraph (a)(1) of this section shall be paid to the Service."

(b) All royalties on producing leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all royalty payments under easements for directional drilling are to be paid to the Service.

PART 3400—[AMENDED]

8. Section 3473.1–1 is revised to read:

§ 3473.1–1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

9. Section 3473.1–2 is revised to read:

§ 3473.1–2 Where submitted.

(a)(1) All first-year rentals and the first-year portions of all bonuses for leases issued under group 3400 of this title shall be paid to the Bureau of Land Management State office having jurisdiction over the lands (43 CFR Subpart 1821). In addition, all second-year and subsequent rentals and deferred bonus amounts payable after the first year for non-producing leases covering: Coos Bay Wagon Road, Oregon and California Grant; National Grasslands; the south half of the Red River, Oklahoma; or acquired Taylor Grazing Act lands shall be paid to the Bureau of Land Management State office having jurisdiction over the lands (43 CFR Subpart 1821).

(2) All second-year and subsequent rentals and deferred bonus amounts payable after the initial payment for leases not covered by paragraph (a)(1) of this section shall be paid to the Service.

(b) All royalties on producing leases, all payments under leases in their minimum production period, and all advance royalties shall be paid to the Service.

10. Section 3503.1–1 is revised to read:

§ 3503.1–1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

PART 3500—[AMENDED]

11. Section 3503.1–2 is revised to read:

§ 3503.1–2 Where submitted.

(a)(1) All first-year rentals and bonuses for leases issued under group 3500 of this title shall be paid to the proper BLM office. In addition, all second-year and subsequent rentals for non-producing leases covering: Coos Bay Wagon Road; Oregon and California Grant; National Grasslands; the south half of the Red River, Oklahoma; or acquired Taylor Grazing Act lands shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals and all payments for leases not covered by paragraph (a)(1) of this section shall be paid to the Service.

(b) All royalties on producing leases and all payments under leases in their minimum production period shall be paid to the Service.

[FR Doc. 84–7871 Filed 3–26–84; 8:45 am]

BILLING CODE 4310–84–M

LEGAL SERVICES CORPORATION

45 CFR Parts 1612, 1618 and 1621

Instruction on Implementation of Eligible Client Grievance Procedures.

AGENCY: Legal Services Corporation.

ACTION: Withdrawal of LSC Instruction 83–10.

SUMMARY: Instruction 83–10, dealing with the establishment of grievance procedures pursuant to Section 1006(b)(2) of the Legal Services Corporation Act of 1974, as amended 1977, 45 CFR 1612.5, 45 CFR 1618, and 45 CFR 1621, was published in the **Federal Register** on Monday, December 19, 1983, at page 56058. On the basis of comments received indicating that the language of the Instruction could be interpreted as going beyond the language of the Act and Regulations, the Corporation has decided to withdraw Instruction 83–10. It may be reissued in modified form at a later date.

EFFECTIVE DATE: Instruction 83–10 is withdrawn effective March 27, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas J. Opsut, Office of Compliance and Review, Legal Services Corporation, 733 Fifteenth Street, N.W., Washington, D.C. 20005, (202) 272–4331.

Dated: March 20, 1984.

Gregg Hartley,

Director, Office of Field Services.

[FR Doc. 84–8176 Filed 3–26–84; 8:45 am]

BILLING CODE 6820–35–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–488; RM–4425]

TV Broadcast Station in Gainesville, Florida; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Channel 61 to Gainesville, Florida, as its third TV assignment in response to a petition filed by Holt Robinson Communications Corp.

EFFECTIVE DATE: May 22, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Gainesville, Florida); MM Docket No. 83–488, RM–4425.

Adopted: March 8, 1984.

Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 27563, published June 16, 1983, which invited comments on a proposal to assign UHF Television Channel 61 to Gainesville, Florida, in response to a petition filed by Holt Robinson Communications Corp. ("petitioner"). Petitioner submitted comments in support of the proposal and expressed an interest in applying for the channel, if assigned. Gainesville Television, Inc. filed opposing comments.

2. Gainesville Television, Inc., licensee of WCJB–TV (Channel 20) in Gainesville, filed comments in opposition to the proposal, stating that there was already sufficient television service provided by stations in and around Gainesville, as well as cable TV service and low power TV applications pending. The Commission has determined that questions concerning sufficiency of service should be taken up at the application stage, where the specific proposal can be analyzed.

3. We believe that the petitioner has adequately demonstrated the need for a third television assignment in

Gainesville and that the public interest would be served by assigning UHF commercial Channel 61 to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules. However there are two applications pending for Channel 53 at High Springs, Florida, which specify transmitter locations short spaced to the present Gainesville allocation. These applicants would need to specify another site in order to avoid the spacing problem.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 22, 1984, the TV Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Gainesville, Florida	*5–, 20, 61+

5. It is further ordered, that this proceeding is terminated.

6. For further information contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–8117 Filed 3–26–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–489; RM–4416; RM–4486]

TV Broadcast Stations in Katy and Pasadena, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 51 to Katy, Texas, as its first UHF television channel in response to a petition filed by the Enigma Corporation. A counterproposal submitted by Dr. Samuel Levantino to assign Channel 51 to Pasadena, Texas, has been withdrawn.

EFFECTIVE DATE: May 22, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (Katy and Pasadena,[1] Texas); MM Docket No. 83–489, RM–4416, RM–4486.

Adopted: March 8, 1984.
Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. The Commission has before it the *Notice of Proposed Rule Making*, published in the **Federal Register** on June 27, 1983 (48 FR 29552), proposing the assignment of UHF television Channel 51 to Katy, Texas, in response to a petition by the Enigma Corporation ("Enigma").

2. Comments were filed by Enigma, reiterating its continued intention to apply for a construction permit for Channel 51 if the channel is assigned to Katy, and the Association of Maximum Service Telecasters, Inc. ("AMST").[2] Supporting comments were filed by Dr. Samuel R. Levatino.[3]

3. After consideration of the proposal, the Commission is persuaded that the public interest would be served by assigning Channel 51 to Katy, Texas, as its first television channel assignment. A site restriction of 3.6 miles south is required to avoid short spacing to a construction permit for Station KLMG–TV on Channel 51 in Longview, Texas.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.238 of the Commission's Rules, it is ordered, That effective May 22, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below:

City	Channel No.
Katy, Texas	51+

5. It is further ordered, that this proceeding is terminated.

[1] This community has been added to the caption.

[2] AMST's comments were directed to the Pasadena proposal (see fn. 3, *infra*).

[3] Originally, Dr. Levantino filed a counterproposal to assign Channel 51 to Pasadena, Texas. However, on January 9, 1984, Dr. Levantino withdrew the Pasadena petition in support of the Katy proposal. Thus we have given no further consideration to the Pasadena proposal.

6. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–8118 Filed 3–26–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–97; RM–4235; RM–4428]

FM Broadcast Stations in Pullman, Washington and Moscow, Idaho; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Class C Channel 258 to Pullman, Washington, in response to a petition filed by P–N–P Broadcasting. The assignment could provide a second FM service to Pullman.

EFFECTIVE DATE: May 22, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR 73

Radio broadcasting.

First Report and Order

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (*Pullman, Washington* and Moscow, Idaho[1])

MM Docket No. 83–97, RM–4235, RM–4428.

Adopted: March 8, 1984.
Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. Before the Commission is the *Notice of Proposed Rule Making*, 48 FR 8503, published March 1, 1983, proposing the assignment of Channel 258 to Pullman, Washington, as its second FM assignment. The *Notice* was issued in response to a petition filed by P–N–P Broadcasting ("petitioner"). Petitioner filed comments, restating its intent to apply for the channel, if assigned. A counterproposal was filed by KRPL, Inc.[2] proposing instead the substitution

[1] This community has been added to the caption.

[2] KRPL, Inc. is the licensee of Station KRPL–FM, Moscow, Idaho.

of Channel 258 for Channel 280A at Moscow, Idaho, to which the petitioner responded.

2. A staff study indicates that Channel 291 can be assigned to Moscow, Idaho. Thus, we are issuing a *Further Notice of Proposed Rule Making* seeking comments on the proposed substitution of channels at Moscow. In so doing, we have not considered the comments of KRPL, Inc. comparing the need for the assignment of Channel 258 to Moscow instead of to Pullman.

3. After consideration of P–N–P's proposal, the Commission is satisfied that the public interest would be served by a second FM assignment at Pullman. We shall, therefore, assign Channel 258 to Pullman, Washington. As stated in the *Notice*, the transmitter site is restricted to 3.7 miles south of the city to avoid short spacing to FM Stations KSEM, Moses Lake, Washington, and KICN, Spokane, Washington.

4. Canadian concurrence has been obtained in the assignment of Channel 258 to Pullman, Washington.

5. In view of the foregoing and pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 22, 1984, the FM Table of Assignments (§ 73.202(b) of the Rules) is amended with regard to the following community:

City	Channel No.
Pullman, Washington	[illegible], and 285A.

6. For further information, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 305, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–8119 Filed 3–26–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 40228–19]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service; NMFS, NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the rules implementing the Fishery Management Plan for the Pacific Coast Groundfish Fishery (FMP), published on October 5, 1982 (47 FR 43964). Two measures in § 663.26, Gear Restrictions are clarified so that the mesh size of a trawl codend will be measured in the last 50 meshes of the net, and that a roller or bobbin trawl must have at least two 14-inch rollers or bobbins equally spaced on each side within 10 feet of the center of the footrope. This final rule clarifies and eliminates misinterpretations of the groundfish regulations.

EFFECTIVE DATE: 0001 hours, PDT, on April 25, 1984.

FOR FURTHER INFORMATION CONTACT: T. E. (Gene) Kruse at 206–527–6160 or Floyd S. Anders, Jr. at 213–548–2526.

SUPPLEMENTARY INFORMATION: This final rule clarifies two portions of the existing regulations which govern fishing for groundfish along the Pacific coast. The two portions, § 663.26 (b)(2) and (b)(7), have caused confusion and compliance has been jeopardized. The first change makes it clear that mesh measurements to determine compliance with minimum requirements are to be taken in the last 50 meshes of the codend. The second change clarifies that rollers or bobbins used on the footrope of a trawl net must be 14 inches in diameter, free to rotate, and spaced so that at least two are on each side within ten feet of the center.

This rule was published as a proposed rule on October 31, 1983 (48 FR 50129), with a 45-day comment period, which ended December 15, 1983. Since the notice of the proposed rule was published, the exact dimensions of the stainless steel wedge used to make these measurements have been added to this rule. The genesis of the issues and the basis for the corrective measures were discussed at length in the proposed rule and are not repeated here. No comments were received on the proposed rule. These changes also were the subject of public discussion and comment at meetings of the Pacific Fishery Management Council during the summer of 1983.

Classification

The Regional Director determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Council prepared an environmental impact statement (EIS) for this FMP; a notice of availability was published on November 30, 1979 (44 FR 69005). There will be no change in environmental impact from that determined in the EIS as a result of this rule.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

This rule has been certified as "nonsignificant" under the Regulatory Flexibility Act. It makes a minor technical adjustment to clarify the regulations; it will have no economic effect and will create no extra paperwork or reporting burdens.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. (16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fish, Fisheries, Fishing.

Dated: March 22, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 663—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 663 is amended as follows:

1. The authority citation for Part 663 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.26 paragraphs (b)(2) and (b)(7) are revised to read as follows:

§ 663.26 Gear restrictions.

* * * * *

(b) * * *

* * * * *

(2) *Mesh size.* Trawl nets may be used if they meet the minimum sizes set forth below. The minimum sizes apply to the last fifty meshes running the length of the net to the terminal (closed) end of the codend. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (depending on the gear being measured) less one thickness of the metal at the widest part, can be passed with thumb pressure only through 16 of 20 sets of two meshes each of wet mesh in the codend.

* * * * *

(7) *Roller trawl or bobbin trawl.* In the Eureka, Columbia, and Vancouver Subareas, if trawl mesh size less than 4.5 inches is used, rollers or bobbins must be at least 14 inches in diameter and free to rotate, with at least 2 rollers or bobbins equally spaced on each side

of the footrope within 10 feet of the center of the footrope of the net.

* * * * *

[FR Doc. 84-8205 Filed 3-26-84; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 671

[Docket No. 31230-254]

Tanner Crab off Alaska; Closure of Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Rule-related notice; closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum harvest level of Tanner crab in the North Mainland Section of the Kodiak District in Registration Area J will be achieved on March 23, 1984, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing the North Mainland Section to fishing for Tanner crab by vessels of the United States on that date. The previously scheduled closing date is April 30, 1984.

DATE: This notice is effective 12:00 noon, Alaska Standard Time (AST), March 23, 1984. It was filed for public inspection with the Office of the Federal Register on March 26, 1984. Public comments on this notice of closure are invited until April 9, 1984.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST weekdays) at (1) the NMFS Kodiak Field Office, ADF&G Building, Kashevaroff and Mission Roads, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT:

Raymond E. Baglin (NMFS Fishery Management Biologist), 907-486-4791.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, Provides for inseason adjustments by field order of season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. The Kodiak District is further subdivided into eight sections. The Alaska Board of Fisheries has set the desired 1984 harvest level for the North Mainland Section at 1.25 million pounds, based on pot index surveys conducted by the Alaska Department of Fish and Game (ADF&G) in 1983.

The 1984 fishing season for this section began on February 10. Approximately 15 vessels have delivered about 1.2 million pounds through March 18. The catch rate has declined rapidly from about 45 to about 25 crabs per pot. This rapid decline indicates that stocks are insufficient to support this fishery through the scheduled April 30 closure date. The optimum harvest level of 1.25 million pounds is expected to be reached on March 23.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that: (1) The actual condition of Tanner crab stocks in the North Mainland Section is substantially different from the condition anticipated at the beginning of the fishing year; and (2) this difference reasonably supports the need to protect those Tanner crab stocks by closing the North Mainland Section of the Kodiak District, as described in § 671.26(f)(l)(i). This section is therefore closed to all fishing for Tanner crab from 12:00 noon, AST, March 23, 1984, until 12:00 noon ADT, April 30, 1984, at which time the closure of this area prescribed in § 671.26(f)(2)(i) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through ADF&G procedures, under § 671.27(a)(2). Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the North Mainland Section will be subject to damage by overfishing unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment on this order are contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of regulations specified at 50 CFR 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-8204 Filed 3-23-84; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 60
Tuesday, March 27, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R-0514]

Interest on Deposits; Advertising; Regulation Q

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: The Board is proposing to amend Regulation Q—Interest on Deposits to incorporate its Policy Statement of March 22, 1984, concerning advertising of split rate time deposits and Individual Retirement Account ("IRA") deposits and to clarify permissible advertising methods in view of the removal of federal deposit interest rate limitations. The Board is also requesting comments on other advertising and disclosure issues that may warrant consideration under Regulation Q.

DATES: Comments must be received by May 22, 1984.

ADDRESS: Interested parties are invited to submit written data, views, or arguments concerning the proposal to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or such comments may be delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452–3625); Paul S. Pilecki, Senior Counsel (202/452–3281); or Elaine M. Boutilier, Attorney (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board is authorized under Section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) to prescribe rules governing the advertisement of interest on time and savings deposits by member banks. The current regulation is codified in Regulation Q at 12 CFR 217.6—Advertising of Interest on Deposits. The Board believes that revisions to this regulation may be warranted in view of the deregulation of interest rate ceilings resulting from actions of the Depository Institutions Deregulation Committee ("DIDC") pursuant to the Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96–221).

The DIDC has substantially deregulated the limitations on interest rate ceilings that previously existed. In this deregulated environment, depository institutions have greater freedom in structuring time and savings deposits. This freedom has led to a vast diversity in terms and conditions on deposit accounts, making it more difficult for the consumer to compare accounts. Consequently, the issue of whether customers are receiving meaningful information in advertisements for deposit accounts has become more important.

In recognition of this increased importance of advertising, on March 22, 1984, the Board adopted a Policy Statement concerning the advertising of split rate accounts, in particular, the potentially misleading advertising practices for deposits used as investments for IRAs. The Board anticipates that similar actions will be taken by the Comptroller of the Currency, the Federal Home Loan Bank Board, and the Federal Deposit Insurance Corporation. In summary, the Policy Statement provides that the Board believes that advertisements that state in large type an initial rate that is effective for a period of a few months and then state in smaller type a lower rate that will be effective for the remaining term of the deposit can be misleading to consumers. Such advertisements should state both rates in equal type in order not to be regarded as misleading. In addition, advertisements for deposits to be used in connection with IRS should not refer to contributions to such accounts as "tax-free," "tax-exempt" or other similar terms. This action was taken to assure that depository institutions provide meaningful and accurate information and to assist consumers to make comparisons of deposit interest rates being offered.

The Board proposes that the principles set forth in its March 22, 1984 Policy Statement be incorporated into Regulation Q, as an amendment to 12 CFR 217.6. The Board is requesting comments on the proposed amendment, and also is interested in any alternative proposals that would achieve the goals of the Policy Statement. In addition, the Board requests comments regarding other advertising and disclosure issues arising from the deregulation of interest rate ceilings, and whether existing provisions of Regulation Q should be modified to reflect the removal of interest rate ceilings. Currently, the regulation establishes a framework of deposit advertising rules aimed at full disclosure of the material elements of deposit instruments. As a general matter, Regulation Q prohibits any advertisements or solicitations relating to interest paid on deposits that are inaccurate, misleading, or misrepresentative of deposit contracts (12 CFR 217.6(g)). Other provisions of the regulation require that specific types of information appear in advertisements:

(a) Interest rates must be stated in terms of the annual rate of simple interest, and advertisements that display an effective annual yield based on compounding must state the annual rate of simple interest and the basis of compounding (12 CFR 217.6 (a) and (b));

(b) No interest rate can be advertised that states a yield based on a period of more than one year in order to ensure that effective yields are not artificially inflated (12 CFR 217.6(c));

(c) If an advertised rate is payable only on a deposit that meets a specific time or amount requirement, such requirements must be stated clearly and conspicuously (12 CFR 217.6(d));

(d) Advertisements for time deposits must state that interest penalties apply in the event of early withdrawal (12 CFR 217.6(e));

(e) Member banks are required to inform customers at the time that an account is opened as to the method that will be used in computing and paying interest on the account, including any provisions for nonpayment of interest (12 CFR 217.148).

The Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board have virtually identical rules for institutions subject to their respective jurisdictions.

The Board is interested in receiving comments on existing advertising and disclosure practices that may be harmful

to individuals. In addition, the Board is interested in comments or changes that could be made to the existing advertising provisions to reflect the removal of interest rate ceilings on deposits. Such comments could, for example, discuss the proper method of advertising floating or variable interest rates, or requiring that rates for deposits be stated in terms of the average effective annual yield rather than requiring that the simple rate be used.

Regulatory Flexibility Anaylsis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, it is the Board's view that the proposal would not impose any additional reporting or recordkeeping requirements. The purpose of this proposal is to request comment on any alternatives that the public believes may be preferable to the Board's March 22, 1984 Policy Statement. Suggested alternatives will be considered when comments are analyzed. The proposed rule would apply only to commercial banks which are members of the Federal Reserve System. It is not anticipated that the proposal will have a negative impact on the ability of small depository institutions to attract deposits, and the proposal should benefit consumers in their efforts to obtain the most favorable deposit terms.

List of Subjects in 12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

PART 217—[AMENDED]

Pursuant to its authority under section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) the Board proposes to amend § 217.6 of Regulation Q (12 CFR Part 217) by revising paragraph (a), and by redesignating paragraph (g) as paragraph (g)(1) and adding a new paragraph (g)(2) as follows:

§ 217.6 Advertising of interest on deposits.

* * * * *

(a) *Rate of interest.* (1) Interest rates shall be stated in terms of the annual rate of simple interest. In no case shall a rate be advertised that is in excess of the rate being paid on the deposit.

(2)(i) Advertisements for time deposits where more than one rate is paid must state each rate to be paid on the account in type of equal size together with a conspicuous statement as to the length of time for which each rate is effective and a conspicuous statement of the average effective annual yield for the deposit which assumes compounding of interest at least annually. This applies to accounts where

(A) it is known in advance what the rates to be paid throughout the life of the account will be and,

(B) the initial rate to be paid is higher than subsequent rates.

(ii) For accounts subject to a variable interest rate that is detemined by an index, the initial interest rate may be advertised; however, the advertisement must also include a conspicuous statement as to (A) the time period for which such rate applies, and (B) the method by which the rate will be determined for future periods and the time period for which such rate will apply.

(iii) For accounts that offer an initial fixed rate to be followed by a variable rate determined by an index during the remainder of the term of the account, the method of determining the variable rate shall be stated in type of the same size as the fixed rate. In addition, the time periods for which the initial fixed rate and subsequent rates apply must be conspicuously stated.

* * * * *

(g) *Accuracy of advertising.* (1) * * *

(2) It is misleading and inaccurate for advertisements to refer to an Individual Retirement Account ("IRA") as a "tax-free," "tax exempt" (or other similar language) investment. Contributions to, and earnings on, IRAs are deferred from federal income taxes rather than exempt from taxes.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 22, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-8222 Filed 3-26-84; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 255

[Economic Reg. Docket: 41686; EDR-471]

Carrier-Owned Computer Reservations Systems

AGENCY: Civil Aeronautics Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In conjunction with a separate notice of proposed rulemaking on carrier owned computer reservations systems being issued simultaneously, EDR-466C, the Board is requesting comments on the need for rules specifying the way in which connecting flights are selected and arranged for display on computer terminals. We also solicit comments on the feasibility of various requirements for objective flight displays and on their effectiveness in meeting consumer needs.

DATE: Comments by: April 26, 1984.

Reply comments by: May 11, 1984.

ADDRESSES: Twenty copies of comments should be sent to Docket 41686, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Robert D. Young (202) 673-6060, Samuel E. Whitehorn (202) 673-5450, Paul Samuel Smith (202) 673-5450, Barry L. Molar (202) 673-5205 or George S. Baranko (202) 673-6011, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: In EDR-466C, being issued concurrently, we are proposing comprehensive rules to regulate air carrier operation of Computer Reservations Systems (CRS's) that travel agents use to get information about carrier services, make reservations and issue tickets. The proposed rules would prohibit display bias, i.e., giving preference to the flights of certain carriers, in CRS displays, and would regulate pricing of CRS services to user carriers, other aspects of the CRS owner/user carrier relationship, aspects of the CRS owner/travel agent relationship, and use of booking and sales data generated by CRS's.

As discussd in detail in EDR-466C however, we are concerned about the effectiveness of our proposed rule on connecting flight bias. This proposed connecting flight bias rule would prohibit consideration of a carrier identity in selecting connecting points and also in the selection of connecting flights over those points. The nature of the construction of connecting flights,—the selection of connecting points followed by the editing of flights, may make a prohibition on bias easy to evade. In addition, with direct flights, bias usually just places a flight farther from the first line of the first screen. In the case of connecting flights, bias may cause flights not to be displayed at all.

One way to avoid this risk would be to specify the standards that CRS carriers must employ in constructing connecting flights displays. As discussed in EDR-466, we are generally reluctant to intervene in the CRS industry to such a degree and to impose

our judgment as to what is the proper level of service quality. This would be inconsistent with the policy of placing maximum reliance on competition, unless it were shown to be necessary to correct abuses in the market.

In addition, before adopting a specific display requirement, we would have to satisfy ourselves that the requirement in fact reflected consumers' preferences in choosing among connecting flights. Moreover, we would have to consider the cost to carriers of implementing any Board requirement. Such costs would inevitably be passed on to consumers. If they were high enough, the Board's requirement could result in a net reduction in consumer welfare.

Thus there are a number of questions to be answered before we can propose any affirmative connecting flight display requirements. We are issuing this advance notice of proposed rulemaking to solicit information and comments to assist us in answering these questions.

The Need for Specific Standards

The threshold question of course is whether Board-imposed, affirmative standards are required to ensure that connecting flights are not selected for display on the basis of competitive considerations and to ensure that consumers will in fact have the opportunity to learn about flights that best serve their needs. Especially with the appearance of new hubs used by one or two carriers, the danger that CRS vendors can avoid listing competitors' flights even with objective standards may be very real, and we are anxious to explore this possibility further.

If this danger is indeed substantial, we request comment on whether it could be alleviated by adding what might be considered less intrusive requirements, such as a requirement that systems use a minimum number of connecting points or that they include additional connecting flights that do not meet the CRS's objective requirements for a fee. The OAG currently "sells" additional connecting flights. What threshold minimum number of connecting points is sufficient to reduce the risk that objective criteria can still be used to block the display of competitors' flights?

Consumer Preferences

If simple prohibitions on bias are not sufficient to correct abuses, it may be necessary to select objective criteria that best serve consumer interests in selecting flights. There are a number of factors which may be of primary importance, such as departure time, arrival time, elapsed time or waiting time at the connecting point. Some consumers may give primary weight to on-line connections over interline connections while others may be indifferent. Some consumers may prefer large aircraft over small aircraft enough that type of equipment is more important than other considerations. Before proposing any specific standards, we need to determine whether any consideration so predominates as to justify its use as an industry standard. If no single factor predominates but two or three appear to be substantially more important, would a combination of standards be more appropriate?

Feasibility

Assuming that we can identify predominant consumer concerns, we must also determine the feasibility of programming CFS's to display flights in a mannner that accounts for the above.

If time considerations alone are used, CRS's could conceivably have to search flights over all possible connecting points in selecting flights for display. What would be the cost of processing individual flight requests? Would the search introduce substantial delay in the processing of those requests? Would non-time standards such as on-line versus interline or large versus small aircraft require similar universal searches of all possible connecting points? Is it possible to construct a program based on multiple criteria? What would be the cost of such a program?

Most systems use a two-step process to build connecting flights today. Connecting points are first selected using a variety of criteria that may include circuity, frequency of service between the connecting point and each end point, size of the city-pair market in question, or historic traffic flows. Once this selection is made, the service related criteria outlined above—like time, on-line/interline, or equipment type—are used to select the particular flights to be displayed over each connecting point. This prescreening of hubs may alleviate the potential expense and delay of a "pure" service standard, i.e. one that requires comparison of flights over all possible connecting points.

Before we would include prescreening of connecting points in a connecting display stanadard, we must consider a number of issues. How clearly would displays where hubs were prescreened resemble displays under a "pure" service standard? Put another way, how often would the results for the first 5 to 10 connecting flights be the same? Is there a particular prescreening criterion that produces markedly superior results? If the results are close, would the added costs of eliminating the gap by imposing a pure service standard be justified. Is there some way to enhance prescreening standards to close the gap between prescreened and "pure" service displays as requiring a minimum number of connecting points or requiring that the CFSs owner sell additional connecting points? What thereshold minimum number would make a material difference and what would be the cost of such requirement?

Comments by interested parties will assist us greatly in resolving these issues. Of even greater assistance would be any hard information such as any studies or surveys or evaluations by appropriate personnel, that already exists or that might be prepared without extraordinary expense in the period allowed for comments. Once we have evaluated comments and information, we will decide whether uniform standards for connecting flight displays are required.

(Secs. 102, 204, 404, 411, 419, 1102 of Pub. L. 85–726, as amended, 72 Stat. 740, 743, 760, 797, 92 Stat. 1732, 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502)

Accordingly, the Civil Aeronautic Board requests comments and information on the issues outlined above.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8043 Filed 3–26–84; 8:45 am]

BILLING CODE 6320–01–M

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14 CFR Part 255

[Economic Reg. Docket 41686; EDR–466C]

Carrier-Owned Computer Reservations Systems

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to adopt rules that would deal with competitive abuses and consumer injury resulting from practices of those airlines that provide computer reservations services to other air carriers and travel agents. The Board is proposing rules that would prohibit specific practices, including discrimination in price and other terms of access to information distribution services; tying of access to information distribution services to the purchase of other services or goods; ordering the display of information in computer reservations systems on the basis of carrier identity; including provisions in agreements with travel agents that impede agent access to objective service information; and that would require the

dissemination of certain computer-generated information.

DATES: Comments by: April 26, 1984.

Reply comments by: May 11, 1984.

Comments received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 41686, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Robert D. Young (202) 673–6060, Samuel E. Whitehorn (202) 673–5450, Paul Samuel Smith (202) 673–5450, Barry L. Molar (202) 673–5205 or George S. Baranko (202) 673–6011, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: This proceeding is an outgrowth of a Congressional request in the Conference Report accompanying Pub. L. 97–369 the Board's 1983 appropriations Act, that the Board investigate the competitive and consumer ramifications of computer reservations systems (CRS's) used by travel agents in marketing air transportation services. In response to this request, the board opened a docket for comments (Docket 41207) and conducted informal interviews with numerous carriers. The Board, in consultation with the Department of Justice, submitted its *Report to Congress on Airline Computer Reservations Systems* (*Report*) on June 1, 1983.

On March 16, 1983, while the Board was preparing the *Report*, the Association of Retail Travel Agents, Ltd. (ARTA) filed petition for rulemaking asking the Board to adopt rules declaring certain avoidable forms of bias in automated reservations systems unlawful. (Docket 41369). After the issuance of the *Report*, two additional petitions were filed. On August 2, 1983, Air Cal, Muse Air, Capitol International Airways, Inc., Midway Airlines, Inc., Ozark Airlines, Inc., Pacific Southwest Airlines, Air Florida, Inc., Jet America Airlines, Inc., Northeastern International Airways, Inc., Pacific Express and Pan American World Airways, Inc. (the Joint Carriers) jointly filed a petition requesting that the Board adopt rules determining criteria for the marketing and operation of CRS's. (Docket 41621). On August 5, 1983 Continental Air Lines, Inc., filed a petition which asked the Board to institute a proceeding to adopt rules to eliminate unfair and deceptive bias and discrimination in the CRS industry. (Docket 41628).

In EDR–466, 48 FR 41171, September 14, 1983 we consolidated the various petitions into a single docket (Docket 41686) and issued an advance notice of proposed rulemaking, which requested comments on the need for rules governing the marketing of CRS services. We indicated that the information then available justified serious concern about the potential for practices in the CRS industry to inhibit competition and injure consumers. If the distribution system or a critical part of it is controlled by a few airlines, and their competitors cannot easily circumvent that system or provide their own system, their ability to compete will be greatly diminished and the premises underlying deregulation will be undercut.

Concluding that CFR access is critical to airlines and consumers, and that a handful of air carriers control those systems now and probably will continue to control them for a long time to come, we requested comments on rules to limit competitive and consumer abuses in three problem areas. First, we suggested that rules to curb display bias might be necessary. Bias is the result of CRS owners' programming their systems to give preference to their own flight information, or that of preferred carriers, in the selection of services displayed on the CRS screen. Second, we suggested that rules to eliminate unfair or discriminatory charges for distributing other air carrier's information through a CRS might be necessary. We were also concerned that CRS carriers might be requiring other carriers to sign agreements for the purchase of unrelated goods or services as a precondition to distributing other carriers' information. Finally we were concerned that the information on travel agent sales to which CRS airlines have access gives them a potentially unfair advantage over their airline competitors.

Comments on the advanced notice of proposed rulemaking were received on November 17, 1983. Generally, the comments fell into four categories. The comments of United Air Lines, Inc., the American Automobile Association, Inc., the Travel Agents' Computer Society and Travel Trust International expressed the view that Board action in this area was unnecessary and unwarranted. Eastern Air Lines, Inc. only commented that any rules the Board might adopt should not be applied to its CRS. While American Airlines, Inc. questioned the need for regulatory intervention, it indicated it would accede to, and in fact proposed, limited rules on CRS practices. The second category of commenters favoring rules included ARTA, Continental Airlines, Delta Air Lines, Inc., the Department of Justice, Frontier Airlines, Inc., Golden Pacific Airlines, the Joint Carriers, Muse Air Corp./Air Cal/Jet America Airlines, Inc. (the Muse Group), Pan American World Airways, Inc., Trans World Airlines, Inc. and Western Airlines, Inc. In their comments, Omega World Travel, Inc., Republic Airlines, Inc., and Tymshare, Inc. argued that the various rulemaking proposals were inadequate to correct the competitive and consumer harm they believed results from air carrier ownership of CRS's. These parties asked us to begin procedures that would produce strutural changes in the CRS industry. Specifically, they seek a proceeding that would consider the need to divest CRS owning carriers of their CRS's or to isolate CRS operations in separate corporate subsidiaries. Of the various commenters, the Bureaus of Competition, Consumer Protection and Economics of the Federal Trade Commission were alone in taking no position. Their comments were filed for the purpose of explaining the FTC's standards for adopting rules predicated on findings of consumer injury.

Reply comments were filed on December 16, 1983 by American, ARTA, the American Society of Travel Agents (ASTA), Continental (we will grant its motion to file late), Delta, DOJ, Eastern, Frontier (we will grant its motion to file an unauthorized document), the Joint Carriers, Midway Airlines, Inc., the Muse group, Nothwest Airlines, Inc., Pan Am, the Regional Airline Association, Republic, TACOS, TWA, Tymshare (we will grant its motion to file late), United, USAir, Inc., Western, and World Airways, Inc.

Simultaneously with our request for comments on EDR–466, we issued Order 83–8–105, August 26, 1983 which directed certain air carriers that operate computer reservations systems used by travel agents to provide specific information concering those systems. (Docket 41663). We indicated that the information might be used in this proceeding or in a future enforcement proceeding under section 411. United and American filed pleadings requesting that we reconsider our order and that it be vacated. These petitions were denied by Order 83–10–74. In that same order we deferred action on United's request for an adjudicatory hearing. (Docket 41735), which has been consolidated into this proceeding.

The information has now been filed. By Orders 83–12–136, 84–1–41 and 84–2–85, we made that information accessible to interested persons for use in formulating their positions in this

proceeding, subject to carefully articulated procedures for maintaining the confidentiality of documents where such treatment was justified.[1]

On the basis of the information we have received in Docket 41663 and comments and reply comments to EDR–466, we have decided to adopt general rules that would forbid air carriers owning computer reservations systems from using those systems to affect air transportation competition adversely and to cause consumer injury. We find that rules dealing with unjust discrimination in the terms of contracts with other carriers are necessary. We are also proposing rules that would prohibit the ordering of information in integrated displays on the basis of carrier identity. Under those rules, CRS vendors would be required to inform participating airlines of the criteria used in selecting connecting cities and ranking flights. We are futher proposing rules that would forbid subscriber contract terms that would impede travel agent access to other information sources. Finally, we are proposing rules requiring CFR carriers to disseminate to participating airlines information generated by CRS's.

I. Overview

It has been just eight years since United and American decided to market to travel agents computers that would provide them with information on flights and fares offered by carriers, and whether seats were available. Those carriers admit that they were willing to provide such services at a substantial loss in order to gain agent acceptance. Moreover they acknowledge that they were willing to include competing carriers' information in their systems, without charge to other carriers in order to make their systems more attractive.

CRS's have become virtually essential for information management. On top of the tremendous amount of information to be managed already, in 1978, airline deregulation multiplied the number of flight and fare offerings available in the marketplace several times. Moreover, deregulation has allowed carriers to change their flight and service offerings almost at will, which has created the need for information sources that are updated far more quickly than those in place prior to 1978. It is not surprising, therefore, that 90 percent of travel agent sales are through CRS systems. They provide a highly efficient information source, in addition to keeping track of passenger reservations and printing tickets.

With travel agents' increasing reliance on computers as an information source, it has become more important for air carriers to have their information displayed on the various computer systems. Travel agents are the primary distributors of air transportation. Moreover, their importance as a distributor is increasing. At the present time over 60 percent of all air transportation sales in the United States are made by agents.

This fact has not gone unnoticed by CRS vendors. In the last three years they have begun to charge their competitors for the display of information through their systems. CRS vendors' tendency to charge and their competitors' willingness to pay for information display highlights the importance of CRS's in the current air transportation distribution industry. Insofar as agents are the primary distribution mechanism, and CRS's are their information source, if a carrier's information does not appear in the computer display, that carrier will be at a significant disadvantage vis-a-vis its competitors. The agent will not know of its services and will not offer them to the public as a travel option.

The information distribution function of computer reservations systems constitutes, in essence, the vertical integration of CRS vendors into air transportation distribution. CRS's are the information source for the prevalent distribution method. Distribution is one level removed from air transportation competition and the level at which consumers actually purchase air transportation services. With vertical integration, if vendors have market power at the distribution level, they can use it to harm competition at the transportation level.

In this proceeding we are examining the CRS industry to assess its competitive and consumer impact on air transportation services. We have been entrusted with the responsibility for ensuring a competitive air transportation industry, and if CRS vendor practices are having an adverse effect on competition and consumers at that level, we believe we have the authority to redress such problems. Specifically, section 411 of the Federal Aviation Act (49 U.S.C. 1381) permits us to determine whether any air carrier has engaged in unfair or deceptive practices or unfair methods of competition in air transportation or its sale. Under section 41, we need not wait until violations of the antitrust laws actually occur. We may act to prevent problems from occurring when we determine that a significant potential for abuses exists.

Our review of the information we have received in Docket 41663 and the comments we have received on EDR–466 leads us to conclude that some CRS vendor practices do, or in the future, may affect air transportation competition and consumer interests substantially and adversely. We have decided, therefore, to propose general rules that would eliminate or prohibit those specific vendor practices. While greater regulatory intervention, in the form of very specific rules of conduct or some form of structural relief might yet be necessary, we believe that the rules we adopt will be adequate to ensure vigorous air transportation competition and to avoid consumer injury.

Our belief that CRS carriers are engaged in unfair methods of competition flows from CRS vendors' role as providers of automated information distribution services to other air carriers. The facts clearly demonstrate that CRS vendors have substantial control over the information travel agents have on their competitor's flights. Our data on CRS vendors' market shares and concentration in the CRS industry shows the industry to be highly concentrated, with just six firms providing CRS services and two of them, American and United, having nearly 70 percent of the CRS market between them. Concentration is even more pronounced on a regional level, with individual CRS vendors frequently having market shares of more than 50 percent. These facts create an inference that CRS vendors at national and regional levels have substantial economic power in the information distribution market.

The inference of economic power is strengthened by evidence that entry into the CRS industry is difficult and that CRS carriers are engaged in conduct that could only occur if they possessed substantial market power. For example, as CRS owners acknowledge, they can differentiate in the prices they charge their carrier competitors for automated information distribution services on the basis of the services' value to their competitors. Regardless of whether such pricing practices are desirable, as a matter of economic theory, a producer of a good or service could not engage in that type of conduct in a competitive market. We may act to prevent its use of adversely affect air transportation competition under section 411, whether or not this economic power can be described as monopoly power.

Our review of CRS vendor practices has revealed conduct producing

[1] Throughout this document we cite material from Dockets 41663 and 41666. The DOJ material cited is contained in Docket 41666, and references to Appendices are those of the commenters—and not those listed in the orders cited above.

competitive harms that may be analagous to conduct that would be labeled an abuse of monopoly power under section 2 of the Sherman Act, 15 U.S.C. 2. CRS carrier vendors are apparently gaining the ability to determine the terms on which they provide automated information distribution services on the basis of the extent to which the other carriers compete with them. The charges being assessed for providing such services are or may be assessed, in significant measure, upon the extent or nature of competition from the other party. Similarly, CRS carriers appear to possess the power to offer special service enhancements to other carriers and to set display priorities based upon the extent or nature of competition from the other carrier.

An entity holding market power in one segment of the distribution chain should not be able to use that power indiscriminately to influence competition in the final product. It can be required to deal on reasonable non-discriminatory terms with its competitors for the final product. To forestall these users of CFR economic power we are proposing rules that would prohibit discrimination in access charges, enhancements, and display priorities based upon a carrier's identity. We are also proposing requiring CRS vendors to inform participating airlines of their criteria for display.

CRS vendors use economic power in another way that adversely affects competition. Some CRS vendors have sufficient economic power to require, as a precondition to providing automated information distribution services, that their competitors compensate them for writing some kinds of tickets. CRS vendors are, in effect, tying CRS access to the purchase of direct sales services, services which were previously done free of charge as a service to the public. It is well established that a firm holding market power in one market cannot exert that power to require the purchase of goods or services in another market. Consequently, we are proposing a rule that would forbid CRS carrier vendors from requiring the purchase or sale of any other goods or services as a condition for participation in their systems.

Our proposed rules are justified because the types of conduct set out above are having an immediate substantial effect on air transportation competition. The targeting of economic power to raise competitor's distribution costs selectively is constraining competition on the merits of fare and service offerings. Further, it appears to have the potential effect of deterring some entry into air transportation markets. Consumers are injured by diminished air transportation competition and higher fares.

We also find that CRS carrier vendors practices may be, or could in the future result in, unfair and deceptive practices under section 411. An unfair and deceptive practice occurs when a practice produces substantial injury to consumers that is not outweighed by offsetting benefits and cannot reasonably be avoided.

Consumers view travel agents as providers of objective travel advice. The system of common accreditation of travel agents was designed for this purpose and its rules impose specific obligations that agents serve their many principals fairly. Agents believe that CRS's can be used to obtain information on all air carriers' services. CRS carriers have fostered this impression by claiming that information is objectively displayed and that the best flights are listed first or in the first display. In practice, however, CRS carriers include in their displays significant preferences for their own services, and those of favored competitors, and these preferences inhibit travel agents' ability to provide objective advice. This is causing substantial injury to consumers in that they are being steered to specific carriers without due regard to price and service offerings. Other air carriers that may provide better service, whether it be at a lower price, at a preferable time or with a more attractive connection, are being denied revenues they would normally receive. As a result, air transportation competition on the merits of fare and service offerings is being undermined. This injury cannot be reasonably avoided by agents or consumers because it is frequently difficult to detect, and, even if detected CRS carriers have the means to change its character and extent almost at will. Moreover, CRS carriers have begun to include clauses in their contracts with agents to inhibit access to alternative information sources. In addition, the alternative CRS systems will also be biased.

In our view these facts lend further support for rules forbidding the use of carrier preference factors in ordering information on CRS displays. They also provide a basis for voiding subscriber contract terms of undue length that require the use of a particular system in the sale of its air transportation services, and that inhibit the use of any other system in the sale of air transportation.

Finally, CRS carriers have gained an unfair advantage over their competitors insofar as CRS's generate information for themselves that is unmatched in making marketing decisions and developing marketing initiatives. Such information is proprietary to the carrier on which the flights are booked and should not, properly, be used for other purposes. If, however, a CRS carrier generates such information, it should make that information available to participating airlines on non-discriminatory terms. We are proposing a rule to this effect.

Should we finally adopt our proposed rules, we are currently contemplating a 90-day transition period, from the date of final publication of the rules, before the rules would become effective. Our examination of the documents submitted in this docket and Docket 41663 suggests that the reprogramming of the various CRS systems to eliminate display bias will not be very burdensome. The major CRS vendors have demonstrated that they could change their display bias very quickly when it was in their economic interest to do so. Of course, our rules will also require CRS providers to renegotiate some provisions of their contracts with carriers and subscribers. We believe 90 days will be adequate for that task. We invite comments on these issues.

II. The Relationship Between CRS's and Air Transportation

A. The Role of Travel Agents in the Marketing of Air Transportation

Since the passage of the Airline Deregulation Act, two striking trends in the distribution of air transportation have developed. First, travel agents have become the primary distribution outlet for air carriers. Second, the overwhelming majority of travel agents have come to rely on CRS's as their primary resource for information on carriers' fares, service and availability.

As the air transport industry is currently structured, airlines have two major outlets for the distribution of their tickets: direct sales made by them and their competitors, and travel agents. Of these two distribution channels, the travel agency system has grown predominant, and its importance is expected to increase over the next few years. Travel agents' share of airline sales has been rapidly increasing in recent years. They accounted for 38% of domestic airline ticket sales in 1977, 53% in 1979, and between 60% and 65% in 1982. Order 82-12-85, p. 19, note 45. Travel agents' share of international sales in the United States is even

higher—approximately 80%. It appears that this trend will continue, at least over the next few years. Based on "research and some careful modeling," United strategists have predicted that the travel agent share of airline sales will grow to 85% by the late 1980's. DOJ Appendix B; UA001583.

The travel agency distribution system has an important feature which sets it apart from distribution systems in other industries. Unlike agents in most other industries, where distributors represent the interests of one on a few principals, each travel agent sells tickets on behalf of almost all airlines. The two major air carrier trade associations—the Air Traffic Conference of America (ATC) for domestic carriers and the International Air Transport Association (IATA) for international carriers—handle the accreditation and policing of travel agents for their members. Travel agents accredited by either or both of the two associations are authorized to sell air transportation for the associations' members. Until recently this conference agency system was the only outside distribution channel that association members could use.

While the Board's decision in the *Competitive Marketing Investigation*, Order 82–12–85, December 16, 1982, now permits the simultaneous use of conference agents and other persons as marketers, carriers have not implemented their new freedom. No carrier to our knowledge is using non-conference travel agents. Indeed, ATC and IATA have sought to reverse the Board's decision both in the courts and Congress.

In order to present both their clients and their air carrier principals adequately, travel agents must have access to accurate and timely information on the carriers' schedules, fares, and seat availability. Prior to deregulation and the growth of CRS's, agents typically accomplished this task as follows: after ascertaining the traveler's needs the agent would turn to the Official Airline Guide (OAG), a book containing carrier schedules and some limited fare information, to locate flights and carriers that could serve the customer's needs. To determine the applicable fares and restrictions, the agent would then turn to carrier tariffs, voluminous publications containing all fares, rules and restrictions for each carrier and routing. Once the agent had determined desirable flight and fare, it would have to telephone the air carrier's reservations office to confirm the flight and fare information, find out whether the carrier had seats available, and make a reservation for his customer. The agent would then write the passenger's ticket by hand or through a teleticket printer.

Even before deregulation this process was cumbersome, time-consuming and costly for both airlines and agents. Recognizing this, the airlines, which had computerized their own in-house reservations functions, made several attempts between 1967 and 1976 to develop an industry-wide CRS for use by travel agents. These efforts failed for various reasons, and in 1976, United announced that it would market its own proprietary CRS system to agents. American and TWA soon followed.

The efficiency benefits of CRS's are obvious. With a CRS, a travel agent can obtain on successive computer screens the schedule of flights offered by various carriers, the fares charged by the carriers, and the availability of seats on particular flights. In addition, the agent can make reservations on most carriers through the computer and can automatically print tickets. On most systems, agents can also make hotel and car rental reservations. This entire process can take place without the intervention of carrier reservations personnel. Travel agents may also add to their reservations computer a "back office" accounting system, which maintains client records for billing purposes and keeps the agents' accounts. This permits an agent to operate virtually a paper-free office. This streamlining of the reservations process results in striking efficiency gains for agents and airlines. One survey estimated that the average productivity gain from automation was forty-two percent. *Travel Weekly*, May 1982, Louis Harris Study at 51.

Deregulation of the air transport industry has further emphasized the superiority and necessity of CRS's as information systems for airlines and travel agents. The number and variety of fare and service offerings, which were relatively stable prior to deregulation, have exploded since that time. So has the frequency of fare and schedule changes. Hub-and-spoke route systems have replaced linear route systems, reducing the number of direct flights but increasing the number of available connecting flights over an ever-widening variety of hub cities. A profusion of new carriers has entered the market. American has argued, with some merit, that CRS's have become a necessity, Docket 41207, American Airlines, Inc., Travel Agency Automation in an Era of Deregulation, April 1983, p. 35, reproduced in Addendum to CAB *Report to Congress on Airline Computer Reservations Systems.*

The growth in travel agency automation, which has paralleled the growth in the travel agent distribution system, further demonstrates CRS's efficiency advantages. In November 1977, United estimated that each of the three CRS's then offered to travel agents (APOLLO, SABRE and PARS) had been placed in about 270 travel agencies. UAO11511. By June 1980, about 4,060 agencies had computer equipment installed. *Automation in Airline Reservation and Ticketing Systems*, pp. 1–3, Docket 36595. Over the following three years, the number of automated agencies grew to about 14,000 by June 30, 1983. *See* DOJ Comments Appendix A, page 1. When one considers that the automated agencies also tend to produce the largest amount of airline revenue, the trend becomes even more dramatic. Some 90% of the airline revenue produced by travel agents is now produced by automated agencies. DOJ Comments at 36.

It is evident that CRS's have become the primary information and distribution resource for airlines and travel agents, and that the old OAG-telephone-manual method is at best a supplement to, rather than a substitute for, CRS's. It is further clear that for a carrier to obtain meaningful access to the majority of the traveling public that uses travel agents, the carrier must be included in the agents' primary information source—the CRS.

B. The CRS Industry Today

While the six CRS's currently available to travel agents have some significant differences, their basic feature is the same—they provide access to electronic display of airline schedule, fare and availability information together with the ability to book, sell and issue tickets automatically through the system. DOJ Comments at 25. They accomplish this by providing access to, and communication with, the reservations data base of one or more airlines. These data bases, which are maintained by all airlines, contain information on schedules, fares, and seat availability for the airline that owns the data base and for others as well. The three basic data components are obtained from various sources. Airline schedules are obtained from the OAG. Virtually all airlines submit their schedules of direct flights to the OAG for its publication. In addition to publishing this information in hard-copy form, the OAG Prepares consolidated computer tapes containing these schedules and provides them to the airlines on a weekly basis. The airlines' computers use two tapes as the

bases through which they search for direct flights and build connections. The Airline Tariff Publishing Company (ATP) perform a similar function with respect to fares and their associated rules and restrictions.

The acquisition of information on seat availability is somewhat more complicated. Since each airline needs to retain control over the inventory of seat for its own flights, there is no centralized information source for seats availability. Instead, the airlines have established a communications network operated by Aeronautical Radio, Inc. (ARINC) through which their computers can exchange reservation requests and information on seat availability. This system is far from perfect. The ARINC network is required to handle an overwhelming amount of message traffic, and some messages are inevitably delayed, lost, garbled or mistaken. In addition, carriers frequently "close" flights for sale by other carriers before all seats are reserved to avoid overbooking or simply to reserve part of their inventory for themselves. As a result of these factors, the most accurate any up-to-date information on the availability of seats for any particular flight resides in the computer of the carrier providing that flight. To overcome the ARINC problem, some large carriers have direct, computer-to-computer links.

The CRS's now available to travel agents are of three basic types: Proprietary, direct access, and multi-access. The proprietary systems (APOLLO, SABRE, PARS and DATAS II) offer the agent access to only one data base—that of the system proprietor. The schedule, availability and other displays are modifications of the displays used by the proprietor's in-house reservations personnel, and the travel agent's transactions are processed in the same way as transactions initiated by the carrier's in-house personnel. The initial display of Eastern's SODA system is also a proprietary display. That is, the agent has acces to, and books his transactions in a modified proprietary data base. In addition, however, the agent is essentially able to view the in-house availability displays of other participation carriers. This feature gives the agent more accurate and reliable information on participating carriers' service, particularly on their seat availablility. A multiple access system (MARS PLUS and the SMART enhancement to SABRE) is basically a computer switch which allows the agent both to view and to interact with the in-house systems of the participating carriers. APOLLO offers another variation, called direct link. The agent views the display of the APOLLO system but it can communicate directly with the in-house systems of participating carriers.

C. CRS Market Share

As noted above, United (with APOLLO) and American (with SABRE) were the first to enter the CRS market. They were followed by TWA (with PARTS). In the 1970's, ITT developed the Mars Plus multi-access system in conjunction with a number of airlines. Finally, in the last three years, Eastern (with SODA) and Delta (with DATAS II) completed the list of current CRS providers. USAir and Frontier have also made aborted attempts to enter the field.

As a result of its investigation of the CRS industry, DOJ has presented to the Board an extensive compilation of the market positions of the six CRS providers in every metropolitan statistical area and consolidated metropolitan statistical area in the U.S. and for the nation as a whole (excluding only those agencies located outside an MSA or CMSA). Based on DOJ's description of its methodology, the absence of any challenge to its figures, and other information available to the Board, those market share statistics appear to present a reliable but conservative picture of the relative positions of CRS hosts. See Tables 1–3.

DOJ computed its statistics on two different bases: (1) The number of travel agency locations for each CRS and (2) the amount of domestic airline revenues generated by those agencies over a one-year period. The second perspective provides a much more accurate picture of the relative economic strength and penetration of the respective systems. From DOJ's tables it is apparent that United and American CRS's far surpass other systems in terms of number of agency subscribers and revenue produced by those subscribers. Information submitted by the CRS hosts themselves increases the relative dominance of APOLLO and SABRE. Responses to Information Directives 1 through 56, Docket 41663.

TABLE 1.—NATIONAL SHARES OF ALL AGENCIES, 18 MO ENDED JUNE 1983

CRS	Number	Percent	Domestic revenues	Percent
APOLLO (United)	[illegible]	18	[illegible]	[illegible]
DATAS II (Delta)	[illegible]	[illegible]	259,774,372	2
MARS PLUS (Tymshare)	[illegible]	2	[illegible]	2
PARS (TWA)	2,159	10	1,561,123,415	10
SABRE (American)	5,692	27	[illegible]	43
SODA (Eastern)	1,074	5	[illegible]	4
Unautomated	7,546	35	1,822,511,524	12
Total	21,360	100	14,947,832,487	100

TABLE 2.—NATIONAL SHARES OF AUTOMATED AGENCIES BY PERCENTAGE OF REVENUE, 18 MO ENDED JUNE 1983

CRS	Number	Percent	Domestic revenues	Percent
APOLLO (United)	[illegible]	22	[illegible]	[illegible]
DATAS II (Delta)	[illegible]	5	259,774,372	2
MARS PLUS (Tymshare)	[illegible]	2	[illegible]	[illegible]
PARS (TWA)	2,159	16	1,561,123,415	12
SABRE (American)	5,692	41	[illegible]	[illegible]
SODA (Eastern)	1,074	8	[illegible]	5
Total	13,822	100	13,125,320,963	100

TABLE 3.—$100 MILLION URBAN MARKET (CNSA) WHERE A CRS HAS MORE THAN A 40-PERCENT SHARE OF THE MARKET, 18 MO ENDED JUNE 1983

SABRE	Percent	APOLLO	Percent	PARS	Percent
Anchorage	92	Denver	72	Kansas City	[illegible]
Dallas-Fort Worth	86	Portland	[illegible]	St. Louis	[illegible]
Cincinnati	[illegible]	Cleveland	64	Columbus	[illegible]
Phoenix	[illegible]	[illegible]	57	Pittsburgh	[illegible]
Boston	69	Sacramento	52		
Rochester	[illegible]	Salt Lake City	52		
Houston	[illegible]	Seattle	[illegible]		
San Diego	54	Honolulu	47		
Detroit	[illegible]	Buffalo	44		
Washington, D.C.	51	Chicago	42		
New York	[illegible]				
Miami	49				
Minneapolis-St. Paul	49				
Hartford	46				

TABLE 3.—$100 MILLION URBAN MARKET (CNSA) WHERE A CRS HAS MORE THAN A 40-PERCENT SHARE OF THE MARKET, 18 MO ENDED JUNE 1983—Continued

SABRE	Percent	APOLLO	Percent	PARS	Percent
Los Angeles	43				
Salt Lake City	42				
Chicago	41				

D. Entry into the CRS Market

Development of a CRS is expensive and time-consuming, even for entrants that are starting with sophisticated in-house systems. American estimates that it has incurred capital costs of $160 million in developing SABRE, and United's claimed expenditures for APOLLO run as high as $500 million. DOJ Comments at Appendix B: UA002433. DOJ estimates that entry would require a minimum investment of at least $100 million. DOJ Comments, at 71. Moreover, it appears that a substantial portion to these capital costs are "sunk" costs—costs that are not recoverable if the enterprise is discontinued. A significant factor in the cost of entry is programming, or software development. In addition, in today's fast-changing data processing field, computer equipment may become quickly outmoded, and its resale value can plummet.

The time required to develop a CRS is also substantial. Programmers experienced with airline data systems are scarce and take from six months to two years to train. DOJ Comments at Appendix D: Kotar Tr. at 184–5, Murray Tr. at 120–26. SABRE and APOLLO have taken years to develop sophisticated enhancements like back-office accounting packages, automatic pricing, complete rules displays and advance boarding pass capabilities. A new entrant who fails to match these attractive features may be limited in the customers he can attract. For example, according to DOJ, Eastern's failure to offer an accounting package in conjunction with its system has limited its market penetration to the smaller travel agencies. DOJ Comments at 72.

A provider of a CRS also faces the economies of scale situation encountered in many "information" industries. The "provision" of the product entails a high fixed cost and a relatively low variable cost per user—average unit costs will decline with increasing output over a considerable range. NERA Analysis, page 9 attached to American's comments. Consequently, there is a "critical mass" of "threshold" factors to be considered—the need to attain some minimum level of market penetration before production becomes economic. *Id.* at 11. At a lower level of market penetration, a CRS owner is operating at a loss. If its costs per transaction are considerably greater than the price it must charge to the competitive, and if it takes a long time to increase its market share enough to lower its costs significantly, the CRS owner will be incurring substantial losses. Such losses are almost entirely sunk costs; they cannot be recouped upon exist.

In the CRS industry, the need to attain a significant share of the market quickly to reach minimum efficient size, and obtain larger incremental revenues, prompted American and United to offer low "introductory" prices to travel agents to whom they initially marketed their systems. *Id.* at 10–12. While this pricing policy was certainly sensible—particularly considering the risk involved in introducing a totally new service to the market place—it apparently set the general pattern for generating revenue that prevails today.

There are three potential sources of revenue for a CRS proprietor to recover its costs and make a profit: charges to travel agent subscribers, fees to airlines for reservations services and, for airline proprietors so-called incremental revenues, *i.e.*, air transport revenues that the CRS proprietor gains by virtue of its system's presence in a travel agency. The pricing and marketing strategies of the two pioneer CRS proprietors have, since their systems' inception, placed the greatest reliance on the third revenue source to pay their way. This strategy has, for better or worse, largely dictated the course of CRS development.

The phenomenon of incremental revenues is relatively simple to describe but difficult to quantify. When a travel agency is automated with a particular carrier's CRS, there is a very strong tendency for the agency to place a disproportionate amount of its customers on the flights of the CRS proprietor. There are several reasons for this phenomenon. First, CRS carriers "bias" the selection and display of industry services to give prominence to their own flights and suppress those of their air carrier competitors. Second, an agent's use of a carrier's CRS tends to foster close contact with, and general good will toward, that carrier. This "halo effect" tends to make the agent prefer flights of the CRS carrier when other factors are equal. Finally, as was described above, a CRS's information on seat availability tends to be more accurate for the proprietor's flights than for those of other carriers, so the agent may feel safer in booking the CRS carrier's flights, *i.e.*, those of the largest transporter in the area.

Although estimates vary, all agree that the amount of additional air transport revenues generated by this phenomenon is tremendous. American, which has devoted the most effort to quantifying incremental revenues, has made estimates ranging from $78.5 to $150 million for 1980. DOJ Comments, at 54 and AA–ER1–22, p. 5. United has made a conservative estimate for purposes of this proceeding that its 1983 incremental revenues from Apollo were over $160 million (versus a system owned by a competitor). Internally, United has made little effort to quantify its incremental revenues, but it apparently believes that "possessing an airlines' [CRS] is strongly associated with disproportionately greater bookings being assigned to that carrier." *See* DOJ Comments at 107.

The extent of incremental revenues is also indicated by internal estimates of return on investment for decision making purposes. TWA has regularly estimated return on investment above 25% for capital expenditures to expand PARS. In some cases estimates have been over 95 percent with payback periods of approximately one year. *See generally* TW-Con, ER1–(22), pp. 32–81. In almost all instances, income generated by increased travel agent and carrier fees alone would have produced losses or barely covered expenses.

United believes that at each SABRE agency converted to APOLLO it will realize a 10-percent increase in air transportation revenue. It expects a 5-percent increase in revenue when a previously unautomated agent becomes an APOLLO agency. UA 12207 and UA 20628.

United and American have emphasized the importance of incremental revenues since the inception of their systems. Their motivations for entering the CRS market in the first place were, quite naturally, their desire to develop a more effective and efficient marketing system for their own air transportation product. Before their systems became widely accepted by travel agents, they had to price their systems attractively. They also had to offer the agents systems with the ability

to research and book industry-wide. They therefore made their information distribution and booking services available to other carriers at no charge. As the systems grew and the CRS carriers began to realize the anticipated incremental revenues, a number of developments took place.

First, their battle to sign up the strategic agencies intensified, and fees for targeted agencies were driven even lower. *See* DOJ Comments at 51–56. Second, the CRS proprietors began to seek ways to obtain revenues directly from other carriers. At first, when the systems were still small, these efforts were directed toward developing "co-host" arrangements whereby carriers that did not compete extensively with the host, Western with American and Delta with United for example, would pay modest (by today's standards) booking fees and a small capital contribution and would assist the host in marketing its system in areas where the co-host had a strong air transportation presence. In exchange, the host would bias its displays to favor the co-host. As the CRS's expanded their travel agent base, the hosts expanded their co-host program with increased booking fees; began in late 1980, to demand "net ticketing agreements" as a condition of CRS access; and, in late 1981, began to demand booking and net ticketing fees from carriers that were not co-hosts. By contrast, some new CRS entrants have not placed such demands on other carriers for access to their systems. *See* DL–NC–ERI–8–(1–3).

Interestingly, the booking fees to non-co-hosts, who received no bias in their favor, were in many cases substantially higher than co-host fees negotiated at the same time with other carriers. Fees per segment booked through APOLLO and SABRE currently range from $0.30 to $3.30, depending on the carrier. DOJ Comments, Table 7, at 139–140. This does not include the fees under "net ticketing arrangements," which American and United could only get other carriers to accept by making entry into such arrangements a precondition to access to their CRS systems. DOJ Comments at 141 and documents cited. Net ticketing fees—fees for handling tickets which name the CRS-owner as the ticketing carrier—can vary from $.50 to $3.85 for tickets written by travel agents and from $1.00 to $12.10 for tickets written by the carrier's own employees, in addition to the CRS access fee. DOJ Comments at 142–143.

While these developments reflected an effort by United and American to expand the revenue base for their CRS's, this new revenue source clearly remained subordinate to incremental revenues. Thus, the widely varying booking fees American charges to co-hosts are based not on American's costs but on the impact the addition of that co-host will have on American's air transport revenues. DOJ Comments at Appendix D: Baker Tr. 130. *See also* DOJ Comments at 118. After November of 1981, United based its pricing strategy not on its costs or on the fees its CRS competitors were charging, but on the degree to which the participating airline competed with United in air transportation. DOJ Comments at 128–134.

The third development that took place as the two systems matured was that their proprietors began to increase the degree and sophistication of the bias in their systems. Several studies commissioned by United found that travel agents have a high degree of tolerance for bias and that they do not work to defeat the bias, and recommended that United increase its level of bias and make it more subtle. UA IR's 018178–018182, 018183–018191, 018266–018366. In August of 1981, United launched a two-phased Parametric Merchandising project designed to increase the level and subtlety of its bias. DOJ Comments at 99. American also increased the level of its bias several times during this period in such a manner as to minimize detection by travel agents. DOJ Comments at 83. Since TWA first introduced bias into PARS, the amount of bias on direct flights has increased twelve-fold. TW–Con–ER1–(26–27), pp. 16–29.

The fact that the incentives and strategies of the two major CRS proprietors are dominated by their desire to maximize downstream air transportation revenues has some important consequences. It forces all other CRS proprietors and potential entrants to match that strategy. If a CRS competitor wishes to attract any travel agent subscribers, it must offer its system at prices that are competitive with the at/or below-cost rates offered by the dominant CRS carriers. That forces the CRS competitor to rely on a combination of carrier fees and incremental revenues to compensate for the revenue shortfall from the travel agent source. Non-carriers or small carriers do not have the large air transport traffic base necessary to realize substantial incremental revenues and so are not able to earn a profitable return on a CRS. Large CRS carriers that are able to realize incremental revenues are forced into a strategy that will maximize their incremental revenues. Delta, for example, allegedly has introduced a substantial element of bias into its system through its choice of connect points even though it markets its system as unbiased. *See* American Airlines Reply Comments at Appendix B.

E. Difficulties in Converting Agents

Another set of obstacles facing any would-be CRS proprietor relates to the difficulties in inducing agents to switch from one system to another. While the CRS industry has grown rapidly, it has at this point reached a certain level of maturity. The 35 percent of travel agents that remains unautomated account for only 12 percent of the air transportation sold by agents. DOJ Comments at Appendix A. A new CRS entrant cannot realistically gain a significant foothold in the CRS market by focusing solely on this pool of the smallest, unautomated agents. The alternatives then, are to attempt to convince automated agents to switch systems or to persuade agents to accept the new CRS as a second system. Both alternatives present serious difficulties.

In most cases, the agency's contract with its current CRS provider restricts its ability to change or add systems. It appears that most travel agent contracts on SABRE are 4–5 years in length, and United has recently begun to sign many agents to 7–10 year contracts. DOJ Comments at 60. These contracts also provide for fairly substantial penalties for cancellation. Notably, the length of American's and United's contracts have been increasing over the years. And, TWA, Delta and Eastern appear generally to use three-year contract terms. The lengthy terms of the contracts on the dominant CRS systems sharply reduce the number of agencies that the CRS entrant can seek to convert at any one time. Liquidated damage provisions may reduce even further the agency revenues the CRS entrant can hope to receive. For example, the liquidated damages clauses in APOLLO contracts require payment of 80 percent of the remaining rentals due under the contract. DOJ Comments at 61.

The two major CRS providers also attempt to restrict an agency from using more than one CRS. United requires that its subscribers use Apollo for at least 95 percent of all bookings that contain any United segments. UA 004603. Because of the prevalence of interlining and United's extensive route network, this so-called "95 percent rule" effectively prohibits any use of a second system for booking and ticketing functions and thereby forces agents to choose between Apollo and another CRS. American's

"minimum of parity" rule requires new subscribers to have at least as many SABRE CRT's as there are non-SABRE CRT's at each location. DOJ Comments at 57. As a result of these policies and other factors, few automated agencies, accounting for 12.6 percent of automated agency revenues, have more than one CRS at the same location. DOJ Comments at 58.

Aside from contractual limitations, agents have a great reluctance to switch systems because that process can be very costly and inconvenient. Switching causes great disruption of the agency's business due to the replacement of equipment and the time required for training and familiarization with the new formats and procedures. United's travel agent research confirms this point. One study, conducted in 1981, reports that "very few owners or managers express even the slightest interest in switching systems. The system they have represents a significant investment not only in terms of money, but in training and adjustment as well." UA 018328, DOJ Comments at Appendix B.

As was noted above, the regions where a carrier's CRS is predominant tend also to be regions where that carrier has a strong air transportation presence. There are two reasons for this striking correlation. First, because the primary source of revenue from CRS operations is incremental revenues, the major CRS proprietors have historically concentrated their sales efforts on the areas and agencies where they had the most air transportation business. Second, and perhaps more important, however, is the fact that in areas where a CRS proprietor has a significant air transportation presence, it has a distinct advantage over a CRS proprietor that does not have such a presence. *See* DOJ Comments at Appendix B; UA 018324–325

The primary basis for the second competitive advantage is the fact, noted above, that the proprietor's CRS contains the most reliable, accurate and up-to-date information on its inventory of airline seats—which the travel agent recognizes as a necessity or a large advantage in writing tickets on that carrier. One of the biggest problems facing the CRS industry and the travel agent today is the so-called "no rec" problem. This occurs when the transmission of reservation requests, seat confirmations, and availability status messages from carrier to carrier through the ARINC message system becomes lost, garbled or delayed. In the typical case, for example, when a travel agent using carrier A's CRS makes a reservation for a customer on a flight of carrier B, A's computer sends a message to B through the ARINC system. If B has space available and accepts the reservation, it sends a confirmation back to the agent through A. If, however, the original reservation message never reaches B, the agent may believe its customer has a confirmed reservation. When the customer arrives for B's flight and finds it booked, the traveler may be turned away because carrier B has no record of the reservation. This problem is avoided if the agent can, through its CRS, book directly into the inventory of the transporting carrier. Thus, travel agents have a very strong incentive to obtain the CRS that gives them immediate access for the largest proportion of their business.

Another example of the advantages gained from a CRS carrier's control over its own seat inventory is last seat availability. Largely because of the delay factors occasioned by ARINC, carriers frequently reserve part of their inventory for sale by their own reservations agents or through their own CRS. A CRS that can offer the agent access to these last available seats for the flights and carriers booked most often has a distinct marketing advantage.

Finally, American and United have recently developed an enhancement that further improves their regional advantages. SABRE and APOLLO agents can now issue their customers advance seat assignments and boarding passes for their proprietor's flights. This appears to be an attractive feature, especially for business travelers. Other enhancements might be developed in the future that would have a similar effect.

F. The Importance of Incremental Passengers in Air Transportation

The key to understanding the effect of CRS practices—particularly bias—on competition in air transportation is to recognize the impact of incremental passengers on costs and profitability. Since a flight costs almost as much to operate empty as full, the cost per passenger is highly dependent on the load factor—the percentage of seats filled with revenue-paying passengers. Simply stated, an airline averaging a 70-percent load factor will operate at roughly half the per passenger cost of a carrier with a 35-percent load factor, all other things being equal.

An airline will consider entry into market in a situation where it can reasonably expect to attain a load factor sufficiently high that it can cover its per passenger cost and make a profit at the prevailing price level. If it obtains more passengers per flight, its profits should increase dramatically—assuming it is not discounting greatly—since the added cost of each additional passenger is a small portion of the ticket price. On the other hand, if it fails to reach a breakeven load factor, its costs per passenger will correspondingly increase in relation to the percentage its load factor is below breakeven. Moreover, unlike a seller of non-perishable goods, an airline's inventory of seats cannot be retained for another day. Once a flight takes off, the unsold seats will never provide any revenue.

The basic point is that small differences in average load factors often make the difference between substantial profit and significant loss in the airline industry. This is the basic reason for the popularity of the so-called "hub and spoke" route systems. Each additional flight a carrier adds at its hub will increase by a small percentage (perhaps only one point) the load factors on connecting flights leaving for points beyond the hub. In this way, the hubbing carrier lowers its per passenger costs and increases its profitability.

Essentially the same phenomenon is at work in the CRS industry. Each of the CRS providers recognizes that if an agent does not use a CRS or uses one without bias, it will place a certain number of passengers on its airplanes. This number can be increased by inducing the agent to use its CRS and by biasing their displays, because the probability of sale decreases line-to-line, screen-to-screen. AA083619. TW–CON–ER1–(9).

The added revenue which the CRS owner obtains through bias is, in most circumstances, profit-laden. Internal airline analyses often assume that 80% of this incremental revenue represents pre-tax profit. *See* TW–CON–ER1–22, pp. 32–81. For the carrier which "lost" that revenue, its profits decline by a similar amount all other things being equal.

Consequently, small shifts in load factor can have enormous implications. The "disadvantaged" competitor can lose much if not all of its profit in the market, and, the "advantaged" carrier can, if it wished, drop its price—since its per passenger costs are lower—thereby gaining a bigger share of the market and cutting the profits of its competitor even more or forcing it to sustain greater losses. Clearly, bias can be used by CRS-owners as a powerful weapon against existing competitors and a strong deterrent to entry by potential competitors.

III. Competitive Analysis

The previous sections describing the nature of competition in air transportation, the marketing of air transportation today, the role of travel agents and the development of CRS systems lay the foundation for our analysis in this section. As more fully explained below, our analysis shows that the major airline-owned CRS systems have substantial market power which they exhibit today by charging very different fees to different carriers and by biasing the information on CRS systems. Neither practice could persist for any period of time in a competitive market. This "power to maintain price and reduce output" in the CRS market gives them the ability to raise competitors' costs and to deter entry into city-pair markets in the airline industry.

At the core of the CRS owners' power is the ability to generate incremental revenues to offset losses incurred because travel agent receipts and carrier booking fees do not cover CRS costs. The millions of dollars of incremental revenues generated by CRS's have the effect of precluding entry into the CRS industry by anyone except a very large air carrier—all, or most, of which already operate a CRS system.

A. Our Statutory Mandate

We believe that Congress gave the Board the authority and responsibility to take appropriate action in this type of situation, primarily under section 411. In the Airline Deregulation Act, Congress placed a high priority on "the prevention of unfair, deceptive, predatory, or anticompetitive practices in air transportation, including the avoidance of "excess market domination and monopoly power" and other conditions "that would tend to allow one or more air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation." Section 102(a)(7).

Congress also gave the Board authority to prevent "unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof." Section 411. Section 411 was patterned—indeed is virtually identical to—section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and as the Supreme Court has noted, has the same general purposes. *Pan American World Airways* v. *U.S.*, 371 U.S. 296, 303 (1963). As the Supreme Court has consistently held, "unfair methods of competition" in the Federal Trade Commission Act "was designed to supplement and bolster the Sherman and the Clayton Act . . .—to stop in the incipiency acts and practices which, when full blown, would violate those acts." *FTC* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392, 394–95 (1953). *Atlantic Refining Co.* v. *FTC*, 381 U.S. 357 (1965); *FTC* v. *Brown Shoe Co.*, 384 U.S. 316 (1966). The companion prohibition against "unfair or deceptive practices" in both section 411 and section 5 of the Federal Trade Commission Act was intended to protect consumer from trade practices which, while not necessarily anticompetitive, were misleading, contrary to recognized public policy or injurious to consumers. *FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972).

Given the prophylactic intention of section 411, it is appropriate for us to use section 411 as the basis for prospective rules. It permits us to forestall conduct where we find that a potential for abuse exists. We need not, therefore, determine whether there actually has been a violation of section 411 in order to promulgate rules. See *National Petroleum Refiners Ass'n* v. *FTC*, 482 F.2d 672, 678 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951. The choice between proceeding by general rule or by individual litigation is "one that lies primarily in the informed discretion of the administrative agency." *SEC.* v. *Chenery Corp.*, 332 U.S. 202–03 (1947); *American Airlines, Inc.* v. *CAB*, 359 F.2d 624 (D.C. Cir. 1966) *cert. denied*, 385 U.S. 843.

In considering CRS carrier practices under this section, we are mindful of the fact that our principal obligation is to ensure effective competition in carriers' fare and service offerings. Of course airline deregulation is premised upon the view that individual city-pair markets are highly contestable. Our concern with the CRS system is that they constitute the primary information source to persons who sell over 60 percent of a typical air carrier's services today and may sell 70–80 percent in a few years. Except for a very few carriers, like People Express and Southwest, which have simplified pricing structures and regularized, frequent flights on heavily traveled routes and do not interline, carriers rely heavily on agents to inform the public of their fare and service offerings, and to write their tickets. Even for those low-cost carriers, access to travel agents at competitive fees and on an unbiased basis could increase the efficiency of their marketing.

To assess the effects of CRS practices on air transportation, we must examine the CRS market. The CRS market consists of the several services CRS owners provide to distributors of air transportation (agents) and to the persons who wish to have their air transportation marketed through agents (other carriers). Agents purchase the electronic display of schedules, fares and seat availability, along with the ability to book reservations and issue tickets electronically by use of the system. Carriers purchase the electronic transmission of current schedule, fare and seat availability information, along with the transmission of reservation information upon an agent's sale of a seat. It is the ability to raise prices or restrict output of these services that is the focus of our analysis.

The CRS situation is one which affects virtually all major airlines in the United States. It is also one in which action, to be effective, should be taken with respect to all airlines/owned CRS systems even if they do not have the magnitude of market power that American and United possess today. The incentives to bias systems and generate incremental revenues are so strong that a rule applicable only to United and American would still leave substantial risk of abuse. The national market shares of the newer CRS's are growing. Moreover, in certain regional markets, where competition is most important, each of the smaller CRS owners have shares approaching those of American and United. To the extent that incremental revenues allow lower prices to agents, CRS competitors not subject to the rule could use this price advantage to offset the quality disadvantage of biased displays and thus perpetuate the problems associated with bias. Consequently, we believe the only responsible course is to propose rules covering all airline-controlled CRS systems.

B. Access to a High Percentage of Travel Agents is Essential

1. *The efficiencies of the travel agent system.* Given the importance of load factors to a carrier's per passenger costs and overall profitability, access to travel agents is usually critical. With minor exceptions, a carrier simply cannot ignore this distribution system which already accounts for over 60 percent of domestic revenue and 80 percent of international revenue today.

Carrier reliance on travel agents as their primary distribution system is based upon the substantial efficiencies of the agency system. As we found in the *Competitive Marketing Investigation*, it is far less costly for most carriers to use agents than to establish an independent distribution system. The common agency system allows carriers to spread the cost of

distribution outlets over a large base. Order 62–12–65 at 35. For many members of the domestic air carrier trade association that accredits agents, the cost of administration of the agency program was less than $1.00 per agent. Individual air carriers could not establish a comparable independent marketing system. The system also facilitates entry into new markets. Even in cities far removed from a carrier's existing route system, there are agents prepared to provide distribution services immediately upon notification of a carrier's decision to enter. A carrier can enter a new city, or provide service in a new market without incurring significant costs in establishing a distribution network. Similarly, carriers can freely exist without liquidating fixed assets. *Id.* at 35–36. The evidence shows that the key to gaining these efficiencies for virtually all airlines is access to the travel agent community through CRS systems on reasonable terms.

United takes exception to our focusing on the treavel agents in this proceeding. It argues that travel agents are merely one form of air transportation distribution available to air carriers and consumers. In its view, direct sales outlets are a readily interchangeable alternative available to both. As we have already explained, however, travel agent distribution is a more efficient means of distributing air transportation services than independent sales outlets. Only carriers with very specialized route systems may be able to circumvent travel agents through direct distribution systems.

Moreover, the *Marketing* case also established that consumers believe travel agents provide a different and more comprehensive type of distribution service than carriers. While there may be some interchangeability, the carriers themselves have assured that consumers will increasingly use travel agents—by creating and maintaining a system under which the consumer does not pay any more for full service from a travel agency than for direct purchases from the airlines. To most consumers, carriers are seen as providing little more than a reservation service. Carriers tend to be called directly when the choice of carrier, the itinerary and time for travel have already been determined. Travel agents, on the other hand, are seen as providers of comprehensive and objective travel advice.

Agent distribution services differ from carriers' direct sales services in that agents are relied upon to offer assistance in the selection of travel alternatives. In essence, consumers rely upon them to keep track of the multitude of service and fare options the various carriers in a market may offer. Of course, travel agents are also used because they offer some types of travel services, such as car rental and hotel reservations, tour packages, cruise packages and travelers checks that airlines' direct sales outlets generally do not offer. Recognition of the basically different service that travel agents perform has been at the core of our explanation of travel agents' rapidly increasing share of the air travel distribution industry. United itself recognized as much when it projected that by 1985 travel agents may be responsible for some 80 percent of ticket sales and, in a few more years, as much as 85 percent. DOJ Comments at Appendix D: Kotar EX. 4 at 10 and UA–001583.

2. *Access to travel agents in a region.* While much of our discussion has focused on the importance of travel agents nationally, the real economic impact is more regional in nature. Obviously, most people use travel agencies with locations in the immediate community, not agencies hundreds of thousands of miles away. Consequently, a carrier is likely to have lower load factors—and therefore higher per passenger costs—if it is denied access to a high proportion of travel agents in the cities it serves. This is why the often high regional market shares cited by the Department of Justice are so troubling. A new entrant into a city-pair market out of Dallas-Ft. Worth, for example, may be denied access to some 54 percent of its potential passengers from that area were it not on the SABRE system, which has 88 percent of that area's travel agents by revenue.

Even where the predominant CRS system in a region has a smaller market share, the effect on load factors could be very significant. A carrier denied meaningful access to a CRS system handling 40 percent of the agent ticket volume in the cities it serves could well have difficulty reaching a quarter of its potential market today and a third of that market in a few years. Ignoring other factors, the carrier could have per passenger costs 30 percent higher (and in the future, 50 percent higher) than a competitor with access to all travel agents. The carrier might reduce some of this cost advantage if it had access to most travel agents at the other end of the city-pair or engaged in extensive advertising and promotion. But, even then, the potential cost disadvantage could still be significant.

Notably, the regional market share figures provided by the Department of Justice—which appear to be conservative—show that in many of the major metropolitan areas of the country, the largest CRS system has at least 40% if the travel agent markets. In many major cities, the percentage is much higher: Boston (69%), Cincinnati (84%), Cleveland (84%), Dallas-Ft. Worth (88%), Denver (72%), Houston (68%), Kansas City (71%), Phoenix (69%), Portland (66)% and Rochester (69%).

3. *CRS is the key to the travel agent market.* As discussed in detail in the earlier section, CRS's are by far the primary conduit to information from carriers to the travel agent community. To most travel agents, CRS's are not a luxury but a competitive necessity as graphically demonstrated by the fact that CRS's have grown from almost zero to ninety percent of the market in less than eight years.

C. The Major CRS Owners Have Market Power

All of the indicia of market power in traditional economic terms are exemplified by the undisputed facts presented in this rulemaking. As noted above, virtually all carriers must have access to a large proportion of travel agents in the regions the airlines serve. Reaching 90% of the travel agent market efficiently requires access to CRS systems. In economic terms, the cross-elasticities of demand between CRS's and their alternatives are very low for almost all carriers and travel agents.

That, in and of itself, would not be a great concern were entry into the CRS industry easy or were the market not concentrated and agents and carriers could use multiple systems or quickly switch between systems. None of these is the case.

1. *Difficulty of entry.* Entry into the CRS industry is not only difficult but indeed may well be impossible for all but the largest carriers that already provide CRS systems This is due to the fact that even the American and United systems—which are among the most sophisticated computer systems in the world—may operate at a loss with their current pricing structure if incremental revenues from air transportation are not included.

Consequently, non-carriers realistically cannot enter the market and thus pose no competitive threat. They simply cannot offer prices competitive with the carrier-owned systems and still earn a profit. U~like carrier providers, they cannot overcome their losses with tens (if not hundreds) of millions of dollars of additional revenues from air transportation. Tymshare's experience—with a much less capital-intensive system than the major CRS's—

demonstrates this fact as it acknowledges that it has been forced to keep the price of its system below its costs in order to compete with carrier systems.

Since the incremental revenue generated by a CRS system for its owner is proportional to the amount of air transportation a carrier provides, it may well be that only the largest airlines—United, American, TWA, Eastern, and Delta—could profitably operate a CRS system today. They have the extensive route systems necessary to generate incremental revenues of the magnitude required to make a CRS system potentially profitable.

It is uncertain whether other major airlines could profitably enter the CRS industry or whether the fringe competitors—TWA, Delta and Eastern—can make significant inroads into the dominance of American and United. To make significant inroads, they have to convert agents since all but some ten percent of agencies (by revenue) are already under contract with one of the other CRS vendors. Or, they have to sell their system as a second system for the agent—something current contract provisions may inhibit.

Notably, United and American are increasingly using contracts with travel agents that make it more difficult for a competitor to convert an agent. Where economies of scale are important, long term leases with penalties for early termination tend to increase the time before a new entrant or fringe competitor has the market share necessary to operate economically and thereby increases its initial losses, risk and sunk costs.

The major CRS owners are also impeding agents' ability to use other systems in conjunction with their own. This is the effect of United's contract provisions that require an APOLLO subscriber to use APOLLO for at least 95 percent of its bookings that include a United segment. American's "minimum of parity" rule has a similar effect.

Of course, even if such clauses did not exist, agents may not readily switch systems. When an agent switches systems, it may incur additional installation and equipment costs. It will undoubtedly experience a period of disruption while the CRS system is replaced and the employees learn to use the new system. Generally, agents have required the new CRS provider to absorb these costs and to discount its system to compensate for the inconvenience of switching.

Finally, a new competitor will have particular problems converting agents in a region where the dominant CRS provider is also a major provider of air transportation. Agents naturally prefer up-to-date and reliable information on the carrier that provides substantial air transportation in the region.

2. *Market shares and concentration.* The potential for substantial market power is increased by the fact that the CRS market is concentrated. Table 2, *supra*, shows that SABRE has 49 percent of automated agencies and APOLLO has 31 percent of automated agencies, in terms or revenue. If all agencies—automated and unautomated—are included, the two major CRS systems have 70 percent of domestic airline revenues derived from travel agencies. And, as noted earlier, the market share of the leading CRS providers in many major metropolitan areas is often much greater.

United suggests that we cannot find market power, however, unless the market share of the dominant firm is much higher—more than 60 percent. This is the case in a number of the regional markets, as detailed in Table 3.

But, more important, we must recognize that a firm can have substantial market power with much less than 60 percent of the market. It all depends on the ease with which customers can switch to alternatives and the ease with which new entrants and fringe competitors can increase output: market elasticities of demand and supply. Landes & Posner, *Market Power in Antitrust Cases*, 94 Harvard Law Review 937, 951 (1981).

While American and United may not have quite that much market power, the fact remains that market elasticities of supply and demand appear to be low. In most cases, neither travel agents nor carriers have any alternative but to be on a system; smaller CRS providers are likely to encounter difficulties in growing quickly; and new entry into the CRS market is difficult if not effectively blocked.

3. *Conduct and performance.* If there were any doubt that United and American have market power in the provision of CRS services, that doubt is dispelled by three facts that can only be explained by the existence of market power.

First, the record shows that American and United are charging different carriers desparate prices for the same service. The price ranges from thirty cents to three dollars per segment booked. As Professor (now Judge) Posner has stated:

> Persistent discrimination is very good evidence of monopoly because it is inconsistent with the competitive market; it implies that some consumers are paying more than the cost of serving them, a situation that would disappear with competition. R. Posner, *Antitrust Law: An Economic Perspective* 63 (1976).

Second, major CRS vendors clearly restrict the output of their product. Restriction of output is the classic behavior of a monopolist since this increases its profits. In the CRS market, the output is really the provision of information. And, restriction of information can be in the form of providing less information or providing less reliable information. In the case of bias, of course, it is the latter. Again, as in the case of systematic price discrimination, bias could not remain prevalent in a competitive market because travel agents and their customers—as well as other carriers—would obviously prefer unbiased information, although they might accept a certain degree of bias in exchange for lower fees. That biased systems not only persist but, in fact, dominate the market indicates very strongly that the incumbents recognize there is little threat of new entry.

Third, the internal documents of American, United and TWA reflect rates of return that could only exist in the long run if they had substantial market power. Since they do not price their CRS services to be profitable on a "stand alone" basis, these high rates of return are attributable to incremental revenues from air transportation. Internal American memos have estimated its rate of return on CRS as 500 percent. United, in fact, instructs its sales personnel not to accept a travel agent contract that will yield less than a 30 percent annual return of investment, including, of course, incremental air transportation revenues. DOJ Comments at 52: UA 004586.

4. *The heavy reliance on incremental revenues perverts competition.* Indeed, as American has noted in its comments, the importance of incremental revenues—which are enhanced by bias—really leads to a situation where all CRS vendors have a strong incentive to compete on the basis of increasing the bias of their systems, at least up to the point that will be tolerated by travel agents. The relationship between United and American, as confirmed by their internal documents, illustrates the problem and the perverse incentives that it creates.

United is the least preferred carrier in terms of listings on the American SABRE system and American is the carrier most biased against on the United system. Each system thereby diverts even more revenues away from a competitor. To combat this, each attempts to find increasingly sophisticated means of biasing its own

system so that, if the bias increases on the other system, the lost revenue will be balanced by the increase in revenue from its system.

The strong incentives for United and American to increase bias is exemplified by United's program for parametric merchandising. *See* DOJ Comments at 99–106. The thrust of United's plans is to bias its system on a market by market basis with various degrees of bias for different carriers, and a bias which is constantly changing depending on the competitive situation. Such unsystematic bias would make it much more difficult for travel agents to detect the bias and overcome it, leading—at least United hopes—to increased incremental revenue to it and diversions of revenue from its competitors.

D. The Impact on Air Transportation

The market power that United and American possess in the CRS industry gives them power to raise competitors' costs in air transportation markets. Other CRS vendors—TWA, Delta and Eastern—are compelled to bias their own systems as protection against the bias in the much more dominant United and American systems so that they do not sustain large losses. TW–CON–ER1–22 at 44, 46, 49, 50. This compounds the dissemination of misleading information to the detriment of travel agents and the consuming public and increases the power of the CRS owners to raise their competitors' costs.

The CRS owners can raise competitors' costs directly by charging higher access fees. The potential impact of this is suggested by an observation of the Joint Carriers in their original petition for rulemaking. Based on CAB data, in 1978, the most profitable year for airlines to date, all carriers made an average profit of about $2.50 per passenger segment. CRS owners also can increase costs indirectly by biasing displays. This diverts sales from other carriers, which is very important because of the economics of load factors in the airline industry. A small decrease in load factors, as noted previously, may make the difference between significant loss and substantial profits.

Most important, the major CRS owners have the power to increase competitors' costs not only in a single market but in all markets in which a competitor flies. This provides a powerful deterrent to entry or to a competitor that may consider competing on the basis of lower fares. United or American can deter such procompetitive activity by threatening to increase access fees and bias for a competitor in all the markets which that competitor serves. The diversion of revenue for a moderate size carrier could amount to tens of millions of dollars a year—much of which, as noted earlier, would otherwise go right to the bottom line.

That non-CRS carriers perceive the threat is demonstrated by correspondence in the record. Air Florida apparently felt that, to overcome United's concern that it would be an aggressive competitor with United, it had to agree to notify United prior to entry into any new market. Likewise Jet America in correspondence with United on at least two occasions apparently promised that it would not be a "low cost" airline. And, Pan American apparently sought to assuage United's concerns that Pan Am would become increasingly competitive with United. DOJ Comments at 166–67: UA 578, UA 18859 and UA 51.

This is not the kind of perception or conduct that we will tolerate in the domestic air transportation industry. The whole foundation of deregulation is the "contestability" of city/pair airline markets. That is, although many markets may be highly concentrated—with two or three competitors—fares and service should remain at competitive levels because of the ease of entry. If entry is deterred, however, incumbent airlines will have more flexibility to raise the price above competitive levels and more efficient airlines will be less able to discipline the major carriers. The result would be fares above competitive levels resulting in a monopoly surcharge to those passengers who do still fly and a reduction in consumer welfare for the economy as a whole.

The problems of bias and discriminatory access fees are compounded by other potential abuses of market power some of which are documented in the record before us. In addition to raising access fees to competitors, United and American have also required that other airlines enter into a "net ticketing agreement" with them as a precondition to the provision of access to their CRS systems. Net ticketing arrangements are contracts by which interlining carriers agree to pay each other for selling and handling the ticket sales on the other carrier. Such arrangements, in and of themselves, may not be anticompetitive at all. However, using access to a CFS as a precondition offers the very great potential of being able to charge unreasonable net ticketing fees or force a carrier to accept the added costs of that agreement—again a means of increasing competitors' costs and increasing the discriminatory nature of access fees.

The major CRS vendors—American and United— also obtain very valuable sales and booking data from their systems which they use in their marketing planning and in dealing with travel agents. This very detailed and timely information permits them to determine exactly how much each travel agent on the CRS system is booking on themselves and each of their competitors. They are therefore in a position to offer agents overide commissions geared toward increasing their load factors in particular markets vis-a-vis a competitor. In and of itself such conduct would not be at all reprehensible. The problem is that the proprietary information necessary to compete with such an override system is simply not available to their competitors. They are therefore in a position to suffer the same types of diversion through a selective commission override system that they now face due to bias.

Finally, a number of carriers have complained that acces to the so called "service enhancements" offered by some CRS systems is not available to all carriers on a nondiscriminatory basis. *See* n.7, *infra*. Again, where service enhancements increase the ability of an airline to sell its air transportation, the major CRS vendors may be in a position to place competitors at a marketing disadvantage.

E. Legal Conclusion

In view of the express policies in section 102 of the Airline Deregulation Act, we believe that we have not only the authority but the responsibility under section 411 to take action to prevent the use of market power in the CRS industry to lessen competition in air transportation. Since that market power occurs only because the CRS providers are able to earn large amounts of incremental revenues from air transportation and would not exist if the CRS providers were not airlines, we believe that we have the authority to take action to reduce the market power in the CRS market.

This conduct is analogous to conduct which the courts have found destroys competition and establishes monopoly. In a number of cases monopolists have been required to deal on reasonable, nondiscriminatory terms. *LaPayre* v. *FTC*, 366 F.2d 117 (5th Cir. 1966) and *Fulton* v. *Hecht*, 580 F.2d 1243, 1249 (5th Cir. 1978) ("[u]nder section 5 of the FTC Act, a monopolist may be required to use uniform and reasonable criteria when dealing with those who compete in an adjacent market.") Moreover, the same duty has been imposed upon joint ventures where the joint ventures control a facility essential to effective

competition. In *U.S.* v. *Terminal Railroad Ass'n,* 224 U.S. 383 (1912) several railroad companies formed a joint venture that controlled access to rail routes to St. Louis. Unanimous consent was required before any new firm could gain access. The court ordered the Association to permit other railroads to use the Association's facilities on reasonable, nondiscriminatory terms. To the same effect are *Associated Press* v. *U.S.,* 326 U.S. 1 (1945), and *Silver* v. *New York Stock Exchange,* 373 U.S. 341 (1068). Thus these cases require that those who control the essential facility provide access to all competitors on non-discriminatory terms.

The size of incremental revenues alluded to above also indicates the risk of consumer deception. The very existence of such incremental revenues indicates that consumers are in fact being misled if not deceived. Travel agents are presented to the public as neutral industry representatives and neither carrier nor agents point out that they use biased information systems. Even if an agent desired to overcome bias, the increasing sophistication of display programming makes it more difficult to detect.

Obviously the amount of incremental revenue does not accurately measure the amount of consumer harm caused by this misinformation. Bias can deprive consumers of the opportunity to take advantage of lower fares. Frontier Comments at Appendix B. Much of the harm may be in the form of inconvenience however. Given the extent of incremental revenue and its recurring nature the consumer injury from deception is likely to be substantial.

Nor can the consumer readily avoid it. To deal with air carriers directly the consumer would have to undertake the very search costs that the use of travel agents is intended to avoid. Switching between automated agents using different systems would only substitute one carrier's bias for another's. While use of a non-automated agent is possible, their numbers are dwindling and consumers would have to forego the advantages of automated agents to use this option.

IV. Our Proposed Course of Action

A. General Rules

Based on our review of the comments and the information filed in the rulemaking and in respose to our Evidence Request, we believe that the dominant CRS owners ahve significant market power over the flow of information between carriers and travel agents. We have also tentatively concluded the CRS owners have the ability and strong incentives to exercise this power to reduce competition in air transportation, and to otherwise injure consumers. The evidence suggests that some CRS owners may in fact be exercising this power today. We therefore have decided to propose rules which limit the exercise of that market power and remove some of the obstacles to entry which are the basis of that market power. The rules would prohibit bias, require CRS owners to give access to other carriers on non-discriminatory terms, and prohibit restraints on agents' use of multiple systems.

Our ability to forecast the future of the CRS industry is far from perfect. We cannot measure precisely the extent or duration of the market power or the limitations on it. These considerations lead us to conclude that it is appropriate to strike a balance which prevents competitive and consumer abuses but still allows the CRS market to function. Our proposed rules should be sufficient to alleviate the major problems that we have identified, but still give CRS owners great latitude in the design and marketing of their systems.

Given the dynamic nature of computer communications and airline distribution, the CRS industry should continue to be monitored by the Board or its successor even after our proposal is implemented. Should this proposal be inadequate, we would anticipate that the responsible agency(ies) would be ready and willing to consider further rules or either partial or complete divestiture. On the other hand, should the CRS owner's market power dissipate through new developments, the rules should be eliminated or modified. Therefore, we propose a mandatory reassessment of these rules by 1990.

1. *Bias.* With the exception of parties opposing rules altogether, all parties have identified bias as an area of abuse can lead to consumer deception and harm to competition. All support or at least accept rules on the subject. A majority of commenters urge us to adopt a simple prohibition of the use of carrier identify as a factor in creating displays.[2] Certain parties, however, argue that such a prohibition would not be effective, and urge us to require that displays be structured in particular ways.[3]

We will not adopt the latter approach to eliminating bias. We have consistently allowed market forces in the airline industry to determine as much as possible the quality and variety of services offered in the CFR industry. To now regulate CRS operations of carriers specifically, would be contrary to the intent of the Airline Deregulation Act. In addition, we hesitate to attempt to decide what single display format best meets consumer needs.

However, the display of connecting flight information presents special problems. All CRS systems now select a limited number of connecting points for each city-pair market and construct connections over those points and edit out certain connections, based on various criteria. This process creates a greater potential for abuse, which could not be readily detected. On the one hand, we recognize that the increased potential for abuse may justify imposition of some standards. On the other hand, we do not now have the information necessary to justify particular standards. Moreover, to defer action entirely while we collect that information would delay implementation of rules in other areas where we are prepared to go forward. We have therefore decided on a two-part approach. We are including as a part of the general CRS proposal, a rule that would prohibit use of carrier identity factors in selecting connecting points and selecting flights. We are also issuing a separate advance notice of proposed rulemaking to solicit suggestions for practical means of dealing with bias in connecting flights and to obtain information on the feasibility of various alternatives.

While we are not proposing to establish mandatory objective criteria at this time, the potential risks of permitting carriers to use total enplanements or flights (total size) at connecting point may warrant a specific prohibition. Some carriers are developing new hubs at smaller points as alternatives to such major hubs as Denver, Atlanta and Chicago. In the absence of any restriction, a CRS owner could adopt as an objective criterion the total size of each hub, e.g., select the five largest or ten largest hubs based on total flights or enplanements. Use of such an objective criterion would effectively deny listing to flights of a system vendor's competitor that elected to develop an alternative hub. We therefore request comments on whether we should expressly prohibit the use of size, at least as between medium and large hubs, as an objective criterion.

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[2] Continental, Delta, DOJ, Frontier, Pan American and Western. No pro-rule commenter objected to simple bias prohibitions.

[3] American, Republic, ARTA, TWA and Western. Delta and the Joint Carriers specifically opposed Board-mandated display formats.

In an effort to enhance the effectiveness and enforceability of our bias rules, we are proposing two additional rules. First, we propose to require CRS owners to disclose the factors they use in constructing displays, in selecting connecting points, and in editing connecting flights. Many commenters, including CRS owners and user-carriers, support these rules. Second, we propose to require that CRS owners load and handle information in a non-discriminatory fashion.

2. *Pricing.* All commenters supporting Board intervention identified the pricing of CRS services as another potential problem area. A large number of commenters urge us merely to prohibit discrimination in fee levels.[4] They fear that any effort to regulate the level of fees would involve us in lengthy and difficult ratemaking, for which our authority is questionable. Some carriers urge us to go further and either set fees or prohibit unreasonable fees. They argue that fee levels are now excessive and that CRS owners have sufficient market power to maintain excessive fees, even in the face of a simple prohibition on discrimination.[5]

We have decided to prohibit discriminatory fees. As discussed more fully below, we anticipate that incremental revenues will be significantly reduced as a result of the elimination of bias. With lower incremental revenues, it is difficult to say that existing fee levels would be excessive. Indeed, determining reasonable fee levels for CRS's would be extremely difficult.

Although we are inclined to adopt the traditional view of discrimination, *i.e.*, one that permits cost-based differences in fees, we are also sensitive to the risk that such flexibility may lead to abuses. Therefore we are also seeking comment on whether to require each CRS owner to establish uniform fees that would be charged to all carriers, regardless of differences in cost in providing CRS services to different carriers.

Most commenters favoring rules also request that we prohibit CRS owners from requiring the purchase of or payment for other services as a condition of access to their CRS system (tying arrangement).[6] Tying arrangements currently take the form of requirements that carriers accept interline ticketing fee agreements as a condition for CRS access, and they are objected to as abuses of CRS market power. This tying is simply another mechanism of discriminatory pricing. None of the pro-rule commentors have objected to such a prohibition. We propose to prohibit the practice.

3. *Service Enhancements.* A related issue raised by a number of commenters is access to service enhancements, *i.e.* services available through CRS's beyond reservations and ticketing capability. Some commentors, including TWA, a CRS owner,[7] have requested that we require that access to all service enhancements by given to participating carriers because otherwise the system owner has an unfair advantage. American opposes forced licensing.[8] It argues that access to service enhancements is not critical to assuring that the agent has access to the information necessary to book a reservation on a given airline, and that the ability to offer exclusive enhancements is merely a natural attribute of the service competition that spawned CRS development.

We propose to strike a middle ground. We would permit CRS owners to retain exclusive use of enhancements, but require that CRS owners offer them to all other carriers on non-discriminatory terms once they offer enhancements to any outside carrier. This approach prevents enhancements from being used as a weapon to injure competition, while maintaining the incentives for continued development of enhancements. However, we will also consider comments on whether this exception for CRS owners should be allowed.

4. *Travel agent contracts.* Many parties urge us to regulate certain aspects of contracts between CRS owners and travel agents. Some urge us to prohibit in general terms provisions that inhibit use of multiple systems.[9] Certain members of this group also ask us specifically to prohibit provisions that discourage an agent from using competing systems to book a CRS owner's flights.[10]

We propose to prohibit contract provisions that impede the use of multiple systems and that impede switching between systems. In this regard, we would prohibit contracts of longer than five years duration. We are also proposing specific prohibitions on contract provisions that would limit the agent's freedom to choose among systems in connection with booking a CRS owner's flights and that require parity in the number of terminals an agent has from various CRS providers. Contract provisions such as these have the effect of insulating CRS owners from competition and increasing the difficulty of entry into the CRS market.

5. *Booking and sales data.* CRS's generate very detailed information about booking patterns which are made available to the marketing departments of CRS owners. Data that CRS owners make available to other carriers is much less detailed. Most commenters have urged us to regulate practices in this area to prevent CRS owners from having an unfair competitive advantage. They are split as to the appropriate solution. About half urge us to prohibit use of any such information by CRS owners' marketing departments.[11] The remainder contend that such a prohibition would be unenforceable.[12] They clain that only a compulsory disclosure rule would be effective in curing the problem.

We share the doubts about the effectiveness of prohibiting information dissemination to CRS owner marketing departments. We propose requiring CRS owners to offer any booking and sales data that they choose to generate to other carriers. CRS owners would not be obliged to generate booking information. If they do, they can charge non-discriminatory fees for providing the information to other carriers.

6. *Applicability.* We propose to regulate only carrier-owned systems, and only those used by travel agents as that term is commonly understood today, *i.e.* ticket agents that hold themselves out to the public as providing neutral representation of the industry. Internal reservations systems would not be included. The rule would apply to sales of domestic and foreign air transportation.

B. Procedures

In the Advanced Notice of Proposed Rulemaking (ANPRM) EDR-466, we proposed to conduct an informal rulemaking, as defined by the Administrative Procedure Act, 5 U.S.C. 553. We indicated that this type of proceeding would be used to develop rules of general applicability that are prospective and legislative in nature, and to develop a "factual record, responsive policies and appropriate

[4] American, Continental, Delta, Golden Pacific, Muse Group, TWA and Western.

[5] ARTA, Continental, Golden Pacific, Muse Group, Joint Carriers, Pan American and Republic. TWA, Western and American specifically opposed fee setting. Frontier opposed a reasonable fee requirement.

[6] American, Continental, Delta, Frontier, Joint Carriers, Pan American, Republic and Western.

[7] Continental, Frontier, Joint Carriers, Pan American and TWA.

[8] American comments at 35–37.

[9] American, Continental, DOJ, Frontier, Joint Carriers, Pan American.

[10] Continental, Frontier, Joint Carriers and Pan American.

[11] ARTA, Continental, Joint Carriers, Pan American, TWA.

[12] American, Frontier, Republic and Western.

regulatory action."[13] We solicited comments on the proposed procedure.

We also have indicated on two occasions, in the ANPRM and Order 83–10–74, that we would not hold oral evidentiary hearings. In the ANPRM we stated that any final rule in this case would not rest on "resolution of particular issues of adjudicative fact" [14] but rather on policy determinations based on arguments, opinions, and facts submitted by commenters, and gathered pursuant to our request for information (Order 83–8–105). In Order 83–10–74, in response to various motions and petitions filed by United, and a petition for reconsideration of Order 83–8–105 filed by American, we again rejected the need for an oral evidentiary proceeding. We reiterated that we were not engaging in fact finding about past conduct—which is the end result of an adjudication. Instead, we were concerned about the need for future, prospective rules. However, we noted that it was necessary for us to gather specific facts from carriers to determine, what, if any, future actions were necessary. We also indicated that Order 83–8–105 was not an enforcement proceeding, and rejected efforts to turn it into one. Thus, while reviewing documents—some of which related to past conduct—our focus has been to assess what prospective course we should take. We further stated that comments filed by United in its Petition for Adjudicatory Hearing, Docket 41735, would be considered fully in this proceeding. We address those arguments below.

United alone maintains in three separate documents—a Petition for an Adjudicatory Hearing filed October 13, 1983, and Comments and Reply Comments to the ANPRM—that the Board must undertake to conduct an adjudication. American, in its Petition for Reconsideration of Order 83–8–105, initially agreed with United's position. However, it has not maintained its argument in its comments to the ANPRM. Essentially United makes three points: first, allegations have been made, and facts have been disputed, that can only be, and must first be, resolved through adjudication prior to any rulemaking proceeding, and that the Board is essentially engaging in an adjudication despite labeling it as rulemaking; second, under § 411 we are required to hold an adjudication; and, third, if the CAB voids United's existing CRS contracts without an adjudication United will be deprived of property without due process of the law.

[13] ANPRM at 22.

[14] ANPRM at 22.

The DOJ supports our decision, and the statutory basis for that decision, to proceed by informal rulemaking without holding an oral evidentiary hearing and also asserts that section 411 does not require that formal rulemaking procedures be used. The DOJ also concurs that we are not engaging in *de facto* adjudication, but rather that our intent and procedures clearly fall within the well defined boundaries of rulemaking, and that a trial-type hearing is not required whenever a rulemaking results in a restriction of property rights.

1. *Adjudicatory facts.* We disagree with United that we are engaged in determining the type of facts that would require an adjudication. First, we are engaged in rulemaking under the definitions of the terms "adjudication," "rulemaking" and "rules" contained in the APA, 5 U.S.C. 551(7), (5) and (4), respectively. Second, because of our intention to promulgate rules of general applicability, we are not engaging in an adjudication masquerading as a rulemaking.[15]

To assess whether an agency is engaged in rulemaking or adjudication, courts determine whether the proceeding involves "adjudicative" or "legislative" facts. Professor Davis defines the terms as follows:

> Adjudicative facts are the facts about the parties and their activities, business, and properties. Adjudicative facts usually answer the questions of who did what, where, when, how, why, with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law and policy and discretion.[16]

We recognize that "[w]here adjudicative, rather than legislative facts are involved the parties must be afforded a hearing to allow them an opportunity to meet and to present evidence." [17] However, we disagree that the facts gathered, or the use of those facts, falls within the commonly applied definition of "adjudicative facts." We conclude instead that they fall within the term "legislative facts."

United has tended to view our rulemaking procedure as an attempt to find it in violation of the antitrust laws or to have engaged in unfair or deceptive trade practices. It thus characterizes our action as essentially an adjudication. It seems that United views our request for information, for instance, as an attempt to determine if United's past actions "have violated" the laws.[18] It focuses on specific words used in the ANPRM and Order 83–8–105, and from those selected words argues that we are attempting to assess what wrongful acts United has in the past undertaken.[19] For example, United argues that we asked for organizational charts and the identities of certain key personnel because it "would be of interest in an attempt to assess individual wrongdoing."[20]

These claims are untrue. We sought this information pursuant to Order 83–8–105 to see how the various companies were structured and to expand our own knowledge of how the carriers operated their CRS's—not to assess individual culpability.

The focus of our rulemaking has been on what prospective actions we could or should take. A basic knowledge of the industry was required. Solicited information, and various comments gave us a sufficient basis to proceed—not to punish any carrier for past actions or assess whether violations of the antitrust laws have occurred. In addition, we do not resolve here allegations of wrongdoing.

United and the DOJ spar over their comparison of section 411 with section 5 of the Federal Trade Commission Act, 15 U.S. 45. The DOJ cites *National Petroleum Refiners Ass'n* v. *FTC*, 482 F. 2d 672 (D.C. Cir. 1973), *cert. denied* 415 U.S. 951 (1974) for the proposition that under section 5, which is analogous to section 411, an adjudicatory hearing need not be held before a rule is promulgated. United cites 15 U.S.C. 57(a), to support its argument that the FTC must hold an adjudication prior to issuance of any rule. (United agrees that section 411 was closely modeled after section 5 of the FTC act). Whether or not the FTC must hold an adjudication prior to issuance of a rule under section 5 is not relevant here as the Federal Aviation Act does not contain the same explicit statutory language relied upon by United—section 57a of the FTC Act. Indeed that language was added to the FTC Act in response to the decision in *National Petroleum Refiners* that the FTC could issue rules without holding

[15] *See* Attorney General's Manual on the Administrative Procedure Act, at 14 (1947) which discusses the distinction between rulemaking and adjudication. *See also American Airlines* v. *CAB*, 359 F. 2d 624, 631 (D.C. Cir. 1966), *cert. denied* 385 U.S. 843 (1966).

[16] 1 Davis, Admininstrative Law section 702 at p. 413 (1958), *also cited* in *Alaska Airlines* v. *CAB*, 545 F. 2d 194, 200 (D.C. Cir. 1976).

[17] *Alaska Airlines, Inc.* v. *CAB*, 545 F. 2d 194, 200 (D.C. Cir. 1976).

[18] United Petition for Ajudicatory hearing at 3. (United Petition).

[19] Order 83–10–7 also addresses this issue. We will not restate our entire discussion here.

[20] United Petition at 9.

an adjudication. Congress did not similarly amend section 411. To the extent that analogies can be drawn between section 5 and section 411, the addition of section 57a to the FTC Act in no way diminishes the Board's rulemaking authority under section 411.

2. *Statutory authority.* We have primarily relied upon sections 102, 104 and 411 as the statutory authority for our proposed rule. As noted in the ANPRM, those sections of the ADA provide ample authority for our decision to employ informal rulemaking procedures.[21] United, however, argues that sections 102 and 204 are not relevant as to whether we proceed by rulemaking or by adjudication, since neither section address which course we must take.

United recognizes that section 411 does not contain the words "on the record" but argues that despite the absence of that language the application of the statute is "essentially adjudicative" and thus we must hold a hearing. United also contends that because section 411 contains the word "order," and the definition of "adjudication" under the APA also includes the word "order," we therefore must engage in an adjudication.

The DOJ asserts that formal rulemaking is necessary when the language of the statute includes the words "on the record"—which sections 102, 204 and 411 do not.

We agree with the DOJ that we are not required to undertake formal rulemaking or engage in adjudication in this proceeding. The language of all the statutory sections does not contain the words "on the record" and consistent with Supreme Court decisions we believe our procedures fully satisfy section 553 of the APA.[22] We also may provide for oral argument which would give parties a "greater opportunity to persuade and enlighten" [23] the Board, than is required under the APA. Also, as noted in the ANPRM, while section 411 does provide for a notice and hearing before the issuance of a cease and desist "order" we consistently have held that we need not hold an oral evidentiary hearing when we engage in rulemaking.[24] In addition, we are not here issuing a cease and desist "order", and thus United's argument concerning "order" and "adjudication" too must fall.

Finally, if we were engaged in "essentially an adjudication" perhaps case law cited by United would require us to hold a hearing "on the record" despite the absence of that phrase in any of the statutory sections relied upon here. However, we need not address that issue there because we are *not* engaged in "essentially an adjudication", as discussed earlier.

3. *Due Process.* We also do not agree with United that our action here will deprive it of property without due process. First, we are providing United with the processes attendant to informal rulemaking. United's argument is that that form of process is inadequate because we are restricting their contractual rights. However, trial-type processes are not required whenever a rulemaking restricts a property right. Virtually all substantive rulemaking affects or restricts property rights and the courts have not overturned rules merely for that reason.[25]

The DOJ notes that our chosen forum provides for much wider participation than would occur if we were engage in a adjudication. In *Hercules, Inc.* v. *EPA*, 598 F.2d 91, 118 (D.C. Cir. 1978) the court noted that even if only one company was subjected to a proposed toxic substance rule, such a standard affects more than that particular company and "[r]ulemaking, not adjudication, is the appropriate, flexible procedural mechanism to accommodate the input of all concerned." We agree with the DOJ's and the court's conclusion that our proposed forum will provide all concerned the ability to comment on general rules that we believe will have a far-ranging beneficial effect.

A claim for adjudicatory procedures must rest on the existence of material *facts* in dispute, not arguments, inferences, conclusions, public policy or economic theory. For the most part United's specific points allegedly requiring adjudication are either not facts, or are facts upon which we do not rely. Moreover, we do not propose to reach a decision "as to whether past conduct was unlawful so the proceeding is characterized by an accusatory flavor and may result in disciplinary action."[26] We have made no accusations of illegal conduct and no civil or criminal penalties will be meted out. In addition, United does not dispute many of the *facts* we rely upon, including the number of agents automated by APOLLO and other systems, the absolute and relative sales revenues flowing through these systems, the differences in access prices and other terms afforded participating carriers, the listing of flights on the basis of carrier identity, the existence of hundreds of millions of dollars in total incremental revenues. Whether American actually drove New York Air out of a specific city-pair market through CRS manipulation is not determinative.[27] Likewise with respect to agents' willingness to work around bias, every study shows that screen placement affects sales. Furthermore, it is an economic judgment that observed CRS access disparities are not examples of legitimate value of service pricing. We have reviewed the assembled, uncontested facts and based on the knowledge gained and expertise in air transportation, reached conclusions on market concentration, structure, and performance, as well as on injury to consumers andcompetition. United is not entitled to an adjudicatory proceeding to contest those conclusions. We are obliged to inform all interested persons of the facts on which we have relied and the processes used to reach our present position. We have done so. United is now free to challenge those processes and conclusions in its comments in response to this notice and in court, but can demand no more.

C. Divestiture

We also reject proposals that we order divestiture—complete or partial—at this time. Proponents of divestiture-type remedies have put forward three proposals: requiring airlines to divest themselves completely of CRS's, ordering airlines to set up separate profit centers for their CRS's with a "Chinese wall" between the two entities (including requiring that financial cost reports be generated and distributed), and mandating that carriers set up "maximally" separate subsidiaries to lower barriers to entry and eliminate incremental revenue. Each of the proponents of these proposals argues that its remedy would ensure a competitive market place, with a minimum of further government intervention.

Opponents generally claim that these remedies are unwarranted, that no basis

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[21] ANPRM at 23–24.

[22] *United States v. Florida East Coast Railroad Co.*, 410 U.S. 224, 234–246 (1973); *United States* v. *Alleghany-Ludlum Steel Corp.*, 406 U.S. 742, 757 (1972.

[23] *American Airlines, Inc. v. CAB*, 359 F.2d 624, 632 (D.C. Cir. 1966).

[24] *See* ANPRM at 24. Examples cited in the ANPRM include denied boarding compensation and bagage liability rulemaking.

[25] *See e.g. United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956); *American Airlines* v. *CAB*, 359 F.2d 624–29, and n.12–13 (D.C. Cir. 1966) *cert. denied* 385 U.S. 843 (1966); and *Air Line Pilots Asso'n International* v. *Quesada*, 276 F.2d 892, 896 (2nd Cir. 1960).

[26] United Petition at 14.

[27] American Reply Comments, pp. 39–40.

for them exists, and that we do not have the authority to order divestiture. In addition, some commentors assert that general standards are the best way to address CRS problems, that competition will foster better systems, and that efficencies inherent in vertical integration should not be destroyed. Still others argue that divestiture would not prevent bias, discriminatory access fees, or misuse of information by the third party vendors, and that, therefore, consumers would not be protected.

Divestiture/separate subsidiaries could arguably "cure" all of the ills asserted, and involve little government intervention in the future. On the other hand, at this point, the necessity for such action is not clear. First, general rules should have a direct effect in preventing CRS market abuses, while at the same time encouraging innovation and fostering efficiencies. In addition, general rules should enable the industry to continue to mature, without government direction of that growth. This should permit companies to reap the rewards of technological innovation fostered by competition, while at the same time reduce regulatory oversight of the market consistent with the intent of the Airline Deregulation Act.

Second, divestiture cases require an inquiry into specific facts and a review of past conduct to determine whether or not the remedy is appropriate. This would, necessarily, involve adjudicatory-type hearings. As a practical matter, these cases often take years to resolve, and thus the effectiveness of our role would be questionable. Third, there may be a whole host of efficencies produced by the vertical integration of airline ownership of CRS that are otherwise unobtainable. For example, transaction costs may be lower for a vertically integrated firm than if we required separate ownership. We do not now have sufficient information to determine which, if any, efficiencies or benefits would be lost or gained by divestiture, and thus, at this time we will not undertake to employ such a remedy. Finally, we note that while we reject divestiture at this time, it may be a viable option in the future, if, after our proposed rules are made final, they prove ineffective. We suspect that if the market does not function competitively in the future, evidence of abuses would surface, and DOJ or any aggrieved party could then present its arguments for divestiture to a district court.

Our Proposal

We propose to issue regulations prohibiting display bias, unjust discrimination in fees and access to service enhancements, and the tying of provisions of computer services to the purchase of other goods or services. The proposed Part 255 would also enable travel agents to use multiple CRS systems and switch systems more easily—thereby permitting new and smaller CRS owners to make inroads into the market. The proposed rule would also regulate use of travel agent sales and booking data generated by CRS's. We discuss the scope of the rule after explaining the substantive provisions in more detail.

I. Specific Provisions of the Rule

A. Display of Information § 255.4

Proposed § 255.4 deals with the problems of bias, and the related problem of information loading.

Bias can reduce competition in air transportation. To the extent that bias reduces the bookings per flight of disfavored carriers, their per passenger costs are increased. Bias also can cause a carrier contemplating entering a market served by a system owner to reconsider its decision. It would have to ponder not only loss of passengers caused by specific market bias, but also the potential loss of passengers systemwide caused by a general increase in bias against its services in retaliation for its entry.

Bias can also result in direct consumer injury which is not easily quantified, but can be readily identified. We know that incremental revenues industry-wide total hundreds of millions of dollars a year. Some percentage of that total logically must constitute consumer injury in terms of dollars—injury also occurs through potential added inconvenience via selection of a less desirable flight because of bias. The magnitude of consumer losses is likely to be in the tens of millions of dollars a year.

1. *Requirement of Comprehensive Display.* Paragraph (a) requires all systems to offer comprehensive displays showing the services of all carriers. Thus, a CRS-owner cannot exclude any carrier. This requirement, when combined with paragraphs (b) and (c), also mandates that displays be free from bias, i.e., that carrier identity not be considered in the selection and ranking of flights.

The rule would apply to all carrier owned CRS's, even those that offer agents direct-access capabilities to other carriers' internal systems. We have considered Eastern's argument that such systems be exempted from any anti-bias rule, but find them unpersuasive. Eastern alleges that with direct/access, agents can overcome any primary screen bias by simply jumping around from biased internal system to biased internal system. In addition Eastern claims that it would be competitively handicapped if it were subject to an antibias rule. Agents would have access to other carriers' biased internal displays, but Eastern would not have the opportunity to counter with bias in its primary display.

Eastern has underestimated the potential consumer and competitive harm from bias for these types of systems. The process of switching between internal systems is likely to be time consuming and detract from the efficiencies that lead agents to use CRS's in the first place. The record suggests that agents use the direct access feature primarily to get more accurate information on last seat availability and to confirm status of reservations, not to overcome bias.

Eastern has also overstated the potential burden of offering an unbiased display. SODA already offers a comprehensive display, admittedly a biased one. In terms of direct expense, Eastern will face the same costs as other system owners—the cost of unbiasing an existing display. As to the competitive disadvantage, Eastern is free to encourage agents to use, its internal displays. In fact, Eastern's SODA system would be comparable to American's SMART system, which American obviously believes will give it a competitive advantage, not put it at a disadvantage.

There is also a serious drawback to Eastern's proposal. The exception could make the prohibition of bias totally ineffective. American, TWA, or any other carrier with direct access capability, could claim the benefit of the exception and carriers without such capability might be prompted to develop it. In a short time we would return to the very situation we have today. Agents would be faced with bias in whatever carrier owned system they used, and could only overcome it through time consuming searches through numerous biased screens.

2. *Display Bias.* Paragraph (b) and its subparagraphs set out our proposed rule on bias. The paragraph itself prohibits the use of carrier identity factors in the ordering of flight displays.

Subparagraph (1) directs that flights be ranked on the basis of service factors that do not consider carrier identity and are applied equally to all carriers. System vendors would be free to select the service criteria to be used. This subparagraph would reinforce the basic requirement that no carrier, including the system vendor, may receive a

preference in the listing of flights based on its identity.

The second subparagraph would require vendors to disclose to carriers and agents, on a current basis, both the creteria they use in ranking flights and the weightings attached to each. Many parties have commented that such publication is necessary to ensure that system vendors are not evading the Board's rule, and to allow agents to evaluate intelligently the information that they see displayed. We are inclined to agree.

We have decided against specifying the service criteria to be used in constructing direct schedule displays, that is affirmative display requirements. American, for example, has requested us to require consolidation of direct and connecting flights, and others have requested that we mandate use of the OAG format, which separates direct flights from connecting flights and lists flights by departure time. Each of these requests is based on a similar line of reasoning: unless we establish uniform objective criteria, system vendors will abuse their discretion to select service criteria so as to favor their own flights in their displays.

We recognize that this risk is present with a rule that simply prohibits use of carrier identity factors. However, we do not believe that the risk justifies the government imposition of uniform display criteria at this time. First, the disclosure requirement should substantially reduce the risk of manipulation. Second, a rule dictating service factors would stifle competition, innovation, and variety in the industry unnecessarily.

3. *Connecting Flight Bias.* a. *The need for special rules.* We are proposing a separate rule on connecting flight displays. While connecting flights will be subject to the general prohibition on use of carrier identity factors, they pose additional problems. All system vendors today select a limited number of possible connecting points over which to build connections. They then edit all of the possible flight combinations over each point. Generally the purpose of edit procedures is to eliminate duplicate and unattractive connections so that the agent need not search through multiple display screens in order to find connections that are realistic for the traveler. However, the procedure may also be used to eliminate attractive competing services.

A number of parties have suggested that because of these complicating factors, a simple rule against bias would be ineffective. The multitude of selections that a system vendor has to make to offer useful and timely displays of connections simply would make such a rule unenforceable. They suggest that we impose standards for selecting and displaying connecting flights. They argue that imposition of standards would make manipulation more difficult and also make detection easier.

Others have suggested that we require a minimum number of connecting points—nine has been urged by American. They argue that unless we require connections to be constructed over a large number of connect points, carriers will inevitably pick points that favor their flights and will fail to show connecting flights over other hubs that are as good if not better. If the required number of connecting points is high, however, it is more likely that even if the owner's hubs are used, most other suitable connecting services will be shown on the display.

B. *The proposed rule.* We have decided as an initial step to take the more limited approach of merely prohibiting bias in connections. The proposed rule starts with a general prohibition on use of carrier identity factors in the display of connecting flights. It is followed by two subparagraphs that govern specific aspects of selection of connecting flight display.

The first subparagraph requires that connecting points be chosen on the basis of service criteria that do not consider carrier identity and that are applied to all carriers equally. Subject to those limitations, the CRS owner would be free to choose the criteria. The second requires that all editing be done on the same objective basis for all carriers. Thses two subparagraphs should eliminate one of the more pernicious forms of bias in connections—the failure to list some attractive connections. Imposing a requirement that hubs be selected without regard to which carriers serve the hub will reduce the risk that a competitive carrier's connecting flights are not displayed because it happens to use a connecting point that the system vender does not. The system vendor would not be permitted to include its major hub or hubs automatically as connections for any city pair. Those hubs would be weighted on an equal footing with all other possible connecting points.

We also propose to require that CRS owners provide carriers and travel agents with up-to-date information on their chosen connecting points and all criteria used to select connecting points and to edit flights. This disclosure requirement should assist in monitoring carrier performance under the rule, and make it more difficult to circumvent our rule.

c. *The need for more information.* We have decided not to propose specific standards for display of connecting flights, or to specify a minimum number of connecting points in this notice. We recognize that a simple bias prohibition may not be completely effective. Our proposal affords CRS carriers substantial latitude in selecting criteria to be used in order connecting displays. It may be difficult to determine whether competitive considerations have come into play in such circumstances. Nevertheless, as discussed in more detail in the Advance Notice of Proposed Rulemaking being issued concurrently, we are concerned about the feasibility and ramifications of other options.

At this time, we do not have enough information to evaluate adequately the various requests for affirmative rules on connecting flights bias. The time required to obtain and analyze that information could substantially delay enactment of any rule. Rather than delay our entire CRS program while we explore this issue more fully, we are now proposing general prohibitions on connecting flight bias. We are, however, simultaneously issuing an advance notice of proposed rulemaking that focuses on more specific approaches to connecting flight bias.

4. *Information loading.* Our proposed rule on information display contains one other element: a rule on loading of information. Many parties have complained that the inclusion of erroneous information in a system is almost as serious a problem as bias. Parties allege that new schedules or fares have not been included, that full flights show up as available, and that flights with unsold seats show up as full. While CRS owners claim that most of these problems are caused by human error, some participating carriers suspect that these mistakes are intentional.

We agree that some rules are appropriate in this area. Like bias, misinformation in the CRS can be injurious to the consumer. Erroneous information about a carrier's services can cause agents to avoid booking on it; fewer bookings raise that carrier's costs per revenue passenger. Competition between it and the CRS owner is thus reduced, not because of any change in the relative quality or costs of the competing carriers' air transportation services, but because the flow of information is controlled by the CRS owner.

Our proposed rule on information loading has three elements. The first is a general requirement that information provided by carriers be loaded with the same care and timeliness as that of the CRS owner once it is received. This provision establishes a rule of fair and nondiscriminatory treatment. It is not a rule of absolute equality. The rule requires only that the time between receipt of information on changes and the loading of that information be essentially the same for all carriers, including the owner. It does not, however, prevent the CRS owner from updating information about itself more often, if the CRS operation receives more frequent information about the owner's flights, fares and availability.

The second element is a requirement that CRS owners disclose their information input formats and procedure. This is designed to reduce the risk delayed carriers are apprised of the CRS owner's information loading procedures and formats, they should be better able to supply information that facilitates prompt loading and accuracy.

The third element requires that if system vendors offer enhanced loading capability to any carrier, it be offered to all on a non-discriminatory basis. This is intended to address the concerns of parties that urge for us to require vendors to allow for direct updating of information. These parties claim that so long as information must be processed by the vendor's personnel, it can be manipulated, and they argue that the only effective means of precluding manipulation is to permit direct updating.

An absolute direct updating requirement has serious drawbacks, however. Without some assurances of technical compatibility, and controls over access to data base for updating purposes, the risks of both intentional and unintentional misinformation could actually increase.

Once a vendor has shown the capability and willingness to overcome these problems, however, by providing another carrier with enhanced information loading capability, it is appropriate to require that all carriers willing to meet its system's technical and operational requirements have the opportunity to use the enhanced capability on non-discriminatory terms.

B. Contracts with Participating Carriers § 255.5

The next section of our proposed rules deals with certain aspects of contracts between CRS owners and participating carriers which we believe to be detrimental to competition in air transportation.

1. *Unjust price discrimination.* The first paragraph proposes a requirement on pricing. As discussed above, it appears that some CRS owners are using their market power to price access to participating carriers in a discriminatory manner and/or on the basis of the degree of competition between them. This raises the costs of CRS owners' competitors and stifles competition. The ability of some CRS owners to dictate the costs of their competitors' information flow to travel agents in what may be an arbitrary fashion justifies rules on the pricing of CRS services.

Our rule would prohibit unjust discrimination between carriers in the setting of fees. It would not necessarily require that CRS owners charge equal prices to all users. Price differentials based on cost differences would be permitted so that participating carriers could have incentives to reduce their costs to the CRS owner. Without such incentives, the CRS-owner's cost could be higher—higher costs that would be reflected in higher fees for all participating carriers.

We are very concerned, however, that any rule that allows cost based price differences not lead to the perpetuation of the great disparity in fees that we see today. We anticipate that the rule would create a strong presumption in favor of equal fees. In the event that a fee was challenged as discriminatory, the burden would be on the CRS carrier to substantiate the cost differences that justify fee differentials.

Such cost differences might arise in a variety of ways. A CRS customer might offer services that reduce the system vendor's cost of handling its data and transactions. For example, the customer might prepare the data in the vendor's format or it might offer the vendor use of an underutilized communications line. These and other cost savings resulting from such arrangements could be recognized in the fees under our rule.

Systems might offer different levels of service. In some cases, carrier schedules appear on the system, but the agent is required to contact the carrier by phone to make this reservation. If system vendors offered truly different service levels, and CRs users were free to choose among them without any coercion, fee differentials based on the differences in cost of the services would not be unjust or discriminatory.

2. *Resolving disputes.* We have considered the arguments of various parties that a rule prohibiting discrimination would be unworkable, or that it would lead to full scale ratemaking. We believe that once the rule is in place, government intervention should be rare. The presence of certain carriers in the CRS is important to agents and therefore to CRS owners. Their importance to agents will give them some countervailing bargaining power. It is expected that under a non-discrimination rule CRS owners will have to approach this group of carriers first. The fees that result form these negotiations, along with our rule, should restrain abuses in CRS pricing for all other carriers.

To further enable the market to police itself, we also propose to require that all CRS contracts with participating carriers provide for expedited arbitration of fees. (§ 225.5(c)). This clause is designed to avoid the lengthy delay that would be involved in a traditional ratemaking case before the Board (or its successor), but would provide parties that believed that they were the victims of price discrimination with a means of seeking redress. We have imposed arbitration clauses often as a part of Labor Protection Provisions in merger cases, in recognition of the need to provide a sure and expeditious means of resolving disputes, and in recognition of the limits on the Board's ability to resolve questions relating to LPP's quickly. The same need for a means of prompt dispute resolution exists here. Therefore we conclude that an arbitration requirement is appropriate to ensure that our proposed rule is effective in controlling discrimination. We invite specific comments on this element of our proposal.

3. An Alternative: completely equal fees. Nevertheless, we are concerned that a rule permitting cost-based differences in fees may permit abuses. Such abuses would likely be most burdensome to the new smaller carriers that now are paying the highest fees.

A possible solution to this problem that would avoid some pitfalls of full-scale rate regulation would be to take a more restrictive view of discrimination. We would welcome comments on an alternative rule of strict equality. Each system vendor would be required to establish uniform fees for its services, but they would be free to determine the level of those fees.

At the moment, we have some doubts about the benefits of such a rule. The rule could conceivably eliminate some of the incentive for participating carriers to reduce the system vendor's costs of servicing them. A rule of strict equality might also lead to cross subsidization among CRS users. It is possible that costs of providing system services to carriers will vary to some degree between customers.

We request parties to comment on a rule requiring strictly equal fees as an alternative to a rule prohibiting unjust discrimination in fees. Parties should focus in particular on the need for such a rule, *i.e.* the risks of abuse of a rule on discrimination, and on the potential for harm from the distortion in the market that a rule requiring strict equality would produce.

4. *Rate-setting.* Finally, several parties have urged that we go further than a simple prohibition on discrimination. They urge us to either set rates, or impose a reasonable fee requirement. They argue that besides the problem of fee differentials, fees charged to competitors—especially low-cost new entrants—are excessive. Without a rule on fee levels, they suggest that CRS owners may simply charge excessive fees to all carriers.

Rate regulation has been shown to impose such distortions on dynamic markets that we view it as a last resort. Moreover, the accounting complexities that would be involved in setting reasonable rates for CRS services are unusually great. For example, fees to travel agents as well as carriers would have to be regulated. This in turn would require allocations of expenses and investments between agents and carriers. In addition, further allocations would have to be made to account for the fact that most CRS owners use much of the same software and hardware for their internal systems. The time and effort required to resolve these questions would be substantial.

Most important, any effort to control fees could lead to substantial distortions in the CRS market. While there may be market power present, some competition occurs. Any attempt to set fees could reduce the influence of competitive forces. If uniform fees were set for the industry, lower cost systems could not exploit this advantage to attract a portion of the business from incumbents. There would be no long run improvement in the conditions of market power. Even if fee levels were set for individual systems, there would be a loss of flexibility and ability to react quickly to changing circumstances. Setting fees could also reduce incentives to innovate or increase efficiencies. In contrast, the rule on price discrimination does not preclude competition between CRS suppliers. It only imposes a certain fairness requirement on that competition.

5. *Tying.* The proposed rule also would prohibit "tying". It would prohibit the CRS owner from requiring the purchase or sale of any goods or services as a condition for participation in the CRS. To date, the problem has come to the Board's attention in the context of interline fees and CRS participation. CRS owners appear to require participants to agree to pay reciprocal fees for processing interline tickets as a condition for participation in the CRS. CRS-owners write more interline tickets than participants, such that the owners come out ahead. The ability to tie can be exercised just effectively in other areas. Therefore, the proposed rule would prohibit tying of any goods or services. The rule would not, of course, prohibit voluntary agreements in which goods or services are substituted for cash in the payment of fees.

Tying arrangements, especially in the form of mandatory net ticketing agreements, raise the cost of air transportation. CRS participants must not only pay the basic booking fees, but must also pay the interline ticketing fees. This effectively raises the cost of air transportation. The impact is effectively the same as that of discriminatory access fees.

In addition, there appears to be no valid business reason for tying interline ticketing and CRS services. A CRS can display any other carrier's service. Owners are compensated for that service through the booking fee. If the fee is not sufficient to cover costs, the solution is to raise the booking fee. Conversely, carriers can write interline transportation on each other even if the first is not a participant in the second's CRS system. Compensation for this service can occur without reference to CRS's.

We have considered the arguments of opponents of a rule on tying, and we find them unconvincing. United, for instance, argues that CRS services and interline ticketing are not separate services, and that therefore, there can be no tie in the traditional sense. As we disussed above, however, CRS's do not represent a method of distribution *per se*. Rather they represent a method of providing information to a distribution outlet. As such, CRS access is a distinct service from interline ticketing. Therefore CRS's and interline ticketing can be considered as separate services for purposes of analysis.

United argues that its linkage between CRS services and net ticketing fees is not the tying condemned by the antitrust laws. It claims that the tying prohibited by the antitrust laws is the use of market power by a supplier over one good or service to force customers to purchase a second. United is not forcing carriers to choose its interline ticket writing services over other competing services. It claims that almost all carriers desire United's interline ticketing service, and that the linkage is olny intended to insure that United is reimbursed for providing them.

This argument ignores the more fundamental nature of the harm of tying arrangements. Without a prohibition on tying, there is a strong risk that CRS owners will be able to use compulsory net ticketing agreements to evade the discriminatory pricing prohibition. Some CRS owners have shown an ability to compel net ticketing agreements as a condition for CRS access, and they have managed to differentiate fees widely. The rule on discriminatory fees will not diminish the economic incentives of CRS carriers to charge higher fees to their competitors. A failure to prohibit tying arrangements in the face of their existence today would provide CRS owners with an opportunity to do so, our prohibition on discriminatory fees not withstanding.

C. Subscriber Contracts § 255.6

The next section of the proposed rule sets down requirements for CRS owner contracts with subscribers, which we define to be travel agent users. The first paragraph would prohibit subscriber contracts longer than five years. The remaining paragraphs would prohibit direct and indirect restraints on use of multiple systems by individual agents. These can take the form of a direct prohibition or, more commonly, of requirements that a given percentage of bookings made on the CRS owner be processed through its CRS. In addition, the rule would prohibit CRS vendors from conditioning commission payments on the use of its system. This would include conditions for receiving overrides as well as conditions for receiving base commissions.

Many parties have complained that the combined effects of long-term contracts, "exclusive use" provisions, excessive liquidated damages clauses, and below cost pricing are to impede entry into the CRS industry and expansion by small vendors. These practices are employed to get the agent onto the owner's system and keep it there. Once on, any carrier cannot avoid dealing with the CRS owner if it wants to communicate with the agent. If the CRS owner has enough agents signed on, the carrier cannot avoid dealing on the CRS owner's terms.

We are concerned about the ramifications of these features of the owner-subscriber relationship for competition in the CRS market and their ramification in the air transportation market. While we have not selected major structural remedies at this time, we also recognize that to the extent that

market power is the source of CRS problems today, reduction of market power may be the best long-term solution. These practices appear to entrench vendors and hence preserve market power. As discussed below, there appears to be little other business justification for contract terms in excess of five years or for "exclusive use" arrangements. While possession of market power is not itself necessarily condemned under antitrust policy, use of contract terms such as this to maintain market power may well be. *U.S.* v. *United Shoe Machinery Corp.*, 110 F.Supp. 295 (D. Mass. 1953), *U.S.* v. *Aluminum Co. of America*, 148 F.2d 416 (2nd Cir. 1945).

We also believe that long-term contracts and the exclusive use provisions have the effect of reinforcing or preserving the consumer deception that results from bias. Both terms make it more costly and difficult for agents to use alternate sources of information, even if they are dissatisfied with the misinformation provided by carrier-owned systems. Admittedly, misinformation should decrease once our rules prohibiting bias are in place. Nevertheless, as a number of parties have argued, our rules may be subject to circumvention. The fact that agents can more easily seek alternate sources of information may limit system vendors' incentives and ability to continue to bias.

The arguments against rules in these areas have not dissuaded us from proposing regulations—with one limited exception. American claims that under existing tax laws, five-year contracts are necessary for agents to claim the full benefit of investment tax credits. If this is true, it would appear reasonable to permit five-year contracts. We invite comments on this particular argument, and on whether a different contract term is appropriate.

The other argument against limitations on the length of contracts, in contrast, has little merit. Opponents suggest that long-term contracts enhance the ability of new entrants to compete. Under this theory, if long-term contracts are the norm in an industry, then a new entrant can expect to negotiate similar long-term contracts. This ability reduces the risk of entry substantially and thereby makes entry easier. Our problem with this theory is that it ignores one practical reality. The CRS market is almost saturated. New entrants benefit little from the reduced risks inherent in long-term contracts if similar long-term contracts held by incumbents mean that very little of the market is actually open to the new entrant at any given time. In all likelihood, the risks inherent in being locked out of substantial segments at any given time outweigh risk reduction associated with long-term contracts.

None of the parties have convinced us that "exclusive use" provisions should not be prohibited. Some parties have said that their "exclusive-use" clauses are merely defensive countermeasures against clauses of other system vendors. To the extent that this is true, our rules will eliminate the need for such defensive measures. Parties have also claimed that they are merely a quality control device. as the CRS owner's own system is likely to have the most accurate and up-to-date information about its own services, it is not unreasonable to require agents to use its system in booking its air transportation services. The flaw in this argument is that the higher quality information itself provides a powerful incentive to use the vendor's system when booking flights on the vendor. The primary effect of the exclusive use clauses is to preclude agents from using other systems to overcome poor quality information about other carriers' services.

United offers one more justification which has not persuaded us against the rule. United claims that "exclusive-use" clauses are necessary to preserve competitive balance in the travel agency industry. It argues that in the absence of such clauses, the larger, richer agents would buy multiple systems, primarily to get the broadest range of availability information. Smaller agents that could not afford multiple systems would be at a disadvantage, and would ultimately lose customers because of their inability to offer the same service.

It goes without saying that it is not for United, or any other private business, to dictate the terms of competition in the travel agency industry. The whole purpose of competition is to reward those that offer superior service or lower prices. The ability to purchase multiple systems represents rewards for having better served consumer needs in the past and is itself a form of improved customer service. Neither United nor any other CRS vendor should interfere with the natural workings of the market place.

Two aspects of the vendor-subscriber relationship are not addressed in our proposal: below-cost pricing and excessive liquidated damages clauses. This is not due to a lack of concern. On the contrary, we have every reason to believe that CRS owners routinely offer systems to subscribers at prices below costs, *i.e.* prices which would be less than the cost of providing the system on a stand-alone basis—without incremental air transportation revenues—and that they insist on liquidated damages provisions that could be deemed excessive. However, we have concluded that rules in this area will not be necessary.

It appears that the primary purpose of below cost pricing is to gain access to incremental revenues. With the prohibition on bias, there will be reduced incentives to offer below cost contracts to travel agents. In addition, the elimination of bias-induced incremental revenues and the non-discriminatory fee rule will substantially reduce the ability of CRS vendors to make up for below cost agent contracts out of other CRS revenues.

As to the excessive liquidated damages provisions, they are condemned under general contract law as penalties and are usually held unenforceable by the courts. We do not intend that adoption of CRS rules preempt general contract laws applicable to vender-subscriber contracts, including prohibitions on penalties. However, if parties believe that contract law remedies are inadequate to prevent excessive liquidated damages we invite them to discuss a prohibition on any liquidated damage clauses or other appropriate alternatives.

D. Service Enhancements § 255.7

In addition to the rules outlined above, we propose rules that do not fall into these categories. The first concerns enhancements. Although the term service "enhancement" is used by almost all parties, they give it different meanings. Some use it to refer to such things as the capability to issue boarding passes or make advance seat selection. Others would include the agent's ability to get direct access to a carrier's internal reservation system, or the ability of a carrier to update its own information directly. There is a common thread through all of these categories, however. A service enhancement represents something more than the mere ability to make a reservation and issue tickets.

This thread forms the basis of the definition of enhancement in the proposed rule. "Service enhancement" would mean a product or service, offered through CRS's other than the display of information on schedules fares, rules and availability, the ability to make reservations, and the ability to issue tickets. Anything else, including direct access and direct updating would be considered an enhancement.

There are a number of reasons for defining enhancements in this fashion. As discussed more fully below, we propose to allow system vendors to favor themselves to some degree in the use of enhancements. Our definition insures that system vendors do not use this leeway to deny to competitors the basic functions of CRS's, information distribution and communications for purposes of ticketing. The consequences of exclusion from these basic services would certainly be far worse than those of merely being denied the ability to have boarding passes issued. At the same time the generic approach recognizes that CRS's are still undergoing refinement and development. New capabilities may develop over the years. Rather than limit the rule to capabilities that exist today, the definition will encompass future developments without constant amendments.

Just as parties differ on what constitutes a service enhancement, they differ on what the Board should do about them. At one extreme, parties argue that the Board should impose no requirements. They claim that any rule would have the effect of denying the natural advantages and rewards for having taken the risks in developing the enhancements. At the other extreme, parties request that the Board require CRS vendors to make enhancements available to all participating carriers when they use them in connection with their own services ("forced licensing"). Still a third group urges the Board to adopt a middle ground, of allowing system vendors to keep enhancements for themselves, but requiring that they be offered to all outside carriers once they are offered to any.

We have decided to follow the middle course and to require only that whenever an enhancement is offered to one participating carrier, it must be offered to all on a nondiscriminatory basis. There is no absolute requirement to offer enhancements to other carriers, and the vendor is free to use it exclusively. Once it gives up exclusive use, however, it is required to treat all carriers fairly.

This non-discrimination requirement does not require that all carriers that desire the enhancement receive it at precisely the same time. For example, unlimited access to the enhancement could be denied if the participating carrier did not have the required technical capabilities. If the vendor is incapable of providing the enhancement to all at the same time, access to some can be delayed, provided that the schedule is not based on competitive considerations. Finally, the rule would not prevent the vendor from charging fees for enhancements, provided that it does not discriminate.

This approach to enhancements strike the best balance between the public interest in assuring that control of CRS's not adversely affect competition in air transportation, and the private interests of CRS owners in legitimately reaping rewards for their enterprise in developing their systems.

As parties who support a rule on enhancements correctly point out, denial of access to enhancements can have the same kind of effect as bias. Agents will favor the CRS host that offers the enhancements in connection with its services—especially enhancements like boarding passes—over carriers that cannot offer them. This will cause the traffic pool of have-not carriers to decrease, and thus increase the per passenger cost for the have-not carriers.

On the other hand, when basic display and ticketing capability are not involved, the effect is likely to be less pronounced. In addition, a rule requiring vendors to offer all enhancements might deprive them of the fruits of their efforts and could therefore discourage them from developing new enhancements.

We are not entirely comfortable with allowing system vendors to keep service enhancements to themselves. We have not been able to quantify the risks of permitting vendors to do this or the potential risks of "forced licensing." We therefore request parties to comment specifically on the issue of "forced licensing." Comments should focus on the need for "forced licensing." *i.e.* the risks of the alternative, and on the potential negative impact to the extent that concrete data is available, it should be provided.

E. Marketing Information § 255.8

We are also proposing rules on the use of sales and booking information. At present, system vendors collect a substantial amount of data on travel agent bookings. This detailed information is given to the system vendor's marketing department, which in turn can use it to analyze agent productivity, and the success of the carrier's marketing strategies in individual markets and against specific competitors. Participating carriers are given data about their own bookings from "sponsored" agents and may be given general aggregate data for the rest of the industry.

A number of parties have requested rules in this area. They claim that access to the detailed data gives CRS vendors an unfair advantage. It enables them to target particular agents for incentive commissions and to analyze quickly their success in particular city-pairs. Without access to such detail themselves, other carriers cannot compete as effectively in developing a travel agent sales incentive program. They claim that system vendors are taking unfair advantage of their role as communications link between the agent and the carrier. They argue that the sales information is proprietary to the carrier whose services are booked and that mere transmission over the vendor's system does not give its marketing department a right of access.

Proponents of rules have suggested various options. Some have argued that we should prohibit distribution to vendor marketing departments. They argue that the information is indeed proprietary between the agent and the carrier on which it books and that, accordingly, it should not be disseminated. Another group argues that a rule prohibiting access by the vendors' marketing department would be unenforceable. Given this fact, the only way to cure the unfairness is to require disclosure, notwithstanding the proporietary nature of the information. American proposes something of a middle ground. Claiming that the information is proprietary to the agent, it would release all information that the agent permits to be released. Given the fact that travel agents are true agents of the carrier on which they book, it would seem that any proprietary right in booking information if it exists belongs to the carrier—not the agent or CRS owner. However, under common accreditation, an agent for one carrier is usually an agent for others. American's approach could put agents in a conflict of interest position with respect to their common law duty of loyalty to their principals.

Our proposed rule would simply require system vendors to supply participating carriers any marketing sales and booking data they elect to generate on reasonable and non-discriminatory terms. Vendors would not be required to generate any information that they do not already. They would be required merely to make available information that the system produces for a reasonable non-discriminatory fee.

The use of booking data by CRS vendors can have negative implications for competition in air transportation. Vendors can use the information to target competitors and attract traffic away from them. As with other CRS practices, the effect is to increase the per unit cost of other carriers' operations. As with other aspects of

CRS operations, competing carriers have no effective means of counteracting this outcome. The data that they get are either too incomplete or too dated to be useful in effectively matching the system vendor's sales efforts.

The use of CRS booking data does not appear to be merely a harmless by-product of CRS's. To the extent that system vendors are merely generating detailed information and studies about sales of their own services, we would agree that they are simply enjoying the fruits of their innovation. However, the vendors are going beyond that and also using for competitive purposes the sensitive booking data that they collect on other carriers simply because they are a communications link, much like the telephone line. Such conduct has no justification.

We have not been persuaded by arguments against Board intervention. Some vendors claim that the information really is not all that useful because it tallies bookings, rather than actual flights taken. We believe that these carriers are underestimating the value of the information, at least in their comments. The value of information of this nature depends on three factors: accuracy, detail and timeliness. The primary advantages of booking data are timeliness and detail. Reports available to the vendor are generated weekly or monthly and contain information on each travel agent's bookings for all carriers. The most detailed information that other carriers can get on all carriers is our own O&D data and service segment data which are broken down only as far as city-pairs, and are not available until several months after the time period covered. Admittedly, booking data may not reflect flights actualy taken, but it is only reasonable to expect that system vendors have developed formulae that correlate their own bookings with actual passengers carried. That correlation is not likely to vary significantly from carrier to carrier. Besides, O&D and service segment data are also flawed. Compared to other information that is available to carriers about the sales of their competitors, booking data are probably as accurate, and it is certainly much more detailed and timely and hence more useful.

F. Purpose, Applicability and Definitions—§§ 225.1, 225.2 and 225.3

These sections, establish the scope of the proposed rule. The proposed rule would apply only to carrier owned systems (either air carrier, or foreign air carrier) and would apply to all sales of passenger air transportation, i.e., interstate, overseas and foreign, make oy travel agents as the concept is commonly understood in the United States.

1. *Application to non-carrier CRS.* We have tentatively decided not to regulate non-carrier systems at this time. As noted above, the air transportation marketing, computer, and communications industries are all in a state of flux. Our proposed rule attempts a measured response to problems that we perceive exist today or may exist in the future. Third party systems do not, at the present time, appear to present significant problems for competition in the air transportation market.

Thus, regulation of third party systems would do little to protect air transportation competition or promote consumer welfare. It could have long-term detrimental effects, however, as we noted above. To the extent that there is market power in the CRS industry, actions to improve the effectiveness of actual and potential competition may in the long run be a better means of controlling abuses than government regulation. Subjecting third party systems to some of the proposed rules might substantially increase entry costs of potential third party entrants. This would in turn reduce the effectiveness of potential competition as a disciplining force.

The only third party system now in existence is Tymshare's Mars Plus. For a variety of reasons, its operation does not pose serious risks to air transportation competition or consumer interests.

Tymshare at present has only a limited share of the market, and it has never been a major participant. *See* Tables 1 and 2, *supra*. Many carriers do not even participate on its system. Domestically, only Eastern, Northwest, TWA and Pan American participate. *Report*, Appendix F. It does not have market power which creates the risk of harm to competition in air transportation.

The risks to consumers presented by Mars Plus is also low. Mars Plus offers only access to its participating airlines' internal systems. It makes no claim that its individual displays offer complete or best flight information, although it does claim that agents' ability to jump between in-house systems allows it to find the information. Neither agents nor carriers can reasonably expect that individual display screens of internal reservation system seen through the Mars PLus system will be unbiased.

2. *Applicaton to foreign air transportation and foreign air carriers.* The applicability and purpose section also make it clear that the proposed rule would apply to foreign as well as domestic air transportation. A number of parties have urged the Board to limit application of the rule in foreign air transportation. They argue that foreign flag carriers that operate CRS's in their home countries, bias in favor of themselves more than U.S. carrier systems do, and that it would be unfair to require U.S. carriers to give them equal treatment here when U.S. carriers cannot get equal treatment abroad. Some parties suggest that the Board solve this problem by limiting application of the rule to domestic air transportation. Others urge the Board to simply exclude foreign air carriers that themselves operate CRS's that do not conform to Board rules from the rule's protective cover.

As discussed more fully below, (*See* § 255.9(b)) we have decided to adopt the latter approach: *i.e.*, foreign air carriers that operate systems in their home countries that are biased against U.S. carriers will not be protected by our rules.

We also propose to limit our rule to use of CRS's in the United States. This is consistent with our position, most recently stated in the *Competitive Marketing Investigation*, 82–12–85, December 16, 1982, that marketing and distribution of air transportation services, as opposed to operation of such services, is largely an internal matter for each country. Thus, although our proposal would apply to use of CRS's for sales of all air transportation within the U.S., we are not attempting to regulate CRS practices outside the U.S., even when they affect the sale of air transportation.

3. *Application to types of users.* Finally, we are limiting the applicability of the rule based on the type of user. The rule would apply only to systems sold to "subscribers" as defined in the proposed rule. "Subscriber" is defined as a ticket agent that holds itself out as a neutral industry representative. By the concept of holding-out, we mean both explicit and implicit holding out, *i.e.*, holding oneself out as a "travel agent" and relying on the common perception that a "travel agent" is an industry representative. Much of our policy concerns over CRS's stem from their use by industry agents who are perceived by the traveling public as, and in many cases consider themselves to be, neutral advisors. This neutrality is often relied on by new entrant carriers to provide a ready distribution network. When a ticket agent holds itself out as a dealer for a specific carrier or carriers, however, neither the public nor other carriers should reasonably expect it to provide neutral representation of all

carriers in the industry. Therefore, our proposed rule would not apply to instances where CRS's are used by ticket agents who hold themselves out as agents of selected carriers, nor does it apply to CRS's used by persons other than ticket agents. Thus, the rule would not apply to carriers' internal reservation systems or systems offered only to commercial accounts for their own use.

C. Exceptions § 255.9

We also propose two limited exceptions to the CRS rules.

1. *Carriers refusing to pay non-discriminatory fees.* The first exception deals with carriers that might refuse to agree to pay the non-discriminatory fees required by our rules. Some carriers today pay relatively low fees to system vendors. Usually these are carriers whose presence is considered necessary to make a system acceptable to agents, and they may be also carriers that vendors do not perceive to be strong air transportation competitors. It has been suggested that because of their importance to agents, these carriers may have some leverage to refuse to pay non-discriminatory fees which are likely to be higher than the fees that they currently pay.

Some parties have argued that system vendors should be permitted, if not required, to drop such carriers from their systems. They argue that otherwise, this group of carriers will simply refuse to negotiate in good faith and get a free ride. Other parties argue that total removal from the system would be inconsistent with the consumer protection purposes of our rules. Agents would be obliged to abandon the CRS entirely for another information source in order to make a booking on these excluded carriers. They suggest that vendors be permitted to retain bias in their systems against such carriers with full disclosure to the agent. While the biased information would be less accurate, at least the agent could still use the CRS to book on the affected carrier.

We agree that any rule should permit system vendors to give less preferred treatment to carriers that refuse to pay non-discriminatory fees. Ideally, the rule would be fashioned in such a way as to minimize the incentives of participating carriers to hold out for a free ride. Unfortunately, incentives will vary among systems and participating carriers, and with time. A precise weighing of these incentives would be difficult, if not impossible. System vendors, through the ongoing negotiating process, will be in a much better position to weigh and evaluate the business motivations of participating carriers.

Therefore, our proposed rule would not apply to CRS services offered to carriers that do not enter into participation agreements, consistent with the proposed rule. This leaves the CRS owner discretion to adjust services offered to non-contributing carriers. Depending on the circumstances, it will have the option of removing a carrier from its system entirely, maintaining its schedules in its display but cutting off ticketing capability, or biasing its display against that carrier. However, in no case could a CRS owner give superior service to a carrier that refused to pay non-discriminatory fees.

We recognize that there is some risk in giving too much discretion to system vendors. It may well be that a participating carrier is so important that the vendor will continue to carry it on its system without penalty, even when it refuses to bargain in good faith. To require specific action would, however, eliminate the flexibility that we consider to be desirable in dealing with unwilling carriers. Moreover, any inclination to give non-contributing carriers the rights given participating carriers will be tempered by the knowledge that such an action creates the risk of being found in violation of the prohibition on discriminatory fees.

2. Foriegn air carriers.

The second exception deals with foreign carriers. CRS owners in particular have pointed out that many foreign carriers discriminate against U.S. carriers in their home country. In particular, foreign permit holders that operate CRS's in their home countries apparently discriminate heavily against U.S. international carriers in their displays, often more heavily than system vendors discriminate against their competitors in the U.S. We agree that U.S. carriers should not be forced to give up their advantage against carriers that operate discriminatory CRS's abroad without any assurances that those carriers will give up like advantages in their home countries.

The International Air Transportation Competition Act of 1979 (IATCA) established definite public policy in this case. We are directed to strengthen the competitive position of U.S. carriers to at least ensure equality with foreign air carriers (49 U.S.C. 1302(12), and to pursue the elimination of discrimination and unfair competitive practices faced by United States carriers in foreign air transportation in developing negotiating policy. (49 U.S.C. 1502(b)(9).) In addition, IATCA authorized the Board to take retaliatory action if we find that a foreign carrier or its government discriminated against our carriers.

This strong concern for assuring equal competitive opportunities for U.S. carriers vis-a-vis foreign carriers means that here, we must balance the policies of section 411 with other policies in the Act.

As outlined above commenters have suggested two solutions. The first, applying the CRS rules only to the sale of domestic air transportation, represents too great a sacrifice of the interests embodied in section 411. While the degree of competition in foreign air transportation varies widely from country to country, there is effective competition in many foreign markets. The harm to competition and consumer interests from bias, discriminatory fees and other practices covered by the proposed rule would be just as great in those foreign markets as it is in domestic air transportation. A general exception for foreign air transportation would deny the benefits of the rule to "innocent" air carriers, foreign air carriers and consumers of foreign air transportation because certain foreign carriers operating CRS's happen to bias their systems.

The second alternative mentioned by the commenters goes much further in fulfilling the policies of section 411. Therefore, we propose a second exception for foreign carriers that operate systems that discriminate against U.S. carriers. The exception would state that the protections of the rule do not apply to services offered to foreign air carriers that operate systems that discriminate against *any* U.S. carrier in their displays. We are not attempting to force foreign carriers to modify their own practices regarding CRS's in their home countries. Rather, we are simply stating that if foreign carriers expect to get the benefit of fair play in CRS's in the U.S., they must be prepared to offer the same benefits to U.S. carriers in their own countries. Foreign carriers that do not operate CRS's at all would not be subject to the exception, and they would have the full benefits of the Board's rule. The exception would not allow system vendors to give preferential listing to any foreign carrier.

Our proposal was intentionally fashioned to be as narrow as possible to meet the problem of foreign carrier practices with respect to U.S. carriers. Any exceptions to the rule diminish its efficacy in reducing consumer deception, and maintaining competition in air transportation. The proposed exception is designed to minimize this loss of efficacy. In addition, it is

consistent with our policy of taking proportionate countermeasures in the face of discrimination against our carriers. (See, *e.g.*, Order 81–12–91, December 14, 1981 and Order 83–6–20, May 18, 1983.)

An exception tied to foreign carriers' operation of their own systems does no more than to allow our carriers to respond in kind to practices of their foreign air carrier competitors in a well defined area of their operations. In addition, our proposal does not prevent U.S. carriers CRS owners from voluntarily offering all the protections of our rules to foreign carriers. They are free to do so if they wish. All the exception does is to avoid compelling U.S. carriers to give non-discriminatory treatment to foreign carriers that do not afford such treatment to U.S. carriers in their systems' displays. This approach best balances the competing interests in acknowledging foreign carrier practices in defining the scope of our rule.

H. Review and Termination § 255.10

We also propose a review of the rules within five years of their effective date, with termination on December 31, 1990 unless they are extended by our successor on the basis of that review.

As noted above, both the air transportation distribution and information processing industries may change dramatically. A specific review requirement and termination date assures that the successor to the Board will reevaluate the CRS rules in light of changing circumstances at a later point.

The time frame proposed assures that an essentially meaningless review is not required before enough time has elapsed for change to occur. However, this will not preclude earlier review if desired as a matter of discretion. Such a review might occur under two circumstances: If changes in the relevant industries occur soon enough that our successor may reasonably question the need for rules before their five-year term expires; and conversely, experience under the rule may cause our successor to reasonably question whether they are sufficient to correct the problems we have identified. In either event, we anticipate that the rule could be revised without regard to the termination date.

II. Other requests

We have received a number of other requests for rules that we have decided not to propose, which we discuss separately below.

A. Mandatory Participation in Other Systems

DOJ has requested that we require CRS owning carriers to participate in other systems. It argues that one of the largest impediments to successful penetration of the CRS market is the refusal of CRS owners that are also major carriers to participate in new systems. It attributes the failure of Tymshare to achieve greater market penetration in part to the refusal of American and United to join the MARS PLUS system. DOJ claims that mandatory participation would reduce CRS industry market power by making actual and potential competition more viable.

The primary problem with DOJ's request is that it is designed to enhance entry for a particular CRS competitor, Tymshare's MARS PLUS. Tymshare's difficulty in penetrating the market is the result of two factors. The first is its inability to use incremental revenues to lower fees charged to agents. The second is the refusal of carriers like United and American to participate. This refusal means that an agent that desires to book on United for example, must rely on the internal system of another carrier. Those internal systems are likely to be heavily biased against United, making this option unattractive to agents.

Our bias rules, which will reduce incremental revenues, should alleviate the first cause of Tymshare's problems. DOJ's requested rule is intended to cure the second. The proposal is flawed because Tymshare's second difficulty, in part, is the result of a business decision. Had Tymshare decided to offer a proprietary display, it would be able to offer accurate information on United using OAG and ATP tapes. The reservations and ticketing function could be performed through the internal reservation system of any MARS PLUS participant that had an interline agreement with United.

DOJ's proposal is thus an attempt to compel CRS owners to enhance the quality of CRS services offered by actual or potential competitors even through such competitors could provide the enhanced quality of service, if they are willing to undertake the effort of developing a propietary system. Indeed, with the advent of an electronic OAG, an arrangement might be worked out using that as a proprietary screen that greatly reduced the costs involved.

We consider intervention in the CRS market to benefit a particular competitor as wholly inconsistent with our effort in the proposed rules to give maximum flexibility to CRC industry participants to respond to the needs in the market. Even if a third party CRS vendor elects not to provide a proprietary screen, it will have another means to overcome the disadvantage caused by the refusal of some carriers to participate. It can pass the costs saved from not developing the proprietary screen along to agents in the form of lower fees. This kind of variety in service and price is precisely what one would expect in a market that is functioning competitively.

B. Discussion Authority and Collective Bargaining

Certain carriers have requested authority under section 412 of the Act and immunity under section 414 for discussions among carrier purchasers of CRS services with a view toward permitting joint negotiation of CRS participation terms. They argue that problems with bias and access fees result from the fact that no single carrier is as important to the viability of the CRS as the CRS access is to the carriers. This relative importance gives the CRS owner the ability to impose unreasonable terms. They predict that if participants could join together in negotiations, presumably with the ability to withdraw jointly in the face of unsatisfactory terms, then the positions of CRS owners and user airlines would be more balanced.

Joint discussions are not necessary to prevent CRS's from being used to reduce competition in air transportation, and they could be counter-productive. We have consistently rejected carrier requests for immunity for joint purchasing of goods or service, even from suppliers with alleged monopoly powers as inconsistent with competition under the Act. Order 83–2–17. The commenters have not demonstrated that an exception should be made here.

The danger in joint discussions is that they could create market power in the hands of the participants which could have unforseeable and undersirable consequences. Thus, carriers might use their collective power to force CRS owners to accept their price. This might, in the extreme, make CRS operations uneconomic or, what is more likely, force CRS owners to raise prices to carriers that are not participants in the collective bargaining process.

Our proposed rules on bias and CRS owner-carrier contracts are designed to reduce the potential for abuses that may arise from the disparate bargaining power of CRS owners and other carriers. Until we have had a chance to test their effectiveness, we are not disposed to depart from our long-standing policy of refusing to risk giving market power to carriers that purchase CRS services by permitting collective bargaining.

C. Ticketing and Plating Practices

Certain commenters have also requested that we further examine the CRS owner practices concerning ticket writing. They are concerned that CRS owners continue to encourage agents to issue tickets naming the CRS provider as the ticketing carrier so they may gain the advantage of cash float and net ticketing fees.

The issue of travel agent ticketing practices was recently addressed at length in a proceeding reviewing ATC agreements. Orders 82–12–77, 83–4–135, and 83–7–55. There, we directed ATC to modify its agreements governing ticketing standards to conform to the public interest, and to assure that no carrier, particularly CRS owners, achieves unfair competitive advantages over others based solely on its being identified as a ticketing carrier. All CRS owners are currently ATC members and are bound by this agreement, which has been modified to meet our concerns. If CRS owners are not abiding by the terms of the agreement, carriers have ample remedies elsewhere. Adding provisions to our proposed rule that are peripheral to the basic issue of carrier access to CRS's and agents is not necessary to protect competition in these circumstances.

D. Use of Carrier Codes

Frontier has requested that we adopt rules addressing United's recently announced policy of removing multiple carriers that share a single two-letter airline designator from its Apollo display.

Generally speaking, airlines are each assigned two letter designators that are used to identify them in industry fare and schedule publications as well as for other purposes. For some time however, some carriers have shared a common designator. The practice started with USAir and its franchisees, the Allegheny Commuters, and it has been followed by other carriers that are establishing franchising networks, such as Pan American and Eastern. Most recently, Frontier has elected to share its designator with its newly established affiliate, Frontier Horizon.

According to Frontier, United has announced that it will discontinue the use of common designator codes for franchisees and affiliates and their airline "parent" in the ordering of displays. Apparently United considers the practice to be misleading in that what its computer shows to be on-line service is really interline service.

Frontier claims that because of the joint control, Frontier Horizon's service is the equivalent of Frontier's, and it argues that connecting service between the carriers is the equivalent of on-line service. It requests that we require CRS owners to display both carriers' services using the same designator code.

Other carriers, such as USAir, have filed an emergency rulemaking petition which asks the Board to take similar action. The use of single designators by affiliates and franchisees is also the subject of pending third party enforcement complaints.

We have decided not to consider these requests here. Frontier and the affiliated carriers have raised what may well be a serious problem. The sharing of designators has been a practice in the industry for at least 15 years, starting with the Allegheny Commuters. We are unaware of any substantial consumer complaints that the practice is deceptive. In addition, the Board within the last year has sanctioned the sharing of airline designators, subject to a general disclosure requirement, *Emerald Air Fitness Investigation* Order 83–4–98, April 20, 1983. We prefer to address this issue in the context of the emergency rulemaking petition, in part because we could not complete this proceeding in time to give the petitioners any immediate relief if we decided that is warranted.

Paperwork Reduction Act

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. Those requirements have been submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirements to OMB and to the Board. Comments sent to OMB should be addressed to: Office of Information and Regulatory Affairs, ATTN: Desk Officer for Civil Aeronautics Board, Office of Management and Budget, Washington, D.C. 20503.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96–354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, will have a significant economic impact on a substantial number of small entities.

The analysis is required to describe the need, objectives, legal basis for, and flexible alternatives to the agency's proposed action. These requirements are met by the discussion above. In addition, the analysis must include a description of the small entities to which this proposal would apply, the reporting, recordkeeping, or other compliance requirements of the proposed rule, and any other Federal rules that may duplicate, overlap, or conflict with it.

The Board tentatively finds that this rule may, if adopted as proposed, have a significant economic impact on a substantial number of small entities. The proposed rule would affect airlines operating aircraft with less than 60 seats, travel agents, and new, low-cost airlines.

The proposed rule would have an overall beneficial economic impact on a substantial number of small air carriers. First, they would benefit by the prohibition of display bias. Currently, none of these carriers are system vendors and consequently have not enjoyed the benefit of built-in display preference. Under the new rules, their flights will be displayed strictly on the basis of service criteria. This change will allow them to go from what is often the least desirable display to a competitive go from what is often the least desirable display to a competitive display. As a result, these small carriers will be better able to compete.

The proposed prohibition on tying arrangements will also benefit small aircraft operators. Presently, many small airlines are forced by system vendors to sign agreements to pay for interline tickets as a condition for staying on the system. Under the new rule, this cost would be eliminated.

The general availability of service enhancements might improve the quality of service offered by small aircraft operators. Under the proposed rule, if a system vendor has the technical capability to provide service enhancements to other carriers, it must allow any participating carrier to provide that service upon request. This change will provide small aircraft operators the opportunity to compete with larger, more established airlines on new service elements.

Finally, the rule will help small airlines compete by giving them access to information they previously could not have obtained. For example, a small carrier would be able to analyze booking information obtained from the service vendor to develop markets or change flight schedules. Alternatively, it could use the service criteria for ranking the order of connecting flights to ensure that it gets a favorable display. In a competitive environment, such information will be valuable.

If this rule is adopted, small carriers may have to pay higher fees. Presently, few small aircraft operators directly compete with the system vendors. As a

result, many of these operators have free or low-cost display. Under the new rule, fees must be non-discriminatory so that such an indirect subsidy would no longer be allowed.

Travel agents would also be affected by this rule. Nationwide, there are approximately 21,000 travel agents, 74–80 percent of which use automated reservations systems. Of these 21,000 travel agents, the Board estimates that over three quarters would be considered small entities for the proposes of the Regulatory Flexibility Act.

This rule may result in travel agents paying higher fees than at present. Currrently, CRS owners rely on incremental revenues to recoup some portion of the cost of their systems. If this rule is adopted, some of these incremental revenues may be redistributed among other carriers and subscribers so that the system vendors cannot economically continue to subsidize their subscribers. In addition, may travel agents are presently paying fees that are below cost because certain vendors intentionally set low prices to gain a larger market share. Under the proposed rules, the fees for travel agents should be more consistent.

Travel agents should benefit, however, by the elimination of bias in the system. This change should increase efficiency and lower agency costs since personnel will no longer be required to take time to overcome bias. In addition, the rules on contracts between owners and agents will provide agents with greater opportunities to take advantage of CRS competition to lower costs. Further, under a regime of individual carrier commission rates, travel agents will have greater opportunity to recoup through increased commissions any cost increases associated from the rules. In effect, carriers that now have higher costs because of bias will have an incentive to share with agents their cost savings resulting from the rule. Finally, to the extent that service enhancements are available and used by other carriers, travel agents using computerized reservation systems will be able to offer better service than they do now.

New low-cost airlines should receive significant benefits from this rule. Presently, new entrants are among the greatest competitive threat to the established airlines that own the CRS systems. As a group, they currently must pay the highest fees for access to the system. Under the new rules, these entrants well pay the same fees as everyone else, which should result in a substantial cost savings. Similiarly, flights by new entrants tend to be dislayed inconspicuously. The prohibition against bias should result in more favorable displays, which in turn should increase sales and lower the cost per seat. Finally, the elimination of interline ticket fees should also help lower carrier costs.

The rule does not contain any direct reporting, recordkeeping, or other compliance requirements. System vendors must disclose to interested subscribers and participating carriers what criteria were used in determining the order of display and the construction of connecting flights. In addition, the vendors must make available any marketing data generated by their system. The vendors are not required, however, to provide this information to the Board.

There are no other Federal rules that duplicate, overlap, or conflict with this proposed rule.

Regulatory Impact Analysis and Review

Executive Order 12291, dated February 17, 1981, requires every executive agency to perpare a Regulatory Impact Analysis for every "major rule." Major rule is defined in the order as any that is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As an independent agency, the Civil Aeronautics Board is not required to comply with E.O. 12291. Because of the importance of this rule and its expected transfer to the Department of Transportation in connection with the sunset of the Board, we are voluntarily preparing a Regulatory Impact Analysis. Beause we are scheduled to sunset at the end of 1984 and it is important that this rulemaking be in place sufficiently prior to that time to allow the Board to implement it, we are not providing the 60-day review period provided in section 3 of the Executive Order for the Director of the Office of Management and Budget. Instead, our usual 10 work day OMB period will apply.

We find that this rule, if adopted as proposed would meet the definition of a major rule within the meaning of the Executive Order. American has estimated that the effect of incremental revenues on SABRE ranged from $78.5 to $150 million in 1980. DOJ Comments at 54. United has estimated that its 1983 incremental revenues from APOLLO were over $160 million. There can be no question, therefore, that the sum of incremental revenues for all CRS owners is well over $100 million. Because this rule may result in a redistribution of a large portion of these revenues among CRS owners, participating carriers, and travel agents, it is a major rule under the terms of Executive Order 12291. In addition, the rule may result in a major increase in costs or prices for certain air carriers and travel agents.

The Executive Order sets forth five general requirements for new rules.

Administrative decision shall be based on adequate information concerning the need for and consequences of proposed government action;

Regulatory action shall not be undertaken unless the potential benefits to society from the regulation outweigh the potential costs to society;

Regulatory objectives shall be chosen to maximize the net benefits to society;

Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

We carefully considered each of these elements in the preceding Supplementary Information. Our tentative findings are based on information set forth in the various petitions for rulemaking, answers filed to those petitions and our extensive investigation into computer reservations systems. The investigation included substantive information requests from all the CRS owners. We also relied on extensive research conducted by the Department of Justice that was compiled for its investigation into the same area.

Our proposed rules have four or five major provisions. For each, we find that its benefits to consumers will substantially exceed its potential costs.

The elimination of carrier preference factors in the ordering of information on CRS displays will cause a significant revenue shift from CRS providers and certain preferred carriers to generally smaller, currently disfavored carriers. United and American estimated incremental revenue shifts of as much as $150–$160 million each year. The CRS providers are likely to retain the remainder because of the "halo" effect. Currently disfavored carriers are likely to experience revenue gains comparable

to those some carriers experienced when they went from "other airline" to "cohost status," generally 10 to 20 percent revenue gains per agency.

This shift of revenues with the elimination of bias will have significant beneficial effects on consumers. It will strengthen the merits of fare and service offerings as the basis for consumer selection of flights. Consumers can expect lower air fares as the CRS providers lose their ability to raise other carriers' costs through bias. While we cannot exactly predict consumer savings, because of the magnitude of the bias problem, if even a small percentage was passed through to the consumer the savings would amount to tens of millions of dollars.

Our proposal that carriers disclose their criteria for ordering display information will cause CRS carriers some additional costs, particularly to generate and disseminate the information. However, these costs should not be substantial, on the order of a few thousand dollars a year. The benefits, on the other hand, will be tremendous. Insofar as the rule provides the means for other carriers to monitor CRS carrier practices, the rule will be more effective than Board regulation. Many carriers currently have reservations departments that can perform this function. We, on the other hand, would have to establish a mechanism for continued government oversight of CRS carrier practices.

Currently, fees from other carriers and agents are generally insufficient to cover CRS providers' operating costs. Only through the benefits of bias have they become profitable. With the elimination of a substantial portion of bias revenues, CRS providers may raise costs to participating airlines and travel agent subscribers. We do not anticipate dramatic cost increases to these persons because CRS losses, when incremental revenues are not considered, are not substantial. On the basis of the profit and loss statement submitted to us, it has been determined that American's CRS operations could break even if air carrier subscribers were charged 54 cents a booking. We expect, therefore, modest increases in booking fees to other carriers because of our bias rules, and virtually no change in subscriber charges.

Insofar as our rules foreclose unjustly discriminatory access charges there will also be revenue transfers between CRS providers and participating carriers. The fees charged the generally smaller carriers that currently pay from $2–$3 should decrease. Those of the larger, more established carriers should increase somewhat, at least to .54 cents a booking if not to the $1.00 per booking range. Overall, participating airlines should pay more than they do at the present time for CRS services. These costs will be offset, however, by the substantial benefits gained from the elimination of bias.

Another reason to expect higher booking fees is our decision to eliminate CRS contract terms that require an airline to pay net ticketing charges as a precondition to CRS access. The ticketing services for which these charges are assessed do not appear to be of sufficient value to other carriers to, standing by themselves, warrant compensation. Insofar as other carriers are willing to pay them to gain CRS access, it appears that CRS carriers could merely charge more for CRS services, with no significant loss of revenue. As with our rule on unjustly discriminatory fees, smaller carriers are likely to pay somewhat less for CRS access and the larger, established carriers somewhat more. The effect of these marginal revenue transfers will also be offset by the tremendous benefits to be gained from a more competitive air transportation industry.

Finally, our rule requiring CRS carriers to make available to participating airlines the information generated by their systems will not result in significant new costs. The programs necessary to generate the information are or will already be in place. Our rule will merely result in slight administrative costs attendant to distributing the information to requesting carriers.

In considering the need for rules and the alternatives suggested to our proposed course we have endeavored to take the approach that will produce the maximum set benefits to society. The cost of doing nothing, in our view is tremendous. Consumer losses would be measured in hundreds of millions of dollars.

The alternatives of beginning a proceeding aimed at the possible mandated divestiture of some or all of carrier owned CRS systems, requiring separate corporate subsidiaries, and highly specific rules of conduct for CRS providers have also all been considered. We find that each of these alternatives would be more costly. The costs attendant to a separation of American's SABRE system, for example, from its other operations would be substantial. Among costs American would have to bring on line a new mainframe to handle in-house computer needs and hire new personnel to oversee its operation.

While the costs, attendant to these alternative proposals should be greater than those of our proposed course, it does not appear that any greater benefits might be obtained. Our proposed rules will eliminate the conduct that is causing an immediate adverse impact on air transportation competition and consumer injury without undue interference in management prerogatives or the workings of the marketplace. As a result, our course involves the least net cost to society and maximizes the aggregate net benefits.

Comment Period

In light of our conclusions on the significant potential for competitive harm and consumer injury from CRS practices, comments on this notice of proposed rulemaking will be due 30 days after publication in the **Federal Register.** CRS carriers' ability to bias their systems, discriminate in access charges, and use computer generated information to their competitive advantage is lessening competition in air transportation. We have the responsibility under the Federal Aviation Act to act quickly in such circumstances. For this reason, we find good cause to conduct this rulemaking on an expedited basis with a 30-day comment period.

Options for Which Comments are Requested

To assure that parties are fully aware of all options on we are requesting comments, they are listed below:

All provisions of the proposed Part 255, infra; a rule prohibiting use of total hub size in selecting connecting points (pp. 32–33); a rule requiring strictly equal fees in lieu of one that would permit cost based fee differences (p. 49); and a rule requiring CRS owners to offer service enhancements as soon as they are developed (p. 56). We are also requesting comments on whether we should adopt affirmative standards for display of connecting flights in a separate advance notice of proposed rulemaking.

List of Subjects in 14 CFR Part 255

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Chapter II by adding a new Part 255, *Carrier-Owned Computer Reservations Systems,* to read:

PART 255—CARRIER OWNED COMPUTER RESERVATIONS SYSTEMS

Sec.
255.1 Purpose.
255.2 Applicability.
255.3 Definitions.

255.4 Display of information.
255.5 Contracts with participating carriers.
255.6 Contracts with subscribers.
255.7 Service enhancements.
255.8 Market information.
255.9 Exceptions.
255.10 Review and termination.

Authority: Secs. 102, 204, 404, 411, 419, 1102 Pub. L. 85–726 as amended, 72 Stat. 740, 743, 760, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502.)

§ 255.1 Purpose.

The purpose of this part is to set forth requirements for operation by air carriers of computer reservation systems used by travel agents so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

§ 255.2 Applicability.

This rule applies to air carriers and foreign air carriers that own, control or operate computerized reservations systems for travel agents in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 255.3 Definitions.

"Availability" means information provided in display with respect to the seats a carrier holds out as available for sale on a particular flight.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and 14 CFR 298.2(f), respectively that are engaged directly in the operation of aircraft in passenger air transportation.

"Discriminate", "Discrimination," and "discriminatory" mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

"Participating carrier" means a carrier that has an agreement with a system vendor for display of its flight schedules, fares, and seat availability in a system.

"Service enhancement" means any product or service offered to subscribers of passengers in conjunction with a system other than the display of information on schedules, fares, rules, and availability, and the ability to make reservations or to issue tickets for air transportation.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry in general, and that has entered into an agreement for the use of a system.

"System" means a computerized airline reservation system offered by a carrier to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to issue tickets.

"System vendor" means a carrier that owns, controls or operates a system.

§ 255.4 Display of information.

(a) All system vendors shall offer a display that includes the schedules, fares, rules and availability of all carriers in accordance with the provisions of this section.

(b) In ordering the information contained in a display, system vendors shall not use any factors relating to carrier identity.

(1) System vendors may order flight information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including the system vendor.

(2) System vendors shall provide upon request to all subscribers and participating carriers the current criteria used in ordering flights for the integrated display and the weight given to each criterion.

(c) System vendors shall not use any factors relating to carrier identity in constructing the display of connecting flights.

(1) System vendors may select the connecting points to be used in the construction of connecting flights for each city pair on the basis of any service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor.

(2) System vendors may select connecting flights for inclusion ("edit") on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor.

(3) System vendors shall provide all subscribers to their systems and participating carriers with information on:

(i) All connecting points used for each market;

(ii) All criteria used to select connecting points;

(iii) All criteria used to "edit" connecting flights; and

(iv) The weight given to each criterion in (ii) and (iii) above.

(d) Upon receipt of information from any carrier, system vendors shall apply the same standards of care and timeliness to loading information concerning participating carriers (including direct updating) as it applies to the loading of its own information.

(1) If a system vendor provides special loading capability to any other carrier, it shall offer the same capability to all participating carriers in a nondiscriminatory fashion as soon as technically feasible.

(2) Each system vendor shall provide upon request to all participating carriers all current data base update procedures and data formats.

§ 255.5 Contracts with participating carriers.

(a) No system vendor shall unjustly discriminate among participating carriers in the fees for participation in its system, or for system related services.

(b) No system vendor shall condition participation in its system on the purchase or sale of any other goods or services.

(c) In order to facilitate compliance with the provisions of this section, each system vendor shall include in every participation contract a clause providing for expedited arbitration of disputes relating to alleged discrimination in fees.

§ 255.6 Contracts with subscribers.

(a) No subscriber contract shall have a term in excess of five years.

(b) No system vendor shall directly or indirectly prohibit a subscriber from obtaining or using any other system.

(c) No system vendor shall require use of its system, by the subscriber in any sale of its air transportation services.

(d) No system vendor shall require that a travel agent use its system as a condition for the receipt of any commission for the sale of its air transportation services.

§ 255.7 Service enhancements.

In the event that a system vendor offers a service enhancement to any participating carrier, it shall offer it to all participating carriers on nondiscriminatory terms.

§ 255.8 Marketing information.

Each system vendor shall make available to all participating carriers on nondiscriminatory terms all marketing, booking and sales data that it elects to generate from its system.

§ 255.9 Exceptions.

(a) The obligations of a system vendor under this support shall not apply where a carrier refused to enter into a contract that complies with this part or fails to pay a nondiscriminatory fee.

(b) The obligations of a system vendor under this part shall not apply to any

foreign air carrier that operates an airline computer reservation system for travel agents outside the United States that does not display the flights of all United States carriers equally with the flights of the foreign carrier.

§ 255.10 Review and termination.

(a) The Federal agency administering this rule shall conduct a review within 5 years after its effective date.

(b) Unless extended on the basis of the review specified above, this rule shall terminate on December 31, 1991.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-8048 Filed 3-26-84; 8:45 am]

BILLING CODE 6320-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 33

Commodity Options; Margins

Correction

In FR Doc. 84-6444 beginning on page 8937 in the issue of Friday, March 9, 1984, make the following corrections.

1. On page 8941, second column, in Footnote 21, last line, insert "call" after "long"; third column, in Footnote 23, eighth line from the bottom, "differerent" should read "difficult".

§ 1.17 [Corrected]

2. On page 8945, first column, § 1.17, paragraph (h)(2)(vii)(a)(*2*), twenty-first line from the top, insert "not" after "have".

BILLING CODE 1505-01-M

PEACE CORPS

22 CFR Part 303

Compliance With Public Information Act

AGENCY: Peace Corps.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the Director of the Peace Corps proposes to amend Chapter III of Title 22, Code of Federal Regulations, by replacing Part 303 with a new Part 303, which provides regulations permitting the inspection and copying of documents of the Peace Corps. Originally, regulations governing dissemination of information to the public were published as Part 303 of Title 22, Code of Federal Regulations. Amended regulations with regard to the dissemination of Peace Corps records, documents and other information in conformity with the Freedom of Information Act, 5 U.S.C. 552 as amended by Pub. L. 93-502, 88 Stat. 1561, were published in the **Federal Register,** Vol. 40, No. 83, April 29, 1975, as Chapter XII, ACTION, Part 1215, or Title 45, Code of Federal Regulations because the Peace Corps was a part of the ACTION Agency. Under the provisions of Pub. L. 97-113, Title VI, the Peace Corps became an independent Agency on February 21, 1982. Accordingly, the Peace Corps is now republishing amended Freedom of information Act regulations to reflect the current statutory provisions.

DATES: Comments must be received on or before May 29, 1984.

ADDRESSES: Comments should be submitted to and are available for examination from 8:30 a.m. to 5:00 p.m. Monday through Friday except holidays, at the Peace Corps, 806 Connecticut Avenue, N.W., Washington, D.C. in Room 1207, Office of the General Counsel. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Robert McClendon, Freedom of Information Act Officer, Office of Administrative Services, 202-254-6180 or Robert Martin, Associate General Counsel, 202-254-7966.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Peace Corps has determined that rule is not a major rule because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule impose no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The Director certifies that this rule, if adopted will not have a significant economic impact on a substantial number of small entities.

Reasons for this Proposed Rule

The provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, require that each agency of the Federal government make available to the public at established places any records reasonably described in a request therefore and other records therein specified.

Accordingly it is proposed that 22 CFR Chapter III Part 303 be amended to provide a new procedure implementing the provisions of the Freedom of Information Act.

List of Subjects in 22 CFR Part 303

Administrative practice and procedure, Freedom of Information Records.

PART 303—INSPECTION AND COPYING OF RECORDS: RULES FOR COMPLIANCE WITH FREEDOM OF INFORMATION ACT

Sec.

303.1 Purpose.
303.2 Definitions.
303.3 Records generally available.
303.4 Availability of records.
303.5 Records which may be exempt from disclosure.
303.6 Manner of requesting records—appeals.
303.7 Authority to release and certify records.
303.8 Location of records.
303.9 Identification of records.
303.10 Schedule of fees.

Authority: 5 U.S.C. 552 Pub. L. 87-293 as amended (22 U.S.C. 2501 *et seq.*); Pub. L. 97-113, Sec 601; Executive Order 12137, May 16, 1979.

§ 303.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, staff manuals, instructions, and other records of the Peace Corps pursuant to 5 U.S.C. 552.

§ 303.2 Definitions.

As used in this part, the following definitions shall apply:

(a) "The Agency" means Peace Corps.

(b) "Records" includes all books, papers, maps, photographs, films, tapes, or other documentary material or copies thereof, regardless of physical form or characteristics, made in or received by the Peace Corps and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities but does not include books, magazines, or other materials acquired solely for library purposes and available in the library of the agency.

(c) "Identifiable" means, in the context of a request for a record, one which is reasonably described in a manner sufficient to permit the location of the material requested.

(d) "Unit" means an office of the Agency headed by a senior official who shall be responsible for making initial determinations of availability of documents or records requested hereunder. The head of any such Unit may delegate his or her responsibility hereunder to his or her Deputy or some other official during any absence of such official. At present, the units of the

Agency for the purposes hereof consist of, the Office of the Director; the Executive Secretariat; the Office of Private Sector Development; the Office of Executive Talent Search; the Office of General Counsel and Legislative Liason; the Office of Public Affairs; the Office of the Associate Director for Marketing, Recruitment, Placement and Staging; the Office of the Associate Director for International Operations; and the Office of the Associate Director for Management.

§ 303.3 Records generally available.

The agency will make promptly available to any member of the public the following documents:

(a) All final opinions and orders made in the adjudication of cases.

(b) Statements of policy and interpretation adopted by the agency which have not been published in the Federal Register.

(c) Administrative staff manuals and instructions to the staff which affect a member of the public.

(d) A current index, which shall be updated at least quarterly, covering so much of the foregoing materials as may have been issued, adopted or promulgated after July 4, 1967, is maintained by the Agency and copies of same or any portion thereof shall be furnished upon request at a cost not to exceed the cost of duplication. The Agency deems further publication of such index in the **Federal Register** both unnecessary and impractical.

(e) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details from materials furnished under this section.

(f) Brochures, flyers and other similar material shall be furnished to the extent that same are available. Copies of any such brochures and flyers which are out of print shall be furnished upon request at the cost of duplication, provided, however, that in the event no copy exists, the Agency shall not be responsible for reprinting the same.

(g) The Agency will not be required to create or compile selected items from its file and records or to provide a requester with statistical or other data unless such data has been compiled by the Agency and is available in the form of a record in which event such record shall be made available as provided in this part.

§ 303.4 Availability of records.

All records of the Peace Corps, in addition to those ordinarily maintained and disseminated under 303.3 hereof, requested under 5 U.S.C. 522(a)(3) and reasonably described in any request therefore shall be made promptly available upon request of any member of the public for inspection or copying upon compliance with procedures established in this part, except to the extent that a determination is made, in accord with the procedures set forth herein, that a record is exempt from disclosure, and should be withheld in the public interest. All publications and other documents heretofore provided by the Peace Corps in the normal course of business will continue to be made available upon request to the appropriate unit of the Agency. No charge will be made for such documents unless necessary by reason of the fact that such document is no longer in print in which case the charge shall not exceed the cost of duplication as set forth herein.

§ 303.5 Records which may be exempt from disclosure.

The following categories are examples of records maintained by the Peace Corps which, under the provisions of 5 U.S.C. 552(b), may be exempted from disclosure:

(a) Records required to be withheld under criteria established by an Executive Order in the interest of national defense or foreign policy and which are in fact properly classified pursuant to any such Executive Order. Included in this category are records required by Executive Order No. 12356, as amended, to be classified in the interest of national defense or foreign policy.

(b) Records related solely to internal personnel rules and practices. Included in this category are internal rules and regulations relating to personnel management and operations which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant function of the Agency.

(c) Records specifically exempted from disclosure by statute.

(d) Information of a commercial or financial nature including trade secrets given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(1) It is the policy of the Peace Corps not to release information which is a trade secret or commercial or financial information obtained from a person and privileged or confidential within the meaning of 5 U.S.C. 552(b)(4), and to give submitters of information which may be exempt from disclosure under 5 U.S.C. 552(b)(4) adequate opportunity to provide information at the administrative level which may establish such exemption.

(2) A person submitting information to the Peace Corps, if previously notified by the Peace Corps of his/her right to request confidential treatment for information, must request that the information be considered exempt from disclosure at the time of submission. Failure to do so will be deemed an acknowledgement that the submitter does not wish to claim exempt status.

(3) A person submitting information not covered by paragraph (2) which is the subject of a Freedom of Information Request, and which may be exempt from disclosure, shall be given prompt written notification of such request, unless it can be established that the information should not be disclosed, or that the information has already been lawfully published or made available to the public. Such notice must afford submitters at least ten working days in which to object to the disclosure of any requested information.

(4) Each request for exemption from disclosure under 5 U.S.C. 552(b)(4) as a trade secret or privileged or confidential commercial or financial information must:

(i) Specifically identify the exact material claimed to be confidential.

(ii) State whether or not the information identified has ever been released to a person not in a confidential relationship with the submitter.

(iii) State the basis for submitter's belief that the information is not commonly known or readily ascertainable by outside persons.

(iv) State how release of the information would cause harm to the submitter's competitive position.

(5) The agency will not normally decide whether material received with a request for exemption from disclosure under 5 U.S.C. 522(b)(4) is entitled to be withheld unless a request for disclosure is made. Any reasonably segregable portion of a record will be disclosed after deletion of any portions determined to be exempt.

(6) The agency will give careful consideration to all specified grounds for exemption prior to making its administrative determination and, in all cases in which the determination is to disclose, provide the submitter with a statement of the reasons why its disclosure objection was not sustained. The Peace Corps will provide the submitter with at least ten days advance notice of the proposed release date of information in cases in which an

objection to disclosure has been rejected.

(7) The Peace Corps will notify the submitter promptly of any instance in which a requester brings suit seeking to compel disclosure of its information. Submitters should not request exemption from disclosure unless they are prepared to assist the agency in the defense of any judicial proceeding brought to compel disclosure.

(e) Interagency or intra-agency memoranda or letters which would not ordinarily be available by law to party in litigation with the Agency. Included in this category are memoranda, letters, interagency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records of deliberations of staff, ordinarily used in arriving at policy determinations and decisions.

(f) Personnel, medical and similar files. Included in this category are personnel and medical information files of staff, volunteer applicants, former and current volunteers, lists of names and home addresses and other files or material containing private or personal information, the disclosure of which would amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) Investigatory files complied for law enforcement purposes. Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings; provided however, that such records shall be made available to the extent that their production will not (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by a confidential source; (5) disclose investigative techniques and procedures; or (6) endangered the life or physical safety of law enforcement personnel.

(h) In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section.

(i) Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any peson to whom such information might pertain, and that disclosure is not prohibited by law or Executive Order.

§ 303.6 Manner of requesting records-appeals.

(a) Requests under the Freedom of Information Act (5 U.S.C. 552) for access to Peace Corps records may be filed in person or by mail with the Director of Administrative Services, Peace Corps, 806 Connecticut Avenue N.W., Washington, D.C. 20526. All requests and the envelope in which they are sent must be plainly marked "FOIA Request." Personal written requests will be received from between 10 a.m. and 4 p.m., Monday through Friday, except for official holidays.

(b) Requested records which are reasonably described shall either be made available within ten working days after receipt of any such request or a written notice that the request cannot be complied with will be provided to the person making such request within such ten day period. Any such notice of inability to comply shall specify the reasons for refusal and the right of the person making such request to appeal such adverse determination. In the event a request for a record or document is made to the Director of Administrative Services, and such office does not have the requested material, the requester shall be immediately notified. The request shall be deemed received when actually received by the Director of Administrative Services.

(c) Upon receipt of a notice of failure to comply, a person making a request for information, records, or documents may, within 15 calendar days from the receipt of such notice, appeal such adverse determination to the Director of the Peace Corps or designee. Such appeal shall be in writing and shall specify the date upon which the notice of failure or refusal to comply was received by the person making such request. The Director or designee shall make determination with respect to such appeal within 20 working days after receipt of such appeal. Written notice of such determination shall be provided to the person making the request in writing. If the original denial of the request for records is upheld in whole or in part, such notice shall include notification of the right of the person making such request to have judicial review of the denial and appeal as provided under the Freedom of Information Act (5 U.S.C. 552).

(d) The time limits specified above for initial compliance, and appeal from a refusal to comply, may be extended by the Agency upon written notice to the person making the request. Such notice shall set forth the reasons for such extension and the date upon which determination is expected. Such extension may be applied at either the initial stage or the appellate stage, or both, provided that the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension will include the following:

(1) Time necessary to search and collect requested records from segments of the Agency separate from the office processing the request;

(2) Time necessary to search, collect and appropriately examine a voluminous number of records demanded in a single request; or

(3) Time necessary for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency which have an interest in the subject matter of the request.

(e) The time limits provided in this section are mandatory and a person requesting records shall be deemed to have exhausted his or her administrative remedies with respect to such request in the event the Agency fails to comply within the said applicable time limit provisions as extended in accord with this section. In unusual circumstances in which additional time is necessary to collect and review the records requested, the Act provides that a court of appropriate jurisdiction may allow the agency additional time for such purpose. Alternatively, the Agency and the person making such request may agree as to a reasonable time for completion of Agency work upon such request.

(f) Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of the persons primarily responsible for the denial of such request.

(g) Upon receipt of a request for a record or document the Director of the Office of Administrative Services will promptly make an initial determination as to whether the request for the record reasonably describes such record with sufficient specificity to determine the unit of the Agency to which such request should be referred. Upon making such initial determination, he shall immediately refer such request to the head of the unit concerned. Upon receipt

of the request the head of the unit shall promptly determine whether the description of the record contained in the request is sufficient to permit its identification and production.

(h) If the Director of Administrative Services or the head of the unit concerned determines that the description contained in the request is not sufficient to reasonably describe the record requested, the requester shall be advised and shall be permitted to amend the request to provide any additional information which would better identify the record. The requester shall be provided with appropriate assistance from the head of the unit concerned, the Director of Administrative Services or any member of their staffs. A request which is amended in accord herewith shall be deemed to have been received by the Agency on the data of receipt of the amended request.

(i) If the head of the unit concerned determines that the record requested is reasonably described so as to permit its identification, he or she shall make it available unless he or she determines, after consultation with the General Counsel, that (1) the record is exempt from disclosure and (2) it should be withheld in the public interest or to protect the rights of persons to whom the information pertains. When such a determination is made the requester shall be immediately notified in writing as provided herein.

(j) Peace Corps offices overseas are not responsible for maintenance of any Freedom of Information Act indexes, documents, or records (other than materials normally kept and maintained in such offices). Insofar as they do have any materials, they will make them available upon written or oral request to persons who are present in their respective countries addressed to the Director, Peace Corps, c/o American Embassy in the applicable country. Such requests shall be treated informally and as expeditiously as possible. In the event any such request is received for information which might be exempt from disclosure under the provisions of § 303.5 hereof, a copy of the material and the request together with any recommendation shall be forwarded to the Director of Administrative Services for processing. Such a request shall be considered received when actually received by the Director of Administrative Services.

(k) The Peace Corps maintains recruiting offices in many states. These offices are not responsible for maintaining Freedom of Information Act indexes, reading rooms, or other records or documents. Requests to any Recruiting Office or Service Center Office for materials not given out in the normal course of business shall be referred to the Director of Administrative Services. The request shall be in writing and shall be deemed received when actually received by the Director of Administrative Services.

§ 303.7 Authority to release and certify records.

(a) Authority is hereby delegated to the Director of Administrative Services, Office of Management, to furnish, pursuant to these regulations, copies of records to any person entitled thereto, and upon request to provide certified copies thereof for use in judicial proceeding or other official matters as provided below.

(b) The Director of Administrative Services and his or her deputy, are hereby designated to act as authentication officers. When both the authentication officers are unavailable, any other person within such office designated by the Director of Administrative Services may act in his or her place and stead. The authentication officer is hereby authorized to sign and initial certificates of authentication for and in the name of the Director of the Peace Corps. The form of authentication shall be as follows:

Certificate of Authenticity

In testimony whereof, I ————————, Director of the Peace Corps, have hereunder caused my name to be subscribed by the authentication officer of said agency at Washington, D.C., this ———— day of ————, 19—.

Director of the Peace Corps
By

Authentication Officer, Peace Corps.

(c) The authentication officer is also hereby authorized to issue such statements, certificates, or other documents as may be required in connection with judicial proceedings or other official matters to show that, after thorough search of Peace Corps records, a requested record has not been found. (See Rule 44(b) Federal Rules of Civil Procedure).

§ 303.8 Location of records.

The Agency will maintain a central records room at its headquarters in Washington, D.C. The headquarters of the Peace Corps is presently located at 806 Connecticut Avenue, NW., Washington, D.C. The present location of the central records room shall be the Paperwork and Records Management Branch, the location of which may change from time to time. The specific location of the records room may be determined by requesting such information from the Peace Corps receptionist in the Office of the Director of the Peace Corps.

§303.9 Identification of records.

(a) In order for the Agency to locate records and make them available it is necessary that it be able to identify the specific records sought. Persons wishing to inspect or secure copies of records should therefore seek to describe and identify them as fully and as accurately as possible. In cases where requests are submitted which are not sufficient to permit identification, the records officer receiving the request will endeavor to assist the person seeking the records in filling in necessary details.

(b) Among the kinds of information which a person seeking records should try to provide in order to permit an identification of a record are the following:

(1) The unit or program of the Agency which may be responsible for or may have produced the record.

(2) The specific event or action, if any, and if known, to which the record refers.

(3) The date of the record or the period to which it refers or relates, if known.

(4) The type of record, such as an application, a contract, or a report.

(5) Personnel of the office who may have prepared or have knowledge of the record.

(6) Citation to newspapers or publications which are known to have referred to the record.

§ 303.10 Schedule of fees.

(a) It is the policy of the Peace Corps to encourage the widest possible distribution of information concerning programs under its jurisdiction. To the extent practicable, this policy will be applied under this part so as to permit requests for inspection or copies of records to be met without substantial cost to the person making the request. Search and reproduction charges will be made in accordance with subsection (b) below. The Peace Corps will conduct a thorough review of all fee waiver requests, on a case-by-case basis, and will grant waivers or reductions in feeds only in those cases in which the requester establishes that the disclosure of the information will primarily benefit the general public.

(b) Search and copying charges will be made as follows:

(1) Copies made by photostat or otherwise (per page) $.10.

(2) Search service will be charged according to current hourly rates or quarterly fraction thereof, at the first step of the FS–3/1 or FS–8/1 salary level rounded to the nearest dollar. Currently, $16.00 per hour will be charged for a search by a professional level employee and $7.00 will be charged for a search by a clerical level employee. Such charges will be changed on the effective date and in accordance with changes in the Foreign Service salary schedule. A charge will be made regardless of whether the search is successful in locating a requested record.

(3) When no specific fee has been established for a service, for example when the search involves computer time or special travel, transportation, or communications costs, the Director of Administrative Services will determine the direct costs of the service and include such costs in the fees chargeable under this section.

(4) In the event a request for documents or records is received which does not state that the requester will pay any or all reasonably necessary costs, or costs up to an amount specified in such request, and the head of the unit or the Director of Administrative Services determines that the anticipated cost for search and duplication of the records requested will be in excess of $25, or in excess of the limit specified in the request, the Director of Administrative Services shall so advise the requester promptly after receipt of the initial request. Such notification shall specify the anticipated cost of search and reproduction of the records requested. The requester may thereafter amend his or her request to specify fewer documents or agree to accept the estimate of anticipated costs, in which case the request shall be deemed received by the Agency upon the receipt date of the requester's response. A requester may, prior to making a request, ask for an estimate of cost from the Director of Administrative Services who shall promptly respond to such request.

(5) Payment should be sent or delivered to the Director of Administrative Services. Such payment should be check or money order payable to Peace Corps. A receipt for fees will be provided upon request. All fees collected are deposited into the General Fund Receipt Account at the U.S. Department of the Treasury.

(c) A requester may, in his or her original request, or subsequently, ask for a fee waiver or that documents be furnished at a reduced charge. A request for documents shall not be deemed to have been received until a determination of the question of fee waiver or reduction has been made, provided however, that such determination shall be made within five working days from the receipt of a fee waiver request. A request for waiver or reduction of fees shall specify the amount of reduction requested and the reasons which cause the requester to feel that the public interest would be served by a waiver or reduction of fees. The following procedure will be followed:

(1) Upon the receipt of a fee waiver or fee reduction request the Director of Administrative Services will refer such request to the Director or such official as he or she may designate. The Director or designee will promptly determine whether such request should be granted in whole or in part, and such determination is final. The request will be reviewed in accordance with the following Freedom of Information Act fee waiver objectives: (i) The fostering of disclosure of non-exempt agency records where it will primarily benefit the general public, and (ii) the preservation of public funds where there will be insufficient public benefit derived from disclosure.

(2) There are five general factors which are considered in determining whether there is sufficient public benefit to be derived from disclosure to warrant the granting of a fee waiver.

(i) First, a determination must be made as to whether there is a genuine public interest in the subject matter of the documents for which a fee waiver is sought; absent such a public interest, there is no basis for granting a waiver. The "public" to be benefited need not be so broad as to encompass all citizens, but it must be distinct from the requester alone. An interest which is personal to the requester is insufficient, nor is it in the public interest to grant a waiver solely on the basis of a requester's indigency.

(ii) The second factor which the Agency will examine is the value to the public of the records themselves. A fee waiver is appropriate only if the disclosable contents of the records are in fact informative on the issue found to be of public interest. No matter how interesting or vital the subject matter of a request, the public is benefited only if the information released meaningfully contributes to the public development or understanding of the subject.

(iii) The third factor to be considered is whether the requested information is already available in the public domain. Where requested information is already in the public domain, the fee waiver will be denied.

(iv) Fourth, the identity of a FOIA requester is considered in acting on a request for a fee waiver. A requester's identity and qualifications, e.g., expertise in the subject area and ability and intention to disseminate the information to the public, is evaluated. Therefore, requesters should specifically describe their qualifications, the nature of their research, and the purposes for which they intend to use the requested materials. Bare assertions by requesters that they are "researchers" or have "plans to author a book" are insufficient.

(v) The fifth criterion requires an assessment, based upon information provided by the requester as well as information independently available to the agency, of any personal interest of the requester reasonably expected to be benefited by disclosure. Such interests include any commercial interest, as well as the interests of first-party requesters in records pertaining to themselves and the interests of parties seeking records for use in litigation.

(3) Fee reductions may be based on any equitable basis, including the percentage of the material requested which meets the waiver criteria, or the extent to which the request meets the first four criteria described in paragraph 2. The requirement that it meet the fifth criteria, that the primary benefit be to the public, is absolute.

(4) A decision to grant a fee waiver or reduction with respect to records pertaining to a particular subject, or with respect to a particular requester, does not create a precedent for subsequent requests for materials relating to the same subject, or by the same requester.

(Approved by the Office of Management and Budget. OMB control number 0420–A003)

Issued at Washington, D.C. on March 22, 1984.

Loret M. Ruppe,

Director.

[FR Doc. 84–8218 Filed 3–26–84; 8:45 am]

BILLING CODE 8051–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 84–3]

Participation in Contract Claim Awards and Settlements

AGENCY: Federal Highway Administration [FHWA], DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Highway Administration (FHWA) is requesting

comments on proposed revisions to its regulation concerning the extent to which Federal-aid highway funds may participate in awards and settlements of Federal-aid highway contract claims brought by private contractors against State highway agencies (SHA's). The revised regulation would clarify the current regulation by specifying more definitive criteria in determining eligibility for participation. It is anticipated that the revised regulation would enable SHA's to submit more specific information supporting their requests for participation and would make participation determinations more consistent State-to-State.

DATE: Comments must be received on or before May 29, 1984.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 84–3 Federal Highway Administration, Room 4205, HCC–10, 400 7th Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul E. Cunningham, Chief, Construction and Maintenance Division, Office of Highway Operations, (202) 426–0392, or Mr. Hugh T. O'Reilly, Office of the Chief Counsel, (202) 426–0780, Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under the Federal-aid highway program, 23 U.S.C. 101 *et seq.*, construction of Federal-aid highways is generally performed by State highway agencies through private contractors. FHWA reimburses the States for a statutory pro rata share of the construction costs that are incurred. In the course of construction, disputes between the contractor and the State's administering agency may occur. The contractors may allege that unanticipated costs were or must be incurred, and attribute the cause to matters that were under State control. For example, contractors may argue that agency administrators required them to perform work that was not contemplated by the plans and specifications, or that subsurface conditions were encountered which materially differed from those represented in the contract. Often, such disputes are resolved informally at the project level. Where the SHA initially denies liability, State law generally provides a forum for resolution of these claims. State courts, administrative boards, arbitration panels, or other tribunals may hear and decide them, or they may be settled by the parties in lieu of such proceedings.

Under a project agreement with the SHA, entered into under 23 U.S.C. 110, FHWA agrees to reimburse the State for the estimated Federal share of the construction costs incurred, based upon a prescribed statutory rate, see 23 U.S.C. 120. State highway agencies will often request FHWA to reimburse them for a portion of the contract claim payments they must make to a contractor, on the basis that such payments reflect a cost of construction.

It has been recognized that FHWA has no inherent contractual obligation to participate in any and all contract claim settlements, "Louisiana Department of Highways v. United States," 604 F.2d 1339 (Ct.C1., 1979). In "Commonwealth of Pennsylvania, Department of Transportation v. United States," 643 F.2d 758 (Ct.C1., 1981), the former United States Court of Claims further found "proper" FHWA's requirement that unbudgeted settlement costs must be "reasonable" in order to be eligible for Federal participation. That court also concluded that the ultimate burden of demonstrating that the actual costs involved were "reasonable" resides with the State.

The regulation currently governing the participation of the FHWA in contract claim awards and settlements is 23 CFR 635.120. This provides in full as follows:

> The eligibility for, and extent of, Federal-aid participation in claim awards made by the State to Federal-aid contractors on the basis of arbitration board awards or State court judgments shall be determined on a case-by-case basis. Generally, the criteria for establishing Federal-aid participation in claims and resultant settlements is the extent to which such settlements are grounded in contract provisions and specifications and actual costs incurred. Where legal issues arise in the course of resolving a claim, any data submitted for consideration shall include a brief from the legal counsel for the State setting forth the basis for determining the extent of the State's liability for the claim under local law.

This regulation, published in 1974, restates a policy of FHWA that has remained consistent over the years. It essentially adopts language of uncodified policy directives dating back to 1964 which indicate that the policy on eligibility incorporated therein was one that had been followed, at least informally, prior to that time.

Although this policy has been in place for a long time, questions of interpretation have been prompted by the literal language of the regulation, particularly that of how "grounded in contract provisions and specifications" should be construed. In the "Louisiana Department of Highways" case the Court of Claims described this key eligibility language as being "far from clear," 604 F.2d at 1340, and suggested that it be clarified. This thought was again echoed in the "Pennsylvania Department of Transportation" case, 643 F.2d at 765. In 1981 the American Road and Transportation Builders Association argued that eligibility issues could best be resolved by making Federal-aid participation automatic in any case where a settlement is approved by the SHA's chief administrative officer and the State's Attorney General.

While FHWA maintains its right to exercise separate and independent judgment on claim reimbursement eligibility questions, a clearer statement of the criteria which would be employed in making such judgments appears warranted. It is also proposed to provide more guidance to SHA's as to the nature of the supporting information and documentation believed necessary for FHWA to make informed determinations.

Under proposed paragraph (a), the present case-by-case determination approach would be retained. Recurring similarities are uncommon in the ways that claims arise. While there are identifiable types of claims, the facts related to them are often very different. No categories of judgments or settlements could be identified which appear appropriate for exclusion from *any* review. It is also proposed not to differentiate between judgments of arbitration proceedings, administrative board determinations, or court judgments, or the settlements entered into in lieu of these proceedings. Each case and resolution would be considered on its own merits. The primary participation criterion would essentially reflect the interpretations by the former Court of Claims that the resolutions of claims and the costs incurred be "reasonable" ones, and would recognize that the burden rests with the SHA to demonstrate such reasonableness. Thus, it is proposed that Federal funds would not participate to the extent that any contract adjustments were unreasonable or unsupported. In this regard, it may be instructive to relate the comments of the former Court of Claims on the meaning of "reasonable," in the context of a claims settlement:

> At a minimum, a claim against a State must have some basic merit to be considered for reimbursement as 'reasonable.' But the mere fact that a claim against a State may have

some legal merit does not mean any possible settlement of the claim is reasonable. We must also look as to whether the settlement, as made, appears to be reasonable on all of the facts available to a State at the time of settlement. We have, in other circumstances, characterized the duty of reasonableness in several ways, but the essence of the term is that a party must proceed prudently, wisely, and efficiently. The settlement is reasonable only to the extent it would have been made by a prudent businessman placed in a similar position. . . . Reasonableness requires, we think, not only that the State explore and adopt less expensive means of terminating a lawsuit other than by outright cash settlement but, also, that the State proceed in a manner so that its potential liability on claims is kept to a minimum. "Commonwealth of Pennsylvania, Department of Transportation v. United States," 643 F.2d at 765, 766 (citations omitted.)

Given the fact that the burden of demonstrating reasonableness of the judgment or settlement remains with the SHA, it is proposed to disallow participation where the contract adjustments are "unsupported" by the SHA. In cases where there is a court or administrative judgment involved, such "support" may be contained in the records of these proceedings.

Contract law principles apply to these contract adjustments and the manner in which contractors might be compensated through them. To reflect this basic fact, it is proposed to retain the concept that the adjustment have a basis in the terms of the contract, which would include the contract's plans and specifications. However, use of "a basis in" rather than "grounded in" the terms of the contract is considered more direct and definitive.

Sole reliance on the literal terms of the contract can sometimes be misplaced, as where State courts have refused to give full effect to the language of particular clauses. Further, doctrines evolved through State law may be applicable in situations where no contract clauses are relevant or, if relevant, require careful interpretation. Thus, it is proposed to require that contract adjustments have a basis in "applicable State law," as "fairly construed." Again, where there has been a State court or administrative judgment rendered, the "basis in State law, as fairly construed" for the contract adjustment will ordinarily be quite apparent. However, when a careful review by FHWA of the case leads to a belief that such a basis was lacking, a recommendation to appeal may be made. This would not change from present practice.

It is also proposed to deny participation where the basis for the adjustment or compensation is "not in accord with prevailing principles of public contract law." There would be respect under this standard for the common, State-to-State differences in substantive law, and sufficient margin would be afforded for the maturation and evolution of contract law. However, under the rule as proposed, denials of participation could be made where the State determinations clearly departed from the mainstream of thought on the particular issues presented. States may certainly choose to adopt positions that are generous in the extreme to plaintiffs in actions against it. However, in circumstances where the Federal share of any resulting awards or settlements are 75 to 90 percent or even more, the Federal interests would not appear to be appropriately served by requiring FHWA to, in effect, adhere without question to the State position. Some examples of cost items believed inappropriate for participation include consequential or punitive damages and anticipated profit, which are noted in proposed § 635.120(c). The general statement regarding nonparticipation in adjustments or compensation "not in accord with prevailing principles of public contract law" would preserve FHWA's discretion in other, similar areas.

Proposed paragraph (b) would identify for SHA's the key supporting materials which should accompany a request for participation. These include (1) information as to the legal and contractual basis for the claim, (2) the factual and cost data supporting the award or settlement, (3) an audit report, where feasible, of the actual costs incurred by the contractor, and (4) a memorandum of law from the SHA's counsel if evaluation of a legal controversy would be expected to be critical to consideration of the award or settlement for participation. Where an audit is not feasible, provision would be made for the SHA and FHWA to mutually agree on the costs which were reasonably incurred by the contractor.

When a contractor claim has been reduced to judgment, especially where a written opinion has been entered, submission of court papers, legal briefs, and key exhibits would usually suffice to meet these proposed requirements. Where cases have been settled, the case file may well contain documents supporting the settlement which may also be used for this purpose. Typical of such documents would be claim submissions themselves, contractor documents furnished in support of the claim, SHA claim review memoranda, inspector's diary entries, and pertinent correspondence on the issues raised.

The intent of proposed paragraph (b) is to identify those materials FHWA ordinarily needs in order to make informed determinations on participation. This paragraph largely restates present practice.

Under proposed paragraph (c), it would be clarified that participation would be denied to the extent to which State employees, officers, or agents acted unreasonably in project design, plan preparation, contract administration, or other activities which gave rise to the claim. This largely follows in concept a finding made by the former Court of Claims in the "Pennsylvania Department of Transportation" case that FHWA could reduce its level of participation on a claim to reflect the unreasonable failure by that State to mitigate damages by giving timely direction to the contractor. "Acted unreasonably" would set a somewhat higher standard than mere negligence, encompassing gross negligence, intentional acts or omissions, fraud, or other acts or omissions not accepted within the standards of the profession involved.

It is proposed in this paragraph to identify several cost items in which Federal participation would be clearly denied. Several of these, as noted above, represent cost elements which are routinely disallowed under prevailing concepts of public contract law. Included in this category are consequential damages, punitive damages, and anticipated profits, as well as attorney's fees awarded to an opposing party in litigation against the State. In this context, "consequential damages" means damages which are not reasonably within the contemplation of the parties at the time they contract, and which cannot be foreseen as the result of the failure of a duty. Consequential damages would thus include failure of business, losses of or on other contracts, mental anguish, and other remote, speculative, or collateral damages.

Further, it is proposed to deny participation in post- or pre-judgment and settlement interest. The one exception to this would be award of interest during the period of appeal when the State has appealed an adverse decision with prior concurrence by FHWA. This would reflect conformity with the general principle that interest is not recoverable against the United States unless specifically provided for by contract or statute (see 28 U.S.C. 276(a)). In addition, it is not believed that such interest costs may logically be considered as being a "cost of construction" (see 23 U.S.C. 101(a) and 120). Finally, except for the situation in

which the State acts upon FHWA's specific recommendation to appeal a case, the control over litigation and, especially, payments under judgments or settlement agreements are matters entirely under the discretion and control of the States. In situations, then, where a State is dilatory in making payments, FHWA should not be in the position of having to absorb most of the interest costs that could be imposed.

Proposed paragraph (c) would also clarify that the rule regarding participation in contract claim awards and settlements would not govern Federal participation in tort, inverse condemnation, or other claims erroneously styled as being "claims under a contract."

Proposed paragraph (d) would be added to specify that where States affirmatively recover compensatory damages from contractors, subcontractors, or their agents, whether through contract claims, counterclaims, or crossclaims, on a project upon which there was Federal-aid participation, the Federal share of such recovery shall be credited back to the particular project account. Such credit would, in turn, increase the unobligated balance of that project's Federal-aid program category.

The FHWA has determined that this document is neither a major rule under Executive Order 12291 nor a significant regulation under the Department of Transportation regulatory policies and procedures. The proposed revisions are intended to merely clarify current regulations by specifying relevant criteria in determining eligibility for participation. Since there is no substantive change in the approach or procedures FHWA has traditionally employed in dealing with contract claims participation requests, it is anticipated that this action will not have a significant economic effect. Therefore, a full regulatory evaluation is not required. For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, is is hereby certified that this proposal will not have a substantial economic impact on a substantial number of small entities.

The FHWA believes the paperwork burden imposed by this regulation would be reasonable but invites comments on ways to reduce the burden without jeopardizing the basic purpose of the regulation.

In consideration of the foregoing, and under the authority of 23 U.S.C. 110, 120, 315, and 49 CFR 1.48(b), the FHWA proposes to amend Part 635, Subpart A of Chapter I of Title 23, Code of Federal Regulations, by revising § 635.120 to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

Issued on: March 21, 1984.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administrator.

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart A—Contract Procedures—[Amended]

The Federal Highway Administration proposes to amend Part 635 of Chapter I of Title 23, Code of Federal Regulations, by revising § 635.120 to read as follows:

§ 635.120 Participation in contract claim awards and settlements.

(a) The eligibility for, and extent of, Federal-aid participation in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration proceeding, administrative board determination, or court judgment, or a contract claim settlement entered into in lieu of such proceedings, shall be determined on a case-by-case basis. However, Federal funds will not participate to the extent that any contract adjustments made were unreasonable or unsupported, or do not have a basis in the terms of the contract and applicable State law, as fairly construed. Further, participation may be denied where the basis for the adjustment or contractor compensation is not in accord with prevailing principles of public contract law.

(b) When requesting such participation, a State shall, in writing, set forth the legal and contractual basis for the claim, together with the factual and cost data supporting the award or settlement. Federal-aid participation in such instances should be supported by an audit by the State of the actual costs incurred by the contractor. Where an audit is not feasible, or actual costs cannot be determined, the State and FHWA may agree upon a reasonable estimate of the actual costs incurred, plus profit if applicable. Where difficult, complex or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the State shall include in its submissions a brief from its counsel setting forth the basis for determining the extent of the State's liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved.

(c) Federal funds will not participate to the extent to which State employees, officers or agents acted unreasonably in project design, plan preparation, contract administration or other activities which gave rise to the claim. Nor will Federal funds participate in such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorneys fees paid by a State to an opposing party in litigation. Payment of interest is not-participating, except for pre-judgment interest which was incurred during appeal of an adverse judgment and the State appealed such judgment with prior concurrence by FHWA. Also, this section does not authorize Federal participation in tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

(d) In cases where States affirmatively recover compensatory damages through contract claims, cross-claims, or counterclaims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

[FR Doc 84-8171 Filed 3-26-84; 8:45 am]
BILLING CODE 4910-22-M

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23 CFR 660

[FHWA Docket No. 84-2]

Forest Highways; Construction and Maintenance; Allocation of Funds

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed revisions to its regulation for the construction and maintenance of forest highways as it relates to the allocation of funds. The proposed revision has been developed in accordance with the criteria specified in Section 126 of the Surface Transportation Assistance Act of 1982 (1982 STAA). This revision would provide for allocating forest highway funds based upon the relative transportation needs of the national forest system. The Forest Service (FS) has participated in the development of the proposed rule, and the chief of the

Forest Service has concurred in the allocation method.

DATE: Comments must be received on or before May 11, 1984.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket 84–2, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., ET, Monday through Friday. Those desiring notification of receipt of comment must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Allen W. Burden, Chief, Program Planning and Coordination, Office of Direct Federal Programs, (202) 426–0456, or Mr. Michael J. Laska, Attorney, Office of the Chief Counsel, (202) 426–0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the President signed into law the 1982 STAA (Pub. L. 97–424, 96 Stat. 2097). Section 126 of the 1982 STAA amends 23 U.S.C. 202 and requires the Secretary of Transportation to allocate forest highway funds according to the relative needs of the various elements of the national forest system by taking into consideration the need for access as identified through renewable resource and land use planning and the impact of such planning on existing transportation facilities. Section 105 of the 1982 STAA increased authorization for forest highway funds from $33 million per year to $50 million per year.

In distributing funds prior to the 1982 STAA, including the funds made available under the FY 1983 Continuing Appropriations, the 1958 land area and land value formula were utilized for apportionments. The remaining forest highway funds, made available for FY 1983 under the 1982 STAA, were allocated using the previous apportionment values as an interim measure until such time as the relative needs of the various elements of the national forest system could be determined.

In 1983, the FHWA and the United States Forest Service (FS) jointly developed a new allocation method using values based on relative transportation needs of renewable resource outputs and costs for backlog of improvements on roads designated as forest highways.

In FY 1984, the new allocation method was used with a protection provision that ensured each forest highway area will be allocated at least the amount of funds it received in FY 1982.

The 1958 apportionment formula values are not a complete indicator of relative needs. They are based on 1955 data which is out of date and 50 percent of the formula is based on land value. Land is difficult to determine accurately and is not a true indicator of relative transportation needs. Any new allocation method must ensure that each forest highway State has a stable funding level in order to continue with the 5 year program update as described in 23 CFR 660.109. In addition, provisions should be included to ensure that adequate funding is available for each forest highway area.

The following are factors that were considered for a new forest highway allocation:

- Timber harvest volume,
- Recreation visitor days,
- National forest land area,
- Present value benefit,
- Forest related vehicle miles of travel,
- Percent forest related traffic,
- Forest highway mileage,
- Relative condition of forest highways, and
- Relative cost to bring forest highways up to a safe and adequate standard.

National forest land area was eliminated, since it is not an accurate indicator of relative need for highway access. In some forest highway areas, a portion of the land area may be designated as roadless or have little or no need for highway access.

The present value benefit, which is an output of FS land management planning, was eliminated because it includes nonrenewable forest resources and values for nontraffic-generated benefits such as water quality. Also, the reliability of the data is questionable.

Forest highway mileage was eliminated because it is not an accurate measure of relative needs. The relative condition of forest highways was eliminated because it is already reflected in the cost factor.

It is proposed that 23 CFR 660.107, apportionments, be revised to read as "Allocations" and that funds be allocated based upon relative needs of the various elements of the national forest systems as determined by the relative percent of resource outputs and the relative percent of road related improvement costs attributed to forest traffic for the following reasons:

1. Timber Harvest Volumes (TV) and Recreation Visitors Days (RVD) are the two main National Forest's renewable resource outputs identified by land management planning as having a direct impact on forest highway transportation needs. Table 1 and Table 2 shows the relative percent of the national total in each State for TV and RVD respectively. This data was derived from current alternative data (May 1983) which will be used in the 1985 update of the Forest and Range Land Renewable Resources Planning Act. Equal weight is being given to TV and RVD since both have similiar impacts on relative transportation needs.

2. Standardized improvement cost factors were used which took into consideration road width, terrain, and type of improvement needed. In addition, bridge improvement costs were added for each bridge based upon the condition to the bridges. Roads, which are designated as forest highways, are open to public travel. As such, these roads not only serve the national forest but other areas as well. The Federal responsibility to assist in the development and improvement of forest highways as related to the national forests can be expressed as the forest related cost. The forest related cost to improve a forest highway can be determined by multiplying the relative improvement costs by the percent of forest related traffic. When this is cumulated by forest highway areas, the relative costs of forest related improvements can be determined and are summarized in Table 3.

3. Cost of improvements is indirectly related to forest highway mileage which is a product of forest highway route designation. To minimize the influence of forest highways route designation on the allocation of funds, a regional standardization factor (K) has been incorporated to ensure proper weight between benefits (resource outputs) and costs (forest highway investments) is achieved. The K value consists of relative percent of FS Regional resource outputs (TV+RVD) divided by relative percent of forest related vehicle miles of travel (VMT). For a specific area where the relative percent of resource output is constant, as the forest highway mileage is increased or decreased, VMT increases or decreases, and the "K" factor will decrease or increase respectively. When the relative forest related improvement costs are multiplied by this factor, the relative improvement costs are placed in proper balance with resource outputs. The K values are shown in Table 4. Idaho, Wyoming, and California have different K factors for the portions that are in different FS regions.

When the forest related cost of improvements in Table 3 is multiplied by the K values in Table 4 and the

product is added for all forest highway areas, the total percent is 101.35 percent. These values then can be normalized by factor of 100 divided by 101.35. The normalized values for (K × Cost × % FS Traffic) are shown in Table 5.

In FY 1984, forest highway funds were distributed on a FS region basis to allow flexibility as required in certain States to meet project funding and scheduling needs. The allocation on a FS region basis does not require that the annual distribution of funds by State boundary be expended in that State that year. Transfer of funds on a borrow basis between States is allowed in order to maximize use of all available funds.

Each State will be assured that over a 3 year period (FY 1984, FY 1985, and FY 1986), the total allocated funds will be available for use on forest highways within that State boundary. Any temporary transfer (borrow) of funds shall have the concurrence of the FS and State highway administration (SHAs) affected by the transfer. The FHWA Direct Federal Division Engineer will ensure that credits are appropriately established within the overall approved forest highway program plans and schedules.

It is proposed that the following allocation formula be used without any prior fiscal year protection values:

½ (TV+RVD)+½ (K × Cost × % FS Traffic).

Where:

—TV is percent of total timber harvest volume.

—RVD is percent of total recreation visitors days.

—Cost is improvement cost to bring forest highways to a given standard.

—K is regional standardization factor based on ratio of relative percent resources outputs to relative percent forest related vehicle miles traveled.

Table 6 shows the regional allocation of funds for forest highways including a breakdown by State boundary.

ALLOCATION FACTORS

State boundary	Table 1—percent TV	Table 2—percent RVD	Table 3—cost × FS traffic (percent)	Table 4—K	Table 5—normalized K × cost × percent FS traffic (percent)
Alabama	0.6648	0.5032	1.7472	0.7434	1.2815
Alaska	4.0433	[illegible]	0.3479	[illegible]	[illegible]
Arizona	0.5802	7.1710	[illegible]	1.7736	[illegible]
Arkansas	1.4050	0.8007	2.1029	0.7434	1.5424
California:					
Reg. 4	0.0621	[illegible]	[illegible]	[illegible]	[illegible]
Reg. 5	[illegible]	21.1776	5.1159	[illegible]	[illegible]
Colorado	1.6266	[illegible]	[illegible]	1.3001	12.5747
Florida	0.5984	1.1323	1.1785	0.7434	[illegible]
Georgia	0.5319	0.9545	[illegible]	0.7434	[illegible]
Idaho:					
Reg. 1	[illegible]	[illegible]	[illegible]	1.7778	[illegible]
Reg. 4	2.2737	4.1516	2.8401	[illegible]	2.7874
Illinois	0.1374	0.3774	[illegible]	0.4575	[illegible]
Indiana	0.0754	0.3774	[illegible]	0.4575	[illegible]
Kentucky	[illegible]	1.1742	[illegible]	0.7434	[illegible]
Louisiana	1.2654	0.2516	0.2280	0.7434	0.1672
Maine	[illegible]	0.0210	0.1009	0.4575	[illegible]
Michigan	1.4006	2.6000	3.1437	0.4575	1.4189
Minnesota	1.0504	[illegible]	5.4587	[illegible]	2.4637
Mississippi	[illegible]	0.4612	[illegible]	[illegible]	1.2248
Missouri	0.4432	[illegible]	[illegible]	0.4575	[illegible]
Montana	[illegible]	3.5226	[illegible]	1.7778	10.6860
Nebraska	[illegible]	0.1258	1.1663	1.3001	1.4960
Nevada	[illegible]	[illegible]	0.9501	[illegible]	[illegible]
New Hampshire	[illegible]	1.0065	0.7209	0.4575	0.3254
New Mexico	1.7463	2.6420	3.3819	1.7736	5.9178
North Carolina	[illegible]	[illegible]	[illegible]	0.7434	[illegible]
North Dakota	0	0	[illegible]	1.7778	1.6628
Ohio	[illegible]	[illegible]	[illegible]	0.4575	[illegible]
Oklahoma	0.2349	[illegible]	[illegible]	0.7434	0.3263
Oregon	[illegible]	7.5484	6.3937	1.0265	6.4753
Pennsylvania	0.3818	[illegible]	1.0128	0.4575	0.4571
South Carolina	0.7978	0.4194	0.7147	0.7434	0.5242
South Dakota	1.3341	[illegible]	1.4072	1.3001	[illegible]
Tennessee	[illegible]	[illegible]	1.6379	0.7434	1.2013
Texas	0.8421	[illegible]	1.5169	0.7434	1.1126
Utah	[illegible]	6.3742	3.1266	[illegible]	[illegible]
Vermont	0.1241	[illegible]	[illegible]	0.4575	0.1519
Virginia	[illegible]	1.8032	[illegible]	0.7434	[illegible]
Washington	13.8241	[illegible]	[illegible]	[illegible]	5.1701
West Virginia	[illegible]	0.5871	[illegible]	0.4575	1.3928
Wisconsin	0.9618	0.7129	3.3056	0.4575	1.4919
Wyoming:					
Reg. 2	[illegible]	1.2161	[illegible]	1.3001	1.4047
Reg. 4	0.2127	[illegible]	[illegible]	[illegible]	0.3710
Puerto Rico	[illegible]	[illegible]	0.1342	[illegible]	[illegible]
Total	100.0000	100.0000	100.0000	N/A	100.0000

TABLE 6.—ALLOCATION

[⅓ (TV+RVD) + ⅓ K cost × percent FS traffic]

Forest service region	State	State percentage	Regional percentage
1	Idaho	4.2472	
	Montana	7.7003	
	North Dakota	0.8314	12.8779
2	South Dakota	1.4525	
	Colorado	8.0534	
	Wyoming	1.0704	
	Nebraska	0.7785	12.3756
3	Arizona	6.0141	
	New Mexico	4.0960	10.0701
4	Utah	3.2586	
	Idaho	3.2003	
	Wyoming	0.6189	
	Nevada	0.6258	
	California	0.4377	8.1694
5	California	11.0498	11.0498
6	Oregon	12.5199	
	Washington	7.4804	20.3808
8	Alabama	0.9126	
	Arkansas	1.3426	
	Florida	0.9648	
	Georgia	0.5553	
	Kentucky	0.5301	
	Louisiana	0.4879	
	Mississippi	1.2153	
	North Carolina	2.5242	
	Oklahoma	0.2503	
	South Carolina	0.5864	
	Tennessee	0.9227	
	Texas	0.9760	
	Virginia	2.5174	
	Puerto Rico	0.1080	13.8772
9	Illinois	0.3005	
	Indiana	0.2560	
	Maine	0.7502	
	Michigan	1.7586	
	Minnesota	2.0882	
	Missouri	0.7554	
	New Hampshire	0.4884	
	Ohio	0.2913	
	Pennsylvania	0.5850	
	Vermont	0.1905	
	West Virginia	0.9119	
	Wisconsin	1.1647	8.7025
10	Alaska	2.4099	2.4099
Total		100.0000	100.0000

Since the procedures for program and project selection (23 CFR 660.109) are not being changed, it is not anticipated that this proposal will have a national significant economic effect. Accordingly, a full regulatory evaluation is not required. For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities.

Comments on the proposed fund allocation are requested from all interested parties. The comments should specifically address the effects of the proposed allocation method on the effectiveness of the forest highway program.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation.

In consideration of the foregoing and under the authority of section 126 of the 1982 Surface Transportation Assistance Act, 23 U.S.C. 202 and 49 CFR 1.48(b), the FHWA proposes to amend Part 660 of Title 23, Code of Federal Regulations, by revising Subpart A, § 660.107, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 660

Forest highways, Highways and roads.

Issued on: March 21, 1984.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 660—SPECIAL PROGRAMS (DIRECT FEDERAL) [AMENDED]

Section 660.107 of 23 CFR is revised to read as follows:

§ 660.107 Allocations.

On October 1 of each fiscal year, the FHWA will allocate funds for forest highways using values based on relative transportation needs of the various elements of the national forest system, after deducting such sums as deemed necessary for the administrative requirements of the FHWA; the necessary expenses of the FS; and the necessary costs of forest highway research and development, and engineering studies.

[FR Doc. 84-8172 Filed 3-26-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-246-76]

Taxation of DISC Income to Shareholders

Correction

In FR Doc. 84-519 beginning on page 1075 in the issue of Monday January 9, 1984, make the following correction.

On page 1083 first column , in *Example (1)* to § 1.995-7(h)(5), line eleven "As part of an overall plan to section, Z transfers all the export assets that relate to the trade or business conducted by X to V Corporation in exchange for all of the stock of V", should read "As part of an overall plan to avoid the application of section 995 (e)(9) of this section, Z transfers all the export assets that relate to the trade or business conducted by X to V Corporation in exchange for all of the stock of V."

BILLING CODE (505-9)

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

Correction

In FR Doc. 84-5869 beginning on page 8446 in the issue of Wednesday, March 7, 1984, make the following correction.

On page 8447, second column, second line under the heading **Part 2—[Amended]**, "18 U.S.C. 4204" should have read "18 U.S.C. 4203".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Permanent State Regulatory Program of Alaska

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Alaska (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a suface coal mining operation. On February 29, 1984, Alaska requested a 12 month extension of time for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA of the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments must be received by April 26, 1984 at the address below, no later than 5:00 p.m.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William Thomas, Field Office Director,

Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 328–5830.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Alaska's program, the applicable date is 12 months after the approval of the State program, or May 2, 1984.

On February 29, 1984, the State of Alaska submitted to OSM a request for a 12 month extension to submit final rules addressing the blaster certification program. The State of Alaska is in the process of developing, in conjunction with the University of Alaska, a blaster training and certification program. The State is also in the process of developing regulations addressing the training, examination and certification of blasters. Due to the problems inherent in implementing a new program such as Alaska's, the State has indicated a need for additional time in which to develop an adequate program consistent with the requirements of 30 CFR Part 850.

Therefore, OSM is seeking comment onthe State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 7029(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 902

Coal mining, Intergovernmental relations, Surface mining Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328, 91 Stat. 40532).

Dated: March 22, 1984.

Dean Hunt,

Acting Director, Office of Surface Mining.

[FR Doc. 84–8189 Filed 3–26–84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

Permanent State Regulatory Program of Indiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed program amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment submitted by the State on March 5, 1984, consists of five modifications to the Indian statute pertaining to the hearing on a lands unsuitable petition, location of permit applications, permit application denials, requirements for a permittee to submit an annual status report to the State and adjustment of bond amounts.

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indian's proposed modification of it's program not received on or before 4:00 p.m. on April 26, 1984, will not necessarily be considered in the District's decision to approve or disapprove the proposed program modifications.

If requested, a public hearing will be held on April 23, 1984, beginning at 10:00 a.m. at the location shown below under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

If a public hearing is held, its location will be at: OSM Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana. Telephone: (317) 269–2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Indianapolis, Indiana, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business April 16, 1984. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32071–32108).

On March 5, 1984, the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment is titled Senate Enrolled Act No. 30 which was signed by the Governor of Indiana on February 29, 1984. This statutory amendment proposes to amend five provisions of the approved Indiana program. Briefly, the proposed modifications and statute cites are:

1. Deleting the requirement for the hearing on a lands unsuitable petition to be conducted according to the Indiana Administrative Adjudication Act. IC 13–4.1–2–4.

2. Changing the filing location of permit applications from the county recorders' offices to the main public library in the county of operation and providing that the applicant can remove the application from public inspection at the library thirty (30) days after the final Commission decision on that application, provided that the application remains on file for public inspection at the Division of Reclamation field office. IC 13–4.1–3–3.

3. Providing that a permit can be denied if the applicant owns or controls operations currently in violation of the old Indiana Coal Mining Law, or if the applicant or operator controls or has controlled coal mining operations with a demonstrated pattern of willful violations of the old Indiana Coal Mining Laws, in addition to the existing language based on violations of the new Indiana law and Federal law. Further, the term applicant or operator is defined to include the officers, partners or directors of the named applicant, allowing the Commission to consider violations of operations owned or controlled by the persons behind the named applicant. IC 13.4.1–4–3.

4. Adding a requirement for the permittee to submit an annual status report to the Natural Resources Commission. IC 13–4.1–5–7.

5. Providing that bond amounts, once established, may be adjusted, if the permittee's history of mining and reclamation changes during the term of the permit. IC 13–4.1–6–6.

Therefore, pursuant to 30 CFR 732.17 and 732.15, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1202 *et seq.*).

Dean Hunt,

Director, Office of Surface Mining.

[FR Doc. 84–8191 Filed 3–26–84; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 931

Permanent State Regulatory Program of New Mexico

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for New Mexico (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who

are directly responsible for the use of explosives in a surface coal mining operation. On March 5, 1984, New Mexico requested a 12 month extension of time for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments must be received by April 26, 1984 at the address below, no later than 5:00 p.m.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

Supplementary Information

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of New Mexico's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 5, 1984, the State of New Mexico submitted to OSM a request for a 12 month extension to submit final rules addressing the blaster certification program. The State indicated that it is making considerable progress in developing a program for the training, examining and certification of blasters. The New Mexico Permanent Program Committee has developed proposed regulations that will be submitted shortly to the New Mexico Coal Surface Mining Commission, the rulemaking body. The State has indicated a need for additional time to complete the above tasks so as to develop an adequate program consistent with the requirements of 30 CFR Part 850.

Therefore, OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 22, 1984.

Dean Hunt,

Director, Office of Surface Mining.

[FR Doc. 84–8100 Filed 3–26–84; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Amendment to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by Ohio as an amendment to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Ohio regulations concerning blaster training and certification.

This notice sets forth the times and locations that the Ohio program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public must be received by 4:30 p.m., April 26, 1984 to be considered in the decision on whether the proposed amendment should be approved and incorporated into the Ohio regulatory program. A public hearing on the proposed amendment will be held only if requested. If no one requests a public hearing, none will be held. If only one person requests a public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record. If a hearing is requested and scheduled, a notice announcing the time and location of the hearing will be announced in the **Federal Register**. Requests for a public hearing should be directed to Ms. Nina Rose Hatfield at the address or telephone number listed below by 4:00 p.m., April 11, 1984.

ADDRESSES: Written comments and requests for a hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will

be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**.

II. Submission of Revisions

By letter dated March 5, 1984, Ohio submitted proposed regulations which would establish requirements for the training and certification of blasters working in surface coal mining operations. The new requirements are set forth in OAC 1501:13-14-05— *Training, Examination, and Certification of Blasters*.

At the time of the Secretary's approval of the Ohio program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the Ohio program, the Secretary specified that Ohio would be required to adopt such provisions following promulgation of the Federal standards (47 FR 34688, August 10, 1982).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). OSM is seeking comment on whether the Ohio proposed rules are no less effective than the Federal regulations and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the proposed program amendment submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSM's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendment. If approved, the amendment will become part of the Ohio program.

III. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

Dated: March 22, 1984.

Dean Hunt,

Acting Director, Office of Surface Mining.

[FR Doc. 84-8192 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-269; RM-4572]

FM Broadcast Station in Humnoke, Arkansas; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of James M. Cope, proposes the assignment of Channel 269A to Humnoke, Arkansas. The assignment could provide that community with its first local FM service.

DATES: Comments must be filed on or before May 7, 1984, and reply comments on or before May 22, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Humnoke, Arkansas); MM Docket No. 84-269, RM-4572.

Adopted: March 8, 1984.
Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. The Commission has before it a petition for rule making filed by James M. Cope ("petitioner") seeking the assignment of FM Channel 269A to Humnoke, Arkansas, as that community's first local FM service. Petitioner has stated his intention to apply for the channel, if assigned. The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements as long as the transmitter is located at least 1.1 mile north of Humnoke to avoid a short spacing to Station KQEW, Channel 269A, at Fordyce, Arkansas.

2. We believe it would be appropriate to seek comments on the proposed assignment as it could provide Humnoke with its first local FM facility. Therefore, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's Rules, for the community listed below:

City	Channel No.	
	Present	Proposed
Humnoke, Arkansas		269A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before May 7, 1984, and reply comments on or before May 22, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

James M. Cope, 3509 N. Cypress, North Little Rock, Arkansas 72116 (Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, it advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished by the Commission.'

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-8120 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-270; RM 4598]

FM Broadcast Station in Pittsburg, Texas; Proposed Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 276A to Pittsburg, Texas, as its first FM assignment, in response to a petition filed by Charles D. Hagen and Steven Milner.

DATES: Comments must be filed on or before May 7, 1984, and reply comments on or before May 22, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Pittsburg, Texas); Docket No. 84-270, Rm-4598.

Adopted: March 8, 1984.
Released: March 16, 1984.

By the Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Charles D. Hagen and Steven Milner ("petitioners"), proposing the assignment of FM Channel 276A to Pittsburg, Texas, as its first FM service. Petitioners expressed an interest in applying for the channel, if assigned.

2. The channel can be assigned in compliance with the minimum distance

separation requirements provided there is a site restriction of 7.6 miles northwest of Pittsburg. The site restriction would prevent short spacing to FM Station KJCS on Channel 277 in Nacogdoches, Texas, and FM Station KOSY on Channel 273 in Texarkana, Texas. However, with the site restriction, it may prove difficult to provide a city-grade (70 dBu) signal to the community pursuant to the requirements of § 73.315. The petitioner, in an amendment to his petition, provided information that a site is available that appears to meet the minimum spacing requirements and at the same time provide a city-grade signal to the principal community.

3. In view of the fact that the proposed assignment could provide a first FM service to Pittsburg, Texas, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with respect to the following community.

City	Channel No.	
	Present	Proposed
Pittsburg, Texas		276A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before May 7, 1984, and reply comments on or before May 22, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Phil Prescott, Prescott & Prescott, Merchants Bank Building, Suite 305, 5217 Ross Avenue, Dallas, Texas 75206 (Attorney for the petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the persons) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-8121 Filed 3-26-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-271; RM-4501]

TV Broadcast Station in Bakersfield, California; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: At the request of Stephen J. Mewhort, the Commission has proposed the assignment of UHF TV Channel 48 to Bakersfield, California, as its fifth television assignment.

DATES: Comments may be filed on or before May 7, 1984, and reply comments on or before May 22, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television Broadcasting.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (Bakersfield, California); MM Docket No. 84–271, RM–4501.

Adopted: March 8, 1984.
Released: March 16, 1984.

By the Chief, Policy and Rules Divisions.

1. The Commission has before it a petition for rule making filed by Stephen J. Mewhort ("petitioner") seeking the assignment of UHF TV Channel 48 to Bakersfield, California. Petitioner has stated his intention to apply for the channel, should it be assigned.

2. Bakersfield (population 105,611),[1] the seat of Kern County (population 403,089), is located in southern California, approximately 170 Kilometers (102 miles) northwest of Los Angeles. The assignment would represent the fifth television channel assigned to Bakersfield. The channel can be assigned in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 miles north to avoid a short spacing to the construction permit for Station KTIE, Channel 63, Oxnard, California.

3. In view of the fact that Bakersfield could receive an additional television broadcast service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Bakersfield, California	17, 23–, 29, *39–.....	17, 23–, 29, *39–, 48

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before May 7, 1984, and reply comments on or before May 22, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel, or consultant, as follows:

Mr. Edward M. Johnson, Edward M. Johnson & Associates, Suite 450, One Regency Square, Knoxville, Tennessee 37915 (Consultant to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

[1] Population figures are taken from the 1980 U.S. Census.

Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-8122 Filed 3-26-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of termination of rulemaking.

SUMMARY: This notice terminates the NHTSA rulemaking action begun when this agency published a grant of petition for rulemaking on a petition by Zemco, Inc., concerning Safety Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect.* In order to produce an aftermarket fuel saving device, Zemco, Inc., sought to have this agency amend the provisions of the standard requiring that the engine starter be inoperable when the transmission shift lever is in the forward or reverse position. After a limited test of the Zemco device, the NHTSA determined that the operational safety of the fuel saver may compromise safe vehicle operation. However, the agency emphasizes that if in the future a more effective and safe fuel saving device is developed, amendments to Standard No. 102 could then be considered.

FOR FURTHER INFORMATION CONTACT: Dr. August Burgett, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1351).

SUPPLEMENTARY INFORMATION: On July 31, 1980, the NHTSA published a notice granting a petition for rulemaking by Zemco, Inc., concerning Safety Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect* (45 FR 50845). The petitioner sought to produce an aftermarket fuel saving device that automatically shuts off when the vehicle stops in traffic and would restart when the accelerator is depressed. In order to market the device, Zemco, Inc., requested an amendment to the provision in the standard mandating that the engine starter be inoperable when the transmission shift lever is either in the forward or the reverse position (49 CFR 571.102, S3.1.3). In its petition, Zemco, Inc., asserted that the device could offer fuel saving benefits without negative effects on safety. Because of the high cost and potential future shortages of gasoline and because of industry interest in developing fuel conservation devices, the NHTSA granted the Zemco petition.

The Zemco Fuel Economy Device

The Zemco fuel saving device is an aftermarket mechanism which can be mounted on both old and new vehicles. The device is activated by pushing the "on" button located on the command console which is affixed to the dashboard. This switch allows the operator to choose whether or not to activate the device. By design, the unit will not operate for approximately one minute after initial engine starting, to permit the engine to warm-up.

The control unit requires signals from two sensors for its operation. The first signal is received from the vehicle's brake system. When the operator applies the foot brakes, an electrical signal from the brake light switch is routed to the fuel economy control unit.

A second sensor detects the speed of the vehicle. This sensor is installed on the vehicle's drive shaft. A signal from this sensor is routed to the fuel economy control unit when the vehicle speed is *0* mph for a two second period.

Approximately two seconds after receiving signals from the brake light switch and the movement sensor, the control unit opens the ignition circuit to the coil, thereby stopping the engine. To restart the engine, the operator simply presses the accelerator, which has been fitted with a microswitch. The microswitch signals the control unit to close the ignition relay and to activate the relay for the engine starting system, resulting in a brief starting delay. After the engine is restarted, the device will not stop the engine again until the vehicle moves several feet, preventing multiple restarts.

Testing of Zemco Fuel Saving Mechanism

Originally, the NHTSA planned a general investigation of the concept of reduced idle time and the safety hazards it might pose in a three-year study. However, the study on fuel economy designs was not funded due to other projects with higher safety priority. The agency instead commenced a specific review of the potential safety and fuel economy effects of the Zemco fuel saving device.

The NHTSA undertook to test the operational safety of the Zemco device in house with members of the NHTSA staff. An intercity route with numerous stop lights, stop signs and differing terrain was selected. A questionnaire was prepared to elicit operator reaction to the various driving situations and conditions.

The test focused on potential safety problems. Fuel economy, reliability, maintenance and other aspects and functions of the device were not considered. Weather conditions were those typical of the Washington fall. No operations under nighttime driving or adverse weather conditions such as fog, rain or snow were undertaken. After evaluating and summarizing the responses of the drivers, several main concerns arose regarding potential safety hazards.

Starting Delay—Merging Traffic

After a stop, there is a brief starting delay before the engine is restarted. This delay could be hazardous when making turns across traffic. For example, a merging left turn from a stop, particularly across a divided intersection against oncoming and cross traffic, poses a potentially unsafe situation due to the delay. A similar but less hazardous set of circumstances exists on a right hand merge from a stop, especially with pedestrians in the crosswalk or with the vehicle entering a "yield" section of a high speed expressway.

Lack of Automatic Shut-Off

The mechanism is activated when the operator pushes the "on" button located on the command console mounted on the dash. Once the device is turned on, it stays "on" until the "off" button of the console is pushed. There is no positive signal to the driver to inform him that the device is activated. There is no automatic shut-off of the device when a driver stops the vehicle and exits without turning off the fuel saving unit. A positive signal such as a light display or sound could warn the exiting driver

that he has left the fuel-saving device "on".

A hazardous situation could also arise as to the uninformed driver. For instance, if one driver exits a vehicle without turning off the device, the next driver could enter, start the vehicle and drive off without the knowledge that the fuel saving device is activated.

The Zemco installation kit contains a small 2¾ in x ⅝ inch gummed label, warning that the vehicle is equipped with a stop/start device. The label reads: "CAUTION—Vehicle Equipped With Fuel Saver. Engine Will Automatically Re-Start With Vehicle In Gear." There is not active warning to an uninstructed driver that the vehicle is equipped with a fuel saving unit.

The potential safety hazards to the unknowing driver could be averted by an automatic shut down system. For instance, the fuel saving unit could cease functioning automatically upon some specified signal such as turning off the ignition, leaving the driver's seat or opening the driver's door.

Effect on Other Vehicle Functions

The Zemco device may pose safety hazards in relation to other vehicle functions. For example, some older vehicles are equipped with vacuum or hydraulic wiper systems. When the engine shuts off, the wiper system will also stop. This condition could lead to safety problems in inclement weather by adversely affecting visibility.

Furthermore, the use of a stop/start mechanism could be unsafe for vehicles equipped with power steering or brakes. When the engine turns off there may be inadequate vacuum or pressure to keep the power steering and brake systems functioning. This problem can be averted through a special booster arrangement that provides sufficient vacuum or pressure to keep these systems operational when the engine is shut off. Such a booster is not found in the Zemco device.

Stalling on Restart

The Zemco fuel economy unit is an aftermarket item and could be installed in new, well-tuned vehicles as well as old, out-of-tune vehicles. The Zemco fuel saver is designed to permit only one automatic restart after a two-second stop and shutdown. The second restart is accomplished by shifting into "neutral" or "park" and cranking with the key. An older, out-of-tune vehicle may stall upon restart. Hazardous traffic delays could result because of older vehicles equipped with the Zemco mechanism.

Furthermore, this same problem may occur in any vehicle when it is cold. This stalling problem can be avoided by delaying the functioning of the fuel saving device until after the coolant reaches a certain temperature.

Avoidance of Engine Shutdown

In the fuel economy unit, there may be a built-in challenge to the driver to avoid engine shut down due to the two second delay prior to shut down after a stop. In trying to prevent the two second dead stop, the driver may be motivated to effect a rolling stop at a "stop" sign, in slow moving traffic, or in slowly decelerating while approaching a red light about to change. To avoid engine shut down, the driver may continue to roll forward slowly so that the control unit will not signal the engine to shut off. Trying to avert a shutdown by creeping maneuvers will likely distract operators, resulting in hazardous driving conditions.

Conclusion

In light of the foregoing arguments concerning the negative effects on safety of the Zemco fuel saver, the agency is terminating its rulemaking activity on the matter. But the agency strongly encourages further research and development in the area of fuel economy devices. The termination of rulemaking in this instance reflects only on the type of design offered, not on the concept of reduced idle time. The NHTSA emphasizes that many of its safety concerns could be overcome by design modifications. The agency further stresses that if in the future a more effective and safe fuel economy device is developed, amendments to Standard No. 102 could then be considered.

Issued on: March 22, 1984.

Barry Felrice,

Acting Associate Administrator for Rulemaking.

[FR Doc. 84-8228 Filed 3-26-84; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1048

[Ex Parte No. MC-37 (Sub-36)]

Proposed Supplement to the Commercial Zone Regulations in Lieu of Specific Definition of the Houston, TX Commercial Zone

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; Houston, TX commercial zone.

SUMMARY: The Port of Galveston seeks specific definition of the Houston, TX commercial zone to assure that the present zone is unaltered by contraction of the Houston city limits through an anticipated de-annexation. Rather, than specifically define the Houston Commercial Zone, the Commission proposes to supplement its regulations so that contraction of municipal boundaries do not disturb established commercial zones.

DATES: Comments are due April 26, 1984.

ADDRESSES: The original and 15 copies of comments should be sent to: Ex Parte No. MC-37 (Sub-No. 36), Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Barry, (202) 275-7540

or

Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION: We propose to amend Title 49 of the CFR by adding a new paragraph (c) to § 1048.102 to read as follows:

§ 1048.102 Controlling distances and population data.

* * * * *

(c) Contraction of municipal boundaries shall not alter the size of established commercial zones.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC, 20423, or call 289-4357 (DC metropolitan area) or toll-free (800) 424-5403.

This action proposed will not have an adverse effect on either the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Statement

The Commission certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Its purpose is to maintain the *status quo* of commercial zones so as to ensure that changes in political boundary lines do not disturb commercial shipping patterns or competitive relationships.

List of Subjects in 49 CFR Part 1048

Motor carriers, Commercial zones.

This decision is issued pursuant to 49 U.S.C. 10321, 49 U.S.C. 10526 and 5 U.S.C. 553.

Decided: March 16, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8129 Filed 3-26-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

Gulf of Mexico Fishery Management Council; Swordfish Public Hearings

Correction

In FR Doc. 84-7132 appearing on page 10319 in the issue of Tuesday, March 20, 1984, the CFR Part number in the heading should have appeared as set forth above.

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 49, No. 60
Tuesday, March 27, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Fort Berthold Reservation Indian Tribes in North Dakota

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Fort Berthold Reservation in North Dakota has been materially increased and became acute because of severe and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Mandan, Hidatsa and Arikara Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1984, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on March 22, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service

[FR Doc. 84-8131 Filed 3-26-84; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

Puerto Rico Electric Power Authority

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice.

SUMMARY: The Administrator of the Rural Electrification Administration will consider a request for financial assistance in the approximate amount of $32,087,000 from Puerto Rico Electric Power Authority, San Juan, Puerto Rico. The proposed loan will finance 70 percent of a project which includes service for 14,766 additional electric consumers, 542 miles of distribution line, upgrading transmission facilities and various system improvements. Construction will take place throughout the island of Puerto Rico.

ADDRESS: All interested parties are invited to submit written comments to REA within 60 days. Comments should be sent to Mr. Joe S. Zoller, Assistant Administrator—Electric, REA, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Wilfredo Marcial Gonzalez, Executive Director, Puerto Rico Electric Power Authority, GPO Box 4267, San Juan, Puerto Rico 00936 or Mr. Joseph R. Binder, Director, Southeast Area Electric REA, U.S. Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 12372, "Intergovernmental Review of Federal Programs" and in conformance with 7 CFR Part 3015 "Intergovernmental Review of U.S. Department of Agriculture Programs and Activities," REA is providing notice that the Administrator of REA intends to consider a request for financial assistance from the Puerto Rico Electric Power Authority. Interested parties may obtain information on the proposed loan, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of loan funds, from Mr. Wifredo Marcia Gonzalez at the address given above.

This program is listed in the Catalog of the Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

Dated: March 20, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-8202 Filed 3-26-84; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

[Docket 41035]

Dominion Intercontinental Airlines, Inc. Fitness Investigation; Target Date

Section 399.62 of the Board's Policy Statements provides that in hearing cases Administrative Law Judge shall issue a notice of the target date for completion of the initial or recommended decision within 20 days of the submission of closing briefs or the conclusion or oral argument to the Judge. In accordance with that provision, notice is hereby given that the Judge shall endeavor to issue the recommended decision in this proceeding on or before April 23, 1984.

Dated at Washington, D.C., March 21, 1984.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84-8194 Filed 3-26-84; 8:45 am]

BILLING CODE 6320-01-M

[Dockets 34507, 40541, 41676; Order 84-3-91]

El Al Israel Airlines Limited; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order To Show Cause: Order 84-3-91.

SUMMARY: The Board proposes to approve the following applications:

Applicant: El Al Israel Airlines Limited.

Dockets: 34507, 40541, 41676.

Dates applications filed: January 17, 1979; March 18, 1982; August 31, 1983.

Authority sought: El Al requests authority to serve Miami, Chicago, Boston and Los Angeles; to conduct beyond service from one specified U.S.

point to Mexico City, Mexico; and to perform charter flights in accordance with the terms of the August 1978 U.S.-Israel Protocol. We propose to grant the requests. In addition, we propose to: (1) authorize El Al to serve Montreal as an intermediate point (without traffic rights between Montreal and the United States)—authority consistent with the Protocol; and (2) delete the intermediate points Iceland, Greenland, the Azores, and the Provinces of Newfoundland and Quebec which are listed in El Al's current permit, but are not listed in the 1978 Protocol.

Objections: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than April 9, 1984, file a statement of such objections in each docket with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Israel. A statement of objections must cite the docket numbers and must include a summary of testimony, statistical data, or other supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

Addresses for objections:

Dockets 34507, 40541, 41676, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428

Ruth J. Weinstein, Esq., Hale, Russell and Gray, 101 Park Avenue, New York, N.Y. 10178

Robert Reed Gray, Esq., Benjamin R. Achenbach, Jr., Esq., Hale, Russell and Gray, 1025 Connecticut Avenue, NW., Washington, D.C. 20036

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Nancy Pitzer Trowbridge, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

By the Civil Aeronautics Board: March 21, 1984

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-8196 Filed 3-26-84; 8:45 am]

BILLING CODE 6325-01-M

[Docket 40962]

Lone Star Certificate Amendment and Transfer Case; Change of Site for Hearing

Notice is hereby given that the site of the hearing in the above-titled matter scheduled to begin on March 28, 1984, at 10:00 a.m. (local time), has been changed to Hearing Room 540, 2120 L Street, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., March 21, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84-8195 Filed 3-26-84; 8:45 am]

BILLING CODE 6325-01-M

[Docket 42052; Order 84-3-86]

Complaint of Pan American World Airways, Inc. Against the Government of Nigeria, Nigeria Airways; Order

On March 19, 1984, Pan American World Airways, Inc. (Pan American) filed a complaint against the Government of the Federal Republic of Nigeria (Nigeria) and its flag carrier, Nigeria Airways. Pan American alleges that Nigeria has barred it from obtaining remittance in U.S. dollars of the bulk of its 1983 net airline revenues obtained in Nigerian currency for ticket sales made in Nigeria; that the value of such blocked funds for 1983 is $17 million; and that this $17 million is not a debt owed to Pan American as a creditor, but consists of funds owned by Pan American and held captive by Nigeria. Pan American also alleges that it was advised on February 17, 1984, by senior Nigerian officials that these funds are to be amalgamated with other funds due other claimants and no payment at all will be made for two and a half years at a minimum. Pan American claims that this action by Nigeria does grave harm to Pan American, since its costs are largely dollar costs and prevents Pan American from paying expenses incurred in its services to Nigeria with revenues earned in Nigeria.

Pan American alleges that these actions of Nigeria are in direct violation of Article 12 of the Air Transport Agreement between the United States and Nigeria, which provides for expeditious conversion and repatriation of local revenues in excess of sums locally disbursed; constitute an unreasonable restriction on its access to foreign markets; and are discriminatory in favor of Nigeria Airways *vis-a-vis* Pan American.

Pan American states that it will terminate one of its two Nigeria flights on or about April 29, 1984; that after reviewing the failure of its latest efforts to obtain repatriation of its funds held hostage in Nigeria, it will terminate all of its Nigeria service, absent a recovery of its 1983 funds and an assurance that blocks to repatriation will cease in the future: that this decision will become unchangeable on or about April 20: that to permit the U.S. Government time to resolve this problem, it will defer termination of service until June 1, 1984; and that termination of service to Nigeria necessarily also requires the termination of service between the U.S. and Kenya and the U.S. and Senegal.

Pan American requests that we exercise our authority under section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974, as amended (IATFCPA) and section 402(f) of the Federal Aviation Act of 1958, as amended (Act) to modify Nigeria Airways' foreign air carrier permit to only allow one frequency a week to the United States effective April 29, 1984, and to terminate such permit as of June 1, 1984, unless the carrier voluntarily agrees to transfer all of its dollar revenues to a third party fiduciary which will undertake to pay to Pan American such amounts as Pan American certifies are being blocked in excess of 30 days by the Nigerian Government.

The International Air Transportation Competition Act of 1979 substantially expanded our ability to deal with allegations of unfairly restrictive and discriminatory practices by foreign governments and foreign airlines. We now possess power to respond quickly to such practices through amendments to section 402 of the Act and section 2 of the IATFCPA which permit us to deny, alfer, amend, modify, suspend, cancel, limit or condition any foreign air carrier permit or tariff if we find such action to be in the public interest. They also enable us to act without any hearing or to dispense with oral evidentiary hearings and base our decision or written evidence and arguments submitted by interested parties in appropriate circumstances. Furthermore, to ensure that complaints filed under this legislation receive prompt attention, section 2 of the IATFCPA provides that we shall approve, deny, dismiss or set a complaint for hearing, or institute other proceedings proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action in increments of 30

days up to 180 days, if we conclude that it is likely that the complaint can be satisfactorily resolved through negotiations.

With these considerations in mind, we have decided to invite all interested persons to answer the complaint in this docket. Answers shall include all data, evidence, and argument upon which persons rely to support their position, and shall cover all substantive and procedural issues they wish the Board to consider. We will also provide an opportunity to reply to these answers.

Answers shall be filed no later than 15 days from the service date of this order, and replies no later than 7 calendar days from that answer date.[1] Given the urgency of the situation described in the complaint, we will not be disposed to grant requests for extension of these dates.

After receipt and consideration of these pleadings and any evidence submitted, we will issue a further order in this proceeding. As indicated above, we may either provide for further procedures, defer action for 30 days, or grant, dismiss, or deny the complaint in whole or in part.

Accordingly,

1. We invite any interested person to file and serve upon persons named in paragraph 3, below, no later than April 5, 1984, answers to the complaint in Docket 42052. If comments are filed, replies may be filed, and must be served as above, but no later than April 12, 1984;

2. If timely and properly supported requests are filed, we will give consideration to the matters and issues raised by the requests before we take further action, provided that we may order further procedures within the statutorily determined time period; and

3. We will serve this order upon Pan American World Airways, Inc., Nigeria Airways, the Ambassador of the Federal Republic of Nigeria in Washington, D.C., and the United States Departments of State and Transportation.

We shall publish this Order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-8193 Filed 3-26-84; 8:45 am]

BILLING CODE 6320-01-M

[1] We delegate to the Director, Bureau of International Aviation, the authority to dispose of all procedural questions arising in this proceeding, except for requests for oral evidentiary hearings, until further Board order.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 17-82]

Application for a Special-Purpose Subzone for Huffy Bicycle Plant in Celina, Ohio; Industry Impact Study Completed; Comments Invited

This notice concerns the application of the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 46 in Cincinnati, Ohio, to the Foreign-Trade Zones Board, on behalf of the Huffy Corporation for a special-purpose foreign-trade subzone at its bicycle manufacturing plant in Celina, Ohio, filed July 30, 1982 (48 FR 35543, 8/16/82). The period for public comment on this proposal closed on December 3, 1982 (47 FR 44128). During the open record period a number of comments in opposition were received from the domestic bicycle and bicycle parts industries.

In order to assist the examiners committee in its evaluation of the proposal, the Board's Executive Secretary requested an economic analysis from the Bureau of Industrial Economics, U.S. Department of Commerce. The analysis (BIE report) was completed on March 9, 1984.

Notice is hereby given that a public version of the BIE report, in which certain figures have been ranged or approximated to protect business confidentiality, is being made available for comment by interested parties. The report is available for inspection and copying at the Central Records Room (Room B-099), Import Administration, U.S. Department of Commerce, 14th and Pennsylvania, NW., Washington, D.C. 20230, (202-377-1248). Comments must be postmarked by April 30, 1984, and submitted with 12 copies to the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania, NW., Room 1872, Washington, D.C. 20230.

Dated: March 21, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-8215 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATE: Comments on these applications must be submitted on or before April 11, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00012."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131; or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mar. 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–40 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Northwest Fruit Exporters, 1005 Tieton Drive Yakima, WA 98902, Telephone 509/453–4837.

Application #: 84–00012.

Date Received: March 6, 1984.

Date Deemed Submitted: March 12, 1984.

Members in Addition to Applicant: Andrus & Roberts Produce Company, Sunnyside, WA; C.M. Holtzinger Company, Yakima, WA; Cascadian Fruit Shippers, Wenatchee, WA; Columbia Fruit Packers, Inc., Wenatchee, WA; Diamond Fruit Growers, Hood River, OR; George F. Joseph Orchard, Yakima, WA; Hansen Fruit & Cold Storage, Yakima, WA; Highland Fruit Growers, Yakima, WA; Inland Fruit & Produce Company, Wapato, WA; Mojonnier & Sons, Inc., Walla Walla, WA; Northern Fruit Company, Wenatchee, WA; Obert Cold Storage, Zillah, WA; Pacific Fruit Company, Yakima, WA; Phillippi/Pro Pack, Wenatchee, WA; Roche Fruit Company, Yakima, WA; Skookum, Inc., Wenatchee, WA; Snokist Growers, Yakima, WA; Stadelman Fruit, Inc., The Dalles, OR; Stadelman Fruit, Inc., Yakima, WA; Stemilt Growers, Wenatchee, WA; The Dalles Cherry Growers, The Dalles, OR; Washington Fruit & Produce, Yakima, WA; Wenatchee Wenoka Growers, Wenatchee, WA; and Yakima Fruit & Cold Storage, Yakima, WA.

Summary of the Application:

Northwest Fruit Exporters (NFE) is a non-profit corporation organized in 1978 by certain sweet cherry growers, packers and shippers to represent them in connection with the export of fresh sweet cherries. As a qualified Webb-Pomerene association, NFE is already active in the Japanese market. NFE has now submitted an application seeking certification for certain activities relating to the export of fresh sweet cherries worldwide, with an initial emphasis on countries in the Far East.

The applicant intends to conduct on behalf of its members the following export trade activities and methods of operation relating to the export of fresh sweet cherries: advising and cooperating with the United States Government in establishing procedures regulating the export of this product; participating in negotiations and reaching agreements with foreign governments and private persons regarding (a) fumigating, packing and other quality control procedures, and (b) the quantities, time periods, prices and terms and conditions upon which members will export; establishing and operating fumigation facilities export quotas among growing regions and members; providing market entry and development assistance, including related administrative and promotional services; and arranging transportation services for export.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: March 21, 1984.

Irving P. Margulies,

Acting General Counsel.

[FR Doc. 84–8150 Filed 3–26–84; 8:45 am]

BILLING CODE 3510–DR–M

[Case No. 644]

Charles J. McVey, Jr., et al.; Export Privileges

In the Matter of Charles J. McVey, Jr., 1140 North Armando, Anaheim, California 92806; Rolf Lienhard c/o Frank AG, International Transporte Frachthof West, Postfach 236, 8058 Zurich-Flughafen, Switzerland, Yuri Boyarinov c/o Electronorgtechnika, G–200, Smolenskaja pl. 32/34, Moscow, U.S.S.R.; order amending temporary denial of export privileges.

By Order of October 13, 1983 (48 FR 48699, October 20, 1983) (the "Order"), Frank A.G. was designated in Paragraph III, as a party related to one or more of the respondents and was temporarily denied, pursuant to § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1983)), all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data.

Frank A.G. has moved to vacate the Order with respect to it on the ground it lacks any relationship with any of the respondents such that the Order should apply to it. The Department of Commerce (the "Department") has now stated that it has no objection to Frank A.G.'s motion.

Based on the representations made by Frank A.G. and by the Department, I find that the motion to vacate is justified, and that granting it will not jeopardize the purpose of the Order.

Accordingly, It is hereby Ordered, that, effective immediately, the Order of October 13, 1983 is amended by deleting, from the related parties named in Paragraph III, the following: Frank AG, aka. Frankair Frank AG Zurich, Switzerland; aka. Frankair, Postfach 236, 8058 Zurich-Flughafen, Switzerland.

A copy of this Amendment of the Order shall be served upon Frank A.G., upon each of the respondents, and upon each of the related parties named in Paragraph III of the Order, and a copy of this Amendment shall be published in the **Federal Register**.

Dated: March 20, 1984.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84-8157 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Exxon Company, U.S.A. from California Coastal Commission Objection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal.

SUMMARY: On March 9, 1984, the Secretary of Commerce received an appeal by Exxon Company, U.S.A. (Exxon) from an objection by the California Coastal Commission (Commission) that Exxon is proposed drilling of an exploration well at well location B in the Southwest Quarter of Lease OCS–P 0467 in the Santa Rosa Unit in the Santa Barbara Channel, as provided in Exxon's Plan of Exploration, as amended (Plan), filed with the U.S. Department of the Interior, is inconsistent with the California Coastal Management Program. This appeal has been filed pursuant to Section 307(c)(3) (A) and (B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3) (A) and (B) and implementing regulations at 15 CFR Part 930 Subpart H.

Interested persons are advised that they may submit comments to the Secretary of Commerce (Secretary) on the issues raised in this appeal within 30 days from the date of publication of this notice. Comments should be sent to: Robert J. McManus, General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce, 14th and Constitution Avenue, NW., Room 5814, Washington, D.C. 20230.

Copies of comments also should be sent to the following persons:

1. James C. Dale, Exxon Company, U.S.A., P.O. Box 4279, Houston, Texas 77210–4279;
2. Tim Eichenberg, California Coastal Commission, 631 Howard St., San Francisco, CA 94105; and
3. William Grant, Minerals Management Service, Pacific OCS Region, 1340 W. 6th Street, Los Angeles, CA 90017.

Comments should addressed whether Exxon's proposed exploration drilling complies with the regulatory criteria, as set forth in 15 CFR 930.121 and 930.122, to be considered by the Secretary in deciding whether the drilling may be Federally approved under Section 307(c)(3) (A) and (B) of the CZMA notwithstanding the objection of the California Coastal Commission.

Access to Exxon's Notice of Appeal and accompanying public information, and to the public information contained in comments submitted by Federal and State agencies, will be available to the public at the following State and Federal offices during normal working hours:

1. California Coastal Commission, 631 Howard Street, 4th Floor, San Francisco, California 94105; and
2. Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Department of Commerce, Room 270, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

A copy of Exxon's notice of appeal and supporting information is also available at the Santa Barbara Public Library, 40 E. Anapamu, Santa Barbara, California 93101; and the Minerals Management Service, Pacific OCS Region, Public Information Room, 1340 W. 6th St., Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Bernard C. Cody, Attorney Advisor, National Oceanic and Atmospheric Administration, 2001 Wisconsin Avenue NW., Washington, D.C. 20235, (202/254–7512).

SUPPLEMENTARY INFORMATION: On August 26, 1983, Exxon filed an appeal with the Secretary of Commerce from the Commission's objection that Exxon's Plan of Exploration is inconsistent with the California Coastal Management Program. According to the Plan filed on February 4, 1983 with the Minerals Management Service of the U.S. Department of the Interior, Exxon proposed to drill three exploratory wells in the Southwest Quarter of Lease OCS–P 0467. The Commission's consistency objection was based primarily on its concern that the drilling operations, as proposed, would interfere with thresher shark commercial fishing normally conducted during the period December through April. Following discussions between Exxon and the Commission which led to a partial settlement of the matters in dispute, Exxon withdrew its appeal to the Secretary on December 2, 1983. As a part of that settlement, Exxon amended its Plan of Exploration on November 30, 1983, to conflicts with the commercial fishing industry. On December 15, 1983, the Commission withdrew its consistency objection to the drilling of Well A. During subsequent discussions between the parties concerning Wells B and C, Exxon agreed to delete Well C from its amended Plan. On February 8, 1984, the Commission objected to Exxon's consistency certification for Well B, on the ground that exploratory drilling in this area outside the period from December through April would interfere with thresher shark commercial fishing.

Exxon's exploratory drilling may be federally approved notwithstanding the objection of the Commission that the drilling is inconsistent with the California Coastal Management Program if the activity meets one of two tests. To meet the first test, four criteria must be satisfied: (a) The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 and 303 of the CZMA; (b) when performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest; (c) the activity will not violate any requirements of the Clean Air Act, as amended, or the Clean Water Act, as amended; and (d) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the State management program. To meet the second test, the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. If the Secretary does not find that the activity meets either of these two tests, the Federal agency shall not approve the activity.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: March 20, 1984.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 84-8203 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Notice of Issuance of Permit; Mark Blane McHugh

On February 9, 1984, Notice was published in the **Federal Register** (49 FR 4962), that an application had been filed with the National Marine Fisheries Service by Mr. Mark Blane McHugh, Port Aransas, Texas 78373 for a scientific research permit to take an unspecified number of bottlenose dolphins by harassment for a period of two years.

Notice is hereby given that on March 20, 1984 the National Marine Fisheries

Service issued a Scientific Research Permit as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) to Mr. Mark Blane McHugh subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: March 20, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-8165 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Notice of Issuance of Permit; Moclips Cetological Society

On October 24, 1983, Notice was published in the **Federal Register** (48 FR 35694) that an application had been filed with the National Marine Fisheries Service by Moclips Cetological Society, P.O. Box 945, Friday Harbor, Washington, 98250 for a permit for potential harassment while conducting census and identification studies of killer whales, gray whales, minke whales, humpback whales, and harbor and Dall's porpoises.

Notice is hereby given that on March 16, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a permit to Moclips Cetological Society to take an unspecified number of cetacean species, subject to certain conditions as required by the Endangered Species Act of 1973.

Issuance of this permit for humpback and gray whales is based on a finding that such permit (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the permit, and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (30 FR 41367), November 24, 1974.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: March 16, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-8166 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit; National Zoological Park

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: a. Name: National Zoological Park (P6I), Smithsonian Institution.

b. Address: Washington, D.C. 20008.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: California sea lions (*Zalophus californianus*), 1,200.

4. Type of Take: Capture, tag, including radio tags, metabolic studies and release.

5. Location of Activity: Channel Islands, California.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 20, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-8164 Filed 3-26-84; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.).

Send comments on applications to: Fees, Permits, and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, or, send comments to the Fishery Management Council(s) which review the application(s) as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906, 617–231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 800 South New Street, Dover, DE 19901, 802–674–2331

David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803–571–4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809–753–6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813–228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council,

526 S.W. Mill Street, Portland, OR 97201, 503–221–6352
Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 605 W. Forth Avenue, Anchorage, AK 99510, 907–271–4064
Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1608, Honolulu, Hawaii 98613, 808–523–1368

For further information contact Shirley Whitted or John D. Kelly (Fees, Permits, and Regulations Division), 202–634–7432.

The Magnuson Act also requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983 issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1984 have been received between March 22, 1984 and March 22, 1985 from the Government(s), shown below.

Dated: March 23, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator, for Fisheries Resource Management, National Marine Fisheries Service.

Fishery codes and designation of regional councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional council
ABS	Atlantic Billfishes and Sharks	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish	North Pacific
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
SMT	Seamount Groundfish (Pacific Ocean).	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon, and California).	Pacific
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity Code	Fishing Operations
1	Catching, Processing, and Other Support.
2	Processing and Other Support, Only.
3	Other Support Only.
4	"Joint Venture" in Support of U.S. Vessels.

Nation, vessel name, vessel type	Application No.	Fishery	Activity
Government of Japan:			
Akebono Maru No. 2, Medium Stern Trawler.	JA–84–1154	BSA	1
Akebono Maru No. 22, Medium Stern Trawler.	JA–84–0317	BSA	1
Akebono Maru No. 1, Medium Stern Trawler.	JA–84–1153	BSA	1
Akebono Maru No. 3, Medium Stern Trawler.	JA–84–0105	BSA, SMT	1
Kanyo Maru No. 11, Medium Stern Trawler	JA–84–0313	BSA	1
Government of the Republic of Korea.			
Daijin No. 52, Large Stern Trawler.	KS–84–0037	GOA	1
No. 1 Han Sung, Large Stern Trawler.	KS–84–0106	GOA	1
No. 215 Tae Baek, Medium Stern Trawler.	KS–84–0105	GOA	1
No. 315 Tae Baek, Medium Stern Trawler.	KS–84–0117	GOA	1

Korea

The Government of Korea has applied for fishing permits to engage in joint venture activities with the American partners ALASKA JOINT VENTURE FISHERIES, ALASKA CONTACT LTD., AND DAERIM AMERICAN INC. The application between Korea and the American partner Alaska Joint Venture Fisheries requests the harvest of 1,300 mt of Pacific cod, and 700 mt of other species in the GOA fishery. This joint venture will take place between the months of April–July. The application between Korea and the American partner Alaska Contact Ltd., requests the harvest of 2,000 mt of Pacific cod and 500 mt of other species in the GOA fishery. This joint venture will take place between the months of July–September. The application between Korea and the American partner Daerim American Inc., requests the harvest of 1,500 mt of Pacific cod and 1,000 mt of other species in the GOA fishery. This joint venture will take place between the months of May–December.

Japan

The Government of Japan has applied for fishing permits to engage in joint venture activities with the American partner PETER PAN SEAFOODS, INC. The application requests 4,500 mt of yellowfin sole and 400 mt of other species. This joint venture will take place between the months of April–June and August–September.

[FR Doc. 84–8274 Filed 3–26–84; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application notice establishing the closing date for transmittal of new grant applications—Research in Education of the Handicapped Program.

Applications are invited for new Field-Initiated Research projects under the Research in Education of the Handicapped program.

Authorization for this program is contained in sections 641 and 642 of Part E of the Education of the Handicapped Act.

(20 U.S.C. 1441, 1442)

Applications may be submitted by State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

The purpose of the Research in Education of the Handicapped program is to make awards for research and related activities, and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth.

On October 28, 1983, the Secretary published (48 FR 49533) an application notice establishing the closing date for transmittal of new grant applications for Field-Initiated Research projects. As in previous years, most of these applications for projects propose to conduct research on problems that can be addressed in a relatively short period (12 to 36 months). Certain research efforts, however, require a longer period. For example, in order to answer some research questions, a longitudinal design is necessary, or a series of studies building on one another may be required. In other instances, new measurement techniques or instruments must be developed or field tested before the principal research activities can begin. In order to provide the sustained support required for those kinds of research projects, the Secretary invites applications for new awards for Field-Initiated Research projects that require support for a 60-month period.

The appropriate study areas for proposed Field-Initiated Research projects are limited only by the purpose of the research program and the need for a 60-month period of support to accomplish the research objectives and activities.

Closing date for transmittal of applications: An application for a grant

must be mailed or hand delivered by May 21, 1984.

Applications delivered by mail: Applications sent by mail must be addressed to the Department of Education, Application Control Center, Attention: CFDA Number 84.023H, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Hand-delivered applications must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Available funds: It is estimated that approximately 10 awards will be made for new Field-Initiated Research projects under this program. For fiscal year 1984, the average amount of these awards will be approximately $50,000. This estimate of funding level does not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations. Grant approval is for a 60-month period subject to an annual review of progress and availability of funds.

Application forms: Application forms and program information packages are expected to be ready for mailing by April 6, 1984. These materials may be obtained by writing to the Research Projects Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3076), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested.

(OMB 1820-0028—Expires 2/28/87)

Applicable regulations: Regulations applicable to this program include the following:

(a) The regulations governing the Research in Education of the Handicapped Program (34 CFR Part 324).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTRACT: Eileen Lehman, Research Projects Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3523), Washington, D.C. 20202. Telephone: (202) 732-1120.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance Number 84.023; Research in Education of the Handicapped)

Dated: March 22, 1984.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 84-8128 Filed 3-26-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

National Petroleum Council, Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve' Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve will meet in April 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the Coordinating Subcommittee meeting follows:

The Coordinating Subcommittee will hold its second meeting on Tuesday, April 3, 1984, starting at 8:00 a.m., in the Monticello Room of the Madison Hotel, 15th and M Streets, NW., Washington, D.C.

The tentative agenda for the Coordinating Subcommittee meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.
2. Discuss an organizational structure for the study.
3. Discuss a timetable for completion of the study.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment facilitate the orderly conduct to business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032 prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal

Building, 1000 Independence Avenue, SW., Washington, D.C, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 20, 1984.

William A. Vaughan,

Assistant Secretay Fossil Energy..

[FR Doc. 84-8084 Filed 3-26-84, 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-84-003]

Powerplant and Industrial Fuel Use Act of 1978: Electric Utility Conservation Plans

AGENCY: Economic Regulatory Administration.

ACTION: Notice of approval of amendment to conservation plans.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has approved the proposed amendment to approved electric utility conservation plans filed by the Texas Utilities Electric Company under section 808(d)(3) of the Powerplant and Industrial Fuel Use Act of 1978, as amended, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") and 10 CFR 508.6.

The public file for Texas Utilities Electric Company containing this Notice of Approval of Amendment to the Approved Conservation Plans and all other pertinent documents is available for inspection at the Department of Energy, Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C. 20585, telephone (202) 252-6020. Approval of the amendment to the conservation plans is based on ERA's consideration of the entire record of the proceeding, including any comments received during the public comment period for the plan.

DATE: In accordance with 10 CFR 508.5(b), this notice shall take effect on March 27, 1984.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073 G, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-8162

Marya Rowan, Office of the General Counsel, Forrestal Building, Room 6A-141, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6739

SUPPLEMENTARY INFORMATION: Section 1023 of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35 ("OBRA") amended FUA by adding a new section 808, entitled "Electric Utility Conservation Plan." That section requires utilities which own or operate any existing electric powerplant which used natural gas as a primary energy source between August 14, 1980 and August 13, 1981, and which also plan to use natural gas in any electric powerplant, to develop and submit to DOE for approval a plan setting forth the means of conserving electric energy. The conservation goal, to be achieved not later than the fifth year after DOE's initial approval of the plan, is the equivalent of ten (10) percent of the utility's electric energy output attributable to natural gas generation, sold within its own system during the four calendar quarters ending on June 30, 1981, measured on an annual basis.

In 1982, DOE approved conservation plans for Dallas Power & Light Company (DP&L), FC Case No. 50736-9999-99-49 (47 FR 41163, September 17, 1982); to Texas Electric Service Company (TESCO), FC Case No. 52901-9999-99-49 (47 FR 54319, December 2, 1982); and for Texas Power & Light Company (TP&L), FC Case No. 52902-9999-99-49 (47 FR 56387, December 16, 1982), while these companies were subsidiaries of the Texas Utilities Company (TU). In 1983, subsequent to DOE's approval action, DP&L, TESCO and TP&L were merged into Texas Utilities Electric Company, another subsidiary of TU.

On January 27, 1984, Texas Utilities Electric Company filed with ERA a proposed amendment to the above-described electric utility conservation plans in which it requested that the approved programs and conservation goals of these plans be consolidated into a single plan that would be administered by Texas Utilities Electric Company, as successor to the three companies.

Notice of Receipt of the proposed amendment to the three approved conservation plans, providing for a thirty (30) day public comment period, was published in the **Federal Register** on February 14, 1984 (49 FR 5655). The comment period ended March 15, 1984. No comments on the proposed amendment to the plans were received.

Based upon the entire record of this proceeding, ERA has determined that the proposed amendment to consolidate the conservation plans and goals of each named utilities meets the requirements for approval contained in 10 CFR 508.8. Based on the information contained in the proposed amendment, ERA has determined that the conservation programs contained in the consolidated plan will remain as previously approved, at which time DOE found that they would not produce environmental consequences significant enough to warrant detailed documentation pursuant to the National Environmental Policy Act or its implementing regulations (40 CFR Part 1500 *et seq.*). Thus, DOE's approval of the proposed amendment consolidating the plans does not represent a major Federal action significantly affecting the quality of the human environment. Pursuant to 10 CFR 508.6 and section 808(d) (1) and (3) of FUA, DOE hereby approves the amendment to consolidate the subject electric utility conservation plans.

Texas Utilities Electric Company, as the successor to the three subsidiaries, is to administer the consolidated plan and file the annual report of progress for each remaining year of the five-year plan beginning with the 1984 annual report due January 30, 1985.

Issued in Washington, D.C. on March 19, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-8086 Filed 3-26-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER84-318-000]

Alabama Power Co.; Filing

March 21, 1984.

The filing Company submits the following:

Take notice that on March 12, 1984, Alabama Power Company (Alabama) tendered for filing Revised Sheet No. 34 to its FERC Electric Tariff, Original Volume No. 1. The purpose of this filing is to give notice that effective January 20, 1984 electric service to the Pettus Street Delivery Point of the City of Dothan was terminated. The City of Dothan requested this cancellation and the load served from the Pettus Street Delivery Point was transferred to the East Haven and South Park Avenue Delivery Points.

Copies of the filing were served upon the City of Donothan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 5, 1984. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8093 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-316-000]

Duke Power Co.; Filing

March 21, 1984.

The filing Company submits the following:

Take notice that on March 12, 1984, Duke Power Company (Duke) tendered for filing a supplement to the Company's Electric Power Contract with the City of Clinton. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 249.

Duke further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following increase in contract demand: Delivery Point No. 1 from 18,000 KW to 24,000 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of May 18, 1984.

According to Duke Power, copies of this filing were mailed to the City of Clinton and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8094 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE82-14-001]

Kansas City Power & Light Co.; Application for Exemption

March 20, 1984.

Take notice that Kansas City Power & Light Company (KCPL) filed an application on February 16, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290. In addition, KCPL requests a waiver of the requirement that an application for exemption shall be filed "no less than 18 months prior to the time the information would otherwise be required" (Section 290.601(a)).

In its application for exemption KCPL states, in part, that it should not be required to file the specified data for the following reasons:

> Section 133 data are not needed for consideration of rate standards and policies under Title I of PURPA.
>
> Section 133 data are not relied upon for retail rate regulatory purposes by the Missouri Public Service Commission and the Kansas Corporation Commission.
>
> The cost of collecting, analyzing, and reporting the data necessary to satisfy Section 133 requirements exceed the value and benefits realized by the consumer and the state regulatory commissions.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45 day period, such person must also serve a copy of such comments on: Mr. Robert B. Sullivan, Director of Rates and Regulatory, Kansas City Power & Light Company, 1330 Baltimore Avenue, Kansas City, Missouri 64105.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8095 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-15-004]

Mid Louisiana Gas Co.; Proposed Changes in FERC Gas Tariff

March 21, 1984.

Take notice that on March 13, 1984, Mid Louisiana Gas Company (Mid Louisiana) re-submitted for filing the following proposed changes in its FERC Gas Tariff:

> Substitute Forty-Fourth Revised Sheet No 3a
> Substitute Alternate Forty-Fourth Revised Sheet No. 3a.

In addition, Mid Louisiana filed the following exhibits: Revised Exhibit A, page 14; Exhibit A, page 14A; and Exhibit A, page 14B.

Mid Louisiana states that copies have been sent to Gulf States Utility Company and its attorneys, and to the Louisiana Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 2, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8096 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-319-000]

Pennsylvania Power & Light Co.; Filing

March 21, 1984.

The filing Company submits the following:

Take notice that on March 12, 1984, Pennsylvania Power & Light Company (PP&L) tendered for filing as a rate schedule an executed agreement dated as of February 15, 1984 between PP&L and Power Authority of the State of New York (NYPA).

PP&L state that the rate schedule provides for a maximum energy reservation charge rate of $24.70 per megawatt hour and an energy charge rate based upon the incremental cost of providing the energy.

PP&L requests an effective date of March 12, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon NYPA and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8097 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-317-000]

Public Service Company of New Mexico; Filing

March 21, 1984.

The filing Company submits the following:

Take notice that on March 12, 1984, Public Service Company of New Mexico (PNM) tendered for filing proposed changes in its Rate Schedule FPC No. 31. On said date, PNM tendered for filing Amendment No. 4 (the Amendment) to Service Schedule B of the Master Interconnection Agreement between PNM and Plains Electric Generation and Transmission Cooperative, Inc. (Plains).

PNM states that the proposed Amendment provides for an extension of the term of Service Schedule B from May 31, 1984, to December 31, 1984, and specified minimum amounts of power that Plains will purchase from PNM in 1983 and 1984.

PNM further states that the primary purpose of the proposed Amendment is to extend the term of Service Schedule B for seven months to coincide with the anticipated in-service date of Plains' Electric Generation Station Unit One.

PNM requests an effective date of January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Plains and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 5, 1984. Protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8098 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-279-000]

Algonquin Gas Transmission Co.; Application

March 22, 1984.

Take notice that on March 2, 1984, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP84-279-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the modification of an existing meter station located in Uncasville, Connecticut, to allow for increased deliveries of authorized contract quantities to an existing customer, The Connecticut Light and Power Company (CL&P), formerly the Connecticut Gas Company, and to authorize Applicant to reflect such change of name, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is asserted that CL&P has requested that Applicant deliver larger quantities of gas at higher pressures than are now being delivered at the Uncasville meter station, which would enable CL&P to render service to its Montville electric generating plant. It is stated that CL&P has certificated that its downstream distribution facilities are suitable for the higher pressure resulting from the proposed modifications.

Applicant proposes to modify the Uncasville meter station by installing facilities capable of receiving and measuring gas at a higher pressure and higher rate. Applicant states that it would install piping, an enlarged heater, and measurement equipment together with related facilities. Applicant asserts that such modifications would enable CL&P to make such higher volume and higher pressure deliveries to the Montville plant whenever Applicant's line pressure is adequate. Applicant further asserts that the proposal does not represent an increase in the annual contractual quantity that CL&P currently purchases from Applicant.

Applicant further requests authority to change the name of its existing customer, CL&P, formerly The Connecticut Gas Company, reflecting such change of name in its authorization for service.

Applicant estimates cost of the proposed modifications to the Uncasville meter station to be $128,100 with such costs being reimbursed by CL&P to Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 12, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8177 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2098-000]

John W. Ellis; Application

March 22, 1984.

The filing individual submits the following:

Take notice that on March 14, 1984, John W. Ellis filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, President, and Chief Executive Officer, Puget Sound Power & Light Company

Director, Washington Mutual Savings Bank

Director, SAFECO Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8179 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-320-000]

Iowa-Illinois Gas and Electric Co.; Filing

March 22, 1984.

The filing company submits the following;

Take notice that on March 13, 1984, Iowa-Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing a proposed change in its Rate Schedule WES (applicable only to Sherrard Power System Orion, Illinois), FPC Wholesale Electric Tariff, Original Volume No. 1. The change reflected in 4th Revised Sheet No. 5, proposed to be effective May 14, 1984, would increase revenues from jurisdictional sales and service by $1,962,060 based on the 12-month period ending December 31, 1982.

Iowa-Illinois alleges that the reason for the proposed increased revenues is because its operating outcome has declined to a level which provides an inadequate return. It further alleges that it is essential in the interest of preserving its financial integrity that its revenues and operating income be necessary to provide good electric service and to attract the additional capital required.

Copies of the filing were served upon Sherrard Power System and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 9, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8178 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-34-000]

Kansas City Power & Light Co.; Application

March 22, 1984.

Take notice that on March 12, 1984, Kansas City Power & Light Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $300 million of Short-Term Debt and Commercial Paper on or before June 30, 1986, which would mature no later than December 31, 1987.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before April 12, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8180 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-251-000]

K N Energy, Inc.; Application

March 22, 1984.

Take notice that on February 22, 1984, as supplemented March 1, 1984, K N Energy, Inc. (K N), P.O. Box 16265, Lakewood, Colorado 80215, filed in Docket No. CP84-251-000 an application, pursuant to section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing K N to establish a new delivery point with respect to the sale of gas to a new customer, Iams Company, Inc. (Iams), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N states that it was authorized to provide natural gas service to an alfalfa dehydration mill near Odessa, Nebraska, pursuant to order issued in Docket NO. G-1857 on June 30, 1954. It is further stated that Iams has obtained from the owner of the plant the right to purchase gas from K N but that Iams desires to have its gas delivered at a location in the vicinity of Aurora, Nebraska, for use in a new agricultural processing plant that would produce pet food. In order to assist Iams, K N requests authorization to install a delivery point and related facilities approximately 4.5 miles west of Aurora in Hamilton County, Nebraska. It is stated that Iams would fully reimburse K N for the cost of constructing the new delivery point.

K N states that the total volumes that would be delivered to Iams at Aurora would not exceed the total volumes authorized at Odessa. It is further stated that the annual volumetric limitation on the gas delivered to Iams at the Odessa delivery point would be 185,000 Mcf. K N indicates that the change in delivery points and volume reassignment would not be prohibited by any of K N's existing tariffs. Furthermore, K N avers that it has sufficient capacity to make the proposed deliveries without detriment or disadvantage to its other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 12, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8181 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-322-000]

Pacific Gas and Electric Co.; Filing

March 22, 1984.

The filing Company submits the following:

Take notice that on March 15, 1984, Pacific Gas and Electric Company (PGandE) tendered for filing a notice of change in rates and charges under electric resale rate Schedule Nos. 84, 85, 72, 53 and R-2. The proposed rates are based on formulas contained in rate settlements reached between PGandE and the City and County of San Francisco, Sierra Pacific Power Company, CP National Corporation, the Shasta Dam Area Public Utility District, the City of Santa Clara and the Northern California Power Agency, respectively.

PGandE states that the proposed changes would increase revenues from jurisdictional sales and service by a total of $3,559,597 based on the 12 month estimated test period ending December 31, 1984.

PGandE requests an effective date of January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the affected customers and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 9, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8182 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-20-002]

Panhandle Eastern Pipe Line Co.; Change in FERC Gas Tariff

March 22, 1984.

Take notice that on March 16, 1984, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet Nos. 3-E, 3-U and 32-V

Panhandle states that these sheets are submitted to include the GRI Funding Unit Charge in the rates authorized in Panhandle's Rate Schedule AIC.

Panhandle requests that these sheets become effective on January 1, 1984 as this is the date upon which the new GRI rate became effective pursuant to the Commission's order dated October 28, 1983.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8183 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-195-000]

Schoeller Technical Papers, Inc.—Pulaski Facility; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 22, 1984.

On March 2, 1984, Schoeller Technical Papers, Inc., (Applicant) of P.O. Box 250, Pulaski, New York 13142, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on Centerville Road, Pulaski, New York. The facility will consist of an existing combustion turbine generator unit, a new waste heat recovery boiler, and associated equipment. The primary energy source for the facility will be natural gas. The useful thermal energy output, which is in the form of process steam, will be utilized in paper production processes. The net electric power production capacity of the facility will be 2,850 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8184 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-264-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

March 22, 1984.

Take notice that on February 27, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-264-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to construct and operate a sales tap for the delivery of natural gas under the authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to install a sales tap on a 2-inch pipeline and to provide daily requirements on natural gas to David G. LaRosa in St. Tammany Parish, Louisiana. It is stated that service would be rendered for commercial use through Louisiana Gas Service Company (Louisiana Gas). It is stated further that the current sale to the distributor is under Rate Schedule G-N pursuant to a service agreement between United and Louisiana Gas dated July 30, 1979. United proposes to supply approximately 19 Mcf of natural gas per day and states that the proposed tap would not cause an increase in the customer's contractual maximum daily quantity nor an increase in its entitlements under United's effective curtailment plan. United further states that gas volumes delivered through the proposed sales tap would have no significant effect on existing service requirements either with respect to peak day and/or annual gas deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8185 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-268-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

March 22, 1984.

Take notice that on February 29, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-268-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to construct and operate two sales taps for the delivery of natural gas to its distributor-customer, the Utility Board of the Town of Citronelle, Alabama (Citronelle), under the authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Tap No. 1 would serve daily requirements to Citronelle's residential customers and Tap No. 2 would be used only to aid deliveries during periods of low pressure. It is stated that both taps would connect the system of Citronelle to United's system in Mobile County, Alabama, the first tap to be connected into United's Baxterville-Mobile 20-inch pipeline and the second tap into United's Lirette-Mobile 30-inch line. United states that the requested sales taps would not cause an increase in the customer's contractual maximum daily quantity nor its entitlements under United's effective curtailment plan. United further states that it has sufficient capacity to provide gas service to its other existing customers. It is stated that United sells natural gas to Citronelle pursuant to a service agreement between the parties dated April 1, 1983, under United's Rate Schedule G-N. As proposed, Citronelle would reimburse United for all costs connected with the construction of the proposed taps.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8186 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00048; BH-FRL 2553-8]

Administrator's Pesticide Advisory Committee (Proposed); Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The proposed Administrator's Pesticide Advisory Committee (APAC) will hold a preliminary meeting to discuss the operation of the proposed Committee and to identify and evaluate issues to be addressed by the Committee in future meetings. General activities of the Office of Pesticide Programs (OPP) will also be discussed. The meeting will be open to the public.

DATE: The preliminary meeting will take place on Wednesday, April 11, 1984, at 9:00 a.m. and adjourn by 4:30 p.m.

ADDRESS: The preliminary meeting will be held in: Rm. M-2409, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Designated Federal

Official/Executive Secretary, (Proposed) Administrator's Pesticide Advisory Committee (TS–788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–637, 401 M St., SW., Washington, D.C. 20460, (202–382–2910).

SUPPLEMENTARY INFORMATION: The principal agenda items for the preliminary meeting of the proposed APAC will be the identification of pesticide administrative and legislative issues appropriate for consideration by the proposed Committee and the manner in which these issues should be addressed. The agenda will also include briefings and discussions of interest to the proposed Committee. The EPA Administrator, William D. Ruckelshaus, and the Assistant Administrator for Pesticides and Toxic Substances, John A. Moore, will brief the proposed Committee and solicit discussion on topics of interest in the area of pesticide regulation.

The meeting will be open to the public, and time will be set aside for public comments concerning the future work of the proposed Committee. Any member of the public wishing to present an oral or written statement relating to the proposed Committee's work should contact the proposed APAC Federal Designee at the address or phone number listed above.

Currently, this proposed Committee and its functions are under review by the General Services Administration (GSA) Committee Management Secretariat. EPA is continuing to coordinate with GSA to assure the most expeditions review and concurrence on the establishment of this Committee.

Dated: March 22, 1984.

John A. Moore,

Assistant Administrator for Pesticide and Toxic Substances.

[FR Doc. 84–8124 Filed 3–26–84; 8:45 am]

BILLING CODE 6560–50–M

[FRL–2553–6]

Region 6; Rescission of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA) rescinded Prevention of Significant Deterioration (PSD) permits for the following:

1. PSD–TX–21; United States Steel Corporation; permit issued on July 20, 1977, for the construction of a pipe mill at the existing Texas Works facility located on FM Road 1405, approximately 6 miles southeast of Baytown, Chambers County, Texas; rescinded on May 13, 1982.

2. PSD–TX–69; Val Verde International, Inc. (now Rio Grande Recovery); permit issued on March 30, 1978, for the construction of an atmospheric crude oil topping plant capable of processing waste slop oil located at 3550 Terminal Road, Brownsville, Cameron County, Texas; rescinded on April 8, 1983.

3. PSD–TX–78; Texas Industries, Inc.; permit issued on March 2, 1979, for the construction of a coal strip mining and cleaning plant located on Jaybird Road, approximately 1.5 miles south of Thurber, Erath County, Texas; rescinded on April 12, 1983.

4. PSD–TX–161a; Texas Bitulithic Company; permit issued on December 21, 1978, for the construction of a hot mix asphaltic concrete plant located approximately one mile west of the intersection of State highways 289 and 121, approximately 4 miles south of Frisco, Collin County, Texas; rescinded on February 12, 1982.

5. PSD–TX–167; K.O. Steel Castings, Incorporated; permit issued on January 19, 1979, for the construction of a steel castings foundry at the existing Plant No. 2 located at 3700 Pitluk Road, San Antonio, Bexar County, Texas; rescinded on July 10, 1981.

6. PSD–TX–169a; Board of Trustees of the Galveston Wharves (now FAR-MAR-CO, Incorporated; permit issued on January 19, 1979, for the construction of an export grain elevator in replacement of the damaged grain elevator located at 32 Wharf Road, Galveston, Galveston County, Texas; rescinded on January 21, 1983.

7. PSD–TX–175; Coastal States Petroleum Company; permit issued on July 20, 1979, for the modification of the existing refinery located on Interstate Highway 27, in Corpus Chrisit, Nueces County, Texas; rescinded on February 11, 1982.

8. PSD–TX–195; Chickasha Cotton Oil Company; permit issued on August 22, 1979, for the construction of a cottonseed oil solvent extraction plant located at East South 8th Street and Elgin Avenue in Lamesa, Dawson County, Texas; rescinded on June 15, 1983.

9. PSD–TX–196a; Lufkin Industries, Incorporated; permit issued on March 30, 1979, for the modification of the Main Bay Foundry from a dry sand molding process to a "no-bake" process located near downtown Lufkin, Angelina County, Texas; rescinded on March 15, 1982.

10. PSD–TX–197; Enserch Exploration, Incorporated; permit issued on November 29, 1979, for the construction of an ethane recovery plant located approximately 12 miles from Cisco, Eastland County, Texas; rescinded on February 11, 1982.

11. PSD–NM–208; Navajo Refining Company; permit issued on July 19, 1979, for the replacement of an existing Thermofor Catalytic Cracking Unit with a used Fluid Catalytic Cracking Unit at the existing refinery located at 501 East Main Street, Artesia, Eddy County, New Mexico; rescinded on December 14, 1981.

12. PSD–TX–213a; Consolidated Foundry, Incorporated; permit issued on April 19, 1979, for the construction of a new gray iron jobbing foundry located on FM Road 1346 near San Antonio, Bexar County, Texas; rescinded on April 26, 1982.

13. PSD–OK–223a; Phillips Petroleum Company; permit issued on August 22, 1979, for the expansion of the existing carbon black pilot plant research facility located at Bartlesville, Osage County, Oklahoma; rescinded on March 4, 1982.

14. PSD–LA–238a; R.L. Abshire Construction, Incorporated; permit issued on July 9, 1979, for the construction of a new asphaltic concrete plant located in Lake Charles, Calcasieu Parish, Louisiana; rescinded on August 7, 1981.

15. PSD–TX–241; Marathon Oil Company; permit issued on March 3, 1980, to replace the existing No. 5 topping crude heater, firing refinery gas, with a new heater firing natural gas and No. 6 fuel oil, at the existing refinery located on 6th Street, Texas City, Galveston County, Texas; partially rescinded on October 4, 1982.

. PSD-LA–250; Uniroyal Chemical; permit issued on September 26, 1980, for the construction of a 25 MMBtu/hr waste incinerator at the existing chemical plant located in Geismar, Ascension Parish, Louisiana; partially rescinded on April 23, 1982.

17. PSD–TX255a; United States Gypsum Company; permit issued on February 13, 1980, for the construction of a new wallboard manufacturing facility located 2.8 miles east of Sweetwater, Nolan County, Texas; rescinded on December 16, 1982.

18. PSD–TX265a; GAF Corporation; permit issued on February 27, 1980, for the construction of a new asphalt roofing machine facility located at 2600 Singleton Boulevard, Dallas, Dallas, County, Texas; rescinded on September 18, 1981.

19. PSD–LA–270a; Uniroyal Chemical; permit issued on January 14, 1980, for the construction of a para amino diphenylamine (UBOB) manufacturing facility located at the existing complex in Geismar, Ascension Parish, Louisiana; rescinded on May 13, 1983.

20. PSD–TX–272a; Luling Iron Foundry; permit issued on January 11, 1980, for the construction of a gray iron castings foundry located at 800 North Magnolia, Luling, Caldwell County, Texas; rescinded on March 30, 1982.

21. PSD–TX–288a; W–K–M Valve Division of ACF Industries, Inc.; permit issued on February 22, 1980, for the construction of a no-bake molding facility at the existing foundry located at 126 Collins Road, Richmond, Fort Bend County, Texas; rescinded on May 17, 1983.

22. PSD–TX–360; Shell Oil Company; permit issued on March 27, 1981, for the construction of two internal combustion compressor engines at the existing CO_2 injection facility located on State Highway 67, approximately 5 miles west of McCamey, Upton County, Texas; rescinded on July 9, 1982.

Part 52.21(w) of the PSD regulations amended on August 7, 1980, states that any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21, as in effect on June 19, 1978, may request that the Administrator rescind the permit, or a particular portion of the permit, if the applicant shows that the PSD regulations, as amended on August 7, 1980, would not apply to the source or modification. All the sources listed above, except for PSD–TX–241 and PSD–TX–250, no longer constitutes a major stationary source since, under the new definition of "potential to emit", their controlled emissions are not large enough to constitute a major stationary source or a major modification. Therefore, EPA determined that a PSD permit is no logner required for these facilities and is giving notice that it has rescinded the permits. PSD–TX–241 was partially rescinded because there was a net decrease in the nitrogen oxide (NO_x) emissions and, therefore, NO_x was not subject to PSD review. This source is still subject to the PSD regulations for sulfur dioxide emissions. PSD–TX–250 was partially rescinded because the emissions of sulfur dioxide (SO_2) and particulate matter (PM) from this project are insignificant, as defined in 40 CFR 52.21(b)(23) as in effect on August 7, 1980, and, therefore, the SO_2 and PM emissions are no longer subject to the PSD regulations. The source is still subject to the PSD regulations for nitrogen oxide emissions.

Notices of EPA's proposed action to rescind, or partially rescind, these PSD permits were published in newspapers in the affected area of each facility. No comments were received regarding the proposed rescissions. Documents relevant to the rescission requests are available for public inspection during normal business hours in the offices of the Air Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of Section 3 of Executive Order 12291.

Dated: March 14, 1984.

Dick Whittington,

Regional Administration, Region 6.

[FR Doc. 84-3137 Filed 3-26-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on DBS Standards; Working Group on Signal Format, and Sub-Committee on Transmission Standards; Changed Meeting

March 16, 1984.

Notice of: (1). Date and Room Change of a Meeting of the FCC Advisory Committee on DBS Standards, and (2). Sub-Committee Meeting on Transmission Standards.

Public Notice No. 2845, dated March 9, 1984, indicated that the Working Group on Signal Format will meet on March 20, 1984 in FCC/OST Conference Room No. 7317. This has been changed to March 22, 1984 (all day). The meeting location is now FCC Conference Room No. 5115, 2025 M Street, NW.

There will be a meeting of the Sub-Committee on Transmission Standards on March 30, 1984. The meeting location is CBS, 1800 M Street, 3rd flr.

Those seeking further information may contact B. Pattan, FCC/OST at (202) 653–8098, or chairman of the above groups.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-8114 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84–274, File No. BPCT–830818KI, et al.]

Retherford Publications, Inc., et al.; Hearings Designation Order

Adopted: March 13, 1984.
Released: March 19, 1984.
By Chief, Mass Media Bureau.

In re Applications of Retherford Publications, Inc., Sheboygan, Wisconsin, MM Docket No. 84–274, File No. BPCT–830818KI; Sheboygan County Broadcasting Co., Inc., Sheboygan, Wisconsin, MM Docket No. 84–275, File No. BPCT–831011KH; Hometown Television, Inc., Sheboygan, Wisconsin, MM Docket No. 84–276, File No. BPCT–831018KN; for construction permit.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it: (1) The above-captioned mutually exclusive applications of Retherford Publications, Inc. (Retherford), Sheboygan County Broadcasting Co., Inc. (Sheboygan County), and Hometown Television, Inc. (Hometown) for authority to construct a new commercial television station on Channel 28, Sheboygan, Wisconsin; (2) a petition to deny Retherford's application filed by Sheboygan County; (3) an opposition filed by Retherford; and (4) a reply to the opposition filed by Sheboygan County.

2. On October 18, 1983, Sheboygan County filed a petition to deny the Retherford application on the grounds that Retherford does not have a site available to it. Generally, petitions to deny filed by one applicant against another are treated as pre-designation petitions to specify issues. As such, they are dismissed (without prejudice to raising the issues before the Administrative Law Judge) because such petitions to specify issues are no longer permitted. *Revised Procedures for the Processing of Contested Broadcast Applications.* (General Docket No. 79–137), 72 FCC 2d 202, 214 (1979). In this case, the petition raises a disqualifying issue which could not be discovered by the staff in the ordinary course of processing. We believe, therefore, that this is a matter appropriately addressed here. To the extent that other issues are raised by the petition, however, the petition will be dismissed.[1]

3. Retherford proposes to locate its transmitter at a site owned and controlled by a competing applicant, Sheboygan County. The site is that of Sheboygen County's Stations WHBL(AM) and WWJR(FM), Sheboygan, Wisconsin. Sheboygan County states that Retherford has never sought permission to use the site and that the site would not be made available to Retherford. Retherford responded that permission was given by telephone to use the WWJR(FM) tower

[1] On November 17, 1983, Retherford filed an opposition to the petition to deny. On November 23, 1983, Sheboygan County filed a reply to the opposition.

coordinates for the purposes of Retherford's application. Retherford, however, concedes that "* * * the tower may not be available for leasing when a license is granted." Retherford does not state when the alleged telephone call was made nor to whom it was made.

4. The Commission has long held that an applicant need not demonstrate absolute assurance of site availability nor legal control over the proposed site; rather, there must be a showing of "reasonable assurance" that the site is available. *John Hutton Corp.*, 27 FCC 2d 214 (1971); *North American Broadcasting Co.*, 15 FCC 2d 984 (1969). The indication that the site will be available must, obviously, be obtained from a person who has authority to give such assurances, i.e., the property owner. It is a well established Commission policy that "neither absolute assurance nor legal control of a site is necssary, but only that when an applicant proposes a site, he must have done so in good faith that the site will be available to him." *Alabama Citizens for Responsive Television Inc.*, 59 FCC 2d 1, 2–3 (1976). Since the specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available, a failure to inquire as to the availability of the site specified in the application is inconsistent with such a representation. Accordingly, an issue will be added as to whether Retherford has a site at the time its application was filed, and whether it now has "reasonable assurance" of the availability of its site.

5. The proposed antenna of Sheboygan County is to be mounted on one of the towers of its own AM Radio Station WHBL, Sheboygan, Wisconsin. The proposed tower of Retherford is to be located 0.04 miles from the directional array of WHBL. Consequently, any grant of a construction permit to either applicant will be conditioned to ensure that WHBL's radiation pattern is not adversely affected by the construction of the proposed TV station.

6. Section 73.636(a)(1) of the Commission's Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly controls one or more AM and/or FM broadcast stations and the grant of such license would result in the Grade A contour of the proposed television station encompassing the entire community of license of the AM and/or FM broadcast station. However, Note 8 to this rule provides, *inter alia*, that applications for UHF television facilities "* * * will be handled on a case-by-case basis in order to determine whether common ownership, operation or control of the stations in question would be in the public interest." Since Sheboygan County is the licensee of Stations WHBL(AM) and WWJR(FM), Sheboygan, Wisconsin, an appropriate issue will be specified to determine whether the common ownership, operation or control of Stations WHBL(AM) and WWJR(FM), and the proposed television station would be consistent with the public interest.

7. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabluated at least every 10° plus any minima or maxima. Sheboygan County has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information, to the presiding Aministrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

8. Hometown has neither shown taht it is financially qualified nor certified that it is financially qualified. Its Exhibit No. 2, however, states that as soon as financial arrangements are completed, the applicant will make the appropriate certification. Accordingly, the applicant will be given 20 days from the date of the release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, FCC Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

9. Hometown intends to operate the proposed facility as a satellite of commonly-owned station WLRE(TV), Channel 26, Green Bay, Wisconsin. Since the other applicants do not propose a satellite operation, it follows that Hometown must justify the need for a satellite. Accordingly, an appropriate issue will be specified as to the need for a satellite operation.[2]

[2] The issue to be specified as to whether circumstances exist which make the "satellite" form of operation necessary in Sheboygan will be a qualifying issue, for if it is resolved in the negative, the application proposing a satellite operation could not be granted.

10. No determination has been made that the tower height and location specified by Hometown would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether, at the time it filed its application, Retherford had reasonable assurance that its proposed site would be available to it for the proposed use and, if not, the effect thereof on the applicant's basic or comparative qualifications;

2. To determine whether Retherford now has reasonable assurance that its proposed site will be available to it for the proposed use.

3. To determine, with respect to Hometown, whether circumstances exist which would make operation as a "satellite" necessary for Sheboygan, Wisconsin.

4. To determine, with respect to Hometown, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

5. To determine, with respect to Sheboygan County, whether its interests in Radio Stations WHBL(AM) and WWJR(FM), Sheboygan, Wisconsin, and the proposed television station would be consistent with the public interest.

6. To determine which of the proposals would on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That, in the event of a grant of the application to either Sheboygan County or Retherford, the construction permit shall be conditioned as follows:

During the installation of the antenna authorized here, AM Station WHBL

shall determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point values within authorized limits. Upon completion of the installation, common point impedance measurements on the AM array shall be made and a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

14. It is further ordered, That, Sheboygan County shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

15. It is further ordered, That Hometown shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days of the date of the release of this Order.

16. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 4.

17. It is further ordered, That the petition to deny filed by Sheboygan County is granted to the extent indicated and otherwise is dismissed.

18. It is further ordered, That, to avail themselves of the opportunity to be heard, the applications and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

19. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Service Division, Mass Media Bureau.

[FR Doc. 84-8116 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group Steering Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group Steering Committee scheduled to meet on April 9, 10, 11, 12, and 13, 1984. The meeting will be held at the office of AT&T, 1120 20th Street, NW., Washington, D.C., 10th Floor, Conference Room A&B and will be open to the public. The meeting time for the first day of the meeting is 10:00 AM.

The agenda is as follows:

I. Review of Minutes of Previous Meeting
II. General Administrative Matters
III. Review of Entire USOA Revision
IV. Other Business
V. Presentation of Oral Statements
VI. Adjournment

With prior approval of Gerald P. Vaughan, Chairman, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Steering Committee objectives. Anyone not a member of the Steering Committee and wishing to make an oral presentation should contact Stephen T. Duffy, Group Vice-Chairman ((202) 634-1509) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8115 Filed 3-26-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 9522-48.

Title: Med-Gulf Conference.

Parties: Atlanttrafik Express Service, Achille Largo, C.IA Venezolana de Navegacion, Constellation Lines, Costa Line, D'Amico Line S.N.p.A., Egyptian Navigation Co., Ltd., Farrell Lines, Inc., Flota Mercante Grancolombiana S.A., Italian Line, Jugolinija, Jugooceanija, Lykes Lines, Nedlloyd Lines, Nordana Line/Dannebrog Lines, Spanish Line, Zim Israel Navigation Co., Ltd.,

Synopsis: The proposed amendment would provide for conference U.S. and Puerto Rican intermodal authority; eliminate the requirement that a member give a 120 days' notice before offering a service within the conference's scope; require a vote of unanimous less one for conference action on rates and rules applicable to cargo movements to points in states bordering the Pacific Ocean and establish a conference-wide right of independent action on 30 day's notice.

Filing Party: Warren L. Lewis, Esquire, Billig, Sher & Jones, 2033 K Street, NW., Suite 300, Washington, D.C. 20006.

Agreement No.: 10064-5.

Title: Colombia/U.S. Gulf Equal Access Agreement.

Parties: Coordinated Caribbean Transport, Flota Mercante Grancolombiana, S.A. Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment will permit Coordinated Caribbean Transport to become a member of the agreement and an associate of Grancolombiana under the Colombian Government's cargo preference laws in the trade between U.S. Gulf ports and Colombian ports.

Filing Party: R. J. Finnan, Director of Pricing, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana 70130.

By Order of the Federal Maritime Commission.

Dated: March 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8127 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Robert H. Metti, 18982 Laurel, Livonia, Michigan 48152.

By the Federal Maritime Commission.

Dated: March 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8125 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1376-R]

Sunvan International, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Sunvan International, Inc., 7700 Second Ave., Seattle, WA 98108 was cancelled effective March 16, 1984.

By letter dated February 24, 1984, Sunvan International, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1376-R would be automatically revoked unless a valid surety bond was filed with the Commission.

Sunvan International, Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1376-R be and is hereby revoked effective March 16, 1984.

It is ordered, that Independent Ocean Freight Forwarder License No. 1376-R issued to Sunvan International, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Sunvan International, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-8126 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 84-10]

The Coca-Cola Export Corporation v. Peruvian Amazon Line; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Coca-Cola Export Corporation against Peruvian Amazon Line was served March 16, 1984. Complainant alleges that respondent has violated section 18(b)(3) of the Shipping Act, 1916, in connection with the rate assessed against a particular shipment of complainant.

This complainant has been assigned to Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8199 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 84-9]

Ingersoll Rand Company v. Maersk Line; Filing of Complaint and Assignment

Notice is given that a complaint filed by Ingersoll Rand Company against Maersk Line was served March 16, 1984. Complainant alleges that respondent has violated section 18(b)(3) of the Shipping Act, 1916, in connection with the rate assessed against a particular shipment of complainant.

This complaint has been assigned to Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8197 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 84-11]

Ingersoll Rand Company v. U.S. Lines, S.A. (Formerly Moore McCormack Lines, Inc.); Filing of Complaint and Assignment

Notice is given that a complaint filed by Ingersoll Rand Company against U.S. Lines, S.A. (formerly Moore McCormack Lines, Inc.) was served March 16, 1984. Complainant alleges that respondent has violated section 18(b)(3) of the Shipping Act, 1916, in connection with the rate assessed against a particular shipment of complainant.

This complaint has been assigned to Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8198 Filed 3-26-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fleet Financial Group, Inc., et al.; Applications To Engage De Novo in Permissible Nonbanking Activities

The companies listed in this Notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for banking holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 1984.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financing Group, Inc.*, Providence, Rhode Island; to engage through its subsidiary, Fleet Mortgage Corporation, Milwaukee, Wisconsin, in making, acquiring, selling or servicing of mortgage loans or other extensions of credit; consumer finance; and acting as insurance agent or broker with respect to credit life and credit accident and health insurance that is directly related to a mortgage loan or consumer loan made, acquired, sold or serviced by such subsidiary. Comments on this application must be received not later than April 16, 1984.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *First Community Bancorp, Inc.*, Rockford, Illinois; to engage through its subsidiary, First Community Credit Insurance Company, in reinsurance of credit life and credit accident and health insurance in the State of Illinois, principally the Rockford metropolitan area. Comments on this application must be received not later than April 16, 1984.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alaska Mutual Bancorporation*, Anchorage, Alaska; to engage *de novo* through its subsidiary, Alaska Mortgage Company, Anchorage, Alaska, in making and servicing loans as would be made by a mortgage company. These geographic areas to be served are the states of Alaska, Arizona, California, Oregon, and Washington.

2. *Fresno Bancorp*, Fresno, California; to engage *de novo* through its subsidiary, Fresno Bansystems, Inc., Fresno, California, in providing data processing and transmission services, facilities, software, hardware or access to such services.

3. *U.S. Bancorp*, Portland, Oregon; to engage *de novo* through its subsidiary, U.S. Bancorp Mortgage Company, Portland, Oregon, in making, acquiring and servicing of loans and other extensions of credit secured by mortgages or deeds of trust on real property, and to act as insurance agent with regard to credit life and disability insurance solely in connection with extensions of credit by Bancorp Mortgage. Comments on this application must be received not later than April 16, 1984.

Board of Governors of the Federal Reserve System, March 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8221 Filed 3-26-84; 8:45 am]

BILLING CODE 6210-01-M

Key Bancshares, Inc.; Formation of Bank Holding Company

The company listed in this notice has applied for the Board's approval under sections 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. Interested persons may express their views in writing to the address indicated for the application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Key Bancshares, Inc.*, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The Key Bank of Tampa, Tampa, Florida. Comments on this application must be received not later than April 11, 1984.

Board of Governors of the Federal Reserve System, March 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8219 Filed 3-26-84; 8:45 am]

BILLING CODE 6210-01-M

Summit Holding Corporation, et al.; Formations, Acquisitions, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 18, 1984.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Summit Holding Corporation*, Beckley, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Big Clock

National Bank, Beckley, West Virginia, successor by merger to Raleigh County National Bank, Beckley, West Virginia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Eastern Michigan Financial Corporation,* Croswell, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Croswell, Croswell, Michigan.

2. *First of Charlevoix Corp.,* Charlevoix, Michigan, to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Charlevoix, Charlevoix, Michigan. Comments on this application must be received not later than April 19, 1984.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mammoth Bancorp, Inc.,* Brownsville, Kentucky; to become a bank holding company by acquiring 85.7 percent of the voting shares of Brownsville Deposit Bank, Brownsville, Kentucky.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *South St. Paul Bancshares, Inc.,* South St. Paul, Minnesota; to become a bank holding company by acquiring 92.5 percent of the voting shares of Summit State Bank of South St. Paul, South St. Paul, Minnesota. Comments on this application must be received not later than April 19, 1984.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bolder Bancorporation,* Boulder, Colorado; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Boulder, Boulder, Colorado.

2. *First Flo Corporation,* Florence, Colorado; to become a bank holding company by acquiring 85.5 percent of the voting shares of First National Bank of Florence, Florence, Colorado.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Citizens-Texas Banc Shares, Inc.,* Buffalo, Texas; to acquire 100 percent of the voting shares of Citizens National Bank, Teague, Texas, a *de nova* bank.

2. *Jersey Village Bancshares, Inc.,* Houston, Texas; to acquire 100 percent of the voting shares of Sterling Bank, N.A., Houston, Texas, a *de novo* bank. Comments on this application must be received not later than April 19, 1984.

3. *Waskom Bancshares, Inc.,* Waskom, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank, Waskom, Texas.

Board of Governors of the Federal Reserve System, March 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8220 Filed 3-26-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Report; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Pub. L. 92-463 (5 U.S.C Appendix I), the fiscal year 1983 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress:

Mine Health Research Advisory Committee

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C (telephone 202/287-6310). Additionally, on weekdays the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue, SW., Washington, D.C. (telephone 202/245-6791).

Dated: March 16, 1984.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 84-7981 Filed 3-26-84; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 83F-0320]

Quaker Chemical Corp.; Withdrawal of Petition for Food Additive

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the withdrawal without prejudice of the petition (FAP 3B3722) proposing that the food additive regulations be amended to provide for the safe use of polyethyleneamino-fatty (C_{16}–C_{18}) amide ethyl sulfate as a softener and debonder of pulp in paper and paperboard in contact with food.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Quaker Chemical Corp., Conshohocken, PA 19428, has withdrawn its petition (FAP 3B3722), notice of which was published in the **Federal Register** of October 17, 1983 (48 FR 47073).

Dated: March 13, 1984.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 84-8099 Filed 3-26-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0073]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of styrene copolymers in coatings on paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3785) has been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that the food additive regulations be amended to provide for the safe use of styrene copolymers with methacrylate and acrylate comonomers in coatings on paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the

notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 17, 1984.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 84-8100 Filed 3-26-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84D-0016]

Medical Device Notification and Voluntary Safety Alert; Availability of Draft Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public review and comment of a draft guideline entitled "Medical Device Notification and Voluntary Safety Alert" prepared by FDA's Center for Devices and Radiological Health (CDRH) (formerly National Center for Devices and Radiological Health). The draft guideline sets forth the procedure that FDA proposes to follow when requiring responsible persons to notify device users of an unreasonable risk of substantial harm presented by any medical device. Persons that voluntarily alert device users of risks posed by medical devices are encouraged to follow the guideline. The draft guideline is being made available for public comment to provide the agency with views to be considered for incorporation into a final guideline.

DATES: Comments by May 29, 1984. FDA will begin following the draft guideline immediately.

ADDRESSES: Written comments may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Single copies of the draft may be obtained by submitting a written request to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Leonard J. Stauffer, Center for Devices and Radiological Health (HFZ-321), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8110.

SUPPLEMENTARY INFORMATION: FDA has observed that when manufacturers, distributors, or other responsible persons discover a risk presented by a medical device, they often voluntarily alert appropriate persons of the risk to reduce or eliminate it. In such cases, the responsible persons have used "advisories," "alerts," or other similarly designated communications to inform the recipient of the steps to be taken to reduce or eliminate the risk.

Under section 518(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h(a)), FDA may order that appropriate persons be notified if FDA determines (1) that a device in commercial distribution and intended for human use presents an unreasonable risk of substantial harm to the public health, (2) that notification is necessary to eliminate such risk, and (3) that no more practicable means are available under the act to eliminate such risk. Such order shall require that adequate notification be provided by the persons and means best suited to all health professionals who prescribe or use the device and to any other person who should receive such notification to eliminate the risk.

CDRH has prepared a draft guideline to set forth the procedures that FDA intends to use in implementing section 518(a) of the act and that FDA recommends manufacturers, distributors, or other responsible persons follow in notifying or alerting health professionals or other persons of an unreasonable risk of substantial harm to the public health presented by a medical device.

The draft guideline, entitled "Medical Device Notification and Voluntary Safety Alert," refers to a notice intended to reduce or eliminate an unreasonable risk of substantial harm to the public health issued voluntarily by any person (including FDA) as a "safety alert" and such notice issued by a manufacturer, distributor, or other responsible person pursuant to an order under section 518(a) of the act as a "notification." Also, the draft guideline describes the following: (1) The factors FDA would use in determining whether to issue a notification order; (2) FDA's responsibility to consult with responsible persons before issuing a notification order; (3) the expected content and distribution of, and followup to a notification or safety alert; (4) the relationship between a notification or safety alert and a recall under 21 CFR Part 7 (FDA's recall guidelines); and (5) other information intended to give manufacturers, distributors, and other responsible persons guidance when notifying appropriate persons of an unreasonable risk of substantial harm presented by a device.

This draft guideline is being made available for public comment before being issued by the agency as its formal position. If, following the receipt of comments, FDA concludes that the guideline reflects acceptable procedures for decisionmaking with respect to application of section 518(a) of the act, the guideline will be formalized and made available under § 10.90(b) of the agency's administrative practices and procedures regulations (21 CFR 10.90(b)). That regulation provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guideline. The agency is prepared to meet with persons who choose to depart from a guideline to discuss the matter further to prevent unnecessary expenditure of resources for actions that the agency may later determine to be unacceptable.

The draft guideline is available for public examination in the Dockets Management Branch (address above). Written requests for single copies may be submitted to Leonard J. Stauffer (address above). FDA advises that the agency intends to implement the procedures set forth in the draft guideline upon publication of this notice in the **Federal Register**. The agency encourages persons that voluntarily alert device users to risk posed by medical devices to follow the draft.

Interested persons may, on or before May 29, 1984, submit to the Dockets Management Branch (address above) written comments regarding this draft guideline. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Comments received will be considered in developing a final guideline and in determining whether revision of the draft guideline is warranted.

Dated: March 22, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-8239 Filed 3-26-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Preventive Services Under Medicaid

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: The purpose of this notice is to encourage States to maximize the availability of preventive services to their Medicaid populations, and to solicit public comment on the criteria HCFA plans to use to evaluate new State plan amendments concerning preventive services. We are also soliciting public comment on the benefits and costs of preventive services. By using the methods described in this notice, States will be able to make a wider range of preventive services available and accessible to Medicaid-eligible individuals.

DATE: To assure consideration, comments must be received by May 29, 1984.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–285–N, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–285–N.

Comments will be available for public inspection beginning approximately 2 weeks from publication in Room 309–G of the Department's office at 200 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:40 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Bill Ullman, 301–594–9827.

I. Background

Preventive services are acknowledged to be of great value in helping an individual to maintain health and well-being. These services can assist an individual in avoiding or minimizing the occurrence of disease and disability. A corollary result is that individual health care costs may be reduced. We have developed this notice to encourage States to maximize the availability of preventive services to their Medicaid populations and to provide guidelines for State plan amendments on coverage of these services.

A number of States already offer an effective package of preventive care under their Medicaid programs. Other States have included coverage of at least some preventive services under their Medicaid programs. Often, however, a wide range of preventive services may already be available in a State, but the services are fragmented among numerous agencies and programs in addition to Medicaid. As a result, Medicaid-eligible individuals may not receive a complete and coordinated program of preventive care. To address this problem, this notice also provides guidance as to how a State Medicaid agency can use increased coordination and referrals to create a more unified program of preventive care.

II. Discussion

The following sections of this notice discuss:

- The nature of preventive services and of scientific and professional opinion regarding their effectiveness;
- Information about preventive services currently available under various Federal programs;
- The various preventive service coverages under the Medicaid program, both within various benefits and separately as optional "preventive services";
- A program for self-evaluation of a State Medicaid program's approach to the overall issue of prevention, and steps to take as a means of assuring that the Medicaid program offers maximum use of existing resources both within and outside of the current State plan; and
- Criteria HCFA will be using to evaluate new State plan amendments concerning preventive services.

A. Types of Preventive Care

Preventive services traditionally have been divided into three categories:

1. Primary prevention that consists of actions, such as immunizations and prenatal care, which are directed at well persons and are intended to help avoid entirely the occurrence of disease and other impairments to health;

2. Secondary prevention that involves detecting the presence of a disease or other impairment in its earliest stages (for example, through screening procedures), when the condition may be most responsive to medical intervention; and

3. tertiary prevention that involves treatment of an already-established medical condition in order to avoid further damage and arrest the process of deterioration.

An additional distinction is made between personal preventive services (which are performed on a one-to-one basis by a qualified health care professional for the purpose of preventing disease or maintaining health) and preventive efforts that are applied at a community level (which involve no direct patient care). Broadly defined, the term "preventive services" can encompass a large range of activities of both types, including interventions applied directly to individuals (such as immunizations and screening for disease) as well as environmental interventions applied at a community level (such as water purification).

For the purpose of Medicaid coverage of preventive services, however, it is necessary to make a further distinction between those services that are medical or remedial in nature and those that are not. The statute defines Medicaid as a program of medical assistance, and repeatedly uses the terms "medical" and "remedial" to describe the general types of care for which Medicaid will make payment (see sections 1903(a)(1), 1905(a)(6), and 1905(a)(18) of the Social Security Act). Since the inception of the Medicaid program, this medical-remedial orientation has been interpreted to include those services that: (1) Involve direct patient care, and (2) are for the express purpose of treating or preventing, or minimizing the adverse effects of illness, injury, or other impairments to an individual's physical or mental health. In order for any service to be covered under the Medicaid program, it must meet both of these elements. Therefore, preventive services applied at the community level are excluded from Medicaid coverage, since they do not involve direct patient care. Preventive services that are furnished to individuals but deal with external social or environmental factors are also excluded, since they do not directly address an individual's physical or mental health. Some examples of non-covered preventive services at the community level and nonmedical services that address broader social or environmental concerns are as follows:

- Activities such as fluoridation of a community's water supply are not covered under Medicaid, since there is no direct patient care involved. However, fluoride dental treatments furnished directly to a Medicaid-eligible individual are covered.
- Investigations to determine the source of a child's elevated blood level are patient-oriented and, therefore, covered; however, environmental interventions to remove the lead source are not.

• Nonmedical preventive services that address broader social or environmental concerns are not covered under Medicaid, even when furnished directly to individuals (e.g., counseling on the importance of smoke detectors, instruction on traffic safety, etc.).

At present, there is no uniformly accepted nationwide standard that specifies a single set of preventive services, or a particular schedule for their delivery, as being the most effective (and we do not attempt to prescribe one here). Medical professional organizations and scientific bodies have given considerable thought to recommendations about those preventive procedures which should be offered to individuals. Groups such as the Canadian Task Force on the Periodic Health Examination, the Ad Hoc Committee of the Institute of Medicine, the American Cancer Society, and the Public Health Service Advisory Committee on Immunization Practices have recommended schedules of diagnostic tests and other preventive services to be administered in the context of periodic examinations over a person's entire lifetime. In addition, certain, professional medical groups have developed preventive services guidelines that apply to specific patient populations. These groups include organizations such as the American College of Obstetricians and Gynecologists, the American Academy of Pediatricians, the American College of Physicians and the American Medical Association.

The presence (or absence) of agreement among various professional and scientific groups regarding the application of individual services and procedures can, in large part, be attributed to the strength of the scientific data base supporting the efficacy of each service or procedure. For example, while there is extensive scientific evidence to support the efficacy and schedule of administration of most immunizations, the date to support many counseling services are not as complete. Decisions regarding coverage of particular services or procedures generally should be guided by criteria which include evidence of the efficacy, acceptability and safety of the procedure, the availability of effective interventions for diseases detected in the asymptomatic state, and the prevalence of the condition in the population at risk. They should also reflect advances in medical research as the scientific data base which supports preventive services is updated. (See section D(1) for criteria that HCFA will use in evaluating States' proposals for coverage of preventive care under Medicaid.)

B. Federal Funding for Preventive Care

In addition to Medicaid, various other programs provide Federal funding of personal preventive services. For example, the Center for Prevention Services, a component of the Centers for Disease Control makes grants to State health departments to help ensure that children receives appropppirate immunizations. Other Federal programs may also fund preventive services that do not involve direct, medically-oriented care of individual patients, but instead address broader social or environmental conditions that also may affect health. These services might include such activities as removal of lead-based paint from the home or promotion of good health through injury prevention.

Additionally, a large portion of the Federal funding for preventive care (other than under the Medicaid program) takes place under the authority of the Public Health Service (PHS) Act. As a result of the Omnibus Budget Reconciliation Act of 1981, a number of former categorical grant programs were consolidated into several PHS block grants. Specifically, this legislation amended title XIX of the PHS Act to establish the Alcohol and Drug Abuse and Mental Health Services Block Grant, and the Preventive Health and Health Services Block Grant. It also amended title V of the Social Security Act to establish the Maternal and Child Health Services Block Grant. Under these block grants, States fund varied services of a preventive nature.

C. Medicaid Coverage of Preventive Care

Medicaid program funding can support preventive care in a variety of contexts. For example, the preventive aspects of some services are specifically included in the definitions of those services in the Medicaid regulations. These services include outpatient hospital services (42 CFR 440.20(a)), clinic services (§ 440.90), dental services (§ 440.100(a)), services for individuals with speech, hearing, and language disorders (§ 440.110(c)(1)), and prescribed drugs (§ 440.120(a)). The Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program for individual under age 21 has a definite preventive orientation, since its purpose is to detect and treat physical and mental health problems in their early stages (§ 440.40(b)). For example, initial and periodic health examinations, and certain dental care, immunizations, and necessary hearing and vision services are mandatory under EPSDT.

Other covered Medicaid services may also include preventive elements. For example, physicians generally include, as part of the services furnished to a patient who is recovering from a heart attack, counseling on the effect of diet, exercise, and smoking. (Such counseling is an inherent part of the physician's covered services for which payment has already been made; thus a separate, additional payment for the counseling aspect of the services would not be made, since this would represent a duplicate payment.)

In addition to inclusion as an integral component of other covered services, preventive care can be furnished as a separate optional Medicaid benefit. Additional diagnostic, screening, or rehabilitative services also can be covered at State option (see 42 CFR 440.130 for definitions of those services). An informal telephone survey recently indicated that a wide variety of preventive care currently is being covered under the preventive services option (§ 440.130(c)). Including are such services as immunizations, medical check-ups, fluoride treatment of teeth, well-baby and well-child care, vision screening, and genetic screening. States may include other types of personal preventive services under this option that are medical or remedial in nature and which are delivered on a personally-oriented basis. In developing an approach to preventive care, each State should consult with local health authorities to identify the most effective set of preventive services for its Medicaid population. We encourage States to share with us their experiences in offering various types of preventive services and informing Medicaid-eligible individuals of their availability.

D. State Preventive Initiatives

States that are interested in initiating or expanding a Medicaid preventive care effort can take a two-fold approach: A) Medicaid funding of the medically-oriented personal preventive services for which Federal financial participation (FFP) is available under title XIX; and B) increased coordination between Medicaid and other programs that fund or provide preventive care, including referral to social and environmental programs and services.

1. *HCFA Criteria for Evaluating Medicaid Preventive Services Proposed by States.* As discussed in section A above, there currently is no single set of preventive services or schedule for their delivery that is uniformly acknowledged to be the most effective. In light of this, and in keeping with the nature of the Federal-State partnership in

administering the Medicaid program, we believe that States which wish to cover preventive services should have the flexibility to design their own packages of preventive care. States should be aware of certain general criteria which HCFA plans to use in reviewing plan amendments for preventive services coverage:

- The proposed services must be preventive in nature and must fit within the basic medical-remedial framework of the Medicaid program (see section A).
- The proposed services must be directed at the patient rather than at the patient's environment.
- The proposed services must not be otherwise available to recipients without cost, nor may they duplicate other Federally-funded services.
- The proposed services must not entail an additional payment for a service which is logically an inherent part of otherwise paid-for services (see section C).

Although the Medicaid statute does not preclude States from funding experimental types of care if they so choose, we encourage States to consider, in addition, the following guidelines when they develop proposals for coverage of preventive services:

- Services to detect disease in its early state should be those proven to be safe and reliable and should be directed at diseases for which an effective intervention exists.
- Services proposed to prevent occurrence of disease or disability (including those to modify predisposing risk factors) should have a demonstrated efficacy in preventing disease or disability.

We welcome any public comments regarding our criteria for evaluating Medicaid State plan amendments that contain preventive care proposals.

2. *Coordination With Other Programs.* Although the range of currently available preventive services (described in sections B and C above) is quite broad, these services sometimes are fragmented among a number of agencies and programs. In the absence of interaction between these agencies and programs, there may be little or no overall coordination in the provision of preventive care. As a result, a Medicaid-eligible individual may not know that many of these preventive services are available, or how to obtain them. We believe that the benefits an individual derives from the preventive services that are covered under Medicaid can be significantly enhanced when these services are provided in coordination with the preventive care available under other programs. In an effort to maximize scarce Medicaid dollars available for preventive services, many States have sought the cooperation and active participation of other public as well as voluntary health agencies, such as State, county, and local health agencies, Head Start, Public Health Service community health centers, neighborhood health centers, and others. All States considering the inclusion of preventive services in their plans are encouraged to follow this example. Such coordination and joint planning avoids costly duplication and overlapping of services. Coordination can be achieved through interagency agreements, informal cooperative arrangements and increased referrals between the Medicaid agency and other programs that offer preventive care.

Medicaid regulations (42 CFR Part 431, Subpart M) and the Medical Assistance Manual (section 5-40-000) contain requirements and options for interagency agreements. These include the following:

- The Medicaid agency is required to have an interagency agreement with the State health agency and the State vocational rehabilitation agency, as well as the title V program. The agreements are designed to make maximum use of the services of these agencies. (Specific characteristics of agreements between the EPSDT program and title V are described in section 5-70-71 of the Medical Assistance Manual.)
- The Medicaid agency, in addition, may execute interagency agreements with other health and social service agencies and organizations, involving services that utilize Federal, as well as State or local funds. For children, youth and pregnant women, these programs could include Head Start, title XX (Social Services Block Grant), certain education programs, and the Special Supplemental Food Program for Women, Infants and Children (WIC).
- Examples of services furnished by other programs and reimbursed by Medicaid through interagency agreements include examinations, immunizations and treatment services, and such activities as informing recipients about available health services, assisting recipients with transportation to health services and health care case management (ensuring continuity of care).

The Medicaid agency can perform a valuable referral function for Medicaid-eligible individuals and can help to supplement the preventive services available to them under the State plan, by directing them to appropriate preventive care available from other sources. In certain situations, the State agency can also help to utilize available Federal funds most effectively by coordinating Medicaid-funded preventive services activities with those of other programs offering related services. (Information on funding arrangements is contained in section 5-40-000 (H) and (I) of the Medical Assistance Manual.)

The use of preventive services holds promise for the Medicaid population, both in terms of improvements in individual health and reductions in the cost of treating illness and injury. We encourage States to review their current programs and determine the desirability of making a wider range of preventive services available and accessible to Medicaid-eligible individuals.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 21, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84-8212 Filed 3-26-84; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-84-732; FR-1903]

Delegation of Authority With Respect to Programs Transfered to the Revolving Fund (Liquidation Programs)

Correction

In FR Doc. 84-6660 beginning on page 9476 in the issue of Tuesday, March 13, 1984, make the following correction.

On page 9477, first column, the **EFFECTIVE DATE** now reading "March 1984" should read "March 13, 1984".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau Clearance Officer and the Office of Management and Budget Interior Department Desk

Officer, Washington, D.C. 20503, telephone (202) 395–7313.

Title: *Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs of the Department of the Interior, 43 CFR Part 17 Subpart B.*

Abstract: Section 504 of the Rehabilitation Act requires that all recipients perform a self-evaluation of their programs in order to achieve compliance with the Act. Recipients employing fifteen or more employees must maintain records of persons consulted and a description of areas examined, problems identified, and corrective actions taken.

Bureau Form Number: 1084–0009.

Frequency: One-time requirement.

Description of Respondents: State and local governments receiving Federal financial assistance from the Department of the Interior.

Annual Responses: 12,500.

Annual Burden Hours: 6,250.

Bureau Clearance Officer: Alfred R. Gordon, (202) 343–4331.

Dated: March 21, 1984.

Edward E. Shelton,

Director, Office for Equal Opportunity.

[FR Doc. 84–8161 Filed 3–26–84; 8:45 am]

BILLING CODE 4310–32–M

Bureau of Land Management

[M–58031(SD), M–58034(SD)]

Reality Action; South Dakota; Competitive Reoffering of Two Parcels of Public Land in Lyman County

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area Office, Interior.

ACTION: Amended notice of reality action M–58031(SD) and M–58034(SD); competitive reoffering of two parcels of public land in Lyman County, South Dakota.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976) at no less than fair market value:.

5th Principal Meridian

M–58031(SD), Appraised Value $2,500

T. 103 N., R. 75 W.,
Section 22: Lot 4
Containing 28.70 acres.

M–58034(SD), Appraised Value $500

T. 103 N., R. 78 W.,
Section 29: Lot 1
Containing 2.60 acres.

These lands are being rescheduled for sale due to protests received on the original sale held on December 21, 1983.

These lands will be offered for sale by *Sealed Bid Only* utilizing competitive bidding procedures on May 2, 1984, at 1:30 p.m., MST, at Montana State Office, Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

M–58031(SD) Township 103 North, Range 75 West, Section 22, Lot 4. This parcel is located approximately 13 miles southeast of Kennebec, South Dakota, in Lyman County. These lands are along the White River with some being rolling grasslands (White River Breaks) with shale slide banks near the river.

M–58034(SD) Township 103 North, Range 78 West, Section 29, Lot 1. This parcel is located approximately 16 miles southwest of Presho, South Dakota, in Lyman County. The parcel is along the White River with cottonwoods, ash trees and shrub undergrowth.

The above parcels have section line access and are being offered for sale because they are isolated from other blocks of public land and are difficult and uneconomical to manage. The proposed sale is consistent with the Bureau's planning system and Lyman County government officials have been notified of the sale. The transfer of the tracts into private ownership will benefit the public interest and provide for better land management.

Terms and Conditions

The terms and conditions applicable to this sale are as follows:

1. All minerals will be reserved to the United States together with the right to explore, prospect for, mine, and remove same under applicable law and regulations.
2. A right-of-way for ditches or canals will be reserved to the United States on M–58034(SD) in accordance with 43 U.S.C. 945.
3. The sale of these lands will be subject to all valid existing rights and reservations of record.
4. Access for these parcels must be in compliance with County and State regulations.
5. Any actions on these parcels must be in compliance with County and State floodplain ordinances and regulations.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including environmental assessment, and the record of public discussions is available for review at the South Dakota Resource Area Office, Belle Fourche, South Dakota.

SUPPLEMENTARY INFORMATION:

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state of the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of South Dakota. Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised value of $2,500 on M–58031(SD) or $500 on M–58034(SD). Bids must be individually submitted for each parcel in this notice.

Method of Bidding: The land will be sold by *Sealed Bid Only*. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of Interior, Bureau of Land Management, for not less than one-fifth (20%) of the amount bid.

Sealed bids will be received at the Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107, until 1:00 p.m. MST, May 2, 1984. Sealed bids will be opened in the Montana State Office, 222 North 32nd Street, Billings, Montana 59107.

The sealed bid envelope must be marked in the lower left-hand corner, as follows: Public Land Sale: M–58031(SD); or M–58034(SD) (whichever applies to bid). Date: May 2, 1984.

If two or more valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying sealed bid shall then be publicly declared.

Sale Continuation: In the event these parcels are not sold at the initial sale offering, the parcels will then be available for sale over the counter on a first come, first served basis, at the Montana State Office, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Final Details: Once a high bid price is accepted, the successful bidder shall submit the remainder of the full bid price within the time period designated by the authorized officer. Failure to submit the required amount within the allotted time will result in cancellation of the sale and the deposit will be forfeited. All bids will be either returned, accepted or rejected within 60 days of the sale date.

Dated: March 20, 1984.

Ray Brubeker,

District Manager.

[FR Doc. 84-8169 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-ON-M

[C-36674 (D-I)]

Colorado: Notice of Realty Action: Sale of Public Land in Delta County

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcing sale of public land in Delta County, Colorado.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 45 U.S.C. 1713), at no less than the appraised fair market value. Further, except for oil, gas and coal these lands have been determined to have no mineral values. Therefore, the successful high bidder must apply for all the minerals except oil, gas and coal.

Parcel	Legal description	Acreage	Appraised value
C-36674	Delta, County, 6th Principal Meridian, Colorado.		
D	T. 15 S., R. 95 W., Sec. 13, SW¼SE¼.	40.00	$8,000
E	T. 15 S., R. 94 W., Sec. 19, NE¼SE¼.	40.00	8,000
F	T. 15 S., R. 94 W., Sec. 29, W½NE¼.	80.00	16,000
G	T. 15 S., R. 94 W., Sec. 32, W½NW¼.	80.00	20,000
H	T. 15 S., R. 94 W., Sec. 28, NW¼SW¼.	40.00	8,000
I	T. 15 S., R. 94 W., Sec. 32 SW¼SE¼.	40.00	8,000

Bidding: The Federal Land Policy and Management Act requires that bidders must be citizens of the United States, 18 years of age or over, or in the case of a corporation, be subject to the laws of any state of the United States. Bids may be made by a principal (the one desiring to purchase the land) or his duly qualified agent. Each bid must be for all the land in a specified parcel.

Sealed bids must be in a separate sealed envelope with the lower left-hand corner marked (Sealed Bid, Public Land Sale C-36674, Parcel No. ———— (D, E, F, G, H or I), Sale to be May 30, 1984". The sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the "Dept. of the Interior—BLM" for no less than one-fifth (20%) of the bid. Bids must be received by the Montrose District Office, Bureau of Land Management, 2465 South Townsend Ave., Montrose, CO, 81401 before 10:00 a.m. on May 30, 1984. Sealed bids will be opened at 10:00 a.m. on May 30, 1984.

If two or more envelopes are received containing valid bids of the same amount for the same parcel, the successful bid shall be determined by allowing those bidders to resubmit a new bid. The successful high bidder will be required to submit the remainder of the bid offer by certified check, cash, bank draft, money order, or any combination of these within 30 days after the determination of the highest bid.

In addition the high bidder will be required to apply for all the minerals—except the oil, gas and coal—beneath the parcel bid upon and submit a $50.00 non-refundable filing fee with the application. Failure to deposit 20% of the bid price or to file an application for the minerals will result in the disqualification of the high bidder.

If final payment is not received within the specified 30 days, the high bid will be rejected, the deposit will be forfeited, and the land will be offered to the second highest bidder, subject to the same terms and conditions. All unsuccessful sealed bids will be returned within 30 days of the sale.

If valid bids are not received for any of the parcels by May 30, 1984, the unsold parcels will be offered over the counter on a continuing basis beginning on May 31, 1984 at 7:45 a.m. at the Montrose District Office until the parcels are sold or withdrawn.

Patents will contain the following reservations to the United States:

1. Rights-of-way for ditches and canals constructed by the authority of the United States (26 Stat. 391; 43 U.S.C. 945).

2. Oil, gas, and coal, with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary of the Interior may prescribe (43 U.S.C. 1719).

Further, patents will be subject to:

1. All valid existing rights,

2. Oil and gas leases involving all parcels.

The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws.

Comments: Detailed information regarding this sale, including the planning documents and Environmental Assessment, is available for review in the Montrose District Office. For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Montrose District Office. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action, and issue a final determination. If the absence of any action by the District Manager, this Realty Action will be the final determination of the Department of the Interior.

Paul W. Arrasmith,

Montrose District Manager.

[FR Doc. 84-8106 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-JB-M

[M-60210]

Realty Action—Exchange; Montana

AGENCY: Bureau of Land Management, Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-60210–Exchange of public and private lands, in Phillips County, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T.29 N., R. 27 E.,
Sec. 17, NE¼NW¼.
T.29 N., R. 28 E.,
Sec. 5, lots 1 and 2, S½NE¼;
Sec. 19, W½NE¼, NE¼SW¼, and NW¼SE¼.
T.35 N., R. 29 E.,
Sec. 26, SE¼NW¼.
T.28 N., R. 31 E.,
Sec. 32, E½, N½SW¼, and SE¼SW¼ (excluding a one acre tract in NW¼SW¼;
Sec. 33, W½SW¼.
T. 31 N., R. 31 E.,
Sec. 19, lot 3, S½NE¼, NE¼SE¼ and SE¼.
T. 36 N., R. 32 E.,
Sec. 27, SE¼NE¼;
Sec. 34, NW¼NE¼.
T. 34 N., R. 33 E.,
Sec. 31, SE¼.

The area described, aggregates 1,480.24 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

T. 31 N., R. 31 E.,
Sec. 13, SW¼SE¼;
Sec. 14, W½NE¼ and SE¼NW¼;
Sec. 22, N½N½.
T. 36 N., R. 31 E.,
Sec. 3, lot 1 and SE¼;
Sec. 10, E½NE¼ and NE¼SE¼.
T. 28 N., R. 32 E.,
Sec. 32, N½.
T. 33 N., R. 32 E.,
Sec. 2, E½SW¼.

T. 29 N., R. 34 E.,
Sec. 27, NW¼NW¼, S½N½, NE¼SW¼ and N½SE¼.
T. 35 N., R. 34 E.,
Sec. 2, lots 1 to 3, inclusive.
T. 36 N., R. 34 E.
Sec. 35, NW¼SE¼, NE¼SW¼, SE¼SW¼ and S½SE¼.
The area described aggregates 1,704.54

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bueau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals on one parcel of land and oil and gas in the balance of lands being transferred out of Federal ownership.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment or acreage adjustments.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with state and local officials. The public interest will be served by completion of this exchange.

Dated: March 18, 1984.

David E. Little,

Acting District Manager.

[FR Doc. 84–8110 Filed 3–26–84; 8:45 am]

BILLING CODE 4310-DN-M

Amendment of a Notice of Intent To Prepare Management Framework Plan Amendments, New Mexico, Interior.

AGENCY: Bureau of Land Management (BLM), New Mexico, Interior.

ACTION: Amendment of a Notice of Intent to prepare wilderness plan amendments and a statewide environmental impact statement published in the **Federal Register** January 28, 1982, pages 4154–4155.

SUMMARY: The Interior Board of Land Appeals (IBLA) remanded to the BLM some decisions regarding designation of Wilderness Study Areas (WSA's) in New Mexico.

Portions of the Florida and Cedar Mountains were re-evaluated to determine if they met the minimum requirements to become a WSA. Within the Las Uvas Mountains, the portion of the Rustler Fire Trail past Chivatos Tank was re-evaluated to determine if the trail met the definition of a road.

An area of 22,336 acres in the Florida Mountains met the minimum requirements and is designated as a WSA.

An area of 13,126 acres in the Cedar Mountains did not meet the minimum requirements and is released from further wilderness review. The Rustler Fire Trail met the definition of a road and is cherry-stemmed into the Las Uvas Mountains WSA.

FOR FURTHER INFORMATION CONTACT: Joseph Sovcik, Environmental Coordinator, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Telephone: (505) 988–6565; FTS 476–6565.

SUPPLEMENTARY INFORMATION: As a result of this decision, the table in the Notice of Intent in the **Federal Register**, Vol. 47, no. 19, on page 4154, published January 28, 1982, is amended as follows:

Florida Mountains—New WSA acreage—22,336

Leroy C. Montoya,

Acting State Director.

[FR Doc. 84–8102 Filed 3–26–84; 8:45 am]

BILLING CODE 4310-FB-M

Availability of Draft Steens Mountain Recreation Management Plan and Notice of Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Draft Steens Mountain Recreation Management Plan availability and notice of public meeting.

SUMMARY: This notice sets forth the public comment period of the Steens Mountain Recreation Plan draft and the schedule for the public meeting.

DATES: April 23, 1984—Draft document available; May 10, 1984—Public Meeting at Harney County Courthouse from 7:00 P.M. to 9:00 P.M. in Burns, Oregon; May 25, 1984—30-day public comment period ends.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Burns District, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720, Telephone (503) 573–5241.

SUPPLEMENTARY INFORMATION: The Draft Steens Mountain Recreation Management Plan will be available for public review and comment after April 23, 1984. Copies of the draft document can be obtained by contacting the following BLM offices: Burns District Office, 74 South Alvord, Burns, OR 97720; Oregon State Office (912), 825 NE. Multnomah, Portland, OR 97208.

During the public comment period, a meeting open to the public will be held at the Harney County Courthouse in Burns, Oregon, on Thursday, May 10th from 7:00 P.M. to 9:00 P.M.

All public comments on the Draft Steens Mountain Recreation Management Plan will be accepted at the Burns District Office from April 23rd to May 25th, 1984.

Dated: March 16, 1984.

Joshua L. Warburton,

District Manager.

[FR Doc. 84–8101 Filed 3–26–84; 8:45 am]

BILLING CODE 4310-33-M

Montrose District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Montrose District Grazing Advisory Board meeting notice.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that the Montrose District Grazing Advisory Board will meet on April 23, 1984. The Board will convene at 10:00 a.m. in the conference room of the United States Forest Service Building, 216 North Colorado Avenue, Gunnison, Colorado. The business meeting will include the following topics:

1. Election of Officers;
2. Discussion of the Taylor Grazing Act 50th Anniversary;
3. Discussion on the CCA/CWGA Steering Committee Tour;
4. Review applicants nominated for Cooperative Management Agreements;
5. Briefing on the DOW Wildlife Feeding Program;

6. Update on the San Juan/San Miguel RMP/EIS effort;

7. Follow-up discussion on the 1983 Summer Range/Wildlife Tour;

8. Advisory Board expenditures for Range Improvement Work;

9. Arrangements for the next meeting.

The meeting is open to the public. Anyone wishing to make an oral statement, must notify the District Manager, BLM, 2465 South Townsend, Montrose, Colorado 81401 by April 18, 1984. Depending on the number of persons requesting time, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Paul W. Arrasmith,

District Manager.

[FR Doc. 84-8103 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-JS-M

Phoenix District Advisory Council; Meeting

The Phoenix District Advisory Council meets April 24 and 25 in Tucson, Arizona. The first day will be devoted to a field trip. The Council will depart the Phoenix District office, 2015 W. Deer Valley Road, Phoenix at 8:15 a.m. Members of the public may accompany the Council, but must provide their own transportation, meals, and lodging. A formal meeting will be held on the second day at the Tucson Hilton Inn, 1601 N. Miracle Mile, from 8:30 a.m. until noon.

The Council has been established by, and will be managed according to, the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

Inspection of erosion control and grass seeding programs on public rangelands.

Inspection of mining operations, springs and other naturally-occuring water sources on public lands.

Discussion of Cooperative Management Agreement Policy.

BLM management updates.

Business from the floor.

Public comment and statements.

Future meetings and agenda topics.

The meeting is open to the public. Interested persons may make oral statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona, 80527 (telephone 602 863-4464) by April 19, 1984. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be set.

Dated: March 18, 1984.

Deane H. Zeller,

Acting District Manager.

[FR Doc. 84-8104 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-33-M

[W-81862, W-81931]

Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, petitions for reinstatement of oil and gas lease W-81862 for lands in Converse County, Wyoming and oil and gas lease W-81931 for lands in Sheridan County, Wyoming, were timely filed and were accompanied by all the required rentals accruing from their respective dates of termination. The lessees have agreed to new lease terms for rentals and royalties at rates of $5.00 per acre, and 16-⅔ percent, respectively. The lessees have paid the required $500.00 administrative fee and will reimburse the Department for the cost of this Federal Register notice. The lessees having met all the requirements for reinstatement of the leases as set out in Section 31 (d) and (e) of the Minerals Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W-81862 effective November 1, 1983, and lease W-81931 effective January 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Harold G. Stinchomb,

Chief, Branch of Fluid Minerals.

[FR Doc. 84-8105 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document; Notice of Receipt

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4845, Block 438, Brazos Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on March 1, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Hossein Hekmatdoost, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0873.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 19, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-8107 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Issue Concession Permit

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to issue a concession permit with Ye Olde Sun Shack, Inc. authorizing it to continue to provide umbrella/chair rental and surf shop sales facilities and services for the public at Jacob Riis Park, Breezy Point District, Gateway National Recreation Area, for a period of FIVE (5) years from

January 1, 1984, through December 31, 1985.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1983, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. This provision in effect, grants Ye Olde Sun Shack, Inc. the opportunity to meet the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by Ye Olde Sun Shack, Inc. If Ye Olde Sun Shack, Inc. amends its proposal and the amended proposal is substantially equal to the better offer, then the proposed new permit will be negotiated with Ye Olde Sun Shack, Inc.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109, for information as to the requirements of the proposed permit.

Dated: March 16, 1984.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region, National Park Service.

[FR Doc. 84-8175 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Yosemite Medical Group, authorizing it to continue to provice medical, emergency surgical and related services; the prescription and sale of drugs, medicines, medical appliances and supplies for the public at Yosemite National Park for a period of approximately ten (10) years from January 1, 1985.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1984, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Yosemite Medical Group the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Yosemite Medical Group. If Yosemite Medical Group amends its proposal, and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with Yosemite Medical Group.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: March 13, 1984.

John D. Cherry,

Acting Regional Director, Western Region.

[FR Doc. 84-8174 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Permit

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Mr. Robert F. Bevington, Jr., authorizing him to continue to provide service station facilities and services for the public at El Portal Administrative Site adjacent to Yosemite National Park for a period of five (5) years from January 1, 1985, through December 31, 1989.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed his obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1984, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. This provision, in effect, grants Mr. Robert F. Bevington, Jr. the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Mr. Robert F. Bevington, Jr. If Mr. Robert F. Bevington, Jr. amends his proposal, and the amended proposal is substantially equal to the better offer, then the proposed new permit will be negotiated with Mr. Robert F. Bevington, Jr.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Yosemite National Park, for information as to the requirements of the proposed permit.

Dated: March 12, 1984.

John D. Cherry,

Acting Regional Director, Western Region.

[FR Doc. 84-8173 Filed 3-26-84; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 16, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written

comments should be submitted by April 11, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Colbert County

Tuscumbia, *Norman, Felix Grundy, House,* 401 W. Main St.

Madison County

Huntsville, *White-Turner-Sanford House,* 601 Madison St.

Madison, *Bibb, James H., House,* 11 Allen St.

Marshall County

Guntersville, *Saratoga Victory Mill,* 1821 Gunter Ave.

ARIZONA

Mohave County

Littlefield vicinity, *Horse Valley Ranch,* Lake Mead National Recreation Area

FLORIDA

Brevard County

Melbourne Beach, *Melbourne Beach Pier,* Ocean Ave. and Riverside Dr.

Leon County

Tallahassee, *Bradley's Country Store Complex,* Moccasin Gap Rd.

Tallahassee, *Magnolia Heights Historic District,* 701–1005 E. Park Ave and Cadiz St.

Sarasota County

Sarasota, *Bay Haven School (Sarasota MRA),* 2901 W. Tamiami Circle

Sarasota, *City Waterworks (Sarasota MRA),* 1015 N. Orange Ave.

ILLINOIS

DuPage County

Glen Ellyn, *Glen Ellyn Main Street Historic District,* Main St. between Cottage Ave. and Maple St.

IOWA

Allamakee County

Postville, *Postville Public School,* Ogden and Post Sts.

Mahaska County

Oskaloosa, *Stock Judging Pavilion,* Southern Iowa Fairgrounds

Monroe County

Albia, *Noble-Kendall House,* 209 E. Benton Ave.

Montgomery County

Red Oak, *Hebard, Alfred, House,* 700 8th St.

Polk County

Des Moines, *First Methodist Episcopal Church,* 10th and Pleasant Sts.

Pottawattamie County

Council Bluffs, *State Savings Bank,* 509 W. Broadway

Van Buren County

Mount Zion vicinity, *Martin, Abner, House,* S of Mount Zion off IA 1

KENTUCKY

Hancock County

Hawesville, *Hawesville Historic District,* Main, Water, Main Cross, and Clay Sts.

Pike County

Pikeville, *College Street Historic District (Pikeville MRA),* Roughly College St. from Elm St. to Huffman Ave.

Pikeville, *Commercial Historic District (Pikeville MRA),* Main St. and Division Ave.

Pikeville, *Greer, R.T., and Company (Pikeville MRA),* Auxier St.

Pikeville, *Huffman Avenue Historic District (Pikeville MRA),* Huffman Ave. and Main St.

Pikeville, *Odd Fellows Building (Pikeville MRA),* 333 Second St.

Pikeville, *Scott Avenue Historic District (Pikeville MRA),* Scott Ave., 6th and 7th Sts.

Pikeville, *Third Street Historic District (Pikeville MRA),* 3rd St. and Scott Ave.

Pikeville, *York House (Pikeville MRA),* Main St.

Pikeville, *York Mansion (Pikeville MRA),* 209 Elm St.

LOUISIANA

Avoyelles Parish

Bunkie, *Epps, Edwin, House,* U.S. 71

Grant Parish

Boyce vicinity, *Kateland,* N of Boyce off LA 8

Terrebonne Parish

Schriever vicinity, *Armitage,* LA 20 and Colonial Dr.

MARYLAND

Dorchester County

Cambridge, *Christ Episcopal Church and Cemetery,* High St.

NEW YORK

Monroe County

Rochester, *Nazareth House,* 94 Averill Ave.

Ontario County

Canandaigua, *Adelaide Avenue School (Canandaigua MRA),* 108–116 Adelaide Ave.

Canandaigua, *Benham House (Canandaigua MRA),* 280–282 S. Main St.

Canandaigua, *Brigham Hall (Grove Home) Canadaigua MRA),* 229 Bristol St.

Canandaigua, *Building at 426 South Main Street (Canadaigua MRA),* 426 S. Main St.

Canandaigua, *Canadaigua Historic District (Canadaigua MRA),* Roughly Main St. from Chapel to Saltonstall Sts.; Howell, Gibson, Gorham, Bristol, Bemis, and Center Sts.

Canandaigua, *Chapin, Thaddeus, House (Canadaigua MRA),* 128 Thad Chapin St.

Canandaigua, *Cobblestone Manor (Canadaigua MRA),* 495 N. Main St.

Canandaigua, *Granger Cottage (Canadaigua MRA),* 60 Granger St.

Canandaigua, *Granger Francis, House (Canadaigua MRA),* 426 N. Main St.

Canandaigua, *Marshall House (Canadaigua MRA),* 274 Bristol St.

Canandaigua, *Saltonstall Street School (Canadaigua MRA),* 47 Saltonsall St.

Otsego County

Onetonta, *Bresee Hall,* Hartwick Dr.

NORTH DAKOTA

Richland County

Wahpeton, *Red River Valley University (Old Main),* N. 6th St.

Ward County

Minot, *Carr, Andrew Sr., House,* 510 Fourth Ave. NW

Minot, *Tufveson House,* 426 Fourth Ave. NW

TEXAS

Harris County

Barker-Cypress Archeological Site (41 HR436)

VERMONT

Windham County

Brattleboro, *Brattleboro, Retreat,* Linden St. and Upper Dummerston Rd.

WASHINGTON

Clark County

Vancouver, *U.S. National Bank Building,* 601 Main St.

Cowlitz County

Longview, *Tennant, J.D., House,* 420 Rutherglen Rd.

San Juan County

Friday Harbor, *San Juan County Courthouse,* 350 W. Court St.

WEST VIRGINIA

Randolph County

Elkins, *Davis Memorial Presbyterian Church,* 450 Randolph Ave.

WISCONSIN

La Crosse County

Sand Lake Archeological District

WYOMING

Goshen County

Jay Em, *Jay Em Historic District,* Main St.

[FR Doc. 84–8170 Filed 3–26–84; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

President's Task Force on International Private Enterprise; meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the President's Task Force on International Private Enterprise which will be held on April 9–10, 1984 at the U.S. State Department, Washington, D.C.

This will be the seventh meeting of the Task Force.

The meeting will be closed on Monday, April 9, 1984 from 9:00 AM to 12:00 PM under the authority of section 10(d) of the Federal Advisory Committee Act under the exemption of Section 552b(c)(1) of Title 5, United States Code. The Task Force will hear and discuss classified matters concerning international economic policy and China. The remainder of the meeting will be open to the public. The Task Force will review and discuss findings and proposed recommendations.

There will be an AID representative at the meeting. It is suggested that those in need of further information contact Birge Watkins, Assistant Director, on (202) 944–3350 or by mail c/o The President's Task Force on International Private Enterprise, Agency for International Development, Washington, D.C. 20523.

Dated: March 15, 1984.

Christian R. Holmes,

Executive Director, The President's Task Force on International Private Enterprise.

[FR Doc. 84-8163 Filed 3-26-84; 8:45 am]

BILLING CODE 8116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30142 (Sub-1)]

Railcarriers; Southern Railway Company and Virginia and Southwestern Railway Co.; Exemption; Extension of Lease

March 19, 1984.

Southern Railway Company (SRC) leases and operates the properties of its wholly-owned subsidiary the Virginia and Southwestern Railway Company (VSW), consisting of approximately 100 miles of railroad line in Tennessee and Virginia, by virtue of a 1958 lease, and a one-year extension previously granted by the Commission. The extension expired by its terms on March 14, 1984.[1] The two railroads are considering a merger, and have agreed to another one-year extension of the lease (until March 14, 1985). On March 7, 1984, SRC and VSW filed a notice of exemption, under 49 CFR 1180.2(d)(3) for the one-year extension.

This is a transaction wholly within a corporate family which is exempt as a class because it does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

[1] A one-year extension was granted in Finance Docket No. 30142, *Southern Railway Company and Virginia and Southwestern Railway Company—Exemption—Extension of Lease* (not printed), served March 21, 1983.

As a condition to the use of this exemption, any rail employees affected by this transaction shall continue to be protected pursuant to *Mendocino Coast Ry., Inc.-Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

By the Commission.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8130 Filed 3-26-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Notice of Lodging of Final Judgment on Consent Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 12, 1984 a proposed Consent Decree in *United States* v. *Northland Gold Dredging, Ltd.*, Civil Action No. CV 83–350 was lodged with the United States District Court for the District of Alaska. The proposed Consent Decree concerns defendant's violations of the Clean Water Act by discharge of pollutants from its gold placer mining operation into the Tuluksak River near Nyac, Alaska, without a National Pollutant Discharge Elimination System ("NPDES") permit. The Consent Decree assesses civil penalties in the amount of $25,000. In addition, the Consent Decree imposes injunctive relief requiring, *inter alia*, that defendant comply with effluent limitations for discharge of settleable solids, turbidity, and other pollutants. The injunctive provisions are enforced by stipulated civil penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Northland Gold Dredging, Ltd.* Ref. 90–5–1–1–1995.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Alaska, United States Courthouse, 701 C Street, Anchorage, Alaska 99513 and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-8108 Filed 3-26-84; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Competitive Impact Statements and Proposed Consent Judgments; United States v. South Water Market Credit Association

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois in *United States* v. *South Water Market Credit Association*, Civil Action No. 84 C 1896. The defendant in the case is South Water Market Credit Association. The Complaint in this case alleges that the Association and co-conspirators agreed to fix credit terms employed in the sale of produce, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed judgment enjoins the Association for a period of ten years from participating in: (1) Any agreement concerning the amount, duration, or any other term of credit extended to any customer, and (2) any agreement to withhold credit from any person. The proposed judgment also enjoins the Association from using any form or form letter that contains any reference to bills being due within a specified period or on any day of the week. The proposed judgment preserves the right of the Association to circulate credit information to its members.

The proposed judgment requires that notices detailing the rights and obligations of members be sent to members of the Association, and requires the Association to provide a copy of the proposed judgment to anyone who requests one and pays a reasonable copying fee. It further requires the Association for three years to report to the United States actions taken to ensure compliance with the proposed judgment, to provide the

United States with a copy of any new rule or bylaw promulgated by the Association, and to provide the Department of Justice access, upon reasonable notice, to the Association's records and personnel to determine its compliance with the judgment.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone 202–724–6327).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court, Northern District of Illinois

United States of Amercia, Plaintiff, v. *South Water market Credit Association,* Defendant.

Civil Action No.

Filed: March 1, 1984.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that the Court may file and enter a Final Judgment in the form attached to this Stipulation, on the Court's own motion or on the motion of any party at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), and without further notice to any party or other proceedings, if plaintiff has not withdrawn its consent, which it may do at any time before the entry of the judgment by serving notices of its withdrawal on defendant and filing that notice with the Court.

2. In the event Plaintiff withdraws its consent of if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other preceeding.

Dated:

For the plaintiff: J. Paul McGrath, *Assistant Attorney General, Antitrust Division.* Joseph H. Widmar. Alanl L. Marx, Kenneth L. Jost, Angela L. Hughes, *Attorneys for the United States, United Staters Department of Justice, Antitrust Division, Washington, D.C. 20530.*

For the defendant: Le Roy W. Gudgeon, 540 W. Frontage Road, Northfield, Illinois 60093, *Attorney for the South Water Market Credit Association.*

U.S. District Court, Northern District of Illinois

United States of America, Plaintiff, v. *South Water Market Credit Association,* Defendant.

Civil Action No.

Filed: March 1, 1984.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on March 1, 1984, and defendant, by its attorney, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

I

This Court has furisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted under Section 1 of the Sherman Act, 15 U.S.C 1.

II

As used in this Final Judgment:

A. "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;

B. "Produce" means fresh fruits and vegetables;

C. "Member" means any member of the defendant pursuant to the terms specified in its bylaws; and

D. "The date of entry" means the date on which this Final Judgment is entered by this Court. Acts required to be done "on" an anniversary of the date of entry must be done on or before that date.

III

This Final Judgment applies to the defendant and to its officers, directors, managers, agents, employees, subsidiaries, succesors, and assignes, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

The defendant is enjoined and restrained from directly or indirectly entering into, adhering to, enforcing, or maintaining any contract, understanding, rule, bylaw, regulation, plan, or program with or affecting any member, or urging any member to engage in any practice, which:

(a) fixes, maintains, or establishes the length of time which that member grants or allows customers before payment for produce sold becomes due;

(b) prevents or interferes with the granting of credit to any person by member; or

(c) fixes, maintains, or establishes the amount or any term or condition of credit which any member grants or offers to any person in connection with the sale of produce.

V

The defendant is enjoined from using any stationery, form, of form letter which (a) refers to bills being due on Thursday or any other specified day of the week following purchase, or within any other specified time after purchase, except as provided in the notice that this Final Judgment requires the defendant to provide to its members, or (b) states that customers who do not pay their bills on time will be denied credit by members.

VI

A. Nothing contained in this Final Judgment shall prevent the defendant form circulating to members (1) information concerning the payment history of any person, or (2) the fact that information concerning the credit worthiness of any person is unavailable.

B. Nothing contained in this Final Judgment shall prevent the defendant form (1) conducting credit investigations on behalf of members for the purpose of obtaining credit information for circulation to members, or (2) conducting its business in any oher reasonable, lawful, commercial fashion.

VII

The defendant is hereby ordered:

A. To inform members by providing them with a notice in the form of Exhibit A attached hereto, within thirty (30) days of the date of entry, again six months after the date of entry, and on the anniversary of the date of entry for three (3) years: (a) of the substance of the terms of the Final Judgment: (b) that each of them must individually establish terms and conditions of sale; and (c) that each of them is free to extend credit to any person or firm whatsoever;

B. Within thirty (30) days from the date of entry, and on the first anniversary of the date of entry for three (3) years, to notify each of its officers, managers, and employees who have contact with members or their customers, of the obligations imposed on each of them by this Final Judgment;

C. To have copies of this Final Judgment, including Exhibit A, available for public inspection in its offices, and to provide a copy to any person who requests one for a reasonable copying fee; and

D. Within sixty (60) days from the date of entry, and on the anniversary of the date of entry for a period of three (3) years, to inform plaintiff of actions taken to ensure compliance with this Final Judgment, and to provide plaintiff a copy of any rule or bylaw enacted by the defendant within the preceding year.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to

any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees, and agents of defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgement, or as otherwise required by law.

C. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten days notice to the defendant before divulging the material in any legal proceedings (other than a grand jury proceeding) to which the defendant is not a party.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgement, for the modification of any of its provisions, for the enforcement of compliance with it or for the punishment of any violation of it.

X

This Final Judgment shall be in effect for the period of ten years following the date of entry.

XI

Entry of this Final Judgement is in the public interest.

Dated: ————.

United States District Judge

Exhibit A

Notice to Members of the South Water Market Credit Association

The United States Department of Justice, on March 1, 1984, filed a complaint in United States District Court in Chicago alleging that the South Water Market Credit Association (the "Association") had violated the Sherman Antitrust Act by engaging in a combination and agreement to fix and maintain credit terms employed in the sale of produce. The complaint alleged that in pursuit of their agreement, the Association and others, among other things, had:

(a) agreed to fix the length of time for which Association members extend credit to customers;

(b) agreed to withhold credit from customers who did not pay their bills within the terms the Association established; and

(c) agreed to withhold credit from customers who did not establish credit through the Association.

The Association, without making any admission of wrongdoing or violation of any laws, entered a consent decree with the government settling the lawsuit. The degree has now been entered by the Court. It requires that we publish this notice so that you understand the decree. A copy of the entire decree is attached, and copies of the decree will be available at the Association's office. Violations of the decree can be punished as civil or criminal contemp of court. The Association and any person who participated in any such violation could be prosecuted, so it is important that you understand and comply with the decree.

Under the decree, the Association cannot have any agreement like those described above with any member. Accordingly, you are free to establish your own credit terms with your customers. You can extend credit to anyone you like, including accounts who have not furnished a financial statement to the Association and accounts identified as delinquent. Previous Association Credit Rules to the contrary are no longer valid, You can extend credit for any period of time you desire.

The Association will continue to distribute information to you concerning the identity of persons who do not pay their bills on time and provide other credit information regarding your customers. You can use this information as you see fit.

The U.S.D.A. regulations regarding prompt payment continue to be in effect. If you and your customer do not discuss when payment of a credit bill is due, and you have no announced terms, then payment is due in 10 days under current regulations. However, under the regulations, you can establish any other length of credit you desire, and payment within those terms constitutes the prompt payment required by the Perishable Agricultural Commodities Act of 1930 (commonly known as the "PACA").

Finally, in choosing what terms of sale you offer to your customers, you cannot reach any understanding or agreement with any other Association member regarding credit terms. Any such agreement or understanding would violate the Sherman Antitrust Act and could subject you to civil or even criminal prosecution. You may, of course, make any credit terms of sale with your customers as you see fit. You may require that payment of credit purchases be made in any period of time that is agreeable to you and your customer.

U.S. District Court Northern District of Illinois

United States of America, Plaintiff, v. *South Water Market Credit Association*, Defendant.

Civil Action No.

Filed: March 1, 1984.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), the United States files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case.

I.

Nature and Purpose of the Proceeding

On March 1, 1984, the United States filed a civil antitrust suit alleging that the South Water Market Credit Association (the "Association") and its predecessor, the Chicago Produce Trade and Credit Association, participated in a conspiracy to fix credit terms in the sale of produce from 1902 until the date of filing of the complaint. The Association is an Illinois corporation doing business in Chicago, Illinois. It is an organization with approximately 25 members, most of which are independent wholesale produce firms doing business in the terminal market on South Water Market Street in Chicago.

The complaint alleges that the Association and co-conspirators agreed to fix credit terms employed in the sale of produce in violation of Section 1 of the Sherman Act (15 U.S.C. 1). The complaint asks the Court to: (1) find that the defendant violated the Sherman Act; (2) enjoin the defendant from continuing or renewing the conspiracy; and (3) require that notices be sent to Association members informing them of entry of the judgment.

On the same day the complaint was filed, the parties filed a proposed Final Judgment, Stipulation, and this Competitive Impact Statement. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action. The Court will retain jurisdiction to interpret, modify or enforce compliance with the provisions of the proposed Final Judgment.

II

Practices and Events Giving Rise to the Alleged Violation

Association members are independent produce distributors. The Association disseminates credit information and lists of delinquent customers to its members weekly. The Association's predecessor, the Chicago Produce Trade and Credit Association, was formed in 1902. The predecessor organization's statement of purpose included several objects, including the regulation of credits and collection of debts. That goal is still considered to be one of the primary purposes of the Association.

The Association's current rules were adopted in 1941 and include several provisions dealing with members' credit practices. The rules state that (1) with specified exceptions, customers of members must pay their bills by Thursday of the week following the sale; (2) members are to report to the Association customers who do not pay on time; (3) the Association will circulate a list of delinquent accounts to all members; (4) no member can extend credit to a delinquent

account; and (5) new customers are to file a financial statement with the Association, which will investigate the customer before members extend it credit. The form financial statement states that bills are due on a specified day of the week following the sale and that delinquent accounts will not be given credit by members. Essentially the same rules are printed on the form cover sheet for the weekly list of delinquent accounts. Thus each week the members are reminded of the Association's credit restrictions.

In December 1982 the Antitrust Division opened an investigation to determine whether the Association was violating or had violated the Sherman Act. The basis for the investigation was a newsclipping which described the Association and stated that its bylaws fixed the term of credit offered by its members and that it circulated a "blacklist" identifying those who did not pay on time. The investigation revealed, as the complaint alleges, that the defendant and co-conspirators had agreed to fix and maintain credit terms employed in the sale of produce.

III

Explanation of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment does not constitute an admission by any party as to any issue of law or fact. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

The proposed Final Judgment contains two principal forms of relief. First, the defendant is enjoined from repeating the behavior that constituted the conspiracy. Second, the proposed Judgment places an affirmative obligation on the defendant to provide notice of this action to persons affected by the Association's credit rules.

A. Prohibited Conduct

Section IV of the proposed Judgment enjoins certain agreements with members. Section IV(a) enjoins all agreements on the time for which members extend credit. This was the heart of the alleged violation. Section IV(b) bans agreements to withhold credit from any person. This prohibits the alleged ancillary agreements to withhold credit from delinquent and unapproved accounts. Finally, Section IV(c) enjoins agreements regarding the amount or any other term of credit that members grant. This covers agreements on dollar limits, interest charges, or any other term of credit.

Section V rejoins use of forms and form letters that contain any reference to bills being due within a specified number of days, or on any day of the week. As indicated above, the Association has employed several forms of this nature. This prohibition is meant to bring the impropriety of Association use of such forms to the attention of Association officials and to ensure that such forms will not be used in the future.

Section VI confirms that the proposed Judgment does not interfere with the legitimate functions of the Association. It states that the Association can circulate credit information and that it can conduct its business in any other reasonable, lawful, commercial fashion.

B. Affirmative Obligations of the Defendant

Section VII requires that notice of the Judgment be sent to members. The notice, attached as an exhibit to the proposed Judgment, spells out the rights and obligations of members and the Association so that all know what is allowable behavior.

The notice refers to the Perishable Agricultural Commodities Act of 1930, 7 U.S.C. 499(a)–(s). That Act requires, *inter alia*, that dealers must pay promptly for fresh fruits and vegetables. 7 U.S.C. 499(b)(4). United States Department of Agriculture rules provide that prompt payment within the meaning of the Act is payment within any agreed-upon time period or, in the absence of agreement, payment within ten days. 7 CFR 46.2(aa). The proposed Judgment does not interfere with this scheme.

Section VII B requires that the Association, within 30 days of entry of the Judgment and annually for three years, notify its officers, managers, and certain employees of the obligations imposed on each of them by the proposed Judgment. Section VII C requires the Association to provide a copy of the proposed Judgment to anyone who requests one and pays a reasonable copying fee. Section VII D requires the Association for three years to report to the United States actions taken to ensure compliance with the proposed Judgment and to provide a copy of any new rule or bylaw. Thus, the United States will receive reports which will allow it to police compliance with the notice provisions.

Finally, under Section VIII of the proposed Final Judgment, the Justice Department will have access upon reasonable notice, to the defendant's records and personnel to determine its compliance with the Final Judgment and may require the defendant to submit written reports with respect to any of the matters contained in the Final Judgment.

IV

Competitive Effect of the Proposed Final Judgment

The relief encompassed in the Final Judgment is aimed at preventing any recurrence of the activities described in the complaint, and at educating Association members concerning their right to negotiate terms of sale. Agreements on credit terms interfere with the normal operation of competitive forces in the marketplace and, accordingly, result in artifically determined price levels.

Entry of the Final Judgment will ensure that each member of defendant independently determines its terms and conditions of credit in the sale of produce. This assurance is primarily provided by Sections IV and V, which forbid all agreements relating to credit and prohibit the Association from using forms which suggest the existence of common credit terms among members. In addition, the notice requirements of Section VII will ensure that members will receive notices informing them that any Association member is free to offer whatever credit terms it chooses. This should stimulate competition in credit terms and allow the level of credit in the market to reach its competitive equilibrium.

V

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action. Under Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

VI

Procedures Available for Modification of the Proposed Final Judgment

The proposed Final Judgment is subject to a stiuplation between the United States and the defendant providing that the United States may withdraw its consent to the proposed Judgment at any time before it is entered by the Court. The Antitrust Procedures and Penalties Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest. Under Section IX of the proposed Final Judgment, the Court would retain jurisdiction over this action in order, among other things, to permit either party to apply for any necessary or appropriate modification of the proposed Judgment or construction of its provisions.

The Antitrust Procedures and Penalties Act provides a period of at least sixty days preceding the entry of the proposed Final Judgment within which any person may submit to the United States comments regarding the proposed Final Judgment. The United States will evaluate the comments and determine whether it should withdraw its consent. The comments and the response of the United States to the comments will be filed with the Court and published in the **Federal Register** in accordance with the Antitrust Procedures and Penalties Act.

Written comments should be submitted to: Alan L. Marx, Chief, General Litigation Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

VII

Alternatives to the Proposed Final Judgment

This proceeding does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of the Final Judgment. All relief requested in the complaint is included in the proposed Final Judgment.

VIII

Determinative Documents

There are no materials or documents that the United States considered determinative in formulating this proposed Final Judgment.

Accordingly, none are being filed along with this Competitive Impact Statement.

Dated: ———————.

Respectfully submitted,

Kenneth L. Jost, Angela L. Hughes,

Attorneys for the United States, United States Department of Justice, Antitrust Division, Washington, D.C. 20530, (202) 724–6468.

[FR Doc. 84–8123 Filed 3–26–84; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Justice

Solicitation; Improving Evidence Gathering Through Police and Prosecutor Coordination

Police and prosecutor coordination is essential if felony case attrition is to be kept at a minimum. The problem of felony arrests resulting in no conviction has been estimated to be as high as fifty percent. While a certain amount of this attrition is warranted, a portion results from either the poor quality of the arrest cases when they are presented to the prosecutor, or to problems in coordination and cooperation between law enforcement and prosecuting agencies.

To address the problem of felony case attrition the National Institute of Justice announces a competitive research grant program on "Improving Evidence Gathering Through Police and Prosecutor Coordination". Proposals are requested for experimental research designed to reduce the rate of avoidable felony case attrition through improved case preparation and policy coordination between police and prosecutors.

This solicitation requests proposals from organizations desiring either: (1) To develop, implement and assess new methods of improving felony case evidence gathering and preparation or, (2) to evaluate the effects of an already existing program or policy aimed at enhanced felony case evidence gathering and preparation. It is anticipated that three to five awards will be made from the $500,000 planned for this program.

Both the qualifications of the research team and evidence of cooperation of the participant jurisdiction are among the review criteria.

All proposals must be received no later than June 1, 1984.

A copy of the solicitation may be obtained by sending a self addressed *mailing label* to: Announcement Request, Improving Evidence Gathering, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Dated: March 16, 1984.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 84–8158 Filed 3–26–84; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 10, 1984, 9:30 a.m., Rm. S4215 A & B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information contact:

Fernand Lavallee, Acting Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565, March 20, 1984.

Signed at Washington, D.C. this 20th day of March 1984.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 84–8224 Filed 3–26–84; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to OMB for Review

The following package is being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 CFR Chapter 35). The current valid OMB clearance expires on March 31, 1984.

Subject: 12 CFR 701.31 Nondiscrimination Requirements (3133–0068).

This regulation requires a Federal Credit Union to keep a copy of the property appraisal. It also requires that a Federal Credit Union using geographic factors in evaluating real estate loan applications must disclose such fact on the appraisal and state its justification.

Respondents: Federal Credit Unions

OMB Desk Officer: Judith McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the National Credit Union Administration, Special Projects Officer, on 202–357–1080.

Written comments and recommendations for listed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Judith McIntosh.

Dated: March 19, 1984.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 84–8162 Filed 3–26–84; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Linguistics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics.

Date and Time: April 12 and 13, 1984; 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 338, Washington, D.C. 20550.

Type of Meeting: Part Open—Open 4/13—9:00 a.m. to 11:00 a.m., closed 4/12—9:00 a.m. to 5:00 p.m., closed 4/13—11:00 a.m. to 5:00 p.m.

Contact Person: Dr. Paul G. Chapin, Program Director, Linguistics Program, Room 320, National Science Foundation, Washington, D.C. 20550, (202) 357–7896.

Summary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda: Open—General discussion of the current status and future plans of the Linguistics Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

March 22, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–8217 Filed 3–26–84; 8:45 am]

BILLING CODE 7555–01–M

Subpanel on Regulation and Policy Analysis Advisory Panel for Social and Economic Science; Meeting

In accordance with the Federal advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subpanel or Regulation & Policy Analysis of the Advisory Panel for Social & Economic Science.

Date/Time: April 13, 1984—8:00 a.m. to 6:00 p.m.

Place: National Science Foundation, 1800 G St., NW. (Rm 643) Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Laurence C. Rosenberg, Program Director Regulation & Policy Analysis, National Science Foundation, Washington, DC 20550, Room 335, Phone (202) 357–7417.

Purpose of Subpanel: To provide advice and recommendations concerning research in Regulation and Policy Analysis.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–8216 Filed 3–26–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on April 5–7, 1984, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on March 27, 1984.

The agenda for the subject meeting will be as follows:

Thursday, April 5, 1984

8:30 a.m.–8:45 a.m.: Chairman's Report (Open)—The ACRS Chairman will report briefly to the Committee regarding items of current interest.

8:45 a.m.–12:00 noon: Maintenance Policies and Practices (Open/Closed)—The members will hear and discuss the report of its subcommittee and members of the NRC staff regarding maintenance policies and practices in nuclear power plants.

A portion of this session will be closed to discuss information provided in confidence by a foreign source.

1:00 p.m.–2:00 p.m.: Items for Meeting with NRC Commissioners (Open)—The members will discuss the ACRS position regarding matters to be discussed with the NRC Commissioners including the proposed NRC Safety Research Program for FY 1985, ACRS activities related to QA/QC practices in the nuclear industry, and establishment of an NTSB type board for evaluation of nuclear power plant accidents.

2:00 p.m.–3:30 p.m.: Meeting with NRC Commissioners (Open)—The members will meet with the NRC Commissioners to discuss items noted above.

3:30 p.m.–4:15 p.m.: Implementation of Regulatory Guide 1.97, Instrumentation of Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident (Open)—The members will hear a briefing regarding the status of implementation of Regulatory Guide 1.97.

4:15 p.m.–5:00 p.m.: Subcommittee Action (Open)—The members will hear and discuss reports of designated Subcommittees regarding the status of assigned activities including provisions for ECCS and decay heat removal.

Friday, April 6, 1984

8:30 a.m.–11:30 a.m.: Ginna Nuclear Power Plant (Open)—The members will hear and discuss reports from its subcommittee, the NRC Staff, and the Licensee regarding the request for a full term operating license for this facility.

Portions of this session will be closed as necessary to discuss Proprietary Material applicable to this matter.

11:30 a.m.–12:30 p.m.: Activities of NRC Regional Offices (Open)—The members will hear and discuss a report from an NRC Regional Director regarding the activities of NRC regional offices.

1:30 p.m.–2:30 p.m.: Severe Accident Policy (Open)—The members will hear a briefing by a representative of the NRC Staff regarding the status of a proposed NRC policy statement regarding consideration of severe nucler power plant accidents in the regulatory process.

2:30 p.m.–3:30 p.m.: Nuclear Power Plant Operating Experience (Open)—The Committee will hear and discuss a proposed NRC Bulletin regarding operation of undervoltage trip devices in nuclear power plant circuit breakers.

3:30 p.m.–4:00 p.m.: Passive Containment System (Open)—The Committee will discuss a proposed ACRS reply to the request for a preapplication review of the passive containment system.

4:00 p.m.–5:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports/letters regarding items considered during the meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being considered and to discuss information involved in an adjudicatory proceeding.

Saturday, April 7, 1984

8:30 a.m.–9:15 a.m.: Appointment of ACRS Members (Closed)—The members will discuss the qualifications of candidates proposed for appointment to the Committee.

This portion of the meeting will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy.

9:15 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will complete preparation of reports/letters regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being considered and information involved in an adjudicatory proceeding.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1983 (48 FR 44291). In accordance with the procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring

to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d), Pub. L. 92–463, that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)), information involved in an adjudicatory proceeding (5 U.S.C. 552b(c)(10)), information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meetings has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m. est.

Dated: March 22, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-8208 Filed 3-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–302]

Florida Power Corp.; Order Confirming TMI Commitments; Correction

On March 2, 1984 (49 FR 7895), an Order issued by the U.S. Nuclear Regulatory Commission (NRC) was published in the Federal Register. This Order confirms commitments made by the Florida Power Corporation for Post-TMI related issues involving the Crystal River Unit 3 Nuclear Generating Plant, which is located in Citrus County, Florida.

The March 31, 1984 completion date for completion of Emergency Response Facilities, appearing in Page 2 of the Attachment to the Order, has been changed to July 2, 1984.

For additional details, see NRC's letter to the licensee dated March 15, 1984.

Dated at Bethesda, Maryland, this 15th day of March 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 84-8207 Filed 3-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–220; License No. DPR–63 EA 83–137]

Niagara Mohawk Power Corp. (Nine Mile Point Station, Unit 1); Order Modifying License Effective Immediately

I

Niagara Mohawk Power Corporation (the "licensee") is the holder of Facility Operating License No. DPR–63 issued December 26, 1974 which authorizes the licensee to operate the Nine Mile Point Station, Unit 1 (the "facility") in Scriba, New York.

II

Recent violations at Nine Mile Point Station, Unit 1, including violations of technical specification limiting conditions for operation and technical specification surveillance requirements, indicate a lack of management attention to the control of safety related activities at the facility. These violations represent a continuing negative trend in operations at Nine Mile Point Station, Unit 1. They involve inattentiveness to plant parameters by plant personnel, lack of awareness of plant conditions, and failure to adhere to plant procedures. For example, a Notice of Violation and Proposed Imposition of Civil Penalty was issued to Nine Mile Point Station, Unit 1 on October 6, 1983 for violations which involved the following:

(1) Failure to adequately perform required checks of main steam line radiation monitors in that the readings of two of the monitors were significantly different from the reading of two other monitors, yet no action was taken to determine the cause of this discrepancy, the monitors were not declared inoperable, and appropriate action was not taken as required by the technical specification;

(2) A reactor building inner track bay door was open when the outer door was not sealed, in violation of a plant operating procedure;

(3) A motor starter circuit breaker for a core spray isolation valve was in the off position but not locked in that position, in violation of a technical specification limiting condition for operation.

Further, on November 15, 1983, an enforcement conference was conducted to discuss violations identified during NRC inspection 50–220/83–24, conducted October 1–31, 1983 and Inspection 50–220/83–29 conducted November 9–10, 1983. These violations involved: (1) The failure to maintain primary containment integrity while the reactor was critical as required by technical specifications, and (2) two reactor coolant system isolation valves, required by a technical specification surveillance requirement to be tested for closure times at least once per operating cycle, which had not been tested for closure time during the past five operating cycles, a period of ten years.

III

Such violations demonstrate the need for increased corporate management involvement in plant activities to foster an attitude that will ensure increased personnel attentiveness to plant parameters, increased personnel awareness of plant conditions, and strict adherence by operating personnel to plant procedures and, as a result, increased compliance with NRC requirements. Accordingly, I have determined that the actions set forth below are required by the public health, safety, and interest, and therefore, should be imposed by an immediately effective Order.

IV

In view of the foregoing, pursuant to Sections 103, 161(i), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2 and 10 CFR Part 50, it is hereby ordered effective immediately that:

Within 60 days of the effective date of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval, a plan for an independent appraisal of site and corporate management and their functions to evaluate their effectiveness and to develop recommendations for the purpose of increasing corporate management involvement in plant activities to foster an attitude that will ensure increased personnel attentiveness to plant parameters, and increasing personnel awareness of plant conditions, and strict adherence by operating personnel to plant procedures

to ensure that the facility is operated in accordance with license requirements.

The plan shall include, but shall not be limited to, the following elements:

(1) An appraisal conducted by an independent third party management consultant organization retained by the licensee to evaluate current organizational structure and responsibilities, management controls, communication systems and management practices, both at the Nine Mile Point Nuclear Station, Unit 1, and the corporate offices.

This appraisal shall also include an evaluation of how the preoperational, start-up and eventual operating activities at Unit 2 will interface with and affect the management system for the operation of Unit 1.

(2) A description of the appraisal program, the qualifications of the appraisal team, a discussion of how the appraisal is to be documented, and the schedule of completion of appropriate milestones.

(3) Recommendations for changes in the areas mentioned in Item 1 that will provide assurance that the licensee will effectively implement NRC requirements.

Upon approval of the plan by the Regional Administrator, Region I, the plan shall be implemented. Scheduled milestone completion dates may not be extended without good cause and the concurrence of the Regional Administrator, Region I.

The licensee shall direct the approved independent management consultant organization to submit to the Regional Administrator, Region I, a copy of any report of the appraisal and recommendations resulting from the appraisal, and any drafts thereof at the same time they are sent to the licensee or any of its employees or contractors. Prior notice shall be given to the Regional Administrator, Region I, of any meeting or discussion between the licensee and the organization to discuss the results, recommendations, or progress made on the appraisal in sufficient time for the Regional Administrator to determine whether NRC participation is required. In addition, the licensee shall consider the recommendations resulting from the appraisal and provide to the Regional Administrator, Region I, an analysis of each such recommendation and the action to be taken in response to the recommendation. The licensee shall also provide a schedule for accomplishing these actions.

The Regional Administrator, Region I, may relax or terminate in writing any of the preceding conditions for good cause.

V

The licensee may request a hearing on this Order. A request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, Region I, 631 Park Avenue, King of Prussia, PA 19406. Any request for a hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

Dated at Bethesda, Maryland this 20th day of March 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-8208 Filed 3-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-410; Construction Permit No. CPPR-112 EA 83-137]

Niagara Mohawk Power Corp. (Nine Mile Point Station, Unit 2); Order

I

Niagara Mohawk Power Corporation (the "licensee") is the holder of construction permit CPPR-112 issued by the Nuclear Regulatory Commission (the "Commission") which authorizes the construction of the Nine Mile Point Station, Unit 2 (the "facility"). The facility is under construction in Scriba, New York.

II

A Construction Appraisal Team ("CAT") inspection was conducted at the facility during the period of November 7 through 19, and November 28 through December 9, 1983. The objective of this CAT inspection was to evaluate the adequacy of construction at the facility which the licensee estimates as currently about 80 percent complete. An additional aspect of the CAT inspection was the review of the licensee's project management involvement with site construction activities to determine whether adequate control existed to meet Commission requirements.

Significant deficiencies in your Quality Assurance program were identified during the CAT inspection as described in Appendix A to the January 31, 1984 Inspection Report (Report No. 50-410/83-18). These findings include, but are not limited to, the following:

(1) The program for review and acceptance of radiographs was found to be deficient. The deficiencies identified included weld quality, radiographic film quality, missing film, and quality of documentation. Some similar deficiencies had previously been identified by the licensee site quality assurance/quality control programs, but timely actions to correct the deficiencies had not been initiated.

(2) The document control system is inadequate as evidenced by the number and type of problems identified. These deficiencies indicate that crafts and inspectors may not be using the latest design documents. Inspection reports often do not reflect the applicable drawing revision. Project Procedure 77, Advance Change Notices (ACN), requires that ACN's be incorporated into the appropriate drawings within a 60-day time period. Because of a large backlog of ACN's, an Interoffice Memorandum dated November 11, 1983 was issued which removed the 60-day time period for incorporating changes into drawings. Therefore, ACN's do not receive full engineering review until the appropriate drawing is revised. This change was made as an expedient action, rather than taking appropriate measures to identify and correct the reasons for a high ACN generation rate.

(3) Deficiencies were identified in the site auditing program, the corrective action system, and the procurement quality assurance program. Audits were not effective in the identification of hardware and program deficiencies, nor in resolving problems in a timely manner. Corrective action systems were deficient with regard to the correction of nonconformances identified and the associated documentation. In addition, several discrepancies were identified during the review of hardware which raise questions as to the adequacy of the Stone and Webster Procurement Quality Assurance Program. Review of a small sample of hardware revealed a number of installed materials and equipment that did not comply with purchase documents.

(4) A number of deficiencies were found in the QA/QC program as evidenced by problems identified in the electrical and mechanical areas. These deficiencies included inadequate acceptance criteria to perform appropriate quality control inspections; failure to perform adequate quality control inspections; and failure to take appropriate actions when deficiencies were identified. The low number of

quality control inspected items as compared to the much larger number of installed items reflects a quality control program that is not timely in accomplishing required work. Although further opportunities may exist to detect existing deficiencies prior to plant operation, the deficiencies identified by the CAT inspection had already evaded the existing quality control program. Failure of the licensee to detect these deficiencies raises serious questions as to the effectiveness of that program.

(5) The prequalification testing program for concrete expansion anchor bolts was found to be inadequate since it did not establish that torque values required in the site specifications were adequate to ensure that the anchor bolts were properly set. The concrete anchor bolts were tested in a 1000 psi concrete mix, rather than a minimum 3000 psi concrete mix which is the concrete mix most representative of field conditions.

(6) Power Generation Control Complex (PGCC) cable and wiring installations exhibited significant deficiencies relative to separation criteria. The applicant's program of quality control inspection does not provide adequate consideration or establish the appropriate procedural controls to assure that specification separation criteria have been satisfied.

These and other deficiencies are described in the CAT Inspection Report (Report No. 50–410/83–18) issued January 31, 1984. A number of the findings identified during the CAT inspection are similar to deficiencies previously identified by Region I. These Region I findings are documented in the NRC Region I Report 50–410/SALP, which covers the period of October 1, 1982 to September 30, 1983. The results of the SALP were discussed during a meeting with the licensee on January 11, 1984, and the report was issued February 23, 1984.

III

The nature and number of the NRC-identified deficiencies, most of which were in areas which had already received licensee's quality control inspection and acceptance, raise serious questions concerning the adequacy of the licensee's management control over the construction process and whether construction that has been completed and the demonstration of its quality has been achieved in accordance with the Commission's requirements.

I have determined that further information is necessary concerning the licensee's ability to manage construction and to determine the adequacy of the construction work completed to date.

IV

In view of the foregoing, pursuant to Sections 103, 161(i), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2 and 10 CFR Part 50, it is hereby ordered that:

A. Within 60 days of the effective date of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval, a plan for a review of the CAT inspection findings, the most recent SALP report and licensee-identified deficiencies (both past and current). The plan shall include a description of the scope of the proposed review, the qualifications of the review team and a schedule for completion of appropriate milestones. The review shall determine whether the licensee has correctly identified the underlying/fundamental causes for these deficiencies and whether the licensee's corrective actions have adequately addressed the underlying/fundamental causes as well as adequately addressing the specific deficiencies. This review shall include a thorough reinspection of identified deficiencies. Neither the manager of the review (the reviewer) nor any member of the review team shall have been involved in performing any of the work under review.

Upon approval of the plan by the Regional Administrator, Region I, the plan shall be implemented. Scheduled milestone completion dates may not be extended without good cause and the concurrence of the Regional Administrator, Region I.

The licensee shall direct the reviewer to submit to the Regional Administrator, Region I, a copy of any report, and any drafts thereof, at the same time they are sent to the licensee or any of its employees or contractors. The reports and recommendations shall be submitted to the Regional Administrator, Region I, by a date agreed upon by the licensee and the Regional Administrator.

The licensee shall consider the recommendations resulting from the review and provide to the Regional Administrator, Region I, an analysis of each such recommendation and the action to be taken in response to the recommendation. The licensee shall also provide a schedule for accomplishing these actions.

B. Within 60 days of the effective date of this Order, the licensee shall establish, define and submit to the Regional Administrator, Region I, a listing of performance indicators to be used to measure and monitor quality construction performace in the future. These indicators should address but not be limited to, those areas required to be reviewed by Section A of this Order. These indicators should also address the implementation of corrective actions, and changes made or planned based on deficiencies identified. The licensee shall periodically discuss with the Regional Administrator, Region I, the status of construction as measured by these performance indicators as well as modifications or additions to these performance indicators.

C. Within six months of the effective date of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval, a plan for an independent third party to conduct an appraisal of organizational responsibilities, management controls, staffing levels, communications, and operating practices both at the facility and the corporate office. This appraisal shall be initiated after the most recent changes are in effect but no later than one year from the effective date of this Order.

Additionally, this appraisal shall also address the adequacy of actions implemented in response to items A, B and C of this Order. This independent third party shall be directed to make recommendations for changes in the areas reviewed.

The plan shall include a description of the appraisal program, the qualifications of the appraisal team, a discussion of how the appraisal is to be documented, and the schedule of completion of appropriate milestones. Upon approval of the plan by the Regional Administrator, Region I, the plan shall be implemented. Scheduled milestones completion dates may not be extended without good cause and the concurrence of the Regional Administrator, Region I.

The licensee shall direct the approval independent management consultant organization to submit to the Regional Administrator, Region I, a copy of any report of the appraisal and recommendations resulting from the appraisal, and any drafts thereof at the same time they are sent to the licensee or any of its employees or contractors. Prior notice shall be given to the Regional Administrator, Region I, of any meeting or discussion between the licensee and the organization to discuss the results, recommendations, or progress made on the appraisal in sufficient time for the Regional Administrator to determine whether NRC participation is required. In addition, the licensee shall consider the recommendations resulting from the appraisal and provide to the Regional Administrator, Region I, an analysis of

each such recommendation and the action to be taken in response to the recommendation. The licensee shall also provide a schedule for accomplishing these actions.

D. The Regional Administrator, Region I, may relax, or terminate in writing any of the preceding conditions for good cause.

V

The licensee may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the date of thjs Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, NRC Region I, 631 Park Avenue, King of Prussia, PA 19406.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

This Order shall become effective upon the licensee's consent or upon expiration of the time within which the licensee may request a hearing or, if a hearing is requested by the licensee on the date specified in an Order issued following further proceedings on this Order.

Dated at Bethesda, Maryland this 20th date of March 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-8209 Filed 3-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric & Gas Co. and South Carolina Public Service Authority (Virgil C. Summer Nuclear Station, Unit No. 1); Exemption

I

The South Carolina Electric & Gas Company (SCE&G) and South Carolina Pubic Service Authority hold operating license number NPF-12 which authorizes the operation of the Virgil C. Summer Nuclear Station, Unit No. 1. The facility consists of one pressurized water reactor located at the licensees' site near Jenkinsville, South Carolina.

II

Section IV.F.1.a. of Appendix E to 10 CFR Part 50 requires each licensee to hold emergency preparedness exercises at a frequency which will enable each State and local government within the plume exposure pathway emergency planning zone to participate in at least one full-scale exercise per year.

SCE&G's letter of January 18, 1984, to Harold R. Denton, Director, Office of Nuclear Reactor Regulation, requested that an exemption be granted from the requirements of 10 CFR 50, Appendix E. Section IV.F.1.a. as it applies to participation by State and local government agencies in the planned March 21, 1984, full-scale emergency preparedness exercise to be held at the Virgil C. Summer Nuclear Station, Unit 1.

SCE&G bases this request for exemption on the previous successful participation by State and local government agencies in full-scale and limited-scale exercises in May 1981 and March 1983, which resulted in favorable findings by FEMA and NRC. SCE&G contends that the experience gained by the State and local government agencies during the exercises is sufficient basis for relief from the annual exercise frequency requirement.

The NRC staff has reviewed the participation of the State in an October 1983 exercise with the H. B. Robinson Nuclear Power Station and the local government agencies in the March 1983 exercise for the V. C. Summer Nuclear Station. The staff determined that the agencies demonstrated a capability to respond effectively to nuclear power station emergency conditions. Based on this review, the staff concludes that an exemption pursuant to the requirements of 10 CFR Part 50, Appendix E, Section IV.F.1.a., is justified, subject to the condition that the State and local government agencies may be required to provide such minimal support as may be essential to the conduct of the March 21, 1984, onsite emergency preparedness exercise.

Based on our evaluation, the staff has concluded that non-participation by State and local government agencies in the March 21, 1984, emergency preparedness exercise for the Virgil C. Summer Nuclear Station, Unit 1 will not adversely affect the overall state of emergency preparedness for the V. C. Summer Nuclear Station and that the requested exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.1.a. should be granted.

III

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 20th day of March 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-8210 Filed 3-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System (WPPSS Nuclear Project No. 2); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision concerning a petition dated October 14, 1983, filed by Eugene Rosolie, on behalf of the Coalition for Safe Power. The petitioner had requested that the Nuclear Regulatory Commission institute show cause proceedings to determine whether the construction permit for the Washington Public Power Supply System Nuclear Project No. 2 (WNP-2) should be revoked, a stay of construction imposed, the pending application for an operating license denied and hearings instituted. The Director, Office of Inspection and Enforcement, has decided to deny the petitioner's request.

The reasons for this decision are explained in a "Director's Decision under 10 CFR 2.206" (DD-84-7), which is available for public inspection in the Commission's public document room, 1717 H Street, N.W., Washington, DC, and in the local public document room for the WNP-2 facility, located at the Richland Public Library, Swift and Northgate Street, Richland, WA 99352.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 19th day of March, 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-8211 Filed 3-26-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, 202-632-6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on February 28, 1984 (49 FR 7318). Individual authorities established or revoked under Schedules A, B, or C between February 1, 1984 and February 29, 1984 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedules A and B

No Schedule A or B exceptions were established or revoked during the month of February.

Schedule C

The following exceptions are established:

Department of Agriculture

One Confidential Assistant to the Manager, Federal Crop Insurance Corporation. Effective February 6, 1984.

One Private Secretary to the General Counsel, Office of the General Counsel. Effective February 10, 1984.

One Confidential Assistant to the Director, Office of Rural Development Policy. Effective February 23, 1984.

One Confidential Assistant to the Director, Office of Equal Opportunity. Effective February 24, 1984.

One Special Assistant to the Director, Office of Transportation. Effective February 24, 1984.

Department of the Army

One Staff Assistant to the Special Assistant to the President for Public Liaison. Effective February 24, 1984.

Department of Commerce

One Confidential Assistant to the Director General of U.S. and Foreign Commercial Service, International Trade Administration. Effective February 3, 1984.

One Private Secretary to the Deputy Under Secretary, Office of the Secretary. Effective February 10, 1984.

One Confidential Assistant to the Director General of the U.S. and Foreign Commercial Service, International Trade Administration. Effective February 16, 1984.

One Confidential Assistant to the Deputy Assistant Secretary for Industry Projects, International Trade Administration. Effective February 21, 1984.

One Special Assistant to the Under Secretary for Travel and Tourism. Effective February 22, 1984.

One Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective February 22, 1984.

One Special Assistant to the Assistant Director for Communications, Bureau of the Census. Effective February 23, 1984.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration. Effective February 23, 1984.

One Congressional Affairs Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective February 24, 1984.

Department of Defense

One Personal and Confidential Assistant to the Deputy Secretary of Defense. Effective February 16, 1984.

Department of Education

One Executive Assistant to the Assistant Secretary for Legislation and Public Affairs. Effective February 3, 1984.

One Confidential Assistant to the Director of Regional Liaison, Office of the Under Secretary. Effective February 3, 1984.

One Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective February 3, 1984.

One Legislative Liaison to the Director, Legislative Liaison Staff, Office of Legislation and Public Affairs. Effective February 8, 1984.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective February 10, 1984.

One Executive Director, Intergovernmental Advisory Council on Education, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective February 23, 1984.

One Confidential Assistant to the Under Secretary, Office of the Under Secretary. Effective February 29, 1984.

Department of Energy

One Staff Assistant to the Assistant Secretary for Internal Affairs. Effective February 1, 1984.

One Private Secretary to the Chairman, Federal Energy Regulatory Commission. Effective February 24, 1984.

One Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission. Effective February 24, 1984

One Attorney-Advisor (Public Utilities) to the Chairman, Federal Energy Regulatory Commission. Effective February 24, 1984

One Attorney-Advisor (Public Utilities) to the Chairman, Federal Energy Regulatory Commission. Effective February 24, 1984

One Attorney-Advisor (Public Utilities) to the Chairman, Federal Energy Regulatory Commission. Effective February 27, 1984

One Attorney-Advisor (Public Utilities) to the Chairman, Federal Energy Regulatory Commission. Effective February 27, 1984

Department of Health and Human Services

One Director, Intergovernmental and Congressional Affairs in Dallas, Texas. Office of the Secretary. Effective February 3, 1984.

One Confidential Assistant to the Associate Administrator for External Affairs, Health Care Financing Administration. Effective February 8, 1984.

Department of Housing and Urban Development

One Special Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective February 1, 1984.

One Staff Assistant (Typing) to the Assistant Secretary for Community Planning and Development. Effective February 3, 1984.

One Special Assistant to the Secretary. Effective February 6, 1984.

One Executive Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective February 9, 1984.

One Confidential Assistant to the Under Secretary. Effective February 16, 1984.

One Senior Assistant for Legislation to the Deputy Assistant Secretary for Legislation. Effective February 21, 1984.

One Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective February 24, 1984.

One Executive Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective February 27, 1984.

One Special Assistant to the Secretary, Office of the Secretary. Effective February 27, 1984.

One Special Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective February 29, 1984.

Department of the Interior

One Special Assistant to the Deputy Director, National Park Service. Effective February 21, 1984.

One Special Assistant to the Secretary. Effective February 21, 1984.

One Confidential Assistant to the Special Assistant to the Secretary. Effective February 24, 1984.

Department of Justice

One Confidential Assistant (Private Secretary) to the Assistant Attorney General, Antitrust Division. Effective February 1, 1984.

One Special Assistant to the Deputy Assistant Attorney General, Tax Division. Effective February 3, 1984.

One Secretary (Typing) to the Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

Department of Labor

One Special Assistant to the Assistant Secretary for Employment and Training. Effective February 1, 1984.

One Special Assistant to the Deputy Under Secretary for Employment Standards. Effective February 6, 1984.

One Assistant to the Assistant Secretary for Legislative Affairs. Effective February 17, 1984.

One Staff Assistant to the Chief of Staff, Office of the Secretary. Effective February 24, 1984.

One Special Assistant to the Administrator, Pension and Welfare Benefit Programs. Effective February 29, 1984.

Department of State

One Special Assistant to the Under Secretary for Management. Effective February 6, 1984.

One Secretary (Stenography) to the Ambassador, U.S. Permanent Representative to the Organization of American States. Effective February 17, 1984.

Department of Transportation

One Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective February 1, 1984.

One Secretary (Typing) to the Deputy Secretary. Effective February 2, 1984.

One Director, Office of Public Affairs, Urban Mass Transportation Administration. Effective February 8, 1984.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective February 10, 1984.

One Special Assistant for Marketing to the Administrator, Saint Lawrence Seaway Development Corporation. Effective February 14, 1984.

One Special Assistant to the Director, Office of Intergovernmental Affairs. Effective February 24, 1984.

One Chief, Minority Business Resource Center, to the Director, Office of Small and Disadvantaged Business Utilization. Effective February 24, 1984.

One Deputy Director, Office of Congressional Affairs. Effective February 24, 1984.

One Special Assistant to the Deputy Assistant for Governmental Affairs. Effective February 27, 1984.

One Confidential Assistant to the Assistant Secretary for Governmental Affairs. Effective February 29, 1984.

Department of the Treasury

One Staff Assistant to the Principal Deputy Assistant Secretary (International Affairs). Effective February 10, 1984.

Action

One Special Assistant to the Assistant Director of Policy and Planning. Effective February 10, 1984.

One Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations. Effective February 16, 1984.

Administrative Office of the U.S. Courts

One Attorney-Advisor (Legislative) to the Legislative Affairs Officer. Effective February 3, 1984.

Agency for International Development

Special Assistant to the Assistant Administrator, Bureau for Program and Policy Coordination. Effective February 9, 1984.

One Deputy Assistant to the Administrator for Interbureau Affairs and Special Projects. Effective February 24, 1984.

Commission on Civil Rights

One Public Affairs Officer to the Assistant Staff Director for Congressional and Public Affairs, Office of the Staff Director. Effective February 29, 1984.

Commodity Futures Trading Commission

One Special Assistant to a Commissioner. Effective February 23, 1984.

Consumer Product Safety Commission

One Special Assistant (Legal) to the Chairman. Effective February 2, 1984.

Environmental Protection Agency

One Congressional Liaison Specialist to the Director, Office of Congressional Liaison. Effective February 6, 1984.

Equal Employment Opportunity Commission

One Deputy Director, Office of Public Affairs. Effective February 9, 1984.

Executive Office of the President

One Secretary to the Associate Director for Management, Office of Management and Budget. Effective February 29, 1984.

Export-Import Bank of the United States

One Secretary (Typing) to the President and Chairman, Office of the Board of Directors. Effective February 3, 1984.

Federal Emergency Management Agency

One Special Assistant to the Administrator, Federal Insurance Administration. Effective February 27, 1984.

International Trade Commission

One Staff Assistant (Economics) to a Commissioner. Effective February 24, 1984.

National Credit Union Administration

One Confidential Assistant to a Member of the Board. Effective February 1, 1984.

National Endowment for the Arts

One Director, Media, News and Special Events. Effective February 22, 1984.

Office of Personnel Management

One Special Assistant to the Assistant Director for Public Affairs. Effective February 3, 1984.

One Special Assistant to the Director, Office of the Director. Effective February 27, 1984.

One Confidential Assistant (Typing) to the Director, Office of Government Ethics. Effective February 27, 1984.

Securities and Exchange Commission

One Supervisory Public Affairs Specialist to the Chairman. Effective February 24, 1984.

One Confidential Assistant to a Commissioner. Effective February 29, 1984.

Small Business Administration

One Confidential Assistant to the Regional Administrator in New York, New York. Effective February 21, 1984.

One Special Assistant to the Administrator, Office of the Administrator. Effective February 21, 1984.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-8153 Filed 3-26-84; 8:45 am]

BILLING CODE 6325-01-M

Proposed Extension of a Form

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of Proposed Extension of BRI 49–233, "Continuance of Child's Eligibility to Receive Benefits".

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35) this notice announces a proposed extension of a form which collects information from the public. The BRI 49–233, Continuance of Child's Eligibility to Receive Benefits, was developed by the Office of Personnel Management, Civil Service Retirement System (OPM/CSRS), to determine continued survivor annuity eligibility for dependent children between the ages of 18 and 22 years. The form is sent at the end of each school year to collect information regarding the student's marital status and immediate plans to continue in school on a fulltime basis. Upon receipt of this completed form, OPM/CSRS determines whether or not benefits should be continued. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632–7720.

DATES: Comments on this proposal should be received on or before April 2, 1984.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415

and

Frank Reeder, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson on (202) 632–5472.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-8152 Filed 3-26-84; 8:45 am]

BILLING CODE 6325-01-M

Proposed Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of public information collection/recordkeeping requirements for OMB review and approval.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35, this notice announces a proposal to obtain OMB approval for the information collection/recordkeeping requirements of the Federal Employees Health Benefits Program. These requirements are contained in Title 41, Code of Federal Regulations, Chapter 16, which apply to the procurement policies and procedures for the administration of that program. For copies of this proposal call John Weld, Agency Clearance Officer, on (202) 632–7720.

ADDRESSES: Send or deliver comments on or before April 2, 1984.

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: Kevin Burns, on (202) 632–4670.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-8154 Filed 3-26-84; 8:45 am]

BILLING CODE 6325-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From the Bond/Escrow Requirement Relating To Sale of Assets by an Employer That Contributes to a Multiemployer Plan; the Kittinger Company

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted The Kittinger Company an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from this requirement was published on January 20, 1984 (49 FR 2567). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The request for an exemption and the PBGC response to the request are available for public inspection at the PGBC Communications & Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (160) at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254–4860.

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (29 CFR Part 2643), the BPGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purpose of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner

that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On January 20, 1984 (49 FR 2567), the PBGC published a request from The Kittinger Company ("Kittinger") for an exemption from the requirement of ERISA section 4204(a)(1)(B). On December 15, 1983, pursuant to an asset purchase agreement with General Mills, Inc. ("General Mills"), Kittinger purchased substantially all of the assets of the Kittinger division of General Mills.

In connection with this sale, Kittinger has assumed the responsibilities of General Mills under a collective bargaining agreement with the United Furniture Workers of America, AFL–CIO, Local #39, which requires contributions to the United Furniture Workers Pension Funds A ("Fund"). General Mills' potential withdrawal liability to the Fund has been estimated to be $200,000. The amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is $81,497 (the annual contributions required to be made by General Mills for the plan year preceding the sale).

Kittinger is a new corporation, and thus was unable to submit financial statements in compliance with PBGC regulation (29 CFR 2643.2(d)(7)). All of its common stock is held by a newly formed holding company, The Corporate Holding Company ("Holding Company"). Kittinger did submit *pro forma* unaudited financial statements for its own operations as of December 15, 1983 (net assets of about $3 million) and for the Holding Company as of March 1, 1984 (net assets of $40,000).

Kittinger stated that the request for an exemption should be granted on a *de minimis* basis. The average annual contributions made by all employers to the Fund for the three plan years preceding the plan year in which the sale occurred was $5,401,840. Thus, the amount of the bond/escrow is about one and one-half percent of the amount of employer contributions. When the notice of pendency for this request was published, the PBGC indicated that it was considering granting the request for an exemption on a *de minimis* basis. No comments were received in response to the notice. The PBGC believes that when, as in this request, the amount of the bond/escrow is very small in comparison to the total annual contributions to a plan, an exemption from the bond/escrow requirement would not significantly increase the risk of financial loss to the plan. *Heinemann's, Inc., et al.* 48 FR 29638, June 27, 1983.

Therefore, based on the facts of this case and the representations and statements made in connection with the request for exemption, the PBGC has determined that this request is *de minimis* in nature and thus an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purpose of Title IV of ERISA and would not significantly increase the risk of financial loss to the Fund. Accordingly, the PBGC hereby grants the request by Kittinger for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is made by the plan sponsor.

Issued at Washington, D.C. on this 16th day of March, 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-8135 Filed 3-26-84; 8:45 am]

BILLING CODE 7708-01-M

Pendency of Request for Exemption From Bond Escrow Requirement Relating To Sale of Assets by an Employer That Contributes to a Multiemployer Plan; G. Heileman Brewing Company, Inc. (Lone Star Brewing Company)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from G. Hileman Brewing Company, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 as amended. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years beginning after the sale. The PBGC is authorized to grant exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATES: Comments must be submitted on or before May 11, 1984.

ADDRESSES: All written comments (at least three copies) should be addressed to: Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. The request for exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4860. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plans years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller

shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above will be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Under ERISA section 4204(b)(2), the amount of the bond or escrow is doubled if the plan is in reorganization in the plan year in which the sale of assets occurs.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) and the contract-provision requirement of section 4204(a)(1)(C). The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1) (B) or (C) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on procedures for variances for sales of assets (29 CFR 2643.3(a)), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from G. Heileman Brewing Company, Inc. ("Heileman") to waive the bond/escrow requirement of ERISA section 4204(a)(1)(B). In the request, Heileman represents among other things, that:

1. Effective March 19, 1983, Heileman purchased the Lone Star Brewing Company ("Lone Star"), a wholly owned subsidiary of Pabst Brewing Company.

2. In connection with this sale, Heileman has assumed the responsibilities of Lone Star under a collective bargaining agreement with the International Association of Machinists and Aerospace Workers, Local 36, which requires contributions to the I.A.M. National Pension Fund, Benefit Plan A (the "Fund").

3. The estimated amount of Lone Star's withdrawal liability to the Fund is $529,562. The estimated amount of the bond/escow that would be required under ERISA section 4204(a)(1)(B) is $209,238 (the average annual contributions that Lone Star made to the Fund for the three plan years preceding the plan year in which the sale occurred).

4. In the purchase agreement, Lone Star agreed that, if the purchaser withdraws within the five year period commencing with the first plan year beginning after the date of the sale and fails to pay withdrawal liability, Lone Star would be secondarily liable for any withdrawal liability it would have had to the Fund but for the operation of ERISA section 4204.

5. According to its audited consolidated financial statements, Heileman had total net assets for its fiscal year ended December 31, 1982 of approximately $194 million. Heileman's average net income after taxes for its three fiscal years preceding the sale was $40.2 million.

6. Heileman has sent a copy of this request to the Fund and the collective bargaining representative of Lone Star's former employees by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending exemption to the above address, by May 11, 1984. All comments will be made a part of the record. Comments received, as well as the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C. on this 16th day of March, 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-8134 Filed 3-26-84; 8:45 am]

BILLING CODE 7708-01-M

Pendency of Request for an Exemption From the Bond Escrow Requirement Relating to a Sale of Assets by an Employer That Contributes To a Multiemployer Plan; Rock-Tenn Company

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from Rock-Tenn Company for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. Section 4204 (a)(1) provides that the sale of assets by an employer that contributes to a multi-employer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money is escrow for a five plan year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATES: Comments must be submitted on or before May 11, 1984.

ADDRESSES: All written comments (at least three copies) should be addressed to: Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. The request for exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254-4860. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, (ERISA), 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period

of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contibution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204. The bond or escrow described above will be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1)(B) does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on procedures for variances for sales of assets (29 CFR 2643.3(a)), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the Rock-Tenn Company ("Rock-Tenn") to waive the bond/escrow requirement of ERISA section 4204(c)(1)(B). In the request, Rock-Tenn represents, among other things, that:

1. On August 1, 1983, Rock-Tenn purchased the assets of the Partition/Mill Division and Dallas Folding Carton Plant of the Clevepak Corporation ("Clevepak").

2. In connection with the sale, Rock-Tenn has assumed the responsibilities of Clevepak under collective bargaining agreements with the following unions: (a) United Paperworkers International Union, AFL–CIO and Local Union No. 826; (b) United Paperworkers International Union, AFL–CIO and Local Union No. 1106; (c) United Paperworkers International Union, AFL–CIO and Philadelphia Local Union No. 286; (d) United Paperworkers International Union, AFL–CIO and Local Union No. 200; and (e) United Paperworkers International Union, AFL–CIO and Greater Milwaukee Local No. 200. These agreements require contributions to the Paper Industry Union-Management Pension Fund ("Fund"). The Fund has computed Clevepak's potential withdrawal liability to be $0. Clevepak is continuing to contribute to the Fund for operations other than those subject to this sale of assets. [The PBGC takes no position as to whether there has been or will be complete or partial withdrawal with respect to the Fund as a result of the sale of assets described in this notice.]

3. The amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is $138,200 (the annual contribution required to be made by Clevepak for the three plan years preceding the sale).

4. In the sale contract, Clevepak agreed that, if the purchaser withdraws and fails to pay withdrawal liability within five years of the date of the sale, Clevepak would be secondarily liable for any withdrawal liability it would have had to the Fund but for the operation of ERISA section 4204.

5. In accordance with PBGC regulation (29 CFR 2643.2(d)(7)), copies of Rock-Tenn's unaudited financial statements for its fiscal years 1980, 1981 and 1982 were submitted as part of the application. However, Rock-Tenn has asserted that the financial information is exempt from disclosure under the Freedom of Information Act (5 U.S.C 552(b)(4)).

6. Rock-Tenn stated that the request for an exemption should be granted on a *de minimis* basis. Based on information provided by the Fund, the average annual contributions made by all employers to the Fund for the three plan years preceding the plan year in which the sale occurred were $23,937,019. Thus, the amount of the bond/escrow is about six-tenths of one percent of the amount of employer contributions. The PBGC is considering granting this request on a *de minimis* basis.

7. A copy of this request has been sent by Rock-Tenn to the Fund and the collective bargaining representatives of Clevepak's former employees, by certified mail return receipt requested.

Comment

All interested persons are invited to submit written comments on the pending request for exemption to the above address, on or before May 11, 1984. All comments will be made a part of the record. Comments received, as well as the relevant information submitted in support of the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 16th day of March 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84–8133 Filed 3–26–84; 8:45 am]
BILLING CODE 7708–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0034]

Basic Capital Corporation; License Surrender

Notice is hereby given that, pursuant to Section 107.105 of the Small business Administration's (SBA) Rules and Regulations governing Small Business Investment Companies [13 CFR 107.105 (1983)]. Basic Capital Corporation, 32 West 39th Street, New York, New York 10018, incorporated under the laws of the State of New York, has surrendered its License No. 02/02–0034, issued by the SBA on December 2, 1960.

Basic Capital Corporation has complied with all conditions set forth by SBA for surrender of its license. therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Basic Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-8230 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0179]

Funds, Inc.; Issuance of a Small Business Investment Company License

On September 26, 1983, a notice was published in the **Federal Register** (48 FR 43754) stating that an application has been filed by Funds, Inc., 1930 George Street, Melrose Park, Illinois 60160, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)) for a license as a small business investment company.

Interested parties were given until close of business October 11, 1983, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA Issued License No. 05/05-0179 on February 28, 1984, to Funds, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-8231 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0145]

Mountain Ventures, Inc.; Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Mountain Ventures, Inc. (MVI), 911 North Main Street, P.O. Box 628, London, Kentucky 40741, a Federal Licensee under the Small Business Investment Act of 1958 (Act), as amended, has filed an application with the Small Business Administration (SBA) pursuant to section 312 of the Act and covered by § 107.903 of the Rules and Regulations, governing small business investment companies (13 CFR 107.903 (1984)) for approval of a conflict of interest transaction falling within the scope of the above Section of the Act and Regulations.

Subject to such approval, MVI proposes to invest $270,000 in Medical Management Corp. (MMC), Highway 27, Whitley City, Kentucky 42653, to increase its working capital.

The proposed financing is brought within the purview of Section 107.903 of the SBA Regulations since an associated company, Newventures Capital Corporation (NCC), is currently providing short-term financing to MCC. As such, NCC does not qualify as an Associate lending institution.

Notice is hereby given that any interested person may, not later than ten (10) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-8229 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0438]

New Publication Fund; License Surrender

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration's (SBA) Rules and Regulations governing Small Business Investment Companies [13 CFR 107.105 (1983)]. New Publication Fund, 350 East 81st Street, New York, New York 10028, incorporated under the laws of the State of New York, has surrendered its License No. 02/02-0438, issued by the SBA on October 26, 1982.

New Publication Fund has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of New Publication Fund is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-8228 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #615000]

Texas; Designation of Disaster Loan Area

Brooks and Matagorda Counties in the State of Texas constitute a disaster area because of a freeze which occurred during December 1983. Eligible small businesses may file applications for economic injury assistance until the close of business on December 20, 1984, at the address listed below:

U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054

U.S. Small Business Administration, 222 E Van Buren, Suite 500, Harlingen, Texas 78550

or other locally announced locations. The interest rate for eligible applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 21, 1984.

Marshall Parker,

Acting Administrator.

[FR Doc. 84-8227 Filed 3-26-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 20, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0491
Form Number: IRS Forms 6243/6013

Type of Review: Revision
Title: SBW Information Card/SBW Evaluation Questionnaire
OMB Number: 1545–0197
Form Number: Forms 5300, Schedule T and 5301
Type of Review: Revision
Title: Application for Determination for Defined Benefit Plan, Supp. Application for Approval of Employee Benefit Plans Under TEFRA, Application for Determination for Defined Contribution Plan
OMB Number: 1545–0028
Form Number: Forms 940 and 940PR
Type of Review: Revision
Title: Employer's Annual Federal Unemployment Tax (FUTA) Return
OMB Number: 1545–0035
Form Number: Forms 943, 943PR, 943A, 943A–PR
Type of Review: Revision
Title: Employer's Annual Tax Return for Agricultural Employees
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: 1515–0029
Form Number: Customs Form 7573
Type of Review: Revision
Title: Drawback Entry for Exported Articles
OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Gary Kowalczyk,
Departmental Reports, Management Office.

[FR Doc. 84–8132 Filed 3–26–84; 8:45 am]
BILLING CODE 4810–25–M

Customs Service

Application for Recordation of Trade Name: "The Drackett Company"

AGENCY: Customs Service, Treasury.
ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "THE DRACKETT COMPANY" used by the Drackett Company, a corporation organized under the laws of the State of Delaware, located at 5020 Spring Avenue, Cincinnati, Ohio 45232.

The application states that the trade name is used in connection with the following merchandise manufactured in the United States: household care products, including preparations for windows, floors, tile, etc.; furniture and furniture polishes; drain cleaners; air deodorants and disinfectants, etc.; mops and brooms.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before May 29, 1984.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (201–566–5765).

Dated: March 19, 1984.
Edward T. Rosse,
Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 84–8168 Filed 3–26–84; 8:45 am]
BILLING CODE 4820–02–M

Application for Recordation of Trade Name: "Westwood Pharmaceuticals Inc."

AGENCY: Customs Service, Treasury.
ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 4, 1946, as amended (15 U.S.C. 1124), of the trade name "WESTWOOD PHARMACEUTICALS INC.," a corporation organized under the laws of the State of Delaware, located at 468 Dewitt Street, Buffalo, New York 14213.

The application states that the trade name is used in connection with a wide range of dermatological products manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before May 29, 1984.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue,. NW., Washington, D.C. 20229 (202–566–5765).

Dated: March 19, 1984.
Edward T. Rosse,
Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 84–8167 Filed 3–26–84; 8:45 am]
BILLING CODE 4820–02–M

Application for Recordation of Trade Name: "Zimmer, Inc."

AGENCY: Customs Service, Treasury.
ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CRF 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ZIMMER, INC." used by Zimmer, Inc., a corporation organized under the laws of the State of Delaware, located in Warsaw, Indiana 46580.

The application states that the trade name is used in connection with the marketing of orthopaedic, surgical, patient-care and hospital products manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before May 29, 1984.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:
Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Dated: March 19, 1984.

Edward T. Rosse,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 84-8169 Filed 3-26-84; 8:45 am]
BILLING CODE 4820-02-M

VOL 49 ISS 60 MR 27 1984 UMI

Sunshine Act Meetings

Federal Register
Vol. 49, No. 60
Tuesday, March 27, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

March 22, 1984.

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Thursday, March 29, 1984 following the Open Meeting, which is scheduled to commence at 2:00 P.M. in Room 856, at 1919 M Street, N.W. Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Applications for Review of rulings dismissing an application and approving settlement agreements in the Yucca Valley, California, comparative FM proceeding (Docket Nos. 82–135 et. al.).

Hearing—2—Petition for Reconsideration in the Ventura, California FM proceeding (Docket Nos. 80–366, 80–367 and 80–369).

These items are closed to the public because they concern Adjudicatory Matters (See 47 CFR 0.603(j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission March 21, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider these items in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sally Lawrence, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Federal Communications Commission.

[FR Doc. 84–8326 Filed 3–23–84; 4:10 pm]

BILLING CODE 6712–01–M

2

FEDERAL COMMUNICATIONS COMMISSION

March 22, 1984.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 29, 1984, which is scheduled to commence at 2:00 P.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Private Radio—1—Title: Report and Order concerning aeronautical advisory station rules in the Aviation Services. Summary: The FCC will consider whether to amend rule Part 87 (Aviation Services) to remove the one aeronautical advisory station (unicom) per airport limitation at airports with control towers. The FCC will also consider whether to modify the rules concerning the frequencies available for assignment at airports which do not have control towers.

Private Radio—2—Title: Order in the Matter of Petition for Reconsideration of Specialized Mobile Radio System licensee Texas Two-Way, Inc. seeking reconsideration of the Commission's decision in *Texas Two-Way, Inc.*, FCC 83–472 (released October 26, 1983). Summary: The Commission will consider Texas Two-Way's argument that the Commission's *Memorandum Opinion and Order*, PR Docket No. 79–191, *et al.*, 48 FR 51917 (November 15, 1983), requires reconsideration of the denial of Texas Two-Way's Application for Review.

Audio—1—Title: The acceptability for filing of applications by E. Kaye Johnson for new commercial FM translator stations, in view of the requirement of express written retransmission consent pursuant to Section 325(a) of the Communications Act and Section I, Question 4(b) of FCC Form 346. Summary: The Commission will consider whether the applications contain sufficient express written retransmission consent and are technically feasible, and thus are acceptable for filing.

Audio—2—Title: Application for Review filed by Anthony R. Martin-Trigona and New Haven Radio, Inc., jointly and severally, of the application of Daniel Meister, Esq., Trustee in Bankruptcy, for consent to the involuntary assignment of the license of WNHC(AM), New Haven, Connecticut. Summary: The Commission considers an application for review filed by Anthony R. Martin-Trigona and New Haven Radio, Inc.

Audio—3—Title: Petition for Extraordinary Relief by West Coast Media, Inc., KIFM, San Diego, California. Summary: The Commission will consider the petition for Extraordinary Relief by West Coast Media, Inc., to permit "distress sale" of KIFM, San Diego, California, or, alternatively, interim operation.

Policy—1—Title: Application for Review filed by Stone Communications, Inc. seeking review of an FM rule making action. Summary: The Commission will consider an Application for Review of an action assigning Class C FM Channel 293 for Brewer, Maine, and denying the request for modification of Station WGUY–FM to specify the new channel.

Policy—2—Title: Mass Media Docket No. 82–441 relating to subscription television authorization for noncommercial educational television station licensees. Summary: The Commission will consider whether to authorize noncommercial educational television station licensees to transmit programming on a subscription basis.

Policy—3—Title: Amendment of Parts 2 and 73 of the Commission's Rules Concerning use of Subsidiary Communications Authorizations. Summary: The Commission will consider a recommendation by the Mass Media Bureau concerning maximum peak modulation levels for FM broadcast.

Policy—4—Title: Amendment of Part 76, Subpart J, of the Commission's Rules and Regulations Relative to Cable Television System's; and Postponement of Divestiture Requirement of 76.501 Relative to Prohibited Cross-Ownership in Existence on or before July 1, 1970. (Docket 20423). Summary: The Commission will consider whether to require divestiture of all commonly-owned, co-located cable/broadcast combinations which were in existence on or before July 1, 1970.

Policy—5—Title: Reexamination of the Commission's Rules and Policies regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities. (Dockets Nos. M 83–46, 20521, 20548, BC 78–239; RMs 3653, 3695, 4045.) Summary: The Commission considers a variety of modifications to its ownership attribution rules, including the establishment of a new benchmark at which to consider a stock interest as an ownership interest, the continuation of its use of separate benchmarks depending on the size of the licensee or the nature of the investor, the attribution of various kinds of nonvoting interests, the correct attribution to ultimate owners in vertical chains of ownership, the treatment of officers and directors of parent and sister corporations of licensee, and the reporting of the ownership of a licensee to the Commission.

Policy—6—Title: Amendments of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorization. Summary: The Commission will consider Petitions for Reconsideration of the *First Report and Order* in BC Docket No. 82–536, FM subchannels.

Policy—7—Title: The use of subcarrier frequencies in the aural baseband of television transmitters. Summary: The Commission will consider whether to allow expanded use of subcarriers in the aural portion of television signals. Uses could include, for example, stereophonic aural programming, a second language channel, paging, or most any other ancillary purpose.

Enforcement—1—Title: Application for Review of a Bureau ruling denying a Fairness Doctrine complaint, filed by Brent Buell, et al. Summary: The Mass Media Bureau found that complainants failed to establish a prima facie fairness complaint. The Commission will consider whether this finding is correct.

Enforcement—2—Title: Application for Review of a Bureau ruling denying a Fairness Doctrine complaint, filed by the Yes to Stop Callaway Committee. Summary: The Mass Media Bureau found that television station KTVI was not unreasonable in concluding that the need for the Callaway nuclear plant was not a current controversial issue of public importance. The Commission will consider whether this finding is correct.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sally Lawrence, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico

Secretary, Federal Communications Commission.

[FR Doc. 84–8327 Filed 3–23–84; 4:50 pm]

BILLING CODE 6712–01–M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 21, 1984.

TIME AND DATE: 2:00 p.m., Monday, March 26, 1984.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will continue with a previously announced meeting and discuss the following:

1. Secretary of Labor, MSHA v. Carbon County Coal Company, Docket No. WEST 82–10L

It was determined by a unanimous vote of Commissioners that the meeting described above be continued and that no earlier announcement of the continuation was possible. 5 U.S.C. § 552b(e)(1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84–8245 Filed 3–23–84; 10:48 am]

BILLING CODE 6735–01–M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 21, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, March 28, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Bobby Holt v. Southern Stone Co., Docket No. Se 83–49–DM; Petition for Discretionary Review. (Issues include whether the administrative law judge erred in concluding that the operator did not discriminate against the miner and in dismissing the miner's discrimination complaint.)

2. Richard Bjes v. Consolidation Coal Company, Docket No. Penn 82—26–D. (Issues include whether the administrative law judge erred in concluding that the operator discriminated against the miner in violation of Section 105(c) of the Mine Act.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84–8246 Filed 3–23–84 10:48 am]

BILLING CODE 6735–05–M

5

THE FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Monday, April 2, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204

Dated: March 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–8325 Filed 3–23–84; 4:00 pm]

BILLING CODE 6210–01–M

6

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Monday, April 2, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 731–TA–134 and –135 (Color Television Receivers from the Republic of Korea and Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–8313 Filed 3–23–84; 3:05 pm]

BILLING CODE 7020–02–M

7

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 2:30 p.m., Thursday, April 5, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Presentation of service awards.
2. Petitions and complaints:
   a. Optical waveguide fibers (Docket No. 1036).
3. Investigation 731–TA–136 (Cyanuric Acid and Its Chlorinated Derivatives from Japan)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth K. Mason,

Secretary.

[FR Doc. 84–8314 Filed 3–23–84; 3:05 pm]

BILLING CODE 7020–02–M

8

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–84–11]

TIME AND DATE: 9 a.m., Tuesday, April 3, 1984.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Safety Study* on the General Deterrence Approach to Drunk Driving.
2. *Highway Accident Report*—Valley Supply Company Truck Towing Farm Plows/Anchor Motor Freight, Inc., Car Carrier Truck/N.Y. Association for Retarded Children Bus Collisions and Fire, State Route 8, near Holmesville, New York, April 5, 1983.
3. *Highway Accident Report*—Samuel Coralozzo Company, Inc., Tractor Cargo TAnk Semitrailer, Mechanical Failure, Overturn, and Fire, Interstate 76, Philadelphia, Pennsylvania, October 7, 1983.
4. *Recommendations* to the Federal Highway Administration and Mack Trucks, Inc., concerning failure of commercial vehicle suspension components.
5. *Recommendations* to the Boston Gas Company, the American Gas Association, and the American Public Gas Association concerning natural gas overpressure and fire in East Boston, Massachusetts, September 23, 1983.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

March 23, 1984.

[FR Doc. 84–8275 Filed 3–23–84; 12:53 pm]

BILLING CODE 4910–58–M

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 12, 1984.

PLACE: Suite 316, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mr. Earl R. Ohman, Jr. (202) 634–4015.

Dated: March 23, 1984.

Earl R. Ohman, Jr.,

Acting General Counsel.

[FR Doc. 84–8283 Filed 3–23–84; 8:45 am]

BILLING CODE 7600–01–M

10

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 19, 1984.

PLACE: Suite 316, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mr. Earl R. Ohman, Jr. (202) 634–4015.

Dated: March 23, 1984

Earl R. Ohman, Jr.,

Acting General Counsel.

[FR Doc. 84–8282 Filed 3–23–84; 2:40 pm]

BILLING CODE 7600–01–M

11

PAROLE COMMISSION

National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters.)

TIME AND DATE: 2:00 p.m., Thursday, April 5, 1984.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 3 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: March 22, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 84–8315 Filed 3–23–84; 3:05 p.m.]

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March 27, 1984

Part II

Environmental Protection Agency

Review of Standards of Performance for New Stationary Sources; Grain Elevators

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2517-3]

Review of Standards of Performance for New Stationary Sources; Grain Elevators

AGENCY: Environmental Protection Agency.

ACTION: Review of Standards.

SUMMARY: The existing standards of performance to control emissions of particulate matter from grain elevators have been reviewed under the Clean Air Act. This review indicates that no revision to the standards is necessary.

DATES: *Comments.* Comments must be received on or before May 29, 1984.

ADDRESSES: *Comments.* Send comments (in duplicate if possible) to the Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket No. A–83–14.

Review Document. The review document, which summarizes information gathered during the review, may be obtained from the EPA Library (MD–35), Research Triangle Park, North Carolina, 27711, telephone number (919) 541–2777. Please refer to "Review of Standards of Performance for Grain Elevator Industry, EPA–450/3–84–001," January 1984.

Docket. Information used in reviewing the standards is contained in Docket No. A–83–14. The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

For Further information on policy questions contact: Mr. Robert Ajax, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, Telephone: (919) 541–5624.

For further information on technical questions contact: Mr. James U. Crowder, Industrial Studies Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, Telephone: (919) 541–5601

SUPPLEMENTARY INFORMATION:

Background

In January 1977, (42 FR 2842) standards of performance were proposed, under Section 111 of the Clean Air Act, to control emissions of particulate matter from grain elevators. The standards were promulgated on August 3, 1978 (43 FR 34340).

The Clean Air Act requires that standards of performance be reviewed every 4 years. The principal objectives of the review are to determine, (a) if the new source performance standards (NSPS) are being achieved based upon performance tests, (b) if there are new or improved emission control systems available which are capable of achieving additional emission reduction, (c) if there are unusual operating problems with emission control systems or problems in conducting performance tests, and (d) the capital and annualized costs of operating emission control systems. The review has been completed, draft copies of the findings were distributed to government, environmental, and industry representatives and discussed at the April 26, 1983, meeting of the National Air Pollution Control Techniques Advisory Committee NAPCTAC).

The NSPS apply only to new, modified, or reconstructed grain elevators with a permanent storage capacity of more than 88,100 cubic meters (m^3) or 2.5 million bushels. Country elevators with smaller capacities are exempted specifically via Section 111(i) of the Clean Air Act, as amended in 1977. The standards also apply to new, modified, or reconstructed grain storage elevators at wheat mills, flour mills, wet corn mills, dry corn mills (human consumption), rice mills, and soybean extraction plants with a permanent grain storage capacity of more than 35,200 m^3 or 1.0 million bushels.

The standards limit particulate matter emissions fom 10 types of affected facilities at grain elevators by limiting the visibility of emissions released to the atmosphere at the affected facilities and the concentration of particulate matter exhausted from the emission control devices. The affected facilities are each truck loading station, truck unloading station, railcar loading station, railcar unloading station, barge or ship loading station, barge or ship unloading station, grain dryer, and all grain handling operations.

The standards can be summarized as follows:

(a) Truck loading station—visible emissions may not exceed 10 percent opacity.

(b) Truck unloading station, railcar loading station, and railcar unloading station—visible emissions may not exceed 5 percent opacity.

(c) Ship or barge loading station—visible emissions may not exceed 20 percent opacity.

(d) Ship or barge unloading station—specified equipment or its equivalent must be used.

(e) Grain dryer—specified equipment must be used, or visible emissions may not exceed 0 percent opacity.

(f) All grain handling operations—visible emissions may not exceed 0 percent opacity.

(g) Emission control devices—visible emissions may not exceed 0 percent opacity; and the concentration of particulate matter in the exhaust gas discharged to the atmosphere may not exceed 0.023 g/dscm (0.01 gr/dscf).

Findings

Overview of the Grain Elevator Industry

The grain elevator industry consists of about 15,000 existing facilities, widely dispersed throughout the United States, with the majority located in the grain belt States. Grain elevator storage capacity can range from a few hundred thousand bushels for small country elevators to several million bushels for large terminals. Grain elevators will handle many times more grain on an annual basis than their storage capacity, and the industry prefers to be known as "grain handling facilities" rather than grain elevators.

Growth of grain production is unclear at this time because of world market uncertainties, surplus supplies, and governmental policies. However, it is anticipated that some new and modified grain elevator facilities will be constructed over the next 5 years and be subject to the NSPS.

Particulate Matter and Emissions Control Technology

Grain elevators are significant sources of particulate matter if good capture and control devices are not used. Particulate matter (PM) emissions are generated at all points where grain is handled. However, most modern grain handling facilities have installed enclosed grain handling equipment (e.g., elevator legs) and enclosed conveyor systems (at least all transfer points) and use baghouses exclusively as the control devices. All NSPS facilities are in compliance with the current standard and PM emissions are reduced substantially. For example, a typical facility that handles 80 million bushels of grain per year and has 5 million bushels of storage capacity

would emit about 2600 tons of PM per year without NSPS controls. If the plant were to meet the NSPS, emissions of PM would be reduced by about 96 percent or to about 100 tons of PM per year.

The EPA Regional offices, State and local air pollution control agencies, and industry representatives were contacted to determine the number and location of new, modified, or reconstructed facilities subject to the existing NSPS. Available test data and information from State and local air pollution control agencies and industry representatives regarding all facets of the existing standards were solicited. During the review, six grain elevators were located that were subject to the existing standards. Each of these grain elevators was visited and found to be in compliance with the existing standards. Additionally, 12 other well-controlled grain elevators were visited to obtain information on control technology and costs.

Based on the data and information gathered during these visits, no significant problems associated with the existing standards of performance were identified. The emission control technology and its performance remain essentially the same as that analyzed during the original investigations to develop the existing standards. No demonstrated particulate control technology was found which was more effective than fugitive emissions capture and ventilation to baghouses. As expected, the costs of emission control have increased somewhat in response to inflation; however, they remain quite reasonable. The average cost effectiveness of emission control, for example, ranges from a low of about $90 per ton of PM for the standard limiting emissions from grain dryers to a high of about $870 per ton for the standard limiting emissions from ship loading. The plant average cost-effectiveness of $500 per ton of PM removed.

Based on this review, no revisions to the existing standards of performance are considered appropriate. However, in the course of the reviews, various operating practices were observed and various questions raised which deserve comment or clarification of the existing standards. Each of these aspects is discussed below.

Truck Unloading

The existing standard for truck unloading is based on a shed that has doors that can be closed before unloading the truck. This system was found to still be the best demonstrated system of emission reduction. During visits to some new truck unloading facilities not subject to the standard, the EPA observed that those facilities that were open on each end did not reduce emissions to the level of the NSPS opacity standard. Only those truck unloading facilities with doors closed on one end of the truck unloading station were able to reduce opacity to the level of the standard.

Barge or Ship Loading

Compliance with the NSPS opacity standard for barge and ship loading was of some concern to the National Grain and Feed Association. In fact, the Association commented that the barge and ship loading opacity standard should be eased.

During loading, two types of pouring spouts can be used. One type is the standard telescoping spout. The spout can direct the grain into a ship's hold while the hold is covered with canvas. Another approach is to maintain the telescoping spout at a location within a few inches of the grain surface. This involves another telescoping pouring spout which uses a choke or controlled feeder on the end of the spout. Many loading spouts have aspiration at the end of the spout that captures the dust and directs it to a baghouse. These two systems were found to still be the best control techniques for capture and collection of particulate emissions.

All of these systems can comply with the NSPS opacity standard for barge and ship loading; however, they do require very careful and skillful operation of the loading spouts by the operators. The highest emissions during loading come during "topping off" or filling about the last 25 percent of the ship's hold, especially when tarps have to be removed so the operators can be sure the hold is completely filled, the grain is level, and the ship is balanced. Even under these conditions, however, careful operation of the loading spout will ensure compliance with the NSPS opacity limit of 20 percent. Observations during the review did not indicate a need to change the NSPS.

Dryers

During the review, the EPA found that one dryer manufacturer is using a woven wire screen with rectangular openings of 0.0486 inch by 0.5 inch to control emissions from the dryer rather than the mesh screen and perforated plates with circular openings that were in widespread use when the NSPS was developed. Observations by air pollution control enforcement personnel associated with the State of North Dakota indicate that this system can comply with the NSPS opacity limit for dryers. Consequently, there is no need to change the existing equipment standard to accommodate this type of woven wire screen.

Fugitive Emission Opacity Observations

Observing the opacity of fugitive emissions is sometimes difficult. EPA Reference Method 9 should be used by having the observer positioned so that he or she has a clear view of the emission source and the potential fugitive emissions, with the sun or other light source at the observer's back. The observer's position should be at least 15 feet from the source of emissions. The line of sight should be approximately perpendicular to the general flow of the potential fugitive emissions and readings of opacity should be made at the point of highest opacity. The development of the existing NSPS was based on the use of these techniques and, therefore, remains consistent with Method 9.

Modifications

Some confusion apparently exists concerning how the addition of storage capacity to an existing facility should be considered. Storage capacity determines only whether the NSPS potentially applies to some portion of a grain elevator. It does not determine whether any individual grain handling operation, such as a dryer or a ship loading station, has been modified. To be subject to the NSPS as a modified facility, an existing grain handling operation must be altered or changed in some manner which results in an increase in emissions. However, this alteration or change would exclude production increases, if accomplished without by capital expenditures as defined in the General Provisions of Part 60 of the Code of Federal Regulations which apply to all NSPS. Consequently, the addition of storage capacity to an existing grain elevator in the absence of any other alteration or change is not considered a modification of any of the individual existing grain handling operations at the elevator. However, if a grain storage elevator (mill) with 800,000 bushels of existing storage capacity adds another 800,000 bushels of new storage capacity and also adds associated new grain handling equipment, then the new grain handling equipment associated with the 800,000 bushels of new storage capacity would be subject to the standard. Any existing, unchanged grain handling equipment at the mill would not be covered by the standard.

Applicability Definition

Some confusion also apparently exists concerning the applicability of the NSPS to grain storage plants. For example, one

company questioned the applicability of the NSPS to a case in which the company constructed a large storage building to hold several million bushels of grain. The grain is unloaded and loaded from this plant and no other handling (screening, drying, etc.) is done to the grain. The individual loading, unloading, and grain handling operations at this plant would be subject to the NSPS, provided the permanent storage capacity is greater than 88,100 m^3 (2.5 million bushels), because the plant would still be considered a grain elevator.

Risks of Explosions

Many persons who commented on the proposed standards in 1978 were concerned about the safety aspects of enclosing grain handling areas and the possible increased risk of dust explosions at grain elevators resulting from the addition of control devices. Following some large grain elevator explosions in 1977, industry, labor, and government increased their explosion prevention efforts. One of these efforts, initiated by the Occupational Safety and Health Administration (OSHA), the Department of Agriculture, and the National Institute of Occupational Safety and Health (NIOSH), was a request for the National Academy of Sciences National Materials Advisory Board to establish a panel to study the grain-handling industry and to recommend measures to reduce explosion hazards. The panel included grain elevator and safety experts from the academic community, grain elevator owners and operators, contractors who construct elevators, vendors, insurance underwriters, government personnel, and other safety experts.

In 1982, the panel released their report, "Prevention of Grain Elevator and Mill Explosions." In this report, one of the top priorities for safe operation of grain elevators or mills is to remove the dust being generated during grain handling to keep it from being in a confined area or collecting or surfaces of equipment, floors, or walls. To accomplish this, the panel recommended that all dust generator systems be enclosed or hooded, and aspirated to a control device. This is consistent with the existing NSPS.

Small Elevators

Some commentators on the standards proposed in 1977 erroneously believed that the NSPS covers small country elevators as well as large grain elevators. Consistent with the 1977 Clean Air Amendments, the NSPS applied only to grain storage elevators (mills) of one million bushels of storage capacity or greater, and grain handling elevators of 2.5 million bushels of storage capacity or greater. Small country elevators are not covered by the NSPS.

Reporting and Record Keeping Requirements

Two types of reporting are associated with the existing standard. First, there are notification requirements, which enable EPA to keep abreast of facilities that are or would be subject to the standards. Second, there is reporting of the results of performance tests that have been or will be conducted to determine compliance with the standards. These reports are required by the General Provisions of 40 CFR Part 60, which apply to all NSPS. No changes in the existing reporting and record keeping requirements are being proposed.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metal, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

Dated: March 16, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-7828 Filed 3-26-84; 8:45 am]

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federal register

Tuesday
March 27, 1984

Part III

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1088]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: March 20, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection expect to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd., Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
ISSUED MARCH 20, 1984

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
-KEYSTONE ENERGY OIL &		GAS PRODUCTIO RECEIVED: 02/24/84 JA: NY							
8422525	7139	3100918487		103		107-TF C GARDINER #3	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422529	7129	3100918466		103		107-TF GARDINER #2	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422596	7155	3100918637		103		107-TF MOENCH/TANNING #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422527	7135	3100918425		103		107-TF RAYMOND HILL #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422528	7133	3100918467		103		107-TF RONALD PRIEST #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422534	7131	3100918485		103		107-TF WM JARRETT #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8422526	7137	3100918484		103		107-TF WM JARRETT #2	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
-LENAPE RESOURCES CORP		RECEIVED: 02/24/84 JA: NY							
8422521	5623	3112117613		108		A J DRIES #1 LRC #136	LEICESTER	9.0	ELIZABETHTOWN GAS
8422522	5624	3112117617		108		A J DRIES UNIT #1 LRC #135	WILDCAT	15.7	ELIZABETHTOWN GAS
8422517	5697	3112113998		108		B GASTON #1 LRC #28	LEICESTER	4.4	ELIZABETHTOWN GAS
8422581	5616	3105117308		108		B S DONMAN #1 LRC #97	CALEDUNIA	18.8	ELIZABETHTOWN GAS
8422514	5635	3112117075		108		C A OLSOWSKY UNIT #1 LRC #108	LEICESTER	10.5	ELIZABETHTOWN GAS
8422512	5633	3112117079		108		D G BUTLER #1 LRC #111	PERRY	10.9	ELIZABETHTOWN GAS
8422523	5625	3112117295		108		E KINGSLEY UNIT #1 LRC #128	LEICESTER	13.2	ELIZABETHTOWN GAS
8422511	5632	3112117208		108		EMERLING FARMS UNIT #1 LRC #112	LEICESTER	15.7	ELIZABETHTOWN GAS
8422589	5631	3112117618		108		H B GOOD UNIT #1 LRC #113	WILDCAT	17.9	ELIZABETHTOWN GAS
8422515	5639	3112116289		108		HALMA #2 LRC #30	LEICESTER	11.0	ELIZABETHTOWN GAS
8422510	5638	3112117080		108		L WOLFGANG #1 LRC #114	LEICESTER	7.5	ELIZABETHTOWN GAS
8422516	5640	3112113996		108		ONEIL #1 LRC #29	LEICESTER	8.2	ELIZABETHTOWN GAS
8422518	5698	3112113971		108		R L BLANKE #2 LRC #27	LEICESTER	2.6	ELIZABETHTOWN GAS
8422513	5634	3112117049		108		R L HALMA #5 LRC #110	LEICESTER	15.7	ELIZABETHTOWN GAS
8422528	5641	3112113999		108		SIEBERT #1 LRC #20	LEICESTER	16.9	ELIZABETHTOWN GAS
8422524	5626	3112117233		108		TAYLOR FARMS #1 LRC #121	LEICESTER	11.2	ELIZABETHTOWN GAS
8422585	5629	3112117238		108		TAYLOR FARMS UNIT #1 LRC #117	LEICESTER	7.4	ELIZABETHTOWN GAS
8422507	5628	3112117231		108		TAYLOR FARMS UNIT #2 LRC #118	LEICESTER	17.6	ELIZABETHTOWN GAS
8422519	5642	3112113963		108		W GRAHAM #1 LRC #19	LEICESTER	16.2	ELIZABETHTOWN GAS
-TEMPLETON ENERGY INC		RECEIVED: 02/24/84 JA: NY							
8422505	7019	3101318367		103		107-TF DEWEY #1 - #736	LAKESHORE	0.0	TENNESSEE GAS PIP
-UNIVERSAL RESOURCES HOLDINGS INC		RECEIVED: 02/24/84 JA: NY							
8422504	7141	3101318688		103		107-TF WALKER #1	LAKE SHORE	20.0	NATIONAL FUEL GAS
OKLAHOMA CORPORATION COMMISSION									
-AMERICAN QUASAR PETROLEUM CO		RECEIVED: 02/24/84 JA: OK							
8422663	27393	3505121140		107-DP		WOOTTEN TRUST #1-30	SEC 30 T4N R5W	0.0	TRANSOK PIPE LINE
-AMOCO PRODUCTION CO		RECEIVED: 02/24/84 JA: OK							
8422636	26558	3513900000		108		BURROWS GAS UNIT "A" #1	GUYMON HUGOTON - CHAS	15.0	PHILLIPS PETROLEU
8422638	26560	3513900000		108		SHARP GAS UNIT #1 - (3RD FILING)	GUYMON HUGOTON - CHAS	16.2	PHILLIPS PETROLEU
8422639	26561	3505935297		108		STATE OF OKLAHOMA GAS UNIT "W" #1	MOCANE LAVERNE - MORR	11.3	MICHIGAN WISCONSI
8422637	26559	3513900000		108		TILGHMAN GAS UNIT #1	GUYMON HUGOTON - CHAS	9.8	PHILLIPS PETROLEU
-ARKOMA PRODUCTION CO		RECEIVED: 02/24/84 JA: OK							
8422629	26165	3506124626		108		PATTERSON #2	KINTA	800.0	ARKANSAS LOUISIAN
-C J CASSELMAN		RECEIVED: 02/24/84 JA: OK							
8422661	26241	3511124443		108		PINKSTON #2	MORRIS	14.5	PHILLIPS PETROLEU

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-CITATION ENERGY CORP				RECEIVED:	02/24/84	JA: OK			
8422659	22176	3504723296		103		MORTON #2-31	SOONER TREND	1.0	EXXON CO U S A
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	02/24/84	JA: OK			
8422635	26553	3513720995		108		STONEBRAKER "L" #2	WEST STONEBRAKER	2.4	NORTHERN NATURAL
-ENERGY QUEST INC				RECEIVED:	02/24/84	JA: OK			
8422642	26660	3507121840		108		HINTON 1-A	UNNAMED	596.0	CHASE EXPLORATION
-FLINT J A				RECEIVED:	02/24/84	JA: OK			
8422650	26260	3506321829		103		JACK #1	HORNS CORNER	550.0	MEGA NATURAL GAS
8422651	26624	3506321672		103		LOWRANCE #1	YEAGER	132.8	MEGA NATURAL GAS
-FUNK EXPLORATION INC				RECEIVED:	02/24/84	JA: OK			
8422668	22891	3500722403		102-4	103	ROSS #1-10	SIX MILE WEST	330.0	PANHANDLE EASTERN
-GOOD D MICHAEL				RECEIVED:	02/24/84	JA: OK			
8422646	26684	3509322794		103		KEETON "C" #1	CHEYENNE VALLEY	0.0	DELHI GAS PIPELIN
-HAWKINS OIL & GAS INC				RECEIVED:	02/24/84	JA: OK			
8422655	24283	3504723293		102-4		ZION #1-16	S E ZION	42.0	UNION TEXAS PETRO
-KENNEDY & MITCHELL INC				RECEIVED:	02/24/84	JA: OK			
8422640	26685	3513921258		108		NORA #26-387	DOMBEY (SW SW 26-5N-1	8.7	NORTHERN NATURAL
-LEAR PETROLEUM EXPLORATION INC				RECEIVED:	02/24/84	JA: OK			
8422644	24568	3501521366		102-4		BLOOD #1-5	WILDCAT	150.0	PRODUCERS GAS CO
-MARSHALL OIL CORP				RECEIVED:	02/24/84	JA: OK			
8422654	23316	3509500000		102-4		WHITEOAK ROYALTY #1		0.0	NATURAL GAS PIPEL
-MOBIL OIL CORP				RECEIVED:	02/24/84	JA: OK			
8422647	26687	3501900000		108		COUNTYLINE UNIT #13-20 (JORDON #20)	SHO VEL TUM	1.0	OKLAHOMA NATURAL
-O I L ENERGY INC				RECEIVED:	02/24/84	JA: OK			
8422649	26238	3500720721		103		MCCLOY #1-27	NE NOBLE	205.0	
-OKTEX OIL & GAS INC				RECEIVED:	02/24/84	JA: OK			
8422652	26652	3511124731		103		HULEN #1	HECTORFIELD	72.0	PHILLIPS PETROLEU
8422641	26653	3511124732		103		HULEN #2	HECTORFIELD	72.0	PHILLIPS PETROLEU
-PHILLIPS OIL OPERATING CO				RECEIVED:	02/24/84	JA: OK			
8422644	26676	3500320261		108		TUXHORN #1		38.0	PIONEER GAS PRODU
8422643	26677	3500300000		108		ZIMMERMAN #1		18.3	AMINOIL USA INC
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	02/24/84	JA: OK			
8422628	26348	3513900000		108		BERRY G #2	GUYMON HUGOTON - COUN	8.0	MICHIGAN WISCONSI
-PTL RANCH MINISTRIES				RECEIVED:	02/24/84	JA: OK			
8422657	23637	3510500009		102-2		S KUEHN #1	WILDCAT	8.0	R E M INDUSTRIES
-RAMBLER OIL CO				RECEIVED:	02/24/84	JA: OK			
8422669	22357	3504922018		102-4		WATKINS #1-10		0.0	
-RICKS EXPLORATION CO				RECEIVED:	02/24/84	JA: OK			
8422665	24527	3504321707		102-2		CATCHING #7-A	S SEILING	7.0	PHILLIPS PETROLEU
-SEARCH DRILLING CO				RECEIVED:	02/24/84	JA: OK			
8422632	26512	3500722274		103		KAMP #1-33	MOCANE LAVERNE	75.0	PHILLIPS PETROLEU
-SEIGEL PETROLEUM CO				RECEIVED:	02/24/84	JA: OK			
8422662	26164	3510721727		103		FRANKS #1		120.4	SWAN CORP
-SIDWELL OIL & GAS INC				RECEIVED:	02/24/84	JA: OK			
8422631	26492	3500700000		108		JOHNSON #1	OKLAHOMA DOLOMITE	0.6	EL PASO NATURAL G
8422634	26552	3500900000		108		KNOX #1	OKLAHOMA DOLOMITE	0.2	EL PASO NATURAL G
8422633	26542	3500900000		108		RAY #1	OKLAHOMA DOLOMITE	0.1	EL PASO NATURAL G
-SOUTHPORT EXPLORATION INC				RECEIVED:	02/24/84	JA: OK			
8422656	24229	3505121371		102-4		KAHLE #1-14	HENNEKAN	72.0	
-TEXACO INC				RECEIVED:	02/24/84	JA: OK			
8422648	26632	3501922877		103		M LUCAS "A" #3	UNOVELTUM	871.0	
-THE GHK COMPANY				RECEIVED:	02/24/84	JA: OK			
8422630	26381	3512920493		108		FOWLER #1-18		21.0	EL PASO NATURAL G
-THREE SANDS OIL INC				RECEIVED:	02/24/84	JA: OK			
8422666	24472	3510321938		102-2	103	H T SMITH #3-34		36.5	ARCO OIL & GAS CO
-TOWNER PETROLEUM CO				RECEIVED:	02/24/84	JA: OK			
8422660	21452	3501521292		102-4	103	PARTON HEIRS #18-1		0.0	PIONEER GAS PRODU
-TRIMEHA INC				RECEIVED:	02/24/84	JA: OK			
8422645	26680	3501722521		103		KLEPPER #1-33	S W MUSTANG	98.0	PHILLIPS PETROLEU
-TXO PRODUCTION CORP				RECEIVED:	02/24/84	JA: OK			
8422667	24210	3513723398		102-4	103	GARRIBSON "B" #1	S E MARLOW	0.0	
-VACU-MAID INC				RECEIVED:	02/24/84	JA: OK			
8422653	26219	3507100000		108		GILLIG #1A		25.8	COGAS INC
-VALIDUS, INC.				RECEIVED:	02/24/84	JA: OK			
8422658	23079	3510300000		103		MCGUAR #1	S PERRY	1.0	AMINOIL USA INC

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** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE, NM
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-AMERADA HESS CORPORATION				RECEIVED:	02/27/84	JA: NM K			
8422549	NM-0954-83	3003905892		108		J APACHE "A" #3 (DUAL GAS)	OTERO	12.9	EL PASO NATURAL G
8422599	NM 0893-83	3003905951		108		J APACHE "F" #7 (DUAL GAS)	OTERO	12.8	EL PASO NATURAL G
-AMOCO PRODUCTION CO				RECEIVED:	02/27/84	JA: NM K			
8422554	NM-941-83	3004525614		103		BELL FEDERAL GAS COM "A"/TRUE #1E	BASIN - DAKOTA	29.7	EL PASO NATURAL G
8422575	NM 980-83	3004506721		108		C M MORRIS "A" #1	FULCHER KUTZ - PICTUR	10.0	SOUTHERN UNION GA
8422587	NM-943-83	3004525138		103		GALLEGOS CANYON UNIT #158E	BASIN DAKOTA	34.7	EL PASO NATURAL G
8422588	NM-929-83	3004524601		103		GALLEGOS CANYON UNIT #219E	BASIN - DAKOTA	18.0	EL PASO NATURAL G
8422555	NM-942-83	3004524613		103		GALLEGOS CANYON UNIT #228E	BASIN DAKOTA	27.8	EL PASO NATURAL G
8422563	NM 902-83	3003921321		108		JICARILLA APACHE 102 #22	TAPACITO - PICTURED C	16.0	GAS CO OF NEW MEX
8422564	NM904-83	3003921322		108		JICARILLA APACHE 102 #26	TAPICITO - PICTURED C	11.0	GAS CO OF NEW MEX
8422595	NM 898-83	3003921582		108		JICARILLA APACHE 102 #30	BLANCO MESAVERDE	18.0	GAS CO OF NEW MEX
8422589	NM-930-83	3003922173		103		JICARILLA APACHE 35 #4	OTERO - GALLUP	15.0	NORTHWEST PIPELIN
8422534	NM-940-83	3004525694		103		JOHN SCHUMACHER/TRUE #1E	BASIN - DAKOTA	35.6	EL PASO NATURAL G
8422596	NM-899-83	3004506648		108		R P HARGRAVE "D" #1	FULCHER KUTZ - PICTUR	16.0	SOUTHERN UNION GA
-BCO INC				RECEIVED:	02/27/84	JA: NM K			
8422548	NM-955-83	3003923244		103		ESCRITO GALLUP UNIT #24 (3-21 #3)	ESCRITO GALLUP	50.0	EL PASO NATURAL G
8422536	NM-935-83	3004525752		103		NANCY #5	BUFFERS POINT	50.0	EL PASO NATURAL G
8422605	NM 0869-83	3004525735		103		SMITH #5	ESCRITO GALLUP	50.0	EL PASO NATURAL G
-CHACE OIL COMPANY INC				RECEIVED:	02/27/84	JA: NM K			
8422584	NM-953-83	3003923205		103		JICARILLA 70-18	S LINDRITH GALLUP DAK	7.0	EL PASO NATURAL G
-CONOCO INC				RECEIVED:	02/27/84	JA: NM K			
8422553	NM-947-83	3003906050		108		AXI APACHE M #7	AXI APACHE AREA	12.6	GAS CO OF NEW MEX
8422585	NM 0948-83	3003920665		108		AXI APACHE O #3	AXI APACHE AREA	14.3	GAS CO OF NEW MEX
8422586	NM 0947-83	3003920969		108		AXI APACHE O #5	AXI APACHE AREA	17.5	GAS CO OF NEW MEX
-CURTIS J LITTLE				RECEIVED:	02/27/84	JA: NM K			
8422557	NM-0867-83	3003922988		107-TF		TURNER #2	OTERO CHACRA	25.0	EL PASO NATURAL G
8422604	NM-0873-83	3004525385		103		WIEDEMER #3	FULCHER KUTZ	36.0	EL PASO NATURAL G
8422618	NM-0874-83	3004525386		103		WIEDEMER #4	FULCHER KUTZ	36.0	EL PASO NATURAL G
-DUGAN PRODUCTION CORP				RECEIVED:	02/27/84	JA: NM K			
8422538	NM-937-83	3004523953		103		BENGAL B #6 WELL	SOUTH GALLEGOS FR PC	7.5	EL PASO NATURAL G
8422543	NM-907-83	3003922947		103		GRAND GULCH #2	BASIN DAKOTA	16.0	NORTHWEST PIPELIN
8422600	NM-888-83	3004525431		103		TURKS TOAST #2	BASIN DAKOTA	15.0	NORTHWEST PIPELIN
8422601	NM-889-83	3004525431		107-TF		TURKS TOAST #2	BASIN DAKOTA	15.0	NORTHWEST PIPELIN
-EL PASO EXPLORATION CO				RECEIVED:	02/27/84	JA: NM K			
8422541	NM-912-83	3003922074		108		JICARILLA 128 C #17	SOUTH BLANCO - PICTUR	12.8	NORTHWEST PIPELIN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
-EL PASO NATURAL GAS COMPANY				RECEIVED:	02/27/84	JA: NM K
8422579	NM-0896-83	3003920232		108		CANYON LARGO UNIT NP 0146
8422622	NM-2168-83PB	3004520916		108-PB		EL PASO 02
8422615	NM-2166-83PB	3004520462		108-PB		FLORANCE 08
8422565	NM 985-83	3004523718		108		HARGRAVE 02R
8422619	NM-2179-83PB	3004511785		108-PB		HEATON 020
8422613	NM-2170-83PB	3004520792		108-PB		HUBBELL 06
8422618	NM-2176-83PB	3004505701		108-PB		HUERFANO UNIT 058
8422614	NM-2118-83PB	3004509232		108-PB		LUDWICK 010 PC
8422620	NM-2172-83PB	3004521569		108-PB		MYE 014
8422612	NM-2169-83PB	3003906332		108-PB		QUANTIUS 03
8422617	NM-2174-83PB	3004521035		108-PB		ROELOFS 06
8422624	NM-2171-83PB	3004521089		108-PB		ROELOFS 07
8422616	NM-2175-83PB	3003907012		108-PB		SAN JUAN 27-5 UNIT 010
8422598	NM-898-83	3003907861		108		SAN JUAN 30-6 UNIT 063
8422623	NM-2189-83PB	3003907992		108-PB		SAN JUAN 32-5 UNIT 07
8422621	NM-2167-83PB	3004520791		108-PB		SUNRAY 04
-EPX COMPANY				RECEIVED:	02/27/84	JA: NM K
8422578	NM-0896-83	3003921458		108		JIC JOINT VENTURE KD 05
-MERRION OIL & GAS CORP				RECEIVED:	02/27/84	JA: NM K
8422606	NM-0870-83	3003923183		103		CANADA MESA COM 04
8422550	NM-950-83	3003923080		103		WARREN G COM 026-2
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	02/27/84	JA: NM K
8422562	NM-910-83	3003921504		108		FEDERAL 28714 01
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	02/27/84	JA: NM K
8422590	NM-927-83	3003923035		103		ROSA UNIT 94
8422591	NM-928-83	3003923034		103		ROSA UNIT 95
8422593	NM-926-83	3003923224		102-Z		RUCKER LAKE 03
8422573	NM-925-83107	3003922706		103	107-TF	SAN JUAN 30-5 UNIT 089
8422572	NM-924-83103	3003923144		103	107-TF	SAN JUAN 30-5 UNIT 93
8422548	NM-915-83	3004523684		107-TF		SAN JUAN 32-7 UNIT 056
8422594	NM-923-83	3004523687		107-TF		SAN JUAN 32-7 UNIT 057
8422597	NM-922-83	3004523688		107-TF		SAN JUAN 32-7 UNIT 060
8422539	NM-916-83	3004524390		107-TF		SAN JUAN 32-7 UNIT 062
8422592	NM-921-83	3004524391		107-TF		SAN JUAN 32-7 UNIT 063
8422577	NM-920-83	3004524776		107-TF		SAN JUAN 32-7 UNIT 068
8422576	NM-919-83	3004524777		107-TF		SAN JUAN 32-7 UNIT 069
8422558	NM-918-83	3004525230		107-TF		SAN JUAN 32-8 UNIT 011A
8422540	NM-917-83	3004524541		107-TF		SAN JUAN 32-8 UNIT 012A
-SCHALK DEVELOPMENT COMPANY				RECEIVED:	02/27/84	JA: NM K
8422559	NM-914-83	3003922194		108		SCHALK 31-4 01
8422625	NM-1286-83PB	3003920862		108-PB		SCHALK 49 03
8422626	NM-1285-83PB	3003920579		108-PB		SCHALK 55 01
8422627	NM-0777-83PB	3003920579		108-PB		SCHALK 55 01
8422542	NM-913-83	3003920592		108		SCHALK 62 WELL 01
-SHERMAN F WAGENSELLER				RECEIVED:	02/27/84	JA: NM K
8422548	NM-0957-83	3003908229		108		MOBIL APACHE 011
8422567	NM 0957-83	3003920224		108		MOBIL APACHE 013
8422564	NM 0958-83	3003905113		108		MOBIL APACHE 02
-SOUTHERN UNION EXPLORATION COMPANY				RECEIVED:	02/27/84	JA: NM K
8422552	NM-0946-83	3004525692		103		HORSESHOE 01
-SOUTHLAND ROYALTY CO				RECEIVED:	02/27/84	JA: NM K
8422535	NM-934-83	3003905716		108		ARIZONA JICARILLA 03
8422537	NM-933-83	3003905499		108		ARIZONA JICARILLA 06
8422576	NM-932-83	3003921817		108		ARIZONA JICARILLA 09
8422533	NM-939-83	3003921248		108		ARIZONA JICARILLA "B" 05-A
8422531	NM 0938-83	3003906800		108		ARIZONA JICARILLA "B" 8-A
8422611	NM-0875-83	3004525740		105		CAIN 016E
8422545	NM-0961-83	3004520979		108		HAGOOD 03E
8422551	NM-0951-83	3004513308		108		THOMPSON 02
8422581	NM 0952-83	3004510285		108		THOMPSON 04
-TENNECO OIL COMPANY				RECEIVED:	02/27/84	JA: NM K
8422561	NM-909-83	3004521348		108		ARROYO 1
8422513	NM-945-83	3004523989		106		JOHNSTON COM B 02
8422609	NM-0878-83	3004525590		103		PRICE COM 5E
8422608	NM-0877-83	3004525595		103		PRICE 2E
8422607	NM-0876-83	3004525680		103		PRICE 4E
8422662	NM-0879-83	3004525553		103		TAPP 3E
-TEXACO INC				RECEIVED:	02/27/84	JA: NM K
8422547	NM 0956-83	3004522163		108		M J LOE "B" FEDERAL 02R
-UNICON PRODUCING CO				RECEIVED:	02/27/84	JA: NM K
8422544	NM-908-83	3004507571		108		ANGEL PEAK 021
8422580	NM-0885-83	3004522858		108		ANGEL PEAK "B" 012
8422582	NM 882-83	3004523723		108		ANGEL PEAK "B" 029
8422546	NM-960-83	3004525538		103		CONGRESS LACHMAN 4-E
8422581	NM-886-83	3003923016		103		JICARILLA "F" 07
8422570	NM-0881-83	3004525084		108		MCCORD 05E
8422569	NM-0883-83	3004510255		108		TALIAFERRO 04
8422603	NM-0880-83	3004523731		104		ZACHRY 021
8422556	NM 0336-83	3004525302		103		ZACHRY 30
-WEXPRO COMPANY				RECEIVED:	02/27/84	JA: NM K
8422571	NM 0872-83	3004524992		107-TF		OREO 01
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NM DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM						
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-EXXON CORPORATION				RECEIVED:	02/27/84	JA: NM L
8422675	RNM 0111-83	3001502434		103		YATES FEDERAL C 06
-MCCLELLAN OIL CORPORATION				RECEIVED:	02/27/84	JA: NM L
8422674	RNM 0110-83	3000520836		105		VEST FEDERAL 01
-PERRY R BASS				RECEIVED:	02/27/84	JA: NM L
8422672	RNM 0089-83	3001525968		103		BIG EDDY UNIT 084
8422676	RNM 0089-83	3001521988		102-4		BIG EDDY UNIT 084
-SUPERIOR OIL CO				RECEIVED:	02/27/84	JA: NM L
8422673	RNM 0103-83	3002528137		103		GOVERNMENT "9" 01
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NM DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, TULSA, OK						
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-AMOCO PRODUCTION CO				RECEIVED:	02/24/84	JA: LA M
8422448	83-3519	1770340866		102-5		OCS-G-2037 WELL 8A-9
8422487	83-3782	1770740028		102-5		OCS-0788 8B-1
-ARCO OIL AND GAS COMPANY				RECEIVED:	02/24/84	JA: LA M
8422462	83-3933	1781740199		102-5		OCS-G-2640 MISS CANYON BLK 1488A-14
8422496	83-3638	1772140266		102-5		OCS-1608 SOUTH PASS BLK 60 8E-16ST
-CHEVRON U S A INC				RECEIVED:	02/24/84	JA: LA M

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FIELD NAME	PROD	PURCHASER
BALLARD PICTURED CLIF	18.0	EL PASO NATURAL G
AZTEC	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
FULCHER KUTZ - PICTUR	30.0	EL PASO NATURAL G
AZTEC	0.0	EL PASO NATURAL G
AZTEC	0.0	EL PASO NATURAL G
BALLARD	0.0	EL PASO NATURAL G
AZTEC	0.0	EL PASO NATURAL G
AZTEC & OTERO	0.0	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO - MESA VERDE	16.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
BLANCO	0.0	EL PASO NATURAL G
CHACON-DAKOTA ASSOC	30.0	EL PASO NATURAL G
BASIN DAKOTA	250.8	NORTHWEST PIPELIN
DEVILS FORK GALLUP	41.2	EL PASO NATURAL G
CHACON DAKOTA	20.9	EL PASO NATURAL G
BLANCO MESAVERDE	0.9	NORTHWEST PIPELIN
BLANCO MESAVERDE	0.4	NORTHWEST PIPELIN
GAVILAN GALLUP	11.0	NORTHWEST PIPELIN
BASIN DAKOTA	14.0	NORTHWEST PIPELIN
BASIN DAKOTA	7.9	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
WILDCAT	0.0	NORTHWEST PIPELIN
BLANCO	0.0	NORTHWEST PIPELIN
BASIN	0.0	NORTHWEST PIPELIN
BASIN	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	0.0	NORTHWEST PIPELIN
SOUTH BLANCO PC	11.7	EL PASO NATURAL G
SOUTH BLANCO PC	8.9	EL PASO NATURAL G
SOUTH BLANCO PC	10.3	EL PASO NATURAL G
MEADOWS GALLUP	41.0	INTRASTATE GATHER
BLANCO	15.0	GAS CO OF NEW MEX
BLANCO	13.0	GAS CO OF NEW MEX
BLANCO	16.0	GAS CO OF NEW MEX
BLANCO	20.0	GAS CO OF NEW MEX
BLANCO	20.0	GAS CO OF NEW MEX
BASIN	150.0	SOUTHERN UNION GA
BASIN	15.0	EL PASO NATURAL G
BLANCO	20.0	SOUTHERN UNION GA
BLANCO	16.0	SOUTHERN UNION GA
GALLEGOS GALLUP	9.0	EL PASO NATURAL G
BASIN DAKOTA	11.0	EL PASO NATURAL G
BASIN DAKOTA	120.0	EL PASO NATURAL G
BASIN DAKOTA	58.0	EL PASO NATURAL G
BASIN DAKOTA	145.0	EL PASO NATURAL G
BASIN DAKOTA	91.0	EL PASO NATURAL G
BASIN DAKOTA	13.0	SOUTHERN UNION GA
	43.0	SOUTHERN UNION GA
	44.0	SOUTHERN UNION GA
	43.0	SOUTHERN UNION GA
BASIN DAKOTA	117.0	SOUTHERN UNION GA
DAKOTA	689.0	GAS CO OF NEW MEX
	54.0	SOUTHERN UNION GA
	56.0	SOUTHERN UNION GA
	59.0	SOUTHERN UNION GA
ARMENTA GALLUP	135.0	EL PASO NATURAL G
BASIN DAKOTA	31.7	EL PASO NATURAL G
AVALON (DELAWARE)	86.0	PHILLIPS PETROLEU
WILDCAT	109.5	CABOT PIPELINE CO
GOLDEN LANE	250.0	NATURAL GAS PIPEL
GOLDEN LANE	250.0	NATURAL GAS PIPEL
SCHARB	115.0	PHILLIPS PETROLEU
EAST CAMERON	1200.0	TEXAS EASTERN TRA
SOUTH MARSH ISLAND	700.0	TRANSCONTINENTAL
MISSISSIPPI CANYON	600.0	TENNESSEE GAS PIP
SOUTH PASS	50.0	SOUTHERN NATURAL

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422482	G3-3930	1771540419		102-5		OCS-G-1899 BCA-2	SOUTH TIMBALIER	898.0	TRUNKLINE GAS CO
8422475	G3-4041	1770240633		102-5		OCS-G-2869 02	WEST CAMERON	1095.0	NATURAL GAS PIPEL
-EUGENE SHOAL OIL CO				RECEIVED:	02/24/84	JA: LA M			
8422493	G3-3721	1772140196		102-5		OCS-G 2176 BA-2	SOUTH PASS BLOCK	356.0	TENNESSEE GAS PIP
8422494	G3-3722	1772140208		102-5		OCS-G 2176 BA-3	SOUTH PASS	356.0	TENNESSEE GAS PIP
8422466	G3-3723	1772140213		102-5		OCS-G 2176 BA-4	SOUTH PASS BLOCK	356.0	TENNESSEE GAS PIP
8422473	G3-3724	1772140207		102-5		OCS-G 2176 BA-5	SOUTH PASS BLOCK	356.0	TENNESSEE GAS PIP
8422474	G3-3725	1772140208		102-5		OCS-G 2176 BA-6	SOUTH PASS BLOCK	356.0	TENNESSEE GAS PIP
8422481	G3-3726	1772140180		102-5		OCS-G 2176 BA-7	SOUTH PASS BLOCK	356.0	TENNESSEE GAS PIP
-EXXON CORPORATION				RECEIVED:	02/24/84	JA: LA M			
8422501	G3-3748	1772240088		102-5		OCS-G 1619 BA-8	SOUTH PASS	165.0	COLUMBIA GAS TRAN
8422502	G3-3806	1771540540		102-5		OCS-019 BG-12	SOUTH TIMBALIER	45.0	TENNESSEE GAS PIP
8422476	G3-3892	1771540543		102-5		OCS-019 BG-17	SOUTH TIMBALIER	90.0	TENNESSEE GAS PIP
8422471	G3-3931	1771540548		102-5		OCS-019 BG-20	SOUTH TIMBALIER	80.0	TENNESSEE GAS PIP
8422456	G3-3992	1771540549		102-5		OCS-019 BG-23	SOUTH TIMBALIER	80.0	TENNESSEE GAS PIP
8422472	G3-3830	1771540542		102-5		OCS-019 MO G-5	SOUTH TIMBALIER	80.0	TENNESSEE GAS PIP
-GETTY OIL COMPANY				RECEIVED:	02/24/84	JA: LA M			
8422484	G3-3902	1770240458		102-5		WEST CAMERON 487 A-5DA	WEST CAMERON	400.0	UNITED GAS PIPELI
-GULF OIL CORPORATION				RECEIVED:	02/24/84	JA: LA M			
8422469	G3-4068	1772140284		102-5		OCS-G 2177 WELL A-6 S/P BLK 49 FLD	SOUTH PASS	310.0	TEXAS EASTERN TRA
8422496	G3-3841	1772140269		102-5		OCS-G 2177 WELL A-9 S/P BLK 49 FLD	SOUTH PASS	45.5	TEXAS EASTERN TRA
-MARATHON OIL COMPANY				RECEIVED:	02/24/84	JA: LA M			
8422489	G3-3917	1770440436		102-5		EAST CAMERON BLOCK 294 WELL A-11B	EAST CAMERON SOUTH AD	511.0	TEXAS EASTERN TRA
-MCMORAN OFFSHORE EXPLORATION CO				RECEIVED:	02/24/84	JA: LA M			
8422459	G3-3603	1770840570		102-5		OCS-G 2887 BA-12	SOUTH MARSH ISLAND	110.0	
8422463	G3-3615	1770840571		102-5		OCS-G 2887 BA-13	SOUTH MARSH ISLAND	110.0	
8422497	G3-3629	1770840578		102-5		OCS-G 2887 BA-17	SOUTH MARSH ISLAND	113.0	
8422500	G3-3579	1770840557		102-5		OCS-G 2887 BA-4	SOUTH MARSH ISLAND	6.0	
8422485	G3-3587	1770840557		102-5		OCS-G 2887 BA-4A	SOUTH MARSH ISLAND	67.0	
8422499	G3-3578	1770840561		102-5		OCS-G 2887 BA-7	SOUTH MARSH ISLAND	68.0	
8422470	G3-3580	1770840556		102-5		OCS-G 2888 BA-2	SOUTH MARSH ISLAND	172.0	
8422465	G3-3581	1770840550		102-5		OCS-G 2889 BA-1	SOUTH MARSH ISLAND	0.0	
8422468	G3-3627	1770840576		102-5		OCS-G 2889 BA-15A	SOUTH MARSH ISLAND	11.0	
8422495	G3-3628	1770840583		102-5		OCS-G 2889 BA-16	SOUTH MARSH ISLAND	11.0	
8422461	G3-3588	1770840559		102-5		OCS-G 2889 BA-5	SOUTH MARSH ISLAND	1825.0	
8422457	G3-3605	1770840560		102-5		OCS-G 2889 BA-6	SOUTH MARSH ISLAND	67.0	
-MOBIL OIL EXPLOKATION & PROD S E				RECEIVED:	02/24/84	JA: LA M			
8422483	G3-3502	1770540388		102-5		VERMILION BLOCK 23 013 - A	VERMILION	109.5	TRUNKLINE GAS CO
-ODECO OIL & GAS CO				RECEIVED:	02/24/84	JA: LA M			
8422490	G3-3880	1771340055		102-5		OCS - 072 025 (S/+)B	SOUTH PELTO 20 FIELD	110.0	TRANSCONTINENTAL
8422484	G2-3326	1771340087		102-5		OCS-073 035A	SOUTH PELTO 20 FIELD	730.0	TRANSCONTINENTAL
-SUPERIOR OIL CO				RECEIVED:	02/24/84	JA: LA M			
8422467	G2-3295	1770040394		102-5		OCS 0245 BF-1	WEST CAMERON	2000.0	TEXAS EASTERN TRA
8422477	G3-3970	1770040487		102-5		OCS 0245 BH-3	WEST CAMERON	2000.0	TEXAS EASTERN TRA
8422491	G3-3986	1770040615		102-5		OCS 0254 BF-1	WEST CAMERON	1500.0	
8422464	G3-4007	1770940552		102-5		OCS 0197 BD-6	EUGENE ISLAND	1000.0	TRANSCONTINENTAL
8422487	G3-4008	1770940564		102-5		OCS 0797 BD-7	EUGENE ISLAND	500.0	TRANSCONTINENTAL
8422479	G2-3295	1770040456		102-5		S 0245 BF-3	WEST CAMERON	2000.0	TEXAS EASTERN TRA
8422458	G3-4006	1770940551		102-5		0797 BD-5	EUGENE ISLAND	500.0	TRANSCONTINENTAL
-TENNECO OIL COMPANY				RECEIVED:	02/24/84	JA: LA M			
8422478	G3-3980	1770740333		102-5		SOUTH MARSH ISLAND 61 BD-2	SOUTH MARSH ISLAND	1825.0	TENNESSEE GAS PIP
-TEXACO INC				RECEIVED:	02/24/84	JA: LA M			
8422480	G3-3805	1771940289		102-5		OCS-G-2937 WEST DELTA 109 BA-11	WEST DELTA	529.0	NATURAL GAS PIPEL
-TENNECO OIL COMPANY				RECEIVED:	02/24/84	JA: TX M			
8422492	G3-4070	4270330298		102-1		OCS-G-4136 BTC-1	MATAGORDA ISLAND	2000.0	EL PASO NATURAL G
**********									
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, RAWLINS, WY									
**********									
-BELCO PETROLEUM CORPORATION				RECEIVED:	02/24/84	JA: WY S			
8422670	W 154-3	4903505646		108		MCD 33-29	MCDONALD DRAW UNIT	0.0	NORTHWEST PIPELIN
8422671	W 155-3	4903505876		108		MCD 73	MCDONALD DRAW UNIT	0.0	NORTHWEST PIPELIN
-TENNECO OIL COMPANY				RECEIVED:	02/27/84	JA: WY S			
8422678	W 15-3	4904120554		102-4		GRACE USA 1-6	WILDCAT	100.0	NORTHWEST PIPELIN
**********									
** DEPT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE, LA									
**********									
-MOBIL OIL EXPLORATION & PROD S E				RECEIVED:	02/27/84	JA: LA W			
8422677	G3-3821	1772540250		102-5		MAIN PASS 72/74 BB-12B	MAIN PASS -	75.0	UNITED GAS PIPE L

[FR Doc. 84-8091 Filed 3-26-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1089]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: March 20, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection expect to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register**.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd., Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
ISSUED MARCH 20, 1984

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
ALABAMA OIL & GAS BOARD									
-ANDERMAN/SMITH OPERATING CO				RECEIVED:	02/28/84	JA: AL			
8422859	2-23-8412PD	0105720333		102-2		DUDLEY 22-16 #1	BLUFF	146.0	TENNESSEE GAS PIP
8422855	1-19-846PD	0105720323		102-2		RANDOLPH 25-13 #1	BETHEL CHURCH	300.0	TENNESSEE GAS PIP
-BLACK WARRIOR METHANE CORP				RECEIVED:	02/28/84	JA: AL			
8422857	2-23-847PD	0112520147		107-CS		SHOOK 35-16-7	BROOKWOOD COAL DEGASI	180.0	SOUTHERN NATURAL
-EXXON CORPORATION				RECEIVED:	02/28/84	JA: AL			
8422858	2-23-8411PD	0105320187		107-DP		T R MILLER MILL CO #33-5	JAY/LEC	919.0	FLORIDA GAS TRANS
-GRACE PETROLEUM CORPORATION				RECEIVED:	02/28/84	JA: AL			
8422860	2-23-8413PD	0105720236		108		LANTHGHAM HEIRS 11-1	STUDHORSE CREEK	21.9	TENNESSEE GAS PIP
-HOWELL PETROLEUM CORP				RECEIVED:	02/28/84	JA: AL			
8422854	12-2-8311PDA	0105720172		102-2		GRAVLEE 20-9	NEWTONVILLE	54.0	NORTHWEST ALABAMA
-MWJ PRODUCING CO				RECEIVED:	02/28/84	JA: AL			
8422856	2-23-844PD	0105720330		102-2		THOMAS ATKINSON 5-5 #1	BLUFF	69.6	
MONTANA BOARD OF OIL & GAS CONSERVATION									
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	02/27/84	JA: MT			
8422886	10-82-258	2508521353		102-2		CRUSCH #2-2	TARGET	13.0	DOME PETROLEUM CO
OKLAHOMA CORPORATION COMMISSION									
-ANADARKO PRODUCTION COMPANY				RECEIVED:	02/27/84	JA: OK			
8422895	26602	3513921782		103		N E HARDESTY UNIT #13-3	N E HARDESTY	3.0	PHILLIPS PETROLEU
-ARCO OIL AND GAS COMPANY				RECEIVED:	02/27/84	JA: OK			
8422898	24451	3500722463		102-4		MAHANAY #2	S W COMO	36.5	PHILLIPS PETROLEU
-FUNK EXPLORATION INC				RECEIVED:	02/27/84	JA: OK			
8422889	21410	3500722381		102-4		HEMLINE #1		8.0	PANHANDLE EASTERN
8422888	21412	3500722046		102-4		STEWART #1	S BALKO	8.0	NORTHERN NATURAL
-HADSON PETROLEUM CORP				RECEIVED:	02/27/84	JA: OK			
8422894	26656	1356724928		103		WESTCOTT #1-25	BLANCHARD	73.0	SUN OIL CO
-HARPER OIL COMPANY				RECEIVED:	02/27/84	JA: OK		146.0	
8422897	24650	3512920957		102-2		JULIA #1		146.0	
8422904	24580	3512920936		102-2		RAYMOND #1	S E ROLL		
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	02/27/84	JA: OK			
8422902	24507	3504321680		102-4	103	LEROY DENNIS #1-33	PUTNAM	657.0	OKLAHOMA GAS & EL
-MOBIL OIL CORP				RECEIVED:	02/27/84	JA: OK			
8422891	26685	3509500000		108		WARD-RAINES UNIT #3-VIOLA	AYLESWORTH	8.1	PIONEER GAS PRODU
-NEW RESERVES GROUP INC				RECEIVED:	02/27/84	JA: OK			
8422890	26705	3508720959		103		NEW RESERVES GROUP INC - NO 1 GRAY	FRENCH	15.3	SUN EXPLORATION &
-NEW TREND RESOURCES INC				RECEIVED:	02/27/84	JA: OK			
8422896	26530	3510721673		103		MIRACLE #4	SOUTH MORSE	25.0	SWAB CORP
-PROSPECTIVE INVESTMENT & TRADING CO				RECEIVED:	02/27/84	JA: OK			
8422887	24448	3504521127		102-2		CARL 1-35	WEST VICI	36.0	PHILLIPS PETROLEU
-RED EAGLE OIL CO				RECEIVED:	02/27/84	JA: OK			
8422893	26664	3509322690		103		HART #1	N W OKEENE	365.0	PIONEER GAS PRODU
-SANTA FE-ANDOVER OIL CO				RECEIVED:	02/27/84	JA: OK			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422903	24516	3501121861		102-4		SCHOOL LANDS #36-3		126.0	OKLAHOMA GAS PIPE
-TEXACO INC				RECEIVED:	02/27/84	JA: OK			
8422892	26681	3507300000		108		SY WATTS #1	SOONER TREND	2.5	EASON OIL CO
-WOODS PETROLEUM CORPORATION				RECEIVED:	02/27/84	JA: OK			
8422901	24471	3504300000		102-4	103	HOLCOMB #24-1	SW WEBB	511.0	
8422899	24466	3503920694		102-4	103	HUNNICUTT #20-1	COMET CREEK	639.0	PRODUCER'S GAS CO
8422900	24467	3504321494		102-4	103	WALKER #19-1	SW WEBB	913.0	
##########									
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
##########									
-ADOBE OIL & GAS CORPORATION				RECEIVED:	02/27/84	JA: PA			
8422712	22128	3702120195		103		ALLAN VARNER #2	HASTINGS	26.0	CONSOLIDATED GAS
8422703	22112	3706327465		103		C MORRELL DEABENDERFER #1	CLYMER "G"	25.0	SCM CORP
8422704	22113	3706327466		103		C MORRELL DEABENDERFER #2	CLYMER "G"	25.0	SCM CORP
8422702	22111	3706327464		103		C MORRELL DEABENDERFER "A" #1	CLYMER "G"	25.0	SCM CORP
8422705	22115	3706522744		103		LOUIS EMANUEL #4	REYNOLDSVILLE "E"	25.0	T W PHILLIPS GAS
-ADOBE OIL & GAS CORPORATION				RECEIVED:	02/27/84	JA: PA			
8422761	22237	3712922215		103		NELLIE FOSTER "B" #1	BLAIRSVILLE "B"	25.0	PEOPLES NATURAL G
-ADOBE OIL & GAS CORPORATION				RECEIVED:	02/27/84	JA: PA			
8422689	21983	3712922282		103		JAMES TRIMBLE #1	BLAIRSVILLE	25.0	T W PHILLIPS GAS
-ANGERMAN ASSOCIATES INC				RECEIVED:	02/27/84	JA: PA			
8422694	22099	3706327635		103		JOHN K CRIBBS #5 - IND-27635	W PA UPPER DEVONIAN S	8.0	PEOPLES NATURAL G
-ASHTOLA PRODUCTION CO				RECEIVED:	02/27/84	JA: PA			
8422728	22196	3705324957		103		TRUSSELL - WARRANT 3193X-2	HOWE	6.0	UGI CORP
-BOYD & SHRIVER				RECEIVED:	02/27/84	JA: PA			
8422713	22129	3706572612		103		COSIE MILLIRON #527	TIMBLIN	8.0	T W PHILLIPS GAS
-CASTLE GAS CO INC				RECEIVED:	02/27/84	JA: PA			
8422726	22184	3712921851		108		A J HIRKO #2 (C-716) WES-21851	DERRY TOWNSHIP	15.0	PEOPLES NATURAL G
8422727	22185	3706324038		108		T STUCHELL #1 (PNG-05243) IND-24038	YOUNG TOWNSHIP	58.0	PEOPLES NATURAL G
-CNG DEVELOPMENT CO				RECEIVED:	02/27/84	JA: PA			
8422721	22141	3706327498		102-2		GARMAN G BUTERBAUGH #1 CNGD #87	GREEN TWP	16.0	
-CNG DEVELOPMENT CO				RECEIVED:	02/27/84	JA: PA			
8422695	22100	3703321679		103		THEODORE GARMAN #1 CNGD # 83	BURNSIDE TWP	34.0	
8422696	22101	3703321680		103		THEODORE GARMAN #2 CNGD # 395	BURNSIDE TWP	37.0	
8422697	22102	3703321667		103		WILLIAM SOMERVILLE #1 CNGD # 84	BURNSIDE TWP	4.0	
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	02/27/84	JA: PA			
8422681	20035	3712921715		108		SARA E EISMAN #1 WN-1797	HEMPFIELD	8.0	GENERAL SYSTEM PU
-DOC-NCC SERVICE CO				RECEIVED:	02/27/84	JA: PA			
8422679	19798	3712921844		108		J W GAUT #80-3	EAST HUNTINGDON	20.0	TEXAS EASTERN TRA
8422680	19793	3712922042		108		SOUTHMORELAND SCHOOL DISTRICT 748-6	EAST HUNTINGDON	21.3	TEXAS EASTERN TRA
-ENERGY QUEST INC				RECEIVED:	02/27/84	JA: PA			
8422764	22241	3706325370		108		ANNIE HELMAN #1	CLYMER	10.5	COLUMBIA GAS TRAN
8422763	22240	3706325371		108		ANNIE HELMAN #2	CLYMER	10.5	COLUMBIA GAS TRAN
8422766	22243	3706325372		108		BIBLE BAPTIST #1	CLYMER	12.2	COLUMBIA GAS TRAN
8422775	22260	3706325997		108		C L RUFFNER & SONS #3	CLYMER	12.0	COLUMBIA GAS TRAN
8422767	22244	3706300000		108		MILDRED R SIMPSON #1	BRUSH VALLEY	14.0	COLUMBIA GAS TRAN
8422768	22245	3706325756		108		MILDRED R SIMPSON #2	BRUSH VALLEY	14.0	COLUMBIA GAS TRAN
8422765	22242	3706325457		108		MILDRED R SIMPSON #3	BRUSH VALLEY	14.0	COLUMBIA GAS TRAN
8422769	22253	3706325794		108		WILLIAM C HOUSER JR 118-A #1	CLYMER	8.9	COLUMBIA GAS TRAN
8422770	22254	3706325783		108		WILLIAM C HOUSER JR 118-A #2	CLYMER	8.9	COLUMBIA GAS TRAN
8422771	22255	3706300000		108		WILLIAM C HOUSER JR 118-A #3	CLYMER	2.2	COLUMBIA GAS TRAN
8422772	22256	3706325086		108		WILLIAM C HOUSER JR 159 A #1	CLYMER	9.4	COLUMBIA GAS TRAN
8422773	22257	3706300000		108		WILLIAM C HOUSER JR 159 A #2	CLYMER	9.4	COLUMBIA GAS TRAN
8422774	22258	3706325888		108		WILLIAM C HOUSER JR 159 A #3	CLYMER	9.4	COLUMBIA GAS TRAN
-FAIRMAN DRILLING CO				RECEIVED:	02/27/84	JA: PA			
8422698	21989	3703321668		102-3		MASETO #1 S/N F-3796	CUSH CUSHION	30.0	EASTERN SHORE NAT
-FELMONT OIL CORPORATION				RECEIVED:	02/27/84	JA: PA			
8422762	22239	3702120210		102-2		MARTIN L BEARER #4 F-367	DRISCOLL HOLLOW	98.0	COLUMBIA GAS TRAN
-FOX OIL & GAS INC				RECEIVED:	02/27/84	JA: PA			
8422688	21970	3702120193		102-3		JAMES GRIFFITHS #1 280	SUSQUEHANNA	25.5	COLUMBIA GAS TRAN
-HANLEY & BIRD				RECEIVED:	02/27/84	JA: PA			
8422720	22140	3700522804		103		EDWARD M WILSON SHB18 SN1738	DAYTON	24.0	PEOPLES NATURAL G
-JAMES F SCOTT				RECEIVED:	02/27/84	JA: PA			
8422707	22123	3706522782		103		EUGENE NORTH #1 PS-463	BIG RUN BOROUGH	72.0	
8422706	22122	3703321641		103		HOYT #3	FERGUSON	38.0	CONSOLIDATED GAS
-KRIEBEL GAS CO INC				RECEIVED:	02/27/84	JA: PA			
8422725	22158	3706327642		103		MCCULLY #6	BLAIRSVILLE	30.0	
8422724	22157	3706327641		103		WITENSKI #7	ROCHESTER MILLS	30.0	
-MARK RESOURCES CORP				RECEIVED:	02/27/84	JA: PA			
8422708	22124	3712135077		102-3		HINES UNIT #1	JACKSON	30.0	NATIONAL FUEL GAS
8422709	22125	3712135077		107-TF		HINES UNIT #1	JACKSON	30.0	NATIONAL FUEL GAS
8422714	22133	3708520546		102-3		POLONSKY #2	SOUTH PYMATUNING	30.0	
8422715	22134	3708520546		107-TF		POLONSKY #2	SOUTH PYMATUNING	30.0	
8422710	22126	3712135561		102-3		R MOORHEAD #1	JACKSON	30.0	NATIONAL FUEL GAS
8422711	22127	3712135561		107-TF		R MOORHEAD #1	JACKSON	30.0	NATIONAL FUEL GAS
-MARK RESOURCES CORP				RECEIVED:	02/27/84	JA: PA			
8422722	22146	3712135079		102-3		DEETER #2	JACKSON	30.0	NATIONAL FUEL GAS
-MARK RESOURCES CORP				RECEIVED:	02/27/84	JA: PA			
8422723	22147	3712135079		107-TF		DEETER #2	JACKSON	30.0	NATIONAL FUEL GAS
-MID-PENN ENERGY CORP				RECEIVED:	02/27/84	JA: PA			
8422685	20393	3703321186		108		CHARLES MCCRACKEN #1	GRAMPIAN	15.0	CONSOLIDATED GAS
8422684	20392	3703321324		108		CHARLES MCCRACKEN #2	GRAMPIAN	10.0	CONSOLIDATED GAS
8422683	20391	3703321213		108		CLARENCE A KEISER #2	GRAMPIAN	10.0	CONSOLIDATED GAS
8422682	[illegible]	3703321146		108		HUGH APPLETON #1	GRAMPIAN	10.0	CONSOLIDATED GAS
-MITCHELL ENERGY CORPORATION				RECEIVED:	02/27/84	JA: PA			
8422754	22223	3703922030		107-TF		A YURCAK UNIT #1 CRA-22030	MOSIERTOWN (MEDINA/WH	6.8	COLUMBIA GAS TRAN
8422755	22224	3703922030		103		A YURCAK UNIT #1 CRA-22030	MOSIERTOWN (MEDINA/WH	6.8	COLUMBIA GAS TRAN
8422756	22225	3703922028		103		LUCAS UNIT #1 CRA-22028	JAMESTOWN (MEDINA/WHI	27.4	COLUMBIA GAS TRAN
8422757	22226	3703922028		107-TF		LUCAS UNIT #1 CRA-22028	JAMESTOWN (MEDINA/WHI	27.4	COLUMBIA GAS TRAN
8422752	22221	3703922031		107-TF		MODEL LAND COMPANY UNIT #1	MOSIERTOWN (MEDINA/WH	13.7	COLUMBIA GAS TRAN
8422753	22222	3703922031		103		MODEL LAND COMPANY UNIT #1	MOSIERTOWN (MEDINA/WH	13.7	COLUMBIA GAS TRAN
-NEA CROSS CO				RECEIVED:	02/27/84	JA: PA			
8422729	22197	3704923158		102-2		CLARENCE BOYD #5	LEBOEUF	10.0	NATIONAL FUEL GAS
8422730	22198	3704923158		107-TF		CLARENCE BOYD #5	LEBOEUF	10.0	NATIONAL FUEL GAS
8422733	22201	3704923204		102-2		DAVID LAUGHLIN/ELMER FAILS #1	WATERFORD	10.0	NATIONAL FUEL GAS
8422734	22202	3704923204		107-TF		DAVID LAUGHLIN/ELMER FAILS #1	WATERFORD	10.0	NATIONAL FUEL GAS
8422737	22205	3704923152		102-2		KENNETH WISE #6	LEBOEUF	10.0	NATIONAL FUEL GAS
8422738	22206	3704923152		107-TF		KENNETH WISE #6	LEBOEUF	10.0	NATIONAL FUEL GAS
8422731	22199	3704923063		102-2		SAMUEL FAULHABER #3	WATERFORD	10.0	NATIONAL FUEL GAS
8422732	22200	3704923063		107-TF		SAMUEL FAULHABER #3	WATERFORD	10.0	NATIONAL FUEL GAS
8422735	22203	3704923202		102-2		TIMOTHY MCCORMICK #3	LEBOEUF	10.0	NATIONAL FUEL GAS
8422736	22204	3704923202		107-TF		TIMOTHY MCCORMICK #3	LEBOEUF	10.0	NATIONAL FUEL GAS
-NEA CROSS CO				RECEIVED:	02/27/84	JA: PA			
8422748	22217	3704923287		107-TF		CROSS & COMPANY CONTRACTORS #1	UNION	10.0	NATIONAL FUEL GAS

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422749	[illegible]	3704923287		102-2		CROSS & COMPANY CONTRACTORS #1	UNION	10.0	NATIONAL FUEL GAS
8422742	22211	3704922655		107-TF		JAMES MCMURRAY #1	LEBOEUF	10.0	NATIONAL FUEL GAS
8422743	[illegible]	3704922655		102-2		JAMES MCMURRAY #1	LEBOEUF	10.0	NATIONAL FUEL GAS
8422744	22213	3704923279		102-2		JOSEPH MAY #1	LEBOEUF	10.0	NATIONAL FUEL GAS
8422745	22214	3704923279		107-TF		JOSEPH MAY #1	LEBOEUF	10.0	NATIONAL FUEL GAS
8422750	22219	3704923114		107-TF		SIMION CRISTEA/EDWARD LACNY #1	WATERFORD	10.0	NATIONAL FUEL GAS
8422751	[illegible]	3704923114		102-2		SIMION CRISTEA/EDWARD LACNY #1	WATERFORD	10.0	NATIONAL FUEL GAS
8422746	22215	3704922686		107-TF		VICTOR MALINOWSKI #3	WATERFORD	10.0	NATIONAL FUEL GAS
8422747	[illegible]	3704922686		102-2		VICTOR MALINOWSKI #3	WATERFORD	10.0	NATIONAL FUEL GAS
8422740	[illegible]	3704923277		107-TF		WILLIAM WURST #3	LEBOEUF	10.0	NATIONAL FUEL GAS
8422741	[illegible]	3704923277		102-2		WILLIAM WURST #3	LEBOEUF	10.0	NATIONAL FUEL GAS
-PEOPLES NATURAL GAS CO				RECEIVED:	02/27/84	JA: PA			
8422718	22137	3706327491		103		FLOSSIE WHITACRE #4 - IND-27491	W PENNA - UPPER DEVON	15.0	PEOPLES NATURAL G
8422719	22138	3706327582		103		WILLIAM D DRYLIE #2-IND-27852	W PENNA - UPPER DEVON	16.0	PEOPLES NATURAL G
-PEOPLES NATURAL GAS CO				RECEIVED:	02/27/84	JA: PA			
8422692	21991	3712922223		103		AUGUST MAYER #3 - WES-22223	W PENNA - UPPER DEVON	33.0	PEOPLES NATURAL G
8422691	21990	3712922290		103		LENA MOGLIA #3 - WES-22290	W PENNA - UPPER DEVON	51.0	PEOPLES NATURAL G
8422686	21891	3712922216		103		ROBERT H WHITTAKER #1 - WES-22216	W PENNA - UPPER DEVON	22.0	PEOPLES NATURAL G
8422693	21992	3712922280		103		WILLIAM S RUFFNER #2 - WES-22280	W PENNA - UPPER DEVON	15.0	PEOPLES NATURAL G
-PIONEER WESTERN ENERGY CORP				RECEIVED:	02/27/84	JA: PA			
8422758	22232	3712922278		103		LOUIS A BOMPIANI #2	SOUTH HUNTINGDON	25.0	
-PIONEER WESTERN #3-1				RECEIVED:	02/27/84	JA: PA			
8422759	22233	3712922242		103		NORMAN STOUT #1	NEW STANTON BOROUGH	25.0	
-QUESTA JOINT VENTURE #3				RECEIVED:	02/27/84	JA: PA			
8422760	22234	3712922284		103		EDWARD KELLNER #1	HEMPFIELD	25.0	
-R D WERNER CO INC				RECEIVED:	02/27/84	JA: PA			
8422700	22106	3708520381		107-TF		O ANDERSON #1	SUGAR GROVE	25.0	NATIONAL FUEL GAS
-RELGATE RESOURCES (CANADA) LTD				RECEIVED:	02/27/84	JA: PA			
8422716	22135	3704923324		107-TF		HOTCHKISS #1	CROSSINGVILLE	20.0	COLUMBIA GAS TRAN
8422717	22136	3704923324		103		HOTCHKISS #1	CROSSINGVILLE	20.0	COLUMBIA GAS TRAN
-REX-HIDE REALTY INC				RECEIVED:	02/27/84	JA: PA			
8422699	22105	3703321599		103		ARNOLD T PRICE #1	BELL	65.0	
8422701	22110	3706327538		103		ROBERT L HANLEY #1	CANOE	35.0	
-REX-HIDE REALTY INC				RECEIVED:	02/27/84	JA: PA			
8422698	22104	3712922235		103		WILBUR W HAWKEY #1	LOYALHANNA	45.0	
-UNION DRILLING INC				RECEIVED:	02/27/84	JA: PA			
8422687	21944	3706327539		103		CHARLES RUSSELL #1 0704	CHERRYHILL TOWNSHIP	0.0	COLUMBIA GAS TRAN
-VICTORY ENERGY CO				RECEIVED:	02/27/84	JA: PA			
8422739	22207	3703321570		102-2		M PIERCE #3 CLE 21570	BURNSIDE	36.0	COLUMBIA GAS TRAN
##########	##########	##########	##	######	######	##########	##########	###	##########
TENNESSEE OIL & GAS BOARD									
##########	##########	##########	##	######	######	##########	##########	###	##########
-ACE PETROLEUM CO INC				RECEIVED:	02/27/84	JA: TN			
8422849	A-2639	4112921360		102-2		VIRGIL SMITH #1A		2.0	
8422850	A-2639	4112921384		102-2		VIRGIL SMITH #2A		3.5	
-AMTEX RESOURCES INC				RECEIVED:	02/27/84	JA: TN			
8422853	A-2638	4104921173		102-2		BRUND GERNT ESTATE #3(D-3)		2.0	FENTRESS GAS TRAN
8422848	A-2625	4104921189		102-2		CHARLES GERNT ET AL E-3		50.0	FENTRESS GAS TRAN
8422847	A-2618	4104921174		102-2		CHARLES GERNT ET AL 3(D-1)		5.0	FENTRESS GAS TRAN
8422846	A-2626	4104921167		102-2		GERNT - GERNT UNIT 2-C		50.0	FENTRESS GAS TRAN
8422852	A-2637	4104921176		102-2		GERNT-GERNT #3 (D-2)		2.5	FENTRESS GAS TRAN
8422851	A-2654	4104921199		102-2		GERNT-PLATEAU PROPERTIES 1 E-2		30.0	FENTRESS GAS TRAN
-B & W OIL CO				RECEIVED:	02/27/84	JA: TN			
8422845	A-2634	4112921325		102-2		JOE PHILLIPS ET AL #2	GLADES EAST	24.0	EAST TENNESSEE NA
-BRADY ENERGY CORP				RECEIVED:	02/27/84	JA: TN			
8422842	A-2615	4112921354		102-4		B M BROOKS HEIRS ETAL #2	UNKNOWN	60.5	INTRASTATE ENERGY
8422841	A-2617	4112920062		102-2		LOUIS HOWARD #1	DOUGLAS BRANCH FIELD	21.9	INTRASTATE ENERGY
8422844	A-2620	4112920456		102-4		THOMAS L DAVIDSON #1	BURRVILLE	21.9	INTRASTATE ENERGY
8422843	A-2616	4112920901		102-4		THOMAS L DAVIDSON #2	BURRVILLE	21.9	INTRASTATE ENERGY
-C & M ENERGY INC				RECEIVED:	02/27/84	JA: TN			
8422835	A-2633	4115170043		108		CONWAY WALKER #1	ONEIDA WEST	19.0	INTRASTATE ENERGY
[illegible]	A-2632	4115170039		103		CONWAY WALKER #2	ONEIDA WEST	0.0	INTRASTATE ENERGY
8422837	A-2631	4115171028		108		ELCANEY & MAUDE TERRY #1	ONEIDA WEST	4.1	INTRASTATE ENERGY
-COLLINS C G				RECEIVED:	02/27/84	JA: TN			
[illegible]	A-2643	4104921130		102-4		BAESE-GERNT UNIT #1	STOCKTON	21.9	FENTRESS GAS TRAN
[illegible]	A-2642	4104921168		102-2		BOYD WHEATON/GERNT UNIT #1	STOCKTON	21.9	FENTRESS GAS TRAN
[illegible]	A-2641	4104921156		102-2		CLYDE FREELS/PLATEAU PROPERTIES INC	STOCKTON	21.9	FENTRESS GAS TRAN
-CRYSTAL EXPLORATION CO				RECEIVED:	02/27/84	JA: TN			
8422834	A-2567	4115121117		102-4		RUTH VELANDER #3		5.0	
-DELOY MILLER				RECEIVED:	02/28/84	JA: TN			
8422869	A-2627	4115120440		102-2		KOPPERS #5	HURRICANE RIDGE	125.0	INTRASTATE ENERGY
8422861	A-2628	4115120462		102-2		KOPPERS #6	HURRICANE RIDGE	1.0	INTRASTATE ENERGY
8422867	A-2613	4115120993		102-2		WOODRUM #3	STANLEY JUNCTION	125.0	INTRASTATE ENERGY
8422868	A-2614	4115121072		102-2		WOODRUM #4	STANLEY JUNCTION	600.0	INTRASTATE ENERGY
-DIXIE OIL COMPANY				RECEIVED:	02/28/84	JA: TN			
8422883	A-2630	4104921022		102-4		CHARLES GERNT #8	STOCKTON SW	1.0	TENNESSEE GAS PIP
8422884	A-2629	4112921346		102-4		OTTO B HURST #1	WILDCAT	18.0	TENNESSEE GAS PIP
-EAST TENNESSEE COMSULTANTS INC				RECEIVED:	02/28/84	JA: TN			
8422880	A-2609	4112921378		102-2		G C PEMBERTON #A-7		90.0	
8422879	A-2622	4112921391		102-2		G C PEMBERTON #A-8		20.0	
-ENERPRO OF KENTUCKY INC				RECEIVED:	02/28/84	JA: TN			
8422881	A-2646	4112920714		102-2		THOMAS & WANDA BURNETT #2		2.0	
8422882	A-2645	4112920718		102-2		THOMAS & WANDA BURNETT #5		2.0	
-HUDSON RESOURCES				RECEIVED:	02/28/84	JA: TN			
8422878	A-2271	4112920889		102-4		J T MCKEETHAN	WILDCAT	0.1	INTERSTATE ENERGY
-JOHNSON ENERGY INC				RECEIVED:	02/28/84	JA: TN			
8422865	A-2644	4103520162		102-2		EDWARD BROOKHART #1-A	NORTH CREEK	45.0	GENESIS GAS SYSTE
8422864	A-2527	4103520153		102-2		ODELL SHIRELL UNIT #1		3.0	
-JON E JONES				RECEIVED:	02/28/84	JA: TN			
8422863	A-2611	4112921098		102-2		OLMSTEAD-OVERTON #4 P M 5026	WILDCAT	1.0	B & W OIL CO
-NATIONS RESOURCE OF ENERGY INC				RECEIVED:	02/28/84	JA: TN			
8422866	A-2571	4112921333		102-2		LESTER POTTER #2		2.0	
-ROGERS RICHARD R				RECEIVED:	02/28/84	JA: TN			
8422873	A-2606	4112921269		103		Y T JOHNSON UNIT #1		17.7	INTRASTATE ENERGY
-SAINT JOSEPH PETROLEUM INC				RECEIVED:	02/28/84	JA: TN			
8422870	A-2619	4104921163		102-2		C & S GERNT-BRUNO GERNT #2	STOCKTON	18.3	FENTRESS GAS TRAN
8422872	A-2618	4104921166		102-4		RODGER WALLACE-GERALD GERNT #1	STOCKTON	18.3	B & W OIL CO
-SRI DRILLING CO				RECEIVED:	02/28/84	JA: TN			
8422871	A-2621	4112921191		102-4		EARL MANIS 1	PLEASANT RIDGE	100.0	EAST TENNESSEE NA
8422876	A-1035	4115120503		102-4		GROVER C PEMBERTON #1	PLEASANT RIDGE	14.0	EAST TENNESSEE NA
8422877	A-2281-A	4115120503		108		GROVER C PEMBERTON #1	PLEASANT RIDGE	14.0	EAST TENNESSEE NA
-T & V DRILLING CO				RECEIVED:	02/28/84	JA: TN			
8422874	A-2636	4104921191		102-2		DALBERT ATKINSON UNIT #2		18.2	FENTRESS GAS TRAN
8422875	A-2633	4104921185		102-2		DELBERT ATKINSON #1		18.9	FENTRESS GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
-TENEXCO CO				RECEIVED:	02/28/84	JA: TH
8422862	A-2623	4115120321		102-2		KOPPERS #2
WYOMING OIL & GAS CONSERVATION COMMISSION						
-AMOCO PRODUCTION CO				RECEIVED:	02/24/84	JA: WY
8422820	NG 193-83	4904120582		102-2		AMOCO CHEVRON #2-36
8422824	NG 164-83	4904120421		102-2		BRADBURY "B" #1 - (WEBER)
8422800	NG 165-83	4903721632		107-TF		CHAMPLIN 326 AMOCO "E" #1
8422819	NG 162-83	4904120414		102-2		HARRY A MOON #1 - (PHOSPHORIA)
8422823	NG166-83	4904120414		102-2		HARRY A MOON #1 - (WEBER)
8422790	NG 163-83	4904120576		102-2		MILLIS WIU "B" #2
8422810	NG 192-83	4902320369		107-TF		SEVEN MILE GULCH #12
-BELCO PETROLEUM CORPORATION				RECEIVED:	02/24/84	JA: WY
8422789	NG 95-83	4903520557		108		BUDD 4-4
8422779	NG 33-83	4903520696		102-4		C79-23
8422778	NG 96-83	4900320511		108		THOMPSON 3-8
-CELSIUS ENERGY CO				RECEIVED:	02/24/84	JA: WY
8422792	NG 199-83	4903722227		103		CHURCH BUTTES UNIT #38
8422805	NG 11-84	4904120601		103		CHURCH BUTTES UNIT WELL #39
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	02/24/84	JA: WY
8422787	NG 174-83	4903721942		101		CPC #1 UPRR 44-13
8422788	NG 173-83	4903722004		103		CPC #1 UPRR 44-23
8422789	NG 172-83	4903721993		103		UPRR 44-9 #2
-CHEVRON U S A INC				RECEIVED:	02/24/84	JA: WY
8422795	NG 16-84	4904120486		102-2		CHEVRON FEDERAL 2-6E
-CIG EXPLORATION INC				RECEIVED:	02/24/84	JA: WY
8422811	NG 187-83	4901321127		107-CS		LONG BUTTE #5
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	02/24/84	JA: WY
8422821	NG 189-83	4900527115		103		HARTZOG DRAW UNIT TRACT 114 #5206
8422822	NG 190-83	4900527114		103		HARTZOG DRAW UNIT TRACT 63 #5206
8422817	NG 191-83	4900527113		103		HARTZOG DRAW UNIT TRACT 85 #5285
-CRYSTAL EXPLOR & PROD CO				RECEIVED:	02/24/84	JA: WY
8422791	NG 181-83	4900526746		103		REED #31-20
-CZAR RESOURCES INC				RECEIVED:	02/24/84	JA: WY
8422798	NG 183-83	4900526959		102-4		CZAR-MACKEY 32-1
-DAVIS OIL COMPANY				RECEIVED:	02/24/84	JA: WY
8422815	NG 170-83	4900527056		102-2		ANDY UNIT #13
8422814	NG 167-83	4900526970		102-2		ANDY UNIT #5
8422807	NG 168-83	4900527072		102-2		FELIX UNIT #16-A
8422813	NG 169-83	4900526700		102-2		FELIX UNIT #8
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	02/24/84	JA: WY
8422818	NG 188-83	4905270400		102-4		EVERETT FEE 33-13
-HPC INC				RECEIVED:	02/24/84	JA: WY
8422797	NG 182-83	4900922236		102-2		M E #3
-HUNT OIL COMPANY				RECEIVED:	02/24/84	JA: WY
8422794	NG 13-84	4902921185		102-2		HOC FEE #1-6
-INTEGRATED ENERGY INC				RECEIVED:	02/24/84	JA: WY
8422831	NG 9-84	4900921614		102-4		MORTON 1-19
8422832	NG 10-84	4900921551		102-4		MORTON 1-20
8422777	NG 8-84	4900922311		102-4		MORTON 2-20
-KERR-MCGEE CORPORATION				RECEIVED:	02/24/84	JA: WY
8422801	NG 15-84	4900527125		102-2		MOORE-MINERAL TRUST #24-2
-LEONARD HAY				RECEIVED:	02/24/84	JA: WY
8422784	NG 178-83	4903500000		102-2		JENSEN #2
-MARATHON OIL COMPANY				RECEIVED:	02/24/84	JA: WY
8422783	NG 179-83	4902921208		103		PAULINE #13 (EMBAR AND TENSLEEP)
-MILESTONE PETROLEUM INC				RECEIVED:	02/24/84	JA: WY
8422833	NG 185-83	4900527104		103		BIRDSALL 41G-8
-MONSANTO COMPANY				RECEIVED:	02/24/84	JA: WY
8422804	NG 12-84	4901320743		102-4		LELAND #1-25
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	02/24/84	JA: WY
8422803	NG 14-84	4901920735		103		JEPSON DRAW ST-A #3
-PUMA PETROLEUM CO				RECEIVED:	02/24/84	JA: WY
8422812	NG 186-83	4900527021		103		ELLIOTT FEDERAL #1-27
-SMOKEY OIL COMPANY INC				RECEIVED:	02/24/84	JA: WY
8422827	NG 5-84	4904522105		102-4		WILDCAT CREEK UNIT #11-18
8422825	NG 3-84	4904522193		102-4		WILDCAT CREEK UNIT #14-8
8422782	NG 26-83	4904522039		102-4		WILDCAT CREEK UNIT #21-9
8422793	NG 2-84	4904521909		102-4		WILDCAT CREEK UNIT #23-4
8422829	NG 7-84	4904522194		102-4		WILDCAT CREEK UNIT #24-8
8422826	NG 6-84	4904522104		102-4		WILDCAT CREEK UNIT #43-12
8422824	NG 4-84	4904521907		102-4		WILDCAT CREEK UNIT #43-4
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	02/24/84	JA: WY
8422799	NG 184-83	4900526355		103		HUNTER RANCH MUDDY UNIT #10-3
8422776	NG 32-83	4900525634		108		UTE MUDDY SAND UNIT #3-17
-TEXACO INC				RECEIVED:	02/24/84	JA: WY
8422786	NG 175-83	4903722205		103		TABLE ROCK UNIT #68
8422785	NG 176-83	4903722213		103		TABLE ROCK UNIT #69
-TOCO CORP				RECEIVED:	02/24/84	JA: WY
8422808	NG 198-83	4904521753		102-4		COLLINS #12
8422816	NG 197-83	4904521751		102-4		COLLINS #8
-TRUE OIL COMPANY				RECEIVED:	02/24/84	JA: WY
8422830	NG 1-84	4904521878		102-4		WILDCAT CREEK UNIT #23-8
8422781	NG 27-83	4904500000		102-4		WILDCAT CREEK UNIT #31-18
-WIND RIVER EXPLORATIONS				RECEIVED:	02/24/84	JA: WY
8422809	NG 345-82	4900306245		108		WEST 1-X
-WOODS PETROLEUM CORPORATION				RECEIVED:	02/24/84	JA: WY
8422806	NG 157-83	4900525987		102-2		MOORE MINERALS TRUST #14-1
8422802	NG 17-84	4900922273		102-2		MOORE UNIT #1
8422796	NG 177-83	4900527127		102-4		PINE TREE UNIT #28-66
## DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, RAWLINS, WY						
-BELCO PETROLEUM CORPORATION				RECEIVED:	02/28/84	JA: WY S
8422885	W29-3	4903520602	D	102-4		BPMV 14-7S

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FIELD NAME	PROD	PURCHASER
HURRICANE RIDGE	2.2	INTRASTATE ENERGY
CHICKEN CREEK - MUGGE	1829.0	
YELLOW CREEK DEEP - W	5518.0	
WILD HARE GULCH - FRO	35.0	NORTHWEST CENTRAL
YELLOW CREEK DEEP - P	1825.0	
YELLOW CREEK DEEP	1825.0	
GLASSCOCK HOLLOW - TW	385.5	
SEVEN MILE GULCH - FR	29.0	
MOUNTAIN HOME	0.0	NORTHWEST PIPELIN
C-47	0.0	NORTHWEST PIPELIN
MOUNTAIN HOME	0.0	NORTHWEST PIPELIN
CHURCH BUTTES	0.0	MOUNTAIN FUEL SUP
CHURCH BUTTES	257.3	MOUNTAIN FUEL SUP
TABLE ROCK	10.0	COLORADO INTERSTA
TABLE ROCK	10.0	COLORADO INTERSTA
TABLE ROCK	10.0	COLORADO INTERSTA
WHITNEY CANYON - CART	919.8	COLUMBIA GAS TRAN
LONG BUTTE - CODY	0.0	COLORADO INTERSTA
HARTZOG DRAW UNIT	17.0	PHILLIPS PETROLEU
HARTZOG DRAW UNIT	34.0	PHILLIPS PETROLEU
HARTZOG DRAW UNIT	15.0	PHILLIPS PETROLEU
BEDEKOVEN	69.4	MGPC INC
PORCUPINE	200.0	MCCULLOCH GAS PRO
WILDCAT	100.0	BIG HORN FRACTION
WILDCAT	24.0	BIG HORN FRACTION
WILDCAT	200.0	BIG HORN FRACTION
WILDCAT	140.0	BIG HORN FRACTION
BUCK DRAW	0.0	
SCOTT	0.0	PHILLIPS PETROLEU
WILDCAT	365.0	
SCOTT	10.0	CHINOOK PIPELINE
SCOTT	12.0	CHINOOK PIPELINE
SCOTT	0.0	CHINOOK PIPELINE
POWELL FIELD	0.0	PHILLIPS PETROLEU
PINEDALE ANTICLINE	400.0	NORTHWEST PIPELIN
OREGON BASIN	26.6	COBY GAS CO
PORCUPINE	40.0	PHILLIPS PETROLEU
BATTLE BUTTE	400.0	COLORADO INTERSTA
HOLLER DRAW	6.6	PANHANDLE EASTERN
WILD HORSE CREEK	40.0	
WILDCAT CREEK UNIT	52.0	TRUE OIL CO
WILDCAT CREEK UNIT	41.6	TRUE OIL CO
WILDCAT CREEK UNIT	33.0	TRUE OIL CO
WILDCAT CREEK UNIT	10.4	TRUE OIL CO
WILDCAT CREEK UNIT	200.0	TRUE OIL CO
WILDCAT CREEK UNIT	12.0	TRUE OIL CO
WILDCAT CREEK UNIT #4	16.0	TRUE OIL CO
HUNTER RANCH	0.4	MCCULLOCH GAS PRO
UTE	0.0	MCOR OIL & GAS CO
TABLE ROCK	0.1	COLORADO INTERSTA
TABLE ROCK	55.0	COLORADO INTERSTA
FINN-SHURLEY	1.5	MGPC INC
FINN SHURLEY	1.5	MGPC INC
WILDCAT CREEK UNIT #2	47.0	PHILLIPS PETROLEU
WILDCAT	32.0	PHILLIPS PETROLEU
SOUTH BYRON FIELD	13.0	MONTANA-DAKOTA UT
WILDCAT/BUCK DRAW	543.0	PHILLIPS PETROLEU
MOORE UNIT	245.0	WESTERN GAS PROCE
PINE TREE	22.0	WESTERN GAS PROCE
BIG PINEY	0.0	NORTHWEST PIPELIN

[FR Doc. 84-8082 Filed 3-26-84; 8:45 am]

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Energy Conservation Program for Consumer Products; Final Rules Regarding State Petitions for Exemption From Federal Standards for Clothes Dryers and Kitchen Ranges and Ovens

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket Nos. CE-SPRM NY001, WI002, CA003, MN004, OR005]

Energy Conservation Program for Consumer Products; Final Rules Regarding State Petitions for Exemption From Federal Standards for Clothes Dryers and Kitchen Ranges and Ovens

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rules.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, as a general matter requires that the Department of Energy prescribe an energy efficiency standard for each of certain major household appliances unless it determines, by rule, that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified.

On December 22, 1982, DOE issued a final rule with respect to clothes dryers and kitchen ranges and ovens in which DOE determined that an energy efficiency standard for either of these products would not result in a significant conservation of energy and would not be economically justified. In addition, the final rule set forth the procedures by which States may obtain exemption for State or local efficiency standards that are statutorily preempted as a result of a final rule with respect to energy efficiency standards.

DOE received petitions from the States of California, New York, Wisconsin, Minnesota and Oregon requesting, in each case, that the State energy efficiency standard requiring intermittent ignition devices (IIDs) for clothes dryers and/or kitchen ranges and ovens be exempted from Federal preemption.

On August 1, 1983, the Department of Energy published proposed rules to grant each State's petition. Today's final rules reflect DOE's final determination with respect to each of the five petitions. DOE is adopting final rules granting each State's petition seeking exemption from Federal preemption for each State's applicable standard requiring IIDs for clothes dryers and/or for kitchen ranges and ovens.

DATES: The effective date of these rules is April 26, 1984.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-113.1, Room GF-217, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Room 6B-128, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9513

SUPPLEMENTARY INFORMATION:

I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619,[1] created the Energy Conservation Program for Consumer Products Other Than Automobiles. The consumer products subject to this program (referred to hereafter as "covered products") are: Refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces, as well as any other consumer product classified by the Secretary of Energy, if the product uses a specified minimum amount of energy. *See* Section 322. The Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts; testing, labeling, and energy efficiency standards.

For each of the covered products, DOE is required to establish energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(a) (1) and (c). The Act provides, however, that no standard for a product is to be established if there is no test procedure for the product, or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. Section 325(b).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State or local laws or regulations concerning such matters. Generally, all such State or local laws or regulations (State laws) are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy would be a rule that supersedes any State standard. Section 325(b). A State whose energy efficiency standard would be superseded, however, may petition the Department for a rule that it not be superseded, on the basis that there is a significant State or local interest to justify the standard and the State standard is more stringent. However, DOE cannot issue the requested rule if it finds that the State standard would unduly burden interstate commerce. Section 327(b)(3).

Because Section 327(b)(3) requires DOE to consider each State petition individually before DOE can issue a rule exempting the State or local standard from preemption, DOE could not issue a rule that makes a blanket determination for all the five States that petitioned.

b. Background

On December 22, 1982, DOE published a final rule with respect to two covered products, clothes dryers and kitchen ranges and ovens. (47 FR 57198.) (Hereafter referred to as the December 1982 rule.) With respect to both products, DOE determined that a standard would not result in significant conservation of energy and would not be economically justified. The December 1982 rule also established procedures governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards as well as by manufacturers to obtain exemption from State or local energy efficiency standards.[2]

State standards subject to preemption include: energy efficiency requirements applicable to any particular type (or class) of covered products established by mandatory State or local building codes, including codes that incorporate consensus standards, such as those developed and issued by the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE); prohibitions on standing pilot lights; and prohibitions on the

[1] Part B of Title III of EPCA, as amended by NECPA, 42 U.S.C. §§ 6291-6309, is referred to in this notice as the "Act."

[2] Persons subject to a State efficiency standard that has not been superseded by a Federal rule, may petition DOE to have the standard preempted based upon a finding by the Secretary of no significant State or local interest sufficient to justify the standard and a finding by the Secretary that the standard unduly burdens interstate commerce. Section 327(b)(1).

manufacture, sale and/or hook-up of appliances with less than a certain efficiency.

In the December 1982 rule, DOE also established the effective dates upon which supersession of State and local standards would take place. DOE determined that State and local laws for a particular product would be superseded 180 days after **Federal Register** publication of a final rule governing that particular product unless within 60 days of publication, a State had filed with the Department a notice of intent to petition DOE for an exemption for that product. The full petition itself had to be filed within 120 days of publication of the rule. When such a submission is made, the State or local rule will remain in effect until DOE reaches a final determination on the State petition.

In its petition, a State is required to present information which would appear on its face to show that the State's regulation is more stringent than the Federal standard and that there is a significant State or local interst in the State's regulation. The State is not required to provide information concerning the State regulation's impact on interstate commerce. A person opposing the State's petition should present information which would show that the State's proposed rule would place an undue burden on interstate commerce. Such a person may also present information to rebut the State's initial submission.

Five States, New York, California, Wisconsin, Minnesota, and Oregon, each submitted a notice of intent to petition and each petitioned the Department for a rule to allow each State to maintain its applicable energy efficiency standard for clothes dryers and/or kitchen ranges and ovens.

Each of the five States met the filing requirements set forth in the December 1982 rule. Each notice of intent to petition and each petition was received within the proper time period. The petitions also presented information which indicated that each State's regulation is more stringent than the Federal standard and that there is a significant State interest to justify the State regulation. DOE made a preliminary determination that there did not appear to be any undue burden on interstate commerce resulting from the State regulations and statutes. Therefore, on August 1, 1983, DOE proposed to amend § 430.33 to issue rules permitting each of the five States to maintain applicable appliance energy efficiency standards for clothes dryers and/or kitchen ranges and ovens. (48 FR 34858.) (Hereafter referred to as the August 1983 proposal.)

DOE requested comments on the petitions and encouraged interested parties to speak at public hearings to be held in each of the five States and in Washington, D.C. Although the Department did not receive sufficient interest to hold all the public hearings, hearings were held in Madison, Wisconsin on September 13, 1983 and in Washington, D.C. on September 30, 1983.[3]

II. Discussion

a. General

DOE is adopting final rules granting each of the five State petitions for exemption for each State's applicable standard requiring IIDs for clothes dryers and/or kitchen ranges and ovens.

The comments submitted in favor of DOE's proposed rules to grant each petition are State specific. These comments were submitted by States, public interest groups and some utilities. The comments received recommending denials generally address generic issues pertaining to most or all of the five petitions. These comments were submitted by appliance manufacturers and appliance manufacturer trade associations.

A very general criticism of the validity of the entire rulemaking process was submitted by the Gas Appliance Manufacturers Association (GAMA) (GAMA, No. 7, at 1).[4] GAMA criticized DOE for a statement in the December 1982 final rule which said that ". . . in general, these laws (those State laws and regulations currently in force) would qualify for an exemption from supersession."[5] GAMA contends that the Department prejudged the results of the petition process without having seen the required documentation.

GAMA's contention is without merit. DOE has held a full and open rulemaking process in its review of the five State petitions. Each State met the filing requirements set forth in the December 1982 rule within the proper time period. Moreover, each State was required to present information demonstrating that its regulation is more stringent than the Federal standard and that there is a significant State interest to justify the State regulation. DOE's preliminary determination with regard to these petitions and the proposal to grant each petition were based on DOE's initial review of the State regulations and assessment of each petition.

In these rulemakings, as in any rulemaking proceeding, the data received during the comment period is crucial to the Department's final determination. The statement GAMA quotes in the December 1982 preamble merely indicated DOE's belief concerning State and local standards prior to the actual implementation of a full rulemaking proceeding. Clearly, the final determinations contained in today's action were based on all of the materials contained in the record.

b. Stringency of State Standards, State Interest, and Effect on Interstate Commerce

Several manufacturers and industry associations argue that the States overstated the energy savings derived from their respective standards and failed to show significant State interest. Most of these commenters focused on issues pertaining to gas clothes dryers.

General Electric Company (GE) (GE, No. 6, at 4) and GAMA (GAMA, No. 7, at 3) first maintain that the State bans on pilot lights fail the EPCA requirement that a State standard be more stringent than the Federal standard. GAMA's position is that a ban on pilot lights in clothes dryers is equivalent to a de facto national standard since they assert that all gas clothes dryers produced are now equipped with IIDs. GE argues that a State standard must be greater than any standard DOE analyzed. GE maintains that the State bans are less stringent than the highest levels analyzed by DOE in the December 1982 final rule.

DOE rejects both of these arguments since the Act requires that a State standard, to be eligible for exemption from Federal preemption, must be more stringent than a Federal standard established by regulation. Clearly, the State standards requiring IIDs are more stringent than the Federal standard, since the Federal "no standard" standard allows the manufacture and sale of clothes dryers and ranges and ovens with pilot lights. Furthermore, the Act prescribes no criteria that States must meet in the exemption process concerning meeting or exceeding the efficiency levels analyzed by DOE to determine cost effectiveness of standards. Therefore, DOE rejects the argument that a State standard must be

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[3] DOE received only one request to speak at each of the hearings scheduled to be held in Minnesota, New York, California and Oregon. These persons were invited to participate in the other hearings. The representative from Minnesota spoke at the Wisconsin hearing and the representative from New York spoke at the Washington, D.C. The individuals from California and Oregon did not present testimony at either of the hearings.

[4] Comments on the rulemaking were given docket numbers. Citations to comments provide those docket numbers.

[5] 47 FR 57214.

more stringent than the levels studied by DOE.

The Association of Home Appliance Manufacturers (AHAM) (AHAM, No. 9, at 4), Whirlpool Corporation (Whirlpool, No. 12, at 1), GAMA (GAMA, No. 7, at 3) and General Electric (GE, No. 6, at 3) point out that each of the three petitions seeking exemption for standards for gas clothes dryers rest on the assumption that the existing standards will save the energy claimed by each State. These commenters dispute the claims that State regulations have been responsible for the extensive use of IIDs in gas dryers, since IIDs were already widely used prior to any State's requirement for them. In fact, these commenters argue, there are no energy savings attributable to State laws banning pilot lights in gas dryers since no dryers containing pilot lights have been produced since 1976. The elimination of the standing pilot light in gas clothes dryers, according to these commenters, was the result of market forces (the rising cost of gas and maintenance problems with the pilot light design) and the cost of returning to a pilot light model would be much less cost effective than the current IID models.

With respect to gas clothes dryers, GE (GE, No. 6, at 2) also asserts that since preemption does not become effective until DOE issues a final determination, the savings data that result from earlier State actions are irrelevant. GE maintains that only future savings that the States expect to achieve as a result of the exemption are pertinent to the justification of the State's regulations. AHAM (AHAM, No. 9, at 7) maintains that the States have failed to meet the criteria of demonstrating significant State or local interest since if there are no energy savings, no benefits can accrue to the regulation and there can be no significant interest in retaining the existing standards. GE (GE, No. 6, at 2), GAMA (GAMA, No. 7, at 4) and Whirlpool (Whirlpool, No. 7, at 14) concur on this point and state that DOE has not required, nor have the States shown, that some distinctive benefit will result if the State regulations are exempted from preemption.

DOE has reviewed the data submitted by these commenters and agrees that under current conditions there is little specific data which sets forth energy savings derived from the laws banning pilot lights in clothes dryers. However, DOE believes that there is a significant State interest in States maintaining their ban on pilot lights. Without such a ban on pilot lights, manufacturers in the future could redesign their clothes dryers and sell clothes dryers with pilot lights.

DOE agrees that market forces and cost considerations were contributing factors for discontinuing production of clothes dryers with pilot lights, and since such models do not appear to be available in the marketplace, the Department acknowledges that these requirements do not result in measurable energy savings currently. However, several commenters supporting the ban on clothes dryers with pilot lights emphasized that while there appear to be no such clothes dryers in production now, it is of significant interest to the State to maintain such a ban since there is no guarantee of what the market will be like in the future. *See* testimony of September 13, 1983, by P. Herriges, West Central Wisconsin Community Action Agency, at 15; R. Christianson, Wisconsin Department of Administration, at 22; Sen. J. Strohl, Chairman, Wisconsin Senate Committee on Energy and Environment, at 38; D. Shott, Office of the Governor of Wisconsin, at 48; and Rep. C. Gerlach, Chairman, Wisconsin House Committee on Energy and Utilities, at 65.

DOE agrees with the commenters from Wisconsin. Although data suggests that manufacturers will not return to the manufacture of clothes dryers with pilot lights, DOE has received no assurances that pilot light manufacture will never be resumed for clothes dryers. In fact, the manufacturers and AHAM could not assure DOE that only clothes dryers with IID's will be manufactured and sold in the future.

White Consolidated Industries, Inc. (WCI) (WCI, No. 3, at 2) and GAMA (GAMA, No. 7, at 3) comment that the States are providing old data, that the rising cost of gas eliminated pilot lights from clothes dryers and seems likely to do the same for ranges and ovens. WCI asserts that since 1980 the percentage of ranges shipped with pilot lights has dropped from 58 percent to 43 percent nationwide and that some manufacturers, such as Frigidaire, no longer offer any pilot light models for ranges and ovens.

WCI, GAMA, and Whirlpool submitted data on the energy savings and/or the number of pilot lights presumably kept out of the States as a result of State requirements for IIDs on ranges and ovens. (*See* WCI, No. 3, at 1; GAMA, No. 7, at 2, and Whirlpool, No. 12, at 4.) For example, using GAMA data, WCI calculates that in the States of Wisconsin and Minnesota 19,155 and 14,925 pilot lights, respectively, would be banned each year in those States. These figures contrast to Wisconsin's revised estimate of 86,000 pilot lights banned each year, and Minnesota's 64,495. Futhermore, GAMA (GAMA, No. 7 at 1) maintains that all of the petitions overstate the yearly energy savings resulting from a ban on pilot lights in ranges and ovens. Moreover, Whirlpool (Whirlpool, No. 12 at 4, 7) argues that the savings claims by Wisconsin, California and Minnesota, do not account for the sales of ranges and ovens which would have been sold with IIDs in the absence of standards.

The Department recognizes that the increasing cost of gas and other market forces contributed to the apparently uniform production of clothes dryers with IIDs. DOE also agrees that these factors may contribute to the increase in IID's kitchen ranges and ovens. In addition, DOE is aware that some of the data provided in the petitions may be outdated or incomplete. However, no data were submitted to demonstrate that the existing regulations pertaining to kitchen ranges and ovens do not save energy. These commenters do not dispute the fact that energy is being saved, only the amount of energy saved. The States have demonstrated that their standards are more stringent than the Federal "no standard" standard with respect to kitchen ranges and ovens. DOE believes, moreover, that because energy is being saved, the States have shown a significant State interest in these cases in maintaining their applicable laws.

Whirlpool and GE also assert that DOE should provide more meaningful criteria for determining whether there is a significant State or local interest to justify a regulation. (*See* Whirlpool, No. 2, at 14; and GE, No. 6, at 2.) These commenters suggest that a State should demonstrate that some distinctive benefit will result from a standard or that no standard will result in adverse consequences. Whether GE and Whirlpool intend "more meaningful criteria" to mean more stringent criteria or additional criteria is unclear to DOE. The Department already requires a State petition to demonstrate a benefit of the existing standard and provide evidence that the State standard is more stringent than the Federal standard. DOE believes that if either a past or future energy savings can be attributed to a State or local standard, then that clearly demonstrates a benefit and therefore a significant State interest in maintaining the regulation.

Three commenters, GAMA, AHAM, and the National LP Gas Association (NLPGA), argue that the granting of the petitions poses a burden on interstate

commerce. (*See* GAMA, No. 7, at 2; AHAM, No. 8, at 2; and NLPGA, No. 11, at 2.) GAMA argues that granting these petitions will weaken the economies of a nationwide distribution system that results from the opportunities for national advertising and centralized warehousing and distribution. AHAM maintains that the mere existence of any State regulation is a burden on commerce and that if DOE accepts the States' claims, the door may be open to future outrageous or exaggerated claims about the benefits of standards. AHAM maintains that this could be the ruin of the national appliance marketplace. NLPGA states that the burden on interstate commerce will result from a "hodge-podge" of regulations where pilot lights are permitted in some States but not in others. Economic pressures will force some manufacturers to discontinue the production of appliances with pilot lights, leaving consumers with only one option, that of purchasing the more expensive IID-equipped appliances. GAMA also states that the petitions show that the potential gas savings associated with the State laws is so small, there appears to be no benefit from these laws which exceeds the burden on interstate commerce and the ensuing costs to the consumer.

The Department rejects these arguments. First, with regard to clothes dryers, the matter of any burden on interstate commerce is non-existent since few, if any, products are being produced or sold that would be affected if the Department were to grant the petitions. Second, the commenters have not provided any evidence to demonstrate how the existing State regulations banning pilot lights in kitchen ranges and ovens have caused an undue burden on interstate commerce. The New York State Energy Office stated that the New York law allows for manufacturers to petition for a waiver of the State regulation, and that no manufacturers have petitioned for a waiver from the State ban on pilot lights. Further, the New York State Energy Office concluded that since no manufacturer has petitioned for relief from the ban on pilot lights, the law did not impose an undue burden on manufacturers. DOE agrees with the New York State Energy Office that the manufacturers' failure to petition the State for relief from the ban on pilot lights indicates that the law has not placed an undue burden on interstate commerce. The other States provided no specific information on this matter. However, DOE did not receive any evidence that these regulations caused undue burden on manufacturers. No evidence has been provided that the mere existence of these State regulations is a burden on interstate commerce, especially in light of the fact that some of these same commenters emphasize that it was market forces only, not regulations, that led to industry-wide use of IIDs in clothes dryers and that the same market forces are responsible for the increase of IIDs in kitchen ranges and ovens.

GAMA did not submit data to support its claim that the savings associated with the State laws is so insignificant that there is no benefit which exceeds the burden on interstate commerce and consumer costs. A State petition to maintain an energy efficiency standard for a particular covered product must only show that the State standard is more stringent than the Federal standard and that there is a significant State interest in maintaining that standard. Nothing in the Act or in DOE's regulations requires a State to meet or exceed an energy savings threshold.

III. Conclusions and Determinations on State Petitions

a. General Conclusion

The Department has determined that each State petition seeking to maintain applicable appliance energy efficiency standards for gas clothes dryers and/or kitchen ranges and ovens has demonstrated that the State standard is more stringent than the Federal standard and that there is a significant State interest to justify each State's regulation. Even if the energy saved for ranges and ovens was less than the amount of energy set forth in the petitions, there is agreement, even from those opposing the granting of these petitions, that the State regulations do save energy. While clothes dryer standards presently would not appear to save much energy, the possibility exists that without standards, manufacturers could reintroduce pilot lights which use more energy than IIDs. Furthermore, the Department received no data showing that any of the State regulations impose an undue burden on interstate commerce.

b. Determinations on State Petitions

1. New York (NY001). The petition submitted by the New York State Energy Office seeks a rule exempting from Federal preemption Section 16–116 of New York State's Energy Law as it pertains to gas kitchen ranges and ovens. Section 16–116 of New York's law prohibits the sale, delivery or installation of any stove or range using a gaseous fuel (other than propane) that is not equipped with an IID. Exempted from this requirement are gas stoves or ranges containing a separate component specifically designed to provide space heating.

DOE has reviewed New York's petition and the comments on the proposed rule in accordance with the requirements of Section 327(b)(3) of the Act and § 430.47 of the regulation. Based on its analysis, DOE has determined that New York has demonstrated that Section 16–116 is more stringent than DOE's rule for gas kitchen ranges and ovens, is justified by a significant State interest and does not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Section 16–116 of the New York Energy Law from the preemptive provisions of Section 327(a)(2)(A) of the Act.

2. Wisconsin (WI002). The petition submitted by the Wisconsin Department of Administration seeks a rule exempting from Federal preemption Wisconsin Statute 101.655 (1981) as it pertains to gas clothes dryers and gas kitchen ranges and ovens. The Wisconsin law prohibits the sale, distribution or installation of a new gas appliance that is not equipped with a State-certified IID.

DOE has reviewed Wisconsin's petition and the comments on the proposed rule in accordance with the requirements of Section 327(b)(3) of the Act and Section 430.47 of the regulation. Based on this analysis, DOE has determined that Wisconsin has demonstrated that Wisconsin Statute 101.655 (1981) is more stringent than DOE's rule for gas clothes dryers and kitchen ranges and ovens, is justified by a significant State interest and does not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Wisconsin Statute 101.655 (1981) as it pertains to gas clothes dryers and kitchen ranges and ovens from the preemptive provisions of section 327(a)(2) of the Act.

3. California (CA003). The petition submitted by the California Energy Commission (CEC) seeks a rule exempting from Federal preemption Sections 25960 and 25964 of California's Public Resources Code and Title 20, California Administrative Code, Section 1605 and Title 24, California Administrative Code Sections 2–5352(1) and 2–5365 as they pertain to gas kitchen ranges and ovens. The California laws prohibit the sale or installation of gas appliances using a gaseous fuel (other than propane) that are not equipped with a State-certified IID.

DOE has reviewed California's petition and the comments on the proposed rule in accordance with the requirements of Section 327(b)(3) of the Act and Section 430.47 of the regulation. Based on this analysis, DOE has determined that California has demonstrated that Sections 25960 and 25964 of the California Public Resources Code, Title 20, California Administrative Code, Section 1605 and Title 24, California Administrative Code, Sections 2–5352(1) and 2–5365 are more stringent than DOE's rule for gas kitchen ranges and ovens, are justified by a significant State interest and do not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Section 25960 and 25964 of the California Public Resources Code, and Title 20 California Administrative Code, Section 1605 and Title 24, California Administrative Code, Section 2–5352(1) and 2–5365 from the preemptive provisions of Section 327(a)(2) of the Act.

4. Minnesota (MN004). The petition submitted by the Minnesota Department of Energy seeks a rule exempting from Federal preemption Minnesota Statute Section 116J.18, Subd. 14, as it pretains to gas clothes dryers and gas kitchen ranges and ovens. Minnesota's law prohibits the sale or installation of gas clothes dryers and gas kitchen ranges and ovens that are equipped with a continuously burning gas pilot light.

DOE has reviewed Minnesota's petition and the comments on the proposed rule in accordance with the requirements of Section 327(b)(3) of the Act and § 430.47 of the regulation. Based on its analysis, DOE has determined that Minnesota has demonstrated that Minnesota Stat. § 116J.18, Subd. 14 is more stringent than DOE's rule for gas clothes dryers and kitchens ranges and ovens, is justified by a significant State interest and does not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Minnesota Stat. § 116J.9 Subd. 14 as it pertains to gas clothes dryers and kitchen ranges and ovens from the preemptive provisions of Section 327(a)(2) of the Act.

5. Oregon (OR005). The petition submitted by the Oregon Department of Energy seeks a rule exempting from Federal preemption Section 1 of the Oregon Revised Statutes (ORS) 479.770 as it pertains to gas clothes dryers and gas kitchen ranges and ovens. The Oregon law prohibits the sale of gas clothes dryers and gas kitchen ranges and ovens unless they are equipped with IIDs.

DOE has reviewed Oregon's petition and the comments on the proposed rule in accordance with the requirements of Section 327(b)(3) of the Act and § 430.47 of the regulations. Based on its analysis, DOE has determined that Oregon has demonstrated that Section 1 ORS 479.770 is more stringent than DOE's rule for gas clothes dryers and kitchen ranges and ovens, is justified by a significant State interest and does not impose an undue burden on interstate commerce. Accordingly, DOE is amending § 430.33 exempting Section 1 ORS 479.770 as it pertains to gas clothes dryers and kitchen ranges and ovens from the preemptive provisions of Section 327(a)(2) of the Act.

IV. Environmental, Regulatory Impact, and Small Entity Impact Reviews

a. Environmental Review

In each case where DOE is requested to approve State standards, DOE conducts a National Environmental Policy Act (NEPA) review on a case-by-case basis. Currently, the five States have regulations requiring IIDs on gas clothes dryers and/or gas kitchen ranges and ovens. Granting the petitions received from these States will mean that these regulations will remain in effect. The Department's final rule granting the petitions with respect to clothes dryers and/or ranges and ovens, will result in no change in the environmental status quo of the five States, and therefore, will clearly have no significant environmental impact. No evironmental assessment or environmental impact statement is required.

It should also be noted that the Department has prepared and issued an Environmental Assessment (EA), DOE/EA–0113, on the impact of setting and implementing energy efficiency standards for all 13 types of consumer products identified in section 322(a) (1)–(13) of the Act. A Finding of No Significant Impact and Notice of Availability of that EA were published with the June 30, 1980 proposed rule for minimum energy efficiency standards for eight of the products. 45 FR 44088. Copies of the EA may be obtained from the address indicated at the beginning of this notice.

b. Regulatory Impact Review

In light of the foregoing analysis of the effect of today's actions, DOE has concluded that the rules are not "major rules" for the purposes of Executive Order 12291 because they will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the rules were submitted to OMB for review without a regulatory impact analysis.

c. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifices pursuant to section 605(b) of the Regulatory Flexibility Act that the final rules will not have a "significant economic impact on a substantial number of small entities." Granting the State petitions will not affect the status quo. Based on evidence provided in these rulemakings, the existing State regulations have not had a significant impact on manufacturers, including small businesses.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., March 15, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. Section 430.33 is revised to read as follows:

§ 430.33 Preemption of State regulations.

Any State regulation providing for any energy efficiency standard or other requirement with respect to the energy efficiencies or energy use of a covered product that is not identical to a Federal standard (including a determination of no standard) in effect under this subpart is preempted by that standard, except that with respect to:

(a) Kitchen ranges and ovens:

(1) All gas kitchen ranges and ovens in New York subject to the New York State Energy Law, Section 16–116, are exempt from preemption;

(2) All gas kitchen ranges and ovens in Wisconsin subject to Wisconsin Statute 101.655 (1981) are exempt from preemption;

(3) All gas kitchen ranges and ovens in California subject to Sections 25960 and 25964 of the California Public Resources Code, Title 20, California Administrative Code Section 1605, and Title 24, California Administrative Code, Sections 2–5352(1) and 2–5365, are exempt from preemption;

(4) All gas kitchen ranges and ovens in Minnesota subject to Minnesota Statute § 116J.19, Subd. 14, are exempt from preemption; and

(5) All gas kitchen ranges and ovens in Oregon subject to Section 1 of the Oregon Revised Statutes 479.770 are exempt from preemption.

(b) Clothes dryers:

(1) All gas clothes dryers in Wisconsin subject to Wisconsin Statute 101.655 (1981) are exempt from preemption;

(2) All gas clothes dryers in Minnesota subject to Minnesota Statute § 116J.19, Subd. 14, are exempt from preemption; and

(3) All gas clothes dryers in Oregon subject to Section 1 of the Oregon Revised Statutes 479.770 are exempt from preemption.

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Part V

Department of Health and Human Services

Office of Human Development Services

45 CFR Parts 1385, 1386, and 1387
Developmental Disabilities Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1385, 1386, and 1387

Developmental Disabilities Program

AGENCY: Department of Health and Human Services (HHS), Office of Human Development Services (HDS), Administration on Developmental Disabilities (ADD).

ACTION: Final rule.

SUMMARY: The Department is issuing final rules for the Developmental Disabilities programs. This final regulation implements the Developmental Disabilities Assistance and Bill of Rights Act of 1978, as amended, and contains management and administrative procedures which will reduce reporting and paper work requirements. These rules do not include requirements for the University Affiliated Facilities (UAF) except for the requirement that a UAF must provide an assurance regarding the rights of persons with developmental disabilities. Regulations for the UAF program are found at 45 CFR Part 1388.

EFFECTIVE DATE: April 26, 1984.

FOR FURTHER INFORMATION CONTACT: Jean K. Elder, Ph.D., Commissioner, Administration on Developmental Disabilities, Room 336–E Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201. Telephone: (202) 245–2890.

SUPPLEMENTARY INFORMATION:

Background

Amendments to the Developmental Disabilities Assistance and Bill of Rights Act of 1978, and 1981 require some major modifications in the regulations to reflect statutory changes. In addition, Departmental policy and regulatory principles governing Executive Order 12291 and the Paper Work Reduction Act of 1981 are reflected in these final rules.

Description of Program

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.), "the Act," has traditionally served a target population who, by virtue of their severe handicapping conditions, have been underserved or not served at all through existing programs.

Legislation originally enacted in 1963 as the Mental Retardation Facilities and Construction Act (Pub. L. 88–164) authorized planning activities and construction of facilities in which services were to be provided to the mentally retarded. Public Law 88–164 was subsequently amended by the Developmental Disabilities and Facilities Construction Act of 1970 (Pub. L. 91–517) which further expanded the target population to include individuals with cerebral palsy, epilepsy and other neurological disorders. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for the developmentally disabled.

Public Law 91–517 and successive amendments to the Act emphasized that the purpose of the Developmental Disabilities Program was to strengthen, rather than supplant existing services, and to fill gaps in the human service delivery system. Section 101(a)(5) of the Findings and Purpose Section in the Act (42 U.S.C. 6000(a)(5)) explicitly states that "it is in the national interest to strengthen specific programs, especially programs that reduce or eliminate the need for institutional care * * *."

Public Law 94–103, the 1975 Amendments, deleted the construction authority, emphasized advocacy, and added a new requirement for States to establish a Protection and Advocacy system (42 U.S.C. 6012). It also introduced Section 111, "Rights of the Developmentally Disabled," (42 U.S.C. 6010) which stated findings with respect to the rights of persons with developmental disabilities.

The 1978 amendments (Pub. L. 95–602) introduced the provision of priority services to assist States in focusing their energies on specific areas needing remediation (42 U.S.C. 6001(8)).

In addition, these amendments added a new definition of developmental disabilities (42 U.S.C. 6001(7)). The term "developmental disability" in the 1978 amendments was defined as "* * * a severe chronic disability of a person which:

(A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) Is manifested before the person attains age twenty-two;

(C) Is likely to continue indefinitely;

(D) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living; and (vii) economic self-sufficiency; and

(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated."

This definitional change was arrived at following an extensive study and emphasizes functional deficits rather than clinical conditions. It is estimated that 3.9 million people in the United States now meet the functional definition of developmental disability.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) extends the Developmental Disabilities Program through September 30, 1984. It authorizes appropriations for the programs in the Act which include: (1) The basic State grant program (42 U.S.C. 6061–6068); (2) a system for protection and advocacy of individual rights (42 U.S.C. 6012); (3) the university affiliated facilities programs for administration and operation of interdisciplinary training, research and service programs (42 U.S.C. 6031–6033); and (4) special project grants for projects of national significance (42 U.S.C. 6081).

In addition, Section 912 of Pub. L. 97–35 repeals the requirement formerly contained in Section 110 of the Act (42 U.S.C. 6009) for a specific evaluation system for services furnished to persons assisted under the Developmental Disabilities Program.

The Department published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on February 23, 1983 (45 FR 7700–7712). Interested persons were given sixty days in which to send written comments, suggestions or objections regarding the proposed regulations. During the sixty day comment period seventy letters containing approximately two hundred and twenty-five comments were received. In addition informal discussions on the NPRM were held in three major cities.

All written comments were analyzed and form the basis for changes which the Department has made in these final rules.

Part 1385 contains provisions which apply to all of the Developmental Disabilities programs. Part 1386 regulates the two formula grant programs: the Basic State Grant program authorized by Part C of the Act; and the Protection and Advocacy (P&A) program authorized by Section 113 of the Act. Part 1387 applies to Special Projects of National Significance authorized by Section 145 of the Act. Although rules for the University Affiliated Facilities program (UAF) are in 45 CFR Part 1388, these rules require an assurance by the UAFs of compliance with Section 111 of the Act regarding the rights of persons with developmental disabilities.

Summary of Major Comments, Departmental Response and Changes

The sections which follow include a summary of major comments, our response to those comments, and discussion of all significant changes that we have made in the NPRM to produce these final regulations.

PART 1386

Subpart A—Basic Requirements

Section 1386.2 Obligation of Funds.

Section 1386.2(c)(1) Obligation Based on Estimate.

Section 1386.2(c)(1) of the NPRM proposed that Protection and Advocacy Offices be permitted to obligate funds prior to the end of the fiscal year based on an estimate of potential costs to be incurred when an appearance in judicial and administrative proceedings on behalf of a person with developmental disabilities (litigation costs) is contemplated.

Comment: One commenter recommended that at least twelve months be allowed to reobligate funds which have been obligated for litigation purposes prior to the end of the fiscal year in which the funds become available.

Response: The Department cannot legally allow for obligation or reobligation of funds after the fiscal year in which those funds are appropriated and cannot change Section 1386.2(a) which provides for obligation of all funds within the same fiscal year they are appropriated. We believe that we are providing additional flexibility in this area by allowing an estimate of litigation costs to appear on an obligation document. We suggested that if litigation activity on behalf of an individual is tentative, the Protection and Advocacy System may obligate funds for that purpose in sufficient time during the fiscal year which will allow for reobligation in that same year in the event that litigative activity becomes unnecessary.

Section 1386.2(c)(2) Definition of litigation.

This section defines litigation as it relates to Section 1386.2(c)(1).

Comment: Five commenters indicated that the definition of litigation in § 1386.2 (c)(2) was too restrictive and suggested that the definition be expanded to include monitoring activities associated with court orders or consent decrees.

Response: We concur with this opinion and have expanded the definition of litigation costs to include the expenditure of funds for monitoring, review and oversight of the outcome of litigation. This cannot include salaries of P&A employees, as suggested by several individuals, since salaries are daily expenditures and cannot be part of an obligation to an outside agent or agency.

In addition, we want to clarify that funds used for salaries and expenses incurred in the day-to-day operation of the Protection and Advocacy Systems are part of the operating budget of the grantee. These funds cannot be utilized beyond the end of the fiscal year and cannot be treated in the same way as funds which are obligated to an outside agent or agency to achieve a specific objective, such as litigation and associated activities.

Section 1386.3 Liquidation of Obligations.

The NPRM stipulated that all obligations must be liquidated within one year of the close of the Federal fiscal year in which the funds were made available, or else they revert back to the Federal government.

Comment: There were more than twenty comments on this section proposing a longer liquidation period to address contingencies such as (1) start-up lag by subgrantees, (2) coordination of grant cycles with other State agencies, (3) reappropriation of funds by State Legislatures, and (4) previous time lag between the beginning of a fiscal year and States' receipt of allotment. In addition, commenters recommended that we consider a liquidation period which would coincide with the three year State plan cycle. Many individuals felt that there was a need for a thirty-six month period in which to liquidate obligations. An equal number recommended a twenty-four month period.

Response: The Department believes it has the latitude to establish a reasonable liquidation period which will not impose undue hardships on the States. As there was virtual unanimity that twelve months following the close of the fiscal year in which funds were allotted was too restrictive for liquidation of obligations, we have determined that a two year liquidation period will ease problems articulated by commenters. Section 1386.3 has been revised to reflect this decision and calls for all obligations to be liquidated within two years (twenty-four months) of the close of the Federal fiscal year in which the funds were made available or else they revert back to the Federal government.

Section 1386.4 Eligibility for Services.

Section 1386.4(b) Clients Previously Served.

This section addresses the "Grandfather Clause" in Pub. L. 95–602 which allows continued receipt of services by individuals who met the definition of developmental disability in Pub. L. 94–103, and who actually received one or more services under the Act between October 1, 1968 and October 1, 1978 and whose Individual Habilitation Plan (IHP) indicated a continuing need for those same services.

Comment: Eight of the commenters recommended that language in this section be changed to permit the continued eligibility for services under the Act of persons who were eligible under the former categorical definition of developmental disability, but who do not meet the criteria of the functional definition, provided their IHP specifies that they still need the same services as they did at the time of their entry into the DD service delivery system.

Two other respondents advocated that this "Grandfather Clause" be deleted from the regulation.

Other commenters indicated a need to delete the words "those same" from this section because client needs for services change as they mature and as a result of remediation.

Response: The Report of the Conference Committee accompanying HR 12467 noted that the functional "definition is intended to cover everyone currently covered under the [categorical] definition and it is also intended to add other individuals with similar characteristics * * *. It is not the intent to exclude anyone who legitimately should have been included under the definition in current law." HR Report No. 95–1789, 95th Congress, Second Session 104 (1978).

We believe that the NPRM addressed continued eligibility for individuals who were previously served under the categorical definition, but agree that services, in order to meet current needs of individuals, will change over a period of years and should be reflected in Individual Habilitation Plans. We have, therefore, deleted the words "those same" from this section.

We believe that this section should not be deleted as commenters suggested because it conveys the intent of Congress not to exclude anyone who was previously served and continues to be eligible under the functional definition.

Subpart B—State System for Protection and Advocacy of Individual Rights

Section 1386.20 Designated State Protection and Advocacy Office.

Section 1386.20(a) Accountable State Official.

Paragraph (a) of this section of the NPRM proposed that the Governor designate the State official or public or private agency accountable for the proper use of funds and conduct of the State Protection and Advocacy System.

Comment: One respondent pointed out that requiring Governors to designate State protection and advocacy agencies imposed restrictions on the States not intended by the Congress. In some States, for example, the legislature may wish to assume responsibility for designating the Protection and Advocacy agency, or may wish to place that responsibility on an officer of the legislature or on the Chief Justice of the State Supreme Court.

Five commenters apparently misinterpreted § 1386.20(a) as introducing another element of control over a State Protection and Advocacy System. This section relates only to designation of the agency to be responsible for the Protection and Advocacy System.

Response: The Department concurs that States should be given the maximum flexibility for designation of the State Protection and Advocacy System and have added the phrase "or other State official or entity" following the word "Governor."

Section 1386.20(b) Non-designation of Guardianship Agency.

This paragraph of the NPRM proposed to preclude an agency of the State which provides guardianship services from being designated as the Protection and Advocacy agency.

Comment: Seventeen commenters supported the prohibition against designation of agencies providing guardianship services. They agreed with the Department that guardianship should be considered a service and that allowing providers of guardianship services to receive the protection and advocacy designation would inherently promote conflict of interest for those agencies.

Five commenters felt that clarification was needed to determine if this section precluded the Protection and Advocacy agencies from representing clients in guardianship proceedings.

Response: The Department wishes to make clear the intent of this section. It prohibits designation as the Protection and Advocacy agency of any agency which provides direct services, including those which provide guardianship services, in order to avoid conflicts of interest. This section is not intended to dictate the kinds of cases which Protection and Advocacy agencies can handle. We have clarified § 1386.20(b) by inserting the following phrase after the word *State:* "or private agency providing direct services, including." States affected by this section will be given one year from the date of issuance of this regulation to redesignate their Protection and Advocacy agencies in the event that redesignation is necessary to comply with § 1386.20(b).

Section 1386.20(c) Responsible State Official.

This paragraph calls for the appointment of a responsible State official to receive notices of compliance actions and disallowances when an entity outside of State government is designated as the protection and advocacy agency.

Comment: Three commenters supported, without reservation, this section, four opposed it, and five indicated that it should be modified. Those in opposition or seeking modification felt that the independence of the Protection and Advocacy agency would be compromised.

Response: In response to those commenters who expressed concern that this section would adversely affect the independence of the Protection and Advocacy agencies, the Department wishes to make clear that this was not the intention of § 1386.20(c). The State official referred to in this section is to act in a liaison capacity in cooperation with the Protection and Advocacy agency in the event that there are instances of disallowance of funds or compliance actions. We have modified this section, for purposes of clarity, by making necessary technical changes which address this concern.

Section 1386.21 Requirements of the Protection and Advocacy System.

Section 1386.21(b)(1) Federal Access to Records.

This section of the NPRM provided for access to client records by authorized Federal officials.

Comment: Two respondents indicated that the opportunity for access afforded representatives of the Federal government in this section was too broad and violated confidentiality of records.

Response: The Department has addressed this issue by amending this section to tie Federal access to clients' records to official audit or other reviews conducted by the Federal government. The Department will fulfill its obligations to maintain confidentiality of personal records.

Comments: Three commenters indicated that granting unlimited access by parents or guardians to the records of minor clients would, in some cases, violate the Protection and Advocacy System's responsibilities to these clients. (e.g. where minors are represented in instances of alleged child abuse).

Response: The Department has amended this Section to protect client confidentiality and to recognize the primacy in these instances, not only of State law but also of court order and attorney-client privilege by adding the terms "court order" and "attorney-client privilege."

Section 1386.22 Triennial report on the State Protection and Advocacy System.

We have made technical changes to this section for clarity and, in one instance, have indicated an OMB clearance number.

Section 1386.23 Periodic Reports.

This section identifies required reports in addition to the triennial report.

Comment: One respondent indicated that it was not clear whether the responsibility for submitting the annual report resides with the Protection and Advocacy agency or with the State. Another commenter questioned whether it was appropriate to require that quarterly and final financial status reports be submitted by the Governor or appropriate State financial official.

Response: We agree and in each case have changed the requirement so that these reports must be submitted directly to the Department by the State Protection and Advocacy agency. In addition, we have revised the language for clarity.

Section 1386.24 Federal financial Participation: Allowable and non-allowable costs for Protection and Advocacy Systems.

Section 1386.24(b)(1) Costs incurred for activities not included in the triennial report are disallowed.

This section of the NPRM precluded Federal financial participation for activities not included in the triennial report.

Comment: One commenter noted that as new activities will occur after the triennial report has been submitted and as the annual report will be a summary of activities which have already taken place, problems for the State would

arise if this section remained as written in the NPRM.

Response: We concur that the rigidity of this provision would cause unnecessary problems for Protection and Advocacy Systems and have deleted section 1386.24(b)(1).

Section 1386.24(b)(2) Non-allowable Costs.

The NPRM proposed, in this section, that costs incurred for activities to solve problems not directly related to an individual's disability and which are faced by the general populace (e.g. drawing up of wills or divorce actions) would not be eligible for Federal financial participation.

Comment: Four commenters indicated that the examples cited in this section are sometimes part of an activity directly related to a person's disability and would inhibit the Protection and Advocacy Systems from carrying out their mandate.

Response: The Department concurs that if activities listed in the examples are part of the overall tasks of the Protection and Advocacy System in resolving a client's problem, then they should be allowable. We have decided to delete the example but retain the paragraph to convey that if a client seeks assistance solely to resolve a problem faced by the general populace, the client should be referred to other counsel or sources of assistance.

Access To Institutional Records

A section on "access to records" was not included in the regulation part of the NPRM but was discussed in the preamble section which described an earlier NPRM dated May 9, 1980. Numerous responses were received to the request for comment on this issue.

These comments stressed the importance of insuring that State Protection and Advocacy Systems are able to serve developmentally disabled persons residing in institutions as well as persons in the community. They felt that the intent of Congress was quite clear regarding the mandate of Protection and Advocacy Systems to employ all appropriate methods for ensuring the rights of *all* developmentally disabled persons, including those residing in institutions.

Response: As developmentally disabled persons residing in institutions are less likely to have access to a Protection and Advocacy System and less likely to understand the services afforded them by that system than are their counterparts residing in the community, special communication efforts may have to be made to insure that the services offered by Protection and Advocacy Systems are understood by and available to institutionalized developmentally disabled persons.

Where problems of access to records and facilities exist, it is important that States take action to address these systemic issues, e.g. through negotiation with individual institutions and agencies.

The Department does not wish to issue regulations granting blanket access to records because of potential conflict with the rights of persons who are competent and do not wish their records reviewed, especially if they receive no Federal or State assistance. However, we will endeavor to identify "best practices" and issue an information memorandum containing model agreements, practices and procedures.

Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities

Section 1386.30 (a) and (c)(2) Priority Areas.

These sections of the NPRM proposed to require that the States prepare and submit plans which meet the requirements of Section 133(b) and Section 137(b) of the Act, and that States select the priority area(s) in which sixty-five percent of the Federal allotment will be spent.

Comment: Two respondents commented that these provisions do not reflect the role of the Councils in conducting needs assessment, selecting the priorities, and developing the plans. One suggested that the language in the May 9, 1980 NPRM (1386.32) be included in this section. The May, 1980 NPRM described the specific responsibilities of the Council in the planning and priority selection process.

Response: It was not our intent to exclude the Councils from the planning and decisionmaking process. Consequently, the final rules have been modified to specify that States and Councils will jointly prepare and submit the State Plan which will include jointly selected priority areas.

Section 1386.30(c) State Plan Format.

This section of the NPRM supports Executive Order 12372 which allows States to submit their plans in any format they choose, as long as the plans contain all the required information and assurances.

Comment: Twelve commenters wanted the regulation changed to require States to use the State Plan Format which was jointly developed by the Administration on Developmental Disabilities (ADD) and the National Association of Developmental Disabilities Councils (NADDC).

The rationale for this suggestion was that the State plan is the most important document to assure the intent of the Act is being carried out, to provide consistent, comparable data, and to assist States in helping each other. There are twelve commenters who expressed concern that, without a standardized format, these important roles of the plans would be diluted.

One commenter supported the absence of a mandatory format in favor of "simplicity, flexibility, and substitution."

Response: The Department is maintaining its previous position in support of Executive Order 12372. This section in the regulation will allow for a State plan format of the States' choice (including use of the voluntary format developed by NADDC and ADD) as long as States submit plans which meet the requirements of Sections 133 and 137(b) of the Act and provide assurances regarding the development of individual habilitation plans.

Section 1386.30(c)(3) Identification of Council Members.

This section of the NPRM called for the identification in the State Plan of the members of the officially appointed State Planning Council.

Comment: One organization believed that identification of Council members in the State plan was too prescriptive and unnecessarily intrusive.

Response: We concur with this comment and have deleted Sections 1386.30(c)(3) and 1386.30(c)(4).

Section 1386.30(c)(4) Council Staffing.

This section of the NPRM set forth the requirement that the State assign a Director and such support staff as deemed necessary.

Comment: Twenty respondents commented on this position. Seven suggested that the language be amended to specify that the director and support staff should be solely responsible to the State Planning Council and eight respondents suggested that the Council should determine what support staff are necessary.

One commenter suggested that it is the State's prerogative to determine adequate support staff, and one suggested that such decisions should be made jointly by that State and the Council.

One respondent supported the deletion of the May 1980 NPRM requirement that the director be full time, and two advocated that a full time director be mandatory.

Response: ADD recognizes that there have been instances when Councils feel that States have not allocated sufficient staff to permit them to carry out their mandated responsibilities. A requirement that the need for support staff be determined by the Council and that the director and support staff be solely responsible to the Council might eliminate that problem.

However, it is the general policy of the Department to permit States to organize their governments as they see fit. While there may be occasions when Federal requirements necessitate a departure from this policy, we do not believe this is the case in this instance. In order to be responsive to comments and recognizing that a Council's views on what constitutes adequate staff are important in assisting a State in arriving at a proper decision, we have changed the regulation to require State agency consultation with the Council in determining staffing requirements.

The regulation clearly requires the State to identify and assign staff to the Council. This identification and assignment assures that Councils will have specific staff who will carry out the executive and administrative functions under council auspices. We decided that a full time director should not be required because in many States the assignment of a full time director precludes the assignment of part time support staff, a circumstance that restricts the flexibility of Councils to retain staff with a variety of skills. The proposed language has been modified to reflect that the authority for the determination of necessary staff, while still vested with the State, should be made with advice from the Council. These requirements are to be included in the State plan through an assurance rather than a description in section 1386.30(e)(4).

Section 1386.33 Protection of Employees Interests.

This section of the NPRM proposed to provide for fair and equitable arrangements to protect the interests of employees affected by actions under a State plan to provide alternative community living arrangement services.

Comment: There were twenty-two comments on this section, each addressing one of the following five points of view.

(1) Three commenters requested that the regulation contain language from the preamble which explicitly calls for "the protection of the interests of employees who work in institutions when the State has selected the priority area of alternative community living arrangements causing the return of clients from institutions to the community."

(2) Three commenters concluded that the protection of employee interests should be the responsibility of State civil service systems.

(3) Six commenters took issue with that portion of the preamble which referred to the protection of employee interests when the State plan identified alternative community living arrangements as a priority. They maintained that the law requires this protection when alternative community living arrangements services are provided irrespective of their selection as a priority.

(4) Three commenters felt that the regulation should take into account the types of alternative living arrangement services which would adversely affect institutional employment. They felt that the provision of respite care and aid to families of individuals (services under alternative community living arrangements) who had never been institutionalized was not a basis for providing employee protection and would be inappropriate and destructive to the objective of providing individuals with the least restrictive environment.

(5) Seven commenters maintained that Councils lack the authority to develop and implement a plan to protect the interests of employees.

Response: The Department agrees with the first comment that an employee protection plan must relate to institutional employees affected by alternative living arrangement services. In addition, we recognize that there was an error in the preamble of the NPRM, as pointed out in the third comment, stating that a plan for the protection of employees' interests is necessary when a State selects the priority area of alternative community living arrangements as a priority service. The Act requires an employee protection plan when any alternative community living arrangement services are provided, and not only when the priority area is selected (as erroneously stated in the preamble of the NPRM).

With regard to the second comment, the Act (Section 133(b)(7)(B)) requires development of an employee protection plan as discussed in the previous paragraph. Therefore, the Department has rejected the suggestion that the employee protection plan be left to State merit systems.

We also agree with the point of view expressed in paragraph four (4) above. However, since the provision of respite care for, and other aid to, families of individuals who have never been institutionalized can have no adverse effect on employees of institutions, no employee protection plan can logically be required or developed when these services are provided. Consequently, no change in regulation is called for.

The fifth issue regarding Councils' lack of authority to plan and implement a plan to protect the interests of employees fails to take into account that the State plan must be jointly developed by the Council and State administering agency. The plan is implemented by the State agency which is empowered to carry out an employee protection plan. The extent of Council authority is prescribed by the statute and the regulation is consistent with the statute. Since the Department cannot change the law by regulation, it has rejected this comment.

Section 1386.34 Provision of Priority Services.

This section addresses requirements that the State plan identify one or two priority areas in which sixty-five percent of the allotment is to be expended.

Comment: Four commenters requested that preamble language of the NPRM describing the Department's interpretation regarding priority services be included in the regulation.

Response: We concur and have added appropriate language to Section 1386.34.

Section 1386.35(b)(3) Nonallowable Cost.

In the NPRM, this paragraph listed non-allowable costs for basic State grants, including issuances of the Office of Management and Budget.

Comment: Two commenters expressed confusion on what specific issuances were referred to in this section, and suggested that the final rules list those applicable issuances.

Response: We concur that all responsible parties should be informed of the policies to which they must adhere. However, most of these policy issuances emanate from separate agencies, such as the Office of Management and Budget, and are subject to change. Any addition or deletion of a particular requuirement would necessitate amendment of these regulations should these policies be delineated in the final rules. Consequently, ADD will disseminate information on these issuances to all affected parties through an information memorandum which can be updated as needed.

Miscellaneous Comments

Minimum Allotments

Establishment of a minimum allotment level for State Developmental Disabilities Programs.

Comment: Two respondents suggested that language in current regulations establishing the amount of formula grant funds for minimum allotment States be inserted in the final rules.

Response: The statute is very explicit about the minimum amounts to which States are entitled, leaving little room for elaboration or clarification. Thus, including the suggested language in the regulations would constitute a restatement of the law. We consider such redundacy unnecessary.

Subpart D—Hearings

Section 1386.80 General.

This subpart in the NPRM set forth the requirements regarding the practice and procedure for hearings for States when issues of compliance arise. It also made these provisions applicable to the Protection and Advocacy System.

Comment: Eight respondents commented on the length and detail of those requirements. Their concerns centered around their imposing an undue administrative burden on ADD.

One respondent specifically supported provisions which addressed the recognition of individuals and groups to participate as *amici curiae* in the proceedings.

Response: The Department appreciates the concern expressed about potential administrative burdens. However, experience has shown that most compliance issues are resolved through negotiations during the process of developing and approving State plans. It is rarely necessary to engage in formal hearings. When such cases arise, however, it is important that the practice and procedures for such hearings be clearly delineated, including all essential protections for affected parties. As a result this subpart, except for some minor technical corrections, has been retained in the final rules and is essentially unchanged.

PART 1387

Special Projects—Projects of National Significance

Section 1387.1 General.

This section of the NPRM proposed that all projects supported with funds under Section 145 of the Act be of national significance. Since the 1981 amendments to the Act are quite explicit, we chose not to repeat that language in the regulation and have indicated that pertinent information concerning format, content of application, submittal procedures and priority areas would be included in the consolidated HDS discretionary grant announcement published in the **Federal Register**.

Comment: Four commenters expressed concerns that the developmentally disabled might not be served if projects of national significance were announced in the consolidated HDS **Federal Register** announcement of availability of funds.

They recommended that regulatory language require that funds available under Section 145 must be used for projects related specifically to the developmentally disabled. These commenters also expressed concern that some "cross-cutting" projects awarded with section 145 funds might be too broad to be of value to the developmentally disabled target group.

Response: The Department feels that all projects supported with Section 145 funds in the joint HDS discretionary grant process have directly benefitted or will directly benefit the developmentally disabled and does not concur with the recommendations. However, we have amended this section to include language which reflects the intent of Section 145 of the Act.

Impact Analysis

These proposed regulations have little economic impact since they closely follow the statute. Further, the regulations primarily affect State agencies, which are not considered small entities under the Regulatory Flexibility Act. Therefore, the Secretary certifies, pursuant to 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act, that this regulation will not have a significant impact on a substantial number of small entities.

For the same reasons, this proposed rule does not meet the threshold requirements contained in Executive Order 12291 and, therefore, does not constitute a major rule.

Recordkeeping and Reporting Requirements

Sections 1386.22 (Triennial Report), 1386.23(a) (Annual Report) and 1386.30–1386.31 and 1386.33–1386.34 (State Plan) of this rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of these information collection requirements.

There will be no specified format for the submittal of the State plan requirements established in §§ 1386.30–1386.31 and 1386.33–1386.34. States may select any format they wish as long as they comply with the requirements in the Act and in these regulations. These regulations reflect the aims of Executive Order 12372 to allow for State Plan simplification, consolidation or substitution.

List of Subjects

45 CFR Part 1385

Grant programs/education, Grant programs/social programs, Handicapped, Reporting and recordkeeping requirements.

45 CFR Part 1386

Administrative practice and procedure, Grant programs/education, Handicapped, Reporting and recordkeeping requirements.

45 CFR Part 1387

Colleges and Universities, Grant programs/education, Grant programs/social programs, Handicapped, Research.

(Catalog of Federal Domestic Assistance Program, Nos. 13.630 Developmental Disabilities Basic Support; and 13.631 Developmental Disabilities—Special Projects)

Dated: October 26, 1983.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: February 23, 1984.

Margaret Heckler,

Secretary.

For the reasons set forth in the Preamble, Chapter XIII of Title 45 of the Code of Federal Regulations is amended as follows:

1. In Title 45, Chapter XIII, the Subchapter heading for Subchapter I is revised to read as follows:

SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

2. Parts 1385, 1386, and 1387 of Chapter XIII of the Code of Federal Regulations are revised as follows:

PART 1385—REQUIREMENTS APPLICABLE TO PARTS 1386, 1387 and 1388

Sec.

1385.1 General.
1385.2 Purpose of the regulations.
1385.3 Definitions.
1385.4 Rights of persons with developmental disabilities.
1385.6 Employment of handicapped individuals.
1385.7 Waivers.
1385.8 Formula for determining allotments.
1385.9 Grants administration requirements.

Authority: Pub. L. 88–164, 77 Stat. 282, as amended by Pub. L. 90–170, 81 Stat. 527; Pub. L. 91–517, 84 Stat. 1316; Pub. L. 94–103, 89

Stat. 486; Pub. L. 95–602, 92 Stat. 2955; Pub. L. 97–35, 95 Stat. 563 (42 U.S.C. 6001 et seq.)

§1385.1 General.

Except as specified in § 1385.4, the requirements in this Part are applicable to programs and projects carried out under Parts 1386, 1387, and 1388:

(a) State Systems for Protection and Advocacy of Individual Rights of Persons with Developmental Disabilities;

(b) State Basic Program for Planning, Administration and Services on Behalf of Persons with Developmental Disabilities;

(c) Special Projects—Projects of National Significance; and

(d) University Affiliated Programs.

§1385.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act as amended (42 U.S.C. 6000, et seq.).

§ 1385.3 Definitions.

In addition to the definitions in Section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

Act means the statutory authority for the developmental disabilities programs as enacted in Pub. L. 88–164 and amended by Pub. L. 90–170, Pub. L. 91–517, Pub. L. 94–103, Pub. L. 95–602 and Pub. L. 97–35. It may be cited as the Developmental Disabilities Assistance and Bill of Rights Act.

Commissioner means the Commissioner of the Administration on Development Disabilities, Office of Human Development Services, Department of Health and Human Services or his or her designee.

Department means the U.S. Department of Health and Human Services (HHS).

Fiscal year means the Federal fiscal year unless otherwise specified.

Governor means the chief executive officer of the State or Territory, or his or her designee who has been formally designated to act for the Governor in carrying out the requirements of the Act and these regulations.

Secretary means the Secretary of the Department of Health and Human Services.

§ 1385.4 Rights of persons with developmental disabilities.

(a) Section 111 of the Act, *Rights of Persons with Developmental Disabilities* (42 U.S.C. 6010), is applicable to the programs authorized under the Act, except for the Protection and Advocacy system.

(b) In order to comply with Section 133(b)(5)(C) of the Act (42 U.S.C. 6063(b)(5)(C)), regarding the rights of developmentally disabled persons, the State must meet the requirements of § 1386.30(e)(3) of these regulations.

(c) Applications from university affiliated facilities or for special project grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with Section 111.

§ 1385.6 Employment of handicapped individuals.

Each grantee who receives Federal funding under this Act must meet the requirements of Section 106 of the Act (42 U.S.C. 6005) regarding affirmative action. Failure to comply with Section 106 may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in Subpart D of Part 1386.

§ 1385.7 Waivers.

Applications for a waiver of the provisions of Section 107 of the Act (42 U.S.C. 6006) with respect to alternative use of facilities constructed with funds under the Act may be granted by the Commissioner if the following criteria are met:

(a) The waiver request provides a basis for alternative use or sale of a facility constructed with funds appropriated under the Act.

(b) The clients served in the facility are or will be served in a facility of equal or higher quality.

(c) If the waiver request is for an alternate use, that use must serve some other public purpose.

§ 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the purpose of the basic State program (see Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities) and the protection and advocacy system (see Subpart B—State System for Protection and Advocacy of Individual Rights) on the following basis:

(a) Two-thirds of the amount appropriated are allotted to each State according to the ratio the population of each State bears to the population of the United States. This ratio is weighted by the relative per capita income for each State. The data used to compute allotments are supplied by the U.S. Department of Commerce, for the three most recent consecutive years for which satisfactory data are available.

(b) One-third of the amount appropriated is allotted to each State on the basis of the relative need for services of persons with developmental disabilities. The relative need is determined by the number of persons receiving benefits under the Childhood Disabilities Beneficiary Program (Section 202(d)(1)(B)(ii) of the Social Security Act), (42 U.S.C. 402(d)(1)(B)(ii)).

§ 1385.9 Grants administration requirements.

(a) The following parts of Title 45 CFR apply to grants funded under Parts 1386, 1387, and 1388 of this chapter.

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.
45 CFR Part 46—Protection of Human Subjects.
45 CFR Part 74—Administration of Grants.
45 CFR Part 75—Informal Grant Appeals Procedures.
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance Through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 81—Practice and Procedure for Hearings Act under Part 80 of this title.
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(b) The Departmental Grant Appeals Board also has jurisdiction over appeals by grantees who have received grants under the University Affiliated program or for a Special Project.

The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR Part 16.

(c) The Departmental Grant Appeals also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula grant programs—the Basic State Grant program and the State Protection and Advocacy system. Appeals filed by States shall be decided in accordance with 45 CFR Part 16.

(d) In making audits, examinations, excerpts and transcripts of records of grantees and subgrantees, including the protection and advocacy system, as provided for in 45 CFR Part 74, the Department will keep information about individual clients confidential to the extent permitted by law and regulations.

PART 1386—FORMULA GRANT PROGRAMS

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Authority: Pub. L. 88–164, 77 Stat. 282, as amended by Pub. L. 90–170, 81 Stat. 527; Pub. L. 91–517, 84 Stat. 1316; Pub. L. 94–103, 89 Stat. 486; Pub. L. 95–602, 92 Stat. 2955; Pub. L. 97–35, 95 Stat. 563 (42 U.S.C. 6000 et seq.).

Subpart A—Basic Requirements

§ 1386.1 General.

All rules under this subpart are applicable to both the Protection and Advocacy System and State Basic Support Program.

§ 1386.2 Obligation of funds.

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States only within the same Federal fiscal year.

(b)(1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c)(1) Protection and Advocacy offices may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of a person with developmental disabilities as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, litigation costs mean expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented a developmentally disabled person (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy system. All funds made available to the State Basic Support Program and to the P&A System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within the same fiscal year in which the funds were originally obligated.

§ 1386.3 Liquidation of obligations.

(a) All obligations incurred pursuant to a grant made under the Act for a specific Federal fiscal year, must be liquidated within two years of the close of the Federal fiscal year in which the grant was awarded.

(b) The Commissioner may waive the requirements in paragraph (a) of this section when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute.

(c) Funds attributable to obligations which are not liquidated in accordance with the provisions of this section revert to the Federal Government.

§ 1386.4 Eligibility for services.

(a) All persons who meet all of the criteria of the definition of developmental disability set forth in Section 102 of the Act (42 U.S.C. 6001) are eligible for available and appropriate services.

(b) In addition, a person who met the definition of developmental disability as provided in Pub. L. 94–103 and who was actually receiving one or more services under the Act during the period October 1, 1968 through November 30, 1978, is eligible to continue to receive same services, provided that person's Individual Habilitation Plan (IHP) indicates a continuing need for same services.

Subpart B—State System for Protection and Advocacy of Individual Rights

§ 1386.20 Designated State Protection and Advocacy Office.

(a) The Governor or other State official or entity so empowered must designate the State official or public or private agency to be accountable for the proper use of funds and conduct of the State Protection and Advocacy system.

(b) An agency of the State or private agency providing direct services, including guardianship services may not be designated as a Protection and Advocacy agency.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the proper and appropriate expenditure of Federal funds.

§ 1386.21 Requirements of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the Basic Support Program (subject C), the Protection and Advocacy system must meet the requirements of Section 113(a) of the Act (42 U.S.C. 6012(a)) and that system must be operational.

(b) The client's record is the property of the Protection and Advocacy system

which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy system must:

(1) Keep confidential all information contained in a client's records including information contained in an automated data bank; this requirement in no way limits or restricts access by the Department or other authorized Federal officials to the client's records or other records of the protection and advocacy system for purposes of carrying out the responsibilities of their offices. It also does not limit access by parents or legal guardians of minors unless prohibited by State law, court order or the rules of attorney-client privilege.

(2) Have written policies governing access to duplication of, and release of information from the client's record; and

(3) Obtain written consent from the client, if competent, or his or her guardian, before it releases information to individuals not otherwise authorized to receive it.

§ 1386.22 Triennial report on the State protection and advocacy system.

In order to receive Federal financial assistance for a State's Protection and Advocacy system:

(a) At least once every three years the Protection and Advocacy office must submit through the designating official or entity to the appropriate Regional Office of the Department, a report describing the system. The report may be in the format of the State's choice. Unless State law provides differently, the report must be signed by the designating official or entity.

(b) The triennial report on the State Protection and Advocacy system must state how requirements of Section 113(a)(1) and (2) of the Act are being met and address those items contained in the request for information outline to be issued by the Department.

(c) The Department will not terminate or deny funding of the Protection and Advocacy system until it has given the State reasonable notice and opportunity for a hearing in accordance with Subpart D of this Part.

(Approved by the Office of Management and Budget under control number 0980–0053 expiration date 6/30/85)

§ 1386.23 Periodic reports.

In addition to the triennial report, the State Protection and Advocacy Agency must submit:

(a) An annual report describing the activities carried out under the system and any changes made in the system during the previous year and addresses such other items as prescribed by the Secretary and approved under the Paperwork Reduction Act. Those items contained in the request for information submitted for approval to OMB. The report may be in the format of the State's choice.

(Approved by the Office of Management and Budget under control number 0980–0160 expiration date 12/31/86)

(b) Quarterly financial status reports from the Protection and Advocacy Agency which are due 30 days after the close of each quarter of the Federal fiscal year, except for the final report which is due 90 days following the close of the fiscal year.

(Approved by the Office of Management and Budget under control number 0980–0054)

§ 1386.24 Federal financial participation: Allowable and nonallowable costs for Protection and Advocacy System.

(a) Federal financial participation is allowable for costs incurred, in accordance with the Act and regulations:

(1) For carrying out activities described in the State's triennial report on the State Protection and Advocacy system (see § 1386.22); and

(2) For providing information and referral services to persons who contact the system for aid whether or not those persons are developmentally disabled.

(b) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of persons with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace, e.g., drawing wills and initiating or defending divorce actions; and

(2) Costs not allowed under other applicable statutes, Departmental regulations and issuances of the Office of Management and Budget.

Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities

§ 1386.30 State plan requirements.

(a) In order to receive Federal financial assistance under this Subpart, Councils and States must prepare, submit and have in effect a State plan which meets the requirements of Section 133(b) and Section 137(b) of the Act (42 U.S.C. 6063(b) and 6067(b)) and these regulations.

(b) Failure to comply with State plan requirements may result in loss of Federal funds as described in Section 135 of the Act (42 U.S.C. 6065).

(c) the State plan may be submitted in any format the State selects as long as the items contained in the Act are addressed. The plan must:

(1) Identify the program unit(s) responsible for administration of the plan within the designated State agency or agencies;

(2) Identify the priority areas selected by the Council and by the State in which 65% of Federal allotment will be expended.

(Approved by the Office of Management and Budget under control number 0980–0162 expiration date 3/31/87)

(d) The State plan must be reviewed at least once every three years.

(e) The State plan must contain assurances that:

(1) The State will comply with all applicable Federal statutes and regulations in effect during the time that the State is receiving formula grant funding;

(2) The State meets the requirements regarding individual habilitation plans as set forth in Section 112 of the Act (42 U.S.C. 6011); and

(3) The human rights of developmentally disabled persons will be protected consistent with Section 111.

(4) The State planning council has a staff assignment to assist it in carrying out its function and responsibilities identified in the Act and the staff consist of at least a director and such support staff as the State in consultation with the Council has deemed necessary.

§ 1386.31 Plan submittal and approval.

(a) The State plan must be submitted to the appropriate Regional Office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuances.

(b) Failure to submit an approvable State plan or amendment prior to the Federal fiscal years for which it is applicable may result in the loss of Federal financial participation. Costs resulting from obligations incurred during the period of the fiscal year for which an approved plan is not in effect are not eligible for Federal financial participation.

(c) The Commissioner must approve any State plan or plan amendment provided it meets the requirements of the Act and these regulations.

(d) Amendments to the State plan are required when substantive changes are contemplated in plan content.

§ 1386.32 Financial reports.

The State must submit quarterly financial status reports on the programs funded under this part and must be

submitted by either the Governor or the appropriate State financial official. These reports are due 30 days following the close of each quarter except for the final report which is due 90 days following the close of the Federal fiscal year.

(Approved by the Office of Management and Budget under control number 0980–0055)

§ 1386.33 Protection of employee's interests.

(a) Based on Section 133(b)(7) of the Act (42 U.S.C. 6063(b)(7)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

(b) To the maximum extent practicable, fair and equitable arrangements must include provisions for:

(1) The preservation of rights and benefits;

(2) Guaranteeing employment to employees affected by action under the plan to provide alternative community living arrangements; and

(3) Employee training and retraining programs.

§ 1386.34 Provision of priority services.

(a) As part of the State plan requirements in Section 133(b)(4)(A) of the Act (42 U.S.C. 6063(b)(4)(A)), a State must identify its selection of at least one, but not more than two priority areas defined in Section 102(8)(B) of the Act (42 U.S.C. 6001(8)(B)), although the second selection may be in an area not identified in the Act but which is of special significance to the individual State.

(b) In order to select more than two priority areas when the appropriation level does not exceed $90,000,000 (See Section 133(b)(4)(B)(ii)(II) of the Act (42 U.S.C. 6063(b)(4)(ii)(II)), the Commissioner, upon written application from the State, may approve a waiver of the priority service limitations described in paragraph (a) of this section and allow for an additional priority area to be designated. (See Section 133(b)(4)(C) of the Act (42 U.S.C. 6063(b)(4)(C)).

(c) The use of 65% of the State allotment in selected priority areas (as required by Section 133(b)(4)(B) of the Act) is a mechanism to assist the State developmental disabilities program in concentrating on planning, coordinating, and providing technical assistance.

§ 1386.35 Allowable and non-allowable costs for basic State grants.

(a) Under this Subpart, Federal financial participation is available in costs resulting from obligations incurred under the approved State plan for the necessary expenses of the approved State plan for the necessary expenses of the State Council, the administration and operation of the State plan, and training of personnel.
and operation of the State plan, and training of personnel.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the developmentally disabled in Section 111 of the Act (42 U.S.C. 6010):

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes. Departmental regulations or issuances of the Office of Management and Budget.

§ 1386.36 Final disapproval of the State plan amendments or plan amendments.

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to the appropriate HHS Regional Office, and the Regional Office and State have been unable to resolve their differences.

(b) The Regional Office has prepared a detailed written analysis of its reasons for recommending disapproval and has transmitted its analyses and all other relevant material to the Commissioner, and has provided the State Council and State agency with copies of the material.

(c) The Commissioner, after review of the records and the recommendation of the Regional Office, has determined whether the State plan, in whole or in part, is not approvable. Notice of this determination has been sent to the State and contains appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with 45 CFR Part 1386, Subpart D.

(d) The Commissioner's decision has been forwarded to the State Council and agency by certified mail with a return receipt requested.

(e) A State has filed its request for a hearing with the Assistant Secretary for Human Development Services (ASHDS) within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the ASHDS. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities Plans, Reports, and Federal Requirements

General

§ 1386.80 Definitions.

For purposes of this Subpart:

"*Assistant Secretary*" means the Assistant Secretary for Human Development Services (HDS) or a presiding officer.

ADD means Administration on Developmental Disabilities, Office of Human Development Services.

Presiding officer means anyone by the Assistant Secretary to conduct any hearing held under this Subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

§ 1386.81 Scope of rules.

(a) The rules of procedure in this Subpart govern the practice for hearings afforded by the Department to States pursuant to Sections 113, 133, and 135 of the Act. (42 U.S.C. 6012, 6063 and 6065.)

(b) Nothing in this Part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Negotiations, and resolution of issues are not part of the hearing, and are not governed by the rules in this Subpart, except as otherwise provided in this Subpart.

§ 1386.82 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

§ 1386.83 Use of gender and number.

As used in this Subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

§ 1386.84 Suspension of rules.

Upon notice to all parties, the Assistant Secretary may modify or waive any rule in this Subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the HDS Hearing Clerk in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party's designated representative is deemed service upon the party.

Preliminary Matters—Notice and Parties

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State council and the designated State agency, or to the State protection and advocacy office or official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the **Federal Register.**

§ 1386.91 Time of hearing.

The hearing must be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is mailed to the State.

§ 1386.92 Place.

The hearing must be held at a date, time, and place determined by the Assistant Secretary with due regard for the convenience and necessity of the parties or their representatives.

§ 1386.93 Issues at hearing.

(a) Prior to a hearing, the Assistant Secretary may notify the State in writing of additional issues which will be considered at the hearing. That notice must be published in the **Federal Register.** If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20 days after the notice was mailed, or such later date as may be agreed to by the Assistant Secretary.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Assistant Secretary finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Assistant Secretary must terminate the hearing.

(2)(i) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements of State plan or report on the description of the protection and advocacy system with Federal requirements, the Assistant Secretary must provide all parties other than the Department and the State (see § 1386.94(b)) with the Statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or report on the description of the protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program with the State plan or system description, or with Federal requirements, the same procedure set forth in paragraph (c)(2) of this Subsection must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

(e) The issues considered at the hearing must be limited to those issues of which the State is notified as provided in § 1386.90 and paragraph (a) of this Section, and new or modified issues described in paragraph (b) of this Section, and may not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this Section.

§ 1386.94 Request to participate in hearing.

(a) The Department, the State council, the designated State agency, and the State protection and advocacy office, as appropriate, are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party must file a petition with the HDS Hearing Clerk within 15 days after notice of the hearing has been published in the **Federal Register**, and must serve a copy on each party of record at that time in accordance with § 1386.85(b). The petition must concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues petitioner wishes to address and (iv) whether petitioner intends to present witnesses.

(3) Any party may file comments within 5 days of receipt of such petition.

(4) The presiding officer must promptly determine whether each petitioner had the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the presiding officer may request all of the petitioners to designate a single representative, or he or she may recognize one or more of the petitioners to represent all of them. The presiding officer must give each petitioner written notice of the decision on its petition. If any petition is denied, the presiding officer must briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the HDS Hearing Clerk before the commencement of the hearing. The petition must concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(2) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It may also submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

Hearing Procedures

§ 1386.100 Who presides.

(a) The presiding officer at a hearing must be the Assistant Secretary or someone designated by the Assistant Secretary.

(b) The designation of a presiding officer must be in writing. A copy of the designation must be served on all parties and amici curiae.

§ 1386.101 Authority of presiding officer.

(a) The presiding officer has the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer has all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their positions with respect to the issues in the proceeding;

(4) Administer oaths and affirmations,

(5) Rule on motions and other procedural items on matters pending before him or her, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix for the time for filing motions, petitions, briefs, or other items in matters pending before him or her,

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is a person designated by the Assistant Secretary, examiner, certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

(12) Take any action authorized by the rules in the Subpart or 5 U.S.C. 551–559; and

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a person designated by the Assistant Secretary, examiner, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether Federal financial participation should be withheld with respect to the entire State plan or the report of the system description, or whether Federal financial participation should be withheld only with respect to those parts of the program affected by such noncompliance.

§ 1386.102 Rights of parties.

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer,

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing;

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 1386.103 Discovery.

The Department and any party named in the Notice issued pursuant to § 1386.90 has the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There is no fixed rule on priority of discovery. Upon written motion, the presiding officer must promptly rule upon any objection to discovery action. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1386.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it must be presented in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what it intends to prove, may be made at hearings.

§ 1386.105 Evidence.

(a) *Testimony.* Testimony by witnesses at the hearing is given orally under oath or affirmation. Witnesses must be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, must be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination are applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record is open to examination by the parties and opportunity must be given to refute facts and arguments advanced on either side of the issues.

§ 1386.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 1386.107 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing is placed in the correspondence section of the docket of the proceeding. This material is not deemed part of the evidence or record in the hearing.

§ 1386.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcript of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed with them is filed with the Department Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon

notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts must be taken by stenotype machine and not be voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

§ 1386.109 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, constitute the exclusive record for decision.

Posthearing Procedures, Decisions

§ 1386.110 Posthearing briefs.

The presiding officer must fix the time for filing posthearing briefs. This time may not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed fundings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the posthearing briefs.

§ 1386.111 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, he or she must issue a decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is a person designated by the Assistant Secretary, he or she must, within 30 days after the time for submission of posthearing briefs has expired, certify the entire record to the Assistant Secretary including recommended findings and proposed decision. The Assistant Secretary must serve a copy of the recommended findings and proposed decision upon all parties and amici.

(2) Any party may, within 20 days, file exceptions to the recommended findings and proposed decision and supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary must review the recommended decision and, within 60 days of its issuance, issue his or her own decision.

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing under Sections 113, 133 and 135 of the Act that a State plan or report on the State's protection and advocacy system does not comply with Federal requirements, he or she shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the allotment will be limited to parts of the State plan or the report not affected by the noncompliance.

(2) In the case of a hearing pursuant to Section 135 of the Act that the State is not complying with requirements of the State plan or the report on the description of the State's protection and advocacy system, he or she must also specify whether Federal financial participation will not be made available to the State or whether, in the exercise of his or her discretion. Federal financial participation will be limited to categories under the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this Section is the final decision of the Secretary and constitutes "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of Section 138 of the Act. The Assistant Secretary's decision must be promptly served on all parties and amici.

§ 1386.112 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to Section 135 of the Act, the Assistant Secretary concludes that a State plan or the report on the description of the State's protection and advocacy system does not comply with Federal requirements, and the decision provides that the allotment will be authorized but limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance, the decision must specify the effective date for the authorization of the allotment.

(b) In the case of a hearing pursuant to Section 113, 133 if the Assistant Secretary concludes that the State is not complying with requirements of the State plan or report on the description of the State's protection and advocacy system, the decision that further payments will not be made to the State, or that payments will be limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected, must specify the effective date for the withholding of Federal funds.

(c) The effective date may not be earlier than the date of the decision of the Assistant Secretary and may not be later than the first day of the next calendar quarter.

(d) The provision of this section may not be waived pursuant to § 1386.84.

PART 1387—SPECIAL PROJECT—PROJECTS OF NATIONAL SIGNIFICANCE

Sec.

1387.1 General requirements.

Authority: Pub. L. 88–164, 77 Stat. 282, as amended by Pub. L. 91–517, 84 Stat. 1316, Pub. L. 94–103, 89 Stat. 486. Pub. L. 95–802. 92 Stat 9555. Pub. L. 97–35. 95 Stat. 583 (42 U.S.C. 8000 et seq.).

§ 1387.1 General requirements.

(a) All projects funded under this Part must be of national significance and serve or relate to the developmentally disabled to comply with Section 145 of the Act.

(b) The requirements concerning format and content of the application, submittal procedures, eligible applicants and priority areas of services will be published in program announcements in the **Federal Register.**

(c) Projects of national significance must be exemplary models and hold potential for replication.

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Tuesday
March 27, 1984

Part VI

Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Part 530

Employment of Homeworkers in Certain Industries; Proposal To Repromulgate Permanent Rule Rescinding Restriction on Homework in the Knitted Outerwear Industry

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 530

Employment of Homeworkers in Certain Industries

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 9, 1981, the Department of Labor published a final rule rescinding the restriction on the employment of homeworkers in the knitted outerwear industry. The Department's action was taken after consideration of oral testimony received at hearings held pursuant to the **Federal Register** Notice of December 5, 1980 and one of more than 10,000 written comments received as the result of the Notice of Proposed Rulemaking of May 5, 1981.

A suit filed challenging the rescission of the homework restriction, and the United States District Court for the District of Columbia upheld the Department's rule. On November 29, 1983, the U.S. Court of Appeals for the D.C. Circuit reversed the district court and vacated the rule on the ground that the explanation provided by the Department in support of rescission of the restriction was inadequate. The court directed that the matter be returned to the Department for such further proceedings as might be appropriate.

After further consideration, and on the basis of its enforcement experience since November, 1981, the Department proposes to repromulgate a permanent rule rescinding the restriction on homework in the knitted outerwear industry.

Interested persons are invited to submit written comments relevant to this proposal. Comments submitted in connection with the 1981 hearings or the May 1981 **Federal Register** Notice will be made part of the record in this rulemaking. Persons who submitted comments at that time need comment now only if they have new or additional information.

DATE: Comments should be received on or before April 26, 1984.

ADDRESS: Send written comments to William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, Room S–3502, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Room S–3502, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210. 202–523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

Section 11(d) of the Fair Labor Standards Act (FLSA) provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. As originally issued in the 1940's, these regulations restricted the employment of industrial homeworkers in seven industries: knitted outerwear; women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. Homework has been permitted in all other industries.

The restrictions essentially provide that the production of goods in these industries cannot be carried on by employees in or about a home, apartment, tenement, or room in a residential establishment except by a certified homeworker. Under specified conditions, an employer may obtain a certificate for employees who are unable to adjust to factory work because of age or physical or mental disability or who are unable to leave home because their presence is required to care for an invalid there. Individuals may also be employed as industrial homeworkers in the restricted industries under the supervision of a sheltered workshop without obtaining a certificate under Part 530.

These restrictions were promulgated following a series of public hearings on the seven industries, held from 1941 through 1943. In 1980, in light of the fact that the homeworker restrictions had been in effect for almost 40 years, the Department decided to review the status of industrial homework. Accordingly, in the **Federal Register** of December 5, 1980 (45 FR 80555), the Department published a notice of hearings to obtain information concerning the employment of homeworkers. The hearings were held on January 13 and 14, 1981 in Burlington, Vermont and on February 17 and 18, 1981 in Washington, D.C. The purpose of the hearings was to obtain information with respect to the situation in industrial homework and the extent to which the regulations were still necessary to safeguard the minimum wage. In addition to the oral testimony, written comments were submitted through March 23, 1981.

The testimony heard and comments received reflected, among other things, concern regarding the feasibility of enforcement of the minimum wage and overtime requirements in the homework setting, the extent to which wages among homeworkers equal or exceed the minimum wage, the effect of the restrictions on employment opportunities, and the competitive effect of homework on firms not employing homeworkers.

Based on the testimony and comments, the Department published a proposal in the **Federal Register** on May 5, 1981 (46 FR 25108) to remove the existing restrictions on homework in all seven industries. Interested persons were invited to submit written comments relevant to the proposal on or before June 4, 1981. The period for comment was subsequently extended to July 4, 1981 (46 FR 29485). Comments were received from more that 10,000 individuals, organizations, and agencies.

On October 9, 1981, after reviewing the entire record, the Department rescinded the restriction on the employment of homeworkers in the knitted outerwear industry (46 FR 50348). The restrictions in the six other industries were retained. Along with this action, the Department announced that it would undertake a concerted compliance effort among employers of homeworkers.

In reaching this decision, the Department determined that it would be feasible to enforce the minimum wage requirements of the Act in the knitted outerwear industry without a ban on homework and that retention of the ban would curtail employment opportunities in the industry.

After issuance of the new rule, a number of organizations filed a suit seeking an injunction against rescission of the homework ban. The district court upheld the Department's rule, but the court of appeals reversed, vacating the rescission of the restriction. *International Ladies' Garment Workers' Union* v. *Donovan*, 722 F.2d 795 (D.C. Cir. 1983). The court of appeals held that the Department had failed to articulate adequately the reasons for its action, and that the rulemaking process had therefore not conformed to the requirements of the Administrative procedure Act. The case was remanded to the district court with instructions to

return the matter to the Department for such further proceedings as might be appropriate, and to reinstate the restriction against homework unless properly modified consistent with the opinion of the court. The court of appeals issued its mandate on February 29, 1984, reimposing the ban after a period of two years during which homework in the knitted outerwear industry was lawful.

The Department has concluded that it is appropriate to institute a new rulemaking proceeding at this time. The Department's tentative view at this time, as explained below, is that a rescission or modification of the homework ban in the knitted outerwear industry would be consistent with the purposes of the Fair Labor Standards Act. The Act authorizes restrictions on homework only to the extent "necessry or appropriate" to protect the minimum wage. Section 11(d). The Department tentatively believes it can effectively enforce the minimum wage provisions of the Act in the knitted outerwear industry without totally banning homework there. Accordingly, the Department is proposing to repromulgate a permanent final rule rescinding the homework ban in that industry.

The Department has also published today, separately, an emergency temporary rule suspending the ban on homework for a period of 120 days for those individuals who were employed as homeworkers in the knitted outerwear industry during the period when the Department's final rule lifting the homework ban was in effect (from November 8, 1981 through February 29, 1984). See Part VII of this issue. The emergency temporary rule is intended to avoid the hardship and disruption which would result from reimposition of the ban on homework for those individuals currently employed as homeworkers in the knitted outerwear industry during the period while the Department proceeds with the permanent rulemaking process.

The Department will carefully consider all comments and other relevant evidence it receives pursuant to the proposal it publishes today, before issuing a permanent final rule. The present rulemaking is limited to the knitted outerwear industry. The Department will consider instituting at a later date a separate rulemaking proceeding regarding homework in the six other industries where restrictions have been imposed.

The Department's present view is that it can effectively enforce the Act in the homework sector of the knitted outerwear industry, and that it has done so over the past two years. Federal law does not prohibit homework in the great majority of industries in this country; only in seven industries has it ever been restricted pursuant to Section 11(d) of the FLSA. Moreover, knitted outerwear is a very small industry, with only about 63,000 total employees in 1981. This compares with a universe of more than 50 million employees subject to the FLSA. The relatively small scale of the industry increases the Department's ability to conduct an effective enforcement program in the knitted outerwear industry.

A restriction on homework is permissible under the FLSA only when necessary to safeguard the minimum wage. Section 11(d) 29 U.S.C. 211(d). A restriction is simply one tool among many the Department has available to enforce the Act. It is a harsh tool because it deprives persons of the right they would otherwise have to work in their own homes if they so choose. Many Americans prefer to work at home because it is more convenient. Others would be unable to work at all if not permitted to work at home. For these reasons, the Department at present believes that homework should not be restricted in an industry, unless there is clear evidence that the Act cannot effectively be enforced by other means.

Particularly in view of the Department's enforcement experience, described below, in the many industries in which homework has been lawfully practiced for decades, the Department believes that it should not continue to employ the extraordinary enforcement mechanism of a total ban on homework in an industry in which there appear to be no enforcement problems that are unique or insurmountable. In light of the fact that homework may be freely engaged in by the vast majority of workers, and that enforcement is possible in the knitted outerwear industry, a total prohibition against homework appears to unfairly and arbitrarily deprive the individuals involved of a basic prerogative—the opportunity to work at home.

Since 1981, the Department has pursued a vigorous concerted enforcement program to detect violations of the Act among homeworkers as an alternative to the imposition of restrictions against homework. In the period from October 1, 1981 to December 31, 1983, a total of 591 investigations of employers utilizing homeworkers were conducted as compared with approximately 75 to 80 such investigations during the previous six-year period. This is an increase of approximately 1900% in the number of homework investigations conducted annually. The Department has investigated all complaints received involving homework, and it has actively sought, through a variety of information sources, to make sure that homework activity, wherever it occurs, is in compliance with the FLSA. Information is obtained from unions, manufacturers' associations, local newspapers, crafts newsletters, and lists of firms that have requested subminimum wage certificates for homework under FLSA Regulations 29 CFR Part 524 or 525 or homework handbooks, as well as from homeworkers themselves.

The Department has also taken steps to update and improve procedures and techniques for homework investigations. As part of this effort, a task force of experienced compliance officers from offices located in areas of the country that are major garment centers was assembled to develop specialized policies and operating procedures for conducting investigations in the garment industry. These procedures, which were issued to the entire Wage-Hour enforcement staff, included definitions of industry terminology and job classifications, identification of common industry practices and potential violations, and detailed guidance on effective investigation techniques. Timestudy training material was also made available to compliance officers. Selected field enforcement staff received detailed training in timestudy techinques, in order to enhance the Department's ability, in the absence of accurate time records, to reconstruct the hours worked by homeworkers, to determine whether they are properly paid under the FLSA. The Department has made the scheduling and conduct of special "directed" (i.e. noncomplaint) investigations of homework firms a top priority.

Since institution of the Department's concerted enforcement program in 1981, there has been a steady increase in the percentage of homework employers investigated found to be in compliance with the monetary provisions of the FLSA. The overall compliance rate for homework employers investigated by the Department was 52% in fiscal year 1982, 56% in 1983, and 68% during the first quarter of 1984.

Furthermore, a significant percentage of homework investigations have been initiated as a result of complaints. Such complaints, whether from employees or competitors, have provided a productive basis for investigation of employers operating in violation of the FLSA. Of the 591 investigations of employers utilizing homeworkers which the Department has conducted . ince the

beginning of its concerted compliance effort, 39 percent were based on complaints.

The investigative results also suggest that the prohibition against homework in the restricted industries has not been especially effective. The Department's enforcement activities since 1981 have disclosed many firms operating in the restricted industries that are using homeworkers. Of the 391 investigations referenced above, 195 were of firms in the six restricted industries. Moreover, a prohibition probably makes it more difficult to identify firms in the industry that use homeworkers, since such firms would be inclined to conceal their existence. Because the homework practices of such firms would be unlawful *per se*, such firms would have a reduced incentive to comply with the Act's monetary provisions. Indeed, the results of the Department's concerted enforcement program to date indicate that the compliance rate for homework employers in the restricted industries is slightly lower (51%) than for homework employers in unrestricted industries (58%).

Additional considerations support the Department's present view that enforcement of the Act does not require outright prohibition of homework in the knitted outerwear industry. As noted above, the knitted outerwear industry employs a very small share of the American workforce. Even if the number of workers performing homework in this industry were to increase substantially as a result of deregulation, effective investigation and enforcement would be feasible.

The Department's concerted homework enforcement program suggests that the rate of compliance among homework employers is not at present exceptionally low, as some have contended. Rather, it appears to be roughly comparable to that found in all covered industries. Of the 591 homework firms investigated, 56% were found to be in compliance with the FLSA. The compliance rate was 40% for investigations arising from complaints, and 66% for noncomplaint investigations. Of the 396 homework firms investigated in the unrestricted industries, 58% were found to be in compliance (41% in complaint investigations and 69% in non-complaint investigations).

Wage-Hour investigations in all industries during fiscal years 1981 through 1983 revealed a 34% to 36% compliance rate (25% and 27% for complaint investigations and 52% to 56% for noncomplaint investigations).

The compliance rate found among homework employers in the knitted outerwear industry (39% overall: 11% for complaint investigations and 53% for non-complaint investigations), although somewhat lower than in other homework industries, is comparable to the 34% to 36% compliance rate found for all covered employers investigated. Persons who have contended that minimum wage violations are pervasive in homework industries have relied on factors which are inherent in the nature of homework itself. They have advanced no reasons for concluding that enforcement problems relating to homework would be different in the knitted outerwear industry than in other industries where homework is permitted. The Department therefore believes that the compliance rate found among all homework firms investigated is probably more indicative of enforcement feasibility than the rate found in knitted outerwear investigations alone. In any event, as noted above, the compliance rate found in knitted outerwear investigations is comparable to that found in Wage-Hour investigations overall. This equivalence itself supports the Department's belief that enforcement of the Act in the homework sector of the knitted outerwear industry is feasible.

Comparison of the compliance rate in investigations of homework employers with that of industry as a whole is inexact because, industrywide, the available figures include a small percentage of investigations under government contract labor standards statutes as well as the FLSA. Moreover, industrywide, only a small proportion of employers were selected for investigation, while, as a result of the concerted homework enforcement program, it is likely that a higher share of homework employers were investigated. Nonetheless, the evidence indicates that the compliance rate among homework employers, including those in the knitted outerwear industry, is not exceptionally low, but rather appears to be roughly comparable with industry as a whole.

In his 1942 findings, the Administrator noted three particular difficulties associated with industrial homework which, in his view, rendered minimum wage enforcement infeasible: (1) the difficulty of identifying and locating homeworkers; (2) the difficulty of accurately ascertaining hours worked by homeworkers; and (3) the length of time required to conduct investigations of homework. Initially, we noted that the premise underlying the 1942 findings was that violations were ubiquitous among homework employers. The Department's recent experience indicates that there is no current basis in fact for this premise; the compliance rate among employers of homeworkers, as noted above, appears to be roughly proportional to that among other employers.

Based on the results of its enforcement program since 1981, the Department currently believes, for a number of reasons, that the difficulties noted in 1942 can be dealt with short of the drastic remedy of banning all homework in the knitted outerwear industry. First, the Department can locate homeworkers and had done so. As noted above, some 591 investigations involving homeworkers have been conducted since 1981, using a variety of information sources. Twenty-eight firms, employing approximately 474 homeworkers, have been identified in the knitted outerwear industry.

Second, the Department has not found accurate record-keeping to be an insurmountable problem in homework investigations. The Department has had considerable experience with investigations in industries where time clocks are not maintained and employees are not closely supervised; the problem is no different in kind in homework. In such cases the Department's compliance officers rely on personal interviews with employees as well as personal observations concerning the time required to produce an article and other investigative techniques referred to above. In homework, these procedures are supplemented by a Departmental regulation requiring all homeworkers to maintain special handbooks recording their hours worked and units produced. See 29 CFR 516.31(c).

Third, while it is apparent that thorough investigation of homework is time-consuming, the Department has committed substantial resources for this purpose and intends to continue vigorous enforcement. As a result of the concerted enforcement program, enforcement of the Act in the homework setting is far more effective now than was the case in the years preceding the 1981 rescission of the homework ban in the knitted outerwear industry. Moreover, as noted above, knitted outerwear is a relatively small industry, and the number of homeworkers engaged in knitted outerwear manufacture is not likely to exceed the Department's enforcement capabilities.

Finally, the suggestion has been made that rescission of homework restrictions in the knitted outerwear industry would result in the hiring and exploitation of illegal aliens and other immigrants. The enforcement implications of the presence of illegal aliens as employees

is a matter with which the Department has had considerable experience; the enforcement problems in homework are not significantly different in kind from those found in other types of employment. Since 1978 the Department has earmarked resources for targeting investigations of employers in specific industries and geographic areas who are believed likely to be employing illegal aliens under terms violative of Federal labor laws. The Department relies heavily upon information provided by the Immigration and Naturalization Service in scheduling these investigations; in turn, it provides appropriate information to the INS. In addition, in recognition of language barriers that are frequently present when dealing with legal as well as illegal aliens, the Department employs bilingual enforcement personnel who are proficient in Spanish, Chinese, Haitian Creole, Vietnamese and other foreign languages.

Although the Department is presently proposing a rescission of restrictions on homework in the knitted outerwear industry, the Department will give careful consideration to alternatives, including retaining the restrictions or adopting a proposal of lesser scope, such as one of the following:

A. Remove the restrictions on knitted outerwear homework in rural areas but retain restrictions for urban areas

Under this alternative proposal, only persons residing in rural areas, as defined by the Secretary, would be permitted to engage in knitted outerwear homework. The considerations favoring this approach appear to include the following: persons residing in areas remote from cities commonly live at considerable distances from available factory employment. Even where factories exist in the general vicinity, public transportation is often limited or non-existent. Especially in northern parts of the country, winter weather conditions may impede access to factory sites. Need to tend to wood stoves and farm animals is also a special factor pertinent to rural residents. For these reasons, it is arguable that persons residing in such areas may be particularly dependent on homework as a source of employment.

Considerations weighing against this alternative include the problem of devising a workable definition of "rural" vs. "urban" that would avoid inequitable treatment of employees. There are "urban" areas in States that are generally considered to be "rural" in nature. And there are "rural" areas in States that would generally be characterized as "urban". There is also a lack of evidence that minmum wage or overtime violations are less prevalent among rural than among urban homeworkers. In addition, it is unclear that the needs of workers are similar in all "rural" areas of the country, or that these needs are essentially different from those of workers in "urban" areas, so as to justify differential treatment.

Finally, as noted above, the Act authorizes the Department to restrict homework only to the extent necessary to safeguard the minimum wage. The Department believes that effective enforcement of the minimum wage provisions of the Act is possible in the homework sector of the knitted outerwear industry in both urban and rural areas. Therefore the essential predicate for a prohibition against homework in urban areas may be lacking.

B. Expand the conditions for granting certificates permitting homework employment in the knitted outerwear industry

Under this alternative proposal, the present system for granting special certificates authorizing homework in the knitted outerwear industry would be expanded to include various additional categories of need, such as the following: need to care for children or other family members in the home; lack of accessible factory employment; lack of public transportation; and economic need. The perceived advantage of this alternative is that it would target the specific needs expressed by homework, without broadly validating all such work.

Disadvantages would appear to include the difficulty of defining what constitutes a legitimate need and avoiding inequities among workers. In addition, a certificate program might engender substantial paperwork for the public. It would also appear difficult to police the program to guard against abuses, yet provide necessary flexibility to take into account individual circumstances.

C. Transfer homework certification and enforcement responsibilities to the States

It has been suggested that the Department delegate responsibility for homeworker certification and enforcement to the States. The Department notes that its existing regulations provide that it may designate a State agency to act as its authorized representative for the purpose of issuing or denying homework certificates. 29 CFR 530.10. In deciding whether to issue a homework certificate, the State agency applies the same standards that the Department would apply. These are set forth in the regulations. See 29 CFR 530.4. Existing regulations also authorize the Department to enter into an agreement with a State agency, providing that the agency will conduct investigations for compliance with the FLSA. 29 CFR Part 515. In conducting investigations, the State agency must conform to the Department's enforcement policies and to the provisions of the Department's Inspection Manual. 29 CFR 515.5.

The question whether the Department or the States should administer the homeworker certification process is essentially procedural. Resolution of the question does not answer the substantive policy issue of the conditions under which certificates should be issued. Therefore, commenters addressing the States' role in the certification process are urged to provide their views regarding the substantive issue as well.

The Department will consider all proposals which it receives. It notes, however, that there are legal limits on the extent to which it may delegate its authority under the FLSA. Commenters supporting increased State responsibility in the homework area should consider this factor. The Department also notes that its proposed rule lifting the federal ban on homework in the knitted outerwear industry would not affect a State's right to impose homework restrictions in the industry under state law, if it chooses to do so.

D. License employers utilizing homeworkers in the knitted outerwear industry

Under this alternative proposal, all employers of homeworkers in the knitted outerwear industry would be required to obtain licenses from the Department. In theory, this would put in place a control mechanism whereby the Department would have a record of all such employment, and thereby be in a better position to insure FLSA compliance.

A contervailing consideration is that only law-abiding employers might apply for such licenses, thereby undercutting the purpose of the requirement. A licensing requirement could also generate a paperwork burden.

Conclusion

The Department currently is inclined to believe that removal of the ban on homework in the knitted outerwear industry is warranted. The Department's experience suggests that it has the ability to enforce the protections of the Act with respect to this category of

workers as effectively as it does for other industries.

The Department invites comments on this proposal and on alternatives. The Department requests that commenters do not merely state whether they favor or oppose the proposed rule or a particular alternative, but that they provide their reasons, and any supporting information which they possess. The Department also requests that commenters supporting adoption of an alternative proposal provide their views as to how the terms used in the alternative proposal would be defined and by what mechanisms the alternative would be implemented and administered. Finally, commenters should bear in mind that the Department's authority to restrict homework is limited to those measures which are "necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage * * *" Commenters should address matters relevant to this statutory objective, rather than general conceptions of appropriate public policy.

The Department invites comments particularly with respect to the following:

1. The appropriateness and/or feasibility of the present proposal to remove the ban on homework in the knitted outerwear industry;

2. The appropriateness and/or feasibility of alternatives A through D above; and

3. The appropriateness and/or feasibility of other alternatives to the present proposal.

Further comments are also invited on the subject matter of the May 5, 1981 proposal, i.e., 1) the impact of the current proposal, or alternative proposals, on the minimum wage provisions of the Act; 2) the impact of the current proposal, or alternative proposals, on the knitted outerwear industry, including firms which do not employ homeworkers; and 3) the impact of this proposal, or alternative proposals, on small businesses. However, *commenters may be assured that all comments submitted in response to the May 5, 1981 proposal as well as the entire record of the January and February 1981 hearings, will be considered and made a part of the record of the present rulemaking, and that only new or additional information need be submitted.*

The entire record of this proceeding will be made available for inspection during office hours at Room C–4316, Frances Perkins Building, 200 Constitution Ave., NW., Washington, D.C. 20210.

Classification

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulation, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Furthermore, the Department certifies that the rule will have no "significant economic impact . . . upon a substantial number of . . . small [business] entities" within the meaning of § 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)).

This conclusion is based upon all information presently available to the Department, including the entire record compiled by the Department in the 1981 rulemaking proceedings. Accordingly, no initial regulatory flexibility analysis is required.

Paperwork Reduction Act

Because this rule does not require the collection or retention of information, it is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, U.S. Department of Labor.

List of Subjects in 29 CFR Part 530

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages.

Accordingly, the following action is proposed: The prohibition of homework in the knitted outerwear industry under 29 CFR 530.1(f) and 530.2, the text of which appeared in the July 1, 1981 edition of the *Code of Federal Regulations* and is contained in Appendix A to this document, and which was reinstated as a result of the Court of Appeals ruling, effective February 29, 1984, is removed.

(Sec. 11, 52 Stat. 1066; (29 U.S.C. 211) unless otherwise noted; Secretary's Order No. 16–75, 40 FR 55913, December 2, 1975; and Employment Standards Order No. 78–1, 43 FR 51469, November 3, 1978)

Signed at Washington, D.C., this 23rd day of March, 1984.

William M. Otter,

Administrator.

Appendix A

The text of 29 CFR 530.1(f) and 530.2 which appeared in the July 1, 1981, edition of the Code of Federal Regulations reads as follows:

§ 530.1 Definitions.

* * * * *

(f) The knitted outerwear industry is defined as follows: The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing or other finishing of knitted garments, knitted garment sections, or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed; and the manufacture of bathing suits from any purchased fabric: *Provided*; That the manufacturing, dyeing or other finishing of the following shall not be included:

(1) Knitted fabric, as distinguished from garment sections or garments, for sale as such.

(2) Fulled suitings, coatings, topcoatings, and overcoatings.

(3) Garments or garment accessories made from purchased fabric, except bathing suits.

(4) Gloves or mittens.

(5) Hosiery.

(6) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.

(7) Fleece-lined garments made from knitted fabric containing cotton only or containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(8) Knitted shirts of cotton or any synthetic fiber or any mixture of such fibers which have been knit on machinery of 10-cut or fine: *Provided*, That this exception shall not be construed to exclude from the knitted outerwear industry and the manufacturing, dyeing, or other finishing of knitted shirts made in the same establishment as that where the knitting process is performed, if such shirts are made wholly or in part of fibers other than those specified in this clause, or if such shirts of any fiber are knit on machinery coarser than 10-cut.

* * * * *

§ 530.2 Restriction of homework.

No work in the industries defined in paragraphs (d) through (j) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homeworker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.1 of this chapter.

(Secretary's Order No. 16–75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76–2, dated Feb. 23, 1976 (41 FR 9016))

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Part VII

Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Part 530

Employment of Homeworkers in Certain Industries; Emergency Rule Temporarily Suspending Ban on Homework for Certain Employees in the Knitted Outerwear Industry

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 530

Employment of Homeworkers in Certain Industries

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Emergency rule temporarily suspending the ban on homework for certain employees in the knitted outerwear industry.

SUMMARY: On October 9, 1981, the Department of Labor published a final rule rescinding the restriction on the employment of homeworkers in the knitted outerwear industry. A suit was filed challenging the rescission of the homework restriction, and the United States District Court for the District of Columbia upheld the Department's rule. On November 29, 1983 the U.S. Court of Appeals for the D.C. Circuit reversed the district court and vacated the rule on the ground that the explanation provided by the Department in support of rescission of the restriction was inadequate. The court directed that the matter be returned to the Department for such further proceedings as might be appropriate. The court's mandate issued on February 29, 1984; as a result, the restriction on homework in the knitted outerwear industry is now in effect.

In accordance with the court's decision, the Department is today publishing two documents. The first is a proposed rule permanently rescinding the restriction on homework in the knitted outerwear industry appearing elsewhere in this issue. The second is this final rule, which temporarily suspends the restriction on homework for those persons who were employed as homeworkers in the knitted outerwear industry during the period when the Department's final rule lifting the homework restriction was in effect (from November 8, 1981 through February 29, 1984). This suspension is intended to avoid the disruption and economic hardship to homework employees that would result from reinstatement of the restriction during the pendency of the permanent rulemaking proceedings.

DATES: This rule becomes effective March 27, 1984. It will remain in effect not longer than 120 days thereafter.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Room S–3502, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. 202–523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

Section 11(d) of the Fair Labor Standards Act (FLSA) provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. As originally issued in the 1940's, these regulations restricted the employment of industrial homeworkers in seven industries: knitted outerwear; women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. Homework has been permitted in all other industries.

On May 5, 1981, the Department published a proposal to remove the existing restrictions on homework in all seven industries (46 FR 25108). On October 9, 1981, after reviewing a record which was developed during public hearings in Burlington, Vermont, and Washington, D.C. and which included comments received from more than 10,000 individuals, organizations, and agencies, the Department of Labor rescinded the restriction on homework in the knitted outerwear industry (46 FR 50348). A more extensive discussion of the background of those rulemaking proceedings is contained in the Department's Notice of Proposed Rulemaking appearing elsewhere in this issue which is being published today simultaneously with the issuance of this emergency rule.

After issuance of the new rule, a number of organizations filed a suit seeking an injunction against rescission of the homework ban. Individual homeworkers in the knitted outerwear industry intervened in defense of the Department's rule. The district court upheld the rule, but the court of appeals reversed, vacating the rescission of the restriction. *International Ladies' Garment Workers' Union* v. *Donovan*, 722 F.2d 795 (D.C. Cir. 1983). The court of appeals held that the Department had failed to articulate adequately the reasons for its action, and that the rulemaking process had therefore not conformed to the requirements of the Administrative Procedure Act. The case was remanded to the district court with instructions to return the matter to the Department for such further proceedings as might be appropriate, and to reinstate the restriction against homework unless properly modified consistent with the opinion of the court. The court of appeals subsequently denied the intervenors' petition for rehearing and also denied the Department's motion for a stay of the mandate pending consideration of a petition for a writ of certiorari. The Chief Justice subsequently denied a further motion filed by the intervenors to stay issuance of the mandate. The mandate issued February 29, 1984, reimposing the ban after a period of two years during which homework in the knitted outerwear industry was lawful.

Pursuant to the opinion of the court of appeals, the Department is today publishing separately a proposed rule permanently rescinding the ban on homework in the knitted outerwear industry. The Department has tentatively concluded that it can effectively enforce the minimum wage in the homework sector of the knitted outerwear industry, and that rescission is therefore fully consistent with Section 11(d) and the purposes of the FLSA. The Department will carefully consider all comments and other relevant evidence it receives in response to the proposed rule before issuing a permanent rule regarding homework.

In view of the pendency of the Department's proposed rule rescinding the ban on knitted outerwear homework, reinstatement of the ban at this time is likely to result in substantial unnecessary economic disruption and hardship to persons in the industry who are currently dependent on such homework for their livelihood. The Department has received petitions filed on behalf of a number of homeworkers requesting that it issue an emergency rule permitting them to continue working in their homes pending the completion of permanent rulemaking proceedings resolving the status of homework in the knitted outerwear industry.

Because of the prospect that irreparable harm to home knitters will otherwise occur, the Department is today issuing an emergency rule, pursuant to Section 11(d) of the Fair Labor Standards Act, suspending the homework ban in the knitted outerwear industry for a period of 120 days for those persons who were employed as homeworkers in the knitted outerwear industry at any time during the period when the Department's final rule rescinding the homework ban was in

effect (from November 8, 1981 through February 29, 1984).

During the previous rulemaking, the Department estimated that there were approximately 1,000 homeworkers in the knitted outerwear industry. Subsequently, in the course of its concerted program to enforce the minimum wage and overtime provisions of the Act among homeworkers, the Department identified 28 firms employing approximately 474 homeworkers in the knitted outerwear industry. If homework is made unlawful, the individuals currently employed at home in the knitted outerwear industry will lose their current jobs. The only exception would be those few individuals who could qualify for a special certificate permitting homework under the exceptional circumstances set forth in the Department's regulations at 29 CFR 530.4.

Evidence adduced in the earlier rulemaking proceedings, moveover, indicates that many homeworkers in the knitted outerwear industry may find it difficult or impossible to obtain other work outside the home. Even a temporary loss of employment is likely to cause substantial hardship to the individual affected. These concerns are reflected in the petitions for issuance of an emergency rule filed with the Department on behalf of individual home knitters, some of whom are intervenors in the litigation. These individual petitioners relate that they will suffer severe and irreparable hardship in the form of lost employment and income if they are unable to continue working in their homes.

Finally, if homework is banned, firms in the knitted outerwear industry that have employed homeworkers will be forced to go out of business, or to shift to an alternative mode of production. Should homework again become lawful, these firms may not find it practicable to resume operations involving homework. Thus, the loss of job opportunities could be permanent.

The prospect that the ban on homework may be permanently rescinded or modified in the near future makes the hardship which reimposition of the ban at this time would cause to those individuals who are currently engaged as home knitters doubly unfortunate. Surely, if the Department may issue a final rule permanently rescinding or modifying the ban on homework in the knitted outerwear industry within a few months, it is inappropriate to close down the whole homework sector for the industry at this time and to throw the hundreds of individuals involved out of work. The Department believes that the better and more equitable course is to preserve the status quo for those individuals during the brief period in which it conducts rulemaking proceedings. If, at that time, the Department reimposes the ban, it can do so with adequate notice to the public.

The legal authority supporting issuance of a final rule of limited duration to deal with exigent circumstances is found in the Administrative Procedure Act (A.P.A.), 5 U.S.C. 553(b)(B), which provides a "good cause" exception to notice-and-comment rulemaking. See *Council of Southern Mountains, Inc.* v. *Donovan*, 653 F.2d 573, 580 (D.C. Cir. 1981). That provision permits rulemaking without comment when "the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The APA also provides that a substantive rule may be immediately effective when it relieves a restriction, or for good cause. 5 U.S.C. 553(d)(1), (3).

As applied by the courts, the "good cause" provision may properly be invoked when the following criteria are satisfied: (1) The rule responds to an emergency created by forces beyond the agency's control; (2) the agency states the reasons why "good cause" exists; (3) the rule is effective for a finite period of time and (4) the agency acts diligently to implement a permanent rule pursuant to A.P.A. notice-and-comment procedures. See, *e.g.*, *National Federation of Federal Employees* v. *Devine*, 671 F.2d 607, 610–612 (D.C. Cir. 1982); *Council of Southern Mountains, supra*, 653 F.2d at 580–582; *American Federation of Government Employees* v. *Block*, 655 F.2d 1153, 1155–1159 (D.C. Cir. 1981) ("good cause" found where agency acted in response to judicial directive, to avoid disruptive effect of relying on antiquated guidelines).

These criteria are met by the circumstances now present with respect to homework in the knitted outerwear industry. First, as discussed above, there is an emergency threatening severe disruption to those individuals who had lawfully engaged in homework in the knitted outerwear industry. This emergency arose when the court of appeals denied the Department's motion for a stay out of the court's mandate pending a determination whether to seek Supreme Court review, and the Court thereafter issued its mandate, reinstating the former ban. Second, as discussed above, cogent reasons support promulgation of an emergency rule to alleviate the disruption that would otherwise occur while the Department conducts further rulemaking consistent with the Court's decision. Third, the emergency rule is for a period of at most 120 days. Thus, any disadvantage that occurs to interested parties as the result of implementation of the emergency rule will be eliminated at the expiration of that time. Finally, the notice of proposed rulemaking accompanying issuance of this emergency rule evidences the Department's good faith in acting as quickly as possible to remedy the defects identified by the Court in the rescission of the homework ban. Therefore, the "good cause" exception may properly be invoked in this instance.

The Department notes, in addition, that the public has already commented extensively on the earlier rescission proposals. *ILGWU, supra*, 722. F.2d at 804. The purpose of the A.P.A. provision requiring an opportunity to comment therefore, has, as a practical matter, been fulfilled in some measure. *Cf. Consumer Energy Council of America* v. F.E.R.C., 673 F.2d 524, 446 (D.C. Cir. 1981) ("The value of notice and comment prior to repeal of a final rule is that it ensures that an agency will not undo all that it accomplished through its rulemaking without giving all parties an opportunity to comment on the wisdom of repeal.") Moreover, further comments on the Department's new proposal to permanently lift the ban on homework in the knitted outerwear industry are solicited in the accompanying notice of proposed rulemaking.

The Department finds additional legal grounds supporting issuance of this emergency rule in the Supreme Court's recent decision in *Motor Vehicle Manufacturers Association* v. *State Farm Mutual Automobile Insurance Co.*, 103 S.Ct. 2856 (1983), where the court distinguished between evidence sufficient to justify *rescission* of the standard at issue and evidence sufficient to justify *suspension* of that standard pending further consideration. 103 S.Ct. at 2870 n.15, 2874 n.21. The Department's view is that sufficient evidence, set forth herein, is available at this time to justify suspending the ban on homework on an emergency basis while the agency proceeds with its consideration of whether to rescind the ban permanently in light of the comments submitted in response to its new proposal.

The Department's decision to issue this emergency rule suspending the homework ban is based on its current belief, supported by the information detailed below, that it can effectively enforce the Act in the homework sector of the knitted outerwear industry during the next 120 days, and that it has done

so over the past two years. Federal law does not prohibit homework in the great majority of industries in this country; only in seven industries has it ever been restricted pursuant to Section 11(d) of the FLSA. Moreover, knitted outerwear is a very small industry, with only about 63,000 total employees in 1981. This compares with a universe of more than 50 million employees subject to the FLSA. The relatively small scale of the industry increases the Department's ability to conduct an effective enforcement program in the knitted outerwear industry during the next 120 days.

A restriction on homework is permissible under the FLSA only when necessary to safeguard the minimum wage. Section 11(d), 29 U.S.C. 211(d). A restriction is simply one tool among many the Department has available to enforce the Act. It is a harsh tool because it deprives persons of the right they would otherwise have to work in their own homes if they so choose. Many Americans prefer to work at home because it is more convenient. Others would be unable to work at all if not permitted to work at home. For these reasons, the Department is disinclined to restrict homework in an industry, unless there is clear evidence that the Act cannot effectively be enforced by other means.

Particularly in view of the Department's enforcement experience, described below, in the many industries in which homework has been lawfully practiced for decades, the Department, during the next 120 days, believes that it should not employ the extraordinary enforcement mechanism of a total ban on homework in an industry in which there appear to be no enforcement problems that are unique or insurmountable. In light of the fact that homework may be freely engaged in by the vast majority of workers who are employed in non-restricted industries, and that enforcement is possible in the knitted outerwear industry, a total prohibition against homework in the knitted outerwear industry appears to unfairly and arbitrarily deprive individuals currently engaged as homeknitters of a basic prerogative—the opportunity to work at home.

Since 1981, the Department has pursued a vigorous concerted enforcement program to detect violations of the Act among homeworkers as an alternative to the imposition of restrictions against homework. In the period from October 1, 1981 to December 31, 1983, a total of 591 investigations of employers utilizing homeworkers were conducted, as compared with approximately 75–80 such investigations during the previous six-year period. This is an increase of approximately 1900% in the number of homework investigations conducted annually. The Department has investigated all compliants received involving homework, and it has actively sought, through a variety of information sources, to make sure that homework activity, wherever it occurs, is in compliance with the FLSA. Information is obtained from unions, manufactures' associations, local newspapers, crafts newsletters, and lists of firms that have requested subminimum wage certificates for homework under FLSA Regulations 29 CFR Part 524 or 525 or homework handbooks, as well as from homeworkers themselves. The Department has made the scheduling and conduct of special "directed" (i.e., noncomplaint) investigations of homework firms a top priority.

The Department has also taken steps to update and improve procedures and techniques for homework investigations. As part of this effort, a task force of experienced compliance officers from offices located in areas of the country that are major garment centers was assembled to develop specialized policies and operating procedures for conducting investigations in the garment industry. These procedures, which were issued to the entire Wage-Hour enforcement staff, included definitions of industry terminology and job classifications, identification of common industry practices and potential violations, and detailed guidance on effective investigation techniques. Timestudy training material was also made available to compliance officers. Selected field enforcement staff received detailed training in timestudy techniques, in order to enhance the Department's ability, in the absence of accurate time records, to reconstruct the hours worked by homeworkers, to determine whether they are properly paid under the FLSA.

Since institution of the Department's concerted enforcement program in 1981, there has been a steady increase in the percentage of homework employers investigated found to be in compliance with the monetary provisions of the FLSA. The overall compliance rate for homework employers investigated by the Department was 52% in fiscal year 1982, 56% in 1983, and 68% during the first quarter of 1984.

Furthermore, a significant percentage of homework investigations have been initiated as a result of complaints. Such complaints, whether from employees or competitors, have provided a productive basis for investigation of employers operating in violation of the FLSA. Of the 591 investigations of employers utilizing homeworkers which the Department has conducted since the beginning of its concerted compliance effort, 39 percent were based on complaints.

The investigative results also suggest that the prohibition against homework in the restricted industries has not been especially effective. The Department's enforcement activities since 1981 have disclosed many firms operating in the restricted industries that are using homeworkers. Of the 591 investigations referenced above, 195 were of firms in the six restricted industries. Moreover, a prohibition probably makes it more difficult to identify firms in the industry that use homeworkers, since such firms would be inclined to conceal their existence. Because the homework practices of such firms would be unlawful *per se*, such firms would have a reduced incentive to comply with the Act's monetary provisions. Indeed, the results of the Department's concerted enforcement program to date indicate that the compliance rate for homework employers in the restricted industries is slightly lower (51%) than for homework employers in unrestricted industries (58%).

The Department's concerted homework enforcement program suggests that the rate of compliance among homework employers is not at present exceptionally low, as some have contended. Rather, it appears to be roughly comparable to that found in all covered industries. Of the 591 homework firms investigated, 56% were found to be in compliance with the FLSA. The compliance rate was 40% for investigations arising from complaints, and 66% for noncomplaint investigations. Of the 396 homework firms investigated in the unrestricted industries, 58% were found to be in compliance (41% in complaint investigations, and 69% in noncomplaint investigations).

Wage-Hour investigations in all industries during fiscal year 1981 through 1983 revealed a 34% to 36% compliance rate (25% to 27% for complaint investigations and 53% to 56% for non-complaint investigations).

The compliance rate found among homework employers in the knitted outerwear industry (39% overall: 11% for complaint investigations and 53% for non-complaint investigations) although somewhat lower than in other homework industries, is comparable to the 34% to 36% compliance rate found for all covered employers investigated.

Moreover, persons who have contended that minimum wage violations are pervasive in homework industries have relied on factors which are inherent in the nature of homework itself. They have advanced no reasons for concluding that enforcement problems relating to homework would be different in the knitted outerwear industry than in other industries where homework is permitted. The Department therefore believes that the compliance rate found among all homework firms investigated is probably more indicative of enforcement feasibility than the rate found in knitted outerwear investigations alone. In any event, as noted above, the compliance rate found in knitted outerwear investigations is comparable to that found in Wage-Hour investigations overall. This equivalence itself supports the Department's belief that enforcement of the Act in the homework sector of the knitted outerwear industry is feasible.

Comparison of the compliance rate in non-complaint investigations of homework employers with that of industry as a whole is inexact because, industrywide, the available figures include a small percentage of investigations under government contract labor standards statutes as well as the FLSA. Moreover, industrywide, only a small proportion of employers were selected for investigation, while, as a result of the concerted homework enforcement program, it is likely that a higher share of homework employers were investigated. Nonetheless, the evidence indicates that the compliance rate among homework employers, including those in the knitted outerwear industry, is not exceptionally low, but rather appears to be roughly comparable with industry as a whole.

In his 1942 findings, the Administrator noted three particular difficulties associated with industrial homework which, in his view, rendered minimum wage enforcement infeasible: (1) The difficulty of identifying and locating homeworkers; (2) the difficulty of accurately ascertaining hours worked by homeworkers; and (3) the length of time required to conduct investigation of homework. Initially, we note that the premise underlying the 1942 findings was that violations were ubiquitous among homework employers. The Department's recent experience indicates that there is no current basis in fact for this premise; the compliance rate among employers of homeworkers, as noted above, appears to be roughly proportional to that among other employers.

Based on the results of its enforcement program since 1981, the Department currently believes, for a number of reasons, that the difficulties noted in 1942 can be dealt with short of the drastic remedy of banning all homework in the knitted outerwear industry. First, the Department can locate homeworkers, and has done so. As noted above, some 591 investigations involving homeworkers have been conducted since 1981, using a variety of information sources. Twenty-eight firms, employing approximately 474 homeworkers, have been identified in the knitted outerwear industry.

Second, the Department has not found accurate recordkeeping to be an insurmountable problem in homework investigations. The Department has had considerable experience with investigations in industries where time clocks are not maintained and employees are not closely supervised; the problem is no different in kind in homework. In such cases the Department's compliance officers rely on personal interviews with employees as well as personal observations concerning the time required to produce an article and other investigative techniques referred to above. In homework, these procedures are supplemented by a Departmental regulation requiring all homeworkers to maintain special handbooks recording their hours worked and units of production. See 29 CFR 516.31(c).

Third, while it is apparent that thorough investigation of homework is time-consuming, the Department has committed substantial resources for this purpose and intends to continue vigorous enforcement. As a result of the concerted enforcement program, enforcement of the Act in the homework setting is far more effective now than was the case in the years preceding the 1981 rescission of the homework ban in the knitted outerwear industry. Moreover, as noted above, knitted outerwear is a relatively small industry, and the number of homeworkers currently engaged in knitted outerwear manufacture is not likely to exceed the Department's enforcement capabilities.

Finally, the suggestion has been made that rescission of homework restrictions in the knitted outerwear industry would result in the hiring and exploitation of illegal aliens and other immigrants. The Department has had considerable experience with the general enforcement implications of the presence of illegal aliens as employees. The enforcement problems in homework are not significantly different in kind from those found in other types of employment. Since 1978 the Department has earmarked resources for targeting investigations of employers in specific industries and geographic areas who are believed likely to be employing illegal aliens under terms violative of Federal labor laws. The Department relies heavily upon information provided by the Immigration and Naturalization Service in scheduling these investigations; in turn, it provides appropriate information to the INS. In addition, in recognition of language barriers that are frequently present when dealing with legal as well as illegal aliens, the Department employs bilingual enforcement personnel who are proficient in Spanish, Chinese, Haitian Creole, Vietnamese and other foreign languages.

In the permanent rulemaking proceedings instituted today, the Department will give careful consideration to alternatives such as retaining the homework restrictions or adopting a proposal of lesser scope than a complete rescission of the restriction. However, none of the currently known alternatives could be implemented feasibly in the short time period during which this emergency rule will be in effect. Furthermore, none of these alternatives would fully serve the Department's purpose of preventing unnecessary hardship by maintaining the status quo for employees in the industry pending a decision whether to permanently rescind the ban on homework. These alternatives include the following:

A. Remove the restrictions on knitted outerwear homework in rural areas but retain restrictions for urban areas

Under this alternative proposal, only persons residing in rural areas, as defined by the Secretary, would be permitted to engage in knitted outerwear homework. There are a number of considerations, discussed in the preamble to the proposed permanent rule, which would have to be weighed carefully before the proposal could be implemented. In particular, the process of defining rural areas for purposes of the rule would require careful study and could not feasibly be completed during the brief period in which this emergency rule will be in effect.

Moreover, as noted above, the Act authorizes the Department to restrict homework only to the extent necessary to safeguard the minimum wage. The Department believes that effective enforcement of the minimum wage provisions of the Act is possible in the homework sector of the knitted outerwear industry over the next 120

days in both urban and rural areas; therefore, it appears neither necessary nor appropriate to ban homework in urban areas in the knitted outerwear industry at this time.

B. Expand the conditions for granting certificates permitting homework employment in the knitted outerwear industry

Under this alternative proposal, the present system for granting special certificates would be expanded to include various additional categories of need, such as one or more of the following: need to care for children or other family members in the home; lack of accessible factory employment; lack of public transportation; economic need. The time needed to study this alternative and to give it definite content precludes its adoption as an emergency rule. Moreover, in light of the possibility that rulemaking may lead to a complete rescission of the ban on homework within the next few months, expansion of the certificate system at this time would be premature.

C. Transfer homework certification and enforcement responsibilities to the States

It has been suggested that the Department delegate responsibility for homeworker certification and enforcement to the States. The Department notes that its existing regulations provide that it may designate a state agency to act as its authorized representative for the purpose of issuing or denying homework certificates. 29 CFR 530.10.

The transfer of responsibility for certification and enforcement from one level of government to another is a complex matter which could not feasibly be accomplished on an emergency basis, effective at once. The development of standards, drafting of federal-state agreements, and training of state personnel are incompatible with the time constraints inherent in emergency rulemaking.

D. License employers utilizing homeworkers in the knitted outerwear industry

Under this alternative proposal, all employers of homeworkers in the knitted outerwear industry would be required to obtain licenses from the Department. Apart from the infeasibility of immediately implementing this proposal, it does not seem sensible to establish a licensing system which, depending upon the outcome of the rulemaking process, may become unnecessary in a few months.

Again, the Department emphasizes that it will review and consider all alternative proposals in the course of the rulemaking proceedings.

Conclusion

Pursuant to Section 553(b)(B) of the Administrative Procedure Act, the Department finds that there is good cause for dispensing with notice and public comment concerning this final rule. The disruption among homeworkers currently engaged in the knitted outerwear industry constitutes an emergency which is beyond the control of the Department. The Department also notes that this rule is for a short and definite duration. The regular rulemaking proceedings will be completed by the expiration of the 120 day period, at which time the emergency in the knitted outerwear industry will be ended.

Finally, the Department finds that this emergency rule is a rule which relieves a restriction within the meaning of Section 553(d)(1) of the Administrative Procedure Act. Therefore, this rule shall become effective immediately rather than 30 days after its publication. In the event that it is necessary under Section 553(d)(3) of the Act, the Department also finds that there is good cause for waiving the 30-day delay in effectiveness, for the same reasons set forth regarding waiver of prior notice and opportunity for public comment.

Classification

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulation, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Furthermore, the Department certifies that the rule will have no "significant economic impact . . . upon a substantial number of . . . small [business] entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)).

Paperwork Reduction Act

Because this rule does not require the collection or retention of information, it is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, U.S. Department of Labor.

List of Subjects in 29 CFR Part 530

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages.

Accordingly, the following action is taken: The prohibition of homework in the knitted outerwear industry under 29 CFR 530.1 (f) and 530.2, the text of which appeared in the July 1, 1981, edition of the Code of Federal Regulations and is contained in Appendix A to this document, and which was reinstated as a result of the Court of Appeals ruling, effective February 29, 1984, is suspended for a period of 120 days for those individuals who were employed as homeworkers in the knitted outerwear industry at any time during the period from November 8, 1981 through February 29, 1984.

(Sec. 11, 52 Stat. 1066; (29 U.S.C 211) unless otherwise noted; Secretary's Order No. 16–75, 40 FR 55913, December 2, 1975; and Employment Standards Order No. 78–1, 43 FR 51469, November 3, 1978)

Signed at Washington, D.C., this 23rd day of March, 1984.

William M. Otter,

Administrator.

Appendix A

The text of 29 CFR 530.1(f) and 530.2 which appeared in the July 1, 1981 edition of the Code of Federal Regulations reads as follows:

§ 530.1 Definitions.

* * * * *

(f) The knitted outerwear industry is defined as follows: The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing or other finishing of knitted garments, knitted garment sections, or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed; and the manufacture of bathing suits from any purchased fabric: *Provided*, That the manufacturing, dyeing or other finishing of the following shall not be included:

(1) Knitted fabric, as distinguished from garment sections or garments, for sale as such.

(2) Filled suitings, coatings, topcoatings, and overcoatings.

(3) Garments or garment accessories made from purchased fabric, except bathing suits.

(4) Gloves or mittens.

(5) Hosiery.

(6) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.

(7) Fleece-lined garments made from knitted fabric containing cotton only or

containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(8) Knitted shirts of cotton or any synthetic fiber or any mixture of such fibers which have been knit on machinery of 10-cut or fine: *Provided,* That this exception shall not be construed to exclude from the knitted outerwear industry and the manufacturing, dyeing, or other finishing of knitted shirts made in the same establishment as that where the knitting process is performed, if such shirts are made wholly or in part of fibers other than those specified in this clause, or if such shirts of any fiber are knit on machinery coarser than 10-cut.

* * * * * *

§ 530.2 Restriction of homework.

No work in the industries defined in paragraphs (d) through (j) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homeworker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.1 of this chapter.

(Secretary's Order No. 16–75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76–2, dated Feb. 23, 1976 (41 FR 9016))

[FR Doc. 84–8290 Filed 3–26–84; 8:45 am]

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S. 820 / Pub. L. 98-241

To authorize appropriations for the Earthquake Hazards Reduction Act of 1977 and the Federal Fire Prevention and Control Act of 1974 for fiscal year 1984 and fiscal year 1985, and for other purposes. (Mar. 22, 1984; 98 Stat. 95) Price: $1,50

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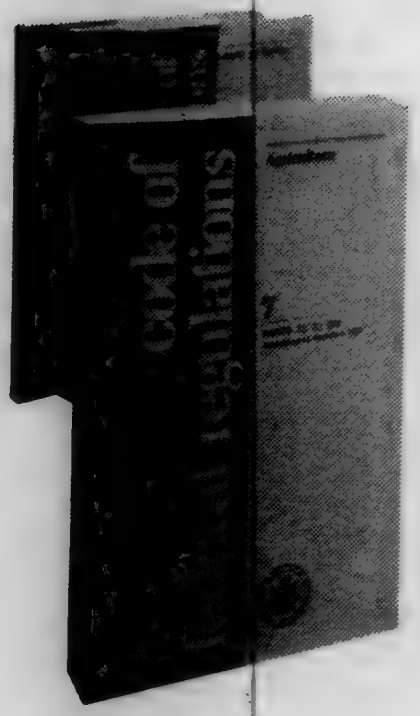

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Presidential Documents

Title 3—

The President

Executive Order 12469 of March 26, 1984

East-West Foreign Trade Report

By the authority vested in me as President by the Constitution and the statutes of the United States of America, including section 301 of Title 3 of the United States Code (3 U.S.C. 301), and section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)), in order to provide for more efficient reporting to the Congress, it is hereby ordered as follows:

Section 1. The reporting functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)), as transferred to the President by section 5(c) of Reorganization Plan No. 3 of 1979 (19 U.S.C. 2171 note), are delegated to the United States Trade Representative.

Sec. 2. This order is effective upon publication in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
March 26, 1984.

[FR Doc. 84-8486
Filed 3-26-84; 4:30 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 49, No. 61
Wednesday, March 28, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 427

Oat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1984 and succeeding crop years by: (1) Changing the policy to make it easier to read and understand; (2) eliminating the reduction in production guarantee for unharvested acreage; (3) eliminating the substitute crop provision; (4) adding a 60-day claim for indemnity provision; (5) clarifying the provision determining production to count when small grains are growing with other planted or volunteer crops; (6) adding a section regarding appraisals following the end of the insurance period for unharvested acreage; (7) changing the cancellation and termination for indebtedness dates; (8) revising the unit definition to provide for unit determination when the acreage report is filed; (9) adding three sections concerning descriptive headings, determinations, and notices; and (10) making format and language corrections for purposes of clarification.

In addition, FCIC issues a new subsection in the oat crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring oats in accordance with Departmental Regulations 1512–1, requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements in these regulations.

EFFECTIVE DATE: April 27, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this action and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is February 1, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that: (1) This action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small business, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance program to which these regulations apply are: Title-Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On Wednesday, April 13, 1983, FCIC published an interim rule at 48 FR 15869, revising and reissuing the Oat Crop Insurance Regulations (7 CFR Part 427) in accordance with the provisions of Departmental Regulation 1512–1. Public comment was solicited following the publication and the regulations were scheduled for review; however, no comments were received. In reviewing these regulations prior to issuing this final rule, it was determined that the control numbers assigned by OMB to information collection requirements should be added to the regulations in addition to two other sections regarding determinations and notices. None of these additions have any effect on the terms and conditions of the policy for insuring oats as contained in the regulations but merely serve to clarify determinations made by FCIC and notices required by the policy, and to comply with OMB regulations.

With the exception of the additions referred to above, the interim rule as published is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 427

Crop Insurance, Oats.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1984 and succeeding crop years, to read as follows:

PART 427—OAT CROP INSURANCE

Subpart—Regulations for the 1984 and Succeeding Crop Years

Sec.

427.1 Availability of oat crop insurance.
427.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
427.3 OMB control numbers.
427.4 Creditors.
427.5 Good faith reliance on misrepresentation.
427.6 The contract.
427.7 The application and policy.
Appendix A, Counties designated for oat crop insurance.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 427.1 Availability of oat in crop insurance.

Insurance shall be offered under the provisions of this subpart on oates in counties within limits prescribed by, and in accordance with the provisions of the

Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which oat insurance will be offered.

§ 427.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for oates which shall be shown on the county actuarial table on file in the service office and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 427.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 427) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 427.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 427.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the oat insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured, or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believes to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000 finds: (1) That an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured persons relied thereon in good faith and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 427.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance. The contract shall cover the oat crop as provided in the policy. The contract shall consist of the application, the policy, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service office.

§ 427.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the oat crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the service office in the county and publishing a notice in the **Federal Register** upon the Manager's determination that no selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) Oat contracts in effect for the 1983 crop year are amended by the substitution of the 1984 contract and are continuous unless terminated in accordance with their terms. A new application is not required by these regulations for the 1984 crop year.

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, § 400.38; first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Oat Insurance Policy for the 1984 and succeeding crpp years, are as follows:

Department of Agriculture

Federal Crop Insurance Corporation

Oat—Crop Insurance Poilcy

(This is a continuous contract. Refer to Section 15.)

Agreement to insure: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake; or
(7) Volcanic eruption;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We shall not insure against any loss of production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good oat farming practices;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

a. Crop, acreage, and share insured.

a. The crop insured shall be oats seeded for harvest as grain, oats seeded in the same manner for harvest as silage or hay, and grain mixtures in which oats are the predominant grain; which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured by each crop year shall be oats planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured oats at the time of planting.

d. We do not insure any acreage:

(1) Planted with flax or vetch;

(2) Where the farming practices carried out are not in accordance with the farming

pratices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) which is destroyed and it is practical to replant to oats but such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table unless you agree in writing on our form, to coverage reduction;

(6) Of volunteer oats; or

(7) Planted to a type or variety of oats not established as adapted to the area or excluded by the actuarial table.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good oat irrigation practice; and

(2) Any loss of production caused by failure to carry out a good oat irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production or hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You shall report on our form:

a. All the acreage of oats in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any oats planted in the county. This report shall be submitted annually on or before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	65
.41 to .60	100	100	95	95	95	90	90	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	106	110	112	114	116	116	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	106	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	108	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	126	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	156	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5e shall be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you

or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches when the oats are planted except that in counties with an April 15 cancellation date, insurance on fall planted oats shall attach April 16 following planting, provided there is an adequate stand on this date to produce a normal crop.

b. Insurance ends at the earliest of:

(1) Total destruction of the oats;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The date shown below of the calendar year in which oats are normally harvested:

(a) Alaska—September 25;

(b) All other states—October 31.

8. Notice of damage or loss.

a. In case of damage of probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the oats on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) You want our consent to put the acreage to another use;

(c) You want to harvest the oats for silage or hay, (After such notice is given, we shall appraise the potential grain production. *However*, if we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes); or

(d) After consent to put acreage to another use is given, additional damage occurs. Insured acreage may not be put to another use until we have appraised the oats and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined, and a representative sample of the unharvested wheat (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(3) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the oats on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the oats which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the oats on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of oats on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of oats to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. The total production to be counted for a unit shall include all harvested and appraised production.

(1) Mature oat production:

(a) Which otherwise is not eligible for quality adjustment and which grades No. 4 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(b) Which, due to insurable causes, does not grade No. 4 or better, or is graded smutty, garlicky, or ergoty, in accordance with the Official United States Grain Standards, shall be adjusted by:

(i) Dividing the value per bushel of such oats by the price per bushel of U.S. No. 2 oats; and

(ii) Multiplying the result by the number of bushels of such oats.

The applicable price for No. 2 oats shall be the local market price on the earlier of the day the loss is adjusted or the day such oats were sold.

(2) Any mature production from other crops growing in the oats shall be counted as oats on a weight basis.

(3) Appraised production to be counted shall include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good oat farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered production unless such acreage:

(a) Is not put to another use before harvest of oats becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(5) We may determine the amount of production of any unharvested oats on the basis of field appraisals conducted after the end of the insurance period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the oats are damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI–78, "Request To Exclude Hail And Fire".

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You shall not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the oats are planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us,

you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and access to farm.

You shall keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all oats produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

1. If deducted from an indemnity claim shall be the date you sign the claim; or

2. If deducted from payment under another program administered by the United States Department of Agriculture shall be the date the payment was approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
New Mexico except Taos County; Oklahoma; and Texas.	August 31.
Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.	September 30.
Arizona; California except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties.	October 31.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; Taos County, New Mexico; and all other states.	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for an crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership s all dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by May 31 preceding the cancellation date for all other counties. Acceptance of any changes shall be conclusively presumed in the absence of a notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of oat crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding oat insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the oats are normally grown and shall be designated by the calendar year in which the oats are normally harvested.

d. "Harvest" of oats on the unit means the completion of combining, threshing or cutting for hay or silage.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. "Tenant" means a person who rents land from another person for a share of the oats or a share of the proceeds therefrom.

j. "Unit" means all insurable acreage of oats in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the oats on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy shall be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Appendix A—Counties Designated for Oat Crop Insurance

In accordance with the provisions of 7 CFR 427.1, the following counties are designated for oat crop insurance:

Alabama

Baldwin

Arkansas

Arkansas

California

Modoc
Siskiyou

Colorado

Alamosa

Idaho

Kootenai

Illinois

Boone
Bureau
Carroll
De Kalb
Henry
Jo Daviess
Kane
Knox
LaSalle
Lee
McHenry
Mercer
Ogle
Stephenson
Warren
Whiteside
Will
Winnebago

Iowa

(All counties)

Kansas

Dickinson
Marion

Michigan

Allegan
Alpena
Barry
Calhoun
Clinton
Eaton
Genesee
Huron
Ionia
Isabella
Jackson
Kent
Lapeer
Lenawee
Montcalm
St. Clair
Sanilac
Shiawassee
Tuscola
Washtenaw

Minnesota

All counties except:
Aitkin — Koochiching
Carlton — Lake
Cook — Ramsey
Itasca — St. Louis

Montana

Hill — Richland
Judith Basin — Roosevelt
Phillips — Valley

Nebraska

Antelope
Boone — Holt
Boyd — Knox
Burt — Madison
Butler — Pierce
Cedar — Platte
Colfax — Saunders
Cuming — Sheridan
Dakota — Stanton
Dawes — Thurston
Dixon — Washington
Gage — Wayne

New York

Allegany — Oneida
Cattaraugus — Onondaga
Cayuga — Ontario
Erie — Orleans
Genesee — Otsego
Herkimer — Seneca
Jefferson — Steuben
Livingston — Tompkins
Madison — Wayne
Monroe — Wyoming
Montgomery — Yates
Niagara

North Carolina

Rowan

North Dakota

(All counties)

Ohio

Allen — Lorain
Ashland — Mahoning
Ashtabula — Medina
Auglaize — Mercer
Carroll — Paulding
Columbiana — Portage
Coshocton — Putnam
Crawford — Richland
Drake — Seneca
Defiance — Shelby
Hardin — Stark
Homes — Trumbull
Huron — Van Wert
Knox — Wayne
Logan — Wood

Oregon

Klamath — Polk
Marion — Yamhill

Pennsylvania

Armstrong — Clarion
Bedford — Columbia
Berks — Crawford
Bradford — Cumberland
Butler — Dauphin
Cambria — Erie
Centre — Franklin
Chester — Indiana
Juniata — Schuylkill
Lawrence — Snyder
Lebanon — Somerset
Lehigh — Tioga
Lycoming — Union
Mercer — Washington
Northumberland — Westmoreland
Perry — York

South Carolina

Sumter

South Dakota

All counties except:
Custer
Fall River — Shannon
Jones — Washabaugh
Washington

Texas

Archer — Hamilton
Bell — Hill
Blanco — Hunt
Bosque — Johnson
Brown — Kaufman
Coleman — Lamar
Collin — Limestone
Concho — McCulloch
Cooke — McLennan
Coryell — Medina
Dallas — Runnels
Denton — San Saba
Erath — Tarrant
Falls — Taylor
Gillespie — Uvalde

Washington

Spokane — Stevens

Wisconsin

All counties except:

Ashland — Menominee
Bayfield — Milwaukee
Douglas — Oneida
Florence — Price
Forest — Sawyer
Iron — Vilas
Lincoln

Wyoming

Cook

Done in Washington, D.C., on February 13, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 5, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-8371 Filed 3-27-84; 8:45 am]
BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1150

Dairy Promotion Program; Decision Establishing Final Order Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final decision establishes a Dairy Research and Promotion Order to implement a national program for dairy product promotion, research and nutrition education as provided for in Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983. The program will be funded by a mandatory 15-cent per hundredweight assessment on all milk marketed by producers in the 48 contiguous States and will be administered by a board of 36 dairy farmers appointed by the Secretary.

The order defines the powers and duties of the National Dairy Promotion and Research Board, provides for collection of the 15–cent per hundredweight assessment, specifies the objective of board activities, and provides a mechanism for terminating the activities of the board if the program is defeated in any producer referendum. Additional subparts set forth the rules to govern petitions to modify or to be exempted from the order and the procedures used to certify those milk producer organizations eligible to submit nominations for board membership to the Secretary.

EFFECTIVE DATES: All provisions, except the collection of assessments specified in § 1150.152, are effective on and after April 1, 1984. The collection of assessments in effective on and after May 1, 1984.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Dairy Division, Agricultural Marketing Service. U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Invitation to submit proposals: Issued December 6, 1983; published, December 9, 1983 (48 FR 55132).

Procedure for certification of milk producer organizations: Issued January 27, 1984; published, February 2, 1984 (49 FR 4068).

Invitation to submit comments and notice of public meeting: Issued January 27, 1984; published February 2, 1984 (49 FR 4080).

This final rule has been reviewed under Executive Order 12291 and has been designated as a "major" rule since it would have an annual impact on the economy of more than $100 million. Also, this action could have a significant economic impact on a substantial number of small entities. Consequently, a combined regulatory impact analysis and regulatory flexibility analysis has

been prepared and is available for review to the public by contacting the person named above.

In information collection requirements that are included in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35) and have been assigned OMB Control Number 0581–0147.

Statutory Authority for Final Rule

This final rule is issued pursuant to Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128 as approved November 29 1983. The declared policy of this statute is to provide for the establishment of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States.

The statue mandates a deduction of 15-cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers in the 48 contiguous States. These deductions are to be remitted to a National Dairy Promotion and Research Board established for administration of appropriate plans or projects for advertisement and promotion of the sale and consumption of dairy products, for research projects related thereto, for nutrition education projects, and for the disbursement of necessary funds for such purpose. Where it can be established that milk producers are participating in active, ongoing qualified State or regional dairy product promotion or nutrition education programs intended to increase consumption of milk and dairy products generally, such producers shall receive credit in determining the assessment due from such producers for contributing to such programs of up to 10 cents per hundredweight of milk marketed.

In addition, the statute mandates that the Secretary issue a promotion order to become effective not later than 90 days after publishing a proposed order for public comment, which occurred February 2, 1984. Also, within the 60-day period immediately preceding September 30, 1985, the Secretary must conduct a referendum among producers for the purpose of ascertaining whether the promotion order shall be continued.

Preliminary Statement

Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98–180), which was enacted on November 29, 1983, authorizes the establishment of a national program for dairy product promotion, research and nutrition education to be funded by a mandatory assessment on all milk marketed by producers in the 48 contiguous States. The Act also specifies the timetable for implementation of an order to establish the program. The Secretary was required to publish a proposed order within 30 days after it was received and provide an opportunity for public comment. After notice and opportunity for public comment, the Secretary must issue a dairy products promotion and research order to become effective not later than 90 days following publication of the proposal.

To implement this procedure, the Department solicited proposals from interested parties. This invitation to submit proposals was issued on December 6, 1983, and published in the **Federal Register** on December 9, 1983 (48 FR 55132). Interested parties were given until January 6, 1984, to submit proposals.

In response to this notice, one complete proposed order was received. In addition, other more limited proposals concerning certain aspects of the program were received that raised issues and questions concerning the order and its application. The proposed order along with the issues and questions were published in the **Federal Register** on February 2, 1984 (49 FR 4080). Interested parties were asked to submit comments on the proposed order by February 24, 1984. In addition, the Department conducted a public meeting in Alexandria, Virginia, on February 14 and 15, 1984, to give interested parties an opportunity to discuss all issues raised by the proposed order. The record of this public meeting and all comments received from interested parties were utilized in the development of these final rules.

In addition to the proposed order, other rules were necessary to implement the program on the timely basis required by the enabling legislation. The Act requires that the eligibility of any organization to nominate milk producers to serve on the Board must be certified by the Secretary. Interim rules were necessary to implement the application and certification process with respect to the eligibility of organizations to nominate Board members. It was found that because of a statutory deadline, it was impracticable, unnecessary and contrary to the public interest to give preliminary notice and opportunity for public comment prior to issuance of the rules and good cause was also found for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

The emergency interim final rule provided the procedure for organizations to apply for certification by the Secretary of their eligibility to represent milk producers and to nominate milk producers to serve as members of the National Dairy Promotion and Research Board. Any organization whose membership consisted primarily of milk producers was invited to apply for certification.

In order to be eligible for certification to make nominations to the initial Board, applications for certification were to be received by the Department by March 5, 1984.

Additional rules concerning the procedure for conducting referenda to determine producer approval will be developed at a later time since the initial referendum is not required by the Act until the 60-day period immediately preceding September 30, 1985.

As previously stated, the Dairy and Tobacco Adjustment Act of 1983 mandates the implementation of a national dairy promotion plan. In addition, the legislation specifies many of the provisions to be included in the dairy promotion and research order. The major issues raised in comments and at the public meeting concerned matters of statutory interpretation or operations not addressed by the Act. Most of the comments addressed one or more of the issues set forth in the proposed order document: nature of authorized advertising, Board membership, qualification of State and regional programs, collection of assessments, and expenditures of funds. Consequently, each of these issues will be addressed in the decision which follows.

The decision is divided into seven major issues. The first six deal with the dairy research and promotion order and the seventh with the additional regulatory provisions to implement the program. The major issues identified in this proceeding are:

1. Nature of authorized advertising.
2. Definitions and miscellaneous provisions.
3. Structure of the Board.
4. Powers and duties of the Board.
5. Expenses and collection of assessments.
6. Qualification of State and regional programs.
7. Additional regulatory provisions.

Findings and Conclusions

Following are the findings and conclusions on the major issues set forth above.

1. Nature of Authorized Advertising

The order should not specifically prohibit the expenditure of program funds to promote milk and dairy products on a brand or trade name basis. The initial decision on brand or trade name advertising should be left to the National Dairy Promotion and Research Board, which has the responsibility to administer the order and to conduct a coordinated national program for milk and dairy product promotion, research and nutrition education. The Board should have the authority to consider, and to recommend to the Secretary, possible methods and plans or projects for implementing a promotion program for milk and dairy products on a brand or trade name basis. The Board would have to determine that any such program would tend to generally increase the consumption of milk and dairy products and that such program could be carried out in an equitable manner and without using unfair or deceptive practices. As discussed later, this issue also involves the criteria and procedure for determining if State or regional dairy product promotion programs that provide for brand advertising should be qualified so that producers who fund such programs would be eligible for credits, thereby reducing the amount of their mandatory assessment to fund the national program.

This issue stimulated substantial controversy and was addressed by a large number of interested parties both at the public meeting and in written comments to the Department. Generally, producers propose a generic promotion program with an absolute prohibition against brand name advertising in the order. On the other hand, processors, generally proprietary firms, oppose any prohibition in the order to exclude advertising that makes reference to private brands or trade names and propose that such advertising be specifically provided for in the order.

The Milk Industry Foundation and International Association of Ice Cream Manufacturers (MIF) and other interested parties contend that the expenditure of program funds on brand advertising cannot be prohibited in the order since the Act does not prohibit brand advertising. They contend that both the statutory provisions and the legislative history of the Act make it unlawful for the Secretary to arbitrarily exclude brand advertising in the order and thereby prohibit the Board from determining whether any specific advertising program would tend to achieve the purposes of the Act. These parties also maintain that brand advertising, rather than being directed towards brand preference, can be effective in increasing total sales of milk and dairy products. They further maintain that brand advertising, in conjunction with a generic program, would encourage processor involvement in promoting dairy products. They maintain that, although generic programs have been successful, they could have been more successful if they had been fully coordinated with the marketing plans and strategies of processors. In this regard, brand advertising advocates offered various general guidelines to implement a jointly funded promotional program. Basically, the concept involves matching processor dollars for promotional programs with dairy farmer funds from the national program. Processors maintained that their contributions would be either in excess of what is currently spent by processors for promotion, or in excess of some prior established norm of advertising expenditures for various categories of milk and dairy products. Thus, they maintain that an incentive would be created for the expenditure of additional funds to promote milk and dairy products, and that such a jointly funded program would be most effective in increasing overall sales. Thus, processors conclude that a jointly funded program would have the greatest impact in carrying out the objectives of the Act to finance and carry out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace.

The National Milk Producers Federation (NMPF) and other interested parties (including producers, processors and representatives of State and regional promotion programs) oppose the expenditure of program funds to promote milk and dairy products on a brand or trade name basis. They maintain that brand advertising results in sales shifts among brands and does not result in an overall increase in sales. Therefore, they maintain that the funding of brand advertising programs would not be consistent with the objective of the Act to increase the overall sales of milk and dairy products. Producer groups further emphasize that the Act requires that the program be funded by producer contributions, and that producers do not want their funds to be used by processors to promote their own private brands of milk and dairy products. These parties also maintain that it would be impossible to administer any brand advertising program in an equitable manner under the national program. They question how the Board would determine what processors and what brands would receive producer funds for promotion. They maintain that excluded processors would be placed at a competitive disadvantage and that the Board would be subject to extensive litigation by such companies. Producers also maintain that attempting to allocate program funds among all processors and thousands of brands would result in a dissipation of producer contributions to subsidize the advertising of processors. With respect to the concept of processors matching new advertising dollars with producer funds, producers question what procedure would be used to determine what processors would have spent for advertising in the absence of producer contributions. Producers maintain that if the Board has to contend with all the administrative problems inherent in a national program that provides for brand advertising, rapid implementation of an effective dairy product promotion program would be impossible. Producers contend that Congress intended that an effective program to increase consumption of milk and dairy products be implemented expeditiously as evidenced by the specific and limited time span contained in the Act for adoption of a program. Producers also maintain that rapid implementation is necessary to have an ongoing, effective program prior to the initial, required referendum. Producers conclude that the function of the national program is to use producer funds to increase the overall consumption of milk and dairy products through a generic promotion program and that such a program is consistent with the intent and requirements of the Act.

A review of the points raised by the proponents and opponents of brand advertising reveals four significant points. First of all, the Act is silent with respect to the use of program funds to promote milk and dairy products on a brand or trade name basis. Second, the program is funded by producers through a mandatory assessment on all milk marketed and, from the views and comments submitted by producers and their cooperative associations, they do not want to fund a program that promotes milk and dairy products on a brand or trade name basis. Third, there are difficult administrative, enforcement, and legal problems inherent with the implementation of brand or trade name advertising under a national promotion program that cannot

readily be resolved. Fourth, the intent of the enabling legislation must be construed to promote an overall increase in sales of milk and dairy products when viewed in the context of the entire Dairy and Tobacco Adjustment Act that is principally concerned with curtailing the high surplus of milk production and dairy products.

The first of the above points is controlling and, thus, the order should not contain an outright prohibition to the use of national program funds to promote milk and dairy products on a brand or trade name basis. To do so would prohibit the Board from even considering promotional programs that use brand or trade names that might be developed in the future and be beneficial to the entire industry. In effect, the Board will not be foreclosed from considering all options, which appears to be the primary concern of processors at this time.

The remaining three major points were raised by producers in opposition to brand or trade name advertising. At the present time, producers do not wish to fund a brand advertising program because they do not believe that this would result in an overall increase in sales of milk and dairy products. In this regard, nothing has been presented to the Department through all the views and comments received from which it could be concluded that brand advertising has a positive impact on total sales of milk and dairy products. Accordingly, there should be nothing in the order that would require the Board to expend program funds for a brand name advertising program. In fact, it should be the Board's option not to even consider such programs at the national level. If in the future, however, the Board wishes to consider brand advertising programs, it should be able to do so.

The initial decision with respect to this issue should rest with the Board as it is responsible for conducting a coordinated national program for dairy product promotion. As provided in the order, the Board will have the authority to consider, and to recommend to the Secretary, possible methods and plans or projects for implementing promotion programs for milk and dairy products on a brand or trade name basis. Before implementing such a program, the Board would have to determine, and establish to the Secretary, that any such program would tend to generally increase the total sales of milk and dairy products and that such program could be administered and carried out in an equitable manner and without using unfair or deceptive practices.

As stated previously, this issue also involves the procedure and criteria to be used in determining whether State and regional programs should be qualified for credit purposes under the national program. The Act specifies that producers can obtain a credit for funding qualified programs, thereby reducing the amount of their mandatory contribution that is to accrue to the national program. Consequently, a determination must be made with respect to whether State and regional programs that expend funds for promoting milk and dairy products on a brand or trade name basis will be qualified for credit purposes. The order contained herein provides that the Board must address the issue of whether such programs should be qualified. Until such time as the Board, and ultimately the Secretary, approves such a program, any State or regional program that promotes milk and dairy products on a brand or trade name basis will not be qualified, and producers funding such programs will not be credited for their contributions to such programs.

Generally, the parties that support brand advertising under the national program also support qualification of State and regional programs that fund brand advertising programs. They maintain that it is not the intent of the Act to disrupt active and ongoing State and regional promotional programs or to require that such programs conform to the same type of activities that may be conducted under the national program. They emphasize that the Act requires that nothing in the Act "may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State."

Parties that opposed brand advertising under the national program generally opposed the qualification of State or regional programs that provide for brand advertising for virtually the same reasons presented in the discussion of the nature of authorized advertising under the national program. Basically, producers perceive the crediting of brand advertising under local programs as a dissipation of national program funds to subsidize the advertising of processors for their own benefit and for the benefit of their producer suppliers.

It is clear that the Act does not require, for qualification purposes, that State and regional programs conduct activities that are identical to those that may be conducted under the national program. However, it is evident that brand advertising conducted at the State or regional level would represent a significant departure from the generic promotion program that NMPF urged under the national program because of the numerous problems inherent in the administration and enforcement of brand or trade name advertising under the national program. Also, such problems associated with brand or trade name advertising that were discussed relative to the national program apply equally as well to State and regional programs. Consequently, a determination must be made on whether State or regional programs should be qualified if brand advertising is conducted.

The order contained herein provides the Secretary with the authority to determine which State and regional programs should be qualified for credit purposes. The qualification procedure and the criteria to be used are discussed under issue number 6. However, with respect to the brand advertising issue, the Board must be given the duty to review such programs and recommend to the Secretary whether they should be qualified for credit purposes. The Board has been given the authority to conduct a coordinated national program, and therefore should be given the opportunity to have an input with respect to the qualification of programs that conduct brand advertising. Generally, the requirements that the Board would need to consider to implement a national advertising program would serve as a benchmark in its deliberations on the qualification of State and regional programs.

The discussion of the nature of advertising under the national program indicated that the Board would have the option to determine when and if brand advertising should be considered. However, there is a greater sense of urgency with respect to the issue at the State and regional level. This is because the order is to be fully operational on May 1, 1984, and because assessments on May production will be due on June 30. Consequently, those responsible for remitting the assessments to the Board will have to know which programs are qualified for credit purposes. Because of the urgency involved, the order provides that, until such time as the Board reviews and makes a recommendation on the issue, any State or regional programs that expend funds to promote milk and dairy products on a brand or trade name basis will not be qualified programs.

From the information contained in views and comments received by the

Department, it appears that promotional programs operated under State or Federal laws do not engage in promoting milk and dairy products on a brand or trade name basis. Consequently, most, if not all, of such programs would be qualified programs. Other regional programs, however, that are operated by processors do emphasize their own particular brands or trade names. Such programs will not be qualified until such time as the Board recommends and the Secretary concurs that they should be qualified. Such a determination on the record is consistant with the record at this point in time. There is no demonstration to substantiate that such programs have a positive impact in increasing total sales of milk and dairy products.

2. Definitions and Miscellaneous Provisions

The order includes definitions of nineteen terms. These definitions are helpful tools in regulatory construction and make the order language simplier and easier to understand. Twelve of these terms are defined in the Act. Of the twelve, eight (department, milk, person, dairy products, fluid milk products, producer, research, and nutrition education) are reproduced verbatim from the Act. Proponents of the order recommended that the definitions of dairy products, research and nutrition education differ slightly from the way they appear in the Act. Proponents asserted that these minor changes would clarify what was interpreted as ambiguous statutory language.

Several interested parties objected to the proposed definition of "dairy products." They contended that the proposal to tie "dairy products" to the published standards of identity would unnecessarily restrict the range of products that could be promoted by the Board. One party stated that the proposed definition conflicted with the Board's statutory duty to study casein because casein is not defined in the standards of identity. It is concluded that the definition of "dairy products" should be identical to the definition included in the Act. This definition eliminates any possible regulatory conflicts and gives the Board flexibility to develop programs to promote a wide range of products.

Likewise, the definitions of research and nutrition education are reproduced from the Act. This approach avoids any possibility that the order would be interpreted to place a different meaning on these terms than is intended in the Act.

Four terms are given definitions that are slightly different from the way they appear in the Act. The definitions of "Board" and "United States" are changed by replacing the statutory citations with order citations and the title of the Board is added. The term "Secretary" is broadened to include officers and employees of the Department delegated to act for the Secretary. The definition of "promotion" is changed by adding the word "generally." The change is designed to emphasize that promotion efforts of the Board should be directed toward increasing overall demand for dairy products. These minor alterations were suggested by the producer proponents and no interested parties objected.

Seven terms are defined in the order that do not appear as definitions in the statute: Act, fiscal period, eligible organization, qualified State or regional program, plans and projects, marketing, and cooperative association. These definitions were offered to simplify drafting of the regulatory language. With minor editorial changes, they are adopted as proposed. No parties commented on these definitions.

The final order also contains certain miscellaneous provisions concerning penalties, proceeding after termination, personal liability of Board members and employees, patents and copyrights, amendments, separability, and compliance with the Paperwork Reduction Act. These provisions are necessary because they restate specific statutory requirements and they provide completeness for ease of administration. Other than the provision for penalties and compliance with the Paperwork Reduction Act, they were submitted by the proponents and no interested parties opposed their adoption.

The penalty provision of section 119(b) of the Act is included in § 1150.156 of the order. Although the statute allows these penalties to be imposed on persons who violate the order even if the provisions are not included in the order, including the penalty provision in the order will serve to give all parties additional notice of the consequences of willful violations of the order.

Sections 1150.181 and 1150.182 provide a mechanism for concluding the business of the Board if the program is defeated in a producer referendum. Since continuation of the program is subject to producer approval, the order should contain a method for closing out the program in an orderly fashion. These provisions were proposed by the producer proponents and no interested parties opposed their adoption. Therefore, they are adopted as proposed, with minor editorial changes.

Section 1150.183 is designed to limit the personal liability of Board members and Board employees for actions taken in their official capacities. This protection from liability would not extend to acts of dishonesty or willful misconduct. This provision was proposed by the National Milk Producers Federation. No additional comments were received on this topic. This provision is included in the order to clarify the personal and official responsibilities of Board members and employees.

The order contains a provision to protect the interests of the Board and the U.S. Government in patents, trademarks and copyrights that result from plans or projects funded by the Board. The language adopted in § 1150.184 was proposed by NMPF. Kraft, Inc., requested that the language be clarified to emphasize that patents and copyrights that relate to a company's branded products that may result from jointly-funded programs remain the property of the company. It is not necessary to address the issue raised by Kraft at this time. The protection of private brand or trade names and any associated patents or copyrights should be addressed in any joint program agreements that are entered into by the Board and private industry. The order need only assert the Board's property interest in materials developed with its funds. Therefore § 1150.184 is adopted as proposed.

Section 1150.186 states that if any part of the order is declared invalid, the remaining provisions shall not be affected. This provision is necessary to allow the program to operate until any legal questions are resolved or changes can be implemented to correct legal deficiencies. No interested party other than the proponent commented on this provision. Since the provision is necessary to effectuate operations of the program, it is adopted as proposed.

Sections 1150.185 and 1150.187 address legal requirements for implementing the order or amendments to the order. The Act gives the Secretary authority to amend the order. Since the Act is silent with regard to procedures to amend the order, it is concluded that any amendments must be promulgated under the informal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553). Amendments can be proposed by the Board, the Secretary, eligible organizations, cooperatives, or any interested party. Proposed amendments would be subject to the notice and

comment provisions of the Administrative Procedure Act. The Secretary would have the authority to issue interim final rules in emergency situations. Also, regulations issued under the Act are subject to the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Sections 1150.185 and 1150.187 are included so that the order complies with these statutory requirements.

3. Structure of the Board

The Act states that the program will be administered by a Board of not less than 36 milk producers appointed by the Secretary. Interested parties raised several issues concerning the structure of this producer Board, including geographic representation, nominations, and conflicts of interest. This part of the decision sets forth the order provisions that establish the Board and its operational procedures and discusses the concerns raised by interested parties.

Section 1150.131 establishes the National Dairy Promotion and Research Board of 36 milk producers. The Act requires that Board members be nominated to represent specific geographic regions and that each member represent an equal proportion of total U.S. milk production. The NMPF proposal adopted in this decision divides the nation into 13 geographical regions. Each region is assigned between one and six Board positions, depending on the volume of milk production. Analysis of this proposal shows that each Board member, in fact, represents approximately one thirty-sixth of the nation's milk supply, which complies with the statutory requirement.

A representative of Farmers Union Milk Marketing Cooperative objected to the variable number of Board members from each region. He suggested that the regions be drawn so that they represent equal amounts of the nation's milk production. Essentially, he proposed that the order provide for six regions, each having six Board positions. In written comments, he withdrew the proposal for alternative regions with regard to Board membership. Farmers Union did submit an alternative proposal concerning membership of the Board's executive committee. This proposal is discussed in the section of this decision on Powers and Duties of the Board.

Other interested parties suggested that Board positions be reserved for consumers, handlers, and other nonmilk producer groups. The Act requires all Board members to be milk producers. Therefore, these suggestions cannot be considered.

The NMPF proposal for a 36-member Board of milk producers representing 13 geographic regions meets the statutory requirements. Since there were no other proposals regarding Board membership that comply with the Act, the NMPF proposal is adopted.

NMPF also proposed that every three to five years, the Board be required to reapportion the Board positions to reflect regional changes in milk production. This provision would assure that the Board would continue to represent milk production across the country. Since this provision is certainly within the spirit of the Act and no opposition comments were received, it is adopted with minor editorial changes.

The Act states that Board members shall serve terms of three years and that no member may serve more than two consecutive terms. Also, the Act states that the initial appointments will be divided proportionately into one-, two-, and three-year terms. Section 1150.132 restates these requirements with some minor clarification. For simplicity, the order states that all terms will expire on April 30 of the designated year, so that all terms will begin on the anniversary of the date when the order became fully effective, May 1, 1984. Also, the order allows a retiring Board member to remain in office until his/her successor is appointed. These minor changes are added for ease of administration. In addition, it is appropriate and consistent with the Act for the Secretary to designate the one-, two-, and three-year terms for the initial Board. These abbreviated terms of service will count as a full term for purposes of the two-term limit.

The Act states that Board members shall be appointed from nominations submitted by eligible organizations. Eligible organizations are organizations that represent dairy farmers as outlined in § 114 of the Act and in §§ 1150.270 through 1150.278 of this Part. If the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, any eligible organization, then the Secretary may select Board members from nominations made by such producers in the manner authorized by the Secretary.

The proposal made by NMPF essentially repeated the statutory language. The proposal also included a paragraph that would allow eligible organizations for any region to caucus and select a single nominee for each position. In addition, the proposal did not include a mechanism for obtaining nominations from producers not represented by the eligible organizations. Although these proposals do not directly contradict the statute, they would restrict the number of nominees from which the Secretary would select Board members.

The Act gives the Secretary authority to appoint the Board. The Department contends that any regulatory language that tends to restrict the number of nominees to less than two for each Board position contradicts the statutory authority granted to the Secretary. Consequently, the paragraph of § 1150.133 dealing with caucuses of eligible organizations is amended to encourage caucus participants to nominate more than one individual for each position. Also, language is added to allow the Secretary to solicit nominations from milk producers through general farmer organizations or by other means when the Secretary determines that a substantial number of producers are not represented by the eligible organizations. These changes are designed to preserve the Secretary's authority to appoint Board members from a broad list of nominees.

The NMPF proposal also included a provision to have the Department announce anticipated vacancies and require that nominations be submitted to the Secretary sixty days before the anticipated vacancy. No interested parties commented on this provision. This provision is consistent with the Act and is adopted with one change which specifies that the Department should announce vacancies at least 120 days prior to the expiration of terms.

The order should contain a procedure for filling unexpected vacancies. The procedure proposed by NMPF in § 1150.136 of the proposed order would have required the Secretary to select a replacement Board member from a restricted list of previous nominees. For the same reasons given earlier, the authority granted the Secretary to appoint the Board implies a certain flexibility to choose individuals without being restricted to a single nominee. Therefore, the final order contains less restrictive language in § 1150.136.

The order should provide some guidance on potential conflicts of interest of Board members. This issue was raised in the proposed order document and in the oral and written comments. Most interested parties did not believe that conflicts of interest would be a major problem. There was little support from interested parties for a rule which would prohibit a Board member from serving on the board of another dairy promotion organization while serving on the national Board. In fact, several persons suggested that such dual board membership be encouraged

to aid in the coordination of efforts between the national Board and State and regional programs.

Since qualified State and regional programs benefit from this program through the workings of the credit system for producer participation and some of these programs might receive some direct funding from the Board, dual board memberships do raise a possibility of potential conflicts of interest. Without some limit on dual board membership activity, the Board would be open to criticism from the media, interested dairy organizations, and the general public.

Conflict of interest problems can be avoided if members of the Board disclose all relationships they may have with other dairy promotion organizations or an organization that has any relationship with the Board. In addition to disclosure, it is necessary for any member of the Board to abstain from any Board discussion or voting on a matter that involves an organization with whom the Board member has an ongoing relationship. The combination of disclosure and disqualification on matters that may give an appearance of a conflict of interest would diffuse the problem. Consequently, § 1150.134 contains a requirement that nominees agree to the practice of disclosure and disqualification as a condition of appointment.

The proposed § 1150.135 dealing with acceptance of Board positions has been integrated into the nomination process along with the rule on conflicts of interest discussed above. This editorial change simply provides that nominees must agree to serve at the time of nomination. This will speed the appointment process and avoid unnecessary delays.

Section 1150.137 outlines basic procedures for the conduct of Board meetings. The language has been changed from the proposal to clarify the basic rules. All Board members must be given notice of meetings. A majority of the members shall constitute a quorum at any meeting. Any action of the Board requires concurring votes from a majority of the members present. Business can be conducted with affirmative votes of a majority of the Board by mail, telephone or telegraph in emergency situations if all members are notified and given the opportunity to participate and the action is confirmed promptly in writing. Procedures to supplement these basic rules can be adopted by the Board.

Section 1150.138 restates the statutory provision that Board members serve without compensation. The members will be reimbursed for their necessary and reasonable expenses as approved by the Secretary. This provision was proposed by NMPF and no interested parties opposed its adoption.

4. Powers and Duties of the Board

The provisions of §§ 1150.139 and 1150.140 of the proposed order generally restated the powers and duties specified in section 113 of the Act. Most of the items covered in these sections generated few comments from interested parties and are adopted as proposed. The Board's major responsibility is to develop a program to promote the use of fluid milk and dairy products. The Board can undertake this responsibility itself or it can contract with other parties. In the end, the Board must develop a program along with related budgets and submit both to the Secretary for approval, and carry out those programs approved by the Secretary. The Board must provide the Secretary with notice of all of the meetings, an annual audit, and any other information the Secretary requests.

Also, the Board is given the power to administer the order and to make rules and regulations to effectuate that administration. The Board may disseminate information to dairy farmers and eligible organizations and must publish an annual report of its activities. The Board must require certain information of its contractors and the contractors must agree to make all books and records concerning the contract available for audit by the Board or the Secretary. The Board is directed to encourage coordination among all organizations that promote dairy products.

Three issues concerning powers and duties of the Board did generate comments from interested parties: composition of the executive committee, advisory committees, and Board staff. In addition, two paragraphs have been added to § 1150.140 for completeness.

Composition of the Board's executive committee was a significant issue at the public meeting and in written comments. The Act states that the Board shall appoint an executive committee whose membership "shall equally reflect each of the different regions in the United States in which milk is produced." NMPF proposed that the executive committee be made up of one member from each of the proposed 13 geographic regions used to determine Board membership. A representative of Farmers' Union Milk marketing Cooperative objected to this proposal because the executive committee members would not represent equal portions of the nation's milk production. The spokesman was concerned that the dairy industry of Wisconsin and the Upper Midwest would be underrepresented on the executive committee. Ten members of Congress submitted comments supporting the Farmers' Union position.

In written comments, Farmers' Union changed their position, proposing that the order not specify the size of the executive committee, but that the Board be given the discretion to appoint an executive committee that "shall equally reflect each of the different regions in the United States in which milk is produced, taking into account the geographic distribution of milk production volume." In addition, Farmers' Union recommended that the word "Area" be substituted for "region" to remove any structural parallel between this section and § 1150.131 dealing with Board membership.

The Act requires the Board to establish an executive committee. However, the size and composition of this committee are not specified because the term "region" is not defined by the Act. Since "region" is not defined with regard to Board membership or executive committee membership, the executive committee structure proposed by NMPF is not required by the Act. Consequently, the final order in § 1150.140(b) requires the Board to establish an executive committee whose membership in the words of the Act "shall equally reflect each of the different regions in the United States in which milk is produced." This language gives the Board flexibility to establish an executive committee of any size that is found to be workable and meets the criteria established by the Act.

NMPF proposed that the Board be given authority to establish advisory committees and to pay the reasonable expenses and fees of the members of such committees. MIF and other industry representatives proposed that the order mandate two advisory committees of industry representatives (one of chief executive officers and one of marketing executives) to be appointed by the Secretary. Although the Act would seem to permit the establishment of advisory committees by the Board, there is no statutory support for the proposal to have members of such committees appointed by the Secretary. Therefore, the MIF proposal cannot be adopted. The order adopted by this decision gives the Board authority to appoint advisory committees and pay their associated costs as proposed by NMPF.

The Act speaks of employees of the Board and thus, by implication, gives the Board authority to hire a staff. The

NMPF proposal gives the Board the authority to appoint or employ such persons as it may deem necessary. One interested party commented on this proposal and suggested that the Board be required to hire a full-time executive director. The Act gives the authority to implement the national dairy promotion program to the Board. The Board should be granted as much flexibility as possible within statutory limits to develop and administer the program as it deems appropriate. The order should give the Board authority to hire a staff but should not dictate the structure of that staff. The Secretary will, however, retain general budgetary oversight over all Board operations.

The Act gives the Board power to receive, investigate and report to the Secretary complaints of violations. This language is repeated in § 1150.139(d) of the order. This provision gives the Board primary responsibility to initiate enforcement of the order.

In addition to the powers and duties already discussed, it is necessary to add two paragraphs to the duties section proposed by NMPF. The first, § 1150.140(f), restates the statutory requirement that the Board undertake studies dealing with use of fluid milk and dairy products by the military and the feasibility of converting surplus nonfat dry milk into casein. The other, § 1150.140(d), states that the Board have an affirmative duty to review all State and regional programs that promote milk and dairy products with brand name advertising and recommend to the Secretary whether these programs should be classified as qualified programs. The rationale for this provision was outlined in the discussion of branded advertising.

5. Expenses and Collection of Assessments

The order specifies that the Board is authorized to incur certain expenses that shall be paid from assessments. The provisions pertaining to expenses are adopted as proposed by NMPF. No views or comments were received to indicate any major dissatisfaction or problems with the proposed provisions.

As proposed, the Board is authorized to incur such expenses as the Secretary finds are reasonable for the Board to exercise its powers and perform its duties in accordance with the order. After the first full year of operation of the order, the Board's administrative expenses are not to exceed 5 percent of the projected revenue of that fiscal year. In addition, the order specifies that the Board must reimburse the Secretary for administrative costs incurred after the order has been promulgated by the Department. Such administrative costs incurred by the Department include the cost of conducting the required referendum, and any subsequent referendum that might be conducted, to determine whether producers approve the continuation of the order. In addition, the Department's administrative costs include the cost of the reports and studies that are required in section 301(4) of Title III of the Dairy and Tobacco Adjustment Act of 1983. Specifically, this includes the cost of the annual reports that the Secretary must submit to Congress not later than July 1, 1985, and July 1 of each year thereafter, which must include an independent analysis of the effectiveness of the Dairy Research and Promotion Order contained herein.

The assessment provisions represent a major operational section of the order and are contained in § 1150.152. The section, as originally proposed by NMPF, contained provisions to specify who is responsible for making payments to the Board, the rate of such payment, the manner by which producers may obtain credits for participation in another program, when payments must be made, charges on overdue accounts and authority for the Secretary to establish temporary rules to act in place of the Board during the initial implementation period prior to the appointment of the Board.

The order provisions in this section have been altered significantly from the provisions proposed by NMPF. These changes, however, are primarily structural changes to simplify and clarify the reading and meaning of the provisions. Certain provisions have been deleted and others have been placed on other sections. The major concepts of the NMPF proposal, however, are carried out in the revision of the section.

As required by the Act, all producers whose milk is produced in the United States are subject to a mandatory assessment to provide the funds necessary to carry out the order. The provisions specify that persons who pay producers must collect and remit an assessment to the Board, while producers who market milk of their own farm production must remit an assessment directly to the Board.

Several interested parties suggested alternatives that would require that all assessments be remitted to the Secretary rather than the Board, or that State promotion programs collect assessments from persons who pay producers and, in turn, pay the appropriate assessments to the Board. These alternatives are not adopted because the Act specifically states who shall collect the assessments and that these parties shall remit the assessments to the Board.

The provisions specify that the rate of assessment is 15 cents per hundredweight, but that a producer can obtain a credit of up to 10 cents per hundredweight for contributions to a qualified State or regional program. However, for milk produced during May 1984, the credit can be up to 15 cents per hundredweight under certain conditions. NMPF proposed that the maximum 15-cent credit apply through May 29, 1984, and this has been extended through the entire month. Such extension will simplify the process for persons who are responsible for remitting the assessment to the Board in that they will have to be concerned only with one rate for the entire month.

The provisions that specify the action that must be taken by producers in order to receive a credit for contributions to another program have been modified from those proposed by NMPF in order to simplify the credit process for both producers and handlers.

NMPF proposed that producers certify that they are participating in another program. Such language implied that producers would be required to file a form with the paying handler that identified the other program and the rate of contributions. This requirement would have applied to all producers who are not represented by a cooperative association that could make a certification on behalf of its members.

This process has been modified to specify that a producer who can establish participation in a qualified State or regional program shall receive a credit. A producer will be able to establish participation in a number of different ways. This would include an authorized deduction for participation in another program that is already in existence, a State law that requires a deduction by a handler to fund a qualified program, or a statement to the paying handler by a qualified program indicating that certain producers are participating in such program. Also, as in the NMPF proposal, a cooperative association could establish the participation of its members with paying handlers. It is anticipated that only those producers who make individual payments to a qualified program (other than through a payroll deduction) will have to file a certification with the paying handler. Forms will be provided for this purpose. Also, the qualified program will have to validate the producer's participation. Even in these instances, however, a producer will not have to individually establish

participation in a qualified program if such program takes the initiative to inform the paying handler of the producer's participation. Persons who market milk and dairy products of their own farm production to consumers will have to establish participation in another program with the Board, and participation must be validated by the qualified program in order to receive credit for such participation. Overall, this process of establishing participation in qualified programs should reduce the paperwork burden for both producers and handlers as it incorporates within the credit process payment and funding processes that are already in place.

The NMPF proposed order contained provisions that required certain specific actions by qualified programs that provide for refunds. These included requiring the qualified program to send any requested refunds to the Board, to notify producers that their requested refunds were sent to the Board, and to send any requested refunds to other qualified programs if so designated by the producer. These provisions have been removed from this section of the order as the primary requirement for qualifying a program that provides for refunds is contained in the provisions concerning the qualification of State and regional programs. Basically, in order to be qualified, such programs must agree to send requested refunds to the Board at the time they would normally make the refund to the producer. Other conditions (such as sending a notice to producers or sending funds to other programs) have been deleted since they intrude into the operations of other programs. However, qualified State and regional programs will have the option to send requested refunds to other qualified programs if they desire to do so and are requested to take such action by the producer. Such option is contained in the provisions concerning the qualification of such programs.

As proposed by NMPF, the order provides that the Secretary can act in place of the Board during the initial implementation period of the order. However, this authority is interpreted to apply also in the event the Board has not adopted operating rules at the time that the initial assessments must be remitted under the provisions. In the event that the Secretary must act in place of the Board, an additional provision providing for adjustments of accounts has been established in another section of the order. The provisions apply to the Department and the Board and are necessary to handle overpayments and underpayments.

A provision of the NMPF proposal granting temporary authority for the Secretary to issue credits on behalf of the Board has been deleted. Neither the Secretary nor the Board issues credits. Credits are authorized by the order when the paying handler is determining the amount of money to remit to the Board (or initially to the Secretary), and are based, up to the maximum amount authorized by the order, on the basis of a producer's actual participation in a qualified program.

The order, as was proposed by NMPF, contains a provision that applies a charge on overdue accounts. No opposition was presented to such provision and it is necessary to provide a compliance incentive. In addition, the Act provides for specific penalties for noncompliance and these have been included in the order. Both of these provisions, however, have been deleted from the assessments section and are provided for in another section.

The issue of who has the responsibility to enforce the collection of assessments is not addressed within the assessment provisions of the order. However, a discussion of this issue is appropriate here.

The NMPF proposed that assessments and reports be submitted to the Board, but that no Board member or any other producer have access to confidential information. The proposal specified that the Board had the responsibility to report complaints of violations to the Secretary, but that books and records of handlers must be made available only to the Secretary. The implication of the proposal is that the Secretary would have the primary responsibility to enforce the collection of assessments. MIF further proposed that no confidential information of a handler be disclosed to Board members, agents, appointees or employees of the Board.

Contrary to the above proposals, the Board should have the initial responsibility or duty to enforce the collection of assessments. The Act specifies that assessments shall be remitted to the Board by persons who pay producers. In order to verify the assessments, reports must necessarily also be submitted to the Board. The Act also specifies that the Board is responsible for reporting complaints of violations. Since the Board must report violations and receive reports, the Board has the initial responsibility with respect to any violations of the order. Also, section 113(k) of the Act contemplates review of handler reports by employees of the Board because these employees are subject to the penalty provisions of the Act for disclosure of confidential information.

The order provides the Board with the authority to conduct a fully coordinated dairy promotion, research, and nutrition education program. For the program to be effective, and in view of the reasons presented above, the Board must have the authority for the initial enforcement of the order provisions. Consequently, the order provides that the Board has the responsibility to enforce the terms and provisions of the order, including the collection of assessments. The Board, however, would have the option to request the assistance of the Secretary to carry out this function since the Act gives the Secretary authority to initiate legal action to enforce the order. Furthermore, the order provides that a handler's books and records shall be made available to employees of the Board, as well as to the Secretary. Any person who willfully violates any provision of the order by refusing to provide needed information or by releasing confidential information is subject to the penalty provision of the Act. It is noted, however, that no Board member shall have access to such confidential information.

6. Qualified State and Regional Programs

Coordination between the national dairy promotion program and existing State and regional programs is given high priority by the Act. To facilitate coordination, the Act allows producers to subtract their contributions to qualified State or regional programs from the 15-cent per hundredweight assessment payable to the national program.This credit system, as previously discussed, allows existing programs to preserve their source of funds and help the national program carry out a coordinated dairy promotion effort.

In addition to the credit mechanism, the Act in section 121(a) states that nothing in the Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State. This statutory policy statement implies that the order should provide State and regional programs with as much freedom to continue their present operations as is consistent with a coordinated effort.

The Act does not provide any detailed definition of State and regional programs. It only states that for contributions to be eligible for credits, the program must be "active," "ongoing," and "qualified." The NMPF proposal gives the Secretary authority to

determine qualification. The standards for qualification were (1) the program conduct promotion, research, and nutrition education activities as defined by the order, (2) be active and ongoing, (3) be financed by producers, (4) conduct a program over a major portion of a State or region, (5) not utilize private brand or trade names in advertising, and (6) for programs that allow refunds to producers, an assurance that the refunds would be sent to the national program or another qualified program. Only the prohibition on brand advertising drew significant opposition, although the requirement to be "active and ongoing" and the treatment of refunds generated discussion at the public meeting and in written comments.

The issue of brand advertising has been discussed previously in this decision. It has been determined that authority to qualify State and regional programs will rest with the Secretary, but the Board will be designated to review all programs that conduct brand advertising to determine if they tend to increase the overall demand for milk and dairy products. The Board will send a recommendation on each program to the Secretary who will make the final decision. This procedure will allow the Board to develop a uniform approach to the issue of brand advertising.

NMPF proposed that qualification be granted only to programs that operated in a major portion of a State or region. The Department received opposition comments from producer funded programs that operate in major metropolitan areas that do not provide services over a large geographic area. These programs asserted that they make a significant contribution to dairy promotion and should not be denied qualification because they operate within a small geographic area. The Department does not interpret the statute to mean that these programs should be denied qualification. In addition, the language submitted by NMPF was vague and would be difficult to administer. Therefore, this requirement was deleted from the final order.

Several State and regional programs that are funded by deduction from producer payrolls allow producers to request and receive a refund of their contributions. All programs operated under Federal milk orders provide for refunds as do some State sponsored programs. Coordinating these "voluntary" programs with the mandatory national program is a difficult task. The order must provide a mechanism that assures that every producer will contribute at least 15 cents per hundredweight to promote dairy products without preempting the operation of existing voluntary programs. As outlined in the discussion of collection of assessments, the simplest and most direct way of accomplishing this goal is to require that all voluntary programs that petition to be qualified so their producer contributors can receive the credit, agree to forward producer refunds (up to 10 cents per hundredweight) to the National Board or at the option of the program and producers, to another qualified program. Although this procedure does preempt some State laws with regard to refunds, this is the only approach that assures that all producers contribute 15 cents per hundredweight to promotion efforts without forcing producers to contribute 15 cents directly to the national program while continuing to fund State or regional programs or denying qualified status to such voluntary programs. Both of the alternatives would be inconsistent with the policy directive to encourage a coordinated promotion effort.

NMPF originally proposed that programs must have been active and ongoing on the date of enactment of the Act to be eligible for qualification. At the public meeting, the proponent amended the proposal to exempt from this provision programs operated under State or Federal law. This exemption was proposed so that the order would not conflict with section 121(a) of the Act dealing with preemption of programs organized under State or Federal law. Four members of the United States Senate submitted comments stating that the intent of the statute was to accommodate programs active at the time of enactment but not programs initiated after that date.

The Department agrees with the interpretation of the statute put forward by NMPF. The Act was designed to accommodate only existing State or regional programs. However, section 121(a) dealing with preemption must be weighed against the other statutory language. The NMPF proposal is a reasonable compromise of these conflicting parts of the Act.

As stated previously, this order attempts to apply the same standards to State and regional programs as are applied to the national program. The Act in section 113(j) prohibits the Board from using any funds to influence governmental policy or action. To provide consistency among all programs, this prohibition should be applied to State and regional programs. This requirement is included as § 1150.153(b)(6).

7. Additional Regulatory Provisions

In addition to the order provisions discussed in the first six sections of this decision, certain additional regulations are necessary to implement the national dairy promotion program. These are the procedure for certification of milk producer organizations and the rules of practice governing proceedings on petitions to modify or to be exempted from the order.

The rules of practice governing proceedings on petitions to modify or to be exempted from the order appear in §§ 1150.250 through 1150.252. They were included as a Departmental proposal in the proposed order and notice of public meeting document. No interested party submitted comments on these proposed procedures. Therefore, they are adopted as proposed.

The rules for certification of milk producer organizations appear as §§ 1150.270 through 1150.278. Previously, they were published as an emergency interim final rule. This emergency treatment was necessary because of the implementation deadline imposed by the Act. Interested parties were given an opportunity to comment on the interim rule. No comments were received. The rationale for these rules which were published in the emergency interim final rule document (49 FR 4068) is adopted by this decision. The interim rules are annexed to this order and made final.

Additional Findings

It is hereby found and determined that because of a statutory deadline, it is impractical, unnecessary and contrary to the public interest to delay the effective date of the issuance of these rules for 30 days after their publication in the **Federal Register.** In order to carry out the statutory timetable for implementation of the order, it is necessary that all of the provisions contained in this Part 1150 be effective on April 1, 1984, except that the provisions in § 1150.152 shall be effective on May 1, 1984.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion and advertising, Research.

Title 7 of the Code of Federal Regulations, Chapter X is amended by adding to Part 1150 "Subpart—Dairy Research and Promotion Order" and "Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From an Order" and revising "Subpart—Procedure for Certification of Milk Producer Organizations" to read as follows:

PART 1150—DAIRY PROMOTION PROGRAM

Subpart—Dairy Research and Promotion Order

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1150.161 Promotion, research and nutrition education.

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1150.171 Reports.
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1150.250 Words in the singular form.
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1150.277 Listing of certified organizations.
1150.278 Confidential treatment.

Authority: Pub. L. 98–180, 97 Stat. 1128.

Subpart—Dairy Research and Promotion Order

Definitions

§ 1150.101 Act.

"Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§ 1150.102 Department.

"Department" means the United States Department of Agriculture.

§ 1150.103 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1150.104 Board.

"Board" means the National Dairy Promotion and Research Board established pursuant to § 1150.131.

§ 1150.105 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative or other entity.

§ 1150.106 United States.

"United States" means the 48 contiguous States in the continental United States.

§ 1150.107 Fiscal period.

"Fiscal period" means the calendar year or such other annual period as the Board may determine.

§ 1150.108 Eligible organization.

"Eligible organization" means any organization which has been certified by the Secretary pursuant to §§ 1150.270 through 1150.278 of this Part.

§ 1150.109 Qualified State or regional program.

"Qualified State or regional program" means any State or regional dairy product promotion, research or nutrition education program which is certified as a qualified program pursuant to § 1150.153.

§ 1150.110 Producer.

"Producer" means any person engaged in the production of milk for commercial use.

§ 1150.111 Milk.

"Milk" means any class of cow's milk produced in the United States.

§ 1150.112 Dairy products.

"Dairy products" means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products.

§ 1150.113 Fluid milk products.

"Fluid milk products" means those milk products normally consumed in liquid form as a beverage.

§ 1150.114 Promotion.

"Promotion" means actions such as paid advertising, sales promotion, and publicity to advance the image and sales of, and demand for, dairy products generally.

§ 1150.115 Research.

"Research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for dairy products.

§ 1150.116 Nutrition education.

"Nutrition education" means those activities intended to broaden the understanding of sound nutritional principles, including the role of milk and dairy products in a balanced diet.

§ 1150.117 Plans and projects.

"Plans and projects" means promotion, research and nutrition education plans, studies or projects pursuant to §§ 1150.139, 1150.140 and 1150.161.

§ 1150.118 Marketing.

"Marketing" means the sale or other disposition in commerce of dairy products.

§ 1150.119 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which is organized under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

National Dairy Promotion and Research Board

§ 1150.131 Establishment and membership.

(a) There is hereby established a National Dairy Promotion and Research Board of thirty-six members. For purposes of nominating producers to the Board, the United States shall be divided into thirteen geographic regions and the number of Board members from each region shall be as follows:

(1) One member from region number one comprised of the following States: Washington and Oregon.

(2) Four members from region number two comprised of the following State: California.

(3) Two members from region number three comprised of the following States: Arizona, Colorado, Idaho, Montana, Nevada, Utah and Wyoming.

(4) Two members from region number four comprised of the following States: Arkansas, Kansas, New Mexico, Oklahoma and Texas.

(5) Four members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

(6) Six members from region number six comprised of the following State: Wisconsin.

(7) Three members from region number seven comprised of the following States: Illinois, Iowa, Missouri and Nebraska.

(8) Two members from region number eight comprised of the following States: Alabama, Kentucky, Louisiana, Mississippi and Tennessee.

(9) Three members from region number nine comprised of the following States: Indiana, Michigan, Ohio and West Virginia.

(10) Two members from region number ten comprised of the following States: Florida, Georgia, North Carolina, South Carolina and Virginia.

(11) Three members from region number eleven comprised of the following States: Delaware, Maryland, New Jersey and Pennsylvania.

(12) Three members from region number twelve comprised of the following State: New York.

(13) One member from region number thirteen comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

(b) The Board shall be composed of milk producers appointed by the Secretary either from nominations submitted pursuant to § 1150.133 or in accordance with § 11150.136. A milk producer may be nominated only to represent the region in which such producer's milk is produced.

(c) At least every five years, and not more than every three years, the Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or a modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

(d) The number of members for each region which shall serve on the Board shall be determined by dividing the total pounds of milk produced in the United States for the calendar year previous to the date of review by 36 which provides a factor of pounds of milk per member, and then dividing the total pounds of milk for each region by such factor.

(e) In determining the volume of milk produced in the United States, the Board and the Secretary shall utilize the information received by the Board pursuant to § 1150.171 and data published by the Department.

§ 1150.132 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall serve proportionately, for terms of one, two and three years.

(b) Each member of the Board shall serve until April 30 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.

(c) No member shall serve more than two consecutive terms.

§ 1150.133 Nominations.

Nominations for members of the Board shall be made in the following manner:

(a) Upon effectuation of this provision, the Secretary shall solicit nominations for the initial Board from all eligible organizations. If the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, such eligible organizations, the Secretary shall also solicit nominations from such producers through general farmer organizations or by other means.

(b) After the appointment of the initial Board, the Secretary shall announce at least 120 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in § 1150.133(a). Nominations for such position should be submitted to the Secretary not less than 60 days prior to the expiration of such term.

(c) An eligible organization may submit nominations only for positions on the Board that represent regions in which such eligible organization can establish that it represents a substantial number of producers. If there is more than one Board position for any such region, the organization may submit nominations for each position.

(d) Where there is more than one eligible organization representing producers in a specific region, they may caucus and jointly nominate producers for each position representing that region on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary nominations for each appointment to be made to represent that region.

§ 1150.134 Nominee's agreement to serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters where paragraph (b) applies.

§ 1150.135 Appointment.

From the nominations made pursuant to § 1150.133, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1150.131(a).

§ 1150.136 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations made by the Board.

§ 1150.137 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present. The Board shall establish rules concerning timely notice of meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph when in the opinion of the chairman of the Board such action must be taken before a meeting can be called.

Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1150.138 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a per diem allowance as recommended by the Board and approved by the Secretary, incurred by them in the performance of their duties under this subpart.

§ 1150.139 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of fluid milk and dairy products as well as projects for research and nutrition education and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To make rules and regulations to effectuate the terms and provisions of this subpart;

(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(e) To disseminate information to producers or eligible organizations through programs or by direct contact utilizing the public postage system or other systems;

(f) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable;

(g) To establish advisory committees of persons other than Board members and pay the necessary and reasonable expenses and fees of the members of such committees;

(h) To recommend to the Secretary amendments to this subpart; and

(i) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1150.152 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1150.140 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairman and such other officers as may be necessary;

(b) To appoint from its members an executive committee whose membership shall equally reflect each of the different regions in the United States in which milk is produced, and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(c) To appoint or employ such persons as it may deem necessary and define the duties and determine the compensation of each;

(d) To review all programs that promote milk and dairy products on a brand or trade name basis that have requested certification pursuant to § 1150.153, and to recommend to the Secretary whether such request should be granted;

(e) To develop and submit to the Secretary for approval, promotion, research, and nutrition education plans or projects resulting from research or studies conducted either by the Board or others;

(f) To solicit, among other proposals, research proposals that would increase the use of fluid milk and dairy products by the military and by persons in developing nations, and that would demonstrate the feasibility of converting surplus nonfat dry milk to casein for domestic and export use;

(g) To prepare and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of promotion, research and nutrition education plans or projects, and also including a general description of the proposed promotion, research and nutrition education programs contemplated therein;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports from time to time to the Secretary as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i) With the approval of the Secretary, to enter into contracts or agreements with national, regional or State dairy promotion and research organizations or other organizations or entities for the development and conduct of activities authorized under §§ 1150.139 and 1150.161, and for the payment of the cost thereof with funds collected through assessments pursuant to § 1150.152. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budgets or budget which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(j) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(k) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards, at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(l) To give the Secretary the same notice of meetings of the Board, committees of the Board and advisory committees as is given to such Board or committee members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(m) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(n) To encourage the coordination of programs of promotion, research and nutrition education designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States.

Expenses and Assessments

§ 1150.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and

perform its duties in accordance with the provisions of this subpart. However, after the first full year of operation of the order, administrative expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal year. Such expenses shall be paid from assessments collected pursuant to § 1150.152.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1150.152, for administrative costs incurred by the Department after May 1, 1984.

§ 1150.152 Assessments.

(a) Each person making payment to a producer for milk produced in the United States and marketed for commercial use shall collect an assessment on all such milk handled for the account of the producer at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof and shall remit the assessment to the Board.

(b) Any producer marketing milk of that producer's own production in the form of milk or dairy products to consumers, either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such milk at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof.

(c) In determining the assessment due from each producer pursuant to § 1150.152 (a) and (b), a producer who is participating in a qualified State or regional program(s) shall receive a credit for contributions to such program(s), but not to exceed the following amounts:

(1) In the case of contributions for milk marketed on or before May 31, 1984, up to the actual rate of contribution that was in effect under such program(s) on November 29, 1983, not to exceed 15 cents per hundredweight of milk marketed.

(2) In all other cases, the credit shall not exceed 10 cents per hundredweight of milk marketed.

(d) In order for a producer described in § 1150.152(a) to receive the credit authorized in § 1150.152(c), either the producer or a cooperative association on behalf of the producer must establish to the person responsible for remitting the assessment to the Board that the producer is contributing to a qualified State or regional program. Producers who contribute to a qualified program directly (other than through a payroll deduction) must establish with the person responsible for remitting the assessment to the Board, with validation by the qualified program, that they are making such contributions.

(e) In order for a producer described in § 1150.152(b) to receive the credit authorized in § 1150.152(c), the producer and the applicable qualified State or regional program must establish to the Board that the producer is contributing to a qualified State or regional program.

(f) The collection of assessments pursuant to § 1150.152 (a) and (b) shall begin with respect to milk marketed on and after the effective date of this section and shall continue until terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board. The Secretary shall remit such assessments to the Board when it is constituted.

(g) Each person responsible for the remittance of the assessment pursuant to § 1150.152 (a) and (b) shall remit the assessment to the Board not later than the last day of the month following the month in which the milk was marketed.

(h) Money remitted to the Board shall be in the form of a negotiable instrument made payable to "National Dairy Promotion and Research Board." Remittances and reports specified in § 1150.171 shall be mailed to the location designated by the Secretary or the Board.

§ 1150.153 Qualified State or regional dairy product promotion, research or nutrition education programs.

(a) Any organization which conducts a State or regional dairy product promotion, research or nutrition education program may apply to the Secretary for certification of qualification so that producers may receive credit pursuant to § 1150.152(c) for contributions to such program.

(b) In order to be certified by the Secretary as a qualified program, the program must:

(1) Conduct activities as defined in §§ 1150.114, 1150.115, and 1150.116 that are intended to increase consumption of milk and dairy products generally;

(2) Except for programs operated under the laws of the United States or any State, have been active and ongoing before enactment of the Act;

(3) Be financed primarily by producers, either individually or through cooperative associations;

(4) Not use a private brand or trade name in its advertising and promotion of dairy products unless the Board recommends and the Secretary concurs that such preclusion should not apply;

(5) Certify to the Secretary that any requests from producers for refunds under the program will be honored by forwarding to either the Board or a qualified State or regional program designated by the producer that portion of such refunds equal to the amount of credit that otherwise would be applicable to that program pursuant to § 1150.152(c); and

(6) Not use program funds for the purpose of influencing governmental policy or action.

§ 1150.154 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

§ 1150.155 Adjustment of accounts.

Whenever the Board or the Department determines through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in § 1150.152. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

§ 1150.156 Charges and penalties.

(a) *Late-payment charge.* Any unpaid assessments to the Board pursuant to § 1150.152 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(b) *Penalties.* Any person who willfully violates any provision of this subpart shall be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by this subpart, in addition to the amount due, a

penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States. The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available by law or in equity.

Promotion, Research and Nutrition Education

§ 1150.161 Promotion, research and nutrition education.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§ 1150.139, 1150.140 and this section. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research and nutrition education with respect to milk and dairy products; and

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of milk and dairy products and the creation of new products thereof, to the end that marketing and utilization of milk and dairy products may be encouraged, expanded, improved or made more acceptable. Included shall be research and studies of proposals intended to increase the use of fluid milk and dairy products by the military and by persons in developing nations and proposals intended to demonstrate the feasibility of converting nonfat dry milk to casein for domestic and export use.

(b) Each plan or project authorized under § 1150.161(a) shall be periodically reviewed or evaluated by the Board to insure that the plan or project contributes to an effective program of promotion, research and nutrition education. If it is found by the Board that any such plan or project does not further the purposes of the Act, the Board shall terminate such plan or project.

(c) No plan or project authorized under § 1150.161(a) shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

Reports, Books and Records

§ 1150.171 Reports.

Each producer marketing milk of that producer's own production directly to consumers and each person making payment to producers and responsible for the collection of the assessment under § 1150.152 shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information may include but not be limited to the following:

(a) The quantity of milk purchased, initially transferred or which, in any other manner, are subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The basis, if necessary, to show why the remittance is less than the number of hundredweights of milk multiplied by 15 cents; and

(d) The date any assessment was paid.

§ 1150.172 Books and records.

Each person who is subject to this subpart, and other persons subject to § 1150.171, shall maintain and make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necesssary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1150.173 Confidential treatment.

All information obtained from such books, records or reports under the Act and this subpart shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

Miscellaneous

§ 1150.181 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1150.140(i);

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research or nutrition education plans or projects authorized pursuant to this subpart.

§ 1150.182 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have

arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1150.183 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1150.184 Patents, copyrights, inventions and publications.

Any patents, copyrights, trademarks, inventions or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1150.181 shall apply to determine disposition of all such property.

§ 1150.185 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose such amendments to the Secretary.

§ 1150.186 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1150.187 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in §§ 1150.133, 1150.152, 1150.153, 1150.171, 1150.172 and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0147.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From an Order

§ 1150.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1150.251 Definitions.

As used in this subpart:

(a) "Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto;

(b) "Department" means the United States Department of Agriculture;

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead;

(d) "Judge" means any administrative law judge in the Office of Administrative Law Judges, United States Department of Agriculture;

(e) "Administrator" means the Administrator of the Department's Agricultural Marketing Service, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Administrator's stead;

(f) "Federal Register" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501–1511), and acts supplementing and amending it;

(g) "Order" means any regulation or any amendment thereto which may be issued pursuant to the Act;

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) "Proceeding" means a proceeding before the Secretary arising under Section 118(a) of the Act;

(j) "Hearing" means that part of the proceeding which involves the submission of evidence;

(k) "Party" includes the Department;

(l) "Hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.;

(m) "Presiding officer" means the administrative law judge conducting a proceeding under the Act;

(n) "Presiding officer's report" means the presiding officer's report to the Secretary and includes the presiding officer's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions and orders submitted by the parties; and

(o) "Petition" includes an amended petition.

§ 1150.252 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the Department's General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioners' business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which complained of;

(4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(c) *An application to dismiss petition—Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the application to the Secretary for his consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(d)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However each reference to "marketing order" in the title shall mean "order."

Subpart—Procedure for Certification of Milk Producer Organizations

§ 1150.270 General.

Organizations must be certified by the Secretary that they are eligible to represent milk producers and to participate in the making of nominations of milk producers to serve as members of the National Dairy Promotion and Research Board as provided in the Dairy and Tobacco Adjustment Act of 1983. Certifications of eligibility required of the Secretary shall be conducted in accordance with this subpart.

§ 1150.271 Definitions.

As used in this subpart:

(a) "Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto;

(b) "Department" means the United States Department of Agriculture;

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in the Secretary's stead;

(d) "Dairy Division" means the Dairy Division of the Department's Agricultural Marketing Service;

(e) "Producer" means any person engaged in the production of milk for commercial use;

(f) "Dairy products" means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products; and

(g) "Fluid milk products" means those milk products normally consumed in liquid form as a beverage.

§ 1150.272 Responsibility for administration of regulations.

The Dairy Division shall have the responsibility for administering the provisions of this subpart.

§ 1150.273 Application for certification.

Any organization whose membership consists primarily of milk producers may apply for certification. Applicant organizations should supply information for certification using as a guide "Application for Certification of Organizations," Form DA–26. Form DA–26 may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

§ 1150.274 Certification standards.

(a) Certification of eligible organizations shall be based, in addition to other available information, on a factual report submitted by the organization, which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) Geographic territory covered by the organization's active membership;

(2) Nature and size of the organization's active membership including the total number of active milk producers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the organization's operating funds are derived;

(5) Functions of the organization; and

(6) The organization's ability and willingness to further the aims and objectives of the Act.

(b) The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk, and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products.

(c) The Secretay shall certify any organization which he finds meets the criteria under this section and his determination as to eligibility shall be final.

§ 1150.275 Inspection and investigation.

The Secretary shall have the right, at any time after an application is received from an organization, to examine such books, documents, papers, records, files, and facilities of an organization as he deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the organization is eligible for certification.

§ 1150.276 Review of certification.

Certifications issued pursuant to this subpart are subject to termination or suspension if the organization does not currently meet the certification standards. A certified organization may be requested at any time to supply the Dairy Division with such information as may be required to show that the organization continues to be eligible for certification. Any information submitted to satisfy a request pursuant to this section shall be subject to inspection and investigation as provided in § 1150.275.

§ 1150.277 Listing of certified organizations.

A copy of each certification shall be furnished by the Dairy Division to the respective organization. Copies also shall be filed in the Dairy Division where they will be available for public inspection.

§ 1150.278 Confidential treatment.

All documents and other information submitted by applicant organizations and otherwise obtained by the Department by investigation or examination of books, documents, papers, records, files, or facilities shall be kept confidential by all employees of

the Department. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in the issuance of general statements based upon the applications of a number of persons, which do not identify the information furnished by any one person.

Effective date: All provisions contained in this Part 1150, except the provision in § 1150.152, are effective on and after April 1, 1984. The provisions in § 1150.152 are effective on and after May 1, 1984.

Signed at Washington, D.C., on: March 23, 1984.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-8287 Filed 3-27-84; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 83-138]

Ports Designated for the Importation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations concerning ports designated for the importation of animals by adding Los Angeles, California, to the list of air and ocean ports having Veterinary Services (VS) inspection and quarantine facilities necessary for a quarantine station for the importation of animals. The facility will begin receiving animals on or about April 4, 1984. It is necessary to add Los Angeles to this list to reflect the existence of the VS facility at Los Angeles so that importers can make arrangements for the importation of animals.

This document also announces that it will be necessary to allow quarantine space at the VS facility at Los Angeles on a priority basis for horses that are to participate in the 1984 Olympics in Los Angeles in order to efficiently handle their entry into the United States.

DATES: Effective date of this interim rule is March 28, 1984. Written comments must be received on or before May 29, 1984.

ADDRESS: Written comments concerning this interim rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M. P. Dulin, Veterinary Services, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations), among other things, list ports which are designated for the importation of animals and birds into the United States. Paragraph (a) of § 92.3 of the regulations lists air and ocean ports having Veterinary Services (VS) inspection and quarantine facilities necessary for quarantine stations. Prior to the effective date of this document, Newburgh, New York, Miami, Florida, and Honolulu, Hawaii, were the only ports listed as air and ocean ports.

VS inspection and quarantine facilities necessary for a quarantine station for animals are being completed in Los Angeles. The facilities are scheduled to begin allowing air and ocean importations of animals on or about April 4, 1984. Therefore, this document amends § 92.3(a) of the regulations to add Los Angeles, California, as an air and ocean port for the importation of animals to reflect the existence of the VS facility at Los Angeles so that importers can make arrangements for the importation of animals.

Quarantine Space for Olympic Horses

It is anticipated that approximately 350 horses will be entering the United States from mid June through early August to participate in the 1984 Olympics in Los Angeles. In order to efficiently handle the entry of these animals into the United States, it will be necessary to allow quarantine space at the VS facility at Los Angeles on a priority basis for horses entering the United States for participation in the Olympics. It appears that during the time of the Olympics the space at the VS quarantine facility will be needed almost exclusively for horses imported for the Olympics.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

In addition to air and ocean ports, the regulations list Canadian border ports, Mexican border ports, and a number of other ports where Veterinary Services maintains facilities for the importation of certain animals. The regulations also provide a mechanism for allowing the importation of horses or birds at ports with privately operated facilities.

It appears that the addition of the port of Los Angeles to the list of air and ocean ports will not have a significant impact on the importation of animals into the United States. However, it provides another alternative facility for importation of animals and will reduce costs of importation for certain importers. Currently, almost all of the animals imported in the United States at Los Angeles are horses which are imported at one privately operated facility. This addition of a VS facility at the port of Los Angeles will impact on this privately operated facility.

Under these circumstances, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have significant economic impact on a substantial number of small entities.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure are unnecessary and contrary to the public interest with respect to the addition of Los Angeles, California, to the list of air and ocean ports in § 92.3(a), and that good cause is found for making this action effective upon publication in the **Federal Register**. Comments concerning the addition of Los Angeles are being solicited for 60 days after publication of the document.

It is necessary to make this rule effective as soon as possible in order to relieve unnecessary restrictions and to reflect the existence of the VS facility at Los Angeles so that importers of animals

can make arrangements to utilize the facility for the importation of animals.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

In § 92.3(a), the material following the colon is amended to read: "Los Angeles, California (quarantine space at Los Angeles will be allowed on a priority basis for horses entering the United States for participation in the 1984 Olympics); Miami, Florida; Honolulu, Hawaii; and Newburgh, New York."

Authority: Sec. 2, 32 Stat. 792, as amended; secs. 2, 4, and 11, 76 Stat. 129, 130, 132, (21 U.S.C. 111, 134a, 134c, and 134f); 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 23rd day for March, 1984.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 84-8333 Filed 3-27-84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 7, 9, 11, 12, 16, 21, 25, 27, 29, 31, and 32

[Docket No. 84-10]

OMB Control Numbers

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This final rule adds the Office of Management and Budget (OMB) control numbers for information collection requirements contained in Office of the Comptroller of the Currency (Office) interpretive rulings and regulations. This action is necessary to alert the public that the Office has complied with the applicable legal requirements for each collection of information requirements.

EFFECTIVE DATE: March 28, 1984.

FOR FURTHER INFORMATION CONTACT: John Ference, Financial/Regulatory Analyst, Legislative and Regulatory Analysis Division (202) 447-1177, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1983, OMB published in the **Federal Register** (48 FR 13666), a final rule pertaining to 5 CFR Part 1320 (Controlling Paperwork Burdens on the Public). That regulation requires that all collection of information requirements that have been submitted to OMB for clearance, and that have not been disapproved by OMB, display a currently valid OMB control number.

Purpose

This final rule ascribes OMB control numbers to information collection requirements contained in Office interpretive rulings and regulations. In order to avoid any public confusion regarding the status of a collection of information requirement contained in an Office regulation and to comply with the requirements of 12 CFR Part 1320, the Office is issuing this final rule.

Reason for not allowing notices and comment.

Notice and opportunity for public comment was not provided because this final rule is a rule of agency practice, contains only technical changes, and is simply informative and beneficial in nature. No burden of any kind is imposed, and no change in practice or procedure is involved. Notice and public procedure for this final rule are therefore unnecessary. Any delay in providing the information contained in this final rule could result in confusion and thereby be contrary to the public interest. The exceptions to notice and public procedure stated in 5 U.S.C. 553(b)(3) (A) and (B) apply.

Regulatory Flexibility Act

Since this final rule is not subject to notice and public comment procedure, preparation of a Regulatory Flexibility Analysis is not required. The Comptroller of the Currency believes however, that this final rule will avoid confusion and will not have any particular effect on small entities.

Executive Order 12291.

The Office has determined that this final rule is not subject to Executive Order 12291 because it relates to agency management.

List of Subjects in 12 CFR Parts 7, 9, 11, 12, 16, 21, 25, 27, 29, 31, and 32

National banks, OMB control numbers, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Comptroller of the Currency amends 12 CFR Chapter I, Parts, 7, 9, 11, 12, 16, 21, 25, 27, 29, 31, and 32 as follows:

PART 7—[AMENDED]

1. The authority citation for Part 7 reads as follows:

Authority: 12 U.S.C. 1 *et seq.;* 12 U.S.C. 93a.

§ 7.3025 [Amended]

2. Section 7.3025 is amended by adding, after the regulatory text, the following:

(Approved by the Office of Management and Budget under control number 1557-0153)

§ 7.3100 [Amended]

3. Section 7.3100 is amended by adding, after the regulatory text, the following:

(Approved by the Office of Management and Budget under control number 1557-0154)

§ 7.5225 [Amended]

4. Section 7.5225 is amended by adding, after the regulatory text, the following:

(Approved by the Office of Management and Budget under control number 1557-0069)

§ 7.6100 [Amended]

5. Section 7.6100 is amended by adding, after the regulatory text, the following:

(Approved by the Office of Management and Budget under control number 1557-0155)

PART 9—[AMENDED]

6. The authority citation for Part 9 reads as follows:

Authority: Sec. 1, 77 Stat. 668; 12 U.S.C. 92a; and R.S. 5240 as amended (12 U.S.C. 481), unless otherwise noted.

§ 9.18 [Amended]

7. Section 9.18 is amended by adding, after the regulatory text, the following:

(The collection of information requirements contained in this section were approved by the Office of Management and Budget as follows: Section 9.18(b)(1)—OMB control number 1557-0141; § 9.18(b)(5)—OMB control number 1557-0140)

PART 11—[AMENDED]

8. The authority citation for Part 11 reads as follows:

Authority: 15 U.S.C. 781, 78m, 78n, 78p, 78w)

9. Section 11.1 is revised to read as follows:

§ 11.1 Scope and OMB control number.

(a) *Scope.* This part is issued by the Comptroller of the Currency pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78) (the "Act") and applies to all securities subject to registration pursuant to section 12(b) or section 12(g) of the Act by a national bank or a bank operating under the Code of Law for the District of Columbia ("bank"). The effective date of this part shall be September 30, 1975.

(b) *OMB control number.* The collection of information requirements contained in this Part were approved by the Office of Management and Budget under OMB control number 1557–0106.

PART 12—[AMENDED]

10. The authority citation for Part 12 reads as follows:

Authority: 12 U.S.C. 24 and 12 U.S.C. 92a.

11. Section 12.1 is revised to read as follows:

§ 12.1 Scope and OMB control number.

(a) *Scope.* This part is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 24 and 12 U.S.C. 92a and contains rules applicable to recordkeeping and confirmation requirements for certain transactions effected by national banks.

(b) *OMB control number.* The collection of information requirements contained in this Part were approved by the Office of Management and Budget under OMB control number 1557–0142.

PART 16—[AMENDED]

12. The authority citation for Part 16 reads as follows:

Authority: 12 U.S.C. 1 *et seq.*

13. Section 16.1 is revised to read as follows:

§ 16.1 Authority and OMB control numbers.

(a) *Authority.* This part is issued under the general authority of the national banking laws, R.S. 324 *et seq.* as amended; 12 U.S.C. 1 *et seq.*, and contains rules applicable to the offering of securities.

(b) *OMB control numbers.* The collection of information requirements contained in this part were approved by the Office of Management and Budget and assigned OMB control numbers as follows: Offering Circular—OMB control number 1557–0120; Abbreviated Offering Circular—OMB control number 1557–0121; Offering Document—OMB control number 1557–0122; and Notice of Nonpublic Sales and Exchanges (Notice of Exempt Transactions)—OMB control number 1557–0123.

PART 21—[AMENDED]

14. The authority citation for Part 21 reads as follows:

Authority: 12 U.S.C. 1881–1884.

§ 21.5 [Amended]

15. Section 21.5 is amended by adding, after the regulatory text, the following:

(Approved by the Office of Management and Budget under control number 1557–0072)

PART 25—[AMENDED]

16. The authority citation for Part 25 reads as follows:

Authority: Community Reinvestment Act of 1977 (Title VIII, Pub. L. 95–128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*)); 12 U.S.C. 21, 22, 26, 27, 30, 36, 161, 215, 215a, 481, 1814, 1816, 1828(c), unless otherwise noted.

17. Section 25.1 is revised to read as follows:

§ 25.1. Authority and OMB control number.

(a) *Authority.* The Comptroller of the Currency ("Comptroller") issues this part under the authority of the Community Reinvestment Act of 1977 (title VIII of Pub. L. 95–128), and under provisions of title 12 of the United States Code authorizing the Comptroller to charter national banks (sections 21, 22, 26, and 27), to issue certificates to national banks to commence or resume the business of banking (sections 1814, 1816), to consider applications from national banks to relocate a main office (section 30) or to establish or relocate a branch office (section 36), to consider applications for a merger, consolidation, acquisition of assets, or assumption of liabilities where the acquiring, assuming, or resulting bank is a national bank (sections 215, 215a, 1828(c)), to acquire reports of condition (section 161), and to conduct examinations of national banks (section 481).

(b) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557–0159.

PART 27—[AMENDED]

18. The authority citation for Part 27 reads as follows:

Authority: 15 U.S.C. 1691 *et seq.*; 12 U.S.C. 1818; 12 U.S.C. 1 *et seq.*; 12 U.S.C. 161; 12 U.S.C. 481; 42 U.S.C. 3601 *et seq.*; 5 U.S.C. 301; 12 CFR 202.

19. Section 27.1 is revised to read as follows:

§ 27.1. Scope and OMB control number.

(a) *Scope.* This part applies to the activities of national banks and banks located in the District of Columbia, and their subsidiaries, which make home loans for the purpose of purchasing, construction-permanent financing, or refinancing of residential real property.

(b) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557–0160.

PART 29—[AMENDED]

20. The authority citation for Part 29 reads as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; and 12 U.S.C.371.

§ 29.7 [Amended]

21. Section 29.7 is amended by adding, after the regulatory text, the following:

(Approved by the Office of Management and Budget under control number 1557–0139)

§ 29.9 [Amended]

22. Section 29.9 is amended by adding, after the regulatory text, the following:

(Approved by the Office of Management and Budget under control number 1557–0139)

PART 31—[AMENDED]

23. The authority citation for Part 31 reads as follows:

Authority: 12 U.S.C. 375a(4), 375(b)(2), 1817(k), and 1972(2)(G)(ii), as amended.

24. Section 31.4 is revised to read as follows:

§ 31.4. Authority and OMB control number.

(a) *Authority.* This subpart is issued by the Comptroller of the Currency pursuant to 12 U.S.C 1817(k) and 12 U.S.C. 1972(2)(G)(ii), as amended.

(b) *OMB control number.* The collection of information requirements contained in this subpart were approved by the Office of Management and Budget under OMB control number 1557–0070.

§ 31.6 [Amended]

25. Section 31.6 is amended by removing the parenthetical OMB control number sentence that follows the regulatory text.

PART 32—[AMENDED]

26. The authority citation for Part 32 reads as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 84; and 12 U.S.C. 93a.

§ 32.1 Authority, purpose and scope.

27. Section 32.1 is amended by revising the title to read as set forth above and by removing paragraph (d).

§ 32.5 [Amended]

28. Section 32.5 is amended by adding, after the regulatory text, the following:

(Approved by the Office of Management and Budget under control number 1557–0147)

Dated: March 7, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84–8272 Filed 3–27–84; 8:45 am]

BILLING CODE 4810–33–M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R–0389]

Credit by Brokers and Dealers; Complete Revision and Simplification of Regulation T Deferral of Effective Date

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Deferral of effective date.

SUMMARY: The Board is extending, until June 30, 1984, the effective date for compliance with the completely revised Regulation T (governing credit extended by brokers and dealers), which was adopted by the Board on May 16, 1983 (48 FR 23161). The effective date was deferred once before to March 31, 1984 in light of unforeseen operational problems encountered by broker-dealers in conforming their computer systems to the requirements of the revised regulation (48 FR 51768). The Board has been apprised that not all broker-dealers will be able to resolve such problems by March 31, 1984. It is, therefore, deferring until June 30, 1984, the effective date of the newly revised Regulation T.

DATE: The effective date for the revised Regulation T (12 CFR Part 220) is deferred until June 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202) 452–2781.

SUPPLEMENTARY INFORMATION: On May 16, 1983 the Board adopted a completely revised Regulation T, governing credit extended by brokers and dealers (48 FR 23161, May 24, 1983). The new regulation was to become effective on November 21, 1983 or any earlier date after June 20, 1983, at the option of the creditor. Subsequent to the adoption of revised Regulation T, however, several major broker-dealers informed the Board that due to unforeseen difficulties in programing their computer systems, they would need more time than originally expected to conform their accounts to the requirements of the new regulation. In requesting a deferred effective date, broker-dealers pointed to, among other things, the special temporary computer programs which had to be developed in order to provide support for the AT&T divestiture transactions. The broker-dealers have stated that an enormous amount of program and systems modifications are needed to adequately support the highly complex cash and margin transactions in the stock of AT&T and the seven new regional companies formed as a result of the divestiture, and for transactions in AT&T options. Because of these operational problems, the effective date of the newly-revised Regulation T was deferred until March 31, 1984 (48 FR 51768 November 14, 1983).

The Board has recently been apprised that not all broker-dealers will be able to adopt their computer systems to the newly revised Regulation by March 31, 1984. Since a significant number of customer accounts will be affected by this inability to comply with the Regulation by March 31, 1984, the Board hereby defers the effective date of the regulation to June 30, 1984. Although the effective date has been deferred to June 30, the Board expects creditors make a good faith effort to comply with the new regulation as soon after March 31, 1984 as possible.

List of Subjects in 12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

By order of the Secretary of the Board of Governors, acting under delegated authority, March 23, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–8334 Filed 3–27–84; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 371

[Docket No. 40306–23]

Clarification of Export Licensing Policy—General License GLR; Return or Replacement of Certain Commodities

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations, amends the Regulations to clarify the procedures for use of General License GLR. This clarification emphasizes that Country Groups S and Z are excluded from the GLR procedures.

EFFECTIVE DATE: March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Hanrahan, Office of Export Administration (Telephone: (202) 377–3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a burden under Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 3501 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 371

Exports.

PART 371—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended by adding a sentence to the end of the introductory paragraph of § 371.17 reading as follows:

§ 371.17 General license GLR; return or replacement of certain commodities.

* * * This GLR procedure applies to all Country Groups except S and Z.

Authority: Section 13 and 15, Pub. L. 96–72, 93 Stat. 503, as amended (50 U.S.C. app. 2401 *et seq.*); Executive Order No. 12214 (45 FR 29783, May 6, 1980). Executive Order No. 12541 of December 20, 1983 (48 FR 56563, December 22, 1983).

Dated: March 6, 1984.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 84-8311 Filed 3-27-84; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-172; Texas-21 Addition Order No. 364]

High-Cost Gas Produced From Tight Formations: Texas

Issued March 27, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced for tight formations as high-cost gas which may receive (18 CFR 271.703 (1983)). This rule established procedures form formations as high-cost gas which may receive established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Railroad Commission of Texas that an additional area of the James Limestone Formation located in Shelby County, Texas be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective April 26, 1984.

FOR FURTHER INFORMATION CONTACT: Elisabeth Pendley, (202) 357-8476, or Walter W. Lawson, (202) 357-8556.

Final Rule

The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1983)) to include the James Limestone Formation as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued February 28, 1983 (48 FR 32510, March 4, 1983)[1] based on a recommendation by the Railroad Commission of Texas (Texas) in accordance with § 271.703, that the James Limestone Formation, located in Hidalgo County, Texas be designated as a tight formation.

Evidence submitted by Texas supports the assertion that the James Limestone Formation, located in Shelby County, Texas meets the guidelines contained in § 271.703(c)(2).[2] The Commission adopts the Texas recommendation.

This amendment shall become effective April 26, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—[AMENDED]

Section 271.703 is amended to read as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.;* Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(92) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(92) *James Limestone Formation in Texas.* RM79-76-172 (Texas-21).

(i) *Southern Shelby and Northern San Augustine Counties.*—(A) *Delineation of formation.* The James Limestone Formation is found in northern San Augustine County and southern Shelby County, in Railroad District No. 6 in Texas. The area includes 67,900 acres surrounding and extending northwest of the city of San Augustine, Texas.

(B) *Depth.* The top of the James Limestone Formation ranges from −6,700 feet subsea in the north to −7,750 feet subsea in the south, with a thickness of approximately 202 feet.

(ii) *Shelby County.*—(A) *Delineation of Formation.* The James Limestone Formation is located in Shelby County, Railroad Commission District 6, East Texas. The James Limestone Formation is included as a subdivision of the Trinity Group of Lower Cretaceous (Commanchean) Age.

(B) *Depth.* The James Limestone Formation ranges from approximately −5,100 feet subsea in the North to −6,700 feet subsea in the south. The James Limestone overlies the Pine Island Shale and underlies the Bexar Shale.

[FR Doc. 84-8234 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-220; Texas 10—Addition III; Order No. 366]

High-Cost Gas Produced From Tight Formations; Texas

Issued March 27, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703) (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the State of Texas that an additional area of Edwards Limestone Formation located in Karnes County, Texas, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective April 26, 1984.

FOR FURTHER INFORMATION CONTACT: Kevin R. Rees, (202) 357-5420 or Walter Lawson, (202) 357-8556.

[1] The notice also included the James Limestone Formation in Nacogdoches County. On January 4, 1984 Texas requested that the Nocogdoches County section of the tight formation be excluded until additional data is submitted. Comments on the proposed rule were invited and one comment supporting the recommendation was received. No party requested a public hearing and no hearing was held.

[2] The Commission previously designated a portion of the James Limestone Formation in San Augustine and Shelby Counties as a tight formation in Order No. 246 (Texas-21) on August 4, 1982.

Final Rule

The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1983)) to include an additional area of the Edwards Limestone Formation as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued December 6, 1983 (48 FR 54,651)[1] based on a recommendation by the Texas Railroad Commission (Texas) in accordance with § 271.703, that the Edwards Limestone Formation, located in Karnes County, Texas, be designated as a tight formation.

Evidence submitted by Texas supports the assertion that the additional area of the Edwards Limestone Formation located in Karnes County, Texas, meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Texas recommendation.

This amendment shall become effective April 26, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—[AMENDED]

1. The authority for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.;* Natural Gas Policy Act, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(48)(iv) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(48) *The Edwards Limestone Formation in Texas.*

RM79–76–220 (Texas 10). * * *

(iv) *Karnes County.*—(A) *Delineation of formation.* The Edwards Limestone Formation is located in Karnes County, Texas, Railroad Commission District 2. The designated area is all that portion of the Kennedy S.W. (Edwards) Field within the area encompassed by a circle 1.5 miles radially distant from and centered upon the Estelle Rolf Gas Unit No. 2, Well No. 2. The Estelle Rolf Gas Unit No. 2, Well No. 2 is located in the Carlos Martinez Survey A–6, Estelle Rolf lease, at a point 660 feet from the southwest leaseline and 1,250 feet from the southeast leaseline.

(B) *Depth.* The top of the designated portion of the Edwards Limestone Formation ranges from 12,500 feet to 13,500 feet below sea level. The average depth to the top of the Edwards Limestone Formation in the designated area is 13,042 feet.

[FR Doc. 84–8238 Filed 3–27–84; 8:45 am]

BILLING CODE 6717–01–M

[1] Comments on the proposed rule were invited and one comment supporting the recommendation was received. No party requested a public hearing and no hearing was held.

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18 CFR Part 271

[Docket No. RM79–76–211; Virginia–2; Order No. 365]

High-Cost Gas Produced From Tight Formations; Virginia

Issued March 27, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Commonwealth of Virginia, Department of Labor and Industry, Division of Mines and Quarries that the Lower Mississippian Little Valley Formation located in Scott and Washington Counties, Virginia, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective April 26, 1984.

FOR FURTHER INFORMATION CONTACT: Tom Rattray, (202) 357–5447 or Walter W. Lawson, (202) 357–8556.

Final Rule

The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d)(1983)) to include the lower Mississippian Little Valley Formation as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued October 5, 1983 (48 FR 46071, October 11, 1983) [1] based on a recommendation by the Commonwealth of Virginia, Department of Labor and Industry, Division of Mines and Quarries (Virginia) in accordance with § 271.703, that a portion of the Lower Mississippian Little Valley Formation, located in Scott and Washington Counties, Virginia, be designated as a tight formation.

Evidence submitted by Virginia supports the assertion that the Lower Mississippian Little Valley Formation located in Scott and Washington Counties, Virginia, meets the guidelines contained in § 271.703(c)(2). The Commission adopts Virginia's recommendation.

This amendment shall become effective April 26, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.;* Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.)

2. Section 271.703 is amended by adding paragraph (d)(160) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(160) *Lower Mississippian Little-Valley Formation in Virginia.* RM79–76–211 (Virginia—2).

[1] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held.

(i) *Delineation of formation.* The Lower Mississippian Little Valley Formation is found in Scott and Washington Counties, Virginia. The designated area consists of approximately 89 square miles comprising all of the Mendota and Wallace quadrangles south of the Holston River in Virginia.

(ii) *Depth.* The average depth to the top of the Lower Mississippian Little Valley Formation is 3,191 feet. The formation has an average thickness of 673 feet.

[FR Doc. 84-8235 Filed 3-27-84; 8:45 am]
BILLING CODE 4717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Cythioate Oral Liquid and Tablets

Correction

In FR Doc. 84-3915 beginning on page 5614 in the issue of Tuesday, February 14, 1984, make the following correction: In column two, sixth line from the bottom, "45 FR 42036" should read "45 FR 40236".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-169; Reference Notice No. 477]

Southeastern New England Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This rule establishes a viticultural area located in Connecticut, Rhode Island, and Massachusetts known as "Southeastern New England." This final rule is the result of a petition submitted by Mr. James Mitchell, of Sakonnet Vineyards, Little Compton, Rhode Island, and of written comments received in response to the proposed regulation.

The Bureau of Alcohol, Tobacco and Firearms believes the establishment of Southeastern New England as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow wineries to designate their specific grape-growing area and will help consumers identify the wines they purchase.

EFFECTIVE DATE: April 27, 1984.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Under 27 CFR 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area. Approved American viticultural areas are listed in 27 CFR Part 9.

Petition for Southeastern New England. Mr. James Mitchell, of Sakonnet Vineyards, Little Compton, Rhode Island, petitioned for a viticultural area located in coastal Connecticut, Rhode Island and Massachusetts.

In response to this petition, ATF proposed the Southeastern New England viticultural area in Notice No. 477 on August 4, 1983 (48 FR 35462). In that notice, ATF solicited comments on alternative names or boundaries for the proposed viticultural area. Notice No. 477 also proposed a "Martha's Vineyard" viticultural area which will be the subject of a separate Treasury decision.

Comments. ATF received two written responses to the proposed Southeastern New England viticultural area. One comment submitted by Professor Everett R. Emino, Department of Plant Science of the University of Connecticut at Storrs, sought inclusion of the entire coastal plain of Connecticut within the viticultural area. He stated this area experiences the same climate as the portions of Rhode Island and Massachusetts within the proposed area. He also noted that establishment of the proposed area would unfairly disadvantage the Connecticut wine industry relative to Rhode Island and Massachusetts.

Mrs. Hugh P. Connell of Crosswoods Vineyards, North Stonington, Connecticut, submitted a written comment seeking the inclusion of the coastal plain of Connecticut between the Mystic and Connecticut Rivers. This area extends 10 miles inland from Long Island Sound, and experiences a climate similar to the proposed viticultural area.

Name

The name "Southeastern New England" is descriptive of the land adjoining coastal bodies of water in eastern Connecticut, Rhode Island, and Massachusetts south of the Boston area. It has been used by the New England River Basins Commission to describe this portion of New England. No comments were addressed to the name, and ATF is adopting "Southeastern New England" as the name of the viticultural area.

Geographic Criteria

Climate distinguishes the Southeastern New England viticultural area from adjacent areas in New England and New York. The U.S. Weather Service categorizes this area as the coastal division of Connecticut, Rhode Island, and Massachusetts. Its climate is moderated by proximity to coastal bodies of water including Long Island Sound, Block Island Sound, Narragansett Bay, Rhode Island Sound, Buzzards Bay, Cape Cod Bay, and Massachusetts Bay.

The entire Southeastern New England viticultural area experiences a low Region I climate on the scale used by Winkler and Amerine of the University of California to measure degree days.

Geographic criteria for inclusion within the Southeastern New England viticultural area include a growing season of 180 days or longer, average annual precipitation of 44 inches, average daily temperatures of 30° F. in January, 70° F. in July, and a mean daily range of temperatures during the growing season of 20° F. or less.

Comments from both the University of Connecticut and from Crosswoods Vineyards favored extending the viticultural area westerly into Connecticut beyond the Mystic River. The comment from Crosswoods Vineyards indicated that the coastal region of Connecticut extends into Fairfield County to the New York boundary, and generally reaches no more than 10 miles inland from Long Island Sound. Their evidence shows that the growing season of 180 days or more generally follows the coastal division in Connecticut, but is wider in the eastern part of the State while narrowing significantly toward the New York border. Other evidence shows the

coastal plain has a mean annual temperature of between 50 and 51° F., and that its rainfall varies between 44 and 50 inches per year.

No comments were submitted relative to the climate in Rhode Island or Massachusetts.

Boundaries

Using the geographical criteria presented above, and following the coastal regions of Massachusetts, Rhode Island, and Connecticut, Notice No. 477 proposed boundaries for the Southeastern New England viticultural area. This area included New London County east of the Mystic River and South of the 41° 30′ latitude line; Washington, Bristol and Newport Counties and a small portion of Providence County; and Massachusetts south and east of the Amtrak mainline and the Neponset River. All offshore islands between the Neponset River and the Mystic River were included within the proposed area.

Based on the above comments relating to geographic criteria of Connecticut's coastal plain, ATF is extending the viticultural area west to the Quinnipiac River. The boundary begins in New Haven Harbor, follows Connecticut Highways 80, 9, and 82 east to Norwich, follows Connecticut Highway 2 east to Highway 165, and then follows Connecticut and Rhode Island Highway 165 east to U.S. Interstate 95. The remainder of the boundaries are as proposed in Notice No. 477. All offshore islands (including Martha's Vineyard) between the Neponset and Quinnipiac Rivers are included within the viticultural area. For an exact description of the boundary, see § 9.72 set out below.

Although there is evidence that the coastal plain of Connecticut extends through Fairfield County to the New York boundary, ATF notes this plain narrows significantly toward the western end of the State. At the same time, the western coastal plain is heavily urbanized west of the Quinnipiac River. ATF has, therefore, not included the western portion of the coastal plain in the viticultural area.

General Information

Within the Southeastern New England viticultural area there are nine bonded wineries with others being established. It is estimated that there are between 200–300 acres of grapes with additional acreage planned in the near future. Vineyards are widely distributed and consist of both French Hybrid grapes and Vinifera grapes, especially Chardonnay, White Riesling, and Pinot Noir. Overall, the Southeastern New England viticultural area covers approximately 2,930 square miles or 1,875,200 acres.

Approval of the Southeastern New England viticultural area in no way affects the Martha's Vineyard viticultural area which was also proposed in Notice No. 477. A separate final rule will be issued for that area. The proposed Martha's Vineyard viticultural area is included within the Southeastern New England viticultural area.

Miscellaneous

ATF does not wish to give the impression that by approving Southeastern New England as a viticultural area, it is approving or endorsing the quality of the wine from the area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Southeastern New England wines.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended by adding § 9.72 which reads as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Paragraph 2. Subpart C is amended by adding § 9.72 which reads as follows:

§ 9.72 Southeastern New England.

(a) *Name.* The name of the viticultural area described in this section is "Southeastern New England."

(b) *Approved maps.* The approved maps for determining the boundary of the Southeastern New England viticultural area are three U.S.G.S. maps. They are entitled:

(1) "Boston, Mass.; N.H.; Conn.; R.I.; Maine", scaled 1:250,000, edition of 1956, revised 1970;

(2) "Hartford, Conn.; N.Y.; N.J.; Mass.", scaled 1:250,000, edition of 1962, revised 1975; and

(3) "Providence, R.I.; Mass.; Conn.; N.Y.", scaled 1:250,000, edition of 1947, revised 1969.

(c) *Boundaries.* The Southeastern New England viticultural area is located in the counties of New Haven, New London, and Middlesex in Connecticut; in the counties of Bristol, Newport, Providence, and Washington, in Rhode Island; and in the counties of Barnstable, Bristol, Dukes, Nantucket, Norfolk, and Plymouth in Massachusetts. The beginning point is found on the "Hartford" U.S.G.S. map in New Haven Harbor;

(1) Then north following the Quinnipiac River to U.S. Interstate 91;

(2) Then east following U.S. Interstate 91 to Connecticut Highway 80;

(3) Then east following Connecticut Highway 80 to Connecticut Highway 9 near Deep River;

(4) Then north following Connecticut Highway 9 to Connecticut Highway 82;

(5) Then north, east, south and east following Connecticut Highway 82 and 182 to Connecticut Highway 2 in Norwich;

(6) Then east following Connecticut Highway 2 to Connecticut Highway 165;

(7) Then east following Connecticut and Rhode Island Highway 165 to Interstate Highway 95 near Millville;

(8) Then north following Interstate Highway 95 to the Kent County-Washington County boundary;

(9) Then east following the Kent County-Washington County boundary into Narragansett Bay;

(10) Then north through Narragansett Bay, the Providence River, and the Blackstone River to the Rhode Island-Massachusetts State boundary;

(11) Then east and south following the Rhode Island-Massachusetts State boundary to the Norfolk-Bristol (Mass.) County boundary;

(12) Then northeast following the Norfolk-Bristol (Mass.) County boundary to the Amtrak right-of-way (Penn Central on map) northeast of Mansfield;

(13) Then north following the Amtrak right-of-way to the Neponset River immediately east of the Norwood Memorial Airport;

(14) Then northeast following the Neponset River into Dorchester Bay;

(15) Then east following the Norfolk-Suffolk County boundary, and the Plymouth-Suffolk County boundary into Massachusetts Bay;

(16) Then returning to the point of beginning by way of Massachusetts Bay, the Atlantic Ocean, Block Island Sound and Long Island Sound; and including all of the offshore islands in Norfolk, Plymouth, Barnstable, Nantucket, Dukes, and Bristol Counties, Massachusetts; all offshore islands in Rhode Island; and all offshore islands in Connecticut east of the Quinnipiac River.

Signed: March 2, 1984.

Stephen E. Higgins,

Director.

Approved: March 12, 1984.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 84-8252 Filed 3-27-84; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 829

Organizing and Operating Off-Base Patrols

AGENCY: Department of the Air Force, Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 829—Organizing and operating off-base patrols, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 125–19, has been revised and determined to be for internal guidance only and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas, HQ USAF/SPO, Kirtland AFB, NM 87117, telephone (505) 264–6627.

SUPPLEMENTARY INFORMATION:

PART 829—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 829.

List of Subjects in 32 CFR Part 829

Federal buildings and facilities, Law enforcement officers, Military personnel.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8244 Filed 3-27-84; 8:45 am]
BILLING CODE 3910-01-M

32 CFR Part 932

Prevention and Control of Communicable Diseases in Animals

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 932—Prevention and control of communicable diseases in animals, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 163–4, has been rescinded. This action is a result of departmental review in an effort to insure that only current regulations are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Col Brooks, HQ USAF/SGB, Bolling AFB, Wash DC 20332, telephone (202) 767–4595.

SUPPLEMENTARY INFORMATION:

PART 932—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 932.

List of Subjects in 32 CFR Part 932

Animal diseases, Communicable diseases.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8243 Filed 3-27-84; 8:45 am]
BILLING CODE 3910-01-M

Department of the Army; Corps of Engineers

33 CFR Part 209

Shipping Safety Fairways, Port Hueneme, California

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is deleting the regulations which establish a shipping safety fairway in the approach to Port Hueneme, California. This shipping safety fairway has been established by the U.S. Coast Guard under its authorities and accordingly, the fairway established by the Army is no longer needed.

EFFECTIVE DATE: These rules are effective on March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard, Office of the Chief of Engineers, ATTN: DAEN–CWO–N, Washington, D.C. 20314 or telephone (202) 272–0199.

SUPPLEMENTARY INFORMATION: The Corps of Engineers has determined that notice of proposed rulemaking is unnecessary and that these rules shall be effective upon publication in the **Federal Register** since these rules have been replaced by rules published by the Coast Guard in 33 CFR 166.300. Port Hueneme Shipping Safety Fairways were established by the Corps of Engineers in 33 CFR 209.138 under authority of the Outer Continental Shelf Lands Act (67 Stat. 463; 43 U.S.C. 1333(e)). The Corps established the fairways as specific areas where fixed structures would not be permitted. Pursuant to the Ports and Waterways Safety Act, the Coast Guard was

subsequently given specific authority to establish vessel routing measures, including fairways. The Coast Guard published final rules establishing the Port Hueneme Shipping Safety Fairway in the **Federal Register** on 24 October 1983 (48 FR 49018–19) in 33 CFR 166.300. Accordingly, the regulations which establish the Port Hueneme Shipping Safety Fairway in 33 CFR 209.138 are no longer necessary and are revoked.

Note.—The Corps of Engineers has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices. The Corps also certifies that this rule will not have a significant economic impact on a substantial number of entities and thus, does not require the preparation of a regulatory flexibility analysis.

List of Subjects in 33 CFR Part 209

Marine safety, Shipping safety fairways, Anchorage areas.

PART 209—[AMENDED]

Section 209.138 is removed from 33 CFR as follow:

§ 209.138 Shipping Safety Fairway in the Pacific Ocean at Port Hueneme, California [Removed].

Authority: 43 U.S.C. 1333(e).

Dated: February 8, 1984.

John F. Wall,

Major General, USA, Director of Civil Works.

[FR Doc. 84-8239 Filed 3-27-84; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2524-6]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Final disapproval.

SUMMARY: On December 17, 1982 (47 FR 56518), EPA proposed to approve a State Consent Order No. 16–1982 for Great Lakes Steel (GLS), a Division of the National Steel Corporation (National Steel), as a revision to the Michigan State Implementation Plan (SIP). On February 18, 1983 (48 FR 7210), EPA published a supplemental proposed rulemaking notice, announcing the availability of the short term ambient equivalence demonstration and presented the results of its review. EPA has reviewed all public comments received and is today announcing its disapproval of Michigan's proposed SIP revision request for GLS because the proposal does not satisfy all the requirements of EPA's proposed Emissions Trading Policy Statement (ETPS), (April 7, 1982, 47 FR 15076).

DATE: This action is effective April 27, 1984.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available at the following addresses (It is recommended that you telephone the contact person listed below, before visiting the Region V Office):

Environmental Protection Agency, Air and Radiation Branch, Region V, Regulatory Analysis Section, 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, 7150 Harris Drive, Lansing, Michigan 48909

Written comments should be sent to:

Gary Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Environmental Protection Agency, 230 South Dearborn, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Specialist. Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, Environmental Protection Agency, 230 South Dearborn, Chicago, Illinois 60604, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On June 24, 1982, the State of Michigan submitted Consent Order No. 16–1982 for GLS, as a revision to the Michigan SIP. The Consent Order contained an alternate emission control plan (AECP) or "bubble" requiring that all controls be implemented by December 31, 1982. GLS is a Division of National Steel, which operates integrated iron and steel making facilities in Ecorse and Zug Island in River Rouge, Michigan. These plants are located in the Detroit Total Suspended Particulate (TSP) primary nonattainment area. EPA's approval of the control strategy for the Detroit primary TSP nonattainment area is discussed in the May 22, 1981, **Federal Register** (46 FR 27923).

On December 17, 1982 (47 FR 56518), EPA proposed approval of Michigan's request for a revision to its SIP for GLS's AECP. In that notice, EPA also indicated that the short-term ambient equivalence demonstration for GLS was scheduled to be completed during the public comment period of the proposed rulemaking and that the public would be given an opportunity to review the results of the short-term modeling prior to EPA's final rulemaking. On February 18, 1983 (48 FR 7210), EPA published a supplemental proposed rulemaking announcing the availability of the short-term ambient equivalence demonstration and EPA's review of the demonstration. That notice also provided an additional public comment period on all elements of the GLS revision.

The December 17, 1982 (47 FR 56518), and February 18, 1983 (48 FR 7210), **Federal Register** notices, along with EPA's technical support document of September 10, 1982, contain a detailed description of the GLS AECP. EPA's technical support document of September 28, 1983 contains a detailed presentation of the issues and responses to the public comments received.

During the two comment periods, EPA received a total of 11 comments and one additional comment letter by National Steel after the close of the second comment period. Despite the fact that this comment was received after the close of the public comment period, it was considered by EPA in the development of its final rulemaking. Nine of the comments did not raise technical issues but cited economic benefits of the GLS AECP. EPA cannot consider comments relating to the economic benefits of a proposed bubble SIP revision if the proposed SIP revision does not protect the National Ambient Air Quality Standards (NAAQS) and comply with the April 7, 1982, proposed ETPS. A summary of EPA's response to the remaining comments is presented below.

Comment: The State of Michigan objected to EPA's statement that Consent Order No. 16–1982 provides an AECP or "bubble" which will result in reduction of particulate emissions in the Detroit primary nonattainment area. The commenter states that the Michigan Air Pollution Control Commission (MAPCC) rules contain no provisions for particulate bubbles.

Response: The State was correct in citing that it has no explicit provisions for approving particulate bubbles. However, EPA believes that the appropriate criteria for reviewing a SIP revision of this type, which involves increasing emissions at some points and decreasing emissions at other points, and which is not accompanied by a demonstration that the NAAQS will be attained and maintained are contained in the proposed ETPS.

Comment: The Natural Resources Defense Council (NRDC) stated that the modeling analysis done in support of the GLS bubble proposal, by a combination of errors in data and programming and

the use of invalid and undocumented assumptions, understates the ambient impact of this SIP revision. Specifically, NRDC notes the following problems in the short-term ambient equivalence demonstration:

(a) The impacts of all process sources are considerably understated due to the use of erroneously low emission rates for these sources;

(b) The choice of particle size distributions underestimates the impacts of the basic oxygen furnace (BOF) shop and blast furnace casthouses, and overstates the impacts from open dust sources;

(c) The Universal Transverse Mercator (UTM) coordinates (i.e. source location) input for the casthouses and open dust sources are in error; and

(d) TSP impacts for similar sources from previous EPA studies suggest much higher impacts than those predicted by GLS for its process sources.

Response: EPA agrees that National Steel's inadvertent input of improper process source emission rates into the ISC model resulted in a severe underestimate of the TSP concentrations from the process sources. EPA subsequently performed an analysis correcting this error as well as the incorrect source coordinates. The reanalysis showed substantial impacts from the casthouses which are unlikely to be offset by any credit for control greater than the Reasonably Available Control Technology (RACT) level on the Zug Island open dust sources. In addition, a significant increase in TSP concentrations as defined by the ETPS (i.e., greater than 10/$\mu g/m^3$ on a 24-hour basis) due to less-than-RACT controls at the No. 2 BOF Shop was predicted. If particle size distributions assumed for similar type sources at a steel million Ohio are input to the ISC model, the predicted TSP concentration increases are enhanced further. EPA recognizes that National Steel failed to document the support for the particle size distributions but, at the time of the initial analysis, EPA did not consider these inputs to be critical to the demonstration because of the low magnitude of the predicted concentrations.

The correction of the errors in the short-term ambient equivalence demonstration leads to the conclusion that the GLS bubble, as presently configured, does not satisfy the ambient tests specified in the proposed ETPS and technical clarifying memorandum (February 17, 1983). Therefore, without a demonstration that greater-than-RACT level emissions will not significantly contribute to periods of violations of the TSP NAAQS, EPA cannot approve the proposed bubble.

EPA has reviewed the NRDC's criticism of certain emission factor assumptions relating to the process fugitive sources involved in the proposed bubble. In regard to the blast furnace casthouses, EPA agrees with NRDC that an uncontrolled emission factor of 0.6 lb/ton of hot metal is more technically supportable than the 0.5 lb/ton used. For the electric arc furnace shop, EPA again agrees with the commenter that RACT for secondary emission control can achieve 0.005 gr/dscf instead of the 0.02 gr/dscf assumed. For the bubble overall, correction of these assumptions results in: (1) An increase in total uncontrolled emissions, (2) a reduction in the RACT emission baseline, and (3) a total emissions trade of less than one-for-one. If these changes were made to the input for the short-term modeling, they would undoubtedly make more unfavorable the already significant adverse modeled impacts.

EPA has considered the NRDC's criticism of the emission factor assumptions used for the No. 2 BOF shop. While it does not agree with NRDC's position regarding the uncontrolled factors, EPA does acknowledge that some revision to the factors used might be justified. EPA has undertaken a thorough review of this subject in regard to BOFs in general and will make the results of that study available at a later date. Regarding the assumptions which EPA used for BOF charging and tapping control under the bubble, EPA here also acknowledges that some revision might be justified based on further detailed study of the shop. However, EPA has not undertaken such a study because the other problems with the bubble as discussed in this notice make the bubble unapprovable.

Comment: NRDC commented that the modeling fails to demonstrate that the plan as revised is adequate to attain the primary air quality standards because the modeling does not consider the impacts from all of the emission sources in the area affected by GLS's plants. NRDC believes SIP relaxations must be supported by a demonstration that the SIP as revised is adequate to protect the ambient standards. Also, NRDC contends that a large enough meteorological data base (e.g., five years) should be used so that variations in meteorology from year to year are not ignored in judging the SIP's adequacy and that there is no justification for the limited modeling requirements in EPA's ETPS for areas such as Wayne County, where the standards have not been attained and the SIP has not been approved as adequate to attain the standards.

Response: EPA solicited public comment on the generic issue raised by the commenter of whether emission trades should be allowed in areas where the standards have not been attained and/or the SIP has not been approved or shown to be sufficient to attain and maintain the standards, (August 31, 1983, 48 FR 39580). At the time the agency proposed to approve this SIP revision, its position on this issue was that such trades could be considered if they provided emission reductions and ambient concentrations equivalent to those obtained if the sources complied with RACT. This was based on the view that a showing of ambient equivalence to a RACT baseline would be adequate to assure that a bubble would not interfere with attainment or reasonable further progress toward attainment. The Level II modeling procedures specified in the proposed ETPS address only the sources involved in the trade and require only a limited meteorological data base. As explained in the proposed ETPS, EPA believes this limited modeling is adequate to demonstrate ambient equivalence to the appropriate baseline in certain circumstances. However, since National Steel has not demonstrated the required ambient equivalence, EPA must disapprove this bubble.

Comment: National Steel commented that since, after the submission of the original AECP the blast furnace casthouses have been controlled, they will likely propose a revised, much more limited, bubble involving control of emissions from the Zug Island roads in lieu of additional controls on the No. 2 BOF. National Steel believes this trade satisfies the requirements in the April 7, 1982, ETPS for a Level II air quality equivalence demonstration by meeting the following two conditions:

1. There is no increase in baseline emissions.

2. There is no significant air quality impact at the receptor of maximum impact on either an annual or 24-hour basis.

Response: Before EPA can formally entertain a revised AECP involving only roof monitor emissions from the No. 2 BOF Shop while excluding consideration of any blast furnace casthouse emissions, the State of Michigan must make such a request to EPA. Bubbles are revisions to the State's SIP and must be formally submitted to EPA as any other revision request. EPA's analysis and that summarized by the commenter suggest that an alternative bubble proposal involving only the No. 2 BOF

Shop would result in TSP concentrations increases over RACT levels near or above the 10ug/m³ significance level as defined by the ETPS.

Comment: National Steel commented that recent analysis of ambient air quality data indicates that the area around the Ecorse plant, which includes the No. 2 BOF Shop, meet EPA's criteria for redesignation to attainment for the primary TSP NAAQS.

Response: Before EPA could redesignate this area to primary attainment, a demonstration must be provided which shows that:

(a) Legally enforceable, permanent emission reductions are responsible for the recent air quality improvement,

(b) The available monitoring data are representative of the worst case air quality in the area, and

(c) Existing sources in the area to be redesignated do not significantly contribute to violations of the primary standards elsewhere in the surrounding area.

These requirements are consistent with the Agency's redesignation criteria noted in the memorandum "Section 107 Designation Policy Summary," dated April 21, 1983, and no such demonstration has been provided to EPA for this area.

Comment: NRDC commented that paving and dust suppressant applications are reasonably available and cost-effective control techniques, that would provide greater emission reduction than a program of watering, which EPA determined was the minimum requirement of the rule.

Response: EPA believe that is was incorrect to assume that watering was the minimum RACT requirement of Michigan's Rules 336.1371 and 336.1372. In approving these rules on November 15, 1982 (47 FR 51398), EPA was affirming that RACT for open dust sources is represented by a range of control techniques from which an appropriate program must be formulated based on site-specific considerations. EPA notes that in this regard the agency expects to solicit comment soon on whether it should withdraw its approval of the Michigan Rules.

EPA now believes that the site-specific factors that warrant the consideration of different control techniques under the rule must be presented by the State or company in a demonstration that any alternative program for which emission trading credits are sought does in fact offer emission reduction greater-than-RACT. In this case, no such demonstration or site-specific information regarding the cost-effectiveness of the alternative control program was submitted by the State or the company to allow EPA to determine whether it meets the definition of RACT or goes beyond the RACT requirements and therefore provides potential emission reduction credit. Because of the lack of such a demonstration, EPA does not believe that it is possible to consider the AECP as a program which provides for emission reductions beyond those required by RACT. EPA now believes that in the absence of site-specific information to the contrary, the RACT baseline should be set at the level achievable by the AECP, since the control techinques that would be used under the AECP are among those listed under the RACT-based Michigan rule.

In summary, EPA has reviewed all comments received and is taking final action to disapprove Michigan's proposed SIP revision request for GLS since the proposal does not satisfy all the requirements of EPA's proposed ETPS.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the EPA Region V Office listed above.

Under section 307(b)(1) of the Clean Air Act, petitions for Judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit May 29, 1984. This action may not be challenged later in proceeding to enforce its requiremets. (See 307(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon nonoxide, Hydrocarbons, Intergovernmental relations.

This notice is issued under authority of sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: March 22, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

40 CFR Part 52 is amended by adding paragraph (c) to § 52.1173 to read as follows:

Subpart X—Michigan

§ 52.1173 Control Strategy: Particulates

* * * * *

(c) *Disapprovals.* EPA disapproves the following specifi revisions to the Michigan Plan:

(1) The State submitted Consent Order No. 16–1982 on June 24, 1982, Great Lakes Steel, a Division of the National Steel Corporation as a revision to the Michigan State Implementation Plan. EPA disapproves this revision, because it does not satisfy all the requirements of EPA's proposed Emission Trading Policy Statement of April 7, 1982 (47 FR 15076).

[FR Doc. 84–8136 Filed 3–27–84; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 158

[OPP–240053; PH–FRL 2550–3]

Pesticide Guidelines; Notification to the Secretary of Agriculture of Final Regulation Specifying the Data Requirements for Registration of Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule—related notice.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a final regulation specifying the data requirements for the registration of pesticide products under the Federal Insecticide, Fungicide and Rodenticide Act.

FOR FURTHER INFORMATION CONTACT: Fred S. Betz, Hazard Evaluation Division (TS–769), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2 Room 821A, Arlington, Virginia 22202, (Tel. 703–557–9307).

SUPPLEMENTARY INFORMATION: Sec. 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 92–516, 86 Stat. 973; Pub. L. 94–140, 89 Stat. 753; 7 U.S.C. 136 et seq.) provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing to the Administrator regarding any such proposed regulation within 15 days after receiving it, the Administrator shall publish in the **Federal Register** (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator within 15 days after receiving it, the Administrator may sign

such regulation for publication in the Federal Register at any time after such 15-day period notwithstanding the foregoing 30-day time requirement. The time requirements may, however, be waived or modified to the extent agreed upon by the Administrator and the Secretary.

In accordance with Sec. 25(a)(3) of FIFRA, EPA has also furnished a copy of this final regulation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

This regulation is designated as Part 158 of 40 CFR, and is titled "Data Requirements for Registration".

(Sec. 25 [Pub. L. 92–515, 86 Stat. 973; Pub. L. 94–140, 89 Stat. 753 (7 U.S.C. 136 et seq.)])

Dated: March 7, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84–7846 Filed 3–27–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 3F2865/R651; PH–FRL 2553–2]

Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Bentazon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide bentazon and its 6- and 9-hydroxy metabolites in or on the raw agricultural commodities sorghum, grain; sorghum, forage; and sorghum, fodder. This regulation to establish maximum permissible residues of the herbicide in or on these commodities was requested pursuant to a petition by BASF Wyandotte Corp.

EFFECTIVE DATE: Effective on March 28, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 243, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of June 8, 1983 (48 FR 26535), which announced that BASF Wyandotte Corp., 100 Cherry Hill Rd., P.O. Box 181, Parsippany, NJ 07054, had filed pesticide petition 3F2865 with the Agency proposing to amend 40 CFR 180.355 by establishing tolerances for the combined residues of the herbicide bentazon (3-isopropyl-1-*H*-3,1,3-benzothiadazin-4-(3H)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolities in or on the commodities sorghum fodder and grain at 0.05 part per million (ppm) and sorghum forage at 0.20 ppm.

No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicology data considered in support of the tolerances include several acute studies; a 90-day dog-feeding study with a no-observed-effect level (NOEL) of 7.5 milligrams per kilogram per day (mg/kg/day); a teratology study (rat) with no observed teratogenic effects at 200 mg/kg/day (highest dose tested) and a NOEL of 66.7 mg/kg/day for maternal toxicity and fetotoxic effects; a 3-generation reproduction study (rat) with a NOEL greater than 9 mg/kg; an 18-month mouse-feeding study with no observed oncogenic effects at all levels tested (0, 100, 350, 1,600 ppm); a 2-year rat-feeding study with a systemic NOEL of 17.5 mg/kg/day and no observed oncogenic effects at all levels tested (0, 100, 350, 1,600 ppm); and a dominant-lethal mouse study negative at 195 mg/kg/day (highest dose tested).

The acceptable daily intake (ADI) is based on the 2-year rat-feeding study (NOEL of 17.5 mg/kg/day) and using a 100-fold safety factor is calculated to be 1.1750 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated at 10.5 mg/day. The theoretical maximum residue contribution (TMRC) for existing tolerances for a 1.5-kg diet is calculated to be 0.0584 mg/day. The current action will use less than 1 percent of the ADI. Published tolerances use 0.56 percent of the ADI.

A teratology study in a second species, a chronic study in a second species, and additional mutagenicity data are lacking. The company has been notified and has agreed to perform the studies.

The nature of the residue is adequately understood, and an adequate analytical method, gas chromatography using a sulfur-specific flame photometric detector, is available for enforcement purposes. There are currently no actions pending against the continued registration of this chemical. The established tolerances for residues in eggs, meat, milk, or poultry are adequate to cover secondary residues resulting from the proposed use as delineated in 40 CFR 180.6(a)(2).

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this regulation in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 14, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.355(a) is amended by adding and alphabetically inserting the new raw agricultural commodities, to read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) * * *

Commodities	Parts per million
Sorghum, fodder	0.05
Sorghum, forage	0.20
Sorghum, grain	0.05

[FR Doc. 84-8139 Filed 3-27-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[SW-3-FRL 2554-1]

West Virginia; Phase I and II, Components A and B, Interim Authorization of the State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA) provisions, the State of West Virginia has applied for Interim Authorization Phase I and Phase II, Components A and B. The Environmental Protection Agency (EPA) has reviewed West Virginia's application for Phases I and II, Components A and B, Interim Authorization, and has determined that West Virginia's hazardous waste program is substantially equivalent to the Federal program.

The State of West Virginia is hereby granted Interim Authorization for Phases I and II, Components A and B to operate the State's hazardous waste program in lieu of the Federal program.

EFFECTIVE DATE: March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Anthony J. Donatoni, Chief, State Programs Section, Waste Management Branch, U.S. EPA Region III, 6th and Walnut Streets, Philadelphia, PA 19106 (215) 597-7937.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, to protect human health and the environment from the improper management of hazardous waste. Includes in these regulations, which became effective November 19, 1980, were provisions for a transitional stage in which States would be granted interim authorization. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program has taken effect. Phase I of the Federal program, published in the May 19, 1980 **Federal Register** (45 FR 33063), includes regulations pertaining to the identification and listing of hazardous wastes; standards applicable to generators and transporters of hazardous waste, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

In the January 26, 1981 **Federal Register** (26 FR 7965), the Environmental Protection Agency announced the availability of portions of the second phase of Interim Authorization. Phase II of the Federal program includes permitting procedures and standards for hazardous waste management facilities. EPA made the second phase of Interim Authorization available in components in order to authorize State programs as expeditiously as possible and because some of the standards for hazardous waste treatment, storage, and disposal facilities (40 CFR Part 264) have been promulgated at different times. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments, and waste piles. Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators. Component C, published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting surface impoundments, waste piles, land treatment facilities and landfills. These Component C standards for permitting surface impoundments and waste piles superseded the Component A standards for permitting storage and treatment in surface impoundments and waste piles published on January 12, 1981. The State of West Virginia applied for Phase I and Phase II, Components A and B, Interim Authorization which would enable them to permit storage and treatment in containers and tanks and to permit hazardous waste incinerators in lieu of the Federal program.

On September 15, 1983, EPA published a notice in the **Federal Register** inviting the public to comment on West Virginia's application for Interim Authorization, Phases I and II, Components A and B, at a public hearing on October 18, 1983. This notice also invited the public to submit written comments on West Virginia's application to Region III by October 25, 1983. Notice was also given in eight major daily newspapers in West Virginia and was mailed to persons on both the State and EPA mailing lists.

Discussion

The State of West Virginia submitted an application for Phase I and Phase II, Components A and B, Interim Authorization on August 19, 1983. Although the application was complete, the State had not yet addressed some of the comments submitted by EPA on the earlier draft application. At the public hearing, the State indicated their intent to make certain revisions to its regulations to conform to the Federal program. These revisions were accomplished by the issuance of emergency regulations. The rule making process has also been initiated for permanent regulations. The State has agreed to voluntarily and immediately relinquish Interim Authorization if permanent regulations, substantially equivalent to the Federal program, do not become effective prior to the expiration of the emergency regulations. West Virginia has now adequately addressed EPA's comments and has made needed conforming revisions to the Memorandum of Agreement and the Attorney General's Statement. The State's program is substantially equivalent to the Federal program.

Responsiveness Summary

Region III held the public hearing on West Virginia's application for Phase I and Phase II, Components A and B, Interim Authorization, in Charleston, WV. Sixteen (16) members of the public attended, in addition to Region III and State agency representatives. Two presentations were made at the hearing; the first by a represenatative of the Environmental Control Committees of the West Virginia Manufacturers Association and the State Chamber of Commerce, and the second by a representative of the West Virginia Citizen Action Group and the West Virginia Highlands Conservancy. Both commenters were generally supportive of the State receiving Interim Authorization. Subsequent to the hearing, both commenters submitted written documentation further outlining their comments raised at the hearing. In addition, one written comment was received from the legal representative of the Appalachian Power Company and the Ohio Power Company, which did not oppose Interim Authorization. The public comment period closed on October 25, 1983.

Response

One comment questioned whether the Air Pollution Control Commission

(APCC) had exceeded its statutory authority under the Hazardous Waste Management Act (HWMA) when it promulgated regulations on the identification and listing of hazardous waste, a responsibility designated to the Director of the Department of Natural Resources (DNR) in Section 20–5E–6 of the HWMA. The regulations of the APCC have been amended to include by reference the criteria, characteristics and lists of hazardous waste in DNR's regulations.

Another comment questioned the suitability of the APCC having promulgated its regulation to manage hazardous waste facilities under the authority of both W. Va. Code Chapter 16, Article 20, and W. Va. Code Chapter 20, Article 5E. The Attorney General has certified that Article 20, Section 5E (the Hazardous Waste Management Act) provides authority for the required elements of an approved program. He also certified that the enforcement authority under Article 20, Section 5E, will be fully available. EPA believes that the additional citation of Chapter 16, Article 20, as authority for this regulation does not preclude interim authorization.

There was a comment indicating concern that the application was based upon regulations that were no longer jointly promulgated. Both DNR and the Water Resources Board originally issued Series VII of the regulations. Subsequently, the Board withdrew its participation in the regulations (except for a groundwater protection standard). The Attorney General has certified that the program being approved is supported by statutory authority and EPA has determined that the State program is substantially equivalent to the Federal program.

In 1982, DNR conducted a survey of hazardous waste generators, transporters and treatment, storage, and disposal facilities. Information from this survey was used to estimate available revenue to the State in its application for Interim Authorization. One comment expressed concern about the accuracy of the data as to the number of facilities, quantity of waste reported, and the possible revenues to be generated from permit application fees. EPA has carefully reviewed the current budget and believes it is adequate to effectively implement the hazardous waste program, even if such discrepancies exist. During FY 1984, DNR will investigate any discrepancies in the report and correct any errors accordingly.

Another comment objected to the fact that the State's regulatory program is more stringent than the Federal program in some areas. However, under Section 3009 of RCRA, the State has the authority to adopt regulations which are more stringent. Therefore, EPA cannot disapprove State programs solely on the basis that they are more stringent than the Federal program.

There was some concern raised regarding the authority of West Virginia's Hazardous Waste Management Act (HWMA). However, in his statement, the West Virginia Attorney General certified that, in his opinion, the HWMA is adequate for Interim Authorization and that regulations promulgated pursuant to HWMA are substantially equivalent to the analogous Federal regulations. EPA has accepted this opinion.

Another comment concerned the development of a form for the Part B permit application by APCC prior to EPA authorization. EPA does not have a form for these applications and, therefore, does not require the State to develop one. Both EPA and the State require the permit applicant to submit information outlined in the permitting regulations as part of the Part B permit application.

One commenter questioned the resources which the State has allocated to the hazardous waste management program (and the subsequent effects on West Virginia's permitting and compliance inspection efforts). EPA believes that the State has an acceptable resource base to qualify for Phase I and Phase II, Components A and B, Interim Authorization. Furthermore, it is EPA's opinion that West Virginia has the appropriate number of staff and skill mix to adequately perform compliance monitoring inspections and process storage and incineration permits during FY 1984. The Agency will be carefully assessing the performance of the State in conducting the delegated program and the results of this evaluation will be factored into our decision on Final Authorization.

There was one comment on DNR's revision of hazardous waste number D007 in Section 3.03.05, Table I, from Chromium (VI) to Chromium (total). EPA's listing is for total chromium. The State currently lists total chromium. Therefore, West Virginia's regulation is equivalent to the Federal regulation. The State chose to change its listing after EPA identified this difference between the State and Federal listings.

Another concern was raised that the application should be amended to include the recently negotiated Memorandum of Understanding (MOU) between the Department of Highways (DOH) and DNR. The responsibilities of DOH and DNR are outlined in the Program Description which is a part of the application. The MOU has been made a part of the State's file.

DNR's authority to regulate the transportation of hazardous waste by air was questioned. However, Section 5 of DNR's regulation adopts and incorporates by reference 40 CFR Part 263, as applicable to air transportation. The West Virginia Attorney General certified that Section 20–5E–6(12) empowers the Director "to promulgate such other rules and regulations as necessary to effectuate the purpose of the Act," and that "this statutory authority is sufficient and does allow the Director of DNR to promulgate such rules and regulations governing the transportation of hazardous waste by water and air as may be necessary to make the West Virginia program equivalent to and consistent with the federal program." EPA has accepted this opinion.

Decision

I have determined that West Virginia's program is substantially equivalent to the Federal program for Phase I and Phase II, Components A and B, Interim Authorization, as defined in 40 CFR Part 271, Subpart B (formerly 40 CFR Part 123, Subpart F). In accordance with Section 3006(c) of RCRA, West Virginia is hereby granted Interim Authorization to operate its hazardous waste program in lieu of Phase I and Phase II, Components A and B of the Federal hazardous waste program.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of West Viriginia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entitities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste supply,

Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and Solid Waste Disposal Act Amendments of 1980, 42 U.S.C. 6901 et seq.

Dated: March 7, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 84-8280 Filed 3-27-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-49

[FPMR Amdt. H-148]

Redefinition of "Minimal Value" Associated With the Receipt and Retention of Foreign Gift Items

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Final rule.

SUMMARY: In accordance with Pub. L. 95-105, this regulation amends FPMR Part 101-49 by redefining the "minimal value" associated with the receipt and retention of foreign gifts by United States officials from foreign governments from $140 to $165.

EFFECTIVE DATE: March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Utilization Division (703-577-0807).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-49

Utilization, Donation, and Disposal of foreign gifts and decorations, Decorations, Medals, Awards, Foreign relations, Government property.

PART 101-49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

Title 41, Part 101-49 of the Code of Federal Regulations is amended as follows:

1. **Authority:** Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486(c); Sec. 515, 91 Stat. 862; 5 U.S.C. 7342.

2. Section 101-49.001-5 is amended by revising the introductory text to read as follows:

§ 101-49.001-5 Minimal value.

"Minimal value" means a retail value in the United States at the time of acceptance of $165 or less, except that:

* * * * *

Dated: February 10, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84-8299 Filed 3-27-84; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 81, and 83

[Docket No. 83-664, FCC 84-15]

Frequency Allocations and Treaty Matters; General Rules and Regulations; Stations on Shipboard in the Maritime Services; Stations on Land in the Maritime Services and Alaska-Public Fixed Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules by changing the use of marine VHF Channel 88 in the Puget Sound area and its approaches, within 75 miles of the U.S./Canada border. Currently, this Channel is available for commercial use (ship-to-ship). The commercial use has caused harmful interference to Canadian public correspondence stations near the border, according to the British Columbia Telephone Company. We are therefore amending the rules to make Channel 88 available to ships within 75 miles of the border for public correspondence with Canadian coast stations. This action is intended to rectify the interference problem in the interest of both the Canadian and the U.S. maritime community. This document includes two other minor changes involving Limited Coast and Marine Utility station eligibility requirements and A3A emission specifications. This last change removes an unnecessary regulation which has burdened manufacturers and licensees.

EFFECTIVE DATE: February 27, 1984.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, 202-632-7175.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 81

Communication equipment, Radio.

47 CFR Part 83

Canada, Radio, Ship stations, Vessels.

Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 2, 81, and 83 of the Commission's rules concerning the use of marine VHF Channel 88 in the Puget Sound area, eligibility for Limited Coast and Marine Utility stations, and deletion of all A3A emission requirements; PR Docket No. 83-664, FCC 84-15.

Adopted: January 16, 1984.

Released: January 19, 1984.

By the Commission.

Summary

1. In this Report and Order we are amending the Commission's rules to discontinue use of simplex marine VHF Channel 88A (157.425 MHz) for commercial intership communications in the Pudget Sound waters[1] within 75 miles of the United States/Canada border. Instead, ships within this 75 miles area will be allowed to use Channel 88 for public correspondence with Canadian coast stations. In this proceeding we are also clarifying the rules concerning eligibility for Limited Coast and Marine Utility stations and deleting the requirement that single sideband radios be capable of operating in the A3A mode. We released a *Notice of Proposed Rule Making* (NPRM, FCC 83-299, 48 FR 32610) in this proceeding on July 12, 1983.

Marine Ch. 88

2. Marine Channel 88 consists of a frequency pair: a ship station transmit frequency (157.425 MHz) and a coast station transmit frequency (162.025 MHz). The ship station frequency, which may also be used in a simplex mode, is sometimes referred to as Channel 88A. Channel 88A may be used by commercial fishing vessels and their associated aircraft (e.g., fish spotting). In 1976 the Commission amended its rules to allow public correspondence use of Channel 88 in the Great Lakes and the

[1] For purposes of this rule making proceeding, the "Puget Sound" includes the area of the Puget Sound and the Strait of Juan de Fuca and its approaches.

St. Lawrence Seaway between U.S. vessels and Canadian coast stations.

3. The Commission proposed to change the use of Channel 88A in the Puget Sound in response to a petition from the North Pacific Marine Radio Council (NPMRC). Enclosed with the NPMRC's correspondence was a letter from the British Columbia Telephone Co. (B. C. Telephone Co.) alleging that U.S. vessels were causing interference on 157.425 MHz. The B. C. Telephone Company uses the frequency pair for public correspondence, in accordance with the international Radio Regulations. A long comment period was allowed to insure that commercial interests which might be affected by this change would have an opportunity to file comments after reading or hearing about the NPRM from the local media. The local FCC field office disseminated copies of the NPRM to a broad population of local interests. The NPRM also received wide media coverage in the Seattle area where over 500 copies were distributed.

4. No one filed comments opposing the reallocation of Channel 88A in the Puget Sound. Thus we infer that this change in the rules will have little or no impact on our licensees. As stated previously in the NPRM, there are ten other channels which will remain available for commercial intership communications. With the adoption of this amendment, the rules governing the use of Channel 88 in the Puget Sound area, the Great Lakes, and the St. Lawrence Seaway will be consistent.

Limited Coast/Marine Utility Station Eligibility Requirements

5. In the NPRM, we proposed to rewrite the rules (Section 81.351) governing the eligibility requirements for Limited Coast stations and Marine Utility stations to specifically include companies servicing radio equipment on non-commercial vessels. This rule amendment was proposed in response to a number of requests from such users. This minor rule amendment did not generate any adverse public comment and is therefore being made.

A3A Emission

6. The third change proposed in the NPRM concerned the requirement in Parts 81 and 83 of our rules that single sideband radios have an A3A emission capability. Manufacturers of this equipment stated the there is no need for such voice single sideband reduced carrier operation. Rockwell International Corporation (Rockwell) filed comments in support of the Commission's proposal to remove the A3A capability. Rockwell pointed out that the International Telecommunication Union at its 1983 Mobile Services World Administrative Radio Conference eliminated similar requirements from its Radio Regulations. We are therefore removing this obsolete requirement from our rules as part of our general effort to eliminate unnecessary and outmoded regulations. However, there will be no prohibition against the continued manufacture and use of equipment with this emission capability, and existing equipment will not be affected in any way. We also have taken this opportunity to reorganize and clarify § 83.137 (Modulation requirements) which previously contained, among other things, the A3A requirement.

8. We have determined the Section 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this rule making proceeding because it limits the use of only one channel in the Puget Sound waters. There are ten other channels available for this use, and the limitation only affects the part of the sound within 75 miles of the U.S./Canada border. Therefore, it will not have a significant economic impact on a substantial number of small entities. The other two changes will have a small beneficial effect on large and small business alike.

9. Regarding questions on matters convered in this document contact Maureen Cesaitis, (202) 632–7175.

10. Accordingly, it is ordered, That under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), the Commission's rules are amended as set forth in the Appendix, effective February 27, 1984.

11. It is further ordered, That a copy of this Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

12. It is further ordered, That this proceeding in terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2, 81, and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS GENERAL RULES AND REGULATIONS

Section 2.106 is modified by revising footnote US223 as follows:

§ 2.106 Table of frequency allocations.

* * * * *

United States Footnotes

* * * * *

US223 Within 75 miles of the United States/Canada border on the Great Lakes, the St. Lawrence Seaway, and the Puget Sound and the Strait of Juan de Fuca and its approaches, use of coast transmit frequency 162.025 MHz and ship station transmit frequency 157.425 MHz (VHF maritime mobile service Channel 88) may be authorized for use by the maritime service for public correspondence.

* * * * *

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

§ 81.142 [Amended]

1. Section 81.142 is amended by removing paragraph (c)(3).

2. Section 81.351 is amended by adding new paragraphs (a)(7) through (a)(9), removing paragraph (b), and redesignating paragraph (c) as paragraph (b), and revising it, as follows:

§ 81.351 Supplemental eligibility requirements.

(a) * * *

(7) A person controlling moorage facilities,

(8) A person performing the function of service and supply to vessels other than commercial transport vessels,

(9) A nonprofit corporation or association organized to provide noncommercial communications to vessels other than commercial transport vessels.

(b) Each application for station authorization for a limited coast station or a marine-utility station shall be accompanied by a written statement in detail sufficient to indicate clearly the applicant's eligibility under paragraph (a) of this section.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. Section 83.137 is amended by revising paragraphs (a), (b) and (c) introductory text and (c)(3), by adding a new paragraph (c)(4) and (d), and by removing paragraphs (e), (f), (g), (h), (i), and (j), including the footnote.

§ 83.137 Modulation requirements.

(a) Transmitters must comply with the following emission requirements:

(1) Transmitters using A3 emission shall be capable of proper technical operation with modulation of 75 percent on peaks but not more than 100 percent on negative peaks. Each such transmitter shall be so adjusted that the transmission of speech and the international radiotelephone alarm

signal, if provision is made for transmission of the signal, normal produce peak modulation percentages within those limits.

(2) Transmitters using F3 emission in the band 156–162 MHz, or emissions F1, F3, F4 in the band 218–220 MHz, shall be capable of proper technical operation with a frequency deviation of ±5 kHz, which is defined as 100 percent modulation. In general, transmitters shall be adjusted so that transmission of speech normally produces peak modulation percentages between 75 and 100 percent.

(b) Radiotelephone transmitters shall automatically prevent modulation in excess of 100 percent when using A3 or F3 emissions. This requirement shall not apply to survival craft station transmitters or to transmitters not required to be type accepted or with a transmitter power not exceeding 3 watts. In the event the operation of any licensed radiotelephone transmitter causes harmful interference to any authorized radio service by reason of excessive modulation, the Commission may, in its discretion, require that the use of such transmitter be discontinued until it will automatically prevent modulation in excess of 100 percent.

(c) Single sideband transmitters shall be capable of operating as follows:

* * * * *

(3) In single sideband operation, the sideband on the higher frequency side of the carrier frequency shall be transmitted.

(4) Single sideband transmitters shall automatically limit the peak envelope power to the authorized transmitter power.

(d)(1) Emergency position indicating radiobeacon (EPIRB) stations operating on the frequencies 121.5 and 243 MHz shall employ a distinctive emission consisting of amplitude modulation of the carrier with an audio frequency sweeping downward over a range of not less than 700 Hz, within the range 1600 to 300 Hz, with a sweep rate between 2 and 4 times per second. The modulation applied to the carrier shall be in accordance with that specified in the Radio Technical Commission for Aeronautics (RTCA) Document Numbers D0–145 or D0–146.

(2) EPIRB stations operating on the frequencies 156.75 and 156.8 MHz shall employ the international Radiotelephone Two Tone Alarm signal to frequency modulate the carrier frequencies.

(i) The EPIRB signal transmitted on the frequencies 156.75 and 156.8 MHz shall consist of two substantially sinusolidal audio frequency tones transmitted alternately. One tone shall have frequency of 2200 Hz and the other a frequency of 1300 Hz, the duration of each tone shall be 250 milliseconds. The frequency tolerance of the tones and the tolerance of the tone duration shall be ±5 percent.

(ii) An EPIRB sequence consists of 6 time periods of specified durations. The EPIRB shall transmit during 4 of the time periods and remain silent during the other 2. The nominal period of each successive sequence shall be increased by extending the duration of the "off" periods (t_4 to t_6) during which the device is not transmitting a signal. The duration to t_4 and t_6 shall be incrementally increased in proportion to the time the device is continuously activated. The duration of each time period with a ±5% tolerance, the number of sequences, and the frequency are specified in the table below.

Time period	Transmission frequency in MHz.	Duration in seconds (No. of sequences)
1	1.5	156.8
2	14.5	156.75
3	1.5	156.8
4	(1) 40.0	None
	(2) 80.0	
	(3) 160.0	
	(4) 320.0	
5	14.5	156.75
6	(5)	None

(1) 16 sequences.
(2) 32 sequences.
(3) 64 sequences.
(4) 83.2 sequence.
(5) Same as time period 4.

2. Section 83.351 is amended by revising paragraphs (b) (33) and (44) to read as follows:

§ 83.351 Frequencies available.

* * * * *

(b) * * *

(33) Except within 75 miles of the United States/Canada border in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, the Great Lakes, and the St. Lawrence Seaway, available for intership and commercial communications. Except in the Puget Sound and the Strait of Juan de Fuca and its approaches and the Great Lakes, also available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

* * * * *

(44) Within 75 miles of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, on the Great Lakes, and the St. Lawrence Seaway, 157.425 MHz is half of the duplex pair designated as Channel 88. In this area, Channel 88 is available for use by ship stations for public correspondence communications only.

* * * * *

3. In Section 83.1012, paragraph (b) is amended by adding new language to footnotes 1 and 2, the revised footnotes read as follows:

§ 83.1012 (VHF Marine Rule 12) What channels may I use?

* * * * *

(b) * * *

[1] Not available in the Great Lakes, the St. Lawrence Seaway, or the Puget Sound and the Strait of Juan de Fuca and its approaches.

[2] Only for use in Great Lakes, St. Lawrence Seaway, and Puget Sound and the Strait of Juan de Fuca and its approaches.

* * * * *

[FR Doc. 84–7218 Filed 3–27–84; 8:45 am]
BILLING CODE 8712–01–M

47 CFR Part 73

[MM Docket No. 83–493; RM–4393]

FM Broadcast Station in Gulf Breeze, Florida; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 237A to Gulf Breeze, Florida, as its first FM channel assignment in response to a petition filed by Eugene Hobdy.

DATE: Effective: May 29, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Gulf Breeze, Florida), MM Docket No. 83–493, RM–4393.

Adopted: March 12, 1984.
Released: March 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 27567, published June 16, 1983, issued in response to a petition for rule making filed by Eugene Hobdy ("Hobdy") proposing to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, by assigning FM Channel 237A to Gulf Breeze, Florida, as its first FM channel assignment. In repsonse to the *Notice*, Hobdy filed comments and restated his intention to apply for FM Channel 237A at Gulf Breeze. Supporting comments were filed by Breeze Broadcasting Corp. also

indicating an interest in applying. Capitol Broadcasting Corp. ("Capitol"), licensee of FM Station WKSJ, Mobile, Alabama, filed opposing comments and a counterproposal. Reply comments were filed by Hobdy.

2. Channel 237A can be assigned to Gulf Breeze in conformity with the Commission's minimum distance separation requirements at a site located approximately 5.6 miles northeast of the city. As stated in the *Notice*, this restriction is necessary to avoid short-spacing to the present site of Station WKSJ–FM (Channel 235), Mobile, Alabama.

3. In its comments, Capitol states that on July 5th, 1983, it filed an application to change the transmitter site of WKSJ–FM. Capitol argues that the assignment of Channel 237A to Gulf Breeze will preclude the proposed relocation of WKSJ because of a 26.6 mile short-spacing. As a counterproposal, Capitol suggests that pursuant to the proposed guidelines in Docket No. 80–90, there are several channels available in Gulf Breeze which would allow both the relocation of WKSJ–FM and the assignment of a new channel to Gulf Breeze.

4. In reply comments, Hobdy opposes the counterproposal on the grounds that requested channel assignments in Docket 80–90 may not be made for several years and proposals for Gulf Breeze would have to compete with numerous other proposals within the general rule making. Consequently, Hobdy asserts, if the counterproposal is adopted it may be several years before Gulf Breeze would have an available FM channel. Hobdy concludes that, Section 307(b) of the Communications Act of 1934, as amended, requires that a move of the WKSJ transmitter-antenna site must wait until the Docket 80–90 standards are adopted so that Hobdy's proposal to bring a first FM service to Gulf Breeze may be adopted immediately.

5. We agree with Hobdy, that Capitol's reliance on the channels that will be made available pursuant to Docket 80–90 is premature. Although the Commission adopted a *Report and Order* in BC Docket 80–90, which will authorize new frequencies nationwide, those rules are not effective as yet. The Commission is expecting to make these rules effective early this year. Thereafter, the public will be notified when petitions based on 80–90 rules would be accepted.

6. Concerning Capitol's counterproposal, the issue here is whether Capitol's site preference should be permitted to take precedence over an assignment which could provide Gulf Breeze with its first local FM service? In *Lockhart, Texas*, we held *inter alia*, that a site preference for an existing station is not sufficient justification to deny a first assignment to another city. See, *Report and Order*, 81 F.C.C. 2d 171 (1980). We believe *Lockhart* is controlling here. Capitol offers no evidence demonstrating how the public interest will be better served by its proposed move. Furthermore the new channel availability envisioned under the rules adopted in BC Docket 80–90 would delay service at Gulf Breeze for an undetermined period. Thus we believe the public would be benefitted by the assignment of FM Channel 237A to Gulf Breeze, as its first assignment.

7. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 29, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows for the community listed:

City	Channel No.
Gulf Breeze, Florida	237A

8. It is further ordered that this proceeding is terminated.

9. For further information concerning this proceeding contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–8319 Filed 3–27–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 21130–239]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment opening area to fishing.

SUMMARY: NOAA issues this technical amendment deleting from regulations the previously closed area known as the "Philadelphia and du Pont closure," thereby reopening an area closed to surf clam and ocean quahog fishing due to environmental degradation. The area is being reopened because studies conducted by the U.S. Public Health Service show that the level of shellfish contamination has dropped to the extent that shellfish in the area no longer pose a health risk. Reopening of the area will allow fishermen to harvest any legal-sized surf clams or ocean quahogs which may occur in the area.

EFFECTIVE DATE: March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Surf Clam Management Coordinator, National Marine Fisheries Service, Northeast Region, State Fish Pier, Gloucester, Massachusetts 01930; telephone 617–281–3600.

SUPPLEMENTARY INFORMATION: Final regulations implementing Amendment 3 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries were published on January 29, 1982 (47 FR 4268). Section 652.23(a) of the regulations provides for the closure of areas to surf clam and ocean quahog fishing because of adverse environmental conditions. That section also provides that the areas will remain closed until the Secretary of Commerce determines that the adverse environmental conditions have been corrected. One of the identified closed areas, described at § 652.23(a)(3), is the ocean dumpsite known as the Philadelphia and du Pont Closure. The area was closed to shellfishing in 1976 because of the presence of chemical and sewage sludge contaminants. Waste disposal in the area ceased in 1980. The Public Health Service of the Department of Health and Human Services is the agency which monitors recovery of degraded dumpsite areas. Sampling was conducted by the Northeast Technical Services Unit of that agency in 1983, which analysed for the presence of coliform bacteria and found excellent bacteriological water quality. The analysis showed that water conditions had nearly returned to pre-dumping conditions, and that shellfish harvesting in the area no longer posed a health risk. Accordingly, the Public Health Service has cancelled its notice of closure of the area to shellfish harvesting, and the Secretary is reopening the area to surf clam fishing as stipulated in the surf clam fishery regulations. Also, § 652.23 of the implementing regulations is amended by deleting § 652.23(a)(3) and redesignating (a)(4) as (a)(3).

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: March 23, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 652—[AMENDED]

For the reasons set out in the preamble, NOAA is amending 50 CFR Part 652 as set forth below:

1. The authority citation for Part 652 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 652.23 [Amended]

2. Section 652.23 is amended by removing the existing paragraph (a)(3) and redesignating existing paragraph (a)(4) as (a)(3).

[FR Doc. 84-8273 Filed 3-26-84; 12:55 p.m.]

BILLING CODE [illegible]

Proposed Rules

Federal Register
Vol. 49, No. 61
Wednesday, March 28, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Notice of extension of comment period on advance notice of proposed rulemaking.

SUMMARY: On February 10, 1984, SBA published in the **Federal Register** an Advance Notice of proposed rulemaking regarding Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies (see 49 FR 5230)

That publication provided that comments on the advance notice would be received for a period of 60 days from date of publication. This notice extends the comment period pertaining to the advance notice for an additional 30 days due to request from industry for additional time.

DATE: Comments on the above-referenced proposed rule must be received by May 10, 1984.

ADDRESS: Written comments should be directed to Mr. Thomas C. Bresnan, Staff Accountant, Small Business Administration, Office of Finance and Investment, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas C. Bresnan, telephone (202) 653–6782.

SUPPLEMENTARY INFORMATION: In order to provide more time for public comment on the above-referenced proposed rule, SBA is hereby extending the comment period relative to the proposal for an additional 30 days. The public is encouraged to supply comments in writing to the address indicated above so that a complete record on this important advance notice can be established.

Dated: March 19, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-8278 Filed 3-27-84; 8:45 am]
BILLING CODE [illegible]

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 832 3100]

Adria Laboratories, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violation of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Dublin, Ohio manufacturer and seller of over-the-counter drugs, among other things, to cease promoting "Efficin," or any other over-the-counter internal analgesic containing magnesium salicylate, by representing that the product contains no aspirin or by comparing the product's safety to any product containing aspirin, unless such representations are accompanied by prescribed disclosure warnings and substantiated by reliable and competent scientific evidence.

DATE: Comments must be received on or before May 29, 1984.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PA, T. Bringier McConnell, Washington, D.C. 20580, (202) 724–1096.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Over-the-counter drugs, Trade practices.

Before Federal Trade Commission

[File No. 832–3100]

Agreement Containing Consent Order To Cease and Desist

In the matter of Adria Laboratories, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Adria Laboratories, Inc. ("Adria"), a corporation, and it now appearing that Adria, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Adria Laboratories, Inc., its duly authorized officer, its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Adria Laboratories, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 5000 Post Road, in the City of Dublin, State of Ohio.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The

Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of the factual allegations of the proposed complaint, except for jurisdictional facts, or that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Adria Laboratories, Inc. a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of Efficin or any other over-the-counter internal analgesic containing magnesium salicylate affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that the product contains no aspirin, or any other representation, directly or by implication, comparing the product's safety to any product containing aspirin, unless the following statement is clearly and promiently disclosed:

A. "Efficin (or other product's name) has side effects similar to aspirin."

B. If Efficin's (or other product's) label discloses that consumers should not take the product if they have stomach distress, ulcers or bleeding problems except under the direction and supervision of a physician, respondent may substitute the following statement for the disclosure required in PART I(A): "Efficin (or other product's name) is similar to aspirin. Read label including warnings."

C. If Efficin's (or other product's) package insert discloses that consumers should not take the product if they have stomach distress, ulcers or bleeding problems except under the direction and supervision of a physician, respondent may substitute the following statement for the disclosure required in Part I(A): "Efficin (or other product's name) is similar to aspirin. Read and save package insert including warnings."

D. Such other statment approved by the Federal Trade Commission in advance, or

E. Such other statement as respondent can demonstrate (based on consumer surveys whose design is adequate and previously approved by the Federal Trade Commission) will convey the same messages as conveyed by the statement in Parts I(A), I(B), or I(C) as applicable.

Provided that it shall not violate this Part to distribute packages of Efficin that were fully packaged as of October 18, 1983, that do not contain a disclosure statement required by this Part.

II

A. It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, packaging, offering for sale, sale, or distribution of any over-the-counter drug product affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning the safety of such product or from comparing any such product to any product or products of one or more competitors concerning safety, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of reliable and competent scientific evidence that substantiates each such representation.

B. To the extent the evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" for purposes of Part II (A) only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

III

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IV

It is further ordered that respondent shall forthwith distribute a copy of this order to each of its operating divisions involved in the marketing of over-the-counter drugs.

V

It is further ordered that respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VI

It is further ordered that, for the period of three years after it last disseminated the advertisements of the products covered by this order, respondent shall maintain accurate records:

1. Of all materials that were relied upon by respondent in disseminating any representation covered by this order.

2. Of all test reports, studies, surveys, or demonstrations in its possession or control or of which it has knowledge that contradict any representation made by respondent that is covered by this order.

These records may be inspected by the staff of the Commission upon reasonable notice.

Analysis Of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Adria Laboratories, Inc. ("Adria").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges the respondent Adria with disseminating advertisements containing several false, misleading and unsubstantiated representations regarding Efficin. The complaint alleges that, contrary to fact, respondent's advertisements claimed that Efficin is not associated with most of the side effects and contraindications as aspirin. In addition, the complaint charges respondent with advertising the claims that use of Efficin poses a lesser risk of suffering the side effects associated with aspirin than does use of aspirin and that the side effects associated with both aspirin and Efficin are less severe with Efficin than with aspirin. The advertisements represented, directly or by implication, that respondent had a reasonable basis for these claims when in fact respondent did not rely on a reasonable basis for them. Accordingly, disseminating these representations constitutes unfair or deceptive acts or practices.

The complaint also alleges that Adria's advertising for Efficin failed to disclose that Efficin is similar to aspirin, and that the ingredient in Efficin has been associated with many of the same side effects and contraindications as aspirin. In light of respondent's claims about the relative safety of Efficin over aspirin, respondent's failure to disclose the similarities between Efficin and aspirin in its advertising is an omission of a material fact, and consequently this advertising is false within the meaning of Section 12 of the Federal Trade Commission Act.

The consent order contains various provisions designed to remedy the alleged advertising violations.

Part I of the order prohibits Adria from promoting Efficin or any other over-the-counter internal analgesic containing magnesium salicylate by representing that the product contains no aspirin or by making any representation that otherwise compares the product's safety to any product containing aspirin unless certain information is clearly and prominently disclosed. Specifically, one of the three following disclosures must be made.

(1) "Efficin (or other product's name) has side effects similar to aspirin."

(2) If Efficin's (or other product's) label discloses that consumers should not take the product if they have stomach distress, ulcers or bleeding problems except under the direction and supervision of a physician, respondent may substitute the following statement: "Efficin (or other product's name) is similar to aspirin. Read label including warning."

(3) If Efficin's (or other product's) package insert discloses that consumers should not take the product if they have stomach distress, ulcers or bleeding problems except under the direction and supervision of physician, respondent may substitute the following statement: "Efficin (or other product's name) is similar to aspirin. Read and save package insert including warnings."

Alternatively, Adria may use any disclosure approved in advance by the Commission or any statement that respondent can demonstrate (based on adequately designed consumer surveys approved in advance by the Commission) will convey the same message as the statements specified in the Paragraph I of the order. Part I permits Adria to distribute Efficin which was fully packaged as of October 18, 1983, without making the disclosures on the product packaging that would otherwise be required by Part I. Any advertising disseminated during the period this inventory is distributed, however, would not be exempted from the disclosure requirements contained in Part I. Rather, the order proviso, together with the requirements found in Part I, requires Adria to make the disclosure statement set out in Paragraph I(A) (or an equivalent statement, pursuant to Paragraphs I(D) or I(E)) in connection with any advertising claims covered by Part I of the order.

Paragraph II (A) of the order prohibits Adria from promoting Efficin or any other over-the-counter internal analgesic containing magnesium salicylate by making any representation, directly or by implication, concerning the safety of the product or comparative safety of competitive products unless respondent has a reasonable basis for these representations. Paragraph II(A) also specifies that a reasonable basis consists of reliable and competent scientific evidence that substantiates each representation. To the extent that respondent's reasonable basis consists of scientific or professional tests and studies Paragraph II(B) requires that they be conducted and evaluated objectively by qualified persons using generally accepted procedures.

Paragraph III requires respondent to notify the Commission at least thirty (30) days prior to any proposed change in respondent that may affect compliance obligations arising out of the order.

Paragraph IV requires respondent to distribute a copy of the order to each of its operating divisions involved in the marketing of over-the-counter drugs.

Paragraph V requires respondent to file a compliance report with the Commission sixty (60) days after the order becomes final.

Paragraph VI requires respondent to maintain records of all substantiation related to the requirements of the order for three (3) years after the dissemination of any advertisements. These records may be inspected by Commission staff on reasonable notice.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 84-8280 Filed 3-27-84; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Proposed Rule To Regulate Under the Consumer Product Safety Act Risks of Injury That May Be Associated With Baby Bassinets Having Legs That Collapse

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has learned of instances where baby bassinets have collapsed because their supporting legs gave way. As a result, infants occupying the bassinets have fallen and suffered injuries. Should regulatory action become necessary to address any risk of injury associated with baby bassinets having legs that collapse, the Commission proposes to regulate any such risk of injury under the provisions of the Consumer Product Safety Commission Act (CPSA) rather than the Federal Hazardous Substances Act (FHSA). The Commission preliminarily determines that this transfer is in the public interest because, if the Commission finds regulation of such risks of injury is necessary, public notification and remedial action can be accomplished more effectively and expeditiously under the CPSA than under the FHSA.

DATE: Comments concerning this proposal must be received in the Office of the Secretary by April 27, 1984.

ADDRESS: Written comments should be addressed to the Secretary of the Commission, Sadye E. Dunn, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Lynn Lichtenstein, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION: The Commission proposes to regulate under the CPSA rather than the FHSA possible risks of death and injury such as concussion, fractured skull, hemorrhage, anoxia and related trauma associated with baby bassinets having legs that collapse.

Section 30(d) of the CPSA (15 U.S.C. 3079(d)) on which this proposed rule is based, provides that a risk of injury associated with a consumer product which could be eliminated or reduced to a sufficient extent by action under the FHSA, may be regulated under the CPSA if the Commission, by rule, finds that it is in the public interest to regulate such risks of injury under the CPSA.

The Commission has examined the applicable statutes and has considered the facts regarding possible risks of death or injury associated with baby bassinets having legs that collapse thus endangering the infant using the bassinet. The Commission has preliminarily determined that it is in the public interest to regulate under the CPSA rather than the FHSA the risks of injury noted here because public notification and remedial action can be accomplished more effectively and expeditiously under the CPSA.

A. Background

The product—A bassinet is a small sleeping container used in the home and elsewhere for infants during the first several months after birth. A bassinet may be stationary or equipped with wheels for mobility. To enhance portability and storage in small spaces, may bassinets have folding legs.

The size of the sleeping container may vary, but it is usually about 36 inches long by about 20 inches wide by about 12 inches deep. The sleeping container is often made of wicker or plastic shaped like wicker, and resembles a basket.

The sleeping container is mounted on four legs, which may have caster wheels to facilitate movement from place to place. (See figure 1.) Some bassinets are constructed with the two legs at each end connected by a harizontal cross member which allows the legs to fold as a pair. On these bassinets, each leg in a pair may have an individual leg brace consisting of two steel links connected by a center pivot. (See figure 1.) When the legs of these bassinets are fully extended, the links of the leg brace form a straight line. The links of the brace may have intermeshing dimples or some other mechanism for locking the brace. (See figure 2A.) When the two links of the brace are moved in an upward direction, the legs will fold under the sleeping container. (See figure 2B.)

When a leg brace is in a straight line it can resist compressive forces either from movement of the infant within the bassinet or an adult pushing the bassinet from one room to another. If a leg brace which is designed to reach a straight line is not fully opened into its straight line position, or if the interlocking dimples are small and shallow, the legs of the bassinet can collapse inward (toward the center of the bassinet). Bending stress on the links due to offset at their outer ends may also cause the leg braces to separate and allow folding of the links either upward or downward. Folding of the links in turn results in collapse of the legs and the bassinet. Collapse of the legs may also be more likely when the brace is constructed of thin-gauge steel.

The hazard—The Commission has learned of the deaths of three infants that are associated with collapse of baby bassinets. The reports indicate that, while the children were in them, the bassinets' legs collapsed. Each infant may have suffered internal cranial hemorrhaging from the blow to the head when falling, and anoxia (inability to breathe) because of being thrown head downward and remaining in that position. From consumer complaints and Commission investigations, the Commission has also learned of additional incidents involving bassinets having legs that collapsed which resulted in minor or no injuries.

All these incidents, fatal or otherwise, appear to have occcured after the baby moved about in the bassinet, or when an adult pushed the bassinet from one room to another over doorsills or other routine obstructions. The incidents indicate that the braces on the legs of the bassinets loosened, detached, or otherwise failed to perform their intended function of keeping the legs fully extended so that the bassinet could be moved around in the home until such time as the user desired to fold the legs under the sleeping container.

Based on the nature of the occurrences, it appears that an infant can suffer concussion, fractured skull, hemorrhage and other related injuries because of the unanticipated collapsing of the legs on some bassinets. The staff is continuing to update its information on injuries associated with leg collapse of baby bassinets.

B. Regulation Under FHSA

At this time, the baby bassinets described above could be subject to regulation by the Consumer Product Safety Commission under provisions of the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*) as articles intended for use by children.

In accordance with provisions of section 3 (e) through (i) of the FHSA (15 U.S.C. 1262 (e), (f), (g), (i)), the Commission could begin a proceeding for the issuance of a rule to declare that the bassinets described in this notice present a mechanical hazard. If issued on a final basis, such a rule would have the effect of classifying these children's articles as "banned hazardous substances" as that term is used in section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)), and would prohibit the distribution or sale of these products in the United States, as well as their importation into this country. If a children's article presents an "imminent

hazard to the public health," provisions of section 3(e)(2) of the FHSA (15 U.S.C. 1262(e)(2)) authorize the Commission to issue an immediate order declaring the product to be a banned hazardous substance pending completion of a proceeding to issue a banning rule.

A final rule issued under provisions of sections 3 (e) through (i) of the FHSA would also make the products in question subject to provisions of section 15 of the FHSA (15 U.S.C 1274). That section authorizes the Commission to determine, after affording all interested persons opportunity for a hearing, that notification to the public of the hazard presented by a product which is a "banned hazardous substance" is necessary in order to adequately protect the public. That section also authorizes the Commission, after affording all interested persons opportunity for a hearing (which could be combined with a hearing regarding the need for public notification), to require the manufacturer, distributor or dealer of a product which is a banned hazardous substance to elect to repair or replace the product, or to refund the purchase price of the product.

However, the provisions of section 15 of the FHSA concerning public notification and corrective action would be applicable to the products which are the subject of this notice only if the Commission had first issued a rule under provisions of sections 3 (e) through (i) of the FHSA to announce the Commission's determination that the products present a mechanical hazard or had published an order to declare that such products present an imminent hazard to the public health.

A proceeding to issue a rule under provisions of sections 3 (e) through (i) of the FHSA is initiated by publication of an advance notice of proposed rulemaking in the **Federal Register** to invite comments from all interested persons about the risk of injury associated with the product which is the subject of the proceeding and possible means of addressing that risk of injury, including voluntary standards now in existence or which might be developed. If, after consideration of all information received in response to the advance notice of proposed rulemaking, the Commission decides to continue the proceeding, publication of a second notice in the **Federal Register** is required to propose the rule and invite written comments on the proposal. The Commission must then analyze all comments received in response to the proposal; describe the costs and benefits of the rule; again consider alternative means to address the risk of injury, including voluntary standards; and publish a third notice in the **Federal Register** to issue the rule on a final basis.

In summary, the Commission is authorized under the FHSA to issue a regulation declaring baby bassinets having legs that collapse to be banned hazardous substances. The rulemaking must consist of three stages—an advance notice of proposed rulemaking with public comment, a notice of proposed rulemaking with public comment, and a final rule that analyzes the public comments and includes a detailed regulatory analysis. Once rulemaking is completed, a process that could take two or more years, the Commission could initiate a proceeding to seek public notice and recall of the banned bassinets, a process which itself would likely take about one year. In appropriate circumstances, the Commission could declare a product to be an imminent hazard to the public health, either before or during the rulemaking proceeding, which would have the effect of immediately banning the product and allowing the public notice and recall proceeding to be started. Whether or not a product is declared to be an imminent hazard, however, the rulemaking is expected to be continued.

C. Regulation Under CPSA

The CPSA has provisions which authorize the Commission in certain cases to obtain an administrative order for public notification of the hazard presented by a product and for repair, or replacement of the product, or refund of the purchase price of the product without any necessity of first completing a rulemaking proceeding. Under the FHSA, the Commission may not initiate a proceeding to obtain public notification or corrective action with regard to a hazard presented by a toy or children's article until the Commission has issued a final banning rule (unless the Commission publishes an order declaring the product to be an imminent hazard to the public health).

Section 15 of the CPSA (15 U.S.C. 2064) confers upon the Commission the authority to order public notification of the hazard presented by a product if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that notification is required in order to adequately protect the public from that substantial product hazard. Additionally, section 15 of the CPSA authorizes the Commission to order any manufacturer, importer, distributor, or retailer of a product to elect to repair or replace the product, or to refund the purchase price of the product, if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that issuance of such an order is in the public interest.

If the products described in this notice were subject to regulation under the CPSA, no requirement for rulemaking would exist in order to invoke the provisions of section 15 of that Act.

Additionally, provisions of section 12 of the CPSA (15 U.S.C. 2061) authorize the Commission to file an action in a United States district court against a manufacturer, importer, distributor, or retailer of a consumer product which presents an imminent and unreasonable risk of death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund of the purchase price. The court also has authority to order a firm to undertake extensive notification efforts to advise purchasers and the general public of the nature of the risk and of the firm's obligation for remedial action. The Commission may file an action under section 12 of the CPSA without any requirement for having first undertaken a rulemaking proceeding. No corresponding provisions exist in the FHSA.

In summary, under the CPSA, the Commission may regulate a product in one or more different ways. First, after giving interested persons an opportunity for a hearing, the Commission may order that ntoice and recall be provided by firms manufacturing, importing, or distributing a product that presents a substantial product hazard. Unlike the FHSA, there are no requirements that the product first be declared a banned hazardous substance or that it first be subject to a consumer product safety rule. Second, the Commission may file an action in a United States district court if a product presents an imminent and unreasonable risk of death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund of the purchase price. Third, the Commission may undertake rulemaking to declare the product a banned hazardous product or to subject the product to a consumer product safety standard.

Because notification to the public of any hazard which may be presented by the products described in this notice and remedial action with regard to those products could be accomplished more effectively and expeditiously under the CPSA than under the FHSA, the

Commission preliminarily determines that it would be in the public interest to regulate under the CPSA rather than the FHSA any risk of strangulation which may be associated with the baby bassinets described in this notice.

D. Impact of Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. Section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

The regulation proposed below, if issued on a final basis, will not by itself impose any legal or other obligation on any person or firm. The rule would simply express the Commission's determination that any action taken to eliminate or reduce the risk of injury with which it is concerned will be taken following the procedures set forth in the CPSA rather than the FHSA.

If the Commission issues a final rule based on the proposal published below, and then determines that it should act to eliminate or reduce the risk of injury which is the subject of the rule, the Commission will be required to initiate the follow through to completion appropriate judicial or administrative proceedings under one or more sections of the CPSA before it can impose any obligation on any person or firm.

Since a final rule based on the proposal imposes no obligation on any person or firm, the Commission hereby certifies that it will have a significant economic impact on a substantial number of small businesses.

E. Environmental Considerations

The regulation proposed below falls within the categories of the Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

F. Conclusion and Proposal

After consideration of the information set forth above, and provisions of the FHSA and the CPSA, the Commission preliminarily finds that if regulatory action is needed to address risks of death and injury associated with baby bassinets having legs that collapse, it would be in the public interest to regulate such risks under the CPSA rather than under the FHSA. The FHSA would allow the product to be banned by a rulemaking procedure that would likely take at least two years. Following that, the Commission could, if appropriate, begin a proceeding to order firms to give notice of the risk and to recall the product, a process which itself could take about one year. Thus, if public notice and recall were found to be the appropriate remedies, it would take about three years to obtain these remedies under the FHSA. Although the process could be shortened, as discussed above, by declaring the product to be an imminent hazard to the public health, the Commission does not believe, based on presently available information, that such action would be appropriate for these products. Under the CPSA, as discussed above, no rulemaking is necessary before public notice or recall is sought. Thus, if public notice or recall is found to be necessary because the product presents a substantial product hazard, either or both could be obtained at least two years sooner under the CPSA.

For these reasons, the Commission hereby proposes to regulate under the CPSA rather than the FHSA all possible risks of death or injury which may be associated with bassinets having legs that collapse. Until issuance of any final regulation under section 30(d) of the CPSA, the Commission has authority to regulate under the FHSA any risk of injury described in this notice which bassinets may present. Any other risks of injury that may be associated with this product continue to be subject to regulation under the FHSA.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children.

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

Therefore, under provisions of the Consumer Product Safety Act (section 30(d), Pub. L. 92–573, 86 Stat. 1207, as amended Pub. L. 94–284, 90 Stat. 503, Pub. L. 97–35, 95 Stat. 703; 15 U.S.C. 2079(d)), the Commission proposes to amend the Code of Federal Regulations, Title 16, Chapter II, Subchapter B, Part 1145, by adding a new § 1145.15, as follows:

* * * * *

§ 1145.15 Baby bassinets having legs that collapse; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act, risks of death or injury associated with baby bassinets having hinged legs that collapse when the braces on such legs give way, become loose, detach, or otherwise fail to perform their intended function of keeping the legs fully extended until such time as the user desires to fold the legs.

(b) Therefore, if the Commission finds regulation to be necessary, the risks of death or injury associated with baby bassinets having any of the failures described in § 1145.15(a) shall be regulated only under one or more provisions of the Consumer Product Safety Act.

Interested persons are invited to submit written comments by April 27, 1984. Comments may be accompanied by written data, views, and arguments, and should be addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Received comments may be seen in the Office of the Secretary, Eighth Floor, 1111 18th Street, NW., Washington, D.C., between 8:30 a.m. and 5:00 p.m., Monday through Friday.

(Sec. 30(d), Pub. L. 92–573, 86 Stat. 1207, as amended Pub. L. 94–284, 90 Stat. 503, Pub. L. 97–35, 95 Stat. 703; 15 U.S.C. 2079(d))

Dated: March 15, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

BILLING CODE 6355-01-M

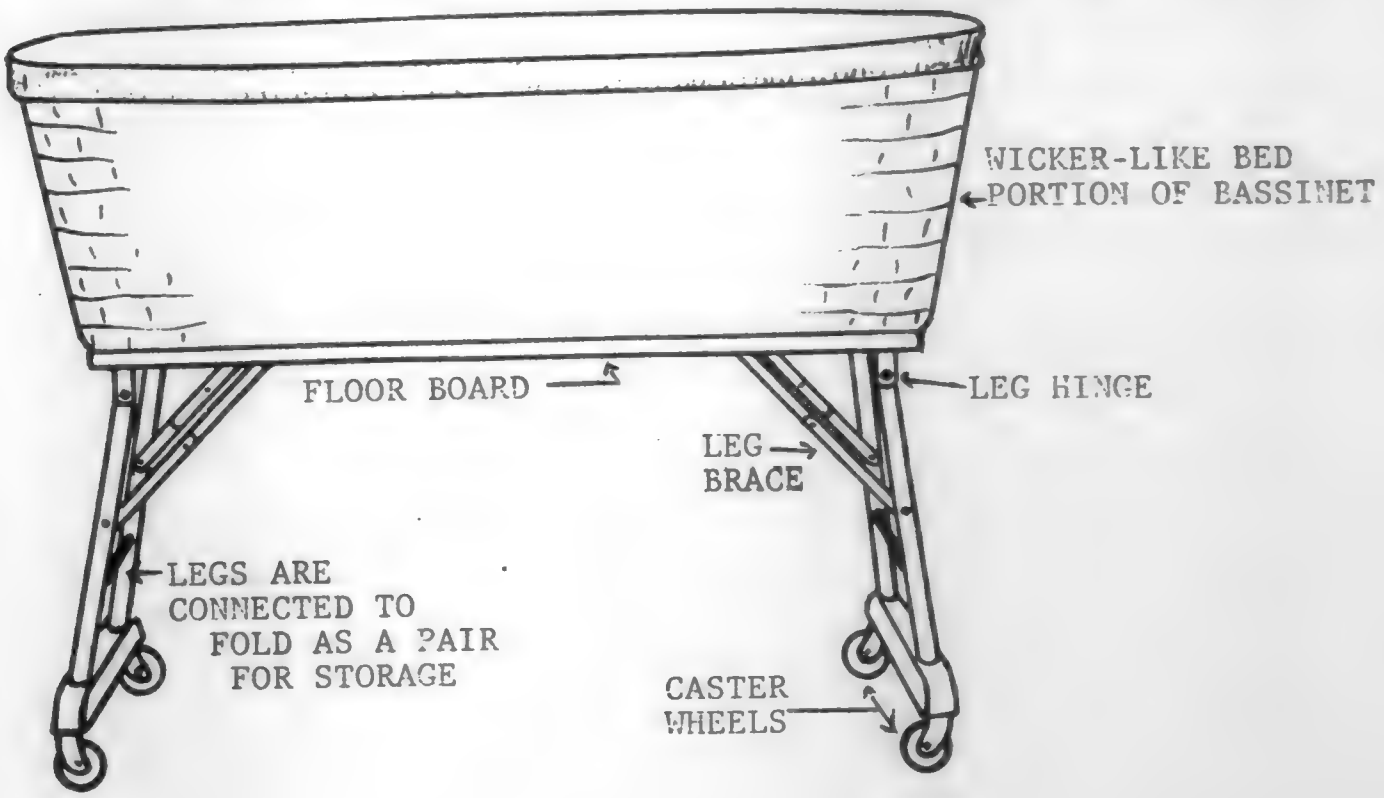

FIGURE 1 - GENERAL ARRANGEMENT OF A TYPICAL BASSINET

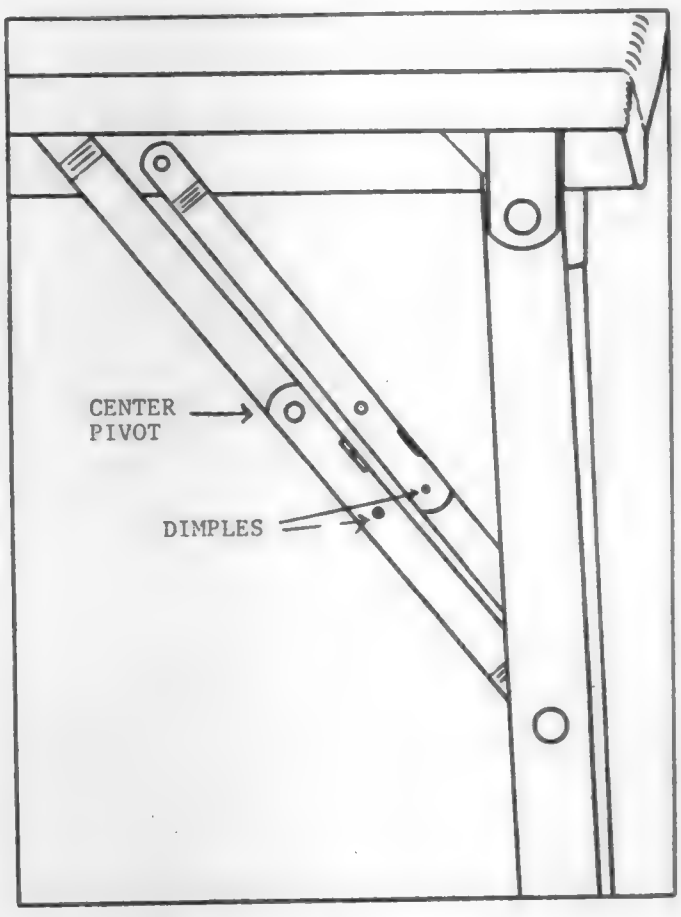

FIGURE 2A - LEG BRACES IN "LOCKED" POSITION

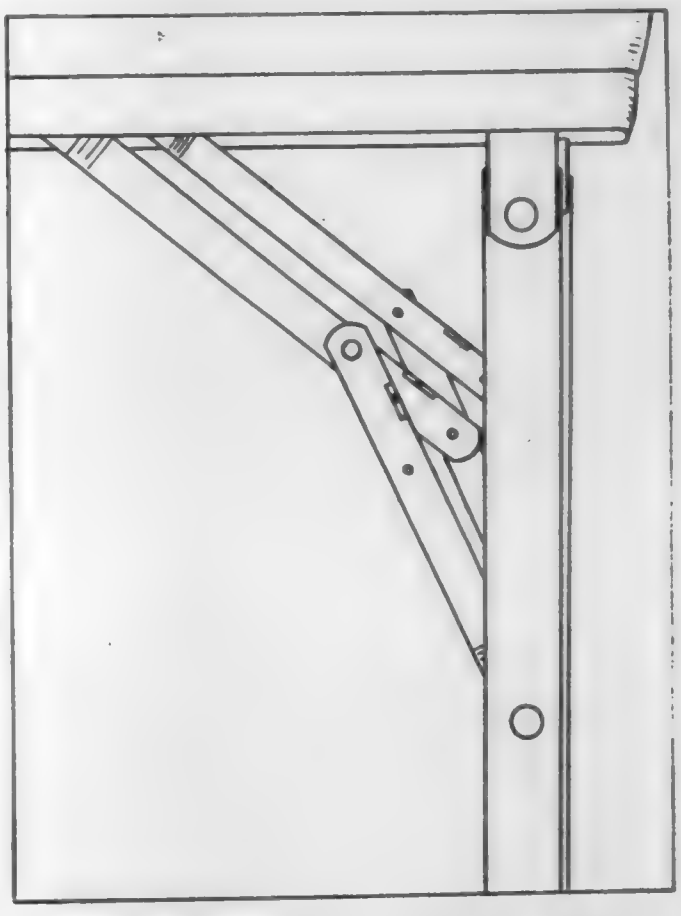

FIGURE 2B - LEG BRACES IN "UNLOCKED" POSITION

[FR Doc. 84-7489 Filed 3-27-84; 8:45 am]
BILLING CODE 6355-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 81N-0004]

Irradiation in the Production, Processing, and Handling of Food

Correction

In FR Doc. 84-4150 beginning on page 5714 in the issue of Tuesday, February 14, 1984, make the following corrections:

1. On page 5715, column two, paragraph three, line five, "wa" should read "was".

2. On page 5716, column two, paragraph four, line five, "concoluded" should read "concluded".

3. On the same page, column three, first complete paragraph, line two, "coincluded" should read "concluded".

4. On the same page, column three, paragraph two, line twelve, "doese" should read "doses".

5. On page 5717, column one, fourth line from the bottom, "species" should read "spices".

6. On the same page, column three, paragraph two, line twenty-four, "species" should read "spices".

7. On page 5718, column three, paragraph two, line seven, "insure" should read "ensure".

8. On page 5719, column two, first complete paragraph, line twelve, "does" should read "dose", and in line seventeen, "altermative" should read "alternative".

9. On page 5721, column two, "7a", line two, "Fuits" should read "Fruits".

10. On page 5722, column one, paragraph three, line ten, "th" should read "to".

§ 179.26 [Corrected]

11. On the same page, column three, § 179.26(c), line four, "foood" should read "food".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-148-81]

Individual Retirement Plans, Simplified Employee Pensions, and Qualified Voluntary Employee Contributions

Correction

In FR Doc. 84-1786 beginning on page 2794 in the issue of Monday, January 23, 1984, make the following corrections:

§ 1.219(a)-1 [Corrected]

On page 2795, third column, § 1.219(a)-1 (b)(3), nineteeth and twentieth lines, "section 405." should have read "sections 404 and 405.".

§ 1.219(a)-3 [Corrected]

On page 2797, second column, § 1.219(a)-3(a), tenth line, "of" should have read "to".

§ 1.219(a)-5 [Corrected]

On page 2800, first column, § 1.219(a)-5 (d)(2)(ii), second line, "of" should have read "or".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: On January 19, 1984, the State of Illinois submitted to OSM a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan. The amendment pertains to the authority and the capability to conduct a State emergency reclamation program. OSM is seeking public comment on the proposed amendment.

DATE: Written comments on the amendment must be received on or before 5:00 p.m. April 27, 1984.

ADDRESSES: Copies of the full text of the proposed amendment are available for review at the following locations:

Illinois Department of Mines and Minerals, AML Reclamation Council, First Floor, Alzina Building, 100 North First Street, Springfield, Illinois 62701

Office of Surface Mining and Enforcement, Springfield Office, 600 East Monroe, Room 20, Springfield, Illinois 62701

Written comments must be mailed or hand carried to: Office of Surface Mining and Enforcement, Springfield Office, 600 East Monroe, Room 20, Springfield, Illinois 62701

Comments received after 5:00 p.m., April 27, 1984 will not ordinarily be considered or included in the administrative record for this rulemaking.

FOR FURTHER INFORMATION CONTACT: James D. Evans, Division of Abandoned Mine Land Reclamation, Office of Surface Mining and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240 Telephone (202) 343-7921.

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement an abandoned mine land reclamation program.

The Illinois AMLR Plan was approved on June 1, 1982. On September 19, 1983, OSM informed the States and Indian Tribes of the opportunity to amend their reclamation plans to include a provision for emergency reclamation programs (47 FR 42729). Under Section 410 of SMCRA, the Secretary of the Interior is authorized to expend monies for the emergency restoration, reclamation, abatement, control or prevention of adverse effects of coal mining practices on eligible lands. An emergency, as defined in 30 CFR 870.5 means "a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety or general welfare of people before the danger can be abated under normal program operation procedures."

For a State or Tribe to undertake an emergency reclamation program as part of its reclamation plan, the State/Tribe must amend its reclamation plan and demonstrate that it has the statutory

authority to undertake emergencies, the technical capability to design and supervise the emergency work and the administrative and procurement procedures to quickly respond to emergencies either directly or through contractors.

On January 19, 1984, Illinois submitted a proposed amendment to the Plan. An approved State AMLR Plan can be amended under the provisions of 30 CFR 884.15. Under these provisions, if the amendment or revision changes the objectives, scope, or major policies followed by the State in the conduct of its reclamation program, the Director should follow the procedures set out in 30 CFR 884.14 in approving an amendment or revisions of a State reclamation plan. This notice of proposed rulemaking begins the process of review of the proposed amendment.

Representatives of OSM's Field Office Director will be available to meet Monday through Friday, excluding holidays, between 8:00 a.m. and 4:00 p.m. at the address indicated above under "**ADDRESSES**," at the request of members of the public to receive their advice and recommendations concerning the proposed Illinois amendment. Persons wishing to meet with representatives of the Field Director's Office during this time period may place such request with William E. Bye, telephone (217) 492–4483.

The Department intends to continue to discuss the State's amendment with representatives of the State throughout the review process. All contacts between Departmental personnel and representatives of the State will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979, at 44 FR 54444.

The Illinois amendment can be approved if:

1. The Assistant Secretary finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State had the legal authority, policies and administrative structure to carry out the amendment.

4. The amendment meets all requirements of the OSM, AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. It is determined that the amendment is in compliance with all applicable State and Federal laws and regulations.

Contents of the Illinois amendment are:

1. The agency designated by the Governor as authorized to receive grants and administer an emergency program.

2. A legal opinion from the State Attorney General that the designated agency has the authority under State law to conduct the emergency program in accordance with the requirements of Section 410 of Title IV of the Act.

3. A description of the policies and procedures to be followed by the designated agency in conducting the emergency reclamation program.

4. A description of the administrative and managerial structure to be used in conducting the emergency reclamation program.

5. A general description of emergency reclamation activities to be conducted.

6. A narrative description which supports State's position that the procedures, personnel, and other proposed aspects of its program give evidence of its abilities to promptly and effectively mitigate the full range of emergency conditions anticipated in the State.

The Office of Surface Mining has examined this proposed rulemaking under Section 1(b) of Executive order No. 12291 (February 17, 1981) and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have adverse effects on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Office of Surface Mining has determined that the rule will not have significant economic effects on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable cost, competitive effects, enforcement costs or aggregate effects on small entities.

Further, the Office of Surface Mining has determined that the Illinois amendment does not have a significant effect on the quality of the human environment because the decision relates only to the policies, procedures and organization of the State's Abandoned Mine Land Reclamation program. Therefore, under the Department of the Interior Manual DM 5162.3(a)(1), the Assistant Secretary's decision on the Illinois amendment is categorically excluded from the National Environmental Policy Act requirements.

As a result, no environmental assessment (EA) or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Moreover, an EA or an EIS has been prepared for the approval of grants for the abandoned mine land reclamation projects under 30 CFR Part 886.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental regulations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

Dated: March 22, 1984.

Dean Hunt,

Acting Director, Office of Surface Mining.

Dated: March 22, 1984.

Garrey E. Carruthers,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 84-8328 Filed 3-27-84; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Part 917

Permanent State Regulatory Program of Kentucky

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Kentucky (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of

explosives in a surface coal mining operation. On January 20, 1984, Kentucky requested an extension of time for the development of a blaster certification program until March 4, 1985. The State later modified its extension request to a nine month extension until December 4, 1984. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments must be received by April 27, 1984 at the address below, no later than 5:00 p.m.

ADDRESSES: Written comments should be mailed or hand delivered to W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: Mr. W. W. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Kentucky's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On January 20, 1984, Kentucky requested an extension of the March 4, 1984 deadline until March 4, 1985, to submit its blaster certification program. Subsequently, the State modified the request to extend the deadline to December 4, 1984 (KY Administrative Record No. 587). The State's letter of January 20, 1984, stated that the extension was needed for the State regulatory authority (Department for Surface Mining Reclamation and Enforcement) to work out procedures with the Kentucky Department of Mines and Minerals which presently certifies Kentucky blasters. Also, the letter stated that most of the State's efforts in the past year have been directed toward permitting.

Therefore, OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

VI. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal minning, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 23, 1984.

Dean Hunt

Acting Director, Office of Surface Mining.

[FR Doc. 84–8281 Filed 3–27–84; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP–250054; PH–FRL 2550–2]

Pesticide Guidelines; Notification to the Secretary of Agriculture of Proposed Regulation Rescinding the Efficacy Data Waiver for Vertebrate Control Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule—related notice.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation amending the condition regulations to rescind the efficacy data waiver for vertebrate control products.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, Room 1114, Arlington, Virginia 22202 (Tel. 703–557–0592).

SUPPLEMENTARY INFORMATION: Sec. 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 92–516, 86 Stat. 973; Pub. L. 94–140, 89 Stat. 753; 7 U.S.C. 136 et seq.) provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** If the Secretary comments in writing to the Administrator regarding any such proposed regulation within 30 days after receiving it, the Administrator shall publish in the **Federal Register** (with the proposed regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator within 30 days after receiving it, the Administrator may sign such regulation for publication in the **Federal Register** at any time after such 30-day period notwithstanding the foregoing 60-day time requirement. The time requirements may, however, be waived or modified to the extent agreed upon the Administrator and the Secretary.

In accordance with Sec. 25(a)(3) of FIFRA, EPA has also furnished a copy of this proposed regulation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

This regulation is designated as Part 162 of 40 CFR, and is titled "Rescision of

Efficacy Data Waiver for Vertebrate Control Products."

(Sec. 25 [Pub. L. 92–515, 86 Stat. 973; Pub. L. 94–140, 89 Stat. 753 (7 U.S.C. 136 et seq.)])

Dated: March 7, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84–7947 Filed 3–27–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 6E1831/P331; PH–FRL 2552–6]

Dinoseb; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the pesticide dinoseb in or on the raw agricultural commodities pasture grasses and pasture grasses hay. The proposed regulation to establish maximum permissible levels for residues of the pesticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on or before April 27, 1984.

ADDRESS: By mail, submit written comments identified by the document control number (PP 6E1831/P331) to: Information Service Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E1831 to EPA on behalf of Dr. Robert H. Kupleian, National Director, IR–4 Project, and the Agricultural Experiment Stations of New York, Vermont, and West Virginia.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the pesticide dinoseb (2-*sec*-butyl-4,6-dinitrophenol) in or on the raw agricultural commodity forage grasses at 0.1 part per million (ppm). The petition was later amended to propose tolerances for 0.1 ppm dinoseb in or on the raw agricultural commodities pasture grasses and pasture grasses hay from application of phenol or its readily hydrolyzable salts, ammonium salt or sodium salt.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerance were a 6-month rat feeding study with a no-observed-effect level (NOEL) of 5.0 milligrams (mg)/kilogram (kg)/day (100 ppm); a 3-month dog feeding study with a NOEL of 7.5 mg/kg/day (300ppm); a second 3-month dog feeding study with a NOEL of 2.5 mg/kg/day (100 ppm); and teralology studies with NOEL's greater than 15 mg/kg/day for teratogenic effects and 5.0 mg/kg/day for fetotoxic effects in rats and a NOEL of 32 mg/kg/day (highest level tested) for teratogenic effects in mice. Studies considered desirable but currently lacking include chronic feeding studies in at least two species, including one non-rodent species; onocogenic potential evaluation; a multigeneration reproduction study; and mutagenicity testing.

The provisional acceptable daily intake (PADI), based on 3-month dog feeding study (NOEL of 2.5 mg/kg/day) and using a 2000-fold safety factor, is calculated to be 0.0013 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.075 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.054 mg/day; the proposed tolerances will not contribute to the TMRC since there is no reasonble expectation of finite residues in meat, milk, poultry, or eggs resulting from the feed use of treated pasture grasses or pasture grasses hay.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes.

Although there are presently no action pending against the continued registration of this chemical, concern was expressed about the presence of *N*-nitrosamine impurities in dinoseb formulations containing the alkanolamine salt. EPA has determined that dinitroaniline compounds and secondary or tertiary alkylamines or alkanolamines may pose more of an *N*-nitroso problem than other compounds and is requesting the submission of analytical chemistry data for pesticide products containing these classes of compounds. Since the petitioner has proposed the use of alternate formulations of the pesticide, dinoseb phenol and ammonium or sodium salts of dinoseb, rather than the alkanolamine salt, additional analytical chemistry data are not required at this time.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.281 would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E1831/P331]. All written comments filed in response to this petition will be available in the Program Management and Support Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e))).

Dated: March 14, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.281 be amended by designating the existing text as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.281 Dinoseb; tolerances for residues.

(a) * * *

(b) Tolerances are established for residues of the herbicide, insecticide, and fungicide dinoseb (2-*sec*-butyl-4,6-dinitrophenol) from application of its phenol or its readily hydrolyzable salts (ammonium salt or sodium salt) in or on the following raw agricultural commodities:

Commodities	Parts per million
Grasses, pasture	0.1
Grasses, pasture, hay	0.1

[FR Doc. 84-8141 Filed 3-27-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2862/P330; PH-FRL 2552-8]

Methyl 3-[(Dimethoxyphosphinyl)Oxy]Butenoate, Alpha and Beta Isomers; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers in or on the raw agricultural commodity watercress. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on or before April 27, 1984.

ADDRESSES: By mail, submit written comments identified by the document control number (PP 3E2862/P330) to: Information Services Section; Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway; Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2862 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Alabama, Florida, Pennsylvania, Tennessee, and West Virginia

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers in or on the raw agricultural commodity watercress at 1.5 per million (ppm). The petition was later amended to propose a tolerance at 2.0 ppm.

The data submitted in the petition and other relevant material have been evaulated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were a 2-year rat feeding study with a no-observed-effect level (NOEL) for cholinesterase inhibition (ChE) of 0.025 milligram (mg)/kilogram (kg)/day (0.5 ppm) and negative for oncogenic effects at all levels fed (0, 0.5, 1.5, 5 and 15 ppm); a 2-year dog feeding study with a ChE NOEL of 0.025 mg/kg/day (0.5 ppm); a 3-generation reproduction study in rats with no reproductive effects at 1.2 mg/kg (24 ppm); and rabbit teratology study, negative for teratogenic effects at 1.0 mg/kg. Studies considered desirable but lacking include an oncogenicity study in a second species, a delay neurotoxicity study, and a general metabolism study.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 0.025 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.0025 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.15 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.1765 mg/day; the current action will increase the TMRC by 0.0009 mg/day (0.5 percent) and will utilize an additional 0.6 percent of the ADI. The tolerance that will be established by this proposed rule is considered to pose a negligible incremental risk since dietary exposure will not be significantly increased.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. There should be no problem with secondary residues in meat, milk, poultry, or eggs since watercress is not considered a livestock feed item. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.157 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E2862/P330]. All written comments filed in response to this petition will be available in the Program Management and Support Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the

Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 14, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.157 be amended by adding and alphabetically inserting the raw agricultural commodity watercress, to read as follows:

§ 180.157 Methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers; tolerances for residues.

* * * * *

Commodities	Parts per million
Watercress	2.0

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

FR Doc. 84-8140 Filed 3-27-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

([00000/P333; PH-FRL 2554-2])

Potassium Carbonate and Sodium Sesquicarbonate Proposed Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to add potassium carbonate and sodium sesquicarbonate to the pesticide chemcials listed as generally recognized as safe (GRAS) when used as plant desiccants for the purposes of section 408(a) of the Federal Food, Drug, and Cosmetic Act. This proposed amendment was requested by EPA.

DATE: Written comments must be received on or before April 27, 1984.

Information submitted as a comment concerning this notice may be claimed confidential by making any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice.

ADDRESS: By mail, submit written comments identified by the document control number ([00000/P333]) to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby (703-557-1900).

SUPPLEMENTARY INFORMATION: This proposed rule is sought in conjunction with the anticipated use of a mixture of potassium carbonate, sodium sesquicarbonate, and sodium carbonate for the purpose of accelerating the field drying (desiccation) of freshly cut hay. Potassium carbonate (K_2CO_3) is already exempted from the requirement of a tolerance under 40 CFR 180.1001(d) when used in accordance with good agricultural practice as an inert (or occasionally active) ingredient (specifically a buffering agent) in pesticide formulations applied to growing crops. Potassium carbonate is routinely used in foods such as beverages, soft candy, baked goods, and frostings at levels ranging from 0.01 percent (100 parts per million (ppm)) to 1.13 percent (11,300 ppm). Sodium sesquicarbonate ($NA_2CO_3.NaHCO_3.2H_2O$) is a molecule containing sodium bicarbonate, sodium carbonate, and water and is naturally occurring or can be produced synthetically.

In 1975, the Select Committee on GRAS Substances (SCOGS) determined that there was no evidence in the available information on carbonates and bicarbonates, including the two subject chemicals, that demonstrated or suggested reasonable grounds to suspect a hazard to the public used (on food) at levels that are current or that might reasonably be expected in the future. Both chemicals are GRAS under 21 CFR Part 182 as multiple-purpose GRAS food substances when used in accordance with good manufacturing practice. As part of a chemical family routinely used in foods, the various carbonates function as nutrient and/or dietary supplements, neutralizing agents, or leavening agents.

Based on the report of the SCOGS committee concerning potassium carbonate and sodium sesquicarbonate, the Agency has no reason to believe that these two chemicals are not GRAS substances.

Based on the long history of safe use of these chemicals in foods and on their GRAS status under 21 CFR 182.1619 (potassium carbonate) and 21 CFR 182.1792 (sodium sesquicarbonate), the Agency concludes that neither material should be considered as poisonous or deleterious, and that they are recognized by experts as safe pursuant to 40 CFR 180.2. The opinions of such experts on these chemicals are published in the NTIS Monograph #PB-254 535 (Evaluation of Health Aspects of Carbonates and Bicarbonates as Food Ingredients), FASEB, 1975.

The subject materials are considered useful for the purpose for which this regulation is being sought, and the Agency has concluded that it will protect the public health. It is proposed, therefore, that the regulation be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [00000/P333]. All written comments filed in response to this proposed regulation will be available for public review in the office of Henry M. Jacoby at the above address from 8 a.m. to 4 p.m., Monday through Friday, except for legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e))

List of Subjects in 40 CFR Part 180

Administrative practices and procedures, Agricultural commodities, Pesticides and pests.

Dated: March 16, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.2(a) be revised, to read as follows:

§ 180.2 Pesticide chemical considered safe.

(a) As a general rule, pesticide chemicals other than benzaldehyde (when used as a bee repellent in the harvesting of honey), ferrous sulfate, lime, lime-sulfur, potassium carbonate, potassium polysulfide, potassium sorbate, sodium carbonate, sodium chloride, sodium hypochlorite, sodium polysulfide, sodium sesquicarbonate, sorbic acid, sulfur, and, when used as postharvest fungicides, citric acid, fumaric acid, oil of lemons, oil of orange, sodium benzoate, and sodium propionate are not for the purposes of section 408(a) of the Act generally recognized as safe.

* * * * * *

[FR Doc. 84-8279 Filed 3-27-84; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79-252; FCC 84-82]

Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations

AGENCY: Federal Communications Commission.

ACTION: Fourth further notice of proposed rulemaking.

SUMMARY: In Docket No. 79-252 the Commission has determined that it would forbear from regulating the rates and facilities of all resale common carriers and the specialized common carriers. In this Notice, the Commission seeks comments on its proposal to require those carriers to cancel any tariffs they presently have on file with the Commission and to file no further tariffs. This action is proposed to reduce regulatory burden.

DATES: Comments must be received by April 30, 1984 and replies by May 15, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Beverly Baker, Common Carrier Bureau, (202) 632-6917.

Fourth Further Notice of Proposed Rulemaking

In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor; CC Docket No. 79-252.

Adopted: March 15, 1984.
Released: March 22, 1984.

By the Commission.

1. In the Competitive Carrier Rulemaking,[1] the Commission has adjusted its common carrier tariff and facilities regulatory requirements in light of the development of competition in interexchange telecommunications services. In the *First Report and Order* in this proceeding, the Commission streamlined the regulatory requirements applied to the specialized common carrier and the terrestrial resellers.[2] In the *Second Report and Order,* the Commission decided to forbear from regulating tariffs and facilities of terrestrial resellers.[3] In the *Fourth Report and Order* the Commission found, after three years' experience with streamlined regulation, that for some carriers there was no evidence that even this minimal regulation regarding tariffs and facilities was necessary or useful to protect the public against unreasonable pricing practices or imprudent investments.[4] Accordingly, the Commission determined that it would forbear from requiring tariffs or facilities applications from the specialized common carriers and all resellers, including the domestic satellite resellers, resellers owned by or affiliated with exchange telephone companies, and domestic record carier resellers not covered by the interconnection requirements of the Record Carrier Competition Act.[5] On the basis of this extensive record and for the reasons discussed below, we are here proposing that all tariffs which carriers treated by forbearance have on file with the Commission be cancelled and that no further tariffs be accepted for filing from those carriers.

2. Maintaining these documents at the Commission's offices entails certain costs such as the cost of storage space and the cost of staff time necessary to review the form of filed tariffs, to organize the materials for public inspection, to review special permission requests and to respond to questions from members of the public concerning the tariffs. More importantly, the presence of effective tariffs on Commission premises might mislead the public, state regulators and others to the belief that the FCC had, in fact, substantively evaluated them and found no objection. As the Commission stated in the *Second Report and Order,* the unnecessary application of traditional regulatory tools inhibits development of competition and results in unnecessary burdens inevitably borne by the consuming public. The elimination of these requirements would encourage the offering of services in greater diversity, more rapidly and at lower prices. Successful market performance, the Commission stated, should depend on carrier performance and not on an unintended Commission "stamp of approval" 91 FCC 2d at 72-73. The continued presence of tariffs at the Commission, by giving the appearance of such a "stamp of approval," could well lull customers into believing that their own comparisons and evaluations of various service offerings were unnecessary and, thus, would inhibit the development of a vigorously competitive market. Since the rate levels and practices in these tariffs will no longer be analyzed by the Commission staff, it would seem to be unnecessary to continue to incur these costs and risks. Of course, no action of the Commission

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[1] Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Common Carrier Services (CC Docket No. 79-252), Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982), *recon.* FCC 83-69, released March 21, 1983; Second Further Notice of Proposed Rulemaking, FCC 82-187, released April 21, 1982; Third Further Notice of Proposed Rulemaking, Mimeo CC 33457, released June 14, 1983, 48 FR 28282 (June 21, 1983); Thrid Report and Order, Mimeo 012, released October 6, 1983; and Fourth Report and Order, FCC 83-481, released November 2, 1983, petitions for reconsideration filed December 19, 1983.

[2] The specialized common carriers are providers of terrestrial voice and data services. They include such carriers as: MCI Telecommunications Corporation, GTE-SPRINT, United States Transmission Systems, Inc., Goeken Comunications, Inc., and Western Telecommunications. Resellers are carriers that lease all of the circuits they use to provide service to their customers from underlying carriers.

[3] In response to the *Second Report and Order,* fifteen carriers cancelled the tariffs they had on file with the Commission.

[4] Carriers subject to streamlined regulatory requirements could file tariffs on 14 days' notice, the tariffs would be presumed to be lawful, and extensive cost support data would not be required. In addition, those carriers could, without advance authorization from the Commission, expand their facilities anywhere within the continental United States and discontinue service on 31 days' notice to the Commission.

[5] Pub. L. No. 97-130, 95 Stat. 1687 (1981). The Commission has not altered regulatory requirements applicable to international services. *See Fourth Report and Order,* para. 4 n. 5 and para. 37.

would prohibit any carriers from keeping these materials or any other materials regarding their service offerings, pricing policies and terms of service on file in a tariff format and available for public inspection at their own offices.

3. We are, therefore, proposing that all carriers subject to forbearance be required by a date certain to cancel their tariffs on file with this Commission by supplement effective upon five days' notice. We invite comment from interested parties on this proposal.

4. *Regulatory Flexibility Analysis.* By this Notice of Proposed Rulemaking, the Commission seeks to determine whether it is in the public interest to discontinue maintaining at the Commission tariffs of carriers over which the Commission is no longer excercising its regulatory jurisdiction as to rates and facilities. If adopted, this proposal would result in the cancellation of the tariffs of approximately 120 specialized common carriers and resellers of common carrier services. The proposal would eliminate all federal tariff filings by these companies. The proposal would not establish any additional federal rules requiring recordkeeping, reporting or other compliance measure. There are no other federal rules which overlap, duplicate or conflict with this proposal. There are no significant alternatives to this proposal which would accomplish the Commission's objective.

5. This proceeding is instituted pursuant to the provisions contained in 47 U.S.C. 154(i) and 403.

6. Comments must be filed by April 30, 1984 and replies by May 15, 1984.

7. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must also state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* § 1.1231 of the Commission's Rules, 47 CFR 1.1231. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

8. In accordance with the provision of 47 CFR 1.1419(b), an original and six copies of all comments, replies, pleadings, briefs and other documents filed in this proceeding shall furnished to the Commissiom. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments, without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filings will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239) at its headquarters in Washington, D.C. 1919 M Street, NW.

9. It is hereby ordered that the Secretary shall cause this fourth further Notices of Proposed Rulemaking to be published in the **Federal Register.**

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William. J. Tricarico,

Secretary.

[FR Doc. 84-8317 Filed 3-27-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-278; RM-4551; 4728]

FM Broadcast Station in Appalachicola, Florida; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 265A and 288A to Appalachicola, Florida, in response to separate petitions filed by Richard L. Plessinger and B.F.J. Timm. The proposed assignments could provide a first and second FM service to that community.

DATES: Comments must be filed on or before May 14, 1984, and reply comments on or before May 29, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the Matter of amendment of § 73.202(b). Table of Assignments, FM Broadcast Stations (Appalachicola, Florida) MM Docket No. 84-278, RM-4551, RM-4728.

Adopted: March 12, 1984.
Released: March: 21, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration two separate petitions for rule making requesting the assignment of Class A channels to Appalachicola, Florida. The first petition filed by Richard L. Plessinger ("Plessinger") (RM-4551), seeks the assignment of FM channel 265A, while the second petitioner, B.F.J. Timm ("Timm") (RM-4728), requests the allocation of FM Channel 288A. Each petitioner stated their intention to apply for the channel, if assigned.

2. Both channels can be assigned in compliance with the minimum distance separation requirements. Plessinger specified a slightly different set of coordinates (6.2 miles east) than those used by the Commission for the assignment. Petitioner should be aware that the use of a site too far removed from the community may present a problem in providing city grade coverage to community.

3. In view of the fact that the proposed assignments could provide a first and second local FM service to Appalachicola, Florida, the Commission believes it is appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Apalachicola, Florida		256A, and 288A.

4. The Commission's authority to institute rule making proceedings showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before May 14 1984, and reply comments on or before May 29, 1984, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioners as follows:

Richard L. Plessinger, 1591 Boyle Road, Hamilton, Ohio 45013

Herbert M. Schulkind, Esquire, Fly, Shuebruk, Gaguine, Boros, Schulkind & Braun, 1211 Connecticut Avenue, NW., Suite 401, Washington, D.C. 20036 (Counsel for B.F.J. Timm).

6. The Commission had determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathlen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84–8323 Filed 3–27–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–97; RM–4235; RM–4428]

FM Broadcast Stations Pullman, Washington, and Moscow, Idaho; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute Channel 291 for Channel 280A at Moscow, Idaho, and to modify the license for Station KRPL–FM accordingly, in response to a counterproposal filed by the licensee, KRPL, Inc.

DATES: Comments must be filed on or before May 14, 1984, and reply comments on or before May 29, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Further Notice of Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations

(Pullman, Washington, and Moscow, Idaho,[1] MM Docket No. 83–97, RM–4235, RM–*4428*.

Adopted: March 14, 1984.

Released: March 21, 1984.

By the Chief, Policy and Rules Division.

1. In response to the *Notice of Proposed Rule Making*, 48 FR 8503, published March 1, 1983, proposing the assignment of Channel 258 to Pullman, Washington, KRPL, Inc.[2] filed a counterproposal urging the Commission to assign Channel 258 to Moscow, Idaho, instead, as a substitute for Channel 280A. The channel cannot be assigned to both communities because of mileage separation requirements. We undertook to identify any other channels available for assignment to either city and have determined that Channel 291 can be assigned to Moscow. A site restriction of 3.3 miles south of the city is needed to avoid short spacing to Canadian Channel 291B, Creston, British Columbia, and to Station KEZE(FM) (construction permit) for Channel 289 at Spokane, Washington. Generally, we would not propose a substitute channel which cannot be used at the same site as the licensee's existing station. However, petitioner had requested Channel 258 as a substitute even though that channel involved a move of 1.3 miles northwest from the present location.

2. In conformity with Commission precedent, it is necessary to issue a *Further Notice of Proposed Rule Making* to allow interested parties an opportunity to express their interest in Channel 291. The earlier *Notice* did not provide this opportunity because it only pertained to Pullman. In a separate action, the Commission has assigned Channel 258 to Pullman, Washington.

3. KRPL, Inc. in it counterproposal alleges that its station's coverage area is inadequate. It claims that Moscow is characterized by hills, valleys and small communities which cannot be provided an adequate signal from a Class A facility. It further states that in order to remain competitive in the Pullman-Moscow market, it will be necessary to increase its operating power by going from a Class A to a Class C channel.

4. Canadian concurrence has been obtained in the assignment of Channel 291 to Moscow, Idaho.

5. In accordance with our established policy, we shall propose to modify the license of Station KRPL–FM to specify operation on Channel 291. However, if another party should indicate an interest in the Class C assignment, the modification may not be implemented. Instead, the channel would be open to competing applications. See *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976) and *Modification of FM Station Licenses*, 48 FR 55585, published December 14, 1983.

6. In view of the need for a wide coverage area FM station, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, as it pertains to Moscow, Idaho, as follows:

City	Channel No.	
	[illegible]	Pro- [illegible]
Moscow, Idaho	[illegible]	[illegible]

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before May 14, 1984, and reply comments on or before May 29, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Haley, Bader & Potts, c/o Michael H. Bader, 2000 M Street, NW., Washington, D.C. 20036.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, and amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of the Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a

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[1] This community has been added to the caption.

[2] KRPL, Inc. is the licensee of Station KRPL–FM, Moscow, Idaho.

different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the persons(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 84-8318 Filed 3-27-84; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1473 (Sub-No. 1)]

Rail Carriers; Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee); Decision

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Commission requested information and comments on whether interim carriers providing service over lines of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) under section 122 of the Rock Island Railroad Transition and Employee Assistance Act and which are utilizing the Rock Island formula, should be permitted to annualize their expenses, and on whether changes in the reporting time limits are appropriate. This decision describes the results of our review of the information filed pursuant to that request.

DATES: This decision shall be effective on March 27, 1984.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr., (202) 275-7840 or 275-1559.

SUPPLEMENTARY INFORMATION: By notice served September 15, 1982 [47 FR 41144, September 17, 1982], the Commission indicated its intent to reconsider its previous decision in this matter [47 FR 4261, January 29, 1982] as to whether interim operators, which are providing service over lines of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island), under Section 122 of the Rock Island Transition and Employee Assistance Act (RITEA) (Pub. L. 96-254) and which are utilizing the Rock Island Formual (Formula) for compensating the Trustee, should have the present reporting time limit changed to permit additional reporting time for their operations, and should be permitted to annualize expenses associated with those operations when determining net revenues.

The initial compliants from interim operators utilizing the Formula indicated that it was virtually impossible to report on revenues derived from interim operations within fifteen days of the close of a month, particularly where those operations were integrated into their system operations. The comments received on the Commission's notice essentially affirmed the railroads' previous assertions that the reporting time is too short, and that there is need for greater equity in applying the revenue portion of the Formula. The comments were received from the Cadillac and Lake City Railway Company (CLK), Chessie System Railroads (Baltimore and Ohio Railroad Company (BO)), Norfolk and Western Railway Company (NW), and the North Central Oklahoma, Inc. (NCOK). No comments were received from the Trustee of the Chicago, Rock Island and Pacific Railroad Company, or any other party opposing the proposed changes.

The NW, the principal operator utilizing the formula, has instituted a specialized computer reporting system for its operations over Rock Island lines. This system compiles net revenue data for three month intervals and determines the proper net revenue payment for that interval within 120 days of the close of each quarterly period. NW considers this to be the minimum time required for it to report on the net revenue portion of its operations, even though its reporting of switching and loaded cars handled can be accomplished sooner.

NW supports the annualization of revenues and expenses, and recommends that this reporting be allowed without the requirement of an individualized showing of need. NW believes that the elimination of such a showing would further reduce the Commission's regulatory burden without unduly prejudicing the Trustee.

Since submitting their comments, the carriers utilizing the Rock Island Formula advised the Commission of their negotiations with the Trustee, and subsequent lease and/or purchase agreements for the Rock Island property covered by the service order. With the exception of NW, all involved carriers have consummated lease agreements with the Trustee which contain provisions for compensating the Estate for the use of Rock Island property. Further, on September 1, 1983, the NW filed an application under Section 17(b) of the Milwaukee Railroad Restructuring Act (MRRA), 45 U.S.C. 915(b), as modified by section 111 of the RITEA, 45 U.S.C. 1009, and 49 CFR Part 1180, Supart B, to purchase the line in the Lake Calumet switching district covered by Service Order No. 1473. The application was filed in response to Order No. 593 entered on August 17, 1983, by the United States District Court for the Northern District of Illinois (Judge Frank T. McGarr) which has jurisdiction over the bankruptcy estate of the Rock Island.

On October 12, 1983, the Commission issued its decision in Finance Docket No. 30281 recommending that the Court authorize NW's acquisition of the Rock Island line, and on November 2, 1983, NW and Rock Island closed on the purchase.

Conclusion

Since the carriers are no longer utilizing the Rock Island Formula, the question of annualizing expenses in the proceeding is moot. Under these circumstances, no further Commission action is required and this proceeding should be discontinued.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is Ordered:

1. This proceeding is discontinued.

2. This decision is effective on its date of service.

A copy of this order shall be served on the Association of American Railroads and each of the respondents.

Notice shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, DC, and by publication in the **Federal Register.**

Decided: March 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8270 Filed 3-27-84; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 49, No. 61
Wednesday, March 28, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Section 22 Import Fees; Determination of Quarterly Import Fees on Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, 957.15) under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the second calendar quarter of 1984.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert G. Harper, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202–382–9061).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 5164, dated March 20, 1984, Headnote 4 of Part 3 of the Appendix to the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange), expressed in United States cents per pound, in bulk, is less than the market stabilization price. The market stabilization price for the second calendar quarter of 1984 is 21.17 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter: (1) Exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent; or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent. Paragraph (c)(i) of Headnote 4 further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent.

The average of the adjusted daily spot (domestic) price quotations for raw sugar for the applicable period prior to the second calendar quarter of 1984 has been calculated to be 22.0170 cents per pound. This results in a fee of 0.00 cent per pound for item 956.15, since the adjusted average spot price is greater than 21.17 cents. Accordingly, the fee for items 956.05 and 957.15 for the second calendar quarter of 1984 is 1.00 cent per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amount of such fees to the Commissioner of Customs and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c).

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the second calendar quarter of 1984 shall be as follows:

Item	Fee (cents per pound)
956.05	1.00
956.15	0.00
957.15	1.00

The amounts of such fees have been certified to the Commissioner of Customs in accordance with paragraph (c)(v) of Headnote 4.

Signed at Washington, D.C., on March 23, 1984.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 84-8321 Filed 3-23-84; 3:51 pm]

BILLING CODE 3410-10-M

Agricultural Stabilization and Conservation Service

Flue-Cured Tobacco; 1984–85 National Marketing Quota for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of 1984–85 Marketing Quota.

SUMMARY: The purpose of this notice is to affirm determinations which have been made with respect to the 1984 crop of flue-cured tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended. As announced on December 15, 1983, the 1984 marketing quota for flue-cured tobacco is 805 million pounds, approximately 11½ percent below last year's quota. In addition, the national acreage allotment for the 1984 crop of flue-cured tobacco is 404,725.99 acres.

EFFECTIVE DATE: December 15, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Traczy, Agricultural Economist Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual

industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "1938 Act") in order to announce for the 1984 marketing year for flue-cured tobacco the following:

1. The amount of the reserve supply level;

2. The amount of the total supply;

3. The amount of the national marketing quota;

4. The national average yield goal;

5. The national acreage allotment;

6. The national acreage reserve;

A. For establishing acreage allotments for new farms, and

B. For making corrections and adjusting inequities in old farms;

7. The national acreage factor; and

8. The national yield factor.

Marketing quotas on an acreage-poundage basis were proclaimed by the Secretary of Agriculture for flue-cured tobacco for the 1983–84, 1984–85, and 1985–86 marketing years (See 48 FR 1781). Since at least one-third of the flue-cured tobacco producers voting in a marketing quota referendum on December 16, 1982, did not vote to disapprove such marketing quotas, such marketing quota is in effect for the 1984–85 marketing year (See 48 FR 21608).

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government and after due consideration of data, views, and recommendations received from flue-cured tobacco producers and others pursuant to a proposed Notice of Determination (48 FR 46401) which was published on October 12, 1983.

Discussion

During the comment period, 27 written responses were received from farmers, members of the trade (including associations), and farm groups. Of the 24 respondents who commented on the level of the 1984 quota, 17 recommended that the quota remain unchanged from the 1983 level. The other 7 who commented on the quota level recommended quotas ranging from a 5 to 16 percent decrease in quota.

In addition, two meetings were held to allow interested persons to give their views orally. The vast majority of these individuals and organizations favored the same quota level for the 1984 marketing year as the level which was applicable to the 1983 marketing year.

Because the total supply is significantly above the reserve supply level and those supplies are well distributed amont the grades, the flue-cured tobacco marketing quota has been reduced by 11½ percent for the 1984 marketing year.

Section 317(a)(1) of the 1938 Act (7 U.S.C. 1314c(a)(1)) provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the amount of flue-cured tobacco produced in the United States which the Secretary estimates will be utilized during the marketing year in the United States and will be exported during the marketing year, adjusted upward or downward in such amount as the Secretary determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The 1938 Act further provides that any such downward adjustment shall not exceed 15 percent of such estimated utilization and exports.

The "reserve supply level" is defined in section 301(b)(14)(B) of the 1938 Act as the normal supply plus 5 percent thereof, to assure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty.

The "normal supply" is defined in section 301(b)(10)(B) of the 1938 Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports as an allowance for normal carryover.

A "normal year's domestic consumption" is defined in Section 301(b)(11)(B) of the 1938 Act as the yearly average quantity of tobacco produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the 1938 Act as the yearly average quantity of tobacco produced in the United States which was exported from the United States during the 10 marketing years immediately proceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The yearly average domestic consumption of flue-cured tobacco during the 10 marketing years preceding the 1983–84 marketing year was 591 million pounds, and the yearly average exports during such period amounted to 533 million pounds. both domestic consumption and exports have shown downward trends. Accordingly, a normal year's exports equal 530 million pounds while a normal year's domestic consumption has been established at 500 million pounds. These normal year's consumption and exports result in a reserve supply level for flue-cured tobacco of 2,363 million pounds.

"Total supply" is defined in Section 301(b)(16)(B) of the 1938 Act as the carryover at the beginning of the marketing year (July 1) plus the estimated production in the United States during the calendar year in which the marketing year begins. The carryover of flue-cured tobacco in the inventories of manufacturers and dealers, including Commodity Credit Corporation (CCC) loan stocks, amounted to 2,204 million pounds, farm sales weight on July 1, 1983.

The 1983 crop marketings of flue-cured tobacco are currently estimated at 855 million pounds. The sum of the carryover of flue-cured tobacco plus the 1983 crop marketings totals 3,059 million pounds and represents the total supply of flue-cured tobacco for the 1983–84 marketing year. This amount exceeds the reserve supply level by 696 million pounds.

It is estimated that 455 million pounds of flue-cured tobacco will be utilized in the United States during the 1984–85 marketing year and 460 million pounds will be exported. Because the total supply is substantially in excess of the reserve supply level, it is deemed desirable to make a downward adjustment of 110 million pounds from the estimated utilization in order to determine the 1984 flue-cured tobacco marketing quota. Accordingly, the national marketing quota for flue-cured tobacco for the marketing year

beginning July 1, 1984, is 805 million pounds.

Section 317(a) of the 1938 Act (7 U.S.C. 1314c(a)), provides that, beginning in 1983 and at 5 year intervals thereafter, the farm acreage allotment and preliminary farm yield for each farm be adjusted to reflect increases or decreases in the past 5 years' moving county average yield per acre and the national average yield goal shall be adjusted to the past 5 years' moving national average yield. Accordingly, it has been determined that the national average yield goal of 1989 pounds per acre for the 1983–84 marketing years will be the national average yield goal for the 1984–85 marketing year.

In accordance with section 317(a)(3) of the 1938 Act (7 U.S.C. 1314c(a)(3)), the national acreage allotment for the 1984 crop of flue-cured tobacco is determined to be 404,725.99 acres, which is the result of dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act (7 U.S.C. 1314c(e)), the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purposes of making corrections in farm acreage allotments, adjusting for inequities, and establishing allotments for new farms. It has been determined that a national reserve for the 1984 crop of flue-cured tobacco of 475 acres is adequate for these purposes.

Determinations 1984–85 marketing year

Accordingly, the following determinations have been made for flue-cured tobacco for the marketing year beginning July 1, 1984:

(a) *Reserve supply level.* The reserve supply level has been determined to be 2,363 million pounds based upon a normal year's domestic consumption of 500 million pounds and a normal year's exports of 530 million pounds.

(b) *National marketing quota.* The national marketing quota on an acreage-poundage basis for the marketing year beginning July 1, 1984 has been determined to be 805 million pounds. This quota is based on an estimated consumption in the United States in such marketing year of 455 million pounds and estimated exports in such marketing year of 460 million pounds, with a 110 million pound downward adjustment in order to effect an orderly reduction of supplies toward the reserve supply level.

(c) *National average yield goal.* The national average yield goal has been determined to be 1,989 pounds. This goal is based on the 5-year national average yield for the 1977–81 marketing years.

(d) *National acreage allotment.* The national acreage allotment on an acreage-poundage basis has been determined to be 404,725.99 acres. This allotment is determined by dividing the national marketing quota of 805 million pounds by the national average yield goal of 1,989 pounds.

(e) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 475 acres.

(f) *National acreage factor.* The national acreage factor has been determined to be .884.

(g) *National yield factor.* The national yield factor has been determined to be .9020.

(h) *Types of tobacco.* Types 11, 12, 13, and 14 of tobacco shall constitute one kind of tobacco for the 1983–84, 1984–85, and 1985–86 marketing years.

(Secs. 301, 313, 317, 375, 52 Stat. 38, 47, 66, as amended, 79 Stat. 66 (7 U.S.C. 1301, 1313, 1314c, 1375))

Signed at Washington, D.C. on March 9, 1984.

Richard E. Lyng,

Acting Secretary.

[FR Doc. 84-8337 Filed 3-27-84; 8:45 am]

BILLING CODE 3410-05-M

CIVIL RIGHTS COMMISSION

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and will end at 2:00 p.m., on April 18, 1984, at the Brown University—Wilson Laboratory, Seminar Room B–2, Brown Street (between Angel and Waterman), Providence, Rhode Island 02912. The purpose of the meeting is to discuss the monitoring of the "Greenhouse Compact" and the revised draft of the redistricting report.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Dorothy Zimmering, at (401) 245–3515 or the New England Regional Office at (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 23, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-8271 Filed 3-27-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-008]

Carbon Steel Plate From Brazil; Intention To Terminate Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of intention to terminate suspension agreement.

SUMMARY: The Department of Commerce has begun an administrative review of the agreement suspending the countervailing duty investigation on carbon steel plate from Brazil. In the course of that review, we have found evidence that the Government of Brazil has failed to comply with the terms of the agreement. Therefore, we are proposing to terminate the suspension agreement. Interested parties are invited to comment on this proposal.

EFFECTIVE DATE: March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 39394) a notice suspending the countervailing duty investigation on carbon steel plate from Brazil and announced its intent to conduct an administrative review of the suspension agreement. The Department subsequently received a request from the petitioners that the investigation be continued, and on January 20, 1983, published a notice of final affirmative determination (48 FR 2568). The International Trade Commission published a final affirmative injury determination on March 16, 1983 (48 FR 11190).

Scope of the Agreement

Imports covered by the agreement are shipments of Brazilian carbon steel plate. The term "carbon steel plate" covers hot-rolled carbon steel products

whether or not corrugated or crimped, not pickled, not cold-rolled, not in coils, not cut, not pressed, and not stamped to non-rectangular shape, 0.1875 inch or more in thickness and over 8 inches in width, currently classifiable under items 607.6615 or 607.9400 of the Tariff Schedules of the United States Annotated ("TSUSA"); and hot or cold-rolled carbon steel plate that has been coated or plated with zinc, including any material which has been painted or otherwise covered after having been coated or plated with zinc, currently classifiable under items 608.0710 or 608.1100 of the TSUSA. Semifinished products of solid rectangular cross section with a width at least four times the thickness, in the as cast condition or processed only through primary mill hot-rolling, are not included.

Reasons for Terminating the Agreement

Under the terms of the agreement, the Brazilian government was to impose an export tax on all shipments of carbon steel plate exported to the United States on or after October 1, 1982. The initial tax rate for imposition was 12.16 percent of the f.o.b. invoice price of the exports. In February 1983, the Brazilian government increased this tax to 12.53 percent.

In the course of the administrative review, we found that the exporters paid no tax before May 16, 1983. On May 16, exporters paid back taxes. However, the tax payments were not subjected to monetary correction, interest, or other penalties.

We believe the word "imposition" in the agreement means timely collection of the export taxes. The general procedure agreed to by the Department and the Brazilian government for tax collection is that the tax is due 45 days after the end of the month in which the shipment occurs. Under this arrangement payment of taxes on all shipments from October 1, 1982 through February 28, 1983 was up to five months late. We preliminarily determine that the late payment of these export taxes, particularly without monetary correction, interest, or penalties, constitutes a violation of the agreement.

The Brazilian government is required to submit quarterly letters certifying compliance with the agreement. The letters are due 15 days after the end of each quarter. We note that the certification letters due on July 15, 1983 and October 15, 1983 were several weeks late.

Intention To Terminate

For these reasons, we believe the Brazilian government has failed to comply with the terms of the suspension agreement. We propose to terminate it and to issue a countervailing duty order.

Accordingly, as required by section 704(a)(1)(A)(i) of the Tariff Act of 1930 ("the Tariff Act"), the Department intends to instruct the Customs Service to suspend liquidation of all entries of carbon steel plate from Brazil that are entered, or withdrawn from warehouse, for consumption beginning 90 days prior to publication of a notice terminating the agreement. Further, we intend to instruct the Customs Service to require a cash deposit or bond for each such entry of 11.75 percent of the f.o.b. invoice price, the subsidy rate found in the Department's final affirmative determination.

Interested parties may submit written comments on this proposed termination within 15 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 20 days after the date of publication of this notice or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish its final decision, including its analysis of issues raised in any such written comments or at a hearing.

This notice is published in accordance with section 704(i)(1) of the Tariff Act (19 U.S.C. 1671c) and § 855.32 of the Commerce Regulations.

Dated: March 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-8282 Filed 3-27-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-011]

Carbon Steel Wire Rod From Brazil; Intention To Terminate suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of intention to terminate suspension agreement.

SUMMARY: The Department of Commerce has begun an administrative review of the agreement suspending the countervailing duty investigation on carbon steel wire rod from Brazil. In the course of that review, we have found evidence that the Government of Brazil has failed to comply with the terms of the agreement. Therefore, we are proposing to terminate the suspensison agreement. Interested parfies are invited to comment on this proposal.

EFFECTIVE DATE: March 28, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On september 27, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 42399) a notice suspending the countervailing duty investigation on carbon steel wire rod from Brazil and announced its intent to conduct an administrative review of the suspension agreement.

Scope of the Agreement

Imports covered by the agreement are shipments of Brazilian carbon steel wire rod. The term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.02 inch nor over 0.74 inch in diameter, not termpered, not treated, and not partly manufactured, and valued over 4 cents per pound, as currently classifiable in item 607.1700 of the Tariff Schedules of the United States Annotated.

Reasons for Terminating the Agreement

Under the terms of the agreement, the Brazilian government was to impose an export tax on all shipments of corbon steel wire rod exported to the United States on or after October 20, 1982. The initial tax rate for imposition was 14.90 percent of the f.o.b. invoice price of the export. In February 1983, the Brazilian government increased this tax to 15.50 percent.

In the course of the administrative review, we found that the exporters paid no tax before May 16, 1983. On May 16, exporters paid back taxes. however, the tax payments were not subjected to monetary correction, interest, or other penalties.

We believe the word "imposition" in the agreement means timely collection of the export taxes. The general procedure agreed to by the Department and the Brazilian government for tax collection is that the tax is due 45 days after the end of the month in which the shipment occurs. Under this arrangement payment of taxes on all shipments form October 20, 1982 through February 28, 1983 was up to five months late. We preliminarily determine that the late payment of these export taxes, particularly without monetary

correction, interest, or penalties, constitutes a violation of the agreement.

The Brazilian government is required to submit quarterly letters certifying compliance with the agreement. The letters are due 15 days after the end of each quarter. We note that the certification letters due on July 15, 1983 and October 15, 1983 were several weeks late.

Intention To Terminate

For these reasons, we believe the Brazilian government has failed to comply with the terms of the suspension agreement. We propose to terminate it. As provided by section 704(i)(B) of the Tariff Act of 1930 ("the Tariff Act"), this would require that we resume the investigation as if the affirmative preliminary determination under section 703(b) were made on the effective date of any termination.

Accordingly, as required by section 704(i)(1)(A)(i) of the Tariff Act, the Department intends to instruct the Customs Service to suspend liquidation of all entries of carbon steel wire rod from Brazil that are entered, or withdrawn from warehouse, for consumption beginning 90 days prior to publication of a notice terminating the agreement. Further, we intend to instruct the Customs Service to require a cash deposit or bond for each such entry of 14.31 percent of the f.o.b. invoice price, the subsidy rate found in the Department's preliminary affirmative determination (47 FR 30650, July 14, 1982).

Interested parties may submit written comments on this proposed termination within 15 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 20 days after the date of publication of this notice or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish its final decision, including its analysis of issues raised in any such written comments or at a hearing.

This notice is published in accordance with section 704(i)(1) of the Tariff Act (19 U.S.C. 1671c) and § 355.32 of the Commerce Regulations.

Dated: March 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-8293 Filed 3-27-84; 8:45 am]

BILLING CODE 3510-DS-M

Texas A&M University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 82-00351. Applicant: Texas A&M University, College Station, TX 77843. Instrument: 2 Wavemakers, Wave Height Gauge. Manufacturer: Seasim Controls Limited, United Kingdom. Intended use: See notice at 47 FR 49055.

Comments: None received.

Decision: Approved for the wavemakers (including the random signal generator) only. Denied for the wave height gauge.

(1) In the case of the approved instrument, no instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument has a wave absorbing capability which absorbs reflection from walls or models. The National Oceanic and Atmospheric Administration advises in its memorandum dated December 8, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(2) In the case of the denied instrument, an instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: In its request for duty-free entry, the applicant alleges only that "There are no resistance gauges manufactured in the United States." However, the National Oceanic and Atmospheric Administration advises in its memorandum dated December 8, 1982, that Grundy Environmental Systems of San Diego, California manufactures a resistance type wave height gauge. The Department has verified that Grundy does manufacturer such a gauge (The Model 9611 Wave and Tide Monitoring System). We therefore find that the Grundy resistance type wave height gauge is of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 84-8291 Filed 3-27-84; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Limit for Certain Cotton Textile Products Produced or Manufactured in Brazil

March 23, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 28, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377-4212.

Background

A CITA directive dated March 11, 1983, as amended, established restraint limits for specified categories of cotton and man-made fiber textiles and textile products, including Category 313 (cotton sheeting), produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1983. In the CITA directive published below the limit for Category 313 is being increased from 29,098,650 square yards to 31,720,150 square yards by the application of ten percent swing provided under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of March 31, 1982 between the Governments of the United States and the Federative Republic of Brazil.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreement.

March 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

This directive further amends, but does not cancel, the directive of March 11, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textiles and textile products, produced or manufactured in Brazil.

Effective on March 28, 1984, you are directed to increase the restraint limit established for Category 313 in the directive of March 11, 1983, as amended, to 31,720,150 square yards [1] according to the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of March 31, 1982 bewteen the Governments of the United States and the Federative Republic of Brazil.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls with the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-8287 Filed 3-27-84; 8:45 am]

BILLING CODE 3510-DR-M

Announcing New Limits on Certain Cotton, Wool, and Man-Made Fiber Textile Products Exported From Hong Kong

March 23, 1984.

On September 15, 1983 and January 4, 1984, notices were published in the **Federal Register** (48 FR 41481 and 49 FR 491) announcing that the Government of the United States had requested consultations with the Government of Hong Kong concerning Categories 314, 337, 359, 361, 369, 459 and 649 under the terms of the bilateral Agreement of June 23, 1982, as amended.

The purpose of this notice is to announce that consultations on these categories have been held and the following limits established for 1983 under the terms of the bilateral agreement.

Category	Unit	1983 limit
314	Syd	5,817,191
337	Doz.	591,979
359	Lbs.	9,536,887
[illegible]	Nos	655,561
369	Lbs.	7,392,251
459	Lbs.	425,038
649	Doz.	512,867

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-8286 Filed 3-27-84; 8:45 am]

BILLING CODE 3510-DR-M

Announcing New Import Limits for Certain Wool Apparel Products Produced or Manufactured in Hungary

March 23, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 28, 1984. For further information contact Gordana Slijepcevic, International Trade Specialist, (202) 377-4212.

Background

In consultations held January 23-24, 1984, the Governments of the United States and the Hungarian People's Republic agreed to amend their Bilateral Wool Textile Agreement of February 15 and 25, 1983 to include specific limits for wool coats in Category 435 and women's, girls' and infants' trousers, slacks and shorts in Category 448, produced or manufactured in Hungary and exported to the United States. In the case of Category 435 the specific limit is 10,563 dozen for goods exported during the thirteen-month period which began on December 1, 1983 and extends through December 31, 1984. For Category 448 the specific limit is 19,000 dozen for goods exported during the twelve-month period which began on January 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

SUPPLEMENTARY INFORMATION: On December 16, 1983 a letter dated December 13, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** (48 FR 55891) which established limits for certain categories of wool apparel products produced or manufactured in Hungary and exported during the year which began on January 1, 1984. The letter published below amends the letter of December 13, 1983 to include limits for wool apparel products in Categories 435 and 448 during the designated restraint periods.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the letter of December 13, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of wool textile products, produced or manufactured in Hungary and exported to the United States during 1984.

Effective on March 28, 1984, the directive of December 13, 1984 is hereby amended to include the following levels of restraint for wool textile products in Categories 435 and 448, exported during the indicated periods:

Category	Restraint limit[1] (dozen)	Period
435	10,561	Dec. 1, 1983 to Dec. 31, 1984
438	19,000	Jan. 1, 1984 to Dec. 31, 1984.

[1] The limits have not been adjusted to reflect any imports exported after November 30, 1983 (Cat. 435) and December 31, 1983 (Cat. 448)

Wool textile products in Categories 435 and 438 which have been exported to the United States prior to December 1, 1983 in the case of Category 435 and prior to January 1, 1984 in the case of Category 438 shall not be subject to this directive.

Wool textile products in Categories 435 and 438 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

The action taken with respect to the Government of the Hungarian People's Republic and with respect to imports of wool textile products from Hungary has been

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[1] The level has not been adjusted to account for any imports exported after March 31, 1983.

[2] The agreement provides, in part, that (1) within the aggregate and group limits, specific limits may be exceeded by designated percentages; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-8286 Filed 3-27-84; 8:45 am]

BILLING CODE 3510-DR-M

Government of India Officials Authorized To Issue Export Visas and Exempt Certifications

March 22, 1984.

The Government of India has notified the United States Government that the following officials of the Apparel Export Promotion Council are now authorized to issue export visas for cotton, wool and man-made fiber textile products, produced or manufactured in India and exported to the United States under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982:

Jacob Thomas, Assistant Director, Air Cargo Complex, Palam Airport, New Delhi
Kanshi Ram, Deputy Director, Air Cargo Complex Palam Airport
Anil Kumar, Assistant Director, Jaipur
S. C. Gadekar, Assistant Director, Bombay
K. Vasantha Kumar, Assistant Director, Madras

The following new officials have been designated to issue certifications for textile products which are exempt from the limitations of the bilateral agreement:

R. S. Bedi, Assistant Director, Office of Development Commissioner (Handicrafts)
P. K. Khullar, Assistant Director, Office of Development Commissioner (Handicrafts)
R. R. Vasudeva, Assistant Director, Office of Development Commissioner (Handicrafts)
G. K. Ashthana, Assistant Director, Office of Development Commissioner (Handicrafts)

The purpose of this notice is to advise the public of the change.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-8285 Filed 3-27-84; 8:45 am]

BILLING CODE 3510-DR-M

COMPTROLLER OF THE CURRENCY

FEDERAL DEPOSIT INSURANCE CORPORATION

FEDERAL HOME LOAN BANK BOARD

FEDERAL RESERVE SYSTEM

Delayed Availability of Funds; Issuance of a Policy Statement

AGENCY: Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and Board of Governors of the Federal Reserve System.

ACTION: Issuance of a policy statement.

SUMMARY: The agencies are issuing this policy statement to encourage and assist industry efforts in voluntarily addressing the problems caused by some financial institutions when they delay a depositor's ability to withdraw funds deposited by check—often called "delayed availability of funds." The policy statement calls for those financial institutions that delay availability to review and disclose their policies, and to refrain from imposing unnecessary delays on all checks, particularly on Social Security and other government checks. In reviewing their availability policies, institutions are asked to consider taking into account factors that indicate whether a given situation presents a risk of loss and to provide a means for depositors to request that an exception be made to the standard hold policy.

EFFECTIVE DATE: March 22, 1984.

FOR FURTHER INFORMATION CONTACT: William Grant, Office of the Comptroller of the Currency, (202) 447–1938; Paul Sachtleben, Federal Deposit Insurance Corporation, (202) 389–4761; Richard Tucker, Federal Home Loan Bank Board, (202) 377–6211; or Gerald Hurst, Board of Governors of the Federal Reserve System, (202) 452–3667.

SUPPLEMENTARY INFORMATION: (1) *General.* Delayed availability—the practice by some financial institutions of delaying a customer's ability to withdraw funds deposited by check for several days after the date of deposit—has been an issue of concern for several years.

Interest in limiting or restricting the delayed availability practice has increased recently both at the state and federal level. Two states, New York and California, have enacted laws addressing the issue and several other states are considering legislation. In addition, there are bills pending in both houses of Congress.

The agencies believes that the practice of delaying availability results in problems for depositors, especially when the policy is inflexible or is not disclosed to depositors in an effective manner. Institutions maintain that the practice of delaying a depositor's ability to withdraw funds beyond the time it takes the institution to receive provisional credit for the check is justified to some extent because of the time it takes for a check to be returned to the institution of first deposit if it is not paid by the paying institution. They state that the only way an institution learns that a deposited check is being returned unpaid is to receive the check back; thus, there is a risk of loss. However , only about one percent of all checks are returned unpaid and only a very small percentage of these checks result in actual losses to financial institutions. While it may be true that the frequency of losses is small because of delayed availability policies and that the potential for losses is much larger, the agencies nevertheless believe that the practice of imposing delays on all deposited checks without regard to whether a particular situation presents a potential risk (for example, the deposit of an unusually large personal check into a new account) does not appear to be justified by the risk of loss. More specifically, for example, there is normally no justification for delaying availability on a Social Security or other government check deposited into an established account beyond the date when an institution receives credit for the check. The real risk of loss in such cases results from fraud, which typically would not be discovered until long after the check has cleared.

The agencies believe that voluntary industry action, rather than mandatory requirements, represents a potential solution to many of the problems caused by delayed availability, without the costs and burdens of a legislative or regulatory approach. The agencies are, therefore, issuing a policy statement tha. outlines their concerns and recommending actions to be taken by the industry in the hope that it will encourage and assist voluntary industry action.

(2) *Discussion of policy statement.* The policy statement calls on financial institutions that delay availability to take several actions. Institutions are asked to review their policies, consider whether the delay periods can be reduced, and disclose their policies to customers in an effective manner. Institutions are also asked to refrain from imposing unnecessary delays on all checks, particularly delays on

government checks deposited into established accounts beyond the time required for the institutions to receive credit for the checks. In reviewing their policies, institutions are asked to consider various factors that might indicate whether a risk of loss exists in a given situation that justifies a delay in availability and to provide depositors with a means for requesting that an exception be made from the standard hold policies.

The actions recommended are based on the agencies' belief that, although it is appropriate to delay availability in some specific situations, it is not necessary for financial institutions to delay availability on all deposited checks. By pointing out specific actions that institutions can take, the agencies hope that the policy statement will be a basis for industry action. As the statement indicates, the agencies plan to monitor developments in the area to determine whether further steps are needed.

* * * * *

Joint Policy Statement on Delayed Availability of Funds

The Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and Federal Reserve Board are issuing this policy statement regarding the practice by financial institutions of delaying a depositor's ability to withdraw funds deposited by check—often called "delayed availability of funds." The agencies are concerned about the problems this practice causes for depositors and believe that voluntary action on the part of all financial institutions to reduce these problems would be the most efficient, least costly, and least burdensome solution.

An increasing number of financial institutions delay a depository's ability to withdraw funds in order to reduce their risk of loss if a deposited check is returned unpaid. However, financial institutions need not impose such delays on every deposited check in order to reduce the risk. In fact, some delayed availability policies may be inequitable. The agencies believe that there are actions that financial institutions can take now to eliminate some of the problems.

The agencies believe that financial institutions that delay availability should:

(1) *Review their policies* and consider reducing the delay periods to the extent possible, consistent with prudent business practices.

(2) *Disclose their policies* to depositors in an effective manner at the time an account is opened and, when practical, at the time a check is deposited that will be subject to a delay in availability. Institutions might also alert depositors to other ways of transferring funds that do not involve checks, such as through wire transfers or direct deposit through an automated clearing house.

(3) *Refrain from imposing unnecessary delays on all checks,* particularly delays on Social Security and other government checks deposited into established accounts beyond the time required to receive credit for the checks. (A delay beyond this time is generally inappropriate since the real risk is that of fraud, which ordinarily will not be discovered until long after the check has cleared.)

In reviewing their policies, institutions should take into account factors that indicate whether a given situation presents a risk of loss that justifies a delay in availability. These factors may include, for example, the length of time the account has been maintained, past experience with the depositor, the identity of the drawer, the type of check, and the location of the payor depository institution. In addition, institutions should consider providing, as part of their policy, a means for depositors to request that an exception be made from the standard delay practice and inform depositors of this possibility.

The agencies hope that the problems caused by delayed availability policies can be addressed by voluntary industry action, and urge trade groups and individual institutions to act. The agencies will be monitoring the effectiveness of these voluntary efforts to determine the extent to which disclosure is being made and the nature of specific delayed availability policies. Consumer surveys will also be conducted to determine the level of consumer awareness of delayed availability policies and the extent of consumer problems.

If it appears that voluntary action is inadequate to address the delayed availability issue, the agencies will consider further action to deal with the practice and the problems it causes.

Dated: March 22, 1984.

By order of the Office of the Comptroller of the Currency.

John F. Downey,

Chief National Bank Examiner.

By order of the Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

By order of the Federal Home Loan Bank Board.

J. J. Finn,

Secretary to the Board.

By order of the Board of Governors of the Federal Reserve System.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-8257 Filed 3-27-84; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following request for approval of the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

- Survey of Former Department of Defense Civilian Employees.
- Survery results will provide unique data on characteristics of former Department of Defense (DoD) civilian employees which are related to the willingness of critical-skill holders, t. return to DoD and to relocate in order to work, and on policy changes possibly required in order to attract an optimum of skilled employees during mobilization.
- Individuals; 11,994 respondents; 5,997 hours.
- Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mr.

Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301, telephone (202) 695–0643. This information collection will be administered by DoD personnel and is not for contract.

Dated: March 26, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-8280 Filed 3-27-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of information collection and form number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of respondendent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

New

- Designation for Arrears of Retired Pay (AFAFC Form T–609).
- This form is submitted to the Air Force Accounting and Finance Center (AFAFC/RPT) by Air Force retirees who wish to redesignate the beneficiaries who will receive their Arrears of Pay (AOP—the retired pay due but unpaid at death). Often, the retiree designated the AOP beneficiary years ago, so AFAFC spends time trying to find people who have moved or died. An automated system is being developed to use this information to pay the AOP when a retiree dies.
- Air Force retired members: 525,000 responses; 52,500 hours.
- Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Mr. John Bender AFAFC/CPR, Denver, CO 80279, telephone (303) 370–7141.

Dated: March 26, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-8280 Filed 3-27-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Acquisition Guide

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Acquisition Guide (BAG) which establishes the procedures BPA uses in the solicitation, award, and administration of procurement contracts are now available from BPA for $20 each.

ADDRESS: Copies of the BAG may be obtained by sending a check to the General Accounting Section—DTKC, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

FOR FURTHER INFORMATION CONTACT: N. L. Linscott, Contracts Manager at the above address, 503–230–4763.

SUPPLEMENTARY INFORMATION: The Bonneville Power Administration was established in 1937 as a Federal Power Marketing agency in the Pacific Northwest. BPA is a nonappropriated fund entity which finances its operations from power revenues. Its procurement operations are conducted under 16 U.S.C. 832a (f) and (g) as well as 40 U.S.C. 474(d)(20). The BAG utilizes the special authorities referred to in the preceding sentence as a basis for establishing BPA procurement policy; however, it follows the format of the Federal Acquisition Regulations to assist offerors in locating pertinent policies.

All BPA procurement solicitations include notice of applicability and availability of the BAG for the information of offerors on particular procurements.

Issued in Portland, Oregon, on March 15, 1984.

Peter T. Johnson,

Administrator.

[FR Doc. 84-8341 Filed 3-27-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 6446–001]

Clifford W. Holman; Surrender of Preliminary Permit

March 23, 1984.

Take notice that Clifford W. Holman, Permittee for the Holman Hydro–3 Project No. 6446, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 6446 was issued on November 1, 1982, and would have expired on May 31, 1984. The project would have been located on Johnson Creek in Cowlitz County, Washington.

The Permittee filed the request on February 13, 1984, and the surrender of the preliminary permit for Project No. 6446 in deemed accepted as of February 13, 1984, and effective as of 30 days after the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8343 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84–323–000]

Florida Power & Light Co.; Filing

March 23, 1984.

The filing Company submits the following:

Take notice that on March 15, 1984, Florida Power & Light Company (FP&L) tendered for filing two Exhibits A to its FERC Electric Tariff, First Revised Volume No. 1, for the termination of service to Seminole Electric Cooperative, Inc. at its Bayshore and Slater delivery points. In accordance with the terms of these Exhibits A, all loads previously served at these delivery points have been transferred to a different existing delivery point as of February 27, 1984.

FP&L requests an effective date of February 27, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8344 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-324-000]

Florida Power & Light Co.; Filing

March 23, 1984.

The filing Company submits the following:

Take notice that on March 15, 1984, Florida Power & Light Company (FP&L) tendered for filing a contract executed by both parties entitled "Contract for Interchange Service Between Florida Power & Light Company and City of Starke, Florida."

FP&L requests an effective date of June 1, 1984, and therefore requests waiver of the Commission's notice requirements.

According to FP&L a copy of this filing was served upon the City of Starke.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8345 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7229-001]

The Grisdale Hill Co.; Surrender of Preliminary Permit

March 23, 1984.

Take notice that The Grisdale Hill Company, Permittee for the Bartlett Power Project No. 7229, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7229 was issued on September 20, 1983, and would have expired on August 31, 1985. The project would have been located on the Salmon River in Clackamas County, Oregon.

The Permittee filed the request on February 7, 1984, and the surrender of the preliminary permit for Project No. 7229 is deemed accepted as of February 7, 1984, and effective as of 30 days after the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8346 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6406-001]

Langell Valley Irrigation District; Surrender of Preliminary Permit

March 23, 1984.

Take notice that Langell Valley Irrigation District, Permittee for the Gerber Reservoir Project No. 6406, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6406 was issued on January 3, 1983, and would have expired on June 30, 1984. The Project would have been located on Upper Miller Creek in Klamath County, Oregon.

The Permittee filed the request on February 13, 1984, and the surrender of the preliminary permit the Project No. 6406 is deemed accepted as of February 13, 1984, and effective as of 30 days after the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8347 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-4-1-60-002]

Locust Ridge Gas Co.; Proposed Changes in FERC Gas Tariff

March 23, 1984.

Take notice that on March 15, 1984, Locust Ridge Gas Company (Locust Ridge) tendered for filing the following revisions to its FERC Gas Tariff:

Original Volume No. 3—Second

Substitute Sixteenth Revised Sheet No. 1A

Original Volume No. 1—Second

Substitute Ninth Revised Sheet No. 1A.

Locust Ridge states that these new tariff sheets will have no net effect on the Company's current effective rate. Copies of the filing have been mailed to its jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 2, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8348 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4792-001]

Mac Hydro Power Co.; Inc.; Surrender of Exemption From Licensing

March 21, 1984.

Take notice that Mac Hydro Power Company, Inc., Exemptee for the proposed Aikens Creek Water Power Project No. 4792, has requested that its exemption be terminated. The exemption from licensing was issued on September 28, 1982, and the project would have been located on Aikens Creek in Humboldt County, California.

The Exemptee filed its request on March 12, 1984. The surrender of the exemption from licensing for Project No. 4792 is deemed accepted as of March 12, 1984 and will be effective 30 days after the date of this notice.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8349 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5126-002]

Mega Hydro Inc.; Surrender of Preliminary Permit

March 23, 1984.

Take notice that Mega Hydro Inc., Permittee for the proposed West Fork-

Feather River Power Project No. 5126 has requested that its preliminary permit be terminated. The preliminary permit was issued on December 22, 1982, and would have expired on May 31, 1984. The project would have been located on West Fork Creek in Butte County, California. Mega Hydro Inc. cites that the project is not economically feasible for development.

Mega Hydro Inc. filed its request on January 30, 1984, and the surrender of its permit for Project No. 5126 is deemed accepted effective 30 days from the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8360 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-321-000]

Pacific Power & Light Co.; Filing

March 23, 1984.

The filing Company submits the following:

Take notice that on February 24, 1984, Pacific Power & Light Company (PP&L) tendered for filing a Letter Agreement dated, December 2, 1983 between PP&L and the Public Utility District No. 1 of Cowlitz County (The District) and an Amendment (Amendatory Agreement) to the Power Contract dated June 4, 1957 between PP&L and The District.

PP&L states that the Letter Agreement provides for a methodology to determine transfer and motoring losses associated with The District's power allocation from the Swift Hydroelectric Project. PP&L further states that the $54,000 transfer charge noted in the Letter Agreement is a restatement of the transfer charge contained in PP&L's December 15, 1983 filing under Docket No. ER84-171-000.

PP&L indicates that the Amendatory Agreement reflects The District's withdrawal from the sale of electrical power and energy to PP&L and provides for scheduling, accounting and storage of The District's power allocation from the Swift Hydroelectric Project.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8351 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4916-001]

Plumas County Flood Control and Water Conservation District; Surrender of Preliminary Permit

March 23, 1984.

Take notice that Plumas County Flood Control and Water Conservation District (District), Permittee for the proposed Chips Creek Project No. 4916 has requested that its preliminary permit be terminated. The preliminary permit was issued on March 21, 1983, and would have expired on September 30, 1984. The project would have been located on Chips Creek in Plumas County, California. The District cites that the project is within the U.S. Forest Service's Rare II Planning Area which precludes activities necessary to determine the feasibility of the proposed project.

The District filed its its request on February 6, 1984, and the surrender of its permit for Project No. 4916 is deemed accepted effective 30 days from the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8352 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-41-001]

Southwest Gas Corp.; Proposed Changes in FERC Gas Tariff

March 23, 1984.

Take notice that on March 19, 1984, Southwest Gas Corporation (Southwest) tendered for filing the following revisions to its FERC Gas Tariff, Original Volume No. 1: Substitute Twenty-Second Revised Sheet No. 10.

This filing is in response to the recommendations of the Commission's auditors.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8353 Filed 3-27-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of March 2 Through March 9, 1984

During the week of March 2 through March 9, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: March 21, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Mar. 2 through Mar. 9, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 5, 1984	Industrial Sprinkler Co., Hackensack, N.J	HFA-0212	Appeal of an Information Request Denial. If granted: The February 23, 1984, Freedom of Information Request Denial issued by the Department of Energy would be rescinded and Industrial Sprinkler Company would receive access to documents relating to the DOE's audit of Terminal Construction Company.
Mar. 6, 1984	Economic Regulatory Administration, Washington, D.C	HRZ-0191	Interlocutory Order. If granted: The proposed Remedial Order (Case No. HRO-0156) issued to Gulf Oil Corporation would be modified as follows: the violation time period would be extended, amount of alleged overcharges would be increased, and Subpart V proceedings would be substituted for the remedial measures.
Do	do	HRD-0203	Motion for Discovery. If granted: Discovery would be granted to Economic Regulatory Administration regarding issues of marine transportation costs in connection with the Proposed Remedial Order issued to Marathon Oil Company (Case No. HRO-0026).
Do	Marathon Oil Co., Washington, D.C	HRD-0204	Motion for Discovery. If granted: Discovery would be granted to Marathon Oil Company in connection with the Statement of Objections submitted in response to a Proposed Remedial Order (Case No. HRO-0026) issued to the firm.
Do	do	HRD-0205	Motion for Discovery. If granted: Discovery would be granted to Marathon Oil Company, regarding issues of marine transportation costs in connection with the Proposed Remedial Order issued to the firm (Case No. HRO-0026).
Do	Welch Oil Co., Bellevue, Iowa	HEE-0090	Exception to the Reporting Requirements. If granted: Welch Oil Company would not be required to file form EIA 782-B "Reseller/Retailer's Monthly Petroleum Products Sales Report".
Mar. 8, 1984	Ashland Oil, Inc./Atlantic Richfield, Los Angeles, Calif	HEJ-0047	Request for Protective Order. If granted: Atlantic Richfield Company would enter into a Protective Order with the Ashland Oil, Inc. regarding the exchange of proprietary information between Atlantic Richfield Company and Ashland Oil, Inc. in connection with Ashland Oil Inc.'s Application for Exception (Case No. BEE-1578).
Do	Herbert Holmes, Clarksburg, W. Va	HFA-0213	Appeal of An Information Request Denial. If granted: The February 27, 1984 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and Herbert Holmes would receive access to his dosimeter readings and related medical reports resulting from a nuclear test named "Operation Teapot" in 1955.
Mar. 9, 1984	Texaco, Inc., Washington, D.C	HRR-0085	Motion for Modification/Rescission. If granted: The February 28, 1984 Decision and Order (Case No. HRZ-0166) issued to the Office of Special Counsel would be modified regarding Texaco, Inc.'s request to reconsider the LOC Crude information.

Refund Applications Received

[Week of Mar. 2 to Mar. 9, 1984]

Date	Name and refund proceeding/name of refund applicant	Case No.
Mar. 6, 1984	Amoco/Asher Oil Co., Amoco/Heilig Oil Co	RF21-12287, RF21-12288
Feb. 29, 1984	Amoco/Capitol Rent A Car, Inc	RF21-12289
Mar. 6, 1984	Amoco/Doug Asher Oil Co., Inc	RF21-12290

[FR Doc. 84-8342 Filed 3-27-84; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Request for Applications for Short-Term Power From the Navajo Generating Station

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of request for applications for short-term power from the Navajo Generating Station.

SUMMARY: The Western Area Power Administration (Western), Boulder City Area Office, is requesting applications for Navajo Generating Station (Navajo) power. The general principles under which the power is to be marketed are contained in the General Consolidated Power marketing Criteria or Regulations for Boulder City Area Projects (Criteria) published in the **Federal Register** on May 9, 1983 (48 FR 20881).

Applications are requested for short-term capacity and energy available from Navajo, a feature of the Central Arizona Project (CAP), in accordance with Part IV of the Criteria. Allocations of Navajo power for short-term arrangements will be made after review of applications requested herein.

Allocations of Navajo power for long-term arrangements will be made after the decision relating to the construction of a regulatory storage unit is reached.

Western will immediately begin accepting and reviewing applications for power in accordance with the Criteria.

ADDRESS: Applications may be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293-8800.

DATE: Applications for short-term Navajo power will be accepted through April 30, 1984. Applications postmarked after that date will not be considered.

SUPPLEMENTARY INFORMATION: On May 9, 1983, Western published the General Consolidated Power marketing Criteria or Regulations for Boulder City Area Projects in the **Federal Register**. The Criteria contains the general power marketing principles for amounts of power available from Navajo. Terms for delivery will be consistent with the Criteria. Charges for capacity and energy will currently be consistent with the United States layoff agreements. These charges currently include an annual generation capacity charge, an annual generation capacity surcharge, a generation operating charge and a generation energy charge. Charges for transmission capacity currently include an annual transmission capacity charge, an annual transmission capacity surcharge, an annual Moenkopi

Substation use charge, and a transmission operating charge.

As stated in the Criteria, the power from Navajo is marketed as contingent power, with the reciever supplying the necessary reserve capacity. Navajo power available for marketing is that amount of power withdrawn from the current layoff contractors that is surplus to the needs of the CAP. It is anticipated that the power to be allocated will be available for the most part during offpeak hours for the startup of CAP, and will be available only during the winter season after CAP pumping is in full operation. The amount available during any hour will be dependent upon Navajo output and CAP load.

The current schedule for withdrawal of Navajo power from the layoff contractors is shown below:

Withdrawal date	Withdrawal amount (MW)	
	Incremental	Cumulative
July 1984	16.4	16.4
July 1984	8.7	25.1
July 1984	13.7	[illegible]
July 1984	11.2	- 50.0
January 1985	[1] 316.3	[illegible]
July 1985	[2] 41.5	[2] 407.8
July 1985	[2] 61.0	[2] 468.8
January 1986	[2] 31.8	[2] 500.6
January 1986	[2] 46.2	[2] 546.8

[1] The January 1985 withdrawal includes separate planned withdrawals of 4.8 MW for the Protective and Regulatory Pumping Unit, and 40.7 MW for the Yuma Desalting Plant, which have been postponed due to the enactment of Public Law 98-[illegible].

[2] Withdrawals from preference contractors will be postponed until May 31, 1987, if power is not needed for CAP.

This schedule is subject to change concurrent with any change in the CAP construction schedule.

The Salt River Project has installed a dynamic participation signal that instantaneously allocates the output of Navajo to the participants in the Navajo Generating Station. Due to the varied output of the powerplant, with variations in coal quality and other factors, each successful applicant must be able to accept such a signal in order to provide system regulation and control. Inasmuch as the output of Navajo is separated into percentages equal to the participation share, Western will allocate Navajo power by percentage of the amount withdrawn.

Applications shall include name and address of the applicant, including contact person, and the amounts of capacity and energy requested for both the summer and winter seasons as defined in the Criteria.

The applications for power shall include the following applicant profile data as approved through November 30, 1984, by the Office of Management and Budget (OMB No. 1904–0037):

1. Eligibility—a statement of eligibility as a preference customer under Reclamation Law and pertinent statutes, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)).

2. Organization—a brief description of the organization that will interact with Western on contract and billing matters.

3. The name, address, and telephone number of a contact person from a consulting firm used, if any.

4. Transmission:

a. Voltage of service required, requested point(s) of delivery, and the capacity desired at each.

b. A description of the transmission arrangements necessary to deliver the power from the project delivery point(s) specified in the Criteria to the applicant's load.

5. Loads:

a. A tabulation showing monthly peak demands and monthly energy usage for calendar years 1981, 1982, and 1983.

b. The applicant's daily peak for system loads for the peak weeks in the summer (March–September) and winter (October–February) seasons for 1981, 1982, and 1983.

6. Resources:

a. List of generating resources, if any, including installed capacity, 1983 plant factor, and location.

b. A listing, if an applicant is applying for power on behalf of others, of the entities represented, the present allocations to those entities of existing Federal resources, and the proposed allocation of the available new resources.

c. A listing of power supply contracts with parties other than Western, which includes the amounts of capacity and energy under contract and termination date of each.

7. The application may also contain any other pertinent information the applicant may wish to provide.

8. The signature and title of an appropriate official who is able to attest to the validity of the data submitted and who is authorized to submit an application for power.

The applications for power will be available for public review at the Boulder City Area Office after May 11, 1984.

Issued at Golden, Colorado, March 16, 1984.

Robert L. McPhail,
Administrator.

[FR Doc. 84-8340 Filed 3-27-84; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180640; PH-FRL 2554-6]

Louisiana Department of Agriculture; Receipt of Application for Specific Exemption To Use a Pesticide for an Unregistered Use; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Lousiana Department of Agriculture (hereafter referred to as the "Applicant") for a specific exemption to use the active ingredient 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole, plus its metabolites containing the dichlorobenzyl moiety (Tilt, EPA Reg. No. 100–617) to control sheath blight caused by *Rhizoctonia solani,* as well as brown spot caused by *Bipolaris oryzae,* narrow brown spot caused by *Cercospora oryzae,* leaf smut caused by *Entyloma oryzae,* stem rot caused by *Sclerotium oryzae,* blast caused by *Pyricularia oryzae* and sheath spot caused by *Rhizoctonia oryzae* on 250,000 acres of rice in Louisiana. EPA is soliciting comment before making the decision whether or not to grant the specific exemption.

DATE: Comments must be received on or before April 27, 1984.

ADDRESS: Written comments by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part of all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION:

By mail: Libby Welch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of Tilt, EPA Reg. No. 100–617, to control sheath blight caused by *Rhizoctonia solani,* as well as brown spot caused by *Bipolaris oryzae,* narrow brown spot caused by *Cercospora oryzae,* leaf smut caused by *Entyloma oryzae,* stem rot caused by *Sclerotium oryzae,* blast caused by *Pyricularia oryzae* and sheath spot caused by *Rhizoctonia oryzae* throughout Louisiana. Information in accordance with 40 CFR Part 166 was submitted as part of this request. Tilt is currently registered for use on grasses grown for seed.

According to the Applicant, approximately 525,000 acres will be planted to rice in Louisiana during the 1984 crop year. It is stated that the Louisiana rice crop has been damaged annually by a number of diseases, primarily sheath blight caused by *Rhizoctonia solani,* but including the other pests named above. The incidence of rice sheath blight has increased since the late 1960's and has severely reduced yields in various locations in the State, according to the Applicant. The organism is soilborne with the primary inoculum being a sclerotium that continues to increase in number with each diseased crop.

The Applicant predicts that this disease situation will continue and even worsen because of the following factors: (1) Resistant long grain rice varieties are currently unavailable and none are anticipated within the near future; (2) the pathogen attacks both rice and soybeans, preventing cultural control through crop rotation; (3) changes in crop rotation from long rice-pasture rotations to rice-rice or rice-soybean rotation have occurred; these rotations have allowed the current buildup of inoculum levels resulting in increasing sheath blight incidence in rice; (4) crop residue destruction has not been effective in controlling this pathogen; burning of rice stubble is not effective in completely destroying the sclerotia, contributes to air pollution, and destroys needed organic matter; incorporation of residue by tillage serves to replenish the sclerotia reserve in the soil; (5) currently labeled fungicides available for sheath blight control *Rhizoctonia* spp. in rice, but do not provide consistently high levels of control or substantially reduce the number of sclerotia in the stubble. Benlate (benomyl) and Mertect (thiabendazole) are currently labeled for rice sheath blight in Louisiana. The Applicant states that widespread use of benomyl has often resulted in the development of pathogen resistance to the chemical and consequent loss of benomyl as a control measure. The chemical pathways of thiabendazole are very near those of benomyl and similar situations are expected to develop with that compound according to the Applicant. It is estimated that treatment of affected acreage with Tilt in 1984 could save Louisiana growers at least $9,400,000.

The Applicant proposes to treat 250,000 acres of rice throughout the State. The time of usage will be from May 1, 1984, through September 1, 1984, with no more than 141,000 pounds of active ingredient to be used.

This notice does not constitute a decision by EPA on the application itself. Use of the pesticide Tilt has been determined to be of public interest, and, therefore, the Agency has decided that public notice and opportunity for public comment pursuant to 40 CFR 166.10 is called for as a part of the information adjudication for specific exemptions. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before April 27, 1984, and should bear the identifying notation "OPP–180640." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystall Mall No. 2, at the address given above, from 8:00 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by Louisiana.

Dated: March 19, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84–8356 Filed 3–27–84; 8:45 am]
BILLING CODE 6560–50–M

[WH–FRL 2554–5]

Draft General National Pollutant Discharge Elimination System (NPDES) Permit for Log Transfer Facilities in the State of Alaska; Change in Comment Period and Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of Extension of public comment period and postponement of public hearing.

SUMMARY: The Regional Administrator of Region 10 is today giving notice that the public comment period (previously noticed at 49 FR 6788, February 23, 1984) for the draft general National Pollutant Discharge Elimination System (NPDES) permit for log transfer facilities in the State of Alaska is extended until May 4, 1984. A public hearing scheduled for March 28, 1984, in Juneau has been rescheduled for April 27, 1984. An informal public workshop to discuss the permit terms and conditions has been scheduled for April 12, 1984, in Juneau. The time and location of these meetings are listed below.

DATES: Interested persons may subit comments on the draft general permit to EPA, Region 10, at the address below no later than May 4, 1984. An informal public workshop is scheduled for April 12, 1984, at 9:00 A.M. at the University of Alaska, Bill Ray Center, Room #152, 1108 F Street, Juneau. A public hearing is scheduled for April 27, 1984, at 9:00 A.M., at the Mendenhall Glacier Visitor Center, Juneau, Alaska. Any person wishing to make statement at the hearing must notify Mr. Wally Scarburgh at the address below no later than 4:00 P.M. on April 20. Regional Administrator, U.S. Environmental Protection Agency, Region 10, M/S 430, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT:

Mr. William Lawrence, Alaska Operations Office, Room E 556, Federal Building, 701 C Street, Box 19, Anchorage, Alaska 99513, (907) 271–5083

Ms. Marcia Lagerloef, Ocean Programs Section, M/S 430, US EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442–1285

Mr. Wally Scarburgh, Alaska Operations Office, 3200 Hospital Drive, Suite 101, Juneau, Alaska 99811, (907) 586–7619

Mr. Edward Ovsenik, Permits Division (EN–336), EPA Headquarters, 401 M Street, S.W., Washington, D.C. 20460, (202) 426–7035

Dated: March 21, 1984

L. Edwin Coate,

Acting Regional Administrator.

[FR Doc. 84-8357 Filed 3-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP—180641 PH-FRL 2552-7]

Cyromazine; Issuance of Emergency exemptions for Use of an Unregistered Pesticide

AGENCY: EPA Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the use of the pesticide chemical cyromazine to the: (1) Maryland and Pennsylvania Departments of Agriculture and the Virginia Department of Agriculture and Consumer Services to control fly larvae in poultry manure. The specific exemptions were authorized for use in 15 counties in Pennsylvania, 3 counties in Maryland and in the affecterd area of Virginia's Shenandoah Valley to control an outbreak of highly pathogenic avian influenza; and (2) Florida Department of Agriculture and Consumer Services for use on celery, lettuce and fresh-market tomatoes to control leafminers.

DATES: 1. The specific exemptions were granted to Pennsylvania on December 9, 1983, to Maryland on January 31, 1984, and to Virginia on February 25, 1984. Pennsylvania's exemption expires on December 9, 1984, or when the emergency situation ceases to exist, whichever occurs first; and Maryland's and Virginia's exemptions expire on January 26, 1985, or when the emergency situation ceases to exist, whichever occurs first.

2. Florida's exemptions for use on celery and lettuce were granted on November 25, 1983, and expire on June 30, 1984; and the tomato exemption was granted on February 9, 1984, and expires on June 15, 1984.

FOR FURTHER INFORMATION CONTACT:

By mail: Jack E. Housenger, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, Va. (703) 557–1192.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions for the use of the pesticide chemical cyromazine to the Maryland and Pennsylvania Departments of Agriculture and the Virginia Department of Agriculture and Consumer Services to control fly larvae in poultry manure in areas affected by an outbreak of highly pathogenic avian influenza. EPA has also granted a specific exemption to Florida for the use of cyromazine on celery, lettuce, and tomatoes to control leafminers.

Maryland, Pennsylvania, and Virginia

The Maryland and Pennsylvania Departments of Agriculture and the Virginia Department of Agriculture and Consumer Services have declared the existence of emergency conditions due to outbreaks of the highly pathogenic avian influenza in the poultry flocks in certain areas within their States.

The highly pathogenic avian influenza is a virus which can be trasmitted by various mechanisms. One possible mechanism of transmission may be the fly. Therefore, one aspect of the efforts to reduce the spread of the virus is control of the fly population. Each State will use cyromazine in poultry feed as a feed-through pesticide to control fly larvae in poultry manure. Currently registered pesticides will also be used to control adult fly populations as well as other insects. This outbreak of highly pathogenic avain influenza has resulted in mortality of 25 to 60 precent of the poultry population affected.

After reviewing the applications and other available information, EPA has determined that:

1. An outbreak of the highly pathogenic avian influenza has occurred in seven counties in Pennsylvania, in Cecil County in Maryland and in some parts of Virginia's Shenandoah Valley, and as a part of the overall program to help reduce the spread of the virus, immediate control of fly populations is necessary in and around the affected areas.

2. Registered alternatives are not adequately controlling the fly populations which could result in the spread of this highly pathogenic virus.

3. As a result of a risk analysis, it has been determined that the use of cyromazine as proposed will not pose an unreasonable hazard to man or the environment.

Accordingly, Pennsylvania, Maryland, and Virginia have been granted specific exemptions to use the pesticide noted above until December 9, 1984, in Pennsylvania; and January 26, 1985, or when the emergency situation ceases to exist, whichever occurs first, in Maryland and Virginia, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The unregistered pesticide product Larvadex 0.3% Premix, which contains the active ingredient cyromazine and is manufactured by the CIBA-GEIGY Corporation, will be used.

2. Larvadex 0.3% Premix will be applied to feed at a rate of one pound of product (0.003 pound active ingredient) per ton of feed.

3. Poultry may be fed treated feed in the Pennsylvania counties affected by the avain flu and their adjoining countries, Adams, Berks, Chester, Cumberland, Dauphin, Delaware, Franklin, Lancaster, Lebanon, Lehigh, Montgomery, Northumberland, Perry, Schuylkill, and York; in the Maryland county of Cecil and the adjoining countries of Harford and Kent; and in Virginia's Shenandoah Valley.

4. Treated feed may be fed only to egg-laying, pullet and broiler poultry.

5. Combined residues of cyromazine and its metabolite melamine will not exceed 0.4 ppm in eggs, meat, fat and meat byproducts of poultry.

6. The EPA shall be immediately informed of any adverse effects resulting from the use of cyromazine in connection with these exemptions.

7. A final report summarizing the results of these programs is required to be submitted after the exemptions expire.

Florida

The Florida Department of Agriculture and Consumer Services has declared the existence of emergency conditions with regard to control of leafminers in celery, lettuce and tomatoes. The leafminer has been a serious problem for Florida growers and has resulted in extreme economic losses on each of these crops in the past when registered alternative pesticides have failed to provide control.

After reviewing the applications and other available information, EPA has determined that:

1. A pest outbreak of the leafminer has occurred and registered alternative pesticides will not provide adequate control.

2. Significant economic losses are anticipated without the use of an effective leafminer control.

3. The use of cyromazine as proposed will not pose an unreasonable hazard to man or the environment.

Accordingly, Florida has been granted specific exemptions to use cyromazine on celery and lettuce until June 30, 1984, and on fresh-market tomatoes until June 15, 1984. The specific exemptions are also subject to the following conditions:

1. The unregistered pesticide product Trigard 75 WP, which contains the active ingredient cyromazine and is manufactured by the CIBA-GEIGY Corporation, will be used.

2. Trigard 75 WP will be applied at a rate of 0.125 pound active ingredient per acre per application.

3. A maximum of 12 applications may be made to celery and tomatoes and a maximum of 8 applications may be made to lettuce.

4. A 14-day preharvest interval will be observed for applications made to celery and lettuce while applications may be made up to the day of harvest for tomatoes.

5. A maximum of 10,000 acres of celery and 12,000 acres of lettuce in the counties of Hendry, Lake, Orange, Palm Beach, Sarasota, and Seminole may be treated. A maximum of 30,000 acres of tomatoes for fresh fruit market only may be treated.

6. Combined residues of cyromazine and its metabolite melamine will not exceed 0.5 ppm in or on celery or lettuce and 1 ppm in or on tomatoes as a result of the approved treatments.

7. The EPA shall be immediately informed of any adverse effects resulting from the use of cyromazine in connection with these exemptions.

8. A final report summarizing the results of these programs is required to be submitted after the exemptions expire.

Dated: March 19, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84-8138 Filed 3-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS -53057; TSH-FRL 2517-2]

Premanufacture Notices; Monthly Status Report for December 1983

Correction

In FR Doc. 84-2850, beginning on page 4139, in the issue of Thursday, February 2, 1984, make the following corrections:

1. On page 4139, in Table I, in the entries for 84-257 and 84-258, the second line in the identity and generic name column should read "a diisocyanate."

2. On page 4140, in Table I, in the entry for 84-286, in the identity and generic name column, after "aliphatic" add "nitrile".

3. On page 4142, in Table III., in the entry for 83,1156 "cyclopentadieneformaldehyde" should be one word.

4. On page 4143, in Table III., in the entry for 83-1273 "Chromophore" should have an "e" on the end.

BILLING CODE 1505-01-M

[(OPTS-59146A/147A) TSH-FRL 2554-3]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of six applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-26, TME-84-27, TME-84-28, TME-84-29, TME-84-30, TME-84-31, and TME-84-32. The test marketing conditions are described below.

EFFECTIVE DATE: March 20, 1984.

FOR FURTHER INFORMATION CONTACT: Joe B. Boyd, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M St. SW., Washington, DC. 20460 (202-382-3739).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-26, TME-84-27, TME-84-28, TME-84-29, TME-84-30, TME-84-31, and TME-84-32. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, number of workers exposed to the new chemicals, and the levels and durations of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

TME 84-26

Date of Receipt: February 6, 1984.
Notice of Receipt: February 17, 1984 (49 FR 6162).
Applicant: Confidential.
Chemical: (G) Polyamic resin solution.
Use: (G) Specialty coatings.
Production Volume: Confidential.
Number of Customers: Confidential.
Worker Exposure: Manufacture: a total of 4 workers.
Processing: Dermal and inhalation. Number of workers is confidential.
Test Marketing Period: 18 months.
Commencing on: March 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.
Public Comments: None.

TME 84-27

Date of Receipt: February 6, 1984.
Notice of Receipt: February 17, 1984 (49 FR 6162).
Applicant: Confidential.
Chemical: (G) Polyamic resin solution.
Use: (G) Specialty coatings.
Production Volume: Confidential.
Number of Customers: Confidential.
Workers Exposure: Manufacture: a total of 4 workers.
Test Marketing Period: 18 months.
Commencing on: March 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.
Public Comments: None.

TME 84-28

Date of Receipt: February 7, 1984.
Notice of Receipt: February 17, 1984 (49 FR 6162).
Applicant: Confidential.
Chemical: (G) Alkyl polyether.
Use: (G) Used in manufacture of an industrial polyurethane.
Production Volume: 20,000 kg.
Number of Customers: Confidential.
Worker Exposure: Manufacture and use: dermal, a total of 10 workers up to 2 hrs/day up to 120 days/yr.
Test Marketing Period: 6 months.
Commencing on: March 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.
Public Comments: None.

TME 84-29

Date of Receipt: February 7, 1984.
Notice of Receipt: February 17, 1984 (49 FR 6162).
Applicant: Confidential.
Chemical: (G) Urethane acrylate.
Use: (G) Resin coating.
Production Volume: 20,000 lbs.
Number of Customers: five.
Worker Exposure: Manufacture: dermal, 10 workers. Processing and use: dermal, 20 workers
Test Marketing Period: 12 months.
Commencing on: March 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.
Public Comments: None.

TME 84-30

Date of Receipt: February 10, 1984.
Notice of Receipt: February 24, 1984 (49 FR 6990).
Applicant: Confidential.
Chemical: (G) Rosin-modified phenolic resin.
Use: Heat set web offset printing inks (80%), Sheet-fed quickset printing inks (20%).
Production Volume: Confidential.
Number of Customers: Six.
Worker Exposure: Manufacture: Dermal and inhalation a total of 4 workers, up to 3 hrs./day, up to 2 days/yr.
Test Marketing Period: 6 months.
Commencing on: March 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.
Public Comments: None.

TME 84-31

Date of Receipt: February 15, 1984.
Notice of Receipt: February 24, 1984 (49 FR 6990).
Applicant: EM Chemicals.
Chemical: (g) Alkylbenzoic acid, 4-alkylphenyl ester.
Use: Used in a mixture for manufacture of liquid crystal displays.
Production Volume: Confidential.
Number of Customers: 15.
Worker Exposure: Manufacture: dermal, a total of 15 workers.
Test Marketing Period: 3 months.
Commencing on: March 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.
Public Comments: None.

TME 84-32

Date of Receipt: February 15, 1984.
Notice of Receipt: February 24, 1984 (49 FR 6990).
Applicant: EM Chemicals.
Chemical: Alkylbenzoic acid, 4-alkylphenyl ester.
Use: Used in a mixture to manufacture liquid crystal displays.
Production Volume: Confidential.
Number of Customers: 15.
Worker Exposure: Processing and use: dermal, a total of 15 workers up to 8 hrs/day and up to 90 days/yr.
Test Marketing Period: 3 months.
Commencing on: March 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.
Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: March 20, 1984.

Don R. Clay,

Director, Office of Toxic Substance.

[FR Doc. 84-8278 Filed 3-27-84; 8:45 am]
BILLING CODE 6560-50-M

[Docket Nos. ECAO-HA-83-2, ECAO-HA-79-7; CORD-FRL-2554-U]

Health Assessment Document for Ethylene Oxide and Ethylene Dichloride

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of External Review Drafts.

SUMMARY: This notice announces the availability of two external review drafts: the Health Assessment Document for Ethylene Oxide and the Health Assessment Document for Ethylene Dichloride. The largest single use of ethylene oxide is as an intermediate in the synthesis of ethylene glycol. However, small amounts of this epoxide are used as a sterilant or pesticide in commodities, pharmaceuticals, medical devices, tobacco, and other items. A major portion (84%) of the United States' ethylene dichloride production is consumed to make vinyl chloride monomer. It is also used to make chlorinated solvents, vinylidene chloride and ethyleneamines.

Those persons interested in commenting on the scientific merit of these documents will be able to obtain a copy of each document as follows:

(1) The documents will be available in single copy quantity from EPA at the following address: ORD Publications—CERI-FRN, U.S. Environmental Protection Agency, 26 W. St. Clair, Cincinnati, Ohio 45268 [(513) 684-7562].

Requesters should be sure to cite the EPA number assigned to these documents, EPA-600/8-84-009A for ethylene oxide and EPA-600/8-84-006A for ethylene dichloride.

To receive these documents, requesters should send their names and addresses to CERI at this time.

(2) These documents will also be available for public inspection and copying at the EPA Library at Waterside Mall, 401 M. Street, SW., Washington, D.C. 20460.

Commenters are requested to submit separate comments for each document rather than making a combined submission. Comments must be made in writing and addressed to either: Project Officer for Ethylene Oxide or Project Officer for Ethylene Dichloride, Environmental Criteria and Assessment Office (MD-52), U.S. Envoronmental Protection Agency, Research Triangle Park, N.C. 27711.

After receipt of all public comments on these documents, the Science Advisory Board will hold public meetings to review the documents. Advance notices announcing the time and place and the agenda will be published in the **Federal Register.**

DATES: The Agency will make these documents available for public comment on Monday, April 23, 1984. Comments must be received by close of business on Friday, June 22, 1984, or postmarked by that date.

SUPPLEMENTARY INFORMATION: The Office of Health and Environmental Assessment has prepared these health assessments to serve as source documents for EPA use. These health assessment documents were originally developed for use by the Office of Air Quality Planning and Standards to support decision-making regarding

possible regulation of ethylene oxide and ethylene dichloride under the Clean Air Act. However, the scope of these documents has since been expanded to address multimedia aspects.

In the development of these assessment documents, the scientific literature has been inventoried, key studies have been evaluated, and summary/conclusions have been prepared so that the chemicals' toxicity and related characteristics are qualitatively identified. Observed effect levels and other measures of dose-response relationships are discussed, where appropriate, so that the nature of the adverse health responses is placed in perspective with observed environmental levels.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Chappell, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD–52, Research Triangle Park, N.C. 27711 [(919) 541–3637].

Dated: March 23, 1984.

Bernard D. Goldstein,

Assistant Administrator for Research and Development.

[FR Doc. 84–8277 Filed 3–27–84; 8:45 am]

BILLING CODE 6560–50–M

[FRL 2493–5]

Fuels and Fuel Additives; Proposed Revocation of Waiver Granted Under Section 211(f) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revocation of waiver.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition for reconsideration and proposing to revoke a waiver granted under section 211(f) of the Clean Air Act to American Methyl Corporation (American Methyl) [1] for a proprietary fuel known as "Petrocoal." This proposed revocation is based on EPA's analysis of relevant data and information in light of a petition for reconsideration and a supplementary submission by the Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA), as well as comments submitted in response to a solicitation for public comments in the **Federal Register** on May 2, 1983, 48 FR 19779.

Hearing

Any party desiring to present views orally may request a hearing by contacting Richard G. Kozlowski at the address listed below. The deadline for such a request is April 27, 1984. If EPA receives a timely request, EPA will publish in the **Federal Register** a notice of its date and location.

DATE: Comments should be submitted on or before May 29, 1984, or 30 days after the hearing, should one be held.

ADDRESS: Copies of the non-confidential information relative to this waiver application and subsequent submissions are available for inspection in public docket EN–81–8 at the Central Docket Section (LE–131) of EPA, Gallery I—West Tower, 401 M Street, SW., Washington, D.C. 20460, (202) 382–7548, between the hours of 8:00 a.m. and 4:00 p.m. Any comments from interested parties should be addressed to this docket, with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying materials in the docket.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Chief, Fuels, Section, Field Operations and Support Division (EN–397), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382–2635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(f)(1) of the Clean Air Act (Act), 42 U.S.C. 7545(f)(1), states that effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce in commerce, or to increase the concentration in use of, any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4), provides that the Administrator of EPA, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under section 211(f)(1), if the Administrator determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, or the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the use life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny an application within 180 days of receipt of the application, the waiver authorized by section 211(f)(4) shall be treated as granted.

American Methyl submitted an application for a waiver for a proprietary fuel known as "Petrocoal" on February 20, 1981. A **Federal Register** notice was published April 13, 1981, 46 FR 21695, acknowledging receipt of the application and soliciting comments. With American Methyl's consent, EPA subsequently extended until September 28, 1981 the 180-day review period provided by section 211(f)(4), that would have expired on August 19, 1981. On September 28, 1981, the Administrator granted the waiver, subject to certain conditions. A **Federal Register** notice of this decision was published on October 5, 1981, 46 FR 48975.

On December 4, 1981, MVMA filed with EPA a petition seeking administrative reconsideration of EPA's decision. In general, MVMA's administrative petition argued that: (1) The Petrocoal waiver was not in the public interest, (2) adverse consequences to vehicle manufcturers and individual car owners would result, and (3) the decision was contrary to applicable provisions of the Act.

Also on December 4, 1981, MVMA on behalf of its member companies, and the General Motors Corporation individually, filed timely petitions for review of the waiver grant in the U.S. Court of Appeals for the District of Columbia Circuit. American Methyl joined in the litigation as an intervenor, and over the next several months the parties discussed approaches to narrow or resolve the outstanding issues. Those discussions did not lead to an agreement, and on February 22, 1983, MVMA submitted to EPA supplementary petition for reconsideration, referencing new data on the effects of methanol in gasoline on automotive evaporative emissions. These data were obtained primarily from studies performed for the Department of Energy and the Coordinating Research Council by Systems Control, Inc., and from studies by E.I. duPont, Inc. (DuPont) in connecting with its August 25, 1982 waiver application to EPA concerning a methanol blend. These data were also based on comments submitted by the California Air Resources Board in connection with DuPont's waiver application. On the basis of this evidence, MVMA argued, among other

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[1] At the time EPA granted the waiver, American Methyl was known as Anafuel Unlimited. For ease of reference, this notice will refer to the company as American Methyl throughout.

things, that evaporative emissions with methanol-gasoline blends are significantly higher than with gasoline, and cannot be controlled by fuel blending, even if volatility is controlled.

In addition, subsequent information indicated that the fuel tested by the applicant and provided by the applicant to the Agency and to General Motors Corporation for testing may not have been the fuel described in the waiver request.

Since the control of evaporative emissions by compliance with American Society for Testing and Materials (ASTM) specifications was a key assumption upon which the waiver was granted, and since the composition of the fuel described or tested is integral to the waiver decision, the new information brought into question the validity of the Agency's waiver grant.

Accordingly, in the **Federal REgister** on May 2, 1983, 48 FR 19789, EPA stated that it was considering administrative action to modify or to revoke the waiver under section 211(f) of the Act, or to control or prohibit the sale of Petrocoal under section 211(c) of the Act. The Agency solicited comments, data, and analyses which relate to the waiver or which could be of help to the Agency in determining whether Petrocoal produces any emission product which either causes or contributes to air pollution which may reasonably be anticipated to endanger the public health or welfare, or which will impair to a significant degree the performance of any emission control device or system which is in general use or which is likely to be in general use in a reasonable time, or which would cause or contribute to the failure of a vehicle to meet applicable emissions standards to which it was certified.

II. New Information

A. Introduction

Since the Petrocoal waiver was granted on September 28, 1981, new information concerning Petrocoal as well as information concerning the relationship between evaporative emissions and fuel volatility has been obtained. Much of this new information has been received in response to EPA's May 2, 1983 request for comments. In response to this notice, EPA received many comments from motor vehicle manufacturers, oil companies, alternative fuel companies, and a prosecuting attorney.

The major source of new data is a test program on vehicles fueled with alcohol blends conducted by Systems Control, Inc. for the Coordinating Research Council (CRC) under contract with the Department of Energy. The study was designed to evaluate, for these fuels, such properties as driveability, fuel economy, and emissions performance. The program was divided into two phases: ethanol and methanol blends. The methanol phase of the program included ten vehicles.

While all the data from the CRC tests have been accumulated, CRC has not published a final report. Accordingly, EPA received many reviews, comments, and analyses concerning these data. Detailed analyses were provided by the MVMA, Energy and Environmental Analysis, Inc., the California Air Resources Board, DuPont, and Atlantic Richfield. The comments mainly discuss emissions properties observed for the various methanol blends compared with the base fuel.

One of the methanol blends, labeled MG–3 by the CRC, consists of 9.2 percent methanol and 3.2 percent butanol. This particular blend most closely resembles the Petrocoal fuel, although it does not contain Petrocoal's proprietary inhibitor. In the original application for a waiver, American Methyl suggested that its inhibitor served two purposes: To "control corrosion" in the fuel system and to "Overcome the usual decrease in fuel efficiency of methanol-petroleum blends." Since the inhibitor apparently does not affect short-term evaporative emissions, either in American Methyl's view or based on EPA's independent judgment, the MG–3 fuel data are pertinent to a review of Petrocoal's properties regarding evaporative emissions. Therefore, these data are appropriate for the purpose of evaluating the central argument concerning the relationship between evaporative emissions and volatility with Petrocoal.

Additionally, Toyota presented new data consisting of emissions tests performed on two Toyota vehicles, a 1982 Cressida and 1983 Corolla. These vehicles were tested on an indolene reference fuel and a test fuel almost equivalent to Petrocoal. This test fuel contained 9 percent methanol and 6 percen tertiary-butyl alcholo in unleaded gas. It was blended to be similar in Reid Vapor Pressure to the indolene reference fuel and to a lesser extent to the other distillation specifications. Toyota also presented results concerning fuel deterioration and driveability using and unleaded fuel alone compared to the same unleaded fuel blended with Petrocoal Basic.

There is also new information concerning the composition of the proprietary inhibitor in Petrocoal. A series of reports and affidavits have been received from American Methyl Corporation and Coal Fuels Corporation. The matter of concern is whether CV–100, a ferrous picrate, is a portion of Petrocoal's proprietary inhibitor. Coal Fuels asserts it must be used in Petrocoal. American Methyl originally argued that CV–100 was a component in Petrocoal, but now assert it is not.

Some new information concerning long-term effects of Petrocoal has also been presented to EPA. Specifically, the California Air Resources Board has commented on its experience with part failures in vehicles fueled with Petrocoal, and Toyota has presented some test results on peroxide formation in vehicles fueled with blends approximating Petrocoal.

B. Evaporative Emissions

Several important comments were received that discuss the effect on evaporative emissions of Petrocoal and fuels similar to it. The discussion that follows reviews the general nature of the data and supporting analyses; and section C, the effect on vehicle emission standards is discussed.

1. Coordinating Research Council Data. CRC's data on methanol blends are particularly important to an examination of effect of Petrocoal on evaporative emissions. This unique importance stems from the close physical control that was exercised over volatility as measured by the Reid Vapor Pressure (RVP) or the Front End of Volatility Index (FEVI) in developing the test and base fuels and the similarity in alcohol composition between certain of the test fuels and Petrocoal. This discussion will therefore review some basic observations regarding the outcomes of the test program. These data are also analyzed in various comments to the docket.

The test fuels and base fuel for this test program are described in Table 1. The test fuels of primary interest to this discussion are MG–1, MG–3, and MG–5, each a blend of methanol and butanol similar to Petrocoal, with MG–3 most like Petrocoal. A review of all three fuels is of interest for what it may reveal of trends and relationships. Both RVP and FEVI are controlled to a narrower range than is common for such studies and a range entirely within typical ASTM Summer specifications. Moreover, the base fuel has the highest RVP of all of the fuels and is exceeded in FEVI by only one of the fuels examined here—MG–5.

The vehicles used in the test program are identified in Table 2. Five of them are closed loop California cars designed to meet a two-gram evaporative

standard, and five are open loop Federal cars designed to meet a six-gram evaporative standard.[3] All are 1980 model year vehicles. Emission levels of the six-gram vehicles may reflect some anticipation of the 1981 Federal shift to a two-gram standard.

The changes in evaporative hydrocarbon emissions with each of the three test fuels relative to the higher RVP base fuel are shown separately in Table 3 for two-gram and six-gram vehicles. When all ten cars are combined, the increases in evaporative emissions for MG–1, MG–3, an MG–5 are, respectively, 47%, 95%, and 146%. Removal of vehicles #3 and #12, vehicles with the sharpest pattern of response to the test fuels, reduces these increases to 35%, 56%, and 94%—still very substantial effects, considering the already largely controlled volatility.

Since MG–3 most closely resembles the fuel tested in the original Petrocoal evaluation (except for the presence in Petrocoal of the proprietary inhibitor, which does not appear to affect evaporative emissions), the data from tests made with this fuel were subjected to the statistical tests usually used by the Agency to evaluate fuel waiver applications.[3] In light of its low volatility, both in absolute terms and relative to the base fuel, MG–3's failure of all three of these tests for evaporative emissions is considered to be very significant.

The paired difference test places a confidence interval about the mean of the vehicle-by-vehicle differences between base and test fuels. The 90% interval for MG–3 was from 1.16 grams to 4.37 grams. The entire interval was above zero, evidence that an increase occurred which was outside of the normal realm to chance variations. MG–3 also failed the sign test, which looks at the preponderance of increases over decreases. This test is particularly useful here in that it gives no special weight to extreme values. The test result was such, with all vehicles showing increases, that there is 99% confidence that an increase actually occurs. The final test, the deteriorated emissions test, evaluates the significance of these increases by adding the difference attributable to the test fuel on a vehicle-by-vehicle basis to the 50,000-mile deteriorated certification level for each vehicle. The result is compared to applicable standards. This evaluation demonstrates that four of these vehicles, all two-gram cars, exceed the evaporative emission standard when fueled with MG–3. For a sample of ten, any single failure of this test is sufficient to support the conclusion that the fuel causes vehicles to exceed emission standards. Test parameters are set so that there is at least a 90% chance that the fuel will fail the test if 25% or more of the vehicles in the sample fleet fail when using it. Statistical details of this test are developed more fully in the Administrator's decision on Methyl Tertiary Butyl Ether cited above.

To summarize, the Agency's analysis of these data on fuels very similar to Petrocoal seems to demonstrate a failure to meet evaporative hydrocarbon standards using Petrocoal. Control of volatility to ASTM specifications appears to exert insufficient control to assure that use of Petrocoal will not cause or contribute to excessive evaporative emissions.

2. ARCO Petroleum Products Company.

Comments to this docket by ARCO consist, in the main, of a statistical reanalysis of the data from nine different studies that included evaporative emissions measurements. The studies tested a variety of fuels, including gasohol, methanol blends, and methanol-butanol blends as compared with pure hydrocarbon fuels. The primary focus of the effort is on demonstrating the existence of a statistical correlation between fuel volatility (as measured by the Front End Volatility Index (FEVI)[4]) and evaporative emissions as measured in the SHED [5] test. The correlation is shown to exist in all nine of the studies.

A correlation such as that mentioned above can exist and be quite strong without precluding the parallel finding that certain fuel compositions yield higher evaporative emissions than others at controlled volatility. The generally wide volatility range of the studies considered and the tendency of the base or reference fuels to be relatively low in that range also contribute to a situation where the demonstrated existence of a positive correlation between evaporative emissions and FEVI tells little about the complete statistical model that predicts evaporative emissions. Alone among the nine studies, the CRC study of methanol blends provides physical control over volatility and permits direct comparison of evaporative emissions between Petrocoal-like blends and base fuels. Where that comparison is made by ARCO, the base fuel test results fall entirely below a regression line constructed using methanol fuels to relate evaporative emissions to FEVI (see Figure 9–6, Docket Entry III–D–2). In the absence of some other causal influence than FEVI, the base fuel tests should be distributed more or less evenly above and below the regression line. This distributional anomaly is doubly significant in light of the base fuel's position in the middle of the FEVI range for this study.

In addition to the correlation analysis mentioned above, ARCO made an attempt to determine, where possible, whether base fuels and test fuels differ significantly with respect to the slope of the regression equations relating FEVI and evaporative emissions. That no significant differences were found is not remarkable, given the paucity of data where such comparisons could be made.

ARCO has demonstrated the existence of a positive correlation between FEVI and evaporative emissions where a wide range of volatilities and fuel compositions are involved. The existence of this general relationship is not at issue. The question, rather, is whether controlling the FEVI of high concentration methanol blends to ASTM specifications will adequately control evaporative emissions to within the standard. The question more specifically is whether so controlling the FEVI of Petrocoal blends will control evaporative emissions within standards. The ARCO analysis fails to demonstrate this.

3. E. I. DuPont de Nemours & Company

DuPont's submission undertakes essentially the same demonstration as that made by ARCO—to show that the correlation known to exist with hydrocarbon fuels between volatility and evaporative emissions is also present where alcohol-gasoline blends are involved. DuPont analyzed data from three studies, including the CRC study discussed above. The analysis demonstrates, as expected, the existence of the correlation of evaporative emissions and FEVI. In the plots provided by DuPont, the hydrocarbon fuels have a tendency to have evaporative emissions which are lower than those predicted by the regression line relating emissions and volatility—an indication that a more complex causal process may be involved than the simple bivariate relationship between evaporative emissions and FEVI.

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[3] The evaporative emission standard for 1981 and later model year cars is two grams per test measured on the full SHED (Sealed Housing for Evaporative Determination) test. Prior to that, the standard was six grams per test. See 40 CFR 86.0818(b)(1)(i).

[3] See, for example, Application for Methyl Tertiary Butyl Ether—Decision of the Administrator, 44 FR 12242 (March 6, 1979).

[4] Defined as the Reid Vapor Pressure of the fuel plus .13 times the percentage evaporated at 158°F.

[5] Sealed Housing for Evaporative Determinations.

DuPont carried this analysis a step further than other commenters by assessing the adequacy of various volatility measures through the use of multiple regression procedures. This effort resulted in development of a new measure of volatility which correlates more closely with evaporative emissions than either FEVI or RVP, the more commonly used measures.

DuPont's analysis, though laudable for its progress toward a better measure of volatility, still does not demonstrate the equivalence of evaporative emissions from hydrocarbon fuels with those from alcohol fuels even when DuPont's new measure of volatility is controlled. The simple demonstration of a statistical correlation between evaporative emissions and volatility fails to explain away the strong relationship between evaporative emissions and the presence or absence of the high methanol concentrations typical of Petrocoal, even with volatility controlled.

4. Energy and Environmental Analysis

Writing on behalf of Coal Fuels and American Methyl under separate covers, Energy and Environmental Analysis Inc. (EEA) reviewed the engineering aspects of the CRC test program on methanol blends and also performed a statistical analysis of the data.

EEA raised several technical concerns with respect to the CRC test program. EEA contends that certain non-standard equipment installed in the vehicles' fuel systems (primarily the fluidyne fuel flow transducers for Department of Energy (DOE) fuel economy measurements) resulted in fuel leakage and increased evaporative emissions. It is true that CRC encountered some leakage problems. However, the vehicles were checked thoroughly after testing for leaks and when leaks were encountered, the data were not used.

EEA also contends that because the test fuels did not contain corrosion inhibitors, there was a greater possibility of fuel leakage. For the short duration of the test program, the presence or lack of corrosion inhibitors should not have any significant effect. Also, as previously mentioned, the vehicles were monitored very carefully for leakage after each test, and only where no leakage occurred were the data used. EPA therefore concludes that the occurrence of leakage or potential leakage does not compromise the validity of the CRC data for evaluating evaporative emissions effects of the tested fuels.

EEA's statistical analysis of the CRC data is somewhat more sophisticated than the approach used by other commenters and was designed to permit types of conclusions not possible with a simple bivariate correlation analysis. In essence, the analysis used multiple regression with dummy variables for individual vehicles and for the presence of alcohol in fuels. This approach would appear to permit the examination of the effects on evaporative emissions of any single variable in the equation with the effects of other variables held constant. Of particular interest here, of course, is the ability of the technique to adjust evaporative results for test fuels to the levels that could be expected if the fuels had been blended to the same volatility (measured by FEVI) as that of the based fuel. The analyst would thus statistically remove the effects of differing volatilities in the test program and determine the effects on evaporative emissions of the presence or absence of methanol.

While in most respects this is a rigorous way to approach these data and the substantive concerns in question, there are some problems with application of the statistical method used. The use of a single dummy variable to represent all alcohol fuels simultaneously, regardless of the amount of alcohol, prevents an assessment of the impact of individual test fuels on evaporative emissions, and calls into question the usefulness of the significance test for this variable. It should also be noted that statistical control of volatility is not entirely necessary in this study due to the tight experimental controls that in fact were exercised over this variable, and the fact that the base fuel was near the middle of the FEVI range.

These qualifications aside, this analysis does permit certain important conclusions. First, the relationship between measures of volatility and evaportive emissions (discussed above in connection with the ARCO and DuPont analyses) is here again established in an analysis employing statistical controls over other variables. Second, this analysis quantifies the effect of methanol blends on evaporative emissions in a situation where volatility is controlled, both relative to the base fuel and relative to ASTM specifications.

The emission increase over base fuel levels is established separately for two-gram and six-gram vehicles and averages together the effects of all of the test fuels in the program (including MG–2 and MG–4 in which methanol was used without a cosolvent). For the closed loop two-gram cars, there was a 56% increase of 1.56 grams over base fuel emissions; for the open loop six-gram cars, the increase was 1.35 grams—a 43% increase. The method also permits determination of the amount by which FEVI would have to be lowered for the test fuels to achieve the same evaporative level as was obtained with the base fuel—a rather substantial 3.8 FEVI points for the two-gram cars and 3.2 points for the six-gram cars. It is important to note that despite the reduced variance of the predictor dummy variable, this effect of methanol blends in producing an evaporative increase at controlled FEVI was statistically significant at the .01 level (99% confidence) or better. While it may be possible to eliminate the increase by reducing FEVI below the level for the base fuel (and hence reducing RVP below the ASTM specification), the necessary compensatory adjustment estimated by EEA's analysis is a drastic one. Therefore, the EEA analysis, while again affirming the relationship between volatility and emissions, additionally demonstrates the upward pressure on evaporative emissions exerted by methanol blends even when RVP or FEVI is controlled.

5. Toyota. Toyota's test program was small, but sharply focused on the issues in the request for comments, and thus, is of considerable interest. The data for the emissions tests were developed using a test fuel comprising 9% methanol and 6% butanol whose distillation properties (particularly RVP) were deliberately matched to Indolene, the certification reference fuel. The two vehicles in the program experienced 32% and 105% increases in evaporative emissions over the reference fuel. The larger of the two increases occurred with a carburetor-equipped vehicle, a 1983 Corolla, while the smaller increase occurred with a fuel-injected 1982 Cressida. Toyota notes that the Corolla was induced by the test fuel to fail its two-gram standard.

The test fuel for this program was different from Petrocoal only in the absence of the proprietary inhibitor. It was matched in RVP, and to a lesser extent in other distillation characteristics with the reference fuel and controlled to an RVP level within ASTM summer specifications. Despite these controlled conditions, there was an increase for the carburetor-equipped vehicle very similar in magnitude to those seen with MG–3 and MG–5 in the CRC program. This evidence seems damaging to the proposition that controlling Petrocoal's RVP to ASTM specifications will hold evaportive emissions to the levels obtained with conventional gasolines.

C. Effect of Petrocoal on Adherence to Standards

Since the effect of a proposed fuel or fuel additive on vehicles' abilities to adhere to applicable vehicle emission standards is the crucial issue under section 211(f), the data and comments that bear upon this question with Petrocoal are examined here.

1. Energy and Environmental Analysis. EEA's analysis of the CRC data undertakes a direct examination of the standards question for evaporative emissions by computing vehicle-by-vehicle failure probabilities for the base and for all test fuels aggregated. EEA provided little information on the method use in this analysis, and Agency statisticians were unable to determine how the calculations were made. EEA argues that the failure probabilities for vehicles certified to the six-gram standard are low on both base and test fuels and that the high probabilities for "two-gram" vehicles are not meaningful, since they all failed on the base fuel.

The low failure probabilities asserted for six-gram cars are clearly a function of the large difference between the base fuel evaportive emission certification levels for these vehicles and the standard. The two-gram vehicles' performace on these tests cannot be simply ignored because the specific cars initially failed. Rather, the effect of the high increase in evaporative emissions must be considered.

While the failure probability discussion is not ultimately productive, EEA's larger analysis of the CRC data does provide certain insights relating to this question. The 1.56 gram and 1.32 gram increases computed for two-gram cars, respectively, at controlled FEVI, are quite large relative to the two-gram standard that applies to 1981 and later Federal vehicles. The likelihood that there will be sufficient headroom to cover increases even approaching this magnitude for most of the vehicle fleet slight.[6]

2. California Air Resources Board (CARB). CARB uses data form its in-use surveillance testing program to look at the likelihood that Petrocoal induces vehicles to exceed standards. The analysis looks at both evaporative hydrocarbon (HC) emissions and oxides of nitrogen (NO_x) exhaust emissions. The approach is to apply the percentage increases for the CRC data to the in-use test results from properly maintained cars and then to compare the resulting failure rates to those obtained in the original tests.

For evaporative emissions, CARB treated hot soak and diurnal measurements separately, later combining them for overall pass/fail determinations. They used an average of the MG–3 and MG–5 results from the CRC data to obtain the increases. The failure rate for the twenty two-gram cars with evaporative measurements went from an initial 20% to 80% when the increases were applied. The Agency repeated the procedure with just the increase attributable to MG–3, which falls entirely within the Petrocoal alcohol composition definition. This effort has the same result—the failure rate still changed from 20% to 80% when the test fuel effect was applied.

NO_x effects were similarly evaluated, but on larger in-use vehicle samples of 63 and 90 vehicles each. The failure rate for the 1979 vehicles on a 1.5 gram per mile (gpm) California standard went from 21% to 52% when the increase from the two test fuels was added. The 1980 1.0 gpm vehicles' failure rate increased to 72% from 26%.

3. Toyota. Since the Toyota test program used a fuel judged identical to Petrocoal in its instantaneous emission effects, and since the CARB analysis renewed Agency concerns about NO_x emissions, the two Toyota test vehicles' results were appended to those from the earlier tests of Petrocoal by American Methyl, GM, and the Agency on which the original waiver was based. Then, the deteriorated emissions test was performed again. One of the two Toyotas, the carburetor-equipped Corolla, failed this test, bringing the overall rate to 3 out of 18, a more serious failure than the 2 of 16 observed during the original consideration of the Petrocoal waiver. The 73% increase on the Corolla is large enough to cause concern when vehicles are meeting a 1.0 gpm NO_x standard.

D. Long-Term Effects

A review of the comments on specific long-term effects of Petrocoal finds two results specific to Petrocoal. The California Air Resources Board (CARB) reports that customer experience now exists documenting long-term deleterious effects of Petrocoal. CARB reports that Newhall, a Petrocoal marketer in California, found numerous complaints about driveability problems when Petrocoal at 12 percent total alcohol was marketed. Further, Newhall reported accelerator pump failures associated with the fuel. Some of the accelerator pumps on the vehicles of Newhall's own employees had to be replaced. Since such failure of accelerator pumps can cause failure of emission standards, it gives EPA cause for concern regarding the long-term ability of vehicles fueled with Petrocoal to meet applicable emissions standards.[7]

Toyota presents data on laboratory tests of Petrocoal Basic vs. a hydrocarbon fuel, both blended to similar distillation characteristics. It finds the Petrocoal oxidation stability to be almost 50 percent lower than the base gasoline, and the peroxide formation seven times larger with Petrocoal than with the base hydrocarbon fuel. Toyota cites this increased peroxide formation as likely to significantly increase gum generation, which is the cause of rapid deterioration of rubber and metal parts. Further, it may directly cause corrosion of fuel system materials leading to the deterioration of emission control devices and, hence, to increased emissions. Once again, these tests lead EPA to question the ability of vehicles to comply with applicable emissions standards using Petrocoal.

E. Other Comments to the Docket

The major comments concerning evaporative emissions and emissions durability have been discussed above. Some additional comments which were also presented are discussed here.

Sun Oil, Union Carbide, and American Methyl Corp. presented information or suggested modifications concerning lower levels of alcohol than the 15 percent maximum currently permitted in Petrocoal. Sun Oil, in requesting a rescission of the waiver, presented two technical papers discussing, among other things, materials compatibility. It concludes that data exist to support acceptance of a 3.5 weight percent oxygen limit on alcohol blends for satisfactory driveability. Further, Sun Oil presents its research findings that up to five percent concentrations of methanol are compatible with fuel system parts. Yet, it notes insufficient data have been developed at higher concentrations of methanol, with the literature indicating that such higher percentages could significantly change the properties of elastomers.

Union Carbide, while supportive of Petrocoal, suggested that the volatility of Petrocoal might be too high. It performed a mathematical regression to arrive at a

[6] For example, the average certification level for 49-state 1981–1984 model year GM light-duty vehicles is 1.3 grams. This leaves substantially less headroom than the Petrocoal effects indicated by this EEA analysis would consume.

[7] It should be noted that the information before the Agency at the time of the grant of the waiver included a vehicle fueled with Petrocoal that experienced an accelerator pump failure. EPA discounted the information at the time, because it was a single incident. In light of CARB's comments, the pump failure is more significant.

more optimal set of parameters. It suggested that Petrocoal should be restricted such that total alcohols do not exceed 12.5 percent by volume, methanol content does not exceed 10.9 percent and C–4 content is at least 1.5 percent.

American Methyl, while obviously supporting its own product, did note that it would accept a modification to restrict the maximum allowable alcohol content to 12½ percent.

Some further information came from the Prosecuting Attorney of Genessee County, Michigan. He cited managers of vehicle repair facilities who are seeing damage to fuel systems with the use of methanol fuels. He said they noted deterioration of rubber sealants and suggested that a maximum allowable limit of 5 percent methanol would be appropriate.

III. Proper Ingredients

A portion of the May 2, 1983 notice requested comments concerning the ingredients that were proper for use in Petrocoal. This request stemmed from the controversy concerning the use of CV–100, an additive containing ferrous picrate. While the ingredients of Petrocoal are proprietary, EPA has been given written permission by American Methyl, the firm which requested the confidential treatment of Petrocoal, to publicly discuss the CV–100 issue.

Affidavits have been presented by both American Methyl and Coal Fuels Corp. discussing the use of this compound. Also, Carvern Petrochemical Co., Ltd. has commented that CV–100, a product it manufactures, is a "very necessary ingredient."

The confidential information submitted by American Methyl with its waiver application disclosing the contents of Petrocoal did not mention mention CV–100. The fuel registration required by section 211(b) of the Act which was filed with the EPA office at Research Triangle Park, NC, also does not include CV–100, either by its name or chemical identity. American Methyl did at one time want to use CV–100 for blends of gasoline with high volumes of methanol, and argued that ferrous picrate was implicitly covered by the registration and waiver application. It now claims that it does not use the substance.

In the course of vehicle testing required for the waiver application, American Methyl performed tests at Systems Control, Inc., in California. It is generally agreed that the Petrocoal fuel in those tests did not include CV–100. However, it appears that CV–100 may well have been used in Petrocoal samples supplied by American Methyl and used by EPA in Ann Arbor and General Motors in Warren. American Methyl has stated its belief that CV–100 was not used in these samples, although it has originally intended that it would be added to the fuel sent to General Motors. A Coal Fuels Corporation official, formerly with American Methyl, asserts that CV–100 definitely was used by EPA and General Motors.

Since CV–100 has a metallic ingredient, a chemical test for the ferrous component would still be possible two years later. The Agency has investigated and learned, however, that neither GM, EPA, nor American Methyl still has any of the Petrocoal fuel that was sent either to EPA or General Motors.

Further, the long-term durability information on Petrocoal presented by American Methyl was developed by Dr. Geoff Germane using a fuel that did not contain CV–100. He tested for long-term compatibility of Petrocoal with the metals and polymers in vehicles. His basic conclusion in his April 1, 1981 report was the Petrocoal caused less corrosion than unleaded gasoline on metals, and that Petrocoal and unleaded gasoline has similar effects on fuel system polymers. However, this report clearly did not consider CV–100.

An applicant for a fuel or fuel additive waiver must present emissions test results based on the same fuel as that for which the waiver is sought. In the Petrocoal case, it appears that a different fuel was used for at least some testing. Specifically, a fuel containing CV–100 may well have been used for the GM and EPA tests. The applicant at the time considered CV–100 to be an ingredient in the fuel.

The fact that the GM and EPA emissions tests results with CV–100 did not differ appreciably from those of Petrocoal without the CV–100 is not surprising. CV–100 includes an iron compound, mixed in very small quantities in the finished gasoline. The emission effects would show up after many miles of driving, usually in the form of detrimental catalyst coating and/or engine deposits. For this reason, EPA has required long-term durability tests for metallic additives.

EPA was not aware of the presence of CV–100 in any of the Petrocoal samples Had EPA known that this metallic compound was present in the samples used in the long-term compatibility tests, it would have required substantiation that Petrocoal with CV–100 would not contribute to a vehicle's failure to meet applicable emissions standards over the 50,000-mile lifetime of vehicles.

MVMA further commented that the parameters used by EPA to describe Petrocoal were faulty. Specifically, MVMA claimed that the total alcohol allowed (15%) and the maximum ratio of methanol to C–4 alcohols (6.5 to 1) were not based on any fuel actually sampled. The sample of Petrocoal used by EPA's Ann Arbor laboratory was tested by the Department of Energy.[8] They reported a volumetric content that was less than 100% as follows: 9.9% methanol, 2.2% butanol, and 82.8% hydrocarbons. They note that "it is not uncommon, however, that the sum of three independent analyses of a complex mixture such as this vary from 100 percent by a few points." The ratio of methanol to butanol was 4.5 to 1. General Motors[9] reported a total of 10% alcohol with a methanol/butanol ratio of 2. General Motors noted that the 15% Petrocoal fuel they were sent contained only about 10% total alcohol.

As to the fuel tested by American Methyl, EPA has some reason to think that sample might have contained 11.2% methanol, 3.6% C–4 alcohol, with a ratio of 3.2 to 1.[10] However, GM, upon contact with American Methyl, claimed that it learned that the 15% proprietary additive in Petrocoal contained hydrocarbons in addition to the alcohols and inhibitor. While this would appear to contradict the use of 15% alcohol as claimed by American Methyl, there is no record that American Methyl has attempted to refute GM's assertion. Thus, the total alcohol, in one case, might have reached 15%, but some ambiguity still remains. It appears clear, however, that the highest ratio of methanol to butanol tested was 4.5 to 1, not 6.5 to 1.

IV. Today's Actions

After reviewing the public comments and other information obtained since the grant of the Petrocoal Waiver, the Agency is granting MVMA's administrative petition for reconsideration of the waiver. New information submitted by MVMA and others seems to disprove the validity of key conclusions on which the waiver was based. Most importantly, the waiver's requirement of adherence to ASTM volatility standards (predominantly RVP) appears to be inadequate to control evaporative emissions of Petrocoal. As a result, EPA can no longer conclude that vehicles

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[8] Letter from Frank W. Cox, Research Chemist, U.S. Dept. of Energy, to Richard Lawrence (EPA), August, 4, 1981.

[9] General Motors Comments to Docket EN–81–8, July 6, 1981.

[10] See note of telephone conservation between Byron Nagata (Anafuel Unlimited) and Barry Nussbaum (EPA), May 4, 1981.

using Petrocoal will meet Clean Air Act emission standards. In addition, there is some evidence that some of the fuel tested at the time of the waiver application was not the same as the fuel described in the waiver. If true, it also calls into question whether the applicant met its burden to demonstrate that its fuel will not result in noncompliance with emission standards. This is in part because, had EPA known that Petrocoal contained the metallic additive CV–100, it would have required the applicant to perform long-term durability tests to assure that emission standards are met over the full useful life of motor vehicles under the Clean Air Act.

American Methyl raised an objection to reconsideration of the Petrocoal waiver in a letter to then-acting Administrator Verstandig, dated April 21, 1983.[11] Although American Methyl did not present the same objection in its response to EPA's requests for comments, it is relevant to address that objection at this time. Specifically, American Methyl argued that the information presented for reconsideration "may not validly be the basis for administrative reconsideration" under section 307(d)(7)(B) of the Act, since the information was presented after the expiration of the 60-day period for seeking judicial review.

The argument is flawed for two reasons. First, section 307(d)(7)(B) does not apply to this reconsideration. Proceedings to waive the prohibitions in section 211(f) of the Act are not among the actions enumerated in section 307(d)(1), which provides an exclusive list of actions that are subject to the requirements of section 307(d). The only such action under section 211 is "the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 211." Section 307(d)(1)(D). A section 211(f) wavier is not a regulation, however.

Secondly, even if section 307(d)(7)(B) applied to this reconsideration, it would not bar these proceedings. That provision only defines the instances in which EPA is compelled to convene a proceeding for reconsideration; it does not prohibit EPA from reconsidering any action based on new information arising after expiration of the period for judicial review.[12]

In reconsidering the Petrocoal waiver, the standard for review of the newly submitted and developed information is that prescribed in section 211(f)(4) of the Act: will the fuel or fuel additive, or its emission products cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance with the emission standards under which the device or system was certified pursuant to section 206 of the Act? If the information available to the Agency indicates that such compliance will be achieved, the waiver will continue in effect. If, however, this information indicates that such compliance will not be achieved, the waiver will be revoked by the Agency.

Based on information submitted in response to the May 2, 1983 **Federal Register** notice, and other information provided to the Agency since the grant of the Petrocoal waiver, the Agency is today proposing to revoke that waiver. Although evidence continues to demonstrate a correlation between evaporative emissions and volatility in general, serious doubts have been raised as to whether at a given RVP or FEVI a methanol blend fuel will behave similarly to a hydrocarbon blend fuel with regard to evaporative emissions. Therefore, the ability of ASTM controls on volatility such as those in the Petrocoal waiver to effectively limit evaporative emissions is questionable. Since the available test data show large increases in evaporative emissions with use of fuels similar to Petrocoal, the Agency has concluded that the use of Petrocoal will likely cause vehicles to exceed applicable Clean Air Act emission standards. In addition, new information raises questions concerning Petrocoal's compatibility with certain automotive materials. Finally, as noted, above, conflicting information concerning the content of Petrocoal calls into question whether the manufacturer met its burden of demonstrating compliance with applicable emission standards during the initial waiver process.

EPA's conclusions concerning the relationship of volatility and evaporative emissions are based on the submittals discussed in Part II–B of this notice, above. In general, these analyses firmly establish a correlation between fuel volatility as measured by both RVP and the Front End Volatility Index and evaporative emissions. However, when volatility is controlled (either statistically or experimentally) to a comparable level found in reference fuels (which are below ASTM specifications), there is substantial evidence that use of methanol blends at levels similar to Petrocoal leads to evaporative emission levels higher than those of otherwise comparable hydrocarbon fuels. Such higher levels were found in the tests conducted for the Coordinating Research Council and those conducted by Toyota on fuels very similar to Petrocoal. The increases in emission levels found in these testing programs are large enough to statistically significant even with a relatively small sample. Therefore, control of volatility to ASTM specifications does not appear to be sufficient to assure that the use of Petrocoal will not result in excessive evaporative HC emissions, as was assumed by the Agency in its grant of the Petrocoal waiver.

In regard specifically to the ability of vehicles using Petrocoal to meet applicable emission standards, the information discussed above in Part II–C of this notice indicates that even relatively small emission increases may have a substantial effect on failure rates of vehicles subject to a two-gram HC evaporative emission standard. The CRC data (as analyzed by the Agency, EEA, and others) and the Toyota tests evince a relatively large impact of Petrocoal on such emissions compared to the standard. Even assuming a low level of base in-use emissions, these data indicate that use of Petrocoal is likely to cause or contribute to vehicle failures to meet HC evaporative emission standards.

In addition, information submitted to the docket causes the Agency to believe that vehicles using Petrocoal will not be able to meet the NO_x exhaust emission standard. Although the testing which preceded the grant of the Petrocoal waiver indicated that this fuel was likely to cause failure of that standard, the statistical result with the data then available was marginal. However, the magnitude of increases in NO_x emission shown in the new CRC and Toyota data provides an additional basis for EPA's belief regarding Petrocoal's effect on conformity to the NO_x.

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[11] "Opposition to Request by Motor Vehicle Manufacturers Association for Reconsideration of Grant of Fuel Waiver for Petrocoal Fuel," from Scott N. Stone, attorney for American Methyl Corporation, to Lee Verstandig, Acting Administrator, EPA, April 21, 1983.

[12] American Methyl also argued that MVMA's original petition for reconsideration presented "no legally valid ground for administrative reconsideration under the Clean Air Act," since MVMA's original petition (before it was supplemented) purportedly contained no new information which could not have ben presented to EPA during the comment period. This argument, also based on sectgion 307(d)(7)(B), is also incorrect for the two reasons discussed immediately above. Moreover, regardless of the merits of American Methyl's argument with respect to MVMA's original petition for reconsideration, the petition as supplemented and the comments in response to the May 2, 1983 **Federal Register** notice clearly present new information not available to the Agency during the comment period, as discussed elsewhere in this notice.

Finally, the application by CARB of experimental emission increases to in-use test data provides direct insight into the likely impact of Petrocoal on fleet attainment of both HC evaporative emissions and NO_x exhaust emission standards. For HC evaporative emissions, in particular, these results point to a substantial incidence of Petrocoal-induced failures.

The Agency is further concerned about the CV–100 question. A waiver applicant must take precautions to assure that representative samples are available to all parties wishing to test the additive in order to respond to the request for public comments. This is especially true when the applicant for a waiver requests confidential treatment of the contents of his product. In this case, some confusion still exists as to the content of Petrocoal, as evidenced by affidavits containing contradictory statements submitted by two different companies. There is a strong possibility that CV–100 was used in some of the tests during the initial waiver process, but not in others. The waiver applicant should have exercised more caution to assure that all parties tested the same material. Lacking such caution, there are serious doubts about the reliability of information submitted to the Administrator during the initial waiver process. As noted above, this discrepancy also calls into question whether the applicant met its statutory burden of demonstration, in light of the fact that additional long-term durability testing would have been required had the Agency known the Petrocoal contained CV–100. Information submitted by Toyota concerning the long-term effectsof Petrocoal raises further doubts about the ability of vehicles using Petrocoal to meet applicable emission standards throughout their useful life. This matter is an additional basis for EPA's proposed revocation of the Petrocoal waiver.

Moreover, a review of the data indicates that none of the original samples tested contained the ratio of methanol to cosolvent covered by the waiver request, and at most, only one of the samples contained the percentage of total alcohol covered. This also leads the Agency to believe the requisite burden had not, in fact, been met by American Methyl.

American Methyl has raised two additional issues concerning further action by the Agency on the Petrocoal waiver. First, it has indicated its willingness to agree to a modification of the Petrocoal waiver so as to reduce the allowable alcohol content of Petrocoal from 15% to 12½%. Second, it has argued that a reconsideration of the Petrocoal waiver based on MVMA's petition would require reconsideration of all section 211(f) waivers granted in the past for similar alcohol-based fuels.

In regard to the proposed modification of the Petrocoal waiver, the Agency does not believe that such an action would be appropriate based on this record. American Methyl has submitted no evidence to indicate that a 12½% alcohol content limitation would eliminate the problems described above concerning the ability of Petrocoal-fueled vehicles to meet applicable emission standards, particularly the HC evaporative emission and NO_x exhaust emission standards. Absent such evidence, the Agency would have no basis under section 211(f) to approve such a modified Petrocoal waiver.[13]

In regard to American Methyl's second issue, the Agency notes that the company has filed a petition for reconsideration and revocation of a waiver granted to ARCO for a blend of methanol and tertiary butyl alcohol (46 FR 56361, November 16, 1981). Issues raised by that petition will be addressed separately in EPA's response to it. In general, however, the Agency does not believe that a revocation of the Petrocoal waiver either requires or precludes Agency action to regulate fuel content under the general rulemaking authority of section 211(c) or to reconsider other waivers issued under section 211(f). The information currently available to the Agency demonstrates only that methanol blends at the level allowed by the Petrocoal waiver are likely to cause emission problems. Petrocoal contains methanol at considerably higher levels than allowed by any other waiver granted by EPA. Further examination will be required before EPA can decide whether action to control fuels containing lower levels of methanol is appropriate. Thus, the Agency is not proposing any action other than revocation of the Petrocoal waiver at this time.

(Sec. 211 of the Clean Air Act, 42 U.S. 7545)

Dated: March 16, 1984.

William D. Ruckelshaus,

Administrator.

TABLE 1.—COMPOSITION AND VOLATILITY OF CRC TEST AND BASE FUELS

Fuel	Percent of		Reid vapor pressure	Front end volatility index
	Methanol	Butanol		
Base	0.0	0.0	8.2	12.3
MG–1	3.6	1.3	8.1	11.1
MG–2	2.7	0.0	8.5	11.4
MG–3	9.2	3.2	7.7	11.6
MG–4	10.0	0.0	5.6	13.1
MG–5	14.2	2.1	8.3	14.0

TABLE 2.—CRC TEST PROGRAM VEHICLE CHARACTERISTICS

Vehicle No.	Manufacturer	Model	Standards	Control system	Displacement (l)	Evaporation standard
1	Chrysler	Horizon	Federal	Open loop	1.7	6
2	Chrysler	Horizon	Federal	Open loop	1.7	6
3	Chrysler	Omni	California	Closed loop	1.7	2
4	Chrysler	Omni	California	Closed loop	1.7	2
7	General Motors	Century	California	Closed loop	3.8	2
8	General Motors	Century	Federal	Open loop	3.8	6
10	Ford	Pinto	Federal	Open loop	2.3	6
11	Ford	Pinto	Federal	Open loop	2.3	6
12	Ford	Pinto	California	Closed loop	2.3	2
13	Ford	Pinto	California	Closed loop	2.3	2

TABLE 3.—PERCENT INCREASES OVER BASE FUEL EMISSIONS AND ABSOLUTE MEAN LEVELS FOR THREE TEST FUELS, BY TECHNOLOGY/STANDARD GROUPINGS

Fuel	Closed loop 2 gram		Open loop 6 gram	
	Percent	Grams	Percent	Grams
MG–1	59	4.25	32	3.53
MG–3	185	7.36	46	3.99
MG–5	252	9.44	82	4.58

[FR Doc. 84–7545 Filed 3–27–84; 8:45 am]

BILLING CODE 6560–50–M

[13] Of course, American Methyl is free to develop such data in support of a new waiver application at that (or any other) alcohol level.

[OPTS–59141A/142A/143A; TSH–FRL 2524–3]

Certain Chemicals; Approval of Test Marketing Exemptions

Correction

In FR Doc. 84–3506 beginning on page 4978 in the issue of Thursday, February 9, 1984, make the following corrections:

1. On page 4978, in the heading, the docket number should read "[OPTS–59141A/142A/143A; TSH–FRL 2524–3]".

2. On page 4979, column three, "TME 94–18" should read "TME 84–18".

BILLING CODE 1505–01–M

[OPP-30237; PH-FRL 2519-1]

Certain Companies; Applications To Register Pesticide Products Containing New Active Ingredients

Correction

In FR Doc. 84-3125 beginning on page 4836 in the issue of Wednesday, February 8, 1984, make the following correction:

On page 4837, column one **Application Received**, "3.", line three, the trademark symbol "TM" should appear after "Scout".

BILLING CODE 1505-01-M

[PF-363; PH-FRL 2523-2]

FMC Corp.; Pesticide Petitions

Correction

In FR Doc. 84-3384 appearing on page 4840 in the issue of Wednesday, Feburary 8, 1984, make the following correction: In column two, "**SUMMARY,**" line four, "(± +)" should read "(±)".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

March 23, 1984.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Judy McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for Approval To Implement a One-Time Survey

1. Report title: One-time Household Survey of Currency and Transactions Account Usage

Agency form number: FR 3030

Frequency: One-time

Reporters: Individuals and households

Small businesses are not affected.

General description of report: Respondent's obligation to reply is voluntary; a pledge of confidentiality on an individual basis is promised.

This survey of households usage of currency and transaction accounts will provide valuble information for monetary policy, research, and operations. The information will be used in analyses developments by the Federal Reserve System and in responses to inquiries from Congress, the U.S. Treasury and the public.

Board of Governors of the Federal Reserve System, March 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8326 Filed 3-27-84; 8:45 am]

BILLING CODE 6210-01-M

Marshall & Ilsley Corp., et al; Formations, Acquisitions, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 19, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Wauwatosa State Bank, Wauwatosa, Wisconsin.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Minnesota Assets Management Corporation*, St. Louis Park, Minnesota; to acquire 94.1 percent of the voting shares of Summit State Bank of Richfield, Inc., Richfield, Minnesota. Comments on this application must be received not later than April 20, 1984.

Board of Governors of the Federal Reserve System, March 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8255 Filed 3-27-84; 8:45 am]

BILLING CODE 6210-01-M

Citicorp, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* through an unnamed future subsidiary in credit card activities, including the issuance of credit cards to customers; the servicing of credit card accounts receivable; the soliciting of merchants to participate in credit card programs so that merchants will accept the credit cards from customers.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to engage *de novo* through its subsidiary, BA Futures, Incorporated, San Francisco, California, in futures commission merchant activities in the execution and clearance of futures contracts and options on futures contracts for unaffiliated persons.

Board of Governors of the Federal Reserve System, March 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8256 Filed 3-27-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N-0012; DESI 9049]

Certain Dermatologic/Anti-Infective Drug Products; Drugs for Human Use; Drug Efficacy Study Implementation; Reevaluation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA): (1) Rescinds a notice of opportunity for a hearing as it pertains to certain combination drug products containing neomycin and a corticosteroid, (2) classifies the drug products as effective for the indication stated below, and (3) announces the conditions for their approval and marketing.

DATE: Supplements due on or before May 29, 1984.

ADDRESSES: Communications in response to this notice should be identified with reference number DESI 9049, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Anti-Infective Drug Products (HFN-140), Center for Drugs and Biologics.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN-530), Center for Drugs and Biologics.

Requests for an opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstezang, Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 25, 1981 (46 FR 47408), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) reclassified certain topical anti-infective drug products for dermatologic use to lacking substantial evidence of effectiveness, proposed to withdraw approval of their new drug applications, and offered an opportunity for a hearing on the proposal. Among the drugs included in that notice were products containing neomycin in combination with a corticosteroid. In subsequent **Federal Register** notices (47 FR 17677, 48 FR 334, and 48 FR 3416), the Director withdrew approval of those products for which hearing requests were not submitted or were later withdrawn by the manufacturers. The data and information submitted in support of hearing requests for the drug products listed below have been reviewed, and the Director has determined that insofar as it applies to these drug products, the September 25, 1981 notice of opportunity for a hearing should be rescinded and the products should be reclassified as effective for the treatment of corticosteroid-responsive dermatoses with secondary infection. Other durg products included in the 1981 notice that are the subjects of pending hearing requests will be addressed in future **Federal Register** notices.

(Final rules amending the antibiotic drug regulations have exempted antibiotic-containing drugs for dermatologic use (45 FR 71354, Oct. 28, 1980) and, later, all classes of antibiotic-containing drugs (47 FR 39155, Sept. 7, 1982) from certification requirements. Under these provisions, approved antibiotic form 5's and form 6's are regarded as new drug applications (NDAs) and abbreviated new drug applications (ANDAs), respectively, and subject to section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). Most of the drug products listed below were being certified until they were exempted from that procedure. The monograph or regulation under which

each was certified (now retained as the public standard for each drug product) is shown below in parentheses following the name and address of the NDA holder. No reference number is included for three drugs which, in the absence of a certification regulation, were released pending a final effectiveness determination. The antibiotic regulations will be amended at a future date to provide the public standards for these drugs.)

1. NDA 50–237; Neo-Cort-Dome Cream 0.5% and 1% and Neomycin-HC Cream 0.5% and 1%, each containing neomycin sulfate EQ 3.5 mg base/Gram (Gm) and 0.5% or 1% hydrocortisone; Miles Pharmaceuticals, 400 Morgan Lane, West Haven, CT 06516.

2. NDA 50–323; NeoDecadron Cream containing neomycin sulfate EQ 3.5 mg base/Gm and dexamethasone sodium phosphate EQ 0.1% phosphate; Merck Sharp & Dohme, Division of Merck & Co., Inc., West Point, PA 19101. (21 CFR 444.542b)

3. NDA 50–345; Cordran-N Ointment containing neomycin sulfate EQ 3.5 mg base/Gm and flurandrenolide 0.05%; Eli Lilly & Co., P.O. Box 618, Indianapolis, IN 46206. (21 CFR 444.542a)

4. NDA 50–346; Cordran-N Cream containing neomycin sulfate EQ 3.5 mg base/Gm and flurandrenolide 0.05%; Eli Lilly & Co.

5. NDA 50–374; Neo-Cortef Lotion containing neomycin sulfate EQ 3.5 mg base/milliliter and hydrocortisone acetate 1%; The Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49001. (21 CFR 444.542c)

6. ANDA 60–480; Neo-Oxylone Ointment containing neomycin sulfate EQ 3.5 mg base/Gm and fluorometholone 0.025%; The Upjohn Co. (21 CFR 444.542a)

7. ANDA 60–611; Neo-Medrol Acetate Cream containing neomycin sulfate EQ 3.5 mg base/Gm and methylprednisolone acetate 0.25% or 1%; The Upjohn Co. (21 CFR 444.542b)

8. ANDA 60–700; Neo-Synalar Cream containing neomycin sulfate EQ 3.5 mg base/Gm and fluocinolone acetonide 0.025%; Syntex Laboratories, Inc., 3401 Hillview Ave., Palo Alto, CA 94304. (21 CFR 444.542b)

9. ANDA 60–751; Neo-Cortef Ointment containing neomycin sulfate EQ 3.5 mg base/Gm and hydrocortisone acetate 0.5%, 1% or 2.5%, The Upjohn Co. (21 CFR 444.542a)

10. ANDA 60–904; Neomycin Sulfate-Hydrocortisone Ointment containing neomycin sulfate EQ 3.5 mg base/Gm and hydrocortisone 1% formerly marketed by Lemmon Co. (successor to Premo Pharamaceutical Laboratories), P.O. Box 30, Sellersville, PA 18960.

11. ANDA 61–036; Neo-Delta Cortef Ointment containing neomycin sulfate EQ 3.5 mg base/Gm and prednisolone acetate 0.5%; The Upjohn Co. (21 CFR 444.542a)

12. ANDA 61–049; Neo Cortef Cream containing neomycin sulfate EQ 3.5 mg base/Gm and hydrocortisone acetate 1% or 2.5%; The Upjohn Co.

13. ANDA 61–154; Neomycin Sulfate-Hydrocortisone Acetate Ointment containing neomycin sulfate EQ 3.5 mg base/Gm and hydrocortisone acetate 1%; Ambix Laboratories, Division of Organic Corporation of America, 1615 East 51st St., North Bergen, NJ 07047.

14. ANDA 62–104; Neomycin Sulfate-Hydrocortisone Ointment containing neomycin sulfate EQ 3.5 mg base/Gm and hydrocortisone 1%, Clay-Park Laboratories, Inc., 3339 Park Ave., Bronx, NY 10456.

The findings announced in the 1981 notice were based on data submitted up to that time in support of the products' labeled indications. The Director has reevaluated these data plus additional data submitted in response to the 1981 notice in light of comments from the American Academy of Dermatology that the clinical benefit from these products would be expected to be greatest during the early phase of treatment.

For the combination product Neo-Synalar (neomycin sulfate and fluocinolone acetonide), two studies provided substantial evidence of effectiveness of the combination, showing that each component contributes to the beneficial effect in patients with corticosteroid-responsive dermatoses with secondary infection. The Leyden et al. study was a 1-week, multicenter, double-blind, randomized, parallel comparison of Neo-Synalar and Synalar in 240 analyzable patients, 141 of whom had confirmed infections. The Folan et al. study was a 2-week, multicenter, randomized, double-blind comparison of four treatment groups in 105 analyzable patients with paired lesions. The four groups were: (1) Neo-Synalar vs. Synalar (fluocinolone acetonide), (2) Neo-Synalar vs. neomycin, (3) neomycin vs. placebo, and (4) Synalar vs. placebo. Effectiveness of the two components was shown for the first week of therapy only.

The Director has determined that this finding of effectiveness should not be limited to neomycin in combination with one, specific corticosteroid because there is no corticosteroid that is unique with respect to therapeutic and toxic effects. See Haynes, R. C., Jr., and F. Murad, in "The Pharmacologic Basis of Therapeutics," 6th Ed., edited by A. G. Gilman, L. S. Goodman, and A. Gilman, the Macmillan Co., New York, p. 1482, 1980. Therefore, the Director considers the two adequate and well-controlled studies that were submitted in support of the neomycin/fluocinolone combination to provide substantial evidence of effectiveness for the other products listed above, each of which is an ointment, cream, or lotion that contains neomycin with an effective corticosteroid.

Accordingly, the Director reclassifies the drug products listed above as effective for the treatment of corticosteroid-responsive dermatoses with secondary infection. It should be noted, however, that the steroid-antibiotic combination has not been shown to provide greater benefit than the steroid component alone after 7 days of treatment. The Director also rescinds the notice of September 25, 1981, as it pertains to those drug products listed above, provided their new drug applications are supplemented in accord with this notice to delete all indications other than the indication set forth below. If a new drug application is not supplemented, then that drug product will remain subject to the September 25, 1981 notice. Submission of a supplemental new drug application in accord with this notice will constitute a withdrawal of a hearing request previously submitted in response to the September 25, 1981 notice; no further **Federal Register** notice will be issued for these drug products.

In addition to the holders of the applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address above).

A. *Effectiveness classification.* FDA has reviewed all available evidence and concludes that the drug products are effective for the indication listed in the labeling conditions below.

B. *Conditions for approval and marketing.* FDA is prepared to approve abbreviated new drug applications and supplements to previously approved

new drug applications under conditions described herein.

1. *Form of drug.* These preparations are in cream, ointment, or lotion form suitable for topical administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

For the treatment of corticosteroid-responsive dermatoses with secondary infection. It has not been demonstrated that this steroid-antibiotic combination provides greater benefit than the steroid component alone after 7 days of treatment. (See "WARNINGS" section).

c. The "WARNINGS" section contains the following statement:

Because of the concern of nephrotoxicity and ototoxicity associated with neomycin, this combination product should not be used over a wide area or for extended periods of time.

3. *Marketing status.* a. Marketing of such drug product that is now the subject of an approved or effective new drug application may be continued provided that on or before May 29, 1984, the holder of the application has submitted: (i) A supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)).

b. Approval of an abbreviated new drug application (21 CFR 314.2) must be obtained before marketing such products. The requirements for bioavailability testing are waived for topically applied preparations (21 CFR 320.22). Marketing the drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 507, 52 Stat. 1050–1053, 1055–1056 as amended (21 U.S.C. 352, 355, 357)) and under authority delegated to the Director of the National Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: March 22, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–8240 Filed 3–23–84; 10:02 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado; Filing of Plat of Survey

March 21, 1984.

The plat of survey of the following described lands was officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., March 21, 1984.

The supplemental plat, showing a subdivision of original lot 2, section 28, T. 2 N., R. 72 W., Sixth Principal Meridian, Colorado, was accepted March 16, 1984.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037—20th Street, Denver, Colorado 80202.

Timothy A. Kent,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 84–8237 Filed 3–27–84; 8:45 am]

BILLING CODE 4310–84–M

[W–87122]

Nebraska; Application for Public Lands for State Indemnity Selection

March 21, 1984.

1. Under the provisions of Sections 2275 and 2276 of the Revised Statutes, 43 U.S.C. 851, 852, the State of Nebraska has filed application W–87122 to acquire public lands in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. Pursuant to the provisions of 43 CFR 2091.2–6, the lands described below are segregated from settlement, sale, locations or entry under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

2. The following described lands were segregated in accordance with 43 CFR 2091.2–6 as of Septemeber 6, 1983:

Sixth Principal Meridian, Nebraska

T. 32 N., R. 14 W.,
  Sec. 1, lots 3, 4, and S½NW¼.
T. 33 N., R. 14 W.,
  Sec. 15, NW¼SW¼, SE¼SW¼.
T. 27 N., R. 20 W.,
  Sec. 21, NW¼.
T. 23 N., R. 21 W.,
  Sec. 1, lot 1, SE¼NE¼, and E½SE¼.
T. 24 N., R. 21 W.
  Sec. 35, NE¼SE¼.
T. 28 N., R. 21 W.,
  Sec. 9, W½SE¼.
T. 26 N., R. 22 W.,
  Sec. 33, SW¼SE¼.
T. 33 N., R. 27 W.,
  Sec. 8, lot 8.
T. 33 N., R. 29 W.,
  Sec. 31, lots 2 and 3.
T. 4 N., R. 30 W.,
  Sec. 4, lots 3 and 4;
  Sec. 5, lots 1 and 2.
T. 17 N., R. 30 W.,
  Sec. 24, SW¼SW¼.
T. 32 N., R. 30 W.,
  Sec. 29, N½SW¼.
T. 33 N., R. 32 W.,
  Sec. 31, lots 1, 3, and 4.
T. 19 N., 33 W.,
  Sec. 28, SW¼NW¼.
T. 6 N., R. 35 W.,
  Sec. 17, NE¼NE¼.
T. 31 N., R. 37 W.,
  Sec. 30, lot 2.
T. 22 N., R. 47 W.,
  Sec. 1, lots 10, 11, 12, 13, and 16;
  Sec. 12, lot 1.
T. 20 N., R. 50 W.,
  Sec. 2, S½NW¼.
T. 21 N., R. 51 W.,
  Sec. 22, E½SE¼.
T. 22 N., R. 52 W.,
  Sec. 35, E½NE¼, SW¼NE¼, and NE¼SE¼

The following described land was segregated in accordance with 43 CFR 2091.2–6 as of March 16, 1984:

T. 33 N., R. 30 W.,
  Sec. 31, SW¼SE¼.

The areas described aggregate 1,893.46 acres in Blaine, Brown, Cherry, Hayes, Holt, Hooker, McPherson, Morrill, Red Willow, and Rock Counties, Nebraska.

3. The segregation of the above described public lands shall terminate upon issuance of a document of conveyance to such lands, or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of 2 years from the date of the filing of the selection application, whichever occurs first. However, where administrative appeal or review actions have been sought pursuant ot Part 4 or Subparts 2450 of 43 CFR, the segregative period shall continue in effect until publication of notice of termination of the segregation in the **Federal Register.**

44. Inquires concerning the segregation of the lands referenced above should be addressed to the Chief, Branch of Land Resources, Bureau of Land Management, Wyoming State

Office, P.O. Box 1828, Cheyenne, Wyoming 82003.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-8294 Filed 3-27-84; 8:45 am]

BILLING CODE 4310-22-M

Wyoming; Rawlins District Advisory Council and Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Rawlins District Office, Rawlins, Wyoming, Interior.

ACTION: Joint meeting of the Rawlins District Advisory Council and Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Public Laws 94-463 and 94-579 that a joint meeting of the Rawlins District Multiple Use Advisory Council and Grazing Advisory Board will be held.

DATE: April 26, 1984, 9:30 a.m. until 4 p.m.

ADDRESS: Bel Air Inn, 23rd and Spruce Streets, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: David J. Walter, District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301 (307) 324-7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at 9:30 a.m. at the Bel Air Inn in Rawlins, Wyoming. The agenda for this meeting will include:

(1) Cooperative Range Management Agreements (CMAs).

(2) Lander Resource Management Plan (RMP) Issues.

(3) Known Geologic Structures (KGSs).

(4) Status of Coal Unsuitability Petition.

(5) Stock Driveway Withdrawals.

(6) Cattleguard Maintenance.

(7) Changes in the 8100 Program.

(8) Election of new officers for the Advisory Council.

The primary purpose of the joint meeting is to review and make recommendations on nominations that have been received for CMAs. Issues for the Lander RMP, KGSs, and the coal unsuitability petition will also be discussed at the joint meeting. The remainder of the topics on the agenda are for consideration mainly by the Grazing Advisory Board.

The meeting is open to the public. Interested persons may make oral statements during the public comment period, or file written statements for consideration. Anyone wishing to make an oral statement must notify the District Manager on or before April 19, 1984. Depending on the number of persons who want to make a statement, a time limit may be established.

Summary minutes will be available for review at the Rawlins District Office. Copies may be obtained for the cost of duplication

David J. Walter,

District Manager.

[FR Doc. 84-8296 Filed 3-27-84; 8:45 am]

BILLING CODE 4310-22-M

[OR-19854 (WASH)]

Washington; Order Providing for Opening of Lands

Correction

In FR Doc. 84-5659, beginning on page 7880, in the issue of Friday, March 2, 1984, make the following corrections:

1. On page 7881, in the first column, the first line of Sec. 8 should read "N½NE¼, SW¼NE¼, E½SW¼,".

2. Also on page 7881, in the first column, in the first line of Sec. 28 there should be a comma between "NW¼" and "SW¼".

Billing Code 1505-01-M

[M 60266]

Montana; Invitation, Coal Exploration License Application

Members of the public are hereby invitetl to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Big Horn County, Montana:

T. 8 S., R. 39 E., P.M.M.,
Sec. 11: S½SW¼;
Sec. 14: W½NE¼, NW¼, S½;
Sec. 15: S½NE¼, SE¼;
Sec. 23: NW¼.

1,040.00 acres

Any party electing to participate in this exploration program shall notify, in writing both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and Spring Creek Coal Company, c/o NERCO Mining Company, 111 S.W. Columbia, Suite 800, Portland, Oregon 97201. Such written notice must refer to serial number M 60266 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Hardin Herald, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at this address.

Dated: March 23, 1984.

George Mowat,

Acting Chief, Branch of Solid Minerals.

[FR Doc. 84-8386 Filed 3-27-84; 8:45 am]

BILLING CODE 4310-DM-M

[Phx 047032]

Arizona; Order Providing for Opening of Public Lands

March 20, 1984.

The following described land has been reconveyed to the United States in connection with the issuance of a corrective patent pursuant to Section 316 of the Act of October 21, 1976, 90 Stat. 2770; 43 U.S.C. 1746:

Gila and Salt River Meridian, Arizona

Kaibab National Forest

T. 21 N., R. 2 E.,
Sec. 1, S½S½ of Lot 5.
Containing 5 acres.

Upon acceptance of title to such land, it became part of the Kaibab National Forest and is subject to all the laws, rules, and regulations applicable thereto.

At 10 a.m. on April 19, 1984, the land shall be open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning the land should be addressed to the Forest Supervisor, Kaibab National Forest, 800 S. 6th Street, Williams, Arizona 86046.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-8248 Filed 3-27-84; 8:45 am]

BILLING CODE 4310-33-M

Colorado; Airport Lease Application; Rio Blanco County, Colorado

Notice is hereby given that pursuant to the Act of May 24, 1928, (49 U.S.C. 211-214), the County of Rio Blanco, Colorado, has applied for an airport lease for the following lands;

6th Principal Meridian

T. 1 N., R. 101 W.,
Section 6, Beginning at the NE corner of Lot 27, Section 6, T. 1 N., R. 101 W. a BLM brass cap; thence N 89 degrees 49'50"W—A distance of 945.91 feet to the NW corner of Lot 8, Section 6, T. 1 N., R. 101 W. a BLM brass cap; thence 500 degrees 2'42" E along the West line of Lot 8, 242.84 feet; thence N 77 degrees 24'5" E a distance of 969.06 feet to a point on the

east line of Lot 27, T. 1 N., R. 101 W.; thence N zero degrees 2'16" W. along the east line of Lot 27 a distance of 28. 07 feet to the NE corner of Lot 27 the point of beginning. This parcel contains 2.95 acres more or less.

The purpose of this Notice is to inform the public that the filing of this application segregates the described land from all forms of appropriation under the Public Land Laws.

For a period of 30 days from the date of this Notice, interested persons desiring to express their views should promptly send comments along with their name and address to the Craig District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625.

Larry Bauer,

Acting District Manager.

[FR Doc. 84-8267 Filed 3-27-84; 8:45 am]

BILLING CODE 4310-JB-M

Realty Action—Sale; Public Land in Gilliam County, Oregon; Correction

1. In FR Doc. 84-4260 in the issue of Thursday, February 16, 1984, appearing on page 6033, column 1, under the heading from the previous page "Terms and conditions applicable to the sale are:", please add the following after the sentence in item (7) that states in part "* * * prior to the expiration of 30 days from the date of sale."

* * * * *

(8) Bids must be made by the principle or his duly qualified agent by sealed bid and must be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than one-fifth the amount bid. The sealed envelope must be marked in the lower left-hand corner as follows: "Public Sale Bid Parcel No. ———, Serial No. OR 36685, Sale held April 18, 1984."

2. On page 6032, column 2, under Parcel No. 5 where it lists the names of the designated bidders, please change the names Delbert and Cleo Edwards to Dallas and Francis Dalzell.

Gerald E. Magnuson,

District Manager.

[FR Doc. 84-8240 Filed 3-27-84; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Outer Continental Shelf Advisory Board Solicitation of Nominations to Regional Technical Working Groups

The Minerals Management Service is accepting nominations for consideration to fill a number of discretionary vacancies anticipated in 1984 on the North Atlantic, Mid-Atlantic, South Atlantic, Gulf of Mexico, Alaska, and Pacific Regional Technical Working Group (RTWG) Committees of the Outer Continental Shelf (OCS) Advisory Board.

The RTWG's represent one of three types of committees of the OCS Advisory Board. The Board includes, in addition to the RTWG's, a national Scientific Committee and a national OCS Policy Committee. The RTWG's have been established in each of six OCS leasing regions to advise the Director, Minerals Management Service, on technical matters of regional concern regarding both prelease and postlease activities of the OCS oil and gas leasing program.

The Associate Director for Offshore Minerals Management, through the OCS Regional Managers, implements the technical working group program on a regional level in order to facilitate understanding and participation of the parties most immediately affected by minerals leasing decisions and most knowledgeable on the technical aspects of offshore mineral development and its associated impacts. The RTWG's are comprised of Governor's technical representatives from the States within each leasing region; Federal ex officio representatives from the Minerals Management Service, the Fish and Wildlife Service, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and the U.S. Coast Guard; and discretionary representatives from the oil and gas industry and other private and special interests. This solicitation relates only to the discretionary positions.

Secretarial selections and appointments to the RTWG's will be based on achieving a balance of representation and a range of technical expertise and knowledge relevant to OCS related activities within each region. Discretionary membership appointments are for 2 years. Nominees should be familiar with the OCS oil and gas leasing program and should be able to deal with specific technical problems of exploration, production, and transportation of offshore oil and gas as well as the economic and environmental factors involved. Additionally, nominees should have experience in or a working knowledge of interagency coordination at the Federal or State level and should be representative of one or more of the following disciplines:

—Geology
—Oceanography
—Transportation
—Land-Use Planning
—Economics
—Oil and Gas Industry
—Marine Recreation
—Terrestrial Wildlife
—Fisheries Biology
—Engineering
—Marine Biology
—Environment

This announcement is for recruitment of public and private sector members only. In order to be considered, letters of recommendation should be accompanied by a brief résumé and should be directed to the Manager, at the address listed below, of the OCS office located in the region of the applicant's residence, expertise, and interest. The deadline for receipt of nominations will be May 15, 1984. As the number of potential vacancies and the type of representation sought will differ for each RTWG, interested individuals should contact the appropriate OCS Regional Manager for specific information.

For additional information on individual RTWG's contact one of the OCS Regional Offices listed below:

North, Mid, and South Atlantic RTWG's: Manager, Atlantic OCS Office, Attention: RTWG Coordinator, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, (703) 285–2165

Gulf of Mexico RTWG: Manager, Gulf of Mexico OCS Office, Attention: RTWG Coordinator, Minerals Management Service, P.O. Box 7944, 3301 N. Causeway Blvd. Metairie, Louisiana 70011, (504) 838–0627

Alaska RTWG: Manager, Alaska OCS Office, Attention: RTWG Coordinator, Minerals Management Service, 800 "A" Street, Anchorage, Alaska 99501, (907) 261–2307

Pacific RTWG: Manager, Pacific OCS Office, Attention: RTWG Coordinator, Minerals Management Service, 1340 W. 6th Street, Los Angeles, California 90017, (213) 688–2063

For additional information relating to the OCS Advisory Board, interested parties should contact Michele Tetley, Executive Secretary, OCS Advisory Board, Minerals Management Service, Department of the Interior, OIS/MS 640, Washington, D.C. 20240, telephone number (202) 343–9314.

Dated: March 22, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84-8233 Filed 3-27-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Current Schedule of Reviews of Government Versus Contract Operation of Commercial or Industrial Activities and Service Contracts

AGENCY: Agency for International Development, IDCA.

ACTION: Notification of current schedule of reviews.

SUMMARY: Pursuant to Office of Management and Budget (OMB) Circular A–76, notice is hereby given that the Agency for International Development (AID) intends to conduct reviews of the feasibility and/or cost of contract operation versus Government operation of commercial and industrial activities listed below under Supplemental Information. Specific invitation for bids or request for proposals will be announced in the *Commerce Business Daily*. A contract or contracts may or may not result from each feasibility or cost comparison study. Results of each study will be made available to responding bidders or offerors and other interested parties.

FOR FURTHER INFORMATION CONTACT:
Fred Allen, 632–3378
John H. Elgin, 632–3378

SUPPLEMENTARY INFORMATION: Studies to be made are identified in the following tabulation:

Name of activity	Location of activity	Review start date
Voucher Processing.	Washington, D.C.	March, 1985.
Duplicating Services.	Rosslyn, Virginia	Review underway.
Warehousing Operation.	Arlington, Virginia	Review underway.

Dated: March 21, 1984.

R.T. Rollis, Jr.,

Assistant to the Administrator for Management.

[FR Doc. 84–8295 Filed 3–27–84; 8:45 am]

BILLING CODE 8116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Final)]

Chloropicrin From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673(b)(1)), that an industry in the United States is materially injured by reason of imports from the People's Republic of China of chloropicrin, provided for in items 408.16, 408.29 and 425.52 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective September 19, 1983, following a preliminary determination by the Department of Commerce that imports of chloropicrin from China are being sold in the United States at LTFV.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of October 5, 1983 (48 FR 45480).

On October 7, 1983, the Department of Commerce published a notice in the **Federal Register** (48 FR 45816) postponing its final antidumping determination. Accordingly, the Commission published a notice in the **Federal Register** of October 26, 1983 (48 FR 49558) revising its schedule for the conduct of the investigation. The public hearing was held in Washington, D.C., of February 9, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel. The staff briefing of the Commission and the Commission's vote on the investigation occurred on March 6, 1984 in a public "Government in the Sunshine" meeting of the Commission.

The Commission transmitted its report on the investigation to the Secretary of Commerce on March 19, 1984. A public version of the Commission's report, Chloropicrin from the Peoples Republic of China (investigation No. 731–TA–130 (Final), USITC Publication 1505, 1984), contains the views of the Commission and information developed during the investigation.

By order of the Commission.
Issued: March 19, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–8301 Filed 3–27–84; 8:45 am]

BILLING CODE 7020–01–M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[Investigation No. 337–TA–166]

Certain Computerized Jacquard Pattern Cutting Systems

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on April 30, 1984, at the Waterfront Center, Room 201, 1010 Wisconsin Avenue, NW., Washington, D.C. 20007, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: March 21, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84–8302 Filed 3–27–84; 8:45 am]

BILLING CODE 7020–02–M

[332–161]

Conditions of Competition Between Certain Domestic and Imported Fabricated Structural Steel Products

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under Section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) concerning the conditions of competition between certain domestic and imported fabricated structural steel products, and the scheduling of a hearing in connection therewith.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Peter Avery (202–523–0342) or Dennis Rapkins (202–523–0438), Minerals and Metals Division, U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

The Commission instituted the investigation, No. 332–161, on its own motion, following receipt on January 27 and March 1, 1984, of a request therefore from the Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives.

In accordance with the Subcommittee's request, the study will include a review of the following points or questions with regard to the western U.S. market for fabricated steel products: (1) What are the recent trends in trade in steel and structural steel products into the western United States (as defined in previous Commission studies of the western U.S. steel industry)? What is the import penetration ratio and its trend line? What price differences have existed between domestic and imported

products? Which countries play a major role in the western U.S. market? (2) What are the tariff classifications and rates on these imports (and are there any classification problems)? (3) To the extent it can be determined from available sources, are there differences in the pricing of raw steel products by foreign suppliers which favor Korean fabricators and adversely affect domestic fabricators? (4) What programs does the Government of the Republic of Korea maintain to assist its steel fabricators, both domestically and with respect to exports? (5) What is the nature of the steel fabrication industry in the Republic of Korea (i.e., how many firms are involved, what is this relation to steel producers, and what are their level of sales and net income)?

In addition, the same questions regarding trends in steel trade, import penetration, price competition, tariff classifications, and major importers will be addressed for the national steel market. Moreover, the nature of the steel fabrication industries in other major supplier countries, including Canada, and the type of government programs which exist will be examined. The Commission expects to complete its study by October 26, 1984.

Public Hearing

A public hearing in connection with this investigation will be held at the International Trade Commission in Washington, D.C. on August 28, 1984, at 10 A.M. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 701 E Street, NW, Washington, D.C. 20436, not later than noon, August 21, 1984.

Written Submissions

In lieu of or in addition to appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be received at the earliest possible date, but no later than August 21, 1984. All submissions should be addressed to the Secretary at the Commission's Office in Washington, D.C.

By order of the Commission.

Issued: March 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8208 Filed 3-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-166]

Certain Fluidized Supporting Apparatus and Components Thereof; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on February 23, 1984, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of UHI Corporation, 2464 Mariondale Avenue, Los Angeles, California 90017. The complaint alleges unfair methods of competition and unfair acts in the importation of certain fluidized supporting apparatus and components thereof into the United States, or in their rental and/or sale, by reason of alleged (1) defamation of complainant; (2) disparagement of complainant's fluidized supporting apparatus; (3) passing off; (4) false designation of origin; (5) interference with contractual relations; and (6) interference with prospective advantage. The Complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complaint requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and temporary cease and desist orders. After a full investigation, the complaint requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and procedure (19 CFR 210.12).

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on March 20, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain fluidized supporting apparatus and components thereof into the United States, or in their sale, by reason of alleged (1) disparagement of complainant and complainant's fluidized supporting apparatus; (2) passing off; (3) false representation; and (4) interference with contractual relations, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed on February 23, 1984, shall be forwarded to the presiding officer for an initial determination pursuant to § 210.53(b) of the rules.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon whom this notice of investigation shall be served:

(a) The complainant is: UHI Corporation, 2464 Mariondale Avenue, Los Angeles, California 90017.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon whom the compliant is to be served:

Support Systems International, Inc., 4349 Corporate Road, Charleston, South Carolina 29401

Support Systems International (S.A.), 111 Bis, Route De Toulouse, 3400 Montpellier, France

(c) Denise T. DiPersio, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 124, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(4) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. Pursuant to § 210.24(e) of the Commission's Rules of Practice

and Procedure, the presiding officer shall determine as expeditiously as possible whether or not temporary relief preceedings should be instituted.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedures (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the compliant and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the compliant and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Room 156, Washington, D.C. 20436, telephone 202/523–0471.

FOR FURTHER INFORMATION CONTACT: Denise T. DiPersio, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202/523–0113.

Issued: March 22, 1984.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–8304 Filed 3–27–84; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 713–TA–183 (Preliminary)]

Large Diameter Carbon Steel Welded Pipes From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: March 21, 1984.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of carbon steel welded pipes, over 16 inches in outside diameter, provided for in item 610.32 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Mr. David Coombs, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–1376.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on March 21, 1984, by counsel on behalf of Berg Steel Pipe Corporation, Panama City, Florida. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by May 7, 1984 (19 CFR 207.17).

Participation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided for in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in this investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written Submissions

Any person may submit to the Commission on or before April 18, 1984, a written statement of information pertinent to the subject matter of this investigation (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has sheduled a conference in connection with this investigation for 9:30 a.m. on April 16, 1984, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW, Washington, D.C. Parties wishing to participate in the conference should contact the staff investigator, Mr. David Coombs (202–523–1376) not later than April 11, 1984, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public Inspection

A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of this investigation and rules of

general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201). Further information concerning the conduct of the conference will be provided by Mr. Coombs.

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR § 207.12).

Issued: March 22, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8300 Filed 3-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-164]

Certain Modular Structural Systems

Notice is hereby given that the prehearing conference and hearing in this matter scheduled to commence on April 4, 1984 (49 FR 7465) are cancelled.

The Secretary shall publish this Notice in the **Federal Register.**

Issued: March 22, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84-8305 Filed 3-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-157

Certain Office Desk Accessories and Related Products; Decision Not To Review Initial Determination Amending Notice of Investigation

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) to amend the notice of investigation to add allegations of infringement of U.S. Design Patent No. 270,649 and to change the allegation of false designation of origin or source to failure to mark country of origin.

SUPPLEMENTARY INFORMATION: The Commission did not receive any petitions for review of the ID or any comments from other Government agencies.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Gracia M. Berg, Esq. Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

Authority: 19 U.S.C. 1337, 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983 (to be codified at 19 CFR 210.53(c) and (h)).

By order of the Commission.

Issued: March 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8306 Filed 3-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-147]

Certain Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components Thereof; Decision Not To Review Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (ID) that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The Commission has adopted that portion of the presiding officer's ID relating to the noninfringement of U.S. Letters Patent 3,726,758. The Commission has taken no position on the other issues discussed in the ID, since the findings and conclusions of the presiding officer regarding noninfringement are dispositive of the question of whether there is a violation of section 337.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53-210.56 of the Commission's Rules of Practice and Procedure (47 FR 25134 (June 10, 1982), as amended by 48 FR 20225 (May 5, 1983) and 48 FR 21115 (May 11, 1983)); to be codified at 19 CFR 210.53-210.56.

SUPPLEMENTARY INFORMATION: On February 14, 1984, the presiding officer issued an ID that there is no violation of section 337 of the Tariff Act of 1930 in the unauthorized importation and sale of certain papermaking machine forming sections for the continuous production of paper, and components thereof. Complainant and respondents filed petitions for review of various parts of the ID, pursuant to § 210.54(a) of the Commission's rules. Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission on March 15, 1984, determined not to review the ID.

Notice of this investigation was published in the **Federal Register** of May 11, 1983 (48 FR 21213).

Copies of the public version of the ID and all other nonconfidential documents on the record of this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202-523-0350.

Issued: March 19, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8307 Filed 3-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-97]

Certain Steel Rod Treating Apparatus and Components Thereof; Reopening of Investigation

AGENCY: International Trade Commission.

ACTION: Lifting of suspension and reopening of the above-captioned investigation upon joint motion of complainant and respondents in order to entertain motion to terminate the investigation on the basis of a settlement agreement.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain steel rod treating apparatus and components thereof. Notice of the investigation was published in the **Federal Register** of January 28, 1981 (46 FR 9262)

On December 1, 1981, the Commission unanimously determined that there is a violation of section 337 in the unauthorized sale for importation of certain steel rod treating apparatus and components thereof which infringe U.S. Letters Patent 3,390,871. The Commission further determined that the appropriate remedy is an exclusive order pursuant to section 337(d) excluding from entry into the United States certain steel rod treating apparaus which are manufactured by or on behalf of Korf Industrie und Handel, GmbH, Korf Engineering, GmbH, Korf Industries, Inc., Ashlow, Ltd., Ashlow Corp., Mr. Willy Korf and/or Mr. Johann Heinrich Rohde, or any successor, assignee, parent company, affiliated

person, subsidiary, or related business entity of the above-named parties respondent, or which are sought to be imported by Georgetown Steel Corporation.

On December 30, 1981, the U.S. District Court for the District of South Carolina indicated that the court would hold U.S. Letters Patent 3,390,871 invalid and unenforceable. *Ashlow Ltd. et al* v. *Morgan Construction Co.* (D.S.C., Civ. No. 81–936–5).

On December 31, 1981, respondents Ashlow Ltd., Ashlow Corp., Korf Industries, Inc., Georgetown Steel Corp., Korf Industrie und Handel, Korf Engineering, Mr. Willy Korf and Mr. Johann Heinrich Rohde, moved the Commission to stay or suspend its exclusion order and for an expedited decision thereon (Motion No. 97–64). The Commission granted Motion No. 97–64, subject to certain measures designed to protect the *status quo* pending Morgan's exhaustion of its appeal rights. Specifically, the Commission issued an order permitting entry of the subject apparatus under bond pursuant to section 337(e), and suspended its investigation pending judicial proceedings. Notice of these actions was published in the **Federal Register** of January 20, 1982, 47 FR 2950.

Appeals were taken from the District Court decision and the Commission's action requiring posting of a bond.

The appeal from the Commission's action was stayed in the U.S. Court of Customs and Patent Appeals pending resolution by the U.S. Court of Appeals for the Fourth Circuit of the appeal by Morgan from the decision of the District Court. Following briefing and oral argument, the Fourth Circuit decided to delay resolution of that appeal until a decision had been issued by the U.S. Court of Appeals for the Federal Circuit (successor to the U.S. Court of Customs and Patent Appeals). The Court of Appeals for the Federal Circuit thereupon lifted its stay and briefing and oral argument followed. No decision has been issued by the Court of Appeals for the Federal Circuit.

Complainants and respondents have moved for and obtained a stay in the Court of Appeals for the Federal Circuit for a period of 70 days, during which time they have informed the court they will seek termination of the Commission's investigation on the basis of a settlement agreement, pursuant to section 210.51(c) of the Commission's Rules of Practice and Procedure. 19 CFR 210.51(c).

Written Comments

A copy of the motion for termination and the settlement agreement are available for inspection by the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0161. Interested persons may submit written comments concerning termination of the investigation within ten (10) days of the date of publication of this notice in the **Federal Register**. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Frank J Schuchat, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0421.

Issued: March 20, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–8308 Filed 3–27–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–133]

Certain Vertical Milling Machines, Parts, Attachments, and Accessories Thereto; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of investigation upon a finding of no violation of section 337 of the Tariff Act of 1930.

SUPPLEMENTARY INFORMATION: On November 17, 1982, the Commission instituted an investigation in response to a petition filed on behalf of Textron, Inc., of Providence, R.I. Bridgeport Machines is a division of Textron which manufactures, distributes, and sells vertical milling machines and their attachments and accessories in the United States. The Commission published a notice of investigation in the **Federal Register** of November 17, 1982, 47 FR 51821, which instituted an investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 in the unauthorized importation or sale of certain vertical milling machines and parts, attachments, and accessories thereto by reason of the alleged—

(a) Violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

(b) Infringement of Federally registered trademarks in violation of section 32(1) of the Lanham Act, 15 U.S.C. 1114(1);

(c) Infringement of common law trademark rights;

(d) Trademark dilution;

(e) Misappropriation simulation or adoption of shape design and trade dress;

(f) Passing off;

(g) False advertising; and

(h) Unfair competition.

The effect or tendency of which is to destory or substantially injure an industry which is efficiently and economically operated in the United States.

On March 1, 1984, the Commission unanimously determined that there was no violation of section 337 in investigation No. 337–TA–133 in the importation or sale of the vertical milling machines, parts, attachments, and accessories thereto in question.

Copies of the Commission's Action and Order, its Opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523–0189.

Issued: March 22, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–8309 Filed 3–27–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–180]

Certain X-Ray Image Intensifier Tubes and Instruments; Correction to Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Correction of an error in notice of investigation published in the **Federal Register** of February 1, 1984.

SUMMARY: On January 26, 1984, the United States International Trade Commission issued a notice announcing the institution of the above-captioned

investigation. This notice, which was published in the **Federal Register** February 1, 1984 (49 FR 4046–4047), indicated that the investigation was being instituted to determine whether there is a violation of section 337 of the Tariff Act of 1930 in the unlawful importation of certain x-ray image intensifier tubes and instruments equipped with x-ray image intensifier tubes into the United States, or in their sale, by reason of (1) the alleged coverage of such tubes by claims 1 through 7 of U.S. Letters Patent 3,916,182 and (2) the alleged manufacture of such tubes by a process covered by claims 1 through 6 and 9 through 15 of U.S. Letters Patent 3,795,531. Notice is hereby given that the number of the first patent was listed incorrectly in the previously published notice. The correct number is 3,961,182. The prior notice accurately reflected the scope of the Commission's investigation in all other respects.

SUPPLEMENTARY INFORMATION: Copies of the patents, the complaint, the responses, and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

Issued: March 22, 1984.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8310 Filed 3-27-84; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-27]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Advisory Subcommittee on Chemical Propulsion Technology.

DATE AND TIME: April 17 and 18, 1984, 8:30 a.m. to 4:30 p.m., April 19, 1984, 8:30 a.m. to 12:00 noon.

ADDRESS: National Aeronautics and Space Administration, George C. Marshall Space Flight Center, Building 4610, Room 5025, Marshall Space Flight Center, Alabama 35812.

FOR FURTHER INFORMATION CONTACT: Mr. Vance Houston, National Aeronautics and Space Administration, Code RST, Washington, D.C. 20546 (202/453–2852).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Chemical Propulsion Technology was established to provide guidance and direction to the Chemical Propulsion research and technology programs of NASA's Office of Aeronautics and Space Technology. The Subcommittee, chaired by Dr. Sanders Rosenberg, is comprised of five members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons, including the Subcommittee members and participants).

Type of meeting: Open

Agenda

April 17, 1984

8:30 a.m.—Chairperson's Remarks.
8:40 a.m.—Office of Aeronautics and Space Technology Propulsion Program Summary.
9:30 a.m.—High Pressure Liquid Oxygen/Hydrogen Technology Program.
1:30 p.m.—Advanced Orbital Transfer Vehicle Propulsion Technology Program.
3:00 p.m.—Liquid Oxygen/Hydrocarbon Technology Program.
4:30 p.m.—Adjourn.

April 18, 1984

8:30 a.m.—Lewis Research Center as Center of Excellence.
9:00 a.m.—Marshall Space Flight Center as Center of Excellence.
1:00 p.m.—MSFC Center of Excellence continued.
3:30 p.m.—Subcommittee Discussion.
4:30 p.m.—Adjourn.

April 19, 1984

8:30 a.m.—Subcommittee Business.
10:00 a.m.—Subcommittee Discussion in Preparation of Final Report.
12:00 noon—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

March 22, 1984.

[FR Doc. 84-8238 Filed 3-27-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Directorate for Engineering; Advisory Committee for Earthquake Hazard Mitigation; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Earthquake Hazard Mitigation (EHM).

Date and time: April 12, 1984—9:00 a.m. to 5:00 p.m. April 13, 1984—9:00 a.m. to 12 Noon.

Place: AIA Board Room, 1735 New York Avenue, N.W., Washington, D.C.

Type of meeting: Open.

Contact person: Rowena Peacock, Administrative Officer (CEE) National Science Foundation, Room 1130, Washington, D.C. TELEPHONE: (202) 357–9545.

Summary minutes: Minutes may be obtained from the contact person.

Agenda

Thursday, April 12, 1984

9:00–10:00—Welcome and Discussion of Directorate Activities
10:00–11:00—Report on EHM Activities
11:00–12:00—General Issues for Long-Range Planning
12:00–1:30—Lunch
1:30–5:00—General Issues for Long-Range Planning

Friday, April 13, 1984

9:00–12:00—Discussion of General Issues for Long-Range Planning
Adjournment

Dated: March 23, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-8339 Filed 3-27-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Plant Unit Nos. 3 and 4 located in Dade County, Florida.

The proposed license amendments were initially noticed December 21, 1983 (48 FR 56503). This notice includes requested changes provided in a

submittal dated October 26, 1983 which were not included in the initial notice of December 21, 1983. The proposed amendments request the deletion of non-radiological Environmental Technical Specifications (Appendix B) which address the groundwater monitoring program and environmental protection limits. The justification for the requested deletions are based on the results of eight years of studies, the revised agreement with the South Florida Water Management District and an effective National Pollutant Discharge Elimination System (NPDES) Permit from the Environmental Protection Agency in accordance with the licensee's application for amendments dated September 12, 1983, as modified October 26, 1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The amendments would delete the non-radiological monitoring programs related to the groundwater monitoring and environmental protection limits. The amendments would not change any current limitations related to the operation of the plants. Since no operational limitations are being changed, the staff proposes to determine that the amendments do not involve a significant increase in the probability or consequences of an accident from any accident previoulsy evaluated, do not create the possiblity of a new or different kind of accident from any accident previously evaluated and do not involve a significant reduction in a margin of safety. The staff, therefore, proposes to determine that the amendments do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By April 27, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limted to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involve no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of

the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union operator at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Branch Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, NW., Suite 1214, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 20th day of March 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 84-8332 Filed 3-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-27]

Negative Declaration Regarding Renewal of Special Nuclear Material License No. SNM–42; Babcock & Wilcox Co., Naval Nuclear Fuel Division, Lynchburg, Virginia

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Special Nuclear Material License SNM–42 for the continued operation of the Naval Nuclear Fuel Division at Lynchburg, Virginia.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Impact Appraisal for the proposed renewal of Special Nuclear Material License SNM–42. On the basis of this appraisal, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Negative Declaration is appropriate. The Environmental Impact Appraisal (NUREG–1049) is available for public inpection at the Commission's Public Document Room at 1717 H street, NW., Washington, D.C. Copies of NUREG–1049 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Silver Spring, Maryland, this 22nd day of March 1984.

For the Nuclear Regulatory Commission.

R. G. Page,

Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 84-8331 Filed 3-27-84; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Fish Propagation Panel; Meeting

AGENCY: Fish Propagation Panel of the Pacific Nothwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Role and future activities of panel
- Status report on subbasin planning proposal
- Other
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Fish Propagation Panel.

DATE: April 2, 1984.

ADDRESS: The meeting will be held in the Peninsula East Room of the Seattle Airport Hilton, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Schneider, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-8384 Filed 3-27-84; 8:45 am]

BILLING CODE [illegible]

Options Evaluation Task Force; Regular Meeting

AGENCY: Options Evaluation Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Discussion of potential decision rules
- Alternatives to model for evaluating options
- Public Comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Options Evaluation Task Force.

DATE: Friday, March 30, 1984. 10:00 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room at 700 S.W. Taylor; Suite 200, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Wally Gibson (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-8385 Filed 3-27-84; 8:45 am]

BILLING CODE [illegible]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–20776]

Securities Processing Roundtable

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the Division of Market Regulation's Securities Processing Roundtable.

SUMMARY: This is to give notice that the Division of Market Regulation will host a Securities Processing Roundtable on April 2 and 3, 1984 in Room 1C30 at the Securities and Exchange Commission's main offices, 450 5th Street, NW., Washington, D.C., beginning at 9:30 a.m. The public is invited to attend.

FOR FURTHER INFORMATION CONTACT: John Connolly, Division of Market Regulation, Securities and Exchange

Commission, Washington, D.C. 20549, (202) 272–2368.

SUPPLEMENTARY INFORMATION: The Division of Market Regulation hereby gives notice that it will host a Securities Processing Roundtable on April 2 and 3, 1984 in Room 1C30 at 450 5th Street, NW., Washington, D.C., beginning at 9:30 a.m. The Roundtable is intended to provided to provide an opportunity for financial industry representatives to discuss ways to improve efficiency, reduce costs and increase safety in securities processing in the future. Issues scheduled for discussion at the Roundtable concern current and prospective clearing agency and transfer agent operations. The Roundtable is open to the public.

Dated: March 21, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8286 Filed 3–27–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20775; File No. SR–SCCP–84–1]

Filing and Immediate Effectiveness of a Proposed Rule Change of Stock Clearing Corporation of Philadelphia

March 21, 1984.

Stock Clearing Corporation of Philadelphia ("SCCP") on March 1, 1984, submitted a proposed rule change to the Commission pursuant to Rule 19b–4 under the Securities Exchange Act of 1934 (the "Act"). 15 U.S.C. 78s(b)(1), that deletes a redundant rule, SCCP Rule 31, entitled "Audit Committee." Article IV, Section 8(i) of SCCP's By-laws already describes all standing committees of SCCP's Board of Directors, including its Audit Committee.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested presons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the **Federal Register.** Persons desiring to make a written submission should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–SCCP–84–1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8283 Filed 3–27–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20774; File No. SR–PHILADEP–84–1]

Filing and Immediate Effectiveness of a Proposed Rule Change by Philadelphia Depository Trust Co.

March 21, 1984.

Philadelphia Depository Trust Company ("Philadep") on March 1, 1984, submitted a proposed rule change to the Commission pursuant to Rule 19b–4 under the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), that deletes a redundant rule, Philadep Rule 18, entitled "Audit Committee." Philadep By-Law Article IV, Section 8(i) already contains an identical description of Philadep's Audit Committee. Current Philadep Rule 29, "Standard of Care," will become Philadep Rule 18.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the **Federal Register.** Persons desiring to make a written submission should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–PHILADEP–84–1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8284 Filed 3–27–84; 8:45 am]

BILLING CODE 8010–01–M

[File No.: 81–701]

PACCAR Financial Corp.; Application and Opportunity for Hearing

March 21, 1984.

Notice is hereby given that PACCAR Financial Corp. (The "Applicant"), a wholly owned subsidiary of PACCAR, Inc. ("PACCAR"), has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for exemption from certain requirements under sections 14(a) and 14(c) of the Act subject to certain conditions.

The application states in part:

Because Applicant's common stock is registered under section 12(g), of the Exchange Act, Applicant is required to comply with the proxy and information statement requirements of Regulations 14A and 14C under that Act.

Applicant believes that the exemptive order requested by it is appropriate in that as long as PACCAR continues to own all of Applicant's common stock, a proxy or information statement will be of no revelance to PACCAR.

Further, the information provided by a proxy or information statement will be either of little or no relevance to a holder of Applicant's debt securities, or will be otherwise publicly available in documents Applicant is required to file under section 13 of the Exchange Act.

For a more detailed statement of the information presented, all persons are referred to said application, which is on file in the Office of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than April 16, 1984 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should

be addressed to The Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8285 Filed 3-27-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area #615100]

Texas; Designation of Disaster Loan Area

Uvalde, Bosque, Bell, Jackson, Calhoun, Bowie, Travis, Williamson and Gonzales Counties in the State of Texas constitute a disaster area because of a freeze which occurred during December 1983. Eligible small businesses may file applications for economic injury assistance until the close of business on December 24, 1984, at the address listed below:

U.S. Small Business Administration, 727 East Durango—Room A-513, Federal Building, San Antonio, Texas 78206
U.S. Small Business Administration, 1100 Commerce Street, Dallas, Texas 75242
U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054

or other locally announced locations. The interest rate for eligible applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 22, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-8330 Filed 3-27-84; 8:45 am]

BILLING CODE 8025-01-M

Direct Business Loans; Interest Rates

The interest rate on section 7(a) Small Business Administration direct business loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is twelve and five-eights (12⅝) percent for the fiscal quarter beginning April 1, 1984.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 120.3(b)(2)(iii)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the April-June quarter of 1984, this rate will be eleven and five-eights (11⅝) percent.

Eward J. Myerson,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 84-8359 Filed 3-27-84; 8:45 am]

BILLING CODE 8025-01-M

Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulations governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State Usury ceilings, and to its forfeiture and penalty provisions.

Effective April 1, 1984, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR Section 107.301(c) is *12.565%* per annum.

Dated: March 20, 1984.

Edward J. Myerson,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 84-8360 Filed 3-27-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Priority System for the Airport Improvement Program

AGENCY: Federal Aviation Administration, DOT.

SUBJECT: Availability of the Airport Improvement Program Priority System for Information of the Aviation Public.

SUMMARY: This notice provides information on availability of copies of the Airport Improvement Program Priority System.

Section 505 of the Airport and Airway Improvement Act of 1982 (AAIA) (49 U.S.C. 2204) authorizes the Secretary to make grants for eligible projects under the Airport Improvement Program. Because the demand for these funds exceeds the amount available, the FAA is unable to fund all of those projects for which airport sponsors wish to obtain grants. The FAA has developed a priority system to help make decisions on the relative national priority of projects proposed during the year. Under this system, projects are favored which best carry out the purpose of the Act, with emphasis on those which improve safety and assure the integrity of the system.

The FAA is making this document available for review by the aviation public. Interested parties may call, write, or visit the following office to obtain the document: Office of Airport Planning and Programming, Grants-in-Aid Division, APP-500 (Room 620), Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone: (202) 426-3067.

Issued in Washington, D.C., on March 23, 1984.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 84-8338 Filed 3-27-84; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Approval of Applicant as Trustee; NCNB New National Bank of Florida

Notice is hereby given that NCNB New National Bank (to be named NCNB National Bank of Florida), successor to NCNB National Bank of Florida, with offices at 600 N. Florida Avenue, Tampa, Florida, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21—221.30.

Dated: March 23, 1984.

By order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 84-8330 Filed 3-27-84; 8:45 am]

BILLING CODE 4910-81-M

Removal, Without Disapproval, From Roster of Approved Trustees; Exchange Bank and Trust Co. of Florida

Notice is hereby given, pursuant to 46 CFR 221.28, that Exchange Bank and Trust Company of Florida, with offices at 600 N. Florida Avenue, Tampa, Florida, has been removed from the Roster of Approved Trustees. In its request for removal, Exchange Bank and Trust Company of Florida stated that as of December 31, 1982, the shareholders of Exchange Bancorporation, Inc. (principal stockholder of the Bank) sold all of their stock in the Bank to NCNB Exchange Corporation.

Dated: March 23, 1984.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 84-8329 Filed 3-27-84; 8:45 am]

BILLING CODE 4910-81-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Tennessee Valley Authority. 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: New, regular submission

Title of Information Collection: TVA Energy Awareness Pilot Program—Phase II Teacher Evaluation

Frequency of Use: Annually

Type of Affected Public: Non-Profit Institutions

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 500

Estimated Total Annual Burden Hours: 100

Estimated Annual Cost from Appropriated Funds: $0

Need for and Uses of Information: During this proposed information collection, TVA will contract elementary and high school teachers regarding the success of the Energy Awareness Pilot Program. The information is needed by TVA to evaluate this program and to determine whether to continue or to terminate the program.

Dated: March 21, 1984.

John W. Thompson,

Manager, Corporate Services, Senior Agency Official.

[FR Doc. 84-8241 Filed 3-27-84; 8:45 am]

BILLING CODE 8120-05-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

March 22, 1984.

[Supplement to Dept Circ.; Public Debt Series—No. 7-84.]

Interest Rate; Notes Designated Series S-1986

The Secretary announced on March 21, 1984, that the interest rate on the notes designated Series S-1986, described in Department Circular—Public Debt Series—No. 7-84 dated March 15, 1984, will be 11½ percent. Interest on the notes will be payable at the rate of 11½ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84-8251 Filed 3-27-84; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Agency Information Collections Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Adminstration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains forms and reporting requirements and lists the following information: (1) The Department or Staff Office issuing the requirement; (2) The title of the form or report; (3) The agency form number, if applicable; (4) How often the form or report must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms, reports, and supporting document may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-6880.

DATES: Comments on the forms and questionnaires should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 22, 1984.

By direction of the Administrator:

Dominick Onorato,

Associate Deputy administrator for Information Resources Management.

New Reporting Requirement

1. Department of Medicine and Surgery.
2. Epidemiologic Study of the Health of Vietnam Veterans.
3. None.
4. Reporting requirement.
5. Individuals or households.
6. 32,600 responses.
7. 32, 600 hours.
8. Not applicable.

Reporting Requirement

(1) Department of Medicine and Surgery.
(2) Former Prisoner of War Medical Follow-up.
(3) Not applicable.
(4) One-time.
(5) Individuals or households.
(6) 3300 responses.
(7) 1650 hours.
(8) Not applicable.

Extensions

1. Department of Veterans Benefits.
2. Counseling Record—Personnel Information.
3. VA Form 28-1902.

4. On occasion.
5. Individuals or households.
6. 60,000 responses.
7. 30,000 hours.
8. Not applicable.

* * * * * *

1. Department of Veterans Benefits.
2. Transfer of (Scholastic) Credit (Schools).
3. VA Form 22–315.
4. On occasion.
5. Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
6. 1,600 responses.
7. 267 hours.
8. Not applicable.

Extensions

1. Department of Veterans Benefits.
2. Request to Lender for Status Loan Account—LCS.
3. VA Form 26–8778.
4. On occasion.
5. Small businesses or organizations.
6. 126,000 responses.
7. 21,600 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Electrical Systems Inspection Report (Manufactured Home).
3. VA Form 26–8731b.
4. On occasion.
5. Individuals or households, Businesses or other for-profit, Small businesses or organizations.
6. 1,000 responses.
7. 2,000 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Statement of Dependency on Parent(s).
3. VA Form 21–509.
4. On occasion.
5. Individuals or households.
6. 55,000 responses.
7. 27,500 hours.
8. Not applicable.

[FR Doc. 84–8312 Filed 3–27–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 61
Wednesday, March 28, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to **Federal Register** on March 16, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 11:00 a.m., Monday, March 26, 1984, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Proposed statement to the Senate Committee on Banking, Housing, and Urban Affairs, regarding S. 2181, the Financial Services Competitive Equity Act, and S. 2134, the Depository Institutions Holding Company Act Amendments of 1983.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: March 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8448 Filed 3-26-84; 4:02 pm]

BILLING CODE 6210-01-M

2

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: March 29, 1984, 1:30 p.m.

PLACE: 1776 G Street, NW., Washington, D.C., Conference Room 4–G.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, D.C. 20013, (202) 789–4763.

MATTERS TO BE CONSIDERED:

Closed:
Minutes of January 31, 1984 Board of Directors' Meeting
Minute Entry
Closed:
President's Report
Closed:
Financial Report
Minute Entry

Date sent to **Federal Register:** March 26, 1984.

Maud Mater,

Corporate Secretary.

[FR Doc. 84-8422 Filed 3-26-84; 1:49 pm]

BILLING CODE 6720-01-M

3

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (NORTHWEST POWER PLANNING COUNCIL)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. An executive session to discuss pending litigation and personnel matters will follow the meeting on April 12. This session will be closed to the public.

TIME AND DATE: April 11 and 12, 1984, 9:00 a.m.

PLACE: Red Lion Motor Inn/Riverside, 29th and Chinden Boulevard, Boise, Idaho.

MATTERS TO BE CONSIDERED:

- Prelimiary Council Decisions on Draft Amendment of the Columbia River Basin Fish and Wildlife Program
- Public Comment on Second Set of Issue Papers on Amendment of the Columbia River Basin Fish and Wildlife Program
- Presentation of Third Set of Issue Papers on Amendment of the Columbia River Basin Fish and Wildlife Program
- Staff Presentation of Bureau of Reclamation, Federal Energy Regulatory Commission, and Corps of Engineers FY 1985 Budget Proposals
- Council Decision on Proposed Amendment to the Council's Study of Large Thermal Plant Planning and Construction Schedules (Action 23.1)
- Staff Presentation on Death Spiral Issue Paper
- Staff Presentation on Northwest Power Planning Council Power Planning Division Workplan

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222–5161

Edward Sheets,

Executive Director.

[FR Doc. 84-8383 Filed 3-26-84; 11:01 am]

BILLING CODE 0000-00-M

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federal register

Wednesday
March 28, 1984

Part II

Department of Energy

48 CFR Ch. 9
Acquisition Regulations; Final Rule

DEPARTMENT OF ENERGY

48 CFR Ch. 9

Acquisition Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule completes the effort begun by the notice of proposed rulemaking published in the **Federal Register** on September 28, 1983 at 48 FR 43772. The purpose of the rule is to establish the Department of Energy Acquisition Regulation (DEAR). This regulation will be codified as Chapter 9 of Title 48 of the Code of Federal Regulations. Its purpose is to implement and supplement the Federal Acquisition Regulation (FAR) which has been separately promulgated by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration as Chapter I of Title 48 of the Code of Federal Regulations. The FAR was published in the September 19, 1983 issue of the **Federal Register**. The FAR is being promulgated as the uniform, simplified, acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms.

The FAR will supersede the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation. Civilian agency implementations of the Federal Procurement Regulations will generally become outdated as a result of the promulgation of the FAR. For this reason, the Department of Energy Procurement Regulations (DOE–PR), codified at Chapter 9 of Title 41 of the Code of Federal Regulations, will not be used, with one exception, for solicitations issued after the April 1, 1984 effective date of the FAR and DEAR. The exception to this however is that Part 9–9, "Patents, Data, and Copyrights," of the DOE–PR will remain in effect. However, the provisions of 41 CFR 9–9.107–1 through 9–9.107–6 and 9–9.109–6 shall apply only to contracts with other than small business firms and domestic nonprofit organizations which do not fall within the provisions of 35 U.S.C. 202(a)(i), (ii), or (iii). This will be an interim procedure pending finalization of FAR coverage in this area and a Departmental rulemaking. As a practical matter, both the Federal Procurement Regulations and the DOE–PR, 41 CFR Chapters 1 and 9, respectively, will continue to be applicable for the administration of contracts awarded prior to the effective date of the FAR and DEAR.

The intended effect of the FAR is to simplify the Federal procurement process by adopting a uniform regulation for all agencies. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the DEAR is to implement the FAR where required and to supplement the FAR in areas where there is no FAR coverage of policies unique to DOE.

EFFECTIVE DATE: This regulation will be effective April 1, 1984.

FOR FURTHER INFORMATION CONTACT:

Richard Langston, Procurement Policy Branch, MA–421.1, Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–8188

Robert Forst, Office of General Counsel, AGC for Procurement and Financial Incentives, GC–44, Department of Energy, Room 6B–158, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–1526

SUPPLEMENTARY INFORMATION:

I. Background

II. Statutory & Regulatory Requirements

A. Executive Order 12291

B. Regulatory Flexibility Act

C. Paperwork Reduction Act

III. Public Comments

I. Background

The policies and procedures of the Federal government regarding the procurement of supplies and services have been developed in a largely independent fashion by the various agencies. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies have traditionally developed their own contracting procedures with limited attention to uniformity among agencies. The result of this is a system of procurement policies which vary from agency to agency and cause confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR has been codified as Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR was published in the September 19, 1983 edition of the **Federal Register** with an effective date of April 1, 1984.

Because of differing statutory authorities among Federal agencies and because as a practical matter the FAR cannot contain all the procedural details of how to implement a particular policy, the FAR authorizes the agencies to issue implementing regulations. For this reason, DOE issued a notice of proposed rulemaking on September 26, 1983 at 48 FR 43772 inviting the public to comment on the draft of its regulation to implement and supplement the FAR. A correction notice was issued on October 25, 1983 at 48 CFR 49315. The only significant aspect of the correction notice involved the addition of 917.7108–3 which provides for managing Government property under special research contacts in accordance with FAR 45 and 945 when title is to remain with the Government.

II. Statutory & Regulatory Requirements

A. Executive Order 12291

This Executive Order, entitled "Federal Regulation", requires that certain rules be reviewed by the Office of Management and Budget prior to promulgation. In accordance with the memorandum from the Director, Office of Management and Budget to the Administrators of the Office of Federal Procurment Policy and the Office of Information and Regulatory Affairs, dated December 15, 1983, this final rule is exempt from the provisions of Executive Order 12291, pursuant to section 8(b) of the Order, because it deals with management of the agency's procurement function.

B. Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed on the public by this proposed rulemaking have been cleared by the Office of Management and Budget (OMB) under various control numbers, in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96–511, and OMB's implementing

regulations at 5 CFR Part 1320. These requirements and their corresponding control numbers appear at 901.105. Pursuant to the request for public comments, DOE received two comments regarding paperwork reduction considerations. These comments are addressed at section III.

III. Public Comments

The Department of Energy (DOE) published a notice of proposed rulemaking on September 26, 1983 to establish the Department of Energy Acquisition Regulation. The notice invited public comments for a 60 day period ending November 25, 1983. Comments were received from seven organizations. In addition to general comments, the DOE received two comments concerning items which involve approvals by the Office of Management and Budget (OMB) as part of the clearance process required by the Paperwork Reduction Act of 1980, Pub. L. 96–511 and OMB's implementing regulations of 5 CFR Part 1320. Actions taken with regard to the Paperwork Reduction Act of 1980 issues are the first issues discussed. Other public comments and suggestions pertinent to the notice of proposed rulemaking and actions taken in response thereto are summarized in the paragraphs that follow those comments.

Comments Regarding Paperwork Reduction Act

Comment: Two organizations objected to the Department's proposal, at 952.219–9, that requires a contractor to report the percent and dollar value of subcontracts awarded to women-owned small businesses. The proposal included language that this information be inserted at the "Remarks" section of Standard Forms 294 and 295. The commenter asked that 952.219–9 be removed from the final rule.

Response: The DOE's proposal was based on an interim "Phase I" copy of Part 19 of the FAR which contained a requirement for a women-owned small business subcontracting program clause. This clause was not contained in the final FAR. Based on the concerns of the respondent and the deletion of the earlier FAR requirement, the Department has removed the requirement for such subcontract reporting. Section 952.219–9 and references to it have not been deleted. Nonetheless as a result of additional internal review prompted by the comment, the Department did revise 952.219–9 and its general instructions for use at 919.708, as well as the internal reporting instructions at 904.601–70(b)(4). Subcontract reports are required pursuant to FAR 19.704 for contracts which contain the Small Business and Small Disadvantaged Business Subcontracting Plan clause. These reports are furnished by means of semi-annual submissions of Standard Form 294 and quarterly submissions of Standard Form 295. The Department has reviewed these forms as well as its own need for such information. It was determined that the Department can fulfill its information requirements and at the same time reduce the paperwork burden imposed on its contractors. The SF 294 contains all the information needed except for the amount of labor surplus area subcontracting. The final rule has been revised to provide that DOE contractors need only submit their reports through use of an SF 294 on a quarterly basis with an annotation to indicate the amount of labor surplus area subcontracting if such reports are required by the terms of the contract. This action decreases from 6 to 4 the number of subcontract reports which must be submitted annually and simplifies the process by using a single form rather than two separate forms.

Comment: One organization objected to Article B–XXVII, "Sensitive Foreign Nations Controls" at 917.7113. They objected to the ambiguity caused by the reference to an "Attachment ——" in the clause at 952.204–3 of the proposed rule which is incorporated in Article B–XXVII. The commenter expressed concern that the attachment would contain reporting and recordkeeping requirements.

Response: Upon review, the Department agrees the clause may not be clear regarding what is intended by the reference to "Attachment ——". However, 904.404 describes the use of the clause and what is to be enclosed as an attachment.

The "——" is for a reference number of the particular contract attachment. National security requirements necessitate control when unclassified materials or information on nuclear technology may be made available to Sensitive Foreign Nations. Generally, special research contracts will not require the clause. However, some SRC's may deal with nuclear technologies, therefore the clause has been retained at 952.204–71 to be used under the appropriate circumstance. It has been rewritten to identify what is to be attached. Instructions for use of the clause are revised at 917.7113, Article B–XXVII to say that the clause is applicable when nuclear technology is involved. These requirements are included in the DOE paperwork clearance.

Other Comments

Comment: Two commenters asked questions concerning 904.404 which specifies clauses to be used in contracts which involve or have the potential to involve classified information. One reviewer was confused by the numbering of the clauses and another asked the definition of the word "off-site" as used in the clause which appeared at 904.404(d)(4) in the proposed rule.

Response: The Department agrees there may be confusion in the series of clauses dealing with security. The several clauses in question were included in the proposed rule at 952.204–1; 952.204–2; 952.204–3; and 952.204–4. To clarify the differing security clauses that apply to DOE contracts, the clauses included in the final rule have been renumbered. This renumbering more clearly indicates that the clause entitled "Security" at 952.204–1 of the proposed rule, renumbered in the final rule as 952.204–2, is to be used in DOE contracts instead of the FAR clause of the same title. The other clauses are supplemental to the FAR and implement DOE requirements and have accordingly been numbered with "— 70" identifications. The purpose and intent of the clause at 952.204–72, of the final rule "Disclosure of Information" was clarified at this instruction for use as well as at 904.404(d)(4) by removing the words "off-site" and substituting a reference to the institutions own facilities.

Comment: Two respondents commended DOE for its efforts to reduce paperwork burden through use of the annual representations and certifications technique as proposed at 904.70. One of these commenters also suggested that the Department make these procedures mandatory rather than optional.

Response: The treatment of this subject is relocated to 915.406–5 in this final rule. Based on the comments received and further discussions within the Department, DOE has further expanded this topic. The coverage in the final rule being published today makes it possible to place a representations and certifications on record with a contracting activity for a period of 3 years. During that period, it will be possible to file a simplified certification attesting to the currency of the record copy and identifying any differences from the record copy that may exist for an individual bid or proposal. The DOE expects this simplified procedure to benefit organizations who submit frequent bids or proposals to the Department. It will contribute to the

Department's efforts to reduce such paperwork burdens. DOE expects all of its contracting activities to adopt these simplified procedures. Because the technique is new the Department has elected to provide for its use on an optional basis.

Comment: One commenter discussed 915.105, "Competition". The commenter suggested that there may be confusion as a result of recent legislation and regulation, both proposed and final. The commenter suggested that paragraph (b) of 915.105 be an unequivocal statement of the Department's policy. The commenter stated the belief that subparagraphs (b)(2) and (b)(6) of 915.105 of the proposed rule were correct and observed with regard to subparagraph (b)(2) that 41 U.S.C. 252(c)(5) authorizes the negotiation of any service to be rendered by any university and suggested that pending legislation. S. 338, will authorize noncompetitive procedures for "an essential research capability to be provided by an educational institution." Regarding subparagraph (b)(6) the commenter also stated that FPR Amendment 230 and FPR Temporary Regulation 75 encourage unsolicited proposals and stated that FPR 1–1003.2 provides that unique or innovative research proposals need not be synopsized in the *Commerce Business Daily* if doing so would disclose the originality of thought or innovativeness of the proposed research.

Response: The recent legislation and regulation mentioned by the commenter is presumed to be Pub. L. 98–72 and FPR Temporary Regulation 75. Pub. L. 98–72 amended the Small Business Act to improve small business access to Federal procurement information by making it harder for agencies to award sole source contracts. The commenter appears to be equating the exceptions listed at paragraph (b) of 915.105 as being exceptions to the new synopsis requirements of Pub. L. 98–72. This is not the case and the Department disagrees with the apparent conclusion. The exceptions listed at 915.105(b) are exceptions to the general requirement for competition in its traditional sense. They are different and apart from the exceptions to the requirement to synopsize acquisition solicitations in the Commerce Business Daily which were recently changed by FPR Temporary Regulation 75 as a result of Pub. L. 98–72. The DOE anticipates that a Federal Acquisition Circular will be issued prior to April 1 to assure that this recent legislation is reflected in the FAR. There is no need to change this section of the final rule at this time.

Comment: One commenter questioned the DOE's authority regarding the statement at 915.401 to the effect that subpart 15.4 of the FAR does not apply to special research contracts, program opportuntity notices, or program research and development notices. The reviewer asked whether the DOE had obtained a FAR deviation in this area or had separate statutory authority in this matter.

Response: The intent of the DEAR is recognition that the DOE has developed over an extended period of years several highly specialized types of solicitation and award mechanisms. The DOE has statutory authority to negotiation the Special Research Contract and the Program Opportunity Notice. These authorities include section 31(c) of the Atomic Energy Act of 1954 and section 302c(5) of the Federal Property and Administrative Services Act of 1949 for the Special Research Contract and the Federal Non-nuclear Energy Research and Development Act of 1974 for the Program Opportunity Notice. The Program Research and Development Announcement was developed as a result of experience gained from the Program Opportunity Notice and was first promulgated as part of the Energy Research and Development Administration Procurement Regulation in 1976. Later, it was promulgated, in the DOE–PR following public comment in June 1979. The DOE does not consider any of these special solicitation and contract types to represent a deviation from the FAR. They are supplemental to the FAR. For this reason, they were assigned "70" series numbers (917.71, 917.74, and 917.75 respectively) as described at 901.104–2.

Comment: One reviewer offered several observations concerning 909.5, "Organizational Conflicts of Interest." The reviewer suggested that DOE delete this topic and rely solely on the FAR coverage of this topic. The organization urged that organizational conflicts of interest (OCI) guidance in the FAR be utilized for DOE procurements in lieu of the guidance contained Subpart 909.5. In particular, the organization asserted that, upon completion of a DOE contract, all reports, technical data, etc., are essentially in the "public domain" thereby diminishing any unfair competitive advantage. The organization also noted that the Department's patent policy reduces the potential for OCI and that no fixed term/duration is indicated in the DOE OCI provision (thus imposing a serious and unmanageable restriction on DOE and its contractors).

Response: The OCI requirements contained at Subpart 909.5 reflect the Department's efforts to comply with statutory criteria contained in Pub. L. 95–39 and Pub. L. 95–70. Pursuant to these laws (made specifically applicable to DOE through Section 644 of Pub. L. 95–91), the Secretary of DOE was specifically required to promulgate regulations governing the avoidance of OCI in accordance with specific criteria contained within each of those statutes. Moreover, the OCI regulation that was finalized (44 FR 2556, January 11, 1979), in compliance with the statutory criteria of Pub. L. 95–39 and Pub. L. 95–70, reflected the opinions and recommendations expressed by interested parties commenting on the Department's proposed rule of March 27, 1978, (43 FR 12727).

The Department is not certain it fully understands the specific focus of the particular questions raised by the commenter. If the nature of the inquiries concerns OCI as it applies to research and development contracts, there is in general, little difference between the OCI coverage of the FAR and that of the proposed notice. Pursuant to 909.570–7, OCI disclosure or representation with respect to research and development contracts is specifically required only for research and development conducted pursuant to the Federal Energy Administration Act of 1974, as amended. A general OCI clause (DEAR 952.209–71) is included in contracts falling into that very limited category.

A degree of difference between the proposed rule and FAR OCI requirements does exist with respect to contracts for technical consulting and management support services. The Department has a special contract clause (DEAR 952.209–72) which is to be included in all contracts of that type. This clause does provide a fixed term/duration in its OCI restrictions with regard to information first provided to a particular contractor which will eventually be available to all. Although there are distinctions, as noted above, between the FAR and the DOE proposed OCI coverage depending on the type of contractual situation, in general, the OCI coverage in the FAR and the proposed rule are in agreement. The Department's OCI policy supplements and does not contradict the OCI policy set forth in the FAR. Both are based on the principle of avoiding bias and unfair competitive advantage (see DEAR 909.570–4 and FAR 9.505).

The FAR is not unlike the proposed rule in its recognition of the possible need to guard against OCI *after* contract completion. Again, the important thing

to remember is that the need for OCI coverage depends in large part on the particular *type* of contract. It may be that because of a particular contractual situation (e.g., technical consulting and management support services) more detailed OCI coverage will be necessary; and, depending on the particular factual situation, when OCI coverage is required, it may be necessary to impose OCI restraint (to avoid the circumstances of unfair competitive advantage or bias) that extends *beyond* contract completion. (With respect to technical consulting and management support contracts the fixed term/duration OCI restriction for access to and use of "Internal" data extends for six months after either completion of the contract or until such information is released or otherwise made available to the public (DEAR 952.209–72(b)(2)). Moreover, the FAR specifically implies that the period of restriction will vary (and could extend beyond contract completion) depending on the factual circumstances (see FAR 9.508–2).

In summary, while the circumstances that the commenter has mentioned (reports in the "public domain" reducing the potential for OCI, and patent ownership impacting on the issue of OCI) may affect OCI, the more important point is that need for OCI coverage must first be established; and this depends, in large part, on the type of contract involved. Once the need is established, the type of OCI coverage may very well be affected by factors such as reports being in the "public domain" and patent ownership rights, etc.

Finally, the commenter has also suggested that 909.570–3(a) be modified to remove proposed subcontractors and consultants from its definition in order that a prime not be held in default for an OCI at the subcontractor level. It should first be noted that Pub. L. 95–39 and Pub. L. 95–70 explicitly require that OCI coverage apply to subcontractors. It is for this reason that subcontractors and consultants have been included within the definition of OCI contained at 909.570–3(a). In carrying out these requirements, subcontractors and consultants are required to submit their own OCI disclosure or representation and this is evaluated by the contracting officer who is responsible for making an OCI assessment. The prime is not responsible for either evaluating OCI information or making an OCI assessment with respect to subcontractors or consultants.

The Department may, in certain situations (for example, with respect to technical consulting and management support services), terminate a contract for default in a so-called "breach" situation. This could, for example, be based on a post-award finding that a subcontractor did have an OCI. However, 909.570–10 requires that in these types of situations "every reasonable action to avoid or mitigate the effects of the conflict" be taken before terminating.

Comment: One commenter suggested that 915.501 represented a departure from the FAR definition of "unsolicited proposal." The same reviewer had previously suggested the same thing during the rulemaking which resulted in "Change 7" of the DOE PR promulgated on April 15, 1983 at 48 FR 16450. The reviewer also made reference to Pub. L. 98–72 which contains a definition of "unsolicited proposal" and to FPR Temporary Regulation 75.

Response: The Department had never intended that the statement at 915.501 be taken as a literal interpretation that there is some separate definition of unsolicited proposal with respect to special research contracts which are separately covered at 917.71. The Department's intent had been to highlight the separate treatment afforded unsolicited proposals received from educational institutes under the Department's special research contract provisions at 917.71. To avoid misconception of the Department's intent, the final rule being published today deletes the paragraph entitled "Unsolicited proposals" from 915.501. Additionally, the definition of research proposal at 917.7101(c) is changed by referencing the definition of unsolicited proposal at FAR 15.501.

Comment: One comment suggested that 917.70 regarding cost participation varied from guidance contained in OMB Circulars A–88 and A–124 and requested that universities be exempt from the policy.

Response: The reviewer did not explain how the guidance of 917.70 departed from OMB Circulars A–88 and A–124. The cost participation policy of DOE is general policy with emphasis on cost sharing for demonstration projects. This portion of the policy is necessitated by the Federal Non-nuclear Energy Research and Development Act of 1974, which requires consideration of cost sharing for such projects. Section 917.7001(a) explains when cost sharing is required and 917.7002(c) describes situations in which cost sharing is unlikely. The DOE agrees that a contract with a university for the performance of basic research is not a situation in which cost participation is expected. On the other hand, if a university were to propose a demonstration project then cost participation would be expected. The DOE finds no merit in the suggestion to exempt universities from 917.70. No change is made in the final rule published today.

Comment: One commenter stated that 917.7108–6 which concerns the selection of a field office for negotiation and award of special research contracts ignores the existence of DOE Order 4220.1 which sets forth policy and procedures concerning the cognizant office concept.

Response: DOE Order 4220.1 issued in 1979, concerned a cognizant office concept for contracting with educational institutions. The cognizant office for a particular educational institution is responsible for, among other things, negotiating basic agreements that would contain all the basic terms and conditions for subsequent contract awards by any DOE contracting activity. The order itself is undergoing internal review. If the review reveals a need to amend applicable acquisition regulations, that amendment will be handled through a future rulemaking.

Comment: One commenter observed that 917.71, Special Research Contracts, appears to be a reprint of 9–4.51 of the DOE–PR. The reviewer attached a copy of a letter previously submitted to the Department during the course of a rulemaking relating to Change 7 of the DOE–PR. The commenter suggested that the Department reconsider these earlier suggestions in the context of this rulemaking. The commenter went on to state that the provisions of paragraphs (b)(4), (d), and (e) of 917.7107–1 of the proposed rule, require an extraordinary amount of paperwork and administrative time.

Response: The commenter's observation is correct that 917.71 is merely a rearrangement of 9–4.51 of the DOE–PR. The Department previously considered the commenter's comments regarding Change 7 to the DOE–PR and published its response on April 15, 1983, at 48 FR 16450. The nature of the commenter's earlier comments would necessitate a fundamental reconsideration of the Special Research Contract. Such an action is beyond the scope of this rulemaking. The intent of this rulemaking is merely to implement and supplement the FAR not to establish new policy or make significant changes in previous policy. Due to a minor format change, to correctly include a section title inadvertently omitted in the proposed rule, 917.7107–1 has been renumbered and retitled as 917.7107–2 "Financial arrangements" in this final

rule. The requirements at 917.7107–2(b)(4), and (c) and (d) of this final rule all relate to situations in which the contractor shares in the cost of the project. They are instructional in nature and relate to completion of an Appendix A of the Special Research Contract format. To consider changes in this section would necessitate consideration of changes in other sections of the special research contract format. Such changes are beyond the scope of this rulemaking.

Comment: A commenter suggested that the requirements at 917.7108–1(c) for prior approval of the Contracting Officer to transfer title of equipment to a university contractor is contrary to FAR property provisions.

Response: The first sentence of paragraph (c)(4) of Alternate I of FAR 52.245–5 requires the prior approval of the Contracting Officer. Alternate I is for use when the contract is for the conduct of basic or applied research at nonprofit educational institutions or at nonprofit organizations whose primary purpose is the conduct of scientific research.

Comment: A commenter suggested that 917.7112–4 concerning prior approvals be compressed and simply make reference to portions of OMB Circular A–21 which contains guidance on prior approvals. The commenter also suggested that paragraphs (a) (5), (8), and (9) be deleted.

Response: The DOE prefers to provide the details included in the proposed rule. This prevents misunderstanding which might otherwise occur. For this same reason, the final rule retains paragraphs (a) (5), (8), and (9).

Comment: One commenter suggested that 917.7112–5 fails to recognize that OMB Circular A–88, which applies to Federal contracts as well as Federal grants, has established the concept of cognizant audit agencies. The commenter went on to state that OMB is considering extension to universities and nonprofit organizations of the single audit concept now prescribed by OMB Circular A–102 for awards to state and local governments.

Response: The Department agrees that OMB Circular A–88 involves the assignment of a single cognizant audit agency to individual educational institutions. The proposed rule does not conflict with this circular. If the DOE requires an audit of an educational institution for which another agency has cognizance, the Department will simply rely on the services of that cognizant agency. The Department is aware that OMB is considering such an extension of OMB Circular A–102. The Department will consider any future changes as may be required by the conclusion of OMB's consideration.

Comment: One commenter suggested that Article A–II of 917.7113 contains a different definition of "equipment" in paragraph (a)(2) than that contained in OMB Circular A–21 at paragraph J.13. The same reviewer also provided a general statement that paragraph (a)(5) (regarding indirect cost rates) should be consistent with A–21.

Response: The Department agrees on the issue of definition. The definition is based on a dollar value. The change is made in the final rule to include the $500 threshold currently cited in Circular A–21. The Department believes paragraph (a)(5) is consistent with A–21. However, for other reasons the term "predetermined" is being revised to "applicable" to reflect possible use with nonprofit organizations. No intent is changed. The applicable rates established by the cognizant negotiating agency will be used. They may be predetermined, fixed-carry forward, or other.

Comment: One commenter suggested that Article B–VIII at 917.7113 should be updated to include the more recent OMB Circular A–124 coverage of Patents.

Response: The Department agrees and the final rule includes appropriate updates.

Comment: One commenter suggested that Article B–XI, "Payments", at 917.7113 is inconsistent with the FAR.

Response: The Department's procedures are consistent with the FAR. The issue is clearer when reading 917.7112–3 and paragraph (c)(1) of Article B–XI. The FAR coverage is located at 32.406.

Comment: One commenter suggested that Article B–XIX, "Buy America Act", of 917.7113 is not appropriate to a special research contract providing for research services rather than the acquisition of supplies.

Response: The DOE agrees. Article B–XIX has been removed.

Comment: A commenter suggested that Article B–XXII, "Foreign Travel", of 917.7113 is redundant to paragraph (f) of Article B–XXX "Additional Approvals."

Response: The article is not considered by the Department to be redundant. Article B–XXII is a special provision alerting the contractor to this requirement which might otherwise be missed at Article B–XXX, a lengthy article.

Comment: One commenter suggested that the clause entitled "Preference for Privately Owned U.S. Flag Commercial Vessels" is not applicable to university contracts. The clause questioned is Article V–XXXVII of 917.7113.

Response: DOE agrees that ocean transportation of supplies is unlikely under a special research contract and has removed the clause.

Comment: One commenter suggested that 924.705 be revised to be consistent with OMB Circular A–124.

Response: The cited reference has been renumbered as 927.705 in the final rule. These provisions are not inconsistent with OMB Circular A–124. Pub. L. 96–517, provides small businesses and domestic nonprofit organizations the right to elect to retain title to subject inventions. DOE has separate statutory authority to grant patent waivers. The notice has been expanded to point this out and to explain that small businesses and domestic nonprofit organizations normally need not request a waiver since they have the right, pursuant to Pub. L. 96–517 and OMB Circular A–124, to elect to retain title to subject inventions.

Comment: One commenter suggested that Part 927, "Patents, Data and Copyrights" be reserved pending publication of such coverage in the FAR.

Response: The DOE has elected not to reserve Part 927. Pending FAR publication on this subject, DOE has chosen to provide that OMB Circular A–124 coverage be extended to small businesses and domestic nonprofit organizations. Patent coverage for other organizations will continue to be that found at 41 CFR Part 9–9. The final rule published today explains at 927.3 the Department's treatment of this topic. The DOE's statutory patent policy necessitates that the Department maintain this coverage in the final rule. When FAR coverage is available, the Department will make such adjustments as may be required.

Comment: One commenter pointed out that 931.205–18 restricts the allowability of independent research and development costs by requiring that the relevance of these costs to DOE be demonstrated. The commenter suggested that this section be deleted on the basis that the test of allowability should be uniform regardless of agency involved.

Response: DOE does not agree and follows a policy that funds authorized for payment of cost allocation for IR&D programs must be expended only for efforts relevant to the mission for which the appropriation was made.

Comment: One commenter stated that paragraph (a)(1) of 932.7104, "Payment Procedures," should be made inapplicable to research contracts with educational institutions. The commenter discussed OMB Circular A–125 (which

does not mandate inspection period) and suggested that delivery of a technical report did not equate to delivery of an end item susceptable to an inspection period. The commenter asked that the section be modified.

Response: It is assumed the commenter is addressing the procedures in 932.7104 requiring inclusion of inspection periods in research contracts. The Department does not agree that technical reports under research contracts are not receivables subject to oversight and review. Such reports are necessary before final payments and closeout of a contract can be accomplished. In the Department's view, the payment procedures presented at 932.7104 are applicable to all contracts except the exemptions at 932.7103. No change is made in the final rule.

Comment: One commenter suggested that 932.7107–1 did not take cognizance of the fact that university contracts are usually funded on an advance payment basis either through a letter of credit or by advance Treasury Check. The commenter went on to suggest that 932.7107–1(b) be revised to exclude university contracts and to add an additional sentence to provide that the "Advance Payment" clause at FAR 52.232–12 be included in university contracts.

Response: The Department cannot exclude university contracts from use of the "Allowable Cost and Payment" clause at FAR 52.216–7 as it is required by the FAR for cost reimbursement contracts. When advance payments are to be furnished, the FAR itself explains that the clause, "Advance Payments," at FAR 52.232–12 with its Alternate IV is to be used. It is not proper for the DEAR to restate FAR guidance.

Comment: One commenter suggested that the intent of the guidance at 936.603–72(b) "Evaluation of qualifications and performance data," would be enhanced by adding the phrase "unless no satisfactory response is received from any other compatible highly qualified firm" between the word "considered" and the words "and where size and simplicity."

Response: DOE agrees and has adopted the suggestion. Subsection 936.603–72(b) is found at 936.602–3(c)(1) of the final rule.

Comment: A commenter stated that the definition of "capital equipment" at 945.101 differed from that in OMB Circular A–21. The proposed rule spoke of an acquisition cost of $1000 or greater and a service life of 1 year or more while the OMB definition speaks of an acquisition cost of $500 or greater and a useful life of greater than 2 years.

Response: The DOE could not find a definiton of "capital equipment" in Circular A–21. That circular speaks to definitions of "Equipment" and "Capital Expenditures" which have different meanings. "Capital equipment" is equipment for which the "capital expenditure" was $1000 or more. This definition was established for accounting, reporting and control purposes. Circular A–21 deals with the allowability of certain cost reimbursements by the Government. Prior to the publication of this rule, DOE used a threshold of $500. The explanation for this is that DOE's previous, and earlier, definition was based on a definition at Subpart 12.5, "Property," of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies. That manual used the $500 threshold. More recently the General Accounting Office issued an opinion, B114365(2), April 4, 1980, that revised the threshold upward in light of inflation and in the interest of reducing administrative costs of managing low cost property items. The DOE definition reflects this more recent decision dealing with reporting and control. A–21 shall continue to apply for reimbursements of cost under a contract with an educational institution.

Comment: One commenter stated that no 945.608–2 could be found even though 945.608–5 refers to it.

Response: This was the result of an error in the Federal Register. The title line for this section was inadvertently omitted on page 43880, although the text was included and the section was listed in the Table of Contents at page 43874. The title line should have appeared below the third sentence of 945.607–2 and above the paragraph designated (b)(1).

Comment: A commenter noted that 952.215–18, "Order of Precedence," makes reference to a provision 952.215–1 which could not be found.

Response: The Department agrees and the reference in 952.215–18 has been removed as there is no provision at 952.215–1.

Comment: One commenter was critical of the Department's policy at 972 and implementing clauses at 952.272 concerning "Foreign Ownership, Control or Influence" (FOCI) as related to universities. The commenter considered the provisions to be unduly burdensome for universities which have numerous foreign involvements such as foreign students, exchange programs and cooperative research programs. The commenter asked that universities be exempt from these policies. Also, the commenter thought that including unclassified, sensitive information in the FOCI provisions was inappropriate.

Response: The Department has relocated the FOCI provisions to 904.70 in order to consolidate provisions of an administrative nature. The solicitation provision and contract clause have been moved to 952.204–73 and 952.204–74 respectively. In response to this commenter's and others' concern about including unclassified sensitive information in the FOCI provision, DOE has eliminated this information from the scope of this provision. Now, only contractors requiring access to classified information and special nuclear material must comply with the FOCI provision. In response to the commenter's more general concern, the Department points out there are few instances in which this subpart would be applicable to universities. Very few universities have contracts that require access to classified information or special nuclear material. DOE's primary concern is that the classified information or special nuclear material be protected from coming under FOCI. The DOE believes that universities, when seeking a DOE contract which requires access to classified information or special nuclear material, can answer the questions as completely as possible listing any qualifications. DOE cannot exempt universities from complying with the provisions of this subpart just as DOE has not, and will not, exempt universities from receiving, when necessary, facility security clearances or security clearances for individuals.

Comment: One commenter offered several comments regarding specific sections of Part 970 including a general observation that the proposed rule appears to mix together differing management concepts. The commenter also suggested the possibility of forming a task group to review this portion of the new regulation with the intent of clarifying it.

Response: The content of Part 970 has evolved over an extended period of years and can generally be traced to procurement regulations of the Atomic Energy Commission, the Energy Research and Development Administration, and the Department of Energy. The same provisions are, in general merely being promulgated as Part 970 of the Department of Energy Acquisition Regulations that implement the new Federal Acquisition Regulation. Establishment of a task group to review Part 970 is beyond the scope of this effort. The rulemaking, being finalized today (as was explained in the Preamble of the notice of the proposed rule) does not establish new policy. It is, in

general, a reformatting of the existing DOE–PR, with deletion of old portions which would duplicate new FAR coverage, and the insertion of necessary Departmental procedures at those places the FAR requires agency implementation. No action is being taken, at this time, on the commenter's specific comments relating to 970.22, "Application of Labor Policy;" 970.31, "Contract Cost Principles and Procedures, 970.44, "Contractor Procurement;" or 970.52, "Contract Clauses for Management and Operating Contracts." The Department is, however, making changes based on the two other comments made by this commenter. Concern was expressed that the proposed rule did not contain the provision previously found at DOE–PR 9–50.601–2(b) which authorized a contractor with an approved purchasing system to make determinations of nonavailability from domestic sources for individual acquisitions not exceeding $25,000. The commenter anticipated delays in obtaining approval to acquire items clearly not available from domestic sources. To alleviate this concern, a section 970.2501 has been added which references the list of excepted items found at FAR 25.108(d). The commenter also stated that 970.1508–408(a) did not discuss the exemptions normally available regarding submission and certification of cost or pricing data. Section 970.1508–408 has been corrected in the final rule to read 970.1508–1, "Cost or Pricing Data." A new paragraph (b)(3) has been added to this subsection to note that the exemptions at FAR 15.804–3 apply to subcontractors under management and operating contracts.

Comment: One commenter noted that 970.2270–4(e), "Conduct of employees and consultants of DOE Management and Operating certain other contractors," and contained an extraneous and misleading statement: "Therefore, there is no general prohibition against employees as other citizens." The commenter suggested it be deleted.

Response: The statement was the result of a typographical error. It has been deleted. The corrected section has been renumbered and relocated to 970.2272.

In addition to the changes resulting from public comments received pursuant to this rulemaking, the Department wishes to highlight four areas in this final rule. They involve Subpart 909.4, "Debarment, Suspension, and Ineligibility;" Part 950, "Extraordinary Contractual Actions," Part 972, "Foreign Ownership, Control or Influence Over Contractor;" and Part 953, "Forms."

As was mentioned in the notice of proposed rulemaking, DOE has been conducting a separate rulemaking concerning its procedures regarding the debarment or suspension of contractors and assistance recipients. The purpose of the separate rulemaking was to establish uniform procedural coverage of this topic for financial assistance recipients as well as contractors. These procedures have been placed at 10 CFR Part 1035. Completion of this separate rulemaking, published in the **Federal Register** on February 3, 1984, at 49 FR 4314 necessitated minor revision of 909.4. The coverage being included in the final rule published today directs readers to 10 CFR Part 1035 for guidance concerning debarment and suspension and advises that the FAR is the source for guidance concerning ineligibility. In addition to 909.4, 944.202–1, 944.202–2, 944.303, 944.305–2, 970.4403(f), and 970.5204–22 have also been amended.

At Part 950, "Extraordinary Contractual Action" of the final rule published today the Department has made the requirements of FAR Part 50 applicable to the processing of claims under Pub. L. 85–804. As such, the Department applies the requirements of FAR Part 50 to DOE without further implementation. Any future changes to Departmental policy and procedure in this area will be undertaken through a separate rulemaking.

The proposed rule contained Part 972, Foreign Ownership, Control or Influence Over Contractor. The FOCI provision in the rule being published today is being relocated from Part 972 to 904.70 because this provision is more appropriately placed in Part 904 which discusses administrative matters.

This subpart is intended to help DOE identify and prevent situations in which FOCI over contractors with access to classified information and special nuclear material may pose an undue risk to the common defense and security. The DOE has been developing this provision through a separate rulemaking as an amendment to the DOE Procurement Regulations (See notice of proposed rulemaking, 48 FR 34396, July 28, 1983). The final rule amending the DOE procurement regulation (See 49 FR 7374, February 29, 1984) addressed the public comments received and the specific changes made resulting from the comments. That discussion is not repeated here.

The final rule published today substantively contains the same language as the final rule on FOCI which was incorporated into the DOE procurement regulation. The following summarizes the significant changes that have been made to the FOCI provisions and that were discussed in the February 29 **Federal Register** rule mentioned above. Unclassified sensitive information which was previously included in the scope of the subpart is now excluded. In addition to focusing on the DOE's evaluation efforts, on potential threats to classified information and special nuclear material, this change allows for a simplified process that will enable DOE to monitor FOCI on a corporation-by-corporation basis, utilizing the existing security facility process, rather than on a contract-by-contract basis. The revised language also includes examples of types of plans that can be utilized to mitigate the foreign influence, if deemed necessary. Finally, a new subsection has been added describing when contract termination will be considered.

The Department has deleted Part 953, "Forms," in the final rule being published today. Part 53 of the FAR contains contract related forms for use by Government employees and those seeking or having Government contracts. The DOE has elected to utilize the FAR forms without introducing new forms of its own. Forms for use by DOE employees for internal administrative purposes will be developed and utilized in accordance with the DOE Directive related to forms. Such internal forms are not considered to be of interest to the general public and the DOE does not propose to publish such forms in the DEAR. If the Department does develop forms for use by the public, it will publish these through rulemaking and obtain such approvals as necessary.

In addition to the actions discussed above, numerous revisions, additions, edits, deletions and sequential repositionings are being made in the text published in the final rule today to correctly identify and align certain parts, subparts, sections, or subsections into a more logical or required location. Corrections to erroneous citations and cross references and paragraph number changes are being made to properly tract the numbering system of the FAR. Many of these revisions were suggested by the **Federal Register**. Syntax changes are also being made to some text that appeared in the proposed rule to more clearly and succinctly express its intent and meaning. In some cases, relatively minor substantive changes have been made. The revisions are summarized as follows:

(1) Subsection 901.104–70 of the proposed rule described a procedure by which the Department's regulation

would show certain parts or subparts as "Reserved" if there was no need to implement the FAR at such parts or subparts. Further discussion with the staff responsible for publication of the Code of Federal Regulations has indicated there is no need for such a practice. If the DEAR does not implement or supplement a particular FAR part or subpart, there will be nothing indicated and the reader will rely on the FAR only. This subsection of the proposed rule is deleted in the final rule.

(2) Subsection 901.603–72(b) was revised to delete the paragraph as unnecessary. As a result, paragraph (c) becomes paragraph (b).

(3) Section 902.1, "Definitions," was changed to delete the authority to ratify unauthorized contract and/or contract modification awards from the listing of authorities of the "Head of the Contracting Activity." This results from an earlier change in the DOE–PR at 47 FR 21539, May 19, 1982, which had not been noted in the proposed rule.

(4) Subsection 903.101–3 regarding "Standards of Conduct," was amended to add a requirement that contracting activities maintain a "Standards of Conduct Notebook for Acquisition and Assistance personnel" and that DOE acquisition and assistance personnel review it on an annual basis and certify their understanding of its contents.

(5) Section 904.403 was amended to delete the specific dates noted for each DOE Order cited therein. The most current order is always applicable.

(6) Subsection 904.601–70 was amended to delete the reference to Standard Form 295 from paragraph (b)(4) for reasons explained in the discussion of public comments of this preamble. The reference to Part 953 as the place where forms illustrations are found was also deleted by the omission of subparagraph (b)(5) of this section since there is no Part 953.

(7) Subsection 904.601–70 was revised at paragraph (b)(2) and (b)(3) to refer to "small purchase limit" rather than the proposed specific dollar limitation of $10,000.

(8) Subpart 904.70 in the proposed rule covered representations and certifications. This section was rewritten and moved to 915.406–5. Coverage on "Foreign Ownership, Control, or Influence over Contractors" was added as a new section under 904.70. This had been located at Part 972 in the proposed rule. Changes were made as was explained in the public comments section of this preamble.

(9) Section 905.403 was edited to add a new paragraph (b)(3) to provide that contracting officers advise the Office of Congressional Relations 48 hours prior to the time of contract execution for Special Research Contracts of $50,000 or greater.

(10) Section 907.102 was amended to delete reference to specific DOE Orders involving acquisition planning and in lieu thereof referenced the complete series of 5700 series of DOE Orders.

(11) Section 908.7119, regarding the acquisition of "gas masks and canisters" and was deleted as these items are no longer stockpiled by DOE.

(12) Section 908.7120, regarding acquisition "masking devices" was deleted as they are no longer stockpiled by DOE.

(13) Section 908.7121(c) was amended to add text, inadvertently omitted in the proposed rule, that lithum is available at no cost through the DOE, Oak Ridge Operations Office.

(14) Subsection 909.104–70 was amended to delete the "–70" reference and to reidentify the subsection as 909.104–1, "General Standards," to be the same as FAR. Paragraphs (a) and (c) were reidentified as paragraphs (b) and (g) respectively (the appropriate FAR paragraphs which the DOE text implements).

(15) Subsections 909.570–14 and –15 were created to include, as a separate section, the examples and format language included the proposed rule as Appendix A and B to 909.570. The **Federal Register** suggested the change.

(16) Section 910.004 was revised to identify the language in the proposed rule as paragraph (f) and give it a title, "Specifications for concrete using fly ash." It is now consistent with FAR. A new paragraph (g) was added to contain the language included in the proposed rule at 917.7200. The paragraph more directly deals with specification requirements.

(17) Section 915.105, "Competition" was revised at (a)(1) to raise the threshold for documenting noncompetitive small purchases from $500 to $1,000 in order to conform to FAR.

(18) Section 915.105(c)(2). Regarding the format for a "Justification for Noncompetitive Acquisition" has been removed. This is internal guidance adequately covered in the DOE Directive System.

(19) Subsection 915.106–1 was deleted as unnecessary. FAR coverage will suffice.

(20) Section 915.200 was amended to redesignate paragraph (1) as paragraph (b) and move paragraph (2) to new 915.201 as paragraph (a).

(21) Section 915.201 was added as a new section titled "National Emergency." The text at paragraph (2) of 915.200 was relocated as paragraph (a). The language in the proposed rule at 915.201(b) supports the FAR text at 915.201(a).

(22) Section 915.404 was deleted. The language in FAR 15.404 "Presolicitation Notices and Conferences," at paragraph (c), was deemed sufficient upon re-evaluation.

(23) Subpart 915.5 was revised to more closely follow the sections and subsections of the FAR. Separate "–70" DOE designations were not considered necessary on re-evaluation. Most of the revised language is additional implementation of FAR text. Only editorial changes were made in the text. Location was the major revision and is recapped as follows:

915.503: Added as a new section titled "General." Relocated paragraph (a) from 915.504–72 as complementary language to FAR paragraph (c)(5) of FAR 15.503. Added new language as a paragraph (f) to better explain that unsolicited proposals for the performance of support services are not acceptable.

915.504: Added as a new section. See 915.504–70.

915.504–70: Re-identified as 915.504 Advance Guidance except paragraph (e) which moved to a new subsection 915.506–2 "Evaluation." 915.504–70 deleted and last sentence of paragraph (b)(7) was deleted as being unclear.

915.504–71: Relocated as paragraph (g) of new subsection 915.506–2 since it deals with evaluating a contractor per Subpart 909.1 and FAR. No text change. 915.504–71 deleted.

915.504–72: Relocated paragraph (a) as paragraph (c)(5) of new 915.503 General. Pargraph (b) was reidentified as 915.505, Content of Unsolicited Proposals. Paragraph (b)(5) of FAR 15.505 deals with the thrust of this paragraph. A correct reference to subpart on Cost Participation was added. Paragraph (c) was relocated under the new subpart 915.506–2 Evaluation. 915.504–72 deleted.

915.505: A new section, "Content of unsolicited proposals" was added. See 915.504–72 Comment.

915.506: Re-positioned paragraph (a) to a new 915.509 Limited use of data, which was deemed a more appropriate location.

915.506–70: Paragraph (a) was relocated as paragraph (b) of a new 915.506–1, "Receipt and Initial Review." This language supported the text of FAR 15.506–(b) thus the new section believed more appropriate than a –70 DOE supplement. The remaining paragraphs of this section were

identified as more appropriate to FAR 15.506–2, thus repositioned a new 15.506–2.

915.506–1: Added as a new section titled "Receipt and Initial Review" in order to clearly implement FAR. Paragraph (a) of 915.506–70 relocated to this section as paragraph (b) which implements FAR 915.601–1(b).

915.506–2: Added as new section, "Evaluation". Paragraph (c) of 915.504–72 of the proposed rule repositioned to this section to support text of FAR 15.506–2.1.

915.507–70: Deleted "–70" Reference and re-identified as paragraph (d) under a new 915.507 Contracting Method. No need for a supplemental DOE paragraph.

915.509: Added as new section titled "Limited Use of Data." Paragraph (a) of 915.506 relocated to this section Text was appropriate to use of data.

915.570: Deleted as the text was placed at 943.170.

(24) 915.611(d) Moved, without change, to 915.612(g).

(25) Subsection 915.805–70 was edited to add a paragraph (e) which was inadvertently omitted from **Federal Register** issuance. The paragraph permits contracting officers to waive the requirement for audit.

(26) Subsection 915.971–2 was edited to delete the last sentence included in the proposed rule. Internal coordination of this language indicated it was being misunderstood and was not clear. The idea was added back as a new paragraph (h) of 915.971–4.

(27) Subsection 915.971–4 was revised to add (in addition to paragraph (h) referenced above) a new paragraph (g) to reflect increases to fee schedules that may be necessary if a fixed price contract is negotiated. The curves are based on a cost reimbursement type contract.

(28) Subsection 915.971–5 was revised. Paragraph (a) was rewritten and subdivided into additional paragraphs to provide a better understanding of what was intended and the applicability of the additional paragraphs in the subsection. Language was added to include specific adjustment factors if fixed price contracts are negotiated or the contractor furnishes its own financing. These were overlooked in the proposed rule.

(29) Section 915.971–6 was amended at (a)(10) to add language to identify the term "equipment" to be that which becomes Government-owned. Paragraph (a)(10) was amended to state equipment addressed at this section does not include "special equipment."

(30) Section 917.7007 was added to provide guidance on in-kind contributions. This guidance was omitted from the proposed rule due to an administrative oversight. The provision was in the DOE–PR 9–4.5907 as a result of rulemaking completed on July 22, 1983, at 48 FR 33642.

(31) Subsection 917.7106–2 was amended at paragraph (g) to add a new subparagraph (1) to indicate that field offices are responsible for the cost/price analysis of a SRC proposal.

(32) Section 917.7107; and Subsection 917.7107–1 were amended to correct format errors. Section 917.7107 was retitled "Contract Content," Section 917.7107, "General," in the proposed rule was reidentified as subsection 917.7107–1 "General," in the final rule. Subsection 917.7107–1 of the proposed rule was reidentified as 917.7107–2, "Financial requirements," in the final rule. Minor text edits made and the paragraphs were subdivided for easier reading.

(33) Section 917.7113 was amended by adding "or other nonprofit institutions" to the title line so that it now reads "Format for Special Research Contracts with educational institutions or other nonprofit institutions." This corrects an error as Special Research Contracts have previously been available to both educational institutions and other nonprofit institutions.

(34) Subpart 917.72 was relocated in paragraph (g) of 910.004 with minor edits to fit a single paragraph format.

(35) Subpart 917.73 was relocated as a paragraph at 945.303–1 with minor edits to fit a single paragraph format.

(36) Subpart 917.74 was amended to reidentify this subpart as 917.72 and to renumber all sections and subsections accordingly. Additionally, the text of 917.7401 (proposed rule) was added to subpart 917.7400 (proposed rule) "Scope of part," and 917.7401 (proposed rule) was deleted.

(37) Subpart 917.75 was amended to renumber the subpart as 917.73.

(38) Subpart 917.76 was amended to renumber the subpart as 917.74.

(39) Subpart 917.77 was amended to renumber the subpart as 917.75.

(40) Subsection 917.7502–2(b)(2) was reidentified as 917.7301–2(b)(2) and was amended to add a requirement that concurrence be obtained from the Procurement Director of the office assigned to issue a Program Research and Development Announcement before that solicitation technique is chosen.

(41) Section 919.102 of the proposed rule has been deleted because the final FAR includes this information.

(42) Subsection 919.502–2 was added to emphasize that architect-engineer acquisition procedures must conform to the Brooks Act, (Pub. L. 92–582) as implemented at FAR Part 36.

(43) Subsection 919.705–5 was added and titled "Awards involving subcontracting plans." A paragraph (b) was added to implement the FAR.

(44) Subsection 919.705–6 was added and titled "Postaward responsibilities of the contracting officer." A requirement was added to require the contracting officer to submit a copy of the information given to SBA, as a result of FAR 19.705–6, to the Office of Small and Disadvantaged Business Utilization, DOE HQ.

(45) Section 920.302 was deleted. This section limited the usage of certain clauses in DOE Construction contracts.

(46) Subsection 922.403–70, "General," was changed to become 922.470 "Applicability." The unnumbered paragraphs of the proposed rule were numbered (a) and (b) respectively. Subpart 922.4 of the FAR was reserved. Subpart 922.4 had anticipated a FAR subpart. Since FAR 22.4 was in essence, reserved, subpart 922.4 (proposed rule number) has been renumbered with minor reformating to more properly reflect the content to be that of the DOE.

(47) Subsection 922.403–71, "Noncoverage (Davis-Bacon and Copeland Acts)," was amended to move the paragraph cited therein to other sections. Paragraphs (a) (1), (2), (3), (4), (5), (6), (7), and (8) were repositioned as subparagraphs of paragraph (c) of the new section 922.470 "Applicability," discussed in note (46). Paragraphs (b) and (c) were moved to be paragraphs (d) and (e) of the new 922.470.

(48) Subsection 922.403–72, "Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities," was relocated to Part 970 as 970.2273 since the subject matter dealt with operating contracts it was considered more appropriate to Part 970, "DOE Management and Operating Contracts."

(49) Subsection 922.403–7301 contained unnecessary language and was deleted.

(50) Subsection 922.403–7302, "Specific examples," Was renumbered as 922.471 and titled, "Decisions and other guides in difficult areas." The text of this renumbered section was unchanged except for paragraph (h) "Experimental Installations;" which was moved to become paragraph (c) of the 970.2273 established in part 970. The text of this paragraph dealt with work in DOE owned facilities by operating contractors.

(51) Section 922.404, "Wage Determinations," included no text in the proposed rule. This section was renumbered as 922.472 and the paragraphs at 922.404–2 and 922.404–70

were added to it and renumbered accordingly.

(52) Section 922.405, "Administration and enforcement," was renumbered as 922.473. Paragraphs (a) and (b) of 922.405–70, "Responsibilities," were relocated to this section.

(53) Subsection 922.405–70, "Responsibilities," was deleted. Paragraphs (a) and (b) were relocated to 922.473 as (a) and (b).

(54) Section 922.470, "Applicability," was added. See Note (46).

(55) Section 922.471, "Decisions and other guides in difficult areas," was added. See note (49).

(56) Section 922.472 "Wage determinations," was added. See note (51).

(57) Section 922.473, "Administration and enforcement," was added. See Note (52).

(58) Subpart 922.70 was added as a new subpart as a result of repositioning the text previously contained in the proposed rule at 970.2270–1.

(59) Section 922.803 was amended to delete paragraph (c) regarding "referral lists." Such referral lists are not maintained for the purposes cited in (c).

(60) Section 923.7001 was amended to delete the second paragraph as it involved management and operating contracts which are separately covered at Part 970.

(61) Section 932.7103 was amended to add a paragraph (e) to clarify that the interest penalties do not apply to contracts awarded prior to October 1, 1982, unless provided for by a contract clause.

(62) Subpart 924.70 was relocated to 927.70 in the final rule. Narrative material in this subpart that duplicated material appearing at 927.402–4 of the proposed rule has been deleted from the final rule as relocated at 927.70. Solicitation and contract provisions that duplicated provisions contained in 952.227 of the proposed rule have been deleted from the material relocated at 927.70.

(63) Subsection 924.702 was amended to delete the text at paragraph (c). It duplicated language at 952.227–76 and was unnecessary.

(64) Section 924.703 of the proposed rule has been deleted with an instruction added at 927.7003 to use the notice at FAR 15.413–2(e) for solicited proposals and FAR 15.509(d) for unsolicited proposals in its stead.

(65) Subsection 925.902–70 was deleted in the final rule.

(66) Section 925.903 was added to require submission of determinations and reports required therein to the Procurement Review Office Hqs.

(67) Subsection 927.402–4 dealing with the treatment of data under management and operating contracts was moved to 970.2702 so that Part 970 will be a single repository, to the extent possible, of regulations governing such contracts.

(68) Subpart 927.70. See item (62) above.

(69) Section 927.7000(c) which appeared in the proposed rule at 924.7000(c) and 952.227–74.4, has been restyled as a representation by the external evaluator to require their signature.

(70) Section 927.7002, in the final rule which appeared at 927.702 in the proposed rule was amended to direct the use by proposers of the proprietary data marking legend at FAR 52.215–12 for solicited proposals and FAR 15.509 for unsolicited proposals. This is in lieu of the single DOE Notice that appeared in the proposed rule at 927.702(c). Conforming changes have been made elsewhere.

(71) Subsection 928.101–70; 928.102–70; and 928.103–70 were added as new subsections covering review requirements for the different types of bonds. These subsections resulted from clarifying the intent of 928.106–70 of the proposed rule which was then deleted. The intent of the change was to align the DOE review requirements with the applicable bond type.

(72) Subsection 928.106–70 was deleted. See Note (71).

(73) Part 930 was deleted in its entirety. The FAR is adding the same language in its first revision. The DOE language appears unnecessary and would be a duplication.

(74) Subsection 934.005–2 was moved in its entirety to become a section in 970 as its content on mission-oriented solicitations addressed contractors subject to 970 of this regulation. It has been designated 970.70.

(75) Section 935.014 was added and titled, "Government property," to implement the FAR provision that agencies can establish different thresholds for vesting title of property in the contractor. FAR stated $5,000; DOE prefers $1,000. This involves property under research contracts with educational and nonprofit institutions.

(76) Section 935.070 entitled, "Contract Clauses," was added to include a requirement for a "Key Personnel" clause. The clause was added at 952.235–70. The clause, previously found at FPR 1–7.404–6, appears to have been inadvertently omitted from FAR. The clause is needed for research contracts.

(77) Section 936.202 was added and titled "Specifications" by deleting the "–70," "–71," and "–72" designations from 936.202–70, –72 respectively. No text changes; only minor edits to accommodate new structure.

(78) Subsection 936.202–72 of the proposed rule was revised to increase dollar limits. The suffix "–72" was also removed as per previous comment. Paragraph (a) includes a provision that allows DOE to charge the full cost of specification and drawing packages for construction solicitations up to a maximum of $100. The actual cost of reproducing packages has sometimes exceeded $100 per set. The limit has been increased to $500 per set.

(79) Subsection 936.602–2, "Evaluation Boards," was added to reidentify text in the proposed rule as an implementation of the FAR text rather than supplemental text. This section includes the information in the proposed rule at 936.603–71(a).

(80) Subsection 936.602–3, "Evaluation board functions," was added to better implement the FAR. It includes the information in the proposed rule at 936.603–72 (a) and (c); 936.603–73; 936.603–74, and 936.603–77.

(81) Subsection 936.602–4, "Selection authority," was added. The text was taken from 936.603.75 and was designated (b) in the new location.

(82) Subsection 936.603–70 was renumbered in the final rule as 936.602–70.

(83) Subsection 936.603–71 was corrected. The identification should have properly read 936.602–3, "Evaluation board functions." The Department has repositioned the first half of paragraph (a) into a new 936.602–2, "Evaluation boards," and renumbered paragraphs accordingly in both the "–2" and "–3" subsections.

(84) Subsection 936.603–72 was deleted. The text was relocated under a new 936.602–3, "Evaluation Board Functions." Paragraph (a) became (a)(2). (b) became c(1) and (c) became (c)(2).

(85) Subsection 936.603–73 was deleted. The language was relocated as paragraph (c)(3) of 936.602–3 to correspond with FAR.

(86) Subsection 936.603–74 was deleted. The text of paragraph (a) became (a)(1) of 936.602–3. Paragraphs (b) and (c) became (c)(4) of 936.602–3.

(87) Subsection 936.603–75 was relocated to 936.602–4, "Selection authority" and the text designated as paragraph (b) to correspond to FAR 36.602–4.

(88) Subsection 936.603–76 was deleted and the text was moved to become part of the existing text at 936.601 "Policy" as it addresses policy and procedure issues.

(89) Subsection 936.603–77, was amended to move text to become

paragraph (c)(5) of 936.602–3 to correspond with the FAR.

(90) Subsections 936.606–70, –71, –72, –73 were renumbered to delete the dash references. Their text becomes part of 936.606, "Negotiations," which addresses price proposals, contract prices and fees.

(91) Subsection 936.606–74 was deleted as unnecessary.

(92) Section 936.670 was deleted as unnecessary.

(93) Subsection 936.600–3, "Work oversight in architect-engineer contracts," was added to provide instruction on and requirements for an inspection clause in architect-engineer contracts. The clause was relocated at 952.236–71.

(94) Section 936.702, "Forms for use in contracting for architect services" was added to furnish instructions for use of the clause at 952.236–70.

(95) Section 936.7200 was deemed to be inappropriate as a separate part on negotiation. Paragraph (a) text was deleted as duplicating 936.605. The text of (a)(1) through b(1)(vii) was properly numbered and moved to be part of 936.605. The remainder of 936.7200 text was retitled as "Acquisition of special equipment," and arranged into appropriate paragraphs 936.7200, "Scope of Part"; 936.7201 "Definitions;" and 936.7202, "Description of Services."

(96) Section 936.7302 "Outline of agreement for rental of third party owned construction equipment" was added to move into Part 936, the third party agreement format published in the proposed rule at 970.3604.

(97) Section 942.000 was rewritten to better define the policy, responsibilities and structure of contract administration in the DOE as compared to the Department of Defense. Sections 942.001, 942.002 were added to establish and describe this relationship and contract administration policies of the DOE.

(98) Section 942.803 was revised at paragraph (c) to more clearly identify the actions of the contracting officer in dealing with questioned cost in auditor reports.

(99) Section 943.170 was added as a result of revisions to 917.7111. The issue deals with modifying a contract to extend it. It was proposed at 917 because the text addresses contracts resulting from unsolicited proposals. Since the issue deals with modifyng a contract to extend the performance period, it was relocated to Part 943.170 as a unique DOE modification requirement. It has been titled "Extension of contracts resulting from unsolicited proposals."

(100) Section 944.101 was amended to delete the first two sentences as being confusing and misleading.

(101) Subsection 944.202–1, "Responsibilities," was added to be more specific in the responsibilities of the contracting officer in consenting to subcontract awards.

(102) Subsection 944.202–2, "Considerations," was added to include a requirement to refer to the DOE Consolidated List of Debarred, Suspended, Ineligible or Voluntarily Excluded Awardees.

(103) Section 944.302–70 was amended to delete the"–70" suffix. Paragraph (a) was edited to clarify the intent of the language in the proposed rule. FAR paragraph (a) allows agencies to establish lower thresholds than the $10,000,000 in FAR if such are considered appropriate for contractor procurement system reviews. The proposed rule imposed a DOE requirement of $5,000,000 in Government sales for DOE cognizant contractors. The final rule amends this to $5,000,000 of sales to the DOE and only in those instances where there is sufficient subcontracting to support a review. Due to the changes in paragraph (a) some of the text in (b) was included in (a) to conform with FAR 44.302(a). Paragraph (c) of the proposed rule was reidentified as paragraph (b) and (c) to be compatible with FAR paragraphs. The last sentence of 944.305–71 was relocated as paragraph (d) of this section.

(104) Section 944.305 was determined to be a duplication of FAR language and was deleted.

(105) Subsection 944.305–1.70 was considered to apply to contracts covered by Part 970. Appropriate language was included in 970.44 and 944.305–70 was deleted.

(106) Subsection 944.305–1.71 was deleted as not applicable as a separate DOE subsection. The text of (a) and (b) was located as paragraph (b) of 944.302 and paragraph (c) was added to 944.302–70 as a separate paragraph (d).

(107) Subsection 944.305–1.72 was reidentified as 944.305–1, "Responsibilities," since FAR 44.305–1 addresses review requirements.

(108) Subsection 944.305–2 was deleted as being duplicative language of paragraph (c) at FAR 305–2 Notification.

(109) Subsection 944.305–3 was deleted. Paragraph (b) was considered to be duplicative of FAR. Paragraph (c) was relocated to 944.307, "Reports."

(110) Section 944.307 "reports," was added to include a portion of the language of old 944.305–3 since it amplifies the current language of FAR 44.307 Reports.

(111) Section 945.000 "Scope of part," was created to clarify the applicability of the DOE rules cited in the Part 45 and FAR 45 to DOE management and operating contractors and restated in a different way, the applicability of special test equipment and special tooling requirements of the FAR previously stated at 945.102–72 of the proposed rule.

(112) Section 945.101 was revised to delete the inclusion of special test equipment and special tooling, which was incorrectly stated.

(113) Subsection 945.102–72 was deleted since the subject was addressed in a new 945.000.

(114) Subsection 945.303–1 was added to state DOE policies concerning furnishing of special nuclear materials to contractors. This represented a repositioning of material in the proposed rule at 971.73.

(115) Subsection 945.502–71, was amended at paragraph (b) to provide for physical inventories once each year. The paragraph discusses the inventory and control of sensitive items.

(116) Subsection 945.505–14 was revised to indicate new dates for submission of the semiannual reports required by this section.

(117) Subsection 945.570–5 was revised at paragraph (d) to add a reference which establishes mileage standards for specific types of vehicles. A statement was also added concerning the standard against which vehicle use must be measured.

(118) Subsection 945.570–8 was revised to delete the last sentence on contracting officer guidance in preparation and submission of the motor vehicle reports.

(119) Subsection 945.603–71, "Disposal procedures for radioactively contaminated personal property," was added to reference 41 CFR 109–45.50 regarding procedures for disposal of radioactively contaminated property.

(120) Subsection 945.607–2 was amended to move paragraph (b) into a new 945.608–2, "Standard Screening." Paragraph (b) and (e) were rewritten into a single paragraph (b). There was no change in content.

(121) Subsection 945.608–70 was deleted as it duplicated 945.607–2.

(122) Subsection 945.608–2 was added and titled, "Standard screening." The text of paragraph (b) of 945.607–2 was relocated to a paragraph b(1). The text covered standard screening which was the subject of FAR 45.607.

(123) Section 947.508 was added at the request of Maritime Administration. The title is "Procedures," and covers ocean transportation by U.S. Flag Vessels. The

added text requires copies of contract awards involving foreign suppliers, which will require ocean transportation, be forwarded to the Maritime Administration.

(124) Section 952.100 was amended to use the term "contract clauses" in lieu of the term "general provisions." The FAR uniform contract format references inclusion of "clauses" and not "provisions." The term "provisions" is assigned for use in solicitations.

(125) Subsection 952.212–72, "Uniform Reporting System Clause," of the proposed rule was deleted from the final rule.

(126) Subsection 952.215–18, "Order of Precedence." of the proposed rule was revised to follow the correct section topics of the uniform contract format and to reflect post award situations. The final sentence of this subsection, which referred to 952.215–1, was deleted as this was an erroneous reference mistakenly left in from a preliminary draft of the notice of proposed rulemaking.

(127) Subsection 952.215–70 was added as a new solicitation provision entitled "Required Subcontractor Representations and Certifications." The purpose of the provision is to alert contractors to the need to obtain certain certifications from their subcontractors if their own contracts include certain clauses listed therein.

(128) Subsections 952.222–70 and 952.222–71, both dealing with clauses for determinations, were deleted. The clauses were considered superfluous and DOE will rely only on the FAR coverage in this area.

(129) Subsection 952.227–74.2 "Rights to Proposal Data" of the proposed rule has been relocated to 952.227–82.

(130) Subsection 952.227–80 was added to include a new solicitation provision entitled "Technical Data Certification." It's purpose is to assure that DOE does not pay monies to acquire technical data which it or another Government agency may have already acquired or has the right to acquire. The provision also requires the offeror or proposer to identify any proprietary data it intends to withhold pursuant to the "Rights in Technical Data" clause at 952.227–75. It has been included because many DOE contracting activities have as a practical mater been using such a certification in their solicitations. The second portion of this certification implements the requirements of the solicitation provision at 952.227–83.

(131) Subsection 952.227–81 was added to include a new solicitation provision entitled "Royalty Payments Certifications." The purpose of the clause is to assure that the DOE does not include royalty payments in a contract price if it or another Government agency has previously paid for such rights. Several DOE contracting activities had been using this provision in their solicitations. This certification implements the requirements of 41 CFR 9–9.111, as incorporated by 927.300 of this regulation.

(132) Subsection 952.227–82, "Rights to proposal data" was added. See comment (129).

(133) Subsection 952.227–83, "Rights in Technical Data Solicitation Instruction" was added to relocate the language which appeared in the proposed rule at 924.704–2 and 952.227–74.5 dealing with identification of proprietary data.

(134) Subsection 952.227–84, which appeared in the proposed rule at 924.705 and 952.227–74.6, describing the right to of proposers to request patent waivers has been revised to point out that small businesses and domestic nonprofit organizations may retain title to subject inventions; pursuant to OMB Circular A–124 and Pub. L. 96–517.

(135) Subsection 952.231–70 was added to include a clause entitled "Date of Incurrence of Costs." The clause was previously used by DOE, when appropriate, and its original source is FPR 1–7.204–3. Its use is appropriate, in cost-reimbursement type contracts when the parties wish to record in the contract their advance agreement on certain items of cost. The nature of DOE's mission is such that it has a high proportion of cost-reimbursement type contracts and it has chosen to continue use of this clause by placing it in the Department's implementing regulation.

(136) Subsection 952.232–70 was amended to clarify its intent. The language in the proposed rule at paragraph (c) required the contracting officer to insert the number of calendar days after receipt or completion of work to establish when "constructive acceptance" would be deemed to occur. The intent was to esablish that constructive acceptance would occur on the last day of the stated inspection period. To preclude potential misinterpretations, the second sentence of paragraph (c) was appropriately revised.

(137) Subsection 952.232–71 was amended to add a new provision at paragraph (d) establishing that a payment will be considered to have been made on the date the Government check was dated or an electronic transfer of funds transfer payment. This change pursuant to guidance contained in Federal Procurement Regulations—Temporary Regulation 66, Supplement 1. Proposed paragraph (d) renumbered as (e).

(138) Subsection 952.232–73 amended to add new provision (d) requiring for contractors to identify the contractor's authorized official for providing the required payment data. This change based on guidance contained in the Federal Procurement Regulations—Temporary Regulation 66, Supplement 1. Proposed paragraph (d) renumbered as (e).

(139) Subsection 952.235–70: See Note (76) above.

(140) Subsection 952.236–71 was added to include the text of a clause prescribed for inclusion in architect-engineer contracts as 609–3. The text is relocated from 936.

(141) Subsection 952.250–1, "Nuclear Hazards Indemnity" was edited to change the term "article" as stated in the clause at this section to read "clause." The term "article" is no longer used in the FAR system. The term "clause" is preferred. The "–1" reference was also changed to a "–70" reference to indicate it is a DOE supplemental clause.

(142) Subsection 952.250–2, "Nuclear Hazards Indemnity—Product Liability" was edited. See comment for 952.250–1 for description of change. The "–2" reference also changed to "–71" to indicate it is a DOE clause.

(143) Subsection 952.250–70 was added by renumbering 952.250–1.

(144) Subsection 952.250–71 was added by renumbering 952.250–2.

(145) Section 970.0404, "Safeguarding Classified Information," was established in the final rule to remind a contracting activity awarding a management and operating contract that there may be security requirements that must be included therein. Appropriate locations of the required clauses were cited. Four subsections were established. They basically are a restatement of the same language in the proposed rule at 904.4. Edits were made to be consistent with the part 970 format. No new language was added.

(146) Subpart 970.08, "Required Sources of Supplies and Services" was added by moving text which had been at Subpart 970.51 of the proposed rule.

(147) Subpart 970.10, "Specifications, Standards, and other Statement of Work Descriptions" was established in order to relocate the text in the proposed rule at 970.5204–37 from the clauses section. The text states that clause language should be created. (It is not actual clause language as are the other subsections of subpart 970.52.) The text is more properly placed in the subpart that contains the direction that a statement of work is necessary under management and operating contracts.

970–5204–37 was amended to refer to 970.10.

(148) Section 970.1509–1 was amended at paragraph (e) to add language to clarify that approval of the Procurement Executive is necessary if maximum fee amounts are exceeded.

(149) Section 970.1509–4 was amended to paragraph (d) to clarify when the approval of Procurement Executive is necessary.

(150) Section 970.1509–6 was amended to identify situations when the fee schedules may not reflect adequate compensation.

(151) Section 970.1901 was amended at paragraph (a) adding a reference to "52.219–9 as modified by 952.219–9." This addition is intended to clarify that management and operating contracts and their subcontracts will contain the FAR clause on "Small and Disadvantaged Business Subcontracting Plan."

(152) Section 970.1901(d), regarding use of small business concerns, was changed such that all acquisitions of construction by Management and Operating contractors are set aside for small business concerns rather than just those between $10,000 and $3,000,000. As a practical matter, Management and Operating contractors have been setting aside small purchases for small business concerns.

(153) Section 970.2205 was deleted. The language not applicable to management and operating contracts.

(154) Section 970.2207 was deleted. See note for comment (153).

(155) Section 970.2208 was amended to simplify the language. Much of the text included in the proposed rule did not directly address management and operating contractors. The title was also changed to the same as FAR 22.8, "Equal Employment Opportunity."

(156) Subsection 970.2270–1 was moved, as written to Section 922.7001, "Responsibilities." The text is more applicable to prime construction contracts.

(157) Subsection 970.2273 was added and titled "Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities." This subsection was created by repositioning the text located in the proposed rule at 922.403–72 under the same title.

(158) Subpart 970.23 was established to identify, in appropriate text sections of the final rule, DOE requirements for "Environmental Conservation and Occupational Safety Programs." The language is basically a repeat of what was in the proposed rule at 923.7001 and 923.7002 but edited to appropriate language for Part 970. Paragraphs (b), (c) and (d) of Part 970.2303–2, "Clauses," was included in the final rule to provide the instruction language for applicable clauses. The same as that which preceded the clauses at 970.5204–2(b); 970.5204–28 and 952.233–75 of the proposed rule. To be consistent it was deemed appropriate to move the instruction language into the subpart establishing the need for the respective clause.

(159) Section 970.2701 was amended to add a new paragraph (a) to affirm that in patent related matters, the provisions of 41 CFR 9–9:1 apply to management and operating contracts.

(160) Subpart 970.28 was amended to add a new 970.2870 to include language discussing the applicability of indemnification to operating and management contracts and identifying the contract clause required for management and operating contracts. No new language was developed. It was a restatement of subpart 950.70 of the proposed rule.

(161) Subsection 970.3100–1 was revised to delete references to contract types which were already defined elsewhere and actually had no direct applicability to Management and Operating contracts. Additional examples were added to the definition of direct on-site costs.

(162) Subsection 970.3100–2(a) and (b) were edited to delete an unnecessary and confusing sentence on allocating cost dealing with the same purpose, in like circumstances, and being both direct and indirect. The term final cost objective was also deleted as being misleading under a Management and Operating contract. Unnecessary language relating to overhead expense and its allocation basis was also deleted from paragraph (b). This language was not considered to be directly associated with Management and Operating contractors. The last sentence (b)(4) was deleted as non-applicable since the DOE establishes the accounting period for Management and Operating contracts.

(163) Section 970.3201 was edited to add language to identify the Controller as having involvement in the financing of management and operating contracts.

(164) Section 970.3202(c) was edited to add necessary language to clarify that changes in the specified requirements for special bank account agreements shall not be considered a deviation to the DEAR. Text was added to provide that any additional requirements required by the Treasury Department should be included.

(165) Section 970.3271 was created to reposition the "Special Bank Account Agreement" in the proposed rule at 970.5204–17 to the main text of the Part. This text is an agreement which is a contract itself. It is not a clause. It has been moved to stress its importance to the Financing of Management and Operating contracts. The location is now consistent with other outlines and suggested formats included in the final rule.

(166) Section 970.3604 dealing with a format for rental of construction equipment was moved and repositioned in 936.7302.

(167) Section 970.3607 "Architect-Engineer/Construction Services," was rewritten for clarity at paragraph (a).

(168) Subpart 970.51 was edited to move certain sections into Subpart 970.8 whose title was corrected to read: Required Sources of Supplies and Services by adding "and services." Without text changes 970.5102 became 970.0801; 970.5104 became 970.0811; 970.5105 became 970.0870; 970.5106 became 970.0871; 970.5107 became 970.0872; 970.5103 renumbered 970.5102.

(169) Subsection 970.5204–19 regarding printing was rewritten for clarity.

(170) Subsection 970.5204–48 was deleted as it is judged duplicative of a provision at 970.1901(a).

(171) Part 971 was modified to rearrange the contents into a more logical sequence and to improve the language on review requirements. Additions were added to identify the data required to be furnished by DOE field offices to be furnished to Headquarters for review and approvals.

(172) Other edits or title changes being made in the final rule published today are as follows:

901: Part title change to same as FAR: "Federal Acquisition Regulation System."

902.100: Revised definition to delete reference to delegation from Procurement Executive.

903.302–70: Deleted the "–70" which should have been excluded in the proposed rule.

904.601–70: Retitled to read: "Procurement and Assistance Data Systems" (PADS).

904.702: The title in paragraph (b) deleted as unnecessary.

905.403–70: Deleted the "–70" which should have been excluded in the proposed rule.

909.404: The reference in proposed rule, 10 CFR 1035.13(J) changed to read 10 CFR 1035.15.

905.404–1: The term "application" added in paragraph (a) to be consistent with FAR.

905.502: The term "Newspaper" was added to paragraph (a) to be consistent with FAR.

908.800–70: Retitled as 908.82 "Policy." The same as FAR. The "–70" designation not necessary.
913: Part title changed to same as FAR: "Small Purchase and Other Simplified Purchase Procedures."
914.407–8: Revised the stated protest receipt times to be consistent with GAO Manual requirements.
914.502–70: Deleted the "–70" and identified the text as paragraph (a).
915.307–70: Deleted the "–70" and retitled to be consistent with FAR. No separate DOE designation was considered necessary.
915.305–70: Paragraphs (a) and (b) were switched to give a better introduction. The remainder of the subsection was divided into paragraphs to provide better reading.
915.405–1: Renumbered as 915.405 and retitled "General."
915.612: Edited to delete references to "SEB Handbook" as "Regulations Handbook No. 1."
915.970.3: Correction to the proper form identification.
915.1002–70: Deleted the "–70" which should have been excluded in the proposed rule.
916.603–70: This subsection was determined to be part of 916.603–2 "Application:" Its contents amplified 916.603–2(f).
917.604–71 & 917–605–70: "–70" titles deleted as the language is not DOE unique but implements and clarifies the FAR.
917.74, 75, 76, 77: All sections and subsections were renumbered and edited to be identified as 917.72; 917.74; 917.75; respectively. Minor syntax edits made and 917.7404 (as reidentified) corrected to read solicitations as its subject matter and not competition.
922.202(2): Correctly identified as 922.202 "Policy."
922.608–3: Correctly identified as "Protest against Eligibility."
949.111–70: Correctly identified as 949.111 "Review of Proposed Settlements."
949.111–71: Subsection title was deleted and the two paragraphs assigned to 949.111 as paragraphs (c) and (d).
949.505–70: Deleted the –70 reference and identified subsection as 949.505. Other termination clauses. This is consistent with FAR format. The text of the clause was repositioned to clause section at 952.249–70.
951.102–70 and –71: Deleted the " –70/71" reference and identified the text paragraphs under 951.102. This move consistent with FAR format.
970: All titles in the table of contents and text were edited to be same as or closer to the titles of the FAR. Several had to be different of necessity. Changes made in: 970.8; 970.803; 970.1508; 970.1901; 970.2001; 970.2213; 970.27; 970.2701; 970.46; 470.4801; 970.49; 970.51.
970: The term "Management and Operating" was added in front of the term Contractor in several locations in Part 970—since 970 applies to Management and Operating contracts.
970–0803–7: Title deleted. Text became applicable to 970.0803 which was retitled "Acquisition of Utility Services" as paragraph (c).
970.0803–70: "–70" title deleted. Text became applicable as paragraph (d) of 970.0830.
970.1508–3: Reidentified as 970.1508 Price Negotiation.
970.1508–408: Reidentified as 970.1508–5.
970.1508–4: Deleted title only. Text positioned as—1508.
970.1509: Properly identified as "Fees for management and operating contracts."
970.2201: Unnecessary language in opening sentence deleted.
970.2204: Language not necessary deleted and a single paragraph added.
Subsection 970.2270–2 was renumbered as 970.2270.
Subsection 970.2270–3 was renumbered as 970.2271.
Subsection 970.2270–4 was renumbered as 970.2272.
970.2903: Titles deleted from paragraphs.
970.3100: Minor edits made to clarify intent.
970.3103–3: Language of (a)(2) simplified.

The Department of Energy appreciates the comments and suggestions received from the public as well as its own employees, and has made the corresponding changes discussed above. Because of the need to have a regulation in place as of the effective date of the FAR, the rule being published today is effective April 1, 1984. However, in view of the size of the Department's Acquisition Regulation and the overall number of changes made, additional comments will be taken for a period of sixty days after the April 1st effective date. The Department will consider all comments received as part of an ongoing process to amend its Acquisition Regulation as discussed at 901.301–72.

List of Subjects in 48 CFR Chapter 9

Government procurement, DOE acquisition regulation.

Authority: Section 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201 and Section 644 of the Department of Energy Organization Act, 42 U.S.C. 7254. For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C. March 15, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

Title 48 of the CFR is amended by establishing chapter 9 to read as follows:

CHAPTER 9—DEPARTMENT OF ENERGY

Part and Title

SUBCHAPTER A—GENERAL

901—Federal Acquisition Regulations System
902—Definitions of words and terms
903—Improper business practices and personal conflicts of interest
904—Administrative matters
905—Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

907—Acquisition planning
908—Required sources of supplies and services
909—Contracting qualifications
910—Specifications, standards, and other purchase descriptions
912—Contract delivery or performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

913—Small purchase and other simplified purchase procedures
914—Formal advertising
915—Contracting by negotiation
916—Types of contracts
917—Special contracting methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

919—Small business and small disadvantaged business concerns
920—Labor surplus area concerns
922—Application of labor laws to Government acquisitions
923—Environment, conservation, and occupational safety
924—Protection of privacy and freedom of information
925—Foreign acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

927—Patents, data, and copyrights
928—Bonds and insurance
931—Contract cost principles and procedures
932—Contract financing
933—Disputes and appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

935—Research and development contracting
936—Construction and architect-engineer contracts
937—Service contracting

SUBCHAPTER G—CONTRACT MANAGEMENT
942—Contract administration
943—Contract modifications
944—Subcontracting policies and procedures
945—Government property
947—Transportation
949—Termination of contract
950—Extraordinary contractual actions
951—Use of government sources by contractors

SUBCHAPTER H—CLAUSES AND FORMS
952—Solicitation provisions and contract clauses

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS
970—DOE management and operating contracts
971—Headquarter's review and approval of contract actions

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 901.1—Purpose, Authority, Issuance

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901.301–71 Amendment of regulation.
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Subpart 901.4—Deviations From the FAR

901.402 Policy.
901.403 Individual deviations.
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Subpart 901.5—Agency and Public Participation

901.570 Rulemaking.

Subpart 901.6—Contracting Authority and Responsibilities

901.601 General.
901.601–70 Responsibility of the Head of the Contracting Activity.
901.603 Selection, appointment and termination of appointment.
901.603–1 General.
901.603–70 Modification of appointment.
901.603–71 Ratification of unauthorized contract awards.
901.603–72 Responsibility of other government personnel.
901.603–73 Contracting officer's representatives.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 901.1—Purpose, Authority, Issuance

901.101 Purpose.

(a) This subpart establishes Chapter 9, the Department of Energy Acquisition Regulation, within Title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be DEAR.

(b) The purpose of the DEAR is to implement the Federal Acquisition Regulations (FAR) where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DEAR is not, by itself, a complete document as it must be used in conjunction with the FAR. When a FAR Part or Subpart is adequate for use without further DOE implementation, no mention is cited in the DEAR. Therefore the order of use is (1) FAR; (2) DEAR.

901.102 Authority.

The DEAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of section 644 of the Department of Energy Organization Act of 1977 (Pub. L. 95–91), the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252), as amended, and other applicable law.

901.103 Applicability.

The FAR and DEAR apply to all DOE acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this regulation. These regulations shall be used as guides to the extent practicable for acquisitions using non-appropriated funds.

901.103–70 Exclusions.

Certain DOE policies and procedures which might otherwise come within the scope of this regulation may be excluded from the DEAR where there is appropriate justification, such as:

(a) Subject matter which bears a security classification (See FAR 4.402).

(b) Subject matter which deals with assistance programs where the award instruments are other than acquisition contracts and purchase orders. The DOE financial assistance policies are codified separately at Part 600 of Title 10 of the Code of Federal Regulations.

(c) Subject matter which deals with the Department's sales programs. These matters are codified separately at various parts of Title 10 of the Code of Federal Regulations.

(d) Subject matter which is procedural in nature and which is internal to the operation of the Department. These matters are contained in the DOE Directives System.

(e) Instructional or training material that more fully explains matters covered in the FAR and DEAR.

901.104 Issuance.

901.104–1 Publication and code arrangement.

(a) The DEAR and its subsequent changes are published in (1) daily issues of the **Federal Register**, (2) cumulative form of the Code of Federal Regulations, and (3) a separate loose-leaf edition.

(b) The DEAR is issued as Chapter 9 of Title 48 of the Code of Federal Regulations.

901.104–2 Arrangement of regulations.

(a) *General.* The DEAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding DEAR part, subpart, etc.

(b) *Numbering.* Where the DEAR implements the FAR, the implementing part, subpart, section or subsection of the DEAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 9 or a 90 such that there will always be three numbers to the left of the decimal. For example, the DEAR implementation of FAR 1.104–1 is shown as 901.104–1 and the DEAR implementation of FAR 24.1 is shown as 924.1. Material which supplements the FAR will be assigned the numbers 70 and up. For example, by statute, DOE requires a more comprehensive organizational conflicts of interest review than is contemplated by FAR 9.5. This supplementary material is identified as 909.570.

(c) *References and citations.* (2) This regulation may be referred to as the Department of Energy Acquisition Regulation or the DEAR.

(3) References to FAR materials within this regulation will include FAR and the identifying number, for example, FAR 1.104–2(c)(3). References to DEAR materials within this regulation will simply cite the identifying number, for example, 901.104–2(c)(3).

901.104–3 Copies.

(a) Copies of the DEAR published in the **Federal Register** or Code of Federal

Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference the DEAR as Chapter 9 of Title 48. The Code of Federal Regulations is printed in paperback edition and updated annually. Requests for the CFR version of the DEAR should reference Chapter 9 of Title 48.

(b) Loose-leaf copies of the DEAR are distributed within DOE in accordance with a distribution list maintained by the Policy Office in the Procurement and Assistance Management Directorate, Headquarters.

901.105 OMB control numbers.

The Paperwork Reduction Act of 1980, Pub. L. 96–511, and the Office of Management and Budget's implementing regulations at 5 CFR Part 1320, require that reporting and recordkeeping requirements affecting 10 or more members of the public be cleared by that Office. Shown below are DEAR citations containing such requirements and their control numbers.

DEAR	Title	Control No.
913.505–2	Agency order form in lieu of Optional Forms 347 and 348.	1910–3000
915.406–5	Offeror representations and certifications.	1910–3100
917.72	Program opportunity notice for commercial demonstrations.	1910–3200
917.73	Program research and development (R&D) announcement.	1910–3200
919.708	Small business report	1910–3300
922–804–2(b)(2).	Affirmative action compliance requirements for construction.	1910–3400
927.402–3	Technical data certification	1910–3500
928–103–3	Payment bond	1910–3600
928.170	Fidelity bond	1910–3600
936.7301	Outline of agreement for rental of contractor-owned equipment.	1910–3700
945.508	Physical inventory	1910–3800
945.607–2	Recovering precious metals	1910–3800
945.608–2	Agency screening	1910–3800
949.505	Other termination clauses	1910–3900
952.204–2	Security requirements	1910–1800
952.204–70	Classification	1910–1800
952.204–71	Sensitive Foreign nations controls.	1910–1800
952.204–72	Disclosure of information	1910–1800
952.204–73	Foreign ownership, control, or influence over contractor (Representation).	1910–1800
952.204–74	Foreign ownership, control, or influence over contractor.	1910–1800
952.209–70	Organizational conflicts of interest—disclosure or representation.	1910–0900
952.209–71	Organizational conflicts of interest—general.	1910–0900
952.209–72	Organizational conflicts of interest—special clause.	1910–0900
952.212–71	Priorities, allocations and allotments for DOE atomic energy programs.	1910–4000
952.212–73	Cost and schedule control systems criteria.	1910–1400
952.215–70	Required subcontractor representations and certifications.	1910–4000
952.217–70	Acquisition of real property	1910–4000
952.219–9	Small business and small disadvantage business subcontracting plan.	1910–4000
952.223–71	Safety and health (Government-owned or leased facility).	1910–0300
952.223–72	Radiation protection and nuclear criticality.	1910–0300
952.223–74	Nuclear facility safety applicability.	1910–0300
952.223–75	Preservation of individual occupational radiation exposure records.	1910–0300
952.227–71	Patent rights—small business firms or nonprofit organizations.	1910–4000
952.227–71(h).	Utilization of subcontractor inventions report.	1910–4000
952.227–80	Technical data certification	1910–4000
952.227–81	Royalty payments certification	1910–4000
952.227–83	Identification of proprietary data	1910–4000
952.227–84	Notice of right to request patent waiver.	1910–0800
952.235–70	Key personnel	1910–4000
952.245–2	Government property (fixed-price contracts).	1910–4000
952.245–5	Government property (cost-reimbursement, time and material, or labor hour contracts).	1910–4000
952.247–70	Foreign travel	1910–2100
952.249–70	Termination clause for cost reimbursement architect-engineer contracts.	1910–4000
970.5203–2	Examination of records by comptroller general.	1910–4100
970.5204–1	Security	1910–1800
970.5204–2	Safety and health (Government-owned or leased).	1910–0300
970.5204–9	Accounts, records, and inspection.	1910–1700
970.5204–10	Foreign ownership, control, or influence over contractors.	1910–1800
970.5204–11	Changes	1910–4100
970.5204–12	Contractor's organization	1910–4100
970.5204–13	Allowable costs and fixed-fees (CPFF management and operating contracts).	1910–4100
970.5204–14	Allowable costs and fixed-fees (support contracts).	1910–4100
970.5204–19	Printing	1910–1300
970.5204–21	Property	1910–4100
970.5204–22	Contractor procurement	1910–4100
970.5204–23	State and local taxes	1910–4100
970.5204–24	Subcontractor's certificate of current cost or pricing data.	1910–4100
970.5204–26	Nuclear safety	1910–0300
970.5204–27	Consultant or other comparable employment services of contractor employees.	1910–4100
970.5204–29	Permits and licenses	1910–4100
970.5204–30	Notice of labor disputes	1910–4100
970.5204–31	Litigation and claims	1910–4100
970.5204–32	Requirement bonds and insurance—exclusive of Government property (cost-type contracts).	1910–4100
970.5204–33	Priorities, allocations and allotments.	1910–4100
970.5204–34	Sensitive foreign nations control.	1910–1800
970.5204–38	Special clause for procurement of construction.	1910–4100
970.5204–41	Preservation of individual occupational radiation exposure records.	1910–0300
970.5204–42	Key personnel	1910–4100
970.5204–45	Termination	1910–4100
970.5204–50	Cost and schedule control systems.	1910–1400

Subpart 901.2—Administration

901.201–1 The two councils.

(b) The DOE representative to the Civilian Agency Acquisition Council will be a staff member of the Policy Office, Procurement and Assistance Management Directorate, Headquarters, appointed for that purpose by the Procurement Executive.

(d) The Policy Office will be responsible for coordination with all interested Departmental elements regarding proposed FAR revisions and advocating revisions sought by DOE.

Subpart 901.3—Agency Acquisition Regulations

901.301 Policy.

(a) Acquisition policies and procedures will be issued in the DEAR by the Procurement Executive after appropriate coordination with other officials.

(b) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DEAR within DOE may be issued by the Heads of the Contracting Activities. Contracting activities have the authority to establish the review and approval levels for various acquisition actions, within their respective organizations, up to the dollar authority level delegated to that organization by the Procurement Executive provided the implementing procedures, instructions and guides:

(1) Are consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time;

(2) Follow the format, arrangement, and numbering system of this regulation; to the extent practicable, and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

901.301–70 Acquisition letters.

From time to time the Procurement Executive may, after coordination with the General Counsel, issue advisory Acquisition Letters to furnish interim guidance to contracting activities.

901.301–71 Amendment of regulation.

This regulation may be amended from time to time by the Procurement Executive with appropriate concurrences from other officials (e.g. Counsel, and any other appropriate Headquarters offices) in accordance with 901.570.

901.301–72 Other issuances related to acquisition.

In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulations, the DOE Property Management Regulations, and DOE Directives.

(a) The Federal Property Management Regulations, FPMR, are published by the General Services Administration to guide and govern the Federal agencies in matters pertaining to the management of property and records and other programs and activities of the type

administered by GSA. The FPMRs are codified as Chapter 101 of Title 41 of the Code of Federal Regulations.

(b) The DOE Property Management Regulations, DOE–PMR, implement and supplement the FPMR regarding the utilization, management and disposition of personal property. The DOE–PMRs are codified as Chapter 109 of Title 41 of the Code of Federal Regulations.

(c) The DOE Directives System contains the policies and procedures governing the internal operation of the Department. Because of the need to involve the public through the rulemaking process of the Administrative Procedure Act, as explained at 901.5, such policies and procedures as may directly affect contractors or the general public will be published in the DEAR following the rulemaking procedures established by the Administrative Procedure Act and the DOE Organization Act, Pub. L. 95–91. Policies and procedures which are generally of interest to or used only by DOE personnel will be published in the DOE Directives System.

901.303 Codification and public participation.

(a) The DEAR is codified as Chapter 9 of Title 48 of the Code of Federal Regulations.

(b) Procedures for public participation are described at 901.5.

Subpart 901.4—Deviations From the FAR

901.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the DEAR shall be submitted in writing as far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or DEAR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

901.403 Individual deviations.

In individual cases, deviations from either the FAR or the DEAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Heads of Contracting Activities (HCAs) or designees are authorized to approve deviations from the DEAR, except for cost principles, in individual cases within their delegated dollar authority, after coordination with Counsel and such other DOE personnel as required. No deviations from the FAR may be authorized at the local level. A copy of each deviation and its supporting documentation shall be provided to the Procurement Executive. Deviations, either in excess of an HCA's delegated dollar authority or involving the cost principles contained in Part 931, or any FAR deviation, shall not be made unless such action is authorized by the Procurement Executive after consultation with General Counsel and any other appropriate Headquarters office, on the basis of a written justification stating clearly the special circumstances involved. For deviations from policies and procedures or clauses involving patents, data and copyrights, the concurrence of the Assistant General Counsel for Patents shall be obtained as provided in Part 927.

901.404 Class deviations.

Where deviations from the FAR, or DEAR in classes of contracts, are considered necessary, requests for authority to deviate shall be submitted in writing to the Procurement Executive who will, after appropriate coordination with other officials (e.g., Counsel, and such other DOE personnel as required), consider the submission, and in the case of FAR deviations, consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council as appropriate. Class deviations to the FAR or the DEAR involving patents, data, and copyrights shall be forwarded to the Procurement Executive, Headquarters, via the Assistant General Counsel for Patents. Where circumstances preclude obtaining prior concurrence of the Chairperson of the Civilian Agency Acquisition Council, the Procurement Executive may authorize the deviation and subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

Subpart 901.5—Agency and Public Participation

901.570 Rulemaking.

(a) Section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter related to agency management or personnel or to public property, loans, grants, benefits or contracts. OFPP Policy Letter 83–2 requires rulemaking for substantive acquisition rules but allows significant discretion in the matter. However, notwithstanding either of these, section 501(b)(3) of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7191(b)(3)), provides that the exception shall not be available with respect to public property, loans, grants, or contracts within DOE. Accordingly, DEAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act and the DOE Organization Act. This procedure generally involves issuing a notice of proposed rulemaking inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes actions taken as a result of the comments.

(b) All acquisition rulemakings will be done either by or with the concurrence of the Policy Office, Procurement and Assistance Management Directorate, Headquarters and authorized for issuance by the Procurement Executive or his or her Deputy.

Subpart 901.6—Contracting Authority and Responsibilities

901.601 General.

Contracting authority vests in the Secretary of Energy. The Secretary has delegated this authority to the Procurement Executive. The Procurement Executive has redelegated this authority to the Heads of the Contracting Activities. These delegations are formal written delegations containing dollar limitations and conditions. Each HCA in turn makes formal contracting officer appointments within the contracting activity.

901.601–70 Responsibility of the Head of the Contracting Activity.

The Head of the Contracting Activity, as defined at FAR 2.1 as supplemented by 902.100 of this regulation, is responsible for the conduct of an effective and efficient acquisition

program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted by qualified personnel, preferably assigned to positions other than in the particular acquisition office or portion thereof being reviewed, to determine the extent of adherence to prescribed policies, regulations, and good management practices, and to identify any needs for improvement, guidance and/or training.

901.603 Selection, appointment and termination of appointment.

901.603-1 General.

The DOE system for the selection, appointment, and termination of appointment of contracting officers is established in DOE Order 4200.4, Selection, Appointment, and Termination of Contracting Officers.

901.603-70 Modification of appointment.

To modify a contracting officer's authority, the present appointment shall be revoked and a new certificate issued.

901.603-71 Ratification of unauthorized contract awards.

(a) The Government is not generally bound by agreements or contractual commitments made to contractors or prospective contractors by persons to whom acquisition authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DEAR, and good acquisition practice; e.g., certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met, such as certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, price/cost analysis, administrative approvals, negotiation of appropriate contract clauses, etc.

(b) Unauthorized commitments shall not be ratified unless it would have been otherwise proper to enter into a contract prior to the commitment. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements; (e.g., there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the organizational conflicts of interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met.) Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised that such work is being performed at their own risk pending establishment of valid contractual coverage. The HCA shall then be notified of the circumstances. If the HCA agrees that the work appears to be without valid authorization, the HCA will take appropriate steps to resolve the matter if within his or her area of cognizance. If outside the HCA's normal area of cognizance, the Procurement Executive and Senior Program Official will be notified by the HCA. If they determine that an unauthorized commitment exists, they will arrange for valid contractual coverage if appropriate. The contracting officer shall direct the disposition of all products and deliverables received by the Government as a result of an unauthorized commitment.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall be required to furnish the contracting officer all records and documents concerning the committment and a complete, written statement of facts, including, but not limited to, a statement as to why the acquisition office was not used, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed upon contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Procurement Executive may waive the requirement that the responsible employee initiate and document the request; *provided,* the cognizant Assistant Secretary or the Head of the Contracting Activity determines in writing that the commitment was in fact made by an employee who shall be identified in the determination.

(2) The request for ratification, an approved justification for non-competitive acquisition, and the information required by (c)(1) above must be forwarded to the cognizant program Assistant Secretary, or HCA, based on the source of funds for the proposed contract, for that person's concurrence, together with recommended corrective actions to preclude recurrence.

(3) If the Assistant Secretary, or HCA concurs with the request for ratification, the request and concurrence shall be forwarded to the Procurement Executive. The Procurement Executive will review the request, the Justification for Non-Competitive Acquisition, any comments or information submitted by the contracting officer which should be considered in evaluation of the request, and the information submitted in accordance with (c)(2) above. Based upon this review and advice from the Office of General Counsel, the Procurement Executive, will proceed as follows:

(i) If the request submitted does not appear to be justified, it will be returned to the concurring Assistant Secretary or equivalent official without approval with an explanation of the decision not to ratify.

(ii) If the request and the recommended corrective actions appear justified and adequate, the Procurement Executive may ratify the action, return the file to the contracting officer for action, and monitor the implementation of the corrective action plan.

(iii) A detailed record of the review shall be maintained for audit purposes.

901.603-72 Responsibility of other Government personnel.

(a) Responsibility for the decision of what to buy and when to buy rests with program and certain staff offices and the head of the agency or designee. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting activity, the contracting officer in particular.

(b) Personnel not delegated contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, program personnel who must use the contracting process to accomplish their programs, must support the contracting officer in ensuring that:

(1) Requirements are clearly defined and specified;

(2) Competitive sources are solicited, evaluated, and selected;

(3) Quality standards are prescribed and met;

(4) Performance or delivery is timely;

(5) Prices, estimated costs, and fees are reasonable; and

(6) Files are documented to substantiate the judgments, decisions, and actions taken.

901.603-73 Contracting officer's representatives.

(a) A contracting officer may designate other Government personnel to act as authorized representatives for such functions as technical monitoring, inspection, approval of shop drawings, testing, approval of samples, and other functions of a technical natural not involving a change in the scope, price, terms or conditions of the contract or order. Such designation shall be in writing and shall contain specific instructions as to extent to which the representative may take action for the contacting officer, but will hot contain authority to sign contract documents. The responsibilities and limitations of the contracting officer's representatives may be set forth in the contract or in a separate letter, a copy of which shall be furnished to the contractor.

(b) A person assigned to and performing primary duty within a contracting office, and who is under the supervision of a contracting officer, does not require designation as a representative to perform assigned duties. The contracting officer cannot authorize subordinates to sign any contract document or letter where the signature of a contracting officer is required.

PART 902—DEFINITIONS OF WORDS AND TERMS

Subpart 902.1—Definitions

Sec.
902.100 Definitions.

Subpart 902.2—Definitions Clause

902.200 Definitions clause.

Authority: Section 644 of the Department of Energy (Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 902.1—Definitions

902.100 Definitions.

The following definitions are in addition to those stated in FAR 2.1.

"Acquisition Executive," as that term is defined in OMB Circular A-109, means the Assistant Secretary, Management and Administration. The Acquisition Executive, as contrasted to the Procurement Executive, is involved in monitoring the development of major systems and the review of their progress as they evolve through the major systems acquisition process. Details regarding internal major system acquisition procedures may be found in the DOE Directives.

"Contracting Activity" means a DOE organizational element which has authority to award contracts.

"Head of the Agency" means the Secretary, Deputy Secretary, or Under Secretary.

"Head of the Contracting Activity (HCA)" means, in addition to the element specified in the FAR, a DOE Official who has met the following requirements: first, has been delegated authority to award contracts and appoint contracting officers by the Procurement Executive; and second, has been designated as an HCA. A partial listing of the durties specifically reserved to the HCA or designee includes:

(a) Authority to establish review and approval levels for contract actions within the organization, up to the dollar level delegated.

(b) Authority to approve deviations from the DEAR in accordance with 901.403.

(c) Authority to appoint contracting officers.

(d) Authority to make administrative determinations regarding withdrawals of bids before award in mistake-in-bid cases.

"Procurement Executive" means the individual appointed as such by the Head of the Agency pursuant to Executive Order 12352. The Director, Procurement and Assistance Management Directorate, has been appointed as the DOE Procurement Executive. Duties of the Procurement Executive include:

(a) Prescribe and publish agency acquisition policies, regulations and procedures;

(b) Enter into, make determinations and decisions and take other actions, consistent with appropriate policies, regulations and procedures with respect to purchases, contracts, leases, sales agreements and other transactions, except those required by law or regulation to be made by other authority;

(c) Designate contracting officers and representatives thereof;

(d) Establish clear lines of contracting authority;

(e) Exercise priorities authority on behalf of the agency, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.), Department of Defense Delegation of Priorities Authority, dated October 21, 1958, and applicable policies and regulations; and the Energy Conservation and Policy Act, Pub. L. 94-164;

(f) Evaluate and monitor the agency's acquisition system performance;

(g) Manage and enhance career development of the acquisition work force;

(h) Examine, in coordination with the OFPP, the acquisition system to determine specific areas where Government-wide performance standards should be established and applied and participate in the development of Government-wide acquisition policies, regulations and standards;

(i) Determine areas for agency unique standards and develop unique agency-wide standards;

(j) Be the advocate for competition; and

(k) Certify to the agency head that the acquisition system meets approved standards.

"Senior Program Official" means the Assistant Secretaries; Administrators of Administrations; Chairman, Federal Energy Regulatory Commission; Director, Office of Energy Research; and heads of DOE Headquarters staff offices.

Subpart 902.2—Definitions Clause

902.200 Definitions clause.

As prescribed by FAR 2.2, insert the clause at FAR 52.202-1, Definitions, but modify it to limit the definition, at paragraph (a) of the clause, to encompass only the Secretary, Deputy Secretary, and Under Secretary of the Department of Energy. The contracting officer shall also add a paragraph (d) (or (c) in case Alternate I is used), which defines "DOE" as meaning the United States Department of Energy.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 903.1—Safeguards

Sec.
903.101 Standards of conduct.
903.101-3 Agency regulations.

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.
903.204 Treatment of violations.

Subpart 903.3—Reports of Identical Bids and Suspected Antitrust Violations

903.302-2 Reporting requirements.

Subpart 903.4—Contingent Fees

903.408-1 Responsibilities.

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 903.1—Safeguards

903.101 Standards of conduct.

903.101-3 Agency regulations.

Detailed rules applicable to the conduct of DOE employees are set forth in 10 CFR Part 1010. To ensure that contracting personnel are informed of the high standards to be met and that they maintain current knowledge of the standards of conduct, all contracting activities shall maintain a "Standards of Conduct Notebook for Acquisition and Assistance Personnel." The notebook will contain a copy of 10 CFR Part 1010 and any other DOE or local directives on standards of conduct. All contracting personnel and their supporting personnel shall certify they have read and understand the contents of the notebook by signing a certificate to that effect. This shall be done at least annually.

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the Head of the Contracting Activity (HCA) in writing detailing the circumstances. The HCA will evaluate the report and if the allegations appear to support a violation the matter will be referred to the Procurement Executive for disposition.

903.204 Treatment of violations.

Apparent violations will be processed in accordance with the debarment and suspension rules set forth at Title 10, Part 1035, of the Code of Federal Regulations.

Subpart 903.3—Reports of Identical Bids and Suspected Antitrust Violations

903.302-2 Reporting requirements.

(a) Executive Order 12430 of July 6, 1983, revoked the requirement of Executive Order 10936 of April 24, 1961, to submit a report to the Attorney General on identical bids.

(b) Potential anti-competitive practices, such as described in FAR 3.301, and antitrust law violations as described in FAR 3.303, evidenced in bids or proposals shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Procurement Executive. The Office of General Counsel will provide reports to the Attorney General as appropriate.

Subpart 903.4—Contingent Fees

903.408-1 Responsibilities.

(b) Each Standard Form 119 completed in connection with a DOE contract, together with other relevant information, shall be reviewed by Counsel prior to the initiation of appropriate action.

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

(b) Contracting officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity, or designee, to the Office of General Counsel.

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

(a) When the needs of the Government cannot be reasonably supplied by sources other than employees of the Government or sources which are substantially owned or controlled by Government employees, the contracting officer shall submit, through the HCA, a request to the Procurement Executive, with appropriate justification, for approval of an exception to the prohibitions contained in FAR 3.601.

PART 904—ADMINISTRATIVE MATTERS

Subpart 904.4—Safeguarding Classified Information Within Industry

Sec.
904.401 Definitions.
904.402 General.
904.403 Responsibilities of contracting officers.
904.404 Contract clauses.

Subpart 904.6—Contract Reporting

904.601 Federal procurement data system.
904.601-70 Procurement and Assistance Data System (PADS).

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

Subpart 904.8—Contract Files

904.803 Contents of contract files.
904.804-1 Close out by the office administering the contract.
904.805 Disposal of contract files.

Subpart 904.70—Foreign Ownership, Control, or Influence Over Contractors

904.7000 Purpose.
904.7001 Applicability.
904.7002 Definitions.
904.7003 Disclosure of foreign ownership, control, or influence.
904.7004 Findings, determination, and contract award or termination.
904.7005 Solicitation provision and contract clause.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 904.4—Safeguarding Classified Information Within Industry

904.401 Definitions.

"Classified Information" means any information or material that is owned by, produced by or for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12356, April 2, 1982 (47 FR 14874, April 6, 1982), or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

"Restricted Data" means data which is defined in section II, of the Atomic Energy Act of 1954, as amended, as "all data concerning: (1) Design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142."

904.402 General.

(a) The basis of DOE's security requirements is the Atomic Energy Act of 1954, as amended.

(b) *DOE security regulations.* DOE regulations concerning national security information are codified at 10 CFR Part 1045. Supplemental material is found in the DOE Directives. Foreign ownership, control, or influence over contractors as it relates to security is discussed at 904.70.

(c) *Special requirements regarding foreign release.* Statutory requirements to be observed in connection with the release of Restricted Data to foreign governments are contained in the Atomic Energy Act of 1954, Sections 141 and 144.

(d) *Prohibition against the dissemination of certain unclassified information.* Section 148 of the Atomic Energy Act (42 U.S.C. 2168) prohibits the

unauthorized dissemination of unclassified nuclear information with respect to the atomic energy defense programs pertaining to:

(1) The design of production facilities or utilization facilities;

(2) Security measures (including security plans, procedures, and equipment) for the physical protection of: (i) Production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

(3) The design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act.

(k) Further information on this subject may be found at 10 CFR Part 710.

904.403 Responsibilities of contracting officers.

(a) *Presolicitation Phase.* If access to Restricted Data may be required, security clearances shall be obtained as noted in DOE Order 5631.2.

(c) *Award Phase.* Contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the provisions of DOE Orders 5634.1; 5635.1; and 5632.2. DOE regulations relating to the protection of Restricted Data may also be found under 10 CFR Part 1016.

9004.404 Contract clause.

(d) The security clauses to be used in DOE contracts are found at 952.204. They are:

(1) *Security, 952.204–2.* This clause is required in contracts under section 31 (research assistance) or 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended, and in other contracts and subcontracts, the performance of which involves or is likely to involve classified information. The DOE system is separate from that of the Department of Defense and the DEAR clause shall be used instead of that at FAR 52.204–2.

(2) *Classification, 952.204–70.* This clause is to be used in all contracts which involve classified information.

(3) *Sensitive foreign nation controls, 952.204–71.* This clause is required in unclassified research contracts which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations. The contract specialist shall consult the local security office for a listing of nations involved. (The attachment referred to in the clause should set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

(4) *Disclosure of information, 952.204–72.* This clause should be used in place of the clauses entitled "Security" and "Classification" in contracts with educational institutions for research work performed in their own institute facilities that are not likely to produce classified information.

Subpart 904.6—Contract Reporting

904.601 Federal procurement data system.

(c) DOE's data collection point is the Office of Procurement Support, Headquarters.

904.601–70 Procurement and Assistance Data System (PADS).

(a) The Procurement and Assistance Data System (PADS) is the Department of Energy's system for collection of Federal Procurement Data System (FPDS) data.

(b) DOE Order 1331.1A, entitled "Requirements and Procedures for the Procurement and Assistance Data System," requires that all data be entered into PADS within five (5) working days after the award in the following manner:

(1) Contracting activities shall report the information required by this subpart for new awards and modifications.

(2) For each prime contract action over the small purchase limit, contracting officers shall complete an Individual Procurement Action Report (IPAR), DOE F 4200.40, and submit it to their data entry point for input to the PADS system. Detailed information on completing IPAR forms is contained in the publication entitled "Handbook for Preparation of Individual Procurement Action Reports." A copy of each completed IPAR form shall be inserted in the pertinent contract file.

(3) Prime contract awards below the small purchase limit shall be reported either:

(i) Individually, by completion and submission of an IPAR; or

(ii) On a summary basis, by completion and submission of a DOE F 4200.31, Award Action Quarterly Report. Summary reports shall be submitted within 15 calendar days after the end of each Federal fiscal quarter.

(4) Contracting officers shall assure that contractors whose contracts include the Small and Small Disadvantaged Business Subcontracting Plan clause, FAR 52.219–9, submit the required reports on Standard Forms 294.

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

(b) Contracts containing the Safety and Health clause at 952.223–71, the Radiation Protection and Nuclear Criticality clause at 952.223–72, or the Nuclear Safety clause at 952.223–74 must also include the Preservation of Individual Occupational Radiation Exposure Records clause at 952.223–75 which will necessitate retention of records in accordance with schedules contained in Chapter V of DOE Order 1324.2, and any pertinent superseding provisions, rather than those found at FAR 4.7. These schedules are required by DOE, pursuant to an agreement with the General Accounting Office, in situations where prudence dictates longer retention periods for records involving employee health matters.

Subpart 904.8—Contract Files

904.803 Contents of contract files.

(a) (29) The record copy of the Individual Procurement Action Report shall be included in the file section containing procurement management reports.

904.804–1 Closeout by the office administering the contract.

(a) The Head of the Contracting Activity shall ensure that necessary procedures and milestone schedules are established to meet the requirements of FAR 4.804–1, and that resources are applied to effect the earliest practicable deobligation of excess funds and the timely closeout of all contract files which are physically completed or otherwise eligible for closeout action.

(b) Quick closeout procedures for cost reimbursable and other than firm fixed price type contracts are covered under 942.708.

904.805 Disposal of contract files.

Contract files shall be disposed of in accordance with applicable DOE Order 1324.2.

Subpart 904.70—Foreign Ownership, Control, or Influence Over Contractors

904.7000 Purpose.

This subpart sets forth the Department of Energy policies and procedures regarding foreign ownership, control, or influence (FOCI) over contractors. The procedures are designed to protect against an undue risk to the common defense and security which may result if classified information or special nuclear material is made available to DOE contractors or

subcontractors who are owned, controlled, or influenced by foreign governments, individuals, or organizations. The procedures require certain offerors/ bidders and contractors/subcontractors to submit information which will help DOE to determine whether award of a contract to a firm, or continued performance of a contract by a firm, may pose an undue risk to the common defense and security because of FOCI over the offeror/bidder or contractor/subcontractor.

904.7001 Applicability.

The provisions of this subpart shall apply to all offerors/bidders, contractors, and subcontractors who will or do have access to classified information or a significant quantity of special nuclear material as defined in 10 CFR Part 710. In this subpart, the term "contractor" shall also mean subcontractor at any tier, the term "contract" shall also mean subcontract at any tier, and the term "special nuclear material" shall also mean significant quantity of special nuclear material as defined in 10 CFR Part 710.

904.7002 Definitions.

"Foreign interest" means any of the following:

(1) Foreign government or foreign government agency or instrumentality thereof;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S. which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person, or

(4) Any person who is not a U.S. citizen.

"Foreign ownership, control, or influence" means the situation where the degree of ownership, control, or influence over an offeror/bidder or a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may possibly result.

"Contracting Officer" means the DOE contracting officer.

904.7003 Disclosure of foreign ownership, control, or influence.

(a) If a contract requires a contractor to have access to classified information or a significant quantity of special nuclear material, the DOE must determine whether access to the information or material by a contractor who is or may be subject to FOCI may pose an undue risk to the common defense and security before a contract can be awarded.

(b) If during the performance of a contract, the contractor comes under FOCI, then the DOE must determine whether any further access to the classified information or special nuclear material may pose an undue risk to the common defense and security through the possible compromise of that information or material. If the DOE determines that such a threat or potential threat exists, the contracting officer shall consider the alternatives of negotiating an acceptable method of isolating the foreign interest which owns, controls, or influences the contractor or terminating the contract.

(c) It is essential for the DOE to obtain information about FOCI which is sufficient to help the Department determine whether award of a contract to a person or firm, or the continued performance of a contract by a person or firm, may pose undue risk to the common defense and security. Therefore, the provision specified at 952.204–73 shall be included in solicitations that involve offerors/ bidders or contractors that are subject to 904.7001.

(d) The contracting officer shall not award or extend any contract subject to this subpart, exercise any options under a contract, modify any contracts subject to this subpart, or approve or consent to a subcontract subject to this subpart unless: (1) The contractor provides the information required by the solicitation provision at 952.204–73, or (2) the contractor certifies that it has previously submitted the information requested in 952.204–73 as part of a facility security clearance and that this information is accurate, complete, and current, and (3) the contracting officer has made a positive determination in accordance with 904.7004.

904.7004 Findings, determination, and contract award or termination.

(a) Based on the information disclosed by the offeror/bidder or contractor, and after consulting with the DOE Office of Safeguards and Security, the contracting officer must determine that award of a contract to an offeror/bidder or continued performance of a contract by a contractor will not pose an undue risk to the common defense and security. The contracting officer need not prepare a separate finding and determination addressing FOCI; however, the memorandum of negotiation shall include a discussion of the applicability of this subpart and the resulting determination.

(b) In those cases where FOCI does exist, and the DOE determines that an undue risk to the common defense and security may exist, the offeror/bidder or contractor shall be requested to propose within a prescribed period of time a plan of action to avoid or mitigate the foreign influences by isolation of the foreign interest.

(c) The types of plans that a contractor can propose are: measures which provide for physical or organizational separation of the facility or organizational component containing the classified information or special nuclear material; modification or termination of agreements with foreign interests; diversification or reduction of foreign source income; assignment of specific security duties and responsibilities to board members or special executive level committees; or any other actions to negate or reduce FOCI to acceptable levels. The plan of action may vary with the type of foreign interest involved, degree of ownership, and information involved so that each plan must be negotiated on a case by case basis. If the offeror/bidder or contractor and the DOE cannot negotiate a plan of action that isolates the offeror/bidder or contractor from FOCI satisfactory to the DOE, then the offeror/bidder shall not be considered for contract award and affected existing contracts with a contractor shall be terminated.

904.7005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the representation at 952.204–73, Foreign Ownership, Control, or Influence Over Contractor, in all solicitations for contracts subject to 904.7001.

(b) The contracting officer shall insert the clause at 952.204–74, Foreign Ownership, Control, or Influence Over Contractor, in new contracts and contract modifications to existing contracts subject to 904.7001.

PART 905—PUBLICIZING CONTRACT ACTIONS

Subpart 905.2—Synopses of Proposed Contracts

Sec.
905.205 Special situations.

Subpart 905.4—Release of Information

905.403 Requests from Members of Congress.
905.404–1 Release procedures.

Subpart 905.5—Paid Advertisements

905.502 Authority.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic

Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 905.2—Synopses of Proposed Contracts

905.205 Special situations.

(a) *Research and development (R&D) advance notices.* If, a result of an R&D Sources-Sought Synopsis, a subsequent synopsis is issued, the latter synopsis shall contain information regarding the earlier synopsis, and identify the special qualifications, expertise, experience, or facilities deemed necessary to perform the work satisfactorily. The purpose of this added notice is to alert potential sources that their proposal preparation effort as well as the Government evaluation effort will be unnecessarily expended if they do not possess these special qualifications.

Subpart 905.4—Release of Information

905.403 Requests from Members of Congress.

(a) *Individual requests.* In addition to having access to the information available to the general public, Membe... of Congress shall, upon their request, be given full and detailed information regarding any particular Departmental acquisition. The information provided shall be fully responsive to the member's request unless such a response would disclose classified matter, information not to be released pursuant to law, business confidential information or information which would be prejudicial to the competitive process. The contracting officer shall promptly consult with appropriate specialists such as security analysts or legal counsel and the Office of Congressional Affairs to determine whether circumstances exist which will allow the release of additional information. In such instances, the Congressional requestor shall be provided an interim reply furnishing the information which is readily releasable. The interim reply shall set forth the reasons which preclude release of any requested material and describe generally what steps, if any, are being taken to make such information available.

(b) *Required notices of award.* The Office of Congressional Affairs, Headquarters, is responsible for advising Members of Congress regarding Departmental activities likely to have an impact on their constituents. To facilitate this advice, contracting officers shall notify the Office of Congressional Affairs regarding pending awards for significant new starts or modifications significantly expanding the previous scope of a contract. The transmittal of such notices to the Office of Congressional Affairs shall be as follows:

(1) Notice of awards of $500,000 or greater, but less than $1,000,000 shall be forwarded 48 hours prior to the time of contract execution.

(2) Notice of source selection for a contemplated award of $1,000,000 or greater shall be forwarded 48 hours prior to the public announcement of the source selection. Such notices need not be duplicated at time of award.

(3) Notice of awards of $50,000 or greater, under Special Research Contracts as described at 917.71, shall be forwarded 48 hours prior to the time of contract execution.

905.404-1 Release procedures.

(a) *Application.* Offices contemplating the release of long range acquisition planning estimates shall coordinate with the Office of Procurement Support, Procurement and Assistance Management Directorate, Headquarters, in advance of the release of such planning estimates.

Subpart 905.5—Paid Advertisements

905.502 Authority.

(a) *Newspapers.* When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for such publication shall be obtained from the Head of the Contracting Activity or designee.

PART 907—ACQUISITION PLANNING

Subpart 907.1—Acquisition Plans

Sec.
907.102 Policy.

Subpart 907.3—Contractor Versus Government Performance

907.307 Appeals.

Subpart 907.4—Equipment Lease or Purchase

907.401 Acquisition considerations.
907.402-70 Purchase versus lease comparison.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 907.1—Acquisition Plans

907.102 Policy.

Acquisition plans are required as an element of project management plans which are required for major system acquisitions and major projects. The 5700 Series of DOE Directives establish the project management system which controls the planning and administration of major projects. This project management system calls for the preparation of project management plans which have as an annex the advance acquisition plan. Acquisition plans will be developed for other acquisitions when the potential benefit justifies their development.

Subpart 907.3—Contractor Versus Government Performance

907.307 Appeals.

An appeal of a decision to convert to contract or to continue in-house performance may be made by an affected party. Appeals shall be made in writing, be based only on specific alleged material deviation (or deviations),from OMB Circular A-76, and be supported by appropriate documentation. Appeals must be delivered within 15 working days of the announced decision, to the contracting officer. The contracting officer shall process any such appeal in accordance with internal Departmental procedures.

Subpart 907.4—Equipment Lease or Purchase

907.401 Acquisition considerations.

(c) The factors in FAR 7.401 (a) and (b), the guidelines prescribed in FPMR 101-25.5 and 907.402-70 of this chapter for making purchase or lease determinations shall be applied to the acquisition of all types of equipment. These factors and guidelines shall be used in making purchase versus lease determinations at time of original acquisition, when lease renewals are being considered, or at other times as circumstances warrant.

(d) Contracting officers shall assure the use of applicable purchase versus lease factors and guidelines in all acquisition and supply operations under their jurisdiction.

(e) Excess lists shall be consulted prior to leasing equipment in both original and renewal leasing actions. Also, leased equipment shall be offered for utilization by other DOE offices and DOE contractors prior to release whenever an accumulated credit toward purchase of the equipment will be lost.

(f) Unavailability of funds is not adequate justification for a decision to lease when purchase is indicated by a purchase versus lease comparison to be the more economical course of action. In such circumstances, it it essential that every effort be made to follow the purchase course of action. This is true both with respect to those studies made at the time leases are renewed or when other circumstanc warrant.

907.402–70 Purchase versus lease comparison.

(a) A comparative cost analysis of the alternative methods of acquisition (i.e., purchase, lease, or lease with option to purchase or any other legally acceptable method) shall be performed to determine which method shall provide the Government with the lowest overall cost (price and other factors considered), over the life of the equipment. The method chosen shall be that which offers the greatest advantage to the Government under the circumstances which pertain to each situation.

(b) Responsibilities of acquisition officials, head of program offices, and controller and finance divisions are as follows:

(1) *Acquisition officials:*

(i) Contracting officers shall assure the use of applicable purchase versus lease guidelines in all acquisition and supply operations under their jurisdiction.

(ii) Maintain all purchase versus lease analyses and studies, and other pertinent data used to support administrative actions taken.

(2) *Heads of Program Offices:* Prepare comparative cost analyses for alternative methods of equipment acquisition and submit to the contracting officer.

(3) *Controller and Finance Divisions:* Provide financial policy guidance and assistance to the program offices in preparing comparative cost analyses.

(c) A purchase or lease determination supported by a comparative cost analysis is essential to the equipment acquisition process. To develop a comparative cost analysis properly, it is necessary to bring together "overall costs" of the equipment over the stated life of the equipment. Overall costs shall include, but not be limited to, cost elements as purchase cost, rental cost, lease cost, maintenance cost for purchased equipment, site preparation cost and installation cost. In performing a comparative cost analysis of the alternative methods of acquisition, it is necessary to give consideration to equipment life and residual value.

(1) The cost of equipment for the stated equipment life should be calculated for each acquisition method offered. Examples of plans are:

(i) *Purchase*—Outright purchase after installation and acceptance of equipment.

(ii) *Lease with Purchase Option*—Lease with option to purchase at predetermined intervals of time. The purchase price is usually reduced by subtracting rental credits as set forth in the offeror's proposal.

(iii) *Long Term Lease*—Such plans may provide multi-year leasing at determinable prices where the agency exercises a renewal option at the end of each fiscal year.

(iv) *Lease-to-Ownership Plan or Lease with Title Tranfer Plan*—A plan whereby title transfers after payment of *n* months of rental, but usually with no obligation, or less obligation, to continue to lease than in the installment purchase plan described below.

(v) *Installment Purchase Plan*—A plan whereby the Government exercises an option to purchase the equipment upon payment of *n* months of payments. It is frequently offered as a fixed term installment plan usually for 36 or 60 months in which the Government either is granted title immediately, or title is passed at the end of the contract.

(2) Equipment life, which is a forecast or projection of the period of time which begins with the installation of the equipment and ends when the requirement for the equipment is terminated, is based upon requirements which should be stipulated in the solicitation document. Equipment life is not synonymous with the actual life of the equipment.

(3) Usually, at the end of the stated equipment life, the equipment still has some residual value to the Government. This value may reflect the fact that the initial using activity may well keep the equipment longer than planned or some other Government activity may reutilize the equipment. The future lease payments saved, as well as the resale value of the equipment at the end of the stated equipment life, affect residual value. The residual value varies with each component (item) of equipment and its activity. However, it is generally expected that after a five-year equipment life the equipment should still be worth approximately 20–30% of the purchase price and after eight years, about 10%. The "purchase price" is the lowest evaluated purchase price offered by a responsible and responsive offeror. Instead of the straight purchase price, the sum of all invoice payments to be made to the Contractor may be used as the basis for this calculation. Any procurement option (e.g., Purchase, Lease-to-Ownership, etc.) that results in the Government owning the system(s) will have the residual value deducted from the systems life cost for evaluation purposes.

(4) Care should be taken during negotiations to ensure that the Government retains accrued credits and/or equity under any lease or installment purchase plan should the agency requirement cease or funds no longer be available. It is desirable to negotiate for the transfer of accrued credits to GSA should this case arise, so that GSA can find another user and retain the equity and any purchase option credits. At least a 90 day transfer plan should be available. The negotiator also has to be careful that equipment discontinuance is not hampered by restrictions on when the equipment can be dropped from the plan, or restrictions on the adding of new equipment. Ideally, the contract should contain no penalities for cancellation at the end of each fiscal year. It is imperative, however, that statutory "anti-deficiency" restraints be considered before entering into any multi-year lease or installment plan contracts.

(5) Particular caution should be exercised in entering into a lease-to-ownership or installment purchase plan because often the problems of ownership such as risk of loss or damage, taxes and insurance immediately fall on the Government and hence are avoided by the contractor. These plans offer real profit advantages to a contractor when they can pass the costs and risks on to the Government. Accordingly, since the offeror does not have to include such contingencies in his pricing, commensurate price reductions must be a part of the negotiation objectives under these conditions.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 908.8—Acquisition of Printing and Related Supplies

Sec.

908.802 Policy.

Subpart 908.11—Leasing of Motor Vehicles

908.1100 Scope of subpart.
908.1102 Presolicitation requirements.
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908.1170 Leasing of fuel-efficient vehicles.

Subpart 908.70—Use of Excess Materials From GSA Inventories

908.7001 Use of excess materials from General Services Administrative inventories.

Subpart 908.71—Acquisition of Special Items

908.7100 Scope of subpart.
908.7101 Motor vehicles.
908.7101–1 Scope of section.
908.7101–2 Consolidated acquisition of new vehicles by General Services Administration.
908.7101–3 Direct acquisition.
908.7101–4 Replacement of motor vehicles.
908.7101–5 Used vehicles.
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908.7102 Aircraft.

908.7103 Office machines.
908.7104 Office furniture and furnishings.
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908.7107 Alcohol.
908.7108 Helium.
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908.7110 Coal.
908.7111 Arms and ammunition.
908.7112 Materials handling equipment replacement standards.
908.7113 Calibration services.
908.7114 Wiretapping and eavesdropping equipment.
908.7115 Forms.
908.7116 Electronic data processing tape.
908.7117 Tabulating machine cards.
908.7118 Rental of post office boxes.
908.7119 [Reserved]
908.7120 [Reserved]
908.7121 Special materials.

Subpart 908.72—Use of Acquisition and Supply Management Support Services at the Nevada Test Site

908.7200 Scope of subpart.
908.7201 Policy.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 908.8—Acquisition of Printing and Related Supplies

908.802 Policy.

(b) The Joint Committee on Printing, Congress of the United States periodically publishes "Government Printing and Binding Regulations" These regulations and DOE Order 1340.1A, Chapter VI, "Printing and Related Activities," govern the acquisition, use, and disposal of printing. Inclusion of printing requirements (limited exceptions are set forth in paragraphs 35–2 through 35–4 of the Government Printing and Binding Regulations) in contracts for supplies and services is prohibited unless specifically approved by the Director, Office of Administrative Services, Headquarters. Contracting officers shall insert the clause at 952.208–70.

Subpart 908.11—Leasing of Motor Vehicles

908.1100 Scope of subpart.

This subpart prescribes procedures for the leasing, from commercial concerns, by DOE offices and its authorized contractors, of motor vehicles that comply with Federal Motor Vehicle Safety Standards and applicable State motor vehicle safety regulations. It does not apply to motor vehicles leased outside the United States. Motor vehicle acquisition policies are at 908.7101.

908.1102 Presolicitation requirements.

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program.

908.1104 Contract clauses.

(e) The clause at 952.208–7, Tagging of Leased Vehicles, shall be inserted whenever a vehicle(s) is to be leased over 60 days, except for those vehicles exempted by FPMR 41 CFR 101–38.6.

908.1170 Leasing of fuel-efficient vehicles.

(a) All sedans and station wagons and certain types of light trucks, as specified by GSA, that are acquired by lease for 60 continuous days or more for official use by DOE or its authorized contractors, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 and of Executive Order 12003 and subsequent implementing regulations. Accordingly, the Director of Administration and Heads of Contracting Activities shall submit annually to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters, for approval, a forecast of plans for the lease of such vehicles during the fiscal year. Such forecast shall be submitted so as to arrive at Headquarters on or before November 1 of each year.

(b) Two copies of each proposal/request to commercially lease such vehicles shall also be forwarded to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters, for review and certification/approval prior to submission to GSA under the Consolidated Lease Program or execution of commercial lease agreements. All such documentation will be reviewed by this official and a determination made as to conformance with applicable annual forecasts and pertinent public laws and their implementations. (See DOE–PMR 41 CFR 109–38.13.)

(c) Leased vehicles will meet the miles-per-gallon criteria of, and be incorporated in, the approved plan of the fiscal year in which leases are initiated, reviewed, extended, or increased in scope. Vehicle leases will specify the vehicle model type to be provided.

Subpart 908.70—Use of Excess Materials From GSA Inventories

908.7001 Use of excess materials from General Services Administration inventories.

(a) It is the policy of DOE to comply with the provisions of the Federal Property Management Regulations 41 CFR Part 101–14, National Defense Stockpile, as supplemented from time to time by FPMR Bulletins.

(b) Section 328.2 of Defense Mobilization Order II provides that "Under such policies and procedures as the Administrator of General Services may prescribe, Government agencies which directly or indirectly use strategic and critical materials shall fulfill their requirements through the use of materials in Government inventories that are excess to the needs thereof."

(c) DOE offices shall fulfill their requirements for strategic and critical materials through use of the excess strategic and critical materials in the GSA inventories.

(d) General Services Administration (DS), Washington, D.C. 20406, should be contacted directly for any detailed information concerning specifications, prices, and methods of placing the order.

Subpart 908.71—Acquisition of Special Items

908.7100 Scope of subpart.

This subpart sets forth requirements and procedures for the acquisition of special items by DOE and contractors authorized to use special sources of supply to the extent indicated herein.

908.7101 Motor vehicles.

908.7101–1 Scope of section.

Acquisitions by purchase of motor vehicles shall be in accordance with this section.

908.7101–2 Consolidated acquisition of new vehicles by General Services Administration.

(a) New vehicles shall be procured in accordance with FPMR 41 CFR 101–25.304, 101–26.501, and 101–38.13, and DOE-PMR 41 CFR 109–25.304, 109–38.13, and 109–39.51.

(b) Orders for all motor vehicles shall be submitted on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice, in accordance with FPMR 41 CFR 101–26.501. Requisitions for sedans, station wagons, and certain light trucks as specified by GSA, should contain a certification that the acquisition is in conformance with Pub. L. 94–163, and Executive Order 12003 and 12375 and subsequent implementations.

(c) The schedule of dates for submission of orders is contained in FPMR 41 CFR 101–26.501–4. Heads of Contracting Activities shall consolidate and submit their requirements for passenger automobiles early in the fiscal year. Requisitions for sedans, station wagons and certain types of light trucks shall be submitted through Headquarters as outlined in 908.7101–6. Requisitions for all other types of vehicles shall be submitted directly to GSA.

908.7101–3 Direct acquisition.

Vehicles may be acquired by DOE activities directly rather than through GSA when a waiver has been granted by GSA. A copy of the activity's request to GSA for a waiver shall be forwarded to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters. In those cases involving general purpose vehicles where GSA refuses to grant a waiver and where it is believe that acquisition through GSA would adversely affect or otherwise impair the program, authority for direct acquisition shall be obtained from the above-mentioned Headquarters official, prior to acquisition. In the acquisition of special purpose vehicles for use by DOE and its authorized contractors, the Head of the Contracting Activity may authorize direct purchases. The purchase price for sedans and station wagons, shall not exceed any statutory limitation in effect at the time the acquisition is made. (See DOE–PMR 41 CFR 109–38.5101–4).

908.7101–4 Replacement of motor vehicles.

(a) The replacement of motor vehicles shall be in accordance with the replacement standards prescribed in FPMR 41 CFR 101–38.9 and DOE–PMR 41 CFR 109–38.9.

(b) Heads of Contracting Activities may arrange to sell, as exchange sales, used motor vehicles being replaced and to apply the proceeds to the purchase of similar new vehicles. However, in the event personnel are not available to make such sales, or it is in the best interest of the DOE office, GSA may be requested to sell the used vehicles.

908.7101–5 Used vehicles.

Normally, DOE does not purchase or authorize contractors to purchase used vehicles. However, Heads of Contracting Activities may authorize the purchase of used vehicles where justified by special circumstances; e.g., when new vehicles are in short supply, the vehicles are to be used for experimental or test purposes, or the vehicles are acquired from exchange sale. In accordance with DOE–PMR 41 CFR 109–38.5101–5, the statutory passenger vehicle allocation requirements for DOE shall apply to any purchase of used vehicles except in the case of vehicles to be used exclusively for experimental or test purposes.

908.7101–6 Acquisition of fuel-efficient vehicles.

(a) All purchases of sedans and station wagons, and certain types of light trucks as specified by GSA, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163, and of Executive Orders 12003 and 12375 and subsequent implementing regulations. Accordingly, the Director of Administration and Heads of Contracting Activities will submit annually to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters for approval, a forecast of plans for the purchase of such vehicles during the fiscal year. Such forecast shall be submitted so as to arrive at Headquarters on or before November 1 of each year. Additionally, the original and 2 copies of requisitions (GSA form 1781) for purchase of such vehicles shall also be forwarded to the above official for review and certification/approval prior to submission to GSA. All such documentation will be reviewed by this official and a determination made as to conformance with applicable annual forecasts and pertinent public laws and their implementations. (See DOE–PMR 41 CFR 109–38.13.)

(b) Sedans, station wagons, and light trucks requisitioned according to an approved forecast, but not contracted for by GSA until the subsequent fiscal year, will be included in the acquisition plan for the miles-per-gallon criteria of the year in which GSA signs the purchase contract along with the new vehicles planned for acquisition that year.

908.7101–7 Government license tags.

(a) Government license tags shall be procured and assignments recorded by DOE offices in accordance with FPMR 41 CFR 101–38.303.

(b) The letter "E" has been designated as the prefix symbol for all DOE official license tags. Assignments of specific "blocks" of tag numbers and the maintenance of tag assignment records, is performed by the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters. Assignments of additional "blocks" of tag number will be made upon receipt of written requests from field offices.

(c) Special license tags for security purposes shall be purchased in accordance with state and local laws, regulations, and procedures.

(d) In the District of Columbia, official Government tags shall be obtained from the Department of Transportation, Motor Vehicles Services Branch, District of Columbia, for all motor vehicles (except vehicles exempt for security purposes) based or housed in the District.

(e) See DOE–PMR 41 CFR 109–38.3 and 109–38.6 for additional guidance.

908.7102 Aircraft.

Acquisition of aircraft shall be in accordance with DOE–PMR 41 CFR 109–38.5205.

908.7103 Office machines.

Acquisitions of office machines by DOE offices and its authorized contractors shall be in accordance with FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403, and DOE–PMR 41 CFR 109–25.302, 109–25.302–3, and 109–25.4.

908.7104 Office furniture and furnishings.

Acquisitions of office furniture and furnishings by DOE offices shall be in accordance with FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–1, 101–25.302–5, 101–25.302–7, and 101–25.302–8, 101–25.404 and 101–26.505, and DOE–PMR 41 CFR 109–25.302, 109–25.302–1, and 109–25.350.

908.7105 Filing cabinets.

Acquisitions of filing cabinets shall be in accordance with FPMR 41 CFR 101–26.308 and 101–25.302–2 and DOE–PMR 41 CFR 109–25.302–2.50.

908.7106 Security cabinets.

(a) Acquisitions of security cabinets shall be in accordance with FPMR 41 CFR 101–26.507 and the "prerequisites to ordering" criteria contained in FPMR 41 CFR 101–25.302–2 and DOE–PMR 41 CFR 109–25.302–2.50.

(b) Fixed-price prime contractors and lower tier subcontractors may use GSA acquisition sources for security cabinets in accordance with FPMR 41 CFR 101–26.407 and FAR 51.

908.7107 Alcohol.

(a) This section covers (1) Bureau of Alcohol, Tobacco and Firearms, (ATF), Treasury Department, alcohol regulations applicable to DOE, (2) delegations of authority to submit

applications to purchase tax-free alcohol or specially denatured alcohol, and (3) purchases of alcohol by DOE or authorized contractors. To the fullest extent practicable, alcohol for use by DOE or its cost-type contractors shall be procured on a tax-free basis.

(b) ATF regulations relating to the acquisition and use of alcohol free of tax, by Government agencies, are set forth in 26 CFR 213.141–213.146. Copies of excerpts from these regulations may be secured from the Bureau of Alcohol, Tobacco and Firearms, Department of Treasury, Washington, D.C. 20226. These regulations shall be followed in the acquisition of alcohol.

(c) ATF Form 1444/1486, "Tax Free Spirits or Specially Denatured Spirits for Use of United States," shall be used for acquisitions of specially denatured alcohol and ethyl alcohol. Section I of the form is the application for permission to acquire and Section II is the permit. If acquisition from more than one warehouse is desirable, separate applications must be made for withdrawal from each warehouse. When permits are no longer required, they should be forwarded to the Bureau of Alcohol, Tobacco and Firearms for cancellation. Alcohol procured by use of the ATF form referred to in this subsection shall be used exclusively on DOE work.

(d) The Procurement Executive has been authorized to sign and delegate to others authority to sign applications under Bureau of Alcohol, Tobacco and Firearms regulations relating to the acquisition and use of alcohol free of tax. Specific DOE personnel have been delegated authority to execute Part I of Form 1444/1486 by letters to the Director, Bureau of Alcohol, Tobacco and Firearms without power of redelegation. Copies of such letters have been furnished to field offices. Only the individuals so authorized shall execute Section I of these forms. Requests by field offices for new authorizations or changes to existing authorizations shall be submitted by letter to the Procurement Executive.

(e) Applications on the ATF Form 1444/1486 shall be executed in duplicate by an authorized DOE official and mailed directly to the address on the application. Only one permit will be provided to each field organization. Due to the numerous locations managed by field operations offices, the exact shipping address need not be shown in block 3 of the form. Shipments, however, must be addressed to the "Department of Energy at various locations within the United States". The ATF will assign the application a permit number and return it to the requestor. Distribution of certified copies shall be controlled and each holder of a certified copy recorded.

(f) Annually, the Bureau of Alcohol, Tobacco and Firearms publishes printed lists of Distilled Spirits Plants, Bonded Warehouses and Denaturing Plants Authorized to Operate. Copies of these lists and supplies of Form 1444/1486 may be secured by written request to the Director, Bureau of Alcohol, Tobacco and Firearms, Special Operations Branch, Washington, DC 20226.

(g) A signed copy of the permit shall accompany the original purchase order issued to the plant or warehouse, where it shall be retained or returned with the shipment. Subsequent orders shall refer to the permit on file in the plant or warehouse if it was retained.

(h) When alcohol is shipped, the shipper prepares the required form as specified by Bureau of Alcohol, Tobacco and Firearms regulations and forwards them to the consignee. Upon receipt of the receiving report covering the shipment, the officer who signed the purchase order shall execute the certificate of receipt and forward it to the appropriate Regional Director, Bureau of Alcohol, Tobacco and Firearms. The carrier transporting the alcohol shall also be given a receipt as specified by Bureau of Alcohol, Tobacco and Firearms regulations.

(i) Abandoned and forfeited alcohol which has come into the custody or control of a Federal agency may be obtained by following the procedure set forth in FPMR 41 CFR 101–43.4.

908.7108 Helium.

(a) Acquisitions of helium by DOE and its authorized contractors shall be in accordance with this section.

(b) The helium act (Pub. L. 86–777, as amended (50 U.S.C. 167(d)) provides that, to the extent that supplies are readily available, whether in gaseous or liquid form, DOE shall purchase all major requirements of helium from the Secretary of Interior, Bureau of Mines, or from the Bureau of Mines distribution contractors eligible to sell Bureau of Mines helium to Federal agencies and their users in accordance with 30 CFR Part 602.

(c)(1) Purchases may be made directly from the Bureau of Mines by forwarding a purchase order in duplicate to: Bureau of Mines, Division of Helium Operations, 1100 South Fillmore Street, Amarillo, Texas 79101.

(2) Purchases may be made from those commercial firms listed in the Bureau of Mines as eligible to sell helium to Federal users.

(i) The purchase document shall contain the following statement: "Helium furnished under this contract shall be Bureau of Mines Helium."

(ii) A copy of each acquisition document shall be furnished to the address in paragraph (c)(1) of this section.

908.7109 Fuels and packaged petroleum products.

Acquisitions of fuel and packaged petroleum products by DOE offices shall be in accordance with FPMR 41 CFR 101–26.602. When contractors are authorized, consistent with 951, to acquire such products from Defense sources, they shall do so in accordance with FPMR 41 CFR 101–26.602.

908.7110 Coal.

DOE offices and authorized contractors may participate in the Defense Fuel Supply Center (DFSC) coal contracting program for carload or larger lots. If participation is desired, estimates shall be submitted to DFSC in accordance with FPMR 41 CFR 101–26.602.

908.7111 Arms and ammunition.

Pursuant to 10 U.S.C. 4655, the Secretary of the Army is authorized to furnish arms, suitable accouterments for use therewith, and ammunition for the protection of public money and property.

908.7112 Materials handling equipment replacement standards.

Materials handling equipment shall be purchased for replacement purposes in accordance with the standards in FPMR 41 CFR 101–25.405 and DOE–PMR 41 CFR 109–25.4. Heads of Contracting Activities are authorized to replace an item earlier than the date specified in such standards under unusual circumstances. A written justification shall be placed in the purchase file.

908.7113 Calibration services.

Orders for calibration services may be placed with the National Bureau of Standards, Washington, D.C. 20234, by either DOE acquisition offices or its authorized contractors. Copies of the letters authorizing contractors to order calibration services on behalf of DOE shall be sent to the Bureau of Standards, Attention: "Administrative Services Division."

908.7114 Wiretapping and eavesdropping equipment.

Acquisition by DOE offices and contractors of devices primarily designed to be used surreptitiously to overhear or record conversations is prohibited.

908.7115 Forms.

(a) DOE forms shall be obtained by DOE offices in accordance with DOE Order 1322.2A, "Forms Management." Cost-type contractors shall obtain DOE forms through the DOE contracting officer.

(b) Standard, optional, and certain other agency forms as listed in the GSA Supply Catalog will be obtained by DOE offices in accordance with FPMR 41 CFR 101–26.302.

(c) Marginally punched continuous forms shall be obtained in accordance with FPMR 41 CFR 101–26.703.

908.7116 Electronic data processing tape.

(a) Acquisitions of electronic data processing tape by DOE offices shall be in accordance with FPMR 41 CFR 101–26.508.

(b) Acquisitions of electronic data processing tape by authorized contractors shall be in accordance with FPMR 41 CFR 101–26.508–1. However, if adequate justification exists, Heads of Contracting Activities may authorize contractors to obtain their tape from other sources. When such an authorization is granted, a copy of the authorization and justification shall be retained in the contract file.

908.7117 Tabulating machine cards.

DOE offices shall acquire tabulating machine cards in accordance with FPMR 41 CFR 101–26.509.

908.7118 Rental of post office boxes.

DOE offices and authorized contractors may rent post office boxes on an annual basis, or for shorter periods by quarters, where necessary. Payments for annual rentals are to be made in advance at the beginning of the fiscal year, and for periods of less than a year, either in advance for the whole period or at the beginning of each quarter in which the box is to be used.

908.7119 [Reserved]

908.7120 [Reserved]

908.7121 Special materials.

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials are unclassified, quantities, destination or use may be classified. See appropriate sections of the Classification Guide. Contracting activities shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the procedures stated therein.

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* The Oak Ridge Operations Office is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. Oak Ridge Operations Office has assigned management of these metals to NLO, Inc., P.O. Box 39158, Cincinnati, Ohio 45239. DOE offices and authorized contractors shall coordinate with NLO, Inc., regarding the availability of the above metals prior to the purchase of these metals on the open market.

(c) *Lithium.* Lithium is available at no cost other than normal packing, handling, and shipping charges. The excess quantities at Oak Ridge are to be considered as the first source of supply, prior to procurement of lithium or lithium compounds from any other source.

Subpart 908.72—Use of Acquisition and Supply Management Support Services at the Nevada Test Site

908.7200 Scope of subpart.

This subpart sets forth DOE policy for the use of the acquisition and supply management support services at the Nevada Test Site (NTS). The provisions of this subpart shall be applied to contractors carrying out authorized projects at the NTS.

908.7201 Policy.

As an integral part of its responsibility for furnishing project-related materials, equipment, and technical services, the Nevada Operations Office shall, except in special cases, provide to the fullest practicable extent, the necessary acquisition and supply management support services required to support the technical efforts of all organizations sponsoring experiments or participating in the scientific aspects of experiments conducted at the NTS. Furthermore, all organizations that are carrying out projects or performing work at the NTS will make the fullest practicable use of these facilities and services to prevent unnecessary duplication and to assure maximum efficiency and economy.

PART 909—CONTRACTOR QUALIFICATIONS

Subpart 909.1—Responsible Prospective Contractors

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Subpart 909.4—Debarment, Suspension, and Ineligibility

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909.570–10 Action in lieu of termination.
909.570–11 Architect-engineering and construction contracts.
909.570–12 Subcontractors and consultants.
909.570–13 Remedies.
909.570–14 Examples.
909.570–15 Disclosure format.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 909.1—Responsible Prospective Contractors

909.104–1 General standards.

A prospective contractor, in order to be determined as responsible, in the opinion of the contracting officer, must meet the following standards as they relate to the particular acquisition under consideration:

(b) Have an established system of accounting and financial controls which the contracting officer determines will permit the effective administration of the type of contract proposed, particularly if under its terms, the costs incurred are a factor in determining the amount payable under the contract, or if advance or progress payments are requested.

(g) If a bid or proposal for a construction contract qualifies any major equal opportunity requirement included or referenced in a solicitation, the qualification shall constitute grounds for a determination that the offeror is not eligible for award. In the case of construction acquisition actions by DOE prime contractors, this determination shall be made only with the approval of the DOE contracting officer.

Subpart 909.4—Debarment, Suspension, and Ineligibility

909.402 Policy.

DOE debarment and suspension regulations are contained in 10 CFR Part 1035. Ineligibility regulations are contained in the FAR.

909.404 Consolidated lists of debarred, suspended, and ineligible contractors.

The GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors (GSA List) and the DOE Consolidated List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees (DOE List) shall be reviewed in accordance with 10 CFR 1035.15.

909.406 Debarment.

909.406-3 Procedures.

(a) Information of possible fraud, waste, abuse, or other forms of wrongdoing which may constitute or contribute to grounds for debarment or suspension shall be reported in accordance with 10 CFR 1035.5(c).

909.407 Suspension.

909.407-3 Procedures.

(a) See 909.406-3.

Subpart 909.5—Organizational Conflicts of Interest

909.500 Scope of subpart.

DOE acquisitions will be processed in accordance with 909.570 below rather than as provided at FAR subpart 9.5 with respect to organizational conflicts of interest.

909.570 DOE organizational conflicts of interest.

909.570-1 Scope of section.

This section sets forth Department of Energy policies and procedures regarding organizational conflicts of interest (OCI) and is issued pursuant to section 644 of the Department of Energy Organization Act (Pub. L. 95-91) to implement the requirements of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577), as amended, and the Federal Energy Administration Act of 1974 (Pub. L. 93-275), as amended.

909.570-2 Policy.

It is the policy of the DOE to identify and avoid or mitigate organizational conflicts of interest before entering into contracts, agreements, and other arrangements.

909.570-3 Definitions.

"Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

"Architect-engineering services" means the work or effort of a professional nature associated with the study, test, design, supervision, and construction, alteration, or repair of real property including utilities and appurtenances thereto. Such services embrace conceptual design and Title I, Title II, and Title III work, as defined in 936.605(c).

"Contract" for purposes of implementing policy on organizational conflicts of interest, means any contract, agreement or other arrangement with the Department.

"Contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, which is a party to a contract with the Department.

"Evaluation services or activities" means any work or effort, the principal purpose of which involves the independent study of technology, process, product, or policy.

"Offeror" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, submitting a bid or proposal, solicited or unsolicited, to the Department to obtain a contract or modification thereof.

"Organizational conflicts of interest" means that a relationship or situation exists whereby an offeror or a contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that either directly or indirectly, through a client relationship relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the contract.

"Research and development" means any work or effort, the principal purpose of which involves (1) theoretical analysis, exploration, or experimentation; or (2) extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

"Subcontractor" means any subcontractor of any tier which performs work under a contract.

"Technical consulting and management support services" means any work or effort, the principal purpose of which is to provide internal assistance to any program element or other organizational component of the Department in the formulation or administration of its programs, projects, or policies, which requires the contractor to be given access to internal or proprietary data. Such services typically include assistance in the preparation of program plans; evaluation, monitoring or review of contractors' activities or proposals submitted by prospective contractors; preparation of preliminary designs, specifications, or statements of work.

909.570-4 Criteria for recognizing organizational conflicts of interest.

(a) *General.* Two questions should generally be asked in determining whether organizational conflicts of interest exist: (1) Are there conflicting roles which might bias a contractor's judgment in relation to its work for the Department? (2) Is the contractor being given an unfair competitive advantage based on the performance of the contract? The ultimate determination as to whether organizational conflicts of interest exist should be made in the light of common sense and good business judgment based upon the relevant facts and the work to be performed. While it is difficult to identify, and to prescribe in advance, a specific method for avoiding all the various situations or relationships which might involve potential organizational conflicts of interests, Department personnel must pay particular attention to proposed contractual requirements which call for the rendering of advice, or consultation or evaluation services, or similar activities that lay direct groundwork for the Department's decisions on future acquisitions, research and development programs, production and regulatory activities.

(b) *Situations or relationships involving organizational conflicts of interest.* The following general examples (which are not all-inclusive) illustrate situations or relationships where potential organizational conflicts of interest frequently arise. Specific examples are set forth at 909.570-14.

(1) Contract performance involving the preparation and furnishing of complete or essentially complete specifications which are to be used in

competitive acquisition for the furnishing of products or services.

(2) Contract performance involving the preparation and furnishing of a detailed plan for specific approaches or methodologies that are to be incorporated in a competitive acquisition.

(3) Contract performance involving access to internal information not available to the public concerning Departmental plans or programs and related opinions, clarifications, interpretations, and positions.

(4) Contract performance involving access to proprietary information which cannot lawfully be used for purposes other than those authorized by the owners.

(5) Contract performance involving evaluation of the contractor's products or services, or the products or services of another party, where the contractor is or has been substantially involved in their development or marketing.

(6) Contract performance involving the preparation and furnishing of advice to the Department in a technical area where the contractor is also providing consulting assistance in the same area to any other organization.

(7) Contract performance involving the preparation and furnishing of advice to the Department on a regulatory matter where the contractor is also providing assistance on the same or similar matter to any organization regulated by the Department.

(c) *Other considerations.* An organizational conflict of interest may exist or arise:

(1) Even though no follow-on acquisition is anticipated;

(2) Even though a hardware exclusion clause may not be appropriate; and

(3) When a contract is awarded on a noncompetitive or a sole source basis.

(d) An organizational conflict of interest is more likely to be disclosed if a contract is competitive. Accordingly, greater care shall be exercised in the absence of competition.

909.570–5 Disclosure of organizational conflicts of interest.

(a) When submitting solicitations and unsolicited proposals for (1) evaluation services or activities; (2) technical consulting and management support services and professional services; (3) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (4) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and included in the resulting contract, offerors shall be required to disclose relevant information bearing on the possible existence of any organizational conflicts of interest or complete the representation required by 909.570–7. This requirement shall also apply to all modifications of contracts of the types noted above except those issued under the Changes clause. Where, however, a disclosure statement of the type required by the Organizational Conflicts of Interest Disclosure or Representation provision has previously been submitted with regard to the contract being modified, only an updating of such statement shall be required. Information submitted by offerors pursuant to the disclosure requirement shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes.

(b) When the Government finds that an organizational conflict of interest exists or may exist with respect to an offeror or contractor, no contract or contract modification award covered by 909.570–7 shall be made until the organizational conflict of interest has been adequately avoided or mitigated, except as provided in 909.570–9.

909.570–6 Notices and representations: Action required of contracting officers.

The disclosure or representation required by 909.570–7 is designed to alert the contracting officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. However, this disclosure or representation may not identify a potential organizational conflict of interest involving a successful offeror that could affect the offeror's participation in subsequent acquisitions arising out of or related to work performed under a contract that results from the solicitation currently under consideration. Accordingly, whenever such potential conflicts are foreseeable by the Government, a special notice also shall be included in the solicitation informing offerors of the fact that such a potential conflict is foreseen and that a special contract clause designed to avoid or mitigate such conflict will be included in any resultant contract as required by 909.570–7. Such notice shall specify the proposed extent and duration of restrictions to be imposed with respect to participation in subsequent acquisitions. A fixed term of reasonable duration is measured by the time required to eliminate what would otherwise constitute an unfair competitive advantage. This is a variable; and in no event shall an exclusion be stated which is not related to specific expiration date or an event certain. In the event a contractor, having performed on one contract, later seeks work that stems or may be deemed to stem directly from prior performance, such contractor shall not be precluded from proposing on follow-on work unless the prior contract contained an appropriate follow-on restriction.

909.570–7 Disclosure or representation.

The disclosure or representation provision at 952.209–70 shall be included in all solicitations, scope modifications, and unsolicited proposals for (a) evaluation services or activities; (b) technical consulting and management support services and professional services; (c) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (d) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and included in the resulting contract. 909.570–15 contains a suggested outline for the disclosure submission.

909.570–8 Contract clauses.

(a) *General contract clause.* Except where a special clause has been determined to be appropriate, all contracts subject to the disclosure or representation requirement of 909.570–7 shall include the clause set forth at 952.209–71.

(b) *Special contract clauses.* (1) If it is determined from the nature of the proposed contract that a potential organizational conflict of interest may exist, the Contracting Officer may determine that such conflict can be avoided through the use of an appropriate special contract clause. Examples of the types of clauses which may be employed include, but are not limited to, the following:

(i) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related nonproduction contract previously performed by the contractor;

(ii) Software exclusion clauses;

(iii) Clauses which require the contractor (and/or certain of its key personnel) to avoid certain organizational conflicts of interest;

(iv) Clauses which provide for the protection of the confidentiality of data and guard against its unauthorized use; and

(v) Clauses that prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or

being in a position to influence such work.

If deemed appropriate, the prospective contractor may be given the opportunity to negotiate the terms and conditions of the clause and its application including the extent and time period of any restrictions.

(2) Contracts for technical consulting and management support services, as defined in 909.570–3, are particularly susceptible to organizational conflicts of interest. Therefore, the clause set forth at 952.209–72 shall be included in all contracts for technical consulting and management support services. This clause, after any appropriate modification, may also be included in any contract for professional services and evaluation services and activities.

909.570–9 Evaluation, findings, and contract award.

(a) The contracting officer or selection official, as appropriate, shall evalute all relevant facts submitted by an offeror pursuant to the requirements of 909.570–6 and such other relevant information as may be available concerning possible organizational conflicts of interest. After evaluation all such information in accordance with the criteria of 909.570–4 and prior to any award, a finding shall be made by the contracting officer whether possible organizational conflict of interest exist with respect to a particular offeror or whether there is little or no likelihood that such conflicts exist. When formal Source Evaluation Board procedures are applicable, the finding shall be made by the Source Selection Official. If the finding indicates that such conflicts exist, then the contracting officer shall:

(1) Disqualify the offeror from award; or

(2) Avoid such conflicts by the inclusion of appropriate conditions in the resulting contract; or

(3) If such conflicts cannot be avoided by an appropriate contract clause, and the Secretary or the Secretary's designee has nevertheless determined that award of the contract to the offeror is in the best interest of the United States, the contract may be awarded. Where such a public interest determination is made, an appropriate written finding and determination shall be published in the **Federal Register** and an appropriate clause included in the contract to mitigate the conflict, to the extent feasible, prior to any award.

(b) Examples of circumstances justifying the determination permitted by 909.570–9(a)(3) include, but are not limited to:

(1) Situations where the public exigency will not otherwise permit; and

(2) Situations where the work or services cannot otherwise be obtained.

909.570–10 Action in lieu of termination.

If, after award, a possible organizational conflict of interest is identified by the contractor or other sources and the contracting officer determines that such a conflict does in fact exist and that it would not be in the best interest of the Government to terminate the contract as provided in the clauses required by 909.570–8, the contracting officer shall take every reasonable action to avoid or mitigate the effects of the conflict.

909.570–11 Architect-engineering and construction contracts.

(a) The award of related architect-engineering services and construction contracts or subcontracts to the same contractor can result in self-inspection of construction work and permit the contractor to render biased decisions. Such contract awards shall not be permitted unless a waiver is obtained prior to award from the Department's Procurement Executive.

(b) The award of architect-engineering services contracts, the principal purpose of which is to provide evaluation services and activities or technical consulting and management support services, shall be subject to the requirements of 909.570–7 and 909.570–8(b)(2).

909.570–12 Subcontractors and consultants.

The contracting officer shall require offerors and contractors to obtain for the Department a disclosure or representation in accordance with 909.570–7 from subcontractors and consultants who may be performing services similar to the services provided by the prime, except that subcontractors shall not normally be required to submit the disclosure or representation if such subcontract is for supplies. Such disclosure or representation may be submitted by the subcontractors and consultants directly to the contracting officer and they shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes. The contracting officer shall assure that contract clauses in accordance with 909.570–8 are included in subcontracts or consultant agreements involving peformance of work under a prime contract covered by this subpart.

909.570–13 Remedies.

In addition to such other remedies as may be permitted by law or contract, for a breach of any of the restrictions in this subpart or for nondisclosure or misrepresentation of any relevant facts required to be disclosed by this subpart, the Department may disqualify the contractor for subsequent Department contracts. Contractors and offerors may also be subject to the criminal penalties expressed in 18 U.S.C. 1001 for such violations.

909.570–14 Examples.

(a) In development work it is normal to select firms which have done the most advanced work in the field. It is to be expected that these firms will design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than can firms which did not participate in the development, and this affects the time and quality of production, both of which are important to the Government. In many instances, the Government may have financed such development. Thus, the development contractor may have an unavoidable competitive advantage which is not considered unfair and no prohibition should be imposed.

(b) The following examples illustrate types of situations and relationships where organizational conflict of interest questions frequently arise, but they are not all-inclusive.

(1) Contractor A, in connection with the performance of a study contract, is given information by the Department regarding Department plans for future acquisitions. This information is not available to interested industrial firms. *Guidance.* Normally this would constitute an OCI and the contractor should not be permitted to compete with such firms for work relating to such plans.

(2) Company A, in response to a requests for proposals (RFP), proposes to undertake certain analyses of an energy savings device as called for in the RFP. The company is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, A advises that it is currently performing similar analyses for the manufacturer of the device. *Guidance.* Normally this would constitute an OCI and a contract for that particular work would not be awarded to Company A because it would be placed in a position in which its judgment could be biased in relationship to its work for the Department. Since there are other well qualified companies available, there would be no reason for granting a waiver of the policy.

(3) Accounting Firm A, in response to a requests for proposals (RFP), proposes to undertake an analysis of the profitability of one segment of the

energy industry. The firm is one of several firms considered to be technically well qualified. In response to the inquiry in the RFP, A advises that it derives a substantial portion of its income from the industry to be studied. *Guidance.* Normally this would constitute an OCI and a contract would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relationship it its work for the Department.

(4) Company A prepares updated Government specifications for a standard refrigerator to be procured competitively. *Guidance.* Normally this would constitute an OCI and Company A shall not be allowed for a reasonable period of time to compete for supply of the refrigerator.

(5) Company A designs or develops new electronics equipment and, as a result of the design or development, prepares specifications. *Guidance.* Normally this would not constitute an OCI and the company may supply the electronics equipment.

(6) A tool company and/or a machinery company representing the American Tool Institute works under the supervision and control of Government representatives to refine specifications or to clarify the requirements of a specific acquisition. *Guidance.* Normally this would constitute an OCI and these companies may supply the item.

(7) Prior to acquisition of Automatic Data Processing (ADP) Equipment, Company A is awarded a contract to develop software to automate a DOE function. Since the software can be written to favor a particular vendor's commercial ADP hardware, a potential conflict of interest exists. *Guidance.* Normally this would constitute an OCI and Company A should be barred from at least the initial follow-on ADP hardware acquisition using the software developed under its development contract.

(8) Company A receives a contract to define the detailed performance characteristics a Government agency will require for the purchase of rocket fuels. A has not developed the particular fuels. At the time the contract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the Government agency to choose competitively a contractor to develop or produce the fuels. *Guidance.* Normally this would constitute an OCI and Company A shall not be permitted to bid on this acquisition.

(9) Company A receives a contract to prepare a detailed plan for the acquisition of services aimed at the advanced scientific and engineering training of the Department's personnel. It suggests a curriculum which the agency endorses and incorporates in requests for proposals to various institutions to establish and conduct such training. *Guidance.* Normally this would constitute an OCI and Company A shall not be permitted to bid on this acquisition.

(10) Consulting Firm A, in response to an RFP, proposes to undertake an evaluation of the environmental impacts of coal-fired powered plants as called for in the RFP. The company is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, A advices that it derives a substantial portion of its income from companies which manufacture nuclear power plants. *Guidance.* Normally this would constitute an OCI and a contract for that particular work would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relationship to its work for the Department.

(11) Consulting Firm A derives a substantial portion of its income from Company B in connection with the study of natural gas production. Company B is also heavily involved with motor gasoline marketing. A discloses these facts in response to an RFP for a study of motor gasoline marketing. *Guidance.* Normally this would constitute an OCI and a contract for the study of motor gasoline marketing plants would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relation to its work for the Department.

(12) Firm A, because of its unique technical expertise, has been requested to assist the Department in the evaluation of proposals which will result from a competitive solicitation. Firm A also plans to submit a proposal in response to this game solicitation. *Guidance.* Normally this would constitute a conflict and Firm A should be precluded from participating in the solicitation. In a particular case, it may be desirable (e.g., when the competitive field in narrow) to allow a separate division or affiliate of Firm A to submit a proposal; but in such a case, of course, Firm A would not itself participate in the evaluation of this proposal, which would be undertaken by DOE personnel or another firm.

909.570-15 Disclosure format.

(a) With respect to past, present, and currently planned interests (financial, contractual, organizational, or otherwise), the offeror should furnish a list of past, present, and currently planned activities (including contracts) which relate to the work to be performed under the solicitation.

(b) The list may be in columnar format showing:

(1) The company (or agency) for which the work is being, has been, or will be performed;

(2) Nature of the work (a brief description);

(3) Period of performance for the work;

(4) Dollar value of the work; and

(5) Sales and marketing activity.

(c) Similar information to (b) above should be provided by the covered subcontractors and consultants relating to the work to be performed by them under the solicitation.

PART 910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

910.004 Selecting specifications or descriptions for use.

(f) *Specification for concrete using fly ash.* Pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, the Environmental Protection Agency has promulgated rules at Part 249 of Title 40 of the Code of Federal Regulations regarding the use of certain waste byproducts as generally acceptable substitutes for energy intensive raw materials. When cement or concrete is being acquired, specifications should include provisions to allow for the use of (as an optional or alternate material) cement or concrete which contains fly ash. However, specifications should not be revised to allow the use of fly ash if it can be determined that for a particular project or application reasonable performance requirements for the cement or concrete will not be met, or that the use of fly ash would be inappropriate for technical reasons. Architect-engineer contracts should include provisions assuring that the provisions of 40 CFR Part 249 are considered in developing specifications.

(g) *Measurement principles for sources and special nuclear material transfers.*

(1) Certain principles regarding the resolution of measurement differences have been developed which should be used as guides in the preparation of contracts or other agreements by DOE in which monetary payments or credits depend on quantity and quality of source and special nuclear material. The provisions providing for the resolution of measurement differences must be such that resolution is always accomplished while at the same time

minimizing any advantage one party might have over the other.

(2) Each contract, lease or agreement should contain a:

(i) Clause describing material to be transferred;

(ii) Clause specifying the method by which the quantity and quality are to be measured and reported;

(iii) Clause specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(iv) Clause providing for the use of an umpire to settle unresolved differences in the analytical samples; and

(v) Clause specifying in detail which party shall bear the costs of revolving a difference and what constitutes such costs.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

PART 912—CONTRACT DELIVERY OR PERFORMANCE

Subpart 912.3—Priorities, Allocations, and Allotments

Sec.
912.300 Scope of subpart.
912.302 General.
912.304 Solicitation provision and contract clause.

Subpart 912.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

912.503 Stop-work orders.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 912.3—Priorities, Allocations, and Allotments

912.300 Scope of subpart.

This subpart implements and supplements FAR Subpart 12.3—Priorities, Allocations, and Allotments, and implements the regulations and procedures of the Defense Materials System (DMS) and the Defense Priorities System (DPS) in solicitations and contracts in support of authorized national defense and those energy programs which maximize domestic energy supplies. (See 15 CFR Parts 330-354).

912.302 General.

(d) Programs which maximize domestic energy supplies are eligible for priorities and allocations support depending on an executive decision made on a case-by-case basis. Eligibility is pursuant to section 104(a) of the Energy Conservation and Policy Act, Pub. L. 94-163, which added a new section 101(c) to the Defense Production Act. Guidance is provided by 10 CFR Part 216 and Department of Energy publication DOE/PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Orders on Schedule," dated August 1980. Rated orders and ACM orders placed in support of authorized energy programs are equivalent to orders placed in support of authorized defense programs under DMS/DPS and receive the same preferential treatment throughout the industrial supply chain.

(e) Heads of Contracting Activities shall ensure that members of their staff and contractors under their jurisdiction are advised of the provisions of the DMS and DPS regulations and that the related procedures are followed to ensure training and adherence to the regulations and procedures throughout the industrial supply chain. Under DMS and DPS, it is mandatory that the priority rating be extended through the industrial chain from supplier to supplier.

912.304 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 952.212-70, Rated or Authorized Controlled Material Orders (Atomic Energy) in solicitations that will result in the placement of rated orders or ACM orders for authorized DOE atomic energy programs.

(b) The contracting officer shall insert the clause at 952.212-71, Priorities, Allocations, and Allotments for DOE Atomic Energy Programs, in contracts that are placed in support of authorized DOE atomic energy programs.

(c) The use of the provisions at 952.212-70 and the clause at 952.212-71 is optional for industrial delivery orders of $2,500 or less.

(d) The contracting officer shall insert the provision at 952.212-70 (Alternate I) Rated or Authorized Controlled Material Orders (Domestic Energy Supplies), in solicitations that may result in the placement of rated orders or ACM orders for authorized energy programs.

(e) The contracting officer shall insert the clause at 952.212-71 (Alternate I) Priorities, Allocations, and Allotments-Special E.P.C.A. clause if it is believed the contract involves a program the purpose of which is to maximize domestic energy supplies.

Subpart 912.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

912.503 Stop-work orders.

(b) Approval before issuance of a stop-work order shall be obtained at one organizational level above the contracting officer or at such higher level as the Head of the Contracting Activity may require.

PART 913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 913.3—Fast Payment Procedure

Sec.
913.301 General.

Subpart 913.4—Imprest Fund

913.403 Agency responsibilities.

Subpart 913.5—Purchase Orders

913.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 913.3—Fast Payment Procedure

913.301 General.

The fast payment procedure delineated in FAR Subpart 13.3 is not to be utilized by DOE.

Subpart 913.4—Imprest Funds

913.403 Agency responsibilities.

(d) If imprest funds are to be used, the HCA shall issue detailed procedures for the control of such funds.

Subpart 913.5—Purchase Orders

913.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

The combination purchase request/order/receipt form may be used in lieu of the Optional Form 347 for small purchases.

PART 914—FORMAL ADVERTISING

Subpart 914.2—Solicitation of Bids

Sec.
914.201-5 Part IV Representations and instructions.
914.201-7 Contract clauses.
914.201-70 Preparation of invitations for bids.

Subpart 914.4—Opening of Bids and Award of Contract

914.401 Receipt and safeguarding of bids.
914.402-1 Unclassified bids.
914.406 Mistakes in bids.

914.406–3 Other mistakes disclosed before award.
914.406–4 Mistakes after award.
914.407–8 Protests against award.
914.407–70 Protest authorities.
914.408–2 Award of classified contracts.

Subpart 914.5—Two-Step Formal Advertising

914.502 Conditions for use.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 914.2—Solicitation of Bids

914.201–5 Part IV—Representations and instructions.

(a) *Section K, Representations, certifications, and other statements of bidders.*

(1) DOE contracting activities may elect to adopt the simplified representations and certifications technique, described at 915.406–5, in their formally advertised acquisitions.

(b) Include the solicitation provision at 952.215–70 if the resulting contract will contain any of the clauses referenced therein.

914.201–7 Contract clauses.

(b)(1) When contracting by formal advertising, the contracting officer shall insert the clause at FAR 52.214–27, Price Reduction for Defective Cost or Pricing Data—Modifications-Formal Advertising, in all solicitations and contracts.

914.201–70 Preparation of invitations for bids.

When an option is to be employed, the option quantity should be for an amount which bears a reasonable relationship to the initial firm quantity amount. For procedures to be used in setting the option quantity, see FAR 17.2.

Subpart 914.4—Opening of Bids and Award of Contract

914.401 Receipt and safeguarding of bids.

(c) Envelopes, or other outer covering, containing identified bids shall be time-stamped (indicating the place, date, and time of receipt) upon receipt, either in a mail room or other receiving point at the address specified in the invitation.

914.402–1 Unclassified bids.

(d) At the bid opening, the relative merits of any bid shall not be discussed by the person opening the bids or the contracting officer, with the bidders, their representatives, or with casual observers. No statements shall be issued by the bid opener or the contracting officer at a bid opening bearing on the award, the possibility of a readvertisement, mistakes in bids, etc.

914.406 Mistakes in bids.

914.406–3 Other mistakes disclosed before award.

(e) Pursuant to FAR 14.406–3(e), the Procurement Executive, has been delegated authority by the Secretary to make the determinations under FAR 14.406–3. In the case of mistakes in bids alleged after opening of bids and before award, the Procurement Executive has redelegated this authority to Heads of Contracting Activities without power of redelegation and to make administrative determinations regarding withdrawal of bids as provided for in paragraphs (a) and (c) of FAR 14.406–3, providing that each such determination shall be approved by Legal Counsel.

914.406–4 Mistakes after award.

The Procurement Executive has been delegated authority to make the determinations under FAR 14.406–4. Mistakes in bids after award, together with the data set forth in FAR 14.406–4(e), shall be submitted to the Procurement Executive for decision.

914.407–8 Protests against award.

(a) *General.* Protests must be received within ten working days after the basis for protest is known or should have been known *except that* protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals.

(b) Protests before award.

(3) The Head of the Contracting Activity or designee shall obtain, through the Office of Procurement Review, Headquarters, approval of the Procurement Executive to make an award where a protest has been submitted to either the DOE or to the Comptroller General.

914.407–70 Protest authorities.

(a) The Procurement Executive has the authority and responsibility for processing, reviewing, and providing to the General Accounting Office (GAO) all information relevant to a protest filed with GAO and otherwise representing DOE in all matters relating to such protests. In the case of protests filed with DOE Headquarters, the Procurement Executive shall decide such protests. The authorities and responsibilities concerning GAO protests have been delegated to the Director, Business Clearance Division, Office of Procurement Review, Headquarters.

(b) The Head of the Contracting Activity (HCA) shall decide all agency protests made to the contracting activity, with the following exceptions:

(1) The HCA is the signatory contracting officer; or

(2) Prior to making final disposition of the protest, the action is protested to GAO or DOE Headquarters; or

(3) The HCA finds that the issues raised have the potential for significant impact on DOE acquisition policy or the accomplishment of programmatic requirements.

(c) If a protest is filed with the Contracting Activity, and a decision is made by the Head of Contracting Activity, the agency will not entertain a protest to the Procurement Executive.

914.408–2 Award of classified contracts.

DOE regulations regarding the safeguarding of restricted data and procedures for its destruction are contained at 10 CFR Part 795.

Subpart 914.5—Two-Step Formal Advertising

914.502 Conditions for use.

(c) Use of the two-step formal advertising method shall be approved by the Head of Contracting Activity. The contracting officer shall submit a written request for approval justifying its use in accordance with FAR 14.502.

PART 915—CONTRACTING BY NEGOTIATION

Subpart 915.1—General Requirements for Negotiation

Sec.
915.105 Competition.

Subpart 915.2—Negotiation Authorities

915.200 Scope of subpart.
915.201 National emergency.
915.204 Personal or professional services.
915.213 Technical equipment requiring standardization and interchangeability of parts.
915.215 Otherwise authorized by law.

Subpart 915.3—Determinations and Findings to Justify Negotiation

915.307 Signatory authority.

Subpart 915.4—Solicitation and Receipt of Proposals and Quotations

915.401 Applicability.
915.405–1 General.
915.406–5 Part IV Representations and instructions.
915.413 Disclosure and use of information before award.
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Subpart 915.5—Unsolicited Proposals

915.501 Definitions.
915.502 Policy.
915.509 General.

915.504 Advance guidance.
915.505 Content of unsolicited proposals.
915.506 Agency procedures.
915.506-1 Receipt and initial review.
915.506-2 Evaluation.
915.507 Contracting methods.
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Subpart 915.6—Source Selection

915.610 Written or oral discussions.
915.612 Formal source selection.
915.613 Alternate source selection procedures.

Subpart 915.8—Price Negotiation

915.801 Definitions.
915.804-2 Requiring certified cost or pricing data.
915.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
915.804-6 Procedural requirements.
915.804-8 Contract clauses.
915.804-70 Uncertified cost or pricing data.
915.805-5 Field pricing support.
915.805-70 Audit as an aid in proposal analysis.
915.808 Price negotiation memorandum.

Subpart 915.9—Profit

915.903 Contracting officer responsibilities.
915.905 Profit-analysis factors.
915.970 DOE structured profit and fee system.
915.970-1 General.
915.970-2 Weighted guidelines system.
915.970-3 Documentation.
915.970-4 Exceptions.
915.970-5 Special considerations—contracts with nonprofit organizations (other than educational institutions).
915.970-6 Contracts with educational institutions.
915.970-7 Alternative techniques.
915.970-8 Weighted guidelines application considerations.
915.971 Profit and fee-system for construction and construction management contracts.
915.971-1 General.
915.971-2 Limitations.
915.971-3 Factors for determining fees.
915.971-4 Considerations affecting fee amounts.
915.971-5 Fee schedules.
915.971-6 Fee base.
915.972 Special consideration for cost-plus-award-fee contracts.

Subpart 915.10—Preaward and Postaward Notifications, Protests, and Mistakes

915.1002 Debriefing of unsuccessful offerors.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 915.1—General Requirements for Negotiation

915.105 Competition.

(a)(1) Negotiated acquisition shall be on a competitive basis to the maximum practical extent (FAR 15.105) and reasonable competition shall be obtained in making small purchases in excess of $1,000 (FAR 13.106). There are, however, circumstances where one source (or group of sources) has exclusive capability to perform the work within the time required and at reasonable prices; e.g., by reason of experience, specialized facilities, or technical competence. In such circumstances, the initiating program office may conclude that only one source (or group of sources) is qualified to perform the work and, therefore, may recommend that a contract be negotiated only with that source or group. (In the case of a "group sole source" situation, a justification is required for limiting competition to that group and for the allocation of work among members of the group.) The recommendation, in writing, shall be contained in a separate document entitled, "Justification for Noncompetitive Acquisition," and shall examine the reasons for the acquisition being noncompetitive in accordance with paragraph (c) below.

(2) For a noncompetitive acquisition, a recommended justification shall be attached to the acquisition request when the request is sent to a contracting officer for action.

(3) A justification for noncompetitive acquisition is also required where "new" acquisitions (i.e., outside the contractual scope of work) are initiated through modifications to existing contracts.

(4) If a noncompetitive acquisition has been justified and approved, in accordance with this section, as part of an annual acquisition plan and such plan has been reviewed and approved, it will not be necessary to resubmit the justification for approval at the time each individual acquisition action is processed. Such justifications shall be made a part of the permanent contract file (see subpart 904.8 and FAR subpart 4.8).

(b) The provisions of this regulation do not apply to:

(1) Acquisitions of electric power or energy, gas (natural or manufactured), water or other utility services;

(2) Acquisitions of educational services from nonprofit institutions;

(3) Acquisitions resulting from program opportunity notices, or program research and development announcements (which are forms of competitive solicitations);

(4) Acquisitions from or through other Government agencies;

(5) Contracts which are subject to separate justification for recompetition or extension;

(6) Contracts resulting from unsolicited proposals (because they are subject to the approval procedures for justifications for unsolicited proposals);

(7) Special Research Contracts with educational institutions and extensions thereof (because they are subject to the separate process for SRCs); and

(8) Subscriptions to periodicals (within the small purchase limitations).

(c)(1) The justification for noncompetitive acquisition shall examine the reasons for the acquisition being noncompetitive and shall contain, in the first sentence of the document, an appropriate recommendation (e.g., "I recommend that negotiations be conducted only with (name of entity) for the supplies and services described herein.") For small purchases the justification for noncompetitive acquisitions should be in accordance with small purchase procedures.

(2) Each justification shall set forth enough facts and circumstances to clearly and convincingly establish that competition would not have been feasible or practicable. Procedural guidance is provided in DOE Order 4200.1.

Subpart 915.2—Negotiation Authorities

915.200 Scope of subpart.

(b) Section 302(c) of the Federal Property and Administrative Services Act of 1949, as amended, authorizes the negotiation of contracts, and is applicable to AEC (now DOE) acquisitions. Section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended, permits negotiation when otherwise authorized by law, provided, that in such event the requirements of that Act shall apply. Accordingly, when the Federal Property and Administrative Services Act of 1949, as amended, or the Atomic Energy Act of 1954, as amended, or other law is used as the basis for negotiation, the requirements of section 304 of the Federal Property and Administration Services Act of 1949, as amended, are applicable, except as provided in these regulations.

915.201 National emergency.

(a) Contracts to support industrial mobilization plans may be negotiated under section 302(c)(1) of the Federal Property and Administrative Services Act of 1949, as amended, or section 302(c)(15) of that Act and the Atomic Energy Act of 1954, as amended, if the requisite circumstances exist and the required findings and determinations can be made.

915.204 Personal or professional services.

(d) Formal advertising procedures shall not be used for contracts for architect-engineer or other professional engineering services. Such contracts may be negotiated under section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended, or section 302(c)(15) of that Act and the Atomic Energy Act of 1954, as amended. However, the exemption provided for in 915.903(d)(1)(ii) does not apply to contracts negotiated under section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended. Professional architect-engineer services shall be negotiated in accordance with Subpart 936.6 and FAR Subpart 36.6.

(e) Surveying, mapping, and field or laboratory tests of construction workmanship and materials and equipment should be classified as professional services when they clearly require planning, direction, supervision, and interpretation by professional engineers as a condition of performance, or when the contractor will be required to assume responsibility for the professional adequacy and accuracy of results. Depending upon the nature and requirements of a particular contract professional engineering services may involve activities such as the following:

(1) Overall direction of the technical work;

(2) Supervision of work performed by technicians, sub-professionals, or nonprofessional employees;

(3) Determination of the methods or procedures for accomplishing the requirements of the contract;

(4) Interpretation of the methods or procedures for accomplishing the requirements of the contract; and

(5) Direct performance of required professional services.

(f) When the services are such that the planning and execution can be performed by personnel having only a practical knowledge of the use of instruments and techniques, such as routine aerial photographing and testing, and do not require any professional engineering competence or judgment, the "personal or professional services" exception to the formal advertising requirement is not applicable.

(g) In 1959, the American Society of Civil Engineers (ASCE) adopted a policy statement that land surveying, engineering surveying, geodetic surveying, and cartographic surveying, commonly designated as surveying and mapping, are a part of the civil engineering profession. The report of the ASCE Task Committee on Status of Surveying and Mapping may be used for guidance in determining which positions should be considered as professional and which should be considered subprofessional.

915.213 Technical equipment requiring standardization and interchangeability of parts.

If section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended, and the Atomic Energy Act of 1954, as amended, are used as the basis of negotiation, determinations and findings shall state the authority for negotiations.

915.215 Otherwise authorized by law.

(a)(3) The Atomic Energy Act of 1954, as amended, and the Atomic Energy Community Act of 1955, as amended, contain various exemptions from section 3709 of the Revised Statutes, as amended. Pursuant to section 310 of the Federal Property and Administrative Services Act of 1949, as amended, these references to section 3709 shall be construed to authorize acquisition pursuant to section 302(c)(15) of the Federal Property and Administrative Service Act of 1949, as amended, without regard to the advertising requirements of section 302(c) and 303 of the Act. The situations enumerated in FAR 15.201 through 15.215 are illustrative of situations which could support a determination and finding under the Atomic Energy Act of 1954, as amended, that advertising is not reasonably practicable or, as appropriate, that negotiation is necessary in the interest of common defense and security.

(4) The Atomic Energy Act of 1954, as amended, also provides in section 162 that the President may, in advance, exempt any specific action of the Department of Energy in a particular matter carried out under the authority of the Atomic Energy Act of 1954, as amended, from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of common defense and security.

(5) Every contract negotiated under the authority of section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended, and the Atomic Energy Act of 1954, as amended, shall be supported by a determination and finding justifying use of such authority.

Subpart 915.3—Determinations and Findings to Justify Negotiation

915.307 Signatory Authority.

Determinations and findings supporting negotiation under the authority of the Federal Property and Administrative Services Act of 1949, section 302(c)(11) (FAR 15.211), with respect to contracts which will not require the expenditure of more than $25,000 may be executed by the Procurement Executive. Determinations and findings for contracts in excess of $25,000 negotiated pursuant to section 302(c)(11), and in support of all contracts negotiated pursuant to sections 302(c)(12) and 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended (FAR 15.211, 15.212 and 15.213) shall be executed by the Head of the Agency.

Subpart 915.4—Solicitation and Receipt of Proposals and Quotations

915.401 Applicability.

In addition to the exclusions included at FAR 15.401, FAR 15.4 is not applicable to Special Research Contracts (See 917.71), Program Opportunity Notices (See 917.72), or Program Research and Development Announcements (See 917.73).

915.405–1 General.

Approval for the use of solicitation for information or planning purposes shall be obtained from the Head of the Contracting Activity.

915.406–5 Part IV Representations and Instructions.

(a) Section K, Representations, certifications and other statements of offerors or quoters. (1) To minimize the paperwork burden imposed by the repetitious submission of contract representations and certifications with each bid or proposal submitted, DOE contracting activities may permit a repetitious bidder or offeror the optional use of simplified representations and certifications, provided acceptable comprehensive representations and certifications have been sumitted to the DOE contracting activity within three years of the anticipated contract award date and are currently on file with the awarding activity. Bidders and offerors shall, through use of the simplified representations and certifications only be asked to furnish with each bid or proposal a certification that the previously filed record copy remains current, or indicate any change relative to the individual submission, along with certain minimal information such as type of organization and whether the bidder or offeror is a small, small/disadvantaged, or women-owned small business concern and whether the work will be performed in a labor surplus area. Select additional representations and certifications may also be required depending on the nature of the individual acquisition. These additional

representations and certifications, such as "Organizational Conflicts of Interest Disclosure or Representation" and "Cost Accounting Standards Notices and Certification" shall be separately identified in Section K of the uniform contract format when they are required. (also see (a)(5) below)

(2) Use of the optional simplified representations and certifications is predicated upon the single submission of an acceptable comprehensive representations and certifications rather than the repetitive submission of these items with each bid or proposal. It is required, therefore, that any comprehensive representations and certifications submitted by a potential contractor in anticipation of using the simplified approach be evaluated by the contracting activity based upon the statutory and/or regulatory requirements which mandate the various representations and certifications. The submitter also should be advised of the submissions acceptability, thus permitting use of the simplified representations and certifications. When utilizing the optional simplified representations and certifications, bidders or offerors shall be advised of the need to identify any individual items that may differ from their comprehensive representations and certifications which are on record. Obvious, unintentional errors should be treated as minor informalities whenever possible. Each contracting activity permitting use of the simplified approach shall establish internal procedures to maintain control of comprehensive submittals submitted by an offeror or bidder in support of the simplified approach and to assure notification to the submitter or their acceptance or rejection.

(3) The following format illustrates a simplified representations and certifications approach which may be used if the contracting activity permits use of simplified representations and certifications.

Representations and Certifications

(1) The bidder/offeror certifies:

(a) It is ( ) a Corporation, incorporated in the state of ———; ( ) an individual; ( ) a partnership; ( ) a nonprofit or educational institution; ( ) a state or local government; and,

(b) It is ( ), is not ( ), a small business ( ), a small and disadvantaged business ( ), a women-owned small business ( ), a labor surplus area concern ( ).

(c) Its Data Universal Numbering System (DUNS) establishment number is:

(2) The offeror/bidder represents that the following persons are authorized to communicate on its behalf with the Government in connection with this solicitation: list names and telephone numbers of appropriate personnel.

Phone ———
Name ———

(3) The offer/bidder (check (i) or (iii)):

(i) ( ) Certifies that the comprehensive representations and certifications submitted to the DOE *(insert appropriate DOD contracting activity)* on *(insert date)* remain current and accurate with respect to this bid or proposal submitted in response to solicitation *(insert number)* dated *(insert date)* except as amended hereby.

(ii) ( ) certifies the following specific representations and certifications differ from the disclosures previously filed: *(list any differences);* and revised representation and certification are therefor submitted.

(iii) ( ) acknowledges a comprehensive representations and certifications has not previously been placed on record with the contracting activity and such a comprehensive representations and certifications data package is completed and being submitted with respect to this bid or proposal in response to solicitation no. ——— dated ———.

(4) By signing below, the bidder/offeror certifies that the representations and certifications are accurate, current and complete. The bidder/offeror further certifies that it will notify the contracting activity of any changes affecting a comprehensive representations and certifications if one has been placed on records.

Solicitation Number ———
Signature ———
Date ———
Type Name ———
Title and ———
Address ———

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(4) The following is a comprehensive listing by topic with source citation of the representations and certifications which are required to be submitted with individual bids or proposals and which must be filed with an accepted by the DOE contracting activity to allow use of the simplified representations and certifications described at 915.406–5(a)(3).

Comprehensive Representations and Certifications

(i) Certificate of Independent Price Determination FAR 52.203–2

(ii) Contingent Fee Representation and Agreement FAR 52.203–4

(iii) Type of Business Organization-Formal Advertising (Negotiation) FAR 52.214–2 (FAR 52.215–6)

(iv) Parent Company and Identifying Data FAR 52.214–8

(v) Place of Performance-Formal Advertising (Negotiation) FAR 52.214–14 (FAR 52.215–20)

(vi) Small Business Concern Representation FAR 52.219–1

(vii) Small Disadvantaged Business Concern Representation FAR 52.219–2

(viii) Women-Owned Small Business Concern Representation FAR 52.219–3

(ix) Walsh-Healey Public Contracts Act Representation FAR 52.222–19 (need be completed only for contracts for the manufacture or furnishing of supplies to be performed in the United States and which exceed $10,000).

(x) Certification of Nonsegregated Facilities FAR 52.222–21

(xi) Previous Contracts and Compliance Reports FAR 52.222–22.

(xii) Affirmative Action Compliance FAR 52.222–25 (not applicable to construction contracts)

(xiii) Clean Air and Water Certification FAR 52.223–1

(xiv) Buy American Certificate FAR 52.225–1

(5) Additional representations and certifications which may be required, depending on the nature of the acquisition, are listed by topic and source below. Although they may be included in the single comprehensive submission, they may also be required for the simplified submission since they are unique to an instant solicitation.

(i) Foreign Ownership, Control, or Influence-Representation.

(ii) Jewel Bearings and Related Items Certificate FAR 52.208–2.

(iii) Organizational Conflicts of Interest Disclosure Representation 952.209–70

(iv) Preference for Labor Surplus Area Concerns FAR 52.220–1

(v) Recovered Material Certification FAR 52.223–4

(vi) Balance of Payments Program Certificate FAR 52.225–6

(vii) Cost Accounting Standards Notices and Certification FAR 52.230–1, or FAR 52.230–2

(viii) Permits, Authorities and Franchises FAR 52.247–2

(ix) Technical Data Certification 952.227–80

(x) Royalty Payments Certification 952.227–81

(b) *Section L Instructions, Conditions and Notices to offerors and quoters.* A proposal may include technical data and other data, including trade secrets and privileged or confidential commercial or financial information, which the proposer does not want disclosed to the public or used by the Government for any purposes other than proposal evaluation. Procedures for handling and protecting such data and information are discussed at 927.402–3(d)(2).

(d) Insert the notice at 952.215–70 in solicitations if the resulting contract will contain any of the clauses referenced therein.

915.413 Disclosure and use of information before award.

915.413-2 Alternate II.

The procedures discussed at FAR 15.413-2 may be used if approved at a level above the contracting officer. See also 927.70.

Subpart 915.5—Unsolicited Proposals

915.501 Definitions.

"Notice of program interest" means a method by which broad general technical problem areas needing investigation are published in order to stimulate the flow of unsolicited proposals. The notice describes problems, not desired solutions.

"Project officer" means the individual designated by the responsible official, or designee, having responsibility for the unsolicited proposal.

"Receiving office" means the office designated as the central control point for the receipt, distribution, accountability, and status reporting of unsolicited proposal.

"Responsible official" means the Senior Program Official or the head of the staff office within whose area of responsibility the work contemplated by the unsolicited proposal falls.

915.502 Policy.

(a) Present and future needs demand the involvement of all resources in exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage external sources of unique innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for government support. In furtherance of this policy and to ensure the integrity of the acquisition process through application of reasonable controls, the DOE:

(i) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;

(ii) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;

(iii) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;

(iv) Processes unsolicited proposals in an expeditous manner and, where practicable, keep proposers advised as discrete decisions are made;

(v) Assures that each proposal is evaluated in a fair and objective manner; and,

(vi) Assures that each proposal will be used only for its intended purpose and the information contained therein will not be divulged without prior permission of the proposer.

(b) Extensions of contract work resulting from unsolicited proposals shall be processed in accordance with the procedures at 943.107.

915.503 General.

(c)(5) When the DOE receives a document for a commercial demonstration which might otherwise qualify as an unsolicited proposal, but its substance is generally known and may be obtained without restriction by formal competitive solicitation or program opportunity notice, or its substance closely resembles that of a pending formal competitive solicitation or program opportunity notice, the DOE's policy of obtaining competition applies.

(f) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative or unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative or unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition herein in accordance with Subpart 901.4.

915.504 Advance guidance.

(b)(6) A notice of program interest can be used to provide notification of areas of DOE interest and to stimulate the flow of unsolicited proposals. Each program office should publish periodically a listing of broad, general, technical problems and areas needing investigation using the following guidelines.

(i) The notice shall be coordinated in advance with the head of the contracting office that will be expected to award any contracts which may result from the notice, so that advance preparations can be made for processing proposals in accordance 915.506 and to assure that some form of competitive solicitation, e.g. a program research and development or request for proposal, is not possible.

(ii) Concurrence shall be obtained from the appropriate procurement Advisor in the Office of Procurement Support, Headquarters when it is not possible to identify which contracting office(s) will make possible award(s).

(iii) The notice should contain, but need not be limited to, the following information:

(A) A number assigned by the program office for control and reference purposes;

(B) A brief description of the board, general, technical program or areas needing investigation (generally 50 words or less).

(C) Restrictions, if any, as to who may submit proposals.

(D) A contact (name and telephone number) within the program office or divisions, where additional information may be obtained.

(E) An expiration date, as needed. An expiration date for a Notice of Program Interest is not to be considered a formal due date or common cut-off date for the submission or receipt of unsolicited proposals as is associated with formal solicitations. Rather the expiration date is an approximation of the time after which program interests or directions may be expected to change less the necessary administrative time that will be needed for the evaluation and possible award of contracts resulting from the notice.

(F) A statement that DOE reserves the right to support or not to support any or all proposals in whole or in part.

(G) A statement that DOE assumes no responsibility for any costs associated with specific proposal preparation.

(H) The number of proposal copies required and address of the receiving office to which proposals should be mailed.

(I) A reference that detailed information concerning contracting policy and procedures is contained in the DEAR, copies of which are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(iv) The notice content should be consolidated at the responsible office level and should be in the format that best reflects the needs of that specific office; e.g., letter, booklet, bulletin, or related documents and coordinated in advance with the Unsolicited Proposal Management Officer identified at 915.506(b).

(v) The notice should be given wide distribution including mailings to industry associations, including small business associations, schools, colleges and universities, appropriate professional and scientific journals, other DOE offices, as well as individuals

and organizations that request copies on a one-time basis.

(vi) Copies of the notice shall be given to the Unsolicited Proposal Management Officer identified at 915.506(b).

915.505 Content of unsolicited proposals.

(b)(5) Unsolicited proposals for nonnuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices should contain information along the lines of the information requirements at 917.7201–5. They may include a request for federal assistance or participation, and shall be subject to the cost sharing provisions of 917.70.

915.506 Agency procedures.

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Procurement and Assistance Management Directorate, U.S. DOE, Attn: Unsolicited Proposals Management Officer, MA432, Washington, D.C. 20585. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the Unsolicited Proposal Management Officer to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

915.506–1 Receipt and initial review.

(b) The DOE receiving office shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, and establish accountability. It will send copies of the unsolicited proposal to the responsible official(s). Each unsolicited proposal that is circulated for a comprehensive evaluation shall have an agency control number and legend attached or imprinted on it by the receiving office identifying it as an unsolicited proposal and stating that it shall be used only for purposes of evaluation.

915.506–2 Evaluation.

(a) The responsible official is responsible for assignment of a project officer and such personnel as may be necessary to evaluate the proposal fairly and objectively. In some instances the responsible official may find it advantageous to subject the proposal to external rather than internal evaluation. In such cases, the prior written permission of the proposer shall be obtained. Proposals for demonstration projects will be evaluated in accordance with the Federal support criteria set forth in 917.7203.3 (a) through (h) and the evaluation criteria set forth in 917.7204(c).

(1) The submission of innovative methods, approaches, or ideas is not restricted to those problems or technical areas published in a DOE notice of program interest.

(c) If, after evaluation, it is decided that a proposal will not be supported, it is the responsibility of:

(1) The project officer to prepare a written statement setting forth the basis for rejection of the unsolicited proposal, submit one copy to the responsible official and retain one copy in the permanent file.

(2) The responsible official to prepare a letter to the proposer with copies to the receiving office and the project officer.

(d) If the decision is to support a proposal, a written justification is required which shall address each of the evaluation factors contained in FAR 15.506–2. The justification shall be appended to the procurement request.

(e) Unsolicited proposal justificiations shall contain a recommedation, concurrence (when needed), and approval as follows: (In the case of cost shared contracts, review levels shall be based on the sum of the contractor and Government shares.)

(1) The recommendation shall be prepared and reviewed within the initiating office at such levels as are deemed appropriate by the Senior Program Offical for acquisitions initiated by the Headquarters or by the Head of the Contracting Activity for field initiated acquisitions. In establishing levels for the review of such recommendations, the Senior Program Official or Head of the Contracting Activity shall assure that the recommendation is reviewed at a senior organizational level in order to assure that competition is sought when appropriate. See FAR 15.507 and 15.508.

(2) The more complex and costly transactions will benefit from early coordination with counsel. Justifications exceeding $1,000,000, or such lower level as counsel may determine, shall be submitted by the initiator to counsel, at the Headquarters or field location of the initiator, for concurrence prior to forwarding to the contracting officer.

(3) The justification, following review of the recommendation and concurrence of counsel (if required or considered appropriate), shall be forwarded to the cognizant contracting officer for approval. If the justification is acceptable to the cognizant contracting officer, final approval shall be sought at such level as the Head of the Contracting Activity may require. In specifying the level for final approval, the Head of the Contracting Activity shall require final approval at a level above contracting officer as required by FAR 15.105(c). The Head of the Contracting Activity shall further assure that the official designated as the reviewing official is a contracting officer.

(g) Notwithstanding the decision to accept an unsolicited proposal, organizations and individuals are subject to the policies concerning the responsibility of prospective contractors set forth in 909.1 and FAR 9.1.

915.507 Contracting methods.

(d) Subpart 917.70, which outlines DOE's cost participation policy, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

915.509 Limited use of data.

(a) An unsolicited proposal may include technical data and other data, including trade secrets and privileged or confidential commercial or financial information, which the proposer does not want disclosed to the public or used by the Government for any purpose other than proposal evaluation. Procedures for handling and protecting such data and information are set forth at 927.402–3(d)(3).

Subpart 915.6—Source Selection

915.610 Written or oral discussions.

(c) The contracting officer shall point out to each offeror within the competitive range any ambiguities or uncertainties in its proposal. For research, development, and demonstration contracts, the discussions are intended to assist the Source Evaluation Board (SEB) in understanding fully the proposals and their strengths and weaknesses based upon the individual efforts of each proposer, in assuring that the meanings and points of emphasis of solicitation provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government, and in evaluating the qualifications of the personnel proposed by each firm. Where the proposed award is not for research, development, or demonstration, (e.g., supplies and services) the contracting officer should point out instances in which aspects of a proposal contain a weakness in relation to the Government's requirements.

915.612 Formal source selection.

(a) Negotiated competitive acquisitions of $5 million or less are not subject to the SEB Handbook unless specifically required by the Procurement Executive. For acquisitions under $5 million, less formal procedures are used. For acquisitions under $5 million, but more than $1 million, source evaluation panels may be established. These panels may follow the policies and procedures set forth in the SEB Handbook as a guide. For acquisitions under $1 million, less formal source evaluation and selection procedures shall be used.

(b) The contracting officer may form teams to evaluate the technical, business and management, and cost aspects of proposals. When teams are used, each will function independently of the other and report its findings to the contracting officer. The contracting officer will discuss those findings with the teams (or representatives thereof) separately or together, as may be more helpful. The contracting officer will negotiate and execute the contractual instrument, using, in many cases, some of the same specialists who participated in earlier evaluations and discussions. Part 971 sets forth administrative requirements for the review and approval of certain contract actions.

(c) In selections other than where price is the determining factor, the evaluation procedures set forth in (c) (1), (2), and (3) below should be considered.

(1) *Technical evaluation.* Generally, the contracting officer must rely on scientific and engineering personnel for assistance in reviewing proposals from a technical point of view. It is imperative, therefore, that technical evaluations and findings be fully documented and reviewed by responsible personnel. The report shall reflect the scoring and ranking of the proposals. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal shall be included. After evaluation and preparation of written and signed evaluation findings by the technical evaluators, such evaluations and proposals shall be returned to the contracting officer or authorized representative, and maintained as a permanent record in the contract file.

(2) *Business and management evaluation.* Management capabilities of the offeror to perform the required work in a timely manner must be appraised. In making this appraisal, the following factors, as appropriate, and as stated in the solicitation must be considered: the company's management organization; past performance; reputation for reliability; availability of required facilities; cost controls; ability to control, maintain, and account for any property provided by the Government; the offeror's willingness to devote its resources to the proposed work with appropriate diligence; and other pertinent administrative and business information that may have been requested in the solicitation, such as certifications and representations.

(3) *Price/cost determinations.* Each proposal requires some form of price/cost analysis. The evaluation should consider items such as categories and amounts of labor, indirect costs, materials, travel, computer time, as well as information with regard to the contractor's past cost performance, including contracts or subcontracts for like services or supplies. The contracting officer must exercise judgment in determining the extent of analysis in each case and any desire to obtain assistance from personnel trained in this discipline.

(d) Personnel from the DOE, other Government agencies, consultants, and contractors including those who operate or manage Government-owned facilities may be used in the evaluation process as advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are used as advisors, approval and disclosure procedures as required by 927.7003 shall be followed. In all instances, such personnel will be required to comply with DOE conflict of interest regulations and nondisclosure of information requirements.

(e) The SEB procedures are intended to provide the Source Selection Official with sufficient information to select an offeror for negotiation on the basis of its proposal. However, it is within the discretion of the Source Selection Official to select multiple offerors from those within the competitive range for negotiation and to direct that discussions be reopened with those offerors and that best and final offers be obtained on the basis of fully definitized contract documents executed by the offerors. The contracting officer should seek correction of each offeror's correctable weaknesses using only technical and other information which the Government is entitled to use for this purpose. At the conclusion of discussions, a final common cut-off date which allows a reasonable opportunity for submission of best and final offers shall be established and all participants notified.

(q) Except as provided in 915.612(e), revised proposals are evaluated, selection is made, and negotiations may be conducted with the selected offeror but only to definitize a final agreement on price, terms, and conditions, etc. (No factor which could have had any effect on the selection process may be changed after the common cut-off date for discussions).

915.613 Alternative source selection procedures.

Source Evaluation Board (SEB) procedures shall be used for all negotiated competitive prime acquisitions expected to exceed $5 million, excepting acquisitions for architect-engineer services, and acquisitions specifically waived by the Procurement Executive. Guidance regarding the designation and operation of the SEB are set forth in the SEB Handbook.

Subpart 915.8—Price Negotiation

915.801 Definitions.

"Field Pricing Support" is synonymous with "pricing support" and within the Department of Energy means the advice provided the contracting officer by auditors, price or cost analysts, quality assurance personnel, engineers, program office personnel, small business, legal, financial or other specialists based on their review and analysis of a contractor's proposal notwithstanding their organizational location.

915.804-2 Requiring certified cost or pricing data.

(a) The certification requirements of FAR 15.804-2 need not be applied to cost-reimbursement contracts placed with educational institutions subject to the cost principles at FAR Subpart 31.3, or State, local or Federally recognized Indian Tribal governments subject to the cost principles at FAR Subpart 31.6.

915.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(b)(2)(iii) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may approve the finding required by FAR 15.804-3(b)(2)(iii) that the lowest price received is unreasonable.

(c)(8) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may approve the finding required by FAR 15.804-3(c)(8) that the price is unreasonable even though it is a catalog or market price.

(g) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, authorize individual or class exemptions for exceptional cases in accordance with FAR 15.804–3(g).

(i) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for cost or pricing data under the circumstances set forth in FAR 15.804–3(i) provided that any such waivers are promptly reported to the Procurement Executive.

915.804–6 Procedural requirements.

(e) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for cost or pricing data under the circumstances set forth in FAR 15.804–6(e) provided that any such waivers are promptly reported to the Procurement Executive.

(i) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for subcontractor cost or pricing data under the circumstances set forth in FAR 15.804–6(i), provided that any such waivers are promptly reported to the Procurement Executive.

915.804–8 Contract clauses.

(a) The clause prescribed at FAR 52.215–22, Price Reduction For Defective Cost or Pricing Data, shall only be included in negotiated contracts where a Certificate of Current Cost or Pricing Data was obtained.

(b) The contracting officer shall, insert the clause at FAR 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (a) above has not been included, unless the contractor will otherwise not be required to submit certified data pursuant to 915.804–2(a).

915.804–70 Uncertified cost or pricing data.

Anytime an offeror or contractor is not required to submit certified cost or pricing data (proposals of $500,000 or less) the contracting officer may require the offeror or contractor to submit uncertified cost or pricing data. The amount of data required to be submitted should be limited to that data necessary to allow the contracting officer to determine the reasonableness of the price.

915.805–5 Field pricing support.

(a)(1) Field pricing reports as prescribed in FAR 15.805–5(a)(1) are not required for the negotiation of DOE contract prices or modifications thereof. The term "field pricing report" refers to the Department of Defense (DOD) system for obtaining a price and/or cost analysis report from a cognizant DOD field level contract management office wherein requests for the review of a proposal submitted by an offeror are initiated and the recommendations made by the various specialists of the management office are consolidated into a single report that is forwarded to the office making the contract award for use in conducting negotiations. In the DOE, such review activities, except for reviews performed by professional auditors, are expected to be accomplished by pricing support personnel located in DOE Contracting Activities. The DOE contracting officer shall formally request the assistance of appropriate pricing support personnel, other than auditors, for the review of any proposal that exceeds $500,000, unless the contracting officer has sufficient data to determine the reasonableness of the proposed cost or price. Such pricing support may be requested for proposals below $500,000, if considered necessary for the establishment of a reasonable pricing arrangement. Contracting officers, however, are not precluded by this section from requesting pricing assistance from a cognizant DOD contract management office, provided an appropriate cross-servicing arrangement for pricing support services exists between the DOE and the servicing agency.

(c)(1) When an audit is required pursuant to 915.805–70, "Audit as an aid in proposal analysis", the request for audit shall be sent directly to the Federal audit office assigned cognizance of the offeror or prospective contractor. A copy of each such request for audit, without enclosures, shall be forwarded to the Director, Audit Management Division, Office of Inspector General, Washington, D.C. When the cognizant agency is other than the Defense Contract Audit Agency or the Department of Health and Human Services, and an appropriate cross-servicing agreement has not been established, the need for audit assistance shall be coordinated with the Directorate of Procurement and Assistance Management, Office of Policy, Policy and Procedures Division.

(2) The request for audit shall establish the due date for receipt of the auditor's report and in so doing shall allow as much time as possible for the auditor's review.

(e)(6) Copies of technical analysis reports prepared by DOE technical or other pricing support personnel shall not normally be provided to the auditor. The contracting officer or the supporting price, cost, or financial analyst at the contracting activity shall determine the monetary impact of the technical findings.

915.805–70 Audit as an aid in proposal analysis.

(a) Auditors are professional accountants who, although organizationally independent, are the principal advisors to contracting officers on contractor accounting and cost matters.

(b) Audit as an aid in the negotiation of price or cost arrangements in DOE contract awards shall be utilized as provided by this subsection.

(c) Preaward audit services include:

(1) The submission of an auditor's report which sets forth the results of the review and analysis of cost data submitted by offerors as part of their pricing proposals, reviews of contractor's accounting systems, recorded contract costs, and financial condition other related matters; and

(2) Personal consultation and advice regarding the use of the auditor's report in the negotiation and award of a contractual instrument.

(d) When a contract price will be based on cost or pricing data (FAR 15.804) submitted by the offerors, the DOE contracting officer or authorized representative shall request a review by the cognizant Federal audit activity prior to the negotiation of any contract or modification including modifications under advertised contracts in excess of:

(1) $500,000 for a firm fixed-price contract or a fixed-price contract with economic price adjustment provisions; or

(2) $1,000,000 for all other contract types, including initial prices, estimated costs of cost-reimbursement contracts, interim and final price redeterminations, and target and settlement of incentive contracts.

(e) The requirement for auditor reviews of proposals which exceed the thresholds specified in paragraph (d) above may be waived at a level above the contracting officer when the reasonableness of the negotiated contract price can be determined from information already available. The contract file shall be documented to reflect the reason for any such waiver, provided, however, that independent Government estimates of cost or price

shall not be used as the sole justification for any such waiver.

(f) Ordinarily, preaward reviews by an auditor should not be requested for actions below the thresholds specified in paragraph (d) of this section. Before requesting such audits, the contracting officer should consider using recent audit reports, price negotiation memorandums, or other pertinent information regarding the offeror to establish the reasonableness of proposed price. However, auditor reviews should be considered for proposals below the specified thresholds when the contracting officer determines that:

(1) The available data is inadequate for determining the reasonableness of the contractor's cost proposal;

(2) The contractor's estimating, accounting, or purchasing methods are not reliable; or

(3) The best interest of the Government will be served by an audit review, after giving consideration to the cost of the audit, type of audit and value of the proposed contract amount.

915.808 Price negotiation memorandum.

(b) Whenever an audit review was requested and a report was obtained, the contracting officer shall inform the cognizant audit activity of the disposition of each audit finding and recommendation by either forwarding a copy of the price negotiation memorandum to the auditor; or by advising the auditor, in writing, if an award was cancelled or not made to the audited entity; whichever is applicable.

Subpart 915.9—Profit

915.903 Contracting officer responsibilities.

(d)(1)(ii) The statutory limitations on profit and fees as set forth in FAR 15.903(d)(1) (i), (ii) and (iii) shall be followed, except as exempted for DOE architect-engineer contracts covering Atomic Energy Commission (AEC) and Bonneville Power Administration (BPA) functions. Pursuant to section 602(d) (13) and (20) of the Federal Property and Administration Services Act of 1949, as amended, those former AEC functions, as well as those of the BPA, now being performed by DOE are exempt from the 10 and 6 per centum cost and fee restrictions on contracts for architect-engineer services.

(d)(2) Waivers to apply the maximum cost-plus-award-fee percentage in 915.972(a)(3) in those situations that shall result in potential fees exceeding the limitations cited in FAR 15.903(d)(1) (i), (ii), and (iii) shall be forwarded to the Procurement Executive.

(f) In cases where a change or modification calls for substantially different work than the basic contract, the contractor's effort may be radically changed and a detailed analysis of the profit factors would be a necessity. Also, if the dollar amount of the change or contract modification is very significant in comparision to the contract dollar amount, a detailed analysis should be made.

(g) The estimated costs on which the maximum fee is computed pursuant to the statutory limitations set forth in FAR 15.903(d)(1) shall include facilities capital cost of money when this cost is included in cost estimates.

915.905 Profit-analysis factors.

A profit/fee analysis technique designed for a systematic application of the profit factors in FAR 15.905–1 provides contracting officers with an approach that will ensure consistent consideration of the relative value of the various factors in the establishment of a profit objective and the conduct of negotiations for a contract award. It also provides a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these prescribed factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like.

915.970 DOE structured profit and fee system.

This section implements FAR 15.902 and 15.905.

915.970–1 General.

(a) *Objective.* It is the intent of DOE to remunerate contractors for financial and other risks which they may assume, resources they use, and organization, performance and management capabilities they employ. Profit or fee shall be negotiated for this purpose; however, when profit or fee is determined as a separate element of the contract price, the aim of negotiation should be to fit it to the acquisition, giving due weight to effort, risk, facilities investment, and special factors as set forth in this subpart.

(b) *Commercial (profit) organization.* Profit or fee prenegotiation objectives for contracts with commercial (profit) organizations shall be determined as provided in this subpart.

(c) *Nonprofit organizations.* It is DOE's general policy to pay fees in contracts with nonprofit organizations other than educational institutions and governmental bodies; however, it is a matter of negotiation whether a fee will be paid in a given case. In making this decision, the DOE negotiating official should consider whether the contractor is ordinarily paid fees for the type of work involved. The profit objective should be reasonable in relation to the task to be performed and the requirements placed on the contractor.

(d) *Educational institutions.* It is DOE policy not to pay fees under contracts with educational institutions.

(e) *State, local and Indian tribal governments.* Profit or fee shall not be paid under contracts with State, local, and Indian tribal Governments.

915.970–2 Weighted guidelines system.

(a) To properly reflect differences among contracts and the circumstances relating thereto and to select an appropriate relative profit/fee in consideration of these differences and circumstances, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.905 and paragraph (d) of this section. This is a structured system, referred to as weighted guidelines. Each profit factor or subfactor, or component thereof, has been assigned weights relative to their value to the contract's overall effort. The range of weights to be applied to each profit factor is also set forth in paragraph (d) of this section. Guidance on how to apply the weighted guidelines is set forth in 915.970–8.

(b) Except as set forth in 915.970–4, the weighted guidelines shall be used in establishing the profit objective for negotiation of contracts where cost analysis is performed.

(c) The negotiation process does not contemplate or require agreement on either estimated cost elements or profit elements. Accordingly, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation process in order to develop a mutual understanding of the logic of the respective positions, specific agreement on the exact weights of values of the individual profit factors is not required and need not be attempted.

(d) The factors set forth below are to be used in determining DOE profit objectives. The factors and weight ranges for each factor shall be used in all instances where the weighted guidelines are applied.

Profit factors	Weight ranges (percent)
I. Contractor Effort (Weights applied to cost):	
A. Material acquisitions:	
1. Purchased parts	1 to 3.
2. Subcontracted items	1 to 4.
3. Other materials	1 to 3.
B. Labor skills:	
1. Technical and managerial:	
a. Scientific	10 to 20.
b. Project management/administration	8 to 20.
c. Engineering	8 to 14.
2. Manufacturing	4 to 8.
3. Support services	4 to 14.
C. Overhead:	
1. Technical and managerial	5 to 8.
2. Manufacturing	3 to 6.
3. Support services	3 to 7.
D. Other direct costs	3 to 8.
E. G&A (General Management) expenses	5 to 7.
II. Contract Risk (type of contract—weights applied to total cost of items IA thru E).	0 to 8.
III. Capital Investment (Weights applied to the net book value of allocable facilities).	5 to 20.
IV. Independent Research and Development:	
A. Investment in IR&D program (Weights applied to allocable IR&D costs).	5 to 7.
B. Developed items employed (Weights applied to total of profit $ for items IA thru E).	0 to 20.
V. Special Program Participation (Weights applied to total of Profit $ for items IA thru E).	−5 to +5.
VI. Other Considerations (Weights applied to total of Profits $ for items 1A thru E).	−5 to +5.
VII. Productivity/Performance (special computation).	(N/A)

915.970–3 Documentation.

Determination of the profit or fee objective, in accordance with this subpart shall be fully documented. A worksheet, DOE Form F 4220.23 has been developed to assist the contracting officer in this effort. Since the profit objective is the contracting officer's pre-negotiation evaluation of a total profit allowance for the proposed contract, the amounts developed for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated amounts will probably vary from the objective and from the pre-negotiation detailed application of the weighted guidelines technique to each element of the contractor's input to total performance. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes to the contractor's input to total performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained in the price negotiation memorandum prepared in accordance with FAR 15.808.

915.970–4 Exceptions.

(a) For contracts not expected to exceed $500,000, the weighted guidelines need not be used; however, the contracting officer may use the weighted guidelines for contracts below this amount if he or she elects to do so.

(b) For the following classes of contracts, the weighted guidelines shall not be used:

(1) Commercialization and demonstration type contracts;

(2) Management and operating contracts;

(3) Construction contracts;

(4) Construction management contracts;

(5) Contracts primarily requiring delivery of material supplied by subcontractors;

(6) Termination settlements; and

(7) Contracts with educational institutions.

(c) In addition to paragraphs (a) and (b) above, the contracting officer need not use the weighted guidelines in unusual pricing situations where the weighted guidelines method has been determined by the DOE negotiating official to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the Head of the Contracting Activity. The contract file shall include this doucmentation and any other information that may support the exception.

(d) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth above, other methods for establishing the profit objective may be used. For contracts other than those subject to Subpart 917.6, the selected method shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

915.970–5 Special considerations—contracts with nonprofit organizations (other than educational institutions).

(a) For purposes of identification, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(b) In computing the amount of profit or fee to be paid, the DOE negotiating official shall take into account the tax benefits received by a nonprofit organization. While it is difficult to establish the degree to which a remuneration under any given contract contributes to an organization's overall net profit, the DOE negotiating official should assume that there is an element of profit in any amount to be paid.

(c) In order to assure consideration of the tax posture of nonprofit organizations during a profit or fee negotiation, the DOE negotiating official shall calculate the fee as for a contract with a commercial concern and then reduce it at least 25 percent. However, depending on the circumstances, the contracting officer may pay profit or fees somewhere between this amount and the appropriate profit or fee as if it were a commercial concern. When this is the case, the contract file shall be documented to specifically state the reason or reasons.

(d) Where a contract with a nonprofit organization is for the operation of Government-owned facilities, the fee should be calculated using the procedures and schedules applicable to operating contracts as set forth in Part 970.

915.970–6 Contracts with educational institutions.

In certain situations the DOE may contract with a university to manage or operate Government-owned laboratories. These efforts are generally apart from, and not in conjunction with, their other activities, and the complexity and magnitude of the work are not normally found in standard university research or study contracts. Such operating contracts are subject to the applicable provisions set forth in Part 970.

915.970–7 Alternative techniques.

(a) Profit or fees to be paid on construction contracts and construction management contracts shall be determined in accordance with the applicable profit/fee technique for such contracts set forth in 915.971.

(b) Profit and fee to be paid on contracts under $500,000, not using the weighted guidelines, shall be judgmentally developed by the contracting officer by assigning individual dollar amounts to the factors appropriate to DOE profit considerations discussed in 915.970–2(d).

(c) Contracts which require only delivery or furnishing of goods or services supplied by subcontractors shall include a fee or profit which, in the

best judgment of the contracting officer, is appropriate. It would be expected that there would be a declining relationship of profit/fee dollars in relation to total costs. The higher the cost of subcontracts, for example, the lower the profit/fee ratio to these costs.

(d) Profit/Fee considerations in termination settlements are often a question of equity. They are a matter of negotiation. They should not, however, exceed what would have otherwise been payable under weighted guidelines had the termination not occurred.

915.970–8 Weighted guidelines application considerations.

(a) *General.* (1) 915.970–2(d) lists those DOE factors which are given consideration for profit/fee determination in all cases in which profit is to be specifically negotiated. This section discusses these factors and provides guidance on how they should be evaluated.

(2) The profit/fee elements (factors or subfactors) relating to Contractor Effort, as shown 915.970–2(d), item I, are similar to those cost elements contained in most contract pricing proposals. Often, individual proposals will be in a different format, but, since these factors and subfactors are broad and basic, they provide sufficient guidance to evaluate all items of cost generally found in proposals.

(3) In making a judgment of the value of each factor, the contracting officer should recognize the definition, description, and purpose of the factors, together with consideration for evaluating them as set forth herein.

(4) The effect of the Facilities Capital Cost of Money cost principle (FAR 31.205–10) has been recognized in the weights assigned for arriving at profit and fee objectives; consequently, no offset is necessary or will be made to the prenegotiation profit objectives for cost of money recognized as a cost.

(b) *Contractor effort.* (1) This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's basic responsibility for contract performance, takes into account what resources are necessary, and what the contractor must do, to accomplish a in the contract. This factor recognizes that, within a given performance output or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and, that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract, as discussed in paragraphs (b) (2) through (4) of this section. *Not to be included as part of the cost base (for purposes of computing profit) is any amount calculated for the cost of money for facilities capital computed in accordance with Cost Accounting Standard 414.*

(2) The following comprise the base elements for measuring contractor effort:

(i) *Material acquisition.* Analysis of material acquisition cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items or services, and other materials, including consideration of the number of orders and supplies and whether established sources are available or new sources must be developed. In reviewing this element:

(A) The contracting officer shall determine whether the contractor will obtain the material and tooling by routine orders from readily available suppliers (particularly orders of substantial value in relation to the total contract cost) or by subcontracts, and shall consider the extent to which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements.

(B) Consideration shall be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out sole source subcontractors through the introduction of competition. These determinations and considerations shall be made for purchases of raw materials or basic commodities, purchases of processed material, including all types of components of standard or near standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In the application of this criterion, it should be recognized that the contribution of the prime contractor to his purchasing program may be substantial. This may apply in the management of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative.

(C) Recognized costs proposed as direct material costs, or proposed as material overhead costs, such as scrap charges, shall be treated and evaluated as material costs for profit evaluation.

(D) Intracompany transfers which are accepted at price, in accordance with FAR 31.205–2(e), shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(ii) *Labor (technical and managerial, manufacturing, and support services).* Analyses of the labor cost content of the contract shall include evaluation of the comparative quality and level of the talents, skills, and experience of those personnel to be employed for contract performance. In reviewing this element:

(A) Technical and managerial labor shall be evaluated, for the purpose of assigning profit dollars, by giving consideration to the amount of notable scientific, unusual or scarce engineering, and top management talent needed in contrast to journeyman engineering effort, professional staff, or closely related supporting personnel. The diversity, or lack thereof, of scientific, engineering and managerial specialties, required for contract performance and the corresponding need for related supervision and coordination shall be evaluated. By way of definition, project management and administration labor falling within this category includes senior project management personnel who oversee and direct the work, and usually consist of the project managers, project engineers, and comparable management personnel who form the project management team that plans, directs, and takes responsibility for the execution of the program or project assignment. The cost element for project management and administration labor usually applies to architect-engineer (A–E) contracts. The weight assigned will take into consideration the dollar amount of the project supervised.

(B) Manufacturing labor shall be evaluated by giving consideration to the variety and range of required manufacturing labor skills (i.e., department heads, supervisors, skilled and unskilled labor) and the contractor's manpower resources for meeting these requirements.

(C) Support services labor shall be evaluated in a manner similar to the above by assigning higher weights to professional-type skills and lower weights to semi-professional or other type skills required for contract performance. Support services labor represents those classifications of direct labor whose efforts are not identifiable with the descriptions of labor in paragraph (b)(2)(ii)(A) and (b)(2)(ii)(B) of this subsection and may include labor classifications assigned exclusively for contract performance, such as on-site

A–E firm employees performing project activities related to accounting, contract administration (including reporting), cost engineering, secretarial, clerical and the like. Care should be taken that direct charges of this nature are appropriately classified as direct rather than indirect, and that like activities are not allocated indirectly either to this contract or to the contractor's other work assignments. A weighting in excess of 9 percent for support service contract labor normally will be justified only when the quality, skill, and experience of the support labor warrants a weighting corresponding to category (A), above.

(iii) *General management (overhead and general and administrative (G&A) but exclusive of IR&D costs).* In reviewing this element:

(A) Analysis of overhead and G&A expenses includes evaluation of the makeup of these expenses and how much they contribute to contract performance. This analysis shall include a determination of the amount of labor within the expense pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements shall be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these expense pools shall be evaluated to determine whether they are routine expenses (such as utilities, supplies, and maintenance) and hence given lesser profit consideration, or whether they contribute significantly to contract performance. Depreciation expenses on facilities capital will be excluded from consideration since the profit reward for facilities capital investment is separately weighted as discussed in 915.970–8(d). The composite of the individual determinations in relation to the elements of the expense pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to such expenses differs from the method used in assigning values for the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(B) It is not necessary that the contractor's accounting system break down the overhead expenses within the classification of technical and managerial (or engineering) overhead, manufacturing overhead, and general and administrative expenses, unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system only reflects one overhead rate on all direct labor need not make changes to reflect more detail data (if CAS exempt) to correspond with the above classifications. In evaluating such a contractor's overhead rate, the negotiating official can break out the applicable sections of the composite rate which can be classified as technical, managerial, or engineering overhead, manufacturing overhead, and general and administrative expenses and follow the appropriate evaluation technique.

(C) There is a critical factor to consider in the determination of profit in this area. Management problems surface in various degrees and the management expertise exercised to solve them shall be considered as an element of profit. For example, a new program for an item that is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit consideration, follow-ons shall be adjusted downward as many of the problems may have been solved. In any event, an evaluation shall be made of the underlying managerial effort involved on a case-by-case basis.

(D) It may not be necessary for the negotiating official to make a separate profit evaluation of overhead expenses with each acquisition of substantially the same circumstance or service with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, the weight to be assigned may be used for future contracts with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or until the factors discussed in paragraph (C) above are relevant.

(iv) *Other direct costs (exclusive of CAS 414, Facilities Capital Cost of Money).* In evaluating this element, it should be remembered:

(A) Proposals, particularly for research and development, often list as direct costs the kinds of expenses usually treated as indirect for other contracts. Examples are travel and subsistence, consultants, telephone, computer costs and reports reproduction. The accounting treatment of a cost category does not change the weight appropriate to the cost being evaluated.

(B) The weight ranges in the format cover the broad categories of direct material, labor, and G&A expenses. Although cost submissions may vary from the way shown in the format, all cost categories contained in submissions will fall under one of the broad groupings shown in the format. Because other direct costs are not direct material or direct labor, it follows that they will be considered as indirect costs for weighting purposes.

(C) *Contract risk.* (1) This factor reflects the policy of the Department of Energy that contractors bear an equitable share of cost risk, and to compensate them for the assumption of that risk. A contractor's risk associated with costs to perform under a Government contract is usually minimal under cost-reimbursement-type contracts. In developing a prenegotiation profit or fee objective, the negotiating official will need to consider the type of contract to be negotiated and the anticipated contractor cost risk. This consideration is one of the most important factors in arriving at a prenegotiation profit or fee objective.

(2) Profit/Fee allowances for contractor assumption of cost risk require a determination of the degree of cost responsibility the contractor assumes, and the reliability of the cost estimates in relation to the task assumed. This factor is specifically limited to the risk of costs of contract performance, including unallowable cost elements. Thus, such risks on the part of the contractor as reputation, losing a commercial market, losing potential profits in other fields, or any risk on the part of the contracting activity, such as the risk of not acquiring an effective product or service, are not within the scope of this factor.

(3) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of performance cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract, requiring only that the contractor use his best efforts to perform a task, and a firm-fixed-price contract. A cost-plus-fixed-fee contract reflects a minimum assumption of cost responsibility, whereas a firm-fixed-price contract reflects a complete assumption of cost responsibility.

(4) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates which, among other things, take the difficulty of the task into consideration. Prior production experience assists the contractor in preparing reliable cost estimates on new contracts for similar items.

(5) Contractors are likely to assume greater cost risk when confident that contracting officers analyze the risk incident to proposed contracts and show they are willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract will not justify a reward for risk in excess of 0.5 percent, nor will a firm-fixed-price contract justify a reward of less than the minimum on the following weighted guidelines. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges which are applied to total recognized contract costs, exclusive of facilities capital cost of money:

(i) Type of contract and percentage ranges for profit objectives developed for equipment and supply contracts:

Cost-Plus-Fixed-Fee—0 to 0.5%
Cost-Plus-Incentive-Fee:
  With Cost Incentives Only—1 to 2%
  With Multiple Incentives—1.5 to 3%
Fixed-Price-Incentive:
  With Cost Incentives Only—3 to 5%
  With Multiple Incentives—4 to 6%
Prospective-Price-Redeterminable—4 to 6%
Firm-Fixed-Price—6 to 8%

(ii) Type of contract and percentage ranges for profit objectives developed for research and development contracts:

Cost-Plus-Fixed-Fee—0 to 0.5%
Cost-Plus-Incentive-Fee:
  With Cost Incentives Only—1 to 2%
  With Multiple Incentives—1.5 to 3%
Fixed-Price-Incentive:
  With Cost Incentives Only—2 to 4%
  With Multiple Incentives—3 to 5%
Prospective-Price-Redeterminable—3 to 5%
Firm-Fixed-Price—5 to 7%

(iii) Type of contract and percentage ranges for profit objectives developed for contracts for services.

Cost-Plus-Fixed-Fee—0 to 0.5%
Cost-Plus-Incentive-Fee—1 to 2%
Fixed-Price-Incentive—2 to 3%
Firm-Fixed-Price—3 to 4%

(6) In assessing the selection and application of a weighting factor, the DOE negotiating official should remember:

(i) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive-contract. In such a pricing environment, the negotiating official may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(ii) The acquisition may not obviously fit a specific category shown. For example, effort under a particular A–E contract may better fall into the category of R&D, rather than services. Judgment is required, therefore, in establishing the category and weights to be applied in each case.

(iii) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It can cause risk to increase or decrease in terms of both cost and performance. This consideration shall be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation, as a result, may be below the range that would otherwise apply for the contract type being proposed. This situation will be found to exist only in a few extraordinary situations under circumstances of (A) a follow-on production contract, in which a substantial portion of the total contract costs represents a single subcontract or a few subcontracts, and (B) the fullest incentive reward and penalty feature on cost performance having been passed by the prime contractor to the subcontractor. In an acquisition in which all of these circumstances are found to exist, a lower than usual profit weight may be applied to the aggregate of all recognized costs, including the subcontract portion. The contract risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontract costs (when there is no substantial transfer of the contractor's risk) since such action eventually can result in an undue or undesirable lessening of the amount of work let on subcontracts.

(iv) In making a contract cost risk evaluation in an acquisition that involves executing a definitive contract for a letter contract, unpriced change orders, and unpriced orders under basic ordering agreements, the effect on total contract cost risk as a result of having partial performance before a definitive contract is executed should be considered. Under some circumstances it may be concluded that the amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration of all attendant circumstances and not be just the portion of costs incurred, or percentage of work completed, prior to the execution of a definitive contract.

(v) Time and material, labor hour, and overhaul contracts priced on a time and material basis shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

(d) *Capital investment (facilities).* (1) This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Measurement of the amount of facilities capital employed is discussed in 930.7001–4 and 930.7001–8. Five to twenty percent of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the negotiating official shall consider in evaluating this factor are:

(i) The overall cost effectiveness of the facilities employed;

(ii) Whether the facilities are general purpose or special purpose items;

(iii) The age of the facilities;

(iv) The relationship of the remaining writeoff life of the investment and the length of the program(s) or contract(s) on which the facilities are employed; and

(v) Special contract provisions that reduce the contractor's risk of recovery of facilities capital investment (termination-protection clauses, multiyear cancellation ceilings, etc.).

(2) To assist in evaluating new investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities are part of an approved investment plan and that achievable benefits to the Government will result from the investment. New industrial facilities and equipment shall receive maximum weight when they—

(i) Are to be acquired by the contractor primarily for Government and energy related business and effort;

(ii) Have a long service life;

(iii) Have a limited economic life due to limited alternative uses; and

(iv) Reduce the total life cycle cost of the products produced for, or services to, the Department of Energy.

To the extent that the new investment represents routine replacement of existing assets, a lesser weight shall be assigned.

(e) *Independent research and development.* This factor rewards contractors in two ways:

(1) As a reward for the contractor's investment in a viable independent research and development program; considering, among other things, the program's quality, scope, and resources employed. The normal weight range for this factor is from 5 to 7 percent of allowable IR&D costs allocable to the prospective contract.

(2) As a reward for contractors who assume the extra risk of developing items with energy program applications on their own initiative with no direct Government assistance and little or no indirect Government assistance. Profit weights in the range of 0 to 20 percent of the basic profit dollars (total of profit dollars for items I.A. through I.E., 915.970–2(d)) are normal for this factor. The weight selection is to be based on the amount of assistance provided by the Government through independent research and/or development expense allowance under previous Government contracts and the extent the contractor already has been compensated for independent development through prior sales of the identical item to the Government.

(f) *Participation in special programs.* (1) A composite percentage weight within the range of −5 percent to +5 percent of the basic profit objective (total of profit dollars for items I.A. through I.E., 915.970–2(d)) may be assigned for this profit objective. This profit factor, which may apply to special circumstances as well as a particular acquisition, relates to rewards of outstanding achievement in contractor participation in the Government's small business, small disadvantaged business, women-owned small business concerns, labor surplus, energy conservation and other special programs. Participation that is rated as merely satisfactory shall be assigned a weight of zero, generally. Evidence of effective support may justify a plus weight and poor support a negative weight.

(2) In assessing this factor, the negotiating official shall:

(i) Give favorable consideration to the contractor's policies and procedures that effectively support Government small business and small disadvantaged business subcontracting programs. Any unusual effort that the contractor displays in subcontracting with these concerns, particularly for development-type work likely to result in later production opportunities, and the overall effectiveness of the contractor in subcontracting with, and furnishing assistance to, such concerns shall be considered. Conversely, failure or unwillingness on the part of the contractor to support these Government policies shall be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(ii) Make a similar review and evaluation of the contractor's policies and procedures supporting the Government's labor surplus area program. In particular, favorable consideration shall be given to a contractor who (A) makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (B) promotes maximum subcontractor utilization of certified eligible concerns.

(iii) Give favorable consideration to the contractor's initiatives and accomplishments in the conservation of energy and in carrying out any other special Government programs.

(g) *Other considerations.* (1) Particular situations may justify consideration of a profit allowance in addition to those specifically identified elsewhere in the guidelines. These situations shall be identified and the reason(s) for their use documented in the price negotiation memorandum. An assigned weight of −5 to +5 percent of the basic profit objective is the normal range for this profit factor depending on the circumstances of the particular acquisition. A zero weight designates a satisfactory or average effort.

(2) Examples of "other considerations" are described in the following subparagraphs.

(i) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to (A) measures taken by the prospective contractor that result in productivity improvements and (B) other cost-reduction accomplishments that will benefit Government contracts. Among other things, consideration should be given to the contractor's efforts to explore additional production opportunities or to improve or develop new product, manufacturing or performance technologies to reduce production cost.

(ii) *Complexity of R&D or services assignment.* A weighting for the complexity of the R&D or services assignment will be considered when a contract, such as an A–E contract, relates to a DOE project facility. The following complexity categories are to be used for the purpose of establishing the appropriate fee weight:

(A) *Class A*—Manufacturing plants involving continuous closed processes or other complicated operations requiring a high degree of design particle accelerators; complex laboratories or industrial units especially designed for processing, testing or handling highly radioactive materials; facilities to be used for research, development, experimental or demonstration purposes which involve advance or unique design considerations that are peculiar to the purposes for which the facility is built.

(B) *Class B*—Normal manufacturing processes and assembly operations such as ore dressing, metal working plants and simple processing plants; power plants and accessory switching and transformer stations; water treatment plants; sewage disposal plants; hospitals and ordinary laboratories.

(C) *Class C*—Permanent administrative and general service buildings, permanent housing, roads, railroads, grading, sewers, storm drains and water and power distribution systems.

(D) *Class D*—Construction camps and facilities and other construction of a temporary nature.

(iii) *Operating capital.* This factor includes consideration of the level of the contractor's operating or working capital investment required for effective contract performance. This level will vary, depending on such circumstances as (A) the nature of the work and duration of the contract, (B) contract type and dollar magnitude, (C) the reimbursement or progress payment rate, (D) the contractor's financial management practices, and (E) the frequency of and time lag between billings and Government payments. Such circumstances should be taken into account in determining what profit adjustment, if any, is appropriate under this subfactor. When the contractor will invest relatively few dollars for operating capital purposes (because of cost reimbursement and progress payment rates, or when an advance payment method (such as a letter of credit) is used to finance the contractor), a negative adjustment may be appropriate.

(h) *Productivity/Performance adjustment for follow-on contracts.* (1) One of the objectives of the DOE profit policy is to reduce costs needed to achieve national energy goals by encouraging contractor investment in modern cost-reducing facilities and other improvements in efficiency and performance. To the extent that costs serve as the basis for pricing (both cost and profit), success in reducing costs can serve in turn to reduce the magnitude of prospective profit dollars on follow-on contracts. For example, a cost-plus-award-fee contract may be awarda as the first of two or more contracts required for a major energy program. The incentive to increase productivity or performance and reduce cost under the first contract works against the contractor on any follow-on contracts because the reduced level of costs becomes a part of the basis for pricing subsequent contracts. In order to mitigate the relative loss of prospective profit dollars on a follow-on contract that occurs when costs are reduced under the predecessor contract or contracts due to productivity or performance gains, a special "Productivity/Performance Reward" may be included in the prenegotiation profit objective of a pending follow-on acquisition under certain circumstances.

(2) The "Productivity/Performance Reward" may be applied when all of the following criteria are met:

(i) The pending acquisition is for a follow-on contract.

(ii) Reliable actual cost data relating to the predecessor contract or contracts is available to establish a fair and reasonable cost baseline.

(iii) Changes made in the configuration of the item being acquired or in the technical aspects of the services being performed are not likely to invalidate price comparability.

(3) The amount of productivity or performance reward for a given follow-on contract is based on the estimated cost reduction on the predecessor contract or contracts that can be attributed to productivity or performance gains. Set forth below are principles and procedures that apply to estimating cost reductions and calculating the productivity or performance reward:

(i) The contractor shall prepare and support the cost reduction estimate.

(ii) The overall contract cost decrease shall be based on estimated decreases measured at the unit cost level, or equivalent.

(iii) The lowest average unit cost or its equivalent (exclusive of profit) for a preceding performance period or production run shall serve as the unit cost baseline.

(iv) A technique shall be employed to determine that portion of the cost decrease attributable to productivity or performance gains as opposed to other factors such as the effects of quality differences between the base contract and the pending acquisition.

(v) When the parties agree that the estimated overall contract cost decrease is materially affected by price level differences between the base period and the current point in time, an economic price adjustment may be applied to the estimate.

(vi) The reward shall be calculated by multiplying the contract cost decrease due to productivity/performance gains by the base profit objective rate.

(vii) The degree of review and validation of the data supporting the reward calculation shall be commensurate with the materiality of this profit element in relation to the overall price objective.

(4) There may be several methods advanced, by both contracting officers and contractors, to quantify productivity/performance gains. Any technique may be acceptable, provided it equitably takes into account the principles and procedures listed above.

915.971 Profit and fee-system for construction and construction management contracts.

915.971-1 General.

(a) Business concerns awarded a DOE construction or construction management contract shall be paid a profit or fee if requested or solicited. The profit or fee objective for a construction or construction management contract shall be an amount appropriate for the type of effort contained therein. It is the intent of DOE to (1) reward contractors based on the complexity of work, (2) reward contractors who demonstrate and establish excellent records of performance and (3) reward contractors who contribute their own resources, including facilities and investment of capital.

(b) Standard fees or across-the-board agreements will not be used or made. Profit or fee objectives are to be determined for each contract according to the effort or task contracted for thereunder.

(c) Profit or fee payable on fixed-price and cost-reimbursable construction or construction management contracts shall be established in accordance with the appropriate procedures and schedules set forth in this subpart.

915.971-2 Limitations.

Amounts payable under construction and construction management contracts shall not exceed amounts derived from the schedules established for this purpose. Requests to pay fees in excess of these levels shall be forwarded to the Procurement Executive for review and approval.

915.971-3 Factors for determining fees.

(a) The profit policy stated in 915.971-1(a) reflects, in a broad sense, recognition that profit is compensation to contractors for the entrepreneurial function of organizing and managing resources (including capital resources), and the assumption of risk that all costs of performance (operating and capital) may not be reimbursable.

(b) The best approach calls for a structure that allows judgmental evaluation and determination of fee dollars for prescribed factors which impact the need for, and the rewards associated with, fee or profit, as follows.

(i) Management risk relating to performance, including the (A) quality and diversity of principal work tasks required to do the job, (B) labor intensity of the job, (C) special control problems, and (D) advance planning, forecasting and other such requirements;

(ii) The presence or absence of financial risk, including the type and terms of the contract;

(iii) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(iv) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(v) Duration of project;

(vi) Size of operation;

(vii) Benefits which may accrue to the contractor from gaining experience and know-how, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(viii) Other special considerations, including support of Government programs such as those relating to small and small disadvantaged business in subcontracting, energy conservation, etc.

(c) The total fee objective and amount for a particular negotiation is established by judgmental considerations of the above factors, assigning fee values as deemed

appropriate for each factor and totaling the resulting amounts.

(d) In recognition of the complexities of this process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, fee schedules have been developed which set forth maximum fee amounts that contracting activities are allowed to negotiate for a particular transaction without obtaining prior approval of the Procurement Executive. In addition, the fee negotiation objective established in accordance with 915.971–3(a), (b), and (c) shall not exceed the applicable fee schedule amounts without prior approval of the Procurement Executive. To facilitate application to a contract, the fee amounts are related to the total cost base which is defined as total operating and capital costs.

915.971–4 Considerations affecting fee amounts.

(a) In selecting final fee amounts for the various factors in 915.971–3 of this section, the DOE negotiating official will have to make several judgments as discussed in this subsection.

(b) Complexity of a construction project shall be considered by analysis of its major parts. For a project which includes items of work of different degrees of complexity, a single average classification should be considered, or the work should be divided into separate classifications. The following class identifications are appropriate for proper fee determinations.

(1) *Class A*—Manufacturing plants involving continuous closed processes or other complicated operations requiring a high degree of design layout or process control; nuclear reactors; atomic particle accelerators; complex laboratories or industrial units especially designed for handling radioactive materials.

(2) *Class B*—Normal manufacturing processes and assembly operations such as ore dressing, metal working plant and simple processing plants; power plants and accessory switching and transformer stations; water treatment plants; sewage disposal plants; hospitals; and ordinary laboratories.

(3) *Class C*—Permanent administrative and general service buildings, permanent housing, roads, railroads, grading, sewers, storm drains, and water and power distribution systems.

(4) *Class D*—Construction camps and facilities and other construction of a temporary nature.

(c) Normal management elements of principal tasks relating to a construction contract cover several categories of tasks with differing rates of application throughout the construction period. The principal elements of management effort are outlined in this paragraph. Although each project has a total management value equal to 100% for all elements, the distribution of effort among the various elements will be different for each project due to differences in project character or size. The basic management elements and the normal range of efforts expected to apply for a normal sized project are as follows. When the normally expected effort will not be performed by a contractor, this fact should be considered in arriving at appropriate fee amounts.

Management elements	Effort range	
	Minimum	Maximum
I. *Broad project planning.*—Overall project planning and scheduling, establishment of key project organization and consultation with the A–E and DOE. Performed by highest level of contractor's officers, technical personnel and project manager	15	25
II. *Field planning.*—Mobilization and demobilization of top field organization from the contractor's existing organization and from other sources as necessary. Detailed project planning and scheduling for construction of facilities. Performed by the project manager and top field professional staff	15	20
III. *Labor supervision.*—Direct supervision of manual employees. Performed by contractor's subprofessional staff, such as superintendents and foremen (some salaried and some hourly rate). This includes the contractor's personnel to coordinate and expedite the work of subcontractors	12	16
IV. *Acquisition and subcontracting.*—Acquisition of other than special equipment. Selection of subcontractors and execution and administration of subcontracts. Performed by contractor's staff under supervision and direction of elements I and II	12	10
V. *Labor relations and recruitment (manual).*—Performed by the contractor's staff under supervision and direction of elements I, II and III. This includes demobilization of work forces	7	11
VI. *Recruitment of supervisory staff.*—Staffing required to supplement the organization under elements I and II, and demobilization during completion of the project. Performed by contractor's permanent staff and recruitment personnel under supervision and direction of management elements I and II	4	6
VII. *Expediting.*—Expediting contracting performed by contractor's staff and by subcontractors. Performed by contractor's staff under supervision and direction of elements I and II	4	6
VIII. *Construction equipment operations.*—This includes mobilization and demobilization. Performed by contractor's staff under supervision, direction and coordination of elements I, II, and IV.	4	6
IX. *Other services.*—Timekeeping, cost accounting, estimating, reporting, security, etc., by the contractor's staff under supervision and direction of elements I and II	4	6

(d) Fee considerations dealing with the duration of a project are usually provided by the consideration given to the degree of complexity and magnitude of the work. In only very unusual circumstances should it be necessary to separately weight, positively or negatively, for the period of services or length of time involved in the project when determining fee levels.

(e) The size of the operation is to a considerable degree a continuation of the complexity factor, and the degree and amount of work required to be performed by and with the contractor's own resources. Generally, no separate weighting, positively or negatively, is required for consideration of those factors.

(f) The degree and amount of work required to be performed by and with the contractor's own resources affect the level of fees. Reasonable fees should be based on expectations of complete construction services normally associated with a construction or construction management contract. In the case of a construction contract, reduced services can be in the form of excessive subcontracting or supporting acquisition actions and labor relation interfaces being made by the government. If an unusual amount of such work is performed by other than the contractor, it will be necessary to make downward adjustments in the fee levels to provide for the reduction in services required.

(g) The type of contract to be negotiated and the anticipated contractor cost risk shall be considered in establishing the appropriate fee objective for the contract.

(h) When a contract calls for the contractor to use its own resources, including facilities and equipment, and to make its own cost investment (i.e., when there is no letter-of-credit financing), a postive impact on the fee amount shall be reflected.

915.971–5 Fee schedules.

(a) The schedules included in this paragraph, adjusted in accordance with provisions stated herein and 915.971–6, provide maximum fee levels for construction and construction management contracts. The fees are related to the estimated cost (fee base) for the construction work and services to be performed. The schedule in paragraph (d) sets forth the basic fee schedule for construction contracts. The schedule in paragraph (f) sets forth the basic fee schedule for construction management contracts. A separate schedule in paragraph (h) has been developed (i) for determining the fee applicable to special equipment purchases and (ii) to reflect a differing level of fee consideration associated with the subcontractor effort under construction management contracts. (See 915.971–6(c) and 915.971–6(d)).

(b) The schedules cited in paragraph (a) above provides the maximum fee amount for a CPFF contract arrangement. If a fixed-price type contract is to be awarded, the fee amount set forth in the fee schedules shall be increased by an amount not to exceed 4 percent of the fee base.

(c) The fee schedule shown in paragraphs (d) and (f) assumes a letter of credit financing arrangement. If a contract provides for or requires the contractor to make their own cost investment for contract performance (i.e., when there is no letter-of-credit financing), the fee amounts set forth in the fee schedules shall be increased by an amount equal to 5 percent of the fee amount as determined from the schedules.

(d) The following schedules sets forth the base for construction contracts.

CONSTRUCTION CONTRACTS SCHEDULE

Fee base	Fee	Fee, percent	Increment, percent
$100,000	$5,400	5.40	5.25
$300,000	15,900	5.30	5.00
$500,000	25,900	5.18	4.72
$1,000,000	49,500	4.95	3.33
$3,000,000	116,100	3.87	2.82
$5,000,000	172,500	3.45	2.53
$10,000,000	299,000	2.99	2.16
$15,000,000	408,000	2.72	1.90
$25,000,000	598,000	2.39	1.68
$40,000,000	850,000	2.13	1.46
$60,000,000	1,142,000	1.90	1.28
$80,000,000	1,396,000	1.75	1.24
$100,000,000	1,646,000	1.65	1.03
$150,000,000	2,161,000	1.44	.80
$200,000,000	2,561,000	1.28	.65
$300,000,000	3,211,000	1.07	.50
$400,000,000	3,711,000	.93	.35
$500,000,000	4,061,000	.81	
Over $500 million	4,061,000		[1].35

[1] 0.35 percent excess over $500 million.

(e) When using the Construction Contracts Schedule for establishing maximum payable basic fees, the following adjustments shall be made to the Schedule fee amounts for (1) complexity levels, (2) excessive subcontracting, (3) normal contractor services performed by the government or another contractor:

(i) The target fee amounts, set forth in the fee schedule, shall not be adjusted for a Class A project, which is maximum complexity. A Class B project requires a 10 percent reduction in amounts. Class C and D projects require a 20 percent and 30 percent reduction, respectively. The various classes are defined in 915.971–4(b).

(ii) The target fee schedule provides for 45 percent of the contract work to be subcontracted for such things as electrical and other specialties. Excessive subcontracting results when such efforts exceed 45 percent of the total contract work. To establish appropriate fee reductions for excessive subcontracting, the negotiating official should first determine the amount of subcontracting as a percentage of the total contract work. Next, the negotiating official should determine a percentage by which the prime contractor's normal requirement (based on a requirement for doing work with its own forces) is reduced due to the excessive subcontracting and, finally, multiply the two percentages to determine a fee reduction factor.

(iii) If acquisition or other services normally expected of the contractor (see 915.971–4(c)) are performed by the government, or another DOE prime or operating contractor, a fee reduction may also be required. The negotiating official should first determine what percentage of the total procurement or other required services is performed by others. Then the negotiating official should apply this percentage reduction to the normally assigned weightings for the management services or effort as discussed in 915.971–4(c) to arrive at the appropriate reduction factor.

(f) The following schedule sets forth the base fee for construction management contracts:

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE

Fee base	Fee	Fee, percent	Increment, percent
$100,000	$5,400	5.40	5.25
$300,000	15,900	5.30	5.00
$500,000	25,900	5.18	4.72
$1,000,000	49,500	4.95	3.33
$3,000,000	116,100	3.87	2.82
$5,000,000	172,500	3.45	2.53
$10,000,000	299,000	2.99	2.16
$15,000,000	408,000	2.72	1.90
$25,000,000	598,000	2.39	1.68
$40,000,000	850,000	2.13	1.46
$60,000,000	1,142,000	1.90	1.28
$80,000,000	1,396,000	1.75	1.24
$100,000,000	1,646,000	1.65	1.03
Over $100 million	1,646,000		[1] 1.03

[1] 1.03 percent over $100 million.

(g) When applying the basic Construction Management Contracts Schedule for determining maximum payable fees, no adjustments are necessary to such payable fees for contractor Force account labor used for work which should otherwise be subcontracted until such Force account work exceeds, in the aggregate, 20 percent of the base. Excessive use of Force account work results when such effort exceeds 20 percent of the fee base; and, when this occurs, appropriate fee reductions for such excessive Force account labor shall be computed as follows:

(1) Determine the percentage amount of Force account work to total contractor effort.

(2) Determine the percentage amount of subcontract work reduced due to the use of Force account work.

(3) Multiply the two percentages to determine the fee reduction factor. It is not expected that reductions in the Construction Management Contracts Schedule fee amounts will be made for complexity, reduced requirements and similar adjustments as made for construction contracts.

(h) The schedule of fees for consideration of special equipment purchases and for considerations of the subcontract program under a construction management contract is as follows:

SPECIAL EQUIPMENT PURCHASES/ SUBCONTRACT WORK SCHEDULE

Fee base	Fee	Fee, percent	Increment, percent
$100,000	$1,500	1.50	1.50
$200,000	3,000	1.50	1.47
$490,000	5,940	1.48	1.30
$600,000	8,720	1.45	1.28
$800,000	11,300	1.41	1.15
$1,000,000	13,600	1.36	1.00
$2,000,000	23,600	1.18	.80
$4,000,000	39,600	.96	.62
$6,000,000	52,000	.87	.62
$8,000,000	64,400	.81	.57
$10,000,000	75,800	.76	.55
$15,000,000	102,300	.68	.45
$25,000,000	147,300	.59	.42
$40,000,000	210,300	.53	.36
$60,000,000	282,300	.47	.30
$80,000,000	346,300	.44	.28
$100,000,000	404,800	.41	.25
$150,000,000	514,300	.34	.15
$200,000,000	589,300	.29	.09
$300,000,000	679,300	.23	
Over $300 million	679,300		[1] .09

[1] 0.09 percent excess over $300 million.

915.971–6 Fee base.

(a) The fee base shown in the Construction Contracts Schedule and Construction Management Contracts Schedule represents that estimate of cost to which a percentage factor is applied to determine maximum fee allowances. The fee base is the estimated necessary allowable cost of the construction work or other services which are to be performed. It shall include the estimated cost for, but is not limited to, the following as they may apply in the case of a construction or construction management contract:

(1) Site preparation and utilities.

(2) Construction (labor-materials-supplies) of buildings and auxiliary facilities.

(3) Construction (labor-materials-supplies) to complete/construct temporary buildings.

(4) Design services to support the foregoing.

(5) General management and job planning cost.

(6) Labor supervision.
(7) Procurement and acquisition administration.
(8) Construction performed by subcontractors.
(9) Installation of government furnished or contractor acquired special equipment and other equipment.
(10) Equipment (other than special equipment) which is to become Government property (including a component of Government property).

(b) The fee base for the basic fee determination for a construction contract and construction management contract shall include all necessary and allowable costs cited in paragraph (f)(2) as appropriate to the type of contract; except, any home office G&A expense paid as a contract cost per cost principle guidance and procedures shall be excluded from the fee base. The fee base shall exclude:
(1) Cost of land.
(2) Cost of engineering (A&E work).
(3) Contingency estimate.
(4) Equipment rentals or use charges. (See 936.70.)
(5) Cost of government furnished equipment or materials.
(6) Special equipment as defined in 936.7200(b)(4).

(c) A separate fee base shall be established for special equipment for use in applying the Special Equipment Purchases or Subcontract Work Schedule (see 915.971–5(f)). The fee base for determination of applicable fees on special equipment shall be based on the estimated purchase price of the equipment.

(d) The fee base under the Construction Management Contracts Schedule for a maximum basic fee determination for a construction management contract shall be comprised of only the costs of the construction manager's own efforts. However, it is recognized that in the case of construction management contracts, the actual construction work will be performed by subcontractors. In most cases the subcontract awards for the construction work will be made by the construction management contractor. Occasionally the contract may involve management of construction performed under a contract awarded by the Department or by one of the Department's operating contractors. In these cases, the actual cost of the subcontracted construction work shall be excluded from the fee base used to determine the maximum basic fee (under the Construction Management Contracts Schedule) applicable to a construction management contract. A separate fee base for additional allowances (using the Special Equipment Purchases or Subcontract Work Schedule) shall be established, which shall be comprised of those subcontract construction costs, special equipment purchases, and other items' costs that are contracted for or purchased by the construction manager.

915.972 Special considerations for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on cost-plus-award-fee basis in accordance with 916.404–2, several special considerations are appropriate.

(1) The base fee portion of the fee objective of an award fee contract may range from 0% up to the 50% level of the fee amount for a Cost-Plus-Fixed-Fee (CPFF) contract, arrived at by using the weighted guidelines or other techniques (such as those provided in 915.971 for construction and construction management contracts). However, the base amount should not normally exceed 50% of the otherwise applicable fixed fee. In the event this 50% limit is exceeded, appropriate documentation shall be entered into the contract file. In no event shall the base fee exceed 60% of the fixed fee amount.

(2) The base fee plus the amount included in the award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more than 50%. However, in the event the base fee is to be less than 50% of the fixed fee, the maximum potential award fee may be increased proportionately with the decreases in base fee amounts.

(3) The following maximum potential award fees shall apply in award fee contracts: (percent is stated as percent of fee schedule amounts).

Base fee percent	Award fee [illegible]	Maximum total percentage
50	100	150
40	120	160
30	140	170
20	160	180
10	180	190
0	200	200

(b) Prior approval of the Procurement Executive, is required for total fee (base plus award fee pool) exceeding the guidelines in 915.972(a)(3). Additionally, in the event use of the award fee guidelines exceeds the statutory limitations discussed in FAR 15.903(d)(1)(i), (ii) and (iii), prior approval of the Procurement Executive shall also be required.

Subpart 915.10—Preaward and Postaward Notifications, Protests, and Mistakes

915.1002 Debriefings of unsuccessful offerors.

(a) Debriefings must be requested within 10 working days of receipt of notification of elimination from consideration or announcement of selection. Contracting officers shall advise unsuccessful offerors of this limitation in such notification letter(s). Debriefings will be provided at the earliest feasible time, which normally shall be after announcement of the selection decision and prior to award of the contract. However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefing may be conducted after award of the contract. The contracting officer, may if it is decided the facts justifies such action, receive and act upon request received at a later date. Also see 924.202(b).

PART 916—TYPES OF CONTRACTS

Subpart 916.2—Fixed-Price Contracts

Sec.
916.203 Fixed-price contracts with economic price adjustment.
916.203–4 Contract clauses.
916.206 Fixed-ceiling-price contracts with retroactive price redetermination.
916.206–3 Limitations.
916.207 Firm-fixed-price, level-of-effort term contracts.
916.207–3 Limitations.

Subpart 916.3—Cost-Reimbursement Contracts

916.301–3 Limitations.
916.303 Cost-sharing contracts.
916.306 Cost-plus-fixed-fee contracts.
916.307 Contract clauses.

Subpart 916.4—Incentive Contracts

916.404–2 Cost-plus-award-fee contracts.
916.405 Contract clauses.

Subpart 916.6—Time-And-Materials, Labor-Hour, and Letter Contracts

916.603 Letter contracts.
916.603–2 Application.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 916.2—Fixed-Price Contracts

916.203 Fixed-price contracts with economic price adjustments.

916.203–4 Contract clauses.

(d)(2) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of their delegated authority, may approve the

use of an economic price adjustment clause when appropriate in accordance with FAR 16.203-4(d)(1).

916.206 Fixed-ceiling-price contracts with retroactive price redetermination.

916.206-3 Limitations.

(d) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of delegated authority, may approve the use of a fixed-ceiling-price contract with retroactive price redetermination.

916.207 Firm-fixed-price, level-of-effort term contracts.

916.207-3 Limitations.

(d) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of their delegated authority, may approve the use of a firm-fixed-price, level-of-effort term contract in excess of $100,000.

Subpart 916.3—Cost-Reimbursement Contracts

916.301-3 Limitations.

(c) The determination and findings required by FAR 16.301-3(c) may be approved at a level above the contracting officer. Such determination and findings shall be prepared using the following format:

Department of Energy

Determination and Findings

Authority To Use Cost-Reimbursement Type Contract

I hereby find that:

(1) The Department of Energy proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($——) (if contract is CPFF type, insert, "plus a fixed fee of ($——) which is —— percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

I hereby determine that:

On the basis of the above findings it is impracticable to secure the property or services of the kind or quality required without the use of a (insert contract type————) type of contract, or the (insert contract type ————) method of contracting is likely to be less costly than any other method.

Date ————————————

(Signature) ————————————

916.303 Cost-sharing contracts.

(b) DOE cost participation policies and application are at Subpart 917.70, Cost Participation.

916.306 Cost-plus-fixed-fee contracts.

(c)(2) The head of the Contracting Activity, or designee, for contracts estimated to be within their delegated authority, may approve (sign) the determination and findings establishing the basis for application of the statutory price or fee limitations.

916.307 Contract clauses.

(j) The contracting officer shall insert the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, modified as specified in 952.216-15 in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

Subpart 916.4—Incentive Contracts

916.404-2 Cost-plus-award-fee contracts.

(d) *Fee Determination Plans.*—Award fee arrangements limited to technical performance considerations are prohibited because they may increase cost disproportionately to any benefits gained. Instead, the award fee arrangement shall include both technical performance (including scheduling as appropriate) and business management considerations tailored to the needs of the particular situation. In addition, in a situation where cost estimating reliability and other factors are such that the negotiation of a separate predetermined incentive sharing arrangement applicable to cost performance is detemined both feasible and advantageous, cost incentives may be added. The resulting contract would then be identified as a cost-plus-incentive-fee/award-fee combination type. The goals and evaluation criteria should be results-oriented. The award fee should be concentrated on the end product of the contract, that is, output, be it hardware, research and development, demonstration or services, together with business management considerations. However, input criteria such as equal employment opportunity, small business programs, functional management areas, such as safety, security, etc., should not be disregarded and may be appropriate criteria upon which to base some part of the award fee. Specific goals or objectives shall be established in relation to each performance evaluation criterion against which contractor performance is measured.

916.405 Contract clauses.

(e) Award fee contracts should include in the contract schedule the ARTICLES shown below. The Articles may be modified to meet individual situations and any ARTICLE or specified requirement therein should be deleted when it is not applicable to a given contract. If substantial changes are believed appropriate, consultation with the Director, Office of Policy, Headquarters, is advisable.

ARTICLE (Insert Article Number)—ESTIMATED COST, BASE FEE, AND AWARD FEE

The estimated cost of this contract is $ (Insert Amount). A base fee of $ (Insert Amount) is payable in accordance with the ARTICLE entitled "Payment of Base and Award Fee." In addition, a maximum Award Fee of $ (Insert Amount) is available for payment in accordance with the ARTICLE entitled "Payment of Base and Award Fee."

ARTICLE (Insert Article Number)—PAYMENT OF BASE AND AWARD FEE

Base Fee. The government will make payment of the base fee in (Insert Number) increments. The amount payable shall be based on the progress as determined by the Contracting Officer and shall be subject to any withholdings as may be provided for elsewhere in this contract.

Award Fee. The government will promptly make payment of any Award Fee upon the submission, by the contractor to the Contracting Officer or his authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment shall be made without the need for a contract modification.

ARTICLE (Insert Article Number)—DETERMINATION OF AWARD FEE EARNED

A. The government shall at the conclusion of each specified evaluation period(s) evaluate the contractor's performance for a determination of award fee earned. The contractor agrees that the determination as to the amount of award fee earned will be made by the government Fee Determination Official (FDO) and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any other appeal clause.

B. It is agreed that the evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan referenced in the ARTICLE entitled "Performance Evaluation Plan" and that the contractor shall be promptly advised in writing of the determination, and the reasons why it was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance for each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, any self-evaluation which is received within (Insert Number) days after the end of the period being evaluated, may be given such consideration, if any, as the FDO shall find appropriate.

C. The FDO may, in his sole discretion, specify in any fee determination that fee not earned during the period evaluated may be

accumulated and be available for allocation and/or "Distribution of Award Fee" shall be adjusted to reflect such allocations.

ARTICLE (Insert Article Number)—PERFORMANCE EVALUATION PLAN

A. A contractor Performance Evaluation Plan upon which the determination of award fee shall be based, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area, will be unilaterally established by the government. A copy of the plan shall be provided to the contractor (Insert Number) calendar days prior to the start of the first evaluation period.

B. The Performance Evaluation Plan shall set forth the criteria upon which the contractor will be evaluated for performance relating to any (1) Technical including Schedule requirements if appropriate, (2) Management, and (3) Cost Functions selected for evaluation.

C. The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the government at any time during the period of performance. Notification of such changes shall be provided to the contractor (Insert Number) calendar days prior to the start of the evaluation period to which the change will apply.

ARTICLE (Insert Article Number)—DISTRIBUTION OF AWARD FEE

A. The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period ——————————
Available Award Fee ——————————

B. In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official.

The contract clauses required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(i) The words "base fee and award fee" should be substituted for the term "fixed-fee" where it appears in the clause at FAR 52.243–2, Changes.

(ii) The words "base fee" should be substituted for the word "fee" where it appears in the clauses at FAR 52.232–20, Limitation of Costs, and FAR 52.232–22, Limitation of Funds.

(iii) The words "base fee, if any, and such additional fee as may be awarded as provided for in the schedule" should be substituted for the term "fee" wherever it appears in the clause at FAR 52.216–7, Allowable Cost and Payment.

Subpart 916.6—Time-And-Materials, Labor-Hour, and Letter Contracts

916.603 Letter contracts.

916.603–2 Application.

(c) In accordance with FAR 16.603–2(c), a letter contract shall provide for definitization of the contract not more than 180 days after the date of award or after completion of 40 percent of the work to be performed, whichever occurs first, unless approved in advance by the Procurement Executive.

(d) In accordance with FAR 16.603–2(d), the amount of funds obligated under a letter contract shall not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the Procurement Executive.

(f) Letter contract awards should be reported in the Procurement and Assistance Data System as soon after award as possible. Should it be necessary to modify a letter contract prior to its definitization, such actions shall be handled and reported as formal modifications as they occur. The actual definitization of the letter contract in turn, shall be accomplished by formal modification and be reported as such.

PART 917—SPECIAL CONTRACTING METHODS

Subpart 917.5—Interagency Acquisition Under the Economy Act

Sec.
917.502 General.
917.504 Ordering procedures.
917.505–70 Methods of financing employed by DOE.
917.505–71 Cost-reimbursement standards.

Subpart 917.6—Management and Operating Contracts

917.600 Scope of subpart.
917.604 Identifying management and operating contracts.
917.605 Award, renewal, and extension.

Subpart 917.70—Cost Participation

917.7000 Scope of subpart.
917.7001 Policy.
917.7002 Application.
917.7003 Amount of cost participation.
917.7004 Disposition of property and equipment furnished or acquired.
917.7005 Records.
917.7006 Payments under contracts with third party cost contributions.
917.7007 In-kind contributions.

Subpart 917.71—Special Research Contracts With Educational Institutions

917.7100 Scope of subpart.
917.7101 Definitions.
917.7102 General.
917.7103 Research program objectives.
917.7104 Other objectives.
917.7105 Unsolicited research proposals.
917.7106 Selection, preparation, and award.
917.7106–1 General.
917.7106–2 Responsibilities.
917.7106–3 Review of research proposals.
917.7106–4 Compensation for personal services of professional staff.
917.7106–5 Notice of selection or rejection.
917.7106–6 Selection of field office.
917.7106–7 Information to be furnished to field office.
917.7106–8 Changes in scope and level.
917.7106–9 Notification of contract execution.
917.7107 Contract content.
917.7107–1 General.
917.7107–2 Financial requirements.
917.7108 Personal property.
917.7108–1 Transfer of title to equipment to nonprofit educational or research institutions.
917.7108–2 Acquisition of excess Government personal property.
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Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

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Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7400 Scope of subpart.
917.7401 General.
917.7402 Policy.
917.7403 Application.
917.7404 Competition.

Subpart 917.75—Multiple Awards—Phased Acquisitions

917.7500 Scope of subpart.
917.7501 RFP provisions.
917.7502 Evaluation.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 917.5—Interagency Acquisition Under the Economy Act

917.502 General.

The Head of the Contracting Activity shall make the determination prescribed in FAR 17.502.

917.504 Ordering procedures.

(b) In addition to the items noted at FAR 17.504(b), agreements shall include:

(1) The parties to the interagency agreement.

(2) Agreement number, or modification number, if any as appropriate.

(3) Period covered by interagency agreement and/or duration of the work.

(4) Cost estimate of the project and the amount of funds to be provided by the DOE including (i) the total estimated cost of the work for the period of time specified in the agreement; (ii) the capital equipment, if any, approved for acquisition under the agreement; and (iii) limitations, if any, on the reimbursement of costs by DOE which are not set forth in the agreement. If DOE participates with another agency or agencies in sponsoring a work project, the amount of contribution to be made by each agency and the basis for distributing the costs incurred shall be specified.

(5) Method of financing to be used.

(6) Standard clauses, and reporting requirements as appropriate.

917.505-70 Methods of financing employed by DOE.

(a) Except as specified in (b) and (c) below DOE prefers to finance work done by servicing agencies by reimbursement on the basis of current billings for progress payments.

(b) A consolidated working fund advance shall be used to finance small or medium construction projects buy or the acquisition of goods or services of lesser value from the servicing agency within the same fiscal year in which the advance is made, only after a determination has been made that the reimbursement basis is not to be used.

(c) An appropriation transfer shall be used to finance larger construction projects buy or the acquisition of more costly goods or services from the servicing agency where the work will extend beyond the fiscal year in which the transfer is made, only after a determination has been made that the reimbursement basis is not to be used.

917.505-71 Cost-reimbursement standards.

(a) Incurred cost necessary or incident to the performance of the work of servicing agencies are to be considered allowable for cost-reimbursement purposes. Such costs include direct and, where applicable, indirect costs:

(b) Direct costs are the costs that can be directly identified with work under the agreement. Examples of such costs are salaries and wages, technical services, materials, travel and transportation, communications, and any facilities and equipment expressly approved for purchase under the interagency agreement.

(c) Indirect costs shall be limited to the properly allocable portion of costs that are not charged directly to the work but which can be shown as mutually benefiting the work covered by the interagency agreement as well as other work of the servicing agency. Justification for any such charges shall be required, and the basis of allocation must be reasonable. Where agreements are entered into under authority of section 601 of the Economy Act of 1932, the servicing agency's charge for any indirect costs may include appropriately allocable charges for "general administration" or "central agency overhead," as provided in Comptroller General Decision, 56 Comp. Gen. 275 (1977) as modified by 57 Comp. Gen. 674 (1978). However, general administrative or central agency overhead is chargeable only to the extent specified in the interagency agreement.

Subpart 917.6—Management and Operating Contracts

917.600 Scope of subpart.

This subpart implements FAR Subpart 17.6, Management and Operating Contracts. DOE implementing procedures and requirements to be followed in the selection, award, and administration of Management and Operating Contracts are at Part 970.

917.604 Identifying management and operating contracts.

(a) Single purpose contracts for the operation of process development units, pilot plants, and demonstration plants where the purpose is to demonstrate the viability of processes toward the goal of commercialization are not considered to be included, unless designated operating contracts in accordance with FAR 17.602.

917.605 Award, renewal, and extension.

(b) The decision to extend or compete management and operating contracts requires advance Headquarters' approval. The Head of the Contracting Activity will submit a memorandum that recommends either extending or not extending a management and operating contract. This memorandum of recommended action, together with attachments supporting it, will be submitted at least 18 months prior to expiration of the contract. The attachments shall include the following information:

(1) A full and complete justification of the recommendation that is made; i.e., either to obtain competition or to extend the contract without obtaining competition. This justification must address the policy stated in FAR 17.605.

(2) A statement of the present contractor's overall performance since award of the contract, or if previously extended, since Headquarters' last authorized extension of the contract. This should be supported by a detailed summary of the most recent appraisal of the contractor's performance.

(i) The technical appraisal shall include data which indicates the contractor's success or failure in meeting established program goals and objectives during the appraisal period. It is recognized that in some cases, the contracting office will not have the technical staffing necessary to perform an appraisal of the scientific and technical work under the contracts they are administering, as in the case with the contracts for the operation of DOE's national laboratories. When this is the situation, the contracting office shall obtain the necessary technical appraisal information from the appropriate Headquarters' program division(s) for incorporation into the overall management appraisal.

(ii) The cost appraisal shall include data that indicates the contractor's success or failure in controlling both direct and indirect costs.

(iii) Where the contract is a cost-plus-award-fee (CPAF) or similar arrangement, include a discussion of award fee experience since the date that the contract was last extended, showing the base fee, award fee pool, award fee appraisals, and award fee earned.

(iv) A separate appraisal shall be made of the contractor's performance in assuring consideration of environmental, safety, health, energy conservation and security in operating the facility and development of products.

(3) The justification for use of the contract type contemplated, including discussion of consideration given to use of the CPAF type contract.

(4) Summary description of scope of work and brief listing of some of the important projects which have been performed under this contract. A list of any important projects planned for assignment in the future should be included as well as the current institutional planning documents if applicable or other documents that indicate the area of work to be performed during the contract period.

(5) The actual cost expenditures and fee or management allowance over the past contract period and expected costs in the future.

(6) While a copy of the proposed contract document should not be submitted with the recommendation, Headquarters should be advised of the following:

(i) Any special or unique features (with brief supporting rationale) in the existing contract expected to be continued in either the extension of the existing contract or in the replacement contract. This shall include any provisions which deviate from standard clauses.

(ii) An outline of the principal issues to be negotiated if the contract is extended, with arguments pro and con, and with a recommended position. This should include the identification of any anticipated problem areas for which Headquarters guidance is needed and should also include a justification for any clauses which deviate from standard clauses and continued use of deviations granted in the past.

(d) If Headquarters makes the decision to extend the existing contract without obtaining competition, the contracting officer will be authorized by the Head of the Agency to negotiate an extension to the contract. The contracting officer shall submit the negotiated contract to Headquarters for the approval of the Procurement Executive prior to execution. The proposed contract document shall be accompanied by the following:

(1) A complete justification as required above;

(2) A summary of the major clauses of the proposed contract with particular attention to indemnity, patents, and conduct of work (including clauses concerning control over work and termination). Any deviations from current FAR and DEAR policies or standard contract clauses should be identified with the reasons therefore;

(3) A listing of any significant changes from the existing contract.

Subpart 917.70—Cost Participation

917.7000 Scope of subpart.

(a) This subpart sets forth the DOE policy on cost participation by organizations performing research, development, and demonstration projects under DOE prime contracts. This subpart does not cover efforts and projects performed for DOE by other Federal agencies.

(b) Cost participation is a generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs necessary to accomplish the project or effort under the contract. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

917.7001 Policy.

(a) When DOE supports performer research, development, and demonstration efforts, where the principal purpose is ultimate commercialization and utilization of the technologies by the private sector, and when there are reasonable expectations that the performer will receive present or future economic benefits beyond the instant contract as a result of performance of the effort, it is DOE policy to obtain cost participation. Full funding may be provided for early phases of development programs when the technological problems are still great.

(b) In making the determination to obtain cost participation, and evaluating present and future economic benefits to the performer, DOE will consider the technical feasibility, projected economic viability, societal and political acceptability of commercial application, as well as possible effects of other DOE-supported projects in competing technologies.

(c) The propriety, manner, and amount of cost participation must be decided case-by-case.

(d) Cost participation is required for demonstration projects unless exempted by the Under Secretary. Demonstration projects, pursuant to this subpart, include demonstrations by technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources.

917.7002 Application.

(a) The DOE cost participation policy set forth in 917.7001 applies to all prime contracts to the extent stated therein.

(b) Cost participation is not contemplated in contracts for the operation of Government-owned or leased, contractor-operated facilities or continuing cost-reimbursement type contracts for mission-oriented, large-scale research programs performed, using equipment or facilities which are either partially or wholly Government-owned.

(c) Potential benefits to a performer is less likely where basic research is involved and therefore cost participation, if any, is expected to be less than in circumstances where a product is being developed. As projects or proposed efforts reach stages approaching commercial viability, cost participation should be based on the overall project risk.

(d) Except for demonstration projects, the requirement for a cost participation contract in accordance with 917.7001 may be waived by the cognizant Program Assistant Secretary where it is determined that payment of the full allowable cost of the contractual effort is in the best interests of the Government.

(e) The performer's cost participation may be provided by other companies or associations with which it has contractual arrangements to perform the project. The fact that a project is jointly funded, e.g., where DOE and an industry association fund a third party performer, does not preclude cost participation by the performer.

917.7003 Amount of cost participation.

(a) Cost participation may be in various forms or combinations, which includes but is not limited to cash outlays, real property, or interest therein, needed for the project, personal property or services, cost matching, foregone fee, or other in-kind participation. Cost participation may include the value of contributions of other non-Federal sources, provided the contributions were not previously obtained free of charge from Federal sources. The value of any noncash contribution shall be established by

DOE after consultation with the performer. Cost participation may be accomplished by a contribution to either direct or indirect costs provided such costs are otherwise allowable in accordance with the cost principles of the contract. Allowable costs which are absorbed by the performer as its share of cost participation may not be charged directly or indirectly to the Federal Government under other contracts, agreements, or grants.

(b) Organizations should contribute a reasonable amount of the total project cost covered under the contract. The ratio of cost participation should correlate to the apparent advantages available to performers and the proximity of implementing commercialization. In setting the levels of cost participation by the performer, the contracting officer, in consultation with the program office, should consider such factors as:

(1) The availability of the technology to the performer's competitors;

(2) The risks involved in achieving commercial success;

(3) The length of time before the project is likely to be commmercially successful;

(4) Improvements in the performer's future commercial competitive position;

(5) Disposition of property at project's end;

(6) Whether the potential benefits will be lessened if the performer lacks production or other capabilities with which to capitalize the results of the project. However, if the results of the project are transferable to commercial organizations with production capabilities, and the performing organization would obtain patent of other property rights which could be sold or licensed, this should be considered; and

(7) Whether the performing organization lacks adequate non-Federal sources of funds from which to make cost participation.

(c) The manner of cost participation and how it is to be accomplished shall be set forth in the contract.

(d) The handling of any return from sale of products from the project shall be set forth in the contract.

(e) The solicitation document shall state whether any cost participation is required and may set forth a target level of cost participation. Though technical considerations are normally most important the degree of cost participation will be considered when cost to the Government is to be a major factor in a selection decision.

(f) Unsolicited proposals will be considered on a case-by-case basis by the program office, in consultation with contracting officer, as to the appropriateness of cost participation. If cost participation is considered to be appropriate, guidance for determining an appropriate level may be included in the procurement authorization package. The extent and type of cost participation is subject to negotiation, however.

(g) The extent to which a performing organization contributes to the cost of a project will be taken into consideration in the allocation of patent rights under DOE's waiver policy.

(h) Fee or profit will not be paid the performer under a cost participation contract. Foregone fee or profit will be considered in establishing the degree of cost participation.

(i) Where cost participation is appropriate, fee or profit will not be paid to any member of the proposing team having a substantial and direct interest in the project. Competitive subcontracts placed with the prior written consent of the contracting officer and subcontracts for routine supplies and services are not covered by this prohibition.

917.7004 Disposition of property and equipment furnished or acquired.

Disposition instructions for any property and equipment furnished or acquired using Federal funds during performance shall be set forth in the contract.

917.7005 Records.

Contracts which provide for cost participation shall require the contractor to maintain records adequate to reflect the nature and extent of their cost contribution as well as those costs charged to DOE. Such records shall be subject to audit by DOE.

917.7006 Payments under contract with third party cost contributions.

Arrangements between DOE and non-Government organizations for jointly sharing the cost of projects performed by third party contractors shall provide that each party to the cost sharing agreement shall pay its share of program costs directly to the performing contractor. Any alternative arrangement must be approved in advance by the Controller or designee.

917.7007 In-kind contributions.

(a) In-kind contributions represent noncash contributions provided by the performing contractor or a non-Federal third party who is participating with DOE in a co-sponsored project or contract. In-kind contributions may be in the form of personal property (equipment and supplies), real property (land and buildings) or services which are directly beneficial, specifically identifiable and necessary to performance of the project or program.

(b) In-kind contributions proposed to the DOE as part of a performer's cost participation must meet all of the following criteria before acceptance:

(1) Be verifiable from the performer's books and records, if performer donated;

(2) Not be included as contributions for any other Federal program;

(3) Be necessary to effective and efficient accomplishment of project objectives;

(4) Provide for types of charges that would otherwise be allowable under applicable Federal cost principles appropriate to the contractor's organization; and

(5) Not be paid for by the Federal Government under any contract, agreement or grant, unless specifically authorized by legislation.

(c) In-kind contributions accepted from a performer will be valued as set forth below provided the established values do not otherwise exceed fair market values.

(1) Where the Government receives title to donated land, buildings, equipment or supplies and the property is not fully consumed during performance of the co-sponsored project, the property's in-kind value should be established based on the performer's booked cost (i.e., acquisition cost less depreciation, if any) at the time of donation. In the event the booked costs reflect totally unrealistic values when compared to current market conditions, another appropriate value may be established if supported by an independent appraisal of the fair market value of the donated property or property in similar condition and circumstance.

(2) The value of any services or the use of personal or real property donated by a performer should be established, when necessary to do so, in accordance with generally accepted accounting policies and the appropriate Federal cost principles applicable to the performer's organization.

(d) Values established for in-kind contributions accepted from a non-Federal third party should be reasonable and shall not exceed the fair market value of the item at the time of donation. Specific requirements for selected in-kind items involving third party donors are as follows:

(1) *Donated Employee Services.* Employee services donated by a non-Federal third party shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the donated services require use of the same skills for which

the employee is normally paid. Otherwise, the rate of pay, for valuation purposes, shall be consistent with the rates paid for similar work in the labor market in which the performer competes for such skills.

(2) *Volunteer Services.* Rates used to value volunteered personal services of professional, clerical, or other individuals should be consistent with those regular rates paid by the performer for similar work and be established in accordance with the procedures specified in subparagraph (1) above.

(3) *Property.* Values for personal or real property, or the use thereof, donated by a non-Federal third party shall be established, dependent upon the donor's intended disposition of the property upon project completion, as follows:

(i) When title is donated at no cost to the Government or the property will be fully consumed during project performance, a reasonable value not in excess of the fair market value of the donated property, or comparable property in similar condition, shall be established provided the fair market value of land or buildings is established by an independent appraisal.

(ii) When title is retained by the donor or acquired by the performer, reasonable usage values not in excess of the fair rental value of the donated property or comparable property shall be established provided the fair rental value of donated space is established by an independent appraisal.

Subpart 917.71—Special Research Contracts With Educational Institutions

917.7100 Scope of subpart.

This subpart sets forth policies and procedures applicable to the negotiation and administration of Headquarters-designated special research contracts for basic research with educational or other nonprofit institutions. These policies and procedures should also be followed for Headquarters-designated contracts for applied research with educational institutions and for educational and training activities with educational or other nonprofit institutions. The policy of reimbursing only DOE's share of actual costs up to a ceiling should be reflected in all contracts with educational institutions. The procedures in this subpart regarding acceptance of unsolicited proposals from educational institutions and use of the special research contracts may be used only when the annual DOE support does not exceed $1,000,000. If the annual DOE support exceeds $1,000,000, or a determination is made under the provisions of Pub. L. 95–224 that a grant or cooperative agreement is to be used as the instrument for providing support regardless of the dollar amount, then a special research contract may not be used. If the annual DOE support exceeds $1,000,000, and a contract is determined to be the instrument to provide such support, an appropriate type contract will be used in accordance with FAR 16, with clauses as prescribed in 952 and FAR 52 and the coverage of 917.7108.

917.7101 Definitions.

"Headquarters-designated contract" means a special research contract which results from an authorization to a field office from a Headquarters office to enter into or continue such a contract on the basis of an approved research proposal.

"Contractor" means the educational or nonprofit research organization which enters into a contract with DOE for the performance of specified research.

"Research proposal" means a request by or an unsolicited proposal as defined in FAR 15.501 from an institution for support of a research project, together with a detailed description of the project and its relationship to DOE's program, and detailed information as to background and experience of principal investigators, facilities, and environment of the institution, and cost and cost-sharing arrangements, if any.

917.7102 General.

The DOE, by statute, is permitted to participate in research programs that are related to atomic and other forms of energy.

917.7103 Research program objectives.

(a) Under sections 31 and 31a of the Atomic Energy Act of 1954, as amended, DOE is directed to exercise its powers in such manner as to ensure the continued conduct of research and training activities and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in the following fields:

(1) Nuclear processes;

(2) The theory and production of atomic energy, including processes, material, and devices related to such production;

(3) Utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;

(4) Utilization of special nuclear materials, radioactive material, and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial and commercial uses, the generation of usable energy and the demonstration of advances in the commercial or industrial application of atomic energy;

(5) The protection of health and the promotion of safety during research and production activities; and

(6) the preservation and enhancement of a viable environment by devleoping more efficient methods to meet the nation's energy needs.

917.7104 Other objectives.

(a) Headquarters-designated special research contracts are entered into by negotiation under the authority of section 31c of the Atomic Energy Act of 1954 and section 302(c)(5) of the Federal Property and Administrative Services Act of 1949. In planning, negotiating, and administering such contracts, the objectives are to:

(1) Assure a continuing flow of new knowledge in fields related to the responsibilities of DOE;

(2) Respect the traditions of the contracting institution and encourage the quest for new knowledge without restrictions or scientific initiative, to the extent compatible with the laws and the protection of the public interest;

(3) Provide reasonable levels of support which will increase the national capability in energy fields and enable the contracting institution to strengthen its research programs in areas of interest to DOE; and

(4) Maintain effective contact with the scientific community so that:

(i) Scientists and students will be encouraged to expand their interests in fields of importance to DOE;

(ii) The scientific strength of the country can be brought to bear more effectively on DOE problems;

(iii) The DOE will be continuously aware of developments of value to its activities in the academic communities; and

(iv) An adequate supply of suitably trained scientists will be available for employment to meet energy program needs.

(b) The contractor is responsible for conducting the research and is expected to carry out the project or projects in a manner consistent with the agreed-upon objectives and requirements. These include the obligation to comply with applicable laws and regulations. The contractor is generally expected to follow its normal business practices and to use its existing accounting system.

917.7105 Unsolicited research proposals.

Unsolicited proposals for DOE assistance may be initiated by scientists

interested in doing research. Prior to submitting proposals, the interested scientists, at his or her initiative may discuss the project informally with DOE.

Following such discussions, the proposal should be submitted in accordance with FAR Subpart 15.5 and 915.506 of this Chapter. If the DOE desires to solicit proposals, the procedures in 917.73 or other existing solicitation procedures will be used.

917.7106 Selection, preparation, and award.

917.7106-1 General.

In order to maintain a comprehensive and well-integrated research program, evaluation of research proposals and selection of educational institutions to conduct scientific research is centralized in Headquarters program office. However, field offices may be assigned responsibility for handling the final arrangements and nontechnical administration of such contracts.

917.7106-2 Responsibilities.

(a) The program office interested in particular research is responsible for evaluating the technical aspects of the proposals. The program office must determine that the proposal has sufficient technical merits and program value in comparison to other available proposals to justify providing support. This includes judgments as to the merit of the proposed research objectives, the probability of achieving the objective(s), the capabilities of the researchers, and how the proposals will specifically promote the objectives in 917.7103 and 917.7104. The program office also reviews the proposer's requested cost and other estimates to determine the reasonableness, the propriety, and the advisability of proceeding with the project. Specifically, Senior Program Officials or their designees at Headquarters are responsible for:

(1) Selecting and approving research proposals and determining the amount to be funded;

(2) Documenting the rationale for funding in accordance with (a) above;

(3) assuring that the statement of work is clear and complete;

(4) Providing a copy of the documents prepared in (a)(2) and (3) to the field office;

(5) Reviewing the items in the proposal budget or itemized account of the proposed work, and, if necessary, requesting the assistance of the appropriate field office;

(6) Determining the ownership of property;

(7) Reviewing and following the technical progress of the work;

(8) Providing contractors with the technical guidance and direction as may be required to meet broad program objectives; and

(9) Keeping the field offices fully informed of technical correspondence and discussions with contractors that may have contractual or non-technical administrative implications.

(b) Field offices are responsible for the consummation of contracts with the institution in accordance with directives from the program office, and for administering and making payments under such contracts. Specifically, field offices are responsible for:

(1) Performing any necessary cost or price analysis, obtaining audit service when needed, and negotiation of budget and contract terms;

(2) Finalizing and executing the contract (where necessary, obtaining further instructions from the program office);

(3) Administering the contract in accordance with its terms and conditions and making payments thereunder; and

(4) Providing technical and administrative assistance requested by program officials.

917.7106-3 Review of research proposals.

(a) If, in the judgment of the program office, an appraisal from representatives of the scientific community is required, reviewers may be selected on the basis of their familiarity with either the field of research or the competence of the investigator. See also 924.70.

(b) Occasionally, the program office may find it necessary to obtain additional information from the research institution or to visit the site. In some cases, the comments, assistance, or participation of staff members of the appropriate field office will be requested.

(c) At the time it reviews a research proposal, the sponsoring program office shall review the prospective contractor's budget or itemized account of the proposed work and activities and the materials, equipment, and facilities involved, for the purpose of reaching mutual understanding of the estimated cost of the research and the other major aspects of the contemplated contract. Questions about the cost elements that required further investigation may be referred to the appropriate field office when the contract is authorized.

(d) When reviews are conducted by representatives who are not Government employees, the policies for avoidance of organizational conflicts of interest in 909.5 shall be followed.

917.7106-4 Compensation for personal services of professional staff.

Compensation for personal services of professional staff must be in accordance with Office of Management and Budget Circular A-21, revised. The certification required by Appendix C of 917.7113 fulfills the certification requirement of section K of OMB Circular A-21 for the special research contract.

917.7106-5 Notice of selection or rejection.

The program office shall notify the proposer of the decision to fund or reject the proposal. In the event of a decision to fund, this notification shall advise: (a) that the proposal has been selected for funding subject to completion of a satisfactory contract; (b) which field office will negotiate and execute the contract; and (c) that DOE assumes no obligation until a contract has been executed. A copy of the notice of acceptance or rejection shall be sent to the field office concerned. The notice shall indicate the basis for rejection and shall constitute DOE's record of action for the files. If the proposal is accepted, a justification shall be prepared in accordance with 917.7106-2.

917.7106-6 Selection of field office.

(a) When the program office has determined that a proposal shall be funded, a field office shall be requested to make the final arrangements with the institution concerned. Usually the field office geographically nearest to the research institution will be selected, but occasionally other factors such as existing contractual relationships and location of the research project will make the selection of some other field office desirable.

(b) Traineeship agreements under the nuclear science and engineering traineeship program are exempt from the policy in (a) and shall continue to be assigned to the Oak Ridge Operations Office. Research contracts with foreign educational institutions shall be assigned to the Chicago Operations Office.

(c) Any transfers of assignments between field offices will be accomplished when the particular contract is next renewed or otherwise modified.

917.7106-7 Information to be furnished to field office.

The sponsoring program office shall provide the Contracting Activity with an authorizing directive early enough (generally 60 days) to permit timely completion of the contract award before the work is scheduled to start. The following shall be furnished:

(a) A copy of the detailed proposal and any modifications;

(b) Copies of correspondence with the research institution that are pertinent to the completion of the negotiation or that have some specific significance as to the preliminary review of arrangements made with the institution; and

(c) An authorizing directive which:

(1) Authorizes the execution of a special research of contract for a specified term, with DOE support limited to a specified amount or a specified percentage of costs up to a specified support ceiling;

(2) Summarizes the background of the proposal and any pertinent discussion not reflected in the papers attached to the memorandum;

(3) Indicates the extent to which the scope of the work proposed has been approved;

(4) Indicates the principal investigator and other necessary details;

(5) Determines the availability of legal authority to transfer title to property and indicates the total estimated cost of the research and other major aspects of the contract, by reference to the proposal or otherwise;

(6) Indicates whether title to property to be acquired under the contract is to be vested in DOE or the contractor;

(7) Indicates whether restricted data or other classified information is likely to be used or developed in the course of the work and such classification and security determination as may be appropriate;

(8) Indicates directions for special reports, if any;

(9) Gives such additional information as may assist the field office in negotiating the contract; and

(10) Designates the appropriate organizational unit and individual in the program office that will have technical cognizance over the work under the contract.

917.7106-8 Changes in scope and level.

After a contract has been authorized by the program office but prior to execution, the field office shall not approve any significant change in technical scope, funding, specified result, performance, principal investigator, or other major aspects of the work without prior approval of the program office.

917.7106-9 Notification of contract execution.

Promptly after execution of a contract, the program office shall be notified of such action.

917.7107 Contract content.

917.7107-1 General.

A standard outline (format) for a special research contract for research performed in facilities owned and controlled by the contractor (as distinguished from Government-owned or Government-controlled facilities), is set forth in 917.7113. This document is intended to provide a vehicle by which research tasks can be accomplished with a minimum of administrative effort. It is, therefore, important that such contracts be written so as to assure the complete understanding of the parties as to the job to be performed and the financial and administrative details connected therewith. Of special consideration is the nature of research contracting as contrasted to the acquisition of supplies and activities of a production nature. Wide latitude in the conduct of research by the institutions is generally desirable and the standard contract forms are designed to permit such latitude in the establishment of the rights and obligations of the parties.

917.7107-2 Financial requirements.

(a) The special research contract outlined in 917.7113, is generally used for basic research with educational institutions when the annual DOE support under the contract does not exceed $1,000,000. It provides that DOE's monetary obligations will be a specified amount, which is referred to as the support ceiling, or a lower adjusted amount (referred to as the cumulative support cost) if actual costs chargeable to DOE during the total period of the contract are less than expected. The ceiling on DOE's monetary support shall be determined and established as a support ceiling at the outset of the initial contract period.

(1) The total contract period of performance should be established based upon the estimated period of performance necessary to accomplish the research effort. If available funding is less than that needed to fully fund the effort, the available funding will be provided as the cumulative Government cost as defined at Article A–III(b) of 917.7113 with the remainder of the funding subject to the availability of funds.

(2) In such circumstances the standard Special Research Contract format provided at 917.7113 shall be revised at Article II, The Period for Performance, to indicate the period of time for which the available funding is estimated to suffice and at Article A–III to show the additional funding to be provided subject to the availability of funds.

(b) If the parties agree to extend the contract for an additional period or periods of performance, the ceiling on the DOE's funding (Government ceiling) shall be increased to reflect any increased support by reason of the extended period or periods. The costs chargeable to the DOE (Government cost) will be reported for each pertinent period of the contract specified in Appendix A (generally an annual period) in accordance with paragraphs (b), (c), and (d) of this section, and the Government cost determined for each such period will be accumulated for all periods of performance, as will the Government ceiling.

(1) The monetary obligation to the contractor will not exceed the cumulative Government cost or the accumulated Government ceiling, whichever is less.

(2) Upon termination, or expiration of the total period of performance, the contractor must refund to DOE, or make such other disposition as the contracting officer may direct, any funds advanced in excess of the cumulative Government cost incurred under the contract. Payment shall be made in consideration of the contractor's performance of research activities described in the contract and in accordance with the provisions of the contract.

(3) The contractor shall have the right to discontinue performance of research under the contract, upon written notice to the contracting officer, at any time when or after the total costs chargeable to DOE equal or exceed the cumulative Government cost or the Government ceiling whichever is less.

(4) Certain deviations in performance and other actions require the contracting officer's approval as stated in 917.7113. Among other approval requirements, the contractor must obtain the contracting officer's approval to incur costs for items set forth in Article A–II(a), during the pertinent period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III for the specific period. In those cases in which there is to be proportionate sharing of costs, the percent of the cost to be borne by DOE will be set forth in Article A–III of the agreement (see paragraph (d) of this section).

(c) The contractor shall be required to furnish a certified statement (within three months after the expiration of the pertinent contract period set forth in 917.7113, Appendix A and at the termination of or expiration of the contract), signed by an authorized official, showing the total cost, Government cost, and contractor's contribution, if any, for the prior

contract period. The format for this report is found in 917.7113, Appendix C.

(d)(1) It is expected that in many cases the contractor will propose to contribute to the cost of the research work. Such contribution shall be set forth in Appendix A of the contract, either as items under (b) or (c) of Article A–II which will be contributed solely by the contractor without charge to DOE, or as a proportionate cost-sharing agreement in Article A–III which will provide that the contractor will charge DOE only a specified percentage of the actual cost incurred from items under (a) of Article A–II.

(2) Proposed contractor contributions should ordinarily be listed under (b)(1) of Article A–II when: (i) The contribution is that of the principal investigator or other senior personnel who are likely to be involved in the research work to the same extent whether their cost is included in or excluded from proportionate cost sharing; (ii) the proposed contribution to the work is being paid for by a third party; e.g., personnel or equipment, the cost of which is being reimbursed under another contract or grant from public or private sources; and (iii) the proposed contribution does not involve any cash expenditure by the contractor.

(3) Only those items, the cost of which is to be charged to DOE or proportionately shared by the parties, should be listed under Article A–II(a). Proportionate sharing of the cost of items under Article A–II(a) should be provided for only when the contractor agrees to pay a specified percentage of the cost of all such items, and when such sharing is expected to be of financial benefit to DOE.

(4) In those cases in which there is to be proportionate cost-sharing, the contractor should generally be encouraged to continue the same sharing ratio througout the life of the contract so as to provide for ease of administration and to avoid difficulties in determining proper charges to DOE. It should be understood that the DOE will pay only the specified percentage of the actual cost of items under Article A–II(a) incurred during the pertinent period specified in Appendix A, up to a maximum of 110 percent of the estimated Government cost set forth in Article A–III for the pertinent period unless otherwise specifically approved by DOE and subject to the Government ceiling set forth in Article III.

(e)(1) If the contractor proposes to contribute the cost of the principal investigator(s) on the project and requests that the contribution be excluded from A–II(b), the contributed time or effort should be shown in A–II(d). The contractor shall not be required to maintain records regarding the amount of effort contributed by the principal investigator, and the contractor shall not be required to certify, in accordance with Appendix C of the contract, the amount of effort contributed by the principal investigator.

(2) The principal investigator may be included in Article A–II(a) for purposes of obtaining reimbursement of costs during the summer months, and excluded from Article A–II(a) for academic year if the contractor proposes to contribute the costs for that period. The contract generally will not require the contractor's commitment that any particular amount of time or effort by the principal investigator(s) or other personnel will be devoted to the work.

(3) In the event a proposed contractor contribution is included in Article A–II(b)(1), the contract should reflect the nature and extent of the contractor's intent to contribute the item, and the contractor shall maintain records adequate to permit DOE to determine the extent of the contribution. The contractor must certify, in accordance with Appendix C of the contract, the extent to which the item or items under Article A–II(b)(1) have been contributed.

(4) Government-owned property to be procured, fabricated, or furnished under Article IV or Article B–IX of the contract and other Government-furnished equipment, supplies, materials, or services should be excluded from Article A–II(a) and listed under Article A–II(b)(2).

(f) When the special research contract outlined at 917.7113 is used for nonprofit organizations other than educational institutions:

(1) Article B–XXIX, Determination of Support Cost, should be revised to provide that the nonprofit cost principles (Subpart 931.7) will be used in determining actual cost, or

(2) Revised at the direction of the cognizant Headquarters office to provide for a lump-sum payment to the contractor in consideration for its performance of particular research at a specified level of effort.

(g) The special research contract outlined in 917.7113 may also be used to fund research at educational institutions in foreign countries; when so used:

(1) The outline of 917.7113 may be revised at the discretion of the cognizant Headquarters or field office, to provide for a lump-sum payment to the foreign institution in consideration of its performance of particular research at a specified level of effort.

(2) Approval requirements shall be limited to those consistent with the nature of the support to the foreign institution.

(3) All such contracts with foreign institutions shall provide that any unused funds available to the foreign institutions at the end of the contract shall be used in a renewal period, returned to the DOE, or otherwise disposed of, in accordance with instructions from the contracting officer.

917.7108 Personal property.

917.7108–1 Transfer of title to equipment to nonprofit educational or research institutions.

(a) In accordance with Pub. L. 95–224, DOE has discretionary authority, where it is deemed to be in furtherance of the objectives of DOE to vest in nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, without further obligation to the Government or on such other terms and conditions as may be appropriate, title to equipment purchased or fabricated with contract funds.

(b) It is deemed to be in the furtherance of the objectives of DOE, pursuant to Pub. L. 95–224, to vest in those educational and nonprofit institutions title to equipment purchased or fabricated with contract funds for research. This will promote the progress of scientific research, reduce the amount of expense and unnecessary labor due to the necessity for maintaining records, transporting, or storing such property which is often unsuitable for any other use. Contracting officers (coordinating with program officials) shall impose such terms or conditions as they determine to be appropriate in individual cases.

(c) The vesting of title to equipment, fabricated or purchased for work to support a SRC shall be as follows:

(1) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, shall provide that title to equipment having an acquisition cost of less than $1,000 and purchased or fabricated with contract funds available for the conduct of basic and applied research rest in the contractor at acquisition, provided prior approval of the purchase is obtained from the contracting officer. This prior approval may be in the form of an approved budget which calls out the equipment to be acquired, either on a line-item basis or for clearly defined classes of items, or by other means, as long as the contracting officer can determine that the proposed acquisition is essential to the performance of the contract. Title to

such equipment shall vest in the contractor upon acquisition or as soon thereafter as feasible.

(2) Contracts with those institutions cited in (1) above shall provide that title to equipment having an acquisition cost of $1,000 or more, and purchased with contract funds available for the conduct of basic and applied research, shall vest in the institution upon acquisition or as soon thereafter as feasible without further obligation to the Government, unless it is determined not to be in furtherance of the objectives of DOE and is provided for in the contract. The contract may reserve the right of the Government to transfer title of equipment costing $1,000 or more per unit to the Government or to a third party named by the Government, at any time prior to final payment under the contract.

(d) When title to equipment is vested in the institution as provided in this subsection, the institution shall not be reimbursed for any depreciation, amortization, or use charges with respect to such equipment under any Government contract, cooperative agreement, grant or any subcontract under a Government contract.

(e) The determination to vest title in the institution under this subsection will be provided by the cognizant program office on the procurement request, or other appropriate document.

(f) In addition to the authority referred to in paragraph (a) of this subsection, the Atomic Energy Act of 1954, as amended, authorized DOE to vest title to items of equipment and other personal property in a contractor when the transfer serves a nuclear programmatic purpose. When applicable programmatic determination to transfer title to the institution will be provided by the cognizant program office and made a part of the official contract file.

917.7108–2 Acquisition of excess Government personal property.

(a) The utilization of certain items of excess Government personal property by educational institutions is encouraged in the interest of conserving funds otherwise designated for similar items of property in existing research contracts or agreements with such institutions. Excess Government personal property includes all types of equipment and materials, used or new, which are owned by the Federal Government and are no longer needed by the holding Federal agency, but have additional useful life.

(b) Consistent with GSA regulations, excess personal property may be furnished to a contractor (with or without transfer of title) upon authorization by DOE, provided a determination is made that acquisition will result in a reduction in the cost to the Government of the contract. This procedure will not normally be used for the acquisition of general purpose equipment (e.g., desks, typewriters, air conditioners).

(c) Contractors shall be advised they may obtain information concerning the availability of certain kinds of equipment or materials by requesting the contracting officer to include them on the GSA mailing list for excess property catalogs. When an item of equipment or material is selected, the contractor should reserve it by notifying the cognizant GSA office and confirming the reservation in writing. Availability is usually on a first-come, first-serve basis, but GSA will give preference in a competing situation to those agencies which do not vest title to property in the contractor. The contractor should then submit a Standard Form 122, Transfer Order Excess Personal Property, to the cognizant DOE office, accompanied by a written justification of need, including the estimated cost of acquisition (e.g., packing, shipping, installation, rehabilitation, etc.), signed by the principal investigator and an authorized administration official. The written justification shall contain a statement as to whether or not the contractor desires title to the property under the authority of the Atomic Energy Act and 917.7108–1(g). If the acquisition is approved, the DOE office shall forward the SF–122 to the appropriate GSA office with a notation as to whether or not DOE intends to vest title to the property in the contractor. A copy of the approved SF–122 with the notation regarding the vesting of title shall be returned to the contractor. When the property is received, the contractor shall forward to the DOE office a receipted copy of the SF–122 which lists the items of property.

(d) In those instances where the contractor's acquisition of title has been approved by DOE, title to the property shall pass to the contractor when the receipted SF–122 is received by the DOE office, pursuant to Article B–IX(b), Property Items, of 917.7113. Contract funds may be used to pay for necessary costs of packing, transportation, installation, rehabilitation, and maintenance, if required.

(e) In those instances where the contractor did not desire title or where the cognizant DOE office has determined that title to the excess property should remain in the Government, the property will be handled as Government property in accordance with Article B–IX of 917.7113.

917.7108–3 Management of Government-owned equipment.

When title to equipment is retained by the Government, the institution shall be required to establish and maintain a program for the utilization, maintenance, repair, protection, preservation, and reporting of Government property in accordance with sound business practice and the provisions of FAR Subpart 45.5 and 945.5 of this Chapter.

917.7108–4 Reports.

Excess property acquired from other Government agencies or from GSA and provided to institutions under the authority of 917.7108–2, above, will be included in the report required by FPMR 41 CFR 101–43.4701(c).

917.7109 Reporting requirements.

917.7109–1 Purpose of reports.

Research reports from contractors are necessary to show the progress achieved under projects receiving DOE funding. In many instances, the research reports are of value in making information available to scientists working on closely allied problems.

917.7109–2 Notice of Energy R&D Project.

Immediately after a special research contract is negotiated, a Notice of Energy R&D Project, DOE Form 538, which summarizes the purpose and scope of the project should be prepared by the contractor and sent to the contracting officer, the program manager, and the technical information officer. Annual updates are required.

917.7109–3 Progress reports.

Progress reports are required which should briefly describe the scope of investigations undertaken and the significant results obtained. They should also explain any significant differences between the actual level of activity (expressed in the various categories of labor-months, facilities acquired, travel performed, etc.) and that contemplated in the contract.

917.7109–4 Technical reports.

Technical reports, reprints, and articles prepared for publication during the period covered by the contract shall be required to be listed with bibliographic references. Reprints of all such material not previously submitted to the DOE shall be required to be appended and material contained in them need not be duplicated in the report.

917.7109–5 Special reports.

Special reports or additional progress, status, or topical reports shall be

requested as required by program officials or submitted as deemed necessary by the contractor. For example, brief status reports shall be requested when developments are of immediate interest or when a significant point in the investigation has been reached. The value relative to the costs incurred in providing special reports must be considered when requesting any additional reports.

917.7109–6 Final report.

A final report summarizing the entire investigation shall be required from the contractor upon expiration of each contract. Satisfactory completion of a contract will be contingent upon the receipt of this report. The final report should follow the outline agreed upon for progress reports, or when a project has extended over a long period of time, the final report may refer to previously submitted technical reports for details and may be a synopsis of the entire project. Manuscripts prepared for publication should be appended.

917.7109–7 Summary and distribution of reports.

(a) A table summarizing the various types of reports, time for submission, number of copies and distribution is set forth below. The distribution and schedule of reports shall be as prescribed in this table, unless the authorizing program office specifies otherwise. Frequently, an annual progress report and a 200-word summary are sufficient for fundamental research, but additional reporting may be required in many cases. All reports shall be prepared by the contractor and submitted to the appropriate field office for distribution. The field office shall transmit these reports with a cover memorandum indicating: (1) The other DOE offices receiving the documents; (2) the name of the contractor; and (3) the contract number. Each copy of the documents shall bear the contract number.

DISTRIBUTION AND SCHEDULE OF DOCUMENTS

Type	When due	Number of copies for			
		Field office	HQ program office	TIC/Oak Ridge	HQ patents DOC
1. Summary: 200 words on scope and purpose (S.I.E. Form)	At start of initial contract and period	1	3	1	
2. Renewal proposal	Not later than 4 months nor earlier than 6 months before contract expires.	2	4		
3. Annual progress reports	With renewal proposal, but bound separately	2	4	2	
4. Other progress reports, brief topical reports, etc. (Desired when significant results developed or when work has direct programmatic impact).	As deemed necessary by investigator or as specifically requested by appropriate Hq. office.	2	4	2	
5. Conference papers	Same as 4 above	2	4	2	
6. Final report	Three months after completion of the work	2	2	2	1

(b) The DOE contracting officer shall inform the contractor which types of documents are to be transmitted to TIC. For each document so identified, the contractor shall send an additional copy to the contracting officer for transmittal to TIC, accompanied by one copy of DOE Form 427.

(c) The research effort shall be prefaced by an informative abstract of no more than 200 words.

(d) A listing of technical reports, articles, and reprints and the appendage of reports not previously submitted are required.

917.7110 Dissemination of results.

917.7110–1 Prompt dissemination.

Prompt dissemination of research results to the scientific community is encouraged. Publication in open literature is recognized as the normal and most desirable means for reporting the findings of unclassified fundamental research. Although DOE reserves the right to utilize, and have others utilize, to the extent it deems appropriate, the reports resulting from research contracts, DOE will attempt, to the maximum extent practicable and consistent with the Government's best interest, to permit the institutions and the authors to effect their own publication in established technical journals.

917.7110–2 Publication.

(a) Contractors should be urged to publish results through normal publication channels. As a further inducement, page charges or other printing assessments for publishing articles in recognized scientific journals, or any additional costs incurred in obtaining a limited supply of reprints of articles, shall be considered an appropriate budget item under contracts receiving DOE support where:

(1) The document reports work funded by the Government;

(2) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors;

(3) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal;

(4) The journals involved are not operated for profit; and

(5) The author does not receive an emolument for the research paper.

(b) A credit line shall be included in any such publication to indicate that the research has been funded, in whole or in part, by DOE. A patent check shall be made in advance of release to the public of any material prepared for publication.

(c) The contractor or principal investigator may publish contract data as approved by DOE in accordance with the provisions of the Patent Rights clause.

917.7111 Extension of contracts.

917.7111–1 Renewal proposals.

(a) Where additional time, beyond the current expiration date, is required to continue or complete the work under a special research contract, the contractor shall be requested to submit six copies of its renewal proposal to the contracting officer not later than four months nor earlier than six months before the date of expiration of the contract. If a renewal proposal has not been received four months prior to the contract expiration date, the contracting officer shall determine if a renewal proposal is to be submitted and take necessary action for contract close-out or processing the renewal proposal as appropriate.

(b) The renewal proposal shall outline and justify a program and budget for the succeeding year, showing in detail the estimated cost of the project, together with an indication of the items for which the contractor is requesting reimbursement or proportionate cost-sharing, the percentage of any such costs to be shared by the contractor, and

any items to be contributed solely by the contractor. It should include the same type of information as that required for initial proposals, or reference this information to the extent contained in earlier proposals. Any contemplated change in program or scope for the ensuing period should be justified and explained clearly, and the cost estimates and other items should be based upon past experience. Any deviation from the contract which has not received DOE approval should be explained in detail.

(c) The renewal proposal should include a financial statement of the work under the current contract including:

(1) Total project costs for the current period to date, indicating the amount chargeable to DOE;

(2) An estimate of the total costs to be incurred during the remainder of the current contract period, indicating the amount chargeable to DOE;

(3) The anticipated difference, if any, between the accumulated support cost at the end of the current contract period and the cumulative Government ceiling; and

(4) A footnote to show the estimated amount of outstanding commitments for property at the end of the current contract period.

917.7111-2 Evaluation of requests for renewals.

(a) Requests for renewals are required to be evaluated by the appropriate program office in the light of:

(1) Progress reports submitted by the contractor;

(2) Research results published in scientific media;

(3) Field visits to the research site by technical personnel;

(4) Contractor's performance and progress;

(5) Continued relevance to DOE's mission;

(6) Scientific and technical merit of the research and a comparison of the relative importance of the project in relation to other research proposals, proposed and ongoing; and

(7) Availability of funds.

(b) Requests for renewals generally follow the same process of review and evaluation of technical aspects, funding, and preparation, and execution of the contract, and administration as a new project, although less use would normally be made of outside consultants.

(c) Contracts authorized by program offices shall not be extended for a new term or on an interim basis or modified in scope without specific prior authorization from the appropriate program office except as provided at 917.7111-3(c).

917.7111-3 Authorization to renew.

(a) When a determination has been made to extend a special research contract, the sponsoring program office is required to provide the contracting officer with notification 60 days in advance of expiration to permit an orderly completion of the extension before the expiration date. The authorizing directive generally should include the same type of information provided in the authorization of a new contract, including pertinent information concerning any changes in scope of work, level of funding, scheduled dates for completion of certain phases of work, target dates for submission of report, etc. The directive will describe the results of the prior funding period and what is expected to be accomplished in the new funding period.

(b) An authorization to renew a special research contract shall state the estimated total cost of items to be included under Article A-II(a) of Appendix A for the renewal period, the percentage of such costs to be reimbursed by DOE, and the amount of new funds authorized to increase the Government ceiling.

(c) The field office that has administrative jurisdiction of an existing contract may extend the term of an existing contract without authorization from the cognizant program office, provided that:

(1) Any such extension does not provide for an increase in DOE's monetary obligation under the contract;

(2) The scope of work is not revised by such extension;

(3) Such extension is necessary to permit completion of the scope of work authorized by Headquarters, including preparation of required reports; and

(4) Any such extension will not be for a period in excess of 90 days.

917.7112 Administration.

917.7112-1 Responsibilities of program offices.

(a) Technical representatives of program offices will make, to the extent practicable, periodic site visits. A written summary of the results of all visits will be prepared and filed promptly. Copies of such reports shall be forwarded to the contracting officer whenever they contain information of administrative interest or other information pertinent to the assigned responsibilities of the Contracting Activity. These visits are for the purpose of:

(1) Determining that the research is being performed in accordance with the contract;

(2) Ascertaining that schedules are being met to ensure timely submission of interim and final reports;

(3) Determining whether the project has adequate facilities, equipment, and scientific, technical, and other personnel for the specified research;

(4) Ascertaining that any equipment requested for purchase is not reasonably available within the institution;

(5) Assisting the principal investigator to clarify specific technical aspects as work progresses;

(6) Exploring future budget requirements, but without making any commitments as to future funding level; and

(7) Obtaining information regarding the status of work for administrative and technical purposes of the program sponsor.

(b) Program offices will provide guidance to the contracting offices in connection with:

(1) Any contractor requests for approval of proposed deviations or other actions requiring DOE approval which are brought to their attention by Contracting Activity, or which have been brought to their attention through site visits, progress reports, or other agreements or contacts with the contractor;

(2) Increasing the obligational authority under any special research contracts;

(3) Whether or not required contractor reports are satisfactory; and

(4) The renewal or close-out of contracts. Instructions should be provided at least four weeks prior to the expiration date of a contract.

917.7112-2 Responsibilities of field offices.

Field offices are responsible for the following:

(a) Assisting Headquarters program offices, as requested, in carrying out the functions set forth in 917.7112-1;

(b) Performing the necessary administrative functions required by the terms of the contract, and making payments in accordance with the contract;

(c) Bringing to the attention of the appropriate Headquarters offices:

(1) Any contractor requests for approval which are required by the contract;

(2) The upcoming expiration date of a contract whenever required instructions on renewal or close-out have not been received on a timely basis;

(3) Any request by a contractor to revise an established stipulated salary support amount, and any notification by a contractor that is reducing the charges under the stipulated salary support procedure (see 917.7106–4(c)); and

(d) Determining whether to use Pub. L. 95–224 or the Atomic Energy Act of 1954, as amended, as the authority for vesting title to personal property in the contractor when authorized to do so pursuant at 917.7106–7(c)(6). Pub. L. 95–224 shall be used to the maximum extent consistent with the authority contained therein.

917.7112–3 Payments under special research contracts.

(a) Payments will be made to contractors under a special research contract in accordance with its provisions (see Article B–XI of 917.7113). The letter-of-credit procedures, as provided for in Treasury Fiscal Requirements Manual, Part 6, Chapter 2000, shall be used to the maximum extent feasible when the total of DOE contracts and agreements with advance financing to an institution provides for a continuing annual level of support of $120,000 or more. When the total DOE contracts and agreements with advance financing provide for a continuing annual level of support of less than $120,000, DOE shall make advance payments covering the first 90 percent of the amount of the new funds as set forth in Article A–III(b) of the contract. The contracting officer may revise Article B–XI of 917.7113, regarding the timing and amounts of advance payments, in accordance with the following provisions.

(1) The advance payments may be made at times and in amounts determined appropriate provided that no single payment will exceed 45 percent of the new funds as set forth in Article A–III(b) of the contract for the pertinent period except on the basis of a request from the contractor evidencing that a specified amount is required in connection with expenditures or commitments made under the contract.

(2) The timing and amounts of payments should be determined on the basis of limiting the amount of advances to the extent feasible, consistent with effective and efficient administration and performance of the research, for the purpose of slowing the rate of cash withdrawals from the Treasury and thereby decreasing the financing costs to the Federal Government.

(3) In determining the timing and amounts of payments, consideration should be given to funds already available to the contractor, the expected expenditures under the contract, any information from the contractor regarding the need for funds, and the administrative cost of additional payments.

(b) If the contract is to be extended for an additional period of performance with additional funding, there may be paid at the time of execution of the extension, the amount withheld from the expiring period which, when added to the payments already made, does not exceed the new funds set forth in Article A–III(b) for the expiring period. The final payment under both of the procedures referred to in paragraph (a) of this section shall be made on the basis of determinations by the contracting officer that: (1) The required reports are satisfactory; (2) the research was performed in accordance with the provisions of the contract; (3) an additional payment is required to reimburse for all costs chargeable to DOE; and (4) an appropriate patent clearance has been obtained. If necessary in making these determinations, the contracting officer should obtain advice from technical personnel. It is expected that the annual progress and final reports and the contractor's certified cost statements will provide an adequate basis for making the required determinations. If the determinations cannot be made on the basis of the reports, visits to and other contacts with the research project during the contract period, and the contractor's certified statements, and the contracting officer determines that the contractor has not satisfied the contractual undertakings, appropriate steps shall be taken to protect the Government's interest.

917.7112–4 Approval of deviations in performance and other specified actions.

(a) Contractors should be advised to inform the contracting officer as soon as possible of contemplated deviations and other proposed actions which require DOE approval. Specific deviations and approval actions include the following:

(1) A change of the principal investigator, co-investigator, or other key people as might be named in the contract, or continuation of the research work for any period in excess of three months without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining the contracting officer's approval; however, a representative of the institution shall consult with the appropriate Headquarters program representative if the principal investigator plans to, or becomes aware that he will, devote substantially less effort to the work than anticipated in Article A–I. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work and what modification to the contract, if any, may be appropriate.

(2) A change in the phenomenon or phenomena under study (i.e., broad category of the research under the contract) requires the specific written approval of the contracting officer; ordinarily such changes, if approved by the contracting officer, will be accomplished through a new contract or modification. The contractor may change the specific objectives in the research work described in the contract, provided it gives the contracting officer prompt notification of such changes; and the contractor may continue to follow the new objectives while DOE determines whether it wishes to continue the program under the changed approach. Significant changes in methods or procedures employed in performing the research should be reported in the first technical progress report issued subsequent to the changes.

(3) Acquisition of an item of equipment not itemized in the contract, the cost of which is $1,000 of more. Approval is not required if the equipment is merely a different model of an item listed in the contract. If plant and capital equipment funds are provided for the acquisition of equipment, with title to be vested in the Government, the total cost of such equipment shall not exceed the amount provided for such equipment unless prior approval has been obtained.

(4) Purchase of any general-purpose equipment, such as office equipment or furniture, air conditioning, etc., not specifically provided for in 917.7113, Appendix A of the contract will require prior approval.

(5) Incurring costs for items set forth in Article A–II(a), during the pertinent contract period stated in 917.7113, in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III. Charges to DOE for any such costs incurred with approval of the contracting officer shall also be subject to the limitations of Article III.

(6) Any proposed foreign travel (defined as any travel outside of Canada and the United States and its territories and possessions) if requires prior approval.

(7) Expenditures for domestic travel if such expenditures exceed the amount shown in Article–II(a) for such travel by $500 or by 25 percent, whichever is greater, requires prior approval.

(8) Acquisition of excess personal property.

(9) Such other items as, in the judgment of the program office or the contracting officer, in specific cases need to be separately identified in the contract. (When plant and capital equipment funds are provided for the acquisition of Government property, the program offices shall require that such funds be used only for acquiring the equipment designated in the contract, unless prior approval has been obtained.)

(b) The contracting officer will present (in any manner considered appropriate) all such requests for approval to the cognizant program office for consideration, and will issue such authorizations and modifications under the contract as are necessary and appropriate.

(c) Contractors should be required to provide such statements of the project's financial and program status as are believed necessary for considering requests for approval.

917.7112-5 Auditing.

(a) As a part of the management of the research program accomplished through special research contracts, auditing of participating institutions shall be initiated by the contracting officers administering the contracts. The prupose of this audit program is to corroborate that the participating institutions are properly using the funds and personal property provided by the contracts, and to identify any changes needed in the arrangement or in related administrative requirements in order to further the effectiveness of the contracts in accomplishing their intended programmatic research purposes. In addition to these general objectives, the principal specific objectives of the audits of special research contracts should determine that: (1) The amounts as submitted in the contractor's certified cost statement are accurate and were incurred in connection with the work; (2) satisfactory documentary evidence is available in support of the costs incurred; (3) DOE approval was obtained where required; and (4) the proportion of total cost charged to DOE is in accordance with the percentage stipulated in the contract.

(b) The review of special research contracts should be made on a selective basis with the selected sample including all special research contracts where the contracting officer requested that an audit be performed pursuant to the provisions of 917.7112–3(b).

(c) In the event of termination prior to the expiration date of a special research contract, unless the costs incurred by the contractor are relatively small or can be otherwise adequately corroborated, an audit should be made to determine the nature of the costs and other relevant data for use in arriving at a termination settlement.

(d) While audit is not a prerequisite to payment under a contract, the contracting officer, before authorizing final payment, should consider the necessity for an audit to determine whether the charges to the contract are proper. If any such audits result in findings which may be of value to program offices in their determinations regarding selection and renewal of research projects, such findings should be made available to them.

917.7112-6 Security.

As a general rule, investigators should not need access to classified information in the conduct of basic research funded by DOE. The contractor should be advised when, in the judgment of the principal investigator, information is developed which should be classified, the DOE field office must be notified immediately. When, in the opinion of the cognizant program office, the work moves into a classified area, prompt steps shall be taken to notify the contractor and appropriate field office.

917.7113 Format for Special Research Contracts (SRC) with educational institutions/or other nonprofit institutions.

Contract No. ———————————

This contract is effective as of the ——, 19—, between the United States of America (hereinafter referred to as the "Government"), acting throught the U.S. Department of Energy (hereinafter referred to as the "DOE"), and ——— (hereinafter referred to as the "Contractor").

Recitals

DOE wishes to have the Contractor perform certain research. This contract states the terms and conditions under which the Contractor agrees to perform the work.

This contract is authorized by the Department of Energy Organization Act of 1977 and other applicable law.

Agreement

Now therefore, the parties hereto agree as follows:

Article I—The Research To Be Performed

(a) The Contractor shall furnish personnel, facilities, equipment, materials, supplies, and services, except such as are furnished by the Government, necessary for the performance of the research provided for in Appendix A and shall perform the research and report thereon pursuant to the provisions of this contract. It is understood that Appendix A, a guide to the performance of this contract, may be deviated from by the Contractor subject to the specific requirements of this contract.

(b) This work shall be conducted under the direction of or such other members of the Contractor's staff as may be mutually satisfactory to the parties.

Note A.—The description of the research in Appendix A may be omitted and Appendix A appropriately modified to incorporated, by pertinent references to the proposal or other documents, the type of data necessary to describe the research as called for by Appendix A; and where there is no cost sharing, other features may be referenced in lieu of insertion in Appendix A. In such cases, the referenced material will be retained as part of the permanent contract file.

Article II—The Period for Performance

The period of performance under this contract shall commence on ——19—, and expire on ——19—. Performance may be extended for additional periods by the mutual written agreement of the parties. It is presently expected that this contract will be extended by mutual agreement until —— 19—.*

*This sentence is optional and may be omitted.

Article III—Consideration

(a) In full consideration of the Contractor's performance hereunder, DOE shall furnish the equipment, supplies, materials, and services, if any, listed in Article A–11(b)(2) and pay the Contractor the sum of ——, hereinafter called the Government "Ceiling" which sum shall be subject to adjustments as hereinafter provided.

(b) Payments to the Contractor shall equal the "cumulative Government cost" of performance of this contract, as the term "cumulative Government cost" is defined in Article B–XXIX*; provided however, and notwithstanding any other provisions of this contract, that the Government's monetary liability under this contract shall not exceed the Government ceiling or an amount equal to the cumulative Government costs, whichever is less. The Contractor shall be obligated to perform under this contract throughout the agreed-upon period of performance, and to bear all costs which DOE has not agreed to pay; provided however, that the Contractor shall have the right to cease to perform the research provided for in this contract, upon written notice to DOE to that effect, at any time, when or after the cumulative Government cost equals or exceeds the Government ceiling.

(c) The Government ceiling specified in (a) above may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification to this contract). In the event that the stated period of performance is extended, the Government ceiling will be revised to reflect any increased DOE funding for the extended period or periods.

(d) Upon termination or expiration of the total period of performance, the Contractor shall promptly refund to DOE (or make such disposition as DOE may in writing direct) any sums paid by DOE to the Contractor under this contract, through direct payment or

under letter or credit, in excess of the cumulative Government cost incurred in performance under the contract.

*The term cumulative Government costs refers to the cost of items under A–II(a) of Appendix A, for the initial contract period plus any extension period that may be properly chargeable to DOE. If proportionate cost sharing is involved, the cost is DOE's share of such costs, and does not include the cost of items excluded from Article A–II(a), such as items to be contributed solely by the Contractor or property to be furnished by the Government. Charges to DOE will be reported after the conclusion of each contract period set forth in Appendix A (generally an annual period); in addition to the limitations on charges to DOE provided for by this Article III, charges to DOE for a specified contract period may not exceed the 110 percent limitation mentioned above as well as to the provisions of this Article III.

Article IV—Government Property

The following items of property acquired or fabricated by the Contractor are hereby listed as "Government Property;" (List all property and equipment, title to which is to remain in the Government. Insert the word "none" if title to all of the property is to be vested in the Contractor. If title to property acquired of fabricated by the Contractor is to remain in the Government, add appropriate provisions for payment for such property from plant and equipment funds. Such funds should be in addition to, and not a part of, the "Government Ceiling" funds provided under Article III).

Article V—Appendices

Appendix A—Performance guide, Appendix B—General Provisions, and Appendix C—Statement of Costs, are hereby attached to and made a part of this contract.*

In witness whereof, the parties have executed this contract.

United States of America

By ———
Date ———
Contracting Officer ———
Contractor ———
By ———
Date ———
Name ———
Title ———
Contract No. ———

Appendix A—Performance Guide

Contractor ———
Contract No. ———
For the contract period ——— through ———

Article A–I. Research to be performed by the Contractor. (Insert description of research activity and state the appropriate percentage of time or effort which the principal investigator(s) expects to devote to the work.)

Article A–II. Ways and means of performance. The listing under (a), (b), and (c) below should be in a form to permit determination of which items of costs are to be chargeable to DOE or proportionately shared, and which items are to be contributed solely by the Contractor or solely by DOE. The listing should also permit application of the approval requirements of the contract. Excessive detail in listing should be avoided.

(a) Items for which funding will be provided as indicated in A–III below. Do not include in this paragraph (a) any items which are to be contributed solely by the Contractor.

(1) Salaries and wages. State total dollar amount. If any stipulated salary amounts for professional staff members are established in accordance with FAR 31.3 or 31.7 the stipulated amounts, along with any limitations or requirements on the use of such stipulated amounts should be provided for in the contract.

(2) Equipment to be purchased or fabricated by the Contractor. List equipment to be purchased or fabricated by the Contractor and for which title is to remain in the Contractor and state the total dollar amount budgeted for such equipment. Such equipment may be set forth in general classifications as specifically as possible, if it is not feasible to list them individually. However, any individual piece of equipment, the estimated cost of which is over $1,000 will be separately identified. Except where the contract may otherwise specifically provide, equipment for the pupose of this paragraph A–II shall mean an item of personal property having a useful life expectancy in excess of 1 year and an acquisition cost in excess of $500. Failure to identify equipment may result in disallowance of its cost if subsequently pruchased.

(3) Travel. (Show amounts for both foreign and domestic. If none, state none).

Domestic ———
Foreign ———

(4) Other direct costs.

(5) Indirect costs based on applicable rates or predetermined rate of — percent if with a educational institution for FY year(s) ———. Show base or bases of costs to which rate apply.

(b) Items, if any, significant to the performance of this contract, but excluded from computation of Government costs and from consideration in proportioning costs. (See 917.7107–1(c)).

(1) Items to be contributed by the Contractor. In accordance with Article B–II(c), if a proposed Contractor contribution is included in this paragraph (b)(1), the Contractor shall maintain records adequate to permit DOE to determine the extent of the contribution. If the time or effort of the principal investigator(s) is to be contributed by the Contractor and excluded from A–II(a) and A–II(b), the contributed time or effort should be listed under A–II(d).

(2) Items to be contributed by the Government.

(c) Time or effort of principal investigator(s) contributed by Contractor but excluded from computation of Government cost and from consideration in proportioning costs. Where covered under A–II(a) or A–II(b) above, state: "None." See 917.7107–1(e).

Article A–III. The total estimated cost of items under A–II(a) above for the contract period stated in this Appendix A is $———. DOE will pay — percent of the actual costs of these items incurred during the contract period stated in this Appendix A, subject to the provisions of Article III and Article B–XXIX of Appendix B. The estimated Government cost for the contract period stated in this Appendix A is $———.

The estimated Government cost is funded as follows:

(a) Estimated unexpended balance from the prior period(s) $———.

(b) New funds for the current period $———.

The new funds being added in A–III(b) constitute the basis for advance payments provided under Article B–XI.

(c) Subject to their availability, additional funds anticipated for the contract in the amount of $———.

Note.—Do not include this provision in fully funded SRCs.

Appendix B—General Provisions

Article B–I—Definitions

(a) The terms "DOE" means the U.S. Department of Energy or any duly authorized representative thereof, including the contracting officer except for the purpose of deciding an appeal under the article entitled "Disputes."

(b) The term "contracting officer" means an official designated to enter into or administer contracts and make related determinations and findings.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

*Article B–II—Inspection, Reports, Records, and Accounts**

(a) DOE shall have the right to inspect, in such manner and at all reasonable times as it deems appropriate, all activities of the Contractor arising in the course of its undertakings under this contract.

(b) The Contractor shall make progress and other reports in such manner and at such time as specified under this contract, as DOE may reasonably require from time to time.

(c) The Contractor agrees to keep records and books of account, in accordance with generally accepted accounting principles and practices, and consistent with the requirements of OMB Circular A–21, and FAR 31.3 or 31.7 as constituted on the effective commencement date of the contract period, covering its costs and expenditures for items included under Article A–II(a) of Appendix A and which are furtherance of the research work under this contract. In the event a contractor contribution is listed in Article A–II(b), the Contractor shall maintain records adequate to permit DOE to determine the extent of the contribution. If professional staff members are included under Article A–II(b), the Contractor shall maintain records on such personnel in accordance with the payroll distribution procedure of section J.6 of OMB Circular A–21.

(d) DOE shall at all reasonable times be afforded access to the premises and to these books and records and to related correspondence receipts, vouchers, memoranda, and other data of the Contractor; and the Contractor shall preserve such books and papers, without additional compensation therefor, in accordance with the retention requirements referenced in Article B–XVIII, Examination of Records.

*If the contract is with a nonprofit organization rather than an educational institution, this article should be revised to provide that the cost principles at FAR 31 as

may be modified by 931 depending on the nature of the contractors organization, will be used in determining actual cost.

Article B–III—[Reserved]

Article B–IV—Disclosure of Information

This clause should be used in place of the clauses entitled "Security," 952.204–1, and "Classification" 952.204–2, in SRCs with educational institutions for off-site research that are not likely to produce Restricted Data or other classified information.

Disclosure of Information

(a) It is mutually expected that the activities under this contract will not involve Restricted Data or other classified information or material. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or termination of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any event, the Contractor shall classify, safeguard, and otherwise act with respect to all Restricted Data and other classified information and material, in accordance with applicable law and the requirements of DOE, and shall promptly inform DOE in writing if and when Restricted Data or other classified information and material becomes involved. If and when Restricted Data or other classified information or material becomes involved, the Contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The Contractor shall not permit any individual to have access to Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and DOE regulations or directives.

(c) The term "Restricted Data" as used in this article means all data concerning the design, manufacture or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

Article B–V—Responsibility for the Work

(a) The Contractor is solely responsible for the conduct of the work.

(b) In instances where the carrying out of the work involves a DOE license, the provisions of the pertinent license shall prevail over any inconsistent provisions of this contract.

Article B–VI—[Reserved]

Article B–VII—Rights in Technical Data (Short Form)

Insert the clause in 952.227–7700.

Article B–VIII—Patent Rights—Small Business Firms or Nonprofit Organizations

Insert the clause in 952.227–7100.

Article B–IX—Property Items

(a) Except as otherwise provided in this paragraph (a) and paragraph (b) of this Article B–IX, title to all material, supplies, and equipment purchased or otherwise acquired by the Contractor in the performance of its research activities shall be and remain in the Contractor. Said materials, supplies, and equipment shall be used for the benefit of research under this contract and any extensions or successor contractors hereto; and provided there is no interference with said research, shall be made available for use by investigators working on any Federal research contract at the same location. Subject to these priorities, materials, supplies, and equipment may be used as the Contractor wishes. Except as otherwise agreed in writing, title to any items of property listed as "Government property" shall pass directly to the Government; such property shall be subject to paragraphs (b), (c), (d), (e), and (f) of this Article B–IX.

(b) Subject to the mutual agreements of DOE and Contractor, the Government may furnish the Contractor items of equipment, materials, supplies or facilites for use by the Contractor in performance of the work, title to these items shall remain in the Government unless otherwise agreed in writing. Such items of property and the items of property listed elsewhere in this contract as Government property, are hereinafter referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government or shall any such property, or any part thereof, be or become a fixture or lose its identity as property by reason of affixation to any realty.

(c) To the extent practicable, the Contractor shall cause all items of Government property to be suitably marked with an identifying mark or symbol indicating that the items are the property of the Government. The Contractor shall maintain, at all times and in a manner satisfactory to DOE, records showing the use and disposition of Government property. Such records shall be subject to DOE inspection at all reasonable times and DOE shall at all reasonable time have access to the premises wherein any items of Government property are located. Unless otherwise authorized in writing by DOE, the Contractor shall use Government property only for the purposes of this contract, provided, however, that the Contractor is hereby authorized to use items of equipment constituting Government property for other Federal research contracts to the extent such use: (1) Does not interfere with its work under this contract; (2) is not prohibited by provisions of the other Federal agreements; and (3) is promptly reported by the Contractor to contracting officer.

(d) The Contractor shall promptly notify DOE of any loss or destruction of or damage to Government property. It is understood that the Contractor shall not be liable for any such loss, destruction, or damage, unless same results from willful misconduct or lack of good faith on the part of any corporate officer of the Contractor, or of one or more of the contract's representatives having supervision or direction of all or substantially all of the activities under this contract. If the Contractor is liable for such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of DOE; if the Contractor is not liable therefor, and is indemnified, reimbursed, or otherwise compensation for such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of DOE.

(e) With the written approval of DOE, the Contractor may sell, transfer, or otherwise dispose of items of Government property to such parties and upon such terms as so approved, or itself acquire title to items of Government property upon such terms as may mutually be agreed upon in writing by the Contractor and DOE. The proceeds of any such disposition, and any agreed price of any such Contractor acquisition, shall be paid by the Contractor to the Government, or credited on account of DOE, payments to be made under this contract as DOE may direct. Subject to the other provisions of this contract, the Contractor shall deliver Government property to DOE upon request (suitably packed and shipped at the Government's expense).

(f) The Contractor shall utilize for the benefit of the work under this contract such items of property available to the Contractor by reason of its activities under other Federal research agreements as are appropriate for utilization under this Contract pursuant to the provisions of the pertinent Federal agreement.

Article B–X—Termination for Convenience of the Government

Insert the requirements of FAR 49.

Article B–XI—Payments

(a) DOE shall make payments to the Contractor with respect to the amount of consideration prescribed in Article III of this contract as follows:

(1) A maximum of an additional 45 percent of the new funds as set forth in Article A–III(b) of this contract following execution of this contract (and following the effectuation of each extended period) upon receipt of a request or requests in writing from the Contractor evidencing that the requested amount is currently needed in connection with planned expenditure or commitments for contract performance.

(2) A maximum of an additional 45 percent of the new funds as set forth in Article A–III(b) of this contract upon receipt of requests from the Contractor evidencing that the amount requested is then required in connection with the work under the contract.

Note.—Subparagraphs (1) and (2) of this paragraph (a) may be revised, as deemed appropriate by the contracting officer, in accordance with 917.71.

(3) If, following submission of an annual progress report, the contract is to be extended for an additional period of performance, and additional payment may be made at the time of execution of the extension which, when added to the payments already made under (1) and (2) above for the expiring period, will not exceed the new funds set forth in Article A–III(b) for the expiring period. A concluding payment

for the pertinent period, if appropriate, may be made following submission of a certified statement showing Government cost and evidencing the Contractor's performance under this contract.

(4) If the contract is not to be extended, the final payment of the consideration provided for in Article III shall be made following submission by the Contractor of a final report required by Article B–XXI, in form and content satisfactory to DOE, and submission of a certified statement showing Government cost and evidencing the Contractor's performance and compliance with the patent provisions.

(b) The payments made pursuant to paragraph (a) above shall not prejudice or otherwise affect adversely any of the Government's rights under the contract. For purposes of settlement in the event of termination prusant to article B–X hereof, these payments shall not be construed as evidentiary, and any excess payment in the light of Article B–X shall be promptly returned to DOE.

(c) DOE, at its option, may invoke the following with respect to any amount of consideration remaining to be paid at any given time:

(1) DOE shall issue a letter of credit as provided for by Treasury Fiscal Requirements Manual, Part 6 Chapter 2000 under which payments to the Contractor with respect to the amount of consideration provided for in Article III will be made. The Contractor agrees that the first ninety (90) percent of the new funds as set forth in Article A–III(b) will be under the letter of credit and will be subject to the submission by the Contractor of a Payment Voucher on Letter of Credit (TUS 5401), in accordance with procedures based upon Treasury Fiscal Requirements Manual, Part 6 Chapter 2000 which are agreed to by the parties. Following submission by the Contractor of a final report provided for in Article B–XXI, in form and content satisfactory to DOE, and submission of a certified statement showing the total expenditures and evidencing the Contractor's performance, and upon submission by the Contractor to DOE of such invoices or vouchers as are satisfactory to DOE, DOE shall pay the Contractor the concluding payment of the consideration provided for in Article III: or said concluding payment will be included under the letter or credit and will be subject to submission by the Contractor of a payment voucher on letter of credit, in accordance with the procedures described above. If, following submission of an annual report, the contract is extended for an additional period of performance, an additional payment may similarly be made at the time of execution of the extension which, when added to the payments already made for the expiring period, will not exceed the new funds as set forth in Article A–III(b) for the expiring period. A concluding payment for the pertinent period, if appropriate, may be made following submission of a certified statement showing Government cost for the peritent period and evidencing the Contractor's performance.

(2) DOE reserves the right to increase, decrease, or cancel the amount covered by the letter of credit, provided that such action is required because of a change in the amount of consideration provided for in Article III or is taken pursuant to paragraph (c)(1) of this article. The issuance and use of a lettter of credit and receipt of funds pursuant thereto shall not prejudice or otherwise adversely affect any of the Government's rights under the agreement.

Article B–XII—Equal Opportunity

Insert the clause from FAR 52.222–26.

Article B–XIII—Convict Labor

Insert the clause from FAR 52.222–3.

Article B–XIV—Contract Work Hours and Safety Standards Act—Overtime Compensation—General

Insert the clause from FAR 52.222–4 with appropriate insertions.

Article B–XV—Disputes

Insert the clause in FAR 52.223–1.

Article B–XVI—Officials Not To Benefit

Insert the clause in FAR 52.203–1.

Article B–XVII—Convenant Against Contingent Fees

Insert the clause in FAR 52.203–5.

Article B–XVIII—Examination of Records

Insert the clause from FAR 52.215–1. The Examination of Records clause in FAR 52.215.1 may be omitted from foreign contracts in accordance with procedures in FAR 25.9.

Article XIX—[Reserved]

Article B–XX—Assignment: Subcontracting

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor, except as expressly authorized in writing by the contracting officer. The Contractor shall not subcontract any research or development work under this contract, except as expressly authorized in writing by the contracting officer.

Article B–XXI—Reports and Renewal Proposals

The Contractor shall furnish six (6) copies of the following reports to the appropriate field office.

(a) *Progress report.* The progress report shall briefly describe the scope of investigations undertaken and the significant results obtained. It shall also indicate compliance with the contract requirements and any failures to comply. The report shall indicate the approximate percentage of time or effect which the principal investigator(s) has devoted to the project since the beginning of the current term of the contract and indicate the amount of effort which is expected to be devoted during the remainder of the current term. Technical reports, preprints, and articles prepared for publication shall be listed with bibliographical references. Reprints of all such material not previously submitted shall be appended and material contained therein need not be duplicated in the report. Progress reports shall be submitted approximately 4 months in advance of the expiration of the current contract term and shall give the Contractor's best estimate of the probable events and occurences in regard to the remainder of the current term. Except as DOE may otherwise request, no further progress report will be required for any contract year unless there has been a significant change in scientific results or compliance between the lastest progress report by the contractor and its actual experience which shall be reported promptly.

(b) *Final report.* Upon termination or expiration of the total period of performance, the Contractor shall submit, promptly, a summary of its activities for the entire period, including a list of publications issued during the entire period and copies of any reprints not previously submitted, as well as a comprehensive evaluation of progress in the area of research funded by the contract.

(c) *Renewal proposals.* A renewal proposal, if any, shall be submitted along with the technical progress reports, and each of the two documents shall be separately bound. Renewal proposals are submitted to the DOE contracting officer.

Article B–XXII—Foreign travel

Foreign travel shall be subject to the prior approval of the contracting officer for each separate trip, regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

Article B–XXIII—[Reserved]

Article B–XXIV—Utilization of Labor Surplus Areas Concerns

Insert the clause in FAR 52.220–3 under the conditions prescribed therein.

Article B–XXV—Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

Insert the clause in FAR 52.219–8.

Article B–XXVI—Utilization of Women-Owned Small Business

Insert the clause in FAR 52.219–13.

Article B–XXVII—Sensitive Foreign Nations Controls

Insert the clause at 952.204–71 if the contract involves research in nuclear technology and it is appropriate. The contracting officer should confirm its inclusion with the local security office.

Article B–XXVIII—Affirmative Action for Special Disabled and Viet Nam Era Veterans

Insert the clause in FAR 52.222–35.

Article B–XXIX—Determination of Government Costs

"(a) The term "Government cost" as used in this contract means DOE's share"* of the sum of costs incurred by the Contractor for items included under Article A–11(a) of Appendix A furtherance of the work hereunder, incurred in accordance with the provisions of this contract, and which are reported to DOE in accordance with (b) below. The term "cumulative Government costs" as used in this contract means the total of the Government costs incurred during

the initial contract period plus any extension periods.

(b) Within 3 months after the end of each contract period set forth in Appendix A, and within 3 months after the termination or expiration of the total period of performance, the Contractor shall furnish a certified statement, executed by an official of the Contractor showing the Contractor's cost and evidencing its performance under the contract, during the contract term just completed. The statement shall show all cost incurred during the pertinent contract term set forth in Appendix A for items under Article A–II(a) of Appendix A, including the Contractor's share, if any, of such costs, and show the extent of the Contractor's contribution of items under Article A–II(b)(1) of Appendix A. Costs included in the certified statement may include the following: expenditures of cash, the cost of material and supplies transferred from store's inventory, and the amount due the Contractor for indirect costs in accordance with the rate and factor shown in Appendix A of the contract for the pertinent period. The costs for the pertinent period shall be consistent with the principles of OMB Circular A–21 as constituted as of the effective commencement date of said period. The certified statement shall be in the form set forth in Appendix C.

(c) The certified statement should be in agreement with the institution's financial record and shall reflect only expenditures actually made during the period covered, including transfers from inventory. It shall not include commitments as a part of such expenditures for goods or services on order but not received or those received but not paid for, unless the Contractor is operating under an established and consistently applied system of accrual accounting. If this is the case, the certified statement shall be so footnoted. A combination of accrual and cash accounting for cost accumulation and reporting purposes shall not be used. The renewal proposal budget should be footnoted to show the estimated amount of outstanding commitments for property at the end of the current period. The certified statement contains a space in which office should be inserted the actual amount of outstanding commitments for property at the end of the period covered by the statement. This commitment amount is for information only and is not a part of the expenditure calculation. The Contractor understands that DOE expects to rely on this certified statement for determining the Government cost for the period. With respect to any period in which proportionate cost sharing is applicable, the support costs for the pertinent period will be determined by applying the percentage figure included in Article A–III for the pertinent period to the certified cost of items included under Article A–II(a) incurred during the pertinent period. All charges to DOE shall be subject to the approval requirements of this contract. The Contractor is expected to maintain auditable records as contemplated by Article B–II(c) to substantiate the costs incurred for items under Article A–II(a) and to show the extent of the Contractor's contribution of the items listed under Article A–II(b)(1).

*If the contract is with a nonprofit organization other than an educational institution or a research foundation established by an educational institution, this article should be revised to provide that the commercial cost principles (FAR 31.2) will be used in determining actual cost.

**In those cases in which there is no proportionate sharing of costs, DOE's "share" will be 100 percent. With respect to any period in which proportionate cost sharing is applicable to Article A–III, it is understood that Government cost for that specified period will equal the stipulated percent of the sum of costs incurred by the Contractor during the stated period for items under A–II(a) of Appendix A, not shown in Appendix A of the contract for the pertinent period. The costs for the pertinent period shall be consistent with the principles of OMB Circular A–21 and FAR 31.3 or FAR 31.7 as constituted on the effective commencement date of said period. The certified statement shall be in the form set forth in Appendix C.

Article B–XXX—Additional Approvals

In addition to such approvals as are specifically required by other provisions of this contract, the Contractor shall obtain DOE's approval for:

(a) A change of the principal investigator, co-investigator, or other key people as might be named in this contract or continuation of the research work for any one period in excess of 3 months without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining DOE approval; however, a representative of the institution shall consult with the appropriate DOE Headquarters program representative if the principal investigator plans to, or becomes aware that he will devote substantially less effort to the work than anticipated in Article A–1. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work and what modification to the contract, if any, may be appropriate.

(b) No change in the phenomenon or phenomena under study, i.e., broad category of the research under the contract, shall be made without the specific written approval of the contracting officer. Ordinarily, such changes, if approved by the contracting officer, will be accomplished through a new contract or mutually agreed to modification. The Contractor may change the specific objectives in the research work described in the contract, provided it gives the contracting officer prompt notification of such changes, and the Contractor may continue to follow the new objectives while DOE determines whether it wishes to continue the program under the changed approach. Significant changes in methods or procedures employed in performing the research should be reported in the first technical program report issued subsequent to the changes.

(c) Prior approval is required. Acquisition of an item of equipment not itemized in Appendix A, the cost of which is $1,000 or more. Approval is not required if the equipment is merely a different model of an item listed in Appendix A. (If plant and capital equipment funds are provided for the acquisition of equipment with title to be vested in the Government, the total cost of such equipment shall not exceed the amount provided for such equipment unless prior DOE approval has been obtained.)

(d) Prior approval is required. Purchase any general-purpose equipment, such as office furniture, air conditioning, automatic data processing equipment, etc., not specifically provided for in Appendix A.

(e) Incurring costs for items set forth in Article A–II(a), during the pertinent contract period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III. Charges to DOE for any such costs incurred with the approval of DOE shall also be subject to the limitations of Article A–III.

(f) Any proposed foreign travel (see Article B–XXII).

(g) Prior approval is required. Expenditures for domestic travel if such expenditures exceed the amount shown in Article A–II(a) for such travel by $500 or by 25 percent, whichever is greater.

(h) Acquisition of excess personal property.

Article B–XXXI—[Reserved]

Article B–XXXII—Clean Air and Water

Insert the clause in FAR 52.223–2 under the conditions set forth therein.

Article B–XXXIII—Affirmative Action for Handicapped workers

Insert the clause set forth in FAR 52.222–36 under the conditions set forth in the section.

Article B–XXXIV—Security

Insert the clause in 952.204–1 under the conditions set forth therein.

Article B–XXXV—Classification

Insert the clause in 952.204–70 under the conditions set forth therein.

Article B–XXXVI—Preference for U.S. Flag Air Carriers

Insert the clause in FAR 52.247–63 under the conditions set forth in FAR 47.4.

Article B–XXXVII—Preservation of Individual Occupational Radiation Exposure Records

Insert the clause set forth in 952.223–75 where appropriate.

APPENDIX C.—STATEMENT OF COST

1. Name and address of Contractor .....
2. Contract number .....
3. Beginning and ending date of pertinent contract period .....
4. Costs incurred during the pertinent contract period (List only those costs which are to be reimbursed by DOE or proportionately shared by the parties in accordance with Article A–II(a) and Article A–III.)

Cost categories*	Amount
a. Salaries and wages	$_____
b. Equipment	$_____
(List separately the cost of each piece the equipment separately listed in Appendix A to the agreement or for which separate approval was obtained from DOE.)	
c. Travel	$_____
(Show amounts for both foreign and domestic. If none, state none.)	
Foreign	$_____
Domestic	$_____
d. Other direct costs	$_____
e. Total direct expenditures	$_____
f. Indirect charges	$_____

APPENDIX C.—STATEMENT OF COST—Continued

(Indicate percent and expenditures to which percent is applied.)

5. Total costs for items under Article A–II(a) for pertinent period ..... $_____
6. Government costs for the pertinent period set forth in Appendix A, as defined in Article B-XXIX, chargeable to DOE for the pertinent period (percent of total costs using percent shown in Article A–III of Appendix A) for pertinent period of ..... $_____
7. Cumulative Government cost (Government cost under this statement plus Government costs for previous periods ..... $_____
8. Accumulated Government ceiling in Article III ..... $_____
9. The difference between lines 7 and 8 ..... $_____
10. Provide information regarding contributions by the Contractor of items in Article A–II(b) of Appendix A during pertinent period. State the extent of the Contractor's actual contribution, the measure of such contributions should be in the same terms as the Contractor's commitment under Article A–II(b), e.g., time, dollar, etc ... $_____
11. Actual outstanding commitments for property at the end of the period covered by this statement ..... $_____

I hereby certify that this report is true and correct to the best of my knowledge and belief and that the costs listed herein were incurred in connection with the performance of the research provided for under this contract and in accordance with the terms and conditions set forth therein

.....
(Name and Title of an Authorized Representative)

.....
(Signature) (Date)

*The listing of categories should be consistent with the itemization in Appendix A.

Supart 917.72—Program Opportunity Notices for Commercial Demonstrations

917.7200 Scope of subpart.

(a) This subpart establishes procedures for the submission, evaluation, and selection for award or support of proposals offered in response to program opportunity notices (PONs) issued by DOE to accelerate the demonstration of the technical feasibility and commercial application of all potentially beneficial non-nuclear energy sources and utilization technologies.

(b) As a result of a PON, a contract, grant or cooperative agreement may be entered into. If the intended relationship is expected to be a contract this regulation shall be followed. If the intended relationship is expected to be a financial assistance instrument the DOE Assistance Regulations (DOE–AR) shall be followed. Specifically, DOE-AR 600.233 (10 CFR Part 600.233) will apply if the intended relationship is expected to be a cooperative agreement. In any event, any public notice, solicitation, or request for applications or proposals should indicate whether the intended relationship will be one of acquisition or assistance and state that acquisition regulation will govern if an acquisition contract is entered into and that the assistance regulation will govern if a financial assistance instrument is utilized.

(c) This subpart applies to demonstrations performed by individuals, educational institutions, other commercial or industrial organizations, or other private entities, or by public entities, including State and local governments, but not other Federal agencies. For purposes of this subpart, commercial demonstration projects include demonstrating technological advances and field demonstrations of new methods and procedures, and demonstration of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of non-nuclear energy resources.

917.7201 Policy.

917.7201–1 General.

(a) It is DOE's intent to encourage the submission of proposals to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components. Program opportunity notices will be used to provide information concerning scientific and technological areas encompassed by DOE's programs. DOE shall, from time to time, issue program opportunity notices for proposals for demonstrations of various forms of non-nuclear energy and technology utilization.

(b) Synopsis of the notice shall be published in the Commerce Business Daily prior to release. In addition, the notice shall be circulated directly to potentially interested individuals, private and public entities (excluding Federal agencies) and associations thereof to the maximum extent feasible. Special attention in this regard should be given to small business concerns, small disadvantaged concerns, and women-owned small business concerns to insure that they are given every opportunity to participate in such acquisitions. Consideration should be given to distributing the notice to all eligible entities which, during the preceding two years, have expressed an interest in participating in, or entering into arrangements for, commercial demonstration in the particular energy field.

917.7201–2 Determination to use and approval of content.

(a) *Determination to use.* (1) Before the PON is selected as the appropriate solicitation procedure the Head of the Contracting Activity expected to issue the notice will be consulted to assure that the PON is the appropriate solicitation method. A written program determination shall be made to show that the conditions in 917.7201–3 exist to support the conclusion that the use of the PON procedure is both necessary and appropriate. The determination must not be merely conclusive but shall be supported by specific facts and explanations.

(2) The Senior Program Official or designee may approve the determination.

(3) The approved determination shall be included in the PON file.

(b) *Approval of content.* (1) When the dollar amounts are less than Source Evaluation Board (SEB) level, a PON may be originated at whatever level is consistent with the program objectives established by the Senior Program Official. When a source evaluation board is not required, notices may be approved by the Senior Program Official or designee after prior concurrence by Counsel.

(2) When an SEB is required, notices shall be reviewed and approved by the SEB after prior concurrence by Counsel, and the Senior Program Official or designee.

(3) All PONs shall be issued by the cognizant Head of the Contracting Activity or designee.

917.7201–3 Federal support criteria.

In determining the appropriateness of DOE involvement through the PON mechanism in any particular area of demonstration activity, consideration shall be given to the extent to which the proposed undertaking meets Federal support criteria including, but not limited to, the following:

(a) The urgency of public need for the potential results of the research, development, or demonstration effort is high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance;

(b) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results;

(c) The extent of the problems treated and the objectives, sought by the undertaking are national or widespread in their significance;

(d) The opportunities to induce non-Federal support of the undertaking through regulatory actions, end-use controls, tax and price incentives, public educations, or other alternatives to direct Federal financial assistance are limited;

(e) The degree of risk of loss of investment inherent in the research is high, and the availability of risk capital to the non-Federal entities which might otherwise engage in the field of the research is inadequate for the timely development of the technology;

(f) The research, development, and application objectives anticipated by the activities or facilities proposed, support national interests or objectives;

(g) The economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system; and

(h) The availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal.

917.7201-4 Information to be included in program opportunity notices.

Each program opportunity notice shall include:

(a) The goal of the intended demonstration effort;

(b) A time schedule for submission of, and action on, proposals;

(c) Evaluation criteria, including an indication, when determined practicable to do so, of the approximate cost and time duration contemplated for individual projects resulting from the notice;

(d) Program policy factors.

(e) A statement that additional information, consistent with the overall concepts and approaches developed in the proposal, may be required regarding the statement of work and the proposed budget (e.g., a notice that a detailed cost breakdown may be required from the proposers being considered);

(f) Such other information, terms, or conditions that shall apply to the particular program opportunity notices;

(g) A place and manner of submission; and

(h) A late proposal provision (see FAR 15.412).

917.7201-5 Information to be provided in proposals offered pursuant to program opportunity notices.

(a) Name and address of the entity(ies) submitting the proposals;

(b) Date of preparation of submission;

(c) Type of entity(ies) (public, including State and local governments, and private, including profit and nonprofit organizations and educational institutions);

(d) Representations and certifications as specified in the notice; and

(e) Concise title and abstract of the proposed demonstration project for which assistance or participation is being sought.

(f) An outline and discussion of the proposed demonstration which shall, if applicable and to the extent possible, specifically address and reference the evaluation criteria and include:

(1) Specification of the technology;

(2) Proposed statement of work to be performed;

(3) Description of prior operation experience with the technology;

(4) Preliminary design of the demonstration plan;

(5) Time tables containing proposed construction or fabrication and installation and operation plans;

(6) Budget-type estimates of construction or fabrication and operation costs;

(7) Description and proof of title to land for proposed site, natural resources, electricity and water supply, and logistical information related to access to raw materials to construct and operate the plant and dispose of salable products from the plant;

(8) Assessment of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(9) Plans for continued use of the technology if the demonstration is successful;

(10) Plans for continued use of the plant if the demonstration is successful;

(11) Plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned;

(12) Form and amount of assistance or participation being sought;

(13) Form and amount of funding, or other contribution to be provided by the proposer, including proposed disposition of revenues generated; and,

(14) The extent to which the proposed expenditures would constitute permanent (nonseverable) improvement to property now owned by the Government; and proposed plans for the disposal (through acquisition by the offeror or otherwise) of any such improvements.

The information called for under this section relates primarily to a demonstration project involving the construction and operation of a "plant." In instances where the proposed project concerns a demonstration that does not involve a plant (for example, the demonstration of a process, apparatus, or device), the program opportunity notice shall state what additional information is to be submitted with the proposal;

(g) Names of key personnel to be involved, brief biographical information, including relevant experience;

(h) A current financial statement;

(i) The period for which proposal is valid;

(j) Names and telephone numbers of proposer's primary business and technical personnel whom DOE may content during evaluation or negotiation;

(k) Each proposal containing technical data or proprietary or business confidential information, which the proposer intends to be used by DOE for evaluation purposes only, should be marked on the cover sheet with the legend prescribed in 927.402–3(d); and

(l) Signature and title of official of the proposing organization authorized to contractually obligate such organization

917.7202-1 Forms of assistance and participation.

(a) In providing for demonstration, DOE may utilize various forms of Federal assistance and participation. These include but are not limited to:

(1) Contracts;

(2) Grants;

(3) Loans;

(4) Incentives, including financial awards, to individual inventors;

(5) Joint Federal-industry demonstration corporation;

(6) Federal purchase(s) or guaranteed price of the products of the demonstration project; and

(7) Cooperative agreements.

917.7202-2 Cost participation.

The provisions of DOE's cost participation policies contained in 917.70 shall apply, as applicable, to proposals hereunder.

917.7203-2 Method and criteria for evaluation and selection.

(a) *General policy.* (1) Information contained in proposals offered in response to PONs shall be handled in accordance with the policies and procedures set forth in 927.402–3(d) pertaining to the marking and handling of proprietary data.

(2) Late proposals, modifications of proposals, and withdrawals of proposals shall be handled in accordance with FAR 15.412.

(b) *Selection.* (1) When the aggregate of expected award values, plus costs shared by the performer and/or other parties, together with later phases of the same project, is expected to meet the SEB dollar threshold, comprehensive evaluation shall be conducted by a specially constituted board which shall follow procedures and documentation requirements of the SEB Handbook modified as appropriate to conform to the solicitation process as set forth herein.

(2) When the aggregate of expected award values, plus costs shared by the performer and/or other parties, together with the later phases of the same project

is not expected to meet the SEB dollar threshold, proposals submitted in response to a PON will be evaluated by a panel which shall be appointed by the cognizant program office. The panel should utilize any of the procedures and documentation requirements of the SEB Handbook (as modified as appropriate to conform to the solicitation process as set forth herein) whenever necessary to ensure the impartial, equitable and thorough evaluation of each proposal. The panel will be composed of program office and other personnel, including representatives of Procurement, Counsel, and, as deemed appropriate by the appointing official, supplemented by Personnel from other Government agencies. The representative of Counsel will be an ex-officio (nonvoting) member of the panel. Personnel from DOE management or operating contractors may be used as advisors to the panel when their services are necessary and available as long as the approvals and procedures in 927.70 and 915.613(f) are followed.

(c) *Evaluation criteria.* The evaluation criteria shall be specified in the notice along with a narrative description of their relative importance. The criteria below, to the extent applicable, as well as any additional criteria stated in the program opportunity notice, shall be considered:

(1) The overall technical feasibility of the proposed effort;

(2) The contribution which the proposed effort is expected to make to DOE in carrying out its program responsibilities, including, but not limited to, solving energy extraction and storage, transportation, conversion, waste utilization, and conservation problems;

(3) The capabilities, related experience, facilities, instrumentation, or techniques which the proposer possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal;

(4) The qualifications, capabilities, experience, and availability of the proposed key personnel;

(5) The ability of the proposer to furnish necessary financial support;

(6) Project and financial plans for management of the activities including the adequacy of proposed arrangements among all participants;

(7) Plans for involvement of the small business community;

(8) Cost realism and probable cost to the government.

(d) *Program policy factors.* Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.), are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the notice so as to notify proposers that factors which are essentially beyond their control will affect the selection process. The following are examples of possible program policy factors:

(1) It is desirable, because of the nature of the energy source, the type of projects envisioned, or limitations of past efforts, to select for award or support a group of demonstration projects with a broad or specific geographic distribution;

(2) It is desirable to select for award or support (for reasons that must be stated) projects from diverse types and sizes of proposing organizations;

(3) It is desirable to select for award or support a group of projects which represents a diversity of methods, approaches, applications, or kinds of work; and

(4) It is desirable, due to the nature of certain projects or proposing organizations, to select for award or support duplicative or complementary efforts or projects.

(e) *Selection official.* The selection official will be as provided in 915.

(f) *Preliminary review.* (1) Prior to making a comprehensive evaluation of a proposal, the SEB, or the receiving office when an SEB is not required, shall determine that it:

(i) Contains sufficient technical, cost, and other required information to enable comprehensive evaluation; and

(ii) Has been signed by a responsible official of the proposing organization or a person authorized to obligate such organization.

(2) If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such a case, a prompt reply shall be sent to the proposer, indicating the reason(s) for its not being selected for award or support under the PON.

(g) *Comprehensive evaluation.* The basic task in the evaluation and selection of proposals for award or support is to assess their relative merit in order to determine which of them offers the greatest likelihood for achievement of the program objectives stated in the notice, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposals which survive preliminary review shall be evaluated by an SEB or a panel, as applicable, in accordance with the criteria stated in the notice. The Source Selection Official will select proposals for support or award from the findings established by the SEB or panel, as applicable. In this latter process, the selection official will take into account the relevant program policy factors in order to determine the mix of proposed projects which will best further specific program goals. All findings and selections are to be documented, signed, and maintained to provide an adequate record of the proceedings.

917.7204 Award or support.

While only those proposals which further the needs of the program as specified in the notice will be considered for award or support, DOE may accept for award or support all, none, or any number or part of the proposals submitted.

917.7205 Unsolicited proposals for commercial demonstrations.

See 915.503.

§ 917.7206 Optional two-step method.

Where a large number of proposals are anticipated, proposals may be limited to technical considerations with cost proposals subsequently requested from those proposers whose technical proposals are evaluated as technically acceptable.

Subpart 917.73—Program Research and Development Announcements

§ 917.7300 Scope of subpart.

(a) This subpart establishes procedures for the submission, evaluation, and selection for award or support of proposals offered in response to specific program research and development announcements (PRDAs) issued by DOE to conduct research, development, and related activities in the energy field.

(b) As a result of a PRDA, a contract, grant or cooperative agreement may be executed. If the intended relationship is expected to be a contract this regulation shall be followed. If the intended relationship is expected to be a financial assistance instrument the DOE Assistance Regulations (DOE–AR) shall be followed. Specifically, DOE–AR 600.234 (10 CFR 600.234) will apply if the intended relationship is expected to be a cooperative agreement. In any event, any public notice, solicitation, or request for applications or proposals should indicate whether the intended relationship will be one of acquisition or assistance and state that the DEAR will govern if a contract is entered into and that the DOE–AR will govern if a financial assistance instrument is utilized.

(c) This subpart applies to efforts by the DOE to conduct, or participate in joint or cooperative projects for research, development, and related activities with individuals, private entities (including educational institutions, nonprofit organizations, and commercial industrial organizations), or public entities (including State and local governments, but not Federal agencies), provided, however, that the conditions set forth in 917.7301–1(c) exist.

§ 917.7301 Policy and prerequisites.

§ 917.7301–1 General.

(a) PRDAs shall be used to provide potential proposers with information concerning DOE's interest in entering into arrangements for research, development, and related projects in specified areas of interest. It is DOE 's intent to solicit the submission of ideas which will serve as a basis for research, development, and related activities in the energy field. It is DOE's desire to encourage the involvement of small business concerns, small disadvantage business concerns, and women-owned small business concerns in research and development undertaken pursuant to PRDAs.

(b) The PRDA should not replace existing acquisition procedures where a requirement can be sufficiently defined for solicitation under standard advertised or negotiated acquisition procedures. Similarly, it should not inhibit or curtail the submission of unsolicited proposals. However, a proposal which is submitted as though it were unsolicited but is in fact germane to an existing PRDA shall be treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, the PRDA is not to be used in a competitive situation where it is appropriate to negotiate a study contract to obtain analysis and recommendations to be incorporated in the subsequent request for proposals.

(c) The PRDA is to be used only where:

(1) Research and development is required within broadly defined areas of interest to support program goals but it is difficult, if not impossible, to describe in any reasonable degree of detail the nature of the work contemplated because of:

(i) The multiplicity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The desirability of involving a broad spectrum of organizations in seeking out solutions to the problems, posed;

(iii) The expectation that many individual proposers will have unique qualifications or specialized capabilities which will enable them to perform portions of the research or development program (without necessarily possessing the qualifications to perform the entire program) so that the overall support may be broken into segments which cannot be ascertained in advance; and

(iv) The desirability of fostering new and creative solutions;

(2) Consistent with (c)(1) above, it is anticipated that choices will have to be made among dissimilar concepts, ideas, or approaches; and

(3) It is determined that a broad range of organizations exist that would be capable of contributing towards the overall research and development goals identified in (c)(1) above.

(d) The PRDA shall be synopsized in the Commerce Business Daily prior to release. The announcement shall also be circulated directly to interested individuals, private and public entities (excluding Federal agencies), and associations thereof to the maximum extent feasible.

§ 917.7301–2 Determination to use and approval of content.

(a) *Determination of use.* (1) Before the PRDA is selected as the appropriate solicitation procedure, the Head of the Contracting Activity expected to issue the announcement shall consult with requiring program office to assure that the PRDA is the appropriate solicitation method. A written program determination shall be made to show that the conditions in 917.7301–1(c) exist to support the conclusion that use of the PRDA procedure is both necessary and appropriate. The determination must not be merely conclusory but shall be supported by specific facts and explanations.

(2) [Reserved]

(3) The approved determination shall be included in the PRDA file.

(b) *Approval and content.* (1) A PRDA may be originated at whatever level is consistent with the program objectives established by the Senior Program Official.

(2) The PRDA content must be approved by the Senior Program Official or designee after prior concurrence by Counsel, and the Procurement Director of the office assigned to issue the PRDA.

(3) All PRDAs will be issued by the Head of the Contracting Activity or designee.

§ 917.7301–3 Information to be included.

Each PRDA shall include:

(a) A summary of the area(s) of program interest, expanded as appropriate, to include problems and objectives;

(b) A time schedule for submission of, and action on, proposals;

(c) Information to be provided in the proposals;

(d) Evaluation criteria;

(e) Program policy factors;

(f) Other information, terms and conditions which shall apply to the particular PRDA;

(g) Place for, and manner of, submission;

(h) A unique number for identification purposes;

(i) A statement notifying potential proposers that an announcement does not commit DOE to pay any proposal preparation costs and that DOE reserves the right to select for award or support any, all, or none of the proposals received in response to an announcement, and

(j) A late proposal provision (see FAR 15.412).

§ 917.7301–4 Information to be provided in proposals.

(a) All proposals should be specific, concise, and require inclusion, as appropriate, the following information:

(1) Name and address of the entity(ies) submitting the proposal;

(2) Date of proposal submission;

(3) Identification of the PRDA (by number and title) to which the proposal responds;

(4) Type of entity(ies) submitting the proposal, whether public (including State and local governments), or private (including profit and nonprofit organizations and educational institutions);

(5) Concise title and abstract of the proposed project or effort;

(6) An outline and narrative of the proposed effort which shall specifically address and reference the evaluation criteria and, to the extent possible, include:

(i) Objectives of the proposed effort;

(ii) Detailed plan of approach (procedures, concepts, limitations, timetables of key milestones, and expected accomplishments or research results);

(iii) Internal management controls applicable to conduct of the work;

(iv) Scope and methods of management support;

(v) Details concerning previous or ongoing work performed in the category(ies) of research proposed, or in related fields;

(vi) Form and amount of funding, or other contribution, if any, to be provided by the proposer;

(vii) Location where the work will be performed;

(viii) Cost schedule detailing estimated costs for manpower and other resources (SF 1411 with supporting data as described at FAR 15.804–6); and

(ix) Projected date of completion of the proposed effort;

(7) Resumes of key personnel to be involved which include a description of relevant experience and associated dates;

(8) A current financial statement;

(9) Period for which the proposal is valid (if other than that stipulated in the announcment);

(10) Names and telephone numbers of proposer's primary business and technical personnel whom DOE may contact during evaluation; and

(11) Signature and title of an official of the proposing organization(s) authorized to obligate such organization(s).

(b) Proposer should be advised that if a proposal will contain proprietary data or privileged business information which the proposer intends to be used by the DOE for evaluation purposes only shall be marked on the cover sheet with the notice prescribed in 927.402–3(d).

(c) Representations, certifications and acknowledgements required by law or regulation shall also be submitted as specified in the announcement.

917.7302 Cost participation.

The provision of DOE's cost participation policy in 917.70 shall apply, as applicable, to proposals submitted in response to PRDA's.

917.7303 Method and criteria for evaluation and selection.

(a) *General policy.* (1) Information contained in proposals offered in response to PRDAs shall be handled in accordance with the policies and procedures set forth in 927.402–3(d) pertaining to the marking and handling of proprietary data and privileged business information.

(2) Late proposals, modifications of proposals, and withdrawals of proposals shall be handled in accordance with FAR 15.412.

(b) *Selection panel.* A panel appointed by the cognizant program office will evaluate proposals submitted in response to a PRDA. The panel will be composed of program office and other personnel, including representatives from Procurement, Counsel, and, as deemed appropriate by the appointing official, supplemented by personnel from other Government agencies. The representative of Counsel will be an ex-office (nonvoting) member of the panel. Personnel fro.n prime management or operating contractors may be used as advisors to the panel when their services are necessary and available as long as the approvals and procedures in 927.70 are followed.

(c) *Evaluation criteria.* The evaluation criteria shall be specified in the announcement along with a narrative description of their relative importance. The following items are illustrative of the elements which may be considered as evaluation criteria:

(1) Overall technical feasibility of the proposed effort;

(2) Adequacy and relevance of the proposed research plan, including validity tests as related to the proposed goals;

(3) The capabilities, related experience, facilities, instrumentation, or techniques which the proposer possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal:

(4) The qualifications, capabilities, experience, and availability of the proposed key personnel;

(5) The ability of the proposer to furnish necessary financial support;

(6) Project and financial plans for management of the activities including the adequacy of proposed arrangements among all participants.

(7) Plans for involvement of the small business community.

(8) Cost realism and probable cost to the government.

(d) *Program policy factors.* Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.) are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the announcement so as to notify proposers that factors which are essentially beyond their control will affect the selection process. The following are examples of possible program policy factors:

(1) It is desirable, because of the nature of the energy source, the type of projects envisioned, or limitations of past efforts, to select for award or support a group of projects with a broad or specific geographic distribution;

(2) It is desirable to select for award or support (for reasons which must be stated) projects for diverse types and sizes of proposing organizations;

(3) It is desirable to select for award or support a group of projects which represent a diversity of methods, approaches, applications, or kinds of work; and

(4) It is desirable, due to the nature of certain projects or proposing organizations, to select for award or support duplicative or complementary efforts or projects.

(e) *Selection official.* The selection official will be as provided in 915.612.

(f) *Preliminary review.* (1) Prior to making a comprehensive evaluation of a proposal, the selection panel shall determine that it:

(i) Contains sufficient technical, cost, and other required information to enable comprehensive evaluation; and

(ii) Has been signed by a responsible official of the proposing organization or a person authorized to obligate such organization.

(2) If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such case, a prompt reply shall be sent to the proposer, indicating the reason(s) for its not being selected for award or support under the PRDA.

(g) *Comprehensive evaluation.* The basic task in the evaluation and selection proposals for award or support is to assess their relative merit in order to determine which of them offer the greatest likelihood for achievement of the program objectives stated in the announcement, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposals which survive preliminary review shall be evaluated by the panel in accordance with the criteria stated in the announcement. The Source Selection Official will select proposals for support or award from the findings established by the panel. The selection official will take into account the relevant program policy factors in order to determine the mix of proposed projects which will best further specific program goals. All findings and selections are to be documented, signed, and maintained to provide an adequate record of the proceedings.

917.7304 Award or support.

While only those proposals which best further the needs of the program as specified in the announcement will be considered for award or support, DOE may accept for award or support, all, none, or any number part of the proposals submitted.

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7400 Scope of subpart.

This subpart addresses DOE policies and procedures to be applied in DOE cost-type contracts which include authorization to acquire, use, and

dispose of real estate or interest therein for the performance of a contract or contracts; and, DOE assumes liability for, or otherwise will pay, or may be expected to pay, for the acquired real estate as a reimbursable contract cost.

917.7401 General.

Ordinarily Government agencies are not directly concerned with the real estate management procedures for fixed price or cost-type contractors. However, special circumstances and situations arise under cost-type contracts when, in the performance of their contract or subcontract, the performer shall be required, or otherwise find it necessary, to acquire real estate or interests therein by:

(a) Purchase, on DOE's behalf or in its own name, with title eventually vesting in the Government.

(b) Lease, and DOE assumes liability for, or otherwise will pay for the obligation under the lease.

(c) Acquisition of temporary interest through easement, license or permit, and DOE funds the cost of the temporary interest.

917.7402 Policy.

It is the policy of the Department of Energy that when the real estate acquisitions described in 917.7401 are made, the following policies and procedures shall be applied to such acquisitions:

(a) Real estate acquisitions shall be mission essential; effectively, economically, and efficiently managed and utilized; and disposed of promptly, when not needed;

(b) Acquisitions shall be justified, with documentation which describes the need for the acquisitions, general requirements, cost, acquisition method to be used, site investigation reports, site recommended for selection, and property appraisal reports; and

(c) Acquisition by lease, in addition to the requirements in paragraphs (a) and (b) of this section:

(1) Shall not exceed a one-year term if funded by one-year appropriations.

(2) May exceed a one-year term, when the lease is for special purpose space funded by no-year appropriations and approved by the Department.

(3) Shall contain an appropriate cancellation clause which limits the Government's obligation to no more than the amount of rent to the earliest concellation date plus a reasonable cancellation payment.

(4) Shall be consistent with Government laws and regulations applicable to real estate management.

917.7403 Application.

(a) The Officer of Project and Facilities Management is the Headquarters contact point for Departmental policies and procedures governing the acquisition, use, and disposal of the Department's real estate or interests therein. Real estate interests include purchases, leases, easements, permits and licenses.

(b) It is the contracting officer's responsiblilty to coordinate with the Office of Project and Facilities Management when contractor real estate acquisitions meet the criteria set forth in 917.7401 in order to assure that appropriate procedures are followed by the contractor.

(c) The clause at 952.217–70 will be included in contracts or modifications where contractors acquisitions are expected to meet the criteria specified in this subpart.

917.7404 Competition.

(a) Contracting officers shall make certain that solicitation documents:

(1) Require proposals to specify additional facilities and equipment which must be acquired for contract performance, the estimated cost of individual items, and whether acquisition of such property will be financed by the prospective contractor or whether the Government will be requested to provide the required items.

(b) Explain whether it is the Government's intention to provide property, when it is known prior to solicitation that contract performance will require additional facilities or equipment.

(c) Require prospective contractors to:

(i) List items (including dollar value) of Government-owned property in the offerors possession which is proposed to be used in performance of the prospective contract;

(ii) Identify the contract or other instrument under which the property is accountable; and

(iii) Present written permission to use such property in the performance of the prospective DOE contract from the Government contracting officer having cognizance of the property.

(d) Include a statement that the user will assume all costs related to making the property available for use (e.g., transportation, installation, rehabilitation, modification, etc.) unless the Government is to assume such costs.

(e) Include a statement which explains the consideration to be given Government property during evaluation of bids and proposals. This is insure that all prospective bidders and offerors understand that Government property will be an important consideration in evaluating their bids and proposals.

Subpart 917.75—Multiple Awards-Phased Acquisitions

917.7500 Scope of subpart.

Some projects lend themselves to the use of multiple phase, parallel contracts. The basic decision in regard to the use of multiple awards for phased acquisitions will be made by the program office based on technical, schedule, and cost considerations. In the first phase, more than one contractor may undertake a design effort. For the second and succeeding phases, one or more contractors may then be selected from the preceding phase's participants. Since there is an important selection decision to be made at the end of any phase, explicit evaluation and selection procedures will be made known to the contractors prior to competitive selection for succeeding phases.

917.7501 RFP provisions.

Where multiple awards for phased acquisitions are contemplated, requests for proposals (RFPs) for the initial phase shall include:

(a) Notice that the initial negotiated contract will be for Phase I only; however, the Government reserves the right to require a proposal(s) for additional phases of the project as defined in the provisions of the RFP.

(b) If appropriate, notice that competition on subsequent phases will be restricted to the Phase I contractor(s).

(c) Evaluation and qualification criteria should not ordinarily be restricted to Phase I consideration only, but rather should be designed to assure that selected offerors have the requisite technical, management and financial capacity to compete for and perform all phases.

(d) A requirement that each contractor submit a proposal to perform subsequent phases. Instructions for proposal submission and the evaluation criteria to be used in the selection of contractor(s) for subsequent phases will be provided to the Phase I contractors, by letter, as early as possible and at least 90 days prior to the date for submission of proposals.

(e) A requirement of each Phase I, or subsequent phase, contractor to submit a comprehensive report covering actual and projected accomplishments under the present phase. This information will be used in addition to the proposal and the Government's assessment of contractor performance in the evaluation and selection process for subsequent phases. The report shall, as

a minimum address the technical, schedule, and cost aspects of the phase of work now under contract.

917.7502 Evaluation.

(a) The contracting officer or other source selection official as appropriate, shall establish an evaluation team sufficiently in advance of the Phase II proposal due date. The evaluation team shall consist of a chairman from the program office and representatives of procurement and other DOE programmatic or functional areas as appropriate. Counsel will be included as a non-voting advisory member of the evaluation team as deemed appropriate.

(b) The evaluation team will develop the evaluation criteria and proposal instructions to be furnished to the contractors. The purpose of the evaluation is to select that or those offerors which best satisfies the DOE requirements for successful completion of the project. The evaluation shall consider such factors as technical, price, programmatic and other requirements. The evaluation process shall be accomplished in an impartial, equitable, comprehensive, and timely fashion to assure the selection of one or more organizations, which offer the best possibility for successful performance, cost and other factors considered. It is contemplated that the initial phase of multiphase parallel contracts awarded under these procedures will be performed in the same timeframe so that a single competitive evaluation and selection can be accomplished at one point in time. Accordingly, the contracts should contain provisions permitting the Government to synchronize contractor Phase I performances through acceleration or deceleration, as is appropriate, to achieve simultaneous completion of the Phase I activities by all firms under consideration. A thorough and detailed evaluation shall be completed so as to provide the basis on which the best selection can be made.

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 919.2—Policies

Sec.
919.201 General policy.

Subpart 919.5—Set-Asides for Small Business

919.501 General.
919.502–2 Total set-asides.
919.503 Setting aside a class of acquisitions.

Subpart 919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

919.705–5 Awards involving subcontracting plans.
919.705–6 Postaward responsibilities of the contracting officer.
919.708 Solicitation provisions and contract clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 919.2—Policies

919.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Headquarters, is responsible for the administration of the DOE small and small disadvantaged business programs. This includes responsibility for developing, implementing, executing, and managing these programs, providing advice on these programs, and representing DOE before other Government agencies on matters primarily affecting small and small disadvantaged businesses. Heads of Contracting Activities (HCAs) shall appoint a small business/small disadvantaged business (SB/DB) specialist.

Subpart 919.5—Set-Asides for Small Business

919.501 General.

(c) The Department has established a comprehensive review and screening process for acquisitions over the small purchase threshold. The review is intended to enhance the prospect of participation by small business, small disadvantaged business, and women-owned small business concerns.

919.502–2 Total set-asides.

In considering set-asides in the area of architect engineer contracts, contracting personnel must first consider the special procedures required by the Brooks Act, Pub. L. 92–582 pertaining to this type acquisition.

919.503 Setting aside a class of acquisitions.

By agreement with SBA, the DOE has established a class set-aside for construction acquisitions not exceeding $3 million, including new construction and repair and alteration of structures. Lists of other class set-asides shall be maintained by all DOE contracting offices. These lists shall be updated at least annually.

Subpart 919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

919.705–5 Awards involving subcontracting plan.

(b) When the exigencies of the situation prevent obtaining a subcontracting plan prior to the award of a letter contract, the plan shall be obtained prior to definitization.

919.705–6 Postaward responsibilities of the contracting officer.

A copy of the notification to the SBA of awards of contracts, amendments or modifications that contain subcontracting plans, as required by FAR 19.705–6(a), shall be provided to the OSDBU.

919.708 Solicitation provisions and contract clauses.

(b) When using the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, it shall be modified as specified at 952.219–9. The effect of this modification is to relieve DOE contractors and subcontractors from the burden of submitting the SF295 quarterly report since DOE is able to extract this information from the SF294 report. However, in order to do this, DOE must obtain the SF294 on a quarterly basis rather than semiannually. The modification also requires DOE contractors and subcontractors to indicate, at the "Remarks" section of the form, the number and dollar value of awards to labor surplus area concerns if required by the terms of the contract. Upon receipt of these reports, contracting officers shall input the information to the DOE Subcontracting Data System.

(c) Advance approval of the Procurement Executive, or designee, is required prior to including any small and small disavantaged business concerns incentive subcontracting provision in any solicitation or of this clause in any contract.

PART 920—LABOR SURPLUS AREA CONCERNS

Subpart 920.1—General

Sec.
920.102 General policy.
920.106 Records and reports.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

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Subpart 920.1—General

920.102 General policy.

Acquisitions shall be reviewed for potential labor surplus area set-aside consideration in accordance with 919.501(c).

920.106 Records and reports.

Records and reports shall be as required by "A Guide to Preparation of DOE Quarterly Procurement and Financial Assistance Reports."

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 922.1—Basic Labor Policies

Sec.
922.103 Overtime.
922.103–4 Approvals.

Subpart 922.4—Labor Standards for Contracts Involving Construction

922.470 Applicability.
922.471 Decisions and other guides in difficult areas.
922.472 Wage determinations.
922.473 Administration and enforcement.

Subpart 922.6—Walsh-Healey Public Contracts Act

922.608–3 Protests against eligibility.
922.608–4 Award pending final determination.
922.608–5 Award.
922.608–6 Postaward.

Subpart 922.8—Equal Employment Opportunity

922.800 Scope of subpart.
922.802 General.
922.803 Responsibilities.
922.804 Affirmative action programs.
922.804–1 Nonconstruction.
922.804–2 Construction.
922.805 Procedures.
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Subpart 922.70—Special Concerns Affecting Construction Laborers and Mechanics

922.7000 Scope of subpart.
922.7001 Responsibilities.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 922.1—Basic Labor Policies

922.103 Overtime.

922.103–4 Approvals.

(d) *Approvals.* (1) Where the cost to the Government may be affected, approval of hours of work in excess of the normal workweek is justified only in those instances and for those employees where it can be shown that overtime would provide needed and demonstrable impetus to the accomplishment of DOE objectives and that all other means of meeting these objectives have been considered and found inadequate or not feasible. Accordingly, Heads of Contracting Activities shall:

(i) Establish controls to prevent excess casual overtime and to assure that such overtime work is in the best interest of the Government. By casual overtime is meant (A) work in excess of the normal workweek (or in excess of an authorized extended workweek) which cannot be regularly scheduled in advance, or (B) regularly scheduled work in excess of the normal workweek for a period of four consecutive weeks or less; and

(ii) Establish controls to assure that any use of any extended workweek schedule is in the best interest of the Government. Extended workweek means a workweek regularly scheduled and established in excess of the normal workweek for a period in excess of four consecutive weeks.

Subpart 922.4—Labor Standards for Contracts Involving Construction

922.470 Applicability.

(a) Although the statutes required to be followed per FAR 22.400 direction do not contain definitions, the Secretary of Labor's regulations in 29 CFR 5.2 include definitions, of "contract," "building," "work," "construction," "prosecution," "completion," "repair," "public building," and "public work." In general, contracts are classifiable as being covered by the statutes when performance by the contractor consists substantially of the erection or assembly of new plants (including laboratory or other buildings or works), or the alteration and/or repair including painting and decorating, of new and existing plants. The fact that certain contracts may be entered into without regard to general statutory requirements as to advertising for bids or proposals, or upon a cost-reimbursement basis or otherwise, is not determinative in the classification of such contracts, activities, construction projects, or other work or services performed thereunder.

(b) Contracts for servicing or maintenance work are not ordinarily subject to the requirements of this subpart. Maintenance includes the routine, recurring type of work necessary to keep a facility in such condition that it may be continuously used at an established capacity and efficiency for its purpose. However, if such maintenance or service contracts call for substantial and segregable task for construction, alteration or repair, the labor standards provision for construction contracts will be applicable to those items. All contracts in excess of $2,000 for painting of public buildings or public works, whether performed in connection with the original construction or as regular maintenance, are subject to the labor standards provisions for construction contracts.

(c) The requirements that must be followed as a result of FAR 22.4 and other parts of FAR 22 in respect to the Davis-Bacon and Copeland Acts do not apply to the following:

(1) Contracts, regardless of their nature, not in excess of $2,000 (Does not apply to the Copeland Act). However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the applicability of the Davis-Bacon Act.

(2) Contracts for furnishing supplies and equipment, including installation, where the installation requires only an incidental amount of work (as defined in paragraph (c) of this section) that would otherwise be considered construction, alteration and/or repair of a public building or public works.

(3) Contracts for servicing or maintenance work in an existing plant, including installation or movement of machinery or other equipment, and plant rearrangement, which involve only an incidental amount of work (as defined in paragraph (e) of this section) that would otherwise be considered construction, alteration and/or repair.

(4) Contracts for operational or maintenance activities (e.g., production, research and development, or community services, as distinguished from contracts for construction). In general, these are contracts where performance by the contractor consists primarily of the utilization of existing facilities and the services of personnel to produce materials, conduct research and development, or provide community-type services, and of the use of or maintenance of plant. However, the classification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are not covered, since it may be necessary to separate out work which should be classified as covered. As used in connection with "operational activities," the term "produce" means to manufacture, make, or refine special nuclear or other material; to separate material from other substances in which it is contained; or to make new material. The "materials" includes supplies, articles, or equipment; the term "research and development" means the same as defined in 909.5703(b).

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(5) Contracts to be performed outside the United States and the District of Columbia. (Does not apply to the Copeland Act.)

(6) Contracts for demolition, except when performed as a phase of a covered construction project or when subsequent construction activity at the site being cleared is contemplated.

(7) Contracts with a State or subdivision thereof.

(8) Contracts with railroads for construction services to the extent that the services are performed by railroad employees covered by the Railway Labor Act.

(d) It should be noted, however, that the requirements of FAR Subpart 22.4 do apply to work performed by laborers and mechanics employed by a construction contractor or subcontractor at the site of the work under a contract for the construction, alteration and/or repair, including painting and decorating of public buildings or public works, which is otherwise subject to these Acts whether or not such work would be covered if it were a separate contract.

(e) As used in paragraph (c) (2) and (3) of this section, "an incidental amount of work" is defined to mean work directly related to the installation, movement or rearrangement of equipment or machinery, relatively small in amount, and which does not include changes in a facility affecting its architectural or structural strength, stability, safety, size, or function as a public work.

922.471 Decisions and other guides in difficult areas.

The following are examples of applications of the Davis-Bacon Act to particular situations.

(a) *Land-based prototypes.* (1) The Department of Labor has held that the construction of a full-scale operating prototype of a reactor and all necessary nuclear power components, systems, and propulsion equipment for a submarine is covered.

(2) The Department of Labor has held that assembling and fitting the components of nuclear steam propulsion units in a prototype ship situation into the hull sections, including installation of the pressure vessels, turbo-generator sets, heat exchangers, control wiring, etc., is covered.

(3) A later decision involving the prototype situation in (a)(2) above indicates that the earlier rulings should not be construed as intended to cover all equipment assemblies irrespective of the status of construction and other pertinent factors.

(b) *Paving.* The construction of roads, including grading, and their repair—where such repair includes work in roadbeds before resurfacing, building up shoulders, forming ditches, culverts and bridges, and on the actual resurfacing of roads—is covered. However recurring-type maintenance work, such as patching surfaces, filling chuck holes, patching shoulders, and resurfacing railroad crossings is non-covered. Similarly, patch and maintenance work on a parking lot, the replacement of bumper stops, and the repainting of parking dividers is non-covered.

(c) *Stationary boilers.* The construction, alteration and/or repairs, including installation and rebuilding, of stationary boilers costing in excess of $2,000 for labor and materials is covered. Inspection may reveal a need for replacement of pieces of insulation, individual tubes, or other defective parts. Such minor maintenance, necessary to keep the boiler in safe operating condition, is non-covered.

(d) *Start-up of operating activity after fire or other catastrophe.* Rebuilding of a plant following a catastrophe, such as replacement of structural members, roof trusses, walls, roof, utility services, and process piping is covered. However, where process equipment can be restarted and/or operational activities resumed prior to such rebuilding, the actual work of start-up. including preliminary activity, e.g., cleaning, drying, checking, adjustment, temporary services, and temporary weather protection of equipment, essential to such resumption of operational activity, is non-covered.

(e) *Rehabilitation of facilities.* By contrast with emergency services needed to restore or maintain functional usefulness, as above described, rehabilitiation (e.g., painting, change-out, rearrangement and installation of equipment, replacement or repair of damaged parts of a structure or of building services or equipment) of a facility is covered. In such rehabilitation, the startup of equipment by operating employees is non-covered.

(f) *Painting.* Although painting and decorating are specifically mentioned in the Davis-Bacon Act, painting which is closely integrated within operation and maintenance activities and such repainting as color coding of process lines and service piping (including valves and directional arrows), is non-covered. Likewise, application of various materials for localizing contamination, painting of machine tools to identify degree of contamination, and preventive maintenance such as repainting of machine tools, equipment and plant structures are non-covered when performed with a stable work force employed by the operating contractor.

(g) *Installation, rearrangement of adjustment of equipment.* (1) *During construction.* In the construction of a new facility—whether it is a production plant, a laboratory, or supporting facilities, such as shops and warehouses—an integral part of a construction project is the installation of equipment (including mechanical equipment, building services, instruments, etc.) which permits the facility to be utilized for the purpose intended. Normally, the initial installation, arrangement, adjustment, balancing, calibration, and checking of such equipment is a logical part of the construction contract(s) for completion of the facility and, whether or not included within the scope of such contract(s), is covered.

(2) *Plant start-up.* At the time of the turnover of a DOE facility from construction to operating activities, if the facility is turned over a section at a time, some problems of coverage may arise. Usually, it is essential that final checkout of a plant prior to the start-up of plant operations be performed by personnel of the operating organization and, as such, is not covered. The important thing is to work out a practical plan that will assure: (i) Safe and effective start-up of the facility, (ii) the fulfillment of obligations under applicable statutes, and (iii) uninterruption of continuing construction at the facility.

(3) *Equipment and equipment assemblies.* Although the current construction status of a public building or public work is not the controlling factor as to coverage of supply-installation type contracts, it is a factor to be considered in judging the applicability of the Davis-Bacon Act. The Department of Labor has ruled (Walsh-Healey Rulings and Interpretations No. 3, section 6(b)) that while contracts in excess of $10,000 for equipment, including erection or installation, are subject to the Walsh-Healey Act, they may be also covered under the Davis-Bacon Act where more than an incidental amount (see 922.403–71(c)) of work is involved. Examples given in this ruling include furnishing and installation of mechanical equipment such as elevators or of generators requiring prepared foundations or housing. The Department has indicated that a contract for furnishing the initial installation of piping, wiring, gas exhaust fans, plumbing, sheet metal work, and related activities to install kitchen baking equipment was comparable to the basic plumbing, wiring, and heating contracts and was covered. While such a situation

involves an initial installation, alteration or rearrangement of existing facilities involving such work to accommodate new or different equipment is also covered. Conversely, it follows that where the test of more than an incidental amount of construction is not met, and where the installation, rearrangement or adjustment of equipment is not a logical part of any current related construction project, it is non-covered.

(4) *Telephone and utility systems.* Contracts involving the installation of telephone systems or utilities are not covered when the work is performed by employees of the telephone or utility company supplying the services, and the material and equipment installed are owned by the telephone or utility company. Such installation is considered to be an extension of the utility's services. However, a contract for a telephone central system to be installed by the manufacturer and owned by the United States has been held to be covered. In addition, relocation of utility lines to accommodate construction of a public work is covered.

922.472 Wage determinations.

(a) The Heads of Contracting Activities are responsible for submitting to the Wage and Hours Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, all DOE requests for wage determinations, or individual determinations, or extensions or modifications thereto. Requests for such determinations shall be made on Standard Form 308, at least 30 calendar days before they are required for use in advertising for bids or requests for proposals.

(b) In general, the Davis-Bacon Act rates applicable to a contract at the time it is awarded continue in effect during its term regardless of whether it is a fixed-price or cost-reimbursement contract. However it should be noted that:

(1) The minimum wage rates that will be paid to laborers and/or mechanics engaged on jobs which are programmed on a fiscal year or shorter basis are those predetermined by the Secretary of Labor to be prevailing as of the date the program is approved by DOE for performance by the contractor. However, in the event of a substantial addition to the scope of a contract containing a "general or area wage determination," the current "general or area wage determination," including modifications thereto, shall be made applicable to the additional work. It the contract contains a "project area or installation (54A) determination," or an individual determination, and substantial addition to the scope of the contract is made during the fiscal year or shorter basis but more than 120 days from the date of the determination, a new determination is required for the substantial addition. Programmed work will be performed by the contractor under continuing contracts for minor or miscellaneous construction, alteration and/or repair, including painting and decorating.

(2) The minimum wage rates that will be paid to laborers and/or mechanics engaged on subcontracts let by an operating contractor will be those in the wage determination decision of the Secretary of Labor which has been issued in conformance with 29 CFR 1.7.

(c) The **Federal Register** prints general or area wage determinations as they are issued by the Secretary of Labor or designee.

922.473 Administration and enforcement.

(a) The statutes and regulations alluded to in FAR 22.400 impose direct responsibilities for administration and enforcement upon DOE. Therefore, Heads of Contracting Activities and others, consistent with their assignments of responsibilities and delegations of authority, shall assure that DOE contract activities are carried out consistent with these laws and regulations.

(b) Heads of Contracting Activities shall submit (to the Office of Contractor Industrial Relations) reports, recommendations, and requests for ruling and interpretations resulting from following the requirements of FAR 22.400 and 922.400.

Subpart 922.6—Walsh—Healey Public Contracts Act

922.608-3 Protests against eligibility.

When an eligibility determination made by the contracting officer is challenged, this protest shall be handled in accordance with procedures for agency protests against award, except the matter shall be submitted to the Department of Labor for final determination. However, if the eligibility determination challenged pertains to a small business, the protest shall be forwarded to the Small Business Administration for determination.

922.608-4 Award pending final determination.

(a) Award, as contemplated by FAR 22.608-4, may be made only with the approval of the Head of the Contracting Activity.

922.608-5 Award.

The notice required by FAR 22.608-5(b) is to be sent to the appropriate Department of Labor Regional Office in which the contractors place of business is located. Regional Office locations are specified at FAR 22.609.

922.608-6 Postaward.

(c) Any postaward actions of the type discussed at FAR 22.608-6 should be coordinated in advance with the Office of Industrial Relations, Headquarters.

Subpart 922.8—Equal Employment Opportunity

922.800 Scope of subpart.

This subpart implements FAR 22.800. It applies to all DOE contracts and subcontracts.

922.802 General.

922.803 Responsibilities.

(a) The Director, Office of Federal Contract Compliance Programs of the Department of Labor has been delegated authority and responsibility for carrying out the requirements of Executive Order 11246, as amended. In conjunction with the delegation, contracting officers shall be familiar with existing and any updated provisions of 41 CFR Ch. 60, and assist the Department of Labor in its compliance responsibilities. DOE contracting officers will include the applicable Equal Employment Opportunity (EEO)) and Affirmative Action Program (AAP) requirements in their solicitations and obtain the applicable reports of compliance from the Office of Federal Contract Compliance Programs (OFCCP) (when required) prior to awarding of contracts. The provisions of 41 CFR Ch. 60, are applicable to all DOE contracts.

(d) The OFCCP requires that requests for pre-award clearances be directed to the OFCCP Regional Office in which the contractor's facility is (to be) located. If OFCCP finds the contractor in compliance, the contracting officer will be notified. Findings of non-compliance can be communicated to the contracting officer by the OFCCP or Headquarters Director or his designee. The appropriate Regional Office will provide the apporpriate contact point in cases of non-compliance. The Director, Office of Industrial Relations (DOE HQ), when requested, will provide assistance to contracting officers resolving non-compliance issues by providing assistance in obtaining a final decision from the OFCCP.

922.804 Affirmative action programs.

922.804-1 Nonconstruction.

In the event a prospective contractor or subcontractor is entering into its first contract containing the Equal Opportunity clause, the contracting officer shall determine that the prospective contractor understands and appears able to conform to the requirements of the EEO clause.

922.804-2 Construction.

(a) Construction contracts, including cost-sharing contracts, are subject to OFCCP orders applicable in particular areas.

(1) When a proposed nonexempt construction contract is within a geographic area where construction is subject to the provisons of Federal EEO Bid Conditions, Part I or Part II, the solicitation shall contain those bid conditions. The contracting officer shall include in such solicitation a provision that "the offeror shall adhere to the affirmative action plan (bid conditions) set forth in this solicitation."

(2) Lists of areas for which OFCCP has designated specific affirmative action requirements are available through the Procurement Executive. Contracting officers should assure that this list and copies of pertinent orders are made available to all concerned DOE offices and to DOE contractors and construction subcontractors for work to be performed in the specified geographical areas.

(b) *Other nonexempt construction contracts.* (1) When a proposed nonexempt construction contract is not in a "plan area" and is in the amount of $10,000 or more, offerors must agree to comply with the Equal Employment Opportunity clause.

(2) When proposed nonexempt contracts of $1,000,000 or over are not in plan areas and have not been designated as high impact, offerors also must submit to the contracting officer details regarding specific affirmative action steps to be taken by the offeror in connection with all work under the contract. Such details shall include estimates of the percentage of minority group persons expected to be employed in each craft involved in the performance of the contract work. All solicitations for construction contracts shall reference the affirmative action requirements and the offeror's obligation to make good faith efforts to employ women in craft positions.

(3) Pursuant to the OFCCP order dated August 30, 1976, agencies shall develop "Special Bid Conditions" for use on high impact projects in non-plan areas. These special bid conditions will include mandatory goals and timetables for the utilization of minorities. The Procurement Executive using the criteria issued by OFCCP will determine those projects that are "high impact." The contracting officer is responsible for compliance with policies and procedures contained in the OFCCP "Construction Compliance Program Operations Manual." Language for inclusion in solicitations or contracts contained in the manual may be modified, provided all of the requirements are retained. The contracting officer shall develop the goals and timetables and shall confer with the appropriate OFCCP regional office. The Office of Industrial Relations will provide assistance as necessary, when requested. Special bid conditions will be submitted by the contracting officer to the appropriate OFCCP regional office for approval unless otherwise directed by the Procurement Executive. When special bid conditions are applicable, adequate presolicitation lead time should be allowed for submission of the special bid conditions to OFCCP national and regional offices.

(c) An attempt to limit in any major respect the equal opportunity requirements included in an invitation for bids or request for proposals for a construction contract shall constitute grounds for a determination that the offeror does not qualify as a responsible offeror and for rejection of the bid or proposal.

922.805 Procedures.

(b) *Furnishing Posters.* The contracting officer may obtain posters from the Government Printing Office.

922.807 Exemptions.

(c) Contracting officer requests for exemption from EO 11246 should be directed to the Procurement Executive for submission to the Director, OFCCP.

Subpart 922.70—Special Considerations Affecting Construction Laborers and Mechanics

922.7000 Scope of subpart.

This subpart discusses DOE responsibilities and actions regarding DOE construction programs.

922.7001 Responsibilities.

(a) *General.* (1) As collective bargaining arrangements exist generally throughout the construction industry, the wages, hours and working conditions followed for construction laborers and mechanics normally will result from collective bargaining between management and labor. It is important that practices contributing to harmonious labor-management relations prevail throughout the DOE program. All participants in the DOE program, including employees and their unions, have a special and continuing obligation to do their part in accomplishing a stable, efficient construction operation under adequate and reasonable conditions.

(2) In some areas, DOE construction is a minor part of local construction activity, while in other areas DOE construction may, at times, overshadow local construction. Normally, there will be a number of contractors and subcontractors, both cost-type and fixed price, engaged simultaneously on a single large DOE project. It is important that adequate coordination exist among all such contractors in order that similar conditions are provided for all construction employees, in a given classification, at a particular location.

(3) The problem of establishing appropriate conditions for the large projects is complicated by the essential requirements that initial conditions be clearly identified and fixed prior to recruitment of work force. This factor involves applicability of all pertinent Federal statutes, including the Davis-Bacon Act and the Labor Management Relations Act of 1947, as amended (29 U.S.C. 141 et seq.).

(b) *Steps preliminary to the staffing of new cost-reimbursement projects.* Preliminary to the actual recruitment of workers, it is important that sufficient data be accumulated by the field office concerned to reflect area practices accurately. These data should cover in detail the pattern of bargaining in the area; the proportion of the work force employed by employer parties to collective bargaining agreements in relation to the total construction work force; the terms of local area agreements; the extent of conformance with such agreements and any accepted interpretations of them; and a description of practices which may have developed outside of the local agreements. These data will furnish the basis for decision contemplated in (c) and (d) below. Where the data indicate local agreements are adequate for the contemplated work, there may still be areas that need to be filled by additional understandings to attain the desired stability of conditions. The data obtained in the initial survey will also be used in connection with the original Davis-Bacon predetermination.

(c) *Role of project contractor management in collective bargaining.* The DOE expects contractor management engaged in the negotiation and/or administration of collective bargaining agreements to assume

responsibility for assuring conditions which are consistent with the judicious expenditure of public funds, attracting and retaining the skills needed, and giving due consideration to the community's interests and established standards. To meet these responsibilities, it is important that the collective bargaining role to be played by project contractor management be clearly determined in the light of project requirements and local conditions.

(1) In an area where DOE construction does not overshadow total local construction activity, and the majority of construction is performed by members of local contractor associations, the DOE expects that basic conditions for labor on its projects will be negotiated between the local contractor associations and local unions and generally adhered to on construction work in the area. In such situations, DOE contractors will provide for clear identification and application of these local agreements to the DOE work. In such applications, the conditions to be followed will be those which obtain in actual practice in the area covered by the agreement and are consistent with applicable laws, rather than those appearing from a literal interpretation of the language of the agreement. Conditions not covered by local agreements may be provided for as necessary to meet project goals.

(2) In some areas, local agreements may be nonexistent, or inadequate, or the employer parties may not be representative of the employers of the bulk of the labor force in the area. In such event, DOE contractors are expected to carry their share of the responsibility for negotiations and to negotiate directly or in cooperation with others to establish appropriate conditions.

(3) In an area where DOE construction work is of such magnitude as to overshadow local construction, it may be desirable for DOE contractors to negotiate special project conditions (on either a craft or a multi-craft basis) as the best way to meet their obligations to the DOE. Such agreements usually involve the establishment of new bargaining units and are therefore dependent upon the voluntary cooperation of the building trades unions. Normally both the Building Trades Department (AFL–CIO) and the Senior Official, Office of Industrial Relations, should be consulted in respect to any proposed course of action.

(d) *Role of DOE in construction labor relations.* The DOE's role in construction labor relations is one of overall cognizance consistent with DOE's ultimate responsibilities. The scope of the construction program, the complexity of the problems which may arise, and the need for coordination among contractors at the same site are factors which affect the degree of influence exercised by DOE in carrying out the following responsibilities:

(1) To assure that careful advance survey and analysis is made of each contract situation and that the role of the contractor management is in accordance with the considerations in (c) above;

(2) To establish effective machinery for coordination among project contractor management;

(3) With respect to DOE contracts carried out under area practices, to assure that conditions proposed are actually prevalent in the area or have other substantial foundation and that, to the extent consistent with the terms of fixed-price contracts, practices established by fixed-price contractors are not of a character that will destabilize other DOE work;

(4) With respect to DOE contracts carried out under project agreement, both union and management, to take into account all relevant factors pertaining to any conditions peculiar to the project, duration of project, tenure of employment, housing and travel accommodations, length of regular work week, uniformity of shift, special subsidies, etc.;

(5) To encourage contractor officials and representatives of employees to establish similar conditions among all construction employers for each class or classification of employees at a particular location;

(6) To encourage contractor officials and representatives of employees to provide clear identification and application of practices under local agreements, or to make and maintain project agreements on DOE construction projects; and

(7) To encourage contractor officials and representatives of employees to establish reliable working contact between the DOE project contractors and any unions that are cooperating in staffing the job.

(e) *Initial wage rates.* The wage rates initially established under both cost-reimbursement and fixed price contracts will not be less than, and will normally conform to, those determined by the Secretary of Labor pursuant to the requirements of the Davis-Bacon Act. On cost-reimbursement work, the total compensation on the DOE project will be comparable with the total compensation allowed similar workers in an appropriate area of comparison. Where the DOE project is applying the practices under local agreements, the area of comparison normally will be the geographic area within the jurisdiction of each local union cooperating in staffing the project. In this situation, the application of local pratices and agreements will usually be carried out on an item-by-item basis. Where a project agreement has been agreed on as the foundation for project conditions, the area of comparison for each craft should be large enough to provide a sound base which will result in realistic wage rates. In the development of a project agreement, the Office of Industrial Relations should be consulted.

(f) *Adjustments in compensation.* Subject to limitations imposed by applicable labor laws, changes in established wage rates and working conditions under cost-reimbursement contracts may be effected as follows:

(1) Adjustments in wage rates and other job conditions established in project collective bargaining agreements may be effected by the renegotiation or modification of the agreements at appropriate times and by the reopening of existing agreements as provided therein. The Office of Industrial Relations should be consulted as appropriate criteria to follow in review of such reopenings.

(2) In situations where DOE contractors working under cost-reimbursement type contracts apply local established job conditions included in applicable bargaining agreements, adjustments in wages and job conditions may coincide with changes within the locality. Wage rates may be adusted to bring rates into conformity with new rates which are verified as established in the area at the time of their acceptance for DOE work.

(g) *National Joint Board for the Settlement of Jurisdictional Disputes in the Building and Construction Industry.* Construction contractors and representatives of employees are encouraged to settle craft jurisdiction disputes, in accordance with the procedural rules and regulations of the National Joint Board.

(h) *Responsibility of the Office of Industrial Relations.* The Office of Industrial Relations, Headquarters, is responsible for coordinating all activities arising under this subpart, and for maintaining liaison with the Department of Labor, the Building Trades Department (AFL–CIO), and other construction labor and employer organizations.

PART 923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 923.70—Environmental, Conservation, and Occupational Safety Programs

Sec.
923.7001 Nuclear safety.
923.7002 Contract clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 923.70—Environmental, Conservation, and Occupational Safety Programs

923.7001 Nuclear safety.

(a) The DOE regulates the nuclear safety of its major facilities under its own statutory authority derived from the Atomic Energy Act and other legislation. The DOE also regulates, under certain specific conditions, the use by its contractors of radioactive materials and ionizing radiation producting machines.

923.7002 Contract clauses.

(a) A decision to include or not include environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate environmental, safety and health program management personnel.

(b) When work is to be performed at a facility where the DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 952.223–71 shall be used in such contract or subcontract if conditions (a) (1) through (3), are satisfied:

(1) DOE work is segregated from the contractor's or subcontractor's other work;

(2) The operation is of sufficient size to support its own safety and health services; and

(3) The facility is government-owned, or leased by or for the account of the government.

(c) In facilities not meeting the requirements of 923.7002(b) above and which are a production or utilization facility where there is use or possession of source, special nuclear, or byproduct materials, DOE policy is not to enforce radiological safety and health standards pursuant to the contract or subcontract but rather to rely upon Nuclear Regulatory Commission (NRC) licensing requirements (including agreements with states under section 274 of the Atomic Energy Act). Pursuant to this policy, neither the clause found at 952.223–71 nor 952.223–72 is to be incorporated in the contracts or subcontracts for work at such facilities. Notwithstanding this general policy with respect to facilities not meeting the requirements of paragraph (b) above, the Secretary or his designee may determine in special cases, that DOE needs to enforce radiological safety and health standards pursuant to the contract or subcontract (see paragraph (d) below). When such a determination is made, the clause found at 952.223–72 shall be included in the contract or subcontract.

(d) In facilities not meeting the requirements of either 923.7002(b) or 923.7002(c) above and where there is a machine capable of producing ionizing radiation, it is DOE policy not to regulate such activity where it is adequately regulated by a state or other Federal agency. In such cases, neither clause 952.223–71 nor 952.223–72 shall be incorporated in the contract. Where the contracting officer, with appropriate environmental, safety and health advice determines that no state or other Federal agency exists to adequately regulate the operation and/or use of such machines, the clause found at 952.223–72 shall be included in the contract. The Deputy Assistant Secretary for Environment, Safety and Health shall be consulted to determine if a non-agreement (NRC) state or a facility located in a non-agreement state has been reviewed by any other DOE office to establish that the state agency has the essential authority and resources for enforcing the radiation protection standards. This is to assure reasonable consistency in the assessment of radiation protection in non-agreement states and subsequent use of 952.223–72.

(e) In a situation where the contractor or subcontractor is performing DOE work at more than one location, inclusion of either, or both, 952.223–71 and 952.223–72 may be appropriate. In such cases, the contract or subcontract must include language to specify the extent of applicability of each clause used. For example, with a parenthetical: (Applicable only to work performed at a contractor site which has 952.223–71 or 952.223–72 clause in its contract or subcontract).

PART 924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 924.1—Protection of Individual Privacy

Sec.
924.103 Procedures.

Subpart 924.2—Freedom of Information Act

924.202 Policy.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 924.1—Protection of Individual Privacy

924.103 Procedures.

(b)(2) See 10 CFR Part 1008, Records maintained on Individuals (Privacy Act), for the DOE regulations relating to the maintenance or disclosure of information from systems of records on individuals. In addition, see DOE order 1800.1, Privacy Act, for internal DOE procedures to be followed in the establishment and maintenance of systems of records.

Subpart 924.2—Freedom of Information Act

924.202 Policy.

(b) See 10 CFR Part 1004, Freedom of Information for the DOE regulations relating to the availability of DOE records to the public.

PART 925—FOREIGN ACQUISITION

Subpart 925.1—Buy American Act—Supplies

Sec.
925.102 Policy.
925.105 Evaluating offers.
925.108 Excepted articles, materials, and supplies.

Subpart 925.2—Buy American Act—Construction Materials

925.202 Policy.
925.204 Violations.

Subpart 925.5—Payment in Local Foreign Currency

925.501 Policy.

Subpart 925.9—Omission of the Examination of Records Clause

925.903 Conditions for omission.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 925.1—Buy American Act—Supplies

925.102 Policy

(a)(4) Contracting officers may make the determination required by FAR 25.102(a)(4), provided such determination is facutally supported in writing. If the contract is estimated to exceed $1 million, the Head of the Contracting Activity shall approve the determination.

925.105 Evaluating offers.

(c) Proposed awards shall be submitted (in triplicate) through the Procurement Executive, to the Head of the Agency for decisions required by FAR 25.105(c).

925.108 Excepted articles, materials, and supplies.

(b) Suggestions for changes and additions to the FAR 25.108(d) list, with appropriate justifications, shall be submitted to the Procurement Executive.

Subpart 925.2—Buy American Act—Construction Materials

925.202 Policy.

(b) Contracting officers may make the determination required by FAR 25.202(a)(3). If the cost of the materials is expected to exceed $100,000, the Head of the Contracting Activity shall approve the determination.

925.204 Violations.

(d) Contracting officers shall make a complete written report (in triplicate) to the Secretary through the Procurement Executive of each violation of the Buy American Act—Construction Materials clause at 52.225–5.

Subpart 925.5—Payment in Local Foreign Currency

925.501 Policy.

(b) The contracting officer, prior to award of a contract requiring payment to be made in a foreign currency, should ensure that sufficient DOE funds will be available to purchase the foreign currency needed for making such payments.

(c) The contracting officer, when required by applicable financial regulations or directives, may obligate funds in excess of the current contract price, or contract with a financial organization dealing in foreign exchange for the future delivery of the required foreign currency. The official contract file should be appropriately documented to reflect the amount of funds reserved or other actions to be taken in the event additional U.S. dollars are required to make such payments because of an increase in the value of the foreign currency.

Subpart 925.9—Omission of the Examination of Records Clause

925.903 Conditions for omission.

Any proposed determinations and any reports mentioned at FAR 25.903 shall be forwarded to the Procurement Review Office, Headquarters.

PART 927—PATENTS, DATA, AND COPYRIGHTS

Subpart 927.3—Patent Rights Under Government Contracts

Sec.
927.300 General.

Subpart 927.4—Technical Data and Copyrights

927.400 Scope of subpart.
927.401 Definitions.
927.402 Acquisition and use of technical data.
927.402–1 General.
927.402–2 Policy.
927.402–3 Procedures (supply, research, development, or demonstration contracts).
927.403 Negotiations and deviations.

Subpart 927.70—Disclosure of Proposal Information

927.7000 Disclosure outside Government.
927.7001 Proposal information.
927.7002 Treatment of proposal information.
927.7003 Handling notice.
927.7004 Identification of proprietary data in proposals.
927.7004–1 Solicited proposals.
927.7004–2 Solicitations.
927.7004–3 Unsolicited proposals.
927.7005 Required notice of right to request patent waiver.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 927.3—Patent Rights Under Government Contracts

927.300 General.

(a) The provisions of 41 CFR 9–9.1 shall continue in effect; provided, however, that the provisions of 41 CFR 9–9.107–1 through 9–9.107–6 and 9–9.109–6 shall apply only to contracts with other than small business firms and domestic nonprofit organizations which do not fall within the provisions of 35 U.S.C. 202(a) (i), (ii), or (iii). The following sentences shall be substituted for the first sentence of paragraph (j)(2) of the Patent Rights (Long Form) clause of 41 CFR 9–9.107–5(a) and paragraph (e)(2) of the Patent Rights (Short Form) clause of 41 CFR 9–9.107–6:

The contractor will include the clause at 952.227–71 "Patent Rights—Small Business Firms or Nonprofit Organizations" of the Department of Energy Acquisition Regulation 48 CFR Part 952 suitably modified to identify the parties, in all subcontracts regardless of tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor will include the Patent Rights clause of 41 CFR 9–9.107–5(a) or 41 9–9.107–6 as appropriate, modified to identify the parties.

(b) The clause at 952.227–71 shall be used in contracts with small business firms and nonprofit organizations in accordance with OMB Circular A–124 and Chapter 18 of Title 35 of the United States Code.

Subpart 927.4—Technical Data and Copyrights

927.400 Scope of subpart.

This subpart sets forth DOE's policy, procedures, and instructions for contract clauses with respect to the acquisition and use of technical data and copyrights in contracts or subcontracts entered into, with or for the benefit of the Government.

927.401 Definitions.

"Technical data" means for the purpose of this subpart, recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data, as used in this subpart, do not include financial reports, cost analyses, and other information incidental to contract administration.

"Proprietary data" means for the purpose of this subpart, technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(1) Are not generally known or available from other sources without obligation concerning their confidentiality;

(2) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(3) Are not already available to the Government without obligation concerning their confidentiality.

"Contract data" means for the purpose of this subpart, technical data first produced in the performance of the contract, technical data which are specified to be delivered under the contract, technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

"Unlimited rights" means for the purpose of this subpart, rights to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

927.402 Acquisition and use of technical data.

927.402-1 General.

(a) The provisions herein pertain to research, development, demonstration and supply contracts. Special considerations for contracts for the operation, design, or construction of Government-owned facilities are covered by Subpart 970.27. Under DOE's broad charter to perform research, development, and demonstration work, in both nuclear and nonnuclear fields, and to meet the objectives stated in 927.402-2, DOE has extensive needs for technical data. The satisfaction of these needs and the achievement of DOE's objectives through a sound data policy are found in the balancing of the needs and equities of the Government, its contractors, and the general public.

(b) It is important to keep a clear distinction between contract requirements for the delivery of technical data on the one hand, and rights in technical data on the other. The legal rights which the Government acquires in technical data in DOE contracts [other than "facilities" contracts) are set forth in the Rights in Technical Data [long form) clause of 952.227-75. However, this clause does not obtain for the Government the delivery of any data whatsoever. Rather, known requirements for the technical data to be delivered by the contractor shall be set forth as part of the contract (e.g. in the statement of work). The Additional Technical Data Requirements clause at 952.227-73 may be used along with the clause at 952.227-75 to enable the contracting officer to require the contractor to furnish additional technical data, the requirement for which was not known at the time of contracting. There is, however, a built-in limitation on the kind of technical data which a contractor may be required to deliver under either the contract statement of work or the Additional Technical Data Requirements clause. This limitation is found in the withholding provision of paragraph (e) of the Rights in Technical Data (long form) clause of 952.227-75 which provides that the contractor need not furnish "proprietary data." It is specifically intended that the contractor may withhold "proprietary data" even though a requirement for technical data specified in the statement of work or called for pursuant to the Additional Technical Data Requirements clause would seemingly require the furnishing of proprietary data. This withholding of proprietary data is the primary means by which the contractor may protect its proprietary position.

(c) There are, however, two situations where the Government, or its representative, may need to have limited access to a contractor's proprietary data.

(1) First, paragraph (f) of the Rights in Technical Data (long form) clause gives the contracting officer's representatives the limited right to inspect at the contractor's facility the contractor's proprietary data which were withheld from delivery under paragraph (e) of the clause for the purpose of verifying that such data were properly withheld or to evaluate work performance. In carrying out the inspection, normally the contracting officer's representative is a DOE employee although he may be an employee of a DOE contractor acting under an agreement to treat in confidence the proprietary data to be inspected. However, where the contractor whose data are to be inspected demonstrates that there would be a possible conflict of interest if the inspection were made by such a contractor employee, the contracting officer's representative may be limited to a DOE employee. Paragraph (f) has a built-in exclusion from these inspection rights for "specific items of proprietary data" when they are so specified in the contract schedule. Such exclusions limit even DOE's minimum rights of evaluating contract work performance and verifying that technical data withheld by the contractor is proprietary in fact. Such exclusions should be sparingly used, and only in situations where program personnel stipulate to the fact that DOE has no need for access to the specified items to be excluded from paragraph (f), i.e., that the nondisclosure and nonaccessibility will not adversely affect the DOE program involved. It should also be noted that paragraph (f) permits exclusion of "specific items" of proprietary data and, accordingly, should not be used to exclude classes of technical data or all technical data pertaining to specific items or processes or classes of items or processes.

(2) The second situation, where the Government may have limited access to a contractor's proprietary data, is provided in optional paragraph (g) of the Rights in Technical Data (long form) clause at 952.227-75 Alternate I. When used, optional paragraph (g) provides the Government the right to require the contractor to furnish with limited rights the proprietary data previously withheld under paragraph (e). In this situation, the limited rights in proprietary data and the Government's obligation for limited use and disclosure of such data as set forth in the Rights in Technical Data (long form) clause provides the means by which the contractor protects its proprietary position. Paragraph (g) will be used only where it is determined by DOE that for programmatic reasons there is a need for the delivery of proprietary data to the Government. Where proprietary data is to be delivered under paragraph (g) and subparagraph (a) or (b) of the limited rights legend is to be applied to the data, the contractor may, if he can show the possibility of a conflict of interest regarding disclosure of such data to other contractors, limit or modify subparagraphs (a) or (b) as set forth in 927.402-3(e)(2), to exclude or include certain contractors.

(d) The contractor licensing provisions of optional paragraph (h) at 952.227-75 Alternate II of the Rights in Technical Data (long form) clause enable DOE to require limited licenses in proprietary contract data to be granted to the Government and responsible parties in certain circumstances. Such a license may parallel or supplement the license obtained in background patents under the provisions of paragraph (k) of the Patent Rights clause of 41 CFR 9-9.107-5(a). Paragraph (h) is normally to be included in contracts for research, development or demonstration where it is deemed by DOE that the limited license afforded therein is necessary to ensure widespread commercial use or practical utilization of a subject of the contract. As explained in 927.402-3(e)(3), paragraph (h) provides that upon request by DOE, the contractor will grant to the Government and responsible third parties a license in proprietary data only where such data in the form of results obtained by its use, i.e., essential equipment, articles, products, and the like which were the subject of the contract, are not otherwise available, or cannot be made

available in a reasonable time as set forth in paragraph (h).

(e)(1) It is the responsibility of prime contractors and higher tier subcontractors, in meeting their obligations with respect to contract data, to obtain from their subcontractors the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in these regulations, and subject to the approval of the contracting officer where required, selection of appropriate technical data provisions for subcontracts is the responsibility of the prime contractor or higher-tier subcontractor. In many but not all instances, inclusion in a subcontract of the Rights in Technical Data (long form) clause of 952.227–75 will suffice to obtain for the benefit of the Government the rights in and, if appropriate, access to technical data. Access by DOE to technical data, i.e., the inspection rights afforded in paragraph (f) of the Rights in Technical Data (long form) clause at 952.227–75 normally should be obtained only in first-tier subcontracts having as a purpose the conduct of research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract. If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the contractor shall so inform the Contracting Officer in writing and not proceed with the subcontract without written authorization of the Contracting Officer. In prime contracts (or higher-tier subcontracts) which contain the Additional Technical Data Requirements clause, it is the further responsibility of the contractor (or higher-tier subcontractor) to determine whether inclusion of such clause in a subcontract is required to satisfy technical data requirements of the prime contract (or higher-tier subcontract).

(2) As is the case for DOE in its determination of technical data requirements, the Additional Technical Data at 952.227–73 Requirements clause should not be used at any subcontracting tier where the technical data requirements are fully known, and normally the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration. Prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to inequitably acquire rights in the subcontractor's proprietary data for their private use, and they shall not acquire rights on behalf of the Government to proprietary data for standard commercial items unless required by the prime contract.

(f) Related to the acquisition and use of technical data are the contractor's rights in contract data as well as technical data furnished to the contractor by DOE or its contractors. These rights are set forth in paragraph (b)(2) of each Rights in Technical Data clause and provide that the contractor may, subject to patent, security and other provisions of the contract, use for its private purposes contract data it first produces in the performance of the contract, provided that the contractor has met its data requirements (e.g., delivery of data in form of progress or status reports specified to be delivered) as of the date of the private use of such data. It is not necessary that a final report be submitted in order to privately use data if all required progress and interim reports and other technical data then due have been delivered. Paragraph (b)(2) further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(g) An additional clause described further at 927.402–3(f), the text of which is found at 952.227–76 entitled Rights in Data—Special Works, is to be used in place of or in addition to the Rights in Technical Data (long form) clause in contracts where a purpose of the contract is the production of copyrightable material, a substantial portion of which is to be first produced in the performance of the contract, such as motion pictures, television recordings, books, histories, etc. Where, during contract negotiations, it may be determined to purchase, i.e., "specifically acquire," unlimited rights in technical data, or to lease or obtain a license therein, or to obtain rights in existing data, an appropriate clause therefor should be obtained from patent counsel. In situations where technical data including computer software are to be leased or licensed, the terms of any agreement restricting the Government's rights will be included in the contract as either a special clause or an agreement annexed thereto. Another clause, the Rights in Technical Data (short form) clause further described at 927.402–3(g), the text of which is found at 952.227–77, is provided for use in research contracts with educational institutions and consultants. Such contracts may, for example, include those for conducting symposia, training, or education, or other contracts not involving possible use of proprietary data.

(h) In contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725. DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related data and technology. Accordingly, in contracts where access to such restricted data is to be provided to contractors, the following parenthetical phrase shall be inserted after "contract data" in paragraph (b)(2)(ii) of the clause at 952.227–75, after "technical data" in paragraph (b)(2) of the clause at 952.227–77, or after "technical data" in paragraph (b)(2)(ii) of the clause at 952.227–78 as appropriate: "(except Restricted Data in category C–24, 10 CFR Part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)." In addition, there are other types of contract situations (e.g., no cost contracts for studies or evaluation) wherein the contractor is given access to restricted data. In such contract situations, limitations on the use of such data may be appropriate.

927.402–2 Policy.

The technical data policy is directed toward achieving the following objectives:

(a) Making the benefits of the energy research, development and demonstration programs of DOE widely available to the public in the shortest practicable time;

(b) Promoting the commercial utilization of the technology developed under DOE programs;

(c) Encouraging participation by private persons in DOE energy research, development, and demonstration programs; and

(d) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

927.402–3 Procedures (supply, research, development, or demonstration contracts).

(a) *Known requirements for technical data.* Technical data requirements are determined in relation to the intended use of the data which in turn depends upon the intended use of the contract end item. In many contracts for research, the end item may often be a technical report or series of such reports, while in contracts beyond research, the subject of the contract may be a feasibility model, an engineering or advance development model, or a

prototype. The extent to which required technical data may be needed often depends on the level of maturity of design and perfection of the end item, and for a demonstration plant or prototype, may include data pertaining to performance, operational and environmental testing, repair, maintenance, operation, quality assurance, detailed design, logistics, training, etc. Known technical data requirements shall be programmatically ascertained prior to contracting and shall be included in requests for proposals or disclosed during contract negotiations for incorporation as data requirements in the contract statement of work.

(b) *Additional requirements for technical data.* In contracts for research, development, or demonstration, it is not normally possible or appropriate for the Government to ascertain all actual needs for technical data in advance of contracting. Accordingly, the Additional Technical Data Requirements clause at 952.227–73, shall normally be used in such contracts (and, if appropriate, in subcontracts) to enable the ordering of technical data as the actual need and requirement therefor becomes known during the course of the contract. If all technical data requirements are known in advance of contracting and are set forth in the contract statement of work, this clause need not be used. The Additional Technical Data Requirements clause should not normally be used in supply contracts because the required technical data therefor are ordinarily known in advance and thus are specified in the contract statement of work or specification. When the Additional Technical Data Requirements clause is used, the Rights in Technical Data-Long Form clause at 952.227–75 shall also be used.

(c) *Clause text.* The text of the Additional Technical Data Requirements clause is found at 952.227–73.

(d) *Proposals.* (1) The policy and procedures for treatment of proposal information are set forth in FAR 15.413 for solicited proposals, in FAR 15.509 for unsolicited proposals, and 927.70.

(2) Solicited proposals are to be handled in accordance with the procedures of FAR 15.413–2. Evaluation of such proposals outside the Government is authorized in accordance with the procedures of FAR 15.413–2(f) and paragraph (d)(4) below. In order to assure that solicited proposals are properly handled, the handling notice of FAR 15.413–2(e) shall be affixed to a cover sheet attached to each proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose the information.

(3) Unsolicited proposals are to be handled in accordance with FAR 15.509. Outside evaluations of such proposals are authorized in accordance with the procedures of 925.7000.

(4) It is DOE policy to have proposals evaluated by the most competent persons available in Government. In addition, DOE may meet its evaluation needs by having proposals reviewed by evaluators and contractor organizations operating or managing government-owned facilities. Where it is determined to evaluate a proposal outside the Government, such as by consultants, grantees and contractors including those who operate or manage Government-owned facilities, the agreement of 927.7000 or an equivalent arrangement for the treatment of the proposal shall be obtained from the outside evaluator before DOE furnishes a copy of the proposal to such person. In addition, care should be taken that the required handling notice is affixed to a cover sheet attached to the proposal before it is disclosed to the evaluator.

(5) Should a contract be awarded based on a proposal, it is DOE policy, in consideration of the award, to obtain unlimited rights for the Government in the technical data contained in the proposal unless the prospective contractor marks those portions of the technical information which it asserts as "proprietary data", or specifies those portions of such technical data which are not directly related to or will not be utilized in the work to be funded under the contract. "Proprietary data" is defined in 927.401(b). A proposer who receives a contract award shall mark the data identified as proprietary by specifying the appropriate page numbers to be inserted in the Rights to Proposal Data clause of 952.227–82, which clause shall be inserted in the contract. Subject to the concurrence of the contracting officer, information unrelated to the contract may be deleted from the proposal by the contractor. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated, rests with the prospective contractor.

(e) *Rights in technical data.* (1) The Rights in Technical Data (long form) clause set forth at 952.227–75 shall be used in all contracts having as a purpose the conduct of research, development, or demonstration, or in contracts for supplies, or in any other contract where technical data are expected to be first produced under the contract, where technical data are specified to be delivered in the contract, or where the contract contains the Additional Technical Data Requirements clause. Accordingly, all such contracts shall contain the Rights in Technical Data (long form) clause at 927.227–75, except as noted in 970.2702 and 927.492–3 (f) and (g) and except contracts for standard commercial off-the-shelf supplies where technical data such as operating or repair manuals are routinely furnished with the supplies.

(2) *Optional paragraph-Limited Rights in Proprietary Data.* In research, development, or demonstration contracts, and supply contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data (long form) clause at 952.227–75 shall be supplemented by the additional paragraph (g) set forth at Alternate I to the clause. It should be noted that this paragraph does not entitle the contractor to place a limited rights legend on any technical data furnished to the Government under paragraph (g) unless the contracting officer requests in writing delivery of identified technical data previously withheld under paragraph (e) of the Rights in Technical Data clause. Paragraph (g) provides that proprietary data may be specified in the contract as being excluded from the delivery requirements of paragraph (e). Alternatively, the limited rights legend specified in Alternate I may be made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, subparagraphs (a), (b) and (c) thereunder may be modified as follows. When proprietary data is to be furnished only for evaluation, subparagraph (a) of the limited rights legend shall be used, and subparagraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirements that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts, subparagraph (b) of the limited rights legend shall be used, and subparagraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude such contractors or evaluators from subparagraphs (a) or (b). If the data is required solely for emergency repair or overhaul, subparagraph (c) of

the limited rights legend shall be retained, and subparagraphs (a) and (b) may be deleted, unless otherwise applicable. In the event it is determined that all of the subparagraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word "none" shall be inserted in the legend after the colon(:).

(3) *Optional paragraph-Contractor Licensing.* In many contracting situations the achievement of DOE's objectives would be frustrated if the Government, at the time of contracting, did not obtain on behalf of responsible third parties and itself limited license rights in and to proprietary contract data. Where, for example, the contractor is required to license background patents, consideration should be given to securing co-extensive license rights to the Government and responsible third parties at reasonable royalties, and under appropriate restrictions, for contract data which are proprietary data in order to practice the technology which is a subject of the contract. When such a license right is deemed necessary, the Rights in Technical Data (long form) clause at 952.227–75 should be supplemented by the addition of paragraph (h) at 952.227–75 Alternate II. Paragraph (h) will normally be sufficient to cover proprietary contract data for items and processes that were used in the contract and are necessary in order to insure widespread commercial use of a subject of the contract. The expression "subject of the contract" is intended to limit the licensing required in paragraph (h) below to the fields of technology specifically contemplated in the contract effort and may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in 41 CFR 9–9.107–5(b)(9) pertaining to "Background Patents." Where, however, proprietary contract data cover the main purpose or basic technology of the research, development, or demonstration effort of the contract, rather than subcomponents, products or processes which are ancillary to the contract effort, the limitations set forth in subparagraphs (h) (1)–(4) should be modified or deleted. Paragraph (h) further provides that technical data may be specified in the contract as being excluded from or not subject to the licensing requirements thereof. This exclusion can be implemented by limiting the applicability of the provisions of paragraph (h) to only those classes or categories of proprietary data determined as being essential for licensing. Although contractor licensing may be required under paragraph (h), the final resolution of questions regarding the scope of such licenses, the terms thereof, including provions for confidentiality and reasonable royalties, is then left to the negotiation of the parties with resolution of the issues being made, if necessary, by a court of competent jurisdiction.

(f) *Rights in Data—Special Works.* (1) The clause set forth in 952.227–76 shall be used in all contracts where the principal purpose or a task of the contract is the production of copyrightable works, even through such works may incorporate uncopyrighted material or material previously copyrighted by the contractor or others. Such contracts include those:

(i) Primarily for production of motion picture or television recordings or scripts, musical compositions or arrangements, sound tracks or recordings, translations, adaptations, and the like;

(ii) For books, compilations, surveys, histories, or technology information pamphlets;

(iii) For works pertaining to management studies, support services, training, career guidance, or similar functions of DOE; and

(iv) For works pertaining to guidance or instruction of DOE officials or employees in the discharge of official duties.

(2) The Rights in Data—Special Works clause at 952.227–76 should be modified with the assistance of Patent Counsel where the contract calls for the editing, translation, addition, or other modification of the subject matter of an existing work.

(g) *Rights in Technical Data (short form).* The clause set forth in 952.227–77 may be used in contracts for basic research including grants, special research contracts with educational institutions, contracts with consultants, contracts for symposia, or for the conduct of training and educational programs, and in other contracts of a similar nature. This clause shall not be used in any contract where proprietary information of the contractor may be utilized in the performance of work under the contract; in such instances the Additional Technical Date Requirements clause of 952.227–73 and the Rights in Technical Data (long form) clause of 952.227–75 shall be used. The short form clause of this section shall not be used in situations involving long-term consultancy arrangements for work in DOE programs providing opportunities for specialized work experience at DOE-owned facilities for scientific, engineering, and other employees of private firms and institutions engaged in civilian applications of atomic energy.

927.403 Negotiations and deviations.

Contracting officers shall contact the Patent Counsel assisting their contracting activity, or the Assistant General Counsel for Patents, for assistance to the contracting officer in selecting, negotiating, or approving appropriate data and copyright clauses in accordance with the procedures as set forth in 927.402 and 970.27. In particular, advice of Patent Counsel should be obtained regarding the appropriateness or modification of optional paragraphs (g) and (h) of the Rights in Technical Data (long form) clause, the exclusion of specific items of proprietary data from paragraph (f) in said clause, and the exclusion of the Additional Technical Data Requirements clause of 952.227–73.

Subpart 927.70—Disclosure of Proposal Information

927.7000 Disclosure outside Government.

(a) It is DOE policy to have proposals evaluated by the most competent persons available in the Goverment. In addition, DOE may meet its evaluation needs by having proposals reviewed by evaluators and contractor organizations operating or managing government-owned facilities. Outside evaluations may be made provided the requirements in (b) and (c) below are met. A decision to employ outside evaluators shall take into consideration requirements for avoidance of organizational conflicts of interest set forth in 909.5 and the competitive relationship, if any, between the proposer and the outside evaluator.

(b) Decisions to evaluate proposals outside the government shall be made only by the Source Selection Official with the concurrence of the Procurement Executive, Headquarters, for all source evaluation board acquisitions, or by the Senior Program Offical or designee with the concurrence of the HCA or his designee for other acquisitions. If the proposal under consideration expressly indicates that only Government evaluation is authorized and evaluation outside the Government is neverthless desired, the proposer shall be advised that DOE may be unable to give full consideration to the proposal unless the proposer consents in writing to having the proposal evaluated outside the Government.

(c) Where it is determined to evaluate a proposal outside the Government, such as by consultants, grantees or contractors including those who grant or manage Government-owned facilities

the following agreement or an equivalent arrangement for the treatment of the proposal shall be obtained from the outside evaluator before DOE furnishes a copy of the proposal to such person. In addition, care should be taken that the handling notice required by 927.7003 is affixed to a cover sheet attached to the proposal before it is disclosed to the evaluator.

Agreement

Conditions for Evaluating Proposal

Whenever DOE furnishes a proposal for evaluation, I the recipient agree to use the information contained in the proposal only for DOE evaluation purposes and to treat the information obtained in confidence. This requirement does not apply to information obtained from any source, including the proposer, without restriction. Any notice or restriction placed on the proposal by either DOE or the originator of the proposal shall be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of the evaluation, it is agreed all copies of the proposal and abstracts, if any, shall be returned to the DOE office which initially furnished the proposal for evaluation. Unless authorized by the conracting officer, it is agreed the recipient shall not contact the originator of the proposal concerning any aspect of its contents.

Recipient: _____

Date: _____

927.7001 Proposal information.

Information contained in proposals will be used only for evaluation purposes except to the extent such information is generally available to the public, is already the property of the Government, or the Government already has unrestricted use rights, or is or has been made available to the Government from any source, including the proposer or offeror, without restriction. The term "proposal," as used in this section, includes responses to program opportunity notices (PONs), program research and development announcements (PRDAs) and solicitations of a similar nature, in addition to requests for proposals (RFPs) and unsolicited proposals. As a practical matter, DOE cannot assume any responsibility for disclosure or use of any such information unless it is identified by the proposer or offeror in accordance with this section. Unless a solicitation specifies otherwise, DOE will not refuse to consider a solicited proposal or an unsolicited proposal merely because the proposal is restrictively marked.

927.7002 Treatment of proposal information.

(a) A proposal may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information which the offeror does not want disclosed to the public or used by the Government for any purpose other than proposal evaluation. To protect such data the offeror should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the proposal with the notice set forth at FAR 52.215–12, as prescribed at FAR 15.407(c)(8) for solicited proposals or FAR 15.509 for unsolicited proposals. Solicitation documents shall include instructions to proposers to mark their proposals in the prescribed manner.

(b) A reference to that notice on a proposal cover sheet shall be placed on each page to which the notice applies. Data, or abstracts of data, marked with that notice will be retained in confidence and used by the DOE or its designated representative(s) including Government contractors and consultants, as set forth in paragraph (c) below solely for the purpose of evaluating the proposal. The data so marked will not otherwise be disclosed or used without the proposer's prior written permission except to the extent provided in any resulting contract, or to the extent required by law. Offerors should be made aware of the provisions of paragraph (c) below if they desire to modify the notice at FAR 52.215–12 or otherwise seek to limit the evaluation to the Government only. The restriction contained in the notice does not limit the Government's right to use or disclose any data contained in the proposal if it is obtainable from any source, including the offeror, without restriction. Although it is the policy of the DOE to treat all proposals as confidential, the Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. See FAR 15.1001(b) regarding disclosure to other offerors.

(c) Should a contract be awarded based on a proposal, it is DOE policy, in consideration of the award, to obtain unlimited rights for the Government in the technical data contained in the proposal unless the prospective contractor marks those portions of the technical information which he asserts "proprietary data," or specifies those portions of such technical data which are not directly related to or will not be utilized in the work to be funded under the contract. "Proprietary data" is defined in 927.401. An offeror who receives a contract award shall mark the data identified as proprietary by specifying the appropriate page numbers to be inserted in the Rights to Proposal Data clause of 952.227–82, which clause shall be inserted in the contract. Subject to the concurrence of the contracting officer, information unrelated to the contract may be deleted from the proposal by the contractor. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated, rests with the prospective contractor.

(d) The clause at 952.227–82 shall be included in any contract which resulted from a proposal that was the basis of negotiation and award of the contract. This clause is intended to apply only to technical data and not to other data such as privileged or confidential commercial or financial information.

927.7003 Handling notice.

In order that proposals may be handled in confidence consistent with the policies set forth in this section and pursuant to 927.402–3(d)(2), the notice at FAR 15.413–2(e) for solicited proposals and FAR 15.509(d) for unsolicited proposals shall be affixed to a cover sheet attached to each proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose data or information.

927.7004 Identification of proprietary data in proposals.

927.7004–1 Solicited proposals.

Even though the statement of work contained in a solicitation sets forth the known requirements for technical data, i.e., technical data which will be specified to be delivered, there is no assurance that the contractor will deliver all of this data because paragraph (e) of the Rights in Technical Data (long form) clause at 952.227–75 permits the contractor to withhold proprietary data from delivery. In order to ascertain the technical data the proposer intends to withhold as proprietary data, and as an aid in determining whether to include the provision for limited rights in proprietary data set forth in optional paragraph (g) of the Rights in Technical Data (long form) clause, the provision set forth in 952.227–83 shall be included in the solicitation. This provision explains that solicitations will include DOE's known requirements for technical data, and that the proposer must submit a list identifying to the best of its knowledge which of this data will be withheld as proprietary data, or state that no technical data will be withheld. The submission of such a list does not constitute a stipulation or determination by the Government that the data identified therein are in fact proprietary.

In addition, the provision to be included in the solicitation refers to the Additional Technical Data Requirements clause at 952.227-73, as being included in the proposed contract where, due to programmatic considerations, it is contemplated that all of the requirements for technical data will not be known at the time of contracting. When a proposer specifically identifies the proprietary data to be withheld, the contracting officer shall determine as advised by the appropriate program manager, whether:

(a) the Government needs limited rights in the proprietary data, in which case the optional paragraph (g) will be included in the Rights in Technical Data (long form) clause;

(b) the Government needs to require the contractor to license proprietary data to the Government and responsible third parties, in which case optional paragraph (h) will be included in the Rights in Technical Data (long form) clause; and

(c) the Government needs unlimited rights in the proprietary data, in which case negotiations may be held to purchase or obtain a suitable license to the proprietary data.

927.7004-2 Solicitations.

The provision at 952.227-83 shall normally be included in solicitations which may result in contracts calling for research, development, or demonstration work or solicitations for supplies in which delivery of required technical data is contemplated.

927.7004-3 Unsolicited proposals.

The contracting officer, during contract negotiations, shall identify technical data which will be required to be furnished under the contract. The proposer shall be required to submit a list identifying, to the best of his knowledge, which of this data will be withheld as proprietary under paragraph (e) of the Rights in Technical Data (long form) clause, or to state that no technical data will be withheld. The contracting officer shall then make the determinations, in the same manner as set forth in 927.7004-1 for solicited proposals, pertaining to the proprietary data identified to be withheld.

927.7005 Required notice of right to request patent waiver.

Offerors are to be provided with notice of the right to request, in advance of or within 30 days after the effective date of contracting, a waiver of all or any part of the rights of the United States with respect to subject inventions. In no event will the fact that an offeror has requested such a waiver be a consideration in the evaluation of his offer or the determination of his acceptability. Accordingly, the notice at 952.227-84 shall be given to all prospective contractors and shall be inserted in all solicitations which may result in contracts calling for research, development, or demonstration work.

PART 928—BONDS AND INSURANCE

Subpart 928.1—Bonds

Sec.
928.101-1 Policy on use.
928.101-70 Review of bid bonds for construction.
928.102-70 Review of performance and payment bonds for construction.
928.103-2 Performance bonds.
928.103-3 Payment bonds.
928.103-70 Review of performance and payment bonds for other than construction.
928.170 Fidelity bonds.

Subpart 928.2—Sureties

928.202-1 Corporate sureties.
928.202-70 Partnerships as sureties.
928.202-71 Substitution or replacement of a surety.

Subpart 928.3—Insurance

928.301 Policy.
928.370 Service-type insurance policies.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 928.1—Bonds

928.101-1 Policy on use.

(a) In addition to the restriction on use of bid guarantees in FAR 28.101-1(a), a bid guarantee may be required only for fixed price or unit price contracts entered into as a result of formal advertising. They may not be required for negotiated contracts.

928.101-70 Review of bid bonds for construction.

Prior to award of a contract, the contracting officer shall obtain a review from Counsel of the bid bond furnished with the successful bid as to legal form and sufficiency and as to acceptability of the surety. Prior to award of a subcontract, the contracting officer shall review the bid bond furnished with the successful bid as to legal form and sufficiency and as to acceptability of the surety and adequacy of the bond.

928.102-70 Review of performance and payment bonds for construction.

Prior to the award of a contract for construction the contracting officer shall obtain review of performance and payment bonds as to legal form and sufficiency, acceptability of the surety, and adequacy of the bond. A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

928.103-2 Performance bonds.

Situations in addition to those listed in FAR 28.103-2, which may warrant requiring a performance bond for other than construction contracts are:

(a) Where doubt exists as to the financial or technical ability of all possible suppliers;

(b) Where the contractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the contractor's ability to perform the proposed work;

(c) Where other commitments of the contractor might delay performance;

(d) Where performance of the proposed work might disrupt other operations of the contractor and impair its overall efficiency; and

(e) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

928.103-3 Payment bonds.

(a) A determination that is in the best interest of the Government to require payment bonds in connection with other than construction contracts may be made by the contracting officer on individual acquisitions. Such approval is subject to the approval of the Head of the Contracting Activity. In the case of either advertised or negotiated acquisitions, whenever the contracting officer has reason to believe that work under a proposed contract might be delayed because of the concern of subcontractors or suppliers over the credit standing of a potential prime contractor, the contracting officer should consider requiring a payment bond.

928.103-70 Review of performance and payment bonds for other than construction.

Prior to the award of a contract for other than construction the contracting officer shall obtain review of performance and payment bonds as to legal form and sufficiency, acceptability of the surety, and adequacy of the bond. A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

928.170 Fidelity bonds.

Fidelity bonds shall not be required in connection with fixed-price contracts. They may be required, however, in connection with cost-reimbursement contracts for supplies, or construction, where it is determined that a fidelity bond is necessary for the protection of the Government or the contractor, or

when it is considered desirable to obtain the investigative and claim services of the surety company.

Subpart 928.2—Sureties

928.202–1 Corporate sureties.

Each corporate surety, may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability. The co-sureties must, however, bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

928.202–70 Partnerships as sureties.

A partnership or other unincorporated association, as such, shall not be accepted as a surety. The individual members of the partnership or association may, of course, qualify as sureties, provided they meet the requirements set forth in FAR 28.202–2. Individual members of a partnership or association shall not, however, be acceptable as sureties on bonds under which the partnership or association, or any co–partner or member thereof, is the principal obligor.

928.202–71 Substitution or replacement of a surety.

In case of financial inadequacy, failure, or other disqualifying cause on the part of a surety under a bond, the contracting officer shall require the substitution of a new surety satisfactory to the contracting officer.

Subpart 928.3—Insurance

928.301 Policy.

The DOE policies and procedures for indemnification of DOE contractors are set forth in FAR Part 50 and 950.

928.370 Service-type insurance policies.

(a) Service-type insurance policies are cost-reimbursement type contracts or subcontracts in which the insurer provides claim and loss adjustment services on a cost reimbursement basis, which satisfies state and Federal insurance requirements.

(b) Service-type insurance policies may be used with contracting officer approval, when one or more of the following conditions are present:

(1) Pure risk commercial insurance is not available or, if available, cost is not considered reasonable;

(2) Inherent risks in the contract are new and a part of the process of commercialization;

(3) The service-type insurance is needed to implement jointly funded projects; or

(4) The service-type insurance arrangement is considered in the Government's best interest.

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 931.1—Applicability

Sec.
931.102 Fixed-price contracts.

Subpart 931.2—Contracts With Commercial Organizations

931.205–18 Independent research and development and bid and proposal costs.
931.205–32 Precontract costs.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 931.1—Applicability

931.102 Fixed-price contracts.

The intent of the first sentence of FAR 31.102 is that applicable subparts of FAR Part 31 shall be used by the Government in (a) pricing fixed-price prime contracts and modifications, (b) evaluating the reasonableness of a prime contractor's (or prospective prime contractor's) proposed subcontract (or subcontract modification) prices, and (c) determining the allowability of contractor payments to subcontractors in accordance with the provisions of FAR 31.204(b).

Subpart 931.2—Contracts With Commercial Organizations

931.205–18 Independent research and development and bid and proposal costs.

(c)(3) In determining the amount of cost recoverable under DOE contracts the maximum total amount of annual IR&D costs recoverable under all DOE contracts with a business unit or segment shall not exceed (i) those contracts' allocable share of the business unit's (or segment's) total allocable IR&D amounts (as established in accordance with paragraphs FAR 31.205–18(c)(1) and (2)), or (ii) the total cost of the business unit's (or segment's) annual IR&D activities determined to have potential benefit or relationship to the DOE program, whichever is less. The maximum total amount of B&P cost which is recoverable under DOE contracts with a business unit (or segment) shall be those contracts' share of the allocable B&P expense computed in accordance with FAR 31.205–18(c)(1) and (2).

(4) For purposes of 931.205–18(c)(3), the term "DOE program" encompasses the DOE total mission and its objectives. However, IR&D costs that exceed the benefit threshold at one business unit or segment of a business organization cannot be used to offset IR&D costs that are less than the benefit threshold of another segment or business unit.

931.205–32 Precontract costs.

(a) To the extent practical, known expenditures of precontract costs under DOE contracts should be governed by establishing advance understandings as contemplated by FAR 31.109. Contracts that include authorized precontract costs shall include the "Date of Incurrence of Cost" clause specified at 952.321–70.

(b) The following limitations apply to establishment of advance understandings relative to precontract costs:

(1) Precontract cost authorizations shall not be used to cover a period in excess of 15 days, unless a longer period is approved by the HCA based upon a written finding that such an allowance is reasonable, and shall not be extended or renewed. A copy of the findings shall be forwarded to the Procurement Executive at the time of approval. If prolonged coverage is necessary, a letter contract shall be issued.

(2) All precontract cost authorizations shall be reviewed and approved at a management level above the contracting officer.

(3) Retroactive precontract cost authorization and the predating of contractual agreements shall not be used.

(4) Precontract cost authorizations shall not authorize the delivery or furnishing of any goods or services from a contractor until after the contract is executed.

PART 932—CONTRACT FINANCING

Subpart 932.1—General

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932.7105 Payment due dates.
932.7106 Inspection periods.
932.7107 Contract clauses.
932.7107–1 DOE payment clauses.
932.7107–2 Modified FAR clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 932.1—General

932.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized for use as a payment method under DOE contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. For all other contracts, progress payment provisions shall be based on costs, as provided in FAR Subpart 32.5, and Subpart 932.5 of this chapter, except that progress payments based on a percentage or stage of completion may be authorized by the Head of the Contracting Activity when a determination is made that progress payments based on costs cannot be practically employed and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

932.111 Contract clauses.

Payment due dates shall be established in accordance with the provisions set forth in Subpart 932.71, Contract Payments.

Subpart 932.3—Loan Guarantees for Defense Production

932.304–2 Certificate of eligibility.

(h) Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Bank only by the Secretary or designee specified for that purpose.

Subpart 932.4—Advance Payments

932.402 General.

(e)(1) The Head of the Contracting Activity or designee shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(2) Before authorizing any advance payment arrangements, the approving official shall obtain the advice, and other inputs of the servicing finance office.

932.407 Interest.

(d)(4) Advance payments may be made without interest under cost-reimbursement contracts for construction or engineering services.

Subpart 932.5—Progress Payments Based on Costs

932.501–2 Unusual progress payments.

(a)(3) The Head of the Contracting Activity shall forward all requests which are considered favorable, with supporting information, to the Procurement Executive, who, after coordination with the Controller, will approve or deny the request.

(d) Requests for unusual progress payments will not be considered as a handicap or adverse factor in the award of a contract; provided the bid or proposal is not conditioned on approval of such request.

Subpart 932.6—Contract Debts

932.605 Responsibilities and cooperation among Government officials.

(b) The DOE contracting officer has primary responsibility for determining the amount of contract debt and notifying the cognizant finance office of such debt due the Government. The servicing DOE finance office making payments under the contract has primary responsibility for debt collection.

Subpart 932.7—Contract Funding

932.703–1 General.

(a) The contracting officer shall, prior to contract award and obligation of funds, ensure sufficient funds are available to cover the maximum amount of Government liability being created under a fully funded contract; e.g., the ceiling price under a fixed-price incentive or redeterminable contract.

(b) For incrementally funded contracts the contracting officer shall limit the Government's liability to available funds and only require a contractor to provide;

(1) The property or services for which funds are available under a fixed price arrangement; or

(2) The intended increment of work and a proportionate amount of fee under a cost-reimbursement contract.

Subpart 932.8—Assignment of Claims

932.802 Conditions.

(d)(1) This paragraph covers all unpaid amounts payable under the contract except that partial assignments may be permitted when primarily for the benefit of the Government.

932.803 Policies.

(d) In the case of prime contracts, when it has been determined that the financing of contracts will be facilitated in the interest of DOE programs, it is the policy of DOE that such contracts provide, or be amended without consideration (see Assignment of Claims Act of 1940) to provide, in conformance with FAR 32.804, that payments to be made to an assignee shall not be subject to reduction or setoff. In the case of subcontracts, when loans are made for the purpose of financing performance of subcontracts under DOE prime contracts, financing institutions or the Government as guarantor in those instances in which such loans are guaranteed should not be required to incur risks of loss by reason of possible diversion of assigned subcontracts proceeds for payment of other claims of the prime contractor against the borrower, otherwise unrelated to the assigned subcontracts. The Head of the Contracting Activity shall require the adoption of these policies and practices by DOE prime contractors with respect to DOE subcontract work. The Head of the Contracting Activity should inform the Controller of each DOE contractor who is unwilling to adopt policies consistent with this paragraph and the reasons given in support of the contractor's position.

932.805 Procedure.

(f) For classified contracts, the assignee should ordinarily be furnished, upon request, with the following information, as applicable, in lieu of a copy of the contract:

(1) Name and address of the DOE prime contractor;

(2) Prime contract number and date;

(3) Name, address, and phone number of responsible official in the

(i) DOE office receiving the material or service; and

(ii) DOE finance office making payments;

(4) Subcontract number or purchase order number;

(5) Date of the subcontract or purchase order;

(6) Date on which prime contract, subcontract, or purchase order is to be completed;

(7) Total amount of the subcontract or purchase order;

(8) Dollar amount remaining to be delivered on prime contract, subcontract, or purchase order; and

(9) A statement as to the assignability of the prime contract, subcontract, or purchase order.

Subpart 932.70—DOE Loan Guarantee Authority

932.7000 Scope of subpart.

This subpart prescribes policies and procedures for guarantees of loans made by a private financial institution to borrowers performing DOE contracts relating to DOE programs for which guaranteed loans are authorized by legislation.

932.7001 Definitions.

(a) The terms "borrower," "Federal Reserve Board," and "guaranteed loan" have the same meaning set forth in FAR 32.301.

(b) "Guaranteeing Agency" as used in this subpart, means the Department of Energy when authorized to guarantee loans through the Federal Reserve Banks.

932.7002 Authority.

Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Board only by the Secretary, or designee specified for that purpose, and only when made pursuant to enabling legislation or other authority; e.g., by executive order or regulation.

932.7003 Policies.

The following policies governing the exercise of its loan guarantee authority have been established by DOE:

(a) The use of the loan guarantee authority is not restricted to contracts or subcontracts of any particular type or of class. Each case is to be evaluated on its own merits and under the particular circumstances applicable thereto.

(b) The fact that a contract has been awarded as a result of competitive bidding should not, of itself, render the loan ineligible for guarantee by DOE if the contractor is financially responsible and its need for working capital is the result of the impact of a defense program or any other DOE program for which guaranteed loans are authorized.

(c) The guarantee authority should, in general, not be used in connection with loans to contractors required to furnish performance bonds, except in those cases in which the time likely to be required for the surety or DOE to take over in the event of default will result in delays which cannot be tolerated by the particular program concerned. When performance bonds have been furnished, the surety shall be required to subordinate its rights in favor of the guaranteed loan.

(d) The criterion that the materials or services to be provided cannot readily be acquired from alternative sources does not require the finding that the materials or services are absolutely unobtainable elsewhere. The criterion should be so applied as to permit guarantees of loans when, although the materials or services can be obtained elsewhere, such factors as the urgency of supply schedules, technical capacity of the contractor, comparative prices, and time and expense involved in reissuing the contract, including termination payment, establish that it is to the Government's advantage not to resort to alternative sources merely because the contractor or subcontractor may require a guaranteed loan.

(e) If it is known at the time the contract is to be awarded that the low offeror who is technically qualified and competent to furnish the required materials and services will require a guaranteed loan, the contracting officer should obtain appropriate advice and in reaching a decision should consider at least the following:

(1) The savings to be realized by awarding the contract to the low offeror;

(2) The risk to the Government in guaranteeing a loan; and

(3) The likelihood, if award is made to the second low offeror, of that offeror's applying for a guaranteed loan at a later date.

Extreme care should be exercised in rejecting a low bid or proposal simply because the low offeror requires a guaranteed loan.

(f) The amount of the loan should bear reasonable relationship to such factors as the value and terms of the contract, the probable investment required to be made by the contractor in payrolls and inventories, the frequency with which contract payments are to be made, and the borrower's current working capital position.

(g) Borrowings for working capital purposes under guaranteed loans shall be limited to the amount necessary to perform the contract for which the loan is sought. In order that the contractor will also use its own funds in the performance of the contracts, amounts outstanding under the loan or line-of-credit shall be limited to an amount not to exceed 90 percent of the borrower's investment in its contracts, regardless of the total amount of the loan or line of credit authorized. The borrower's investment includes all items for which the borrower would be entitled to payment on performance or termination of contracts, but does not include any items for which no work has been done nor expenditures made.

(h) Unless there are exceptional circumstances, the loan should mature not later than 30 days after the estimated date of final payment under the contract.

932.7004 Procedures.

932.7004–1 Guaranteed loans for civilian programs.

The procedures for authorizing a guaranteed loan under legislation other than section 301 of the Defense Production Act of 1950 (50 U.S.C. App. 2091) shall be essentially the same as those set forth in FAR 32.304, Procedures, FAR 32.305, Loan Guarantees for Terminated Contracts, and FAR 32.306 Loan Guarantee for Subcontacts; except that any contrary provisions required by enabling legislation authorizing the loan shall govern.

932.7004–2 Criteria.

(a) The materials or services to be furnished by the contractor are necessary to the Government interest.

(b) The materials or services cannot as a practical matter be obtained from alternate sources without delay or impeding the Government's interest, except that no small business concern shall be held ineligible for the issuance of such guarantee by reason of alternative sources of supply.

(c) The contractor has demonstrated its inability to obtain the necessary financing in conventional credit channels without the guarantee.

(d) There is reasonable assurance that the loan can be repayed.

(e) The contractor is competent to perform the contract.

932.7004–3 Eligibility.

The applicant's eligibility for a guaranteed loan will be based on:

(a) Contracting officer determinations and findings regarding items (a), (b) and (e) in 932.7004–2 as incorporated in a Certificate of Eligibility (FAR 32.304–2); and

(b) The Controller's determination for items (c) and (d) in 932.7004–2 based on information contained in the application, the Federal Reserve Bank's report, and information furnished by the contracting activity concerned.

Subpart 932.71—Contract Payments

932.7100 Scope of subpart.

This subpart prescribes policies and procedures on (a) the inclusion of payment terms in DOE contracts and purchase orders (b) the requirements of the Prompt Payment Act (31 U.S.C. 3901 et seq.,) Office of Management and Budget (OMB) Circular No. A–125, Prompt Payment, and (c) invoice requirements and matters concerning payments to contractors.

932.7101 Definitions.

"Business Concern" means any person or organization engaged in a profession, trade, or business; and nonprofit entities (including State and local governments, but excluding Federal entities) operating as contractors.

"Contract" means any enforceable agreement, including rental and lease agreements and purchase orders, between an agency and a business concern for the acquisition of property or services.

"Designated payment office" means the place named in the contract for the forwarding of invoices for payment, or in certain instances for approval.

"Due date" means the date on which Federal payment should be made. Determination of such dates is discussed in 932.7105.

"Discount date" means the date by which, if payment is made, a specified discount can be taken.

"Payment date" means the date on which a check for payment is dated or an electronic funds transfer payment is made.

"Proper invoice" means a bill or written request for payment prepared and submitted by a contractor in accordance with contract specified terms and conditions.

"Receipt of invoice" means the date a proper invoice is actually received in the designated payment office; or, the date on which the DOE accepts the property or service; whichever is the later.

932.7102 General.

(a) It is the policy of the Department of Energy to include payment terms in its contracts and to make payments due thereunder on the due dates determined in accordance with such terms. Adherence to this policy will avoid interest penalities for overdue payments, establish better business relationships with suppliers, and increase competition for Government contracts.

(b) In accordance with guidelines set forth in Chapter 8000, Cash Management, section 8040.20, Timeliness of Disbursements, of the Treasury Fiscal Requirements Manual (TFRM), it is also the policy of the Government to defer payment until as close as administratively possible to the due date for payment or, if appropriate, the discount date. Discounts for early payments shall not be taken, however, unless such discounts are determined to be economical in accordance with section 8040.30 of the TFRM. These practices will tend to maximize cash balances available to the Treasury, reduce the need for borrowing, and thus contribute to lowering the public debt.

(c) When not established contractually, it is the DOE policy that the payment due date for invoices, bills, statements, or any other documents including progress and final payments (hereinafter referred to as "invoices") shall be the thirtieth (30th) calendar day after date of invoice receipt, as defined in this subpart, unless a different date is required by law or regulations.

(d) Notice of an apparent error, defect, or impropriety in an invoice shall be given to a business concern within 15 days of invoice receipt (3 days for meat or meat food products and 5 days for perishable agricultural commodities). When provided by telephone, the notice shall be suitably documented.

(e) The contracting officer and other responsible officials shall ensure that receipt and acceptance of goods and services are executed as promptly as possible. Receiving reports shall be forwarded in time to be received by the designated payment office by the fifth business day after acceptance, unless other arrangements are made. Designated payment offices shall stamp receiving reports and invoices with the date received in those offices.

(f) DOE Payment Offices are required to schedule contractual payments to occur on or as near as administratively possible to established payment due dates. Payments made by Treasury checks will be mailed or transmitted on or about the same day for which the check is dated.

(g) When the DOE accepts property or services from a business concern, but does not make payment for each such complete delivered item of property or service by the required payment date, an interest penalty shall be paid to such business concern unless such payment is made within 15 days after the due date (3 days for meat or meat products and 5 days for perishable agricultural commodities) or is exempted pursuant to 932.7103 below.

(h) If a business concern offers the DOE a discount from the amount otherwise due under a contract for property or services in exchange for payment within a specified period of time, payment will be made in an amount equal to the discounted price only if payment is made within such specified period of time. Violation of this provision shall result in payment of an interest penalty on any amount which remains unpaid and on which the Department fails to correct the underpayment within 15 days of the expiration of the discount period (3 days for meat and meat food products, and 5 days for perishable agricultural commodities).

(i) To ensure prompt payment of amounts due, all DOE contracts shall incorporate appropriate payment provisions enabling the Government, at its option, to determine at the time of payment the method of payment to be used (e.g., check, electronic funds transfer).

932.7103 Exemptions.

The interest penalty provisions of this subpart are not applicable to the following types of contract payments.

(a) Advance payments, progress payments or other payments made for financing purposes before receipt of complete delivered items of property or service.

(b) Payments under cost-reimbursement contracts or similar payments under other types of contracts providing for cost-reimbursements; e.g., a Time-and-Materials or Labor-Hour Contract, a Personal Services Contract.

(c) Payments for utilities (gas, water, electricity, etc.) where the contract includes provisions for late payment charges established by tariffs or State regulatory commissions.

(d) Payments under informal contracts for the purchase of utilities under a tariff when such tariff provides for late payment charges.

(e) Late payments, if any, made under a contract awarded prior to October 1, 1982; unless such contract contains a specific interest penalty clause.

932.7104 Procedures.

(a) In all DOE contract and purchase order solicitations and awards, the contracting officer shall:

(1) Establish specific payment terms, payment due dates, stated inspection periods, invoice requirements, notification of defective invoice requirements and interest penalty provisions as set forth in this subpart; and

(2) Ensure awards specify the name (where practicable), title, phone number, office name and complete mailing address, of officials of:

(i) The business concern to be notified when the Government receives a defective or improper invoice, and

(ii) The Government office where the invoices or vouchers are to be sent by the contractor.

932.7105 Payment due dates.

(a) The contracting officer shall provide for contract payment due dates that are equitable and give proper consideration to prevailing industry practices for the same or similar products or services and the financial condition of the prospective contractor. To the extent feasible and appropriate, payment cycles should be established to minimize or avoid entirely the necessity for the making of advance payments or progress payments.

(b) Contract specified payment due dates, shall generally be predicated on a payment cycle of thirty (30) calendar days after invoices receipt, as defined herein, in order to permit DOE officials to routinely receive, review, approve, and otherwise administratively process invoices for payment of cost reimbursement vouchers or invoices for complete delivered products or services. However, payment due dates based on different payment cycles may be established for a contract, or class of contracts, as appropriate or required by law, regulation, the contractor's financial condition or the payment procedures and practices of the awarding office.

(c) Payment cycles of less than thirty (30) calendar days may be appropriate when:

(1) An award is made to a small business concern.

(2) Advance payments or progress payments are authorized to finance contract work or such financing payments can be curtailed by making payments sooner for completed work.

(d) When authorized, separate payment due dates shall be established for progress payments. The absence of a contract specified due date may preclude progress payments from being made on other than a thirty (30) day payment cycle.

(e) Advance payments, when provided, shall be timed to coincide with the contractor's financial need for such payments in accordance with applicable Treasury Department requirements.

(f) In connection with the acquisition of meat and meat food products, as defined in section 2(a)(3) of the Packers and Stockyards Act of 1921 (7 U.S.C. 182(3)), the Prompt Payment Act requires payment to be made not later than 7 days after the date of delivery. Similarly, for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), the required time for payment is 10 calendar days after delivery.

(g) When contract payment due dates other than those established by local policy are to be incorporated, or are requested by the contractor, the contracting officer shall first obtain concurrence from cognizant finance and program officials.

932.7106 Inspection periods.

(a) In order to ensure timely payments when contract payment due dates are partially or wholly based on a specified number of days after Government acceptance of complete delivered property or services, the contract shall specifiy an agreed to maximum period for Government inspection and acceptance.

(b) For purposes of determining such payment due dates, a delivered item shall be deemed constructively accepted on the last day of the contract specified inspection period if actual acceptability has not yet been determined.

(c) For purposes of determining payment due dates for purchase orders, constructive acceptance shall be deemed to occur on the date of receipt at the specified delivery point unless the contracting officer specifically requires otherwise in the purchase order.

(d) Failure by the Government to accept or reject delivered items within specified time period may result in the payment of interest penalties. However, such failure shall not be considered a breach of contract terms.

(e) Contract specified inspection periods shall be predicated on the estimated number of calendar days required to determine the acceptability of the delivered item(s) after the date of receipt at the contract specified delivery point.

(f) When more than a ten (10) calendar day inspection period is contractually established, approvals of contracting and program officials should be included with the contract file.

932.7107 Contract clauses.

932.7107-1 DOE payment clauses.

(a) The contracting officer shall insert—

(1) The basic clause at 952.232–70, Payment Due Dates, Invoice Requirements and Penalties, in solicitations and awards containing the clause at FAR 52.232–1, Payment (applicable to fixed-price supply contracts, fixed-price service contracts, and contracts for nonregulated communication services), FAR 52.232–2, Payment under Fixed-Price Research and Development Contracts, or FAR 52.232–4, Payment under Transportation Contracts and Transportation-Related Services Contracts;

(2) Alternate I of the basic clause at 952.232–70 in solicitations and awards containing the clause at FAR 52.232–3, Payment under Personal Services Contracts, or FAR 52.232–7, Payments under Time-and-Materials and Labor-Hours Contracts, when such contracts provide for cost-reimbursements;

(3) Alternate II of the basic clause at 952.232–70 in solicitations and awards containing the clause at FAR 52.232–5, Payments under Fixed-Price Construction Contracts, or FAR 52.232–10, Payments under Fixed-Price Architect-Engineer Contracts;

(4) Alternate III of the basic clause at 952.232–70, or a clause substantially the same as alternate III, in solicitations and awards containing the clause at FAR 52.232–6, Payments under Communication Service Contracts with Common Carriers, in order to establish appropriate due dates and to provide for late payment charges established by tariffs or state regulatory commissions; or

(5) Alternate IV of the basic clause at 952.232–70 in fixed-price solicitations and awards providing for the acquisition of meat and meat products or perishable agriculture commodities to ensure compliance with Prompt Payment Act requirements.

(b) The contracting officer shall insert the clause at 952.232–71, Payment Due Dates and Invoice Requirements, in all cost-reimbursement contract solicitations and awards containing the clause at FAR 52.216–7, Allowable Cost and Payment, as modified at 952.216–7; or, FAR 52.216–13 Allowable Cost and Payment-Facilities.

(c) Fixed-price purchase orders shall incorporate the prompt payment clauses at 952.232–72.

(d) The contracting officer shall insert the clause at 952.232–73, Payment Methods, in all DOE contract solicitations and awards in order to provide proper notice and require contractor acceptance of electronic funds transfers for any required contract payments not to be made under a letter-of-credit advance payment arrangement.

932.7107-2 Modified FAR clauses.

(a) For consistency with the applicable clauses prescribed in 932.7107–1 above, the payment clauses prescribed in FAR 32.111 shall be modified as provided below:

(1) Revise the payment clauses at FAR 52.232–1 through FAR 52.232–6, as

prescribed in FAR 32.111(a)(1) through FAR 32.111(a)(6), to indicate payments will be made "after" rather than "upon" invoice receipt or acceptance.

(2) Revise the clause cited at FAR 52.232–7, as prescribed in FAR 32.111(b), to indicate payments will be made "after" rather then "upon" invoice receipt or acceptance.

(3) Modify the clause at FAR 52.232–8, Discounts For Prompt Payment, as prescribed in FAR 32.111(c)(1), to reflect the term "proper" in lieu of "correct" and the last sentence to read as follows—For the purpose of computing the discount earned, payment shall be considered to have been made on the date either a government check was dated or an electronic funds transfer payment was made.

(4) Revise the clause at FAR 52.232–10, Payments Under Architect-Engineer Contracts, as prescribed at FAR 32.111(d)(1), to indicate payments shall be made "after" rather than "upon" invoice receipt or acceptance.

PART 933—DISPUTES AND APPEALS

933.011 Contracting officer's decision.

(a) In addition to the information specified in FAR 33.011, the contracting officer's decision shall include the contracting officer's written findings of fact.

(b) The contracting officer shall also furnish the contractor a copy of the rules established by the DOE Board of Contract Appeals.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

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935.007 Solicitations.
935.010 Scientific and technical reports.
935.014 Government property and title.
935.015 Contracts for research with educational institutions and nonprofit organizations.
935.070 Contract clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

935.007 Solicitations.

See Subpart 917.72 for the conditions under which Program Research and Development Announcements may be used, and the procedures for their use.

935.010 Scientific and technical reports.

(c) All research and development contracts which have as a requirement the submission of a scientific or technical report shall include a provision which requires the contractor to submit a copy of the final, edited report to the following address: U.S. Department of Energy Technical Information Center, P.O. Box 62, Oak Ridge, TN 37830.

(d) Contractors shall be required to submit with the report a completed DOE Form RA–426, "DOE and Major Contractor Recommendations for Announcement and Distribution of Documents," except when the contract is with an educational institution, in which case the contractor shall be required to submit with the report a completed DOE Form RA–427, "University Contractor, Grantee and Cooperative Agreement Recommendations for Announcement and Distribution of Documents."

935.014 Government property and title.

(b) As authorized by FAR 35.014(b), DOE has established a threshold of $1,000 with respect to consideration of vesting title to property to the contractor in contracts with nonprofit and educational institutions as contemplated by FAR 35.014(b)(1) and 35.014(b)(2).

935.015 Contracts for research with educational institutions and nonprofit organizations.

See Subpart 917.71 for the conditions and procedures under which Special Research Contracts may be used and the procedures for their use.

935.070 Contract clauses.

Insert the clause at 952.235–70, Key Personnel, in Research and Development contracts under which performance is largely dependent on the expertise of specific key personnel. To prevent administrative burden, the list should be as limited as possible.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 936.2—Special Aspects of Contracting for Construction

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936.202 Specifications.

Subpart 936.6—Architect-Engineer Services

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936.602–2 Evalution boards.
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936.605 Government cost estimate for architect-engineer work.
936.606 Negotiations.
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Subpart 936.7—Standard Forms for Contracting Architect-Engineer Services and Dismantling, Demolition or Removal of Improvements

936.702 Forms for use in contracting for architect-engineer services.

Subpart 936.70—Rental of Construction Equipment

936.7000 Scope of subpart.
936.7001 General policy.
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936.7002–2 Rental period.
936.7002–3 Rental rates.
936.7002–4 Application of rates.
936.7002–5 Insurance.
936.7002–6 Rental limitation.
936.7002–7 Record of negotiation.
936.7002–8 Responsibility for repair and replacement.
936.7002–9 Equipment condition and inspection.
936.7003 Rental of third-party-owned equipment.
936.7003–1 Rental agreement.
936.7003–2 Rental rates.
936.7003–3 Insurance.
936.7003–4 Option to purchase equipment.

Subpart 936.71—Inspection and Acceptance

936.7100 Scope of subpart.
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Subpart 936.72—Acquisition of Special Equipment

936.7200 Scope of subpart.
936.7201 Definition.
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Subpart 936.73—Outline for Equipment Rental Agreement

936.7300 Scope of subpart.
936.7301 Outline of agreement for rental of contractor-owned construction equipment.
936.7302 Outline of agreement for rental of third-party owned construction equipment.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 936.2—Special Aspects of Contracting for Construction

936.202 Specifications.

(a) Construction specifications shall allow the use of concrete which contains fly ash as an optional or alternate material in accordance with 910.004 unless a determination is made that its use is technically unacceptable.

(b) The list of excepted supplies appearing at FAR 25.108 shall be noted in the specifications.

(c) To support all invitations for bids, plans and specifications will be available on request to all prospective bidders, including general contractors, subcontractors, and material and

equipment suppliers. Where the cost of reproduction is $10 or more, the charge shall be a minimum of $10 and subject to a maximum of $500, depending upon the size of the project and the number of drawings and the volume of specifications involved. Where the cost of reproduction is less than $10, the contracting officer has authority to make distribution at cost of reproduction, or free of charge, as a particular situation dictates.

(d) No refund for the return of plans and specifications will be made except when the invitation is canceled. Under such circumstances, refund of payments will be made upon return of the plans and specifications in good condition to the issuing office.

(e) Plans and specifications will be issued without charge to such organizations as The Associated General Contractors of America, American Road Builders' Association, Dodge Reports, Blue Reports, Brown's Letters, Inc., builders and contractors exchanges in the locality in which the project is to be constructed, and others that maintain public plan display rooms.

(f) Payments received for plans and specifications shall be handled in accordance with the regulations prescribed by the General Accounting Office in sections 3020–10 and 3030 of Title 7 of GAO Manual for Guidance of Federal Agencies.

(g) If the contracting officer desires to have the architect-engineer or construction manager handle the furnishing of plans and specifications and payments therefor, the invitations for bids should so state, and the architect-engineer or construction management contract shall provide the manner in which the receipts are to be handled, generally as a credit to the contract.

(h) No charge will be made to original receivers of plans and specifications for revised sheets of drawings and revised pages of specifications which are issued by amendments to invitations.

(i) Plans and specifications may be issued in complete sets only, or in complete sets and parts of sets, as the Head of the Contracting Activity determines to be best. If less than complete sets of plans and specifications are issued, the distribution should be based on an applicant's request for specific pages and drawing sheets.

(j) When a non-refundable fee is to be charged, a provision substantially the same as 952.236–72 shall be included in the solicitation.

Subpart 936.6—Architect-Engineer Services

936.601 Policy.

To ensure the broadest publicity concerning DOE's interest in obtaining architect-engineer services, a notice of intention to contract for architect-engineer services shall be prepared and published for each acquisition of architect-engineer services, in accordance with the requirements of FAR 5.205(c) and 5.207. The submissions requested and received as part of the architect-engineer selection process differ in substance from proposals received for other types of acquisition. Consequently, the policies and procedures contained in FAR 15.412, and 915.412 concerning the consideration of the late responses are not applicable to proposals submitted under the provisions of this Subpart 936.6.

936.602–2 Evaluation boards.

(a) Architect-engineer evaluation boards shall be used for the selection of professional architect-engineer services when the estimated cost of the contract is $500,000 or more. Except as provided by this subpart, the use of architect-engineer evaluation boards shall be governed by the general policies and procedures contained in FAR 36.603 and the policies concerning the selection of such contractors by board process contained in internal DOE Directives. These policies and procedures are also applicable to the selection of architect-engineers for awards of less than $500,000. However, less formal procedures and practices may be followed, depending upon the circumstances in each particular selection, at the discretion of the selecting official. The Source Selection Office, as designated in 915.612, shall establish an architect-engineer evaluation board and select the contractor.

936.602–3 Evaluation board functions.

(a)(1) Firms indicate their general interest in providing services by annual submittal of Standard Form 254; and indicate specific interest in providing services for a particular project, in response to the public announcement, by submittal of Standard Form 255 (and Standard Form 254 if not previously submitted). Supplemental information may be solicited as a means of initiating the discussion phase of the architect-engineer selection process. This may be particularly appropriate for the larger or more complex projects where sufficient qualification and performance data are not available from the Standard Forms 254 and 255, and additional information beyond that already furnished is needed to apply the selection criteria and evaluate and rank the firms. Firms should not be requested to furnish the same information previously submitted on Standard Forms 254 and 255, nor should they be requested to submit preliminary designs, plans and drawings, except in appropriate circumstances involving design competitions.

(2) After the notice of intention of contract for architect-engineer services has been published and the date for submission of the standard forms has passed, the evaluation board and/or the selecting official shall review and evaluate the Standard Form 254 and the Standard Form 255, where applicable, submitted in response to the public announcement. Consideration should be given to requesting submission of a Standard Form 255, by qualified firms which fail to respond to the public announcement to assure adequate competition. Based on this evaluation, no less than three firms shall be selected for the purpose of holding discussions. It is not necessary to hold discussions with any firm that fails to submit a Standard Form 255, where required.

(c)(1) Normally, only those firms which are compatible with the size and complexity of the job requirements should be considered for discussions; that is, for a small, relatively simple job, firms whose resources and qualifications are far in excess of the job requirements should not be considered unless no satisfactory response is received from any other compatible highly qualified firm, and where size and simplicity of the project permit, consideration should be limited to the geographic area of the project.

(2) Every opportunity and encouragement shall be given to small business, small disadvantaged businesses and women-owned small business concerns firms. Toward this end, groups that propose to form a joint venture or engage the services of small consulting firms for portions of the effort shall be given full consideration by the evaluation board and the selection official of their combined qualifications

(3) After three or more firms have been selected in accordance with 936.602–70, discussions shall be held with these firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. These discussions may be used to obtain additional qualification, performance, and management data, and other information needed to properly apply

the evaluation criteria and evaluate the firms under consideration.

(4) Requests for supplemental information shall not request firms to submit price proposals. Such requests can be used only to obtain information that will enable DOE to select the best qualified contractor. When a request for supplemental information is made, some wording should be included to identify it with the discussion phase of the selection process similar to the following: "As a result of our evaluation of material on file with this office and the SFs 254 and/or 255 submitted in response to Public announcement ——, we have selected your firm for further consideration for selection and award of a contract to perform the architect-engineer services which are described below. The principal purpose of this request is to obtain additional specific qualification and performance data concerning your firm."

(5) The term "discussions" includes telephone conversations, exchange of correspondence, or interviews. The term "interview" as used in FAR 5.207(d), Note 63, means "discussions" as defined above.

(d) When the evalnation board completes its functions, it shall prepare a report, including its recommendations, and submit it along with the solicitation, selection criteria, weights, and other information and documents, as may be requested, to the Source Selection Official through the Procurement Executive, or designee, when the Source Selection Official is in Headquarters. The Procurement Executive, or designee, shall arrange for appropriate Headquarters review of the report and prepare an action memorandum to the Source Selection Official for consideration in making the selection.

(e) The evaluation board's duties will ordinarily include preparation of the public announcement (936.601) and development of evaluation criteria, based on architect-engineer services requirements established by the appropriate DOE program and staff organization; development of evaluation criteria weighting; review and evaluation of Standard Forms 254 and 255; review and evaluation of information from other sources, such as appraisals of performance on previous contracts awarded to the architect-engineer firm; development of additional information requirements and conduct of discussions with firms selection for further consideration; determination of ranking of the firms evaluated; preparation of the evaluation board report and presentation of the board's findings, or recommendations, to the selecting official.

(f) The public announcement (see 936.601) covering the requirement for architect-engineer services, criteria and relative weightings, as developed by the evaluation board, shall be submitted to the Procurement Executive or designee, for appropriate review and comment prior to issuance of the announcement, where it is a Headquarters' selection or requires Headquarters' review and approval of the contract action. Commerce Business Daily announcements shall be prepared in accordance with FAR Subpart 5.2.

936.602-4 Selection authority.

(b) Upon completion of discussions and evaluation of the firms that were selected for discussions, the board shall recommend to the selecting official, in order of preference, based upon the criteria in 936.602-70 and any special criteria included in the public announcement, no less than three firms deemed to be the most highly qualified to provide the services required. The Standard Form 255 submitted by firms with which written or oral discussions were held should be retained in selection file; all other Standard Forms 254 may be discarded 90 days after award. The selecting official shall then select the firm determined to be most highly qualified. Should the firm selected be other than that ranked highest in qualifications by the evaluation board, the selecting official shall provide complete documentation of his decision which shall become part of the contract file.

936.602-70 DOE selection criteria.

Contracting officers or architect-engineer evaluation boards shall apply the evaluation criteria contained in this subsection, as appropriate, and any special criteria developed for individual selections. When special and additional criteria are to be used, they shall be set forth in the public announcement required by 936.601, and a written justification for their use shall be placed in the DOE file maintained for the project.

(a) *General qualifications, including:*

(1) Reputation and standing of the firm and its principal members;

(2) Experience and technical competence of the firm in comparable work;

(3) Past record in performing work for DOE, other Government agencies, and private industry, including projects or contracts implemented with no overruns; performance from the standpoint of cost including cost overruns (last 5 years); the nature, extent, and effectiveness of contractor's cost reduction program; quality of work; and ability to meet schedules including schedule overruns (last 5 years) (where applicable);

(4) the volume of past and present workloads;

(5) Interest of company management in the project and expected participation and contribution of top officials;

(6) Adequacy of central or branch office facilities for the proposed work, including facilities for any special services that may be required;

(7) Geographic location of the home office and familiarity with the locality in which the project is located:

(b) *Personnel and organizations.*

(1) Specific experience and qualifications of personnel proposed for assignment to the project, including, as required for various phases of the work:

(i) Technical skills and abilities in planning, organizing, executing, and controlling;

(ii) Abilities in overall project coordination and management; and

(iii) Experience in working together as a team;

(2) Proposed project organization, delegations of responsibility, and assignments of authority;

(3) Availability of additional competent, regular employees for support of the project, and the depth and size of the organization so that any necessary expansion or acceleration could be handled adequately;

(4) Experience and qualifications of proposed consultants and subcontractors; and

(5) Ability to assign adequate qualified personnel from the proposed organization (firms own organization, joint-venture organizations, consulting firms etc.) including key personnel and a competent supervising representative.

(c) Additional (or special) criteria developed for the specific project shall be considered and evaluated as may be appropriate.

936.603 Collecting of data on and appraising firms' qualifications.

(a) *Establishing offices.* DOE offices that regularly acquire architect-engineer services shall collect and maintain current qualifications and performance data files on architect-engineer firms, including information on their past experience on various types of construction projects. Normally, Standard Form 254, Architect-Engineer and Related Services Questionnaire, shall be used for this purpose. Information from other sources, such as appraisals of performance of previous projects awarded to the firm, may also be included in the files.

936.605 Government cost estimate for architect-engineer work.

(a) Prior to the initiation of negotiations, an independent Government estimate of the cost of the required architect-engineer services will be prepared based on a detailed analysis of the costs expected to be generated by the work. Consideration shall be given to the estimated value of the services to be rendered, and to the scope, complexity, and nature of the project. The independent Government estimate shall be revised as required during negotiations to reflect changes in or clarification of the scope of the work to be performed by the architect-engineer. On construction projects, a fee estimate based on the application of percentage factors to project cost estimates of the various segments of the work involved may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent Government estimate.

(b) The Government estimate shall include the following information:

(1) A sufficiently detailed description and cost estimate of the work to permit an evaluation of services to be performed by the various participants and the degree of complexity of its principal components. When A–E contracts are fixed price, the information as to the work should be in more detail and on a firmer basis, particularly as to estimated costs, than for a CPFF contract. The estimated cost of the component items (including the cost of material and equipment furnished by DOE) and their descriptions, insofar as available, should be included as follows:

(i) Major buildings and other structures for which complete designs and specifications are to be prepared by the architect-engineer, including number and cost of each type, with as much information as is available (within security requirements) as to the functional requirements for such structures;

(ii) Major utilities, including classifications and costs, in as much detail as practicable;

(iii) Special equipment to be procured by a DOE operating contractor, construction contractor, or architect-engineer, or furnished by DOE;

(iv) Special equipment to be designated by the architect-engineer; and

(v) Special equipment to be installed by the construction contractor.

(2) A statement should be provided indicating total estimated cost of the work exclusive of the construction contractor's fee, and to the extent available, identifying labor, material, and indirect costs, and any amount included for contingencies; estimated cost of architect-engineer services; and the estimated time of completion of design or construction work with an explanation of the basis for establishing the completion schedules.

(c) A written statement should be prepared which gives the extent to which the services of the architect-engineer include any of the services set forth below.

(1) Conceptual Design—Provide preliminary studies to develop a project scope that satisfies a program need, statutory requirements; validate feasibility and attainable performance levels; identify and quantify risks: develop a reliable budget estimate and a realistic performance schedule; develop project criteria and design parameters for all engineering disciplines, identify applicable codes and standards, quality assurance requirements, environmental studies, materials of construction, space allowances, energy conservation features, health, safety, safeguards, and security requirements and any other features or requirements necessary to describe the project.

(2) Title I—Provide the necessary topographical and other field surveys, test boring, and other subsurface investigation; prepare preliminary studies, sketches, layout plans, and outline specifications; and prepare reports including estimates of cost of the proposed project and of all structures, utilities, and appurtenances thereto.

(3) Title II—Provide complete design of the work including preparation of all required preliminary and final working drawings, specifications, estimates, and contract documents; and assist in securing, analyzing, and evaluating bids or proposasl for construction; and consult with DOE on all questions arising in connection with the services performed by the architect-engineer.

(4) Title III—Provide complete architect-engineer supervision and inspection of construction under the direction of a responsible representative, check shop drawings, and furnish drawings to show construction has actually been accomplished.

(5) Process design-Process design normally requires the preparation of flow diagrams showing each operating step to perform the process; material and heat balances where required; determination of the nature, capacity and design characteristics of production equipment; the general design of connecting flow lines to handle the calculated rates of product and by-product flow; and schematic layouts.

(6) Procurement of materials and equipment (describe fully) if specified for accomplishment in conjunction with Title I, II, and III services and approved by the Procurement Executive.

(7) Other special services (describe fully) if specified for accomplishment in conjunction with Title I, II, and III services and approved by the Procurement Executive.

936.606 Negotiations.

(a) A fixed-price contract for architect-engineer services should be used wherever it is practicable to compile, in advance of the preparation of plans and specifications, adequate information specifically describing the character and extent of services required. When there is insufficient scope information available to permit contracting for complete services (Title I, II, and III) on a fixed-price basis, and when it may be to the advantage of the Government to do so, appropriate consideration should be given to contracting only for a study contract or for the preliminary engineering (Title I), on either a reimbursable or fixed-price basis, in order to permit entering into a fixed-price contract for the remaining portion of architect-engineer service (Title II and III), based upon information developed in the first phase.

(b) The contracting officer shall request the selected architect-engineer firm to submit its price proposal with supporting cost or pricing data in accordance with FAR 15.804. Revisions of the price and supporting cost or pricing data may be made as required during negotiations to reflect changes in or clarification of the scope of work to be performed by the architect-engineer or findings derived from preaward audits conducted pursuant to FAR 15.805–5.

(f) The contracting officer shall negotiate a price considered fair and reasonable based on a comparative study of the independent Government estimate and the architect-engineer's proposal. Significant differences between elements of the two figures and between the overall figures shall be discussed and the contracting officer shall ascertain the reasons therefor. Under the authority of section 602(d)(13) and (20) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474) as amended, contracts for architect-engineer services for former AEC functions and those of BPA now being performed by DOE shall not be limited to the six percentum fee restriction in section 304 of the Act, 41 U.S.C. 245(b).

(g) Promptly at the conclusion of each negotiation, a memorandum setting forth the principal elements of the negotiation shall be prepared in accordance with the requirements of FAR 15.808, for use by the reviewing authorities and for inclusion in the contract file. The memorandum shall contain sufficient detail to reflect the significant considerations controlling the establishment of the price and other terms of the contract.

936.609–3 Work oversight in architect-engineer contracts.

In addition to the clause at FAR 52.236–24, the contracting officer shall insert the clause at 952.236–71 in architect-engineer contracts.

Subpart 936.7—Standard Forms for Contracting Architect-Engineer Services and Dismantling, Demolition or Removal of Improvements

936.702 Forms for use in contracting for architect-engineer services.

(a) The contracting officer shall also include the additional terms at 952.236–70 in Standard Form 252 item 6.

Subpart 936.70—Rental of Construction Equipment

936.7000 Scope of subpart.

This subpart sets forth general policy and instructions which shall be applied to rental of construction equipment for use by DOE contractors with cost-reimbursement type contracts.

936.7001 General policy.

(a) It is the policy of the DOE to use presently owned DOE construction equipment to the fullest extent. Careful investigation shall be made of the equipment available, not only at the field office concerned, but at other field offices, to determine whether such equipment can be economically utilized on the job. The Procurement Executive or designee, can assist in the investigation of excess equipment available in other offices.

(b) It is the policy of the DOE to rent construction equipment, where available, rather than purchase it, unless in the case of third-party-owned equipment, the contracting activity determines that accrued rentals on a particular item of equipment will approximate the cost of ownership of it except, however, that individual items of construction equipment having an original cost of less than $1,000 ordinarily should be purchased and not rented. Where it is clearly to the advantage of the Government, items having a cost of less than $1,000 may be rented with the approval of the Head of the Contracting Activity. Whenever it is practical, cost and other factors considered, Contractor-owned equipment shall be rented in preference to renting third-party-owned equipment.

(c) It is the policy of the DOE to pay rental for construction equipment at rates not higher than those prevailing in the locality, except under unusual circumstances, and at as low a rate as is consistent with securing modern equipment in good operating condition. Costs of repair, job interruption due to poor equipment, transportation and in-transit rental may well offset any apparent savings in rental rates. Rental paid shall be subject to any Government price ceiling regulations that may be in effect.

936.7002 Rental of contractor-owned equipment.

936.7002–1 Rental agreements.

The terms and conditions governing rental by DOE of construction equipment from a cost-type construction contractor are set forth in 936.7301. Outline of agreement for rental of contractor-owned construction equipment. This form of agreement is designed for use as an appendix to a DOE cost-type construction contract. It may be modified for rental of equipment under other contractual arrangements and it may be modified for use as a separate contract or as an attachment to a subcontract. Some of the aspects of this agreement to which particular attention should be given are set forth in 936.7002–2 through 936.7002–9.

936.7002–2 Rental period.

The base rental period shall extend from the time the equipment is accepted at the job site until the contractor is notified in writing by DOE's representative that the equipment is no longer required. Subject to applicable limitations covered in the rental agreement form, the contractor shall be paid rental during the in-transit time and during the time required for equipment repair or replacement prior to return to the contractor.

936.7002–3 Rental rates.

(a) Rates for rental of contractor-owned equipment shall be fair and equitable. The rental rates contemplate that the DOE will pay incoming and outgoing transportations costs and rental during in-transit time for both inbound and outbound transportation of equipment; however, terms more favorable to DOE may be negotiated where appropriate. The rental rates to be paid for the use of contractor-owned equipment under normal conditions should not exceed 65 percent of the rates quoted in the latest edition of the Associated Equipment Distributor's (A.E.D.) "Compilation of Average Rental Rates for Construction Equipment." However, Heads of Contracting Activities may approved rates in excess of 65 percent of the current A.E.D. schedule when local conditions require higher rates. When it becomes necessary as a general practice to exceed 65 percent of the current A.E.D. schedule, Heads of the Contracting Activities shall be advised.

(b) For items of equipment that are not covered by the A.E.D. schedule, use the latest edition of "Contractors' Equipment Ownership Expense" document published by the Associated General Contractors of America, Inc., and information on prevailing local rates for developing rates that would be consistent with the 35 percent reduction of the A.E.D. rates (i.e., taking into consideration the expenses paid by the Government under the rental agreement).

936.7002–4 Application of rates.

(a) Rental rates shall be based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month of a 30-consecutive-day period.

(b) The monthly rental rate and its pro-rata share shall apply to all rental periods of 1 month or more. The weekly rate and its pro-rata shall apply to all rental periods of 1 week or more up to 1 month. The daily rate and its pro-rata shall apply to all rental periods up to 1 week.

(c) Inasmuch as there are certain elements of cost to an equipment owner which do not change even though the equipment is used on more than one shift per day, it is believed equitable to pay a lower rental rate during a second and third shift than would be paid during a single shift. Therefore, the rental agreement form provides for payments for overtime at a rate equal to one-half the rate for the first shift.

936.7002–5 Insurance.

(a) Generally, rental rates should include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods. The rental agreement for contractor-owned equipment is so worded.

(b) However, if the contracting officer determines that it is not practical to include the cost of such insurance in the rental rates, paragraphs 3(d) and 7(a) shall be amended as indicated in the applicable notes following these paragraphs in 936.7301.

936.7002-6 Rental limitation.

The rental agreement form provides that when the total amount of rental paid to the contractor for any one unit of equipment equals 75 percent of the mutually agreed value of that unit, as set forth in the initial inspection report, the equipment is to remain available for the work under the construction contract as long as it will be required without any further rental payments to the contractor. The rental ceiling of 75 percent of the agreed-upon value of the equipment applies to all rental paid, including rental paid during in-transit time to and from the site of the work and down time from any operating repairs or restoring of the equipment after it is no longer needed at the site. The purpose of the provision is to prevent the Government from paying rental in excess of the contractor's investment, and is included in lieu of an "option to purchase" clause. Once a particular piece of equipment has been released, the contractor will be required to return it to the job under the original rental period.

936.7002-7 Record of negotiation.

A record of negotiation shall set forth the information used to determine the reasonableness of the rental rates, including a breakdown of the contractor's equipment ownership expense, similar to that itemized in the Associated General Contractors of America's document, "Contractors' Equipment Ownership Expense."

936.7002-8 Responsibility for repair and replacement.

The rental agreement describes the responsibilities of the parties with respect to maintenance and repair necessary to the operation of the rented equipment, or replacement of such equipment. The DOE's responsibility includes repairs resulting from normal wear and tear, provided they were necessary in order to continue the equipment in service. However, when the equipment is no longer required on the job, the extent of the DOE's obligation is only to return the equipment to the contractor in as good operating condition as when received, less wear and tear.

936.7002-9 Equipment condition and inspection.

(a) Construction equipment shall be given a rigid and detailed inspection by representatives of the DOE and, at the contractor's option, by representatives of the contractor, before its shipment and acceptance or use on the job. Equipment shall be inspected under actual workloads insofar as practicable. In cases where it is not practical to inspect equipment prior to its shipment to the job site, the contractor should be informed of the extent of inspection and the expected condition of his equipment in t event the equipment does not meet required standards. The transportation, rental, or any other expenses shall be paid by DOE unless, at contractor's expense, the equipment is repaired to acceptable standards in a reasonable length of time. A similar inspection shall be made immediately prior to scheduled return shipment of an item of equipment.

(b) A detailed inspection report shall be signed by each representative inspecting. The initial inspection report shall be used at the time of release as a basis of determining the repairs necessary to place the equipment in as good operating conditions as when accepted less normal wear and tear. After necessary repairs are completed, a final inspection report shall be completed by a representative of the DOE and, at his option, the contractor.

(c) If initial detailed inspection discloses that the condition of the equipment is doubtful, arrangements should be made with the contractor for a trial period of operation to prove the equipment, with provisions that if equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the contractor. Repairs to equipment which fails in service due to defects not reasonably ascertainable on initial inspection shall be at the contractor's expense.

936.7003 Rental of third-party-owned equipment

936.7003-1 Rental agreement.

The terms and conditions governing rental of construction equipment from a third party which does not operate the equipment are in accordance with 936.7002-2, 936.7002-4, 936.7002-8, and 936.7002-9, and the following subsections of this part, and are set forth in 936.7302, Outline of agreement for rental of third-party-owned construction equipment. Heads of Contracting Activities shall assure that these terms and conditions are used by DOE cost-reimbursement construction contractors and that similar terms and conditions are used by other DOE cost-reimbursement contractors or subcontractors in renting construction equipment from a third party. These terms and conditions may be suitably modified to provide for rental of equipment with operators. Some of the aspects of this agreement to which particular attention should be given are set forth in the next three subparts.

936.7003-2 Rental rates.

Third-party equipment shall be rented on the basis of competitive bids, rental rates, transportation costs, and other factors being considered. The rental specifications shall be based on the circumstances of a particular case, including the length of rental period, the availability of equipment in certain localities, and the work requirements.

936.7003-3 Insurance.

The provisions of 936.7002-5(a) also apply to the rental of construction equipment from a third party. However, if the contracting officer determines that the rental rates are not to include the cost of insurance or self-insurance covering loss of or damage to the equipment, the rental agreement shall reflect this condition.

936.7003-4 Option to purchase equipment.

When accrued rentals on a particular item of equipment will likely approximate the appraised value of equipment and a decision has been made not to purchase in accordance with 936.7001(b), consideration shall be given to including in the rental agreement, an option to purchase the equipment.

Subpart 936.71—Inspection and Acceptance

936.7100 Scope of subpart.

This subpart implements and supplements FAR Part 36 by prescribing the policies and requirements for inspection and acceptance under construction contracts.

936.7101 Construction contracts.

(a) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be procured from a construction contractor with respect to its own work.

(b) When one contractor is to inspect the work of another, the inspection contractor will be given written instructions defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the contract, to direct additional work, to waive any requirements of the contract, or to settle any claim or dispute. Copies of the instructions will be given to the contractor who is to be inspected, with a request to acknowledge receipt on a copy to be returned to the contracting officer. In this manner, both contractors are on express notice of the authority and limitations of the authority of the inspecting contractor.

Subpart 936.72—Acquisition of Special Equipment

936.7200 Scope of subpart.

Contracts for acquisition services only are rarely used. Acquisition of special equipment is generally contracted for in conjunction with CPFF contracts for construction, operating, or architect-engineer services. In special situations, acquisition of other equipment and construction materials is also contracted for in conjunction with CPFF contracts for operating or architect-engineer services. The description of acquisition services in paragraph (936.7202) below is applicable to all of these cases.

936.7201 Definition.

Special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to improperly reflect the amount of technical direction and management effort required of the contractor. Generally, special equipment is considered to be a capital-asset-type of equipment (typically, equipment costing more than $1,000 and having a service life of more than two years) for which the cost of installation and handling (including unloading, hauling and warehousing) is 5 percent or less, of the purchase price of the equipment. However, the determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved for each project. This category of equipment would generally include items such as:

(a) Major items of prefabricated process or research equipment.

(b) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and larger electrical equipment. In some cases it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

936.7202 Description of acquisition services.

(a) Acquisition as herein considered is an activity involving judgment, knowledge, and experience relating to the manufacture, use, or application of the article or process to be purchased. It may include the development or location of sources of supply, and generally includes preparation of bidding documents, solicitation of proposals, analysis of proposals received (including, where necessary, technical and sometimes complicated evaluation of performance characteristics of the equipment of different manufacturers), inspection at manufacturer's plant as distinguished from inspection supplied under Title III services of an architect-engineer contract, and evaluation of production capacities to meet required delivery. Acquisition includes necessary coordination with participating contractors and DOE for especially designed equipment, general and specific expediting, and special assistance to the manufacturers in helping to locate scarce materials and machine tools and in supporting allocation for critical materials where this is a necessary function. Acquisition normally includes inspection and receiving upon delivery at the site (this may be a joint activity where the contracting agent is not the constructor) and payment. All on-site physical activities after delivery, including unloading, warehousing, hauling, and installation are considered a construction activity and not acquisition.

(b) Coordination, timing, and technical know-how are important factors to be considered in the selection of a contracting agent. The advantages and disadvantages of placing full responsibility in one contractor for construction and acquisition, or split responsibility where the acquisition is placed under a contract with architect-engineer or operating contractor, should be evaluated in the light of the above factors.

Subpart 936.73—Outline for Equipment Rental Agreement

936.7300 Scope of subpart.

This subpart contains agreement formats which are suggested for use where DOE rents construction equipment from a prime cost-type construction contractor, or third-party-owned equipment. The outline for rental from the prime contractor is designed for use as an appendix to the prime cost-type construction contract. The format for use with third parties is an agreement within itself.

936.7301 Outline of agreement for rental of contractor-owned construction equipment.

Attached to and made a part of Contract No. ———.

Contractor: ————.

The following provisions shall govern the use and rental of the Contractor's construction plant and equipment (hereinafter called the "equipment") under the contract:

1. *Equipment rented.* The Contractor agrees to furnish for his own use in the performance of the contract the equipment itemized in Schedule 1 (attached to and made part of this agreement). Each item of the equipment shall be clearly marked with the identification number assigned to it on Schedule 1. the Contractor and DOE may from time to time amend Schedule 1 by deleting items or adding items.

2. *Payments.* As provided in the clause of the contract entitled "Allowable Cost and Payment," the allowable costs of the performance of the contract shall include:

(a) Rental. Rental of equipment, for rental periods determined in accordance with paragraph 4 and at the rates set forth in Schedule 1 applied in accordance with paragraph 3.

(b) Transportation. Transportation of equipment in accordance with paragraph 5.

(c) Repair. Maintenance, repair, and replacement of equipment to the extent provided in paragraphs 6 and 7.

Payment shall be made in accordance with procedures set forth in the clause of the contract entitled "Allowable Cost and Payment."

3. *Application of rates.* The rates set forth in Schedule 1 shall be applied in accordance with the following rules:

(a) Basis of rates. The rates are based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month (of 30 consecutive days).

(b) Apportionment of rates. The monthly rate and its pro-rata share shall apply to all rental periods of 1 month or more. The weekly rate and its pro-rata share shall apply to all rental periods of 1 week or more up to one month. The daily rate and its pro-rata share shall apply to all rental periods up to 1 week.

(c) Overtime. If the equipment is rented by the day, the rate for overtime is one-sixteenth ($\frac{1}{16}$) of the daily rate for each hour of use in any day in excess of 8 hours; if it is rented by the week, the rate for overtime is one-eightieth ($\frac{1}{80}$) of the weekly rate for each hour of use in any week in excess of 40 hours; and if it is rented by the month, the overtime rate is one-three hundred and fifty-second ($\frac{1}{352}$) of the monthly rate for each hour of use in excess of 176 hours in any one 30 consecutive day period.

(d) Insurance. Rental rates include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, as indicated in Schedule 1 and copy of policy attached. The Contractor agrees to maintain this insurance coverage for loss of or damage to the equipment during the entire term of this agreement. The Contractor shall waive any right of action against the government to the extent that loss is recovered from insurance applicable to loss, damage or destruction of leased equipment.

Note.—*When rental rates do not include the cost of insurance or self-insurance, substitute the following text for paragraph (d):*

"Rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods."

4. *Rental period.* The rental period for which rental is payable for an item of equipment shall consist of a base period, beginning upon the date stipulated in a written notice from the contracting officer to the Contractor that DOE has accepted the item of equipment at the job site, and ending upon the date stipulated in a written notice

from the contracting officer to the Contractor that use of the item of equipment is terminated, subject to the following additions, deductions, and conditions:

(a) In-transit time. There shall be added to the base period:

(1) The actual in-transit time of inbound transportation from one point of shipment to the job site, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment subsequently accepted by DOE and

(2) The actual in-transit time of outbound return transportation from the job site, to the original point of inbound shipment, or other destination at equal or less distance from the job site, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment whose use has been terminated by DOE.

(b) Delay due to repairs.

(1) The time required for repair of equipment shall be deducted from the base period if such repair is necessitated by willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or made necessary by defects not reasonably ascertainable on initial inspection by DOE.

(2) If an item of equipment has been accepted by DOE, the subsequent withdrawal by the Contractor of such item from the work for necessary repairs (due to causes other than those mentioned in the preceding paragraph) shall not interrupt the running of the base period unless the contracting officer finds that the Contractor has not exercised due diligence in effecting the repairs or in returning the item to use, and in such event the time which the contracting officer finds to have been excessive shall be deducted from the base period.

(c) Time for repairs on termination. In the event DOE, in accordance with paragraph 6(c), elects to effect repair or replacement of an item of equipment prior to scheduled return shipment, the time required for such repair or replacement shall be added to the base period.

(d) Trial period. If initial inspection by DOE discloses that the condition of an item of equipment is doubtful, it will not be accepted by DOE without a trial period of operation to prove such item, upon terms and conditions agreed upon by the Contractor and DOE. If the equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the Contractor.

(e) Rental limitation. When the aggregate of rental paid for an item of equipment equals 75 percent of its appraised value, as agreed upon by the Contractor and the contracting officer at or prior to the time of acceptance by DOE and set forth in the initial inspection report, the rental period shall cease as to such item for purposes of rental payment. Such item shall thereafter remain available for use under the contract without further rental payments but otherwise in accordance with the terms and conditions of this agreement, until the contractor receives written notice from the contracting officer that use of the item is terminated. The limitation of rental to 75 percent of the agreed value shall apply to the total of all rental due under this paragraph 4. A failure to agree as to the value of an item of equipment shall be deemed to be a dispute within the meaning of the article of the contract entitled "disputes."

5. *Transportation.* Inbound transportation of equipment, f.o.b. cars from the original point of shipment to the job site, and outbound return transportation of shipment f.o.b. cars to the original point of shipment or to another destination selected by the Contractor at equal or less distance from the job site, shall be at the expense of the Government, subject to the following conditions:

(a) Limitation on return transportation. The Government shall not bear any expense for outbound return transportation in excess of the amount paid for inbound transportation to the job site, except additional amounts representing or equivalent to increase in freight rates applicable to the route to the original point of shipment.

(b) Limitation on long distance transportation. Transportation over a distance in excess of 500 miles shall be subject to the approval of the contracting officer.

(c) Transportation by other than common carrier. The expense borne by the Government hereunder for transportation by a method other than common carrier shall be the actual expense of such transportation as shown by evidence satisfactory to the contracting officer.

(d) Loading and unloading. Only such costs of loading and unloading equipment as are incurred at the job site shall be borne by the Government.

(e) Equipment not in required condition. The Government shall not bear the expense of transportation of any item of equipment which arrives at the job in a condition which does not fulfill the requirements of paragraph 6(a) and which is not placed in the condition required under paragraph 6(a) by the Contractor at the Contractor's expense within a reasonable time.

6. *Condition of equipment.* The following conditions apply.

(a) Condition on delivery. The equipment shall, on delivery at the job site, be in good operating condition to render efficient, economical, and continuous service, and shall be equipped with necessary and required safety devices according to ICC regulations and other applicable Federal and State laws. Each item of the equipment shall have been registered by the Contractor at the Contractor's own expense with all Federal, State, and local authorities requiring registration, and registration plates or other evidence of registration shall be displayed in accordance with the requirements of the registering authority. The cost of subsequent registration shall also be borne by the Contractor. If any item of equipment on arrival at the job site is not placed in the condition required by this paragraph within a reasonable time, the contracting officer may reject the item and require its removal from the job site, and in that event, the Government shall not be liable for rental, transportation, or any other expense in connection with such item.

(b) Condition on the job. Equipment accepted by DOE shall be maintained by the Contractor in the condition required for its operation until use of the equipment is terminated by the contracting officer. Maintenance and repair required to keep accepted equipment in such condition during such time and replacement (at the agreed value set forth in the initial inspection report, less depreciation) of accepted equipment lost or destroyed during such time, shall be at the expense of the Government unless such maintenance, repair, or replacement is made necessary by loss or damage covered by any policy of insurance (or self-insurance), or caused by willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or is made necessary by defects not reasonably ascertainable on initial inspection of DOE.

(c) Condition on termination. Upon termination by DOE of the use of any item of equipment, the item shall be returned by DOE to the Contractor at the job site in as good condition as when received by DOE (as shown by the initial inspection report) less normal wear and tear, except for any loss or damage which is due to willful misconduct or lack of good faith on the part of the Contractor's mangerial personnel, or defects not reasonably ascertainable on initial inspection by DOE, or which is covered by any policy of insurance (or self-insurance). If the inspection report to be made immediately prior to the scheduled return shipment of an item of equipment discloses the necessity for repairs or replacement the cost of which is the responsibility of the Government under this paragraph, DOE may at its election either (A) effect such repairs or replacements or (B) allow the Contractor the agreed estimated reasonable cost of such repairs (or the agreed value set forth in the initial inspection report, less depreciation, if replacement is required), and a sum in lieu of rental for the time estimated by the contracting officer to be necessary for such repairs. Failure to agree as to the estimated reasonable cost of affecting such repairs or replacement under (C) above, shall be deemed to be a dispute within the meaning of the article of the contract entitled "Disputes."

(d) Inspection. For the purpose of establishing the condition of the equipment, each item of equipment shall be inspected, tested and inventoried by representatives of DOE and at the Contractor's option, together with representatives of the Contractor, prior to its acceptance by DOE and also immediately prior to scheduled return shipment. The results of such inspections and tests, and the inventories compiled, shall be incorporated in reports submitted to the contractor and to the contracting officer. For any item of equipment which the Contractor has failed to inspect, test, and inventory, or has failed to report as provided herein, the Contractor agrees that the report submitted hereunder by a representative of DOE shall be conclusive evidence of the condition as of the date of inspection.

(e) Excessive repairs. The contracting officer may deduct from payments otherwise due the Contractor, any amounts previously allowed the Contractor under this agreement for repairs made at the Government's expense which the contracting officer finds to

have been in excess of the requirements of this agreement.

7. Protection of equipment—steps to be taken in event of loss. The following apply.

(a) The Contractor shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment is not reimbursable to the extent that such loss or damage is required to be covered by insurance under paragraph 3(d) of this agreement.

Note.—*When paragraph 3(d) of the agreement provides that rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, the following paragraph (a) shall be used*

(a) The Contractor shall take all reasonable and necessary pre-cautions to safeguard and protect the equipment. Any loss or damage to the equipment will be at the Contractor's risk to the extent that such loss or damage is covered by any policy of insurance (or self-insurance).

(b) Upon the happening of any loss or damage which is at the risk of the Government under this agreement, the Contractor shall immediately notify the contracting officer of the occasion and extent thereof, shall at the contracting officer's request effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such loss or damage, shall, if required by the contracting officer, authorize representatives of the Government to settle or prosecute to final judgment any such claims, and shall furnish to the Government on request all reasonable assistance in obtaining recovery.

8. Liquidation of indebtednes. The Contractor warrants full and complete title and right to possession of all the equipment, subject only to those liens, encumbrances or claims to title or possession securing the indebtedness detailed on Schedule 1, Part 2. The Contractor agrees to apply such portion of the rental payment hereunder as may be necessary for the prompt discharge of such indebtedness. If at any time any person holding a lien, encumbrance, or claim against any item of equipment shall submit to DOE evidence that the Contractor is not discharging the indebtedness secured thereby in accordance with the terms under which the indebtedness is payable or dischargeable, DOE shall have the right upon three day's written notice to the Contractor to impound such part of the unpaid rental hereunder, as DOE in its sole discretion deems necessary, until the rights of the Contractor and any such person are determined and all just and proper claims of such persons are satisfied, provided, that nothing contained in this paragraph shall be construed to pay to such person any sum not required to be paid by the terms under which the indebtedness was incurred or to pay any sum prior to the time it becomes due.

9. Taxes. Unless otherwise directed by the contracting officer, the Contractor shall at the Contractor's own expense pay and discharge any and all taxes levied upon any item of the equipment.

Schedule 1

Part 1—Items and Rental Rates

Item No.———

———

Item description (equipment No.; type of equipment; serial No.; manufacturer; year of model; original point of shipment; etc.) ———

———

Description of any insurance coverage for loss or damage to equipment ———

———

Item Rental Rates ———

———

Attach certified copy of insurance policy.

(Continue, if necessary, on reverse side or on separate sheets.)

Part 2—Liens, Encumbrances and Claims

The following is a complete and correct statement of the amount of any and all indebtedness secured by liens or other encumbrances of any nature, legal or equitable, which are held by any person, firm or corporation against the equipment, items Nos. 1 through ———.

(Contractor) ————.

By ————.

(Title) ————.

Item No.———

———

Name and address of present creditor ———

———

Present unpaid balance ———

———

Amounts and date of future payments ———

———

(Continue, if necessary, on the reverse side or on separate sheets.)

936.7302 Outline of agreement for rental of third-party-owned construction equipment.

This agreement, made and entered into this ——— day of ———, 19——, by and between ——— ——— ("hereinafter called the lessor") and ————) (hereinafter called the "lessee") Witnesseth:

Whereas, the lessee has entered into a contract, dated ———, (hereinafter called the "construction contract"), with the United States of America (hereinafter called the "Government"), represented by the U.S. Department of Energy hereinafter called "DOE"), for the performance of certain construction work in connection with the construction at ———; and

Whereas, the lessor is the owner of certain construction plant and equipment (hereinafter called the "equipment"), listed on the attached Schedule 1 attached to and made a part of this agreement; and

Whereas, the lessee desires to rent the equipment for use in performing the construction contract.

Now, therefore, in consideration of the mutual covenants and conditions herein set forth, it is agreed as follows:

Article I—Equipment rented. The lessor agrees to furnish for use by the lessee in the performance of the construction contract the equipment itemized in Schedule 1 at time specified as follows:

(Each item of equipment shall be clearly marked with the identification number assigned to it on Schedule 1. The lessor and the lessee may from time to time amend Schedule 1 by deleting or adding items.)

Article II—Payments. Payments shall be made by the lessee to the lessor at monthly intervals on invoices rendered by the lessor for:

(a) *Rental.* Rental of equipment, for rental periods determined in accordance with the article entitled "Rental Period" and at the rates set forth in Schedule 1 applied in accordance with the article entitled "Application of Rates."

(b) *Transportation.* Transportation of equipment in accordance with the article entitled "Transportation."

(c) *Repair.* Maintenance, repair, and replacement of equipment to the extent provided in the articles entitled "Conditions of Equipment" and "Protection of Equipment—Steps to be Taken in Event of Loss."

Article III—Application of rates. The rates set forth in Schedule 1 shall be applied in accordance with the following rules:

(a) *Basis of rates.* Rates are based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month (30 consecutive days).

(b) *Apportionment of rates.* The monthly rate and its pro-rata share shall apply to all rental periods of 1 month or more. The weekly rate and its pro-rata share shall apply to all rental periods of 1 week or more up to 1 month. The daily rate and its pro-rata share shall apply to all rental periods up to 1 week.

(c) *Overtime.* If the equipment is rented by the day, the rate for overtime is one-sixteenth ($\frac{1}{16}$) of the daily rate for each hour of use in any day in excess of 8 hours; if it is rented by the week, the rate for overtime is one-eightieth ($\frac{1}{80}$) of the weekly rate for each hour of use in any week in excess of 40 hours; and if it is rented by the month, the overtime rate is one-three hundredth and fifty-second ($\frac{1}{352}$) of the monthly rate for hour of use in excess of 176 hours in any one 30-consecutive-day period.

(d) *Insurance.* Rental rates include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods as indicated in Schedule 1 and copy of policy attached. The lessor agrees to maintain this insurance coverage for loss or damage to the equipment during the entire term of this agreement. The lessor shall waive any right of action against the contractor or the United States Government for loss, damage or destruction of the leased equipment to the extent that the lessor recover from insurance applicable to loss, damage or destruction of the leased equipment.

Note.—*When rates do not include the cost of insurance or self-insurance, substitute the following text for paragraph (d) Insurance:*

"Rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods."

Article IV—Rental period. The rental period for which rental is payable for an item of equipment shall consist of a base period, beginning upon the date stipulated in a written notice from the lessee to the lessor that the lessee has accepted the item of equipment at the job site, and ending upon date stipulated in a written notice from the lessee to the lessor that use of the item of equipment is terminated, subject to the following additions, deductions, and conditions.

(a) *In-transit time.* There shall be added to the base period:

(1) The actual in-transit time of inbound transportation from the point of shipment to the job site, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment subsequently accepted by the lessee.

(2) The actual in-transit time of outbound return transportation from the job site to the original point of inbound shipment, or other destination at equal or less distance from the job site, not exceeding the time required for such transportation by commerical carrier via the most expeditious routing available, of any item of equipment whose use has been terminated by the lessee.

(b) *Trial period.* If initial inspection by the lessee discloses that the condition of an item of equipment is doubtful, it will not be accepted by the lessee without a trial period of operation to prove such item upon terms and conditions agreed upon by the lessor and the lessee and approved by DOE. If the equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the lessor.

(c) *Delay due to repairs.*

(1) The time required for repair of equipment shall be deducted from the base period if such repair is necessitated by willful misconduct or lack of good faith on part the of the lessor, of an individual, or the partners or corporate officers of the lessor, or a supervising representative of the lessor, or made necessary by defects not reasonably ascertainable on initial inspection by the lessee.

(2) If arrangements are made for the lessor to repair an item of equipment, the withdrawal of such item from work for necessary repairs (due to causes other than those mentioned in the preceding paragraph) subsequent to acceptance of the item by the lessee shall not interrupt the running of the base period, unless the lessee or DOE finds that due diligence in effecting the repairs or in returning the item to use has not been exercised. In the latter event, the time found to have been excessive shall be deducted from the base period.

(d) *Time for repairs on termination.* In the event the lessee, in accordance with the article entitled "Condition of Equipment," elects to effect repair or replacement of an item of equipment prior to scheduled return shipment of the item, the time required for such repair or replacement shall be added to the base period.

Article V—Transportation. Inbound transportation of equipment to the job site, f.o.b. cars and return to the original point of shipment or to another destination selected by the lessor at equal or less distance from the job site, shall be at the expense of the lessee, subject to the following conditions:

(a) *Limitation on return transportation.* The lessee shall not bear any expense for outbound return transportation in excess of the amount paid for inbound transportation to the job site, except additional amounts approved by DOE representing or equivalent to increase in freight rates applicable to the route to the original point of shipment.

(b) *Limitation on long distance transportation.* Transportation over a distance in excess of 500 miles shall be subject to the approval of the lessee and DOE.

(c) *Transportation by other than common carrier.* The expense borne by the lessee hereunder for transportation by a method other than common carrier shall be the actual expense of such transportation as shown by evidence satisfactory to the lessee and DOE, but shall in no case exceed the amount which would be paid for such transportation by a suitable and available common carrier, unless otherwise authorized by the lessee and DOE.

(d) *Loading and unloading.* Only such costs of loading and unloading equipment as are incurred at the job site shall be borne by the lessee.

(e) *Equipment not in required condition.* The lessee shall not bear the expense of transportation of any item of equipment which arrives at the job site in a condition which does not fulfill the requirements of the article entitled "Condition of equipment" and which is not placed in the condition required under that article by the lessee at the lessor's expense within a reasonable time.

Article VI—Condition of equipment.

(a) *Condition on delivery.* The equipment shall, on delivery at the job site, be in good operating condition to render efficient, economical, and continuous service and shall be equipped with necessary and required safety devices according to ICC regulations and other applicable Federal and state laws. Each item of the equipment shall have been registered by the lessor at the lessor's own expense with all Federal, State, and local authorities requiring registration, and registration plates or other evidence of registration shall be displayed in accordance with the requirements of the registering authority. The cost of subsequent registration shall also be borne by the lessor. If any item of equipment on arrival at the job site is not in the condition required by this paragraph, its use on the work shall not be permitted unless and until it is placed in the condition required by this paragraph at the lessor's expense and within a reasonable time. If any such item is not placed in the condition required by this paragraph within a reasonable time, the lessee may reject the item and require its removal from the job site, and in that event, the lessee shall not be liable for rental, transportation, or any other expense in connection with such item.

(b) *Condition on the job.* Maintenance and repair necessary to keep accepted equipment in the condition required for its operation until use of the equipment is terminated by the lessee, and replacement (at the value agreed upon by the lessor and the lessee with the approval of DOE at or prior to the time of acceptance by the lessee and set forth in the initial inspection report, less depreciation) of accepted equipment, lost or destroyed during such time, shall be at the expense of the lessee. Except, however, such maintenance, repair, or replacement will not be at the expense of the lessee if it is made necessary by loss or damage covered by any policy of insurance (or self-insurance), or caused by willful misconduct or lack of good faith on the part of the lessor, of an individual, or the partners or corporate officers of the lessor, of a supervising representative of the lessor, or is made necessary by defect not reasonably ascertainable on initial inspection by the lessee.

(c) *Condition on termination.* Upon termination by the lessee of the use of any item of equipment, the item shall be returned by the lessee to the lessor at the job site in as good conditions as when received by the lessee (as shown by the initial inspection report), less normal wear and tear, except for any loss or damage which is due to willful misconduct or lack of good faith on the part of the lessor, of an individual, or the partners or corporate officers of the lessor or a supervising representative of the lessor, or defects not reasonably ascertainable on initial inspection by the lessee, or which is covered by any policy of insurance (or self-insurance). If the inspection report is to be made immediately prior to the scheduled return shipment of an item of equipment discloses the necessity for repairs or replacements, the cost of which is the responsibility of the lessee under this paragraph, the lessee may, at its election, either (1) effect such repairs or replacements, or (2) with the approval of DOE, allow the lessor the agreed estimated reasonable cost of such repairs (or the agreed value less depreciation, if replacement is required), and a sum in lieu of rental for the time estimated by the lessee to be necessary for such repairs

(d) *Inspection.* For the purpose of establishing the condition, the equipment shall be inspected, tested, and inventoried by representatives of the lessee and, at the lessor's option, together with representatives of the lessor (and of DOE, if DOE so elects), prior to its acceptance by the lessee and immediately prior to scheduled return shipment. The results of such inspections and tests, and the inventories compiled, shall be incorporated in reports submitted to the lessor and to the lessee (and to DOE if DOE so requires). For any item of equipment which the lessor has failed to inspect, test, and inventory, or has failed to report as provided herein, the lessor agrees that the report submitted hereunder by a representative of the lessee shall be conclusive evidence of the condition as the date of inspection.

(e) *Excessive repairs.* DOE may require the lessee to deduct from payments otherwise due the lessor any amounts previously allowed the lessor under this agreement for repairs made at the lessee's expense which DOE finds to have been in excess of the requirements of this agreement.

Article VII—Protection of equipment—Steps to be taken in event of loss.

(a) The lessee shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the lessor's risk to the extent that such loss or damage is required to be covered by insurance under Article III(d) of this agreement.

Note.—When Article III(d) of the agreement provides that rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, the following paragraph (a) shall be used:

"(a) The lessee shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the lessor's risk to the extent that such loss or damage is covered by any policy of insurance (or self-insurance)."

(b) Upon the happening of any loss or damage which is at the risk of the lessee under this agreement, the lessee shall immediately notify the lessor of the occasion and extent thereof, and the lessor shall thereupon, at the lessee's request, effect an assignment and subrogation in favor of the lessee or the Government of all the lessor's rights and claims (except those against the lessee or the Government) arising out of any such loss or damage, shall, if required by the lessee or the Government, authorize representatives of the lessee or the Government to settle or prosecute to final judgment any such claims, and shall furnish to the lessee or the Government on request all reasonable assistance in obtaining recovery.

Article VII—Liquidation of indebtedness. The lessor warrants full and complete title and right to possession of all the equipment, subject only to those liens, encumbrances or claims to title or possession securing the indebtedness detail on Schedule 1, Part 2. The lessor agrees to apply such portion of the rental payable hereunder as may be necessary for the prompt discharge of such indebtedness. If at any time, any person holding a lien, encumbrance, or claim against any item of the equipment shall submit to the lessee evidence that the lessor is not discharging the indebtedness secured thereby in accordance with the terms under which the indebtedness is payable or dischargeable, the lessee shall have the right upon three day's written notice to the lessor to impound such part of the unpaid rental hereunder as the lessee, with the approval of DOE, deems necessary until the rights of the lessor and any such person are determined and all just and proper claims of such person are satisfied, provided that nothing contained in this paragraph shall be construed to require the lessor to pay to such person any sum not required to be paid by the terms under which the indebtedness was incurred or to pay any sum prior to the time it becomes due.

Article IX—Taxes. Unless otherwise directed by DOE, the lessor shall at the lessor's own expense pay and discharge any and all taxes levied upon any item of equipment.

Article X—Definition. As used herein the term "DOE" means the U.S. Department of Energy or any duly authorized representative thereof, including the contracting officer under the construction contract.

In witness, thereof, the lessor and the lessee have executed this agreement as of the day and year above written.

(Lessor) _____
By _____
(Title) _____
(Lessee) _____
By _____
(Title) _____

Note.—*The following articles shall be inserted along with the required socio-economic articles:*

EXAMINATION OF RECORDS

COVENANT AGAINST CONTINGENT FEES

Schedule 1

Part 1—Items and Rental Rates

Item No. _____

_____

Item description (equipment No.; type of equipment; serial No.; manufacturer; year of model; original point of shipment; etc.) _____

_____

Description of any insurance coverage for loss or damage to equipment _____

_____

Item Rental Rates _____

_____

Attach certified copy of insurance policy.

(Continue, if necessary, on reverse side or on separate sheets.)

Part 2—Liens, Encumbrances and Claims

The following is a complete and correct statement of the amount of any and all indebtedness secured by liens or other encumbrances of any nature, legal or equitable, which are held by any person, firm or corporation against the equipment, items Nos. 1 through ____.

(Contractor) _____.
By _____.
(Title) _____.
Item No. _____

_____

Name and address of present creditor _____

_____

Present unpaid balance _____

_____

Amounts and date of future payments _____

_____

(Continue, if necessary, on the reverse side or on separate sheets.)

PART 937—SERVICE CONTRACTING

Subpart 937.2—Consulting Services

937.205 Management controls.

(b) DOE contracting personnel should familiarize themselves with the pertinent DOE Directives coverage before any acquisition involving consulting services is undertaken and shall comply with the appropriate DOE Directives. See DOE Orders 3304.1 and 4200.3.

(7) In accordance with FAR 37.205(b)(7), purchase requests for consulting services initiated in the fourth quarter of the fiscal year, must be approved at the second management level above that of the initiator or such equivalent level as the Head of Contracting Activity may designate.

(Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168)).

PART 942—CONTRACT ADMINISTRATION

Sec.

942.000 Scope of part.
942.001 General.
942.002 DOE policy and responsibilities.
942.003 Organizational structure.

Subpart 942.1—Interagency Contract Administration and Audit Services

942.101 Policy.

Subpart 942.2—Assignment of Contract Administration

942.202 Assignment of contract administration.

Subpart 942.7—Indirect Cost Rates

942.704 Billing rates.
942.705–1 Contracting officer determination procedure.
942.705–3 Educational institutions.
942.705–4 State and local governments.
942.705–5 Nonprofit organizations other than educational and state and local governments.
942.708 Quick closeout procedures.

Subpart 942.8—Disallowance of Costs

942.803 Disallowing costs after incurrence.

Subpart 942.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

942.1004 Location of negotiators in a central office.
942.1008 Administrative appeals.

Subpart 942.14—Traffic and Transportation Management

942.1401 General.
942.1402 Volume movements within the continental United States.
942.1403–1 U.S. Government bills of lading.
942.1403–2 Contractor-prepaid commercial bills of lading.

Subpart 942.70—Audit Services

942.7000 Scope of subpart.
942.7001 Definition.
942.7002 General.
942.7003 Types of services.
942.7003–1 Incurred cost.
942.7003–2 Indirect expenses (overhead cost).
942.7003–3 Accounting systems.

942.7003–4 Management systems.
942.7003–5 Financial analysis evaluations.
942.7003–6 CAS disclosure statements.
942.7003–7 CAS compliance.
942.7003–8 Estimating systems.
942.7003–9 Consultation and advice.
942.7004 Procedures.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

942.000 Scope of part.

This part discusses the requirements for and the management of activities that occur after the award of a contract.

942.001 General.

(a) Those government actions taken subsequent to award of a contract to monitor the performance of the contractor and the contractor's adherence to the terms and conditions thereof through completion of the contract are commonly referred to as contract management and administration. The specific actions included in this process are as generally defined in FAR 42.302. This post-award management is essential to ensure the purpose of the contract is achieved and is in accordance with the terms and conditions of the contractual instrument. Contract management is broad and involves the expertise of many specialists including technical (programmatic) legal, financial, administrative, acquisition, and others.

(b) Post-award contract management functions are executed by the various specialists assigned the responsibility and procedural guidance as to how to perform the required functions. Generally, acquisition personnel in the person of a contracting officer, act as the overall business manager for administering and maintaining the integrity of the contract. Such responsibility ensures that only a contracting officer modifies a contract, payments are prompt and represent reimbursements or payments for only allowable cost, funds are obligated in a timely manner, and contracts are officially closed.

942.002 DOE policy and responsibilities.

(a) It is the policy of the Department of Energy that the performance of its contractors be monitored to assure compliance with the terms and conditions of the contract instrument and products are received on time, at a reasonable cost which meet technical requirements and specifications.

(b) The responsibility for ensuring effective post-award management of DOE contractual programs involves many elements of the Department. The various procedures and policies that implement and support project and contract management systems are promulgated in various DOE Orders.

942.003 Organizational structure.

(a) The Department of Defense has initiated a formal system of independent organizations responsible for performance of post-award management functions. A field structure of Contract Administration Offices (CAO) responsible for contract management and administration of contracts for major defense contractors has been established. DOD agencies (Army, Navy, Air Force) have organized plant residencies of contract management specialists for specific DOD contractors and their various business units. The Defense Logistics Agency performs contract management functions both at onsite residencies of contractors not assigned to a service and on a mobile basis from centrally located management areas for other defense contractors. A complete listing of the DOD's contract administration service components is contained in the Defense Directory cited in FAR 42.102.

(b) Civilian agencies for the most part have not established formal, organizationally independent CAO's responsible for performance of contract management functions. The post-award contract management and administration functions performed by civilian agencies are performed by contracting, program and other staff (accounting, legal, etc.) personnel and specialists located in the contracting offices and/or Operational units in a less formal manner than the DOD. Sometimes such services may be acquired from a cognization Defense CAO, when dealing with a defense contractor.

(c) The DOE has no field or resident contract administration offices. Contract management of DOE contracts is performed by the contracting office or is obtained from a Department of Defense (DOD) Contract Administration Office (CAO) if the contract warrants requesting contract administration services from such an activity. There is no specific DOE rule or policy on requesting and assigning DOE contracts for DOD administration services. It is a matter of judgment of the contracting office. To the extent any functions cited in FAR 42.302 are required for proper post-award management of the contract, assignment to a DOD CAO or the requesting of certain supporting services (FAR 42.201) from the CAO should be considered if it is (1) beyond capability of the DOE office (2) cost effective (3) eliminates duplication of effort, and (4) would provide for consistent treatment of the contractor.

Subpart 942.1—Interagency Contract Administration and Audit Services

942.101 Policy.

(a) The Department of Energy has entered into cross-servicing contract management arrangements with:

(1) The Defense Logistic Agency

(2) The Air Force Contract Management Division

(3) The Office of Naval Research

(b) The above arrangements are established and maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters. Questions concerning these agreements should be directed to that organization.

(c) The Department of Energy Inspector General has established a memorandum of understanding with the Defense Contract Audit Agency and the Office of Audit of the Department of Health and Human Services for providing audit support service (942.70) to the DOE in support of its procurement mission. Procedures for acquiring these services are discussed in 942.70.

Subpart 942.2—Assignment of Contract Administration

942.202 Assignment of contract administration.

(d)(5) Contracts assigned for administration support shall be entered and reported in the Procurement and Assistance Data System.

Subpart 942.7—Indirect Cost Rates

942.704 Billing rates.

(b) When the contracting officer or auditor responsible for establishing billing rates, in accordance with FAR 42.704, has not established such rates or such rates are not current for the performance periods (contractor FY) under contract, the DOE contracting officer responsible for administration of the contract shall establish an appropriate rate(s) for billing purposes. If the contractor holds more than one DOE contract covering that period of performance, the DOE office with the largest unliquidated obligations as of the beginning of that performance period shall take the lead in establishing the required billing rate for use on DOE contracts. Once appropriate billing rates are established by the responsible contracting officer designated by FAR 42.704, such rates shall be adopted by the contracting officer and all billings and payments shall be retroactively

revised to reflect the agreed upon rate(s).

942.705–1 Contracting officer determination procedure.

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates. A listing of such business units is maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters, and published as a separate publication in the DOE Order system.

(b)(1) The Department of Energy shall not require or direct contractors to submit their final indirect cost rate proposals reflecting actual cost experience during the covered period to the auditor. The DOE negotiating official shall request all needed audit service in accordance with the procedures in 942.70, Audit Services.

942.705–3 Educational institutions.

(a)(2) The negotiated rates established for the institutions cited in OMB circular No. A–88 are centrally maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters.

942.705–4 State and local governments.

A list of cognizant agencies for State/local government organizations is maintained by the Office of Management and Budget (OMB) which is periodically published in the Federal Register. The responsible agencies are notified of such assignments. A listing of the cognizant agencies and the current negotiated rates for State/local government activities is maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters.

942.705–5 Nonprofit organizations other than educational and state and local governments.

OMB Circular A–122 establishes the rules for assigning cognizant agencies for the negotiation and approval of indirect cost rates. The Federal agency with the largest dollar value of awards (contracts plus federal financial assistance dollars) will be designated as the cognizant agency. DOE is not currently assigned cognizance over any such nonprofit organizations. There is no published listing of assigned agencies. The Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Directorate, Headquarters, does maintain a DOE central file of rates established by the cognizant agency.

942.708 Quick closeout procedures.

(a) Contracting officers shall use the quick-closeout procedure to finalize indirect expenses under any DOE contract when it appears appropriate to establish such expenses by means other than the formal negotiation procedures of FAR Subpart 42.7 and use of this procedure is agreeable to the contractor. The quick-closeout procedure is considered to include the establishment, of either indirect cost rates established for the closeout of a contract(s) or lump-sum indirect expenses dollars that shall be agreed to as chargeable to the contract. Such lump-sum amounts are appropriate for all categories of contractors—commercial, State/local governments, educational, and nonprofit organizations.

The contracting officer shall apply the quick-closeout procedure in closing DOE contracts in lieu of using the rates established in accordance with FAR 42.705, when:

(1) See FAR 42.708(a)(1)

(2) The amounts of indirect expense to be reimbursed by a single DOE contract will not exceed $250,000 per contractor fiscal year or the indirect expense amount reimbursed by all DOE contracts using the quick-closeout procedure will not exceed $1,000,000 per contractor fiscal year.

(3) Amounts of and the allowability of claimed or proposed indirect expenses will be readily determinable based on a review of the contractor's indirect cost experience (reviews may be made by the contracting officer with or without the assistance of a professional auditor).

(4) The contractor does not have a history of disputes, disallowed cost of any consequence, and there are no known potential cost issues of significance.

(5) There is a low potential (risk) for any significant over payment of indirect expense under the contract.

(6) Administrative cost of obtaining the annual negotiated final rate(s) is known to, or would be expected to, exceed any benefit of the final rates established in accordance with FAR Subpart 42.7.

(d) A decision to request audit assistance in applying the quick-closeout procedure should be decided on a case-by-case basis. The extent of any required services may vary. If possible, closeout rates or lump-sum expenses should be established with limited use of audit especially when acquiring the support service would defeat the quick-closeout approach by lengthening the evaluation and contract closeout process. Audits should not be requested if it is reasonably apparent that the audit would have little effect on the rates or expense finally agreed upon and any overpayments would be relatively insignificant.

Subpart 942.8—Disallowance of Costs

942.803 Disallowing costs after incurrence.

(a) Contracting officer receipt of vouchers. Vouchers and invoices submitted to DOE shall be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted therein, the contracting officer, shall:

(1) Hold informal discussion with the contractor as appropriate.

(2) Issue a notice (letter, memo, etc.) to the contractor advising of cost disallowed or to be disallowed and advising the contractor that it may:

(i) Submit a written claim as to why the cost should be reimbursed—if in disagreement with the disallowance.

(ii) File a claim under the disputes clause, which will be processed in accordance with disputes procedures in the event disagreements cannot be settled.

(3) Process the voucher or invoice for payment and advise the finance office to deduct the disallowed cost when scheduling the voucher for payment.

(c) *Auditor reports and other sources of questioned costs.* (1) From time to time reports are received from professional auditors that may question the allowability of an incurred cost. Such reports are received as the result of auditors, in their independent role under OMB Circular A–73 or their own charters, scheduling and conducting financial or compliance audits of government contracts or as the result of an independent request for auditor service, as discussed in 942.70 Audit Services.

(2) When auditor reports or other notifications question cost or consider them unallowable, the contracting officer shall follow up such reports and resolve all such cost issues promptly by determining, through discussions with the contractor and/or auditor within six months of the audit report date, or date of receipt if a non-Federal audit. One of the following courses of action shall be pursued:

(i) Accept and implement audit recommendations as submitted.

(ii) Accept the principle of the audit recommendation but reject the cost questioned amount.

(iii) Reject audit findings and recommendations.

(3) When implementing the accepted course of action, the contracting officer shall—

(i) Hold discussions with the auditor and contractor as appropriate.

(ii) Issue a notice in writing advising the contractor of the government's intent to disallow the cost questioned, if the contracting officer agrees with the auditor concerning the questioned costs.

(iii) Negotiate a mutual settlement of questioned costs if they are agreed with in principle but there is a difference of opinion as to a proper amount.

(iv) Negotiate a mutual settlement of questioned costs if the auditor recommendations are acceptable to the contracting officer but the contractor does not accept the finding or disallowance.

(v) Issue a final decision of the contracting officer disallowing the questionable cost where differences cannot be resolved, advising of the contractor's right to appeal the decision, and advising the procedure to be followed if it is decided to make such an appeal.

(vi) Initiate immediate recoupment actions for all disallowed cost owed the government by:

(A) Requesting the contractor to provide a credit adjustment (offset) against amounts billed the government on the next or future invoice(s) if such shall be submitted under a contract for which the disallowed cost applies.

(B) Deducting (offset) the disallowed cost from the next or future invoice(s) submitted under the contract; if the contractor provides no adjustment under the contract for which the disallowed cost applies; provided such reduction is deemed appropriate.

(C) Advising the contractor that a refund shall be directly payable to the government in situations where there are insufficient payments owed by the government to effect recovery via (A) or (B) above or an offset is otherwise inappropriate.

(vii) Promptly notify the appropriate finance office of refunds directly payable to the government to ensure proper billing and followup action for collection.

Subpart 942.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

942.1004 Location of negotiators in a central office.

The central office within the Department of Energy for negotiating independent research and development/bid and proposal (IR&D/B&P) advance agreements, as required in accordance with FAR 42.1004, is established in the Procurement and Assistance Management Directorate, Headquarters. DOE contracting officers should advise offerors, suppliers, potential contractors, and contractors that are required, or expect they will be required, to establish advance agreements for allowability of IR&D/B&P cost and where the DOE is to be the lead negotiating agency in accordance with FAR 42.1003, their IR&D/B&P proposals and/or other correspondence shall be submitted to: Business & Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue SW. Washington, D.C. 20585.

942.1008 Administrative appeals.

The official within the DOE to hear administrative appeals of a contracting officer's decision to reduce payment, as prescribed in FAR 42.1008, is the Procurement Executive.

Subpart 942.14—Traffic and Transportation Management

942.1401 General.

DOE contracting officers or designees will consult and coordinate with the Office of Operations and Traffic, Defense Programs, Headquarters, as required in 41 CFR Part 109–40 and implemented by DOE Order 1540.1.

942.1402 Volume movements within the continental United States.

(a)(2) DOE activities will be reported to the Office of Operations and Traffic, Defense Programs Headquarters.

942.1403–1 U.S. Government bills of lading.

(a) The Office of Operations and Traffic, Defense Programs Headquarters, has responsibility for prescribing DOE's shipping documents.

(c)(1) Any limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature will be prescribed by the Office of Operations and Traffic, Defense Programs, Headquarters.

942.1403–2 Contractor-prepaid commercial bills of lading.

(a) Use of commercial bills of lading for movement of supplies should be on a limited manner. Shipments of questionable quantity should be discussed with the Office of Operations and Traffic, Defense Programs, Headquarters.

Subpart 942.70—Audit Services

942.7000 Scope of subpart.

This subpart prescribes policies and procedures for requiring and using audit support services in the post-award management of DOE contracts. Such services shall be obtained in accordance with the provisions of FAR Subpart 42.1 and this subpart.

942.7001 Definition.

Auditors are professional accountants who although organizationally independent are viewed as one of several sources of counsel to the contracting officer on accounting and other financial subjects. They are the principal advisors to contracting officers on audit matters and provide the contracting officers with various audit services.

942.7002 General.

Contract management practices require the review of a contractor's contract cost records and controls, billings, and claims to assure their completeness, accuracy, and compliance with contract requirements. Such services are available from and provided by independent government audit activities such as the Defense Contract Audit Agency, the Inspector General, and commercial audit firms. Such services are generally referred to as "Contract Audit." In addition to providing "Contract Audit" services in direct support of the contracting officer and other program officials, departmental audit activities, pursuant to Office of Management and Budget policies set forth in Circular A–73, Audit of Federal Operations and Programs, conduct their own independent economy and efficiency reviews of government contractors and performers. Their purpose is to determine whether the business entity is managing and utilizing its resources economically and efficiently and any causes of inefficiencies or uneconomical practices.

942.7003 Types of services.

An efficient and effective contract management and administration program requires that the contracting officer responsible for post award contract management and administration functions seek the service of the professional auditor in several areas. The primary areas of needed audit support and areas in which auditors have agreed to support the DOE acquisition mission are:

(a) Incurred cost audits (direct & indirect cost)

(1) Vouchers, billings, invoices, claims, and other settlement proposals

(2) Financial records, contract cost records, work-in-process costs, etc.

(b) Overhead rate reviews (establishment and verifications)

(c) Accounting systems reviews

(d) Management control systems reviews

(e) Financial analysis evaluations

(f) Review Cost Accounting Standards (CAS) Disclosure Statements

(g) Cost Accounting Standards compliance

(h) Estimating system reviews

(i) Consultation and advice

942.7003-1 Incurred cost.

(a) Financial audits of a contract's cost records and charges, particularly material and labor cost, shall be requested of the auditors as is considered warranted by the financial condition, integrity, and reliability of the contractor; prior audit experience; adequacy of the accounting system; and unaudited claims, vouchers, invoices, and billings. Audits of such cost should be requested when needed or desirable, but no less frequently than once yearly for any contract where such annual cost exceed $500,000 or $1,000,000 under all DOE contracts. Such audits should cover cost-reimbursement type contracts, including fixed-price contracts with cost-reimbursement portions, letter contracts with reimbursement provisions, time-and-materials contracts, and labor-hour contracts.

(b) Vouchers and invoices provisionally approved and paid may be submitted to the auditor for specific review and verification of the accounting records and for an opinion on the allowability of the cost when situations warrant.

942.7003-2 Indirect expenses (overhead cost).

Auditors look at indirect expenses (overhead cost) on an after-the-fact basis to review the incurred cost and to assist in the negotiation of a final overhead payment rate, when such rates are provided for in the contract. Auditors also assist the contracting officer in the administration of indirect cost by making appropriate recommendations concerning the establishment of before-the-fact overhead rates for billing purposes and/or establishing predetermined overhead rates. Contracting officers should seek the assistance of the auditor as they deem warranted or appropriate or as may be required by FAR 42.700 and 942.7.

942.7003-3 Accounting systems.

Auditors are available to advise the contracting officer on the adequacy of a contractor's accounting system and its suitability for administration of Government contracts. The contracting officer should always obtain such service to assure himself/herself of the contractor's financial competence or credit needs, unless prior experience or other available information shows the contractor to have financial integrity and acceptable accounting and cost control systems.

942.7003-4 Management systems.

Auditors are available to help the contracting activity and the contracting officer in a review, and assessment of a contractor's various management systems and systems of internal control. The objective of the reviews, is to assure cost effective and efficient methods of operations. Reviews should be requested as deemed warranted.

942.7003-5 Financial analysis evaluations.

Auditors are available to assist the contracting officer in a review and evaluation regarding a contractor's financial competence or credit needs. Such service may be helpful in determining the need for advance payments, loans, etc. When the contracting officer is aware of or is otherwise concerned about the financial viability of the contractor, financial reviews by the auditors should be requested as the contracting officer believes the situation warrants.

942.7003-6 CAS disclosure statements.

The audit activity is available and, in accordance with FAR 30, Cost Accounting Standards, is responsible for making recommendations to the contracting officer as to whether the CAS disclosure statement submitted by the contractor as a condition of the contract, adequately describes the actual or proposed cost accounting practices, and is in compliance with the Cost Accounting Standards required under the terms of the contract (required by Pub. L. 91-379, 50 U.S.C. APP 2168, for Defense contracts). The contracting officer shall request the auditor to review all Disclosure Statements submitted by a contractor or potential contractor.

942.7003-7 CAS compliance.

The audit activity also performs audits for contractor compliance with the standards of the Cost Accounting Standards Board, when such Standards are required to be followed under the terms of the contract; and, the audit activity advises whether a contractor or subcontractor has failed to comply with the applicable Standards or to follow consistently its disclosed cost accounting practices and whether the failure has resulted in or may result in any increased cost paid by the government. The auditors also review proposed price changes for contractor changes to disclosed or established cost accounting practices to assure that the changes are fair and reasonable.

942.7003-8 Estimating systems.

Many contractors, particularly where a large portion of the business is government work, have formal cost estimating systems used in the development of program estimates and/or the submittal of price/cost proposals to the Government. Other contractors which perform less Government work often have some type of system, too. Estimating systems are encouraged by the Government, but it should be recognized that systems will vary between contractors, and may vary between plants or divisions of a contractor due to differences in products, size and methods of operation (i.e., production versus research), and other factors. Advantages of estimating systems are that they: (a) Provide a greater degree of confidence in estimates, (b) expedite the negotiation process, (c) reduce the amount of detailed explanations that need be included in each proposal on the estimating procedural rationale used, and (d) reduce need for and scope of reviews by technical, financial and audit personnel. Auditors are available to assist the acquisition organization in reviewing a contractor's estimating systems or processes. The contracting officer shall decide whether an estimating system review should be undertaken as a team effort, including an auditor, or if the auditors can sufficiently perform a system check by themselves. It is not DOE policy to generally request such reviews.

942.7003-9 Consultation and advice.

Auditors are available for general consultation and advice to acquisition and supporting personnel (including counsel) with or without providing an audit.

942.7004 Procedures.

(a) The Department of Energy Inspector General (IG) has established formal cross-servicing arrangements with the Defense Contract Audit Agency (DCAA) and the Health and Human Services Inspector General. Audits are available to contracting officer pursuant to terms of these arrangements.

(b) The following procedures are to be followed by the contracting officer when requesting needed audit services:

(1) Upon award of a contract to an existing DOE or DOD contractor which is being audited by the DCAA, all requests for normal postaward audit services shall be directed to the cognizant DCAA office.

(2) Upon award of a contract to a contractor who is not currently being audited by DCAA, and/or for which the DCAA is not the cognizant audit activity, all requests for postaward audit services shall be directed to the DOE Assistant Inspector General for Audits.

(3) Requests to the DOE Assistant Inspector General for audit services shall be made to the appropriate Regional Office.

(c) In determining if DCAA is currently auditing a contractor or has audited it in the past, the contracting officer should refer to the contractor's pricing proposal or ask the contractor.

(d) In the event a contracting officer considers that an economy and efficiency system review or a program results audit will be beneficial to the Government's interest, the appropriate Regional office of the DOE Assistant Inspector General for Audits should be notified.

(1) Such request should be made to the IG's office even in situations where the DCAA or another audit activity is known to be cognizant for contract audit.

PART 943—CONTRACT MODIFICATIONS

943.170 Extension of contracts resulting from unsolicited proposals.

(a) Where additional time beyond the formal contract period is required to complete or continue the work undertaken as the result of the acceptance of an unsolicited proposal and award of a contract therefor, the Contractor should be instructed to submit six copies of an extension proposal to the contracting office in sufficient time to allow evaluation and possible processing before the date of expiration of the contract. This requirement does not apply to requests for no-cost extensions as may sometimes be needed to complete all details such as a final report of the project.

(b) The extension proposal should outline and justify a program and budget for the succeeding year(s), showing in detail the estimated cost for the additional period(s) requested. It should include the same type of information to the extent as was contained in the initial proposal. Any contemplated change in program or scope for the ensuing period(s) should be justified and explained clearly, and must remain consistent with the original method, approach or idea which was accepted as the basis for award by DOE as a result of the initial unsolicited proposal. This is not, however, intended to preclude a redirection based upon a discovery or breakthrough occurring under the contract to date.

(c) The extension proposal should include a financial profile of the existing contract including:

(1) Total project costs to date, indicating the amount chargeable to DOE;

(2) An estimate of the total costs to be incurred during the remainder of the current period, including a statement of unextended balance.

(d) All requests for extensions of contract work as a result of an unsolicited proposal should be evaluated by the appropriate program office in light of:

(1) Progress reports submitted by the Contractor;

(2) Research results published in scientific media;

(3) Field visits by technical personnel;

(4) Contractor's progress and potential for achieving desired results;

(5) Continued relevance to DOE's mission;

(6) Scientific and technical merit of the research;

(7) Availability of funds;

(8) Likelihood that competition at this stage in the project would hasten achieving the desired results.

(e) Requests for extensions of contract work originating from an unsolicited proposal should generally follow the same process of review and evaluation of technical aspects and funding, preparation and execution of contract, and administration as does a new project.

(f) When an extension request receives a favorable technical evaluation and a determination is made that similar conditions exist relative to those that justified acceptance of the initial unsolicited proposal, a justification for extension of the award shall be processed for review and approval as indicated in 915.506.

(g) As a minimum, extension justification should contain:

(1) A statement of the result of the technical evaluation (915.570–2).

(2) An evaluation of any contemplated change in the contract scope of work for the renewal period and a justification explaining why this change is consistent with the original method, approach or idea which was accepted as the basis for award by the DOE as a result of the initial unsolicited proposal.

(3) An assessment of the current status of the original circumstances and conditions which justified acceptance of the intitial unsolicited proposal identifying any changes that may have developed and providing rationale as to why such change(s) should not preclude renewal.

(h) If, after evaluation, it is decided that an extension period should not be supported on the basis of technical merit or other reasons, such as lack of funding, or changed mission relevance, the project officer should:

(1) Prepare a written statement setting forth the basis for rejection, submit one copy to the responsible program official for approval and transmittal to the proposer and retain one copy in the permanent file.

(2) Promptly notify the contracting officer in order that the current contract may be closed out.

(i) Under certain circumstances it may be in the Government's best interest to continue or complete the work begun under a contract awarded as a result of an unsolicited proposal but which is not appropriate for extension. Continuation or completion of the work shall be accomplished by means of competition, unless non-competitive acquisition can be justified in accordance with FAR 15.507(b).

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended 42 U.S.C. 2168).

PART 944—SUBCONTRACTING POLICIES AND PROCEDURES

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Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 944–1—General

944.101 Definitions.

"DOE cognizant contractors" refers to those contractors over which DOE has been assigned cognizance by the Office of Management and Budget, or those with which DOE has the preponderance of Government business. The term includes pilot and demonstration plant contractors.

"Industrial facilities" means property (other than material, special tooling, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

Subpart 944.2—Consent to Subcontracts

944.202–1 Responsibilities.

(b) The responsible contracting officer shall—

(1) Promptly evaluate the contractor's requests for consent to subcontract;

(2) Obtain assistance in the evaluation from subcontracting, audit, pricing, technical, or other specialists as necessary;

(3) Withhold consent to subcontracts with subcontractors on the DOE consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees (DOE List) (see 10 CFR 1035.15) or the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors (GSA List), to the extent that the award falls within the scope of the suspension, proposed debarment, debarment, ineligibility, or voluntary exclusion unless the Procurement Executive determines in writing that there is a compelling reason for such action (see 10 CFR 1035.13 and 1035.13(c)); and

(4) Notify the contractor in writing of consent or the withholding of consent, including any changes or corrections required.

944.202–2 Considerations.

(a)(13) In addition to the considerations in FAR 44.202–2, the contracting officer responsible for consent shall review the request and supporting data and consider whether the proposed subcontractor or any proposed key person(s) is on the DOE List.

944.203 Consent limitations.

(d) For determining profit/fee objectives under negotiated subcontracts, the prime contractor should have considered use of and applied a weighted guidelines or a structured approach that distinguishes different levels of investment if the acquisition would be subject to the weighted guidelines under a prime DOE contract. If the acquisition falls into one of the exceptions to the DOE weighted guidelines applications as cited in 915.970–4, the prime contractor should have applied other techniques to establish profit objectives.

Subpart 944.3—Contractors' Purchasing Systems Reviews

944.302 Requirements.

(a) Heads of Contracting Activities shall consider whether the best interest of DOE would be served by the initiation of a Contractor Purchasing System Review (CPSR) for those contractors whose sales to DOE are expected to exceed $5,000,000 during the next 12 months and for which DOE is the cognizant Government agency for CPSR purposes. In exceptional circumstances, consideration of a CPSR may be warranted for contractors with sales to DOE of less than $5,000,000. When considering the initiation of a CPSR, such a review should not be conducted if the extent of the contractor's subcontracting program does not appear to justify the review.

(b) DOE contracting officers, or designees, will conduct CPSRs of DOE cognizant contractors. Other Federal Agencies/Departments may be requested to conduct CPSRs, as appropriate, for other than DOE cognizant contractors. DOE contracting officers shall normally recognize other Federal Agency/Department approvals of contractors' purchasing systems within the limitation identified by approving officials of such agencies.

(c) Initial, subsequent, and followup review teams should include appropriate representatives from DOE field offices; other Federal Agency participation may be additionally requested as appropriate. Generally, team composition should not consist exclusively of those who have a day-to-day relationship with the contractor regarding subcontract consent or approval.

(d) The Procurement Executive is responsible for the overall conduct of the DOE CPSR program.

944.304 Surveillance.

(b) The surveillance plan required by FAR 44.304(b) shall be approved by the Head of the Contracting Activity.

944.305 Granting, withholding, or withdrawing approval.

944.305–1 Responsibilities.

(a) Team findings and recommendations contained in a CPSR Report shall be approved by the Head of Contracting Activity before the contracting officer makes a determination to continue, grant, withhold, or withdraw approval.

944.307 Reports.

(b) Copies of CPSR reports; notifications granting, continuing, withholding, or withdrawing approval of a contractor's purchasing system; copies of recommendations for improvement of an approved system notifications (or contract modifications) altering the subcontract consent dollar thresholds; and information received from the contractor pursuant to 944.305–3(b) shall be transmitted to the Director, Procurement Management Review Division, Procurement and Assistance Management Directorate, Headquarters.

PART 945—GOVERNMENT PROPERTY

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Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

945.000 Scope of part.

This part and FAR Part 45 are not applicable to the management of property by operating and management contractors. In addition, the policies and procedures contained in FAR Part 45 governing the management, control, reporting, and disposal of special test equipment and special tooling are not followed by the DOE.

Subpart 945.1—General

945.101 Definitions.

"Personal property" as used in this part, means property of any kind or interest therein, except real property, records of the Federal Government, and nuclear and special source materials, atomic weapons, and by-product materials.

"Capital equipment" as used in this part means personal property items having a unit acquisition cost of $1,000 or more and an anticipated service life in excess of one year, regardless of type of funding, and having the potential for maintaining their integrity as capital items; i.e., not expendable due to use.

945.102–70 Reporting of contractor-held property.

Within 30 days after the end of each fiscal year, the Head of the Contracting Activity shall report the following information to the Director, Property and Equipment Management Division, Procurement and Assistance Management Directorate, Headquarters:

(a) Name and address of each contractor with DOE property in their possession, or in the possession of their subcontractors (do not include grantees, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOE contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOE office, Defense Contract Administration Service, or the Office of Naval Research).

(d) Date of most current appraisal of contractor's property management system, who conducted the appraisal, and status of the system (satisfactory or unsatisfactory).

(e) Total dollar value of DOE property as reported on last semiannual asset report (including date of report), for each DOE contract administered by the contracting activity.

945.102–71 Maintenance of records.

The contracting activity shall maintain records of approvals and reviews of contractors' property management systems, the dollar value of DOE property as reported on the most recent semiannual financial report, and records on property administration delegations to other Government agencies.

945.104–70 Review and correction of contractors' property management systems.

DOE offices shall follow the provisions of this section in the review and approval of a contractor's property management system. If contracts are formally delegated to other Government activities for property administration, the DOE will accept their method of approving the contractor's system and document the file accordingly.

(a) *Initial review.* (1) The contracting officer, or his/her representative assigned the responsibility as property administrator, shall review contractors' property systems within six months after the execution of the contract to assure compliance with the Government property clauses of the contract.

(2) Appraisals of complex property management operations may require detailed tests and evaluations on-site over an extended period of time. However, an evaluation of a contractor's operation involving only small dollar amounts of property and simple property control methods can often be accomplished without an on-site visit or extensive testing by the property administrator, by utilizing the Off-Site Contractor's Property Management Self-Evaluation Questionnaire, telephone contacts, or other appropriate methods necessary to assure that the system is adequate.

(3) In those instances where a contractor has contracts with more than one DOE contracting office, the DOE office with the contract(s) having the largest dollar value of property should normally be responsible for making the necessary reviews and appraisals of the contractor's system. Contracting officers should determine if a contractor has multiple DOE contracts by inquiry of the Procurement and Assistance Data System (PADS).

(4) When the contractor's property management system has previously been approved and a new contract requires the expansion of existing, or the establishment of additional controls, the review should normally be limited to the new requirements. If the system is adequate, the property administrator shall record this fact. Notification to the contractor is not required. However, if the property administrator determines that the contractor's property management system does not adequately meet the new contract requirements, the contractor shall be notified in writing of the required changes.

(5) The property administrator shall examine the contractor's procedures to be used to determine the extent to which they meet the criteria for property management required by FAR Subparts 45.5 and 45.6 and Subparts 945.5 and 945.6 of this chapter. Necessary tests will be made of the contractor's system, as appropriate, and, as each functional area is analyzed, the acceptability of the procedures shall be appropriately noted or commented upon and used as the basis for preparation of the record of system evaluation. Worksheets should be maintained by the property administrator.

(6) Upon completion of the property administrator's review, an exist interview will be held with the contractor to discuss any areas of the contractor's property management controls or systems found to be defective, and to recommend corrective actions to be completed before an approval of the system can be granted. Agreement shall be reached as to corrective measures necessary and a reasonable time schedule established for completion of the corrective actions.

(7) Following the exist interview, the property administrator shall prepare a written summary of findings to support approval of the system or the requirements for corrective action to be taken prior to such approval.

(8) The property administrator shall advise the contractor in writing when the contractor's property management system is considered acceptable.

(9) The property administrator shall notify the contractor in writing when its property management system is not acceptable, and request correction of the deficiencies within the agreed upon time schedule.

(10) Appropriate follow-up shall be taken by the property administrator to ensure that corrective actions are taken.

(11) If the contractor does not correct the deficiencies within the time period, the property administrator shall request action by the contracting officer administering the contract. The contracting officer shall notify the contractor in writing including the details specified at FAR 45.104(c). If the contractor also has contracts with other DOE contracting activities, the contracting officer shall notify the Property and Equipment Management Division, Headquarters.

(12) When the contract involves Government property at subcontractor facilities or prime contractor secondary locations, and the controls for the property at such locations have been determined to be adequate, the approval shall be expanded to include the procedures governing Government property at such locations.

(b) *Follow-up reviews.* Every two years after the initial approval of the contractor's system, the property administrator shall reappraise the contractor's property management operations in accordance with the provisions of paragraph (a) above.

Subpart 945.3—Providing Government Property to Contractors

945.303-1 Policy.

The DOE has established specific policies concerning special nuclear material requirements needed under DOE contracts for fabricating end items using special nuclear material, and for conversion or scrap recovery of special nuclear material. These special nuclear material needs means "uranium enriched in the isotope U233, U235 and plutonium other than PU238." The policies to be followed are:

(a) Special nuclear material will be furnished by the DOE for fixed-price contracts and subcontracts, at any tier, which call for the production of special nuclear products, including fabrication and conversion, for Government use. (The contractor or subcontractor must have the appropriate license or licenses to receive the special nuclear material. The Nuclear Regulatory Commission is the licensing agency.)

(b) Contracts and subcontracts for fabrication of end items using special nuclear material generally shall be of the fixed-price type. Cost-type contracts or subcontracts for fabrication shall be used only with the approval of the Head of the Contracting Activity. This approval authority shall not be further delegated.

(c) Contracts and subcontracts for conversion or scrap recovery of special nuclear material shall be of a fixed-price type, except as otherwise approved by the Head of the Contracting Activity.

945.304 Providing motor vehicles.

Additional guidance and information concerning the provision of motor vehicles are found at:

(a) 945.670 Motor vehicle and aircraft management.

(b) 908.11 Leasing of motor vehicles.

(c) 908.7101 Acquisition of motor vehicles.

(d) FAR 51.2 GSA Interagency Motor Pool System.

Subpart 945.4—Contractor Use and Rental of Government Property

945.407 Non-Government use of plant equipment.

The type of plant equipment and dollar threshold for non-Government use of DOE plant equipment will be determined by the Head of the Contracting Activity which awarded the contract. Approval of the Head of the Contracting Activity is required to authorize non-Government use exceeding 25% of operational use.

Subpart 945.5—Management of Government Property in the Possession of Contractors

945.501 Definitions.

"Government-furnished motor vehicles" are DOE-owned vehicles, vehicles leased from the General Services Administration Interagency Motor Pool System (GSA–IMPS), and vehicles leased from commercial sources.

"Precious metals," as used in this subpart, means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals—platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Sensitive items" as used in this subpart, means those items of property which are susceptible to being appropriated for personal use or which can be readily converted to cash. Examples are firearms, photographic equipment, binoculars, tape recorders, calculators, and power tools.

945.502-70 Physical protection of property.

(a) Controls such as property pass systems, memorandum records, marking of tools, regular or intermittent gate checks and perimeter fencing shall be implemented, recognizing the value of the property to prevent loss, theft, or unauthorized movement of Government property from the premises on which such property is located.

(b) Classified Government property will be handled in accordance with instructions of the contracting officer.

945.502-71 Control of sensitive items of property.

(a) The contractor shall assure that effective procedures and practices are established for the administrative and physical control of sensitive property items before and after issuance. Each contractor shall prepare a list of the types of property considered to be sensitive. This list, together with control procedures, shall be provided to the property administrator for review and approval.

(b) At a minimum, controls on sensitive property shall include property records, and memorandum receipts, bin or tool check systems, or combinations thereof. Procedures shall provide for physical inventories at least once each year, and methods for adjustment for inventory levels due to losses, thefts, and damage. More frequent inventories of sensitive property may be necessary where the value of the property, degree of security achieved, or loss experience indicates greater controls are required in order to protect the Government's interest. Such procedures and practices shall be subject to review and approval by the property administrator.

945.502-72 Management of precious metals.

(a) The contractor shall establish effective procedures and practices for the administrative and physical control of precious metals.

(b) At a minimum, procedures should provide for physical protection from theft or loss from time of receipt by the contractor to disposition.

(c) Responsible individuals will be designated as precious metals custodians. Records will be maintained of metals received, in use, in stock, and which have been issued or disposed of.

(d) Perpetual inventory records shall be maintained for each type of precious metals in terms of location, weight, and value. Metals consumed in use shall be removed from inventory records only after written certification by the custodian and higher level management official that they have been consumed or contaminated beyond recovery. The project consuming the metals shall be identified.

(e) Physical inventories of precious metals shall be taken at least semiannually, and either witnessed by independent observers or audited independently to verify the accuracy of the inventory. The results of the

inventory shall be promptly reported to the property administrator.

(f) All losses shall be promptly investigated and reported to the property administrator.

(g) Excess and termination inventory precious metals shall be reported to the DOE contracting officer for subsequent inclusion in the DOE precious metals pool.

945.505–5 Records of plant equipment.

The requirements of FAR 45.505–5 apply to plant equipment having a unit cost of $1,000 or more. The property record shall include the DOE asset type for reporting purposes.

945.505–11 Records of transportation and installation costs of plant equipment.

The requirements of FAR 45.505–11 apply to plant equipment having a unit cost of $1,000 or more.

945.505–14 Reports of Government property.

(a) The contractor shall prepare a semiannual report, as of February 28 and August 31 of each year, for each contract and subcontract thereunder, for the following property. The reports will be submitted to the property administrator, and are due not later than 45 days after the end of the reporting period.

(i) Capital equipment and real property acquired or disposed of during the period by asset type (see below).

(ii) Government-owned materials held in storage for issue when the balance on hand at the end of the reporting period amounts to $50,000 or more. Only the beginning and ending balance will be shown on the report.

(b) The report of physical inventory of capital equipment (see 945.508(b)) shall be submitted, as a minimum, with the fourth semiannual report after either the last physical inventory report or the inception of the contract.

DOE PLANT AND EQUIPMENT ASSET TYPES

Asset type code No.	Name and definition
401	*Land.* Includes the cost of land owned by the Government and under the control of DOE. The cost of land includes the purchase price, other acquisition costs, and removal costs less salvage realized in disposing of any facilities acquired with the land.
410	*Land Rights.* Includes the costs of rights, interests, and privileges relating to land such as leaseholds, easements, rights-of-way, water and waterpower rights, diversion rights, and submersion rights.
430	*Minerals.* Includes the cost of mineral rights and land containing mineral deposits owned by the Government.

DOE PLANT AND EQUIPMENT ASSET TYPES—Continued

Asset type code No.	Name and definition
440	*Timber.* Includes the cost and appraised value of timber and pulpwood; cost of reforestation program for the purpose of dust and soil erosion control, retention of water tables, etc.; cost of development and improvement of timber stand; and other forestry management costs. Use of this code is limited to the Savannah River Operations Office.
460	*Site Preparation, Grading and Landscaping.* Includes the cost of general clearing, grading and drainage not directly related to the erection of buildings and structures. All landscaping is included.
470	*Roads, Walks, and Paved Areas.* Includes the costs of roads, bridges, streets, walks, paved parking areas and paved open areas between buildings, including any related costs of clearing, grading, base, surfacing, storm sewers or drains, curbs, gutters, culverts, lighting service, and other related facilities.
480	*Fences and Guard Towers.* Includes the cost of security fences, guard towers and lighting service. Fences associated with specific facilities such as ball parks and substations are included with the facilities protected.
490	*Other Improvements to Land.* Includes the cost of improvements not includable under codes 460, 470, or 480, such as airports, playgrounds, tennis courts, and athletic fields.
501	*Buildings.* Includes the cost of buildings and permanently attached appurtenances, such as elevators, fire protection, lighting, plumbing, heating, ventilation, and built-in air-conditioning systems (excluding window or console air-conditioning units that require no duct work or cooling towers) and the cost of piping, conduit, and cable permanently attached to and made a part of the building and that cannot be removed without cutting into the walls, ceilings, or floors. The division between building costs and the costs of utility systems is generally to be at a point nominally 5 feet outside the building wall.
550	*Other Structures.* Includes the cost of such structures as dams, retention basins, reservoirs, swimming pools, pits, platforms, underground oil storage reservoirs, and stacks (when not a part of a building).
610	*Communication Systems.* Includes the cost of telephone, intercommunication and teletype equipment; telephone instruments and protective devices; lines, poles, cables and conduits; and stationary and associated portable radio transmitting and receiving equipment.
615	*Electric Generation, Transmission and Distribution Systems.* Includes the cost of all electric generation equipment; boiler plant equipment primarily used to supply steam to steam-electric generation equipment; transmission and distribution lines, poles, towers, grounding systems, substations, transformers, controls, cables, conduit, services, meters and protective devices; lightning fixtures, wire, poles, standards and related accessories supplying electric lighting service to roads, walks, and fences.
620	*Fire Alarm Systems.* Includes the cost of central office equipment necessary for receiving and transmitting alarms, including control wiring, both cable and open, and other associated overhead and underground equipment.
625	*Gas Production, Transmission and Distribution Systems.* Includes the cost of equipment involved in the production, storage, transmission and distribution of natural and artificial gas, including pipelines, services, and associated regulating and metering equipment of buildings served.
630	*Irrigation Systems.* Includes the cost of canals, ditches, waterways, flumes, pipelines and equipment used for irrigation purposes.
635	*Railroad Systems.* Includes the cost of railways, including bridges, trestles, culverts, crossing signals, clearing and grading, riprap, ties, ballast, rails, insulated joints, switches and accessories.

DOE PLANT AND EQUIPMENT ASSET TYPES—Continued

Asset type code No.	Name and definition
640	*Sewerage Systems.* Includes the cost of sewerage treatment and disposal facilities, including manholes, mains and lateral lines to point of tie-in with buildings served, and any septic tanks.
645	*Steam Generation and Distribution Systems.* Includes the cost of all equipment used for the generation and distribution of steam to the point of tie-in to buildings where such steam is utilized primarily for heating and for furnishing power to rotating equipment, including emergency turbo-generators. The cost of boiler plant equipment used primarily to supply steam to steam-electric generation equipment is included in code 615.
650	*Water Supply, Pumping, Treatment and Distribution Systems.* Includes the cost of wells, pumping and distributing facilities to the point of tie-in with buildings served.
655	*Nuclear Steam and Electric Generation and Transmission Systems.* Includes the cost of nuclear reactors and appurtenant equipment involved primarily and principally in the generation of steam for use in steam-electric generating equipment, fossil-fuel superheaters, electric generation equipment, and electric transmission facilities connecting the nuclear powerplant to the transmission or distribution network. The only reactors to be identified by this code are those which have significant electric generation.
660	*SPR Crude Oil Piping System.* Includes the cost of pipelines and metering devices between the oil transporting vehicle and the oil storage site.
665	*NPR Crude Oil Extraction and Distribution System.* Includes the cost of drilling equipment, piping, pumps, and storage facilities.
710	*Heavy Mobile Equipment.* Includes the cost of heavy mobile equipment (other than motor vehicles) such as concrete mixers, power shovels, cranes, compressors, rollers, road graders, tractors, farm implements, boats, and barges. The cost of trucks is included in code 725.
715	*Hospital and Medical Equipment.* Includes the cost of hospital, clinical, and dental equipment such as hospital beds, dentist chairs, instruments, sterilizers, and other scientific equipment used by dentists and doctors.
720	*Laboratory Equipment.* Includes the cost of laboratory equipment such as microscopes, analytical balancell, electroanalyzers, oscillographs, refractometers, light sources, vibrometers, and other scientific equipment usually associated with laboratories. The cost of furniture and fixtures and shop equipment are included in codes 730 and 755.
725	*Motor Vehicles and Aircraft.* Includes the cost of passenger cars, trucks, buses, jeeps, trailers, and fire trucks.
730	*Office Furniture and Equipment.* Includes the cost of office furniture and equipment such as machines, desks, drafting sets, safes, photographic equipment, copy making equipment, printing equipment and other office equipment regardless of where located. The cost of automatic data processing equipment is included in code 770.
735	*Process Equipment.* Includes the cost of equipment used specifically in product manufacturing and processing, including associated measurement and control instruments.
740	*Railroad Rolling Stock.* Includes the cost of railroad rolling stock such as locomotives and cars.
745	*Reactors and Accelerators.* Includes the cost of reactors, proton synchrotrons, electron synchrotrons, cyclotrons, linear accelerators, Van De Graaff generators, and accessory equipment, including associated measurement and control instruments.
750	*Security and Protection Equipment.* Includes the cost of equipment used for security, police, and fire protection purposes, except that all associated automotive vehicles are included in code 725, and fire alarm systems are included in code 620.

DOE PLANT AND EQUIPMENT ASSET TYPES—Continued

Asset type code No.	Name and definition
755	*Shop Equipment.* Includes the cost of shop equipment such as lathes, drilling machines, rolling mills, hoists, grinders, forges, pipe cutting machines, presses, saws, shapers, and other equipment usually associated with shops, garages and service stations. Similar equipment used in laboratories and other areas for research purposes should also be identified by this code.
760	*Reserve Construction Equipment Pool.* Includes the costs of construction and automotive equipment held for the purpose of maintaining a reserve pool for use in emergencies as part of the DOE mobilization program, or for secondary use in future construction programs.
770	*Automatic Data Processing Equipment.* Includes the cost of all equipment used in automatic data processing, such as (1) punched card and/or tape equipment, whether used alone or in conjunction with electronic computers; (2) electronic computers and all peripheral or auxiliary equipment; (3) data transmission systems employing devices communicating or transmitting data from place to place for processing in an ADP system; (4) all other equipment that is used in automatic data processing in conjunction with punched card equipment or electronic computers, and (5) the initial package of software that is required to make the system operational. Equipment such as flexowriters, IBM typewriters, equipment reading the results of experiments, etc., shall be classified as ADP equipment when used primarily in conjunction with an ADP system. Excludes the cost of equipment such as analog computers, card and/or tape file cabinets, and air-conditioning for the processing room. Also, excludes the cost of automatic data recording or electronic control systems used to furnish operating guidance for control of machine tools, equipment used in process operations, reactors, accelera- [illegible]
790	*Miscellaneous Equipment.* Includes the cost of furniture and fixtures for hotels, dormitories, and apartments; laundry equipment; restaurant, cafeteria, and canteen equipment; and other miscellaneous equipment not includable in other codes.
800	*Improvements to Property of Others.* Includes the cost of improvements made by DOE to land, buildings, structures, building services, and utility systems not owned by DOE. Plants, laboratories, and similar facilities constructed by DOE on land owned by others are not to be classified in this category.
900	*Unclassified Plant and Equipment.* Includes the cost of major construction projects or operative portions thereof that have been physically completed and placed in service for which the unitization and classification of costs into plant and equipment accounts have not been completed. Allocation to production, research, community, and general facilities and to asset types 401 through 800 will require approximation in some instances, particularly at year end when full allocation is required. (Year-end allocations may be reversed in October pending formal and more precise classifications.)

945.506 Identification.

The requirements of FAR 45.506 apply to Government property having a unit cost of $1,000 or more.

945.508 Physical inventories.

The frequency of physical inventories shall be as follows:

(a) Permanently affixed plant (such as buildings, utilities, and fences)—Not less frequently than every 10 years.

(b) Capital equipment—Not less frequently than every two years. (See 945.505–14)

(c) Sensitive items—Not less frequently than every twelve months.

(d) Materials (held under inventory control)—Not less frequently than every twelve months.

(e) Precious metals—Not less frequently than every six months.

945.570 Motor vehicle and aircraft management.

(a) Normally, motor vehicles will not be furnished to fixed price or cost-reimbursable contractors. Further, Government-furnished motor vehicles may be provided to or acquired by contractors only when *all* of the criteria of FAR 45.304 are met and approved in writing by the contracting officer.

(b) Government-owned motor vehicles and aircraft shall be maintained and utilized by contractors in the most practical and economical manner consistent with DOE program requirements, safety consideration, fuel economy, and applicable laws and regulations.

(c) Contractors shall conform fully to the average fuel economy standards established by law and these regulations in the selection of Government-furnished motor vehicles.

945.570–1 Classification of motor vehicles.

Because of differences in controls or limitations on possession and use, Government vehicles are classified as follows:

(a) Passenger vehicles.

(1) Sedans and station wagons (small, subcompact, compact, mid-size, and large).

(2) Ambulances.

(3) Buses.

(b) Trucks.

(1) Light, less than 8,500 GVWR (Gross Vehicle Weight Rating).

(i) 4 x 2

(ii) 4 x 4

(2) Light, 8,500 to 12,499 GVWR.

(i) 4 x 2

(ii) 4 x 4

(3) Medium, 12,500 to 23,999 GVWR.

(4) Heavy, 24,000 GVWR or more.

(c) Special purpose vehicles.

(1) Fire trucks.

(2) Construction vehicles.

(3) Other vehicles equipped for special purposes.

945.570–2 Acquisition of motor vehicles.

(a) The GSA Interagency Motor Pool System (GSA–IMPS) is the first source of supply for providing motor vehicles to contractors; however, contracting officer approval is required for contractors to utilize this service.

(b) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA–IMPS;

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by a GSA–IMPS; and

(3) A contractor can commercially lease a motor vehicle for more than 60 days.

(c) GSA has the responsibility for acquisition of motor vehicles for Government agencies. All requisitions (GSA Form 1781) shall be processed in accordance with 41 CFR 101–26.501.

(d) Contractors shall submit all motor vehicle requirements to the contracting officer for approval.

(e) The acquisition of sedans and station wagons is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards. The acquisition of light trucks is limited to those vehicles which meet the current fuel economy standards set by Executive Orders 12003 and 12375.

(f) Cost reimbursement contractors may be authorized by the contracting officer to utilize GSA Federal Supply Schedule 751, Motor Vehicle Rental, for short term rentals not to exceed 60 days, and are required to utilize available GSA consolidated leasing programs for long term (60 continuous days or longer) commercial leasing of passenger vehicles and light trucks.

(g) The Property and Equipment Management Division, Headquarters Procurement and Assistance Management Directorate (MA–422), shall certify all requisitions prior to submittal to GSA for the following:

(1) The acquisition of sedans and station wagons.

(2) The lease (60 continuous days or longer) of any passenger automobile.

(3) The acquisition or lease (60 continuous days or longer) of light trucks less than 8,500 GVWR.

(h) Purchase requisitions for other motor vehicles may be submitted directly to GSA when approved by the contracting officer.

(i) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

945.570–3 Selection of type of motor vehicles.

(a) All vehicles acquired for use, whether by purchase, rental, lease, forfeiture or transfer from another

agency, shall be limited to the minimum body size, engine size, maximum fuel efficiency, and only that operational equipment (if any) necessary to fulfill programmatic needs.

(b) The least expensive unit overall should be used, taking into consideration both acquisition and operating costs for units to be purchased, and rental rates for rented or leased units.

(c) Dual purpose vehicles capable of hauling both personnel and light cargo shall be used whenever appropriate to avoid the need for two vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid limitations on the number of passenger vehicles which may be acquired.

945.570–4 Identification of motor vehicles.

(a) Except as indicated in 945.570–4(b), DOE-owned and commercially leased (for 60 continuous days or longer) motor vehicles shall have Government license tags and the following identification, which shall be furnished and displayed as specified by the DOE contracting officer.

"For Official Use Only
U.S. Government
Department of Energy"

(b) Security vehicles may be exempted from the above identification requirements by the contracting officer. All other exemptions require approval by the Procurement Executive.

945.570–5 Utilization of motor vehicles.

(a) Government-owned vehicles are to be used for official purposes only. Contracting officers may approve home-to-work or work-to-home transportation on a one-time exceptional basis. Home-to-work or work-to-home transportation on a continuing basis is discouraged; however, if justified, such use requires approval of the Head of the Contracting Activity and a determination that the facts sufficiently justify a conclusion of "official purpose." An authorization to use a motor vehicle for transportation between a domicile and place of employment shall be limited to a period of sixty days. Requests for renewals of authorizations shall be subject to the same justification as original requests, and must also show what attempts were made during the original period to eliminate the necessity for the request. Records, including full justification, of such approvals will be kept on file.

(b) The contractor shall prescribe and issue, subject to approval by the contracting officer, such local written guidelines regarding the use of motor vehicles or aircraft for "official purposes" as may be necessary and appropriate for particular operating situations.

(c) The contractor shall establish written procedures to ensure that all motor vehicle operators are informed concerning:

(1) The statutory requirement that motor vehicles shall be used only for "official purposes";

(2) Personal responsibility for safe driving and operation of motor vehicles, and for compliance with Federal, State, and local laws and regulations, and all accident reporting requirements;

(3) The penalties for unauthorized use of motor vehicles;

(4) Procedures for reporting accidents;

(5) The prohibition against picking up strangers or hitchhikers or transporting family members;

(6) Care and control of credit cards; and

(7) Any other duties and responsibilities assigned to motor vehicle operators with regard to the use, care, operation, and maintenance of motor vehicles.

(d) Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard as stated in 41 CFR 109–38.5002. Other measures of use will need to be considered. Accordingly, as an aid in achieving maximum feasible utilization, local use objectives which represent practical units of measurement for vehicle utilization and for planning and evaluating future vehicle requirements should be established. Such objectives should generally be initiated by the organization involved and reviewed and adjusted as appropriate, but not less often than annually. The objectives will take into consideration past performance, future requirements, and special operating conditions and should be consistent with the justifications used to obtain vehicle authorizations. Both Department-wide and local objectives should be used in such a manner that their use does not stimulate vehicle use for the purpose of meeting the objectives. The ultimate standard against which vehicle use must be measured is that the minimum number of vehicles will be retained to satisfy program requirements.

(e) Methods and practices for achieving maximum economical utilization of motor vehicles shall include but not be limited to—

(1) The maximum use of equipment pooling arrangements, taxicabs, or other common service arrangements;

(2) The minimum, practicable assignment of equipment to individuals, groups or specific organizational components;

(3) The careful selection of equipment types to permit the maximum appropriate use of multi-purpose equipment;

(4) The rotation of equipment between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy, and

(5) The maintenance of individual equipment use records, such as trip tickets or vehicle logs, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage.

945.570–6 Maintenance of motor vehicles.

(a) Contractors shall maintain Government-owned vehicles according to a systematic written procedure and in accordance with manufacturer's specifications and the terms of the warranty and 41 CFR 101–38.10. The requirement for a written procedure may be waived by the contracting officer if the contractor has less than 15 Government-owned vehicles.

(b) Special attention shall be devoted to the warranty on each motor vehicle to ensure that maximum benefits are realized from each warranty. Defective materials and workmanship on vehicles under warranty should be corrected under the terms of the warranty to avoid maintenance and repair of such vehicles at Government expense.

945.570–7 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must execute the Title Transfer forms.

945.570–8 Reporting motor vehicle data.

(a) Contractors conducting motor vehicle operations shall forward annually (on or before November 1) to the contracting officer their plan for acquisition of motor vehicles for the next fiscal year for review, approval and submittal to DOE Headquarters. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by

Executive Orders 12003 and 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the contracting officer, as required.

(b) Contractors operating DOE-owned and/or commercially leased (for 60 continuous days or longer) motor vehicles shall prepare and submit the following annual year-end reports to the contracting officer:

(1) DOE Report of Motor Vehicle Data (passenger vehicles).

(2) DOE Report of Truck Data.

945.570-8 Aircraft.

(a) Purchase of aircraft requires statutory authority. Contracting officers may authorize a lease, rental, hire, or loan of an aircraft if the period is less than 30 days. If longer than 30 days, approval must be obtained from the Procurement Executive.

(b) Aircraft shall be used for official purposes only.

Subpart 945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

945.601 Definitions.

"Personal property" (See 945.101).

945.603 Disposal methods.

945.603-70 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer shall assume all responsibilities of the plant clearance officer identified in FAR Subpart 45.6.

945.603-71 Disposal of radioactively contaminated personal property.

Special procedures regarding the disposal of radioactively contaminated property may be found at 41 CFR 109-45.50.

945.607-2 Recovering precious metals.

(b) Excess precious metals shall be promptly reported to the contracting officer for review, approval and reporting to the DOE precious metals pool. This includes all precious metals in any form, including shapes, scrap or radioactively contaminated, except for silver. Only high grade nonradioactively contaminated silver should be reported to the precious metals pool. The Oak Ridge Operations Office is responsible for maintaining the DOE pool. Precious metals scrap will be reported to the DOE precious metals pool, operated by NLO, Inc., P.O. Box 39158, Cincinnati, Ohio 45239.

945.608-2 Standard screening.

(b)(1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Property Management Regulations 41 CFR 101-43.4801, shall be reported to the contracting office. The contracting office shall transmit this information via terminal processing or hard copy to DOE Headquarters for centralized screening in the DOE Reportable Excess Automated Property System (REAPS). Agency screening will begin when the item is first included in the REAPS monthly catalog and will end upon the issuance of the following monthly catalog.

(i) REAPS requires the inclusion of a five character address code which identifies the reporting contractor. The address code will be assigned by DOE Headquarters upon receipt of a completed Address Notification form for the contractor or DOE office reporting the property as excess.

(ii) Excess screening documents and Address Notification forms shall be submitted to the Chief, Property and Supply Branch, REAPS, Office of Policy, Procurement and Assistance Directorate, Headquarters, by the contracting office.

945.608-3 Agency screening.

Items shall be reported to the contracting office and should be screened informally within the contracting office's complex of contractors and with other known users of the property at other DOE locations.

945.608-4 Limited screening.

(a) Prior to reporting to GSA, all nonreportable property, excluding scrap and salvage, shall be reported to the contracting office for a 15 day informal screening within the contracting office's complex of contractors and other appropriate DOE field locations.

945.608-5 Special items screening.

Prior to reporting to GSA, that property in FAR 45.608-5 (a), (b), and (d) shall be reported and screened within DOE in accordance with 945.608-2 and 945.608-3.

(c) *Printing equipment.* All printing equipment excess to requirements shall be reported to the Office of Administrative Services, Headquarters.

945.610-4 Contractor inventory in foreign countries.

Contractor inventory located in foreign countries will be utilized and disposed of in accordance with DOE-PMR 41 CFR 109-43.4, 44.3, and 45.51.

PART 947—TRANSPORTATION

Subpart 947.1—General

Sec.
947.102 Transportation insurance.
947.104-3 Cost-reimbursement contracts.

Subpart 947.5 Ocean Transportation by U.S. Flag Vessels

947.506 Procedures.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 947.1—General

947.102 Transportation insurance.

(c)(1) If special circumstances dictate the need for the Government to buy insurance coverage, the contracting officer, after coordination with appropriate local transportation personnel shall ascertain that (i) there is no statutory prohibition, and (ii) funds for insurance are available.

947.104-3 Cost-reimbursement contracts.

(d)(1) Include in contracts a statement requiring the contractor to use carriers providing services commensurate with DOE program needs, taking full advantage of special reduced rates where available.

Subpart 947.5—Ocean Transportation by U.S. Flag Vessels

947.506 Procedures.

For contract awards involving foreign suppliers which will necessitate ocean transportation, a copy of the award document is to be furnished to the Maritime Administration at the following address: Inter-Agency Liaison, Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street, SW., Washington, D.C. 20590

PART 949—TERMINATION OF CONTRACTS

Subpart 949.1—General Principles

Sec.
949.101 Authorities and responsibilities.
949.106 Fraud or other criminal conduct.
949.108-4 Authorization for subcontract settlements without approval or ratification.
949.108-8 Assignment of rights under subcontracts.
949.111 Review of proposed settlements.
949.112-1 Partial payments.

Subpart 949.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience

949.206-1 Submission of settlement proposals.
949.206-2 Bases for settlement proposals.

Subpart 949.3—Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

949.303–1 Submission of settlement proposal.

Subpart 949.5—Contract Termination Clauses

949.501 General.
949.505 Other termination clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 949.1—General Principles

949.101 Authorities and responsibilities.

The Procurement Executive shall be notified prior to taking any action to terminate (a) contracts for the operation of Government-owned facilities, (b) any prime contract or subcontract in excess of $10 million, and (c) any contract the termination of which is likely to provoke unusual interest.

949.106 Fraud or other criminal conduct.

Any evidence of fraud or other criminal conduct in connection with the settlement of a contract termination shall be reported in accordance with 909.406.

949.108–4 Authorization for subcontract settlements without approval or ratification.

The power to authorize a contractor to conclude settlements of its terminated subcontracts, when the amount of settlement is more than $10,000, but not more than $25,000, shall be exercised by contracting officers only with the approval of the Head of the Contracting Activity.

949.108–6 Assignment of rights under subcontracts.

The contracting officer's determination under FAR 49.108–6(b) that it is in the best interest of the Government to settle and pay directly a subcontractor's termination claim is subject to the approval of the Head of the Contracting Activity.

949.111 Review of proposed settlements.

(a) Heads of Contracting Activities shall establish settlement review boards for the review of each termination settlement or determination of amount due under the termination clause of a contract or approval or ratification of a subcontract settlement when the action involves $50,000 or more.

(b) Settlement review boards may be established for actions below $50,000 when considered desirable by the Head of the Contracting Activity or when specifically requested by the contracting officer.

(c) Proposed settlement agreements or determinations in excess of contractual authority of Heads of Contracting Activities will be transmitted to the Procurement Executive for review and approval.

(d) Contracting officers shall not conclude proposed settlement or determinations until the approvals required by this subsection have been obtained.

949.112–1 Partial payments.

(d) Protection of the Government's interest in partial payments, by means other than those specified in FAR 49.112–1(d), shall be subject to approval of the Head of the Contracting Activity.

Subpart 949.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience

949.206–1 Submission of settlement proposals.

(c) When the standard forms are not appropriate for a particular contract, the Head of the Contracting Activity may authorize modification thereof. However, the certificate shall be substantially as set forth in the form.

949.206–2 Bases for settlement proposals.

(c) Settlement proposals shall not be submitted on any basis other than the inventory or total cost basis without the prior approval of the Head of the Contracting Activity.

Subpart 949.3—Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

949.303–1 Submission of settlement proposal.

When necessary, the Head of the Contracting Activity may authorize modification of the form prescribed in FAR 49.602–1. However, the certificate shall be substantially as set forth in the form.

Subpart 949.5—Contract Termination Clauses

949.501 General.

The standard clauses set forth in FAR Subpart 49.5 are applicable as prescribed subject to the following:

(a) Cost principles referenced in the various termination articles shall be in accordance with Part 931.

949.505 Other termination clauses.

(f) The clause at 952.249–70 is suggested for use in cost-plus-fixed-fee Architect-Engineer contracts.

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 950.1—General

Sec.
950.104 Reports.

Subpart 950.70—Indemnification of DOE Contractors

950.7000 Scope of subpart.
950.7001 Applicability.
950.7002 Definitions.
950.7003 Statutory indemnity.
950.7004 Authority to negotiate statutory indemnity agreements.
950.7005 Substantial nuclear incident.
950.7006 Statutory indemnity contract article.
950.7007 Contractual assurance.
950.7008 "Representation" for use in subcontracts and purchase orders of prime contractor holding statuory indemnity agreement.
950.7009 Fees.
950.7010 Financial protection requirements.
950.7011 General contract authority indemnity.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 950.1—General

950.104 Reports.

The information required by FAR 50.104(b) for all actions taken under the extraordinary emergency authority shall be submitted to the Director, Contract Business Clearance Division, Headquarters no later than 30 days after the date of completion of processing the action. In the event no actions were taken under Pub. L. 85–804 during the preceding calendar year, a negative report should be submitted to the Director, Contract Business Clearance Division, Headquarters no later than January 20 of each year.

Subpart 950.70—Indemnification of DOE Contractors

950.7000 Scope of subpart.

This subpart describes the established policies concerning (a) indemnification of DOE contractors against public liability for a nuclear incident arising out of or in connection with the contract activity, and (b) indemnification of DOE contractors against liability for nonnuclear risks arising out of or in connection with the contract activity.

950.7001 Applicability.

(a) With respect to indemnification against public liability for a nuclear incident, the pertinent policies and procedures set forth in this subpart shall

be applicable in entering into indemnity agreements with:

(1) DOE contractors engaged in the operation of prodcution or utilization facilities; and

(2) DOE contractors whose work entails the risk of public liability for a substantial nuclear incident.

(b) With respect to indemnification against liability for nonnuclear risks, the pertinent policies and procedures set forth in this subpart shall be applicable in entering into indemnity agreements with any DOE contractors.

950.7002 Definitions.

"DOE contractor" means any DOE prime contractor, including any agency of the Federal Government with which DOE has entered into an interagency agreement.

"Construction contractor" means a DOE contractor who is constructing an installation for DOE which, when completed, will be a production or utilization facility.

"Nuclear incident" means:

(1) Any occurrence within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or by-product material; and

(2) Any such occurrence outside the United States, if such occurrence involves a facility or device owned by, and used by or under contract with, the United States.

"Person indemnified" means:

(1) With respect to a nuclear incident occurring within the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability; or

(2) With respect to any nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of activities under any contract with DOE or any project to which indemnification under the provisions of section 170d of the Atomic Energy Act 1954, as amended, has been extended, or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

(3) With respect to a nonnuclear incident the person with whom an indemnity agreement is executed.

"Nuclear reactor" means an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction.

"Production facility" means:

(1) Any nuclear reactor designed or used primarily for the formation of plutonium or uranium 233; or

(2) Any facility designed or used for the separation of the isotopes of uranium or the isotopes of plutonium, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(3) Any facility designed or used for the processing of irradiated materials containing special nuclear material, except laboratory scale facilities designed or used for experimental or analytical purposes only.

"Public liability" means any legal liability (including liability for loss of, or damage to, or loss or use of property which is located at the site of and used in connection with the contract activity arising out of or resulting from a nuclear incident) except: (1) Claims under State or Federal workmen's compensation acts of employees of persons indemnified, who are employed at the site of and in connection with the activity where the nuclear incident occurs, and (2) claims arising out of an act of war. "Public liability" also includes damage to property of persons indemnified, provided that such property is covered under the terms of any financial protection that may be required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

"Utilization facility" means any nuclear reactor other than one designed or used primarily for the formation of plutonium or U 233.

950.7003 Statutory indemnity.

Section 170d of the Atomic Energy Act of 1954, as amended, authorized DOE "to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident." Contractors identified in 950.7001(a) are eligible for such statutory indemnity.

950.7004 Authority to negotiate statutory indemnity agreements.

(a) Heads of Contracting Activities are authorized to negotiate statutory indemnity agreements with contractors identified in 950.7001(a)(1).

(b) Pursuant to 950.7005, Heads of Contracting Activities may enter into a statutory indemnity agreement whenever it has been determined that a contractor in 950.7001(a)(2) is engaged in activities involving the risk of public liability for a substantial nuclear incident. Such a determination may be based upon either the risk of liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work, or the risk of liability for a substantial nuclear incident caused by a product delivered to or for the DOE under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement. If, pursuant to 950.7005, a Head of a Contracting Activity determines that the maximum conceivable damage which could result from a nuclear incident arising in the course of a contractor's activities falls between $1 million and $60 million, they shall submit the proposed indemnification with a recommendation, and all supporting data, to the Head of the Agency, or designee, for appropriate action.

950.7005 Substantial nuclear incident.

(a) With respect to 950.7001(a)(2), and pursuant to the provisions of 950.7004, a Head of a Contracting Activity may be required to determine whether a contractor's activities involve the risk of public liability for a substantial nuclear incident and thus make the contractor eligible to obtain a statutory indemnity agreement from the DOE. The determination by a Head of a Contracting Activity shall be based on the criteria in paragraph (b) below.

(b) If, after a study of the maximum conceivable damage which can result from an incident arising out of or in connection with the contractor's activities, the Head of a Contracting Activity concludes that the maximum conceivable damage per incident to property and persons is $60 million or more, the contractor may be found to be under a risk of public liability for a substantial nuclear incident and the Head of the Contracting Activity is authorized to execute a statutory indemnity agreement under such a contract. If such a study of the maximum conceivable damage indicates a figure of $1 million or less, the contractor should not be considered to have a risk of public liability for a substantial nuclear incident, and therefore, shall not be made a party to a statutory indemnity agreement. If the study indicates that the maximum conceivable damage falls between $1 million and $60 million, the Head of a Contracting Activity will submit the proposed indemnification of such contractor to the Head of the Agency or designee with a

recommendation and all supporting data.

(c) The Head of the Agency or designee may take one of the following actions:

(1) Determine that the contractor is under risk of public liability for a substantial nuclear incident and that the contractor should be extended a statutory indemity agreement; or

(2) Determine that the contractor should not be extended a statutory indemnity.

(d) When statutory indemnity is not extended, the Head of the Agency or designee may authorize the Head of a Contracting Activity to authorize the contractor to purchase nuclear liability insurance or to offer the contractor a general authority indemnity agreement.

950.7006 Statutory indemnity contract article.

The contract clause contained in 952.250–70 shall be incorporated in all contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work. The contract clause contained in 952.250–71 shall be incorporated in all contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability only for a substantial nuclear incident caused by a product delivered to or for the DOE, under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement.

950.7007 Contractual assurance.

Heads of Contracting Activities are authorized to include assurances that the DOE will enter into a statutory indemnity agreement with the contractor who will operate a production or utilization facility on its completion. Such assurances may be authorized in contracts for:

(a) Architect-engineer services in connection with the construction of a production or utilization facility;

(b) Component parts for a production or utilization facility;

(c) Construction at a production or utilization facility, where the work does not entail the risk of a substantial nuclear incidences; or

(d) Equipment or services which would be a part of, or contribute to, or be used in connection with the constuction or operation of a production or utilization facility.

Assurances will be given only to those contractors and suppliers which might be held liable in connection with a substantial nuclear incident occurring after completion of the facility. The clause to be used to provide contractual assurance is found in 952.250–72.

950.7008 "Representation" for use in subcontracts and purchase orders of prime contractor holding statutory indemnity agreement.

(a) A DOE contractor with whom a statutory indemnity agreement has been executed in the form contained in 952.250–70 may include in any of its subcontracts and purchase orders a representation that the work under the prime contract is covered by a statutory indemnity agreement with the DOE, and that this indemnity covers all persons who may be liable for public liability for any nuclear incident arising out of or in connection with the activity under the prime contract. A suggested form of "representation" that may be provided to the contractor follows:

The contractor represents that there is included in its prime contract with DOE an indemnity agreement, entered into by DOE under the authority of Section 170 of the Atomic Energy Act of 1954, as amended by Public Law 85–256 (the "Price-Anderson Act"), a copy of which may be obtained from the contractor (or is attached hereto); that, under said agreement, DOE has agreed to indemnify the contractor and other persons indemnified, including the subcontractor, against claims for public liability (as defined in said Act) arising out of or in connection with the contractual activity; that the indemnity applies to covered nuclear incidents which (1) take place at a "contract location" (which term, as defined in the indemnity agreement, does not include the location of the subcontractor's plant and facilities); or (2) arise out of or in the course of transportation of source, special nuclear or nuclear by-product material to or from a "contract location;" or (3) involve items produced or delivered under the prime contract. The obligation of DOE to indemnify is subject to the conditions stated in the indemnity agreement.

(b) The DOE shall not approve the inclusion, in the subcontracts and purchase orders of an indemnified prime contractor, of any provision whereby the prime contractor indemnifies the subcontractor or supplier against public liability for a nuclear incident because any such liability will be covered by the statutory indemnity agreement of the prime contractor.

950.7009 Fees.

No fee will be charged a DOE contractor for a statutory indemnity agreement.

950.7010 Financial protection requirements.

(a) DOE contractors with whom statutory indemnity agreements under the authority of section 170d of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents, except: (1) That DOE contractors now covered by insurance against such liability, with the approval of the DOE, may continue to carry such insurance; and (2) with the approval of the Office of Industrial Relations, contractors engaged in the operation of DOE facilities may be required or permitted to furnish financial protection in an amount not to exceed $1 million.

(b) If nuclear liability insurance is carried by a contractor who is a Nuclear Regulatory Commission (NRC) licensee, the DOE will pay an equitable portion of the insurance premium under its contract (or would include such an item in the calculation of a fixed price), but normally a statutory indemnity agreement would not be granted under the contract.

950.7011 General contract authority indemnity.

(a) The DOE also has general contract authority to enter into indemnity agreements with its contactors. Under such authority a certain measure of protection is extended to the DOE contractor against risk of liability, but the assumption of liability by DOE will be expressly subject to the availability of appropriated funds. Prior to enactment of section 170 of the Atomic Energy Act 1954, as amended, this authority was exercised in a number of Atomic Energy Commission contracts and this type of indemnification remains in some DOE contracts.

(b) It is the policy of the DOE, subsequent to the enactment of section 170, to restrict indemnity agreements with DOE contractors, with respect to protection against public liability for a nuclear incident, to the statutory indemnity provided under section 170. However, it is recognized that circumstances may exist under which a DOE contractor may be exposed to a risk of public liability for a nuclear occurrence which would not be covered by the statutory indemnity.

(c) While it is normally DOE policy to require its contractors to obtain insurance coverage against public liability for nonnuclear risks, there may be circumstances in which a contractual indemnity may be warranted to protect

a DOE contractor against liability for uninsured nonnuclear risks.

(d) If circumstances as mentioned in paragraph (b) or (c) of this section do arise, it shall be the responsibilty of the Heads of Contracting Activities to submit to the Head of the Agency or designee for review and decision, all pertinent information concerning the need for, or desirability of, providing a general authority indemnity to a DOE contractor.

(e) Where the indemnified risk is nonnuclear, the amount of general authority indemnity extended to a fixed-price contractor should normally have a maximum obligation equivalent to the amount of insurance that the contractor usually carries to cover such risks in its other commerical operations or, if the risk involved is dissimilar to those normally encountered by the contractor, the amount that it otherwise would have reasonably procured to insure this contract risk.

(f) In the event that a DOE contractor has been extended both a statutory indemnity and a general authority indemnity, the general authority indemnity will not apply to the extent that the statutory indemnity applies.

(g) The provisons of this subsection do not restrict or affect the policy of DOE to pay its cost-reimbursement type contractors for the allowable cost of losses and expenses incurred in the performance of the contact work, within the maximum amount of the contract obligation.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 951.1—Contractor Use of Government Supply Sources

Sec.
951.101 Policy.
951.102 Authorization to use Government supply sources.
951.103 Ordering from Government supply sources.

Subpart 951.2—Contractor Use of Interagency Motor Pool Vehicles

951.201 Policy.

Authority: Section 644 of the Department of Energy Organization Act, Pub L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 951.1—Contractor Use of Government Supply Sources

951.101 Policy.

(a) It is DOE policy that contractors performing under cost-reimbursement contracts should meet their requirements from Government sources of supply when these sources are available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

951.102 Authorization to use Government supply sources.

(a) The Head of the Contracting Activity may authorize contractors performing under cost-reimbursement contracts and subcontractors performing under cost-reimbursement contracts, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR Part 51, DOE PMR 41 CFR 109-26, and any necessary approval from the agency involved. This authority may be redelegated to the level of contracting officer. Direct acquisition by the DOE, rather than by a contractor under cost-reimbursement contracts, shall be required where deemed necessary by the Head of the Contracting Activity in order to carry out special requirements of appropriation acts or other applicable laws relating to particular items.

(c)(1) The DOE central point of contact for the assignment, correction, or deletion of FEDSTRIP activity address codes is the Property and Equipment Management Division, Office of Policy, Procurement and Assistance Directorate, Headquarters.

(e)(4)(iii) Materials, supplies, and equipment acquired from Government sources of supply under the procedures described herein must be used exclusively in connection with Government work, except as otherwise authorized by the Head of the Contracting Activity.

951.103 Ordering from Government supply sources.

(b) The Procurement Executive shall be informed of instances in which GSA sources of supply are not used because of the quality of the items available from GSA or when a Federal Supply Schedule contractor refuses to honor an order.

Subpart 951.2—Contractor Use of Interagency Motor Pool Vehicles

951.201 Policy.

(a) If it is in the Government's interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services, including: (1) Fuel and lubricants, (2) vehicle inspection, maintenance, and repair, (3) vehicle storage, and (4) commercially rented vehicles for short-term use under Federal Supply Schedule Industrial Group 751.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 952.0—General

Sec.
952.000 Scope of part.
952.001 General policy.

Subpart 952.1—Instructions for Using Provisions and Clauses

952.102-1 Incorporation by reference.

Subpart 952.2—Text of Provisions and Clauses

952.202 Clauses related to definitions.
952.202-1 Definitions.
952.204 Clauses related to administrative matters.
952.204-2 Security requirements.
952.204-70 Classification.
952.204-71 Sensitive foreign nations controls.
952.204-72 Disclosure of information.
952.204-73 Foreign ownership, control, or influence over contractor (Representation).
952.204-74 Foreign ownership, control, or influence over contractor.
952.208 Clauses related to required sources of supply.
952.208-7 Tagging of leased vehicles.
952.208-70 Printing.
952.209 Clauses related to contractor's qualifications.
952.209-70 Organizational conflicts of interest—disclosure or representation.
952.209-71 Organizational conflicts of interest—general.
952.209-72 Organizational conflicts of interest—special clause.
952.212 Clauses related to contract delivery or performance.
952.212-70 Rated or authorized controlled material orders for energy programs.
952.212-71 Priorities, allocations and allotments for energy programs.
952.212-72 [Reserved]
952.212-73 Cost and schedule control systems criteria.
952.214 Clauses related to formal advertising.
952.214-27 Price reduction for defective cost or pricing data—modifications—formal advertising.
952.215 Clauses related to contracting by negotiation.
952.215-18 Order of precedence.
952.215-22 Price reduction for defective cost or pricing data.
952.215-23 Price reduction for defective cost or pricing data—modifications.
952.215-70 Required subcontractor representations and certifications.
952.216 Clauses related to types of contracts.
952.261-7 Allowable cost and payment.
952.216-15 Predetermined indirect cost rates.
952.217 Clauses related to special contracting methods.
952.217-70 Acquisition of real property.
952.219 Clauses related to small business.

952.219–9 Small business and small disadvantaged business subcontracting plan.
952.223 Clauses related to environment, conservation, and occupational safety.
952.223–71 Safety and health (Government-owned or leased facility).
952.223–72 Radiation protection and nuclear criticality.
952.223–73 [Reserved]
952.223–74 Nuclear facility safety applicability.
952.223–75 Preservation of individual occupational radiation exposure records.
952.223–76 [Reserved]
952.224 Clause relating to protection of privacy and freedom of information.
952.224–70 Paperwork Reduction Act.
952.227 Provisions and clauses related to patents, technical data, and copyrights.
952.227–70 [Reserved]
952.227–71 Patent rights—small business firms or nonprofit organizations.
952.227–72 [Reserved]
952.227–73 Additional technical data requirements.
952.227–74 [Reserved]
952.227–75 Rights in technical data—long form.
952.227–76 Rights in data—special works.
952.227–77 Rights in technical data—short form.
952.227–78 Rights in technical data—facility.
952.227–79 Limited rights in proprietary data.
952.227–80 Technical data certification.
952.227–81 Royalty payments certification.
952.227–82 Rights to proposal data.
952.227–83 Identification of proprietary data.
952.227–84 Notice of right to request patent waiver.
952.231–70 Date of incurrence of cost.
952.232 Clauses related to contract financing.
952.232–1 Payments.
952.232–2 Payments under fixed-price research and development contracts.
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952.232–8 Discounts for prompt payment.
952.232–10 Payments under fixed-price architect engineer contracts.
952.232–70 Payment due dates, invoice requirements and penalties.
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952.235–70 Key personnel.
952.236 Construction and architect-engineer contracts.
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952.236–71 Inspection in architect-engineer contracts.
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952.245 Clauses related to Government property.
952.245–2 Government property (fixed-price contracts).
952.245–5 Government property (cost-reimbursement, time and material, or labor-hour contracts).
952.247–70 Foreign travel.
952.249 Clauses related to terminaton.
952.249–70 Termination clause for cost-reimbursement architect-engineer contract.
952.250 Clauses related to indemnification of contractors.
952.250–70 Nuclear hazards indemnity.
952.250–71 Nuclear hazards indemnity—product liability.
952.250–72 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 952.0—General

952.000 Scope of part.

This part implements FAR Part 52 which sets forth contract clauses for use in connection with the acquisition of personal property and nonpersonal services (including construction), and supplements, as well as modifies, FAR Part 52 by prescribing certain modifications to be made to FAR clauses when used in DOE contracts and specifying certain DOE contract clauses to be used in addition to or in place of such FAR clauses.

952.001 General policy.

It is DOE policy to use the prescribed FAR and DOE contract clauses wherever practicable. Uniformity in the use of contract clauses helps to ensure impartial treatment of all contractors, expedites negotiation and contract review, and facilitates contract administration.

Supbart 952.1—Instructions for Using Provisions and Clauses

952.102–1 Incorporation by reference.

(a) Preprinted standard contract clauses (clause sets) and solicitation representations and certifications provisions will be maintained by the Office of Policy for use by DOE contracting activities during the initial Federal Acquisition Regulations System familiarization period. The clause sets contain the FAR and DEAR clauses required for specific contract types. Contracting Activities will be responsible for including necessary additions and alterations in individual contracts to ascertain that the clauses are current and appropriate to the circumstances of the individual contract. The concept of preprinted clause sets is designed to reduce the review burden on both the Contracting Activities and Department's contractors. Use of the preprinted clause sets reduces the review burden for an individual contract award since once the clause sets have been reviewed and understood for a particular contract type, individual contact reviews can be limited to examination of the alterations and additions used in conjunction with the preprinted clause sets. This practice eliminates the confusion and expense of the Department's contractors which would be caused were each contracting activity to pursue its own approach regarding contract clauses.

(b) At a later date, when the FAR and DEAR clause requirements are familiar to both DOE personnel and the Department's contractors, the Department will consider incorporation by reference. Incorporation by reference is the practice of reducing the bulk of contract documents by listing only the title, regulatory citation, and date of a particular clause rather than its full text. The full text of the clause can be obtained by referring to a copy of the Code of Federal Regulations, Title 48, Chapter 1 for FAR clauses or Title 48, Chapter 9 for DEAR clauses.

Subpart 952.2—Text of Provisions and Clauses

952.202 Clauses related to definitions.

952.202–1 Definitions.

(a) The contracting officer shall substitute the following for paragraph (a) of the clause at FAR 52.202–1.

(a) The term "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy.

(b) The following shall be added as paragraph (d) except it will be designated paragraph (c) if Alternate I of the clause is used.

(d) The term "DOE" means the Department of Energy.

952.204 Clauses related to administrative matters.

952.204–2 Security requirements.

The following clause shall be included in contracts entered into under section 31 (research assistance) or 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended, and in other contracts and subcontracts, which involve or are likely to involve classified information.

Security (April 1984)

(a) Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the contracting officer, the contractor will complete a certificate of possession to be furnished to DOE specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the contract.

(b) *Regulations.* The contractor agrees to conform to all security regulations and requirements of DOE.

(c) *Definition of classified information.* The term "classified information' means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Security clearance of personnel.* The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2100 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).

(j) *Subcontracts and purchase orders.* Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

952.204-70 Classification.

The following clause shall be included in all contracts which involve classified information:

Classification (Apr. 1984)

In the performance of the work under this contract, the contracter shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and equipment originated or generated under the contract in accordance with classification regulations and guidance furnished to the contractor by the DOE. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment shall include a provision to the effect that in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and equipment in accordance with classification regulations and guidance furnished to such subcontractor or supplier by the contractor.

952.204-71 Sensitive Foreign nations controls.

In accordance with 904.404(d)(3), the contracting officer shall include the following clause:

Sensitive Foreign Nations Controls (Apr. 1984)

(a) In connection with any activities in the performance of this contract, the contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the contractor by written notice as sensitive foreign nations. The contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the contracting officer if the contractor determines that it is unable, without substantially interfering with its polices or without adversely effecting its performance to continue performance of the work under this contract as a result of such notification. If the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts.

952.204-72 Disclosure of information.

This clause may be used in place of the clauses entitled "Security," 952.204-2, and "Classification," 952.204-70, in contracts with educational institutions for research involving nuclear technology which could but is not expected to produce classified information or restricted data:

Disclosure of Information (Apr. 1984)

(a) It is mutually expected that the activities under this contract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or terminating of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any event, the contractor shall classify, safeguard, and otherwise act with respect to all classified information in accordance with applicable law and the requirements of DOE, and shall promptly inform DOE in writing if and when classified information becomes involved, or in the mutual judgment of the parties it appears likely that classified information or material may become involved. The contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract respecting termination for the convenience of the Government shall apply.

(b) The contractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act 1954, as amended, Executive Order 12356, and DOE's regulations or requirements.

(c) The term "Restricted Data" as used in this article means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

952.204-73 Foreign ownership, control, or influence over contractor (Representation).

As prescribed in 904.7005(a), insert the following provision in all solicitations

for contracts subject to the provisions of 904.70.

Foreign Ownership, Control, or Influence Over Contractor (Apr. 1984)

(a) For purposes of this provision, a foreign interest is defined as any of the following:

(1) A foreign government or foreign government agency;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or

(4) Any person who is not a U.S. citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or significant quantity of special nuclear material as defined in 10 CFR Part 710 may result.

(c) If the offeror/bidder has not previously submitted responses to the following questions to DOE as part of the facility security clearance process, then it shall answer the following questions. Answer each question in either the "yes" or "no" column. If the answer is yes, furnish in detail on a separate sheet of paper all the information requested in parentheses. Copies of information which responds to these questions and which was submitted to other Government agencies may be submitted as responses to these questions if the earlier responses are accurate, complete, and current.

Question	Yes	No
1. Does a foreign interest own or have beneficial ownership in 5% of more of your organization's voting securities? (Identify the percentage of any class of shares or other securities issued which are owned by foreign interests, listed by country. If you answer "Yes" and have received from an investor a copy of Schedule 13D and/or Schedule 13G filed by the investors with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
2. Does your organization own 10% or more of any foreign interest? (Furnish the name of the foreign interest, address by country, and the percentage owned. Include name and title of officials of your organization who occupy positions with the foreign interest, if any.)		
3. Do any foreign interests have management positions such as directors, officers, or executive personnel in your organization? (Furnish full information concerning the identity of the foreign interest and the position he/she holds in your organization.)		
4. Does any foreign interest control or influence, or is any foreign interest in a position to control or influence the election, appointment, or tenure of any of your directors, officers, or executive personnel? (Identify the foreign interest(s) and furnish full details concerning the control or influence.)		
5. Does your organization have any contracts, binding agreements, understandings, or arrangements with a foreign interest(s) that cumulatively represent 10% or more of your organization's gross income? (Furnish the name of the foreign interest, country, nature of agreement or involvement. Agreements include licensing, sales, patent exchange, trade secrets, agency, cartel, partnership, joint venture, proxy, etc. Give overall percentage by country as related to total income and type of services or products in general terms. If you answer "Yes" and have received from the foreign interest a copy of Schedule 13D and/or Schedule 13G filed by the foreign interest with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
6. Is your organization indebted to foreign interests? (Furnish the amount of indebtedness as related to the current assets of the organization and identify the creditor. Include specifics as to the type of indebtedness and what, if any, collateral, including voting stock, has been furnished or pledged. If any debentures are convertible, specifics about the indebtedness, collateral, if any, and what will be received after conversion are to be furnished.)		
7. Does your organization derive any income from Communist countries included in Country Groups P, Q, W, Y, and Z in Supplement No. 1 in 15 CFR Part 370? (Discuss in detail any income derived from Communist countries, including percentage from each such country as related to total income, and the type of services or products involved.)		
8. Is 5% or more of any class of your organization's securities held in "nominee shares," in "street names", or in some other method which does not disclose beneficial owner of equitable title? (Identify each foreign institutional investor holding 5 percent or more of the voting stock. Identification should include the name and address of the investor and percentage of stock held. State whether the investor has attempted to, or has, exerted any management control or influence over the appointment of directors, officers, or other key management personnel, and whether such investors have attempted to influence the policies of the corporation. If you have received from the investor a copy of the Schedule 13D and/or Schedule 13G filed by the investor with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
9. Does your organization have interlocking directors with foreign interests? (Include identifying data on all such directors. If they have a security clearance, so state. Also indicate the name and address of all other corporations with which they serve in any capacity.)		
10. Are there any citizens of foreign countries employed by, or who may visit, your offices or facilities in a capacity which may permit them to have access to classified information or a significant quantity of special nuclear material? (Provide complete information by identify the individuals and the country of which they are citizens.)		
11. Does your organization have foreign involvement not otherwise covered in your answers to the above questions? (Describe the foreign involvement in detail, including why the involvement would not be reportable in the preceding questions.)		

Certification

( ) The offeror/bidder certifies that the entries made above are accurate, complete, and current to the best of my knowledge and belief and are made in good faith.

( ) The offeror/bidder certifies that the information requested above has previously been submitted to DOE as required for a facility security clearance and that the information is accurate, complete and current.

Date Certified _____
By _____
Offeror/Bidder _____
Title _____
Address _____
Signature and Date _____

(d) Prior to award of a contract under this solicitation, the DOE must determine that award of the contract to the offeror/bidder will not pose an undue risk to the common defense and security as a result of its access to classified information or a significant quantity of special nuclear material in the performance of the contract. In making the determination, the contracting officer may consider a voting trust or other arrangements proposed by the offeror/bidder to mitigate or avoid FOCI. The contracting officer may require the offeror/bidder to submit such additional information as deemed pertinent to this determination.

(e) The offeror/bidder shall require any subcontractors having access to classified information or a significant quantity of special nuclear material to submit the certifications in (c) above directly to the DOE contracting officer.

(f) Information submitted by the offeror/bidder in response to the questions in (c) above is to be used solely for purposes of evaluating foreign ownership, control, or influence and shall be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

952.204-74 Foreign ownership, control, or influence over contractor.

As prescribed in 904.7005(b), insert the following contract clause in new contracts and contract modifications to existing contracts subject to 904.70.

Foreign Ownership, Control, or Influence Over Contractor (Apr 1984)

(a) For purposes of this clause, a foreign interest is defined as any of the following:

(1) A foreign government or foreign government agency;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or

(4) Any person who is not a U.S. citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a

contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.

(c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(d) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the answers to the questions presented in DEAR 952.204–73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

(e) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the contracting officer shall consider proposals made by the contractor to avoid or mitigate foreign influences.

(f) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

(g) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204–73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.

(h) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(i) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.

(j) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

952.208 Clauses related to required sources of supply.

952.208–7 Tagging of leased vehicles.

Insert the following clause when leasing commercial vehicles for periods in excess of 60 days.

Tagging of Leased Vehicles (Apr 1984)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the contractor shall furnish the DOE the documentation required by the State to acquire such tags.

952.208–70 Printing.

Title 44, United States Code, "Public Printing and Documents," establishes policies regarding public printing and documents within the Federal Government. It provides that public printing will be accomplished by the Government Printing Office, its regional offices or authorized departmental printing plants. It provides a limited exemption for contractors. Requirements exceeding that limitation are to be accomplished utilizing Government resources. To facilitate this, contracting officers shall furnish the necessary forms and instructions to contractors, as called for by DOE Order 1340.1, and include the following clause in all contracts:

Printing (Apr 1984)

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8½ by 11 inches one side only, one color. A requirement is defined as a single publication ducument.

(1) The term "printing" includes the following processes: composition, plate making, pressework, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

952.209 Clauses related to contractor's qualifications.

952.209–70 Organizational conflicts of interest—disclosure or representation.

Use the following solicitation provision under the circumstances described at 909.570.

Organizational Conflicts of Interest Disclosure or Representation (Apr 1984)

It is Department of Energy policy to avoid situations which place an offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, the offeror may have which relates to the work to be performed pursuant to this solicitation or where the offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein, "offeror" means the proposer or any of its affiliates or proposed consultants or subcontractors of any tier.) Therefore:

(a) The offeror shall provide a statement which describes in a concise manner all relevant facts concerning any past, present or currently planned interest (financial, contractural, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(b) In the absence of any relevant interests referred to above, the offeror shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to possible organizational conflicts of interest. Proposed consultants and subcontractors are responsible for submitting information and may submit it directly to the contracting officer.

(c) The Department will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to the Department, will be used to determine whether an award to the offeror may create an organizational conflict of interest is found to exist, the Department may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the offeror, or (3) determine that it is otherwise in the best interest of the United States to contract with the offeror by including appropriate conditions mitigating such conflict in the contract awarded.

(d) The refusal to provide the disclosure or representation and any additional information as required shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award, or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated for default. The offeror may also be disqualified from subsequent related Department contracts, and be subject to such other remedial action as may be permitted or provided by law or in the resulting contract. The attention of the offeror in complying with this provision is directed to 18 U.S.C. 1001.

(e) Depending on the nature of the contract activities, the offeror may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement, unless the solicitation specifically prohibits such exclusion. Any such proposed exclusion by an offeror shall be considered by the Department in the evaluation of proposals, and if the Department considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.

(f) No award shall be made until the disclosure or representation has been evaluated by the Government. Failure to provide the disclosure or representation will be deemed to be a minor informality (FAR 14.405) and the offeror or contractor shall be required to promptly correct the omission.

952.209-71 Organizational conflicts of interest—general.

Insert the following contract clause under the circumstances described at 909.570.

Organizational Conflicts of Interest—General (Apr 1984)

(a) The contractor warrants that, to the best of his knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest, as defined in 909.570 or that the contractor has disclosed all relevant information.

(b) The contractor agrees that, if after award, an organizational conflict of interest with respect to this contract is discovered, an immediate and full disclosure in writing shall be made to the Contracting Officer which shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The Department may, however, terminate the contract for its convenience if it deems such termination to be in the best interest of the Government.

(c) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the contracting officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the Government's rights.

(e) Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Department will request and the contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

952.209-72 Organizational conflicts of interest—special clause.

Insert the following contract clause under the circumstance described at 909.570.

Organizational Conflicts of Interest—Special Clause (Apr 1984)

(a) *Purpose.* The primary purpose of this clause is to aid in ensuring that the contractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) *Technical consulting and management support services.*

(i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for technical consulting and management support services.

(ii) If the contractor under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard commercial items to the Government.

(2) *Access to and use of information.*

(i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produces under this requirements of this contract have been met.

(c) *Disclosure after award.* (1) The contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing to the contracting officer which shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts.

The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the contracting officer.

the Department may terminate the contract for default.

(d) *Subcontracts.* (1) The contractor shall include this clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "contract", "contractor" and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) If a subcontract is to be issued for evaluation services or activities, technical consulting or management support services work as defined at 909.570, the contractor shall obtain for the Department a disclosure statement or representation, in accordance with DOE regulations in effect at the time, from each intended subcontractor or consultant. The contractor shall not enter into any subcontract nor engage any consultant unless the contracting officer shall have first notified the contractor that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of the Government.

(e) *Remedies.* For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may terminate the contract for default, disqualify the contractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.

(f) *Waiver.* Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waive and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer shall grant such a waiver in writing.

(g) *Modifications.* Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Department will request and the contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

952.212 Clauses related to contract delivery or performance.

952.212-70 Rated or authorized controlled material orders for energy programs.

As prescribed in 912.304(a), insert the following provisions in solicitations that will result in the award of a contract eligible for placement of rated orders or authorized controlled material orders for DOE atomic energy programs:

Rated or Authorized Controlled Material Orders (Atomic Energy) (Apr 1984)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a/——/ DO-Rating; /——/ DX-rating; or /——/ DMS allotment number in accordance with Defense Priorities System Regulation 1 and Defense Materials System Regulation 1. (*Contracting officer check appropriate box or boxes*).

Alternate I: As prescribed in 912.304(d), insert the following provision in solicitations that may result in a contract eligible for placement or rated orders or authorized controlled material orders for authorized energy programs:

Rated or Authorized Controlled Material Orders (Domestic Energy Supplies) (Apr 1984)

Contracts or purchase orders awarded as a result of this solicitation may be eligible for priorities and allocations support in accordance with 10 CFR 216 and Section 101(c) of the Defense Production Act of 1950, as amended.

952.212-71 Priorities, allocations, and allotments for energy programs.

As prescribed in 912.304(b), insert the following clause in orders and contracts that are placed in support of authorized DOE atomic energy programs:

Priorities, Allocations, and Allotments (Atomic Energy) (Apr 1984)

The Contractor shall follow the provisions of Defense Material System Regulation 1 or Defense Priorities System Regulation 1 (see 15 CFR Parts 330–354) and all other applicable regulations and orders of the DMS/DPS in obtaining controlled materials and other products and materials needed to fill this contract.

Alternate I: Certain contracts may be eligible for priorities and allocations support as described in 912.302 if their purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis. Guidance is provided by DOE Publication PR–0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. If the purpose of the contract is to maximize domestic energy resources, include the following clause:

Priorities, Allocations, and Allotments—(Domestic Energy Supplies) (Apr 1984)

(a) This contract may be eligible for priorities and allocations support, as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94–163, 42 U.S.C. 6201 *et seq.*) if its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Commerce and Energy.

(b) DOE Regulations regarding Material Allocation and Priority Performance under Contracts or Orders to Maximize Domestic Energy Supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

(c) Additional guidance is provided by DOE Publication PR–0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Technical Information Center (TIC), Post Office Box 62, Oak Ridge, Tennessee 37830.

952.212-72 [Reserved]

952.212-73 Cost and schedule control systems criteria.

Certain DOE projects are of such significance and magnitude that responsible management calls for enhanced visibility of contractor cost and schedule performance as well as more formalized data to document their progress and to aid in decisions regarding their continuation. Any contract with a total estimated cost in excess of $50 million shall require full implementation of the DOE Cost and Schedule Control Systems Criteria. Selected projects between $2 million and $50 million may benefit from modified implementation of such a control system. In those instances where the DOE Cost and Schedule Control System Criteria are to be utilized, the contracting officer shall provide for this by including the "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," Office of the Controller Publication CR–0015, in the solicitation and shall include the following clause in the contract:

Cost and Schedule Control Systems (Apr 1984)

(a) In the performance of this contract, the contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in DOE/CR–0015, "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the contracting officer and within —— calendar days after contract award, the contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the contracting officer. The contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.

(b) The description of the management control systems accepted by the contracting officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the contractor in the performance of this contract.

(c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the contracting officer. When contracting officer approval is required, the contracting officer shall advise the contractor of the acceptability of such changes within sixty (60) days after receipt

from the contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.

(d) The contractor agrees to provide access to all pertinent records and data requested by the contracting officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the contracting officer.

(e) The contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime contractor, or by the Government when requested by either the prime or subcontractor.

952.214 Clauses related to formal advertising.

952.214-27 Price reduction for defective cost or pricing data—modifications—formal advertising.

As prescribed in 914.201-7(b)(1), when contracting by formal advertising insert the clause at FAR 52.214-27, Price Reduction For Defective Cost or Pricing Data—Modifications—Formal Advertising, in solicitations and contracts unless this requirement is waived pursuant to FAR 14.201-7(b)(2).

952.215 Clauses related to contracting by negotiation.

952.215-18 Order of precedence.

Use this clause in place of the clause provided at FAR 52.215-18:

Order of Precedence (Apr 1984)

In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence as follows: (a) schedule; (b) contract clauses; or (c) other provisions of the contract, whether incorporated by reference or otherwise.

952.215-22 Price reduction for defective cost or pricing data.

As prescribed in 915.804-8(a), when contracting by negotiation, include the clause at FAR 52.215-22, Price Reduction for Defective Cost or Pricing Data, in contracts when certified cost or pricing data was obtained.

952.215-23 Price reduction for defective cost or pricing data—modifications.

As prescribed in 915.804-8(b), insert the clause at FAR 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when the clause at FAR 52.215-22 has not been included, unless the contractor will otherwise not be required to submit certified cost or pricing data pursuant to 915.804-2(a).

952.215-70 Required subcontractor representations and certifications.

In accordance with 914.201-5(b) or 915.406-5(b), include the following notice at Section L of the uniform contract format in solicitations which contemplate award of contracts expected to include any of the clauses entitled Small Business and Small Disadvantaged Business Concern Subcontracting Plan, FAR 52.219-9, Organizational Conflicts of Interest-General, 952.209-71 of this chapter, Organizational Conflicts of Interest-Special Clause, 952.209-72 of this chapter, Equal Opportunity, FAR 52.222-26, Clean Air and Water, FAR 52.223-1, Buy America Act-Supplies, FAR 52.225-3, or Buy America Act-Construction Materials, FAR 52.225-5.

Notice—Subcontractor Representations and Certifications

Bidders or offerors are required to obtain the representations and certifications listed below from subcontractors prior to the award of any subcontract for furnishing supplies or services under the prime contract:

(1) Small Business Concern Representation, FAR 52.219-1, Small Disadvantaged Business Concern Representation, FAR 52.219-2, if the prime contract contains the Small Business and Small Disadvantaged Business Subcontracting Plan clause from FAR 52.219-9;

(2) Organizational Conflicts of Interest Disclosure and Representation, DEAR 952.209-70, if the prime contract contains either of the clauses entitled Organizational Conflicts of Interest-General, DEAR 952.209-71, or Organizational Conflicts of Interest-Special Clause, DEAR 952.209-72;

(3) Certification of Nonsegregated Facilities, FAR 52.222-21, if the prime contract includes the clause entitled Equal Opportunity, FAR 52.222-26;

(4) Previous Contracts and Compliance Reports, FAR 52.222-22, if the prime contract contains the clause entitled Equal Opportunity, FAR 52.222-26;

(5) Clean Air and Water Certification, FAR 52.223-1, if the prime contract contains the clause entitled Clean Air and Water, FAR 52.223-2.

(6) Buy America Act Certification, FAR 52.225-1, if the prime contract contains either of the clauses entitled Buy America Act-Supplies, FAR 52.225-3, Buy America Act-Construction Materials, FAR 52.225-5.

952.216 Clauses related to types of contracts.

952.216-7 Allowable cost and payment.

Alternate I: If the contract is with a nonprofit organization, other than an educational institution; or a State or local government, modify the clause at FAR 52.216-7 Allowable Cost and Payment by deleting from paragraph (a) the phrase "Subpart 31.2" and substituting for it "Subpart 31.7."

Alternate II: When contracting with a commercial organization modify paragraph (a) of the clause at FAR 52.216-7 by adding the phrase "as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR)," after the acronym "(FAR)".

952.216-15 Predetermined indirect cost rates.

Alternate: As prescribed in 916.307(j), modify paragraph (c) of the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, by deleting the words "Subpart 31.3" and substituting for them "Supbart 31.6" and insert the clause in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

952.217-70 Acquisition of real property.

Insert the following clause when required by 917.7403(c).

Acquisition of Real Property (Apr 1984)

(a) Notwithstanding any other provision of the contract, the prior approval of the contracting officer shall be obtained when, in performance of this contract, the contractor acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government's behalf or in the contractor's own name, with title eventually vesting in the Government.

(2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the contracting officer.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

952.219 Clauses related to small business.

952.219-9 Small business and small disadvantaged business subcontracting plan.

Alternate: When the clause at FAR 52.219-9 is used, modify it to substitute the following alternate paragraph (d)(10).

(d)(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294 only, (DOE contractors need not submit SF 295) on a quarterly basis as of

the last day of March, June, September and December, and upon contract completion, in accordance with the instructions on the form except the report shall be submitted quarterly rather than semiannually and additionally shall indicate at the remarks block the number and dollar amount of awards made to labor surplus area concerns to the extent such reporting is required by the terms of their contract, and (iv) ensure that its subcontractors agree to submit SF 294 in accordance with the instructions at (iii) above.

952.223 Clauses related to environment, conservation, and occupational safety.

952.223-71 Safety and health (Government-owned or leased facility).

The clause set forth at 970.5204-2 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at a government-owned or leased facility where DOE has elected to assert its statutory authority to establish and enforce occupational safety and health standards applicable to the work conditions of contractor and subcontractor employees, and to the protection of the public health and safety.

952.223-72 Radiation protection and nuclear criticality.

The clause set forth herein shall be included in those contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to assert its statutory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees, but does need to enforce radiological safety and health standards pursuant to provisions of the contract or subcontract rather than by reliance upon Nuclear Regulatory Commission licensing requirements (including agreements with states under section 274 of the Atomic Energy Act).

Radiation Protection and Nuclear Criticality (Apr. 1984)

The contractor shall take all reasonable precautions in the performance of work under this contract to protect the safety and health of employees and of members of the public against the hazards of ionizing radiation and radioactive materials and shall comply with all applicable radiation protection and nuclear criticality safety standards and requirements (including reporting requirements) of DOE. The contractor shall submit a management program and implementation plan to the contracting officer for review and approval within 30 days after the effective date of this contract or modification. In the event that the contractor fails to comply with said standards and requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work. Thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

952.223-73 [Reserved]

952.223-74 Nuclear facility safety applicability.

The clause set forth in 970.5204-26 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at or involving the construction, startup, operation; and decommissioning of DOE-owned nuclear facilities deemed to be exempt from nuclear regulatory licensing requirements. Any deviation in substance affecting the meaning, intent, or basic principles of this clause must be referred to the Procurement Executive for approval. Minor changes in wording which may become necessary in negotiations may be approved by the contracting officer after consultation with the General Counsel.

952.223-75 Preservation of individual occupational radiation exposure records.

This clause shall be included in all contracts containing the DOE standard clause entitled "Safety and Health" at 952.223-71 or "Radiation and Nuclear Criticality" at 952.223-72 or Nuclear Safety at 952.223-74.

Preservation of Individual Occupational Radiation Exposure Records (Apr 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

952.223-76 [Reserved]

952.224-70 Paperwork Reduction Act.

Insert the following clause if it is anticipated that information collection from 10 or more persons will be necessary under the contract.

Paperwork Reduction Act (Apr 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

952.227 Provisions and clauses related to patents, technical data and copyrights.

952.227-70 [Reserved]

952.227-71 Patent rights—small business firms or nonprofit organizations.

The following clause shall be used in contracts for research, development or demonstration work with small businesses or domestic nonprofit organizations as directed in 927.300(b).

Patent Rights—Small Business Firms or Nonprofit Organizations (March 1982)

(a) *Definitions.*

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.).

(2) "Subject Invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121.3-8, and in subcontracting, contained in 13 CFR 121.3-12, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a))

or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) patent counsel assisting the DOE contracting activity.

(b) *Allocation of principal rights.* The contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title and filing of patent applications by contractor.*

(1) The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for the administration of patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete technical detail to convey a clear understanding, to the extent known at the time of the disclosure of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the contractor will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel within twelve months of disclosure to the contractor; provided that in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title terminates sixty days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extention of the time for disclosure to the Patent Counsel, election, and filing, may, at the discretion of the Patent Counsel be granted.

(d) *Conditions* when the Government may obtain title.

(1) The contractor will convey the DOE, upon written request, title to any subject invention:

(i) If the contractor fails to disclose or elect the subject invention within the times specified in (c) above, or elects not to retain title.

(ii) In those contries in which the contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the contractor has filed a patent application in a country after the times specified in (c) above but prior to its receipt of the written request of the Patent Counsel, the contractor shall continue to retain title in that country; or

(iii) In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to contractor.*

(1) The contractor will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the contractor fails to disclose the subject invention within the times specified in (c) above. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 10 CFR Part 781 and 41 CFR 101–4. This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with 10 CFR Part 781, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect Government's interest.*

(1) The contractor agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:

(i) Establish or confirm the rights the Governement has throughout the world in those subject inventions for which the contractor retains title, and

(ii) Convey title to DOE when requested under (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under this contract in order that the contractor can comply with the disclosure provisions of (c) above and to execute all papers necessary to file patent applications on subject inventions. The disclosure format should require, as a minimum, the information requested by (c)(1) above. The contractor shall instruct such employees through the employee agreements or suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

(3) The contractor will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenace fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the Department of Energy. The Government has certain rights in this invention."

(5) The contractor agrees to:

(i) Provide a report prior to the close-out of the contract listing all subject inventions;

(ii) Provide notification of all subcontracts under this contract for experimental, developmental, demonstration, or research work, the identity of the patent rights clause therein, and copy of each subcontract upon request;

(iii) Provide promptly a copy of the patent application, filing date, serial number, patent number and issue date for any subject invention in any country in which the contractor has applied for a patent.

(g) *Subcontracts.*

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or a domestic nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract,

obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause of 41 CFR 9–9.107–5(a) or 9–9.107–6 as appropriate, modified to identify the parties.

(3) In the case of a subcontract at any tier, DOE, the subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(h) *Reporting on utilization of subject inventions.* The contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as DOE may reasonably specify. The contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. To the extent data or information supplied under this section is considered by the contractor, its licensee or assignee to be privileged and confidential and is so marked, DOE agrees that, to the extent permitted by 35 U.S.C. 202(c)(5), it will not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The contractor agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in OMB Circular A–124 to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.*

If the contractor is a non profit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the contractor);

(2) The contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, DOE approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The contractor will share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

(l) *Communications.* The DOE central point of contact for communications on matters relating to this clause is the Patent Counsel.

952.227–72 [Reserved]

952.227–73 Additional technical data requirements.

The following clause shall be used in contracts for research, development, or demonstration work and in other contracts as directed in 927.402–3(b).

Additional Technical Data Requirements (Apr. 1984)

(a) In addition to the technical data specified elsewhere in this contract to be delivered, the contracting officer may at any time during the contract performance or within one year after final payment call for the contractor to deliver any technical data first produced or specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design.

(b) The provisions of the Rights in Technical Data clause included in this contract are applicable to all technical data called for under this Additional Technical Data Requirements clause. Accordingly, nothing contained in this clause shall require the contractor to actually deliver any technical data, the delivery of which is excused by paragraph (e) of the Rights in Technical Data clause.

(c) When technical data are to be delivered under this clause, the contractor will be compensated for appropriate costs for converting such data into the prescribed form for reproduction, and for delivery.

952.227–74 [Reserved]

952.227–75 Rights in technical data—long form.

As directed by 927.402–3(e), the following clause shall be used in all contracts having as a purpose the conduct of research, development, or demonstration, or in contracts for supplies, or in any other contract where technical data are specified to be delivered in the contract, or where the contract contains the Additional Technical Data Requirements clause at 952.227–73.

Rights in Technical Data—Long Form (Apr. 1984)

(a) *Definitions.*

(1) "Technical data" means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists,

specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein do not include financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning its confidentiality; and

(iii) Are not already available to the Government without obligation concerning the confidentiality.

(3) "Contract data" means technical data first produced in the performance of the contract in technical data which are specified to be delivered under the contract; technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

(4) "Unlimited rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) *Allocation of rights.*

(1) The Government shall have:

(i) Unlimited rights in contract data except as otherwise provided below with respect to proprietary data;

(ii) The right to remove, cancel, correct or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if in response to a written inquiry by DOE concerning the propriety of the markings, the contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case, DOE will notify the contractor of the action taken;

(iii) No rights under this contract in any technical data which are not contract data.

(2) The contractor shall have:

(i) The right to withhold proprietary data in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract data it first produces in the performance of this contract, provided the data requirements of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(3) Nothing contained in this Rights of Technical Data clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) *Copyrighted material.*

(1) The contractor shall not, without prior written authorization of the Patent Counsel, establish a claim to statutory copyright in any contract data first produced in the performance of the contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, duplicate exhibit and perform any such data copyrighted by the contractor.

(2) The contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the contractor and not to knowingly include any material copyrighted by others, without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If such royalty-free license is unavailable and the contractor nevertheless determines that such copyrighted material must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the contractor shall obtain the written authorization of the Contracting Officer to include such copyrighted material in the technical data prior to its delivery.

(d) *Subcontracting.* It is the responsibility of the contractor to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the contractor shall:

(1) Promptly submit written notice to the Contracting Officer setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and

(2) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(e) *Withholding of proprietary data.* Notwithstanding the inclusion of the Additional Technical Data Requirements clause in this contract or any provision of this contract specifying the delivery of technical data, the contractor may withhold proprietary data from delivery, provided that the contractor furnishes in lieu of any such proprietary data so withheld technical data disclosing the source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("Form, Fit and Function" data, e.g., specification control drawing, catalog sheets, envelope drawings, etc.), or a general description of such proprietary data where "Form, Fit and Function" data are not applicable. The Government shall acquire no rights to any proprietary data so withheld except that such data shall be subject to the "inspection rights" provisions of paragraph (f), and, if included, the "Limited rights in proprietary data" provisions of paragraph (g) and the "Contractor licensing" provisions of paragraph (h).

(f) *Inspection rights.* Except as may be otherwise specified in this contract for specific items of proprietary data which are not subject to this paragraph, the Contracting Officer's representatives, at all reasonable times up to three years after final payment under this contract, may inspect at the contractor's facility any proprietary data withheld under paragraph (e) and not furnish under paragraph (g), if this contract includes such paragraph, for the purposes of verifying that such data properly fell within the withholding provision of paragraph (e), or for evaluating work performance.

Alternate I: Additional paragraph (g), limited rights. The following paragraph (d) shall be added to the basic clause at 952.227–75 above when it is determined in accordance with 927.402–3(e)(2) that delivery of proprietary data is necessary with limited rights in the Government.

(g) *Limited rights in proprietary data.* Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the contractor shall, upon written request from the Contracting Officer at any time prior to three years after final payment under this contract, promptly deliver to the Government any "proprietary data" withheld pursuant to paragraph (e) of the Rights in Technical Data clause of this contract. The following legend and no other is authorized to be affixed on any "proprietary data" delivered pursuant to this provision, provided the "proprietary data" meets the conditions for initial withholding under paragraph (e) of the Rights in Technical Data clause. The Government will thereafter treat the "proprietary data" in accordance with such legend.

Limited Rights Legend (Apr 1984)

This technical data contains "proprietary data," furnished under "Contract No. ————" with the U.S. Department of Energy (and Purchase Order No. ———— if applicable) which may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the contractor, except that further disclosure or use may be made solely for the following purposes:

(a) This "proprietary data" may be disclosed for evaluation purposes under the restriction that the "proprietary data" be retained in confidence and not further disclosed;

(b) This "proprietary data" may be disclosed to other contractors participating in the Government's program of which this contract is part, for information or use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be

retained in confidence and not be further disclosed.

This legend shall be marked on any reproduction of this data in whole or in part.

Alternate II: Additional paragraph (h), contractor licensing. The following paragraph (b) shall be added to the basic clause at 952.227–75 above when it is determined in accordance with 927.402–3(e)(3) that the Government should obtain on behalf of third parties and itself limited license rights in and to proprietary contract data.

(h) *Contract licensing.* Except as may be otherwise specified in this contract as technical data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purpose of practicing a subject of this contract, a nonexclusive license in any contract data which are proprietary data, on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obligated to license any such data if the contractor demonstrates to the statisfaction of the Head of the Agency or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternative available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

952.227-76 Rights in data—special works.

The following clause shall be included in contracts having as a principal purpose or task the production of copyrightable works as discussed in 927.402–3(f).

Rights in Data—Special Works (Apr. 1984)

(a) The term "Data" as used herein means recorded information regardless of form or characteristic, such as writings, sound recordings, pictorial reproductions, drawings, or other graphic representations, and works of similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term includes data such as management studies and data produced under support services contracts but does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All data first produced or composed in the course of or under this contract shall be the sole property of the Government. Except with the prior written permission of the contracting officer, the contractor agrees not to assert any rights at common law or in equity or establish any claim to statutory copyright in such data. The contractor shall not publish or reproduce such data in whole or in part or in any manner of form, or authorize others so to do, without the written consent of the Contracting Officer or until such time as the Government may have released such data to the public.

(c) The contractor hereby grants to or will obtain for the Government a royalty-free, nonexclusive and irrevocable license throughout the world (1) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data which are not first produced or composed in the performance of this contract but which are incorporated in the work furnished under this contract; and (2) to authorize others so to do.

(d) The contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract; or (2) based upon any libelous, defamatory, or other unlawful matter contained in such data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

952.227-77 Rights in technical data clause—short form.

As discussed in 927.402–3(g), the following clause may be used in contracts for basic research with educational institutions and in contracts with consultants and in other contracts of a similar nature. The clause shall not be used in any contract where proprietary information of the contractor may be utilized in performance of work under the contract.

Rights in Technical Data—Short Form (Apr. 1984)

(a) *Definitions.* The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.

(b) *Allocation of rights.*

(1) The Government shall have:

(i) Unlimited rights in technical data first produced or specifically used in the performance of this contract;

(ii) The right of the contracting officer or his representative to inspect at all reasonable times up to three years after final payment under this contract all technical data first produced or specifically used in the contract (for which inspection the contractor or its subcontractor shall afford proper facilities to DOE); and

(iii) The right to have any technical data first produced or specifically used in the performance of this contract delivered to the Government as the contracting officer may from time to time direct during the progress of the work, or in any event as the contracting officer shall direct upon completion or termination of this contract.

(2) The contractor shall have:

The right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract provided the data requirements of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the contracting officer.

(c) *Copyrighted material.*

(1) The contractor agrees to, and does hereby grant to the Government, and to its officers, agents, servants and employees acting within the scope of their duties:

(i) A royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others to do so, all copyrightable material first produced or composed in the performance of this contract by the contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and

(ii) A license as aforesaid under any and all copyrighted or copyrightable works not first produced or composed by the contractor in the performance of this contract but which are incorporated in the material furnished under the contract, provided that such license shall be only to the extent the contractor now has, or prior to completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The contractor agrees that it will not knowingly include any material copyrighted by others in any written or copyrightable material furnished or delivered under this contract without a license as provided for in paragraph (c)(1)(ii) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the contracting officer for the inclusion of such copyrighted material.

952.227-78 Rights in technical data—facility

As discussed in 970.2702 the following clause is to be used in contracts for the operation of Government-owned facilities (GOCO's).

Rights in Technical Data—Facility (Apr 1984)

(a) *Definitions.*

(1) "Technical data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or

demonstration, or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(iii) Are not already available to the Government without obligation concerning their confidentiality.

(3) "Unlimited rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) *Allocation of rights.*

(1) The Government shall have:

(i) Ownership in all technical data first produced in the performance of the contract;

(ii) The right to inspect technical data first produced or specifically used in the performance of the contract at all reasonable times (for which inspection the proper facilities shall be afforded DOE by the contractor and its subcontractors);

(iii) The right to have all technical data first produced or specifically used in the performance of the contract delivered to the Government or otherwise disposed of by the contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this contract, provided that nothing contained in this paragraph shall require the contractor to actually deliver any technical data, the delivery of which is excused by this Rights in Technical Data clause;

(iv) Unlimited rights in technical data specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design; the contractor agrees to leave a copy of such technical data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer; provided, that if such data are proprietary, the rights of the Government in such data shall be governed solely by the provisions of optional paragraph (e) hereof—"Limited Rights in Proprietary Data;"

(v) The right to remove, cancel, correct, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the contractor of the action taken.

(2) The contractor shall have:

(i) The right to withhold its proprietary data in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract, provided the data requirement of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the contracting officer.

(3) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) *Copyrighted material.*

(1) The contractor shall not, without prior written authorization of the Patent Council establish a claim to statutory copyright in any technical data first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the contractor.

(2) The contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If the contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the contractor shall obtain the written authorization of the contracting officer to include such material in the technical data prior to its delivery.

(d) *Subcontracting.*

(1) Unless otherwise directed by the contracting officer, the contractor agrees to use in subcontracts having as a purpose the conduct of research, development, and demonstration work or in subcontracts for supplies, the contract clause provisions in 48 CFR 952.227–75 in accordance with the policy and procedures of 48 CFR 927.402–1, 927.402–2 and 927.402–3.

(2) It is the responsibility of the contractor to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons for the subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

952.227–79 Limited rights in proprietary data.

As discussed in 970.2702(c) the following paragraph may be used as a supplement to the clause at 952.227–78 where it is determined that delivery of proprietarty data is necessary with limited rights in the Government.

(e) Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any proprietary data of the contractor specifically used in the performance of this contract; provided, however, that to the extent that any proprietary data when furnished or delivered is specifically indentified by the contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government, except as provided in the "Limited Rights Legend" set forth below. All such proprietary data shall be marked with the following "Limited Rights Legend":

Limits Rights Legend (Apr 1984)

This Technical data contains "proprietary data," furnished under contract No. ——— with the U.S. Department of Energy (and purchase order No. ——— if applicable) which may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside of the Government or be used for purposes of manufacture without prior permission of the following purposes:

(a) This " proprietary data" may be disclosed for evaluation purposes under the restriction that the "proprietary data" be retained in confidence and not be further disclosed;

(b) This "proprietary data" may be disclosed to other contractors participating in the Government's program of which this contract is a part for information for use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be retained in confidence and not be further disclosed.

This legend shall be marked on any reproduction of this data in whole or in part.

952.227-80 Technical data certification.

In soliciations which may involve the acquisition of technical data, obtain the following certification and include the legend at FAR 52.215-12 and, where appropriate, the provision at 952.227-83.

Technical Data Certification (Apr 1984)

(a) The offeror certifies that it has not delivered or is not obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer, except as set forth below:

( ) none

( ) Contract No. (and Subcontract No., if applicable)

Agency name and place of delivery ——

(b) The work to be performed and the known requirements for technical data as set forth in the solicitation have been reviewed. To the best of my knowledge:

/ / There will be no technical data withheld from delivery as being proprietary data.

/ / The technical data listed on page —— of the proposal will likely be used in conjunction with the performance of work under the contract and is represented as being proprietary data to be protected from unauthorized use and disclosure and therefore to be withheld from delivery in a report not having a restrictive legend.

952.227-81 Royalty Payments Certification

If the nature of the acquisition suggests that royalty payments may be involved, include the following certification in the solicitation.

Royalty Payments (Apr 1984)

In order that DOE may be informed regarding royalty payments to be made by a contractor in connection with any acquisition, construction, or operation where the amount of the royalty payment is reflected in the contract price, or is to be reimbursed by the Government, check one of the following:

( ) The Contract price includes no amount representing the payment of royalty by the offeror directly to others in connection with the performance of the contract.

( ) The contract price includes an amount for royalty payment expected to be made in connection with the proposed award. The Offeror shall set forth below: (1) the amount of each payment, (2) the names of the licensor, (3) either the patent numbers involved or such other information as will permit identification of the patents and patent applications and the basis on which royalties will be paid.

952.227-82 Rights to proposal data.

Pursuant to 927.7002(d), include this clause in any contract which the decision to make the award included consideration of a technical proposal.

Rights to Proposal Data (Apr 1984)

Except for technical data contained on pages —— of the contractor's proposal dated —— which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsover, the technical data contained in the proposal upon which this contract is based.

952.227-83 Rights in technical data solicitation representation.

Pursuant to 927.7004-1 and 927.7004-2, include this provision, the legend at FAR 52.215-12 and the certification at 952.227-80 in solicitations which may result in contracts for research, development, or demonstration work or contracts for supplies in which delivery of required technical data is contemplated.

Rights in Technical Data Solicitation Instruction (Apr 1984)

The section of this solicitation which describes the work to be performed also sets forth DOE's know requirements for technical data. The Additional Technical Data Requirements clause, if included in this solicitation, provides the Government with the option to order additional technical data, the requirements for which are not known at the time of contracting. There is, however, a built-in limitation on the kind of technical data which may be required. This limitation provides that the contractor may withhold delivery of proprietary data. Accordingly, it is necessary that your proposal state that the work to be performed and the known requirements for technical data as set forth in the solicitation have been reviewed, and either state that, to the best of your knowledge, not data will be withheld, or submit a list identifying the proprietary data which, to the best of your knowledge, will likely be used in the contract performance and will be withheld.

952.227-84 Notice of right to request patent waiver.

Pursuant to 927.7005, include this provision in all solicitations which may result in contracts calling for research, development, or demonstration work.

Right To Request Patent Waiver (Apr 1984)

Offerors and prospective contractors, in accordance with applicable statutes and the Department of Energy Acquisition Regulation, have the right to request, in advance of or within 30 days after the effective data of contracting, a waiver of all or any part of the rights of the United States in subject inventions. Small business firms and domestic nonprofit organizations normally will receive the Patent Rights clause of 952.227-71 which permits the contractor to retain title to subject inventions, except in contracts for management or operation of a Government-owned research or production facility and in contracts involving exceptional circumstances or intelligence activities. Therefore small business firms and nonprofit organizations normally need not request a waiver.

952.231-70 Date of incurrence of cost.

In accordance with 931.205-30, insert the following clause when advance understandings have been negotiated regarding costs incurred prior to the contract effective date:

Date of Incurrence of Cost (Apr 1984)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed $ —— on or after —— which, if incurred after this contract has been entered into, would have been reimbursable under the provisions of this contract.

952.232 Clauses related to contract financing.

952.232-1 Payments.

As prescribed in 932.7107-2(a)(1), replace the word "upon" with "after" in the clause at FAR 52.232-1.

952.232-2 Payments under fixed-price research and development contracts.

As prescribed in 932.7107-2, replace the word "upon" with the word "after" in the clause at FAR 52.232-2.

952.232-3 Payments under personal service contracts.

As prescribed in 932.7107-2 replace the word "upon" with "after" in the clause at FAR 52.232-3.

952.232-4 Payments under transportation contracts and transportation-related services contracts.

As prescribed in 932.7107-2, replace the word "upon" with "after" in the clause at FAR 52.232-4.

952.232-5 Payments under fixed-price construction contracts.

As prescribed in 932.7107-2 modify paragraph (e) of the clause cited at FAR 52.232-5 by replacing the words "upon request" with "after receipt of a proper invoice".

952.232-6 Payments under communication service contracts with common carriers.

As prescribed in 932.7107-2, replace the word "upon" with "after" in the clause at FAR 52.232-6.

952.232-7 Payments under time-and-materials and labor-hour contracts.

As prescribed in 932.7107-2, modify the introductory sentence and paragraph (e) of the clause cited at FAR 52.232-7 by replacing the word "upon" with the word "after".

952.232-8 Discounts for prompt payment.

As prescribed in 932.7107-2, modify the clause cited at FAR 52.232-8 to substitute the word "proper" for the word "correct" in the seventh line and delete the last sentence and add the following sentence—"For the purpose of computing the discount earned, payment shall be considered to have been made on the date the Government check was dated or an electronic funds transfer payment was made."

952.232-10 Payments under fixed-price architect-engineer contracts.

As prescribed in 932.7107-2, modify paragraphs (b) and (c) of the clause cited at FAR 52.232-10 by replacing the words "upon" with "after".

952.232-70 Payment due dates, invoice requirements and penalties.

As prescribed in 932.7107(a)[1), insert the following clause in solicitations and contracts containing the clause at FAR 52.232-1, Payments, FAR 52.232-2, Payment under Fixed-Price Research and Development Contracts, or FAR 52.232-4, Payments under Transportation Contracts and Transportation-Related Services Contracts, all as modified by 932.7107-2;

Payment Due Dates, Invoice Requirements and Penalities (Apr 1984)

(a) Notwithstanding the payment provisions stated elsewhere in this contract, payment due dates, invoice requirements and penalties for overdue payment, if any, shall be determined under this contract as provided herein.

(b) Payments for complete delivered supplies, services or work accepted under this contrct shall be due on the *Calendar day after the later of:

(1) the date of actual receipt of a proper invoice by the Government office designated in this contract for invoice receipt; or

(2) The date the supplies, services or work were accepted by the Government.

(c) For purposes of determining payment due dates and for no other purpose, the Government agrees to inspect and determine the acceptability of items delivered under the terms of this contract within ** calendar days after the date of receipt or completion of work. If actual acceptance occurs later, constructive acceptance will be deemed to occur on the last day of the above stated inspection period.

(d) If a delivered item or completed work is rejected for failure to conform to the technical requirements of the contract, or for damage in transit or otherwise, the provisions of paragraph (c) will apply to the replacement item(s) delivered or be reapplied upon Contractor correction of the defect(s).

(e) Progress payments, if provided, shall be due on the * calendar day after the date of receipt of each progress payment request by the Government office designated for invoice receipt.

(f) Proper invoices shall be submitted in an original and *** copies to the Government office designated in this contract, and shall include the Contractor's name and invoice date; contract or order number; payment terms; other documentation or information as required by the contract; name (where practicable), title, phone number, office name and complete mailing address of the responsible official to whom payment may be made. Proper invoices for completed supplies, services or work shall also include the description, price and quantity of item(s) actually delivered or services rendered; and, if applicable, shipping terms.

(g) For complete delivered supplies, services or work, the Government shall pay an interest penalty when the payment check or electronic funds transfer is dated more than fifteen (15) calendar days after the payment due date as established by the provisions herein provided such delays are not due to contractor failure to provide proper payee designations in accordance with the requirements stated elsewhere in this contract; or a discount is taken after expiration of the discount period and the underpayment is not corrected within fifteen (15) calendar days of the expired period.

(h) Interest penalities due under the provisions of this clause shall be calculated in accordance with the provisions of the Prompt Payment Act (31 U.S.C. 3901 et seq.); based on the interest rate(s) established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). Claims for failure to pay interest penalties may be filed under Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605). Interest penalties under this clause shall not accrue for more than one year or after the timely filing of a claim for such penalties under the Contract Disputes Act.

(i) Claims concerning disputes, and any interest which may be payable with respect to the period while such dispute is being resolved, shall be subject to the provisions specified in the disputes clause of this contract.

(j) Interest penalties shall not apply when the contractor is notified that an invoice is defective or improper provided the Contractor is notified within fifteen (15) calendar days after actual invoice receipt or acceptance of delivered contract item, whichever is later, that payment is delayed because of a disagreement between the Government and the Contractor concerning contract compliance or amounts invoiced; or the penalty amounts to less than one dollar; nor are they required when payments are made for progress payment purposes, payments are made in advance, or for a period when amounts are withheld temporarily in accordance with the contract. In the event the Government fails to provide notification of a defective invoice within fifteen (15) calendar days, the due date for the corrected invoice will be the normal payment due date less the difference between the fifteenth (15) calendar day and the day notification was made.

**Contracting officer to insert appropriate number of days.*

***Contracting officer to insert a number of calender days which constitutes the estimated number of days necessary for inspection, acceptance, and other necessary action.*

****Contracting officer to insert required number of copies.*

Alternate I: For solicitations and contracts containing the clause at FAR 52.232-3, Payments under Personal Sevices Contracts, or FAR 52.232-7, Payments under Time-and-Materials and Labor-Hours Contracts, as modified by 932.7107-2 respectively, insert the basic clause and add the following paragraph (k):

(k) In the event of an overdue payment, interest penalties shall not be applied to payment of cost-reimbursement amounts, if any, claimed pursuant to the reimbursable cost provisions of this contract.

Alternate II: For solicitations and contracts containing the clause at FAR 52.232-5, Payments under Fixed-Price Construction Contracts, or FAR 52.232-10, Payments under Fixed-Price Architect-Engineer Contracts, as modified by 932.7102-2, respectively, insert the basic clause revised as follows:

(1) Replace paragraph (b) with

(b) Payments for complete delivered property, services or work accepted under this contract shall be due on the —* calendar day after the later of the date the property, services or work were accepted by the Government; the date of actual receipt of a proper invoice by the Government office designated in this contract for invoice receipt; or where applicable, the date the contractor's release of claims is received by the contracting officer.

(2) For a construction contract, add the following to revised paragraph (b):

Payment for reimbursement of premiums paid by the contractor for performance and payment bonds shall be due —* calendar days after the date of initial receipt of a proper invoice in the Government designated office or the date satisfactory evidence of full payment to the surety is received by the contracting officer, whichever is later.

Alternate III: For solicitations and contracts containing the clause at FAR 52.232-6, Payment under Communication Service Contracts with Common Carriers, as modified by 932.7107-2, insert the basic clause revised essentially as follows:

(1) Replace paragraph (b) with:

(b) Payments under this contract shall be due on the —* calendar day after the date of actual receipt of a proper invoice by the Government office designated in this contract for invoice receipt.;

(2) Delete paragraphs (c) through (e) and (g) through (j);

(3) Redesignate paragraph (f) as paragraph (c); and

(4) Add the following as paragraph (d):

(d) Overdue payments, if any, are subject to late payment charges established by tariffs or the applicable State Regulatory Commission(s).

952.232-71 Payment due dates and invoice requirements.

As prescribed in 932.7107-1(b) insert the following clause in all cost-reimbursement contract solicitations and awards containing the clause at FAR 52.216-7, Allowable Cost and Payment, or FAR 52.216-13 Allowable Cost and Payment-Facilities:

Payment Due Dates and Invoice Requirements (Apr 1984)

(a) Payments pursuant to the provisions of the allowable cost and payment clause of this contract pursuant to the allowable cost and payment provision of this contract shall be due—* calendar days after the date of actual receipt of a proper invoice or public voucher by the Government office designated in this contract for invoice receipt, provided the amounts claimed are reimbursable in accordance with other terms and conditions of the contract.

(b) Final payment of any balance of allowable costs and that part of the fee, if any, not previously paid as included in the completion invoice or voucher submitted by the contractor shall be due —* calendar days after the later of the date that invoice or voucher is approved for payment by the contracting officer, or the date all the terms of this contract are complied with by the Contractor.

(c) When discounts for early payments are offered by the contractor, the discount period will be calculated from the date a proper invoice was actually received by the Government office designated for invoice receipt or the date the costs were incurred, whichever is the later.

(d) Payment will be considered to have been made on the date the Government check was dated or an electronic funds transfer payment was made.

(e) Notwithstanding any other directions pursuant to the allowable cost and payment clause of this contract, proper invoices or public vouchers shall be submitted in an original and —** copies to the Government office designated in this contract and shall include the Contractor's name and invoice date; contract number; cost amounts by elements of cost and fee amounts, if any, claimed currently; cumulative amounts of costs by element of cost and fee amounts claimed from inception of the contract through the current period; total estimated contract cost amount, fee amount, total contract amount and fee amount not subject to contract specified withholding, as appropriate; payment terms; other substantiating documentation or information required by the contract; and name (where practicable), title, phone number and complete mailing address of responsible official to whom payment may be made.

** Contracting officer to insert appropriate number of days.*

*** Contracting officer to insert the number of copies required.*

952.232-72 Fixed-price purchase order payment provisions.

As prescribed in 932.7107-1(c), incorporate the following payment provisions in fixed price purchase orders and, if more than one (1) calendar day is required, specify the appropriate number of calendar days established for Government inspection/acceptance of deliverables:

Payment due dates—Unless otherwise provided herein, payments for accepted supplies or services shall be due thirty (30) calendar days after the later of the date of actual receipt of a proper invoice by the Government official designated herein for the receipt of invoices or the date the delivered items are accepted by the Government. For purposes of determining payment due dates and for no other purpose, constructive acceptance shall be deemed to occur on the date of receipt at the specified delivery point. If upon inspection a delivered item is found defective, the provisions of this paragraph will apply to the replacement item(s) or will be reapplied upon correction of the defect.

Discounts—In connection with any discount offered for early payment, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date a proper invoice is received in the office specified by the Government if the latter date is later than the date of delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the Government check was dated.

Vendor's billing instructions—Proper invoices shall include the vendor's name and invoice date; order number; description, price and quantity of item(s) actually delivered or services rendered; shipping and payment terms; and name (where practicable), title, phone number, office name and complete mailing address of responsible official to whom payment is to be made.

Bill of lading number and weight of shipping will be shown for shipments made on Government bills of lading. Prepaid shipping costs will be indicated as a separate item on the invoice. Where shipping costs exceed $10.00 (except for parcel post) the billing must be supported by a bill of lading or receipt.

Interest on overdue payments—Interest penalties determined in accordance with provisions of the Prompt Payment Act (31 U.S.C. 3901 et seq.) and Office of Management and Budget Circular A-125 shall be paid by the Government when the payment check is dated more than fifteen (15) calendar days after the payment due date as established by the provisions herein, or a discount is taken after the expiration of a discount period and the underpayment is not corrected within fifteen (15) calendar days of the expired discount period.

952.232-73 Payment methods.

As prescribed in 932.7107-1(d), insert the following clauses in all solicitations and contracts:

Payment Methods (Apr 1984)

(a) Payments due for amounts properly invoiced in accordance with the terms and conditions specified elsewhere in the contract shall be made either by Treasury check(s) payable to the contractor or designee or by electronic funds transfer(s) to a financial institution designated by the contractor for that purpose. The method of payment shall be determined by the Government at the time of payment in accordance with applicable Treasury Department requirements.

(b) After award but no later than fourteen (14) days before an invoice or bill is submitted for payment, the contractor shall designate a financial institution for the receipt of electronic funds transfer payments hereunder; and provide the appropriate Government representative (contracting officer or finance official as determined by the Government) with the name of the designated financial institution, financial institution's or correspondent financial institution's 9-digit American Bankers Association identifying number, telegraphic abbreviation of such financial institution, and account number at the designated financial institution to be credit with funds.

(c) In the event the contractor during the performance of this contract elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the information as specified in paragraph (b) above must be received by the appropriate Government representative thirty (30) days prior to the date such change is to become effective.

(d) The document furnishing the information required in paragraphs (b) and (c) above must be dated and contain the signature, title, and telephone number of the contractor official authorized to provide it, as well as the contractor's name and contract number.

(e) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

952.235-70 Key personnel.

In accordance with 935.070, insert this clause.

Key Personnel (Apr 1984)

The personnel specified in an attachment to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be

made by the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The attachment to this contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

952.236 Construction and architect-engineer contracts.

952.236-70 Administrative terms for architect-engineer contracts.

As prescribed at 936.702(a) the following additional terms shall be included in Standard Form 252, Item 6:

(a) *Description of project.* The contracting officer shall include. (As full a description as is feasible should be inserted. If the architect-engineer services are to be furnished for a construction project, describe the facilities involved, including any auxiliary facilities that may be required.)

(b) *Statement of architect-engineer services.* The contractor shall, within the time specified in the contract, or if not specified therein, in the shortest reasonable time, furnish for the construction project the architect-engineer services described below, subject to such further detailed requirements as may be appended to this contract by agreement of the parties.

Note A.—This form of contract provides for completion of the architect-engineer services "within the shortest reasonable time." The form may be modified to provide for completion of separable parts of the work at different times.

Note B.—When title I, II, or III services are to be furnished, the following language may be used to describe such services. Modifications in the text of the language may be made to omit inappropriate items or, where necessary, to meet particular circumstances.

Title I—Preliminary Services

(1) Conduct or arrange for, by subcontract or otherwise as approved by the Contracting Officer, and supervise all necessary topographical and other field surveys, the preparation of maps, and necessary test boring and other surface investigations.

(2) Consult and collaborate with DOE to determine the requirements which will govern the design of the project and to establish architectural and engineering criteria for such design.

(3) Conduct preliminary studies, and prepare preliminary sketches, drawings, layout plans, outline specifications, and reports showing features and characteristics of the design proposed to meet DOE's requirements. If more than three studies, including sketches, drawings, plans, outline specifications, or documents are required because of changes initiated by DOE, an equitable adjustment in the lump-sum compensation will be made in accordance with provisions of the Changes clause.

(4) The drawings, plans, and outline specifications and documents shall be prepared in such form and furnished in such quantity as directed by DOE.

Note.—Specific quantities of the drawings, plans, outline specifications, and documents should be indicated here or elsewhere in the contract.

(5) Prepare preliminary estimates of cost and time schedule for (i) completion of the design, working drawings, and specifications, and (ii) construction.

(6) Prepare preliminary estimates of material quantities required for construction.

Title II—Design Services

(1) Upon approval by DOE of preliminary plans and estimates, undertake the design of the construction project.

(2) Undertake restudy and redesign work due to minor deviations from the approved preliminary work as may be required by DOE.

(3) Prepare and revise, for the approval of DOE, and furnish complete sets of contract bidding documents, including working drawings, details, and specifications for construction, in such form and quantity and including such provisions as may be required by law or the directions of DOE.

Note.—Specific quantities of drawings and specifications should be indicated here or elsewhere in the contract.

(4) Prepare, or when directed by DOE, participate with others in the preparation of a detailed estimate of the cost of construction based on the approved design and working drawings and specifications.

(5) Assist DOE in securing, analyzing, and evaluating construction bids or proposals.

(6) When requested, consult with and advise DOE on any questions which may arise in connection with the architect-engineer services described in this contract.

Title III—Supervision of Construction

(1) Furnish and maintain governing lines and benchmarks to provide horizontal and vertical controls to which construction progress may be referred.

(2) Check approved or require revision of, all vendors' shop drawings to assure conformity with the approve design and working drawings and specifications.

(3) Inspect the execution of construction so as to assure adherence to approved working drawings and specifications.

(4) Inspect construction workmanship and materials, and equipment, and report to DOE as to their conformity or nonconformity to the approved working drawings and specifications.

(5) Make or acquire such field or laboratory tests of construction workmanship, materials, and equipment, as DOE may require or approve.

(6) Prepare estimates of reasonable amounts of increase or decrease in contract price and/or contract completion time for contract modification, evaluate proposal submitted by the constructor for such contract adjustment and make recommendations to the Contracting Officer for use in negotiating.

(7) Prepare reports and make recommendations on status of deliveries or materials and equipment as DOE may require or approve.

(8) Prepare monthly and other reports of the progress of construction, as may be required, and partial, interim, and final estimates and reports of quantities and values of construction work performed, for payment or other purposes.

(9) Furnish ——— set(s) of reproducible "as-built" records drawings of the type specified by DOE ——— set(s) of marked-up specifications, showing construction as actually accomplished.

952.236-71 Inspection in Architect-Engineer contracts.

As prescribed at 936.609-3 insert the following clause.

Inspection (Apr 1984)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work peformed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

952.236-72 Nonrefundable fee for plans and specifications.

In accordance with the requirement at 936-202 include the following in solicitations for construction.

Nonrefundable Fee for Plans and Specifications (Apr 1984)

A fee of $——— is required for the plans and specifications referenced in this solicitation. Send check or money order to ———. The fee is not refundable. Plans and specifications need not be returned.

952.245 Clauses related to government property.

952.245-2 Government property (fixed-price contracts).

Modify FAR 52.245-2 by adding "and the DOE Acquisition Regulation Subpart 945.5," after the reference to FAR Subpart 45.5 in the first sentence of paragraph (e)(1) and (e)(2) of the clause.

952.245-5 Government property (cost reimbursement, time-and-materials, or labor-hour contracts.)

Modify FAR 52.245-5 by adding "and DOE Acquisition Regulation Subpart 945.5" after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.

952.247-70 Foreign travel.

When foreign travel may be required under the contract insert the following clause.

Foreign Travel (Apr 1984)

(a) Foreign travel, when charged directly, shall be subject to the prior approval of the contracting officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

(b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

952.249 Clauses related to termination.

952.249–70 Termination clause for cost-reimbursement architect-engineer contracts.

In accordance with the provisions prescribed at 949.505 include the following clause in a cost-reimbursement architect-engineer contract.

Termination (Apr 1984)

(a) Notice of termination for default or convenience. The Contracting Officer may at any time terminate performance of the work under this contract in whole or from time to time in part for the default of the architect-engineer or for the convenience of the Government by written notice to the architect-engineer stating the ground for termination. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the architect-engineer. Upon receipt of such notice and except as otherwise directed by the contracting officer, the architect-engineer shall:

(1) Stop work under the contract on the date and to the extent specified in the notice of termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated; and

(3) Terminate all orders and subcontracts to the extent they relate to the performance of work terminated by the notice of termination.

(b) Termination for default.

(1) If the architect-engineer refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof; or fails to complete said work within such time; or if the architect-engineer fails to perform any of the other requirements of this contract, and does not cure such failure within a period of 10 days (or such longer period as the contracting officer may authorize in writing) after receipt of notice from the contracting officer specifying such failure, the contracting officer may terminate for default the architect-engineer's right to proceed with the work as to which there has been delay, provided that the performance of the work shall not be terminated for default because of any delays in the completion of work due to unforeseeable causes beyond the control and without the fault or negligence of the architect-engineer, including, but not restricted to, acts of God, or the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another architect-engineer in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delay of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the architect-engineer and subarchitect-engineers or suppliers; and if the architect-engineerwithin ten (10) days from the beginning of any such delay (unless the contracting officer grants a further period of time prior to the date of final settlement of the contract) notifies the contracting officer in writing of the causes of delay. The contracting officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal by the architect-engineer to the head of the agency or his designee in accordance with "Disputes" clause of this contract.

(2) If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the architect-engineer was not in default pursuant to (1), or that the architect-engineer failure to perform or to make progress in performance is due to causes beyond the control and without the fault to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the architect-engineer pursuant to the provisions of this clause relating to excusable delays, the notice of termination shall be deemed to have been issued for the convenience of the Government under this clause, and the rights and obligations to the parties hereto shall in such event be governed accordingly.

(c) *Liability for costs on default.* If performance of the work under this contract is terminated for the default of the architect-engineer, the Government may complete or employ any other person or persons to complete the work, and the architect-engineer shall be liable to the Government for increased costs occasioned the Government by the default.

(d) *Terms of settlement.* Upon the termination of performance of work under this contract, full and complete settlement of all claims of the architect-engineer with respect to the terminated work shall be made as follows:

(1) *Assumption of contractor's obligations.* The Government shall have the right in its decision to assume all obligations, commitments, and claims that the architect-engineer may have theretofore in good faith undertaken or incurred in connection with the terminated work, the cost of which would be allowable in accordance with the provisions of this contract; and the architect-engineer shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as the contracting officer may require for the purpose of fully vesting in the Government all the rights and benefits of the architect-engineer, related to such obligations, commitments, and claims.

(2) *Payments for allowable costs.* The Government shall treat as allowable costs all expenditures made in accordance with the clause herein entitled "Allowable cost and Payment," not previously so allowed or otherwise credited.

(3) *Payment for termination expense.* If performance of work under the contract is terminated for the convenience of the Government, the Government shall reimburse the architect-engineer for such further expenditures made after the date of termination for the protection of Government property and for such legal and accounting services in connection with settlement as are required or approved by the contracting officer.

(4) *Payments on account of fixed fee.* If performance work under the contract is terminated for the convenience of the Government, the architect-engineer shall be paid that portion of the fixed fee which the work actually completed, as determined by the contracting officer, bears to the entire work under this contract less payments previously made on account of the fee. If performance of the work under the contract is terminated for the default of the architect-engineer, no further payment beyond that amount due on completed work with appropriate fee payment, shall accrue on account of the fixed price.

(5) *Computation of amount due.* In arriving at the amount, if any, due the architect-engineer under this article, there shall be deducted from what would otherwise be due (i) all unliquidated advances and all other unliquidated payments on account theretofore made to the contractor, (ii) any claims of the Government against the contractor in connection with this contract, and (iii) all deductions due under the terms of this contract and not otherwise recovered by or credited to the Government.

(6) *Property accounting and release.* The architect-engineer shall furnish the accounting for Government-owned property required by the clause entitled "Property" and the assignment, closing financial statement, and release required by the clause entitled "Allowable Cost and Payments."

(e) *Rights and remedies of the Government.* The rights and remedies of the Government provided in this article are in addition to any other rights and remedies provided by law or under this contract.

952.250 Clauses related to indemnification of contractors.

952.250–70 Nuclear hazards indemnity.

In accordance with the provisions prescribed in Subpart 950.7 include the following clause in applicable contracts.

Nuclear Hazards Indemnity (Apr 1984)

(a) This clause is incorporated into this contract pursuant to the authority contained in subsection 170(d) of the Atomic Energy Act

of 1954, as amended (hereinafter called the Act.)

(1) The definitions set out in the Act shall apply to this article.

(2) The term "contract location" means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractural activity under this contract.

(3) The term "extraordinary nuclear occurrence" means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in Subpart E of 10 CFR 140.

(b) Except as hereafter permitted or required in writing by DOE, the contractor will not be required or provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. DOE may at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability, arising out of or in connection with the contractual activity, provided that the costs of such financial protection will be reimbursed to the contractor by DOE.

(c)(1) To the extent that the contractor and other persons indemnified are not compensated by any financial protection, permitted or required by DOE or the Nuclear Regulatory Commission (NRC), DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable cost of investigating and settling claims and defending suits for damage for such public liability, provided that DOE's liability, excluding such reasonable costs, under all indemnity agreements entered into by DOE under section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in paragraph (c)(1) of this section is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of results from:

(A) A nuclear incident which takes place at a contract location; or

(B) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the contractor's employees, individual consultants, borrowed personnel or other persons for the consequence of whose acts or omissions the contractor is liable, provided that such incident is not covered by any other indemnity agreement entered into by DOE or the NRC pursuant to section 170 of the Act: or

(C) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or by-product materials to or from a contract location, provided such incident is not covered by any indemnity agreement entered into by DOE with the transporting carrier, or with a carrier's organization acting for the benefit of the transporting carrier, or with a licensee of NRC, pursuant to section 170 of the Act; or

(D) A nuclear incident which involves items (such as equipment, material, facilities, or design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by DOE or NRC pursuant to section 170 of the Act.

(d) In the event of an extraordinary nuclear occurrence which:

(1) Arises out of or results from or occurs in the course of the construction, possesson, or operation of a production or utilization facility, or

(2) Arises out of or results from or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility, or

(3) During the course of the contract activity, arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material. DOE and the contractor on behalf of itself and other persons indemnified, insofar as their interests appear, each agrees to waive:

(i) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

(A) Negligence;

(B) Contributory negligence;

(C) Assumption of risk; or

(D) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, "conduct of the claimant" includes conduct of persons through whom the claimant derives its cause of action;

(ii) Any issue or defense as to charitable or governmental immunity;

(iii) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have know, of his injury or change and the cause thereof, but in no event more than 20 years after the date of the nuclear incident. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(e) The waivers set forth in paragraph (d) of this clause:

(1) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(2) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(3) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;

(4) Shall not apply to any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law;

(5) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(6) Shall be effective only with respect to those obligations set forth in this agreement and in insurance policies, contracts or other proof of financial protection; and

(7) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e of the Atomic Energy Act of 1954, as amended, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (c)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. When DOE shall determine that the Government will probably be required to make indemnity payments under the provisions of (c) above, DOE shall have the right to, and shall collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right (1) to require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) The indemnity provided by this clause shall not apply to public liability arising out of, or in connection with, any activity that is performed at a licensed facility, and that is covered by a Nuclear Regulatory Commission indemnity agreement authorized by section 170 of the Act.

(h) The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or

by the completion, termination or expiration of this contract.

(i) The parties to this contract enter into this clause upon the condition that this clause may be amended at any time by the mutual written agreement of DOE and the contractor, and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(j) The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause provided, however, that the following provisions of the contract: Clause entitled, Covenant Against Contingent Fees; the clause entitled, Officials Not to Benefit; and the clause entitled, Examination of Records by Comptroller General; and any provisions later added to this contract which under applicable Federal law, including statutes, executive orders and regulations, are required to be included in agreements of the type contained in this article, shall apply to this clause.

Alternate I: The following paragraph will be included in for those contracts containing the indemnity clause executed under the general contract authority of DOE.

(k) To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause or is effectively relieved of public liability by an order or orders limiting same, pursuant to section 170e of the Atomic Energy of 1954, as amended, the provisions of clause providing General Authority Indemnity, shall not apply.

952.250-71 Nuclear hazards indemnity—product liability.

Include the following clause as prescribed by the provisions of Subpart 950.70.

Nuclear Hazards Indemnity—Product Liability (Apr. 1984)

(a) This clause is incorporated into this contract pursuant to the authority contained in section 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).

(1) The definitions set out in the Act shall apply to this article.

(2) The term "product delivered under the contract" means any material, equipment, device, drawing, specification, or technical data made, prepared, or acquired by the contractor in the course of performance of the contract and delivered to DOE or to any other persons as directed or approved by DOE.

(b) Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. DOE may at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability against which the contractor is indemnified hereunder, provided that the costs of such financial protection will be reimbursed to the contractor by DOE.

(c)(1) To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE or the Nuclear Regulatory Commission, (NRC), DOE will indemnify the contractor, and other persons indemnified, against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable costs of investigating and settling claims, and defending suits for damages for such public liability, provided that DOE's liability, excluding such reasonable costs, under all indemnity agreements entered into by DOE under section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (1) of this section is public liability which (i) arises out of, or in connection with, the contractual activity; and (ii) arises out of, or results from, a product delivered under the contract, but does not include liability for a nuclear incident which is covered by any other indemnity agreement entered into by DOE or NRC pursuant to section 170 of the Act.

(d) The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (c)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE copies of all pertinent papers received by the contractor or filed with respect to such actions of claims. When DOE shall determine that the Government will probably be required to make indemnity payments under the provisions or (c) above; DOE shall have the right to, and shall collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right, (1) to require the prior approval of DOE for payment of any claim that DOE may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(e) The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligations under this contract, and shall be unaffected by the death, disability, or termination of existence of the contractor or by the completion, termination, or expiration of this contract.

(f) The parties to this contract enter into this article upon the condition that this clause may be amended at any time by the mutual written agreement of DOE and the contractor and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(g) The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause, provided, however, that the following provisions of the contract: Clause entitled, Convenant Against Contingent Fees; Clause entitled, Officials Not to Benefit; Clause entitled, Assignment of Claims; and Clause entitled, Examination of Records by Comptroller General; and any provisions later added to this contract which, under applicable Federal law, inlcuding statutes, executive orders, and regulations, are required to be included in agreements of this type contained in this clause, shall apply to this clause.

Alternate I: The following section will be added for in those contracts containing indemnity agreements executed under the general contract authority of DOE:

(h) To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same pursuant to section 170e of the Atomic Energy Act of 1954, as amended, the provisions of clause providing General Authority Indemnity, shall not apply.

952.250-72 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.

Include the following clause in accordance with the provisions of Subpart 950.70.

Indemnity Assurance to Architect-Engineer or Supplier Prior to Operation of a Production or Utilization Facility (Apr 1984)

(a)(1) The definitions set out in the Atomic Energy Act of 1954, as amended (hereinafter called the Act), shall apply to this clause.

(2) The services or supplies furnished under this agreement are intended to be used in connection with the construction and/or operation of a production or utilization facility.

(3) DOE will use its best efforts to include in any contract for the operation of such facility, an agreement based on the then current approved form of indemnity agreement under section 170d of the Atomic Energy Act of 1954, as amended, whereby DOE will indemnify all persons indemnified, including the contractor, against public liability for nuclear incidents arising out of or in connection with contractual activities under the contract for the operation of said facility in accordance with the authority provided in subsection 170d of the Act.

(4)(i) DOE will enter into an indemnity agreement in accordance with the authority provided in subsection 170d of the Act with the contractor, without further consideration from the contractor, at any time all of the following circumstances are present:

(A) The services or supplies furnished under this contract are being used in connection with any activity or situation

which involves a risk of substantial nuclear incident; and

(B) there is not in effect an indemnity agreement as described in subparagraph (3) of this clause; and

(C) DOE's authority to enter into agreements of indemnification under section 170(d) of the Act has not expired or been so amended as to deprive DOE of authority to enter into such an agreement.

(b) In that agreement, DOE will indemnify the contractor and other persons indemnified against public liability arising out of, or in connection with, the contractual activity of this contract.

(c) Such agreement will be based on the then current approved form of section 170d indemnity agreement used in contracts between DOE and its contractors, and shall further include an obligation to indemnify the contractor, and persons indemnified for such public liability arising out of, or resulting from, nuclear incidents occurring between the time when the services or supplies furnished under this contract are used in connection with any activity or situation which involves risk of a substantial nuclear incident and the time when such agreement is executed.

(d) The indemnity provided by DOE under all indemnity agreements entered into by DOE under section 170 of the Act, including this agreement, shall not exceed $500 million in the aggregate for each nuclear incident, without regard to the number of persons indemnified, excluding the reasonable costs of investigating and settling claims and defending suits for damages, provided, however, that with respect to incidents occurring outside the United States, such aggregate indemnity shall not exceed $100 million, including such reasonable costs.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

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Subpart 970.70—Use of DOE Facilities for Work for Others

970.7000 Mission-oriented solicitation.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

970.0000 Scope of part.

This part provides Departmental requirements and provisions regarding award and administration of management and operating contracts as defined at FAR Subpart 17.6 and Subpart 917.6 of this chapter. Use of a management and operating contract must be authorized by the Secretary, Deputy or Undersecretary. For administrative convenience, the subparts of this part are arranged in the same numeric sequence as the parts of the FAR. Thus, for example, requirements regarding Small Business are found at 970.19 and guidance regarding Contract Clauses is found at 970.52. To the extent possible the same subpart section and subsection Titles of the FAR are applied in this part 970. There are some difference for convenience. When there is no specific guidance of a FAR part/ section or applicability of a FAR part/section to DOE management and operating contracts a subpart or section will not be included.

970.0001 Renewal of management and operating contracts.

(a) In accordance with applicable law, rules, or regulations and FAR 17.605, competition of existing management and operating contracts will be sought whenever it appears likely that the Government's position may be meaningfully improved in terms of cost or performance, unless it is determined that to change a contractor would be contrary to the best interest of the Government. Except in those cases where the contract specifically permits the Government to bring in a replacement contractor, it is not practical in most instances to compete a management and operating contract which includes major Government-owned facilities on contractor-owned or leased sites. In such cases, the alternatives would be to extend the contract or to allow the contract to expire and, if the work is to be continued, place all or some part of the work with another contractor at a different site.

(b) The following factors, as a minimum, shall effect whether an existing management and operating contract should be completed.

(1) Overall performance of an incumbent contractor including specific consideration of the contractor's administrative, environmental, safeguards and security, safety, health, site planning, maintenance and construction, facility management, energy conservation program considerations, cost, schedule and technical performance.

(2) Potential impact of change in contractors on programmatic activities.

(3) The likelihood that qualified industrial firms or other organizations will compete for the contract.

Subpart 970.03—Ethics

970.0304 Contingent fees.

The policies and requirements of FAR Subpart 3.4 shall be applied to all procurement actfvities of management and operating contractors.

Subpart 970.04—Administrative Matters

970.0404 Safeguarding classified information.

970.0404–1 Definitions.

"Classified Information" means any information or material that is owned by or produced for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12356, April 2, 1982 (47 FR 14874, April 6, 1982), or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

"Restricted Data" means data which is defined in section II, of the Atomic Energy Act of 1954, as amended, as "all data concerning: (1) Design, manufacture, or utilization of atomic weapons; (2) the production of specifical nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142."

970.0404–2 General.

(a) The basis of DOE's security requirements is the Atomic Energy Act of 1954, as amended.

(b) DOE regulations concerning national security information are codified at 10 CFR Part 1045 and Part 710. Supplemental security material is found in the DOE Directives and Orders system. Foreign ownership, control, or influence over contractors as it relates to security and discussed at 904.70 also applies to management and operating contracts Regulations pertaining to the protection of restricted data is found under 10 CFR Part 1016.

(c) Statutory requirements to be observed in connection with the release of Restricted Data to foreign governments are contained in the Atomic Energy Act of 1954, Sections 141 and 144.

(d) Section 148 of the Atomic Energy Act (42 U.S.C. 2168) prohibits the unauthorized dissemination of unclassified nuclear information with respect to the atomic energy defense programs pertaining to:

(1) The design of production facilities or utilization facilities;

(2) Security measures (including security plans, procedures, and equipment) for the physical protection of: (i) Production or utilization facilities, (ii) nuclear material contained in such facilites, or (iii) nuclear materials in transit; or

(3) The design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act.

970.0404–3 Responsibilities of contracting officers.

(a) If access to Restricted Data may be required, during the solicitation process for a management and operating contract security clearances shall be obtained as noted in DOE Order 5631.2

(b) Management and operating contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the provisions of DOE Orders 5634.1; 5635.1; and 5632.2.

970.0404–4 Contract clauses.

(a) The security clauses to be used in DOE management and operating contracts are found at 970.5204. They are:

(1) *Security, 970.5204–1.* This clause is required in contracts under section 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended.

(2) *Classification, 970.5204–53.* This clause is to be used in all management and operating contracts which involve classified information.

(3) *Sensitive foreign nation controls, 970.5204–34.* This clause is required in all management and operating contracts.

(4) *Foreign ownership, control, or influence, 970.5204–10.* The clause is required in all management and operating contracts.

(b) The clause at 970.5204–4, Disclosure of Information may be used in place of the clauses entitled "Security" and "Classification" in contracts for work that are not likely to produce classified information or restricted data.

(c) Include the clause at 952.204–73 in a solicitation for a management and operating contract.

970.0407 Record retention requirements.

The requirements of FAR Subpart 4.7 do not apply to management and operating contractors and cost-reimbursement type subcontracts thereunder. The contract shall include clause at 970.5204–9.

Subpart 970.08—Required Sources of Supplies and Services

970.0801 Excess personal property.

The provisions of FAR Subpart 8.1, FPMR 41 CFR 101–43, and DOE–PMR 41 CFR 109–43 apply.

970.0803 Acquisition of utility services.

The requirements of FAR Subpart 8.3 shall be applied to management and operating contractors who are authorized to procure utility services.

(a) All utility services (except telecommunications) that are required for Government-owned and contractor-operated facilities shall generally be procured directly by DOE and not by the contractors that manage and operate these facilities for DOE.

(b) However, when it is economically advantageous or otherwise in the best interest of the Government, and subject to the provisions of 970.803–7(b), Heads of Contracting Activities may authorize a contractor that manages or operates a DOE facility to procure utility services on a subcontract basis. When a contractor is authorized to subcontract for utility services under the authority of this paragraph (b), a copy of the authorization, together with a statement of justification, shall be sent to the Project and Facilities Management Office, Headquarters. Heads of Contracting Activities shall require contractors which they authorize to subcontract for utility services to comply with the requirements of 970.803–7, dealing with the prior review of certain proposed acquisitions.

(c) Heads of Contracting Activities shall submit, to the utility element in the Office of Project and Facilities Management for Headquarters' review and approval, proposed contracts for utility services (except telecommunications), including proposed authorizations under applicable GSA area-wide contracts, and proposed memoranda of understanding for consolidated purchase, joint use, or cross-service by DOE with other Government agencies, when one of the circumstances described at FAR 8.307 applies or if the contract term is to exceed one year.

(d) Section 164 of the Atomic Energy Act of 1954 establishes special authorities relative to the acquisition of electric utility services for the Oak Ridge, Paducah, and Portsmouth installations.

970.0811 Leasing of motor vehicles.

The provisions of FAR 8.11 and 908.11 apply.

970.0870 Strategic and critical materials.

Management and operating contractors who use strategic and critical materials shall fulfill their requirements in accordance with 908.70.

970.0871 Procurement of special items.

The following items are to be procured by management and operating contractors in accordance with the provisions of the DEAR as shown.

Item	DEAR
(a) Motor vehicles	908.7101.
(b) Aircraft	908.7102.
(c) Office machines	908.7103.
(d) Office furniture and furnishings	908.7104.
(e) Filing cabinets	908.7105.
(f) Security cabinets	908.7106.
(g) Alcohol	908.7107.
(h) Helium	908.7108.
(i) Fuels and packaged petroleum products	908.7109.
(j) Coal	908.7110.
(k) Arms and ammunition	908.7111.
(l) Materials handling equipment replacement standards.	908.7112.
(m) Calibration services	908.7113.
(n) Wiretapping and eavesdropping equipment.	908.7114.
(o) Government forms	908.7115.
(p) Electronic data processing tapes	908.7116.
(q) Rental of post office boxes	908.7118.
(r) Precious metals	908.7121(b).
(s) Heavy water	908.7121(a).
(t) Lithium	908.7121(c).
(u) Products made in Federal penal and correctional institutions.	FPMR 41 CFR 101-26.702.
(v) Products and services of the blind and other severely handicapped.	FPMR 41 CFR 101-26.701.

970.0872 Purchase or lease determinations.

The guidelines in FPMR 41 CFR 101–25.5 for making purchase or lease determinations shall be applied to management and operating contractor acquisitions of all types of equipment. These guidelines shall be used in making lease-versus-purchase determinations at time of original acquisition, when lease renewals are being considered, or at other times as circumstances warrant.

Subpart 970.09—Contractor Qualifications

970.0902 Qualified products.

(a) Heads of Contracting Activities may authorize use of procedures in FAR Subpart 9.2 by contractors.

(b) Qualified products lists (QPL) shall be distributed to all management and operating contractors.

970.0905 Organizational conflicts of interest.

(a) All management and operating contracts shall contain an appropriate organizational conflict of interest clause. The disclosure or representation requirement of 909.5706 and an appropriate clause such as those found at 952.209–71 and 952.209–72 shall be included in solicitations and resulting contracts. The contracting officer shall consider provisions which assure appropriate restraints on intercorporate relations between the contractor's organization and personnel operating the Department's facility and its parent corporate body and affiliates, including personnel access to the facility, technical transfer of information from the facility, and the availability from the facility of other advantages flowing from performance of the contract. The subcontractors and consultants of management and operating contractors should be, to the extent feasible, made subject to the requirements of this subpart as if they were performing the work as prime contractors to the Department.

(b) FAR Subpart 9.5 and 909.570 of this chapter shall apply to procurements by management and operating contractors.

Subpart 970.10—Specifications, Standards and Other Statement of Work Descriptions

970.1001 General.

Department of Energy management and operation contracts provide for the operation, maintenance, or support, on behalf of the Department, Government-owned or controlled research, development, special production or testing facilities established wholly for or principally devoted to one or more major programs of the Department.

970.1002 Statement of work.

(a) While it is not feasible to set forth standard language which would apply to every contract situation, language must be designed for inclusion in a management and operating contract to describe clearly the work being undertaken; the controls, as appropriate, to be exercised by DOE over the performance of that work; and the relationship contemplated between the parties.

(b) The language shall also include the following with respect to subcontracting performance of the work described pursuant to (a) above: "The contractor shall, when directed by DOE and may; but only when authorized by DOE, enter into subcontracts for the performance of any part of the work under this clause".

(c) In management and operating contracts when the contractor is expected to perform no Davis-Bacon work with his own forces, the special clause in 970.5204–38 shall be included in the language.

(d) The provisions required above shall be set forth in a Statement of work clause to be included in the contract.

Subpart 970.15—Contracting by Negotiation

970.1506 Price negotiation.

(a) Management and operating contract prices (fee) and DOE obligations to support contract performance shall be governed by:

(1) The level of activity authorized and the amount of funds appropriated for DOE approved programs by specific program legislation;

(2) Congressional budget and reporting limitations;

(3) The amount of funds apportioned to DOE;

(4) The amount of obligational authority allotted to program officials and Approved Funding Program limitations; and

(5) The amount of funds actually available to the DOE operating activity as determined in accordance with applicable financial regulations and directives.

(b) Funds shall be obligated and made available by contract provision or modification after the funds become available for obligation for payment to support performance of DOE approved projects, tasks, work authorizations, or services.

(c) Management and operating contracts shall contain appropriate provisions to limit contractor expenditures to the overall amount of funds available and obligated. The clause at 970.5204–15 shall be used for this purpose.

970.1508–1 Cost or pricing data.

(a) The certification requirements of FAR 15.804–2, are not applied to DOE cost-reimbursement management and operating contracts.

(b) Management and operating contractors and their subcontractors shall be required to:

(1) Obtain certified cost or pricing data prior to the:

(i) Award of a negotiated subcontract at any tier when the subcontract price is expected to exceed $500,000; or

(ii) Modification of any subcontract when the modification is expected to exceed $500,000, unless unrelated and separately priced changes, for which certified cost of pricing data would not otherwise be required, are included.

(2) Incorporate appropriate contract provisions that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of submission of subcontractor defective cost or pricing data, at any tier.

(3) The exemptions to certified cost or pricing data identified by FAR 15.804–3

shall also apply in implementing the above cost/pricing data requirements.

(c) the clause at 970.5204–24 shall be included in subcontracts under management and operating contracts as described therein.

970.1509 Fees for management and operating contracts.

970.1509–1 Fee policy.

(a) DOE mangement and operating contractors, except educational institutions, may be paid a fee. The fee for a management and operating contract shall be an amount commensurate with the difficulty of the work and the level of required skills, demonstrated excellence in performance, and where applicable, an amount which recognizes contractor contributions or utilizations of their own facilities or other investment capital.

(b) Fee objectives and amounts are to be determined for each contract. Standard fees or across the board agreements will not be used or made. Due to the nature of funding management and operating contracts, it is anticipated that fees shall be established in accordance with the funding cycle; however, a longer period may be used, particulary for production efforts.

(c) Fee amounts payable on contracts for administration, management, operation, and on-site support of Government-owned facilities shall be established in accordance with this part. Amounts payable shall not exceed maximum amounts derived from the appropriate fee schedule established for this purpose. Request to pay fees in excess of the maximum will be sent to the Procurement Executive, for review and approval.

(d) Maximum fees for those management and operating contracts that provide support services shall be determined using the schedule(s) most closely related to the service(s) to be performed. This may be either the production and/or R&D schedules (in some cases this could be both schedules) or the maximum fee schedules for construction or construction management cited in 915.971. If architect-engineer services are involved, the weighted guidelines, profit-fee technique cited in 915.970 shall be applied.

(e) When a contract subject to this part requires a contractor to use its own facilities or equipment, or other resources to make its own cost investment for contract performance; e.g., when there is no letter-of-credit financing, consideration will be given to approval of fee amounts based on assigning weights to appropriate fee factors. The weighted guidelines factors developed in 915.970 may be applied for this purpose. However maximum fees as are discussed in 970.1509–1(c) and (d) shall not be exceeded without the Procurement Executives approval.

970.1509–2 Specal considerations—eductional institutions.

(a) DOE policy is generally not to pay fees for management and operating contracts with educational institutions.

(b) Notwithstanding paragraph (a) of this section it may be, under special circumstances, permissible to reimburse or pay a management allowance to any educational institution provided such allowance can be justified and has the approval of the Head of the Contracting Activity.

970.1509–3 Special consideration—nonprofit organizations (other than educational institutions).

(a) Unless there is reason to do otherwise, it is the general policy of DOE to pay fees for a mangement and operating contract with a nonprofit organization; however, it is a matter of negotiation whether a fee will be paid in a given case.

(b) In computing the amounts to be paid, the tax status of the nonprofit organization should be considered. It is difficult to establish the degree to which the fee contributes to an organization's overall net profit since the fee compensates for certain unallowable costs and certain general and administrative expenses. It should be assumed, however, there is an element of profit in the fees paid under management and operating contracts.

(c) In order to assure consideration of the tax benefits of nonprofit organizations the maximum payable fixed fee cited in the fee schedules of this subpart should be reduced by at least 25%. However, depending upon the circumstances and with appropriate justification, fees may be paid between this reduced amount and the fee amount established by the fee schedule.

970.1509–4 Considerations and techniques for determining fees.

(a) The intent of the fee policy stated in 970.1509–1 reflects recognition that a fee is remuneration to contractors for the entrepreneurial function of organizing and managing resources, the use of contractor resources (including capital resources), and the assumption of risk that all incurred costs (operating and capital) may not be reimbursable.

(b) Use of a purely cost-based structured approach for determining fee objectives and amounts for typical DOE management and operating contracts is inappropriate considering the limited level of contractor cost, capital goods, and operating capital outlays for performance of such contracts. Instead of being solely cost-based, the desirable approach calls for a structure that allows judgmental evaluation and consideration of such significant factors, as outlined below, and the selection of and assignment of appropriate fee values therefor:

(1) Management risk relating to performance, including: (i) The quality and diversity of principal work tasks required to do the job, (ii) the labor intensity of the job, (iii) the special control problems, and (iv) the advance planning, forecasting and other such requirements;

(2) The presence or absence of financial risk, including the type and terms of the contract;

(3) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(5) Duration of project;

(6) Size and operation (number of locations, plants, differing operation, etc.);

(7) Influence of alternative investment opportunities available to the contractor (i.e., the extent to which undertaking a task for the Government displaces a contractor's opportunity to make a profit with the same staff and equipment in some other field of activity).

(8) The relationship of a proposed fee to fees being paid for similar work;

(9) The extent to which the activity contemplated is fundamentally a service being furnished to the Government or is an activity in which the contractor has substantial independent interest, a factor especially pertinent to research work which is closely allied to a contractor's own program and to operations which involve furnishing research facilities which would otherwise not be available because of their large cost;

(10) Benefits which may accrue to the contractor from gaining experience and knowledge of how to do something, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(11) Other special considerations, including support of Government

programs such as those relating to small and minority business in subcontracting, energy conservation, etc.

(c) The fee objective and amount for a particular negotiation is established by judgmental considerations of the above factors, assigning fee values as deemed appropriate for each factor, and totaling the resulting amounts.

(d) In recognition of the complexities of this fee determination process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, the fee schedules in 970.1509–5 set forth the maximum amounts of fee that contracting activities are allowed to award for a particular transaction without obtaining prior approval of the Procurement Executive. In addition the fee amount established in accordance with 970.1509–4 (a), (b) and (c) shall not be exceeded without prior approval of the Procurement Executive. To facilitate application of the schedules to a contract, the payable fee amounts thereunder are related to the total expected level of cost expenditures under the contract which is defined as the fee base.

§ 970.1509–5 Limitations.

(a) Fee schedules representing the maximum allowable fee to be paid under operating and management contracts have been established for the following management and operating contract tasks or efforts.

(1) Production/Manufacturing and

(2) Research and Development

(b) The applicable schedules and maximum fees are:

PRODUCTION EFFORTS

Fee base	Fee	Fee (percent)	Increment (percent)
Up to $1 million		7.00	7.00
1,000,000	$70,000	7.00	6.05
3,000,000	191,000	6.37	5.25
5,000,000	296,000	5.92	4.18
10,000,000	509,000	5.09	3.30
15,000,000	680,000	4.53	3.30
25,000,000	1,010,000	4.04	2.88
40,000,000	1,439,000	3.60	2.41
60,000,000	1,921,000	3.20	2.07
80,000,000	2,336,000	2.92	1.50
100,000,000	2,635,000	2.64	1.10
150,000,000	3,185,000	2.12	.80
200,000,000	3,485,000	1.74	.50
300,000,000	3,985,000	1.33	.40
400,000,000	4,385,000	1.10	.30
500,000,000	4,685,000	.94	
Over 500M	4,685,001	[1]+.30	

[1] Excess.

RESEARCH AND DEVELOPMENT EFFORTS

Fee base	Fee	Fee (percent)	Increment (percent)
$25,000	$2,500	10.00	9.74
50,000	4,938	9.87	9.07
100,000	9,420	9.42	8.22
200,000	17,640	8.82	7.84
400,000	32,920	8.23	7.28
600,000	47,480	7.91	6.92
800,000	61,320	7.67	6.06
1,000,000	74,700	7.47	6.36
3,000,000	202,300	6.74	6.11
5,000,000	324,500	6.49	5.53
10,000,000	601,000	6.01	4.82
15,000,000	842,000	5.61	4.15
25,000,000	1,257,000	5.03	3.60
40,000,000	1,797,000	4.49	3.10
60,000,000	2,417,000	4.03	2.40
80,000,000	2,897,000	3.62	1.88
100,000,000	3,273,000	3.27	1.12
150,000,000	3,833,000	2.56	.65
200,000,000	4,158,000	2.08	.55
300,000,000	4,708,000	1.57	.45
400,000,000	5,158,000	1.29	.35
500,000,000	5,508,000	1.10	
Over 500M	5,508,001	[1]+.35	

[1] Excess.

970.1509–6 Fee base.

(a) The fee base is an estimate of necessary allowable costs to which a fee factor has been applied to determine the maximum fee allowance. It represents the cost of the production or R&D work to be performed, exclusive of the cost of source and special nuclear materials; estimated costs of land, buildings and facilities whether to be leased, purchased or constructed; depreciation of Government facilities; and any estimate of effort for which a separate fee is to be negotiated.

(b) The fee base, in addition to the above adjustments, shall exclude:

(1) Any part of the following types of costs which are of such magnitude or nature as to distort the technical and management effort actually required of the contractor:

(i) Estimated cost of capital equipment (other than special equipment) which the contractor procures by subcontract;

(ii) Estimated cost or price of subcontracts and other major contractor procurements; and

(iii) Other simular costs.

(2) Special equipment as defined in 970.1509–7.

(3) Estimated cost of Government-furnished materials, services and equipment;

(4) All estimates of costs not directly incurred by or reimbursed to the operating contractor;

(5) Estimates of home office or corporate general and administrative expenses that shall be reimbursed through the operating contract;

(6) Estimates of any independent research and development cost or bid and proposal expenses that may be approved under the operating contract.

(c) In calculating the fee base for application of the production schedule, the estimated cost of research and development work and of process development work which goes beyond normal technical support required to ensure continuity of operation shall be excluded. The maximum fee for such R&D and process development work is calculated separately, starting at the beginning of the R&D schedule.

(d) The schedules in this part are not intended to reflect compensation for unusual architect-engineer or construction services provided by the management and operating contractor. Such services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. Fees paid for such services shall be in addition to the operating fees and should be calculated using the provisions of 915.9 relating to architect-engineer or construction fees.

(e) The fee schedules provide the maximum fees payable within the authority of the Head of Contracting Activity. There may be times however, when the fee schedule does not reflect an adequate compensation to the contractor (such as the use of its own facilities and capital). Proposals to compensate a contractor in excess of the maximum fee schedules shall be submitted to the Procurement Executive. Requests should contain documentation and state specifically why the contractor is entitled to additional fees. (See also, 970.1509–1(c)).

970.1509–7 Special equipment purchases.

(a) Special equipment is sometimes procured in conjunction with management and operating contracts. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment and use the schedule in 915.971–5(f).

(b) In determining appropriate fees, factors such as complexity of equipment, ratio of procurement transactions to volume of equipment to be purchased and completeness of services should be considered. Where possible, the reasonableness of the fees should be checked by their relationship to actual costs of comparable procurement services.

(c) The maximum allowable fee for such services shall not exceed the fee schedule set forth in 915.971–5(f) for such services as performed by construction contractors. The fee is based on the estimated price of the equipment being purchased.

(d) For purposes of this part, special equipment is equipment for which the

purchase price is of such a magnitude compared to the cost of installation as to distort the amount of technical direction and management effort required of the contractor. Generally, special equipment is considered to be a capital-asset-type of equipment (typically equipment costing more than $1,000 and having a service life of more than two years) for which the cost of installation and handling (including unloading, hauling and warehousing) is 5%, or less, of the purchase price of the equipment. However, the determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved in each project. This category of equipment would generally include:

(1) Major items of prefabricated process or research equipment.

(2) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment. In some cases, it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

970.1509-8 Special considerations—award fee.

(a) When a management and operating contract is to be awarded on an award-fee basis, several special considerations are appropriate.

(b) In management and operating contracts, the base fee portion of the fee objective should not normally exceed 50% of the otherwise applicable fixed fee. However, the base amount may range from 0 to 50% of the fixed fee amount. In the event 50% is exceeded, appropriate documentation shall be entered into the contract file. In no event shall the base fee exceed 60% of the fixed fee amount.

(c) The base fee plus the amount included in the award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more than 50%. However, in the event that the base fee is to be less than 50% of the fixed fee, the maximum potential award fee may be increased proportionately with the decreases in base fee amounts.

(d) The following maximum potential award fees shall apply in award fee contracts: (percent is stated as percent of fee schedule amounts).

Base fee (percent)	Award fee (percent)	Maximum total (percent)
50	100	150
40	120	160
30	140	170
20	160	180
10	180	190
0	200	200

(e) Prior approval of the Procurement Executive, is required for total fee (based plus award fee pool) exceeding the guidelines in paragraph (d), above. Additionally, in the event use of the award fee guidelines in (d), above, result in total fees which exceed or are expected to exceed the statutory limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b), prior approval of the Procurement Executive shall be obtained.

Subpart 970.19—Small Business and Small Disadvantaged Business Concerns

970.1901 General.

(a) The policies and procedures in the following FAR sections shall be applied to the acquisition activities of management and operating contractors.

19.301, 19.302, 19.502-2, 19.502-3, 19.508(b), 19.508(c), 19.508(d)

(b) Protests received by management and operating contractors regarding small business status or questions concerning small disadvantaged business shall be referred to the Small Business Administration through the DOE contracting officer.

(c) Procurements of $10,000 or less awarded through small purchase procedures shall be reserved exclusively for small business where there is a reasonable expectation that bids will be obtained from two or more responsible small business concerns that are competitive with market prices, quality and delivery.

(d) Acquisition by management and operating contractor of construction estimated to cost $3 million or less, including new construction, and repair and alteration of structures, shall be required to be set aside on a class basis for small business concerns. When, in the judgment of the contractor, a particular acquisition falling within these dollar limits is determined to be unsuitable for a small business set-aside, notification to SBA shall be made through the DOE contracting officer. Unless SBA appeals the decision, the contractor shall proceed to process the acquisition on an unrestricted basis. Small business set-aside preferences should be considered on a case-by-case basis, for acquisition of construction in excess of $3 million favoring the preferential participation of small business, whenever appropriate.

(e) Initiation of set-asides by contractors shall be made on a unilateral basis.

(f) Contracting activities shall require management and operating contractors to prepare quarterly reports on small business, small disadvantaged business, women-owned small business and contracts placed in labor surplus areas.

(g) To expand participation of small and small disadvantaged business sources, management and operating contractors shall publicize proposed actions of $100,000 and above in accordance with FAR subpart 5.2. This procedure will be followed unless approval by the contracting officer to waive the requirements of this provision is obtained.

(h) The clause at FAR 52.219-9 as modified by 952.219-9 shall be included in management and operating contracts.

Subpart 970.20—Labor Surplus Area Concerns

970.2001 General.

(a) Management and operating contractors shall be authorized to employ total labor surplus area (LSA) set-asides where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible LSA concerns so as to ensure that awards will be made at reasonable prices. The priorities set forth in FAR 19.504 shall be utilized in determining the type of set-aside to be employed.

(b) Protests received or questions raised by contractors regarding LSA status shall be handled with the Department of Labor through the DOE contracting officer.

(c) LSA set-aside acquisitions awarded by management and operating contractors shall be reported quarterly in accordance with "A Guide to Preparation of DOE Quarterly Procurement and Financial Assistance Reports."

(d) Initiation of set-asides by management and operating contractors shall be on a unilateral basis.

Subpart 970.22—Application of Labor Policies

970.2201 Basic labor policies.

(a) Contracting officers shall in appropriate circumstances, follow the guidance in FAR subpart 22.1 except as provided below in award and management of management and operating contracts.

(b) The extent of Government ownership of the nation's energy plant and materials, and the overriding concerns of national defense and

security, impose special conditions on personnel and labor relations in the energy program, namely, continuity of vital operations at DOE installations must be assured; DOE must retain absolute authority on all questions of security; DOE reviews labor expenses under management and operating contracts as a part of its responsibility for assuring judicious expenditure of public funds. It is the intent of DOE, that personnel and labor policies throughout the energy program should reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the proper development of the energy program. The following enunciates the principles upon which the DOE policy is based:

(1) *Employment standards.* (i) Management and operating contractors are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract work and to recruit other well-qualified personnel as needed. Such personnel should be employed and treated during employment without discrimination by reason of race, color, religion, sex, or national origin. Contractors shall be required to take affirmative action to achieve these objectives.

(ii) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful personnel investigations. Such personnel investigations should include, as appropriate: a credit check; verification of high school degree/diploma or degree/diploma granted by an institution of higher learning within the last 5 years; contacts with listed personal references; contacts with listed employers for the past 3 years (excluding employment of less than 60 days duration, part-time employments, and craft/union employments); and local law enforcement checks *when* such checks are not prohibited by state or local law, statute, or regulation, and when the individual had resided in the jurisdiction where the contractor is located. Where a security clearance will be required, the applicant's job qualifications and suitability must be established before a request is made to DOE for a security clearance. When an applicant is being hired specifically for a position which shall require a DOE security clearance, the applicant shall not be placed in that position prior to the security clearance being granted by the DOE unless an exception has been obtained from the Head of the Contracting Activity or designee.

(iii) The contractor is responsible for maintaining satisfactory standards for employee qualifications, performance, conduct, and business ethics under its own personnel policies.

(2) *Security.* On all matters of security at its installations, DOE retains absolute authority and neither the security rules nor their administration are matters for collective bargaining between management and labor. Insofar as DOE security regulations affect the collective bargaining process, the security policies and regulations will be made known to both parties. To the fullest extent feasible, DOE will consult with representatives of management and labor in formulating security rules and regulations that affect the collective bargaining process.

(3) *Wages, salaries, and employee benefits.* (i) Wages, salaries, and employee benefits shall be administered in a manner designated to adapt normal industry or university practices and conditions to the contract work and to provide for appropriate review by DOE. Area practices, valid patterns, and well-established commerical or academic practices of the contractors, as appropriate, form the criteria for the establishment and adjustment of compensation schedules.

(ii) The aspects of wages, hours, and working conditions which are the substance of collective bargaining in normal organized industries will be left to the orderly processes of negotiation and agreement between DOE contractor managements and employee representatives with maximum possible freedom from Government interference.

(4) *Employee relations.* The handling of employee relations on contract work, including such matters as the conduct and discipline of the work force and the handling of employee grievances, is part of the normal management responsibility of the contractor.

(5) *Collective bargaining.* (i) DOE review of collective bargaining practices will be premised on the view that management's trusteeship for the operation of the Government facilities includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships. Practices inconsistent with this view may be objected to, if not found to be otherwise clearly warranted.

(ii) In line with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at Government-owned energy installations should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption to normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations for the term of the agreement.

(iii) DOE expects its management and operating contractors and the unions representing contractor employees to cooperate fully with the Federal Mediation and Conciliation Service.

(6) *Personnel training.* DOE encourages and supports personnel training programs aimed at improving work efficiency or developing needed skills which are not otherwise obtainable.

(7) *Working conditions.* Accident, fire, health, and occupational hazards associated with DOE activities will be held to a practical minimum level and controlled in the interest of maintenance of health and prevention of accidents. To this end, contractors shall be required to maintain comprehensive continuous preventive and protective programs appropriate to the particular activities throughout all operations subject to DOE control. Appropriate financial protection in case of occupational disability must be provided employees on DOE projects.

(c) Title to payroll and associated records under certain contracts for the management and operation of DOE facilities, and for necessary miscellaneous construction incidental to the function of these facilities, shall vest in the Government. Such records are to be disposed of in accordance with DOE directions. For such contracts, the Solicitor of Labor has granted a tolerance from the Department of Labor Regulations to omit from the prescribed labor clauses the requirement for the retention of payrolls and associated records for a period of three years after completion of the contract. Under this tolerance, the records retention requirements for all labor clauses in the contract and the Fair Labor Standards Act is satisfied by disposal of such records in accordance with DOE directives.

970.2202 Convict labor.

The provisions of FAR Subpart 22.2 shall apply to procurement by management and operating contractors.

970.2203 Contract Work Hours and Safety Standards Act (other than construction contracts).

The requirements of FAR Subpart 22.3 shall apply to procurements by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements. Paragraph (c) of the clause in FAR 52.222–4 should be revised to provide for the withholding of moneys from the subcontractor by the contractor as directed by the contracting officer.

970.2204 Labor standards for contracts involving construction.

The requirements of FAR Subpart 22.4 apply to subcontracts involving construction awarded by DOE management and operating contractors to the same extent that they would if the subcontract had been directly awarded by DOE. Subpart 922.4 provides guidance, including examples of work situations, to assist in determining the applicability of these standards.

970.2206 Walsh-Healey Public Contracts Act.

(a) The requirements of FAR Subpart 22.6 and this section shall apply to procurements by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

(b) Because DOE has safety and health standards compatible with those of 41 CFR Part 50–204, the Department of Labor has agreed to accept DOE's program for inspection and evaluation of compliance, in lieu of establishing its own program of inspection and evaluation to the extent the Walsh-Healey safety and health standards are applicable to operations conducted for DOE at Government-owned and/or controlled sites and facilities.

970.2208 Equal employment opportunity.

The equal employment opportunity provisions of FAR Subpart 22.8 and Subpart 922.8 of this chapter, including E.O. 11246 and 41 CFR Part 60, are applicable to DOE management and operating contracts and to subcontracts awarded by DOE management and operating contractors as a result of the management or operating contracts. The DOE contracting officer shall furnish any needed assistance to assure that the management or operating contractor is familiar with these requirements and that its purchasing system extends these requirements to subcontracts.

970.2210 Service Contract Act.

(a) The Service Contract Act of 1965 is not applicable to contracts for the management and operation of DOE facilities. However, subcontracts awarded by contractors operating and managing DOE facilities are subject to the Act to the same extent and under the same conditions as contracts awarded directly by DOE, under which the contractor is acting on the Government's behalf.

(b) Subcontracts awarded by contractors operating and managing DOE facilities shall include the applicable clause in FAR 22.10 with such modifications as would otherwise be appropriate had this clause been included in the prime contract.

970.2213 Special disabled and Vietnam Era Veterans.

The provisions of FAR Subpart 22.13 shall apply to procurements by management and operating contractors.

970.2214 Employment of the handicapped.

The provisions of FAR Subpart 22.14 shall apply to procurement by management and operating contractors.

970.2270 Unemployment compensation.

(a) Each state has its own unemployment compensation system to provide payments to workers who become unemployed involuntarily and through no fault of their own. Funds are provided for unemployment compensation benefits through a payroll tax on employers. Most DOE contractors are subject to the unemployment compensation tax laws of the states in which they are located. It is the policy to assure, both in the negotiation and administration of cost-reimbursement type contracts, that economical and practical arrangements are made and practiced with respect to unemployment compensation.

(b) *Contract exempt from state laws.* (1) Some contractors are exempt from state unemployment compensation laws, usually on grounds that they are nonprofit organizations or subdivisions of State governments. Most states, however, permit such employers to elect unemployment compensation coverage on a voluntary basis. Under such circumstances, all existing or prospective cost-reimbursement contractors shall be encouraged to provide unemployment compensation coverage or equivalent substitutes.

(2) It is also DOE policy that, prior to the award or extension of a management and operating contract, exempt contractors or prospective contractors shall be required to submit to the contracting officer a statement that they will either elect coverage or provide equivalent substitutes for unemployment compensation, or in the alternative, submit evidence that it is impractical to do so. If any exempt contractor or prospective contractor submits that it is impractical to elect coverage or to provide an equivalent substitute, appropriate Headquarters Labor Relations staff shall review that position prior to recommending an award or extension of the contract. If there are substantial reasons for not electing coverage or for not providing equivalent substitutes, a contract may be awarded or extended. Headquarters' staff review and recommendation shall be based on such factors as:

(i) The specific provisions of the unemployment compensation law of the State;

(ii) The extent to which the establishment of special conditions on DOE work may have an adverse effect on the contractor's general policies and operating costs in its private operations;

(iii) The numerical relationship between the contractor's private work force and its employees performing only work for DOE;

(iv) The contractor's record with respect to work force stability and the general outlook with respect to future work force stability;

(v) In a replacement contractor situation, whether or not the prior contractor had coverage or suitable substitutes; and

(vi) The particular labor relations implications involved.

970.2271 Workers' compensation insurance.

(a) *Policies and Requirements.* (1) *Workers' compensation insurance protects employers against liability imposed by workers' compensation laws for injury or death to employees arising out of, or in the course of, their employment.* This type of insurance is required by state laws unless employers have acceptable programs of self-insurance.

(2) *Special requirements.* Certain workers' compensation laws contain provisions which result in limiting the protection afforded persons subject to such laws. The policy with respect to these limitations as they affect persons employed by, management and operating contractors is set forth below:

(i) *Elective provisions.* Some worker's compensation laws permit an employer to elect not to be subject to its provisions. It is DOE policy to require these contractors to be subject to workers' compensation laws in jurisdictions permitting election.

(ii) *Statutory immunity.* Under the provisions of some workers'

compensation laws, certain types of employers; e.g., nonprofit educational institutions, are relieved from liability. If a contractor has a statutory option to accept liability, it is DOE policy to require the contractor to do so.

(iii) *Limited medical benefits.* Some workers' compensation laws limit the liability of the employer for medical care to a maximum dollar amount or to a specified period of time. In such cases, a contractor's workers' compensation insurance policy should contain a standard extrastatutory medical coverage endorsement.

(iv) *Limits on occupational disease coverage; and employers' liability.* Some workers' compensation laws do not provide coverage for all occupational diseases. In such situations, a contractor's workers' compensation insurance policy should contain voluntary coverage for all occupational diseases.

(3) *Contractor "employees' benefit plan"—self-insurers.* The policies and requirements set forth in paragraph (2) apply where management and operating contractors purchase workers' compensation insurance. With respect to self-insured contractors, the objectives specified in paragraph (a)(2) also shall be met through primary or excess workers' compensation and employers' liability insurance policy(ies) or an approved combination thereof. "Employees' benefit plans" which were established in prior years may be continued to contrast termination at existing benefit levels.

(b) *Assignment of responsibilities.* (1) Headquarters' Labor Relations and other officials and Heads of Contracting Activities, consistent with their delegations of responsibility, shall assure management and operating contracts are consistent with the policies and requirements of (a), above.

(2) In discharging assigned responsibility, Heads of Contracting Activities shall:

(i) Periodically review workers' compensation insurance programs of management and operating contractors in the light of applicable workers' compensation statutes to assure conformance with the requirements of (a), above;

(ii) Evaluate the adequacy of coverage of "self-insured" workers' compensation programs;

(iii) Provide arrangements for the administration of any existing "employees' benefit plans until such plans" are terminated; and

(iv) Submit to the Office of Industrial Relations, Headquarters, all proposals for the modification of existing "employees' benefit plans."

(3) The Office of Industrial Relations, Headquarters, is responsible for approving management and operating contractor "employees' benefit plans."

970.2272 Conduct of employees and consultants of DOE management and operating contractors.

(a) *Scope of subsection.* This subsection establishes the policies for maintaining satisfactory standards of conduct on the part of employees and consultants employed on DOE contract work by its management and operating contractors. Contracts with colleges and universities, which have adopted conflict-of-interest policies consistent with ACE–AAUP standards and do not involve the operation of Government-owned facilities on Government-owned or Government-leased land, are governed by the "Policy of the Federal Council for Science and Technology Relating to Conflicts of Interest by Staff Members of Colleges and Universities" (adopted March 29, 1966), and are not subject to this subsection.

(b) *Applicability.* (1) These policies are applicable to DOE management and operating contractors to the extent that their contracts with DOE contain provisions making this subsection applicable; or instructions have been issued under appropriate provisions of their contracts with DOE directing compliance with this subpart.

(2) The contract clause contained in 970.5204–12 requiring the contractor to establish such procedures as are necessary to effectively implement the provisions of this subsection, subject to the approval of the Contracting Officer, shall be included in all new DOE management and operating contracts.

(3) The contract clause contained in 970.5204–27(a) concerning necessary approvals to be obtained by contractor employees before performing consultant or similar services for another DOE contractor shall be included in:

(i) All new DOE management and operating contracts except those identified in paragraph (b)(4) below; and

(ii) Major modifications (involving change in scope or other significant substantive changes) or extensions of existing contracts within the foregoing category.

(4) The contract clause contained in 970.5204–27(b) concerning necessary approvals to be obtained by contractor employees before performing consultant or similar services for another DOE contractor, or in the energy field for another organization, shall be included in:

(i) All new DOE management and operating contracts for research or operations of DOE program work where a substantial portion of the land or buildings used for such research or in such operations is owned or controlled by the Government; and

(ii) Major modifications (involving change in scope or other significant substantive changes) or extensions of existing contracts within the foregoing category.

(5) Exceptions to the requirements of paragraphs (b)(2), (3), and (4) will be permitted only with the approval of the Procurement Executive.

(c) *Gratuities.* A management and operating contractor or its employees or consultants shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, accept any gratuity or special favor from individuals or organizations with whom the contractor is doing business, or proposing to do business, in accomplishing the work under the contract. Reference should be made to the provisions of 41 U.S.C. 51–54.

(d) *Use of privileged information.* Employees and consultants of a management and operating contractor shall not use for personal gain or make other improper use of privileged information which is acquired in connection with their employment on contract work. In this connection, the term "Privileged information" includes but is not limited to, unpublished information relating to technological and scientific developments; medical, personnel, or security records of individuals; anticipated materials' requirements or pricing action; possible new sites for DOE program operations; and knowledge of selections of contractors or subcontractors in advance of official announcement.

(e) *Outside employment of contractor employees.* Employees of a management and operating contractor are entitled to the same rights and privileges with respect to outside employment as other citizens. Therefore, there is no general prohibition against employees having outside employment. However, no employee of a contractor performing work on a full-time basis under a DOE management and operating contract may engage in employment outside official hours of duty or while on leave if such employment will:

(1) In any manner interfere with the proper and effective performance of the duties of the position;

(2) Appear to create a conflict-of-interest situation, or

(3) Appear to subject DOE or the contractor to public criticism or embarrassment.

(f) *Information statement concerning consultant or other employment service.* If a consultant or other outside employment service of the employee involves the use of information in the area of the employee's contract employment, the contractor will be responsible for requiring that the employee file with the contractor, an information statement containing such information concerning the outside employment as the contractor may prescribe. As a minimum, the information statement shall include a description of any patent agreements that may be involved and the following acknowledgement:

I acknowledge that I have read and am familiar with the published policy of the DOE contained in:

(a) Subpart 970.2273 "Conduct of employees and consultants of DOE management and operating contractors and

(b) DOE publication entitled, "Reporting Results of Scientific and Technical Work Funded by DOE," which states in part that significant new results produced in DOE-funded scientific and technical work agree not to withhold or delay reporting information acquired through my employment with ——— in favor of ——— with whom I have made or am contemplating making a consulting agreement. I have also read and am familiar with the requirements of my employer's contract with DOE relating to patents. To the best of my knowledge or belief, the activities to be performed under this consulting agreement will not conflict with the policy set forth in 970.5204–27, the patent provisions of my employer's contract with DOE, or with the responsibility of my employer to report fully and promptly to DOE all significant research and development information. If in the course of my activities under this consulting agreement, it appears that such a conflict may arise, I will promptly notify and consult with my primary employer ——— concerning such possible conflict.

(g) *Incompatibility between regular duties and private interests.* Employees and consultants of a management and operating contractor shall not be permitted to make or influence any decisions on behalf of the contractor which directly or indirectly affect the interest of the Government, if the employee's or consultant's personal concern in the matter may be incompatible with the interest of the Government. For example: (1) An employee or consultant of a contractor will not negotiate, or influence the award of, a subcontract with a company in which the individual has an employment relationship or significant financial interest; and (2) an employee or consultant of a contractor will not be assigned the preparation of an evaluation for DOE or for any DOE contractor of some technical aspect of the work of another organization with which the individual has an employment relationship, or significant financial interest, or which is a competitor of an organization (other than the contractor who is the individual's regular employer) in which the individual has an employment relationship or significant financial interest. The contractor shall be responsible for informing employees and consultants that they are expected to disclose any incompatibilities between duties performed for the contractor and their private interests and to refer undecided questions to the contractor.

970.2273 Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

(a) Particular work items falling within one or more of the following criteria normally will be classified as noncovered by the Davis-Bacon Act.

(1) Individual work items estimated to cost $2,000 or less. The total dollar amount of the operating contract is not a factor to be considered and bears no relation to individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the application of the Act.

(2) Work and services that are a part of operational and maintenance activities or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and/or repair work. This includes work and services which would involve a material risk to continuity of operations, to life or property, or to DOE operating requirements, if performed by persons other than the operating contractor's regular production and maintenance forces. However, any decision that contracts or work items are noncovered for these reasons must be made by the Head of the Contracting Activity and the authority to make such a decision cannot be redelegated.

(3) Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment. It should be noted, however, that these activities are covered if they are part of or would be a logical part of the construction of a facility, or if construction type work, other than defined as "incidental" in 922.403–71(c) is involved.

(4) Experimental development of equipment, processes, or devices including assembly, fitting, installation, testing, reworking, and disassembly. This refers to equipment, processes and devices which are assembled for the purpose of conducting a test or experiment. The design may be only conceptual in character, and professional personnel responsible for the experiment participate in the assembly. Specifically excluded from the category of experimental development are buildings and building utility services—as distinguished from temporary connections thereto. Also specifically excluded from this category is equipment to be used for continuous testing, e.g., a machine to be continuously used for testing the tensile strength of structural members. (See 922.403–7302 (g) and (h)).

(5) Experimental work in connection with peaceful uses of nuclear energy. This refers to equipment, processes and devices which are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment is such that professional personnel responsible for the test or experiment and/or data to be derived therefrom necessarily must participate in the assembly and interconnections. Specifically excluded from experimental work are buildings, building utility services, structural changes, drilling, tunneling, excavation, and back-filling work which can be performed according to customary drawings and specifications, and utility services of modifications to utility services—as distinguished from temporary connections thereto. Work in this category may be performed in mines or in other locations specifically constructed for tests or experiments. (See 922.403–7302 (g) and (h).)

(6) Emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident or other casualties, and to restart the operational activity following the casualty. Work which is not directly related to restarting the activity or which involves rebuilding or replacement of structure or structural components or equipment is excluded from this category. (See 922.403–7302(g) and (h)).

(7) Decontamination, including washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material; and painting or other resurfacing, provided that such painting or resurfacing is an intergral part of the decontamination activity and performed by the employees of the contractors performing the decontamination.

(8) Burial of contaminated soil waste or contained liquid; however, initial preparatory work readying the burial ground for use (for example, any grading or excavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered. Likewise, work subsequent to burial which involves the placement of concrete or other like activity is covered.

(b) The calssification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as outside Davis-Bacon Act coverage, since it may be necessary to separate out work which should be classified as covered. Therefore, Heads of Contracting Activities shall establish and maintain controls for the careful scrutiny of proposed work assignements under such a contract to assure that:

(1) Contractors whose contracts do not contemplate the performance of covered work with the contractor's own forces are neither asked nor authorized to perform work within the scope of the Davis-Bacon Act. If the actual work assignments do involve coverd work, the contract should be modified to include applicable provisions of the Davis-Bacon Act.

(2) Where covered work is performed by a contractor whose contract contains provisions required by the Davis-Bacon Act, such work is performed as required by law and the contract. After such contractor has been informed, as provided in paragraph (b)(3) of this section, that certain work is covered work, the Head of the Contracting Activity's responsibility to assure compliance is the same as it would be if the work were being performed under a separate construction contract.

(3) Controls provided for above include consideration by the Head of the Contracting Activity and the contractor, before work is begun or contracted out, of the relation of the Davis-Bacon Act to (i) the annual programming of work, (ii) the contractor's work orders, and (iii) work contracted out in excess of $2,000. The Head of the Contracting Activity may, if he concludes that it is consistent with DOE's responsibilities as described in this section, prescribe from time to time classes of work as to which applicability or nonapplicability of the Davis-Bacon Act is clear, for which he will require no further DOE determination on coverage in advance of the work. For all work, controls to be established by the Head of the Contractng Activity should provide for notification to the contractor before work is begun as to whether such work is covered.

The Head of the Contracting Activity is responsible for submitting to the Wage and Hours Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, all DOE requests for project area or installation wage determinations, or individual determinations, or extensions or modification thereto. Requests for such determinations shall be made on Standard Form 308, at least 30 calendar days before they are required for use in advertising for bids or requests for proposals.

(c) *Experimental installations.* Within DOE programs, a variety of experiments are conducted involving materials, fuels, coolants, processes equipment. Certain types of situations where tests and experiments have sometimes presented coverage questions are described below.

(1) *Set-ups of device and/or processes.* The proving out of investigative findings and theories of a scientific and technical nature may require the set-up of various devices and/or processes at an early, pre-prototype stage of development. These may range from laboratory bench size to much larger set-ups. As a rule, these set-ups are made within established facilities (normally laboratories); required utility connections are made to services provided as a part of the basic facilities; and the activity as a whole falls within the functional purpose of the facility. Such set-ups are generally not covered. However, the erection of structures which are public works is covered if construction type work, other than an "incidental amount" as defined in 922.403–71(c) is involved. Preparatory work for the set-up requiring structural changes or modifications of basic utility services—as distinguished from connections thereto—is covered. Following are illustrations of noncovered set-ups of devices and/or processes:

(i) Assembly of piping and equipment within existing "hot cell" facilities for proving out a conceptual design of a chemical processing unit;

(ii) Assembly of equipment, including adaptation and modification thereof, in existing "hot cell" facilities to prove out a conceptual design for remotely controlled machining equipment;

(iii) Assembly of the first graphite pile in a stadium at Stagg Field in Chicago;

(iv) Assemby of materials and equipment for particular aspects of the direct current thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy injection and to collect data thereon.

(2) *Loops.* Many experiments are carried on in equipment assemblies called loops in which liquids or gases are circulated under monitored and controlled conditions. For purposes of determining Davis-Bacon coverage, loops may be classed as loop facilities or as loop set-ups. Both of these classes of loops can include in-reactor loops and out-of-reactor loops. In differentiating between clearly indentified loop set-ups and loop facilities, an area exists in which there have been some questions of coverage, such as certain loops at the Material Test Reactor and at Engineering Test Reactor and the Idaho National Engineering Laboratory site. Upon clarification of this area, further illustrations will be added. In the meantime, the differentiation between loop set-ups and loop facilities must be made on a case-by-case basis, taking into account the total criteria set forth in this subpart.

(i) *Loop set-ups.* The assembly, erection, modification, and disassembly of a loop set-up is noncovered. A noncontroversial example of a loop set-up is one which is assembled in a laboratory, e.g., Oak Ridge National Laboratory, Argonne National Laboratory, or Lawrence Livermore National Laboratory, for a particular test and thereafter disassembled. However, preparatory work for a loop set-up requiring structural changes or modifications of basic utility services—as distinguished from connections thereto—is covered, as are material and equipment that are installed for a loop set-up which is a permanent part of the facility or which is use for a succession of experimental programs.

(ii) *Loop facilities.* A loop facility differs from a loop set-up in that it is of a more permanent character. It is usually, but not always, of greater size. It normally involves the building or modification of a structure. Sometimes it is installed as a part of construction of the facility. It may be designed for use in a succession of experimental programs over a longer period of time. Examples of loop facilities are the in-reactor "K" loops at Hanford and the large Aircraft Nuclear Propulsion loop at the Idaho National Engineering Laboratory site. The on-site assembly and erection of such loop facilities are covered. However, once a loop facility is completed and becomes operational, the criteria set forth above for operational and maintenance activities apply.

(3) *Reactor component experiments.* Other experiments are carried on by insertion of experimental components within reactor systems without the use of a loop assembly. An example of reactor facilities erected for such experimental purposes are the special power excursion test reactors (SPETRs) at the National Reactor Test Site which are designed for studying reactor behavior and performance characteristics of certain reactor components. Such a facility may consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power interruption, and buildings as needed to house the reactor and its auxiliary

equipment. The erection and on-site assembly of such a reactor facility is covered, but the components whose characteristics are under study are excluded from coverage. To illustrate, one of the SPETRs planned for studies of nuclear reactor safety is designed to accommodate various internal fuel and control assemblies. The internal structure of the pressure vessel is designed so that cores of different shapes and sizes may be placed in the vessel for investigation, or the entire internal structure may be easily removed and replaced by a structure which will accept a different core design. Similarly, the control rod assembly is arranged to provide for flexibility in the removal of instrument leads and experimental assemblies from within the core.

(4) *Tests or experiments in peaceful uses of nuclear energy.* These tests or experiments are varied in nature and some are only in a planning stage. They consist of one or more nuclear or nonnuclear detonations for the purposes of acquiring data. The data can include seismic effects, radiation effects, amount of heat generated, amount of material moved and so forth. Some of these tests are conducted in existing mines, while others are conducted in facilities specifically constructed for the tests or experiments. In general, all work which can be performed in accordance with customary drawings and specifications, as well as other work in connection with preparation of facilities is treated as covered work. Such work includes tunneling, drilling, excavation and back-filling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear device to be detonated, and the instrumentation and connection between such material or device and the instrumentation are treated as noncovered work.

(5) *Tests or experiments in military uses of nuclear energy.* As in 922.403–7302(h)(4), these tests or experiments can be varied in nature. However, under this category it is intended to include only detonation of nonnuclear material or nuclear devices. The material or devices can be detonated either underground, at ground level, or above the ground. These tests or experiments have been conducted in, on, or in connection with facilities specifically constructed for such tests or experiments. As in tests or experiments in peaceful uses of nuclear energy, all work which can be performed in accord with customary drawings and specifications, as well as other work in connection with preparation of facilities are treated as covered work. Such work includes building towers or similar structures, tunneling, drilling, excavation and backfilling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear devices and instrumentation are treated as noncovered work.

(d) *Construction site contiguous to an established manufacturing facility.* As DOE-owned property sometimes enbraces several thousand acres of real estate, a number of separate facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly, and reconditioning of components and equipment which in other industries would normally be done in established conmmercial plants. While the manufacture of components and equipment in the manufacturing plant is noncovered, the installation of any such manufactured items on a construction job is covered.

Subpart 970.23—Environmental, Conservation, and Occupational Safety Programs

970.2303 Hazardous materials identification and material safety.

970.2303–1 General.

(a) The Department of Energy regulates the nuclear safety of its major facilities under its own statutory authority derived from the Atomic Energy Act and other legislation. The Department also regulates, under certain specific conditions, the use by its contractors of radioactive materials and ionizing radiation producing machines.

(b) The inclusion of environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate environmental, safety and health program management personnel.

970.2303–2 Clauses

(a) When work under management and operating contracts and subcontracts thereunder is to be performed at a facility where DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 970.5204–2 shall be used in such contract or subcontract and made applicable to the work if conditions (a)(1) through (3), are satisfied:

(1) DOE work is segregated from the contractor's or subcontractor's other work;

(2) The operation is of sufficient size to support its own safety and health services; and

(3) The facility is government-owned, or leased by or for the account of the government.

(b) The clause set forth in 952.223–72 shall be included in those contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to assert its statutory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees, but does need to enforce radiological safety and health standards pursuant to provisions of the contract or subcontract rather than by reliance upon Nuclear Regulatory Commission licensing requirements (including agreements with states under section 274 of the Atomic Energy Act).

(c) The clause set forth at 970.5204–26 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at or involving the construction, startup, operation, and decommissioning of DOE-owned nuclear facilities deemed to be exempt from Nuclear Regulatory Commission licensing requirements. Any deviation in substance affecting the meaning, intent, or basic principles of this clause must be referred to the Procurement Executive, for approval.

(d) The clause at 970.5204–41 shall be included in all contracts containing the DOE standard clause entitled "Safety and Health" at 970.5204–2 or "Radiation and Nuclear Criticality" at 952.223–72 or Nuclear Safety at 970.5204–26.

Subpart 970.25—Foreign Acquisitions

970.2501 Buy American Act.

Management and operating contractors are required, through the contract clauses prescribed at 970.5203–3 and 970.5204–3, to comply with the provisions of the Buy American Act. The list at FAR 25.108(d) lists excepted articles, materials, and supplies which have been determined to be unavailable in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

Subpart 970.27—Patents, Data, and Copyrights

970.2701 General.

(a) The provisions of 41 CFR 9–9.1 remain in effect for the management and operation of Government-owned research or production facilities.

(b) A management and operating contractor's obligations for protection of information and data received from DOE and other contractors or subcontractors, and for the contractor's private use of contract data first produced in the performance of the contract, are set forth in subparagraph (b)(2) of each Rights in Technical Data clause in 952.227. This subparagraph provides that the contractor may, subject to patent, security, or other provisions of the contract, use for its private purposes, contract data it first produces in the performance of the contract, provided that the contractor has met its data requirements (e.g., delivery of data in the form of progress

or status reports specified to be delivered) as of the date of private use of such data. It is not necessary that a "Final Report" be submitted in order to privately use data if all required progress and interim reports and other technical data than due have been delivered. Paragraph (b)(2) further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(c) Contractors should be aware that technical information which is reported to DOE by DOE contractors may be disseminated by DOE to others, subject to the restrictions included in the "Rights to Technical Data" clause.

(d) Employees of contractors operating DOE facilities may not be used to assist in the preparation of a proposal or bid for the performance of private commercial services similar or related to those being performed under the DOE contract unless such employee has been separated, with DOE approval, from performance of work under the DOE contract for such period as the Head of the Contracting Activity or designee shall direct consistent with the purpose of this section.

(e) Contractors operating DOE facilities and performing services as a part of their contract work for other Government agencies or private organizations should not be permitted to utilize information which is furnished by such customers for their own private activities unless it is generally available to others, or unless the customer authorizes such use.

970.2702 Procedures.

(a) *General.* It is essential that DOE maintain continuity in its programs which are implemented by contracts for the operation of Government-owned facilities. Contract data first produced or specifically used in the performance of such contracts must be considered as integral to and remaining with the facility or plant after termination of such contracts and thus available to DOE and its future contractors for the continued use of the facility or plant. However, it is recognized that these contracts by their nature cannot always be subject to one set of prescribed contract provisions which will always apply. Accordingly, the Rights in Technical Data-Facility clause set forth in 952.227–78 is to be used as a basic or minimal clause which may be modified or expanded with the concurrence of patent counsel to meet particular contract situations.

Whenever a contract has as a purpose the operation of a Government-owned research or production facility, the clause set forth at 952.227–78 shall normally be included in the contract. Inasmuch as this clause secures to the Government ownership, access to, and, if requested, delivery of all technical data first produced in the performance of the contract and access to and delivery of technical data which are specifically used in the performance of the contract, there is no need to include the Additional Technical Data Requirements Clause of 952.227–73.

(b) *Subcontracting.* Unless otherwise directed by the contracting officer, the contractor shall be required to follow the policy and procedures of 927.402–1, 927.402–2, and 927.402–3 and shall employ the provisions of the Additional Technical Data Requirements Clause of 952.227–73 and the Rights in Technical Data (Long Form) clause of 952.227–75, where appropriate, except in subcontracts for the design of special production plants or facilities or specially designed equipment for facilities or plants, in which instances contractors shall include the provisions of the Rights in Technical Data—Facility Clause of 952.227–78.

(c) *Optional clause—Limited rights in proprietary data.* In contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data clause of this section shall be supplemented by the additional paragraph (e), set forth in 952.227–79. Paragraph (e) provides that technical data may be specified in the contract as being excluded from the delivery requirements thereof. Alternatively, paragraph (e) may be limited or made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, paragraphs (a), (b) and (c) thereunder may be modified as follows. When proprietary data is to be furnished only for evaluation, paragraph (a) of the limited rights legend shall be used, and paragraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirement that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts, paragraph (b) of the limited rights legend shall be used, and paragraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude contractors or evaluators from paragraphs (a) or (b). If the data is required solely for emergency repair or overhaul, paragraph (c) of the limited rights legend shall be retained, and paragraphs (a) and (b) may, unless otherwise applicable, be deleted. In the event that it is determined that all of the paragraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word "none" shall be inserted in the legend after the colon (:).

(d) For contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725, see 927.402–1(h).

Subpart 970.28—Bonds and Insurance

970.2800 Scope.

Policies and procedures of FAR 28, shall be applied to procurements by management and operating contractors, except that the provisions of FAR 28.1 shall be applied only to construction subcontracts.

970.2801 Performance bonds.

(a) *Construction subcontracts.* A performance bond on Standard Form 25 (modified to name the contractor as well as the United States of America as obligees) shall be required for all fixed price and unit price construction subcontracts in excess of $25,000 and sub-subcontracts under cost-reimbursement type subcontracts. The penal amounts are set forth in FAR 28.102–2.

(b) *Other than construction subcontracts.* (1) Situations which may warrant requiring a performance bond are listed in FAR 28.103–2(a). Other such situations are:

(i) Where doubt exists as to the financial or technical ability of all possible suppliers.

(ii) Where the contractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the contractor's ability to perform the proposed work.

(iii) Where other commitments of the contractors might delay performance.

(iv) Where performance of the proposed work might disrupt other operations of the contractor and impair its overall efficiency; or

(v) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

970.2803 Payment bonds.

(a) *Construction subcontracts.* A management and operating contractor shall be required to seek from the subcontracts, a payment bond on Standard Form 25A modified to name

the operating contractor (as well as the United States of America as obligees) required for all fixed-price and unit-price construction subcontracts in excess of $25,000. The management and operating contractor shall be required to include such a requirement in its cost reimbursement subcontract to apply to subcontracting in excess of $25,000. The penal amounts shall be set forth in FAR 28.102–2.

(b) *Other than construction subcontracts.* The contracting officer may make a determination that it is in the best interest of the Government on an individual subcontract to require payment bonds in connection with other than construction work, subject to the approval of Head of the Contracting Activity. In the case of either advertised or negotiated procurement, wherever the contracting officer has reason to believe that work under a proposed action might be delayed because of the concern of the subcontractor or supplier over the credit standing of the management and operating contractor, they should consider the advisability of requiring a payment bond.

970.2804 Execution and administration of bonds.

(a) *Bid bonds.* Prior to award of a construction subcontract, the contracting officer or, the contractor with contracting officer approval, shall obtain review of the bid bond furnished with the successful bid as to legal form and sufficiency and as to acceptability of the surety and adequacy of the bond.

(b) *Performance and payment bonds.* Prior to award of a construction subcontract, the contracting officer or the contractor with the contracting officer's approval, shall obtain review of the performance and payment bonds furnished with the successful bid as to legal form and sufficiency and as to aceptability of the surety and adequacy of the bonds.

(c) *Clauses.* The contract clause pertaining to bonds is set forth in 970.5204–32.

970.2805 Corporate co-sureties.

More than one corporate surety may be accepted as surety upon recognizance, stipulation, bond, or undertaking in connection with either construction or other contracts, provided that in no case will the liability of any such co-surety exceed the maximum penal sum in which the corporate surety is qualified to any one obligation. On bonds covering contracts other than construction contracts, where the amount of the bond is greater than the limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. Corporate co-sureties need not obligate themselves for the full amount of the bond. Each corporate surety may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability. The co-sureties must, however, bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

970.2870 Indemnification.

(a) DOE Policies provide for indemnification of DOE management and operating contractors against public liability for a nuclear incident arising out of or in connection with operation of production or utilization facilities, and work which entails the risk of public liability for a substantial nuclear incident.

(b) Details of these policies are discussed at 950.70 Indemnification of DOE contractors.

(c) Section 170d of the Atomic Energy Act of 1954, as amended, authorizes DOE "to enter into agreements of indemnification with its management and operating contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident."

(d) Heads of Contracting Activities are authorized to negotiate statutory indemnity agreements with management and operating contractors following the procedures at 950.70. They may enter into a statutory indemnity agreement whenever it has been determined that a contractor that is engaged in activities involving the risk of public liability for a substantial nuclear incident.

(e) The contract clause contained in 970.5204–6 shall be incorporated in management and operating contracts in which a statutory indemnity agreements is to be included upon a determination that the contractor is under risk of public liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work. The contract clause contained in 970.5204–7 shall be incorporated in management and operating contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability for a substantial nuclear incident caused by a product delivered to or for DOE under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement.

(f) A DOE contractor with whom a statutory indemnity agreement has been executed in the form contained in 970.5204–6 may include in any of its subcontracts and purchase orders a representation that the work under the prime contract is covered by a statutory indemnity agreement with the DOE, and that this indemnity covers all persons who may be liable for public liability for any nuclear incident arising out of or in connection with the activity under the prime contract. A suggested form of "representation" that may be provided to the contractor follows:

Statutory Indemnity

The contractor represents that there is included in its prime contract with DOE an indemnity agreement, entered into by DOE under the authority of section 170 of the Atomic Energy Act of 1954, as amended by Public Law 85–256 (the "Price-Anderson Act"), a copy of which may be obtained from the contractor (or is attached hereto); that, under said agreement, DOE has agreed to indemnify the contractor and other persons indemnified, including the subcontractor, against claims for public liability (as defined in said Act) arising out of or in connection with the contractual activity; that the indemnity applies to covered nuclear incidents which (1) take place at a "contract location" (which term, as defined in the indemnity agreement, does not include the location of the subcontractor's plant and facilities); or (2) arise out of or in the course of transportation of source, special nuclear or by-product material to or from a "contract location;" or (3) involve items produced or delivered under the prime contract. The obligation of DOE to indemnify is subject to the conditions stated in the indemnity agreement.

(g) DOE shall not approve the inclusion, in the subcontracts and purchase orders of an indemnified management and operating contractor, of any provision whereby the management and operating contractor indemnifies the subcontractor or supplier against public liability for a nuclear incident because any such liability will be covered by the statutory indemnity agreement of the prime contractor.

(h) Management and operating contractors with whom statutory indemnity agreements under the authority of section 170d of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents, except (1) that DOE contractors now covered by insurance

against such liability, with the approval of the DOE, may continue to carry such insurance; and (2) with the approval of the Office of Industrial Relations, contractors engaged in the operation of DOE facilities may be required or permitted to furnish financial protection in an amount not to exceed $1 million.

Subpart 970.29—Taxes

970.2901 Exemptions from Federal excise taxes.

(a) The exemption respecting taxes on communication services or facilities has been held to extend to such services when furnished to DOE management and operating contractors who pay for such services or facilities from advances made to them by DOE under their contracts.

(b) Where it is considered that a request for an additional exemption in the performance of a management and operating contract would be justified, a recommendation that such a request be made should be forwarded to the Controller.

(c) Where tax exemption certificates are required in connection with the foregoing taxes, the Head of the Contracting Activity will supply standard Government forms (SF 1094, U.S. Tax Exemption Certificate) on request.

970.2902 State and local taxes.

It is DOE policy to secure those immunities or exemptions from state and local taxes to which it is entitled under the Federal Constitution or state laws. In carrying out this policy, Heads of Contracting Activities shall:

(a) Take all necessary steps to preclude payment of any taxes for which any of the foregoing immunities or exemptions are available. Advice of Counsel should be sought as to the availability of such immunities or exemptions;

(b) Acquire directly and furnish to contractors as Government furnished property, equipment, material, or services when, in the opinion of the Head of the Contracting Activity:

(1) Such direct acquisition will result in substantial savings to the Government, taking into consideration any additional administrative costs;

(2) Such direct acquisition will not have a substantial adverse effect on the relationship between DOE and its contractor; and

(3) Such direct acquisition will not have a substantial adverse effect on the DOE program or schedules.

970.2903 Contract clauses.

(a) Contracting officers shall include an appropriate clause in management and operating contracts and require a similar inclusion in cost-type subcontracts where the higher-tier contracts and subcontracts are cost-type which will require the contractor to take certain actions with regard to nonpayment, payment, protest, or other treatment of specific taxes. Such a clause is included in 970.5204–23.

(b) Contracting officers should assure that tax matters are appropriately treated in their review and approval of management and operating contractor's procurement system and in their review and approval of individual subcontracts by such contractor. An appropriate tax clause shall be required for inclusion in all fixed-price purchase orders and subcontracts and should contain provisions covering all tax matters which may require special consideration.

Subpart 970.30—Cost Accounting Standards

970.3001 General.

970.3001–1 Applicability.

The provisions of FAR Part 30 shall be followed for management and operating contracts.

970.3001–2 Limitations.

Cost of money as an element of the cost of facilities capital (CAS 414) and as an element of the cost of capital assets under construction (CAS 417) is not recognized as an allowable cost under contracts subject to 970 (See 970.3102–10).

Subpart 970.31—Contract Costs Principles and Procedures

970.3100 Scope and applicability of subpart.

The cost principles, procedures and general policy for the determination of reimbursable costs applicable to the administration of management and operating contracts are set for in this subpart. The terms "reimbursement" and "reimbursable" are used interchangeably in relation to "allowable costs" as a matter of editorial convenience. No "reimbursement" is actually involved in those situations where the cost-type contractor makes payments for "allowable cost" from Government funds advanced to him by the DOE.

970.3100–1 Definitions.

"Off-site work" is contract required work (under a contract covered by FAR Subpart 17.6) performed in contractor-owned facilities, such as a central or branch office.

"On-site work" (under a contract covered by FAR Subpart 17.6) is work performed at the Government-site.

"Direct costs" of a management and operating contract are defined as follows:

(a) With respect to on-site work, "direct costs" technically include all performance costs; that is, such costs are identified specifically for, or account of, the contract. However, in some circumstances it may be desirable or necessary because of the requirements of the contract to distinguish between direct and indirect types of costs. "Direct costs," when the foregoing circumstances apply, are those which are identified as having been incurred specifically for, or on account of a designated cost objective, such as a particular product (or groups of similar products), work order, job, project, program or contract. Materials, labors or expenses which relate specifically and solely to the manufacture of a particular product or to the performance of a distinct job or work are broad examples of direct costs. Direct costs are not limited to items incorporated in an end product.

(b) With respect to "off-site" work, "direct costs" are as defined in FAR 31.202 and discussed in other sections of this subpart.

"Indirect costs" of a management and operating contract are defined as follows:

(a) With respect to "on-site" work, when it is desirable or necessary to distinguish them from direct costs, "indirect costs" are those items of material, labor, and expenses not directly identified with a single final cost accumulation point, but identified with applicability to two or more objectives or with at least one intermediate cost objective.

(b) With respect to "off-site" work, "indirect cost" are as defined in FAR 31.203 and discussed in other sections of this subpart.

970.3100–2 Responsibilities.

(a) The Procurement Executive is responsible for developing and revising the policy and procedures for the determination of allowable costs reimbursable under a management and operating contract, and for seeing that they are properly coordinated with other Headquarters' offices having joint interests.

(b) The Head of the Contracting Activity is responsible for following the policy, principles and standards set forth herein in establishing the compensation provisions of contracts and subcontracts and for submission of

deviations for Headquarters consideration.

970.3100-3 Deviation.

Deviations from the policy and principles set forth in this subpart shall not be made unless such action is authorized by the Procurement Executive, on the basis of a written justification stating clearly the special circumstances involved. Where appropriate, any approved deviation shall be reflected in the compensation provisions of the contract.

970.3101 General policy.

The cost policies of the DOE regarding management and operating contracting are as discussed in this section:

970.3101-1 Actual cost basis.

(a) DOE shall reimburse its contractors for costs incurred in the performance of a management and operating contract in accordance with its terms and the provisions of this subpart. Such costs are those allowable costs provided for in the contract to the extent that they are necessary or incident, and either directly attributable or equitably allocable to the work under the contract. This broad expression of the DOE's cost-reimbursement policy is further developed and elaborated upon throughout this subpart.

(b) DOE uses retrospective or after-the-fact determination, usually called the actual cost basis, to establish the amount reimbursable. This general policy precludes the use of predetermined fixed percentage rates except for provisional payments.

(c) When a fixed compensation for any otherwise allowable cost is separately negotiated, the items of such costs covered by the fixed amount shall be identified with maximum clarity and set forth in an appropriate appendices to the contract as an amount otherwise excludable from other reimbursable costs (this is done in order to distinguish between those allowable costs subject to reimbursement and those costs which are covered by the negotiated fixed amount).

970.3101-2 Direct and indirect costs.

(a) Direct costs identified specifically with a management and operating contract are direct cost of performing that contract and are to be charged directly thereto. All costs specifically identified with other final cost objectives of the management and operating contractor are direct cost of those cost objectives and are not to be charged to the contract directly or indirectly. For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment—

(1) Is consistently applied; and

(2) Produces substantially the same results as treating the cost as a direct cost.

(b) Indirect cost are not subject to treatment as a direct cost and thus directly chargeable to a contract. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated from an appropriate indirect cost accumulation account. The following principles and procedures shall apply to indirect costs to the extent that they are incurred under management and operating contracts.

(1) Indirect costs to the extent required to be or otherwise incurred in the accounting system of the operating contractor shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the cost objectives to which it is to be allocated. Generally, overhead and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings; e.g., building occupancy costs might be separable from those of personnel administration within a specific overhead group such as manufactoring overhead. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the cost objectives. The number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(2) Once an appropriate base for distributing indirect costs has been accepted, it shall not be fragmented by removing individual elements. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the costs input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share or G&A costs.

(3) The method of allocating indirect costs shall be in accordance with generally accepted accounting principles which are consistently applied.

(4) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period.

970.3101-3 General basis for reimbursement of costs.

(a) The total reimbursable cost of a DOE management and operating contract is the sum of the allowable direct costs necessary or incident to the performance of the contract, plus any properly allocable portion of allowable indirect costs, (including corporate or home office G&A expense, or branch office indirect expenses), if any, less applicable income and other credits. In determining allowability and reimbursability of costs, the following shall be considered:

(1) Reasonableness, including the exercise of prudent business judgment;

(2) Allocability of a cost to management and operating contract. A cost is allocable if it is assignable or chargeable for work and performance of the contract in accordance with the relative benefits received or other equitable relationship;

(3) Application of generally accepted accounting principles and practices appropriate to identifying and measuring costs of performing the contract in accordance with this subpart;

(4) All exclusions of and limitations of types and amounts of items of cost set forth in the contract;

(5) Approvals by the contracting officer required under the contract terms; and

(6) Cost accounting standards if applicable.

970.3101-4 Cost determination based on audit.

(a) The amount reimbursable under management and operating contracts shall be determined in accordance with the principles set forth in this subpart and in accordance with the terms of the respective contract on the basis of audit. In the event that the contractual terms differ, or are inconsistent with (see 970.3100-3 for approval of deviations) the principles stated herein, the contractual terms control. It is expected however, contractual terms to be based on the principles therein. The audit may be performed directly by DOE (or by the cognizant Federal agency pursuant to arrangements made by the DOE). Contracting officers shall assure that management and operating contractors assume the responsibility for audit of subcontractors (and provide for the audit of lower tier subcontractors by the subcontractor immediately preceding in the contractual chain) except as noted in this paragraph. Exceptions may be made to this general principle of subcontractors being audited by the next higher-tier contractor, where the

latter, interrelated with the subcontractor involved, does not have the necessary audit facilities, or for other reasons, is not in a position to perform the subcontract audit in a manner satisfactory to the DOE. In the event of such exception, the subcontract audit responsibility shall rest with the successively higher-tier contractor (or ultimately DOE), but responsibility for determining the costs reimbursable to the subcontractor remains with the next higher-tier contractor on the basis of such audit.

(b) Where the amount of cost-type work to be performed for the DOE in a particular facility is less than that being performed at the same facility for other Federal agencies, arrangements may be made to have the cognizant agency perform the audit of the subcontract in support of DOE. These arrangements shall be made administratively between DOE and the other agency involved, and wherever possible, shall provide for the cognizant agency to audit against the DOE cost principles. In no case, however, shall the arrangements preclude determination by the DOE contracting officer of the allowable and unallowable costs in accordance with 970.5204–13 and 970.5204–14. Steps appropriate in the light of the magnitude and nature of the costs shall be taken by the contracting officer to ascertain that the audit results properly reflect the application of DOE cost principles (particularly as to types and amounts of items of cost including incidence, allocability, and equitable distribution thereof).

970.3101–5 Contractor's system of accounting.

(a) Careful DOE study of a management and operating contractor's usual accounting procedures shall be made prior to arriving at an understanding with the contractor as to the accounting system to be employed by the contractor during the period of contract performance.

(b) A contractor's customary accounting practices are usually accepted for management and operating contracts if they conform to generally accepted accounting principles, produce equitable results, are consistently applied, are not in conflict with the provisions of this subpart, are conducive to accurate costing of the contract work, and produce reports required by the DOE.

970.3101–6 Advance understandings on particular cost items.

(a) It is important that agreement between DOE and its management and operating contractors be reached in advance of the incurrence of costs in categories where reasonableness as to amounts or allocability to the management and operating contract are difficult to determine in order to avoid possible subsequent disallowance or dispute. Any such agreement should be incorporated in the contract. But the absence of such agreement on any element of cost will not, in itself, serve to make the element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

(1) Deferred maintenance costs;
(2) Precontract costs;
(3) Professional or technical counseling services;
(4) Reconversion costs;
(5) Research and development costs;
(6) Royalties;
(7) Selling and distribution costs;
(8) Unemployment insurance experience ratings; and
(9) Employee compensation, including amounts of money or percentage of payment authorized to be expended annually for groups of employees for all types of wage and salary increases, travel, relocation expenses and other personnel costs.

(b) DOE generally utilizes two basic methods of achieving and recording understandings with contractors as to the allowability of employee compensation, travel, relocation, and other personnel costs: (1) Negotiation of a personnel appendix to the contract, which sets forth the policies, programs, and schedules which are accepted as the basis for determining the allowability of costs; or (2) reviewing and reaching agreements on established policies, programs, and schedules (and any changes thereto during the contract term) applicable to contractor's private operations which are acceptable for contract work and which will be consistently followed throughout the contractor's organization. A personnel appendix to the contract setting forth advance understandings covering compensation for personal services shall be utilized in management and operating contracts (as defined in FAR 17.601) when one or more of the following circumstances exist: when policies, programs, and schedules are established specifically for contract work; when the contractor's work is predominantly or exclusively made up of negotiated Government contract work; when contract work is so different from the organization's private work that existing established policies, programs, and schedules cannot reasonably be extended to and consistently applied on contract work; or, when established policies, programs, and schedules proposed for contract work are not sufficiently definitive to permit a clear advance mutual understanding of allowable costs and to provide a basis for audit. The Head of the Contracting Activity is authorized to select the alternative method of achieving and recording advance understanding that they find most appropriate, after considering the facts of the particular contract situation. As used in this paragraph:

(c) With regard to the costs at (a)(9) above:

(1) Compensation for personal services includes wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation covered by 970.3102–2.

(2) Employee travel costs include transportation expenses incurred while on official business, within the U.S. or outside the U.S. as necessary. Travel of executive officers is covered in 970.3102–17. Contractor travel policies must be acceptable to the Department, and result in reasonable cost necessary for contract performance. To avoid disputes and to clearly state the treatment that applies to travel cost, advance understandings should be reached with the management and operating contractor. They should be sufficiently definitive to evidence the contractor's responsibility to minimize costs consistent with contract performance. The allowability to certain travel costs, such as air travel, are specifically limited by Department policy. For example, the added cost of first class air travel is prohibited as a reimbursable cost, except under stringent conditions, which must be justified in writing. Contractually enforceable understandings concerning the allowability and reimbursement of other potentially significant travel costs (such as the use of Government-furnished automobiles or Government-contract provided rental automobiles) should be reached with the contractor. A reasonable basis for such understandings is the Federal travel policy applicable to Government and directly paid contractor employees.

(3) Other personnel costs include:

(i) Morale, health, welfare, food service and dormitory costs covered in 970.3102–5;

(ii) Training and education costs covered in 970.5204–13 and 970.5204–14;

(iii) Relocation costs for relocating employees as discussed in 970.3102–16;

and special or mass personnel movement covered in 970.3102–2(i).

970.3102 Application of cost principles.

The incurred costs of performing management and operating contracts shall be reimbursed to the extent they are reasonable, allocable, and determined to be allowable under the provisions of this subpart and the terms of the contract. The DOE principles on allowability of selected items or classification of cost or situations expected to be associated with the performance of contract work as stated in this section.

970.3102–1 General and administrative expenses.

(a) For on-site work, the DOE considers that its fee allowance for management and operating contracts provides for the recognition of appropriate compensation for home or corporate office general and administrative expenses incurred in the general management of the contractor's business as a whole.

(b) The above policy is intended to preclude the payment of general and administrative expenses merely because they are incurred or accounted for at or by a contractor's home or corporate office and not the operating site. The DOE recognizes some benefit of such cost to the DOE program. The basis of recognition through fee allowance is associated with the difficulty of determining and assessing the dollar value of such expenses that might be applicable to or have benefit to a management and operating contract. Conventional allocation techniques; i.e., total operating costs, labor dollars or hours, etc., are generally not considered appropriate because they normally distribute such expenses over a base representative or contractor investment (in terms of its own resources, including labor, material, overhead, etc.). Contractor investments and home office contributions are minimal under DOE's operating and management contracts in as much as they are totally financed and supported by DOE advance payments under the letter-of-credit method and by DOE's provision of government-owned and project-exclusive facilities, property, and other needed resources.

(c) Notwithstanding the concept in (a) above, it is recognized that from time to time the fee amounts established for a management and operating contract, to meet the purpose cited in 970.1509–1 and consideration of the factors in 970.1509–4, may be considered insufficient to adquately recognize a contractor's general and administrative expenses incurred in general management and administration of the contractor's business as a whole and which appear to have a directly benefiting relationship to the DOE program. Such recognitions may be the basis of requesting fee amounts in excess of the limitations set forth in 970.1509–5 or alternatively, in any particular case, the contractor may be compensated on the basis of cost in accordance with 970.3101–1 if the Head of the Contracting Activity or other approving contract official authorizes or approves the procedure and a fair and reasonable amount can be agreed upon. Such amount shall normally be in addition to the applicable fee amounts.

(d) The DOE allows company general and administrative expenses under off-site architect-engineer, supply and research contracts with commercial contractors performing the work in their own facilities. Contractor's general and administrative expenses, may, however, be included for reimbursement under such DOE off-site architect-engineer, supply and research contracts, only to the extent that they are established, after careful examination, to be allowable in nature an properly allocable to the work. Work performed in a contractor's own facilities under a management and operating or construction contract may likewise be allowed to bear the properly allocable portion of allowable company general and administrative expense.

§ 970.3102–2 Compensation for personal services.

(a) *General.* Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for severance pay costs in paragraph (b)(4)(i) below and for pension cost in paragraph (b)(1) below). It includes, but is not limited to, salaries; wages; directors' and executive committee members' fees; bonuses (including stock bonuses); incentive awards; employee stock options, stock appreciation rights, and stock ownership plans; employee insurance; fringe benefits; contributions to pension, annuity, and management employee incentive compensation plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential.

(b) *Allowability.* Reimbursable costs for compensation for personal services are to be set forth in a personnel appendix in the contract as discussed at 970.3101–6. This personnel appendix shall be negotiated using the principles and policies of this 970.3102–2, and other pertinent parts of the DEAR. However, costs that are unallowable pursuant to other paragraphs of 970.3102 or contract terms shall not be allowable under this 970.3102–2 on the basis they constitute compensation for personnel services. Costs of compensation for personal services are reimbursable to the extent that:

(1) The compensation is for personal services work performed by the employee in the current year and must not represent a retroactive adjustment of prior year's salaries or wages (but see 970.3102 (i), (j), (l), (m), and (n));

(2) The compensation in total is reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed;

(3) The compensation is based upon and conforms to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment;

(4) Any approvals prescribed by this 970.3102–2 are obtained. No assumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor—

(i) Has not notified the cognizant contracting officer of the changes either before their implementation, or within a reasonable period after their implementation, and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under the contract terms or other paragraphs of this 970.3102 shall not be allowable under this 970.3102–2 solely on the basis that they constitute compensation for personal services.

(c) *Reasonableness.* Subject to 970.3102–2(d) of this section compensation for personal services will be considered reasonable if the total compensation conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area for similar services or work performed. This does not preclude the Government from challenging the reasonableness of an individual element of compensation where costs are excessive in comparison with compensation paid by other firms of the same size, same industry, or in the same geographic area for similar services. In administering this principle,

it is recognized that not every compensation case need be subjected in detail to the above tests. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. In questionable cases, the contractor has responsibility to support the reasonableness of compensation in relation to the effort performed. Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:

(1) Compensation to (i) owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or (ii) persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subparagraph shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and its regulations.

(2) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in the treatment of allowability of specific types of compensation due to changes in Government policy. No presumption of reasonableness will exist where major revisions of existing compensation plans or new plans are introduced by the contractor; and the contractor—

(i) Has not notified the cognizant contracting officer of the change either before their implementation or within a reasonable period after their implementation; and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(3) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(4) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and its regulations.

(d) *DOE Review and approval of compensation paid individual employees.* In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, all compensation due an individual of $50,000 or more shall require the contracting officer's or designee's review and approval. In addition, it will often be necessary that employee compensation be subjected to review and approval on an individual basis at a level below $50,000, when the contracting officer finds it appropriate for the particular situation. The contract shall specifically provide for the approval by the contracting officer of the cost of compensating an individual contractor employee above the level determined by the contracting officer, if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts. For purposes of determining the level for individual review and approval, total compensation as used in this paragraph includes only the employee's salary and bonus or incentive compensation. As in the case of other personnel and compensation costs, it is intended that contracting officer review and approval of individual compensation normally will be prior to incurrence of costs.

(e) *Labor-management agreements.* Notwithstanding any other DOE requirements, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in performing Government contracts, are determined to be unreasonable because they are either unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (e.g., work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (e.g., work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (e) unless—

(1) The contractor has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(f) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, stock (see paragraph (h)(2) below regarding valuation), products, or services, and are allowable.

(g) *Domestic and foreign differential pay.* (1) When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, state, local or foreign income taxes resulting from foreign assignment, and other related expenses.

(h) *Bonuses and incentive compensation.* Incentive compensation and cash bonuses based on production, cost reduction or efficient performance, suggestion awards, and safety awards are to be treated as allowable, to the extent that the contractor's overall compensation plan is determined to be reasonable and such costs are paid or accrued, pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payment (see 970.3101–6). In determining reasonableness, it will be necessary to take into account, not only bonuses and incentive compensation payments charged directly to the contract, but also payments charged indirectly to the contract through overhead. Bonuses, awards, and incentive compensation, when any of them are deferred, are to be treated as allowable to the extent provided in paragraph (m) of this section.

(1) Bonuses and incentive compensation paid to employees other than those whose pay is directly

reimbursed will not be made allowable in on-site construction and management and operating contracts, where home office general and administrative expense is unallowable.

(2) When the costs of bonuses and incentive compensation are paid in the stock of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the stock shall be the fair market value on the measurement date (i.e., the first date the number of shares awarded is known) determined upon the most objective basis available; and

(ii) Accruals for the cost of stock before issuing the stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the stock and that their interest in the accruals will be forefeited.

(3) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of subparagraph (h)(1) above and of paragraph (m) below.

(i) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (l)(6) below.

(2) Severance pay to be allowable must meet the general allowability criteria in paragraph (i)(2)(i) below, and, depending upon whether the severance is normal or abnormal, criteria in paragraph (i)(2)(ii) for normal severance pay or paragraph (i)(2)(iii) for abnormal severance pay also apply.

(i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law, (B) employer-employee agreement, (C) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (D) circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable. Severance payments, or amounts paid in lieu thereof, are not allowable when paid to employees in addition to early or normal retirement payments.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed at the facility.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(3) Subject to paragraph (a) of this section, the following standards apply in determining allowability of costs for severance pay plans of management and operating contractors:

(i) Payments should be made only upon involuntary termination by reduction in force (RIF) of an employee which results in a permanent separation from the employment of the contractor. However, payments may also be made upon voluntary separation of an employee within a RIF grouping, but not otherwise scheduled for termination, which thereby eliminates the need for terminating another employee involuntarily.

(ii) Payments should be not provided for in the event of temporary layoffs; employment or offer of employment with a replacement contractor (employer) where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment; early or normal retirement; or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor. Contractor employees should not have the option of refusing employment to receive severance pay.

(j) *Backpay.*—(1) *Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964.* Backpay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such backpay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay resulting from willful violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.

(2) *Other backpay.* Backpay may also result from payments to union employees (union and non-union) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such backpay is allowable. Backpay to nonunion employee based upon results of union agreement negotiations is allowable only if (i) a formal agreement or understanding exists between management and the employees concerning these payments, or (ii) an established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.

(k) *Stock options, stock appreciation rights, and phantom stock plans.* (1) The cost of stock options awarded to employees to purchase stock of the contractor or of an affiliate will be treated as deferred compensation and must comply with the requirements of paragraph (m) below and with the allowability criteria contained in paragraph (k)(2) below. The allowable cost of stock appreciation rights, whether offered separately or combined with stock options, will be determined in the same manner as stock options.

(2) The allowable costs of stock options and stock appreciation rights will be limited to the difference between the option price or stock-appreciation-right price and the market price of the stock on the measurement date (i.e., the first date on which both the number of shares and the option or stock-appreciation-right price are known). Accordingly, when the option or stock-appreciation-right price is equal to or greater than the market price on the measurement date, then no costs are allowed for contract costing purposes.

(3) In phantom-stock-type plans, contractors assign or attribute contingent shares of stock to employees as if the employees own the stock, even though the employees neither purchase the stock nor receive title to it. Under these plans, an employee's account may be increased by the equivalent of dividends issued and any appreciation in the market price of the stock over the price of the stock on the measurement date (i.e., the first date the number of shares awarded is known). Such increases in employee accounts for

dividend equivalents and market price appreciation are unallowable.

(l) *Pension costs.* (1) A pension plan is a deferred compensation plan that is established and maintained by one or more employers to provide systematically for paying benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employee. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined benefit or defined contribution pension plans. Except as provided by other DOE directives, the cost of all defined benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of CAS 412, Composition and Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost. The costs of all defined contribution pension plans shall be measured, allocated, and accounted for in acordance with the provisions of CAS 412. Pension costs are allowable subject to directives issued by the Office of Labor Relations, Headquarters, the referenced standards and the cost limitations and exclusions set forth below in this subparagraph and in paragraphs (l)(3), (4), (5), (6), and (7) below.

(i) To be allowable in the current year, pension costs must be funded by the time set for filing the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year.

(ii) Pension payments must be reasonable in amount and be paid pursuant to (A) an agreement entered into in good faith between the contractor and employees before the work or services are performed and (B) the terms and conditions of the established plan. The cost of changes in pension plans which are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in subparagraph (l)(6) below, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in acordance with a policy or practice consistently followed.

(3) *Defined benefit pension plans.* This subparagraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined benefit plans are as follows:

(i) Normal costs of pension plans not funded in the year incurred, and all other components of pension costs (see CAS 412.40(a)(1)) assignable to the current accounting period but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any part of a pension cost that is computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA) (see CAS 412.50(c)(3)), will be allowable in those future accounting periods in which the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding occurred in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in those years. The interest earned on such premature funding, based on the valuation rate of return, may be excluded from future years' computations of pension costs in accordance with CAS 412.50(a)(7).

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in CAS 413.50(c)(5). Determination of unallowable costs shall be made in accordance with the actuarial method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis; provided that if insurance was required by the PBGC under ERISA section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate in the indemnification payment to the extent of its fair share.

(4) Defined contribution pension plans. This subparagraph covers those pension plans in which the contributions to be made are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans provided the plans fall within the definition of a pension plan in paragraph (l)(1) above.

(i) The pension cost assignable to a cost accounting period is the net contribution required to be made for that period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of ERISA (see CAS 412.50(c)(3)) will be allowable in those future accounting periods when the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding been made in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded to the trust before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in such years.

(iii) The provisions of paragraph (l)(3)(vi) above concerning payments to PBGC apply to defined contribution plans.

(5) *Pension plans using pay-as-you-go methods.* A pension plan using pay-as-you-go methods is a plan in which the contractor recognizes pension cost only when benefits are paid to retired employees or their beneficiaries. Regardless of whether the payment of pension benefits contribution can or

cannot be compelled, allowable costs for these types of plans shall not exceed an amount computed as follows:

(i) Compute, by using an actuarial cost method, the plan's actuarial liability for benefits earned by plan participants. This entire liability is always unfunded for a pay-as-you-go plan.

(ii) Compute a level amount which, including an interest equivalent, would amortize the unfunded actuarial liability over a period of no less than 10 or more than 40 years from the inception of the liability.

(iii) Compute, by using an actuarial cost method, a normal cost for the period.

(iv) The sum of paragraphs (l)(5) (i), (ii), and (iii) of this subsection represents the amount of pension costs assignable to the current period. This amount, however, is limited to the amount paid in the year.

(v) For purposes of determining contract cost where a pay-as-you-go plan is initiated as either a supplemental plan or an additional but separate plan to a basic funded plan, the plans will be treated as one plan; e.g., the actuarial cost method, past service amortization period, etc., of the basic plan will be used on the supplemental or additional pay-as-you-go plan in determining the proper costs assignable to the current period. Any costs in excess of those determined by using the actuarial cost method and assumptions of the basic plan are unallowable. However, where assumption for salary progressions, mortality rates of the participants, and so forth are significantly different, the assumptions used for the basic and supplemental plan may be different.

(vi) The requirements of paragraphs (l)(3)(i) through (iv) above are also applicable to pay-as-you-go plans.

(6) *Early retirement incentive plans.* An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allowable subject to pension criteria contained in paragraphs (l)(3)(i) through (iv) provided—

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs (see paragraph (l)(5)(v) above for supplemental pension benefits);

(ii) The payments are made in accordance with the terms and conditions of the contractor's plan;

(iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(vi) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(7) *Employee stock ownership plans (ESOP).* (i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees partcipating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.

(C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOT are or will be at a fair market price; e.g., makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

(ii) Amounts contributed to an ESOP arising from either (A) an additional investment tax credit (see 1975 Tax Reduction Act-TRASOP's); or (B) a payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.

(iii) The requirements of paragraphs (l)(3)(ii) above are applicable to Employee Stock Ownership Plans.

(m) *Deferred compensation.* (1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to 970.3102–2(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of CAS 415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of CAS 415 are allowable to the extent they would have

been allowable under prior acquisition regulations.

(n) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to its employees, as compensation, in addition to regular wages and salaries. Subject to the determination that total compensation is reasonable in accordance with this 970.3102–2, costs of fringe benefits such as pay for vacations, holidays, sick leave, military leave, employee insurance, pension, retirement plans, and supplemental unemployment benefit plans are to be treated as allowable, provided such fringe benefits meet the following conditions;

(1) The benefits contribute to the performance of contract work and are appropriate for reimbursement from public funds;

(2) Such benefit plans as exist in the contractor's private operations that are inconsistent with DOE published requirements are appropriately modified or disallowed;

(3) Employee benefit plans especially established to meet the particular needs of the contract are in conformity with published DOE policy and standards;

(4) Appropriate controls under the contract are established to assure that employees on contract work are treated no more or no less favorably than employees in the contractor's private operation, except to the extent that paragraphs (n)(2) and (3) of this section apply;

(5) To the fullest extent possible, definite limitations or terminal points are established for each of the various benefit plans, so that DOE's full liability with respect thereto is established under the contract; and

(6) DOE has access to all information necessary to complete understanding of the means of computing or determining the cost of the benefits afforded contract employees and their dependents under the benefit plans.

(o) *Training and education expenses.* See 970.5204–13 and 970.5204–14.

§ 970.3102–3 Cost of money.

Cost of money as an element of the (a) cost of facilities capital (CAS 414) and (b) cost of capital assets under construction (CAS 417) is not an allowable cost under DOE management and operating contracts. Under the provisions of CAS 414 and CAS 417, cost of money is an imputed cost applicable to contractor owned and financed tangible capital assets employed in contract performance or being constructed, fabricated, or developed for ultimate employment in contract performance. Cost of money is not applicable to DOE management and operating contracts since the Government provides for assets used, or under construction for use in performance of its contracts (such as through Government furnished or contractor-acquired Government property contract provisions and/or through granting cash advances, including letters-of-credit.)

§ 970.3102–4 Depreciation.

(a) Depreciation is allowable subject to the following:

(1) The charge represents normal depreciation on a contractor's plant and equipment used in performance of management and operating work.

(2) The charge to current operations is a distribution of the cost of acquisition of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset, in a systematic and logical manner.

(3) Any generally accepted accounting method consistently applied to assets concerned having the approval of the Internal Revenue Service for Federal income tax purposes, if subject to the Internal Revenue Code of 1954, as amended, may be used including:

(i) The straight-line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (a)(3)(i) of this section;

(iii) The sum-of-the-years digits method;

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used, had such allowances been computed under the method described in paragraph (a)(3)(ii) of this section.

(4) If a nonprofit or tax-exempt organization, the method shall be such that it could have had the approval of the Internal Revenue Service, had the organization been subject to the Internal Revenue Code of 1954, as amended.

(5) The contractor must use the same approved method of depreciation for costing its contract work as for costing its other work at the same facility.

(6) The method of depreciation shall produce equitable and reasonable results.

(b) Depreciation of the following is unallowable:

(1) Idle or excess facilities (machinery and equipment), other than reasonable standby facilities;

(2) Assets fully amortized or depreciated on the contractor's books;

(3) Unrealized appreciation of values of assets; and

(4) Accelerated amortization under Certificates of Necessity or other system in excess of normal depreciation, as computed under paragraph (a) of this section.

(c) In entering into contracts involving the use of "special facilities" under section 161 of the Atomic Energy Act of 1954, as amended (section 7 of Public Law 85–681 approved Aug. 19, 1958), the percentage of the total cost of such special facilities devoted to contract performance and chargeable to the DOE should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such facilities.

970.3102–5 Employee morale, health, welfare, food service, and dormitory costs.

(a) Employee morale, health, and welfare activites are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. These activities include such items as house or employee publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this section, food service and dormitory costs. However, these activities do not include, and should be differentiated from compensation for personal services as defined in 970.3102–2. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities or site of the contract work.

(b) Except as limited by paragraph (c) of this section, the aggregate of costs incurred on account of all activities mentioned in paragraph (a) of this section, less income generated by all such activities, is allowable to the extent that the net aggregate cost of all such activities, as well as the net cost of each individual activity, is reasonable and allocable to the contract work. Additionally, advance understandings with respect to the costs mentioned in paragraph (a) of this section are to be reached prior to the incurrence of these costs as required in 970.3101–6.

(c) Losses from the operation of food or dormitory services may be included as costs incurred under paragraph (b) of this section, only if the contractor's objective is to operate such services at least on a break-even basis. Losses

sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except in those instances where the contractor can demonstrate that unusual circumstances exist, such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Typical examples of such unusual circumstances are: (1) Where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (2) where it is necessary to operate a facility at a lower volume than the facility could economically support. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(d) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (e) of this section).

(e) Contributions by the contractor to an employee organization, including funds set over from vending machines receipts or similar sources, may be included as cost incurred under paragraph (b) of this section, only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable, if incurred by the contractor directly.

970.3102-6 Facilities (plant and equipment).

(a) *Use of Government-owned facilities.* If the Government furnishes to the contractor, or the contractor acquires at Government expense, Government-owned equipment with which to do all or a significant amount of the work under the DOE contract, on which equipment the Government is bearing the expenses of depreciation, maintenance, insurance, and taxes, appropriate procedures must be established to avoid apportioning to DOE work performed with DOE-owned equipment, a share of the expenses of depreciation, maintenance, insurance and taxes on the contractor's equipment not used to perform such work. If the Government-owned equipment is placed in a segregated area, that area should be accounted for as a separate department. If the Government-owned equipment is not placed at the separate area, other steps must be taken to avoid what would amount to a double equipment burden on work performed with the Government-owned facilities. Such work shall be so accounted for as to be relieved of charges for expenses related to contractor's equipment not used in its performance.

(b) *Contractor's costs covering plant and equipment.* Charges relating to contractor-owned plant and equipment shall be restricted to the applicable costs, such as depreciation, maintenance, insurance, and taxes, and shall not be on a rental basis. (Compensation in excess of costs is covered by the fixed fee.) Rentals of plant or equipment owned by third parties are normally allowable, if the rates are reasonable in the light of the type, value, condition of the property involved, and option and other provisions of the lease agreement. However, where the plant and equipment used by the contractor is rented by the contractor under a sale and lease-back agreement, only the normal costs (such as depreciation, maintenance, insurance, and taxes) that would have been incurred if the contractor had retained title to the facilities, should be allowed. Allowances for plant and equipment rented under agreements that are not arms-length transactions should be similarly restrictive.

970.3102-7 Lobbying costs.

(a) Lobbying is defined as any activity or communication that is intended or designed (1) to directly influence members of the U.S. Congress or state and local legislatures, their staffs, or the staffs of committees of these bodies to favor or oppose pending, proposed, or existing legislation, appropriations, or other official actions of these bodies, their members, or their committees, or (2) to engage in any campaign to directly encourage others to do so. Except as provided in paragraph (c) below, lobbying includes, but is not limited to, appearances before any legislative committee or subcommittee and written or oral communications, including face-to-face decisions or conferences, telephone conversations, paid advertisements, and the sending of telegrams or letters.

(b) The costs of lobbying, including the applicable portion of the salaries and fees to those individuals engaged in lobbying efforts on behalf of a contractor, whether or not the individuals are registered as lobbyists under any applicable law, are unallowable.

(c) Legislative liaison activities, such as attendance at committee hearings and gathering information regarding pending legislation, are not lobbying and are allowable. In addition, written or oral communications, appearances before legislative committees and subcommittees, and meetings with legislative representatives are allowable legislative liaison activities when such efforts are undertaken in conjunction with a legislative public hearing or meeting in response to a public notice, or a specific invitation or request from a legislative source, and the notice, invitation, or request from a legislative source, and the notice, invitation, or request is documented. However, for the costs to be allowable, the contractor shall maintain and make available to the Government records and documentation sufficient to identify the costs and clearly establish the nature and purpose of the legislative liaison activity to which the costs relate.

970.3102-8 Membership in trade, business and professional organizations.

(a) The costs of memberships in trade, business and technical organizations are unallowable, except as approved by the contracting officer.

(b) In considering approval of membership dues, the contracting officer shall:

(1) Ensure that dues payments to an organization are clearly justified and provide necessary and specific agency benefit;

(2) Do not constitute payments for, or in support of partisan and political activity; and,

(3) Are solely for purposes of enhancing trade, business, or technical knowledge necessary for, and related to, performance of DOE contracts.

970.3102-9 Outside technical and professional consultants.

Technical and professional consultants, as used here, refer to private individuals acting in their own behalf, who make their services available on a fee or per diem basis. It does not refer to employees of firms acting in the firm's behalf whose services may be made available by the firm on, for example, a fixed rate basis. Consultant arrangements may permit bringing to contract work, the services of outstanding specialists who would not be available on a full-time basis, or whose employment on a full-time basis would not be economically feasible.

Costs of such outside consultant services are normally allowable (however, see 970.4204–13 and 970.5204–14 regarding compensation of an individual who is employed by another contractor and concurrently performing work on a full-time annual basis under a DOE cost-type contract), provided that the servies are essential to, and will make a material contribution to, the performance of contract work; the services may be performed more economically or more successfully by a consultant than by the contractor's regular personnel; the fee or per diem charged is reasonable; and, when approved by the contracting officer. If the cost of such services is charged directly to the DOE contract, the cost of like items properly chargeable only to other work of the contractor must be eliminated from indirect costs allocable to the DOE contract (see 970.3101–2).

970.3102–10 Overtime, shift, and holiday premiums.

(a) Overtime, shift, and holiday premiums are allowable only to the extent provided in the contract or approved by the contracting officer. The amount of such premiums charged to a management and operating contract shall be equitable in relation to the amount of such costs charged to other work currently performed in the contractor's plant and the factors which necessitate incurrence of the costs. When the necessity for overtime, shift, and holiday work arises from inadequacy of the contractor's plant or department to perform its total workload on a purely straight-time basis, inclusions in overhead for apportionment to all work of the plant or department, as the case may be, appears appropriate. When particular work, DOE or other, is being specially expedited to a point that its fair share of the contractor's purely straight-time efforts on a single-shift basis will not get the particular job completed within the time desired, direct charging of the related premiums appears appropriate.

(b) When premiums for overtime, shift, and holiday work are charged direct to the work concerned, if the operating overhead of the plant or related department is distributed on the basis of direct labor (cost or hours), the premiums should be excluded from the direct labor base for purposes of overhead distribution. That is, the direct labor base should be, as appropriate, direct labor straight-time cost or direct labor hours actually worked. While the premiums for authorized overtime, shift, and holiday work are acceptable as reimbursable costs, it is generally recognized that direct labor hours worked on an overtime, shift, or holiday basis should participate in indirect costs to the same extent as hours worked on a straight-time basis.

970.3102–11 Page charges in scientific journals.

It is a policy of the DOE to permit DOE contractors to budget for and pay page charges for scientific journal publication, as a necessary part of research costs, in all cases where:

(a) The research papers report work supported by the Government.

(b) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors.

(c) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal.

(d) The journals involved are not operated for profit.

(e) The author does not receive an emolument from the journal for the research paper.

970.3102–12 Plant reconversion costs.

Plant reconversion costs are those incurred in the restoration of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the contract work, fair wear and tear excepted.

970.3102–13 Precontract costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract, where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after effective the date of the contract. They do not include costs of preparing bids or of participation in the negotiation. The allowability of precontract costs is dependent upon appropriate coverage in the contract.

970.3102–14 Preparatory and make-ready costs.

Since indirect costs are usually apportioned to individual jobs wholly or substantially on the basis of the direct labor applied to the particular job, a contract will absorb no overhead by apportionment prior to the inception of the actual performance of direct work on the contract. The effort of the contractor's overhead organization in preparing for one job and in getting it underway, will thus be absorbed by jobs previously commenced and still being performed; later, the job, which in its initial stages of preparation and make-ready was relieved of expenses that were actually applicable to it, will partially absorb, through their apportionment as overhead, similar costs equally applicable in fact to other, subsequently undertaken jobs. This procedure is in accordance with generally accepted accounting practices and normally is reasonably equitable in its results. The initial advantages and subsequent disadvantages to the individual contract that result from consistent application of the procedure tend to offset each other and balance out. It is quite appropriate, however, to employ the direct charge method in connection with overhead costs in preparing for actual performance by segregating such preparatory and make-ready costs and identifying them specifically with the contract to which the effort actually pertains. However, if preparatory and make ready costs are charged direct to a DOE contract, care must be taken, as performance of the DOE contract work proceeds toward completion, to segregate subsequent indirect expenses similarly applicable to the preparation for, and commencement of, other jobs and to account for them as direct charges to those other jobs.

970.3102–15 Procurement: subcontracts and contractor-controlled sources.

(a) *Subcontracts.* Award and management policies for subcontracts placed under operating contracts when necessary to the performance of the required services and work efforts of the management and operating contractor are set forth in 970.44. The cost of performing such subcontracts shall be allowable under the DOE contract when (1) the award/approval is otherwise in accord with the contract terms and conditions and the provisions of 970.44 and (2) the reimbursement of subcontractor costs of the management and operating contractor is in accordance with the provisions of the DOE cost principles set forth in FAR 31, as appropriate to the type of subcontractor being selected; i.e., commercial, educational, state/local government, or nonprofit organization.

(b) *Procurement or transfer from contractor-controlled sources (See 970.4404).* Allowance for all equipment, materials, supplies, and services which are sold or transferred between any division, subsidiary, or affiliate of a management and operating contractor under a common control shall be on the basis of cost incurred in accordance with the terms of the contract; except, when it is the established practice of the transferring organization to price inter-organization transfers of equipment.

materials, supplies, and services at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, allowance may be at a price when:

(1) It is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with FAR 15.8 or

(2) It is the result of "adequate price competition" in accordance with FAR 15.8 and is the price at which an award was made to the affiliated organization, after obtaining quotations of an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity, provided that in either case:

(i) The price is not in excess of the transferor's current sales price to its most favored customer (including any division, subsidiary, or affiliate of the contractor under a common control) for a like quantity under comparable conditions, and

(ii) The price is not determined to be unreasonable by the contracting officer, provided, however, that if the price is determined unreasonable, such determination must be supported by an enumeration of facts on which it is based and approved at a level above the contracting officer. The price determined in accordance with paragraph (a) of this section should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of contract requirements.

970.3102-16 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of costs are allowable as noted, subject to provisions of paragraphs (b), (c), and (d) below.

(1) Costs of travel of the employee and members of his/her immediate family and transportation of household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition periods, not exceeding separate cumulative totals of 60 days for employees and 45 days for spouses and dependents, including advance trip time.

(3) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer; Provided that closing costs when added to the continuing costs described in (a)(6) below shall not exceed 14% of the sales price of the property sold.

(4) Other necessary and reasonable miscellaneous expenses incident to relocation, such as disconnection and connecting household appliances; automobile registration; drivers license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(5) Costs incident to the acquisition of a home in a new location, except that these costs will not be allowable for existing employees or newly recruited employees who prior to the relocation were not homeowners and the total costs shall not exceed 5% of the purchase price of the new home.

(6) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, etc., after settlement date or lease date of new permanent residence; Provided that when added to the closing costs described in (a)(3) above, the costs shall not exceed 14% of the sales price of the property sold.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who prior to the relocation were not homeowners, and the total payments are limited to an amount determined as follows:

(i) Difference between the mortgage interest rates of the old and new residence times the current balance of the old mortgage times 3 years; and

(ii) When mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payment may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Cost of canceling an unexpired lease.

(b) The costs described in (a) above must also meet the following criteria to be considered allowable.

(1) The move is for the benefit of the Government.

(2) Reimbursement must be in accordance with an established policy or practice and program that is consistently followed and is designed to motivate employees to relocate promptly and economically.

(3) Amounts to be reimbursed do not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in (a)(4), a flat amount, not to exceed $1,000, may be paid in lieu of actual costs.

(c) The following types of costs are not allowable:

(1) Loss on sale of a home.

(2) Continuing mortgage principle payments on residence being sold.

(3) Cost incident to the acquisition of a home in a new location as follows:

(i) Real estate brokers fees and commissions;

(ii) Costs of litigation;

(iii) Real and personal property insurance against damage or loss of property;

(iv) Mortgage life insurance;

(v) Owner's title policy insurance when such insurance was not previously carried by the employees on the old residence (however, costs of a mortgage title policy is allowable) and;

(vi) Property taxes and operating or maintenance costs.

(4) Payments for employee's income taxes of FICA (social security taxes) incident to reimbursed relocation costs.

(5) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed and the employee resigns within 12 months for reasons within the employee's control, it is expected the contractor shall refund or credit the relocation costs to the Government.

(e) Contractor payments to an independent relocation assistance firm handling acquisitions and sales of houses of transferred employees are allowable in amounts which otherwise represent payment for itemized cost which are allowable in accordance with the provisions of this section.

970.3102-17 Travel costs.

(a) *Air travel.* It is the policy of the DOE to require the use of the lessor of the lowest available discount fare which serves the missions purpose or other less than first-class air accommodations

for all cost-reimbursed travel, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements. For example, less than first-class accommodations are considered not reasonably available where less than first-class accommodations would:

(1) Require circuitous routing,

(2) Require travel during unreasonable hours,

(3) Greatly increase the duration of the flight,

(4) Result in additional costs which would offset the transportation savings; or

(5) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

The difference in cost between first-class air accommodations and less than first-class accommodations (such as discount fares or other less than first class accommodations) is an unallowable cost, except as provided for in this section.

(b) *Government-owned or commercial rental vechicles.* Commercial rental automobile costs in excess of the cost of a Government-furnished automobile or, when a Government-furnished automobile is not available, the cost of a Government-contract rental automobile available under a GSA Federal Supply Schedule contract, is unallowable unless:

(1) A Government-furnished or a Government contract rental automobile is not reasonably available to the traveler, or

(2) The traveler's use and the cost of a commercial rental automobile are justified and authorized as more advantageous to the Government.

970.3102-18 Special funds in the construction industry.

Costs of special "funds," financed by employer contributions, in the construction industry for such purposes as methods and materials research, public and industry relations, market development, disaster relief, etc., are unallowable, execept as specifically authorized by the contracting officer and provided for in the contract.

970.3102 Contract clauses.

The appropriate cost principles clause at 970.5204-13 or 970.5204-14 shall be included in a management and operating contract.

Subpart 970.32—Contract Financing

970.3201 General.

It is the policy of the DOE to finance management and operating contracts through advance payments and use of Special Bank Accounts. Appropriate procedures for properly managing and controlling funds for obligation and expenditure under a management and operating contract are maintained by the Office of Controller.

970.3202 Advance payments.

(a) The Head of the Contracting Activity, shall authorize advance payments without interest; and approve the findings, determinations and the contract terms and conditions concerning advance payments in accordance with the procedures set forth in FAR Subpart 32.4, Advance Payments, as amended by Subpart 932.4.

(b) Advance payments shall be made under a letter-of-credit arrangement for deposit in a special bank account.

(c) Prior to providing any advance payments, the contracting officer shall enter into an agreement with the contractor and a financial institution, regarding a special bank account where the advanced funds are to be deposited by the Government. Such agreement shall (1) provide that DOE shall retain title to the unexpended balance of funds in the special bank account including revenues if any, deposited by the contractor; and that such title shall be superior to any claim or lien of the bank of deposit and (2) incorporate as necessary or appropriate, additional financial provisions required by Treasury or Departmental financial regulations.

(d) Deviations from these specified requirements cited in paragraph (c) above shall be considered a deviation requiring approval of the Head of the Contracting Activity.

(e) Letter-of-Credit arrangements shall be prepared in accordance with FAR 32.406, Letters of Credit, and shall be coordinated between the procurement and finance organizations.

970.3270 Clauses.

The clauses at 970.5204-16 shall be included in management and operating contracts when advances of funds are to be placed in a special bank account. They may be appropriately modified to incorporate any additional provisions that may be required by governing financial regulations of the Treasury Department or the Department.

970.3271 Special bank account agreement.

Note.—The following agreement shall be used with special bank accounts in accordance with 970.3202(c).

Agreement entered into this —— day of ———, 19 —, between the United States of America (hereinafter called the Government) represented herein by the Department of Energy (hereinafter called the "DOE"), and ——— (hereinafter called the "Contractor," a corporation under the laws of the State of ———, and ———, (hereinafter called the "Bank,") a banking corporation under the laws of ———, located at ———.

Recitals

(a) On the date of ———, 19 —, DOE and the Contractor entered into Contract(s) No. ———, or a supplemental agreement thereto, providing for the making of advances of Government funds to the contractor a copy of such advance provisions has been furnished to the Bank.

(b) DOE requires that amounts advanced to the Contractor under said contract or supplemental agreement be deposited in a Special Bank Account or accounts with a bank designated by the Treasury Department as depositary and financial agent of the Government (Section 10 of the Act of June 11, 1942, 56 Stat. 356; 12 U.S.C. 265), separate from any of the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "——— (Name of Contractor), ——— (Contract Number), Department of Energy Special Bank Account."

Covenants

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that,

(1) The Government shall have title to the credit balance in said account to secure the return of all advances made to the contractor, which title shall be superior to any lien or claim of the Bank or others with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds properly withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the duly authorized representative of the Contracting Officer, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including, without limitation, the inspection or copying of such books and records and any and all memoranda, checks, correspondence, or documents pertaining thereto. Except as agreed upon by the Government and the Bank, all books and records pertaining to the Special Bank Account in the possession of the Bank relating to the Special Bank Account agreement shall be preserved by the Bank for a period of three (3) years after final payment under the contract to which the Special Bank Account agreement pertains or otherwise disposed of in such manners as may be agreed upon by the Government and the Bank.

(4) In the event of the services of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify the Head of Contracting Activity, DOE.

In witness whereof the parties hereto have caused this Agreement to be executed , as of the day and year first above written.

(Signatures and Official Titles) _____

Subpart 970.36—Construction and A-E Contracts

970.3600 Scope of subpart.

This subpart sets forth contracting procedures applicable to construction work performed by management and operating contractors and their subcontractors. Provisions of FAR Part 36 and Part 936 of this chapter also apply.

970.3601 Government estimates.

A Government estimate of costs shall be prepared for all construction work to be subcontracted under operating and management contracts. The services of an architect-engineer, management and operating contractor, or construction contractor shall be used as appropriate in the preparation of Government estimates.

970.3602 Specifications.

Management and operating contractors are required to comply with the DOE publication entitled "Design Criteria," in preparing specifications for construction work.

970.3603 Labor standards.

The provisions of FAR Subpart 22.4 and Subpart 922.4 of this chapter shall be followed in determining whether a management and operating contractor's procurement actions involve work covered under the Davis-Bacon Act.

970.3604 Agreement for rental of third-party owned construction equipment.

When construction work under a management and operating contract requires the rental of construction equipment from a third party, the DOE agreement outlined at 936.7302 shall be used.

970.3605 Davis-Bacon Act.

Subcontracts subject to the Davis-Bacon Act under management and operating contracts shall include the applicable clauses and shall be modified to delete references to a prime contract subject to the Davis-Bacon Act.

970.3606 Special construction clause for operating contracts.

The clause in 970.5204–38 shall be used in management and operating contracts when the contractor will not perform covered work with its own forces but may procure construction by subcontract.

970.3607 Architect-engineer/construction services.

Combinations in or subcontracts for architect-engineer and construction services, which may result in self-inspection of construction work, tend to prevent a contractor from rendering unbiased decisions, or create difficulties in segregating costs between contracts, and should be avoided. However, it is recognized that sometimes it is advantageous under carefully circumscribed conditions for a management and operating contractor to obligate a single firm to perform both architect-engineer and construction management services which may include performance of a segment of the construction work with the contractor's own forces. Unless otherwise authorized by the Procurement Executive, the following combinations of subcontracts shall not be awarded by a management and operating contractor to the same firm or to affiliated companies:

(a) Both a cost-reimbursable contract and fixed-price contract if the performance of any portion of the work under either the cost-type or fixed-price contract will be performed on different projects concurrently and in the same general locations. This restriction applies to contracts for construction services, architect-engineer services, or construction and architect-engineer services.

(b) A fixed-price contract or contracts, for both architect-engineer and construction services on the same construction project, or a cost-type contract for architect-engineer services and a fixed-price contract for construction services on the same construction project. If a firm is to be responsible under such contractual arrangements for both design and construction services, title III architect-engineer services shall be performed by another organization selected by DOE.

(c) A cost-type contract for both architect-engineer and construction services on the same construction project (engineer-constructor contract). If this contractual arrangement is used, the contract shall provide for performance of the title III architect-engineer services by contractor's engineering personnel who are not responsible to the contractor's construction personnel, or the title III services shall be performed by another organization selected by DOE.

970.3608 Inspection.

(a) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be procured from a fixed-price construction contractor with respect to its own work. Under cost-reimbursement type subcontracts where the construction contractor and architect-engineer contractor are the same, some degree of self-inspection may be permitted, but shall not constitute final inspection and acceptance by the Government.

(b) When one contractor is to inspect the work of another, the inspecting contractor will be given written instructions defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the contract, direct additional work, waive any requirements of the contract, or settle any claims or dispute. Copies of the instructions will be given to the contractor who is to be inspected, with a request to acknowledge receipt on one copy and return it to the contracting officer. In this manner, both contractors are on notice as to the authority and limitations on the authority of the inspecting contractor.

Subpart 970.44—Contractor procurement

970.4401 General.

Contracting activities of management and operating contractors shall be governed by contract requirements. The Federal Acquisition Regulation generally is not directly applicable. There are, however, requirements of certain Federal Laws, Executive Orders and regulations including Federal Acquisition Regulations which pertain to and are applicable to procurements by management operating contractors. These requirements, together with implementing DOE Acquisition Regulations which apply to management and operating contractor procurements are identified in this subpart and other subparts of 970.

970.4402 Responsibility of contracting officers.

Contracting officers are responsible for assuring that procurement by management and operating contractors conforms to contract requirements and provides effective and timely support to agency programs. In carrying out this responsibility, contracting officers shall: (a) Assure that management and operating contracts include those provisions required by law or regulations, and such other provisions as are appropriate to implement DOE

policies and requirements; (b) review contractor procurement systems including implementation of policies as required by 970.4403 and in accordance with the provisions of their contracts; (c) review individual procurement actions of certain types or above stated dollar level; and (d) make periodic appraisals of the contractor's management of the procurement function in accordance with criteria established by the Procurement Executive.

970.4403 Policies.

The following policies shall apply to the procurement practices of management and operating contractors. Within these policies it is expected that procurement systems and methods will vary according to the types and kinds of procurement to be made, the needs of the particular programs, and the experience, methods, and practices of the particular contractor.

(a) Procurement systems and methods used to support DOE management and operating contract work should be well defined, consistently applied, and follow good business practices appropriate for the requirement and amount of procurement involved.

(b) Procurement should be effected in the manner most advantageous to the Government—price, quality, and other factors considered. In order to assure this objective and the award of subcontracts on an impartial basis, procurement (from other than Government sources) shall be effected by methods calculated to assure such full and free competition as is consistent with securing the required supplies and services. Generally, procurement actions are carried out through one of the following methods:

(1) *Firm-Price Competitive offers or quotations and award.* The competitive offer or quotation and award method of procurement, which normally assures the greatest degree of fair and open competition, generally involves the following basic steps and objectives:

(i) Preparation of a solicitation document setting forth contract terms and conditions and describing the requirement clearly, accurately, and completely, avoiding unnecessarily restrictive specifications or requirements.

(ii) Publicizing such solicitations by distribution to a reasonable number of prospective offerors and by such other means as may be appropriate, in sufficient time to permit the preparation and submission of offers before the time set for receipt of offers. This time shall be uniform for all.

(iii) Handling solicitations in a manner which provides fair and equal treatment for all prospective contractors.

(iv) Making an award to the prospective contractor whose offer, in response to the solicitation, will be most advantageous to the Government, price and other factors considered. However, if upon evaluation, it is determined to be in the best interest of the Government to enter into negotiations with prospective contractors before award, such negotiations should be conducted in accordance with (b)(2) below with respect to according fair and equal treatment to prospective contractors.

(2) *Negotiation.* Procurement by this method normally should be conducted by competitive negotiations through the solicitation and evaluation of proposals, from an adequate number of qualified sources to assure effective competition, consistent with securing the required supplies or services. Negotiated procurement involves advance planning, description of procurement and delivery requirements, and consideration of the effect these requirements may have on prices and competition. Requests for proposals should describe the property or services required as completely as possible; allow sufficient time for submission of proposals; and establish a closing date for receipt of proposals. Proposals should be handled in a manner which provides fair and equal treatment to all prospective offerors.

(c) Price or cost analyses shall be performed in accordance with the requirements of FAR Subpart 15.8 and Subpart 915.8 of this chapter. Profit and fee and negotiation objectives shall be consistent with guidance in FAR Subpart 15.9 and Subpart 915.9 of this chapter. Allowable cost shall be determined in accordance with the cost principles of FAR Part 31 appropriate for the type of organization to which the subcontract is awarded.

(d) Supplies and services normally should be procured through the use of specifications, standards, or purchase descriptions which clearly and accurately describe the supplies or services to be procured. If such specifications, standards, or purchase descriptions are not available and it is impractical and uneconomical to prepare them, "brand name or equal" descriptions may be used, provided the particular physical functions or other characteristics of the brand name item which are deemed essential are clearly identified and described.

(e) The need for access authorizations to classified information shall not be a limiting factor in obtaining competition except where time will not permit securing additional access authorizations.

(f) Awards shall be made only to responsible, responsive, prospective contractors. Proposed awards to firms or individuals on the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE Consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees shall be submitted to DOE for approval.

(g) Selection of the type of contract to be used should be based on consideration of the nature of the supplies and services required and other circumstances surrounding the procurement. The cost-plus-a-percentage-of-cost system of contracting shall not be used in any event.

(h) Small purchases should be made by methods designed to (1) obtain fair and reasonable prices, (2) reduce administrative costs of making such purchases to the minimum required to establish the propriety of placing the order at the price paid with the supplier concerned, and (3) improve opportunities for small and minority business concerns within the local trade area to obtain a fair proportion of purchases.

970.4404 Procurement from contractor-controlled sources.

(a) When a management and operating contractor maintains a separate procurement function to support performance of work in DOE facilities on DOE sites, procurement from contractor-controlled sources (any division, subsidiary, or affiliate of the contractor under a common control) may be treated in the same manner as procurement from other sources provided the procurement is made:

(1) Under the same terms and conditions as would apply if the purchase were from a third party;

(2) In accordance with policies and procedures particularly designed to permit fair and open competition which have been approved by the contracting officer; and

(3) In a manner which results in legally enforceable terms and conditions.

(b) Subcontracts for performance of contract work itself (as distinguished from procurement of supplies and services needed in connection with the performance of work) require DOE authorization which may involve an adjustment of the contractor's fixed fee. If the contractor seeks authorization to have some part of the contract work performed by a contractor-controlled source, and the contractor's

performance of that work was a factor in the negotiated fixed fee, DOE approval would normally require (1) that the contractor-controlled source perform such work an a basis without profit, (2) an equitable downward adjustment to the contractor's (i.e., the contracting component's) fixed fee.

(c) Determination on cost of money allowance as prescribed in at FAR 31.205–10 shall be treated as follows:

(1) When a procurement from a contractor-controlled source with the provisions and conditions of (a) (1), (2), and (3) of this section, the contractor-controlled source may include cost of money as an allowable element of the costs of its goods or services provided to the contractor; *provided* (i) the procurement is based on cost as set forth in 970.3102–15 and (ii) the cost of money amount is computed in accordance with FAR 31.205–10 and related procedures (see 930.70).

(2) When a procurement from a contractor-controlled source is authorized in accordance with 970.4408 of this section, cost of money shall not be considered an allowable element of the cost of the contractor-controlled source procurement.

970.4405 Procedures for handling mistakes under management and operating contractor procurement.

(a) Heads of Contracting Activities may authorize the withdrawal of offers and the correction of mistakes in contracts awarded by contractors in accordance with this section.

(1) Contractors may permit the withdrawal of offers upon a showing of clear and convincing evidence of the alleged mistake.

(2) Contractors may correct obvious clerical errors in offers disclosed prior to award, regardless of amount.

(3) Except as provided in paragraph (a)(4) of this section, contractors may correct other mistakes in bids and contracts as provided in this section.

(4) The Head of the Contracting Activity approval shall be required for:

(i) Any corrections of mistakes which would cause the proposed contract price (A) to exceed that of the second low offer, or (B) to displace one or more lower acceptable offers;

(ii) Any corrections of mistakes in offers, other than obvious clerical errors, in procurement actions which require DOE approval;

(iii) Any correction of mistakes which exceed $10,000 disclosed after award; and

(iv) Any rescision of a contract.

(b) Corrections of mistakes are authorized under paragraph (a) (3) and (4) of this section when:

(1) There is clear and convincing evidence to support both the assertion of a mistake and the amount thereof;

(2) The mistake was made in good faith;

(3) The mistake is of such a nature that correction thereof is justified by consideration of fair dealings; and

(4) The mistake is of the type that would be corrected under the contractor's private procurement practices, or with respect to mistakes in excess of $10,000, or which require approval of the Head of the Contracting Activity, a determination is made that relief would be granted under applicable Federal law.

(c) The authority of this section may not be used to make a offer responsive.

(d) Where rescision is an appropriate remedy, the Head of the Contracting Activity may authorize a modification in a specific amount, or approve revisions in other terms and conditions, in lieu of rescision.

(e) Where a contract is executed or work is continued after assertion of a mistake, the alleged mistake may be considered on its merits as of the time it was asserted, provided the contract was executed or the work continued pursuant to an understanding that such action did not constitute a waiver of any rights.

(f) Corrections of mistakes or other remedial actions taken pursuant to this section shall be documented by a written statement setting forth the circumstances and basis for such action and shall be made a part of the procurement file.

(g) When correction of mistakes or other relief cannot be granted under the criteria of this section, the Head of the Contracting Activity may deny the request or forward the file to the Procurement Executive with recommendation for action.

970.4406 [Reserved]

970.4407 Review and approval.

(a) Heads of contracting activities shall require management and operating contractors to obtain the approval of the contracting officer before entering into any subcontracts or purchase orders within the following categories:

(1) *Specified contract types.* Approval shall be required before entering into cost reimbursement, labor-hour, and time-and-materials type subcontracts in excess of $500.

(2) *Specified dollar amounts.* Approval shall be required before entering into subcontracts or purchase orders that:

(i) Except as provided in paragraph (b) (1) and (2) of this section, exceed the following amounts:

(A) Construction and A–E, $10,000;

(B) R&D, $10,000; and

(C) All others, $25,000.

(ii) Exceed any lesser dollar limits established at the discretion of Heads of Contracting Activities, taking into consideration such factors as the nature of work under each contract, the estimated cost of work under the contract, the contractor's procurement organization, other controls exercised over the contractor's procurement operations, and policies with respect to approvals established by Headquarters or field offices.

(3) *Contracts entered into under section 41 of the Atomic Energy Act of 1954 relating to the operation of nuclear production facilities.* Prior approval shall be required for the subcontracting of any work a contractor is obligated to perform under a contract entered into under section 41 of the Atomic Energy Act of 1954, as amended.

(4) *Specified materials, equipment, or services.* Heads of Contracting Activities shall take such action as may be required to insure compliance with the procedure for purchase from contractor-controlled sources or the procurement of specific items, or classes of items which by the terms of the contract may require DOE approval.

(b) The following exceptions shall apply to the provisions of paragraph (a) above.

(1) In the event application of any of the dollar amount limitations established in paragraphs (a)(1) and (2) above would impair the DOE program or the field office or would be impracticable under the circumstances, or such higher levels would be in the Government's best interest, the Head of a Contracting Activity may, upon making such determination, establish a dollar amount in $100,000 subject to advance notification limitations set forth in 970.4408. Requests to establish dollar levels in excess of $100,000 shall be submitted to the Procurement Executive for approval and contain the applicable information required in 970.4408. Advance notification required in 970.44–8 shall be applicable to all such higher levels established.

(2) When a review has been made of the contractor's procurement system and the contractor's procurement system has been approved, the Head of the Contracting Activity may raise the dollar limitations in paragraph (a)(1) and (2) above as follows (subject to advance notification): To the lower of (A) limits established by the performing activity,

or (B) the amount of the Head of the Contracting Activities delegated authority, provided approval has been obtained as required.

(c) Heads of Contracting Activities may, up to the limits of their delegated authority, give oral approval (or approval by telephone or teletype) to any subcontract or purchase order requiring DOE approval in instances of compelling or unusual urgency, such as circumstances under which a DOE program would be seriously hampered or delayed if supplies or services are not obtained by a certain date and time does not permit the obtaining or formal approval. Such emergency approvals shall be confirmed in writing.

(d) Management and operating contractors shall be required to justify procurements in writing, setting forth the information and data used in determining that the procurements are in the best interest of the Government. The scope and detail of this documentation shall be consistent with the nature, dollar value, and complexity of the procurement.

(e) Contracting officers shall assure that the contractors establish and maintain procurement files which contain those documents essential to present an accurate and adequate record of the transaction.

(f) Field offices will establish files for the review and approval of contractor procurement actions, including among other necessary documentation, an appraisal of the proposed action and a copy of suggestions, deficiencies, or improvements forwarded to the contractor.

970.4408 Advance notification.

(a) This provision only applies to former AEC functions now being performed by DOE pursuant to section 602(d)13 of the Federal Property and Administrative Services Act of 1949, as amended. The limitation in section 304(b) of that act concerning advance notification is not applicable, provided the contractors procurement methods and systems have been reviewed and approved, except that advance notification shall be required for all proposed contracts or solicitations where the procurement is:

(1) Noncompetitive and over $25,000

(2) A intracompany transfer or payment over $10,000;

(3) Will result in direct reimbursement of costs over $500.

(4) For consulting work over $10,000.

(b) The advance notice shall contain, as a minimum, a description of work, estimated cost, type of contract or reimbursement provisions, and extent of anticipated competition, or justification for a noncompetitive procurement. The contracting officer may at any time request additional information that must be furnished promptly and prior to award of the subcontract.

970.4409 Nuclear material transfers.

(a) Management and operating contractors, in preparing contracts or other agreements in which monetary payments or credits depend on the quantity and quality of nuclear material, shall be required to assure that each such contract or agreement contains a:

(1) Description of the material to be transferred;

(2) Provision specifying the method by which the quantities are to be measured and reported;

(3) Provision specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(4) Provision providing for the use of an umpire to settle unresolved differences in the analytical samples; and

(5) Provision specifying in detail which part shall bear the costs of resolving a difference and what constitutes such costs.

(b) The provisions providing for resolution of measurement differences must be such that resolution is always accomplished, while at the same time minimizing any advantage one party may have over the other.

Subpart 970.46—Quality Assurance

970.4601 General.

Contract provisions relating to inspection and acceptance as included, in subcontracts and purchase orders by management and operating contractors, should provide no less protection for the Government than are provided by the contract articles in prime contracts.

Subpart 970.49—Termination of Contracts

970.4901 General principles.

(a) All management and operating contracts, regardless of whether they are for production, research and development, or services, shall contain appropriate termination provisions.

(b) Subcontracts and purchase orders awarded by the management and operating contactor are required to include termination and settlement requirements of FAR Part 49.

§ 970.4902 Termination clause.

The clause at 970.5204–45 shall be inserted into management and operating contracts.

Subpart 970.51—Use of Government Sources by Contractors

970.5101 Use of Government supply sources.

(a) Management and operating contractors should meet their acquisition requirements from Government sources of supply, when these sources are made available to them and if it is economically advantageous or otherwise in the best interest of the Government.

(b) Contracting officers may authorize management and operating contractors and their subcontractors with cost-reimbursement type subcontracts, where all higher-tier subcontracts are cost-reimbursement types, to acquire materials and services directly from such Government sources of supply in accordance with the requirements of this subpart or the consent of agencies involved.

(c) Materials, supplies, and equipment procured from Government sources of supply under the procedures described herein must be used exclusively in connection with management and operating contract work, except as otherwise authorized by Heads of Contracting Activities.

(d) Many supply facilities and contracts of the Department of Defense are made available to DOE and its management and operating contractors. Accordingly:

(1) Requisitions or purchase orders shall be submitted directly to these sources, unless otherwise specified. Field offices will be notified by the Procurement Executive, or designee, when such contracts and facilities are made available. Inquiries in connection with these sources may be directed to the Procurement Executive.

(2) Contractor requisitions submitted to Defense Logistics Centers should include the following statement. "The consignee of the supplies and materials requisitioned herein is acting in behalf of and as agent for the Department of Energy with respect to the expenditure of Government funds." Orders submitted directly to DOD contractors shall be accompanied by an authorization substantially similar to that in FAR 51.103.

(e) Contracting officers, when reviewing the procurement systems and methods of contractors that have been authorized to use Government sources of supply, shall assure that provision is made for documenting the justification of procurements from commercial sources of items available from Government sources of supply.

(f) Direct procurement by DOE, rather than by a management and operating contractor, shall be required where deemed necessary by the Head of the Contracting Activity in order to carry out special requirements of appropriation acts or other applicable laws relating to particular items.

(g) The Procurement Executive, shall be informed of instances in which Government sources of supply are not used because of the quality of the items available or when a Federal Supply Schedule contractor refuses to honor an order.

970.5102 Use of interagency motor pool vehicles and related services.

The provisions of FAR subpart 51.2, FPMR 41 CFR 101–39, and DOE–PMR 41 CFR 109–39 apply.

Subpart 970.52—Contract Clauses for Management and Operating Contracts

970.5201 General policy.

Many of the clauses set forth in subparts of FAR Part 52 and Part 952 of this Chapter apply to management and operating contracts. The clauses in this subpart are to be used in addition to or in place of the FAR or the DEAR counterpart contract clauses where appropriate. Further modifications and notes to certain FAR clauses are also prescribed, in addition to those set forth in Part 952.

970.5202 Deviations.

Deviations from the standard contract clauses and modifications to FAR clauses set forth herein, as well as from the standard contract clauses prescribed in FAR Part 52 and Part 952 of this Chapter, shall be made only in accordance with the deviation procedures of Subpart 901.4. Minor changes in wording which may become necessary in the course of negotiations are not considered deviations, provided Counsel determines that the change is not prohibited by statue, executive order, or administrative regulation and does not alter the meaning, intent, or basic principles expressed in these clauses.

970.5203 Modifications and notes to FAR clauses.

970.5203–1 Covenant against contingent fees.

See FAR 52.203–5.

Note.—*Modify this clause by adding the following paragraph:*

"(c) Subcontracts and purchase orders. Unless otherwise authorized by the Contracting Officer in writing, the contractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract."

970.5203–2 Examination of records by Comptroller General.

See FAR 52.215–1.

Note.—*The following paragraph (e) should be included in management and operating contracts when the clause at FAR 52.215–1 is required. It may be omitted only with the approval of the Procurement Executive, upon a specific determination, based on consultation with the Office of the Controller and the Office of the General Counsel, that nothing in the contract purports to preclude an audit by the General Accounting Office of any transaction thereunder.*

(e) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

970.5203–3 Buy American Act.

See FAR 52.225–3.

Note.—*Substitute* "used" *for* "delivered" *in paragraph (b).*

970.5204 Clauses to be used in addition to or in place of the contract clauses set forth in FAR 52 and DEAR 952.

970.5204–1 Security.

Use the clauses at 952.204–2, Security and 952.204–70, Classification.

970.5204–2 Safety and health (Government-owned or leased).

Safety and Health (Government Owned or Leased) (Apr 1984)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of DOE. The contracting officer shall notify the contractor, in writing, of any noncompliance with the provisions of the clause and the corrective action to be taken. After receipt of such notice, the contractor shall immediately take corrective action. The contractor shall submit a management program and implementation plan to the contracting officer for review and approval within 30 days after the date of award of this contract. In the event that the contractor fails to comply with said regulations or requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

970.5204–3 Buy American Act—Construction materials.

Include the clause at FAR 52.225–5 when the contract contains construction.

970.5204–4 [Reserved]

970.5204–5 Disclosure of information.

Clause located at 952.204–72 use as prescribed at 970.0404–4.

970.5204–6 Nuclear hazards indemnity.

See 952.250–70

970.5204–7 Nuclear hazards indemnity—product liability.

See 952.250–71

970.5204–8 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.

See 952.250–72

970.5204–9 Accounts, records, and inspection.

Accounts, Records, and Inspection (Apr. 1984)

(a) *Accounts.* The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

Note.—*If the contract includes the clause for* "Price Reduction for Defective Cost or Pricing Data" *set forth at FAR 52.215–22, paragraph (a) above should be modified by adding the words* "or anticipated to be incurred" *after the words* "allowable costs incurred."

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE at all reasonable times, before and during the period of retention provided for in (d) below, and the contractor shall afford DOE proper facilities for such inspection and audit.

(c) *Audit of subcontractors' records.* The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.

(d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the

progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as provided in this contract, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

(e) *Reports.* The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.

(f) *Inspections.* The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time in such manner as it shall deem appropriate.

(g) *Subcontracts.* The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this clause in all subcontracts (including fixed-price of unit-piece subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

Note.—*If the prime contract contains a "Defective Cost or Pricing Data" clause, this paragraph (g) shall be modified by adding the following:*

The contractor further agrees to include an audit clause, the substance of which is the "Audit" clause set forth at FAR 52.215–22, in each subcontract which does not include provisions similar to those in paragraph (a) through this paragraph (g) of this clause, but which contains a "defective cost or pricing data" clause.

(h) *Internal audit.* The contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the contracting officer.

Note.—*This paragraph (h) shall be included in (a) all cost-type contracts (or subcontracts) involving an estimated cost exceeding $5 million and expected to run more than 2 years, and (b) any other cost-type contract (or subcontract) where deemed advisable by the Head of the Contracting Activity advisable by the Head of the Contracting Activity and wen the contactor (or subcontractor) already has an established internal audit organization.*

970.5204–10 Foreign ownership, control, or influence over contractors (FOCI).

(a) Insert the clause at 952.204–73 in a solicitation for a management and operating contract.

(b) Insert the clause at 925.204–74 in management and operating contracts as prescribed at 970.0404–4.

970.5204–11 Changes.

Changes (Apr 1984)

(a) *Changes and adjustment of fee.* The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(b) *Work to continue.* Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

970.5204–12 Contractor's organization.

Contractor's Organization (Apr 1984)

(a) *Organization chart.* As promptly as possible after the execution of this Contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel to be employed in connecting with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) *Supervising representative of contractor.* Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site at all times. This also applies to off-site work.

(c) *Control of employees.* The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be contrary to the public interest, the Government reserves the right to require the contractor to remove the employee.

Note.—*In contracts identified in 970.2273, the following paragraph shall be substituted for (c) above:*

(c) The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in 970.2273, and such standards and procedures shall be subject to the approval of the contracting officer.

970.5204–13 Allowable costs and fixed-fee (CPFF management and operating contracts).

Allowable Costs and Fixed-Fee (Apr 1984) (CPFF Management and Operating Contracts)

(a) *Compensation for contractor's services.* Payment for the allowable costs as hereinafter defined, and of the fixed-fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed-fee.* The fixed-fee payable to the contractor for the performance of the work under this contract is $———. There shall be no adjustment in the amount of the contractor's fixed-fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work.

Note.—*This provision to this paragraph may be appropriately changed to cover situations where the fee is for a period of time or different fees are allowed for various phases of the work.*

(c) *Allowable costs.* The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on: (1) Reasonableness, including the exercise of prudent business judgment; (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work; and (3) recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not simply either that it is allowable or that it is unallowable.

(d) *Items of allowable cost.* Subject to the other provisions of this clause, the following items of cost of work done under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance, including self-insurance, as provided in the clause entitled "Required Bonds and Insurance—Exclusive of Government Property."

(2) Communication costs, including telephone services, local and long-distance calls, telegrams, cablegrams, postage, and similar items.

(3) Consulting services (including legal and accounting), and related expenses, as

approved by the contracting officer, except as made unallowable by paragraphs (e)(16) and (e)(26).

(4) Litigation expenses, including reasonable Counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and Claims."

(5) Losses and expenses (including settlements made with the consent of the contracting officer) sustained by the contractor in the performance of this contract and certified in writing by the contracting officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) Materials, supplies, and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.

(7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the contracting officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any "Patent Rights" clause of this contract.

(8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personal appendix sets forth in detail personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the contracting officer. It is further understood and agreed that the contractor will advise DOE of any proposed changes in any matters covered by said policies, practices or plans which relate to this item of cost, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the contractor and DOE without execution of an amendment to this contract for the purpose of effectuating any such changes in, or additions to, said personnel appendix as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the contracting officer or his representative. Types of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:

(i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees, provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $——— or more, when it is proposed that a total of 50 percent or more or such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;

(ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and workmen's compensation plans, (whether or not covered by insurance); voluntary or agree-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign travel, which requires specific approval by the contracting officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications;

(v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis); including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;

(vi) Recruitment of personnel (including help-wanted advertisement), including service of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the contract.

Note.—*In appropriate circumstances, the lead sentence in subparagraph (d)(8) may be changed to read as follows:*

"Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout his organization, as approved by the contracting officer, such as".

(9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent directed or approved by the contracting officer.

(10) Subcontracts and purchase orders, including procurements from contractor-controlled sources, subject to approvals required by other provisions of this contract.

(11) Subscriptions to trade, business, technical, and professional periodicals, as approved by the contracting officer.

(12) Taxes, fees, and charges levied by public agencies which the contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(13) Utility services, including electricity, gas, water, and sewerage.

(14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205-6(j)(3)(iv).

(15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

Note.—*The following additional examples apply when the contractor performs construction.*

(16) Camp operations, to the extent approved by the contracting officer.

(17) Maintenance, inspection, repair, replacement, and transportation of construction plant and equipment to the extent not covered by rentals or insurance and as provided in rental agreements approved by the contracting officer.

(18) Rental for (i) construction plant and equipment rented by the contractor from others at rates and under written agreements approved by the contracting officer, and (ii) construction plant and equipment owned and furnished by the contractor under this contract.

(e) *Items of unallowable costs.* The following items of costs are unallowable under this contract to the extent indicated:

(1) Advertising, except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the contracting officer as clearly in furtherance of work performed under the contract.

(2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the contractor.

(3) Proposal expenses and costs of proposals.

(4) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contract or (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(5) Central and branch office expenses of the contractor, except as specifically set forth in the contract.

(6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(7) Contingency reserves, provisions for.

(8) Contributions and donations.

(9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight line method), or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.

(10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.

(11) Entertainment costs, except the costs of such recreational activities for on-site employees as may be approved by the contracting officer or provided for elsewhere in this contract.

(12) Fines and penalties, including assessed interest, resulting from violations of, or failure of, the contractor to comply with Federal, state, or local laws or regulations, except when incurred in accordance with the written approval of the contracting officer or as a result of compliance with the provisions of this contract.

(13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the contractor from others.

(14) Insurance (including any provisions of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined in Clause ———.

(15) Interest, however represented (except interest incurred in compliance with the clause entitled "State and local taxes"), bond discounts and expenses, and costs of financing and refinancing operations.

(16) Legal, accounting, and consulting services and related costs incurred in connection with the preparation and issuance of stock, rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions of proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(17) Losses (including litigation expenses, Counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reductions to and discount purchases by employees and other from any source; and losses where such losses or expenses:

(i) Are compensated for by insurance or otherwise or which would have been compensated by insurance required by law or by written direction of the contracting officer but which the contractor failed to procure or maintain through its own fault or negligence;

(ii) Result from willful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor, as defined in Clause ——— of this contract.

(iii) Represent liabilities to third persons from which the contractor has expressly accepted responsibility under other terms of this contract.

(18) Maintenance, depreciation, and other costs incidental to the contractor's idle or excess facilities (including machinery and equipment), other than reasonable standby facilities.

Note.—May be omitted when no contractor-owned equipment is being utilized in the performance of the contract.

(19) Membership in trade, business, and professional organizations, except as approved by the contracting officer.

(20) Precontract costs, except as expressly made allowable under the provisions in this contract.

(21) Research and development costs, unless specifically provided for elsewhere in this contract.

(22) Selling cost, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the contractor's product for agency use.

(23) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.

(24) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including listing of securities on exchanges, taxes which are paid contrary to the clause entitled "State and local taxes," federal taxes on net income and excess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to Section 4971 or Section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

(25) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the constractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the contracting officer.

(26) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organizational and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of DOE applicable to the borrowing of such an individual from another cost-type contractor.

(27) First-class air travel in excess of the cost of less than first-class air accommodations, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would:

(i) Require circuitous routing,

(ii) Require travel during unreasonable hours,

(iii) Greatly increase the duration of the flight,

(iv) Result in additional costs which would offset the transportation sayings, or

(v) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(28) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this contract.

(29) Late premium payment charges related to employee deferred compensation plan insurance.

(30) Facilities capital cost of money. (CAS 414 and CAS 417).

(31) Lobbying cost.

(32) Commercial automobile rental expenses unless approved by the Contracting Officer.

970.5204-14 Allowable costs and fixed-fee (support contracts).

Allowable Costs and Fixed-Fee (Support Contracts) (Apr 1984)

(a) *Compensation for contractor's services.* Payment for the allowable cost as hereinafter defined, and of the fixed-fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed-fee.* The fixed-fee payable to the contractor for the performance of the work under this contract is $. There shall be no adjustment in the amount of the contractor's fixed-fee by reason of differences between any estimate of cost for perfomance of the work under this contract and the actual cost for performance of that work.

Note: *This provision to this paragraph may appropriately be changed to cover situations where the fee is for a period of time, or different fees are allowed for various phases of the work.*

(c) *Allowable cost.* The allowable costs for performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor, are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the contract work in accordance with its terms, and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on (1) reasonableness, including the exercise of prudent business judgment, (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work, and (3) recognition of all exclusions and limitations set forth in this clause or

elsewhere in this contract as to types or amounts of items of costs. Allowable cost shall not include costs of any item described as unallowable in paragraph (e) of this clause, except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not imply either that it is allowable or that it is unallowable.

(d) *Items of allowable cost.* Subject to the other provisions of this clause, the following items of cost of work under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance (including self-insurance) as provided in the clause entitled "Required bonds and insurance—exclusive of Government property."

(2) Communication costs, including telephone services, local and long-distance telephone calls, telegrams, cablegrams, radiograms, postage, and similar items.

(3) Consulting services (including legal and accounting) and related expenses, as approved by the contracting officer, except as made unallowable by paragraph (e)(14) and (e)(23).

(4) Litigation expenses, including reasonable Counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and Claims."

(5) Losses and expenses (including settlements made with the consent of the contracting officer) sustained by the contractor in performance of this contract and certified in writing by the Contracting Officer to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) Materials and supplies (including those withdrawn from common stores costed in accordance with any generally recognized method that is consistently applied by the contractor and productive of equitable results).

(7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the contracting officer; and preparation of invention disclosures, reports, and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with the Patent Rights clause of this contract.

(8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personnel appendix sets forth, in detail, personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the contracting officer. It is further understood and agreed that the contractor will advise DOE of any proposed changes in any matters covered by said policies, practices, or plans which relate to this item of costs, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the contractor and DOE without execution of an amendment to this contract for the purpose of effectuating and such changes in, or additions to, said personnel appendix, as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the contracting officer or his representative. Examples of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:

(i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees, provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $———— (See 970.3102–2) or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary and bonus and incentive compensation payments.

(ii) Legally required contributions to old-age and survivor's insurance, unemployment, compensation plans, and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign-travel, which requires specific approval by the contracting officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects, and the travel and subsistence of their dependents);

(iv) Employee relations, welfare, morale, etc., programs, including incentive or suggestion awards, employee counseling services, health or first-aid clinics, and house or employee publications;

(v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the contracting officer on a case-by-case basis) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vi) Recruitment of personnel (including help-wanted advertisement) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vii) Net cost of operating plant-site cafeterias, dining rooms, and canteens attributable to the performance of the contract.

Note.—*In appropriate circumstances that lead sentence in subparagraph (d)(8) may be changed to read as follows:*

Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout its organization, as approved by the contracting officer, such as:

(9) Rentals and leases of land, buildings, and equipment owned by third parties where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to approval by the contracting officer.

(10) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property to the extent directed or approved by the contracting officer.

(11) Repairs, maintenance, and inspection of contractor owned property used in connection with the performance of this contract, including reasonable standby facilities, which are due to ordinary wear and tear from use and the action of the elements, provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent value or appreciably prolong its intended useful life; and major repair (including replacement) to such property, as directed or approved by the contracting officer when charged directly to the contract.

(12) Special tooling, including jigs, dies, fixtures, molds, patterns, designs and drawings, tools, and equipment of a specialized nature generally useful to the contractor only in the performance of this contract.

Note.—*Itemize any additional special equipment which may be appropriate, such as loops, mockups, experimental setups, etc.*

(13) Subcontracts, purchase orders, and procurement from contractor-controlled sources, subject to approvals required by other provisions of this contract.

(14) Subscriptions to trade, business, technical, and professional periodicals, as approved by the Contracting Officer when charged directly to the contract.

(15) Taxes, fees, and charges levied by public agencies which the contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(16) Utility services, including electricity, gas, water, steam, and sewerage.

(17) Indemnification of the Pension Benefit Guaranty Corporation pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205–6(j).

(e) *Items of unallowable costs.* The following examples of items of costs are unallowable under this contract to the extent indicated:

(1) Advertising, except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the Contracting Officer as clearly in furtherance of work performed of this contract.

(2) Bad debts (including expenses of collection) and provisions for bad debts not

arising out of the performance of this contract.

(3) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contractor (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(4) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(5) Contingency reserves, provisions for (except provisions for reserves under a self-insurance program to the extent that the type, coverage, rates, and premiums would be allowable if commercial insurance were purchased to cover the same risk, as approved by the contracting officer).

(6) Contributions and donations.

(7) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method) or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life. Amortization or depreciation of unrealized appreciation of values of assets or of assests fully amortized or depreciated on the contractors books of account is unallowable.

(8) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profits.

(9) Entertainment costs, except the costs of such recreational activities for on-site employees as may be approved by the contracting officer or provided for elsewhere in this contract.

(10) Fines and penalties, including assessed interest, resulting from violations of, or failure of, the contractor to comply with the Federal, state, or local laws, or regulations, except when incurred in accordance with written approval of the contracting officer or as a result of compliance with the provisions of this contract.

(11) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of the DOE applicable to transfers of such property to the contractor from others.

(12) Insurance (including and provision of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss or damage to Government property.

(13) Interest, however represented (excepted interest incurred in compliance with the clause entitled "State and Local Taxes), bond discounts and expenses, and costs of financing and refinancing operations.

(14) Legal, accounting, and consulting services, and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(15) Losses, including litigation expenses. Counsel fees, and settlement on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reduction to and discount purchases by employees and others from any sources; and losses where such losses or expenses:

(i) Are compensated for by insurance or otherwise, or which would have been compensated by insurance required by law or by written direction of the contracting officer, but which the contractor failed to procure or maintain through its own fault or negligence, or which could have been covered by permissible insurance in keeping with ordinary business practice, but which the contractor failed to secure or maintain;

(ii) Result from willful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor.

(iii) Represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this contract.

(16) Maintenance, depreciation, and other costs incidental to the contractor's idle or excess facilities (including machinery and equipment) other than reasonable standby facilities.

(17) Membership in trade, business, and professional organizations except as approved by the contracting officer.

(18) Precontract costs, except as expressly made allowable under other provisions in this contract.

(19) Reconversion, alteration, restoration, or rehabilitation of the contractor's facilities, except as expressly provided elsewhere in this contract.

(20) Selling costs, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such purposes as applying or adapting the contractor's product for agency use.

(21) Storage or records pertaining to this contract after completion of operations under this contract irrespective of contract or statutory requirement for the preservation of records.

(22) Taxes, fees, and charges in connection with financing, refinancing or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the clause entitled "State and local taxes;" Federal taxes on net income and excess profits; special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to section 4971 or section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

(23) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment thereto is required pursuant to the provisions of this contract or procedures of the DOE applicable to the borrowing of such an individual from another cost-type contractor.

(24) First-class air travel in excess of the cost of less than first-class air accommodations, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as, where less than first-class accommodations would:

(i) Require circuitous routing,

(ii) Require travel during unreasonable hours,

(iii) Greatly increase the duration of the flight,

(iv) Result in additional costs which would offset the transportation savings, or

(v) Offer accommodations which are not reasonably adequate for the medical needs for the traveler.

(25) Late premium payment charges related to employee deferred compensation plan insurance, in accordance with FAR 31.205–6(j).

(26) Research and development costs, unless specifically provided for elsewhere in this contract.

(27) Bidding expenses and costs of proposals.

(28) Facilities capital cost of money (CAS–414 and CAS–417).

(29) Lobbying costs.

(30) Commercial automobile rental costs unless approved by the contracting officer.

970.5204–15 Obligation of funds.

Obligation of Funds (Apr 1984)

(a) *Obligation of funds.* The amount presently obligated by the Government with respect to this contract is ———— dollars ($————). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated revenues and receipts from others for work and services to be performed under this contract are not included in this amount ———— obligated with respect to this contract. Such revenues and receipts, to the extent actually received by the contractor shall be available and used for the payment of allowable costs as provided in the article entitled "Payments and Advances." Nothing in this paragraph (a) is to be construed as authorizing the contractor to exceed limitations stated in financial plans

established by DOE and furnished to the contrator from time to time under this contract.

(b) *Limitation on payment by the Government.* Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the article entitled "Termination," or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract is in accordance with the article entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fixed fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of (1) revenues and receipts deposited to the Government's account as provided in the article entitled "Payments and Advances," and (2) other funds with DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) *Notices—Contractor excused from further performance.* The contractor shall notify DOE in writing whenever the unexpended balance of funds (including revenues and receipts) available under paragraph (a) above, plus the contractor's best estimate of revenues and receipts to be received during the —— day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only —— days and to cover the contractor's unpaid fixed fee, and outstanding commitments and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of funds (including revenues and receipts) available under paragraph (a) above, less the amount of the contractor's fixed fee then earned but not paid, is in the contractor's best judgment either sufficient only to liquidate outstanding commitments and liabilities on account of costs allowable under this contract or is equal to zero, the contractor shall immediately notify DOE and shall made no further commitments or expenditures (except to liquidate existing commitments and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the article entitled "Termination."

(d) *Financial plans; cost and commitment limitations.* In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans or other directives issued to the contractor, establish controls on the costs to be incurred and commitments to be made in the performance of the contract work. Such plans and instruction may be amended or supplemented from time to time by DOE. The contractor hereby agrees to comply with the specific limitations (ceilings) on costs and commitments set forth in such plans and directives, to use its best efforts to comply with other requirements of such plans and directive, and to promptly notify DOE in writing whenever it has reason to believe the authorized financial levels of costs and commitments will be exceeded or substantially underrun.

Note.—*This paragraph (d) may be omitted in contracts which expressly or otherwise provided a contractual basis for equivalent controls in a separate article.*

(e) *Government's right to terminate not affected.* The giving of any notice under this article shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the article entitled "Termination."

970.5204–16 Payments and advances.

Payments and Advances (Apr 1984)

(a) *Installments of fixed-fee.* Ninety percent (90%) of the fixed-fee shall become due and payable in periodic installments in amounts based on the proportion of the work then completed, as determined by the contracting officer, and the balance upon completion and acceptance of all work under this contract.

Note.—*Where a separate fixed-fee is provided for a separate item of work, this subparagraph should be modified to permit payment of the entire fixed-fee upon completion of that item.*

(b) *Payments on Account of Allowable Costs.* The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) *Special bank account—use.* All advances of Government funds shall be withdrawn pursuant to a letter of credit in favor of the bank or, in the option of the Government, shall be made by check payable to the contractor, and shall be deposited only in the Special Bank Account referred to in the Agreement for Special Bank Account, which is attached hereto and incorporated into this contract as an appendix. The contractor shall likewise deposit in the Special Bank Account any other revenues received by the contractor in connection with the work under this contract. No part of the funds in the Special Bank Account shall be (1) mingled with any funds of the contractor or (2) used for a purpose other than that of making payments for costs allowable under this contract or payments for other items specifically approved in writing by the contracting officer. If the contracting officer shall at any time determine that the balance on such bank account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any bank account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the bank of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

Note.—The following paragraph (e) shall be included in management and operating contracts with integrated contractors.

(e) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a voucher for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the voucher, and DOE, after audit and appropriate adjustment, will approve such voucher. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

Note.—*It should be omitted in contracts with nonintegrated contractors.*

(f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs and fixed fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after (1) compliance by the contractor with DOE's patent clearance requirements, and (2) the furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property;" and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents.

In arriving at the amount due the contractor under this clause, there shall be deducted, any claim which the Government may have against the contractor in connection with this contract, and deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Bank Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(g) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.

(h) *Discounts.* The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.

(i) *Revenues.* All revenues other than the contractor's fixed fee or fees, if any, accruing to the contractor in connection with the work under this contract shall be Government property and shall be deposited in the Special Bank Account to be available for payment of allowable cost under this contract.

(j) *Direct payment of charges.* The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.

970.5204-17 [Reserved]

970.5204-18 [Reserved]

970.5204-19 Printing clause for management and operating contracts.

Printing (Apr 1984)

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) In all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Contractor shall include a provision substantially the same as this clause.

970.5204-20 [Reserved]

970.5204-21 Property.

Property (Apr 1984)

(a) *Furnishing of Government property.* The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) *Title to property.* Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) *Identification.* To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.

(d) *Disposition.* The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor or under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of cost allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the contractor under this contract.

(e) *Protection of government property—Classified Materials.* The contractor shall take all reasonable precautions, as directed by the contracting officer, or in the absence of such direction in accordance with sound industrial practice, to safeguard and protect government property in the contractor's possession or custody. Special measures shall be taken by the contractor in the protection of and accounting for any classified or special materials involved in the performance of this contract, in accordance with the regulations and requirements of DOE.

(f) *Risk of loss of government property.* The contractor shall be not liable for loss or destruction of or damage to government property in the contractor's possession unless such loss, destruction or damage results from willful misconduct or lack or good faith on the part of the contractor's managerial personnel, or unless such loss, destruction or damage results from a failure on the part of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written directive of the contracting officer to safeguard such property under paragraph (e) hereof. The term "contractor's managerial personnel" as used herein means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (1) all or substantially all of the contractor's business; or (2) all or substantially all of the contractor's operation at any one plant or separate location at which this contract is being performed; or (3) a separate and complete major industrial operation in connection with the performance of this contract; or (4) a separate and complete major construction, alteration or repair operation in connection with performance of this contract.

(g) *Steps to be taken in event of loss.* Upon the happening of any loss or destruction of or damage to government property in the possession or custody of the contractor, the contractor shall immediately inform the contracting officer of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or

damaged property, if and as directed by the contracting officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only.* Government property shall be used only for the performance of this contract.

(i) *Property Management.* The contractor shall maintain and administer a property management system, subject to the approval of the contracting officer, of accounting for and control, utilization, maintenance, repair, protection and preservation of Government property in its possession under the contract. The contractor's property management system shall be maintained and administered in accordance with sound business practice, and in accordance with Department of Energy Property Management Regulations and such directives or instructions which the contracting officer may from time to time prescribe.

970.5204–22 Contractor procurement.

Contractor Procurement (Apr. 1984)

(a) DOE reserves the right at any time to require that the contractor submit for approval any or all procurements under this contract. The contractor shall not procure any item whose purchase is expressly prohibited by the written direction of DOE and shall use such special and directed procurement sources as may be expressly required by DOE. The contractor shall provide information concerning procurement methods, practices, and procedures used or proposed to be used and shall use methods, practices, and procedures which are acceptable to DOE. Procurement arrangements under this contract shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise administer, and coordinate the work of subcontractors) and shall be in such form and contain such provisions as are required by this contractor or as DOE may prescribe.

(b) In addition to, and without derogation of any rights under paragraph (a) of this clause and any other provision in this contract the contractor shall require subcontractors to furnish cost or pricing data, and shall include in such subcontracts the appropriate clause set forth in 970.5204–24 except as otherwise directed or approved by DOE.

(c) Procurement or transfer of equipment, materials, supplies, or services from a contractor-controlled source (any division or other organizational component of the prime contractor, exclusive of the contracting component, and any subsidiary or affiliate of the contractor under a common control) shall be considered a procurement for the purposes of this clause.

(d) Proposed awards to firms or individuals on either the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE Consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees shall be forwarded to DOE for approval notwithstanding any prior procurement system approval.

Note A.—*When appropriate, the words,* "if required by the contracting officer," *may be inserted in the sentence of paragraph (a) after the word* "shall.

Note B.—*When appropriate, the words,* "shall be made in the name of the contractor, shall not bind nor purport to bind the Government" *may be inserted in the fourth sentence.*

970.5204–23 Taxes

State and Local Taxes (Apr 1984)

(a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid;* and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

**Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.*

(b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

(c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

970.5204–24 Subcontractor cost or pricing data.

Subcontractor Cost or Pricing Data (Apr 1984)

(a) The following clause shall be inserted in all subcontracts where such subcontracts are over $500,000 and any modification over $500,000 to such subcontracts, even though the original amount of the subcontract is $500,000 or less:

Certified Cost or Pricing Data (Apr 1984)

(1) The subcontractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each sub-subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete and current.

(2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each sub-subcontract, the price of which is expected to exceed $500,000, and (ii) the negotiation of the price of each change or modification to a sub-subcontract under this subcontract for which the price adjustment is expected to exceed $500,000.

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the subcontractor has not been required to furnish cost or pricing data; or (ii) the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the subcontractor states in writing the basis for applying this exception.

(4) In submitting the cost or pricing data, the sub-subcontractor shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by sub-subcontractors to the next higher-tier sub-subcontractor or the subcontractor, as applicable, for retention.

(b) The certificates required by this clause shall be in the form set forth below.

Subcontractor's Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FAR 15.804–6(d)), to the contractor in support of _____* are accurate, complete, and current as of _____**.

Firm _____
Name _____
Title _____
Date of execution*** _____

*Identify the proposal, quotation, request for price adjustment, or other submission involved.

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month, and year of signing, which should be as close as

practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract change or other modification involving an amount in excess of $500,000 were accurate, complete, and current, DOE shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) If the original price of this subcontract exceeds $500,000 or the price of any change or other modification to this subcontract is expected to exceed $500,000, the subcontractor agrees to furnish the contractor certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any sub-subcontract change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification result from a change or modification to the subcontract, nor does it apply to a sub-subcontract change or modification, at any tier, where the subcontract is not firm fixed-price or fixed-price with escalation unless the price for such change or other modification becomes reimbursable under the subcontract.

(f) The subcontractor agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each sub-subcontract hereunder in excess of $500,000 and in each sub-subcontract of $500,000 or less, at the time of making a change or other modification thereto in excess of $500,000.

(g) If the prime contractor determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the subcontractor, or any sub-subcontractor pursuant to this clause or any sub-subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the subcontractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(h) Failure of the contractor and the subcontractor to agree on any of the matters in paragraph (g) above shall be a dispute concerning a question of fact subject to the Disputes provisions of this subcontract.

Note.—*Since the subcontract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain sub-subcontracts, it is expected that the subcontractor may wish to include a clause in each such sub-subcontract requiring the sub-subcontractor to appropriately indemnify the subcontractor. It is also expected that any sub-subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower-tier sub-subcontractors.*

(i) This clause may also be used for subcontracts of $500,000 or less for which a certificate of cost or pricing data is obtained and, if so used, the $500,000 amount stated in the clause should be appropriately modified.

(j) The Head of a Contracting Activity, for contracts estimated to be within the limits of delegated authority, may, without power of redelegation, approve the waiver cited in FAR 15.804–3(i).

970.5204–25 Workmanship and Materials.

Workmanship and materials (Apr 1984)

(a) *Grade of workmanship and materials.* Unless otherwise directed by the contracting officer or expressly provided for by specifications issued under this contract:

(1) All workmanship shall be first class; and

(2) All articles, equipment and materials incorporated in the work are to be:

(i) New and of the most suitable grade of their respective kinds for the purpose;

(ii) In accordance with any applicable drawings and specifications; and

(iii) Installed to the satisfaction and with the approval of the contracting officer.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the contracting officer shall decide the question of equality.

(b) *Samples and test results.* If the contracting officer so requires, the contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

970.5104–26 Nuclear facility safety.

In accordance with the provisions at 970.2303 insert the clause below in management and operating contracts.

Nuclear Safety (Apr 1984)

(a) The activities under this contract include the operation of nuclear facilities. The contractor recognizes that such operation involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the contractor will exercise a degree of care commensurate with the risk involved.

(b) The contractor shall comply with all applicable regulations of DOE concerning nuclear safety and with those requirements (including reporting requirements and instructions) of DOE concerning nuclear safety of which it is notified in writing by the contracting officer.

(c) Prior to the initial startup of any nuclear facility under this contract and prior to any subsequent startup following a change which represents a significant deviation from the procedures, equipment, or analyses described in the safety analysis reports or other hazards summary reports for that facility, the contractor shall:

(i) Prepare a safety analysis report and detailed plans and procedures designed to assure the safe operations and maintenance of the facility in accordance with applicable DOE regulations and directives. For nuclear reactors and critical facilities, technical specifications shall also be provided.

(2) Establish nuclear safety control procedures to be used within the contractor's organization to insure competent independent review and internal approval of the safety analysis report and the detailed plans and procedures specified in (1) above.

(3) Submit to the contracting officer for his approval such procedures relating to nuclear safety as may be designated by him.

(4) Carry out a program of initial training and periodic requalification designed to assure that all personnel who will be engaged in nuclear operations or maintenance understand the approved plans and procedures for nuclear safety and are qualified to perform their assigned functions; and

(5) Obtain the approval of the contracting officer prior to start-up of the facility.

(d) In the operation and maintenance of any nuclear facility under this contract, the contractor shall:

(1) Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel, and except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified and authorized to evaluate any emergency condition and take prompt effective action with respect thereto.

(2) Operate the facility within the technical specifications or operational safety requirements which are approved by the contracting officer.

(3) Follow strictly the procedures relating to nuclear safety approved by the contracting officer in (c)(3) above, and submit to the

contracting officer for his approval, any proposed changes in such procedures.

(4) Establish an auditable, well-defined, internal safety review and inspection system approved by the contracting officer (including review and inspection reports by competent technical personnel) that will: (i) Provide frequent and periodic checks of facility performance and of the qualifications and training of operating and maintenance personnel, and (ii) provide for investigation of any unusual or unpredicted conditions that might affect safe operation.

(5) Report promptly to the contracting officer any change in the physical condition of the facility or its operating characteristics that might, in the judgment of the contractor, affect the safe operation of the facility.

(6) Terminate operations at the facility immediately whenever so instructed by the contracting officer, or whenever, in the judgment of the contractor, the risk of a nuclear incident endangering persons or property warrants such action.

(7) Prepare, in cooperation with other services and facilities available at the site and with the approval of the contracting officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons of the site; participate as directed in the integration of the contractor's and contracting officer's emergency plans with the responsible state and local government's emergency plans for protection of the public off-site; instruct its personnel as to their participation in such plans and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.

(8) At an appropriate time as determined by the contracting officer, prepare and submit to the contracting officer for his approval, shutdown, decommissioning, decontamination and property management plans leading to orderly and safe program disposition of the nuclear facility and any associated nuclear wastes or other hazardous material.

(9) In the event that the contractor fails to comply with said standards and requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

970.5204-27 Consultant or other comparable employment services of contractor employees.

(a) The following clause shall be included in all cost-reimbursement type contracts identified in 970.2273(b)(3).

Consultant or Other Comparable Employment Services (Apr 1984)

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the contracting officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE contractor under its contract with DOE, except with the prior approval of the contractor.

(b) The following clause shall be included in all contracts identified in 970.2273(b)(4).

Consultant or Other Comparable Employment Services (Apr 1984)

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the contracting officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE contractor in the same or related energy field or another organization except with the prior approval of the contractor. If the contractor believes, with respect to any employee who is employed full-time on the contract work, that any proposed consultant or other comparable employment service for an organization in the atomic energy field other than a DOE cost-type contractor may involve: (1) A rate of remuneration significantly in excess of the employee's regular rate of remuneration; (2) a significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE's contractors; (3) the contractor's responsibility to report fully and promptly to DOE all significant research and development information; or (4) the patent provisions of the contractor's contract with DOE, the contractor shall obtain the prior approval of the contracting officer for such consultant or other comparable employment service.

970.5204-28 Assignment.

Assignment (Apr 1984)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the contracting officer.

970.5204-29 Permits or licenses.

Permits or Licenses (Apr 1984)

Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

970.5204-30 Notice of labor disputes.

Notice of Labor Disputes (Apr 1984)

Whenever an actual or potential labor dispute is delaying or threatening the performance of the work, the contractor shall immediately notify the contracting officer in writing. Such notice shall include all relevant information concerning the dispute and its background.

970.5204-31 Litigation and claims.

Litigation and Claims (Apr 1984)

(a) *Initiation of litigation.* The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) *Defense and settlement of claims.* The contractor shall give the contracting officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and (2) of any claim against the contractor, the cost and expense of which is allowable under the clause entitled "Allowable Costs and Fixed-Fee." Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action of claim. To the extent not in conflict with any applicable policy of insurance, the contractor may with the contracting officer's approval, settle any such action or claim, shall effect at the contracting officer's request an assignment and subrogation in favor of the Government or all of the contractor's rights and claims (except those against the Government) arising out of such action or claim against the contractor, and if required by the contracting officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the contractor is not covered by a policy of insurance, the contractor shall, with the approval of the contracting officer, proceed with the defense of the action in good faith and in such event the defense of the action

shall be at the expense of the Government, provided, however, that the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the contracting officer, but which the contractor failed to secure or maintain through its own fault or negligence.

970.5204-32 Required bonds and insurance-exclusive of Government property (cost-type contracts).

Required Bonds and Insurance—Exclusive of Government Property (Cost-Type Contracts) (Apr 1984)

The contractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the contracting officer. The terms and conditions of any such bonds and insurance shall conform to the directions of the contracting officer. In view of the provisions of the article entitled "Property" the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government-owned property.

970.5204-33 Priorities, allocations, and allotments.

(a) The following clause shall be used in management and operating contracts for military and atomic energy production and directly related activity, where the programs have been authorized pursuant to the Atomic Energy Act of 1954, as amended.

Priorities, Allocations, and Allotments (Apr 1984)

The contractor shall follow the rules, regulations, and procedures of the Defense Priorities System and the Defense Materials System, Regulation 1, and all other applicable regulations and orders of the International Trade Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed for contract performance.

(b) Management and operating contracts may be eligible for priorities and allocations support if their purpose maximizes domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis. Guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. If the purpose of the contract is to maximize domestic energy resources, include the following clause:

Priorities, Allocations, and Allotments—Special Clause (Apr 1984)

This contract may be eligible for priorities and allocations support, as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case by case basis with the decision being jointly made by the Departments of Commerce and Energy.

DOE regulations regarding material allocation and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

Additional guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Technical Information Center (TIC), Post Office Box 62, Oak Ridge, Tennessee 37830.

970.5204-34 Sensitive foreign nations control.

See 952.204-71

970.5204-35 Controls in the national interest (unclassified contracts with educational institutions).

Controls in the National Interest (Apr 1984)

The contractor agrees to comply with the requirements of DOE specified in Attachment ———— to this contract, and to such other DOE requirements of the same general nature as the parties may agree to from time to time; these requirements relate to unclassified work, and they shall not be construed to limit or affect in any way the contractor's obligation to conform to all security regulations and requirements of DOE pertaining to classified work.

970.5204-36 Organizational conflicts of interest (contracts with universities where DOE has major investments in facilities but does not own or lease the land).

Organizational Conflicts of Interest (Apr 1984)

The parties agree that the university has adopted policies and procedures, designed to avoid conflict-of-interest situations, which are in substantial conformance with the Joint Statement of the Council of American Association of University Professors and the American Council on Education of December 1964, entitled, "On Preventing Conflicts of Interest in Government-Sponsored Research at Universities," which policies and procedures will be applied in connection with this contract.

970.5204-37 Statement of work (management and operating contracts).

See 970.10

970.5204-38 Special Clause for procurement of construction.

In accordance with 970.2274 the following clause shall be used in operating and management contracts when the contractor is to perform no Davis-Bacon work with his own forces but may procure construction by subcontract:

Government Facility Subcontract Approval (Apr 1984)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, on a public building or public work.

970.5204-39 [Reserved]

970.5204-40 [Reserved]

970.5204-41 Preservation of individual occupational radiation exposure records.

See 952.223-75

970.5204-42 Key personnel.

Key personnel (Apr 1984)

It having been determined that the employees whose names appear (below or in Appendix ——), or persons approved by the contracting officer as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this contract, the contractor agrees to assign such employees or persons to the performance of the work under this contract and shall not reassign or remove any of them without the consent of the contracting officer. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the contract, the contractor shall, with the approval of the contracting officer, replace such employee with an employee of substantially equal abilities and qualifications.

970.5204-43 Other Government contractors.

Other Government Contractors (Apr 1984)

The Government may undertake or award contracts for work or services. The contractor agrees to fully cooperate with such other contractors and Government employees and carefully fit its own work to such other work as may be directed by the contracting officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

970.5204-44 [Reserved]

970.5204-45 Termination.

The following clause is suggested for use in management and operating contracts:

Termination (Apr 1984)

(a) This contract shall continue until ———— unless sooner terminated in accordance with the provisions which follow:

(1) The performance of work under this contract may be terminated by the Government in whole, or from time to time in

part, (i) whenever the contractor shall default in performance, and shall fail to cure the fault or failure within such period as the contracting officer may allow after receipt from the contracting officer or a notice specifying the fault or failure, or (ii) whenever, for any reason, the contracting officer shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying whether termination is for default of the contractor or for the convenience of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other. If, after notice of termination under the provisions of (a)(1)(i) above, it is determined for any reason that the contractor was not in default, such notice of default shall be deemed to have been issued pursuant to (a)(1)(ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(2) Upon receipt of notice of termination, in accordance with (1) above, the contractor shall, to the extent directed in writing by the contracting officer, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by the contracting officer, to cancel promptly and settle with the approval of the contracting officer, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.

(b) Upon the termination of this contract, full and complete settlement of all claims of the contractor and of DOE arising out of this contract shall be made as follows:

(1) The Government shall have the right in its discretion to assume sole responsibility for any or all obligations, commitments, and claims that the contractor may have undertaken or incurred, the cost of which are allowable in accordance with the provisions of this contract; and the contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and; take all such steps as the contracting officer may require for the purpose of fully vesting in the Government any rights and benefits the contractor may have under or in connection with such obligations, commitments, or claims.

(2) The Government shall treat as allowable costs all expenditures made in accordance with and allowable under the clause entitled "Allowable Costs and Fixed Fee," not previously so allowed or otherwise credited for work performed prior to the effective date of termination, together with expenditures as may be incurred for a reasonable time thereafter with the approval of, or as directed by, the contracting officer.

(3) The Government shall treat as allowable costs, to the extent not included in (b)(2) above, the costs of settling and paying claims arising out of the termination of work under orders, subcontracts, and commitments as provided in (a)(2) above.

(4) The Government shall treat as allowable costs the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the termination of the contract and for the termination and settlement of orders and subcontracts thereunder, together with such further expenditures made by the contractor after the date of termination for the protection or disposition of Government property as are approved or required by the contracting officer; provided, however, that if the termination is for default of the contractor, there shall not be included any amount for preparation of the contractor's settlement proposal.

(5) If performance of work under this contract is terminated in whole by the Government, the fixed fee of the contractor shall be prorated to and including the effective date of such termination. In addition, if the termination is for the convenience of the Government, the contractor shall be paid a fixed fee in an amount to be agreed upon as compensation for its services in closing out the work under this contract after the effective date of such termination. The additional fixed fee is to be negotiated as soon as practicable after service of notice of termination, shall take into account the estimate of the cost of the services and managerial effort to be rendered under this clause after the effective date of termination, and shall be provided for in a supplement or amendment to this contract prior to final settlement hereunder. Pending agreement as to the amount of such fee, the contractor shall diligently proceed with the performance of the services required under this clause. No additional fee will be paid if the contract is terminated due to the default of the contractor. In the event of a partial termination by the Government, an equitable adjustment shall be made in the fixed fee if such termination results in a material decrease in the level of the contractor's management effort. Any failure to agree on the right to or the amount of any adjustment shall be deemed a dispute within the purview of the clause hereof entitled "Disputes."

(6) The obligation of the Government to make any of the payments required by this clause or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the contractor.

(c) Prior to final settlement, the contractor shall furnish a release as required in the clause entitled "Payments and Advances" and account for Government-owned property as may be required by the contracting officer: provided, however, that unless the contracting officer requires an inventory, the maintenance and disposition of the records of Government-owned property in accordance with the clause entitled "Accounts, Records and Inspection" shall be accepted by the contracting officer as full compliance with all requirements of this contract pertaining to an accounting for such property.

970.5204-48 [Reserved]

970.5204-50 Cost and schedule control systems.

See 952.212-73.

970.5204-51 [Reserved]

970.5204-52 Foreign Travel.

See 952.247-70.

Subpart 970.70—Use of DOE Facilities for Work for Others

970.7000 Mission-oriented solicitation.

Contractors shall be required to promptly advise the DOE contracting officer of any advance notices of, or solicitations for, requirements which would logically involve DOE facilities or resources operated or managed by the contractor, received from other agencies pursuant to FAR 34.005. Management and operating contracts shall provide that the contractor shall not respond or otherwise propose to participate in response to the requirements of such solicitations unless the contractor shall have first obtained the written approval of the DOE manager of the field activity having cognizance over the contract. Such approval shall not be given except in compliance with DOE directives and with the concurrence of the appropriate Senior Program Official.

PART 971—HEADQUARTER'S REVIEW AND APPROVAL OF CONTRACT ACTIONS

Sec.

971.000 Scope of part.

Subpart 971.1—Headquarters Review and Notification Requirements

971.100 Scope of subpart.
971.101 Requirements—general.
971.102 Requirement—long-term contracts.
971.103 Documentation submittals.

Subpart 971.2—Contracting Activity Review Requirements

971.200 Scope of subpart.
971.201 Requirements.
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Subpart 971.3—Procurement Management Systems Reviews

971.300 Scope of subpart.
971.301 Review of procurement management systems.

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

971.000 Scope of part.

This part sets forth the administrative requirements for review and approval of certain solicitations and contract awards and a notification of Headquarters procurement system reviews.

Subpart 971.1—Headquarters Review and Notification Requirements

971.100 Scope of subpart.

This subpart establishes a requirement for Headquarters review of certain solicitations and contract awards made by DOE contracting activities.

971.101 Requirements—general.

Solicitations and contract awards which are in excess of authority delegated to Heads of Contracting Activities, likely to provoke unusual public interest, or of a new or unusual nature shall be submitted to the Procurement Executive or designee for appropriate review and approval. Contract actions are those actions relating to the letting of contracts, subcontracts, agreements with other governmental agencies, and subsequent modifications, extensions, and settlements of terminations thereof. Questions of contract policy or procedure which arise in the course of negotiation and administration of such contract actions shall be submitted for advance Headquarters review and approval.

971.102 Requirement—long-term contracts.

Heads of Contracting Activities shall notify the Controller, with a copy to the Procurement Executive, or any intent to utilize the long-term contract authority provided by subsection U, section 161 of the Atomic Energy Act of 1954, as amended by Pub. L. 85-681 (72 Stat. 633). Such advance notice should be provided at an early stage of planning on any such proposed contract action.

971.103 Documentation submittals.

(a) When contract awards require review and/or approval by Headquarters, (See 971.101) the following documentation is to be submitted to the Business Clearance Division, Headquarters, at the times set forth below:

(1) *Prior to negotiations.* Prior to the start of formal negotiations concerning contract awards the following documents are required for review:

(i) Five copies of the prenegotiation plan and draft contract (six copies in the case of operating and on-site service contracts which contain a personnel appendix).

(ii) One copy of the determinations and findings, as required by FAR 15.302.

(iii) If applicable, one copy of the justification for noncompetitive procurement (JNCP) or justification for acceptance of unsolicitated proposals (JNCP) should be provided.

(iv) One copy of documentation (including audits and technical evaluation of costs) to support a pricing action.

(2) *After completing negotiation.* If there were significant departures from the objectives of the prenegotiation plan, or new and significant issues were developed which were not addressed in the prenegotiation plan, one copy of the post negotiation summary shall be submitted for Headquarters' review and approval. In the event all of the prenegotiation objectives were substantially met, one information copy is to be submitted.

(b) When solicitations require review and approval by Headquarters, two copies of the solicitation shall be submitted to the Business Clearance Division, Headquarters, in sufficient time prior to the planned release to allow a comprehensive review.

(c) The following information should also be provided with the documentation submitted to Headquarters:

(1) Name and telephone number of the cognizant Headquarters program official.

(2) The supporting documentation should include a copy of the local independent review, if any, conducted in accordance with 971.102.

Subpart 971.2—Contracting Activity Review Requirements

971.200 Scope of subpart.

This subpart sets forth the administrative requirement for an independent Contracting Activity review of contracts to be awarded by that activity and subcontracts to be awarded by a prime or operating and management contract under a cost-reimbursement contract.

971.201 Requirements.

Prime contracts and subcontracts under cost-reimbursement contracts shall be reviewed, based on dollar thresholds to be established by Heads of Contracting Activities.

971.202 Responsibilities.

Each Head of Contracting Activity shall establish procedures, providing for an independent review by that activity prior to award of proposed contract and subcontract actions and to review termination settlements.

971.203 Review functions.

Responsibility for conducting the independent review of contract and subcontract actions shall be assigned to a contract review board or where it is impracticable to establish a contract review board, under appropriate alternate independent review procedures. The mode of conduct of the review is not prescribed herein in order to permit discretionary judgment in determining the depth to which significant areas are examined. The results of the review shall be documented showing the scope and extent of the review and written recommendations submitted to Heads of Contracting Activities (or to such other approving officials as may be appropriate) on each proposed contract or subcontract action reviewed. In the event the approving official departs from the recommendation of the review board, the basis for such action shall be appropriately documented in the files.

Subpart 971.3—Procurement Management System Reviews

971.300 Scope of subpart.

This subpart advises Contracting Activites of the Headquarters responsibility for oversight and review of Procurement Systems by contracting activities.

971.301 Review of procurement management systems.

The Procurement Executive is responsible for establishing and maintaining a program for the review of DOE procurement management systems. Review will be conducted in accordance with the procedures prescribed for that program. A review schedule will be published and maintained. Each contracting activity will be notified at least 60 days in advance of its review.

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Part III

Department of Agriculture

48 CFR Ch. 4

Acquisition Regulation; Interim Rule

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DEPARTMENT OF AGRICULTURE

48 CFR Ch. 4

Acquisition Regulation

AGENCY: Office of Operations, Department of Agriculture.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Agriculture is issuing an interim rule to implement and supplement the new Federal Acquisition Regulation (FAR). The FAR, which becomes effective on April 1, 1984, simplifies the Federal procurement process by creating a single, uniform regulation for all agencies.

This interim rule, the Agriculture Acquisition Regulation (AGAR), prescribes policies and procedures that implement and supplement the FAR. On the effective date, the AGAR will replace the Agriculture Procurement Regulations, 41 CFR Chapter 4. Although superseded by the AGAR, the existing procurement regulations remain in effect in Title 41 for contracts entered into, and solicitations issued (including any resultant contracts), before the effective date of this acquisition regulation.

DATES: This interim rule, except for 410.004 (see paragraph E of Supplementary Information), becomes effective April 1, 1984. Written comments must be received on or before May 15, 1984.

ADDRESS: Comments should be sent to: USDA, Procurement Division, Office of Operations, Room 1575–South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Larry Schreier, 202–447–6924.

SUPPLEMENTARY INFORMATION:

Procedural Requirements

A. Administrative Procedure Act

This rule relates to agency contracting. As such, pursuant to the provisions of 5 U.S.C. 553(a), it is exempt from the notice and comment requirements set forth in 5 U.S.C. 553 (b) and (c). Nevertheless, the Secretary of Agriculture, in a Policy Statement issued on July 24, 1971, committed the Department to observing the aforementioned public participation requirements in contract related rule-making, unless such observance is for good cause found to be impracticable, unnecessary, or contrary to the public interest.

Because of the need to have the AGAR in place on April 1, 1984, the effective date of the FAR, time constraints make it impracticable to seek public participation before adopting the AGAR. Therefore, the requirements of 5 U.S.C. 553 (b) and (c) are not here applicable.

B. Office of Federal Procurement Policy Letter No. 83–2

Due to the aforementioned time constraints it is impracticable to solicit and consider the views of interested parties prior to adopting this regulation. Therefore, in accordance with OFPP Letter 83–2, the AGAR is being issued as an interim rule and will not be issued in its final form until the views of all interested parties have been considered. The time for comments and the location to which they should be addressed is set forth elsewhere in this preamble.

C. Executive Order 12291

David A. Stockman, Director of the Office of Management and Budget, has exempted procurement regulations from the requirements of a regulatory impact analysis and review required by Executive Order 12291 in a memorandum dated December 15, 1983, to Don Sowle, Administrator, Office of Procurement Policy and Christopher DeMuth, Administrator, Information and Regulatory Affairs.

D. Regulatory Flexibility Act

Consistent with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), it is herein certified that this rule does not have a significant economic impact on a substantial number of small entities because the rule contains few changes in current acquisition regulations. To the extent changes are made to current regulations, they are designed to foster and promote participation of small entities in the Department's procurement program (5 U.S.C. 605(b)).

E. Paperwork Reduction Act

The information collection requirement contained in 48 CFR Part 410 will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. Comments on the information collection requirements should be submitted to Andy Velez-Rivera, Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3001, 725 Jackson Place, Washington, D.C. 20503, as well as to the Departmental address listed above.

List of Subjects in 48 CFR Chapter 4

Government procurement, Department of Agriculture Acquisition Regulation.

For the reasons set out in this preamble, an interim Chapter 4 is added to Title 48 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C. on March 16, 1984.

Frank Gearde, Jr.,

Director, Office of Operations.

CHAPTER 4—DEPARTMENT OF AGRICULTURE

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SUBCHAPTER A—GENERAL

PART 401—AGRICULTURE ACQUISITION REGULATION SYSTEM

401.000 Scope of Part.

Subpart 401.1—Purpose, Authority, Issuance

401.101 Purpose.
401.102 Authority.
401.103 Applicability.
401.103–70 Exclusions.
401.104 Issuance.
401.104–1 Publication and Code arrangement.
401.104–2 Arrangement of regulations.
401.104–3 Copies.

Subpart 401.2—Administration

401.201 Maintenance of the FAR.
401.201–1 The two councils.

Subpart 401.3—Agency Acquisition Regulations

401.301 Policy.
401.303 Codification and public participation.
401.304 Agency control and compliance procedures.
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Subpart 401.4—Deviations From the FAR and AGAR

401.402 Policy.
401.403 Individual deviations.
401.404 Class deviations.

Subpart 401.6—Contracting Authority and Responsibilities

401.601 General.
401.602–1 Authority.
401.603 Selection, appointment, and termination of appointment.
401.603–1 General.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

401.000 Scope of part.

This part presents introductory information about the Department of Agriculture's Acquisition Regulation, subsequently referred to as the AGAR. The AGAR is an integral part of the Federal Acquisition Regulations System and implements or supplements the Federal Acquisition Regulation (FAR).

Subpart 401.1—Purpose, Authority, Issuance

401.101 Purpose.

(a) This subpart establishes Chapter 4, the Department of Agriculture Acquisition Regulation (AGAR), within Title 48 of the Code of Federal Regulations. The AGAR provides for the codification and publication of uniform policies and procedures for acquisitions by contracting activities within the Department.

(b) The purpose of the AGAR is to implement the Federal Acquisition Regulation (FAR), where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The AGAR is not by itself a complete document, as it must be used in conjunction with the FAR.

401.102 Authority.

The AGAR and amendments thereto are issued under 5 U.S.C. 301 and 40 U.S.C. 486(c). Pursuant to 7 CFR 2.76 the Director, Office of Operations, has the delegated authority to promulgate Departmental acquisition regulations.

401.103 Applicability.

The FAR and AGAR apply to all Department of Agriculture (USDA) acquisitions of supplies and services (including construction) which obligate appropriated funds, unless otherwise specified in this regulation or excepted by law. For acquisitions using nonappropriated funds, these regulations shall be used as guides to the maximum extent feasible and consistent with efficient program operations.

401.103-70 Exclusions.

Certain USDA policies and procedures which come within the scope of this chapter may be excluded from the AGAR under appropriately justified circumstances, such as:

(a) Subject matter which bears a security classification (See FAR 4.402).

(b) Subject matter which is effective for a period less than 6 months.

(c) Subject matter which is instituted on an experimental basis for a reasonable period.

401.104 Issuance.

401.104–1 Publication and code arrangement.

(a) The AGAR is issued in the Code of Federal Regulations as Chapter 4 of Title 48, Federal Acquisition Regulations System, to implement and supplement Chapter 1 which constitutes the FAR. Parts 400 through 499 have been assigned to USDA by the Office of the Federal Register.

(b) The AGAR and its subsequent changes are published in: (1) Daily issues of the **Federal Register**, (2) cumulative form in the Code of the Federal Regulations, and (3) looseleaf form for distribution within the Department.

401.104–2 Arrangement of regulations.

(a) *General.* The AGAR is divided into the same subchapters, parts, subparts, sections, and subsections as the FAR. However, when the FAR coverage is adequate by itself, there will be no AGAR counterpart. AGAR coverage parallels the FAR in format, arrangement, and numbering system.

(b) *Numbering.* The AGAR numbering system conforms to the FAR. The first digit, "4", represents the chapter number assigned to USDA, followed by a 2-digit part number, and then a decimal point. Numbers after the decimal point represent respectively the subpart, section (two digits) and subsection separated from the former by a dash. For example, the AGAR implementation of FAR 1.104 is shown as 401.104, and of FAR 15.804–3 as 415.80–3. Subdivisions at the section and subsection level are indicated by parenthetical alphanumerics in accordance with the FAR scheme. However, the designations of subdivisions in the AGAR do not necessarily correspond with subdivisions in the FAR.

401.104–3 Copies.

Copies of the AGAR published in the **Federal Register** or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference Chapter 4 of Title 48 CFR.

Subpart 401.2—Administration

401.201 Maintenance of the FAR.

401.201–1 The two councils.

(a) The Department is represented on the Civilian Agency Acquisition Council by a Policy Team member of the Procurement Division, Office of Operations.

(b) The Procurement Division will coordinate proposed FAR revisions with interested contracting activities and serve as the point of contact for interpreting regulations or receiving

FAR revisions advocated by contracting activities.

Subpart 401.3—Agency Acquisition Regulations

401.301 Policy.

(a) The Director, Office of Operations, subject to the authorities in 401.102 and FAR 1.301(c)(3), shall issue and publish in the **Federal Register**, as may be required, Departmental regulations to implement and supplement the FAR, that together with the FAR, constitute Department-wide policies, procedures, solicitation provisions, and contract clauses governing the contracting process or otherwise controlling the relationship between the Department (including any of its contracting activities) and contractors or prospective contractors.

(b) Each designated Head of a Contracting Activity (HCA) is authorized to issue or authorize the issuance of internal guidance at any organizational level, which does not directly affect contractors or prospective contractors. Internal guidance will not be published in the **Federal Register**. HCA's shall ensure that the guidance, procedures, or instructions issued:

(1) Are consistent with the policies and procedures contained in this regulation;

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this regulation; and

(4) Are numbered and identified by use of alphabetical suffixes to the chapter number as follows:

4A Agricultural Marketing Service.
4B Agricultural Research Service.
4C Agricultural Stabilization and Conservation Service.
4D Farmers Home Administration.
4E [Reserved].
4F Foreign Agricultural Service.
4G Forest Service.
4H Rural Electrification Administration.
4I Soil Conservation Service.
4J Economics Management Staff.
4K Food and Nutrition Service.
4L Animal and Plant Health Inspection Service.
4M Federal Crop Insurance Corporation.
4N Office of Operations, Procurement Division (Procurement Operations).
4O [Reserved].
4P Office of International Cooperation and Development.
4R Office of the Inspector General.

401.303 Codification and public participation.

(a) The AGAR is codified as Chapter 4 Title 48 of the Code of Federal Regulations.

(b) Section 553(a)(2) of the Administrative Procedures Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter related to agency management or personnel or to public property, loans, grants, benefits or contracts. OFPP Policy Letter 83–2 requires rulemaking for substantive acquisition rules but allows discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedures Act and OFPP Policy Letter 83–2. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

401.304 Agency control and compliance procedures.

(a) The AGAR System is under the direct oversight and control of the Director, Office of Operations, who is responsible for review and issuance of all Department-wide acquisition regulations published in the **Federal Register** to assure compliance with FAR Part 1.

(b) The Director, Office of Operations, is also responsible for review and issuance of unpublished, Department-wide internal guidance under the AGAR System.

(c) HCA's are responsible for establishment and implementation of formal procedures for oversight and control of all unpublished internal guidance issued to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the Director, Office of Operations, and shall include:

(1) Provisions for centralized issuance of all guidance and instructions using a directives system;

(2) Methods for periodic review and updating of all issuances;

(3) Distribution processes which assure timely receipt by all affected contracting offices; and

(4) Provisions for maintaining compliance with FAR 1.304.

(d) The Director, Office of Operations, is responsible for evaluating coverage under the AGAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the HCA to the Director, Office of Operations, for further action.

401.370 Departmental directives.

Subject to the policies of FAR 1.3, the Department from time to time may issue internal directives of the following types to establish procedures, standards, guidance, or methods of performing duties, functions, or operations.

(a) *Departmental Regulations* (DR). Permanent directives signed by the Director, Office of Operations, to issue policies, authorities, and operating instructions.

(b) *Departmental Notices* (DN). Temporary directives signed by the Director, Office of Operations, to communicate policy or procedure which require immediate dissemination.

(c) *Secretary's Memoranda*. Temporary directives signed by the Secretary which establish major policy concerning missions and programs of the Department, direct initial or implementing action on these programs, or redirect or change policy or action in these areas.

Subpart 401.4—Deviations From the FAR and AGAR

401.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the AGAR shall be submitted in writing as far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or AGAR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

401.403 Individual deviations.

In individual cases, deviations from either the FAR or the AGAR will be authorized only when essential to effect

a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Except for cost principles, HCA's may approve individual deviations from the AGAR, after coordinating with the General Counsel and the Director, Office of Operations. No deviations from the FAR or AGAR may be authorized at the contracting office level. A copy of each deviation and its supporting documentation shall be provided to the Director, Office of Operations. Deviations involving cost principles contained in FAR Part 31 and Part 431, or any FAR deviation, shall not be made unless such action is authorized by the Director, Office of Operations, after consultation with the Office of General Counsel and any other appropriate office, on the basis of a written justification stating clearly the special circumstances involved.

401.404 Class deviations.

Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the Director, Office of Operations, who will, after obtaining appropriate concurrences from other officials (e.g., General Counsel, and such other parties of interest), consider the submission, and in the case of FAR deviations, consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council. Where circumstances preclude obtaining prior concurrence of the Chairperson of the Civilian Agency Acquisition Council, the Procurement Executive may authorize the deviation and subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

Subpart 401.6—Contracting Authority and Responsibilities

401.601 General.

(a) The authority and responsibility vested in the Secretary to manage the Department's acquisition function is delegated through the Assistant Secretary for Administration to the Director, Office of Operations, who is the USDA Procurement Executive, pursuant to 7 CFR 2.76(a) (1) and (10). This broad authority includes, but is not limited to, the following responsibilities:

(1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.

(2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(3) Designating contracting officers.

(4) Establishing clear lines of contracting authority.

(5) Evaluating and monitoring the performance of the Department's acquisition system.

(6) Managing and enhancing career development of the contracting work force.

(7) Participating in the development of Government-wide acquisition policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied.

(8) Determining areas of Department-unique standards and developing unique Department-wide standards.

(9) Acting as the advocate for competition.

(10) Certifying to the Secretary that the acquistion system meets approved standards.

(b) The Director, Office of Operations, may delegate contracting authority to the Heads of Contracting Activities (HCA's) and the responsibility to manage their acquisition function. Delegations of authority for automatic data processing (ADP) equipment, services and related supplies are limited in accordance with Part 439.

(c) HCA's may redelegate contracting authority, without the power of redelegation, only to qualified contracting officers as prescribed in 401.603. Contracts may be entered into and signed only by the Agency Head, HCA's and appointed contracting officers.

401.602-1 Authority.

Information on the limits of contracting officers' authority shall be maintained by the HCA's as required by FAR 1.602-1. This information shall be readily available to the public and is subject to review by the Director, Office of Operations.

401.603 Selection, appointment, and termination of appointment.

401.603-1 General.

HCA's are authorized by the Director, Office of Operations, to select and appoint contracting officers and terminate their appointment as prescribed in FAR 1.603.

PART 402—DEFINITIONS OF WORDS AND TERMS

402.000 Scope of part.
402.001 Definitions.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

402.000 Scope of part.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

402.001 Definitions.

"Agency Head" or "Head of the Agency" means the Secretary of Agriculture, Deputy Secretary, and the Assistant Secretary for Administration.

"Contracting Activity" means the Office of Operations and other USDA organizations having delegated acquisition contracting authority. A contracting activity's authority and responsibility to manage its acquisition contracting function and those of other organizations for which it provides administrative support are established by a written delegation from the Director, Office of Operations.

"Head of the Contracting Activity" (HCA) means the official who has overall responsibility for managing the contracting activity, i.e., Chief, Forest Service; Administrator, Agricultural Marketing Services; etc. Each HCA may designate one individual from the contracting activity to act as the HCA and perform the delegated contract management functions for the contracting activity.

"Procurement Executive" means the agency official appointed as such by the Head of the Agency pursuant to Exectutive Order 12352. The Director, Office of Operations, has been designated as the USDA Procurement Executive.

PART 403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 403.2—Contractor Gratuities to Government Personnel

403.203 Reporting suspected violation of the gratuities clause.
403.204 Treatment of violations.

Subpart 403.3—Reports of Identical Bids and Suspected Antitrust Violations

403.302 Reporting identical bids.
403.303 Reporting suspected antitrust violations.

Subpart 403.4—Contingent Fees

403.406 Evaluation of the SF.-119.
403.406-1 Responsibilities.
403.409 Misrepresentations or violations of the Convenant Against Contingent Fees.

Subpart 403.5—Other Improper Business Practices

403.502 Subcontractor kickbacks.

Subpart 403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

403.602 Exceptions.
403.603 Responsibilities of the contracting officer.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 403.2—Contractor Gratuities to Government Personnel

403.203 Reporting suspected violation of the gratuities clause.

A suspected violation of the contract clause, FAR 52.203–3, Gratuities, shall be reported immediately to the cognizant contracting officer in writing, stating the circumstances surrounding the incident(s), and date(s) and names of all parties involved. The contracting officer shall review the report for completeness, add any additonal information deemed necessary and a recommendation for action, and submit the report to the HCA.

403.204 Treatment of violations.

The HCA shall review the report and consult with the Offices of General Counsel and Inspector General, as appropriate, to determine whether further action should be pursued. If it is found that the facts and circumstances warrant further action, the HCA shall give the contractor formal, written notice which summarizes the reported violation and affords the contractor the opportunity to make a written or oral response within a reasonable, specified period after receipt of the notice. The notice shall be sent by certfied mail with return receipt requested. Oral presentations shall follow the procedures outlined in FAR 3.204(b). The HCA shall furnish copies of any adverse determination to the contracting officer and the Department Debarring Officer for their subsequent considerations under FAR 3.204(c) (1) and (2), respectively.

Subpart 403.3—Reports of Identical Bids and Suspected Antitrust Violations

403.302 Reporting identical bids.

Executive Order 12430 dated July 6, 1983, revoked the requirement of Executive Order 10936 dated April 24, 1961, to submit reports to the Attorney General regarding identical bids.

403.303 Reporting suspect antitrust violations.

Contracting officers shall report the circumstances of suspected violations of antitrust laws to their respective HCA's. HCA's shall refer the reports directly to the Attorney General as stated in FAR 3.303(e), and send a copy of each to the Director, Office of Operations.

Subpart 403.4—Contingent Fees

403.408 Evaluation of the SF–119.

403.408–1 Responsibilities.

The review required by FAR 3.408–1(b) shall be performed at a level higher than the contracting officer.

403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A suspected misrepresentation or violation of the Covenant Against Contingent Fees shall be documented in writing by the contracting officer and reported immediately to the HCA. The HCA shall determine if a violation has occurred and take action in accordance with FAR 3.409(b).

(b) If the HCA decides to refer the case to the Department of Justice, it should be referred directly with a copy of the report and referral submitted to the Director, Office of Operations.

Subpart 403.5—Other Improper Business Practices

403.502 Subcontractor kickbacks.

Each suspected violation of the Anti-Kickback Act (41 U.S.C. 51–54) shall be documented in writing by the contracting officer and reported immediately to the HCA. The HCA, after consultation with the Office of General Counsel and referral to the Office of Inspector General, as appropriate, shall refer the suspected violation to the Department of Justice, with a copy of the report and referral submitted to the Director, Office of Operations.

Subpart 403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

403.602 Exceptions.

The HCA is authorized to except a contract from the policy in FAR 3.601.

403.603 Responsibilities of the contracting officer.

The contracting officer, when requesting authorization under 403.602, shall prepare a written determination and findings for the signature of the HCA. The determination shall document compliance with FAR 3.603 specifying the compelling reason(s) for award, and be placed in the contract file.

PART 404—ADMINISTRATIVE MATTERS

Subpart 404.4—Safeguarding Classified Information Within Industry

404.402 General.
404.403 Responsibilities of contracting officers.

Subpart 404.6—Contract Reporting

404.601 Federal Procurement Data System.

Subpart 404.8—Contract Files

404.805 Disposal of contract files.
404.870 Document numbering system.
404.870–1 Purchase order/delivery order numbering system.
404.870–2 Contract numbering system.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 404.4—Safeguarding Classified Information Within Industry

404.402 General.

(a) Based on an agreement with the Department of Defense, USDA is covered by the Defense Industrial Security Program (DISP). Accordingly, all contracting activities will conduct classified acquisitions as required by the DISP.

(b) Detailed information on DISP requirements is maintained by the Chief, Security and Employee Relations Staff, Office of Personnel, Washington, D.C. 20250.

404.403 Responsibilities of contracting officers.

When a proposed solicitation is likely to require access to information classified by USDA, the contracting officer shall consult with the Chief, Security and Employee Relations Staff, Office of Personnel, regarding the procedures that must be followed.

Subpart 404.6—Contract Reporting

404.601 Federal Procurement Data System.

(a) The Procurement Division, Office of Operations, manages an automated procurement reporting system for USDA This system provides the Federal Procurement Data System with all required contracting information.

(b) Contracting activities shall report all contract actions into the USDA Procurement Reporting System in accordance with the regulations and notices of the 5010 classification series in the Departmental Directives System.

(c) Questions about the USDA Procurement Reporting System should be directed to the Procurement Division, Office of Operations, Washington, D.C. 20250.

Subpart 404.8—Contract Files

404.805 Disposal of contract files.

Contracting activities shall comply with their organizational file plans and disposition guides with respect to procedures for handling, storing, and disposing of contract files and other

acquisition related documents. Contracting activity file plans and disposition guides shall not include provisions that permit contract files to be destroyed before the times indicated in FAR 4.805.

404.870 Document numbering system.

The Department has prescribed a standardized numbering system for acquisition documents.

404.870-1 Purchase order/delivery order numbering system.

USDA purchasing activities shall number their purchase/delivery orders in accordance with NFC Procedures Manual, "Purchase Orders," Title II, Section 5.1.

404.870-2 Contract numbering system.

Contracting offices shall assign an 8 to 12-digit number to all contracts. Contract numbers will be divided into four data elements and formatted as follows:

(1)	(2)	(3)	(4)
Transaction code	Ordering office	Fiscal year	Control No.
XX	XXXX	X	X to XXXXX

(a) *Transaction Code.* This two-position code identifies the contract as being one of the following types:

(1) Code 50—construction contract;

(2) Code 51—[Reserved]

(3) Code 52—tree planting/thinning contract;

(4) Code 53—service contract;

(5) Code 54—supply contract;

(6) Code 55—aircraft rental (for firefighting purposes only) contract;

(7) Code 56—personal equipment rental (rental of vehicular equipment for firefighting purposes only) contract;

(8) Code 57—real property rental contract.

(b) *Ordering Office.* This four-position alpha-numeric code corresponds to the last four characters of the contracting office's GSA assigned FEDSTRIP requisitioner number.

(c) *Fiscal Year.* This one-position code corresponds to the last digit of the fiscal year in which the contract becomes effective.

(d) *Control Number.* This up-to-five position code (from one to five characters may be used) will be assigned by the contracting office. While contracts will generally be numbered consecutively (1 through 99999), contracting offices may assign codes in any manner of their choosing. Codes may not be repeated, however, unless one of the preceding data elements (transaction code, ordering office, or fiscal year) changes. Alpha, as well as numeric, characters may be used in any one or more of the five positions.

PART 405—PUBLICIZING CONTRACT ACTIONS

Subpart 405.4 Release of Information

405.404-1 Release procedures.

Subpart 405.5—Paid Advertisements

405.502 Authority.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 405.4—Release of Information

405.404-1 Release procedures.

(a) The HCA's may release long-range acquisition estimates if the information meets the requirements of FAR 5.404-1.

(b) Classified information shall not be released without the approval of the Chief, Security and Employee Relations Staff, Office of Personnel.

Subpart 405.5—Paid Advertisements

405.502 Authority.

HCA's are authorized to order the publication of an advertisement in newspapers. HCA's may redelegate this authority by regulation, order, or memorandum to subordinates within the contracting activity.

PART 406—[RESERVED]

Subchapter B—Acquisition Planning

PART 407—ACQUISITION PLANNING

Subpart 407.1—Acquisition Plans

407.102 Policy.

407.170 Advance acquisition plans.

Subpart 407.3—Contractor Versus Government Performance

407.302 General.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 407.1—Acquisition Plans

407.102 Policy.

Each HCA shall develop an acquisition planning system in compliance with the requirements of FAR Subpart 7.1 for complex/high dollar acquisitions. The HCA should establish the criteria for requiring formal written plans and determine the dollar thresholds for use in each contracting activity that will ensure application of the principles of this section in FAR Subpart 7.1.

407.170 Advance acquisition plans.

Each HCA shall implement an advance acquisition planning system in accordance with procedures in Departmental Regulation (5000 series).

Subpart 407.3—Contractor Versus Government Performance

407.302 General.

The requirements of FAR Subpart 7.3 and OMB Circular A-76 are implemented by Departmental Regulation 2170-1.

PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 408.8—Acquisition of Printing and Related Supplies

408.802 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 408.8—Acquisition of Printing and Related Supplies

408.802 Policy.

(a) The Office of Governmental and Public Affairs (OGPA) has been designated as the Department's liaison with the Joint Committee on Printing (JCP) and the Public Printer, Government Printing Office, on all matters related to printing.

(b) Departmental organizations and offices with publication programs have designated a publication liaison officer who is authorized to coordinate appropriate printing and publication matters with OGPA.

(c) Prior to contracting for any of the items defined in FAR 8.801, the contracting officer shall coordinate with the publications liaison officer and obtain required approvals.

PART 409—CONTRACTOR QUALIFICATIONS

Subpart 409.4—Debarment, Suspension and Ineligibility

409.403 Definitions.
409.404 Consolidated list of debarred, suspended, and ineligible contractors.
409.405 Effect of listing.
409.405-1 Continuation of current contracts.
409.405-2 Restrictions on subcontracting.
409.406 Debarment.
409.406-3 Procedures.
409.407 Suspension.
409.407-3 Procedures.
409.470 Appeals.

Subpart 409.5—Organizational Conflict of Interest

409.503 Waiver.
409.507 Procedures.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 409.4—Debarment, Suspension and Ineligibility

409.403 Definitions.

"Debarment official." The Director, Office of Operations, is designated as the debarment official (Department Debarring Officer) pursuant to the

Secretary's delegations of authority in 7 CFR 2.25 and 2.76. However, for contracts awarded under the School Lunch and Surplus Removal Program (42 U.S.C. 1755 and 7 U.S.C. 612C), the Department Debarring Officer has delegated debarring authority to the Agricultural Marketing Service.

409.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The Department Debarring Officer is the department's single point of contact with GSA for debarment and suspension actions taken under this subpart. The debarring officer in the Agricultural Marketing Service shall notify the Department Debarring Officer of each debarment and suspension action by promptly submitting a copy of the debarment or suspension notice and any later changes to the debarment or suspension status. The Department Debarring Officer will forward a copy of each notice to GSA for inclusion in the Government-wide consolidated list.

(b) The Chief, Procurement Division, Office of Operations, is responsible for arranging bulk distribution of the consolidated list to contracting activities under the USDA Automated Mailing List. Contracting activities must make their own internal distribution.

409.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Director, Office of Operations, is authorized to make the determinations under FAR 9.405. Requests for such determinations shall be submitted through the HCA to the Director, Office of Operations.

409.405-1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405-1.

409.405-2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405-2.

409.406 Debarment.

409.406-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment. The contractor shall be provided a copy of a transcript of the proceedings under the conditions established in FAR 9.406-3(b)(2)(ii).

409.407 Suspension.

409.407-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines suspension is justified, the debarring official shall initiate the proposed suspension in accordance with FAR 9.407-3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in 409.406-3(c).

409.470 Appeals.

A debarred or suspended contractor may appeal the debarring officer's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the U.S. Department of Agriculture Board of Contract Appeals, Washington, D.C. 20250. A copy of the notice of appeal shall be furnished to the debarring officer from whose decision the appeal is taken. Appeals under Subpart 409.4 shall be governed by the rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR, Part 24.

Subpart 409.5—Organizational Conflicts of Interest

409.503 Waiver.

(a) The Director, Office of Operations, is authorized to waive any general rule or procedure in FAR 9.5 when in the Government's interest.

(b) Requests for waiver shall be made by the HCA. Each request shall include:

(1) The general rule or procedure proposed to be waived;

(2) An analysis or the potential conflict, including the benefits and detriments to the Government and prospective contractors;

(3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and

(4) Advice of counsel obtained under FAR 9.504(b).

409.507 Procedures.

(a) The Director, Office of Operations, is authorized to make the final decision under FAR 9.507(c)(4) when a prospective contractor disagrees with the decision by the HCA.

(b) Referrals shall be made by the HCA and include:

(1) A copy of the prospective contractor's request; and

(2) The initial decision made under FAR 9.507(a), along with the supporting documentation.

PART 410—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

410.004 Selecting specifications or descriptions for use.
410.007 Deviations.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

410.004 Selecting specifications or descriptions for use.

(a) The determination required by FAR 10.004(b)(2) shall be prepared in writing, signed and dated by the initiating office and accompany the purchase requisition.

(b) Brand name or equal.

(1) A "brand name product" is a commercial product described by its brand name, make, model number, catalog designation or other description by which it is regularly offered for sale in the commercial marketplace.

(2) A "Brand Name, or Equal" purchase description shall include the following type information to clearly indentify the specific item named by brand(s):

(i) Identification of the item by generic description.

(ii) Make, model number, catalog designation, or other description, and identification of the commercial catalog where it is listed.

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(3) All salient characteristics of the "brand name product or products" which have been determined by the initiating office to be essential to the Government's minimum requirements shall be clearly identified and included in the purchase description under the heading, "Salient Characteristics."

(4) The following or similar language shall be included in every solicitation seeking offers on a "brand name, or equal" basis to allow offerors the opportunity to clearly identify the "equal" item being offered, and how that item meets the salient characteristics requirements of the Government:

(i) Offerors proposing to furnish an "equal" product, in accordance with the "Brand Name, or Equal" provision of this solicitation, shall provide the following information for the offered product:

Item Number: _____
Manufacturer's Name: _____
Address: _____
Product Name (if any): _____
Product Make, Model or Catalog Description:

_____

Offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the "brand name" as listed in the solicitation.

(5) In addition, the provision at 452.210–70, Brand Name or Equal, shall be inserted in solicitations where "brand name or equal" purchase descriptions are used.

410.007 Deviations.

HCA's are designated to authorize deviations as required by FAR 10.007 and are responsible for accomplishing the actions required by FAR 10.007. Copies of the applicable documents shall be provided to the Director, Office of Operations.

PART 411—[Reserved]

PART 412—[Reserved]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 413.5—Purchase Orders

413.505 Purchase order and related forms.
413.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
413.505–70 AD–744, Purchase Order-Invoice-Voucher.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 413.5—Purchase Orders

413.505 Purchase order and related forms.

413.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

Form AD–838, Purchase Order, is prescribed for use by USDA in lieu of Optional Forms 347 and 348.

413.505–70 AD–744, Purchase Order-Invoice-Voucher.

(a) *Prescribed form.* Form AD–744, Purchase Order-Invoice-Voucher, is prescribed for use by USDA in lieu of Standard Form 44.

(b) *Restrictions on use.* Form AD–744 shall not be used for any of the following:

(1) Purchases involving future delivery of the items purchased.

(2) As a confirming purchase order.

(3) As an order under a Blanket Purchase Agreement.

(4) Purchases from GSA or other Government agencies.

(5) Purchases for which the vendor is paid in cash or as a receipt for such purchases.

(6) Purchases which may be accomplished normally through an inprest fund transaction.

(c) *Accountability controls.* Form AD–744 shall be controlled and accounted for in accordance with the procedures established by the USDA National Finance Center.

PART 414—FORMAL ADVERTISING

Subpart 414.2—Solicitation of Bids

414.205 Solicitation mailing lists
414.205–1 Establishment of lists.

Subpart 414.4—Opening of Bids and Award of Contract

414.406 Mistakes in bids.
414.406–3 Other mistakes disclosed before award.
414.406–4 Mistakes after award.
414.407 Award.
414.407–8 Protests against award.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 414.2—Solicitation of Bids

414.205 Solicitation mailing lists.

414.205–1 Establishment of lists.

(a) Contracting offices shall notify all prospective bidders who submit Bidder's Mailing List Applications (SF–129) that they either have been added to the solicitation mailing list or do not meet the criteria for placement on the list.

(b) The issuance of a solicitation within 60 days may be considered appropriate notification.

Subpart 414.4—Opening of Bids and Award of Contract

414.406 Mistakes in bids.

414.406–3 Other mistakes disclosed before award.

(a) Contracting offices shall send all cases of mistakes in bid described in FAR 14.406–3 (a), (b), and (d) through their HCA to the Director, Office of Operations, for an administrative determination. The Director, Office of Operations, shall submit all determinations to the Assistant General Counsel, Research and Operations Division, for approval.

(b) The HCA shall make the determination described in FAR 14.406–3(c). An HCA may redelegate this authority to a level no lower than the contracting officer. Each proposed determination is subject to the approval of the Assistant General Counsel, Research and Operations Division, or the appropriate Regional Attorney or Attorney-in-Charge, whoever routinely provides legal services for the contracting office.

(c) Doubtful cases that are to be submitted to the General Accounting Office for advance decision shall be submitted through the Director, Office of Operations.

414.406–4 Mistakes after award.

If a mistake in bid is disclosed after award, the contracting officer shall make a final determination in accordance with the provisions of FAR 14.406–4 (b) and (c) and shall coordinate each proposed determination with the Assistant General Counsel, Research and Operations Division, or the Regional Attorney-in-Charge, whoever routinely provides legal services to the contracting office. Such coordination shall, at a minimum, consist of the contracting officer providing the proposed determination and the case file to the appropriate legal officer for comment.

414.407 Award.

414.407–8 Protests against award.

(a) *General.* (1) When a protest has been filed with the contracting officer, the written final decision to the protestor required by FAR 14.407–8(a)(1) shall include a paragraph substantially as follows: This decision shall be final and conclusive unless a further written notice of protest is filed with the General Accounting Office in accordance with the Bid Protest Procedures of the General Accounting Office (4 CFR Part 21).

(2) The Director, Office of Operations, is responsible for coordinating the handling of bid protests lodged with the General Accounting Office (GAO) against contracts awarded by contracting activities. The Director, Office of Operations, may authorize individual contracting activities to coordinate their bid protests directly with the GAO when it will best serve to expedite the processing time.

(3) To ensure proper resolution of bid protests, the Office of Operations and the Office of the General Counsel will provide assistance to contracting activities upon request by the contracting officer.

(b) *Notice of protest.* Upon being advised by the GAO of receipt of a protest, the Chief, Procurement Division, Office of Operations, shall inform the appropriate HCA who will promptly notify the contracting officer. Based on this advance notification, the contracting officer shall begin compiling the information necessary to prepare a report responsive to the protest. Upon receiving a copy of the protest and GAO's request for an administrative report, the Chief, Procurement Division, Office of Operations, shall promptly forward it to the appropriate contracting activity for preparation of the written report by the contracting officer.

(c) *Submission of report.* (1) Bid protests shall be handled on a priority basis. Within 25 working days after notification by the Office of Operations that a protest has been filed with the GAO, the contracting officer shall prepare a report responsive to the protest and submit it directly to the GAO. The contracting officer shall furnish copies of the report, and any subsequent submissions, to the protester and other interested parties and advise the GAO accordingly. A copy of the letter transmitting the report to the GAO shall be furnished to the Chief, Procurement Division, Office of Operations.

(2) If the contracting officer is unable to submit a timely response, the GAO shall be notified, in writing or by phone, of the delay and the expected date of submission. The Chief, Procurement Division, Office of Operations, shall be notified accordingly.

(3) The report and any additional information requested by the GAO concerning the protest should be addressed to: General Counsel, Attn: Bid Protest Unit, General Accounting Office, Washington, D.C. 20548. The report shall be appropriately titled and dated and shall include the documents and statements required by FAR 14.407–8(a)(2).

(d) *Protests before award.* If a protest before award has been lodged with the GAO and the contracting officer determines in writing that it is necesary to make award under any of the circumstances, in FAR 14.407–8(b)(4), the determination must be approved by the HCA prior to contract award.

(e) *Protests after award.* Protests received after award shall be handled in accordance with paragraphs (b) and (c) above.

PART 415—CONTRACTING BY NEGOTIATION

Subpart 415.3—Determinations and Findings To Justify Negotiations

415.307 Signatory authority.

Subpart 415.4—Solicitation and Receipt of Proposals and Quotations

415.405 Solicitations for information or planning purposes.
415.406 Issuing solicitations.
415.411 Receipt of proposals and quotations.

Subpart 415.5—Unsolicited Proposals

415.504 Advance guidance.
415.506 Agency procedures.

Subpart 415.6—Source Selection

415.607 Disclosure of mistakes before award.
415.612 Formal source selection.

Subpart 415.8—Price Negotiation

415.804 Cost or pricing data.
415.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

Subpart 415.9—Profit

415.902 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).)

Subpart 415.3—Determinations and Findings To Justify Negotiation

415.307 Signatory Authority.

(a) Those individual and class determinations and findings requiring agency head signature shall be submitted to the Director, Office of Operations, for review and referral to the Assistant Secretary for Administration for approval.

(b) The HCA is authorized to make determinations and findings under FAR 15.214 to permit negotiation after advertising.

(c) The HCA is authorized to make determinations to use the authority of FAR 15.211 to negotiate when not more than $25,000 will be obligated. Determinations and findings for obligations estimated to exceed $25,000 shall be forwarded to the Director, Office of Operations, for review and referral to the Assistant Secretary for Administration for approval.

Subpart 415.4—Solicitation and Receipt of Proposals and Quotations

415.405 Solicitations for information or planning purposes.

The written determination justifying use of a solicitation for information or planning purposes required by FAR 15.405–1 shall be approved by the HCA prior to release of the solicitation.

415.406 Issuing solicitations.

Solicitations involving classified information shall be issued as prescribed in Subpart 404.4.

415.411 Receipt of proposals and quotations.

Classified proposals and quotations shall be handled as prescribed in Subpart 404.4.

Subpart 415.5—Unsolicited Proposals

415.504 Advance guidelines.

HCA's are responsible for establishing advance guidelines as required by FAR 15.504 in accordance with contracting activities' missions and programs.

415.506 Agency procedures.

HCA's are responsible for establishing the procedures for control of unsolicited proposals required by FAR 15.506(a) and

for designating the contact point required by FAR 15.506(b).

Subpart 415.6—Source Selection

415.607 Disclosure of mistakes before award.

The HCA with the concurrence of the Office of General Counsel is authorized to make the determination permitting proposal correction as required by FAR 15.607(c)(3).

415.612 Formal source selection.

(a) The HCA shall determine when a formal source selection process will be used and establish procedures for implementing the requirements of FAR 15.612.

(b) The HCA shall be the formal selection official for all negotiated contracts over $500,000.

(c) A copy of the established procedures shall be forwarded to the Director, Office of Operations.

Subpart 415.8—Price Negotiation

415.804 Cost or pricing data.

415.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

The HCA is authorized to waive the requirement for submission of certified cost or pricing data as allowed by FAR 15.804–3(i).

Subpart 415.9—Profit

415.902 Policy.

(a) USDA will use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions that require cost analysis based on the profit analysis factors in FAR 15.905.

(b) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.905–1 when analyzing profit for these contracts or actions:

(1) All actions which do not require cost analysis;

(2) Architect-engineer contracts;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee contracts; and

(7) Other professional services.

(c) In developing a profit or fee objective, the contracting officer shall comply with the requirements in FAR 15.903.

(d) When profit analysis is required, any amount proposed by the prospective contractor for the cost of money for facilities capital allowable under FAR 31.205–10 shall be deducted from the prenegotiation cost base objective before calculating the profit objective.

(e) The HCA is responsible for establishing procedures to ensure compliance with this subpart.

PART 416—TYPES OF CONTRACTS

Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.
416.203–4 Contract clauses.

Subpart 416.3—Cost-Reimbursement Contracts

416.301 General.
416.301–3 Limitations.
416.306 Cost-plus-fixed-fee contracts.

Subpart 416.4—Incentive Contracts

416.403 Fixed-price incentive contracts.
416.404 Cost-reimbursement-incentive contracts.
416.404–1 Cost-plus-incentive-fee contracts.
416.404–2 Cost-plus-award-fee contracts.

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.
416.603–2 Application.

Subpart 416.7—Agreements

416.702 Basic agreements.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.

416.203–4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203–4(d) after approval by the Director, Office of Operations, and consultation with the Office of the General Counsel.

Subpart 416.3—Cost-Reimbursement Contracts

416.301 General.

416.301–3 Limitations.

(a) Determinations and findings authorizing the use of a cost-reimbursement type contract as described in FAR 16.302 through 16.306 shall be signed by the contracting officer after compliance with the limitations in FAR 16.301–3 and 16.404, as appropriate.

(b) Prepare determination and findings substantially in accordance with the following format:

Determination and Findings

Authority to Use Cost Reimbursement-Type Contract

I hereby find that:

(1) The (contracting activity name) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($—) (if contract is CPFF type, insert, "plus a fixed fee of ($—) which is — percent of the estimated cost of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

I hereby determine that:

On the basis of the above findings it is impracticable to secure the property or services of the kind or quality required without the use of (cost, cost-sharing, or cost-plus-a-fixed-fee) type of contract, or the (cost, cost-sharing, or cost-plus-a-fixed-fee) method of contracting is likely to be less costly than other methods.

Date:

(Signature)

416.306 Cost-plus-a-fixed-fee contracts.

The determinations and findings establishing the basis for application of the statutory fee limitation (see FAR 16.306(c)(2) and 15.903(d)) shall be signed by the contracting officer and may be combined with the determination and findings prescribed in FAR 16.301–3.

Subpart 416.4—Incentive Contracts

416.403 Fixed-price incentive contracts.

Determinations and findings authorizing the use of a fixed-price incentive contract as described in FAR 16.403–1 through 16.403–2 shall be signed by the contracting officer after compliance with the limitations in FAR 16.403(c), 16.403–1(c) and 16.403–2(c), as appropriate.

416.404 Cost-reimbursement-incentive contracts.

416.404–1 Cost-plus-incentive-fee contracts.

In accordance with 416.301–3, determinations and findings authorizing the use of a cost-plus-incentive-fee contract under FAR 16.404–1 shall be signed by the contracting officer after compliance with the limitations in FAR 16.404–1(c).

416.404–2 Cost-plus-award-fee contracts.

In accordance with 416.301–3, determinations and findings authorizing the use of a cost-plus-award-fee contract under FAR 16.404–2 shall be signed by the contracting officer after compliance with the limitations in FAR 16.404–2(c).

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.

416.603-2 Application.

The HCA is authorized to extend the period for definitization of a letter contract required by FAR 16.603-2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

Subpart 416.7—Agreements

416.702 Basic Agreements.

Promptly after execution by the Government, HCA's shall furnish copies of basic agreements negotiated with contractors in accordance with FAR 16.702 to the Director, Office of Operations.

PART 417—SPECIAL CONTRACTING METHODS

Subpart 417.2—Options

417.203 Solicitations.
417.206 Evaluation.

Subpart 417.4—Leader Company Contracting

417.402 Limitations.

Subpart 417.5—Interagency Acquisitions Under the Economy Act

417.502 General.

Subpart 417.6—Management and Operating Contracts

417.602 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 417.2—Options

417.203 Solicitations.

The HCA shall authorize the use of option quantities in excess of the 50 percent limitation stated in FAR 17.203(g)(2).

417.206 Evaluation.

The HCA shall make the written determination required by FAR 17.206(a).

Subpart 417.4—Leader Company Contracting

417.402 Limitations.

The HCA shall authorize the use of leader company contracting procedures in FAR Subpart 17.4.

Subpart 417.5—Interagency Acquisitions Under the Economy Act

417.502 General.

The HCA shall make the determination required by FAR 17.502.

Subpart 417.6—Management and Operating Contracts

417.602 Policy.

(a) The Assistant Secretary for Administration shall make the determination to enter into or renew any management and operating contracts as prescribed in FAR 17.602(a).

(b) Written determinations shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Director, Office of Operations, for action. The determination shall be submitted prior to solicitation for the requirement and shall:

(1) Reference the statutory authority for awarding a managment and operating contract;

(2) Discuss the relationship between the requirement and the limitations in FAR 17.603;

(3) Include a copy of the solicitation document including evaluation criteria;

(4) If non-competitive acquisition is proposed, include a copy of the justification.

(c) The HCA shall be responsible for conducting the reviews required by FAR 17.602(c).

PART 418—[RESERVED]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 419.2—Policies.

419.201 General Policy.
419.201-70 Office of Small and Disadvantaged Business Utilization (OSDBU).
419.201-71 OSDBU coordinators.
419.201-72 Goals.
419.201-73 Reports.
419.202 Specific policies.
419.202-70 Specific policies relating to small businesses.
419.202-71 Specific policies relating to minority, disadvantaged, and women-owned businesses.

Subpart 419.5—Set-Asides for Small Business

419.506 Withdrawing or modifying set-asides.

Subpart 419.6—Certificates of Competency and Determinations of Eligibility

419.602 Procedures.
419.602-1 Referral.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 419.2—Policies

419.201 General policy.

419.201-70 Office of Small and Disadvantaged Business Utilization (OSDBU).

The Office of Small and Disadvantaged Business Utilization shall develop policy, procedures and guidelines for the effective administration of the Department's small and disadvantaged business procurement preference program to include minority and women-owned businesses. OSDBU shall also evaluate contracting activity accomplishments, objectives and procedures with respect to these programs, and recommend corrective actions for program improvement. The HCA's and Departmental staff office directors whose programs generate requirements for contract actions shall administer the Department's procurement preference program within their organizations. This responsibility may be delegated to ensure program effectiveness.

419.201-71 OSDBU coordinators.

HCA's shall designate an OSDBU Coordinator in each contracting office. In addition, Departmental staff office directors whose programs generate contracts shall designate an OSDBU Coordinator. OSDBU Coordinators shall take positive actions which will maximize contracting opportunities for small businesses, including minority and women-owned businesses. The amount of time required for the performance of functions concerning this program shall be directly related to the number and dollar value of contract awards made in each office. In addition to their regular assigned duties, it is anticipated that about 20 percent of their time should be spent as OSDBU Coordinators. Supervisors of OSDBU Coordinators are encouraged to provide time for the coordinators to perform this important function. The duties and responsibilities of the OSDBU Coordinators shall include, but not be limited to, the following:

(a) Review each proposed acquisition expected to exceed $25,000 prior to its solicitation. The Coordinator shall:

(1) Recommend section 8(a) action and identify potential contractors, or

(2) Identify available minority and women-owned businesses to be solicited by competitive procedures. Coordinators shall document the contract file with recommendations made and actions taken.

(b) Participate in goal-setting procedures and planning activities as described in 419.201-72.

(c) Ensure that the subcontracting clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," as prescribed in FAR 19.708, is included in applicable solicitations. The coordinator shall participate in the review of those contracts which reguire the successful offeror to submit written plans for the utilization of small and small disadvantaged businesses as subcontractors.

(d) Ensure that small purchases (under $25,000) are reserved exclusively for small businesses, including minority and women-owned businesses as prescribed by FAR 13.105 and 19.506. This policy shall be implemented unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased.

(e) Maintain comprehensive source listings of small, minority and women-owned businesses and utilize SBA's Procurement Automated Source System (PASS) and the National Minority Purchasing Council's Vendor Information Service to build and maintain these listings. Ensure that all small, minority and women-owned businesses seeking to do business are informed of the bid and proposal submission requirements, and of financial, management and technical assistance programs offered by SBA and the Minority Business Development Agency. Ensure that these firms, upon request, are directed to appropriate program and project personnel.

(f) Upon written request, provide small, minority and women-owned businesses the bidders mailing lists of individuals receiving solicitations which will contain the subcontracting clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns." These lists may be limited to those supplies or services of major interest to the requesting firms.

(g) Develop a program of contacts with local, small, minority, and women-owned trade, business, and professional associations and organizations and Indian tribal councils to apprise them of the Department's program needs and recurring contract requirements.

(h) Actively participate in the programs and activities of the local Minority Business Opportunity Committees (MBOC) and assist the Minority Business Development Centers (MBDC), where applicable. Become aware of and participate in locally sponsored workshops, conferences, trade fairs, etc., which are held to apprise small, minority and women-owned firms about current and projected contracting opportunities.

(i) Periodically meet with program managers to discuss the section 8(a), small, minority and women-owned business programs and the impact which their requirements can have to achieve progress. Explore the feasibility of breaking large complex requirements into smaller lots suitable for participation by small, minority and women-owned firms. Encourage program managers to meet with these firms so that their capabilities can be demonstrated.

(j) Establish internal operating procedures which implement the requirements of the regulations as set forth in this Part 419. Compile data and prepare all reports pertaining to the small, minority and women-owned business activities. Ensure that these reports are accurate, complete and up-to-date.

419.201-72 Goals.

(a) The Department is required by Pub. L. 95-507, Section 221, Executive Order 12138 (May 18, 1979) and Executive Order 12073 (August 16, 1978) to establish fiscal year goals for the procurement preference programs. Goals shall be reviewed and approved by the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). HCA's and staff office directors whose programs generate contract requirements shall submit to the Director, OSDBU, the following data no later than August 1 of each fiscal year:

(1) An estimate of the total dollar amount of all prime contracts regardless of dollar value to be awarded during the fiscal year, including awards to non-profit organizations, educational institutions, all transportation services and real property leases. Do not include foreign military sales, contracts to be awarded and performed entirely outside the United States and Federal Supply Schedule orders;

(2) An estimate of the total dollar value of all prime contracts having a value of $25,000 or more to be awarded during the fiscal year, including contracts to non-profit organizations, educational institutions, all transportation services and real property leases. Do not include foreign military sales, contracts to be awarded and performed entirely outside the United States and Federal Supply Schedule orders;

(3) A goal for prime contract awards valued at $25,000 or more to be made to small business concerns during the fiscal year, expressed in dollars and as a percentage of paragraph (a)(2) of this section;

(4) A goal for prime contract awards to be made to the Small Business Administration under the authority of Section 8(a) of the Small Business Act, as amended, expressed in dollars and as a percentage of paragraph (a)(1) of this section;

(5) A goal for prime contract awards valued at $25,000 or more to be made to small business concerns owned and controlled by socially and economically disadvantaged individuals, expressed in dollars and as a percentage of paragraph (a)(2) of this section;

(6) A goal for prime contract awards to be made to small business concerns owned and controlled by women, expressed in dollars and as a percentage of paragraph (a)(1) of this section;

(7) A goal for prime contract awards to business concerns in Labor Surplus Areas (LSA) on the basis of set-asides, expressed in dollars and as a percentage of paragraph (a)(1) of this section. (This includes all categories of LSA set-asides authorized by Pub. L. 96-302);

(8) An estimate of the total dollar amount of subcontracts to be awarded by "reporting prime contractors" (as identified in Standard Form 295) during the fiscal year;

(9) A goal for subcontracts to be awarded by prime contractors to small business concerns, expressed in dollars and as a percentage of paragraph (a)(8) of this section; and

(10) A goal for subcontracts to be awarded by prime contractors to small business concerns owned and controlled by socially and economically disadvantaged individuals, expressed in dollars and as a percentage of paragraph (a)(8) of this section.

(b) The information developed in paragraph (a) shall include a detailed written presentation of the method used to establish the estimates and goals submitted pursuant to paragraphs (a) (1) through (10) of this section, along with copies of the historical, empirical data upon which the estimates and goals are based. Information about the types, kinds and amounts of goods and services brought and the numbers and types of contracts involved in the estimates submitted pursuant to paragraphs (a) (3) through (10) of this section is required. This information is needed to realistically evaluate the estimates and the goals related thereto. In establishing subcontracting goals, identification and justification should be provided for each class of contracts and the projected total value thereof determined to have little or no subcontract possibilities. Similarly, in

establishing goals for prime contract awards to small or small disadvantaged firms, contracts which have no potential for award to such firms, including the projected value thereof, should be identified.

(c) All goals are expressed in terms of dollars and percentages. However, if there is any significant variance, up or down, from the estimates in paragraph (a) (1) or (2) of this section, upon which the goals are established, the percentage goal is the controlling factor and will be used to measure actual attainment.

(d) Section 221 of Pub. L. 95–507 reserves all small purchases with certain exceptions for small business and requires that goals be established for awards over $25,000 to small and small disadvantaged business. Thus, the goals under paragraphs (a) (3) and (5) of this section do not include awards under $25,000.

419.201–73 Reports.

(a) The Director, OSDBU, shall be responsible for submitting reports concerning the Department's progress and achievements in the procurement preference program. Data for these reports shall be obtained from the USDA Procurement Reporting System (UPRS). Subcontracting data, however, cannot be retrieved from UPRS and shall be reported in accordance with paragraph (b) of this section.

(b) Contracting activities shall collect, summarize, and submit subcontracting data elements to the Director, OSDBU. The data are to be reported quarterly for other than commercial products and annually for commercial products for contract awards in excess of $500,000 ($1 million for construction). Reports shall be submitted each quarter in the format of the Standard Form 295. An additional data form will be required in the fourth quarter for the annual report on commercial products. To ensure accurate and timely reporting, contracting activities shall perform the following:

(1) Submit the SF–295 on a contractor-by-contractor basis 30 calendar days following the end of the first, second, and third quarters and 45 days following the end of the fourth quarter.

(2) Edit all forms (data) prior to their submission. Forms must be completed in all fields of the "Cumulative Commitments" and "Subcontract Goal Achievement." OSDBU will not assume that a blank field is a zero. Forms not fully completed will be returned. Contracting officers should communicate with the prime contractor's representative to ensure that consistent, accurate and timely data are submitted.

(3) In the "Cumulative Commitment" block, many contractors are reporting each quarter only those awards occuring in that quarter. OSDBU will return quarterly reports on which the awards reported are less than those submitted on the previous quarter of the same fiscal year. Totals must add up to exactly 100 percent. The sum of line 9 must be the sum only of lines 9a and 9b. All dollar figures should be in whole numbers and not in thousands.

(4) In the "Subcontract Goal Achievement" block, the column headed "No. of Contracts" must reflect the number of contracts and subcontracts valued over $500,000 ($1 million for construction) which have subcontracting plans and goals. Delete the three zeros (000) in the "$ Value of Subcontracts" column. The percentage of actual goal achievement reported on line 12b must always be 100 percent or higher and on line 12c must always be lower than 100 percent. The same applies for lines 13b and 13c.

(5) Items in lines 12 and 13 do not apply to company-wide annual subcontracting plans for commercial products. Accomplishments for these type plans are reported in line 14. The information reported must summarize all Federal contracts for commercial products performed during the year and the share of the total attributable to USDA from which contracts for such commercial products were received

(c) Explanatory comments concerning shortfalls in meeting procurement preference program goals established in accordance with 419.201–72 shall be summitted to the Director, OSDBU. Reports may be submitted in a narrative format and shall contain appropriate justifications for the goal shortfall(s). Achievements shall be based upon official AD–760 and SF–281 data as recorded in UPRS. Reports shall be submitted no later than November 20 of each fiscal year.

419.202 Specific policies.

419.202–70 Specific policies relating to small businesses.

OSDBU Coordinators shall take positive actions to ensure maximum participation of small business concerns in proposed acquisitions. These actions shall include:

(1) Developing a plan of operation to increase the share of contracts awarded to small business and LSA concerns;

(2) Reviewing the types and classes of items and services to be purchased to determine the applicability of small business and LSA set-aside priorities prescribed in 419.504(a);

(3) Developing adequate small business and/or LSA competition on all appropriate contract requirements;

(4) Making maximum utilization of SBA's Procurement Automated Source System (PASS) when considering contract requirements;

(5) Ensuring that specifications are not restrictive, thereby enabling small business participation;

(6) Assisting and counseling small business firms and especially those found to be nonresponsive or nonresponsible to help qualify them for future awards;

(7) Reviewing proposed large contract requirements to determine the potential for breaking out components suitable for purchase from small business firms or LSA concerns; and

(8) Ensuring that the SBA Resident Procurement Center Representative (PCR) is provided an opportunity and reasonable time to review any solicitation that meets the dollar threshold for small business and small disadvantaged business subcontracting plans.

419.202–71 Specific policies relating to minority, disadvantaged, and women-owned businesses.

OSDBU Coordinator shall take positive action to ensure maximum participation of minority business enterprises, including women-owned, in proposed acquisitions. These actions shall include:

(a) Establishing aggressive minority and women-owned business goals based on the annual review of advance acquisition plans. These goals shall be submitted in accordance with 419.201–72.

(b) Attempting to direct those contracting requirements to the 8(a) program which match the abilities of the minority contractors located in the area where the contract will be performed.

(1) Recurring requirements should not be assigned to the 8(a) program, without consulting SBA, when small businesses are dependent in whole or in significant part on such Government requirements. However, this does not mean that a segment of a requirement could not be assigned to the 8(a) program.

(2) The SBA publication "Firms in the 8(a) Business Development Program" should be used as an aid in locating eligible contractors.

(3) Field personnel should be encouraged to locate and contact minority contractors for possible 8(a) participation. These contractors should be directed to the nearest District or Regional Office of SBA to make application for certification.

(c) Fully utilizing available minority and women-owned vendor listings, directories and query systems to ensure that eligible and qualified minority and women-owned business enterprises are included on bidders mailing lists and source lists.

(d) Nominating OSDBU Coordinators for appointment by the HCA at each contracting office. Duties of these coordinators shall be in accordance with 419.201–71.

(e) Providing training opportunities for all personnel involved in carrying out the Department's minority and women-owned business enterprise program.

(f) Preparing plans for the utilization of minority and women-owned business enterprises. These plans may be in the form of standard operating procedures, and they are to be followed by all personnel involved in carrying out this program.

Subpart 419.5—Set-Asides for Small Business

419.506 Withdrawing or modifying set-asides.

Disagreements between the contracting officer and OSDBU Coordinator concerning withdrawals or modifications of individual or class set-asides shall be forwarded to the HCA for resolution. The OSDBU Coordinator shall provide timely notification of such disagreements to the OSDBU in order to afford them an opportunity to provide assistance in resolving the dispute.

Subpart 419.6—Certificates of Competency and Determinations of Eligibility

419.602 Procedures.

419.602–1 Referral.

Contracting officers shall refer determinations of non-responsibility regarding small businesses directly to the SBA Regional Office servicing the location where the contractor's office (home) is located. This referral shall consist of the documents described in FAR 19.602–1(c).

PART 420—LABOR SURPLUS AREA CONCERNS

Subpart 420.1—General

420.170 Labor surplus area performance and goals.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 420.1—General

420.170 Labor surplus area performance and goals.

(a) Construction and other "site-specific" contract requirements are applicable to labor surplus area set-asides. Contracts which are restricted to labor surplus area concerns shall be recorded in fulfillment of labor surplus area goals.

(b) Contracts awarded under priorities (1), (3) and (5) of FAR 19.504(a) shall be recorded in fulfillment of labor surplus area goals. Contracting activities shall not record noncompetitive 8(a) contracts, purchases from blind and handicapped workshops, and purchases from Federal Prison Industries toward their LSA goals. However, contracts may be counted toward LSA goals whenever there is competition among firms in labor surplus areas which are also in the 8(a) Program.

(c) Small business-small purchase set-asides accomplished under the procedures in FAR 13.105 shall be counted toward fulfillment of LSA goals. The clause requiring firms to perform as LSA concerns shall be included in the purchase order or other purchase document. In addition, the following statement should be included in the SF–18, when applicable: "This request is restricted to small business (and labor surplus area firms)." The contracting officer shall document a firm's acceptance of the LSA provisions whenever solicitations are conducted orally.

(d) LSA goals shall be established in accordance with the provisions of 419.201–72.

PART 421—[RESERVED]

PART 422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 422.1—Basic Labor Policies

422.103 Overtime.
422.103–4 Approvals.

Subpart 422.6—Walsh-Healy Public Contracts Act

422.604 Exemptions.
422.604–2 Regulatory exemptions.
422.608 Procedures.
422.608–4 Award pending final determination.

Subpart 422.8—Equal Employment Opportunity

422.803 Responsibilities.
422.804 Affirmative action programs.
422.804–2 Construction.
422.805 Procedures.
422.807 Exemptions.

Subpart 422.10—Service Contract Act of 1965

422.1003 Applicability.
422.1007 Notice of intention to make a service contract.
422.1011 Hearings.

Subpart 422.13—Special Disabled and Vietnam Era Veterans

422.1303 Waivers.
422.1306 Complaint procedures.

Subpart 422.14—Employment of the Handicapped

422.1403 Waivers.
422.1406 Complaint procedures.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 422.1—Basic Labor Policies

422.103 Overtime.

422.103–4 Approvals.

Requests for the use of overtime shall be approved at a level above the contracting officer in accordance with the procedures in FAR 22.103–4.

Subpart 422.6—Walsh-Healy Public Contracts Act

422.604 Exemptions.

422.604–2 Regulatory exemptions.

The Assistant Secretary for Administration can request the Secretary of Labor to exempt contracts from the Walsh-Healy Public Contracts Act pursuant to FAR 22.604–2(c). A written finding justifying the request for exemption shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Director, Office of Operations, for referral to the Assistant Secretary.

422.608 Procedures.

422.608–4 Award pending final determination.

The HCA is delegated authority to approve the contracting officer's certification for award required by FAR 22.608–4.

SUBPART 422.8—Equal Employment Opportunity

422.803 Responsibilities.

The contracting officer shall submit questions involving the applicability of EO 11246 and FAR Subpart 22.8 through the HCA to the Director, Office of Operations, for resolution.

422.804 Affirmative action programs.

422.804–2 Construction.

The HCA shall ensure that each contracting office awarding nonexempt construction contracts maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction trades.

422.805 Procedures.

(a) The contracting officer shall submit requests for preaward reviews directly to the appropriate OFCCP regional office in accordance with FAR 22.805(a) (4) and (5).

(b) The contracting officer shall obtain copies of the poster "Equal Opportunity is the Law" (OFCCP 1420), from the nearest regional GSA supply depot using stock NO. 769000–926–8988.

422.807 Exemptions.

(a) The Assistant Secretary for Administration is authorized to make the determination in FAR 22.807(a)(1) that a contract is essential to the national security.

(b) The contracting officer shall submit request for exemptions under FAR 22.807(a)(1), (a)(2), and (b)(5) through the HCA to the Director, Office of Operations, for determination by the Assistant Secretary for Administration or referral to the Director, OFCCP, as appropriate.

Subpart 422.10—Service Contract Act of 1965

422.1003 Applicability.

The contracting officer shall submit requests for determinations regarding application of the Service Contract Act and exemptions to the HCA for referral to the Department of Labor (DOL), Wage and Hour Administrator.

422.1007 Notice of intention to make a service contract.

The contracting officer shall contact the DOL, Wage and Hour Division, directly when expediting wage determinations or checking the status.

422.1011 Hearings.

The contracting officer shall submit a request for a hearing in accordance with FAR 22.1011 to the HCA for referral to the DOL, Office of Government Contract Wage Standards, for determination.

Subpart 422.13—Special Disabled and Vietnam Era Veterans

422.1303 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determination under FAR 22.1303(a), and under FAR 22.1303(b) with concurrence of the Director, OFCCP.

(b) The contracting office shall submit requests for waivers through the HCA to the Director, Office of Operations.

422.1306 Complaint procedures.

The contracting officer shall forward complaints received about the administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972 directly to the DOL as prescribed in FAR 22.1306.

Subpart 422.14—Employment of the Handicapped

422.1403 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1403(a), and under FAR 22.1403(b) with concurrence of the Director, OFCCP.

(b) The contracting officer shall submit requests for waivers through the HCA to the Director, Office of Operations.

422.1406 Complaint procedures.

The contracting officer shall forward complaints received about the administration of Section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

PART 423—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 423.1—Pollution Control and Clean Air and Water

423.104 Exemptions.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 423.1—Pollution Control and Clean Air and Water

423.104 Exemptions.

(a) Requests for exemption shall be submitted to the Director, Office of Operations. The Office of Operations will coordinate review of the request with the appropriate staff and program officer and submit the request to the Assistant Secretary for Administration for decision.

(b) The Office of Operations shall notify the Environmental Protection Agency upon the granting of an individual exemption, and shall consult with the Environmental Protection Agency in advance of the granting of any class exemption.

PART 424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 424.2—Freedom of Information Act

424.202 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 424.2—Freedom of Information Act

424.202 Policy.

USDA implementation of the Freedom of Information and Privacy Acts is found in 7 CFR, Subtitle A, Part 1, Subparts A and G, respectively. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency function.

PART 425—FOREIGN ACQUISITION

Subpart 425.1—Buy American Act—Supplies

425.102 Policy.
425.105 Evaluating offers.
425.108 Excepted articles, materials and supplies.

Subpart 425.2—Buy American Act—Construction Materials

425.202 Policy.
425.203 Evaluating offers.
425.204 Violations.

Subpart 425.3—Balance of Payments Program

425.302 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 425.1—Buy American Act—Supplies

425.102 Policy.

(a) The Assistant Secretary for Administration shall make the determination prescribed in FAR 25.102(a)(3).

(b) The HCA shall make the determination prescribed in FAR 25.102(a)(4) in accordance with 425.108.

425.105 Evaluating offers.

(a) FAR 25.105 provides that the price of a domestic end product is unreasonable if it exceeds specified percentages. The FAR, however, permits the agency head to determine that offers above these percentages are acceptable.

(1) Contracting officers who determine it is in the best interest of the Government to award a contract to a domestic firm whose offer exceeds the percentages specified in FAR 25.105(a) (1) and (2) may do so only with approval of the Assistant Secretary for Administration.

(2) Requests for approval must:

(i) Be directed to the Director, Office of Operations, by the HCA;

(ii) Be in writing; and

(iii) Provide a detailed justification for the reasonableness of the domestic offer.

(b) If an award of more than $250,000 would be made to a domestic concern if the 12 percent factor were applied, but not if the 6 percent factor were applied, the Assistant Secretary for Administration shall decide whether award to the domestic concern would involve unreasonable cost. The HCA shall refer such proposed awards to the

Director, Office of Operations, for coordination of the necessary approval.

425.108 Excepted articles, materials, and supplies.

(a) The HCA shall determine if articles, materials, and supplies should be added to or deleted from the list in FAR 25.108(d)(1). The HCA shall provide a copy of all such determinations to the Director, Office of Operations.

(b) The Director of the Office of Operations shall submit a copy of each determination to the FAR Council in accordance with FAR 25.108 (b) and (c).

Subpart 425.2—Buy American Act—Construction Materials

425.202 Policy.

(a) The Assistant Secretary for Administration shall make the determination prescribed in FAR 25.202(a)(2).

(b) The HCA shall make the determination prescribed in FAR 25.202(a)(3) in accordance with the procedures in 425.108.

(c) The HCA shall make the determination prescribed in FAR 25.202(b).

425.203 Evaluating offers.

The Assistant Secretary for Administration may determine that the use of a particular domestic construction material would be impracticable or unreasonably increase the cost of the contract. If the Assistant Secretary makes such a determination, the restrictions of the Buy American Act shall be waived for that material for the contract in question.

(a) If a contracting officer determines that the use of a particular domestic construction material should be waived for a contract, the contracting officer shall submit the proposed award and the information prescribed in FAR 25.203(b) through the HCA to the Director, Office of Operations.

(b) The Director, Office of Operations, shall evaluate all waiver requests and make a recommendation for approval or disapproval to the Assistant Secretary for Administration.

425.204 Violations.

Contracting officers shall, in accordance with the debarment procedures prescribed in 409.4, refer all violations of the clause found in FAR 52.225–5 to the Department Debarring Officer for possible debarment action.

Subpart 425.3—Balance-of-Payments Program

425.302 Policy.

The HCA shall make the determinations prescribed in FAR 25.302(b) (2) and (3) and may authorize differentials greater than 50 percent as prescribed in FAR 25.302(c).

PART 426—[RESERVED]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 427—[RESERVED]

PART 428—BONDS AND INSURANCE

Subpart 428.1—Bonds

428.102–3 Solicitation requirements.

Subpart 428.2—Sureties

428.203 Options in lieu of sureties.

Subpart 428.3—Insurance

428.370 Government-owned vehicles operated in foreign countries.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 428.1—Bonds

428.102–3 Solicitation requirements.

(a) When a performance or payment bond is required, the contracting officer shall insert the clause at 452.228–70, Notice of Required Bid Security.

(b) When a performance bond is required, the contracting officer shall insert the clause at 452.228–71, Notice of Required Performance Security.

(c) When a payment bond is required, the contracting officer shall insert the clauses at 452.228–72, Notice of Required Payment Security.

Subpart 428.2—Sureties

428.203 Options in lieu of sureties.

HCA's shall establish procedures to ensure protection and conveyance of deposited securities of the types listed in FAR 28.203–1 and 28.203–2.

Subpart 428.3—Insurance

428.370 Government-owned vehicles operated in foreign countries.

The Department is authorized to obtain insurance to cover liability incurred by any of its employees while acting within the scope of their employment and operating a Government-owned vehicle in a foreign country. (7 U.S.C. 2262).

PART 429—[RESERVED]

PART 430—COST ACCOUNTING STANDARDS

Subpart 430.3—CAS Contract Requirements

430.304 Waiver.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 430.3—CAS Contract Requirements

430.304 Waiver.

(a) The Director, Office of Operations, is authorized to waive CASB requirements as prescribed in FAR 30.304(c).

(b) Requests for waivers under (a) above shall be prepared by the contracting officer as prescribed in FAR 30.304(a) and submitted by the HCA.

PART 431—[RESERVED]

PART 432—CONTRACT FINANCING

Subpart 432.4—Advance Payments

432.402 General.

Subpart 432.5—Progress Payments Based on Costs

432.502 Preaward matters.

432.502–2 Contract finance office clearance.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 432.4—Advance Payments

432.402 General.

The HCA is designated as the individual responsible for making the findings and determination and for approval of contract terms concerning advance payments as required by FAR 32.402(e).

Subpart 432.5—Progress Payments Based on Costs

432.502 Preaward matters.

432.502–2 Contract finance office clearance.

The contracting officer shall obtain the approval of the HCA and the cognizant finance office for the contract before taking action under FAR 32.502–2.

PART 433—DISPUTES AND APPEALS

433.003 Applicability.

433.003–70 Agriculture Board of Contract Appeals.

433.009 Suspected fraudulent claims.

433.011 Contracting officer's decision.

433.012 Contracting officer's duties upon appeal.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

433.003 Applicability.

(a) The Assistant Secretary for Administration is authorized to

determine the applicability of the Contract Disputes Act to contracts with foreign governments pursuant to FAR 33.003.

(b) A written determination shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Director, Office of Operations, for review and referral to the Assistant Secretary.

433.003–70 Agriculture Board of Contract Appeals.

The Agriculture Board of Contract Appeals (AGBCA) is authorized by the Secretary of Agriculture to hear, consider and determine appeals by contractors from decisions of USDA contracting officers under a contract or relating to a contract made by the Department or by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal. All appeals brought before the Board are subject to the AGBCA Rules of Procedure in 7 CFR, Part 24.

All correspondence and documents to be filed with the Board should be addressed to the Board of Contract Appeals, U.S. Department of Agriculture, Washington, D.C. 20250.

433.009 Suspected fraudulent claims.

The contracting officer shall refer all matters related to suspected fraudulent claims by a contractor under the conditions in FAR 33.009 to the Office of the Inspector General for further action or investigation.

433.011 Contracting officer's decision.

The contracting officer's decision under FAR 33.011(a)(4) shall include the Board or Contract Appeals' mailing address and rules of procedure citation as referenced in 433.003–70.

433.012 Contracting officer's duties upon appeal.

Once notified by the AGBCA of an appeal, the contracting officer shall provide data, documentation, information, and support in accordance with the AGBCA Rules of Procedure, 7 CFR, 24.9.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 434—MAJOR SYSTEM ACQUISITION

434.001 Implementation.
434.002 Policy.
434.003 Responsibilities.
434.004 Acquisition strategy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

434.001 Implementation.

(a) *Definition.* For the purpose of applying the policy and procedures of OMB Circular No. A–109 within the USDA, the definition of a major system contained in the Circular is to be followed subject to the following:

(1) All system acquisitions which are expected to result in at least 50 million dollars of acquisition costs with private industry are considered to be major system acquisitions and are subject to the requirements of OMB Circular No. A–109.

(2) Other system acquisitions not expected to result in acquisition costs in excess of this 50 million dollar limit may be specifically designated as major system acquisitions subject to A–109 by the USDA Acquisition Executive.

(3) Classification as a major system acquisition is independent of the number of component USDA contracting activities involved in the process. A major system acquisition may occur entirely within the jurisdiction of a single contracting activity or may involve more than one component USDA contracting activity.

(4) The Major Missions of USDA are documented in the USDA Program Structure Dictionary. All major system acquisitions will be in response to a "need" of one of these Major Missions.

(b) *Exemption.* Acquisition of major ADP systems which would otherwise be subject to the requirements of this section and OMB Circular A–109 are exempted from these requirements. USDA has other existing controls which provide the necessary reviews, approval and monitoring procedures to manage major ADP systems acquisitions.

434.002 Policy.

USDA concurs with the objecives of OMB Circular A–109 to assure effectiveness and efficiency in acquiring major systems and also views the guidelines stated in A–109 as necessary steps in the acquisition of any system, be it major or otherwise. The steps outlined in the Circular should serve as a guide to all contracting activities in the planning and developing of all systems. These steps should include:

(a) Expressing needs in "mission terms" to encourage innovation;

(b) Emphasizing initial activities of the system acquisition process;

(c) Communicating with Congress at an early stage;

(d) Establishing clear lines of authority, responsibility, and accountability;

(e) Designating focal points for integration and unification of activities; and

(f) Relying on private industry in accordance with the policies established by OMB Circular No. A–76.

434.003 Responsibilities.

(a) The Secretary of Agriculture is charged by OMB Circular No. A–109 with the responsibility for making four key decisions in each major system acquisition process. These are summarized in paragraph nine of the Circular and elaborated in paragraphs ten through thirteen.

(b) The key executives of USDA, i.e., the Secretary, Deputy Secretary, Under Secretaries, and Assistant Secretaries, individually or as a group, will participate in the identification and definition of specific mission needs to be fulfilled in USDA and in the assignment of priorities to these needs. They will also be involved in assisting the Secretary in making the "key decisions" identified in A–109.

(c) The Assistant Secretary for Administration has been designated by the Secretary to be the Departmental Acquisition Executive. The Assistant Secretary will assure that OMB Circular No. A–109 is implemented in USDA and ensure that the management objectives of the Circular are realized. The Acquisition Executive is responsible for designating the program manager for each Major System Acquisition designating any acquisition in the Department as a Major System Acquisition and approving the written charter and project control system for each Major System Acquisition.

(d) The Office of Operations will serve as the cognizant staff office in assisting the Assistant Secretary for Administration in carrying out the above responsibilities. The Office of Operations will access the budget development and review process to identify potential major system acquisitions and bring them to the attention of the Assistant Secretary.

(e) HCA's must:

(1) Become familiar with the requirements of OMB Circular No. A–109 and ensure that contracting activity personnel are knowledgeable regarding the Circular.

(2) Take such steps as are necessary to ensure that all potential Major System Acquisitions are brought to the attention of the Acquisitions Executive.

(3) Recommend qualified candidates for designations as program managers for each major system acquisition within their jurisdictions.

(4) Ensure that program managers fulfill their responsibilities and discharge their duties.

(5) Cooperate with the Assistant Secretary for Administration and the Office of Finance and Management in implementing the requirements of the Circular.

(6) Adhere to the principles outlined in the Circular with regard to all major system acquisitions.

(7) Use the principles outlined in the Circular as a guideline for other acquisitions.

(f) Program Managers will:

(1) Plan and carry out the proposed objective of the Major System Acquisition.

(2) Schedule and monitor all aspects of the projects using an appropriate project control system.

(3) Provide analysis papers to recommend decisions to the key executives of USDA and the Secretary.

(4) Document USDA compliance with A–109.

434.004 Acquisition strategy.

(a) The Program Manager will assume operational responsibility for the planning and execution of the Major System Acquisition upon designation by the Acquisition Executive.

(b) The Program Manager will work closely with the Acquisition Executive to develop a written charter outlining the authority, responsibility, accountability, and budget for accomplishing the proposed objective.

(c) The Program Manager will develop a project control system to schedule, monitor, and regularly report on all aspects of the project. The control system will be presented to the Acquisition Executive for approval. In developing the control system, the Program Manager shall provide for appropriate reporting periods and for checkpoints consistent with the "key decisions" Section No. 9 of OMB Circular No. A–109.

(d) Upon initiation of the project, the Program Manager will report regularly (at least monthly) to the Acquisition Executive on the progress achieved to that point. The reports shall include information with regard to the requirements of OMB Circular No. A–109 and how the objectives of the Circular have been realized to present time. Also, the reports shall contain a statement as to what is planned for the next reporting period both in terms of the project itself and the requirements of A–109.

(e) As each "key decision" point is reached, the Program Manager will prepare detailed analysis, findings and recommendations to be submitted, through the Acquisition Executive, to the key executives in the Department. The program manager shall also prepare additional reports and documentation as requested by the key executives.

(f) The Program Manager will work closely with the Director, Office of Finance and Management, with regard to budgeting and financing for the system and will provide the necessary information to OMB and Congress as required by Circular A–109.

PART 435—RESEARCH AND DEVELOPMENT CONTRACTING

435.010 Scientific and technical reports.
435.015 Contracts for research with educational institutions and nonprofit organizations.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

435.010 Scientific and technical reports.

(a) Pursuant to FAR 35.010(b), research and development contracts shall contain a provision requiring that the contractor send copies of all scientific and technical reports to the National Technical Information Service (303Y), Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

(b) The release of research and development contract results to other Government activities and to the private sector is subject to the provisions of FAR Subject 4.4

435.015 Contracts for research with educational institutions and nonprofit organizations.

(a) Promptly after execution of a basic agreement for research and development with an educational institution or nonprofit organization, the HCA shall furnish a copy of the agreement to the Director, Office of Operations.

(b) The Director, Office of Operations, shall furnish the list required under FAR 35.015(b)(3) to the FAR Secretariat.

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 436.2—Special Aspects of Contracting for Construction

436.201 Evaluation of contractor performance.
436.209 Construction contracts with architect-engineer firms.

Subpart 436.3—Special Aspects of Formal Advertising in Construction Contracting

436.370 Additive or deductive items.

Subpart 436.5—Contract Clauses

436.570 Prohibition against use of lead-based paint.

Subpart 436.6—Architect-Engineer Services

436.602 Selection of firms for achitect-engineer contracts.
436.602–1 Selection criteria.
436.602–2 Evaluation boards.
436.602–3 Evaluation board functions.
436.602–4 Selection authority.
436.602–5 Short selection processes for contracts not to exceed $10,000.
436.603 Collecting data on and appraising firms' qualifications.
436.604 Performance evaluation.
436.606 Negotiations.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 436.2—Special Aspects of Contracting for Construction

436.201 Evaluation of contractor performance.

(a) HCA's shall establish procedures to evaluate construction contractor peformance including instructions for review of the evaluation report (SF–1420) as prescribed in FAR 36.201 and 36.701(e).

436.209 Construction contracts with architect-engineer firms.

(a) As required by FAR 36.209, no contract for construction of a project shall be awarded to the firm that designed the project or its subsidiaries or afffiliates without the written approval of the Director, Office of Operations.

(b) Requests for approval under (a) above shall be made by the HCA to the Director, Office of Operations. The request shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 436.3—Special Aspects of Formal Advertising in Construction Contracting

436.370 Additive or deductive items.

(a) When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order or priority. In such case, the invitation shall include a provision substantially as set forth in 452.236–71, and the low bidder and the bid items to be awarded shall be determined as therein provided.

Subpart 436.5—Contract Clauses

436.570 Prohibition against use of lead-based paint.

(a) *Policy.* The Lead-Based Paint Poisoning Prevention Act, as amended by the National Consumer Health Information and Health Promotion Act of 1976 (42 U.S.C. 4831), prohibits the use of lead-based paint in Federal or Federally-assisted construction or rehabilitation of residential structures. Implementing regulations of the Secretary of Housing and Urban Development under 24 CFR Part 35 requires agencies to include appropriate provisions in contracts or subcontracts for construction or rehabilitation of residential structures.

(b) *Definitions.* As used in this section, "residential structure" means any house, apartment, or structure intended for human habitation including any institutional structure where persons reside such as an orphanage, boarding school dormitory, day care center, or extended care facility.

(c) *Procedures.* The contracting officer shall insert the clause at 452.236–70, Prohibition Against Use of Lead-Based Paint, in solicitations and contracts when construction of residential structures or rehabilitation (including dismantling, demolition, or removal) of residential structures is contemplated.

Subpart 436.6—Architect-Engineer Services

436.602 Selection of firms for architect-engineer contracts.

436.602–1 Selection criteria.

(a) In addition to the selection criteria under FAR 36.602–1(a), the following criteria shall be used in the evaluation of each potential contractor when applicable to a particular acquisition:

(1) Computer-assisted design capability and capacity (where such design is required).

(2) Adequacy of facilities for performance of the work including those necessary to provide specialized services that may be required.

(3) Volume and nature of present workload as it relates to the ability to perform the work required.

(4) Experience and qualifications of proposed key personnel including specialized technical skills, project coordination and management skills, and experience in working together as a team.

(5) Availability of additional contractor personnel or consultants to support expansion or acceleration of the project.

(6) Other specific criteria as may be required.

(b) HCA's are authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

436.602–2 Evaluation boards.

HCA's shall establish procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2. Procedures may provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the HCA to be essential to meet the Government's minimum needs.

436.602–3 Evaluation board functions.

(a) Firms shall be evaluated in accordance with the criteria in 436.601–1, as applicable, as well as the criteria in FAR 36.602–1.

(b) The selection report required in FAR 36.602–3(d) shall be prepared for the approval of the HCA. The HCA may authorize an acquisition official above the level of the contracting officer to execute the required approval.

436.602–4 Selection authority.

The HCA shall serve as the selection authority in accordance with FAR 36.602–4. The HCA may authorize an acquisition official above the level of the contracting officer to serve as the selection authority.

436.602–5 Short selection processes for contracts not to exceed $10,000.

The selection process prescribed in FAR 36.602–5(a) shall be used for architect-engineer contracts not expected to exceed $10,000.

436.603 Collecting data on and appraising firms' qualifications.

(a) HCA's which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under (a) above shall be submitted to the Director, Office of Operations, for review and approval. The procedures shall include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually.

436.604 Performance evaluation.

(a) HCA's shall establish procedures to evaluate architect-engineer contractor performance including instructions for review of the evaluation report (SF–1421) as prescribed in FAR 36.604 and 36.702(c).

(b) Performance reports shall be distributed to the HCA for filing, distribution points in FAR 36.604(c), and other points required by internal procedures.

436.606 Negotiations.

Whenever a proposal is solicited from an architect-engineer firm selected for negotiation, the contracting officer shall include in the request for proposal a reference to 436.209 as required by FAR 36.606(c).

PART 437—SERVICE CONTRACTING

Subpart 437.2—Consulting Services

437.205 Management controls.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 437.2—Consulting Services

437.205 Management controls.

Contracts for consulting services are subject to the management controls and procedures in Departmental Regulation 5000–2, "Contracting for Consulting Services."

PART 438—[RESERVED]

PART 439—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Subpart 439.70—Delegation of Acquisition Authority

439.7001 Delegation threshold limitations.
439.7002 Other limitations.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 439.70—Delegation of Acquisition Authority

439.7001 Delegation threshold limitations.

Contracting activities delegated general contracting authority by the Office of Operations are hereby delegated specific authority for acquisition of automatic data processing equipment, services, and related supplies in the following circumstances:

(a) *ADP equipment.* (1) Card punching, verifying, and manipulating equipment described as electronic accounting machines (EAM) or punch card accounting machines (PCAM) where the total dollar cost does not exceed $100,000 for purchase or annual rental.

(2) Any other items of ADP equipment where the total dollar cost does not exceed $100,000 for purchase or annual rental; provided, that no existing computer system is augmented under this delegation such that the purchase cost (cost to purchase if leased) of all the components of that system are made to exceed $400,000.

(3) Renewal of equipment up to $100,000 for purchase or annual rental, or within the dollar limits and time frame of the original delegation.

(b) *ADP equipment maintenance.* The acquisition does not exceed $50,000 annually.

(c) *ADP software.* The total acquisition for the specific software package does not exceed $15,000 annual lease cost, excluding maintenance, or $20,000 purchase cost.

(d) *ADP services.* The cost of the ADP service does not exceed $50,000.

(e) *ADP supplies.* (1) The cost of the supplies does not exceed $5,000; or

(2) The acquisition will be made under a specific purchase program established by GSA. These programs include electronic data processing (EDP) tapes, tabulating machine cards, and marginally punched continuous forms.

439.7002 Other limitations.

All acquisitions which are not within the authorities set forth in 439.7001 must be submitted to the Director, Office of Operations, for delegation of contracting authority. The Office of Operations will either conduct the acquisition or delegate authority to the contracting activity to conduct the acquisition.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 440—[RESERVED]

PART 441—[RESERVED]

PART 442—CONTRACT ADMINISTRATION

Subpart 442.1—Interagency Contract Administration and Audit Services

442.102 Procedures.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 442.1—Interagency Contract Administration and Audit Services

442.102 Procedures.

(a) The Office of the Inspector General (OIG), Audit Division, has established a cross-servicing arrangement with the Defense Contract Audit Agency (DCAA) to provide contract audit services required by the FAR.

(b) All contract audit services required by contracting officers shall be coordinated through the cognizant OIG Regional Inspector General—Auditing (RIG–A). Cognizance is determined on the basis of the contractor's location. The OIG will, at its discretion, perform the audit with OIG personnel or refer the request to the DCAA if such would be more practical due to workload considerations or the location of the contractor. There is no charge for audit services coordinated through OIG.

(c) In order to ensure compliance with this requirement and to evaluate the results of audits, contracting officers shall forward to the RIG–A copies of all price negotiation memoranda prepared for contracts and contract modifications in excess of $500,000.

PART 443—[RESERVED]

PART 444—[RESERVED]

PART 445—GOVERNMENT PROPERTY

Subpart 445.3—Providing Government Property to Contractors

445.302 Providing facilities.
445.302–1 Policy.

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges Clause.
445.407 Non-Government use of plant equipment.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contractor inventory.
445.608–6 Waiver of screening requirements.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 445.3—Providing Government Property to Contractors

445.302 Providing facilities.

445.302–1 Policy.

HCA's are authorized to make determinations for providing facilities to a contractor as prescribed in FAR 45.302–1(a)(4).

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges clause.

HCA's are authorized to make determinations for charging rent on the basis of use under the Use and Charges clause in FAR 52.245–9 as prescribed in FAR 45.403(a).

445.407 Non-Government use of plant equipment.

Requests for non-Government use of plant equipment as prescribed in FAR 45.407 shall be submitted by the HCA to the Director, Office of Operations, for approval.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contractor inventory.

445.608–6 Waiver of screening requirements.

Requests to waive screening requirements as prescribed in FAR 45.608–6 shall be submitted by the HCA to the Director, Office of Operations, for approval.

PART 446—QUALITY ASSURANCE

Subpart 446.6—Material Inspection and Receiving Reports

446.601 Inspection and receiving.
446.602 Acceptance.
446.603 Inspection, acceptance, and receiving certification.
446.604 Distribution of material inspection and receiving reports.

Subpart 446.7—Warranties

446.704 Authority for use of warranties.
446.708 Warranties of data.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 446.6—Material Inspection and Receiving Reports

446.601 Inspection and receiving.

(a) The certification stated in 446.603 shall be inserted on each commercial shipping document or packing list for supplies or services and shall be signed by the authorized Government representative as required by FAR 46.401(f), except for small purchases (see FAR 46.404).

(b) Form AD–838, Purchase Order, shall be used to comply with the requirements of FAR 46.406(f) and FAR 46.404.

(c) The certification required by 446.601(a) shall be made at the place or places specified in the contract for performance of Government quality assurance as required by FAR 46.401(b) and as prescribed in FAR 46.402 or FAR 46.403, as appropriate.

446.602 Acceptance.

(a) The certification stated in 446.603 shall be inserted on each commercial shipping document or packing list for supplies or services and signed by the authorized Government representative as required by FAR 46.501.

(b) The certification required by 446.602(a) shall be made at the place or places specified in the contract for Government acceptance as required by FAR 46.503.

(c) If the contracting officer elects to use a contractor's certificate of conformance as allowed by FAR 46.315 under the conditions prescribed by FAR 46.504, the certificate may be used as the basis for Government acceptance.

(d) Form AD–838, Purchase Order, shall be used to comply with the requirements of FAR 46.501.

446.603 Inspection, acceptance and receiving certification.

As prescribed in this subpart, the following certification shall be inserted on commercial shipping documents or packing lists for supplies or services:

Inspection, Acceptance and Receiving Certification

The listed items or services have been: ——— inspected, ———accepted, ——— received by me or under my supervision and they conform to contract except as noted below or on attached documents.

Date ———————————

(Signature) ———————————

(Typed name of authorized Government representative)

446.604 Distribution of material inspection and receiving reports.

Distribution of material inspection and receiving reports shall be made in accordance with established procedures established by contracting activities.

Subpart 446.7—Warranties

446.704 Authority for use of warranties.

The HCA is authorized to approve the use of warranties as prescribed by FAR Subpart 46.7.

446.708 Warranties of data.

Warranties of data shall be developed and used only after review and approval by OGC.

PART 447—[RESERVED]

PART 448—VALUE ENGINEERING

Subpart 448.1—Policies and Procedures

448.102 Policies.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 448.1—Policies and Procedures

448.102 Policies.

(a) USDA is exempt from the requirements of FAR Part 48, Value Engineering.

(b) HCA's are encouraged to implement value engineering programs in their contracting activities in accordance with FAR Part 48 when it has been determined by the HCA that such implementation is in the best interest of the Government.

PART 449—TERMINATION OF CONTRACTS

Subpart 449.1—General Principles

449.106 Fraud or other criminal conduct.
449.107 Audit of prime contract settlement proposals and subcontract settlements.
449.111 Review of proposed settlements.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.

449.402–3 Procedure for default.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 449.1—General Principles

449.106 Fraud or other criminal conduct.

(a) Whenever fraud, such as falsified documents, false statements, or other criminal conduct related to the settlement of a terminated contract is suspected, the contracting officer shall discontinue negotiations and prepare a report of the facts. The report shall be submitted by the HCA to the Inspector General along with copies of documents or other information connected with the suspected violation(s). Concurrently, a copy of the report shall also be submitted to the Director, Office of Operations.

(b) Depending of the findings of the Inspector General, the HCA may initiate suspension of debarment action as prescribed in FAR Part 9.4 and Part 490.4 of this chapter.

449.107 Audit of prime contract settlement proposals and subcontract settlements.

Prime contractor settlement proposals and subcontract settlements requiring audit review in accordance with FAR 49.107 shall be referred to the Inspector General.

449.111 Review of proposed settlements.

All proposed settlement agreements shall be reviewed and approved at a level above the contracting officer in accordance with contracting activity procedures. Settlement agreements of $50,000 or more shall be approved by the HCA.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.

449.402–3 Procedure for default.

(a) In addition to the requirements of FAR 49.402–3(g), the notice of termination shall contain instructions regarding the disposition of any Government property in the possession of the contractor (see FAR 45.508–1) and, in the case of construction contracts, such materials, appliances, and structures as may be on the site of the construction work. The notice shall also contain a statement concerning the liability of the contractor or its surety for any liquidated damages (see FAR 49.402–7).

(b) The notice of termination suggested under FAR 49.601–2 shall be modified in accordance with (a) above.

PART 450—EXTRAORDINARY CONTRACTUAL ACTIONS

450.001 Definitions.

Subpart 450.1—General

450.103 Deviations.
450.104 Reports.

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

450.001 Definitions.

"Approving authority," as used in this part, means the Assistant Secretary for Administration.

Subpart 450.1—General

450.103 Deviations.

Requests for deviations to FAR Part 50 shall be submitted by the HCA to the Director, Office of Operations, for approval.

450.104 Reports.

The Director, Office of Operations, shall prepare the report required by FAR 50.104.

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

The Assistant Secretary for Administration is authorized to approve all actions under FAR Part 50 except indemnification actions listed in FAR 50.201(d).

PART 451—[RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 452.2—Texts of Provisions and Clauses

452.210–70 Brand name or equal.
452.228–70 Notice of required bid security.
452.228–71 Notice of required performance security.
452.228–72 Notice of required payment security.
452.232–70 Interest on overdue payments.
452.232–71 Payment due date.
452.232–72 Invoices.
452.236–70 Prohibition against use of lead-based paint.
452.236–71 Additive or deductive items.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 452.2—Texts of Provisions and Clauses

452.210–70 Brand name or equal.

As prescribed in 410.004, insert the following provision in solicitations which contain a "brand name or equal" purchase description:

Brand Name or Equal (Apr 1984)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name mapufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids or proposals and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the bidder clearly indicates in its bid that it is offering an "equal" product, its bid shall be considered as offering a brand name product referenced in the solicitation.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in its bid as well as other information reasonably available to the contracting activity. Caution to bidders: The contracting activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the bidder must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the solicitation, the bid shall include (i) a clear description of such proposed modifications and (ii) clearly marked descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitations will not be considered.

(End of clause)

452.228–70 Notice of Required Bid Security.

As prescribed in 428.102–3(a), insert the following clause in solicitations:

Notice of Required Bid Security (Apr 1984)

Each bidder must submit a bid guarantee in the amount of ——— percent of the total bid price, but in no event shall the penal sum exceed $3 million. If a bid bond is submitted, it should be on Standard Form 24. Money orders and checks, if used, shall be drawn payable to: (*insert name of the USDA contracting activity*).

(End of clause)

452.228–71 Notice of Required Performance Security.

As prescribed in 428.102–3(b), insert the following clause in solicitations:

Notice of Required Performance Security (Apr 1984)

The successful bidder shall furnish security to guarantee faithful performance of the contract in the amount of ——— percent of the total contract price. Security may be in the form of a performance bond on Standard Form 25 (furnished on request), or in the form of a postal money order, certified check or cashier's check, or United States Government bonds or notes (at par value) may be deposited in accordance with Treasury Regulations. Money orders and checks shall be drawn payable to: (*insert name of the USDA contracting activity*).

(End of clause)

452.228–72 Notice of Required Payment Security.

As prescribed in 428.102–3(c), insert the following clause in solicitations:

Notice of Required Payment Security (Apr 1984)

The successful bidder shall furnish security to guarantee payment to all persons supplying labor or materials in the performance of the contract, such security to be in the form of a payment bond on Standard Form 25A (furnished on request). The penal sum of the payment bond shall equal:

(a) 50 percent of the contract price, if the contract price is not more than $1 million;

(b) 40 percent of the contract price, if the contract price is more than $1 million but not more than $5 million; or

(c) $2½ million, if the contract price is more than $5 million.

(End of clause)

452.232–70 Interest on Overdue Payments.

The following clause, which sets forth the Government's liability for interest penalties, shall be included (incorporation may be by reference) in all nonexempt contracts and purchase orders, including leases of real property. Exempt contracts and purchase orders include:

(a) Those for which payment is made for financing purposes before receipt of complete delivered items of property or service;

(b) Contracts for utilities (gas, water, electricity, etc.) that include provisions for late payment charges established by tariff or State regulatory commissions; or

(c) Informal contracts for the purchase of utilities under a tariff when such tariff provides for late payment charges.

Interest on Overdue Payments (Apr 1984)

(a) The Prompt Payment Act, Public Law 97–177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract and requires the payment to contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A–125.

(End of clause)

452.232–71 Payment Due Date.

(a) When invoices required to be furnished by contractors may be received before the Government has had an opportunity to inspect and accept the supplies or services, the following clause shall be included in all nonexempt contracts and purchase orders not exceeding $25,000 (exemptions are defined in 452.232–70):

Payment Due Date (Apr 1984)

(a) Payments under this contract will be due on the 30th calendar day after the latter of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the supplies are accepted by the Government.

(b) For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur on the 15th calendar day after the date of delivery of the supplies in accordance with the terms of the contract.

(c) If the supplies are rejected for failure to conform to the technical requirements of the contract, or for damage in transit or otherwise, the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies.

(d) The date of the check issued in payment shall be considered to be the date payment is made.

(End of clause)

(b) The following clause shall be included in all nonexempt contracts and purchase orders not exceeding $25,000 (exemptions are defined in 452.232–70), when invoices may be required to reflect that delivery (or performance) and acceptance has already occurred. This would be the situation in the case of supplies purchased on an f.o.b. origin basis, with inspection and acceptance at source, and proof of shipment (e.g., a Government bill of lading) required to be furnished with the invoice. This may also be the case with respect to various contracts for services.

Payment Due Date—Alternate I (Apr 1984).

(a) Payments under this contract will be due on the ——— calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.

(b) The date of the check issued in payment shall be considered to be the date payment is made.

(End of clause)

(c) The following clause shall be included in all contracts or purchase orders not exceeding $25,000 for leases of real property:

Payment Due Date—Alternate III (Apr 1984)

(a) Payments under this contract will be due on the 15th calendar day of the month following that in which payment accrued.

(b) The date of the check issued in payment shall be considered to be the date payment is made.

(End of clause)

452.232-72 Invoices.

Insert the following clause in all contracts and purchase orders (unless the clause at FAR 52.213-2 applies). The contracting officer may appropriately modify the clause to request additional information under paragraph (b):

Invoices (Apr 1984)

(a) Invoices shall be submitted in an original and 2 copies to the Government office designated in this contract or on the delivery order to receive invoices. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

(1) Name of the business concern and invoice date.

(2) Contract number, or other authorization for delivery of property or services.

(3) Description, price, and quantity of property and services actually delivered or rendered.

(4) Shipping and payment terms.

(5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(b) To assist the Government in making timely payments, the Contractor is requested to furnish the following additional information either on the invoice or on an attachment to the invoice: (List any such additional information.)

(End of clause)

452.236-70 Prohibition Against Use of Lead-based Paint.

As prescribed in 436.570, insert the following clause in solicitations and contracts when construction of residential structures or rehabilitation (including dismantling, demolition, or removal) of residential structures is contemplated:

Prohibition Against the Use of Lead-Based Paint (Apr 1984)

No lead-based paint containing more than .5 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of paint, or the equivalent measure of lead in the dried film of paint already applied, or both, or with respect to paint manufactured after June 23, 1977, no lead-based paint containing more then .06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, shall be used in the construction or rehabilitation of residential structures under this contract or any resulting subcontracts.

(End of clause)

452.236-71 Additive or Deductive Items.

As prescribed in 436.370, insert the following clause in solicitations when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. Contracting officers may use the clause in solicitations when a resultant contract within the small purchase limitation is expected.

Additive or Deductive Items (Apr 1984)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the lower bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid and any combination of his additive or deductive bid for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of items.

(End of clause)

PART 453—FORMS

453.000 Scope of part.

Subpart 453.1—General

453.103 Exceptions.
453.108 Recommendations concerning forms.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.
453.204 Administrative matters.
453.204-2 Contract reporting (AD-760).
453.213 Small purchase and other simplified purchase procedures (AD-744 and AD-838).
453.270 Request for contract action (AD-700).

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.
453.303 Agency forms.
453.303-700 Procurement Request (AD-700)
453.303-744 Purchase Order-Invoice-Voucher (AD-744).
453.303-760 Report of Individual Procurement (AD-760).
453.303-838 Purchase Order (AD-838).

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

453.000 Scope of part.

This part: (a) Prescribes Department of Agriculture (AD) forms for use in acquisition, (b) contains requirements and information generally applicable to AD forms and forms prescribed by FAR Part 53, and (c) illustrates AD forms.

Subpart 453.1—General

453.103 Exceptions.

(a) The contracting officer shall submit requests for exceptions to forms prescribed in FAR Part 53 through the HCA to the Director, Office of Operations, for referral to the GSA.

(b) Requests for exceptions to AD forms prescribed in Part 453 shall be handled as individual or class deviations, as appropriate (see Subpart 401.4).

453.108 Recommendations concerning forms.

Contract officers shall submit recommendations for new forms or to revise, eliminate, or consolidate forms prescribed by FAR 53 and Part 453 through the HCA to the Director, Office of Operations, for consideration or referral to the Civilian Agency Acquisition Council (CAAC), as appropriate.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.

This subpart prescribes Department of Agriculture (AD) forms for use in acquisition. Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the AGAR in which the form usage requirements are addressed.

453.204 Administrative matters.

453.204-2 Contract reporting (AD-760).

Form AD-760, *Report of Individual Procurement,* is prescribed by the USDA Procurement Reporting System, for reporting contract actions over $10,000 (see 404.601(b)).

453.213 Small purchase and other simplified purchase procedures (AD-744 and AD-838).

(a) Form AD-744, *Purchase Order-Invoice-Voucher,* is prescribed for use as an over-the-counter purchase document (see 413.505-3(a)).

(b) Form AD-838, *Purchase Order,* is prescribed for use as a small purchase/delivery order document (see 413.505-2).

453.270 Request for contract action (AD-700).

Form AD-700, *Procurement Request,* is prescribed as the contract requisition document for contracting activities in USDA.

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.

This subpart contains illustrations of Department of Agriculture (AD) forms for use in acquisitions. Forms are not illustrated in the **Federal Register**, or Code of Federal Regulations. Individual copies may be obtained from any USDA contracting activity, or the Director, Office of Operations, Washington, D.C. 20250.

453.303 Agency forms.

453.303-700 Procurement Request (AD-700).

453.303-744 Purchase Order-Invoice-Voucher (AD-744).

453.303-760 Report of Individual Procurement (AD-760).

453.303-838 Purchase Order (AD-838).

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Flight Time Limitations and Rest Requirements for Flight Crewmembers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 23634; Notice No. 84-3]

Flight Time Limitations and Rest Requirements for Flight Crewmembers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing flight time limitations and rest requirements for flight crewmembers engaged in air transportation. This proposal is based on the recommendations of a regulatory negotiation advisory committee composed of persons who represent the interests affected by the flight time rules. This proposal results from a reassessment of the agency's role in regulating flight and rest time in light of current operating conditions and current regulatory phlosophy. The proposal would simplify, clarify, and update the regulations and reduce the need for their interpretation.

DATE: Comments must be received on or before May 14, 1984.

ADDRESS: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23634, 800 Independence Avenue SW., Washington, D.C. 20591; or delivered to: Room 915G, 800 Independence Avenue, SW., Washington, D.C. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Lawrence P. Bedore, Project Development Branch, Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, Room 304, 800 Independence Avenue SW., Washington D.C. 20591; Telephone (202) 426-8096.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impact of the adoption of this proposal. Comments are also specifically requested concerning the implementation and effective date of the final rule. For example, the FAA would like to know if operators want the option of complying before the mandatory effective date. The FAA proposes to establish an effective date of 180 days after the publication of the final rule in the Federal Register.

The comment should carry the regulatory docket or notice number and be submitted in duplicate to the address above. All comments received as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for making comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before May 14, 1984 and the proposal may be changed in light of the comments received. The FAA is allowing only 45 days for comment on this NPRM, because notwithstanding the significance of the issues involved, the FAA believes that this is sufficient time given the length of and the accomplishments of the Regulatory Negotiation Advisory Committee sessions.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. 23634." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of The NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of the NPRM wanted. Anyone interested in being placed on a mailing list for future FAA NPRM's should also request a copy of Advisory Circular No. 11-2 which describes how to apply to be on the mailing list.

Background

The Federal Aviation Act of 1958 (49 U.S.C. 1351 et. seq.) requires the Administrator of the Federal Aviation Administration to issue "reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of aircrew and other employees of air carriers." The rules issued by the FAA under this provision are generally referred to as "flight time limitations." The flight time limitation rules that apply to the major scheduled airlines—those most familiar to the traveling public—are contained in Part 121 of the Federal Aviation Regulations (14 CFR Part 121). These rules contain daily rest requirements for certain operations and weekly, monthly, and annual limits on the number of hours of flight time.

The flight time limitation rules that apply to the fast growing scheduled airlines that operate airplanes of 30 or less seats (commonly referred to as "commuters") and air taxi operations are contained in Part 135 of the Federal Aviation Regulations (14 CFR Part 135). These rules contain daily rest requirements as well as daily limits on the number of hours of flight time but do not contain weekly, monthly, or annual limits. The Airline Deregulation Act of 1978 requires the Administrator, among other things, to "impose requirements upon * * * commuter air carriers to assure that the level of safety provided to persons traveling on such commuter air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling" on Part 121 air carriers.

Despite changes in the airline transportation industry over the past 30 years, the rules governing flight time limits and rest requirements have remained virtually unchanged. No safety reasons have been presented which have necessitated changes to the regulations. But the presumed safety of the rules does not necessarily mean that the rules are as effective as they should be or that given recent changes in the industry they will continue to provide an adequate safety standard. There are a number of factors which affect the adequacy of the rules and require that they be amended.

Perhaps the most significant factor requiring amendment of the current rules is that the rules regulating the rest requirements under Part 121 are extremely complicated. Over the 30 years of their existence they have required thousands of pages of interpretations, have sometimes been incorrectly followed by air carriers, and have been difficult to enforce. Thus, a primary aim of this rulemaking is to clarify and simplify the rest requirements for domestic air carriers. This is consistent with Executive Order 12291.

A second significant factor requiring amendment of the rules has been their inflexibility. For example, although under the current rule air carriers are not considered in violation of the rules if flight times are exceeded due to adverse weather conditions or other circumstances beyond the control of the

air carrier, an air carrier presently has not flexibility to adjust scheduled rest periods in the event of late arrivals or other factors. If a flight is late, the subsequent flights must often be held up while the flight crewmember receives his scheduled rest. This has resulted in numerous canceled flights as well as delays, and has often required crewmembers to spend extra days away from home. An important objective of this rulemaking proceeding is to eliminate this problem, without derogating safety, by allowing flexibility in scheduling rests so that air carriers, passengers, and flight crewmembers are not unnecessarily inconvenienced.

A third factor affecting the current rules is a change in the character and make-up of the air transportation industry. In the past, most of the domestic air carriers were major companies each employing several thousand crewmembers. However, under deregulation of the air transportation industry, the number and variety of part 121 domestic operators has dramatically increased. The present complexity and variety of operations require that the FAA provide clear and simple minimum safety criteria for all operators. If the present rules are examined as the criteria for safe flight time limitations and rest requirements, some potential weaknesses are apparent. For example, current Part 121 fligh time limits are effective against chronic long-term fatigue because they provide weekly, monthly, and annual flight time limits as well as daily rest requirements for a pilot who flies more than 8 hours in a 24-hour period. But these rules do not provide rest requirements for a pilot scheduled for 8 hours or less flight time in a 24-hour period. Thus, under the current rules an operator can schedule a flight crewmember for 8 hours or less of flight time in a 24-hour duty day and repeat this cycle until the flight crewmember reaches the 30-hour weekly limit. The current Part 121 rule, then, provides no protection against acute short-term fatigue for flight crewmembers scheduled for 8 hours or less of flight time in a 24-hour period. On the other hand, under Part 135, acute short-term fatigue is covered by a 10-hour minimum rest requirement in a 24-hour period and by a flight time limit of 8 hours for a one-pilot crew and 10 hours for a two-pilot crew; but not annual, monthly, or weekly limits exist to protect against long-term fatigue. Under existing Part 135 rules a flight crewmember could fly 10 hours a day with a 14-hour duty day every day of the year, all year.

A fourth factor affecting the current rules, and one related to the changing character of the air transportation industry, has been the growth of commuter-type operations. Some commuter-type operations fall under Part 121 domestic rules while others fall under Part 135 rules. A question exists as to whether either set of requirements effectively covers these comparatively new and growing operations. Thus an additional aim of this rulemaking proceeding has been to study the materials submitted by this industry group and incorporate into the rules standards which will provide a level of safety equivalent to other air transportation operations.

The current rulemaking proceeding is not the FAA's first attempt to solve these problems. For several years the FAA has recognized that the flight time limits and rest requirements need to be clarified and substantively improved in those areas where they are potentially weak. On several occasions the FAA has attempted to correct the flight time limitation problems of both Parts 121 and 135 through rulemaking actions. [1] But because of the complexity of the flight time rules and the economic interests affected, none of the past proposals succeeded in resolving the problems to the satisfaction of the affected parties. Given the importance of these rules in air transportation safety, the FAA, therefore, decided to try an innovative approach which would bring the affected parties together to negotiate a resolution. It was the FAA's hope that this approach would produce a proposal that would at once simplify and clarify the existing regulations, increase their flexibility, and meet all statutory requirements.

Regulatory Negotiation

Regulatory negotiation, as recommended by the Office of Vice President and by the Administrative Conference of the United States, is a procedure by which representatives of all interests affected by a rulemaking fully discuss the issues under conditions conducive to narrowing or eliminating differences and to negotiating a proposed rule acceptable to each interest. In accordance with the recommended procedure, the FAA created an advisory commmittee chartered under the Federal Advisory Committee Act. The committee is comprised of persons representing the diverse interests affected by the flight time rules including persons representing flight crewmembers, air carriers, air taxis, helicopter operators, and the public. At its opening session, the committee was addressed by the FAA Deputy Administrator, the Deputy Secretary of Transportation, the Legal Counsel to the Vice President, a representative of the Office of Information and Regulatory Affairs in the Office of Management and Budget, and the Chairman of the Administrative Conference of the United States. These individuals stated their support for the committee and encouraged the committee to take its charge seriously. In addition, representatives of these offices attended and monitored sessions. The committee met under the direction of Nicholas Fidandis (former Director of Mediation Services of the Federal Mediation and Conciliation Service) who acted as convenor/mediator.

The committee met for 16 days in 1983 (June 29–30, July 11–13, July 25–27, August 8–10, August 22–25, and September 26) and thoroughly discussed the major issues involved in the regulation of flight time limits. Numerous proposals and justifications were drafted by participants and submitted to the committee for review. Copies of all proposals submitted for consideration by committee members and copies of written summaries of each meeting are available in the public docket for this NPRM. Although the committee did not reach consensus on any particular proposal, its deliberations were successful because committee members gave serious consideration to and entered onto candid discussion of the various proposals and justifications submitted to them. Thus the committee succeeded in narrowing the differences among parties and in reaching substantial agreement of some issues. In addition, the committee identified major areas of concern and all parties obtained significant, new information on a subject which has been discussed, without resolution, for years. This document is a notice of proposed rulemaking that reflects the committee's discussion of and agreements on the issues. The document sets forth the FAA's analysis of those agreements and discussions.

The Regulatory Negotiation Advisory Committee also met on February 14, 1984, to review and discuss this proposed rule and preamble. A majority of the committee members recommended that the proposed rule be published in the **Federal Register** as submitted. Several members of the

[1] The following past proposals have to do with flight time limitations and rest requirements:
Notice No. 77–17 [42 FR 43490, August 29, 1977]
Notice No. 78–3 [43 FR 8070, February 27, 1978]
Notice No. 78–3B [45 FR 53316, August 11, 1980]
Notice No. 82–4 [47 FR 10748, March 11, 1982]

committee, however, dissented from this recommendation because they believed that certain issues which have not been resolved to their satisfaction should be addressed further before the proposal is published. The FAA has decided to publish the proposed rule and preamble as submitted to the committee on February 14, but with modifications in the preamble which address the following unresolved issues:

1. The maximum flight time allowed between rests under proposed Parts 121 and 135 scheduled operations;

2. The minimum amount of rest required under proposed Parts 121 and 135 scheduled operations;

3. The maximum weekly, monthly, and annual flight time limits under proposed § 121.471(h);

4. The limitation of "passenger-carrying" in the definition of "scheduled operations" under proposed § 135.261(b); and

5. The lack of a specific response time for deviations under proposed § 135.263(f).

Modifications on these issues have been made in appropriate sections of the preamble.

Comments received on this proposed rule will be reviewed by the committee to determine whether it should recommend that the proposal be modified. Any necessary changes would be negotiated by the committee in the same manner as the NPRM. It must be emphasized that a decision on the final rule is the sole responsibility of the Administrator.

PROPOSED REVISIONS

General Discussion

The proposed rule modifies the current rule in several important ways. First, it reorganizes the regulations according to certain operational differences by creating a separate category in Part 121 domestic rules for commuter-type operations and in Part 135 by separating scheduled operations from non-schedule. Secondly, it adds cumulative flight time limits for all Part 135 operations. The cumulative flight time limits and daily rest requirements for commuter-type Part 121 and scheduled Part 135 operations would be identical. Thirdly, it clarifies the daily rest requirements of Part 121 operators and specific Part 135 operators and adds provisions which correct potential weaknesses in the current rule and which provided scheduling flexibility for air carriers. A complete description and rationale for specific revisions appears below.

Revisions To Part 121 and Part 135 Scheduled Operations

Reorganization to cover "Commuter-type" operations

An issue in this rulemaking proceeding has been the question of which part of the regulations the new commuter air carriers should comply with. The large domestic air carriers clearly fall under Part 121; the small on-demand operators fall under both parts. The dividing line between Parts 121 and 135 is provided by Special Federal Aviation Regulation (SFAR) 38. Operations of airplanes with more than 30 passenger seats or a payload capacity of more than 7,500 pounds must be conducted under Part 121 which contains separate flight time limits for domestic, flag and supplemental (non-scheduled) air carrier operations. Operations with airplanes below these limits must be conducted under Part 135 which at present does not distinguish between scheduled and non-scheduled operations.

While this proposal would continue the 30-passenger/7,500 pound payload distinction as the major dividing line between Part 121 and Part 135 air carrier operations, it would make some additional operational distinctions that would, in effect, make the rules in Part 121 for commuter-type operations identical to those in Part 135 for scheduled operations. The proposed rule would accomplish this in the following way:

(a) Based upon a recommendation of the advisory committee, Part 135 would contain two sets of daily rest requirements and flight time limits, one for scheduled operations and another for non-scheduled operations. The set of daily rest requirements for scheduled operations would be identical to those proposed for Part 121.

(b) Operations of aircraft exceeding the 30-passenger/7,500 pound payload line would continue to be conducted under Part 121, but a separate category would be recognized in paragraph (h) of § 121.471 for operators of propeller driven multiengine airplanes with a passenger seating configuration of 31–60 seats and a payload capacity of 18,000 pounds or less. The flight time limits set forth in pargraph (h) would be somewhat less restrictive than the flight time limits for other domestic operations under that part and would be identical to those proposed for Part 135 scheduled operations (discussed under that section).

The only minor difference between the two sets of rules would be that scheduled operations under Part 135 would in addition have a daily flight time limit of 8 hours of flight time for one pilot crew. In all other respects the rules would be the same and an operator of aircraft with up to 60 seats having a payload capacity of 18,000 pounds or less could conduct all operations under the identical flight time limits and daily rest requirements.

The proposed creation of this "commuter-type" category is based upon a proposal submitted by the Regional Airline Association (RAA) and endorsed by other committee members that scheduled passenger-carrying operations in aircraft with 60 or less seating capacity be treated, for flight time limitation purposes, as a separate category in both Parts 121 and 135.

According to information submitted by RAA, the basic premise of its request is that "the present regulatory benchmark of 30 versus 31 seats that defines Part 135 operations from those conducted under Part 121 is inappropriate for the flight time rules." Commuter-type operations using smaller aircraft, whether conducted under Part 135 or Part 121, are like each other and substantially unlike longer haul jet operations of the major airlines. Specifically, commuter-type operations are similar in the number of aircraft operated, pilot employed, and routes served; in route distance and pilot flight times, and in operating schedules. The slightly higher flight time limits are balanced by the type of operations typically conducted by this type of operator. The route systems of these operators are such that crewmembers do less flying at night and spend more time at home.

Although the FAA has incorporated the RAA requests into this proposed rule, in view of objections to proposed paragraph (h) expressed at the February 14 advisory committee meeting, the FAA invites comments and statistics on this issue.

It should also be noted that, consistent with present regulatory requirements, Part 135 operators who operate scheduled passenger carrying operations under Part 121 are subject to the domestic air carrier flight time limitations of Subpart Q. Comments are requested as to whether additional regulatory language is needed in this rulemaking proceeding to make this requirement clear.

Revision of flight time limits and daily rest requirements

The weekly, monthly, and annual flight time limits of Part 121 would not be changed by the proposal, except (as mentioned in the previous section) that less restrictive limits are added in

§ 121.471(h) for commuter-type operations. These less restrictive limits are discussed later under "Revisions to Part 135—Scheduled Operations."

The proposed rule makes significant changes in the daily rest requirements under Part 121 and Part 135 scheduled operations. The purpose of these changes is to correct several potential problems inherent in the existing rule.

Under current § 121.471(b), a domestic air carrier may schedule a flight crewmember for more than 8 hours of flight time during a 24-hour period if a rest period is scheduled at or before the end of the 8 hours. The rest period must be twice the number of hours of flight time since the last rest period, but not less than 8 hours. In addition, a flight crewmember who has accumulated flight time of more than 8 hours during any 24 consecutive hours (whether scheduled or not) must be given, upon completion of his assigned flight or series of flights, at least 16 hours of rest before being assigned to any duty with the air carrier.

Several problems exist with these requirements. First, a 16-hour rest given at the end of a series of flights in which a rest of at least 8 consecutive hours has already been given is considered excessive since it amounts to 24 or more hours of rest in a 48-hour period. Second, a 16-hour rest is considered counterrestful because in many cases a flight crewmember will receive his actual rest (sleepful rest) in the first half of the 16-hour period and may therefore no longer be rested by the time he reports for the next duty period. Both of these points were acknowledged by most committee members. Third, and most important, the series-of-flights rule has been misunderstood by some operators to mean that the 16-hour rest must be given at the end of a series of flights that have extended over several days; this is contrary to the agency's interpretation that the 16-hour rest must be given at the end of a series of flights that have occurred within a 24-hour period.

In addition to the above problem, the current Part 121 rule does not have a rest requirement if flight time is 8 hours or less in 24, because the rule was predicated on the belief that fatigue is an issue only in circumstances where flight time is more than 8 hours in 24. Theoretically, this allows a Part 121 operator to schedule a flight crewmember for a 24-hour duty day as long as the total scheduled flight time is 8 hours or less. However unlikely such a schedule might be in practice, the potential for unsafe scheduling should not exist in regulations designed to set a minimum level of safety.

Although present Part 135 does contain a minimum 10-hour rest requirement for scheduled flight time, including flight time of 8 hours or less within any 24-hour period, this requirement has not proven flexible enough to cover some typical Part 135 commuter operations. As a result, at the request of the Regional Airline Association, the FAA issued an exemption that under specific conditions and limitations allows reduction of the rest period to 8 hours.

The proposed rule addresses all of the above mentioned problems. It would clarify and simplify the current regulations by creating reasonable and flexible rest requirements for both Part 121 operations and scheduled operations under Part 135. Proposed §§ 121.471(b) and 135.265(b) would require that a flight crewmember be given the following rest periods in any 24 consecutive hours involving flight time: (1) 9 consecutive hours of rest for less than 8 hours of flight time; (2) 10 consecutive hours of rest for 8 or more but less than 9 hours of flight time; and (3) 11 consecutive hours of rest for 9 or more hours of flight time.

The proposed rule provides flexibility to air carriers in scheduling flights or in rescheduling for flights that have arrived late. Sections 121.471(c) and 135.265(c) would allow the following:

(1) An air carrier could schedule less than a 9-hour rest or could reduce a 9-hour rest by up to 1½ hours if 10 hours of rest is given at the flight crewmember's next scheduled rest.

(2) An air carrier could schedule less than a 10-hour rest or could reduce a 10-hour rest by up to 2 hours if 11 hours of rest is given at the flight crewmember's next scheduled rest.

(3) An air carrier could schedule less than an 11-hour rest or could reduce an 11-hour rest by up to 2 hours if 12 hours of rest is given at the flight crewmember's next scheduled rest.

Thus the proposed rule would eliminate the series of flights problem by establishing a minimum rest requirement in relation to the number of flight hours, and would protect against short-term fatigue while allowing air carriers flexibility in scheduling over a 48-hour period.

In relation to the above proposal, it should be noted that each rest requirement is based on what is commonly referred to in the industry as "release to report." That is, if 8 hours of rest are required, the flight crewmember must be given at least 8 hours free of all duty from the time the flight crewmember is "released" from a duty assignment involving flight time until the crewmember "reports" for the next duty assignment involving flight time. Transportation to or from a hotel is not considered as duty.

It must be emphasized that as a practical matter carriers will not schedule to the limitations permitted by this proposal. For example, the rest requirement for flight time of 8 or more but less than 9 hours is 10 consecutive hours of rest. That 10-hour rest can be reduced for any reason to 8 hours if 11 hours of rest is given at the next scheduled rest. Although the rule technically allows the carriers to reduce the 10-hour rest down to 8, existing practice shows that the carriers would add a "buffer" period to that minimum rest requirement to avoid the need to cancel or reschedule the crewmember's next flight. Thus, few carriers, if any, would actually schedule down to the minimum 8-hour rest. Instead, they would more likely schedule approximately 9 hours of rest leaving additional time in case the flight encountered bad weather or other delays. It must be noted that the minimum rest requirement (in this example 8 hours) cannot *under any circumstances* be reduced further nor can the make-up rest (11 hours) be reduced. If the carriers set the scheduled rest under this example at 8 hours 15 minutes and if there were weather delays resulting in a 30-minute late arrival, the crewmembers would not be able to report to work until they have had the 8 consecutive hours of rest. Therefore, the next scheduled flight would have to be delayed or canceled.

In this connection, it must be noted that the carriers can reduce the scheduling rest for any reason. It can be reduced for scheduling purposes or to accommodate delays in the system caused by weather or other factors. Although the current rules only allow reduction for limited reasons, the proposed change acknowledges that a crewmember who is delayed for bad weather is in the same position as one delayed for "scheduling" reasons. A flight crewmember is not necessarily more "tired" because of the type of delay. This proposed change will increase the flexibility of all parties while assuring that over a 48-hour period each crewmember would receive adequate rest. If the scheduled rest is reduced for any reason, the crewmember must receive a make-up rest. For example, if the scheduled rest was reduced to 9 hours, the crewmember would be entitled to 11 hours of rest at his next scheduled rest and, therefore, would be getting a total minimum of 20 hours of rest during approximately a 48-hour period.

The FAA wants to make it clear that this proposed requirement, as well as all requirements in this proposal, would be strictly monitored and enforced by the FAA.

In addition to the rest requirement, the proposal includes a provision (Section 121.471(a)(4)) which limits flight time to 9 hours between rest periods. This provision has been included to prevent flight crewmembers from accumulating excessive flight hours within short periods of time. This flight time limit plus the weekly flight time limit would prevent flight crewmembers from flying up to the 9-hour limit for more than a few days at a time.

The rest requirement set forth in this portion of the proposal reflects proposals submitted by the Air Transport Association (ATA), a modified version of the ATA proposal issued by the mediator, and a proposal made by the Regional Airline Association. The flight time limit between rest periods reflects with modifications, flight time limits under current Parts 121 and 135. At the February 14 advisory committee meeting which reviewed this proposed rule, flight crewmember organization representatives objected to the 9-hour flight time limit and to the minimum 7½ hour rest allowed under proposed §§ 121.471(c)(1) and 135.265(c)(1). These advisory committee members requested that the 9-hour limitation between rests be reduced to 8 hours and that the minimum rest never be less than 8 hours. They stated that they do not believe these provisions would provide adequate rest. The FAA invites further comments on these proposals including benefits and detriments. Air carriers and flight crewmember organizations should provide comments on how often the 9-hour cap would be reached including the types of schedules, in use or contemplated, to which it would apply. These comments also should discuss the 9-hour cap in relation to the present § 121.471 which, as a practical matter, may limit flight time between rest periods to 8 hours.

Transcontinental Flights

The current requirement under paragraph (b) of § 121.471 for scheduled transcontinental non-stop flights would be eliminated. Under the current requirements for such flights, a crewmember can be scheduled for more than 8 but not more than 10 hours of duty aloft without an intervening rest if the aircraft has a pressurization system and if the flight consists of two pilots and flight engineer. This requirement is outdated since transcontinental non-stop flights no longer take 8 hours.

Revisions to Part 135—All Operations

Organization and Applicability of Sections

At present, all of the flight time limitation requirements in Part 135 are contained in § 135.261. These limits apply to all Part 135 operations whether scheduled or not, whether in helicopters or airplanes, and regardless of any special nature of the operation. The variety of operations conducted under Part 135 has spawned a number of exemptions for seemingly special, but actually somewhat general, types of operations. To accommodate the variety of Part 135 operations, the proposed flight time limitation requirements would be organized into the following categories: (1) Requirements for all operations; (2) scheduled operations; (3) non-scheduled operations; and (4) helicopter emergency medical evacuation service operations.

Section 135.261(b) would define "scheduled operations" to mean "passenger-carrying operations that are conducted in accordance with a published schedule of at least five round trips per week on at least one route between two or more points which include dates or times (or both) that is openly advertised or otherwise made readily available to the general public." Operations within this definition (except those in Alaska) would fall under the requirements of § 135.265. These scheduled operations would be conducted in aircraft with a seating capacity of 30 or less and a payload capacity of 7,500 pounds or less.

This proposed definition would limit "scheduled operations" to "passenger-carrying" operations only. At the February 14 meeting of the advisory committee, a member objected to the proposed rule on the ground that it excluded scheduled cargo operations. The FAA requests further information on the issue of whether cargo operations which meet all other requirements of this definition should be included under "scheduled operations."

Non-scheduled operations (except helicopter emergency medical evacuation services) would be conducted under the rest period and flight time limits of §§ 135.267 and 135.269. These operations would include non-scheduled air taxi operations and commercial operations. Such operations are often seasonal and highly diverse. They include cargo transportation, work crew and executive transportation, surveying, fire fighting, etc. Most of these operations are conducted under contract and are not available to the general public.

The proposal to permit Part 135 scheduled passenger carrying operations in Alaska to be conducted under the rules applicable to non-scheduled operations was made by several members of the advisory committee. The unique characteristics of the Alaskan air transportation system were cited as the rational for allowing Alaskan operators to conduct scheduled passenger-carrying operations under rules designed for non-scheduled operations. Comments and information regarding the safety aspects of this proposal are invited.

General requirements for all operations

Section 135.263 contains requirements that apply either to all operations under Part 135 or to more than one type of operation. There are two significant changes from the present rule proposed in this section. The first is paragraph (e) which would replace current § 135.261(d). Under the present rule is the daily flight time limit of 8 hours in any 24 hours for one pilot crew or 10 hours of flight time in any 24 hours for a two pilot crew is exceeded due to circumstances beyond the control of the certificate holder, the flight crewmember must be given 16 hours of rest before being assigned to further duty which includes flight time. The excessiveness of this penalty would be corrected by paragraph (e) of the proposed section which establishes the following sliding scale for rest periods if flight time limits are exceeded:

(1) 11 consecutive hours of rest if the flight time limitations is exceed by not more than 30 minutes;

(2) 12 consecutive hours of rest if the flight time limitations is exceed by more than 30 minutes, but not more than 60; and

(3) 16 consecutive hours of rest if the flight time limitations is exceed by more than 60 minutes.

In the event that Part 135 scheduled operations exceed the daily flight time limit, this penalty would supersede applicable shorter rest requirements.

The second significant change would be the addition of a deviation authority Proposed § 135.263(g) authorizes the Director of Flight Operations to issue operations specifications authorizing a deviation from any specific requirement of §§ 135.267 and 135.269, the non-scheduled operations, within 2 years after the issuance of this regulation, if he finds that the operator's request is justified and that other conditions provide an equivalent level of safety. The FAA does not believe that the proposal for cumulative flight time limits will be burdensome. However, in an effort to relieve any potential burden of

the proposed cumulative flight time limits for non-scheduled operators, this authority would provide an alternative to the exemption process during a 2-year transition period. The intent is to provide limited transition relief and not a permanent exception.

An objection raised at the February 14 advisory committee meeting is that the provision does not specify a time within which the FAA would have to respond to a request for a deviation. A 20-day limit on the response time was recommended by an advisory committee member. The FAA does not believe that a response time limit is appropriate and is unlikely to accept such a time limit on FAA action. Comments are invited.

Revisions to Part 135—Scheduled Operations

As discussed earlier, under the current regulations, no distinction exists between scheduled and non-scheduled operations. All Part 135 operations have a 24-hour flight time limit of 8 hours for a one-pilot crew and 10 hours for a two-pilot crew, and a rest requirement of 10 hours in any 24-hour period. Under the proposed rule, scheduled operations would be separated from non-scheduled. For scheduled operations the daily rest requirements would be identical to daily rest requirements for Part 121 domestic operations, as discussed above under "Revisions to Part 121 and Part 135 Scheduled Operations." In addition, proposed § 135.265 would impose the following flight time limits:

(1) 1,200 hours in any calendar year.
(2) 120 hours in any calendar month.
(3) 32 hours in any 7 consecutive days.
(4) 8 hours during any 24 consecutive hours for a flight crew consisting of one pilot.
(5) 9 hours between rest periods for a flight crew consisting of two pilots.

With the exception of the 8-hour limit, these flight time limits parallel those under § 121.471(h). These figures are similar to the recommendations of those advisory committee members representing scheduled operations subject to Part 135, and are considered to be set at a level that accommodates those operators' scheduling constraints, while requiring a much stricter flight time limit than under present regulations. Under current regulations pilots on two member crews may fly as many as 10 hours a day or 70 hours a week. Under the proposed rule they may fly only 32 hours per week.

The retention of the daily 8-hour flight time requirement for a one pilot crew is necessary because under Part 135 one pilot crews are currently permitted for certain operations, and the FAA considers 8 hours to be the maximum for safe operation of a one-pilot crew without regard to whether there are weekly and other cumulative limits.

Another new requirement for Part 135 operators is the proposed provision in § 135.265(d) that flight crewmembers be relieved of all duty for at least 24 consecutive hours at least once during any 7 consecutive days. This requirement is identical to § 121.471(d) and works together with the weekly flight time limits to prevent the buildup of fatigue in flight crewmembers operations under Part 135.

Revisions to Part 135—Non-Scheduled Operations

Quarterly and Yearly Flight Time Limits

Current § 135.261 contains no cumulative flight time limits. The proposed §§ 135.267(a) and 135.269(a) would impose the following quarterly and yearly flight time limits:

(1) 500 hours in any calendar quarter.
(2) 800 hours in any two consecutive quarters.
(3) 1,400 hours in any calendar year.

The quarterly and yearly flight time limitations are intended to prevent cumulative fatigue while acknowledging that the seasonal operations of a few non-scheduled operators may exceed the weekly and monthly limits proposed in § 135.265.

As used in this proposal "calendar quarter" refers to January–March, April–June, July–September, or October–December.

Quarterly Rest Requirements

In the current Part 135 rules, there is no requirement to provide one 24-hour period of rest in every 7-day period as there is in Part 121. Proposed §§ 135.267(f) and 135.269(b) would require the certificate holder to provide at least 13 rest periods of at least 24 hours in each calendar quarter. While this requirement is not identical to the rest required under Part 121, it will provide adequate rest and still allow flexibility in scheduling 24-hour rests for seasonal and on-demand operations.

Daily Flight Time Limits and Rest Requirements for One- and Two-Pilot Crews

The daily flight time limits of § 135.267(b) are parallel to the present § 135.261(a) with the following exceptions. the phrase "required by this chapter" has been replaced by the phrase "qualified under this part" with respect to the 10-hour flight time limit for a flight crew consisting of two pilots. In effect, this will allow a flight crew consisting of two qualified pilots to fly up to 10 hours in an aircraft which may be operated by a flight crew of only one pilot under Part 135. In addition a new paragraph (c) has been added which allows a flight crewmember to exceed the flight hours of paragraph (b) within a specified duty period.

Paragraph (c) § 135.267 would allow an operator and flight crew to use a regular daily schedule rather than the rolling 24-hour clock. A flight crew could fly the allowed flight time any time during a regularly scheduled duty period which is separated from the next duty period by a regularly scheduled rest period of at least 10 hours. The duty period and the rest period together must total 24 hours. This alternative is intended to give scheduling flexibility to Part 135 operators who use a regular, diurnal cycle as the basis of their operations.

Another difference from the current rule is the addition of flight time limits for augmented crews. These limits, set forth in § 135.269, are discussed below.

Daily Flight Time Limits and Rest Requirements for Three- and Four-Pilot Crews

Since the present rules do not provide special requirements for augmented crews, operations which utilize augmented crews have been operating under exemptions. Proposed Section 135.269(c) incorporates the exemption requirements into the rule. Basically the rule would limit flight time to 8 hours in 24 consecutive hours, but would allow for an extended duty period and extended period aloft if the aircraft is equipped with approved sleeping facilities for the relief pilot. The rule also would require a minimum 12-hour rest after an extended duty period. These regulations would provide an equivalent level of safety while recognizing the benefits of augmented crews for certain operations.

Helicopter Hospital Emergency Medical Evacuation Services

Proposed § 135.271 contains regulations for the helicopter hospital emergency medical evacuation services. These regulations would differ from proposed § 135.267 in that flight time would be limited to 8 hours and the rest period would be at least 8 consecutive hours during any 24 consecutive hours. No emergency evacuation assignment would be allowed to exceed 72 consecutive hours at the hospital. In order to assure that a helicopter pilot is adequately rested, there would have to be an approved place of rest at, or in close proximity to, the hospital at which the helicopter is based. In addition, an extended rest period would be required

at the completion of an assignment. These air ambulance operations are of undoubted social benefit and proven safety. The FAA has been issuing exemptions for these operations for several years and is satisfied that they are safe. This proposal codifies the terms of the typical exemption for emergency evacuations.

Economic Evaluation

The proposals in this NPRM are expected to generate no net cost, while maintaining or increasing the level of safety. Although there are a number of changes in the regulation, any potentially costly changes would be balanced by benefits. Major changes are discussed below.

Part 121

The basic changes in Part 121 would be the inclusion of a minimum rest period for periods when flight time is less than 8 hours in any 24 consecutive hours, and changes in the required rest periods when flight time is 8 hours or more in any 24 consecutive hours. The first change is not expected to involve significant cost, because the required rest period is only 9 hours and it can be reduced to 7½ hours if a longer rest is provided at the next scheduled rest period. The second change stipulates that a rest period of 10 hours must be given if the flight time exceeds 8 hours in any 24 consecutive hours, and 11 hours if the flight time exceeds 9 hours in any 24 consecutive hours. These periods may be reduced if longer rests are given at the next scheduled rest periods. The present regulation requires that if a flight crewmember exceeds 8 hours of flight in 24 consecutive hours, an intervening rest period must be given of twice the flight time before the rest period; also, at the end of the crewmember's "series of flights," there must be a 16-hour rest period granted. While the proposed rule is substantively different from the present rule, the FAA believes it will be beneficial to operators, allowing somewhat more flexibility than the present rule.

Part 135

There are a number of changes from the present rule. In particular, different rules would be provided for scheduled versus non-scheduled operations. The proposed rule for Part 135 is similar to that for Part 121. However, the weekly, monthly, and annual maximum flight hours for all Part 135 operators are somewhat higher than the Part 121 limits.

The proposed Part 135 non-scheduled regulations are similar to present regulations except that certain penalties in the present rule are moderated, while quarterly and annual flight time limits are added.

Both scheduled and non-scheduled proposals are based on industry recommendations to the committee. As such, they were presented as acceptable from a cost standpoint, and thus were only generally reviewed from a benefit/cost standpoint. The costs are expected to be minimal. For example, certain monthly, quarterly, and annual hours will have to be checked by operators. This is a minimal cost, since basic payroll type records already provide simple building blocks for developing such data.

A number of elements incorporated in the proposal would eliminate potentially costly situations. For example, non-scheduled operations have no requirement for 1 day off in 7, but are required to give 13 days off per calendar quarter. This provides the flexibility needed by non-scheduled operations. From comments to previous NPRM's, the FAA knows that there would be a significant cost if the rule required 1 day off in 7.

As outlined in the discussion of the proposals, other rule elements are either non-costly, relaxatory, or they are codifications of present exemptions. As such they are not expected to have a net cost to any segment of the industry. Also, while there are benefits to some of the changes, these are not readily quantifiable. Only the air carriers can accurately determine, by comparing crew scheduling options under present rules to the proposals, whether costs or benefits are associated with the proposals.

Under the terms of the Regulatory Flexibility Act of 1980, Federal agencies must review regulatory proposals with particular concern about the impact rules might have on small entities. The proposals will not have significant economic impact on a substantial number of small entities because the only costs implied (those for keeping track of total flight hours on a quarterly and annual basis) are minimal and are balanced by benefits of new flexibilities in the rules.

List of Subjects

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Airports, Airspace, Airworthiness directives and standards, Beverages, Cargo, Chemicals, Children, Narcotics, Flammable materials, Handicapped, Hazardous materials, Hours of work, Infants, Liquor, Mail, Drugs, Pilots, Smoking, Transportation, Common carriers.

14 CFR Part 135

Air carriers, Airplanes, Airspace, Aviation safety, Air traffic control, Air transportation, Air taxi, Airworthiness, Airmen, Aircraft, Alcohol, Airports, Baggage, Beverages, Cargo, Chemicals, Drugs, Handicapped, Hazardous materials, Helicopters, Hours of work, Mail, Narcotics, Pilots, Safety, Smoking, Transportation, Weapons.

Proposed Rule

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 121 and 135 of the Federal Aviation Regulations (14 CFR Parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. By revising the table of contents of Subpart Q of Part 121 to read as follows:

Subpart Q—Flight Time Limitations: Domestic Air Carriers

Sec.
121.470 Applicability.
121.471 Flight time limitations: All flight crewmembers.

2. By revising Subpart Q of Part 121 to read as follows:

Subpart Q—Flight Time Limitations: Domestic Air Carriers

§ 121.470 Applicability.

This subpart prescribes flight time limitations for domestic air carriers.

§ 121.471 Flight time limitations: All flight crewmembers.

(a) Except as provided in paragraph (h) of this section, no domestic air carrier may schedule any flight crewmember and no flight crewmember may accept an assignment for flight time in scheduled air transportation or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed—

(1) 1,000 hours in any calendar year;
(2) 100 hours in any calendar month;
(3) 30 hours in any 7 consecutive days;
(4) 9 hours between rest periods.

(b) Except as provided in paragraph (c) of this section, no domestic air carrier may schedule a flight crewmember and no flight crewmember may accept an assignment for flight time during the 24 consecutive hours preceding the scheduled completion of any flight segment without a scheduled

rest period during that 24 hours as follows:

(1) 9 consecutive hours of rest for less than 8 hours of flight time.

(2) 10 consecutive hours of rest for 8 or more but less than 9 of flight time.

(3) 11 consecutive hours of rest for 9 or more hours of flight time.

(c) An air carrier may schedule a flight crewmember for less than the rest required in paragraph (b) of this section or may reduce a scheduled rest under the following conditions:

(1) A rest required under paragraph (b)(1) of this section may be scheduled for or reduced to a minimum of 7½ hours if the flight crewmember is given at his next scheduled rest period 10 hours of rest before being assigned to any further flight time with the air carrier.

(2) A rest required under paragraph (b)(2) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given at his next scheduled rest period 11 hours of rest before being assigned to any further flight time with the air carrier.

(3) A rest required under paragraph (b)(3) of this section may be scheduled for or reduced to a minimum of 9 hours if the flight crewmember is given at his next scheduled rest period 12 hours of rest before being assigned to any further flight time with the air carrier.

No air carrier may assign, nor may any flight crewmember perform any flight time with the air carrier unless the flight crewmember has had at least the minimum rest required under this paragraph.

(d) Each domestic air carrier shall relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days.

(e) No domestic air carrier may assign any flight crewmember and no flight crewmember may accept assignment to any duty with the air carrier during any required rest period.

(f) Time spent in transportation, not local in character, that an air carrier requires of a flight crewmember and provides to transport the crewmember to an airport at which he is to serve on a flight as a crewmember, or from an airport at which he was relieved from duty to return to his home station, is not considered part of a rest period.

(g) A flight crewmember is not considered to be scheduled for duty in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the air carrier (such as adverse weather conditions) are not at the time of departure expected to reach their destination within the scheduled time.

(h) For operations of propeller driven multiengine airplanes having a passenger seating configuration of 31–60 seats and a payload capacity of 18,000 pounds or less, no air carrier may schedule any flight crewmember for flight time in scheduled air transportation or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed—

(1) 1,200 hours in any calendar year.

(2) 120 hours in any calendar month.

(3) 32 hours in any 7 consecutive days.

(4) 9 hours between rest periods.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. By revising the table of contents of Subpart F of Part 135 to read as follows:

Subpart F—Flight Crewmember Flight Time Limitations

Sec.
135.261 Applicability.
135.263 Flight time limitations: All certificate holders.
135.265 Flight time limitations: Scheduled operations.
135.267 Flight time limitations: Non-scheduled one- and two-pilot crews.
135.269 Flight time limitations: Non-scheduled three- and four-pilot crews.
135.271 Helicopter hospital emergency medical evacuation services (HEMES).

4. By revising Subpart F of Part 135 to read as follows:

Subpart F—Flight Crewmember Flight Time Limitations

§ 135.26 Applicability.

Section 135.263 through 135.271 prescribe flight time limitations and rest requirements for operations conducted under this part as follows:

(a) Section 135.263 applies to all operations under this subpart.

(b) Section 135.265 applies to scheduled operations except scheduled operations conducted solely within the state of Alaska. "Scheduled operations" means passenger-carrying operations that are conducted in accordance with a published schedule of at least five round trips per week on at least one route between two or more points which includes dates or times (or both) that is openly advertised or otherwise made readily available to the general public.

(c) Section 135.267 and 135.269 apply to air taxi operations, commercial operator operations, and operations conducted solely within the state of Alaska.

(d) Section 135.271 contains special daily flight time limits for operations conducted under the helicopter emergency medical evacuation service (HEMES).

§ 135.263 Flight time limitations: All certificate holders.

(a) A certificate holder may assign a flight crewmember and a flight crewmember may accept an assignment for flight time only when the applicable requirements of §§ 135.263 through 135.271 are met.

(b) No certificate holder may assign any flight crewmember to any duty with the air carrier during any required rest period.

(c) Time spent in transportation, not local in character, that a certificate holder requires of a flight crewmember and provides to transport the crewmember to an airport at which he is to serve on a flight as a crewmember, or from an airport at which he was relieved from duty to return to his home station, is not considered part of a rest period.

(d) A flight crewmember is not considered to be scheduled for duty in excess of flight time limitations if the flights to which he is assigned are scheduled to and normally terminate within the limitations, but due to circumstances beyond the control of the air carrier or flight crewmember (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

(e) When a flight crewmember has exceeded the daily flight time limitations in § 135.265 through 135.271, because of circumstances beyond the control of the certificate holder or flight crewmember (such as adverse weather conditions), that flight crewmember must have a rest period before the next duty period of at least—

(1) 11 consecutive hours of rest if the flight time limitation is exceeded by not more than 30 minutes;

(2) 12 consecutive hours of rest if the flight time limitation is exceeded by more than 30 minutes, but not more than 60 minutes; and

(3) 16 consecutive hours of rest if the flight time limitation is exceeded by more than 60 minutes.

The rest requirements of this paragraph supersede shorter rest requirements of this subpart.

(f) Within 2 years after the issuance of this rule, the Director of Flight Operations may issue operations specifications authorizing a deviation from any specific requirement of §§ 135.267 and 135.269 if he finds that the deviation provides a substantially equivalent standard of safety.

§ 135.265 Flight time limitations: Scheduled operations.

(a) No air carrier may schedule any flight crewmember for flight time in scheduled operations or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed—

(1) 1,200 hours in any calendar year.

(2) 120 hours in any calendar month.

(3) 32 hours in any 7 consecutive days.

(4) 8 hours during any 24 consecutive hours for a flight crew consisting of one pilot.

(5) 9 hours between rest periods for a flight crew consisting of two pilots.

(b) Except as provided in paragraph (c) of this section, no air carrier may schedule a flight crewmember for flight time during the 24 consecutive hours preceding the scheduled completion of any flight segment without a scheduled rest period during that 24 hours as follows:

(1) 9 consecutive hours of rest for less than 8 hours of flight time.

(2) 10 consecutive hours of rest for 8 or more but less than 9 hours of flight time.

(3) 11 consecutive hours of rest for 9 or more hours of flight time.

(c) An air carrier may schedule a flight crewmember for less than the rest required in paragraph (b) of this section or may reduce a scheduled rest under the following conditions:

(1) A rest required under paragraph (b)(1) of this section may be scheduled for or reduced to a minimum of 7½ hours if the flight crewmember is given at his next scheduled rest period 10 hours of rest before being assigned to any further flight time with the air carrier.

(2) A rest required under paragraph (b)(2) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given at his next scheduled rest period 11 hours of rest before being assigned to any further flight time with the air carrier.

(3) A rest required under paragraph (b)(3) of this section may be scheduled for or reduced to a minimum of 9 hours if the flight crewmember is given at his next scheduled rest period 12 hours of rest before being assigned to any further flight time with the air carrier.

(d) Each air carrier shall relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days.

§ 135.267 Flight time limitations: Non-scheduled one- and two-pilot crews.

(a) No certificate holder may assign any flight crewmember, and no flight crewmember may accept an assignment, for duty during flight time if that crewmember's total flight time in all commercial flying will exceed—

(1) 500 hours in any calendar quarter.

(2) 800 hours in any two consecutive calendar quarters.

(3) 1,400 hours in any calendar year.

(b) Except as provided in paragraph (c) of this section, during any 24 consecutive hours the total flight time of the assigned flight when added to any other commercial flying by that flight crewmember may not exceed—

(1) 8 hours for a flight crew consisting of one pilot; or

(2) 10 hours for a flight crew consisting of two pilots qualified under this Part.

(c) A flight crewmember's flight time may exceed the flight time limits of paragraph (b) of this section if the assigned flight time occurs during a regularly assigned duty period of no more than 14 hours and—

(1) If this duty period is immediately preceded by 10 or more consecutive hours of rest;

(2) If flight time is assigned during this period, that total flight time when added to any other commercial flying by the flight crewmember may not exceed—

(i) 8 hours for a flight crew consisting of one pilot; or

(ii) 10 hours for a flight crew consisting of two pilots; and

(3) If the combined duty and rest periods equal 24 hours.

(d) Each assignment under paragraph (b) of this section must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment.

(e) Each assignment under paragraph (c) of this section must be immediately preceded by and followed by 10 consecutive hours of rest.

(f) The certificate holder must provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

§ 135.269 Flight time limitations: Non-scheduled three- and four-pilot crews.

(a) No certificate holder may assign any flight crewmember for duty during flight time if the crewmember's total flight time in all commercial flying will exceed—

(1) 500 hours in any calendar quarter.

(2) 800 hours in any two consecutive calendar quarters.

(3) 1,400 hours in any calendar year.

(b) A certificate holder must provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

(c) No certificate holder may assign any pilot to a crew of three or four pilots, unless that assignment provides—

(1) At least 10 consecutive hours of rest immediately preceding the assignment;

(2) No more than 8 hours of flight time in any 24 consecutive hours;

(3) No more than 18 duty hours for a three-pilot crew or 20 duty hours for a four-pilot crew in any 24 consecutive hours;

(4) No more than 12 hours aloft for a three-pilot crew or 16 hours aloft for a four-pilot crew during the maximum duty hours specified in paragraph (c)(3) of this section;

(5) Approved sleeping facilities on the aircraft for the relief pilot;

(6) Upon completion of the assignment, a rest period of at least 12 hours;

(7) For a three-pilot crew, a crew which consists of at least the following:

(i) A pilot in command (PIC) who meets the applicable flight crewmember requirements of Subpart E of Part 135;

(ii) A PIC who meets the applicable flight crewmember requirements of Subpart E of Part 135, except those prescribed in § 135.244 and 135.247; and

(iii) A second in command (SIC) who meets the SIC qualifications of § 135.245

(8) For a four-pilot crew, at least three pilots who meet the conditions of paragraph (c)(7) of this section, plus a fourth pilot who meets the SIC qualifications of § 135.245.

§ 135.271 Helicopter hospital emergency medical evacuation service (HEMES).

(a) A certificate holder operating under this section must also comply with § 135.267 (a) and (f).

(b) No certificate holder may assign a helicopter pilot for hospital emergency medical evacuation service helicopter operations unless that assignment provides for at least 10 consecutive hours of rest immediately preceding reporting to the hospital for availabitity for duty during flight time.

(c) No pilot may fly for more than 8 hours during any 24-consecutive hour period of a HEMES assignment.

(d) Each pilot must be given at least 8 consecutive hours of rest during any 24 consecutive hour period of a HEMES assignment.

(e) A HEMES assignment may not exceed 72 consecutive hours at the hospital.

(f) An approved place of rest must be provided at, or in close proximity to, the hospital at which the HEMES assignment is being performed.

(g) No certificate holder may assign any other duties during a HEMES assignment.

(h) Each pilot must be given a rest period upon completion of the HEMES assignment and prior to being assigned any further duty with the certificate holder of—

(1) 12 consecutive hours for an assignment of at least 24 hours but less than 48 hours.

(2) 16 consecutive hours for an assignment of more than 48 hours.

(Sec. 313, 314, and 601 through 610, Federal Aviation Act of 1958 (49 U.S.C. 1354, 1355, and 1421 through 1430); 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

Note.—This notice proposes regulatory changes that are based on the discussions and recommendations of a regulatory negotiation advisory committee. Since this committee included representatives from the air transportation industry, the FAA believes that these regulatory proposals are not costly. Therefore, the FAA has determined that this notice involves a rulemaking action which: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified that the proposals, if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on February 23, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84-8233 Filed 3-27-84; 8:45 am]

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Part V

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Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Test Procedures for Furnaces, Vented Home Heating Equipment and Unvented Home Heating Equipment; Final Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-104]

Energy Conservation Program for Consumer Products; Test Procedures for Furnaces, Vented Home Heating Equipment, and Unvented Home Heating Equipment

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby prescribes amendments to its test procedures for furnaces, vented home heating equipment, and unvented home heating equipment. These test procedures are one part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act as amended by the National Energy Conservation Policy Act. Among other program elements, the legislation requires that standard methods of testing be prescribed for 13 covered products.

DOE is referencing, the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 103–82 into the furnace test procedure. Other amendments prescribed today for furnaces include test procedures for modulating furnaces and boilers, condensing furnaces and boilers, and thermal stack dampers, and other technical revisions. Amendments prescribed today for vented home heating equipment include test procedures for vented heaters with thermal stack dampers and/or manual controls and a simplified test procedure which covers modulating vented heaters. Amendments prescribed today for unvented home heating equipment include test procedures for unvented heaters that use natural gas, propane, or kerosene. DOE is also including an estimated cost per million Btu output as a measure of energy use for vented and unvented heaters.

EFFECTIVE DATE: (30 days from publication)

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–113.1, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–33, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–9513.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On October 1, 1977, the Department of Energy (DOE) assumed the authority of the Federal Energy Administration (FEA) for the energy conservation program for consumer products, under Section 301 of the Department of Energy Organization Act (DOE Act) (Pub. L. 95–91). The energy conservation program for consumer products was established by FEA pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619). References in this notice to the Act, or to sections of the Act, refer to EPCA as amended by NECPA. Among other program elements, Section 323 of the Act requires that standard methods of testing be prescribed for covered products. Test procedures appear at 10 CFR 430, Subpart B.

II. DISCUSSION OF COMMENTS

In general, the received comments were supportive of the proposed amendments; consequently for most of the issues, today's notice prescribes the amendments as proposed. For each issue, the following discussion sections repeat the background information that was presented in the proposal followed by a characterization of the comments received and a statement delineating the disposition of the issue with regards to today's final rule. Also, some additional issues were brought up during the comment period. Where appropriate, those issues are also discussed here today.

A. Furnace Test Procedure

Test procedures for furnaces were prescribed by DOE by notice issued May 2, 1978. 43 FR 20155 (May 10, 1978). DOE amended the furnace test procedures by notice issued August 4, 1980. 45 FR 53720 (August 12, 1980). The amendment included provisions for pulse combustion and condensing furnaces and technical revisions. Subsequently, DOE has become aware of additional areas of concern through cooperative efforts with the furnace industry and by the test procedure waiver process. Specifically, manufacturers of condensing furnaces and boilers felt an improved method of testing was warranted to determine the amount of beneficial condensation produced in their designs; manufacturers of boilers felt the test procedure needed further clarification in the area of advanced controls (modulating controls and pump delay controls); utilities and research groups identified the need for improving the test procedure with regard to stack dampers and draft hood designs; and the furnace industry expressed the need for the test procedure to specifically outline the method of test for units installed in "isolated combustion systems." On the basis of the information submitted under the waiver process, research done by the National Bureau of Standards (NBS), and other available information, DOE proposed to amend the furnace test procedure to address all these concerns. 48 FR 28014 (June 17, 1983) hereafter referred to as the June 17 proposal. Subsequently, a public hearing was held on June 29, 1983 and comments were received regarding the proposed rule.

1. ANSI/ASHRAE Standard 103–82

When the test procedures were initially developed in 1976 and 1977, existing commercial standards were referenced wherever possible. The final test procedures prescribed by DOE reference sections from many commercial standards developed by various consensus standard organizations, such as ASHRAE, Air-Conditioning and Refrigeration Institute, American National Standards Institute, Association of Home Appliance Manufacturers, and Underwriters Laboratory. However, at the time when DOE was developing test procedures for residential furnaces and boilers, no commercial standard existed from ASHRAE, or any other organization, that could meet the needs of the Act. Specifically, no commercial standard was available for referencing by DOE that could be used to determine the annual energy consumption of a furnace as outlined in EPCA. Thus, DOE and NBS set out to develop a test procedure methodology that would satisfy the legislative requirements. This effort included referencing portions of certain commercial standards for the purposes of including test set up and instrumentation provisions that were already established in the test methods used by the furnace industry at that time.

As mentioned above, final test procedures for residential furnaces were prescribed by DOE, pursuant to the Act, on May 10, 1978. In 1980, the test procedures were amended to include new furnace designs and to make some technical revisions. Following the

establishment of the test procedure amendments ASHRAE initiated the development of a standard method of measurement and test for residential furnaces and boilers that could be referenced by DOE in its test procedures. ASHRAE established a Standards Project Committee, with representation from Industry, Government, and Research groups, for the purpose of developing a consensus standard for testing furnaces and boilers. The resulting commercial standard is now available entitled "Methods of Testing for Heating Seasonal Efficiency of Central Furnaces and Boilers ASHRAE 103–82." DOE believes the referencing of the ASHRAE Standard will not result in a difference in efficiency ratings since the Project Committee has essentially adopted the existing DOE test methods.

DOE is required by Section 32 of the FEA Act to alert the public to the use and background of commercial standards in a proposed rulemaking and, through the comment and hearing process, allow interested persons to make known their views regarding the appropriateness of the use of particular commercial standards in any proposed rulemaking.

In addition to identifying the organization which promulgated the standard to be used, Section 32 requires that the Secretary make a judgmental statement concerning the organization process of promulgating any of its standards (i.e. are all interested persons given adequate notice, is there effective representation of all interested persons in the membership, are all proceedings of the organization made available to the public, and can any interested persons obtain reconsideration and review of any action taken by the organization).

In the June 17, 1983 proposal it was the judgment of DOE that ASHRAE standards are not developed in a manner which provided for public participation, comment and review. ASHRAE (ASHRAE, No. 4, at 1),[1] American National Standards Institute (ANSI) (ANSI, No. 5 at 1), and GAMA (GAMA No. 12, at 1), all took exception to this statement and offered that ASHRAE and ANSI[2] procedures do clearly provide for public participation, comment, and review. DOE has reviewed the procedures of these organizations and agrees that, if complied with, these procedures will provide for public participation, comment, and review.

In addition, as required by Section 32(c) of FEA Act, DOE has consulted with the Attorney General and the Chairman of the Federal Trade Commission (FTC) regarding referencing ASHRAE Standard 103–82 into furnace test procedures. (Letters from DOE to the Attorney General and FTC dated July 26, 1983.)

All comments received concerning the use of ASHRAE Standard 103–82 expressed approval. In addition, neither the Attorney General nor the Chairman of FTC recommends against such referencing or use. (Letter from Attorney General dated September 14, 1983, letter from FTC dated September 12, 1983.) Therefore, DOE is referencing in today's final rule the ASHRAE Standard 103–82.

Since the standard has received approval from the American National Standards Institute (ANSI), the standard has been designated as the ANSI/ ASHRAE Standard 103–82. Today's final rule reflects this change.

2. Modulating Furnaces and Boilers

The furnace and vented heater test procedures were developed to reflect the fact that furnaces, boilers and vented heaters operate either at the maximum firing rate or are off. This is called single step control. For heating equipment that is designed to operate at various firing rates, both the vented heater and furnace test procedures require that the testing is to be based only on the maximum firing rate. It was thought that the results of such testing were reasonably accurate and further complication of an already complicated test procedure was not warranted. However, since that time, two vented heater and three furnace manufacturers have petitioned the Department's Office of Hearings and Appeals (OHA) for an Exception from the existing test procedure on the grounds that such procedures are not appropriate for their units which have modulating controls.[3] These petitioners felt that modified test procedures are necessary to account for operation with fuel modulation. OHA agreed with the petitioners and has granted an exception in each case. However, no testing provisions were specified in these grants regarding modulating controls. A revised procedure which accommodates two types of fuel modulating controls was developed by NBS and the June 17 proposal proposed this revised procedure.

The two types of modulating controls are:

1. "Step-modulating thermostat control" means a control that reduces burner fuel input rate if the heating load is light, or gradually increases or steps-up the heat input to meet any higher heating load that cannot be met with the low firing rate.

2. "Two stage thermostat control" means a control that either cycles a burner at the reduced heat input rate and off, or cycles a burner at the maximum heat input rate and off.

A. *Proposed Amendment*—The June 17 proposal included methods for measuring the Annual Fuel Utilization Efficiency (AFUE) for modulating furnaces and boilers by devising two new measures, weighted average steady state efficiency and weighted average part load efficiency. The methods are more fully described in the technical support document, *A Test Method and Calculation Procedure for Determining Annual Efficiency for Vented Household Heaters and Furnaces Equipped with Modulating-Type Controls*, NBSIR 82–2497, May 1982.

The June 17 proposal outlined calculation methods for two types of variable firing rate controls, i.e., step-modulating and two stage. All comments received expressed approval of these methods. However, Teledyne Laars and Raypak, Inc. requested clarification in the final rule on which calculation method is to be used when testing their particular design of two stage control. *See* Teledyne Laars and Raypak, Inc. No. 9, at 4. Specifically, the June 17 proposal assumes that two stage controls operate either from off to minimum and then to off, or from off to maximum and then to off. Their design of modulating controls differ in that they can operate from off to minimum to maximum and back to minimum (more than once) without ever going through an off cycle. NBS has determined that the proposed test method for step modulating controls is appropriate for this design of controls. Thus, the final rule is the same as the proposed rule with the addition of clarifying language

[1] Comments on the rulemaking were given docket numbers. Citations to comments provide the docket numbers, unless the comment was submitted as part of an oral presentation, in which case the citation is to the date and the numerical order of the presentation.

[2] ASHRAE Standards 103–82 received approval as an ANSI Standard on June 21, 1983.

[3] Dearborn Stove Company, Case No. BEE–0083, *Federal Energy Guidelines*, 6 DOE 81,060.

Atlanta Stove Works, Case No. BEE–0083, *Federal Energy Guidelines*, 6 DOE 81,109.

Raypak, Inc., Case No. HXE–0012, *Federal Energy Guidelines*, 9 DOE 81,036.

Teledyne Laars, Case No. HXE–0013, *Federal Energy Guidelines*, 9 DOE 81,038

A. O. Smith Corporation, Case No. HXE–0018, *Federal Energy Guidelines*, 81,042

involving user-evaluation of the control. Specifically, this control design is defined as a step modulating control in the definitions.

Also, in early comments, Raypak, Inc. expressed concerns about the appropriateness of the proposed provisions for modulating boilers in general. *See* Raypak, Inc., No. 1, at 1. However, the final comments from Raypak, Inc. endorsed these provisions as proposed. *See* Raypak, Inc., No. 6.

B. *Oversize Factor of Furnaces and Boilers*—In the existing furnace test procedure, the value of efficiency used to determine the estimated annual operating cost is prescribed to be constant for all design heating loads regardless of the extent that the capacity of the installed furnace exceeds the design heating load, i.e. the extent of oversizing. The existing furnace test procedures are only applicable to units with single-stage controls. Consequently, where the FTC labeling rule for furnaces and boilers requires annual operating costs for various design heating load to be determined, these costs are based on a single value of efficiency. NBS has found that oversizing has little effect on the efficiency of furnaces and boilers equipped with single stage controls.

However, the efficiency of modulating furnaces and boilers depend on the fraction of the heating load that occurs during the various firing rates. In turn, the fraction is dependent on the extent of oversizing. Consequently, for modulating units, DOE believes the test procedure should reflect the change in efficiency due to the differences in oversizing. This would allow the FTC labeling program to present the consumer with a valid evaluation of modulating furnaces and boilers.[4] Specifically, the labeled operating costs under each design heating load that appears on the FTC EnergyGuide Fact Sheet, will be based on the appropriate value of efficiency for the degree of oversizing that each design heating load represents.

Consequently, the June 17 proposal provided for a separate efficiency and annual cost calculation to be made for each oversizing factor, corresponding to each typical design heating load listed in Table 1 of the test procedure.

Teledyne Laars and Raypak, Inc. objected to the requirement to calculate the efficiency for each degree of oversizing. *See* Teledyne Laars and Raypak, Inc., No. 9, at 2. It is their belief that disclosure of these different efficiencies would be of little or no use to the consumer since most consumers do not understand what oversizing means and are not likely to use FTC EnergyGuide fact sheets in any event. DOE disagrees with this contention and fails to see any merit to reducing the accuracy of a test procedure on such a basis. The procedure to determine the different efficiencies is simply an arithmetic exercise with no additional testing required. Since the energy savings potential of modulating controls depends on the extent of oversizing, DOE feels it is justified to require these additional calculations.

These same commenters stated that the proposed test procedures do not provide for the use of zone controls for boilers, and therefore will not recognize the benefits of such widely used systems. *See* Teledyne Laars and Raypak, Inc. No. 9, at 3. DOE realizes this shortcoming but is reluctant to expand the test procedures to allow different ratings for installations with and without zone controls. As with other installation variables (i.e. chimney height) DOE has sought to be as representative as possible. Since most residential boiler installations are without zone controls, DOE believes it appropriate to have the efficiency ratings based on this single condition. Further, the expansion necessary to accommodate zone controls would be significantly more than that already objected to above (i.e. an efficiency for each degree of oversizing). This expansion would apply not only to modulating boilers but to all boilers. Therefore, DOE is not considering expanding the test procedures to accommodate zone controls at this time.

Hydrotherm Inc., a manufacturer of boilers which are equipped with modulating controls, has been granted a test procedure waiver to use the modulating control test provisions outlined in the June 17 proposal. 48 FR 55020 (December 8, 1983). The effective date of the final rule constitutes the official expiration of the test procedure waiver by Hydrotherm Inc. (F–009). Today's provisions reflect exactly the provisions granted in the Hydrotherm waiver (F–009).

Also, since the above mentioned test procedure exceptions, HXE–0012, HXE–0013, and HXE–0018, (delineated in footnote 3) were partially granted on the basis that no modulating control provisions were included in the existing test procedures, the effective date of this rule constitutes the expiration of those exceptions with regard to modulating controls. Further, those exceptions are superceded on the effective date of today's rule since all the grounds for these exceptions are now addressed. (*See* Section II a 9 "Pump Delay Boiler Controls" below).

3. Condensing Furnaces and Boilers

A. *Direct Condensate Method*—DOE has granted waivers to Hydrotherm, Inc. (Hydrotherm), Lennox Industries, Inc. (Lennox), Arkla Industries, Inc. (Arkla), Amana Refrigeration, Inc. (Amana), Duo/Matic Olsen, Inc. (Duo/Matic) and Heil Quaker Corporation (Heil) from the existing test procedures for furnaces and boilers because the prescribed test procedures do not adequately consider the improvement in energy efficiency attributable to the condensing and the removing of water in the flue products. 46 FR 34621 (July 2, 1981). 47 FR 32471 (July 27, 1982). 47 FR 57987 (December 29, 1982). 48 FR 28531 (June 22, 1983). 48 FR 41213 (September 14, 1983). 48 FR 41215 (September 14, 1983), respectively.

The test procedure waivers specified that the manufacturers use the test method outlined in Appendix C of the NBS report, *Recommended Testing and Calculation Procedures for Estimating the Seasonal Performance of Residential Condensing Furnaces and Boilers,* NBSIR 80–2110, April 1981. The June 17 proposal was identical to the requirements of the waivers except it proposed a six cycle test in lieu of three cycles. Hydronics Institute (HI), Carrier Corp., GAMA and Trane indicated that the six cycle test was burdensome especially for those designs that have repeatable condensate collection rates. *See* HI, No. 8, at 4, Carrier, No. 10, at 4; GAMA, No. 12, at 3; and Trane, No. 14, at 2. Also, the one hour period for the steady-state collection test was thought to be excessive by these commenters. NBS analyzed these issues and agrees with the recommended reduction in the number of required cycles for units with repeatable condensate collection rates and the reduction in steady-state testing time.

Accordingly, today's final rule prescribes a ½ hour steady-state test and a three cycle test for those furnaces and boilers with repeatable condensate collection rates. A furnace or boiler is considered to have a repeatable condensate collection rate if it can demonstrate a standard deviation less than 20 percent of the mean per cycle condensate collected after three cycles. For those furnaces and boilers which do not demonstrate a repeatable condensate collection rate in these first three cylces, and additional three cycles are required irrespective of variability.

[4] FTC labeling program for furnaces consists of a requirement to produce "EnergyGuide Fact Sheets" that report estimates of annual operating costs for several different design heating loads (degrees of oversizing).

The effective date of this final rule constitutes the official expiration of the following waivers: Hydrotherm (F–002), Lennox (F–004), Arkla (F–005), Amana (F–006), Duo-Matic/Olsen (F–008) and Heil (F–010). Today's rule differs from what was granted in these six waivers in that one hour steady-state test is changed to a 30 minute test and the cyclic test may be 3 cycles in length instead of 6 cycles in length.

4. Energy Efficiency Descriptor

Although not directly related to any of the issues raised in the June 17 proposal, many commenters discussed the need for an energy efficiency descriptor (energy efficiency rating) to account for the electrical energy used by a fossil fueled furnace in addition to the fossil fuel used. The descriptor AFUE only accounts for the fossil fuel efficiency. *See* TRD, No. 7, at 1; Carrier, No. 10, at 1; and GAMA, No. 12, at 8. The proposed provisions for modulating controls drew these comments since in most modulating designs improved fuel efficiency (AFUE) is obtained at the expense of additional electrical energy consumption, (e.g. increased blower run time). The existing regulation for determining annual operating costs does reflect this concept, since electrical and fuel costs are separately determined and then summed. The commenters felt that in addition to the annual operating cost provisions, an energy efficiency descriptor needs to be added that will fairly disclose to the consumer the relative performance of different designs of furnaces that use both fossil fuel and electricity. Commenters felt the situation is exacerbated by FTC's labeling program, where for furnaces the dominant disclosure is AFUE and annual operating costs are relegated to the bottom of the Fact Sheet in grid format. The consumer may make a purchasing decision solely on the AFUE and not consider the electrical cost as well. Carrier delineated an example of the misleading nature of comparisons based on AFUE by showing where a higher AFUE furnace had an actual higher annual operating cost. *See* Carrier Corp., No. 10, at 2. Obviously, this outcome was dependent on assumed relative costs of the fuel and electricity. Other relative costs assumptions could lead to the opposite outcome, i.e., higher AFUE, lower operating costs. The commenters suggested the adoption of a new efficiency descriptor that includes an *average* electricity to fuel cost ratio. Any rankings developed from this descriptor would be identical to that developed on the basis of annual operating costs using the same average electricity to fuel costs ratio. DOE sees some merit to an efficiency descriptor based on the average electricity to fuel cost ratio but feels there exists, already in DOE procedures, a superior method of rating a furnace's performance in all costs scenarios, not just average costs scenarios. The DOE procedures currently provide the method of calculation needed to explicitly detail the electrical energy cost and the fuel energy cost for any furnace.

Therefore, for the reasons discussed above today's final rule does not include a new energy efficiency descriptor. However, DOE will continue to examine this subject and may consider revisions at a later date.

5. Furnaces Without Draft Relief

The 1980 amendments clarified how to test gas furnaces equipped with reduced draft fans and no draft relief device. Specifically, a definition of "direct exhaust" was added and provisions to allow testing of direct exhaust systems were specified. In addition, the Carrier Corporation was granted a test procedure waiver for its induced draft gas furnace with a draft safeguard system. 46 FR 22799 (April 21, 1981). The waiver specified that the unit with a draft safeguard system is tested according to the same provisions specified in the 1980 amendments for "direct exhaust" systems.

The June 17 proposal would allow all manufacturers of similar designs to use the provisions granted to Carrier's draft safeguard system.

All commenters that addressed this issue agreed with the proposal. *See* HI, No. 8, at 4; Carrier, No. 10, at 3; ETL, No. 11, at 4; and Trane, No. 14, at 2. However, both GAMA and Hydronics Institute suggested that the term "draft safeguard system" is proprietary and should be eliminated. DOE agrees with the commenters, and today's final rule adopts the proposal except that the term "draft safeguard system" is eliminated.

The effective date of today's rule constitutes the official expiration of the Carrier waiver (F–001). Future rulemakings may consider the need to specify exactly how to determine this percent flue flow if it is found that today's provisions lead to difficulty in replicating the procedure.

6. Hot Water Boiler Specifications

Existing test procedures for non-condensing hot water boilers specify testing at a 120°F temperature rise and a 200°F outlet water temperature. These specifications generally are not difficult to achieve and thereby reduce the testing burden on manufacturers. However, some manufacturers of finned tube boilers were granted test procedure exceptions because their boilers cannot be tested safely at these conditions. (Exception requests by Teledyne Laars and Raypak, Office of Hearings and Appeals, Case Nos. DEE–3439 and DEE–3950). The August 1980 amendments to the furnace test procedures prescribed test procedures for finned tube boilers. Specifically, these amendments required boilers to be tested at at a 20°F to 40°F temperature rise and a 200°F outlet water temperature.

Since the 1980 amendments, Energy Kinetics (F–003), a manufacturer of boilers which are designed with low thermal mass, received a test procedure waiver to allow testing of its boilers under the provisions prescribed for finned tube boilers. 46 FR 58732 (December 3, 1981).

The June 17 notice proposed entirely new provisions, specifically all non-condensing hot water boilers are to be tested with a return inlet water temperature of at least 120°F and a water temperature rise of at least 20°F. DOE believed that all non-condensing hot water boilers, including finned tube boilers and low thermal mass boilers, generally operate at these conditions.

Teledyne Laars and Raypak agreed with these provisions but felt the exact test apparatus necessary to supply the 120°F water should be specified. *See* Teledyne Laars and Raypak, Inc., No. 9, at 4. DOE disagrees and would like to avoid further specification, because in this case no increase in test procedure accuracy is likely.

The effective date of today's final rule constitutes the official expiration of the water specifications provisions of the test procedure waiver granted to Energy Kinetics (F–003).

7. Thermal Stack Dampers

The June 17 proposal proposed a test method to directly measure the off-cycle losses for furnaces and boilers equipped with thermal stack dampers. These losses are the off-cycle infiltration loss ($L_{I,OFF}$) and the off-cycle sensible loss ($L_{S,OFF}$) which have been estimated in the past by the use of off-cycle draft factors for flue gas flow (D_F) and for stack gas flow (D_S). Currently, the off-cycle draft factors are assigned values in the existing furnace test procedure and these draft factors are adjusted if the unit is equipped with an electro-mechanical stack damper; this adjustment factor is the stack damper effectiveness factor D_O.

For furnaces and boilers with thermal stack dampers, the energy efficiency could not be accurately determined by using the value of D_O that was

developed for electric-mechanical stack dampers. This is based on the fact that thermal stack dampers typically have changing off-period leakage rates, whereas electro-mechanical dampers typically have relatively constant off-period leakage rates. Also, the leakage rate is strongly dependent on temperature for thermal stack dampers whereas it is not dependent on temperature for electro-mechanical stack dampers.

The June 17 proposal allowed for the direct measurement of off-cycle losses by measuring the concentration of a tracer gas in the flue and in the stack during an appropriate off-cycle period and thereby eliminating any need for assigned draft factors. The method is based on the tracer gas method described in Appendix A of the NBS milestone report, *Recommendations to DOE on Modifications of Assigned Factors for Test Procedures for Vented Gas and Oil Fueled Heaters*, May 1980, and in Appendix D of ANSI/ASHRAE Standard 103–82. *See* NBS letter report, *An Analysis of Burner On and Off Periods and Their Effect on Part-Load Efficiency for Furnaces and Boilers Equipped with Modulating Controls*, January 1983.

Comments received regarding this issue approved of the proposal. *See* HI, No. 8, at 5 and Trane No. 14, at 2. However, GAMA's test procedure committee pointed out a number of questions that needed to be clarified before GAMA could fully support the provisions (e.g. should the thermal stack damper be in place for all parts of the test? should the thermal stack damper be insulated during testing? should the provision apply to furnaces with power burners?) *See* GAMA, No. 12, at 6. GAMA stated that the provision needed to be reproposed to allow comment on the complete procedures. DOE agrees and is reserving those provisions relating to thermal stack dampers until testing details and calculation procedures as required can be developed. These details and procedures are still being developed by the National Bureau of Standards. Thus, DOE will include those provisions in a separate notice.

8. Improvement in Stack (Flue) Damper Evaluation in the Test Procedures

Since the development of DOE furnace test procedures, it has been suspected by many interested parties that the actual energy efficiency improvement attributable to electro-mechanical stack (flue) dampers is less than that predicted in the test procedures. At this time, DOE is aware of analyses (both theoretical and field analyses) that support this conclusion. *See Proposed Framework for Furnace and Boiler Test Procedure Modifications*, a report to U.S. DOE Office of Buildings Energy Research and Development by Arthur D. Little, Inc., November 1982.

The current test procedure evaluates the effectiveness of a stack (flue) damper by comparing the area of the damper plate to the area of the stack. This simplified evaluation method ignores damper closing times. Thus, it is deficient in that it likely results in overstatements of efficiency. Also, the existing method discourages manufacturers from using quicker closing dampers.

The June 17 notice proposed that the direct measurement (tracer gas) method proposed for thermal stack dampers be allowed as an option for other than thermal stack flue dampers.

As with the provisions proposed for thermal stack dampers, all comments received expressed merit for the provisions. *See* HI, No. 8 at 5; GAMA, No. 12, at 6; and Trane, No. 14, at 2. However, since these provisions for all stack damper designs use essentially the same test method as was proposed for thermal stack dampers, the same questions as to the completeness of the proposed provisions were also raised. DOE agrees with these comments, therefore, DOE is reserving those provisions relating to the direct measurement method of testing all designs of stack dampers until testing details and calculation procedures as required can be developed.

9. Pump Delay Boiler Controls.

The June 17 proposal for pump delay boiler controls included a test method similar to that for time delay blower controls for furnaces, i.e. during testing the circulating pump is allowed to operate in accordance with its own control strategy. Maximum allowable time delays, a minimum return water temperature and a method for calculating the estimated annual operating cost to reflect the additional run time of the electrical circulating pump were proposed.

HI agreed with the proposal, especially for those control strategies that are time actuated. *See* HI, No. 8, at 6. However, HI felt clarification of the test method with regard to temperature actuated controls was required. It recommended a 15 minute fixed time delay be used for these controls. NBS reviewed these comments and also recommends the incorporation of this provision. Consequently, DOE has incorporated these provisions into today's final rule.

Three boiler manufacturers were granted test procedure exceptions which allowed testing under these provisions for pump delay. (Previously mentioned in footnote 3 were Raypak, Teledyne-Laars, and A. O. Smith). Since both pump delay and modulating controls are addressed, the effective date of today's final rule constitutes the official expiration of exceptions HXE–0012, HXE–0013, and HXE–0018.

DOE also received comments regarding the need to specify clearly the procedures for testing boilers designed for continous pump operations. *See* ETL, No. 11, at 1. This is done in today's rule by allowing such designs to have their laboratory testing conducted under continuous pump operation. In addition, the calculations are appropriately adjusted to reflect continuous operation.

10. Improved Method of Determining the S/F Factor for Furnaces and Boilers

A. Gas Furnaces and Boilers—The June 17 proposal included a method for calculating the S/F factor (average ratio of stack gas mass flow rate to flue gas mass flow rate at steady-state operation). The S/F factor is used to measure the on-cycle infiltration losses and the off-cycle infiltration losses in the furnace test procedure. The existing method is based on assigned values. The proposed method is based on the flue and stack measurements of CO_2 concentration, which already are required in the existing test procedures.

All comments received regarding these issues agreed with the proposal. *See* HI, No. 8, at 4; Carrier, No. 10, at 4; GAMA, No. 12, at 6; and Trane, No. 14, at 3. However, GAMA and the Hydronics Institute pointed out that though the flue and stack measurements of CO_2 concentration are already required for gas units with integral draft diverters, they are not required for units equipped with draft hoods. In consideration of this, the commenters suggested a 2-year phase in period for gas units equipped with draft hoods since data is not on file for previously tested units and thus additional testing is necessary to develop the new S/F factors. DOE agrees and has incorporated the suggested 2-year phase in period for units equipped with draft hoods. Specifically, the draft hood units shall have the option of using the existing assigned value or today's method for a 2-year period. Thereafter only today's method may be used.

B. Oil Furnaces and Boilers—Based on tests conducted by NBS, it was found that the value of S/F for oil furnaces and boilers is relatively constant, therefore, the assigned value of S/F is not likely to

result in marked inaccuracy. Also, oil furnaces and boilers are commonly marketed and sold without a barometric draft regulator. Thus, for those models, a laboratory determination of an S/F value is inappropriate.

Therefore, DOE proposed to allow the use of an assigned value of S/F oil furnaces and boilers and at the manufacturers option a measured value of S/F for oil furnaces and boilers that have the barometric regulator shipped with the unit. As with the gas furnaces and biolers, CO_2 concentrations are used to determine the measured value of S/F.

No opposing comments were received on this issue. Therefore, DOE has adopted the provisions as proposed.

11. Isolated Combustion System (ICS)

The June 17 notice addressed how DOE test procedures should be applied to determine a representative energy efficiency for units installed in an "isolated combustion system." DOE proposed that an assigned jacket loss value of 1 percent may be used, as an option, by all designs of furnaces, if an outdoor rating is made. Since many of the units in ICS installations are designed and intended for indoor installations, this will allow manufacturers to produce indoor and outdoor ratings of any design without increasing testing burden. Additionally, DOE proposed that representations specifically regarding ICS installations be based on the outdoor test method with one half of the jacket loss deduction.

All commenters supported the proposal regarding ICS systems. *See* HI, No. 8, at 6; Carrier, No. 10, at 3; GAMA, No. 12, at 5; and Trane, No. 14, at 3. Therefore, the provisions are adopted as proposed.

In addition, HI and GAMA suggested that this issue further be clarified by revising the definition of "outdoor furnace" in the ASHRAE/ANSI Standard 103–82. *See* HI, No. 8, at 6, and GAMA, No. 12, at 5. Basically, this suggestion is to require a statement on the furnace itself that indicates "intended for outdoor use" if the manufacturer is to consider his design an outdoor furnace in the test procedures. GAMA indicated it would petition the appropriate ASHRAE revision committee regarding this issue.

12. Additional Issues Regarding Furnace Test Procedures

There were a number of additional issues brought up in the comments regarding the furnace test procedures. Although in most cases, these comments were not directly related to the June 17 proposal, they are discussed here for the information of all interested parties.

A. Test Procedure Applicability to Furnaces with High Mass Heat Exchangers—The 20th Century Heating and Ventilating Company (20th Century) believed the June 17 proposal failed to address the company's long-standing objections to the DOE furnace test procedures. *See* 20th Century, No. 2. Twentieth Century company believes that furnaces with higher mass are inherently more efficient than the AFUE predicted by using DOE's "average cycle" methodology. Twentieth Century contends that its design will continue to deliver heat beyond the time frame of the average cycle; thereby keeping the thermostat satisfied and keeping the burner off beyond the time the test procedures assume a furnace should recycle. This postponing of burner on time, called a "free ride" by the commenter, is the basis of the company's contention that its furnace is inherently more efficient than predicted by DOE's test procedures. The fundamental error in this contention is the belief, by the company, that the house thermostat will be satisfied as long as some heat is being delivered by the furnace. This belief is incorrect since the room temperature can decrease in spite of the delivered heat: thus, the thermostat is not satisfied and another burner cycle is needed even though the furnace blower may still be delivering some heat. The DOE test procedures allow for the rating of furnaces with various blower run times. In fact, if the design is such that the furnace would deliver heat in excess of the amount that would be delivered during the average cycle time frame, the test procedures allow ratings based on continuous fan operation.

DOE believes the existing procedures do adequately and fairly allow for the rating of furnaces with high mass heat exchangers. Therefore, DOE sees no need to further address this issue.

B. Deletion of Test Procedures for Electric Furnaces—Trane, Inc. recommended that "the rating of electric furnaces be deleted from the DOE test procedures since they are essentially 100 percent efficient and perpetuation of their rating with resulting FTC labeling is contributing to a waste of industry and government resource time with no benefit to the consumers." *See* Trane, No. 14, at 1.

DOE believes the use of the test procedure itself constitutes little or not testing burden to the manufacturer. Test procedure results and the FTC labeling program provide consumers with useful information. While there is little variation in electric furnace efficiency, the DOE is not deleting the provisions. If the commenter has any proposed revisions to the FTC labeling program, they should be addressed to the FTC.

C. Jacket Loss Testing Accuracy—The existing DOE test procedures refer to the industry standards jacket loss test when determining the efficiency of furnaces installed outdoors. The jacket loss provisions of these standards of the American National Standard Institute (ANSI) (ANSI Z21.47 and ANSI Z91.1) were incorporated into the ANSI/ASHRAE 103–82 standard. These provisions as published in the ANSI/ASHRAE 103–82 was criticized by the ETL Laboratories as being extremely vague and subject to varied interpretations. *See* ETL, No. 11, at 1. ETL suggests a more formal and detailed jacket loss test be developed.

DOE will consider this issue as a possible area for future test procedure rulemaking. Any data, analysis, or general comment from interested parties including ANSI are welcome.

Comments were also received that the proposed the jacket loss test failed to assign an adjustment factor, C_j, for finned tube boilers as was done in the existing test procedures. *See* Teledyne Laars and Raypak, Inc., No. 9, at 4, and GAMA, No. 12, at 5. DOE regrets this inadvertent error and has included in today's rule the provision that $C_j = 1.0$ for finned tube boilers.

D. Need to Include a "Preamble" to the Test Procedures—Trane, Teledyne Laars and Raypak and GAMA recommended that a preamble be included in the test procedures to clarify their intent. *See* Trane, No. 14, at 1, Teledyne Laars and Raypak, Inc., No. 9, at 5, and GAMA, No. 12 at, 9. Basically, the preamble would serve to point out the inability of the test procedures to predict the energy performance of a furnace in every installation. Rather, it would point out that their use is for comparison purposes and thus installation variables are only representatively accounted for. DOE agrees with this statement. Thus, this discussion constitutes a "preamble" to the test procedure as requested.

GAMA and Trane suggested DOE provide that: "the procedures are not intended to provide comparisons with other types of heating devices such as heat pumps, space heater, etc.". DOE strongly objects to this additional wording because this cross-product comparison was intended by DOE in developing the different test procedures for the various types of heating devices. Efforts were made by DOE to promulgate consistent test procedures that will allow, to the extent possible,

informed purchase decisions across types of heating devices. In addition, the Act requires this when it states the test procedures are to contain measures of energy consumption which are likely to assist consumers in making purchasing decisions.

B. Vented Heater Test Procedure

The vented heater test procedure was prescribed by DOE by notice issued May 2, 1978, 43 FR 20182 (May 10, 1978). Several manufacturers petitioned DOE to expand the vented heater test procedure to include modulating vented heaters and manually controlled vented heaters. Other manufacturers felt that an improved method of testing was needed for vented oil heaters equipped with vaporizing-type burners. In 1980, the *Ad Hoc* Technical Committee of GAMA, presented a simplified testing method to DOE. The method was intended to be an optional procedure that reduces the testing burden on manufacturers. On the basis of the information submitted by the petitioners, information from GAMA, research conducted by NBS, and other available information, DOE proposed to amend the vented heater test procedure to address these concerns in the June 17 proposal. Subsequently, a public hearing was held on June 29, 1983 and comments were received regarding the proposed rule. DOE today is amending the vented heater test procedure to expand the coverage of the test procedure while at the same time reducing the testing burden.

1. Simplified Vented Heater Test Procedure

For vented heaters equipped without manual controls or without thermal stack dampers, DOE proposed a simplified test procedure. The simplified procedures addressed those heaters with modulating controls.

No disapproving comments were received regarding the simplified procedures. *See* GAMA, No. 12, at 10. Therefore, DOE is adopting the simplified procedure as proposed in the June 17 proposal.

Also, since the above mentioned test procedure exceptions BEE–0883 and BEE–0983 (delineated in foot note 3) were granted partially on the basis that no modulating control provisions were included in the existing vented heater test procedures, the effective date of today's rule constitutes the expiration of those exceptions with regard to modulating controls.

2. Manually Controlled Vented Heaters

The June 17 proposal would allow for a determination of efficiency of manually controlled heaters by use of a weighted-average steady-state efficiency. Since a typical manual control allows for several firing rates, this weighted average steady-state efficiency is based on the manually controlled heater operating at 50 percent of maximum heating output rate. However, GAMA testified that since there exist manually controlled heaters that have only a single firing rate and for this design, the averaging of efficiencies method is inappropriate. *See* GAMA, June 29. DOE agrees and today's rule provides that for such designs the weighted average steady-state efficiency is that steady state efficiency when tested at its single firing rate.

Since both modulating controls and manual controls are addressed, the effective date of this final rule constitutes the official expiration of exceptions BEE–0883 and BEE–0983 (delineated in footnote 3).

3. Vented Heaters Equipped With Thermal Stack Dampers

Since no comments objecting to the June 17 proposal for testing of vented heaters with thermal dampers were received, DOE is adopting the proposed provisions in today's final rule.

4. Floor Furnaces

Floor furnaces are a class of vented heaters that are specifically designed to be installed in a crawl space under a home. GAMA suggested that the similar provisions allowed ICS furnaces be allowed for floor furnaces. Specifically, ICS furnaces are allowed an assigned jacket loss of 1 percent and an adjustment factor to account for outdoor and cycling conditions of 1.7. GAMA asks that floor furnaces be allowed an assigned jacket loss of 3 percent and an adjustment factor of 1.7. *See* GAMA, No. 12, at 12.

NBS has reviewed these comments and recommends that the jacket loss continue to be required to be measured for floor furnaces since reduced jacket losses represent the single most important improvement available to floor furnaces. Allowing an assigned value reduces the incentive for improving jacket losses. Consequently, DOE is not allowing an assigned jacket loss for floor furnaces.

Regarding the issue of a lower adjustment factor for floor furnaces, DOE agrees that some reduction of adjustment factor is appropriate for reasons similar to ICS's (i.e. not entirely outside, protected from the wind, etc.). However, DOE believes that representatively, floor furnace installations more closely resemble outdoor installations than ICS installations. Therefore, the appropriate adjustment factor for floor furnace jacket loss should be between that which is allowed for ICS furnaces (1.7) and what is allowed for outdoor vented heaters (3.93). The factor of 2.8 represents the midpoint of these two cases.

C. Unvented Heater Test Procedures

A test procedure for unvented heaters, using electricity, natural gas, or propane, was proposed by DOE on May 4, 1977. 42 FR 23860 (May 11, 1977). A test procedure for electric heaters was prescribed by DOE on May 2, 1978. 43 FR 20128 (May 10, 1978). A final test procedure was not prescribed for unvented natural and propane gas heaters at that time because the Consumer Product Safety Commission (CPSC) proposed to ban the sale of these heaters. 43 FR 6235 (February 14, 1978). CPSC has issued a safety standard in place of a sales ban (16 CFR Part 1212). Today, DOE is prescribing a test procedure appropriate for unvented natural and propane gas heaters as proposed.

In addition, DOE is today prescribing a test procedure for unvented kerosene heaters as proposed. Kerosene heaters were not considered during the previous rulemaking process essentially because these heaters were not widely marketed at the time of the original proposal. DOE believes that a test procedure for kerosene heaters is presently needed since these heaters are now widely marketed.

All comments received regarding these prodedures approved of the provisions as proposed. In particular, the kerosene industry elaborated on the appropriateness of the implied 100 percent fuel efficiency. The Kerosun Company testified that since the operation of an unvented heater does not cause an additional infiltration loss to the home, and since the combustion of the fuel is essentially complete, the implied 100 percent fuel efficiency is entirely appropriate. *See* Kerosun, Inc. June 29. Therefore, based on this testimony and due to the fact that no opposing testimony was received, DOE is prescribing today the provisions that were proposed for these types of heaters.

Arizona Public Service Company (APSC), a public utility, generally supported the proposed amendments for unvented heaters but commented upon the unsafe nature of unvented gas-fired room heaters. *See* APSC, No. 13. The safety of such heaters is not within the jurisdiction of DOE.

D. Estimated Operating Cost for Vented and Unvented Heaters

For vented and unvented heaters, DOE is adopting the proposed method to determine an estimated operating cost per million British thermal units (Btu) output. In the past, several commenters expressed concern over the validity of an estimated annual operating cost for vented and unvented heaters. Most felt that any selection of a representative hours of annual use would be inappropriate for these heaters considering the large variability involved. Secondly, an appropriate efficiency determination was needed for vented heaters with modulating controls. As with furnaces, heaters with modulating controls would have a variable efficiency and operating costs depending on the extent of oversizing.

A valid estimated annual operating cost method for modulating vented heaters would require substantial changes in order to properly consider the effects of oversizing. The changes would require additional calculations for the weighted-average efficiency because the fraction of time that the heater would operate in each mode would depend on the extent of oversizing and on the ratio of minimum to maximum heat output rates. The changes would be similar to today's amendments for modulating furnaces and boilers discussed above.

The variable annual operating cost method was originally developed for vented heaters under the premise that the cost data would be required for the FTC labeling program. The FTC has excluded vented heaters from the labeling program. Therefore, DOE sees no need to expand the estimated annual operating cost calculations for vented heaters.

DOE believes that for vented and unvented heaters the best economic measure to assist consumers in their purchasing decisions is the estimated operating cost per million Btu output. For vented heaters, the estimated cost is determined by using the measured output, the representative unit cost of energy and the annual fuel utilization efficiency (which may be determined from the simplified test procedure proposed today). For unvented heaters, the estimated cost is determined by using the measured output, the representative unit cost of energy and the implied efficiency of 100 percent.

At the public hearing, GAMA and Kerosun, Inc. expressed support for the cost per million Btu's measure. No comments opposing the measure were received. *See* GAMA, June 29; Kerosun, June 29. Therefore, DOE is today prescribing this measure for both unvented and vented home heating equipment.

However, GAMA thought it appropriate that in addition to cost per million Btu's, an hourly operating cost be included for vented heaters as is currently included in electric unvented heaters. DOE sees little merit in such a measure for vented heaters since most vented heaters have modulating type controls and, therefore, various hourly operating costs. Accordingly, a consumer could be misled by this measure if comparisons are made across various firing rates. DOE feels that such comparisons should be avoided and is, therefore, not including them in today's regulations for all types of heaters.

A number of commenters pointed out an apparent deficiency in the measures provided for vented heaters. Although a regulation to determine the operating cost for heaters which use both fossil fuel and electricity was proposed for unvented heaters, no such regulation was proposed for vented heaters. This was an oversight on DOE's part and consequently, today's rule includes a regulation to determine operating cost for such heaters in both the unvented and vented heater subparagraphs.

E. Miscellaneous

After careful consideration of all of the comments and further consultation with NBS, DOE has made some editorial and minor technical changes to the published proposal in today's final rule. For instance, an equals sign (=) is added to the first expression in section 4.9 of Appendix N.

III. PROCEDURAL MATTERS

A. Environmental Review

Pursuant to Section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of the proposed notice was submitted to the Administrator of the Environmental Protection Agency (EPA) for his comments concerning the impact of this proposal on the quality of the environment. EPA responded by letter with no comment on September 28, 1983.

In addition, the Department has reviewed today's final rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council of Environmental Quality Regulations implementing the procedural provisions of NEPA (40 CFR Part 1500 et seq.), and the Department's own NEPA guidelines (45 FR 20694, March 28, 1980, as amended by 47 FR 7976, Feb. 23, 1982) to determine if an environmental impact statement (EIS) or an environmental assessment (EA) is required.

Today's final rule serves only to standardize the measurement of energy usage for furnaces and other home heating equipment. The action of prescribing these revised test procedures will not result in any environmental impacts. Because it is clear that today's final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, DOE has determined that neither an EA nor an EIA is required.

B. Regulatory Impact Review

The final rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines a major rule as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule would only make minor changes in the test procedures for furnaces and other home heating equipment. Therefore, DOE has determined that this final rule does not come within the definition of a major rule.

In accordance with Section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the final rule was submitted to OMB for review without a regulatory impact analysis. This rule has been reviewed by OMB in accordance with the procedures applicable to rules other than major rules.

C. Small Entity Review

The Regulatory Flexibility Act (Pub. L. 96-354) requires that an agency prepare a final regulatory analysis to be available at the time the final rule is published. This requirement does not apply if the agency "certifies that the final rule will not * * * have a

significant economic impact on a substantial number of small entities."

In the June 17 proposal, DOE certified, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities. All commenters were generally supportive of the proposal and no commenter took issue with DOE's certification. Accordingly, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

(Energy Policy and Conservation Act of December 22, 1975, Pub. L. 94–163, Sec. 323(a))

Issued in Washington, D.C., March 7, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Provisions of 10 CFR Part 430, § 430.2, § 430.22, Appendix G, Appendix N, and Appendix O are amended as follows:

1. Section 430.2 definition of "unvented home heating equipment" is revised and definitions of "Kerosene," "Unvented gas heater," and "unvented oil heater" are added in alphabetical order to read as follows:

§ 430.2 Definition.

* * * * *

"Kerosene" means No. 1 fuel oil with a viscosity meeting the specifications as specified in UL–730–1974, section 36.9 and in tables 2 and 3 of ANSI Standard Z91.1–1972.

* * * * *

"Unvented gas heater" means an unvented, self-contained, free-standing, nonrecessed gas-burning appliance which furnishes warm air by gravity or fan circulation.

"Unvented home heating equipment" means a class of home heating equipment, not including furnaces, used for the purpose of furnishing heat to a space proximate to such heater directly from the heater and without duct connections and includes electric heaters and unvented gas and oil heaters.

"Unvented oil heater" means an unvented, self-contained, free-standing, nonrecessed oil-burning appliance which furnishes warm air by gravity or fan circulation.

* * * * *

§ 430.22 [Amended]

2. Section 430.22 is amended by revising paragraphs (g), (n) and (o) to read as follows:

* * * * *

(g) *Unvented home heating equipment.* (1) The estimated annual operating cost for primary electric heaters, shall be the product of: (i) The average annual electric energy consumption in kilowatt-hours per year, determined according to section 3.1 of Appendix G of this subpart and (ii) the representative average unit cost in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year.

(2) The estimated regional annual operating cost for primary electric heaters, shall be the product of: (i) The regional annual electric energy consumption in kilowatt-hours per year for primary heaters determined according to section 3.2 of Appendix G of this subpart and (ii) the representative average unit cost in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year.

(3) The estimated operating cost per million Btu output shall be—

(i) For primary and supplementary electric heaters and unvented gas and oil heaters without an auxiliary electric system, the product of: (A) One million; and (B) the representative unit cost in dollars per Btu for natural gas, propane, or oil, as provided pursuant to section 323(b)(2) of the Act as appropriate, or the quotient of the representative unit cost in dollars per kilowatt-hour, as provided pursuant to section 323(b)(2) of the Act, divided by 3,412 Btu per kilowatt hour, the resulting product then being rounded off to the nearest 0.01 dollar per million Btu output; and

(ii) For unvented gas and oil heaters with an auxiliary electric system, the product of: (A) The quotient of one million divided by the rated output in Btu's per hour as determined in 3.4 of appendix G of this subpart; and (B) the sum of: (*1*) The product of the maximum fuel input in Btu's per hour as determined in 2.2. of this appendix times the representative unit cost in dollars per Btu for natural gas, propane, or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act, plus (*2*) the product of the maximum auxiliary electric power in kilowatts as determined in 2.1 of appendix G of this subpart times the representative unit cost in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting quantity shall be rounded off to the nearest 0.01 dollar per million Btu output.

(4) The rated output for unvented heaters is the rated output as determined according to either sections 3.3 or 3.4 of Appendix G of this subpart, as appropriate, with the result being rounded to the nearest 100 Btu per hour.

(5) Other useful measures of energy consumption for unvented home heating equipment shall be those measures of energy consumption for unvented home heating equipment which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix G of this subpart.

* * * * *

(n) *Furnaces.* (1) The estimated annual operating cost for furnaces is the sum of: (i) The product of the average annual fuel energy consumption, in Btu's per year for gas or oil furnaces or in kilowatt-hours per year for electric furnaces, determined according to section 4.8 or 4.10 of Appendix N of this subpart, respectively, and the representative average unit cost in dollars per Btu for gas or oil, or dollars per kilowatt-hour for electric, as appropriate, as provided pursuant to section 323(b)(2) of the Act, plus (ii) the product of the average annual auxiliary electric energy consumption in kilowatt-hours per year determined according to section 4.9 of Appendix N of this subpart, and the representative average unit cost in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting sum then being rounded off to the nearest dollar per year. (For furnaces which operate with variable inputs, an estimated annual operating cost is to be calculated for each degree of oversizing specified in section 4 of Appendix N of this subpart.)

(2) The annual fuel utilization efficiency for furnaces, expressed in percent, is the ratio of annual fuel output of useful energy delivered to the heated space to the annual fuel energy input to the furnace determined according to section 4.6 of Appendix N of this subpart for gas and oil furnaces and determined in accordance with section 4.1 of Appendix N of this subpart for electric furnaces.

(3) The estimated regional annual operating cost for furnaces is the sum of: (i) The product of the regional annual fuel energy consumption in Btu's per year for gas or oil furnaces or in kilowatt-hours per year for electric

furnaces, determined according to section 4.11 or 4.13 of Appendix N of this subpart, respectively, and the representative average unit cost in dollars per Btu for gas or oil, or dollars per kilowatt-hour for electric, as appropriate, as provided pursuant to section 323(b)(2) of the Act, plus (ii) the product of the regional annual auxiliary electrical energy consumption in kilowatt-hours per year, determined according to section 4.12 of Appendix N of this subpart, and the representative average unit cost in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting sum then being rounded off to the nearest dollar per year.

(4) The energy factor for furnaces, expressed in percent, is the ratio of annual fuel output of useful energy delivered to the heated space to the total annual energy input to the furnace determined according to section 4.14 of Appendix N of this subpart.

(5) Other useful measures of energy consumption for furnaces shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix N of this subpart.

(o) *Vented home heating equipment.*

(1) The annual fuel utilization efficiency for vented home heating equipment, expressed in percent, which is the ratio of the annual fuel output of useful energy delivered to the heated space to the annual fuel energy input to the vented heater, shall be determined either according to section 4.1.17 of Appendix O of this subpart for vented heaters without either manual controls or thermal stack dampers; according to section 4.2.6 of Appendix O of this subpart for vented heaters equipped with manual controls; or according to section 4.3.7 of Appendix O of this subpart for vented heaters equipped with thermal stack dampers.

(2) The estimated operating cost per million Btu output for vented heaters without an auxiliary electric system shall be the product of: (i) One hundred; (ii) the quotient of one million Btu output divided by the annual fuel utilization efficiency as determined in paragraph (o) (1) and (iii) the representative unit cost in dollars per Btu for natural gas, propane, or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act, the resulting product shall be rounded to the nearest 0.01 dollar per million Btu output.

(3) The estimated operating cost per million Btu output for gas or oil vented home heating equipment with an auxiliary electric system shall be the product of: (A) The quotient of one million Btu divided by the sum of: (*1*) The product of the maximum fuel input in Btu's per hour as determined in 3.1.1 or 3.1.2 of Appendix O of this subpart times the annual fuel utilization efficiency in percent as determined in 4.1.17, 4.2.6, or 4.3.7 of this appendix as appropriate divided by 100, plus (*2*) the product of the maximum electric power in watts as determined in 3.1.3 of Appendix O of this subpart times the quantity 3.412; and (B) of the sum of: (*1*) the product of the maximum fuel input in Btu's per hour as determined in 3.1.1 of this appendix times the representative unit cost in dollars per Btu for natural gas, propane, or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act; plus (*2*) the product of the maximum auxiliary electric power in kilowatts as determined in 3.1.3 of Appendix O of this subpart times the representative unit cost in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting quantity shall be rounded off to the nearest 0.01 dollar per million Btu output.

(4) Other useful measures of energy consumption for vented home heating equipment shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix O of this subpart.

3. Appendix G. to Subpart B of Part 430 is revised to read as follows:

Appendix G to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Unvented Home Heating Equipment

1. *Testing conditions.*

1.1 *Installation.*

1.1.1 *Electric heater.* Install heater according to manufacturer's instructions. Heaters shall be connected to an electrical supply circuit of nameplate voltage with a wattmeter installed in the circuit. The wattmeter shall have a maximum error not greater than one percent.

1.1.2 *Unvented gas heater.* Install heater according to manufacturer's instructions. Heaters shall be connected to a gas supply line with a gas displacement meter installed between the supply line and the heater according to manufacturer's specifications. The gas displacement meter shall have a maximum error not greater than one percent. Gas heaters with electrical auxiliaries shall be connected to an electrical supply circuit of nameplate voltage with a wattmeter installed in the circuit. The wattmeter shall have a maximum error not greater than one percent.

1.1.3 *Unvented oil heater.* Install heater according to manufacturer's instructions. Oil heaters with electric auxiliaries shall be connected to an electrical supply circuit of nameplate voltage with a wattmeter installed in the circuit. The wattmeter shall have a maximum error not greater than one percent.

1.2 *Temperature regulating controls.* All temperature regulating controls shall be shorted out of the circuit or adjusted so that they will not operate during the test period.

1.3 *Fan controls.* All fan controls shall be set at the highest fan speed setting.

1.4 *Energy supply.*

1.4.1 *Electrical supply.* Supply power to the heater within one percent of the nameplate voltage.

1.4.2 *Natural gas supply.* For an unvented gas heater utilizing natural gas, maintain the gas supply to the heater with a normal inlet test pressure immediately ahead of all controls at 7 to 10 inches of water column. The regulator outlet pressure at normal supply test pressure shall be approximately that recommended by the manufacturer. The natural gas supplied should have a higher heating value within ± 5 percent of 1,025 Btu's per standard cubic foot. Determine the higher heating value, in Btu's per standard cubic foot, for the natural gas to be used in the test, with an error no greater than one percent. Alternatively, the test can be conducted using "bottled" natural gas of a higher heating value within ± 5 percent of 1,025 Btu's per standard cubic foot as long as the actual higher heating value of the bottled natural gas has been determined with an error no greater than one percent as certified by the supplier.

1.4.3 *Propane gas supply.* For an unvented gas heater utilizing propane, maintain the gas supply to the heater with a normal inlet test pressure immediately ahead of all controls at 11 to 13 inches of water column. The regulator outlet pressure at normal supply test pressure shall be that recommended by the manufacturer. The propane supplied should have a higher heating value of within± 5 percent of 2,500 Btu's per standard cubic foot. Determine the higher heating value in Btu's per standard foot, for the propane to be used in the test, with an error no greater than one percent. Alternatively, the test can be conducted using "bottled" propane of a higher heating value within ± 5 percent of 2,500 Btu's per standard cubic foot as long as the actual higher heating value of the bottled propane has been determined with an error no greater than one percent as certified by the supplier.

1.4.4 *Oil supply.* For an unvented oil heater utilizing kerosene, determine the higher heating value in Btu's per gallon with an error no greater than one percent. Alternatively, the test can be conducted using a tested fuel of a higher heating value within ± 5 percent of 137,400 Btu's per gallon as long as the actual higher heating value of the tested fuel has been determined with an error no greater than one percent as certified by the supplier.

1.5 *Energy flow instrumentation.* Install one or more energy flow instruments which measure, as appropriate and with an error no greater than one percent, the quantity of electrical energy, natural gas, propane gas, or oil supplied to the heater.

2. *Testing and measurements.*

2.1 *Electric power measurement.* Establish the test conditions set forth in

section 1 of this appendix. Allow an electric heater to warm up for at least five minutes before recording the maximum electric power measurement from the wattmeter. Record the maximum electric power (P_E) expressed in kilowatts.

Allow the auxiliary electrical system of a forced air unvented gas, propane, or oil heater to operate for at least five minutes before recording the maximum auxiliary electric power measurement from the wattmeter. Record the maximum auxiliary electric power (P_A) expressed in kilowatts.

2.2 *Natural gas, propane, and oil measurement.* Establish the test conditions as set forth in section 1 of this appendix. A natural gas, propane, or oil heater shall be operated for one hour. Using either the nameplate rating or the energy flow instrumentation set forth in section 1.5 of this appendix and the fuel supply rating set forth in sections 1.4.2, 1.4.3, or 1.4.4 of this appendix, as appropriate, determine the maximum fuel input (P_F) of the heater under test in Btu's per hour. The energy flow instrumentation shall measure the maximum fuel input with an error no greater than one percent.

3. Calculations.

3.1 *Annual energy consumption for primary electric heaters.* For primary electric heaters, calculate the annual energy consumption (E_E) expressed in kilowatt-hours per year and defined as:

$E_E = 2080(0.77)DHR$

where:

2080 = national average annual heating load hours
0.77 = adjustment factor
DHR = design heating requirement and is equal to P_E /1.2 in kilowatts.
P_E = as defined in 2.1 of this appendix
1.2 = typical oversizing factor for primary electric heaters

3.2 *Annual energy consumption for primary electric heaters by geographic region of the United States.* For primary electric heaters, calculate the annual energy consumption by geographic region of the United States (E_E) expressed in kilowatt-hours per year and defined as:

$E_E = HLH(0.77)(DHR)$

where:

HLH = heating load hours for a specific region determined from Figure 1 of this appendix in hours
0.77 = as defined in 3.1 of this appendix
DHR = as defined in 3.1 of this appendix

3.3 *Rated output for electric heaters.* Calculate the rated output (Q_{out}) for electric heaters, expressed in Btu's per hour, and defined as:

$Q_{out} = P_E$ (3,412 Btu/kWh)

where:

P_E = as defined in 2.1 of this appendix

3.4 *Rated output for unvented heaters using either natural gas, propane, or oil.* For unvented heaters using either natural gas, propane, or oil equipped without auxiliary electrical systems, the rated output (Q_{out}), expressed in Btu's per hour, is equal to P_F, as determined in section 2.2 of this appendix.

For unvented heaters using either natural gas, propane, or oil equipped with auxiliary electrical systems, calculate the rated output (Q_{out}), expressed in Btu's per hour, and defined as:

$Q_{out} = P_F + P_A$ (3,412 Btu/kWh)

where:

P_F = as defined in 2.2 of this appendix in Btu/hr
P_A = as defined in 2.1 of this appendix in Btu/hr

FIGURE I

Heating Load Hours (HLH) for the United States and Territories

This map is reasonably accurate for most parts of the United States but is necessarily highly generalized and consequently not too accurate in mountainous regions, particularly in the Rockies.

Alaska — 3500 HLH
Hawaii and Territories — 0 HLH

4. Appendix N to Subpart B of Part 430 is revised to read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces

1. *Definitions.* Definitions shall include the definitions specified in section 3.0 of ANSI/ASHRAE 103–82 and the following additional definitions:

1.1 "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

1.2 "ANSI/ASHRAE 103-82" means the test standard published in 1982 by ASHRAE, approved by the American National Standards Institute (ANSI) on June 21, 1983 and titled "Methods of Testing for Heating Seasonal Efficiency of Central Furnaces And Boilers."

1.3 "Electro-mechanical stack damper" means a type of stack damper which is operated by electrical and/or mechanical means.

1.4 "Isolated combustion system" means an installation in which a furnace is installed indoors and all combustion and ventilation air is admitted through grills or ducts from outdoors and (all such air) does not communicate with air in the conditioned space.

1.5 "Modulating control" means either a step modulating or a "two-stage control"

1.6 "Reduced heat input rate" means the factory adjusted lowest reduced heat input rate for furnaces equipped with either two stage thermostats or step-modulating thermostats.

1.7 "Single stage thermostat" means a thermostat that cycles a burner from the maximum heat input rate and off.

1.8 "Step-modulating control" means a modulating control that cycles a burner from the reduced input rate to off if the heating load is light. If a higher heating load is encountered which cannot be met with the reduced input rate, the control either gradually increases or steps up the input rate to meet the higher heating load. At that point if a lower heating load is encountered, the control either gradually decreases or steps down to a lower rate, or gradually increases the heat input to meet any higher heating load that cannot be met with the low firing rate.

1.9 "Thermal stack damper" means a type of stack damper which is dependent for operation exclusively upon the direct conversion of thermal energy of the stack gases into closure of the damper.

1.10 "Two stage control" means a modulating control that cycles a burner from reduced heat input rate and off or cycles a burner at the maximum heat input rate and off.

2.0 *Testing conditions.* The testing conditions shall be as specified in section 8 of ANSI/ASHRAE 103–82 with the exception of section 8.4.2.3, and the inclusion of the following additional testing conditions:

2.1 *Gas burner adjustment at maximum input rate.* The following paragraph is in addition to the requirements specified in section 8.4.1.1 of ANSI/ASHRAE 103–82:

For gas fueled furnaces and boilers equipped with modulating type controls, adjust the controls to operate the unit at the maximum fuel input rate. Set the thermostat control to the maximum setting. Start the furnace or boiler by turning the safety control valve to the "on" position. Use a supply water temperature for boilers that will allow for continuous operation without shut off by the thermostat control.

2.2 *Gas burner adjustment at reduced input rate.* The following paragraph is in addition to the requirements specified in section 8.4.1.1 of ANSI/ASHRAE 103–82:

For gas fueled furnaces and boilers equipped with modulating type thermostat controls, adjust the controls to operate the unit at the reduced fuel input rate. Set the thermostat control to the lowest setting that does not cause the burner to cycle on and off. Start the furnace or boiler by turning the safety control valve to the "on" position. Use supply water temperature for boilers that will allow for continuous operation without shut off by the thermostat control. If necessary, supply water may be increased above 120° F in order to maintain continuous operation at the reduced setting.

2.3 *Gas and oil fueled low pressure steam and hot water boilers (including direct vent systems).* The following paragraphs are in place of section 8.4.2.3 of ANSI/ASHRAE 103–82:

For non-condensing hot water boilers, the water flow rate shall be adjusted to produce a water temperature rise, during the steady-state test described in section 9.1 of ANSI/ASHRAE 103–82, of 19° F –24° F. During the steady-state and heat-up tests, the hot water boiler shall be supplied with water having a temperature of at least 120° F but not more than 124° F.

For steam boilers, the pressure shall be at atmospheric or at a pressure not exceeding 2 psig during the steady-state test.

3.0 *Test procedure.* Testing and measurements shall be as specified in section 9 of ANSI/ASHRAE 103–82 with the exception of sections 9.2.2 and 9.3.2, and the inclusion of the following additional procedures:

3.1 *Gas fueled gravity furnaces, forced air central furnaces, and low pressure steam and hot water boilers (including direct vent systems, excluding condensing furnaces or boilers).* The following paragraphs are in addition to the requirements specified in section 9.1.1 of ANSI/ASHRAE 103–82:

For all gas fueled furnaces and boilers, the steady-state efficiency shall be determined at the maximum fuel input rate measured in accordance with sections 2.1 of this appendix and section 9.1.1 of ANSI/ASHRAE 103–82. Also, for gas fueled furnaces and boilers equipped with either two stage thermostats or step-modulating thermostats, the steady-state efficiency shall also be determined at the reduced fuel input rate measured in accordance with sections 2.2 of this appendix and section 9.1.1 of ANSI/ASHRAE 103–82.

In addition, for gas fueled furnances and boilers equipped with draft hoods, measure CO_2 in stack after dilution during the steady state condition.

3.2 *Flue temperature measurements—cool down test.* The following paragraphs are in addition to the requirements specified in section 9.2 of ANSI/ASHRAE 103–82:

For furnaces and boilers equipped with step-modulating thermostats, the cool down test shall be conducted after steady-state conditions have been reached at the reduced input rate, as specified in section 2.2 of this appendix. For furnaces and boilers equipped with two stage controls, separate cool down tests shall be conducted after steady-state conditions have been reached at both the reduced and maximum fuel input rates.

3.3 *Gas and oil fueled boilers—cool down test.* The following paragraphs are in place of the requirements specified in section 9.2.2 of ASHRAE 103–82:

After steady-state testing has been completed, turn the main burner(s) off and measure the flue gas temperature at 3.75 ($T_{F,OFF(3)}$) and 22.5 ($T_{F,OFF(4)}$) minutes after the burner shuts off, using the thermocouple grid described above. During this off period for units that do not have pump delay after shut-off, no water shall be allowed to circulate through the hot water boilers. For units that have pump delay on shut-off, except those having pump controls sensing water temperature, the pump shall be stopped by the unit control and the time, t^+, between burner shut-off and pump shut-off shall be measured within one second accuracy. For units having pump delay controls which sense water temperature, the pump shall be operated for 15 minutes and t^+ shall be 15 minutes. While the pump is operating, the inlet water temperature and flow rate shall be maintained at the same values as used during the preceding steady-state test.

Make a third flue gas temperature measurement 45 minutes after the burner shuts off to determine the off-period minimum flue gas temperature ($T_{F,OFF(5)}$).

During this cool down test, measure the energy input rate to the pilot light (Q_P), if the unit is so equipped, to within an error no larger than ± 3 percent. Record all measured values. For oil fueled units not equipped with stack dampers, maintain the draft in the flue within the same ranges specified in section 9.2.1 of ANSI/ASHRAE 103–82. For direct vent systems with flue dampers or boilers equipped with both stack dampers and barometric dampers, close the flue or stack damper during the cool down test.

3.4 *Flue gas temperature measurements—heat-up test.* The following paragraph is in addition to the requirement specified in section 9.3 of ANSI/ASHRAE 103–82.

For furnaces and boilers equipped with step-modulating thermostats, the heat-up test shall be conducted at the reduced fuel input rate, as specified in section 2.2 of this appendix. For furnaces and boilers equipped with two stage controls, separate heat-up tests shall be conducted at both the reduced and maximum fuel input rates.

3.5 *Gas and oil fueled boilers.* The following paragraph is in place of the requirements specified in section 9.3.2 of ANSI/ASHRAE 103–82.

Fifty minutes or more after the main burner(s) is turned off for the cool down test, turn on the steam or hot water boiler and measure the flue gas temperature at 1.0 ($T_{I,on(1)}$) and 5.5 ($T_{I,on(2)}$) minutes after the main burners are turned on. The pump circulating the water through the hot water

boiler shall be started simultaneously with the main burner(s). The water flow rate shall be the same as that maintained during the steady-state test described in section 9.1 of ANSI/ASHRAE 103–82. During the heat-up test for oil fired boilers maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft. Record the measured temperatures.

3.6 *Direct measurement of condensate.* For condensing furnaces and boilers, the condensate heat loss shall be determined either by the method specified in section 11.2.33 of ANSI/ASHRAE 103–82 or by the following test procedures:

Control devices shall be installed to allow cyclical operation of the unit and return water or air flows as described in sections 9.2 and 9.3 of ANSI/ASHRAE 103–82 and sections 3.2, 3.3, 3.4 and 3.5 of this appendix. The test unit shall be leveled prior to test. Operating times and beginning and end of condensate collection shall be determined by a clock or timer with a minimum resolution of one second. Humidity of the room air shall, at no time, exceed 80 percent.

Control of on or off operation actions shall be within ± 6 seconds of the scheduled time. Condensate drain lines shall be attached to the unit as specified in the manufacturer's installation instructions. A continuous downward slope of drain lines from the unit shall be maintained. Additional precautions shall be taken to facilitate uninterrupted flow of condensate during the test.

The flue pipe installation must not allow condensate formed in the flue pipe to flow back into the unit. An initial downward slope from the unit's exit, an offset with a drip leg, annular collection rings, or drain holes must be included in the flue pipe installation without disturbing normal flue gas flow, as specified in section 7.2.2 of ANSI/ASHRAE 103–82. Flue gases should not flow out of the drain with the condensate.

Collection-containers must be glass or polished stainless steel, so removal of interior deposits can be easily made. The collection-container shall have a vent opening to the atmosphere.

The scale for measuring the containers and sample condensate mass shall be calibrated with an error no larger than ± 0.5 percent over the range of interest.

The condensing furnace or boiler shall be tested by the flue loss method in accordance with the provisions for condensing units, as specified in section 9 of ASNI/ASHRAE 103–82 and section 3 of this appendix. The condensate collection-containers shall be dried prior to each use and shall be at room ambient temperature prior to a sample collection. Tare weight of the collection-container must be measured and recorded prior to each sample collection.

The unit should be operated in a cyclical manner until flue gas temperatures at the end of each on-cycle are within 5° F (2.8° C) of each other for two consecutive cycles. On-cycle and off-cycle times are listed in Table 2 of this appendix. Begin three test cycles. Return air temperature for furnaces shall be as specified in section 9 of ANSI/ASHRAE 103–82 and section 3 of this appendix. Return water temperature for boilers shall be as specified in section 2.3 of this appendix. Operation of the furnace blower or boiler pump shall conform to the time delay requirements specified in sections 9.2 and 9.3 of ANSI/ASHRAE 103–82 and sections 3.2, 3.3, 3.4, and 3.5 of this appendix for cool down and heat up tests. Operation of the boiler pump shall conform to the time delay requirements specified in section 3.3 of this appendix.

Begin condensate collection at one minute before the on-cycle period of the first test cycle. The container shall be removed one minute before the end of each off-cycle period of the sixth test cycle. Condensate mass shall be measured for each test cycle.

Fuel input shall be recorded during the entire test period starting at the beginning of the on-time period of the first cycle to the beginning of the on-time period of the second cycle, etc., for each of the test cycles. Fuel higher heating value (HHV), temperature and pressures necessary for determining fuel energy input (Q_c) shall be recorded. The fuel quantity and HHV shall be measured with errors no greater than one percent. Determine the mass of condensate for each cycle (m_c) in pounds. If at the end of three cycles, the sample standard deviation is within 20% of the mean value for 3 cycles use total condensate collected in the three cycles as m_c, if not, continue collection for an additional three cycles and use the total condensate collected for the six cycles as m_c. Determine the fuel energy input during the three or six test cycles (Q_c) expressed in Btu.

Begin a steady-state condensate collection after steady-state conditions have been achieved as specified in section 8 of ANSI/ASHRAE 103–82 and section 2 of this appendix. The steady-state collection period shall be 30 minutes. Condensate mass shall be measured immediately at the end of the collection period to prevent evaporation loss from the sample. Fuel input shall be recorded for the one hour steady-state test period. Fuel Higher Heating Value (HHV), temperature and pressures necessary for determining fuel energy input $Q_{C.ss}$ will be observed and recorded in Btu's. The fuel quantity and HHV shall be measured with errors no greater than one percent. Determine the mass of condensate for the steady-state test, $m_{C.ss}$, in pounds by subtracting the tare container weight from the total container and condensate weight measured at the end of the 30 minutes test period.

3.7 *Direct measurement of off-cycle losses testing method.* Reserved.

3.8 *Direct measurement of the S/F factors for oil furnaces and boilers.* For oil furnaces and boilers that are marketed and sold with attached barometric dampers, the S/F factor shall be determined either by using assigned factors in Table 2 of ANSI/ASHRAE 103–82 or by the following test procedure:

To directly measure the S/F factor, seal the barometric damper plate in the closed position. Operate the furnace or boiler until steady-state temperatures are attained. Adjust the draft in the flue within one foot of the heat exchanger exit to be between 0.075 and 0.085 inch water column. A mechanical draft inducer or a natural draft developed by adjusting the height of the test stack may be used. Remove the seal from the barometric damper and adjust the damper gate to achieve proper draft, as specified by the manufacturer. If the draft over the fire is specified as a range, adjust the draft to the mid-point of that range.

After steady-state conditions are again achieved with the draft adjusted as specified, measure CO_2 before and after dilution at points marked A and B in Figure 2 of this appendix. To ensure that the sample is well mixed after dilution obtain a representative sample of stack gas by sampling from several points on a horizontal plane through the cross section of the stack. The test setup shown in Figure 2 enhances the mixing of dilution air and flue gases. Alternatively, a straight length of stack or other flue piping arrangement may be used with stack samples taken sufficiently downstream after dilution in order to obtain a well-mixed sample.

3.9 *Furnaces and boilers that includes small air passages in the flue.* For furnaces and boilers that includes small air passages in the flue where such passage serves a utility other than for draft relief, the air passage shall be open during all tests and the test data shall be reduced as specified in section 4 of this appendix.

These units shall be considered as direct exhaust systems, for the purposes of this test procedure. These provisions shall not apply to systems which allow for air flow through the air passage in excess of 10 percent of maximum steady state total flue flow; in these cases, such passages are to be considered as draft diverters or draft hoods.

4.0 *Calculations.* Calculations shall be as specified in section 11 of ANSI/ASHRAE 103–82 with the exception of section 11.2.6, and the inclusion of the following additional calculations:

4.1 *Annual fuel utilization efficiency for electric furnaces and boilers.* The annual fuel utilization efficiency for electric furnaces and boilers (AFUE) is equal to the heating seasonal efficiency for electric furnaces and boilers ($Effy_{hs-e}$) as defined in section 11.1 of ANSI/ASHRAE 103–82.

4.2. *Average ratio of stack gas mass flow rate to flue gas mass flow rate at steady-state operation.* The following paragraphs are in place of the requirements specified in section 11.2.6 of ANSI/ASHRAE 103–82:

For gas furnaces and boilers with integral draft diverters, calculate the average ratio of stack gas mass flow rate to flue gas mass flow rate at steady-state operation (S/F) defined as:

$$S/F = 1.3\ R_{T.S}/R_{T.F}$$

where:

$R_{T.S}$ = as defined in 11.2.3 of ANSI/ASHRAE 103–82

$R_{T.F}$ = as defined in 11.2.2 of ANSI/ASHRAE 103–82

For gas furnaces and boilers equipped with draft hoods determine the S/F by the method set out above or use the assigned value of 2.4. This alternative method may be used until 24 months from the effective date of the amendment. After that date, the assigned value may not be used and only the method set out above may be used.

For oil furnaces and boilers, S/F shall be 1.40 for units not shipped with barometric

dampers or for units shipped with barometric dampers, S/F shall be either 1.40 or determined by:

$S/F = R_{T.S}/R_{T.F}$

where:

$R_{T.S}$ = as defined in 11.2.3 of ANSI/ASHRAE 103–82 in which the value of CO_2 measured in the stack in 3.8 of this appendix is used

$R_{T.F}$ = as defined in 11.2.2 of ANSI/ASHRAE 103–82 in which the value of CO_2 measured in the flue in 3.8 of this appendix is used

4.3 *Optional direct condensate measurement method.* For condensing furnaces and boilers for which the direct measurement of condensate is used, as specified in section 3.6 of this appendix, calculate the part-load efficiency (η_u) and the steady-state efficiency (η_{ss}) expressed as a percent and defined as:

$\eta_u = Effy_{ss} + L_G - L_C$

$\eta_{ss} = Effy_{ss} + L_{G.ss} - L_{C.ss}$

where:

$Effy_{ss}$ = heating seasonal efficiency for non-condensing furnaces and boilers, as defined in 11.2.34 of ANSI/ASHRAE 103–82

L_G = latent heat gain under part-load conditions, as defined in 4.3.1 of this appendix

L_C = part-load heat loss due to the condensate going down the drain and corrected for the fact that the condensate did not go up the flue as heated vapor, as was assumed in determining $L_{G.ss.A}$, as defined in 4.3.2 of this appendix

$Effy_{ss}$ = steady-state efficiency for non-condensing furnaces and boilers, as defined in 11.2.5 of ANSI/ASHRAE 103–82

$L_{G.ss}$ = latent heat gain under steady-state conditions, as defined in 4.3.3 of this appendix

$L_{C.ss}$ = steady-state heat loss due to the condensate going down the drain and corrected for the fact that the condensate did not go up the flue as heated vapor, as was assumed in determining $L_{G.ss.A}$, as defined in 4.3.4 of this appendix

4.3.1 *Latent heat gain under part-load conditions.* Calculate the latent heat gain under part-load conditions (L_G) expressed as a percent and defined as:

$L_G = 100(1053.3)\, m_c/Q_c$

where:

100 = conversion factor to express a decimal as a percent

1053.3 = latent heat vaporization of water, Btu per pound

m_c = as defined in 3.6 of this appendix

Q_c = as defined in 3.6 of this appendix

4.3.2 *Part-load heat loss due to the condensate.* Calculate the part-load heat loss due to the condensate going down the drain and corrected for the fact that the condensate did not go up the flue as heated vapor, as was assumed in determining $L_{G.ss.A}$ (L_C) expressed as a percent and defined as:

$L_C = L_G[1.0(T_{F.ss} - 70) - 0.45(T_{F.ss} - 42)]/1053.3$

where:

L_G = as defined in 4.3.1 of this appendix

1.0 = specific heat of water (liquid), Btu per pound – °F

$T_{F.ss}$ = as defined in 11.2.4 of ANSI/ASHRAE 103–82

70 = assumed average indoor air temperature, °F

0.45 = specific heat of water vapor, Btu per pound – °F

42 = average outdoor temperature corresponding to 5,200 degree day location, °F

1053.3 – Latent heat of vaporization of water, Btu per pound

4.3.3 *Latent heat gain under steady-state conditions.* Calculate the latent heat gain under steady-state conditions ($L_{G.ss}$) expressed as a percent and defined as:

$L_{G.ss} = 100(1053.3)m_{C.ss}/Q_{C.ss}$

where:

100 = conversion factor to express a decimal as a percent

1053.3 = latent heat of vaporization of water, Btu per pound

$m_{C.ss}$ = as defined in 3.6 of this appendix, pound

$Q_{C.ss}$ = as defined in 3.6 of this appendix, Btu

4.3.4 *Steady-state heat loss due to the condensate.* Calculate the steady-state heat loss due to the condensate going down the drain ($L_{C.ss}$) expressed as a percent and defined as:

$L_{C.ss} = L_{G.ss}[1.0(T_{F.ss} - 70) - 0.45(T_{F.ss} - 42]/1053.3$

where:

$L_{G.ss}$ = as defined in 4.3.3 of this appendix

1.0 = specific heat of water (liquid), Btu per pound – ° F

$T_{F.ss}$ = as defined in 11.2.4 of ANSI/ASHRAE 103–82

70 = assumed average indoor air temperature, ° F

0.45 = specific heat of water vapor, Btu per pound – ° F

42 = average outdoor temperature corresponding to 5200 degree day location, ° F

1053.3 = latent heat of vaporization of water, Btu per pound

4.4 *Direct determination of off-cycle losses for furnaces and boilers equipped with stack dampers.* Reserved

4.5 *Modulating controls.*

4.5.1 *Weighted-average part-load utilization efficiency.* For furnaces and boilers equipped with two stage thermostats, calculate the weighted-average part-load utilization efficiency at each design heating requirement ($\eta_{U.WT}$) expressed as a percent and defined as:

$\eta_{U.WT} = X_1\eta_{U.RED} + X_2\eta_{U.MAX}$

where:

X_1 = fraction of heating load at reduced operating mode, as defined in 4.5.2 of this appendix

$\eta_{U.RED}$ = the part-load efficiency at the reduced fuel input rate and is defined as the heating seasonal efficiency ($Effy_{ss}$) in 11.2.34 of ANSI/ASHRAE 103–82, measured at the reduced fuel input rate and calculated by using the appropriate on and off times as specified from Table 2 of this appendix

X_2 = fraction of heating load at maximum operating mode, as defined in 4.5.3 of this appendix

$\eta_{U.MAX}$ = the part-load efficiency at the maximum fuel input rate and is defined as the heating seasonal efficiency ($Effy_{ss}$) in 11.2.34 of ANSI/ASHRAE 103–82, measured at the maximum fuel input rate and calculated by using the appropriate on and off times as specified from Table 2 of this appendix

For furnaces and boilers equipped with step-modulating thermostats, calculate $\eta_{U.WT}$ expressed as a percent and defined as:

$\eta_{U.WT} = X_1\,\eta_{U.RED} + X_2\,\eta_{U.MOD}$

where:

X_1 = as defined in 4.5.2 of this appendix

$\eta_{U.RED}$ = as defined in 4.5.1 of this appendix

X_2 = as defined in 4.5.3 of this appendix

$\eta_{U.MOD}$ = average part-load efficiency for the modulating mode, as defined in 4.5.8 of this appendix

4.5.2 *Fraction of heating load at reduced operating mode.* Determine the fraction of heating load at the reduced operating mode (X_1) expressed as a decimal and listed in either Figure 4 or Table 3 of this appendix for appropriate values of the balance point temperature (T_C). T_C is defined in section 4.5.4 of this appendix.

4.5.3 *Fraction of heating load at maximum operating mode.* Determine the fraction of heating load at the maximum operating mode (X_2) expressed as a decimal and listed in either Figure 4 or Table 3 of this appendix for appropriate values of the balance point temperature (T_C).

4.5.4 *Balance point temperature.* Calculate the balance point temperature (T_C) which represents a temperature used to apportion the annual heating load between the reduced input cycling mode and either the modulation mode or maximum input cycling mode. T_C is defined as:

$T_C = 65 - [\Delta T_D(1 + \alpha_{DHR})\,[Q_{OUT.RED}/Q_{OUT.MAX}]]$

where:

65 = average outdoor temperature at which a furnace or boiler starts operating, °F

ΔT_D = the difference between the outdoor air temperature where heating is typically required and the outdoor design temperature, the national average temperature difference is 65° F – 5° F or 60° F

5 = outdoor design temperature

α_{DHR} = oversize factor at each design heating requirement, as defined in 4.5.5 of this appendix

$Q_{OUT.RED}$ = heat output rate at the reduced fuel input rate, as defined in 4.5.6 of this appendix

$Q_{OUT.MAX}$ = heat output rate at the maximum fuel input rate, as defined in 4.5.7 of this appendix

4.5.5 *Oversize factor at each design heating requirement.* Calculate the oversize factor at each design heating requirement (α_{DHR}) expressed as a decimal and defined as:

$\alpha_{DHR} = [Q_{OUT.MAX}/DHR] - 1$

where:

$Q_{OUT.MAX}$ = as defined in 4.5.7 of this appendix

DHR = typical design heating requirements, as listed in Table 1 of this appendix

4.5.6 *Heat output rate at the reduced fuel input rate.* Calculate the heat output rate at the reduced fuel input rate ($Q_{OUT.RED}$) defined as:

$$Q_{OUT.RED} = \eta_{SS.RED} Q_{IN.RED}$$

where:

$\eta_{SS.RED}$ = steady-state efficiency at the reduced fuel input rate and is defined as the steady-state efficiency ($Effy_{SS}$) in 11.2.5 of ANSI/ASHRAE 103–82, measured at the reduced fuel input rate

$Q_{IN.RED}$ = the reduced fuel input rate and is defined as Q_{IN} in 11.2.34 of ANSI/ASHRAE 103–82, measured at the reduced fuel input rate

4.5.7 *Heat output rate at the maximum fuel input rate.* Calculate the heat output rate at the maximum fuel input rate ($Q_{OUT.MAX}$) defined as:

$$Q_{OUT.MAX} = \eta_{SS.MAX} Q_{IN.MAX}$$

where:

$\eta_{SS.MAX}$ = steady-state efficiency at the maximum fuel input rate and is defined as the steady-state efficiency ($Effy_{SS}$) in 11.2.5 of ANSI/ASHRAE 103–82, measured at the maximum fuel input rate

$Q_{IN.MAX}$ = the maximum fuel input rate and is defined as $_{IN}$ in 11.2.34 of ANSI/ASHRAE 103–82

4.5.8 *Average part-load efficiency for the modulating mode for furnaces and boilers equipped with step-modulating thermostats.*

For furnaces and boilers equipped with step-modulating thermostats and are located in heated spaces, calculate the average part-load efficiency for the modulating mode ($\eta_{U.MOD}$) expressed as a percent and defined as:

$$\eta_{U.MOD} = \eta_{SS.MOD} - L_{I.ON.\ MOD}$$

where:

$\eta_{SS.MOD}$ = average steady-state efficiency for the modulating mode as defined in 4.5.9 of this appendix

$L_{I.ON.MOD}$ = average on-cycle infiltration heat loss for the modulating mode as defined in 4.5.10 of this appendix

For furnaces and boilers equipped with step-modulating thermostats and are located outside or are in unheated spaces, calculate $\eta_{U.MOD}$ defined as:

$$\eta_{U.MOD} = \eta_{SS.MOD} - C_J L_L$$

where:

$\eta_{SS.MOD}$ = as defined in 4.5.9 of this appendix

C_J = as defined in 4.6 of this appendix

L_J = as defined in 4.6 of this appendix

4.5.9 *Average steady-state efficiency for the modulating mode for furnaces and boilers equipped with step-modulating thermostats.* For furnaces and boilers equipped with step-modulating thermostats, calculate the average steady-state efficiency for the modulating mode ($\eta_{SS.MOD}$) expressed as a percent and defined as:

$$\eta_{SS-MOD} = \left[\frac{DHR - Q_{OUT.RED}}{Q_{OUT.MAX} - Q_{OUT.RED}}\right]\left[\frac{T_C - T_{OA'}}{T_C - 5}\right]\left[\eta_{SS.MAX} - \eta_{SS.ED}\right] + \eta_{SS.RED}$$

where:

DHR = average design heating requirement as listed in Table 1 of this appendix

$Q_{OUT.RED}$ = as defined in 4.5.6 of this appendix

$Q_{OUT.MAX}$ = as defined in 4.5.7 of this appendix

T_C = as defined in 4.5.4 of this appendix and is based on the average design heating requirement listed in Table 3 of this appendix

$T_{OA'}$ = average outdoor air temperature during the modulating mode, as defined in 4.5.1 of this appendix and is based on the average design heating requirement listed in Table 3 of this appendix

5 = outdoor design temperature, °F

$\eta_{SS.MAX}$ = as defined in 4.5.7 of this appendix

$\eta_{SS.RED}$ = as defined in 4.5.6 of this appendix

4.5.10 *Average on-cycle infiltration heat loss for the modulating mode for furnaces and boilers equipped with step-modulating thermostats.* For furnaces and boilers equipped with step-modulating thermostats, calculate the average on-cycle infiltration heat loss for the modulating mode ($L_{I.ON.MOD}$) expressed as a percent and defined as:

$$L_{I.ON.MOD} = [K_{I.ON.RED}(70 - T_{OA}) + K_{I.ON.MAX}(70 - T_{OA'})]/2$$

where:

$K_{I.ON.RED}$ = multiplication factor for infiltration loss during burner on-cycle at the reduced firing rate, and defined as $K_{I.ON}$ in 11.2.18 of ANSI/ASHRAE 103–82 at the reduced firing rate

70 = average indoor temperature, °F

T_{OA} = average outdoor temperature in the cycling mode, based on the average design heating requirement, and is listed in either Figure 3 or Table 2 of this appendix

$K_{I.ON.MAX}$ = multiplication factor for infiltration loss during burner on-cycle at the maximum firing rate, and defined as $K_{I.ON}$ in 11.2.18 of ANSI/ASHRAE 103–82 at the maximum firing rate

$T_{OA'}$ = average outdoor temperature in the modulating mode, based on the average design heating requirement, and is listed in either Figure 3 or Table 3 of this appendix

4.5.11 *Average heat output rate for the modulating mode for furnaces and boilers equipped with step-modulating thermostats.* For furnaces and boilers equipped with step-modulating thermostats, calculate the average heat output rate for the modulating mode ($Q_{OUT.MOD}$) defined as:

$$Q_{OUT.MOD} = [(DHR - Q_{OUT.RED})[T_C - T_{OA'}]/[T_C - 5]] + Q_{OUT.RED}$$

where:

DHR = average design heating requirement, as listed in Table 1 of this appendix

$Q_{OUT.RED}$ = as defined in 4.5.6 of this appendix

T_C = as defined in 4.5.4 of this appendix and is based on the average design heating requirement listed in Table 3 of this appendix

$T_{OA'}$ = as defined in 4.5.10 of this appendix and is based on the average design heating requirement listed in Table 3 of this appendix

5 = outdoor design temperature, °F

4.5.12 *Average fuel input rate for the modulating mode for furnaces and boilers equipped with step-modulating thermostats.* For furnaces and boilers equipped with step-modulating thermostats, calculate the average fuel input rate for the modulating mode ($Q_{IN.MOD}$) defined as:

$$Q_{IN.MOD} = Q_{OUT.MOD} / \eta_{SS.MOD}$$

where:

$Q_{OUT.MOD}$ = as defined in 4.5.11 of this appendix

$\eta_{SS.MOD}$ = as defined in 4.5.9 of this appendix

4.5.13 *Average outdoor temperature.* For furnaces and boilers equipped with two stage thermostats or with step-modulating thermostats operating at the reduced operating mode, the average outdoor temperature shall be T_{OA}, as obtained either from Figure 3 or Table 3 of this appendix. For furnaces and boilers equipped with two stage thermostats operating at the maximum operating mode or with step-modulating thermostats operating at the modulating mode, the average outdoor temperature shall be $T_{OA'}$, as obtained from either Figure 3 or Table 3 of this appendix. These values for the average outdoor temperature shall replace the value of 42 specified as the average outdoor temperature in sections 11.2.15, 11.2.17, 11.2.19, 11.2.30, 11.2.31, and 11.2.33 of ANSI/ASHRAE 103–82.

4.5.14 *Weighted-average steady-state efficiency.* For furnaces and boilers equipped with two stage thermostats, calculate the weighted-average steady-state efficiency ($\eta_{SS.WT}$) expressed as a percent and defined as:

$$\eta_{SS.WT} = X_2 \eta_{SS.MAX} + X_1 \eta_{SS.RED}$$

where:

X_1 = as defined in 4.5.2 of this appendix

$\eta_{SS.MAX}$ = as defined in 4.5.7 of this appendix

X_2 = as defined in 4.5.3 of this appendix

$\eta_{SS.RED}$ = as defined in 4.5.6 of this appendix

For furnaces and boilers equipped with step-modulating thermostats, calculate $\eta_{SS.WT}$ defined as:

$$\eta_{SS.WT} = X_2 \eta_{SS.MOD} + X_1 \eta_{SS.RED}$$

where:

X_1 = as defined in 4.5.2 of this appendix

$\eta_{SS.MOD}$ = as defined in 4.5.9 of this appendix

X_2 = as defined in 4.5.3 of this appendix

$\eta_{SS.RED}$ = as defined in 4.5.6 of this appendix

4.6 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) shall be expressed as a percent and defined as:

$$AFUE = \frac{5200 \eta_{SS} \eta_U Q_{IN}}{5200 \eta_{SS} Q_{IN} + 2.5(1 + 0.7)(4600) \eta_U Q_P}$$

where:

5200 = average annual heating degree-days

η_{SS} as defined in 4.3 of this appendix for condensing furnaces and boilers measured by the optional direct condensate measurement method; as

$\eta_{ss.WT}$ as defined in 4.5.14 of this appendix at each design heating requirement for modulating furnaces and boilers; or as $Effy_{ss}$ as defined in 11.2.5 of ANSI/ASHRAE 103–82 for all other furnaces and boilers

η_U = as defined in 4.3 of this appendix for condensing furnaces and boilers measured by the optional direct condensate measurement method; as $\eta_{U.WT}$ as defined in 4.5.1 of this appendix at each design heating requirement for modulating furnaces and boilers; or as $Effy_{hs}$ as defined in 11.2.34 of ANSI/ASHRAE 103–82 and in 4.2 of this appendix for all other furnaces and boilers except that C_j and L_j are defined as:

C_j =
- 0 for furnaces or boilers intended to be installed indoors
- 3.3 for furnaces intended to be installed outdoors
- 1.7 for furnaces intended to be installed as isolated combustion systems
- 4.7 for boilers intended to be installed outdoors
- 2.4 for boilers intended to be installed as isolated combustion systems

L_j = jacket loss and is either assigned the value of 1 percent or determined in accordance with 8.6 of ANSI/ASHRAE 103–82 in percent

Q_{IN} = steady-state heat input as defined in 11.2.34 of ANSI/ASHHRAE 103–82

0.7 = average oversizing factor for furnaces and boilers

4600 = average non-heating season hours per year

Q_P = pilot flame fuel input rate as defined in 9.2 of ANSI/ASHRAE 103–82

4.7 *National average number of burner operating hours.* For furnaces and boilers equipped with single stage thermostats, calculate the national average number of burner operating hours (BOH_{ss}) defined as:

$BOH_{ss} = 2080(0.77)A\ DHR - 2080\ B$

where:

2080 = national average heating load hours

0.77 = adjustment factor which serves to adjust the calculated design heating requirement and heating load hours to the actual heating load experienced by a heating system

DHR = typical design heating requirements, as listed in Table 1 of this appendix using the proper value of Q_{OUT} where:

$Q_{OUT} = (\eta_{ss}/100 - (K)\ (L_j)/100)\ (Q_{IN})$ rounded off to the nearest 1,000 Btu/hr

where:

η_{ss} as defined in 4.3 of this appendix for condensing furnaces and boilers measured by the optional direct condensate measurement method: as $\eta_{ss.WT}$ as defined in 4.5.14 of this appendix at each design heating requirement for modulating furnaces and boilers; or as $Effy_{ss}$ as defined in 11.2.5 of ANSI/ASHRAE 103–82 for all other furnaces and boilers.

Q_{IN} as defined in 11.2.34 of ANSI/ASHRAE 103–82

K = factor that adjusts jacket losses measured in the laboratory to those that would be measured under outdoor design conditions.
- 0 for furnaces or boilers intended to be installed indoors.
- 1.7 for furnaces or boilers intended to be installed as isolated combustion systems.
- 3.3 for furnaces or boilers intended to be installed outdoors.
- 1.0 for finned tubed boilers intended for installation outdoors.

L_j = jacket loss

$A = 100{,}000/[341{,}300(PE + y\ BE) + (Q_{IN} - Q_P)\eta_U]$

$B = 2\ Q_P \eta_U A/100{,}000$

100,000 = factor that accounts for percent and kBtu

PE = power burner electrical energy input rate at full-load steady-state operation, as defined in 9.1 of ANSI/ASHRAE 103–82

y =
- ratio of average blower or pump on time to average burner on time
- 1, for furnaces without a fan delay
- 1, for boilers without a pump delay
- $1 + (t^+ - t^-)/3.87$, for single stage furnaces with fan delay
- $1 + (t^+ - t^-)/10.00$, for two stage and step modulating furnaces with fan delay
- $1 + (t^+/9.68)$, for single stage boilers with pump delay
- $1 + (t^+/15.00)$, for two stage and step modulating boilers with pump delay

BE = circulating air fan (or circulating water pump) electrical energy input rate at full-load steady-state operation, as defined in 9.1 of ANSI/ASHRAE 103–82

Q_{IN} = as defined in 11.2.34 of ANSI/ASHRAE 103–82

Q_P = as defined in 11.2.34 of ANSI/ASHRAE 103–82

$\eta\mu$ = as defined in 4.6 of this appendix

2 = ratio of the average length of a heating season in hours to the average heating load hours

t^+ = as defined in 3.3 of this appendix

t^- = as defined in 9.3.1 of ANSI/ASHRAE 103–82

For furnaces and boilers equipped with two stage thermostats or step-modulating thermostats, calculate the national average number of burner operating hours at the reduced operating mode (BOH_{RED}) defined as:

$BOH_{RED} = X_1\ E_M/Q_{IN.RED}$

where:

X^1 = as defined in 4.5.2 of this appendix

E_M = average annual energy used during the heating season

$E_M = (Q_{IN.MAX} - Q_P)BOH_{ss} + (8760 - 4600)Q_P$

$Q_{IN.RED}$ = as defined in 4.5.6 of this appendix

$Q_{IN.\ MAX}$ = as defined in 4.5.7 of this appendix

Q_P = as defined in 11.2.34 of ANSI/ASHRAE 103–82

BOH_{ss} = as defined in 4.7 of this appendix in which $\eta_{U.WT}$ replaces η_U for calculating the values of A and B and the term (PE + y BE) in the factor A is increased by the ratio, R. It is defined as:

R =
- 2.3 for two stage controls
- 2.3 for step-modulating controls when the ratio of minimum-to-maximum output is greater than or equal to 0.5
- 3.0 for step modulating controls when the ratio of minimum-to-maximum out is less than 0.5

$A = 100{,}000/[341{,}300(PE + y\ BE)R + (Q_{IN} - Q_P)\eta_U]$

8760 = total number of hours per year

4600 = as defined in 4.6 of this appendix

For furnaces and boilers equipped with two stage thermostats, calculate the national average number of burner operating hours at the maximum operating mode (BOH_{MAX}) defined as:

$BOH_{MAX} = X_2 E_M/Q_{IN.MAX}$

where:

X_2 = as defined in 4.5.3 of this appendix

E_M = as defined in 4.7 of this appendix

$Q_{IN.MAX}$ = as defined in 4.5.7 of this appendix

For furnaces and boilers equipped with step-modulating thermostats, calculate the national average number of burner operating hours in the modulating mode (BOH_{MOD}) defined as:

$BOH_{MOD} = X_2 E_M/Q_{IN.MOD}$

where:

X_2 = as defined in 4.5.3 of this appendix

E_M = as defined in 4.7 of this appendix

$Q_{IN.MOD}$ = as defined in 4.5.12 of this appendix

4.8 *Average annual fuel energy consumption for gas or oil fueled furnaces or boilers.* For furnaces and boilers equipped with single stage thermostats, calculate the average annual fuel energy consumption for gas or oil fueled furnaces or boilers (E_F) expressed in Btu's per year and defined as:

$E_F = BOH(Q_{IN} - Q_P) + 8760\ Q_P$

where:

BOH = as defined in 4.7 of this appendix

Q_{IN} = as defined in 11.2.34 of ANSI/ASHRAE 103–82

Q_P = as defined in 11.2.34 of ANSI/ASHRAE 103–82

8760 = as defined in 4.7 of this appendix

For furnaces and boilers equipped with either two stage thermostats or step-modulating thermostats, calculate E_F as defined as:

$E_F = E_M + 4600\ Q_P$

where:

E_M = as defined in 4.7 of this appendix

4600 = as defined in 4.6 of this appendix

Q_P = as defined in 11.2.34 of ANSI/ASHRAE 103–82

4.9 *Average annual auxiliary electrical energy consumption for gas or oil fueled furnaces or boilers.* For furnaces and boilers equipped with single stage thermostats, calculate the average annual auxiliary electrical energy consumption (E_{AE}) expressed in kilowatt-hours per year and defined as:

$E_{AE} = BOH_{SS}$ (PE + y BE)

where:

BOH_{SS} = as defined in 4.7 of this appendix
PE = as defined in 9.1 of ANSI/ASHRAE 103–82
y = as defined in 4.7 of this appendix
BE = as defined in 9.1 of ANSI/ASHRAE 103–82

For furnaces and boilers equipped with two stage thermostats, calculate E_{AE} defined as:

$E_{AE} = BOH_{RED}$ (PE_{RED} + y BE_{RED}) + BOH_{MAX}(PE_{MAX} + y BE_{MAX})

where:

BOH_{RED} = as defined in 4.7 of this appendix
PE_{RED} = as defined in 9.1 of ANSI/ASHRAE 103–82, measured at the reduced fuel input rate
y = as defined in 4.7 of this appendix
BE_{RED} = as defined in 9.1 of ANSI/ASHRAE 103–82, measured at the reduced fuel input rate
BOH_{MAX} = as defined in 4.7 of this appendix
PE_{MAX} = as defined in 9.1 of ANSI/ASHRAE 103–82, measured at the maximum fuel input rate
BE_{MAX} = as defined in 9.1 of ANSI/ASHRAE 103–82, measured at the maximum fuel input rate

For furnaces and boilers equipped with step-modulating thermostats, calculate E_{AE} defined as:

$E_{AE} = BOH_{RED}$ (PE_{RED} + y BE_{RED}) + BOH_{MOD}(PE_{MAX} + y BE_{MAX})

where:

BOH_{RED} = as defined in 4.7 of this appendix
PE_{RED} = as defined in 4.9 of this appendix
y = as defined in 4.7 of this appendix
BE_{RED} = as defined in 4.9 of this appendix
BOH_{MOD} = as defined in 4.7 of this appendix
PE_{MAX} = as defined in 4.9 of this appendix
BE_{MAX} = as defined in 4.9 of this appendix

4.10 *Average annual electric energy consumption for electric furnaces or boilers.* For electric furnaces and boilers, calculate the average annual electric energy consumption (E_E) expressed in kilowatt-hours per year and defined as:

$E_E = 100(2080)(0.77)$ DHR/3412 AFUE

where:

100 = conversion to express a percent as a decimal
2080 = as defined in 4.7 of this appendix
0.77 = as defined in 4.7 of this appendix
DHR = as defined in 4.7 of this appendix
3.412 = conversion to express energy in terms of watt-hours instead of Btu
AFUE = as defined in 4.1 of this appendix

4.11 *Average annual fuel energy consumption for gas or oil fueled furnaces or boilers located in different geographic regions of the United States and in buildings with different design heating requirements.* For gas or oil fueled furnaces and boilers, calculate the average annual fuel energy consumption for a specific geographic region and for a specific typical design heating requirement (E_{FR}) expressed in Btu's per year and defined as:

$E_{FR} = [(E_T - 8760\ Q_T)HLH/2080] + 8760\ Q_T$

where:

E_T = as defined in 4.8 of this appendix
8760 = as defined in 4.7 of this appendix
Q_T = as defined in 11.2.34 of ANSI/ASHRAE 103–82
HLH = heating load hours for a specific geographic region determined in accordance with the heating load hour map in Figure 1 of this appendix
2080 = as defined in 4.7 of this appendix

4.12 *Average annual auxiliary electrical energy consumption for gas or oil fueled furnaces or boilers located in different geographic regions of the United States and in buildings with different design heating requirements.* For gas or oil fueled furnaces and boilers, calculate the average annual auxiliary electrical energy consumption for a specific geographic region and for a specific typical design heating requirement (E_{AER}) expressed in kilowatt-hours per year and defined as:

$E_{AER} = E_{AE}HLH/2080$

where:

E_{AE} = as defined in 4.9 of this appendix
HLH = as defined in 4.11 of this appendix
2080 = as defined in 4.7 of this appendix

4.13 *Average annual electric energy consumption for electric furnaces or boilers located in different geographic regions of the United States and in buildings with different design heating requirements.* For electric furnaces and boilers, calculate the average annual electric energy consumption for a specific geographic region and for a specific typical design heating requirement (E_{ER}) expressed in kilowatt-hours per year and defined as:

$E_{ER} = 100(0.77)$DHR HLH/3.412 AFUE

where:

100 = as defined in 4.10 of this appendix
0.77 = as defined in 4.7 of this appendix
DHR = as defined in 4.7 of this appendix
HLH = as defined in 4.11 of this appendix
3.412 = as defined in 4.10 of this appendix
AFUE = as defined in 4.1 of this appendix

4.14 *Energy factor.* For electric furnaces and boilers, the energy factor (EF) is equal to AFUE, as defined in section 4.1 of this appendix. For gas and oil furnaces and boilers, calculate EF as defined as:

$EF = \eta_U[E_T - 4600\ Q_T]/[E_T + 3412\ E_{AE}]$

where:

η_U = as defined in 4.6 of this appendix
E_T = as defined in 4.8 of this appendix
4600 = as defined in 4.6 of this appendix
Q_T = as defined in 11.2.34 of ANSI/ASHRAE 103–82
3412 = as defined in 4.10 of this appendix
E_{AE} = as defined in 4.9 of this appendix

TABLE 1.—AVERAGE AND TYPICAL DESIGN HEATING REQUIREMENTS FOR FURNACES AND BOILERS WITH DIFFERENT OUTPUT CAPACITIES

Furnace or boiler output capacity, Q_{out} (Btu/hr)	Average design heating requirements (KBtu/hr)	Typical design heating requirements (KBtu/hr)
5,000–10,000	5	5
11,000–16,000	10	5, 10
17,000–25,000	15	10, 15
26,000–34,000	20	15, 20
35,000–42,000	25	20, 25, 30
43,000–51,000	30	25, 30, 35
52,000–59,000	35	30, 35, 40, 45
60,000–76,000	40	35, 40, 45, 50
77,000–93,000	50	40, 45, 50, 60
94,000–110,000	60	50, 60, 70, 80
111,000–127,000	70	60, 70, 80, 90
128,000–144,000	80	70, 80, 90, 100
145,000–161,000	90	80, 90, 100, 110, 120
162,000–178,000	100	90, 100, 110, 120, 130
179,000–195,000	110	100, 110, 120, 130, 140
over 196,000	120	120, 130, 140, 150, 160

TABLE 2.—AVERAGE BURNER ON-TIME AND OFF-TIME PER CYCLE FOR FURNACES AND BOILERS (MINUTES)

Thermostat type	Furnaces		Boilers	
	t_{on}	t_{off}	t_{on}	t_{off}
Single stage	3.87	13.3	9.68	33.26
Two stage	10.0	10.0	15.0	15.0
Step modulating	10.0	10.0	15.0	15.0

TABLE 3.—FRACTIONAL HEATING LOADS AND AVERAGE OUTDOOR TEMPERATURES FOR FURNACES AND BOILERS EQUIPPED WITH MODULATING CONTROLS

Balance point temperature range (° F)	Fractional heating load		Average outdoor temperature (° F)	
	Reduced rate	Modulating or maximum rate	Reduced rate	Modulating or maximum rate
(T_C)	(X_1)	(X_2)	(T_{OA})	(T_{OA}*)
6 to 15	0.95	0.05	41	9
16 to 20	0.90	0.10	42	14
21 to 25	0.84	0.16	43	18
26 to 28	0.77	0.23	44	22
29 to 31	0.70	0.30	45	24
32 to 33	0.66	0.34	46	26
34 to 35	0.60	0.40	47	27
36 to 37	0.54	0.46	48	28
38 to 39	0.48	0.52	48	30
40 to 41	0.42	0.58	49	31
42 to 43	0.35	0.65	50	32
44 to 45	0.29	0.71	51	33
46 to 47	0.23	0.77	52	35
48 to 49	0.18	0.82	54	36
50 to 52	0.12	0.88	55	37
53 to 57	0.07	0.92	56	39
58 to 62	0.02	0.98	61	40

NOTE.—This table is based on national average 5,200 degree-days.

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FIGURE I

Heating Load Hours (HLH) for the United States and Territories

This map is reasonably accurate for most parts of the United States but is necessarily highly generalized and consequently not too accurate in mountainous regions, particularly in the Rockies.

Alaska — 3500 HLH
Hawaii and Territories — 0 HLH

FIGURE 2

Test Setup for Measuring S/F for Furnaces and Boilers with Barometric Draft Controls

Note: Dimensions are suggested minimums in inches and may be varied to assure well-mixed samples of gases.

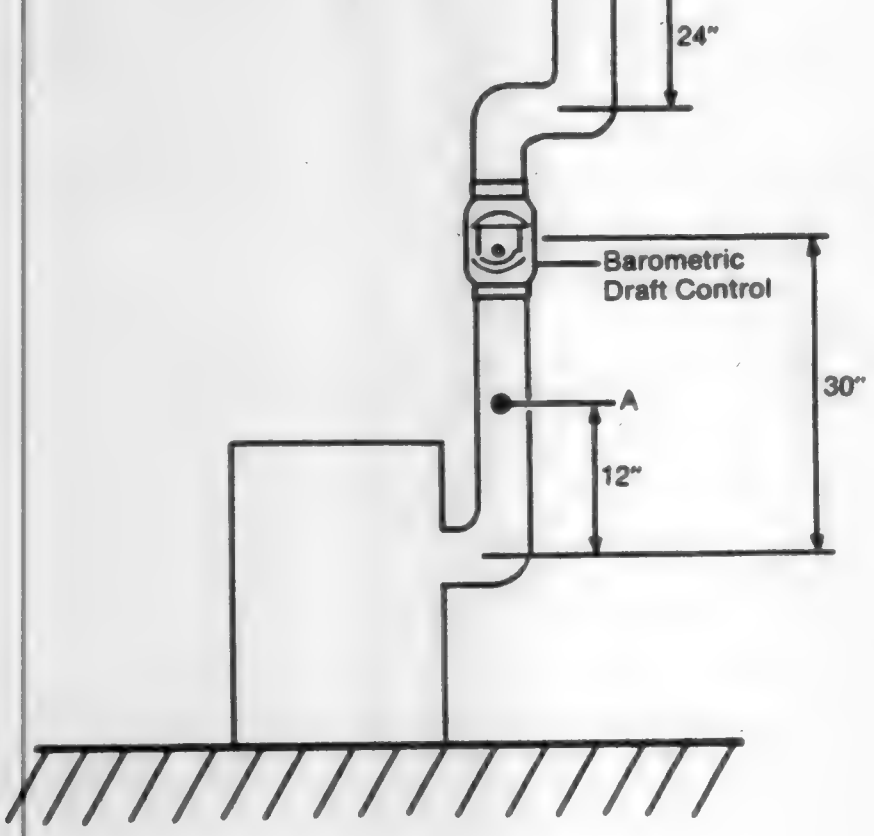

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FIGURE 3

Average Outdoor Air Temperature vs. Balance Point Temperature for Modulating Furnaces and Boilers

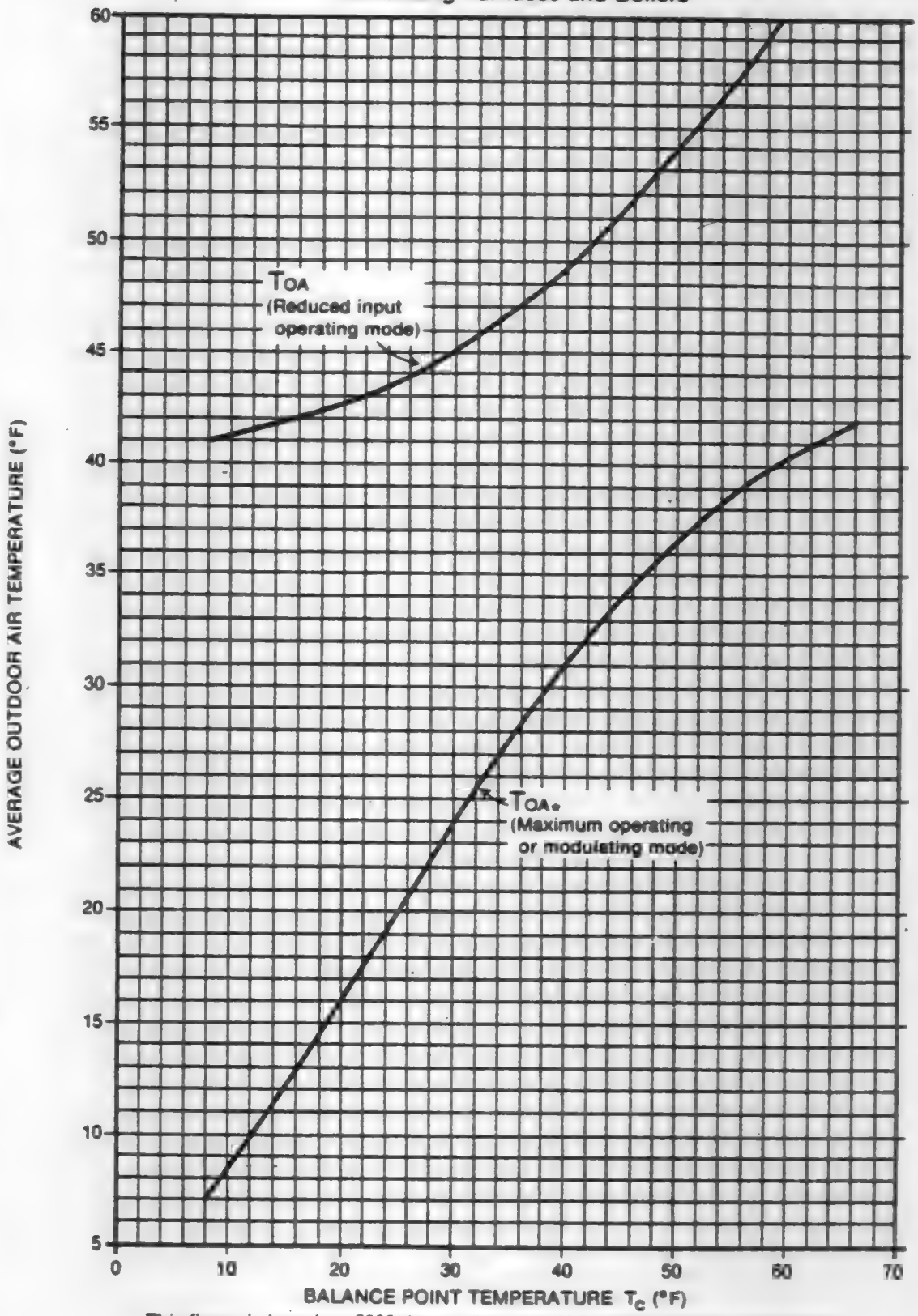

This figure is based on 5200 degree-days and 5°F outdoor design temperature.

FIGURE 4

Fraction of Total Annual Heating Load Applicable to Reduced Operating Mode (X_1) and to Maximum Operating Mode or Modulating Mode (X_2) vs. Balance Point Temperature for Modulating Furnaces and Boilers.

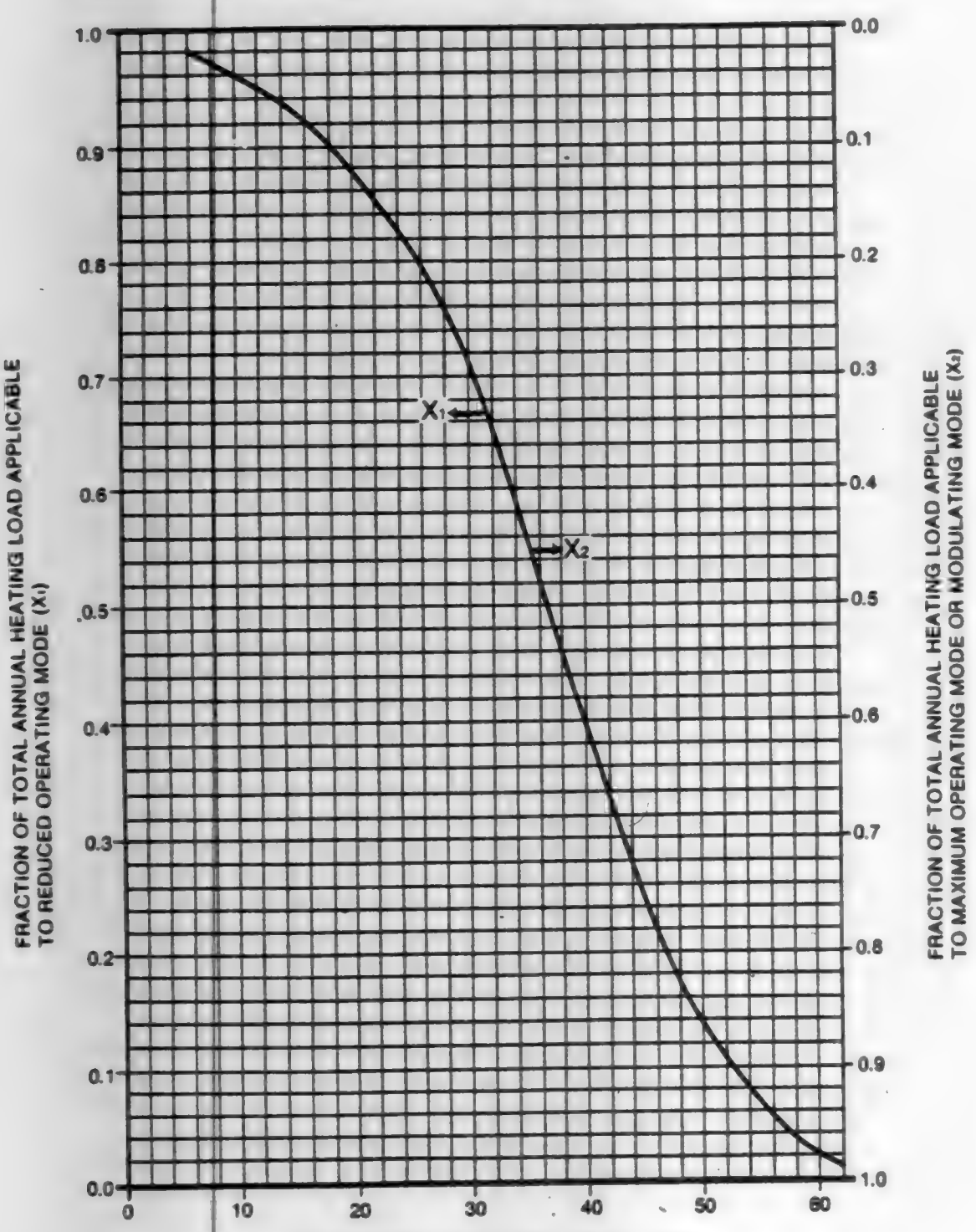

This figure is based on 5200 degree-days and 5°F outdoor design temperature.

BILLING CODE 6450-01-C

5. Appendix O to Subpart B of Part 430 is revised to read as follows:

Appendix O to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment

1.0 *Definitions.*

1.1 "Air shutter" means an adjustable device for varying the size of the primary air inlet(s) to the combustion chamber power burner.

1.2 "Air tube" means a tube which carries combustion air from the burner fan to the burner nozzle for combustion.

1.3 "Barometic draft regulator or barometric damper" means a mechanical device designed to maintain a constant draft in a vented heater.

1.4 "Draft hood" means an external device which performs the same function as an integral draft diverter, as defined in section 1.17 of this appendix.

1.5 "Electro-mechanical stack damper" means a type of stack damper which is operated by electrical and/or mechanical means.

1.6 "Excess air" means air which passes through the combustion chamber and the vented heater flues in excess of that which is theoretically required for complete combustion.

1.7 "Flue" means a conduit between the flue outlet of a vented heater and the integral draft diverter, draft hood, barometric damper or vent terminal through which the flue gases pass prior to the point of draft relief.

1.8 "Flue damper" means a device installed between the furnace and the integral draft diverter, draft hood, barometric draft regulator, or vent terminal which is not equipped with a draft control device, designed to open the venting system when the appliance is in operation and to close the venting system when the appliance is in a standby condition.

1.9 "Flue gases" means reaction products resulting from the combustion of a fuel with the oxygen of the air, including the inerts and any excess air.

1.10 "Flue losses" means the sum of sensible and latent heat losses above room temperature of the flue gases leaving a vented heater.

1.11 "Flue outlet" means the opening provided in a vented heater for the exhaust of the flue gases from the combustion chamber.

1.12 "Heat input" (Q_{in}) means the rate of energy supplied in a fuel to a vented heater operating under steady-state conditions, expressed in Btu's per hour. It includes any input energy to the pilot light and is obtained by multiplying the measured rate of fuel consumption by the measured higher heating value of the fuel.

1.13 "Heating capacity" (Q_{out}) means the rate of useful heat output from a vented heater, operating under steady-state conditions, expressed in Btu's per hour. For room and wall heaters, it is obtained by multiplying the "heat input" (Q_{in}) by the steady-state efficency (η_{ss}) divided by 100. For floor furnaces, it is obtained by multiplying (A) the "heat input" (Q_{in}) by (B) the steady-state efficiency divided by 100, minus the quantity (2.8) (L_j) divided by 100, where L_j is the jacket loss as determined in section 3.2 of this appendix.

1.14 "Higher heating value" (HHV) means the heat produced per unit of fuel when complete combustion takes place at constant pressure and the products of combustion are cooled to the initial temperature of the fuel and air and when the water vapor formed during combustion is condensed. The higher heating value is usually expressed in Btu's per pound, Btu's per cubic foot for gaseous fuel, or Btu's per gallon for liquid fuel.

1.15 "Induced draft" means a method of drawing air into the combustion chamber by mechanical means.

1.16 "Infiltration parameter" means that portion of unconditioned outside air drawn into the heated space as a consequence of loss of conditioned air through the exhaust system of a vented heater.

1.17 "Integral draft diverter" means a device which is an integral part of a vented heater, designed to: (1) Provide for the exhaust of the products of combustion in the event of no draft, back draft, or stoppage beyond the draft diverter, (2) prevent a back draft from entering the vented heater, and (3) neutralize the stack action of the chimney or gas vent upon the operation of the vented heater.

1.18 "Manually controlled vented heaters" means either gas or oil fueled vented heaters equipped without thermostats.

1.19 "Modulating control" means either a step-modulating or two-stage control.

1.20 "Power burner" means a vented heater burner which supplies air for combustion at a pressure exceeding atmospheric pressure, or a burner which depends on the draft induced by a fan incorporated in the furnace for proper operation.

1.21 "Reduced heat input rate" means the factory adjusted lowest reduced heat input rate for vented home heating equipment equipped with either two stage thermostats or step-modulating thermostats.

1.22 "Single stage thermostat" means a thermostat that cycles a burner at the maximum heat input rate and off.

1.23 "Stack" means the portion of the exhaust system downstream of the integral draft diverter, draft hood or barometric draft regulator.

1.24 "Stack damper" means a device installed downstream of the integral draft diverter, draft hood, or barometric draft regulator, designed to open the venting system when the appliance is in operation and to close off the venting system when the appliance is in the standby condition.

1.25 "Stack gases" means the flue gases combined with dilution air that enters at the integral draft diverter, draft hood or barometric draft regulator.

1.26 "Steady-state conditions for vented home heating equipment" means equilibrium conditions as indicated by temperature variations of not more than 5° F (2.8C) in the flue gas temperature for units equipped with draft hoods, barometric draft regulators or direct vent systems, in three successive readings taken 15 minutes apart or not more than 3° F (1.7C) in the stack gas temperature for units equipped with integral draft diverters in three successive readings taken 15 minutes apart.

1.27 "Step-modulating control" means a control that either cycles off and on at the low input if the heating load is light, or gradually, increases the heat input to meet any higher heating load that cannot be met with the low firing rate.

1.28 "Thermal stack damper" means a type of stack damper which is dependent for operation exclusively upon the direct conversion of thermal energy of the stack gases into movement of the damper plate.

1.29 "Two stage control" means a control that either cycles a burner at the reduced heat input rate and off or cycles a burner at the maximum heat input rate and off.

1.30 "Vaporizing-type oil burner" means a device with an oil vaporizing bowl or other receptacle designed to operate by vaporizing liquid fuel oil by the heat of combustion and mixing the vaporized fuel with air.

1.31 "Vent/air intake terminal" means a device which is located on the outside of a building and is connected to a vented heater by a system of conduits. It is composed of an air intake terminal through which the air for combustion is taken from the outside atmosphere and a vent terminal from which flue gases are discharged.

1.32 "Vent limiter" means a device which limits the flow of air from the atmospheric diaphragm chamber of a gas pressure regulator to the atmosphere. A vent limiter may be a limiting orifice or other limiting device.

1.33 "Vent pipe" means the passages and conduits in a direct vent system through which gases pass from the combustion chamber to the outdoor air.

2.0 *Testing conditions.*

2.1 *Installation of test unit.*

2.1.1 *Vented wall furnaces (including direct vent systems).* Install gas fueled vented wall furnaces for test as specified in sections 2.1.3 and 2.1.4 of ANSI Z21.49–1975. Install gas fueled wall furnaces with direct vent systems for test as described in sections 2.1.3 and 2.1.4 of ANSI Z21.44–1973. Install oil fueled vented wall furnaces as specified in UL–730–1974, section 33. Install oil fueled vented wall furnaces with direct vent systems as specified in UL–730–1974, section 34.

2.1.2 *Vented floor furnaces.* Install vented floor furnaces for test as specified in sections 35.1 through 35.5 of UL–729–1976.

2.1.3 *Vented room heaters.* Install in accordance with manufacturer's instructions.

2.2 *Flue and stack requirements.*

2.2.1 *Gas fueled vented home heating equipment employing integral draft diverters and draft hoods (excluding direct vent systems).* Attach to, and vertically above the outlet of gas fueled vented home heating equipment employing draft diverters or draft hoods with vertically discharging outlets, a five (5) foot long test stack having a cross sectional area the same size as the draft diverter outlet.

Attach to the outlet of vented heaters having a horizontally discharging draft diverter or draft hood outlet a 90 degree elbow, and a five (5) foot long vertical test stack. A horizontal section of pipe may be used on the floor furnace between the diverter and the elbow if necessary to clear

any framing used in the installation. Use the minimum length of pipe possible for this section. Use stack, elbow, and horizontal section with same cross sectional area as the diverter outlet.

2.2.2 *Oil fueled vented home heating equipment (excluding direct vent systems).* Use flue connections for oil fueled vented floor furnaces as specified in section 35 of UL 729–1976, sections 34.10 through 34.18 of UL 730–1974 for oil fueled vented wall furnaces and sections 36.2 and 36.3 of UL 896–1973 for oil fueled vented room heaters.

2.2.3 *Direct vent systems.* Have the exhaust/air intake system supplied by the manufacturer in place during all tests. Test units intended for installation with a variety of vent pipe lengths with the minimum length recommended by the manufacturer. Do not connect a heater employing a direct vent system to a chimney or induced draft source. Vent the gas solely on the provision for venting incorporated in the heater and the vent/air intake system supplied with it.

2.3 *Fuel supply.*

2.3.1 *Natural gas.* For a vented heater utilizing natural gas, maintain the gas supply to the unit under test at a normal inlet test pressure immediately ahead of all controls at 7 to 10 inches water column. Maintain the regulator outlet pressure at normal test pressure approximately at that recommended by the manufacturer. Use natural gas having a specific gravity of approximately 0.65 and a higher heating value within ± 5 percent of 1,025 Btu's per standard cubic foot. Determine the actual higher heating value in Btu's per standard cubic foot for the natural gas to be used in the test with an error no greater than one percent.

2.3.2 *Propane gas.* For a vented heater utilizing propane gas, maintain the gas supply to the unit under test at a normal inlet pressure of 11 to 13 inches water column and a specific gravity of approximately 1.53. Maintain the regulator outlet pressure, on units so equipped, approximately at that recommended by the manufacturer. Use propane having a specific gravity of approximately 1.53 and a higher heating value within ± 5 percent of 2,500 Btu's per standard cubic foot. Determine the actual higher heating value in Btu's per standard cubic foot for the propane to be used in the test with an error no greater than one percent.

2.3.3 *Other test gas.* Use other test gases with characteristics as described in section 2.2, table VII, of ANSI Standard Z21.11.1–1974. Use gases with a measured higher heating value within ± 5 percent of the values specified in the above ANSI standard. Determine the actual higher heating value of the gas used in the test with an error no greater than one percent.

2.3.4 *Oil supply.* For a vented heater utilizing fuel oil, use No. 1, fuel oil (kerosene) for vaporizing-type burners and either No. 1 or No. 2 fuel oil, as specified by the manufacturer, for mechanical atomizing type burners. Use No. 1 fuel oil with a viscosity meeting the specifications as specified in UL–730–1974, section 36.9. Use test fuel conforming to the specifications given in tables 2 and 3 of ANSI Standard Z91.1–1972 for No. 1 and No. 2 fuel oil. Measure the higher heating value of the test fuel with an error no greater than one percent.

2.3.5 *Electrical supply.* For auxiliary electric components of a vented heater, maintain the electrical supply to the test unit within one percent of the nameplate voltage for the entire test cycle. If a voltage range is used for nameplate voltage, maintain the electrical supply within one percent of the mid-point of the nameplate voltage range.

2.4 *Burner adjustments.*

2.4.1 *Gas burner adjustments.* Adjust the burners of gas fueled vented heaters to their maximum Btu ratings at the test pressure specified in section 2.3 of this appendix. Correct the burner volumetric flow rate to 60° F (15.6C) and 30 inches of mercury barometric pressure, set the fuel flow rate to obtain a heat rate of within ±2 percent of the hourly Btu rating specified by the manufacturer as measured after 15 minutes of operation starting with all parts of the vented heater at room temperature. Set the primary air shutters in accordance with the manufacturer's recommendations to give a good flame at this adjustment. Do not allow the deposit of carbon during any test specified herein.

If a vent limiting means is provided on a gas pressure regulator, have it in place during all tests.

For gas fueled heaters with modulating controls adjust the controls to operate the heater at the maximum fuel input rate. Set the thermostat control to the maximum setting. Start the heater by turning the safety control valve to the "on" position. In order to prevent modulation of the burner at maximum input, place the thermostat sensing element in a temperature control bath which is held at a temperature below the maximum set point temperature of the control.

For gas fueled heaters with modulating controls adjust the controls to operate the heater at the reduced fuel input rate. Set the thermostat control to the minimum setting. Start the heater by turning the safety control valve to the "on" position. If ambient test room temperature is above the lowest control set point temperature, initiate burner operation by placing the thermostat sensing element in a temperature control bath that is held at a temperature below the minimum set point temperature of the control.

2.4.2 *Oil burner adjustments.* Adjust the burners of oil fueled vented heaters to give the CO_2 reading recommended by the manufacturer and an hourly Btu input, during the steady-state performance test described below, which is within ±2 percent of the heater manufacturer's specified normal hourly Btu input rating. On units employing a power burner do not allow smoke in the flue to exceed a No. 1 smoke during the steady-state performance test as measured by the procedure in ANSI Standard Z11.182–1965 (R1971) (ASTM D 2156–65 (1970)). If, on units employing a power burner, the smoke in the flue exceeds a No. 1 smoke during the steady-state test, readjust the burner to give a lower smoke reading, and, if necessary a lower CO_2 reading, and start all tests over. Maintain the average draft over the fire and in the flue during the steady-state performance test at that recommended by the manufacturer within ±0.005 inches of water gauge. Do not make additional adjustments to the burner during the required series of performance tests. The instruments and measuring apparatus for this test are described in section 6.3 of ANSI standard Z91.1–1972.

2.5 *Circulating air adjustments.*

2.5.1 *Forced air vented wall furnaces (including direct vent systems).* During tests maintain the air flow through the heater as specified by the manufacturer and operate the vented heater with the outlet air temperature between 80° F and 130° F above room temperature. If adjustable air discharge registers are provided, adjust them so as to provide the maximum possible air restriction. Measure air discharge temperature as specified in section 2.14 of ANSI Z21.49–1975.

2.5.2 *Fan type vented room heaters and floor furnaces.* During tests on fan type furnaces and heaters, adjust the air flow through the heater as specified by the manufacturer. If adjustable air discharge registers are provided, adjust them to provide the maximum possible air restriction.

2.6 *Location of temperature measuring instrumentation.*

2.6.1 *Gas fueled vented home heating equipment (including direct vent systems).* For units employing an integral draft diverter, install nine thermocouples, wired in parallel, in a horizontal plane in the five foot test stack located one foot from the test stack inlet. Equalize the length of all thermocouple leads before paralleling. Locate one thermocouple in the center of the stack. Locate eight thermocouples along imaginary lines intersecting at right angles in this horizontal plane at points one third and two thirds of the distance between the center of the stack and the stack wall.

For units which employ a direct vent system, locate at least one thermocouple at the center of each flue way exiting the heat exchanger. Provide radiation shields if the thermocouples are exposed to burner radiation.

For units which employ a draft hood or units which employ a direct vent system which does not significantly preheat the incoming combustion air, install nine thermocouples, wired in parallel, in a horizontal plane located within 12 inches (304.8 mm) of the heater outlet and upstream of the draft hood on units so equipped. Locate one thermocouple in the center of the pipe and eight thermocouples along imaginary lines intersecting at right angles in this horizontal plane at points one third and two thirds of the distance between the center of the pipe and the pipe wall.

For units which employ direct vent systems that significantly preheat the incoming combustion air, install nine thermocouples, wired in parallel, in a plane parallel to and located within 6 inches (152.4 mm) of the vent/air intake terminal. Equalize the length of all thermocouple leads before paralleling. Locate one thermocouple in the center of the vent pipe and eight thermocouples along imaginary lines intersecting at right angles in this plane at points one third and two thirds of the distance between the center of the flue pipe and the pipe wall.

Use bead-type thermocouples having wire size not greater than No. 24 American Wire Gauge (AWG). If there is a possibility that the thermocouples could receive direct radiation from the fire, install radiation shields on the fire side of the thermocouples only and position the shields so that they do not touch the thermocouple junctions.

Install thermocouples for measuring conditioned warm air temperature as described in ANSI Z21.49–1975, section 2.14. Establish the temperature of the inlet air by means of single No. 24 AWG bead-type thermocouple, suitably shielded from direct radiation and located in the center of the plane of each inlet air opening.

2.6.2 *Oil fueled vented home heating equipment (including direct vent systems).* Install nine thermocouples, wired in parallel and having equal length leads, in a plane perpendicular to the axis of the flue pipe. Locate this plane at the position shown in Figure 34.4 of UL 730–1974, or Figures 35.1 and 35.2 of UL 729–1976 for a single thermocouple, except that on direct vent systems which significantly preheat the incoming combustion air, it shall be located within 6 inches (152.5 mm) of the outlet of the vent/air intake terminal. Locate one thermocouple in the center of the flue pipe and eight thermocouples along imaginary lines intersecting at right angles in this plane at points one third and two thirds of the distance between the center of the pipe and pipe wall.

Use bead-type thermocouples having a wire size not greater than No. 24 AWG. If there is a possibility that the thermocouples could receive direct radiation from the fire, install radiation shields on the fire side of the thermocouples only and position the shields so that they do not touch the thermocouple junctions.

Install thermocouples for measuring the conditioned warm air temperature as described in sections 35.12 through 35.17 of UL 730–1974. Establish the temperature of the inlet air by means of a single No. 24 AWG bead-type thermocouple, suitably shielded from direct radiation and located in the center of the plane of each inlet air opening.

2.7 *Combustion measurement instrumentation.* Analyze the samples of stack and flue gases for vented heaters to determine the concentration by volume of carbon dioxide present in the dry gas with instrumentation which will result in a reading having an accuracy of ±0.1 percentage points.

2.8 *Energy flow instrumentation.* Install one or more instruments, which measure the rate of gas flow or fuel oil supplied to the vented heater, and if appropriate, the electrical energy with an error no greater than one percent.

2.9 *Room ambient temperature.* During the time period required to perform all the testing and measurement procedures specified in section 3.0 of this appendix, maintain the room temperature within ±5° F (±2.8C) of the value T_{RA} measured during the steady-state performance test. At no time during these tests shall the room temperature exceed 100° F (37.8C) or fall below 65° F (18.3C).

Temperature (T_{RA}) shall be the arithmetic average temperature of the test area, determined by measurement with four No. 24 AWG bead-type thermocouples with junctions shielded against radiation, located approximately at 90-degree positions on a circle circumscribing the heater or heater enclosure under test, in a horizontal plane approximately at the vertical midpoint of the appliance or test enclosure, and with the junctions approximately 24 inches from sides of the heater or test enclosure and located so as not to be affected by other than room air. Locate a thermocouple at each elevation of draft relief inlet opening and combustion air inlet opening at a distance of approximately 24 inches from the inlet openings. The temperature of the air for combustion and the air for draft relief shall not differ more than ±5° F from room temperature as measured above.

2.10 *Equipment used to measure mass flow rate in flue and stack.* The tracer gas chosen for this task should have a density which is less than or approximately equal to the density of air. Use a gas unreactive with the environment to be encountered. Using instrumentation of either the batch or continuous type, measure the concentration of tracer gas with an error no greater than 2 percent of the value of the concentration measured.

3.0 *Testing and measurements.*

3.1 *Steady-state testing.*

3.1.1 *Gas fueled vented home heating equipment (including direct vent systems).* Set up the vented heater as specified in sections 2.1, 2.2, and 2.3 of this appendix. The draft diverter shall be in the normal open condition and the stack shall not be insulated. (Insulation of the stack is no longer required for the vented heater test.) Begin the steady-state performance test by operating the burner and the circulating air blower, on units so equipped, with the adjustments specified by sections 2.4.1 and 2.5 of this appendix, until steady-state conditions are attained as indicated by a temperature variation of not more than 3° F (1.7 C) in the stack gas temperature for vented heaters equipped with draft diverters or 5° F (2.8 C) in the flue gas temperature for vented heaters equipped with either draft hoods or direct vent systems; in three successive readings taken 15 minutes apart.

On units employing draft diverters, measure the room temperature (T_{RA}) as described in section 2.9 of this appendix and measure the steady-state stack gas temperature ($T_{S.SS}$) using the nine thermocouples located in the 5 foot test stack as specified in section 2.6.1 of this appendix. Secure a sample of the stack gases in the plane where $T_{S.SS}$ is measured or within 3.5 feet downstream of this plane. Determine the concentration by volume of carbon dioxide (X_{CO2S}) present in the dry stack gas. If the location of the gas sampling differs from the temperature measurement plane, there shall be no air leaks through the stack between these two locations.

On units employing draft hoods or direct vent systems, measure the room temperature (T_{RA}) as described in section 2.9 of this appendix and measure the steady-state flue gas temperature ($T_{F.SS}$), using the nine thermocouples located in the flue pipe as described in section 2.6.1 of this appendix. Secure a sample of the flue gas in the plane of temperature measurement and determine the concentration by volume of CO_2 (X_{CO2F}) present in dry flue gas. In addition, for units employing draft hoods, secure a sample of the stack gas in a horizontal plane in the five foot test stack located one foot from the test stack inlet; and determine the concentration by volume of CO_2 (X_{CO2S}) present in dry stack gas.

Determine the steady-state heat input rate (Q_{in}) including pilot gas by multiplying the measured higher heating value of the test gas by the steady-state gas input rate corrected to standard conditions of 60° F and 30 inches of mercury. Use measured values of gas temperature and pressure at the meter and the barometric pressure to correct the metered gas flow rate to standard conditions.

After the above test measurements have been completed on units employing draft diverters, secure a sample of the flue gases at the exit of the heat exchanger(s) and determine the concentration of CO_2 (X_{CO2F}) present. In obtaining this sample of flue gas, move the sampling probe around or use a sample probe with multiple sampling ports in order to assure that an average value is obtained for the CO_2 concentration. For units with multiple heat exchanger outlets, measure the CO_2 concentration in a sample from each outlet to obtain the average CO_2 concentration for the unit. A manifold (parallel connected sampling tubes) may be used to obtain this sample.

For heaters with single stage thermostat control (wall mounted electric thermostats), determine the steady-state efficiency at the maximum fuel input rate as specified in section 2.4 of this appendix.

For gas fueled vented heaters equipped with either two stage thermostats or step-modulating thermostats, determine the steady-state efficiency at the maximum fuel input rate, as specified in section 2.4.1 of this appendix, and at the reduced fuel input rate, as specified in section 2.4.1 of this appendix.

For manually controlled gas fueled vented heaters, with various input rates determine the steady-state efficiency at a fuel input rate that is within ±5 percent of 50 percent of the maximum fuel input rate. If the heater is designed to use a control that precludes operation at other than maximum output (single firing rate) determine the steady state efficiency at the maximum input rate only.

3.1.2 *Oil fueled vented home heating equipment (including direct vent systems).* Set up and adjust the vented heater as specified in sections 2.1, 2.2, and 2.3.4 of this appendix. Begin the steady-state performance test by operating the burner and the circulating air blower, on units so equipped, with the adjustments specified by sections 2.4.2 and 2.5 of this appendix until steady-state conditions are attained as indicated by a temperature variation of not more than 5° F (2.8 C) in the flue gas temperature in three successive readings taken 15 minutes apart.

Do not allow smoke in the flue, for units equipped with power burners, to exceed a No. 1 smoke during the steady-state performance test as measured by the procedure described in ANSI standard Z11.182–1965 (R1971) (ASTM D 2156–65

(1970)). Maintain the average draft over the fire and in the breeching during the steady-state performance test at that recommended by the manufacturer ±0.005 inches of water gauge.

Measure the room temperature (T_{RA}) as described in section 2.9 of this appendix and measure the steady-state flue gas temperature ($T_{F,SS}$) using nine thermocouples located in the flue pipe as described in section 2.6.2 of this appendix. Secure a sample of the flue gas in the plane of temperature measurement and determine the concentration by volume of CO_2(X_{CO2F}) present in dry flue gas. Measure and record the steady-state heat input rate (Q_{in}).

For manually controlled oil fueled vented heaters, determine the steady-state efficiency at a fuel input rate that is within ±5 percent of 50 percent of the maximum fuel input rate.

3.1.3 *Auxiliary Electric Power Measurement.* Allow the auxiliary electrical system of a gas or oil vented heater to operate for at least five minutes before recording the maximum auxiliary electric power measurement from the wattmeter. Record the maximum electric power (P_E) expressed in kilowatts. For vented heaters with modulating controls, the recorded (P_E) shall be maximum measured electric power multiplied by the following factor (R). For two stage controls, R=1.3. For step modulating controls, R=1.4 when the ratio of minimum-to-maximum fuel input is greater than or equal to 0.7, R=1.7 when the ratio of minimum-to-maximum fuel input is less than 0.7 and greater than or equal to 0.5, and R=2.2 when the ratio of minimum-to-maximum fuel input is less than 0.5.

3.2 *Jacket loss measurement.* Conduct a jacket loss test for vented floor furnaces. Measure the jacket loss (L_J) in accordance with the ANSI standard Z21.48–1976 section 2.12.

3.3 *Measurement of the off-cycle losses for vented heaters equipped with thermal stack dampers.* Install the thermal stack damper according to the manufacturer's instructions. Unless specified otherwise, the thermal stack damper should be at the draft diverter exit collar. Attach a five foot length of bare stack to the outlet of the damper. Install thermocouples as specified in section 2.6.1 of this appendix.

For vented heaters equipped with single stage thermostats, measure the off-cycle losses at the maximum fuel input rate. For vented heaters equipped with two stage thermostats, measure the off-cycle losses at the maximum fuel input rate and at the reduced fuel input rate. For vented heaters equipped with step-modulating thermostats, measure the off-cycle losses at the reduced fuel input rate.

Let the vented heater heat up to a steady-state condition. Feed a tracer gas at a constant metered rate into the stack directly above and within one foot above the stack damper. Record tracer gas flow rate and temperature. Measure the tracer gas concentration in the stack at several locations in a horizontal plane through a cross section of the stack at a point sufficiently above the stack damper to ensure that the tracer gas is well mixed in the stack.

Continuously measure the tracer gas concentration and temperature during a 10 minute cool down period. Shut the burner off and immediately begin measuring tracer gas concentration in the stack, stack temperature, room temperature, and barometric pressure. Record these values as the midpoint of each one-minute interval between burner shut down and ten minutes after burner shut down. Meter response time and sampling delay time shall be considered in timing these measurements.

3.4 *Measurement of the effectiveness of electro-mechanical stack dampers.* For vented heaters equipped with electro-mechanical stack dampers, measure the cross sectional area of the stack (A_s), the net area of the damper plate (A_o), and the angle that the damper plate makes when closed with a plane perpendicular to the axis of the stack (Ω). The net area of the damper plate means the area of the damper plate minus the area of any holes through the damper plate.

3.5 *Pilot light measurement.* Measure the energy input rate to the pilot light (Q_P) with an error no greater than 3 percent for vented heaters so equipped.

3.6 *Optional procedure for determining D_P, D_F, and D_S for systems for all types of vented heaters.* For all types of vented heaters, D_P, D_F and D_S can be measured by the following optional cool down test.

Conduct a cool down test by letting the unit heat up until steady-state conditions are reached, as indicated by temperature variation of not more than 5°F (2.8°C) in the flue gas temperature in three successive readings taken 15 minutes apart, and then shutting the unit off with the stack or flue damper controls by-passed or adjusted so that the stack or flue damper remains open during the resulting cool down period. If a draft was maintained on oil fueled units in the flue pipe during the steady-state performance test described in section 3.1 of this appendix, maintain the same draft (within a range of −.001 to +.005 inches of water gauge of the average steady-state draft) during this cool down period.

Measure the flue gas mass flow rate ($m_{F,OFF}$) during the cool down test described above at a specific off-period flue gas temperature and corrected to obtain its value at the steady-state flue gas temperature ($T_{F,SS}$), using the procedure described below.

Within one minute after the unit is shut off to start the cool down test for determining D_F, begin feeding a tracer gas into the combustion chamber at a constant flow rate of V_T, and at a point which will allow for the best possible mixing with the air flowing through the chamber. (On units equipped with an oil fired power burner, the best location for injecting this tracer gas appears to be through a hole drilled in the air tube.) Periodically measure the value of V_T with an instantaneously reading flow meter having an accuracy of ±3 percent of the quantity measured. Maintain V_T at less than 1 percent of the air flow rate through the furnace. If a combustible tracer gas is used, there should be a delay period between the time the burner gas is shut off and the time the tracer gas is first injected to prevent ignition of the tracer gas.

Between 5 and 6 minutes after the unit is shut off to start the cool down test, measure at the exit of the heat exchanger the average flue gas temperature, $T^*_{F,OFF}$. At the same instant the flue gas temperature is measured, also measure the percent volumetric concentration of tracer gas C_T in the flue gas in the same plane where $T^*_{F,OFF}$ is determined. Obtain the concentration of tracer gas using an instrument which will result in an accuracy of ±2 percent in the value of C_T measured. If use of a continuous reading type instrument results in a delay time between drawing of a sample and its analysis, this delay should be taken into account so that the temperature measurement and the measurement of tracer gas concentration coincide. In addition, determine the temperature of the tracer gas entering the flow meter (T_T) and the barometric pressure (P_B).

The rate of the flue gas mass flow through the vented heater and the factors D_P, D_F, and D_S are calculated by the equations in sections 4.5.1 through 4.5.3 of this appendix.

4.0 *Calculations.*

4.1 *Annual fuel utilization efficiency for gas or oil fueled vented home heating equipment equipped without manual controls and without thermal stack dampers.* The following procedure determines the annual fuel utilization efficiency for gas or oil fueled vented home heating equipment equipped without manual controls and without thermal stack dampers.

4.1.1 *System number.* Obtain the system number from Table 1 of this appendix.

4.1.2 *Off-cycle flue gas draft factor.* Based on the system number, determine the off-cycle flue gas draft factor (D_F) from Table 1 of this appendix.

4.1.3 *Off-cycle stack gas draft factor.* Based on the system number, determine the off-cycle stack gas draft factor (D_s) from Table 1 of this appendix.

4.1.4 *Pilot fraction.* Calculate the pilot fraction (P_F) expressed as a decimal and defined as:

$$P_F = Q_P / Q_{in}$$

where:

Q_P = as defined in 3.5 of this appendix
Q_{in} = as defined in 3.1 of this appendix at the maximum fuel input rate

4.1.5 *Jacket loss for floor furnaces.* Determine the jacket loss (L_J) expressed as a percent and measured in accordance with section 3.2 of this appendix. For other vented heaters L_J=0.0.

4.1.6 *Latent heat loss.* Based on the fuel, obtain the latent heat loss ($L_{L,A}$) from Table 2 of this appendix.

4.1.7 *Ratio of combustion air mass flow rate to stoichiometric air mass flow rate.* Determine the ratio of combustion air mass flow rate to stoichiometric air mass flow rate ($R_{T,F}$), and defined as:

$$R_{T,F} = A + B/X_{CO2F}$$

where:

A = as determined from Table 2 of this appendix
B = as determined from Table 2 of this appendix
X_{CO2F} = as defined in 3.1 of this appendix

4.1.8 *Ratio of combustion and relief air mass flow rate to stoichiometric air mass flow rate.* For vented heaters equipped with

either an integral draft diverter or a drafthood, determine the ratio of combustion and relief air mass flow rate to stoichiometric air mass flow rate ($R_{T.S}$), and defined as:

$$R_{T.S}=A+[B/X_{CO_2S}]$$

where:

A = as determined from Table 2 of this appendix
B = as determined from Table 2 of this appendix
X_{CO_2S} = as defined in 3.1 of this appendix

4.1.9 *Sensible heat loss at steady-state operation.* For vented heaters equipped with either an integral draft diverter or a draft hood, determine the sensible heat loss at steady-state operation ($L_{S.SS.A}$) expressed as a percent and defined as:

where:

$L_{S.SS.A}=C(R_{T.S}+D)(T_{S.SS}-T_{RA})$
C = as determined from Table 2 of this appendix
$R_{T.S}$ = as defined in 4.1.8 of this appendix
D = as determined from Table 2 of this appendix
$T_{S.SS}$ = as defined in 3.1 of this appendix
T_{RA} = as defined in 2.9 of this appendix

For vented heaters equipped without an integral draft diverter, determine ($L_{S.SS.A}$) expressed as a percent and defined as:

$L_{S.SS.A}=C(R_{T.F}+D)(T_{F.SS}-T_{RA})$

where:

C = as determined from Table 2 of this appendix
$R_{T.F}$ = as defined in 4.1.7 of this appendix
D = as determined from Table 2 of this appendix
$T_{F.SS}$ = as defined in 3.1 of this appendix
T_{RA} = as defined in 2.9 of this appendix

4.1.10 *Steady-state efficiency.* For vented heaters equipped with single stage thermostats, calculate the steady-state efficiency (excluding jacket loss, η_{SS}, expressed in percent and defined as:

$\eta_{SS}=100-L_{I.A}-L_{S.SS.A}$

where:

$L_{I.A}$ = as defined in 4.1.6 of this appendix
$L_{S.SS.A}$ = as defined in 4.1.9 of this appendix

For vented heaters equipped with either two stage thermostats or with step-modulating thermostats, calculate the steady-state efficiency at the reduced fuel input rate, $\eta_{SS.L}$, expressed in percent and defined as:

$\eta_{SS-L}=100-L_{I.A}-L_{S.SS.A}$

where:

$L_{I.A}$ = as defined in 4.1.6 of this appendix
$L_{S.SS.A}$ = as defined in 4.1.9 of this appendix in which $L_{S.SS.A}$ is determined at the reduced fuel input rate

For vented heaters equipped with two stage thermostats, calculate the steady-state efficiency at the maximum fuel input rate, $\eta_{SS.H}$, expressed in percent and defined as:

$\eta_{SS.H}=100-L_{I.A}-L_{S.SS.A}$

where:

$L_{I.A}$ = as defined in 4.1,6 of this appendix
$L_{S.SS.A}$ = as defined in 4.1.9 of this appendix in which $L_{S.SS.A}$ is measured at the maximum fuel input rate

For vented heaters equipped with step-modulating thermostats calculate the weighted-average steady-state efficiency in the modulating mode, η_{SS-MOD}, expressed in percent and defined as:

$$\eta_{SS-MOD}=[\eta_{SS-H}-\eta_{SS-L}]\left[\frac{T_C-T_{OA'}}{T_C-15}\right]+\eta_{SS-L}$$

where:

η_{SS-H} = as defined in 4.1.10 of this appendix
η_{SS-L} = as defined in 4.1.10 of this appendix
$T_{OA'}$ = average outdoor temperature for vented heaters with step-modulating thermostats operating in the modulating mode and is obtained from Table 3 or Figure 1 of this appendix
T_C = balance point temperature which represents a temperature used to apportion the annual heating load between the reduced input cycling mode and either the modulating mode or maximum input cycling mode and is obtained either from Table 3 of this appendix or calculated by the following equation:

$T_C=65-[(65-15)R]$

where:

65 = average outdoor temperature at which a vented heater starts operating
15 = national average outdoor design temperature for vented heaters
R = ratio of reduced to maximum heat output rates, as defined in 4.1.13 of this appendix

4.1.11 *Reduced heat output rate.* For vented heaters equipped with either two stage thermostats or step-modulating thermostats, calculate the reduced heat output rate ($Q_{red\cdot out}$) defined as:

$Q_{red\cdot out}=\eta_{SS\cdot L}Q_{red\cdot in}$

where:

$\eta_{SS\cdot L}$ = as defined in 4.1.10 of this appendix
$Q_{red\cdot in}$ = the reduced fuel input rate

4.1.12 *Maximum heat output rate.* For vented heaters equipped with either two stage thermostats or step-modulating thermostas, calculate the maximum heat output rate ($Q_{max\cdot out}$) defined as:

$Q_{max.\ out}=\eta_{SS.H}\ Q_{max.\ in}$

where:

$\eta_{SS\cdot H}$ = as defined in 4.1.10 of this appendix
$Q_{max\cdot in}$ = the maximum fuel input rate

4.1.13 *Ratio of reduced to maximum heat output rates.* For vented heaters equipped with either two stage thermostats or step-modulating thermostats, calculate the ratio of reduced to maximum heat output rates (R) expressed as a decimal and defined as:

$R=Q_{red\cdot out}/Q_{max\cdot out}$

where:

$Q_{red\cdot out}$ = as defined in 4.1.11 of this appendix
$Q_{max\cdot out}$ = as defined in 4.1.12 of this appendix

4.1.14 *Fraction of heating load at reduced operating mode.* For vented heaters equipped with either two stage thermostats or step-modulating thermostats, determine the fraction of heating load at the reduced operating mode (X_1) expressed as a decimal and listed in Table 3 of this appendix or obtained from Figure 2 of this appendix.

4.1.15 *Fraction of heating load at maximum operating mode or noncycling mode.* For vented heaters equipped with either two stage thermostats or step-modulating therostats, determine the fraction of heating load at the maximum operating mode or noncycling mode (X_2) expressed as a decimal and listed in Table 3 of this appendix or obtained from Figure 2 of this appendix.

4.1.16 *Weighted-average steady-state efficiency.* For vented heaters equipped with single stage thermostats, the weighted-average steady-state efficiency (η_{SS-WT}) is equal to η_{SS}, as defined in section 4.1.10 of this appendix. For vented heaters equipped with two stage thermostats, η_{SS-WT} is defined as:

$\eta_{SS-WT}=X_1\eta_{SS-L}+X_2\eta_{SS-H}$

where:

X_1 = as defined in 4.1.14 of this appendix
η_{SS-L} = as defined in 4.1.10 of this appendix
X_2 = as defined in 4.1.15 of this appendix
η_{SS-H} = as defined in 4.1.10 of this appendix

For vented heaters equipped with step-modulating thermostats, η_{SS-WT} is defined as:

$\eta_{SS-WT}=X_1\eta_{SS-L}+X_2\eta_{SS-MOD}$

where:

X_1 = as defined in 4.1.14 of this appendix
η_{SS-L} = as defined in 4.1.10 of this appendix
X_2 = as defined in 4.1.15 of this appendix
η_{SS-MOD} = as defined in 4.1.10 of this appendix

4.1.17 *Annual fuel utilization efficiency.* Calculate the annual fuel utilization efficiency (AFUE) expressed as percent and defined as:

$AFUE=[0.968\eta_{SS-WT}]-1.78D_F-1$
$.89D_S-129P_F-2.8\ L_J+1.81$

where:

η_{SS-WT} = as defined in 4.1.16 of this appendix
D_F = as defined in 4.1.2 of this appendix
D_S = as defined in 4.1.3 of this appendix
P_F = as defined in 4.1.4 of this appendix
L_J = as defined in 4.1.5 of this appendix

4.2 *Annual fuel utilization efficiency for gas or oil fueled vented home heating equipment equipped with manual controls.* The following procedure determines the annual fuel utilization efficiency for gas or oil fueled vented home heating equipment equipped with manual controls.

4.2.1 *Average ratio of stack gas mass flow rate to flue gas mass flow rate at steady-state operation.* For vented heaters equipped with either direct vents or direct exhaust or are outdoor units, the average ratio of stack gas mass flow rate to flue gas mass flow rate at steady-state operation (S/F) shall be equal to unity. (S/F=1.) For all other types of vented heaters, calculate (S/F) defined as:

$S/F=1.3R_{T.S}/R_{T.F}$

where:
$R_{T.S}$ = as defined in 4.1.8 of this appendix with X_{CO_2} measured at 50% fuel input rate
$R_{T.P}$ = as defined in 4.1.7 of this appendix with X_{CO_2} measured at 50% fuel input rate

4.2.2 *Multiplication factor for infiltration loss during burner on-cycle.* Calculate the multiplication factor for infiltration loss during burner on-cycle ($K_{1.ON}$) defined as:

$$K_{1.ON} = 100(0.24)\ (S/F)\ (0.7)\ [1 + R_{T.P}(A/F)]/HHV_A$$

where:
100 = converts a decimal fraction into a percent
0.24 = specific heat of air
A/F = stoichiometric air/fuel ratio, determined in accordance with Table 2 of this appendix
S/F = as defined in 4.2.1 of this appendix at 50 percent of rated maximum fuel input
0.7 = infiltration parameter
$R_{T.P}$ = as defined in 4.1.7 of this appendix
HHV_A = average higher heating value of the test fuel, determined in accordance with Table 2 of this appendix

4.2.3 *On-cycle infiltration heat loss.* Calculate the on-cycle infiltration heat loss ($L_{4.ON}$) expressed as a percent and defined as:

$$L_{4.ON} = K_{1.ON}\ (70–45)$$

where:
$K_{1.ON}$ = as defined in 4.2.2 of this appendix
70 = average indoor temperature
45 = average outdoor temperature

4.2.4 *Weighted-Average Steady-State Efficiency.* For manually controlled heaters with various input rates the weighted average steady-state efficiency ($\eta_{SS\text{-}WT}$), is at 50 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters. For manually controlled heater with one single firing rate the weighted average steady-state efficiency is the steady state efficiency measured at the single firing rate.

4.2.5 *Part-load fuel utilization efficiency.* Calculate the part-load fuel utilization efficiency (η_u) expressed as a percent and defined as:

$$\eta_u = \eta_{SS\text{-}WT} - L_{4.ON}$$

where:
$\eta_{SS\text{-}WT}$ = as defined in 4.2.4 of this appendix
$L_{4.ON}$ = as defined in 4.2.3 of this appendix

4.2.6 *Annual fuel utilization efficiency.* For manually controlled vented heaters. Calculate the annual fuel utilization efficiency (AFUE) expressed as a percent and defined as:

$$AFUE = \frac{4400\eta_{SS}\eta_u Q_{in\ max}}{4400\eta_{SS}Q_{in-max} + 2.5(4600)\eta_u Q_P}$$

where:
4400 = average number of heating degree days
η_{SS} = as defined as $\eta_{SS\ WT}$ in 4.2.4 of this appendix
η_u = as defined in 4.2.5 of this appendix
$Q_{in\text{-}max}$ = as defined as Q_{in} at the maximum fuel input rate, as defined in 3.1 of this appendix
4600 = average number of non-heating season hours per year
Q_P = as defined in 3.5 of this appendix

4.3 *Annual fuel utilization efficiency by the tracer gas method.* The annual fuel utilization efficiency shall be determined by the following tracer gas method for all vented heaters equipped with thermal stack dampers. All other types of vented heaters can elect to use the following tracer gas method, as an optional procedure.

4.3.1 *On-cycle sensible heat loss.* For vented heaters equipped with single stage thermostats, calculate the on-cycle sensible heat loss ($L_{S.ON}$) expressed as a percent and defined as:

$$L_{S.ON} = L_{S.SS.A}$$

where:
$L_{S.SS.A}$ = as defined in 4.1.9 of this appendix

For vented heaters equipped with two stage thermostats, calculate $L_{S.ON}$ defined as:

$$L_{S.ON} = X_1 L_{S.SS.A\text{-}red} + X_2 L_{S.SS.A\text{-}max}$$

where:
X_1 = as defined in 4.1.14 of this appendix
$L_{S.SS.A\text{-}red}$ = as defined as $L_{S.SS.A}$ in 4.1.9 of this appendix at the reduced fuel input rate
X_2 = as defined in 4.1.15 of this appendix
$L_{S.SS.A\text{-}max}$ = as defined as $L_{S.SS.A}$ in 4.1.9 of this appendix at the maximum fuel input rate

For vented heaters with step-modulating thermostats, calculate $L_{S.ON}$ defined as:

$$L_{S.ON} = X_1 L_{S.SS.A\text{-}red} + X_2 L_{S.SS.A\text{-}avg}$$

where:
X_1 = as defined in 4.1.14 of this appendix
$L_{S.SS.A\text{-}red}$ = as defined in 4.3.1 of this appendix
X_2 = as defined in 4.1.15 of this appendix
$L_{S.SS.A\text{-}avg}$ = average sensible heat loss for step-modulating vented heaters operating in the modulating mode

$$L_{S.SS.A-avg} = \left[[L_{S.SS.A\ max} - L_{S.SS.A-red}] \left[\frac{T_C - T_{OA'}}{TC - 15} \right] \right] + L_{S.SS.A-red}$$

where:
$L_{S.SS.A\text{-}avg}$ = as defined in 4.3.1 of this appendix
T_C = as defined in 4.1.10 of this appendix
$T_{OA'}$ = as defined in 4.1.10 of this appendix
15 = as defined in 4.1.10 of this appendix

4.3.2 *On-cycle infiltration heat loss.* For vented heaters equipped with single stage thermostats, calculate the on-cycle infiltration heat loss ($L_{4.ON}$) expressed as a percent and defined as:

$$L_{4.ON} = K_{1.ON}(70–45)$$

where:
$K_{1.ON}$ = as defined in 4.2.2 of this appendix
70 = as defined in 4.2.3 of this appendix
45 = as defined in 4.2.3 of this appendix

For vented heaters equipped with two stage thermostats, calculate $L_{4.ON}$ defined as:

$$L_{1.ON} = X_1 K_{1.ON\text{-}Max}(70–T_{OA'}) + X_2 K_{1.ON\text{-}red}(70–T_{OA})$$

where:
X_1 = as defined in 4.1.14 of this appendix
$K_{1.ON\text{-}max}$ = as defined as $K_{1.ON}$ in 4.2.2 of this appendix at the maximum heat input rate
70 = as defined in 4.2.3 of this appendix
$T_{OA'}$ = as defined in 4.3.4 of this appendix
$K_{1.ON.red}$ = as defined as $K_{1.ON}$ in 4.2.2 of this appendix at the minimum heat input rate
T_{OA} = as defined in 4.3.4 of this appendix
X_2 = as defined in 4.1.15 of this appendix

For vented heaters equipped with step-modulating thermostats, calculate $L_{4.ON}$ defined as:

$$L_{4.ON} = X_1 K_{1.ON\text{-}avg}(70–T_{OA'}) + X_2 K_{1.ON\text{-}red}(70–T_{OA})$$

where:
X_1 = as defined in 4.1.14 of this appendix

$$K_{1.on\text{-}avg} = \frac{[K_{1.on\text{-}max} + K_{1.ON.red}]}{2}$$

70 = as defined in 4.2.3 of this appendix
$T_{OA'}$ = as defined in 4.3.4 of this appendix
X_2 = as defined in 4.1.15 of this appendix
T_{OA} = as defined in 4.3.4 of this appendix

4.3.3 *Off-cycle sensible heat loss.* For vented heaters equipped with single stage thermostats, calculate the off-cycle sensible heat loss ($L_{S.OFF}$) at the maximum fuel input rate. For vented heaters equipped with step-modulating thermostats, calculate $L_{S.OFF}$ defined as:

$$L_{S.OFF} = X_1 L_{S.OFF.red}$$

where:
X_1 = as defined in 4.1.14 of this appendix
$L_{S.OFF.red}$ = as defined as $L_{S.OFF}$ in 4.3.3 of this appendix at the reduced fuel input rate

For vented heaters equipped with two stage thermostats, calculate $L_{S.OFF}$ defined as:

$$L_{S.OFF} = X_1 L_{S.OFF.red} + X_2 L_{S.OFF.Max}$$

where:
X_1 = as defined in 4.1.14 of this appendix
$L_{S.OFF.red}$ = as defined as $L_{S.OFF}$ in 4.3.3 of this appendix at the reduced fuel input rate
X_2 = as defined in 4.1.15 of this appendix
$L_{S.OFF.Max}$ = as defined as $L_{S.OFF}$ in 4.3.3 of this appendix at the maximum fuel input rate

Calculate the off-cycle sensible heat loss ($L_{S.OFF}$) expressed as a percent and defined as:

$$L_{S.OFF}=\frac{100(0.24)}{Q_{in}t_{on}}\sum m_{S.OFF}(T_{S.OFF}-T_{RA})$$

where:

100 = conversion factor for percent
0.24 = specific heat of air in Btu per pound—°F
Q_{in} = fuel input rate, as defined in 3.1 of this appendix in Btu per minute (as appropriate for the firing rate)
t_{on} = average burner on-time per cycle and is 20 minutes
$\Sigma m_{S.OFF}(T_{S.OFF}-T_{RA})$ = summation of the twenty values of the quantity, $m_{S.OFF}(T_{S.OFF}-T_{RA})$, measured in accordance with 3.3 of this appendix
$m_{S.OFF}$ = stack gas mass flow rate pounds per minute

$$m_{S.OFF}=\frac{1.325P_BV_T(C_{T^*}-C_T)}{C_T(T_T+460)}$$

$T_{S.OFF}$ = stack gas temperature measured in accordance with 3.3 of this appendix
T_{RA} = average room temperature measured in accordance with 3.3 of this appendix
P_B = barometric pressure in inches of mercury
V_T = flow rate of the tracer gas through the stack in cubic feet per minute
C_{T^*} = concentration by volume of the active tracer gas in the mixture in percent and is 100 when the tracer gas is a single component gas
C_T = concentration by volume of the active tracer gas in the diluted stack gas in percent
T_T = temperature of the tracer gas entering the flow meter in degrees Fahrenheit
(T_T+460) = absolute temperature of the tracer gas entering the flow meter in degrees Rankine

4.3.4 *Average outdoor temperature.* For vented heaters equipped with single stage thermostats, the average outdoor temperature (T_{OA}) is 45°F. For vented heaters equipped with either two stage thermostats or step-modulating thermostats, T_{OA} during the reduced operating mode is obtained from Table 3 or Figure 1 of this appendix. For vented heaters equipped with two stage thermostats, T_{OA}° during the maximum operating mode is obtained from Table 3 or Figure 1 of this appendix.

4.3.5 *Off-cycle infiltration heat loss.* For vented heaters equipped with single stage thermostats, calculate the off-cycle infiltration heat loss ($L_{I.OFF}$) at the maximum fuel input rate. For vented heaters equipped with step-modulating thermostats, calculate $L_{I.OFF}$ defined as:

$$L_{I.OFF}=X_1L_{I.OFF.red}$$

where:

X_1 = as defined in 4.1.14 of this appendix
$L_{I.OFF.red}$ = as defined in $L_{I.OFF}$ in 4.3.3 of this appendix at the reduced fuel input rate

For vented heaters equipped with two stage thermostats, calculate $L_{I.OFF}$ defined as:

$$L_{I.OFF}=X_1L_{I.OFF.red}+X_2L_{I.OFF.max}$$

where:

X_1 = as defined in 4.1.14 of this appendix
$L_{I.OFF.red}$ = as defined as $L_{I.OFF}$ in 4.3.3 of this appendix at the reduced fuel input rate
X_2 = as defined in 4.1.15 of this appendix
$L_{I.OFF.Max}$ = as defined as $L_{I.OFF}$ in 4.3.3 of this appendix at the maximum fuel input rate

Calculate the off-cycle infiltration heat loss ($L_{I.OFF}$) expressed as a percent and defined as:

$$L_{I.OFF}=\frac{100(0.24)(1.3)(0.7)(70-T_{OA})}{Q_{in}t_{on}}\sum m_{S.OFF}$$

where:

100 = conversion factor for percent
0.24 = specific heat of air in Btu per pound—°F
1.3 = dimensionless factor for converting laboratory measured stack flow to typical field conditions
0.7 = infiltration parameter
70 = assumed average indoor air temperature, °F
T_{OA} = average outdoor temperature as defined in 4.3.4 of this appendix
Q_{in} = fuel input rate, as defined in 3.1 of this appendix in Btu per minute (as appropriate for the firing rate)
t_{on} = average burner on-time per cycle and is 20 minutes
$\Sigma m_{S.OFF}$ = summation of the twenty values of the quantity, $m_{S.OFF}$, measured in accordance with 3.3 of this appendix
$m_{S.OFF}$ = as defined in 4.3.3 of this appendix

4.3.6 *Part-load fuel utilization efficiency.* Calculate the part-load fuel utilization efficiency (η_u) expressed as a percent and defined as:

$$\eta_u=100-L_{I.A}-C_jL_j-\left[\frac{t_{on}}{t_{on}+P_Ft_{OFF}}\right]+[L_{I.ON}+L_{S.OFF}+L_{I.ON}+L_{S.OFF}]$$

where:

C_j = 2.8, adjustment factor
L_j = jacket loss as defined in 4.1.5
$L_{I.A}$ = as defined in 4.1.6 of this appendix
t_{on} = as defined in 4.3.3 of this appendix
$L_{S.ON}$ = as defined in 4.3.1 of this appendix
$L_{S.OFF}$ = as defined in 4.3.3 of this appendix
$L_{I.ON}$ = as defined in 4.3.2 of this appendix
$L_{I.OFF}$ = as defined in 4.1.4 of this appendix
P_F = as defined in 4.1.4 of this appendix
t_{OFF} = average burner off-time per cycle and is 20 minutes

4.3.7 *Annual fuel utilization efficiency.* Calculate the annual fuel utilization efficiency (AFUE) expressed as a percent and defined as:

$$AFUE=\frac{4400\eta_{SS-WT}\eta_uQ_{in-max}}{4400\eta_{SS}Q_{in-max}+2.5(4600)\eta_uQ_p}$$

where:

4400 = as defined in 4.2.6
η_{SS-WT} = as defined in 4.1.16 of this appendix
η_u = as defined in 4.3.6 of this appendix
Q_{in-max} = as defined in 4.2.6 of this appendix
4600 = as defined in 4.2.6 of this appendix
Q_p = as defined in 3.5 of this appendix

4.4 *Stack damper effectiveness for vented heaters equipped with electro-mechanical stack dampers.* Determine the stack damper effectiveness for vented heaters equipped with electro-mechanical stack dampers (D_e). defined as:

$$D_e=1.62\ [1-A_D\cos\Omega/A_S]$$

where:

A_D = as defined in 3.4 of this appendix
Ω = as defined in 3.4 of this appendix
A_S = as defined in 3.4 of this appendix

4.5 *Addition requirements for vented home heating equipment using indoor air for combustion and draft control.* For vented home heating equipment using indoor air for combustion and draft control, D_P, as described in section 4.1.2 of this appendix, and D_e, as described in section 4.1.3 of this appendix, shall be determined from Table 1 of this appendix.

4.5.1 *Optional procedure for determining D_P for vented home heating equipment.* Calculate the ratio (D_P) of the rate of flue gas mass through the vented heater during the off-period, $M_{F.OFF}(T_{F.SS})$, to the rate of flue gas mass flow during the on-period, $M_{F.SS}(T_{F.SS})$, and defined as:

$$D_P=M_{F.OFF}(T_{F.SS})/M_{F.SS}(T_{F.SS})$$

For vented heaters in which no draft is maintained during the steady-state or cool down tests, $M_{F.OFF}(T_{F.SS})$ is defined as:

$$M_{F.OFF}(T_{F.SS})=M_{F.OFF}(T^*_{F.OFF})\left[\frac{T_{F.SS}-T_{RA}}{T^*_{F.OFF}-T_{RA}}\right]^{0.56}\left[\frac{T^*_{F.OFF}+460}{T_{F.SS}+460}\right]^{1.19}$$

For oil fueled vented heaters in which an imposed draft is maintained, as described in section 3.6 of this appendix, $M_{F.OFF}(T_{F.SS})$ is defined as:

$$M_{F.OFF}(T_{F.SS})=M_{F.OFF}(T^*_{F.SS})$$

where:

$T_{F.SS}$ = as defined in 3.1.1 of this appendix
$T^*_{F.OFF}$ = flue gas temperature during the off-period measured in accordance with 3.6 of this appendix in degrees Fahrenheit
T_{RA} = as defined in 2.9 of this appendix

$$M_{F,OFF}(T_{F,OFF}) = \frac{1.325\,P_B V_T(100-C_T)}{C_T(T_T+460)}$$

P_B = barometric pressure measured in accordance with 3.6 of this appendix in inches of mercury
V_T = flow rate of tracer gas through the vented heater measured in accordance with 3.6 of this appendix in cubic feet per minute
C_T = concentration by volume of tracer gas present in the flue gas sample measured in accordance with 3.6 of this appendix in percent
C_T^* = concentration by volume of the active tracer gas in the mixture in percent and is 100 when the tracer gas is a single component gas
T_T = the temperature of the tracer gas entering the flow meter measured in accordance with 3.6 of this appendix in degrees Fahrenheit
(T_T+460) = absolute temperature of the tracer gas entering the flow meter in degrees Rankine
$M_{T,SS}(T_{T,SS}) = Q_{in}[R_{T,P}(A/F)+1]/[60HHV_A]$
Q_{in} = as defined in 3.1 of this appendix
$R_{T,P}$ = as defined in 4.1.7 of this appendix
A/F = as defined in 4.2.2 of this appendix
HHV_A = as defined in 4.2.2 of this appendix

4.5.2 *Optional procedure for determining off-cycle draft factor for flue gas flow for vented heaters.* For systems numbered 1 thru 10, calculate the off-cycle draft factor for flue gas flow (D_F) defined as:

$D_F = D_P$

For systems numbered 11 or 12: $D_F = D_P D_O$

where:

D_P = as defined in 4.5.1 of this appendix
D_O = as defined in 4.4 of this appendix

4.5.3 *Optional procedure for determining off-cycle draft factor for stack gas flow for vented heaters.* Calculate the off-cycle draft factor for stack gas flow (D_S) defined as:

For systems numbered 1 or 2: $D_S = 1.0$
For systems numbered 3 or 4: $D_S = (D_P + 0.79)/1.4$
For systems numbered 5 or 6: $D_S = D_O$
For systems numbered 7 or 8 and if $D_O(S/F) < 1$: $D_S = D_O D_P$
For systems numbered 7 or 8 and if $D_O(S/F) > 1$:

$D_S = D_O D_P + [0.85 - D_O D_P]\,[D_O(S/F) - 1]/[S/F - 1]$

where:

D_P = as defined in 4.5.1 of this appendix
D_O = as defined in 4.4 of this appendix

TABLE 1.—OFF-CYCLE DRAFT FACTORS FOR FLUE GAS FLOW (D_F) AND FOR STACK GAS FLOW (D_S) FOR VENTED HOME HEATING EQUIPMENT EQUIPPED WITHOUT THERMAL STACK DAMPERS

System number	(D_F)	(D_S)	Burner type	Venting system type [1]
1	1.0	1.0	Atmospheric.	Draft hood or diverter.
2	0.4	1.0	Power	Draft hood or diverter.
3	1.0	1.0	Atmospheric.	Barometric draft regulator.
4	0.4	0.85	Power	Barometric draft regulator.
5	1.0	D_o	Atmospheric.	Draft hood or diverter with damper.
6	0.4	D_o	Power	Draft hood or diverter with damper.
7	1.0	D_o	Atmospheric.	Barometric draft regulator with damper.
8	0.4	D_oD_p	Power	Barometric draft regulator with damper.
9	1.0		Atmospheric.	Direct vent.
10	0.4		Power	Direct vent.
11	D_o		Atmospheric.	Direct vent with damper.
12	0.4 D_o		Power	Direct vent with damper.

[1] Venting systems listed with dampers means electro-mechanical dampers only.

TABLE 2.—VALUES OF HIGHER HEATING VALUE (HHV_A), STOICHIOMETRIC AIR/FUEL (A/F), LATENT HEAT LOSS ($L_{L,A}$) AND FUEL-SPECIFIED PARAMETERS (A, B, C, AND D) FOR TYPICAL FUELS

Fuels	HHV_A (Btu/lb)	A/F	$L_{L,A}$	A	B	C	D
No. 1 oil	19,600	14.66	6.95	0.0679	14.22	0.0179	0.167
No. 2 oil	19,500	14.46	6.50	0.0667	14.34	0.0181	0.167
Natural gas	20,120	14.45	9.55	0.0918	10.96	0.0175	0.171
Manufactured gas	18,500	11.81	10.14	0.0965	10.10	0.0155	0.235
Propane	21,500	15.58	7.99	0.0841	12.80	0.0177	0.151
Butane	20,000	15.36	7.79	0.0808	12.93	0.0180	0.143

TABLE 3.—FRACTION OF HEATING LOAD AT REDUCED OPERATING MODE (X1) AND AT MAXIMUM OPERATING MODE (X2), AVERAGE OUTDOOR TEMPERATURES (TOA AND TOA*), AND BALANCE POINT TEMPERATURE (TC) FOR VENTED HEATERS EQUIPPED WITH EITHER TWO-STAGE THERMOSTATS OR STEP-MODULATING THERMOSTATS

Heat output ratio *	X1	X2	TOA	TOA*	TC
0.20 to 0.24	.12	.88	57	40	53
0.25 to 0.29	.16	.84	56	39	51
0.30 to 0.34	.20	.80	54	38	49
0.35 to 0.39	.30	.70	53	36	46
0.40 to 0.44	.36	.64	52	35	44
0.45 to 0.49	.43	.57	51	34	42
0.50 to 0.54	.52	.48	50	32	39
0.55 to 0.59	.60	.40	49	30	37
0.60 to 0.64	.70	.30	48	28	34
0.65 to 0.69	.76	.24	47	27	32
0.70 to 0.74	.84	.16	46	25	29
0.75 to 0.79	.88	.12	46	22	27
0.80 to 0.84	.94	.06	45	20	23
0.85 to 0.89	.96	.04	45	18	21
0.90 to 0.94	.98	.02	44	16	19
0.95 to 0.99	.99	.01	44	13	17

* The heat output ratio means the ratio of minimum to maximum heat output rates as defined in 4.1.13.

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FIGURE 1

Average Outdoor Air Temperature vs. Balance Point Temperature for Modulating Vented Heaters

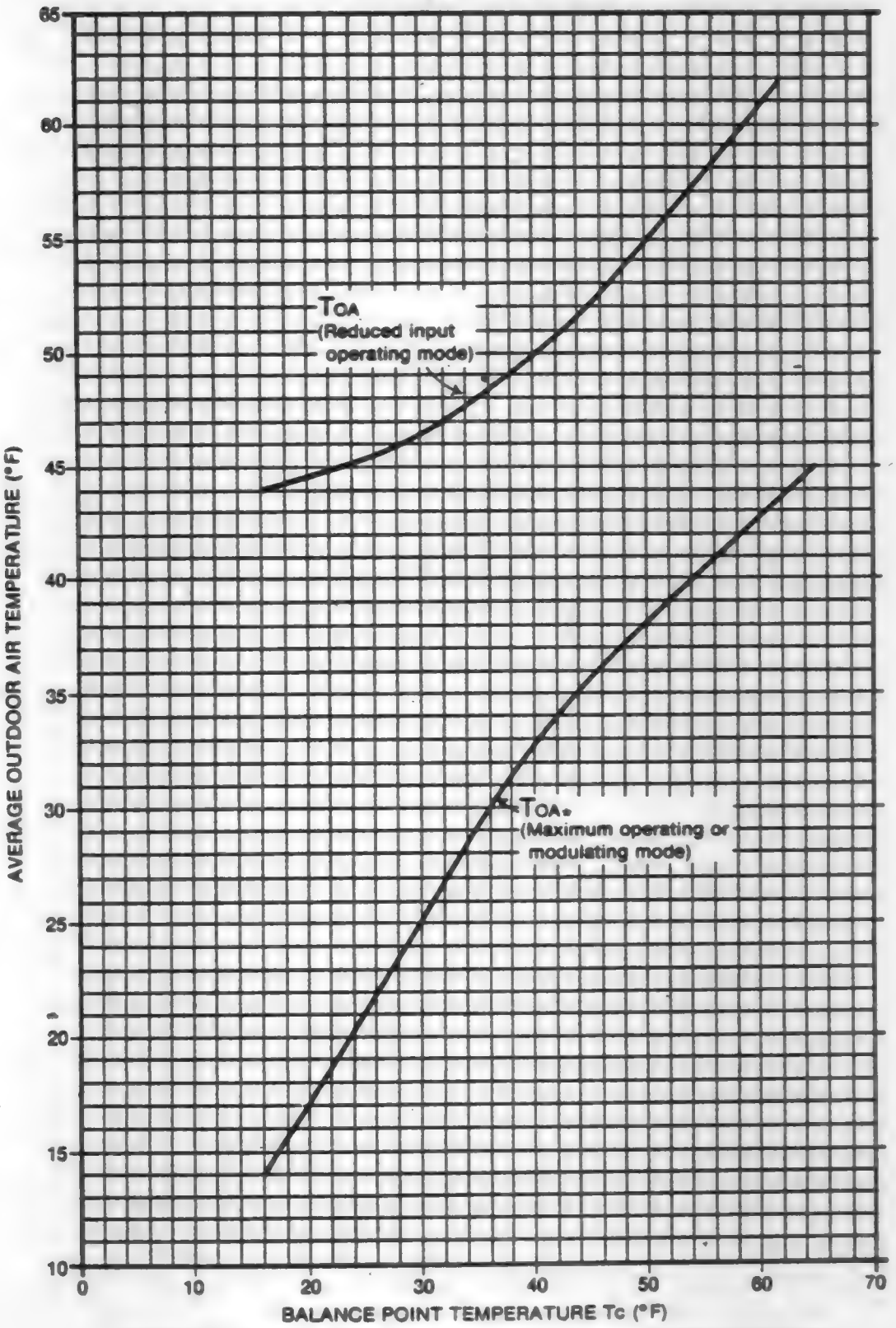

This figure is based on 4500 degree-days and 15° F outdoor design temperature.

FIGURE 2

Fraction of Total Annual Heating Load Applicable to Reduced Operating Mode (X_1) and to Maximum Operating Mode or Modulating Mode (X_2) vs. Balance Point Temperature for Modulating Vented Heaters

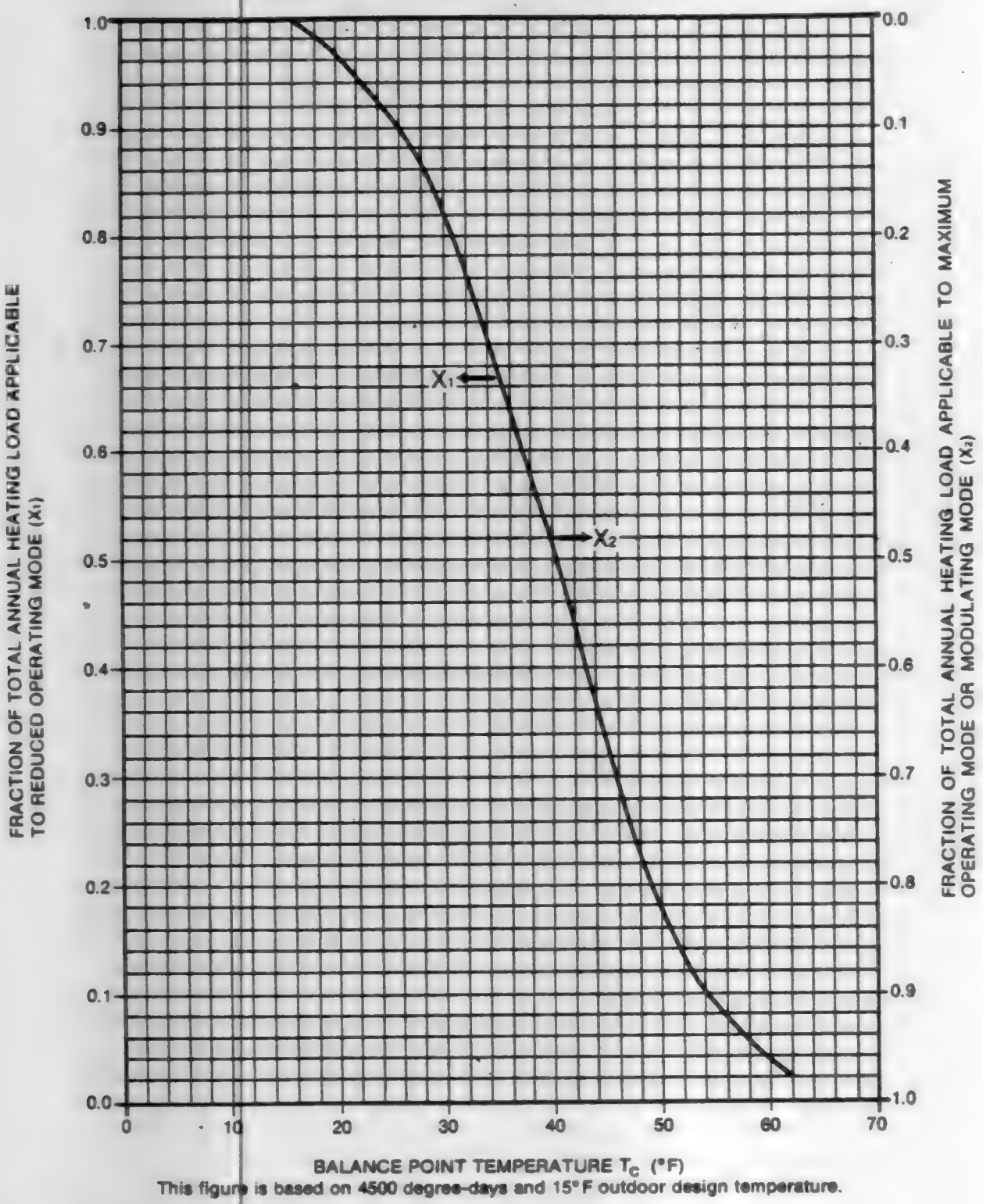

This figure is based on 4500 degree-days and 15° F outdoor design temperature.

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Wednesday
March 28, 1984

Part VI

Office of Management and Budget

5 CFR Part 1320

Controlling Paperwork Burdens on the Public, Delegation of Review and Approval Authority to the Board of Governors of the Federal Reserve System; Proposed Rulemaking

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1320

Controlling Paperwork Burdens on the Public, Delegation of Review and Approval Authority to the Board of Governors of the Federal Reserve System; Notice of Proposed Rulemaking

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of proposed rulemaking.

SUMMARY: This regulation would delegate to the Board of Governors of the Federal Reserve System the authority, under the Paperwork Reduction Act of 1980 and 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Federal Reserve Board (Board). This delegation is proposed to cover all collections of information by the Board except those meeting certain criteria specified in Appendix A and discussed in the Supplementary Information section which follows. In exercising this delegated authority, the Board is to afford the public opportunity to participate in the review process, where this is possible and appropriate, assure that the requirements of 5 CFR 1320.4(b) are adhered to, and assure that the guidelines in 5 CFR 1320.6 are considered in the review process. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. Under the Act, OMB may limit, condition, or rescind this delegation at any time, but it is intended that OMB will exercise this authority only rarely and in unusual circumstances.

The Office of Management and Budget is seeking comments on this proposal to add a new paragraph (d) to 5 CFR 1320.9 and a new Appendix A to 5 CFR 1320.

DATE: Comments must be received on or before April 27, 1984.

ADDRESS: Please address all written comment to Mr. Arnold Strasser, Assistant Chief, Reports Management Branch, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold Strasser, Assistant Chief, Reports Management Branch, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 ((202) 395–6880).

SUPPLEMENTARY INFORMATION: Section 3507(e) of the Paperwork Reduction Act of 1980 (Act) and 5 CFR 1320.9 provide that OMB may delegate its authority to approve collections of information to an agency's designated senior official for Paperwork Reduction or to the agency head if certain conditions are met. The Act and OMB's implementing regulations require OMB to comply with the notice and comment procedures of Title 5 U.S.C. Chapter 5 before providing delegation to any agency. OMB has determined that the Board of Governors of the Federal Reserve System (Board) meets all of the requirements for delegation. Accordingly, and because OMB believes that the public has a vital interest in the administration of the Act, OMB is seeking public comment on this proposal.

The delegation would be to the Board itself because as head of the agency, the Board retains final authority to approve the agency's collections of information, subject to OMB's Paperwork Reduction Act review and approval. This authority is usually exercised by the Board as a collegial body during scheduled meetings conducted "on the record" after the public has received notification of the meeting. The agency review process for proposed collections of information considers the purpose, need, burden, and utility of each collection, and determines whether the information needed is already available to the Board. This review process culminates with Board authorization of the collection either as proposed or with Board-ordered modifications (after which Board staff transmits the proposed collectons to OMB for review and approval), an order for the Board staff to reexamine and modify the proposal, or a determination that the collection of information should not be conducted because it s not necessary for the proper performance of the agency function.

Under this review procedure, instituted by the Board in 1975, collections of information proposed to be started, revised, continued without modification, or deleted are subjected to a comprehensive and rigorous evaluation by several Federal Reserve groups. Each group is charged with, among other things, the responsibility of minimizing reporting burdens while focusing special attention on smaller institutions, questioning the need for the information, and evaluating the trade-off between data needs and reporting burdens. Each reviewing group separately analyzes the proposals and considers the need for the information, including the need for individual report items, the reporting frequency, and selection of the reporting panel. The reviews cover statutory or regulatory authority, issues of confidentiality, availability of related information, clarity of format and instructions, reporting deadlines, costs and burdens, relative burden of alternative approaches, and other relevant items. The next to the last stage of this system of critique and evaluation is conducted by three Board members including the Governor who is the Board's designated senior official for paperwork reduction activities. At each stage, the initiators may modify the proposal as a result of the review and an evaluation of the proposal at that stage accompanies the proposal to the next stage. The final, and decision, stage of the process, as noted above, is action by the Board of Governors.

The exact procedures and the particular structure of the reviewing groups may vary depending upon the nature of the collection, its relationship to statutory or regulatory requirements, and whether or not the collection is mandated by other agencies (*e.g.*, the Federal Financial Institutions Examination Council (FFIEC)). For the bulk of proposals that entail reporting to the Board, the current process is initiated by the submission of a proposal by the Division with subject-matter responsibility for the new, revised, or extended reporting. The initiating Division prepares the proposal and reviews it for conformance with the review standards. After preliminary screening by the Financial Reports Section, the proposal is reviewed in-depth by the Steering Committee for Report Review, which is made up of staff members from both the Board and the Reserve Banks, and then is reviewed by the Presidents of the Federal Reserve Banks before being submitted to the Board members.

The whole process is under the general direction of the Board member designated as the Board's senior official for Paperwork Reduction and under the day-to-day supervision and management of a senior staff member—an Assistant to the Board who is outside the structure of the program offices that would originate proposals for information collections. The Financial Reports Section maintains staff-level administrative control throughout the review process regardless of how or where the collection proposal originates. Each Division with program responsibilities has staff designated to act as liaison with the review structure

described above and to monitor that Division's adherence to the paperwork clearance standards and procedures.

OMB believes that this review and approval process meets all the requirements for full delegation of OMB's Paperwork Reduction Act approval authority. These requirements and the reasons why OMB believes that the Board fully meets them follow.

(1) The agency review process must exhibit independence from program responsibility.

The Board of Governors, which as a collegial body is the head of the agency, makes the final decisions as to whether to conduct or sponsor a collection of information. These decisions are based on independent Board review following the intensive review within the Federal Reserve. Since the final decisions are made at head-of-agency level, the process satisfies the required independence from program responsibility.

(2) The agency must have sufficient resources to carry out responsibilities.

The Board has demonstrated a commitment to information collection reviews that, as described above, includes the use of extensive resources and personnel from all areas within the Federal Reserve.

(3) The agency review process must evaluate fairly whether the proposed collections of information should be approved.

OMB is convinced that a fair evaluation is afforded each proposal throughout each stage of the Board review process. This is evident by the fact that OMB has only refused approval to the Board twice since the Paperwork Reduction Act was implemented. Both refusals were on grounds of timing, not substance, and in each case the disapproved request was mandated by the FFIEC. (All such mandated requirements would be excluded from the area of delegated authority.)

(4) Evidence of successful performance.

All the other points previously mentioned indicate the successful performance of the Board's review process. Additionally, the Board has achieved a 25% reporting burden reduction over the FY 1981 to FY 1983 period. The Board has achieved this reduction on its own initiatives, each year requesting an information collection budget (ICB) with substantial reductions, and its requested budget has always been approved. Under the proposed delegation, the Board would continue to be subject to the ICB process, would have a budget ceiling approved, and would be required to request a higher ceiling from OMB prior to approving an information collection that would otherwise result in the existing ceiling being exceeded by fiscal year-end.

Based on these facts, OMB proposes to give the Board of Governors of the Federal Reserve System a delegation to approve its collections of information subject to the following three exceptions.

The first exception would apply when the proposed collections or proposed revisions to existing collections are required by the FFIEC or other Federal executive branch entity with authority to require the Board to conduct or sponsor a collection of information. In this situation, the Board's review authority would not satisfy the criterion for an independent evaluation as to whether the proposed collection or change should be approved. Since the decision to require the information collection came from outside the Board and was imposed on the Board, the Board would not be an independent party in the review.

The second exception where review would revert to OMB is if the Board proposed to delete or change information it currently collects that is required and used by another agency, and, after the staff of the Board and the other agency have attempted to resolve the problem, the head of that agency objects is writing to OMB before the end of the comment period specified by the Board.

The third exception would be in the case of a new collection or change to an existing collection that would cause the Board to exceed its ICB ceiling by fiscal year-end.

The Board may also, at its option, request OMB to conduct any delegated review.

The Board's final action would normally be taken after the public was given reasonable opportunity to comment on the collection of information through notice in the **Federal Register**. These **Federal Register** notices will advise the public that a copy of comments may also be submitted to the OMB/OIRA desk officer for the Board. When the Board submits the notice to the **Federal Register**, a copy must also be sent to the OMB/ORRA desk officer.

However, in a situation where the Board determines that a new collection or proposed change must be instituted so quickly that public participation is not feasible and that immediate action is necessary for the Board to carry out its statutory authority or that any delay would defeat the purpose of the collection, the Board may grant an "immediate" clearance to the collection, that is, without providing opportunity for public comment. However, upon issuing that clearance, the Board must publish in the **Federal Register** a notice informing the public of its approval and indicating why immediate action was necessary. Prior to any extension of such an approval, the Board will take into account any comments received after the institution of the collection.

The Board must also assure that all approved collections of information are reviewed at least once every three years and when any changes in the collections are proposed. This review would normally be conducted before the expiration date of the prior approval. Where the review has not been completed prior to the expiration date, the Board may extend the report, up to three months, without public notice in order to complete the review and consequent revisions, if any. There may also be other circumstances in which the Board determines that a three-month extension without public notice is appropriate.

OMB and the Board recognize that there may be some collection of information requirements in existing regulations that have not yet been reviewed by OMB and assigned OMB control numbers. According to 5 CFR 1320.14, OMB must approve all collection of information requirements contained in existing regulations, though OMB may require an agency to initiate subsequent rulemaking to modify or eliminate a requirement. Inasmuch as the proposed delegation to the Board would extend to newly instituted collection-of-information requirements, OMB believes that the Board should also have delegated authority to approve like requirements contained in existing regulations. Accordingly, the OMB proposed delegation would also permit the Board to exercise delegated authority over all collections of information in existing regulations that do not have current OMB control numbers without any suspension of their effectiveness. Upon issuance of a final OMB rule providing the proposed delegation to the Board, the Board will promptly review all such requirements, assign OMB control numbers to them, and display such numbers as required by 5 CFR 1320.14.

In determining whether to approve a collection of information under the delegation, the Board is to comply with the review criteria specified in 5 CFR 1320.4. In doing so, the Board must assure itself: (1) That the collection of information is the least burdensome necessary for the proper performance of the Board's functions and to comply

with legal requirements and achieve program objectives; (2) that the collection of information does not duplicate information otherwise accessible to the Board; and (3) that the collection of information has practical utility and that the Board has sought to minimize the cost to itself but not by means of shifting disproportionate costs or burdens onto the public.

The Board must also consider all relevant concerns, including but not limited to, comments received from the public and other government agencies, and whether or not the collection satisfies the guidelines set forth in 5 CFR 1320.6. If the collection is determined by the Board to be inconsistent with those guidelines, the Board must either disapprove the collection, change the proposal so that it conforms to the guidelines, or, upon determining that it is essential to the proper performance of the Board's function to conduct the collection as proposed, approve it.

The Board will also assure that each approved information collection displays an OMB control number, which it will assign from the block of numbers provided in advance by OMB, and the expiration date (unless the collection is contained in a regulation).

As soon as practical after approval, the Board will provide to OMB each approved collection of information, together with a completed SF83, a supporting statement, a copy of each comment received or a summary of these comments and a certification that the Board has approved the collection of information. This package will be incorporated into OMB's public docket files.

OMB may choose to review the Board's paperwork review process under the delegation at any time. The Board will cooperate in carrying out such a review. The Board will respond to any recommendations resulting from such review and, if it finds the recommendations to be appropriate, will either accept the recommendations or propose an alternative approach to achieve the intended purpose.

As required by 5 CFR 1320.9(c), the delegation may be limited, conditioned, or rescinded in whole or in part at any time. However, OMB will exercise its right to review individual information collection proposals only in unusual circumstances and, in those rare instances, will do so, subject to the provisions of 5 CFR 1320.11(f), prior to the expiration of the time period set for public comment in the Board's **Federal Register** notices. OMB will generally exercise this authority in only three situations:

(a) If prior to the commencement of a Board review (*e.g.*, during the ICB review), it has notified the Board that it intends to review a specific new proposal for the collection of information or the continued use (with or without modification) of an existing collection;

(b) If there is substantial public objection to a proposed information collection; or

(c) If OMB determines that a substantially inadequate and inappropriate lead time has been provided between the final announcement date of the proposed requirement and the first date when the information is to be submitted or disclosed.

Where OMB conducts a review of a Board information collection proposal, either because the collection is exempt from the delegation or because OMB has exercised its right to rescind the delegation with respect to that collection, or the Board has asked OMB to review the collection, the provisions of 5 CFR 1320.17 and 5 CFR 1320.19 shall continue to apply.

Regulatory Impact and Regulatory Flexibility Act Analysis

OMB has determined that this regulation is not a major rule as defined by Executive Order 12291 and that the regulation would not have a significant economic impact on a substantial number of small businesses or other small entities.

Issued in Washington, D.C., March 22, 1984.

Christopher C. DeMuth,

Administrator, Office of Information and Regulatory Affairs.

List of Subjects in 5 CFR Part 1320

Reporting and recordkeeping requirements, Paperwork, Collection of information, Delegated review authority.

PART 1320—[AMENDED]

For the reasons set forth in the preamble, OMB proposes to amend 5 CFR Part 1320 by adding a new paragraph, (d) to § 1320.9 and by adding a new Appendix A to Part 1320 which read as follows:

§ 1320.9 Delegation of approval authority.

* * * * *

(d) Subject to the provisions of this part, and in accord with the terms and conditions of each delegation as specified in Appendix A to this part, the Director delegates review and apporval authority to the following agencies:

(1) Board of Governors of the Federal Reserve System

* * * * *

Appendix A. Agencies With Delegated Review and Approval Authority

1. The Board of Governors of the Federal Reserve System.

(a) Authority to review and approve collection of information requests, collection of information requirements, and collections of information in current rules is delegated to the Board of Governors of the Federal Reserve System (Board).

(1) This delegation does not include review and approval authority over any new collection of information or any modification to an existing collection of information that:

(i) Is proposed to be collected as a result of a requirement or other mandate of the Federal Financial Institutions Examination Council, or other Federal executive branch entities with authority to require the Board to conduct or sponsor a collection of information.

(ii) Is objected to by another Federal agency on the grounds that that agency requires information currently collected by the Board, that the currently collected information is being deleted from the collection, and the deletion will have a serious adverse impact on the agency's program provided that such objection is certified to OMB by the head of the Federal agency involved, with a copy to the Board, before the end of the comment period specified by the Board in the **Federal Register** notices specified in (3) (i) below.

(iii) Would cause the burden of the information collections conducted or sponsored by the Board to exceed by the end of the fiscal year the Information Collection Budget allowance provided to the Board by OMB for the fiscal year-end.

(2) The Board may ask that OMB review and approve collections of information covered by this delegation.

(3) In exercising delegated authority, the Board will: (i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action approving the collection. Reasonable opportunity for public comment will include publishing a notice in the **Federal Register** informing the public of the proposed collection of information, notifying the public of the availability of copies of the "clearance package," and providing the public with the opportunity to comment. Such **Federal Register** notices shall also advise the public that they may also send a copy of their comments to the OMB/OIRA Desk Officer for the Federal Reserve Board.

(A) Should the Board determine that a new collection of information or a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation, the Board may approve of the collection of information without providing opportunity for public comment. At the earliest practical data after approving the collection of information, the Board will publish a **Federal Register** notice informing the public of its approval of the collection of

information and indicating why immediate action was necessary.

(B) In such cases, before taking final action to reauthorize the collection of information for an additional period, the Board will take into account any comments received after the institution of the collection.

(ii) Provide the OMB desk officer for the Federal Reserve Board with a copy of the Board's **Federal Register** notice not later than the day the Board files the notice with the Office of the Federal Register.

(iii) Assure that approved collections of information are reviewed not less frequently than once every three years, and that such reviews are normally conducted before the expiration date of the prior approval. Where the review has not been completed prior to the expiration date, the Board may extend the report, for up to three months, without public notice in order to complete the review and consequent revisions, if any. There may also be other circumstances in which the Board determines that a three-month extension without public notice is appropriate.

(iv) Take every reasonable step to ensure that the collection of information conforms to the requirements of 5 CFR 1320.4(b). In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. The Board will not approve a collection of information that it determines does not satisfy the guidelines set forth in 5 CFR 1320.6, unless it determines that departure from these guidelines is necessary to satisfy statutory requirements or other substantial need.

(v) Assure that each approved collection of information displays an OMB control number and that all collections of information, except those contained in regulations, display the expiration date of the approval.

(vi) Assure that each approved collection of information, together with a completed SF83, a supporting statement, a copy of each comment received from the public and other agencies in response to the Board's **Federal Register** notice or a summary of these comments, and a certification that the Board has approved of the collection of information in accordance with the provisions of this delegation is transmitted to OMB for incorporation into OMB's public docket files. Such transmittal shall be made as soon as practical after the Board has taken final action approving the collection. However, no collection of information may be instituted until the Board received written or oral notification from OMB or OMB staff that the transmittal has been received.

(b) OMB will:

(1) Provide the Board in advance with a block of control numbers which the Board will assign in sequential order to, and display on, new collections of information.

(2) Provide a written notice of action to the Board indicating the Board approvals of collections of information have been received by OMB and incorporated into OMB's public docket files and inventory of currently approved collections of information.

(3) Review any collection of information referred by the Board in accordance with the provisions of section 1(a)(2) of the appendix.

(c) OMB may review the Board's paperwork review process under the delegation. The Board will cooperate in carrying out such a review. The Board will respond to any recommendations resulting from such review and, if it finds the recommendations to be appropriate, will either accept the recommendations or propose an alternative approach to achieve the intended purpose.

(d) This delegation may, as provided by 5 CFR 1320.9(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances and, in those rare instances, will do so subject to the provisions of 5 CFR 1320.11(f), prior to the expiration of the time period set for public comment in the Board's **Federal Register** notice *and* generally only if:

(1) Prior to the commencement of a Board review (*e.g.*, during the ICB review), OMB has notified the Board that it intends to review a specific new proposal for the collection of information or the continued used (with or without modification) of an existing collection;

(2) There is substantial public objection to a proposed information collection; or

(3) OMB determines that a substantially inadequate and inappropriate lead time has been provided between the final announcement date of the proposed requirement and the first date when the information is to be submitted or disclosed.

When OMB exercises this authority it will consider that the period of its review began the day that OMB received the **Federal Register** notice provided for in Section 1(a)(3)(i) of the Appendix.

(e) Where OMB conducts a review of a Board information collection proposal under Section 1(a)(1), 1(a) (2), or 1(d) of this Appendix, the provisions of 5 CFR 1320.17 and 5 CFR 1320.19 continue to apply.

(Paperwork Reduction Act of 1980, (Pub. L. 96–511); 44 U.S.C. Chapter 3)

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Federal Register
Vol. 49, No. 62
Thursday, March 29, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

Animal and Plant Health Inspection Service

7 CFR Part 354

Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations which established charges for reimbursable overtime work performed by employees of Plant Protection and Quarantine at border ports, seaports and airports. Plant Protection and Quarantine Officers of the United States Department of Agriculture are charged with performing inspection duties relating to imports and exports at border ports, ocean ports and airports of entry. Such services may be performed outside the regular tour of duty of the employee when requested by persons having ownership, custody or control of plants, plant products, or other articles subject to such port of entry inspection, treatment or testing and the charges for such premium pay service are recoverable through reimbursement from those for whom the services are performed. The payrolling procedures under which port of entry inspectors are paid have been changed insofar as entitlement to commuted traveltime allowances is concerned. In the past, entitlement to commuted traveltime allowances has been based on the performance of additional travel solely on account of the overtime service. This entitlement has been changed to permit the substitution of certain time elements in lieu of a positive travel requirement when overtime service begins less than one hour before the regular tour of duty or begins shortly after the completion of the daily tour of duty. At the same time, the amount of commuted traveltime allowance paid is reduced from a full allowance to ½ an allowance in most instances where only one-way travel is involved. This change in the method of computing commuted traveltime entitlements necessitates a change in the regulations under which reimbursement for such sums paid out for such services is made under the reimbursable features of the Act of August 28, 1950. (7 U.S.C. 2260).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Classification, Employment and Executive Resources Program, Human Resources Division, U.S. Department of Agriculture, Room 221, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782 [301–436–6466.]

SUPPLEMENTARY INFORMATION: The Act of August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260) authorizes the Secretary of Agriculture to pay employees of the Department performing inspection and quarantine services relating to imports into and exports from the United States for all overtime, night or holiday work at such rates as he may determine and to accept from persons for whom such work is performed, reimbursement for any sums paid out by him for such work. Thus, the amounts reimbursed to the Department by owners or custodians of plants and plant products or other articles who request the services of Plant Protection and Quarantine employees at ports of entry outside their regular tour of duty or at night or on a holiday, need to be computed on the same basis as is the pay of those employees actually performing the work. Under the current payrolling practices, entitlement to commuted traveltime allowances is based primarily on the performance of additional travel solely on account of the overtime services. This pay entitlement qualification has been changed, when inspection services are performed on a reimbursable basis immediately before or immediately after the regular scheduled daily tour of duty, to permit substitution of designated periods of elapsed time in lieu of the positive travel heretofore required.

This amendment has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined to be not a "major rule." This final rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, or investment, productivity innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Mr. Harvey L. Ford, Deputy Administrator, Plant Protection and Quarantine, APHIS, has determined that this action will not have a substantial impact on a significant number of small entities. Specifically, this amendment affects only those entities that request the services of an inspector on a holiday or on an overtime basis. Services of an inspector during regularly established hours of service at a port are still furnished free of charge to those requiring the service. The pay provisions determined by the Secretary to be appropriate for employees performing inspection and quarantine services at ports of entry, the established hours of service for such ports, and the features of the reimbursable plan for recovering the costs of furnishing port of entry inspection on an appeal basis depend upon facts within the knowledge of the Department of Agriculture. Public participation in this rulemaking proceeding would not make additional relevant information available to the Department. The Agency has no alternatives to establishing procedures to effect reimbursement which utilize the same basis for recovery as is used in paying the employees who perform the work. By law, importers/exporters are required to reimburse the Agency for costs associated with services requested and rendered. Unless reimbursable amounts are calculated in the same manner as sums paid for the personal services provided, the reimbursement achieved will not equal the cost of providing the service. Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures on these amendments are impracticable and unnecessary and good cause is found for making these amendments effective less than 30 days after publication in the Federal Register.

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, Part 354, Chapter III, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 354 reads as follows:

Authority: 7 U.S.C. 2260 and Sec. 15, Pub. L. 94–353 (49 U.S.C. 1741).

2. Section 354–1(a) (1) and (2) is revised to read as follows:

§ 354.1 Overtime work at border ports, seaports, and airports.

(a)(1) Any person, firm, or corporation having ownership, custody or control of plants, plant products, animals, animal products or other commodities subject to inspection, laboratory testing, certification or quarantine under this chapter and Subchapter D of Chapter I, Title 9 CFR, who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Plant Protection and Quarantine inspector in charge to furnish inspection, laboratory testing, certification or quarantine service during such overtime or Sunday or holiday period, and shall pay the Government therefor at the rate of $28.92 per work-hour per employee on a Sunday and at the rate of $21.84 per work-hour per employee for holiday or any other period except that for any services performed on a Sunday or holiday or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture; and except that owners and operators of aircraft will be provided service without reimbursement during regularly established hours of service on a Sunday or holiday; and except that the overtime rate to be charged owners and operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of aircraft, for work performed outside of the regularly established hours of service on a Sunday will be $23.68 and for work performed outside the regularly established hours of service for holiday or any other period will be $16.44 per hour, which charges exclude administrative overhead charges.

(2) A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or which is performed by an employee on his regular workday beginning either at least 1 hour before his scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of Sunday or holiday or unscheduled overtime work to which the 2-hour minimum charge provision applies may include a commuted traveltime period (CTT) the amount of which shall be prescribed in administrative instructions to be issued by the Deputy Administrator, Plant Protection and Quarantine for the areas in which the Sunday or holiday or overtime work is performed and such period shall be established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which the employee performs such Sunday or holiday or overtime duty. With respect to places of duty within the metropolitan area of the employee's headquarters, such CTT period shall not exceed 3 hours. It shall be administratively determined from time to time which days constitute holidays. The circumstances under which such CTT periods shall be charged and the percentage applicable in each circumstance are as reflected in the following table:

	Actual time[1] charge—no minimum	2-hour guarantee charge	Commuted[2] traveltime (CTT) charge
Charges for Inspection Within Metropolitan Area of Employee's Headquarters			
Work beginning before daily tour begins:			
8 to 59 minutes	Yes	No	None
60 to 119 minutes		Yes	½ CTT.
120 minutes or more.		Yes	Full CTT.
Work beginning after daily tour ends:			
Direct continuation.	Yes	No	None.
Break-in-service of:			
2–29 minutes		Yes	None.
30–60 minutes		Yes	½ CTT.
61 minutes or more.		Yes	Full CTT.
Charges for Inspection Services Performed Outside Metropolitan Area of Employee's Headquarters			
Work beginning before daily tour begins:			
8 to 59 minutes	Yes	No	½ CTT.
60 minutes or more.		Yes	Full CTT.
Work beginning after daily tour ends:			
Direct continuations.	Yes	No	½ CTT.
2–59 minutes	No	Yes	½ CTT.
60 minutes or more.	No	Yes	Full CTT.
Charges for Call Out Inspection Service on Holiday or Nonworkday			
Work beginning at any time.	No	Yes	Full CTT.

[1] Actual time charged when work is contiguous with the daily tour will be in quarter hour multiples, with service time of 8 minutes or more rounded up to the next quarter hour and any time of less than 8 minutes will be disregarded.
[2] The full CTT allowance will be the amount of commuted traveltime prescribed for the place at which the inspections are performed. See Part 97.2. One-half CTT is ½ of the full CTT period.

* * * * *

3. The introductory paragraph of § 354.2 is revised to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

Each period of overtime and holiday duty as defined in § 354.1 shall, in addition, include a commuted traveltime period for the respective ports, stations, and areas in which employees are located. The prescribed commuted traveltime periods are set forth below:

* * * * *

Done at Washington, D.C., on March 23, 1984.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 84–8405 Filed 3–28–84; 8:45 am]

BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

7 CFR Part 417

[Amendment No. 2]

Sugarcane Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final an amendment to the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1983 and succeeding crop years. The amendment was implemented by the Federal Crop

Insurance Corporation (FCIC) on an interim basis to provide insureds with sufficient time to consider changes being made in the policy for insuring sugarcane and to comply with the regulations with respect to placing these changes on file in a timely manner. The intended effect of this action is to confirm the interim rule.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Friday, August 20, 1982, FCIC published an interim rule in the **Federal Register** at 47 FR 36405, amending the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1983 and succeeding crop years to (1) add a Section 11 to the Appendix to the Policy to describe FCIC's liability in cases of loss by fire when the insured has other insurance covering fire losses, (2) prescribe the interest to be charged when premiums payments are not made within a certain time, and (3) add a provision to require the insured to file a notice when the crop is damaged to the extent that a loss is probable and leave intact a representative sample of the unharvested crop.

In accordance with the provisions of these regulations for insuring sugarcane, any amendments to these regulations must have been placed on file 15 days prior to the cancellation date in order to provide sufficient time for the policyholder to consider the changes being made. There would not have been sufficient time for notice and public comment prior to the implementation of this rule and still comply with the regulations with respect to placing this rule on file in the required time to be effective for the 1983 crop year.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has been determined that this action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Departmental Regulations 1512–1. The sunset review date established for these regulations is April 1, 1988.

List of Subjects in 7 CFR Part 417

Crop insurance, Sugarcane.

Final Rule

Accordingly, the interim rule, published in the **Federal Register** of Friday, August 20, 1982, is hereby adopted as final.

Done in Washington, D.C., February 21, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 22, 1984.

Edward Hews,

Acting Manager.

Approved by:

[FR Doc. 84-8475 Filed 3-28-84; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 431

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final a revision and reissuance of the Soybean Crop Insurance regulations, effective for the 1983 and succeeding crop years. The revision and reissuance of the regulations was implemented by the Federal Crop Insurance Corporation (FCIC) on an interim basis to allow insureds sufficient time to consider changes in the regulations for insuring sugar beets. The intended effect of this action is to confirm the interim rule as published.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On December 21, 1982, FCIC published an interim rule in the **Federal Register** at 47 FR 56820, revising and reissuing the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1983 and succeeding crop years in order to provide sufficient time for insureds to consider changes in the regulations for insuring soybeans. Under the regulations, any amendments must be placed on file in the service office by a date 15 days prior to the cancellation date in order to be effective for the crop year. It was determined that there would not have been sufficient time to allow insureds to consider such changes and still comply with the regulations with respect to placing the changes on file 15 days prior to the cancellation date. The public was given 60 days after publication of the interim rule in which to submit comments, data, and opinions on the rule and the rule was scheduled for review in order to provide for any amendments made necessary by such public comment, but no comments were received.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

This action has been reviewed under USDA procedures established in Departmental Regulation No. 1512–1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is October 1, 1987.

List of Subjects in 7 CFR Part 431

Crop insurance; Soybeans.

Final Rule

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*),

the Interim Rule, revising and reissuing the Soybean Crop Insurance Regulations as published in the **Federal Register** at 47 FR 56820 on December 21, 1982, is hereby adopted as final.

Done in Washington, D.C., on February 24, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Date: March 22, 1984.

Edward Hews,

Acting Manager.

Approved by:

[FR Doc. 84-8477 Filed 3-28-84; 8:45 am]

BILLING CODE 3410-08-M

Soil Conservation Service

7 CFR Part 613

Plant Materials Centers; Technical Amendments

AGENCY: Soil Conservation Service, USDA.

ACTION: Final rule; amendment to the rule.

SUMMARY: Minor editorial changes are being made to clarify and update the material published October 31, 1974, and April 17, 1975, in the **Federal Register.**

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas N. Shiflet, Director, Ecological Sciences Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 447-2587.

SUPPLEMENTARY INFORMATION: Since this rule became effective, several inconsistencies have been brought to light requiring the need to update it with several minor editorial changes. These changes do not significantly affect the rule.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impractical and contrary to the public interest, and good cause is found for making this rule effective on publication in the **Federal Register.** Since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12291. Finally, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 613

Plants (agriculture), Soil conservation.

PART 613—[AMENDED]

Accordingly, 7 CFR Part 613 is revised to read as follows:

Sec.

613.1 Purpose.
613.2 Policy.
613.3 SCS responsibilities in plant materials.
613.4 Special production of plant materials.
613.5 Plant materials centers.

Authority: Pub. L. 74-46, 49 Stat. 163 (16 U.S.C. 590a-f); Pub. L. 74-210, 50 Stat. 525 (7 U.S.C. 1010-1011).

§ 613.1 Purpose.

This part provides Soil Conservation Service (SCS) policy on the operations of plant materials centers. The centers have responsibilities for assembling, testing, releasing, and providing for the commercial production and use of plant materials for programs of soil, water, and related resource conservation and development.

§ 613.2 Policy and objectives.

(a) It is SCS policy to assemble, comparatively evaluate, release, and distribute for commerical increase new or improved plant materials needed for broad programs of resource conservation and development for agriculture, wildlife, urban, recreation, and other land uses and environmental needs. It is SCS policy to conduct plant materials work in cooperation with other agencies of the U.S. Department of Agriculture, such as the Agricultural Research Service, and with other federal and state research agencies including state agricultural experiment stations. The emphasis of the SCS plant materials work is to find suitable plants for erosion control adapted to soil and site conditions where vegetation is difficult to establish. In contrast, the emphasis of research agencies and organizations in plant development is to improve economically important crops. The SCS program of testing and releasing new seed-progagated plant materials follows the guidelines in "Statement of Responsibilities and Policies Relating to the Development, Release, and Multiplication of Publicly Developed Varieties of Seed-Propagated Crops," which was adopted in June 1972 by land grant colleges and interested federal agencies. SCS releases improved conservation plant materials requiring vegetative multiplication in ways appropriate for particular states and particular species by working with experiment stations, crop improvement associations, and other state and federal agencies.

(b) The objective of the plant materials activity is to select or develop special and improved plants, and techniques for their successful establishment and maintenance to solve conservation problems and needs relate to:

(1) Controlling soil erosion on all lands.

(2) Conserving water.

(3) Protecting upstream watersheds.

(4) Reducing sediment movement into waterways and reservoirs through the stabilization of critical sediment sources such as surface mined lands, highway slopes, recreation sites, and urban and industrial development areas.

(5) Stabilizing disposal areas for liquid and solid wastes.

(6) Improving plant diversity and lengthening grazing season on dryland pastures and rangelands.

(7) Replacing brush on mountain slopes with fire-retarding plant cover to reduce the possiblity of fires that threaten life and property or result in serious sediment sources.

(8) Improving the effectiveness of windbreaks and shelterbelts for reducing airborne sediment, controlling snow drifting, and preventing crop damage from wind erosion.

(9) Protecting streambank, pond, and lake waterlines from erosion by scouring and wave action.

(10) Improving wildlife food and cover.

(11) Selecting special-purpose plants to meet specific needs for environment protection and enhancement.

(12) Selecting plants that tolerate air pollution agents and toxic soil chemicals.

§ 613.3 SCS responsibilities in plant materials.

SCS operates or enters into agreements with state universities or other state organizations to operate plant materials centers. SCS employs specialists for selecting and using plant materials. SCS responsibilities are to:

(a) Identify the need for suitable plant materials and cultural and management methods in resource conservation and for environmental protection and enhancement.

(b) Assemble and comparatively evaluate plant materials at the plant materials centers and on sites where soil, climate, or other conditions differ significantly from those at the centers.

(c) Make comparative field plantings for final testing of promising plants and techniques in cooperation with conservation districts and other interested cooperators.

(d) Release cooperatively improved conservation plants and maintain the breeder or foundation stocks in ways appropriate for particular state and

plant species by working with experiment stations, crop improvement associations, and other state and federal agencies.

(e) Produce limited amounts of foundation or foundation-quality seed and plants available by grant to or by exchange with conservation districts, experiment stations, other federal and state research agencies, and state seed certifying organizations that will use the material to establish seed fields, seed orchards or plantings for vegetative increase.

(f) Encourage conservation districts, commercial seed producers, and commercial and state nurseries to produce needed plant materials for conservation uses and to assist them in this production.

(g) Encourage the use of improved plant materials in resource conservation and environmental improvement programs.

§ 613.4 Special production of plant materials.

SCS can produce plant materials in the quantity required to do a specific conservation job if this production will serve the public welfare and only if the plant materials are not available commercially. This function will be performed only until the plant materials are available commercially. Specific production of plant materials by SCS requires the approval of the Chief.

§ 613.5 Plant materials centers.

(a) The National Plant Materials Center. The National Plant Materials Center at Beltsville, Maryland, serves as the central facility for assembling, increasing, and determining the characteristics of plant materials from foreign and domestic sources. Plant materials with potential value for conservation and related uses are distributed to other plant materials centers.

(b) Other Plant Materials Centers. There are 23 other plant materials centers. Each serves several major land resource areas. Seventeen of these other centers are operated by SCS, and six by cooperating agencies, as follows:

(1) Operated by SCS:

Tucson, Arizona
Lockeford, California
Brooksville, Florida
Americus, Georgia
Molokai, Hawaii
Aberdeen, Idaho
Manhattan, Kansas
Quicksand, Kentucky
East Lansing, Michigan
Coffeeville, Mississippi
Elsberry, Missouri
Bridger, Montana
Cape May Courthouse, New Jersey
Big Flats, New York
Corvallis, Oregon
Knox City, Texas
Pullman, Washington

(2) Operated by cooperating agencies with financial and technical assistance from SCS:

Los Lunas, New Mexico (New Mexico State University)
Bismarck, North Dakota (North Dakota Association of Soil Conservation Districts)
Meeker, Colorado (White River and Douglas Creek Soil Conservation Districts with partial funding from SCS)

(3) Operated by cooperating agencies with technical assistance from SCS:

Palmer, Alaska (State of Alaska)
Kingsville, Texas (Caesar Kleberg Wildlife Research Institute, Texas Agricultural and Industrial University, and South Texas Association of Conservation Districts)
Nacogdoches, Texas (Stephen F. Austin University and the East Texas Association of Conservation Districts)

Dated: March 21, 1984.

Peter C. Myers,

Chief.

[FR Doc. 84-8201 Filed 3-28-84; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100 and 103

Statement of Organization; Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This document reflects the recent reorganizational changes that occurred within the office of Information Systems. These changes were necessary to provide better management and technical support for INS' expansion of automated systems.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: On January 9, 1984, the Attorney General signed the reorganization of the office of Information Systems as previously approved by OMB and Congress. This reorganization established a Project Control and Integration Division to provide for better management and technical support for the expansion of automated systems. This division is to be headed by an Assistant Commissioner for Project Control and Integration.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates solely to agency management.

This order will not have a significant impact on a substantial number of small entities and is not a rule within the definition of section (1)(a) of EO 12291 as it relates to agency management.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Authority delegations, Organization and functions (government agencies).

8 CFR Part 103

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Organization and functions (government agencies).

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

In § 100.2, paragraph (c)(2)(iv) is revised to read as follows:

§ 100.2 Organization and functions.

* * * * *

(c) * * *

(2) * * *

(iv) Project Control and Integration Division

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

In § 103.1, paragraph (e) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(e) *Associate Commissioner for Information Systems.*

Under the direction of the Executive Associate Commissioner, the Associate Commissioner for Information Systems is delegated authority and responsibility for program planning, development, coordination, evaluation, counseling, and staff direction of the Records

Systems, Data Systems, Policy Directives and Instructions, and Project Control and Integration programs, and general direction to and supervision of:

(1) Assistant Commissioner for Records Systems

(2) Assistant Commissioner for Data Systems

(3) Director for Policy Directives and Instructions, and

(4) Assistant Commissioner for Project Control and Integration.

* * * * *

(Sec. 103, Immigration and Nationality Act, as amended; (8 U.S.C. 1103))

Dated: March 26, 1984.

John W. Murray,

Associate Commissioner, Information Systems, Immigration and Naturalization Service.

[FR Doc. 84-8450 Filed 3-28-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 84-026]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document removes Chile from the list of countries declared to be free of rinderpest and foot-and-mouth disease. This is necessary because the existence of foot-and-mouth disease has been confirmed in Chile. The effect of this action is to prohibit or restrict the importation into the United States from Chile of cattle, sheep, or other ruminants, or swine, or fresh, chilled, or frozen meats of such animals. This is warranted as an emergency measure in order to protect the livestock of the United States from the threat of introduction or dissemination of foot-and-mouth disease into the United States.

DATES: Effective date is March 26, 1984.

Written comments must be received on or before May 29, 1984.

ADDRESS: Written comments concerning this interim rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 846, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1984, the Department was notified by the International Office of Epizootics that an outbreak of foot-and-mouth disease has been diagnosed in cattle in Chile. The outbreak was confirmed by the Government of Chile. The diagnosis of foot-and-mouth disease, Type 01, was based on clinical signs and laboratory confirmation. Consequently, it is necessary to remove Chile from the list of areas determined to be free of rinderpest and foot-and-mouth disease.

Foot-and-mouth disease is a dangerous and destructive communicable disease of ruminants and swine. The morbidity rate within a herd usually approaches 100 percent.

The effect of this action is to prohibit or restrict the importation into the United States from Chile of cattle, sheep, or other ruminants, or swine, or fresh, chilled, or frozen meats of such animals.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. The interim rule should be made effective immediately in order to protect the livestock of the United States from the threat of introduction or dissemination of foot-and-mouth disease.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 with respect to this interim rule. Immediate action is warranted in order to protect the livestock of the United States from the threat of introduction or dissemination of foot-and-mouth disease into the United States.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of the Regulatory Flexibility Act.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

§ 94.1 [Amended]

2. In § 94.1(a)(2), "Chile" is removed.

§ 94.11 [Amended]

1. In § 94.11(a), "Chile" is removed.

Authority: Sec. 2, 32 Stat. 792, as amended; sec. 306, 46 Stat. 689, as amended; secs. 2, 3, 4, 11, 76 Stat. 129, 130, 132; 19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 26th day of March, 1984.

Saul T. Wilson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-8554 Filed 3-27-84; 3:22 pm]

BILLING CODE 3410-34-M

9 CFR Part 97

Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulation which establishes charges for reimbursable overtime work performed by Veterinary Services inspectors at laboratories, border ports, ocean ports and airports. Veterinary Services inspectors of the United States Department of Agriculture are charged with performing inspection duties relating to imports and exports at laboratories, border ports, ocean ports and airports of entry. Such services may be performed outside the regular tour of duty of the employee when requested by the owner or custodian of the animals, animal products or other commodities subject to such port of entry inspection or testing and the charges for such premium pay service are recoverable through reimbursement from those for whom the services are performed. The payrolling procedures under which port of entry inspectors are paid have been changed insofar as entitlement to commuted traveltime allowances is concerned. In the past, entitlement to commuted traveltime allowances has been based on the performance of additional travel solely on account of the overtime service. This entitlement has been changed to permit the substitution of certain time elements in lieu of a positive travel requirement when overtime service begins less than one hour before the regular tour of duty, or begins shortly after the completion of the daily tour of duty. At the same time, the amount of commuted traveltime allowances paid is reduced from a full allowance to ½ an allowance in most instances where only one-way travel is involved. This change in the method of computing commuted traveltime entitlements necessitates a change in the regulations under which reimbursement for such sums paid out for such services is made under the reimbursable features of the Act of August 28, 1950 (7 U.S.C. 2260).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Classification, Employment and Executive Resources Program, Human Resources Division, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 221 Federal Building, Hyattsville, MD 20782, (301–436–6466.).

SUPPLEMENTARY INFORMATION: The Act of August 28, 1950, 64 Stat. 561; 7 U.S.C. 2260) authorizes the Secretary of Agriculture to pay employees of the Department performing inspection and quarantine services relating to imports into and exports from the United States for all overtime, night or holiday work at such rates as he may determine and to accept from persons for whom such work is performed, reimbursement for any sums paid out by him for such work. Thus, the amounts reimbursed to the Department by owners or custodians of animals, animal products or other commodities who request the services of Veterinary Services employees at ports of entry outside their regular tour of duty or at night or on a holiday, need to be computed on the same basis as is the pay of those employees who actually performed the work. Under the current payrolling practices, entitlement to commuted traveltime allowances is based primarily on the performance of additional travel solely on account of the overtime service. This pay entitlement qualification has been changed, when inspection services are performed on a reimbursable basis immediately before or immediately after the regularly scheduled daily tour of duty, to permit substitution of designated periods of elapsed time in lieu of the positive travel heretofore required. In addition, a proviso limiting periods of unscheduled overtime for laboratory personnel to hours which normally constitute a regular workday has been removed.

This amendment has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined to be not a "major rule." This final rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, state or local Government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, or investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Dr. John K. Atwell, Deputy Administrator, Veterinary Services, APHIS, has determined that this action will not have a substantial impact on a significant number of small entities. Specifically, this amendment affects only those entities that request the services of an inspector on a Sunday or a holiday or on an overtime basis. Services of an inspector during regularly established hours of service at a port are still furnished free of charge to those requiring the service. The pay provisions determined by the Secretary to be appropriate for employees performing inspection and quarantine services at ports of entry, the established hours of service for such ports, and the features of the reimbursable plan for recovering the costs of furnishing port of entry inspection on an appeal basis depend upon facts within the knowledge of the Department of Agriculture. Public participation in this rulemaking proceeding would not make additional relevant information available to the Department. The Agency has no alternatives to establishing procedures to effect reimbursement which utilize the same basis for recovery as is used in paying the employees who perform the work. By law, importers/exporters are required to reimburse the Agency for costs associated with services requested and rendered. Unless reimbursable amounts are calculated in the same manner as sums paid for the personal services rendered, the reimbursement achieved will not equal the cost of providing the service. Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures on these amendments are impracticable and unnecessary and good cause is found for making these amendments effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, Part 97, Subchapter D, Title 9, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 reads as follows:

Authority: Act of August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260, and the Airports and Airways Development Act Amendments of July 12, 1978 (90 Stat. 882; 49 U.S.C. 1741).

2. Section 97.1(a) is revised to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.[1]

(a) Any person, firm, or corporation having ownership, custody or control of

[1] For designated ports of entry for certain animals, animal semen, poultry, and hatching eggs see 9 CFR

animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of Veterinary Services on a holiday or Sunday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime or holiday or Sunday service request the Veterinary Services inspector in charge to furnish inspection, laboratory testing, certification or quarantine service during such overtime or holiday or Sunday period, except as provided in paragraph (b) of this section, and shall pay the Government therefor at the rate of $28.92 per work hour per employee on Sunday and at a rate of $21.84 per work hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within the regularly established hours of service, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture. A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or which is performed by an employee on his regular work day beginning either at least 1 hour before his scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of Sunday or holiday or unscheduled overtime work to which the 2-hour minimum charge applies may include a commuted traveltime period (CTT) the amount of which shall be prescribed in administrative instructions to be issued by the Deputy Administrator, Veterinary Services for the areas in which the Sunday or holiday or overtime work is performed and such period shall be established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which the employee performs such Sunday, holiday or overtime duty. With respect to places of duty within the metropolitan area of the employee's headquarters, such CTT period shall not exceed 3 hours. It shall be administratively determined from time to time which days constitute holidays. The circumstances under which such CTT periods shall be charged and the percentage applicable in each circumstance are as reflected in the following table:

	Actual time [1] charge—no minimum	2-hour guarantee charge	Commuted [2] traveltime (CTT) charge
Charges for Inspection Within Metropolitan Area of Employee's Headquarters			
Work beginning before daily tour begins:			
8 to 59 minutes	Yes	No	None.
60 to 119 minutes		Yes	½ CTT.
120 minutes or more		Yes	Full CTT.
Work beginning after daily tour ends:			
Direct continuation	Yes	No	None.
Break-in-service of:			
2–29 minutes		Yes	None.
30–60 minutes		Yes	½ CTT.
61 minutes or more		Yes	Full CTT.
Charges for Inspection Services Performed Outside Metropolitan Area of Employee's Headquarters			
Work beginning before daily tour begins:			
8 to 59 minutes	Yes	No	½ CTT.
60 minutes or more		Yes	Full CTT.
Work beginning after daily tour ends:			
Direct continuation	Yes	No	½ CTT.
2–59 minutes	No	Yes	½ CTT.
60 minutes or more	No	Yes	Full CTT.
Charges for Call Out Inspection Service on Holiday or Nonworkday			
Work beginning at any time.	No	Yes	Full CTT.

[1] Actual time charged when work is contiguous with the daily tour will be in quarter hour multiples, with service time of 8 minutes or more rounded up to the next quarter hour and any time of less than 8 minutes will be disregarded.
[2] The full CTT allowance will be the amount of commuted traveltime prescribed for the place at which the inspections are performed. See Part 97.2. One-half CTT is ½ of the full CTT period.

* * * * *

3. The introductory paragraph of § 97.2 is revised to read as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

Each period of overtime and holiday duty as prescribed in § 97.1 shall in addition include a commuted traveltime period for the respective ports, stations, and areas in which employees are located. The prescribed computed traveltime periods are as follows:

* * * * *

Done at Washington, D.C., on March 23, 1984.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 84-8466 Filed 3-28-84; 8:45 am]

BILLING CODE 3410-34-M

92.1 through 92.3 and for designated ports of entry for certain purebred animals see 9 CFR 151.1 through 151.3.

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 20

FEDERAL RESERVE SYSTEM

12 CFR Part 211

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 351

Accounting for International Loan Fees

AGENCIES: Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation.

ACTION: Joint notice of final rules.

SUMMARY: These regulations establish uniform requirements for the accounting for fees associated with the restructuring of international lending arrangements and nonrefundable fees charged by banking institutions in connection with other international loans. These regulations implement one aspect of the joint program of the Federal banking agencies to strengthen the supervisory and regulatory framework relating to foreign lending by U.S. banking institutions, incorporated in section 906 of the International Lending Supervision Act of 1983.

EFFECTIVE DATES: The effective date of the regulations is June 30, 1984, except for §§ 20.9(a), 211.45(a) and 351.2(b) which are effective March 29, 1984.

FOR FURTHER INFORMATION CONTACT:

Comptroller of the Currency: Zane D. Blackburn, Director, Bank Accounting or Eugene Green, Senior Accountant, Bank Accounting (202/447-0471); Harold Schuler, Director, International Relations & Financial Evaluation (202/447-1747); Dorothy Sable, Senior Attorney (202/447-1880).

Federal Reserve System: Michael G. Martinson, Projects Manager,

International Activities, Division of Banking Supervision and Regulation (202/452–3621); or Stanley C. Weidman, Senior Accountant-Analyst, Division of Banking Supervision and Regulation (202/452–3502); or Nancy P. Jacklin, Assistant General Counsel (202/452–3428); Kathleen O'Day, Senior Counsel, Legal Division (202/452–3786).

Federal Deposit Insurance Corporation: Paul L. Sachtleben, Planning and Program Development Branch, Division of Bank Supervision (202/389–4761) or Peter M. Kravitz, Senior Attorney, Legal Division (202/389–4171).

SUPPLEMENTARY INFORMATION: On February 13, 1984, the agencies published for comment regulations to implement section 906 of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq., 3905) ("Act"). The proposed regulations set forth the accounting for various fees received by banking institutions when making international loans.

The agencies received 67 letters of comment on the proposed regulations as follows: The Board received 32 comments; 6 from trade or professional associations, 17 from banks and bank holding companies, 3 from accounting firms and 6 from Federal Reserve banks; the Comptroller of the Currency received 21 comments; 13 from national banks, 4 from trade or professional associations or firms and 4 from accounting firms or groups; and the Federal Deposit Insurance Corporation received 14 comments which were duplicative of those received by the other agencies.

In the explanatory materials accompanying the proposed regulations, the agencies specifically requested comments on: (1) Whether the rules should differentiate between fees related to restructured loans and other international loans, and if so, how restructured loans should be defined; (2) whether all or certain costs should be capitalized rather than expensed as incurred; (3) whether commitment fees should be deferred and recognized over the combined commitment and expected loan period as adjustments to yield; (4) how banking institutions should account for the costs of, and fee income attributable to, their merchant banking activities; and (5) whether any aspects of the proposed rules were inconsistent with the accounting treatment for domestic loans. Those submitting comments addressed these and other issues. In light of the comments received, the agencies have made several revisions to improve the proposed regulations. Following are the major topics raised in the comments and the agencies' responses thereto:

(1) Scope of the Rules

Many commenters objected to the issuance of rules on the treatment of international loan fees other than fees received in connection with restructured international loans. They argued that Congress only intended the agencies to address restructured loan fees. However, the agencies believe that Section 906 and its legislative history clearly require the agencies to issue rules addressing fees on both types of international loans. Section 906(a) is directed to restructured loans and authorizes the agencies to issue necessary implementing rules. Section 906(b) is directed to all international loans and requires the agencies, subject to the specific requirements for restructured loan fees, to issue rules governing the treatment of all international loan fees.

Most commenters, including the Banking Committee of the American Institute of Certified Public Accountants (AICPA), urged the agencies not to establish accounting rules now that differ significantly from Generally Accepted Accounting Principles (GAAP), especially in view of the current status of consideration by the accounting profession of issues of fee accounting. Accordingly, several commenters urged the agencies to adopt accounting rules for fees on restructured loans as specified in section 906(a) but to adopt current GAAP rules for all other fee accounting for international loans, thereby leaving the resolution of these issues to the accounting profession.

The suggestion that Congress was solely concerned that the Federal banking agencies promulgate regulations for fees on restructured loans and that GAAP should otherwise apply, would make superfluous the legislative requirements in section 906(b). To the contrary, the Federal banking agencies in proposing to Congress the provisions now contained in section 906(b), and Congress in adopting those provisions, considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting practices in this area. Further, Congress determined that more appropriate accounting rules were necessary in order to avoid artificial incentives for banking institutions to make international loans.

In connection with this issue, several commenters requested that implementation of rules on fees other than those received in a restructuring be delayed until final decisions are reached by the Financial Accounting Standards Board (FASB). The FASB has scheduled the issue of accounting for nonrefundable loan fees for its current agenda. The FASB itself, although not commenting specifically on the proposal, noted that it will address this issue through its "due process" procedures and will keep the agencies informed of developments. The agencies do no believe that delaying the rules to an idefinite date would be in accordance with the intention of Congress. However, in order to allow reasonable time for adjustment of accounting methods, the rules are effective June 30, 1984, except for the rules on fees for restructured loans which are effective immediately. Finally, in recognition of the current consideration of these issues by the accounting profession, the agencies intend to reexamine their regulations to assess the need for modification in the event the FASB issues a final pronouncement or standard on loan fees.

(2) Accounting Rules Related to Restructured Loans and Other International Loans

The proposed regulations did not differentiate between restructured and all other international loans. Uniform accounting rules were specified for commitment an agency fees, and the rules required that any other fee received in connection with an international loan in excess of adminisrative costs be deferred and amortized over the effective life of the loan. The reason given for such a requirement was that the fees on restructured international loans and all other international loans are similar in substance and therefore should be treated in the same manner. In addition, it would be burdensome to distinguish between restructurings and other international loans.

The commenters generally were opposed to treating all international loans alike. They cited the statutory provision which mandates certain accounting treatment of fees on restructured loans but provides the banking agencies with discretion as to other international loans. They also stated that the legislative history of the Act shows the major Congressional concern was with restructured loans to debtor countries, and the need to avoid imposing excessive debt burden in those instances.

Section 906(b) of the Act, unlike section 906(a), provides that the bank regulatory agencies shall establish rules

that require that the "appropriate portion" of fees related to international loans be taken into income over the effective life of the loan. In implementing this section of the law, the commenters considered that the agencies should adopt rules that recognize the economic substance of the transactions for which fees are charged. The commenters stated that some fees in excess of administrative costs are compensation for services provided, are unrelated to yield adjustment, and therefore should not be deferred and amortized.

In light of the language and legislative history of the provision and in response to the comments, the final regulations distinguish between restructured international loans and other international loans in the required accounting treatment for fees.

(3) Definition of "Restructured International Loan"

In order to distinguish between restructured international loans and all other international loans for purposes of accounting for fees, it is necessary that "restructured international loan" be defined to meet the particular scope and purpose of section 906(a). The commenters generally suggested that the definition cover restructured loans to borrows in countries with severe foreign exchange or liquidity problems. Several indicated that the definition of a restructured loan could be linked to loans made to countries that had been classified by the agencies for transfer risk purposes.

Some commenters suggested that restructured loans include refinancings or loans the terms of which had been modified or maturities extended in order to permit the loan to be repaid. Others suggested using the definition of "troubled debt restructuring" in the Statement of Financial Accounting Standard No. 15 (SFAS 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings"), issued by the FASB.

Because section 906(a) refers to restructurings of international loans to avoid excessive debt service burden on debtor countries, the regulations provide that the definition of restructured loan contain two criteria. First, the borrower whose loan is being restructured because of debt service difficulties must be a resident of a foreign country experiencing a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, foreign exchange in that country. Second, in a restructuring, the terms of the loan are revised to extend the original schedule of payments or reduce stated interest, or the restructuring takes the form of provision of new funds for the benefit of the borrower that has the same effect as extending the schedule of payments or reducing stated interest on the original loan. These criteria are intended to cover loans restructured to meet debt service difficulties, but not ordinary refinancings.

For any loan that meets the definition of restructured international loan, the regulations prohibit a banking institution from charging any fee unless the portion of the fee in excess of administrative costs is deferred and amortized over the effective life of the loan. If any loan meets the more restrictive category of a "troubled debt restructuring" under the terms of SFAS 15, it should be accounted for in accordance with that Standard. Moreover the definition of "restructured loan" adopted to implement the fee accounting rules mandated by statute is in no way intended to categorize any particular loan as a "restructured loan" for purposes of applying any other accounting standard.

(4) Syndication Fees

As indicated above, fees on international loans other than restructured international loans need not all be amortized but, pursuant to section 906(b), must be accounted for in a manner to accrue an appropriate portion of the fee as income over the life of the loan. The purpose of this provision is to assure that any portion of the fee that is in actuality a yield adjustment be accounted for as interest and amortized.

In those instances where a banking institution is managing or syndicating the loan, the proposed rule established a presumption that a portion of a managing banking institution's fees (other than commitment or agency fees) would be considered an adjustment to yield. This portion would be equal to the proportion of fees in relation to loan principal received by the largest non-managing loan participant. The remainder of the fee would be presumed to be a syndication fee and the proposed rule provided that the syndication fee could be recognized as revenue when received only to the extent it equals administrative costs directly identifiable with the syndication process. The excess was to be deferred and amortized over the loan period.

Many commenters agreed that some portion of a syndication fee normally represents an adjustment to yield because a portion of the fee is passed on to participating banks as an incentive to participate in the loan. The commenters concurred with the proposal that this yield adjustment component should be deferred and amortized over the loan period. Most of the commenters agreed also with the presumption in the proposal that the yield adjustment component is that portion of the fee equal to the fee received by the non-managing bank with the largest proportionate share in the syndication. Several commenters, however, disagreed with the presumption, indicating that the greater the participation, the higher the fee that is passed to that bank. Therefore, the regulation should use a weighted method for determining the yield adjustment component of a syndication fee.

The final regulations retain the requirement that, in all international loans (except restructured international loans for which no fee exceeding specified administrative costs may be taken into income immediately), a banking institution shall recognize that portion of syndication fees that represent an adjustment to yield as interest to be amortized over the loan period, using the interest method.

The presumption in the proposal as to the yield adjustment component in a syndication fee has been altered in the final rules. Because a non-managing participating bank performs no syndication services, whatever fee it receives is a yield adjustment. Therefore, the interest yield component of the syndication fee should be based upon the largest fee received by a non-managing loan participant on a pro rata basis. Accordingly, the managing bank's effective yield on its portion of the loan should be at least equal to that of the non-managing loan participant receiving the largest fee.

The commenters strongly disagreed with the requirement that the remainder of a syndication fee also be deferred as a yield adjustment. Most stated that the proposal misconstrues the nature of the management or syndication fee as comprised only of reimbursement of administrative costs and an adjustment to yield. These commenters stated that the syndication fee is a charge for separate services unrelated to the actual lending of money. These "merchant banking functions," for which banking institutions should be separately compensated, include the arranging of the loan (bringing together third parties), using associated expertise, assuming the underwriting risk of the loan, and negotiating the terms of the loan. These fees also include a "profit" on the provision of the services.

Because the fee is compensation for such services, the commenters stated that GAAP provides that the income should be recorded when the service is rendered. Several commenters stated that the services provided by commercial banks are like those provided by merchant banks in the syndication process and that to apply different accounting rules for fee income for such services earned by commercial banks would place them at a competitive disadvantage.

There can be little dispute that banking institutions that are "lead" or "managing" banks provide services, as described by the commenters, in connection with international loan syndications. These banking institutions also frequently participate in the loan, and often their share in the loan is among the largest of all participants. In such circumstances, the activities of the institution in syndicating the loan are, to at least some extent, integral to the lending of funds.

What additional portion of the syndication fees is intended to compensate a managing bank for making the loan, as compared with arranging loans for others, is not easily determined using any generalized standard and may vary from case to case. In those cases where all or a portion of the remaining fee represents a yield adjustment, as noted above, such income must be amortized over the loan period. Where all or a portion of the remaining fee instead represents compensation for services provided in arranging the loan, the final regulations allow it to be taken into income when the loan agreement is signed.

In order to assure that, in practice, the appropriate portion of the fee is amortized, the final regulations allow the banking institution to take the fee into income when the loan is closed only to the extent the institution can identify and document the services for which the specified fee was received. Documentation for this purpose shall include the loan agreement, signed by all of the parties to the loan, which identifies the services provided and the total fee received by the institution for provision of such syndication or management services. Normally, these agreements contain the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower. If the portion of fees received representing compensation for such services cannot be so identified and documented, then the fee will be presumed to be an adjustment to yield and must be amortized over the life of the loan. Fees received by a "managing bank" in name only are not compensation for syndication services and must be amortized over the life of the loan.

(5) Commitment Fees

The proposed regulations required banking institutions to defer all commitment fees over the term of the combined commitment and expected loan period. Commenters generally opposed this requirement, indicating that such fees should be recognized as income over the commitment period. Objections largely centered on the impracticability of the requirement and the fact that commitment fees are intended as compensation for guaranteeing the funding of a loan and are not yield related. Therefore, the deferral of these fees beyond the commitment period is inconsistent with their nature and purpose. Commenters cited revolving credit arrangements as an example where the proposed rule is particularly inappropriate. Fees on revolving credit commitments are based on the unused line of credit and typically are received periodically in arrears, clearly evidencing their purpose to compensate the bank for the funding risk assumed. Moreover, in such cases, the "loan period" would be particularly difficult to estimate. Many commenters indicated that commitment fees should be recognized in income based on their economic substance consistent with the requirements of the Bank Audit Guide issued by the AICPA.

In light of these comments, the agencies have determined to revise the proposed regulations as they relate to commitment fees to be consistent with the treatment of such fees in the Bank Audit Guide. Accordingly, commitment fees could be taken into income over the commitment period alone. The final regulations retain the requirement to defer commitment fees over the combined term of the loan and commitment period only in those situations when it is not practicable to identify that portion of the fee related to making the commitment as compared with any portion related to lending funds. This includes instances where the fee is unreasonable in comparison with normal banking practices whereby, as indicated by banking industry commenters, such fees typically fall within a narrow range (currently ¼% to ½% per annum) regardless of customer. As required by section 906(a) of the Act, a commitment fee received in connection with a restructured international loan must be amortized over the loan period.

Further, based on responses that commitment fees on revolving loan arrangements are generally received periodically in arrears during the commitment period and are based on the amount of the unused loan commitment, the regulations permit such fees to be recognized as income on a cash basis provided the result would not be materially different from deferring these fees and amortizing them over the commitment period. Finally, the regulations were clarified to state that, if the loan is funded before the end of the commitment period, any unamortized commitment fees may be recognized as revenue at that time.

(6) Administrative Costs

Under the proposed regulations, administrative costs for originating or restructuring a loan, or managing a syndicated loan were similarly defined and were required to be expensed as incurred. Such costs were defined as those which are specifically identified with processing the loan or negotiating and consummating the lending arrangement in the case of an international syndicated loan. These costs included, but were not necessarily limited to: legal fees; costs of preparing and processing loan documents; an allocable portion of salaries and related benefits of employees engaged in the international lending function or, for managing banks, employees, engaged in the syndication function; and an allocable portion of occupancy and other similar costs.

In the preamble to the proposed regulation, the agencies specifically asked whether all or certain costs should be capitalized rather than expensed as incurred and how banking institutions should account for the costs of their merchant banking activities.

The majority of the commenters agreed that costs in both activities should be expensed as incurred. They indicated this is the generally accepted practice in the industry. Some commenters mentioned that the AICPA's Accounting Standards Executive Committee recommendation of capitalizing costs is not a currently accepted practice and represents only a recommendation to the FASB for its consideration in addressing the loan fee issue. Other commenters indicated that the capitalization of such costs would inflate the balance sheet and require the burdensome development of accounting systems to accumulate and track the information. Some of these commenters contended that the initial cost of establishing such an accounting system would outweigh the benefits.

On the issue of defining administrative costs, only a few

commenters thought that the proposed definition was too restrictive and suggested that general overhead costs in addition to those specifically identifiable with processing or consummating a loan should be included. Most commenters considered that the definition encompassed too many allocated costs and suggested that only incremental costs be included. They noted that inclusion of these allocated costs is not current accounting practice and would require establishment of new cost accounting systems. A number of commenters indicated the definition should be consistent with that set forth in SFAS 17 (Accounting for Leases—Initial Direct Costs) and the Bank Audit Guide.

In light of these comments, the agencies have determined that, consistent with GAAP, administrative costs will be required to be expensed as incurred and defined to include only specifically identified direct costs as provided in SFAS 17. Accordingly, supervisory and administrative expenses or other indirect expenses such as occupancy and other similar costs may not be included.

The rule thus would be consistent with GAAP and the Bank Audit Guide, and will not create an undue burden for banking institutions.

(7) Other Issues

There was no disagreement with the basic rules requiring that fees be deferred and amortized over the effective life of the loan unless specific treatment for a particular fee is specified elsewhere in the regulations. Therefore, no change was made in these provisions. The effective life of the loan in this context and in the regulations generally, is meant to be the term of the loan. This may, however, differ from the stated loan period, where, for example, a short-term loan is expected to be rolled-over at maturity.

Several commenters requested the option to amortize the entire fee, whether received in connection with a restructuring or other international loan, rather than being required to recognize a portion of the fee equal to administrative costs as income in the same period such costs are expensed. While immediate recognition of this portion of the fee is the preferred accounting treatment, the final rule also allows deferral and amortization of the entire fee.

Those comments discussing agency fees agreed with the treatment of such fees in the proposed rules and, accordingly, no change in this provision was made in the final rules.

Several comments raised the issue of materiality. Determinations of materiality for the purpose of application of the rules should be made in accordance with GAAP with the exception of the rule on treatment of fees for restructured international loans. That rule must be applied regardless of materiality because it is based on a specific statutory requirement.

One commenter asked how the unamortized balance of fees should be treated when the asset is sold. Sufficient accounting guidance already is provided on this question in GAAP and the agencies do not believe that a specific rule on this point is necessary.

Finally, the Federal banking agencies intend, through the examination process, to oversee good faith compliance with the Act and these regulations. In the event that the regulations do not achieve the objective of assuring that the appropriate portion of fee income is recognized as an interest yield adjustment, the agencies will revise the regulations or review individual institutions' accounting practices as needed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.) the agencies certify that the regulations will not have a significant economic impact on a substantial number of small entities since small banks generally do not engage extensively in international lending and would not be affected by these regulations.

Executive Order 12291

The Comptroller of the Currency has determined that the proposed regulation does not constitute a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Parts 20, 211, and 351

Accounting for international loan fees, Banks, banking, Federal Reserve System, Foreign banking, Investments, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve, National banks, International operations, Reserves on certain international assets, Reporting and disclosure of international assets, State nonmember banks.

Authority and Issuance

Pursuant to their respective authorities, the agencies are amending Title 12 of the Code of Federal Regulations, Parts 20, 211 and 351, as follows:

COMPTROLLER OF THE CURRENCY

[Docket No. 84–11]

PART 20—[AMENDED]

1. The authority citation for 12 CFR Part 20 reads as follows:

Authority: 12 U.S.C. 1 *et seq.* unless otherwise noted.

2. Part 20 is amended by redesignating paragraph (d) of § 20.7 as paragraph (h) and by adding new paragraphs (d), (e), (f), and (g) to read as follows:

§ 20.7 Definitions.

* * * * *

(d) "International loan" means a loan as defined in the instructions to the "Report of Condition and Income" for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) "International syndicated loan" means a loan characterized by the formation of a group of "managing" banking institutions and, in the usual case, assumption by them of underwriting commitments, and participation in the loan by other banking institutions.

(f) "Loan agreement" means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) "Restructured international loan" means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inablilty of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

3. Part 20 is amended by adding a new § 20.9 to read as follows:

§ 20.9 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees

exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring, or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: Legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

Dated: March 22, 1984.

H. Joe Selby,

Acting Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

Regulation K

[Docket No. R-0509]

PART 211—[AMENDED]

Pursuant to the Board's authority under sections 9, 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 221 *et seq.*, 601–604a, and 611 *et seq.)*, section 5 of the Bank Holding Company Act (12 U.S.C. 1844) and section 906 of the International Lending Supervision Act of 1983 (12 U.S.C. 3905), the Board has amended 12 CFR Part 211, Subpart D, as follows:

1. By redesignating paragraph § 211.42(d) as 211.42(h) and by adding new paragraphs § 211.42 (d), (e), (f) and (g), to read as follows:

§ 211.42 Definitions.

* * * * *

(d) "International loan" means a loan as defined in the instructions to the "Report of Condition and Income" for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) "International syndicated loan" means a loan characterized by the formation of a group of "managing" banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(f) "Loan agreement" means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) "Restructed international loan" means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) the terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) a new loan is made to, or for the benefit or, the borrower, enabling the borrower to service or refinance the existing debt.

* * * * *

2. By adding a new section 211.45, to read as follows:

§ 211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method

during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

Board of Governors of the Federal Reserve System, March 26, 1984

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

In consideration of the foregoing, the FDIC hereby amends Part 351 of its rules and regulations (12 CFR Part 351) by adding a new § 351.2 thereto.

PART 351—[AMENDED]

1. The authority citation for 12 CFR Part 351 is as follows:

Authority: Title 1X, Pub. L. 98–181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*

2. Part 351 is amended by adding a new section 351.2 as follows:

§ 351.2 Accounting for fees on international loans.

(a) *Definitions.* For the purpose of this subpart:

(1) "International loan" means a loan as defined in the instructions to the "Report of Condition and Income" for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(2) "International syndicated loan" means a loan characterized by the formation of a group of "managing" banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(3) "Loan agreement" means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(4) "Restructured international loan" means a loan that meets the following criteria: (i) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and either (ii) the terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or (iii) a new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(b) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured loan unless all fees exceeding the banking institution's administrative costs, as described in subsection (d)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(c) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(d) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring, or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related

benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(e) *Fees received by managing banking institutions.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentations shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(f) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(g) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

Dated: March 26, 1984.

By Order of the Board of Directors.

Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 84-8491 Filed 3-28-84; 8:45 am]

BILLING CODES 4810-33, 6210-01, 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-15-AD; Amdt. 39-4833]

Airworthiness Directives; Short Brothers Ltd. Model SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3-30 series airplanes which requires insulating the body of certain line contactors on the electrical power panels. There have been several incidents of short circuits, including one in which severe damage occurred. This action is necessary to prevent short circuits which could cause a fire.

EFFECTIVE DATE: April 9, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom (CAA) has classified Short Brothers Ltd. Service Bulletin SD3-24-18 as mandatory. There have been several reported cases of a short circuit occurring between a live contact and contactor body on the electrical power panels. Extensive damage resulted when a contactor end cap failed and the live contact touched the contactor body. Arcing, which accompanied the short circuit, resulted in a fire. The service bulletin requires that the body of the line contactor be insulated.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires insulating the body of line contactors on the electrical power panels.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Short Brothers Ltd.: Applies to Model SD3-30 series airplanes as listed in Short Brothers Ltd. Service Bulletin SD3-24-18 dated November 1983, certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent short circuiting of the ECE141CC01A line contactor, accomplish the following:

A. Within the next 60 days or 300 hours time in service, whichever occurs first after the effective date of this AD, modify the ECE141CC01A line contactor on the 1C and 2C panels in accordance with Short Brothers Ltd., Service Bulletin SD3-24-18 dated November 1983.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 9, 1984.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (445 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington, on March 19, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-8378 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-17-AD; Amdt. 39-4834]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm GmbH HFB-320 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain HFB-320 airplanes which requires a one-time inspection of the stabilizer/elevator outboard bearing housing fittings for cracks. Cracked fittings have been discovered on several airplanes in service. This action is necessary to prevent failure of the fitting which could result in loss of elevator control.

EFFECTIVE DATE: April 9, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Messerschmitt-Bolkow-Blohm GmbH, Unternehmensbereich, Transport Und Verkehrsflugzeuge, TV 454, 2874 Lemwerder (01db), Germany, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for West Germany, has classified Messerschmitt-Bolkow-Blohm GmbH HFB-320 Service Bulletin 55-8 as mandatory. Cracks have been discovered in the stabilizer/elevator outboard bearing housing fittings on some HFB-320 airplanes. The cracks may result from excessive clamp-up forces, and can compromise the structural integrity of the fitting. The service bulletin requires a one-time inspection of the fittings and the installation of new fittings if cracks are discovered which are beyond certain limits.

This airplane model is manufactured in Germany and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires the inspection and eventual replacement of all cracked fittings regardless of crack length.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Messerschmitt-Bolkow-Blohm GmbH: Applies to HFB-320 airplanes as listed in HFB-320 Service Bulletin 55-8 dated September 14, 1983, certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent failure of the stabilizer/elevator outboard bearing housing fittings accomplish the following:

A. Within the next 25 hours time in service or 45 days after the effective date of this AD, whichever occurs first, perform a one-time inspection of the stabilizer/elevator outboard bearing housing fittings in accordance with HFB-320 Service Bulletin 55-8 dated September 14, 1983. Fittings with cracks greater than 0.79 inches must be replaced prior to further flight. Fittings cracked 0.79 inches or less must be stop drilled per the service bulletin, but also must be replaced within six months.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 9, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on March 19, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-8376 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-14-AD; Amdt. 39-4836]

Airworthiness Directives; (NAMC) Nihon Airplane Manufacturing Company, YS-11/-11A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain NAMC YS-11/-11A series airplanes fitted with a main deck cargo door, which requires a modification of the cargo door handle locking mechanism. There have been three

incidents reported in which the door opened during flight. Modification is required to prevent inadvertent opening of the door in flight.

EFFECTIVE DATE: April 9, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Mitsubishi Heavy Industries, Ltd., No. 10 Oye-cho, Minato-ku, Nagoya, Japan, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. H. N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Japanese Civil Aviation Bureau (JCAB) has issued an AD which requires mandatory compliance with NAMC Service Bulletin 52–92. Three incidents have occurred in which the main deck cargo door inadvertently opened during flight. The service bulletin requires modifications to the main cargo door handle lock mechanism to ensure that the locking mechanism is properly engaged.

This airplane model is manufactured in Japan and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires modification of the main cargo door locking mechanism in accordance with the service bulletin. Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

NAMC: Applies to all model NAMC YS–11/–11A series airplanes fitted with a main deck cargo door certificated in all categories. To prevent inadvertent opening of the main deck cargo door during flight, accomplish the following, unless already accomplished:

A. Within 450 flight hours time in service or 90 days after the effective date of this AD, whichever occurs first, modify the main cargo door handle lock mechanism in accordance with NAMC YS–11 Service Bulletin 52–92, Revision 1, dated September 29, 1983.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 9, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on March 20, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84–8374 Filed 3–28–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–16–AD; Amdt. 39–4835]

Airworthiness Directives; Short Brothers Ltd. Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Agency (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3–60 series airplanes which requires installation of additional mass balance weights on the elevator tab and elevator. The necessity for this action was demonstrated during an evaluation by the manufacturer, which showed that, with the present design, an elevator tab drive failure will result in an unacceptable vibration level.

EFFECTIVE DATE: April 9, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom (CAA) has classified Short Brothers Ltd. Service Bulletin SD360–55–02 as mandatory. Evaluation by the manufacturer has shown that in the event of an elevator tab drive failure, an unacceptable level of vibration will occur. The service bulletin requires the installation of additional mass balance weights on the elevator and tab to eliminate this vibration in the event of a tab drive system failure.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires the installation of the additional mass balance weights.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation

Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Short Brothers Ltd.: Applies to SD3–60 airplanes as listed in Short Brothers Service Bulletin SD360–55–02, dated November 1983, certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent vibration in the event of an elevator tab drive system failure, accomplish the following:

A. Within 60 days after the effective date of this AD, modify the elevator and elevator tab mass balance weights in accordance with Short Brothers Ltd. Service Bulletin SD360–55–02 dated November 1983.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 9, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington on March 20, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-8373 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 23950; Amdt. No. 1265]

14 CFR Part 97

Air Traffic and General Operating Rules, Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA from documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format makes their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and

contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Standard instrument approaches, Aviation safety.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective July 5, 1984*

Los Angeles, CA—Los Angeles Intl, VOR or TACAN RWY 7L/R, Amdt. 17
Los Angeles, CA—Los Angeles Intl, VOR or TACAN RWY 25L/R, Amdt. 13

** * * Effective May 10, 1984*

Eureka, CA—Murray Field, VOR-A, Amdt. 6
West Palm Beach, FL—Palm Beach Intl, VOR RWY 9L, Amdt. 11, Cancelled
West Palm Beach, FL—Palm Beach Intl, VOR RWY 9L, Orig.
West Palm Beach, FL—Palm Beach Intl, VOR RWY 13, Orig.
West Palm Beach, FL—Palm Beach County Park, VOR RWY 15, Amdt. 3, Cancelled
West Palm Beach, FL—Palm Beach County Park, VOR RWY 15, Orig.
West Palm Beach, FL—Palm Beach Intl, VOR RWY 31, Orig.
Coeur d Alene, ID—Coeur d Alene Air Term, VOR RWY 5, Amdt. 3
Abilene, KS—Abilene Muni, VOR/DME-A, Orig.
Atchison, KS—Amelia Earhart, VOR/DME-A, Amdt. 1
Ft. Leavenworth, KS—Sherman AAF, VOR-A, Amdt. 2
Biddeford, ME—Biddeford Muni, VOR-A, Amdt. 4
Cheboygan, MI—Cheboygan City-County, VOR RWY 9, Amdt. 4
Pellston, MI—Emmet County, VOR RWY 23, Amdt. 11
Pellston, MI—Emmet County, VOR/DME RWY 5, Amdt. 6
Camdenton, MO—Camdenton Memorial, VOR-A, Orig.
Elko, NV—Elko Muni-J.C. Harris Field, VOR-A, Amdt. 3
Elko, NV—Elko Muni-J.C. Harris Field, VOR/DME-B, Amdt. 1
Perry, OK—Perry Muni, VOR/DME RWY 17, Orig.
Orange, VA—Orange County, VOR/DME-A, Amdt. 2
Beckley, WV—Raleigh County Memorial, VOR RWY 10, Amdt. 11
Beckley, WV—Raleigh County Memorial, VOR RWY 19, Amdt. 2
Beckley, WV—Raleigh County Memorial, VOR/DME RWY 1, Amdt. 1
Fairmont, WV—Fairmont Muni, VOR/DME RWY 22, Amdt. 3
Pineville, WV—Kee Fld, VOR RWY 25, Amdt. 1
Newcastle, WY—Mondell Field, VOR RWY 31, Amdt. 2

** * * Effective March 17, 1984*

Corvallis, OR—Corvallis Muni, VOR-A, Amdt. 7
Corvallis, OR—Corvallis Muni, VOR/DME RWY 17, Amdt. 5
Corvallis, OR—Corvallis Muni, VOR/DME RWY 35, Amdt. 8

** * * Effective March 16, 1984*

Eufaula, AL—Weedon Field, VOR RWY 18, Amdt. 5

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective May 10, 1984*

West Palm Beach, FL—Palm Beach Intl, LOC BC RWY 27R, Amdt. 10
St Joseph, MO—Rosecrans Memorial, LOC BC RWY 17, Amdt. 6
Elko, NV—Elko Muni-J.C. Harris Field, LDA/DME RWY 23, Orig.

** * * Effective March 17, 1984*

Corvallis, OR—Corvallis Muni, LOC RWY 17, Amdt. 2

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective May 10, 1984*

West Palm Beach, FL—Palm Beach Intl, NDB RWY 9L, Amdt. 18
Coeur d Alene, ID—Coeur d Alene Air Term, NDB RWY 5, Amdt. 1
Des Moines, IA—Des Moines Muni, NDB RWY 30R, Amdt. 15
Eagle Grove, IA—Eagle Grove Muni, NDB RWY 13, Orig.
Eagle Grove, IA—Eagle Grove Muni, NDB RWY 31, Orig.
Keokuk, IA—Keokuk Muni, NDB RWY 13, Amdt. 10
Ft Leavenworth, KS—Sherman AAF, NDB RWY 33, Amdt. 2
St. Francis, KS—Cheyenne County Muni, NDB RWY 31L, Orig.
Fryeburg, ME—Eastern Slopes Regional, NDB-A, Amdt. 3, Cancelled
Fryeburg, ME—Eastern Slopes Regional, NDB-B, Orig.
Charlevoix, MI—Charlevoix Muni, NDB RWY 8, Amdt. 7
Charlevoix, MI—Charlevoix Muni, NDB RWY 26, Amdt. 8
Warroad, MN—Warroad Intl-Swede Carlson Field, NDB RWY 31, Amdt. 1
St Joseph, MO—Rosecrans Memorial, NDB RWY 17, Amdt. 7
St Joseph, MO— Rosecrans Memorial, NDB RWY 35, Amdt. 27
Charlottesville, VA—Charlottesville-Albemarle, NDB RWY 3, Amdt. 13
Lewisburg, WV—Greenbrier Valley, NDB RWY 4, Amdt. 3
Rawlins, WY—Rawlins Muni, NDB-A, Amdt. 8

** * * Effective March 21, 1984*

Tupelo, MS—C.D. Lemons Muni, NDB RWY 36, Amdt. 1

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective July 5, 1984*

Los Angeles, CA—Los Angeles Intl, ILS RWY 6L, Amdt. 5
Los Angeles, CA—Los Angeles Intl, ILS RWY 6R, Amdt. 11
Los Angeles, CA—Los Angeles Intl, ILS RWY 7L, Amdt. 2
Los Angeles, CA—Los Angeles Intl, ILS RWY 24L, Amdt. 18
Los Angeles, CA—Los Angeles Intl, ILS RWY 25R, Amdt. 3

** * * Effective May 10, 1984*

West Palm Beach, FL—Palm Beach Intl, ILS RWY 9L, Amdt. 20
Coeur d Alene, ID—Coeur d Alene Air Term, ILS RWY 5, Amdt. 2
Des Moines, IA—Des Moines Muni, ILS RWY 12L, Amdt. 4
Des Moines, IA—Des Moines Muni, ILS RWY 30R, Amdt. 16
Pellston, MI—Emmet County, ILS RWY 32, Amdt. 6
St Joseph, MO—Rosecrans Memorial, ILS RWY 35, Amdt. 27
Lancaster, PA—Lancaster, ILS RWY 8, Amdt. 1
Charlottesville, VA—Charlottesville-Albemarle, ILS RWY 3, Amdt. 9
Beckley, WV—Raleigh County Memorial, ILS RWY 19, Amdt. 2
Bluefield, WV—Mercer County, ILS RWY 23, Amdt. 6
Lewisburg, WV—Greenbrier Valley, ILS RWY 4, Amdt. 6

** * * Effective April 26, 1984*

Carlsbad, NM—Cavern City Air Terminal, ILS RWY 3, Orig.

** * * Effective March 21, 1984*

Tupelo, MS—C.D. Lemons Muni, ILS RWY 36, Amdt. 2

5. By amending § 97.31 RADAR SIAPs identified as follows:

** * * Effective May 10, 1984*

King Salmon, AK—King Salmon, RADAR-1, Amdt. 8
West Palm Beach, FL—Palm Beach Intl, RADAR-1, Amdt. 8

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective May 10, 1984*

Eureka, CA—Murray Field, RNAV RWY 11, Amdt. 5
West Palm Beach, FL—Palm Beach Intl, RNAV RWY 13, Amdt. 5 Cancelled
Atchison, KS—Amelia Earhart, RNAV RWY 16, Amdt. 1
St Joseph, MO—Rosecrans Memorial, RNAV RWY 17, Amdt. 4
Charlottesville, VA—Charlottesville-Albemarle, RNAV RWY 3, Amdt. 3

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C., on March 30, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84-8380 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 201

[Release No. 34-20783; IC-13839; IA-903; File No. S7-1001]

Applications by Barred Individuals for Consent to Associate With a Registered Broker, Dealer, Municipal Securities Dealer, Investment Adviser or Investment Company

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") has adopted a new Rule of Practice, 17 CFR 201.29 ("Rule 29"), that sets forth the procedures to be followed by certain individuals who are barred by Commission order, and thereafter submit an application to the Commission for consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, investment adviser, or investment company ("registered entities"). Rule 29 clarifies policies and practices relating to applications by such individuals.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: Mary A. Binno (202) 272-2318, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: A number of provisions of the Securities Exchange Act of 1934 ("Exchange Act") authorize the Commission to institute administrative proceedings and impose sanctions against a person associated with a broker-dealer or municipal securities dealer if such person has engaged in certain acts or omissions, has been convicted of particular offenses, or has been enjoined from specified acts.[1] Among the remedial sanctions which may be imposed against such persons is a bar from being associated with a broker-dealer or municipal securities dealer.[2] The Commission has similar disciplinary authority over members of, and participants in, self-regulatory organizations ("SROs"),[3] persons associated with investment advisers, and certain affiliated persons and principal underwriters of registered investment companies.[4] When the Commission issues an order barring an individual from association with a registered entity, it is unlawful for that person to be, or to become, so associated without the consent of the Commission.[5]

In addition to direct regulation of registered entities by the Commission, the statutory scheme for regulation of the securities industry contemplates self-regulation through SROs. For example, Section 6 of the Exchange Act requires a commitment by an exchange to discipline members for conduct inconsistent with "just and equitable principles of trade," the provisions of the Exchange Act and the rules and regulations thereunder, and the rules of the exchange.[6] The same general approach applies to registered securities associations [7] and registered clearing agencies.[8] Additionally, a national securities exchange,[9] registered securities association,[10] or registered clearing agency,[11] may bar any person from association with a member of the SRO if that person is "subject to a statutory disqualification."[12] When an individual is "subject to a statutory disqualification", he or she must seek the consent of the SRO before associating with a member of that SRO.[13]

Most applicants, the majority of whom seek to associate with registered broker-dealers, apply for consent to associate with the assistance of their prospective employer through the employer's SRO. These applications are processed pursuant to Exchange Act Rule 19h-1 (17 CFR 240.19h-1) ("Rule 19h-1"). However, a number of applicants seek to become associated with an entity that is not a member of an SRO and must apply directly to the Commission, or, because of the wording of a Commission bar order, are permitted to apply directly to the Commission for consent to associate. New Rule 29 of the Commission's Rules of Practice [14] sets forth steps to be followed with respect to applications made directly to the Commission for consent to associate, or to change the terms and conditions of association.[15]

The Commission solicited public comment on Rule 29 in Release No. 34-20393 (November 18, 1983), 48 FR 54039 (November 30, 1983). No comment letters were received. The Commission has determined to adopt the Rule as proposed.

Applications which may be made under Rule 29 include applications by individuals barred pursuant to

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[1] *See, e.g.*, Exchange Act section 15(b)(6) and 15B(c)(4), 15 U.S.C. 78*o*(b)(6) and 78*o*-4(c)(4), respectively.

[2] *Id.*

[3] As defined by Exchange Act § 3(3)(26), 15 U.S.C. 78c(a)(26), an SRO is any national securities exchange, registered securities association, or registered clearing agency.

[4] Exchange Act § 19(h), 15 U.S.C. 78s(h); Investment Advisers Act of 1940 ("Advisers Act") section 203(f), 15 U.S.C. 80b-3(f); Investment Company Act of 1940 ("Investment Company Act") section 9(b), 15 U.S.C. 80a-9(b).

[5] *See* note 1, *supra.*

[6] Exchange Act section 6(b) (1) and (5), 15 U.S.C. 78f(b) (1) and (5).

[7] Exchange Act section 15A(b) (2) and (6), 15 U.S.C. 78*o*-3(b) (2) and (6).

[8] Exchange Act section 17A(b)(4)(A), 15 U.S.C. 78q-1(b)(4)(A).

[9] Exchange Act section 6(c)(2), 15 U.S.C. 78f(c)(2).

[10] Exchange Act section 15A(g)(2), 15 U.S.C. 78*o*-3(g)(2).

[11] Exchange Act section 17A(b)(4)(A), 15 U.S.C. 78q-1(b)(4)(A).

[12] *See* Exchange Act section 3(a)(39), 15 U.S.C. 78c(a)(39); among other disqualifications, this section includes the existence of a present suspension or bar from association with SRO members, a Commission order barring the individual's association with a registered entity, and those situations described in Exchange Act section 15(b)(4) (B) through (E), 15 U.S.C. 78*o*(b)(4)(B)-(E). For purposes of determining whether a person is subject to a statutory disqualification under Exchange Act sections 6(c)(2), 15(A)(g)(2), or 17A(b)(4)(B), the term "Commission" in Exchange Act § 15(b)(4)(B) means "exchange", "association", or "clearing agency", respectively. *See* Exchange Act section 15(b)(10), 15 U.S.C. 78*o*(b)(10).

[13] *See* notes 8, 9 and 10, *supra.*

[14] 17 CFR 201.1-201.29.

[15] Applications that are governed by Rule 29 previously were subject to the guidelines announced by the Commission in Exchange Act Release No. 11267 (February 26, 1975).

Investment Company Act Section 9(b).[16] However, they should not be confused with applications under Rule 19h–1 or investment Company Act Section 9(c).[17] Rule 19h–1 permits application by individuals subject to a broader range of disqualifications and specifies appropriate procedures for applications thereunder.[18] Under the Rule 19h–1 process, the Commission reviews SRO determinations on such applications. Investment Company Act Section 9(c) applies only to persons who are ineligible to serve in certain positions in connection with investment companies by reason of certain misdemeanor or felony convictions or injunctions by a court of competent jurisdiction.[19]

I. Relief Obtained Through Applications for Consent

Once an individual is barred by a Commission order from the securities business or some aspect thereof, it is unlawful for him or her to become associated with a registered entity without the consent of the Commission.[20] Commission approval of an application for consent to associate, however, does not modify or vacate the Commission order nor does it remove or lift the bar; the order and bar remain in effect.[21]

Accordingly, if the individual does not comply with the terms or conditions under which his or her application was approved, the individual is in violation of the Commission's order and the Commission may take appropriate enforcement action.[22]

Commission approval of an application for consent to associate, or to change the terms and conditions of association, with a registered entity should not be construed to be consent by an SRO for the individual to associate with one of its members. That consent must be given by the particular SRO.

II. Procedural Channels for Individuals Barred by Commission Order

For those barred individuals who seek to associate with a broker-dealer, an application for consent to associate, or to change the terms and conditions of association, must be submitted by the individual's prospective employer to the employer's SRO. In those cases where the SRO gives its consent, and the Commission does not veto that action pursuant to the provisions of Rule 19h–1, the Commission gives: (a) Consent to the SRO to permit the individual to associate with a member of the SRO, notwithstanding his or her disqualification; and (b) consent to the individual to associate with an entity registered with the Commission.

Direct application to the Commission pursuant to Rule 29 *may* be utilized where the individual has been barred by Commission order and seeks to associate, or to change the terms and conditions of association, with a broker-dealer that is a member of an SRO, provided that the order states that application may be made "to the Commission" after a specified period of time.[23] Rule 29 provides that individuals subject to such orders may elect either: (a) To have the prospective employer apply to the employer's SRO, subject to Commission review under Rule 19h–1; or (b) to apply directly to the Commission pursuant to Rule 29 and, if the Commission approves the application, thereafter to the appropriate SRO. An application pursuant to the Rule 19h–1 process would eliminate the necessity for two separate applications which require substantially the same information.[24]

Applications by those barred individuals who seek to associate with an investment adviser, investment company, or other entity that is not a member of an SRO, should be submitted directly to the Commission pursuant to Rule 29.

III. Delegation of Authority

Currently, the Commission's rules governing delegation of authority to the Director of the Division of Enforcement (the "Director") authorize the Director to approve applications by barred individuals, who have previously been granted Commission consent to associate, to change employers, provided that the conditions of the new employment are substantially similar to those of the previously approved employment.[25] In order to expedite the processing of all direct applications for consent to associate, the Commission is amending its rules to authorize the Director to approve or deny applications made pursuant to Rule 29. Notwithstanding this delegation, in any case where the Director believes it appropriate, the matter may be submitted to the Commission.[26] In the event that the Director denies an application for consent to associate, the applicant will be notified that the denial may be appealed to the Commission for review pursuant to Rule 26 of the Commission's Rules of Practice, provided, however, that the notice of intention to petition for review required of the applicant by that rule may be communicated within the shorter of (a) ten days after the receipt of actual notice of the denial or (b) fifteen days after mailing of the notice of denial.[27]

IV. Regulatory Flexibility Act

A copy of the Regulatory Flexibility Act certification was previously published in Release No. 34–20393 (November 18, 1983), 48 FR 54039 (November 30, 1983).

List of Subjects in Parts 200 and 201

Administrative practice and procedure, Freedom of Information, Investigations, Privacy, Securities.

V. Text of Revised Rule 200.30–4 and Rule 29

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATIONS; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. By revising paragraph (a)(5) of § 200.30–4 as follows:

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[16] 15 U.S.C. 80a–9(b).

[17] 15 U.S.C. 80a–9(c).

[18] Rule 19h–1 permits application by individuals subject to an "applicable disqualification", defined to include not only Commission bar orders but also any conviction or injunction under Exchange Act section 15(b)(4) (B) or (C), 15 U.S.C. 78*o*(b)(4) (B) and (C), and a failure to meet certain qualification standards under Rule G–4 of the Municipal Securities Rulemaking Board. *See* Rule 19h–1(f).

[19] Any person who seeks an exemption from the provisions of Investment Company Act section 9(a), 15 U.S.C. 80a–9(a), should continue to file an application pursuant to Investment Company Act section 9(c), 15 U.S.C. 80a–9(c). Investment Company Act Rules 2 and 5, 17 CFR 270. 0–2 and 0–5, set forth the procedures with respect to such applications.

[20] Exchange Act sections 15(b)(6) and 15B(c)(4), 15 U.S.C. 78*o*(b)(6) and 78*o*–4(c)(4); Investment Advisers Act section 203(f), 15 U.S.C. 80b–3(f); *see also* Investment Company Act section 9, 15 U.S.C. 80a–9.

[21] Commission approval of an application is limited to association in a specified capacity with a particular registered entity and is subject to specific terms and conditions. If any of the individual's duties or responsibilities vary materially from the terms and conditions under which the application was approved, or if he or she seeks to become associated with another registered entity, a new application must be submitted.

[22] *See, e.g.*, Exchange Act section 21(e), 15 U.S.C. 78u(e); Advisers Act section 209(e), 15 U.S.C. 80b–9(e); Investment Company Act section 42(e), 15 U.S.C. 80a–41(e).

[23] In those cases where the Commission bar order specifies that a person may apply for consent to associate after a specified period of time, the Commission generally will grant the application upon a proper showing made after expiration of the specified period of time.

[24] The Commission has previously expressed a preference, where both it and the SROs have authority, for having applications for consent to associate presented first to the SRO concerned. *See*, Securities Exchange Act Release No. 18278 (November 20, 1981).

[25] 17 CFR 200.30–4(a)(5).

[26] 17 CFR 200.30–4(b).

[27] 17 CFR 201.28.

[1] The Phase I regulations are set forth in 18 CFR Part 282.

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(5) To grant or deny applications made pursuant to Rule 29 of the Commission's Rules of Practice (17 CFR 201.1–201.29), provided, that, in the event of a denial, the applicant shall be notified that such a denial may be appealed to the Commission for review.

* * * * *

The Commission finds, in accordance with 5 U.S.C. 553(b)(A) of the Administrative Procedure Act ("APA"), that the amendment of Rule 30–4(a)(5) relates solely to agency organization, procedure, or practice, and that notice and public procedure in accordance with the APA are not necessary. In addition, the Commission finds that the foregoing action does not impose any burden on competition.

PART 201—RULES OF PRACTICE

2. By adding § 201.29 as follows:

§ 201.29 Applications by barred individuals for consent to associate with registered brokers, dealers, municipal securities dealers, investment advisers or investment companies.

Preliminary Note

This rule governs applications by certain persons, barred by Commission order from association with entities registered with the Commission, for consent to become so associated. Applications made pursuant to this rule must show that the proposed association would be consistent with the public interest. In addition to the information specifically required by the rule, applications should be supplemented, where appropriate, by written statements of individuals (other than the applicant) who are competent to attest to the applicant's character, employment performance, and other relevant information. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001 and other provisions of law.

The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the issue of the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment, are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar. As an associated person, the applicant will be limited to association in a specified capcity with a particular registered entity and may also be subject to specific temrs and condtions.

Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and, thus, is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

In addition to the factors set forth in paragraph (d) of this rule, the Commission will consider the nature of the findings that resulted in the bar in determining whether the proposed association is consistent with the public interest. In this regard, attention is directed to Rule 5(e) of the Commission's Rules on Informal and Other Procedures. Among other things, Rule 5(e) sets forth the Commission's policy "not to permit a * * * respondent [in an administrative proceeding] to consent to * * * [an] order that imposes a sanction while denying the allegations in the * * * order for proceeding." Consistent with the rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this rule was granted on the basis of such denial, the Commission will not consider any application that attempts to re-argue or collaterally attack the findings that resulted in the Commission's bar order.

(a) *Scope of rule.* Applications for Commission consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, investment adviser, or investment company ("registered entities") may be made pursuant to this rule where a Commission order bars the individual from association with a registered entity and:

(1) Such barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or

(2) The order contains a proviso that application may be made to the Commission after a specified period of time.

(b) *Form of application.* Each application shall be supported by an affidavit, manually signed by the applicant, which addresses the factors set forth in paragraph (d) of this rule. One original and four copies of the application shall be filed with the Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Each application shall include as exhibits: (1) A copy of the Commission order imposing the bar; (2) an undertaking by the applicant immediately to notify the Commission in writing if any information submitted in support of the application, while pending, becomes materially false or misleading; (3) a copy of a completed Form U–4, where the applicant's proposed association is with a broker-dealer or municipal securities dealer; (4) a copy of a completed Form MSD–4, where the applicant's proposed association is with a bank municipal securities dealer; (5) the information required by Form ADV with respect to the applicant, where the applicant's proposed association is with an investment adviser; and (6) a written statement by the proposed employer that describes (i) the terms and conditions of employment and supervision to be exercised over such applicant and, where applicable, by such applicant; (ii) the qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant; (iii) the compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and (iv) the names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant.

(c) *Required showing.* The applicant shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest.

(d) *Factors to be addressed.* The affidavit required by paragraph (b) shall address each of the following:

(1) The time period which has elapsed since the imposition of the bar;

(2) Any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;

(3) The applicant's compliance with the order imposing the bar;

(4) The applicant's employment during the period subsequent to imposition of the bar;

(5) The capacity or position in which the applicant proposes to be associated;

(6) The manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;

(7) Any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and

(8) Any other information material to the application.

(e) *Notification to applicant and written statement.* In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this rule, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall then have 30 days to submit a written statement in response.

(f) *Concurrent applications.* The Commission will not consider any application submitted pursuant to this rule, if any other application for consent to associate concerning the same applicant is pending before any self-regulatory organization.

VI. Statutory Basis

Rule 29 is adopted pursuant to the authority of Sections 15, 15B, 19, 23 (a) and (c) of the Securities Exchange Act of 1934, (15 U.S.C. 78*o*, 78s, 78w (a) and (c)); Sections 203 and 211 of the Investment Advisers Act of 1940, (15 U.S.C. 80b–3, 80b–11); and Sections 9 and 38 of the Investment Company Act of 1940, (15 U.S.C. 80a–9, 80a–38).

The Amendment to Rule 30–4(a)(5) of the Commission's Rules on Organization; Conduct and Ethics; and Information and Requests is adopted pursuant to Sections 19 and 20 of the Securities Act of 1933 (15 U.S.C. 77s and 77t); Sections 21 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78u and 78w); Sections 38 and 42 of the Investment Company Act of 1940 (15 U.S.C. 80a–37 and 80a–41); Sections 209 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9 and 80b–11); and the Act of August 20, 1962, Pub. L. No. 87–592, 76 Stat. 344 (15 U.S.C. 78d–1, 78d–2), as amended by the Securities Act Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 163 (June 4, 1975).

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 8415 Filed 3–28–84; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM80–10–002; Order No. 363]

Rule Required Under Section 202 of the Natural Gas Policy Act

Issued: March 15, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: On December 1, 1983, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (48 FR 55294, December 12, 1983) proposing not to implement the regulations promulgated in Order No. 80 (45 FR 31622, May 13, 1980). The Commission proposed to use its exemptive authority under section 206(d) of the Natural Gas Policy Act of 1978 (NGPA) to issue a final rule exempting all Phase II users from the Order No. 80 regulations. The Commission has considered the 51 comments filed in response to the Notice. For the reasons discussed in the rule, the Commission, instead of relying on the exemptive authority under section 206(d) of the NGPA, revokes Order No. 80 and issues a new Phase II rule, providing incremental pricing applies only to the boiler fuel uses covered by Phase I and not to any other industrial uses of natural gas.

EFFECTIVE DATE: The final rule becomes effective April 12, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8033.

I. Summary

The Federal Energy Regulatory Commission is issuing this final rule on Phase II of the incremental pricing program under section 202 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (Supp. V 1981). The final rule limits the scope of the incremental pricing program to the boiler fuel uses of natural gas covered by Phase I of the program. To accomplish this, the Commission revokes the regulations issued in Order No. 80 and adds a new paragraph (a)(2) to § 282.102 of its regulations. The new paragraph provides that the requirements of the rule under section 201 apply only to the use of natural gas by industrial boiler fuel facilities, and not by any other category of industrial facilities.

II. Background

Title II of the NGPA requires that the Commission issue regulations to channel to industrial users of natural gas a specified portion of the higher gas costs allowed by Title I.

The "incremental costs" of natural gas are to be passed through from interstate pipelines to industrial users by a surcharge pricing mechanism. Congress designed this program to prepare the natural gas market for deregulation in 1985 and to provide some shelter from rising gas prices to residential and other high priority customers.

Under Title II, the Commission must implement the incremental pricing program in two phases. Section 201 requires that the first phase of the program apply to large industrial facilities that use natural gas as boiler fuel (Phase I).[1]

Section 202 required the Commission to issue an amendment to the Phase I rule by May 9, 1980 (Phase II). That section provides that Phase II of incremental pricing will apply to (1) the industrial boiler fuel facilities covered by the Phase I rule, and (2) any industrial facility in a category defined by the Commission. Section 202 also directed the Commission to submit the Phase II rule to Congress for review. The rule would not become effective if disapproved by either House within a thirty-day review period.

The Commission issued a Phase II rule on May 6, 1980 (Order No. 80).[2] Although commenters overwhelmingly opposed any expansion of incremental pricing, the final rule broadened the scope of incremental pricing to include all industrial users of natural gas except those exempted specifically by the NGPA or exempted by the Commission under section 206(d). The Commission had serious reservations about issuing Order No. 80 because it doubted that an expansion of incremental pricing could achieve the goals of the program. It declined, however, to consider whether market conditions had "so changed as to render the program inappropriate," believing that it was without authority "to second-guess the social and economic judgments that the Congress made in enacting Title II." [3] The Commission left that determination to Congress, which had reserved the right to review the Commission's rule.

Order No. 80 was submitted to Congress pursuant to section 202(c) of the NGPA. The House of Representatives passed a resolution of disapproval of the Phase II rule by a vote of 360–34. Subsequently, the Commission attempted to revoke the Phase II rule because it had not "independently evaluated whether the Phase II rule meets the social and economic goals" of incremental pricing.[4]

In *Consumer Energy Council of America* v. *Federal Energy Regulatory Commission (CECA),*[5] the United States

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[1] The Phase I regulations are set forth in 18 CFR Part 282.

[2] Order No. 80, issued May 6, 1980, Docket No. RM80–10, 45 FR 31,622 (May 13, 1980); FERC Stat. & Regs., Reg. Preambles ¶ 30,157.

[3] 45 FR at 31,622; FERC Stat. & Regs., Reg. Preambles at 31,058.

[4] Order Denying Rehearing and Revoking Amendments Made by Order No. 80, Docket No. RM80–10, issued August 1, 1980, 45 FR 54,741 (Aug. 18, 1980), FERC Stat. & Regs., Reg. Preambles ¶ 30,182.

[5] 673 F.2d 425 (D.C. Cir. 1982); *aff'd. nom. sub nom.* Process Gas Consumers Group v. Consumer Energy

Continued

Court of Appeals for the District of Columbia Circuit held the legislative review provision unconstitutional and severable from section 202 of the NGPA. The court also held that the Commission's attempted revocation of the Phase II rule was invalid because the Commission did not provide adequate notice and opportunity for public comment. As a result, the Commission became obligated to exercise its independent judgment and reconsider Order No. 80 in light of the objectives of incremental pricing and current market conditions.

The rule was due to become effective on October 15, 1983, but the Commission stayed the effective date until December 14, 1983, and proposed to continue the stay for an additional 120 days.[6] On December 1, 1983, the Commission issued an order extending the stay until April 12, 1984, or until the Commission completes reconsideration of Order No. 80, whichever is earlier.[7]

On December 1, 1983, the Commission also issued a Notice of Proposed Rulemaking that proposed not to implement the regulations promulgated in Order No. 80 because an expansion of incremental pricing would not achieve the goals of the program.[8] The Commission received 51 written comments in response to the Notice. In addition, 7 persons presented oral comments at a public hearing held on January 10, 1984.[9] In issuing this final rule, the Commission has considered the written and oral comments in this docket, including those filed before Order No. 80 was issued.

III. Discussion

A. Scope of Incremental Pricing

All the comments in response to the Notice support the Commission's proposal not to implement the Order No. 80 regulations. They agree with the Commission that an expanded incremental pricing program would not help prepare the natural gas market for deregulation and, in fact, would be contrary to present Commission programs aimed at improving market conditions.

As the commenters and the Commission have noted, incremental pricing was intended to shift a greater portion of increasing wellhead prices of natural gas to price-sensitive industrial users at what was expected to be a time of excess demand. In this manner it was supposed to curb the bidding by interstate pipelines for gas, thus carrying out a "market ordering" function. At the time the Commission issued Order No. 80, it expressed doubt that an expanded incremental pricing program could achieve market ordering under those circumstances. This doubt was based on the fact that industrial users with little or no alternative fuel capability would be in a relatively weak position to influence prices that pipelines will pay for natural gas.[10]

Under today's actual market conditions, (*i.e.*, high gas prices, the narrow gap between gas and oil prices, and the large deliverability surplus[11]) implementing and expanded incremental pricing program would compound the present market imbalance by further reducing the demand for gas by industrial users. This decreased demand would require a pipeline's remaining customers to bear a greater share of the fixed costs.

In addition, the commenters agree with the Commission that an expansion of incremental pricing is inconsistent with the Commission's goal of lowering gas prices through the use of competition and market forces.[12] In fact, an expanded incremental pricing program would severely hamper the Commission's and the gas industry's efforts at recovery of the natural gas market. Keeping gas prices at artifically high levels could motivate an increasing number of industrial users to switch to alternative fuels or to look for other sources of gas that are not subject to incremental pricing, such as intrastate supplies, natural gas purchased directly from producers, or gas reserves developed by the user.

In the Notice, the Commission also stated that an expanded incremental pricing program would not significantly further the price shielding objective of incremental pricing. The commenters agree with the Commission that the record in this proceeding supports such a finding. The record established before Order No. 80 was issued showed that, even during periods when alternative fuel prices would exceed base gas prices and incremental pricing surcharges would be collected widely, the price-shielding benefits to residential users would be *de minimus*. Since then, the gap between natural gas and fuel oil prices has closed, further reducing the minimal price-shielding effect of incremental pricing. One commenter noted, for example, that the weighted average price of natural gas sold by the major interstate pipelines to industrial users was $4.24/Mcf in July 1983.[13] For that same month, the alternative fuel price ceilings ranged from $3.30 to $3.99/MMBtu. When the gas price is higher than the alternative fuel price ceilings, there are no incremental pricing surcharges.

For these reasons, and the reasons discussed in the Notice, the Commission has determined that an expanded incremental pricing program would not further the Congressional objectives of Title II, and would be contrary to the public interest and counter-productive in today's natural gas market. Therefore, the Commission revokes the Order No. 80 regulations and issues a new Phase II rule that does not expand the scope of incremental pricing beyond the boiler fuel uses of natural gas covered by Phase I.

B. Commission's Authority

In the Notice, the Commission proposed not to implement the Order No. 80 regulations by using its exemption authority under section 206(d) of the NGPA. That section gives the Commission the authority to exempt from incremental pricing, in whole or in part, any incrementally priced industrial facility or category thereof.

The commenters agree with the Commission that section 206(d) is broad enough to permit the Commission to exempt Phase II users from incremental pricing. As discussed in detail in the Notice,[14] the court's decision in *Ohio Association of Community Action Agencies* v. *FERC*[15] confirms that the

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Council of America, 51 U.S.L.W. 3935 (U.S. July 6, 1983), *reh. denied* 52 U.S.L.W. 3187 (U.S. Sept. 9, 1983).

[6] Order Granting Stay of Effective Date and Proposing Continuation of Stay for an Additional 120 Days, issued October 5, 1983, Docket No. RM80–10, 48 FR 45,759, 45,787 (Oct. 7, 1983).

[7] Order Extending Stay of Effective Date of Order No. 80, issued December 1, 1983, Docket No. RM80–10–001, 48 Fed. Reg. 55,121 (Dec. 9, 1983).

[8] Docket No. RM80–10–002, 48 Fed. Reg. 55,294 (Dec. 12, 1983). The Notice fully sets forth the factual and procedural background of the Phase II proceedings. 48 Fed. Reg. at 55,295.

[9] Representatives of the Chemical Manufacturers Association, Interstate Natural Gas Association of America, United Distribution Companies, Mountain Fuel Supply Company, American Gas Association, Petrochemical Energy Group, and Process Gas Consumers Group *et al.* presented oral comments at the hearing.

[10] 45 Fed. Reg. at 31,633–635; FERC Stat. & Regs., Reg. Preambles at 31,078–081.

[11] The Notice discusses current market conditions in detail. 48 Fed. Reg. at 55,296.

[12] The Commission is encouraging pipeline companies to develop new programs to lower wellhead prices and retain industrial markets. *See e.g.*, Order Amending Rate Settlement and Certificates of Public Convenience and Necessity, Transcontinental Gas Pipeline Corp., Docket Nos. RP83–11–000, *et al.*, November 10, 1983, 25 FERC ¶62,219; April 21, 1983, 23 FERC ¶61,199.

[13] Comments of Petrochemical Energy Group, citing to DOE/EIA, Natural Gas Monthly, Table 13; Volumes and Prices of Natural Gas Sold by Major Interstate Natural Gas Pipeline Companies 29 (November 1983).

[14] 48 FR at 55,296–297.

[15] 654 F.2d 811 (D.C. Cir. 1981).

Commission could issue the exemption. For example, after discussing the legislative history of section 206(d), the court concluded:

> it may be reasonably inferred that the section 206(d) exemption * * * could be used to accommodate the myriad of concerns raised by legislators about the impacts of incremental pricing, *e.g.*, promoting essential industrial users and *preventing market distortions* incident to deregulation. (Emphasis added.)[16]

Although the commenters agree that the Commission may use its section 206(d) exemptive authority as proposed, most prefer instead that the Commission revoke Order No. 80 and issue a Phase II rule that does not expand incremental pricing beyond Phase I uses. Under the approach proposed in the Notice, the Commission would let the stay of Order No. 80 expire and simultaneously would issue a final rule exempting Phase II users.

Many commenters object to this approach because the Order No. 80 regulations, which the Commission has acknowledged were not the product of reasoned decisionmaking, would become part of the Code of Federal Regulations (CFR). The commenters are concerned that, if the regulations are in the CFR, there is a possibility that, at some point, they could become effective.

The Commission proposed to use its exempting authority because it was not convinced that it has the authority to revoke the regulations promulgated in Order No. 80. The Commission said in the Notice that the statute appeared to require an expansion of the incremental pricing program. The Commission, therefore, proposed to issue a final rule that exempted Phase II users instead of a final rule that revoked the Phase II regulations.

Most of the commenters, however, disagree with the Commission's assessment in the Notice of its authority to revoke the regulations promulgated in Order No. 80. The commenters agree with the Commission that the NGPA requires the promulgation of a Phase II rule but they convincingly argue that the Phase II rule does not have to expand incremental pricing beyond the mandatory Phase I uses. They note that the statute only requires the Commission to *consider* whether an expansion of incremental pricing would be appropriate in light of the objectives of incremental pricing and current market conditions. To support their argument, the commenters note that section 202 of the NGPA requires that the Commission prescribe, by rule, an amendment to the rule required under section 201. The section 201 rule must apply to the boiler fuel use of natural gas by industrial boiler fuel facilities. In contrast, the Phase II rule, while continuing this mandatory application of incremental pricing to Phase I boiler fuel uses, only requires the inclusion of additional Phase II uses of gas as may be defined by the Commission. Thus, section 202 does not require that Phase II apply to any industrial facilities other than the boiler fuel facilities covered by Phase I.

The commenters argue that Congress contemplated that it would make the major policy determinations with regard to a Phase II rule. However, with the invalidation of the Congressional review provisions of section 202(c), the Commission is left to exercise its discretion to determine the scope of Phase II that would best meet Congress' objectives, without benefit of Congressional review. The commenters cite the court's decision in *CECA* as support for this argument. There, for example, the court observed that, without the legislative veto, "the *scope* of the Phase II rule would have been left to the Commission's discretion which would include consideration of the effect of changed market conditions on the usefulness of incremental pricing." (Emphasis added.)[17]

As further support for the breadth of the Commission's discretion, many commenters point out that the legislative history of the NGPA does not require an expansion of the incremental pricing program. For example, Congressman Dingell, a member of the Conference Committee and principal proponent of Title II, recognized that "the mandatory requirements of incremental pricing apply only to boiler fuel users".[18] Similarly, Senator Jackson, Manager of the Senate Bill and a key member of the Conference Committee, stated that Title II "does not compel incremental pricing with respect to any industrial use other than in large boilers".[19]

The Commission is persuaded by the commenters that it has the discretion to issue a Phase II rule that includes either no additional category of industrial uses under the Title II rule, or some additional categories, or all categories of industrial uses (and to exempt such uses under section 206(d)) so long as it engages in reasoned decisionmaking based on consideration of the Congressional objectives. All that is required is that the Commission use the rulemaking process to consider what expansion, if any, would be appropriate.

The commenters have also convinced the Commission that revoking the Order No. 80 regulations and issuing a new rule that does not expand incremental pricing is preferable to using the Commission's section 206(d) exemption authority. It does not appear that incremental pricing will serve any useful purpose in the foreseeable future. Even if conditions were to change, there is no reason to believe that the Order No. 80 regulations could fulfill future needs in any different market setting. In any event, the Commission further believes, and the commenters agree, that section 201(a) of the NGPA provides clear authority for the Commission to amend the rule in the future.

Some commenters suggest that the Commission, in addition to revoking Order No. 80 and issuing a rule that does not expand incremental pricing, also issue a rule using its exemptive authority. This suggestion is based on their concern that a reviewing court might determine that an expansion of the program is required by section 202 and would require a reinstatement of the Order No. 80 regulations. In that event, a rule providing for a section 206(d) exemption would already be in place to effectively limit the scope of an expanded program to Phase I users.

The Commission declines to use this dual approach because it is unnecessary at this time. As noted, the Commission has determined that it does have the authority to revoke Order No. 80 and to issue a Phase II rule that does not expand the program to other industrial facilities. Should the need arise in the future, the Commission believes that it could use its section 206(d) authority, at that time, to exempt from Phase II of incremental pricing industrial facilities other than those covered by the Phase I rule.

Accordingly, for the reasons discussed above, the Commission (1) revokes the regulations promulgated in Order No. 80 and (2) issues in their place a final rule under section 202 which provides that no additional category of industrial facilities is subject to the rule required under section 201 of the NGPA. The final rule implements this latter decision by adding a new paragraph (a)(2) to § 282.102 which states that the requirements of the rule under section 201 of the NGPA shall apply only to the use of natural gas by industrial boiler fuel facilities, and not to the use of gas by any other category of industrial facilities.

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[16] 654 F.2d at 823.

[17] 673 F. 2d at 444–45.

[18] 124 Cong. Rec. H11314–15 (Oct. 14, 1978).

[19] 124 Cong. Rec. S15221 (Sept. 15, 1978).

IV. Certification Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to prepare certain statements, descriptions, and analyses of rules that will have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a rule will not have such an impact.

Most pipelines and distribution companies may not fall within the RFA's definition of small entity.[39] Most large industrial users of natural gas, on the other hand, may fall within the small entity definition. The economic impact and the record retention burden on all these types of entities remains unchanged from what it is at present because the rule revokes regulations that never became effective. In addition, the new regulations being promulgated have no additional economic impact and do not impose any record retention burden. Therefore, pursuant to section 605(b) of the RFA, the Commission certifies that this rule will not have "a significant economic impact on a substantial number of small entities."

V. Effective Date

For the reasons discussed above, the Order No. 80 regulations must not become effective. Since the stay of those regulations is due to expire at 11:59 p.m. e.s.t. on April 11, 1984, this final rule, which revokes the Order No. 80 regulations, must be effective by April 12, 1984. Therefore, in accordance with section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553, the Commission finds good cause to waive the requirement for publication thirty days before the effective date and make the final rule effective April 12, 1984.

List of Subjects in 18 CFR Part 282

Intergovernmental Relations, Natural Gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

In consideration of the foregoing, the Commission amends § 282.102 of Part 282, Title 18, code of Federal Regulations, as set forth below, effective April 12, 1984.

[39] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. IV 1980). Section 3 of the Small Business Act defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also* SBA's Small Business Size Standards, 13 CFR Part 121 (1982).

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 282—[AMENDED]

1. The authority citation for Part 282 reads as follows:

Authority: Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301–3432 (Supp. V 1981).

2. Section 282.102(a) is amended by designating the text as paragraph (1) and adding new paragraph (a)(2) to read as follows:

§ 282.102 Applicability and effective date.

(a) *Uses*

(1) * * *

(2) Pursuant to section 202(b) of the NGPA, the requirements of the rule under section 201 shall apply, as of May 9, 1980, only to the use of natural gas by industrial boiler fuel facilities, and not to any other category of industrial facilities.

* * * * *

3. The Commission revokes the regulations promulgated in Order No. 80 published at 45 FR 31622, May 13, 1980.

[FR Doc. 84-7552 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 282

[Docket No. RM79–14]

Natural Gas Policy Act; Publication of Incremental Pricing Acquisition Cost Thresholds

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Issued: March 26, 1984.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of April 1984 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to January 1984 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	Calendar year 1984			
	January	February	March	April
Incremental Pricing Threshold	$2.253	$2.291	$2.299	$2.307
NGPA Section 102 Threshold	3.586	3.609	3.632	3.656
NGPA Section 109 Threshold	2.359	2.367	2.375	2.383
130% of No. 2 Fuel Oil in New York City Threshold	7.750	7.570	7.570	8.000

[FR Doc. 84-8476 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 504

Organization

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: The United States Information Agency on a yearly basis updates Part 504 outlining the organizational changes and office moves which have occurred during the past year.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Dina Andrews, Management Plans and Analysis Staff, Bureau of Management, Room 818, 301 4th Street

SW., Washington, D.C. 20547, (AC) 202–485–8676.

SUPPLEMENTARY INFORMATION:

List of Subjects in 22 CFR Part 504

Organization and functions (Government agencies).

E.O. 12291 Federal Regulations

USIA has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Date: March 22, 1984.

Charles Z. Wick,

Director, United States Information Agency.

Part 504 of Title 22 of the Code of Federal Regulations is revised to read as follows:

PART 504—ORGANIZATION

Sec.

504.1 Introduction.
504.2 Description of central and field organization established places at which, officers from whom, and methods whereby the public may obtain information.
Appendix I—USIA Office Locations in Washington, D.C. Area
Appendix II—USIA Office Locations Outside the Washington, D.C. Area

Authority: Sec. 4, 63 Stat. 111, as amended, sec. 501, 65 Stat. 290; 22 U.S.C. 2658, 31 U.S.C. 483a, 5 U.S.C. 301, 552, E.O. 10477, as amended, 18 FR 4540, 3 CFR 1949–1953 Comp., page 958, E.O. 10501, 18 FR 7049, 3 CFR 1949–1953 Comp., page 979. Reorganization Plan No. 2 of 1977, Pub. L. 97–241, 96 Stat. 291, Pub. L. 98–111.

§ 504.1 Introduction.

It is the policy of the United States Information Agency that information about its operations, organization, procedures, and records be freely available to the public in accordance with the provisions of Pub. L. 89–487, the "Public Information Act of 1966", referred to hereinafter as "The Act", which amended the "Public Information" section of the Administrative Procedure Act (5 U.S.C. 552).

§ 504.2 Description of central and field organization, established places at which, officers from whom, and methods whereby the public may obtain information.

(a) The United States Information Agency, redesignated by Section 303(a) of the United States Information Agency Authorization Act, Fiscal Years 1982 and 1983 (Pub. L. 97–241, Stat. 291), was formerly the International Communication Agency.

(b) The United States International Communication Agency was established as an independent Agency of the Executive Branch of the Government by Reorganization Plan No. 2 of 1977. The Director of the Agency is responsible for reporting to the President and the Secretary of State, as well as advising the National Security Council, on international, informational, educational, and cultural matters. The scope of the Director's advice includes assessments of the impact of actual and proposed U.S. foreign policy decisions on public opinion abroad.

(c) Reorganization Plan No. 2 transferred to the new Agency overseas information functions previously lodged in the U.S. Information Agency and the educational and cultural affairs functions of the Department of State. The Reorganization Plan abolished the U.S. Advisory Commission on Information and the U.S. Advisory Commission on International Educational and Cultural Affairs and established the U.S. Advisory Commission on International Communication, Cultural, and Educational Affairs whose name was subsequently changed to the United States Advisory Commission on Public Diplomacy by Section 604 of the Department of State Authorization Act, Fiscal Years 1980–1981 (93 Stat. 390, August 15, 1979).

(d) The United States Information Agency has responsibility for the conduct of international information, education, and cultural activities, including exchange programs to build bridges of mutual understanding between Americans and the other peoples of the world. The United States Information Agency engages in a wide variety of communication activities—from academic and cultural exchanges to press, radio, and television programs—to accomplish its goals of strengthening foreign understanding of American society and support United States policies. The United States Information Agency operates field posts in 126 foreign countries.

(e) Agency operations are organized along both functional and geographical lines and directed by the Executive Policy group composed of the Director, Deputy Director, four Bureau Associate Directors, the General Counsel, Director of the Office of Public Liaison, Director of the Television and Film Service, the five Area Office Directors, and the Comptroller of the Agency.

(1) The four Bureaus are: Broadcasting (B), Programs (P), Educational and Cultural Affairs (E), and Management (M).

(i) The Bureau for Broadcasting is the global radio network of the United States Information Agency which seeks to promote understanding abroad of the United States, its people, culture, and policies. The Bureau of Broadcasting operates the Voice of America (VOA). VOA conducts its operations in accordance with the VOA Charter, which states:

(A) VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.

(B) VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.

(C) VOA will present the policies of the United States clearly and effectively, and will also present responsible discussion and opinion of these policies.

VOA produces and broadcasts radio programs in English and 41 foreign languages, and operates broadcasting and relay facilities to transmit these programs. The Voice of America's Radio Marti Program, established by PL 98–111, seeks to provide news commentary and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

(ii) The Bureau of Programs is comprised of two small specialized staffs, three foreign press centers, and four major offices and services, all reporting directly to the Associate Director. The Policy and Guidance Staff provides both fast daily and in-depth background guidance for operating elements of the Agency on those U.S. foreign policy issues which are susceptible to public diplomacy and on those domestic concerns which are relevant to the conduct of it. This staff also reviews program proposals of the Agency's overseas posts and Washington elements to assure that they are consistent with agreed-upon policy and that resources are allocated in accordance with priorities, and represents USIA in interagency meetings on public affairs issues, evaluates the extent to which media products reflect the Agency's subject priorities, and develops options and policy

recommendations. The International Communication Policy Staff develops options and policy recommendations over the entire range of international communciation policy issues for the Director of USIA and for the consideration of the U.S. Government as a whole. Foreign Press Centers in Washington, New York, and Los Angeles provide facilitative services to foreign journalists working in those cities. The Office of Program Coordination and Development coordinates the design and implementation of all Agency support for major communcation projects proposed by the Agency's overseas posts or undertaken by it in response to worldwide and regional priorities set by the Director, recruits American participants for those projects, and develops a systematic aggregation of essential resource materials to guide the acquisition and production of media support for them. This Office also is responsible for the development and coordination of the Agency's arts initiative undertaken through an agreement with the National Endowments, including recruitment and scheduling of all fine arts exhibitions and performing artists and groups for overseas programming. The Office of Research combines the functions of research on foreign public opinion and communication environment, analysis of foreign media reaction, and the Agency library. The two media services—Exhibits, and Press and Publications—are responsible for the acquisition and production of a variety of media products for use or adaptation by USIA's overseas posts. These include exhibits in various formats, a daily wireless bulletin to all posts, magazines, pamphlets, reprints, photographs, and picture stories. The media services also operate printing plants at two overseas locations.

(iii) Four major offices constitute the Bureau of Educational and Cultural Affairs. The Office of Cultural Centers and Resources provides policy direction, program support, and professional guidance and materials to USIA libraries, American and Binational Centers overseas; promotes the distribution of American books in English and in translation; operates a donated books program; and supports English teaching programs abroad. The Office of Private Sector Programs is responsible for developing cooperative projects with private sector institutions to support, complement and enhance the goals and objectives of the United States Information Agency. These projects are designed to promote a better understanding of the United States abroad by means of educational and cultural exchange between Americans and citizens of other nations. The Office of Private Sector Programs may provide selective assistance, encouragement, and grant support to nonprofit activities of U.S. organizations and institutions that satisfy this purpose, with special emphasis on international educational and cultural exchanges. The Office of International Visitors is responsible for planning, implementing, monitoring, and evaluating all International Visitor (both grantee and voluntary) programs; for managing the Agency's four reception centers; for serving as the Agency's liaison with public and private organizations involved in the International Visitor Program; and for arranging programs in the U.S. for UN Fellows and foreign government trainees. The Office of Academic Programs is responsible for organizing and assisting academic exchanges between the United States and other countries; facilitating the establishment and maintenance of close ties between the American academic community and those abroad; encouraging and supporting learning; and providing staff support to the Board of Foreign Scholarships. The Office maintains liaison with a wide range of non-government institutions to encourage and support private exchange programs and foster institutional linkages across national boundaries; and coordinates international information, educational, cultural, and exchange programs conducted by other departments and agencies of the U.S. Government.

(iv) The Bureau of Management is comprised of a management analysis staff and six major offices reporting to the Associate Director. These offices are responsible for planning, organizing, directing and controlling the Agency's administrative and management operations. These offices provide support services in the areas of administration, personnel and training, budget and fiscal operations, systems technology, security, equal employment opportunity, and contracts.

(v) The Office of Public Liaison (PL), directs and carries out activities designed to discharge the Agency's obligation to provide information about USIA policies, mission and programs to the American people and the communications media. It publishes news releases, fact sheets and pamphlets; provides Agency speakers in response to invitations from organizations and institutions in the U.S.; and holds seminars and workshops with academic, business, professional and public interest institutions and groups. It is responsible for the publication of the Agency's internal newsletter. The Office is responsible for conducting tours of the Agency exhibit at the VOA headquarters.

(vi) The Office of the General Counsel and Congressional Liaison (GC). The General Counsel and legal staff advise all elements of the Agency on the interpretation of all laws, regulations, and Executive Orders that authorize the Agency's program or relate to the Agency's activities. The Office assists in the drafting of proposed legislation, Executive Orders, regulations, contracts, leases, and other legal documents, and participates in the negotiation of international agreements. The Office represents the Agency in hearings arising from disputes on contracts, equal employment opportunity, grievances, labor disputes, and licensing. The Office provides support to trial counsel in cases tried before domestic and foreign courts. The Office secures the necessary rights clearances for the Agency's activities, exercises in full authority vested in the Director by law relating to Exchange Visitor Program designation, visa waiver review, and authorized periods of duration of stays, and advises on matters relating to ethical conduct and conflict of interest of Agency employees. On congressional matters it maintains contact with Members and their staffs and serves as Agency coordinator of hearings on substantive legislation and of Agency programming of Members and staff.

(vii) The Office of Inspector General provides policy direction for and conducts, supervises, and coordinates audits and investigations relating to Agency programs and operations; evaluates whether the Agency has standards adequate to measure program results; evaluates whether programs are effective and are managed with economy and efficiency; and recommends policies and procedures to promote economy and efficiency in such programs and operations. The Office receives, reviews, and coordinates investigations of evidence, allegations, and complaints from employees and applicants concerning waste of resources, fraud, abuse of authority, mismanagement, violations of laws or regulations, or a substantial and specific danger to public health and safety; and reports regularly the results to the Director.

(viii) The Office of Inspections reviews and assesses the effectiveness of Agency programs overseas in support of Agency objectives and the

effectiveness of domestic operations in support of overseas programs.

(ix) The Television and Film Service is responsible for planning, organizing and directing the Agency's television and film activities. The areas of responsibility encompass planning, acquiring, or facilitating production of films for direct projection or telecast by video tape and satellite to audiences overseas; facilitative assistance to visiting foreign television and film producers; assistance to foreign broadcasters in the production and foreign telecast of cooperative television programs; and coordination with other U.S. and foreign government agencies on the dissemination of information overseas through motion pictures and television.

(x) The heads of the five geographic areas are the Agency's principal advisers on all programs within countries in their respective areas. They help to formulate Agency policies and represent the Director in interagency working groups. The Area Directors (Africa; Europe; East Asia and Pacific; American Republics; and North Africa, Near East, and South Asia) are responsible for the coordination and management of public diplomacy programs for the countries in their geographic areas. They supply a knowledge of the field programs and requirements to the Agency's policy and planning processes. They arranged with media services to provide media products to their areas. They consult with appropriate area and country officers in the Department of State and other foreign affairs agencies on operational matters of mutual concern.

(xi) The agency maintains 205 posts abroad in 126 countries. These posts are under the supervision of the U.S. Chiefs of Mission, and with the guidance of the Director and the appropriate Area Office Director, conduct information, educational exchange and cultural programs on behalf of the U.S. Government. Each overseas office is headed by a Public Affairs Officer who is a member of the "Country Team" under the Chief of the U.S. Diplomatic Mission. A list of overseas offices is maintained by the Management Plans and Analysis Staff, Washington, D.C. 20547.

Appendix I—United States Information Agency Office Locations in Washington, D.C. Area

(1) Agency elements located at 301 4th Street SW., Washington, D.C. 20547—

Office of the Director
Office of Public Liaison
Office of the General Counsel and Congressional Liaison
Office of Inspector General
Office of Inspections
Bureau of Programs—
  Policy Guidance Staff
  International Communications Staff
  Office of Program Coordination and Development
  Office of Research
  Exhibits Service
  Press and Publications Service
Bureau of Educational and Cultural Affairs
  Office of Cultural Centers and Resources
  Office of Private Sector Programs
  Office of International Visitors
  Office of Academic Programs
Bureau of Management
  Management Plans and Analysis Staff
  Office of Administration and Technology
  Office of the Comptroller
  Office of Equal Employment Opportunity
  Office of Personnel
  Office of Security
Office of African Affairs
Office of American Republics Affairs
Office of East Asian and Pacific Affairs
Office of European Affairs
Office of North African, Near Eastern, and South Asian Affairs

(2) Other Agency Elements and addresses:

(a) United States Information Agency, Health and Human Services Building, 330 Independence Avenue SW., Washington, D.C. 20547; Bureau of Broadcasting

(b) United States Information Agency, 400 6th Street, SW., Washington, D.C. 20547, Bureau of Broadcasting—Radio Marti Program

(c) United States Information Agency, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20547, Television and Film Service

(d) United States Information Agency, Bureau of Programs—Foreign Press Center, National Press Building, 529 14th Street NW., Washington, D.C. 20547

(e) United States Information Agency, 1717 H Street NW., Washington, D.C. 20547, Bureau of Management—Office of Contracts

Appendix II—United States Information Agency Office Locations Outside the Washington, D.C. Area

Television and Film Service—

(a) New York Office, Room 30–100, 26 Federal Plaza, New York, N.Y. 10278

(b) Los Angeles Office, 1100 Wilshire Boulevard, Los Angeles, Calif. 90024

United States Information Agency, Bureau of Broadcasting—

(a) Relay Stations—

(1) Bethany Relay Station, P.O. Box 227, Mason, Ohio 45040

(2) Delano Relay Station, Route 1, Box 1350, Delano, Calif. 93215

(3) Dixon Relay Station, Route 2, Box 739, Dixon, Calif. 95620

(4) Marathon Relay Station, P.O. Box 726, Marathon, Fla. 33050

(5) Edward R. Murrow Transmitting Station, P.O. Box 1626, Greenville, N.C. 27834

(b) News Bureaus—

(1) Midwest News Bureau, Room 3876, Federal Building, 230 South Dearborn Street, Chicago, Ill. 60604

(2) Southeast News Bureau, Room 1518, Federal Office Building, 51 S.W. First Avenue, Miami, Fla. 33130

(3) West Coast News Bureau, Room 8107, Federal Building, 11000 Wilshire Boulevard, Los Angeles, Calif. 90020

(4) New York News Bureau, Room 30–100, Fisk Building, 26 Federal Plaza, New York, N.Y. 10278

Bureau of Programs—

(a) Foreign Press Centers

(1) Federal Building, 1100 Wilshire Blvd., Suite C–200, Los Angeles, Calif. 90024

(2) 18 E. 50th Street, 11th Floor, New York, N.Y. 10022

(b) Senior Advisor for Public Affairs, U.S. Mission to the United Nations, 799 United Nations Plaza, New York, N.Y. 10017

Bureau of Management—

Administrative Services Division, New York Services Branch, 830 Third Avenue, Brooklyn, N.Y. 11232

Bureau of Educational and Cultural Affairs—Reception Centers

(a) Honlulu—P.O. Box 50186, Honolulu, Hawaii 96850

(b) Miami—Room 1304, Federal Office Building, 51 S.W. First Avenue, Miami, Fla. 33130

(c) New Orleans—Suit 1130, International Trade Mart, 2 Canal Street, New Orleans, La. 70130

(d) New York—Third Floor, 1414 Avenue of the Americas, New York, N.Y. 10019.

[FR Doc. 84–8368 Filed 3–28–84; 8:45 am]
BILLING CODE 8230–01–M

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22 CFR Part 515

Payments to and on Behalf of Participants in the International Educational and Cultural Exchange Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: Part 515 is amended by removing paragraph § 515.3(h), Designated City Supplement (Interim Rule), which is no longer used. This paragraph has been superseded by increased uniform per diem rates for U.S. cities.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gaudian, Deputy Executive Officer, Bureau of Educational and Cultural Affairs, U.S. Information Agency, Washington, D.C. 20547, (202) 485–2949.

SUPPLEMENTARY INFORMATION:

List of Subjects in 22 CFR Part 515

Cultural exchange programs.

E.O. 12291 Federal Regulations

USIA has determined that this is not a major rule for the purposes of E.O.

12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Authority: Sec. 4, 63 Stat. 111, as amended, 75 Stat. 527–538; 22 U.S.C. 2658, 2451 note; Reorg. Plan No. 2 of 1977; E.O. 12048 of Mar. 27, 1978.

§ 515.3 [Amended]

Part 515 is amended by removing paragraph (h) from section 515.3.

Dated: March 22, 1984.

Charles Z. Wick,

Director, U.S. Information Agency.

[FR Doc. 84-8369 Filed 3-28-84; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 51

[Docket No. R-84-709; FR-935]

Environmental Criteria and Standards; Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; correction and technical amendment.

SUMMARY: The purpose of this document is to indicate the correct placement of Appendices to a final rule published on February 10, 1984 (49 FR 5100), as corrected on March 20, 1984 (49 FR 10253), that provided standards for the safe siting of HUD-assisted projects near hazardous operations that handle petroleum products or chemicals of an explosive or flammable nature.

EFFECTIVE DATE: The effective date for the technical amendment appearing in item 2 of this document is March 29, 1984.

FOR FURTHER INFORMATION CONTACT: James L. Christopulos, Office of Environmental and Energy, Telephone number, (202) 755–7225. (This is not a toll-free number).

Accordingly, the following corrections are being made to 24 CFR Part 51:

1. In the March 20, 1984 issue of the **Federal Register**, in FR Doc. 84–7325, on page 10253, column two, item three corrected a February 10, 1984 final rule of the Department. The correction reinstated an Appendix which had been erroneously removed. The correction should have stated also that it was revising the title of the Appendix to read as follows:

Appendix I to Subpart B—Definition of Acoustical Quantities

2. In 24 CFR 51.103 (a) and (b), the term "Appendix" is changed to read "Appendix I to this Subpart" wherever it appears.

3. In the February 10, 1984 issue of the **Federal Register**, in FR Doc. 84–3516, on page 5105, column two, item three, (1) correct the amendatory language to read as follows: "3. Appendix I to Subpart C and Appendix II to Subpart C are added to read as follows:"; and (2) correct the titles of the two Appendices to read as follows:

Appendix I to Subpart C—Specific Hazardous Substances

Appendix II to Subpart C—Development of Standards; Calculation Methods

4. In the February 10, 1984 issue of the **Federal Register**, in FR Doc. 84–3516, page 5103, column three, correct the table of contents entry for § 51.207 to read as follows:

51.207 Amendments to Appendix I to this subpart.

5. In the February 10, 1984 issue of the **Federal Register**, in FR Doc. 84–3516, page 5105, column one, in § 51.207, (1) correct the section heading to read: § 51.207 *Amendments to Appendix I to this Subpart;* and (2) correct the term "Appendix I" wherever it appears to read "Appendix I to this Subpart."

Authority: Sec. 2, Housing Act of 1949 (42 U.S.C. 1441); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Sec. 2, Housing and Urban Development Act of 1969 (42 U.S.C. 1441(a)).

Dated: March 23, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-8419 Filed 3-28-84; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 205, 207, 213, 221, 232, and 244

[Docket No. R-84-1065; FR-1559]

Mortgage and Loan Insurance Programs Under the National Housing Act—Creation of Inferior Liens To Secure Governmental Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Secretary is adopting as final an interim rule that amended certain of HUD's multifamily and related mortgage insurance regulations to facilitate the use of grants or loans by Federal, State, and local governmental agencies or instrumentalities in connection with the development of projects with FHA mortgage insurance. The rule permits liens inferior to the insured mortgage where needed to secure the Federal, State, or local loan. The rule also provides that, where the proceeds of such a loan or grant are to be used as "front money" to assure completion of the project and the payment of expenses incident to its construction, "front money" deposit requirements for these purposes may be satisfied by a letter of credit or an agreement among the relevant parties rather than by cash, and insured mortgage proceeds may be advanced to cover these expenses before full disbursement of the loan or grant proceeds.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Director, Multifamily Technical Support Division, Office of Multifamily Housing Development, Room 6138, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Telephone number (202) 426–7113. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 4, 1983 the Department published an interim rule in the **Federal Register** (48 FR 35389), amending the then—existing regulations at 24 CFR Chapter II, Subchapter B, governing certain multifamily and nonresidential mortgage insurance programs under the National Housing Act.

As explained more fully in the interim rule, and briefly summarized here, the amendments are designed to facilitate the use of grants and loans by Federal,

State, and local governmental agencies or instrumentalities in connection with the development of projects whose mortgages are insured under those authorities. The rule also permits liens inferior to the lien of the insured mortgage if they are given in favor of the Federal, State, or local governmental agency under circumstances approved by HUD. Additionally, the rule relaxed the "front money" regulatory requirements in those cases where the money is provided by a grant or loan from a government instrumentality. Finally, the rule specified that the mortgagee of record could not be the issuer of a letter of credit used in connection with the insurance of advances for the programs covered by the rule without the prior written consent of the Commissioner.

The interim rule became effective on October 10, 1983, and provided for public comments to be received by October 3, 1983. The Department received only one comment, and this was from a HUD Field Office.

The comment recommended that the rule be withdrawn (and the old policy reinstated) or modified because of its potentially adverse effects on all parties if the proceeds of secondary financing are withheld to the end of a job. The comment argued that the requirement to post a letter of credit for ten percent of the secondary financing amount could be financially burdensome to the borrower; and, in some cases, may represent an insignificant amount in relation to the total cost of a project. The comment further questioned the fairness of having the borrower incur this additional cost because of the borrower's having little influence over the actions of the secondary lender. Finally, the comment contends that, written agreements aside, delays and cost overruns could result if the government agency fails to honor its obligation to provide the loan or grant funds.

The Department disagrees with the comment. The Field Office misapprehends the funding procedure contemplated by this rule. As the rule (along with the instructions to HUD's Field Offices) makes clear, the secondary financing will be advanced either before the disbursement of mortgage proceeds or concomitantly on a pro rata basis with the expenditure of mortgage funds. Mortgage proceeds will not be substantially drawn down before the disbursement of grant or loan funds. The provision for a letter of credit ensures that the general contractor is paid in a timely manner; it does not, in the Department's view, create an undue financial burden on the mortgagor.

HUD recognizes that in the normal course of events, there exists the possibility of funding delays—a contingency the agreement was designed to ameliorate by its provision for a letter of credit or escrowed funds. Finally, the Department believes that the rule's cost effectiveness (interest expense is minimized by deferring the time that loan or grant funds—proceeds of government borrowing—are disbursed) outweighs the potential adverse effects cited in the comment.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. The rule does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is a cost-saving measure with little, if any, adverse impact on small entities.

This rule was listed as RIN 2502–AA30 (H–45–81; FR–1559), in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47435) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program Numbers are 14.112, 14.116, 14.125, 14.126, 14.127, 14.129, 14.134, 14.135, 14.137, 14.138, and 14.139.

List of Subjects

24 CFR Part 205

Community facilities, Land development.

24 CFR Part 207

Mortgage insurance, Manufactured homes.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs-Health, Loan programs-Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 244

Health facilities, Mortgage insurance.

Accordingly, the interim amendments to 24 CFR Parts 205, 207, 213, 221, 232, and 244, published on August 4, 1983 (48 FR 35389) are hereby adopted as final without change.

Authority: Section 211 of the National Housing Act (12 U.S.C. 1715b); Section 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d).

Dated: March 21, 1984.

Shirley M. Wiseman,

General Deputy Assistant Secretary for Housing.

[FR Doc. 84–8490 Filed 3–28–84; 8:45 am]

BILLING CODE 4210–27–M

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24 CFR Part 882

[Docket No. R–84–955; FR–1539]

Section 8 Housing Assistance Payments Program; Existing Housing

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Final rule.

SUMMARY: This rule amends the regulation for the Section 8 Existing Housing (finders-keepers) Program concerning: (1) Lease term and termination of tenancy; (2) selection of applicants for program participation; (3) determination of the number of bedrooms appropriate for a family; (4) review of certain PHA decisions affecting an applicant or participant; and (5) related regulatory changes. The purpose of this rule is to delineate certain notice and hearing requirements

and waiver requirements associated with the Section 8 Existing Housing program and to make final previously published rules on termination of tenancy.

This rule will provide more explicit guidance to PHAs and families participating in the program.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Existing Housing Division, Office of Elderly and Assisted Housing, (202)–755–5353, Department of Housing and Urban Development, Washington, D.C. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: .

I. Consolidation of Rulemaking

This rulemaking consolidates two prior rulemaking proceedings in a single final rule:

A. On July 26, 1982 (47 FR 32169), HUD published a proposed rule implementing Federal Court orders (in *Nichols v. Landrieu*, Civil Action No. 79–3094, United States District Court, District of Columbia, September 12, 1980):

1. Certifying a class action on behalf of persons whose section 8 existing housing subsidy may be terminated or reduced, by a PHA "because of family size and composition requirements without notice of the reasons for termination, the availability of a waiver of family size requirements, and an opportunity to be heard to contest the propriety of termination or claim entitlement to the waiver";

2. Directing HUD to publish as a rulemaking for notice and public comment portions of the administrative handbook for the Section 8 Existing Housing Program "delineating notice and hearing requirements pursuant to subsidy reduction"; and

3. Directing that the PHA notify the participant family of its "right to a waiver [of the PHA's family size requirements] and the grounds upon which a waiver may be granted."

In addition to provisions related to the *Nichols* plaintiff class and required under the court order, the rulemaking also proposed other amendments regarding selection of applicants for Certificates and informal hearing requirements for applicants and program participants.

The Department has received 29 public comments on the proposed rule.

For convenience, this rulemaking is referred to below as the "selection and hearing" rule.

B. On August 3, 1982 (47 FR 33497), HUD published an interim rule implementing 1981 legislation (Pub. L. 97–35, Section 328(e)(1)) which requires a minimum one year lease term in section 8 existing housing, eliminates a prior requirement for PHA participation in a termination of tenancy, and requires good cause for termination of tenancy.

The Department has received 58 public comments on the interim rule.

For convenience, this rulemaking is referred to below as the "termination of tenancy" rule.

II. Statement of Family Responsibilities

Before issuance of this rule, the regulation (§ 882.118) provided that: "A Family receiving housing assistance under this program shall be responsible for fulfilling all its obligations *under the Certificate of Family Participation* issued to it by the PHA and *under the Lease with the Owner*."

Family "obligations under the Certificate" were not otherwise defined in the regulation. The form of Certificate signed by the Family (Form HUD 52578, 10–78) states that the Family agrees "to perform all its obligations under the Existing Housing Program." The Certificate also requires the Family to:

—Provide family income information and records required in administration of the program,

—Permit inspection of its dwelling unit at reasonable times after reasonable notice,

—Give at least 30 days notice to the PHA if the family intends to vacate the unit, and

—Cooperate with the PHA in finding a new unit if the unit is too large because of a change in family size.

The Certificate provides that the "conditions" (i.e., the statement of family obligations on the Certificate)" * * * continue to apply after the Family begins to receive assistance under this program."

The proposed selection and hearing rule (proposed § 882.209(a)(2)(i)) stated that the PHA may deny issuance of a Certificate to an applicant who, as a past participant in the Section 8 Existing Housing Program, failed to comply with "family obligations under the section 8 Existing Housing Program."

A legal aid office objects that the authority to deny a Certificate for failure to comply with family obligations under the program is vague, and does not distinguish between a serious violation of program standards, and minor technical or unintentional infractions for which deprivation of assistance would be unfair. The comment also claims that grounds for denial of a Certificate are already sufficiently clear under the regulation and handbook.

The Department agrees that violation of unstated family program "obligations" is not a sufficiently definite regulatory statement of grounds for denial of assistance, but does not agree that grounds are already adequately stated in the regulation. The responsibilities of the family in the Section 8 Existing Housing Program should be comprehensively listed in the regulation.

As revised by this rule, § 882.118 lists the obligations of a family under the Section 8 Existing Housing Program, both positive (requirements) and negative (prohibitions). The PHA may deny or terminate assistance to a current program participant, or to a prior participant seeking readmission to the program, for violation of any of the stated family obligations (see new § 882.210, discussed in section III of this preamble).

A. Obligation To Furnish Required Information and Certification

The regulation (§ 882.118(a)(1)) requires the family to supply such certification, release, information or documentation as the PHA or HUD determine to be necessary in the administration of the program, including use by the PHA for a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements. The requirement to supply program-related information and records, and to certify family income and composition, is not new.

B. Obligation To Allow PHA Inspection of Unit

The regulation (§ 882.118(a)(2)) requires the family to allow the PHA to inspect the unit at reasonable times and after reasonable notice. The requirement to allow PHA inspection of the unit supports the PHA obligation (see § 882.211) to determine by inspection whether the unit is decent, safe and sanitary, and otherwise in accordance with the lease and assistance contract. This obligation is not a new requirement, and is currently stated in the Certificate.

C. Obligations Related To Use and Occupancy of Unit

The family must use the dwelling unit solely for residence by the Family, and as the family's principal place of residence, and may not assign the lease or transfer the unit (§ 882.118(a)(4)).

The requirement for use solely for residence by the family serves to enforce the statutory purpose of section 8 assistance, to provide assistance for occupancy by a lower income family (see U.S. Housing Act of 1937, sec. 8(c)(4); 42 U.S.C. 1437f(c)(4)).

The requirement for use of the dwelling unit as the family's principal place of residence is intended to prevent the use of scarce subsidy resources for a secondary or seasonal place of residence, or for a unit not actually occupied by an eligible family.

The regulation (§ 882.118(b)(3)) also prohibits the family from receiving assistance under the Section 8 Existing Housing Program "while occupying, or receiving assistance for occupancy of, any other unit assisted under any federal housing assistance program (including any section 8 program)." This provision is intended to prevent double subsidy for a family, or the payment of section 8 subsidy for a unit not occupied by an eligible family.

As under the current form of Certificate of Family Participation, the new regulation (§ 882.118(a)(3)) requires the family to notify the PHA before vacating the dwelling unit. The PHA needs to know when the family is going to leave the unit, so that the PHA will not continue assistance payments, other than authorized vacancy payments (§ 882.105(b)), for a unit no longer occupied by the family.

D. Ownership of Unit

The regulation prohibits the family from owning or having any interest in the dwelling unit (§ 882.118(b)(1)). Currently this is one of the owner's certifications on receipt of payment under the assistance contract. The prohibition is based on the statutory character of the section 8 program, as a rental subsidy for a unit under lease from an owner. Section 8 is not a subsidy for owner occupied housing.

In accordance with the two statutory exceptions to the broad restriction on section 8 subsidy for owner occupied housing, section 8 subsidy may be paid on behalf of a cooperative member (see U.S. Housing Act of 1937, sec. 8(f)(2), 42 U.S.C. 1437f(f)(2)), or to subsidize pad rental by the owner of a manufactured home unit (pursuant to sec. 8(j) of the United States Housing Act of 1937, 42 U.S.C. 1437f(j), as amended by the Housing and Community Development Amendments of 1981, Pub. L. 97–35, sec. 329 H).

E. Fraud

The rule provides (§ 882.118(b)(2)) that the family may not commit any fraud in connection with the Section 8 Existing Housing Program. See also § 882.210 (b)(3) and (d)(1), discussed in section III B below, concerning the denial or termination of assistance because of applicant or participant fraud in connection with *any* federal housing assistance program.

F. Tenant Violation of Assisted Lease

In one major respect, the final rule significantly narrows the regulatory definition of family responsibilities under the program. Since the beginning of the Section 8 Existing Housing Program, the program regulations have provided that the family is responsible for "fulfilling all its obligations * * * under the Lease with the Owner" (§ 882.118 of prior rule). This provision is deleted in the final rule.

Enforcement of the family's obligations to the owner under an assisted lease is properly the concern of the owner, not the PHA. The PHA has, in general, no firsthand knowledge of tenant behavior in the unit. If the family has violated the lease, the owner may take action to terminate the tenancy and, if necessary, to evict the family, without involvement of the PHA.

The PHA is prohibited (under prior program policy and the provisions of this final rule, § 882.209(a)(5)) from establishing selection criteria based on an applicant's expected behavior as a tenant. (The prohibition on screening in selection of tenants will be further discussed in section IV D of this preamble). The termination of assistance because of a family's behavior as tenant of an assisted unit is not an appropriate role for the PHA. For this reason, the tenant's responsibility to comply with the lease is not included in the regulatory listing of family program obligations.

III. Bases for Denial or Termination of Assistance

Under the proposed rule on selection and hearing (§ 882.209(a)(2)), the PHA would have been permitted to refuse a Certificate to an applicant who owes money to a PHA or who (as a past participant in the Section 8 Existing Housing Program) vacated a unit in violation of the lease, or failed to pay amounts owed to a section 8 owner. The PHA could also deny a Certificate to a family which failed to comply with family obligations under the Section 8 Existing Housing Program, or which committed fraud or misrepresentation in connection with a federal housing assistance program.

The proposed rule would not have modified regulatory provisions concerning the grounds for denying a new Certificate to a current program participant (former § 882.209(e)(1), now redesignated §882.209(m)), and would not have contained any new provisions concerning the grounds for termination of assistance to a program participant. On reconsideration, the Department believes this approach is too narrow, and that the regulations should set out a comprehensive statement of the grounds not only for denial of initial selection for participation, but for termination or denial of further assistance to a current program participant because of an action or inaction by the family. The final rule includes therefore a new and complete statement, in a separate regulatory section (§ 882.210), of the bases for denial or termination of assistance because of the family's behavior. (The former provisions of § 882.210 ("Request for lease approval") have been moved to § 882.209, as paragraphs (e) to (l).)

A. Failure To Make Payment to PHA

Under the final rule (§§ 882.210(b) (1) and (2)), the PHA may deny participation in the program, may deny issuance of another Certificate to a participant who wants to move to another dwelling unit, may decline to enter an assistance contract or to approve a lease, if the applicant or participant:

—Currently owes rent or other amounts to the PHA or another PHA, and the debt was incurred in connection with public housing or section 8 asisstance under the United States Housing Act of 1937, or

—Has not reimbursed claims paid on its behalf by the PHA to a section 8 owner, either for rent or for other damages under an assisted lease, or for section 8 vacancy payments.

The PHA may properly conclude that families which have not paid the PHA are less deserving of further assistance from limited funding than other families which meet their financial responsibilities. Payment by the Family of amounts owed to a PHA or of section 8 owner claims paid by a PHA will promote the fiscal welfare of the PHA. Reimbursement of section 8 owner claims paid by a PHA on behalf of the family replenishes funds for operation of the PHA's section 8 program, and for assistance payments for families. The requirement for reimbursement tends to discourage tenant behavior which can result in owner claims, such as claims for tenant damage to the unit.

1. *Treatment of Past Rent or Other Debt to a PHA.* Legal aid comments on the proposed rule assert that the denial of assistance because of rent owed to the PHA, including denial because of rent owed under the public housing program, is an "unauthorized collection practice," and that a PHA may not withhold benefits under the PHA's Section 8 Existing Housing Program because of debt incurred in another "completely unrelated" program.

Section 8 and public housing are different forms of housing assistance under the U.S. Housing Act of 1937, but implement the same statutory purpose—to provide decent, safe and sanitary dwellings for lower income families (U.S. Housing Act of 1937, sec. 2 and sec. 3, 42 U.S.C. 1437 and 1437a). Funding for section 8 housing assistance payments and for development of public housing, is drawn from the same statutory source (the amount of contract authority authorized by the Congress under sec. 5(c) of the Act, 42 U.S.C. 1437c(c)), and the statutory criterion for family eligibility is applicable to both section 8 and public housing assistance under the Act (U.S. Housing Act of 1937, sec. 3(a) and sec. 3(b)(2), 42 U.S.C. 1437a(a) and 1437a(b)(2)). The claim that the two programs are unrelatred is an artificial distinction between two forms of lower income housing assistance under the Act.

A comment from a legal aid office states that the denial of assistance to a family which owes rent or other charges is "harsh and unjustified," since this policy penalizes people who have trouble paying for their rents, the class for which the Section 8 Existing Housing Program is designed.

By statutory definition the section 8 and public housing programs serve people who do not have an adequate income. Family dollars paid for rent cannot be used to meet other family costs. However, this is true for all families assisted under these programs, and is not a justification for failure by a family to pay the statutory rental contribution.

Lower income families are required to pay a part of the full economic rent of their housing, in accordance with a statutory formula. The rental contribution from a family provides resources needed for operation of the programs. The requirement for a rental contribution also encourages the sense of family responsibility for its own welfare. Although the payment of rent is difficult for a poor family, the requirement for payment of the statutory rent contribution could collapse unless enforced by the possibility of effective sanctions.

Under the proposed rule, the PHA would have been permitted to deny assistance because of *any debt* owed by a family to the PHA or to another PHA (proposed § 882.209(a)(2)). The final rule only allows a denial of assistance because of debt incurred to a PHA *in connection with section 8 or public housing assistance under the United States Housing Act of 1937 (§ 882.210(b)(1)).*

Comments from legal aid offices state that a denial of program participation because of debt to the PHA may not be automatic and that the regulation should include standards for mitigation of prior debt. They state that the PHA must be required to afford an opportunity for a family to justify the failure to pay rent, to shown that the amounts claimed are not owed (e.g., where the debt is barred by the statute of limitations), to show that rent was lawfully withheld under local law, or to show a change in financial circumstances, and that the PHA must be required to afford a hearing to consider these factors. Several comments claim that the *Vandermark (Vandermark v. Housing Authority of the City of York,* 633 F.2d 436 (3d Cir. 1981)) and *Baker (Baker v. Cincinnati Metropolitan Housing Authority,* 675 F.2d 836 (6th Cir. 1982)) decisions mandate a hearing which gives the applicant an opportunity to explain a failure to pay rent to the PHA.

Under the new regulation, an applicant family has the opportunity to explain the alleged debt. The PHA is required to give an applicant the opportunity for informal review of a decision to deny assistance for this reason (§ 822.216(a); see section VII B of preamble).

The proposed rule is amended to clarify that the PHA may only deny assistance because of debt due a PHA if an applicant or participant "currently owes" money to a PHA (§ 882.210(b)(1)). Past debt to a PHA is not grounds for denial of assistance. The PHA may not deny assistance if the debt has been paid, or is not valid for any reason (e.g., a rent claim extinguished by the statute of limitations). Thus the final regulation automatically takes into account a change in conditions which results in a satisfaction of the prior debt.

A comment from a legal aid service organization objects to allowing a PHA to deny assistance because of debt to other PHAs. The comment notes that only the PHA to which the debt is owed has access to information on the debt. The Department has decided to retain the regulatory authority for a PHA to deny assistance because of rent or debt owed to another PHA. A family which has incurred an obligation to a PHA should not be assured that if the family moves to the assistance program of a new PHA, the new PHA will be compelled to ignore the delinquency. PHAs may give mutual support for the efforts of other PHAs to collect program-related debts owed by assisted families.

2. *Reimbursement of Owner Claims Paid By a PHA.* The proposed rule (§ 882.209(a)(2)(i)) would have allowed the PHA to deny issuance of a Certificate to an applicant who (as a past program participant) vacated a section 8 existing unit in violation of the lease, or failed to satisfy a liability to a section 8 owner for rents or other amounts owed under the lease.

Under the final rule, the PHA may only deny assistance if the PHA has been forced to pay an owner claim. The final rule (§ 882.210(b)(2)) permits a PHA to deny assistance if an applicant or participant has not reimbursed a PHA for any amounts paid by the PHA to a section 8 owner: (1) For rent or other amounts owed by the family to the owner under the lease, or (2) for vacancy payments.

3. *Opportunity for Future Payment; Agreement to Pay.* Under the proposed rule (proposed § 882.209(a)(2)), the PHA may condition issuance of a Certificate on an applicant's "willingness" to enter into an agreement to repay rent or other amounts owed a PHA. Under the final rule (§ 882.210(c)) the PHA may at its discretion offer an applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA in connection with public housing or section 8, or claims paid by a PHA to a section 8 existing owner. If the PHA chooses to make such an offer, the terms of the agreement are prescribed by the PHA. If the participant breaches the agreement, the PHA may deny or terminate assistance at any time (§ 882.210(b)(5), § 882.210(c) and § 882.210(d)(3)).

A PHA comment states that the issuance of a Certificate should be conditioned on the applicant's agreement to repay amounts owed to the PHA, not just the "willingness" of the applicant to enter an agreement to repay under the language of the proposed rule. The final rule has been revised to clarify, in accordance with the original intention, that the PHA may at its discretion choose whether or not to offer the family the opportunity to enter an agreement for deferred payment of the amounts owed. If the PHA decides not to offer an agreement, or if the family refuses to execute the agreement, the PHA may deny assistance to the family until the family has paid up.

A comment from a legal aid service organization recommends that the family should have the regulatory *right* to enter into a repayment agreement. Another legal aid comment asserts that there should be standards specifying when the PHA *must excuse* prior debt. These recommendations have not been adopted. The decision to accept or not to accept a family promise of future payment properly rests in the discretion

of the PHA, as applied to particular cases, not in the creation of a federal regulatory right to defer the payment of present debt, or in the prescription of a federal standard defining cases in which present debt must be forgiven or in which the present debt may not serve as ground for a denial of assistance. The family can at any time remove the impediment to assistance, by payment of the debt to a PHA, or reimbursement of PHA payments to a section 8 owner.

Some comments claim that a family has a constitutional right to defer payment of amounts owed to a PHA (citing the decisions in *Vandermark* and *Baker*). We do not agree. The *Vandermark* and *Baker* decisions hold that PHAs may withhold entrance to the Section 8 Existing Housing Program because of a family's past failure to pay public housing rent. Procedural and substantive due process do not create any constitutional right to issuance of a Certificate without payment of current debt. The substantive validity of a requirement for prior repayment to a PHA is governed by a simple constitutional test under equal protection—whether the requirement rationally furthers a legitimate State purpose. This preamble has stated some of the main reasons for allowing a PHA to deny section 8 existing assistance to a family until repayment to the PHA.

B. Denial or Termination of Assistance Because of Fraud or Violation of Family Program Obligations

Under the proposed rule (§ 882.209(a)(2)) the PHA would have been authorized to deny issuance of a Certificate to an applicant who failed to comply with "family obligations" under the section 8 program, or who has committed any fraud or misrepresentation in connection with any federal housing assistance program.

The final rule contains a full regulatory definition of the obligations of a program participant (§ 882.116 of the final rule, described in section II of this preamble). The final rule also explicitly confirms that a PHA has the option of denying or terminating assistance for violation of the stated family obligations (§ 882.210(b)(4) and § 882.210(d)(2)).

The PHA may also deny or terminate assistance if the applicant or participant has committed any fraud "in connection with any federal housing assistance program" (§ 882.210(b)(3) and § 882.210(d)(1)); see also provisions on family obligation not to commit any fraud in connection with the Section 8 Existing Housing Program (§ 882.118(b)(2), discussed above in section II E of this preamble).

C. Participant—Denial or Termination of Assistance

Prior to this rule, the program regulation did not contain any unified statement of the bases for denial or termination of assistance to a participant family because of the family's action or inaction. The proposed rule (selection and hearings) only dealt with the grounds for initial denial of participation. Although the proposed rule stated a uniform set of informal hearing requirements for termination or reduction of assistance (proposed § 882.216), the proposed rule did not state the grounds for termination or denial of assistance to a participant family. The final rule defines the bases a PHA may use for denial or termination of assistance to a current program participant. This definition will clarify the substantive rules to be applied in the participant hearing process under the regulation (§ 882.216(b)).

1. *Denial of New Certificate to Participant.* Under the previous rule (§ 882.209(e)(1)), the PHA was required to issue a new Certificate to an assisted family at any time the family wanted to move to another unit in the area (if the PHA had sufficient funds to issue a new Certificate, and the family was meeting its program responsibilities under § 882.118) unless the PHA determined that the family owed payment to the owner "on account of nonpayment of rent or other amount owed under the lease." Under the final rule (§ 882.210(b) and § 882.209(m)(1)), the grounds for denial of a new Certificate to a current program participant are the same as the grounds for denial of assistance to an applicant: failure to pay rent or other debt to a PHA in connection with section 8 or public housing, failure to reimburse claims paid by the PHA to a section 8 owner, fraud or breach of program obligation, breach of agreement to pay or reimburse the PHA.

The final rule (§ 882.209(m)(1)) also specifies that a participant who wants to move must request a new Certificate "during or at the end of the term of the Lease." This is intended to clarify that the right to issuance of a new Certificate applies only to a current program participant. A past participant who applies for a Certificate is treated as an applicant for participation in the PHA's program.

2. *Termination of Assistance Payments Under an Outstanding Assistance Contract.* Under the final rule (§ 882.210(d)), the PHA may terminate housing assistance payments under an outstanding HAP Contract for fraud in connection with any federal housing assistance program, or for violation of family obligations under the section 8 program.

The PHA may not terminate housing assistance payments under an outstanding HAP Contract for nonpayment by the family of amounts owed to a PHA or of section 8 owner claims unless the family breaches an agreement for payment of these amounts (§ 882.210(c) and § 882.210(d)(3)). (Nonpayment is, however, grounds for refusing to issue a new Certificate to the family. See section III A of this preamble.)

The regulation also states (§ 882.210(d)) that the listing of bases for termination of a family's housing assistance payments (because of the action of failure to act by the family) does not affect or limit the right of the PHA to exercise any Contract remedy against the Owner, including the termination of housing assistance payments to the owner. Termination of payments to the owner could become necessary, for example, because of the owner's failure to maintain the unit in compliance with the housing quality standards.

IV. Selection of Participants

Selection of applicants for participation in a PHA's section 8 program begins with determination of statutory eligibility. The applicant must qualify as a "family," and must be income eligible (see U.S. Housing Act of 1937, sec. 3; 42 U.S.C. 1437 a (a) and (b); and see § 882.209(a)(2) and Parts 812 and 813). However, there are many more eligible families than the number that can be assisted with the section 8 funds committee by HUD to a local PHA. To distribute the limited assistance among eligible families, the PHA must have some way to choose which families will be assisted, and in what order. The regulations require a PHA to set up procedures to allocate fairly the available Certificates in accordance with definite selection standards which have been approved in advance by HUD (see § 882.204 (b)(1)(i)(C) and (b)(3)(ii) and § 882.209(a)). The PHA selects applicants for participation from the program waiting list in accordance with the HUD-approved policies and procedures stated in the PHA's administrative plan and equal opportunity housing plan (§ 882.209(a)(7)).

The proposed rule (§ 882.209 (a)(2) and (a)(4)) provided that a PHA may establish "requirements or preferences" for selecting applicants, including use of a nondurational residency requirement or preference; and may refuse to issue a Certificate because of fraud, or because

of certain types of conduct of a former section 8 or public housing program participant. However, the PHA would not be allowed to establish selection criteria based on an applicant's "expected behavior as a tenant" (proposed § 882.209(a)(3)).

Under the final rule (§ 882.209 (a)(3) and (a)(4)) a PHA may establish PHA determined "preferences" in selection of applicants (if incorporated in the HUD-approved administrative plan or equal opportunity housing plan). The PHA may not, however, impose PHA designated "requirements" for selection in addition to the basic program eligibility requirements under the statute (see section IV C on elimination of authority of the PHA to establish a residency "requirement").

Provisions on denial of assistance for fraud or for past conduct as a section 8 or public housing program participant are moved from the regulatory discussion of tenant selection (in proposed § 882.209) to the new unified statement of bases for denial of assistance because of action or inaction by the family (in the new § 882.210 of the final rule, discussed above in section III of this preamble).

In addition to prohibiting selection based on an applicant's expected behavior as a tenant, the final rule prohibits the PHA from considering an applicant's "suitability as a tenant" (§ 882.209(a)(5)).

A. PHA Discretion in Establishing Selection Procedures

Comments from legal aid offices object to the degree of PHA discretion in selection of applicants. The comments state that PHAs should be required to use uniform selection procedures, should not be allowed to set local selection preferences and should not have authority to establish selection criteria not required by statute.

The statutory scheme presumes a bias in favor of PHA autonomy and local discretion. The statute is intended to take advantage of the flexibility allowed by administration of the program through State chartered entities sensitive to local concerns and priorities, and able to respond to local conditions (see U.S. Housing Act of 1937, secs. 2, 3(b)(6), and 8(b)(1); 42 U.S.C. 1437, 1437a(b)(6), 1437f(b)(1)). Section 2 of the Act states that "it is the policy of the United States * * * to vest in local public housing agencies *the maximum amount of responsibility in their administration of their housing programs"* (U.S. Housing Act of 1937, sec. 2, 42 U.S.C. 1437).

It is the judgment of the Department that the selection procedures in this rule strike a reasonable balance between the necessary minimum of federal regulatory controls, and the capacity of each PHA to administer the program in accordance with local objectives and circumstances. Removing PHA discretion and authority in selection of program participants in the manner requested by the legal aid comments would forfeit the advantage of program administration by local public bodies.

The statute does not, as suggested by some comments, bar use by PHAs of non-statutory criteria for admission to the program, nor does the statute deny to HUD the authority to regulate the use of such non-statutory criteria by PHAs. The caselaw has very clearly and soundly concluded that PHAs may establish additional non-statutory criteria for program admission which are reasonably related to program objectives (*Baker v. Cincinnati Metropolitan Housing Authority*, 675 F.2d 836, 839–40 (6th Cir. 1982); *Vandermark v. Housing Authority of the City of York*, 663 F.2d 436, 439–40 (3d Cir. 1981)). Preferences function also as an explicit mode of allocation of a finite subsidy resource where there is no reason to favor a federal formula over a local choice.

B. Denial of Participation to Particular Group or Category

A legal aid organization recommends adoption in the Section 8 Existing Housing Program of the current public housing regulatory provision that PHA admission procedures may "not automatically deny admission to a particular group or category of otherwise eligible applicants (e.g., unwed mothers or families with children born out of wedlock)" (§ 860.204(c)(1)).

There is no present need to expand the reach of this regulatory requirement to the Section 8 Existing Housing Program. The section 8 existing annual contributions contract currently prohibits automatic exclusion of participation in the program *"because of membership in a class such as unmarried mothers, recipients of public assistance, handicapped persons, etc."* (ACC, Part II, § 2.5(c), HUD 52520 C (Supp) (10/79), p. 3.) In addition, PHA selection procedures must be approved in advance by HUD. HUD can require elimination of unreasonable selection procedures proposed by a PHA.

C. Residency

The proposed rule did not revise the prior regulatory provisions which allow a PHA to utilize a requirement or preference for persons living in the jurisdiction, but which prohibit a requirement or preference based upon the length of time the applicant has resided in the jurisdiction (proposed rule § 882.209(a)(4); old rule § 882.209(a)(3)). The residency provisions were included in the proposed rule because of an editorial reorganization to accomodate other substantive changes in the rule. However, a comment from a legal aid organization claims that any requirement for local residency before issuance of a section 8 Certificate discourages travel, and therefore violates the constitutional right to travel. The comment states that any residence requirement, even a non-durational requirement, denies assistance to persons too poor to move to a PHA jurisdiction. The comment also argues that it is unnecessary to impose a local residency requirement in order to make the Section 8 Existing Housing Program "politically palatable" in most communities.

The claims that the residency provisions are unconstitutional ignores the established constitutional distinction between a bona fide residence requirement, and a requirement based on length of residence (e.g., *Dunn* v. *Blumstein*, 405 U.S. 330 (1972); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969)). The Constitution does not prohibit a requirement or preference for bona fide residence in the locality as a condition for State benefits, such as subsidized housing.

Local residency preferences serve purposes other than making a section 8 program politically palatable. A community may wish to provide assistance first to families already living in the community before offering assistance to families not yet residing in the community. The residency preference is a device for allocation of a limited pot of assistance.

The final rule (§ 882.209(a)(4) continues to allow PHAs to establish nondurational residency "preferences," and prohibits durational preferences. The PHA may not, however, impose a residency "requirement," which would prohibit selection of non-residents.

D. Owner Responsibility for Selection of Tenants

Legal aid comments assert that allowing PHAs to establish selection requirements and preferences violates the statutory directive that selection of tenants "shall be the function of the owner" (U.S. Housing Act of 1937, sec. 8(d)(1)(A), 42 U.S.C. 1437f(d)(1)(A)).

Under the final rule (§ 882.209(a)(5)), the PHA may not:

establish selection criteria based on the applicant's suitability as a tenant or expected behavior as a tenant. The Owner will select

the tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the Owner concerning expected behavior of the Family in tenancy of a unit, or concerning the Family's suitability for tenancy.

The provisions of the rule amply comply with the statutory allocation of responsibility for tenant selection.

The statute allocates selection functions between the PHA and the owner, and indicates also that the precise division of functions is subject to HUD requirements. The provision that selection of tenants for existing units is the function of the owner is *"subject to the provisions of the annual contributions contract between the Secretary and the [Public Housing] Agency"* (U.S. Housing Act of 1937, sec. 8(d)(1)(A), 42 U.S.C. 1437f(d)(1)(A)). Under the annual contributions contract, the PHA administering a Section 8 Existing Housing Program agrees to comply with HUD regulations and requirements for the program.

In describing the respective roles of the PHA and the owner, the Congress has referred to "the basic responsibility over tenant selection which, under current law, rests solely with the *PHA and owner"* (Conference Report, Housing and Community Development Amendments of 1979, H.R. Rep. No. 96-706, 96th Cong., 1st Sess. 55 (1979)) (emphasis supplied). The PHA selects a family to be assisted under the program, if and when the family rents a suitable unit. The owner selects tenants for occupancy of the owner's units. Indeed, under the structure of the Section 8 Existing Housing Program, the PHA has no way of forcing an owner to select and rent to a family holding a Certificate. On the other hand, the owner has no involvement with the separate process by which a PHA selects families for participation in the program.

Legal aid comments claim that allowing PHAs to reject an applicant because of the applicant's past conduct as a section 8 or public housing tenant violates the requirement that the selection of tenants is the function of the owner. However, the regulatory grounds for denial of admission (§ 882.210, see discussion at section III of this preamble) do not permit the PHA to deny assistance because of a family's suitability or expected behavior as a tenant. The responsibility for tenant selection is left to the owner. The owner decides whether a family holding a Certificate from the PHA will be selected to reside as a tenant in the owner's unit. The grounds for denial of admission because of past conduct of the applicant (§ 882.210(b)) all deal with actions by the applicant related to past participation in a federal housing assistance program (fraud or violation of section 8 program obligations, failure to pay amounts owed to a PHA or to reimburse section 8 owner claims paid by a PHA). The PHA is responsible for determining who may receive a subsidy under the program. This is not the function of the owner. The PHA's decision to deny assistance because of the family's past conduct in Federal housing programs does not in any way compromise the owner's choice to rent or not to rent a unit to a family holding a Certificate.

Unlike the comments from legal aid offices, individual and PHA comments favor allowing the PHA to deny assistance to a past section 8 program participant who violated the lease, failed to pay rent or vacated the unit in violation of the lease. A PHA comment states that the PHA should be able to deny a Certificate for verified undesirable behavior as a section 8 or public housing tenant. Another comment recommends that PHAs should be able to screen applicants, for their past tenancy and credit record. The comments suggest that the admission of tenants with a history of lease violation reduces the credibility of the program among owners, and will affect owner participation.

The Department is sensitive to the importance of the concerns reflected in the comments. The ability of the Section 8 Existing Housing Program to provide a broad choice of housing opportunities to program families depends completely on the voluntary choice of private owners to rent their units under the program. The ability of a PHA to induce owners to rent units to Certificate holders may be affected by the characteristics of families selected by the PHA to participate in the program.

However, a family unacceptable to one owner may be acceptable to another. Leaving screening of prospective tenants to the owner offers the family the maximum opportunity to find a unit in the local housing market. In selecting tenants, the private landlord may use whatever credit checks or screening process best suits the landlord's interest (subject of course to applicable fair housing limitations). The landlord may apply this process to any prospective tenant, including a section 8 Certificate holder. In deciding whether to rent to a family, the owner's judgment should dictate the level and type of tenant screening.

There is also considerable administrative advantage to PHAs in avoiding screening for expected behavior or suitability as a tenant. Because screening is not the responsibility of the PHA, the PHA does not need to decide whether the PHA has enough information to justify withholding assistance. The PHA can, however, emphasize to the owner, before execution of an assistance contract for a unit, that the PHA has not pre-screened the family for suitability or behavior and that, as with any other private market tenant, this is the job of the owner.

E. Waiting List

Prior to this rule, requirements for administration of a PHA waiting list were handled separately (old § 882.207 (b) and (c)) from the procedures for selection and issuance of Certificates (old § 882.209). The final rule merges the regulatory treatment of waiting list procedures into the treatment of PHA selection procedures (in § 882.209(a) (7) and (8), for a clearer presentation of the sequence of procedures leading to family participation in the PHA program.

The regulation continues the requirement for the PHA to maintain a waiting list of income eligible families which have applied for participation in the program (§ 882.209(a)(7)). However, under the old regulation (§ 882.207(c)), the PHA could suspend taking of applications only if there "is no reasonable prospect" that additional Certificates can be issued in the next year, and must make public announcement of the suspension. The new regulation provides that if there is insufficient funding to admit all eligible applicants for participation, the PHA may *at any time* suspend the acceptance or processing of new applications, or the addition of new listings to the waiting list (§ 882.209(a) (8)).

This revision will allow PHAs more flexibility in administration of the waiting list. The change will also tend to minimize PHA expenses in processing of applications, and in maintenance of the waiting list. The PHA is able to judge whether additional applications are necessary to enlarge the pool of eligible applicants to whom Certificates may be issued. The regulation continues the requirement for public announcement of a suspension.

F. Implementation of Statutory Selection Preference

A 1979 statutory amendment requires a preference for selection of families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance (amendment of sec. 8(d)(1)(A) of the U.S. Housing Act of 1937, Housing and Community Development Amendments of 1979, sec.

206(b)(1), Pub. L. 96–153, 42 U.S.C. 1437f(d)(1)(A)). A comment from a legal aid organization urges that implementation of the 1979 preference should be included in the rule. The 1979 preference provision was amended by the Congress in 1983 to expand the preference requirement to cover families who "are paying more than 50 per centum of family income for rent" (amendment of section 8(d)(1)(A) of the U.S. Housing Act of 1937, by Housing and Urban-Rural Recovery Act of 1983, Title II, sec. 203(b)(1), Pub. L. 98–181).

The 1979 preference, as amended in 1983, will be implemented in a separate rulemaking, which will cover parallel statutory requirements for preference in selecting families for various types of assisted housing, including section 8 existing. This is desirable in order to assure a uniform implementation of the statutory preference requirements applicable in the different programs.

G. Statement of Selection Procedures: Equal Opportunity Housing Plan and Administrative Plan

Under the proposed selection and hearing rule, PHA selection procedures, including any preferences or requirements for selection, must be stated in a single, HUD-approved "equal opportunity housing plan" (§ 882.204(b)(1)). The preamble stated (47 FR 32170) that "PHA discretion in determining selection criteria and preferences should be limited only by statutory eligibility limitations and the distinctive set of policy concerns which are evoked by equal housing opportunity review." The proposed change in selection procedures is not adopted in the final rule.

A comment from a legal aid service organization recommends that a statement of selection criteria and preferences should be retained in the PHA's administrative plan, and should be reviewed by HUD personnel with responsibility for programmatic issues.

A PHA urges that certain types of preference factors (such as excess rent burden, displacement, occupancy of substandard housing, handicap or disaster) should be in the administrative plan rather than the equal opportunity housing plan.

On reconsideration, the Department has decided to preserve the separate roles, under prior practice, of the administrative plan and the equal opportunity housing plan in establishing the PHA's selection procedures. Administration of selection requirements involves factors not characteristically considered in the province of an equal opportunity review. The equal opportunity housing plan is best used to express the particular equal opportunity concerns in selection of tenants.

The final rule provides that the PHA must select applicants for participation in accordance with policies and procedures, including any preferences, stated in the administrative plan *or* equal opportunity housing plan (§ 882.209(a)(7) and § 882.209(a)(3)). The regulation now indicates the special role of the equal opportunity housing plan. The final rule (§ 882.204(b)(1)(i)(C)) states that the *equal opportunity housing plan* must describe the PHA's policies and procedures for "selecting Families for participation without discrimination because of age, race, color, religion, sex, handicap or national origin." On the other hand, the regulation (§ 882.204(b)(3)(ii)) states that the PHA's *administrative plan* must state the PHA's policies and procedures for "handling applications and determining Family eligibility"and "selecting Families for participation in the PHA's Section 8 program (including any selection preferences)."

A PHA comment expresses concern that the PHA should not be restricted to stating its selection criteria in the equal opportunity housing plan. Neither the proposed nor the final rule limits the ability of the PHA to publicize the nature of its selection requirements in any desired form.

V. Unit Size

The proposed rule on applicant selection and informal hearings deals with two aspects of a PHA's standards for determining the unit size which is entered on a family's Certificate. First, the proposed rule (§ 882.209(b)(i)) gives the PHA flexibility in establishing standards for determining the appropriate unit size ("number of bedrooms or other sleeping rooms") for different types of families. Second, the proposed rule (proposed § 882.209(b)(ii)) allows the PHA to establish criteria for granting exceptions from the unit size standards. Both aspects were the subject of public comment.

Under the proposed rule, a PHA's unit size standards must provide for efficient use of program resources while avoiding overcrowding, and must be consistent with the housing quality standards (which establish minimum requirements for approval of a unit selected by a family). A comment from a former PHA employee recommends that HUD prescribe a nationally developed occupancy standard. A comment from a legal aid service organization asserts that because of the PHA discretion allowed under the rule some PHAs may establish unit size standards that will cause hardship to program families. The comment also objects to deletion of the prior regulatory requirement that the bedroom size assigned (on the Certificate) may not require persons of opposite sex, other than husband and wife or very young children, to occupy the same room.

The Department has considered the comments, but has decided to allow considerable discretion to PHAs in establishment of unit size standards, rather than dictate for all PHAs national standards governing the number of bedrooms for a family. The final rule requires (§ 882.209(b)(2)) that:

> The PHA shall enter on the Certificate the smallest number of bedrooms consistent with standards established by the PHA for determining the number of bedrooms for Families of different sizes and compositions. The PHA's standards shall provide for the minimum commitment of housing assistance payments while avoiding overcrowding and shall be consistent with the applicable housing quality standards * * *.

The regulation as adopted sufficiently controls the discretion of PHAs in determining unit size standards, while allowing PHAs to adjust unit size standards to local circumstances. The Department addresses this issue in the spirit of the statutory objective to leave maximum discretion to PHAs in the administration of their section 8 programs, and of the broad national objective of deregulation across the spectrum of federal programs.

To understand the regulatory provisions it is necessary to distinguish the function of the Certificate unit size standards (under amended § 882.209(b)(2)), as contrasted with the function of the housing quality standards ("HQS") (especially the HQS space and security standards in § 882.109(c)). The Certificate unit size standards are used to determine the maximum fair market rent (expressed in number of bedrooms) for a unit rented by a family (cf. definition of "unit" in § 882.102 and cf. § 882.106 and § 888.102(b) (as revised 48 FR 43582)). The HQS are used to evaluate the characteristics of the individual unit selected by a family, so that units subsidized under the program are decent, safe and sanitary, as determined under minimum program standards. The Certificate unit size standards limit the rent that can be paid for a unit, while the HQS determine whether the unit can be subsidized under the program at any rent.

Under the final rule (§ 882.209(b)(2)), the PHA is required to establish occupancy standards to govern the number of bedrooms entered on the

Certificate issued to a family. The PHA occupancy standards must provide for the smallest subsidy level which will avoid overcrowding of a family, and will permit the family to rent a unit conforming with HQS. When issuing a Certificate, the PHA must enter the number of bedrooms for which the family is eligible under the PHA standards.

The proposed and the final rule do not relax the HQS standards in any way. The HQS (§ 882.109(c)) provide, first, that the unit must afford the family "adequate space and security" (minimum requirement), and, second, that there must be "at least one *bedroom or living/sleeping room* of appropriate size for each two persons". This standard may be modified with approval of the local HUD office (as in the case of all HQS acceptability criteria). Previously the HQS required at least one *"sleeping* or living/sleeping room" for each two people (§ 882.109(c)(2) of prior rule). This technical amendment clarifies the purpose of the original HQS standard.

Another amendment (§ 882.209(i)(2)) specifies that the PHA may not prohibit a family from renting a unit with fewer bedrooms than the number stated on the Certificate. The smaller unit must, however, satisfy the regular HQS requirements. Thus, where the PHA unit size standards as applied to a family exceed the HQS minimum, the family has the choice of renting a unit up to the maximum FMR (by bedroom size) allowed under the Certificate, or down to the HQS minimum.

Comments from a legal aid office and a PHA object to deletion of the minimum bedroom requirement in the unit size standard. The legal aid comment states that families will be pressured by PHAs and owners into accepting units which are unsafe and unsanitary. The PHA objects to counting a living room as a sleeping room under HQS. The regulation change does not lower HQS minimums. The regulation permits the family to shop for a unit which satisifies the HQS space and other requirements, and which can be rented within the applicable FMR. At the same time, the PHA is required (§ 882.209(b)(2)) to establish Certificate unit size standards higher than the HQS minimum where necessary to avoid overcrowding.

A. Occupancy Standards—Family Members of Opposite Sex

The Department agrees with comments advising that the regulation should continue to prescribe minimum unit size standards for persons of different sex who are members of an assisted family. In the final rule, this concern is addressed in the determination of unit acceptability under HQS rather than in the Certificate unit size standards, as under the prior regulation (old § 882.209(a)(2)(ii)). The following provision has been added to the HQS "acceptability criteria" for unit space and security:

> Persons of opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room.
> (§ 882.109(c)(2))

The number of bedrooms entered on the Certificate issued to a family must be consistent with the amended HQS acceptability requirement on occupancy by persons of opposite sex.

It should be noted that whereas the old Certificate unit size standards established a minimum number of *bedrooms* ("bedroom size") for persons of opposite sex, the new HQS criterion is a limitation on occupancy of the same "bedroom *or living/sleeping room"* by persons of opposite sex.

B. Granting of Exceptions to Unit Size Standards

Under the judgment of the United States District Court in the *Nichols* case, a PHA which terminates or reduces section 8 subsidy to a recipient family because of a change in family size and composition must notify the recipient of any right to waiver of family size requirements, and of the grounds on which a waiver may be granted by the PHA.

The proposed rule (selection and hearing) (§ 882.209(b)(ii)) would have permitted a PHA to: "grant exceptions from the PHA unit size standards * * * to allow the assignment of a larger unit size than that established under the standards if warranted by the relationship, age, sex, health or handicap of the Family members." Comments from legal aid offices state that the proposed provisions do not satisfy the *Nichols* order, since the provisions do not use the word "waiver" and do not establish a "right" to a waiver, that the right to a waiver should be mandatory, not discretionary, and should be built into the unit size standards, or that families should have a "mandatory right to a waiver" if they can show "unique reasonable circumstances" that demonstrate "good cause" for deviation from the standards.

With respect to terminology, HUD believes that the authority for an "exception," as provided in the regulation, is the same as a "waiver," i.e., authority for the PHA to treat special cases in a special manner. The term "exception" will be more readily understood by PHAs and families. The Department prefers to reserve the term "waiver" for a provision relieving obligations under an outstanding Department regulation (see Part 899, Subpart A).

The final rule (§ 882.209(b)(2)) provides that:

> The PHA shall grant exceptions from the standards if the PHA determines the exceptions are justified by the relationship, age, sex, health or handicap of Family members, *or other individual circumstances.* (emphasis added)

The provision allowing exceptions justified by "individual circumstances" is new, and is intended to afford the PHA additional latitude to respond to special needs in individual cases. In each case, the determination to grant an exception from the standard rests in the PHA's administrative discretion.

HUD does not believe, as suggested by the comments, that the order in *Nichols* requires that the regulations specify the grounds for waiver of unit size standards by each PHA participating in the program. The order requires that a PHA notify the participant of the grounds for which a waiver may be considered by the PHA (see discussion in section V C below). Different PHAs have different unit size standards which reflect local circumstances and the administrative judgment of the individual PHAs. Similarly, there should be local discretion to define the types of circumstances in which the PHA may consider a waiver of the local standards to meet the unique problems of individual families.

HUD also does not agree that granting a waiver by a PHA must be mandatory under the court order, or that circumstances in which a waiver must be given must be predefined in the PHA standards. The order requires notice of the grounds upon which a waiver "*may* be granted" by a PHA. As stated in a PHA comment, exceptions from unit size standards should be based on the circumstances of individual cases. The purpose of providing for a "waiver" is to allow the PHA flexibility to respond to special cases and problems not adequately treated in the generally applicable PHA unit size standards.

C. Notice of Grounds for Exception

The proposed rule stated that the PHA criteria for granting exceptions from the unit size standards, and the procedures for granting exceptions shall be made available to applicants and participating families (proposed § 882.209(b)(1)(2)). The comment from counsel for the *Nichols* plaintiff states that the

proposed requirement that exception criteria must be "made available" does not satisfy the *Nichols* obligation to give notice of the right to a waiver. A comment from a PHA, however, objects to the requirements to make the grounds for exception available to applicants and participants since it is difficult to foresee all possible reasons for exception.

The decree in *Nichols* applies to a participant ("recipient") whose assistance is reduced or terminated pursuant to § 882.213 because of a decrease in family size. To clarify the Department's action to comply with the notice requirement of the *Nichols* decree, the provision for notice to a recipient "of his right to a waiver and the grounds upon which a waiver may be granted" is now incorporated in § 882.213, and provides in terms that the PHA must "notify" the family that exceptions to the unit size standards may be granted and of the circumstances in which the grant of an exception will be considered by the PHA.

VI. Status of Applicant and Participant

The United States Housing Act of 1937 sets the minimum conditions of eligibility for assistance under the Section 8 Existing Housing Program, but does not create an entitlement of any individual to section 8 assistance. The rule has now been amended to make clear that nothing in the rule is intended to create or imply any right to participation in the program. The rule acknowledges, however, that an applicant may have a right, independent of the rule, to bring a judicial action challenging a PHA's violation of a constitutional or statutory requirement (e.g., equal opportunity requirements under Title VI or Title VIII), and states that the rule is not intended to affect such a right of action:

> Nothing in this Part is intended to confer on an applicant for participation any right to be listed on the PHA waiting list, to any particular position on the waiting list, to receive a Certificate, or to participate in the PHA's program. The foregoing sentence shall not be deemed to affect or prejudice any judicially-recognized cause of action. (§ 882.209(a)(9))

The status of an applicant is different from that of a participant. It is important to define the point at which a family moves from the status of "applicant" to the status of "participant":

> A Family becomes a participant in the PHA's Secton 8 Existing Housing Program ("participant") *when the PHA executes a Contract with an Owner for housing assistance payments on behalf of the Family.* (§ 882.209(a)(1)) (emphasis supplied)

The program regulation has been revised at various points to reflect the distinction between an applicant and a participant, and to define regulatory requirements applicable to each stage of program participation (see especially, § 882.216). The revisions will remove confusion under the prior rule as to the status and rights of a family at the preliminary stages which may lead to participation in the program.

VII. PHA Review of Decisions Affecting an Applicant or Participant

Before promulgation of this rule, a single set of minimum hearing procedures applied to both applicants to the program and current participants in the program (Handbook 7420.7, section 10–8, revised November 1979). In the same way, the proposed rule (selection and hearing) provided for a single hearing procedure without distinguishing between applicants and current program participants (although the *Nichols* decision only mandated a rulemaking proceeding for the certified class of participants whose assistance is terminated or reduced because of change in family size or composition). The proposed procedures were essentially the same as in the handbook.

In the preamble to the proposed rule, the Department invited comment on "alternative regulatory patterns" which would grant PHAs greater discretion to fashion locally developed informal hearing procedures after giving "due consideration" to the elements of a fair hearing.

After careful examination of public comments on the proposed rule, the Department has determined:

PHA review procedures will be separately defined for applicants and for current participants in the program.

The regulation will state mimimum procedures for PHA review of determinations concerning an applicant of participant.

For an applicant, the minimum procedures will require prompt written notice of a PHA determination, and use of a simple and informal procedure for PHA review of the determination. The applicant will have the opportunity to present written or oral objections to the determination.

For a participant, the PHA will be required to provide an opportunity for an informal hearing to review certain PHA determinations relating to the individual circumstances of the participant. The purpose of the hearing is to consider whether a PHA decision is in accordance with PHA rules and HUD regulations.

A. PHA Discretion in Development of Review Procedure

Legal aid comments generally advocate imposing strong, uniform and specific hearing requirements on PHAs. The comments state that PHAs lack the resources and expertise to develop hearing systems on their own, that there are no geographic distinctions justifying local determination of proper hearing procedures, that PHA staff prefer the security of HUD prescribed hearing guidelines, that PHAs will exercise poor discretion if given a choice, that failure to mandate specific hearing procedures will result in litigation, and that specific HUD hearing requirements are necessary for the protection of tenants. Legal aid comments object also that the alternative procedures would only require the PHA to give "due consideration" to basic elements of a due process hearing.

Comments from several PHAs and from a legal aid office state that PHAs should have flexibility in devising hearing procedures for different situations. A PHA comment notes the demand on PHA administrative time if a PHA tries to offer the same level of protection to everyone.

On reconsideration, HUD believes that there are compelling reasons for the Department to specify minimum procedures for appeal of PHA determinations for each of the two major phases of a family's involvement in the program: first as an applicant, and then as a participant. The Section 8 Existing Housing Program is administered by PHAs which differ greatly in program size and administrative resources. Many PHAs do not presently have the expertise and capacity to devise procedures for review of PHA decisions, or may welcome the assurance of HUD-determined minimum procedures. The Section 8 Existing Housing Program functions in much the same way in different places, in accordance with a simple national program design.

The Department has not adopted the alternative hearing approach discussed in the preamble to the proposed rule. The final rule prescribes minimum review procedures for use by all PHAs. The desirability of recognizing differences in the character and importance of the private interests affected by PHA determinations is built into the review and hearing procedures provided in the regulation, by providing separate procedures for applicants and for current program participants (see § 882.216).

B. Review Procedure for Applicants

1. *Public Comments.* Several PHA comments recommend the use of a simple review procedure for applicants. A PHA suggests that an applicant should simply be given an opportunity to meet with a PHA representative. Another PHA states that where an applicant is determined ineligible, the PHA should give written notice of ineligibility, and an opportunity for an interview and review by an impartial official of the PHA. A PHA comment claims that since the determination of applicant ineligibility is generally based on HUD requirements, the hearing for an applicant is useless.

2. *Factors Considered.* Where an applicant seeks admission to the Section 8 Existing Housing Program, neither the statute nor the regulation create any property right to assistance under the Act, or to PHA action which may lead to participation in the program (see section VI of this preamble; see § 882.209(a)(1) and § 882.209(a)(9)). Since the applicant has no property right, a PHA is not constitutionally required to provide any administrative due process hearing on PHA determinations to grant or deny participation to an applicant. The Department has decided, however, to require that PHAs provide an applicant the opportunity for informal review of a decision denying assistance to an applicant, in order to minimize mistakes by the PHA in application of the PHA's selection procedures.

In determining procedures for PHA review of PHA decisions on applications for participation, the Department has balanced possible benefits for the applicant against the programmatic, fiscal and administrative costs of procedural safeguards, and has considered the following factors:

There is a very large pool of program eligibles in relation to the number of places available. Admission to the program does not follow from mere proof of eligibility.

A determination that a family is eligible, and to list the family on the PHA waiting list, means only that the family can stand in line for assistance. There is no guarantee that a determination of eligibility or listing on the waiting list will ever actually result in issuance of a Certificate, or that, if a Certificate is issued, the family will find a landlord who will accept the family as a suitable tenant.

Because of the great number of potential applicants, the administration of procedures for reconsideration of decisions on applicants may be a substantial burden on the administrative capacities and fiscal resources of a PHA.

There is only one source of funding for housing assistance payments to families and for PHA expenses in administration of the Section 8 Existing Housing Program (U.S. Housing Act of 1937, sec. 5(c) and sec. 8, 42 U.S.C. 1437c(c) and 1437f). If PHA administrative fees are increased to cover increased PHA costs in administering procedures for review of PHA determinations, less money remains for assistance payments to families.

The Section 8 Existing Housing Program has definite and limited resources. The admission of one family means that admission must be denied to some other eligible family.

The chances of admission to the program are determined by the assistance resources available to the PHA, and the operation of the waiting list, rather than by the isolated consideration of facts relating to a particular family. The operation of this selection procedure can best be monitored by HUD review of the PHA management practices, rather than by determinations in PHA hearings for individual applicants.

A PHA hearing process is at best an imperfect device for the determination of controverted fact. PHAs do not have the power to subpoena evidence or witnesses. Even within the limits of the PHA's capacities to conduct hearings, there is an inescapable dilemma: the more elaborate the procedure for PHA review of decisions affecting an applicant, the more burdensome and expensive to the PHA; the less elaborate the procedure, the less effective in determining matters of disputed fact.

3. *Procedures Required.* Having weighed all the above considerations, the Department has decided to require PHAs to establish a simple but effective procedure for informal review of PHA determinations on an application for admission to the program. Under the final rule (§ 882.216(a)(1)) the PHA must give an opportunity for an informal review of a decision denying an applicant:

Listing on the PHA waiting list.

Issuance of a Certificate of family participation.

Participation in the program (i.e., execution of an assistance contract on behalf of the family).

The PHA review procedure must include the following elements (§ 882.216(a)):

Prompt written notice of a PHA decision denying assistance to the applicant. The notice must give a *brief statement of the reasons for the decision.* The notice must also state that the applicant may request an informal review of the decision, and describe how to obtain the review.

(§ 882.216(a)(1))

An *opportunity for informal review* of the PHA decision, in accordance with *review procedures established by the PHA.*

Review by *any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person.*

Opportunity for applicant to present written or oral objections to the PHA decision.

Prompt written *notice of the final PHA decision, including a brief statement of the reasons for the decision.*

(§ 882.209(a)(2))

4. *Subjects Covered by Applicant Review Process.* Comment from a legal aid organization contends that a hearing should be required for any PHA action affecting the interest of an applicant or participant. Comments from PHAs on the other hand, suggest limitations on the requirement for a hearing. PHA comments state that a hearing is unnecessary if a tenant fails to supply required information, or fails to keep appointments. PHAs recommend elimination of a hearing requirement for a PHA determination that a family is not eligible for assistance, for a PHA determination of the appropriate unit size for a family (number of bedrooms on Certificate), for a PHA determination that the unit selected by a family is not in accordance with HQS, or for a PHA determination not to extend a Certificate.

Under the final rule, the PHA is required to offer the applicant the opportunity to present objections to a PHA decision denying assistance to the applicant. However, the regulation (§ 882.216(a)(3)) provides that the informal review requirements for applicants do not apply to the following types of determinations, which are properly left to the administrative discretion of the PHA, or which are controlled by applicable program requirements:

To review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances.

To review the PHA's determination of the number of bedrooms entered on the Certificate under the PHA's unit size standards.

To review the PHA's determination that a unit located by a Certificate

holder does not comply with the HQS, or the PHA's determination not to approve the lease for the unit.

To review the PHA's decision not to approve a request by a Certificate holder for an extension of the term of the Certificate.

C. PHA Hearing Procedure for Participants

The proposed selection and hearing rule (proposed § 882.216(a)(2)) would have required the PHA to provide the opportunity for an informal hearing whenever assistance to a Certificate-holder is *terminated or reduced.* Under the final rule, the PHA is required to provide the opportunity for an informal hearing on key PHA decisions which affect the interests of a participant (§ 882.216(b)(1)). The regulation defines, with more precision than in the proposed rule, the purpose and subjects of the hearing for program participants.

1. *Purpose of Hearing for Participant.* The hearing process under the final rule is designed to assure that decisions by the PHA with respect to a participant family comply with applicable rules. The hearing process does not displace the regular PHA administrative process for matters committed to PHA discretion and management judgment.

The PHA must provide the opportunity for a hearing to consider if a PHA decision is *"in accordance with law, HUD regulations and PHA rules"* (§ 882.216(b)(1)). Thus, the participant may not claim a hearing on a PHA decision merely because the family objects to a law rule. The right to a hearing applies only when the family is claiming that the law or rule has been incorrectly applied by the PHA. For example, if the percentage of income the family must contribute for rent increases because of a change in statutory rental requirements, the family has no right to a hearing unless the family claims that the PHA has made a mistake in computing the family's contribution under the statute and implement HUD rules.

The participant hearing requirements applies only to PHA decisions "relating to the individual circumstances of the Family" (§ 882.216(b)(1)). Correspondingly, the PHA is not required to provide an opportunity for an informal hearing "to review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances" (§ 882.216(b)(2)(i)).

2. *Subject of Hearing for Participant.* At a family's request, PHA must provide the opportunity for an informal hearing to consider if the following types of decisions are in accordance with law, HUD regulations and PHA rules (§ 882.216(b)(1)):

A determination of the amount of the family contribution to rent (Total Tenant Payment or Tenant Rent) (§ 882.216(b)(1)(i)).

The rule specifies that the administrative hearing requirement does not apply to the determination of the PHA's schedule of Utility Allowances for families in the PHA's section 8 program.

A decision to deny or terminate assistance on behalf of the participant (§ 882.216(b)(1)(ii)).

A determination that a participant is residing in a unit with a larger number of bedrooms than allowed under the PHA unit size standards, or to deny the participant's request for an exception from the standards (§ 882.216(b)(1)(iii)).

A determination of the number of bedrooms to be entered on the Certificate of a participant family which wants to move to another unit (§ 882.216(b)(1)(iv)).

a. *Determination of Family Rent.* The section 8 subsidy is the difference between the family contribution, as determined by a statutory formula, and the full rent for a unit. The regulation requires the PHA to provide the opportunity for an informal hearing on a PHA determination of the amount of the family contribution (total tenant payment and tenant rent (as determined under 24 CFR Part 813) (§ 882.216(b)(1)(i)).

b. *Termination or Denial of Assistance.* The requirement to provide the opportunity for an informal hearing applies to a PHA decision to terminate or deny assistance for a participant (§ 882.216(b)(1)(ii)). Thus the PHA must give a hearing when the PHA terminates assistance payments under an outstanding assistance contract, and when the PHA denies issuance of a new Certificate to a participant who wants to move.

c. *Unit Size Determination.* A PHA comment objects to the requirement for an informal hearing on a PHA determination of the appropriate unit size entered on the Certificate issued to a family, Under the final rule, the requirement to provide the opportunity for an informal hearing will apply: (1) To a determination that a participant family is residing in a unit with a larger number of bedrooms than appropriate under the PHA unit size standards (the *Nichols* situation) and to the denial of the family's request for an exception from the standards (§ 882.209(b)(2), § 882.213 and § 882.216(b)(1)(iii)), and (2) in the case of an assisted family which wants to move to another unit, a determination of the number of bedrooms to be entered on the Certificate issued to the family under the PHA standards (§ 882.209(m)(1) and § 882.216(b)(1)(iv)).

3. *When Hearing Is Not Required.*—a. *Sanctions Against Owner.* Under the proposed rule (selection and hearings), the PHA is not required to provide the opportunity for a hearing to a participant when the PHA exercises any sanction against an owner under the assistance contract, including the termination of housing assistance payments to the owner (proposed § 882.216(a)). Several legal aid comments object to this provision.

The final rule retains (§ 882.216(b)(2)(iii) the exception. The Department considers of paramount importance the need to encourage vigorous enforcement by PHAs of owner obligations under the housing assistance payments contract. It is the reponsibility of the PHA to monitor owner compliance with the assistance contract, and to decide whether and when to take action against the owner under the assistance contract because of the owner's breach of contractual obligations to the PHA under the assistance contract.

The determination of the appropriate contractual remedy against the owner involves the exercise of PHA discretion and judgment. For this reason, the decision to impose sanctions against an owner is not an appropriate subject for the participant hearing process. The judgment of the PHA is based on the overall interests of the local assistance program and the enforcement of national program requirements, such as the owner's obligation to maintain the unit in accordance with HQS.

When assistance payments to the owner are terminated because of owner violations of the contract, the participant may obtain a new Certificate, move to a new unit, and continue to receive subsidy under the program. The participant may prefer not to move, and may, for example, be willing to put up with substandard conditions in the unit, to avoid the inconvenience and expense of a move. However, for the benefit of the program, and to assure the proper application of section 8 subsidy funds in accordance with the statutory purpose (i.e., to assist tenants of decent, safe and sanitary housing), the exercise of contractual sanctions against the owner should not be delayed pending an administrative hearing process on behalf of the tenant.

Although the assistance contract is between the owner and the PHA is for the benefit of the family, the family has no direct right under the contract, either as a contractual party or third party

beneficiary. The assistance contract for the Section 8 Existing Housing Program provides explicitly that the family does not have any right to enforce the assistance contract, or to assert any third party claim under the contract section 23 of assistance contract, HUD 52535, 10/82).[1]

b. *PHA Determination on Unit Compliance With HQS.* PHA comments object to a requirement for informal hearing on a PHA determination that a unit is not up to HQS. For participants, the final regulation states (§ 882.216(b)(2)(ii)) that the PHA is not required to provide the opportunity for an informal hearing to review the PHA's determination that a unit does not comply with HQS, that the owner has failed to maintain or operate the unit to provide decent, safe and sanitary housing in accordance with the HQS (including all services, maintenance and utiities required under the lease), or that the unit is not decent, safe and sanitary because of increase in family size or change in family composition.

The HQS implement the statutory purpose to provide subsidy for a family living in decent, safe and sanitary housing. The PHA must enforce the HQS requirements even if the family is willing to live in housing which does not meet the program standards. As with the decision to enforce contractual sanctions against the owner, the determination that a unit does or does not satisfy HQS is a responsibility entrusted under the regulation to the administrative judgment of the PHA. The participant has no right to participate in this determination, and the PHA is not required to afford the opportunity for informal hearing on the determination.

c. *Extension of Certificate.* Under the proposed rule, the right to an informal hearing applies to a Certificate holder whose assistance is terminated "by refusal to renew a Certificate or otherwise" (proposed § 882.216(a)(3)). PHA comments object to a requirement for informal hearing to challenge a PHA decision on extension of a Certificate.

After a Certificate is issued (to an applicant or a participant), the family has sixty days to find a unit (§ 882.209(c)(1)). The family may ask for extensions of the period to find a unit, for a maximum total Certificate life of 120 days (§ 882.209(d)(2)). The regulation gives the PHA discretion to decide whether or not to grant an extension of the Certificate beyond the initial sixty days (within the maximum allowable period); the regulation does not give the family any right to an extension of the original sixty day Certificate period.

The Department agrees with the comment by a PHA that the decision whether to extend a Certificate is not an appropriate subject of the hearing process. The final rule (§ 882.216(b)(2)(iv)) states that the PHA is not required to afford the opportunity for an informal hearing to review the PHA's decision not to approve a participant family's request for extension of the Certificate.

Extension beyond 120 days is prohibited by the regulation, and consequently is not a proper subject of the hearing process. Extension for up to sixty days after the initial search period is a matter that by regulation is left to the PHA's administrative discretion. In exercising this discretion, the PHA may consider the likelihood of the participant family finding a unit in the period provided; the overall administrative demands on the PHA; and the desirability of releasing funds for use by other families. While the participant may ask for an extension of the Certificate, the participant has no right to an extension.

4. *Furnishing Description of Hearing Procedures to a Participant.* Under the rule, the PHA is required to adopt written procedures for conducting informal hearings for particpants (§ 882.216(b)(6)).

Information on the hearing procedures is included in the packet of information given to a family when the Certificate is issued (§ 882.209(b)(4)(vii)). The information contains a general description of the hearing procedures, including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing, and of the procedures for requesting a hearing.

5. *Notice of Determination and Right to a Hearing.* The proposed rule (selection and hearings) required the PHA to notify the "Certificate holder" of any PHA decision to "deny, defer, terminate or reduce" housing assistance, and that the Certificate holder may request an informal hearing (proposed § 882.216(b)).

The final rule (§ 882.216(b)(3)(i)) requires the PHA to give prompt written notice of a determination (1) to deny or terminate housing assistance to the participant, or (2) that the unit in which a family is living is too large under the PHA unit size standards, or to deny the family's request for an exemption from the standards. The notice to the participant must contain a brief statement of the reasons for the decision. The notice must also state that the participant may request an informal hearing on the decision, and the time by which the request for an informal hearing must be made by the participant.

The final rule (§ 882.216(b)(3)(ii)) provides that when the PHA determines: (1) The amount of the family contribution to rent, or (2) the number of bedrooms entered on the Certificate of an assisted family which wants to move to another unit, the PHA must notify the participant that the participant may ask for an explanation of the basis for the PHA determination and that the participant may request an informal hearing on the determination.

By statute, family income is reexamined at least annually, and the family share of the rent is recomputed in accordance with a statutory formula. This reexamination and redetermination is carried out every year for all participant families. For almost all families, the rental determination is a technical application of the HUD-prescribed rent computation procedures to the income information furnished by the family. The need for an informal hearing on a rental determination applies only in that small minority of cases in which the family desires to challenge the legal correctness of the PHA's rental computation (including the factual basis for the computation). The family can request an explanation of the rental computation. The PHA may, for example, furnish the family a copy of the PHA worksheets showing the rental computation.

The decision on the Certificate unit size determination is also part of the PHA's routine administrative process. The unit size is stated on the Certificate issued to the family. There is no need to require separate notice of the unit size determination. The participant may ask for an explanation of how the unit size was determined under the PHA unit size standards.

Legal aid comments recommend that the regulations state that the PHA notice to a participant must give the factual basis for a proposed decision. The Department believes that the regulatory requirements for notice of the reason for decision (termination of assistance, family in oversized unit), or of the opportunity for explanation (rent, unit size on Certificate) are sufficient to

[1] In *Holbrook v. Pitt*, 643 F.2d 1261 (1981), reh. den. July 7, 1981, the Seventh Circuit held that tenants in another section 8 program were third party beneficiaries of the assistance contract between HUD and the project owner. The assistance contract at issue in that case did not include a contractual disclaimer of intent to create third party rights under the contract. The existence of a third-party beneficiary claim depends on the intention of the original parties, as expressed in the contract, to create a direct right of enforcement in the third party beneficiary.

inform the family of the basis for a decision, and to enable the family to present objections effectively at an informal hearing.

6. *Time of Hearing.* The proposed rule (§ 882.216) states the cases in which an informal hearing is required, but does not specify when the hearing must be held. Comment from a legal aid office says that there should be a right to a hearing before the PHA terminates subsidy for a family. A PHA says that a hearing should not be required prior to "reduction" of subsidy (i.e., determination of the family contribution). A PHA comment contends that a PHA should not be required to take positive action for continuance of assistance pending the hearing.

Under the final rule (§ 882.216(b)(4)), the participant must be given opportunity for an informal hearing before an action or determination by the PHA if the PHA decides to terminate the ongoing flow of assistance payments under an outstanding assistance contract. Conversely, however, there is no regulatory requirement for an informal hearing before a determination of family rent, a determination to deny assistance on behalf of the family (refusal to issue a new Certificate when the family wants to move, to enter a Contract or to approve a lease), or a determination of the unit size on the Certificate issued to a participant who wants to move.

This distinction is based on an analysis of the structure and practical realities of the Section 8 Existing Housing Program in the light of the constitutional principles enunciated by the Supreme Court in *Matthews v. Eldridge*, 424 U.S. 319 (1976).

a. *When Prior Hearing is Required: Termination of Payments by the PHA Under an Assistance Contract.* If the PHA proposes to terminate the flow of assistance payments on behalf of a participant during the term of an outstanding assistance contract (and is required to provide an opportunity for informal hearing on the determination; see § 882.216(b) (1) and (2)), the PHA must provide the opportunity for informal hearing *before* the termination (§ 882.216(b)(4)). The PHA may stop assistance payments because of owner's breach of the contract without giving any administrative hearing for the participant (§ 882.216(b)(2)(iii)). However, if the PHA wants, for example, to terminate assistance payments for participant fraud, or for violation of family obligations (§ 882.210(d)), or because the family is residing in an oversized unit (§ 882.213), the PHA must give the family the opportunity for an informal hearing on the PHA decision before the termination of assistance payments.

The interest of the participant family is greatest when the PHA is cutting off an ongoing stream of assistance payments under an outstanding assistance contract. The potential harm to the family is greater than where the PHA declines to enter into a new assistance commitment for the family, or when the PHA is merely adjusting the family contribution. Termination of the assistance payments may lead to eviction of the family from the unit if the family is unable to pay the unassisted rent.

b. *When Prior Hearing is Not Required.*—(1). *Time of Hearing on Rental Determination.* The regulation does not require a hearing before a change in the tenant share of rent. The PHA's determination of the family contribution is not an action to limit the section 8 subsidy paid, but is the means of ascertaining the amount of the subsidy under the statutory formula, i.e., the difference between the tenant share of rent (tenant rent) and the rent payment to the owner (contract rent). In almost all cases, the rent determination is made as part of the routine reexamination and redetermination for all families in the PHA's program, rather than as a special action solely affecting the individual participant family.

The regulation preserves the opportunity of the family for informal hearing to determine if the PHA has correctly applied the rules for calculation of the family share of rent. If there are mistakes, the mistakes can be identified and corrected. If the family contribution is reduced as a result of a hearing, any overpayment must be refunded to the family. In *Matthews v. Eldridge*, the Supreme Court states that "a claim to a predeprivation hearing as a matter of constitutional right rests on the proposition that full relief cannot be obtained at a postdeprivation hearing" (424 U.S. at 331). In section 8, an overpayment by the family can be compensated by a refund to the family.

A family should not be permitted to delay the implementation of the statutory rent computation by asserting a claim for an advance hearing. The establishment of a regulatory right to an advance PHA hearing (before the section 8 subsidy payment is adjusted to reflect the family contribution determined by the PHA) would encourage the abuse of the hearing mechanism to delay the payment by a family of amounts properly computed by the PHA, rather than as a vehicle for discovering and reversing PHA mistakes in applying the rules. Families may deliberately seek to postpone the completion of a hearing in order to postpone the need to pay the proper share of the rent.

(2). *New Assistance Commitment for a Participant.* The final rule does not require the PHA to provide an opportunity for a hearing *before* the PHA denies a new Certificate and new assistance commitment for a participant family. The PHA should not be required to execute the administrative tasks needed for a new assistance commitment (e.g., inspection of new unit, examination of proposed lease), or required to enter an assistance contract with a new section 8 owner, until the PHA has had the opportunity to hold a hearing on the denial of assistance to the family.

(3). *Participant Moving to New Unit: Time of Hearing on Unit Size Stated on Certificate.* When a participant wants to move to another unit, the participant may request a hearing on the number of bedrooms entered on the Certificate (§ 882.216(b)(1)(iv)). The rule does not require a hearing on the unit size determination prior to issuance of the Certificate. A requirement for an advance determination, notice and hearing would unnecessarily complicate the routine process for extension of assistance to program families. It would also delay issuance of Certificates and the opportunity for the families to search for new units.

c. *Promptness of Hearing.* The PHA is not required to provide the opportunity for advance hearing in the cases noted in section VII C 6 b above. However, in all cases where a hearing is required, the PHA must proceed with a hearing in a reasonably expeditious manner upon the request of the participant (§ 882.216(b)(5)).

7. *Elements of Hearing.* The informal hearing procedures in the proposed rule (selection and hearings) were substantially the same as the hearing procedures prescribed in the HUD program handbook (paragraph 10—8 of the PHA Administrative Practices Handbook, Handbook 7420.7). Some comments recommend the adoption of a more elaborate hearing process, or of a process with all the elements of a *Goldberg* administrative hearing (*Goldberg v. Kelly*, 397 U.S. 254 (1970)). Other comments suggest that PHAs should have freedom to devise workable local varations in the hearing mechanism.

The final rule prescribes the minimum elements of a PHA hearing on a PHA decision which affects a participant (§ 882.216(b)(6)). In determining the minimum elements, HUD has balanced the interests of the participant, and the

interests of the PHA and program. The regulation procedures recognize that the interest of a current program participant in the assurance of continued subsidy is greater than the interest of an applicant seeking admission to the program.

The participant hearing procedures in the final rule give the participant the opportunity for a hearing to test whether a PHA decision is in compliance with applicable laws or rules, and the opportunity to present evidence bearing on the decision. At the same time, the procedures are designed to avoid burdening the PHA with elaborate and inflexible requirements which may be more appropriate to a judicial or other formal hearing process. The participant hearing requirements under this rule will give a full and fair administrative review. The imposition of a more elaborate procedure is unlikely to result in a substantial benefit in a significant number of cases and would be an unjustified administrative burden on the PHA.

The final rule provides that the PHA must adopt written procedures for the conduct of informal hearings for participants (§ 882.216(b)(5)), and must give each participant a general description of the procedures (§ 882.209(b)(4)(vii)). The hearing procedures used by the PHA must comply with the following (§ 882.216(b)(6)):

—The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person (§ 882.216(b)(6)(i)).

—The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures (§ 882.216(b)(6)(iii)).

—At its own expense, the participant may be represented by a lawyer or other representative (§ 882.216(b)(6)(ii)).

—The PHA and the participant shall be given the opportunity to present evidence and question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings (§ 882.216(b)(6)(iv)).

—The person who conducts the hearing shall issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the participant shall be based on the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the participant (§ 882.216(b)(6)(v)).

a. *Person Conducting Hearing.* A number of legal aid comments contend that the proposed rule does not guarantee use of an impartial hearing officer. The proposed rule (§ 882.216(c)(1)) would have allowed appointment of a PHA officer or employee "who did not participate in the PHA decision," or of an outside person designated by the PHA. Several of the comments object to the modification of the prior HUD handbook requirement for appointment of a PHA employee or other public official "who is not directly involved in the day-to-day administration of the program" (HUD handbook 7420.7, section 10—8b). Comment by a PHA supports modification of this requirement.

The final rule (§ 882.216(b)(6)(i)) provides that:

> The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person.

This provision retains in substance the restriction against using a person who participated in the original decision as the hearing officer. The provision is simplified by eliminating the unnecessary references to appointment of an officer or employee of the PHA or of an outside person. Under the final rule the PHA may designate "any person or persons," including a PHA employee or officer, or an outside person. The final rule also adds a provision that the person conducting the hearing may not be a subordinate of the person who made the original decision. By specifically prohibiting use of a subordinate of the original decision-maker, HUD seeks to relieve the concern that a person engaged in day to day administration will not possess the requisite impartiality. This new requirement is intended to assure that the hearing officer is not subject to the pressures of a superior, and therefore to enhance the independence and objectivity of the review procedure. The regulation also clarifies that a person who "approved" the original decision may not be used to conduct the informal hearing.

The standards in the rule are a sufficient guarantee of the impartiality of the PHA review in the context of the administrative review process for the Section 8 Existing Housing Program. The purpose of the informal hearing is to give the participant a chance for a review of a PHA decision, to see if the PHA has violated an applicable law or rule. In the administrative review, the participant gets the benefit of a second look at the challenged decision, by someone other than a person who made or approved the original decision. Since the reviewer did not make or approve the original decision, the review is not prejudiced by the mind-set of the original decision maker. Through this review, prior error can be uncovered and rectified.

The reviewer may be a person with knowledge of the program, and of technical program requirements and procedures (for example, procedures for determination of the tenant share of rent in accordance with the U.S. Housing Act of 1937). This familiarity can assist in a more rapid, more economical and more accurate determination on the points at issue. The PHA hearing process should be able to benefit from the experience of the hearing officer, especially knowledge concerning programs requirements and procedures.

Comment by *Nichols* counsel claims that the proposed regulation violates the court order with respect to designation of a hearing officer. We do not agree. HUD believes that the court's concern in *Nichols* was with the lack of any enforceable regulations guaranteeing notice and hearing to persons whose section 8 subsidy is terminated or reduced due to changes in family size and composition. To correct this situation, the court directed HUD to publish the "the pertinent sections, from its Administrative Practices Handbook" (Handbook 7420.7, section 10–8), because such provisions, if incorporated into a formal regulation, would provide constitutionally adequate due process protections.

The court did not, however, express an intent to freeze the hearing requirements (for participants whose subsidy is reduced or terminated due tc changes in family size) in the exact form of the old handbook reguirements. Such an approach is inconsistent with accepted principles of regulatory publication for notice and public comment, and is not required in order to afford full due process protection to the participant. A hearing officer is sufficiently impartial for constitutional purposes so long as the hearing officer is not the person who rendered the challenged decision. The constitution does not prohibit use of a hearing officer involved in the day-to-day administration of the program (as the handbook provided), and such a prohibition could be detrimental to the section 8 participants, for example by depriving the hearing process of persons knowledgeable of technical requirements of the housing subsidy program, and by diverting scarce

program resources to hire outside persons as hearing officers.

Nothing in the *Nichols* order identifies the handbook hearing procedure as the only constitutionally acceptable procedure. The handbook procedure was merely the hearing process in effect at the time of the *Nichols* decision. By directing the agency to issue formal rules establishing notice and hearing procedures, the court required the initiation of a process which, by definition, contemplates review and revision of proposed regulatory language in the light of public comment (see 24 CFR 10.16). Thus the Department sees no impediment to modification of notice and hearing procedures in response to needs of the program, and HUD's analysis of the handbook procedure.

Comment from a PHA states that the regulation should permit the use of a hearing panel, instead of a single hearing officer. The language of the final rule (§ 882.216(b)(6)(i)) clarifies that the hearing may be by a "person *or persons*" designated by the PHA. Use of a hearing panel is permitted at the discretion of the PHA.

b. *Conduct of Hearing and Presentation of Evidence.* A number of legal aid comments object to the provision in the proposed rule (§ 882.216(c)(3)) that the right of the Certificate holder (or applicant) to offer and examine evidence and question any witnesses is "subject to the direction of the hearing officer." The comments appear to suggest that the right to offer and examine evidence should be absolute, and not subject to regulation by the hearing officer.

To establish a practical and orderly hearing machinery, the hearing officer must have authority to regulate the conduct of the hearing, including determinations on the relevance of proof that may be offered, and of the manner in which evidence is presented. The authority of a hearing officer or judge to regulate the conduct of the proceeding is a normal and necessary element of any hearing process. The proposed provision did not deny the participant a fair opportunity to present relevant proof in the informal hearing.

The final rule confirms that the hearing officer has authority to regulate conduct of the hearing in accordance with the PHA hearing procedures (§ 882.216(b)(6)(iii)) (in regard to the offer and examination of evidence, and in other respects), and separately states the right of the participant and the PHA to present evidence and question witnesses (§ 882.216(b)(6)(iv)).

Use of the formal rules of evidence applicable in a judicial proceeding is not suitable for the informal hearings required under this regulation. A provision has been added in the final rule (§ 882.216(b)(6)(iv)) to clarify that evidence may be considered without regard to admissibility under the rules of evidence applicable in judicial proceedings.

Under the proposed rule (§ 882.216(c)(4)), the decision on "any issue of fact" must be exclusively based on evidence presented at the hearing. The final rule (§ 882.216(b)(6)(v)) provides that factual determinations "relating to the individual circumstances of the participant" must be based on evidence presented at the hearing.

c. *Hearing Decision.*—(1). *Form of Decision.* The proposed rule (§ 882.216(c)(4)) requires the hearing officer to issue a written decision "stating briefly the factual and other basis for the decision." Comment from a legal aid office asserts that the decision must declare both the legal and evidentiary grounds of the decision. Upon reexamination of this question, the Department believes that the requirements in the proposed rule are more elaborate than necessary. The final rule simply requires that the person conducting the hearing shall "issue a written decision, starting briefly the reasons for the decision" (§ 882.216(b)(6)(v)). A copy of the decision must be promptly furnished to the participant.

The statement of the decision required by the regulation tells the participant what was decided, and the reasons for the decision. A requirement for a legalistic statement of evidentiary and legal grounds for the decision would add little of benefit to the participant. The character of the decision is not more informative or comforting to the participant when stated as an enumeration of "evidentiary" and "legal" grounds.

The statement of decision required by the regulation must be truly informative as to the reasons for the decision. This would include a short statement of the elements of fact or law on which the decision is actually based. A bare and conclusory statement of the hearing decision, that does not let the participant know the basic reasons for the decision, will not satisfy the regulatory requirement. There is no reason to believe that a more formal statement of the decision will result in better decisions, or decisions satisfactory to more participants.

(2) *Effect of Decision.* Comments from a PHA and a legal aid office state that the decision in a PHA hearing should be binding on the PHA, or should be final subject only to HUD review.

The final rule specifies certain cases in which the PHA is not bound by a decision of the hearing officer (§ 882.216(b)(7)(i)):

—The PHA is not bound if the decision concerns a subject outside the scope of the required hearing process, or beyond the authority of the person conducting the hearing under the PHA hearing procedures (§ 882.216(b)(7)(i)(A)).

—The PHA is not bound by a hearing decision contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law (§ 882.216(b)(7)(i)(B)).

The purpose of the hearing process is to give the participant the opportunity for a fair hearing, to ascertain whether a PHA decision is in accordance with law, HUD regulations and PHA rules. The PHA has the final responsibility to act in accordance with controlling Federal, State or local legal requirements, and this obligation may not be altered by any decision of the hearing officer.

If the PHA determines that is is not bound by a decision of the hearing officer, the PHA must promptly notify the participant of the determination, and of the reason for the determination (§ 882.216(b)(7)(ii)).

The final rule does not adopt the recommendation for HUD review of PHA hearing decisions. This recommendation is inconsistent with the basic responsibility of the PHA for day to day administration of the program.

d. *Record of Hearing.* Several legal aid comments claim that procedural due process requires that there must be a stenographic record of the informal hearing. The Department believes that in the context of the participant determinations covered by the section 8 existing housing informal hearing process, and given the nature of the public and private interests at stake, procedural due process does not require that the PHA incur the very substantial expense of a stenographic record (cf., e.g., *Neddo v. Housing Authority of the City of Milwaukee,* 335 F. Supp. 1397 (U.S. District Court, E.D. Wisconsin 1971)). A transcript of the administrative hearing is not necessary in order to provide a fair hearing. The notice of decision required by the regulation will be adequate to inform the participant of the reasons for the decision.

C. Administrative Fee

Comment from a PHA notes the administrative burden and cost for PHA hearings, and recommends that HUD reimburse PHAs for hearing costs outside the normal administrative fee

structure. The Department shares the PHA's concern with the expense of the administrative hearing process. By distinguishing between the review processes for applicants and participants, and by a specification of certain limitations on the hearing process for participants, the final regulation seeks to balance the benefits of adequate procedural safeguards against the drain on program resources.

The Department will not, however, provide separate reimbursement for PHA costs in implementing the hearing procedures. In general, PHA fees are paid as a formula reimbursement for all PHA costs of administration. The Department believes that this system tends to result in a more efficient administration of the program with less Federal interference in PHA management. The use of a separate compensation structure for PHA hearing costs would undercut the benefits of the flat-fee reimbursement, and would lead to demands for special reimbursement in other areas.

VIII. Tenancy

A. Form of Assisted Tenancy

The interim rule on termination of tenancy redefined major aspects of the subsidized tenancy. The interim rule removed the provision for termination of tenancy on 30 days notice by the owner or the tenant, and for automatic extension of assistance if a family continues in occupancy "on the same terms and conditions." Under the interim rule (§ 882.107(b)), the section 8 assisted tenancy is for a fixed term of one to three years. At the end of a term, the owner may not refuse to enter a new assisted lease except for cause. However, the interim rule (§ 882.215(b)) provided that the owner need not have good cause for termination of tenancy if the owner "decides not to enter a new Contract with respect to the unit" at the end of the lease term. The interim rule was issued to implement 1981 amendments to the program statute (sec. 8(d)(1)(B) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(d)(1)(B), as amended by sec. 326(e)(1) of the Housing and Community Development Amendments of 1981, Pub. L. 97–35).

Public Comments

Comments from PHAs and from the National Association of Housing and Redevelopment Officials emphasize that operation of the Section 8 Existing Housing Program depends on the voluntary participation of private landlords. The comments state that owner willingness to rent units to Certificate holders will be hurt by the elimination of provision for termination by the owner on 30 days notice without cause, and by creation of a "perpetual tenancy" terminable only for cause.

PHA comments say that many owners will not sign assistance contracts which do not allow termination on 30 days notice, that allowing termination on notice is closer to local landlord tenant practice, and that owners want to preserve the ability to sell the unit or to terminate the tenancy for other reasons.

PHA comments claim that provision for termination by either party on notice benefits both the tenant and the PHA. The tenant can move after giving notice to the owner without breaking the lease. PHA comments say that this may be helpful if the tenant wants to move to another unit or to other employment. Termination on 30 days notice by the tenant avoids owner hostility, and also reduces the need for PHA payment of owner vacancy claims.

Two State agency PHAs support elimination of the provision for termination by either party on 30 days notice. One of the PHAs recommends clarification that there can be termination by mutual consent of the owner and tenant.

PHAs also criticize the requirement under the interim rule that an owner must have good cause for non-renewal of the lease at the end of the fixed term (unless the owner withdraws the unit). The comments say that the good cause requirement interferes with normal relationships between a landlord and tenant. The requirement may be appropriate for project-based assistance, but not for the finders-keepers program, where the family can move and receive assistance in a new unit. The good cause requirement is one-sided, since the tenant is not bound to enter a new lease. The requirements impose a permanent limitation on rent, and may complicate the owner's sale of the property. The regulations should reflect the requirements of the private rental market, and should recognize the right of the owner to terminate the tenancy without cause at the end of the lease. To avoid discouraging owner participation, the owner should be as free as the tenant not to renew the lease.

In addition, most comments by PHAs and legal aid offices object to the new regulatory requirement for execution of a new assistance contract and lease in order to extend the subsidized tenancy at the end of the term. Subsidy payments for the assisted family will be interrupted if the PHA, owner, and family do not complete the necessary steps for renewal of assistance before the end of the lease term. Where the family wishes to move, it may not be able to find a new unit by the end of the term. The old regulatory system of automatic extensions gives a valuable flexibility, and provides a safety net where the PHA has not completed the renewal process. A break in the flow of assistance payments may damage owner confidence in the program, and the family may be evicted. A legal aid comment objects to termination of assistance where the landlord refuses to renew the lease without proper legal basis. Comments recommend that HUD provide for automatic extension of the assistance term, either until the tenancy is renewed or terminated, or during a grace period for special circumstances.

A few PHA comments support the regulation change requiring execution of a new lease and assistance contract for continuation of assistance. A PHA says that the regulatory change will have little impact on its operations, since the PHA already requires execution of a new assistance contract and lease at the time of tenant income recertification.

A number of PHAs recommend the use of a simple procedure for extension of the assisted tenancy, such as by execution of a simple renewal form.

A number of legal aid comments suggest the use of a procedure requiring advance notice by the PHA or owner of the upcoming end of the lease term, or of the owner's intention not to renew the assisted lease.

1. *Good Cause Requirement—Effect on Tenancy.* Public comments on the interim rule present in general a cogent critique of problems which result from the changes in the form of the assisted tenancy under the 1981 amendments and the interim rule. The Department shares the concern that a number of the changes could reduce the desire of private landlords to offer units for rental under the program, and could thus narrow the housing choices of assisted families. However, the program options open to the Department must accord with the 1981 statutory prohibition of a termination of tenancy in section 8 existing housing other than for statutory good cause grounds (U.S. Housing Act of 1937, sec. 8(d)(1)(B)(ii), 42 U.S.C. 1437f(d)(1)(B)(ii)).

The Department may not restore a provision for termination by the owner without cause, either on 30 days notice during the lease term, or at the end of the term. The present statutory good cause requirements for termination of tenancy apply both during the term of an assisted lease and at the end of the lease term. (For discussion of the new regulatory statement of certain cases that fall within the term "good cause,"

see section VIII B 2 below; for a discussion of good cause and owner withdrawal from the program, see section VIII B 3 below).

2. *Assisted Lease and Contract.*

a. *New Regulation Provisions—Description.* In response to the consensus of public comments, the final regulation provides for automatic extension of the assisted tenancy. The regulation does not require the execution of a new lease or contract to accomplish an extension. The final regulation provides:

> The term of the Lease shall begin on a date stated in the Lease, and shall continue until: (1) A termination of the Lease, by the Owner * * *, (ii) a termination of the Lease by the Family in accordance with the Lease or by mutual agreement during the term of the Lease, or (iii) a termination of the Contract by the PHA. (§ 882.215(a)(1))

As under the interim rule (and the prior rule), the term of the assisted lease between the owner and the tenant is the same as the term of the assistance contract between the owner and the PHA which subsidizes occupancy under the lease:

> The term of the Contract shall begin on the first day of the term of the Lease and shall end on the last day of the term of the Lease. (§ 882.215(b)(2))

Thus, as the lease extends automatically, unless terminated for one of the stated reasons, the term of the assistance contract will automatically track the term of the lease. The technical implementation of the requirement that the lease and the contract run for concurrent terms reverses the interim rule provision that the lease term follows the term of the assistance contract. Substantively the result is identical.

Under the interim rule, the length of the term of the assistance contract was fixed in advance, and could not extend beyond the remaining term of the Annual Contribution Contract ("ACC") between HUD and the PHA. Under the final rule (§ 882.215(a)(2)), the term of the lease must begin at least one year prior to the end of the remaining term of the ACC, and the term of the assistance contract and lease end if the ACC terminates. Although the final rule now provides for an automatic and indefinite extension of the initial one year lease and subsidy term, in practice the PHA can continue to make payments under the assistance contract only so long as the PHA receives the funds from HUD under the ACC.

To clarify the relationship between the assistance contract and the assisted lease, a new provision states that the term of the lease ends if the assistance contract is terminated by the PHA (§ 882.215(a)(1)(iii)). A substantively provision was previously contained in the regulatory statement of required lease provisions (previously Part 882, Appendix I, section (g)(2), now deleted from the regulation, see section VIII G of this preamble), but was not previously stated in the body of the rule.

A new provision (§ 882.215(a)(5) states:

> The Lease shall permit a termination of the Lease by the Family without cause, at any time after the first year of the Lease term, on not more than sixty days written notice by the Family to the Owner (with copy to the PHA).

Another new provision (§ 882.215(a)(3)) has been added to state the relationship between the new provisions defining the term of the lease and assistance contract to the regulatory provisions on annual and special adjustments, and on determination of the family contribution:

> During the term of the Lease, the Contract Rent shall be subject to adjustment in accordance with [§ 882.108 [rent adjustments], and the Tenant Rent shall be subject to change in accordance with HUD regulations and requirements.

b. *New Regulation Provisions—Purpose and Operation.* The new provision for automatic extension of the lease will resolve the problems, described in the public comments, stemming from the requirement in the interim rule for execution of a new assistance contract and lease to continue the flow of assistance. Under the final rule, the ongoing stream of assistance to the family is not interrupted because of inability to complete the administrative steps for continuation of assistance. The PHA is relieved of the administrative burden of processing a new assistance contract or lease, or even of the need to distribute and secure execution of simplified renewal documentation, as suggested by some PHAs.

The regulation will also avoid the possible problem, identified in the comments, of an interruption in assistance because of a wrongful refusal by the owner to execute a new lease and a new assistance contract (absent good cause for nonrenewal). Since there is no break in payments, the owner will not be able to rely on a hiatus in assistance payments as good cause grounds for termination of tenancy.

The new regulatory provision for automatic extension has been designed to avoid the legal uncertainties produced by the old regulatory provision (§ 882.107(h), before amendment by the interim rule) that the term of the assistance contract continues in effect for the duration of the tenancy "if a Family continues in occupancy * * * on the same terms and conditions as the original Lease." To determine if the assistance contract remained in effect during a holdover after the original lease term, if was necessary to examine the legal incidents of the holdover tenancy under State and local law to ascertain if the holdover tenancy was on the same terms and conditions. However, this inquiry often yielded no clear answer as to the legal characteristics of a holdover tenancy, and consequently no clear answer on the continued existence of a subsidized tenancy. Many PHAs have apparently dealt with the need for extension under the old regulatory provision by routinely requiring execution of some form of extension documentation by the family and the owner. The old regulation provision was variously understood and implemented by different PHAs.

The existence or nonexistence of a subsidized tenancy should be legally well defined, and should be as clear as possible to the owner, tenant, and PHA. The mechanism for extension of the tenancy should involve the minimum administrative task for the PHA. The provision for automatic extension under the regulatory formula in the final rule gives greater clarity in definition of the assisted tenancy, and requires no administrative action by the PHA.

Since the term of the assisted tenancy is now indefinite, the family should not be permanently bound by the lease. HUD agrees with the public comments, as described above, observing that a provision for termination on notice can benefit the tenant, and that termination by the tenant can reduce the need for vacancy payments by the PHA. Under the regulation (§ 882.215)(a)(5)), the lease must allow the family to terminate the lease without cause, on notice to the owner, at any time after the first year of the term. The tenant may not be required to give more than sixty days written notice of termination. A copy of the termination notice must be sent to the PHA.

Nothing in the rule prohibits inclusion of a unilateral lease provision allowing termination of the tenancy *by the tenant* (with or without cause) during the first year of the term, or on less than sixty days notice. The statutory good cause requirements for termination of tenancy apply only to a termination of tenancy by the owner. The Department recognizes that some owners may be unwilling to agree to a one-sided provision for termination on notice by the tenant alone, during or after the first

year of the term. Some owners may also be unwilling to rent to program families without the right to terminate the tenancy on short notice and without cause.

The regulation (§ 882.215(a)(1)(ii)) clarifies that the owner and the tenant may mutually agree, at any time during the term of the lease, to a premature termination of the lease term.

As the comments suggest, PHAs may have to pay vacancy claims (if a tenant vacates a unit in violation of the lease). However, as described in section III A of this preamble, the PHA may deny a new Certificate if the family fails to reimburse the PHA for section 8 owner claims paid by the PHA (§ 882.210(b)(2)). This provision should produce some incentive for families to try to minimize owner claims (e.g., by getting owner to agree to a release from the lease), or to pay the PHA back.

c. *Offer of a New Lease by the Owner.* Since the assisted lease as defined in this rule continues for an indefinite term, there is need for a procedure allowing modification of the lease terms from time to time. The Department believes that many owners will not wish to enter into a leasehold where the terms are frozen so long as the tenant remains in the unit. The final rule (§ 882.215(a)(4)) therefore provides that the owner may offer the family a new lease for execution by the family after approval by the PHA in accordance with program requirements, for a term beginning at any time after the first year of the lease term. The owner must give the tenant written notice of the offer, with a copy to the PHA, at least sixty days before the proposed beginning date of the new lease. The offer may specify a reasonable time limit for acceptance by the family. Failure by the family to accept the owner's offer of a new lease which has been approved by the PHA is good cause for termination of tenancy (§882.215(c)(2)).

d. *Termination of Subsidy.* Section 8 assistance payments to the owner stop when the statutory family share (Tenant Rent) covers the full contract rent (§ 882.212). The assistance contract terminates if a year has passed since the last PHA payment on behalf of the family (in order to free up the subsidy commitment for another family). A PHA asks for clarification that termination of the assistance contract because the tenant is paying the rent is not ground for termination of the lease. This recommendation has not been adopted. The lease term ends when the assistance contract is terminated by the PHA for any reason (§ 882.215(a)(1)(iii)). The landlord should not continue to be bound by lease provisions intended to regulate the subsidized tenancy, including the requirement for a continuing tenancy terminable only for statutory cause. Landlord and tenant should have the opportunity to redefine their legal relationships free from the requirements and constraints of the Federal subsidy program. The interests of the assisted family are already sufficiently protected, since the family's rights under the lease are not affected for a full year after the cessation of the assistance payments (§ 882.212).

B. Grounds for Termination of Tenancy

Section 8(d)(1)(B)(ii) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(1)(B)(ii), as amended by sec. 326(e)(1) of the Housing and Community Development Amendments of 1981, Pub. L. 97–35) provides that in section 8 existing housing:

> The owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause.

The interim rule stated the grounds for termination in the language of the statute without any regulatory elaboration.

The final rule contains two new provisions which provide regulatory guidance in application of the statutory provisions for termination of tenancy for violation of Federal, State, or local law, or for "other good cause."

1. *Termination for Violation of Applicable Law.* The statutory authority to terminate the tenancy because of a violation of applicable law by the tenant is restricted in the final rules (§ 882.215)(c)(1)(ii)) to a:

> Violation of Federal, State, or local law *which imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises* * * *.

The Department believes that termination on this ground should be restricted to violations related to occupancy of the unit.

2. *Termination for "Other Good Cause".* By design, the interim rule did not contain any definition of "other good cause" for termination of tenancy. The preamble to the interim rule stated:

> Application of the statutory standards to particular cases should be determined by the courts, normally in the course of the eviction proceeding brought by the owner. (47 FR 33479, 33499)

Several PHA and legal aid comments recommend that the regulation define good cause for termination of tenancy. A PHA and a legal aid office urge that the regulations follow the approach used in the HUD regulations governing tenant eviction procedures (24 CFR Part 450, Subpart A) in project based housing subsidy programs. These regulations provide that conduct of a tenant cannot be "good cause" for termination of tenancy unless the landlord has served the tenant with prior written notice that such conduct shall "henceforth" constitute a basis for termination of occupancy (§ 450.3(b)).

It remains the view of the Department that a comperhensive regulatory definition of good cause in the Section 8 Existing Housing Program is neither possible nor desirable. The good cause category should remain open to case by case determination by the courts. It is a prime virtue of this statutory category that it permits termination by an owner in types of cases which cannot be readily foreseen.

The Department does not believe that the approach to good cause in the project subsidy programs is suitable for the finders-keepers program, where individual tenants are subsidized on a unit by unit basis, and where the subsidy commitment to the owner ends if the family moves from the unit. Many finders-keepers landlords participate in the program only for a single unit or for a few units. Tenancy requirements should be as simple as possible, with minimal demands on the owner beyond the normal requirements of an unsubsidized tenancy. As applied in the context of the finders-keepers program, a requirement to give advance notices of conduct that will in future be good cause for termination places an excessive demand on the foresight of the owner in anticipating the kinds of tenant conduct for which the owner might wish to terminate a tenancy. Even the most extensive advance enumeration of good cause cases will inevitably omit circumstances that later occur, and which should be legitimately regarded as good cause for termination of tenancy.

The good cause concept should be flexible and open to application in concrete cases, but there is a critical need to provide explicit regulatory assurance to prospective section 8 owners that legitimate owner concerns will be recognized as grounds for termination of tenancy. With the provision for automatic and indefinite extension of the tenancy, without any predefined limit, this assurance may be essential to promote broad participation by owners.

The final rule (§ 882.215(c)(2)) provides:

> The following are some examples of "other good cause" for termination of tenancy by the Owner: failure by the Family to accept the

offer of a new Lease * * *; a Family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property; criminal activity by Family members involving crimes of physical violence to persons or property; Owner's desire to utilize the unit for personal or family use or for a purpose other than use as a HUD assisted residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended as a non-exclusive statement of some situations included in "other good cause," but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list.

The explicit regulatory statement that a business or economic reason is good cause for termination of tenancy should help PHAs in responding to owner concern, as described in the public comment, with the good cause requirement for termination of tenancy, and in particular with the elimination of the provision for termination on 30 day notice. It is likely that in most cases where an owner wants to terminate the section 8 existing tenancy there are either good cause grounds relating to behavior of the individual tenant, or good cause business reasons relating to use of the property. Several Federal court decisions have concluded that statutory "good cause" would include a business or economic reason for termination of the tenancy (e.g., *Mitchell v. U.S.*, 569 F. Supp. 701 (N.D. Cal, Aug. 1983)).

A legal aid office says that the failure to define good cause will cause a "vast" increase in administrative costs because of varying interpretation and administration of the good cause requirement. We do not agree. The degree of regulatory definition of good cause is unlikely to have any systematic or substantial effect on PHA costs, since good cause is determined in local landlord tenant courts, and there is no longer a statutory or regulatory requirement for PHA involvement in the process for termination of tenancy (for leases entered after promulgation of the interim rule on September 21, 1982).

3. *Withdrawal by the Owner from the Program—Exemption from.*

Good Cause Requirement

The Conference Report on the 1981 amendments states that: It is not the intention of the Conferees that these statutory provisions [on termination of tenancy] govern the relationship between a landlord and a tenant after a landlord has *in good faith, terminated his participation in the sec. 8 existing program.* (H.R. Rep. No. 97–208, 97th Cong., 1st Sess. 695 (1981), *reprinted in* 1981 U.S. Code Cong. and Ad. News, 1010, 1053–54)

The interim rule (§ 882.215(b)(ii)) provided that an owner is not subject to the statutory good cause requirement for termination of tenancy if the owner elects not to enter into a new assistance contract "with respect to the unit."

a. *Public Comments.* PHA comments express a strong concern with the PHA's administrative burdens because of owner withdrawal from the program (withdrawal of the individual unit, under the terms of the interim rule). The comments observe that PHAs will have to maintain a list of units withdrawn from the program, and ask how long the PHA is barred from renting the unit to another finders-keepers tenant. PHA comments stress that it will be difficult or impossible for PHAs to monitor a bar on the use of units withdrawn from the program, and note that such a bar will hamper the search for housing by Certificate holders.

A number of comments by legal aid offices criticize the lack of a statement in the regulation that the owner's withdrawal must be "in good faith." Several comments suggest that exemption from good cause means that the owner must have a "good cause reason" for termination of tenancy, or that a legitimate *business* reason is the only basis for the exemption from good cause. Public comments state that the Conference Report does not allow the owner to avoid the need to show good cause for termination of tenancy by withdrawing a single unit from participation.

b. *Final Rule.* Since publication of the interim rule, a Federal district court decision (*Mitchell v. U.S.*, 569 F. Supp. 701 (N.D. Cal, Aug. 1983)) has stated that the HUD regulatory exemption from good cause where the individual unit is not to be leased to an assisted tenant is not consistent with the legislative intent. The court indicated its preliminary view that an owner's statutory obligation to comply with good cause for termination of tenancy ends only when the owner is terminating participation "in the *entire assisted housing program.*" The Department believes that other courts are likely to follow this analysis.

The reasoning of the court in *Mitchell* affords the Department only two choices: (1) To allow an exemption from good cause if an owner is withdrawing all units from participation in the program; (2) to require that in all cases the owner must have good cause for termination of tenancy, without authorizing any exemption. After full consideration of the public comment on the interim rule, the Department has decided that the final rule will not provide or permit any exemption of the owner from the good cause requirement for termination of tenancy (with respect to contracts or leases entered after the rule is effective).

An exemption from good cause where the owner is withdrawing totally from participation in the program would leave the owner an all or nothing choice: the owner must either terminate participation for all tenants, or show good cause for termination of tenancy of any particular tenant. The election by section 8 owners to withdraw could result in the eviction of many section 8 tenants. Owner withdrawal from the program for all units will also reduce the supply of units which may be rented by Certificate holders. Thus, a provision for owner withdrawal could simultaneously increase the number of families looking for housing, as it reduces the number of units available to be rented. As noted in the comments, the exemption from good cause also would create serious problems for PHAs in administering a bar on owner participation in the program after an owner's withdrawal. The administrative difficulties remarked in the comments would be compounded by a requirement for application of the bar to all of an owner's units.

Finally, it appears that in most cases the good cause exemption is not necessary. An owner who is withdrawing all units in good faith from participation in the program for a business or economic reason has "other good cause" for termination of tenancy. Indeed the owner could withdraw even a single unit from the program for a good cause business or economic reason.

C. PHA Role in Termination of Tenancy; Requirement for Notice by the Owner to the PHA or Family

Before the interim rule, the HUD program regulation (§ 882.215) required an owner to obtain PHA authorization for eviction of a section 8 existing tenant. Before the 1981 amendments which added the statutory grounds for termination of tenancy, the PHA possessed by law the sole right to issue a notice to vacate to the tenant (U.S. Housing Act of 1937, sec. 8(d)(1)(B), 42 U.S.C. 1437f(d)(1)(B)). The 1981 amendments removed any statutory requirement for PHA participation in a termination of tenancy.

A number of legal aid offices recommend restoration of a requirement for PHA approval of an eviction, or for the PHA to issue an eviction notice. The comments assert that judicial review of a termination of tenancy does not give enough protection for the tenant; PHA

review would reduce the number of evictions, and is an opportunity for PHA mediation and resolution of disputes between the landlord and tenant; and elimination of PHA involvement will increase PHA administrative costs because of tenant moves.

A PHA urges that HUD state in the regulation *text* (as indicated in the preamble to the interim rule (47 FR 33499)) that there is no requirement for PHA involvement in a termination of tenancy, or in the decision whether a landlord can terminate the tenancy. However, a number of PHAs recommend that the owner should have to give notice of the termination proceeding to the PHA at the same time as the tenant. This notice could be given by furnishing the PHA a copy of the notice to vacate served on the tenant. The PHAs state that the notice by the owner to the PHA will allow the PHA to take steps to assist the family in finding another unit, that the PHA needs to know if there has been an interruption of assistance payments by the PHA because of PHA clerical or computer error, that notice avoids payments to the owner after the tenant has vacated the unit. A PHA comment suggests that PHAs need to know the grounds for termination, since family failure to perform obligations under the lease is grounds for termination of participation in the program (but see section II F of this preamble).

The final rule does not adopt the recommendation to require PHA approval of an eviction or termination of tenancy, or require that the PHA issue the eviction notice. The questions involved in a termination of tenancy are best resolved in the State judicial proceedings for eviction of a tenant. To assure the availability of the State judicial forum in a termination of tenancy, the final rule adds a provision (§ 882.215(c)(3)) that the section 8 owner may evict the tenant from the dwelling unit only by instituting a court action. This requirement furthers the policy embedded in the list of prohibited lease provisions (now at Part 882, Appendix I, see section VIII G of preamble) which prohibits the use of lease provisions which could foreclose the tenant's opportunity for a fair hearing in a State court eviction proceeding.

The substantive Federal good cause requirements under the statute and the HUD regulation are binding in the State judicial proceeding, and the State proceedings are subject to the due process requirement for a fair hearing under the Fourteenth amendment. To encourage participation by private owners, it is important to minimize the procedural burdens on the owners. The approach in this rule is consonant with the 1981 amendments, which remove the old statutory requirement for PHA participation in eviction (by PHA issuance of the notice to vacate), but which require good cause for termination of the assisted tenancy.

A conforming amendment (removing § 882.116(p)) eliminates authorization of evictions from the listing of PHA responsibilities.

Although the final rule does not require any PHA approval of, or other involvement in, the termination of tenancy, the rule accepts the recommendation that the owner should be required to notify the PHA. The rule (§ 882.215(c)(3)) provides that the owner must notify the PHA in writing of the commencement of procedures for termination of tenancy. Notice to the PHA must be given at the same time that the owner gives notice to the tenant pursuant to State or local law (such as a notice to vacate or notice to quit). Notice to the PHA may be given by furnishing the PHA a copy of the notice to tenant.

When the PHA receives the notice from the owner, the PHA may try to resolve the dispute between the owner and tenant, thus avoiding the eviction. The PHA is not, however, required to play this role, and the owner is not required to seek the mediation of the PHA.

Several legal aid comments recommend a regulatory requirement for the owner to give notice of termination of tenancy to the tenant, and specifying the character of the owner notice. The final rule does not contain any requirement for a form of notice by the owner to the tenant. In the finders-keepers program, the owner is and should be subject only to the same tenant notice requirements which apply to an unassisted tenant.

D. Leases Entered Into Before October 1, 1981

Section 8 existing program leases entered before October 1, 1981 (effective date of the 1981 statutory amendments on termination of tenancy) remain subject to the old statutory requirement that the PHA has the sole right to issue a notice to vacate to the tenant (U.S. Housing Act of 1937, sec. 8(d)(1)(B), 42 U.S.C. 1437f(d)(1)(B), as in effect prior to enactment of sec. 326(e) of the Housing and Community Development Amendments of 1981, Pub. L. 97–35). The provisions of the final rule governing such tenancies (see interim rule § 882.215(a); final rule § 882.215(d)) track the statutory requirement verbatim, and eliminate as unnecessary the interim rule provision that the PHA must give the notice to vacate unless the grounds for eviction as stated in the owner's representation are not sufficient under the lease.

One PHA objects that the requirement for PHA issuance of the notice to vacate makes the PHA an agent of the owner. Another PHA objects to the different treatment of the section 8 tenancies under leases entered before and after October 1, 1981. We note only that the regulation follows a statutory distinction in treatment of program tenancies.

Legal aid comments recommend that the regulation specify that termination of tenancy under the old leases must be for cause, that the good cause grounds are the same as required for leases under the new statutory requirements, that sufficiency under the lease is not good cause, that the regulations should specify the procedure for PHA issuance of a notice to vacate, and that the tenant should have the right to a hearing before the PHA. One PHA asks that the regulations clarify the meaning of notice to vacate in relation to State law.

Issues concerning program leases entered before October 1, 1981, or concerning the construction of the special statutory requirements applicable to such leases, are of dwindling practical significance. The old statutory requirements would only be applicable if the terms and conditions of a pre-October 1, 1981 lease have continued in effect without any positive contractual act by the owner and the tenant to extend or amend the lease after that date.

Courts held that the prior HUD regulation (§ 882.215 before promulgation of the interim rule) did not comply with the statutory requirement for PHA issuance of a notice to vacate (e.g., *Brown v. Harris*, 491 F. Supp. 845 (N.D. Cal. 1980)). The final regulatory provisions are designed solely to correct this deficiency, not to rewrite program contracts after the fact. Little point would be served by attempting to further regulate tenancies under the old statutory requirements. The provision on the grounds for PHA refusal to issue a notice to vacate are not necessary, since the grounds are covered by the outstanding assistance contract between the PHA and owner (assuming there still exist program tenancies covered by the old statutory requirements).

E. Applicability and Implementation

By statute, the good cause grounds for termination of tenancy apply to section 8 existing leases entered after September 30, 1981 (Housing and Community Development Amendments of 1981, sec. 326(e)(2)). The interim rule

became effective September 21, 1982 (47 FR 41735). Comment by a legal aid office objects to application of the good cause grounds to leases entered between the effective date of the statute and the effective date of the regulation. Comment by another legal aid office states that for leases entered during this period, tenants have a contractual right to PHA issuance of the notice to vacate, and that the regulation should so state.

Applicability of the statutory grounds for termination of tenancy enacted in 1981 is determined by the statute. The regulation follows the statutory requirement.

Leases entered after September 30, 1981, but before promulgation of the interim rule, require PHA authorization for an eviction. Therefore PHA authorization (but not PHA issuance of a notice to vacate) is a contractual right of the tenant under such leases. Nothing in the interim or the final rule affects this right. The right arises from the lease between the tenant and the owner, and there is no need to address this subject in the regulation.

A number of PHAs and the National Association of Housing and Redevelopment Officials object to retroactive application of new regulatory tenancy requirements to previously executed leases and assistance contracts. Several of the comments express a particular concern with the invalidation of 30-day termination clauses in leases entered before the interim rule. A PHA asks for clarification on the applicability of new eviction requirements for tenancies originally commenced before October 1, 1981.

Nothing in the interim or the final rule modifies the conditions of a program tenancy under an executed assistance contract and assisted lease except as necessary to conform to a statutory requirement in existence when the lease was entered. Under the interim rule (interim § 882.215(b)), the 1981 statutory grounds for termination of tenancy were made applicable to leases entered after October 1, 1981, as required by the legislation. However, the interim provisions on term of the assistance contract and lease (interim § 882.107 (b) and (c)) were not made retroactively applicable to tenancies under an assistance contract and lease entered before the effective date of the rule. These regulatory provisions applied prospectively only, to a lease and assistance contract entered between the owner and the tenant after the effective date. A provision for termination by owner without cause on 30 days notice (in a lease entered after September 30, 1981) is invalid because of the statutory good cause requirement, not because of any retroactive application of the regulatory provisions governing the term of the assistance contract and lease.

The final rule specifies applicability of new regulatory provisions defining the assisted tenancy. Under the rule (§ 882.215(g)), the new provisions defining the term of the assisted lease and assistance contract (§ 882.215 (a) and (b)), stating certain cases included in "other good cause," and requiring the owner to notify the PHA of the commencement of proceedings for termination of tenancy (§ 882.215(c) (2) and (3)) are applicable in any case where the lease or assistance contract is entered after the effective date of the rule. These new regulatory provisions do not affect contract rights if the assistance contract and lease were entered before that date.

A PHA urges distribution of new assistance contracts before the effective date of the final rule. The Department expects to distribute a new form of assistance contract prior to the effective date.

F. Non Applicability of Regulation on Termination of Tenancy in Multi-family Subsidy Programs

Part 247, Subpart A (formerly in Part 450) establishes substantive and procedural requirements for termination of tenancy in projects assisted under certain FHA subsidy programs. A new provision in this rule (§ 882.215(f)) states that Part 247 is not applicable to a tenancy assisted under the Section 8 Existing Housing Program. This provision removes the overlap of requirements for termination of tenancy for finders-keepers tenant residing in a project otherwise covered under Part 247, Subpart A. Such a finders-keepers tenancy will be subject only to the termination of tenancy requirements in the section 8 finders-keepers program.

G. Lease Addendum

A legal aid comment recommends that the lease should specify that the landlord has the burden of proving good cause. This recommendation has not been adopted. While the substantive good cause requirement is controlled by Federal law, the procedural incidents of the possessory action should be left to determination under State and local law.

A PHA states that the required lease addendum should continue to be used to override provisions of owner leases not consistent with HUD requirements. As in the past, the required lease provisions will contain language stating that the minimum HUD required provisions will override conflicting provisions in the lease.

The final rule deletes from Part 882 the text of the required lease provisions in the program (previously Part 882, Appendix I). This is in accordance with practice in the other section 8 programs. Key regulatory requirements relating to the lease (e.g., grounds for termination of tenancy) are covered in the text of the HUD rules and need not be duplicated by inclusion of the form of lease addendum in the codified rule. The revised rule (§ 882.209(j)(1)) states:

> The Lease between the Owner and the Family shall be in accordance with § 882.215 [assisted tenancy], and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD, and shall not contain any of the prohibited provisions in Appendix I.

H. Concurrent Notices

The regulation (§ 882.215(e)) specifies that required notices relating to the assisted tenancy (pursuant to § 882.215) may be combined with and run concurrently with any notices required under State or local law.

IX. Removal of Obsolete Provisions

Several obsolete provisions are removed from the regulation: (1) Alternative computation of annual adjustments for assistance contracts entered before January 29, 1979 (§ 882.108(a)(i)); (2) provisions on rent credit (in § 882.102, § 882.115, § 882.116(f)); and (3) transition provisions on applicability of regulations published in 1978 (§ 882.122). Since these provisions have no present applicability or effect on the public, notice and public procedure are unnecessary.

Other Matters

A Finding of No Significant Impact with respect to the environment is unnecessary since the Section 8 Existing Housing Program is categorically excluded from the National Environmental Policy Act procedures under 24 CFR 50.21(a)(4).

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements contained in this rule have been or will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. No person may be subjected to a penalty for failure to comply with these information requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by separate notice in the Federal Register.

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

The rule was listed as items H–75–82 and H–23–80 in the Department's Semiannual Agenda of Regulations published on October 17, 1983 at 48 FR 47445 and 47452, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.156 and title is Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 882

Grant programs: Housing and community development, Housing, Rent subsidies.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Accordingly, 24 CFR Part 882 is amended as follows:

1. In § 882.101, paragraph (a) is made an undesignated paragraph and the heading "General." is removed, paragraphs (a)(1) and (a)(2) are redesignated paragraphs (a) and (b) respectively, and new paragraph (b) is revised to read as follows:

§ 882.101 Applicability and scope.

* * * * *

(b) For the purposes of this Part "Section 8 Existing Housing Program" means the program under this Part (except Subparts D and E of this Part). "Existing Housing" means housing that in Decent, Safe, and Sanitary condition except that it does not include: (1) A unit which is covered by an Agreement to Enter into Housing Assistance Payments Contract or by a Housing Assistance Payments Contract under any section 8 program other than the Section 8 Existing Housing Program, (2) a unit which is owned by the PHA administering the ACC under this Part, or (3) housing assisted under the Act other than under section 8 or section 17.

§ 882.102 [Amended]

2. Section 882.102 is amended by removing the term "*Rent Credit.* See § 882.115.", and by revising the definitions of "Existing Housing" and "Service Agreement" to read as follows:

§ 882.102 Definitions.

* * * * *

Existing Housing. See § 882.101(b).

* * * * *

Service Agreement. A written agreement approved by the State between the Owner (including an entity with the right to sublease) of an Independent Group Residence and the Service Agency and/or other entities providing the supportive services to the occupants of Independent Group Residences. The agreement shall specify the type and frequency of the supportive services to be furnished. (See §§ 882.109(n)(6) and 882.209(j)(2)).

* * * * *

3. In § 882.106, paragraphs (a)(1) and (c)(2)(ii) are revised to read as follows:

§ 882.106 Contract rents.

(a) * * *

(1) The Gross Rent for any existing housing unit approved pursuant to § 882.209(f) shall not exceed the Fair Market Rent applicable to such unit on the date of Lease approval, except as provided in this paragraph (a).

* * * * *

(c) * * *

(2) * * *

(ii) The PHA shall issue a Certificate of Family Participation to each eligible Family which will reside in an Independent Group Residence. A separate Lease and Contract shall be executed for each such Family. A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent or the Family's income eligibility.

* * * * *

4. Section 882.107 is revised to read as follows:

§ 882.107 Term of ACC.

The initial term of the ACC shall be for five years. The term may be extended.

5. In § 882.108, paragraph (a)(1)(i) is revised to read as follows:

§ 882.108 Rent adjustments.

(a) * * *

(1) *Annual Adjustments.* (i) Annual adjustments as of any anniversary date shall be determined by using the applicable Section 8 Annual Adjustment Factor (24 CFR Part 888) most recently published by HUD in the Federal Register.

* * * * *

§ 882.109 [Amended]

6. In § 882.109, paragraph (c) (2) is revised to read as follows:

§882.109 Housing quality standards.

* * * * *

(c) * * *

(2) *Acceptability Criteria.* The dwelling unit shall contain a living room, kitchen area, and bathroom. The dwelling unit shall contain at least one bedroom or living/sleeping room of appropriate size for each two persons. Persons of opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room. Exterior doors and windows accessible from outside the unit shall be lockable.

* * * * *

§ 882.109 [Amended]

7. In § 882.109, paragraphs (n) (3), (n) (6) (iii) and (n) (7) are revised to read as follows:

§882.109 Housing quality standards.

* * * * *

(n) *Independent Group Residence—Performance Requirement.*

* * * * *

(3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space shall be within the unit, and the unit shall contain at least one bedroom of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. All emergency and safety features and

procedures shall meet applicable State and local standards.

* * * * *

(6) *Supportive Services.*

* * * * *

(iii) A written Service Agreement, approved by the State and in effect between the Owner and the Service Agency and/or the entities which provide the necessary supportive service, shall be submitted to the PHA with the request for Lease approval. The Lease between the eligible individual and the Owner shall set forth the Owner's obligation for and means of providing these services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease and shall be approved by the State. (See § 882.209(j) (2).)

(7) *State Approval.* Independent Group Residences shall be licensed, certified or otherwise approved in writing by the State (e.g., Departments of Human Resources, Mental Health, Retardation, Social Services, etc.) prior to the execution of the initial Contract. This approval shall be reexamined periodically based on a schedule established by the State. To assure that facilities and the supportive services are appropriate to the needs of the occupants, the State shall also approve the written Service Agreement (or Leases, if the provider of services is the lessor) for each Independent Group Residence. (See § 882.209(j) (2).)

* * * * *

§ 882.115 [Reserved]

8. Section 882.115 is deleted and reserved.

9. § 882.116, paragraph (p) is removed, paragraphs (q) and (r) are redesignated paragraphs (p) and (q) respectively, and paragraphs (f), (g) and (n) are revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(f) Provision to each Certificate holder of basic information on applicable housing quality standards and inspection procedures, search for and selection of housing, owner and tenant responsibilities, and basicrules.

(g) Determination of the amount of the Total Tenant Payment and Tenant Rent.

* * * * *

(n) Adjustment of the amount of the Tenant Rent, Utility Reimbursement and housing assistance payment as a result of an adjustment by the PHA of any applicable Utility Allowance.

* * * * *

10. Section 882.118 is revised to read as follows:

§ 882.118 Obligations of the Family.

(a) The Family shall:

(1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary in the administration of the program, including use by the PHA for a regularly scheduled reexamination or interim reexamination of Family income and composition in accordance with HUD requirements.

(2) Allow the PHA to inspect the dwelling unit at reasonable times and after reasonable notice.

(3) Notify the PHA before vacating the dwelling unit.

(4) Use the dwelling unit solely for residence by the Family, and as the Family's principal place of residence; and shall not assign the Lease or transfer the unit.

(b) The Family shall not:

(1) Own or have any interest in the dwelling unit (other than in a manufactured home assisted under Subpart F of this Part). If the Owner is a cooperative, the Family may be a member of the cooperative.

(2) Commit any fraud in connection with the Section 8 Existing Housing Program.

(3) Receive assistance under the Section 8 Existing Housing Program while occupying, or receiving assistance for occupancy of, any other unit assisted under any Federal housing assistance program (including any section 8 program).

§ 882.122 [Reserved]

11. Section 882.122 is deleted and reserved.

12. In § 882.204, paragraphs (a)(2), (b)(1) (i) and (ii), (b)(3)(ii), and (b)(4) are revised to read as follows:

§ 882.204 Submission of PHA applications.

* * * * *

(a) * * *

(2) State by number of bedrooms the total number of units requested by the PHA (i.e., one bedroom units, two bedroom units), and the approximate number of units for elderly, handicapped, or disabled Families.

* * * * *

(b) * * *

(1) * * *

(i) The plan shall describe the PHA's policies and procedures for:

(A) Outreach to eligible Families, and satisfying the requirements of § 882.207;

(B) Achieving participation by Owners of units of suitable price and quality located outside areas of low income or minority concentration (and outside the local jurisdiction in any area where the PHA is not legally barred from entering into Contracts) and satisfying the requirements of § 882.206;

(C) Selecting Families for participation without discrimination because of age, race, color, religion, sex, handicap or national origin;

(D) Assisting Certificate holders who allege that illegal discrimination is preventing them from leasing suitable units.

(ii) The PHA should consider the possibility of subcontracting with a community-based organization, such as a fair housing organization that has had experience in assisting families which traditionally have encountered discrimination or other difficulties in finding housing in the locality.

* * * * *

(3) * * *

(ii) The administrative plan shall state the PHA's policies and procedures for: performing outreach to eligible Families; contacting Owners; handling applications and determining Family eligibility; selecting Families for participation in the PHA's Section 8 program (including any selection preferences); computing the Total Tenant Payment and the Tenant Rent; briefing Families and issuing Certificates (including determination of the number of bedrooms entered on the Certificate); inspecting units for conformity to housing quality standards; approving Leases and executing Contracts; making payments to Owners; certifying and recertifying incomes; providing housing information and services to applicants and to Families participating in the program; reviewing and adjusting, as necessary, Utility Allowances; reinspecting units under Contract; adjusting Contract Rent payable to Owners; establishing informal review procedures for applicants for participation in the PHA program and informal hearing procedures for participants in the PHA program; monitoring program performance.

(4) A proposed schedule of Utility Allowances with a justification of the amounts proposed.

13. In § 882.206, paragraphs (a) and (b) are revised to read as follows:

§ 882.206 Annual Contributions Contract; schedule of leasing.

(a) *Transmittal of ACC.* After the HUD field office has prepared the ACC, the ACC shall be transmitted to the PHA

for execution by the PHA. The ACC shall be returned to HUD together with the PHA's estimates of its financial requirements on the prescribed forms, equal opportunity housing plan, administrative plan and proposed schedule of Utility Allowances, if these have not been previously submitted.

(b) *Execution of ACC by HUD.* After receipt of the PHA-executed ACC and HUD approval of the equal opportunity housing plan, administrative plan, financial estimates and the schedule of Utility Allowances, HUD shall execute the ACC. HUD shall then transmit to the PHA a fully executed copy of the ACC together with a leasing schedule in accordance with paragraph (c) of this section.

* * * * *

14. In § 882.207, the phrase "; waiting list" in the section heading is removed, paragraph (a) is made an undesignated paragraph and the paragraph (a) heading "Public Notice to Lower-Income Families." is removed, paragraphs (b) and (c) are removed, and paragraphs (a)(1) and (a)(2) are redesignated paragraphs (a) and (b) respectively, and new paragraph (a) is revised to read as follows:

§ 882.207 Public notice to lower-income families

* * * * *

(a) The notice shall state that occupants of housing assisted under the Act, and applicant on a waiting list for any such housing, must apply specifically for participation in the PHA's Section 8 Existing Housing Program if they wish to be considered for such participation. The notice shall also state that applicants for participation in the program will not lose their places on the public housing waiting list.

* * * * *

15. In § 882.209, the section heading is revised, paragraph (f) is removed, paragraphs (a), (b) and (c)(7) are revised, paragraph (e) is redesignated as paragraph (m) and new paragraph (m) is revised, and new paragraphs (e) to (l) are added, to read as follows:

§ 882.209 Selection and participation.

(a) *Selection for Participation in PHA's Section 8 Existing Housing Program.* (1) A Family becomes a participant in the PHA's Section 8 Existing Housing Program ("participant") when the PHA executes a Contract with an Owner for housing assistance payments on behalf of the Family.

(2) The PHA shall determine whether an applicant for participation qualifies as a Family, and is income eligible.

(3) The PHA's administrative plan or equal opportunity housing plan may provide for preferences in selection of applicants.

(4) The PHA may establish selection preferences for applicants living in the PHA jurisdiction. However, preferences may not be based on the identity or location of the housing which is occupied or proposed to be occupied by the applicant, nor upon the length of time the applicant has resided in the jurisdiction. Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(5) The PHA shall not establish selection criteria based on the applicant's suitability as a tenant or expected behavior as a tenant. The Owner will select the tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the Owner concerning expected behavior of the Family in tenancy of a unit, or concerning the Family's suitability for tenancy.

(6) If the PHA has selected an eligible Family residing in an Independent Group Residence to participate in the PHA's Section 8 program, the PHA may establish a preference for selecting eligible applicants who have indicated the desire to reside in an Independent Group Residence when a Section 8 Family in an Independent Group Residence moves. A Family given this preference shall select the unit of its choice and does not have to reside in the Independent Group Residence in which a vacancy has occurred.

(7) The PHA shall maintain a waiting list of income eligible Families which have applied for participation in the PHA's Section 8 program. The PHA shall select applicants for participation from the waiting list in accordance with policies and procedures (including any preferences) stated in the administrative plan or equal opportunity housing plan.

(8) If there is insufficient funding to admit all eligible applicants to participation in the PHA's Section 8 program, the PHA may at any time suspend the acceptance or processing of new applications, or the addition of new listings to the waiting list. Any such suspension shall be publicly announced by the PHA through publication in a newspaper of general circulation as well as through minority media and other suitable means.

(9) Nothing in this Part is intended to confer on an applicant for participation any right to be listed on the PHA waiting list, to any particular position on the waiting list, to receive a Certificate, or to participate in the PHA's Section 8 program. The foregoing sentence shall not be deemed to affect or prejudice any judicially-recognized cause of action.

(10) The PHA shall maintain records of applicants and participants which provide HUD with racial, gender and ethnic data.

(11) The PHA shall retain for three years a copy of the application, notices to the applicant, and the applicant's responses.

(b) *Issuance of Certificate of Family Participation and Certificate Holder's Packet. (1) When the PHA determines there is sufficient funding, the PHA shall issue a Certificate to an applicant on the waiting list.*

(2) The PHA shall enter on the Certificate the smallest number of bedrooms consistent with standards established by the PHA for determining the number of bedrooms for Families of different sizes and compositions. The PHA's standards shall provide for the minimum commitment of housing assistance payments while avoiding overcrowding and shall be consistent with the applicable housing quality standards (see § 882.109(c)). The PHA shall grant exceptions from the standards if the PHA determines the exceptions are justified by the relationship, age, sex, health or handicap of Family members, or other individual circumstances. For a Family renting a unit with a larger or smaller number of bedrooms than stated on the Certificate, see § 882.209(i).

(3) The PHA shall maintain a system to assure that the PHA will be able to honor all outstanding Certificates within the funding provided under the ACC, and that it will comply to the maximum extent feasible with the unit distribution specified in the ACC.

(4) When issuing a Certificate, the PHA shall give the Family a Certificate Holder's Packet, which includes:

(i) Request for Lease approval;

(ii) Required Lease provisions and prohibited Lease provisions (see § 882.209(j)(1));

(iii) Information regarding lead-based paint poisoning hazards, symptoms and precautions;

(iv) Fair housing information and housing discrimination complaint forms, as required by HUD;

(v) Information on the Total Tenant Payment and the Tenant Rent;

(vi) The PHA's schedule of Utility Allowances;

(vii) Information on the PHA's procedures for conducting informal hearings for participants. This information shall contain a general description of the procedures for conducting informal hearings for

participants in the PHA program; including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing (pursuant to § 882.216 (b)(1) and (b)(2)), and of the procedures for requesting a hearing;

(viii) Such other items as the PHA may determine.

(c) * * *

(7) Function of Fair Market Rent, determination of Tenant Payment, Total Tenant Rent and of the housing assistance payment; and

* * * * * *

(e) *Information to Owners and Requests to PHA for Lease Approval.* (1) The PHA will respond to inquiries from Owners who have been approached by Certificate holders by explaining major program procedures including Lease provisions, Lease approval procedures, housing quality inspections, Contract provisions and payment procedures and by furnishing copies of the pertinent forms.

(2) When a Family has found a unit it wants and the Owner is willing to lease, the Family shall submit to the PHA a Request for Lease Approval signed by the Owner of the unit and the Family. At the same time, the Family shall submit a copy of the proposed Lease (which shall be in accordance with § 882.209(j)). The proposed Lease shall be complete except for execution and entry of the amount of rent payable by the Family to the Owner (Tenant Rent).

(f) *Amount of Contract Rent to Owner.* (1) The PHA shall determine whether the requested Contract Rent is approvable in accordance with § 882.106. If the Family is to pay directly for any of the utilities or services, the PHA shall determine the amount of the Utility Allowance on account thereof. Inasmuch as the Fair Market Rents are established for a geographic area within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit. If the requested Contract Rent plus any applicable Utility Allowance is at or below the reasonable rent and at or below the Fair Market Rent, it may be approved.

(2) If the otherwise approvable Contract Rent to Owner plus the applicable Utility Allowance, if any, is higher than the applicable Fair Market Rent, and if the PHA determines that such higher rent is justified, it shall take the action required by § 882.106 to have a higher rent approved.

(g) *Amount of Rent Payable by Family to Owner.* The amount of rent payable by the Family to the Owner shall be the Tenant Rent. Where applicable, the Utility Reimbursement will be paid by the PHA directly to the Family, or, if the Family and the utility company consent, may be paid jointly to the Family and the utility company or directly to the utility company.

(h) *Decent, Safe, and Sanitary Condition of Unit.* (1) Before approving a Lease, the PHA shall inspect the unit for compliance with the PHA's housing quality standards as established in accordance with § 882.109, or cause it to be so inspected on the date on which the Owner indicates that the unit will be ready for inspection, or as promptly as possible thereafter.

(2) If there are defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, the Owner shall be advised by the PHA of the work required to be done. Before a Contract is executed, the unit must be reinspected to ascertain that the necessary work has been performed and that the unit is Decent, Safe, and Sanitary. Occupancy of housing which requires repairs in orders to be made Decent, Safe and Sanitary may be assisted under this Part only after such repairs have been made.

(3) A report of every inspection and reinspection under this paragraph (h) shall be prepared and maintained in the files of the PHA. Each such report shall specify: (i) Any defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, and (ii) any other defects or deficiencies, a record of which shall be maintained for use in the event of a subsequent claim by the Owner that they were caused during the period of occupancy by the Family.

(i) *Size of Units.* (1) Regardless of the number of bedrooms stated on the Certificate, no otherwise acceptable unit shall be disapproved on the ground that it is too large for the Family, if the rent to Owner plus any Utility Allowance applicable to the actual larger size unit does not exceed the Fair Market Rent, or such higher rent as may previously have been approved by HUD under § 882.106(a) (3) or (4), for a unit with the number of bedrooms stated on the Certificate.

(2) The PHA may not prohibit a Family from renting a unit with fewer bedrooms than the number stated on the Certificate. However, the unit must meet the space requirement of § 882.109(c), or such variation as may have been approved by HUD, and the rent to Owner plus any applicable Utility Allowance must not exceed the Fair Market Rent, or such higher rent as approved by HUD pursuant to § 882.106(a) (3) or (4), for the actual smaller size unit.

(j) *Lease Requirements.* (1) *Required and Prohibited Provisions.* The Lease between the Owner and the Family shall be in accordance with § 882.215, and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD, and shall not contain any of the prohibited provisions in Appendix I.

(2) *Independent Group Residences.* Leases for Independent Group Residences shall incorporate by reference the supportive services to be provided in accordance with the written Service Agreement between the Owner and the Service Agency and/or other entities providing the necessary supportive services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease. This Service Agreement or pertinent Lease provisions shall be approved in writing by the State prior to PHA execution of the Contract (See §§ 882.102 and 882.109(n)(6)).

(k) *Approval of Lease and Execution of Related Documents.* (1) If the PHA determines that a unit which an Eligible Family wishes to lease is in Decent, Safe, and Sanitary condition, that the rent is approvable, and that the proposed Lease complies with the requirements of this Part, the PHA shall notify the Owner and the Family of its determination of Lease approval, and furnish two copies of the Contract to the Owner.

(2) After notification: (i) The Family and the Owner shall execute the Lease; (ii) the Owner shall sign both copies of the Contract, and shall furnish to the PHA a copy of the executed Lease, and both copies of the executed Contract; (iii) the PHA shall execute the Contract and return an executed copy to the Owner.

(3) The PHA shall retain the following in its files: The Request for the Lease Approval, the approved Lease, inspection report(s), the certification pursuant to § 882.106(b) that the rent is reasonable and not in excess of rents currently being charged by the Owner for comparable unassisted units, and the executed Contract.

(l) *Disapproval of Lease.* (1) If the PHA determines that the Lease cannot be approved for any reason, including the condition of the unit, the PHA shall notify the Owner and the Family that:

(i) The proposed Lease and/or the proposed dwelling unit are/is disapproved, for specified reasons; and

(ii) If the conditions requiring disapproval are remedied, and a Request for Lease Approval is resubmitted on or before a specified date, the Lease will be approved if the PHA determines that the conditions have been remedied to its satisfaction.

(2) The Certificate of Family Participation shall not expire before the date specified pursuant to paragraph (l)(1)(ii) of this section.

(3) The PHA shall retain in its files the following: the Request for Lease Approval, the inspection report(s), if any, and the notification of disapproval of the Lease.

(m) *Continued Participation When Participant Family Moves.* (1) If a participant in the PHA's Section 8 program notifies the PHA, during or at the end of the term of the Lease, that the Family wants another Certificate so that the Family can move to another dwelling unit within the area in which the PHA has determined that the PHA is not legally barred from entering into Contracts, the PHA shall (unless the PHA determines it does not have sufficient funding for continued Section 8 assistance for the Family) either: (i) Issue another Certificate, or (ii) deny issuance of a Certificate in accordance with § 882.210.

(2) If a participant in the PHA's Section 8 program moves out of the area in which the PHA has determined that it is able to enter Contracts, the Family may obtain housing assistance under the Section 8 program only if the Family is admitted to participation in the Section 8 program of a PHA operating in the area to which the Family moves. The new PHA shall treat the Family either as a participant in the PHA's Section 8 program to whom the PHA is already providing assistance and who wants to move to another unit, or as a resident who has submitted an application for participation. In either case, the PHA shall not deny admission to the program on the ground that the Family income is above limits for admission in that jurisdiction.

16. Section 882.210 is revised, to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

(a) This section states the grounds for denial of assistance to an applicant, or for denial or termination of assistance to a participant, because of action or inaction by the applicant or participant.

(b) The PHA may deny an applicant admission to participation in the program, may deny issuance of another Certificate to a participant who wants to move to another dwelling unit (see § 882.209(m)(1) and § 882.216(b)(1)(iv)), and may decline to enter into a Contract, or to approve a Lease, where requested by a participant, in the following cases:

(1) If the applicant or participant currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the United States Housing Act of 1937.

(2) If the applicant (as a previous participant in the Section 8 program) or participant has not reimbursed the PHA or another PHA for any amounts paid to an Owner under a Contract for rent or other amounts owned by the Family under the Lease (see § 882.112(d)), or for a vacated unit (see § 882.105(b)).

(3) If the applicant or participant has committed any fraud in connection with any federal housing assistance program.

(4) If the applicant or participant has violated any Family obligation under the Section 8 Existing Housing Program as stated in § 882.118.

(5) If the applicant or participant has breached an agreement as described in § 882.210(c).

(c) In the cases described in § 882.210(b)(1) and (2), the PHA may at its discretion offer the applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an Owner by a PHA. If the PHA elects to make such offer, the agreement shall be on terms prescribed by the PHA. The PHA may at any time deny or terminate assistance for breach of such agreement.

(d) In the following cases, the PHA may terminate housing assistance payments which are being made on behalf of the participant under an outstanding Contract: (1) If the participant has commited any fraud in connection with any federal housing assistance program. (2) If the participant has violated any Family obligation under the Section 8 Existing Housing Program as stated in § 882.118. (3) If the participant has breached an agreement as described in § 882.210(c) above. The provisions of this paragraph (d) shall not affect or limit the right of the PHA to exercise any Contract remedy against the Owner under an outstanding Contract, including the termination of housing assistance payments to the Owner (see § 882.211(c) and § 882.216(b)(2)(iii)).

17. Section 882.211 is revised to read as follows:

§ 882.211 Maintenance, operation and inspections.

(a) *Maintenance and Operation.* The Owner shall provide all the services, maintenance and utilities which the Owner agrees to provide under the Contract, subject to termination of housing assistance payments or other applicable remedies if the Owner fails to meet these obligations.

(b) *Periodic Inspection.* In addition to the initial inspection provided under § 882.209(h)(l), the PHA will inspect or cause to be inspected each dwelling unit leased to a Family at least annually and at such other times as may be necessary to assure that the Owner is meeting the obligation to maintain the unit in Decent, Safe and Sanitary condition and to provide the agreed upon utilities and other services. The PHA will take into account complaints and any other information coming to its attention in scheduling inspections. All complaints by Families concerning compliance by the Owner with the housing quality standards shall be retained in the PHA's files for three years.

(c) *Units Not Decent, Safe and Sanitary.* If the Owner fails to maintain a dwelling unit in Decent, Safe and Sanitary condition, the PHA may exercise any of its rights and remedies under the Contract, including termination of housing assistance payments (even if the Family continues in occupancy) and termination of the Contract. If the PHA determines to terminate the Contract, and the Family wants to move to another dwelling unit with assistance under the PHA's Section 8 program, the PHA shall issue another Certificate to the Family (unless the PHA denies issuance of a Certificate in accordance with § 882.210).

18. Section 882.213 is revised to read as follows:

§ 882.213 Overcrowded or oversized units.

The PHA shall issue a participant Family a new Certificate, and the Family and PHA shall try to find an acceptable unit as soon as possible, if: (a) The PHA determines that a Contract unit is not Decent, Safe and Sanitary because of an increase in Family size or a change in Family composition, or (b) The PHA determines that the Family is residing in a unit with a larger number of bedrooms than appropriate under the PHA standards (see § 882.209(b)(2)) because of a change in Family size or change in Family composition, and that the Gross Rent for the unit exceeds the Fair Market Rent for a unit with the number of bedrooms appropriate for the Family size and composition. (The PHA shall notify the Family that exceptions to the standards may be granted, and of the circumstances in which the grant of an exception will be considered by the PHA.) If an acceptable unit is found that is available for occupancy by the

Family, the PHA shall terminate the Contract in accordance with its terms.

19. Section 882.215 is revised to read as follows:

§ 882.215 Assisted tenancy.

(a) *Term of Lease.* (1) The term of the Lease shall begin on a date stated in the Lease, and shall continue until: (i) A termination of the Lease by the Owner in accordance with paragraph (c) of this section, (ii) a termination of the Lease by the Family in accordance with the Lease or by mutual agreement during the term of the Lease, or (iii) a termination of the Contract by the PHA.

(2) The term of the Lease shall begin at least one year prior to the end of the remaining term of the ACC. The Contract and the Lease shall end upon termination of the ACC.

(3) During the term of the Lease, the Contract Rent shall be subject to adjustment in accordance with § 882.106, and the Tenant Rent shall be subject to change in accordance with HUD regulations and requirements.

(4) The Owner may offer the Family a new Lease for execution by the Family after approval by the PHA in accordance with § 882.209(k), for a term beginning at any time after the first year of the term of the Lease. The Owner shall give the tenant written notice of the offer, with copy to the PHA, at least sixty days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time limit for acceptance by the Family.

(5) The Lease shall permit a termination of the Lease by the Family without cause, at any time after the first year of the term of the Lease, or not more than sixty days written notice by the Family to the Owner (with copy to the PHA).

(b) *Housing Assistance Payments Contract.* (1) The Contract for a unit shall be in a form prescribed by HUD.

(2) The term of the Contract shall begin on the first day of the term of the Lease and shall end on the last day of the term of the Lease.

(c) *Termination of Tenancy (for Leases entered into on or after October 1, 1981).* (1) The Owner shall not terminate the tenancy except for:

(i) Serious or repeated violation of the terms and conditions of the Lease;

(ii) Violation of Federal, State, or local law which imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or

(iii) Other good cause.

(2) The following are some examples of "other good cause" for termination of tenancy by the Owner: Failure by the Family to accept the offer of a new Lease in accordance with paragraph (a)(4) of this section; a Family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property; criminal activity by Family members involving crimes of physical violence to persons or property; the Owner's desire to utilize the unit for personal or family use or for a purpose other than use as a HUD assisted residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended as a non-exclusive statement of some situations included in "other good cause," but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list.

(3) The Owner may evict the tenant from the unit only by instituting a court action. The Owner must notify the PHA in writing of the commencement of procedures for termination of tenancy, at the same time that the Owner gives notice to the tenant under State or local law. The notice to the PHA may be given by furnishing to the PHA a copy of the notice to the tenant.

(d) *Termination of Tenancy (for Leases entered into before October 1, 1981).* For Leases entered into before October 1, 1981, the PHA shall have the sole right to give the notice to vacate, with the Owner having the right to make representation to the PHA for temination of tenancy.

(e) *Concurrent Notices.* Any notices required under this section (see paragraphs (a)(4), (a)(5), (c)(3) and (d) of this section) may be combined with and run concurrently with any notices required under State or local law.

(f) *Non-applicability of Part 247—Evictions from Certain Subsidized and HUD-owned Projects.* Notwithstanding the provisions of 24 CFR 247.1, 24 CFR Part 247 shall not apply to a tenancy assisted under the Section 8 Existing Housing Program.

(g) *Applicability.* Paragraphs 882.215 (a), (b), (c)(2) and (c)(3) shall be applicable if a Lease or Contract is entered after May 10, 1984.

20. Section 882.216 is revised to read as follows:

§ 882.216 Informal review or hearing.

(a) *Informal Review of PHA Decision on Application for Participation in PHA Program.* (1) The PHA shall give an applicant for participation in the PHA's Section 8 Existing Housing Program prompt written notice of a decision denying assistance to the applicant including a decision denying listing on the PHA waiting list, issuance of a Certificate of Family Participation, or participation in the program). The notice shall also state that the applicant may request an informal review of the decision, and shall describe how to obtain the informal review.

(2) The PHA shall give the applicant an opportunity for an informal review of the decision, in accordance with review procedures established by the PHA. The informal review shall be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person. The applicant shall be given an opportunity to present written or oral objections to the PHA decision. The PHA shall promptly notify the applicant in writing of the final PHA decision after the informal review, including a brief statement of the reasons for the final decision.

(3) The PHA is not required to provide an opportunity for an informal review in accordance with paragraph (a):

(i) To review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) To review the PHA's determination of the number of bedrooms entered on the Certificate under the standards established by the PHA (see § 882.209(b)(2));

(iii) To review the PHA's determination that a unit located by a Certificate holder does not comply with the PHA's housing quality standards established in accordance with § 882.109, or the PHA's determination not to approve the Lease for the unit;

(iv) To review the PHA's decision not to approve a request by a Certificate holder for an extension of the term of the Certificate.

(b) *Informal Hearing on PHA Decision Affecting Participant Family.* (1) The PHA shall give a participant in the PHA's Section 8 Existing Housing Program an opportunity for an informal hearing to consider whether decisions relating to the individual circumstances of the Family are in accordance with law, HUD regulations and PHA rules, in the following cases:

(i) A determination of the amount of the Total Tenant Payment or Tenant Rent (not including determination of the PHA's schedule of Utility Allowances for Families in the PHA's Section 8 program).

(ii) A decision to deny or terminate assistance on behalf of the participant.

(iii) A determination that a participant Family is residing in a unit with a larger number of bedrooms than appropriate under the PHA standards (see § 882.209(b)(2) and § 882.213), and the PHA's determination to deny the Family's request for an exception from the standards.

(iv) In the case of an assisted Family which wants to move to another dwelling unit with continued participation in the PHA program (see § 882.209(m)(1)), a determination of the number of bedrooms entered on the Certificate under the standards established by the PHA (see § 882.209(b)(2)).

(2) The PHA is not required to provide an opportunity for an informal hearing in accordance with paragraph (b):

(i) To review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) To review the PHA's determination that a unit does not comply with the PHA's housing quality standards established in accordance with § 882.109, that the Owner has failed to maintain or operate a Contract Unit to provide decent, safe and sanitary housing in accordance with the HQS (including all services, maintenance and utilities required under the Lease), or that the Contract unit is not decent, safe and sanitary because of an increase in Family size or change in Family composition;

(iii) To review a decision by the PHA to exercise any remedy against the Owner under an outstanding Contract, including the termination of housing assistance payments to the Owner (see § 882.211(c)); or

(iv) To review the PHA's decision not to approve a Family's request for an extension of the term of the Certificate issued to an assisted Family which wants to move to another dwelling unit with continued participation in the PHA's Section 8 program.

(3)(i) The PHA shall give the participant prompt written notice of a decision described in § 882.216(b)(1) (ii) or (iii). The notice shall contain a brief statement of the reasons for the decision. The notice shall state that, if the participant does not agree with the decision, the participant may request an informal hearing on the decision, and shall also state the time by which the request for an informal hearing must be made by the participant.

(ii) When the PHA determines the amount of the Total Tenant Payment or the Tenant Rent as described in § 882.216(b)(1)(i), or determines the number of bedrooms entered on the Certificate of an assisted Family which wants to move to another dwelling unit as described in § 882.216(b)(1)(iv), the PHA shall notify the participant that the participant may ask for an explanation of the basis of the PHA determination, and that, if the participant does not agree with the determination, the participant may request an informal hearing on the decision.

(4) If the PHA has decided to terminate housing assistance payments on behalf of a participant under an outstanding Contract (and if the PHA is required to give the participant an informal hearing on the decision), the participant shall be afforded the opportunity for such informal hearing before the termination of housing assistance payments.

(5) In all cases where a hearing is required under paragraph (b), the PHA shall proceed with a hearing in a reasonably expeditious manner upon the request of the participant.

(6) The PHA shall adopt written procedures for conducting informal hearings for participants in the PHA's Section 8 program. The PHA hearing procedures shall comply with the following:

(i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person.

(ii) At its own expense, the participant may be represented by a lawyer or other representative.

(iii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(iv) The PHA and the participant shall be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(v) The person who conducts the hearing shall issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the participant shall be based on the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the participant.

(7)(i) The PHA is not bound by a hearing decision: (A) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing pursuant to § 882.216(b), or otherwise in excess of the authority of the person conducting the hearing under the PHA hearing procedures, or (B) Contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law.

(ii) If the PHA determines that it is not bound by a hearing decision, the PHA shall promptly notify the participant of the determination, and of the reasons for the determination.

Appendix I—[Removed]

21. In Part 882, Appendix I—Required Lease Provisions is removed and Appendix II is redesignated as Appendix I.

22. In § 882.504, paragraph (j) is revised to read as follows:

§ 882.504 Assistance to owners and selection of units.

* * * * *

(j) The Lease between the Owner and the Family must be in accordance with § 882.511 and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD, and must not include any of the prohibited provisions in Appendix I.

Authority: Section 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 328(e) of the Housing and Community Development Amendments of 1981 (Pub. L. 97-35); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 21, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 84-8387 Filed 3-28-84; 8:45 am]
BILLING CODE 4210-27-M

Solar Energy and Energy Conservation Bank

24 CFR Part 1800

[Docket No. R-84-1053; FR-1700]

Financial Assistance Program of the Solar Energy and Energy Conservation Bank; Correction

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Final rule; correction.

SUMMARY: The purpose of this document is to correct a table contained in a final rule that set forth the requirements for implementing the Solar Energy and Energy Conservation Bank's program which was published in the **Federal Register** on March 16, 1984 (49 FR 9865).

FOR FURTHER INFORMATION CONTACT: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Telephone number, (202) 755-7168. (This is not a toll-free number.)

Accordingly, the following is being made in FR Doc. 84-7024 appearing in

the March 16, 1984 issue of the **Federal Register** beginning on page 9665:

1. On page 9669, middle of page, third column, remove the table from § 1800.67(a)(1) and insert the following new Tables I and II in its place:

TABLE I

Building type	Assistance as percentage of improvement cost	Maximum assistance			
		1-family building	2-family building	3-family building	4-family building
One- to four-family residential building. Annual income of recipient:					
80 percent or less of median area income	50 percent up to	$1,250	$2,000	$2,750	$3,500
80–100 percent of median area income	35 percent up to	875	1,400	1,925	2,450
100–120 percent of median area income	30 percent up to	750	1,200	1,650	2,100
120–150 percent of median area income	20 percent up to	500	800	1,100	1,440
Over 150 percent of median area income	20 percent up to	(1)	(2)	(2)	(2)

[1] $400 for a non-occupant owner.
[2] $400 per dwelling unit for an owner.

TABLE II

Building type	Assistance as percentage of improvement cost	Maximum assistance
Multifamily residential building	20 percent up to	(1)
Agricultural or commercial building	20 percent up to	$5,000

[1] $400 for a tenant with annual income not in excess of 150% of median area income; $400 per dwelling unit for an owner.

Authority: Secs. 506(e) and 520, Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3604(e) and 3618).

Dated: March 23, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-8420 Filed 3-28-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations; Listing of Courts of Indian Offenses

Correction

In FR Doc. 84-5304 beginning on page 7365 in the issue of Wednesday, February 29, 1984, make the following corrections.

On page 7366, first column, in § 11.1(a), insert "(8) Kaibab (Arizona)." between paragraphs (7) and (9).

In the second column in the file line, "FR Doc. 84-5304" should read "FR Doc. 84-5303".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7947]

Income Tax; Taxable Years Beginning After December 31, 1953; Deduction for Motor Carrier Operating Authorities

Correction

In FR Doc. 84-5935 beginning on page 8246 in the issue of Tuesday, March 6, 1984, make the following corrections.

1. On page 8248, first column, third line of § 1.9200-1(c)(1)(ii), "paragraph (c)(1)(ii)" should have read "paragraph (c)(1)(i)".

2. On page 8249, second column, § 1.9200-1(g), eighteenth line of example (1)(iv), "$30,000" should have read "$130,000".

BILLING CODE 1505-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-170; Ref: Notice No. 484]

The Umpqua Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: As the result of a petition, this final rule establishes a viticultural area in Douglas County, Oregon, to be known as "Umpqua Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Umpqua Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Mr. David B. Adelsheim, Chairman of the Appellation Committee, Oregon Winegrowers Association, petitioned ATF to establish a viticultural area in Douglas County, Oregon, to be known as "Umpqua Valley." This viticultural area is located entirely within Douglas County in the southwestern part of the State and consists of approximately 768,000 acres. There are five wineries

and approximately 334 acres of grapes scattered throughout the area. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 484, in the **Federal Register** on September 16, 1983 (48 FR 41604), proposing the establishment of the Umpqua Valley viticultural area.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

General Information

In *The Winemakers* by Purser and Allen, the beginnings of viticulture in the Umpqua Valley are traced to Jesse Applegate who planted 40 acres of grapes in 1876 that were probabley sold as table grapes. The Von Pessl brothers planted the first vinifera vines soon after, having brought cuttings from St. Helena and Lodi, California. The brothers grew Zinfandel, Riesling, and Sauvignon, made wine for home use, and also ran a distillery. Adam Doerner visited the Von Pessls in 1888, worked for the Beringers in St. Helena, then returned to the Umpqua Valley to grow Sauvignon and Riesling grapes. The winery he started continued to produce wine up until 1965 (selling most to home winemakers during Prohibition) under Adam's son and grandson.

Leon Adams, in *The Wines of America,* calls Richard Sommer the father of Oregon's current wine industry. The following quote is from Adams' book: "Remembering what Dr. Amerine (University of California at Davis professor) had taught, that the finest wine grapes in California are grown in the cooler districts, Sommer went where it is still cooler, to Oregon. He went * * * north, testing the grapes in each locality. At Roseburg in the Umpqua Valley he found some Zinfandels in the 80-year-old Doerner's Winery vineyard that tested right. In 1961 he bought a hillside farm * * * ten miles west of Roseburg, planted vines from the Napa Valley, and bonded his winery two years later." In the 22 years since that time, winegrape acreage in the Umpqua Valley has grown considerably. In the period between 1981 and 1983, vineyard acreage increased by about 201 acres. This is an increase of about 151 percent in two years and shows that this area is a rapidly developing grape-growing area.

Evidence Relating to the Name

The name "Umpqua Valley" is the name used in both academic and consumer-oriented wine and viticulture books to refer to the section of Douglas County where grapes are grown. *The Wines of America* by Leon Adams, McGraw-Hill Book Co., 1978, *Northwest Wine* by Ted Meredith, Nexus Press, 1980, and *Touring The Wine Country of Oregon* by Ronald and Glenda Holden, 1982, all make extensive mention of viticulture in the Umpqua Valley. In *The Winemakers* by Purser and Allen, Harbor House Publishing Ltd., 1977, the authors interchange "Umpqua Valley" with the more prosaic "Hundred Valleys of the Umpqua."

Umpqua Valley has been in use on approved wine labels since 1964, and became one of three appellations of origin approved for use on Oregon wines by the Oregon Liquor Control Commission in 1976. That appellation was defined, using political boundaries, as being all of Douglas County. Those county lines coincide almost exactly with the boundary of the Umpqua River basin. However, only the center, intermountain lowland section of that basin is cultivable. Consequently, the boundaries of the viticultural area have been drawn to coincide with this center, intermountain lowland section.

Historical/Current Evidence of Boundaries

Umpqua is a historic name in the State of Oregon. It was used by the Indians to refer to the locality of the Umpqua River and the name came to be applied both to the river and to an Indian tribe. The territorial legislature created an "Umpqua County" on January 24, 1851. It ceased to exist on October 16, 1862, its area having been added to Douglas and Lane Counties. The Hudson's Bay Company had an establishment in the Umpqua Valley as early as 1832, probably on Calapooya Creek. It was generally called Old Fort Umpqua, and Umpqua City was established near Reedsport in 1850 but gradually died out by 1867. The present Umpqua Post Office is on the Umpqua River, near the mouth of Calapooya Creek. It was originally known as Umpqua Ferry when it was established in 1877.

Contemporary attempts to define an "Umpqua Valley" viticultural area include the previously mentioned Oregon Liquor Control Commission-approved appellation and "Wine-Grape Adaptation to Oregon Climates" by Warren Aney in the *Proceedings* of the Oregon Horticultural Society, 1974. Mr. Aney used various climatological factors to isolate an oval-shaped area around Roseburg, 33 miles wide and 70 miles long, stretching from Elkton in the north to Canyonville in the south. A recent unpublished proposal by the same author (February 25, 1982) identifying various potential viticultural areas in the Pacific Northwest, defined the "Umpqua subregion" as "that part of the Umpqua basin above Elkton having—

(a) An elevation not greater than 300 meters (1,000 feet);

(b) An expected 20-year minimum not lower than minus 20 degrees Celsius (minus four degrees Fahrenheit);

(c) A growing season at least 180 days long; and

(d) At least 2,000 degrees-days from April through October."

A map of donation land claims (free land given to settlers by 1855) in the *Atlas of Oregon,* University of Oregon Books, 1976, page 8, and a map compiled from LANDSAT satellite photographs, found on page 23 of the same book, both clearly isolate the agricultural intermountain lowlands of the Umpqua basin from the surrounding forested coastal and Cascade Mountain regions. The most accurate map showing the cultivable land in the Umpqua River basin is the two-part General Soil Map contained in Appendix I–16, "Umpqua Drainage Basin," to *Oregon's Long-Range Requirements for Water,* State Water Resources Board, Salem, 1969. It divides all of the land in the central part of the basin into five classes of irrigation suitability, from excellent to very poor (non-irrigable), based on slope and soil type. In defining the boundaries of the viticultural area, we have tried to include all areas with soils in Classes I–IV in the central part of the basin, i.e., from Scottsburg upstream.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), the viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

The petition and attached documents contained substantial geographic and climatic information which show that:

(a) The Umpqua Valley viticultural area is basically the intermountain lowlands section of the Umpqua basin. It is bounded on the west and north by the Coast Range Mountains. The Klamath Mountains form the southern boundary and the Cascade Mountains the eastern. The area is separated from the Willamette Valley by an 800 foot divide at the Douglas/Lane County line. In comparison, the surrounding area is generally steeper and more rugged.

(b) The 1,000-foot contour line was chosen as the basic boundary of the viticultural area because elevation seems to be a fairly reliable indicator of suitability for cultivation. At the 1,000-foot level, low slopes turn into steep

slopes and become less hospitable to horticulture. Above the 1,000-foot contour line there is a noticeable difference in climate, soils, topography and vegetation. In addition, there are a few sections of the region below the 1,000-foot elevation, particularly south of the Umpqua River between Elkton and Scottsburg, which contain no cultivable soils. These have been excluded from the viticultural area. Similarly, in the Cascade foothills, the upper sections of the valleys of the North Umpqua River and Calapooya Creek have been excluded for lack of irrigable land.

(c) The soils reflect the complex geology of the region. In the flood plains of the Umpqua River and its tributaries, there is much recent alluvial material which is slightly acidic and well-drained. The flood plains are intensively used for irrigated specialty crops, including grapes. In comparison, the surrounding area is not part of the flood plains and consequently its soil is quite different.

(d) The climate of the Umpqua basin is characterized by cool winters, warm summers, and high annual precipitation with a definite summer deficiency. The mean January temperature at Roseburg is 41 degrees Fahrenheit and the July mean is 67 degrees Fahrenheit. The frost-free period averages 230 days and the April through October degree-day index is 2,380 which establishes this growing area as Region I as classified by the University of California at Davis system of heat summation by degree-days. This area has slightly greater annual temperature ranges than the Willamette Valley to the north and the coastal areas to the west.

Boundaries

The boundaries proposed by the petitioner are adopted. An exact description of these boundaries is discussed in the regulations portion of this document. ATF believes that these boundaries delineate an area with distinguishable geographic and climatic features.

Miscellaneous

ATF does not wish to give the impression by approving the Umpqua Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Umpqua Valley wines.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

A copy of the petition and comments, along with the appropriate maps with boundaries marked, are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th & Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal author of this document is Robert L. White, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.89. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.89 Umpqua Valley.

Par. 2. Subpart C is amended by adding § 9.89. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.89 Umpqua Valley.

(a) *Name.* The name of the viticultural area described in this section is "Umpqua Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Umpqua Valley viticultural area are two U.S.G.S. maps. They are titled:

(1) "Roseburg," scale 1:250,000 (1958, revised 1970); and

(2) "Medford," scale 1:250,000 (1955, revised 1976).

(c) *Boundaries.* The Umpqua Valley viticultural area is located entirely within Douglas County, Oregon, which is in the southwest part of the State. The beginning point is the intersection of Interstate Highway 5 with the Douglas/Lane County line in Township 21 South (T21S), Range 4 West (R4W) on the "Roseburg" map.

(1) From the beginning point, the boundary proceeds north along the Douglas/Lane County line approximately .5 miles to the the 1,000-foot contour line;

(2) Thence northwest along the 1,000-foot contour line to the Douglas/Lane County line; thence west along the Douglas/Lane County line approximately 2.5 miles, returning to the 1,000-foot contour line; thence in a

generally westerly direction along the 1,000-foot contour line to the R9W/R10W range line;

(3) Thence south along the R9W/R10W range line approximately 2.75 miles to the center of the Umpqua River; thence along a straight line in an easterly direction approximately 6.25 miles to the intersection of range line R8W/R9W with the center of the Umpqua River; thence south along range line R8W/R9W approximately 3.5 miles to its intersection with township line T22S/T23S;

(4) Thence southeast approximately 8.5 miles along a straight line to the intersection of township line T23S/T24S with range line R7W/R8W; thence south along the R7W/R8W range line approximately 8 miles to its intersection with the 1,000-foot contour line; thence in a southeasterly direction in a straight line approximately 3.5 miles toward the intersection of township line T25S/T26S with range line R6W/R7W, returning to the 1,000-foot contour line;

(5) Thence in a southerly direction along the 1,000-foot contour line to the intersection of township line T27S/T28S with range line R7W/R8W; thence in a southwesterly direction in a straight line approximately 3.5 miles toward the intersection of township line T28S/T29S with range line R8W/R9W, returning to the 1,000-foot contour line; thence south along the 1,000-foot contour line to its intersection with township line T29S/T30S;

(6) Thence east along township line T29S/T30S approximately .33 miles, rejoining the 1,000-foot contour line; thence in a northerly and eventually a southerly direction along the 1,000-foot contour line past the town of Riddle on the "Medford" map to range line R6W/R7W; thense south along the R6W/R7W range line approximately .5 miles back to the 1,000-foot contour line;

(7) Thence in an easterly, westerly, and eventually a northerly direction along the 1,000-foot contour line to a point approximately 3.5 miles east of Dillard, where the contour line crosses Interstate Highway 5 on the "Roseburg" map; thence northeast along Interstate Highway 5 approximately .25 mile, returning to the 1,000-foot contour line; thence in a generally northeasterly, southeasterly, northwesterly, and eventually a northeasterly direction along the 1,000-foot contour line past the town of Idleyld Park to the R2W/R3W range line;

(8) Thence north along range line R2W/R3W approximately 1.75 miles to the T25S/T26S township line; thence west along township line T25S/T26S approximately .25 mile, returning to the 1,000-foot contour line; thence in a generally westerly and then a northerly direction along the 1,000-foot contour line up the valley of Calapooya Creek to the R3W/R4W range line; thence north along range line R3W/R4W approximately 2.25 miles, back to the 1,000-foot contour line;

(9) Thence in a westerly and then a northerly direction along the 1,000-foot contour line to the T23S/T24S township line; thence east along the T23S/T24S township line approximately 2.75 miles to the 1,000-foot contour line; thence in a northerly direction along the 1,000-foot contour line to its intersection with the Douglas/Lane County line; thence north along the Douglas/Lane County line approximately .75 mile to the point of beginning.

Signed: January 24, 1984.

Stephen E. Higgins,

Director.

Approved: March 16, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 84-8254 Filed 3-27-84; 1:50 pm]

BILLING CODE 4410-21-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Tax Division Directive No. 47]

Organization of the Department of Justice; Appendix to Subpart Y—Redelegation of Authority To Compromise and Close Civil Claims; Redelegation of Authority To Compromise and Close Civil Claims

AGENCY: Tax Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This directive gives the Attorney-in-Charge of the Dallas Field Office authority to accept offers in compromise in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $10,000, and to reject offers in compromise, regardless of amount. This directive supersedes Tax Division Directive No. 45. This revision is intended to simplify the Department's procedures.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Mildred L. Seidman, Tax Division, Department of Justice, Washington, D.C. 20530, (202) 724-6567.

SUPPLEMENTARY INFORMATION: The Assistant Attorney General for the Tax Division has determined that this directive is not a rule within the meaning of Executive Order 12291 or the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 0

Administrative practice and procedure; Authority delegations (Government agencies).

PART 0—[AMENDED]

In appendix to Subpart Y—Redelegation of Authority to Compromise and Close Civil Claims, Tax Division Directive No. 45 is deleted and Directive No. 47 is added as follows:

[Directive No. 47]

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is ordered as follows:

Section 1. The Chiefs of the Civil Trial Sections, the Claims Court Section, and the Appellate Section and the Attorney-in-Charge of the Dallas Field Office are authorized to reject offers in compromise, regardless of amount, provided that such action is not opposed by the agency or agencies involved.

Sec. 2. Subject to the conditions and limitations set forth in Section 8 hereof, the Chiefs of the Civil Trial Sections and Claims Court Section are authorized to:

(A) Accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $200,000,

(B) Approve administrative settlements not exceeding $100,000,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $100,000,

(D) Accept offers in compromise in injunction or declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed $200,000, and

(E) Accept offers in compromise in all other nonmonetary cases,

provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 3. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Appellate Section is authorized to:

(A) Accept offers in compromise with reference to litigating hazards of the issues on appeal in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $200,000,

(B) Accept offers in compromise in declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed $200,000, and

(C) Accept offers in compromise in all other nonmonetary cases which do not involve issues concerning collectibility,

provided that such action is not opposed by the agency or agencies involved or the chief of the section in which the case originated, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 4. Subject to the conditions and limitations set forth in Section 8 hereof, the Attorney-in-Charge of the Dallas Field Office is authorized to accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $10,000, provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 5. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Office of Review is authorized to:

(A) Accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $500,000,

(B) Approve administrative settlements not exceeding $500,000,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $500,000,

(D) Accept offers in compromise in all nonmonetary cases, and

(E) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount.

provided that the action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 6. Subject to the conditions and limitations set forth in Section 8 hereof, the Deputy Assistant Attorneys General and the Special Counsel to the Assistant Attorney General each is authorized to:

(A) Accept offers in compromise of claims against the Government in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $750,000,

(B) Approve administrative settlements not exceeding $750,000,

(C) Accept offers in compromise of claims in behalf of the Government in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $750,000 or 10 percent of the original claim, whichever is greater,

(D) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $750,000,

(E) Accept offers in compromise in all nonmonetary cases, and

(F) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provide that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Sec. 7. Subject to the conditions and limitations set forth in Section 8 hereof, United States Attorneys are authorized to:

(A) Reject offers in compromise of judgments in favor of the Government, regardless of amount,

(B) Accept offers in compromise of judgments in favor of the Government where the amount of the judgment does not exceed $500,000, and

(C) Terminate collection activity by that office as to judgments in favor of the Government which do not exceed $50,000 if the United States Attorney concludes that the judgment is uncollectible,

provided that such action has the concurrence in writing of the agency or agencies involved, and provided further that this authorization extends only to judgments which have been formally referred to the United States Attorney for collection.

Sec. 8. The authority redelegated herein shall be subject to the following conditions and limitations:

(A) When, for any reason, the compromise or administrative settlement or concession of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the respective amounts designated in Section 2, 3, 4, 5, 6, and 7 the case shall be forwarded for review at the appropriate level.

(B) When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the United States Attorney involved, or any other considerations, the person otherwise authorized herein to take final action (or the Chief of the Office of Review, in cases which have been considered by such office) is of the opinion that the proposed disposition should be review at a higher level, the case shall be forwarded for such review.

(C) If the Department has previously submitted a case to the Joint Committee on Taxation leaving one or more issues unresolved, any subsequent compromise or concession in that case must be submitted to the Joint Committee, whether or not the overpayment exceeds the amount specified in Section 6405 of the Internal Reveune Code.

(D) Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part O of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Deputy Attorney General, or the Solicitor General.

(E) Authority to approve recommendations that the Government confess error, or make administrative settlements, in cases on appeal, is excepted from the foregoing redelegations.

(F) The Assistant Attorney General, at any time, may withdraw any authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Sec. 9. This Directive supersedes Tax Division Directive No. 45, effective June 6, 1983.

Sec. 10. This Directive shall become effective March 29, 1984.

Glenn L. Archer, Jr.,

Assistant Attorney General, Tax Division.

Dated: March 20, 1984.

Approved:

D. Lowell Jensen,

Acting Deputy Attorney General.

[FR Doc. 84-8286 Filed 3-28-84; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

28 CFR Part 0, 16, and 50

[Order No. 1055-84]

Revision of Department of Justice Regulations Implementing the Freedom of Information Act and the Privacy Act of 1974

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: This notice sets forth revisions to the procedural regulations of the Department of Justice that implement the Freedom of Information Act ("FOIA") and the Privacy Act of 1974 and provide for access to FBI identification records. The regulations implementing the FOIA and the Privacy Act are revised in their entirety. The Supplementary Information section below explains the modifications that have been made to the proposed regulations published at 48 FR 35892 (Aug. 8, 1983).

These revisions are intended to simplify the Department's procedures, clarify the system for the access of records under the FOIA and the Privacy Act, clarify the system for the referral of such requests within the Department (or from the Department to other government agencies), clarify procedures for handling law enforcement records and records about individuals, and provide for notice to submitters of business information of the filing of a request for that information. The revisions also clarify the distinctions between the procedures for responding to requests under the Freedom of Information Act and the Privacy Act.

Finally, this Notice also sets forth a revision of the Department's 1973 policy statement on the discretionary disclosure of investigatory records of historical interest. 28 CFR 50.8 has been updated to reflect the 1974 amendments to the Freedom of Information Act.

DATE: These regulations will become effective April 30, 1984, except that the

revised policy statement in 28 CFR 50.8 shall be effective March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Kevin R. Jones, Deputy Assistant Attorney General, Office of Legal Policy, United States Department of Justice, Room 4224, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530 ((202) 633–4606).

SUPPLEMENTARY INFORMATION: These rules do not constitute "major rules" within the meaning of Executive Order No. 12291 (Improving Government Regulations). These regulations will not cause a significant economic impact or other substantial effect on small entities; therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply

This final rule does not alter the current language of 28 CFR 16.9, relating to fees charged under the Freedom of Information Act, except to renumber it as 28 CFR 16.10. Revisions to this section are still under review and will be dealt with in a separate rulemaking proceeding.

I. Analysis of Comments Received

A total of 10 comments were postmarked or received within the comment period as extended. Comments were received from the following:

American Society of Newspaper Editors/ American Newspaper Publishers Association/National Newspaper Association
Center for National Security Studies
Rep. Glenn English
Rep. John N. Erlenborn
Freedom of Information Clearinghouse
Mr. D. R. Keller
Rep. Thomas N. Kindness
Mr. James T. O'Reilly
Mr. Y. Shanmugadhasan
Society of Professional Journalists/Sigma Delta Chi

Comments simply requesting an extension of time for the public comment period, which was scheduled to expire on September 7, 1983, were also received from the American Bar Association's Section of Administrative Law, the American Society of Newspaper Editors, Rep. English, Rep. Kindness, the National Newspaper Association, and the Society of Professional Journalists/Sigma Delta Chi. By order dated September 8, 1983 (Attorney General Order No. 1031–83, 48 FR 41161 (Sept. 14, 1983)), the initial comment period was extended to October 3, 1983. Another two comments, from the American Business Press and the ABA Section of Administrative Law, were postmarked and received after the expiration of the comment period as extended, and accordingly were not included in the analysis of the comments set forth below.

1. *Discretionary Disclosures (Proposed § 16.1(a)).* One commenter questioned the omission of the language in the current § 16.1(a) which authorizes the discretionary release of records that the Department may withhold under the FOIA, whenever it determines that such disclosure is in the public interest and is not otherwise prohibited by law. The language of proposed § 16.1(a) has been revised to make clear that discretionary releases may be made in appropriate situations.

2. *Priority of Requests (Proposed § 16.1(d)).* One commenter questioned the provision that provides that FOIA requests shall be processed in their "approximate order of receipt." This provision is expressly made to apply, however, only "to the extent consistent with sound administrative practice." The provision is intended to be consistent with *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976), and is not inconsistent with a two-track system—such as that used by the Federal Bureau of Investigation—which employs a chronological system for responding to requests but places larger "project requests" in a different processing pool than other requests.

3. *Decentralized Processing of Requests (Proposed § 16.3(a)).* One commenter questioned the provision relating to the referral of requests to individual components of the Department for initial response. This commenter asserted that such a "decentralized" method for responding to requests called into question the treatment of the Department as one agency under the FOIA and the Privacy Act.

This comment reflects a misunderstanding of the present practice and regulations of the Department. Current §§ 16.4 and 16.5 provide that, although FOIA requests are initially to be filed with the Office of Legal Policy, all FOIA requests are then referred to the responsible division for processing. Proposed § 16.3 is quite similar, except that it directs requesters to file their requests directly with the appropriate component or with the FOIA/PA Section, Justice Management Division, rather than the Office of Legal Policy. This change is made to bring the regulations more in keeping with present practice and to minimize the possibility of delays resulting from the need to refer requests to appropriate components. Proposed § 16.1(c) emphasizes the continuing policy role of the Office of Legal Policy in supervising the implementation of these regulations within the Department of Justice.

4. *Marking Requirement (Proposed §§ 16.3(a) and 16.41(a)).* One commenter questioned the requirement that envelopes containing initial requests for access must be addressed and marked in a particular manner. The proposed regulation is not intended to require that a request be deemed defective if the envelope was not so marked. However, all requesters are encouraged to mark their requests properly, to avoid unnecessary delays in the referral of requests once their nature has become apparent. The language of this section has been modified to encourage requesters to mark their requests properly, but so as not to appear to penalize a requester whose request was not so marked. As in the existing regulations, the new regulations provide that the time limits under the FOIA do not begin to run until the request is received by the appropriate component, or would have been received with the exercise of due diligence by Department personnel. Proposed § 16.41(a) has been modified in the same manner as this section.

5. *Agreement to Pay Fees (Proposed §§ 16.3(c) and 16.41(c)).* Several commenters objected to the requirement that requesters filing requests under the FOIA must state in their requests their willingness to pay fees up to $25.00, and to the provision that components of the Department may, in their discretion, treat requests not containing this assurance as defective in form and not to have been received until the requester gives such assurance after prompt inquiry by the component. This provision is said to contradict the ten day time limit of the FOIA, to have the possibility of deterring requesters whose fees would be less than $25.00, and to be administratively impracticable.

The Department believes that the provisions of proposed § 16.3(c) would be fully consistent with the requirements of the FOIA, and that, in any event, the invocation of these provisions would be discretionary with each component. However, to avoid the prospect of unnecessary paperwork for the Department and for requesters, and in accordance with the specific suggestion in one comment, the provisions of proposed 28 CFR 16.3(c) have been changed: (1) To reflect that the filing of a request under the FOIA shall be deemed to constitute agreement by the requester to pay all applicable fees up to $25.00, unless a waiver or reduction of fees is sought, (2) to provide that the acknowledgement letters from the Department shall confirm this

obligation of the requester, and (3) to encourage requesters to specify a maximum fee that, absent some further development, they are willing to bear. A similar revision has been made to proposed § 16.41(c) concerning requests for access under the Privacy Act.

6. *Referral of Requests to Other Components or Agencies (Proposed § 16.4).* Several commenters questioned the provisions for the referral of requests to other agencies or other components of the Department, in light of the decisions of the District of Columbia Circuit in *McGehee v. CIA*, 697 F.2d 1095 (D.C. Cir.), *vacated in part on panel reh'g, reh'g en banc denied*, 711 F.2d 1076 (D.C. Cir. 1983), and *Paisley v. CIA*, 712 F.2d 656 (D.C. Cir. 1983).

To the extent that proposed § 16.4 addresses the referral of requests among components of the Department of Justice, the *McGehee* decision has no applicability whatsoever. Nothing in 5 U.S.C. 552 or in *McGehee* or *Paisley* addresses the procedures for referring responsibility for responding to requests *within* an agency; that is a matter committed solely to each agency's discretion, consistent with sound administrative practice and the time limit provisions of 5 U.S.C. 552(a)(6). The language of the proposed regulation does not materially alter the Department's current procedures for referral of requests within the Department, except to provide for the filing of requests directly with the appropriate component or with the Justice Management Division's FOIA/PA Section rather than with the Office of Legal Policy. This change is intended to reduce the possibility of delays in the routing and referral of requests to the appropriate component.

To the extent that proposed § 16.4 provides for inter-agency referrals, *McGehee* and *Paisley* do not preclude this practice either. The discussion of this issue in *McGehee* is interlocutory and therefore does not bind agency policy. The *Paisley* decision is inapplicable because, although the court's opinion discussed inter-agency referrals, the facts of that case actually involved an intra-agency referral. Accordingly, it remains the Department's position that sound agency policy and practice continue to warrant such referrals under certain circumstances. *See FOIA Update*, Summer 1983, at 5. In fact, the provisions for referral of classified information under proposed § 16.4 to the component or agency that classified the information are essentially the same as the requirements of current § 16.10(b)(3).

With respect to the provisions of proposed § 16.42 which implement the Privacy Act, however, the regulations have been revised to provide for consultation rather than referrals. This is in accord with the different considerations under the Privacy Act governing access to systems of records.

7. *Date for Determining Responsive Records (Proposed § 16.4(j)).* Several commenters, again in light of the *McGehee* decision, questioned the provision that the date of receipt of a request ordinarily shall be the date for determining responsive records in response to that request. However, the *McGehee* decision expressly declined to rule on the appropriateness of the date-of-receipt provision applied by the agency in that case; instead, it remanded the issue to the district court for further consideration. *See* 697 F. 2d at 1103–04. Moreover, the particular concern of the court in that case was the agency's failure to give *any* notice of the time-of-receipt provision until the matter was in litigation some 2½ years later. *See id.* at 1097, 1105.

The purpose of proposed § 16.4(j) is to give notice to all requesters at the outset of the usual date for determining responsive records. The provision is not mandatory in all cases, and each component retains discretion to follow a different approach in particular cases rather than the date-of-receipt rule that "ordinarily" would apply. In any event, all that a requester desiring access to materials generated subsequent to the receipt of the initial request need do is to file a new request for the subsequent information.

8. *Business Notification Procedures (Proposed § 16.7).* The provisions for notification of submitters of business information, set forth in proposed § 16.7, were also addressed by several commenters. The following discussion addresses the specific issues raised by the comments.

a. *Explanation of provisions of section to submitters.* One commenter suggested that submitters be advised of the provisions of this section in any subpoena, civil investigative demand, or letter request issued by the Department. As a matter of sound administrative practice, all submitters should make themselves familiar with these regulations setting forth procedures for notice to submitters. These regulations are part of the public record and need not be reiterated in every communication with submitters.

b. *Circumstances in which notice is required (Proposed § 16.7 (b) and (c).* One commenter asserted that notification to business submitters should not be required in every case, suggesting that notice be required only in "close cases" under procedures similar to those of the Food and Drug Administration, 21 CFR 20.45. The provisions of proposed § 16.7(b) do not require notice in every case where business information is requested. Proposed § 16.7(g) expressly provides that notice need not be given if the agency decides not to disclose the information, the information has lawfully been made public, disclosure is required by law other than the FOIA, or the information relates to a criminal law enforcement investigation. Moreover, for information submitted after the effective date, notice is required only with respect to information for which the submitter has made a good faith designation of business or commercial sensitivity or which the component has reason to believe may result in commercial or business injury to submitter if disclosed. Accordingly, the regulations should not permit the designation of nonsensitive information and would not require notice to the submitter regarding information that the Department either withholds because it is clearly exempt or discloses because it is clearly not exempt.

These regulations, properly construed, are in fact similar to the approach suggested by the commenter and implemented by the FDA, except that the component would be required to give notice of intended disclosure in all cases where a submitter has designated information as confidential in good faith (except as provided in § 16.7(g)). (It may be noted in this regard that the FDA has recently broadened its notice procedures. *See FOIA Update*, Fall 1983, at 12.)

c. *Requirement to describe requested information to the submitter (Proposed § 16.7(b)).* One commenter questioned the need for the provision which would require that the notice to a submitter "should describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information." The provision is intended to give the submitter a clear understanding of the information the agency contemplates disclosing; under proposed § 16.7(g)(1), the component need not give any notice to the submitter at all if it determines not to disclose the requested information. The submitter is best able to present its objections to the component if it is made aware of the precise records at issue, not simply a generalized discussion of the nature of the request.

d. *Notice with respect to information less than ten years old (Proposed § 16.7(c)(1)(i)).* One commenter objected that this provision has no basis in the

FOIA and another questioned its clarity. Contrary to the former commenter's apparent assumption, the provision relating to notice to submitters for information that is less than ten years old does not purport to govern the ultimate question of the disclosure of the requested information. [1] Rather, it is designed only to delineate when a submitter should be given advance notice of a component's contemplated disclosure. Particularly with respect to information submitted prior to the effective date of these rules, the intent is to be somewhat overinclusive with respect to notice in order that any submitter with meritorious claims of confidentiality under the statutory standards will be able to make them.

e. *Notice with respect to information given under an express commitment of confidentiality (Proposed § 16.7(c)(1)(ii)).* One commenter questioned this provision, which concerns notice of disclosure with respect to documents previously provided to the Department. It would govern only the question of whether notice of an intended disclosure should be given to a submitter; it is not intended to establish a new rule with respect to the disclosability of the information. As discussed above with respect to information submitted prior to the effective date of these regulations, the intent is to be somewhat overinclusive in defining the circumstances in which notice will be given, in order to reach all submitters who might have valid objections to disclosure. The notice provision would not apply to the extent that the agency determined not to disclose the information. In any event, the submitter who objected to disclosure of information would continue to bear the burden of proof established by law.[2]

f. *Status of documents prepared before 1973 but submitted after 1983 (Proposed § 16.7(c)(2)).* One commenter inquired about the status under proposed § 16.7(c) of documents prepared before 1973 but not submitted to the agency until 1983. Under this paragraph, the ten-year period of paragraph (c)(1) (relating to documents previously submitted to the Department) is intended to provide a reasonable cutoff for notice purposes for information that might still be exempt under the FOIA, while the ten-year period of paragraph (c)(2) will run from the date of *submission* of the information to the agency, not from the date the document was prepared. Thus, under paragraph (c)(2), if a submitter anticipates that its information will retain its exempt status for more than ten years after its submission to the Department, the submitter should make a special showing for a longer notice period as provided therein.

g. *Effective date of the business notification provisions (Proposed § 16.7(c)(2)).* The date on which § 16.7 becomes fully effective (set for October 1, 1983 in the proposed regulation) has been changed to May 1, 1984, in order to give both submitters and requesters additional time to become familiar with the new provisions of § 16.7.

h. *Certification of claims of confidentiality (Proposed § 16.7(c)(2)).* One commenter suggested that any assertion of confidentiality by a submitter should be accompanied by a certification by a company officer that the information is in fact competitively sensitive and has not been disclosed outside the company. The Department is reluctant to impose such strict formalistic requirements for purposes of the notice requirement under this section. The Department contemplates that submitters will ensure that assertions of confidentiality are given full, good faith consideration prior to presentation to the Department. However, proposed § 16.7(c)(2) has been revised to provide that, whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the company that the information at issue is in fact confidential commercial or financial information and has not been disclosed to the public.

i. *Specific reference to Exemption 4 (Proposed § 16.7(d)).* As drafted, proposed § 16.7 did not specifically refer to the requirements of Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). The Department agrees that submitters of business information should object to disclosure only upon a showing that the information submitted is in fact exempt from disclosure under Exemption 4 or another provision of law. To emphasize this, the language of the objection provision in proposed § 16.7(d) has been expanded to include specific reference to the requirements of Exemption 4.

j. *Reasonable period for notification (Proposed § 16.7(d)).* One commenter suggested that the regulations should provide a specific time period for notification. However, in view of the existing time limit provisions of 5 U.S.C. 552(a)(6), which do not expressly authorize additional time in order to notify submitters of requests for information submitted by them, the Department is unable to specify precise periods for the notice to business submitters to be provided under proposed § 16.7. The intent is for the component to give the submitter a sufficient time to review and respond to the notice, within the existing time limit provisions of the FOIA as construed by the courts.

k. *Reference to grounds for nondisclosure (Proposed § 16.7(d)).* One commenter questioned whether this provision is intended to provide for withholding of information on grounds other than the exemptions of the FOIA. To avoid possible misinterpretation, the language of the provision has been clarified.

l. *Submitter's objections to disclosure (Proposed § 16.7(d)).* One commenter suggested that the Department advise business submitters that supporting information they provide in statements of objection to disclosure may be subject to the disclosure provisions of the FOIA. Inasmuch as such cautionary language may prevent future disclosures of sensitive information, or at least future rounds of notices to and responses from business submitters relating to information previously the subject of a FOIA request, such language will be added to proposed § 16.7(d).

m. *Notice to submitter of intent to disclose information (Proposed § 16.7(e)).* One commenter asserted that the Department should not give submitters advance notice of the intent to disclose information unless simultaneous notice is given to the requester, on the theory that the submitter otherwise would have an unfair advantage in selecting a forum for judicial review. However, inasmuch as this provision relates only to determinations to *disclose* requested business information, the requester ordinarily would have no occasion to seek judicial review. Nevertheless, to ensure that requesters are not placed at an unfair disadvantage in the selection of judicial forums, § 16.7(e) has been revised to require that a component forward to the requester of business information a copy of the notice to disclose at the same time it forwards such notice to the business submitter.

n. *Definition of "criminal law enforcement agency" (Proposed § 16.7(g)(4)).* In response to a request for clarification on this point, it should be noted that the Federal Bureau of Investigation is intended to be a "criminal law enforcement agency" within the meaning of proposed § 16.7(g)(4), but the Antitrust and Tax

[1] *Accord, Petkas v. Staats,* 501 F.2d 887, 889 (D.C. Cir. 1974) (prior commitment of confidentiality not dispositive under Exemption 4).

[2] *See Chrysler Corp. v. Brown,* 441 U.S. 281 (1979).

Divisions are not. For the purpose of notification to submitters under this provision, the term is intended to include the FBI and other agencies within the government dedicated to criminal law enforcement, not components that simply have some criminal law jurisdiction.

9. *FOIA Appeals (Proposed § 16.8).* One commenter suggested that the procedures governing administrative appeals from the denial of FOIA requests should specify time limits for action, and should state that an administrative appeal is not mandatory before judicial review can be sought. The requirement for timely response to all matters under the FOIA is stated in proposed § 16.1(d) and need not be restated throughout the regulations. Moreover, unless the agency has failed to comply with the time limits of 5 U.S.C. 552(a)(6), thereby constructively exhausting the requester's administrative remedies, an administrative appeal is indeed required before judicial review can be sought. *See, e.g., Tuchinsky v. Selective Service System*, 418 F.2d 155, 158 (7th Cir. 1969).

10. *Access to Records Under the Privacy Act (Proposed § 16.40(a)).* Two commenters questioned the provision stating that Subpart D of 28 CFR Part 16 sets forth the provisions for providing access under the Privacy Act to records contained in systems of records. This provision is intended simply to state that the procedures in the subpart are applicable to all such requests. To the extent that these comments relate to the relationship of the FOIA and the Privacy Act, that issue is discussed below.

11. *Statements of Disagreement (Proposed § 16.50(e)).* Two commenters questioned new language which would limit a statement of disagreement under the Privacy Act to one page. After consideration of this proposed change, the Department has decided to retain the current provision which limits these statements to one page per fact disputed.

12. *Relationship Between the Privacy Act and the FOIA (Current § 16.57).* Several commenters questioned the deletion of the provisions of current 28 CFR 16.57, which state the Department's position that requests by individuals for information on themselves are subject to all of the exemptions of the Privacy Act but, as a matter of administrative discretion, provide for such individuals to receive information exempt under the Privacy Act if it would otherwise be available under the FOIA.

The deletion of this regulation governing the Department's exercise of its discretion to disclose exempt information under the Privacy Act in fact simply reflects the Department's position in litigation under the FOIA and the Privacy Act since 1981. The Department's reconsideration of its position followed the decision of the district court in *Greentree v. United States Customs Service*, 515 F. Supp. 1145 (D.D.C. 1981), which held, contrary to the position of the plaintiff and the Department, that the Privacy Act operates as an exemption statute within the meaning of Exemption 3 of the FOIA, 5 U.S.C. 552(b) (3). In weighing whether to defend the district court's judgment, the Department also considered the prior *sua sponte* rulings by the Fifth and Seventh Circuits that the FOIA cannot compel disclosure of information exempt under the Privacy Act.[3] Only after reviewing these decisions, carefully reexamining the legislative history of the Privacy Act, and consulting with other interested agencies, including the Office of Management and Budget, did the Department decide to adopt its present policy and defend the district court's decision in *Greentree*.

As the comments reflect, the judicial decisions since then have been inconsistent. The D.C. Circuit and, recently, the Third Circuit, have reached the conclusion that the Privacy Act is not an Exemption 3 statute under the FOIA.[4] However, district courts in other circuits have reached the opposite conclusion.[5] Most recently, the question was decided squarely in the government's favor by the Seventh Circuit, which ruled that the Privacy Act is an Exemption 3 statute and, accordingly, that records exempt from disclosure under the Privacy Act need not be disclosed under the FOIA.[6] In addition, the Office of Management and Budget, which by law has the primary responsibility for the implementation and construction of the Privacy Act, has concurrently proposed to revise its "Implementation of the Privacy Act of 1974 Supplementary Guidance" to reflect the construction of the Privacy Act as an exemption statute under FOIA Exemption 3. *See* 48 FR 36359 (Aug. 10, 1983). As noted, the Solicitor General has asked the Supreme Court to resolve the conflict among the circuits on this issue.

The Department has taken the comments received carefully into consideration. In light of the conflicting construction by the courts and the lead agency for implementation of the Privacy Act, the Department has concluded that it is not appropriate at present to retain the policy incurrent 28 CFR 16.57, which purports to bind the Department to exercise its discretion in a particular manner in certain cases. As revised, Subpart D of the regulations would neither require nor forbid the Department to assert the exemptions of the Privacy Act in appropriate cases, but would leave the question to the sound discretion of the officials responding to the request in the particular circumstances of the case.

13. *Existing delegations of Authority.* One commenter inquired whether the existing Appendixes to Subpart A and D are affected by this Order which revises those subparts in their entirety. Those Appendixes, which are delegations of authority within the Federal Bureau of Investigation and were not adopted as part of those subparts, are unaffected by the revision to Subparts A and D and shall remain unchanged.

II. Other Changes in the Proposed Regulations

Several other changes discussed below have been made in the proposed regulations.

1. *References to the FOIA/PA Referral Unit.* The proposed regulations have been revised for clarity to change the name of the FOIA/PA Referral Unit to the FOIA/PA Section, Justice Management Division.

2. *Access to Historical Records Maintained in National Archives and Records Service Centers (Proposed §§ 16.3(a) and 16.41(a)).* These sections are intended in part to advise requesters seeking certain historical records maintained by National Archives and

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[3] *See Painter v. FBI*, 615 F.2d 689, 691 (5th Cir. 1980); *Terkel v. Kelly*, 599 F.2d 214, 216 (7th Cir. 1979), *cert. denied*, 444 U.S. 1013 (1980). *See also Fuffin v. Carlson*, 636 F.2d 709, 711 (D.C. Cir. 1980) (dictum).

[4] *See Greentree v. United States Customs Service*, 674 F.2d 74, 89 (D.C. Cir. 1982); *Porter v. United States Dep't of Justice*, 717 F.2d 787 (3d Cir. 1983); *Provenzano v. United States Dep't of Justice*, 717 F.2d 799 (3d Cir. 1983) (per curiam), *rehearing en banc denied by 6–4 vote* (3d Cir. Nov. 10, 1983), *petition for cert. filed*, 52 U.S.L.W. 3512 (U.S. Dec. 23, 1983) (No. 83–1045).

[5] *See Martin v. FBI*, No. 83–C–123 (N.D. Ill. Sept. 30, 1983); *Rachel v. United States Dep't of Justice*, Civil Action No. 83–C–0434 (N.D. Ill. Aug. 1, 1983); *Turner v. Ralston*, Civil Action No. 81–3227–CV–5–2 (W.D. Mo. Mar. 17, 1983); *Anderson v. Huff*, 3 Gov't Discl. Serv. ¶ 83,124 (D. Minn. June 8, 1982); *Heinzl v. INS*, 3 Gov't Discl. Serv. ¶ 83,121 (N.D. Cal. Dec. 18, 1981).

[6] *Shapiro v. DEA*, 721 F.2d 215 (7th Cir. 1983), *aff'g* 3 Gov't Discl. Serv. ¶ 83,122 (W.D. Wis. Oct. 8, 1982), *petition for cert. filed*, No. 83–5678 (U.S. Dec. 8, 1983). As the Court of Appeals summarized its holding (721 F.2d at 222):

"[T]he legislative history of the Privacy Act shows Congress' concern that individuals not use the Act to obtain access to their own criminal investigative files. It makes little sense to conclude that Congress would enact specific nondisclosure provisions in the Privacy Act to address this Concern, while at the same time allowing individuals to bypass these exemptions by using the broader terms of the FOIA."

Records Service centers that they must contact the General Services Administration directly, rather than the Department's FOIA/PA Section. These sections have been revised for clarity.

3. *Form of Action on Appeal (Proposed §§ 16.8(c), 16.48(c) and 16.50(d)).* The language of these provisions as proposed has been revised for clarity.

4. *Verification of Identity (Proposed § 16.41(d)(1)).* This provision has been modified to continue the present requirement that statements of identity be notarized. Statements of identity need not be provided on any special form, but an optional form is available and may be obtained from the FOIA/PA Section.

5. *Initial Action by Receiving Component (Proposed § 16.42(c)(2)).* The term "receiving component" means the component that has received a request for access to records. For clarity in the context of subsequent referrals of the responsibility for responding to a request, the phrase "in the hands of the receiving component" has been deleted.

6. *Requests for Correction of records and for Accounting of Record Disclosures (Proposed §§ 16.50(a) and 16.52).* To assist requesters in directing requests for correction of records or for accounting of record disclosures to the appropriate component, a sentence has been added to each of these sections advising requesters that Appendix I to Part 16 lists these components.

7. *Contracted Record Systems (Current § 16.53).* The Department's existing regulation governs contracts for the operation of record systems by or on behalf of the Department, in accordance with 5 U.S.C. 552a(m). This provision, inadvertently omitted from the proposed regulations, has been reinstated with minor revisions as new § 16.55.

8. *Use and Collection of Social Security Numbers (Current § 16.55).* This existing regulation, limiting the use and collection of Social Security numbers, was also inadvertently omitted from the proposed regulations, and has been reinstated with minor revisions as new § 16.56.

III. Revision of Department's Policy Relating to Disclosure of Law Enforcement Records of Historical Interest

This notice also sets forth a revision to 28 CFR 50.8, the Department's statement of policy regarding the discretionary disclosure of investigatory records of historical interest that are exempt from mandatory disclosure under the FOIA. The existing policy statement, promulgated in 1973 prior to the 1974 amendments to the FOIA, has long been out of date.

The revised policy statement is intended to emphasize the Department's practice of affording discretionary access to historical records contained in certain investigatory files compiled for law enforcement purposes. Through the sound exercise of its discretion, the Department intends to facilitate the public's awareness of historical matters in such files, to the extent it does not adversely affect the Department's law enforcement or other significant interests, such as the privacy of individuals. The new policy statement focuses on the nature of the records themselves, rather than on the status of the requester.

This new policy statement is promulgated in final form, to become effective upon publication in the **Federal Register**. The requirements of the Administrative Procedure Act for publication of a notice of proposed rulemaking and opportunity for comment, as well as a 30 day period of notice before the effective date, are not applicable for general statements of policy, 5 U.S.C. 553 (b)(A) and (d)(2). This revision is not intended to affect any request for historical records made before the effective date of the revised policy statement.

List of Subjects

28 CFR Part 0

Government employees, Organization and functions (Government agencies), Authority delegations (Government agencies).

28 CFR Part 16

Freedom of information, Privacy, Administrative practice and procedure.

28 CFR Part 50

Freedom of information.

PART 0—[AMENDED]

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510 and 5 U.S.C. 301, 552, and 552a, Parts 0, 16, and 50 of Chapter I of Title 28 of the Code of Federal Regulations are amended as follows:

1. Part 0 shall be amended as follows:

a. Section 0.23(c) is revised to read as follows:

§ 0.23 General functions.

* * * * *

(c) Manage and coordinate the discharge of Departmental responsibilities related to the Freedom of Information Act [5 U.S.C. 552] and the Privacy Act [5 U.S.C. 552a], including coordination and implementation of policy development and compliance within executive agencies and Departmental units relative to the Freedom on Information Act and within Departmental units relative to the Privacy Act; and supervise the Office of Information and Privacy which will, except as otherwise directed by the Attorney General, act on appeals taken from Departmental denials of access to records under the Privacy Act and the Freedom of Information Act.

* * * * *

b. Section 0.23a(a)(1) is revised to read as follows:

§ 0.23a Office of Information and Privacy.

(a) * * *

(1) Act on behalf of the Attorney General on Freedom of Information Act and Privacy Act appeals under §§ 16.8, 16.48, 16.50(d) and 16.52, respectively, under the supervision of the Assistant Attorney General, Office of Legal Policy, except that: (A) In the case of a denial of a request by the Assistant Attorney General, Office of Legal Policy, the Attorney General or his designee shall act on the appeal, and (B) a denial of a request by the Attorney General shall constitute the final action of the Department on that request.

* * * * *

2. The table of contents for Subparts A and D, Part 16, is revised to read as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.
16.1 General provisions.
16.2 Public reference facilities.
16.3 Requirements pertaining to requests.
16.4 Responses by components to requests.
16.5 Form and content of component responses.
16.6 Classified information.
16.7 Business information.
16.8 Appeals.
16.9 Preservation of records.
16.10 Fees.
16.11 Other rights and services.

* * * * *

Subpart D—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

16.40 General provisions.
16.41 Requests for access to records.
16.42 Responses by components to requests for access to records.
16.43 Form and content of component responses.
16.44 Classified information.
16.45 Records in exempt systems of records.

16.46 Access to records.
16.47 Fees for access to records.
16.48 Appeals from denials of access.
16.49 Preservation of records.
16.50 Requests for correction of records.
16.51 Records not subject to correction.
16.52 Requests for accounting of record disclosures.
16.53 Notice of subpoenas and emergency disclosures.
16.54 Security of systems of records.
16.55 Employee standards of conduct.
16.56 Contracting record systems.
16.57 Use of collection of social security numbers.
16.58 Other rights and services.

* * * * *

3. Subpart A is revised to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Authority: 5 U.S.C. 552.

§ 16.1 General provisions.

(a) This subpart contains the regulations of the Department of Justice implementing the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. All requests for records that are not processed under subparts C or D of this part shall be processed under this subpart. Information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this subpart, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be inconsistent with subparts C, D, or E of this part. To the extent permitted by other laws, the Department will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosure could be in the public interest.

(b) As used in this subpart, the following terms shall have the following meanings:

(1) "Appeal" means the appeal by a requester of an adverse determination of his request, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(2) "Agency" has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(3) "Component" means each separate bureau, office, board, division, commission, service, or administration of the Department of Justice.

(4) "Request" means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(5) "Requester" means any person who makes a request to a component.

(6) "Business information" means trade secrets or other commercial or financial information.

(7) "Business submitter" means any commercial entity which provides business information to the Department of Justice and which has a proprietary interest in the information.

(c) The Assistant Attorney General, Office of Legal Policy, shall be responsible to the Attorney General for all matters pertaining to the administration of this subpart within the Department of Justice. The Assistant Attorney General, Office of Legal Policy, may take or direct such actions, directly or through the Office of Information and Privacy within the Office of Legal Policy, to carry out this responsibility as he deems necessary.

(d) Components of the Department of Justice shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). A component shall notify a requester whenever the component is unable to respond to or process the request or appeal within the time limits established by the FOIA. Components shall respond to and process requests and appeals in their approximate order of receipt, to the extent consistent with sound administrative practice.

§ 16.2 Public reference facilities.

(a) The Department of Justice shall maintain public reading rooms or areas at the locations listed below:

(1) United States Attorneys and United States Marshals—at the principal offices of the United States Attorneys listed in the United States Government Manual;

(2) Federal Bureau of Investigation—at the J. Edgar Hoover Building, 9th Street and Pennsylvania Avenue NW., Washington, D.C.;

(3) Immigration and Naturalization Service—at the Central Office, 425 I Street NW., Washington, D.C., and at each District Office in the United States listed in the United States Government Manual;

(4) All other components of the Department of Justice—Department of Justice, 10th Street and Constitution Avenue NW., Washington, D.C.

The public reference facilities of all components shall contain the materials relating to those components which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying.

(b) Each component shall maintain, make available for public inspection and copying, and publish each quarter a current index of the materials available at its public reading room or area which are required to be indexed under 5 U.S.C. 552(a)(2). However, if a component determines by order published in the **Federal Register** that publication of such an index would be unnecessary or impracticable, then it shall not be required to publish the index.

(c) Each component is responsible for determining which materials it generates or maintains are required to be indexed under 5 U.S.C. 552(a)(2). The Justice Management Division shall ensure that a current index of all materials required to be indexed under 5 U.S.C 552(a)(2) is published in the **Federal Register**, except to the extent that such publication is considered unnecessary or impracticable and an order to that effect is published in the **Federal Register**.

§ 16.3 Requirements pertaining to requests.

(a) *How Made and Addressed.* A requester may make a request under this subpart for a record of the Department of Justice by writing to the component that maintains the record. A request should be sent to the component at its proper address and both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request." (Appendix I to this part lists the components of the Department and their addresses. The functions of each component are summarized in Part 0 of this title and in the description of the Department and its components in the United States Government Manual, which is issued annually and is available from the Superintendent of Documents.) A requester in need of guidance in defining a request or determining the proper component to which he should send his request may write to the FOIA/PA Section, Justice Management Division, United States Department of Justice, 10th Street and Constitution Avenue NW., Washington, D.C. 20530. Requests for certain historical records of the Department maintained in National Archives and Records Service centers must be directed to the General Services Administration in accordance with its regulations.

(b) *Request Must Reasonably Describe the Records Sought.* A request must describe the records sought in sufficient detail to enable Department personnel to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of Department operations. Wherever possible, a request should

include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. To the extent possible, requesters are encouraged also to include in their requests the file designations of the records they seek. If a component determines that a request does not reasonably describe the records sought, the component shall either advise the requester what additional information is needed or otherwise state why the request is insufficient. The component also shall extend to the requester an opportunity to confer with Department personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(c) *Agreement to Pay Fees.* The filing of a request under this subpart shall be deemed to constitute an agreement by the requester to pay all applicable fees charged under § 16.10 of this subpart, up to $25, unless a waiver of fees is sought. The component responsible for responding to the request shall confirm this agreement in its letter of acknowledgement to the requester. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable.

§ 16.4 Responses by Components to Requests.

(a) *In General.* Except as otherwise provided in this section, the component that: (1) First receives a request for a record; and (2) has possession of the requested record is the component ordinarily responsible for responding to the request.

(b) *Authority to Grant or Deny Requests.* The head of a component, or his designee, is authorized to grant or deny any request for a record of that component.

(c) *Initial Action by the Receiving Component.* When a component receives a request for a record in its possession, the component shall promptly determine whether another component, or another agency of the Government, is better able to determine: (1) Whether the record is exempt, to any extent, from mandatory disclosure under the FOIA; and (2) whether the record, if exempt to any extent from mandatory disclosure under the FOIA, should nonetheless be released to the requester as a matter of discretion. If the receiving component determines that it is the component or agency best able to determine whether or not to disclose the record in response to the request, then the receiving component shall respond to the request. If the receiving component determines that it is not the component or agency best able to determine whether or not to dislcose the record in response to the request, the receiving component shall either:

(i) Respond to the request, after consulting with the component or other agency best able to determine whether or not to disclose the record and with any other component or agency having a substantial interest in the requested record or the information contained therein; or

(ii) Refer the responsibility for responding to the request to the component best able to determine whether or not to disclose the record, or to another agency that generated or originated the record, but only if that other component or agency is subject to the provisions of the FOIA.

Under ordinary circumstances, the component or agency that generated or originated a requested record shall be presumed to be the component or agency best able to determine whether or not to disclose the record in response to the request. However, nothing in this section shall prohibit a component that generated or originated a requested record from referring the responsibility for responding to the request to another component, if the component that generated or originated the requested record defermines that the other component has a greater interest in the requested record or the information contained therein.

(d) *Law Enforcement Information.* Whenever a request is made for a record containing information which relates to an investigation of a possible violation of criminal law or to a criminal law enforcement proceeding and which was generated or originated by another component or agency, the receiving component shall refer the responsibility for responding to the request to that other component or agency; however, such referral shall extend only to the information generated or originated by that other component or agency.

(e) *Classified Information.* Whenever a request is made for a record containing information which has been classified, or which may be eligible for classification, by another component or agency under the provisions of Executive Order 12356 or any other Executive Order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request to the component or agency that classified the information or should consider the information for classification. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information; however, such referral shall extend only to the information classified by the other component or agency.

(f) *Notice of Referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or to another agency, it ordinarily shall notify the requester of the referral and inform the requester of the name and address of each component or agency to which the request has been referred and the portions of the request so referred.

(g) *Agreements Regarding Consultations and Referrals.* No provision of this section shall preclude formal or informal agreements between components, or between a component and another agency, to eliminate the need for consultations or referrals of requests or classes of requests.

(h) *Separate Referrals of Portions of a Request.* Portions of a request may be referred separately to one or more components or to one or more other agencies whenever necessary to process the request in accordance with the provisions of this section.

(i) *Processing of Requests that Are Not Properly Addressed.* A request that is not properly addressed as specified in § 16.3(a) of this subpart shall be forwarded to the FOIA/PA Section, Justice Management Division, which shall forward the request to the appropriate component or components for processing. A request not addressed to the appropriate component will be deemed not to have been received by the Department of Justice until the FOIA/PA Section has forwarded the request to the appropriate component and that component has received the request, or until the request would have been so forwarded and received with the exercise of reasonable diligence by Department personnel. A component receiving an improperly addressed request forwarded by the FOIA/PA Section shall notify the requester of the date on which it received the request.

(j) *Date for Determining Responsive Records.* In determining records responsive to a request, a component ordinarily will include only those records within the component's possession and control as of the date of its receipt of the request.

§ 16.5 Form and content of component responses.

(a) *Form of Notice Granting a Request.* After a component has made a determination to grant a request in whole or in part, the component shall so notify the requester in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection shall not unreasonably disrupt the operations of the component. The component shall inform the requester in the notice of any fees to be charged in accordance with the provisions of § 16.10 of this subpart.

(b) *Form of Notice Denying a Request.* A component denying a request in whole or in part shall so notify the requester in writing. The notice must be signed by the head of the component, or his designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the component has relied upon in denying the request and a brief explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 16.8(a) and a description of the requirements of that subsection.

(c) *Record Cannot be Located or Has Been Destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the component shall so notify the requester in writing.

§ 16.6 Classified information.

In processing a request for information that is classified or classifiable under Executive Order 12356 or any other Executive Order concerning the classification of records, a component shall review the information to determine whether it warrants classification. Information which does not warrant classification shall not be withheld from a requester on the basis of 5 U.S.C. 552(b)(1). The Office of Information and Privacy shall, upon receipt of any appeal involving classified or classifiable information, take appropriate action to ensure compliance with Part 17 of this chapter.

§ 16.7 Business information.

(a) *In General.* Business information provided to the Department of Justice by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Notice to Business Submitters.* A component shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (c), and except as is provided in paragraph (g), of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(c) *When Notice Is Required.* (1) For business information submitted to the Department prior to May 1, 1984, the component shall provide a business submitter with notice of a request whenever: (i) The information is less than ten years old; (ii) the information is subject to prior express commitment of confidentiality given by the component to the business submitter; or (iii) the component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(2) For business information submitted to the Department on or after May 1, 1984, the component shall provide a business submitter with notice of a request whenever: (i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or (ii) the component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter. Notice of a request for business information falling within the former category shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to Object to Disclosure.* Through the notice described in paragraph (b), a component shall afford a business submitter a reasonable period within which to provide the component with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of Intent to Disclose.* A component shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a component decides to disclose business information over the objection of a business submitter, the component shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose shall be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA Lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c), the component shall promptly notify the business submitter.

(g) *Exceptions to Notice Requirements.* The notice requirements of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The component is a criminal law enforcement agency that acquired the information in the course of a lawful investigation of a possible violation of criminal law.

§ 16.8 Appeals.

(a) *Appeals to the Attorney General.* When a request for access to records or for a waiver of fees has been denied in whole or in part, or when a component fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the request to the Attorney General within 30 days of his receipt of a notice denying his request. An appeal to the Attorney General shall be made in writing and

addressed to the Office of Information and Privacy, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. Both the envelope and the letter of appeal itself must be clearly marked: "Freedom of Information Act Appeal." An appeal not so addressed and marked will be forwarded to the Office of Information and Privacy as soon as it is identified. An appeal that is improperly addressed will be deemed not to have been received by the Department until the Office of Information and Privacy receives the appeal, or would have done so with the exercise of reasonable diligence by Department personnel.

(b) *Action on Appeals by the Office of Information and Privacy.* Unless the Attorney General otherwise directs, the Director, Office of Information and Privacy, under the supervision of the Assistant Attorney General, Office of Legal Policy, shall act on behalf of the Attorney General on all appeals under this section, except that: (1) In the case of a denial of a request by the Assistant Attorney General Office of Legal Policy, the Office of Information and Privacy or his designee shall act on the appeal, and (2) a denial of a request by the Attorney General shall constitute the final action of the Department on that request.

(c) *Form of Action on Appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including each FOIA exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§ 16.9 Preservation of Records.

Each component shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 16.10 Fees.

(a) *When Charged.* Fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552 shall be charged according to the schedules contained in paragraph (b) of this section for services rendered in responding to requests for Justice Department records under this subpart unless the official of the Department making the initial or appeal decision determines that such charges, or a portion thereof, are not in the public interest because furnishing the information primarily benefits the general public. Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester, or unless the requester is an indigent individual. Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests,to less than $3. Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (c) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(b) *Services Charged for and Amount Charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies of documents (maximum of 10 copies will be supplied) $0.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing requested record, $1.00.

(3) [Reserved]

(4) *Certification.* For certification of true copies, each, $1.

(5) *Attestation.* For attestation under the seal of the Department, $3.

(6) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent in excess of the first quarter hour by such higher level personnel in searching for a requested record, $2.00.

(7) *Examination and related tasks in screening records.* No charge shall be made for time spent in resolving legal or policy issues affecting access to records of known contents. In addition, no charge shall be made for the time involved in examining records in connection with determining whether they are exempt from mandatory disclosure and should be withheld as a matter of sound policy.

(8) *Computerized records.*

(i) *Computer time charges (includes personnel costs).*

1. Central processor charge per hour	$1[illegible].00
2. Main storage charge per 1,000 bytes per hour	.60
3. Channel charges per hour	.74
4. Card reading per 1,000 cards	.20
5. Printing per 1,000 lines	.[illegible]
6. Card punching per 1,000 cards	10.[illegible]
7. Tape mount	.50
8. Specific device charges:	
a. IBM 2260 Cathode ray tube or equivalent per hour	[illegible].20
b. IBM 3330 Disk storage or equivalent per hour	39.72
c. IBM 2314 Disk storage or equivalent per hour	39.72
d. IBM 3420 Tape Drive or equivalent per hour	[illegible].50

(ii) *Material charges.*

1. One-part paper per 1,000	$1[illegible].[illegible]
2. Two-part paper per 1,000	17.63
3. Three-part paper per 1,000	28.95
4. Four-part paper per 1,000	37.52
5. Five-part paper per 1,000	50.83
6. Stock Hollerith cards per 1,000	1.78
7. Magnetic tape per reel	9.50
8. Disk pack, each	775.00

(9) *Tape recordings and other audio records.*

(i) *Personnel charges.* Personnel charges in connection with the duplication of audio records shall be charged in accordance with paragraph (b)(2) or (b)(6) of this section, whichever is appropriate.

(ii) *Materials charges.*

1. 45 minute cassette	$0.56
2. 60 minute cassette	[illegible]
3. 90 minute cassette	.77

(10) *Other charges.* When a response to a request requires services or materials other than the common ones described in paragraphs (b)(1) through (b)(9) of this section, the direct cost of such services or materials to the government may be charged, but only if the requester has been notified of such cost before it is incurred.

(c) *Notice of Anticipated Fees in Excess of $25.* Where it is anticipated that the fees chargeable under this

section will amount to more than $25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request so as to meet his needs at lower cost.

(d) *Form of Payment.* Payment should be made by check or money order payable to the Treasury of the United States.

(e) *Advance Deposit.* (1) Where the anticipated fee chargeable under this section exceeds $25, an advance deposit of 25 percent of the anticipated fee or $25, whichever is greater, may be required.

(2) Where a requester has previously failed to pay a fee under this section, an advance deposit of the full amount of the anticipated fee may be required.

(f) *Other Services.* Nothing in this section shall be construed to entitle any person, as of right, to any services or materials to which such person is not entitled under 5 U.S.C. 552.

§ 16.11 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552.

4. Section 16.33 is revised to read as follows:

§ 16.33 Fee for production of identification record.

Each written request for production of an identification record must be accompanied by a fee of $11.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigency.

5. Subpart D is revised to read as follows:

Subpart D—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Authority: 5 U.S.C. 552a.

§ 16.40 General provisions.

(a) *Purpose and Scope.* This subpart contains the regulations of the Department of Justice implementing the Privacy Act of 1974, 5 U.S.C. 552a. The regulations apply to all records which are contained in systems of records maintained by the Department of Justice and which are retrieved by an individual's name or personal identifier. These regulations set forth the procedures by which an individual may seek access under the Privacy Act to records pertaining to him, may request correction of such records, or may seek an accounting of disclosures of such records by the Department. These regulations are applicable to each component of the Department.

(b) *Transfer of Law Enforcement Records.* The head of a component, or his designee, is authorized to make written requests under 5 U.S.C. 552a(b)(7) for transfer of records maintained by other agencies which are necessary to carry out an authorized law enforcement activity of the component.

(c) *Definitions.* As used in this subpart, the following terms shall have the following meanings:

(1) "Agency" has the meaning given in 5 U.S.C. 551(l) and 5 U.S.C. 552a(a)(1).

(2) "Component" means each separate bureau, office, board, division, commission, service, or administration of the Department of Justice.

(3) "Record" means any item, collection, or grouping of information about an individual which is maintained by any component within a system of records and which contains the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

(4) "Request for access" means a request made pursuant to 5 U.S.C. 552a(d)(1).

(5) "Request for correction" means a request made pursuant to 5 U.S.C. 552a(d)(2).

(6) "Request for an accounting" means a request made pursuant to 5 U.S.C. 552a(c)(3).

(7) "Requester" means an individual who makes either a request for access, a request for correction, or a request for an accounting.

(8) "System of records" means a group of any records under the control of any component from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

§ 16.41 Requests for Access to Records.

(a) *Procedure for Making Requests for Access to Records.* An individual may request access to a record about him by appearing in person or by writing to the component that maintains the record. (Appendix I to this part lists the components of the Department of Justice and their addresses. The "Notice of Records Systems" published by the National Archives and Records Service, General Services Administration, describes the systems of records maintained by all federal agencies, including the Department and its components.) A requester in need of guidance in defining his request may write to the FOIA/PA Section, Justice Management Division, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. A request should be addressed to the component that maintains the requested record. Both the envelope and the request itself should be marked: "Privacy Act Request." Requests for certain historical records of the Department maintained in National Archives and Records Service centers must be directed to the General Services Administration in accordance with its regulations.

(b) *Description of Records Sought.* A request for access to records must describe the records sought in sufficient detail to enable Department personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the record sought, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept. The Notices the Department publishes in the Federal Register describing its components' systems of records may require, in appropriate instances, that requests for access to records describe the records sought with even greater specificity.

(c) *Agreement to Pay Fees.* The filing of a request for access to a record under this subpart shall be deemed to constitute an agreement to pay all applicable fees charged under § 16.47 up to $25.00. The component responsible for responding to the request shall confirm this agreement in its letter of acknowledgment to the requester. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable.

(d) *Verification of Identity.* Any individual who submits a request for access to records must verify his identity in one of the following ways, unless the notice published in the **Federal Register** describing the relevant system of records provides otherwise:

(1) Any requester making a request in writing must state in his request his full name, current address, and date and place of birth. In addition, a requester must provide with his request an example of his signature, which shall be notarized. Sample forms used for such notarized statement of identity may be which may be obtained from the FOIA/PA Section, Justice Management Division, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. In order to facilitate the identification and location of the requested records, a requester may also, at his option, include in his request his Social Security number.

(2) Any requester submitting a request in person may provide to the component a form of official photographic identification, such as a passport or an identification badge. If a requester is unable to produce a form of photographic identification, he may provide to the component two or more acceptable forms of identification (such as a driver's license or credit card) bearing his name and address.

(e) *Verification of Guardianship.* The parent or guardian of a minor (or the guardian of a person judicially determined to be incompetent) who submits a request for access to the records of the minor or incompetent must establish: (1) His own identity and the identity of he subject of the record, as required in paragraph (d) of this section, (2) that the is the parent or guardian of the subject of the record, which may be proved by providing a copy of the subject's birth certificate showing parentage or by providing a court order establishing the guardianship, and (3) that he seeks to act on behalf of the subject of the record.

§ 16.42 Responses by components to requests for access to records.

(a) *In General.* Except as otherwise provided in this section, the component that: (1) First receives a request for access to a record, and (2) has possession of the requested record is the component ordinarily responsible for responding to the request.

(b) *Authority to Grant or Deny Requests.* The head of a component, or his designee, is authorized to grant or deny any request for access to a record of that component.

(c) *Initial Action by the Receiving Component.* When a component receives a request for access to a record in its possession, the component shall promptly determine whether another component, or another Government agency, is better able to determine whether the record is exempt, to any extent, from access. If the receiving component determines that it is the component or agency best able to determine whether the record is exempt, to any extent, from access, then the receiving component shall respond to the request. If the receiving component determines that it is not the component or agency best able to determine whether or not the record is exempt from access, the receiving component shall respond to the request, after consulting with the component or agency best able to determine whether or not the record is exempt from access. Under ordinary circumstances, the component or agency that generated or originated a requested record shall be presumed to be the component or agency best able to determine whether or not the record is exempt from access. However, nothing in this section shall prohibit a component that generated or originated a requested record from consulting with another component or agency, if the component that generated or originated the requested record determines that the other component or agency has an interest in the requested record or the information contained therein.

(d) *Law Enforcement Information.* Whenever a request for access is made for a record containing information which relates to an investigation of a possible violation of criminal law or to a criminal law enforcement proceeding and which was generated or originated by another component or agency, the receiving component shall consult with that other component or agency, as appropriate.

(e) *Classified Information.* Whenever a request for access is made for a record containing information which has been classified, or which may be eligible for classification, by another component or agency under the provision of Executive Order 12356 or any other Executive Order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request to the component or agency that classified the information or should consider the information for classification. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information; however, such referral shall extend only to the information classified by the other component or agency.

(f) *Agreements Regarding Consultations.* No provision of this section shall preclude formal or informal agreements between components, or between a component and another agency, to eliminate the need for consultations concerning requests or classes of requests.

(g) *Processing of Requests for Access Not Properly Addressed.* A request for access that is not properly addressed as specified in § 16.41(a) of this subpart shall be forwarded to the FOIA/PA Section, Justice Management Division, which shall forward the request to the appropriate component or components for processing. A request not addressed to the appropriate component will be deemed not to have been received by the Department until the FOIA/PA Section has forwarded the request to the appropriate component and that component has received the request, or until the request would have been so forwarded and received with the exercise of reasonable diligence by Department personnel. A component receiving an improperly addressed request from the FOIA/PA Section shall notify the requester of the date on which it received the request.

(h) *Date for Determining Responsive Records.* In determining records responsive to a request for access, a component ordinarily will include only those records within the component's possession and control as of the date of its receipt of the request.

§ 16.43 Form and content of component responses.

(a) *Form of Notice Granting Request for Access.* After a component has made a determination to grant a request for access in whole or in part, the component shall so notify the requester in writing. The notice shall describe the manner in which access to the record will be granted and shall inform the requester of any fees to be charged in accordance with § 16.47 of this subpart.

(b) *Form of Notice Denying Request for Access.* A component denying a request for access in whole or in part shall so notify the requester in writing. The notice shall be signed by the head of the responsible component, or his designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the

Privacy Act exemption or exemptions which the component has relied upon in denying the request and a brief explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 16.48(a) of this subpart, and a description of the requirements of that subsection.

(c) *Record Cannot be Located or Has Been Destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the component shall so notify the requester in writing.

(d) *Medical Records.* When an individual requests medical records pertaining to himself which are not otherwise exempt from individual access, the component may advise the individual that the records will be provided only to a physician, designated by the individual, who requests the records and establishes his identity in writing. The designated physician shall determine which records should be provided to the individual and which records should not be disclosed to the individual because of possible harm to the individual or another person.

§ 16.44 Classified information.

In processing a request for access to a record containing information that is classified or classifiable under Executive Order 12356 or any other Executive Order concerning the classification of records, a component shall review the information to determine whether it warrants classification. Information which does not warrant classification shall not be withheld from a requester on the basis of 5 U.S.C. 552a(k)(1). The Office of Information and Privacy shall, upon receipt of any appeal involving classified or classifiable information, take appropriate action to ensure compliance with Part 17 of this chapter.

§ 16.45 Records in exempt systems of records.

(a) *Law Enforcement Records Exempted Under Subsection (k)(2).* Before denying a request by an individual for access to a law enforcement record which has been exempted from access pursuant to 5 U.S.C. 552a(k)(2), the component must review the requested record to determine whether information in the record has been used or is being used to deny the individual any right, privilege, or benefit for which he is eligible or to which he would otherwise be entitled under federal law. If so, the component shall notify the requester of the existence of the record and disclose such information to the requester, except to the extent that the information would identify a confidential source. In cases where disclosure of information in a law enforcement record could reasonably be expected to identify a confidential source, the record shall not be disclosed to the requester unless the component is able to delete from such information all material which would identify the confidential source.

(b) *Employee Background Investigations.* When a requester requests access to a record pertaining to a background investigation and the record has been exempted from access pursuant to 5 U.S.C. 552a(k)(5), the record shall not be disclosed to the requester unless the component is able to delete from such record all information which would identify a confidential source.

§ 16.46 Access to records.

(a) *Manner of Access.* A component that has made a determination to grant a request for access shall grant the requester access to the requested record either by: (1) Providing the requester with a copy of the record or (2) making the record available for inspection by the requester at a reasonable time and place. The component shall in either case charge the requester applicable fees in accordance with the provisions of § 16.47 of this subpart. If a component provides access to a record by making the record available for inspection by the requester, the manner of such inspection shall not unreasonably disrupt the operations of the component.

(b) *Accompanying Person.* A requester appearing in person to review his records may be accompanied by another individual of his own choosing. Both the requester and the accompanying person shall be required to sign a form stating that the Department of Justice is authorized to disclose the record in the presence of both individuals.

§ 16.47 Fees for access to records.

(a) *When Charged.* A component shall charge fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552a(f)(5) for the copying of records to afford access to individuals unless the component, in its discretion, waives or reduces the fees for good cause shown. A component shall charge fees only at the rate of $0.10 per page. For materials other than paper copies, the component may charge the direct costs of reproduction, but only if the requester has been notified of such costs before they are incurred. Fees shall not be charged where they would amount, in the aggregate, for one request or for a series of related requests, to less than $3.00. However, a component may, in its discretion, increase the amount of this minimum fee.

(b) *Notice of Estimated Fees in Excess of $25.* When a component determines or estimates that the fees to be charged under this section may amount to more than $25, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fee, unless the requester has indicated in advance his willingness to pay a fee as high as that anticipated. (If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee.) Where the estimated fee exceeds $25 and a component has so notified the requester, the component will be deemed not to have received the request for access to records until the requester has agreed to pay the anticipated fee. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Department personnel with the object of reformulating his request to meet his needs at a lower cost.

(c) *Form of Payment.* Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(d) *Advance Deposits.* (1) Where the estimated fee chargeable under this section exceeds $25, a component may require a requester to make an advance deposit of 25 percent of the estimated fee or an advance payment of $25, whichever is greater.

(2) Where a requester has previously failed to pay a fee charged under this part, the requester must pay the component or the Department the full amount owed and make an advance deposit of the full amount of any estimated fee before a component shall be required to process a new or pending request for access from that requester.

§ 16.48 Appeals from denials of access.

(a) *Appeals to the Attorney General.* When a component denies in whole or in part a request for access to records, the requester may appeal the denial to the Attorney General within 30 days of his receipt of the notice denying his request. An appeal to the Attorney General shall be made in writing, addressed to the Office of Information and Privacy, United States Department of Justice, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530. Both the envelope and the letter of appeal itself must be clearly marked: "Privacy Act Appeal." An appeal not so addressed and marked shall be forwarded to the Office of Information

and Privacy as soon as it is identified as an appeal under the Privacy Act. An appeal that is improperly addressed shall be deemed not to have been received by the Department until the Office of Information and Privacy receives the appeal, or until the appeal would have been so received with the exercise of reasonable diligence by Department personnel.

(b) *Action on Appeals by the Office of Information and Privacy.* Unless the Attorney General otherwise directs, the Director, Office of Information and Privacy, under the supervision of the Assistant Attorney General, Office of Legal Policy, shall act on behalf of the Attorney General on all appeals under this section, except that: (1) In the case of a denial of a request for access by the Assistant Attorney General, Office of Legal Policy, the Attorney General or his designee shall act on the appeal, and (2) a denial of a request for access by the Attorney General shall constitute the final action of the Department on that request.

(c) *Form of Action on Appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request for access shall include a brief statement of the reason or reasons for the affirmance, including each Privacy Act exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If the denial of a request for access is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§ 16.49 Preservation of records.

Each component shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request for access, appeal, or lawsuit under the Act.

§ 16.50 Requests for correction of records.

(a) *How Made.* Unless a record is exempted from correction and amendment, an individual may submit a request for correction of a record pertaining to him. A request for correction must be made in writing and must be addressed to the component that maintains the record. (Appendix I to this part lists the components of the Department and their addresses.) The request must identify the particular record in question, state the correction sought, and set forth the justification for the correction. Both the envelope and the request for correction itself must be clearly marked: "Privacy Act Correction Request." If a requester believes that the same record appears in more than one system of records, he should address his request for correction to each component that controls a system of records which contains the record.

(b) *Initial Determination.* Within 10 working days of receiving a request for correction, a component shall notify the requester whether his request will be granted or denied, in whole or in part. If the component grants the request for correction in whole or in part, it shall advise the requester of his right to obtain a copy of the corrected record, in releasable form, upon request. If the component denies the request for correction in whole or in part, it shall notify the requester in writing of the denial. The notice of denial shall state the reason or reasons for the denial and advise the requester of his right to appeal.

(c) *Appeals.* When a request for correction is denied in whole or in part, the requester may appeal the denial to the Attorney General within 30 days of his receipt of the notice denying his request. An appeal to the Attorney General shall be made in writing, shall set forth the specific item of information sought to be corrected, and shall include any documentation said to justify the correction. An appeal shall be addressed to the Office of Information and Privacy, United States Department of Justice, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530, unless the appeal is from a denial by the Assistant Attorney General, Office of Legal Policy, in which case the appeal shall be addressed to the Attorney General, at the same address. Both the envelope and the letter of appeal itself must be clearly marked: "Privacy Act Correction Appeal."

(d) *Determination on Appeal.* The Director, Office of Information and Privacy, under the supervision of the Assistant Attorney General, Office of Legal Policy, or the Attorney General in appropriate cases, shall decide all appeals from denials of requests to correct records. All such appeals shall be decided within 30 working days of receipt of the appeal, unless there is good cause to extend this period. If the denial of a request is affirmed on appeal, the requester shall be so notified in writing and advised of: (1) The reason or reasons the denial has been affirmed, (2) the requester's right to file a Statement of Disagreement, as provided in paragraph (e) of this section, and (3) the requester's right to obtain judicial review of the denial in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the record is located, or the District of Columbia. If the denial is reversed on appeal, the requester shall be so notified and the request for correction shall be remanded to the component that denied the request for processing in accordance with the decision on appeal.

(e) *Statements of Disagreement.* A requester whose appeal under this section is denied shall have the right to file a Statement of Disagreement with the Office of Information and Privacy, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530, within 30 days of receiving notice of denial of his appeal. Statements of Disagreement may not exceed one typed page per fact disputed. Statements exceeding this limit shall be returned to the requester for condensation. Upon receipt of a Statement of Disagreement under this section, the Director, Office of Information and Privacy, shall have the statement included in the system of records in which the disputed record is maintained and shall have the disputed record marked so as to indicate (1) that a Statement of Disagreement has been filed, and (2) where in the system of records the Statement may be found.

(f) *Notices of Correction or Disagreement.* Within 30 working days of the correction of a record, the component that maintains the record shall advise all components or agencies to which it previously disclosed the record that the record has been corrected. Whenever an individual has filed a Statement of Disagreement, a component shall append a copy of the Statement to the disputed record whenever the record is disclosed. The component may also append to the disupted record any written statement it has made giving the component's reasons for denying the request to correct the record.

§ 16.51 Records not subject to correction.

The following records are not subject to correction or amendment as provided in § 16.50 of this subpart:

(a) Transcripts of testimony given under oath or written statements made under oath;

(b) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings which constitute the official record of such proceedings;

(c) Presentence reports which are the property of the courts, but are maintained by a component in a system of records; and

(d) Records duly exempted from correction pursuant to 5 U.S.C. 552a(j) or 552a(k) by notice published in the **Federal Register.**

§ 16.52 Request for accounting of record disclosures.

(a) An individual may request a component that maintains a record pertaining to him to provide him with an accounting of those other agencies to which the component has disclosed the record, and the date, nature, and purpose of each disclosure. A request for an accounting must be made in writing and must identify the particular record for which the accounting is requested. The request also must be addressed to the component that maintains the particular record, and both the envelope and the request itself must clearly be marked: "Privacy Act Accounting Request." (Appendix I to this part lists the components of the Department and their addresses.)

(b) Components shall not be required to provide an accounting to an individual to the extent that the accounting relates to: (1) Records for which no accounting must be kept pursuant to 5 U.S.C. 552a(c)(1), (2) disclosures of records to law enforcement agencies for lawful law enforcement activities, pursuant to written requests from such law enforcement agencies specifying records sought and the law enforcement activities for which the records are sought, under 5 U.S.C. 552a(c)(3) and (b)(7), or (3) records for which an accounting need not be disclosed pursuant to 5 U.S.C. 552a (j) or (k).

(c) A denial of a request for an accounting may be appealed to the Attorney General in the same manner as a denial of a request for access, with both the envelope and the letter of appeal itself clearly marked: "Privacy Act Accounting Appeal."

§16.53 Notice of subpoenas and emergency disclosures.

(a) *Subpoenas.* When records pertaining to an individual are subpoenaed by a grand jury, court, or quasi-judicial authority, the official served with the subpoena shall be responsible for ensuring that written notice of its service is forwarded to the individual. Notice shall be provided within 10 working days of the service of the subpoena or, in the case of a grand jury subpoena, within 10 working days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: The date the subpoena is returnable, the court or quasi-judicial authority to which it is returnable, the name and number of the case or proceeding, and the nature of the records sought. Notice of the service of a subpoena is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 522a(e)(8), pursuant to 5 U.S.C. 552a(j), by a Notice of Exemption published in the **Federal Register.**

(b) *Emergency Disclosures.* If the record of an individual has been disclosed to any person under compelling circumstances affecting the health or safety of any person, as described in 5 U.S.C. 552a(b)(8), the individual to whom the record pertains shall be notified of the disclosure at his last known address within 10 working days. The notice of such disclosure shall be in writing and shall state the nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure, and the compelling circumstances justifying the disclosure. The officer who made or authorized the disclosure shall be responsible for providing such notification.

§ 16.54 Security of systems of records.

(a) The Assistant Attorney General for Administration, Justice Management Division, shall be responsible for issuing regulations governing the security of systems of records. To the extent that such regulations govern the security of automated systems of records, the regulations shall be consistent with the guidelines developed by the National Bureau of Standards.

(b) Each component shall establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent the unauthorized disclosure of records, and to prevent the physical damage or destruction of records. The stringency of such controls shall reflect the sensitivity of the records the controls protect. At a minimum, however, each component's administrative and physical controls shall ensure that: (1) Records are protected from public view, (2) the area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to the records, and (3) records are inaccessible to unauthorized persons outside of business hours.

(c) Each component shall establish rules restricting access to records to only those individuals within the Department who must have access to such records in order to perform their duties. Each component also shall adopt procedures to prevent the accidental disclosure of records or the accidental granting of access to records.

§16.55 Contracting record systems.

(a) No component of the Department shall contract for the operation of a record system by or on behalf of the Department without the express approval of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for Administration.

(b) Any contract which is approved shall contain the standard contract requirements promulgated by the General Services Administration to ensure compliance with the requirements imposed by the Privacy Act. The contracting component shall have responsibility for ensuring that the contracter complies with the contract requirements relating to privacy.

§ 16.56 Use and collection of social security numbers.

(a) Each system manager of a system of records which utilizes Social Security numbers as a method of identification without statutory authorization, or authorization by regulation adopted prior to January 1, 1975, shall take steps to revise the system to avoid future collection and use of the Social Security numbers.

(b) The head of each component shall take such measures as are necessary to ensure that employees authorized to collect information from individuals are advised that individuals may not be required to furnish Social Security numbers without statutory or regulatory authorization and that individuals who are requested to provide Social Security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

§ 16.57 Employee standards of conduct.

(a) Each component shall inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Each component also shall notify its employees that they have a duty to: (1) Protect the security of records, (2) ensure the accuracy, relevance, timeliness, and completeness of records, (3) avoid the unauthorized disclosure, either verbal or written, of records, and

(4) ensure that the component maintains no system of records without public notice.

(b) Except to the extent that the Privacy Act permits such activities, an employee of the Department of Justice shall:

(1) Not collect information of a personal nature from individuals unless the employee is authorized to collect such information to perform a function or discharge a responsibility of the Department;

(2) Collect from individuals only that information which is necessary to the performance of the functions or to the discharge of the responsibilities of the Department;

(3) Collect information about an individual directly from that individual, whenever practicable;

(4) Inform each individual from whom information is collected of: (i) The legal authority that authorizes the Department to collect such information, (ii) the principal purposes for which the Department intends to use the information, (iii) the routine uses the Department may make of the information, and (iv) the practical and legal effects upon the individual of not furnishing the information;

(5) Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as to ensure fairness to the individual in the determination;

(6) Except as to disclosures to an agency or pursuant to 5 U.S.C. 552a(b)(2), make reasonable efforts, prior to disseminating any record about an individual, to ensure that such records are accurate, relevant, timely, and complete;

(7) Maintain no record concerning an individual's religious or political beliefs or activities, or his membership in associations or organizations, unless: (i) The individual has volunteered such information for his own benefit, (ii) a statute expressly authorizes the Department to collect, maintain, use, or disseminate the information, or (iii) the individual's beliefs, activities, or membership are pertinent to and within the scope of an authorized law enforcement or correctional activity;

(8) Notify the head of the component of the existence or development of any system of records that has not been disclosed to the public;

(9) When required by the Act, maintain an accounting in the prescribed form of all disclosures of records by the Department to agencies or individual's whether verbally or in writing;

(10) Disclose no record to anyone, except a component, for any use, unless authorized by the Act;

(11) Maintain and use records with care to prevent the inadvertent disclosure of a record to anyone; and

(12) Notify the head of the component of any record that contains information that the Act or the foregoing provisions of this paragraph do not permit the Department to maintain.

(c) Not less than once each year, the head of each component shall review the systems of records maintained by that component to ensure that the component is in compliance with the provisions of the Privacy Act.

§ 16.58 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552a.

6. An Appendix I is added to Part 16, to read as follows:

Appendix I to Part 16

Components of the Department of Justice

Unless otherwise noted, the address for each component is: United States Department of Justice, 10th Street & Constitution Avenue, NW., Washington, D.C. 20530.

Office of the Attorney General
Office of the Deputy Attorney General
Office of the Associate Attorney General
Office of the Solicitor General
Office of Legal Counsel
Office of Legal Policy
Office of Legislative and Intergovernmental Affairs
Antitrust Division
Civil Division
Civil Rights Division
Criminal Division
Land and Natural Resources Division
Tax Division
Office of Justice Assistance, Research, and Statistics, United States Department of Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531
Justice Management Division
Bureau of Prisons, United States Department of Justice, HOLC Building, 320 First Street., N.W., Washington, D.C. 20534
Community Relations Service, United States Department of Justice, 5550 Friendship Boulevard, Chevy Chase, MD 20815
Drug Enforcement Administration, Eye Street Building, 1405 Eye Street, N.W., Washington, D.C. 20005
Executive Office for Immigration Review, United States Department of Justice, 5203 Leesburg Pike, Falls Church, VA 22041
Executive Office for United States Attorneys
Executive Office for United States Trustees, United States Department of Justice, HOLC Building, 320 First Street, N.W., Washington, D.C. 20534
Federal Bureau of Investigation, 9th St. & Pennsylvania Ave., N.W., Washington, D.C. 20535 [for field offices, consult the list of FBI field offices in the United States Government Manual]
Federal Prison Industries, Inc., HOLC Building, 320 First Street, N.W., Washington, D.C. 20534
Foreign Claims Settlement Commission, Vanguard Building, 1111 20th Street, N.W., Washington, D.C. 20579
Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, D.C. 20536 [for district offices consult the list of INS district offices in the United States Government Manual]
Office of Intelligence Policy and Review
Office of the Pardon Attorney, United States Department of Justice, Park Place Building, 5550 Friendship Blvd., Chevy Chase, MD 20815
Office of Professional Responsibility
Office of Public Affairs
United States Marshals Service, One Tysons Corner Center, McLean, VA 22102
United States National Central Bureau—Interpol
United States Parole Commission, Park Place Building, 5550 Friendship Blvd., Chevy Chase, MD 20815

PART 50—[AMENDED]

7. Section 50.8 of Part 50 is revised to read as follows:

§ 50.8 [Amended]

(a) The Department of Justice recognizes that portions of certain investigatory files compiled by the Department for law enforcement purposes, although of significant historical interest, are nevertheless exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552, as amended. In responding to requests pursuant to that Act, it is the general policy of the Department that such files that are more than fifteen years old and that are no longer substantially related to current law enforcement activities will be processed for disclosure subject to deletions to the minimum extent necessary to protect law enforcement efficiency, personal privacy, or other legitimate interests that

would be implicated by the disclosure of such files.

(b) The policy set forth in this section shall not be deemed to constitute a waiver of any applicable exemption under the Freedom of Information Act. By providing for exemptions in the Act, Congress conferred upon agencies the discretion to grant access to exempt materials, unless otherwise prohibited. All disclosures pursuant to the policy set forth in this section are at the sole discretion of the Attorney General and of those persons to whom authority therefor may be delegated.

(c) This policy is intended to further the public's knowledge of matters of historical interest and, at the same time, to preserve the Department's law enforcement efficiency and to protect personal privacy and other legitimate interests.

Dated: March 23, 1984.

William French Smith,

Attorney General.

[FR Doc. 84-8282 Filed 3-28-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

Correction

In FR Doc. 84-4627 beginning on page 6488, in the issue of Wednesday, February 22, 1984 make the following correction.

In line ten of the summary, insert the word "fully" between "comply" and "with."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6528

[A-030682, A-033854, A-049677, AA-50511]

Alaska; Transfer of Jurisdiction; Revocation of Public Land Order 1102, as Amended; Partial Revocation of Public Land Orders 1345, 1523, and 2993

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes four public land orders affecting 613.19 acres of public land withdrawn for airports and military purposes. It also transfers jurisdiction of 39.97 acres of acquired land from the Department of the Army to the Department of the Interior. This action makes all the lands available for conveyance to the State of Alaska. The lands remain closed to all other forms of appropriation under the public land laws, including mining and mineral leasing, by Section 1425 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, 907-271-3240.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by Section 1425 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980; Pub. L. 96-487 (94 Stat. 2515), it is ordered as follows:

1. Public Land Order No. 1102 of March 23, 1955, as amended, which withdrew lands for use by the Department of Interior for an airport, is hereby revoked in its entirety, and Public Land Order Nos. 1345, 1523, and 2993, of October 16, 1956, October 8, 1957, and March 22, 1963, respectively, which withdrew lands for use by the Department of the Army for military purposes are hereby revoked as to the following described lands:

Seward Meridian, Alaska

T. 15 N., R. 3 W.,
Sec. 6, S½SW¼SE¼;
Sec. 7, N½SE¼;
Sec. 8, W½SW¼NW¼NW¼, W½W½SW¼NW¼, W½NW¼NW¼SW¼SW¼NW¼SW¼, W½SE¼NW¼SW¼, SE¼SE¼NW¼SW¼, S½SW¼, SW¼SE¼;
Sec. 16, fractional, lots 1, 2, and 3;
Sec. 17, fractional, lots 1, 2, 3, 5, and 6, N½NE¼.

The area described contains 613.19 acres.

2. Subject to valid existing rights, jurisdiction of the following described land, which was acquired by the United States and used by the Department of the Army for the Nike Site Bay Military Reservation, is hereby transferred to the Department of the Interior for conveyance to the State of Alaska.

Seward Meridian, Alaska

T. 15 N., R. 3 W.,
Sec. 17, U.S. Survey No. 1087.

The area described contains 39.97 acres.

3. The lands described in paragraphs 1 and 2 remain closed to operation of the public land laws, including the mining and mineral leasing laws, by Section 1425 of ANILCA.

4. The lands described in paragraphs 1 and 2 will be conveyed to the State of Alaska under the provisions of Section 1425 of ANILCA, and the North Anchorage Land Agreement, as amended.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands, Bureau of Land Management, 701 "C" Street, Box 13, Anchorage, Alaska 99513.

Dated: March 22, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-8449 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[MM Docket No. 84-1; FCC 84-87]

Compensation for Expenses Incurred in Mitigating the Effects of Cuban Interference to Services Rendered by AM Radio Stations in the United States

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action establishes the requirements for compensation to United States AM radio broadcasters for certain allowable expenses they incur in mitigating interference from Cuban stations.

The Radio Broadcasting to Cuba Act directs the FCC to issue regulations prescribing such requirements.

AM broadcasters who meet the requirements set forth in the new regulations will be found eligible, by the FCC, to receive compensation payments by the United States Information Agency in such amounts, up to a maximum determined by the FCC, as the USIA finds appropriate taking into account the amounts of funds that Congress may in the future appropriate for this purpose and the demand for compensation by qualifying broadcasters.

EFFECTIVE DATE: August 1, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens or Wilson LaFollette, (202) 632-7792, (202) 632-5414, Mass

Media Bureau, Federal Communications Commission.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, Cuban interference to radio stations.

Report and Order

In the matter of compensation for expenses incurred in mitigating the effects of Cuban interference to services rendered by AM Radio Stations in the United States; MM Docket No. 84–1.

Adopted: March 15, 1984.
Released: March 23, 1984.

By the Commission.

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A—Text of Section 7 of the Radio Broadcasting to Cuba Act
B—Text of new Subpart M, Part 1 of the Rules and Regulations of the Federal Communications Commission

I. Introduction

1. In a *Notice of Proposed Rule Making* adopted in this proceeding on January 4, 1984, 49 FR 1091, the Commission invited comments on proposed regulations mandated by section 7 of the Radio Broadcasting to Cuba Act ("the act")[1] Section 7 provides for a program of interim assistance to U.S. AM radio broadcasters in the form of compensation for allowable expenses incurred in mitigating the effects of interference from Cuban stations, and directs the Federal Communications Commission to issue regulations and establish the procedures for providing such compensation. Having considered this matter in light of the comments and reply comments filed in this proceeding, we now adopt the regulations set forth in Appendix B.

[1] Pub. L. No. 98–111, 97 Stat. 749 (Approved Oct. 4, 1983). Section 7 of this Act is set out in full in Appendix A.

II. Background

2. As we observed in the *Notice* inaugurating this proceeding, efforts so far have failed to resolve the problem of longstanding and shifting patterns of interference to AM radio broadcast stations in the United States by Cuban stations. It started before Cuba gave notice in November, 1980, of its intent to withdraw from the North American Regional Broadcasting Agreement as of November, 1981. It has worsened since Cuba withdrew from the Regional Administrative Radio Conference, Rio de Janeiro, 1981 and declined to sign the Final Acts of that conference (hereinafter sometimes referred to as "the Rio Final Acts"), which established a Region 2 Plan for mutual protection of the AM services of participating Western Hemisphere countries.

3. The Radio Broadcasting to Cuba Act recognizes that the eventual solution is to be sought by negotiating a settlement of U.S. claims to protection against Cuban interference, and the Act looks to the Secretary of State to pursue such a settlement. Meanwhile, the Act calls for the establishment of a program of interim assistance to the United States broadcasters who are adversely affected by Cuban radio interference and who, before, on, or after the date of its enactment (October 4, 1983) incur expenses in mitigating such interference pursuant to special temporary authorizations (STAs) issued by this Commission.

III. Commenting Parties

4. Comments and Reply Comments were filed by the below-listed parties:

Party	Comment	Reply comment
American Legal Foundation	X	
Clear Channel Broadcasting Service		X
Department of State, by the Coordinator for International Communications and Information Policy.	X	
Great Southern Broadcasting Company, Inc.	X	
Joint filing by: Florida Association of Broadcasters and South Florida Radio Broadcasters Association ("Florida Associations").	X	X
National Association of Broadcasters (NAB).	X	
National Radio Broadcasters Association (NRBA).	X	
National Telecommunications and Information Agency (NTIA).		
Plough Broadcasting Company	X	
Ronald F. Schatz	X	X
Sudbrink Broadcasting Company	X	X
Susquehanna Broadcasting Company	X	
United States Information Agency (USIA).		X

In deciding upon the regulations set forth in Appendix B, hereto, we have carefully considered the foregoing comments and reply comments. Their substance is noted in the following discussions of the several questions involved.

IV. Discussion

5. *Definition of Cuban Interference.* In AM broadcasting, both domestically and internationally, the presence or absence of interference is customarily determined by whether, at the point of reception, the field strength of the signals of other co-channel or adjacent-channel stations exceeds a stated ratio with respect to the signals of the protected station. The ratios generally applicable among the several countries of the Western Hemisphere are those set out in the Final Acts of the Regional Administrative Radio Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro, 1981. Our proposal to use this standard was generally supported by commenting parties. The comments filed jointly by the Florida Associations referred to departures from the provisions of the North American Regional Broadcasting Agreement (NARBA). However, while NARBA at one time prescribed the ratio applicable as between Cuba and the United States, it no longer governs.

6. We believe that the Final Acts of the 1981 AM Conference at Rio de Janeiro provide the appropriate standard to apply in making findings concerning Cuban interference for the purpose of determining eligibility for compensation under Section 7 of the Radio Broadcasting to Cuba Act. Cuba, as a Member of the International Telecommunication Union, has agreed not to cause "harmful interference" to the radio stations of other Members. The United States is an ITU Member. The term "harmful interference" is defined in the ITU Convention as "interference * * * which seriously degrades,

obstructs or repeatedly interrupts a radiocommunication service operating in accordance with the Radio Regulations." The Rio Final Acts, comprising an ITU Regional Agreement that has been signed by most countries of the Western Hemisphere (ITU Region 2), establish the norms generally applicable in Region 2 for determining when radiation exceeds a generally acceptable level and is considered to cause "objectionable interference." Under the ITU Radio Regulations this quantfied standard is applied, in lieu of the more loosely defined concept of "harmful interference, in determining whether signatories to a Regional Agreement are providing due protection to the stations of the other signatories. Cuba has not signed or adhered to the Rio Final Acts, but this is not to say that the interference standards established in that document are irrelevant or inapplicable to Cuba. The standards established in the Final Acts provide the appropriate basis for quantifying the level of radiation, from a non-signatory to the Rio Final Acts toward stations in any other country in the Western Hemisphere, that may reasonably be considered as likely to cause "harmful interference" within the meaning of the ITU Radio Regulations that do apply to Cuba. In fact, we would find it difficult to understand the justification for quantifying "harmful interference" from any non-signatory in Region 2 toward any other Western Hemisphere country otherwise than by applying the standards that most countries in this Hemisphere have agreed to apply in determining when radiations reach an objectionable level. We therefore consider it appropriate to apply the norms of the Rio Final Acts in determining whether radiations from Cuba toward AM stations in the United States constitute interference for the purposes of the Section 7 program of compensation to affected American broadcasters. We so provide in Section 1.1702 of the new regulations.

7. One result is that, in determining whether Cuban stations cause skywave interference to AM stations in the United States, we employ the 50% skywave signal incidence standard of the Rio Final Acts rather than the 10% standard that is applicable as among stations within the United States. This approach was supported by the NTIA and other parties, but was objected to in comments filed by the Florida Associations, who contend that because the Commission employs the 10% skywave signal incidence factor for other domestic purposes, it should similarly treat interfering Cuban skywave signals. We believe, however, that for the purpose of the program of compensation under Section 7 of the Act, which concerns interference from another country, it is more appropriate to apply the pertinent international standard.

8. *Method for Calculating the Level of Cuban Interference.* It is usually possible to base calculations of the level of interference on the locations of the interfering stations and known operating parameters such as power and antenna radiation pattern. It has been evident for some time, however, that numbers of Cuban stations are not operating with announced facilities, but are in fact employing powers and other station characteristics different from those reflected in regularly available data. Discrepancies between reported and actual operating powers have been apparent in the results of the Commission's monitoring of received field strengths of Cuban signals at locations within the United States, especially at its Fort Lauderdale monitoring station. In these circumstances, it will be necessary, in determining the power levels of Cuban AM transmissions for the purposes of the Section 7 compensation program, to establish a method that can appropriately be used for calculating such powers until Cuba comes into conformity with the established international practices concerning the announcement of proposed changes in frequency assignments and the avoidance of harmful interference to stations in other countries.

9. In paragraph 21 of the *Notice of Proposed Rule Making,* we recognized the need for periodic monitoring, at suitable locations, of the field strengths of the signals of Cuban stations on all 107 AM channels. Data so accrued, together with appropriate determinations as to the directions from which those Cuban signals are coming, will make it possible to estimate the powers and locations of Cuban AM stations. From the powers and locations so estimated and using the methods prescribed in the Rio Final Acts, it will be possible to predict the levels of interference caused by Cuban AM stations. The data so obtained will not only permit determinations of whether interference reaches the minimum levels qualifying licensees for compensation, but will also provide verified, documented, and consistently compiled particulars concerning Cuban operations on all 107 AM channels that will be indispensable to resolution of the Cuban interference problem that Section 7(a) expressly intends that the Secretary of State should seek.

10. The USIA recommended that the presence of Cuban interference be verified by continuous measurements taken on the periphery of the station's primary service area, that the interference be clearly identifiable and audible above other common noises, and that calculations of probable effects of monitored Cuban signals not be considered sufficient. It is pertinent to bear in mind that the limitations that are placed on compensation both by Section 7(b) of the Act and § 1.1708 of the new regulations will make it necessary for recipients of compensation to bear very substantial amounts of the costs involved in making the necessary facilities changes. For this reason, it is unlikely that AM broadcasters will embark on facilities changes unless significant interference is experienced on a scale that impinges harmfully on the service the station is able to render. The regulations contain safeguards against including in the compensation program facilities changes made for purposes other than recovering service lost to Cuban interference, such as to enlarge service areas beyond their previously established interference-free contours. In these circumstances, we have difficulty justifying the additional burdens and costs that would be associated with the kinds of showings of "actual" interference that the USIA proposed be required. The industry's responses to the Commission's invitation that it participate in the procedures necessary to carry out the program, including monitoring, was predominantly negative. One comment suggests that the cost of administration could be reduced if the task of administration program were contracted out. However, no analysis to support this view was provided in the comment.

11. We had proposed that monitoring for the purpose of determining the *existence* and the *level* of Cuban interference be conducted semimonthly. (We discuss later, in paragraphs 18 to 21 the differently structured monitoring methods proposed for the separate purpose of determining the *incidence* or *duration* of such interference.) The NTIA recommended that the monitoring from which the levels of Cuban interference would be determined be conducted much more frequently than semimonthly, in fact, as frequently as daily. That would increase the cost of such monitoring enormously and would be beyond the foreseeable resources of the Commission. Moreover, we do not believe that routine monitoring as detailed and voluminous as that is

necessary for reasonable implementation of the program of compensation established in Section 7 of the Act. Also, we do not believe that it would be necessary to carry out the purposes of other parts of the Act. In particular cases it may become appropriate to monitor more frequently than semimonthly. Within the capacities of available staff and equipment, that could be done on an *ad hoc* basis. The NTIA also expressed its concurrence with the technical procedures the Commission proposed for determining the locations and powers of Cuban AM stations, but cautioned that it may be desirable to correct the measured field strength data for the non-sea portions of the paths, and to take care that measured signals are not contaminated by other signals arising outside Cuba, or by skywaves. We agree. The procedures for monitoring were planned accordingly.

12. *Minimum Level of Interference Qualifying Licensees for Compensation.* As we observed in the *Notice,* the legislative history of the Act indicates that Congress intended that the FCC establish a threshold level of interference in order to qualify an applicant for compensation under Section 7. We proposed that such threshold level be established as follows. The applicant, presuming that the interfering Cuban station operates at the power and at the location derived by baseline studies of the monitoring data obtained as described in paragraph 10, above, and employing the methods of calculation prescribed in the Rio Final Acts, would determine what portion of its otherwise interference-free primary or secondary service area is subjected to Cuban interference. We proposed that the applicant would meet the required threshold level of interference only if the population in the area so subjected to Cuban interference totaled at least 10% of the population within the area in which the station would render interference-free primary or secondary service were it not for the Cuban interference. Most of the parties addressed this proposal.

13. The comments generally supported a requirement that the interference have some defined minimum level of impact. However, almost all of them advocated that holders of previously issued STAs to mitigate Cuban interference should be exempted from the requirement. Affected stations that expended substantial amounts of money for facilities changes to mitigate the effects of Cuban interference may be presumed to have been more than negligibly affected. This is supported by showings of interference submitted by applicants for STAs issued before the compensation program was contemplated. Thus in their case, separate, detailed, after-the-fact showings would not be needed. Their preparation and review would impose a needless burden. We agree, and have provided for such exemption in § 1.1706(b) of the new regulations.

14. The *Notice* Proposed a required showing of interference to 10% of the total *population* within the station's service area. The parties preponderantly advocated that, instead, applicants be permitted to do so in terms of interference to at least 10% of their otherwise interference-free service *areas.* It was pointed out, in response to our reference in the *Notice* to the example of the Florida Everglades as an area of limited population, that there are some local residents and some travelers needing radio service in that sparsely settled area. It was contended that the compensation program should embrace restoration of service to less densely settled areas as well as to the more densely populated places. We disagree. Station licensees are free to seek authorization for facilities changes that will restore service in any areas lost to Cuban interference without in turn interfering with other stations entitled to interference protection. However, Section 7 was not intended to provide full compensation for all costs incurred to mitigate Cuban interferene. The language of the statute and its legislative history indicate, rather, that it was intended to provide some assistance in cases where threshold requirements established by this Commission are met. Taking all pertinent circumstances into account, including the need to moderate the costs of the program, and the desirability of applying available funds so that they will benefit the largest numbers of persons subjected to interference, we have found it preferable to retain the population basis for determining whether applicants who are not exempted meet the 10 % service impact requirement.

15. The USIA, Susquehanna Broadcasting Co., and Ronald F. Schatz advocated that only interference to the primary service areas of affected stations be taken into account for purposes of compensation under Section 7. The Clear Channel Broadcasting Service, on the other hand, urge that it would be inappropriate not to include interference to secondary service areas. Specifically, CCBS states that, although it may not be possible to restore service to all affected parts of a Class I station's secondary service area, there are considerable numbers of persons dependent upon skywave signals for nighttime aural broadcast service, and excluding consideration of interference to secondary service areas would not be appropriate. We agree, and have drafted the regulations accordingly.

16. The USIA proposed raising the threshold still higher than the 10% level we had proposed. USIA proposed requirements that the measured harmful interference be shown to have increased by 50% or more since October 4, 1982 (one year before approval of the Act), that such interference have caused a reduction of 20% or more in the actual listening audience, and that it have caused a reduction of 10% or more in the station's revenues. The last mentioned requirement raises questions that we would be at a loss to answer. Many factors affect fluctuations in station revenues (for example, changes in economic conditions, programming changes, the competitive draw of programming offered by other stations, changes in management personnel or techniques). Even if it were possible to isolate the factor of Cuban interference, we believe that carrying out the necessary intensive economic and financial analyses of all the pertinent factors would be too time-consuming and burdensome, and require an unjustified addition of staff qualified to perform such analyses.

17. Measuring reduction in the listening audience as suggested by the USIA would require repeated, expensive, special surveys, and it is unclear how audience losses could be reliably attributed to the single factor of Cuban interference, when so many factors are known to bear on fluctuations in audience levels. Additionally, we do not find that the suggested requirement of a 50% increase in the level of interference would be justified. If Cuban stations are shown to cause interference in that part of a station's service area where at least 10% of the total population in the otherwise interference-free service area reside, it is realistic to consider that both the service and economic well-being of the station are significantly affected. We believe it is consistent with the intent of Congress that, in such circumstances, a station licensee who incurs expenses for mitigating such interference should be considered as eligible for the limited amount of compensation for which the regulations provide. Taking all the foregoing considerations into account, we believe it desirable, in the interests of economical administration of the program, to adhere to the proposal in the

Notice that the threshold requirement as to the *level* of received interference be established at 10% of the served population, and that the attainment of that level be calculated in the manner previously discussed in this *Report and Order* and provided for in §§ 1.1702, 1.1703 and 1.704(a) of the new regulations.

18. *Minimum Duration of Interference Qualifying Licensees for Compensation.* The legislative history of the Act indicates Congressional intent that the FCC consider threshold requirements not only as to the *level* of interference experienced from Cuban stations, but also as to its *duration.* (See section-by-section analysis of the Act placed in the Congressional Record by Representative Fascell, of Florida, Congressional Record for September 23, 1983, at page H 7680.) The *Notice* proposed that duration of the Cuban interference be shown by logged monitorings of Cuban signals by the station licensees within the affected portion of their service areas or, in some cases, near the station's transmitter. The NTIA urged that such monitorings be performed by the FCC, rather than by the stations. While this would be one way to assure consistent performance of the monitoring in accordance with accepted engineering practice, the task is beyond the resources that are available, or could be expected to be made available, to the Commission. Monitoring to show *duration* of the Cuban interference (as compared with its level) will be required on sixty consecutive days, in some cases both during daytime and nighttime hours. The Commission lacks the staff and equipment that would be necessary to monitor Cuban signals that many times, and at diverse station locations. The FCC staff will be prepared, however, if and when circumstances call for spot checks or reviews of monitoring conducted by station licensees, to perform such checks. In any event, the FCC staff will closely control the monitoring referred to in paragraph 10, above, that will be performed to establish the *levels* of radiation reaching the United States from Cuban stations on all 107 AM radio broadcast channels. This, it is believed, will provide an adequate and appropriate factual basis for future discussions envisaged for the purpose of resolving the problem of Cuban interference. Bearing in mind the limited purpose of monitoring by station licensees, the requirement that it be performed in accordance with good engineering practice, the review that the Commission will perform in order reasonably to assure that proper standards are observed, and the impossibility of the FCC taking on this additional monitoring task, we believe it desirable to adopt essentially the requirements proposed in the *Notice* with respect to monitoring to be performed by station licensees.

19. The Florida Associations urged that the burden on station licensees of performing the prescribed monitoring over a period of sixty days should be relieved by requiring that it be performed for only thirty days. It must be borne in mind that the purpose of the monitoring by licensees is to determine whether the interference is only sporadic or temporary, or is of sufficient duration to warrant compensation for part of the costs of facilities changes to mitigate its effects. Even sixty days is short for this purpose, but we proposed that period in order to economize on the time and expense of performing this task. We believe that any shorter period would be inappropriate, taking into account the additional fact that, insofar as nighttime skywave interference is concerned, the variability of skywave transmissions necessitates at least a sixty-day monitoring period.

20. The Florida Associations proposed that stations previously authorized to make facilities changes to mitigate Cuban interference be exempted from the requirement of monitoring to show *duration* of interference. The same considerations that we found to justify such stations from showings of the *level* of Cuban interference make it appropriate to apply the exemption also to showings of its duration. Section 1.1706(b) of the new regulations accordingly provides for it. We believe this to be appropriate even in cases where interference on which earlier STAs were based might be shown to have abated. The Act contemplates that the interference should be resolved, that the facilities changes authorized to mitigate it are temporary in nature, and that holders of STAs issued before the enactment of Section 7 may be called upon to return to their previous facilities without further compensation at such time as the interference is definitively removed. Thus, there is a need for a showing of duration of the interference in new cases, so that compensation will not be provided in cases of random or insubstantial interference. However, we find that no useful purpose will be served by requiring showings by stations that have already experienced interference of sufficient duration to justify their outlay of substantial sums for temporarily changed facilities, under previously issued STAs, before compensation by the Federal Government was contemplated.

21. Several parties recommended that the regulations make clear that monitoring efforts for the purpose of showing duration of interference be set up separately for interference experienced during the daytime and during nighttime hours. That is appropriate and consistent with the intent of the *Notice,* and § 1.1705 so provides. The requirement is that the interference be detected on at least thirty of the sixty days of prescribed monitoring by the station licensee, at least once during the prescribed daytime or nighttime hours, or both, as the case may be.

22. *Compensable costs: General Considerations.* The intent that the costs incurred in mitigating the effects of Cuban interference be compensated partially, rather than fully, is clearly evident not only in Section 7 of the Act, but also in its legislative history. The section-by-section analysis of the Act that Representative Dante Fascell placed on the record during remarks in the course of the floor debate on September 23, 1983 states, at page H 7680 of the Congressional Record: "The Commission may also consider establishing limits on the type and extent of reimbursable expenses." The USIA points out that the $5 million authorized for the Section 7 program may be expected to cover certain administrative costs as well as compensation payments. It further notes that no funds have yet been appropriated for these purposes, and counsels the need to moderate the size of compensation payments. In prescribing the kinds of costs that will be compensable, and the extent to which they may be compensated under this program, we have applied the limitations expressly laid down in the statute. Moreover, in exercising the discretion conferred on the Commission, we have endeavored to give due weight to considerations urged upon us by the parties. The paramount consideration, we believe, is provided by the current Federal budgetary deficit and the need it imposes to avoid undue demands on the Federal Treasury, while at the same time giving due effect to the Congressional purpose of providing some assistance to affected broadcasters. The American Legal Foundation recommended, in substance, that the Commission make a study of probable demand before establishing the requirements for compensation; but the statutory deadline for issuing the implementing regulations precludes that approach. With the objective of achieving an appropriate balance among all the pertinent considerations, we have

arrived at the following decisions as to the kinds and amounts of expenses that the new regulations should treat as compensable.

23. *Compensable Costs: Replaced Equipment.* In the *Notice of Proposed Rule Making* we considered the express provision of Section 7(b) that expenses eligible for compensation "shall be limited to the cost of equipment (replaced, less depreciation) and associated technical and engineering cost." We initially construed the quoted language as requiring that the amount of depreciation taken for income tax purposes on existing equipment that is replaced by new facilities must be subtracted from otherwise compensable equipment costs. We accordingly proposed to treat as compensable that part of the cost of new equipment remaining after subtracting the depreciation taken on replaced equipment. The USIA commented that, in its view, the legislation bars compensation for capital outlays for new equipment. It recommends that compensation for equipment be limited to the cost of "equipment replaced less depreciation."

24. We accept USIA's interpretation as conforming more closely to the literal language of the statute than the one we initially proposed in the *Notice*. It is pertinent to note that more direct, less debatable language could have been used to make the costs of new equipment expressly compensable, rather than the language in the Act, whose only express reference to includible equipment is to "replaced" equipment, i.e., existing equipment that is replaced by the new facilities. The legislative history is not helpful on this point.

25. Apart from the question of whether the Act bars inclusion of the costs of new equipment, is the probability that, at least in most cases, the basis proposed by the USIA will result in lower compensation than if the cost of new equipment were included. Upon further consideration, we have so drawn Section 1.1708 of the new regulations. We have, at the same time, balanced the resultant reduction in compensation by allowing compensation for the full amount of includible costs (within a $250,000 ceiling), rather than allowing only 50% of such costs, as we originally proposed. Although this may not be expected to offset fully the probable resultant net diminution of compensation, we believe that the course we have adopted properly carries out the mandate of the Act, and reasonably balances the objectives of providing some meaningful assistance to affected broadcasters, while duly moderating resultant demands on the Federal Treasury. Additionally, it will be simpler and more economical to administer.

26. *Compensable Costs: "Associated Technical and Engineering Costs."* The new regulations do not provide for compensation for outlays to acquire and install or construct new equipment, but they do permit compensation for "associated technical and engineering costs" that are provided for in the Act. These costs include out-of-pocket expenditures prudently made to carry out the planning, designing, engineering and testing of new facilities that are reasonably needed to mitigate the effects of Cuban interference, and to carry out monitoring that the regulations call upon station licensees to conduct. Licensees who received FCC authorizations to make such facilities changes before the new regulations prescribing monitoring requirements were adopted may seek compensation, provided they can demonstrate that the costs which they seek to have reimbursed were reasonable and prudently incurred previously in monitoring Cuban signals in order to obtain factual data that they presented to the FCC in support of their requests for such FCC authorizations. We believe that these are reasonable and appropriate conditions to impose on compensation for monitoring. To this extent we do not concur with the recommendation of Sudbrink Broadcasting Company that the costs of taking field strength measurements be compensated, with no qualifying conditions. Sudbrink also recommended that we include the costs of studying alternatives to the facilities changes made to mitigate Cuban interference. We do not consider this appropriate for generalized approval by regulation. Instead, we believe that it would be preferable to consider, on the facts of individual cases, whether the expenses so incurred should be accepted as reasonable and prudent, and otherwise suitable for compensation.

27. *Non-Compensable Costs: Land.* It may be impossible in some cases to construct necessary directional antenna systems on land already owned or used by an affected station for its transmitter and antenna tower(s). This would necessitate the acquisition, or possibly the leasing, of additional land to accommodate new transmission facilities. In the *Notice*, we proposed to exclude land costs as non-compensable. For one thing, it appeared doubtful that land came within the allowable categories of expenses to which compensation was limited by Section 7(b) of the Act. Susquehanna Broadcasting Company supported the proposed exclusion of land costs from compensation. Ronald F. Schuatz recommended in his Reply Comments that land costs be treated as compensable. The NTIA suggested that the ground on which antenna towers are erected, and which contains the essential ground system, should be considered part of the antenna and thus eligible for compensation. The NTIA also suggested that the cost of purchasing land should be allowed, at least in cases where it could not have been obtained by lease. We believe, however, that it would be unduly costly, burdensome, and beyond the Commission's resources to attempt to determine whether it would have been possible, upon adequate search of the entire area where the antenna might be located, to find land that the owners would be willing to lease. Collateral questions would be likely to arise, such as whether the costs of available leases were reasonable, or so excessive as to warrant purchase. The reasonableness of the price paid for land, and its residual value if its use were discontinued upon cessation of the interference, are questions illustrative of numerous others that we believe would arise and unduly complicate the administration of a provision permitting compensation for the cost of land. The Florida Associations proposed that the cost of leasing land, but not its purchase, be compensable. For reasons similar to those already stated, we consider this undesirable, apart from the fact that it is doubtful that the Act intended to make any land costs compensable, whether incurred for lease or purchase.

28. *Non-Compensable Costs: Legal Fees.* Plough Broadcasting Company disagreed with our proposal to treat legal fees as non-compensable, arguing that the Act may reasonably be construed as intending to provide compensation for legal fees when they are incurred in connection with the facilities changes necessitated by Cuban interference. We disagree. Legal fees do not come within the ordinarily understood meaning of the statutory terms used to describe the costs to which compensation is expressly limited: i.e. certain "equipment" costs, and the costs of "associated technical and engineering expenses." Accordingly, we have adhered to our proposal not to treat legal fees as compensable.

29. *Successive Facilities Changes.* Ambassador Diana Lady Dougan, Coordinator of International Communications and Information

Policy, Department of State, commented that it would be desirable that the regulations make clear whether a station licensee that had already been awarded compensation for expenses incurred in mitigating Cuban interference would be eligible for additional compensation if additional facilities changes were found later to be necessary to overcome the effects of further changes in the operating parameters of Cuban stations. The USIA recommended that such additional compensation be expressly barred, and that applicants be limited to compensation for only one such change of station facilities. We note in this regard that, after an initial modification, there would usually be relatively limited opportunity to make further changes that would not cause prohibited interference to other stations. There is, moreover, a limit on the capacity and the desire of Cuba to continue indefinitely to make changes in the pattern of its broadcast transmissions, considering the effects of changes in station frequencies and powers on services provided to Cuban listeners. We believe that it would be more equitable, and in keeping with the intent of the statute, that we deal individually with any applications that may be filed for compensation arising out of changes made after previous modifications for which compensation had been allowed. We would not expect that such additional compensation could be justified except in unusual and highly meritorious circumstances.

30. *Eligibility Confined to Stations Directly Affected.* It would, in our opinion, carry the compensation program beyond the intent of Congress to compensate expenses incurred, not for changes to affected stations, but for changes to other stations that would be necessitated by the remedial action taken by directly affected stations. This could lead to indefinite "daisy-chaining" effects that could multiply the costs far beyond those contemplated by Congress. It would, moreover, be contrary to Commission policy to grant authorizations for facilities changes that would cause prohibited interference to other stations.

31. *Ceiling on Compensation.* The Notice proposed to limit compensation of 50% of the amounts expended for compensable kinds of costs, up to a maximum of $250,000 in each case. Commenting broadcasters and associations opposed both these limitations. The USIA felt that compensable expenses should be limited to the lesser of the $250,000 ceiling or 20% of the fair market value of the station at the time the claim was made. We feel that the views of the USIA, as the agency charged by the Act with responsibility for making compensation payments under Section 7, are entitled to great weight. We believe, however, that it would be undesirable for this Commission to attempt to assay the market value of stations. Our decision to adopt the USIA's more restrictive proposals concerning allowance for equipment costs goes a long way toward achieving the underlying objective of moderating the costs of the program to the Federal Treasury. It appears probable that, if we were to curtail further the already substantially reduced basis for determining the amount of compensation payments, the amount of compensation would be reduced below levels intended by Congress.

32. *Priorities.* In the *Notice* we proposed to classify applications for compensation into three priority groups, and to sequence the applications within each of those groups. Insofar as the comments addressed the proposal, they generally concurred with it. Section 1.1710 of the new regulations contains essentially the proposed provisions. It should be understood, however, that the classification of an application within one of the three priority groups, and its sequencing within that group, does not establish a definitive entitlement to the payment of the amount of compensation in the full amount for which the FCC has found the applicant to be eligible. Nor, for the following reasons, would such finding by the Commission necessarily entitle applicants to receive compensation in the established priority sequence.

33. As provided in § 1.1710(e) and 1.1711 of the new regulations, the FCC will inform the USIA of its findings as to the applicant's eligibility for compensation, and as to its priority classification. That finding is provided for the information of the USIA, upon whom the Act confers the responsibility and the authority to make the compensation payments. Under the Act all appropriations of funds for the compensation payments are made to the USIA as the paying agency. The FCC will make determinations as to whether applicants meet the requirements of the Act and of the regulations for eligibility for compensation, and will determine the maximum amounts for which they qualify. But the Commission will not make the compensation payments or manage the funds that the Act provides will be appropriated to the USIA for this purpose. Since it cannot be known in advance whether funds will be appropriate in sufficient amounts to cover fully the aggregate amounts of compensation for which applicants are found eligible by the FCC, the question of whether the amount for which applicants are found eligible can or should be reimbursed fully, and in a single payment, are questions that must be determined by the USIA.[3]

34. It could happen that, if and when funds are appropriated, they might be insufficient to cover all of the amounts for which applicants will have been found eligible in the sense that they have been found to have satisfied the requirements of the Act and the implementating regulations. It is also possible that developments may expand the foreseeable demand for compensation beyond originally indicated levels, and beyond the amounts of funds that have been appropriated, or for which appropriations may be expected to be provided. In such cases, it may become necessary for the USIA to apportion available funds in some manner, thus making temporary or permanent payments of only some portion of the amounts of compensation for which the FCC has determined applicants to be eligible.

35. An additional reason why the prioritities established by the FCC cannot constitute a definitive entitlement arises from the fact that the priority group in which an application falls, and the sequence within the group, will be made initially when the FCC makes the provisional finding of eligibility under § 1.1711(a). Such provisional finding is issued before the new facilities are acquired and installed or constructed. Circumstances may intervene that would delay the construction and the consequent issuance of the definitive eligibility finding under § 1.1711(b). It would not be proper that earlier applicants who delay carrying out facilities changes be able to block the payment of compensation to later applicants who are found to be eligible, promptly install the new facilities, make all required showings, provide all required documentation and meet all other requirements for compensation in timely fashion.

36. Taking all the foregoing considerations into account, including uncertainty as to whether appropriated funds will be available to cover the entire amounts of compensation for which applicants will have satisified

[3] Although $5 million has been authorized to fund this compensation program, no funds have yet been appropriated for it. Without such appropriation, compensation payments cannot commence.

eligibility requirements, the Commission has concluded that it is appropriate to handle priorities as provided in § 1.1710(e) of the new regulations. Specifically, the Commission will initially designate each application as falling within the First, Second or Third Priority group, and will indicate its sequence within that group. Such determinations will be notified to the applicant and the USIA. This will provide the USIA with the particular information it would need if, in the performance of its function as the paying agency, the USIA found it possible and desirable to exercise its discretion so as to apply the priority ranking and sequence established by the FCC.

V. Order

37. Accordingly, pursuant to authority found in Section 7 of the Radio Broadcasting to Cuba Act, Section 553 of the Administrative Procedure Act, as amended, and Section 4(j) of the Communications Act of 1934, as amended, it is ordered, that, effective August 1, 1984, the regulations appended hereto and designated as Subpart M of Part 1 of the Rules and Regulations of the Federal Communications Commission are adopted.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Text of Section 7 of the Act

Section 7 of the Radio Broadcasting to Cuba Act, Pub. L. 98–111, 97 Stat. 749, (1983) provides as follows:

Sec. 7. (a) It is the intent of the Congress that the Secretary of State should seek prompt and full settlement of United States claims against the Government of Cuba arising from Cuban interference with broadcasting in the United States. Pending the settlement of these claims, it is appropriate to provide some interim assistance to the United States broadcasters who are adversely affected by Cuban radio interference and who seek to assert their right to measures to counteract the effects of such interference.

(b) Accordingly, the agency may make payments to the United States radio broadcasting station licensees upon their application for expenses which they have incurred before, on, or after the date of this Act in mitigating, pursuant to special temporary authority from the Federal Communications Commission, the effects of activities by the Government of Cuba which directly interfere with the transmission or reception of broadcasts by these licensees. Such expenses shall be limited to the costs of equipment (replaced less depreciation) and associated technical and engineering costs.

(c) The Federal Communications Commission shall issue such regulations and establish such procedures for carrying out this section as the Federal Communications Commission finds appropriate. Such regulations shall be issued no later than one hundred and eighty days after enactment of this Act.

(d) There are authorized to be appropriated to the Agency [United States Information Agency], $5,000,000 for use in compensating United States radio broadcasting licensees pursuant to this section. Amounts appropriated under this section are authorized to be available until expended.

(e) Funds appropriated for implementation of this section shall be available for a period of no more than four years following the initial broadcast occurring as a result of programs described in this Act.

(f) It is the sense of the Congress that the President should establish a task force to analyze the level of interference from the operation of Cuban stations experienced by broadcasters in the United States and to seek a practical political and technical solution to this problem.

(g) This section shall enter into effect on October 1, 1984.

Appendix B

PART 0—[AMENDED]

Section 0.61 of Part 0 of the Rules and Regulations of the Federal Communications Commission is amended by adding new paragraph (i), reading as follows:

§ 0.61. [Amended]

* * * * *

(i) Process applications for compensation submitted pursuant to Subpart M, Part 1 of this chapter.

PART 1—[AMENDED]

Part 1 is amended by adding a new Subpart M to read as follows:

* * * * *

Subpart M—Implementation of Section 7 of the Radio Broadcasting to Cuba Act: Compensation of Costs of Mitigating Cuban Interference

Sec.

1.1701 Purpose.
1.1702 Definition of Cuban interference.
1.1703 Method for calculating the level of Cuban interference.
1.1704 Minimum level and duration of interference qualifying licensees for compensation.
1.1705 Method for determining duration of Cuban interference.
1.1706 Waivers and exceptions.
1.1707 Required FCC authorizaton for modification of station facilities.
1.1708 Compensable costs.
1.1709 Requirements for filing applications for compensation.
1.1710 Priorities.
1.1711 Provisional and definitive findings of eligibility.
1.1712 Review of findings.

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Subpart M—Implementation of Section 7 of the Radio Broadcasting to Cuba Act: Compensation of Costs of Mitigating Cuban Interference

§ 1.1701. Purpose.

(a) The regulations in this Subpart implement Section 7 of the Radio Broadcasting to Cuba Act, Pub. L. 98–111, 97 Stat. 749 (1983). That statute is referred to in this Subpart as "the Act."

(b) Section 7 of the Act provides for the payment of compensation by the United States Information Agency (USIA) to radio broadcast station licensees for allowable expenses they incur in mitigating interference from Cuba to the broadcast service they provide. Subsection 7(c) directs the Federal Communications Commission to issue appropriate regulations and establish procedures for carrying out Section 7.

(c) The regulations in this Subpart M establish the standards, requirements, and procedures that the Federal Communications Commission will apply in making findings as to whether applicants for compensation under Section 7 of the Radio Broadcasting to Cuba Act qualify for it, and if they do, in what amounts. The Commission will transmit those findings to the USIA for guidance in the discharge of the responsibility that the Act places upon the USIA to make such compensation payments.

§ 1.1702. Definition of Cuban interference.

For the purposes of this Subpart M, Cuban interference to a United States AM broadcast station is radiation from a radio transmitter in Cuba at a level that, under the provisions of the Final Acts of the Regional Administrative Radio Conference, Rio de Janeiro 1981, ("the Rio AM Agreement") would be treated as causing objectionable interference if it occurred between signatory countries.

§ 1.1703. Method for calculating the level of Cuban interference.

(a) The FCC will prepare, periodically update, and make publicly available a list of Cuban stations known to be operating on the 107 channels allocated for AM broadcasting. The list will show the location and calculated operating power of each Cuban station.

(b) In order to obtain the data needed to calculate the power of Cuban stations, the Commission will arrange for the monitoring of the groundwave signals of Cuban AM stations at suitable locations. The field strengths of the

signals of Cuban stations operating on all 107 AM channels and the directions from which they are transmitted will be logged as nearly semi-monthly as practicable. The data so obtained will be used in making studies on the basis of which the location and transmitter power of each Cuban station will be calculated.

(c) In order to determine the existence and level of interference to United States AM radio broadcast stations for the purposes of this subpart, Cuban stations will be presumed to be operating at the locations and with the powers determined in the manner stated in paragraphs (a) and (b) of this section; and the methods for calculating interference prescribed in the "Rio AM Agreement" referred to in § 1.1702 will be used.

§ 1.1704. Minimum level and duration of interference qualifying licensees for compensation.

In order to be eligible for compensation under Section 7 of the Act, the licensee of a United States AM radio broadcast station that does not come within the exception under § 1.1706(b) of this subpart must:

(a) Using the methods provided in § 1.1703(c), and treating the station's primary and secondary service areas separately, show that a Cuban station causes objectionable interference to the affected station's signals in a portion of its primary and secondary service area where at least 10% of the total population within that otherwise interference-free primary or secondary service area reside;

(b) Using the methods provided in § 1.1705, show that the signals of a Cuban station have been detected within the service area of the affected station on at least half of the days during a prescribed test period. The reception of such Cuban signals must be separately shown to occur during that part or those parts of the day (i.e., during daytime hours, nighttime hours, or both) when the interference pertinent to an application for compensation occurs.

§ 1.1705 Method for determining duration of Cuban interference.

(a) Section 1.1703 prescribes how the *existence* and *level* of Cuban interference will be determined. This § 1.1705 prescribes how the *duration* or *incidence* of Cuban interference will be determined in order to show compliance with the minimum interference "duration" requirements of § 1.1704(b).

(b) Unless the exception in § 1.1706(b) applies, applicants for compensation shall monitor and log the signals of interfering Cuban stations in the manner prescribed in paragraphs (c) through (e) of this section, and shall submit the results of such monitoring to the Commission.

(c) Using equipment and methods conforming with good engineering practice, licensees whose applications for compensation are based on Cuban interference experienced during daytime hours shall, on 60 consecutive days, take and log field strength measurements of the signal of the interfering Cuban station between two hours after local sunrise and two hours before local sunset during brief intervals when the transmitter of the affected station is turned off. Except as provided in paragraph (e)(1) of this section, measurements shall be taken within the portion of the station's otherwise interference-free service area where the calculations performed in accordance with § 1.1703(c) predict that Cuban interference will occur.

(d) Applicants who experience interference by Cuban *groundwave* signals to their primary service areas at night shall similarly take and log field strength measurements as provided in paragraph (c) above, but during nighttime hours instead of during the daytime.

(e)(1) Applicants who experience nighttime interference by Cuban *skywave* signals to the primary service areas of their Class II, Class III, or Class IV stations shall similarly take and log field strength measurements of the Cuban signals on 60 consecutive days during the nighttime hours between two hours after local sunset and two hours before local sunrise. Such measurements shall be taken in the general vicinity of the affected station's transmitter, but not so close as to experience the effects of re-radiation from the station's own tower(s).

(2) Applicants who experience nighttime interference by Cuban *skywave* signals to their Class I stations shall take measurements as prescribed in the first sentence of paragraph (e)(1), above, at locations within the affected portion of their primary service areas, unless only their secondary service is affected. In the latter case, the measurements shall be taken within the affected portion of their secondary service area.

(f) The monitoring of Cuban signals prescribed in this section is designed to provide evidence of the *duration* or *incidence* of interfering Cuban signals for the purposes of determining compliance with the 50% requirement in § 1.1704(b). Although the procedures under this section call for the measuring and recording the field strengths of Cuban signals within the affected station's service area, the Commission, when determining whether the minimum *level* of interference prescribed in § 1.1704(a) exists, will ordinarily base its findings solely on calculations performed in conformity with § 1.1703, without taking into account the field strengths recorded by station licensees under this section. However, in cases where the data obtained by monitoring performed by the licensee under this § 1.1705 reflect a consistently large, unexplained disparity from the level of interference calculated under § 1.1703, the Commission may either request the applicant to take further measurements or defer reaching a finding on the application until it reviews and reconsiders the data previously assembled and the calculations previously made under § 1.1703. The Commission will take such further action in each such case as it may find appropriate in the circumstances of the case.

§ 1.1706 Waivers and exceptions.

(a) The Commission recognizes that compliance with some of the requirements for compensation may be needlessly burdensome for licensees whose facilities were modified, for the purpose of mitigating the effects of Cuban interference, under Commission authorization issued before the regulations in this Subpart L were adopted. Accordingly, the Commission will, upon the request of applicants in such cases, consider waiving or adjusting the showings generally required to be made by applicants.

(b) Licensees who were authorized before April, 1984 to modify their station facilities for the explicit purpose of mitigating the effects of interference from Cuba are generally excepted from the requirements of §§ 1.1703, 1.1704, and 1.1705 relating to showings of minimum levels and duration of Cuba interference; provided that, such licensees shall submit such information relating to interference received by them as the Commission may find it appropriate to request in individual cases.

§ 1.1707 Required FCC authorization for modification of station facilities.

(a) Section 7(b) of the Radio Broadcasting to Cuba Act provides for compensation for expenses incurred "pursuant to special temporary authority from the Federal Communications Commission" in mitigating the effects of Cuban interference. This requirement will ordinarily be satisfied by the issuance by the Commission of an "STA" (special temporary authorization)

for the purposes of enabling the station to restore service to areas prevented by Cuban interference from receiving interference-free primary or secondary service that the station could otherwise provide.

(b) As Congress was aware, most of the authorizations issued before the enactment of the Radio Broadcasting to Cuba Act, for the purpose of mitigating the effects of Cuban interference, were in the form of STAs. Other forms of licensing have been used in a few cases for the same explicit purpose. The substance of the statutory prerequisite to compensation referred to in paragraph (a) of this section is understood to be that the licensee have been authorized by the Federal Communications Commission to make the facilities changes in question for the purpose of mitigating the effects of Cuban interference, but not that such authorization necessarily have been issued in the explicit form of an STA. The Commission will act accordingly in determining whether applicants meet the requirements of Section 7(b) of the Act.

§ 1.1708 Compensable costs.

(a) The following costs are compensable under Section 7 of the Radio Broadcasting to Cuba Act, up to but not exceeding $250,000:

(1) The original cost of existing equipment used by the applicant for the operation of the affected station that it is necessary to replace by facilities specially authorized by the Federal Communications Commission in order to mitigate the effects of interference from Cuba, less the amount of depreciation on such existing equipment previously reported as deductions on Federal income tax returns;

(2) Technical and engineering cost associated with the facilities changes so authorized. The costs allowable under this paragraph (2) shall include costs prudently incurred in planning, designing, engineering and testing such new facilities, and in performing monitoring required by § 1.1704(b), or monitoring performed by licensees who submitted the results to the Commission in support of their applications for authorizations to change facilities to mitigate Cuban interference that were granted before March 15, 1984.

(b) The following costs are not compensable:

(1) The cost of acquiring, constructing or installing the new facilities authorized by the Commission, apart from the associated technical and engineering costs that are compensable under paragraph (a)(2);

(2) Remuneration or expenses paid to persons, such as the station engineer, who are in the regular employ of the applicant; provided that this shall not bar compensation for out-of-pocket outlays for payments to such employees for overtime work on the tasks listed in § 1.1708(a)(2);

(3) Attorney's fees;

(4) The costs of acquiring title or leasehold interests in land; and

(5) Any part of costs incurred for the purpose of extending the interference-free service of stations beyond the area to which the existing affected station would provide interference-free service if the Cuban interference were not present.

§ 1.1709 Requirements for filing applications for compensation.

(a) This section states the requirements for filing applications for compensation for expenses incurred in mitigating the effects of Cuban interference that are filed pursuant to this Subpart M. Applications for authorization by the Federal Communications Commission to make changes in authorized station facilities are governed by other applicable provisions of the FCC rules.

(b) Applications for compensation may be filed on or after the entry into effect of this Subpart M, by the licensees of AM broadcast stations in the United States who simultaneously file or had previously filed applications for authorization to change licensed station facilities in order to mitigate the effects of interference received from stations in Cuba. Applications shall be file with the Secretary to the Federal Communications Commission, Washington, D.C. 20554.

(c) Applications for compensation need not use any particular form, but shall contain all the information required under this Subpart M, and any supplemental information the Commission may request the applicant to file. When initially submitted, the applications need not be accompanied by the evidence of duration of interference required by §§ 1.1704(b) and 1.1705, or the proof of costs required by § 1.1709(f) that applicants file after the facilities changes have been completed.

(d) Applications for compensation, when initially filed, shall be accompanied by:

(1) A statement, with supporting breakdown, of the actual costs of constructing or acquiring and installing replaced equipment prescribed in § 1.1708(a)(1);

(2) A statement of the amount of depreciation on such replaced equipment previously reported as deductions on Federal income tax returns; and

(3) An estimate, with supporting breakdown, of the technical and engineering costs prescribed in § 1.1708(a)(2) prudently incurred and expected to be incurred in planning, designing, engineering and testing the new or changed facilities used to mitigate the effects of Cuban interference, but not including the cost of the new facilities themselves.

(4) A statement, with supporting breakdown, of the costs incurred and expected to be incurred in making the showing of duration of Cuban interference required under § 1.1704(b), from which the applicant is not exempted under § 1.1706.

(e) The data concerning duration of interference required by §§ 1.1704(b) and 1.1705 may be submitted in a supplemental filing for association with a previously filed application for compensation when the applicant completes the prescribed monitoring. However, if the applicant does not file such data within 120 days from the date of the filing of the application for compensation, or within such extended period as the Commission may for good cause permit, the application will be returned. In such case, any priority accrued under § 1.1710 will lapse; and if the application is subsequently refiled, it will be treated as a new application under § 1.1710(c).

(f) Upon the completion of facilities changes authorized to mitigate the effects of Cuban interference, applicants for compensation shall submit to the Federal Communications Commission a detailed financial statement of the out-of-pocket expenditures made for services and replaced equipment that are compensable under § 1.1708. The statement shall be supported by accompanying receipted bills, cancelled checks, and such additional evidence of actual and prudent outlays for such compensable kinds of services and equipment as the Commission may request in individual cases.

§ 1.1710 Priorities.

Because it is not possible to foresee the extent to which interference by Cuban stations may be experienced, and because it is therefore uncertain whether the available funds will be sufficient to cover all the allowable compensation payments to all qualifying applicants, the following priorities are established for eligibility for compensation payments, in order to provide an equitable basis for the distribution of available funds:

(a) *First Priority:* Applicants whose authorizations of facilities changes to mitigate Cuban interference were issued by the Federal Communications Commission prior to October 4, 1983 (the date of the enactment of the Radio Broadcasting to Cuba Act) and whose applications for compensation are filed before October 1, 1984 (the date Section 7 of that Act enters into effect). Within this first priority group, priority will be accorded in the order in which such authorizations were granted.

(b) *Second Priority:* Applicants whose authorizations of facilities changes to mitigate Cuban interference were issued on or after October 4, 1983 and before the effective date of the regulations adopted in this Subpart M, and whose applications for compensation are filed no later than October 1, 1984. Within this second priority group, priority will be accorded in the order in which the applications for authorization to make such facilities changes are filed with the Federal Communications Commission.

(c) *Third Priority:* Applicants who do not come within the first or second priority groups, and applicants whose priorities as a member of the second group have lapsed under § 1.1709(e). Within this third priority group, priority will be accorded in the order of the filing or refiling of applications for compensation that contain substantially all the information.

(d) The effect of the priority sequencing of applicants established under paragraphs (a) through (c), of this section, is governed by the fact that the responsibilities for processing and evaluating applications, and for making the compensation payments, have, by statute, been divided between the FCC and the USIA. While the FCC will initially receive, process and evaluate applications for compensation, the USIA has been designated by the Act as the agency that will make the payments, and to whom appropriations for this purpose will be made. In these circumstances, the matter of priority standing of applicants for compensation will be dealt with as provided in paragraph (e) of this section.

(e) The FCC will determine the priority group in which each applicant for compensation falls and the applicant's priority within that group, and will inform USIA and the applicant of that determination. However, the FCC does not administer the compensation payments or control the funds appropriated for those payments. The authority to perform those functions hving been conferred by statute upon the USIA, it is for USIA to determine the manner in which the priorities established by the FCC are applied in practice in the administration of the compensation funds entrusted to the USIA. Accordingly, such questions as whether all applicants within a particular priority group who are found by the FCC to qualify for compensation will receive such compensation fully before any applicants in a lower priority group, or whether available funds (if inadequate to cover all qualifying applicants) will be pro-rated in some fashion among members of the same priority group, or otherwise, will be for the USIA to decide, taking into account the amounts of appropriated funds and the demand for them.

§ 1.1711 Provisional and definitive findings of eligibility.

(a) As soon as practicable after the filing of applications containing all the information required under § 1.1709 (c), (d) and (e), the Commission will make a provisional findings as to whether the applicant meets the requirements of this Subpart M for compensation, and if so, in what estimated amount.

(b) When the facilities changes are completed and the documentation required by § 1.1709(f) is filed, the Commission will make a definitive finding as to the amount of compensation for which applicant meets the requirements of this Subpart M. Such amount shall not exceed the amount of compensation determined in the provisional finding adopted under paragraph (a) of this section.

(c) The findings reached under paragraphs (a) and (b) of this section will be adopted by order, which will be published and transmitted to the USIA and the applicant. Such findings do not constitute entitlement to compensation, which will depend upon the availability of appropriated funds and the satisfaction of such requirements as may be established by the United States Information Agency which, under the Act, is responsible for making the compensation payments.

§ 1.1712 Review of findings.

(a) Sections 0.61 and 0.283 of this chapter delegate to the Chief, Mass Media Bureau, the processing of applications for compensation under this Subpart M, and the adoption of orders containing provisional and definitive findings as to the amount of compensation for which applicants qualify under the Radio Broadcasting to Cuba Act and the regulations in this subpart.

(b) Sections 1.101, 1.102(b), 1.103, 1.104, 1.106, 1.108, 1.110 (except the last sentence thereof), 1.113, 1.115, and 1.117 of this chapter, which relate to reconsideration and review of actions taken by the Commission and pursuant to delegated authority, and to effective dates and finality of actions, shall apply to orders making provisional or definitive findings under § 1.1711.

(c) The Commission considers that orders adopted under § 1.1711 (a) or (b) by the Commission *en banc*, but not those adopted under delegated authority by the Chief, Mass Media Bureau, are final orders subject to judicial review under Section 402(a) of the Communications Act of 1934, as amended, 47 U.S.C. 402(a).

[FR Doc. 84-8316 Filed 3-28-84; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[13th Rev. S.O. No. 1474; Amdt. No. 5]

Car Service; Various Railroads Authorized to Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 5 to thirteenth revised service order No. 1474.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254, this order authorizes various railroads to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., March 31, 1984, and continuing in effect until 11:59 p.m., June 30, 1984, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840 or 275-1559.

List of Subjects in 49 CFR Part 1033

Railroads.

Decided: March 23, 1984.

Upon further consideration of Thirteenth Revised Service Order No. 1474 (48 FR 6989, 13047, 28992, 44559, and 56059), and good cause appearing therefor:

§ 1033.1474 [Amended]

It is ordered, Thirteenth Revised Service Order No. 1474 *various railroads authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor (Richard B. Ogilvie, trustee)* is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional period of time, and shall expire at 11:59 p.m., June 30, 1984, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1984.

This action is taken under authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8423 Filed 3-28-84; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 49, No. 62
Thursday, March 29, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 904

Grapefruit Grown in a Designated Area in California; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among growers of grapefruit grown in a designated area in California, to determine whether they favor continuation of the marketing order program.

DATES: Representative period, September 1, 1982 through August 31, 1983.

ADDRESSES: See information contained in supplementary information.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. This action is required to determine whether growers favor continuation of the marketing order for grapefruit grown in the production area as specified in the order.

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and Marketing Order No. 904, it is hereby directed that a referendum be conducted April 16–25, 1984, among the growers who, during the period September 1, 1982 through August 31, 1983 (which period is hereby determined to be a representative period for the purposes of such referendum), were engaged in the production area in the production of grapefruit covered by the marketing order, to ascertain whether continuation of the marketing order is favored by the growers.

Roland G. Harris and John H. Clark, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 845 South Figueroa—Suite 540, Los Angeles, California 90017, telephone (213) 688–3190, are hereby designated as referendum agents of the Secretary of Agriculture to conduct the referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et seq.*).

Copies of the text of the aforesaid marketing order may be examined in the office of the referendum agents or the Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 904

Marketing agreements, Grapefruit, California.

Dated: March 20, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-8335 Filed 3-28-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR PART 39

[Docket No. 84-NM-02-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require structural inspections and repairs or replacements, as necessary, on certain Boeing Model 737 series airplanes to assure continued airworthiness. Some Boeing Model 737 series airplanes are approaching or exceeding the manufacturer's original objective fatigue design life. These older airplanes are the ones most likely to develop fatigue cracks in the structure. The manufacturer has completed a structural reevaluation to identify structurally significant items where, if cracking does develop and is permitted to grow undetected, may result in an inability to carry the required loads specified in FAR 25.571. this proposed AD defines structural maintenance requirements for the identified items necessary to preclude this potentially catastrophic condition.

DATES: Comments must be received on or before April 30, 1984.

ADDRESSES: The service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch ANM–120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2920. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be

available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–02–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Introduction

A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidence of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed their goals.

In order to evaluate the impact of increased fatigue cracking with respect to maintaining fail-safe design and the damage tolerance of the airplane structure, large transport airplane manufacturers have been requested to conduct a structural reassessment of the airplane using modern damage tolerance evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," as well as § 25.571 (Amdt. 25–45) of the Federal Aviation Regulations (FAR).

The structural reassessment involves:

(1) The identification of structural parts or components which contribute significantly to carrying flight, ground, pressure, or control loads whose failure could affect the structural integrity necessary for the safety of the airplane and whose damage tolerance or fail-safe characteristics are necessary, therefore, to establish or confirm. These are called Structural Significant Items (SSI).

(2) The calculation of residual strength, with multiple site damage and interactive crack growth under typical flight and ground loading, such that the airplane structure can sustain the load conditions stated for fail-safe qualification under the current FAR 25.571(b).

(3) The establishment of a procedure for developing inspection programs that provide a high probability of detecting fatigue damage before residual strength falls below fail-safe or damage tolerance requirements.

In conducting the assessment, or audit, The Boeing Company has developed continuing structural integrity programs for its transport airplanes. The program developed for the Boeing 737 (Boeing Document No. D6–37089, entitled "Boeing 737 Supplemental Structural Inspection Document" [SSID], in two volumes) ensures continuing structural airworthiness of the Boeing 737 by specifying details to be inspected, inspection intensities, and associated intervals based on the structural audit.

The Boeing 737 program makes use of the Damage Tolerance Rating (DTR) System developed by Boeing. This rating system is used to determine the probability of detecting fatigue damage, which is presumed to have occurred in a fleet of airplanes and has not been reported, before the residual strength of any airplane falls below regulatory fail-safe strength levels.

The supplemental inspection program developed for the Boeing Model 737 permits operator flexibility by adjusting or supplementing existing maintenance programs, where necessary, to meet the required damage tolerance rating. The program was developed in cooperation with members of the airline industry who participated with Boeing in working group sessions. These meetings were also attended by engineers and maintenance specialists from the FAA. Participants included representatives from 17 airlines. All SSI's, which require directed inspections for maintaining structural integrity and with no history of in-service fatigue cracking, are included in this document. An explanation and summary listing of the SSI's is given in detail in §§ 4.0 and 8.0, respectively, of Boeing Document D6–37089.

Damage tolerance rating forms (DTR Check Forms) are provided, in Volume 2, § 11.0, for each operator of candidate airplanes to select the inspection options which together meet the damage tolerance rating requirements. If an operator's existing maintenance program meets or exceeds the required damage tolerance rating no additional inspection requirements are necessary for that detail. If the current maintenance program falls below the required damage tolerance rating, an operator must improve or supplement its programs. To achieve this, an operator may increase the frequency or intensity of its normal maintenance for its candidate airplanes, or incorporate additional inspection methods, including non-destructive test techniques. Feasible inspection options, developed in conjunction with airline working group members, were used to complete an example rating for each SSI.

Known fatigue problems, which could affect the structural integrity necessary for safety of the airplane, covered by existing service bulletins have been reassessed and a safety of flight addendum added to each as required. A list of service bulletins with flight safety addenda is given in Section 9.0.

It is expected that fatigue related service bulletins subsequent to or resulting from the supplemental inspection program, that require a flight safety addendum, will also be referenced in Section 9.0.

Candidate Airplanes

Airplanes with the highest number of flight cycles are the most likely to experience initial fatigue damage in the fleet. Therefore, this program is based on supplemental inspection of high time (candidate) airplanes.

Directed inspection programs for these airplanes (i.e. the candidate fleet) coupled with reporting of discrepancies found and, where necessary, follow-up action, will maintain structural airworthiness in the total fleet when fatigue cracking occurs. to maintain adequate fleet surveillance, each operator with candidate airplanes must provide a directed inspection program for those airplanes which meet the requirements established by this document.

The initial Boeing 737 candidate fleet consists of those airplanes exceeding 37,500 landings by April 30, 1983. A list of candidate airplane serial and line numbers is listed in Boeing Document D6–37089 for the Model 737–100/200 series. The candidate list will be reviewed periodically and updated if there are significant changes in fleet distribution, composition, or utilization.

Structural Significant Items (SSI)

The two design principles for obtaining structural safety are "damage tolerance" and "safe life." Damage tolerance relies on some means of detecting damage before airplane safety is jeopardized. This is the preferred design principle whenever practical. A safe-life principle is used where there is little or no chance of detecting damage before residual strength is reduced below acceptable limits. A conservative fatigue damage threshold is used to limit the service life. On modern commercial jet transports, this design concept is generally limited to landing gear components.

Airplane structure can be categorized to determine safety analysis requirements and corresponding

maintenance considerations. The first breakdown is a determination of an item's function in relation to structural integrity. Any detail, element, or assembly, which contributes significantly to carrying flight, ground, pressure or control loads, and whose failure could affect the structural integrity necessary for the safety of the airplane, is classified as a SSI. Items not in this category are classified as secondary or other structure.

For the category of secondary or other structure, safety is ensure by demonstrating that a flight can be completed safely after the component has lost its ability to function or has separated from the aircraft. Structural maintenance is dictated by the economic consequences of major damage or loss of the component compared to those of an inspection program required to find damage early.

The second category is damage-tolerant design where damage is obvious or malfunction evident before reaching critical size. Examples of this are significant fuel tank leakage or controlled cabin depressurization. In this category, safety is ensured by providing adequate residual strength with extensive damage that is obvious during walk-around or functional checks to personnel whose primary responsibility may not be structural inspection. Economics may dictate structural maintenance where it may be desirable to detect damage early.

The rest of the damage tolerant structure falls into a third category in which structural integrity is maintained by timely damage detection in a planned inspection program. Inspection program requirements for detecting corrosion, stress corrosion, and accidental damage are based on operator experience on the same or similar structure. For fatigue damage, inspection program requirements are matched to structural characteristics that include residual strength, crack growth rate, and damage detection. All items in this category are included in the Boeing Model 737 supplemental inspection program. The parameters considered in determining the SSI's included:

Consequence of Cracking, Inspectability, Stress Environment, Multiple Cracking, Structural Redundancy.

For each SSI, several cracking patterns were considered to determine the most critical. This generally resulted in a crack origin being considered in a location difficult to inspect. In some cases, a single SSI may have multiple cracking patterns due to various parts of the item being hidden from view. For example, a spar chord can be visible from both sides, hidden on either side, or hidden on both sides. For these SSI's, a DTR Check Form is provided for the most critical cracking pattern(s).

The fourth structural category is safe life. Operator experience is used to develop a maintenance program for preventing or detecting and repairing any corrosion, stress corrosion, or accidental damage.

Effect on Existing Maintenance Programs

In developing the SSID, the working group reviewed its operation and maintenance practices and existing maintenance programs with respect to the basic requirements of the SSID program. As a result, the Boeing 737 SSID allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate the SSID for the affected airplanes.

Upon detection of damage on an individual SSI, an assessment will be made as to the need for inspection of all affected airplanes at a threshold and interval established from metallurgical examination and additional fracture mechanics analysis.

The SSID provides an operator with the minimum inspection requirements necessary to provide the required damage tolerance rating (DTR) and the means to evaluate their existing maintenance program. An operator, using the document, will be able to determine for a particular SSI if their regularly scheduled maintenance will provide the required DTR or if additional supplemental inspections must be accomplished.

If cracking does occur, it is likely to occur on older airplanes. The manufacturer has completed a structural reevaluation to identify significant structural components that, if cracking does develop and is permitted to grow undetected, may result in an inability to carry the required loads specified in FAR 25.571. This AD defines structural maintenance requirements for the identified components necessary to preclude this potentially catastrophic condition. As a consequence, the proposed AD would require all affected operators who have not already done so to incorporate in their FAA approved continuing airworthiness program and implement a revision which provides no less than the required damage tolerance rating for each SSI listed in the Boeing Document or later FAA approved revisions.

Information collection requirements contained in this proposed AD have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0056.

Economic Impact

Approximately 92 airplanes of U.S. registry and 27 U.S. operators would initially be affected by the proposed AD. It is estimated that the implementation of the SSID program for a typical operator would take approximately 1000 manhours. It is also estimated that the average labor cost would be $35 per manhour. Based on these figures, the cost to implement the SSID program is estimated to not exceed $950,000.

The recurring inspection impact on the affected operators is estimated to be 500 manhours per airplane at an average labor cost of $35 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to not exceed $1,700,000.

Based on the above figures, the total cost impact of this AD for the first year is estimated to not exceed $2,700,000 and $1,700,000 for each year thereafter.

For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration (FAA) proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CR 39.13) by adding the following new airworthiness directive (AD):

Boeing: Applies to Boeing Model 737 series airplanes, certificated in all categories, listed in Section 3.0 of Boeing Document No. D6–37089, "Supplemental Structural Inspection Document" (SSID), original issue, or later FAA approved revision, and aircraft serial number 20336. Compliance is required as indicated in the body of the AD.

To ensure the continuing structural integrity of these airplanes, accomplish the following, unless already accomplished:

A. Within one year after the effective date of the AD, incorporate a revision into the FAA approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document D6–37089, Original Issue, or later FAA approved revision. The required DTR value for each SSI is listed in the

document. The revision to the maintenance program shall include and be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID.

B. Cracked structure shall be repaired before further flight in accordance with an FAA approved method.

C. Aircraft may be ferried to a maintenance base for repair in accordance with FAR 21.197 and 21.199.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Operators who have acceptably incorporated Boeing Document No. D6–37089 into their approved maintenance program are exempt from the provisions of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

The FAA has requested **Federal Register** approval to incorporate by reference the manufacturer's Supplemental Inspection Document identified and described in this proposal.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: the FAA has determined that this document involves a proposed regulation which (1) is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities since few, if any, small entities operate Boeing Model 737 airplanes. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington, on February 7, 1984.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–8377 Filed 3–28–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 83–ASW–12]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Models AS350 and AS355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires repetitive inspection and repair or replacement, as necessary, of the main rotor mast on Aerospatiale Model AS350 and AS355 helicopters. This amendment is needed to provide for different inspection requirements for Model AS350 and AS355 helicopters, to provide for differences in operating environments, and to exclude corrosion resistant masts from the AD applicability.

DATE: Comments must be received on or before April 30, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Counsel, Attention: Docket No. 83–ASW–12, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or delivered in duplicate to: 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth, Texas 76106.

Comments delivered must be marked: Docket No. 83–ASW–12.

Comments may be inspected in Room 158, Building 3B, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m.

The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of each of the service bulletins is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, telephone number 513.38.30; or R. T. Weaver, helicopter Policy and Procedures Staff, ASW–111, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877–2548.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 83–ASW–12." The post card will be date/time stamped and returned to the commenter.

After issuing Amendment 39–4599 (48 FR 14351), AD 83–07–05, as amended by Amendment 39–4698 (48 FR 37924), the FAA has determined, based on service experience and fatigue testing, that the repetitive inspection types and intervals required by the AD can be changed to consider differences in operating stresses and differences in operating environments. Also, the FAA has determined that if a corrosion resistant mast is installed on a Model AS355 helicopter, a service life is not needed. Accordingly, the proposed AD amendment will provide different inspection programs for AS350 and AS355 helicopters; it will provide for operations in corrosive environments; and it will exclude the corrosion resistant mast from the AD inspection and replacement requirements.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by further amending Amendment 39–4599 (48 FR 14351), AD 83–07–05, as amended by Amendment 39–4698 (48 FR 37924) by revising paragraphs e, f, g, and h, and by adding a new paragraph k as follows:

Aerospatiale Helicopter Corporation: Applies to Aerospatiale Model AS350 and AS355 series helicopters certificated in all categories.

Compliance is required as indicated (unless already accomplished).

* * * * *

e. For AS355 helicopters (within 10 hours' time in service after the effective date of this amended AD, unless already accomplished):

(1) Remove from service any main rotor mast which has accumulated 450 hours' or more total time in service of which 300 hours' or more time in service was in saline (or corrosive) environments.

(2) For helicopter masts operated in nonsaline (or noncorrosive) environments:

(i) Repeat the inspections of paragraph d of this AD at intervals not to exceed 300 hours' time in service from the last paragraph d inspection.

(ii) Visually inspect the upper mast flange-to-shaft radius at intervals not to exceed 50 hours' time in service from last inspection. Inspect for finish deterioration, corrosion, or cracks. Use a 10-power glass in area of suspected surface finish cracks. Conduct magnetic particle or dye penetrant inspections in accordance with paragraph d(2) of this AD of all areas where finish deterioration is found.

(iii) For AS355 helicopters with masts which have accumulated 450 hours' or more total time in service and have operated in saline (or corrosive) environments less than 300 hours, reduce the repetitive visual inspection interval of the upper mast flange-to-shaft radius from 50 to 25 hours.

(3) To qualify for consideration of nonsaline (or noncorrosive) environment operations, an individual Model AS355 helicopter mast must meet all the following criteria:

(i) It must not be operated over salt water for a major part of any month.

(ii) It must not have a total of 300 hours' or more time in service of over salt water operations.

(iii) It must not be installed on a helicopter that had a main rotor mast replaced due to corrosion.

f. For AS350 helicopters (within 10 hours' time in service after the effective date of this AD, unless already accomplished):

(1) Repeat the inspections of paragraph d of this AD at intervals not to exceed 300 hours' time in service from the last paragraph d inspection.

(2) Visually inspect the mast upper flange-to-shaft radius at intervals not to exceed 50 hours' time in service after the last inspection. Inspect for finish deterioration, corrosion, or cracks. Use a 10-power glass in areas of suspected surface finish cracks. Conduct magnetic particle or dye penetrant inspections in accordance with paragraph d(2) of this AD of all areas where finish deterioration is found.

g. Rework corroded masts in accordance with Aerospatiale Service Bulletin No. 05.08 or 05.13, dated April 19, 1983, or later FAA approved equivalent. Replace any masts corroded beyond the allowed rework.

h. Reinstall the main rotor hub in accordance with the appropriate Model AS350 or AS355 Maintenance Manual, or FAA approved equivalents, after completion of the inspections and rework of paragraphs d, e, f, and g.

k. After the installation of corrosion resistant masts (P/N 350A.37.1076.07), the repetitive inspections and life limits of paragraphs d, e, and f, no longer apply.

This proposed amendment further amends Amendment 39-4599 (48 FR 14351), AD 83-07-05, as amended by Amendment 39-4698 (48 FR 37924).

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; 14 CFR 11.85)

Note.—The FAA has determined that this proposed regulation only involves 141 aircraft, makes only minimal changes to inspection requirements, and provides for use of a new corrosion resistant mast (as an option). Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, Texas on March 14, 1984.

F. E. Whitefield,
Acting Director, Southwest Region.

[FR Doc. 84-8372 Filed 3-28-84; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASW-14]

Proposed Revocation of Transition Area; Columbus, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to revoke the transition area at Columbus, TX. The intended effect of the proposed action is to cancel controlled airspace for aircraft executing a standard instrument approach procedure (SIAP) to the Columbus Airport. This action is necessary since the Columbus Airport has been closed and a requirement no longer exists for a 700-foot transition area to provide protection of aircraft operating at this airport.

DATE: Comments must be received on April 30, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G 71.181 as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Revocation of the transition area at Columbus, TX, will necessitate an amendment to this subpart. This amendment will be required at Columbus, TX, since the airport has been closed and the IFR procedure to the Columbus Airport has been cancelled.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ASW-14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 877–2630. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Columbus, TX Revoked

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on March 19, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–8379 Filed 3–28–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ASO–8]

Proposed Designation of Transition Area; Fort Payne, Ala.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Fort Payne, Alabama, transition area to accommodate Instrument Flight Rule (IFR) operations at Isbell Field Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on a new non-Federal radio beacon (RBN), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

DATE: Comments must be received on or before May 6, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320, telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with these comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate the Fort Payne, Alabama, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Isbell Field Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to designate the Fort Payne, Alabama, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Fort Payne, Alabama—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Isbell Field Airport (Lat. 34°28'20"N., Long. 85°43'25" W.); within 3 miles each side of the 043° bearing from the Fort Payne RBN (Lat. 34°31'08" N., Long. 85°40'16" W.), extending from the 6.5-mile radius area to 8.5 miles northeast of the RBN.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1345(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the

anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on March 20, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-8371 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 165

[CGD-3-84-08]

Safety Zone Regulations: New York, New Jersey, Sandy Hook Channel, Raritan Bay, Arthur Kill

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone around all loaded Liquefied Petroleum Gas (LPG) vessels during their transit through New York Harbor. The safety zone will be discontinued, for LPG vessels entering port, when they are safely moored at the LPG receiving facility in the Arthur Kill and, for LPG vessels departing the port, when they pass the Scotland Lighted Buoy "S" (LLNR 1619) at the entrance to Sandy Hook Channel. This safety zone is proposed to minimize the risk of collision between LPG carriers and other vessels. This precautionary measure is deemed necessary in consideration of the nature and quantity of the LPG cargo involved and the limited ability of these vessels to take evasive action when maneuvering through New York Harbor or approaching and departing the terminal. This proposed safety zone regulation would require persons to comply with the general safety zone regulations contained in 33 CFR 165.23 which prohibits persons from entering the safety zone without authorization of the Captain of the Port. Mariners will be provided advance notice of scheduled LPG vessel harbor transits through the Port of New York via Marine Radio Broadcast Notice to Mariners.

DATES: Comments must be received on or before May 14, 1984.

ADDRESSES: Comments should be mailed to the Captain of the Port of New York, Bldg. 109 Governors Island, NY 10004. The comments will be available for inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James M. Collin, Port Safety Officer, Captain of the Port, New York, Building 109, Governors Island, NY 10004; telephone 212-668-7917.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD-3-84-08) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposed rules may be changed in light of the comments received. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Gary W. CHAPPELL, project officer for the Captain of the Port, New York, and Ms. M. A. ARISMAN, project attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulation

This proposed safety zone is part of an overall safety program implemented by the Captain of the Port, New York, NY to enhance the safety of liquefied petroleum gas operations in the Port of New York. Under present procedures, the Captain of the Port, New York, issues a temporary safety zone each time an LPG vessel transits New York Harbor, specifying the time and date of the transit and describing the area of the zone. The area described is the same each time since all LPG vessels transit to and from LPG receiving facilities in the Arthur Kill. Because of the recurring nature of the zone, the Coast Guard proposes to issue a permanent safety zone regulation. This safety zone will be in effect whenever a loaded LPG carrier enters the port and transits Sandy Hook Channel, Raritan Bay, and the Arthur Kill enroute to an LPG receiving facility and will remain in effect until the vessel is safety moored; or, whenever a loaded LPG carrier departs an LPG facility and transits the Arthur Kill, Raritan Bay, and Sandy Hook Channel and will remain in effect until the vessel has passed the Scotland Lighted Buoy "S" (LLNR 1619). All marine traffic would be prohibited from entering the safety zone without authorization from the Captain of the Port, New York.

Mariners will be provided notice of scheduled arrivals and departures of loaded LPG vessels via a Marine Safety Information Broadcast Notice to Mariners. The safety zone during transit will be a "moving safety zone" in the waters within 100 yards of the LPG vessel. For incoming LPG vessels, a Coast Guard vessel will meet the LPG carrier at Ambrose Light and escort it from the Scotland Lighted Buoy "S" (LLNR 1619) to berth and will stay on scene until the LPG vessel is moored to the receiving waterfront facility, at which time the safety zone will be secured. For outgoing vessels, the process will be reversed. The concept of a moving safety zone around the LPG vessel minimizes the chance of collision with another vessel by eliminating crossing, overtaking or passing situations in New York Harbor. It minimizes disruption to other vessel traffic as operators can schedule vessel movements ahead of the LPG vessel transit or just after the LPG vessel has passed. The Exxon Bayway waterfront facility has been receiving LPG for many years. For each LPG vessel arrival the Captain of the Port, New York has exercised his authority and established a temporary safety zone describing conditions similar to those contained in this notice of proposed rulemaking. Interested persons who have communicated with the COTP New York have voiced approval of this "moving safety zone" concept during LPG vessel transits. The Coast Guard believes that establishing this safety zone as a permanent rule will enhance its effectiveness through greater dissemination.

Economic Assessment and Certification

This proposed regulations is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since the theory and practice of establishing a safety zone around a loaded LPG vessel has been in effect for many years. Small and large companies with vessels operating in New York Harbor are aware of scheduled LPG vessel harbor transits and adjust their vessel movements accordingly causing minimum economic impact. Based on this assessment it is

certified in accordance with section 605(b) of Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, by adding section 165.310 to read as follows:

§ 165.310 New York, New Jersey, Sandy Hook Channel, Raritan Bay, Arthur Kill—Safety Zone.

(a) The following areas are established as Safety Zones during the specified conditions:

(1) For incoming tank vessels loaded with Liquefied Petroelum Gas, the waters within a 100 yard radius of the LPG carrier while the vessel transits the Sandy Hook Channel, Raritan Bay East and West Reach, Ward Point Bend East and West Reach, and the Arthur Kill to the LPG receiving facility. The Safety Zone remains in effect until the LPG vessel is moored at the LPG receiving facility in the Arthur Kill.

(2) For outgoing tank vessels loaded with LPG, the waters within a 100 yard radius of the LPG carrier while the vessel departs the LPG facility and transits the Arthur Kill, Ward Point Bend West and East Reach, Raritan Bay West and East Reach, and the Sandy Hook Channel. The safety zone remains in effect until the LPG vessel passes the Scotland Lighted Buoy "S" (LLNR 1619) at the entrance to the Sandy Hook Channel.

(b) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(c) The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect by providing advance notice of scheduled arrivals and departures of loaded LPG vessels via a Marine Safety Information Broadcast Notice to Mariners.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5))

Dated: March 20, 1984.

James L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 84-8432 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 1

Disinterments From National Cemeteries

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration proposes to change its regulation on disinterment from national cemeteries. The regulation currently states that disinterment of the remains of the dependent of a veteran which were interred in a national cemetery, based on an agreement by the veteran to be buried in the same or adjoining grave, may be authorized by the Chief Memorial Affairs Director. It has been determined that eligibility for burial of a dependent in a national cemetery is not contingent on the interment of the veteran in the same or any other national cemetery. Therefore, the paragraph providing procedures for this requirement is being removed.

DATES: Comments must be received on or before April 30, 1984.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed regulation to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection only in the Veterans Service Units, Room 132, of the above address, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Sonja McCombs, (202) 389-2987.

SUPPLEMENTARY INFORMATION: The requirement for a surviving veteran to complete an Agreement for Burial (Dependent), VA Form 40-4969, no longer exists. Since VA Form 40-4983, Request for Disinterment (Dependent), was contingent upon the requirement set forth in VA Form 40-4969, there is no longer a need for VA Form 40-4983. Therefore, 38 CFR 1.621(d) will be removed.

The Administrator has determined that this regulation is nonmajor in accordance with Executive Order 12291, Federal Regulation. The Administrator hereby certifies that this proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this proposed amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations apply almost exclusively to individual veterans and their survivors. They will have no significant impact on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions).

There is no Catalog of Federal Domestic Assistance number involved.

List of Subjects in 38 CFR Part 1

Cemeteries, Claims, Government property, Veteran.

Approved: March 9, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

§ 1.621 [Amended]

38 CFR Part 1, *General,* is amended by removing paragraph (d) to § 1.621.

(38 U.S.C. 210(c))

[FR Doc. 84-8429 Filed 3-28-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. 1

[AD-FRL 2555-2]

Air Pollution Control; Regulation of Polycyclic Organic Matter Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On February 13, 1984 (49 FR 5580) EPA proposed not to regulate polycyclic organic matter (POM) as a specified air pollutant under the Clean Air Act. The State of New York has requested a 60 day extension of the comment period. This notice extends the comment period until May 29, 1984.

DATES: The comment date is extended from March 29, 1984 until May 29, 1984.

ADDRESS: Send comments (in duplicate, if possible) to the Central Docket Section (A-130), U.S. Environmental Protection Agency, 401 M Street, SW.,

Washington, D.C. 20460; Attn: Docket No. A–83–32.

FOR FURTHER INFORMATION CONTACT: Kent Berry, Strategic and Air Standards Division (MD–12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5504 or FTS 629–5504.

SUPPLEMENTARY INFORMATION: As discussed in the February 13, 1984 **Federal Register** notice, EPA is under court order to issue its final decision on POM by May 31, 1984. *State of New York* v. *Ruckelshaus, No. 82–CIV–4695.* As a result of this extension to the comment period, the date for issuing a final decision on POM is also being extended by an equivalent period of time to July 30, 1984. The February 13 notice also provided an opportunity for a public hearing if requested. Since no request for a hearing was made, a hearing will not be held.

Dated: March 22, 1984.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-8355 Filed 3-28-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–277; RM–4630]

FM Broadcast Station in Eveleth, Minnesota; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute Class C Channel 250 for Channel 261A at Eveleth, Minnesota, and to modify the license for Station WEVE–FM to specify operation on the Class C channel in response to a petition filed by Iron Range Broadcasting Inc.

DATES: Comments must be filed on or before May 14, 1984, and reply comments on or before May 29, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subject in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Eveleth, Minnesota) MM Docket No. 84–277, RM–4630.

Adopted: March 12, 1984.
Released: March 21, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Iron Range Broadcasting Inc.[1] ("petitioner"), seeking the substitution of Class C Channel 250 for Channel 261A at Eveleth, Minnesota, and modification of the license for Station WEVE to specify operation on Channel 250.

2. Petitioner submitted information in support of the proposal, indicating that even with translators, Station WEVE–FM, as a Class A station, has not been able to serve the surrounding area. Petitioner indicates that the substitution of Class C Channel 250 would increase its coverage, especially in the rural areas.

3. The proposed substitution of Class C Channel 250 for Channel 261A Eveleth, can be made in conformity with the minimum distance separation requirements provided there is a site restriction of 10.5 miles southeast of Eveleth. This restriction is necessary to avoid short spacing to Channel 251 in St. Cloud, Minnesota.

4. In accordance with established policy, we shall propose to modify the license of Station WEVE–FM (Channel 261A) to specify operation on Channel 250. However, should another party indicate an interest in the Class C assignment, then the modification could not be implemented. See, *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976). Instead an opportunity for the filing of a competing application may be provided.

5. Since Eveleth, Minnesota is located within 320 kilometers (200 miles) of the common U.S.-Canadian border, the Commission must obtain Canadian concurrence in the proposal.

6. In view of the need for a wide coverage area FM station, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Eveleth, Minnesota	261A	250

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before May 14, 1984, and reply comments on or before May 29, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: A. L. Stein, Esquire, Colorado Building, Washington, D.C. 20005 (Counsel to the petitioner).

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheurele, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules IT IS PROPOSED TO AMEND the FM

[1] Iron Range Broadcasting Inc. is the licensee of Station WEVE, Channel 261A, Eveleth, Minnesota.

Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, and original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-8320 Filed 3-28-84: 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Entry and Use, Ruby Lake National Wildlife Refuge, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to issue revised regulations to govern boating on Ruby Lake National Wildlife Refuge (NWR). This proposed revision is necessary to permit the conduct of a five-year research effort to evaluate the effects of powerboating (10 horsepower or less) on redhead and canvasback duck broods. The Service proposes to extend motorized boating for approximately two weeks, on a limited basis, in the South Sump of Ruby Lake NWR. Powerboating would begin July 15, 1984. The design of the research study requires the early opening to be in effect in alternate years—1984, 1986 and 1988. The current August 1 date would be observed in 1985 and 1987. The alternate-year opening scheme would allow appropriate research treatments to be applied during the periods of non-motorized boating from July 15 to August 1.

DATE: Comments must be received on or before April 30, 1984.

ADDRESS: Comments may be addressed to Richard N. Smith, Associate Director, Research and Development, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Rollin F. Sparrowe, Director, Division of Wildlife Research, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, D.C. 20240 (telephone: 202–653–8762).

SUPPLEMENTARY INFORMATION: Ruby Lake NWR was established on July 2, 1938, by Executive Order No. 7923, as a refuge and breeding ground for migratory birds and other wildlife. The refuge supports the densest nesting population of canvasbacks in North America, and is the only major cancasback breeding area in the western United States. More than 10 percent of all canvasbacks breeding in the intermountain west nest at Ruby Lake, and more cancasback ducklings are produced annually at Ruby Lake NWR than any other national wildlife refuge. Also, redhead duck production has been estimated to nearly equal canvasback production at Ruby Lake. In all, fifteen different species of waterfowl nest on the refuge.

At the same time, and compatible with Ruby Lake's high value to waterfowl, the refuge has had a long history of boating use. Largemouth bass were introduced in the South Sump in 1932, and an excellent bass fishery has since developed. Boats began to be used for fishing on the South Sump during the mid-1940's. To protect waterfowl and othe refuge resources, the Service has regulated recreational boating on the South Sump of Ruby Lake since the 1950's. Motorless boats and boats with electric motors are currently allowed on the South Sump from June 15 through December 31, and motors of 10 horsepower (hp) or less are allowed on the South Sump August 1 through December 31.

Throughout the years, various regulatory options have been employed by the Service to ensure the continued compatibility of recreational boating with the major purposes for which Ruby Lake NWR was established. Much of the basis for developing boating regulations for Ruby Lake, and for determining compatibility, has been the reliance on biological data obtained on the effects of boating on canvasback and redhead duck nesting activity. Because the Service does not have as much data available on the effects of powerboating on brood behavior and survival as it does for the effects on nesting, it is proposing this research. To acquire additional data would further enhance the Service's waterfowl management capability and provide a biologically sound basis for determining the effects and assuring the compatibility of recreational boating. Therefore, the Service proposes to evaluate powerboating on the distribution, behavior and survival of canvasback and redhead broods at Ruby Lake NWR.

The proposed study will be conducted in the South Sump of Ruby Lake NWR

for a five-year period, beginning in the spring of 1984. The first year will be designated as a pilot year to develop techniques, field test equipment, and make the requisite initial observations of brood behavior in response to disturbances from powerboats. In order to permit this, the basic study design involves alternate motorized boating dates on an annual schedule beginning with a July 15 opening in 1984; then August 1, 1985; July 15, 1986; August 1, 1987; and July 15, 1988. Non-motorized boating use would remain the same each year, opening June 15. This framework will allow replicate testing among years.

Currently, motorized boats, using motors of 10 hp or less, are allowed on the South Sump of Ruby Lake NWR from August 1 through December 31. In order to implement the research study as designed, it is necessary to revise the special regulations contained in 50 CFR Part 26 to include the alternate year opening scheme, beginning with July 15, 1984.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966 (NWRSAA), as amended (16 U.S.C. 668dd), authorizes the Secretary of the Interior to permit public access, use and recreation on refuges whenever he determines that such uses are compatible with the major purposes for which such areas were established. The Service has determined that permitting the use of motorized boats from July 15 through December 31 in 1984, 1986 and 1988, in order to facilitate a research study on brood behavior and survival will not have a biological impact on waterfowl nesting. The Service also believes that the limited extension of the motorized boating season in the South Sump portion of the refuge in order to undertake the needed research will not result in a substantial biological impact on waterfowl broods. If at any time during the extended boating period, the research activities indicate that motorized boating may be having a biological detrimental effect on duck broods, additional restrictions may be imposed if deemed necessary to maintain compatibility with refuge purposes, as provided for in 50 CFR 25.21. Therefore, the additional 16 days of powerboat use necessary to implement the research study has been determined to be compatible with the major purposes for which Ruby Lake NWR was established.

The provisions of the NWRSAA relating to recreation are administered in accordance with the Refuge Recreation Act of 1962, 16 U.S.C. 460k, which authorizes the Secretary to permit recreational uses on refuges if they are appropriate incidental or secondary uses. In conformance with that Act, the Service has determined that motorized recreational boating governed by the proposed regulations permits a secondary use of Ruby Lake NWR that is not inconsistent with the primary objectives for which it was established. Further, the proposed recreational use will not interfere with the primary purposes for which the Ruby Lake NWR was established. In addition, funds are available within the FY 1984 annual refuge budget of approximately $218,000 for the administration of this recreational activity that will be required to permit a biological study of motorized boating impacts on canvasback and redhead duck broods. Funding to conduct the research study, other than for the expanded boating use, will come from Service sources outside the annual Ruby Lake refuge budget.

Economic Effect

Executive Order 12291 of February 19, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions, or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or government jurisdictions.

The proposed rulemaking is a temporary, minor adjustment to existing regulations for one refuge; therefore, this action will not have an adverse impact on the overall economy or a particular region, industry or group of industries, or level of government. With respect to small entities, the proposed rulemaking will not significantly alter the existing recreational uses of the refuge, and small entities such as sporting good stores, restaurants, motels and local governments will not be significantly affected by the rule.

Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291, and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Effects

An environmental assessment (EA) and finding of no significant impact (FONSI) have been prepared to analyze the impacts of research to evaluate powerboating activity and its effects on the distribution, behavior and survival of canvasback and redhead broods at Ruby Lake National Wildlife Refuge. The limited trial extension of the morotized boating season is alternate years that is attendant to this research does not differ significantly from existing boating use in the area, and does not constitute a major Federal action. Supporting references used in making the FONSI determination include the EA prepared in 1976 concerning the effects of boating on the management of Ruby Lake NWR, the final enviromental impact statement for the "Operation of the National Wildlife Refuge System," that was filed with the Council on Environmental Quality on November 12, 1976, and the above-referenced EA. The EA and FONSI for the research proposal are available for public review and copying at the Service's Division of Wildlife Research, Room 515, Matomic Building, 1717 H Street, NW., Washington, D.C., or by contacting Rollin Sparrowe at the phone number provided above.

Maps of the South Sump are available from the Refuge Manager, Ruby Lake NWR, Ruby Valley, Nevada 89833, and will be posted at refuge boat landings. Copies of the maps can also be obtained from the Regional Director, U.S. Fish and Wildlife Service, 500 Northeast Multnomah Street, Suite 1692, Portland, Oregon 97232.

Primary author of this proposed rule is Noreen Clough, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C St., NW., Washington, D.C. 20240.

List of Subjects in 50 CFR Part 26

National wildlife refuge system, Recreation, Wildlife refuges.

PART 26 [AMENDED]

For the reasons set out in the preamble, as provided for in 50 CFR 26.33, the following special regulations are set forth below.

§ 26.34. Special regulations concerning public access, use and recreation for Ruby Lake National Wildlife Refuge, Nevada.

Beginning June 15 annually, and continuing until December 31, annually, motorless boats and boats with electric motors will be permitted only on that portion of the Ruby Lake National Wildlife Refuge known as the South Sump. For a limited alternating period, beginning on July 15, 1984; July 15, 1986; and July 15, 1988, and continuing through December 31, 1984, 1986 and 1988, respectively, boats propelled with a motor or combination of motors in aggregate not to exceet 10 horsepower rating will also be permitted on the South Sump. Beginning on August 1, 1985, and August 1, 1987, and continuing through December 31, 1985, and 1987, respectively, boats propelled with a motor or combination of motors in aggregate not to exceed a 10 horsepower rating will be permitted in the South Sump. Boats may be launched only from landings approved and so designated by the Refuge Manager.

Authority: 16 U.S.C. 668dd and 460k.

Dated: March 16, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-8478 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-07-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

Caribbean Fishery Management Council; Swordfish Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Change of dates and announcement of locations for public hearings.

SUMMARY: In reference to a notice published March 14, 1984, 49 FR 9588, the Caribbean Fishery Management Council has changed the dates and has set the locations for their public input on the Swordfish Fishery Management Plan.

DATES: April 10, 1984, St. Thomas, Virgin Islands, from 7–10 p.m., and on April 12, 1984, La Jas, Puerto Rico, from 2–5 p.m.

ADDRESS: The hearings will take place at the following locations:

Conference Room, Legislative Building, St. Thomas, Virgin Islands;

and

Conference Room, Marine Science Laboratory, Isla Magueyes, La Jas, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Omar Munoz, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico, phone: (809) 753–4926.

Dated: March 26, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-8480 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

Groundfish of the Gulf of Alaska; Availability of Amendment To Fishery Management Plan and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted Amendment 13 to the fishery management plan for Groundfish of the Gulf of Alaska for review by the Secretary of Commerce and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan amendment will be accepted until June 11, 1984.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Regions, NMFS, P.O. Box 1668, Juneau, AK 99802.

Copies of the amendment and its environmental assessment/initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), (907) 586–7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce for review and approval or disapproval. The act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 13 proposes measures for managing the pollock resource in the Western and Central Regulatory Areas of the Gulf of Alaska. Regulations proposed by the North Pacific Fishery Management Council and based on the amendment are scheduled to be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: March 26, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-8481 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 62
Thursday, March 29, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Tongue River (Pilot) Watershed, Dam Rehabilitation Work, North Dakota; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice than an environmental impact statement is not being prepared for the proposed Rehabilitation Work on Dam No. T7–1, T3–2, T3–6, T8–1, T3–1, T2–4 and T2–2 of the Tongue River (Pilot) Watershed, Pembina and Cavalier Counties, North Dakota.

FOR FURTHER INFORMATION CONTACT: Mr. J. Michael Nethery, State Conservationist, Soil Conservation Service, P.O. Box 1458, Bismarck, North Dakota 58502, telephone (701) 255–4011, extension 421.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. J. Michael Nethery, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The major item of work, to be completed on all seven (7) structures is lining the principal spillway pipe(s) with polyethylene or polyurethane to prevent further degradation of the existing concrete and corrugated metal spillways. Typical installations will require between 250 and 300 linear feet of liner pipe and replacement of at least 20 linear feet of corrugated metal pipe. Associated work includes minor excavation, earth-fill and reseeding of disturbed areas. All work on the damsite will be within approximately a 100 foot radius of the outlet of the principal spillway pipe(s).

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Mr. J. Michael Nethery.

No administrative action on implementation of the proposal will be taken until 30 days after the day of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. State and local review procedures for Federal and federally assisted programs and projects are applicable)

Dated: March 21, 1984.

J. Michael Nethery,

State Conservationist.

[FR Doc. 84-8443 Filed 3-28-84; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Defense Priorities and Allocations System
Form Numbers: Agency—N/A; OMB—0625–0107
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 25,000 respondents; 16,667 reporting hours
Needs and Uses: Under the Defense Production Act of 1950, as amended, the President is given authority to allocate materials and facilities and to establish priorities in the performance of contracts and orders in support of the national defense. This authority has been delegated by the President to the Secretary of Commerce for industrial products, materials and services and is administered through the Defense Priorities and Allocations System (DPAS). Provisions have been established to audit transactions under the regulation to determine compliance with it. Every person subject to this regulation is required to keep records of transactions for 3 years and produce these records for inspection on demand.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Recordkeeping
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Request for Special Priorities Assistance
Form Numbers: Agency—ITA–999; OMB—0625–0015
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,800 respondents; 900 reporting hours
Needs and Uses: This form is used by Defense Contractors to request Special Priorities Assistance (SPA) when placing defense rated orders with suppliers, or to obtain timely delivery of products or materials from suppliers, in support of authorized national defense and energy programs. The information is used by the Department of Defense and its associated defense agencies, the Department of Energy and the Department of Commerce to provide SPA.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Shipment of Nickel Alloy Products

Form Numbers: Agency—ITA–942; OMB—0625–0025
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 21 respondents; 14 reporting hours
Needs and Uses: The information collected provides data on defense rated shipments of nickel alloy products. The data are used by the Department of Commerce to establish and monitor the percentage obligation ("set-asides") of producers of nickel alloys to accept defense rated orders. The set-asides provide a means for equitably distributing the defense requirements for nickel alloy products among the nickel alloy product producers with a minimum disruption to commercial operations.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Controlled Materials Requirements (Production, Construction, or Research and Development)
Form Number: Agency—ITA–9048; OMB—0625–00133
Type of Request: Revision of a currently approved collection
Burden: 2,900 respondents; 1,250 reporting hours
Needs and Uses: This information is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.), as implemented by the Defense Priorities and Allocations system regulation (15 CFR 350). The information collected provides data on the quarterly requirements of controlled materials—copper, steel, aluminum, and nickel alloys.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Aluminum Producers and Importers
Form Numbers: Agency—ITA–978; OMB—0625–0016
Type of Request: Revision of a currently approved collection
Burden: 300 respondents; 1,800 reporting hours
Needs and Uses: The information collected provides data on defense rated shipments of aluminum ingot and mill products. The data are used by Commerce to establish and monitor the obligation ("set-asides") of producers of aluminum ingot and mill products to accept defense rated orders.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Monthly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Steel Controlled Materials Report
Form Numbers: Agency—ITA–943; OMB—0625–0017
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 100 respondents; 133 reporting hours
Needs and Uses: The information collected provides data on defense rated shipments of iron and steel. The data are used by the Department of Commerce to establish and monitor the obligation ("set-asides") of producers of iron and steel to accept defense rated orders.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Emergency Application for Rating or Directive Assistance
Form Numbers: Agency—ITA–993; OMB—0625–0032
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 0 respondents; 1 reporting hour
Needs and Uses: In the event of a national emergency, this information would be used to assure that production materials for essential items may be obtained by contractors, and the distribution of these items be accomplished.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Radial Ball Bearings 30mm and Under
Form Numbers: Agency—ITA–985; OMB—0625–0044
Type of Request: Revision of a currently approved collection
Burden: 15 respondents; 8 reporting hours
Needs and Uses: The information collected provides data on the shipments, including defense orders and exports, and unfilled orders of radial ball bearings 30mm outer diameter and under. Minature and instrument radial ball bearings are used in many defense critical products. The Department of Defense (DOD) requires that DOD purchased items contain only U.S. manufactured radial ball bearing components. This form is used to monitor this requirement.
Affected Public: Businesses or other for-profit organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Titanium Metal
Form Numbers: Agency—ITA–991; OMB—00625–0019
Type of Request: Revision of a currently approved collection
Burden: 35 respondents; 140 reporting hours
Needs and Uses: The information collected provides data on the supply, production and shipments of titanium sponge, ingot, and mill shapes, the consumption of scrap, and the imports of titanium sponge. This information is required in support of the President's industrial mobilization responsibilities under the Defense Production Act, as amended.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Shipments of Primary Nickel
Form Numbers: Agency—ITA–920; OMB—0625–0012
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 21 respondents; 14 reporting hours
Needs and Uses: This information is used in support of the President's industrial mobilization responsibilities under the Defense Production Act of 1950, as amended. The information collected provides data on shipments of primary nickel. The data are used by the Department of Commerce in supporting the Federal Emergency Management Agency in determining stockpile goals and establishing

acquisition and disposal programs, and the expansion of domestic supply.
Affected Public: Businesses or other for-profit organizations
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Diamond Dies, Natural and Synthetic: Production, Import and Exports
Form Numbers: Agency—ITA–9015; OMB—0625–0003
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 22 respondents; 11 reporting hours
Needs and Uses: This information is used in support of the President's industrial mobilization responsibilities under Title III of the Defense Production Act, as amended. The information collected provides data on production, imports, and exports of diamond dies, natural and synthetic. The Federal Emergency Management Agency uses the data for its management of the Strategic and Critical Materials Stockpile, and for applications of Title III of the Defense Production Act. It is used by Commerce in support of industrial mobilization planning and preparedness programs.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Request to Dispose of Commodities or Technical Data Previously Exported
Form Numbers: Agency—ITA–699P; OMB—0625–0009
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,500 respondents; 2,500 reporting hours
Needs and Uses: The information requested by this report must be submitted to Office of Export Administration whenever applicants wish to reexport commodities or technical data that normally requires a validated license for export. The propose of this form is to prevent shipments of commodities in violation of the law.
Affected Public: Businesses or other for-profit organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Request for and Advice on Status of Pending Application, Amendment, or Reexport Request
Form Numbers: Agency—ITA–6019P; OMB—0625–0050
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 400 respondents; 700 reporting hours
Needs and Uses: This is a voluntary form that exporters use to follow-up on pending applications, amendments and reexport requests. The Office of Export Administration returns it giving the current status of their request.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Watch Quota Program
Form Numbers: Agency—ITA–321P, 360P, 361P; OMB—0625–0134
Type of Request: Revision of a currently approved collection
Burden: 7 respondents; 201 reporting hours
Needs and Uses: The information collected is used to administer the watch duty-exemption program (Pub. L. 97–446).
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion, annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Exhibitor and Mission Member Report Form
Form Numbers: Agency—ITA–4075P; OMB—0625–0034
Type of Request: Reinstatement of a previously approved collection
Burden: 3,000 respondents; 250 reporting hours
Needs and Uses: The information is collected from firms participating in overseas trade promotion events managed and funded by the Department of Commerce. It is used to evaluate efficiency impact, and effectiveness of the Department's trade promotion events.
Affected Public: Business or other for-profit organizations, small business or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Ken Allen, 395-3785

Agency: International Trade Administration
Title: Project License Procedure
Form Number: Agency-EAR 373.2(c); OMB—0625-0002
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 40 respondents; 120 reporting hours
Needs and Uses: The Project License Procedure was developed to provide a single license for the export of commodities needed for large-scale overseas operations. It eliminates the necessity for filing and processing of numerous individual license applications.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395–3785

Agency: International Trade Administration
Title: Export Trading Companies Contact Facilitation Service
Form Number: Agency–ITA–4094P; OMB—0625–0120
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,250 respondents; 363 reporting hours
Needs and Uses: Thousands of U.S. firms produce products that are marketable overseas but have never been exported. There is a need to put those new to exporting in contact with firms offering export trade services. The Contact Facilitation Service is designed as a matching system to put the producer together with the exporter or vice versa.
Affected Public: State of local governments, businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395–3785

Agency: National Bureau of Standards (NBS)
Title: National Voluntary Laboratory Accrediation Program (NAVLAP)
Form Numbers: Agency—NBS–1144; OMB—0652–0003
Type of Request: Revision of a currently approved collection
Burden: 250 respondents; 750 reporting hours

Needs and Uses: Information is required of testing laboratories voluntarily applying for accrediation under NAVLAP. The information submitted is used by NBS to determine if the laboratory meets NAVLAP accrediation critera.
Affected Public: State or local governments, businesses or other for-profit organizations, federal agencies or employees, non-profit institutions, small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ken Allen, 395–3785

Agency: National Oceanic and Atomspheric Administration (NOAA)
Title: Report of Observations/Samples Collected by Oceanographic Programs
Form Numbers: Agency—NOAA 24–23; OMB—0643–0033
Type of Request: Extension of the expiration date of a currenly approved collection
Burden: 30 respondents; 100 reporting hours
Needs and Uses: The United Nations Education, Scientific, and Cultural Organization (UNESCO), on recommendations from their working group on International Oceanographic Data Exchange (IDOE), sponsors an international marine data inventory entitled "Report on Observational Samples Collected by Oceanographic Programs." The U.S. delegation to the IDOE agreed that the U.S. will participate in this international inventory. NOAA's form is used by oceanographic researches to submit their data.
Affected Public: Federal agencies or employees, state or local governments, non-profit institutions
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395–7231

Agency: National Oceanic and Atomspheric Administration (NOAA)
Title: Volunteer Severe Weather Observer
Form Numbers: Agency—NOAA–88–512; OMB—0648–0032
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 100 respondents; 53 reporting hours
Needs and Uses: The purpose of this collection is to supplement the National Severe Storms Laboratory's sensors (radars, surface stations, etc.) with visual observations of volunteer rural residents in prime data collection regions. These reports emphasize phenomenon that NOAA's sensors are least likely to adequately sample (hail, tornados) and de-emphasize phenomenon NOAA's instruments have previously proven to sample well (rain, wind). Date are used in basic and applied research on severe storms.
Affected Public: Individuals or households
Frequency: On occasion
Respondent's obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395–7231

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent ot the respective OMB Clearance Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84–8427 Filed 3–28–84; 8:45 am]
BILLING CODE 3510–CW–M

International Trade Administration

[C–484–015]

Tomato Products From Greece; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on tomato products from greece. The review covers the period January 1, 1982 through December 31, 1982.

As a result of the review, the Department has preliminarily determined the amount of bounty or grant to range from 5.62 to 68.91 Greek drachmas per gross kilogram, depending on the specific product. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 7261) the final results of its administrative review of the countervailing duty order on tomato products from Greece (37 FR 6360, March 28, 1972) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are tomato paste and sauce, peeled tomatoes and tomato juice. Such merchandise is currently classifiable under items 141.6520, 141.6540, 141.6600 and 166.3000 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1982 through December 31, 1982 and one program: "production aid" to processors of tomatoes.

Analysis of Program

On January 1, 1981, Greece entered the European Communities ("the EC") and the EC established production subsidies to Greek processors of tomatoes. This program replaced the Greek government program that was the subject of earlier reviews. The EC grants the aid to tomato processors whose products meet the quality standards of the EC and who contract to pay tomato producers at or above the minimum Greek prices for tomatoes established by the EC.

The EC reported its schedule of payments to Greek tomato processors based on marketing years—1981/82 and 1982/83 beginning in July of each year. We calculated the amount of assistance provided to specific products for calendar year 1982 of the basis of concentrate ratios provided by the Greek government in an earlier submission. The average of the two payments reported in the schedules for each product was used to determine countervailable amounts.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the total bounty or grant during the period of review to be as shown in the appendix to this notice, ranging from 5.62 to 68.91 Greek drachmas per gross kilogram. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties as indicated in the appendix on all shipments of Greek tomato products exported on or after

January 1, 1982 and entered, or withdrawn from warehouse, for consumption on or before March 21, 1982.

On March 22, 1982, the International Trade Commission ("the ITC") notified the Department that the Greek government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury or likelihood of material injury to an industry in the United States, the Department intends to instruct the Customs Service to assess countervailing duties in the amount of the estimated duties required to be deposited, on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 22, 1982 and through the date of the ITC's notification to the Department of its determination.

As provided by section 751(a)(1) of the Tariff Act, we intend to instruct the Customs Service to collect cash deposits as indicated in the appendix on all shipments of tomato products from Greece entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. The deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 21, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

Appendix

For January 1, 1982 through December 31, 1982.

(1) Tomato Paste and Sauce:

Concentration (percent)		Drachmas per gross kilogram (packing size)				
Not less than	But less than	More than 1.5 kg	From 1.5 to 0.7 kg	From 0.7 to 0.25 kg	From 0.25 to 0.15	0.15 and less
12	14	10.16	11.91	12.88	15.28	17.56
14	16	11.10	13.01	14.07	15.61	19.18
16	18	12.03	14.11	15.26	18.49	20.80
18	20	12.98	15.23	16.47	18.96	22.45
20	22	13.92	16.33	17.66	21.39	24.06
22	24	14.86	17.42	18.85	22.83	25.66
24	26	15.80	18.52	20.04	24.27	27.30
26	28	16.73	19.62	21.22	25.71	28.82
28	30	17.76	20.72	22.41	27.15	30.54
30	32	18.81	21.81	23.60	28.59	32.16
32	34	19.54	22.91	24.79	30.03	33.76
34	36	20.48	24.01	25.97	31.47	35.39
36	38	21.42	25.11	27.16	32.91	37.01
38	40	22.37	26.23	28.37	34.37	38.66
40	42	23.31	27.33	29.56	35.81	40.28
42	93	24.24	28.43	30.75	37.25	41.90
93	100	66.91	66.91	66.91	66.91	66.91

(2) Tomato Juice: 5.62 drachmas per gross kilogram.

(3) Peeled Tomatoes: San Marzano Variety—9.19 Drachmas Per Gross Kilogram; Roma and Similar Varieties—7.02 Drachmas Per Gross Kilogram.

[FR Doc. 84-8288 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-006]

Carbon Steel Plate From Romania; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Suspension Agreement.

SUMMARY: On January 19, 1984, the Department of Commerce published the preliminary results of its administrative review of the agreement to suspend the antidumping investigation on hot-rolled carbon steel plate from Romania. The review covers the one known exporter of this merchandise to the United States and the period January 4, 1983 through October 31, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, the final results remain unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Michael J. Altier Or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 317) a notice of suspension of the antidumping duty investigation of hot-rolled carbon steel plate from Romania. On January 19, 1984, the Department published in the **Federal Register** (49 FR 2281) the preliminary results of its administrative review of the suspension agreement. The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of hot-rolled carbon steel plate, currently classifiable under items 607.6620, 607.6625, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated.

The review covers the period January 4, 1983 through October 31, 1983, and Metalimportexport, the only known exporter to the United States of Romanian carbon steel plate covered by the suspension agreement.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received joint comments from Metalimportexport and TradeARBED Inc., an importer, and comments from the United States Steel Corporation. The comments of Metalimportexport and TradeARBED, Inc. will be referred to as those of Metalimportexport.

Comment 1: Metalimportexport claims that section 751 of the Tariff Act of 1930 ("the Tariff Act") requires the Department to review its method for establishing foreign market value, including its choice of surrogate.

Department's Position: We agree. In antidumping proceedings involving state-controlled economy countries the choice of surrogate is an issue which is appropriately addressed in each section 751 review. As discussed in Comments 3 and 13 below, we are not persuaded in this review that a change of surrogate is warranted.

Comment 2: Metalimportexport states that the Department has considerable discretion in determining foreign market value in proceedings involving imports from state-controlled economy countries. The Department's previous determinations, establishing a hierarchy for selecting the surrogate, are not countenanced by statutory provision nor approved by the Congress.

Department's Position: The statute gives the Department a certain amount of discretion in determining foreign

market value in state-controlled economy proceedings. Our regulations and the hierarchy which has evolved in our determinations are within the bounds established by the statute. We have a clear preference for using the home market price of a suitable surrogate producer as the basis for calculating foreign market value. We think this approach is appropriate because it fits most closely with the perferred basis for antidumping comparisons involving producers in market economy countries: a comparison of home market and U.S. prices. It is because the home market prices in state-controlled economies are not a valid basis for comparison that we need a surrogate. In choosing the surrogate for foreign market value we seek to approximate the price that the state-controlled economy producer would have charged in its home market, absent the element of state control. The closest approximation, in our vew, is the price charged by a suitable market economy producer in its home market. As long as the statute remains unchanged, we will continue our present practice.

Comment 3: Metalimportexport contends that the statute and the Department's regulations make it difficult if not impossible to predict the basis for calculating foreign market value in any state-controlled economy country proceeding.

Department's Position: We recognize that the difficulty in predicting which surrogate the Department will select is a shortcoming of section 773(c) of the Tariff Act. This is particularly true during the investigatory stage of a proceeding. The uncertainty affects both the petitioner and the respondent. Beyond the investigatory stage, however, the uncertainty ordinarily is reduced. Once we have found a suitable surrogate we are disposed to continue using that surrogate unless we are persuaded a better surrogate exists.

Comment 4: Metalimportexport asserts that foreign market value for state-controlled economy suppliers should not depend upon the existence of a willing surrogate. No market economy supplier having low home market prices could be expected to cooperate willingly and fully with the Department to aid U.S. market access for its competitor. Suppliers with a significant stake in the U.S. market also may be unwilling to cooperate because such cooperation may subject them to scrutiny under the U.S. antidumping law.

Department's Position: We agree with Metalimportexport that, where a foreign producer's prices are used as a surrogate for foreign market value, that producer's motives for cooperating may be questionable. However, unless the law is changed, we will continue to consider a cooperating free market producer's home market prices as the perferred basis for calculating foreign market value.

Comment 5: Metalimportexport recommends in general, and particularly in this case, that the Department consider according priority to the surrogate producer's U.S. prices as the basis for calculating foreign market value. Reliance on the surrogate's U.S. prices would enchance predictability, make the Department's procedures more transparent, avoid the problems of seeking a willing surrogate producer, facilitate adjustments for price comparability, minimize verification difficulties, and overcome the difficulties which result from exchange rate fluctuations.

Department's Position: We agree that using a foreign supplier's prices in the U.S. market as a basis for calculating foreign market value has advantages. It would reduce the uncertainty for both the petitioner and the state-controlled economy producer. However, in this instance, because the Finnish surrogate producer's U.S. sales are currently the subject of an antidumping investigation, use of its prices to the U.S. is inappropriate.

Comment 6: If the Department determines that foreign market value should again be based upon home market prices charged by the Finnish manufacturr, Rautaruukki Oy, Metalimportexport requests that the Department issue its semiannual estimates of foreign market value in the currency of the surrogate economy country.

Department's Position: We agree that, for suspension agreements involving state-controlled economies, it is appropriate to use the stated currency of the relevant sales transactions for the surrogate. We recalculated the estimated foreign market value in terms of Finnish markkas.

Comment 7: The Department received information on adjustments (e.g. year-end rebates, sales commissions) from the Finnish producer during the original investigation but not during this annual review. If the Department determines that foreign market value should again be based upon home market prices charged by Rautaruukki Oy, Metalimportexport requests that the Department update the price adjustment in a manner other than based upon national inflation indices.

Department's Position: The department allowed five different types of price adjustments (year-end rebates, sales commissions, freight equalization, credit and warranty) in its calculation of the last estimated foreign market value. We agree with Metalimportexport's suggested use of adjustment-to-base price ratios and have made the appropriate recalculations.

Comment 8: If the Department continues to use home market prices charged by Rautaruukki Oy, Metalimportexport requests that the Department make an appropriate level of trade adjustment in calculating the foreign market value and, further, that the Department fill in gaps in the Finnish information provided concerning discounts and rebates, through the use of the best information available, cognizant of the inevitably passive position of the state-controlled economy supplier and the total cooperation which Metalimportexport has extended to the Department from the onset of these investigations.

Department's Position: We are unable to make the requested adjustment because Metalimportexport has not provided adequate information for the Department to ascertain the amount of any level of trade adjustment. Further, we are not aware of any discounts or rebates which have not already been accounted for in calculating the estimated foreign market value. It is likely that the discounts or rebates perceived to be unaccounted for are those discussed in the Department's response to comment 11 below.

Comment 9: If the Department continues to use home market prices charged by Rautaruukki Oy, Metalimportexport requests that the Department make an appropriate adjustment for material and labor cost differentials measured by the production factors provided by Metalimportexport and verified by the Department, consistent with the Commerce Regulations.

Department's Position: We are not able to consider the requested adjustment because Metalimportexport has not provided adequate information for the Department to ascertain the amount of any adjustment relating to differences in costs of material and labor.

Comment 10: Metalimportexport has provided information from confidential sources concerning prices charged for carbon steel plate in the Finnish home market which appear to be at variance with those found by the Department. Metalimportexport requests that the Department take steps to ascertain the correct prices charged Finnish home market customers.

Department's Position: The Department has reviewed the information submitted by Metalimportexport and has found it not to be at variance with that reported by the Finnish producer.

Comment 11: Metalimportexport has provided information that, during the period October 1983 until January 4, 1984, there was an official temporary price reduction from Finnish list prices. Metalimportexport requests that the Department account for this additional price reduction.

Department's Position: The Department accounted for the official temporary allowance reduction granted off the Finnish list prices in its calculation of the estimated foreign market value.

Comment 12: Since there were no shipments of Romanian carbon steel plate to the United States during the period of review, the Department used Romanian carbon steel plate shipments to Finland as the best evidence of the product mix of Romanian carbon steel plate which would have entered the United States absent the suspension agreement. U.S. Steel states that this is an error both as a matter of law and as a mater of fact. U.S. Steel asserts that the use of any surrogate for the mix of Romanian carbon steel products in the United States is an error of law. Absent evidence of a sudden and dramatic shift in the preferences of U.S. buyers, the actual Romanian mix prior to the suspension agreement represents the best evidence as to what would have been shipped but for the agreement. U.S. Steel also asserts that the use of the mix of Romanian shipments to Finland as a surrogate for the mix of Romanian shipments to the U.S. is an error of fact. Given the disparity between Finland and the United States in terms of size and degree of sophistication of the steel consuming sector in the United States, U.S. Steel submits that it is inconceivable Finland could ever serve as a surrogate for the United States.

Department's Position: The Department as a matter of law continues to believe that the best evidence of the mix that would have entered the United States during the period of review is the contemporaneous product mix for Finland. As a matter of fact we are not persuaded that a different consumption pattern exists between Finland and the United States.

Comment 13: U.S Steel continues to believe that Italy constitutes the most appropriate surrogate for foreign home market value purposes. Given the difficulty the Department has experienced in obtaining the cooperation of potential surrogates and the enormous amounts of time required to research, analyze and brief the appropriateness (or lack thereof) of each candidate, U.S. Steel states that it will not make further comments unless and until they are informed as to which countries are in fact willing to serve in the surrogate role.

Department's Position: As discussed in our position to Comments 1 and 3 above we are inclined to continue using Finland as a surrogage until we are persuaded a better one exists. A complete explanation of the Department's position and process regarding Finland's selection as a surrogate can be found in the Department's preliminary affirmative determination of August 16, 1982 (47 FR 25646) and the accompanying decision memorandum dated August 9, 1982. We are in agreement with U.S. Steel regarding the difficulty in obtaining cooperation of poetntial surrogates and the extensive amounts of time required to select a willing surrogate.

Final Results of the Review

The final results of our review are the same as those presented in the preliminary results of review. Since there were no shipments of Romanian carbon steel plate to the United States during the period and the other terms of the agreement have been met, we determine that Metalimportexport has complied with the terms of the suspension agreement.

The new estimated foreign market value is effective for all entries, or withdrawals from warehouse, for consumption of Romanian carbon steel plate on or after the date of publication of this notice, and remains in effect until our next semiannual notification.

The Department intends to begin immediately the next administrative review. Interested parties are encouraged to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-8469 Filed 3-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-045]

Steel Wire Rope From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On December 5, 1983, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan. The review covers 101 of the 104 known manufacturers and/or exporters and two known third-country resellers of this merchandise to the United States and the period October 1, 1981 through September 30, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Maureen A. Flannery or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 54528) the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such steel wire rope is currently classifiable under items 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700 of the Tariff Schedules of the United States Annotated.

The review covers 101 of the 104 known manufacturers and/or exporters and two known third-country resellers of Japanese steel wire rope to the United States and the period October 1, 1981 through September 30, 1982. We will cover shipments by three firms, Mitsui

and Co., Ltd., Shinyo Ropes Co., Ltd., and Wire Shoji, in a subsequent review.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review remain unchanged from the preliminary results of review, and we determine that the following weighted-average margins exist for the period October 1, 1981 through September 30, 1982:

Manufacturer/exporter	Margin (per-cent)
Ace Industrial Co., Ltd	[1] 5.8
Ako Rope, K.K.	7.25
Asada Corporation	7.29
Asahi Mini Rope Co., Ltd	[1] 9.66
Chrysanthemum Nippon Wire Rope Co., Ltd./Izumi Trading Co., Ltd	0
Chrysanthemum Nippon Wire Rope Co., Ltd./Kent-Moore Japan, Inc	0
Chuo Seisakusho Ltd./All exporters	[1] 1.39
Daido Corp	7.29
Daisen Kogyo	[1] 5.66
Daiwa Steel Co., Ltd. (also known as Daiwa Kogyo K.K.)	[1] 5.86
Daiyu Kogyo Co., Ltd	7.29
Dia Enterprises, Ltd	7.29
J. Gerber & Co. (Japan)	[2] 0
Godo Tessen Co., Ltd	[1] 9.66
Hakko Sangyo Co., Ltd	[2] 0
Hannan Wire Rope Mfg. Co., Ltd./Far East Industrial Co., Ltd	7.29
Hannan Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd	7.29
Iba Steel Rope Mfg. Co., Ltd./Hori Trading Co., Ltd	[1] 9.66
Igeta Wire Rope Co., Ltd./Mitsui & Co., Ltd	[2] 3.61
Igeta Wire Rope Co., Ltd./Kimura Shoten, Ltd. (formerly known as Osaka Ship Supplies Center)	[1] 3.81
Iwata Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 0
Japan Steel Wire Rope Co., Ltd./Kohshin Co., Ltd	7.29
Kasuga Seiko Co., Ltd./Higashishiba & Co., Ltd	7.29
Kasuga Seiko Co., Ltd./Kohshin Co., Ltd	7.29
Kasuga Seiko Co., Ltd./Nissho-Iwai	7.29
Kasuga Seiko Co., Ltd./Sumitomo Corporation (also known as Sumitomo Shoji Kaisha Ltd.)	7.29
Kawashima Trading Co., Ltd	[1] 9.66
Kawatetsu Wire Products Ltd./Mitsui & Co., Ltd	[2] 0
Kiku Steel & Wire Rope Co., Ltd./Watanabe Trading Co., Ltd	0
Kiyohara & Co., Ltd	[1] 5.66
Kobayashi Metals, Ltd	[1] 5.66
Kokoku Steel Wire, Ltd	7.29
Kokoku Steel Wire, Ltd./Kanematsu-Gosho Ltd	7.29
Kokoku Steel Wire, Ltd./Kohshin Co., Ltd	7.29
Kokoku Steel Wire, Ltd./Kongo Corp	7.29
Kokoku Steel Wire, Ltd./Koyo Boeki Co., Ltd	7.29
Kokoku Steel Wire, Ltd./Mitsui & Co., Ltd	[2] 7.29
Kokoku Steel Wire, Ltd./Nichimen Co., Ltd	7.29
Kokoku Steel Wire, Ltd./Nissho-Iwai	7.29
Kokoku Steel Wire, Ltd./Shinkyo Shoji Kaisha Ltd. (also known as Shinsho Corp.)	7.29
Kokoku Steel Wire, Ltd./Sumitomo Corporation (also known as Sumitomo Shoji Kaisha Ltd.)	7.29
Kokoku Steel Wire, Ltd./Yutoku & Co., Ltd	7.29
Kondo Iron Works Co., Ltd	[1] 9.66
Koshihara Iron Works Co., Ltd	[1] 5.66
Kyosei Industry Co., Ltd	[1] 0
Kyowa Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[1] 7.29
Kyowa Wire Rope Mfg. Co., Ltd./S.M. Industries, Inc	7.29
Kyowa Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd	7.29
Liberty Shokai, Ltd	[1] 5.66
Maruka Machinery Co., Ltd	[1] 5.66
Maruseen Wire Rope Mfg. Co., Ltd./S.M. Industries, Inc	7.29
Maruseen Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd	0.23
Meiji Seiko Co., Ltd. (also known as Meiji Steel Wire Rope Co., Ltd.)/Mitsui & Co., Ltd	[2] 0
Misawa Trading Co., Ltd. (also known as Midawa Kosan Kaisha, Ltd.)/S.M. Industries, Inc	7.29
Naigai Rope Mfg. Co., Ltd./Mitani Kogyo Co	7.29
Nakatsuji Seikosho	7.29
Naniwa Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd	7.29
Naniwa Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 0
Naniwa Wire Rope Mfg. Co., Ltd./All exporters othe than Mitsui or Higashishiba	[1] 9.66
Nankai Senshu Steel Wire & Rope Co., Ltd./Sumitomo Shoji Kaisha Ltd. (also known as Sumitomo Corp.)	7.29
Nanri Trading Co., Ltd	7.29
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./Kin-yo Co., Ltd	7.29
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./S.M. Industries, Inc	7.29
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./Yutoku & Co., Ltd	7.29
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./Daimyo Bussan Co., Ltd	7.29
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./F.A. Industries Corp	7.29
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./Union Co., Ltd	7.29
Nippon Steel Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd	7.29
Nippon Steel Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 0
Nippo Wire & Rope Co., Ltd	7.29
Nishimura Wire & Rope Co., Ltd./Kin-yo Co., Ltd	7.29
Nishimura Wire & Rope Co., Ltd./K-M Int'l	7.29
Nishiya Wire & Rope Co., Ltd./Mitsui & Co., Ltd	[2] 0
Nissei Sangyo Co., Ltd	7.29
Nishi-Nippon Fujikura Co., Ltd	[1] 5.66
Nobuhara Mfg. & Supply Co	7.29
Ryosi Shoji Co., Ltd	7.29
Sakai & Co., Ltd	[1] 5.66
Sasaki Kogyo Yugen Kaisha Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./Kin-yo Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./Kohshin Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./Koutoku Trading Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./Okura & Co., Ltd	7.29
Seiko Wire & Rope Co., Ltd./S.M. Industries, Inc	7.29
Seo Hardware Corp	[1] 9.66
Shibamoto & Co., Ltd	[1] 9.66
Shimada & Co., Ltd	[1] 9.66
Shinko Wire Co., Ltd./Kanematsu-Gosho Ltd	[2] 0
Shinko Wire Co., Ltd./Mitsui & Co., Ltd	[2] 0
Shinko Wire Co., Ltd./Nissho-Iwai	[2] 0
Shinko Wire Co., Ltd./Shinsho Corp	0
Shinyo Ropes Co., Ltd	[2] 7.29
Shinyo Ropes Co., Ltd./Higashishiba & Co., Ltd	7.29
Shinyo Ropes Co., Ltd./Mitsui & Co., Ltd	[2] 0
Shinyo Ropes Co., Ltd./S.M. Industries, Inc	[1] 4.62
Shinyo Ropes Co., Ltd./Yutoku & Co., Ltd	0
Showa Boeki Co., Ltd	[1] 5.66
Sumiyoshi Kinzoku Kogyo	7.29
Taiho Seikosho Co., Ltd./Kin-yo Co., Ltd	7.29
Taiyo Seiki (Iron Works) Co., Ltd./Far EAst Industrial Co., Ltd	7.29
Y. Takeuchi and Co	7.29
Tanaka Metals Corp	[1] 5.66
Teikoku Sangyo Co., Ltd./Sumitomo Corporation (Sumitomo Shoji Kaisha, Ltd.)	7.29
Teikoku Sangyo Co., Ltd./The Tosho Co., Ltd	7.29
Teikoku Sangyo Co., Ltd./Mitsui & Co., Ltd	[2] 7.29
Teikoku Sangyo Co., Ltd./Mitsubishi Corp	7.29
Teikoku Sangyo Co., Ltd./Nissho-Iwai	7.29
Teikoku Sangyo Co., Ltd./Watanabe Trading Co., Ltd	7.29
Tokyo Rope Mfg. Co., Ltd./Alaska Boeki, Ltd	[1] 7.29
Tokyo Rope Mfg. Co., Ltd./C. Itoh & Co., Ltd	[1] 2.21
Tokyo Sangyo Co., Ltd	7.29
Uli Steel Products Works Ltd	7.29
Union Wire Rope Mfg. Co., Ltd./Senyu Bussan Kaisha, Ltd	8.25
Wire Shoji	[2] 7.29
Yamasho Co., Ltd	7.29
Yusas Trading Co., Ltd	[1] 8.66
Manufacture/Third-Country Reseller (Country)	
Daishin Shoji Co., Ltd./Vanguard Steel Ltd. (Canada)	7.29
Igeta Wire Rope Co., Ltd./Wesco Industries Ltd. (Canada)	7.29
Shinyo Ropes Co., Ltd./Vanguard Steel Ltd. (Canada)	7.29
Tokyo Rope Mfg. Co., Ltd./Wesco Industries Ltd. (Canada)	7.29

[1] No shipments during the period.
[2] For cash deposit purposes only.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service. Appraisement instructions for shipments by Mitsui & Co., Ltd., Shinyo Ropes Co., Ltd., and Wire Shoji will be deferred.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on future entries from these firms. Since the weighted-average margin for the manufacturer/exporter combination Marusen Wire Rope Mfg. Co./Yutoku & Co., Ltd. is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall waive the deposit requirement for shipments of steel wire rope from that manufacturer/exporter combination. For any future entries from a new exporter not covered in this or prior reviews, whose first shipments of steel wire rope occurred after September 30, 1982 and who is unrelated to any reviewed firm, a cash deposit of 7.29 percent shall be required. These deposit requirements and waiver shall remain in effect until publication of the final results of the next administrative review.

The Department intends to begin immediately the next administrative review. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: March 21, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-8468 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DS-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance; Golden Crescent, Inc., et al.

Petitions have been accepted for filing from the following firms: (1) Golden Crescent, Inc., P.O. Box 1358, Moultrie, Georgia 31768, producer of men's and women's slacks and shorts (accepted

February 23, 1984); (2) Euro-Style Fashions, Inc., 136 West 21st Street, New York, New York 10011, producer of women's footwear (accepted February 24, 1984); (3) Joseph Sander Supply Company, 3720 14th Avenue, Brooklyn, New York 11218, producer of apparel accessories and headwear (accepted February 24, 1984); (4) Ag-Rain, Inc., 600 S. Schrader Street, Havanna, Illinois 62644, producer of agricultural irrigation equipment (accepted February 28, 1984); (5) Electralloy Corporation, 475 Park Avenue South, New York, New York 10016, producer of stainless steel ingots, bars and plates (accepted February 28, 1984); (6) Josephson's Smokehouse & Dock, P.O. Box 412, Astoria, Oregon 97103, processor of seafood (accepted February 28, 1984); (7) Mid West Glove Corporation, 835 Industrial Road, Chillicothe, Missouri 64601, producer of work gloves (accepted March 5, 1984); (8) Mustang Tripsaver, Inc., P.O. Box 4306, Corpus Christi, Texas 78408, producer of oil field equipment (accepted March 5, 1984); (9) Carissa Creations, Inc., 335 Hudson Street, Hackensack, New Jersey 07601, producer of jewelry (accepted March 5, 1984); (10) Gaynor Electric Company, Inc., P.O. Box 2125, Waterbury, Connecticut 06720, producer of electro-mechanical switches (accepted March 5, 1984); (11) Allied Roll Builders, Inc., P.O. Box 425, Titusville, Pennsylvania 16354, producer of steel rods (accepted March 5, 1984); (12) Tompkins Rubber Company, 550 Township Line Road, Blue Bell, Pennsylvania 19422, producer of rubber components for medical devices (accepted March 6, 1984); (13) East Shoe Chemical Company, Inc., P.O. Box 448, Muskegon, Michigan 49443, producer of organic chemicals (accepted March 6, 1984); (14) Prestini Musical Instruments Corporation, 2301 Patagonia Highway, Nogales, Arizona 85621, producer of musical instrument pads and reeds (accepted March 6, 1984); (15) Allen's Apiaries, Route 1, Box 16B, Payette, Idaho 83661, producer of honey, beeswax and pollen (accepted March 6, 1984); (16) Van Dyk Research Corporation, 45 South Jefferson Road, Whippany, New Jersey 07981, producer of copiers, duplicators and supplies (accepted March 6, 1984); (17) Wayne Floral Company, Inc., P.O. Box 6, Newark, New York 13901, producer of cut flowers and potted plants (accepted March 6, 1984); (18) Federal Packing of Puerto Rico, Inc., P.O. Box 29046, Rio Piedras, Puerto Rico 00929, processor of meat (accepted March 6, 1984); (19) McKeesport Steel Castings Company, 200 25th Street, McKeesport, Pennsylvania 15132, producer of steel castings (accepted March 7, 1984); (20) Horix Manufacturing Company, 1384 Island Avenue, McKees Rocks, Pennsylvania 15136, producer of food processing and other machinery and equipment (accepted March 8, 1984); (21) Kiowa Corporation, 610 S. 12th Avenue, Marshalltown, Iowa 50158, producer of metal diecastings (accepted March 9, 1984); (22) Namsco, Inc., 331 31st Street, Bellwood, Illinois 60104, producer of automotive wheel covers (accepted March 9, 1984); (23) United Speaker Systems, Inc., 6400 Youngerman Circle, Jacksonville, Florida 32244, producer of loudspeakers (accepted March 9, 1984); (24) Stranahan Gear Company, Inc., 1 Cabot Boulevard East, Langhorne, Pennsylvania 19047, producer of industrial gears (accepted March 9, 1984); (25) Swift Engineering Company, Inc., P.O. Box 27, Pontiac, Michigan 48056, producer of machine tools and special machinery (accepted March 9, 1984); (26) Viola Sportswear, Inc., 5115 El Paso Drive, El Paso, Texas 79905, producer of men's and children's pants (accepted March 9, 1984); (27) Quabaug Rubber Company, 17 School Street, North Brookfield, Massachusetts 01535, producer of footwear soles and heels (accepted March 9, 1984); (28) B.M.D. Fashions, Inc., 49 Columbus Boulevard, New Britain, Connecticut 06051, producer of women's tops (accepted March 9, 1984); (29) Curry and Sorensen, Inc., 2105 Edwards Avenue, S. El Monte, California 91733, producer of hand tools (accepted March 9, 1984); (30) Jay Bee Engineering, Inc., 6190 West 55th Avenue, Arvada, Colordo 80002, producer of metal equipment parts (accepted March 9, 1984); (31) Warley Worsted Mills, Inc., 12 Perkins Street, Lowell, Massachusetts 01854, producer of yarn (accepted March 9, 1984); (32) RBC Industries, Inc., 355 E. Ontario Street, Philadelphia, Pennsylvania 19134, producer of plastic toys (accepted March 9, 1984); (33) Loyola Beach Vegetable Company, Box 71, Riviera, Texas 78379, producer of vegetables and fruit (accepted March 9, 1984); (34) MGS, Inc., RD 3, Box 202, Denver, Pennsylvania 17517, producer of fabricated steel components (accepted March 9, 1984); (35) Richmond Sales, Inc., 42 Power Road, Pawtucket, Rhode Island 02860, producer of jewelry (accepted March 9, 1984); (36) Micro Controls, Inc., P.O. Box 728, Burleson, Texas 76028, producer of communication and data transmittal equipment (accepted March 12, 1984); (37) U.S. Synthetic Corporation, 365 S. Mountainway Drive, Orem, Utah 84058, producer of synthetic industrial diamonds and drill bits (accepted March 12, 1984); (38) Ruska Instrument Corporation, 3601 Dunvale, Houston, Texas 77063, producer of measurement, control, calibration and analysis instruments and other electronic products (accepted March 13, 1984); (39) Elegant Knitted Headwear Company, Inc., 195 Front Street, Brooklyn, New York 11201, producer of headwear, scarves and legwarmers (accepted March 13, 1984); (40) Hollywood Lingerie, Inc., 600 Broadway, New York, New York 10013, producer of women's nightgowns and underwear (accepted March 13, 1984); (41) Falcon Sportswear, Inc., 112 Lincoln Avenue, Bronx, New York 10454, producer of men's shirts and women's blouses (accepted March 14, 1984); (42) President Novelty & Jewelry Company, Inc., 104 West 29th Street, New York, New York 10001, producer of jewelry (accepted March 14, 1984); (43) Quad Company, 12 Grove Street, Ballston Spa, New York 12020, producer of wood trunings and plastic snowballs and packaging inserts (accepted March 14, 1984); (44) Elwood Manufacturing Company, 105 S. St. Louis Street, Elwood, Illinois 60421, producer of agricultural tractor components (accepted March 15, 1984); (45) The Zeller Corporation, P.O. Box 278, Defiance, Ohio 43512, producer of automotive parts (accepted March 16, 1984); (46) Vatco Industries Corporation, 184 Everett Avenue, Allston, Massachusetts 02134, producer of automotive seat covers and cushions (accepted March 19, 1984); (47) Selvin Shoe Manufacturing Company, 2413 Eastern Avenue, Baltimore Maryland 21224, producer of men's, women's and children's footwear (accepted March 19, 1984); (48) Metros Company, 1499 Delp Drive, Harleysville, Pennsylvania 19438, producer of metal-working, parts-handling and assembly machines (accepted March 19, 1984).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received

by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 84–8467 Filed 3–28–84; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Delaware Coastal Management Program, et al.; Intent To Evaluate

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Delaware Coastal Management Program (CMP); Louisiana CMP; Michigan CMP; New Jersey CMP; Wisconsin CMP; and Washington National Estuarine Sanctuary (Padilla Bay) through June 1984. These reviews will be conducted pursuant to Section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA. Coastal zone management is funded under Section 306, and the Estauarine Sanctuary program is authorized by Section 315, CZMA. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. A subsequent notice will be placed in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235 (telephone: 202/634–4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 21, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84–8493 Filed 3–28–84; 8:45 am]

BILLING CODE 3510–DR–M

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries; Availability of Findings

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for Oregon, Alaska, Florida, Mississippi, Guam, and Northern Mariana Islands Coastal Zone Management Programs, and/or Coastal Energy Impact Programs and/or National Estuarine Sanctuaries. Section 312 of the Coastal Zone Management Act of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to the implementation of its federally approved Coastal Management Program, Coastal Energy Impact Program, and National Estuarine Sanctuary financial assistance awards. The states and territories evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in Section 303(2)(A)–(I) of the Coastal Zone Management Act.

A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235 (telephone: 202/634–4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 21, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84–8447 Filed 3–28–84; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Increase in the Import Limits for Certain Cotton Apparel Products From Indonesia

March 23, 1984.

ACTION: Increasing by the application of carryforward the import limits for men's and boys' woven cotton shirts in Category 340 from 324,210 dozen to 344,818 dozen and for cotton trousers in Category 347/348 from 579,519 dozen to 616,108 dozen, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of November 9, 1982 between the Governments of the United States and Indonesia provides, among other things, for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used being deducted from the level in the succeeding year. At the request of the Government of Indonesia, increases for carryforward are being applied to the restraint limits for cotton textile products in Categories 340 and 347/348.

EFFECTIVE DATE: March 23, 1984.

FOR FURTHER INFORMATION CONTACT: Diana Bass, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On June 30, 1983, a letter was published in the **Federal Register** (48 FR 30181) from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established restraint limits for Categories 340 and 347/348, produced or manufactured in Indonesia and exported to the United States during the twelve-month period which began on July 1, 1983 and extends through June 30, 1984. In accordance with the terms of the bilateral agreement, and at the request of the Government of Indonesia, the United States Government has agreed to increase the limits for cotton textile products in Categories 340 and 347/348. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the levels to the designated amounts.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On June 24, 1983, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of goods exported during the twelve-month period beginning on July 1, 1983 and extending through June 30, 1984 of certain cotton textile products, produced or manufactured in Indonesia, in excess of designated limits. The Chairman further advised you that the limits are subject to adjustment.[1]

Effective on March 23, 1984, the directive of June 24, 1983 is hereby amended to include the following adjusted twelve-month limit for for cotton textile products in Categories 340 and 347/348, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1983.

Category	Adjusted 12-mo. limit [1]
340	344,818 dozen.
347/348	616,108 dozen.

[1] The limits have not been adjusted to account for any imports after June 30, 1983.

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of November 9, 1982, between the Governments of the United States and Indonesia which provide, in part, that: (1) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The action taken with respect to the Government of the Republic of Indonesia and with respect to cotton textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–8366 Filed 3–28–84; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange and MidAmerica Commodity Exchange: Proposed Amendments Relating to the Live Cattle Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange (CME) and MidAmerica Commodity Exchange (MCE) have submitted proposals to amend their live cattle futures contracts. The proposed amendments would revise the list of exchange-approved delivery points on both the CME and MCE live cattle contracts. The Commodity Futures Trading Commission ("Commission") has determined that the proposals are of major economic significance and that, accordingly, publication of these proposals is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before April 30, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Reference should be made to CME and MCE live cattle futures contracts.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, (202) 254–6990.

SUPPLEMENTARY INFORMATION: The current CME and MCE live cattle contracts specify par delivery of cattle at any of six exchange-approved locations: Peoria, Illinois; Joliet, Illinois; Omaha, Nebraska; Sioux City, Iowa; Guymon, Oklahoma; and Greeley, Colorado. Under the CME and MCE proposals, Dodge City, Kansas and Amarillo, Texas would be designated as new delivery points on the live cattle contract and Guymon, Oklahoma would be deleted from the current list of Exchange-approved delivery points. The proposed delivery points at Dodge City and Amarillo would be added at par subject to the requirements that cattle delivered at these points must be in the yards by 9:00 a.m. on the day of delivery and must stand without feed and water prior to weighing.

The CME states that the propposed designation of new delivery points at Dodge City, Kansas and Amarillo, Texas is based on structural changes which have occurred in the cattle industry. According to the CME, since 1965 the number of fed cattle marketed has declined in the Eastern Corn Belt and increased dramatically in the Plains states, primarily in the states of Texas and Kansas. The CME further indicates that during this time period, structural changes in the cattle slaughter industry have paralleled the changes that have been occurring in the location of cattle marketings. The CME states that cattle slaughter has decreased in the Corn Belt and increased sharply in the Plains states, particularly in the states of Texas, Nebraska and Kansas.

The CME believes that the designation of new delivery points in Kansas and Texas would reflect the shift of production and slaughter from the Corn Belt to the Plains region. The CME submits that delivery facilities at Amarillo, Texas and at Dodge City, Kansas have the physical capacity to accommodate CME deliveries. The CME states that the number of pens, the number of scales and the number of USDA graders at the two locations is comparable to or surpasses the physice facilities at existing live cattle delivery points. The CME further maintains that the designation of the two new delivery points should not increase the uncertainty faced by long traders with respect to the location of the point of delivery. The CME states that there are a sufficient number of major beef packers located in the current CME live cattle delivery areas which also operate plants in the Amarillo and Dodge City areas.

Under the CME's proposal, Guymon would be deleted from the list of delivery points on the live cattle contract. The CME indicates that during most years since 1975, deliveries at Guymon have accounted for a very

small percentage of total CME live cattle deliveries. The CME further states that becasue USDA graders must travel to Guymon to grade CME deliveries, deliveries made at Guymon are more expensive than at other exchange-approved delivery points. The CME maintains that the addition of the two new delivery points at Amarillo and Dodge City would serve the same geographic region as currently served by Guymon while eliminating the need to dislocate USDA graders for CME deliveries. The CME believes that the elimination of a delivery point at Guymon, Oklahoma will have a minimal impact on producers and packers in that area and would reduce the potential for market congestion which might result from an inadequate number of graders to evaluate CME deliveries if Guymon was retained as a delivery point given the proposed addition of delivery points at Amarillo and Dodge City.

The CME is also proposing that cattle delivered at Amarillo, Texas and Dodge City, Kansas must be in the yards no later than 9:00 a.m. on the day of delivery and must stand without feed and water prior to weighing. The CME states that a specification of a 9:00 a.m. stand at Amarillo and Dodge City would facilitate USDA grading of the cattle. The CME submits that Southern Plains cattle traditionally are marketed at a lighter weight than Corn Belt cattle or Northern Plains cattle and that lighter weight cattle have a greater percentage of intestinal fill. The CME indicates that with a 9:00 a.m. stand, cattle delivered at Amarillo and Dodge City would receive their final feeding the evening prior to delivery and, thus, shrink would occur prior to grading and the degree of fill among deliveries should be consistent.

The MidAmerica Commodity Exchange (MCE) has also submitted a proposal to amend its live cattle contract which would be analogous to the proposed CME live cattle amendments. The MCE indicates that the current terms and conditions of the MCE's 20,000 pound live cattle contract are deliberately designed to parallel the terms and conditions of the CME's 40,000 pound live cattle contract in order to provide MCE members and their customers access to the liquidity and price discovery mechanism of the CME live cattle futures market through inter-market spreading. As a result, according to the MCE, an active two-for-one MCE to CME contract inter-market spread has developed. The MCE indicates that the proposed changes in the CME contract would create adverse consequences for inter-market spreaders without appropriate amendments to MCE rules. Therefore, the MCE is proposing amendments which would conform to those proposed by the CME as noted above.

The MCE submits that during the past five years, the volume of slaughter cattle marketings in the Dodge City and Amarillo areas has been among the largest in the United States. The MCE maintains that because of the high number of feedlots and packers in both areas, a substantial number of potential futures market participants, including producers in western Kansas, the Oklahoma panhandle and northwestern Texas, could make delivery at either Amarillo or Dodge City. The MCE further indicates that several of the largest packers have slaughter facilities in the regions close to the proposed delivery points, which the MCE feels would provide a market for cattle and prices equivalent to those at other exchange-approved delivery points.

The MCE further believes that the proposed Amarillo delivery point would be superior to the current Guymon delivery point due to the high concentration of packers in the Amarillo area, which the MCE maintains would provide a more liquid cash market. The MCE also states that because USDA graders have to travel to Guymon to grade MCE live cattle deliveries, deliveries to Guymon are more expensive to the short than deliveries at other exchange-approved delivery points. The MCE submits that due to the additional grding costs of Guymon deliveries, the effectiveness of the Guymon delivery point for cash/futures arbitrage and assurance of cash/futures convergence is limited. The MCE indicates that there have been no MCE live cattle deliveries at Guymon during the past five years.

The proposed amendments to the CME and MCE live cattle futues contracts would become effective after Commission approval for all contract months subsequently listed by the ERxchanges for trading, but would not be applicable to currently listed months.

In accordance with Section 5a(12) of the Community Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposals submitted by the CME and MCE concerning their live cattle futures contracts are of major economic significance. Accordingly, the CME and MCE proposals will be available for inspection at the Office of the secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME and MCE in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1982)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033, K Street NW., Washington, D.C. 20581, by April 30, 1984. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on March 26, 1984.

Jane K. Studkey,

Secretary to the Commission.

[FR Doc. 84–8473 Filed 3–28–84; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information Survey of Households With Coal or Wood-burning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*) the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through August 31, 1984, of a proposed collection of information in the form of a survey of households having a wood-burning fireplace, a wood or coal-burning stove, a fireplace insert, or a wood-burning furnace.

The survey is intended to provide information about types and ages of wood and coal-burning heating equipment now in use; types of chimneys and chimney connectors; types of fuel; patterns of use; and fire incidents and injuries associated with these appliances. The Commission staff will use the information obtained from this survey to assign relative risks of fire

among wood and coal-burning appliances.

Additional Details About the Proposed Collection of Information

Agency Address: Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207.

Title of Information Collection: Solid Fuel Appliance and Chimney Survey.

Type of Request: New plan.

Frequency of Collection: One time.

General Description of Respondents: Households having a wood-burning fireplace, wood or coal-burning stove, fireplace insert, or wood-burning furnace.

Estimated Number of Respondents: 700.

Estimated Number of Hours per Response: 0.25.

Comments: Comments on this request for approval of a proposed collection of information should be addressed to Andy Velez Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washingtoin, D.C. 20503; telephone (202) 395–7313. Copies of the request for approval of the proposed collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: March 26, 1984.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-8479 Filed 3-28-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Water Resources Management Study for the Oswego River Watershed, NY, Under Resolution of the House Committee on Public Works Adopted on 11 April 1974 (House Document Number 846, 76th Congress)

AGENCY: U.S. Army Corps of Engineers District, Buffalo, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

Proposed Action: The proposed action would result in implementing new lake level regulation plans (target rule curves) on Canandaigua Lake, Keuka Lake, Owasco Lake, Skaneateles Lake, and Otisco Lake. No new target rule curve will be initiated on either Seneca Lake or Cayuga Lake; however, the Basis of Comparison (an adjusted standard to provide a uniform standard profile of existing conditions) will be modified due to the fact that a new target rule curve will be implemented on Keuka Lake. Keuka Lake flows directly into Seneca Lake, which in turn flows into Cayuga Lake. Therefore, under the new Keuka Lake target rule curve, minor changes to existing conditions on Seneca Lake and Cayuga Lake are expected. In addition, to implement the new target rule curve on Canandaigua Lake and Keuka Lake some structural modification in their outlets must be constructed. Canandaigua outlet modifications will require about 4 miles of channelization from the lake downstream to Chapin, NY, and construction of a new control structure. Keuka Lake will require the removal of an earthen weir at the lake outlet and construction of a new control structure in its place. There will be no change to the current operating policy on Oneida Lake.

Alternatives Considered: Each of the eight lakes was examined to determine it specific characteristics hydraulically, hydrologically, environmentally, and economically. These parameters created the bounds within which a computer model was operated to produce new target rule curves. In excess of 100 target rule curves were evaluated for the eight lakes involved in this study.

Plans Considered in Detail: In addition to the No Action alternative, a resource management plan was considered in detail. These alternative plans are briefly described below.

a. *No Action*—This alternative plan implies that the Federal Government acting through the Corps of Engineers, would neither make any structural modifications within the project area nor initiate implementation of any new lake level regulation plans. Operation of existing control structures would continue in accordance with existing target rule curves.

b. *Resource Management Plan*—This is a composite plan. It is made up of eight distinct parts. Each of the eight lakes was evaluated individually, in order to determine which new target rule curve and/or structural measures would maximize the planning objectives for that lake. Once the component parts of the plan were determined, they were combined to form the management plan for the watershed (reference Proposed Action).

Public Involvement: Considerable public involvement has been conducted for the Oswego Watershed project. Six public workshops were conducted from November 1982 through August 1983 at various locations throughout the watershed. During each session public input was solicited.

Issues: Significant issues to be evaluated in the DEIS and/or feasibility report will be impacts from new target rule curves, the construction of new control structures, channelization, and disposal of dredged and excavated material. These impacts will be analyzed to determine both positive and negative impacts upon the following parameters: Flood control, water supply, water quality, fish and wildlife, recreation, navigation, hydropower generations, and irrigation. In addition all applicable laws and statutes outlined in 40 CFR 1502.25 and Corps of Engineers Regulation ER 200–2–2 will be reviewed and consulted during the preparation and review of the DEIS.

Scoping Needs: No scoping meeting will be held, since adequate coordination has already been conducted. A public meeting will be scheduled during the DEIS review period.

Availability: The Draft Environmental Impact Statement should be available for public review on or about June 1984.

ADDRESS: Questions about the proposed action and DEIS can be answered by Dr. Stephen Yaksich, project manager, of the Water Quality Branch, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY, 14207, telephone number (716) 876–5454, extension 2272.

Dated: March 22, 1984.

Robert R. Hardiman,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 84-8368 Filed 3-28-84; 8:45 am]

BILLING CODE 3710-GF-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Veterans' Cost-of-Instruction Payments program; Payments to Institutions of Higher Education; Application Notice for Transmittal of Applications for New Awards for Fiscal Year 1984

Applications for new awards are invited from institutions of higher education under the Veterans' Cost-of-Instruction Payments Program. This program issues awards to institutions or combinations of institutions of higher

education to assist them in providing specific services to veterans.

Authority for this program is contained in Section 420 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070e–1.

Closing Date for Transmittal of Applications: An application for a new award must be mailed or hand delivered by May 11, 1984.

Applications delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Veterans' Cost-of-Instruction Program Branch (Room 3514, ROB–3) 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application to be hand delivered must be taken to the U.S. Department of Education, Veterans' Cost-of-Instruction Program Branch (Room 3514, ROB–3) 7th and D Street, SW., Washington, D.C. Hand delivered applications will not be accepted after 4 p.m. on the closing date.

Program Information and Application Forms: Program information packages and application forms are expected to be ready for mailing by April 6, 1984. They may be obtained by writing to the U.S. Department of Education, Office of Postsecondary Education, Veterans' Cost-of-Instruction Program Branch (Room 3514, ROB–3) 400 Maryland Avenue, SW., Washington, D.C. 20202.

Available Funds: There is authorized 3.0 million dollars for new awards under this program in fiscal year 1984.

Applicable Regulations: The regulations applicable to this Program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78); and

(b) Regulations governing the Veterans' Cost-of-Instruction Payments to Institutions of Higher Education (34 CFR Part 629).

Further Information: For further information contact Dr. James F. Rogers, Chief, Veterans' Cost-of-Instruction Program Branch, U.S. Department of Education (Room 3514, ROB–3) 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: 202–245–2806.

(20 U.S.C. 1070e–1)

Dated: March 26, 1984.

(Catalog of Federal Domestic Assistance Number 84.540; Higher Education Veterans' Cost-of-Instruction Program (VCIP))

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–8430 Filed 3–28–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council, Distribution Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Distribution Task Group of the Committee on the Strategic Petroleum Reserve will meet in April 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the Distribution Task Group meeting follows:

The Coordinating Subcommittee will hold its first meeting on Thursday, April 12, 1984, starting at 9:00 a.m., in Room 3507, Exxon Company, U.S.A., 800 Bell Avenue, Houston, Texas.

The tentative agenda for the Distribution Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.

2. Discuss the scope of the overall study.

3. Discuss the study assignment of the Distribution Task Group.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Distribution Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Distribution Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353–3032 prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 22, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84–8486 Filed 3–28–84; 8:45 am]

BILLING CODE 6450–01–M

Review of Enforcement Case Settlements; Increased Public Participation

AGENCY: Department of Energy.

ACTION: Notice of increased public participation in the review of enforcement case settlements.

SUMMARY: The Department of Energy is seeking increased public participation in the review and assessment of proposed settlements of cases involving the enforcement of federal petroleum price and allocation regulations. Wider public participation will be invited in the review of proposed consent orders in which the amount of liability in controversy exceeds ten million dollars and in which disputed issues covering a wide range of regulatory matters are resolved. In these cases, the public will be provided detailed information on the basis and rationale of the proposed settlement and will be invited to participate in a public hearing on the settlement. The public hearing will expand the opportunity for interested persons to provide information, comments and recommendations to the Department of Energy as to whether a proposed consent order should be made

final, modified or rejected by the Department as not in the public interest. The procedures described in this notice will be conducted pursuant to the regulations governing the issuance of consent orders. See 10 CFR 205.199J.

FOR FURTHER INFORMATION CONTACT: Milton C. Lorenz, Special Counsel, or Carl A. Corrallo, Solicitor, Economic Regulatory Administration, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–8900 or 252–4167.

Background

Since 1979, Department of Energy procedural regulations have formally provided for "consent orders" which may resolve any or all outstanding compliance proceedings involving a person or firm subject to the now-terminated federal petroleum price and allocation regulations. 10 CFR 205.199J. The procedure for making proposed consent orders involving more than $500,000 (excluding interest and penalties) final orders requires a notice in the **Federal Register** that invites written public comments on the settlement. Following a comment period of at least thirty days, the Department may reject the proposed consent order, or it may decide to make the proposed consent order a final order. The decision to make a proposed order final is also published in the **Federal Register.**

In following this procedure in the past, the Department has provided in its public notices summary information on proposed consent orders, and the notices have emphasized the remedial terms of the settlements. The comments received in response to these notices have focused primarily on the disposition of the settlement refunds. Comments generally have not been received on other aspects of settlement agreements, including the Department's rationale and basis for proposing a settlement. The Department wishes to provide information to enable the public to understand fully the reasons a settlement is considered by the Department to be in the public interest and to encourage public comment on the adequacy of and rationale for the settlement.

The Department has carefully reviewed its consent order procedures to determine if they could be utilized in a manner that would enhance the public comment process. Settlements remain the Department's preferred method of resolving these complex and expensive litigation matters, and to the extent such settlements can be reached, the public should be provided a full explanation and opportunity for comment. As a result of this review the Department's consent order procedures will be applied in a manner designed to enhance the public's participation in the review of proposed settlements.

Procedure

The process for the review of a proposed consent order begins with a **Federal Register** notice that will provide comprehensive information on the settlement. Information will be included on the audit findings, the negotiation process, enforcement actions pending against the company, disputed issues resolved, the impact of the disputed issues on overcharge calculations, maximum overcharge liability, litigation risks, and the amount proposed to be paid in resolution of the disputed issues. The proposed consent order will also be included in this notice.

Following the **Federal Register** notice, there will be the thirty-day written comment period during which interested persons may submit information, comments and recommendations to the Department on the proposed settlement.

Upon completion of the comment period, the Economic Regulatory Administration will hold a public hearing to receive oral comment on the proposed settlement. The public hearing will be announced in the **Federal Register** notice on the proposed consent order. The hearing will be presided over by the ERA Administrator or his designee, along with a panel of enforcement officials from the ERA and the Department's Office of General Counsel. Oral comment will be received from any interested person, with reasonable time limitations imposed to permit broad public participation. Comments will be received on all aspects of the settlement, with the exception of its remedial provisions. The remedial provisions will be subject to public comment and participation before the Office of Hearings and Appeals if, and after, the consent order is made final. The hearing will be recorded with transcripts available to the public.

The information from the written comments and the public hearing will be reviewed by ERA and OGC enforcement officials and the proposed settlement will be evaluated on the basis of this information. The consent order will be renegotiated and revised, as necessary, with a decision on a final order made by the ERA Administrator.

Notice of the final consent order will be published in the **Federal Register,** and the notice will address the significant written and oral comments, as well as any other considerations that were relevant to the Administrator's decision. The text of the final order will be included in the notice.

This increased public participation will be sought for all consent orders in which the amount in controversy exceeds ten million dollars (excluding interest and civil penalties) and in which a wide range of issues are resolved. Settlements for $500,000 or more, regardless of the amount in controversy or the range of issues, will continue to be published for public comment in the **Federal Register.**

Issued in Washington, D.C., on March 23, 1984.

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 84-8467 Filed 3-28-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-84-007; OFP Case No. 61048-9245-20-24]

Powerplant and Industrial Fuel Use; Prohibition Orders, Exemption Requests; Calcogen, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Calcogen, Inc.

SUMMARY: On February 28, 1984, Calcogen, Inc. (Calcogen) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at the Metropolitan State Hospital, Norwalk, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 27 MW (net) combined cycle cogeneration facility consisting of: (1) A gas turbine generator, (2) a waste heat recovery steam generator, and (3) a steam extraction turbine generator. The

plant will burn only natural gas. It is expected that virtually all of the net annual electric power produced by the cogenerator will be sold to Southern California Edison (SCE), making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will produce approximately 12,625 lbs. of steam per hour which will supply Metropolitan Hospital's needs. Calcogen will operate the facility.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extenson, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before May 14, 1984. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-007 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073L, Washington, D.C. 20585, Phone (202) 252-1774

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-141, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6739

SUPPLEMENTARY INFORMATION: Calcogen proposes to install a cogeneration system at Metropolitan Hospital, Norwalk, California, which will: (1) Generate electrical power for sale to SCE, and (2) produce steam to meet the hospital's heating and cooling requirements. The proposed cogeneration system will be operated by Calcogen. The system will consist of a gas turbine generator which will produce electric power, a waste heat recovery system, and an extraction steam turbine which will produce steam and additional electric power for sale to SCE.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Calcogen has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the congeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Calcogen has also included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Calcogen is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on March 23, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-8383 Filed 3-28-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

American Statistical Association Committee on Energy Statistics

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the American Statistical Association's Committee on Energy Statistics will meet with representatives of the Energy Information Administration (EIA) on Thursday, April 12, 1984, at the J. W. Marriott Hotel, 1331 Pennsylvania Avenue, Northwest, Washington, D.C., from 1:30 p.m. to approximately 5:00 p.m. The meeting will continue on Friday, April 13, 1984, in the J. W. Marriott Hotel, from 9:00 a.m. until approximately 3:30 p.m.

The purpose of the meeting is to enable the EIA to utilize the American Statistical Association's Committee on Energy Statistics to obtain advice on EIA programs and to benefit from the Committee's expertise concerning other energy statistical matters.

The tentative agenda is as follows:

A. Opening Remarks

B. Major Topics:

1. Progress Report: Approaches to Verifying Model Documentation
2. Estimating Changes in Household Energy Characteristics
3. EIA's Quality Audit Program
4. Progress Report: Quality Control Activities in the Petroleum Supply Division
5. EIA Sampling Processes

a. Sampling Multiple Attributes
b. EIA–782 Phase II Sample Design and Estimation
c. Frames Development Methodology
6. Progress Report: Consistency Between Forecasts in the *Short-Term Energy Outlook* and the *Annual Energy Outlook*
7. Short-Term Price Forecasting Methodology
8. Adjusting for Data Shifts Due to Changes in Survey Forms and Definitions

C. Public Comments
D. Topics for Future Meetings

The meeting is open to the public. Any member of the public may file a written statement with the EIA for forwarding to the Committee, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Ms. Kathleen Repass Weigl, EIA Committee Liaison, (202) 252–6463, or Dr. Fred C. Leone, Executive Director of the American Statistical Association, (202) 393–3253, at least five days prior to the meeting and reasonable provisions will be made to include their presentations on the agenda. Subsequent to approval by the Committee, minutes of an executive summary of the meeting will be available for public review and copying at the Office of Planning and Resources, EI–32, EIA, 1000 Independence Avenue, SW., Rooom 2H–055, Washington, D.C. 20585, (202) 252–6460, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Issued at Washington, D.C., on March 22, 1984.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 84-8392 Filed 3-28-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF84–166–000]

Air Products and Chemicals, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 26, 1984.

On February 2, 1984, Air Products and Chemicals, Inc. (Applicant) of P.O. Box 538, Allentown, Pennsylvania 18105, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 14700 Intracoastal Drive, New Orleans, Louisiana. The facility will consist of a combustion turbine generator, a connecting steam generator, and a waste heat recovery boiler. The primary energy source of the facility will be natural gas. The useful thermal energy output, which is in the form of steam, will be utilized in chemical production processes. The electric power production capacity of the facility will be 23 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8458 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81–67–005]

Black Marlin Pipeline Co.; Tariff Filing

March 26, 1984

Take notice that on March 16, 1984, Black Marlin Pipeline Company (Black Marlin) tendered for filing First Revised Sheet No. 1 and Original Sheet Nos. 24 through 61 to Original Volume No. 2 of its FERC Gas Tariff to be effective September 1, 1982.

Black Marlin states that the filing is in compliance with a rate investigation settlement approved by the Commission on August 27, 1982 *(Black Marlin Pipeline Company,* Docket No. RP81–67–000; 20 FERC ¶61,297), and is for the purpose of including in Volume No. 2 of its FERC Gas Tariff a special contract for the sale of gas produced in Southeast Pescadito Field, Webb County, Texas, to Transcontinental Gas Pipe Line Corporation. This special contract was inadvertently overlooked in Black Marlin's earlier compliance filing. Black Marlin states that a copy of this filing is available for public inspection at its general office at Two Greenway Plaza East, Houston, Texas, and that copies have been served on all parties in Docket No. 81–67–000.

Any person desiring to be heard or to protest said filing should file a petition to invervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 FERC 385.211 and 385.214). All such petitions or protests should be filed on or before April 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8459 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84–104–001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

March 23, 1984.

Take notice that on March 19, 1984, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84–104–001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia Transmission proposes to continue to transport natural gas on behalf of GTE Products Corporation (GTE) under the authorization issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

By notice issued December 27, 1983, pursuant to the prior notice and protest procedure set forth in 18 CFR 157.205, Columbia Transmission received authorization to transport up to 3.7 billion Btu equivalent of natural gas per day through May 9, 1984, to GTE's Versailles, Kentucky, plant.

Columbia Transmission proposes to continue the above-described transportation through June 30, 1985, on the same terms and conditions as the existing transportation authority.

Any person or the Commission's staff may, within 45 days after issuance of

the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8451 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-271-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

March 23, 1984.

Take notice that on March 1, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-271-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Lancaster Colony Corporation (Lancaster) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 150 million Btu of natural gas per day for Lancaster for a term of one year. Columbia states that the gas to be transported would be purchased from John C. Mason (Mason) by Lancaster and would be used for boiler fuel in Lancaster's plant in Leesburg, Ohio.

Columbia states that it has released certain gas supplies which Lancaster has purchased from Mason and that these supplies are subject to the ceiling price provisions of sections 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is indicated that Columbia would receive up to 150 million Btu of natural gas per day delivered into its pipeline system at existing interconnections in Holmes and Coshocton Counties, Ohio, and would redeliver such gas to Pike Natural Gas Company, the distribution company serving Lancaster.

Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent of gas, exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. Columbia also states that it is charging the Gas Research Institute Funding Unit.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8452 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS84-49-000, et al.]

H L T Energy Inc., et al.; Applications for "Small Producer" Certificates [1]

March 23, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before April 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No.	Date filed	Applicant
CS84-49-000	3/5/84	H L T Energy Inc., 9831 Wickenburg, Houston, Tex. 77031.
CS84-50-000	3/5/84	Baytech, Inc., P.O. Box 10158, Midland, Tex. 79702.
CS84-51-000	3/6/84	Danny R. Edwards, Trustee, 2800 N. Loop West, Suite 416, Houston, Tex. 77092.
CS84-52-000	3/6/84	Clark Exploration Co., Box 245, Hardtner, Kans. 67057.
CS84-53-000	3/7/84	Howell Spear, Box 206, Perkinston, Miss. 39573.
CS84-50-001	3/12/84	Baytech, Inc., Operator, et al., P.O. Box 10158, Midland, Tex. 79702.
CS84-54-000	3/15/84	Santo Resources Inc., Box 31, Waynoka, Okla. 73860.
CS84-55-000	3/15/84	Zoroco Petroleum Incorporated, 604 Maple, Waynoka, Okla. 73860.
CS84-56-000	3/13/84	L. S. Thompson, Jr., M.D., 6161 Harry Hines, Suite 100, Dallas, Tex. 75235.
CS84-57-000	3/14/84	B & N Petroleum, Inc., P.O. Box 2547, Longview, Tex. 75601.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc. 84-8454 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-25-000]

JM Resources; Request for Relief of Refund Obligation

Issued: March 23, 1984.

On October 24, 1983, J M Resources (JM) filed a request for relief of refunds and interest with the Federal Energy Regulatory Commission (Commission) arising from certain actions taken by the National Fuel Supply Company (National Fuel). JM claimed that National Fuel overpaid JM amounts due under their gas purchase contract and that National Fuel wrongful withheld amounts owed to JM to recoup their overpayments with interest.

JM sells gas produced from its Lepp No. 4 and Newbury No. 6 wells to

National Fuel. JM states that both of these wells produce gas qualifying under section 107 of the National Gas Policy Act of 1978 (NGPA) 15 U.S.C. 3301–3432 (1982) as tight formation gas. The terms of the subject contract provided for a price limitation of either the lesser of: (1) Ninety percent of the average posted price of No. 6 fuel oil per MMBtu or (2) one hundred and fifty percent of the maximum lawful price specified in section 103(b) of the NGPA. On December 27, 1982, the parties amended the contract to provide, commencing January 1, 1983, the price of $4.00 per Mcf plus escalation by the amount of increase per month in the price of NGPA section 103 gas.[1] JM states that National Fuel disregarded the contract price limitation and paid the full section 107(c)(5) price.

On April 15, 1983, National Fuel notified JM that during an internal audit it discovered that it overpaid JM Resources for a fifteen month period between February 1982 and April 1983. National Fuel requested that JM refund the overpayments with interest. The amount of the overpayments equals $11,506.13, plus interest, for gas purchased from the subject wells.

JM states that when it received payments from National Fuel at the tight formation gas ceiling rates, it assumed National Fuel decided to treat this gas in conformity with its other section 107 contracts and pay the full section 107 price. JM states that it did not feel that it was unusual, illegal, or immoral for it to accept payment of the full section 107 price despite the contractual price limitation. JM attributes this situation to the inaction and negligence on the part of National Fuel.

JM requests that the Commission take jurisdiction of this matter and grant relief from National Fuel's assessment of the overpayments plus interest against JM.

Any person desiring to be heard or to make any protest to this petition should file a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure. The motion should be filed within 30 days after notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington D.C. 20426. The Commission will consider all protests filed, but the filing of a protest will not make the protestants parties to the proceedings.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8455 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[1] The original contract price and the renegotiated contract price are below the ceiling rate for section 107(c)(5) tight formation gas as set forth in § 271.703(a).

[Docket No. G–5716–013, et al.]

Mobil Oil Corp. & Mobil Producing Texas & New Mexico Inc. (Successor to Northern Natural Gas Producing Co.); Petition To Amend Certificates of Public Convenience and Necessity, Redesignate Rate Schedules, and Substitute Mobil Oil Corp. & Mobil Producing Texas & New Mexico Inc. as a Party

March 23, 1984.

Take notice that on January 19, 1984, Mobil Oil Corporation (Mobil) and Mobil Producing Texas & New Mexico Inc. (Mobil Producing) of Nine Greenway Plaza, Suite 2700, Houston, Texas 70046, filed an application for Certificates of Public Convenience and Necessity to render service previously authorized by the Commission under Certificates of Public Convenience and Necessity heretofore issued to Northern Natural Gas Producing Company (Northern) and for substitution of Mobil and Mobil Producing for Northern in any other related proceedings as listed in the attched appendix.

Effective December 31, 1983, Northern Natural Gas Producing Company was merged into Mobil Oil Corporation and by General Conveyance entered into and make effective from December 31, 1983, Mobil assigned to Mobil Producing certain properties located in the States of New Mexico and Texas. Mobil and Mobil Producing hereby adopts, ratifies and makes its own in every respect the Rate Schedules as listed in the attached appendix heretofore filed with the Commission by Northern.

Any person desiring to be heard or to make any protests with reference to said applications should on or before April 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX

Old Northern Natural Gas Producing Co. rate schedule No.	Proposed Mobil Oil Corp. rate schedule No.	Proposed Mobil Producing Texas & New Mexico Inc. rate schedule No.	Certificate docket No.	Purchaser
1		181	G–5716	Northern Natural Gas Co.
2	582		G–5716	Do
2	582		G–8589	Do
2	582		G–9011	Do
2	582		G–9863	Do
2	582		G–10053	Do
2	582		G–10217	Do
2	582		G–10299	Do
2	582		G–10712	Do
2	582		G–10900	Do
2	582		G–10940	Do
2	582		G–11066	Do
2	582		G–12742	Do
2	582		G–13012	Do
5	583		G–8589	Do
11	584		G–10001	Do
15	585		G–16752	Do
16	586		G–16134	Do
23		182	CI61–1722	Do
25		185	CI63–1049	El Paso Natural Gas Company
26		184	CI63–1051	Do
27		186	CI63–1050	Do
29		156	CI63–1250	Northern Natural Gas Co.
30		157	CI63–1397	El Paso Natural Gas Co.
31		567	CI64–566	Panhandle Eastern Pipe Line Co.
32		158	CI64–660	Southern Union Gathering Co.
33		189	CI65–1160	Michigan Wisconsin Pipe Line Co.
34		190	CI67–466	Natural Gas Pipeline Co. of America
35		191	CI65–1160	Michigan Wisconsin Pipe Line Co.
36		192	CI75–750	El Paso Natural Gas Co.

APPENDIX—Continued

Old Northern Natural Gas Producing Co. rate schedule No.	Proposed Mobile Oil Corp. rate schedule No.	Proposed Mobile Producing Texas & New Mexico Inc. rate schedule No.	Certificate docket No.	Purchaser
37	588		CI78-307	Northwest Pipeline Corp.

[FR Doc. 84-8456 Filed 3-28-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA84-2-47-001]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

March 26, 1984.

Take notice that on March 16, 1984, MIGC, Inc. tendered for filing copies of Twenty-Ninth Revised Sheet No. 32 and Fifth Revised Sheet No. 32–A to its FERC Gas Tariff Original Volume No. 1, as required by the Commission's Rules and Regulations under the Natural Gas Act.

MIGC's Twenty-Ninth Revised Sheet No. 32 and Fifth Revised Sheet No. 32–A provide for a Purchased Gas Adjustment rate decrease of 19.12¢ per MMBtu effective May 1, 1984 in order (1) to provide for a current gas cost adjustment to permit MIGC to reflect the lower cost of gas purchases which it is currently incurring (Table II); (2) to provide for an adjustment to MIGC's unrecovered Purchased Gas Cost Account as of January 31, 1983 and January 31, 1984 (Table III); (3) to recover carrying charges as permitted under FERC Order No. 47 (Table VI) as set forth in MIGC's First Revised Sheet No. 31–A, (4) to set forth projected incremental pricing surcharges to become effective May 1, 1984 (Fifth Revised Sheet No. 32–A)[1]; and (5) to reflect a surcharge to permit MIGC to recover production related charges pursuant to FERC Order No. 94–A. 18 CFR 271.1100, *et seq.*

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before April 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for the public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8460 Filed 3-28-84; 8:45 am]
BILLING CODE 6717-01-M

[1] None of MIGC's sale-for-resale customers has reported a MSAC for any prior month determined in the manner prescribed by § 282.504(d)(2) of the Commission's Regulations.

[Docket No. RP81-49-021]

Natural Gas Pipeline Company of America; Change in FERC Gas Tariff

March 26, 1984.

Take notice that on March 20, 1984, Natural Gas Pipeline Company of America (Natural) submitted to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective May 1, 1984.

Fifty-fifth Revised Sheet No. 5
Twenty-second Revised Sheet No. 5A
Tenth Revised Sheet No. 5B
Fifth Revised Sheet No. 8
Second Revised Sheet No. 13
Seventh Revised Sheet No. 14
Seventh Revised Sheet No. 116
Fourth Revised Sheet No. 117
Sixth Revised Sheet No. 121

Natural states that the purpose of this filing is to implement the cost allocation and rate design procedures in compliance with (1) Commission Order Affirming in Part and Modifying in Part Initial Decision, issued November 4, 1983, and (2) Article II of the Stipulation and Agreement approved May 13, 1982, at Docket No. RP81–49.

Natural states that a copy of the filing was mailed to Natural's jurisdictional customers, interested sate commisions, and all parties listed on the official service list in Docket No. RP81–49.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commision, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before April 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8461 Filed 3-28-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA84-2-37-002]

Northwest Pipeline Corp.; Change in Rates

March 23, 1984.

Take notice that on March 21, 1984, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance as part of its F.E.R.C. Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Thirteenth Revised Sheet No. 10
Fourteenth Revised Sheet No. 10

The tendered tariff sheets provide for a change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, "Purchased Gas Cost Adjustment Provision" ("PGA"). Such change in rates is for the purpose of implementing a reduction in purchased gas costs which will result from Commission approval of Northwest's certificate application in Docket No. CP84–294–000 authorizing the sale and delivery of incentive priced Canadian gas to certain distribution customers of Northwest for resale to designated end users who would otherwise switch to alternate fuels.

Both Substitute Thirteenth Revised and Fourteenth Revised Sheet No. 10 contain the rate reduction referred to above. Thirteenth Revised Sheet No. 10 is provided in the event Commission authorization in Docket CP84–294–000 is received prior to April 1, 1984. An effective date of April 1, 1984 is requested for this sheet. Fourteenth Revised Sheet No. 10 is provided in the event Commission approval in Docket No. CP84–294–000 is not received prior to April 1, 1984. An effective date concurrent with the Commission approval of the above referenced docket is requested for this sheet.

A copy of this filing has been served on all parties of record in Docket No. RP72–154 and on all jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington D.C. 20426, in accordance with Rules 211 or 214 of the Commission's rules of Practice and Procedure. All such petitions or protests should be filed on or before March 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8467 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-202-000]

Onsite Energy—San Juan Creek Athletic Club; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 26, 1984.

On March 8, 1984, Onsite Energy (Applicant), of 10951 Sorrento Valley Road, Suite II–S, San Diego, California 92121, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the San Juan Creek Athletic Club, 33061 Camino Capistrano, San Juan Capistrano, California. The facility will consist of a reciprocating engine generator unit with waste heat recovery equipment. The primary energy source for the facility will be natural gas. The useful thermal energy output will be used for swimming pool heating, jacuzzi heating, and/or pre-heating of domestic hot water. The electric power production capacity of the facility will be 60 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8462 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-198-000]

Tenneco Oil Company—Oxford Lease; Application for Commission Certification of Qualifying Status of a Congeneration Facility

March 26, 1984.

On March 5, 1984, Tenneco Oil Company, (Applicant) of P.O. Box 9909 Bakersfield, California 93389, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the Oxford Lease (Federal Serial #SAC–019392) in the Midway-Sunset field, Kern County, California. The facility will consist of two separate cogneration units. Each unit will consist of a combustion turbine generator, a duct system, and a waste heat recovery boiler. The primary energy source for the facility will be natural gas. The useful thermal energy output, which is in the form of steam, will be used in enhanced oil recovery. Each unit will have an electric power production capacity of 2600 kilowatts. The total electric power production capacity of the facility will be 5200 kilowats.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8463 Filed 3-28-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2601-003, et al.]

Getty Oil Company, et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

March 23, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	price per 1,000 ft.³	Pressure base
G–2601–003, D, Mar. 15, 1984	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	Columbia Gas Transmission, Erath Field, Vermilion Parish, Louisiana.	(1)	
CI84–248–000, E, Mar. 14, 1984	Phillips Oil Company (Successor in Interest To Phillips Petroleum Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Florida Gas Transmission Company, Nueces Bay Field, Nueces County, Texas.	(2)	
CI87–808–001, D, Mar. 14, 1984	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Southern Natural Gas Company, West Delta Block 133 Field, Offshore Louisiana.	(3)	
CI83–249–003, C, Mar. 19, 1984	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Louisiana Industrial Gas Supply System (formerly Cajun Natural Gas Company), South Timbalier Blocks 22 & 27, Offshore Louisiana.	(4)	14.73
CI84–244–000, B, Mar. 6, 1984	Lario Oil & Gas Company, 301 South Market Street, Wichita, Kansas 67202.	Cities Service Gas Company, Adine "B" Well, Watkins-Smith Well, Barber County, Kansas.	(5)	
CI84–245–000, B, Mar. 9, 1984	Grace Petroleum Corporation, 6501 North Broadway, Oklahoma City, Oklahoma 73116.	Natural Gas Pipeline Company of America, Camric Gas Area, Beaver County, Oklahoma.	(6)	
CI84–246–000, B, Mar. 12, 1984	J & J Enterprises, Inc.	Consolidated Gas Transmission Corporation, McCalmont Field, Jefferson County, Pennsylvania.	(7)	
CI84–329–000 (CI72–838), B, Mar. 14, 1984.	Exchange Oil & Gas Corporation, 1250 Poydras Street, 24th Floor, New Orleans, Louisiana 70112.	Texas Gas Transmission Corporation, Ship Shoal Block 23 Field, Terrebonne Parish, Louisiana.	(8)	
CI84–330–000, A, Mar. 14, 1984	Amerada Hess Corporation, P.O. Box 2040, Tulsa, Oklahoma 74102.	Texas Eastern Transmission Corporation, East Cameron Area, Block 321, Offshore Louisiana.	(9)	14.73
CI84–331–000 (CI74–512), B, Mar. 25, 1984.	Diamond Shamrock Exploration Company, successor to Diamond, Shamrock Corporation, P.O. Box 631, Amarillo, Texas 79173.	Natural Gas Pipeline Company of America, Block 176–S Field, Offshore Galveston County, State of Texas.	(10)	
CI84–333–000, A, Mar. 15, 1984	Aminoil Inc., 2800 North Loop West, Post Office Box 94193, Houston, Texas 77292.	Texas Eastern Transmission Corporation, Est Cameron Block 321, Offshore Louisiana.	(11)	14.73
CI84–334–000, A, Mar. 18, 1984	The Louisiana Land and Exploration Company, 225 Baronne Street, Post Office Box 60350, New Orleans, Louisiana 70160.	Texas Eastern Transmission Corporation, Block 321 Field, East Cameron Area, Offshore Louisiana.	(12)	14.73
CI84–335–000, A, Mar. 19, 1984	Tenneco Oil Company, Houston Oil & Minerals Corporation, TINCO, Ltd., Tenneco Exploration Ltd., and Tenneco Exploration II, Ltd., P.O. Box 2511, Houston, Texas 77001.	Eastern Shore Natural Gas Company, Eugene Island 215 D, Offshore Louisiana, South Marsh Island 116 A, Offshore Louisiana, Vermilion Block 50, Offshore Louisiana, High Island A–270–B, Offshore Texas, West Cameron 638 B, Offshore Louisiana.	(13)	14.73

[1] Acreage in the assignment dedicated to this contract has been assigned to J. P. Oil Company.
[2] Effective September 1, 1983, Phillips Petroleum Company assigned to Phillips Oil Company its interest in the Call and Sand leases, both located in Nueces County, Texas.
[3] By assignments dated March 25, 1982, and April 29, 1983, certain leases were assigned to Kirby Exploration Company et al. and to Taylor Energy Company, respectively.
[4] Applicant is filing under Gas Sales Contract dated May 26, 1983, amended by Supplemental Gas Purchase Agreement dated March 8, 1984.
[5] The referenced wells have now been depleted and are not capable of commercial production. Lario has now plugged these wells, which were the last two producing wells dedicated under the referenced contract.
[6] Collapsed casing: Uneconomical.
[7] It has become uneconomical to maintain this facility given the low volume of production received.
[8] Depletion of reserves and expiration of leases.
[9] Applicant is filing under Gas Purchase Contract dated February 13, 1984.
[10] Reserves depleted, all wells plugged and abandoned, contract terminated.
[11] Applicant is filing under Gas Purchase Contract dated February 17, 1984.
[12] Applicant is filing under Gas Purchase Contract dated January 23, 1984.
[13] Applicant is filing under Gas Purchase and Sales Agreement dated February 20, 1984.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 84–8453 Filed 3–28–84; 8:45 am]
BILLING CODE 6717–01–M

Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

March 12, 1984.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83–3 and RM81–12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On February 28, 1984, the Commission received notice from MMS, Pacific OCS Region, that on November 30, 1983, MMS conducted a lease offering for the Pacific Outer Continental Shelf region. Included in this offering were lease numbers OCS–P–0503 through OCS–P–0510. The legal description for these leases is:

Lease No.	Legal description	Effective date
OCS–P–0503	[illegible]	[illegible]
OCS–P–0504	[illegible]	[illegible]
OCS–P–0505	[illegible]	[illegible]
OCS–P–0506	[illegible]	[illegible]
OCS–P–0507	[illegible]	[illegible]
OCS–P–0508	[illegible]	[illegible]
OCS–P–0509	[illegible]	[illegible]
OCS–P–0510	[illegible]	[illegible]

Pursuant to Order No. 336, these leases have been determined to qualify under NGPA Section 102(c)(1)(A), as new OCS leases granted on or after April 20, 1977. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–8469 Filed 3–28–84; 8:45 am]
BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM

Matewan Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 20, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Matewan Bancshares, Inc.*, Matewan, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Matewan National Bank, Matewan, West Virginia.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *CNB Financial Corporation, Inc.*, Taylor, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The City National Bank of Taylor, Taylor, Texas.

2. *SoBank, Inc.*, Tyler, Texas; to acquire 100 percent of the voting shares of South Broadway Bank, Tyler, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8381 Filed 3-28-84; 8:45 am]

BILLING CODE 6210-01-M

Pacific Western Bancshares; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views of writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Pracific Western Bancshares*, San Jose, California; to engage *de novo* through its subsidiary Western Capital Management Corporation, San Jose, California, in the provision of investment advisory services to financial institutions, public agencies, corportations and individuals, including portfolio investment advice, general economic information and studies, and the development of investment policies, procedures and recommendations.

Board of Governors of the Federal Reserve System, March 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8382 Filed 3-28-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Public Workshop; Anesthetic Management of the Pediatric Dental Patient

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop on appropriate use of drugs and methods for managing the pediatric patient requiring dental procedures.

DATE: The workshop will be held on May 22, 8:30 a.m. to 5 p.m. and on May 23, 8:30 a.m. to 12 m.

ADDRESS: The meeting will be held at the National Institutes of Health (NIH), Bldg. 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: James Hannan, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3500.

SUPPLEMENTARY INFORMATION: Managing pediatric patients needing extensive dental treatment who are occasionally uncooperative is a persistent problem in dental therapy. Pediatric patients may respond erratically to sedative type drugs, and administering nitrous oxide is often difficult, if not impossible. Various psychological and physical management techniques have been developed and used with varying degrees of success. Pharmacologic management using narcotic analgesics has remained a popular method among some dentists in dealing with the pediatric patient. However, potential life threatening adverse reactions have been reported when narcotics are administered for sedation. The meeting will provide a forum to discuss: (1) The various management techniques for the pediatric dental patient; (2) possible guidelines for the use of conscious sedation, deep sedation, and general anesthesia in the pediatric dental patient; and (3) monitoring for possible problems when drugs are administered to the pediatric

patient and the proper preparation for managing emergency situations.

Requests for information on the meeting should be directed to James Hannan (address above).

Dated: March 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-8307 Filed 3-28-84; 8:45 am]
BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of a Pennsylvania State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on May 1, 1984, in Philadelphia, Pennsylvania, to reconsider our decision to disapprove Pennsylvania State Plan Amendment 83–11.

DATE: Requests to participate in the hearing as a party must be received by April 13, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland, 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Pennsylvania State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Pennsylvania's request to place restrictions on payment to skilled nursing facilities (SNFs) for services furnished to Medicare-eligible recipients violates Section 1902(a)(23) and 1902(a)(13)(A) of the Social Security Act and Medicaid regulations at 42 CFR 431.51 and 42 CFR 440.240. Under the State's proposed plan amendment, the State would deny payment for the first 100 days that Medicaid eligible recipient receives services in a SNF that does not participate in medicare. For SNFs that are Medicare-participating, no payment would be made for the first 20 days and only the Medicare SNF coinsurance amount would be paid for days 21 through 100; if care is furnished in a non-Medicare certified bed in such a facility, no payment would be made for the first 100 days.

Section 1902(a)(23) and Medicaid regulations at 42 CFR 431.51 require a State plan to ensure that recipients may obtain services from any qualified provider that undertakes to provide the services. HCFA has determined that the proposed amendment would violate section 1902(a)(23) in that recipients eligible for both Medicare and Medicaid would be denied admission to certain qualified facilities of their choice as a result of the State's policy of not providing full reimbursement.

Regulations at 42 CFR 440.240 require that the services available to a categorically needy recipient cannot be less in amount, duration, or scope than those available to a medically needy recipient, and that the services available to either the categorically needy group or to a covered medically needy group must be available equally in amount, duration, and scope for all recipients within the group. The proposed amendment would result in Medicare-eligible recipients receiving less coverage for SNF services than would other recipients. Therefore, HCFA has determined that the proposed amendment would be in violation of the comparability of services requirement, in regulations at 42 CFR 440.240.

Finally, section 1902(a)(13)(A) requires that States make payment for long-term care facility services through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable State and Federal laws, regulations, and quality and safety standards. HCFA has determined that the proposed amendment is in violation of section 1902(a)(13)(A) of the Act because, by denying payment for the first 100 days that a Medicare-eligible Medicaid recipient receives services in a SNF that does not participate in Medicare, it would preclude reimbursement of reasonable and adequate payment rates as required by the statute governing payments to medicaid providers.

The notice to Pennsylvania announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. **Gerald F. Radke,**
Deputy Secretary for Medical Assistance,
Department of Public Welfare
Harrisburg, Pennsylvania 17120

Dear Mr. Radke:

This is to advise you that your request for reconsideration of the decision to disapprove Pennsylvania State Plan Amendment 83–11 was received on February 23, 1984. You have requested a reconsideration of whether this plan amendment, which would place restrictions on payment to skilled nursing facilities for services furnished to Medicare-eligible recipients, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on May 1, 1984, at 10 a.m., in the Third Floor Conference Room, 3535 Market Street, Philadelphia, Pennsylvania 19104. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 21 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84-8474 Filed 3-28-84; 8:45 am]
BILLING CODE 4120-03-M

Social Security Administration

Transitional-Employment Training Demonstration Program: Announcement of the Availability of Grant Funds

The Acting Commissioner of Social Security announces that applications will be accepted for grants to support the development and operation of programs providing transitional-employment training services to mentally retarded recipients of Supplemental Security Income (SSI). These grants are authorized under section 1110(a) of the Social Security Act, as amended. This announcement describes the nature of the grant activities and grantee (grant recipient) requirements, and gives notice of the anticipated availability of Fiscal Year 1984 funds in support of the proposed activities.

Program Purpose

The grants announced here are intended to promote development of transitional-employment training. The grants form part of a demonstration and research program that will provide experience with transitional-employment training programs for mentally retarded SSI recipients and information about the effects of such programs on long-term employment and the receipt of SSI benefits.

These objectives will be pursued through the combined efforts of the grantees and an independent research contractor who has already been selected by the Social Security Administration (SSA). Grantees will be reponsible for planning their transitional-employment training programs, providing a range of services, collecting research data from and about participating individuals, and maintaining data on program operations. The research contractor will document the services provided by grantees, evaluate the impact of services on participants, and analyze the cost-effectiveness of service.

Transitional Employment and Training Model

Grantees under this demonstration must offer programs which serve a specific population, provide a range of services conforming to a general intervention model specified in the detailed guidelines for applicants, and offer certain organizational strengths.

Population to be Served. The population to be served by the transitional-employment training program operators consists of mentally retarded SSI recipients between the ages of 18 and 40. Grantees will conduct outreach activities with referral agencies and/or individual potential participants to encourage participation.

Grantees will be expected to (1) screen individuals and evaluate their potential to be trained and placed in competitive employment; and (2) determine the appropriate services to be provided to the individuals. The sample of individuals actually enrolled in demonstration programs will therefore be drawn from a subset of the full population of mentally retarded SSI recipients between the ages of 18 and 40.

Service Model. The demonstration is intended to test the effects of transitional services to help retarded individuals obtain and retain permanent employment in the competitive job market. Under the service model to be tested in this demonstration, the grantee will:

1. Provide participants with training in specific vocational skills (for example, attendance, time management, production, social interaction, and following directions). Grantees must provide such training at least primarily, if not entirely, in ordinary work environments among non-retarded co-workers.
2. Place participants in competitive jobs with the potential for permanent employment.
3. Provide post-placement support and follow-up as needed to promote job retention.

Grant guidelines contained in the application kit explain the component services that the grantees must provide to conform to the service model and the latitude that is left to the grantees for designing their own particular programs.

The demonstration focuses on a *transitional* service model, rather than a model which implies a permanent or long-term support role to maintain employment of retarded individuals. Grantees will be expected to ensure that all the services described above are provided to each participant as necessary. The total intervention for each participant under the demonstration project is expected to vary from a few months to a year.

Demonstration Scale and Duration. Grant awards are expected to be issued in the spring of 1984 and will be for a maximum period of two-and-a-half years. The grant period will include an initial planning period of up to five months, the period of full program operation, and a period for orderly phase-out of program operations supported by grant funds. It is anticipated that demonstration participants would be enrolled over the first six to nine months of operations, beginning in October 1984.

Given the research requirements for adequate sample size aggregated across all demonstration grant programs, each grantee will be expected to provide services for a substantial number of participants. It is presently anticipated that each grantee will enroll and provide services to between 30 and 100 participants over the course of the demonstration, and that the grantees will conduct outreach activities to generate the desired level of volunteers from among the population potentially eligible for participation.

Organizational Eligibility Requirements. Grants may be awarded to State or local governments and public or private nonprofit organizations or agencies. Applications will also be considered which include cooperative arrangements with other service operators in order to meet the enrollment target of 30 to 100 participants. Grant applicants should be able to demonstrate substantial experience in providing employment-related services to the mentally retarded. They should also be able to demonstrate the financial stability and organizational resources necessary to develop and manage the type of project described here. One condition of being awarded a grant will be a commitment on the part of the grant applicants to cooperate with the research contractor in conducting the demonstration programs. The applicants must also collect and provide data to the research contractor in accordance with specifications set forth in the guidelines provided to grant applicants and in subsequently developed data collection procedures.

Research-Related Requirements

Although grants are intended to assist grantees in providing services, each grantee will also be expected to accommodate the research objectives of the overall project activity and to cooperate fully with the research contractor in achieving evaluation objectives. Grantees will be expected to: (1) adhere to their proposed service plans as approved by SSA; (2) maintain detailed data on resource use and costs, programs services and placements provided to participants, and intake screenings and assessments of demonstration participants; (3) provide the resulting data to the research contractor through an established reporting procedure; (4) adhere to the policies and procedures established for assessing the abilities of participants and selecting participants; (5) adhere to

the policies and procedures established for data collection; and (6) participate in periodic meetings and interviews with the research contractor's staff and representatives of the other demonstration grantees.

Availability and Duration of Funding

SSA anticipates allocating a total of $2.1 million for the transitional-employment training demonstration grants among 5 to 9 grantees. These figures are intended to provide some guidance as to the magnitude of grantee programs which will be feasible, but they are subject to change. Grant awards will be issued for the full period including the planning, operation, and phase-out of the project. Actual award of grants is contingent on availability of funds.

The Application Process

1. *Availability of application forms.* Application kits which contain the prescribed application forms and detailed program guidelines are available upon request. Requests for application kits should be directed by mail or telephone to Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, Dogwood West Building, First Floor, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207. Telephone (301) 594–0284, Lawrence H. Pullen, Chief, Grants Management Branch.

When requesting an application kit, the applicant should request a kit for grants under section 1110 of the Social Security Act and refer to this announcement to ensure receipt of the proper application.

2. *Additional Information.* For questions concerning project development, please contact Dr. Aaron J. Prero, Office of Research, Statistics, and International Policy, OP, SSA, Room 2–0–5 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–6594 or 594–6591.

3. *Additional Submission.* To be considered for these section 1110 grants, all applications must be submitted on the standard forms provided by the Division of contracts and Grants Management. The application shall be executed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant.

4. *Grantees Share of the Project Costs.* Grant recipients receiving assistance to conduct section 1110(a) projects are expected to contribute towards the project costs. Generally, contributing 25 percent of the total cost of the activity is considered acceptable. No grant will be awarded that covers 100 percent of the project's costs.

5. *Application Consideration.* Applications are initially screened for their relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Relevant applications are reviewed and evaluated by a review panel of not less than three experts. A written assessment of each application is made.

6. *Application Approval.* Following the approval of the applications selected for funding, grant awards will be issued within the limits of Federal Funds available. The grant awards will be issued in August 1984. The official award document is the "Notice of Grant Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is comtemplated, and the total grantee participation.

Criteria for Review and Evaluation of Application

Competing applications will be reviewed and evaluated against the following criteria:

1. Do the qualifications of the project personnel indicate they are capable of competently performing their assigned tasks? Are the assignments of responsibility for portions of the project and the lines of authority within the organization appropriate for the proposed work? (25 points)

2. Do the applicant's current organization and organizational plan provide adequate facilities, resources, and experience to plan, conduct, and complete the project? Does the organizational plan indicate sufficient experience in serving the target population or clearly related experience? (15 points)

3. Does the design of the applicant's project promise to provide an adequate test of the service model? Have plans been presented to deal with all required aspects of the demonstration project? Are details of the planned services realistic elaborations of the basic service model? Do plans for collection of data adhere to program objectives? (40 points)

4. Is the budget detailed with justifications and explanations for the requested amounts? Are the costs reasonable and adequately described? (10 points)

5. Do project plans clearly define the work to be undertaken in each of the project phases: planning, operations, and phase-out? Is adequate detail presented concerning how the work in each of these major phases will be scheduled and performed? (10 points)

Closing Dates

The closing date for receipt of applications in response to this announcement will be (insert date 60 days following the date of this notice).

Applications may be mailed or personally delivered to: Social Security Administration, OMBP, Division of Contracts and Grants Management, Grants Management Branch, Dogwood West Building, First Floor, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207.

In order to be considered applications must be received by the Division of Contracts and Grants Management, Grants Management Branch, by the closing date. Personally delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday. An application will be considered to be received on time if mailed no later than the closing date, as evidenced by a legible U.S Postal Service postmark. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than by mailing through the U.S. Postal Service shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date. Applications which are not received on time will not be considered for funding.

Executive Order 12372 "Intergovernmental Review of Federal Programs"

These grant activities are not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Federal Domestic Assistance Program No. 13.812—Assistance Payment—Research)

Dated: March 26, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 84–8516 Filed 3–28–84; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-84-1361; FR-1943]

Voluntary Affirmative Marketing Agreements

AGENCY: Office of Assistant Secretary for Fair Housing and Equal Opportunity (HUD).

ACTION: Notice and request for comments.

SUMMARY: HUD requests public comments to assist it in developing improvements in the Voluntary Affirmative Marketing Agreements that HUD enters into with organizations in the housing industry for further the objectives of the Fair Housing Act. HUD is particularly interested in comments concerning the stated objective of the affirmative marketing agreements and the role of Community Housing Resource Boards.

DATE: Comment due date: May 29, 1984.

ADDRESS: Interested persons are invited to submit written comments regarding this notice to the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Ubgan Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nathaniel K. Smith, Director, Division of Housing and Community Development, or Deborah Seaborn-Dickens, Equal Opportunity Specialist, Office of Voluntary Compliance, Fair Housing and Equal Opportunity; Room 5242, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: (202) 755-5992 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice requests comments from the public to assist the Department of Housing and Urban Development in developing and considering improvements to voluntary agreements executed with organizations in the housing industry in furtherance of the objectives of Title VIII of the Civil Rights Act of 1968 (the "Fair Housing Act").

The Fair Housing Act provides: "It is the policy of the United States to provide, within constitutional limits, for fair housing throughout the United States". 42 U.S.C. 3601. The authority and responsibility for administering the Act is vested in the Secretary of Housing and Urban Development. Section 809 of the Act directs the Secretary, among other things, to:

> * * * call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this [Act] and his suggested means of implementing it, and [to] endeavor with their advice to work out programs of voluntary compliance and of enforcement. 42 U.S.C. 3608.

One means by which the Secretary has discharged this responsibility is by negotiating and executing voluntary affirmative marketing agreements with national associations representing major components of the housing industry, such as real estate brokers, homebuilders and real estate license commissions. Each agreement is designed to carry out a broad equal opportunity program including outreach advertising, affirmative action in employment, safeguards against racial steering, and other actions designed to ensure that housing will be marketed on an equal opportunity basis.

The national association party to an agreement commends its adoption by member affiliates at the State or local level. Upon adoption of the agreement at the local level, HUD field offices provide technical assistance, monitor progress under the agreement, and organize a citizen participation component.

There is a two-fold policy objective to HUD's voluntary compliance programs: (1) Cooperation and assistance in aiding persons, firms, agencies, and municipalities to comply voluntarily with the Fair Housing Act and HUD equal opportunity requirements; and (2) encouragement of these same parties to exceed the minimum level of legal requirements by working affirmatively to further fair housing objectives.

Voluntary affirmative marketing agreements are intended to promote institutional change on an area-wide basis. Complete equal housing opportunity cannot be achieved until the real estate and building industries, apartment housing association members, financial institutions and local governments demonstrate their acceptance of minority applicants and affirmatively promote open communities. Industry group programs play an important role in HUD's promotion of fair housing because they apply to conventionally financed housing, representing approximately 90% of the total housing market, as well as housing assisted or insured under the Department's programs.

The first national Voluntary Affirmative Marketing Agreement (VAMA) was adopted by the Board of Directors of the National Association of Realtors (NAR) at its annual convention on November 11, 1975, and was executed by HUD and NAR on December 16, 1975. A Memorandum of Understanding executed by HUD and NAR effective November 16, 1981, renewed the VAMA until September 20, 1986. The Memorandum of Understanding amended certain provisions of the VAMA and clarified the intent of other provisions. The text of the HUD/NAR VAMA is set forth in Appendix A to this Notice, and the Memorandum of Understanding is set forth in Appendix B.

The HUD/NAR VAMA is the most broadly subscribed and prominent of the national voluntary agreements, NAR Member Boards of Realtors, State Associations, and individual realtors who subscribe to the agreement on behalf of their firms, become signatories to the agreement. As of December 1983, the NAR VAMA had been adopted by 1,018 out of the total 1,974 NAR Member Boards of Realtors across the country. In addition 50 of the 51 State Associations of Realtors (including the District of Columbia) had adopted the agreement.

A key element of the HUD/NAR VAMA is the provision for appointment by HUD of a Community Housing Resource Board (CHRB) under each agreement to assist the signatory Board of realtors with any problems that may arise in the implementation of the agreement, and to assess program progress under the agreement. HUD appoints to the CHRB representatives of community organizations through the geographic area served by the signatory Board that have a substantial interest in housing and equal opportunity. The CHRB is intended to maximize communication between the housing industry and minority and women's groups of the community, and to enhance the prospects of implementation of industry group commitments made in the VAMA. The first objective requires broad minority and fair housing group representation on the CHRB. The second objective requires the most influential community representation possible, including public officials or their representatives.

Realtor firms and individual Realtors do not become members of CHRBs in their capacities as such. The Memorandum of Understanding provides the "the prerogatives of Member Board membership on a CHRB shall be determined by NAR." NAR has advised its Member Boards that neither

members of the Board nor individual Realtors should become CHRB members as representatives of a Member Board, in order to avoid an appearance of CHRB domination by realtors as well as an appearance of Board commitment to be bound by CHRB opinions or recommendations. However, NAR encourages its Member Boards to appoint liaison representatives to CHRBs. In addition, individual realtors may beome CHRB members as representatives of community groups other than a Member Board.

HUD provides funding assistance to CHRBs pursuant to regulation located at 24 CFR Part 120. As of December 1983, 589 CHRBs had been established under VAMAs adopted by NAR Member Boards of Realtors. However, a number of the established CHRBs have not commenced any substantial activity.

A similar VAMA was executed by HUD and the National Association of Real Estate Brokers (NAREB) on May 14, 1976. NAREB was formed in 1947 as an organization of Black licensed real estate practitioners who, at that time, were excluded from membership in the major national trade association. HUD undertook negotiation of a voluntary affirmative marketing agreement with NAREB in order to promote cooperation between NAR and NAREB and to expand and extend the range of minority sales experience and responsibility. A successor VAMA was executed by HUD and NAREB on August 12, 1982, to remain in effect until August 12, 1986.

Like the HUD/NAR VAMA, the HUD/NAREB VAMA is adopted at the local level by NAREB Member Boards of Realtists. The HUD/NAREB VAMA also provides for HUD appointment of CHRBs to meet regularly with signatory Boards to assist them with problems program implementation and new initiatives designed to further the purposes of fair housing and the objectives of the agreement. In practice, HUD has designated CHRBs appointed under the NAR agreement to serve the NAREB signatory Board as well in areas where both agreements have been adopted. The HUD/NAREB VAMA also provides that HUD will affirmatively seek participation of NAREB representatives to CHRBs appointed under the NAR agreement.

As of December 1983, the HUD/NAREB VAMA had been adopted by 35 local NAREB Member Boards of Realtists.

A model VAMA for homebuilders was approved by HUD and the National Association of Homebuilders on October 22, 1976. Unlike the HUD/NAR VAMA, with respect to which NAR maintains close scrutiny over content and operation because of uniform liability insurance requirements, the HUD/NAHB model VAMA, when executed by HUD and State or local homebuilder groups, may contain deviations from the national model so long as the resulting agreement is at least as comprehensive in its commitments as the national model. Builder VAMAs are applicable to all housing developed, marketed, sold or rented by the builder, whether or not HUD-assisted or HUD-insured.

The HUD/NAHB model VAMA provides for appointment by the State or local Builder Group of a Community Housing Leadership Board composed of local community leaders having a substantial interest in housing and equal opportunity. As constituted in accordance with the model VAMA, Community Housing Leadership Boards are not eligible for HUD assistance under 24 CFR Part 120. As of December 1983, 30 local home builder groups had executed a form of VAMA with HUD.

In addition, the Home Builders Association of Alabama entered into an agreement in 1974 which continues in effect and remains to date the only State-wide home builders' agreement.

The text of the HUD/NAHB model VAMA is set out in Appendix C, and the agreement with the Home Builders Association of Alabama is set out in Appendix D. Several State builder organizations currently are considering agreements similar to the Alabama agreement.

A common feature of each of the VAMAs described above provides that signatories to association voluntary agreements executed by HUD are not required to file affirmative marketing plans for individual HUD-insured or HUD-assisted projects under HUD's Affirmative Fair Housing Marketing Regulations (24 CFR Part 200, Subpart M). While this provision is not applicable, as a practical matter, to many signatories of the NAR and NAREB agreements, it is significant to builder signatories of the NAHB model or similar agreements.

Paragraph VIII of the HUD/NAR VAMA provides that representatives of the Member Board, HUD, the CHRB and a State or local human rights enforcement agency will meet annually to evaluate the effectiveness of the local agreement. It further provides that HUD and the Board shall determine whether the agreement, or some modification thereof, should be adopted for the following year. Also, where an evaluation of the agreement at any time during its term reveals that reasonable progress is not being made toward achieving its objectives, the agreement may be modified by mutual consent of the parties; where the parties are unable to agree on terms of a modification, any party may terminate the agreement.

Although Paragraph VIII by its terms contemplates modification of the local agreement at the local level, the reality is that any significant changes would be arrived at by negotiation between HUD and NAR for incorporation in the HUD/NAR VAMA. This is reflected in paragraph 4 of the Memorandum of Understanding, which provides for annual review of the effectiveness of the agreement by a joint HUD/NAR "review team" (see Appendix). The Memorandum of Understanding provides that the review team will "develop recommendations for consideration to improve the implementation of the agreement."

It is in connection with its development of recommendations for consideration with NAR and, to the extent applicable, with other national associations with whom HUD has entered into voluntary agreements, that the Department now requests public assistance. The request appears timely, in view of eight years of experience under the agreement and the continually increasing number of local Boards of Realtors that have adopted the HUD/NAR VAMA. In addition, several questions have been raised by organizations having a demonstrated interest in fair housing regarding certain provisions of the VAMA or the Memorandum of Understanding, particularly those relating to CHRBs. Some of these questions were raised in public comments on HUD's interim rule governing the disbursement of HUD assistance to CHRBs published March 25, 1982 (47 FR 12926). However, only three public comments on the interim rule were received. The Department considers it desirable to obtain a broader range of comments before developing its final rule governing CHRBs.

Accordingly, the Department solicits comments, particularly from housing industry groups (including local Boards of Realtors and individual realtor firms) that are signatories to voluntary agreements, fair housing organizations, State and local fair housing agencies, and community organizations that have participated in activities undertaken pursuant to voluntary agreements, on the matters noted below or other subjects related to voluntary affirmative marketing agreements.

Goals of VAMA

A question on which the Department solicits comment is whether the scope of

the affirmative marketing objective of the VAMA is sufficiently comprehensive.

Paragraph III of the HUD/NAR VAMA provides:

> Based on the premise that an informed choice is a free choice, the goal of this Agreement is to provide information that will enable minority buyers to make a free choice of housing location. The object of marketing is to sell; the object of Affirmative Marketing is to sell free choice.

The emphasis of this provision is on expansion of housing opportunities for minorities. This may be compared to HUD's Affirmative Fair Housing Marketing Regulations applicable to HUD-insured or HUD-assisted housing, which state their objective as the achieving of

> * * * a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, or national origin. 24 CFR 200.610.

In their implementing provisions, the regulations require a HUD program applicant to

> carry out an affirmative program to attract buyers or tenants, regardless of sex, of all minority and majority groups to housing for initial sale or rental. * * * Such a program shall *Typically* involve publicizing to minority persons the availability of housing opportunities regardless of race, color, religion, sex or national origin, through the type of media customarily utilized by the applicant, including minority publications or other minority publications or other minority outlets which are available in the housing market area (emphasis added). 24 CFR 200.620(a).

The regulation quoted above was developed in 1972. Subsequent articulations of the objectives of affirmative marketing, influenced by experience, have referred more explicitly to the requirement, in some circumstances, of special outreach to non-minorities. Thus, more recent regulations have described the target of affirmative marketing activities as those "least likely to apply." See, e.g., 24 CFR 880.601(a) (Section 8 New Construction), 882.207(a) (Section 8 Existing Housing). The Instructions for the preparation of an Affirmative Fair Housing Marketing Plan developed under the regulation provide:

> The affirmative program * * * should assure that any group(s) of persons NOT likely to apply for the housing without special outreach efforts (because of existing neighborhood racial or ethnic patterns, location of housing in the SMS, price or other factors) know about the housing, feel welcome to apply and have the opportunity to buy or rent. Instructions for Form HUD-935.2

The implication that in some circumstances the target group for affirmative marketing outreach may be non-minorities is made explicit in HUD's Affirmative Fair Housing Marketing Handbook, which states the following example:

> A 100 unit Section 8 New Construction project is proposed for location in an *area of minority concentration*, which is 50 percent Black and 25 percent Hispanic. The tenant population of all assisted housing, including the conventional Low Income Public Housing and the four Section 8 New Construction projects already in occupancy, is also predominantly minority. Given these facts, the non-minority segment should be selected for special outreach. Since more than one minority group, e.g., Blacks and Hispanics, lives in the area of the project, outreach should also be targeted to the minority group which does not predominate, i.e., the Hispanics. Implementation of Affirmative Fair Marketing Requirements, Handbook 8025.1 REV-1, Appendix 5.

Recognition that achievement of affirmative marketing objectives may not be accomplished exclusively through outreach to minorities also has been reflected in voluntary agreements executed by HUD. For example, under the HUD/NAREB VAMA executed in 1976, signatory firms agreed to

> * * * make special outreach efforts to inform minorities of housing opportunities available in areas of majority concentration and make similar efforts to inform the majority white population of available housing opportunities located in areas of minority concentration.

(This provision was not included in the HUD/NAREB VAMA executed in August 1982.) Similarly, the State-wide voluntary agreement entered by HUD and the Home Builders Association of Alabama provides that the State Association will—

> Show evidence of sensitivity to the need for directing the marketing activity to those groups which are not likely to apply without special outreach, i.e., to racial minority groups for housing in predominantly non-minority areas; to racial majority groups for housing in integrated areas.

In commenting on whether the scope of the affirmative marketing concept should be broadened in the VAMA, commenters should focus on the particular means by which a signatory firm could achieve a broadened objective.

HUD's Affirmative Fair Housing Marketing Regulations, referred to above, focus mainly on advertising. This is an appropriate focus for an agreement or plan regarding a housing owner or rental agent who simply advertises for and receives applicants. The functions of a real estate broker include advertising, but their more important and significant activities are qualitatively different from simply advertising. Real estate brokers show homes—or, perhaps more crucially in this context, suggest homes to be shown and, by necessary implication, fail to suggest others.

In this connection, paragraph IV D. of the HUD/NAR VAMA requires signatory Boards to disseminate to their member firms suggested principles of office management as promulgated from time to time by NAR. Such principles address, among other things, "procedures to insure that prospective purchasers are made aware of an optimum number (consistent with the resources of the member firm) of available locational choices within their price and interest ranges," as well as "means of providing prospects with complete and accurate information on availability of homes, alternative methods of financing, and other facts affecting prospects' choice of location (such as schools, employment, transportation, etc.)." The suggested principles developed and disseminated by NAR cover such matters as reporting forms to record homeseeker preferences information, such as price range, location or grographic area, size and specific features, and similar characteristics of properties shown or suggested by the salesperson. See the NAR publication Affirmative Marketing Handbook (Second Edition 1983). Adoption of the suggested principles by individual signatory firms is not mandatory.

The Department is aware that it is possible for some activities purportedly undertaken in the name of racial integration to have a limiting effect on the ability of some persons to select or apply for the housing of their choice. In housing contexts more than in other areas of affirmative action, the burden of these limitations may fall on minorities. See, e.g., *Burney* v. *Housing Authority for the County of Beaver*, 551 F. Supp. 746 (W.D. Pa. 1982). The Department does not support activities that limit the free choice of any persons, majority or minority, in selecting available housing.

Addressing a related topic, Secretary Pierce recently stated:

> Setting the goals of free choice and integration in supposed opposition to each other obscures the issue rather than clarifies it. The issue is free choice, but the unavoidable fact is that the choice is not "free" when it is limited on account of race. The primary concern of our enforcement efforts must continue to be those cases where a minority homeseeker is denied the right to live in a non-segregated community. But, it is

my strong conviction that the restriction of choice is no less real—and the denial of free choice no less unlawful—when a white homeseeker is denied the choice of an integrated community. Address to Annual Convention of Board of Directors, National Association of Realtors, November 14, 1983.

The Department recognizes that the delimiting of activities which a real estate broker or sales person may undertake in furtherance of affirmative marketing objectives is not a simple proposition. Because of the critical impact of the brokers' activities on whether housing is actually made available or—as the Fair Housing Act prohibits—"made unavailable" to a prospect, the Department has been more cautious in endorsing choice-influencing activities by brokers than when undertaken by actors having a less decisive role in the housing acquisition process, such as counselling agencies.

It also must be borne in mind that the VAMA is, and will remain, a voluntary undertaking by private firms. It does not prescribe conditions for participation in HUD-insured or assisted programs but, instead, generates voluntary undertakings exceeding legal requirements in activities that, for the most part, are not financed or regulated by HUD. "[T]he success of the Agreement depends on a 'voluntary' as opposed to a 'coerced' commitment to the spirit and intent of the concept of affirmative marketing in support of equal opportunity in housing." Affirmative Marketing Handbook 7 (Second Edition 1983).

In this context it is appropriate to refer to considerations taken into account at the time of development of the original HUD/NAR VAMA, as described by NAR:

> The initial efforts by the National Association and HUD to develop a single nationwide Affirmative Marketing Agreement involved an in-depth analysis of affirmative marketing obligations then in effect as a result of judicial decision, consent decree, or voluntary agreement. The Housing Section of the Civil Rights Division of the Department of Justice was particularly involved in this analysis, not only as legal counsel to HUD, but in its own right as an agency charged with enforcement of Title VIII.
>
> The objective of this analysis was to identify those types of affirmative marketing activities that:
>
> a. Would contribute positively and significantly to the promotion of equal opportunity in housing and compliance with Title VIII, specifically;
>
> b. Would be undertaken by Boards of Realtors and Realtors at a cost that would not place them at a competitive disadvantage with those who chose not to participate in affirmative marketing;
>
> c. Would not constitute a deterrent to membership in a Board of Realtors; and
>
> d. Would not jeopardize the independent contractor status of real estate salespersons affiliated with Realtors.
>
> Particularly, the analysis was designed to assure that the affirmative marketing activities to be included in the Agreement did not involve commitments or obligations which might expose Realtors and Member Boards to serious legal liability under the antitrust laws or real estate license laws, or even under the civil rights laws themselves.
>
> Thus, as a result of this analysis, it was determined that certain provisions sometimes appearing in affirmative marketing agreements, judgments and consent decrees should be excluded, such as:
>
> a. Those requiring brokers to ignore allegedly restrictive covenants even though not declared unenforceable by the courts;
>
> b. Those requiring brokers to "refuse to deal" with financial institutions accused of "red lining" when such accusation has not been proved;
>
> c. Those requiring brokers to "refuse to cooperate" with any other broker who has not agreed to participate in an affirmative marketing program or who violates the civil rights laws;
>
> d. Those requiring brokers to engage in "affirmative steering" where the legality of such affirmative steering has not been established;
>
> e. Those requiring brokers to establish integration goals and quotas when the legality of such goals and quotas has not been determined;
>
> f. Those requiring brokers to agree on the level of their sales activities in changing neighborhoods;
>
> g. Those requiring brokers to advertise in specified media in specified amounts regardless of the advertising value of the media. Affirmative Marketing Handbook 6–7 (Second Edition 1983).

With the foregoing background and considerations in mind, the Department invites comments on whether consideration should be given to re-defining the affirmative marketing objectives of its voluntary agreements and, if so, on particular recommended means by which such objectives may be furthered by parties to the agreements.

Rental Coverage

Paragraph 11(B) of the HUD/NAR VAMA defines "Buyer" to "include, to the extent applicable, a person seeking to rent, as well as buy, residential property." However, the focus of the balance of the agreement clearly concentrates on the homeownership rather than rental market.

The HUD/NAHB model VAMA covers rental as well as sale properties developed by its signatories. In fact, many signatories of home builder agreements are developers and owners of rental properties. However, the HUD/NAHB agreement's coverage of rental properties is principally directed to initial rent-up and not to continuing rental activity.

HUD's Voluntary Affirmative Marketing Handbook (8021.1) recommends development of voluntary plans with local apartment housing councils, and Appendix J of the Handbook contains a model plan. The model plan contemplates, among other things, development of a code of fair housing practices relevant to apartment house rental standards and procedures, and development of standard rental application forms for adoption by members. Only one or two of these plans are currently active, however.

Comment is solicited as to whether more direct focus on rental markets is appropriate in voluntary agreements, and on particular ways in which such increased focus can be implemented.

Educational Programs

An important feature of the HUD/NAR VAMA is its provision for Board development of educational materials and training courses for members and for new applicants for broker membership in duties and obligations under the fair housing laws and the goals and programs of the VAMA. Historically, HUD has cooperated with NAR in the development of educational and training materials. The VAMA, accordingly, provides an institutional framework for the dissemination throughout the industry of a uniform understanding of compilance requirements and acceptable practices. It also provides a framework for continuing consultation and dialogue on these subjects between industry groups and the Department.

The Department solicits comments on means by which this aspect of the HUD/NAR relationship may be improved, and on ways in which similar functions may be implemented in other voluntary agreements.

Publication of Signatories

Section 1 of the Memorandum of Understanding describes the methods by which individual Realtor members of a signatory Board who subscribe on behalf of their real estate firms may become parties to the VAMA. That section also places strict limitations on access by anyone other than HUD to the Member Board's list of realtor subscribers, although an individual subscriber or the Member Board may volunteer the information.

This provision of the Memorandum of Understanding confirmed HUD/NAR practice since inception of the VAMA. It is based on HUD's understanding that many Realtors are concerned over possible harassment by groups opposed to the voluntary approach.

Nevertheless, this provision permitting a Member Board to prevent disclosure of names of signatory firms was criticized by commenters on the interim rule regarding CHRBs. Points made by these commenters are:

—Identification of Realtors who have made known their adherence to the principles of fair housing by subscribing to the VAMA would enhance the efforts of fair housing centers who could focus their counseling and referral services on such Realtors.

—CHRBs will have little enthusiasm for promoting the VAMA on a community-wide basis if they are not told of the level of support that real estate firms in their communities have demonstrated for the agreement by signing it.

—Inability to know which, or how many, firms in the community have subscribed to the agreement negates a CHRB's ability to exercise one of its principal prescribed functions, viz., to assess the effectiveness of the VAMA (24 CFR 120.25(a)(3); VAMA paragraph V(A)(4)).

The Department lacks information on which to judge whether the withholding of the names of firms who have become signatories to the VAMA has impeded achievement of the objectives of the VAMA, or as to whether local Boards in fact have found it desirable to withhold publication or to permit it. Accordingly, the Department solicits comments on these points, based particularly upon the experience of signatory Boards and CHRBs.

CHRB Activities

The three explicit responsibilities of a CHRB, as described in the NAR VAMA and reiterated in the "Official Commentary to the Memorandum of Understanding," are to assist the signatory Board with problems that arise in implementation of the VAMA, to assess program progress with representatives of HUD and the member Board, and to meet annually with representatives of the Department and the Member Board to evaluate the effectiveness of the Agreement. Other activities HUD has identified as appropriate for CHRBs are:

1. Making information public regarding the goals of fair housing and the VAMA.
2. Assessing community fair housing needs.
3. Expanding minority involvement in the housing industry professions.
4. Expanding public awareness of housing opportunities in the community.
5. Assisting Board representatives to negotiate with local newspapers for inclusion of a HUD-prescribed publisher's notice regarding refusal to accept real estate advertising that violates Title VIII, and the availability, on an equal opportunity basis, of all advertised dwellings.
6. Assisting the Board to negotiate with television and radio stations for public service time to promote fair housing.
7. Persuading the press to carry articles on the VAMA and the role of the CHRB.
8. Seeking air time community television and radio talk shows to discuss the VAMA and fair housing issues.
9. Providing communinity officials with a set of recommendations to improve fair housing conditions.
10. Reviewing land use and zoning practices to determine whether they perpetuate discriminatory housing practices.
11. HUD is currently developing a base line description of the various activities conducted by a CHRB. The next step in evaluation of CHRBs is developing indicators of these activities and performance standards by which to evaluate the extent of effectiveness of a CHRB. The Department would appreciate any suggestions that would assist in the preparation of such indicators and standards.

It should be noted that CHRBs were not established with the expectation or intention that their functions would overlap those of non-profit housing centers (although such organizations are an important source of membership on CHRBs). Some commenters criticized the prohibition in HUD's interim rule on the use of HUD funds for testing activities (24 CFR 120.25(b)). The Memorandum of Understanding provides that CHRBs "will not sponsor, conduct or fund programs of real estate testing."

Responding to criticism of these limitations, Secretary Pierce wrote:

> With respect to testing and the use of testers, I believe you are aware that I am supportive of the use of testers and have so publicly testified. I also am aware that the courts have generally approved of testing as admissible evidence to prove pattern and practice of discrimination. I strongly feel, however, that CHRB activity should be viewed as a voluntary compliance effort and not as an enforcement effort. The issue is not testing, but where the activity can best take place. I believe that if CHRBs were to undertake testing programs, the cooperative nature of the Agreement would be undermined. We are promoting a voluntary agreement between the public and private sectors, and we must make every effort to increase communication and trust. I should point out, however, that the Agreement contains no prohibition which excludes from CHRB membership representatives of organizations that engage in testing or auditing; it simply states that the CHRB itself cannot undertake testing. We feel that position best serves the objectives of the Agreement. Letter of Executive Director, National Committee on Discrimination Against Housing, July 9, 1981.

A related but different question is raised by the provision of the Memorandum of Understanding which requires that if an organization becomes a party to litigation or an administrative complaint alleging violation of the Fair Housing Act or the Realtor Code of Ethics, as complainant or respondent, that organization or its representative should withdraw from the Equal Opportunity Committee of the Board or from the CHRB during tendency of the litigation or other proceeding.

Criticism of this provision has been stated as follows:

> Fair Housing centers perform a number of services for minority homeseekers to help them obtain desirable housing short of litigation. Litigation, in many cases, however, is unavoidable. It is a consequence of their work and the continuing level of housing discrimination.
>
> Fair Housing center directors and representatives of other civil rights organizations who decide to become members of Resource Boards will be "chilled" in the exercise of their duties to fully represent persons who have been discriminated against. Because we foresee no situations in which a center director would forgo filing a lawsuit or a complaint in order to stay on a Resource Board, this provision assures that few, if any, center directors will become involved in VAMA activities.

The loss of fair housing center representatives as CHRB members would seriously impair the usefulness of CHRBs. The Department solicits comments as to whether this provision of the Memorandum of Understanding has impeded CHRB participation by fair housing organizations, and as to whether Boards or CHRB members have found that CHRB participation by representatives of organizations engaged in litigation has hampered the effectiveness of CHRBs.

Paragraph VIII of the NAR VAMA agreement provides that representatives of the signatory Board, HUD, the CHRB and the State or local human rights enforcement agency will meet annually to review the effectiveness of the VAMA. However, there is no provision for CHRBs to help develop reporting forms or receive copies of the annual

evaluation reports required to be filed by the Board with HUD and NAR. Suggestions are solicited as to means through which CHRB participation in the review and evaluation process can be enhanced.

Certain CHRBs have indicated an interest in undertaking lobbying activities. HUD's position has been that in view of the status of CHRBs as essentially an instrumentality of the Department, their engaging in lobbying activities would be inappropriate. (Use of HUD-furnished funds to support lobbying activities might be particularly inappropriate. See proposed revision to OMB Circular A–122, "Cost Principles for Nonprofit Organizations," making unallowable any costs associated with lobbying and related activities, published at 48 FR 50860 (November 3, 1983). HUD's position, based on the nature of a CHRB as an entity established by the Department, extends also to activities funded from other sources.) The Department solicites comment on this question.

Multi-Board CHRBs

Questions arise regarding the utility and desirability of CHRBs which serve more than one Board of Realtors. Numerous such multi-Board CHRBs exist. However, under the Memorandum of Understanding, appointment of a multi-Board CHRB under the NAR VAMA requires the consent of NAR.

HUD believes that within geographically proximate areas, multi-Board CHRBs can be useful and advantageous. For example, a single CHRB in Dade County, Florida, serves five separate Boards. On the other hand, the Department doubts the utility of a single CHRB intended to serve an entire State. However, a State-wide association of CHRBs, whose purpose would be to share innovative programs and information and provide training on a State-wide basis in cooperation with a State-wide real estate organization, could have a separate usefulness.

The Department solicits comments on the desirability and advantages of multi-Board CHRBs.

Other Matters

The Department invites comments on other matters relating to voluntary agreements or CHRBs, including additional areas of the housing industry in which voluntary agreements in furtherance of the objectives of the Fair Housing Act should be developed and promoted.

Dated: March 23, 1984.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

Appendix A—Affirmative Marketing Agreement: Board of Realtors®

I. Parties

A. The undersigned officers of the ———— Board of REALTORS® (hereinafter referred to as the Board) and its individual members whose names and signatures appear in Part IX of this Agreement.

B. The U.S. Department of Housing and Urban Development (HUD) through the authorized representatives whose names and signatures appear in Part X of this Agreement.

C. The adoption of the Affirmative Marketing Agreement by REALTOR® members of a Board may be accomplished in one of two ways as is deemed most convenient by the Board from time to time.

1. The Agreement may be signed by the Board and the REALTOR® on behalf of this firm with a copy retained by each. Such Agreement would be effective without the signature of HUD.

2. The REALTOR® may notify the Board in writing that he subscribes to the Agreement on behalf of himself and his firm. In such case the Agreement would be effective without execution by either HUD or the Board.

II. Definitions

A. Affirmative marketing is defined as a program to inform the minority community of the homes listed for sale or rent by REALTORS®, of the services offered by REALTORS® in selecting a home for purchase, and of the availability of these homes and services to all buyers without regard to race, color, religion, sex or national origin.

B. Buyer is defined to include, to the extent applicable, a person seeking to rent, as well as buy, residential property.

C. Member is defined as a REALTOR® who is a signatory of this Agreement.

D. Associate is defined to mean a sales employee or a salesperson associated with a REALTOR® in an independent-contractor status.

E. Fair Housing Laws include both the 1866 Civil Rights Act, interpreted by the United States Supreme Court in Jones v. Mayer to prohibit discrimination in the acquisition or disposition of all real property, and the 1968 Fair Housing Act.

F. This Voluntary Agreement is intended to implement the congressional directive set forth in Section 809 of the 1968 Fair Housing Act: "(The Secretary of the Department of Housing and Urban Development) shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement." 42 U.S.C. 3609.

III. Goal

The goal of HUD, the Board, and the REALTOR® signatories to the Agreement is to implement through local voluntary action the policy expressed by Congress in the first sentence of the 1968 Public Housing Act: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."

Based on the premise that an informed choice is a free choice, the goal of this Agreement is to provide information that will enable minority buyers to make a free choice of housing location. The object of marketing is to sell; the object of Affirmative Marketing is to sell free choice.

IV. Program

The ———— Board of REALTORS® and the member REALTORS® who are signatories of this Agreement agree to adopt and undertake the following affirmative steps designed to implement the purposes of this Agreement.

A. Advertising

1. The Board shall, within 60 days of the date of this Agreement, and quarterly thereafter, place in a newspaper of general circulation in ———— one of the Affirmative Marketing Advertisements mutually agreed upon by HUD and the NATIONAL ASSOCIATION OF REALTORS®.

2. The Board shall negotiate with local newspapers and television stations for the donation of space and time for the presentation of the Board's Affirmative Marketing Advertising to the public and the publication of the recommended "Publisher's Notice," as set forth in HUD's Advertising Guidelines.

3. Each member shall include the official Fair Housing and Equal Opportunity slogan or logo in all classified advertising of six column inches or larger and in all other advertising (including billboards) where its inclusion does not significantly increase the cost of advertising. Alternatively, inclusion of the slogan or logo is not necessary in any classified advertisement where the "Publisher's Notice" referred to in the previous paragraph appears on the page containing the advertisement.

4. Each member shall display the equal housing opportunity slogan or logo in a prominent place in all brochures.

5. As requested by the Board, HUD shall provide technical assistance to the Board and to members in developing advertising techniques consistent with the objectives of this provision.

B. Posting of Signs

Each member shall display the Fair-Housing Poster, which was developed jointly by HUD and the NATIONAL ASSOCIATION OF REALTORS® and which includes the Code for Equal Opportunity in Housing of the NATIONAL ASSOCIATION OF REALTORS® promulgated in May, 1962.

C. Development of Educational Materials and Training Courses

1. The Board shall develop educational materials and training courses for members,

their associates, and new applicants for broker or associate membership in the following areas:

(a) The duties, obligations and rights of REALTORS® under the Fair Housing Laws;

(b) The goals and programs of this Affirmative Marketing Agreement.

2. The Board shall have available for its members copies of the booklet entitled "Affirmative Marketing Handbook" published by the NATIONAL ASSOCIATION OF REALTORS®; the Board shall have available sufficient copies to enable each member to use the booklet in its training and orientation programs and to maintain copies in all of its offices for reference by associates as well as customers.

3. Each member shall make the booklet available to all associates, encourage them to become familiar with it, and urge them to attend and participate in the Board's Training Courses.

4. Each member shall within 60 days after the effective date of this Agreement conduct an informational program for its sales personnel, agents and employees to inform the same of their responsibilities under this Agreement and under the Fair Housing Laws. Each member shall strongly encourage his sales personnel, agents and employees to comply with this Agreement and with the Fair Housing Laws.

D. Development of Office Procedures and Techniques to Carry Out the Purposes of this Agreement

1. Within 30 days after receipt, the Board shall disseminate to members suggested principles of office management as promulgated from time to time by the NATIONAL ASSOCIATION OF REALTORS®. Such principles shall be designed to achieve the goal set forth in Part III of the Agreement and shall address the following areas of concern:

(a) Procedures to insure that prospective purchasers are made aware of an optimum number (consistent with the resources of the member firm) of available locational choices within their price and interest ranges;

(b) A means of providing prospects with complete and accurate information on availability of homes, alternative methods of financing, and other facts affecting prospects' choice of location (such as schools, employment, transportation, etc.);

(c) Methods of eliciting opinions of minority buyers (e.g., by suggestion box, questionnaire, etc.) on ways in which real estate services to minority buyers can be improved or altered to increase Board and member responsiveness to their needs;

(d) A system of recording the names of prospects and the addresses of homes shown to prospects to enable management to monitor the performance of associates in carrying out the purposes of the Agreement.

2. Each member is encouraged to advise the Board periodically as to whether adherence to the suggested office management procedures is achieving its intended purposes and inform the Board as to any changes or innovations deemed necessary or advisable.

3. HUD shall provide technical assistance as requested by the Board in developing or in measuring the effectiveness of the above office procedures.

E. Minority Brokers, Associates and Employees

1. In order to promote equal housing opportunity within the Board and each signatory firm, and to project that image to both the general public and to the minority brokers homeseeker, the Board shall encourage minority to apply for membership through letters of invitation, accompanied by an application form, and through personal visits and telephone calls;

2. In order to promote the recruitment of minority brokers, the Board shall review its present membership policies and practices, and where necessary adopt and implement affirmative procedures, standards and criteria for the selection and admission of members which shall be nondiscriminatory and nonexclusionary in terms of race, color, religion, sex or national origin.

3. Each member shall affirmatively recruit minority salaried employees through advertising directed specifically at the minority community or through those sources likely to produce minority candidates for employment.

4. The board shall sponsor outreach and training programs to attract members of minority groups into the real estate industry as licensed real estate brokers and salespersons.

5. HUD shall assist the Board and individual members in identifying potential minority applicants and sources of recruitment for minority associates and employees.

F. Fair Housing Practices Code

The Board shall adopt the Code for Equal Opportunity in Housing promulgated by the NATIONAL ASSOCIATION OF REALTORS® in May 1972.

G. Affirmative Marketing for Homesellers

In order to promote awareness by homesellers of the requirements of the Fair Housing Laws and the equal housing opportunity policy of those signing this Agreement, each member shall encourage all associates to distribute copies of the flyer entitled "What Everyone Should Know about Equal Opportunity in Housing" to all clients at the time the listing contract is signed.

H. Authorization of Expenses

The Board shall authorize reasonable expenditures as needed to appropriately carry out the Basic Program as set forth herein above.

V. Implementation

A. The Board, with the cooperation of the REALTORS® who are signatories to this Agreement, will establish an Equal Opportunity Committee which will have the following responsibilities.

1. To explain and publicize the purposes and provisions of this Agreement to all member REALTORS® (and through them to their associates) in order to achieve the broadest possible participation in this Agreement by members.

2. To implement and monitor the progress of the Program set out in Part IV of the Agreement.

3. To receive and investigate complaints of violations of Article 10 of the Code of Ethics and Points 1 through 4 of the Code for Equal Opportunity of the NATIONAL ASSOCIATION OF REALTORS® (see Part IV, B) and to refer such complaints to the Professional Standards Committee.

4. To meet at least semi-annually with representatives of HUD, the State or local human rights agency, and representatives of the Community Housing Resources Board (see below) to assess progress.

B. Each member will be responsible for implementing and monitoring the progress of his firm's affirmative marketing procedures as described in the Program in Part IV of this Agreement.

C. HUD will designate specific Regional or Area office personnel who will provide the Board, members, and the Board's Equal Opportunity Committee with technical assistance, information, and advice necessary to implement this Agreement.

D. HUD, in conjunction with State and/or local human rights agencies, will organize a Community Housing Resources Board consisting of representatives of community organizations throughout the metropolitan area that have a substantial interest in housing and equal opportunity. The Community Housing Resources Board will meet regularly with the Board to assist it with any problems which may arise in the implementation of this Agreement.

VI. Authorization of Expenditures

The Board shall authorize expenditures as needed to appropriately carry out the program set forth in this Agreement.

VII. Acceptance of Agreement by HUD in lieu of Individual Affirmative Fair Housing Marketing Plans

Where any signatory to this Agreement hereafter is an applicant for participation in FHA programs and is subject to the requirements of the HUD Affirmative Fair Housing Marketing Regulations or the Joint HUD–VA Nondiscrimination Certification, said signatory shall, in lieu of submitting an individual affirmative marketing plan or executing the Nondiscrimination Certification, reference his participation in the program described in the Agreement.

VIII. Duration

This Agreement shall be effective for five years upon approval by the Assistant Secretary for Fair Housing and Equal Opportunity of HUD. During the sixty days prior to the expiration of each year, representation of the Board, the State or local human rights enforcement agency, the Community Housing Resources Board and HUD will meet to evaluate the effectiveness of the Agreement. HUD and the Board shall determine whether the Agreement, or some modification thereof, should be adopted for the following year. However, where an evaluation of the Agreement at any time during its term reveals that reasonable progress is not being made toward achieving its objectives, the Agreement may be modified upon mutual consent of the parties. Where the parties are unable to agree upon

the terms of a modification, any party may terminate the Agreement.

IX. Adoption and REALTOR® Signatories

Adopted by the Board of Directors of the ———— Board of REALTORS® ——— at a special meeting held on ———, ——— (year), at ——— and certified as true and correct copy.

For the ———— Board of REALTORS®:

———

Executive Secretary

———

President

For Member Firms:

Firm Name

———

Firm Representative

———

X. HUD Signatories

This Agreement has been approved by the Area or Insuring Office Director by ————, on ————, ——— (year), at———

by the Regional Administrator, by ———— on ————, ——— (year), at ———— ————: and by the Assistant Secretary for Fair Housing and Equal Opportunity, by ———— on ————, ——— (year), at ———.

This Affirmative Marketing Agreement was jointly approved by Representatives of the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® at Washington, D.C. on December 16, 1975.

This document is supplemented by a Memorandum of Understanding signed jointly by Representatives of the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® at Miami Beach on November 16, 1981.

Appendix B—Memorandum of Understanding

The purpose of this memorandum of understanding between the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® is to renew the REALTORS® voluntary Affirmative Marketing Agreement and to clarify the meaning and intent of certain specified provisions of said Agreement, as amended by mutual agreement of May 7, 1978.

It is hereby understood and agreed by and between the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® that existing and future Affirmative Marketing Agreements adopted by them and by their Members, State Associations and Member Boards shall be constructed as follows:

1. Signatories

Paragraph 1. A of the Agreement provides that REALTORS® who subscribe on behalf of their real estate firms are parties to the Agreement. It is understood that the responsibilities of a member Board with respect to voluntary subscription are as follows:

A. A Member Board which has adopted the Affirmative Marketing Agreement will maintain a current list of all REALTORS® who have subscribed to the Agreement on behalf of their real estate firms. This list shall be made available for review by the HUD Assistant Secretary for Fair Housing and Equal Opportunity or his designated representative upon request, provided, however, that the list of Agreement signatories shall not be reproduced or disseminated by HUD without written approval of the Member Board and the NATIONAL ASSOCIATION OF REALTORS®. Access to the list shall be made available to parties other than HUD only on such terms and conditions as are mutually agreed upon by HUD and the Board.

B. A Member Board shall explain and publicize the purposes and provisions of this Agreement to all REALTORS® and through them to their sales associates, in order to achieve broad participation in this Agreement by Members and to encourage member firms to sign the agreement.

C. Designated officials of HUD shall have the right, in person or in writing, to verify names of REALTORS® asking waiver under Article VII from HUD program participation requirements, and the Board shall respond to such requests for verification.

D. Article I, Paragraph C of the Agreement is deleted and the following procedure approved by the NATIONAL ASSOCIATION OF REALTORS® Board of Directors on May 7, 1978 and approved by HUD and submitted in lieu thereof:

"The adoption of the Affirmative Marketing Agreement by REALTOR Members of a Board may be accomplished in one of two ways as is deemed most convenient by the Board from time to time.

a. The Agreement may be signed by the Board and the REALTOR® on behalf of his firm with a copy retained by each. Such Agreement would be effective without the signature of HUD.

b. The REALTOR® may notify the Board in writing that he subscribes to the Agreement on behalf of himself and his firm. In such case the Agreement would be effective without execution by either HUD or the Board.

2. Outreach and Training

Paragraph IV. E of the Agreement defines responsibility for outreach and training programs to attract minority groups into the real estate industry as licensed real estate brokers and salespersons. To this end, the National Association will participate in such national "Fair Housing Conference" as may be convened by HUD to discuss programs designed to promote the concepts and objectives of this Agreement.

3. Review Meetings

The HUD Secretary and the National Association President, or their respective designated representatives, will meet at least quarterly for the purposes of continuing dialogue and prompt resolution of problems or concerns in application or interpretation of the Agreement.

4. Annual Reviews

Paragraph VIII of the Agreement provides that representatives of the Member Board, HUD, the Community Housing Resource Board and the state or local human rights enforcement agency will meet annually to review effectiveness of the Agreement. In this regard, HUD and the NATIONAL ASSOCIATION OF REALTORS® will work jointly to develop a mutually acceptable "annual evaluation of effectiveness report" form to be used to evaluate effectiveness of the Agreement. All signatory Member Boards will annually complete and submit said "annual evaluation of effectiveness report" form to both HUD and the NATIONAL ASSOCIATION OF REALTORS®. In addition, HUD and the NATIONAL ASSOCIATION OF REALTORS® will also review effectiveness of a representative sample of Agreements through procedures defined below, but not necessarily through on-site visits. Therefore, it is understood:

A. That a review team of three members designated by the HUD Secretary and three members designated by the National Association President would be responsible for conducting the annual review of effectiveness of the Affirmative Marketing Agreement;

B. That the review team, taking into consideration current market conditions and fiscal considerations, will annually review a minimum of 25% of the Agreement in force at that time as an indicator of nationwide progress, based on a percentage of small Boards and large Boards which have voluntarily adopted the Agreement and based on a sampling of geographic locations and length of time since adoption.

C. That the review team determine the intervals at which such evaluations will be done and issue joint advance notification of intent to evaluate selected Member Boards;

D. That the review team will receive and analyze results of the evaluations and prepare at least annually a summary report for the HUD Secretary and the President of the NATIONAL ASSOCIATION OF REALTORS®.

E. That the review team will develop recommendations for consideration to improve the implementation of the Agreement.

5. State Association Adoption

Although the Agreement is designed for adoption by Member Boards, many State Associations have also adopted the Agreement as part of their leadership role within the state. It is understood that the responsibilities listed below define responsibilities of a State Association upon adoption:

A. The State Assocation shall establish an Equal Opportunity Committee to explain and publicize the purposes of the Agreement to Member Boards, promote adoption by nonsignatory Boards and make the Agreement available to REALTORS® in unassigned territory.

B. The State Association shall disseminate and encourage the use of the suggested principles of office management and other education and promotional materials by REALTORS® in unassigned territory as provided by the NATIONAL ASSOCIATION

OF REALTORS®, pursuant to Paragraph IV, D of the Agreement.

C. The State Association shall conduct at least two educational seminars annually on Fair Housing Laws and implementation of the Affirmative Marketing Agreement pursuant to Paragraph IV, C of the Agreement.

D. The State Associations shall collect data on program implementation within the state and provide an annual report, identifying successes and examples of innovative implementation and/or areas where assistance is required, to the NATIONAL ASSOCIATION OF REALTORS®, through the State Association Equal Opportunity Chairman to the Enlarged Equal Opportunity Committee.

E. The State Association shall adopt the Code for Equal Opportunity in Housing, and secure and disseminate Fair Housing posters for display in the offices of REALTORS® in unassigned territory.

F. Pursuant to Paragraph IV, A the State Association is not expected to place advertising in every general-circulation newspaper in the state to fulfill its advertising responsibilities. Rather, the State Association shall place one of the approved Affirmative Marketing Advertisements in either the largest general-circulation newspaper in the state or the genral-circulation newspaper serving the city in which the State Association Headquarters is located.

6. Community Housing Resource Boards

As provided in Paragraph V, D, the major purpose and responsibility of a Community Housing Resource Board is to assist the Member Board with any problems which arise in implementation of the Affirmative Marketing Agreement. HUD is responsible for organizing the Community Housing Resource Board, for appointment of members and for insuring that its responsibilities are fulfilled. The prerogatives of Member Board membership on a Community Housing Resource Board shall be determined by the NATIONAL ASSOCIATION OF REALTORS®. In any event, the Member Board shall have the right to be present at all Community Housing Resource Board meetings for the purposes of facilitating liaision. It is contemplated that Member Boards will make reasonable efforts to assist the Community Housing Resource Board in identifying meeting facilities and providing clerical support; however, the Member Board is under no obligation to provide other monetary support to the Community Housing Resource Board.

It is HUD's responsibility to insure a balanced respresentation on the Community Housing Resource Board, which provides equal voice of all of the groups and interests involved in it, such as representatives of state and local agencies of government, civil rights and fair housing groups, and civil organizations which have a substantial interest in housing and equal opportunity.

A multi-Board Community Housing Resource Board, shall be encouraged where practical and economical, but shall not be established without mutual agreement of HUD and the NATIONAL ASSOCIATION OF REALTORS®.

The Community Housing Resource Board will not sponsor, conduct or fund programs of real estate testing.

Any party to litigation or complaints alleging violation of the Federal Fair Housing Law or the REALTORS® Code of Ethics, as from time to time amended, shall immediately withdraw as a member of the Member Board Equal Opportunity Committee or as a member of the Community Housing Resource Board. When the litigation or complaint is resolved, appointment and service on the Equal Opportunity Committee or Community Housing Resource Board may be reinstated.

In support of Paragraph IV, A HUD and members of the Community Housing Resource Board shall assist the Member Board in negotiations with local newspapers for publication of the recommended Publisher's Notice as set forth in HUD's Advertising Guidelines. HUD and representatives of the Community Housing Resource Board shall assist the Member Board in Negotiations with television and radio stations for donations of time to present public service announcements on fair housing and equal opportunity.

7. Community Housing Resource Board Document

HUD and the NATIONAL ASSOCIATION OF REALTORS® will work jointly to develop a mutually acceptable and jointly published document as a reference source and guidebook on organization, appointment and operation of a Community Housing Resource Board.

8. Public Awareness

The words "REALTORS® Guide to Practice Equal Opportunity in Housing" will be deleted from Paragraph IV, G. Said wording was removed from the Agreement through action of the NATIONAL ASSOCIATION OF REALTORS® Board of Directors on May 7, 1978, and approved by HUD. A brochure entitled "What Everyone Should Know about Equal Opportunity in Housing" is available from the National Association for use in fulfilling this responsibility.

Agreement Renewal

The Voluntary Affirmative Marketing Agreement approved by the NATIONAL ASSOCIATION OF REALTORS® Board of Directors on November 11, 1975, and jointly approved by representatives of the Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® on December 10, 1975, will remain in full force and effect, including revisions in Paragraphs I, C and IV, G specified herein, until September 20, 1986, in accordance with provisions of Paragraph VIII as clarified in this document. The Memorandum of Understanding will be attached to Agreements voluntarily adopted by Member Boards and State Associations.

Signed at ——, this —— day of October, 1981, effective September 20, 1981.

For the NATIONAL ASSOCIATION OF REALTORS®

John R. Wood,
President.

Jack Carlson,
Executive Vice President.

For the U.S. Department of Housing and Urban Development

Samuel R. Pierce,
Secretary.

Antonio Monroig,
Assistant Secretary.

Appendix C—Voluntary Affirmative Fair Housing Marketing Agreement

(For Voluntary Use by Members of The National Association of Home Builders)

This Agreement, effective as to the parties hereto respectively on the date executed by said party, by and between the United States Department of Housing and Urban Development (hereinafter referred to as "HUD"); any signatory to the original or a counterpart of this Agreement (hereinafter referred to as "Builder") all of whom shall constitute the Builder Group known as ———— (hereinafter referred to as the "Builder Group").

Witnesseth

WHEREAS, Title VIII of the Civil Rights Act of 1968 (hereinafter referred to as the "Act") declares that: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States," and Section 808 thereof vests authority and responsibility for its administration in the Secretary of Housing and Urban Development; and

WHEREAS, voluntary compliance activities are mandated by Sections 808 and 809 of the Act, and in particular Section 808 requires the Secretary of Housing and Urban Development to "cooperate with and render technical assistance to federal, state, local, and other public and private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices."; and

WHEREAS, Section 808 of the Act states: "The Secretary of the Department of Housing and Urban Development shall call conferences of persons in the housing industry and other interested parties . . . and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement.";

WHEREAS, it is the belief of HUD and the National Association of Home Builders (NAHB) that ". . . the policy of the United States to provide, within constitutional limitations for fair housing throughout the United States, . . ." can best be carried out with ". . . programs of voluntary compliance and of enforcement . . ." therefore, HUD and the NAHB have developed this form of Agreement and have agreed that parties hereto who comply with the provisions of this Agreement are and shall be in compliance with the Act.

NOW THEREFORE, in consideration of the premises and mutual promises and convenants hereinafter set forth, the parties hereto agree as follows:

Section One—Definition

For the purpose of this Agreement the term "Affirmative Marketing" means, a program to inform the community of the availability of housing and services rendered by Builders, to all prospective home buyers and renters, without regard to race, color, religion, sex or national origin, as vested in the Secretary of the Department of Housing and Urban Development by Section 808 of the Act. The purpose of this Agreement is to implement a "Voluntary Affirmative Fair Housing Marketing Program" as provided for and in compliance with the Act (hereinafter referred to as the "Program").

Section Two—Application

The provisions of this Agreement shall apply to all residential housing constructed, marketed, sold, or rented by Builder except that nothing in this Agreement shall apply to any residential housing constructed, marketed, sold, or rented by Builder prior to the effective date of this Agreement. Such effective date shall be the latest date of execution by the Builder or HUD.

Section Three—Voluntary Affirmative Fair Housing Marketing Program

A. Advertising and Public Information

1. Builder Group shall develop and maintain a program of public information to inform the entire community of the Voluntary Affirmative Fair Housing Marketing Program.

2. Builder shall include the official Fair Housing and Equal Opportunity logo, slogan, or statement in all brochures, pamphlets, posters, billboards, and classified advertising of four column inches or larger, as suggested in HUD's Advertising Guidelines for Fair Housing. Alternatively, inclusion of the slogan or logo is not necessary in any classified advertisement where there exists a "Publishers Notice."

3. Whenever human models are depicted in display advertising campaigns, Builder shall attempt to reasonably represent both majority and minority groups so as to indicate receptivity to racial inclusiveness in the housing marketing area(s).

4. When requested, HUD shall provide technical assistance to Builder Group and to Builder in developing advertising and public information tecniques, in accordance with HUD's Advertising Guidelines for Fair Housing.

5. Builder shall maintain a record of advertising that will demonstrate efforts to comply with this Agreement.

B. Fair Housing Posters

Builder will display and maintain the HUD Fair Housing Poster at any place of business where a dwelling is offered for sale or rental, including model houses. Builder will prominently display the Fair Housing Poster so that it is readily apparent to all persons seeking housing accommodations or other services rendered by Builder. For purposes hereof "Fair Housing Poster" means the poster prescribed by HUD for display by persons subject to Section 804–806 of the Fair Housing Act of 1968.

C. Housing Market Area(s) Analysis

1. The HUD Area or Insuring Office shall supply Builder Group an identification of the minority groups whose housing opportunities the parties seek to increase, by cost and kind of housing.

2. Builder shall provide for each project development quarterly reports to the Builder Group or the HUD Area or Insuring Office, at Builder's option, containing a breakdown, by the categories supplied by HUD as set forth in paragraph C.1. hereof, in accordance with HUD procedures for the gathering of necessary data and on model forms established by HUD.

D. Builder Group shall develop a monitoring system in order to receive information from Builder.

E. Builder Group shall submit a report to HUD on a quarterly basis to determine progress in achieving the purpose of this Agreement, including the following:

1. The sales and rental totals of all properties reported to it by members by the group categories identified in paragraph C hereof.

2. A description of all actions in furtherance of this Agreement taken by the local Builder Group during the reporting period.

Section Four—Implementation of the Program

A. Undertakings by Builder Group

Builder Group shall establish an Equal Opportunity Committee consisting of Builders who are signatories to this Agreement which shall have the following responsibilities:

1. To administer and implement the Program as set forth in Section Three of this Agreement as required by the Builder Group.

2. To explain and publicize the purpose and provisions of this Agreement to all Builders who have executed this form of Agreement, in order to achieve broad-based informed participation in the Program contemplated by this Agreement.

3. To meet not less than semi-annually with representatives of HUD and the Community Housing Leadership Board, hereinafter provided for, to determine progress in achieving the purpose of this Agreement.

B. Undertakings by Builder

1. Builder shall inform and train all employees regarding the Affirmative Fair Housing Marketing Program.

2. Builder shall inform the Builder Group in writing of all housing to be constructed, developed, and marketed, at least sixty (60) days prior to such housing becoming available, and shall provide adequate information for distribution by the Community Housing Leadership Board.

C. Undertaking by HUD

1. HUD shall provide to Builder Group and to Builder technical assistance on a continuing basis to aid in the compliance with this Agreement upon request by Builder Group and/or Builder.

Section Five—Community Housing Leadership Board

Builder Group shall appoint _____ individuals with the approval of HUD, which individuals shall constitute the Community Housing Leadership Board for the purpose of this Agreement.

The Community Housing Leadership Board shall be composed of local community leaders having a substantial interest in housing and equal opportunity, from industry, and the financial community and local elected and appointed officials, and other interested parties. The purpose of the Board shall be to assist Builder Group, the Builder, and HUD in carrying out the purpose of this Agreement.

Section Six—Compliance and Enforcement

A. If there is reasonable cause to believe that Builder Group is not in compliance with the basic provisions of this Agreement, the Secretary of HUD (hereinafter referred to as "Secretary"), or the Secretary's designee, may, after providing an opportunity for a fair hearing and determination of the facts, terminate the Agreement.

B. The Secretary shall provide timely notice of the hearing to Builder Group and said hearing shall be conducted in compliance with the Act and Administrative Procedure Act (5 U.S.C., Section 554 et seq.). The decision of the hearing officer shall be subject to judicial review.

C. In the event of termination of the Agreement, the obligations of Builder hereunder shall remain in full force and effect, but only to the extent that said obligations would be required by HUD's Affirmative Fair Housing Marketing Regulations. If Builder has previously applied for HUD assistance and has not yet marketed the housing applied for, Builder must, within ten (10) days from receipt of notice of termination of the Agreement, file with HUD a fully executed Affirmative Fair Housing Market Plan for such housing.

Section Seven—Conference and Conciliation on Alleged Builder Violations

Whenever there is reasonable cause to believe that Builder has failed to make good-faith efforts to fulfill its responsibilities under this Agreement, the following procedures shall be employed prior to the commencement of any action or proceedings against a Builder for any alleged violation within the scope of this Agreement occurring after its effective date:

1. The Equal Opportunity Committee of the Builder Group shall notify Builder of the area(s) of non-compliance and request appropriate corrective action.

2. The Equal Opportunity Committee shall document, in writing, the Builder's non-compliance with the Agreement and provide Builder with copies of such written documentation.

3. Builder shall have fifteen (15) business days from receipt of the written documentation of non-compliance to effectuate the corrective action and to provide written notice to the Equal Opportunity Committee shall arrange for a joint meeting with representatives of the Equal Opportunity Committee, HUD, and Builder, to discuss the steps necessary for compliance with the Agreement.

5. Following the joint meeting referred to in paragraph 4 above, the Equal Opportunity Committee shall provide Builder, in writing, a "Second Notice of Non-Compliance," stating that the Builder has fifteen (15) business days

to take appropriate action, or face termination as party to this Agreement.

6. If compliance with the Agreement is not secured within the allotted time of the "Second Notice of Non-Compliance," the Equal Opportunity Committee and HUD will jointly notify Builder, in writing, that he is terminated as a party to this Agreement, suspended as a member of the Builder Group, an no longer eligible for participation in the Voluntary Affirmative Fair Housing Marketing Program. Thereupon Builder will have ten (10) business days to present an approvable individual Affirmative Fair Housing Marketing Plan for all HUD-assisted projects.

7. By its execution hereof, Builder consents to the notification by HUD of Builder Group that a complaint has been filed against it.

Section Eight—Acceptance of Agreement in Lieu of Individual Affirmative Fair Housing Marketing Plan

When at any future time Builder is an applicant for participation in an FHA or HUD program and is subject to the requirements of the HUD Affirmative Fair Housing Marketing Regulations or the Joint HUD-VA Non-Discrimination Certification, in lieu of submitting an individual Affirmative Fair Housing Marketing Plan or executing the Non-Discrimination Certification, Builder may reference his participation in this Program, which participation shall be accepted by FHA and/or HUD in lieu of an individual Affirmative Fair Housing Marketing Plan.

Section Nine—Term

The original term of this Agreement shall expire on September 30, 1980, and shall automatically be extended for successive one-year terms thereafter unless previously terminated.

Section Ten—Termination

HUD may terminate this Agreement at any time with written notice for noncompliance herewith. Builder and/or Builder Group may terminate this Agreement at any time with or without cause by giving HUD 90 days written notice of its intent to terminate.

Section Eleven—Amendments

This Agreement may be amended only by written consent of all the parties hereto.

Section Twelve—Delegation by Secretary

Wherever the term Secretary of HUD is used herein, it shall be deemed to include and mean his designate for the administration of the Voluntary Affirmative Fair Housing Marketing Program.

Section Thirteen—Adoption and Home Builder Signatories

Adopted by the Builder Group of _____ at a special meeting held on _____, 19—, at _____, and certified as a true and correct copy.

For the _____ Builders Group.

Title _____

Date _____

By appending their signatures hereto, the following hereby become signatories to the above agreement, as of the date indicated next to their respective names, and constitute the Builder Group referred to therein.

Date	Builder

(Additional names may be added on plain paper and attached to this Agreement.)

Section Fourteen—HUD Signatories

This Agreement has been accepted by the Area or Insuring Office Director by _____, on _____, 19—, at _____; by the Regional Administrator, by _____ on _____, 19—), at _____; and by the Assistant Secretary for Fair Housing and Equal Opportunity, by _____, on _____, 19—, at _____.

Appendix D—Affirmative Fair Housing Marketing Plan

1. Parties

a. The Home Builders Association of Alabama (HBAA) and their members whose names appear in Appendix A to this Agreement.

b. The Department of Housing and Urban Development through the authorized signatures appearing in Appendix B.

2. Definitions

Members of the HBAA are residential home and apartment builders, renters, and sellers doing business in the State of Alabama. Substantial portions of their units are developed and marketed under one or more of the FHA Housing Programs. These industry members are subject to the Federal Fair Housing Act of 1968.

a. The Department of Housing and Urban Development has the responsibility under the National Housing Act, as amended, for administering FHA housing programs; and, under the Civil Rights Act of 1968, for developing programs of voluntary compliance with companies in the housing industry.

b. Non-member companies, agencies and individuals may, at any time during the life of this Agreement, become members. These companies, agencies and individuals shall advise the HBAA in writing of their intention.

3. Objectives

To establish an industry and area-wide approach to the Affirmative Fair Housing Marketing Program. Effective February 25, 1972, HUD regulations (HUD Handbook 8030.2, Revised 6–30–73) required the marketing of sale and rental units covered by an FHA housing program to be carried out pursuant to a written Affirmative Fair Housing Marketing Plan. In order to develop compliance with the spirit and letter of these regulations and guidelines, and in order to fully implement the Code of Fair Housing Practices adopted by the HBAA (Appendix C), the following plan of voluntary action will be applicable to all sales and rentals of housing marketed by the member-signatories to this Agreement.

The objectives of this Affirmative Marketing Agreement are:

a. To increase substantially the number of minority residents in neighborhoods outside areas of predominantly minority concentration through advertising and other methods intended to inform minority and majority residents in the State of Alabama that all housing developed, rented and sold by Group members is available to them on an equal opportunity basis.

b. To inform the general public that, in terms of equal opportunity in housing, the State of Alabama is an open community, and to explain and promote the benefits of the Agreement to State residents.

4. Scope

The Agreement covers all residential housing developed, sold and rented by members of the HBAA or their agents, including conventionally financed housing as well as housing developed and marketed under an FHA housing program.

5. Builder Group Responsibilities

In order to carry out effectively the objectives of the Agreement, the HBAA will:

a. Delineate 23 sub-market areas for the State, and

1. The minimum goals for minority and majority sales in the State: 15%.

2. Minority and majority rental goals in the State: 15%.

b. Maintain a current list of community organizations and persons concerned with open housing to be used as referral sources in each market area. (See list of community contacts in Appendix D.)

c. Prominently display the HUD Equal Opportunity logo or slogan on all advertisements for the sale or rental of housing units.

d. Develop, sponsor and underwrite a sustained advertising campaign in the most effective media to promote the principles and meet the goals of this Agreement, and develop awareness among the State homeseeker market of the meaning of equal housing opportunity. Radio, television, billboards, and newspapers, particularly the real estate pages, will be used to reach the specific homeseeker market. Provide all media with information explaining the Agreement and the opportunities for housing in the market area on a regularly scheduled basis. Show evidence of sensitivity to the need for directing the marketing activity to those groups which are not likely to apply without special outreach, i.e., to racial minority groups for housing in predominantly non-minority areas; to racial majority groups for housing in integrated areas.

e. Sponsor an initial comprehensive advertising and public relations campaign promoting the principles and goals of this Agreement.

f. Develop advertising and publicity campaigns of the group through the twenty-five local associations.

g. Encourage the press to publish the recommended "Publisher's Notice" set forth in HUD Advertising Guidelines for Fair Housing, in their respective real estate sections.

h. Solicit and generate substantial public service advertising with mass media in furtherance of the objectives of the Agreement. News and feature stories concerning equal housing opportunities will be prepared on a regularly scheduled basis. Newspapers, including minority newspapers, will be urged to publish these stories as frequently as possible.

i. Media execution: Encourage current advertisers such as utility companies and financial institutions to use the appropriate fair housing opportunity logo and/or slogan on billboards, newspapers and other media.

j. Monitoring. A system of monitoring advertising and publicity will be developed in order to provide HUD with an evaluation of the media campaign.

k. Establish a Community Housing Resource Board in each market area composed of representatives from the minority and majority populations and other whose participation would serve to implement the goals of the Agreement. The HBAA will meet with the Resource Boards on a regular basis to (1) inform the Boards of efforts of the HBAA to implement the Agreement, and (2) draw upon the experience of the Boards to assist in accomplishing the goals of the Agreement and in solving problems as they arise. The Boards may also be called upon to provide housing counseling assistance.

l. Designate an Equal Opportunity Officer to assist in carrying out the goals of the Agreement. The Officer will train employees of member companies in the objectives and implementation of the Agreement.

m. Establish a recruitment pool and training program for minority employees of the members. Continued employment of trainees will be dependent upon successful on-the-job performance during a six-month period.

n. Authorize expenditures as needed to reasonably and appropriately carry out the programs of this Agreement, within the budget of the HBAA.

6. Individual Member Responsibilities

a. Designate a qualified official of the company as Equal Opportunity Officer.

b. Work to achieve the occupancy goals, as set forth in this Agreement for each sub-market area.

c. Inform the appropriate Community Housing Resource Board in a timely fashion of upcoming projects within its area. Provide an adequate supply of printed materials concerning the projects for distribution to the Board's constituency.

d. Insure that all newspaper advertisements will comply with HUD advertising guidelines for fair housing.

e. Insure that radio advertisements will use the "Equal Housing Opportunity" slogan. Television advertisements will use the logo or the slogan.

f. Insure that all billboards will have the logo of such size as to be clearly visible by passing motorists.

g. Insure that all site signs will have the logo of a size as to be readily seen by all visitors to the site.

h. Display the Fair Housing Poster as required by the HUD Fair Housing Poster regulation.

i. Insure that all brochures will display the logo or slogan in a prominent place.

j. Make a special outreach to encourage the majority white population to move into any developments located in racially mixed or transitional areas. The goal of this effort is to achieve a racially balanced community.

k. Maintain a nondiscrimination policy in company employment practices as required by Federal laws. Establish affirmative action numerical goals based on the minority population in the market area as well as such factors as the minimum qualifications for real estate sales personnel and brokers, the existing number of trained minority persons in the area, and the fact that training will be provided by the HBAA.

l. Solicit eligible buyers or renters referred by Community Housing Resource Boards or by the HUD Area Office.

m. Institute formal and informal training programs for all employees, in order to: 1. sensitize employees to the needs of prospective minority clients, 2. positively delineate management's policy of open housing for all persons, and 3. educate employees concerning the specific provisions and goals of this Agreement.

n. In any instance where an individual member firm uses sales personnel other than its own to sell, rent or market its units, the sales and marketing personnel will be required, as a condition of employment, to adopt and be bound by the terms of this Agreement, including the advertising guidelines set forth herein.

o. Maintain a record of advertising and outreach action taken that will demonstrate efforts employed in behalf of increasing minority group employment and housing options.

7. Community Housing Resource Board Responsibilities

a. Assist the HBAA in accomplishing the goals of this Agreement.

b. Receive and disseminate information concerning location, price, and type of housing in the area available to the community.

c. Provide housing counseling assistance as needed.

8. Reports

Each member will file with the Equal Opportunity Officer of the Builder Group, monthly sales and/or rental reports for all housing covered by this Agreement, providing a racial breakdown for sales and/or rentals, starting at the end of the first month, which will then be filed with Director, Equal Opportunity, HUD Area Office.

9. Affirmative Fair Housing Marketing Plan

This Agreement shall constitute, for a member, compliance with the Affirmative Fair Housing Marketing Plan as required by 24 CFR Part 200, Subpart M. Where such a company hereafter is an applicant for participation in FHA housing program to which 24 CFR Part 200, Subpart M applies, said company shall, in lieu of submitting an individual plan, reference its participation in the program described in the Agreement on HUD Form 935.2. Compliance with the terms of this Agreement with respect to the obligations of individual builders shall be governed by 24 CFR 200.635.

10. Duration

This Agreement shall be effective when approved by the Assistant Secretary for Equal Opportunity, HUD, and shall remain in effect for one year. However, where an evaluation of the Agreement at any time during its term reveals that reasonable progress is not being made towards achieving its objectives, the Agreement may be modified upon consent of the parties. Where the parties are unable to agree upon the terms of a modification, HUD in its discretion, may terminate the Agreement, and the obligations set forth in Paragraph 9 of the individual member shall remain in effect as to units marketed under an FHA housing program and covered by this Agreement to the same extent as if said obligations had been embodied in an individual plan filed pursuant to 24 CFR Part 200, Subpart M. Sixty (60) days prior to the date of its scheduled expiration, representatives of the HBAA and of HUD will meet to evaluate the effectiveness of the Agreement and to determine whether this Agreement, or some modification thereof, should be adopted for the following year.

[FR Doc. 84-8082 Filed 3-28-84; 8:45 am]
BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pyramid Lake Indian Irrigation Project, Nevada

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The purpose of this public notice is to change the per acre assessment rates for the operation and maintenance of the irrigation facilities on the Pyramid Lake Indian Irrigation Project, to properly reflect the actual costs for labor, material, equipment, and services. The change is from $29.00 to $30.52 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians, and from $16.50 to $3.00 per irrigable acre for Indian owned land farmed and operated by Indians.

EFFECTIVE DATE: This notice will become effective April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Hunter, Superintendent, Western Nevada Agency, 5533 Mark Twain Avenue, Carson City, Nevada 89701, telephone number (702) 887-3500.

SUPPLEMENTARY INFORMATION: This notice is issued under authority delegated to the Assistant Secretary for Indians Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by

Deputy Assistant Secretary for Indian Affairs (Operations) to the Area Directors in 10 BIAM 3. On November 16, 1983, the Pyramid Lake Tribal Chairman requested that the Indian assessment rate of $16.50 per acre be reviewed and changed to $3.00 per irrigable acre for the 1984 irrigation season. In 1983, the Pyramid Lake Paiute Tribe under Pub. L. 93–638 contracted with the Bureau of Indian Affairs to operate and maintain the Pyramid Lake Irrigation Project. After review and evaluation of the contract, the Bureau of Indian Affairs determined that: (1) the Indian assessment rate for the operation and maintenance of the irrigation facilities could be reduced to adequately reflect the ability of the Indians as a whole to pay; and (2) to increase the full assessment rate to reflect the full cost of operation and maintenance of the irrigation facilities. Public meetings were held on November 29, 1983, and December 13, 1983, with the Land Resource Committee of the Tribe, Tribal Council and the waterusers. A notice for the meetings was published in the local newspaper. Comments and recommendations were requested on the proposed rate change and none were received.

The notice shall read as follows:

Annual Operation and Maintenance Charges

Annual Per Acre Assessment—The annual assessment against land to which water can be delivered under the Pyramid Lake Indian Irrigation Project in Nevada for operation and maintenance of the Project, is hereby fixed at $30.52 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians, and $3.00 per irrigable acre for Indian owned land farmed and operated by Indians.

Payment—The annual operation and maintenance assessment shall be due and payable on April 1 of each year and continued in effect thereafter until further notice. Water will not be delivered to the land until the assessment has been paid or arrangements have been made under 25 CFR Part 171.17 Delivery of Water.

Duty of Water—All water of the project is deemed a common water supply in which all irrigable lands of the project are entitled to share equally and such water will be distributed to the lands of the project as equitable as physical conditions will permit.

Walter R. Mills,

Assistant Area Director (Programs).

[FR Doc. 84-8380 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-02-M

Flathead Irrigation & Power Project, Montana; Revision of Power Rate Schedules

This notice of power rate schedule change is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in 109 DM 8 and redelegated by the Assistant Secretary to the Area Director in 10 BIAM 3.

Pursuant to the provision in 25 CFR 176.59 authorizing the Area Director to pass increased power costs of the Flathead Irrigation and Power Project to the customer, the following changes are made:

A. The new rates are:

1. *Rate Schedule No. 1:*

(a) Monthly rate. 3.5 cents per kilowatt hour for all kilowatt hours;

(b) Basic Charge. $5.00 per month rural, $3.00 per month within incorporated municipalities. All kilowatt hour charges to be in addition to basic charges;

2. *Rate Scheduled No. 4:*

(a) Energy—3.5 cents per kilowatt hour for first 18,000 kilowatt hours, 2.5 cents for additional kilowatt hours;

(b) Demand—$3.50 per kilowatt.

3. *Rate per season or fraction thereof:*

(a) $10.00 per horsepower connected; 2.5 cents per kilowatt hour for all kilowatt hours used; the minimum connected horsepower charge will be $50.00

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-8444 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Federal Minerals Exchange, Maricopa, Pima, Pinal, and Yavapai Counties, Arizona; Realty Action

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action exchange, Federal Minerals in Maricopa, Pima, Pinal, and Yavapai Counties, Arizona.

SUMMARY: The following described Federal mineral estate may be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716;

Gila and Salt River Meridian , Arizona

T.8 N., 10 W.,
Sec. 33: All;Q02
Sec. 34: All;
Sec. 35: All;

T. 8 N., R. 8 W.,
Sec. 1: Lots 1–4, S½;
Sec. 3: Lots 1–4, SW¼;
Sec. 4: Lot 1–4, S½;
Sec. 6: Lots 1–6, E½SW¼, SE¼;
Sec. 9: All;
Sec. 10: W½, S½SE¼;
Sec. 11: All;
Sec. 12: All;
Sec. 13: All;
Sec. 14: All;
Sec. 15: All;
Sec. 21: All;
Sec. 22: E½, W½W½, NE¼NW¼;
Sec. 23: All;
Sec. 24: All;
Sec. 25: All;
Sec. 26: All;
Sec. 27: All;
Sec. 28: All;
Sec. 33: All;
Sec. 34: All;
Sec. 35: All.

T. 8 N., R. 7 W.,
Sec. 4: Lots 1–4, S½;
Sec. 5: :Lots 1–4, S½;
Sec. 6: Lots 1–7, E½SW¼, SE¼;
Sec. 7: Lots 1–4, E½W½, E½;
Sec. 8: All;
Sec. 9: All;
Sec. 18: Lots 1–4, E½W½, E½;
Sec. 30: Lots 1–4 E½W½;
Sec. 31: Lots 1–4, E½W½, S½NE¼, SE¼.

T. 8 N., R 6 W.,
Sec. 35: All.

T. 7 N., R. 10 W.,
Sec. 1: Lots 1–4, S½N½, SW¼;
Sec. 3: Lots 1–4, S½N½, S½;
Sec. 4: Lots 1–4, S½N½, S½;
Sec. 9: N½, SW¼;
Sec. 10: N½;
Sec. 11: N½;
Sec. 12: NW¼;
Sec. 17: N½;
Sec. 20: S½N½, S½;
Sec. 21: S½N½, S½;
Sec. 22: All;
Sec. 23: All;
Sec. 24: All;
Sec. 25: E½, NW¼, E½SW¼, E½W½S W¼;
Sec. 26: All
Sec. 27: All
Sec. 28: N½, SW¼, S½SE¼, NW¼SE¼;
Sec. 29: All;
Sec. 35: All.

T. 7 N., R. 9 W.,
Sec. 1: Lots 1–4, S½N½, S½;
Sec. 13: N½;
Sec. 19: Lots 1–4, E½W½, NE¼;
Sec. 20: N½;
Sec. 29: All;
Sec. 30: Lots 1–4, E½W½, E½;
Sec. 33: W½.

T. 7 N., R. 8 W.,
Sec. 3: Lots 1–4, S½N½, S½;
Sec. 4: Lots 1–4, S½N½, S½;
Sec. 5: Lots 1–4, S½N½, S½;
Sec. 7: Lots 1–4, E½W½, E½;
Sec. 8: N½;
Sec. 9: W½, SE¼;
Sec. 10: E½, SW¼;
Sec. 11: W½SW¼;
Sec. 14: S½;
Sec. 15: N½;
Sec. 22: All;
Sec. 23: E½;
Sec. 24: E½, S½NW¼, SW¼;

Sec. 25: All.
T. 7 N., R. 7 W.,
Sec. 17: N½NE¼, NW¼, W½SW¼;
Sec. 18: Lots 1–4, E½W½, E½;
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 20: SW¼NE¼, SE¼NW¼, W½NW¼, S½;
Sec. 25: NE¼, S½;
Sec. 26: All;
Sec. 27: All;
Sec. 30: Lots 1–4, E½W½, E½;
Sec. 31: Lots 1–4, E½W½, E½;
Sec. 34: All;
Sec. 35: All.
T. 7 N., R. 6 W.,
Sec. 1: Lots 3, 4, S½NW¼, SW¼;
Sec. 3: Lots 1–4, S½N½, S½;
Sec. 8: SE¼;
Sec. 10: All;
Sec. 13: N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 14: All;
Sec. 19: Lots 1, 2, E½NW¼, W½NE¼, NW¼SE¼;
Sec. 20: E½;
Sec. 21: All;
Sec. 28: N½, W½SW¼, NE¼SE¼;
Sec. 29: SE¼;
Sec. 30: Lots 1–4, W½NE¼, NE¼NW¼, E½SW¼;
Sec. 31: Lots 1–4, E½W½, E½;
Sec. 33: S½NE¼, W½, SE¼.
T. 7 N., R. 5 W.,
Sec. 7: Lots 3, 4, E½SW¼, SE¼;
Sec. 8: SW¼, S½SE¼;
Sec. 14: W½E½, W½;
Sec. 22: All;
Sec. 23: All;
Sec. 24: All;
Sec. 27: N½N½;
Sec. 34: All;
Sec. 35: NW¼.
T. 6 N., R. 7 W.,
Sec. 3: Lot 4, SW¼NW¼, W½SW¼;
Sec. 4: Lots 1–4, S½N½, S½;
Sec. 5: Lots 1–4, S½N½, S½.
T. 6 S., R. 10 E.,
Sec. 13: E½, NW¼;
Sec. 20: N½;
Sec. 21: N½;
Sec. 22: S½;
Sec. 23: S½;
Sec. 24: NE¼, S½;
Sec. 25: All;
Sec. 26: All;
Sec. 27: E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 28: All;
Sec. 29: All;
Sec. 34: All;
Sec. 35: All.
T. 6 S., R. 11 E.,
Sec. 13: All;
Sec. 17: All;
Sec. 18: Lots 1–4, E½W½, E½, less M.S. 4540 (103.305 ac.);
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 22: N½, E½SW¼, SE¼.
T. 6 S., R. 12 E.,
Sec. 4: SW¼NW¼, SE¼SE¼;
Sec. 9: All;
Sec. 10: E½NE¼, NW¼NW¼, S½NW¼, SW¼, S½SE¼;
Sec. 11: N½, SE¼;
Sec. 12: All;
Sec. 14: N½, S½S½;
Sec. 15: E½NE¼;
Sec. 17: All;
Sec. 18: Lots 1–8, E½W½, E½;
Sec. 19: Lots 1–8, E½W½, E½;
Sec. 20: All;
Sec. 21: All;
Sec. 23: N½, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 27: W½NW¼, SW¼;
Sec. 28: All;
Sec. 29: All;
Sec. 30: Lots 1–8, E½W½, E½;
Sec. 31: Lots 1–8, E½W½, E½;
Sec. 33: N½, N½S½.
T. 6 S., R. 13 E.,
Sec. 3: Lots 1–4, S½N½, S½;
Sec. 4: Lots 1–4, S½N½, S½
Sec. 9: All;
Sec. 10: All;
Sec. 11: All;
Sec. 12: S½;
Sec. 13: All;
Sec. 14: All;
Sec. 15: All;
Sec. 22: All;
Sec. 23: All;
Sec. 26: All;
Sec. 27: All;
Sec. 33: S½;
Sec. 34: N½, N½SW¼;
Sec. 35: All.
T. 6 S., R. 14 E.,
Sec. 4: Lots 1–3, S½;
Sec. 5: S½S½;
Sec. 7: Lots 1–4, E½W½, E½;
Sec. 9: All;
Sec. 13: All;
Sec. 17: All;
Sec. 18: Lots 1–4, E½W½, E½;
Sec. 20: All;
Sec. 22: All;
Sec. 23: S½;
Sec. 26: N½;
Sec. 27: All;
Sec. 28: All;
Sec. 29: All;
Sec. 31: Lots 1–4, NE¼, E½NW¼, E½SW¼, N½SE¼ SW¼SE¼;
Sec. 33: N½, N½SW¼;
Sec. 34: E½, N½NW¼, S½SW¼;
Sec. 35: All.
T. 9 S., R. 9 E.,
Sec. 26: N½;
Sec. 27: N½.
T. 10 S., R. 6 E.,
Sec. 15: SW¼;
Sec. 17: All;
Sec. 18: Lots 1–4, E½W½, E½;
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 20: All;
Sec. 21: S½;
Sec. 22: W½;
Sec. 23: S½'
Sec. 24: All;
Sec. 25: All;
Sec. 26: All;
Sec. 27: W½, SE¼;
Sec. 28: All;
Sec. 29: E½;
Sec. 33: All;
Sec. 34: All;
Sec. 35: All.
T. 10 S., R. 7 E.,
Sec. 4: S½;
Sec. 9: N½, SW¼;
Sec. 10: W½;
Sec. 14: S½;
Sec. 15: All;
Sec. 17: All;
Sec. 18: All;
Sec. 20: W½NE¼, SE¼NE¼, NW¼, S½;
Sec. 21: NE¼, S½NW¼, S½;
Sec. 22: All;
Sec. 23: All;
Sec. 24: Lots 1–4, 9–16, 21–24, S½SW¼;
Sec. 25: Lots 1–4, 9–24, SW¼;
Sec. 26: NE¼, S½;
Sec. 28: All;
Sec. 29: All;
Sec. 35: All.
T. 10 S., R. 8 E.,
Sec. 1: Lots 2–4, S½N½, N½S½;
Sec. 14: S½;
Sec. 15: All;
Sec. 18: Lots 1–4, E½W½, E½;
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 21: All;
Sec. 23: All;
Sec. 24: N½;
Sec. 26: N½;
Sec. 27: N½.
T. 10 S., R. 9 E.,
Sec. 21: S½SE¼;
Sec. 22: NE¼SW¼, S½SW¼, W½SE¼;
Sec. 26: W½SW¼, SE¼SW¼;
Sec. 27: NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 28: E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 33: All.
T. 11 S., R. 6 E.,
Sec. 1: Lots 1–4, S½N½, S½;
Sec. 3: Lots 3, 4, S½–NW¼;
Sec. 4: Lots 1–4, S½N½, S½;
Sec. 11: All;
Sec. 12: All;
Sec. 13: All;
Sec. 14: All;
Sec. 15: All;
Sec. 18: Lots 1–4;
Sec. 19: Lots 1–4, E½W½, E½;
Sec. 20: NE¼, W½SW¼, E½SE¼;
Sec. 22: All;
Sec. 23: All;
Sec. 24: All;
Sec. 28: All;
Sec. 29: E½NE¼, W½NW¼, SW¼;
Sec. 30: Lots 1–4, E½W½, E½;
Sec. 31: Lots 1–4, E½W½, E½;
Sec. 33: All;
Sec. 34: All;
Sec. 35: All.

Comprising 137,344.595 acres, more or less.

In exchange for this federal mineral estate, the United States has selected 130,367.45 acres of State-owned minerals within Mohave County, Arizona.

The purpose of the exchange is to unite State and Federal split estates, thereby eliminating surface management difficulties and providing for the consolidation of surface/mineral ownership.

The purpose of this Notice of Realty Action is two-fold. First, this action will provide a response period of forty-five (45) days during which public comments will be accepted. Secondly, this action, as provided in 43 CFR 2201.1(b), shall segregate the federal minerals, as described in this Notice, to the extent

that they will not be subject to appropriaton under the mining laws, subject to any prior valid rights. The segregative effect shall terminate either upon publication in the Federal Register of a termination of the segregation or two years from the date of this publication, whichever comes first. This action is necessary to avoid the occurrence of nuisance mining claims that could encumber the federal minerals while the preparation of an environmental assessment and mineral report are ongoing.

Upon completion of the environmental assessment, a final Notice of Realty Action will be published. The Notice will provide a final description of the Federal and State minerals to be transferred, including reservations.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including a listing of the selected State-owned minerals, may be obtained from the Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 23, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84-8445 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-32-M

[Group 153]

California; Filing of Plat of Survey

March 22, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, 45 days after the date of the Federal Register publication:

Humboldt Meridian, Humboldt County

T. 11 N., R. 4 E.

2. This plat, representing the dependent resurvey of the west boundary, T. 11 N., R. 4 E., Humboldt Meridian and the survey of Section 37, under Group No. 153, California, was accepted February 28, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-8483 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-40-M

[Group 153]

California; Filing of Plat of Survey

March 22, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Humboldt Meridian, Humboldt County

T. 11 N., R. 3 E.,
T. 11 ½ N., R. 3 E.

2. These plats, representing the (1) dependent resurvey of the east boundary, T. 11 N., R. 3 E., Humboldt Meridian, (2) the dependent resurvey of the east boundary T. 11½ N., R. 3 E. Humboldt Meridian, California, under Group No. 153, California, were accepted February 28, 1984.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only

4. This survey was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-8484 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-40-M

[Int DEIS 84-7]

Availability; Northeast Resource Area, Colorado, Resource Management Plan, Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the draft environmental impact statement (DEIS) and of the public hearings.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared a DEIS on alternative resource management plans for the Northeast Resource Area in Colorado.

DATE: Comments will be accepted until July 23, 1984.

ADDRESS: Comments should be sent to: Area Manager, Northeast Resource Area, 10200 West 44th Avenue, #222, Wheatridge, Colorado 80033.

FOR FURTHER INFORMATION CONTACT: Frank Young, Area Manager, Bureau of Land Management, Northeast Resource Area, 10200 West 44th Avenue, #222, Wheatridge, Colorado 80033, (303) 234-4988.

SUPPLEMENTARY INFORMATION: The BLM has prepared a DEIS on 5 alternative resource management plans for the Northeast Resource Area. Included are multiple use allocations and management prescriptions for 40,030 public land acres and minerals management decisions (i.e., coal, oil and gas, salable and locatable minerals) for approximately 615,000 acres of federal subsurface estate where the surface is non-federal. The DEIS displays the management decisions and analyzes the land and resource allocations for environmental, productivity, economic, and social impacts by alternative for comparison purposes. The preferred alternative plan would result in no BLM retention of public land but continue minerals management on all subsurface mineral estate.

Availability

Single copies of the DEIS may be obtained at the above adddress. Public Reading copies are also available at the following locations:

Elbert County Library, Kiowa, CO 80117
Fort Morgan Public Library, 414 Main Street, Fort Morgan, CO 80701
Forth Collins Public Library, 200 Mathews, Fort Collins, CO 80524Penrose Public Library, 20 North Cascade Avenue, Colorado Springs, CO 80903
Limon Memorial Library, 590 "E" Avenue, Limon, CO 80828
Sterling Public Library, Sterling, CO 80751
Boulder Public Library, 1000 Canyon, Boulder, CO 80302

Public Hearings

Public hearings to receive oral and/or written comments will be held at 7 p.m. at the following locations and dates:

Elbert County Courthouse Annex, Commissioners Hearing Room, 221 Comanche, Kiowa, Colorado—7:00 p.m., Monday, June 4, 1984
Larimer County Courthouse, Commissioners Hearing Room, 200 West Oak, Ft. Collins, Colorado—7:00 p.m., Tuesday, June 5, 1984

Gilpin County Courthouse, Court Room, 203 Eureka, Central City, Colorado—7:00 p.m., Wednesday, June 5, 1984
Ramada Foothills, 11595 West 6th Avenue, (6th and Simms), Lakewood, Colorado—7:00 p.m., Thursday, June 7, 1984.

Oral comments may be limited in length to allow all participants equal opportunity.

Dated: March 22, 1984.

Ralph Smith,

Bureau of Land Management, Acting State Director.

[FR Doc. 84-8482 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-JB-M

[OR-22454]

Oregon; Proposed Continuation of Withdrawal

The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of September 11, 1936, be continued in its entirety for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The land involved is located at the Unity Reservoir approximately twenty-five miles southwest of Baker and contains 480 acres within Sections 8, 21 and 28, T. 12 S., R. 37 E., Willamette Meridian, Baker County, Oregon.

The purpose of the withdrawal is to protect the Unity Dam and the Burnt River Reclamation Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal continuation. All interested persons who desire a public meeting for the purpose of being heard must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. If the State Director, Bureau of Land Management, determines that a public meeting will be held, the time and place will be announced.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

All communications in connection with the proposed withdrawal continuation should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 23, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-8401 Filed 3-28-84; 8:45 am]

BILLING DATE 4310-33-M

Salt Lake District, Utah; Proposed Amendment to Grouse Creek Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Amendment of Grouse Creek Management Framework Plan.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Salt Lake District, intends to amend the lands portion of the Management Framework Plan (MFP) for the Grouse Creek Planning Unit; Box Elder County, Utah.

Recommendations and decisions in the Grouse Creek MFP designated utility corridors and specified that future power transmission lines should be kept within these corridors, where possible. BLM has determined that the designated corridors may not be adequate to meet the need for proposed transmission lines in the area and that other suitable corridors may be identified. A proposal has recently been received from Raft River Electric Cooperative, Inc. and Wells Rural Electric Company to construct a 138 KV power transmission line from Grouse Creek to Wendover, Utah.

Approximately 30 miles of the line would be located in the Grouse Creek Planning Unit along Highway 30 from the Grouse Creek Road intersection to the Utah-Nevada border.

BLM will consider the environmental consequences of the proposed project and several alternatives prior to amending the Grouse Creek MFP. An environmental assessment will be available for public review approximately 30 days following publication of this notice. Issues to be considered in the assessment and proposed plan amendment include: wildlife habitat, visual resources, watershed, water resources, recreation opportunities, and socioeconomics.

Address and date: Comments, including issues to be considered in the proposed MFP amendment, should be sent by May 7 to Wayne Richards, Area Manager, Bear River Resource Area, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

Dated: March 23, 1984.

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 84-8394 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-84-M

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on May 1, 1984, at 9:00 a.m. Pacific Standard Time in Room 227 in the Federal Building at 211 E. 7th, Eugene, Oregon.

The agenda for the meeting will include: (1) A review of illegal activities taking place on public lands; (2) a summary of other current issues faced by the District; and (3) an update on the O&C timber harvest.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 a.m. and 11:45 a.m. or file written statements for the Council's consideration. Anyone wanting to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl Street, Eugene, Oregon 97401, by April 27. Depending on the number of persons wanting to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: March 8, 1984.

Melvin D. Clausen,

District Manager.

[FR Doc. 84-8395 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-84-M

California Desert District; Off-Road Vehicle Designation Decisions in Northern and Eastern Imperial County

AGENCY: Bureau of Land Management, Interior.

ACTION: Off-road vehicle designation decisions to open, close, or limit use of routes of travel on public lands in the northern and eastern portions of Imperial County, California.

SUMMARY: Off-road vehicle designation decisions have been made to protect the resources of the area, to promote safe use of the lands and to minimize conflicts among users. The designations were prepared following the criteria defined in 43 CFR 8342.1 and with the authority of 43 CFR 8000.0–6, 8340, 8341, 8342, and 8364. The California Desert Conservation Area had previously been mapped using a series of 21 maps called the Motorized Vehicle Interim Access Guides. These guides provided the interim vehicle designations made by the California Desert Conservation Area Plan until such a time as vehicle routes in each map area could be more carefully inventoried. This notice serves to inform the public that designation decisions have been completed on the Imperial County portions of the following two map areas:

1. Midway Well map area, located in eastern Imperial County. This area encompasses approximately 500,000 acres of BLM-administered public land and includes such well-known locations as Milpitas Wash, Hauser Geode Beds, Vinagre Wash, Black Mountain, Indian Pass, Picacho Peak, and the Cargo Muchacho Mountains.

2. Cahuilla map area, located in northwestern and northcentral Imperial County. This area encompasses approximate 150,000 acres of BLM-administered public land and includes such well-known locations as the Fish Creek Mountains, Arroyo Salada, San Felipe Creek, and Sebastian Marsh.

These designations supersede the Interim Critical Management Plan (ICMP) designations for these areas. The designation decisions were prepared with extensive public involvement. Work maps for the areas were sent to more than 600 individuals and groups who had previously indicated an interest in being involved in the route approval process. Using route information provided by the public as well as aerial photographs and field surveys, BLM inventoried travel routes and made preliminary route approval decisions. These proposed decisions were sent to all persons on the mailing list and publicized in the local news media. Following a 45-day comment period, the final decisions were made. An ad hoc citizen group composed of interested persons representing the spectrum of public concerns reviewed the decisions.

DATES: These designations are effective upon publication and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these route designations will be implemented as routes are signed or as maps are printed and become available to the public.

ADDRESSES: Send inquiries to District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507 or the Area Manager, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243. Route designation decision records and maps showing vehicle designations will be available for public review at the above addresses from 7:45 a.m. to 4:30 p.m. on regular work days.

FOR FURTHER INFORMATION CONTACT: Dave Mensing (714) 351–6402; Steve Nelson (619) 352–5842.

SUPPLEMENTARY INFORMATION: Under the authority provided in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Endangered Species Act (16 U.S.C. 1531 et seq.), EO 11644 (Use of Off-Road Vehicles on the Public Lands), and 3 CFR 74.332 as amended by EO 11989, 42 FR 26959 (May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR Part 8341 is subject to arrest, conviction and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1000 or imprisonment for not longer than 12 months, or both.

Dated: March 21, 1984.

Wesley T. Chambers,

Acting District Manager.

[FR Doc. 84-8328 Filed 3-28-84; 8:45 am]
BILLING CODE 4310-40-M

Final Wilderness Inventory Decision for BLM-Administered Islands in Alabama, Florida, and Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final wilderness inventory decision for BLM-administered islands in Alabama, Florida, and Louisiana.

SUMMARY: This notice is to announce the final wilderness decision on public islands administered by the Bureau of Land Management in Alabama, Florida, and Louisiana, under the authority of Section 603 of the Federal Land Policy and Management Act, and in accordance with guidelines in the September 27, 1978 Bureau of Land Management *Wilderness Inventory Handbook*, Organic Act Directive No. 78–61, Change 3; and the Bureau of Land Management Washington Office memorandum dated July 22, 1981.

The following units proposed to be dropped from further study in the October 14, 1983, **Federal Register**, are no longer subject to wilderness review because they were found to lack wilderness characteristics:

State	No. of islands	Total acres
Alabama	13	54.52
Florida	3	1.67
Louisiana	2	4.39
Total	18	60.58

During the initial 90-day comment period, two written comments were received. One comment was submitted by a representative of a state governor's office. The second comment was submitted by a representative of the oil and gas industry. Both comments agreed with BLM's wilderness proposal to drop all islands from further wilderness study.

DATE: Comments/Protests should be submitted by April 30, 1984. Any person adversely affected by this decision may appeal such decision under the provisions of 43 CFR Part 4. Protests must be in writing and received at the Jackson District Office on or before the above date.

ADDRESS: Comments/Protests should be sent to: District Manager, Jackson District Office, Bureau of Land Management, P.O. Box 11348, Delta Station, Jackson, MS 39213.

FOR FURTHER INFORMATION CONTACT: Caroline Albright, Jackson District Office, (601) 960–4405.

SUPPLEMENTARY INFORMATION: The October 14, 1983 **Federal Register** (48 FR 46857) announced a 90-day public comment period on 18 island inventory units in Alabama, Florida, and Louisiana, encompassing approximately 60.58 acres. The public comment period ended January 12, 1983. During the comment period, press releases were issued to encourage response; and wilderness review summaries were distributed to county officials in all counties where the islands are located, as well as state officials, interest groups and individuals expressing interest in the public islands. Copies of this three-page summary of the Wilderness Review, along with the situation evaluations and maps, were available

upon request from the District Manager, Jackson District Office, at the above address.

Donald L. Libbey,

District Manager.

[FR Doc. 84-8400 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-84-M

Off-Road Vehicle Designation

AGENCY: Bureau of Land Management.

ACTION: Notice of Off-Road Vehicle Designations in the Mackay Planning Unit of the Salmon, Idaho District.

Pursuant to 43 CFR 8340 (Management of Off-Road Vehicle Use on Public Lands). The Salmon, Idaho District of the Bureau of Land Management announces that tis Mackay Planning Unit ORV Management Plan is now completed. The plan designates lands within the planning unit as either limited or open to ORV use. Designations include:

1. Limited areas:

a. Jerry Peak WSA 46–14 (8,790 acres)—ORVs limited to existing roads and trails;

b. Wilow Creek Summit elk crucial winter range (1,088 acres)—closed to all vehicles from December 1 to April 30;

c. Mule deer and elk crucial winter range (11,785 acres)—closed to all organized ORV events from December 1 to April 30;

d. Antelope crucial winter range (24,757 acres)—closed to all organized ORV events from November 15 to April 15.

2. Open areas: All other lands in the Mackay Planning Unit (88,508 actres) subject to regulations as listed in 43 CFR 8340.

Note that there are 132,460 acres of BLM Land in the Mackay Planning Unit. Except for the Jerry Peak WSA and the Willow Creek Summit area (a total of 9,878 acres), the entire planning unit is open to yearlong casual ORV use (122,582 acres). Ther is also an overlap of 2,468 acres between antelope and mule deer crucial winter range. Therefore, of the area open to casual ORV use, only 34,074 acres aare additionally closed to organized OrV events diring the winter months.

Copies of the final plan can be obtained by writing or calling the Salmon District Manger, P.O. Box 430, Salmon, Idaho 83467, (208) 756–2201.

Kenneth G. Walker,

District Manager.

[FR Doc. 84-8397 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-GG-M

Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease M 55518, Madison County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, October 1, 1983.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 84-8398 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-84-M

[Sale of Public Lands in Summit County, Utah, U–51478, U–51479]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Sale of Public Lands, U–51478, U–51479.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value shown:

Legal description	Acreage	Value
U–51478, T. 5 N., R. 7 E., SLB+M, section 10, NE¼NE¼	40.0	$14,000
U–51479, T. 6 N., R. 8 E., SLB+M, section 20, NW¼NW¼	80.0	2,000

The sale parcels are small isolated remnants with no significant public value. The sales will enhance land use compatibility with adjoining private lands. The action is consistent with the Bureau's planning system, and the public interest will be served by offering these lands for sale.

The lands will be sold through competitive bidding with no preference right given to the many adjoining private landowners. Bids may be made by a principal or duly qualified agent. Qualified bidders include: citizens of the United States, 18 years of age or over; a corporation subject to the laws of any state or of the United States; a state, state instrumentality or political subdivision authorized to hold property; and any entities capable of holding lands or interests therein under the laws of the state within which the lands to be conveyed are located. Entities include but are not limted to associations, partnerships, and other legal entities.

The lands will be sold by sealed bids. Sealed bids shall be considered only if received at the place of sale, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119, prior to 9 a.m., May 30, 1984, and for at least the appraised value. Each bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Bureau of Land Management for not less than one-fifth of the amount bid and shall be enclosed in a sealed envelope clearly marked "Bid for Public Land Sale U–51478 or U–51479, Summit County." Each parcel of land will be sold separately. If two or more bids for the same amount are received, the apparent high bidder shall be determined by drawing pursuant to 43 CFR 2711.3–1(c). The person making the final high bid will be declared the apparent higher bidder on that tract. The acceptance or rejection of any offer to purchase shall be in writing no later than 30 days after the date of the sale.

The terms and conditions applicable to the sale are:

(1) The apparent high bidder shall submit the remainder of the full bid price within 30 days from the notification of acceptance of the offer to purchase. Failure to submit the full bid price prior to, but not including the 30th day following the notification, shall result in cancellation of the sale of the above described lands and the deposit shall be forfeited.

(2) The authorized offer may reject the highest qualified bid and release the bidder from his obligation and withdraw the tract for sale, if he determines the consummation of the sale would be inconsistent with the provisions of any existing law or collusive or other activities have hindered or restrained free and open bidding or consummation of the sale would encourage or promote speculation in public lands.

(3) The patent will contain a reservation for ditches and canals and

be subject to all valid existing rights including the right of any prior mineral permittee or lessee to occupy so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the patentee or successors in interest for improvement damage resulting from such mineral activity.

(4) All minerals will be reserved to the United States.

(5) The United States does not, by the terms of this sale, guarantee to any party physical or legal access to the tract of land being sold.

Detailed information concerning the sale including the valid existing rights, land report and environmental assessment report are available for review at the Salt Lake District Office at the address below.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

John H. Stephenson,

Associate District Manager.

[FR Doc. 84-8360 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Development Operations Coordination Document; Union Oil Co. of California

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Union Oil Company of California has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3382, Block 279, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 22, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/ Development Plans Unit; Phone (504) 838–0867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 23, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-8446 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Park System Advisory Board; History Areas Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, as amended, that a meeting of the History Areas Committee of the National Park System Advisory Board will be held on April 9, 1984, commencing at 9:30 a.m. in Room 7000A–B, Department of the Interior, 18th and C Streets, NW., Washington, D.C.

At this meeting the History Areas Committee will meet to consider potential National Historic Landmarks as follows:

1. Aquatic Park Historic District, San Francisco, CA
2. Bishop Hill Historic District, Henry County, IL
3. Whitney M. Young, Jr., Residence, Atlanta, GA
4. Whitney M. Young, Jr., Birthplace, Shelby County, KY
5. Whitney M. Young, Jr., Home, New Rochelle, NY
6. Ball's Bluff Battlefield and National Cemetery, near Leesburg, VA
7. Seattle Electric Company Georgetown Steam Plant, Seattle, WA

The formal recommendations of the Committee will be made to the National Park System Advisory Board at its meeting on April 11, 1984, in Washington, D.C. No formal action of the Secretary of the Interior will be sought until after the Advisory Board has considered the recommendations of its History Areas Committee and acted thereon.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the committee a written statement concerning the matters to be considered. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Mr. Benjamin Levy, History Division, National Park Service, Washington, D.C., at (202) 343–8164.

Summary minutes of the meeting will be available for public inspection 4 to 6 weeks after the meeting in room 4209, 1100 L Street NW., Washington, D.C.

David G. Wright,

Associate Director, Planning and Development, National Park Service.

[FR Doc. 84-8322 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-70-M

National Park System Advisory Board; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the National Park System Advisory Board will be held at the Department of the Interior, Rooms 7000–AB, 18th and C Streets, NW., Washington, D.C., April 11 and 12, 1984.

In its general business sessions starting at 9:00 a.m. the Advisory Board will consider administrative matters pertaining to the Board; receive and discuss the report of the History Areas Committee; make recommendations on proposed national historic landmark designations; and review and discuss policy and management issues affecting the National Park System. The meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come-first-served basis. Any member of the public may file with the Advisory Board a written statement concerning matters to be discussed. Persons wishing further information concerning this meeting or who wish to submit written statements may contact Shirley Luikens, Advisory Boards and Commissions, National Park

Service, Department of the Interior, Washington, D.C. (202–343–2012).

Summary minutes of the meeting will be available for public inspection 10 to 12 weeks after the meeting in Room 3328, Interior Building, 18th and C Streets, NW., Washington, D.C.

David G. Wright,

Associate Director, Planning and Development, National Park Service.

[FR Doc. 84-8442 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-70-M

Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming organizational meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Authorities, responsibilities, and operating requirements of the Commission and the National Park Service.

(2) National monument statement for management, general management plan, fish and game regulations, subsistence issues, and data availability.

(3) Commission organization/ administration, objectives, guidelines, and chairperson selection.

DATE: The meeting will begin at 9:00 a.m. on April 18, 1984, and conclude the afternoon of April 19, 1984.

ADDRESS: The meeting will be held in King Salmon, Alaska.

FOR FURTHER INFORMATION CONTACT:

David Morris, Superintendent, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613, Phone (907) 246–3305

or

Lou Waller, Subsistence Coordinator, Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892, Phone (907) 271–4638

SUPPLEMENTARY INFORMATION: The Aniakchak National Monument Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96–487.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8441 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-70-M

Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission will be held at 8:30 a.m. (EST), May 11, 1984, at the Leland Lodge, 565 Pearl Street, Leland, Michigan.

The Commission was established by the Act of October 21, 1970, 84 Stat. 1076, 16 U.S.C. 460x–3, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Sleeping Bear Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. John B. Daugherty (Chairman)
Mr. Sidney Evans
Dr. T. Cline
Mr. George T. Schilling
Mr. William B. Bolton
Mr. Lawrence J. Verdier
Dr. Michael Chubb
Mr. Robert Athey
Ms. Sylvia B. Kruger
Mr. Geroge Weeks

The agenda for the meeting will include discussion of the docking location assessment for the Manitou Islands' ferry; Federal funding for county roads and law enforcement; current planning projects; and Land Protection Plan implementation.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statment concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to sumbit written statements, may contact Richard R. Peterson, Superindentent, Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan 49635, telephone (616) 352-9611.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan.

Dated: March 20, 1984.

Charles H. Odegaard,

Regional Director, Midwest Region.

[FR Doc. 84-8416 Filed 3-28-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28640 (Sub-9), et al.]

Rail Carriers; Chicago, Milwaukee, St. Paul and Pacific Railroad Co.—Reorganization—Acquisition by Grand Trunk Corporation

AGENCY: Interstate Commerce Commission.

ACTION: Acceptance of acquisition proposals and scheduling of proceedings.

SUMMARY: The Commission accepts applications filed under section 5(b) of the Milwaukee Railroad Restructuring Act (MRR), 45 U.S.C. 904(b), by Soo Line Railroad Company (Soo), Chicago and North Western Transportation Company (CNW), Grand Trunk Corporation (GTC) and Chicago Milwaukee Corporation (CMC) to acquire and operate the core assets of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW), transmitted to the Commission on March 14, 1984 by MILW's Reorganization Court in Order No. 738, subject to conditions, and sets a procedural schedule for consideration of these proposals with various pending inconsistent plans for reorganization of MILW.

DATES: The final date for amendment to the MRR applications, as well as related pending applications is April 6, 1984. Verified statements in support of the acquisition proposals of Soo, CNW, GTC and CMC are also due April 6, 1984. Opposition statements are due May 7, 1984. The complete procedural schedule is contained in the Commission's decision.

ADDRESSES: An original and 20 copies of all pleadings referring to Finance Docket No. 28640 (Sub-No. 9) should be sent to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

Copies should also be served on parties of record in Finance Docket No. 28640 (Sub-No. 9). A list of parties of record is available from the Secretary's Office at (202) 275–7999.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245.

or

Joseph C. Levin, (202) 275–7936.

SUPPLEMENTARY INFORMATION: The complete procedural schedule for consideration of the acquisition applications of Soo, CNW, GTC, and

CMC and further information are contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Parties are admonished that no extensions can be granted because MILW Reorganization Court's Order No. 736 requires the Commission to arrive at a decision in these consolidated proceedings and transmit that decision to the court by September 10, 1984.

Soo's proposal consists of an Alternate Plan of Reorganization, identified as Finance Docket No. 28640 (Sub-No. 9M), and Acquisition Application, identified as Finance Docket No. 28640 (Sub-No. 9N). The proposal contemplates that Soo's wholly-owned subsidiary Newco, Inc., would acquire and operate MILW's core assets. Soo also filed two directly-related exemption requests. In Finance Docket No. 28640 (Sub-No. 9P), Soo seeks an exemption from 49 U.S.C. 10901 to construct and operate connections between Soo and MILW track at Duplainville and South Superior, WI. In Docket No. MC–F–15231 (Sub-No. 2), Soo seeks an exemption to acquire control of the Milwaukee Motor Transportation Company.

CNW's Acquistion Application, identified as Finance Docket No. 28640 (Sub-No. 9Q), is a modification of its previously-filed Inconsistent Plan of Reorganization in Finance Docket No. 28640 (Sub-No. 9C) (*See* Notice published August 26, 1983 at 48 FR 38911.) CNW's acquisition proposal does not include the request in Finance Docket No. 28640 (Sub-No. 9F) for exemption to abandon approximately 1,000 miles of rail line in Illinois, Iowa, Minnesota, Missouri, and Wisconsin.

GTC's acquisition proposal, indentified as Finance Docket No. 28640 (Sub-No. 9R), modifies the Stock Acquisition Agreement that is the basis of the MILW Trustee's Amended Plan of Reorganization (*See* Notice published May 2, 1983 at 48 FR 19792.)

CMC's Alternate Plan of Reorganization, identified as Finance Docket No. 28640 (Sub-No. 9K) proposes that MILW be reorganized as an independent carrier (*See* Notice published August 26, 1983 at 48 FR 38911.)

Decided: March 22, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor concurred in part and dissented in part with a separate expression. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–8424 Filed 3–28–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30406]

Rail Carriers; Spokane International Railroad Co. and Union Pacific Railroad Co.—Abandonment and Discontinuance Exemption—Spokane County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the physical abandonment by Spokane International Railroad Company of, and the discontinuance of service by Union Pacific Railroad Company over, 0.62 mile of railroad extending from milepost −0.04 to milepost 0.58, in Spokane County, WA, subject to standard labor protective conditions.

DATES: This exemption will be effective on April 30, 1984. Petitions to stay must be filed by April 9, 1984, and petitions for reconsideration must be filed by April 18, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30406 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge St., Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 22, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–8425 Filed 3–28–84; 8:45 am]

BILLING CODE 7035–01–M

[I.C.C. Order No. P–72]

Passenger Train Operation; Union Pacific Railroad Co.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois, and San Francisco, California. The operation of these trains requires the use of the tracks and other facilities of Denver and Rio Grande Western Railroad Company (DRGW). A portion of the DRGW tracks at Allen and Glenwood Springs, Colorado, are temporarily out of service because of a snow slide. An alternate route is available via the Union Pacific Railroad Company between Denver, Colorado, and Salt Lake City, Utah.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in may be order of the Commission decided April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Denver, Colorado, and a connection with DRGW at Salt Lake City, Utah.

(b) In executing the provisions of this order, the common carrier involved shall proceed even though no agreements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:49 p.m., EST, March 15, 1984.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., m.s.t., March 16, 1984, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., March 15, 1984.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 84-8428 Filed 3-28-84; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

[NUREG-0800]

"Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants"; Issuance and Availability Revised SRP Section 7.1 and Appendix A To SRP Section 7.1, Section 7.5 and Section 7.7

The U.S. Nuclear Regulatory Commission (NRC) has published a revision to Section 7.1, Rev. 1, "Instrumentation and Controls—Introduction" and Appendix A to SRP Section 7.1, "Acceptance Criteria and Guidelines for Instrumentation and Control Systems Important to Safety"; Section 7.5, "Information Systems Important to Safety"; and Section 7.7, "Control Systems" of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The revision consists of SRP Section 7.1, Rev. 3; an appendix to this Section, Appendix A, Rev. 1; Section 7.5, Rev. 3; and Section 7.7, Rev. 3. The revised SRP Sections incorporates the resolution of Generic Issues 45, "Inoperability of Instrumentation Due to Extreme Cold Weather." The guidelines incorporated are not new requirements, they are a formalization of existing criteria that were previously reviewed and approved in Regulatory Guide 1.151, "Instrument Sensing Lines" (which incorporates ANSI/ISA-S67.02. All changes to the SRP Sections resulting from the resolution of this generic issue and a few editorial changes are identified by a line in the margin of the revise SRP section.

The revised SRP sections are effective immediately. A copy is expected to be available in the Public Document Room within 2 weeks. Copies of the revised SRP Sections or of the complete Standard Review Plan, NUREG-0800, Accession No. PD-81-920199, are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487-4650.

Dated at Bethesda, Maryland this 23rd. day of March, 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-8435 Filed 3-28-84; 8:45 am]

BILLING CODE 7590-01-M

NRC Response to Accidents Occurring During the Transportation of Radioactive Material; General Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: General Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) has defined in a general policy statement its role in responding to accidents and incidents related to the transportation of nuclear materials. The purpose of the policy statement is to state clearly the extent of the NRC's participation and involvement in responding to such a transportation accident or incident.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Justin T. Long, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 427-4135

SUPPLEMENARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC), under the Atomic Energy Act of 1954, as amended (42 U.S.C. Chapter 23) and section 201 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841), is authorized to license and regulate the receipt, possession, use, and transfer of "byproduct material," "source material," and "special nuclear material" (as defined in 42 U.S.C. 2014). The NRC authority to license air shipment of plotonium is further governed by Pub. L. 94-79. Pertinent NRC regulations are contained in 10 CFR Parts 30, 40, 70, 71, and 73.

The U.S. Department of Transportation (DOT), under the Dangerous Cargo Act (R. S. 4472, as amended, 46 U.S.C. 170), Title VI and 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430 and 1472(h)), the Department of Transportation Act (49 U.S.C. 101, *et seq.*) and the Hazardous Materials Transportation Act (49 U.S.C. 1801-1812), is required to regulate safety in the transportation of hazardous materials, including radioactive materials. Pertinent DOT regulations are contained in 49 CFR Part 100 to 178.

The roles in regulatory responsibility of NRC and DOT have been delineated in a Memorandum of Understanding (MOU) between the two agencies dated June 8, 1979 (44 FR 38690). The MOU does not define the specific responsibilities of each agency in responding to transportation accidents or incidents. However, in all accidents, incidents, and instances of actual or suspended leakage involving packages of radioactive material regulated by the NRC, the MOU assigns to NRC the responsibility to act as lead agency for investigating the cause of the leakage and preparing a report of the investigation.

The Federal Emergency Management Agency (FEMA) is responsible for preparing a Federal Radiological Emergency Response Plan (FRERP). On December 23, 1980, FEMA published a "Master Plan" for commercial nuclear power plant accidents (45 FR 84910). Development of the FRERP, which is scheduled for completion in 1984, entals revision of the "Master Plan," including its expansion to incorporate provisions for responding to all types of peacetime radiological emergencies including transportation accidents. Availability of planning guidance for developing the FRERP was noticed in the **Federal Register** on April 28, 1983 (48 FR 19229). The FRERP will be based on the planning guidance and on the results of a Full Field Exercise conducted in the vicinity of the St. Lucie nuclear power plant in March 1984.

The response to transportation accidents is less structured than the radiological emergency response to accidents at licensed sites because of the uncertainties surrounding (1) the location where the accident occurs, (2) the diversity of authority of those who will be responding, and (3) the likely limited radiation knowledge of the first-on-scene responders (who are usually local officials). The states have the primary responsibility for protecting the health and safety of the citizens from public hazards. Recognition of the responsibilities for radiation hazards is reflected by the existence of an appropriately designated state agency chartered with the responsibility of responding to radiological emergencies.

The existing Memorandum of Understanding between the DOT and the NRC (mentioned above) assigns NRC the responsibility for the regulation and certification of shipping containers for fissile materials and for other radioactive materials (other than low specific activity materials) in quantities exceeding Type A limits as defined in 10 CFR Part 71. The MOU assigns DOT the responsibility for regulation of most other aspects of nuclear transportation activities. DOT operates a National Response Center which serves to relay information concerning transportation incidents involving hazardous materials. DOT regulations require a carrier, at the earliest practicable moment, to give notice to the National Response Center after an incident occurs during the course of transportation in which, among other things, fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material. Each notification of a transportation incident of any kind is relayed by the National Response Center to the Regional Office of the Environmental Protection Agency (EPA) for incidents on land or to the U.S. Coast Guard Captain of the Port for incidents in navigable waters. When a reported incident is known to involve radioactive material, notification is also made to the Regional Coordinating Office for Radiological Assistance of the U.S. Department of Energy (DOE) and to the Regional Office of the Nuclear Regulatory Commission. NRC my also become aware of a transportation incident through other channels, such as the shipper, the carrier, or the police or highway patrol.

DOE has stated that DOE's involvement is the maintenance, at about 30 sites, of teams of technically trained nuclear and transportation specialists available to assist states, upon request, by providing desired advice and counsel in areas where states may need assistance. Such teams are highly professional and are equipped to provide analytical and diagnostic support, but not to become involved in cleanup activities. Such teams operate under the DOE Radiological Assistance Program or the Federal Radiological Monitoring and Assessment Plan (DOE coordinated).

The Commission invites all interested persons who desire to submit written comments or suggestions on this general statement of policy to send them to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by July 27, 1984.

Consideration will be given to such submissions in connection with possible future revision of the stated policy. Copies of comments received may be examined at the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C.

Statement of NRC Policy

In any accident or incident occurring in connection with the transportation of radioactive material in which a report is required to be sent to the National Response Center by DOT regulations in 49 CFR 171.15, NRC radiation safety assessment actions will consist of the following.

—Call the agency designated by the affected State to respond to transportation accidents involving radioactive materials as soon as practicable to ensure that agency has been informed of the incident. (The State government is responsible for assuming control of the accident scene to protect the health and safety of the public.)
—Offer NRC technical assistance in the form of information, advice, and evaluations to the State at the time the initial notification is made to the appropriate State agency.
—Assure awareness of the incident by the DOE and other affected agencies, including any agencies specifically designated by the Federal Emergency Management Agency.
—Maintain awareness of the situation until normal conditions are restored at the scene of the accident.
—Provide information on packaging characteristics in response to any query regarding NRC-approved packages.
—Respond to requests for information on NRC activities in connection with the event. Requests for specific information on an accident normally will be referred to the appropriate State agency, or to the DOE if the situation relates to DOE activities.
—If the shipper is an NRC licensee, ensure that the shipper provides complete and accurate information concerning the radioactive material and details of the shipment to emergency response personnel.
—In accordance with the NRC–DOT Memorandum of Understanding, act as lead agency for investigating all accidents, incidents, and instances of actual or suspected leakage involving packages of radioactive material regulated by the NRC. Any NRC personnel at the scene of a transportation accident will notify the on-scene coordinator of his or her presence and make clear that, unless NRC assistance is requested by the on-scene coordinator, NRC activities will be primarily limited to information collection.
—Provide recommendations to emergency response personnel on radiological issues if NRC assistance should be requested by the on-scene coordinator or if a need is recognized by NRC personnel.

The policy here set forth relates solely to radiological concerns. Responding to any attempt to steal or sabotage a shipment of nuclear material is a responsibility of the Federal Bureau of Investigation (FBI) as delineated in the NRC/FBI Memorandum of Understanding dated April 27, 1979, and published December 20, 1979, at 44 FR 75535.

Dated at Washington, D.C., this 23rd day of March 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-8434 Filed 3-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352-OL and 50-353-OL; ASLBP No. 84-501-02 OL]

Philadelphia Electric Co.; Establishment of Atomic Safety and Licensing Board To Rule on Petitions

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Philadelphia Electric Company

Limerick Generating Station, Unit Nos. 1 and 2

This Board is being established to rule on the admissibility of Part 70 issues raised in this proceeding.

The Board is comprised of the following Administrative Judges:

Lawrence Brenner, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Peter A. Morris, Atomic Safety and Licensing Board Panel, U.S. Nuclear

Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 16th day of March 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-8436 Filed 3-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-390 and 50-391]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Order Extending Construction Completion Dates

Tennessee Valley Authority is the current holder of Construction Permit Nos. CPPR-91 and CPPR-92, issued by the Atomic Energy Commission [1] on January 23, 1973, for construction of the Watts Bar Nuclear Plant, Units 1 and 2. These facilities are presently under construction at the applicant's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

On October 11, 1983, the Tennessee Valley Authority (the applicant) filed a request for an extension of the completion dates. The extension has been requested because construction has been delayed by the following events:

1. Piping analysis and hanger/support design, installation, and documentation due to numerous nonconforming conditions identified in the construction and design efforts.
2. Closure of licensing items as a result of NRC-identified violations and TVA-identified conditions adverse to quality (i.e., 50.55e items).
3. Quality assurance documentation, ASME Section III N-5 Data Form, and the "as-constructed" drawings program.
4. Completion of conduit, cable, and instrumentation installation.
5. Application of protective coatings inside the Reactor Building.
6. Completion of the piping, hanger, and support verification program required by NRC-OIE Bulletin 79-14.
7. TVA has also requested that allowance for further contingencies be made in granting the extension of the completion dates.

This action involves no significant hazards consideration, good cause has been shown for the delays; several of the causes were beyond the control of the applicant; and the extension is for a reasonable period, the bases for which are set forth in the staff's evaluation of the request for extension.

The Commission has determined that this action will not result in any significant environmental impact, and pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The NRC staff safety evaluation of the request for extension of the construction permits is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and the Chattanooga Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

It is hereby ordered that the latest completion date for Construction Permit No. CPPR-91 is extended from March 1, 1984 to January 1, 1985, and the latest completion date for Construction Permit No. CPPR-92 is extended from August 1, 1985 to July 1, 1986.

Date of Issuance: March 26, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-8437 Filed 3-28-84; 8:45 am]

BILLING CODE 7590-01-M

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[1] Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

OFFICE OF MANAGEMENT AND BUDGET

Proposed Revision of OMB Circular No. A-76; "Performance of Commercial Activies"

AGENCY: Office of Management and Budget.

ACTION: Request for comments on proposed revision of OMB Circular No. A-76, "Performance of Commercial Activities."

SUMMARY: OMB Circular No. A-76 (Revised August 4, 1983) establishes Federal policy regarding the performance of commercial activities. The Supplement to the Circular sets forth procedures for determining whether it is more economical to continue in-house operations of commercial activities or to perform them under contract.

When a decision is made that it is more cost effective to convert an in-house function to contract, Federal employees who are separated or adversely affected by the decision to contract receive the right of first refusal to contractor employment openings for a period of up to 90 days after the beginning of contractor performance.

When the Circular was published for comment in 1983, many commenters requested guidance on the administeration of the right of first refusal. OMB developed this proposed contract clause after consultation with Federal agencies and business representatives.

The propsed right of first refusal contract clause builds upon current policies contained in the Circular. The proposals provide additional guidance concerning:

(1) Employment openings subject to the clause;

(2) Contractor reporting requirements;

(3) Information provided to the contractor;

(4) Qualifications determinations;

(5) Relationship to other statutes, regulations and employment policies; and

(6) Penalty for non-compliance.

The intended effect of the proposed change is to clarify contractor obligations and employee rights, and to collect information on the hiring of adversely affected employees for the purpose of severance pay administration.

Paperwork Reduction Act: The proposed clause establishes a reporting requirement for contractors under the Circular. Should the proposed clause be adopted, it will be submitted for inclusion into the Federal Acquisition Regulation. The current contractor reporting requirement under Federal Procurement Temporary Regulation 63, Supp. 1, (OMB Control No. 3090-0104) would be concelled.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. et seq. and 5 CFR Part 1320) the collection of information requirements contained in this proposed revision has been submitted for review to OMB's Office of Information and Regulatory Affairs.

Comments about the appropriateness of information requirements in this proposal should be addressed to Mr. Edward C. Springer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (telephone: (202) 395-4814).

DATE: Comments must be received on or before the 60th day following publication in the **Federal Register**.

ADDRESS: Comments concerning the proposed policy revision should be submitted to the Administrator, Office of Federal Procurement Policy, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Durant, Office of Federal

Procurement Policy, Office of Management and Budget, (202) 395-6810.

David A. Stockman,

Director.

Right of First Refusal

The following clause shall be inserted in all contracts which result from conversion to contract under OMB Circular No. A-76

Right of First Refusal

1. Consistent with the Government post-employment conflict of interest regulations, the Contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.

2. *Definitions:* (a) As "adversely affected Federal employee" is: (1) any Federal employee who is assigned to the Government commercial activity, or (2) any employee identified for release from his or her competitive level or separated as a result of the contract.

(b) "Employment openings" are position vacancies created by this contract which the Contractor is unable to fill with personnel in the Contractor's employ at the time of the contract award, including positions within a fifty mile radius of the commercial activity which indirectly arise in the Contractor's organization as a result of the Contractor's reassignment of employees due to the award of this contract.

(c) The "contract start date" is the first day of Contractor performance.

3. *Filling Employment Openings:* (a) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the Contracting Officer shall be offered an employment opening until all adversely affected and qualified Federal employees identified by the Contracting Officer have been offered the job and refused it.

(b) The Contractor may select any person for an employment opening when there are no qualified, adversely affected Federal employees on the latest, current listing provided by the Contracting Officer.

4. *Contractor Reporting Requirements:* (a) No later than 5 working days after contract award, the Contractor shall furnish the Contracting Officer with the following:

(i) A list of employment openings;

(ii) Sufficient job application forms for adversely affected Federal employees.

(b) By the contract start date the Contractor shall provide the Contracting Officer with the following:

(i) The names of adversely affected Federal employees offered an employment opening;

(ii) The date the offer was made;

(iii) A brief description of the position;

(iv) The date of acceptance of the offer and the effective date of employment;

(v) The date of rejection of the offer, if applicable; the salary and benefits contained in the rejected offer; and

(vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(c) For the first 90 days after the contract start date, the Contractor shall provide the Contracting Officer with the names of all persons hired or terminated under the contract, within 5 working days of such hiring or termination.

5. *Information Provided to the Contractor:* (a) No later than 10 working days after contract award, the Contracting Officer shall furnish the Contractor a current list of adversely affected Federal employees exercising the right of first refusal, along with their completed job application forms.

(b) Between the contract award and start dates, the Contracting Officer shall inform the Contractor of any reassignment or transfer of adversely affected employees to other Federal positions.

(c) For a period up to 90 days after contract start date, the Contracting Officer will periodically provide the Contractor with an updated listing of adversely affected Federal employees, reflecting employees recently released from their competitive level or separated as a resulted of the contract award.

6. *Qualifications Determination:* The Contractor has the right under this clause to determine the adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening shall be considered qualified for that job. Questions concerning the qualifications of adversely affected Federal employees for specific employment openings shall be referred to the Contracting Officer for determination. The Contracting Officer's determination shall be final and binding on all parties.

7. *Relation to Other Statutes, Regulations and Employment Policies:* The requirements of this clause shall not modify or alter the Contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities or handicapped persons.

8. *Penalty for Non-compliance:* Failure of the Contractor to comply with any provision of this clause may be grounds for termination for default.

[FR Doc. 84-8389 Filed 3-28-84; 8:45 am]

BILLING CODE 3110-01-M

Privacy Act of 1974: Revised Supplemental Guidance on Implementation of the Privacy Act of 1974

March 21, 1984.

AGENCY: Office of Management and Budget.

ACTION: Revision of guidance on the relationship between the Privacy Act of 1974 and the Freedom of Information Act.

SUMMARY: This document issues in final form a revision to OMB's Privacy Act Implementing Guidelines proposed on August 10, 1983 at 48 FR 36359. The revision is intended to clarify the relationship between the Privacy Act and the Freedom of Information Act (FOIA) and improve agency implementation of both Acts. Under the revised Guidelines, agency records exempt from disclosure under provisions of the Privacy Act are, to that extent, also exempt from disclosure under FOIA, by virtue of the Section (b)(3) exemption of FOIA. Therefore, agencies may deny access to records in exempt systems of records when access is sought under FOIA to the same extent they may do so when access is sought under the Privacy Act. However, both the Privacy Act and FOIA provide for universal venue in the District of Columbia, and the Court of Appeals for the District of Columbia Circuit, along with the Court of Appeals for the Third Circuit, have held that the Privacy Act is not a permissible FOIA (b)(3) exemption statute. Consequently, pending a dispositive ruling on the issue by the Supreme Court, agencies should not rely exclusively on this guidance unless a FOIA matter proceeds to litigation within a judicial circuit other than the D.C. or Third Circuits.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 New Executive Office Building, Washington, D.C. 20503; telephone 202-395-4814.

SUPPLEMENTARY INFORMATION: Under section 6 of the Privacy Act of 1974 (Pub. L. 93-579, December 31, 1974; 5 U.S.C. 552a note), the Office of Management and Budget is responsible for developing guidelines and regulations for the use of

Federal agencies in implementing the Act's key provisions codified at 5 U.S.C. 552a. OMB's Privacy Act Guidelines were first issued in 1975 at 40 FR 28948 (July 9, 1975), and supplemental at 40 FR 56741 (December 4, 1975).

On August 10, 1983, OMB proposed to revise its Privacy Act Guidelines to provide that agency records exempt from disclosure under the Privacy Act were, to that extent, also exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552). 48 FR 36359 (August 10, 1983). OMB's earlier guidance had been that "* * * the Privacy Act should not be used to deny access to information about an individual which would otherwise have been required to be disclosed to that individual under the Freedom of Information Act." 40 FR 56741, 56742.

The Privacy Act's most important provisions relevant to this issue are as follows. First, Federal agencies must publish public notices describing the nature and uses of their "systems of records" on individuals (5 U.S.C. 552a(e)). Second, individuals may control some (though not all) disclosures of their own government records contained in systems of records (5 U.S.C. 552a(b)). Third, individuals may have direct access to their own records contained in systems of records, and may seek amendment to their records according to specified procedures (5 U.S.C. 552a(d)).

The Act also contains exemption provisions applicable to Central Intelligence Agency records and to records pertaining to criminal law enforcement, civil law enforcement, personnel, statistical, and a few other matters (5 U.S.C. 552a (j), (k)). These sections describe the types of matters covered, and permit agency heads, through specified public-notice procedures, to exempt such records from the Act's section (d) first-party access requirements (552a(d)) and from other of the Act's requirements. The exemption provisions do not permit agencies to exempt records from the Act's section (b) requirements giving individuals qualified control over the uses of their government records (552a(b)).

OMB received a total of thirty-four comments on its August 10, 1983 proposal. Twenty-six comments were submitted by Federal agencies; of these, thirteen supported the proposal, eleven were neutral, and two (from the Department of the Interior and the Federal Energy Regulatory Commission) opposed the proposal. Three Members of Congress, Representatives Glenn English, Thomas N. Kindness, and John N. Erlenborn, submitted comments, all in opposition to the proposed change. Five private groups also submitted comments, all in opposition—the Section of Administrative Law of the American Bar Association, the American Society of Newspaper Editors and the American Newspaper Publishers Association (a joint submission), the Center for National Security Studies (on behalf of the American Civil Liberties Union), the National Newspaper Association, and the Reporters Committee for Freedom of the Press.

OMB has studied all of these comments carefully, and has also studied the opinions of the United States Courts of Appeals on both sides of the issue, the most extensive of which are *Shapiro* v. *Drug Enforcement Administration*, 721 F.2d 215 (7th Cir. 1983); *Porter* v. *U.S. Department of Justice*, 717 F.2d 787 (3rd Cir. 1983); and *Greentree* v. *U.S. Customs Service*, 674 F.2d 74 (D.C. Cir. 1982). In addition, we have reviewed scholarly commentary on the issue (*see* Anthony T. Kronman, "The Privacy Exemption to the Freedom of Information Act," IX *Journal of Legal Studies* 727 (1980), and authorities cited at notes 5 and 14), and have consulted with Federal agencies concerning current practices under the Privacy and Freedom of Information Acts. We have concluded that our proposal is correct as a matter of law and policy, and are revising the OMB Privacy Act Guidelines accordingly.

In our view, the two statutes provide in straightforward and unambiguous language that agency records exempt from mandatory disclosure under the Privacy Act are, to that extent, also exempt from mandatory disclosure under FOIA. FOIA requires Federal agencies to make their records "promptly available to any person" upon appropriate request (5 U.S.C. 552(a)(3)). This requirement, however, is subject to several specified exemptions, one of which applies to matters—

> *Specifically exempted from disclosure by statute* (other than section 552b of this title), *provided that such statute* (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) *establishes particular criteria for withholding or refers to particular types of matters to be withheld.*

5 U.S.C. 552(b)(3) (emphasis supplied).

The Privacy Act unmistakably fits the FOIA (b)(3)(B) exemption. Sections (j) and (k) of the Act specifically exempt certain files from disclosure, establish particular criteria for withholding, and refer to particular types of matters to be withheld. Thus, by the terms of FOIA's (b)(3) exemption, the Privacy Act's nondisclosure provisions are recognized by FOIA and are not overridden by FOIA's own mandatory-disclosure requirements.

Some of the record comments and court opinions argue that the FOIA (b)(3) exemption does not apply to sections (j) and (k) of the Privacy Act, since these sections exempt records from the disclosure requirements of "this section"—*i.e.*, from the disclosure requirements of the Privacy Act itself, rather than the requirements of other statutes. But FOIA (b)(3) does not require that other statutes establish blanket nondisclosure requirements—only that certain matters be "*exempted*" from disclosure. Other statutes, standing alone, could, of course, exempt matters from FOIA disclosure without benefit of FOIA (b)(3) itself. Where other statutes provide exemptions from disclosure, and meet FOIA (b)(3)'s standards of specificity and particularity regarding the matters to be withheld, these exemptions must be applied to FOIA as well if the FOIA (b)(3) exemption (in particular that established by (b)(3)(B) is to be given its natural meaning.

Sections (j) and (k) of the Privacy Act provide their own demonstration of the logic of the FOIA (b)(3) exemption. The provisions of these sections make it unmistakably clear that the Congress, while wishing to assure citizens ready access to their government files and the means of correcting significant errors, realized that there were circumstances where such disclosures could be harmful. One is where first-party access could lead to physical or other retaliation against those who provided the information in the records (*e.g.*, criminal and civil investigative files). Another is where first-party access could compromise the government's ability to gather needed information in the first place by reducing the candor of that information (*e.g.*, files compiled to determine suitability for Federal employment).

Congress addressed these problems by providing fairly broad disclosure exemptions for the Central Intelligence Agency and criminal law enforcement agencies (552a(j)), and more narrow, precisely specified exemptions for several civil-investigative and administrative functions (which permit nondisclosure, for example, where disclosure would "compromise the objectivity or fairness" of tests or examinations, or would "reveal the identity" of a confidential source of information) (552a(k), (k)(2), (k)(5)–(7)). In both cases, Congress provided that the disclosure exemptions were to apply only to designated "systems of records," were to exclude only certain requirements of the Act, and were to go

into effect only upon public notice and explanation.

These policies and procedures would be rendered virtually meaningless if the FOIA (b)(3) exemption were ignored. An individual denied access to his records under sections (j) or (k) of the Privacy Act could nonetheless obtain them simply by invoking FOIA instead (except to the extent some other FOIA exemption, such as (b)(6) or (b)(7), were found to apply to the contents of those records). Agencies such as the Federal Bureau of Investigation and the Drug Enforcement Administration, having established systems of records on sensitive criminal matters and exempted them from first-party access under section (j) of the Privacy Act, would nevertheless be obliged to sort through the contents of these files in response to first-party requests and, absent successful invocation of another FOIA exemption, be obliged to reveal their contents to the subjects of their investigations.

The *Greentree* opinion argues that permitting FOIA access to records that had been exempt from disclosure under sections (j) or (k) of the Privacy Act would not render these exemptions *totally* meaningless. The exemptions could still be used to excuse systems of records from Privacy Act requirements *other than* the section (d) access requirements, and could also be used to cut back first-party access from the broad disclosure requirements of section (d) of the Privacy Act to the more narrow requirements of FOIA as qualified by the FOIA (b)(6) and (b)(7) exemptions. *See*, 674 F.2d at 80–81.

We find this argument unpersuasive. That one could ignore FOIA (b)(3) and still leave intact some aspects of sections (j) and (k) of the Privacy Act is no reason not to leave all of its provisions intact as written—especially its most important one. As explained above, the primary purpose of sections (j) and (k) is to protect certain sensitive records from access by the subjects of those records, and both sections do so in terms that meet the specifications of FOIA (b)(3) with exactitude. Moreover, as the Seventh Circuit points out in its *Shapiro* opinion, limiting the scope of Privacy Act section (j) exemptions to the scope of any applicable FOIA exemptions "is contrary to the intent of Congress * * * as shown both by the [section (j)] exemption's language, which is broader than the FOIA exemption covering law enforcement records (Exemption 7), and by the relevant legislative history of the Privacy Act" (721 F.2d at 221).

While parties on both sides of the controversy acknowledge that the legislative history of the two statutes is "ambiguous" on some points, we do not think this history is at all ambiguous on the key issue whether Congress thought that intelligence and criminal investigation records covered by the Privacy Act should be disclosed to the subjects of the investigations. The discussion and legislative citations in the *Sehapiro* opinion are lucid on this question. The *Shapiro* discussion concludes that—

> * * * The legislative history of the Privacy Act shows Congress' concern that individuals not use the Act to obtain access to their own criminal investigation files. It makes little sense to conclude that Congress would enact specific nondisclosure provisions in the Privacy Act to address this concern, while at the same time allowing individuals to bypass these exemptions by using the broader access terms of the FOIA.

721 F.2d at 222.

It is clear, moreover, that Congress has been cognizant of the sometimes complex interrelationships between the Privacy Act, FOIA, and related statutes, and where appropriate has taken direct steps to adjust the statutes' general provisions to account for these interrelationships. At one point the Privacy Act provides that first-party control over disclosure of government records shall not apply to disclosures required by FOIA (552a(b)(2)); at another point, it provides that FOIA exemptions shall not be used to deny access to records otherwise available under the Privacy Act (552a(q)). And FOIA's (b)(3) exemption was itself revised in 1976 to exclude the government in the Sunshine Act (5 U.S.C. 552b) from its incorporation of other statutory exemptions—Congress could have excluded the Privacy Act exemptions as well by adding a single term to this provision.

The record comments and court opinions contain three further arguments for permitting FOIA disclosures of exempt Privacy Act records that merit discussion here. The first is the assertion that the Privacy Act is not (or should not be, or was never intended to be) a FOIA (b)(3) statute. This assertion, taken as a legal proposition, is addressed above. In many cases, however, the assertion seems to be based on the general supposition that since the Privacy Act was intended to *expand* access to government records, it should not be applied so as to *limit* access from that provided by another disclosure statute.

In fact, however, the purpose of the Privacy Act is not disclosure but the protection of individual privacy, and toward this end it restricts disclosure of government records in as many cases as it requires disclosure. The statute provides for public disclosure of the existence, nature, and uses of government "systems of records" on individual citizens. But as to the actual disposition of these records, the Act establishes four types of requirements which are necessarily, and for the most part carefully, balanced among each other. First, the Act gives individuals control over the disclosure of information about themselves in certain government records—but second, it provides explicit limitations on such control. Third, it gives individuals access to information about themselves in certain government records (and the means of correcting erroneous information)—but fourth, it provides explicit limitations on that access. To accept the view that the Privacy Act should not be considered a FOIA (b)(3) statute would be to read the fourth policy out of the Act, although this policy is fully consistent with the other three, and protects the privacy of certain kinds of sensitive communications to the government.

The second argument is that section (b) of the Privacy Act (552a(b)) provides that the Act may not be used to limit disclosures required by FOIA. This argument is prominent in the court opinions in *Porter* (717 F.2d at 793, 797) and *Greentree* (674 F.2d at 79–80). We believe, however, that this view is wholly mistaken. Section (b) does not require agencies to disclose any information at all, but to the contrary establishes qualified limitations on disclosures. In particular, section (b) provides that a record covered by the Privacy Act may not be disclosed to any person without the written consent (or request) of the individual to whom the record pertains, except in twelve specified situations, one of which is that disclosure is required by FOIA (552a(b)(2)).

Thus, 552a(b)(2) says that disclosures from systems of record required by FOIA are not contingent on the permission of the subjects of the records involved. This provision cannot reasonably be read as an affirmative disclosure requirement. We think the conclusion of the *Shapiro* decision that "section (d) provides sole access for first party requests under the Act" (721 F.2d at 220) is inescapably correct. The Privacy Act's limitations on section (d) access set forth in sections (j) and (k), which in turn are recognized by FOIA (b)(3), are unaffected by the Act's separate "conditions of disclosure" specified by section (b)(2).

The final argument is the so-called "third party anomaly" argument,

emphasized in some of the record comments and in the *Porter* and *Greentree* opinions. The argument goes as follows:

The Privacy Act's section (j) and (k) exemptions should not recognaized by FOIA (b)(3) because if they were, there would be cases where individuals would have less access to their own records than third parties, and third parties might even gain access to such records and transmit them back to the first parties. The *Greentree* opinion says that "[s]uch as result would comport with neither logic nor common sense," which suggests that "Congress could not have intended section (j)(2) of the Privacy Act to serve as a withholding statute under FOIA Exemption 3" (674 F.2d at 79, 80).

In our view this point is of little practical importance and does not affect the fundamental legal and policy issues. In virtually all cases of agency records exempt from first-party access under sections (j) and (k), disclosure to others would also be exempt from mandatory FOIA disclosure under the "unwarranted invasion of personal privacy" provisions of sections (b)(6) and (b)(7) of FOIA. As noted previously, the exemptions of FOIA (b)(6) and (b)(7) are narrower than those of sections (j) and (k) of the Privacy Act. However, while these differences can be significant in the case of first-party access, they are small and inconsequential in the case of third-party access to the same records. At most they may result in occasional administrative difficulties and instances of partial and unintended first-party access. These are hardly reasons for ignoring the basic statutory scheme inself by permitting FOIA to nullify the first-party access restrictions of sections (j) and (k).

The text of our revised guidance is set forth below. The guidance refers not only to the Privacy Act exemptions in sections (j) and (k), but to those in sections (d)(5) and (1) as well. The latter provisions, involving information compiled in anticipation of civil actions and records of the National Archives, present FOIA issues similar to those discussed above, but which have not been subjects of significant controversy.

Finally, agencies should note that both the Privacy Act and FOIA provide for universal venue in the District of Columbia. As discussed above, the Courts of Appeals for the District of Columbia Circuit (in *Greentree)* and for the Third Circuit (in *Porter*) have held that the Privacy Act is not a permisible FOIA (b)(3) statute. The Department of Justice is presently seeking a writ of certiorari from the Supreme Court to review the Third Circuit's Decision in *Provenzano v. U.S. Department of Justice,* 717 F.2d 799 (3rd Cir. 1983), a companion case to *Porter.* Pending a dispositive ruling on the issue by the Supreme Court, agencies should not rely exclusively on the guidance on this issue set forth below unless a FOIA matter proceeds to litigation within a judical circuit other than the District of Columbia or Third Circuits.

Christopher C. DeMuth,

Administrator for Information and Regulatory Affairs.

Section (q) of the OMB Privacy Act "Implementing Guidelines" published at 40 FR 28948, July 9, 1975 and supplemented on December 4, 1975 (40 FR 5674), is revised to read as follows:

Section (q) Relationship of the Privacy Act to the Freedom of Information Act

Subsection (q) "No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section."

This provision makes it explicit that an individual may not be denied access to a record pertaining to him under subsection (d)(1), access to records, because that record is permitted to be withheld from members of the public under the Freedom of Information Act (FOIA). The only grounds for denying an individual access to a record pertaining to him are the exemptions stated in this Act, subsections (j) and (k); subsection (1), archival records; and subsection (d)(5), records compiled in reasonable anticipation of a civil action or proceeding. In addition, consideration may have to be given to other statutory provisions which may govern specific agency records.

In the converse situation, however, agencies should note that FOIA exemption (b)(3) provides that access under the FOIA is not required if the material sought is specifically barred from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. The Privacy Act in subsections (d)(5), (j), (k), and (l) reaches the level of specificity necessary to qualify under paragraph (b)(3)(B) of the FOIA as a withholding statute. Accordingly, should an individual make a FOIA request for his records that are contained in a system of records, agencies may rely on section (d)(5), (j), (k), or (l) of the Privacy Act, when appropriate, to deny such requests. (It should be further noted that for certain exempt systems, substantial portions of the covered records may be required to be released; see, for example, the requirements of (k)(5)).

Whether a request by an individual for access to his records is to be processed under Privacy Act or FOIA procedures involves several considerations. For example, while agencies have been encouraged to reply to requests for access under the Privacy Act within ten days whenever practical, consistent with the FOIA, the Privacy Act does not establish time limits for responding to requests (see discussion of (d)(1)). The Privacy Act also does not establish an administrative appeal on denial of access comparable to that of the FOIA, although agencies are encouraged to permit individuals to request an administrative appeal of initial denials of access to avoid, where possible, the need for unnecessary judicial action. It can also be argued that requests filed under the Privacy Act can be expected to be specific as to the systems of records to which access is sought, whereas agencies are required to respond to a FOIA request only if it "reasonably describes" the records sought. Further, the FOIA permits charging of fees for search as well as copying records, while the Privacy Act permits only for the direct cost of making a copy upon request.

It is our view that, as a matter of procedure, agencies should treat requests by individuals for information pertaining to themselves which specify either the FOIA or the Privacy Act, (but not both), under the procedural provisions established pursuant to the Act specified in the request. When the request specifies both Acts, and may be processed under both, Privacy Act procedures should be employed. When the request specifies neither Act, and could be processed under both Acts, Privacy Act procedures should also be used. However, in these two latter cases, the individual should be advised of the procedures the agency has elected to use, of the existence and general effect of the FOIA, and of the differences, if any, between the agency's procedures under the two (e.g., fees, time limits, access and appeals).

[FR Doc. 84-8440 Filed 3-28-84; 8:45 am]
BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) Collection title: Application and Claim for Sickness Insurance Benefits
(2) Form(s) submitted: SI–1a/1b, SI–2, SI–3, ID–11a
(3) Type of request: Revisions of a currently approved collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households, business or other for-profit
(6) Annual responses: 648,000
(7) Annual reporting hours: 27,1338
(8) Collection description: Under section 2 of the Railroad Unemployment Insurance Act, sickness benefits are provided for qualified railroad workers. The collection obtains information needed for determining eligibility for and amount of such benefits.

(1) Collection title: Requests for Consultative Medical Examination
(2) Form(s) submitted: ID–31a
(3) Type of request: Existing collection in use without an OMB control number
(4) Frequency of use: On occasion
(5) Respondents: Business or other for-profit, small business or organizations
(6) Annual responses: 500
(7) Annual reporting hours: 500
(8) Collection description: Section 2 of the RUIA provides sickness benefits for qualified railroad employees. The collection obtains consultative evidence of inability to work when needed to supplement evidence obtained from other sources.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhauf (202–395–6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

William A. Oczkowski,

Director of Planning and Information Management.

[FR Doc. 84–8439 Filed 3–28–84; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20779; (SR-CBOE–84–4]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

March 21, 1984.

The Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Van Buren, Chicago, IL 60604, submitted on January 30, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, that would permit open trading to continue until 3:00 p.m. on the Friday before expiration in all expiring series of options. Under existing rules, open trading on expiring options series, other than index options, stops at 2:00 p.m. on the Friday prior to expiration.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20644, February 10, 1984) and by publication in the **Federal Register** (49 FR 6194, February 17, 1984). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therfore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8412 Filed 3–28–84; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 20782; (SR–CBOE–84–6)]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

March 22, 1984.

The Chicago Board Options Exchange, Inc. ("CBOE"), LaSalle at Jackson, Chicago, Illinois 60604, submitted on February 6, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to add CBOE Rule 2.13 to establish a Financial Planning Committee [1] which would make recommendations to the Executive Committee and the Board of Directors with respect to the fee structures, financing, capital and operating budgets, and related financial matters of the Exchange. The committee would consist of the President of the Exchange and at least seven other members, including an Exchange director as either its Chairman or Vice Chairman. Members of the committee would be appointed for three year terms staggered so that the terms of at least two members would expire each year. In addition, under the proposed rule, a quorum for the transaction of business would consist of a majority of the committee members.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20635, February 9, 1984) and by publication in the **Federal Register** (49 FR 6063, February 16, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A.Fitzsimmons,

Secretary.

[FR Doc. 84–8413 Filed 3–28–84; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 23257; (70–6963)]

Louisiana Power & Light Co.; Proposal To Finance Pollution Control Facilities

March 23, 1984.

Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10 and

[1] The Exchange states that members of the proposed Committee must be approved by the Board of Directors of the CBOE pursuant to Section 8.3 of the Exchange's Constitution.

12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50(a)(2) thereunder.

In order to meet certain federal and state pollution control standards, the Company has constructed and installed and is constructing and installing at Unit 3 of its Waterford Steam Electric Generating Station ("Waterford 3") in St. Charles Parish, Louisiana certain facilities solely for atmospheric, air, water and/or pollution control purposes and for solid waste disposal ("Facilities"). To finance some or all of these Facilities, the Company proposes to enter into one or more sale agreements or a sale agreement and one or more supplements and/or amendments ("Sale Agreement") with the Parish of St. Charles, Louisiana ("Parish"); the Parish is to enter into one or more trust indentures or a trust indenture and one or more supplements ("Trust-Indenture") under which the Parish is to issue and sell, in one or more series, its pollution control revenue bonds ("Bonds") in an aggregate principal amount not to exceed $120,000,000. The Bond sale proceeds (net of any underwriter's discount or other expenses payable from such proceeds) are to be deposited with the Trustee and applied to pay the costs of acquiring, constructing, installing and/or equipping the Facilities. Further under the Sale Agreement, the Company is to sell the Facilities to the Parish for cash, and is to simultaneously re-purchase the Facilities from the Parish for a purchase price, payable on an installment payment basis over a period of years, sufficient (together with any other moneys held by the Trustee under the Trust Indenture and available for the purpose for the particular series of Bonds involved) to pay the principal of, the premium, if any, and the interest on such series of Bonds as they become due and payable. The installment payments are to be made directly to the Trustee pursuant to an assignment and pledge thereof by the Parish to the Trustee.

The Company will also be obligated to pay the reasonable and necessary expenses incurred by the Parish pursuant to the Sale Agreement and the Trust Indenture and the reasonable and necessary compensation of and expenses incurred by the Trustee, any registrar or paying agent under the Trust Indenture, and all Indexing Agents, Tender Agents and/or Remarketing Agents, except as to each series of bonds, the initial compensation and expenses of the Trustee, and the legal, accounting, financial and printing expenses and fees, the fee of any underwriter or underwriters ("Underwriter") and substantially all other expenses for that series of Bonds, incurred in connection with the issuance of such series of Bonds, will be included in the "Cost" of the Facilities as defined in the Sale Agreement and therefore to be included in the purchase and re-purchase prices of the Facilities and be financed by the sale of the Bonds of that series.

As to each series of Bonds, the Trust Indenture will provide for the establishment with the Trustee of a Bond Fund and a Project Acquisition Fund; for any accrued interest and/or premium paid by the purchasers of such series of Bonds to be deposited in the Bond Fund for such series and the remainder of the sale proceeds to be deposited in the Project Acquisition Fund for such series; for the cash price payment to the Company upon the sale by the Company to the Parish of the Facilities to be paid out of such Project Acquisition Fund; for any funds remaining in such Project Acquisition Fund after the Facilities have been paid for to be deposited in such Bond Fund and/or used by the Trustee for the redemption and/or payment of principal of Bonds or to purchase Bonds of such series for cancellation or otherwise as directed by the Company with the approval of bond counsel; and for such Bond Fund to be used to pay the principal of, premium, if any, and interest on such series of Bonds. The installment payments to be made by the Company in payment of the re-purchase price are to be deposited in such Bond Fund.

The Trust Indenture will provide that, upon the occurrence of certain events relating to the construction or operation of Waterford 3 or the Facilities, the Bonds will be redeemable by the Parish, at the direction of the Company. Any series of the Bonds may be made subject to a mandatory cash sinking fund under which stated portions of the Bonds of such series are to be retired at stated times. The Bonds will be subject to mandatory redemption in certain other cases, including certain events relating to the taxability of the interest on the Bonds. The payments by the Company in such circumstances shall be sufficient (together with any other moneys held by the Trustee under the Trust Indenture and available for the purpose) to pay the principal of the outstanding Bonds to be retired or redeemed at that time, together with interest accrued or to accrue thereon to the retirement or redemption date.

The Bonds, or the several series thereof, will have a term of not less than 5 years and not more than 35 years, but be subject to earlier redemption and retirement upon the occurrence of certain events.

The Sale Agreement and the Trust Indenture may provide for a fixed interest rate for one or more series of the Bonds and/or for an adjustable interest rate for one or more series of the Bonds. As to series having an adjustable interest rate, the interest rate for the Bonds of such series during the first Rate Period (the period during which the interest rate on such Bonds of a particular series is fixed) will be determined in discussions between the Company and the purchasers of such series from the Parish and be based on the current tax-exempt market rate for comparable bonds having a maturity comparable to the length of the initial Rate Period. Thereafter, for each Rate Period, the interest rate on such Bonds: (a) Will, if no Bonds are tendered for repurchase, be determined by the appointed Indexing Agent based upon an index, chosen by the Indexing Agent, derived from the then current market level for comparable securities of maturity comparable to such Rate Period, or (b), if any of such Bonds are tendered for repurchase, will be that rate which will be sufficient to remarket all such tendered Bonds of such series at their principal amount. At the time of each adjustment, the interest rate so determined will be no greater than 120% nor less than 80% of such index, subject to a maximum rate of interest of 15%.

The initial Rate Period would commence on the date as of which interest begins to accrue on such Bonds of such series. Upon the termination of the initial Rate Period, each Rate Period thereafter, other than the period commencing on the Fixed Rate Date (the date from which the interset rate borne by Bonds of a series would be fixed until maturity), will be a one year period. If the Fixed Rate Date for the Bonds of any series shall not been fixed, the date which would have otherwise been the Anniversary Date (the first day of any Rate Period subsequent to the initial Rate Period, other than the last Rate Period if such shall begin on the Fixed Rate Date) for the Bonds of a series shall be the fixed Rate Date for the Bonds of that series.

The Sale Agreement and the Trust Indenture will provide that holders of such Bonds will have the right to tender their Bonds and have them purchased at a price equal to the principal amount thereof on each Anniversary Date and on the Fixed Rate Date. A Tender Agent will be appointed to facilitate the transfer of any Bonds delivered by holders exercising this right. Any holder

of Bonds wishing to have such Bonds purchased will be required to deliver such Bonds to the Tender Agent no earlier that thirty days preceding such purchase date and no later than fifteen days preceding such purchase date. All obligations of the Company with respect to the purchase of Bonds so tendered would be terminated following the Fixed Rate Date.

Under the Sale Agreement the Company will be obligated to pay amounts equal to the amounts to be paid by the Tender Agent pursuant to the Trust Indenture for the purchase of such Bonds so tendered, such amounts to be paid by the Company on the dates such payments by the Tender Agent are to be made; provided, however, that the obligation of the Company to make any such payment under the Sale Agreement would be reduced by the amount of any other moneys available therefor, including the proceeds of the sale of such Bonds by the Remarketing Agent.

A Remarketing Agent will be appointed who will, upon the delivery of such Bonds by holders to the Tender Agent for purchase, offer such Bonds for sale and use its best efforts to sell such Bonds. The Remarketing Agent will attempt to sell such Bonds at a price equal to the stated principal amount of such Bonds, at an annual interest rate no greater than 120% nor less than 80% of the index for the Rate Period established by the Indexing Agent. Under certain circumstances, Bonds may be remarketed at a discount (not to exceed 5% of the principal amount) or a premium.

Adjustable interest rate Bonds will be subject to optional redemption, at the direction of the Company, in whole at any time or in part from time to time, prior to and including the Fixed Rate Date, on each Anniversary Date at 100% of their principal amount or on each date six months after the Anniversary Date at 100% of their principal amount plus a premium. After the Fixed Rate Date, such Bonds will be subject to optional redemption, at the direction of the Company, in whole or in part at redemption prices for each series of such Bonds to be determined prior to the pricing of such series of Bonds.

In order to obtain a more favorable rating and improve marketability, the Company may, in connection with and in support of any one or more series of the Bonds, arrange for an irrevocable letter of credit from a bank ("Bank") in favor of the Trustee. Payments with respect to principal, premium, if any, interest and purchase obligations in connection with such series of the Bonds, coming due during the term of its supporting letter of credit, would be secured by, or payable from, funds drawn under the letter of credit. In order to induce the Bank to issue such letter of credit, the Company would enter into a reimbursement agreement ("Reimbursement Agreement") with the Bank pursuant to which the Company would agree to reimburse the Bank for all amounts drawn under its letter of credit pursuant to the terms specified in the Reimbursement Agreement.

It is anticipated that the Reimbursement Agreement would require the payment by the Company to the Bank of commitment fees and letter of credit fees, or similar fees, with respect to amounts available to be drawn under its letter of credit. Any such letter of credit may expire or be terminated prior to the maturity date of the series of Bonds which such letter of credit supports and, in connection with such expiration or termination, such series of Bonds may be made subject to mandatory redemption on or prior to the date of expiration or termination of such letter of credit. Provision may be made, as to any such series of Bonds, for extension of such letter of credit or for the replacement thereof, upon its expiration or termination, by another letter of credit from the same or a different Bank.

It is contemplated that the respective series of the Bonds will be sold by the Parish pursuant to arrangements with the Underwriter and/or by private placement in a negotiated sale or negotiated sales. The Company will not be party to such underwriting arrangement or sales; however, the Sale Agreement will provide that the terms of the Bonds, and their sale by the Parish, shall be satisfactory to the Company.

The Company has been advised that the annual interest rate on the Bonds, assuming an initial Rate Period of five years, can be expected at the time of issuance to be 6% to 7% lower than the rate on long-term (30 year) obligations of like tenor and comparable quality, interest on which is tax-exempt. Similarly, the annual interest rates on long-term tax-exempt obligations are expected at the time of issuance of the Bonds to be 1% to2% lower than the rates on obligations of like tenor and comparable quality, interest on which is fully subject to Federal income tax.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing could submit their views in writing by April 16, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, it ordered, and will receive a copy any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8614 Filed 3-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13803; 812-5730]

Mutual Investment Fund of Connecticut, Inc.; Application for an Order Exempting Applicant From the Provisions

March 1, 1984.

Notice is hereby given that Mutual Investment Fund of Connecticut, Inc. ("Applicant"), One Corporate Center, 20 Church Street, Hartford, Connecticut 06103, a open-end, diversified management investment company, filed an application on December 23, 1983, and an amendment thereto on February 3, 1984, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from the provisions of Section 30(a) of the Act and Rule 8b-16 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the rules thereunder for the complete text of the provisions thereof pursuant to and from which the exemption is being sought.

According to the application, Applicant was organized on August 14, 1956, under the laws of the State of Connecticut to provide a mutual fund investment medium to Connecticut savings banks. It is represented that each shareholder is thoroughly familiar with the Applicant's operations and investments and regularly receives detailed information concerning the nature and performance of the Applicant's investments. It is also represented that all of the Applicant's directors have been and are required by its corporate charter to be officers of

savings bank shareholders of the Applicant.

Applicant states that certain information currently provided to Applicant's shareholders in the annual reports under the Act (Form N–1R and the Form N–1 amendment) is already reported to the shareholders in other documents, which Applicant represents it will continue to provide its shareholders. On the other hand, Applicant submits that some types of information Applicant must provide in the annual reports required under the Act, such as the type of company the Applicant is, frequency of board meetings, method of filling vacancies on the board of Directors, and correspondence with shareholders, is information provided primarily for the Commission and need not be provided annually to the shareholders. Applicant maintains that all of its shareholders are aware of such information by virtue of their status as shareholders and that information is set forth in Applicant's bylaws, which may be amended only upon shareholders approval.

Applicant represents that, if the requested exemptions are granted, certain information not currently provided to shareholders in documents other than Applicant's annual reports under the Act will be provided to shareholders. The annual report to shareholders prepared by the investment adviser and custodian, for example, will include a statement of considerations that affected participation of broker-dealers in commissions or other compensation paid on portfolio transactions of the Applicant, a statement whether its code of ethics has been maintained and enforced, and a statement of any cross-ownership or circular ownership between the Applicant and any other company. The investment advisor and custodian's annual financial report will also state the amount of commissions and any other amounts paid to broker-dealers, the discount on redemption of the Applicant's securities, and whether any suspension of the right of redemption or delay in payment upon repurchase has occurred during the fiscal year. The investment advisor and custodian's monthly financial report will also be distributed to shareholders. The minutes of Applicant's annual meeting of shareholders will identify Applicant's fidelity bond insurer and state any pending legal proceedings against Applicant and any savings account or deposit established by Applicant with any institution other than the custodian. In addition, the minutes of Applicant's annual meeting of shareholders or a special report to shareholders will contain the results of a survey which will be undertaken each year to determine the relationships and transactions, if any, between directors, officers, and affiliated persons of Applicant and Applicant, its investment adviser or directors, officers, controlling persons or affiliated persons of the investment adviser, and its broker-dealers. Applicant represents that it will submit the various documents to be sent to shareholders to the Commission in lieu of the annual reports should such submission be desired.

Applicant states that it believes that an exemption from the annual reporting requirements of Section 30(a) of the Act and Rule 8b–16 thereunder will be in the public interest and consistent with the protection of investors and the purposes and policies of the Act. Applicant submits that its shareholders, all of which are financially sophisticated institutional investors, receive and will continue to receive all the relevant financial and investment information necessary to make an informed investment decision from sources other than the Form N–1R and the annual amendment to Form N–1. Applicant states that the Commission will continue to receive the information Applicant is required to provide under Sections 30(b)(1) and (2) of the Act, which will supply the Commission with an ongoing summary of the Applicant's activities and performance. Furthermore, Applicant undertakes that at such time as the Commission may develop a new form to replace Form N–1R, Applicant will file such form, provided, that any of Applicant's obligations to provide information under the instant exemptive order, if granted, will cease to the extent such obligations are fulfilled or removed by the Commission's adoption of such new form or the Applicant's filing of such new form. Finally, Applicant submits that compliance with the annual reporting requirements of the Act imposes an unnecessary and substantial burden, and that because of its peculiar ownership and management characteristics and state regulation, submission of such reports to the Commission serves no purpose not already accomplished.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 11, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8405 Filed 3–28–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13836; 812–5743]

Narragansett Capital Corp. et al.; Application for an Order Permitting Certain Proposed Transactions and Exempting Those Transactions From the Provisions

March 21, 1984.

Notice is hereby given that Narragansett Capital Corporation ("Narragansett"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company, and Arthur D. Little, Robert D. Manchester, William P. Lane, Gregory P. Barber, and Roger A. Vandenberg (collectively, the "Individual Applicants," collectively with Narragansett, "Applicants"), 40 Westminster Street, Providence, RI 02903, filed an application on January 12, 1984, and amendments thereto on February 15 and March 6, 1984, requesting an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder permitting certain proposed transactions, and pursuant to Section 17(b) of the Act exempting those transactions from the provisions of Section 17(a) of the Act. In those transactions, described more fully below, Narragansett First Fund ("First Fund"), a limited partnership controlled by Narragansett in which the Individual Applicants have financial interests, would participate with certain persons directly or indirectly affiliated with Narragansett. Those persons are affiliated indirectly with Narragansett because they are associated with portfolio companies affiliated with Narragansett or Narragansett Venture Corporation ("Venture Corporation"), a wholly-owned subsidiary of Narragansett, a registered investment company under the Act and a small business investment company under the Small Business Investment Company

Act of 1958, as amended. Some of those persons are directly affiliated with Narragansett as co-partners with Narragansett of a limited partnership, WBC Management Limited Partnership, which is the general partner of a portfolio company of Narragansett, WB Cable Associates Ltd. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of its relevant provisions.

Applicants state that by an application filed April 23, 1981, (as amended, the "Original Application"), and by an application for an amended order, filed July 14, 1982, (collectively, as amended, the "Application for Amendment"), they sought an order of the Commission pursuant to Sections 6(c), 17(b) and 57(c) of the Act exempting them from certain provisions of the Act with respect to the establishment and operation of First Fund and permitting certain proposed transactions involving First Fund pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder. On February 25, 1982, the Commission issued a notice (Investment Company Act Release No. 12248) of the filing of the Original Application. On April 2, 1982, the Commission issued an Order (Investment Company Act Release No. 12347) granting the relief sought by the Original Application (the "Original Order"). On September 22, 1982, the Commission issued an order (Investment Company Act Release No. 12664) amending the Original Order (the "Amended Order") and granting the relief sought by the Application for Amendment. Applicants state that since the filing of the Original Application and the Application for Amendment, Narragansett received commitments from a number of institutional investors for investments in First Fund, and in closings occurring from December, 1982 through February, 1983, First Fund was organized under a Limited Partnership Agreement (as amended, the "Partnership Agreement") with 37 Limited Partners, including Narragansett (the "Limited Partners") committing capital contributions in the aggregate amount of $74,650,000 in addition to the General Partner's capital contribution of $500,000.

According to the application, Narragansett is the sole general partner and the Individual Applicants are the limited partners of Narragansett Management Partners ("NMP"), a limited partnership that is the sole general partner of First Fund. Monroe M. Rifkin ("Rifkin"), Charles R. Morris III ("Morris"), Bruce Paul ("Paul"), Cambridge Venture Partners ("Cambridge") and Rifcam Limited Partnership ("Rifcam"), a limited partnership of which Rifkin is the general partner and Cambridge is the limited partner, are affiliated persons (pursuant to Section 2(a)(3) of the Act) of certain portfolio companies of Narragansett and Venture Corporation (the "Portfolio Companies") because each owns more than 5% of the voting securities of one or more of the Portfolio Companies. Rifkin, Morris and Roger Leonard ("Leonard") are "affiliated persons" of Narragansett directly because each is a co-partner with Narragansett in WBC Management Limited, a limited partnership that is the general partner of a portfolio company of Narragansett, WB Cable Associates Ltd. Rifkin, Morris, Paul, Leonard, Cambridge and Rifcam (the "Rifkin Group") are assumed to be "affiliated persons" of each other. The Portfolio Companies are in turn "affiliated persons" of Narragansett and Venture Corporation because either Narragansett or Venture Corporation owns more than 5% of the voting securities of the Portfolio Companies. Rifkin Associates, Inc. ("Associates") is a cable television management company owned by Rifkin, which manages the Portfolio Companies for a fee based on revenues and is assumed to be an "affiliated person" of Rifkin. The Individual Applicants, First Fund, and Venture Corporation are all affilicates of Narragansett; Rifkin, Morris, Paul, Cambridge and Rifcam are affiliated persons of one or more of the Portfolio Companies because they each own more than 5% of the voting securities of one or more of the Portfolio Companies. Applicants also assert that none of Rifkin, Morris, Paul, Cambridge, Rifcam or Associates are affiliated persons of Narragansett, Venture Corporation or any other person affiliated with Narragansett or Venture Corporation, except for the Portfolio Companies.

Applicants asset that no Individual Applicant nor any other person affiliated with Narragansett or Venture Corporation that would be included in items (A) through (E) of Paragraph (d)(5)(i) of Rule 17d(i) has any financial interest, direct or indirect, in any person who is, was or will be a participant in the proposed transactions except for the financial interests of the Individual Applicants in Narragansett and in the First Fund through NMP. None of the Individual Applicants nor any of the other persons who are affiliated with Narragansett have any financial interest, direct or indirect, in Rifkin, Morris, Paul, Leonard, Rifcam, Cambridge, Associates or the other persons associated with Rifkin or in any of the Portfolio Companies, except through their financial interests in Narragansett or Venture Corporation.

The application states that the proposed transactions involve the sale of FNI Communications Company ("FNI"), the owner and operator of four cable television systems operating through 13 franchises located within 90 miles of Nashville, Tennessee, and serving over 25,000 basic subscribers. FNI is presently 100% owned by Sidney Sheldon. Associates conducted a due diligence review of the properties and in behalf of an entity to be controlled by Rifkin and Narragansett submitted a bid to purchase the assets of FNI for $24,500,000 in cash, which was accepted by the seller on December 23, 1983. The specific terms of the proposed sale of FNI involve many separate transactions between the affiliated persons described above, and are set forth in detail in the application.

According to the application, it is presently planned that the assets of FNI will be purchased under an Asset Purchase Agreement with FNI (the "Purchase Agreement") by an operating limited partnership ("Operating Partnership No. 1"), of which a wholly owned subsidiary of Narragansett (the "Subsidiary") and Rifkin are the limited partners and a Tennessee limited partnership ("Management Partnership No. 1") is the sole general partner. FNI Management Corp. ("General Partner No. 1") and RICAP Company ("General Partner No. 2") are the general partners of Management Partnership No. 1. Rifkin and the Subsidiary each own 50% of the voting stock of General Partner No. 1 and General Partner No. 2, as well as shares of non-voting stock of General Partner No. 1.

Applicants state that if the order requested by the present application is received before the closing date under the Purchase Agreement, Narragansett will, prior to the closing, transfer to First Fund at its cost all of the stock of the Subsidiary and a subordinated note of Operating Partnership No. 1 in the amount of $4,200,000 (the "Subordinated Note No. 1"). This transfer would terminate Narragansett's interest in Operating Partnership No. 1, Management Partnership No. 1 and both General Partner No. 1 and No. 2. If that order is not received prior to the closing date, Narragansett will not transfer the stock of the Subsidiary or the Subordinated Note No. 1 to First Fund,

will make the subordinated loan to and the limited partnership investments in Operating Partnership No. 1 or No. 2, as the case may be, planned for First Fund, and First Fund will not acquire any interest in the Subsidiary or any other entity involved in the acquisition of FNI initially or thereafter.

According to the application, a financing plan which is connected with the proposed sale of FNI contemplates raising between $6,000,000 and $7,000,000 through a private offering through an investment banker of limited partnership interests in another operating limited partnership ("Operating Partnership No. 2"). If the placement of limited partnership interests in Operating Partnership No. 2 is completed prior to the closing date under the Purchase Agreement, the rights of Operating Partnership No. 1 under the Purchase Agreement will be assigned to Operating Partnership No. 2, which will make the purchase. If the placement is completed after the closing date, the assets purchased by Operating Partnership No. 1 will be transferred at their original cost to Operating Partnership No. 2 subject to liabilities, as soon as the placement is completed.

Applicants state that the organizational structure of Operating Partnership No. 2 would be similar to that of Operating Partnership No. 1. The general partner of Operating Partnership No. 2 will be a Tennessee limited partnership (Management Partnership No. 2) of which Rifkin and the Subsidiary will be the limited partners. Management Partnership No. 2 will have two corporations as its general partners (GP No. 1 and GP No. 2), the voting stock of each of which will be owned equally by Rifkin and the Subsidiary. In order to comply with certain Federal income tax requirements Rifkin and the Subsidiary will also purchase non-voting stock of one of the general partners (GP No. 1) in an amount sufficient to provide such general partner with a net worth equal to approximately 10% of the capital contributed by limited partners to Operating Partnership No. 2. The financing of Operating Partnership No. 2 in addition to the $6,000,000 to $7,000,000 of limited partnership equity would consist of an $18,000,000 secured revolving line of credit or term loan from a non-affiliated bank and $1,000,000 to $2,000,000 of subordinated debt. In the event the order requested by the application is received prior to the closing date under the Purchase Agreement Narragansett will transfer at its cost to First Fund the subordinated note of Operating Partnership No. 2 (the "Subordinated Note No. 2").

Applicants assert that the assignment of its rights under the Purchase Agreement or the sale of the assets acquired from FNI by Operating Partnership No. 1 to Operating Partnership No. 2 would substantially benefit First Fund since upon the admission of the new limited partners to Operating Partnership No. 2, First Fund will be repaid a substantial part of the equity investment in the Subsidiary, while retaining a substantial portion of the equity interest in Operating Partnership No. 2 through its ownership interest in Management Partnership No. 2. Upon closing under the Purchase Agreement, Associates will receive a fee of $100,000 from Operating Partnership No. 1 or No. 2 as compensation for finding and investigating this investment opportunity. Associates will operate the Operating Partnership No. 1 or Operating Partnership No. 2 as the case may be, under a management contract pursuant to which Associates will receive an annual fee equal to approximately 5% of gross operating revenues.

According to the application, the Purchase Agreement between Operating Partnership No. 1 and FNI is being negotiated. Among other things it contemplates placing $1,000,000 is escrow to be surrendered to FNI as liquidated damages should a closing not take place due to the failure of performance on the part of Operating Partnership No. 1. Should the escrow fund be surrendered its cost to Narragansett and the Rifkin Group would be $763,000 and $125,000, respectively. If the order requested is received before the closing under the Purchase Agreement, Narragansett's obligation with respect to the escrow fund will be assumed by First Fund, and the Subordinated Note No. 1 or Subordinated Note No. 2, as the case may be, issued to Narragansett by Operating Partnership No. 1 will be held by First Fund, which will accordingly bear that cost.

Applicants assert that the transactions involving First Fund and the Rifkin Group described herein would come within the exemptions granted by Rule 17a–6 and Rule 17d–1(d)(5) were it not for the financial interests of the Individual Applicants as limited partners of NMP. These financial interests are the same as those contemplated at the time of the issuance of the Amended Order. The participation of the Individual Applicants in the profits and losses of First Fund through their limited partnership interests in NMP was recognized at the time of the issuance of the Amended Order and the relationship between the Individual Applicants and the shareholders of Narragansett has not changed. In the Amended Order the Commission recognized that the requirement of approval by the "Required Majority" of the Board of Directors of Narragansett (as defined in Section 57(c) of the Act) would protect the interests of the Narragansett shareholders in the transactions contemplated by the Application for Amendment. Applicants contend that there is no reason to apply a different standard to the transactions contemplated hereby, which will not be consummated unless they receive such approval after full disclosure of the interests of all parties, and the financial interests of the Individual Applicants in NMP and hence in First Fund are well known to the Narragansett Directors.

Applicants represent that none of the Individual Applicants nor any other persons so affiliated with Narragansett or Venture Corporation that they would be included in items (A) through (E) of subparagraph (i) of paragraph (5) of Rule 17d–1(d) will have a direct or indirect financial interest in any person (except for First Fund and Narragansett) who is, was or will be a participant in the proposed transactions. Accordingly, Applicants assert that the Individual Applicants would have no incentive to benefit the Rifkin Group as opposed to Narragansett or First Fund.

Applicants assert that denying the requested exemptive relief would deprive the Narragansett stockholders of the benefits that would flow from participation by First Fund in transactions involving Rifkin and the Rifkin Group. The experience that Narragansett has had with Rifkin and the Rifkin Group through investments made by Narragansett or Venture Corporation will be valuable in evaluating the proposed investment by First Fund. The investments made by Narragansett and Venture Corporation in the Portfolio Companies in participation with the Rifkin Group were independent of the proposed transactions. The proposed transactions could not be made by Venture Corporation because FNI is not a small business concern (as a small business investment company Venture Corporation can only invest in small business concerns). Nor could they be made by Narragansett because they involve a leveraged buyout and the First Fund Limited Partnership Agreement prohibits Narragansett (without the Consent of the Limited Partners) from

engaging directly in such a buyout until First Fund has made investments aggregating 90% of the total capital contributions of Limited Partners to the First Fund (90% of total capital contributions is $87,185,000 and investments to date total $14,225,000). Applicants assert that the exemptive relief requested will advance the time at which First Fund shall have made investments aggregating 90% of the total capital contributions of Limited Partners to First Fund, at which time Narragansett would be permitted for the first time to engage directly or indirectly through other partnerships or corporations in leveraged buyouts of non-small business concerns, activities substantially the same as those of First Fund, which will accrue to the benefit of the Narragansett shareholders, since Narragansett will not only be free to engage directly in leveraged buyouts of non-small business concerns, but it will also be able to reduce its expenses by organizing other venture capital partnerships and allocating a portion of its expenses to those other partnerships.

Applicants represent that the First Fund Limited Partnership Agreement anticipated the participation of First Fund in transactions with persons such as the Rifkin Group, who are affiliated with Narragansett, and provided for protection for the interests of the Limited Partners. Section 4.8 of the Limited Partnership Agreement expressly authorizes the purchase by First Fund of securities of an entity in which an "affiliated person" (as defined in Article 1 of the Partnership Agreement) is an officer, director or shareholder, provided the General Partner obtains any required regulatory approval, a favorable recommendation of the Advisory Board and Consent of the Limited Partners. The term "affiliated person" as defined in the Partnership Agreement includes Rifkin, Paul, Cambridge and Rifcam because each owns 10% or more of the stock of a company controlled by Narragansett. The "Advisory Board" consists of seven members, four of whom are elected by the Limited Partners as representatives of the Limited Partners and shall not be "affililated persons" (as defined in Section 2(a)(3) of the Act) of Narragansett or the General Partner, and three of whom are designated by the General Partner.

"Consent of the Limited Partners" means the consent of Limited Partners whose total percentage interest represents at least 60% of the aggregate percentage interests held by the Limited Partners, who are sophisticated institutional investors. Hence if the requested order is issued by the Commission, the proposed transactions would still require a favorable recommendation by the Advisory Board, which is not controlled by Narragansett nor the General Partner, and written consent or approval by Limited Partners owning at least 60% of the total limited partnership interests. Applicants assert that this will insure that the transaction will be reasonable and fair and will not involve any overreaching by any person. Narragansett, which owns a 5.358339% interest as a Limited Partner, would grant its consent and its interest would be included in the minimum percentage.

Applicants assert that in making their determinations the Directors of Narragansett, the members of the Advisory Board and the Limited Partners will be well advised of the financial interest of the Individual Applicants in NMP and will have those interests in mind in approving the particular transaction. Narragansett as the general partner of NMP, which is the General Partner of First Fund and its directors will have a fiduciary relationship to the Limited Partners of the First Fund as well as to the Narragansett stockholders. Applicants assert that any investments of First Fund approved by a Required Majority of the Board of Directors of Narragansett will be considered from the point of view of the benefits to the Narragansett stockholders and not with a view to the benefits accruing to the Rifkin Group.

Applicants assert that, as stated in the Original Application and the Application for Amendment, the relationships established among Narragansett, the Individual Applicants and First Fund is designed to achieve a balance between Narragansett's shareholders and the Individual Applicants that is consistent with the provisions, policies and purposes of the Act and a participation that is not different from or less advantageous than that of other participants as is required by Rule 17d–1 under the Act. There is no change in these relationships in the transactions described herein. Applicants also assert that the proposed transactions are consistent with the policy of Narragansett as recited in its registration statement and reports filed with the Commission. They state that the investment policies of Narragansett currently in effect are set forth in Exhibit E to the proxy statement filed as Exhibit A to the Original Application and that none of these policies in any way restrict Narragansett or any entity controlled by Narragansett, such as First Fund, from entering into the proposed transaction with the Rifkin Group.

Applicants state that Narragansett and the Individual Applicants will participate in the success of the investment in FNI by First Fund through their percentage interest in NMP as described in the Application for Amendment which was approved by the Amended Order. Narragansett will also participate as a Limited Partners of First Fund. The proposed transactions will make no change in those relationships. The participation by the Rifkin Group in the transactions described herein may be different from that of First Fund and hence from the indirect participation by Narragansett and the Limited Partners. However, Applicants assert that these differences will be negotiated at arms-length by the management of Narragansett and will be reasonable and fair under the circumstances and in the light of the objectives of the parties or they would not be approved by the "Required Majority" of the Narragansett Board of Directors, the Advisory Board of First Fund and limited partners owning at least 60% of the total limited partners' percentage interest in First Fund as is required for the Consent of the Limited Partners. In each case there will be full disclosure of all of the pertinent facts, including the financial interest of the Individual Applicants in NMP. There will be no financial interest of the Individual Applicants or other persons affiliated with Narragansett, other than the Rifkin Group, in any parties which participate in the transactions described herein, except for Narragansett and First Fund. Applicants therefore assert the participation by Narragansett in the proposed transactions is not on a bais less advantageous than that of the Individual Applicants or the Limited Partners.

Notice is further given that any interest person wishing to request a hearing on the application may, not later than April 12, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the report should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8407 Filed 3-28-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 13838; 812-5643]

Resources Life Insurance Company, et al.; Application for an Order of Exemption

March 21, 1984.

Notice is hereby given that Resources Life Insurance Company ("RLICO"), One Bridge Plaza, Fort Lee, New Jersey 07024, Resources Variable Account I, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust and established by RLICO in connection with the proposed issuance of certain variable annuity contracts ("Account"), and Integrated Capital Services, Inc. (the principal underwriter for the contracts) (collectively, "Applicants") filed an application on September 12, 1983 and amendments thereto on March 9 and March 16, 1984 for an order pursuant to section 6(c) of the Act granting exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein in support of the requested relief pursuant to section 6(c), which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants request exemption from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to deduct from contract values any premium taxes imposed thereon and to impose a guaranteed records maintenance charge of $30 upon December 31st of each calendar year. Applicants represent that this latter charge is not designed to exceed actual expenses incurred and contains no element of profit.

Applicants also request relief to the extent necessary to deduct a mortality and expense risk charge from the Account at an effective annual rate of 1.40% of the value of the assets of the Account and represent that this charge is reasonable in amount as determined by industry practice with respect to comparable annuity products and that the basis for this representation is reflected in documents on file with RLICO. Applicants will impose in some cases a sales load upon partial and total contract surrenders. Applicants acknowledge that this charge may be insufficient to cover all costs of distributing the contract and that any shortfall would be absorbed by the general account of RLICO, which may include profits derived from the mortality and expense risk charge. In this regard RLICO represents that it has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and contractowners, and the Account represents that it will invest only in funds which undertake to have a board with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 12, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8410 Filed 3-28-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 13840; 812-5742]

Travelers Equities Fund, Inc., et al.; Application for Order Exempting Proposed Transactions and Permitting Proposed Transactions

March 22, 1984.

Notice is hereby given that Keystone Custodian Funds, Inc. ("Keystone"), One Tower Square, Hartford, Connecticut 06115, the corporate trustee of Keystone Custodian Fund, Series K-2 ("Series K-2"), Series K-2 and Travelers Equities Fund, Inc. ("TEFI") ("Applicants"), both open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), filed an application on January 11, 1984, and an amendment thereto on February 24, 1984, for an order of the Commission (1) pursuant to Sections 6(c) and 17(b) of the Act, exempting certain transactions incident to the reorganization of TEFI and Series K-2 from the provisions of Section 17(a), 19(b), and 22(c) of the Act and Rules 19b-1 and 22c-1 thereunder, and (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the proposed reorganization. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions cited in the application.

Applicants state that TEFI was organized in 1968 as a Maryland corporation the investment objective of which is primarily the long-term appreciation of capital and secondarily the growth of income without emphasis on obtaining short-term trading profits. It is stated that, as of December 31, 1983, TEFI had net assets of approximately $49.3 million and approximately 5,000 shareholders. Applicants state further that Series K-2 was organized in 1935 as a Pennsylvania unincorporated common law trust the investment objective of which is capital growth. Applicants state that, as of December 31, 1983, Series K-2 has net assets of approximately $141.9 million and approximately 22,000 shareholders.

Applicants propose that Series K-2 acquire all of the assets of TEFI in the manner set forth in an Agreement and Plan of Reorganization (the "Agreement") between Keystone on behalf of Series K-2 and TEFI. Applicants state that, under the terms of the Agreement, on a closing date (the "Closing Date"), Series K-2 will acquire all of the assets of TEFI in exchange for shares of Series K-2 and the assumption of all of the liabilities of TEFI by Series K-2. Applicants represent that each TEFI shareholder will be entitled to receive that proportion of Series K-2 shares to be received by TEFI that the number of TEFI shares owned by such shareholder bears to the number of TEFI shares outstanding on the date of exchange. Applicants state that full shares and, to the extent necessary, a fractional share of Series K-2 equal in aggregate net asset value to the aggregate net asset value of TEFI, adjusted as described below, are to be issued by Series K-2 in exchange for the net assets of TEFI. The value of the exchanged Series K-2 shares and TEFI's assets acquired by Series K-2 will be determined using the valuation procedures applicable to the net assets

of Series K–2 as set forth in its trust agreement and then current prospectus.

Applicants state that Keystone has agreed to provide, at no cost to the shareholders of TEFI, account insurance to all individual shareholders of TEFI on the Closing Date who continue to maintain their investments and reinvest all dividends and capital gains distribution on Series K–2 shares which they receive in connection with the reorganization. The insurance is intended to guarantee that the value of former TEFI shareholders' Series K–2 accounts on the date of death will be no less than the value of their TEFI accounts on the Closing Date, reduced by the proportionate amounts of any redemptions in their Series K–2 accounts. Applicants state that they deem this insurance arrangement not to require exemptive relief under Section 17(d) of the Act and that therefore they are seeking no such relief in their application.

Applicants state that TEFI and Series K–2 each have agreed to declare a dividend to their respective shareholders prior to consummation of the reorganization of all of their respective undistributed investment company taxable income and any net realized capital gain (to the extent not offset by a capital loss carryover) through the Closing Date. Applicants state that if not making such a distribution by Series K–2 would not materially adversely affect shareholders of TEFI in the reorganization, then any such net realized capital gain will not be distributed by Series K–2.

As a result of the reorganization, TEFI shareholders will be allocated a portion of the net unrealized appreciation in the portfolio of Series K–2. Accordingly, for purposes of Series K–2's acquisition of TEFI's assets, Applicants will make an adjustment to compensate TEFI shareholders for any additional capital gains tax payable after the reorganization resulting from Series K–2's realization of unrealized appreciation in its portfolio attributable to periods before the reorganization. Applicants state that such adjustment will be made according to the Agreement by calculating the "opportunity cost" to shareholders of an assumed amount of tax payable on a portion of the change in unrealized appreciation experienced by shareholders. Applicants state that the calculated opportunity cost will be reflected in the number of shares issued by Series K–2 for the acquisition of the net assets of TEFI. Applicants state further that, as of December 31, 1983, TEFI had $1,097,000 of net unrealized appreciation on investment and Series K–2 had $35,374,000 of net unrealized appreciation on investments. Applicants submit that, if the proposed transaction had occurred on December 31, 1983, the amount of the adjustment would have been $252,558 or approximately plus $.055 per share to TEFI and less $.013 per share to Series K–2.

Applicants state that Series K–2 will assume all liabilities of TEFI in connection with the acquisition of its assets and that Series K–2 will bear the fees and expenses incurred by it in connection with the reorganization. The Travelers Corporation ("Travelers") will bear the fees and expenses incurred by TEFI in connection with the reorganization, except the expenses of independent counsel to the non-interested directors of TEFI. It is expected that the reorganization will be submitted for approval by the holders of two-thirds of the outstanding shares of TEFI and that the acquisition, if approved, will be consummated shortly thereafter.

Applicants state that Travelers Investment Management Company is investment adviser for TEFI. In addition, approximately 35 percent of the outstanding shares of TEFI are beneficially owned by Travelers. The Massachusetts Companies, Inc. ("MassCo"), also a wholly-owned subsidiary of Travelers, beneficially owns 28 percent of the outstanding shares of TEFI. Keystone, a wholly-owned subsidiary of Travelers, is the corporate trustee of Series K–2. Applicants submit that they may be deemed to be affiliated persons of each other for purposes of the prohibitions of Sections 17(a) (1) and (2) of the Act. In addition, the proposed reorganization may be deemed to involve a joint enterprise or other joint arrangement for purposes of Section 17(d) of the Act and Rule 17d–1 thereunder.

Applicants state that TEFI and Series K–2 have each made a distribution of realized capital gains to shareholders following their most recent fiscal year ends. The Agreement provides that TEFI and Series K–2 will distribute to shareholders prior to the Closing Date any investment company taxable income and net realized capital gains. Applicants submit that, to the extent that such distribution involves the distribution of capital gains more often than once every twelve months, it would be prohibited by Section 19(b) and Rule 19b–1 thereunder.

The Agreement provides that shares of Series K–2 will be issued on the Closing Date at their then net asset value in exchange for assets of TEFI, subject to the adjustment based on the amount of net unrealized appreciation in the portfolios of TEFI and Series K–2. Applicants submit that the issuance of shares of Series K–2 in the manner provided by the Agreement may be deemed to violate the provisions of Section 22(c) of the Act and Rule 22c–1 thereunder.

Applicants assert that the terms of the proposed reorganization are consistent with the standards of Sections 6(c) and 17(b) of the Act and Rule 17d–1 under the Act. The Board of Directors of TEFI, including a majority of the directors who are not interested persons of TEFI or Series K–2, has approved the proposed reorganization and recommended that it be submitted to TEFI's shareholders for approval. Applicants assert further that the Board of Directors of Keystone including those who have in various other contexts performed the functions of independent directors of Series K–2, has approved the proposed reorganization. The Boards of Directors of TEFI and Keystone have further determined that an adjustment to reflect the difference in the amount of unrealized capital appreciation in the portfolios of TEFI and Series K–2 is appropriate.

Applicants assert that, in connection with its approval of the proposed reorganization and its decision to recommend the transaction to shareholders for approval, the Board of Directors of TEFI also considered the continued viability of TEFI. The directors were concerned with the continuing net redemptions experienced by TEFI, with its small size and sales load structure, and with TEFI's continued ability to obtain high-quality management services without increases in the costs of such services to shareholders. The Board of Directors also considered the fact that the reorganization could result in higher expenses to TEFI shareholders. However, Applicants submit that shareholders of TEFI will become shareholders of a large and growing fund with an experienced, well-respected investment manager, improved investment performance and an active, viable distribution program. Applicants assert that shareholders of TEFI can also be expected to benefit indirectly from the greater diversification of security holdings possible in a portfolio of Series K–2's size.

Applicants represent further that the advantages of the proposed reorganization to shareholders of TEFI outweigh any disadvantage in the structural differences between TEFI and

Series K–2. Applicants state that, whereas TEFI shareholders have one vote per share on all matters on which shareholders vote under Maryland law or the Act, Series K–2 shareholders have one vote per share only on certain matters. Applicants state that, although Series K–2 shareholders are not called upon to approve the continuance of Keystone as corporate trustee, Series K–2 shareholders have the voting rights provided by Sections 13(b), 16(c) and 32(a) of the Act.

Applicants assert that the proposed reorganization is in the interest of Series K–2 shareholders because despite the absence of immediate monetary savings, the increase in Series K–2's net assets resulting from the reorganization could possibly reduce management fees and permit greater diversification of investment. Applicants state that Series K–2 will increase its assets without incuring the transaction costs incident to investing a comparable amount of cash.

Applicants assert that the proposed reorganization is consistent with the policies of Series K–2 and TEFI. Applicants state that the primary investment objective of each fund is capital growth and that the investment policies and restrictions of Series K–2 and TEFI are similar. Applicants represent that securities in the investment portfolio of TEFI are suitable investments for Series K–2. Applicants represent further that no realignment of TEFI's portfolio will occur prior to the reorganization and TEFI's shareholders will not incur any brokerage expense in connection with the reorganization. Applicants represent that securities received by Series K–2 as a result of the reorganization will be held for investment until they are sold in the ordinary course of portfolio management for investment purposes.

Applicants state that compliance with Rule 17a–8 under the Act would exempt them from the prohibitions of Section 17(a) of the Act if the possibility of such compliance were not negated by Travelers' and MassCo's ownership of TEFI shares and Travelers' and Keystone's possible status as separate investment advisers. Nevertheless, the Boards of Directors of TEFI and Keystone have made the determinations required by Rule 17a–8 under the Act. Applicants assert that Travelers will vote its TEFI shares in the same proportion that the publicly-held TEFI shares are voted on the transaction.

Applicants submit that granting the requested relief from Section 22(c) of the Act and Rule 22c–1 thereunder is consistent with the exemptive standards of Section 6(c) of the Act. Applicants submit that if Rule 17a–8 under the Act were available to them, exemptive relief from the provisions of Rule 22c–1 under the Act would not be required because Rule 22c–1(a)(2) under the Act provides that Rule 22c–1 shall not prevent any registered investment company from adjusting the price of its redeemable securities sold pursuant to a merger, consolidation or purchase of substantially all of the assets of a company, which meets the conditions specified in Rule 17a–8 under the Act. Applicants submit that they have met the conditions of Rule 17a–8 under the Act and that granting the requested relief from Section 22(c) of the Act and Rule 22c–1 thereunder is appropriate.

Applicants assert that granting the requested exemption from the provisions of Section 19(b) of the Act and Rule 19b–1 thereunder is also appropriate under the exemptive standards of Section 6(c) of the Act. Applicants state that Section 19(b) of the Act is designed to prevent realized capital gains from being distributed to shareholders in a manner indicating such capital gains distributions to be part of regular dividends from investment income. Applicants propose to distribute any investment company taxable income and realized capital gains prior to the Closing Date. Applicants represent that the distributions would be made in connection with the reorganization for tax and accounting purposes. Accordingly, Applicants submit that the distribution of any net realized capital gains to TEFI and Series K–2 shareholders prior to the reorganization will not result in any of the abuses addressed by Section 19(b) of the Act and Rule 19b–1 thereunder.

Applicants assert that the terms of the proposed reorganization are fair and reasonable and do not involve overreaching on the part of any person concerned and that the proposed reorganization is consistent with the policies recited in Applicants' respective registration statements and reports filed under the Act and with the general purposes of the Act. Applicants further submit that the participation of TEFI and Series K–2 in the proposed transaction is consistent with the provisions, policies and purposes of the Act and is not on a basis different from or less advantageous than that of other participants.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 16, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8408 Filed 3–28–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13837; (812–5842)]

Providence Life Insurance Company, et al.; Application for an Order of Exemption

March 21, 1984.

Notice is hereby given that Providence Life Insurance Company ("PLICO"), One Bridge Plaza, Fort Lee New Jersey 07024, Providence Variable Account I, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust and established by PLICO in connection with the proposed issuance of certain variable annuity contracts ("Account"), and Integrated Capital Services, Inc. (the principal underwriter for the contracts) (collectively, "Applicants") filed an application on September 12, 1983 and amendments thereto on March 9 and March 16, 1984 for an order pursuant to section 6(c) of the Act granting exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein in support of the requested relief pursuant to section 6(c), which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants request exemption from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to deduct from contract values any premium taxes imposed thereon and to impose a guaranteed records maintenance charge of $30 upon December 31st of each calendar year. Applicants represent that this latter charge is not designed to exceed actual expenses incurred and contains no element of profit.

Applicants also request relief to the extent necessary to deduct a mortality and expense risk charge from the Account at an effective annual rate of 1.40% of the value of the assets of the Account and represent that this charge is reasonable in amount as determined by industry practice with respect to comparable annuity products and that the basis for this representation is reflected in documents on file with PLICO. Applicants will impose in some cases a sales load upon partial and total contract surrenders. Applicants acknowledge that this charge may be insufficient to cover all costs of distributing the contract and that any shortfall would be absorbed by the general account of PLICO, which may include profits derived from the mortality and expense risk charge. In this regard PLICO represents that it has concluded that there is reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and contractowners, and the Account represents that it will invest only in funds undertaken to have a board with a disinterested majority formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 12, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8409 Filed 3–28–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20777; File No. SR–PSE–84–5]

Filing of Proposed Rule Change by Pacific Stock Exchange, Inc.

March 21, 1984.

Pursuant to Section (19)(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 8, 1984, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange proposes to amend its listing fee schedule by adopting a refund policy under which the Exchange would return all but 25% of the listing fee paid by an issuer that withdraws an original or additional listing application before the Exchange has either approved or disapproved it. The amount retained would be applied as partial payment for the listing fee of a new application submitted within one year to list the same issue. On March 14, 1984, the PSE filed with the Commission Amendment No. 1 to SR–PSE–84–5 which states that the Exchange will refund all but 25% of the fee paid for a listing application that has been disapproved by the Exchange. In addition, Amendment No. 1 provides that no refund will be made on a listing application that is withdrawn after the Exchange has approved it. According to the Exchange, the proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among issuers and other persons using its facilities.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR–PSE–84–5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public inaccordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8408 Filed 3–28–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20778; SR–Phlx–84–4]

Philadelphia Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

March 21, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 23, 1984, the Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The rule change would: (1) Fix the cut-off time for options exercises at 5:30 p.m. (New York time) on the last business day before expiration; (2) delete a clause providing an exception from the established cut-off time for options in an account maintained for another member and including only positions of the latter's customers; (3) drop certain explanatory matter relating to the rules of the Options Clearing Corporation ("OCC"); (4) add a provision requiring time-stamping of exercise instructions; and (5) add a reference to notices not to exercise options which otherwise would be automatically exercised under OCC Rule 805. Phlx states that the purpose of the proposed rule change is to take account of OCC rules calling for automatic exercise in certain cases. The proposed rule also shortens the Phlx exercise cut-off rule, adopting language similar to that in the current Chicago

Board Options Exchange ("CBOE") rule and that of the American Stock Exchange, Inc. ("Amex").[1]

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-Phlx-84-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that insofar as the proposal would alter the existing Phlx rule, it is substantially the same as the CBOE and Amex rules recently published for public comment, considered and approved by the Commission. In light of this fact, and to reduce the potential for confusion, accelerated approval is appropriate.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

[1] *See* CBOE Rule 11.1(b) and Amex Rule 960(b). Proposed changes to these rules were approved by the Commission in CBOE-83-20, Securities Exchange Act Release No. 20172, September 12, 1983, 48 FR 42889, September 20, 1983; and SR-Amex-83-25, Securities Exchange Act Release No. 20338, November 1, 1983, 48 FR 51186, November 7, 1983. The Amex rule change was granted accelerated approval on the basis of the CBOE filing.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8411 Filed 3-28-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-023]

Acceptance of Plan Review, Inspections and Examinations by the American Bureau of Shipping (ABS) on Behalf of the United States Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Notice of public comment period.

SUMMARY: The Coast Guard is requesting public comment on the implementation of certain delegations by the Coast Guard to the American Bureau of Shipping regarding vessel plan review, inspections and admeasurement.

DATE: Comments must be received prior to April 30, 1984.

ADDRESS: Comments may be mailed to Commandant (G-CMC/44), U.S. Coast Guard, Washington, D.C. 20593.

SUPPLEMENTARY INFORMATION:

Discussion

In 1982, the Coast Guard was given authority by Congress to delegate certain plan review and vessel inspection and examination functions to the American Bureau of Shipping (ABS), a private sector, non-profit classification society. There followed several memorandums of understanding (MOU) between the Coast Guard and the ABS. One MOU concerning plan review and vessel inspection was signed on April 27, 1982 and published in the **Federal Register** on June 10, 1982 (47 FR 25235). Implementing guidance for this MOU is contained in Navigation and Vessel Inspection Circular (NVC) 10-82. Another MOU addressed ABS performing certain admeasurement functions. That MOU was signed on February 1, 1982 and published in the **Federal Register** of Apirl 1, 1982 (47 FR 13947). Navigation and Vessel Inspection Circular 1-82 gives guidance on implementing this MOU.

The MOU of April 27, 1982 sought to reduce the duplication in plan review and vessel examination suggested to exist between the statutorily mandated safety inspections of the Coast Guard and the classification surveys of the ABS. This MOU was limited to new construction issues and was made optional because of service costs associated with owner selection of the ABS alternative. These delegations do not relieve the Coast Guard of its statutory responsibility for commercial vessel safety. To carry out these responsibilities the Coast Guard has maintained oversight of those activities delegated to ABS and is the final authority in administrative appeal. The benefits to be gained by this action are:

Shorten the time required to review certain vessel construction plans.

Simplify inspection procedures.

Allow better utilization of Coast Guard inspection personnel.

The MOU of February 1, 1982, provides for Coast Guard acceptance of certain ABS admeasurement certificates. Because of the ABS cost issues, this MOU did not make admeasurement by ABS mandatory but provides vessel owners with an alternative to Coast Guard admeasurement. Use of ABS admeasurement services will also reduce the Coast Guard admeasurement workload.

To assess the affects of these procedures and to report to Congress, the Coast Guard is seeking comments from industry and the general public. In addition to general comments, we wish that the following questions be addressed. Have these new procedures led to more efficient plan review and scheduling of inspections? Have there been any undue problems in implementing these procedures such as difficulties in appeals or interpretations? Do you favor expansion of the MOU to include Coast Guard acceptance of ABS' work product in additional areas of new construction activity, such as structural fire protection? What experience have you had with ABS admeasurement?

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard Chief, Office of Merchants Marine Safety.

[FR Doc. 84-8431 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Advisory Committee; Reestablishment; National Airspace Review

Announcement. Notice is given of the reestablishment of the National Airspace Review Advisory Committee. This Advisory Committee stems from informal meetings held by the Federal Aviation Administration (FAA) in May of 1981 on a proposed review of airspace and procedural aspects of the National Airspace System. The Administrator of

the Federal Aviation Administration is the sponsor of the Committee. The membership will include experts from the Government, the aviation industry, and those representing the viewpoints of other elements of the aviation community. Non-Federal members of the Committee do not become Government employees. They serve without compensation and at their own expense. The Committee will make recommendations to the FAA on airspace and procedural areas identified in the NAR Plan to make the system more effective and efficient for all airspace users.

Public Interest. The Secretary of Transportation has determined that the reestablishment and continued use of the Committee is necessary in the public interest in connection with duties imposed on the FAA by law. Meetings of the Committee will be open to the public except as provided for in Section 10(d) of the Advisory Committee Act.

Issued in Washington, D.C., on March 21, 1984.

R. J. Van Vuren,

Associate Administrator for Air Traffic.

[FR Doc. 84-8375 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 2-2 of the Federal Aviation Administration National Airspace Review Advisory Committee. The agenda for this meeting is as follows: A review of current special VFR procedures and their application is necessary. A review of pertinent handbook material and Federal Aviation regulations relating to these operations will be undertaken by the group.

DATE: Beginning Monday, April 23, 1984, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed two weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Associate Administrator for Air Traffic, AAT-1, 800 Independence Avenue, SW., Washington, D.C. 20591, by April 16. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on March 23, 1984.

John Watterson,

Acting Manager, Special Projects Staff, Office of the Associate Administrator for Air Traffic.

[FR Doc. 84-8370 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, December 27, 1982), I hereby determine that the objects in the exhibit "The Sun King: Louis XIV and the New World" (included in the list [1] filed as a part of this Determination), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements between the Louisiana State Museum and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Louisiana State Museum, New Orleans, Louisiana, beginning on or about April 29, 1984, to on or about November 18, 1984, and at the Corcoran Gallery of Art, Washington, D.C., beginning on or about December 20, 1984, to on about April 7, 1985, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

[1] An itemized list of imported objects included in the exhibit is filed as part of the original document.

Dated: March 26, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-8417 Filed 3-28-84; 8:45 am]

BILLING CODE 8230-01-M

Grants, Program for Private Not-for-Profit Organizations; In Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment and activity.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

U.S.-Japan Parliamentary/Legislative Exchange Program on Economic Issues and Foreign Affairs. USIA is interested in establishing a two-way exchange program for members and staffers of the Japanese Diet and the U.S. Congress. The initial program in Washington D.C. could be for approximately 12 Japanese participants. Programs should provide a comparison of the U.S. Congress and Japanese Diet, with particular emphasis on economic and foreign policy issues. Meetings and discussions would, for example, compare the role of political parties, the bureaucracy, and the executive in affecting foreign policy legislation. They may also examine differences in budget development and legislative oversight. (Tentative activity date: Fall 1984.)

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Furthermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming; and with

organizations that have substantial potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information.

This is not a solicitation for a grant proposal. Following the receipt of your letter, and an internal review, USIA may invite your organization to examine and further develop USIA's initiative program concept(s) (summarized above). USIA would then consider your fully developed proposal for limited financial assistance. To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 days of the date of this notice.

Mark Blitz, Director, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547

Dated: March 26, 1984.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84-8618 Filed 3-28-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Tampa, Florida; Land Acquisition and Construction of a Radiation Therapy Suite, Clinical Addition, and a Spinal Cord Injury Addition; Finding of No Significant Impact

The Veterans Administration (VA) has assesed the potential environmental impacts that may occur as a result of the proposed acquisition of approximately 20 acres and construction of a Radiation Therapy Unit, Clinical Addition, and a Spinal Cord Injury Unit (SCIU) and has determined that the potential environmental impacts will be minimal from the development of this project.

The project is in several parts. The Radiation Therapy Unit will be a single story building of approximately 20,000 gross square feet west of the hospital on property that the VA presently owns. The Clinical Addition and SCIU will be west of the Radiation Therapy Unit on the land to be acquired. The Clinic will be approximately 200,000 gross square feet on two levels. The SCIU will be a single level structure interconnected to the Clinic Addition.

Development of the project will cause minor short and long term impacts in the form of air pollution (dust and fumes) during construction operations.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been prepared in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (008C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: March 22, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84-8628 Filed 3-28-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 62
Thursday, March 29, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION
March 23, 1984.

FCC To Hold Open Commission Meeting, Friday, March 30, 1984

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, March 30, 1984, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the INTELSAT Global Communications Satellite System. (CC Docket No. 82-540) Summary: The Commission will consider responses to its notice of inquiry concerning changes to the Commission's current policy on the ownership and operation of U.S. earth stations that operate with the INTELSAT Global Communications Satellite System.

Common Carrier—2—Title: In the Matter of Joint Request of Communications Satellite Corporation and RCA Global Communications, Inc., to resolve dispute concerning the manner by which capital contributions for international earth station facilities may be adjusted. File No. I-S-P-83-005. Summary: The Commission will consider applications for review and requests for reallocation of joint owners' shares in ESOC filed by RCA Global Communications and Western Union International, Inc. The Commission will also consider a motion for stay of the Commission's order pending court review filed by RCA.

Common Carrier—3—Title: Application of Communications Satellite Corporation (Comsat) to participate in the INTELSAT Business Services (IBS) program. Summary: The Commission will consider whether Comsat's participation in the IBS program is in the public interest.

Common Carrier—4—Title: International Relay, Inc., Memorandum Opinion, Order and Authorization to construct and operate earth stations to provide International Business Service, File Nos. CSG-84-001-P/L, I-T-C-84-001, CSG-84-004-P/L, I-T-C-84-024. Summary: The Commission will consider granting IRI's applications for authority to construct and operate international earth stations to provide INTELSAT's International Business Service to area businesses.

Common Carrier—5—Title: Applications of Communications Satellite Corporation for authorization to construct and operate an earth station at the New York Teleport complex. Summary: The Commission will consider whether to authorize the Communications Satellite Corporation to construct a satellite earth station at the Teleport complex, Staten Island, New York and operate it with INTELSAT satellites to provide International Business Service.

Common Carrier—6—Title: Notice of Proposed Rulemaking to eliminate or amend the Commission's satellite procurement rules. Summary: The Commission will consider revision of its satellite procurement rules in view of changed circumstances since their adoption in 1964.

Common Carrier—7—Title: Changes in the Corporate Structure and Operations of the Communications Satellite Corporation. (CC Docket No. 80-634) Summary: The Commission will consider adoption of a Memorandum Opinion and Order concerning Comsat's corporate structure and cost allocation practices.

Common Carrier—8—Title: In the Matter of Regulatory Policies Concerning Direct Access to INTELSAT Space Segment for the U.S. International Service Carriers. (CC Docket No. 82-548) Summary: The Commission will consider pleadings filed in response to its Notice of Inquiry concerning the possible modification of the current arrangements whereby the USISCs acquire, through the Communications Satellite Corporation (Comsat), the satellite capacity of the International Telecommunications Satellite Organization (INTELSAT).

Common Carrier—9—Title: Overseas Option for High Speed Switched Digital Service, AT&T Communications Transmittal No. 14. Summary: The Commission will consider a proposed offering by AT&T for an international video teleconferencing service.

Common Carrier—10—Title: In the Matter of Integrated Services Digital Networks (ISDI). (Gen. Docket No. 83-841) Summary: In August, 1983, the Commission released a Notice of Inquiry in this proceeding inviting comment on a range of ISDN issues. The Commission will consider the adoption of a report addressing these issues and the comments filed thereon.

Common Carrier—11—Title: North American Telecommunications Association Petition for Emergency Relief Requiring Non-Discriminatory CPE Interconnection During the Six-Month Transition Period Prior to BOC's Compliance with the Computer II Rules. North American Telecommunications Association Motion for Partial Stay of the Dial Tone Referral Modification Granted in CC Docket No. 83-115 Pending Submission and Disposition of Petitions for Reconsideration. Summary: The FCC will consider: (1) NATA's petition for an emergency ruling requiring the BOCs to process all service requests for interconnection of CPE through the Centralized Operations Groups (COGs), and (2) NATA's motion for a stay of that portion of the *BOC Separation Order*, FCC 83-252, CC Docket 83-115 which permits a BOC to refer a customer to the BOC's separate CPE Organization, provided the customer is informed that other sources of CPE are available.

Common Carrier—12—*Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286 (Jurisdictional Separations) The Commission will decide whether to refer certain additional questions to the Joint Board in this proceeding.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information cerning this meeting may be obtained from Sally Lawrence, FCC Public Affairs Office, telephone number (202) 254-7674.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 84-8544 Filed 3-27-84; 2:47 pm]
BILLING CODE 6712-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 522b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, March 26, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conaver (Comptroller of the

Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Maine Savings Bank, Portland, Maine, and insured mutual savings bank, for consent to merge, under its charter and title, with The Savings and Loan Association of Bangor, Bangor, Maine, a non-FDIC insured institution, and for consent to establish the three offices of The Savings and Loan Association of Bangor as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,977–L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico
Case No. 45,983–SR—Indian Springs State Bank, Kansas City, Kansas

Memorandum re: Approval of Funds and Award of Contract for Computer Room Renovation.

Memorandum re: Purchase of Two Additional Floors in Ecker Square.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: March 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-8559 Filed 3-27-84; 3:23 pm]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

Federal Register No. 84–7872

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, March 27, 1984, 10:00 a.m.

CHANGE IN MEETING: The closed meeting scheduled for this date has been canceled.

* * * * *

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, April 3, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, April 5, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Eligibility for chandidates to receive Presidential Primary matching funds
Draft Advisory Opinion #1984–4: Shatzi Duffy, WCCL–PAC Dir., Wisconsin Citizens Concerned for Life PAC
Draft Advisory Opinion #1984–8: The Honorable John J. Duncan, U.S. House of Representatives
Finance Committee Report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-8518 Filed 3-27-84; 12:30 pm]

BILLING CODE 6715-01-M

4

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m., April 4, 1984.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Agreement No. 10467: Establishment of the U.S. Gulf/European Commodity Rate Agreement.

Portion Closed to the public:

1. Docket No. 82–54: Space Charter and Cargo Revenue Pooling Agreements in the United States/Japan Trades—Motion for Reconsideration of Order of August 19, 1983.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8528 Filed 3-27-84; 12:30 pm]

BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, April 4, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8506 Filed 3-27-84; 3:48 pm]

BILLING CODE 6210-01-M

6

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday April 4, 1984.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of March, 1984.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

DATE OF NOTICE: March 26, 1984.

Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 84-8501 Filed 3-27-84; 10:30 am]

BILLING CODE 7550-01-M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 2, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Wednesday, April 4, 1984, at 9:00 a.m. An open meeting will be held on Wednesday, April 4, 1984, at 2:30 p.m. in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more

of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway and Cox voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, April 4, 1984, at 9:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.

Institution and settlement of administrative proceedings of an enforcement nature.

Institution of injunctive action.

Litigation matter.

Consideration of amicus participation.

Opinions.

The subject matter of the open meeting scheduled for Wednesday, April 4, 1984, at 2:30 p.m., will be:

Consideration of whether to issue releases: setting aside, in part, proposed fees of the National Association of Securities Dealers, Inc. ("NASD") as an inappropriate limitation on the Institutional Networks Corporation's access to certain NASD quotation information; expanding the current proceeding to cover quotation information on all securities in the NASDAQ system; and modifying the terms of the interim relief currently in effect;' and approving in part and disapproving in part the NASD's proposed fees. For further information, please contact William W. Uchimoto at (202) 272–2409.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Wescoe at (202) 272–2092.

March 23, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8470 Filed 3-28-84; 4:17 pm]

BILLING CODE 8010-01-M

8

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (49 FR 9672 March 14, 1984)

STATUS: Open/closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 9, 1984.

CHANGE IN THE MEETING: Deletion/additional items.

The following items were not considered at an open meeting scheduled for Thursday, March 22, 1984, at 2:30 p.m.

1. Consideration of whether to adopt revised rules under the Public Utility Holding Company Act of 1935 governing the Preservation of Records of registered holding companies and their mutual or subsidiary service companies. For further information, please contact Grant G. Guthrie at (202) 272–7677.

2. Consideration of whether to adopt proposed Rule 205–3, with changes, under the Investment Advisers Act of 1940 to permit registered investment advisers to enter into contracts with certain clients providing for compensation based on a share of capital gains or capital appreciation in the client's account. For further information, please contact Forrest R. Foss at (202) 272–3038.

The following additional item was considered at a closed meeting scheduled for Thursday, March 22, 1984, following the 2:30 p.m. open meeting.

Investigatory matter.

The following additional item will be considered at an open meeting scheduled for Thursday, March 29, 1984, at 10:00 a.m.

Consideration of whether to authorize Consolidated Natural Gas Company, a registered holding company, to adopt antitakeover amendments to its corporate charter and solicit proxies in connection therewith under the Public Utility Holding Company Act of 1935. For further information, please contact James E. Lurie at (202) 272–7648.

Chairman Shad and Commissioners Treadway and Cox determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: JoAnn Zuercher at (202) 272–2014.

George A. Fitzsimmons,

Secretary.

March 23, 1984.

[FR Doc. 84-8471 Filed 3-28-84; 4:17 pm]

BILLING CODE 8010-01-M

9

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of meeting.

SUMMARY: Interested members of the public are invited to attend and observe a meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and Section 4 of the Corporation's Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close a portion of the meeting pursuant to Article II, Section 4 of the Corporation's By-laws, Section 116(f) of the said Act and Sections 4 and 5 of the said policy.

MATTERS TO BE CONSIDERED:

Open session

1. Call to Order (9:30 a.m. EST).
2. Approval of Minutes.
3. Resolution to Close Meeting.

Closed session

4. Consideration of Pending Synthetic Fuel Projects.

A. Tar Sands Projects:
- Hop Kern River Project
- Forest Hill Project
- Kentucky Tar Sand Project
- Chaparrosa Ranch Project
- Enpex Project
- Sunnyside Project

B. Coal (including lignite and peat) Projects:
- First Colony Project
- Cool Water Project
- DOW Syngas Project
- Great Plains Coal Gasification Project
- Louisiana Synthetic Fuels Project
- Arkansas Lignite Conversion Project
- Memphis Project
- Northern Alabama Project
- Northern Peat Energy Project

C. Oil Shale Projects:
- Seep Ridge Project
- Paraho-Ute Project
- Means Oil Shale Project
- Cathedral Bluffs Project
- Union Parachute Creek Phase II

In addition, the Board of Directors will consider such other matters as may be properly brought before the meeting.

TIME AND DATE: 9:30 a.m. (EST), April 5, 1984.

PLACE: U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Room 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Assistant Secretary, at (202) 822–6336.

United States Synthetic Fuels Corporation.

Robert W. Gambino,

Group Vice President-Corporate.

March 28, 1984.

[FR Doc. 84-8484 Filed 3-28-84; 4:24 pm]

BILLING CODE 6000-09-M

federal register

Thursday
March 29, 1984

Part II

National Aeronautics and Space Administration

48 CFR Ch. 18

Implementation of the Federal Acquisition Regulation (FAR); NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement); Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 18

Implementation of the Federal Acquisition Regulation (FAR); NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement)

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: At 49 FR 6388 NASA published a Notice of proposed rule making which made available to the public a copy of the NASA FAR Supplement which implements and supplements the Federal Acquisition Regulation (FAR). The deadline for receipt of comments, if any, was set at March 22, 1984. To date, several copies of the Supplement have been distributed, but no comments have been received. NASA desires that its NASA FAR Supplement become effective on the effective date of the FAR which is April 1, 1984. Accordingly, this final rule adopts the initial draft of the NASA FAR Supplement as final.

EFFECTIVE DATE: This rule is effective April 1, 1984.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, D.C. 20546. Telephone (202) 453–2118.

SUPPLEMENTARY INFORMATION: Although the initial draft of the NASA FAR Supplement is adopted as final in order to meet the effective date of the FAR, all comments received as a result of the 49 FR 6388 Notice of proposed rule making will be carefully reviewed and any amendments deemed necessary as a result thereof will be published in the **Federal Register** as amendments to this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. NASA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule provides uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83–2.

List of Subjects in 48 CFR Ch. 18

NASA Federal Acquisition Regulation Supplement, Government procurement.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

S. J. Evans,

Assistant Administrator for Procurement.

Title 48 of the Code of Federal Regulations is amended by establishing Chapter 18 to read as set forth below:

CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SUBCHAPTER A—GENERAL

Part
1801 Federal Acquisition Regulation System
1802 Definitions of words and terms
1803 Improper business practices and personal conflicts of interest
1804 Administrative matters
1805 Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

1807 Acquisition planning
1808 Required sources of supplies and services
1809 Contractor qualifications
1810 Specifications, standards, and other purchase descriptions
1812 Contract delivery or performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

1813 Small purchase and other simplified purchase procedures
1814 Formal advertising
1815 Contracting by negotiation
1816 Types of contracts
1817 Special contractor methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1819 Small business and small disadvantaged business concerns
1822 Application of labor laws to government acquisition
1823 Environment, conservation, and occupational safety
1824 Protection of privacy and freedom of information
1825 Foreign acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1828 Bonds and insurance
1829 Taxes
1830 Cost accounting standards
1831 Contract cost principles and procedures
1832 Contract financing
1833 Disputes and appeals

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Authority: 42 U.S.C. 2473(c)(1).

1801.000 Scope of part.

This part sets forth basic policies and general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation (FAR) Supplement including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation.

Subpart 1801.1—Purpose, Authority, Issuance

1801.101 Purpose.

(a) The NASA FAR Supplement establishes agency-wide uniform policies and procedures that implement and supplement the FAR.

1801.102 Authority.

(a) The Assistant Administrator for Procurement has been delegated authority to prepare, issue, and maintain the NASA FAR Supplement, by the Administrator under the authority of:

(1) The National Aeronautics and Space Act of 1958, as amended (Pub. L. 85–568; 42 U.S.C. 2451 et seq.);

(2) 10 U.S.C. Chapter 137;

(3) Other statutory authority; and

(4) FAR Subpart 1.3.

1801.103 Applicability.

(a) The NASA FAR Supplement applies to all acquisitions as defined in FAR Part 2 except where expressly excluded in the FAR or this supplement.

1801.104 Issuance.

1801.104–1 Publication and code arrangement.

(a) The NASA FAR Supplement is published in:

(1) The daily issue of the Federal Register;

(2) Cumulated form in the Code of Federal Regulations (CFR); and

(3) A separate loose-leaf edition adaptable for either interleaving with the FAR or filing separately.

(b) The NASA FAR Supplement is issued as Chapter 18 of Title 48 CFR and parallels the FAR in format, arrangement, and numbering system. Thus, a formal citation to this paragraph would appear as 48 CFR 1801.104–1(b).

1801.104–2 Arrangement of regulations.

(a) *General.* The NASA FAR Supplement conforms with the arrangment and numbering system prescribed by FAR 1.104. The numbering illustrations at FAR 1.104–2(b) are equally applicable to the NASA FAR Supplement; however, users are reminded that in the loose-leaf edition of the supplement, NASA's assigned CFR Chapter number 18 will appear to the left of the applicable part number separated by a dash, e.g., 1815.402–1.

(b) *Numbering.* (1) All coverage in the NASA FAR Supplement that is unique to NASA will use Part, Subpart, Section, and Subsection numbers 70 through 89 (see 1801.303–70):

(i) Part 1870 is the first part number NASA can use for adding coverage that neither implements or supplements the FAR; i.e., there is no appropriate subject heading within the 53 parts of the FAR under which the coverage could be located.

(ii) Subpart 1815.70 is the first subpart number NASA can use to supplement FAR Part 15.

(iii) Section 1815.470 is the first number NASA can use to supplement FAR Subpart 15.4.

(iv) Subsection 1815.402–70 is the first number NASA can use to supplement FAR 15.402.

(v) Subsection 1815.402–170 is the first number NASA can use to supplement FAR 15.402–1.

(2) All coverage in the NASA FAR Supplement other than that identified

with a 70 or higher number, as described in (a)(1) above, implements the FAR and will bear the identical number and title of the FAR segment being implemented down to the subsection level, e.g., 1815.402–1 implements FAR 15.402–1. Below this level (paragraph, subparagraph (see FAR 1.104–2(b)(2))), no attempt is made to correlate NASA FAR Supplement alphanumerics with FAR alphanumerics.

(c) *References and citations.* (1) Unless otherwise stated, cross references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this Regulation.

(2) This Regulation may be referred to as the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement, the NASA FAR Supplement, or for the purposes of brevity the NFS. This subparagraph would normally be cited as the NASA FAR Supplement 1801.104–2(c)(2) but within this regulation it will be cited as 1801.104–2(c)(2).

(d) *Provisions and clauses.* See FAR Subpart 52.1 and Subpart 1852.1 for information regarding the numbering and dating of provisions and clauses.

1801.104–3 Copies.

Copies of the NASA FAR Supplement in **Federal Register**, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402.

1801.104–370 Dissemination of this Regulation, revisions and procurement notices.

(a) The NASA FAR Supplement and NASA FAR Supplement Directives (NFSD's) (see 1801.270), will be distributed directly to NASA Headquarters and installations by the U.S. Government Printing Office. The number of copies of the regulation, and revisions thereof, will be distributed on the basis of the requirements furnished by each Headquarters office and NASA field installation, to the Office of Procurement, NASA Headquarters (Code HP–1). Procurement Notices will be distributed by the Procurement Policy Division, Office of Procurement, NASA Headquarters. Both NFSD's and Procurement Notices which revise this Regulation will be published in the **Federal Register.**

(b) Heads of field installations will ensure that copies of the NASA FAR Supplement and revisions thereto are distributed to all interested activities and individuals within their installation. Code HP–1 is responsible for distribution to Headquarters offices.

(c) Subscriptions to the NASA FAR Supplement including applicable NFSD's and PN's, may be purchased by private concerns and individuals from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Subpart 1801.2—Administration

1801.270 Amendment of regulation.

This Regulation will be amended from time to time to set forth improved procedures which reduce contract preparation time, simplify and standardize contract forms, and improve the contracting process. Acquisition personnel are encouraged to submit suggestions, based on operating experience, for improving and simplifying the procedures set forth in this Regulation. Such suggestions should be submitted through the Procurement Officer to the Office of Procurement, NASA Headquarters (Code HP–1).

1801.270–1 Revisions.

This Regulation will be amended by issuance of NASA FAR Supplement Directives (NFSD's) containing loose-leaf replacement pages which revise Parts, Subparts, or paragraphs. Also see 1801.270–2 below. Each replacement page will bear, at the top, the NFSD number and page number. A vertical bar at the beginning or end of a line indicates that a change has been made within that line.

1801.270–2 Procurement notices.

(a) Procurement Notices (PN's) shall also be published as often as may be necessary or advisable under any of the following circumstances:

(1) To promulgate as rapidly as possible selected material revising this Regulation, in a general or narrative manner, in advance of a specific page replacement type revision to this Regulation.

(2) To disseminate material applicable to procurement which is not suitable for insertion in this Regulation but which may have the effect of a directive to, or be of importance and interest to its recipients.

(3) When the policy and/or procedure is expected to be effective for a period of 1 year or less.

(b) Unless otherwise indicated, each item in a Procurement Notice will remain in effect until the effective date of that subsequent NASA FAR Supplement revision which incorporates the item, or until specifically cancelled.

1801.270–3 Effective date.

(a) Statements in NASA FAR Supplement Directives and Procurement Notices to the effect that the material published therein is "effective upon receipt" or upon a specified date, or that changes set forth in the Directive or Notice are "to be used upon receipt," mean that any new or revised clauses or forms included in the Directive or Notice shall be included in invitations for bids and requests for proposals issued thereafter, unless a different meaning is expressed in the Directive or Notice. However, unless otherwise provided, the new revised clauses or forms need not be included in solicitations already in process of preparation where their inclusion would cause an undue delay in the solicitation.

(b) Compliance with a revision to this Regulation shall be in accordance with the NFSD or PN which contains the revision. Procurements initiated after receipt of new or revised clauses should, to the maximum practicable extent, include such clauses.

(c) Unless otherwise stated, invitations for bids which have been issued and bilateral agreements upon which negotiations have been completed prior to the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if such amendment would unduly delay the procurement action.

1801.270–4 Numbering.

NASA FAR Supplement Directives and Procurement Notices will be numbered consecutively on a calendar year basis beginning with number 1 prefixed by the last two digits of the calendar year, e.g., 84–1; 84–2; 84–3, etc.

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy.

All agency-wide policies and procedures that govern the contracting (see FAR Subpart 2.1) process or otherwise, control contracting relationships shall be incorporated in the NASA FAR Supplement.

1801.302–70 Field installation instructions and implementation of the NASA FAR Supplement.

Heads of NASA field installations may implement the FAR and NASA FAR Supplement by prescribing for their installation detailed procurement operating instructions, delegations of authority, and assignment of responsibilities which they deem essential for the efficient performance of their procurement function. Such instructions shall comply with FAR 1.302, FAR Subpart 1.4, and Subpart 1801.4.

1801.303 Codification and public participation.

1801.303-70 Assignment of numbers.

(a) Part, Subpart, Section, and Subsection numbers 1 through 69 are reserved for FAR use.

(b) Part, Subpart, Section, and Subsection numbers 70 through 89 are reserved for NASA FAR Supplement use.

(c) Part, Subpart, Section, and Subsection numbers 90 and up are reserved for use by NASA contracting offices.

Subpart 1801.4—Deviations From the FAR and NASA FAR Supplement

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the NASA FAR Supplement and for the internal processing of FAR deviation requests under FAR Subpart 1.4.

1801.401 Definition.

"Deviation" means—

(a) "Deviation" as defined at FAR 1.401; and/or

(b) Any one or combination of the following:

(1) The issuance or use of a policy, procedure, solicitation provision (see definition in FAR 52.101(a)), contract clause (see definition in FAR 52.101(a)), method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the NASA FAR Supplement.

(2) The omission of any solicitation provision or contract clause when its prescription requires its use.

(3) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the NASA FAR Supplement (see definitions of "modification" and "alternate" in FAR 52.101(a)).

(4) The use of a solicitation provision or contract clause prescribed by the NASA FAR Supplement on a "substantially as follows" or "substantially the same as" basis (see definitions in FAR 52.101(a)), if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the supplement.

(5) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the NASA FAR Supplement.

(6) The issuance of agency-wide policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into the NASA FAR Supplement in accordance with FAR 1.301(a) and 1801.301.

1801.402 Policy.

Unless precluded by law, executive order, or regulation, deviations from the NASA FAR Supplement may be granted as specified in this subpart. See FAR Part 53 and Part 1853 regarding exceptions to forms prescribed therein.

1801.403 Individual deviations.

Individual deviations affect only one contracting action and unless FAR 1.405(e) is applicable, may be authorized only by the Assistant Administrator for Procurement or a designee. See 1801.471 regarding request for deviations.

1801.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, the contracting office should propose an appropriate NASA FAR Supplement revision to cover the matter. Only the Assistant Administrator for Procurement or a designee may approve class deviations. See 1801.471 regarding request for deviations.

1801.405 Deviations pertaining to treaties and executive agreements.

Deviations to the NASA FAR Supplement pertaining to treaties or executive agreements will be processed under the procedures in FAR 1.404 except that deviations not authorized by FAR 1.104 (b) or (c) will be requested under 1801.471.

1801.470 Modification to existing contracts for new procurement.

When an existing contract is modified to add new procurement, approval of the deviations previously granted for the existing contract must be obtained for the modification as though the modification were a new contract. New procurement for the purpose of this section shall be considered any action which requires the citation of an authority to negotiate. An information copy of each request for deviation shall be furnished to the cognizant Associate Administrator.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the provisions of this Regulation and other procurement publications shall be submitted to the Office of Procurement, NASA Headquarters (Code HP–1). Such requests shall be signed by the Procurement Officer, or in his absence, the duly appointed Acting Procurement Officer. Such requests shall be submitted as far in advance as the exigencies of the situation will permit.

(b) Each request for a deviation shall contain as a minimum—

(1) Identification of the NASA FAR Supplement requirement from which a deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request;

(5) The name of the contractor and identification of the contract affected, including the dollar value;

(6) Detailed reasons supporting the request, including any pertinent background information which will contribute to a fuller understanding of the deviation sought; and

(7) A copy of the counsel's concurrence or comments thereon.

Subpart 1801.5—Agency and Public Participation

1801.570 Publicizing the development of NASA procurement policies, regulations, procedures, and forms.

The views of all interested parties including Government agencies, private organizations and associations, business firms, educational institutions, and individuals will be solicited and considered in the development or amendment of any NASA procurement policy, regulation, procedure, or form. The views of interested parties shall be solicited in accordance with OFPP Policy Letter No. 83–2, dated May 25, 1983.

Subpart 1801.6—Contracting Authority and Responsibilities

1801.601 General.

At NASA, the authority and responsibility to contract for authorized supplies and services are delegated to the Assistant Administrator for Procurement by NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement), and the authority and responsibility to act in certain circumstances is redelegated to various NASA officials by NMI 5101.24 (Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (various officials).

1801.603 Selection, appointment, and termination of appointment.

1801.603-1 General.

In addition to the requirements and criteria of FAR 1.603, selection, appointment, and termination of appointment of NASA contracting officers shall comply with NASA Procurement Notice 81-32, The NASA Contracting Officer Warrant Program, dated February 1, 1982.

1801.603-4 Termination.

When a letter is required to terminate the appointment of a contracting officer, the letter should read substantially as follows:

Date _____
To: (Name, grade and position title)
From: (Appointing Authority)
Subject: Termination of Appointment as Contracting Officer, Certificate of Appointment, Serial No. ———.
Your appointment as Contracting Officer contained in the subject Certificate is hereby terminated effective ———, 19—.
(Signature and Title) _____

PART 1802—DEFINITIONS OF WORDS AND TERMS

Sec.
1802.000 Scope of part.

Subpart 1802.1—Definitions

1802.100 Definitions.

Authority: 42 U.S.C. 2473(c)(1).

1802.000 Scope of part.

Definitions of commonly used words and terms are in FAR Subpart 2.1. This part amplifies many of the FAR definitions and also includes definitions of other words and terms commonly used in the NASA acquisition process.

Subpart 1802.1—Definitions

1802.100 Definitions.

As used throughout this regulation the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

"Administrator" means the Administrator or Deputy Administrator of NASA.

"Announcement of opportunity" means a competitive solicitation for proposals, issued pursuant to NASA Handbook (NHB) 8030.6A, "Guidelines for Acquisition of Investigations."

"Assistant Administrator for Procurement" means the Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

"Contracting activity" in NASA includes each "installation" as defined herein.

"Contracting office" within NASA is synonymous with the previously used term "procurement office."

"Defense agencies" as used in the FAR and this regulation, includes NASA unless NASA is specifically excluded.

"Field installation" means Ames Research Center, Goddard Space Flight Center, John F. Kennedy Space Center, Langley Research Center, Lewis Research Center, Johnson Space Center, George C. Marshall Space Flight Center, National Space Technology Laboratories, and any other field installation hereafter established by NASA.

"Head of the agency" in NASA means the Administrator or Deputy Administrator of NASA.

"Head of the contracting activity" in NASA this term includes the Director (or other Head) of a NASA field installation; and the Director, Headquarters Administration Division (Code NH-6), NASA Headquarters.

"Installation" means NASA Headquarters and field installations and is synonymous with the term "contracting activity."

"Procurement" as used in this Regulation is interchangeable with the term acquisition, as defined in FAR Subpart 2.1.

"Procurement Officer" as used in this Regulation refers to the chief of the contracting office, as defined in FAR Subpart 2.1.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

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1803.101 Standard of conduct.
1803.101-1 General.
1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Subpart 1803.2—Contractor Gratuities to Government Personnel

1803.203 Reporting suspected violations of the gratuities clause.

Subpart 1803.3—Reports of Identical Bids and Suspected Antitrust Violations

1803.03 Reporting suspected antitrust violations.

Subpart 1803.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

Subpart 1803.70—Contracts Between NASA and Former NASA Employees

1803.7001 Policy.
1803.7002 Solicitation provision.

Authority. 42 U.S.C. 2473(c)(1)

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.

1803.101-1 General.

(a) A number of Federal statutes prohibit certain acts by Government personnel and special Government employees as defined in 18 U.S.C. 202 in relation to procurement activities of the Government. Among these statutes are the following: (1) 18 U.S.C. 201 relating to bribes in order to secure a Government contract; (2) 18 U.S.C. 203 relating to compensation for services rendered in connection with any proceeding or claim in which the United States has an interest; (3) 18 U.S.C. 205 relating to acting as an agent or attorney for prosecuting any claim against the United States; (4) 18 U.S.C. 208 relating to transacting business as an officer or agent of the United States with firms of which the officer or agent, spouse, minor child, or partner is an official or in which the officer or agent has a pecuniary interest; and (5) 18 U.S.C. 209 relating to compensation from non-Government sources in connection with Government services.

(b) The statutory prohibitions, and their application to NASA personnel, are discussed in NHB 1900.1B, Standards of Conduct for NASA Employees, and NHB 1900.2A, Standards of Conduct for NASA Special Government Employees. All NASA personnel involved in procurement actions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218). (See Subpart 1803.70 for policy on contracting with former NASA employees.)

1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the Installation Office of Inspector General (see NMI 3711.6B, Employee-Communications Channels).

Subpart 1803.2—Contractor Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Any suspected violations of the clause at FAR 52.203-3, Gratuities, shall be reported to the Installation Office of Inspector General (see NMI 3711.6B).

Subpart 1803.3—Reports of Identical Bids and Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

(a) When bids or proposals are received and, in the opinion of the contracting officer, are indicative of possible antitrust violations, the contracting officer shall report such circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HP–1). Reports of such bids or proposals should not be submitted automatically, but only when there is some reason to believe that those bids or proposal may not have been arrived at independently. Such reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth:

(1) The noncompetitive pattern or situation under consideration;

(2) Purchase experience in the same product or service for a reasonable period of time (one or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstracts of bids;

(3) Community of financial interest among bidders, insofar as it is known;

(4) The extent, if any, to which specification requirements or patents restrict competition;

(5) Information which may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and

(6) Any other information considered pertinent.

(b) Evidence of noncompetitive bid practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

The Administrator has delegated to the Assistant Administrator for Procurement (Code H) the authority to authorize an exception to the policy in FAR 3.601 (see NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement)).

Subpart 1803.70—Contracts Between NASA and Former NASA Employees

1803.7001 Policy.

(a) It is NASA policy that contracts will not normally be placed on a noncompetitive basis with any individual who was employed by NASA during the past 2 years, or with any firm in which such a former employee is a partner, principal officer, majority shareholder, or which is otherwise controlled or predominantly staffed by such former employees, unless it is determined to be in the best interest of the Government to do so (see 1815.670(c)).

(b) Where it has been determined that it is appropriate to contract with an individual or a firm described in paragraph (a) above, the approval authority for the Justification for Noncompetitive Procurement (JNCP) shall be one level higher than that prescribed in 1815.670(d) (1), (2), and (3).

(c) If an individual or firm described in paragraph (a) above is involved in a competitive procurement, precautions must be taken to ensure that such individual or firm, per se, is not accorded preferential treatment. In the event such individual or firm is the successful offeror, the contract file shall include a separate document which fully explains the safeguards used to ensure fair treatment of all offerors under the procurement.

(d) Nothing in this subpart shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Disqualification of Former Officers and Employees.

(e) The policy set forth in paragraph (a) above shall also be considered when reviewing subcontracts for the purpose of granting consent under NASA prime contracts (see FAR 44.202–2(a)(7)).

1803.7002 Solicitation provision.

The contracting officer shall insert the provision at 1852.203–70, Contracts Between NASA and Former NASA Employees, in all solicitations.

PART 1804—ADMINISTRATIVE MATTERS

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Subpart 1804.73—Procurement Request

1804.7301 General.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1804.1—Contract Execution

1804.101 Contracting officer's signature.

In the case of negotiated contracts, the contracting officer shall sign after the contractor, except where otherwise required by the particular contract form or by the circumstances of the acquisition.

1804.103 Contract clause.

See Subpart 1804.72, Review and Approval of Contractual Instruments.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements.

In addition to the requirements in FAR 4.201 contracts shall be distributed as follows:

(a) For research or research and development projects one copy of the contract plus a copy of the contractor's technical proposal, if any, will be furnished to the Scientific and Technical Information Office, Code NIT–40, NASA Headquarters.

(b) On contracts with educational institutions, further distribution of contractual documents shall be made in accordance with paragraph (c) below.

(c) On all contracts and modifications requiring approval of the Assistant Administrator for Procurement, one executed copy will be retained by the Office of Procurement, NASA Headquarters.

(d) Upon approval (or disapproval) of the proposed contract or modification the Assistant Administrator for Procurement will forward the original and two executed copies of the contract or modification together with the contract file to the Procurement Officer or other official as deemed appropriate.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General.

NASA industrial security policies and procedures are prescribed in NASA Management Instruction 1650.1, Industrial Security Policies and Procedures and performed by the Department of Defense (see 18042.202–70(d)).

Subpart 1804.6—NASA Contract Reporting

1804.670 General.

This Subpart prescribes uniform reports which are required to be prepared by contracting and contract administration offices in order to provide management with necessary information to help formulate, change or measure the effectiveness of procurement policy.

1804.671 Individual Procurement Action Report (NASA Form 507).

The Individual Procurement Action Report (NASA Form 507) is designed to provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to the President, the Congress, the Department of Labor, Office of Federal Procurement Policy, Federal Procurement Data Center, the Federal Emergency Management Agency, the General Accounting Office, the Small Business Administration, and other Federal agencies. The preparation and utilization of NASA Form 507 has been made an integral part of the Agency-wide Financial and Contractual Status (FACS) System.

1804.671–1 Applicability and coverage.

The levels at which procurements are individually reportable and require an NF 507 are as follows:

(a) Initial basic procurement.

(1) All contracts (procurements) regardless of dollar obligation amount.

(2) All grants and cooperative agreements and Space Act agreements.

(3) All intragovernmental procurements and purchase orders when the *initial* obligation is $10,000 or more.

(4) All delivery orders for ordering supplies and services of $10,000 or more.

(5) All contracts and purchase orders for consulting services.

(Note.—All other purchase orders under $10,000 are *not* reportable.)

(b) Modifications of procurements that are individually reportable and require NASA Form 507.

(1) Modifications of $10,000 and over.

(2) Modifications which change the estimated cost and/or fee by $10,000 or more; and modifications which extend the completion date by three months or more beyond the date previously reported.

(3) Modifications and modifications which change procurement statistics previously reported.

1804.671–2 Contractual records.

For the purpose of these instructions, the words "contractual records" are used as a generic term for all reportable procurements which include contracts, grants, cooperative agreements, Space Act Agreements and intragovernmental awards. The NASA Form 507 or installation equivalent constitutes the source of data for contractual records with the exception of the obligations, which are obtained from the financial records.

1804.671–3 Submission due date.

The FACS report will be submitted monthly as of the last day of the month to arrive in NASA Headquarters not later than the close of business on the 8th work day following the month being reported. It is suggested that "Procurement" establish an agreement with "Finance" on a cut-off date for processing contractual documents to insure that the same contracts are included in the monthly Procurement and Financial submission.

1804.671–4 Preparation of Individual Procurement Action Report (NASA Form 507).

An individual Procurement Action Report (NASA Form 507) shall be prepared and submitted to Headquarters for each procurement action that meets the reportable criteria described in 1804.671–1 above. Detailed item instructions for the preparation of NASA Form 507 are listed below and correspond to the item numbers shown on the NF 507. Position numbers indicated after each item are the number of characters required in reporting the data element.

(a) *Item 1—Type of record* (1 position). Enter *N* to indicate new initial basic procurement and/or modification procurement that are individually reportable. Enter *C* to indicate a correction to an error on a previously

reportable basic and/or modification procurement.

(b) *Item 2—Contract/grant/purchase order number* (11 positions including blanks). Enter the specific contract, grant, cooperative agreement, Space Act Agreement or purchase order number for which the data are reported. This item contains eleven digits. The first five digits represent the prefix field and the last six digits are used to serially number each contract. If a serial number does not fill out the entire field, leave those digit positions blank in lieu of zeros. For utility contract/purchase order numbers enter an alpha letter in the last position of the serial number. The alpha letter will indicate the fiscal year the service was provided.

(c) *Contract numbering scheme.* (1) The method of numbering contracts and purchase orders is set forth in 1804.71 (*e.g.*, NAS9–14000, NAS10–9080, NASW–2080).

(2) The method of numbering grants is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1B paragraph 306 (e.g., NAGW–1).

UTILITY CONTRACTS/PURCHASE ORDERS SERIAL NUMBER SCHEME

Last digit alpha letter	Fiscal years
Z	1980; 1990; etc.
Y	1979; 1989; etc.
X	1978; 1988; etc.
W	1987; 1997; etc.
V	1986; 1996; etc.
U	1985; 1995; etc.
T	1984; 1994; etc.
S	1983; 1993; etc.
R	1982; 1992; etc.
Q	1981; 1991; etc.

(d) *Item 3—Modification number* (3 positions). Enter the supplementary procurement contractual identification code and serial number assigned to the modification action; e.g., S01, M02, A03, etc. The codes currently used are as follows:

Identification Codes

A for *Amendment*
C for *Change Orders*
D for *Delivery Orders*
K for *Call Orders*
L for *Letter Contracts*
M for *Modifications*
N for *Change Notice*
O for *Task Orders*
S for *Supplemental Agreement*

(e) *Item 4—Accounting installation number* (2 positions). Enter a numeric code which identifies the installation currently responsible for maintaining the fiscal records. The following is a list of installations and their assigned codes:

Code and Installations

10 NASA Headquarters
15 Mission Analysis Division
21 Ames Research Center
22 Lewis Research Center
23 Langley Research Center
24 Hugh L. Dryden Flight Research Facility
51 Goddard Space Flight Center
55 NASA Resident Procurement Office—JPL
57 KSC Western Test Range
62 George C. Marshall Space Flight Center
64 National Space Technology Laboratories
72 Lyndon B. Johnson Space Center
70 John F. Kennedy Space Center

(f) *Item 5—Procuring installation number* (2 positions). Enter a numeric code which identifies the installation responsible for the procurement. The following is a list of installations and their assigned codes:

Code and Installations

02 Headquarters Support Division
04 Headquarters Contracts & Grants Division
21 Ames Research Center
22 Lewis Research Center
23 Langley Research Center
24 Hugh L. Dryden Flight Research Facility
51 Goddard Space Flight Center
53 Wallops Flight Center
54 NASA Resident Procurement Office—JPL
62 George C. Marshall Space Flight Center
64 National Space Technology Laboratories
72 Lyndon B. Johnson Space Center
76 John F. Kennedy Space Center

(g) *Item 6—Other agency order number* (15 positions). Enter on this line the Federal agency contract number for orders under contracts awarded by other Federal agencies *(i.e., GSA Federal Supply Schedule, Government Printing Office, etc.)* FPDS will match this number with the initiating agencies procurement statistical data submission.

(h) *Item 7—Contractor identification code (CIC)* (7 positions). This code will be obtained from the publication "NASA Contractor Identification Code." It identifies the procurement in terms of the contractor's name, contractor's division (if any), contractor's address, and contract place of performance. A unique code is assigned for each different combination of the aforementioned items. For combinations not listed in the coding publication, a telephone call will be made to the Office of Procurement, NASA Headquarters (Code HM–1) which will immediately assign a code and, where abbreviations are necessary, the applicable English. The new code will be listed in the next issue of the coding publication.

(i) *Item 8—Contractor's name* (not to exceed 29 positions, including spaces). Enter the name of the contractor. (For editing purposes, the first five characters of the name must be identical to those shown in the publication "NASA Identification Codes" issued quarterly by the Office of Procurement, NASA Headquarters (Code HM–1). For Intragovernmental actions, enter the name of the Department (US Army, US Navy, US Commerce, etc.) and on Item 9 (Contractor Division), the name of the cognizant procuring activity (bureau, command, technical service, etc.). If the activity is a single manager agency, enter the name of the agency.

(j) *Item 9—Contractor's division* (20 positions). Enter the name of the contractor's division if one is named in the contractual instrument. (For editing purposes, the first five characters of the division name must be identical to those shown in the publication "NASA Contractor Identification Codes" issued quarterly by the Office of Procurement, NASA Headquarters (Code HM–1).

(k) *Item 10—Contractor's address—city and State.* Enter city and State of contractor's address as stated in contractual instrument.

(l) *Items 11 and 12—Place of performance* (city—24 positions; State—2 positions, Zip Code—5 positions). Enter the location (city and State) of the principal plant or place of business where the items will be produced or supplied from stock or where the service will be performed. (For editing purposes, the first 3 characters of the city name must be identical to those shown in the publication "NASA Contractor Identification Code.") For construction contracts, enter the site of construction. If more than one location is involved, enter the principal place of performance. In those cases involving intragovernmental actions where the place of performance is unknown, enter the address of the cognizant Government agency. Enter the Zip Code in Item 12.

(m) *Item 13—Contract date/modification date* (6 positions).

(1) *Contract Date*—Enter the year, month and day (two numerics each) shown on the face of the contract. With respect to preliminary contractual instruments, enter the date of commitment to the contractor. This date will be shown as the date of the contract when it is definitized.

(2) *Modification Date*—When reporting a modification, enter in item 13 the year, month and day (two numerics each) shown on the face of the modification being reported.

(n) *Item 14—Completion date* (6 positions). Enter the year, month, and day (two numerics each), either specified or estimated, when all work on the contract and modifications thereto are scheduled for completion. If the date is not determined, enter D in the first position. This date may or may not change as modifications to the contract are issued.

(o) *Item 15—Procurement placement code* (2 positions). Enter a 2-position alpha code which identifies the type of contractor, the extent of competition on the procurement, and the negotiation authority. Refer to the procurement placement code (PPC) matrix (see Supplement 70, Subpart 1). This code relates to the contract in its entirety and can be changed only by a correction.

(1) All procurement awards under $10,000 to "Disadvantaged Business Firms-Direct" shall be reported with a second letter "M" of the procurement placement code, *e.g.*, BM, KM, etc.

(2) All procurement awards under $10,000 to "Women-Owned Firms" shall be coded with a second letter "W" of the procurement placement code, *e.g.*, BW, KW, etc.

(p) *Item 16—Kind of Action.* Enter a 2-numeric code which identifies in general terms the kind of procurement and the action taken to initiate the procurement or modification thereto. Following is a list of codes to be used:

New Contracts

01 *New letter contract*—Enter this code when a new letter contract has been executed.

02 *Definitive contract superseding letter contract*—Self explanatory.

03 *Definitive Contract*—Enter this code for new procurements (except when codes 04, 05, 06 or 21 are applicable) when the first binding document contains all the terms and conditions of the agreement.

04 *Order under contract (BOA's, indefinite delivery order, Federal supply schedule)*—Enter this code when reporting against indefinite delivery type contracts or basic ordering agreements, GSA Federal Supply Schedule contracts, utility contracts, production lists, job orders, task orders, and the like when firm obligations are created by the issuance of such documents.

05 *Intragovernmental*—Enter this code for orders issued to other Federal agencies.

06 *Grants*—Enter this code for new grants.

21 *Cooperative agreement and space act agreement*—Enter this code for new cooperative agreements and Space Act Agreements.

Modifications to Existing Contracts

07 *Additional work*—Enter this code for reporting modifications to existing contracts which add new procurement. New procurement for the purpose of this report shall be a modification action which usually requires the preparation of a Determination and Findings (D&F) to justify the use of authority to negotiate.

08 *Supplemental agreement*—Use this code for reporting bilateral, definitized modifications except those covered in code 10.

09 *Change order*—Enter this code for reporting change orders issued pursuant to the "Changes" clause of the contract.

10 *S/A Definitizing change order*—Enter this code when definitizing change orders.

11 *Administrative*—Enter this code when reporting unilateral modifications and administrative type changes such as incremental funding modifications and novation agreements.

12 *Termination for default*—Enter this code when reporting a termination for default.

13 *Termination for convenience*—Enter this code when reporting a termination for convenience.

(q) *Item 17—Type of contractor* (2 positions).

Business

01 *Section 8(a)—disadvantaged*—Enter this code when the award is placed through the Small Business Administration to a minority business firm which is owned and controlled by socially and economically disadvantaged individuals in accordance with Section 8(a) of the Small Business Act.

02 *Reserved.*

03 *Disadvantaged direct*—Enter this code when the award is placed directly with a disadvantaged business firm.

04 *Other business*—Enter this code when the award is not placed with a minority business firm.

Nonprofit Institutions

05 *Educational*—Enter this code when the award is placed with an educational institution *not* State/Federal-owned.

06 *Hospital*—Enter this code when the award is placed with a hospital *not* State, Federal or local government-owned.

07 *Research foundations/laboratories*—Enter this code when the award is placed with a research foundation or research laboratory *not* State, Federal or local government-owned.

08 *Other nonprofit*—Enter this code when the award is placed with a nonprofit institution or organization which is a corporation, foundation, trust, or institution not organized for profit, no part of its net earnings is applied to the profit of any private shareholder or individual.

State/Local Government

09 *Educational*—Enter this code when the award is placed with a State/Federal-owned educational institution. (Privately owned educational institutions will be coded 05.)

10 *Hospital*—Enter this code when the award is placed with a State, Federal or local government-owned hospital. (Privately owned hospitals will be coded 06.)

11 *Research organization*—Enter this code when the award is placed with a State, Federal or local government-owned research organization.

12 *Other State/local government*—Enter this code when the award is placed with other State or local government organizations.

(r) *Item 18—Type of contract* (2 positions).

(1) Enter a 2-digit code which identifies the type of contract in accordance with the provisions of the basic contract. The following codes are to be used:

01 Firm Fixed-Price (see FAR 16.202). (Also use this code for purchases under GSA Federal Supply Schedule contracts.)

02 Fixed-Price—Redetermination (see FAR 16.205).

03 Fixed-Price—With Economic Price Adjustment (see FAR 16.203).

04 Fixed-Price—Incentive (see FAR 16.204).

05 Cost-No Fee (see FAR 16.302).

06 Cost Sharing (see FAR 16.303). (The estimated cost reported will include *only* the Government's share.)

07 Cost-Plus-Fixed-Fee (see FAR 16.306).

08 Cost-Plus-Incentive-Fee (see FAR 16.304).

09 Time and Materials (see FAR 16.601).

10 Labor-Hour (see FAR 16.602).

11 Retroactive Price Redetermination (see FAR 16.206).

12 Cost-Plus-Award-Fee (see FAR 16.305).

(2) Combination contract types will be reported as follows:

(i) Where the contract has one type of incentive arrangement applying to cost performance and another to technical and/or schedule performance, report the contract type assigned to the cost incentive feature. For example, a contract providing a cost-plus-incentive-fee arrangement on cost, and an award fee arrangement on technical and/or schedule performance, will be reported as a code *08—Cost-Plus-Incentive-Fee.*

(ii) Where one or more items of work are priced exclusively under one of the arrangements coded above, with one or more additional items priced exclusively under another such arrangement, report the contract type in accordance with the code assigned to the predominate arrangement based on dollars.

(s) *Item 19—Labor surplus area* (1 position) (See PRD 78–10).

N *Awards not in a labor surplus area*—Enter this code if the award was not made to a labor surplus area concern.

1 *Labor surplus area—no preference*—Enter this code if the procurement was awarded to a concern in a labor surplus area, but no set-aside preference was involved.

2 *Labor surplus area—tie bid preference*—Enter this code if the procurement was awarded to a concern in a labor surplus area or an area/concern individually certified by the Department of Labor and tie bid preference was given.

3 *Total labor surplus/small business set-asides preference*—Enter this code when reporting an award resulting from a combined total labor surplus area and small business set-aside.

4 *Total labor surplus set-aside preference*—Enter this code if the procurment was awarded to a labor surplus area concern, as a result of a set-aside preference.

(t) *Item 20—Subject to statutory requirements* (1 position). Code in accordance with the provisions of the contract as follows:

N Not subject to statutory requirements listed below.

1 Subject to Walsh-Healey Act, Manufacturer (see FAR 22.606–1).

2 Subject to Walsh-Healey Act, Regular Dealer (see FAR 22.606–2).

3 Subject to Service Contract Act (see FAR Subpart 22.10).

4 Subject to Davis-Bacon Act (see FAR 22.403–1).

(u) *Item 21—Extent of Competition* (1 position).

Advertised

1 *Two-step*—Enter this code for procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids following request for an evaluation of technical proposals. (see FAR 14.503.)

2 *Other advertised*—Enter this code for procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids. (see FAR 14.101.)

Competitively Negotiated

3 *Source evaluation board*—Enter this code where offers were received from at least two responsive offerors capable of satisfying the Government's requirements wholly or partially, where the awards were made on the basis of price, design, or technical competition and where Source Evaluation Board procedures were used to evaluate the proposals (see FAR 15.506–2). This code will also be entered where Architect-Engineer Selection Board procedures were used (see FAR 36.603–2).

4 *No source evaluation board*—Enter this code where offers were received from at least two responsive offerors capable of satisfying the Government's requirements wholly or partially, where the awards were made on the basis of price, design, or technical competition, and where Source Evaluation Board procedures were not used to evaluate the proposals.

Noncompetitively Negotiated

5 *Follow-on after competition*—Enter this code when the award means a new procurement placed with a particular contractor to continue or augment a specific NASA program where such placement was necessitated by prior procurement decisions, e.g., contracts with a particular contractor for continuation of research and development in the same program, contracts for support equipment and spare parts from contractor furnishing original equipment. This code will be used *only* when the contractor was selected initially on the basis of competitive negotiation. Follow-on contracts where the contractor was selected initially on the basis of noncompetitive negotiation will be reported as negotiated noncompetitive (code 6).

6 *Other noncompetitive negotiated*—Enter this code where an offer was received from only one responsive offeror capable of satisfying the Government's requirements wholly or partially and where the work involved is not a follow-on procurement reportable under item 5 above. A single source procurement is one in which there was only one responsive reply to a competitive solicitation.

7 *Unsolicited proposal*—Enter this code to identify procurements resulting from a written offer to perform work which does not result from a formal written request for proposals issued by NASA (see FAR 15.501). A negotiated noncompetitive procurement placement code will be used when reporting unsolicited proposals.

(v) *Item 22—Reason for not selecting small business* (2 positions). When an award is made to a large business firm, this code is used to identify the reason the award was not made to a small business firm. If the reason for not awarding the contract to a small business firm is other than one of the codes listed, then use the appropriate "Other" code. If more than one reason is involved, indicate the dominant one. For purchases under Federal Supply Service contracts, use code 04 if no small business firm is listed in the GSA Schedule; however, if a small business firm is listed, use code 10. This code relates to the procurement in its entirety and can be changed only by a correction.

(w) *Item 23—Type of service or product* (4 positions). Enter the code which indicates the principal type of effort or end item that is obtained under the contract. If more than one classification is applicable to the procurement, enter the one accounting for the largest dollar volume of procurement. Codes have been established to identify R&D procurements, service contracts and supply and equipment contracts.

(1) *Research and Development (R&D) Procurement*—R&D codes are used for the following:

(i) All contracts negotiated under authority 10 U.S.C. 2304(a)(11), Experimental, Developmental, or Research work;

(ii) Most, but not all, contracts negotiated under 10 U.S.C. 2304(a)(5), Services of Educational Institutions;

(iii) All contracts funded by R&D appropriations; and

(iv) All contracts for research and development work, even though not authorized under 10 U.S.C. 2304(a)(11) or (5), or funded by R&D appropriations.

(2) If the procurement involves space research and development, enter one of the following codes:

R&D Code and Type of R&D Procurement

AR1 * Aeronautics & Space Technology
AR2 * Space Science and Applications
AR3 * Space Transportation Systems
AR4 * Tracking and Data Acquisition
AR9 * Other Space R&D

*See paragraph (w)(3)(ii) below.

(3)(i) If the procurement involves other than space research and development, enter the applicable code from the FPDS Product and Service Coding Manual or NASA FAR Supplement 70, Subpart 2.

(ii) For the fourth digit of the code use "0" or one of the following "stages of R&D":

Code and Meaning

1 Research
2 Exploratory Development
3 Advanced Development
4 Engineering Development
5 Operational Systems Development
6 Management and Support
7 Commercialization

Note.—For definitions of "stage of R&D" see FPDS Product and Service Coding Manual or 1804.6727(d).

(4) *Other services.* Enter one of the service codes listed in Supplement 70, Subpart 2, which identifies the principal type of services and construction procured under the contract. (Do *not* use these codes for R&D services and procurement of supplies and equipment.)

(5) *Supply and equipment contracts.* For contracts for off-the-shelf supplies and equipment, enter one of the codes listed in Supplement 70, Subpart 2, to identify the principal item of supply or equipment procured under the contract.

(x) *Item 24—Proposed procurement synopsized* (1 position). Enter Y (yes) or N (no) to indicate whether the procurement was synopsized in the Department of Commerce publication "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards" (see FAR 5.201).

(y) *Item 25—Contract administration delegated* (1 position). Enter Y (yes) or N (no) to indicate whether any contract administration functions have been delegated to another Government agency (see FAR Subpart 42.2).

(z) *Item 26—Consultant type contract* (1 position). Enter Y (yes) or N (no) to indicate whether the contract is for consulting services. For the definition of consulting services (see FAR 37.201).

(aa) *Item 27—Support Services Type Contract* (1 position). Enter Y (yes) or N (no) to indicate whether the contract is for support services.

(1) *In-house contractor support:*

(i) Provides a service to the installation, and

(ii) Is performed on or near the installation, and

(iii) Is continuous in nature, and

(iv) Is not provided by prime product development contractor when the work is for the purpose of fulfilling the prime contract, and

(v) Is characterized as: that support necessary due to the on or near site population and activated facilities (housekeeping M and O function), and

the effort necessary to support the research, development or test efforts the installation performs in-house; and

(vi) Excludes:

(A) Construction, alteration and repair contractor;

(B) Purchase and incidental services;

(C) Prime product development contractor;

(D) Operations support contractors; and

(E) Tenants.

(2) *Operations support contractors.* Contractors whose work is performed on or near site due to the location of major operations facilities. (This is the effort associated with carrying out mission operations and is done on-site because that is where the captured facility is—a launch pad or Mission Control Center or a tracking station.)

(i) Restricted to major national operations facilities and foreign and domestic tracking network stations:

(A) JPL-Mission Control Center (DSN)

(B) Goldstone

(C) Mesa Antenna Range

(D) JSC-Mission Control Center (MSF)

(E) GSFC-Mission Control Center (STDN)

(F) World-Wide Network Tracking Stations

(G) OTDA-Operations Funded Support

(H) KSC-Launch Complex 39 and related support facilities;

(ii) That support funded by STS operations at MSFC, KSC, and JSC;

(iii) Tracking operations support contractors are subdivided as on-site (at or near GSFC or JPL) and as off-site.

(3) *Purchased and/or incidental services.*

(i) Purchased services (described in terms of funds only) are:

(A) Delivery orders against Federal supply schedules;

(B) Purchase orders;

(C) Blanket purchase agreements; or

(D) Basic ordering agreements not exceeding $10K per order.

(ii) Incidental services are:

(a) Described in terms of manpower required to perform the services;

(b) Procured from vendors who provide similar services to the local community;

(c) Vendor provides all or a substantial amount of the capital investment required to perform the work under the contract;

(d) Includes small contracts generally not exceeding four to five man-years per annum.

(bb) *Item 28—Cost accounting standards clause* (1 position). Enter Y (yes) or N (no) to indicate whether the contract contains the clause "Cost Accounting Standards" (see FAR 30.303-2).

(cc) *Item 29—New technology clause* (1 position). Enter Y (yes) or N (no) to indicate whether a long form or short form "New Technology" clause is included in the contract or the "Patent (Small Business Firms and Nonprofit Organizations)" clause (See FAR 27.302-4). For purchases under Federal Supply Schedule contracts, enter N (no).

(dd) *Item 30—Report on small business subcontracting program* (1 position). Enter Y (yes) or N (no) to indicate whether the contract contains the clause requiring the contractor to furnish the information prescribed on Standard Forms 294 and 295 (see 1804.6749).

(ee) *Item 31—Report on geographical distribution of NASA subcontracts* (1 position). Enter Y (yes) or N (no) to indicate whether the contract contains the clause requiring the contractor to furnish the information prescribed on NASA Form 667 (see 1805.6750).

(ff) *Item 32—Affirmative action plan* (1 position). Enter Y (yes) or N (no) to indicate whether the business concern certified that an affirmative action plan has been developed and is on file. Only contractors with 50 or more employees and receiving awards of $50,000 or more are required to develop a plan (see FAR 22.804).

(gg) *Item 33—Previously held contract subject to affirmative action program requirements* (1 position). Enter Y (yes) or N (no) to indicate whether the business concern certified that there has been a previous contract(s) subject to Affirmative Action Program requirements of the rules and regulations of the Secretary of Labor. (Refer to Standard Form 33) (see FAR 22.810).

(hh) *Item 34—Contract Physically Complete* (1 position). Enter Y (yes) or N (no) when the contract becomes physically complete, i.e., after all articles and services called for under the contract including such related items as reports, spare parts, and exhibits have been delivered to and accepted by the Government.

(ii) *Item 35—Modification obligations* (1 position). Enter the modification increase or decrease of $10,000 or more. Round the entry to the nearest dollar.

(jj) *Item 36—Women-owned business* (1 position). Enter Y (yes) or N (no) to indicate whether the business concern is women-owned. Enter 1 to indicate that the business firm did not certify as women-owned.

(2) *Women-owned business*—A women-owned business is a business that is at least 51 percent owned, controlled and operated by a woman or group of women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management. For the purposes of this definition, businesses that are publicly owned, joint stock associations and business trusts are exempted. Exempted businesses may voluntarily represent that they are or are not women-owned if this information is available.

(kk) *Item 37—Management reporting requirements (MRR): correlated cost and performance data reporting* (1 position). Enter one of the following codes (see NHB 9501.2A):

N None Required
2 NF 533M only
3 NF 533M and 533Q
4 NF 533M and 533P
5 NF 533P and 533Q
6 NF 533M, 533P and 533Q

(ll) *Item 38—Management reporting requirements (MRR): property and space hardware reporting* (1 position). Enter one of the following codes (see FAR 45.505-11): (Not required on grants)

N None Required
2 NF 1018 without Space Hardware
3 NF 1018 with Space Hardware

(mm) *Item 39—Trade data.* (1) Enter *one* numeric (0-9) to indicate the number of firms that offered foreign end products. Entry required regardless of whether Buy American Act is invoked or not. If none enter *0.* If 9 more enter *9.*

(2) *Percent difference* (2 positions)—If the evaluation factor under Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and the low firm offering a foreign end product, computed before application of the Buy American Act differential, i.e., the difference divided by the price of the low firm offering a foreign end product. Enter percentage as a whole number. If the evaluation factor under Buy American is not used, enter *0 0.*

(3) *Country of manufacturer* (2 positions)—If the product is manufactured, mined or grown in a foreign country or U.S. outlying area, enter the code from NBS-LO-1067 of that country/area. In the case of a service—if the service is performed by a foreign contractor (including U.S. outlying area contractor)—enter the code from NBS-10-1967 of that, country/area. If the product is manufactured, mined or grown in the U.S.A. (the 50 States and the District of Columbia), or the service is performed by a U.S. contractor, leave this item blank.

(4) *Percent Foreign Content* (2 positions)—Enter the percent of the

contract award price that represents the foreign content of the items or services procured. If none, enter *0 0*. If percent is 99 or 100, enter *9 9*. This information is required only from the successful offeror and regardless of whether the Buy American Act is invoked.

(nn) *Item 40—Total price or estimated cost* (11 positions). (1) Enter the total estimated price or cost for all contracts. For cost-reimbursement type contracts, enter the estimated total allowable cost, exclusive of fee, as prescribed in the contract (see FAR Subpart 16.3). For incentive contracts, enter the target cost exclusive of target profit or fee. For all other contracts, enter the definitized estimate of total cost exclusive of profit or fee.

(2) On *modifications*, enter the total cumulative, definitized estimated cost and *not* merely the increase or decrease effected by the respective modification. (The initially reported estimated cost will be overlaid by modification data.) Round all entries to the nearest whole dollar.

(00) *Item 41—Total profit or fee* (11 positions). (1) Enter the definitized negotiated fee or profit when applicable or available. For incentive contracts, enter the target fee or target profit. For award fee contracts, enter the base fee or potential award fee.

(2) On *modifications*, enter the total cumulative, definitized fee and *not* merely the increase or decrease effected by the respective modification. (The initially reported fee will be overlaid by modification data). Round all entries to the nearest whole dollar.

(pp) *Item 42—Description of contract/modification.* (1) Enter a brief description of the end item or services being procured. For modifications, enter a brief description of the purpose.

(2) *Prepared By.* Type name and/or signature of contracting officer or representative responsible for data being reported.

(3) *Date.* Enter the date report was prepared.

1804.671–5 Limited preparation of NASA Form 507.

For procurement actions listed below, the data to be reported will be *limited* as follows:

(a) *Intragovernmental basic procurement.* The following items will be completed (all other items will be blank):

1. Type of Record
2. Contract/PO Number
4. Accounting Installation Number
5. Procuring Installation Number
7. CIC Number
8. Contractor Name
9. Contractor Division (when applicable)
10. Contractor Address
11. Place of Performance—City
12. Place of Performance—State and Zip
13. Contract Date
14. Completion Date
15. Procurement Placement Code (98)
16. Kind of Action (05)
23. Type of Service or Product
34. Contract Physically Complete (when applicable).
40. Total Price or Estimated Cost
42. Description of Contract

(b) *Grants, cooperative agreements and space act agreements.* The following items will be completed (all other items will be blank):

1. Type of Record
2. Grant/Cooperative agreement/Space Act Agreement Number
4. Accounting Installation Number
5. Procuring Installation Number
7. CIC Number
8. Contractor Name
9. Contractor Division (when applicable)
10. Contractor Address
11. Place of Performance—City
12. Place of Performance—State and Zip
13. Contract Date
14. Completion Date
15. Procurement Place Code (ST, WT, SX, WX, SW, or WW)
16. Kind of Action (06 or 21)
17. Type of Contractor (05–12)
19. Labor Surplus Area (N or 1)
21. Extent of Competition (6 or 7)
23. Type of Service or Product

(c) *Reportable modification.* Only the following items need to be completed.

1. Type of Record
2. Contract/Grant/PO Number
3. Modification Number
4. Accounting Installation Number
5. Procuring Installation Number
13. Modification Date
14. Completion Date (when applicable)
16. Kind of Action (07–13)
18. Type of Contract (when applicable)
28. Cost Accounting Standards Clause (when applicable)
30. Report on Small Business Subcontracting Program (when applicable)
31. Report on Geographical Distribution of NASA Subcontracts (when applicable)
34. Contract Physically Complete (when applicable)
35. Modification Obligations (when applicable)
37. MRR: Cost and Performance Reporting (when applicable)
38. MRR: Property and Space Hardware Reporting (when applicable)
40. Total Price or Estimated Cost (when applicable)
41. Total Profit or Fee (when applicable)
42. Description of Modification

(d) *Corrections.* Only the following items need to be completed:

1. Type of Record
2. Contract/Grant/P.O. Number
3. Modification Number (when applicable)
4. Accounting Installation Number
5. Procuring Installation Number
6. Contract Physically Complete

Plus items to be corrected. If an item needs to be corrected to a blank enter an asterisk.

1804.671–6 Special procurement placement codes (PPC) for certain procurements under $10,000 (no NASA Form 507 required).

(a) The accounting copies on all procurements under $10,000 to Disadvantaged Business Firms—Direct shall be coded with a second letter M of the PPC, *e.g.*, BM, KM, etc. (See PPC matrix in Supplement 70, Subpart 1.)

(b) The accounting copies on all procurements under $10,000 to "Women-Owned Business Firms" shall be coded with a second letter W of the PPC, *e.g.*, BW, KW, etc. (See PPC matrix in Supplement 70, Subpart 1.)

1804.672 Report on NASA subcontracts.

NASA Form 667 will be used to obtain information relating to the geographic distribution of subcontracts awarded under certain NASA contracts.

1804.672–1 NASA contract clause.

The clause at 1852.204–70 shall be inserted in all NASA contracts of $500,000 or more and in all contracts where a modification increases the amount of a contract to $500,000 or more. In the latter instance, the clause will be inserted at the time of the applicable modification but will not be retroactive so as to require the reporting of subcontracts award prior to such modification.

1804.673 Individual contract report for contracts exceeding $150,000 for purchase of supplies and equipment.

1804.673–1 General.

This paragraph establishes procurement data reporting requirements to comply with the Trade Agreement Act of 1979 mandated by section 2 of Pub. L. 96–39. The Office of Federal Procurement Policy, Office of Management and Budget Policy Letter 80–8, dated December 11, 1980, formally established the reporting requirements, disseminated reporting instructions, and designated the Federal Procurement Data Center (FPDC) to collect the data.

1804.673–2 Applicability and coverage.

(a) The levels at which procurement data are to be reported and an "Individual Contract Report for Contracts Exceeding $150,000 for the Purchase of Supplies and Equipment" report to be completed are as follows:

(b) The data requirements are applicable to all contract actions made with appropriated or nonappropriated funds for "supplies and equipment" where the total dollars obligated is more

than $150,000. An Individual Contract Report for Contracts Exceeding $150,000 for the Purchase of Supplies and Equipment shall be prepared and submitted for each reportable contract action in accordance with the following instructions:

(1) A contract which obligated more than $150,000.

(2) Indefinite quantity type contract or basic ordering agreement that may result in the obligations during the fiscal year which accumulate to more than $150,000.

(3) A modification that obligated more than $150,000.

(4) A modification of $10,000 or more to a basic contract that obligated more than $150,000.

(5) Termination of contract that was previously reported.

(6) When a single solicitation results in two or more contracts for the same product and the total amount of the multiple contracts exceed $150,000.

1804.673–3 Definition.

For the purpose of reporting, a reportable contract action means any action that obligates or deobligates funds and is taken to obtain supplies or equipment from sources outside the Federal Government.

1804.673–4 Submission of reports.

The contracting officers or their representatives shall complete an "Individual Contract Report for Contracts Exceeding $150,000 for the Purchase of Supplies and Equipment" for all contract actions made with appropriated or nonappropriated funds for supplies and equipment where the total dollars obligated is more than $150,000 and submit the report to NASA Headquarters, Procurement Management Division (Code HM–1). NASA Headquarters (Code HM–1) will accumulate the reports and submit an Agency consolidated report quarterly to the Federal Procurement Data Center.

1804.674 Subcontracting report.

Standard Forms 294, Subcontracting Report for Individual Contracts, and 295, Summary Subcontract Report, will be used to obtain data to provide a basis for evaluating the effectiveness and extent of subcontracting programs involving small and small disadvantaged business concerns pursuant to the Small Business Act of 1958, as amended by Pub. L. 95–507.

1804.675 NASA financial management reporting.

When financial management reporting on NASA Form 533 series of reports is required (see NASA Management Instruction 9501.2A "Procedures for Contractor Reporting of Correlated Cost and Performance Data") such requirement will be set forth in the procurement request, and the appropriate clauses prescribed at 1804.675–1 shall be included in the contract.

1804.675–1 NASA contract clauses.

(a) The clause at 1852.204–71 shall be used when the NASA Form 533 series of reports, excluding the optional Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P), is required from the contractor.

(b) The clause at 1852.204–72 shall be used in conjunction with the clause in subparagraph (a) above when the optional Monthly Performance Analysis Report is also required from the contractor.

1804.676 Committee on Academic Science and Engineering (C.A.S.E.) Report.

The Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University projects (NASA Form 1356) is designed to collect data (not appropriate for inclusion on NASA Form 507) required for preparation of Government-wide reports on sponsored projects in universities. Information submitted with NASA Form 1356 is used in conjunction with existing procurement and financial data to produce reports required by the National Science Foundation Act, the Office of Management and Budget, the Legislative Branch and private sector requestors. The preparation and utilization of NASA Form 1356 has been made an integral part of the information system for recording all activity with colleges and universities, regardless of the nature of the obligating instrument (grant, contract, cooperative agreement, purchase order) or type of proposal (solicited or unsolicited). Preparation of the form is specified by NMI 5101.12. Detailed instructions for completion are on the form itself.

Subpart 1804.8—Contract Files

1804.802 Contract files.

The cognizant NASA contracting office will be responsible for maintaining the contract administration file where the contract administration functions have not been delegated under FAR Subpart 42.1.

1804.802–70 Handling of classified material.

When the bulk of the material is unclassified, classified material relating to the same contract shall be maintained in a separate file folder and container, and the unclassified folder marked or cross-referenced to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any of the documents in the folder.

1804.802–71 Use of standard file folders for drawer and shelf filing.

(a) For all short duration contracts and for small purchase files, standard letter-size folders should be used. For complex long-duration high-dollar value contracts, heavy individual or 6-part partitioned folders, with front and back flaps, two dividers, expansion gussets between flaps and dividers, and fasteners mounted at the top of the insides of the flaps and on each side of the dividers, may be used.

(b) Loose dividers (file inserts), pre-punched at the top of fastening documents, may be used for subdividing material within the same folder when special folders are not used.

1804.802–72 Filing of documents.

(a) Documents relating to a specific contract and described in FAR 4.803 (a), (b) and (c) should normally be placed in chronological order in an "OFFICIAL FILE" folder or folders. Each folder shall be marked or labeled with the contract number and, when more than one folder is required for the same contract, with information as to the file segment. Other identifying data, such as the contractor's name, should be added only when needed to facilitate filing and locating.

(1) A separate folder need not be established for each subcontract, small purchase, or small dollar value contract, on which little or no administration is required; these should be filed in numerical sequence within the same folder.

(2) When a single folder is used, basic procurement documents and all modifications ordinarily should be filed on the left side of the folder and all other material on the right side. As volume warrants, a contract file may be subdivided further, either within the folder or by using additional folders, as appropriate (e.g., by pre-contract documents, basic contract, contract modifications, termination documents, quality assurance and progressing and production surveillance, property administration and plant clearance, termination documents, and general correspondence).

(3) When it is impractical to file certain documents in the official case folder because of their bulk or use, they may be maintained separately in other suitable containers, but they shall be handled as "OFFICIAL FILES" and

cross-referenced in the contract case file.

(4) Documents relating to two or more contracts may be filed in one contract file and cross-referenced in the others, or enough copies reproduced to provide for filing one in each related contract file. Other pertinent documents of a more general nature may be filed separately in the contractor general file and cross-referenced in the contract file.

(b) Documents described in FAR 4.801(c)(3) and relating generally to the contractor rather than to a specific contract shall be placed in a folder labeled with the contractor's name. When necessary, additional folders may be used and the material subdivided by subject such as general, production, termination, property control, and performance.

1804.802-73 Arrangement of files.

(a) Contract file folders normally should be arranged numerically by contract serial number. When special circumstances warrant, contract folders may be arranged alphabetically by contractor's name.

(b) Contractor general file folders shall be arranged alphabetically by name of the contractor.

1804.803 Contents of contract files.

1804.803-70 Separate files.

Records regarding quality assurance or property actions shall be maintained in separate folders to facilitate possible early disposal of these files.

1804.804 Closeout of contract files.

1804.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Upon receipt of the contract completion statement (NASA Form 1611) from the contract administration office, and compliance with FAR 4.804-2(b), the contracting officer shall complete Item 10 of the NASA Form 1611.

(b) The date in Item 9d of NASA Form 1611, Contract Completion Statement, shall be used as the closeout date for file purposes, except that the date in Item 10e of NASA Form 1611 shall be used when completion of any pending significant contracting office action extends more than three months beyond the date shown in Item 9d of NASA Form 1611.

1804.804-5 Detailed procedures for closing out contract files.

(a) When the contracting office retains contract administration it shall use as necessary NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record, to ensure that the applicable actions enumerated at FAR 4.804-5(a) are completed.

(b) Upon completion of paragraph (a) above the contracting officer shall use NASA Form 1611, Contract Completion Statement, (this will satisfy the requirements of FAR 4.804-5(b)) for all contracts exceeding $10,000. For contracts $10,000 and under, the contracting officer shall file a signed statement that all contract actions are complete.

1804.805 Disposal of contract files.

See NHB 1441.1A, NASA Records Disposition Handbook.

1804.805-70 Review, separation, and retirement of contract files.

(a) *Review of contract case and cross reference locator files.* Upon determination of contract completion under the procedures outlined in 1804.804, each office shall review all files pertaining to the individual contract as follows:

(1) *Duplicate or working contract case file*—remove any original or official file copies of documents and place them in the appropriate official file; destroy immediately any remaining material, or segregate and mark it for early disposal.

(2) *Official contract case file*—remove folder for completed contract from the active file series, mark each folder or folder tab "Completed (Date)" and place folder in completed (inactive) contract file series; separate series should be established for contracts of $10,000 or less and for contracts of more than $10,000, to facilitate later disposal.

(3) *Cross reference/locator files*—remove any contract cross-reference data forms relating to the completed contracts, mark each "Completed (Date)", and place them in completed (inactive) cross-reference/locator file series for later disposal.

(b) *Review of contractor general files.* Each office shall review contractor general files at least once annually and—

(1) Remove obsolete and superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of contractor's current or future capability, performance, or programs, and documents relating to a contractor who is no longer a possible source of supplies, services, or technical assistance) and dispose as authorized in 1804.805; and

(2) Remove any documents pertaining only to completed contracts, place those not routine in nature in inactive contract file for later disposal, and immediately dispose of routine documents as authorized in NHB 1441.1A.

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.

This subpart contains policies and procedures applicable to the transfer of contracts between NASA installations.

1804.7001 Definition.

"Transfer of a contract," as used in this subpart means that process whereby a contract and all future responsibility for the contract held by one installation is transferred or reassigned in writing, to another installation.

1804.7002 Restrictions.

(a) Requests for permission to transfer a contract to another NASA installation, when deemed advisable by the Director of the installation, shall be addressed to the appropriate official-in-charge of a Headquarters program office or the designated program director after concurrence from the recipient installation director.

(b) Contracts shall not be transferred by an installation until approved by the cognizant official-in-charge of the Headquarters program office or designated program director and the concurrence of the recipient installation director. The concurrence of the Associate Administrator for Management Operations is also required for a transfer where an installation's roles and missions may be affected.

(c) An information copy of the memorandum consummating each transfer shall be sent to the Director, Institutional Operations Division, Management Operations Office.

1804.7003 Preparatory actions.

The Procurement Officer of the installation transferring the contract shall contact the Procurement Officer of the installation scheduled to receive the contract. This contact shall be for the purpose of establishing a working agreement and a time phase schedule of transfer actions.

1804.7004 Coordinating actions by the contracting officer of the installation transferring the contract.

The contracting officer shall coordinate with the following elements within his installation prior to transferring a contract:

(a) Financial Mangement Office to determine the contract financial records to be transferred, and the method, timing, and dollar amount of such transfers.

(b) Technical (Engineering and Project) Office to determine the status of any outstanding engineering changes.

(c) Reliability and Quality Assurance Office to determine status and method of transferring the reliability and quality assurance functions.

(d) Industrial Property and Facilities Office to determine the method of transferring the records of Government property.

(e) Transportation Office to determine the status of Bills of Lading furnished to the contractor.

(f) Security Office to determine if any classified material is outstanding and if special precautions are necessary during the transfer process.

(g) Other organizational elements to determine the status of any other actions such as New Technology, Materials Reports, PERT, and Safety.

1804.7005 Inventory of current requests for contract administration assistance.

The contracting officer transferring the contract shall prepare an inventory of all outstanding requests for contract administration assistance issued to other Government agencies (e.g., Military Departments of the Department of Defense, Defense Contract Administration Services Regions, TVA, DOE, FAA, etc.). This inventory shall include the name and address of the agency office, functions requested to be performed, estimated cost of the services, and estimated reimbursement due the administration agency for the services to be performed on the incomplete portion of each requested function. Copies of this inventory will be provided for the contracting officer to whom the contract is to be transferred.

1804.7006 Transfer review.

The contracting officer to whom the contract is to be transferred shall be given an opportunity to review the contract, letters of request, actions in process, and other related files and to request corrective action, if necessary, prior to the official transfer of the contract.

1804.7007 Notification to the contractor.

After coordination with the installation organizational elements as required in 1804.7004 and with the receiving contracting officer, the contractor shall be notified in writing of the impending transfer by the transferring contracting officer.

1804.7008 Notification to other agencies.

As early as practicable after coordination between procurement offices has been effected, the contracting officer transferring the contract, shall notify all agencies performing or requested to perform administration services of the impending transfer.

1804.7009 Administrative actions.

Prior to transferring the contract, a complete inventory shall be made of the contents of the contract file to be transferred. All contract administration actions in process shall be set forth as a separate listing in an inventory and shall include the status of each action.

1804.7010 Transfer.

Upon completion of the preparatory actions required herein, both contracting officers shall agree upon acceptable dates for the transfer of the contract responsibility and the contract files. The contracting officer of the installation transferring the contract shall issue letters as indicated below and provide copies to the contracting officer receiving the contract.

(a) *Contractor.* Notification of the transfer date, termination of appointment of contracting officer's representatives, and the name, mailing address, and telephone number of the contracting officer at the installation receiving the contract.

(b) *Contracting Officer's representatives.* Termination of each contracting officer's representative appointment effective on the date of transfer.

(c) *Agencies performing contract administration functions.* Notification of the effective date of transfer of the contract along with the mailing address and telephone number of the contracting officer at the installation receiving the contract. (Existing requests for contract administration functions shall not be terminated.)

(d) *Installation organizational elements.* Notification of the effective date of transfer and other pertinent information.

(e) *Receiving installation.* Transfer of contract responsibility and transmission of the contract file including an inventory of its contents, and a summary of any contractual problems which should be brought to the attention of the contracting officer receiving the contract. This letter also shall contain a provision for acceptance of the responsibility for the contract and its related files by the contracting officer and a notification of the acceptance to the contracting officer of the installation transferring the contract.

1804.7011 Final action by the contracting officer transferring the contract.

The contracting officer at the installation transferring the contract shall retain for permanent file a copy of—

(a) The approvals and concurrences required by 1804.7002(b);

(b) The inventory receipt signed by the contracting officer receiving the contract;

(c) The contract for historical purposes; and

(d) Any additional documents considered necessary to present a complete summary of the transfer action.

1804.7012 Action by the contracting officer receiving the contract.

The contracting officer receiving the transferred contract shall—

(a) Acknowledge receipt of the contract and its related files;

(b) Inform all offices affected within the installation of the receipt of the contract;

(c) Appoint new contracting officer's representatives, and such other technical representatives as are deemed necessary;

(d) Issue a modification to the contract to provide for the administrative changes caused by the transfer action, such as identifying the—

(1) Office responsible for performing contract administration;

(2) Office responsible for making payment;

(3) Office to which vouchers are to be submitted;

(4) Office to which reports and data are to be submitted;

(5) Place of delivery of contract items; and

(6) Any other change made necessary as a result of the transfer;

(e) Provide copies of the contract documents to the installation offices which have a functional responsibility for the contract; and

(f) Where appropriate, supplement the letter of request to the Government agency providing contract administration support services, to reflect the changes resulting from the transfer action, including identification of new contracting officer's representatives, manpower accounting reporting, reimbursement information, and other changes resulting from the transfer action. The supplement may terminate or amend an existing contract administration support arrangement or may request support in additional areas.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.

This subpart contains the administrative requirements and

procedures for uniform numbering of NASA contracts (including letter contracts), purchase orders (including requests to other Government agencies), grants, basic agreements, basic ordering agreements, other documents evidencing in whole or in part an agreement between the parties involving the payment of appropriated funds or collection of funds for credit to the Treasury of the United States, and modifications or supplements thereto. It further provides for a uniform identification system for numbering IFB's and RFP's.

1804.7101 Policy.

(a) Documents coming within the scope of this Subpart shall be numbered with approved prefixes and serial numbers for identification, audit, and filing purposes. If a prefix identification symbol is required for an installation or office not listed in this Subpart, a request for the assignment of a prefix identification shall be submitted to the Office of Procurement, NASA Headquarters (Code HP–1). Alpha-numeric characters, other than those prescribed in this Subpart, shall not be used as part of the numbering system. If other identification is required, it shall be placed on the document in such a location as to clearly separate it from the identification number prescribed herein.

(b) The indentification number shall be retained unchanged for the life of the particular instrument and shall consist of not more than 11 alpha-numeric characters positioned as prescribed in this Subpart.

1804.7102 Invitations for bids, requests for proposals, contracts, agreements, and modifications.

1804.7102–1 Identification of invitations for bids and requests for proposals.

IFB's and RFP's shall be numbered in accordance with the individual field installation's system for identifying IFB's and RFP's except that in all cases the identifying number shall begin with the installation's numerical identification prefix as set forth in 1804.7102–4.

1804.7102–2 Contracts and agreements requiring numbering.

The following contracts and agreements shall be numbered in accordance with the uniform numbering system prescribed in 1804.7102–3, 1804.7102–4, 1804.7102.5, 1804.7102–7:

(a) All contracts, including letter contracts, for procurement or sale of supplies or services involving or likely to involve the payment or receipt of $10,000 or more.

(b) All indefinite delivery type contracts involving more than one payment and estimated to involve payment or receipt of more than $10,000 during the fiscal year.

(c) All utilities contracts.

(d) All leases of real property and renewals thereof.

(e) All easements.

(f) All basic agreements.

(g) All basic ordering agreements.

(h) All other written agreements involving payment or receipt of funds not covered by 1804.7103.

1804.7102–3 Assignment and control of numbers.

(a) The numbering of contracts, agreements, and modifications thereto shall be centrally by each contracting office at NASA Headquarters, field installation, or office for which a prefix identification symbol has been assigned.

(b) A complete identifying number shall consist of the following and will be assigned to NASA contracts and agreements designated in 1804.7102–2:

(1) One of the prefix identification symbols contained in 1804.7102–4 followed by a hyphen.

(2) A serial number (assigned in accordance with 1804.7102–5) for the particular transaction.

1804.7102–4 Assigned contract or agreement prefixes.

(a) Approved prefixes for NASA contract or agreement numbers are as follows:

(1) Headquarters and Prefix

Headquarters Administration Office: NASW
Procurement Office (Basic Agreements And Institutional Cost Sharing Agreements): NAS11

(2) Field Installations and Offices and Prefix

Langley Research Center: NAS1
Ames Research Center: NAS2
Lewis Research Center: NAS3
Goddard Space Flight Center: NAS5
NASA Resident Office-JPL: NAS7
George C. Marshall Space Flight Center: NAS8
Lyndon B. Johnson Space Center: NAS9
John F. Kennedy Space Center: NAS10
National Space Technology Laboratories: NAS13

(b) The identification numbering system of all contracts that are totally funded under reimbursable arrangements with the Department of Energy shall conform to 1804.7102–3, except that a DEN prefix shall be used in lieu of the NAS prefix, e.g., DENW would be the Headquarters prefix and DEN8 would be the Marshall designation.

(c) In a like manner, all Special Agreements awarded under the authority of sections 203(c)(5) or 203(c)(6) of the Space Act will also be identified as set forth in 1804.7102–3, except that an NCA prefix shall be used in lieu of the NAS prefix.

(d) Also, all Cooperative Agreements subject to Pub. L. 97–258 will be identified as set forth in 1804.7102–3, except that an NCC prefix shall be used in lieu of the NAS prefix.

1804.7102–5 Serial numbers.

(a) Contracts and agreements identified in 1804.7102–2 shall be numbered serially by the organizational unit authorized to assign such numbers, commencing with the number "1", and continuing in successing without regard to fiscal year or type of contract; for example: NAS5–300, NAS5–301.

(b) If the contract is a facilities contract, the letter "F", in parentheses, shall be at the end of the serial number for identification pruposes; for example: NAS5–301(F).

(c) For basic agreements and institutional cost sharing agreements executed by the procurement office, the letter "B", in parentheses, shall be added at the end of the serial number for basic agreements and the letter "C", in parentheses, shall be added at the end of the serial number for institutional cost sharing agreements; for example: NAS11–1(B), NAS11–2(C).

(d) When the series of numbers under a symbol exceeds five digits (99,999), a new series of numbers will be used beginning the series with number 1 and followed by the capital letter "A". Should additional series become necessary, they will be distinguished by the capital letters "B", "C", etc. as may be required, except that the letters "I" and "O" shall not be used.

1804.7102–6 Modifications of contracts or agreements.

Modifications of definitive contracts or agreements shall (a) bear the same identification as the contract or agreement being modified, and (b) be numbered consecutively for each contract or agreement, beginning with Modification No. 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for Notices of termination, modifications shall be effected by the use of Standard Form 30 (Amendment of Solicitation/Modification of Contract).

1804.7102–7 Letter contracts.

(a) *Superseding definitive contract.* The same number assigned to the letter contract according to 1804.7102–4 and 1804.7102–5 shall also be assigned to the superseding definitive contract. No other

contract number will be assigned to the superseding definitive contract.

(b) *Modifications.* (1) Additions or changes to letter contracts will be accomplished by modification to the letter contract. Modifications shall (i) bear the same identification as the letter contract being modified, and (ii) be numbered consecutively for each letter contract, beginning with Modification No. 1, regardless of whether the modification is accomplished by unilateral or bilateral action.

(2) Upon definitization of the letter contract, contract modification shall be accomplished by using the numbering system prescribed in 1804.7102–6.

1804.7103 Purchase orders and requests.

1804.7103–1 General.

Purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services will be assigned a complete identifying number consisting of—

(a) One of the letter prefixes set forth in 1804.7103–2 followed by a hyphen; and

(b) A serial number, assigned in accordance with 1804.7103–3.

1804.7103–2 Assigned purchase order or request prefixes.

Approved letter prefixes for NASA purchase orders (including blanket purchase agreements) or requests to other Government agencies are as follows:

(a) Headquarters and Prefix

Headquarters Administration Office: W

(b) Field Installations and Offices and Prefix

Ames Research Center: A
George C. Marshall Space Flight Center: H
Goddard Space Flight Center: S
John F. Kennedy Space Center: CC
Langley Research Center: L
Lewis Research Center: C
Lyndon B. Johnson Space Center: T
NASA Resident Office-JPL: WO
National Space Technology Laboratories: NS

1804.7103–3 Serial numbers.

The same series of consecutive numbers will be used for numbering both purchase orders (including blanket purchase agreements) and requests to other Government agencies. The series of numbers will commence with the number 1 and continue in succession without regard to the fiscal year. The number will follow the letter symbol, separated by a hyphen, for example: Order Number L–350; Order Number W–1,000. When the series of numbers under a symbol exceeds 5 digits (99,999), a new series will be used beginning the series with number 1 and followed by the capital letter "A". Should additional series become necessary, they will be distinguished by the capital letters "B", "C", "D", etc., as may be required except that the letters "I" and "O" shall not be used.

Subpart 1804.72—Review and Approval of Contractual Instruments

1804.7200 Scope of subpart.

This subpart contains administrative requirements for furnishing advance contract information to NASA Headquarters and to specified field installations of certain proposed procurements expected to exceed the small purchase limitation and for obtaining the approval of NASA Headquarters, prior to award, of specified categories of contracts and supplemental agreements. It also lists information to be furnished by contracting officers in submitting contracts and supplemental agreements that require NASA Headquarters approval. These requirements are in addition to other approval and review requirements.

1804.7201 Contract review function.

The primary purpose of contract review and approval by NASA Headquarters of certain categories of contractual actions is to provide an independent review and analysis for the purpose of determining whether the procurements—

(a) Were competently negotiated;

(b) Are based on adequate information;

(c) Are in conformance with law, established policies and procedures, and sound business practices; and

(d) Will result in contracts that adequately protect the interest of the Government.

1804.7202 Research contracts with colleges and universities.

Where a contract is selected as the research support instrument (see paragraph 203 of the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1A) and the proposed contractor is a nonprofit institution of higher education or a nonprofit institution which is operationally affiliated or integrated with an educational institution, the contracting office will, upon award, forward NASA Form 1356, C.A.S.E. Report on College and University Projects (see 1853.204–1356). This form is either submitted to the contracting office with funded procurement requests (see NMI 5101.12), or, in the case of certain non-funded actions, is initiated by the contracting office. NASA Forms 1356 will be completed, checked and promptly forwarded to the Procurement Management Division (Code HM–1), NASA Headquarters, in accordance with the instructions on the form.

1804.7203 Advance information.

(a) A copy of each unclassified presolicitation notice, solicitation or changes thereto including specifications but not drawings, shall be forwarded to the Office of Small & Disadvantaged Business Utilization, NASA Headquarters (Code K), at the time of issuance. If the proposed procurement is classified, only a copy of the solicitation notice is required.

(b) The presolicitation notice will contain the information prescribed by FAR 5.204). Each copy of the solicitation shall be accompanied by a statement of the estimated cost of the proposed procurement and a complete list of firms or persons solicited. This information is for internal NASA use only.

1804.7204 Review by the contracting officer.

All contractual documents, regardless of dollar value, require a complete review by the contracting officer.

1804.7205 Information to be furnished when requesting approval of contracts and supplemental agreements.

(a) *General.* Requests for approval of contracts and supplemental agreements submitted to Headquarters for approval by the Assistant Administrator for Procurement, in accordance with Subpart 1807.71, Master Buy Plan Procedures, and 1816.603, Letter contracts, shall include the information required by this section and shall be fowarded in sufficient time to allow a minimum of 15 days for review. The official contract file will be submitted with the request for approval and will include completed NASA Form 1098, "Checklist for Negotiated and Advertised Contract File Content (Award File)." Where Headquarters Legal Counsel review is required, a duplicate copy of the file should, if practical, be forwarded in order to expedite review. A list of contracts requiring such legal review will be published periodically.

(b) *Negotiation.* Each request for approval of a negotiated contract or supplemental agreement shall be accompanied by 8 copies of the contract, 4 of which are executed by the contractor and contracting officer, and by the official contract file which contains the appropriate documentation as set forth in FAR 4.803(a). However, for FAR 4.803(a) (10), (11), and (12) provide documentation pertaining only to the successful offeror and for FAR

4.803(a)(28) do not provide supporting documentation for previously issued contract modifications, except as required below. When the contract being forwarded is a supplemental agreement to an existing contract, the contract file shall include an index of all previous modifications which will serve as a guide or quick reference. S.A. No. 2- Added clause 1852.223–70, Safety and Health.

1804.7206 Conditional approval of contracts and supplemental agreements.

(a) Contracts and supplemental agreements submitted to Headquarters for approval by the Assistant Administrator for Procurement may be approved conditionally, subject to requiring the cognizant contracting office to take certain corrective actions within a specified period of time. These corrective actions include (1) revising, deleting, or adding contract clauses, and (2) developing additional supporting data for inclusion in the contract file, prior to or concurrent with the distribution of the approved contract or by an early supplemental agreement.

(b) The Procurement Officer will ensure that these corrective actions are accomplished in accordance with the conditional approval. In addition, the Procurement Officer will provide the Assistant Administrator for Procurement (Code HS–1) with a copy of the corrected contract pages, supplemental agreement, or additional supporting data that accommodates the conditions of approval. This should be evidenced by a memorandum that references the Headquarters approval memorandum and indicates the status of the corrective actions.

(c) On receipt and review of the corrective actions, Headquarters will notify the cognizant Procurement Officer of the disposition of the conditional approval. Such notice will be made a part of the official contract file and the Headquarters file of record.

Subpart 1804.73—Procurement Request

1804.7301 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with the latest revision of NASA Management Instruction 5101.12, "Policy and Procedures Concerning Procurement Request."

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation prior to the receipt of the approved procurement request certifying that funds are available when—

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the procurement will be available prior to the date set for contract award or contract modification; and

(3) The Procurement Officer authorizes such action prior to the issuance of the solicitation.

(c) The procurement request shall be assigned within the contracting office to a negotiator who will be responsible to the contracting officer for conducting the business aspects of the transaction. The negotiator will review the request to ensure that it complies with NASA Management Instruction 5101.12, the FAR, and this Regulation, and that the information contained in the request is in sufficient detail to prepare the solicitation. Uncertain requirements or inconsistencies in the procurement request will be discussed with the initiator of the request and clarified prior to the initiation of procurement action.

PART 1805—PUBLICIZING CONTRACT ACTIONS

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Subpart 1805.4—Release of Information.

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Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1805.1—Dissemination of Information

1805.101 Methods of disseminating information.

For NASA policy regarding paid advertisements, see FAR 5.502 and 1805.502.

Subpart 1805.2—Synopses of Proposed Contracts

1805.201 General.

1805.201–70 Headquarters notification.

A copy of each synopsis of a proposed contract, sent to the Department of Commerce, shall be furnished to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K).

1805.205 Special situations.

Potential sources which respond to NASA Advance Notices shall be added to the appropriate solicitation mailing list for the subsequent solicitation. Those sources which do not appear on the solicitation mailing lists established in accordance with FAR 14.205–1 shall be requested to submit Standard Form 129, Solicitation Mailing List Application. In those situations where responding sources are on established lists they may be requested to submit amended applications in order to reflect their current capabilities.

1805.207 Preparation and transmittal of synopses.

Within NASA, each notice publicizing procurement of architect-engineer services shall be headed *"R. Architect-Engineer Services."* The project shall be listed with a brief statement concerning the location, scope of service required, the significant evaluation criteria and the relative order of importance the Government attaches thereto, the estimated construction cost range, the construction cost limitation, type of contract proposed, the estimated start and completion dates, and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionaire for Specific Project, if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. If the procurement is to be set aside for small business, the notice shall so state, indicating the specific size standard to be used and requiring that eligible responding firms

submit a small business certification statement.

"Provisions of Note 62 shall apply to this notice except that in the second paragraph of the note: (a) the 'National Aeronautics and Space Administration' is substituted for the 'Department of Defense' wherever the reference appears, and (b) the third additional consideration listed is changed to read: '(3) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry.' "

Subpart 1805.3—Synopses of Contract Awards

1805.302 Preparation and transmittal of synopses of awards.

1805.302-70 Headquarters notification.

The contracting officer shall forward, by mail, one copy of the synopsis of contract award as prepared under FAR 5.302 to the Office of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K) and a copy to the Public Affairs Office of the installation.

1805.303 Announcement of contract awards.

Congressional notification shall be in accordance with 1805.403–70.

1805.303-70 Furnishing additional procurement information to the public.

(a) *Policy.* (1) In addition to publicizing procurements and contract awards in the Commerce Business Daily, it is NASA policy to furnish the public, upon request, through the public affairs office of the NASA installation receiving the request, information on specific current NASA procurements, including—

(i) The names of firms invited to submit bids or proposals;

(ii) The names of firms which attended pre-proposal briefing conferences when held;

(iii) After the date established for receipt of bids or proposals, the names of firms which submitted bids or proposals (but see Subpart 1815.6 regarding requests for information involving offerors participating in negotiations); and

(iv) Contract award information as required to be publicized in the Commerce Business Daily under the provisions of FAR 5.303 and this 1805.303–70.

(2) Exceptions to this policy will be permitted only when the Assistant Administrator for Procurement or the Director of the field installation concerned determines that the disclosure of such information would be prejudicial to the interests of NASA.

(b) *Procedures.* Contracts requiring approval by the Assistant Administrator for Procurement, in accordance with Subpart 1804.72 will not be distributed, nor will any information be given to any source outside of NASA that the contract has been approved, until 24 hours after the Director of Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters, have been advised that the contract has been consummated.

(c) *Unsuccessful offerors.* For releasing information to unsuccessful offerors, see FAR 14.408 and FAR Subpart 15.10.

1805.303-71 Notification of the Public Affairs Office.

(a) *Letter contracts.* (1) The procedures for issuing and approving letter contracts are contained in FAR 16.603 and 1816.603. Prior to transmittal of a letter contract to a contractor for signature, the Procurement Officer will furnish to the Installation Public Affairs Office the following information:

(i) Whether the letter contract initiates a new contract or additional work or services under an existing contract.

(ii) Dollar amount authorized for letter contract and estimated total cost of the contract or supplemental agreement.

(iii) Name and address of the contractor.

(iv) Location where the work is to be performed.

(v) Brief description of the work, including identification of the program and project.

(vi) For the purpose only of responding to queries, a list of the unsuccessful offerors and addresses.

(2) Upon receipt of the information described in paragraph (a)(1) above, the Installation Public Affairs Office will transmit the information immediately, in the form of a news release, by priority TWX or more expeditious means (if appropriate), to the Director, Public Affairs Division, and the Director of Legislative Affairs, NASA Headquarters. The information will not be otherwise released by the Installation Public Affairs Office, nor will the letter contract be released before 2:30 p.m. Washington, DC time of the next working day, unless clearance has been received earlier from the office of the Director, Public Affairs Division. If individual circumstances clearly indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(b) *Definitive contracts and supplemental agreements.* (1) This subparagraph pertains to contracts and supplemental agreements which do not require the approval of the Assistant Administrator for Procurement pursuant to 1804.7205 and are in an amount of $5,000,000 or over, exclusive of supplemental agreements covering overruns or incremental funding actions. Such contracts and supplemental agreements will not be distributed, nor information be given to any source outside NASA that the contractural instrument has been signed by both parties, until the following procedures are carried out:

(i) The Procurement Officer will furnish to the Installation Public Affairs Office the following information:

(A) Whether the contract initiates a new contract or additional work or services under an existing contract;

(B) Type of contract;

(C) Dollar amount authorized for the instant action and estimated total cost of the contract if this is different;

(D) Name and address of the contractor;

(E) Location where the work is to be performed;

(F) Brief description of the work, including identification of the program and project; and

(G) For the purpose only of responding to queries, a list of the unsuccessful offerors and addresses.

(ii) Upon receipt of the above information, the Installation Public Affairs Office will immediately prepare a news release in the form of a priority TWX which will contain as a minimum the information in paragraph (b)(1)(i) above, and transmit it to the Director, Public Affairs Division, and the Director of Legislative Affairs, NASA Headquarters. The information will not be otherwise released by the Installation Public Affairs Office, nor will the contract instrument be released before 2:30 p.m. Washington, DC time of the next working day, unless clearance has been received earlier from the office of the Director, Public Affairs Division. If individual circumstances clearly indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(2) Contracts and supplemental agreement which require the approval of the Assistant Administrator for Procurement pursuant to 1804.7205 will be accompanied, when forwarded for such approval, by a draft news release prepared by the Installation Public Affairs Office and furnished to the contracting office for inclusion in the submission file. The news release will contain as a minimum the information required by paragraph (b)(1)(i) above. At the time the contract or supplemental

agreement is approved by the Assistant Administrator for Procurement, the news release will be forwarded inmediately to the Director, Public Affairs Division and the Director of Legislative Affairs.

Subpart 1805.4—Release of Information

1805.401 General.

Release of information to the Small Business Administration shall be in accordance with FAR 19.402(b).

1805.402 General public.

Requests from the general public for specific information will be processed in accordance with 1805.303–70.

1805.403 Requests from Members of Congress.

1805.403–70 Headquarters approval and release.

The proposed reply, with full documentation, will be promptly prepared and forwarded by the most expeditious means to the Assistant Administrator for Legislative Affairs, NASA Headquarters, for approval and release. (See 1805.303–70.)

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Use of paid advertisements for procurement purposes is not authorized in NASA.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1807.1—Acquisition Plans

1807.101 Definitions.

"Procurement plan" means a detailed outline of the method by which the contracting officer expects to accomplish the procurement task. The plan is an administrative tool designed to enable the contracting officer to plan effectively for the placement and accomplishment of assigned procurements by analyzing the requirement for, and determining the method to be used in, placing the procurement. It also furnishes justification for the contemplated method of procurement for use in connection with the review and approval of higher authority when applicable.

1807.102 Policy.

NASA uses several methods to document its acquisition planning. These include the Project Approval Document (PAD), Project Plan, Program Operation Plan (POP), normal budget submissions, and procurement plan. The procurement plan is the only one of these coordinated documents that is a direct procurement responsibility. Instructions and requirements for completing the other documents are in various NMI's. The thresholds and requirements for NASA procurement plans are at 1807.103 below. As authorized in FAR 7.102, NASA will continue to use its existing procurement planning system in lieu of the criteria in FAR Subpart 7.1.

1807.103 Agency-head responsibilities.

(a) *Requirement for preparation of procurement plans.* (1) Except as otherwise authorized by paragraph (a)(2) below, the contracting officer shall prepare a procurement plan, with the advice and assistance of the cognizant technical division, on each negotiated procurement estimated to exceed the dollar amount set forth below for the installation concerned. Such plans shall be prepared prior to solicitation of proposals. Field installations may require the preparation of a procurement plan for negotiated procurements that are not anticipated to exceed the dollar amount established for the particular installation:

(i) $250,000 for—

(A) Headquarters Contracts and Grants Division.

(B) NASA Resident Office—JPL.

(C) National Space Technology Laboratories.

(ii) $500,000 for—

(A) Ames Research Center.

(B) Goddard Space Flight Center.

(C) Johnson Space Center.

(D) Kennedy Space Center.

(E) Langley Research Center.

(F) Lewis Research Center.

(G) Marshall Space Flight Center.

(2) Procurement plans are not required to be prepared for procurements—

(i) Of architect-engineer services;

(ii) Based on unsolicited proposals;

(iii) Of basic research from nonprofit organizations;

(iv) Of utility services where the services are available from only one source:

(v) Made from or through other government agencies;

(vi) Of industrial facilities required in support of related procurement contracts; and

(vii) Of flight payloads and investigations where selection is made pursuant to NHB 8030.6, Guidelines for Acquisition of Investigations.

(b) *Approval of procurement plans.* (1) Whenever the estimated cost of the procurement (including the aggregate amount of follow-on contracts) meets the thresholds below, procurement plans, shall, as a minimum, be reviewed and approved as follows:

(i) For procurements in excess of the dollar amount in 1807.103(a)(1) above, but less than the dollar amount below for the installation concerned, the procurement plan shall be submitted for the approval of the Procurement Officer or designee after review and written concurrence by the head of the cognizant technical division or laboratory, as applicable. (For the purpose of this requirement, the term "or designee" shall mean the individual authorized by the Procurement Officer to sign the procurement plan. Such authorization shall be in writing and shall not be delegated to more than one individual.)

(A) $1,250,000 for —

(*1*) National Space Technology Laboratories.

(*2*) Headquarters Contracts and Grants Division.

(*3*) NASA Resident Office—JPL.

(*B*) $2,500,000 for—

(*1*) Ames Research Center.

(*2*) Goddard Space Flight Center.

(*3*) Johnson Space Center.

(4) Kennedy Space Center.
(5) Langley Research Center.
(6) Lewis Research Center.
(7) Marshall Space Flight Center.

(ii) For procurements within the range of the dollar amounts below for the installation concerned, the procurement plan shall be submitted for the approval of the Head of the Installation, Deputy Installation Head, or Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for * * *) after review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer.

(A) $1,250,000 but less than $2,500,000 for—

(1) National Space Technology Laboratories.
(2) Headquarters Contracts and Grants Division.
(3) NASA Resident Office—JPL.

(B) $2,500,000 but less than $5,000,000 for—

(1) Ames Research Center.
(2) Goddard Space Flight Center.
(3) Johnson Space Center.
(4) Kennedy Space Center.
(5) Langley Research Center.
(6) Lewis Research Center.
(7) Marshall Space Flight Center.

(iii) For procurements that are selected for Headquarters review and approval in accordance with the Master Buy Plan Procedure, the procurement plan shall be submitted for the signature of the Head of the Installation after review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program/Project Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer. The procurement plan shall contain additional signature blocks for approval by the Assistant Administrator for Procurement and for concurrences by cognizant Officials-in-Charge of Headquarters offices. The procurement plan shall be submitted to the Assistant Administrator for Procurement (Code H) for coordination of the Headquarters review and approval process. The original and ten copies shall be submitted. The position title will be shown for each individual signing the procurement plan as required by paragraph (b)(1) (i) through (iii) above.

(2) Examples of what is meant by the phrase "including the aggregate amount of follow-on contracts" appearing in paragraph (b)(1) above are—

(i) Options as defined in FAR Subpart 17.2;

(ii) Agreements-to-agree, wherein the parties agree to negotiate for the extension of the supplies or services being procured; and

(iii) Later phases of the same project.

(3) Approval of a procurement plan does not constitute approval of any deviation or special conditions or clauses which may be required. Any such deviations must be submitted for review and approval under FAR Subpart 1.4 and/or 1801.4.

1807.170 Contents of the procurement plan.

1807.170-1 Procurement plans requiring approval by NASA Headquarters.

(a) Each procurement plan prepared for approval by NASA Headquarters shall be prepared on NASA Forms 1451 and 1452 or on a Headquarters-approved Optional Free Form for those installations that use automated equipment to prepare their procurement plans. Use of either the NASA forms or the Optional Free Form is authorized for preparing procurement plans to be approved by the Head of the Installation. Form 1451, Request for Procurement Plan Approval (see 1853.207-1451), shall be completed as follows:

(1) *Item 1. A descriptive short title.* In this item, include only a descriptive short title of the procurement plan. A Detailed Description of the Proposed Procurement will be attached to the Plan as Tab A. The information to be provided will consist of—

(i) A clear and concise description, including intended use, of the item or service to be procured;

(ii) Number of units, delivery schedule, and/or period of performance (Note: In the event a schedule of major events will enhance the plan, it should also be included);

(iii) An identification of any option provision including the period(s) covered and estimated costs thereof;

(iv) A brief discussion of the relationship between the proposed procurement and NMI 7121.1, Planning and Approval of Major Research and Development Projects; and

(v) A statement as to whether the contractor will be required to comply with detailed specifications, meet performance requirements, perform a mission, or furnish a level of effort.

(2) *Item 2. Name of installation.* Indicate the name of the installation responsible for the procurement.

(3) *Item 3. Plan prepared by.* Indicate the name of the individual who prepared the plan.

(4) *Item 4. Date.* Date the plan is prepared.

(5) *Item 5. Responsible technical office.* Identify the office (by title) that will be responsible for technical monitoring of the contract.

(6) *Item 6. Project Approval Document (PAD) citation and date.* Enter PAD title, number and date of project approval, and name and title of approving authority. If the required PAD, or PAD Change Request, is in process but has not been approved, enter all information except the date.

(7) *Item 7. Total estimated cost of this procurement.* Provide one figure for the total estimated cost of the proposed procurement, including options, if any. When options are involved, show the cost for each option separately in the description (Tab A), as a breakout from total cost.

(8) *Item 8. Separate approvals required.* Indicate by checkmark in each box whether separate approvals will be required for items 8.a. through 8.i. in support of the proposed procurement. Any determinations and findings requiring the approval of the Administrator under 10 U.S.C. 2304 (a)(11) through (a)(16), Justification for Noncompetitive Procurement, and Source Evaluation Board Appointment Letter (NHB 5103.6, Chapter 3, Source Evaluation Board Manual) will be attached to the procurement plan forwarded for approval. All other documents checked under Item 8 should be processed separately for approval.

(9) *Item 9. Proposed funding by fiscal year and project.* Identify the funding amounts by appropriation, fiscal year, and project, for the procurement covered by the plan. Where funding is obtained from multiple projects, provide a complete identification of each fund source.

(10) *Item 10. Competitive or noncompetitive.* If competitive, check box. If noncompetitive, indicate the name of the source in the space provided under Item 10.c.

(11) *Item 11. Type of contract.* State the type of contract recommended for the procurement. Under Tab B, Remarks, discuss the type of contract and the rationale for its selection. Where an incentive-type contract is proposed, discuss the type of incentive provision considered most suitable for the accomplishment of the procurement objectives.

(12) *Item 12. Facilities and Government-furnished property.* Indicate, by checking the appropriate box, whether the procurement will require the providing of any existing, new, or modified Government property.

When other Government property is to be provided, identify the item(s) and dollar amount(s) involved. The dollar amount(s) provided in Item 12 will not be included in the dollar amounts specified under Items 7 and 9 of the form unless the property or facilities specified are part of the procurement. If dollar amounts under Item 12 are included under Items 7 and 9, the amounts should be so annotated under this item in Tab B, Remarks.

(13) *Item 13. Procurement action schedule.* Indicate the date the procurement plan was submitted to Headquarters for review and approval. For all other entries, provide only the number of calendar days required to complete the action (beginning at the time the previous action was completed) in order to meet the program schedule.

(b) *Tab B, Remarks.* (1) *General.* Include any comments required by the above instructions not covered elsewhere and any other information considered essential to amplify or clarify any item on the form. In addition—

(i) Identify specific deviation(s) to the Acquisition Regulation if a deviation was indicated in Item 8;

(ii) Identify any special conditions or clauses required;

(iii) Identify the type of D&F used if other than 10 U.S.C. 2304 (a)(11) through (a)(16);

(iv) Include a copy of any comments by Counsel for the contracting office (or a statement that Counsel has no objection to the plan) and describe the actions taken in response to any such comments; and

(v) Discuss considerations given as to small business, including minority business enterprises, participation.

(2) *Relationship to other procurements, relevant data, and studies.* Discuss the relationship of this procurement to any other active contracts, including the status of completion of each such contract. Identify the extent to which the product of related contracts will affect this procurement and indicate whether performance under related, active contracts should be permitted to continue during the competitive phase of this action, where appropriate. Discuss all relevant data and studies, whether obtained under contract or through in-house efforts, and state whether such data and studies will be made available to all offerors participating in the competition. If data or studies are available, but it is not planned to make them available to prospective offerors, discuss the reasons for not doing so.

1807.170–2 Procurement plans requiring approval by the Procurement Officer.

Procurement plans prepared for the approval of the Procurement Officer are not subject to the requirement set forth in 1807.170–1 above. Such plans may be prepared in accordance with the procedures prescribed by each installation, provided, that each plan shall contain, as a minimum, the following information:

(a) Purpose and description of the proposed procurement.

(b) Program and project titles.

(c) Responsible technical office.

(d) Delivery schedule or period of performance.

(e) Estimated dollar amount of the procurement and funding data.

(f) Sources to be solicited and reasons for omission of other known sources, if any.

(g) Synopsis or explanation of exception.

(h) Justification for noncompetitive procurement (may be referenced in and attached to the plan).

(i) Determination and findings authorizing negotiation (may be referenced in and attached to the plan).

(j) Type of contract contemplated and, if not firm fixed-price, rationale therefor.

(k) Determination and findings for method of contracting (may be referenced in and attached to the plan).

(l) Incentive consideration, unless firm fixed-price contract is contemplated.

(m) Considerations as to small business, including minority business enterprises, participation.

(n) Government property description, monetary evaluation, and basis for requirement.

(o) Precontract costs, if any.

(p) Management information systems, if appropriate.

(q) Reliability and quality assurance, if appropriate.

(r) Technical data for reprocurement.

(s) Procurement action schedule.

1807.170–3 Assistance in providing for reliability assurance in procurement plans.

When system hardware costing over $1,000,000 is involved, reliability personnel at the field installation involved shall assist in the preparation of the procurement plan with respect to arrangements to be made for reliability monitoring. In the absence of such reliability personnel, the field installation shall seek the advice and assistance of the Director, Safety Reliability and Quality Assurance, NASA Headquarters, Code DP, or designee, in the preparation of procurement plans.

Subpart 1807.3—Contractor Versus Government Performance

1807.303 Determining availability of private commercial sources.

NASA procedures for periodic inventories and reviews of commercial and industrial activities are contained in NMI 7410.3, Delegation of Authority for Acquisition of Commercial or Industrial Products or Services for NASA's Use.

1807.307 Appeals.

NASA appeals procedures are contained in NMI 7410.3.

Subpart 1807.71—Master Buy Plan Procedure

1807.7100 Scope of subpart.

This Subpart prescribes the Master Buy Plan Procedure, contains the requirements for furnishing advance information to NASA Headquarters on proposed procurements that meet the criteria in this Subpart, and prescribes the procedures for selecting those procurements that are to be subject to NASA Headquarters review and approval and those that are to be processed at the installation level. This Subpart also prescribes the approval requirements for those procurements that are to be processed at the installation level.

1807.7101 Policy.

The Master Buy Plan Procedure is designed to enable management to focus its attention on a representative selection of high dollar value and otherwise sensitive procurement actions without compromise of Headquarters visibility or control over essential management functions. This procedure is expected to—

(a) Reduce the number of procurement actions requiring Headquarters review and approval;

(b) Permit better visibility of those procurement actions to be submitted to Headquarters;

(c) Permit better planning of workload and better use of personnel resources at both Headquarters and installation levels;

(d) Shorten the procurement review and approval cycle at Headquarters; and

(e) Increase the delegation of procurement responsibility and authority to each installation.

1807.7102 Applicability.

(a) The Master Buy Plan Procedure is applicable to each negotiated procurement, when the expected dollar value of that procurement, or aggregate amount of follow-on procurements (see

1807.103(b)(2)), is expected to equal or exceed the dollar value in paragraph (c) below, for the installation making the award, except that this procedure is applicable to—

(1) Procurement of utility services when an area-wide contract is not used and either—

(i) The annual cost of the services to be procured is estimated by the using installation, at the time of the initiation of the service or annual renewal of the expenditure, to exceed $100,000; or

(ii) When, except for communication services, a proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to exceed $25,000;

(2) Procurement of architect-engineer services when—

(i) The total dollar value is $250,000 or more; or

(ii) The work to be performed under a cost-plus-fixed-fee or fixed-price contract, regardless of the dollar amount, which involves the production and delivery of designs, plans, drawings, and specifications, and the fee inclusive of the architect-engineer's cost, to be paid to the architect-engineer for the performance of such services exceeds 6% of the estimated cost of the related construction project, exclusive of the amount of such fee (see FAR 15.903(d));

(3) Procurements which provide facilities having a total acquisition value exceeding $500,000, or provide real property regardless of amount (see 1845.302–1); and

(4) Leases, and extensions thereto, for the rental of real property by the Government where the annual rental is more than $50,000 or where a Certificate of Necessity under 40 U.S.C. 278b is required.

(b) Information on the above listed procurements is required to be submitted to NASA Headquarters in accordance with 1807.7103 for determination as to which individual procurement actions are to be submitted to NASA Headquarters for review and approval and which ones are to be approved at the installation level. These individual procurement actions may include one or more of the following: procurement plans, requests for proposals, justifications for noncompetitive procurements, source evaluation board appointments and source selections, prenegotiation positions, contracts (including supplemental agreements) and leases (see 1807.7106).

(c) The following are monetary limitations on Master Buy Plan Procedure:

(1) *$12,500,000:*

(A) National Space Technology Laboratories

(B) Headquarters Contracts and Grants Division

(C) NASA Resident Office-JPL

(2) *$5,000,000:*

(A) Ames Research Center

(B) Goddard Space Flight Center

(C) Johnson Space Center

(D) Kennedy Space Center

(E) Langley Research Center

(F) Lewis Research Center

(G) Marshall Space Flight Center

(d) The foregoing monetary limitations also apply to the following types of contracts:

(1) A contract which contains an option provision (including those authorized by FAR Subpart 17.2), or an agreement-to-agree provision, when the total dollar value, including the option(s) or agreement(s)-to-agree, equals or exceeds the dollar value in paragraph (a) above, for the installation awarding the initial contract.

(2) A supplemental agreement (except one which provides only for the addition or deletion of funds for incremental funding purposes) which—

(i) Definitizes either one or more debit change orders or one or more credit change orders when the total dollar value of either the debit change order(s) or credit change order(s) equals or exceeds the dollar value in paragraph (a) above for the installation making the award;

(ii) Definitizes and consolidates one or more debit and one or more credit change orders when the total dollar value of either the debit change order(s) or credit change order(s) before consolidation equals or exceeds the dollar value in paragraph (a) above, for the installation making the award; or

(iii) Adds new work and definitizes and consolidates one or more debit and one or more credit change orders when the total dollar value of either (A) the new work and debit change order(s), or (B) the new work and the credit change order(s) equals or exceeds the dollar value in paragraph (a) above, for the installation making the award.

(e) The Master Buy Plan Procedure does not apply to supplemental agreements which extend contract performance pursuant to agreement(s)-to-agree provisions, where the initial contract was approved by the Assistant Administrator for Procurement. However, where the supplemental agreement provides for a substantive change in the contract, e.g., expanded statement of work, substantial increase in contract value, etc., the Master Buy Plan Procedure will apply. Approval of such supplemental agreements may be specifically required by the Assistant Administrator for Procurement.

(f) The Master Buy Plan Procedure is not applicable to termination settlement agreements (see FAR Part 49).

1807.7103 Submission, selection, and notification procedure.

1807.7103–1 Submission of Master Buy Plan.

Prior to July 15th of every year, each installation will submit to the Assistant Administrator for Procurement (Code HS–1) a Master Buy Plan (original and eight copies) for the next fiscal year, listing therein every known procurement that meets the criteria in 1807.7102, and that (a) is expected to be initiated in that fiscal year and (b) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan. If applicable, the plan will include procurements that are for later phases of the same project (see 1807.103(b)(2)). The plans will be prepared in accordance with the format shown in 1807.7106, and, for every procurement listed therein, an identification will be provided as to the individual procurement documents that are involved (1807.7104). Procurement documents that require Headquarters approval (see 1807.7104) will be held in abeyance until receipt of the notification required by 1807.7103 (a) or (b). This is not to preclude the planning for or initiation of such actions up to that point where Headquarters approval may be required. The fiscal year Master Buy Plan shall include a listing of those procurements that were selected for Headquarters review and approval from prior fiscal year(s) Master Buy Plans and amendments to Master Buy Plans that have not been completed. The procurements should be listed by the appropriate fiscal year Master Buy Plan and should show the current status of the individual procurement documents previously selected for Headquarters review and approval.

1807.7103–2 Submission of amendments to the Master Buy Plan.

Procurements identified by installations after submission of their Master Buy Plan for a fiscal year, which meet one of the criteria in 1807.7102, will be submitted to Headquarters in the same manner as the original Master Buy Plan. Such amendments will be submitted sufficiently in advance of contract award date to allow Headquarters to select those procurement documents which will be subject to Headquarters review and approval without creating an unacceptable delay in contract

placement. When timely submittal is not possible, the installation will provide with the amendment a narrative explaining the circumstances leading to the late submittal.

1807.7103–3 Selection and notification procedures.

(a) *Selection of procurements.* Selection of procurements from the Master Buy Plan and amendments of Master Buy Plans to receive Headquarters review and approval and designation of the Source Selection Officials and the officials to whom the justifications for noncompetitive procurements are to be submitted for approval shall be made by the Assistant Administrator for Procurement with the concurrence of the cognizant officials-in-charge of Headquarters offices.

(b) *Notification when procurement is cancelled, superseded, deferred, or no longer requires Headquarters approval.* In the event a selected procurement, subsequent to its selection, is cancelled, superseded, or deferred, or no longer requires Headquarters approval in accordance with the criteria in 1807.7102, the Assistant Administrator for Procurement will be so advised, together with the reasons therefor. The Assistant Adminstrator for Procurement, with the concurrence of the cognizant officials-in-charge of Headquarters offices, will notify the installation in writing of any further action which may be required.

1807.7104 Procedures for procurements selected for Headquarters review and approval.

For those procurements which have been selected for Headquarters review and approval under this procedure, the cognizant installation will ensure that all documents that require Headquarters review and approval are submitted in accordance with established procedures. Such documents may include one or more of the following: procurement plans (1807.103), request for proposals, justifications for noncompetitive procurements (1815.105–70), source evaluation board appointments, and source selections (see NHB 5103.6A, Source Evaluation Board Manual), prenegotiation positions, contracts (including supplemental agreements), and leases (1807.7106).

1807.7105 Procedures for procurements not selected for Headquarters review and approval.

(a) Procurements which are not selected for Headquarters review and approval shall be processed at the installation level. For such procurements, the following documents, to the extent applicable, shall be approved by the Head of the Installation: procurement plans, justifications for noncompetitive procurements, and prenegotiation positions. If the procurement is subject to the Source Evaluation Board Manual, the Head of the Installation shall sign the source evaluation board appointment letter and shall be the Source Selection Official. If the procurement is between $2,500,000 and $5,000,000 and the installation's Master Buy Plan limitation is $2,500,000, the Head of Installation shall be the Source Selection Official and may redelegate this authority to cognizant management officials. The Head of the Installation may redelegate the authority to approve procurement plans and justifications for noncompetitive procurements and to sign source evaluation board appointment letters to the Installation's Deputy or an Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for * * *). The Head of the Installation may redelegate the authority to approve prenegotiation positions to the level of the Procurement Officer. If the procurement is subject to the Source Evaluation Board Manual, the request for proposals shall be reviewed and approved in accordance with paragraph 403 of that manual. In all other procurements, requests for proposals shall be approved as directed by the Procurement Officer, commensurate with the sensitivity or significance of the procurements. Contracts (including supplemental agreements) and leases that are not selected for Headquarters review and approval under the Master Buy Plan Procedure, shall be subject to approval by the Procurement Officer. The signing of those documents by the Procurement Officer, as the contracting officer, constitutes such approval. The approvals required above may not be redelegated.

(b) Procurements authorized to be processed at the installation level will be subject to after-the-fact reviews by Headquarters personnel during normal procurement surveys or as the situation may otherwise indicate, or through special reviews.

1807.7106 Format of Master Buy Plan.

In accordance with the requirements of 1807.7103–1 and 1807.7103–2, Master Buy Plans and amendments to Master Buy Plans will be prepared in the format below:

Installation:..... Date:.....

Cognizant HDQ Program Office (1)	Descriptive Title of Procurement (2)	Estimated Dollar Value	Proc Plan	RFP	JNCP (3)	SEB	Pre-Neg	Contract Award	Current Status (4)	Remarks (5)

FY19 Documents Selected for Headquarters Review and Approval Not Yet Completed (6)

(1) Include 3 digit Unique Project Number (UPN) as listed in FMM 9130.
(2) Include N or FO to indicate new or follow-on procurement.
(3) Include name of firm under Remarks.
(4) Indicate current status and scheduled date for next event.
(5) Include data considered pertinent by installation and indicate expected date for placement of contract.
(6) List procurements from prior fiscal year(s) Master Buy Plans and amendments to Master Buy Plans that have not been completed (20.5103.1).

(Form should be prepared on legal size paper. Use separate sheets as necessary.)

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

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Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

Authority: 42 U.S.C. 2473(c)(1).

1808.002 Use of other Government supply sources.

1808.002–70 Procurement of materials from Surplus, Strategic, and Critical Materials Stockpile.

(a) The General Services Administration has responsibility for the disposition of strategic and critical materials which are in excess of national stockpile requirements. These materials are primarily metals, ores, chemicals, and similar raw material items and are listed and described in a GSA bulletin disseminated periodically to procurement officers.

(b) Prior to initiating procurements of materials which are listed as being available for transfer from the General Services Administration, the contracting office should screen the list to determine whether the requirement may be met through transfer of materials from the GSA. Due consideration should be given to the quantity, quality and location of the material and to the timeliness of its availability. Detailed information on these excess materials is available from the General Services Administration, Office of Stockpile Management, Room 5028, 18th & F Streets, NW., Washington, DC 20405.

1808.002–71 Acquisition of helium.

(a) NASA is required under the provisions of Pub. L. 86–777 (50 U.S.C. 167a et seq.) to obtain its major requirements for helium from the Department of the Interior.

(b) Each contracting office shall obtain its requirements for gaseous helium from the Department of the Interior (Bureau of Mines) or other Government support activity supplying Bureau of Mines helium.

(c) Requirements for (1) liquid helium or (2) gaseous helium of a quality not supplied by the Bureau of Mines may be procured from commercial sources, provided such sources are qualified by the Bureau of Mines and included in the Bureau of Mines publication, "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies." Copies of this publication may be obtained from Bureau of Mines, Helium Operation, P.O. Box H4372, Herring Plaza, Amarillo, Texas 79101.

(d) Procurement documents for the commercial procurement of helium shall be annotated:

> Pursuant to Parts 1 and 2, Subchapter A, Chapter 1, Title 30, Code of Federal Regulations, helium furnished under this contract (purchase order) shall be Bureau of Mines helium or shall be replaced by the supplier with an equivalent volume of helium purchased from the Bureau of Mines.

(e) A copy of each contract or purchase order for the supply of helium from commercial sources shall be forwarded to the Bureau of Mines, at the address in paragraph (c) above.

1808.002–72 Acquisition of radioisotopes.

(a) DOE Form EV 375, U.S. Department of Energy Isotope Order Blank, and NRC Form 313I, U.S. Nuclear Regulatory Commission Application for Byproduct Material License, shall be used for the acquisition of radioisotopes as stated on the back of DOE Form EV 375. No other type of order blank, purchase order, or contract shall be used in lieu of these forms.

(b) NRC Form 313I shall be filed with the Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, a license will be issued to the applicant by the Radioisotopes Licensing Branch, Nuclear Regulatory Commission. After receipt of the license, a complete DOE Form EV 375 (in duplicate, if the contracting office wants an accepted copy of the form back from the supplier), the license, and a Government bill of lading shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) The "Terms and Conditions" on DOE Form EV 375 shall control all requisitions for radioisotopes purchased by NASA from Department of Energy Laboratories.

(d) NRC Form 313 and DOE Form EV 375 shall be requisitioned directly from: United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555.

1808.002–73 Acquisition of liquid hydrogen.

(a) To ensure that adequate supplies of liquid hydrogen are readily available to meet current and future program requirements, NASA has established contractual arrangements with primary supply sources located in Louisiana and in California. These contracts will be used to the maximum extent practicable in supplying both in-house and contractor requirements for liquid hydrogen.

(b) Requests for liquid hydrogen shall be submitted to the Marshall Space Flight Center.

1808.002–74 Acquisition of propellants.

(a) *General.* The Department of the Air Force has assigned the operational authority and responsibility for the acquisition and distribution of missile propellants and related items to the San Antonio Air Logistics Center (SA–ALC), Kelly Air Force Base, Texas. Propellants (i.e., oxidizers and fuels), pressurants, and related materials are financed under a single Air Force appropriation designated the Missile Procurement Fund (MPF). Supplies are obtained by SA–ALC from Government-owned, contractor-operated plants and by consolidated acquisitions from industry. NASA and its contractors (where materials are Government-furnished) may acquire from SA–ALC the items listed in 1808.002–74(j) (except for liquid hydrogen, see 1808.002–73) on a reimbursable basis. The Air Force MPF shall be utilized as a supply source for propellants whenever there are economic or other advantages to the Government. Field installations and offices obtaining supplies from the MPF shall comply with the reporting requirements of 1808.002–74(f).

(b) *Requests for acquisition.* To obtain the materials listed in 1808.002–74(j) from the Air Force MPF, NASA contracting offices will execute a NASA-Defense Purchase Request (NASA Form 523) 1853.217–523 and forward it to Headquarters, SA–ALC, Kelly Air Force Base, Texas, Attention: SFS. The following additional information should also be provided on the form: (1) contract number (when material is required for use by a NASA contractor), (2) delivery address, and (3) mode of transportation, rail, trailer,

barge, etc. When the procurement request covers requirements for materials not previously forecast or covers significant changes to previously reported requirements, SA–ALC should be notified immediately of such requirements.

(c) *Delivery requests.* (1) A delivery request is a call on the Air Force, made against a purchase request (NASA Form 523), which specifies the time and place of delivery. On the basis of the estimated requirements, the Air Force will notify NASA field installations and contractors of the name and address of the Air Force office or producing contractor's plant to which requests for delivery of materials shall be made. Delivery requests may be placed by any means of communication that time justifies; however, all verbal requests for delivery must be confirmed by a written request within 24 hours. The delivery request, whether oral or written, must cite the NASA-Defense Purchase Request number under which the material is being ordered and contain the following information:

(i) Nomenclature and National Stock Number.

(ii) Quantity.

(iii) Program, project, and task.

(iv) Contract number (when material is required for use by a NASA contractor).

(v) Delivery address.

(vi) Dates of delivery.

(vii) Mode of transportation.

(viii) Location of weighing stations and scales (if weighing of the products prior to delivery is required).

(2) Each delivery request shall be numbered as follows to simplify identification and control. The number shall consist of the last two digits of the calendar year followed by a dash, and a numerical designator of the month submitted, a dash, and a consecutive number beginning with 1. Changes to a request would be identified by adding an alphabetical designator beginning with (A) to the number. This system is not intended to replace or to interfere with existing NASA purchase order numbering or internal budget or accounting numbering procedures.

(d) *Receiving procedures.* (1) *Receiving documents.* Receipt of materials will be evidenced by the signature of an individual authorized by NASA to receive materials from the Air Force on the receiving document received with the shipment. Every effort should be made to ensure that the NASA-Defense Purchase Request number is recorded on the receiving document prior to signing.

(2) *Weighing facilities.* Local weighing facilities (NASA-owned, contractor-owned, commercial, or State-operated) may be used to determine quantities of product received. If a discrepancy exists between the quantities shown on receiving documents and the quantities actually received—

(i) A certified weighing ticket evidencing actual weight at destination will be obtained; and

(ii) A copy of the receiving document (AF Form 857 or DD Form 250) and the original weighing ticket will be forwarded to Headquarters, SA–ALC, Kelly Air Force Base, Texas, Attention: ACFOM, identifying the discrepancy.

(3) *Distribution of receipts.* Copies of all receiving documents except the AF Form 857 shall be transmitted to the Headquarters, SA–ALC, Kelly Air Force Base, Texas, Attention: SACAOM. Receiving documents may be accumulated and submitted on the 10th, 20th, and last day of each month.

(e) *Billing.* The costs for materials obtained through the AMPF are reimbursable. After delivery, a Standard Form 1080 (Voucher for Transfers Between Appropriations and/or Funds (Disbursement)), supported by documentary evidence of delivery, will be submitted by Headquarters, SA–ALC to the NASA installation designated in the NASA Form 523.

(f) *Reporting requirements.* (1) Field installations shall submit periodic estimates of requirements for materials listed in 1808.002–74(j) for all programs under their cognizance, including in-house contractor requirements. Headquarters Program Offices shall submit periodic estimates of requirements for any existing or potential programs which may not be known to, or not under the cognizance of, a field installation. Reports shall be submitted in duplicate on NASA Form 558, Materials Requirement Report.

(2) The reports shall be forwarded so as to reach the Office of Space Flight (Code MOC–8) and HQ, SA–ALC, Kelly AFB, Texas, Attn: SFS, no later than June 1 and December 1. Supplemental reports which advise of additions to or significant changes in previous reports shall be submitted at any time. The reports, covering all materials listed in 1808.002–74(j) due in June and December shall begin with requirements as of the following July 1 and January 1, respectively, and shall cover a three-year period. Requirements shall be shown by month for the first six months, and by quarters for the remaining two and one-half year period.

(g) *Report content.* The reports shall be made using a separate report form for each material and shall provide the following information for each item of material:

(1) Contract number.

(2) Program and/or project.

(3) Specific task within project.

(4) End use when not associated with named program or project.

(5) Name of contractor.

(6) Specific location of use (shipping destination).

(7) Planned source of supply.

(h) *Basis for developing materials requirements.* In computing requirements, consideration shall be given to such elements as lead time, waste factors, transfer, and storage losses so that phased requirements reflect the total gross quantities required to be delivered to the use or storage site. Since the requirements estimates are being used by other Government agencies acting as supply sources to actually contract for materials, estimates must be as accurate as possible.

(i) *NASA headquarters review.* The NASA Office of Space Flight (Code MOC–8) shall be responsible for consolidating reports from installations and Headquarters Program Offices and for coordinating the review of all data with the Headquarters Program Offices. The data will then be used as the basis for NASA requirements reports to various Government agencies for planning and supply support.

(j) *Table of reportable materials.*

Ammonia, Technical (Anhydrous) (Low Oil Content) 99.97 percent purity, Spec 0–A–445

Argon Gas, 6000 PSI AFPID 6830–5

Propellant, Ammonia Liquid Anhydrous 99.5 percent purity, Spec MIL–P–27406

Propellant, Chlorine Tri-fluoride, Spec MIL–P–81399

Propellant, Deuterium, Gaseous, AFPID 9135–20

Propellant, Fluorine, gaseous, Spec MIL–P–27405

Propellant, Fluorine, Liquid, Spec MIL–P–27405

Helium, Technical Grade A, Spec BB–H–1168

Propellant, Isopropyl Alcohol, AFPID 9135–18

Propellant, Hydrazine, Standard Grade, Spec MIL–P–26536

Propellant, Hydrazine, Monopropellant Grade, Spec MIL–P–26536

Propellant, Hydrazine/Uns-Dimethylhydrazine, Spec MIL–P–27402

Propellant, Hydrogen Gaseous, Type I, Spec MIL–P–27201

Propellant, Hydrogen Liquid, Type II, Spec MIL–P–27201

Propellant, Hydrogen Peroxide, Spec MIL–P–16005

Propellant, Hydrogen Peroxide, Electrolytic process, Spec MIL–P–16005

Propellant, Jet Fuel, Grade RJ–1, Spec MIL–F–25558

Propellant, JPX, 50% UDMH–50% JP–4 Spec MIL–P–26694

Propellant, JPX, 17% UDMH–83% JP–4 Spec MIL–P–26604
Propellant, Kerosene Grade RP–1, Spec MIL–P–25576
Propellant, Monomethyl Hydrazine, Spec MIL–P–27404
Propellant, Neon, Liquid AFPID 9135–16
Propellant, Nitric Acid, Type IIIB, Spec MIL–P–7254
Propellant, Nitric Acid, Type III LS, Spec MIL–P–7254
Propellant, Nitric Acid, Type IV (High Density Acid), Spec MIL–P–7254
Propellant, Nitrogen Tetroxide (NTO)(MON–1)(MON–3) Spec MIL–P–26539
Propellant, Nitrogen Tetroxide (NTO) Spec MIL–P–26539
Propellant, Nitrogen Tetroxide (MON–1) Spec MIL–P–26539
Propellant, Nitrogen Tetroxide (MON–3) Spec MIL–P–26539
Propellant, Oxygen, Grade B, Spec MIL–P–25508
Propellant, Oxygen, Grade A, Spec MIL–P–25500
Propellant, Oxygen, Grade F, Spec MIL–P–25505
Propellant, Pressurizing Agent, Helium, Spec MIL–P–27407, 99.995 Pct Min Assay
Propellant, Pressurizing Agent, Nitrogen, Type II, liquid Grade C, Spec MIL–P–27401
Propellant, Pressurizing Agent, Nitrogen, Type I, gaseous Grade A, Spec MIL–P–27401
Propellant, Pressurizing Agent, Nitrogen, Type I, Grade B, Spec MIL–P–27401
Propellant, Pressurizing Agent, Nitrogen, Type II, Grade A, Spec MIL–P–27401
Propellant, Pressurizing Agent, Nitrogen, Type II, Grade B, Spec MIL–P–27401
Propellant, Uns-Dimethylhydrazine, Spec MIL–P–25604
Propellant, Nitrogen Trifluoride
Propellant, Pressurizing Agent Argon, Liquid, AFPID 9135–19

1808.002–75 Acquisiton of mercury

(a) NASA is prohibited from purchasing mercury in quantities of 76 pounds or more from commercial sources without prior clearance from the General Services Administration.

(b) Mercury, minimum 99.9 percent pure (not triple distilled), in 76-pound flasks, is available for transfer from General Services Administration stocks at fair market value.

(1) Requests from mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Project Manager, Mineral and Ores, Property Management and Disposal Services, General Services Administration, Washington, DC 20405. The Project Manager will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(2) Requests for clearance to purchase quantities of 76 pounds or more from sources other than the General Services Administration shall be submitted to the office referred to in paragraph (b)(1) above and must be accompanied by a statement of reasons that makes the available excess mercury unsuitable for use by the requesting field installation.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

In addition to the sources identified in FAR 8.103, Installation personnel shall review the availability of NASA property on lists—

(a) Maintained by the NASA Property Disposal Office, and

(b) Maintained by the NASA Equipment Visibility System (EVS) coordinator.

Subpart 1808.3—Acquisition of Utility Services

1808.301 Definitions.

"Multiple service locations" as used in this Subpart means the various locations or delivery points in the contractor's service area to which services are provided under a single contract.

"Utility suppliers" as used in this Subpart means quasi-public service corporations, private concerns, municipalities, associations, or cooperatives. They generally operate in a franchised territory without competition, so they may frequently be in a "sole source" position. Under common law, however, public utilities must render service at reasonable rates and without unjust discrimination. Furthermore, their operations, management, rates and profits are usually regulated by Federal, State, or local regulatory bodies, but absence of a regulatory body does not necessarily mean a complete lack of control. Administrative remedies pursuant to enabling statutes may be pursued or complaints may be taken to a court of competent jurisdiction.

1808.302 Applicability.

For procurement of utility services without a written document see 1808.304–5.

1808.303 General.

Requirements for utility services shall be determined by technically qualified personnel who will assist the contracting officer as required. Prior to soliciting technical assistance outside the agency (see FAR 8.303(b)), technical personnel will contact the Facilities Division (Code NX–2), NASA Headquarters.

1808.304 Acquiring utility services.

1808.304–2 GSA areawide contracts.

(a) A list of the utility services obtainable under GSA area-wide public utility contracts, including the area served and the name of the contractor involved, is contained in GSA Circular No. 61, Revised. GSA also has available copies of the area-wide public utility contracts which include the required order form. Copies of GSA Circular No. 61 and GSA area-wide public utility contracts may be obtained, upon request, from General Services Administration, Transportation and Communication Service, Public Utilities Division, Washington, D.C. 20405.

(b) In determining whether a GSA area-wide public utility contract is adequate to meet the requirements of the using installation, consideration should be given to (1) the area-wide contract rates viewed in light of the magnitude of the service required, (2) any unusual characteristics of the service required, (3) any special equipment or facility requirements, (4) any special technical contract provisions required, and (5) any other special circumstances.

(c) Where an installation considers that a separately negotiated contract is more advantageous to the Government than the GSA area-wide public utility contract, for a utility service other than communications, a request will be submitted to the Assistant Administrator for Procurement, NASA Headquarters (Code HS–1), for a waiver of the requirement to use the GSA area-wide public utility contract. The request shall explain why the separately negotiated contract is considered to be more advantageous to the Government than the area-wide contract.

1808.304–4 Consolidated purchase, joint use, or cross-service.

(a) The Department of Defense enters into area-wide fuel oil and other energy service contracts. DoD area-wide contracts provide that the contractor will upon receipt of an order in the form prescribed by the contract, furnish, without further negotiations as to rates and charges, the service involved in accordance with such of his established and filed rate schedules as are applicable to the service.

(b) A memorandum of understanding, specifying the services to be provided and the conditions under which they will be supplied, shall be used when procuring utility services from another Government agency by cross-servicing. A Utility Service Narrative shall be

submitted in accordance with 1808.307–70.

1808.304–5 Agency acquisition.

Unless a written document is required by FAR 8.304–5(e), utilities services may be procured without a written document (see FAR 8.304–5(g)) when all the following conditions apply:

(a) The services are to be furnished at rates, terms, and conditions based on an established rate schedule approved by a Federal, State, or other public regulatory body.

(b) The estimated annual cost of the services to be procured is $10,000 or less.

(c) A connection, termination, installation, or similar charge, or a deposit other than a meter deposit required of all customers, if involved, has a total cost that does not exceed $5,000.

(d) The utility supplier does not require the execution of a contract or application form.

(e) It is not deemed advantageous to the Government to negotiate and execute a contract.

1808.304–570 Renewal of contracts.

(a) It is permissible to provide that a contract may be renewed annually for a number of years upon the execution by the Government of a renewal notice, provided that the number of successive years for which the contract is in effect does not exceed five.

(b) In selecting the expiration date to be stated in the contract, consideration should be given to the selection of a date sufficiently past the end of the fiscal year to ensure that appropriations will be available for the renewal period of the contract at the time the renewal notice is issued. The exercise of the option is a new procurement and the contract file shall be documented accordingly. (See FAR Subpart 17.2.)

1808.304–571 Headquarters requirement for copies of contracts.

The contracting officer shall forward, promptly after execution, one copy of each contract, service authorization form, memorandum of understanding, or any modification thereto, to the Assistant Administrator for Procurement, NASA Headquarters (Code HS–1) and to the Facilities Division, NASA Headquarters (Code NX–2).

1808.304–572 Contents of a negotiated utility service contract.

(a) Except under the conditions in 1808.304–5 any negotiated utility service contract which involves an estimated annual cost of more than $2,500 shall consist of—

(1) *Standard Form* 26 (see FAR 53.215–1(b));

(2) (i) *Appendix A.* The rate schedule applicable to the contract, which shall consist of—

(A) The printed or otherwise published rate schedule of the contractor which has been approved or established by a Federal, State, or other regulatory body; or

(B) The rate schedule negotiated between the contractor and the Government.

(ii) The rate schedule shall bear the legend "Appendix A, attached to and made a part of Contract No. * * *," and be entitled "Rate Schedule." Each page shall indicate its numerical order in the total number of pages comprising Appendix A, as, for example, "page 1 of 3." In addition to stating the rate applicable to the contract, Appendix A shall include, where applicable, any rules or regulations (whether established by the regulatory body, the contractor, or by negotiation between the contractor and the Government), which pertain to the Rate Schedule. Appendix A may provide for payment to the contractor of a nonrecurring, nonrefundable fee of not more than $1,000 to cover the costs of connecting the contractor's facilities to, and disconnecting them from, the Government's facilities, whenever the contract period is less than six months. In all instances where a connection charge, other than the fee described above, is involved, the "Connection Charge" clause (1852.208–7009) and Appendix C (see paragraph (a)(4) below) shall be included in the contract.

(3) *Appendix B.* The service specifications applicable to the contract which shall consist of a specially drafted attachment to the contract, bearing the legend "Appendix B, attached to and made a part of Contract No. * * *," and the title of the appropriate service specifications. Each page shall indicate its numerical order in the total number of pages comprising Appendix B, as, for example, "page 1 of 3." Such appendix shall contain as a minimum—

(i) The premises to be served;

(ii) An estimate of the service requirements;

(iii) The point of delivery to the Government;

(iv) A description of the service;

(v) A statement of how the service is to be measured for purposes of billing;

(vi) A statement of the capacity and flow of the service.

(4) *Appendix C.* The connection charge schedule which is required whenever the contract includes the connection charge clause prescribed by 1852.208–7009 or the termination charge clause prescribed by 1852.208–7010 and which shall bear the legend "Appendix C, attached to and made a part of Contract No. * * *," and be entitled "Connection Charge Schedule." Each page shall indicate its numerical order in the total number of pages comprising Appendix C, as, for example, "page 1 of 3." The appendix shall contain as a minimum—

(i) A detailed description of the new facilities to be furnished by the contractor; and

(ii) The agreed salvage value of such facilities.

(5) Any contract clauses required by FAR 8.309 or by 1808.309.

(b) Except under the conditions in 1808.304–5, any negotiated utility service contract which involves an estimated annual cost of $2,500 or less shall consist of—

(1) Standard Form 26 (53.215–1(b)).

(2) An Appendix A (see (a)(2) above).

(3) Any contract clauses required by FAR 8.309 or by 1808.309.

1808.305 Rate increases.

(a) When the contractor furnishes written notice to the contracting officer of a filing of an application for rate changes, as provided for in the clause entitled "Public Regulation and Change of Rates" at 1852.208–7003, or whenever the contractor requests that rate changes be negotiated, as provided for in the clause entitled "Change in Rates" at 1852.208–7008, the contracting officer will notify the Assistant Administrator for Procurement, NASA Headquarters (Code HS–1) and the Facilities Division NASA Headquarters (Code NX–2). The notification shall include sufficient information to permit a determination of the monetary effect of the proposed changes, a recommendation of action to be taken under paragraph (a) (1) or (2) of this section, and the basis therefor.

(1) When a notice is received of a filing of an application for rate changes before the local regulatory body, the contracting officer will make a recommendation as to whether or not the Government should intervene in the hearing on the application. If it is recommended that the Government intervene in the hearing, the recommendation shall be accompanied by a statement containing the basis for such intervention and the extent to which the installation can support intervention through the presentation of testimony, preparation of exhibits, and the furnishing of legal counsel.

(2) When a notice is received that the contractor requests that rate changes be negotiated, the contracting officer wi

make a recommendation as to the position to be taken by the Government regarding the rate changes and the extent to which installation personnel are available to support this position.

(b) The Assistant Administrator for Procurement, NASA Headquarters, with the technical assistance of the Facilities Division, NASA Headquarters, will furnish the contracting officer a recommendation concerning the proposed rate changes and the extent to which NASA Headquarters will participate in the intervention before the local regulatory body in negotiations with the contractor. Prior to recommending any action concerning the proposed rate changes, the Assistant Administrator for Procurement, NASA Headquarters will, as necessary, coordinate with other staff offices or divisions, or other Government agencies. The contracting officer shall await the recommendations of the Assistant Administrator for Procurement, NASA Headquarters for at least 30 calendar days prior to submitting the matter to GSA (see FAR 8.305(b)) or taking any other action concerning the proposed rate changes.

1808.307 Precontract acquisition reviews.

1808.307-70 Utility service narrative.

(a) When required by FAR 8.307-1(b) the contracting officer shall submit a Utility Service Narrative for proposed procurements for new utilities services, renegotiations or extensions of existing utility services, or existing contracts that require a negotiation for change of rate schedules, to the Assistant Administrator for Procurement (Code HS-1), NASA Headquarters, prior to initiating negotiation procedures. The Utility Service Narrative shall include—

(1) A brief technical description of the service required or being furnished;

(2) An analysis of the reasonableness of the proposed rate and/or the monetary extent of the rate change compared to the last typical year of service;

(3) A description outline of the field installation's proposed negotiation tactics, basis for position, and any alternate position;

(4) An estimate of the annual cost of service; and

(5) Other related items, as applicable, such as connection charges, termination liability, facilities charges, requirement for Government capital costs, or any other unusual factors affecting the procurement.

(b) The Assistant Administrator for Procurement (Code HS-1), with the coordination of the Facilities Division (Code NX-2), NASA Headquarters, will review the information submitted under paragraph (a) above. If NASA Headquarters participation in the negotiation proceedings, in an advisory capacity to the contracting officer, is considered desirable, the Assistant Administrator for Procurement (Code HS-1), NASA Headquarters, will inform the contracting officer not later than 30 calendar days from the receipt of the Utility Service Narrative.

1808.307-71 Contracts requiring Headquarters approval.

Contracts and supplemental agreements for utility services shall be submitted to the Assistant Administrator for Procurement, NASA Headquarters (Code HS-1) for approval as required by 1804.71.

1808.309 Contract clauses.

(a) The contracting officer shall, unless stated otherwise, insert the clauses prescribed below in negotiated utility service contracts which involve an estimated annual cost of more than $2,500 and, where specifically prescribed, in those with an estimated annual cost of $2,500 or less. Said clauses are in addition to those prescribed elsewhere in the FAR or this Regulation for inclusion in utility contracts.

(1) Insert the clause at 1852.208-7002, Rates (also include in contracts of $2,500 or less).

(2) Insert the clause at 1852.208-7003, Public Regulation and Change of Rates, in all contracts (regardless of estimated annual costs) except when the clause in paragraph (b)(2) below is applicable.

(3) Insert the clause at 1852.208-7004, Change in Class of Service.

(4) Insert the clause at 1852.208-7005, Contractor's Facilities (see paragraph (a)(6) below).

(5) Insert the clause at 1852.208-7006, Technical Provisions.

(6) Insert the clause at 1852.208-7012, Contractor's Facilities (Short Form), in lieu of the clause at 1852.208-7005 only when the estimated annual cost is $2,500 or less.

(b) When applicable in negotiated utility service contracts, the contracting officer shall also insert the clauses prescribed below:

(1) Insert the clause at 1852.208-7007, Renewal of Contract whenever it is desirable that the utility service be provided under the same terms and conditions for more than one year (see 1808.304-570).

(2) Insert the clause at 1852.208-7008, Change in Rates, in lieu of the clause in 1852.208-7003, when the rates applicable to the service furnished under the contract are negotiated between the contractor and the Government without recourse to the approval of any Federal, State, or local regulatory agency, or if the service to be furnished under the contract is otherwise not subject to regulation by any Federal, State, or local regulatory agency, or if the contractor also acts as the local public regulatory agency and its decisions are not subject to review by a higher regulatory agency.

(3) Insert the clause at 1852.208-7009, Connection Charge when (i) a connection charge is to be paid by the Government and (ii) the conditions permitting the incorporation of a nonrecurring, nonrefundable fee in Appendix A, the rate schedule applicable to the contract, do not exist. Also attach Appendix C (see 1808.304-572(a)(4)).

(4) Insert the clause at 1852.208-7010, Termination Charge, when payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. Use of this clause is subject to Master Buy Plan approval requirements (see Subpart 1804.71). Also attach Appendix C.

(5) Insert the clause at 1852.208-7011, Multiple Service Locations when it is desired to provide for possible alternative service location.

Subpart 1808.4—Ordering From Federal Supply Schedules

1808.404 Using schedules.

1808.404-3 Requests for waivers.

(a) The head of the NASA office initiating the purchase request or a designated representative shall furnish the NASA contracting office a signed statement identifying the supplies or services to be purchased. This statement shall state why similar items listed in the applicable schedule will not meet the specific requirement.

(b) If a waiver is not granted, the case will be referred to the Assistant Administrator for Procurement for a final decision as to whether the non-schedule item will be purchased. The Assistant Administrator for Procurement shall promptly notify the Commissioner, Federal Supply Service, GSA, and the contracting office of the decision reached.

1808.405 Ordering office responsibilities.

1808.405-1 Ordering from multiple-award schedules.

(a) If an opportunity arises for NASA to purchase an item from a schedule contractor at a price substantially more favorable to the Government than the price listed, *the procurement will be*

accomplished at the more favorable price. A copy of the order shall be forwarded to GSA in accordance with FAR 8.405–1(d).

(b) The following examples are additional factors to be considered when making a determination to purchase higher-priced items:

(1) Probable life of the item selected, as compared to that of a lower cost item, is sufficiently greater so that the additional purchase price is economically warranted.

(2) Warranty conditions of a higher-priced item are sufficiently advantageous to justify the added cost.

(3) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated regarding machines or systems, especially at isolated use points, will produce long-run savings greater than the difference in purchase prices.

1808.405–2 Order placement.

Delivery orders may be placed on Optional Form 347 or an installation prescribed form as specified in FAR 8.405–2.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances.

(a) NASA purchase orders or contracts written pursuant to a general or blanket clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher.

(b) Where a formal clearance has been requested, the contracting officer shall not consummate the purchase before the issuance of the formal clearance. A copy of the clearance certificate must be attached to the initial voucher.

(c) When disputes under FAR 8.605(c) occur, the contracting officer shall refer the matter to the Assistant Administrator for Procurement (Code HP–1), for review and any further action. Such referrals shall include a complete statement of the attempts made to resolve the matter.

Subpart 1808.8.7—Acquisition From the Blind and Other Severely Handicapped

1808.705 Procedures.

1808.705–1 General.

(a) When supplies (1) require overseas packaging or packing or (2) are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned, procurement shall follow the procedure in FAR 8.705–3(b)(1).

(b) The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, Subpart 101–26.2) shall be used to obtain blind-made and severely handicapped made supplies from General Services Administration supply distribution facilities.

1808.705–4 Compliance with orders.

If a workshop fails to comply with the terms of an order and the problem cannot be resolved with the workshop, the matter shall be forwarded to the central nonprofit agency and/or the Committee, as necessary.

1808.711 Quality complaints.

If a problem related to the quality of an item or of performance of a service cannot be resolved with the workshop, the matter will be referred for resolution to the central nonprofit agency and the Committee.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy.

Approval of printing supplies or services in contracts shall be in accordance with NPD–1490.1, NASA Printing Management Program.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NASA Management Instruction NMI 6720.1, NASA Motor Vehicle Management.

PART 1809—CONTRACTOR QUALIFICATIONS

Sec.

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1809.1—Responsible Prospective Contractors

1809.102 Applicability.

1809.102–70 Procurements from Canadian sources of supply.

Awards to Canadian sources of supply are subject to FAR Subpart 9.1. A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of FAR 9.104–4 as the basis for his determination under FAR 9.103(b). In cases where the firm proposed by CCC is so accepted, preaward survey forms need not be completed. The contracting officer, when the CCC proposal is not consistent with other information which may be available shall request from CCC and any other sources additional information or plant surveys deemed necessary to make the determination of responsibility. Such additional data may be requested on the preaward survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

1809.106 Preaward surveys.

1809.106–1 Conditions for preaward surveys.

In addition to the circumstances enumerated in FAR 9.106–1(a) (1) and (2) preaward surveys normally are not required when—

(a) The contract is for study or research only.

(b) The data, necessary for a responsibility determination, is available from other sources.

(c) The pending contract will be a definitive contract superseding a letter contract.

(d) An order is placed under an existing contract.

(e) The source has been recommended by the NASA Source Evaluation Board.

1809.106–7000 Preaward survey procedures.

All preaward surveys shall be conducted in compliance with FAR Subpart 9.1 and Subparts 1809.7000.

1809.106–7001 General.

Subsections 1809.106–7001 through 1809.106–7205 establish procedures for conducting preaward surveys (except for construction contracts). They include preaward surveys conducted by NASA, those conducted by another agency for NASA, and those jointly conducted.

1809.106–7002 Definitions.

"Monitor" as used in this section, means the person designated to administer the preaward survey from the receipt of the request through the issuance of the final report.

"Pre-Award Survey Review Board" means a board established to review and approve or disapprove preaward survey reports.

"Team Coordinator" as used in this section means the person designated by the monitor to coordinate the on-site survey, make arrangements for plant visits, and conduct team conferences as necessary before, during, or after the plant visit.

1809.106–7101 Procedure for requesting preaward survey.

(a) A preaward survey shall be requested on Standard Form 1403, Pre-Award Survey of Prospective Contractor (General), indicating in Section III thereof, the scope of the survey desired. Factors requiring emphasis not enumerated in Section III should be listed under block "20.G." of that Section. The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block "20.G." of Section III. A survey may be requested by telegraphic communication containing the data required by Sections I, II, and III of the Form. A survey may be requested by telephone but shall be immediately confirmed on SF 1403. Unless previously furnished, a copy of the solicitation and such drawings and specifications as deemed necessary by the contracting office, shall be supplied with the preaward survey request.

(b) Any information indicating previous unsatisfactory contract performance shall be furnished the survey activity with the preaward survey request, except where it is known that the survey activity already has this information.

(c) The request for preaward survey shall be forwarded in an original and three copies to the responsible survey activity. If the survey activity is a DoD agency, the request is to be sent to the appropriate office shown in the DoD Directory of Contract Administration Services Components, DoD 4105.59–H, Attn: Pre-Award Survey Monitor. The date on which the completed survey report is desired should be indicated; however, the DoD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

§ 1809.106–7102 Scope of survey.

(a) A complete survey encompasses investigation, to the extent applicable to the proposed contract, of the factors listed in Section III of SF 1403, together with other requirements of special inquiry as requested by the contracting officer, and submission of appropriate findings thereon.

(b) A partial survey encompasses investigation of those factors referenced in (a) above which are specifically requested by the contracting officer and any other factors considered advisable by the activity conducting the survey, and submission of appropriate findings thereon.

(c) The activity conducting the survey may execute and transmit to the contracting officer a short form preaward survey report in those cases where sufficient current favorable information is available to recommend award without a formal survey. The SF 1403 will be used as the survey report in accordance with procedures outlined in 1809.106–7103(a)(4). If the contracting officer has reason to need additional information on contractor capability, the activity conducting the survey may be so advised, and a detailed survey report will be provided.

1809.106–7103 Contracting office procedure.

(a) *General.* (1) Preaward surveys will be conducted within the normal time frame of seven working days after receipt of request and in the detail requested by the contracting officer. In unusual procurement situations, reports of such surveys may be requested in a shorter time if the situation so warrants. Qualified specialists responsible for the factors referenced in 1819.106–7102(a) shall participate as required.

(2) Representatives of the contracting office and other activities will participate in preaward surveys when requested by the contracting officer or as desired by the contracting office.

(3) If the preaward survey cannot be accomplished within the time allowed, the contracting officer shall be so notified. If the date is not extended the preaward survey monitor shall supply a definite recommendation by the date required, based on the material at hand or developed by that time. The basis for the recommendation and the factors for which no data or only partial data could be obtained, shall be indicated.

(4) When the activity conducting the survey possesses sufficient current favorable information about an offeror to recommend complete award without performing a formal survey, a short form preaward report may be executed and forwarded to the contracting officer unless the contracting officer has requested additional information as required by 1809.106–7102. The "short-form" preaward survey report will consist of only SF 1403. Sections III and IV of the SF 1403 will be completed and the following statement will be stamped in block 23, the "Remarks" portion of Section III:

Short Form Pre-Award Report Pursuant to 1809.106–7102(a), complete award is recommended.

(b) *Designation of preaward survey monitor.* An individual within each procurement office performing preaward surveys shall be designated as the preaward survey monitor. The monitor shall administer the preaward survey from the receipt of the request through the issuance of the final report to assure appropriate coverage and maximum efficiency. The monitor shall:

(1) Receive all incoming preaward survey requests;

(2) Ascertain whether the prospective contractor is included on the Consolidated List of Debarred, Ineligible, and Suspended Contractors for any reason, including those attributable to equal employment opportunity practices. (Where the prospective contractor is so listed, the

contracting officer shall be promptly advised and the preaward survey shall not be completed, unless specifically requested by the contracting officer);

(3) Compare the survey request with the requirements of the solicitation;

(4) Determine the need for an on-site survey after reviewing the type and quantity of items or services involved; previous experience with the firm; technical and schedule requirements; and the extent of other information currently available. (If an on-site survey has been requested and sufficient data is already available in the contracting or other offices (e.g., DoD Contract Administration Officer), the monitor shall ask the contracting officer whether an on-site survey must nevertheless be conducted, and for the specific elements to be covered);

(5) Determine and advise the organizational segments of the installation (e.g., Engineering, Production, Reliability and Quality Assurance, and Contract Administration), that will furnish team members;

(6) Provide team members the following information:

(i) The date on which the information is required from each organizational segment;

(ii) The portion of the survey for which each organizational segment is responsible;

(iii) Whether an on-site survey of the prospective contractor's facility is contemplated. (This is subject to later modification based on information supplied by team members.);

(iv) Any special terms and conditions noted in the solicitation; and

(v) Any other information or guidance the particular request may require;

(7) After discussion with appropriate organizational segments, designate the team coordinator;

(8) Arrange for required audit and other external assistance. (For example, in those cases where contract award is dependent upon the contractor having an adequate cost accounting system for proper post-award administration of the contract, the cognizant audit agency shall be responsible for the system review, evaluation, and conclusive recommendation (SF 1408 is provided for this purpose);

(9) Coordinate any participation where the preaward survey is being performed for another NASA installation;

(10) Receive and review reports of the individual team members for completeness and adequate substantiation;

(11) Resolve questions regarding technical details with responsible specialists;

(12) Report those applicable procedures of the prospective contractor which have been reviewed by Government personnel (e.g., procurement system, estimating system, accounting system, control of Government property, and quality program); and

(13) Assemble all necessary survey data into a report, including a recommendation as to award, and submit it to the Chairman of the Pre-Award Survey Review Board.

(c) *Designation and responsibilities of team coordinator and members.* (1) When an on-site survey by a team is necessary, members should include specialists qualified to evaluate all appropriate phases of the firm's capabilities. The team coordinator shall:

(i) Arrange for the team's visit to the site;

(ii) Conduct team conferences for the purpose of

(A) Arriving at uniform interpretations prior to holding discussions with the prospective contractor's management;

(B) Briefing team members on their interviews and discussions with officials of the firm prior to making an on-site survey. (Members shall not make reference or comment relative to the possibility that the award will or will not be made to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas which in the opinion of the team member require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know); and

(C) Arranging for discussions among members during and after the on-site survey to assure that evaluations by individual specialists are integrated, coordinated, and complete; and

(iii) Otherwise direct the efforts of the team.

(2) When an on-site survey is required for only one aspect of the prospective contractor's capability, a qualified specialist will be designated to conduct the on-site portion of the survey. One specialist may be designated to investigate more than one aspect when it is within his capability.

(d) *Preaward survey review board.* (1) A Pre-Award Survey Review Board shall be formally established to review and approve survey reports prior to transmittal to the contracting officer.

(2) The Board shall be composed of senior specialists from each of the major functions normally concerned with preaward surveys, one of whom shall be designated Chairman. Flexibility of membership shall be provided by designating alternates for membership and by establishing the criteria or conditions governing the need for occasional special technical representation. Membership on the Board shall be in addition to the members' regular duties.

1809.106–7201 Steps for survey performance.

The three steps in performing a preaward survey are the:

(a) Preliminary analysis;

(b) Development and evaluation of information; and

(c) Preparation and review of the preaward survey report.

1809.106–7202 Preliminary analysis.

The request (SF 1403, Sections, I, II, and III) shall be reviewed to establish basic administrative information and the factors to be investigated. The solicitation shall then be reviewed to ascertain those general and special requirements which have a significant bearing on determining contractor responsibility. Examples are the nature of the product or services, applicable specifications, delivery schedule, documentation requirements, property control requirements and financing aspects.

1809.106–7203 Development of information.

(a) *Review of available data.* The information already available in the contracting office pertaining to the prospective contractor and his past performance shall be reviewed. Prior preaward survey reports and contractor performance records shall be examined and considered in support of preaward survey recommendations. If the prospective contractor has current or contemplated Government contracts, the files should be checked for information regarding similarity of product, current status of contracts, quality control experience, and financial status.

(b) *Development of additional data.* (1) When appropriate, the contracting office shall supplement the data on hand with any additional information required from other Government sources and from commercial sources, such as banks, business associates, and credit rating and reporting agencies.

(2) An on-site survey shall be performed when required by FAR 9.106–1(a), or when sufficient information is not developed as a result of (a) and (b)(1) above.

(3) A narrative discussion shall be referenced in Section III of SF 1403 and

appended to the form covering each factor investigated. This narrative shall include detailed discussion supporting both satisfactory and unsatisfactory conditions and shall include reasons for all stated conclusions. When review discloses previous unsatisfactory contractor performance in any regard, the preaward survey shall specifically cover the extent to which action has been taken or planned by the contractor to avoid repetition. Lack of evidence that the contractor was responsible for a failure to meet past contractual requirements does not necessarily indicate satisfactory performance. A persistent pattern of the contractor's need for costly and burdensome Governmental assistance (engineering, inspection, testing) that was provided in the Government's interest but not contractually required, shall be treated in the preaward survey as an element for separate narrative discussion to be appended to the Form.

(4) When a prospective contractor proposes to acquire additional resources essential to performance of the proposed contract, the activity conducting the survey shall as a minimum obtain and evaluate:

(i) An itemized list of the required resources;

(ii) A planned method of acquisition; and

(iii) A schedule for acquisition of resources.

Failure to meet commitments on previous contracts shall be documented in the current preaward survey report and considered in the final recommendation.

1809.106-7204 On-site surveys.

(a) *Interview, investigation and review.* (1) *General.* An on-site survey will consist of an interview with representatives of the prospective contractor and, normally, an investigation of his resources and procedures.

(2) *Interview with management.* Management officials of the appropriate level authorized to represent the prospective contractor should be interviewed. The prospective contractor's background shall be reviewed and as much history recorded as necessary to reflect the soundness and reputation of the firm's operation.

(i) The organizational structure of the facility is the basis for management's control and must be reviewed. Assignment of definite tasks and responsibilities should be checked.

(ii) Lack of understanding or misinterpretation of the solicitation often results in delinquent contracts and leads to default actions. Therefore, the solicitation shall be discussed with the prospective contractor to assure that he understands its requirements, including its technical aspects, such as drawings, specifications, prototype, technical data, testing, and packaging, and Government's right to use technical data in accordance with the terms of the solicitation (Ref. clauses in 1827.473). Any misinterpretations of the requirements of the solicitation which could adversely affect performance, or refusal by the prospective contractor to furnish required data, should be brought to the immediate attention of the monitor by the team coordinator. The monitor shall, in turn, promptly advise the team coordinator. The monitor shall, in turn, promptly advise the contracting officer.

(3) *Investigation of resources and review of procedures.* The resources which the prospective contractor intends to utilize shall be inspected, analyzed, and compared with his overall plans for performing. His procedures relating to performance of the proposed contract shall be reviewed for adequacy.

(4) *Specific factors to be considered.* In the course of developing information, those factors described in (b), (c), and (d) below and all others needed to provide the report and recommendations in detail and to the extent required by the contracting officer shall be considered.

(b) *Production.* (1) *General.* The production portion of the on-site survey consists of an evaluation of the prospective contractor's ability to manufacture the product(s) or accomplish the tasks in accordance with the specifications and delivery schedule of the proposed contract. To achieve the objectives of this portion of the on-site survey, the production plan shall be reviewed, production resources ascertained, and the plan related to such resources.

(2) *Obtaining the production plan.* The prospective contractor's production plan for meeting the delivery schedule specified in the proposed contract shall be ascertained. The principal milestones within the production plan shall be established, along with target dates for achievement. These target dates must support the delivery schedule of the proposed contract. The controls which will be utilized in order to gear and hold the manufacturing effort to the target dates for the principal milestones shall be analyzed for suitability.

(3) *Ascertaining production resources.* The information necessary to prepare SF 1404 and SF 1405 shall be obtained by discussion with appropriate management personnel of the prospective contractor. This information shall be verified, when necessary, by physical inspection of the manufacturing plant and evaluated in terms of suitability to manufacture the required item(s).

(4) *Relating production plans to production resources.* When necessary, representatives of the prospective contractor shall be requested to advise how the production resources described in Sections II, III, IV, and VI of SF 1405 will be allocated and utilized in order to achieve the target dates for the principal milestones. This shall include both in-house and subcontractor production resources. Pertinent to this is an analysis of projects and contracts which will compete for utilization of those resources within the same time frame as that specified by the prospective contractor's production plan. The information developed as a result of equating the production plan and production resources of the prospective contractor should enable the procurement office to:

(i) Conclude whether the resources which the prospective contractor is planning to use are suitable for the job;

(ii) Determine whether the prospective contractor will be capable of properly controlling, maintaining, protecting and using Government property;

(iii) Determine whether the planning and scheduling of effort will result in timely accomplishment of the principal milestones; and

(iv) Conclude whether achievement of the principal milestones will result in timely delivery.

(c) *Quality assurance.* (1) The standing of the quality assurance organization in the prospective contractor's overall organization must be evaluated. An inspection or quality control function which reports to some other organizational segment (such as production) instead of top management may be undesirable. The experience of the company inspection or quality control personnel with the same or similar items shall be evaluated.

(2) To evaluate the prospective contractor's ability to comply with quality control or inspection requirements, the following areas shall be reviewed:

(i) Methods currently utilized to control product quality as reflected by a documented or verifiable inspection system or quality program plan;

(ii) Personnel on hand and available (report both trained and untrained);

(iii) Inspection and test equipment on hand and available;

(iv) Quality, identification, and storage of materials;

(v) Physical arrangement of plant;

(vi) Tool and gauge control; and
(vii) Test and inspection records.

(d) *Financial.* (1) *General.* The normal procedure for determining a prospective contractor's financial capability shall be initial pre-survey planning, followed by verification of financial data as required. The extent of the review and analysis of financial matters shall be governed by the nature of the proposed contract. In certain instances, a sound decision may be possible after a relatively simple review of a company's financial position and production commitments. Under other circumstances, a more comprehensive review and analysis will be required.

(2) *Procedure.* Aspects to be considered in determining the prospective contractor's financial capability (SF 1407) include the following:

(i) The latest balance sheet and profit and loss statement shall be reviewed. The following are indicative of the soundness of the prospective contractor's financial structure:

(A) Rates and ratios;

(B) Working capital as represented by current assets over current liabilities; and

(C) Financial trends such as net worth, sales and profit.

(ii) The method of financing the contract shall be evaluated. Where sources of outside financing, other than the Government, are indicated, their availability should be verified.

(iii) When financial aid from the Government is to be obtained, the necessity should be verified. Review shall be made concerning the applicability of such financing as progress payments or guaranteed loans.

1809.106–7205 Evaluating data and preparing the report.

(a) *Findings of team members.* When the required information has been gathered, each individual participant shall analyze it and evaluate the prospective contractor's capability to perform with respect to the functions element(s) investigated. Each participant shall then provide his findings to the monitor on one or more of the appropriate forms (see FAR 9.106–4(a)) or an attachment or attachments thereto. Where a negative reply is recorded, or where doubt exists, an explanation must substantiate the entry. If a detailed analysis is needed or additional significant information is pertinent, the Form should be supplemented by a narrative report.

(b) *Monitor's evaluation and recommendation.* Based on all the information received from the team members, the monitor shall thoroughly review and evaluate the findings and recommendations, and forward the report to the Chairman of the Review Board with (1) a summary of his findings, and (2) his recommendation concerning award. A recommendation shall be supported by a statement of justification and shall, where the prospective contractor is a small business concern, be coordinated with the cognizant small business specialist.

(c) *Review board action.* Upon receipt of each preaward report, the Chairman of the Review Board shall determine the extent of Review Board action. The requirements of 1809.106–7103(d) above may be satisfied at the discretion of the Chairman by any of the following:

(1) Action by the Chairman alone;

(2) Informal contact by the Chairman with one or more of the Board members; or

(3) Formal action by the entire Board.

(d) *Final actions.* Following the action by the Review Board, the monitor shall forward the report direct to the contracting officer. When advance reports are made by telegraphic communication or telephone, they shall be confirmed by mail without delay. The monitor shall follow up on any requirements for the submission of supplemental reports.

Subpart 1809.2—Qualified Products

1809.200 Scope of subpart.

This subpart prescribes policies and procedures which, like those of FAR Subpart 9.2, are to be followed only in the use of Qualified Products Lists for procurement of microcircuits as authorized by NPD 5320.5, Basic Policy for Electronic Parts and, NMI 5320.6, Implementation of NASA Standard Parts Program.

1809.203 Responsibilities of a specification preparing activity (SPA).

1809.203–70 General.

(a) NASA Headquarters Office of Reliability and Quality Assurance is responsible for justifying, determining, and approving NASA's need for inclusion and continued usage of qualification requirements in specifications under the NASA Microelectronics Reliability Program.

(b) Prior to the procurement of Class "A" microcircuits, as defined in NHB 5300.4(3F), the determination required by paragraph 3F103–2 of that handbook shall be made in writing by an authorized NASA field installation official.

(c) Copies of NHB 5300.4(3F) may be purchased by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

1809.203–71 Waiver of qualification requirements.

When procuring a product under a specification which includes qualification requirements either for the end item or for components of the end item, such qualification requirements can be waived by the NASA installation conducting the procurement. Directing a waiver of the end item qualification requirement, constitutes adequate authorization for waiver of product qualification requirements. Where waivers have been granted, solicitations shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the procurement (see FAR Subpart 5.2).

1809.206 Acquiring qualified products.

1809.206–70 Small businesses.

Where a small business, otherwise eligible for award, has been placed in a special status of a Qualified Products List (see NHB 5300.4(3F)) established as a part of the NASA Microelectronics Reliability Program and the contracting officer has determined that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR Subpart 19.6 are applicable.

1809.206–71 Contract clause.

When qualified products are being procured, insert the clause at 1852.209–70 in both the solicitation and resulting contracts.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.402 Policy.

For purposes of FAR Subpart 9.4 and this Subpart, the Assistant Administrator for Procurement is the "debarring official," the "suspension official," and the agency head's "designee."

1809.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The Office of Procurement (Code HP–1) is responsible for taking the actions enumerated under FAR 9.404(c).

(b) In compliance with FAR 9.404(c)(5), contracting officers shall consult the Consolidated List to ensure that they do not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as otherwise provided in FAR 9.405.

1809.405 Effect of listing.

If it is believed that a new contract or subcontract with a debarred or suspended contractor must be awarded, the contracting officer shall prepare a determination as set out in 1809.405–1(b) below, and forward it to the Assistant Administrator for Procurement (Code HP–1).

1809.405–1 Continuation of current contracts.

(a) The contracting officer may terminate a contract under FAR 9.405–1(a) if it is in the best interest of the Government to do so, unless directed otherwise by the Assistant Administrator for Procurement.

(b) If it is believed that an existing contract or subcontract with a debarred or suspended contractor must be renewed or otherwise extended, the Procurement Officer shall prepare a determination with all necessary support documentation and forward it to the Assistant Administrator for Procurement (Code HP–1) for approval. If approved, the Assistant Administrator shall forward a notice describing the decision to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason under FAR 9.405–1(b) for award, renewal, or extension include—

(1) The property or services to be acquired are available only from the listed contractor;

(2) The urgency of the requirement dictates that NASA deal with the contractor;

(3) The contractor and NASA have entered into an agreement covering the same events which resulted in the listing, and the agreement includes a decision by NASA not to debar or suspend the contractor; and

(4) For such other reasons related to the national defense or program requirements which necessitate continued business dealings with the listed contractor.

1809.405–2 Restrictions on subcontracting.

When a subcontract must be awarded the procurement officer shall prepare a determination, with all support documentation, and forward it to the Assistant Administrator for Procurement (Code HP–1) for approval. Some examples of circumstances that may constitute compelling reasons are in 1809.405–1(b) above.

1809.406 Debarment.

1809.406–3 Procedures.

The report required by FAR 9.406–3 shall be forwarded by the Procurement Officer to the Assistant Administrator for Procurement (Code H) in accordance with 1809.470, below.

1809.407 Suspension.

1809.407–3 Procedures.

The report required by FAR 9.407–3 shall be forwarded by the Procurement Officer to the Assistant Administrator for Procurement (Code H) in accordance with 1809.470, below.

1809.470 Reporting of suspected causes for debarment, suspension, or evasive actions.

1809.470–1 Situations where reports are required.

A report incorporating the information required by 1809.470–2 below shall be forwarded by the Procurement Officer to the Assistant Administrator for Procurement (Code H) when—

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and FAR 9.407–2; or

(b) A contractor is suspected of attempting to evade the prohibitions of debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

1809.470–2 Contents of reports.

Each report prepared under 1809.470 shall be coordinated with local counsel and shall include substantially the following information, where available:

(a) Name and address of contractor.

(b) Names of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) Description of the contract or contracts concerned, including the contract number, and office identifying numbers or symbols, the amount of each contract, the amount paid the contractor and the amount still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so assigned, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts.

(h) A complete summary of all pertinent evidence.

(i) A recommendation as to the continuation of current contracts.

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the contracting officer and local counsel as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, and (3) the period of any debarment.

(l) As an enclosure, a copy of the contract(s) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1809.470–3 Addressees and copies of reports.

Reports, including enclosures, shall be submitted in duplicate to the Assistant Administrator for Procurement (Code HP–1) with an additional copy to the Office of General Counsel, NASA Headquarters (Code G).

Subpart 1809.5—Organizational Conflicts of Interest

1809.500 Scope of subpart.

The Assistant Administrator for Procurement has authorized the Procurement Officer to take those actions reserved in FAR Subpart 9.5 for the Head of the Contracting Activity. However, see 1809.503 regarding waivers.

1809.503 Waiver.

The Administrator has designated the Assistant Administrator for Procurement as the approval authority for waivers under FAR 9.503. A request for waiver under FAR 9.503 will be forwarded from the Procurement Officer to the Assistant Administrator for Procurement (Code HS–1) for action.

1809.507 Procedures.

(a) The draft solicitation and contract provision required by FAR 9.507(a) (2) and (3) shall be approved by the Procurement Officer in those cases where the installation has final authority for contractor source selection and by the Assistant Administrator for Procurement (Code HS–1) for NASA Headquarters selection.

(b) The Assistant Administrator for Procurement (Code HS–1) will make the final decision required by FAR 9.507(c)(4).

1809.508 Solicitation provision and contract clause.

1809.508-2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209-71, Limitation of Future Contracting, in solicitations and contracts in compliance with FAR 9.508.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
1810.001 Definitions.
1810.002-70 NASA policy.
1810.004 Selecting specifications or descriptions for use.
1810.004-70 Additional requirements.
1810.004-71 Brand name or equal purchase descriptions.
1810.007 Deviations.
1810.008 Identification and availability of specifications.
1810.008-70 Brand-name or equal awards.
1810.011 Solicitation provisions and contract clauses.

Authority: 42 U.S.C. 2473 (c)(1).

1810.001 Definitions.

"Brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor.

1810.002-70 NASA policy.

(a) Each solicitation shall be accompanied by the applicable specifications, standards, plans, drawings, and other pertinent documents, or shall state where such documents may be obtained or examined.

(b) Whenever a specification is deemed inadequate, immediate action shall be taken to effect the issuance of an amendment or a revision in accordance with established procedures to obviate the necessity for repeated departures from the specification.

1810.004 Selecting specifications or descriptions for use.

(a) As required by FAR 10.004(e), appropriate preservation, packaging, packing, and marking requirements will be included in contracts as applicable. The services of packaging technicians shall be used to the maximum extent practicable, for example, for the following purposes:

(1) Development or establishment of preservation, packaging, packing, and marking requirements for individual procurements.

(2) Assistance in evaluating the reasonableness of contractors' packaging, packing, and marking cost estimates or charges.

(b) Unrealistic preservation, packaging, packing, and marking requirements should be reported and changes recommended to the activity originating the requirement and to the contracting officer.

1810.004-70 Additional requirements.

(a) Drawings and data furnished with solicitations shall be clear and legible (see also FAR 10.008).

(b) Many specifications cover several grades or types and provide for several options in methods of inspection. When such specifications are used, the solicitation shall state specifically the grade, type, or method of inspection, on which offers are to be based.

1810.004-71 Brand name or equal purchase description.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by FAR 10.004(b)(3) and in accordance with this Subpart (see 1810.001 and 1852.210-70).

(b) The words "or equal" should not be added when it has been determined under paragraph (a) above that only a particular product meets the essential requirements of the Government, as, for example, (1) where the required supplies can be obtained only from one source (see FAR 15.210(b)(1) and 1815.105-70) or (2) procurements negotiated under FAR 15.207 for specified medicines or medical supplies where it has been determined that only a particular brand-name product will meet the essential requirements of the Government.

(c) Where feasible, all known acceptable brand-name products should be referenced. Where a "brand-name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(d) "Brand-name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, where interchangeability of parts is required, such requirement should be specified. Purchase descriptions should contain the following characteristics, in addition to those at FAR 10.004(b)(1), to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required;

(2) Applicable model, make, or catalog number for each brand-name product referenced, and identity of the commercial catalog in which it appears;

(3) Name of manufacturer, producer, or distributor of each brand-name product referenced (and address if company is not well known).

(e) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the solicitation as being that of the particular-named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by offerors at the contracting office.

(f) When a solicitation contains "brand-name or equal" purchase descriptions, bidders who offer brand-name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand-name products; however, solicitations may require the submission of bid samples in the case of offerors proposing "or equal" products.

(g) Proposals offering products which differ from brand name products referenced in a "brand-name or equal" purchase description shall be considered for award where the contracting officer determines in accordance with the terms of the clause in 1852.210-70 that the offered products meet fully the salient characteristics requirements referenced in the solicitation. Solicitations shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(h) Except as provided in paragraph (i)(1) below, when a "brand-name or equal" purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation for completion by the bidder:

Bidding on:
Manufacturer's Name _____
Brand _____
No. _____

(i)(1) Where component parts of an end item are described in the solicitation by a "brand-name or equal" purchase description and the contracting officer determines that application of the clause in 1852.210-70 to such component parts would be impracticable, the requirements of paragraph (h) above

shall not apply with respect to such component parts. In such cases, if the clause is included in the solicitation for other reasons, a statement substantially as follows also shall be included:

The clause entitled Brand-Name or Equal does not apply to the following component parts: (List the component parts to which the clause does not apply.)

(2) In the alternative, if the contracting officer determines that the clause in 1852.210–70 should apply to only certain such component parts, the requirements of paragraph (h) above shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled Brand-Name or Equal applies to the following component parts: (List the component parts to which the clause applies.)

(j) The policies and procedures prescribed in paragraphs (a) through (g) above for formally advertised procurements shall be generally applicable to negotiated procurements. If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

1810.007 Deviations.

(a) If an exception or deviation from a Federal or military specification is required—

(1) The contracting officer shall, before issuance of the solicitation, submit a fully documented and justified request for the deviation to the Procurement Officer; and

(2) The Procurement Officer shall comply with FAR 10.007(a).

1810.008 Identification and availability of specifications.

1810.008–70 Brand-name or equal awards.

Award documents shall identify or incorporate by reference an identification of the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand-name products specified in the solicitation. Included in this requirement are those instances where (a) the description of the end item contains "brand-name or equal" purchase descriptions of component parts or of accessories related to the end item and (b) the clause at 1852.210–70 was applicable to such component parts or accessories (see 1810.004–70(i)).

1810.011 Solicitation provisions and contract clauses.

The contracting officer shall, when a "brand-name or equal" purchase description is included in a solicitation, insert the provision at 1852.210–70, Brand-Name or Equal. The provisions may be modified for use in negotiated contracts.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1812.1—Delivery or Performance Schedules

Sec.
1812.102 Contract clauses.

Subpart 1812.2—Liquidated Damages

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1812.372–5 Action by NASA Headquarters.
1812.373 Priority ratings for automatic data processing equipment.

Subpart 1812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1812.505 Contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1812.1—Delivery or Performance Schedules

1812.102 Contract clauses.

(a) The contracting officer may use the clause at 1852.212–70, Notice of Delay, when it is desirable to provide for contractor notice of anticipated delays in performance.

(b) The contracting officer shall insert the clause at 1852.212–71, Reports of Works, in all fixed-price research and development contracts and may insert it in cost-reimbursement type contracts. Modifications to this clause may be made to meet the particular requirements of a procurement. Consideration should be given in each case to the desirability of providing for reports on the completion of significant units or phases of the work, in addition to periodic reports and reports on the completion of the entire contract.

Subpart 1812.2—Liquidated Damages

1812.202 Policy.

The contracting officer shall forward recommendations concerning remission of liquidated damages via the head of the contracting activity to the Assistant Administrator for Procurement for submission to the Administrator.

Subpart 1812.3—Priorities, Allocations, and Allotments

1812.302 General.

1812.302–70 NASA program.

(a) It is national policy to require contractors to use ratings and allotment authority to support NASA acquisition to the extent required by the Office of Industrial Resource Administration (OIRA). In addition to the procurement and construction of the Department of Defense (DOD), the Federal Emergency Management Agency (FEMA) has authorized OIRA to provide priorities authority for all procurement and construction programs of NASA. The DOD is the claimant agency to FEMA for NASA.

(b) DOD implementation of all rules and regulations published by OIRA for which the DOD is delegated administrative responsibility is contained in the DOD Priorities and Allocations Manual (PAM).

(c) NASA installations shall comply with the priorities and allocations program as set forth in—

(1) The DOD PAM;

(2) The rules and regulations published by OIRA; and

(3) Sections 1812.370 through 1812.372.

1812.370 DO/DX priority rating system.

1812.370–1 Scope of section.

This section prescribes procedures for the administration of the priority rating system regarding products and equipment, including automatic data processing equipment (see 1812.373), other than controlled materials, required for NASA programs.

1812.370–2 General.

With minor exceptions, the use of priority ratings on both NASA contracts

and purchase orders and on all contractor purchase orders is mandatory. Priority ratings are assigned on individual contracts and purchase orders by NASA personnel to whom authority has been delegated under NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement). Complete information regarding the use of ratings, method of assignment, items not otherwise eligible for ratings (see 1812.370–4), and additional instructions are set forth in section 2 of the DOD PAM.

1812.370–3 Application of ratings.

A NASA contract or purchase order is "rated" by writing on the contract or order or on a separate paper specifically identified with the contract or order, the following:

(a) DO or DX-(appropriate program code symbol).

(b) The certification prescribed in FAR 12.303(b)(3).

(c) The required delivery date(s).

(d) Signature and title of authorized official.

1812.370–4 Non-rateable items.

(a) Priority rating will not be issued for—

(1) Direct procurement of "controlled materials" (i.e., steel, copper, aluminum, and nickel alloys);

(2) Contracts for services, except those relating to deliveries of materials; or

(3) Items ordered or requisitioned from GSA Federal Supply Service.

(b) In addition to the above, a complete list of non-rateable items and classes of items is contained in Exhibit 1, section 2–1 of the PAM.

1812.371 Reporting of controlled materials requirements.

1812.371–1 Scope of section.

This section contains the procedures for the furnishing by installations of quarterly reports of estimates of requirements for Defense Materials System controlled materials. The installation quarterly reports described in this section are the basis of NASA's consolidated estimates to DOD and to FEMA.

1812.371–2 Reporting responsibility.

(a) *Scope of report.* Installations shall submit quarterly estimates of controlled materials requirements by the codes, forms, shapes, and subdivisions as listed in 1812.371–7 for the applicable claimant programs as described in PAM 2–2. Reports will be submitted on DD Form 614, Materials Requirements—Steel and Nickel Alloys, and DD Form 614–1, Materials Requirements—Copper and Aluminum.

(b) *Report due dates.* Reports for the first quarter of each calendar year shall be forwarded to reach the Office of Procurement, NASA Headquarters (Code HP–1) by the preceding September 1, for the second calendar quarter by the preceding December 1, for the third calendar quarter, by the preceding March 1, and for the fourth calendar quarter by the preceding June 1.

1812.371–3 Report content.

The report required by 1812.371–2 above shall include—

(a) For each separate claimant program, the controlled materials needed for all procurements to be made by the reporting installation showing (1) the materials to be purchased by contractors for producton of Class A products, including construction, and materials for research and development and (2) the materials to be purchased by installations for in-house operations. Materials required for production of Class B products are *not* to be reported; (section 1–4 of the PAM contains the definition of Class A and B products);

(b) A summary or total of the requirements reported in paragraph (a) above; and

(c) A breakout from the data called for in paragraph (a) above and the totals in (b) of estimates for the materials required for items and projects which are of highest national priority. Such programs as are authorized for the special DX priority rating may be found in the DOD Master Urgency List.

1812.371–4 Basis for developing controlled-materials requirements.

The reports submitted in accordance with this section shall be based on the research and development, end-item, and construction programs which take into consideration all funds available or anticipated to become available. Estimates shall reflect the best judgment of the installations, and should, if possible, be derived by multiplying unit weight per item by scheduled production, with due consideration of production and purchasing lead times. When this approach is not feasible, other methods, such as factoring a relationship of materials to dollar value, engineering estimates, contractor estimates, or actual past usage of materials, may be utilized in preparing the requirements. Installations shall maintain records of the methods and data used in preparing the reports for review upon request by the Office of Procurement, NASA Headquarters (Code HP–1).

1812.371–5 Requirements coordination with other Government agencies.

Installations shall *not* report materials requirements for those items purchased by other Government agencies for NASA use. However, end-item quantitative requirements for Class A products will, if requested, be furnished to the contracting office so that it can compute and include the required materials in its submission of reports to the DOD.

1812.371–6 Requirements review, assembly, and submission to DOD.

The Office of Procurement, NASA Headquarters (Code HP–1), will—

(a) Review field installation reports for accuracy of computations and reasonableness of computed quantities in relation to authorized program procurements;

(b) Summarize data received from field installations into an overall NASA report for submission to the DOD; and

(c) Justify and defend NASA estimates as may be necessary before DOD and FEMA.

1812.371–7 List of controlled materials—Defense Materials System Regulation 1.

DOD Code and Material	
1200	*Carbon Steel (including wrought iron) Total*
1212	Ingots, billets, etc. (excluding 1215)
1215	Billets, stock for shell bodies
1221	Bars, cold finished
1222	Bars, hot rolled (excluding 1223 and 1225)
1223	Bars, reinforcing
1225	Bars, stock for shell bodies
1231	Structural shapes
1232	Piling
1240	Pipe and tubing, including threaded couplings
1251	Plates
1252	Sheet and strip (excluding 1261)
1261	Sheet, galvanized
1262	Tin, terne, tin mill black plate
1270	Rails and track accessories
1280	Wheels, tires and axles
1290	Wire rods, wire and wire products
1300	*Alloy Steel (excluding 1000 and 1400) Total*
1312	Ingots, billets, etc.
1314	Castings, armor
1321	Bars, cold finished
1322	Bars, hot rolled
1331	Structural shapes
1340	Pipe and tubing, including threaded couplings
1351	Plates (excluding 1355)
1352	Sheet and strip
1355	Plates, rolled armor
1370	Track accessories
1380	Wheels, tires, and axles
1390	Wire rods, wire and wire products
1000	*Stainless Steel—Non-Nickel Bearing— Total*

1400 *Stainless Steel—Nickel Bearing—Total*
0600 *Nickel Alloys—Total*
0601 5% through 29.9% nickel content
0602 30% through 49.9% nickel content
0603 50% through 100% nickel content
1510 *Brass Mill Copper Base Alloy Products—Total*
1511 Plate, sheet and strip (except 1514)
1512 Rods, bars and wire
1513 Tube and pipe
1514 Ammo cups and discs
1520 *Brass Mill Unalloyed Copper Products—Total*
1521 Plate, sheet and strip
1522 Rods, bars and wire
1523 Tube and pipe
1510 and 1520 *Brass Mill Products—Total (sum lines 1510 and 1520)*
1530 *Wire Mill Products (copper content)*
1540 *Foundry Products*
1550 *Powder—Total*
1551 Powder, copper, unalloyed
1552 Powder, copper base alloys
1600 *Aluminum—Total*
1610 Rods and bars, porcelain coated
1611 Rods and bars, rolled (excluding 1610 and 1612 and excluding stock for 1620, 1630 and 1661)
1612 Rods and bars, rolled, forging and impact extrusion stock
1620 Wire and cable (excluding 1630)
1630 Rivets and rivet wire
1651 Sand castings
1652 Mold castings
1653 Die Castings
1654 Other castings
1661 Shapes, rolled structural
1662 Shapes, extruded (excluding 1663 and 1664)
1663 Shapes, extruded forging stock
1664 Shapes, extruded, porcelain
1670 Sheet, strip and plate (excluding 1671 and stock for 1693)
1671 Sheet, strip and plate, porcelain coated
1680 Tubing
1691 Powder
1692 Ingot
1693 Foil (.005" and thinner)

1812.372 Special priorities assistance.

1812.372-1 Scope of section.

This section contains procedures whereby field installations and contractors may obtain special assistance in expediting delivery of raw materials, supplies, and equipment from commercial sources on NASA programs.

1812.372-2 General.

In most instances, with the use of a priority rating and timely acquisition, it is possible to obtain satisfactory deliveries of materials and equipment to meet program schedules. However, conflicts occasionally occur among priority-rated programs competing for the same resources. A number of factors may cause such a conflict, such as a shortage of capacity to produce a material or product or placement by different sources of similar orders on a supplier which require delivery within the same time period. Resolution of problems of this type is accomplished by using the special priorities assistance procedure described herein if not resolved at the field level. Detailed explanation regarding the special priorities assistance procedure is contained in section 7 of the PAM and the Defense Priorities Regulation 1.

1812.372-3 Criteria for special priorities assistance requests.

(a) Requests for special priorities assistance may be submitted by field installations if there is, as a minimum, a clear demonstration—

(1) Of the relationship and importance of the applicant's requirements to NASA programs;

(2) Of the inability of the applicant to divert materials or equipment from other production to meet requirements;

(3) That failure to obtain the supplies will delay NASA program schedules; and

(4) That satisfactory arrangements cannot be accomplished by the field installation.

(b) Requests may be submitted for assistance in placement of orders as well as to improve deliveries of orders already placed.

1812.372-4 Form, preparation, and routing of requests.

(a) Form ITA–999 shall be used for all special priorities assistance requests. Copies of this form may be obtained from Department of Commerce field offices listed in section 9 of the PAM.

(b) The form shall be prepared in accordance with the instructions in section 7–2, Exhibit 2, of the PAM. Blocks 18 and 19 of the form should be left blank for use of NASA Headquarters and DOD officers. The form may be prepared by any authorized field installation representative or by the prime contractor or subcontractors. Prime contractors may prepare forms for their subcontractors, if expedient. However, all forms prepared by contractors must be endorsed by a NASA representative who preferably shall be the DMS/DPS Officer of the installation administering the contract. Technical offices of field installations having need for expediting assistance are urged to utilize the services of their local DMS/DPS Officer in preparing and processing special-priorities assistance requests.

(c) Special-priorities assistance requests on ITA–999 shall be transmitted in quintuplicate to the Office of Procurement, NASA Headquarters (Code HP–1). For emergency cases involving programs of highest national priority (DX) which warrant special handling to obtain immediate deliveries, requests will be accepted by telephone. Data transmitted by telephone shall be confirmed by submission of a Form ITA–999 through regular mail channels.

1812.372-5 Action by NASA Headquarters.

(a) After receipt of the Form ITA–999 a thorough exploration of the case will be unertaken with a view toward determining the specific deficiency (e.g., lack of capacity, prior higher priority orders, shortage of materials or parts). On the basis of the information developed, action will be taken through the DOD to resolve the case by informal arrangements with the supplier and applicant. If this action is unsuccessful, the case will be endorsed by DOD to OIRA. In either case, one of the following actions will result:

(1) Arrangement for improved delivery dates by informal agreement with the supplier.

(2) Issuance of a one-time only, bottle-neck breaking DX rating—not to be confused with those DX ratings assigned programs of highest national priority.

(3) Issuance of a directive requiring the supplier to produce or deliver the specified item by a specific date.

(b) The Office of Procurement, NASA Headquarters (Code HP–1) will maintain a follow-up of all cases received and notify field installations as to final disposition of individual cases.

1812.373 Priority ratings for automatic data processing equipment.

(a) Industrial priority ratings shall be used when the computer systems or peripheral equipment (1) will be used in direct or logistic support of military operations or (2) is necessary for R&D, production, testing or construction at Government-owned facilities.

(b) Industrial priority ratings shall not be used when the primary function of the equipment will be for administrative or business purposes such as financial management (payroll, budget), insurance programs, or personnel/education/training programs.

(c) Contractor requests to use industrial priority ratings for the acquisition of computers and peripheral equipment as privately-owned capital equipment shall be processed on DD Form 691 (reference DOD Priorities and Allocations Manual). Authorization shall not be granted until the request is thoroughly evaluated to assure that the equipment:

(1) Is to be used for NASA related R&D, production, or construction purposes (i.e., computer-aided design, testing, production process control, etc.);

(2) Is needed to insure timely deliveries on priority rated NASA contracts and purchase orders for approved programs; and

(3) Has the smallest capacity available which is sufficient to meet NASA related requirements.

Subpart 1812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1812.505 Contract clauses.

The Stop-Work Order clause at FAR 52.212–13 is not authorized for use in research contracts with educational or other nonprofit institutions.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1813.1—General

Sec.
1813.104 Procedures.

Subpart 1813.2—Blanket Purchase Agreements

1813.203 Establishment of Blanket Purchase Agreements.
1813.203–1 General.

Subpart 1813.3—Fast Payment Procedure

1813.303 Preparation and execution of orders.

Subpart 1813.4—Imprest Fund

1813.403 Agency responsibilities.
1813.403–70 Establishment of imprest funds.
1813.404 Conditions for use.
1813.405 Procedures.

Subpart 1813.5—Purchase Orders

1813.502 Unpriced purchase orders.
1813.505 Purchase order and related forms.
1813.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

Subpart 1813.70—Procurement Request Overlay Method

1813.7001 General.
1813.7002 Limitations on use.
1813.7003 Procedures.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1813.1—General

1813.104 Procedures.

(a) When bulk funding is deemed appropriate see Financial Management Manual 9030–5e and 9040–4b.

(b) See FAR 15.203 for appropriate negotiation authority.

Subpart 1813.2—Blanket Purchase Agreements

1813.203 Establishment of Blanket Purchase Agreements.

1813.203–1 General.

Blanket Purchase Agreements shall be prepared and issued on any Center-prescribed purchase order form.

Subpart 1813.3—Fast Payment Procedure

1813.303 Preparation and execution of orders.

Orders incorporating the fast payment procedure may be issued on Optional Form 347, Order for Supplies or Services, or on other Center-prescribed purchase order form.

Subpart 1813.4—Imprest Fund

1813.403 Agency responsibilities.

1813.403–70 Establishment of imprest funds.

(a) *Authority.* The Director of Financial Management, NASA Headquarters, may authorize, upon approval of the Chief, Disbursing Office of the Treasury Department, the establishment of imprest funds and any required subsequent increases thereto. The number of imprest funds at an installation is generally restricted to the minimum number necessary to assure efficiency in small purchase transactions. Financial Management Manual paragraphs 9650–2 through 9650–15 should be used in conjunction with this Subpart.

(b) *Amount of imprest funds.* The amount of each fund shall be established on the basis of the estimated monthly payments therefrom and the need for replenishment without undue administrative burden. A fund level review shall be made at least semi-annually (see FAR 13.403(a)).

(c) *Imprest fund cashiers.* (1) Imprest fund cashiers are appointed in accordance with Financial Management Manual paragraph 9650–5 and are authorized to make cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. Financial management or fiscal officers and others having access to accounting records or responsibility for originating, approving, processing, or receiving requirements are not eligible for appointment as imprest fund cashiers. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) An alternate imprest fund cashier may be appointed where (i) the volume of work requires an alternate to the principal cashier or (ii) to provide sevice during the absence of the principal cashier. Appointment requirements for principal cashiers shall apply to alternate cashiers. In planned short-term absences of the principal cashier, cash may be advanced by the principal to the alternate in an amount not to exceed the alternate's limit of the fund. Upon resumption of duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers, and residual cash. In the absence of the principal cashier for more than 15 working days or for a period of time which will require the submission of a reimbursable voucher before the return of the principal, the transfer of funds from the principal to the alternate cashier shall be accomplished as prescribed by Financing Management Manual paragraph 9650–10(c).

1813.404 Conditions for use.

(a) Imprest funds may be used for small purchases when the transaction does not exceed $300 ($500 under emergency conditions).

(b) Imprest funds may also be used for small purchases when—

(1) The supplies or services are available for delivery within 60 days, whether at the supplier's place of business or at destination;

(2) The purchase does not require detailed technical specifications or technical inspection;

(3) Charges for local delivery, parcel post (including c.o.d. postal charges) and line-haul or inter-city transportation charges of $75.00 or less for supplies ordered for payment from imprest funds when the vendor is requested to arrange for delivery; and

(4) C.O.D. charges for supplies ordered for payment from imprest funds.

(c) The conditions for use specified in paragraph (b) above do not preclude the use of imprest funds for other expenditures not related to small purchases (*e.g.*, travel advances, travel expenses, transportation charges, and purchases of postage stamps and transportation tokens or passes) when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for—

(1) Payments of salaries and wages;

(2) Advances, other than those authorized in 1813.405(b); or

(3) Cashing of checks or other negotiable instruments.

1813.405 Procedures.

(a) *Receipt of material.* (1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales documents "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. In the absence of a supplier's sales document, a receipted Standard Form 1165, Receipt for Cash-Subvoucher, will be used to record the receipt of purchases made from the imprest fund and shall be processed in the same manner.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advanced arrangement may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certifications of receipt and acceptance of material shall be obtained on one of the documents as indicated in paragraph (a)(1) above. Receipt for cash payment (see paragraph (c) below) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangements for pick up of material are not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(b) *Advance of funds.* Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall "void" the interim receipt for cash. Cash so advanced should generally be accounted for daily, but cash may be advanced for a period not to exceed five consecutive work days.

(c) *Certification of cash payment.* (1) The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment shall be stamped with a certification containing the following information:

(i) Statement that cash payment was received in full.

(ii) Amount paid.

(iii) Date of payment.

(iv) Signature and title of supplier or his agent receiving the cash payment.

(2) Alterations or corrections to documents tendered for payment shall be initialled by the person making the change. Changes in the amount paid shall be initialled by the individual receiving payment.

(d) *Responsibilities of imprest fund cashier.* Pending receipt of material, the imprest fund cashier shall keep a file of purchase request documents covering imprest fund purchases. Prior to payment or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for purchase of $15.00 or less, the person making the purchase shall complete and sign the cash receipt document indicating receipt of funds from the imprest fund.

(e) *Payments.* (1) *C.O.D.* Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or agent and obtain the certification of cash payment as required in 1813.405(c).

(2) *Receipt from common carrier or post office.* When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt will be supported by copies of the applicable sales document if available.

(3) *Periodic payment.* When a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the doliar limitation imposed on the imprest fund method by 1813.404.

(4) *Failure to ship c.o.d.* When material is ordered c.o.d. but is shipped by the supplier subject to payment by check, Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, may be used to make payment. Under these circumstances, the receiver shall prepare the necessary certification of receipt and forward the receipted document through the imprest fund cashier for attachment of the supporting documents which authorized the shipment and submission to the disbursing officer for payment.

(f) *Reimbursement of imprest funds.* (1) The imprest fund shall be reimbursed in accordance with Financial Management Manual paragraph 9650–9.

(2) When a supplier refunds cash prior to the submission of Standard Form 1129, Reimbursement Voucher, covering such payment, the imprest fund cashier shall accept the refund, return the money to the imprest fund, and enter the amount of the refund on the original of the supplier's receipt. When the refund is made subsequent to the submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount of the refund on the retained copy of the reimbursement voucher, promptly submit the refund to the disbursing officer, or by otherwise depositing directly such funds on Standard Form 209, Certificate of Deposit.

(g) *Accounting.* Record keeping shall be based on simplified memorandum records to permit frequent reconciliation of funds and should show (1) the amount of cash received, (2) the amount paid out, and (3) the balance on hand at the close of each day. It is permissible to group numerous small payments by numbering payment documents and affixing to them an adding-machine tape showing the total applying to each grouping of payment documents.

(h) *Review.* The imprest fund cashier shall be required to account for the established fund at any time by cash on hand, paid supplier's receipts, unpaid reimbursement vouchers, and interim receipts for cash. Unannounced reviews, including cash counts, are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the financial management or fiscal officer of the installation maintaining the imprest fund.

Subpart 1813.5—Purchase Orders

1813.502 Unpriced purchase orders.

(a) NASA contracting officers shall assure that suppliers receiving unpriced purchase orders are carefully selected.

(b) Orders shall not contain an estimated target unit price.

(c) Suitable local records and controls of outstanding unpriced purchase orders shall be maintained to assure regular followup with suppliers until the order is priced. These records should include any information available to support the fairness and reasonableness of the proposed monetary limitation.

1813.505 Purchase order and related forms.

1813.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

Optional Forms 347, 348, or Center-prescribed forms may be used.

Subpart 1813.70—Procurement Request Overlay Method

1813.7001 General.

This method is an acceptable adjunct to other simplified purchase methods and may be used in placing oral orders when BPA's do not exist or, if existing, their use is considered too cumbersome in the instant circumstance. Each transaction is recorded on a small form which attaches to, becomes a part of, and overlays a portion of the procurement request. Suppliers' delivery tickets are used as additional supporting documentation. This method eliminates the administrative requirements for preparing and mailing individual purchase orders. This method may be used where suppliers are willing to accept oral orders and can be reasonably relied upon to fill such orders in accordance with the terms of the oral transaction.

1813.7002 Limitations on use.

This method is *not* to be used where—

(a) The requirements of more than one procurement request are to be combined in a transaction;

(b) More than one delivery will be required (except that where the requirements of a single procurement request are to be equitably divided among several qualified suppliers, a single delivery per supplier shall be required);

(c) An installation prescribed form or Optional Form 347 has been utilized;

(d) It is necessary or desirable to incorporate specifications or other terms and conditions in a written purchase order;

(e) GSA Federal Supply Schedules are to be used; or

(f) Where purchases are to be made from or through other Government agencies.

1813.7003 Procedures.

(a) After competitive selection of the source (see FAR 13.106) the order may be placed by telephone. Particular care is to be taken to ensure that the supplier agrees to accept the order without written confirmation and that the order number, item descriptions, quantities, prices, and other terms and conditions are clearly understood. If the amount of the purchase does not exceed $300 (or $500 under emergency conditions) the supplier should be encouraged to deliver c.o.d. (see FAR 13.404).

(b) The supplier will be given all pertinent and specific instructions at the time of placing the order, including the installation's methods of handling charge purchases to be billed within a period of one month or less.

(c) Upon placing the order, the contracting officer will assure that a preprinted overlay form is affixed to the procurement request, and will, if necessary, after the overlay is filled in, adjust the estimated unit and total cost figures of the procurement request to reflect the actual purchase price. This will be done by lining through the original procurement request figures so that they remain legible. Any other changes in the original information of the procurement request to make it conform to the facts of the purchase will be made in like manner. The preprinted overlay form will contain at least the following information:

Order No _____
Supplier (Name) _____
(Address, City) _____
(State, Zip) _____
Discount Terms _____
Deliver Date _____
Buyer _____
FOB Destination _____
Procurement _____
Placement _____
Code _____
Action: purchase request line items ( ), ( ), (etc.) complete*
Total procurement request action: partial,* complete*
Payment: cash,* charge*

_____
(Contracting Officer Signature) _____
Date Signed _____

(*Circle as appropriate.)

(d) The contracting officer will sign and date the completed overlay form on the procurement request.

(e) The procurement request with overlay will be reproduced and distributed internally in accordance with the installation's local instructions to provide copies to the offices or activities which will be responsible for receiving and accepting the merchandise, making cash payment, or processing charge purchases.

(f) In accordance with local instructions, copies of the supplier's delivery ticket received with the merchandise will be distributed to establish receipt and acceptance of merchandise and serve as a basis for cash payment or obligation of funds and subsequent payment of charge purchases.

PART 1814—FORMAL ADVERTISING

Subpart 1814.2—Solicitation of Bids

Sec.
1814.201 Preparation of invitation for bids.
1814.201–2 Part I—The Schedule.
1814.201–5 Part IV—Representations and instructions.
1814.201–6 Solicitation provisions.

Subpart 1814—Opening of Bids and Award of Contract

1814.406 Mistakes in bids.
1814.406–3 Other mistakes disclosed before award.
1814.406–4 Mistakes after award.
1814.407 Award.
1814.407–8 Protests against award.

Subpart 1814.5—Two-Step Formal Advertising

1814.503 Procedures.
1814.503–1 Step one.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1814.2—Solicitation of Bids

1814.201 Preparation of invitations for bids.

1814.201–2 Part 1—The Schedule.

The contracting officer shall include in this section of the Schedule the data specified—

(a) In FAR 14.201–2;

(b) Elsewhere in the FAR; and

(c) Elsewhere in this Regulation.

1814.201–5 Part IV—Representations and instructions.

(a) *Section L.—Instructions, conditions, and notice to bidders.* In procurements involving mission-critical positions in connection with the Space Transportation System, include a statement that the selected contractor will comply with the provisions of NASA Management Instruction 8610.13, Space Transportation System Personnel Reliability Program. The statement will not be required in procurements for flight crew members or payload specialists when covered by other NMI's which have equivalent screening requirements to NMI 8610.13. See, for example, NMI 7100.16, Payload Specialists for NASA-Related Projects.

(b) *Section M.—Evaluation factors for award.*

(1) If no award will be made for less than the full quantities advertised, include a statement to that effect.

(2) If award is to be made by specified groups of items or in the aggregate, include a statement to that effect.

(3) In unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being purchased or for some other special reason, include a statement of such qualifications.

1814.201–6 Solicitation provisions.

The Assistant Administrator for Procurement, under the deviation authority in FAR 1.404(c) has authorized use of the NASA deviation (see 1852.214–23) to the provision at FAR 52.214–23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Formal Advertising in step one of all two-step formally advertised procurements (see FAR 14.201–6(r)). This deviation allows the contracting officer to accept late technical proposals or proposal modifications if in the contracting officer's judgment, it is in the Govenment's best interest to do so.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.406 Mistakes in bids.

1814.406–3 Other mistakes disclosed before award.

(a) Under the authority delegated by the Administrator in NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement), the Assistant Administrator for Procurement is authorized to permit the correction of bids under FAR 14.406–3 (a) and (b), and the award of a contract under FAR 14.406–3(d). The Assistant Administrator for Procurement has, in turn, authorized Procurement Officers to permit withdrawal of bids when the conditions in FAR 14.406–3(c) are met. When the Procurement Officer permits withdrawal of a bid, a copy of the determination shall be forwarded to the Office of Procurement, Code HP–1.

(b) When a contractor requests correction of a bid under FAR 14.406–3(a) and it is determined that a mistake has been made but correction is denied and, as an alternative, the contractor requests award under its bid as submitted, the contracting officer must refer the file to the Assistant Administrator for Procurement for determination.

(c) Any doubtful case under FAR 14.406–3 should be forwarded to the Assistant Administrator for Procurement.

1814.406–4 Mistakes after award.

(a) The determination required by FAR 14.406–4 (b) and (c) shall be made by the contracting officer after obtaining concurrence from the Center's Office of Chief Counsel in accordance with FAR 14.406–4(d).

(b) A copy of the determination made under FAR 14.406–4 (b) and (c) shall be forwarded to the Office of Procurement, Code HP–1.

1814.407 Award.

1814.407–8 Protests against award.

(a) For protests filed with NASA Headquarters, a member of Congress, or the General Accounting Office, contracting officers will forward the report required by FAR 14.407–8(a)(2) to the Office of Procurement, Code HP–1. The agency's decision or its Administrative Report to a member of Congress or the General Accounting Office will be signed by the Assistant Administrator for Procurement (Code H).

(b) The notice to other persons required by FAR 14.407–8(a)(3) and the notice to the General Accounting Office required by FAR 14.407–8(a)(5) are the responsibility of the Office of Procurement Code HP–1.

(c) The determination authorizing award of a contract prior to resolution of a protest (FAR 14.407–8(b) (3), (4) and (5)) is the responsibility of the Assistant Adminstrator for Procurement (Code H).

(d) Notice to the protester and others (FAR 14.407–8(b)(5)) is the responsibility of the Assistant Administrator for Procurement (Code H).

(e) Protests filed after award (FAR 14.407(c)) with the contracting officer will be decided by the contracting officer in the same manner as protests filed with the contracting officer before award. Protests filed after award with the General Accounting Office or a member of Congress will be decided by the Assistant Administrator for Procurement. A report from the Contracting Officer, as required by FAR 14.407–8(a)(2), will be forwarded to the Office of Procurement (Code HP–1).

Subpart 1814.5—Two-Step Formal Advertising

1814.503 Procedures.

1814.503–1 Step one.

In addition to FAR 14.503–1(h) and FAR 15.412, see also 1814.201–6 and 1852.214–23 regarding the handling of late technical proposals.

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.1—General Requirements for Negotiation

Sec.

1815.103 Use of negotiation.
1815.105 Competition.
1815.105–70 Noncompetitive procurement.
1815.106 Contract clauses.
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Subpart 1815.2—Negotiation Authorities

1815.204 Personal or professional services.
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Subpart 1815.3—Determinations and Findings to Justify Negotiations

1815.302 General.
1815.304 Content.
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Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

1815.405 Solicitations for information or planning purposes.
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1815.405–70 Application.
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1815.406–2 Part I—The Schedule.
1815.406–3 Part II—Contract clauses.
1815.406–4 Part III—Documents, exhibits, and other attachments.
1815.406–5 Part IV—Representations and instructions.
1815.406–70 Instructions for technical proposal and business management proposal submission.
1815.407 Solicitatioins provisions.
1815.412 Late proposals and modifications.
1815.413 Disclosure and use of information before award.

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.
1815.503 General.
1815.505 Content of unsolicited proposals.
1815.506 Agency procedures.
1815.507 Contracting methods.
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Subpart 1815.6—Source Selection

1815.608 Proposal evaluation.
1815.608–70 Technical evaluation.
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1815.610 Written or oral discussion.

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1815.613–71 Evaluation and negotiation of procurements conducted in accordance with the Source Evaluation Board Manual (NHB 5103.6)
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Subpart 1815.7—Make-or-Buy Programs

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Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data.
1815.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
1815.805–4 Technical analysis.
1815.805–470 Responsibilities of NASA requirements personnel.
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1815.806 Subcontract pricing considerations.
1815.807 Prenegotiation objectives.
1815.807–70 Content of the Prenegotiation Position Memorandum.
1815.807–71 Center reviews.
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1815.870 Subcontract price redetermination.
1815.870–1 General.
1815.870–2 NASA contract clause.
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Subpart 1815.9—Profit

1815.902 Policy.
1815.970 NASA structures approach for profit or fee objective.
1815.970–1 Common factors..
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Subpart 1815.10—Preaward and Postaward Notifications, Protests, and Mistakes

1815.1002 Debriefing of unsuccessful offerors.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1815.1—General Requirements for Negotiation

1815.103 Use of negotiation.

Among the factors to be considered in determining whether formal advertising is feasible and practicable are—

(a) The number and location of potential suppliers;

(b) The adequacy of the specifications for advertising;

(c) The nature of the items being purchased;

(d) The time available; and

(e) The type of contract contemplated.

1815.105 Competition.

1815.105–70 Noncompetitive procurement.

(a) While competition must be obtained whenever possible, there are circumstances where one institution or company has exclusive or predominate capability by reason of experience, specialized facilities, or technical competence to perform the work within the time required and at reasonable prices. In such a circumstance, the initiating technical office may recommend, for approval by the appropriate authority listed in paragraph (d) below, that only one institution or company is qualified to perform the work or services and that a proposal be solicited only from this source. This recommendation shall be in writing in a separate document entitled Justification for Noncompetitive Procurement (JNCP) and shall contain full and complete justification for the selection in accordance with paragraph (c) below, except as otherwise authorized by paragraph (d)(1) below. In those cases where the initiating technical office does not make such a recommendation, the recommendation may be made by the contracting office, if deemed appropriate. In such a case, the recommendation will be prepared for the signature of an appropriate individual, consistent with the approval requirements of paragraph (d) below, and shall have the concurrence of the cognizant technical office before submission to the approving authority specified in paragraph (d) below, except that such concurrence may be waived in the case of small purchases.

(b) The provisions of this subsection 1815.105–70 do not apply to procurements—

(1) Of $500 or less;

(2) From or through other Government agencies;

(3) Of utility services where the services are available from only one source;

(4) Of industrial facilities required in support of related procurement contracts;

(5) Of flight payloads and/or programs of investigation where source selection is made pursuant to the procedures of NHB 8030.6, Guidelines for Acquisition of Investigation; or

(6) Based on unsolicited proposal where a Justification for Acceptance of Unsolicited Proposal is provided in accordance with Subpart 1815.5.

(c) *Justification for noncompetitive procurement.*

(1) The Justification for Noncompetitive Procurement (JNCP). The JNCP shall—

(i) Fully express the circumstances which make competitive negotiation impractical or not feasible;

(ii) Explain with particularity the exclusive or predominant capability the proposed contractor possesses which meets the requirements of the procurement; and

(iii) Contain in the first sentence an appropriate recommendation *(e.g.,* "I recommend that NASA negotiate only with the *(name of company)* * * * for the detailed documentation and fabrication of *(item being procured)* * * *").

(2) Each JNCP shall reflect the degree of consideration which has been given to other sources in the particular field and the reasons they lack the capability which the proposed contractor evidences. The following illustrations represent factors which should be considered, as appropriate, in preparing the JNCP:

(i) What capability, important to the specific effort, does the proposed contractor have which makes it clearly more desirable than another firm in the same general field?

(ii) What prior experience of a highly specialized nature does the contractor possess which is vital to the proposed effort?

(iii) What facilities and test equipment does the contractor have which are specialized and vital to the effort?

(iv) Does the contractor have a substantial investment of some kind which would have to be duplicated at Government expense by another source entering the field?

(v) If schedules are involved, why are they critical and why can the proposed contractor best meet them?

(vi) If lack of drawings or specifications is a guiding factor, why is the proposed contractor best able to perform under these conditions? Why are drawings and specifications lacking? What is the leadtime required to get drawings and specifications suitable for competition?

(vii) Are Government-owned facilities involved?

(viii) State whether the procurement is/is not a continuation of previous effort performed by the proposed contractor. If a continuation, include the following.

(A) The basis on which the initial selection was made (*i.e.,* competitive or noncompetitive and, if noncompetitive, the reasons therefor), contract period, dollar value, and a brief description of the scope of work.

(B) A résumé of all subsequent awards up to the current action containing detail as described in paragraph (c)(2)(viii)(A) above.

(ix) Does the proposed contractor have personnel considered predominant experts in the particular field?

(x) Is competition precluded because of the existence of patent rights, copyrights, or secret processes?

(xi) Are parts or components being procured as replacement parts in support of equipment specially designed by a manufacturer where data available are not adequate to assure that the parts or components will perform the same function in the equipment as those parts or components being replaced?

(xii) State if the potential for continuation of the procurement does/does not exist. If the potential exists, state whether it will be competitive or noncompetitive, and identify the contemplated performance period.

(d) *Review and approval.* The original and 10 copies shall be submitted, and the position title will be shown for each individual signing the JNCP. The JNCP shall, as a minimum, be reviewed and approved as follows:

(1) For purchases of $1,000 or less but not in excess of the ——— small purchase limitation, the JNCP may be in the form of a statement and shall be submitted for the approval of the contracting officer, except as provided in paragraph (d)(6) below.

(2) For procurements in excess of the small purchase limitation, but not in excess of $100,000, the JNCP shall be submitted for the approval of the Procurement Officer, except as provided in paragraph (d)(6) below, or designees after prior review and written concurrence by the initiating technical individual's immediate superior. Such authorization shall be in writing and shall not be delegated beyond the first level of supervision below the Procurement Officer.

(3) For procurements in excess of $100,000, but less than the dollar amount set forth below for the installation concerned, the JNCP shall be submitted for the approval of the Procurement Officer, except as provided in paragraph (d)(6) below, or a designee after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable:

(i) $1,250,000 for—

(A) National Space Technology Laboratories

(B) Headquarters Contracts and Grants Division

(C) NASA Resident Office—JPL

(ii) $2,500,000 for—

(A) Ames Research Center

(B) Goddard Space Flight Center

(C) Johnson Space Center

(D) Kennedy Space Center

(E) Langley Research Center

(F) Lewis Research Center

(G) Marshall Space Flight Center

(4) For procurements within the range of the dollar amounts set forth below for the installation concerned, the JNCP shall be submitted for the approval of the Head of the Installation, Deputy or Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for * * *) after prior review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer:

(i) $1,250,000 but less than $2,500,000 for—

(A) National Space Technology Laboratories

(B) Headquarters Contracts and Grants Division

(C) NASA Resident Office—JPL

(ii) $2,500,000 but less than $5,000,000 for—

(A) Ames Research Center

(B) Goddard Space Flight Center

(C) Johnson Space Center

(D) Kennedy Space Center

(E) Langley Research Center

(F) Lewis Research Center

(G) Marshall Space Flight Center

(5) For procurements that are selected for Headquarters review and approval in accordance with the Master Buy Plan Procedure (see Subpart 1807.71), the JNCP shall be submitted for the signature of the Head of the Installation after prior review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program/Project Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation and by the Procurement Officer. The JNCP shall contain additional signature blocks, on a separate page for approval by the official designated in the selection of the procurement for Headquarters review and approval under the Master Buy Plan Procedure and for concurrence by cognizant Officials-in-Charge of Headquarters offices and the Deputy Administrator if the Administrator is the approving official.

(6) For procurements involving an individual who was formerly employed by NASA during the past two years or a firm in which such a former employee is a partner, principal officer, majority shareholder, or which is otherwise controlled or predominantly staffed by such former employees (see Subpart 1803.70), the approval of the JNCP shall be one level above that specified in paragraphs (d) (1), (2), and (3) above.

(e) The JNCP shall be attached to the Procurement Plan (see Subpart 1817.1) and made a part of the contract file.

1815.106 Contract clauses.

1815.106–2 Audit—Negotiation clause.

1815.106–270 Partial small business set-asides.

When the conditions in 1819.502–3(a)(2) exist, the clause at FAR 52.215–2, Audit—Negotiation, shall be included in the supplemental agreement and made applicable to the set-aside portion only.

1815.170 Factors in negotiation.

During the course of negotiations, contracting officers and their negotiators shall give due attention to the following and any other appropriate factors:

(a) Comparison of—

(1) The business reputations, capabilities, and responsibilities of the respective persons or firms that submit proposals;

(2) Prices quoted and consideration of other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multi-shift, and overtime costs, and any other factor relating to price, such as profits, costs of transportation, and cash discounts.

(b) Consideration of—

(1) The quality of the supplies or services offered or the quantity of the same or similar supplies or services previously furnished, with particular regard to the satisfaction of technical requirements;

(2) Delivery requirements;

(3) Cost sharing, if required (see 1816.303);

(4) The size of the business concern;

(5) Whether the prospective supplier requires expansion or conversion of plant facilities;

(6) Whether the prospective supplier is located in a labor surplus area;

(7) Whether the prospective supplier will have an adequate supply of qualified labor;

(8) The extent of subcontracting;

(9) The existing and potential workload of the prospective supplier;

(10) Broadening the industrial base by the development of additional suppliers;

(11) Whether the contractor requires Government-furnished property, machine tools, or facilities, or Government-operated test facilities;

(12) The rules for the avoidance of organizational conflicts of interest (see FAR Subpart 9.5).

(c) Discriminating use of price and cost analyses.

(d) Investigation of price aspects of any important subcontract.

(e) Individual bargaining, by mail or by conference.

(f) Effective utilization in general of the most desirable type of contract.

(g) Advantages or disadvantages to the Government that might result from making multiple awards.

(h) Royalties the Government will be required to pay under patent license agreements.

Subpart 1815.2—Negotiation Authorities

1815.204 Personal or professional services.

(a) Under section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)), NASA is authorized "to obtain services as authorized by section 3109 of Title 5, United States Code, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18." 5 U.S.C. 3109, in turn, provides authority to procure by contract "the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services."

(b) It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in the NASA Federal Personal Manual Supp. 118.

1815.213 Technical equipment requiring standardization and interchangeability of parts.

(a) Actions taken under this authority shall be reviewed at least once every two years to determine whether the standardization should be continued, revised, or canceled.

(b) This authority may be used in situations where only one or a limited quantity of a particular item is to be purchased and where compatibility with existing equipment and interchangeability of parts is essential. The fact that this authority is used in such a case does not mean that a subsequent purchase of similar equipment will necessarily require the use of negotiation for purposes of standardization. The facts involved in each case must be examined to determine whether compatibility with other equipment and interchangeability of parts are essential objectives.

1815.217 Purchases in the interest of national defense or industrial mobilization.

1815.217–70 Records and reports.

Each contracting office shall maintain a record of the name of each contractor with a contract awarded under FAR 15.217, together with the amount of the contract and (with due consideration given to the National security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the NASA procurement reporting system described in Subpart 1804.6.

1815.270 Construction work.

(a) *Application.* Contracts to construct or repair any building, road, sidewalk, sewer, main, or similar item are subject to 10 U.S.C. 2304(c).

(b) *Limitation.* (1) *Work in the United States.* Contracts for construction work to be performed within the United States shall be formally advertised and may not be negotiated unless authorized pursuant to 10 U.S.C. 2304(a)(1), (2), (3), (10), (11), (12), or (15).

(2) *Work outside of the United States.* Contracts for construction work to be performed outside of the United States shall be formally advertised and may not be negotiated unless authorized under 10 U.S.C. 2304(a) (1) through (17), as appropriate.

(c) *Citation of authority to negotiate.* Negotiated contracts for construction work shall cite as authority for their negotiation the applicable subsection of 10 U.S.C. 2304(a).

Subpart 1815.3—Determinations and Findings To Justify Negotiations

1815.302 General.

While the contracting officer is responsible for preparing the determination and findings (D&F's), requirements and technical personnel are responsible for the accuracy and adequacy of the factual information supporting the findings. Supporting information within the functional areas of requirements and technical personnel shall be furnished the contracting officer in writing.

1815.304 Content.

Date. D&F's shall be dated at the time of signature.

(a) *D&F's signed by the Administrator or Deputy Administrator.*

(1) When approval of the procurement plan by NASA Headquarters is required (see 1807.103–2), the submission of the D&F shall be made concurrently with the submission of the procurement plan and forwarded to the Assistant Administrator for Procurement (Code HS–1) for simultaneous processing for required approvals in NASA Headquarters.

(2) Each request for Administrator or Deputy Administrator determination under 10 U.S.C. 2304(a) (11) through (16) shall consist of—

(i) A memorandum from the Procurement Officer to the Assistant Administrator for Procurement (Code HS–1) recommending approval of the D&F;

(ii) An original and one copy of NASA Form 543, Justification for Authority to Negotiate (JAN);

(iii) An original and three copies of the D&F in the appropriate format required by 1815.371 below; and

(iv) When only one source is to be solicited, a copy of the approved Justification for Noncompetitive Procurement, as required by 1815.105–70 or a copy of the approved "Justification for Acceptance of Unsolicited Proposal," as required by 1815.507.

(3) The signed D&F and the original NASA Form 543 shall be returned to the contracting office. The copies of these documents shall be retained in Headquarters files.

1815.307 Signatory authority.

1815.307–70 Determinations and Findings by the Administrator.

(a) The following D&F's may be made only by the Administrator or Deputy Administrator (but see 1815.307–71):

(1) The determination required by FAR 15.211 regarding any negotiated contract for experimental, developmental, or research work, or for the making or furnishing of supplies for experimentation, development, research, or test (but see 1815.307–71(a)(4) when the amount does not exceed $5,000,000).

(2) The determination required by FAR 15.212 regarding any negotiated contract that should not be publicly disclosed.

(3) The determination required by FAR 15.213 regarding any negotiated contract for technical equipment requiring standardization and interchangeability of parts.

(4) The determination required by FAR 15.216 regarding any negotiated contract for technical or specialized supplies requiring a substantial initial investment or an extended period of preparation for manufacture.

(5) The determination required by FAR 15.214 regarding any negotiated contract entered into after advertising has proved unsatisfactory.

(6) The determination required by FAR 15.217 regarding any negotiated contract entered into in the interest of National defense or industrial mobilization.

(b) In addition to the foregoing determinations, the Administrator or Deputy Administrator may also make any of the D&F's in support thereof, that may be made by the Assistant

Administrator for Procurement or by a contracting officer.

1815.307–71 Determinations and Findings below the Administrator level.

(a) The following levels of approval are established for executing D&F's under the authority of 10 U.S.C. 2304(a)(11) below the Administrator level:

(1) $5,000,000 or less—Assistant Administrator for Procurement.

(2) $500,000 or less—Procurement Officer.

(3) $100,000 or less—Contracting Officer.

(b) When it is estimated that a class D&F will consist of two or more contracts, each of which is estimated to exceed $5,000,000, the class D&F shall be submitted to the Assistant Administrator for Procurement (Code HS–1) for the signature of the Administrator or Deputy Administrator and may only be executed by one of those two officials. When it is estimated that a class D&F will consist of two or more contracts, each of which is estimated to exceed $500,000 but not exceeding $5,000,000, the class D&F shall be submitted to the Assistant Administrator for Procurement (Code HS–1) for execution. When it is estimated that a class D&F will consist of two or more contracts, each of which is estimated to be $500,000 or less, the class D&F will be signed by the Procurement Officer.

1815.370 Retention of copies of Determinations and Findings.

Executed originals of all D&F's and copies of supporting documents shall be preserved in the NASA installation for six years following the date of the respective determination.

1815.371 Formats for Determinations and Findings.

1815.371–1 General.

Modifications as appropriate shall be made in the formats for D&F's when they are used for a class of contracts. Other modifications of a minor nature may be made in individual cases as necessary. The statutory negotiation authority is hereafter referred to as "Exception (11)," "Exception (12)," and so forth.

1815.371–2 Formats for Administrator or Deputy Administrator Determinations and Findings.

(a) *Format for Individual D&F for Exception (11).* See 1815.371–3 for class D&F for Exception (11).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(11)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination, the proposed procurement described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(11). (See Note 1.)

Findings

1. The * * * (2) * * * proposes to procure by negotiation an Infrared Acquisition Aid for AN/FPS–16 Radar located at * * * (2) * * * consisting of (a) a control unit, (b) an infrared tracking head, (c) an electronic signal processing unit, (d) boresighting gear and (e) test equipment. This acquisition aid will permit * * * (2) * * * to track a vehicle from ignition until burnout and maintain the vehicle within the beamwidth of the AN/FPS–16 Antenna so that searching will not be required and thereby enable * * * (2) * * * to acquire an appreciable amount of data which is unobtainable at present.

2. The effort necessary to satisfy the requirement of the comtemplated Infrared Acquisition Aid will require research and development work to accomplish all of the requirements for acquisition assistance, as well as to optimize the field of view required in this instrument to accommodate the high acceleration vehicles launched from * * * (2) * * * Since no acquisition aid capable of meeting all of our performance specifications has ever been built, research will be required to analyze the tracking rates required to allow the Infrared Servo system to acquire and track the specified vehicles. When these rates have been determined for the Infrared Locator with respect to the various launch locations, the contractor must determine the velocity constant and the acceleration constant for the proper servo bandwidth and then design and develop a Servo and Optics system with adequate loop response to accommodate the stringent angular tracking rate requirement.

3. Formal advertising is not feasible or practicable for this procurement because it involves things which have not been done before, such as the aforementioned optimizing of the field of view to accommodate the high acceleration vehicles launched from * * * (2) * * * It is essential that the specifications and evaluation procedures provide a reasonable latitude for the prospective contractors to propose alternate methods for achieving the performance required, and for the Government to evaluate, and explore with the prospective contractors, which of these methods offer the optimum performance in view of the cost and technical advantages.

Determination

The proposed procurement is for developmental and research work, and for the making of property for research. (3)

Date _____

Notes.—

(1) Assistant Administrator for Procurement, Procurement Officer, and Contracting Officer D&F's under 10 U.S.C. 2304(a)(11) (see 1815.307–71) shall be in the same format and contain justification similar to that in the above example except that the preamble. "This D&F is not an approval of a program * * * made available for the purpose," shall be omitted.

(2) Installation.

(3) When appropriate in individual cases, this determination should be limited to the particular kinds of work under the proposed procurement, as such work is described in FAR 15.211.

(b) *Format for D&F for Exception (12).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(12)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(12).

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * *, maintenance handbooks for the maintenance and repair of the propulsion system of a YFB–C Research Aircraft being tested jointly by NASA and the United States Air Force.

2. Procurement by negotiation of the above described requirement is necessary because the data to be included in the maintenance handbook is compiled from highly classified tests results and performance data that for reasons of security have been classified as secret. The data in the maintenance handbook describes the stress tolerances for the engine components as well as other classified information that relate to engine thrust levels, speed, and ranges under varying conditions and fuel consumption. Also, included in the document to be prepared and reproduced will be engineering drawings showing various designs of critical parts and components of the propulsion system.

3. Procurement by formal advertising of the above described requirements is impracticable because formal advertising would result in unauthorized public disclosure of information that is classified because of the sensitive character of the data

involved. The information to be made available for this requirement has been classified secret and therefore must be controlled through classified procedures and protected from undue disclosure to avoid jeopardizing the security classification.

Determination

The proposed contract is for property whose procurement should not be publicly disclosed because of their character, ingredients and components. (3)

Date ———————

Notes.—
(1) Installation.
(2) Quantity and description of equipment.
(3) When appropriate in individual cases, this determination should be limited to supplies or to services, as the case may be; and, preferably, refer only to those words in the phrase "character, ingredients, or components" that are germane.

(c) *Format for D&F for Exception (13).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(13)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.
Upon the basis of the following findings and determination the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(13).

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * * The * * * (3) * * * is deemed to be technical equipment within the meaning of section 15.213 of the Federal Acquisition Regulation.

2. Procurement by negotiation of the above described equipment is necessary because standardization of this equipment and interchangeability of its parts are necessary in the public interest. This equipment forms an integral part of the launch system. Its failure due to damage or other causes will render the launch system inoperable. Because of the highly technical nature of this equipment, complexity of the processes involved in its manufacture, and differences in manufacturing equipment and techniques, other suppliers would produce equipment having such variation in the physical characteristics of their parts and in their performance (notwithstanding detailed specifications and rigid inspection) that standardization and interchangeability of parts would be precluded. Accordingly when replacement or repair of equipment manufactured by other suppliers becomes necessary, use of other apparently similar equipment or parts is generally impossible. Standardization of this equipment and interchangeability of its parts are necessary to (i) assure the readiness, maintainability and reliability of the equipment; (ii) materially reduce the quantity of spares and repair parts required to be carried which reduction will result in savings in time, manpower, storage space and costs; and (iii) make possible the interchange of parts among pieces of malfunctioning equipment during launch or any other emergency.

3. Use of formal advertising for procurement of the above described equipment is impracticable because such method may result in procurement from another supplier and thereby prevent standardization of the equipment and interchangeability of its parts.

Determination

The proposed contract is for technical equipment for which standardization and interchangeability of its parts is necessary in the public interest, and procurement thereof by negotiation is necessary to assure such standardization and interchangeability.

Date ———————

Notes.—
(1) Installation.
(2) Quantity and description of equipment.
(3) Description of equipment.
(4) Where the item is not for specialized use, omit the words "specialized use" and substitute therefor: use in (enter one or more of the locations where the item is to be used).

(d) *Format for D&F for Exception (16).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(14)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(14).

Findings

1. The * * * (1) * * * proposes to procure by negotiation approximately * * * (2) * * * together with spares, special support equipment, engineering drawings and related data, publications and repair parts under provisioning procedures. The * * * (3) * * * is deemed to be of a technical or special nature within the meaning of section 15.216 of the Federal Acquisition Regulation.

2. Procurement by negotiation of the above described equipment is necessary because the equipment is so intricate and complicated that its manufacture requires a substantial initial investment and if manufactured by any supplier other than * * * (4) * * * would duplicate high starting costs already borne by the Government. Starting costs such as preliminary engineering and development work and other manufacturing preparations by * * * (4) * * *, the developer and only producer of this equipment, have been recovered by the contractor under other contracts with the Government. Generally, such work would not be useful to or usable by any other supplier. Therefore, manufacture of this equipment by any other supplier will result in a duplication of these costs and would likely result in additional costs to the Government by reason of such duplication.

[Alt: * * * because manufacture of this equipment by any supplier other than * * * (4) * * * would result in duplication of necessary preparation which would unduly delay the procurement of the equipment. The manufacture of this equipment requires detailed familiarity with the design and related specifications as well as extensive production engineering and time consuming physical preparation. Deliveries of the equipment are required to commence * * * (5) * * * and be completed in * * * (5) * * * or * * * (6) * * * The * * * (4) * * * has acquired the special skills, manufacturing techniques and experience necessary to manufacture this equipment and can meet the required delivery schedule. No other supplier possessing the special skills and experience necessary to manufacture acceptable equipment in time to meet the delivery schedule is known. Accordingly, manufacture by any supplier other than * * * (4) * * * would require an extended period of preparation for manufacture which would delay delivery of the equipment.]

3. Use of formal advertising for procurement of the above described equipment is impracticable because such method may result in procurement from another source which would require duplication of necessary initial investment to produce this equipment and would likely result in additional cost to the Government by reason of such duplication.

[Alt: * * * because such method may result in procurement from another source which would require duplication of necessary preparation and thereby delay the procurement of this equipment.]

Determination

The proposed contract is for equipment of a technical or specialized nature which requires a substantial initial investment to manufacture, and procurement thereof by formal advertising would likely result in additional cost to the Government by reason of duplication of investment.

[Alt: * * * equipment of a technical or specialized nature which requires an extended period of preparation for manufacture, and procurement thereof by formal advertising would result in duplication of necessary preparation which would unduly delay the procurement of the equipment.]

[Alt: * * * equipment of a technical or specialized nature which requires a substantial initial investment and an extended period of preparation for

manufacture, and procurement thereof by formal advertising would (A) likely result in additional cost to the Government by reason of duplication of investment, and (B) result in duplication of necessary preparation which would unduly delay the procurement of the equipment. (7)]

Date ———————

Notes.—

(1) Installation.

(2) Quantity and description of equipment and estimated cost.

(3) Description of equipment.

(4) Name of supplier.

(5) Month and year.

(6) Number of months.

(7) Determination to be used when both conditions described in paragraph 2 of the Findings exist and both conditions are stated conjunctively.

(e) *Formats for D&F for Exception (14).* (1) *Format (A).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(15)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination (1), the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(15).

Findings

1. The * * * (2) * * * proposed to procure by negotiation 12,080 pounds of Hydrazine, Free Base.

2. Procurement by negotiation of the above described supplies is necessary because the bid prices received after formal advertising are unreasonable. In response to Invitation for Bid, * * * (3) * * *, for the above material prepared and mailed, or delivered, to 17 prospective bidders by the * * * (2) * * * in accordance with the requirements of Subpart 14.2 of the Federal Acquistion Regulation, the following responsive bids were received:

Bidder A $6.96 per pound
Bidder B 9.25 per pound
Bidder C 9.30 per pound
Bidder D 9.55 per pound
Bidder E 9.94 per pound

One bid, which failed to conform to the delivery schedule in the Invitation for Bids, was rejected as nonresponsive. The remaining bids comply in all essential respects with the Invitation for Bids. Quantities of individual purchases of this material have been approximately 4,000 pounds. The most recent purchase, approximately one year ago, was for 3,700 pounds. Based on the unit price paid for the above quantity of 3,700 pounds, a unit price of $6.30 per pound was estimated for the proposed procurement of 12,080 pounds. All other terms and conditions were substantially identical to previous purchases. However, comparison of the lowest bid price with prices previously paid for this material, indicates that the bid prices received are unreasonable. * * * (4) * * * (Note: Include such other requirements as may be appropriate.)

3. Use of formal advertising for procurement of the above described supplies is impracticable because bid prices received after formal advertising are unreasonable.

Determination

The proposed contract is for supplies for which bid prices received after formal advertising are unreasonable.

Date: ———————

Notes.—

(1) Where use of the authority of 10 U.S.C. 2304(a)(15) to negotiate after formal advertising is contemplated, two separate D&F's shall be used. See FAR 15.214. This D&F is an example of the first. An example of the second D&F follows (see format (B)).

(2) Installation.

(3) Number or other identification of Invitation for Bids.

(4) In any case where a partial award has been made at bid prices considered reasonable, such fact should be included.

(2) *Format (B).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(15)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of property or services described, only if, in accordance with established agency regulation and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination * * * (1) * * * the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(15).

Findings

1. The * * * (2) * * * proposes to procure by negotiation 12,080 pounds of Hydrazine, Free Base.

2. Procurement by negotiation of the above described supplies is necessary because the bid prices received after formal advertising were unreasonable. Authority to negotiate this procurement under 10 U.S.C. 2304(a)(15) was obtained from the * * * (3) * * * Pursuant to such authority, the Contracting Officer notified each responsive bidder of intention to negotiate and gave each a reasonable opportunity to negotiate. The following proposals were received:

Offeror A $7.95 per pound
Offeror B 8.35 per pound
Offeror C 8.90 per pound
Offeror D 9.10 per pound
Offeror E 9.50 per pound
Offeror F 10.10 per pound

The negotiated price of $7.95 per pound is lower than the lowest rejected bid price of any responsible bidder and is the lowest negotiated price offered by any responsible supplier.

3. Use of formal advertising for procurement of the above described supplies is impracticable because bid prices received after formal advertising were unreasonable.

Determination

The proposed contract is for supplies for which the negotiated price (A) is lower then the lowest rejected bid price of any responsible bidder and (B) is the lowest negotiated price offered by any responsible supplier.

Date: ———————

Notes.—

(1) This is an example of the second D&F which shall be used when the authority of 10 U.S.C. 2304(a)(15) is used to negotiate after formal advertising (see FAR 15.214). An example of the first D&F precedes this example (see Format (A)).

(2) Installation.

(3) Identify the title of the individual signing the first D&F (Format A) and the number and date there.

(f) *Format for D&F for Exception (17).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, D.C. 20546

Determination and Findings

Authority To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(16)

This determination and findings is not an approval of a program or of specific procurement. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been made available for the purpose.

Upon the basis of the following findings and determination the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(16).

Findings

1. The * * * (1) * * * proposed to procure by negotiation * * * (2) * * * including repair parts and maintenance manuals.

2. Procurement by negotiation of the above described equipment is necessary because its operational and reliability requirements are so critical that no known supplier other than the * * * (3) * * * has the unique skills, sophisticated production techniques, specialized plant facilities and strict quality control disciplines required for its manufacture. This equipment is a vital component of the * * * (4) * * * and its reliable operation is essential to the proper functioning of the * * * (4) * * * It is in the

interest of national defense to keep * * * (3) * * * available for furnishing this equipment in case of a national emergency.

[Alt. (for a class determination and findings): "* * * because the complexity of this equipment limits the sources of supply and it is in the interest of national defense that * * * (3) * * * and * * * (3) * * * be kept available for furnishing such supplies in case of a national emergency. In such event, the planned mobilization requirements for this equipment will substantially exceed the production capacity of both companies. Therefore in addition to maintaining the manufacturing facilities of both companies for emergency requirements, it is essential that their engineering and production skills be maintained in order to be available for training other companies in the manufacture of this equipment."]

3. Use of formal advertising for procurement of the above described supplies is impracticable because such method may result in procurement from another source (notwithstanding rigid evaluation of bidders qualifications, strict manufacturing disciplines and test requirements) of equipment not meeting qualitative requirements.

[Alt. (for a class determination and findings): "* * * because such method may result in procurement from another source and thus prevent the keeping of vital sources available for mass production in the event of a national emergency."]

Determination

It is in the interest of national defense that the * * * (3) * * * be kept available for furnishing such supplies in the event of a national emergency, and procurement by negotiation is necessary to that end.

[Alt. (for a class determination and findings): "It is in the interest of industrial mobilization that the * * * (3) * * * and * * * (3) * * * be kept available for furnishing such supplies in the event of a national emergency, and procurements by negotiation is necessary to that end."]

Date ———————

Notes.—
(1) Installation.
(2) Quantity and description of equipment and estimated cost.
(3) Name of supplier.
(4) Identify system or other end item (e.g., Space Shuttle).

1815.371-3 Format for Class Determination and Findings for Exception (11).

(a) *Findings.* (1) In the first paragraph, identify the program, the project, and the project number (using the NASA Financial Management Manual, Agency-Wide Coding Structure) to which the contemplated procurements are oriented. The following statements will also be included in the first paragraph:

(i) That the D&F covers only procurement requirements that are provided for and further defined under the program project cited; and

(ii) Identification of the NASA installation initiating the request for authority to negotiate.

(2) In the second paragraph, briefly describe the purpose and objectives of the program or project. Also state that the facts and circumstances which demonstrate that the procurements contemplated are for experimental, developmental, and research work, or for making or furnishing property for experiment, test, development and research are set forth in Appendix A. Clearly and convincingly establish that formal advertising would not be feasible and practicable.

(b) *Determination.* Following the format set forth in the sample below, use the appropriate terms to state precisely whether the proposed class of contracts is for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research; or for a combination of these. Include a statement of the period (see paragraph (c) below) for which the D&F will be effective.

(c) *Appendix A.* A description of the types of procurements to be negotiated under this authority will, to the extent identifiable at the time of preparation of the D&F, be set forth in Appendix A, broken down into generic and functional groupings of like type procurements. To the extent that it can be done, specific procurements will be identified, but the class scope is not limited if the generic scope is clear. The critical element is the need for an adequate generic description in order to satisfy the statutory requirements. Accordingly, each category shall set forth those facts and circumstances that are clearly illustrative of the conditions set forth in 10 U.S.C. 2304(a)(11) for use of this authority. These categories should adequately describe in narrative form the particular types of research and development, hardware and configuration, study effort, advance development, novel interfacing problems, and so forth. The purpose here is to demonstrate that even though precise procurements are not identified, the work categories clearly qualify as R&D, e.g., not within the state-of-the-art and not reasonably procurable by formal advertising. Wherever feasible, procurements involving discrete disciplines or work to be done in particular laboratories should be grouped together to better identify the intended subject matter. The appendix should contain sufficient detail to establish that the proposed procurements logically qualify for negotiation under the criteria in paragraph (a) above.

(d) *Format for Class D&F for Exception (11).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Negotiate a Class of Contracts Under 10 U.S.C. 2304(a)(11)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

Upon the basis of the following findings and determination the proposed class of contracts described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(11).

Findings

1. The procurements contemplated by this document will consist of a class of contracts to be accomplished by the * * * (2) * * *, each of which is estimated to cost in excess of $5,000,000, for the accomplishment of research and development requirements in support of Space and Nuclear Research and Technology except that no procurement of property or supplies for which formal advertising is feasible and practicable will be accomplished hereunder. This document will cover procurement requirements that are defined in Appendix A and are under the following program/project citation: Space and Nuclear Research and Technology Program, Research and Technology Base Project, Project No. 506.

2. The proposed class of contracts is in support of the Space Tug Program. In the performance of these contracts, the contractor will be required to perform work which is of a developmental, experimental or research nature which is described in more detail in Appendix A. In summary, the contractor will be required to: (a) investigate design concepts for the hot side of regenerative thrust chambers that will significantly extend low cycle fatigue life by reduction of wall temperatures or heat flux, and (b) design, fabricate, and test a high chamber pressure, regeneratively-cooled, 20K thrust, 400/1 expansion area ratio, rocket thrust chamber.

3. Formal advertising is not feasible and practicable for these procurements because it is impossible to describe in precise detail or by any definite drawings or specifications, the nature of the work to be performed under the proposed contracts; only the ultimate objectives and the general scope of the work can be outlined. In such programs, technical knowledge, experience, and skills are highly necessary in achieving successful results. Under formal advertising such technical experience and skills cannot be evaluated.

Determination

The proposed class of contracts is for experimental, developmental, and research

work, and for making and furnishing property for experiment, test, development, and research. (3)

This class determination and findings shall remain in effect for one year after the date of execution indicated below.

Date ——————

Notes.—

(1) D&F's for procurements of not more than $5,000,000 under 10 U.S.C. 2304(a)(11) shall be in the same format and contain justification similar to that in the above example except that the preamble "This D&F is not an approval of a program * * * made available for the purpose." shall be omitted.

(2) Installation.

(3) When appropriate in individual cases, this determination should be limited to the particular kinds of work under the proposed procurement, as such work is described in 1815.211(a).

SPACE AND NUCLEAR RESEARCH AND TECHNOLOGY, RESEARCH AND TECHNOLOGY BASE, CHEMICAL PROPULSION, PROJECT NO. 506

Appendix A

Advanced Chemical Rocket Component Technology (506)

The Contractor will be required to investigate design concepts for the hot side of regenerative thrust chambers that will significantly extend low cycle fatigue life by reduction of wall temperatures or heat flux for the space tug engine.

The use of film cooling to reduce wall temperature or heat flux has been recently modeled and correlated under contract using heated gas in typical thrust chamber configurations. To fully evaluate film cooling as a tool for extending low cycle fatigue life, additional follow-on contractual effort is required. Such effort shall include interaction with coolant side, film cooling effect on performance, location of film injection, and hot combustion effects. Ultimately, the modeling capability will be made available to LeRC in the form of computer program or design charts.

Advanced Thrust Chamber Technology (506)

The Contractor will be required to design and fabricate a high chamber pressure (2000 psia), 20K thrust, 400/1 expansion area ratio rocket thrust chamber which must have a life expectancy of 300 major thermal cycles with a safety factor of 4. This thrust chamber is to be regeneratively cooled to an area ratio of 100/1. The delivered altitude specific impulse and heat transfer characteristics are to be determined experimentally by the contractor using a LeRC furnished injector. At the completion of these tests, the thrust chamber is to be delivered to LeRC for evaluation of the life expectancy at the S–40 facility.

Additional Sample Categories

The following sample categories or generic descriptions covering various projects are listed for additional guidance in preparation of the appendix of a class D&F. Each category, when considered together with the description of the associated project set forth in paragraph 2 of the D&F, should identify the experimental, developmental, or research nature of the work.

Example No. 1

The procurements under this category are directed toward improving performance of static inverters and converters through improvements to magnetic materials, and the use of modular components and circuits. High frequency operation of magnetic components in static inverters and converters is desirable, to reduce size and weight. However, high frequency operation is limited by the efficiency reduction resulting from high eddy current losses. The magnetic materials program will provide solid magnetic core materials for high frequency operation through the development of multi-layer thin magnetic films, interspersed with bonded thin-film insulation. Since many of the individual stages such as logic, control, regulation, and filter circuits of existing inverters are quite similar, the modularization program will be a study to determine the types and extent of modularization applicable to existing inverters and converters. The objective is to construct building-block types of circuits modules such that inverters and converters for given power requirements can be fabricated from combinations of the various modules. The feasibility of employing existing inverters and converters paralleling techniques to permit parallel operation of power stage modules to increase inverter and converter power output will be verified by breadboard testing.

Example No. 2

The R&D procurements of fuel cells under this category involve work on basic research on electrode structures, high performance lightweight electrodes, improved catalysts, and investigations of methods for using storable reactants in fuel cells. Also involved are procurements for development of an electrically rechargeable fuel cell for orbital energy storage use, and for improved hydrogen-oxygen fuel cells and systems hardware. Fundamental research on the physical properties of electrolyte solutions shall be undertaken. Improved electrolyte matrices will be studied.

Example No. 3

This category involves the design and development of primary and secondary batteries, reserve batteries, and high temperature batteries. Fundamental research on the mechanism and kinetics of reaction of high energy compounds and cathode reactants in nonaqueous electrolytes will be investigated. Experimental work will be required on the compatibility of electrodes, electrolytes, separators, seals, etc. The most promising combinations will be tested in laboratory cells after proper cell design parameters have been determined. Complete performance evaluations will be made on prototype cells and demonstration batteries will be built. Improvements in the design of conventional batteries will be studied. These tasks will include work on improved electrodes and cell designs to produce increased energy output and reliability.

Example No. 4

The procurements in this category are connected with an evaluation of the capabilities of the regenerative Brayton Cycle for achieving high conversion efficiency in the kilowatt electrical power output range. Work that will be performed is divided into three functional areas. In the area of power subsystems, preliminary designs of a radioisotope heat source will be made for the Brayton Cycle Power Conversion System. In addition, subsystem such as the gas management, and the control system will be examined and developed.

In regard to high efficiency, components work will continue to be done to improve the performance of the aerodynamic components as well as the electrical alternator and recouperator components. Axial and radial flow compressors and turbines will be examined for application to the Brayton Cycle System. In the area of bearings and seals for the Brayton application, designs and materials for self-acting gas bearing will be investigated for the high speed, high temperature machines that are being developed. Exploratory work will also be conducted on sophisticated oil bearings, seals, and gas-scrubber system that may be applicable for the Brayton Cycle Space Power System.

Example No. 5

This cateogry of R&D will require the contractor to conduct research for the definition of design parameters for a Simultaneous Stack Gas Emission Control and Wastewater Purification System requiring the contractor to apply various parametric data (for example, scrubber geometry, gas-liquid contact times, liquid and gas flow rates, SO_2 gas concentrations, inhibitors, catalytic oxidation, and recycle rate) to specified design requirements for fuel, scrubbing efficiency, size of plant, waste water flow, SO_2 in exhaust stream, fly ash, ash, flue gas flow, gas temperature, minimum reheat temperature, and exhaust gas moisture in order to define specific simultaneous purification systems. As part of this program, the contractor will be required to develop detailed parametric curves and/or tables reflecting the magnitude of the effects of dependent and independent variables to the scrubbing process; to design a series of detailed process sequences in order to scrub stack gases, including a definition of the complexity of the processes, their utilization under various conditions, and their costs; to establish a technology evaluation of the state-of-the-art in water scrubbing of sulfur dioxide and oxides of nitrogen; to develop bench model units of a simultaneous purification system of stack gases and waste water; and to define a test plan for the bench equipment.

Example No. 6

This category of R&D will require the contract(s) to conduct research for the definition of design parameters which will result in an engine capable of propelling a space shuttle vehicle under the following nominal conditions, none of which can be achieved with existing flight hardware that can be built from existing designs.

(1) Up to 50,000 pounds of discretionary cargo to be placed into earth orbit and returned.

(2) Crew of 2 plus 10 passengers.

(3) Up to 10,000 cubic feet of internal payload volume. The main engine is to be LO2/LH2 high performance, reusable rocket engine, which is to be throttleable down to a 10:1 ratio with up to 800,000 pound sea-level thrust. Previous LO2/LH2 engines have been designed, including the 1,500,000 pound vacuum thrust M–1 Engine, but none of these engines have embodied the high pressure design required to provide the specific impulse and reusable characteristic required of the propulsion system to be incorporated into the proposed space shuttle vehicle. New concepts in the field of liquid propulsion must be incorporated into design criteria for later hardware development.

These contracts will also provide for testing of components (e.g., turbomachinery, and valves), since they will be of configurations and designs not heretofore used in main engines for space vehicles. These contracts will further provide for a study and design of the facilities required for existing facilities (such as the National Space Technology Laboratories) and prevent duplication: and these contracts will provide for the study, definition, and design of modifications to existing test facilities in order that they may meet the engine requirements.

1815.371–4 Formats for Determinations and Findings below the Administrator or Deputy Administrator level.

(a) *Format for D&F for Exception (2).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(2), as implemented by paragraph 15.202(b) of the Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation the installation of a composition roof to be installed on Building 631 at * * * (1) * * *. The roof on Building 631 was completely destroyed during a hurricane which caused considerable damage in this area on October 10, 1983. As a result of this emergency condition, the electrical equipment housed in this building is exposed to the inclement weather we are now experiencing and is expected to continue for the next week. Building 631 houses electronic test equipment that is used extensively by NASA to check out aircraft components, avionic systems and guidance and navigation equipment for research test aircraft and the Space Shuttle system. The test equipment housed in Building 631 is very unique to its intended purpose and would require considerable cost for replacement if the equipment is destroyed beyond its usefulness through its exposure to the elements. Also, if this equipment is destroyed or incapacitated beyond its operational capability, it would cause a serious interruption to aircraft safety programs conducted by NASA and FAA which could result in a delay of approximately * * * (2) * * * before a replacement facility can be obtained, tested and established. With present program commitments to ongoing research projects for NASA and other Government agencies, the operational capability of this test facility cannot be interrupted for a * * * (2) * * * period without causing serious problems to programs that are critical to the national interest.

2. Formal advertising for this procurement would not be feasible or practicable because of time constraints. Obtaining a contractor that can immediately undertake and complete this effort is only possible through the process of negotiations. Formal advertising procedures would delay this procurement for approximately * * * (2) * * * and could not provide the flexibility that would accelerate contractor selection and contract award in time for this emergency condition. Therefore, it is essential that this work commence and be completed immediately. The negotiated method of procurement will permit NASA to initiate a compressed and accelerated time frame to competitively select a contractor and make an award within a * * * (2) * * *, time period. Also, with this compressed time frame, it would be possible for the contractor to commence work immediately and complete the job within * * * (2) * * * from date of award.

Determination

The proposed contract is for property * * * (3) * * * for which the public exigency will not permit the delay incident for formal advertisting.

Date _____

Notes.—
(1) Installation.
(2) Time, in days or months as appropriate.
(3) Each determination shall specify whether it is for property or services as applicable.

(b) *Format for D&F for Exception (7).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(7).

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * *.
2. * * * (3) * * *.
3. The use of formal advertising will not be feasible or practicable in this instance because * * * (4) * * *.

Determination

The use of a negotiated contract is justified because the contemplated procurement is fr medical supplies for which procurement by formal advertising is not feasible and practicable.

Date _____

Notes.—
(1) Installation.
(2) Description of supplies or equipment, quantity, and estimated cost.
(3) Include a statement as to the type of item(s); *e.g.*, medicine, medical supplies, or medical equipment.
(4) Include the specific reason(s) why the use of formal advertising is not feasible or practicable.

(c) *Formats for D&F for Exception (10).* (1) *Format (A).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Indvidual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10), as implemented by paragraph 15.210(b)(1) Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * *. This equipment is special support equipment for the maintenace of the * * * (3) * * *.

2. Procurement by negotiation of the above described special support equipment is necessary because the manufacturer must have a detailed knowledge of the basic equipment to be supported. The special support equipment to be procured must be specially designed to be compatible with the basic equipment.

3. Use of formal advertising for procurement of the above described special support equipment is impractiable because only * * * (4) * * *, the designer, developer, and sole manufacturer of the basic equipment, is sufficiently familiar with the design and operational characteristics of the basic equipment to furnish the special support equipment required.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date _____

Notes.—
(1) Installation.
(2) Quantity and description of equipment and estimated cost.
(3) Describe the basic equipment involved.
(4) Name of supplier.

(2) *Format (B).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10), as implemented by

paragraph 15.210(b)(7) of the Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation technical non-personal services in connection with the assembly, installation, or servicing of the * * * (2) * * *. The * * * (2) * * * is deemed to be equipment of a highly technical or specialized nature within the meaning of paragraph 15.210(b)(7) of the Federal Acquisition Regulation.

2. Procurement by negotiation of the above described services is necessary because * * * (3) * * * is the only manufacturer of this equipment and is therefore the only contractor qualified to furnish the required services.

3. Use of formal advertising for procurement of the above described services is impracticable because no other supplier is qualified to furnish the services required.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date ————————

Notes.—
(1) Installation.
(2) Description of equipment and estimated cost.
(3) Name of supplier.

(3) *Format (C).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10), as implemented by paragraph 15.210(b)(13) of the Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation * * * (2) * * *.

2. Procurement by negotiation of the above described equipment is necessary because only a developmental model not wholly representative of the equipment to be procured and a performance specification are available. Some additional design and engineering effort by the contractor, including the preparation of design data and quality assurance procedures, will be necessary. The performance specification is not sufficiently detailed to permit advertised bidding. The developmental model was constructed by * * * (3) * * * primarily on the basis of technical contributions from several sources. Government and industry. The design data available are incomplete, not sufficiently detailed and are largely uncoordinated.

3. Use of formal advertising for procurement of the above described equipment is impracticable because it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the equipment.

Determination

The proposed contact is for property or services for which it is impracticable to obtain competition by formal advertising.

Date ————————

Notes.—
(1) Installation.
(2) Quantity and description of equipment and estimated cost.
(3) Name of activity, Government or industry.

(4) *Format (D).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10), as implemented by paragraph 15.210(b)(15) of the Federal Acquisition Regulation.

Findings

1. The * * * (1) * * * proposes to procure by negotiation certain parts or components as replacement parts in support of the * * * (2) * * *. The latter equipment was specially designed and manufactured by * * * (3) * * *. The estimated cost of the proposed procurement is $————.

2. Procurement by negotiation of the parts or components required as replacement parts in support of the equipment described above is necessary because fully adequate data and quality assurance procedures are not available and cannot reasonably be made available. Only the above named designer and manufacturer of the equipment is capable of furnishing parts or components which assure the requisite safe, dependable and effective operation of the equipment.

3. Use of formal advertising is impracticable because the data available are not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date ————————

Notes.—
(1) Installation.
(2) Description of the basic equipment for which the replacement parts or components are to be procured.
(3) Name of designer and manufacturer.

§ 1815.372 Preparation of the Justification for Authority to Negotiate.

(a) The determination to formally advertise or to negotiate is governed by the specific facts in a procurement. When the decision is to negotiate and Administrator or Deputy Administrator authority is required, the proposed D&F must be supported by a procurement plan, as required by 1807.103. In such cases, a NASA Form 543, Justification for Authority to Negotiate (JAN) (see 53.215–543), will be attached to the memorandum requesting approval of the D&F (see 1815.304(b)).

(b) The contracting officer shall be generally responsible for the preparation and justification of the proposed D&F and for all contracting aspects discussed in the supporting justification. Where the information furnished in a justification relates to a proposed class D&F, it shall fully support the proposed negotiation authority as to the class of items as a whole or to each item, whichever is applicable, in order to provide the same information that would have been furnished if the item were covered by an individual D&F.

(c) Information to be included in the JAN is self explanatory, except as follows:

(1) In block 5, include a non-technical description of the features of the property or services to be procured which, in the case of Exception (11), demonstrate that the procurement is for experimental, developmental, or research work, or for the making or furnishing of property for experiment, test, development, or research, or a combination of two or more of the foregoing.

(2) In addition to completing block 12, attach a copy of the Justification for Noncompetitive Procurement or Justification for Acceptance of Unsolicited Proposals, as appropriate.

(3)(i) The following information is to be included in block 13 of the JAN or in an attachment:

(A) If a class D&F is proposed, state that a procurement plan and justification for noncompetitive procurement will be prepared prior to the issuance of the requests for proposals, as required.

(B) If a class D&F is proposed, include a statement with regard to the potential for a small business set-aside on a section 8(a) contract on each procurement. If individual procurements are not susceptible to such preferential procedures, the reasons therefor should be stated.

(C) If an individual D&F is proposed, state why a small business set-aside or Section 8(a) contract is inappropriate. Also, state how many of the firms being solicited are small or disadvantaged business firms.

(ii) The requirements of paragraphs (c)(3)(i) (B) and (C) above are not applicable to a noncompetitive

procurement. However, if the firm is a small or disadvantaged business, so state.

(d) The following additional information is required in support of a D&F authorizing negotiation under 10 U.S.C. 2304(a) (11) through (17). When approval of the procurement plan at NASA Headquarters is required, the information will be included in the procurement plan. When approval of the procurement plan is at the Installation level, the information must be included in the JAN or attached to it.

(1) *Exception (12).* The JAN shall contain sufficient information about the item being procured to identify the characteristics warranting a security classification. The simple statement that an item is classified is not sufficient. The nature of the security requirement shall be identified in unclassified language to amplify what will be revealed by data included in the solicitation. A statement shall be included that no other negotiating authority in FAR 15.201 through 15.217 is available for the proposed procurement.

(2) *Exception (13).* Include the following:

(i) A description of previous procurements of the item;

(ii) A statement that the additional units and replacement items of the specific makes and models of technical equipment and parts to be procured have been adopted as standard items of supply in accordance with agency procedures and are—

(A) For use in special situations;

(B) An integral part of or used in direct support of a launch or space vehicle system; or

(C) For use in a particular locality;

(iii) The reasons for standardizing the equipment and why such standardization and interchangeability of parts is necessary in the public interest.

(iv) The results of consideration given each of the factors enumerated in FAR 15.213 and a statement that in arriving at the determination to standardize, other user installations, as applicable, have been consulted in order to insure the full benefit of the action.

(v) A statement that the standardization of the equipment will be reviewed at least once each two years to determine whether the standardization should be continued, revised, or canceled (in cases where standardization of the equipment has previously received Administrator or Deputy Administrator approval, the date the approval was received and the basis for continuing such standardization).

(vi) A statement as to whether or not the initial solicitation of bids or proposals contained the *Notice of Possible Standardization* clause.

(3) *Exception (16).*

(i) If the basis for negotiation is that manufacture of the equipment requires an extended period of preparation for manufacture and its procurement by formal advertising would result in duplication of such preparation which would unduly delay the procurement, the JAN should contain statements of the technical and specialized nature of the item and substantiating data and information clearly demonstrating such duplication of preparation for manufacture and the resulting delay of the procurement, such as the following:

(A) A description of the relationship of the proposed procurement to prior work performed by the proposed contractor, emphasizing the element of delay if the award is made to another contractor.

(B) The associated cost information on the magnitude of the proposed contractor's previous efforts.

(C) The contractor's previous research and development and production contracts, including their respective total time periods and the aggregate dollar values of each kind.

(D) The stage reached in the development or production and any other circumstances which will demonstrate the advantageous lead time of the proposed contractor.

(E) A description of such elements as preliminary engineering and development work already performed by the contractor, including the time required to perform such work, which would not be useful to or usable by any other supplier.

(F) The contractor's ability to make important design changes without repetition of previous engineering effort and the delay that would arise from a new supplier having to acquire the necessary special test equipment and special tooling and to develop essential employee skills.

(G) The minimum lead time for the proposed contractor, establishing that the lead time for any firm other than the proposed contractor would unduly delay the procurement.

(H) The lead time, in terms of months, for other firms as to—

(*1*) Design and engineering;

(*2*) Manufacture of preproduction unit;

(*3*) Test and evaluation; and

(*4*) Acquisition of materials, including special test equipment and special tooling, and manufacture of first production equipment.

(I) The date the requirement originated or was received by the requiring activity.

(J) The date the purchase request was received in the contracting office.

(ii) If the basis for negotiation is that manufacture of the equipment requires a substantial initial investment and its procurement by formal advertising would likely result in additional cost to the Government by reason of duplication of investment, the justification should contain substantiating data and information clearly demonstrating the duplication of investment and additional cost to the Government by reason of such duplication, such as the following:

(A) A description of the type and value of the substantial investment by the proposed contractor or by the Government.

(B) The contracts involved and the identity of any Government-furnished property.

(C) Delineation of costs of the nature described in FAR 15.216(b)(1), (i), (ii), and (iii) (if estimates are used, so state).

(D) The estimated costs which would be duplicated if the procurement were formally advertised; and

(E) The estimated additional costs which the Government would likely incur by reason of such duplication.

(4) *Exception (14).*

(i) Include the following:

(A) Invitation for bid number and date;

(B) The number of firms furnished invitations for bids, number responding, number (if any) rejected as nonresponsive or determined not responsible, a list of the responsible bidders submitting responsive bids, and respective prices submitted.

(C) The installation's original estimate of costs and the basis for the estimate.

(D) A conclusive showing that the responsive bids received are unreasonable as to all or part of the requirements.

(E) If a partial award was made, an explanation thereof.

(F) A list of the firms to be solicited (each responsible bidder that submitted a responsive bid must be included).

(G) A statement that if negotiation is authorized, no contract will be awarded under this authority unless the conditions in FAR 15.214(b) are met and a second D&F is obtained in accordance with 1815.371–2(e)(2).

(ii) See FAR 15.214(b) for procedures where there is evidence that the bid prices were not independently reached in open competition.

(5) *Exception (17).* Emphasis must be placed on the need to negotiate with a particular contractor or contractors, and it must be shown clearly that such necessity arises from genuine

considerations of National defense, or industrial mobilization in the event of a National emergency. The supporting data, as well as the determination and findings, must name the contractors to be kept available and clearly demonstrate that the above considerations form the basis for procurement from such contractors. Additionally, the JAN shall include the following information as applicable and such other information as may be pertinent:

(i) The specific purpose to be served (*i.e.*, for furnishing property or services in case of a National emergency, the interest of industrial mobilization in case of such emergency or the interest of National defense in maintaining active engineering, and research and development would otherwise be subserved) in having a particular contractor, or particular contractors, available in the event of a National emergency.

(ii) The circumstances which make it necessary to keep the proposed contractors available for this particular purpose.

(iii) If for maintaining active engineering, research and development, the circumstances which require negotiation under this authority.

(iv) The technical complexity and criticality of the item.

(v) The procurement history of the item and the firms which have produced it.

(vi) The reasons for lack of sources.

(vii) The current annual requirement and prospective needs for the item.

(viii) If, for maintenance of an existing mobilization base, the contractor's loss of capability to produce the item in the quantities and within the time required by the mobilization planning if the contract is awarded to other suppliers, the specialized capabilities that will be lost, and the time that would be necessary to reacquire such capabilities in the event of a National emergency.

(ix) When the establishment of additional source(s) is necessary to provide production capability to meet current and emergency requirements, the following:

(A) The current annual and the mobilization requirements for the item, citing the source of or the basis for such planning data.

(B) The comparison of current production capacity necessary to meet mobilization requirements.

(C) The hazards of relying on present sources and the time required for a new source to acquire the necessary facilities and skills and achieve the production capacity of both old and new source(s) to that necessary to meet mobilization requirements.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

1815.405 Solicitations for information or planning purposes.

1815.405-1 General.

Solicitations for informational or planning purposes are particularly useful when a procurement can be properly negotiated only after potential offerors have had an opportunity to become familiar with a large quantity of relevant data, or where it would be desirable to have industry participation in the formulation or review of complex specifications or requirements. Solicitations for informational or planning purposes can result in some desirable benefits. Aside from the basic objectives of promoting competition in the private sector and insuring the reasonableness and feasibility of the requirement, potential sources are apprised of NASA requirements in a particular field and invited to submit data for consideration early in the acquisition process without undue expenditure of time, effort, and money. However, such solicitations shall not be used as a means for the prequalification of offerors. It is recognized that the use of solicitations for informational or planning purposes may serve to lengthen the acquisition cycle under some circumstances. Conversely, it may shorten the time required for submitting proposals in situations where a large quantity of data must be analyzed by industry prior to the actual submission of proposals.

1815.405-70 Application.

Solicitations for informational or planning purposes should be utilized when appropriate. Instances where such solicitations would have application include major systems acquisitions or other complex projects where feasibility or technology studies are being conducted (either in-house or by contract) that may have relevance to later competitions. The results of such studies may be made available to industry as soon as they are known or at periodic intervals. Requirements for automatic data processing equipment or support services to perform specified operations or achieve certain results may also be suitable for advance review and comment by the private sector where diverse approaches to the accomplishment of mission objectives may be possible. The material made available in advance may vary from a comprehensive draft of a proposed requirement to a partial draft, e.g., statement of work and/or specifications or reports.

1815.405-71 Procedure.

(a) In making advance information available to industry, sufficient time should be allowed in the acquisition process to permit potential sources an opportunity, commensurate with the task, to prepare and submit a response to the solicitations for informational or planning purposes. Invitations for bids and requests for proposals will not be used for this purpose. Solicitations for informational or planning purposes shall be issued only with prior approval of the Procurement Officer.

(b) The provision at FAR 52.215-3 does not prohibit the allowance, under FAR 31.205-18, of the cost of preparing a response to the solicitation. Solicitations for informational or planning purposes will at least request an expression of interest in the contemplated requirement and will designate a time and place for submission of responses. Each solicitation will define, as explicitly as possible, the information the Government desires and will indicate whether it is contemplated that the solicitation will be followed by a conference. After approval by the Procurement Officer, the solicitation will be forwarded to potential sources and synopsized as required by FAR Subpart 5.2.

(c) Each source responding to the solicitation will be advised of the details of any pending conference. The conference, when provided for, will be conducted by procurement personnel, and should be attended by technical, legal, and other personnel as appropriate. Care must be taken not to prejudice any future competition. Each source shall be furnished identical information in connection with the proposed requirement. Also, care shall be taken to safeguard any information received in confidence.

1815.405-72 Special considerations.

It should be understood that the foregoing procedure does not consitute procurement in the usual sense, where the Government is fully aware of its requirements and has incorporated them in a formal solicitation or where firms are invited to make known their interest in a procurement by responding to a presolicitation notice. Under the solicitations for informational or planning purposes procedure, interested firms may suggest changes in a proposed specification or statement of work, propose alternatives in concept, method, design, system integration, and the like that might result in lower costs

without sacrificing performance, or propose changes in other requirements regarding the product or service involved. Care should be exercised in this connection to avoid potential conflict of interest situations. (See FAR Subpart 9.5.)

1815.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

(a) Requests for proposals (RFP's), including amendments thereto, shall be prepared by the contracting office with assistance from technical or other offices as required and be issued by the contracting officer or authorized representative. The RFP has a twofold purpose: (1) To convey to prospective contractors the information they need to prepare a proposal properly, and (2) to solicit the information that procurement and technical personnel need to appraise the proposals of prospective contractors.

(b) RFP's shall specify a date for their submission. Any extension of time granted to one prospective contractor shall be granted uniformly to all. Each request for proposals shall be issued to prospective contractors at the same time, and no contractor shall be given an advantage. When advisable, particularly in the case of research and development, proposals shall be requested in two parts: (1) An unpriced technical proposal, and (2) a cost proposal cross-referenced to the technical proposal (see 1815.406–70).

1815.406–2 Part I—The Schedule.

The contracting officer shall include, in addition to requirements specified elsewhere in the FAR and this Regulation, the following in the section indicated of the Schedule:

Section A—Solicitation/contract form.

(a) A statement on the first sheet or on a cover sheet of the request for proposals that: "PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THE REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001." This statement shall be suitably modified when quotations are requested.

(b) Instructions that offeror promptly acknowledge receipt of the request for proposal or request for quotation and advise whether it intends to submit a proposal or offer.

1815.406–3 Part II—Contract clauses.

Section I, Contract clauses. In addition to the requirements of FAR 15.406–3, the contracting officer shall include in this section the clauses required by this regulation, if these clauses are not required in any other section of the Uniform Contract Format.

1815.406–4 Part III—Documents, exhibits, and other attachments.

Section J, List of Attachments. List here all of the documents, exhibits, and other attachments which make up the solicitation package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example: work frequency schedules, work breakdown structures, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the solicitation proper).

1815.406–5 Part IV—Representations and instructions.

(a) *Section L, Instructions, conditions, and notices to offerors or quoters.* (1) Includes statement that prospective offerors may submit inquiries by writing or calling (collect calls not accepted) (insert name and address, telephone area code, number, and extension).

(2) Include directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference.

(3) Indicate the type of contract contemplated, together with type of repricing, and economic price adjustment, if any.

(4) Include a statement that the selected contractor will or will not require access to classified information (see NASA Management Instruction 1650.1, Industrial Security Policies and Procedures).

(5) Indicate the method and format of price quotation desired (fixed-price or cost type, if known at the time), including a reference to the necessity for cost or price breakdown.

(6) Include a description of the information required to support proposed prices; e.g., subcontract structure, purchasing system, royalty, and cost price information (see FAR Subparts 15.7 and 15.8, and FAR Part 44).

(7) Include information regarding the requirements for "Certificate of Current Cost or Pricing Data."

(8) Include instructions for disposition of drawings and specifications supplied with the solicitation.

(9) Include a statement of information required to facilitate evaluation of technical and financial capabilities and a statement covering special technical capabilities which offerors must possess.

(10) Include an instruction reflecting desirability of a separation between the contractor's "Business Management Proposal" and "Technical Proposal." For evaluation purposes separate proposals, where time permits, should be received; therefore, the format should be flexible enough to permit separate requirements (see 1815.406–70).

(11) Include a statement that this solicitation does not commit the Government to award a contract, since the Government reserves the right to reject any or all proposals, or to negotiate separately with any source considered qualified; and that the contracting officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed procurement.

(12) Include a statement that the solicitation does not commit the Government to pay any cost incurred in the submission of the offer/quotation or in making necessary studies or designs for the preparation thereof, nor to contract for services or supplies. Further, no costs may be incurred in anticipation of a contract with the exception that any such costs incurred at the offeror's risk may later be charged to any resulting contract to the extent that they would have been allowable if incurred after the date of the contract and to the extent authorized by the contracting officer.

(13) In procurements involving mission-critical positions in connection with the Space Transportation System, include a statement that the selected contractor will comply with the provisions of NASA Management Instruction 8610.13, Space Transportation System Personnel Reliability Program. The statement will not be required in procurements for flight crew members or payload specialists when covered by other NASA Management Instructions which have equivalent screening requirements to NMI 8610.13. (See NMI 7100.16, Payload Specialists for NASA-Related Payload.)

(b) *Section M, Evaluation factors for award.* See 1815.406–70 for instructions for Technical Proposals and Business Management Proposal submissions to be included in this section as applicable.

1815.406–70 Instructions for technical proposal and business management proposal submission.

When it is contemplated that the contract will exceed $1,000,000 (or if appropriate lesser amounts), the solicitation should contain requirements for the following information to be

furnished by the offeror in the offer, if applicable, in addition to the information specified in 1815.406 above.

(a) *Technical proposal.* Proposals should include the following:

(1) Method by which the offeror proposes to solve the technical problems of the project, other than information to be furnished elsewhere as a part of program or project support plan summaries (see (a)(7) below).

(2) A specific exception to proposed technical requirements.

(3) Statement of background experience in fields relating to the procurement.

(4) Names and resumes of experience of key technical personnel who will be employed on the project and extent to which each will participate in the performance of the project. Include an organization chart of the segment of offeror's organization which will be directly assigned to the project, listing names and job categories.

(5) Description and location of the company-owned research test and production equipment and facilities which will be available for use on the project. Include a separate list of any additional facilities or equipment required in the performance of the work, and a separate list of existing Government facilities available to the contractor and required for use on the project.

(6) Hourly time estimates (without pricing information) by labor class for each phase or segment of the project, extent to which these estimates are based on the use of employees presently on the offeror's payrolls who will be available for the work as required, and an indication of number and types of personnel necessary to be hired and arrangements made to obtain them.

(7) For negotiated procurements conducted under Source Evaluation Board procedures where detailed program or project support plans will be required as part of the offeror's proposal, and when such plans are not considered to be important discriminators in the evaluation process but only provide technical or management support to the primary product or service being offered, the requirements for these plans shall be described in separate Appendices to the Statement of Work. As part of their original proposal, offerors will be required to submit an estimate of the cost and work force to perform major tasks under each requirement separately identified and a summary of the major task elements to perform each requirement. Offerors will also be required to indicate that they understand that a detailed program or project support plan will be ultimately required if they are selected for negotiations and that such plans will be negotiated into the proposed contract prior to award.

(b) *Business management proposal.* Proposals should include the following:

(1) Organization proposed for carrying out the project, including organization charts showing interrelationship of business management, technical management, and subcontract management, and an indication of all levels of operation and management, from lower levels through intermediate management to top-level management.

(2) Resume of experience of all key personnel who will conduct the managerial affairs of the project.

(3) Contractural procedures proposed for the project to effect administrative and engineering changes, describing differences from existing procedures.

(4) Extent to which offeror has invested corporate funds in research and development work in the project area or directly related areas and plans for future expenditures for such work; and the extent, if any, to which offeror is willing to participate in the cost of the project.

(5) Statement as to capacity at which company-owned research test and production equipment and facilities required in the performance of the work are currently working; and the extent to which such facilities and equipment could handle the additional workload imposed by this project. The cost of any additional facilities or equipment required in the performance of the work with information as to whether such additional facilities or equipment will be contractor-furnished or Government-furnished and a statement of value of exisitng Government facilities available to offeror and required for use on the project, showing the Government agencies and facilities contracts involved.

(6) Statement of past performance and experience including—

(i) List of Government contracts in excess of $1,000,000 received in past three years or currently in negotiation involving mainly research and development work, showing each contract number, Government agency placing the contract, type of contract, and brief description of the work;

(ii) For each cost-type contract, a list of amounts of cost overruns or underruns, reasons therefor, and percentage of fixed fee;

(iii) For each contract, a record of contract completion as against completion date anticipated at time of entering into contract, giving explanations for completion delays; and

(iv) An identification and explanation of any terminations for default or convenience.

(7) Balance sheet for offeror's last fiscal year, accompanied by profit and loss statement.

(8) Detailed cost or price proposal, furnished as a separate, detachable element of the business management proposal.

(9) In soliciting proposals for support services requiring price quotations for a cost reimbursement type contract, the solicitation should contain available data regarding the quantity and quality of supplies and services required. This data should be set forth in terms of work hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs. To be responsive, an offeror must submit a detailed cost or price proposal based on the effort described or estimated in the solicitation. If the offeror feels that the work can be accomplished more efficiently with organizational plans, staffing, management, or equipment other than that indicated in the solicitation, it may also submit an alternate proposal supported by a detailed cost or price proposal.

1815.407 Solicitation provisions.

As authorized at FAR 15.412(c) and 1815.412(c), use the NASA Alternate I to FAR 52.215–10 (see 1852.215–10), Late Submissions, Modifications, and Withdrawals of Proposals, in NASA solicitations. Alternate I allows the contracting officer to accept late proposals or proposal modifications if, in the contracting officer's judgment, it is in the Government's best interest.

1815.412 Late proposals and modifications.

(a) Proposals, or modifications thereof, received from qualified firms after the latest date specified for receipt may be considered if there is a probability of a significant reduction in cost to the Government or if there are significant technical improvements, as compared with proposals previously received. In such case, the negotiator shall investigate the circumstances surrounding the submission of the late proposal or modification and evaluate its content and submit written recommendations and findings to the contracting officer as to whether—

(1) The company submitting the proposal has an excusable reason for late submission;

(2) There is an advantage to the Government to consider the proposal:

(3) All companies submitting proposals should be resolicited; and

(4) Time of performance permits such resolicitation.

(b) The contracting officer shall determine whether the proposal should be considered or rejected or whether proposals should be resolicited.

(c) When the failure of a proposal to arrive on time is due solely to delay in the mails for which the offeror was not responsible or when only one proposal is received, the contracting officer may consider the proposal.

(d) Offerors may withdraw their proposals any time prior to award, provided that the conditions in paragraph (g) of the provision at FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals are satisfied.

1815.413 Disclosure and use of information before award.

The alternate procedures at FAR 15.413–2 shall be used for NASA procurements in lieu of those prescribed at FAR 15.413–1. The Notice at FAR 15.413–2(e) shall be placed on the cover sheet of all proposals whether solicited or unsolicited.

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.

NASA will foster and encourage the submission of unsolicited proposals relevent to agency mission requirements by—

(a) Informing organizations and individuals of the scientific and technological areas encompassed by NASA's mission;

(b) Issuing notices to the scientific and technological communities which are informative of ongoing programs and areas of activity;

(c) Making no other use of proposals than for evaluation or review purposes unless otherwise specified by law;

(d) Developing appropriate policies and procedures that are consistent with this subpart and that only encourage unsolicited proposal submission and avoid to the extent possible factors that tend to discourage the generation and acceptance of innovative ideas by the unsolicited proposal mechanism;

(e) Ensuring the availability of information for the preparation and submission of unsolicited proposals to NASA;

(f) Maintaining throughout NASA uniform proposal submission requirements that place the least possible burden on the offeror; and

(g) Acknowledging proposals, making suitable evaluations, and notifying the offeror of NASA's decisions in a timely fashion.

1815.503 General.

When it is determined that a meritorious unsolicited proposal is not related to the mission of NASA or may be of interest to agencies in additon to NASA, NASA may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal; however, NASA should not transfer responsibility for evaluation to another agency without the express consent of the offeror.

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to JPL without the express consent of the offeror.

(b) Proposals submitted to NASA may not be transferred to JPL for procurement without the offeror's permission.

1815.505 Content of unsolicited proposals.

In addition to the requirements listed a FAR 15.505, unsolicited proposals submitted to NASA should contain—

(a) *Additional supporting information.* (1) Brief descriptions of the organization, previous work or experience in the field of the proposal, and facilities to be utilized for the work, where appropriate for understanding the proposal.

(2) The identifying number of the basic contract or other agreement, if applicable.

(b) *Renewal information.* Proposals for renewal of ongoing projects are generally simpler to prepare. However, they should cover the items listed at FAR 15.505 (a) through (c) and at (a) above, particularly as dictated by changes since the original award was made. Prior contact with the NASA technical officer is advisable to determine the optimum amount of technical information to include.

1815.506 Agency procedures.

(a) *NASA points of contact—*

(1) *Coordinating offices.* Each NASA field installation will designate an organizational entity as its unsolicited proposal control unit for coordinating the handling of unsolicited proposals in accordance with policies and procedures herein and in FAR Subpart 15.5. Headquarters program offices are designated as coordinating offices for proposals sent directly to them in relation to disseminated information on continuing activities described in paragraph (a)(2) below.

(2) *Proposal submission.* (i) Headquarters offices broadly disseminating information within the scientific and technological communities regarding continuing responsibilities and areas of activity should indicate in the communications that unsolicited proposals relating to such continuing responsibilities and areas of activities should be submitted directly to the originating office, unless submission to a specific field installation is indicated. Responses to any field installation announcements shall be addressed to the unsolicited proposal control unit at that installation.

(ii) Except as provided in paragraph (a)(2)(i) above, unsolicited proposals believed to be of interest to only one NASA field installation should be submitted to that installation, marked for the attention of the unsolicited proposal control unit.

(iii) Except as provided in paragraph (a)(2)(i) above, unsolicited proposals believed to be of interest to NASA Headquarters are to be submitted to NASA Headquarters, Office of Space Science and Applications, Management Operations, Code EPM–2, Washington, DC 20546.

(iv) Except as provided in paragraph (a)(2)(i), proposals from colleges and universities that are of interest to more than one installation should be submitted to NASA Headquarters, Office of Space Science and Applications, Management Operations, Code EPM–2, Washington, DC 20546, whereas such proposals from noneducational and other nonprofit organizations should be submitted to each installation believed to have an interest, marked for the attention of the unsolicited proposal control unit.

(3) *Proposal preparation information.* Information on the preparation of unsolicited proposals may be obtained from field installation contracting offices or NASA Headquarters. Only inquiries from academic researchers should be sent to Code EPM–2. All other inquiries to NASA Headquarters should be addressed to Headquarters Contracts and Grants Division, Code HW–2, Washington, DC 20546.

(4) *Other inquiries.* (i) Advertising material and commercial product offerings may be forwarded to any NASA office or individual.

(ii) Contributions should be sent to the Director of the Staff, Inventions and Contributions Board, NASA, Washington, DC 20546.

(iii) NASA does not have an "informal" or "preliminary" proposal category. Hence, any inquiries or exploratory discussions prior to submission of a complete unsolicited proposal are left as a matter strictly between the interested individuals or

organization and the appropriate NASA office or employee. General guidance on whom to contact is available from the contracting office at each field installation and NASA Headquarters.

(b) *Time of submission.* Unsolicited proposals should be submitted well in advance of the offeror's desired beginning of the proposed effort or activity in order to allow the agency sufficient time to evaluate the proposal and negotiate any resultant contract or other agreement and in ample copies to allow simultaneous study by all reviewers. A minimum of five copies and four months advance submission is suggested.

(c) *Receipt, review, and evaluation.* (1) Each NASA field installation shall adopt procedures that provide for the coordination, control, receipt, and evaluation of proposals in accordance with agency-wide policies and procedures. Because of the sensitivity of the evaluation process, evaluations should be conducted in a manner that will ensure thorough and equitable reviews that are in the best interests of NASA and the offeror.

(2) Unsolicited proposals shall be acknowledged as soon as possible by the office which has been assigned the coordination responsibility and processed in an expeditious manner.

(d) *Reconsideration.* NASA shall not deny reconsideration of a timely and appropriately revised submission which is responsive to an initial determination of inadequacy under FAR 15.506–1.

(e) *Information requirements.* Designated installation coordinating units shall keep records of received proposals and shall provide prompt status information to requestors. At a minimum, the information will include: The number under current active evaluation and the number received, funded, and rejected during the fiscal year. These numbers shall be broken out by source (large business, small business, university, or nonprofit).

1815.507 Contracting methods.

(a) Under FAR 15.507(b)(3), the technical office sponsoring the procurement shall support its recommendation for award of a negotiated, noncompetitive contract with a Justification for Acceptance of Unsolicited Proposal (JAUP). The JAUP shall be based on a comprehensive evaluation of the proposal; it shall include the facts and circumstances that operate to preclude competition and that support the recommended noncompetitive action. Consideration shall include the evaluation factors listed in FAR 15.508–2(a).

(b) For purchases in excess of $1,000, the JAUP shall be in writing and shall be submitted for the approval of the Procurement Officer or a designee after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable.

1815.570 Foreign proposals.

Proposals from foreign sources are additionally subject to the provisions of NPD 1362.1, Initiation and Development of International Participation and Cooperation in Aeronautical and Space Programs. Installations shall forward procurement requests for foreign proposals to the Headquarters Contracts and Grants Division, Code HW–2, through the International Programs Division, Code LI–15, for procurement action.

Subpart 1815.6—Source Selection

1815.606 Proposal evaluation.

1815.606–70 Technical evaluation.

(a) Technical evaluation should include—

(1) The contractor's understanding of the scope of the work as shown by the scientific and technical approach proposed;

(2) Availability and competence of experienced engineering, scientific, or other technical personnel;

(3) Availability of necessary research, test, and production facilities;

(4) Experience or pertinent novel ideas in the specific branch of science or technology involved;

(5) The contractor's willingness to devote its resources to the proposed work with appropriate diligence; and

(6) The contractor's proposed method of achieving the reliability required.

(b) In making this evaluation, technical personnel may be given access to portions of the business proposals upon request. After evaluation and preparation of written findings as to selection of source by the technical personnel, proposals shall be returned to the negotiator. The contracting officer is responsible for reviewing the justification in support of the written findings of technical personnel to determine that the justification is adequate and that the documentation is complete.

1815.606–71 Automatic data processing equipment.

In evaluating proposals containing a significant amount of cost for Automatic Data Processing Equipment (ADPE), the contracting officer should obtain from the prospective contractor a feasibility study and a lease-versus-purchase study covering the acquisition of such equipment or service. The contracting officer will obtain the recommendations of the price analyst and appropriate ADPE technical personnel as to the adequacy of the studies and the prospective contractor's determinations resulting from the studies. Particular attention should be given to those proposals containing a high dollar amount for rental of ADPE or complete systems to be used solely for performance of the contract. Current Office of Management and Budget criteria (NHB 2410.1, Computer Resources Management) should be used, where applicable, as a guide in evaluating the contractor's studies. Prospective contractors should be encouraged to—

(a) Use ADPE machine time available within a reasonable geographic distance;

(b) Use telecommunications links to remote Government-owned or -leased ADPE systems; and

(c) Purchase ADPE in preference to leasing the equipment where the financial advantage is the sole or overriding factor.

1815.610 Written or oral discussion.

Procurement personnel, as well as other personnel concerned with the procurement, shall ensure that contract negotiations are completed expeditiously. However, all details of the negotiation must be completed before the contract is actually placed. This includes, to the extent applicable—

(a) Arrangements regarding Government-furnished property, including the contractor's responsibility for controlling, maintaining, and accounting for such property;

(b) Determination that the prospective contractor is responsible, including completion of preaward surveys where required;

(c) Arrangements with other Government agencies for the use of facilities under their control;

(d) Where the contract will be administered by another Government agency, any necessary arrangements with the responsible activity of that agency;

(e) Where the contract will involve access to classified information, verification that required security clearance has been obtained;

(f) The requirement for the furnishing of data by the contractor in the performance of the contract, both for technical evaluation and for competitive reprocurement where follow-on procurement is probable, in those situations where the appropriate

technical office has requested that the contracting officer obtain such data; and

(g) Assuring that the proposal has been included in the contract as an item of deliverable data (where it is considered necessary for NASA to have access during contract performance to proposal technical data which has been qualified by the offeror as protectible data).

1815.613 Alternative source selection procedures.

1815.613–70 General.

The evaluation of proposals received may be accomplished in a number of different ways. Evaluation of proposals received in response to an Announcement of Opportunity will be accomplished in accordance with NHB 8030.6, Guidelines for Acquisition of Investigations. The applicability of and rules for the conduct of source selection in accordance with formal source evaluation board procedures are covered at 1815.613–71 below.

1815.613–71 Evaluation and negotiation of procurements conducted in accordance with the Source Evaluation Board Manual (NHB 5103.6).

(a) *Applicability.* (1) These procedures shall be used for all competitively negotiated procurements conducted in accordance with NHB 5103.6 (excluding procurements for architect-engineer services and procurements for which the procedures have been specifically waived) when—

(i) The estimated cost of the contract exceeds $5,000,000;

(ii) The estimated cost of the contract does not exceed $5,000,000, but it is likely that the source selected will receive other contracts for later phases of the same project which, cumulatively, would total more than $5,000,000 (Examples of this category: (A) Options as defined in FAR Subpart 17.2; (B) agreements-to-agree, wherein the parties agree to negotiate for the extension of the supplies or services being procured; and (C) later phases of the same project subject to the Guidelines for Phase Project Planning concept prescribed by NHB 7121.1, Planning and Approval of Major Research and Development Projects, and/or the Major Systems Acquisition concept prescribed by NMI 7100.14, Major System Acquisitions.); or

(iii) A Source Selection Official determines that the use of the SEB procedures is desirable. Except where the relevance of this paragraph is peculiar to the SEB procedure, the principles expressed herein also apply to other negotiated procurements conducted in accordance with this Regulation.

(2) The detailed procedures regarding the designation and operation of SEB's are in NHB 5103.6.

(3) Evaluation of system design concepts resulting from requests for alternative system design concept proposals in support of a major system acquisition subject to NMI 7100.14 policies and procedures should include, in addition to proposed system function and performance capabilities to meet mission needs and program objectives, and analysis of resources required and benefits to be derived by trade-offs, where feasible, among technical performance, acquisition costs, ownership costs, time to develop and procure, and the relevant accomplishment record of competitors.

(b) *Evaluation and selection procedures. (1) Responsibility of source selection official.* In the final analysis, NASA judgment on the totality of the evaluation will be that of the Source Selection Official. This includes assessment of the procedures followed by the Board, the validity of its substantive evaluations, the relative significant of the several areas of evaluation, and the weightings previously assigned by the SEB, in the light of all the information produced by the source evaluation and selection process.

(2) *Evaluation criteria and weights.* The establishment of evaluation criteria and their weights requires the exercise of judgment on a case-by-case basis. Evaluation criteria and their weighting factors should be tailored to the requirements of each particular procurement. An SEB should not give scores for cost as such. Technical excellence, price or estimated cost, and contractor management capability are important factors in selection. Their relative importance depends on the nature of the products or services procured, with technical considerations having paramount importance in research and development. Any factor may tip the balance when competition is very close as to other factors. Evaluation criteria shall be described in each Request for Proposals (RFP's) fully enough to inform evaluators and prospective offerors of the significant matters to be addressed in the proposals. A general description of the relative weights of categories of evaluation criteria shall be furnished prospective offerors.

(3) *Initial identification of proposals not considered acceptable.* (i) Subsequent to the review of committee ratings and other information known to the committees or the Board and prior to ranking of proposals by the Board, the Board may discontinue the evaluation of any proposal which is unacceptable because—

(A) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements of the RFP;

(B) In research or development procurement, a substantial design drawback inheres in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(C) It contains major technical or business deficiences or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(ii) Sample technical nonresponsiveness in the sense in which the term is used in formal advertising is not alone sufficient to constitute unacceptability if the proposal is otherwise competitive and negotiations after selection reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

(iii) Documentation must be prepared by the Board as to why the deficiencies of any proposal are believed to be of sufficient significance to warrant discontinuing the evaluation of a proposal at this point in the evaluation process.

(4) *Board determinations of competitive range.* After initial identification of proposals not considered acceptable, the Board will tentatively rank the remaining proposals in accordance with the established scoring system. After this ranking is completed, the proposals will be reviewed to determine the proposals within the competitive range; namely, those which have a reasonable chance of being selected for final award. In making this determination, the Board will evaluate the potential for improving the competitive position of the proposals by written or oral discussions conducted in accordance with paragraph (b)(5) below. The competitive range will consist of the best proposals, considering mission suitability, cost or price, experience and past performance, and other factors. When there is doubt as to whether a proposal is within the competitive range, that doubt shall be resolved by including it. The initial number of offerors considered as being within the competitive range may be narrowed as a result of the written or oral discussions. However, a proposal

initially included in the competitive range should not be rejected withou giving the offeror an opportunity to submit a revised proposal to serve as the basis for establishing the new competitive range unless the discussions relating to an ambiguity or omission make it clear that the proposal should not have been in the competitive range initially.

(5) *Conduct of written or oral discussions.* (i) *General.* Careful judgment will be exercised in determining the extent of discussions. In some cases, good business practice may warrant having more than one round of discussions with all or some of those firms considered in the competitive range. The time available, the expense and administrative limitations, and the size and significance of the procurement should all be considered in deciding on the type, duration, and depth of the discussions.

(ii) *Cost-reimbursement type contracts and all contracts for research and development.* (A) The contracting officer, in concert with or on behalf of the SEB, will conduct writter or oral discussions of the work to be done and the cost of the work with those concerns whose proposals are within the competitive range. The discussions are intended to assist the SEB or other evaluators *(1)* in understanding fully the proposals and their strengths and weaknesses based upon the individual efforts of each offeror, *(2)* in assuring that the meanings and the points of emphasis of RFP provisions have been adequately conveyed to the offerors so that all are competing equally on the basis intended by the Government, *(3)* in evaluating the personnel proposed by each firm, and *(4)* in presenting a report to the Source Selection Official that makes the discriminations among proposals clear and visible. In this process, prior to contractor selection, the Government's interests are not served by its assuming the role of an information exchange or clearing-house.

(B) In cost-reimbursement type contracts and all research and development contracts, the contracting officer shall point out instances in which the meaning of some aspect of a proposal is not clear and instances in which some aspects of the proposal failed to include substantiation for a proposed approach, solution, or cost estimate.

(C) However, where the meaning of a proposal is clear and the Board has sufficient information to assess its validity and the proposal contains a weakness which is inherent in an offeror's management, engineering, or scientific judgment or which is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses. Discussions are useful in ascertaining the presence or absence of strengths and weaknesses. The possibility that such discussions may lead an offeror to discover that it has a weakness is not a reason for failing to inquire into a matter where the meaning is not clear or where insufficient information is available, since understanding of the meaning and validity of the proposed approaches, solutions, and cost estimates is essential to a sound selection. Offerors should not be informed of the relative strengths or weaknesses of their proposals in relation to those of other offerors. To do so would be contrary to other regulations which prohibit the use of auction techniques (see FAR 15.610(d)(3)). In the course of discussions, Government participants should be careful not to transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas.

(D) The foregoing guidelines are not all-inclusive. Careful judgment must be exercised in the light of all the circumstances of each procurement to promote the most advantageous selection from the standpoint of the Government while, at the same time, maintaining the fairness of the competitive process.

(E) At the conclusion of discussions, the contracting officer shall give each offeror a reasonable opportunity (with a common cut-off date for all) to support and clarify its proposal. An offeror may, on its own initiative, revise its proposal and make corrections or improvements until the established cut-off date.

(iii) *Fixed-price contracts other than for research and development.* (A) In fixed-price type contracts other than for research and development, the specifications ordinarily described the Government's requirements with more particularity than is possible in cost reimbursement or research and development contracting so that less emphasis is placed on an offeror's introduction of scientific, engineering, and management innovations. The contracting officer will conduct discussions in accordance with the provisions of paragraph (b)(5)(ii) above, except for the difference in paragraph (b)(5)(iii)(B) below.

(B) The contracting officer, in written or oral discussions, shall point out instances in which some aspect of a proposal contains a weakness in relation to the Government's requirements. But, as provided in paragraph (b)(5)(ii) above, the contracting officer shall neither point out the relative strengths or weaknesses of a proposal in relation to those of other offerors nor transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas. The contracting officer shall point out price elements that do not appear to be justified and shall encourage offerors to put forward their most favorable price proposals, but shall not discuss, disclose, or compare price elements of any other offeror.

(6) *Conduct of negotiations prior to selection.* If, after conclusion of written or oral discussions, the SEB considers that the evaluation findings thus far completed are not sufficiently comprehensive for the Source Selection Official to make a decision, it may be prudent and necessary to conduct further discussions or final negotiations with those offerors remaining in the competitive range prior to presentation of the findings to the Source Selection Official. This course of action must be considered as an exception to the SEB process and therefore may be accomplished only with the approval of the Assistant Administrator for Procurement.

(7) *Notice and debriefing.* When a proposal is no longer to be considered for contract award, the offeror will be promptly notified, in writing, together with a general, reasonably brief explanation of the reasons. If an offeror requests, in writing, a debriefing as a result of such notice, it will be accorded a formal debriefing in accordance with NMI 5103.1, Debriefing of Unsuccessful Companies in Competitive Negotiated Procurements. Such a debriefing will be provided at the earliest feasible time, which normally shall be after announcement of the selection decision and prior to award of the contract. However, where the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefing may be conducted after award.

(8) *Report to source Selection Official.* The SEB report shall contain a summary of the primary points of discussion and will show the effect of the discussions on the evaluation of proposals. The report shall set forth the strengths and weaknesses of each proposal with an estimate of the potential for correction of the principal weaknesses identified. The report also should state the board's estimate of the approximate impact on cost or price that will result from the elimination of correctible weaknesses during negotiations after selection.

1815.613–72 NASA solicitation provision.

The provision at 1852.215–70, Increases in Estimated Costs, shall be included in all requests for proposals to be evaluated pursuant to NASA Source Evaluation Board procedures, when award of a cost-reimbursement type contract (with or without incentive arrangement) is contemplated. The purpose of this provision is to advise the offeror(s) selected for final negotiation that they may not unilaterally increase their estimated costs for the reasons cited therein. Government negotiators are cautioned that in those cases where the second exception applies, there may be instances where such costs do not warrant additional fee.

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.

As a rule, make or buy programs should not include items or work efforts estimated to cost less than (a) one percent of the total estimated contract price or (b) $5,000,000, whichever is greater.

1815.706 Evaluation, negotiation, and agreement.

The make or buy program review by the activities' small and disadvantaged business utilization specialist and the SBA representative (see FAR 15.706(b)) should be, concurrent with the contracting officers' review. When urgent circumstances preclude this, or where the small and disadvantaged business specialist or SBA representative fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and transmit a copy to each of them.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data.

1815.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) When granting an exemption under FAR 15.804–3(e)(2) for repetitive submissions of catalog items, Government approval or the exemption claim shall state the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the continuation of the exemption. This approval may be extended to other Government contracting offices with their concurrence.

(b) When exempting submission before solicitation under FAR 15.804–3(e)(3), the contracting officer may, by a solicitation provision or otherwise, either dispense with the requirement for a SF 1412 or limit the data required to be submitted on the form. For example, if the item being procured is similar to a commercial item, only an explanation of a price differential may be needed. If the fact of substantial sales to the general public is well known, the actual sales prices, but not the quantity of sales may, be required.

(c) The authority in FAR 15.804–3(i) to waive the requirement for submission of cost or pricing data is delegated to the Assistant Administrator for Procurement without power of redelegation. Set forth below is a format for the Determination and Findings to be made by the Assistant Administrator for Procurement to waive the requirement for submission of cost or pricing data and certification thereof as required by 10 U.S.C. 2306(f). Requests for waivers shall be addressed to NASA Headquarters, Contract Pricing and Finance Office, Code HC–1.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, WASHINGTON, DC 20546

Determination and Findings

Authority To Waive Submission of Cost or Pricing Data and Certificate

Upon the basis of the following findings and determination, the requirement for submission of cost and pricing data and certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(f), as implemented by NASA FAR Supplement 1815.804–3(c).

Findings

1. The * * * (1) * * * proposes to enter into a contract with * * * (2) * * * for the procurement of * * * (3) * * *.

2. Pursuant to FAR 15.804–2, the proposed contractor is required to submit cost or pricing data as defined in FAR 15.801, together with the certificate in FAR 15.804–4. However, waiver of submission of the cost or pricing data described below is justified for the reasons indicated:

Determination

The requirement for submission of cost or pricing data for the proposed procurement is waived.

Date _____

Notes.—

(1) Installation.

(2) Name of proposed contractor.

(3) Brief description of supplies or services.

(4) Describe the cost or pricing data requirements to be waived. The waiver may be partial *i.e.*, limited to particular cost or pricing data. Describe the circumstances and conditions which make the proposed procurement an exceptional case and state the reasons justifying the proposed waiver.

1815.805–4 Technical analysis.

1815.805–470 Responsibilities of NASA requirements personnel.

NASA requirements personnel are responsible for conducting a technical evaluation of proposals to determine whether the supplies or services offered will meet specifications. In addition, when a cognizant contract administration office is not requested to perform a technical analysis of proposals in accordance with FAR 15.805–5, the analysis will be the responsibility of NASA requirements personnel.

1815.805–5 Field pricing support.

(a) When the price is based on cost or pricing data submitted by the contractor, the contracting officer or authorized representative shall request a field pricing report unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price, prior to negotiation of a contract or modification resulting from a proposal in excess of: (1) $100,000, see FAR 15.805–5(a)(1), for firm fixed-price and fixed-price with provision for economic price adjustment, fixed-price redeterminable (prospective), time-and-materials, or labor-hour type of contract, interim and final price redetermination and settlement of incentive types; (2) $250,000 for fixed-price incentive, cost plus incentive fee or fixed-price redeterminable (retroactive) type of contract; or (3) $1,000,000 for cost reimbursement, cost sharing, cost-plus-award-fee, or cost-plus-a-fixed-fee type of contract.

(b) Whenever available data is considered adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination. Information of the type described in paragraphs (b) (1) through (6) below, which is often available to the contracting officer from the cognizant contract administration office, should be useful in determining the extent of any field pricing support that is needed. No single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements-labor hours, material costs, and so forth, to which the rates apply.

(1) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(2) Audited cost information from contract awards in process or recently negotiated contracts.

(3) Adequately reviewed data on proposed subcontract items which constitute the major portion of the prime contract price proposal.

(4) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(5) Special forward pricing formulas or rates such as for support items or forecast overhead rates prescribed in an existing advance agreement.

(6) Current labor rates, overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours.

(c) The Defense Contract Audit Agency provides procurement liaison auditors at most NASA installations to facilitate the receipt and use of audit service and to provide accounting and audit advice as to whether or not audit review of a price proposal should be waived.

1815.806 Subcontract pricing considerations.

The appropriate contract administration activities will be notified by the contracting officer when review and evaluation of subcontractor's proposals (a) will require extensive field pricing assistance in connection with a major acquisition or (b) require special or expedited action by field pricing personnel and such action is being or has been delayed.

1815.807 Prenegotiation objectives.

Prior to conducting negotiations that require Center or Headquarters review, contracting officers or their representatives shall prepare a Prenegotiation Position Memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated. Matters for negotiation may result from proposal evaluations, contractor requests, unique Center requirements, and other Government agencies' requirements, among others.

1815.807-70 Content of the Prenegotiation Position Memorandum.

The Prenegotiation Position Memorandum (PPM) should fully explain the contactor and Government positions on any open issues as well as identify and justify the elements that are acceptable as proposed. Since the PPM will ultimately become the basis for negotiation, it should be structured to provide an audit trail to the Contract Negotiation Memorandum (see FAR 15.808 and 1815.808). Generally, the PPM should address the following subjects in the order presented:

(a) *Introduction.* Include a brief description of the procurement and a brief history indicating the extent of competition and results thereof. The identification of the contractor and the place of performance (if not evident from the description of the procurement) shall be included. In addition, the negotiation schedule should be addressed and the Government negotiating team members identified by name and position.

(b) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the procurement including such items as—

(1) Letter contract or precontract cost requirements;

(2) Government property to be furnished;

(3) Contract option requirements;

(4) Contractor/Government investment in facilities and equipment (and any modernization thereof to be provided by the contractor/Government);

(5) Any deviations, special clauses or conditions anticipated.

(c) *Cost and profit/fee analysis.* Include a parallel tabulation by element of cost and profit/fee of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position. For each element of cost, compare the contractor and Government estimate and explain how each was developed, including the estimating assumptions and projection techniques employed. Further, explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective. Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal should be highlighted and explained. Also, technical evaluation results which caused the Government's cost negotiation objectives to significantly differ from the contractor's proposed cost, such as differences in staffing, should be highlighted and explained. Further, there should be an identification and a brief discussion of each major subcontract involved, citing the type of subcontract and stating the degree of analysis performed on the subcontract cost estimate. In addition the rationale for the Government's profit/fee objectives, and a completed copy of the NASA Form 634, Structured Approach-Profit/Fee Objective, where appropriate, should be included.

(d) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability. For an incentive contract, including award fee contracts, describe the planned structuring arrangement in terms of profit/fee patterns, share lines, ceilings, and so forth.

(e) *Negotiation approval sought.* Indicate the specific approvals sought, *e.g.*, dollar parameters, special clauses/conditions not constituting deviations, type of contract, fee objectives, and so forth.

1815.807-71 Center reviews.

Each contracting activity shall establish a formal system for the prenegotiation review of any proposal over $250,000 ($100,000 at National Space Technology Laboratories, Jet Propulsion Laboratory, and Headquarters Contracts and Grants Division). The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the procurement and will be determined by each Center. The primary purpose of these reviews is to ensure that the negotiator, or negotiating team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.807-72 Headquarters reviews.

Approval of the prenegotiation position by the Assistant Administrator for Procurement is required prior to entering into negotiations on all procurement actions selected for Headquarters review. Generally, at the time a procurement is processed as a Master Buy Plan (MBP) action, under Subpart 187.71, a decision will be made as to whether the prenegotiation position will be subject to Headquarters review and approval. However, prenegotiation positions on MBP procurement actions where the prenegotiation position was not initially selected for Headquarters review and approval and other non-MBP procurement action prenegotiation positions may be selected for Headquarters review and approval at any point in the acquisition cycle prior to actual negotiations.

(a) *Scheduling of presentation.* When a prenegotiation presentation is required by Headquarters or requested by the Center, scheduling of the presentation will be arranged by the Office of Procurement, Program Operations Division (Code HS–1), in consultation with appropriate Headquarters program officials. It is the responsibility of the Center to notify Code HS–1 sufficiently in advance of the desired presentation date in order to permit scheduling and preparation by Headquarters staff.

(b) *Advance information.* Not less than ten working days in advance of the scheduled prenegotiation presentation, the Center shall provide Code HS–1 with the following:

(1) Five copies of the Center's PPM.

(2) Five copies of any briefing charts and/or vu-graphs to be used in the presentation. Briefing charts and/or vu-graphs shall summarize key points/factors identified in the PPM and should be grouped in the same manner as presented in the PPM. Only key words or expressions should be used on the charts or vu-graphs—complete sentences are not necessary.

(3) One copy each of the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(c) *Waiver.* The Assistant Administrator for Procurement may waive the presentation requirement where, based on Headquarters review of the advance information provided under paragraph (b)(2) above, it is clear that Center personnel are thoroughly prepared to enter into negotiations.

(d) *Safeguarding prenegotiation material.* Prenegotiation data is very sensitive in nature and should be handled accordingly. Close coordination with Program Operations Division (HS–1) personnel should be maintained to ensure that prenegotiation material is not compromised during transit. Distribution of prenegotiation data shall be made on a need-to-know basis.

1815.808 Price negotiation memorandum.

(a) The NASA Contract Negotiation Memorandum serves as a detailed summary of (1) the technical, business, contractual, pricing and other aspects of the contract negotiated, and (2) the methodology and rationale used in arriving at the final negotiated agreement.

(b) Normally, the Contract Negotiation Memorandum is a "stand alone" document. However, when a PPM has been prepared under 1815.807 the subsequent Contract Negotiation Memorandum need explain (1) only the differences between the prenegotiation position and the final negotiated settlement, and (2) the areas identified in FAR 15.808(a).

1815.870 Subcontract price redetermination.

1815.870–1 General.

When subcontracts have been placed on a price redetermination or fixed-price incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced the amount included for subcontracting is reasonable, *e.g.*, where realistic cost or pricing data on subcontract efforts is available. However, even though the available cost data is highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices that are lower than those predicted in redetermining the prime contract price, other circumstances may require the prompt negotiation of the final contract price. In such a case, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification the clause prescribed at 1815.870–2.

1815.870–2 NASA contract clause.

Insert the clause at 1852.215–71, Adjustment for Subcontract Price Redetermination in contract modifications.

1815.871 Procedures for identifying contractor's unallowable costs.

(a) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and FAR 31.201–6 will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that—

(1) A greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings, and claims;

(2) They expedite the negotiation process; and

(3) They may reduce the scope of reviews performed by audit and other technical and procurement personnel.

(b) The responsible Federal Contract Audit organization shall review the contractor's procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant Administrative Contracting Officer and, as appropriate, contracting officers having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices, and techniques for—

(1) Assignment of responsibilities within the organization for reviewing and approving claims against the government;

(2) Identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable, or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(3) Identification and computation of directly-associated costs;

(4) Assurance that unallowable and directly-associated costs are not included in estimated costs proposed or in incurred amounts claimed by the contractor;

(5) Coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(6) Assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(c) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

Subpart 1815.9—Profit

1815.902 Policy.

As authorized by FAR 15.902, NASA has established a structured approach for determining profit or fee objectives. This approach, described at 1815.970, is based on the profit-analysis factors appearing at FAR 15.905 and shall be used to determine a profit or fee objective for the conduct of negotiations in those acquisitions that require cost analysis except the following:

(a) Architect-engineer contracts.

(b) Management contracts for operation and/or maintenance of Government facilities.

(c) Construction contracts.

(d) Contracts primarily requiring delivery of material supplied by subcontractors.

(e) Termination settlements.

(f) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement).

(g) Contracts having unusual pricing situations where the structured approach is determined to be unsuitable and the exemption is justified in writing and authorized by the Procurement Officer.

1815.970 NASA structured approach for profit or fee objective.

(a) The following factors shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each factor on NASA Form 634, Structure Approach Profit/Fee Objective, shall be used in all instances where the structured approach is used.

(b) The contracting officer shall first measure the "Contractor Effort" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the contracting officer. The amount calculated for the cost of money for facilities capital is not to be included for the computation of profit as part of the cost base.

(c) The suggested categories under the Contractor Effort are for reference purposes only. Often individual proposals will be in a different format; but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(d) After computing a total dollar profit for the Contractor Effort, the contracting officer shall calculate the specific profit dollars assigned for cost risk, investment, performance, socio-economic programs, inventive developmental contributions, and additional factors. This is accomplished by multiplying the total Government Cost Objective, exclusive of any cost of money for facilities capital, by the specific weight assigned to the elements within the Other Factors category. NASA Form 634 should be used, as appropriate to facilitate the calculation of this profit objective (calculating Inventive and Developmental Contributions and Unusual Pricing Agreements and combining them under Special Situations).

(e) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as set forth in 1815.970–1, 1815.970–2, and 1815.970–3.

(f) The structured approach was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the structured approach can be used as a basis for arriving at fee objectives for nonprofit organizations. Therefore, the structured approach, as modified in paragraph (f)(2) below, shall be used to establish fee objectives for nonprofit organizations. The modifications should not be applied as deductions against historical fee levels, but rather, to the fee objective for profit organizations as calculated under the structured approach.

(1) For purposes of this subparagraph, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where fees are involved, an adjustment of up to 3 percent will be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(i) Tax position benefits,

(ii) Granting of financing through letters of credit,

(iii) Facility requirements of the nonprofit organization, and

(iv) Other pertinent factors which may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

1815.970–1 Common factors.

(a) *Contractor effort.* This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and materials into the final product called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. A major consideration, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed, and the unusual demands of the contract, such as whether the project involves a new approach unrelated to existing equipment or only refinements on existing equipment. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(1) *Material acquisition (subcontracted items, purchased parts, and other material).* Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials, including special tooling. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for example, obtain the material and tooling by routine orders from readily available supplies (particularly those of substantial value in relation to the total contract cost), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements. Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts, and select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition. These determinations should be made for purchases of raw materials or basic commodities, purchases of processed material including all types of components of standard or near-standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end-item. In the application of the criterion, it should be recognized that the contractor's purchasing program might make a substantial contribution to the performance of the contract. This might be applicable in the management of subcontracting programs involving many sources, involving new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative. Recognized costs proposed as direct material costs such as scrap charges shall be treated as material for profit evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205–26(e), they shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, *i.e.*, material, labor, and overhead.

(2) *Direct labor (engineering, service, manufacturing, and other labor).* Analysis of the various items of the cost content of the contract should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing, skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or

unusual or scarce engineering talent needed in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance and the corresponding need for engineering supervision and coordination should be evaluated. Such circumstances as whether the calibre or class of engineer involved is that of an "idea-man," or whether the contractor is required by the contract to assign to the work, because of its nature, unusually skilled talent should be considered as part of the evaluation. Service contract labor should be evaluated in a like manner by assigning higher weights to engineering or professional type skills and lower weights to semi-professional or other type skills required for contract performance. Similarly, the variety of manufacturing and other categories of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, categories of labor (*i.e.*, quality control, receiving and inspecting, etc.) which do not fall within the definition for engineering, service, or manufacturing labor may be categorized as appropriate. However, the same evaluation considerations as outlined above will be applied.

(3) *Overhead and general management (G&A).*

(i) Analysis of these overhead items of cost includes the evaluation of the make-up of these expenses and how much they contribute to contract performance. To the extent practicable, analysis should include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses such as utilities and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole.

(ii) It is not necessary that the contractor's accounting system break down overhead expenses within the classification of engineering overhead, manufacturing overhead, other overhead pools, and general and administrative expenses (G&A), unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system only reflects one overhead rate on all direct labor need not change its system (if CAS exempt) to correspond with the above classifications. The contracting officer, in an evaluation of such a contractor's overhead rate, could break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and follow the appropriate evaluation technique.

(iii) Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a new program for an item which is on the cutting edge of the state of the art will cause more problems, require more managerial time, and abilities of a higher order than one which is a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward since many of the problems should have been solved. In any event, an evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses in connection with each procurement action for substantially the same product with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, that weight assigned may be used for future procurements with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or the factors discussed in paragraph (a)(3)(iii) above are involved.

(4) *Other costs.* Include all other direct costs associated with contractor performance under this item (e.g., travel and relocation, direct support, and consultants). Analysis of these items of cost should include (i) the significance of the cost to contract performance, (ii) nature of the cost, and (iii) how much they contribute to contract performance.

(b) *Contract cost risk.* The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit or fee should be less than where the contractor assumes all the risk. In developing the pre-negotiation profit objective, the contracting officer will need to consider the type of contract anticipated to be negotiated and the contractor risk associated therewith when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This factor should be one of the most important in arriving at pre-negotiation profit objectives.

(1) Evaluation of this risk requires a determination of (i) the degree of cost responsibility the contractor assumes, (ii) the reliability of the cost estimates in relation to the task assumed, and (iii) the complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, such risks on the part of the contractor as reputation, losing a commercial market, risk of losing potential profits in other fields, or any risk on the part of the contracting office such as the risk of not acquiring an effective space vehicle, are not within the scope of this factor.

(2) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are cost-plus-fixed-fee contract requiring the contractor to use its best efforts to perform a task and a firm fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility. Whereas a firm fixed-price contract would reflect a complete assumption of cost responsibility, where proper contract type selection has been made, the regard for risk by contract type would usually fall into the following ranges:

Cost Type Contracts: 0–3 percent
Fixed-Price Type Contracts: 3–7 percent

(3) The second determination is that of reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior experience assists the contractor in preparing reliable cost estimates on new procurements for similar equipment. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(4) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(i) Within the above ranges, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to ½ percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the above cost range with weightings directly related to such factors as confidence in target cost, share ratio of fee(s), etc. The range for fixed-price contracts is wide enough to accommodate the many types of fixed-price arrangements. These include fixed-price-incentive, firm-fixed-price with economic price adjustment, fixed-price with prospective or retroactive price redetermination, and firm-fixed-price contracts. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with reqtirements for prototypes or hardware reaching the top end of the range.

(ii) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It could cause risk to increase or decrease in terms of both cost and performance. This consideration should be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation may, as a result, be below the range which would otherwise apply for the contract type being proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of the contractor's risk.

(iii) In making a contract cost risk evaluation in a procurement action that involves definitization of a letter contract, unpriced change orders, and unpriced orders under BOA's, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances; not just by the portion of costs incurred, or percentage of work completed, prior to definitization.

(iv) Time-and-material and labor-hour contracts will be considered to be cost-plus-fixed-fee contracts for the purpose of establishing profit weights, unless otherwise exempt under 1815.902 in the evaluation of the contractor's assumption of contract cost risk.

(c) *Investment.* NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. The evaluation of this factor should include an analysis of the following:

(1) *Facilities.* To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities which significantly contribute to lower total contract costs should be provided with additional profit. On the other hand, contractors who rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit. Cases between the above examples should be evaluated on their merits with either a positive or negative adjustment, as appropriate, in profit being made. However, where a highly facilitized contractor is to perform a contract which does not benefit from this facilitization or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(2) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for a capital turn-over-rate on the contract which is less than the contractor's or the industry's normal capital turn-over-rate.

(d) *Contractor's performance.* The contractor's past and present performance should be evaluated in such areas as quality of product, meeting performance schedules, efficiency in cost control (including need for and reasonableness of cost incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions, and management of subcontract programs. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit or fee.

(e) *Federal socio-economic programs.* This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of contractor's successful participation in the Government sponsored programs such as small business, small disadvantaged business, labor surplus programs, and energy conservation efforts. The contractor's policies and procedures which energetically support Government socio-economic programs and achieve successful results should be given positive consideration. Conversely, failure or unwillingness on the part of the contractor to support Government socio-economic programs should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(f) *Inventive and development contributions.* (1) The extent and nature of contractor-initiated and financed independent development should be considered in developing the profit objective. The importance of the development in furthering space and aeronautical purposes, the demonstrable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources should be weighed.

(2) This factor need not be limited to situations which only increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract (e.g., products with commercial application).

1815.970-2 Additional factors—unusual pricing agreements.

Occasionally, unusual contract pricing arrangements are made with the contractor wherein it agrees to participate in the sharing of contract cost or agrees to accept a lower profit or

fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit objective.

1815.970–3 Facilities capital cost of money.

When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with FAR 31.205–10(a) (see FAR 15.904 and 52.215–30 for related contract clause).

1815.971 Payment of profit or fee under letter contracts.

It is NASA policy to pay profit or fee on definitized contracts only. Therefore, contractors shall not be paid any profit or fee under letter contracts except as provided in the appropriate Termination clause for letter contracts (see 1852.249–7001 and 1852.249–7002). (See 1816.603–70(g).)

Subpart 1815.10—Preaward and Postaward Notifications, Protests, and Mistakes

1815.1002 Debriefing of unsuccessful offerors.

The policies and procedures governing debriefing are in NMI 5103.1, debriefing of Unsuccessful Companies in Competitive Negotiated Procurements and, as applicable, paragraph 504 of NHB 8030.6, Guidelines for Acquisition of Investigations.

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

Sec.
1816.203 Fixed-price contracts with economic price adjustment.
1816.203–4 Contract clauses.

Subpart 1816.3—Cost-Reimbursement Contracts

1816.301 General.
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Subpart 1816.4—Incentive Contracts

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Subpart 1816.5—Indefinite-Delivery Contracts

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1816.603 Letter contracts.
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Subpart 1816.7—Agreements

1816.702 Basic agreements.
1816.702–70 Content and form.
1816.702–71 Responsibilities and procedures.
1816.703 Basic ordering agreements.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1816.2—Fixed-Price Contracts

1816.203 Fixed-price contracts with economic price adjustment.

1816.203–4 Contract clauses.

(a) When neither of the clauses prescribed in FAR 16.203–4(a) or (b) is appropriate, the contracting officer may use a clause prescribed in paragraph (b)(1) or (2) below or an alternate clause approved by the Assistant Administrator for Procurement.

(b) When applicable, the contracting officer will insert one of the clauses at 1852.216–7001 or 1852.216–7002 in accordance with following instructions:

(1) *Economic Price Adjustment for Basic Steel, Aluminum, Brass, Bronze or Copper Mill Products.* The price adjustment clause at 1852.216–7001 is authorized for use in fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when an established catalog or market price exists for the particular product being procured and has been verified in accordance with criteria in FAR 15.804–3(c). The ten percent figure in paragraph (c)(1) of the clause shall not be exceeded unless approved by the Procurement Officer. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with the criteria in FAR 15.804–3(c) and as required by paragraph (c)(4) of the clause.

(2) *Economic Price Adjustment for Nonstandard Steel Items.* The price adjustment clause at 1852.216–7002 is authorized for use in fixed-price supply contracts when (i) the contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause and (ii) the items being procured are nonstandard steel items made wholly or in part of standard steel mill items. The 110 percent figure in paragraph (e) of the clause shall not be exceeded unless approved by the Procurement Officer after coordination with the installation Financial Management Officer.

(c) The contracting officer shall also coordinate with the installation Financial Management Officer before exceeding the ten percent limit in paragraph (c)(1) of the clause at FAR 52.216–2, 52.216–3, and 52.216–4.

(d) The contracting officer may modify the clause at FAR 52.216–4 for use in formally advertised procurements (see 1816.203–4(b)).

(e) *Adjustments based on labor or material costs (cost index method).* (1) As an alternative to the clauses at FAR 52.216–2, 52.216–3, or 52.216–4, consideration should be given to inclusion of a special economic price adjustment clause designed to minimize contingency pricing and prepared under the guidelines listed in (c) below, when (i) there will be an extended period of performance with significant costs to be incurred beyond one year after commencement of contract performance, (ii) the contract amount subject to adjustment is substantial and (iii) the economic variables for labor and material are determined to be too unstable to reflect a reasonable division of risk between the parties absent economic price adjustment provisions.

(2) All economic price adjustment clauses utilizing indices require advance approval by the Assistant Administrator for Procurement. Requests for such approval shall be submitted to the Office of Procurement, NASA Headquarters, Code HS–1.

(3) The following factors may be considered in preparing a price adjustment clause meeting the criteria of paragraph (e)(1) above including construction of appropriate indices:

(i) The clause should not be overly complex;

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor).

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance.

(iv) The clause must have a positive and accurate identification of the applicable index(es) upon which adjustments will be based and provide appropriate economic fluctuation in the event of the discontinuance of the publication of the movement of the designated index. This might include the substitution of another index if the time remaining would so justify and an appropriate index is reasonably available, or some other method for repricing of the remaining portion of the work to be performed. There should not normally be any need to make an

adjustment in the event computation of the indentified index is altered; however, provision may be made to adjust the economic fluctuation computations in the event there is such a substantial alteration to the method of computing the index as to negate the original intent of the parties. When an index to be used is subject to revision (*e.g.*, the Bureau of Labor Statistics Producer Price Indexes), The economic price adjustment clause shall further specify that any economic price adjustment shall be based upon the applicable revised index.

(v) An index should be structured to encompass a large sample of relevant items yet bear a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to the contract performance, yet must be significantly broad so as to assure the minimal effect of any single company, including the anticipated contractors.

(vi) Construction of an index is largely dependent upon two general series published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). These are the Industrial Commodities portion of the Producer Price Index and the Wage and Income Series by Standard Industrial Classification for labor. Since there are no BLS published series currently available that relate directly to total prices of delivered items of aeronautical electronics, space property, etc., such composite indices from major portions of the two series described above should be made.

(vii) Normally not more than two indices should be used, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should provide for adjustment from the beginning of the contract or from such period of time that the rate of expenditure is commensurate with the administrative cost and effort to adjust, but it should not provide for adjustment beyond the original contract performance period.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to total contract price) in lieu of actual cost incurred. In the event the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, shall be determined by the contracting officer in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited in order that all companies may compete on an equal basis. If the clause is to be used in a non-competitive procurement, the labor and material allocations as determined by the contracting officer may be subject to negotiation and agreement.

(xi) The clause should state that percentage of the contract price subject to price adjustment. Normally, adjustments would not be applied to the profit portion of the contract. Additionally, the labor and material portions of the contract must be examined to exclude any areas that do not require adjustment. It may not be necessary, for example, to include all subcontracting as being subject to escalation because some of the subcontracting could be for shorter periods of time during the early life of the contract and, would be covered therefor, by firm priced subcontracting. It may be possible to exclude certain areas of overhead from escalation protection; for example, depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges are illustrated as some of the areas that should be examined in detail. In the same manner, consideration should be given to the necessity to include economic fluctuation protection covering that portion of labor for the period of time for which a definitive union agreement exists without additional factoring for such things as cost of living increases. Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuation in the economy. That portion of the contract which is determined to be proper for economic fluctuation protection shall then be allocated to specific periods of time (*e.g.*—quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events positive for price adjustments. Adjustments should be of such a frequency so as to afford the contractor appropriate economic relief without at the same time creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provision shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges, above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified except in the event of partial termination of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provision for economic price adjustment.

(f) Consistent with the factors set forth in (e)(3) above, the contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

(g) When economic price adjustment provisions are included in contracts that do not require submission of cost or pricing data as provided for in FAR 15.804–2 it will be the responsibility of the contracting officer to obtain adequate information to establish the base line from which adjustments will be made. In addition, the contracting officer may require verification of the data submitted to the extent considered necessary to permit reliance upon it as a reasonable base line.

(h) The contracting officer shall insert the provision at 1852.216–7003, Evaluation of Bids Subject to Economic Price Adjustment, in all solicitations and contracts that contain an economic price adjustment clause.

Subpart 1816.3—Cost-Reimbursement Contracts

1816.301 General.

1816.301–3 Limitations.

The determination and findings required by FAR 16.301–3(c) may be signed by the contracting officer for individual purchases and contracts.

1816.303 Cost sharing contracts.

NASA's Appropriation Acts for several years have included provisions

requiring cost sharing by the contractor under research contracts resulting from unsolicited proposals. In accordance with the foregoing, the following basic guidelines will be implemented in the negotiation of all research contracts and in supplements to such contracts which required additional funding.

(a) *When cost sharing is applicable.* (1) Except as provided in paragraphs (b)(1) and (2) below, cost sharing by non-Federal organizations is mandatory in any contract for basic or applied research which results from an unsolicited proposal.

(2) Cost sharing by non-Federal organizations which is not mandatory under paragraph (a)(1) above may nevertheless be accepted when voluntarily offered by a performing organization.

(b) *When cost sharing is not applicable.* (1) Cost sharing is not applicable to contracts for basic or applied research resulting from an unsolicited proposal when the offeror certifies in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research and that it has no means of recovering any cost sharing on such projects. In these situations, where there is no measurable gain to the performing organization, there is, therefore, no mutuality of interest and it would not be equitable for the Government to require cost sharing.

(2)(i) The activities of educational institutions under NASA research grants, cooperative agreements, and contracts are of benefit only to NASA and thus would not normally justify cost sharing, *i.e.*, NASA's policy of normally reimbursing universities fully for research performed on its behalf would apply. However, in order to establish on a case-by-case basis that there is no clear indication of significant future benefit or measurable gain and that cost sharing does not apply, the contracting officer shall document the file with a determination that is substantively the same as required in paragraph (b)(1) above. The determination shall identify the information on which it is based. If the determination cannot reasonably be made from the available material, the contracting officer will request the offeror to certify as in paragraph (b)(1), above. Blanket procedures for obtaining certifications from offerors for all cases on a routine basis shall not be established.

(ii) Cost sharing by educational institutions may nevertheless be accepted when voluntarily offered provided the institution is aware of NASA's policy that amount of cost sharing is not a factor in the determination to support a given proposal.

(c) *Amount of cost sharing*—(1) *Educational institutions and affiliated not for profit institutions.*

(i) Cost sharing for such institutions normally may vary from one percent to as much as five percent of the costs of the project. Normally, it should be presumed that the cost sharing is appropriate if it falls within the one to five percent range.

(ii) NASA does not request inclusion of cost sharing information in proposals from educational institutions. If it is determined that cost sharing is applicable, a cost sharing offer will be requested during negotiations.

(2) *Other performing organizations.* (i) Cost sharing for other organizations may vary from less than one percent to fifty percent or more of the costs of the research. Mutuality of interest in the results of the work being performed should be of primary significance in assessing the appropriateness of any particular level of cost sharing within the foregoing ranges.

(ii) Factors which may be considered in determining mutuality of interest include:

(A) The potential of the contractor to recover its contribution from non-Federal sources;

(B) The extent to which a particular area of research requires special stimulus in the national interest; and

(C) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise or competitive position.

(d) *Implementation.* The following policies and procedures implement the basic guidelines above.

(1) *Payment of fee or profit.* Normally, no fee or profit will be paid to a contractor, and only an agreed portion of allowable costs will be reimbursed. However, when required to reach agreement, fee- or profit-bearing contracts may be awarded, provided that the total contract value, *i.e.*, the amount of allowable costs plus the fee required, must not exceed the total amount that would have been recognized as the contractor's share under a straight cost-sharing arrangement.

(2) *Method of cost sharing.* Cost sharing shall be accomplished by a contribution of part or all of one or more elements of allowable cost of the work being performed and normally shall be expressed as a stated minimum percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(3) *Documentation.* Grant, cooperative agreement, and contract files shall contain appropriate documentation setting forth the reasons for cost sharing and supporting the amount of cost sharing agreed upon. For educational institutions, the reasons for cost sharing which exceeds five percent or the amount originally offered will be documented.

(4) *Contract clause.* The clause at 1852.216–7004 shall be inserted in each contract in which costs are shared by the contractor pursuant to 1816.303.

1816.370 Forms.

Contractors shall use the NASA Form 779, Assignee's Release, at 1853.216–70(d) and NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts, at 1853.216–70(d) to fulfill the assignment and release requirements of the clauses prescribed at FAR 16.307 (a) and (g).

Subpart 1816.4—Incentive Contracts

1816.405 Contract clauses.

As authorized at FAR 16.405(e) the contracting officer shall insert the clause at 1852.216–7004, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.506 Ordering.

Orders may be placed by written telecommunication if the contracting office retains all contract administration functions.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603–70 Information to include in a letter contract.

Although there is no set format for a letter contract, certain items must be addressed either in the letter portion of the letter contract or in an attachment to it. The following listing of items, not intended to be all-inclusive, applies to letter contracts:

(a) Signature of the contracting officer.

(b) Provision for written acceptance by the contractor.

(c) Statement of work.

(d) Provision for delivery or performance schedule and place of inspection and acceptance.

(e) Maximum dollar amount of Government liability and a statement

that expenditure or obligation in excess of that amount shall be at the contractor's own risk.

(f) Target date for negotiation and execution of a definitive contract and a statement of the type of contract contemplated.

(g) Statement that no profit or fee shall be paid under the letter contract except as provided in the Termination clause (see 1815.971).

1816.603–71 Information to be furnished when requesting authority to issue a letter contract.

(a) Requests for authority to issue letter contracts shall be signed by the Procurement Officer and submitted to the Assistant Administrator for Procurement (Code HS–1), and shall include the following:

(1) Name and address of proposed contractor.

(2) Location where contract is to be performed.

(3) Contract number, including modification number if applicable.

(4) Brief description of the work or services to be performed.

(5) Peformance period, or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed (fixed-price, cost-plus-award-fee, etc.).

(10) Statement that the definitive contract will contain all required clauses or that deviations therefrom have been approved.

(11) Statement as to the necessity and advantage to the Government of the use of the proposed letter contract.

(12) If a modification, date of letter contract approval and of execution.

(b) Promptly upon receipt of a request to issue a letter contract, the Assistant Administrator for Procurement will obtain the concurrence or comments of cognizant Officials-in-Charge of Headquarters Offices. Upon their receipt the Assistant Administrator for Procurement will advise the Procurement Officer of the disposition of the request.

Subpart 1816.7—Agreements

1816.702 Basic agreements.

1816.702–70 Content and form.

Basic agreements shall contain a set of "General Provisions." These general provisions shall include three groups of clauses. The first group, identified as "Section A," shall include all of the clauses made mandatory by Statute, Executive Order, the FAR and NASA FAR Supplement for use in negotiated research and development contracts. The second group, identified as "Section B", shall add clauses and/or modifications to the "Section A" clauses made mandatory by Statute, Executive Order, the FAR and NASA FAR Supplement for use in negotiated supply contracts. The third group, identified as "Section C", shall consist of clauses which may be made a part of each formal contractual document, depending upon their applicability to the particular procurement. The format set forth below may be adapted to fit specific circumstances:

Basic Agreement Between the United States of America and * * *

1. This Agreement is entered into as of the * * * day of * * * 19 * * * between the United States of America, hereinafter called the "Government", represented by the Contracting Officer and * * *, a corporation organized and existing under the laws of the State of * * *, hereinafter called "Contractor."

2. The clauses and provisions of Sections A, B, and C hereinafter set forth have been agreed upon by; the parties hereto for use in negotiated * * * type contracts between the parties, entered into on or after the date of this Agreement, and prior to its termination.

3. The clauses set forth in Section A shall apply to cost-reimbursement research and development contracts whereas cost-reimbursement supply contracts shall include the clauses in Section A modified by the clauses in Section B. These clauses are mandatory and shall, by reference or attachment, be incorporated in every such contract which makes reference to this Agreement. The clauses set forth in Section C are to be incorporated in individual contracts only when applicable and agreed to by the parties.

4. This Agreement, including Sections A, B, and C hereof, may be amended only by mutual agreement of the parties, and the Agreement may be terminated in its entirety by either party upon thirty (30) days written notice to the other party, except that this Agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, amendment, or addition to this Agreement which is required by statute, Executive Order, the FAR, or NASA FAR Supplement. No deletion, modification, addition to, or termination of this Agreement shall affect any contracts theretofore entered into between the parties in which this Agreement or a portion thereof has been incorporated except that letter contracts citing this Agreement shall, when formalized, contain the latest modification hereto and any required NASA implementations of Executive Orders, Federal Statutes, the FAR or NASA FAR Supplement.

5. This agreement shall continue in effect until terminated in accordance with paragraph four (4) above or until superseded by another Agreement. This Agreement should shall be reviewed, as a minimum, annually before the anniversary of its effective date, and revised to conform with all requirements of Federal Statutes, Executive Orders, the FAR, and NASA FAR Supplement. Such revision shall be evidenced by an Agreement modifying this Agreement or by the issuance of a superseding Basic Agreement.

6. This Agreement shall not be referred to by the Contractor in bids submitted in response to invitations for bids nor become a part of any contract placed through the process of formal advertising.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above written:

(Name of Company) _____

By _____

(Signature of Authorized Individual)

Typed or Printed Name _____

Title _____

United States of America

By _____

(Signature of Contracting Officer)

Typed or Printed Name _____

1816.702–71 Responsibilities and procedures.

(a) The Assistant Administrator for Procurement, NASA Headquarters, is responsible for negotiation of all basic agreements and amendments thereto. Contracting offices may not enter into basic agreements nor alter existing basic agreements without the prior written authorization of the Assistant Administrator for Procurement.

(b) Where a contracting office is authorized to enter into a basic agreement with a particular contractor, an introductory paragraph to the basic agreement shall include the clause at FAR 52.204–1, Approval of the Contract, with the word "contract" deleted from the title and text of the clause and the words "basic agreement" inserted in lieu thereof.

(c) Prior to the negotiation for renewal of a Basic Agreement or of a special clause requested by a contractor, each field installation, contracting office, and concerned Headquarters offices will be informed and will be asked to comment on any special items to be discussed.

(d) Basic agreements submitted to the Assistant Administrator for Procurement for approval, shall include the following information:

(1) A memorandum of negotiation describing each deviation from the FAR and NASA FAR Supplement as it appears in the basic agreement together with supporting data required;

(2) A listing of all non-standard clauses used, the genesis of such clauses, and the reasons for use in the basic agreement;

(3) A résumé of all salient features of the agreement which will facilitate the review and approval consideration; and

(4) Documentation of the coordination effected between the negotiator and the procurement offices of other NASA field installations.

1816.703 Basic ordering agreements.

(a) Orders under a basic ordering agreement may be issued on Optional Forms 347, 348, or an Installation prescribed form.

PART 1817—SPECIAL CONTRACTING METHODS

Subpart 1817.1—Multiyear Contracting

Sec.
1817.102 Policy.

Subpart 1817.2—Options

1817.207 Exercise of options.

Subpart 1817.4—Leader Company Contracting

1817.401 General.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.504 Ordering procedures.

Subpart 1817.70—Procurement with Military Departments

1817.7000 Scope of subpart.
1817.7001 Authorization and policy.
1817.7002 NASA-Defense Purchase Request and acceptance.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1817.1—Multiyear Contracting

1817.102 Policy.

(a) *General.* Due to the nature of NASA's appropriations and agency mission, multiyear contracting is a technique that is generally not appropriate for use by this agency. Therefore, contracting officers shall not issue a multiyear solicitation without first obtaining written approval from the Assistant Administrator for Procurement, NASA Headquarters, Code HS–1.

(b) *Limitation.* Under 10 U.S.C. 2306(g), multiyear contracting is permitted for periods of not more than five years for certain types of services to be performed outside the 48 contiguous States and the District of Columbia. In such cases, a written determination and findings is required by 10 U.S.C. 2306(g) and 2311 at the approval levels listed below (this is in addition to the approval required under 1817.102(a) above):

(1) Contracts in excess of three years—Administrator or Deputy Administrator.

(2) Individual contracts that do not exceed three years—contracting officer.

Subpart 1817.2—Options

1817.207 Exercise of options.

Reporting of options exercised under FAR Subpart 17.2 shall be in accordance with the instructions for NASA Form 507, Individual Procurement Action Report (see 1853.204–70).

Subpart 1817.4—Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.504 Ordering procedures.

(a) It is the policy of NASA not to place Government agencies in direct competition with commercial sources. Prior to soliciting bids or proposals from commercial sources, it shall be determined by the Field Installation Director or designee (see NMI 5101.24, Delegation of Authority to Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters) whether to obtain supplies or services from other Government agencies. Solicitations shall not be sent to Government agencies. Current market prices, recent procurement prices, or prices obtained by informational bids as provided in FAR 15.405 may be used to ascertain whether procurement can be effected more economically from commercial sources.

(b) An order for services shall not be placed with an agency when such services can be performed as conveniently or more economically by private contractors.

(c) Delivery orders shall be placed on Optional Form 347, 348, or an Installation prescribed form. However, when the decision is made to procure energy services under DoD area-wide utility contracts, the method of ordering prescribed in the appropriate DoD area-wide contract will be used. The form may be modified to satisfy fiscal and administrative requirements of NASA, and to contain such additional contract provisions as may be contemplated or permitted by the DoD area-wide contract, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034.

Subpart 1817.70—Procurement With Military Departments

1817.7000 Scope of subpart.

This subpart contains policies and procedures, developed jointly by NASA and DOD, with reference to procurement of supplies or services by NASA from or through the Military Departments.

1817.7001 Authorization and policy.

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the procurement services, personnel, equipment, and facilities of the Military Departments with their consent, with or without reimbursement, and on a similar basis to cooperate with the Military Departments in the use of procurement services, equipment, and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their procurement services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to procurements for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments concerned have agreed to use its own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services for NASA, or performing services, and will not cite NASA funds on any Defense obligation or payment document.

1817.7002 NASA-Defense Purchase Request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting procurement of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with Subpart 1804.71. The form shall not be used for requesting:

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items which the Military Departments normally purchase and stock for military use or in-house services, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using

appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) To obtain materials from the Air Force Missile Procurement Fund, the procedures of 1808.072 will be followed.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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Subpart 1819.2—Policies

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1819.810 Contract administration.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1819.1—Terms and Size Standards

1819.101 Explanation of terms.

"Director of Small and Disadvantaged Business Utilization" means that NASA officer who—

(a) Is appointed by the NASA Administrator;

(b) Is responsible only to and reports directly to the NASA Administrator or deputy;

(c) Is responsible for the implementation and execution of the functions and duties under sections 8 and 15 of the Small Business Act which relate to NASA;

(d) Has supervisory authority over NASA personnel to the extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of the Small Business Act;

(e) Assigns a small business technical adviser to each office to which the SBA has assigned a procurement center representative; and

(f) Cooperates, and consults on a regular basis with the Administration regarding performance of the functions and duties described in paragraph (c) above.

"Small business specialist" is that person who (a) is appointed by the Head of each NASA installation having procurement responsibilities and (b) is the central point of contact for all small business and labor surplus area matters. See 1819.201 (b) and (c) for a detailed description of this position. This person is synonymous with the Small and Disadvantaged Business Utilization Specialist (see FAR 19.201(d)).

"Small business technical adviser" means that NASA officer at each NASA center to which SBA has assigned a procurement center representative—

(a) Who is a full-time employee of the contracting activity and is well qualified, technically trained, and familiar with the supplies or services acquired by the activity, and

(b) Whose principal duty is to assist the SBA procurement center representative in performing those duties and functions relating to sections 8 and 15 of the Small Business Act.

Subpart 1819.2—Policies

1819.201 General policy.

(a) *NASA headquarters.* The Assistant Administrator for Procurement is responsible for the general supervision and coordination of the NASA Small Business Program. The Director of the Office of Small and Disadvantaged Business Utilization is responsible for developing the NASA Small Business Program, advising the Assistant Administrator for Procurement and other NASA officials on small business matters, and representing NASA before other Government agencies and industry on matters related to the small business program.

(b) *Installations.* The Head of each installation having procurement responsibilities shall designate a qualified individual in the contracting office as a "small business specialist" to provide a central point of contact to which small business concerns may direct inquiries concerning participation in the NASA procurement program and small business matters. The small business specialist shall also perform such other functions as specifically directed to perform by this subpart for which the Procurement Officer may prescribe for the purpose of implementing the small business program, including the assignment of responsibility for the Labor Surplus Area Program described in FAR Part 20. When the Head of an installation considers that the volume of procurement or the functions relating to procurement at the installation does not warrant a full-time small business specialist, these duties may be assigned to procurement personnel on a part-time basis.

(c) *Small Business Specialists.* The small business specialist appointed under paragraph (b) above shall perform the following duties, as determined appropriate to the installation by the Procurement Officer:

(1) Maintain a program designed to locate capable small business sources for current and future procurements, through SBA or other methods.

(2) Coordinate inquiries and requests for advice from small business concerns on procurement matters.

(3) Prior to issuance of solicitations or contract modifications for additional supplies or services, determine that small business concerns will receive adequate consideration including initiation of set-asides (see FAR Subpart 19.5). This determination may be made jointly with the contracting officer or may be in the form of a recommendation to the contracting officer. Disagreements

between the small business specialist and the contracting officer on proposed set-aside actions shall be resolved by the Procurement Officer whose decision shall be final except in those cases where an SBA representative intervenes as an interested party. (See FAR 19.505 as to resolution of disagreements with SBA recommendations on set-asides.)

(4) If small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications or drawings for the current or future procurements, as appropriate, are available.

(5) Review procurement programs for possible breakout of items suitable for procurement from small business concerns.

(6) Advise small business concerns regarding the financial assistance available under existing laws and regulations, assist such concerns in applying for financial assistance, and also assure that requests by small business concerns for financial assistance are not treated as a handicap in securing the award of contracts.

(7) Participate in determinations concerning responsibility of a prospective contractor (see FAR 9.103), whenever small business concerns are involved.

(8) Participate in the evaluation of a prime contractor's small business subcontracting program (see FAR 19.705–4).

(9) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the small business program.

(10) Assure that participation of small business concerns is accurately reported.

(11) Notify the Procurement Officer of possible contracting opportunities in or near sections of concentrated unemployment or underemployment and of areas of persistent or substantial labor surplus.

(12) Make available to SBA copies of solicitations when so requested.

(13) Act as liaison between the contracting officer and SBA field offices and representatives in connection with set-asides, certificates of competency and any other matters in which the small business program may be involved. Procurements in which certificates of competency are requested shall be reported to the Assistant Administrator for Procurement, NASA Headquarters. The report should contain a description of the requirement, a list of the offerors, and the contract prices specified in the offers as submitted and the reason for the proposed rejection of an otherwise acceptable small business offer. Pertinent dates such as the required date for the completion of the procurement, the date of the request for the certificate of competency, etc., should also be furnished.

(14) In cooperation with the contracting officer and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of the contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(15) When a small business firm's offer has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that small business firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards.

1819.202 Specific policies.

1819.202–5 Data collection and reporting requirements.

Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained and reported through the NASA procurement reporting system prescribed in Subpart 1804.6.

Subpart 1819.3—Determination of Status as a Small Business Concern

1819.302 Protesting a small business representation.

When the contracting officer determines in writing that award must be made without delay to protect the public interest, award will not be made prior to (a) 5 working days after the bid opening date for procurements placed through small business restricted advertising or (b) the deadline date for submitting a protest set forth in the notification to the apparently unsuccessful offeror(s) for small business set-aside procurements placed through conventional negotiation. (See FAR 19.302(h)(1).)

Subpart 1819.4—Cooperation with the Small Business Administration

1819.401 General.

All NASA contracting offices are responsible for consulting and cooperating with the SBA in carrying out the purposes of the Small Business Act.

1819.402 Small Business Administration procurement center representatives.

(a) The contracting office shall include in the appropriate solicitation list or in any group of firms to be solicited in specific procurements, the names of firms submitted by SBA, unless there is a valid reason for not so doing.

(b) If the contracting officer determines not to solicit a firm recommended by SBA in a particular procurement, and as a result no small business firm will be solicited, SBA may appeal such determination to the Procurement Officer.

1819.470 Access to procurement information.

Upon request, and subject to applicable security regulations, the small business specialist shall provide SBA representatives access to available or reasonably obtainable information, including technical data (including drawings and specifications), procurement history, and solicitation lists, and to procurement planning information. The SBA representative will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program.

Subpart 1819.5—Set-Asides for Small Business

1819.501 General.

(a) The contracting officer is responsible for either setting aside a requirement or documenting why a set-aside is inappropriate. The small business specialist is responsible for reviewing those procurements not set aside and for taking action in accordance with 1819.506.

1819.502 Setting aside acquisition.

1819.502–3 Partial set-asides.

(a)(1) Offers obtained under the clause at FAR 52.219–7 Notice of Partial Small Business Set-Aside from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply

to the set-aside award, and (iv) agreement to inclusion of the clause at FAR 52.215–1, "Examination of Records by the Comptroller General" in 7.104–5 and the clause at FAR 52.215–2, "Audit Negotiation."

(2) When the award of the no-set-aside portion has been made to a small business concern and the same concern is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses prescribed at FAR 15.106–1 and 15.106–2. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(3) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (a)(1) and (2) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

(b) For purposes of Subpart 1804.6 the non-set-aside portions shall be reported separately.

1819.503 Setting aside a class of acquisitions.

(a) The contracting officer shall retain copies of each class set-aside determination.

1819.505 Rejecting set-aside recommendations.

(a) NASA small business specialist may make a set-aside recommendation with respect to any individual or class set-aside except those on which an SBA representative has made a recommendation.

(b) If an SBA representative makes a recommendation, see FAR 19.505 for the procedure to be followed.

(c) If the small business specialist recommends that an individual procurement or class of procurements, or portion thereof, be set-aside the contracting officer shall promptly either:

(1) Concur in the recommendation, or

(2) Disapprove, stating in writing his reasons for disapproval.

(d) If the contracting officer disapproves the recommendation of the small business specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for review. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished under (f) below.

(e) All cases involving the noninitiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case under FAR 19.505.

(f) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual procurement or class of procurements or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the Procurement Officer (see 1819.201(b)) for decision. A memorandum of the decision by the Procurement Officer shall be placed in the contract file. After receipt of a decision from the Procurement Officer, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters, Code K.

(g) A signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

Subpart 1819.6—Certificates of Competency and Determinations of Eligibility

1819.601 General.

(a) In any procurement where the highest competence obtainable or the best scientific approach is needed, as in certain negotiated procurements of research and development, highly complex equipment, or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible, the certificate of competency procedure is applicable.

(b) A pre-award survey (see FAR 9.106) shall be made prior to a determination by a contracting officer that a small business concern is not responsible on a proposed award exceeding the small purchase limitation.

1819.602 Procedures.

1819.602–1 Referral.

A copy of the communication referring the matter to SBA shall be forwarded to the Assistant Administrator for Procurement, NASA Headquarters.

1819.602–3 Resolving differences between the Agency and the Small Business Administration.

(a) When there is a disagreement between the contracting officer and the SBA as in FAR 19.602–3(a), the contracting officer shall also forward through channels on an expedited basis a complete case file to the Assistant Administrator for Procurement with a request that the case be considered for appeal to SBA Headquarters. This file will include the data already furnished to SBA, SBA's rationale for proposing affirmative certificate of competency action, and the contracting officer's comments thereon. Procurement action shall be suspended until the contracting officer is informed by the Assistant Administrator for Procurement of the final decision in the case.

(b) If the Assistant Administrator for Procurement concludes that the request for certificate of competency action should be withdrawn and a contract awarded without benefit of a certificate of competency, the contracting officer will be so informed and provided written instructions on how to proceed with the procurement.

(c) If the Assistant Administrator for Procurement agrees with the recommended appeal action of the contracting officer, SBA Central Office will be requested to review the proposed affirmative certificate of competency action of the SBA Regional office.

1819.602-70 Reports on certificates of competency.

The NASA Director of Small and Disadvantaged Business Utilization shall be informed by the contracting activity small business specialist, in writing, on a quarterly basis, of all certificate of competency cases initiated during a particular quarter and of the final disposition made on cases during the quarter, including the number and dollar value of certificates of competency issued during the period. The information shall include company name, item being procured, solicitation number, dollar value of the procurement, and the date the case was submitted to SBA. In addition, advice and data will be furnished for all cases where (a) the small business concern elects not to file an application for a certificate of competency, (b) SBA declines to issue a certificate of competency, or (c) the contracting activity reverses the pre-award survey activity's negative finding concerning responsibility, withdraws the request for the certificate of competency, and makes the award. This reporting requirement shall be included in the Summary of Significant Matters related to the Small Business Program Reports Control No. 10000000029.

Subpart 1819.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1819.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1819.705-1 General support of the program.

The FAR permits the contracting officer to use an incentive clause with monetary rewards for increasing subcontract opportunities for small and small disadvantaged business concerns. It is a NASA policy that no clause of this nature be used in connection with the subcontracting program set forth in FAR Subpart 19.7.

1819.707 The Small Business Administration's role in carrying out the program.

Under the provisions of FAR 19.707(a)(2) and (3), 5 days are allotted for SBA review of solicitations and contracts subject to the subcontracting program. In the absence of an SBA request for the documents, the contracting officer may elect not to seek review.

Subpart 1819.8—Contracting With the Small Business Administration (the 8(a) Program)

1819.801 General.

In contracts for supplies, services, and research and development, it is the stated policy of the SBA to contract with only those small firms which have submitted a written business plan specifically outlining a reasonable approach to the attainment of the policy objectives of this program. This business plan, if approved by the SBA, will be the basis for NASA's consideration of participation in a section 8(a) program for the firm. In the execution of this policy, the SBA will furnish to the Assistant Administrator for Procurement, NASA Headquarters or to the Procurement Officer of a particular NASA installation, when the requested procurement is of a local nature, its request for a commitment to support the approved plan. SBA requests addressed to NASA Headquarters will be coordinated with appropriate installations.

1819.803 Selecting acquisitions for the 8(a) program.

(a) The SBA, under FAR 19.803, makes two separate requests to NASA regarding an 8(a) firm's participation (see FAR 19.803 (b) and (c)). The first request is based on the firm's 8(a) business plan (see 1819.801) and seeks NASA's general commitment to support the firm's plan, that is, to contract with that firm. If NASA commits itself to support the plan, the SBA then makes specific requests to NASA to make 8(a) awards for individual contracts.

(b) The SBA request for a commitment will show the extent to which procurement assistance is needed and an identification of the requirements sought from NASA (the identification of the supplies or services which the SBA may require in connection with a small firm's business plan will be developed by the SBA representatives. This may be accomplished through liaison with appropriate contracting offices either before or after the SBA's approval of a small firm's business plan as the SBA may elect. Small business specialists at NASA installations shall cooperate and assist the SBA representatives in developing identifying information for the requirements being sought from the contracting office. To the extent possible, identifying information furnished by the SBA will be definitive and include purchase descriptions and national stock numbers. The small business specialist shall, when practicable and feasible, arrange for such additional assistance as may be required from procurement, technical, and supply management officials so that the development of the identifying information may be meaningful. Current and future requirements of a small firm's business plan, if identified in meaningful terms, will enable NASA to relate the items to present and future procurement requirements).

(c) It will be the responsibility of the SBA to provide the NASA contracting officer written certification, as to SBA's competency to perform the contract. Such certification may be in the form of a statement in the SBA contract with the NASA contracting office, substantially as follows:

> SBA certifies that it is competent to perform the requirement as stated in this contract.

1819.804 Agency evaluation of the Small Business Administration's request for a commitment.

(a) In addition to considering specific requests for commitments to support the business plans submitted by the SBA under FAR 19.803(b), the NASA small business specialist or other responsible individuals shall review and evaluate, on a continuing basis, all procurement requirements to determine their suitability for referral to the SBA for 8(a) consideration. Upon completion of such evaluation, a recommendation concerning award to the SBA will be made to the contracting officer. In the event the contracting officer disagrees with the recommendation, the procedure in FAR 19.505 shall apply.

(b) After the SBA requested commitments have been evaluated or a specific procurement has been designated as suitable for 8(a) contracting, the cognizant contracting officer shall notify the SBA and the Director of Small and Disadvantaged Business Utilization. The notification will include the extent to which a section 8(a) contract may be placed with the SBA and the time frame within which the prime and subcontract actions must be completed to satisfy NASA's requirements. This notification represents a firm commitment by NASA to negotiate with the SBA, provided that there is no material change in requirements, availability of funds, or other pertinent factors. Within ten working days after notification, the SBA will establish contract with the installation and initiate negotiations of the section 8(a) contract. If negotiations with the installation contracting office have not been initiated by the SBA

within the time indicated, the Procurement Officer will notify the Director of Small and Disadvantaged Business Utilization of the intent to proceed with the procurement without further regard to the section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the requirement.

1819.806 Preaward considerations.

(a) A preaward survey of the SBA's contractor, as required by FAR 9.106, will not generally be requested by the NASA contracting officer. The SBA or the NASA contracting officer may request a cognizant contract administration office to assist in a review of a specific element pertaining to the SBA contractor's responsibility.

(b) Certified cost or pricing data, when required by FAR 15.804–2, or needed to determine an estimated current fair market price, shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor of cost or pricing data with a supporting certificate.

(c) Subsequent to agreement with SBA on satisfactory terms and conditions, including an estimated current fair market price and receipt of the SBA's reimbursable order for any business development expense (if appropriate), the contracting officer shall proceed with the award of a contract to the SBA.

(d) For follow-on year procurements in support of the SBA requested commitment, the SBA will initiate individual requests to NASA for each ensuing proposed section 8(a) contract. This process will permit NASA, prior to actual negotiations of follow-on section 8(a) awards, to verify the availability of requirements, funding, and other pertinent factors. It will be the responsibility of the SBA to provide certification to the cognizant NASA contracting officer for each section 8(a) contract under FAR 19.803(c).

1819.809 Preparing the contracts.

1819.809–1 General.

(a) *Supplies and services (including research and development).* (1) As required by FAR 19.809–1(a), the contracting officer shall prepare a Standard Form 26 for execution with the SBA without incorporating any required clauses (see FAR 52.101(e)) since they are not applicable to the SBA. "10 U.S.C. 2304(a)(17)" shall be cited as the authority for negotiation of this contract. This contract shall include a statement as follows:

It is agreed that the provisions of the Termination for Convenience of the Government, Changes, Disputes, and Default clauses which are included in the contract between the SBA and its Contractor shall be invoked in appropriate cases when requested by the NASA contracting officer. If the SBA does not agree with the NASA contracting officer's request, the case shall be referred to the Assistant Administrator for Procurement, NASA Headquarters, for decision.

Note.—Where a cost-reimbursement type contract is utilized, the following words shall be substituted in the above statement:

Termination (Cost-Reimbursement) in lieu of Termination for Convenience of the Government.

Excusable Delays in lieu of Default.

(2) The execution and distribution of contractual documents by the cognizant NASA contracting office shall comply with FAR Subparts 4.1 and 4.2. The contracting office shall accomplish internal NASA distribution of both the prime contract and the subcontract, and provide the SBA with a duplicate original copy of the executed prime contract and such additional authenticated, conformed or reproduced copies as requested by the SBA. The SBA shall provide the NASA contracting office with two duplicate original copies of the executed subcontract and such additional authenticated, conformed or reproduced copies as requested by the contracting office for internal NASA distribution. For purposes of fund obligation and payment, the NASA contracting office shall ensure that the NASA paying office identified in the contract is provided a signed copy of each contract.

(b) *Construction.* (1) In contracts for construction, it is the stated policy of the SBA to contract with only those small firms which have been approved by the SBA as supporting the policy objectives of FAR 19.801(a). In the execution of this policy, the SBA will furnish to the Assistant Administrator for Procurement or to the Procurement Officer of a particular NASA installation when the requested procurement is of a local nature, its request for a commitment(s) showing at least the following information:

(i) The identification of the SBA's contractor(s) and the capabilities and qualifications of the contractor(s) to accomplish various categories of maintenance, repair, alteration and construction work in such specific work project categories as mechanical, electrical, heat and air conditioning, demolition, building, painting, paving, earth work, water front work or general construction work;

(ii) The total extent to which procurement assistance is needed and an individual identification of the estimated dollar value in each category in which the SBA's contractor(s) have capabilities; for example, electrical up to $100,000, mechanical up to $100,000;

(iii) Any other information concerning the capabilities of the proposed contractor(s) which would be pertinent to the evaluation of the requested commitments.

(2) The Director of Small and Disadvantage Business Utilization will coordinate the evaluation of the SBA's request for a commitment(s) with installation contracting offices, to determine whether or to what extent NASA has proposed work projects for which funding is available, in those categories for which the SBA has indicated its contractors have capabilities to perform. In addition, the NASA small business specialist, or other responsible individual, shall review on a continuing basis, all construction procurement requirements to evaluate their suitability for referral to the SBA for 8(a) consideration. Upon completion of such evaluation, recommendation concerning award to the SBA will be made to the contracting officer. In the event the contracting officer disagrees with the recommendation, the procedure in FAR 19.503 shall apply. In these evaluations consideration shall be given to—

(i) The extent to which work project(s) of the type requested by the SBA are planned for procurement in the current fiscal year and, to the extent known, future fiscal years;

(ii) Required performance schedule;

(iii) Work project(s) of similar complexity and nature if there are no known work project(s) of the specific type requested;

(iv) Problems encountered in prior work project(s) of the type requested;

(v) Impact if slippage occurs in the performance schedule;

(vi) Impact if the work project(s) was procured historically by small business set-asides; and

(vii) Any other information concerning the work project(s) or the contractor which is pertinent to the evaluation of the requested commitment(s).

(3)(i) After the SBA requested commitments have been evaluated or a specific NASA construction requirement has been designated as suitable for 8(a) contracting, the cognizant contracting officer shall notify the SBA and the Assistant Administrator for Procurement. The notification shall contain information regarding the work project(s) as follows:

(A) A summary of the scope of the proposed work.

(B) Detailed Government cost estimates.

(C) Plans and specifications.

(D) Required performance schedules.

(E) Any other pertinent and reasonably available data.

(ii) This notification represents a firm commitment by NASA to negotiate with the SBA, provided there is no material change in requirements, availability of funds, or other pertinent factors. Within ten working days after notification, the SBA will establish contact with the installation and initiate negotiations of the section 8(a) contract. If negotiations with the installation contracting office have not been initiated by the SBA within the time indicated, the contracting office will notify the Assistant Administrator for Procurement of the intent to proceed with the procurement without further regard to the section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the work project.

(4) Provisions of the Miller Act regarding performance and payment bonds do not apply to the prime contract between NASA and the SBA, but do apply to the contract between the SBA and its contractor.

(5) Certified cost or pricing data, when required by FAR 15.804–2 or needed to determine an estimated current fair market price, shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor of appropriate cost or pricing data with a supporting certificate.

(6) It will be the responsibility of the SBA to provide written certification, as to its competency to perform the contract, to the contracting officer. Such certification may be made under FAR 19.803(c).

(7) Subsequent to agreement with SBA on satisfactory terms and conditions, including an estimated current fair market price, and receipt of the SBA's reimbursable order for any business development expense (if appropriate), the contracting officer shall proceed with the award of a contract to the SBA.

(8) To assist the SBA, NASA contracting offices shall prepare two contract sets as follows:

(i) Prepare appropriate contractual documents for use by the SBA with the SBA's contractor. These documents shall be completed, except for signatures and award information (see 1819.809–1), based on information requested or furnished by the SBA. This contract shall incorporate the required clauses and standard forms as required.

(ii) Prepare Standard Form 1442 or other appropriate forms for execution with the SBA without incorporating any required clauses. The required clauses are not applicable to the SBA. "10 U.S.C. 2304(a)(17)" shall be cited as the authority for negotiations of this contract. This contract shall include a statement as follows:

It is agreed that the provisions of the Termination for Convenience, Changes, Differing Site Conditions, Default-Damages for Delay-Time Extension, Suspension of Work, Disputes, Price Reduction, and Payments to Contractor clauses which are included in the contract between the SBA and its Contractor shall be invoked in appropriate cases when requested by the NASA Contracting Officer. If the SBA does not agree with the NASA Contracting Officer's request, the case shall be referred to the Assistant Administrator for Procurement, NASA Headquarters, for decision.

(9) The execution and distribution of procurement documents shall be in accordance with Part 1804 and as set forth herein.

1819.810 Contract administration.

To the extent consistent with NASA capability and resources, SBA contractors furnishing NASA requirements shall be afforded production assistance, including, where appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1822.1—Basic Labor Policies

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1822.7001 Policy.
1822.7002 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1822.1—Basic Labor Policies

1822.101 Labor relations.

1822.101–1 General.

(a) NASA contracting officers, in taking any of the actions prescribed or authorized in FAR Part 22 or Part 1822, will consult with and get advice from the labor relations advisor or other NASA official assigned that function at the installation concerned.

(b) NASA officials will not take any action regarding labor matters involving major policy determinations having a substantial impact on the activities of NASA or other Government agencies without the prior approval of the Director, Office of Industrial Relations (Code NR–31). A full report concerning any labor relations problem, particularly where a labor dispute significantly threatens to affect important NASA procurement, should be furnished to Code NR–31 in accordance with 1822.101–3.

(c) When a strike which may have an adverse effect on NASA programs is imminent or in progress at a prime's or subcontractor's plant, contracting officers shall—

(1) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and, where appropriate, of the actions NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission. If the strike is in a subcontractor's plant, the subcontractor will only be approached through the prime contractor;

(2) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant;

(3) Consider taking the actions at FAR 22.101–4.

1822.101–3 Reporting labor disputes.

Reports of actual or incipient labor-management disputes affecting NASA procurement, operations, or services shall be submitted as specified by the Director, Office of Industrial Relations. Reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made, as appropriate, to provide full information and cover new developments. Reports shall be sent by the most expeditious means required in view of the seriousness of the situation. When an immediate critical effect on NASA procurement is probable, the initial report shall be made by telephone and followed by an electronically transmitted message or a confirming letter. These reports shall describe, but need not be limited to—

(a) The nature of the actual or incipient dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved and the degree of emergency presented;

(b) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and the relation of the production involved to the total procurement program;

(c) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(d) The need for and availability of alternative facilities to furnish the items involved within the time required;

(e) The critical items, if any, which should be removed from the plant or work site or should be continued to be processed there with the consent of the parties to the dispute; and

(f) Recommended action to be taken by NASA.

1822.101–4 Removal of items from contractors' facilities affected by work stoppages.

When the contracting officer determines that it would be in the best interest of the Government to remove items or to arrange for shipment of urgently required items as provided in FAR 22.101–4(a)(2), the contracting officer shall first request approval from Code NR–31 and then take such action as shall be approved.

1822.101–70 Inspection of material during labor disputes.

Despite the existence of a labor dispute, inspection functions at contract plants or sites shall be performed as normally required during contract performance except where the safety of the inspector may be endangered.

1822.101–71 Admission of labor representatives to contract sites.

NASA activities shall not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with performance of the contract work involved and applicable safety and security regulations.

1822.102 Federal and State labor requirements.

1822.102–70 Suspension or relaxation of State labor standards.

(a) NASA shall not initiate applications to State agencies or officials for the suspension or relaxation of State labor standards.

(b) Contracting officers may support applications of contractors or subcontractors when relaxation of State labor standards does not conflict with applicable Federal labor laws and when all of the following circumstances are present:

(1) The required products or services are in short supply and failure to meet production schedules for critically needed end items will result unless the suspension or relaxation of State labor standards is approved.

(2) There are no alternative sources of supply for such products or services available within the required delivery schedule.

(3) Remedial action (such as recruitment, training, and more effective utilization of manpower) is not practicable.

(4) The granting of the application will not result in impairment of working conditions to the extent that productivity at the facility will be adversely affected.

(c) NASA letters of support will be addressed to the appropriate State agency and will indicate—

(1) The facilities and services affected; and

(2) The extent of relaxation of the particular State labor standard required to complete the specific work in conformity with the delivery schedule.

1822.103 Overtime.

1822.103–4 Approvals.

(a) The Procurement Officer or designees are authorized to approve overtime premiums at Government expense. Where two or more contracting officers have current contracts at a single facility, and the approval of overtime by one contracting office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreements as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a contracting office may rely on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another contracting office. Designations to approve overtime shall be in writing and shall not be delegated beyond the first level of supervision below the Procurement Officer.

Subpart 1822.6—Walsh-Healey Public Contracts Act

1822.604 Exemptions.

1822.604–2 Regulatory exemptions.

Applications for exceptions from one or more of the Act's stipulations under FAR 22.604–2(c)(1) shall be submitted in writing through the contracting officer with pertinent data and recommendations to the Director, Office of Industrial Relations (Code NR–31).

Subpart 1822.8—Equal Employment Opportunity

1822.804 Affirmative action programs.

1822.804–2 Construction.

In compliance with FAR 2.804–2(b), listing of covered geographical areas in NASA FAR Supplement Directives.

1822.805 Procedures.

1822.805–70 Preaward clearances for contracts between the small purchase limitation and $1,000,000.

In determining the contractor's responsibility for award of a contract in an estimated or actual amount between the small purchase limitation and $1,000,000, if the contracting officer learns or has reason to believe because of information from Government sources or from the offeror (see FA 52.222–21) that the prospective contractor is currently in violation of the Equal Opportunity clause, or has not developed an acceptable affirmative action program at each of his establishments, award shall be made only after ascertaining that the company

is no longer in noncompliance and is, therefore, eligible for award. The contracting officer will request any clearance from OFCCP at least 30 calendar days prior to the proposed contract award date. Award may also be made, notwithstanding the company's failure to have developed an acceptable affirmative action program, if the contracting officer determines that the proposed contract is for less than $50,000 or that the company has fewer than 50 employees and, in either case, has not previously been required to develop an affirmative action program.

1822.807 Exemptions.

To request an exemption under FAR 22.807(a)(1), the contracting officer shall prepare a detailed justification for such determination which shall be submitted to the Administrator.

1822.870 Reports and other required information.

(a) Title 41, Section 60–1.2 of the CFR prescribes the annual filing of required forms by prime contractors and subcontractors.

(b) If the bidder or prospective prime contractor fails to complete the representation at FAR 52.222–22, he/she should state, prior to award of the contract, whether he/she has participated in any previous contract or subcontract subject to the Equal Opportunity clause; and, if so, whether he/she has filed with the Joint Reporting Committee, the Director, OFCCP, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(c) In any case in which the bidder, prospective prime contractor or proposed subcontractor who participated in a previous contract or subcontract subject to Executive Order 10925, 11114, or 11246 has not filed a report due under the applicable filing requirements, the contract or subcontract shall not be awarded unless such contractor or subcontractor submits a report covering the delinquent period or such other period specified by the Director, OFCCP, and notifies the contracting officer of such submission.

(d) A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information, including copies of affirmative action programs, the Director, OFCCP, requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to or after the award, or both, to furnish such information, including copies of affirmative action programs, as Director, OFCCP, requests.

(e) Failure to file timely, complete, and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the Equal Opportunity clause and is the basis for the imposition by Director, OFCCP, of any sanctions authorized by these regulations or for cancellation or termination of the subcontract by prime contractor or subcontractor. Any such failure shall be reported in writing to the Director, OFCCP, by the contracting officer as soon as practicable after it occurs.

(f) Reports filed and information furnished pursuant to FAR Subpart 22.8 shall be used only in connection with the administration of EO 11246, the Civil Rights Act of 1964, or in furtherance of the purpose of the Executive Order and Act and, to the extent consistent with this purpose, shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4) when requested by the offeror, contractor, or subcontractor.

Subpart 1822.10—Service Contract Act of 1965

1822.1001 Definitions.

"Agency labor advisor," means the Director, Office of Industrial Relations, NASA Headquarters (Code NR–31).

1822.1003 Applicability.

All requests for determinations and exemptions (see FAR 22.1003(e)) shall be submitted in writing through contracting channels to Code NR–31.

1822.1007 Notice of intention to Make a Service Contract.

(a) Contracting officers shall ensure that completed Standard Form 98/98a, Notification of Intent to Make a Service Contract and Response to Notice (original and 4 copies), reach Code NR–31 at least 40 days before issuing any solicitation, or opening negotiations for the contract extension, or exercising the option.

(b) Requests to expedite wage determinations shall be sent to Code NR–31.

(c) The information requested, below, by item number, shall be furnished, in addition to that required by the SF 98/98a:

(1) *Item 6.* Insert on the far left side of the block the applicable code identifying the type of proposed action:

Code and Proposed Action

I New Contract.
II Recompetition of services.
III Contract modifications affecting the scope of the work (see FAR 22.1007(f)).
IV Extension of contract performance through exercise of an option or otherwise (see FAR 22.107(h)).
V Other (e.g., when a multiyear contract (funding is not subject to annual appropriation) is to be entered into, NASA Headquarters (Code NR–31) shall be notified at the time of submission of the required SF 98/98a (see 1817.1)).

(2) *Item 8.* (i) If the proposed contract will be awarded under Section 8(a) of the Small Business Act, insert both the Small Business Administration and the name of the subcontractor.

(ii) If there is an incumbent contractor, the contractor's wage rate ranges and current actual wage rates being paid to the various classes of non-exempt, unrepresented employees will be included as part of the wage data submitted.

(iii) If there is no incumbent contractor, furnish whatever information that is available on wages and fringe benefits currently being paid in the locality.

(iv) If no wage determination is currently available for the particular contract, insert "None" in Item 8.b.

(3) *Item 10.* In addition to information requested, add the solicitation number, if known.

(4) *Item 12.* (i) When entering into a new service contract, all classes of work expected to be performed under the contract will be listed under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF's 98/98a is in connection with any actions other than Code I in paragraph (c)(1) above, list only the classes of work that the incumbent contractor indicates are "nonexempt."

(ii) When classifications include both those categories of employees covered by a collective bargaining agreement and those not represented by a union, distinguish the difference by marking the classifications that are unionized with an asterisk(s).

(iii) If the classification of work is not known, use the most descriptive job title available for the work to be performed under the contract.

(5) *Item 13.* If the number of employees is not known, the estimated manhours required to perform the tasks should be designated so that manning estimates can be determined and listed.

(6) *Item 14.* This item shall also include the wage rates that would be paid if the employees were subject to 5 U.S.C. 5332 (GS grades).

Subpart 1822.11—Professional Employee Compensation

1822.1103 Policy, procedures, and solicitation provisions.

(a) The instructions in paragraph (a) of the clause at FAR 52.222–46, Evaluation of Compensation for Professional Employees, shall be augmented in Section M of the solicitation with an explanation of how the Government will evaluate the offeror's plan. The Government's assessment of the plan shall be a weighted and scored evaluation criterion under the Mission Suitability Factor—Understanding the Requirement. This criterion shall be accorded sufficient weight and relative order of importance to be effective under the particular circumstances involved. When there is a significant number of professional employees involved, the period of performance is lengthy, and the cost relatively large, or there is continuity of the same or similar services at the same location, the weight and relative importance of the criterion should be in the "most important" category.

(b) The cost realism of professional compensation proposed (see paragraph (c) of the clause at FAR 52.222–46) shall be identified as an evaluation factor in Section M of the solicitation.

Subpart 1822.13—Special Disabled and Vietnam Era Veterans

1822.1306 Complaint procedures.

The Assistant Administrator for Equal Opportunity Programs (Code U) is the NASA official designated to act on complaints received about administration of the Act.

Subpart 1822.70—Nondiscrimination—Government Lease

1822.7001 Policy.

It is NASA policy to include a Facilities Nondiscrimination clause in leases when NASA is the lessee. The policy has been adopted because Federal employees belonging to minority groups and other members of minority groups doing business with the Government in some parts of the country have been denied the use of public facilities located in buildings where the Government leases office space.

1822.7002 Contract clause.

(a) The contracting officer shall include the clause at 1852.222–70, Facilities Nondiscrimination Notice, in all solicitations involving leases and resulting leases.

(b) The contracting officer shall include the clause at 1852.222–71, Facilities Nondiscrimination, in all leases where (1) the total annual rental exceeds $10,000 or (2) the total annual rental under a new lease, combined with the total annual rental under all other NASA leases of space in the same building, exceeds $10,000.

PART 1823—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 1823.1—Pollution Control and Clean Air and Water

Sec.
1823.106 Delaying award.
1823.107 Compliance responsibilities.

Subpart 1823.3—Hazardous Material Indentification and Material Safety Data

1823.302 General.
1823.370 Acquisition of potentially hazardous items from or through another Government agency.

Subpart 1823.70—Safety and Health

1823.7000 Scope of subpart.
1823.7001–2 Policy.
1823.7002 Responsibility.
1823.7003 Hazardous operations.
1822.7004 Contracts clauses.

Subpart 1823.71—Frequency Authorization

1823.7101 NASA contract clauses.
1823.7102 Forms.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1823.1—Pollution Control and Clean Air and Water

1823.106 Delaying award.

All notifications initiated by the contracting officer under FAR 23.106 shall be submitted to the EPA through the Procurement Officer and Assistant Administrator for Procurement. NASA Headquarters (Code HS–1).

1823.107 Compliance responsibilities.

Notifications under FAR 23.107 shall be submitted through the same channels as under 1823.106.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.302 General.

As authorized under FAR 23.302(c)(3), NASA has designated the following as a "potentially hazardous" item.

Electro-sensitive initiating devices (squibs).

1823.370 Acquisition of potentially hazardous items from or through another Government agency.

When acquiring supplies or services from or through another Government agency (e.g., see FAR Part 8 and FAR Subpart 17.5) NASA shall request the acquiring agency to furnish NASA with the data required by FAR Subpart 23.3 and the clause at FAR 52.223–3.

Subpart 1823.70—Safety and Health

1823.7000 Scope of subpart.

This subpart contains NASA's safety and health policy responsibility, and requirements relating to its contractors.

1823.7001 Policy.

It is NASA policy that contractors and subcontractors shall perform in a safety and health conscious environment which, within the limits of controllable hazards, will—

(a) Protect the life, health, and physical well-being of NASA and contractor employees during their work on NASA programs;

(b) Assure proper protection of the public from hazards incident to operations of NASA contractors and subcontractors;

(c) Avoid accidental work interruptions which could delay NASA programs;

(d) Prevent contamination and damage to or loss of property, supplies and equipment;

(e) Provide data whereby risks and loss factors in space technology related to NASA programs can be accumulated and evaluated; and

(f) Comply with applicable regulations, standards, and guides.

1823.7002 Responsibility.

(a) *Originators of procurement requests.* Originators of procurement requests will ensure, in accordance with installation safety and health screening criteria, that procurement requests affected by considerations of safety or health are processed through the appropriate installation safety officials and installation health officers or other designated responsible officials for (1) determining if hazards are involved in the procurement, (2) formulating or selecting specific safety and health provisions applicable to the procurement in accordance with FAR Subpart 23.3 or applicable NASA instructions, and (3) determining to what extent a contractor safety and health plan will be required.

(b) *Installation safety officials, occupational health officials, or other designated responsible officials.* The appropriate installation safety and health officials, with their respective areas of responsibility, will advise and assist the contracting officer in—

(1) Evaluating prospective contractors' safety and health programs;

(2) Determining to what extent safety and health provisions, if any, should be included in a proposed procurement;

(3) Assigning the specific safety and environmental health provisions to be included in a contract Schedule;

(4) Determining, in coordination with the cognizant program or project manager, the need for and the adequacy of contractors' safety and health plans;

(5) Assigning the specific occupational medicine provisions to be included in a contract Schedule;

(6) Determining the extent and form of accident or incident reports, required of contractors in compliance with the Federal Reports Act of 1942, and NASA reporting requirements;

(7) Requesting inspections of NASA contractors by representatives of the Occupational Safety and Health Administration (OSHA) when appropriate; and

(8) Reviewing contractor hazardous operations procedures and certification requirements.

(c) *Headquarters occupational health official.* At installations where medical and environmental health officers or other designated responsible officials are not available to assist with the formulation of occupational medicine and environmental health provisions of a contract, the Director, NASA Occupational Health Office, NASA Headquarters (Code NPG–34), will assume this responsibility.

(d) *Contracting officer.* (1) The contracting officer will obtain advice, assistance, recommendations, and applicable requirements from the appropriate safety and health officials prior to the issuance of a solicitation in the following procurements:

(i) Construction, modification, and demolition of facilities on Government installations.

(ii) Manufacture of aerospace systems, including such items as power units, energy systems, boosters, engines, liquid and solid fuels, oxidizers, and/or propellants.

(iii) Transportation of fuels, oxidizers, hazardous chemicals, and other hazardous or regulated materials.

(iv) Research, development, or test of engines, related components and propellants which involve hazardous operations or the use of hazardous or regulated materials.

(v) Services on Government installations which involve hazardous operations or the use of hazardous or regulated materials.

(vi) Operations which involve the use of or exposure to potential health hazards (asbestos, polychlorinated biphenyls (PCB's), etc.) confined space entries, use of hazardous materials, or potential contamination of property, and pollution of air, water, vegetation, and soil.

(vii) Activities which may (by either direct or secondary effect) adversely effect the work environment due to the use of ionizing radiation, microwaves, noise, lasers, ultraviolet, and infrared sources.

(viii) Operations which necessitate exposures in neutral buoyancy or hyperbaric chambers and operations related thereto.

(2) Before issuing a stop-work order under paragraph (d)(2) of the "Safety and Health" clause at 1852.223–70, prior coordination will be effected with the safety and health officials and with the cognizant program or project manager.

1823.7003 Hazardous operations.

Hazardous operations are those that involve the use of, or handling of, hazardous materials or other materials, phenomena or elements at abnormal environmental or physical parameters that could result in personnel injury, illness or property damage if special precautions are not followed (e.g., high pressure gas operations in excess of 150 pounds per square inch gauge (psig), low pressure high volume gas operations, voltages above 550 volts, storage or handling of propellants or explosives, use of "heavy lift" material handling equipment, high or low temperature environments, environments with less that 19.5 percent or more than 25 percent oxygen by volume at normal atmospheric pressure, reduced gravity, radiation, or excessive noise).

1823.7004 Contract clauses.

(a) Specific system safety requirements which are to be included in the contract for the purpose of procuring system safety engineering services shall be defined in the contract Schedule in accordance with applicable NASA instructions.

(b) Any unique facility safety or health requirements, which are in addition to the general requirements of the clause at 1852.223–70, Safety and Health, shall be prescribed as required by 1823.7002(b)(3).

(c) Except as provided in paragraph (d) below, the clause at 1852.223–70 shall be included in—

(1) All negotiated contracts of $1,000,000 or more, unless the contracting officer makes a written determination in accordance with 1823.7002(b)(2) that, under the circumstances of the procurement, the clause is not necessary;

(2) All construction, repair, or alteration contracts in excess of $25,000;

(3) All contracts having, within their total requirement, construction, repair, or alteration tasks in excess of $25,000; and

(4) Any procurement regardless of dollar amount when (i) the deliverable contract end items are of a hazardous nature or (ii) during the life of the contract it can reasonably be expected that hazards will be generated within the operational environment, and the contracting officer determines that the hazards warrant the inclusion of the clause.

(d) The clause prescribed in paragraph (c) above may be excluded from any contract which is subject to either the Walsh-Healy Public Contracts Act (see FAR Subpart 22.6) or the Service Contract Act of 1965 (see FAR Subpart 22.10) and in which the application of either Act and any regulations thereunder constitute adequate safety and health protection. However, the clause should not be excluded without approval of the local safety and health officials.

Subpart 1823.71—Frequency Authorization

1823.7101 NASA contract clauses.

The contracting officer shall insert the clause at 1852.223–71, Frequency Authorization, in any contract which calls for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

1823.7102 Forms.

NASA Form 566, Application for Radio Frequency Assignment (see 1853.223–566), shall be used to request radio frequency assignments under the clause at 1852.223–71.

Part 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

Sec

1824.000 Scope of part.
1824.103 Procedures.
1824.103–70 Applicability.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1824.1—Protection of Individual Privacy

1824.000 Scope of part.

NASA rules and regulations implementing the Privacy Act are located at 14 CFR 1212.100 et seq.

1824.103 Procedures.

1824.103–70 Applicability.

(a) The Privacy Act is not applicable to a system used by a contractor as a result of management discretion. For example it is not applicable to systems

of personnel records maintained by contractors on their own behalf.

(b) Illustrations of systems of records to which the Act applies include the following:

(1) Records which are maintained for administrative functions of a Federal agency, such as personnel and payroll records.

(2) Health records which are maintained by a contractor engaged to provide health services to agency personnel.

(c) Illustrations of systems of records to which the Act does not apply include the following:

(1) Records which are maintained by a contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government.

(2) Under contracts with a State or private educational organization to provide training, the records generated on contract students pursuant to their attendance (admission forms, grade reports), are similar to those maintained on other students, and are commingled with their records on other students.

PART 1825—FOREIGN ACQUISITION

Subpart 1825.1—Buy American Act—Supplies

Sec.

1825.101 Definitions.
1825.102 Policy.
1825.103 Agreements with foreign governments.
1825.105 Evaluating offers.
1825.109 Solicitation provisions and contract clause.
1825.109–70 NASA solicitation provision.

Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy.
1825.205 Solicitation provision and contract clause.
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Subpart 1825.3—Balance of Payments Program

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Subpart 1825.4—Purchases Under the Trade Agreements Act of 1979

1825.401 Definitions.
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1825.402–70 Centralization of foreign acquisition.
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1825.403–70 Coordination of arms purchases.
1825.405 Procedures.

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1825.604 Exempted supplies.
1825.670 Legal representation.

Subpart 1825.7—Restrictions on Certain Foreign Purchases

1825.703 Exceptions.

Subpart 1825.9—Omission of the Examination of Records Clause

1825.903 Conditions for omission.
1825.903–70 Request for determination and findings.

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.
1825.7001 Definition.
1825.7002 Policy.
1825.7003 Assignment of responsibility for contract negotiation.
1825.7004 Procedure.
1825.7005 Assignment of contract administration.
1825.7006 Contracts with foreign nationals.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1825.1—Buy American Act—Supplies

1825.101 Definitions.

"Canadian end product" means an unmanufactured end product, mined or produced in Canada, or an end product manufactured in Canada if the cost of its components which are mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product.

1825.102 Policy.

(a) Subject to the approval requirements in paragraph (c) below, contracting officers are authorized to make determinations under FAR 25.102(a)(4) and to make additional determinations of nonavailability both prior to entering into contracts and in the course of contract administration; *provided,* however, that in the latter case the Government receives adequate consideration. A copy of each determination of nonavailability will be included in the contract file.

(b) The following is the format for nonavailability determinations made by contracting officers:

Determination of Nonavailability

Pursuant to the authority contained in the Buy American Act (41 U.S.C. 10) and authority delegated to me by 48 CFR 1825.102(a), I hereby find—

a. (Insert a description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.);

b. (Enter the name and address of proposed contractor or supplier and country of origin of the items.);

c. (Include a brief statement of the necessity for the procurement.);

d. (Include a statement of facts establishing the nonavailability of similar items of domestic origin. If there are no known domestic items which can be used as a reasonable substitute, make a statement to this effect.) Based upon these findings, I determine that the above-described item(s) is not mined, produced, or manufactured, or the articles, materials, or supplies from which it is manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that procurement be made from domestic sources and that the item(s) be of domestic origin is not applicable to this procurement, since said procurement is within the nonavailability exception stated in the Buy American Act. Authority is granted to procure the above-described item(s) of foreign origin (country of origin) at an estimated total cost of $——, including duty and transportation costs to destination.

(Date)——————————

Contracting Officer——————————

(c) Determinations made under 1825.102(a) shall be approved by the Head of the Installation.

1825.103 Agreements with certain foreign governments.

(a) The Administrator has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of certain supplies mined, produced, or manufactured in Canada (see NMI 5106.2, "Determination Under the Buy American Act—Canadian Supplies"). Accordingly, contracting officers shall—

(1) Evaluate all bids and proposals offering Canadian end products on a parity with bids and proposals offering domestic-source end products, except that applicable duty (whether or not a duty-free entry certificate may be issued) shall be included in evaluating such bids and proposals offering Canadian end products; and

(2) Treat all components mined, produced, or manufactured in Canada as though they were mined, produced, or manufactured in the United States, except that, in evaluating bids and proposals containing such components, applicable duty (whether or not a duty-free entry certificate may be issued) shall be included.

(b) The procedures in paragraph (a) above do not apply to or affect items—

(1) Listed in FAR 25.108; or

(2) Determined to be nonavailable under 1825.102.

1825.105 Evaluating offers.

The following are examples of evaluation of bids and proposals using the provisions of FAR 25.105.

(a) *Example 1:* Price differential of 6 percent or less between low foreign (non-Canadian) and low domestic bid or proposal:

	Low domestic bid	Low foreign bid
Cost to destination	$20,000	$19,000
Import duty		500
Total	20,000	19,500
6 percent differential		1,176
Total	20,000	20,776

The low domestic bid is not unreasonable; award would be made to the low domestic offeror.

(b) *Example 2:* Price differential in excess of 6 percent between low foreign (non-Canadian) and low domestic bid or proposal, and small business and/or labor surplus area concerns are not involved.

	Low domestic bid	Low foreign bid
Cost to destination	$20,000	$17,000
Import duty		500
Total	20,000	17,500
6 percent differential		1,050
Total	20,000	18,550

The low domestic bid is unreasonable; award would be made to the low foreign offeror.

(c) *Example 3:* Low domestic offeror is a small business and/or labor surplus area concern; the low domestic bid or proposal exceeds the low foreign (non-Canadian) bid or proposal by more than 6 percent, and small purchase procedures are not involved.

Item	Low foreign bids (include transportation to destination and duty)		Low domestic bids (include transportation to destination)			
	A Company	B Company	C Company	D Company	E Company	Difference (percent)
1	$20,000		$24,000			20
2	40,000		46,000			15
3		$20,000		$23,000		11
4	20,000				$22,606	13
5		30,000		32,700		9
6	20,000		22,000			10
7	10,000		10,700			7
8	5,000				6,500	30
Total			102,700			

(1) For Items 1, 2, 6, and 7, proposed awards would be submitted to the Assistant Administrator for Procurement for decision by the Administrator since (i) the low acceptable domestic offer exceeds the low acceptable foreign offer plus 6 percent on an item-by-item basis, (ii) the low acceptable domestic offeror is a small business or labor surplus area concern, and (iii) the low acceptable domestic offer exceeds $100,000.

(2) For Items 3 and 5, award would be made to the low acceptable domestic offeror, since (i) the differential is less than 12 percent on an item-by-item basis, (ii) the low acceptable domestic offeror is a small business and/or labor surplus area concern, and (iii) the low acceptable domestic offer is less than $100,000.

(3) For Items 4 and 8, award would be made to the low foreign offeror, since (i) the differential exceeds 12 percent on an item-by-item basis, (ii) the low acceptable domestic offeror is a small business and/or labor surplus area concern, and (iii) the low acceptable domestic offer is less than $100,000.

1825.109 Solicitation provisions and contract clause.

1825.109–70 NASA solicitation provision.

The contracting officer shall insert the clause at 1852.225–70, Percent Foreign Content, in all solicitations (including construction) except those made outside the United States.

Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy.

(a) Subject to the approval requirements in paragraph (b) below, contracting officers are authorized to make determinations under FAR 25.202(a)(3) and to make additional determinations of nonavailability both before and after contract award; *provided,* however, that in the latter case the Government receives adequate consideration. The format for nonavailability determinations is at 1825.102(b).

(b) Determinations made under paragraph (a) above shall be approved by the Head of the Installation.

1825.205 Solicitation provision and contract clause.

1825.205–70 NASA contract clause.

The clause at 1852.225–71, Nondomestic Construction Materials, shall be included in all contracts for construction, and any article of materials and supplies which have been the subject of additional determinations under 1825.202(a) shall be listed thereunder.

Subpart 1825.3—Balance of Payments Program

1825.304 Excess and near-excess foreign currencies.

The determination of the feasibility of using excess or near-excess currency, required by FAR 25.304, shall be made by the NASA Comptroller. The Director of Financial Management (Code BF–6) maintains a current list of excess and near-excess currency-countries and arranges for its publication in the NASA Travel Regulations.

Subpart 1825.4—Purchases Under the Trade Agreements Act of 1979

1825.401 Definitions.

"Designated country" effective June 29, 1983, Israel is added to the list of countries designated under the Trade Agreement Act of 1979 (see FAR 25.401).

1825.402 Policy.

1825.402–70 Centralization of foreign acquisition.

The requirement of Subpart 1825.70 that the responsibility for foreign contract acquisition be centralized at NASA Headquarters does not apply to acquisitions that are subject to this Subpart. However, each contracting office (including JPL) shall coordinate with Headquarters, Division of International Affairs (Code LI–15), before awarding a contract for a designated-country end product.

1825.403 Exceptions.

1825.403–70 Coordination of arms purchases.

With respect to the exception in FAR 25.403(d), if a contracting office considers an individual acquisition to be a purchase "indispensable for National security or National defense purposes" and appropriate for exclusion from the provisions of this Subpart, a request with supporting rationale shall be submitted to Headquarters, Office of External Relations (Code L) for coordination with the Office of the U.S. Trade Representative.

1825.405 Procedures.

(a) The term "promptly," as used in FAR 14.408–1 and 15.1001(b), shall, for purposes of this Subpart, mean "within seven days."

(b) Solicitations will require that applicable duty charges be included in the offered price, whether or not duty free certificates are obtained. Duty charges will be included in the price evaluation.

Subpart 1825.6—Customs and Duties

1825.604 Exempted supplies.

The following items listed in Schedule 8 of the Tariff Schedules of the United States will be of particular interest when making NASA purchases:

(a) Item 832 of Schedule 8 provides that "emergency war materials purchased abroad" may be imported duty-free upon certification by the Military Departments to the Commissioner of Customs. Accordingly, when a Military Department makes a purchase on behalf of NASA, or when NASA is making a purchase for a Military Department, the above duty-free exemption authority shall be used to the maximum extent practicable.

(b) Item 864.30 of Schedule 8 provides for the duty-free exemption of "articles intended solely for testing, experimental or review purposes including plans, specifications, drawings, photographs, and similar articles for use in connection with experimental study" subject to the limitations in Headnote 1 under Item 862.20 of Schedule 8.

(c) Certain supplies (not including equipment) for vessels or aircraft operated by the United States are exempt from duty under 19 U.S.C. 1309.

(d) Under the Educational, Scientific, and Cultural Materials Importation Act of 1966, NASA has been determined to be an eligible institution to request duty-free entry for instruments or apparatus under Items 851.60 and 851.65 of Schedule 8. Pursuant to this authority, NASA may apply for duty-free entry of instruments or apparatus or related repair components if no instrument or apparatus of equivalent scientific value for the purpose for which the instrument or apparatus is intended to be used is being manufactured in the United States.

1825.670 Legal representation.

The Office of the General Counsel (Code G), NASA Headquarters, shall represent NASA before the Court of Appeals for the Federal Circuit.

Subpart 1825.7—Restrictions on Certain Foreign Purchases

1825.703 Exceptions.

(a) If the proposed procurement is from sources restricted by FAR 25.702 and—

(1) Is a small purchase, the contracting officer shall make a determination of nonavailability as authorized in 1825.102(a)(4) and 1825.202(a)(3). This determination shall also include a finding that there is no known item(s) from sources other than the Communist sources which can be used as a resonable substitute. This determination shall be made a part of the contract file.

(2) Exceeds the small purchase limitation, the contracting officer shall prepare a determination of nonavailability for signature by the Administrator. The format at 1825.102(b) shall be used, and the determination shall include a finding that there is no known item(s) from sources other than the Communist sources which can be used as a reasonable substitute. The determination shall be forwarded in triplicate to the Assistant Administrator for Procurement (Code HS–1).

(b) When it is proposed to procure supplies originating from the Communist areas of North Korea, Vietnam, or Cuba for public use outside the United States or when a construction contractor proposes to use such supplies in the performance of a contract for construction outside the United States, the contracting officer shall make a written finding setting forth the unusual situation, such as an emergency or the nonavailability of acceptable substitute supplies of domestic origin or from sources other than the Communist sources, which justifies the procurement. The finding shall be made a part of the contract file. If the proposed procurement exceeds the small purchase limitation, the finding shall be forwarded in triplicate to the Assistant Administrator for Procurement (Code HS–1), for approval by the Administrator of the exception authorizing the proposed procurement.

Subpart 1825.9—Omission of the Examination of Records Clause

1825.903 Conditions for omission.

A determination by the Administrator under FAR 25.903(a)(2) does not require the concurrence of the Comptroller General or designee. However, where such a determination is the basis for exclusion of the clause at FAR 52.215–1, Examination of Records, the statute requires that a written report be furnished to the Congress. This report, explaining the reasons for the determination, shall be prepared in triplicate, signed by the Head of the Installation concerned, and forwarded to the Assistant Administrator for Procurement (Code HC–1) for processing to the Administrator.

1825.903–70 Request for determination and findings.

Request for determination and findings for exclusion ordinarily will be initiated by the contracting officer. It shall consist of a letter submitted through normal procurement channels, addressed to the Administrator containing the facts necessary to arrive at an appropriate determination and findings.

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.

This subpart prescribes policy and procedures for the negotiation of foreign contracts.

1825.7001 Definition.

"Foreign contract acquisition," as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and contracts for research and development, where the work is to be performed outside the United States, its possessions, and Puerto Rico, by a foreign government or instrumentality thereof or a foreign private contractor. The term does not include the following:

(a) Negotiation of government-to-government agreements.

(b) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico.

(c) Contracts with the Canadian Commercial Corporation.

(d) Acquisition of books and periodicals from foreign sources of supply.

1825.7002 Policy.

Foreign contracts are a specialized area that often requires involved negotiation with instrumentalities of foreign governments. Some of the requirements for contract clauses imposed by United States laws conflict with statutory prohibitions imposed by foreign countries. The resolution of these issues generally involves close coordination between the Office of International Affairs and the Office of General Counsel, NASA Headquarters, and the Department of State. Accordingly, the responsibility for placing foreign contracts has been centralized at NASA Headquarters.

1825.7003 Assignment of responsibility for contract negotiation.

The Headquarters Contracts and Grants Division (Code HW–2), in conjunction with the Offices of International Affairs and General Counsel, is responsible for negotiating and executing contracts with foreign governments and private foreign organizations. This assignment of responsibility is specifically limited to foreign contracts and acquisition, as defined at 1825.7001.

1825.7004 Procedure.

A Headquarters or field installation technical office requiring a foreign contract to be made will submit a properly approved Purchase Request (NASA Form 404, or similar form), through channels to the Headquarters Contracts and Grants Division (Code HW–2) for action. Contract forms and clauses for foreign contracts will be as prescribed on a case-by-case basis by the Assistant Administrator for Procurement.

1825.7005 Assignment of contract administration.

(a) *General.* Assignment of contract administration responsibility will be made by agreement between the initiating office and the Headquarters Contracts and Grants Division. Since principal responsibility for monitoring contract progress and performance generally rests with a field installation, the Headquarters Contracts and Grants Division normally will designate the cognizant Procurement Officer as its authorized representative for contract administration.

(b) *Contracts performed in Canada.* (1) When, in accordance with FAR Part 42 contract administration and related support service functions of the Defense Contract Administration Services are desired on a contract to be performed in Canada (whether placed with Canadian Commercial Corporation or directly with a Canadian firm), a letter or delegation shall be issued to—

Defense Supply Agency, DCASMA, Ottawa 6th Floor, Canadian Building 219 Laurier Avenue, West Ottawa, Ontario, Canada (K1A035)

(2) So that DCASMA, Ottawa, may utilize the capabilities of Canadian Government agencies in the performance of contract administration services functions, each letter of delegation shall provide that DCASMA, Ottawa, is delegated authority to act as the contracting officer's representative with power of further delegation for the performance of the requested services.

1825.7006 Contracts with foreign nationals.

(a) Proposals by NASA staff members which involve program or contract possibilities with foreign nationals shall be coordinated with the Office of International Affairs, NASA Headquarters, before any contracts are made with foreign nationals.

(b) Informal discussions between NASA staff members and foreign nationals could give rise to expectations concerning program or contract possibilities which are not supported by program requirements. Such situations must be avoided to preclude possible embarrassment to the United States as well as to NASA.

(c) Requests or offers by foreign nationals to NASA staff members on program or contract matters shall be reported promptly to the Office of International Affairs.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1828—BONDS AND INSURANCE

Subpart 1828.1—Bonds

Sec.

1828.102 Performance and payment bonds for construction contracts.
1828.102–2 General.
1828.106 Administration.
1828.106–1 Bonds and bond related forms.

Subpart 1828.3—Insurance

1828.305 Overseas workers' compensation and war-hazard insurance.
1828.307 Insurance under cost-reimbursement contracts.
1828.307–2 Liability.
1828.307–70 Insurance of industrial facilities.
1828.309 Contract clauses for workers' compensation insurance.
1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
1828.311–70 NASA Contract clause.
1828.370 Fixed-price contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1828.1—Bonds

1828.102 Performance and payment bonds for construction contracts.

1828.102–1 General.

NASA prime contractors who, in the course of their contract performance, will acquire by subcontract construction work determined by NASA to be public work subject to the Miller Act, but who are not required under FAR 28.102 to furnish Miller Act bonds, shall be required to obtain such performance and payment bonds from their subcontractors (see 1828.106–1 below). The contracting officer shall establish the penal amount in accordance with FAR 28.102–2.

1828.106 Administration.

1828.106–1 Bonds and bond related forms.

When performance or payment bonds are required from subcontractors under NASA prime construction contracts (see 1828.102–1 above), the bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

Subpart 1828.3—Insurance

1828.305 Overseas workers' compensation and war-hazard insurance.

(a) *Waiver of Defense Base Act.* Applications for waivers under FAR 28.305(d) shall be submitted to the Administrator, through the Assistant Administrator for Procurement. The request for waiver shall include the following:

(1) Name of contractor.

(2) Business mailing address of contractor.

(3) Contract number.

(4) Date of award.

(5) Geographic location where contract will be performed.

(6) Name of insurance company providing the Defense Base Act coverage.

(7) Nationality of employees to whom waiver is to apply.

(8) Reason for waiver.

(b) When the Defense Base Act is waived:

(1) The contractor shall assume liability to such waived employees and their beneficiaries for war-hazard injury, death, capture, or detention. At the option of the Assistant Administrator for Procurement or a designee, either the costs of this liability or the reasonable cost of insurance against this liability shall be allowed as a cost under the contract.

(2) The Schedule of each contract containing the clause at 1852.228–470, Reimbursement for War-Hazard Insurance, shall contain the following:

(i) *The estimated cost for war hazard losses.* The estimated cost will be based on estimates arrived at in the light of experience, taking into account the number of the contractor's employees subject to protection for war-hazard risks, the level of benefits applicable to such employees, location, and nature of the risks to which the contractor's employees are exposed. The amount allotted to the contract will initially be kept as small as reasonably feasible. As

reports are received indicating the need to increase the allotment to a particular contract, these will be evaluated and the allotment increased as necessary. When negotiating for the inclusion in a contract of provisons applicable to war-hazard risks, the contracting officer may include provisions concerning the types of foreign nationals employed by the contractor, the level of benefits applicable to them, and other pertinent provisions relating to the manner in which the program will function to the benefit of all concerned. Advance Agreements under FAR 31.109 may also be advantageous with respect to the levels of proof considered acceptable to justify the contractor commencing payments and being reimbursed therefor prior to the time the contractor is able to work out, in a proper case lump sum settlement of its obligation.

(ii) *An entry similar to the following:*

"The portion of this contract providing for the contractor to afford protection to its employees and subcontractors to their employees against war-hazard risks (see the clauses at FAR 52.228–4 and 1852.228–470) is on a cost reimbursement, no fee basis, notwithstanding the basis of the remainder of the contract."

1828.307 Insurance under cost-reimbursement contracts.

1828.307–2 Liability.

(a)(1) In accordance with FAR 28.307–2(b)(2) examples of special circumstances requiring property damage liability insurance are:

(i) Where a commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by a contractor in the course of his commercial operations; and

(ii) Where the contractors are engaged in the handling of high explosives or in extrahazardous research and development activities undertaken in populated areas. Otherwise, prior approval for purchase of property damage liability insurance must be obtained from the Assistant Administrator for Procurement.

(b) The Government normally will assume the risk of a contractor's uninsured third-party liability to the extent provided for by the clause at FAR 52.228–7, Insurance—Liability to Third Persons.

1828.307–70 Insurance of industrial facilities.

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the installation concerned, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in FAR 28.307–2.

1828.309 Contract clauses for workers' compensation insurance.

(a) Insert the clause at 1852.228–470, Reimbursement for War Hazard Losses, in all public-work contracts performed outside the United States where the Defense Base Act is waived (see FAR 28.305) and the Assistant Administrator for Procurement determines that the contractor shall not purchase insurance against the assumed liability to such waived employees and their beneficiaries (see 1828.305(b)(2)).

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.228–71, Aircraft Flight Risks, in all cost-reimbursement type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor except where such aircraft are covered by a separate bailment agreement.

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228–70, Aircraft Ground and Flight Risks, in all negotiated fixed price contracts for the production, modification, maintenance, or overhaul of aircraft except as provided in paragraph (b) below.

(b) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause at 1852.228–70 if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume such risk, the clause at 1852.228–70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228–71, Aircraft Flight Risks, suitably adapted for use in a fixed-price type contract, shall be used.

PART 1829—TAXES

Sec.

1829.101 Resolving tax problems.

1829.170 Exemptions from other Federal taxes.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1829.1—General

1829.101 Resolving tax problems.

(a) The Office of General Counsel, Code G, will represent NASA in all negotiations under FAR Part 29 and shall keep the Assistant Administrator for Procurement fully informed on the status of any such negotiations.

(b) Communications with the Department of Justice for representation or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(c) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to the General Counsel for appropriate action.

(d) Tax problems which cannot be solved readily by reference to FAR Part 29 shall be forwarded to the General Counsel through the field installation Office of Chief Counsel. The forwarding of tax problems to the General Counsel is particularly important where—

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition or potential imposition of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(e) Tax problems forwarded to the General Counsel shall be accompanied by the following material, which shall be furnished by the initiating office or by intervening offices:

(1) A comprehensive statement of pertinent facts, including documents and correspondence.

(2) A copy of the contract.

(3) A thorough review of the legal issues involved and recommended action to be taken.

(4) If appropriate, a statement of the problem's effect(s) on procurement policies and procedures with recommendations.

(f) Information copies of tax-related correspondence shall be sent to the

Assistant Administrator for Procurement.

1829.170 Exemptions from other Federal taxes.

Distilled spirits, and specially denatured spirits of 190 degrees proof or more, may be purchased tax-free by any United States Government agency or its contractors. To obtain alcohol tax free, the Administrator or Assistant Administrator for Procurement is responsible for filing and updating Form ATF 1444/1486, Tax-Free Spirits or Specially Denatured Spirits for Use of United States, with the Treasury Department, Bureau of Alcohol, Tobacco and Firearms, Special Operations Branch. One application shall be submitted for all of NASA's requirements. Copies of the Treasury Department certificates issued shall be furnished to all installation Procurement Officers.

(a) When purchasing spirits for use by Center personnel, the contracting officer shall attach a copy of the certificate to the purchase order/contract. Upon receipt of the spirits, the certificate shall be returned to the contracting officer unless future orders are anticipated.

(b) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall give the contractor a copy of the certificate to provide its vendor. Upon receipt of the spirits, the contractor shall return the certificate to the contracting officer unless future orders are anticipated. In any event, the certificate shall be returned upon completion of the contract.

PART 1830—COST ACCOUNTING STANDARDS

Subpart 1830.1—General

Sec.
1830.301 Cost Accounting Standards

Subpart 1830.3—CAS Contract Requirements

1830.304 Waiver.

Authority: 42 U.S.C. 2473(c)(1)

Subpart 1830.1—General

1830.101 Cost Accounting Standards.

To assure uniform administration of CAS requirements, NASA has determined to consider all of its contracts as "National defense" contracts for CAS purposes, whether or not they meet the definitions of "National defense" in FAR 30.102.

Subpart 1830.3—CAS Contract Requirements

1830.304 Waiver.

All requests for waiver of CAS requirements shall be forwarded through the Procurement Officer to the Assistant Administrator for Procurement (Code HC–1) after the contracting officer has made the determination required by FAR 30.304(a).

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.1—Applicability

Sec.
1831.101 Objectives.
1831.102 Fixed-price contracts
1831.102–70 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1831.1—Applicability

1831.101 Objectives.

The Assistant Administrator for Procurement, NASA Headquarters (Code HP–1), is the Administrator's designee for granting individual deviations to FAR cost principles under FAR 31.101.

1831.102 Fixed-price contracts.

1831.102–70 NASA contract clause.

Include the clause at 1852.231–70, Pricing of Adjustments, in fixed-price contracts that include a Changes clause or provisions for adjustments of the contract price. The clause applies to the requirements of FAR Part 31 to contract price adjustments.

PART 1832—CONTRACT FINANCING

Subpart 1832.1—General

Sec.
1832.111 Contract clauses.
1832.111–70 NASA contract clauses
1832.170 Voluntary refunds.
1832.171 Withholding under construction contracts.

Subpart 1832.4—Advance Payments

1832.402 General.
1832.406 Letters of credit.
1832.406–70 Federal Cash Transaction Report.
1832.407 Interest.
1832.410 Findings, determination, and authorization.
1832.410–70 Instructions for determinations and findings.
1832.412 Contract clause.
1832.470 Reporting of installation advance payment approvals.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.
1832.501–2 Unusual progress payments
1832.502 Preaward matters.
1832.502–2 Contract finance office clearance.
1832.503 Postaward matters.
1832.503–3 Initiation of progress payments and review of accounting system.
1832.504 Subcontracts.

Subpart 1832.7—Contract Funding

1832.702 Policy.
1832.702–70 NASA policy.
1832.704 Limitation of cost or funds.
1832.705 Contract clauses.
1832.705–70 Additional clauses for limitation of cost or funds.

Subpart 18–32.8—Assignment of Claims

1832.806 Contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1832.1—General

1832.111 Contract clauses.

1832.111–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.232–71, Invoices, in all fixed-price contracts and solicitations therefor, except those for construction work, architect-engineer services, or utility service.

(b) The contracting officer shall insert the clause at 1852.232–72, Payments (Letter Contracts), in letter contracts and solicitations therefor.

(c) The contracting officer shall insert the clause at 1852.232–73, Payments (Utility Services), in negotiated utility service contracts and solicitations therefor.

(d) The contracting officer shall insert the clause at 1852.232–74, Payments (Facilities), in consolidated facilities contracts and solicitations therefor.

1832.170 Voluntary refunds.

(a) *General.* A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. Where it is desired to solicit a voluntary refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all data relevant thereto to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

(b) *Solicited refunds.* Voluntary refunds may be requested during or after contract performance. They shall be

requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a voluntary refund shall not be requested, unless the overcharge or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Deputy Administrator or designee after coordination with the Assistant Administrator for Procurement.

(c) *Disposition of voluntary refunds.* (1) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(2) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the National Aeronautics and Space Administration and shall be forwarded immediately to the Financial Management Office of the appropriate installation. When forwarded, the check shall be accompanied by a letter identifying it as a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

1832.171 Withholding under construction contracts.

This section is applicable only to contracts containing the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts. When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained until completion of all contract requirements. Retainage should not be used as a substitute for good contract management, and contracting officers should not withhold funds without cause. Determinations regarding the use of retainage and the specific levels to be withheld shall be made by the contracting officers on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The level of retainage withheld shall not exceed 10 percent of the amount billed by the contractor in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

Subpart 1832.4—Advance Payments

1832.402 General.

(a) Advance payments are authorized only for contracts with nonprofit organizations and educational institutions.

(b) Determinations, and Findings in support thereof, not required to be made by higher authority including those in paragraphs (b) (1) and (2) below may be made regarding contracts by the Assistant Administrator for Procurement. The contracting officer may make the determinations and findings in paragraph (b)(2) below regarding individual purchases and contracts:

(1) The determination required by 10 U.S.C. 2307(c) and 2310(b) for the basic contract if the advance payment amount equals or exceeds $1,000,000, the advance payment is to a foreign entity, or the organization receiving the advance payment is also receiving a fee for the effort involved. If the amount of the advance payment is under $1,000,000 for the basic contract and a foreign entity or organization receiving a fee is not involved, the Procurement Officer may make the determination required, *Provided,* that such action has been coordinated with the Installation Financial Management Officer.

(2) The determination required by 10 U.S.C. 2307(c) and 2310(b) for all modifications, supplemental agreements, or extensions to an existing contract which require an increase in the amount of an advance payment previously authorized; *Provided*, that such action has been coordinated with the Installation Financial Management Officer.

1832.406 Letters of credit.

For the purposes of FAR 32.406(b)(1), each installation is considered a contracting agency.

1832.406–70 Federal Cash Transaction Report.

The report required by paragraph (m) of the clause at FAR 52.232–12, Advance Payments, shall be submitted on Standard Form 272, Federal Cash Transaction Report, if the letter of credit method is used.

1832.407 Interest.

Advance payments without interest are hereby authorized, pursuant to FAR 32.407(d)(1).

1832.410 Findings, determination, and authorization.

1832.410–70 Instructions for determinations and findings.

(a) A request for Headquarters approval of advance payment provisions in accordance with 1832.402(b)(1) will be prepared in final form (original and one official file copy) and forwarded to the Assistant Administrator for Procurement (Code HS–1). The request should include the following: (1) The name of the cognizant NASA Headquarters Program or Staff Office; (2) the negotiation exception to support the requirement, if it is other than 10 U.S.C. 2304(a)(5); (3) if a fee is contemplated, the estimated cost, amount and percent of fee, the total cost and fee, and the factors that were considered in determining the fee (see Subpart 1815.9); and (4) the name and phone number of the contracting officer or negotiator.

(b) Modifications to adapt to special facts and circumstances are permitted provided that they do not conflict with the statutory requirements set forth in 10 U.S.C. 2307 or other cited statutory authority.

(c) 10 U.S.C. 2307 will normally be the statutory authority cited for authorizing advance payments. When appropriate, advance payments are also authorized pursuant to 42 U.S.C. 2473(c)(5) and Pub. L. 85–804 as implemented by Executive Order 10789 (see FAR Part 50).

(d) Generally, the format in FAR 32.410 should be in accordance with the instructions therein used with the following changes:

(1) In the second sentence of format paragraph (a)(4), delete the reference to a special bank account.

(2) Use format paragraph (a)(6) or (a)(8).

(3) At the end of format paragraph (b), use "is in the public interest."

1832.412 Contract clause.

The contracting officer, in consultation with General Counsel, may require special security provisions if appropriate in particular cases. For example, the clause at 1852.232–75, Security for Advance Payments, may be included in solicitations and contracts with nonprofit organizations or educational institutions that include the

clause at FAR 52.232–12, Advance Payments.

1832.470 Reporting of installation advance payment approvals.

Each Installation shall report to Headquarters by the tenth of January and July each year, Attention: Code BF–6, a listing of Advance Payment amounts and recipients approved at the Installation during the prior six months' period.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501–2 Unusual progress payments.

Requests for unusual progress payments must have the specific approval of the Assistant Administrator for Procurement with the concurrence of the Director, Financial Management Division.

1832.502 Preaward matters.

1832.502–2 Contract finance office clearance.

The approving authority for the actions specified in FAR 32.502–2 is the Assistant Administrator for Procurement. Any such approvals should be coordinated with the Director, Financial Management Division.

1832.503 Postaward matters.

1832.503–3 Initiation of progress payments and review of accounting system.

In connection with the situations mentioned in FAR 32.503–3(b), the Financial Management Officer shall be notified.

1832.504 Subcontracts.

The Government approval mentioned in FAR 32.504(c) shall be as specified in 1832.502–2 above.

Subpart 1832.7—Contract Funding

1832.702 Policy.

1832.702–70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if—

(1) The total value of the contract (including options as defined in FAR Subpart 17.2) is $1,000,000 or more;

(2) The period of performance under the contract is in excess of twelve months or the period of performance overlaps the succeeding fiscal year; and

(3) Funds are not available to fully fund the total contract value at the time of entering into the contract.

(b) Fixed-price contracts for other than research and development shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded only if—

(i) The total fixed price of the contract (including options as defined in FAR Subpart 17.2) is $1,000,000 or more;

(ii) The period of performance under the contract is in excess of twelve months or the period of performance overlaps the succeeding fiscal year;

(iii) Funds are not available to fund the total fixed price of the contract at the time of entering into the contract; and

(iv) Initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Notwithstanding the grant of authority to incrementally fund contracts under the foregoing circumstances, it is emphasized that fixed-price contracts shall be fully funded wherever possible and that, accordingly, incremental funding of such contracts should be kept to the absolute minimum.

1832.704 Limitation of cost or funds.

When a contract contains the clause at 1852.232–77, Limitation of Funds (Fixed-Price Contract), the procedures in FAR 32.704 are applicable.

1832.705 Contract clauses.

1832.705–2 Clauses for limitation of cost or funds.

1832.705–270 Additional clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232–76, Authority to Obligate Funds, in letter contracts and solicitations therefor.

(b) The contracting officer shall insert the clause at 1852.232–77, Limitation of Funds (Fixed-Price Contract), in fixed-price incrementally funded contracts for research and development, and solicitations therefor.

Subpart 1832.8—Assignment of Claims

1832.806 Contract clauses.

The Prohibition of Assignment of Claims clause prescribed at FAR 32.806(b) shall be inserted in negotiated contracts for utilities services, and solicitations leading thereto, unless a prospective contractor requests and the contracting officer determines that use of the Assignment of Claims clause prescribed at FAR 32.806(a) is in the public interest.

PART 1833—DISPUTES AND APPEALS

Sec.
1833.009 Suspected fraudulent claims.
1833.011 Contracting officer's decision.
1833.014 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

1833.009 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Office of Inspector General (Code W) and the Office of General Counsel (Code G).

1833.011 Contracting officer's decision.

Contracting officers shall alter the paragraph at FAR 33.011(a)(4)(v) to include (a) the address of the NASA Board of Contract Appeals, Code NC–9, Room 6057, 4th and Maryland Avenue, SW, Washington, DC 20546 and (b) to reference the Board's small claims procedure for claims $10,000 or less and their accelerated procedure for claims $50,000 or less.

1833.014 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I where continued performance is vital to National security, the public health and welfare, critical/major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1834—MAJOR SYSTEM ACQUISITION

1834.002 Policy.

NASA's implementation of OMB Circular No. A–109 and FAR Part 34 is contained in NMI 7100.14, Major System Acquisitions.

(42 U.S.C. 2473(c)(1))

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1835.003 Policy.
1835.003–70 Scientific and Technical Information Service.
1835.015 Contracts for research with educational institutions and nonprofit organizations.
1835.070 NASA contract clauses.
1835.071 Space Transportation System Personnel Reliability Program.

Authority: 42 U.S.C. 2473(c)(1).

1835.003 Policy.

(a) For NASA policy regarding cost sharing see 1816.303.

(b) NASA policy regarding recoupment is in NMI 5109.13, Recoupment Policy for the Use of NASA Technology.

1835.003–70 Scientific and Technical Information Service.

In conformance with section 203(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473) in the interest of conserving time and funds, and to avoid unnecessary duplication of effort, it is NASA policy to encourage contractors to use scientific and technical information in the possession of NASA in direct support of all NASA contracts involving research and development work. This information includes past and current reports on research, development, test, and evaluation. Certain information (*e.g.*, Scientific and Technical Aerospace Reports (STAR), which announces current publications covering aeronautics, space, and supporting disciplines) is available to contractors free of charge; other types of information (*e.g.*, automatic distribution of reports on a specific subject) or services (*e.g.*, searches of the NASA data base or on-line access to the NASA data base through NASA/RECON) may be subject to charges for a contractor. In order that such scientific and technical information may be provided in a timely manner, it is necessary for the contractor to furnish NASA the information specified in the clause at 1852.235–70.

1835.015 Contracts for research with educational institutions and nonprofit organizations.

(a) In addition to the requirements of FAR 35.015(a)(1)(iv), the institution must obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of three months without the participation of an approved principal investigator or project leader.

(b) For NASA policy regarding advance payments under contracts with educational institutions see 1832.4.

1835.070 NASA contract clauses.

(a) The Contracting Officer shall insert the clause at 1852.235–70, Scientific and Technical Information Service, in all research and development contracts and in cost-type supply contracts where research and development work is involved.

(b) The Contracting Officer shall insert the clause at 1852.235–71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given contractor of special capabilities, as represented by either key personnel or facilities.

1835.071 Space Transportation System Personnel Reliability Program.

The Space Transportation System is a national source providing a capability to support a wide range of scientific, applications, commercial, defense and international uses. Criteria and procedures for assuring the highest standards of reliability in personnel assigned to mission-critical positions in connection with the Space Transportation System are set forth in NMI 8610, Space Transportation System Reliability Program (see 1814.201–5(a) and 1815.406–5(a)(10)).

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for Construction

Sec.

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1836.205 Statutory cost limitations.
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1836.702 Forms for use in contracting for architect-engineer services.
1836.770 Binding schedule for construction contracts.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.

(a) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Office Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below.

(b) If the acquisition is by formal advertising, a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, cost breakdown figures in the Government estimate may be disclosed during negotiations but only to the extent deemed necessary for arriving at a fair and reasonable price and provided that the overall amount of the Government estimate, however, is not thereby disclosed prior to award. At the time of award, the "For Official Use Only" designation shall be removed. After award, the Government estimate may be revealed, upon request, to those firms or individuals who submitted proposals.

1836.205 Statutory cost limitations.

The term "statutory cost limitations" refers to cost limitations which may be included in an agency's annual appropriation act.

1836.209 Construction contracts with architect-engineer firms.

(a) Except as provided in paragraph (c) below, offers for the construction of a facility shall not be solicited from the firm furnishing architect-engineer services for that facility, its subsidiaries, or affiliates; and unsolicited offers from that firm, its subsidiaries, or affiliates shall not be considered.

(b) An architect-engineer firm selected for negotiation of an architect-engineer services contract under the procedures set forth in 1836.602 shall be advised of the policy set forth in paragraph (a) above prior to the initiation of negotiations, if that firm possesses construction capabilities either within its own organization or through subsidiaries or affiliates. The firm shall have the option of either—

(1) Declining to enter into contract negotiations in order to be eligible to compete for the related construction contract; or

(2) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm, its subsidiaries, or affiliates will be ineligible to compete for the related construction contract.

(c)(1) The policy in FAR 36.209 is not applicable to—

(i) Those cases where the Assistant Administrator for Procurement specifically authorizes, prior to the initiation of negotiations, the use of a cost-plus-a-fixed-fee contract for both the design and construction of a specialized facility; or

(ii) Those cases in which a contract is awarded on the basis of performance specifications for the construction of a facility, and the contract requires the contractor to furnish construction drawings, specifications, or site adaption drawings of the facility.

(2) Requests for authorization pursuant to paragraph (c)(1)(i) above shall be in sufficient detail to establish the need for procuring both design and construction under one contract. In neither of the excepted cases in paragraph (c)(1) above shall the firm that prepared the drawings and specifications be engaged to supervise and inspect, on behalf of the Government, the construction of the facility involved.

Subpart 1836.6—Architect-engineer Services

1836.600 Scope of subpart.

1836.600-70 Interorganizational acquisition of architect-Engineer services.

Procedures for acquiring architect-engineer services through the construction organization of the Corps of Engineers, Department of the Army, are set forth in "NASA-Corps of Engineers Agreement for Performance of Construction Services."

1836.602 Selection of firms for architect-engineer contracts.

1836.602-1 Selection criteria.

(a) As permitted by FAR 36.602-1(a)(6), in evaluating architect-engineer firms, the architect-engineer selection board shall apply any criteria set forth in the public notice on a particular contract and the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms including minority-owned firms and firms that have not had prior NASA contracts.

(b) It should be noted that the above evaluation criteria, and those listed in FAR 36.602-1(a), are not listed in order of importance, since the relative weight to be assigned to each criterion may vary with the particular requirements of the individual procurement.

1836.602-2 Evaluation boards.

In compliance with FAR 36.602-2, the Head of each Installation shall establish an architect-engineer selection board to be composed of not less than three members. Appointment of members who are not Government employees is not authorized.

1836.602-3 Evaluation board functions.

The report required by FAR 36.602-3(d) should, as a minimum, speak to each criterion for each offeror and explain why one firm is rated higher than the others.

1836.602-4 Selection authority.

The Head of each Installation is designated as the selection authority for that installation for the purposes of FAR 36.602-4.

1836.602-5 Short selection processes for contracts not to exceed $10,000.

(a) Use of the procedures of FAR 36.602-5 is permitted when authorized by the Head of the Installation.

(b) The Head of the Installation is designated as the selection authority for the purposes of FAR 36.602-5(b)(2).

1836.602-70 Selection of architect-engineers for master planning.

(a) *Definition of master plan.* A master plan is an integrated series of documents which present in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) *Selection.* Where it is proposed to select an architect-engineer to develop a master plan in connection with the establishment of a new NASA activity or installation, the report prepared by the architect-engineer selection board in accordance with FAR 36.602-3(d) will be forwarded by the Head of the Installation, with that individual's concurrence in the selection, to the cognizant Institutional Director, NASA Headquarters, for the approval of the Administrator and the concurrences of the Deputy Administrator and the Associate Administrator. The cognizant Institutional Director will refer the report for review to the Assistant Administrator for Procurement (Code H), the Facilities Engineering and Computer Management Division (Code NX-2), and to other offices as appropriate under the circumstances. After receipt of comments and recommendations from the reviewing offices, the cognizant Institutional Director will revise, modify, or concur in the report, as appropriate, and forward it to the Administrator, via the Associate Administrator.

1836.602-71 Conflict of interest.

(a) The chairman and members of an architect-engineer selection board will have on permanent file with the appointing official a written certification that their respective participation will not create a conflict of interest within the provisions of the current "Standard of Conduct for NASA Employee" (NHB 1900.1B) regarding Conflict of Interest. Any other participants in an evaluation or selection for a given architect-engineer requirement will file or have on file a similar certification. Personnel unwilling or unable to furnish such a certification will be barred from further participation in the case. The chairman, members, or other participants with certifications on file shall inform the chairman or the appointing official, as appropriate and in writing, if participation in a particular selection or evaluation presents a real or apparent conflict of interest situation. If the situation warrants, the person(s) shall be disqualified from participating.

(b) The chairman, members, or other participants shall promptly report, in accordance with the procedures of NMI 3711.6, Employee-Management Communications Channels, any activity that would give rise to a real or apparent conflict of interest situation, including any indications of extraneous influences being brought to bear on the selection or evaluation process.

1836.603 Collecting data on and appraising firms' qualifications.

The architect-engineer selection boards (see 1836.602-2) are designated as NASA's evaluation boards for the purposes of FAR 36.603.

1836.609 Contract clauses.

1836.609-70 NASA contract clause.

The contracting officer may include the clause at 1852.236-70, Option for Supervision and Inspection Services, in fixed-price architect-engineer contracts, and solicitations therefor, if supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

1836.670 Acquisition requiring Headquarters approval.

Contracts for architect-engineer services that require the prior approval of the Assistant Administrator for Procurement are specified in 1807.7102(a)(2). The request for approval shall include all information required to be developed by FAR 36.605 and 36.606, and in particular, shall set forth the detailed cost breakdown on which the

determination was based that the proposed fee is fair, reasonable, and consistent with the provisions of FAR 15.903(d)(1)(ii).

Subpart 1836.7—Standard Forms for Contracting for Construction, Architect-Engineer Services and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

(a) *Architect-Engineer contract (Standard Form 252). Instruction for Block entries are as follows:*

(1) *Block 5-Project Title and Location.* Include a short description of the construction project and the estimated cost of constructing the facilities for the project. If the space provided is insufficient, include a more detailed description in Appendix A of the contract and list the Appendix A in Block 10.

(2) *Block 6-Contract For (General description of services to be provided).* Include a brief description of the services and state that these services are fully set out in Appendix A (Scope of Work). Clearly specify the date by which design services must be completed. If supervision and inspection services during construction are to be procured, also clearly specify the date by which such services must be completed and add a statement that the Government may extend such period as provided in the Changes clause of the contract.

(3) *Block 7-Contract Amount.* If the contract is for both design and supervision and inspection services, set out the figures separately.

(b) *Statement of architect-engineer services.* The services to be furnished by an architect-engineer should be carefully defined during negotiation of the contract and a statement of such services inserted in Appendix A (Scope of Work) of the contract. The statement should clearly state the nature and extent of the services in a concise form and include any special services such as the nature and extent of sub-surface exploration prior to designing foundations, etc. A similar statement of supervision and inspection services should be prepared for inclusion in Appendix A (Scope of Work) of the contract if supervision and inspection services are included.

1836.770 Bidding schedule for construction contracts.

If the work is divided into separate schedules a bidding schedule showing a breakdown for each such separate schedule should be attached to the invitation for bids and a statement referring thereto made on Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair).

Bidding Schedule

(To be attached to bid form when required by the Invitation for Bids)

(The following paragraphs shall be printed on the last page of the bidding schedule immediately below the schedule.)

Note.—*Use additional page if necessary.* All extensions of the unit prices shown will be subject to verification by the Government. In case of variation between the unit price and the extension, the unit price will be considered to be the bid.

If a modification to a bid based on unit prices is submitted, which provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment to each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a pro rata basis to every unit price in the bid schedule.

PART 1837—SERVICE CONTRACTING

Sec.

1837.000 Scope of part.

Subpart 1837.1—Service Contract—General

1837.104 Personal services contracts.
1837.105 Competition in service contracting.
1837.106 Funding and term of service contracts.

Subpart 1837.2—Consulting Services

1837.200 Scope of subpart.
1837.203 Types of consulting services.
1837.204 Policy.
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1837.205 Management controls.
1837.205–70 Request for approval.
1837.205–71 Negotiation of contracts.
1837.205–72 Contract award and approval
1837.205–73 Copies of reports and recommendations.

Authority: 42 U.S.C. 2473(c)(1).

1837.000 Scope of part.

For purposes of this part, construction is not considered a service.

Subpart 1837.1—Service Contracts—General

1837.104 Personal services contracts.

It is NASA policy not to obtain personal services by contract.

1837.105 Competition in service contracting.

(a) See FAR 15.204 and 1815.204 regarding negotiation for personal and professional services.

(b) Frequently it becomes essential to the needs of NASA to contract for certain services which require immediate performance by a contractor after a minimum prior notice to proceed. Typical of such requirements are contracts for engineering services; maintenance, repair or overhaul of specialized equipment; and printing or reproduction and data processing services to be furnished on a "call basis" where time is of the essence to meet priority requirements.

(c) When soliciting prospective contractors to perform services of this nature, the NASA policy of obtaining competition to the maximum practicable extent will be observed. Geographic limitations imposed on prospective contractors are apt to appear arbitrary to the business community and therefore are proper only in those cases where such limitations are demonstrably justifiable. Even in those circumstances, however, no firm desiring to compete for the procurement shall be denied the opportunity to do so, merely because it is located outside the geographic area. Such firms will be permitted to submit provided they can substantiate their capability to establish a facility in a location which complies with any such required geographical limitation.

(d) A preferred method of obtaining services or supplies, which are required on a prompt response basis, is by clearly setting forth in the solicitation such requirement in terms of maximum time which may elapse between placement of the order or call and delivery date. Such time limitations, when required by the nature of the procurement, will normally meet the needs of NASA for prompt delivery without introducing any unnecessary restrictive criteria on the competitive field of prospective contractors.

(e) Solicitations that contemplate either a geographical area or time of performance limitation will be reviewed and approved by the Procurement Officer, or a designee, prior to distribution.

1837.106 Funding and term of service contracts.

See 1817.102(b) for multi-year overseas service contracts.

Subpart 1837.2—Consulting Services

1837.200 Scope of subpart.

This subpart supplements FAR subpart 37.2 and the procedures of NMI 5104.5, Policy and Guidelines for the Use of Consulting Services Obtained by Contract, and, in particular, establishes the procedures to be followed in contracting for consulting services.

1837.203 Types of consulting services.

Consulting services do not include services obtained under OMB Circular A–76 guidelines and services that only provide data in support of NASA

administrative and program management. If the primary purpose of a task is to conduct research and development (such as data analysis, studies related to basic and applied research, technology development, concept and demonstration development, full-scale development and testing, and evaluation), it is not considered a consulting service. In addition, contractor reviews of technical activities such as hardware and hardware-oriented activities, and evaluation of proposals are excluded. See Attachment A of NMI 5104.5 for examples of services to which this subpart does not apply.

1837.204 Policy.

1837.204-70 NASA policy.

In addition to the prohibitions regarding consulting services listed at FAR 37.204(c)—

(a) Consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances;

(b) Consulting services of individual experts and consultants will normally be obtained by appointment rather than be contract (see NMI 3304.1, Employment of Experts and Consultants);

(c) Grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements;

(d) Consulting service tasks assigned to the Jet Propulsion Laboratory and amend contract NAS 7-100 must be reviewed and approved by the Associate Administrator for Management Operations (Code N);

(e) Persons or organizations employed as NASA consultants must be free from conflict of interest as delineated in FAR Subpart 9.5 and NMI 5101.19, Avoiding Conflict-of-Interest Situations in Placing of NASA Contracts. Caution will also be exercised when considering former Government employees for consulting-service arrangements in order to avoid potential post-employment statutory prohibition (18 U.S.C. 207).

1837.205 Management controls.

1837.205-70 Request for approval.

(a) When a NASA field installation or NASA Headquarters Office considers that consulting services are necessary and desirable, in accordance with the policy in FAR 37.204 and 1837.204-70, the requiring activity is responsible for preparing the required documentation (see FAR 37.205) and securing the prior approval of the Associate Administrator for Management Operations.

(b) Prior to processing any procurement action for consulting services, the contracting officer shall (1) provide advice, as necessary, to the requiring activity on the preparation of the documentation required by NMI 5104.5 and (2) ensure that the required documentation, including the necessary concurrences/approvals, is included in the official contract file. When there is a question whether a requirement is for consulting services, regardless of dollar value, and such requirement has not been submitted to Code N for review, the contracting officer shall determine if the requirement is for consulting services. If it is the procurement request will be returned to the originating office for processing in accordance with NMI 5104.5. In all such cases, the contracting officer's determination shall be final.

1837.205-71 Negotiation of contracts.

(a)(1) Contracting officers shall include in the solicitation a requirement that each offeror furnish the following information with the proposal notwithstanding the type of contract anticipated:

(i) The name(s) and qualifications of principal members of the contractor organization who will be responsible for the project.

(ii) The title of each official and the number of employees who will participate.

(iii) The estimated number of person-hours that each official and employee will contribute to the proposed project.

(iv) The standard billing rate per hour for each official and employee.

(2) The contract shall establish requirements to ensure that the proposal of the successful offeror will be adhered to (as negotiated and agreed to) in each of the above respects (see 1835).

(b) In addition, the solicitation and the resulting contract shall require that:

(1) The contractor warrant the rates quoted are not in excess of those charged nongovernmental clients for the same services performed by the same individuals;

(2) The Government has the right to the working papers used by the participating officials and employees of the firm or organization in connection with the projects;

(3) Publication or distribution of the study, data, or other related material is prohibited, except to the extent authorized by the contracting officer; and

(4) The contractor agree that any reports regarding organizational matters (as required by the contract) shall include, when feasible, in addition to the recommendations, alternative methods to be considered and the pros and cons of each alternative.

1837.205-72 Contract award and approval.

Unless otherwise required by Subpart 1804.72, or by direction of Code N, awards may be made without further reference to Headquarters after Code N approval has been obtained (1837.205-70(a)).

1837.205-73 Copies of reports and recommendations.

Upon completion of the services required and prior to contract closeout, the initiating office shall forward one copy of the final report or recommendations made by the contractor along with a written evaluation of contractor performance to the Chief, Management Processes Branch, Management Support Office (Code NSM-23). These reports will show the following information on the cover:

(a) Name and business address of the contractor.

(b) Contract number.

(c) Contract dollar amount.

(d) Whether the contract was competitively or noncompetitively awarded.

(e) Name, office identification, and location of the sponsoring individual.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1842—CONTRACT ADMINISTRATION

Subpart 1842.1—Interagency Contract Administration and Audit Services

Sec.

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1842.102 Procedures.
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1842.170 Assignment of NASA personnel at contractor plants.
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Subpart 1842.2—Assignment of Contract Administration

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Subpart 1842.14—Traffic and Transportation Management

1842.1405 Discrepancies incident to shipment of supplies.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1842.1—Interagency Contract Administration and audit Services

1842.101 Policy.

It is NASA policy to make optimum use of the contract administration audit and related support functions available from the Department of Defense (DOD) and other Government agencies. A list of NASA agreements with Government agencies regarding the delegation and performance of contract administration and related field support functions is published in NMI 1050.4, Listing of NASA Interagency Agreements. NASA shall retain technical direction of all contracts awarded regardless of the agency responsible for contract administration.

1842.102 Procedures.

DOD contract administration and audit offices will accomplish the delegated functions in accordance with DOD regulations and procedures, except that the following shall take precedence over DOD regulations and procedures:

(a) NASA letters of delegation, including any special instructions attached thereto.

(b) Applicable requirements of NASA Quality Publication NHB 5300.4(2B), Quality Assurance Provisions for Government Agencies.

(c) Any written agency agreements between NASA and DOD.

1842.102–70 Management of subcontracts.

Contractors are responsible for managing their subcontracts; therefore, contract administration functions shall be performed by the Government for subcontracts only as necessary to meet specific NASA requirements. Delegations for contract administration at subcontractors' plants normally shall be made by or through contract administration offices that are responsible for the prime contractors. Where a direct delegation is made for performance of contract administration functions at a subcontractor's plant (such as for quality assurance), the contracting officer shall coordinate in advance with the contract administration office responsible for the prime contractor and shall provide copies of the delegation to that office.

1842.170 Assignment of NASA personnel at contractor plants.

(a) NASA personnel normally shall not be assigned at or near a contractor's facility to perform any contract administration functions listed in FAR 42.302(a). Before making such an assignment, a written request shall be forwarded to the cognizant program director for approval and the concurrence of the Assistant Administrator for Procurement. The following supporting information shall be forwarded with the request to make the assignment:

(1) A statement of the special circumstances which necessitate the assignment.

(2) The contract administration services to be performed.

(3) A summary of any discussions held with the cognizant contract administration organization.

(4) A staffing plan for a three year period or such shorter period as may be appropriate. The provisions of this paragraph do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) below, unless they are performing any of the contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants that are located on either NASA or other Government agency installations.

(b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of the technical representatives assigned shall be clearly defined and shall not conflict, duplicate, or overlap functions delegated to DOD personnel. All DOD and contractor organizations shall be advised of duties and responsibilities of NASA technical personnel with whom they will be concerned. Where such NASA technical personnel are performing any of the contract administration functions listed in FAR 42.302(a), the provisions of paragraph (c) below apply.

(c) When a NASA resident office and a DOD contract administration office are performing contract administration functions on NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall include the relationship of NASA nonprocurement resident personnel with their DOD and contractor counterparts when such personnel are, or intend to be, involved in any aspect of contract administration.

1842.171 Contractor performance on a NASA installation.

When a NASA contract requires contractor performance on another NASA installation or NASA-controlled launch site, a delegation shall be made to the contracting office of the NASA installation on which performance will take place. Normally, delegations will include the functions listed in FAR 42.302(a) less any functions retained under 1842.202, and shall include the contracting officer security functions (when required in the performance of the contract on the installation or site) and the administration of any NASA support to be provided to the contractor.

1842.172 Contract administration by DOD personnel on a NASA installation.

If DOD personnel performing contract administration functions will be required on a NASA installation for more than 30 work days (either continuous or intermittent), the NASA contracting officer shall obtain prior approval of the Head of the Installation where the DOD personnel will be located and the concurrence of the Assistant Administator for Procurement (Code HP). Such approvals will normally be governed by the following criteria:

(a) The delegation of any functional area (e.g., production, property administration, and quality assurance) shall include all of the administrative responsibilities for that functional area listed in FAR 42.302(a) that the DOD

contract administration office is capable of performing.

(b) The delegated functions will be directed by the contract administration office.

1842.173 Reimbursement for contract administration services.

The basis for reimbursement to DOD for contract administration and related support services is the NASA-DOD agreement (see NMI 1050.4A). Budgeting, funding, and payment for these services will be accomplished in accordance with NMI 7410.1, Budgeting, Funding and Payment for Contract Administration and Related Field Services Performed by Others. Budgeting, funding, and payment of carrier bills of lading for transportation performed as a result of a traffic management delegation are the responsibility of the NASA installation issuing the delegation.

1842.174 Reporting requirements.

(a) NASA installations semi-annually shall assess their delegation activity in relation to DOD to determine changes in delegation patterns that could result in significant increases or decreases in future DOD manpower requirements or that could have other important impacts on DOD contract administration activities. Events such as major program cutbacks or expansions, changes in locations of major programs, and sizeable new procurements should be considered in the assessment.

(b) When an event will have a significant impact on DOD manpower matters as described in paragraph (a) above, a summary of the survey shall be submitted to the Assistant Administrator for Procurement (Code HP). The summary shall include at least the following:

(1) A description of the change in work requirements or delegation pattern.

(2) An estimate of the period of time that the impact will be felt.

(3) An estimate of the magnitude of the impact on DOD in terms of changes in manpower requirements or other costs.

(c) The anticipated impact on the DOD shall be discussed with the DOD contract administration offices concerned, and the results of these discussions, such as DOD agreement or disagreement with the estimated impact, shall be included in the report.

1842.175 Functional management responsibility.

NASA contracting officers shall retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency or NASA installation in no way relieves the NASA contracting officer of ultimate responsibility for the proper and effective management of the contract. Therefore, the NASA contracting officer must ensure that complete understanding has been achieved with the contract administration office regarding the respective duties and responsibilities of each office in connection with each NASA contract. NASA contracting officers shall also keep themselves fully informed on contractor performance and progress by the establishment and maintenance of effective communications with contract administration offices.

Subpart 1842.2—Assignment of Contract Administration

1842.202 Assignment of contract administration.

(a) *Withholding normal functions.* (1) *Mandatory (to withhold).* The functions listed below are the responsibility of the NASA contracting officer and shall not be delegated to DOD or to another Government agency:

(i) Execution of supplemental agreements involving new procurements, spare parts, or terminations (see FAR 42.302(a) (22) and (23)); however, see 1842.202(a)(2) (i) and (ii) below regarding negotiation.

(ii) Issuance of decisions under the Disputes clause (see FAR 42.302(a)(10)).

(iii) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (see FAR 42.302(a)(8)).

(iv) Approval of the completion voucher (see FAR 42.302(a)(7)).

(v) Contract payment (see FAR 42.302(a)(13)).

(2) *Optional (to withhold).* The functions listed below may be delegated to DOD or to another Government agency:

(i) Negotiate settlement agreements involving partial or complete contract terminations for convenience upon request of the NASA contracting officer on NASA Form 1432, Letter of Contract Administration Delegation—Termination, and forward for the signature of the NASA contracting officer (see FAR 42.302(a)(23)).

(ii) Negotiate supplemental agreements for spare parts and other items selected through provisioning procedures and forward for the signature of the NASA contracting officer (see FAR 42.302(a)(22)).

(iii) Issue work requests under maintenance, overhaul, and modification contracts insofar as such work requests do not constitute obligation of funds not available under the contract (see FAR 42.302(a)(21)).

(iv) In connection with classified contracts, administer those portions of the Industrial Security Program designated as administrative contracting officer responsibilities in Appendix C, Industrial Security Regulation, DOD 5220.22R (see FAR 42.302(a)(20)).

(v) Consent to placement of subcontracts (see FAR 42.302(a)(51)).

(vi) Perform transportation and packaging functions (see FAR 42.302(a) (35), (36), and (37)).

(vii) Perform reliability and quality assurance functions including reliability and quality assurance engineering functions (see FAR 42.302(a) (38), (40), and (41)).

(viii) Perform systems support engineering functions (as differentiated from production and reliability, and quality assurance engineering) (see FAR 42.302(a)(41)).

(b) When the performance of contract administration functions other than those authorized for retention under 1842.202 is necessary to the administration of a contract and that function is retained for administration or modified by the NASA contracting officer, the NASA contracting officer shall (1) justify, in writing, the retention or modification of that function, (2) obtain written approval of the justification from the Procurement Officer or a designee, and (3) include the approved justification in the contract file. The NASA contracting officer shall then advise the contract administration office of the retention or modification of the function by means of written special instructions on NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions, accompanying the letter of delegation. For any function listed in FAR 42.302(a) that is not necessary to the administration of the contract, no notice of its retention of a function need be issued. The provisions of this paragraph do not apply to contracts and situations described in 1842.203(a), 1842.171, and 1842.172.

(c) *Withholding other than normal functions.* (1) *Mandatory (to withhold).* The functions listed below are the responsibility of the NASA contacting officer and shall not be delegated to DOD or to another Government agency:

(i) Execution of change orders.

(ii) Termination for default or for convenience of the Government.

(2) *Optional (to withhold).* The functions listed below may be delegated to DOD or to another Government agency:

(i) Negotiate supplemental agreements resulting from change orders and forward for the signature of the NASA contracting officer. Prior to completion of negotiations, any delivery schedule change shall be approved by the NASA contracting officer (see FAR 42.302(b) (1) and (3)).

(ii) Negotiate prices and execute priced exhibits for unpriced orders issued by the NASA contracting officer under basic ordering agreements (see FAR 42.302(b)(2)).

1842.202-70 Delegations to contract administration offices.

(a) *General.* The following procedures shall apply for delegations to contract administration offices (for delegations to audit offices, see 1842.202-71):

(1) NASA contracting officers shall review contract performance requirements as early as possible in the acquisition cycle to determine the nature and extent of contract administration functions to be performed. This review shall be coordinated with appropriate installation activities, including program managers, to insure that all essential requirements are incorporated in the delegation. A similar review shall be made before amending letters of delegation under paragraph (a)(7) below.

(2) A planning conference shall be held with representatives of the contract administration office when—

(i) A contract is expected to exceed $5,000,000;

(ii) Contract performance is required at or near another NASA installation or NASA-controlled launch site;

(iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation;

(iv) The circumstances indicate that complex contract management problems are anticipated; or

(v) The NASA contracting officer considers it advisable.

(3) Contracting offices shall prepare, within 15 days after contract award, NASA Form 1430, Letter of Contract Administration Delegation, General, for the delegation, redelegating, and amending of Contract Administration functions. NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions, shall be used to supplement NASA Form 1430 to—

(i) Delegate any *optional* functions listed in 1842.202 (a)(2) or (c)(2).

(ii) Modify previously delegated functions.

(iii) Retain the administration of functions listed in FAR 42.302(a).

(iv) Provide additional or peculiar information concerning the contract that may assist the contract administration office to more effectively perform the delegated contract administration responsibilities (except see paragraph (a)(4) below).

(4) Letters of delegation and special instructions shall not include any clauses or other requirements that are or should be contained in the contract and shall not—

(i) Repeat the functions covered in FAR 42.302(a) or other information covered in DOD issuances or cite administrative procedures;

(ii) Place restrictions on administrative contracting officers; or

(iii) Include references to NASA issuances, unless specific written NASA/DOD agreements exist which include references to such issuances, or unless the NASA issuances are a requirement of the contract. Where it is appropriate to cite DOD issuances in a letter of delegation, the NASA contracting officer shall assure that the issuances are applicable to the contract administration office concerned (i.e., that Air Force issuances are not cited in delegations to Navy or DCAS contract administration offices).

(5) Delegations and amendments thereto should be accompanied by documentation and supporting information which will ensure a complete understanding of the contract administration services to be performed. Contract administration offices shall be kept fully informed of all actions which may affect the performance of the delegated functions. Copies of all significant documents should be furnished to the contract administration office throughout the period of performance of the contract. Significant documents include but are not limited to—

(i) All contractual documents such as the contract, specifications and drawings, change orders, supplemental agreements, and contractor proposals when referenced in the contract;

(ii) Negotiation memoranda covering negotiations of contracts or contract changes in excess of $100,000;

(iii) Copies of any delegation and amendments thereto sent to other contract administration offices which have a bearing on the contract, including those issued pursuant to 1842.102-70; and

(iv) Any other correspondence affecting contract performance under the contract.

(6) Amendments to letters of delegation shall be issued when amendments to the contract are of a nature that will change the scope of functions previously delegated, when additional functions are required to be delegated, or when previously delegated functions are to be terminated in whole or part. However, when a contract administration office has retired the original letter of delegation with the records of a physically completed but administratively open contract, a new letter of delegation shall be issued to support any additional reimbursable services required under the delegation. In order to minimize the need for a duplicate delegation to be issued at a later date on a contract that is nearing closeout, the NASA contracting officer shall advise the contract administration office to hold the contract in open status when conditions exist or are anticipated that justify extension of the contract period of performance. Appropriate NASA forms listed in Part 1853 shall be used in the amendment process. The forms shall be clearly annotated as an amendment to the original delegation.

(7) NASA Form 1431, Letter of Acceptance of Contract Administration Delegation, shall be forwarded with each NASA Form 1430 and amendment thereto. The form, when returned, shall be used by the NASA contracting officer as evidence that the delegation has been received and accepted by the contract administration office and as a reference for points of contact for each of the functional areas delegated.

(8) Delegations shall be sent to DOD contract administration offices in accordance with the instructions contained in the DOD Directory of Contract Administration Services Components (DOD 4105.59H).

(9) The distribution of copies of the contract and letters of delegation for contract administration (including amendments thereto) shall be as follows:

(i) DCAS and all other Government contract administration offices except DOD military contract administration offices, when two or more functional areas are delegated: Five copies of the contract and NASA Form 1430 and three NASA Forms 1431.

(ii) DOD military component offices when two or more functional areas are delegated: Three copies of the contract and three NASA Forms 1430 and 1431.

(iii) Any contract administration office when a single functional area is delegated: Two copies of the contract and two NASA Forms 1430 and 1431.

(iv) The contractor: One NASA Form 1430.

(b) *Reliability and quality assurance.* When special instructions for reliability or quality assurance are necessary, the requirements shall be clearly identified by the NASA installation personnel responsible for the reliability and quality assurance function and shall be

furnished to the contracting officer on NASA Form 1430A for inclusion in the letter of delegation. The procedures for arranging, preparing, and finalizing such delegations and the requirements for NASA direction and management of these functions are contained in NHB 5330.7, Management of Government Quality Assurance Functions for Supplier Operations.

(c) *Transportation and packaging.* Transportation and packaging functions may be delegated at the option of the NASA installation personnel responsible for the transportation and packaging function. When such delegations are contemplated on a particular contract, special instructions will be furnished to the NASA contracting officer on NASA Form 1430A. The form shall also specify the limit of the value of Government bills-of-lading that may be issued without further consent of the NASA contracting officer and shall provide appropriate funding information.

(d) *Industrial security.* NASA industrial security policies and procedures are set forth in NMI 1650.1, Industrial Security Policies and Procedures, which stipulates that the industrial security function on NASA contracts will be performed automatically by DOD. The basis for DOD performance of this function is the NASA/DOD Agreement, NMI 1050.4A. Nonindustrial security functions, which are the responsibility of the NASA contracting officer, may be delegated to DOD at the option of the NASA contracting officer and shall be delegated when contract performance is to be accomplished at another NASA installation (see 1842.171). These contracting officer security functions, when delegated to DOD or to another NASA installation, shall be specifically identified on NASA Form 1430A.

(e) *Services not requiring letters of delegation.* (1) When it is desired that a contract administration or audit office perform services which precede the award of a contract such as cost, price, or technical evaluations (but exclusive of preaward surveys), NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services, shall be used. Preaward surveys shall be requested on SF 1403, Preaward Survey of Prospective Contractor (General). Oral requests made to contract administration offices to expedite these services are authorized but shall be confirmed in writing immediately through the use of NASA Form 1434 or SF 1403, as appropriate.

(2) Preaward and postaward services, such as verification of labor and overhead rates, and similar information which is readily available within contract administration and audit offices and which is not normally subject to reimbursement by NASA, may be obtained either orally without written confirmation or through the use of NASA Form 1434, as appropriate.

1842.202-71 Delegations to audit offices.

The following procedures shall apply when delegations are made to audit offices:

(a) NASA installations shall utilize the services of other Government audit organizations for performance of contract cost audit and other audit functions except in those instances where audits are to be performed by NASA auditors. The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts, except those awarded to educational institutions for which other agencies have audit cognizance pursuant to Federal Management Circular Number 73-6, those with Canadian contractors (see paragraph (e) below), and those accomplished by NASA. To ensure that audit services are performed expeditiously, audit delegations shall be sent to the appropriate audit office immediately after execution of all cost-reimbursement, labor-hour, and time-and-material type contracts, and fixed price contracts containing cost-reimbursement or price adjustment provisions. Audit functions include but are not limited to contract cost and price audits, estimating systems surveys, review of accounting systems, and approval of vouchers for provisional payment.

(b) Delegations shall be sent to cognizant audit offices as listed in the Defense Contract Audit Agency Directory (Headquarters and Field Offices) or in other Government agency directories, as appropriate.

(c) NASA Form 1433, Letter of Audit Delegation, shall be used to delegate the audit function and to amend previous delegations when necessary. The distribution of copies of the contract and NASA Form 1433 shall be as follows:

(1) Audit Office: One copy of the contract and three NASA Forms 1433.

(2) Cognizant NASA Regional Audit Office: One NASA Form 1433.

(3) Contractor: One NASA Form 1433.

(4) Cognizant NASA Fiscal or Financial Management Office: One NASA Form 1433.

(d) NASA contracting officers may request assistance from NASA audit representatives when required. Special audits or additional audit functions may be requested by the NASA audit representative. Arrangements for such audits are the responsibility of the NASA audit representative, unless processed through the NASA contracting officer.

(e)(1) On contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defence Production (Canada) (DDP) in accordance with agreements between the National Aeronautics and Space Administration and Department of Defence Production (Canada). Audit reports are furnished to the DDP. Upon advice from DDP, the CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(2) On contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completing of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

(3) Audits performed by the Audit Services Branch are normally conducted under DDP regulations.

1842.203 Retention of contract administration.

The assignment of contract administration is optional for the contracts and situations listed below:

(a) Research and development study contracts not involving deliverable hardware or Government property in the hands of contractors.

(b) All contracts with delivery schedule of 90 days or less.

(c) Purchase orders having no Government source inspection requirements.

(d) Contract work performed on the installation awarding the contract.

(e) Contract work performed in the vicinity of the installation awarding the contract and for which DOD contract administration services are not reasonably available.

Subpart 1842.7—Indirect Cost Rates

1842.705 Final indirect cost rates.

18-42.705-70 Policy.

(a) Since many NASA contractors are under the Department of Defense (DOD)

negotiated overhead rate procedure, it is the policy of NASA to participate in joint negotiations with the DOD. The NASA participant will be a representative of either the Assistant Administrator for Procurement or an installation contracting office designated by the Assistant Administrator for Procurement.

(b) Where NASA contractors are not under the DOD negotiated overhead rate procedure or negotiation responsibility has not otherwise been assigned to another Government agency, the negotiation or settlement of overhead cost will be conducted by the Assistant Administrator for Procurement or designee.

1842.705–71 Procedure.

When a contractor is under NASA cognizance, the procedure for the establishment and use of negotiated final overhead rates will generally consist of submission by the contractor of an overhead rate proposal, obtaining an advisory audit report from the cognizant auditor, holding a prenegotiation conference for review of the contractor's proposal and the advisory audit report, conduct of negotiation, preparation of a negotiation report or summary, and execution and distribution of the overhead rate agreement.

(a) The contractor shall submit a copy of its proposal to the contracting officer of each NASA installation with which it has contracts, with a copy to the cognizant audit activity and the Assistant Administrator for Procurement (Code HC).

(b) The cognizant audit activity will review the contractor's overhead rate proposal using FAR Part 31 as a basis for determining allowable costs. An advisory audit report will be submitted to the contracting officer of each NASA installation having a contract with the contractor and a copy to the cognizant NASA Regional Audit Office. Such report shall (1) include a list of contracts subject to the overhead rates to be negotiated, (2) identify any advance agreements and special provisions governing specific contracts, (3) set forth the findings of the audit activity, and (4) include the results of any discussions of such findings with the contractor.

(c) A prenegotiation conference will be held by the negotiating authority with attendance by the auditor, representatives of NASA installations as designated by the Assistant Administrator for Procurement (Code HC) and other Government procurement and audit activities interested in or planning to attend the negotiations. This conference will (1) relate to the areas of difference between the advisory audit report and the contractor's proposal and any other factors pertaining to the negotiations, (2) decide upon the approach to the negotiations, and (3) establish a consolidated negotiation position. As a further aid to the negotiating authority, a representative of the audit activity and/or a representative of the NASA Audit Division will, upon request, attend the negotiation conference.

(d) The negotiation conference will be conducted by the Assistant Administrator for Procurement or designee. The allowability of costs and methods of cost allocation will be governed by FAR Part 31 and any advance agreements or special contractual provisions governing specific contract negotiations shall encompass an agreement on final overhead rates, the specific items to be treated as direct charges, and, when applicable, the billing rates for the succeeding period. Such agreement shall be binding on all applicable Government contracts.

(e) At the completion of negotiations, the negotiating authority shall prepare an overhead rate agreement (see FAR 42.705–1(b)(5)(ii)). The agreement shall include a list of affected contracts, identifying those with advance agreements or special provisions and the rates applicable thereto, and shall be executed by the contractor and the NASA negotiating authority. In addition, the negotiating authority shall prepare a negotiation memorandum (see FAR 42.705–1(b)(5)(iii)) listing the names, titles, and organizations of those persons in attendance, the rates negotiated, the reasons for variation from the audit report, if any, the period of rate applicability, the basis for the determination of such rates, the specific items treated as direct costs, and, when applicable, the billing rates agreed upon for application in the succeeding period. A copy of the overhead rate agreement and the negotiation memorandum shall become a part of the official file of each affected contract. Sufficient copies of the agreement and report shall be forwarded to the Assistant Administrator for Procurement for distribution to all affected activities under FAR 42.706.

1842.705–72 Coordination.

In compliance with FAR 42.705–1(b)(3), DOD will, when appropriate, advise the Assistant Administrator for Procurement (Code HC) of a pending overhead rate negotiation. All NASA field installations and headquarters activities having an interest in the negotiation will be notified by the aforementioned office of the scheduled negotiation. The notification will designate the NASA representative in such negotiations. Should it be impossible for the designated representative to attend, the Assistant Administrator for Procurement (Code HC) shall be notified, and arrangements will be made to ensure that NASA is represented. Such representative shall be responsible for prenegotiation coordination with all affected NASA installations and for the furnishing of the overhead rate agreement and the negotiation memorandum (Code HC) for further distribution to interested NASA installations. Final overhead rates negotiated under the above arrangements are those rates contemplated under paragraph (d) of the Allowable Cost and Payment clause at FAR 52.216–7 or the Predetermined Indirect Cost Rates clause at FAR 52.216–15, and such rates shall be automatically incorporated into the contract upon execution of the overhead rate agreement.

Subpart 1842.8—Disallowance of Costs

1842.803 Disallowing costs after incurrence.

(a) Under the authority of FAR 42.803(b), NASA has designated the contract auditor as the authorized representative of the contracting officer for (1) examining reimbursement vouchers received directly from contractors, (2) transmitting those vouchers approved for provisional payment to the cognizant fiscal or financial management officer, and (3) regarding costs claimed but not considered allowable, preparing and sending to the cognizant contracting officer NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. Normally, the NASA Form 456 is initiated by the auditor; however, the contracting officer also may initiate it or direct its initiation, e.g., contracts with Canadian contractors (see 1842.102). The contract auditor will examine and approve (but see paragraph (b) below) separate fee vouchers and fee portions of vouchers for provisional payment under the contract Schedule and any instructions received from the contracting officer. After examination by the auditor, completion vouchers shall be forwarded to the contracting officer for approval and transmittal to the cognizant fiscal or financial management officer.

(b) When delegating audit functions, special instructions may be issued to the contract auditor to—

(1) Require submission of separate vouchers for reimbursable costs and for payment of earned fee; and/or

(2) Reserve to the contracting officer approval of separate fee vouchers and all vouchers submitted by contractors performing on a NASA installation.

(c) Unless otherwise notified, the contractor shall submit public vouchers to the auditor as follows:

(1) One original SF 1034, SF 1035, or equivalent contractor's attachment.

(2) Seven copies of SF 1034a, SF 1035a, or equivalent contractor's attachment.

(3) The contractor shall mark SF 1034a copies 1, 2, 3, 4, and such other copies as may be directed by the contracting officer by insertion in memorandum block names and addresses as follows:

(i) Copy 1 NASA contracting officer
(ii) Copy 2 Defense Contract Audit Agency auditor
(iii) Copy 3 Contractor
(iv) Copy 4 Contract administration office
(v) Copy 5 Project management office (when required by the NASA contracting officer)

(4) The auditor shall retain an unpaid copy of the voucher.

(5) When a voucher contains one or more individual direct freight charges of $100 or more, an additional copy of SF 1034a and SF 1035a shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Accounting Office. When a voucher is identified as the "Completion Voucher," an additional copy shall be submitted for transmittal to the NASA contracting officer.

(d) Following a prompt and careful review of the facts and circumstances leading the auditor to initiate the NASA Form 456 and after coordination with other NASA and DOD contracting officers administering contracts with the same contractor where a NASA Form 456, or a DCAA Form 1 in the case of a DOD contract, has been issued for the same items of cost, the contracting officer shall take one of the following actions:

(1) Countersign the NASA Form 456 disapproving the costs.

(2) Countersign the NASA Form 456 suspending the costs.

(3) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.

(4) Have the contractor issue a new voucher removing the costs in question from its claim and return the NASA Form 456 to the auditor unsigned.

(5) Return the NASA Form 456 unsigned to the auditor with a detailed explanation of why the suspension or disapproval is not being countersigned, and process the contractor's claim for payment.

(e) The contracting officer, when in agreement with the NASA Form 456 initiated by the auditor, shall assign a notice number and shall countersign the form. An original and three copies (which includes two acknowledgement copies, one each for return to the contracting officer and the auditor) of the form shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the SF 1034 and each copy of the SF 1034a (see paragraph (c) above) on which the deduction is made, and one copy shall be sent to the auditor.

(f) The total amount suspended or disapproved as shown on the NASA Form 456, shall be inserted in the Differences block of the SF 1034 and SF 1034a, as follows:

NASA Form 456 No.: $ _____
Net Amount Approved: $ _____

(g) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to this and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher shall not exceed the amount thereof to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action. If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to the Treasurer of the United States, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract, except where those contracts contain a "no set-off" provision. If a set-off is effected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

(h) When necessary, the contracting officer should consult with the auditor or the financial management officer concerning preparation, examination, and payment of vouchers. Functions to be performed by auditors and financial management and fiscal office personnel during the examination of vouchers are in FMM 9630–20b(1).

Subpart 1842.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

1842.1004 Location of negotiators in a central office.

Within NASA, the central office responsible for advance agreements is the Contract Pricing and Finance Office (Code HC), Office of Procurement, NASA Headquarters.

1842.1008 Administrative appeals.

The NASA administrative appeals hearing group shall consist of the Assistant Administrator for Procurement, who shall be chairman, the Deputy Associate Administrator for Aeronautics and Space Technology, and the Deputy General Counsel.

Subpart 1842.12—Novation and Change-of-Name Agreements

1842.1200 Scope of subpart.

This subpart implements and supplements FAR Subpart 42.12 and prescribes policies and procedures for processing novation or change-of-name agreements initiated by either a NASA installation or the DOD on behalf of NASA.

1842.1202 Responsibility for executing agreements.

When none of the affected contracts has been assigned to an Administrative Contracting Officer (ACO) (see FAR 42.1202(a)(2)), the contracting officer shall require the contractor to provide the documentation enumerated in FAR 42.1204(c) or, as appropriate, FAR 42.1205(a) to the NASA installation with which it has the largest amount of unliquidated obligations. This installation shall be the "designated installation" for processing and executing novation agreements and change-of-name agreements with the contractor.

1842.1203 Processing agreements.

(a) The installation shall immediately notify the Assistant Administrator for Procurement (Code HM) of the request to execute a successor-in-interest or change-in-name agreement. The notification shall include (1) the names of the firms involved, (2) the name of the installation which will execute the agreement, and (3) the type of agreement.

(b) When preparing the Standard Form 30 required by FAR 42.1203(f)(1), a supplemental agreement number need not be obtained for contracts other than for the one under which the supplemental agreement is written. For

distribution purposes, the Standard Form 30 will also include the names and addresses of the installations with contracts subject to the agreement.

(c) After execution of the supplemental agreement, the designated installation shall—

(1) Forward one authenticated copy to Code HM; and

(2) Advise each of the affected installations by letter of the consummation of the supplemental agreement, requesting that an administrative change be issued for each affected contract and enclosing a copy of the supplemental agreement.

(d) For each such affected contract, the contracting officer shall prepare an administrative change acknowledging the change in name or successor in interest. The administrative change will receive the same distribution as the affected contract. It will indicate the nature of the transaction, the result attained, and will cite the number of the contract with which the original relevant documents and supplemental agreement are filed.

1842.1203-70 Processing novation agreements and change-of-name agreements by the Department of Defense on behalf of NASA.

(a) Appendix E of the NASA/DOD agreement for contract administration and contract audit services covers the accomplishment of novation and change-of-name agreements by DOD on behalf of NASA.

(b) Installations shall be notified by Code HS when DOD is processing a proposed novation agreement on behalf of NASA. Within 20 days after receiving it, the installation shall submit comments to Code HS for transmittal to DOD. If an installation wishes to make separate agreement with the contractor and presents rationale for doing so with which Code HS concurs, DOD shall be so notified. Code HS will notify the designated NASA installation of its concurrence (see 1842.1202), and a separate agreement shall be processed in accordance with FAR 42.1203.

(c) Copies of agreements entered into by DOD on behalf of NASA shall be maintained by Code HS.

Subpart 1842.14—Traffic and Transportation Management

1842.1405 Discrepancies incident to shipment of supplies.

In addition to the applicable regulations and procedures referenced at FAR 42.1405(a), NASA personnel shall report discrepancies and adjust claims for loss of and damage to Government property in transit as prescribed in NHB 6200.1, NASA Transportation and General Traffic Management.

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.2—Change Orders

Sec.

1843.205 Contract clauses.

1843.205-70 NASA contract clause.

1843.270 Originating engineering change proposals.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1843.2—Change Orders

1843.205 Contract clauses.

1843.205-70 NASA contract clause.

The contracting officer may use the clause at 1852.243-70 to require a contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change.

(a) Use Alternate I when it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing such changes.

(b) Use Alternate II in cost-reimbursement type contracts.

1843.270 Originating engineering change proposals.

Engineering changes may be originated by either party to the contract. The Government needs to obtain detailed information supporting and documenting the proposed change in order to evaluate the technical, cost, and schedule effects of implementing the change and to price the change in advance when possible (see 1843.205-70).

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.1—General

Sec.

1844.102 Policy.

1844.102-70 Special contracting officer consent requirements for critical subcontracts.

1844.102-71 Headquarters review of critical subcontracts.

1844.102-72 New sources of scientific and technical competence.

1844.170 NASA contract clause.

Subpart 1844.3—Contractor's Purchasing Systems Review

1844.302 Requirements.

1844.302-70 Contractor's purchasing system reviews conducted by the Department of Defense.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1844.1—General

1844.102 Policy.

1844.102-70 Special contracting officer consent requirements for critical subcontracts.

If the contracting officer (in conjunction with the technical representative, when appropriate) determines that a proposed subcontract may be critical because of special considerations in the source selection, in the incentive arrangements, or other reasons, provisions shall be included in the Schedule of the prime contract (if not already provided for in the standard Subcontracts clause) for the contracting officer to consent to the critical subcontract prior to award by the contractor.

1844.102-71 Headquarters review of critical subcontracts.

(a) If a requirement is established by the Headquarters Source Selection Official or the Assistant Administrator for Procurement for a Headquarters review of a critical subcontract prior to its award, the contracting officer shall—

(1) Include a provision in the contract Schedule (if not already provided for in the standard Subcontracts clause) for advance notification and consent of the contracting officer prior to award of the subcontract; and

(2) Prior to consenting to the subcontract, submit to the Assistant Administrator for Procurement, Code HS, for review, the—

(i) Subcontract;

(ii) Contractor documentation in support of the subcontract (including that documentation required by notification provisions of the Subcontracts clause); and

(iii) Contracting officer's review and evaluation (in accordance with FAR 44.202) with appropriate recommendations.

(b) Consent shall not be granted by the contracting officer until notification (with limitations and objections, if any) is received from the Assistant Administrator for Procurement.

1844.102-72 New sources of scientific and technical competence.

As a Government agency whose mission calls for substantial Federal expenditures and use of substantial national resources, NASA has a strong interest in assisting in the accomplishment of collateral national economic goals within the framework of applicable statutory and administrative authority in such manner as will not impair program effectiveness. Utilization and the accompanying development of

the potential of all geographical regions in the space program will effectively contribute to achieving national goals. To advance the further development of competence and capacity of sources, it is NASA's policy to encourage the placing of subcontracts over wider geographic areas. To carry out these objectives, the clause at 1852.244–70, Geographic Participation In the Aerospace Program, shall be used as prescribed at 1844.170.

1844.170 NASA contract clause.

The contracting officer shall insert the clause at 1852.244–70, Geographic Participation in the Aerospace Program, in all research and development solicitations anticipated to exceed $500,000 and contracts of $500,000 or over to be performed with the United States.

Subpart 1844.3—Contractors' Purchasing Systems Review

1844.302 Requirements.

1844.302–70 Contractors' purchasing system reviews conducted by the Department of Defense.

(a) Delegation of the contractor purchasing system review (CPSR) function shall include authority for the cognizant DOD contracting officer to grant, continue, withhold, or withdraw approval of the contractor's procurement system.

(b) NASA installations desiring to participate in a DOD CPSR shall forward a request for such participation to the Assistant Administrator for Procurement, Code HP, for approval.

(c) Contracting officers will advise the cognizant DOD contract administration officer of weaknesses in a contractor's procurement system that have come to light during the review of subcontracts or from other sources.

(d) Contracting officers are responsible for reviewing DOD Summary Reports (which include present system status, comments, conclusions, recommendations, and significant changes effected since the review) and notifications to the contractors; and, when there is a determination that is at variance with the Summary Report or actions taken by DOD, the contracting officer will forward a request for approval of alternate actions, with justification, to Code HP. Similarly, a contracting officer desiring the withdrawal of a DOD approval of a contractor procurement system on the basis of a determination that there has been a deterioration of the contractor's procurement system or to otherwise protect the interests of the Government shall forward a request for such withdrawal to Code HP with appropriate justification.

1844.302–71 NASA-conducted contract or purchasing systems reviews.

If a NASA activity is the cognizant administration office, that office may use Supplement No. 1 to the Defense Acquisition Regulation, Contractors Purchasing System Review (CPSR) Program, as a guide.

PART 1845—GOVERNMENT PROPERTY

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1845.1—General

1845.102 Policy.

(a) The reason for the policy in FAR 45.102 that contractors shall ordinarily furnish all property is that providing Government property (whether Government furnished or contractor acquired) increases the Government's administrative burden and requires record keeping and personnel. It may dilute the contractor's overall responsibility and may weaken the effect of guarantees, end item delivery requirements, and other terms of the contract. Furnishing property places NASA between the source of the property and the contractor. When NASA assumes responsibility for scheduling delivery of the property, NASA may be responsible for certain delays.

(b) Nevertheless, there are circumstances where it may be essential to contractor performance or otherwise advantageous to NASA to provide Government property to a contractor. For example, it may be necessary for uniformity of product to provide standardized production property and raw material or to reduce the production cycle by eliminating the lead time necessary for the contractor to acquire or fabricate production property. It may be advantageous to NASA to broaden the competitive base by offering property to firms not otherwise willing (due to risk of program cutback or cancellation) or able to acquire their own, or by offering production property or critical material not generally available throughout the industry. NASA may achieve a lower contract cost by offering existing Government property or new Government property attainable at prices lower than those

available to the contractor. NASA may also provide Government property to educational or other nonprofit institutions to facilitate scientific research.

1845.102–70 Procedures.

(a) The contracting officer shall, when applicable, include in each solicitation a—

(1) List of any Government-furnished property (showing location and condition), including Government-owned tooling, which will be furnished for the performance of the contract and any related special provisions;

(2) Requirement that information be furnished regarding any Government-owned facilities, industrial equipment, or special tooling intended to be used in the performance of the contract, the value thereof, identification of the Government contract under which acquired, rental provisions, and other relevant information;

(3) Requirement that additional facilities to be provided by the Government be described and identified by category, such as "Land," "Buildings," "Machinery," and "Equipment" (see Subpart 1845.71);

(4) Requirement that additional special test equipment to be provided by the Government be described and its intended use, estimated cost, and proposed location be shown.

1845.104 Review and correction of contractors' property control systems.

(a) When review of the contractor's property control system is not delegated to DOD, the NASA contracting officer or property administrator will conduct the review as required in Subpart 1845.70.

(b) The contracting officer shall include in each solicitation under which use of Government property is contemplated a requirement for the offeror to (1) furnish the date of the last review by the Government of its property control and accounting system and describe actions taken to correct any deficiencies found, (2) state that the contractor has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and NASA FAR Supplement Subpart 1845.70, and (3) state whether or not the costs associated with paragraph (b)(2) above are included in its cost proposal.

1845.104–70 Contract property administration by the Government.

Contract property administration by the Government shall comply with NASA Procurement Notice 84–1.

1845.106 Government property clauses.

1845.106–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.245–70, Acquisition of Existing Government Equipment, in all solicitations and contracts which include a Government property clause (see 1852.245–70 and also 1845.7103(f) or instructions for preparing DD Form 1419).

(b) The contracting officer shall insert the clause at 1852.245–71, Installation-Provided Government Property, in solicitations and contracts when Government property is to be provided to on-site contractors:

(1) The clause may also be used when Government property is provided to off-site local support service contractors. In the latter case, the concurrence of the installation supply and equipment management officer must be obtained and indicated in the procurement request. The nature and extent of such property shall be identified in the Schedule of the contract and the property made available to the contractor on a no-charge-for-use basis by the installation supply and equipment management officer. The applicable installation property management directives shall also be listed in the contract.

(2) Any property provided under a Government property clause, but which is not also subject to the clause shall be clearly identified in a separate schedule. Any specific maintenance considerations (for example, requiring use of a central calibration facility) will be addressed elsewhere in the contract.

(3) Requests for deviation (see FAR Subpart 1.4) shall be coordinated with the Chief, Supply and Equipment Management Branch (Code NIE–8), NASA Headquarters, and shall include a determination of costs that will be avoided (for example, additional costs to the installation's property management systems and staffing) and costs that will be incurred (for example, reimbursable costs of the contractor to implement, staff, and operate separate property management systems on-site and resources to be committed to performance of, or reimbursement for, property administration) under the proposed deviation.

(c) The contracting officer shall insert the clause at 1852.245–72, Liability for Government Property Furnished for Repair and Service, in solicitations and contracts for repair (modification, rehabilitation) or other servicing of Government property, when such property is furnished to a contractor for that purpose. If a substantial quantity of parts or material will be furnished to the contractor, or a significant amount of scrap will result from the work to be performed, or if other Government property will be furnished to or acquired by the contractor, the contract will also contain the appropriate Government property clause (see FAR 45.106(b)) and the Schedule of the contract shall provide that such property shall be governed by the terms of the clause. When minor repairs are obtained under small purchases procedures, the procedures of this paragraph will not apply. Contracting officers shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The clause at 1852.245–73, Financial Reporting of Government-Owned/Contractor-Held Property, shall be inserted in all contracts except where it is virtually certain that Government property will *not* be furnished to or acquired by the contractor (i.e., as in most study contracts and certain contracts for services), or where the only property to be provided is provided for the purpose of repair or servicing (see 1852.245–72).

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.

"Space property" (see 1845.501).

1845.302 Providing facilities.

1845.302–1 Policy.

(a) The Directors of NASA field installations have been designated (see NMI 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials) to make determinations required by FAR 45.302–1(a)(4) on providing Government facilities.

(b) When one of the conditions listed in FAR 45.302–1(d) is met, the requirements of FAR 45.302–1(a)(4) do not apply.

1845.302–3 Other contracts.

In addition to the conditions listed in FAR 45.302–3, facilities may also be provided to a contractor under a contract other than a facilities contract when the contract is for less than 6 months or provides less than 6 items of plant equipment and no other facilities.

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.403 Rental—Use and Charges clause.

The directors of NASA field installations, with input from the Chief

of Supply and Equipment Management, have been designated (see NMI 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials) to make the determinations required by FAR 45.403(a) on modified rental rates.

1845.405 Contracts with foreign governments or international organizations.

(a) It is NASA policy that a fair share of the cost of Government production and research property shall be recovered when such property is used in the performance of services or the manufacture of articles for foreign countries or international organizations.

(b) The prior written approval of the Assistant Administrator for Procurement is required for the use of Government production and research property on work for foreign countries or international organizations. Prior to approval the concurrence of the Chief of Supply and Equipment Management, the General Counsel, and the Director, International Affairs shall be obtained.

(c) Requests for approval shall be forwarded to the Assistant Administrator for Procurement along with a summary of the circumstances involved which includes at least the following:

(1) Names of the requesting contractors.

(2) The number of the contract under which the equipment is controlled.

(3) A description of the equipment in question.

(4) The name of the foreign contractor and its relationship to its government or to an international organization if appropriate.

(5) A description of the articles to be manufactured.

(6) A statement that such will not interfere with the current or foreseeable requirements of the United States or require use of the property beyond the anticipated date that NASA contracts will be compeleted.

(7) A statement that the foreign government's placement of the contract directly with the contractor and the use of the government production and research property is consistent with the best interests of the United States.

(8) A statement that such use is legally authorized.

(9) Evidence, if any, of endorsement by another U.S. Government agency on the basis of National Security or Foreign Policy interest of the United States.

(d) Such use, if approved, shall be subject to rent in accordance with FAR 45.403.

1845.407 Non-Government use of plant equipment.

Consistent with the guidelines in FAR 45.407, the following procedures apply to the non-Government use of plant equipment.

(a) The prior written approval of the contracting officer is required for any non-Government use of active Government-owned plant equipment. Before non-Government use exceeding 25 percent may be authorized, prior approval of the Assistant Administrator for Procurement shall be obtained. In addition, non-Government use of machine tools and secondary metalforming and cutting machines (Federal Supply Classes 3405, 3408, 3410, 3411 through 3419, and 3441 through 3449) in excess of 25 percent shall require the advance approval of the Assistant Administrator for Procurement with the concurrence of the Chief of Supply and Equipment Management. Requests requiring the approval of the Assistant Administrator for Procurement shall be submitted at least six weeks in advance of the projected use and shall include—

(1) The total number of active plant equipment items involved and total acquisition cost thereof; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each such item the nomenclature, production equipment code, year of manufacture, and the acquisition cost.

(b) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose,the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All active plant equipment located at any single plant having a unit acquistition cost of less than $25,000 may be averaged over a quarterly period. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis.

(c) The approvals under paragraph (a) may be granted only when it is in the interest of the Government (1) to keep the equipment in a high state of operational readiness through regular usage, (2) because substantial savings to the Government would accrue through overhead cost sharing and receipt of rental, or (3) to avoid an inequity to the contractor required, at the Government's request, to retain the equipment in place, often intermingled with contractor-owned equipment required for commercial production. Approval for non-Government use shall be for a period of not more than one year. Approval for non-Government use in excess of 25 percent shall be for a period of not less than three months.

(d) Rent-free use of Government property for independent research and development generally will discouraged except in unusual circumstances where it is determined that—

(1) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs; and

(2) The policy in FAR 45.201 is adhered to in that no competitive advantage will accrue to the contractor through such authorized use of Government property.

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.501 Definitions.

"Space property" means personal property which is peculiar to aeronautical and space programs of NASA and is not otherwise included in the categories of property in FAR 45.501. It includes such items as aircraft, engines, space vehicles, and other similar components and related support equipment. The term "space property" is synonomous with the term "agency peculiar property" as defined in FAR 45.301.

"Centrally Reportable Equipment" means that plant equipment, special test equipment (including components), special tooling, and non-flight space property (including ground support equipment) which is generally (a) commercially available and used as a separate item or component of a system, (b) is valued at $1,000 or more, and (c) is identifiable by a manufacturer and model number.

1845.502 Contractor responsibility.

1845.502–1 Receipts for Government property.

Receipts for Government property shall comply with the instructions for preparation of NASA Form 1018, Report of Govenment-Owned/Contractor-Held Property (see NASA Procurement Notice 84–1 and 1853.245–1018).

1845.502–70 Conditions for the provision of Government property.

NASA policy on the provision of Government property (both Government furnished and contractor acquired) is prescribed in FAR 45.102 and 1845.102.

1845.502–71 Government-furnished property

(a) All Government-furnished property (GFP) must be described in the

contract schedule or specifications, regardless of property category. Additional GFP must be described in a bilateral modification to the contract with the property categorized and priced. Furthermore, to obtain additional Government-furnished facilities, the contractor must submit a written statement prescribed by FAR 45.302-1(a)(4). In the event a formal facilities application is also required by the contracting officer, its justification statement of financing will satisfy this requirement.

1845.502-72 Contractor-acquired property

All contractor-acquired property must be authorized by the contract and is subject to a determination by the contracting officer that it is allocable to the contract and reasonably necessary. The acquisition (and fabrication) of Government property is further subject to the following conditions, depending on category of property:

(a) *Facilities.* (1) Prior contracting officer approval, if not already described in a contract Schedule as contractor acquired.

(2) Submission of DD Form 1419, DOD Industrial Plant Requisition, and return of Certificate of Nonavailability if it qualifies as Centrally Reportable Equipment (CRE).

(3) Submission of a written statement prescribed by FAR 45.302-1(a)(4).

(b) *Special test equipment.* (1) Contracting officer approval 30 days in advance if not identified in the invitation for bids (on formally advertised procurements) or in the contract (on negotiated procurements).

(2) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.

(c) *Special tooling.* (1) If a Subcontracts clause is part of the contract, advance notification to the contracting officer and contracting officer consent as may be required by that clause.

(2) If a fixed-price contract, submission of list to the contracting officer within 60 days after delivery of the first production end items (or later as prescribed by the contracting officer) unless already identified in the solicitation.

(3) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.

(d) *Material.* If a Subcontracts clause is part of the contract, advance notification to the contracting officer and contracting officer consent as may be required by that clause.

(e) *Space Property.* (1) If a Subcontracts clause is part of the contract, advance notification to the contracting officer and contracting officer consent as may be required by that clause.

(2) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.

1845.505 Records and reports of Government property.

1845.505-6 Special reports of plant equipment.

1845.505-670 Reporting centrally reportable equipment.

(a) NASA requires that certain NASA-furnished or contractor-acquired CRE as defined in 1845.502 be reported to the Equipment Visibility System (EVS). The contractor shall report all unreported items in the contractor's possession and, subsequently, shall report equipment items of EVS (1) at the time of receipt and acceptance of accountability, (2) when major changes occur in the data initially submitted to NASA, and (3) when the equipment is no longer required for or actively being used in pursuit of NASA programs or projects. Reporting will be accomplished by completion of Section I of DD Form 1342, DOD Property Record (see 1853.245-1342), or by other means acceptable to the contracting officer provided DD Form 1342 equivalent-line-item data is furnished. The data furnished at the time the equipment is reported pursuant to subparagraph (a)(3) above will include the equipment's current condition code. Reportable data shall be forwarded through the contracting officer of the cognizant NASA installation marked for the Equipment Visibility System (EVS). Reportable data will be prepared and forwarded within 15 working days after the event which created the need for its preparation and forwarding.

(b) The forms prepared for components will be clearly marked with the word "COMPONENT." Reporting of newly listed items which are in the possession of the contractor shall be accomplished within 180 days following the date of the new handbook or the page change.

(c) Each year as of June 30 the contractor will be provided a verification listing of EVS data bank records for that contractor. The contractor shall verify the correctness of this listing or provide the necessary corrections.

1845.505-14 Reports of Government property.

(a) *Property accounts.* The contractor's property control system shall be such as to provide annually the dollar amount of Government property and material for which the contractor is accountable in the following classifications in accordance with the instructions in Subpart 1845.71:

(1) Land and rights therein.

(2) Buildings.

(3) Other structures and facilities.

(4) Leasehold improvements.

(5) Plant equipment.

(6) Special tooling.

(7) Special test equipment.

(8) Material.

(9) Space hardware.

(b) *Facilities, special tooling, and special test equipment.* The contractor's accounts covering items in paragraphs (a) (1) through (7) above will be susceptible to local reconciliation in totals and subtotals as to whether contractor-acquired or Government-furnished.

(c) *Material and Space Hardware.* The contractor's property control system shall be such as to provide the dollar value of items in subparagraphs (a) (8) and (9) above for which it is accountable. However, reporting of material is required only when the value of this account is $50,000 or more, and, reporting of space hardware is required only by specific direction of the contracting officer.

(d) *Submission of reports.* When required by the contract (see 1845.106-70(d)), the contractor will prepare, annually, a report of Government-Owned/Contractor-Held Property, NASA Form 1018, prescribed in 1853.245 in accordance with the instructions in Subpart 1845.71. Four copies of the NASA Form 1018, or a negative report when appropriate, for the period ending June 30, shall be submitted by the contractor in accordance with the clause at 1852.245-73, Financial Reporting of Government-Owned/Contractor-Held Property, not later than July 31 of each year.

1845.506 Physical inventories.

NASA contractors shall complete reconciliations of inventories described in FAR 45.508 with the official property records and shall submit reports to the property administrator within 30 days after the completion of an inventory. All instances of loss of property and discovery of unrecorded property shall be investigated by the contractor to determine (a) the cause of the discrepancy and (b) actions needed to prevent recurrence of the discrepancy.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.606 Inventory schedules.

1845.606-1 Submission of inventory schedules.

See 1845.506-6 for special instructions on intra-agency screening of Centrally Reportable Equipment.

1845.606 Screening of contractor inventory.

1845.606-1 General.

In addition to the screening instructions described in FAR 45.606, EVS Coordinators are the focal points of NASA installations for intra-agency screening of Centrally Reportable Equipment (see 1845.506-6). Property Disposal Officers (PDO's) are the focal points at NASA installations for intra-agency screening of all other contractor inventory. EVS Coordinators/PDO's shall acknowledge receipt of inventory schedules within 30 days of receipt and, at the same time, provide the plant clearance officer a NASA screening completion/release date. Screening shall be accomplished in accordance with NHB 4200.1 and NHB 4300.1.

1845.606-6 Waiver of screening requirements.

The Chief of Supply and Equipment Management (Code NIE) has been designated to authorize exceptions to screening requirements.

1845.610 Sale of surplus contractor inventory.

1845.610-2 Exemptions from sale by GSA.

Letters seeking exemptions from GSA-conducted sales shall be directed to the Chief of Supply and Equipment Management, Code NIE.

1845.610-4 Contractor inventory in foreign countries.

Foreign disposals shall comply with NHB 4300.1.

1845.613 Property disposal determinations.

Determinations to abandon or destroy NASA contractor inventory shall be referred to the installation PDO for subsequent review by the Property Disposal Review Board under NHB 4300.1.

1845.615 Accounting for contractor inventory.

In addition to the distribution requirements for SF 142, Inventory Disposal Report, a copy of the form shall be provided to the NASA installation Industrial Property Officer or Property Disposal Officer.

Subpart 1845.70—Equipment Visibility System

1845.7001 Policy.

Consistent with the policies in FAR Part 8, new equipment will not be designed, developed, or procured unless it is determined that the requirement cannot be satisfied with items already available. Accordingly, prior to acquisition by an installation or the issuance of an authorization to a contractor to acquire new Centrally Reportable Equipment (see 1845.501), the Equipment Visibility System (EVS) will first be screened and a certificate of non-availability issued by the cognizant installation EVS Data Center attesting to the non-availability of existing Government-owned equipment to satisfy the acquisition requirement.

1845.7002 Application.

The requirements of EVS are applicable to all NASA acquisitions under which equipment reportable to EVS is acquired either by NASA or a NASA contractor for use in the performance of NASA work.

1845.7003 General.

The EVS is a data acquisition and retrieval system designed to provide basic information for reutilization purposes about items of equipment valued at $1,000 or more held by NASA installations or NASA contractors. General purpose or standard items of commercial manufacture are registered in the EVS Central Data Bank (CDB).

1845.7004 Interface with EVS coordinators and technical project office.

NASA contracting officers with contracts subject to EVS requirements will maintain close interface with the installation EVS Coordinator and the Technical Project Office in (a) the conduct of contractor reporting to the EVS, (b) the screening of EVS records prior to authorizing contractors to acquire equipment, (c) the reporting and processing of equipment no longer required for NASA programs or projects, and (d) in all other matters pertaining to compliance with the property provisions of NASA contracts.

1845.7005 Retention of EVS equipment.

The contracting officer may authorize retention of EVS equipment provided the contractor requests such approval in writing concurrently with reporting to the EVS under the provisions of 1845.505-6 and provided the equipment is (a) being held for approved future NASA programs and projects identified to a specific requirement, or (b) being used on other Government work as approved by the contracting officer. Approval for the use of equipment on other Government work shall not exceed 6 months in duration beyond its use on NASA work unless loan of the equipment under an interagency agreement has been arranged or action has been initiated for transfer of the equipment to the using agency and appropriate time is allowed for completion of the transfer action.

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for the preparation of NASA Form 1018.

This instruction provides guidance in the preparation of NASA Form 1018 which is required annually of all contractors who are furnished, or who have acquired, Government-owned property under the terms of their contract. The classification of property, the related costs to be reported, the reporting requirements and a sample format are set forth below:

1. Property Classification Accounts

The following property classifications and related costs apply only to financial reporting under this Form:

(a) *Land.* The classification "land" includes costs of land, capital improvements thereto (except buildings and other structures and facilities), and costs incidental to the acquisition and preparation of land for use such as appraisal fees, clearing costs, drainage, grading, landscaping, plats and surveys, removal and relocation of the property of others as part of purchase contract, removal or destruction of structures or facilities purchased but not used, and legal fees and expenses.

(b) *Buildings.* The classification "buildings" includes costs of buildings, improvements to buildings, and fixed equipment which is normally required for the functional use of the building and becomes permanently attached to and made a part of the building which cannot be removed without cutting into the walls, ceilings, or floors, such as plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults. It also includes the cost of all equipment of any type built-in, affixed to, or installed in real property where the installation cost, including special foundations or unique utilities or services, or the facility restoration cost after removal is substantial.

(c) *Other Structures and Facilities.* The classification "other structure and facilities" includes costs of acquisitions and improvements of other structures and facilities such as airfield pavements; harbor and port facilities; power production facilities and distribution systems; reclamation and irrigation facilities; flood control and navigation aids; storage, industrial, service, and research and development facilities other than buildings; utility systems (heating, sewage, water, and electrical) when they serve several buildings and/or structures; communication systems; traffic aids; roads

and bridges; railroads; monuments and memorials; and other nonstructural improvements such as sidewalks, parking areas, and fences. It also includes the cost of all equipment of any type built-in affixed to, or installed where the installation cost including special foundations or unique utilities or services, or the facility restoration cost after removal is substantial.

(d) *Leasehold Improvements.* The classification "leasehold improvements" includes NASA-funded costs of long-term capital improvements (more then 3 years) to leases, rights, interests, and privileges relating to land such as easements, rights-of-way, permits, use agreements, water rights, air rights, and mineral rights. It also includes the NASA-funded costs of improvements (costing $1,000 or more and determined to be a capital asset) made to land, buildings and other structures and facilities occupied by a NASA contractor but leased either indirectly through contract of directly by NASA rather then owned by NASA. However, the cost of NASA-owned buildings and other structures and facilities (and improvements thereto that meet the criteria for capitalization) occupied by a NASA contractor and located on land not owned by NASA shall be included in the appropriate account(s) described in paragraphs (a), and (b), and (c). A single improvement shall not be accomplished in increments of less than $1,000 in order to avoid adjustment to the fixed asset accounts.

(e) *Plant Equipment.* The classification "plant equipment" includes costs of personal property of a capital nature consisting of furniture, equipment, machine tools, test equipment (but excluding special tooling, special test equipment and space hardware—see paragraphs (f), (g), and (i)), vehicles, and accessory and auxiliary items used or capable of use in the manufacture of supplies, in the performance of services, or for any administrative or general plant purpose which—

(1) Has a unit cost of $500 or more;

(2) Has a life expectancy of more than one year;

(3) Will not be substantially modified so as to lose its identity or will not be incorporated into other equipment; or

(4) Will not be consumed during an experiment.

(f) *Special Tooling.* The classification "special tooling" includes the cost of all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aides, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include—

(1) Consumable property (material);

(2) Special test equipment;

(3) Buildings and collateral structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items; or

(4) Costs that do not materially increase the basic intrinsic value of the item.

(g) *Special Test Equipment.* The classification "special test equipment" includes costs of either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of the contract. Such testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in the performance of special purpose testing in the development or production of particular supplies or services. The term "special test equipment" does not include—

(1) Consumable property (material);

(2) Special tooling;

(3) Buildings and collateral structures (except foundations and similar improvements necessary for the installation of special test equipment and not included elsewhere);

(4) Plant equipment items used for general plant testing purposes; or

(5) Costs that do not materially increase the basic intrinsic value of the item.

(h) *Material.* The classification "material" includes costs of property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of a contract. It is not intended that this category include material which is part of space hardware work in process reported on NASA Form 1018, Schedule II, when required by the terms of the agreement, or material which has been issued from inventory and charged to a contract item. It is intended to include all Government-owned material which normally would be considered as materials inventory for balance sheet purposes.

(i) *Space Hardware.* The classification "space hardware" applies only to those items of space property, and components thereof, specifically identified in the Annual List of Selected Items of Space Hardware (see paragraph 6). It includes the cost of personal property which is unique to aeronautical and space programs of NASA and is not otherwise included in the classification of property set forth in paragraphs (a) through (h) above. Space hardware is subdivided as follows for financial reporting purposes:

(1) Completed space hardware, systems, and subsystems (includes the cost, actual or estimated, of such items as aircraft, engines, space vehicles, satellites, spacecraft, and rockets including components provided for prototypes, mock-ups, fit checks, or for such other reasons as may be specified in the contract).

(2) Space parts and components (includes the cost, actual or estimated, of deliverable spare parts and components employed as spare parts to be used for the purpose of emergency, replacement, repair, or modification subsequent to the fabrication of space hardware.) These types of property are commonly referred to as "logistics spares" or "test support spares" and do not include components utilized by the contractor which are not deliverable as spares and which are included as work in process.

(3) Space hardware work in process (includes the actual or estimated fabrication costs as of the date of the report of undelivered space hardware and such associated systems, subsystems, spare parts, and components which are provided or acquired and charged to work in process pending incorporation into an end items.) These types of items are included in what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are progress payments to firm fixed-price subcontractors for undelivered items.

2. Transfers of Property

In order for NASA to properly control and account for contractor-held Government property (both Government-furnished and contractor-acquired), all transfers to another contract, contractor, NASA installation, or other Government agency shall be adequately documented. Such transfers shall only be accomplished through the NASA installation responsible for the contract from which the property is being transferred.

(a) *Transfers By Contractors.*

(1) *Approval and Notification.* Property transfers by contractors shall be made only upon the approval of the NASA contracting officer (or designee) of the contractor making shipment. The shipping document shall specify the appropriate property-classification such as plant equipment, special test equipment, special tooling, or space hardware. The cognizant property administrator or the shipping contractor shall be informed of property transfers by a copy of the shipping document. Shipping and receiving contractors shall promptly notify their respective NASA financial management office when accountability of Government property reportable on NASA Form 1018 is transferred to, or received from, other contracts, contractors, NASA installations, or other Government agencies. Copies of shipping/receiving documents will suffice in most instances.

(2) *Documentation.* The shipping contractor shall prepare an acceptable form of documentation such as DD Form 250, Material Inspection and Receiving Report, DD Form 1149, Requisition and Invoice/Shipping Document, or similar forms to cover movement of Government property to other Government agencies. Established procedures for the use of such forms shall be strictly followed. As a minimum, each shipping document must contain contract number(s), shipping reference(s), property classification(s) in which the item(s) is (are) recorded, unit price(s), and any other appropriate identifying or descriptive data. Unit prices on the shipping document shall be obtained from records maintained pursuant to the provisions of FAR Part 45 and Part 18-45.

(3) *Reporting.* In addition to the required shipping documentation, all transfers of reportable property which occur during the reporting period shall be reflected in column

(b), Government-Furnished Additions, of NASA Form 1018 by the receiving contractor and in column(e), Disposals, of NASA Form 1018 by the shipping contractor.

(4) *Reclassification.* Reclassifications between property accounts shall be accomplished by the contractor in possession of the property at the time reclassification takes place. Where property is transferred to another contract or contractor, it shall first be recorded by the receiving contractor in the same property classification and amount as reflected on the shipping document. (For example, in the event a contractor received an item by transfer from another contractor or NASA installation which is identified on the shipping document as plant equipment but which the recipient intends to incorporate into special test equipment, the recipient shall first enter the transferred item in the plant equipment account and subsequently reclassify it as special test equipment.) The reclassification of Plant Equipment, Special Tooling, Special Test Equipment, and/or Space Hardware shall not be made without prior notification to the property administrator and approval of the contracting officer.

(5) *Incomplete Documentation.* Where transfer documents are received by contractors without sufficient detail to properly record the transfer (e.g., omission of property classification, unit prices, etc.), the missing data shall be requested directly from the shipper or through the property administrator as provided in FAR 45.505–2. Contractors may append a Government-furnished property list to the NASA Form 1018 report when they are unable to obtain the required data, provided that the list includes the following information:

(i) Description of the property.

(ii) Quantity.

(iii) Shipping document reference.

(iv) Identity of shipper.

(v) Dates shipped and/or received.

(vi) Date(s) price data were requested and from whom requested (shipper or property administrator).

(vii) NASA Form 1018 line item (type/account) to be adjusted.

(b) *Other Transfers.*

(1) *Intra-Contractor Transfers.* Any transfer of Government property between contracts of a single contractor, whether administered by the same NASA installation or by a different NASA installation, requires the same approval, notification, and documentation as set forth in paragraph (a) above.

(2) *Transfer to Government Agencies Other Than NASA.* Transfers of Government property to such other Government agencies can only be accomplished through the NASA contracting officer and requires the same approval, notification, and documentation as set forth in paragraph (a) above.

(3) *Recovered Space Hardware.* Space hardware recovered after flight and transferred to a contractor for analysis, repair, refurbishment, or for other purposes shall not be reported on subsequent NASA Form 1018 as Space Hardware unless accountability has been transferred and the contractor is specifically directed to report the item.

3. Submission of Reports

(a) When the clause entitled "Financial Reporting of Government-Owned/Contractor-Held Property" is included in the contract, the contractor shall prepare a Report of Government-Owned/Contractor-Held Property, NASA Form 1018, in accordance with the instructions set forth herein and on the NASA Form 1018.

(b) Four copies of NASA Form 1018 for the period ending June 30 shall be submitted by the contractor in accordance with the clause entitled "Financial Reporting of Government-Owned/Contractor-Held Property" not later than July 31 of each year.

(c) Negative reports shall be submitted when appropriate.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting under the contract and shall not be withheld until the next regular report due date.

4. Report Coverage

(a) The NASA Form 1018 shall include the cost of all Government-owned property, except as noted in Section 5 below, in the possession of the contractor and first-tier subcontractors under each prime contract using the prime contractor's records to the extent practicable where the subcontractor reporting is delayed.

(b) Government-owned material held in storage for issue by the contractor and subcontractor shall be reported only when the balance on hand at the end of the reporting period amounts to $50,000 or more for each prime contract, including subcontracts.

(c) Where materials are accountable under more than one contract with a single NASA installation, the contractor may request the contracting officer to authorize one report covering materials for all such contracts. This exception does not eliminate the requirement to maintain separate records of materials for each contract.

(d) Space hardware shall be reported only if specifically requested in writing by the contracting officer, and reporting shall be limited to those items identified on the Annual List of Selected Items of Space Hardware (see Section 6).

5. Exclusions

The following items shall not be reported on NASA Form 1018:

(a) Plant equipment having a unit cost of less than $500.

(b) Industrial facilities in process of construction or material held for use in construction of industrial facilities.

(c) Scrap or salvage.

(d) Items ordinarily reportable but furnished to the contractor for repair and return to NASA (except as required in subparagraph 2(b)(3)).

(e) Work in process except as required in Schedule II, Space Hardware Reportable Items, of NASA Form 1018.

(f) Materials issued for consumption.

(g) Materials held in storage for issue where the cost at the close of the reporting period is less than $50,000.

(h) NASA shipping containers.

(i) Space hardware on firm fixed-price contracts and subcontracts, except where progress payments are specified (see subparagraph 1(i)(3)).

(j) Space property, except those items specifically identified as space hardware and required to be reported in accordance with Section 6.

(k) Installation property made available pursuant to the clause at 18–52.245–21.

6. Space Hardware Reporting Requirements

(a) Space hardware reporting shall be required on cost and incentive type contracts and first-tier subcontracts on a selective basis where the estimated cost and fee of the total contract exceeds $100,000 and any one or combination of the individual reporting categories (i.e., completed space hardware, components and spare parts, and work in process) exceeds $50,000.

(b) Space hardware items to be reported or deleted shall be specified by the contracting officer prior to June 1 of each year based on the Annual List of Selected Items of Space Hardware issued by the Director of Financial Management, NASA Headquarters.

(c) Reporting shall become effective with the next report period beginning July 1, and will continue annually thereafter until all specified items of space hardware are delivered under the terms of the contract, the contract is terminated, or the item is removed from the Annual List of Selected Items of Space Hardware.

(d) The reports shall contain—

(1) The reportable items on hand, consisting of the cost and quantity of completed space hardware and the cost of related independent completed systems and subsystems;

(2) The total amount for completed spare parts and components relating to item (1), above; and

(3) The total amount for work in process of fabrication relating to one or both of the preceding items.

(e) Costs reported on Schedule II will not be a consideration in reimbursement to the contractor for work performed or for termination proceedings. Costs will be computed in accordance with accepted accounting principle, will be reasonably accurate, and will be the product of any one, or a combination of, the following:

(1) Abstract of cost data from the contractor's property or financial records.

(2) Computations based on engineering and financial data.

(3) Estimates based on NASA Form 533 reports.

(4) Formula procedures (e.g., using a 50 percent factor for work in process items based on updated SF 1411 estimates or the contractor's approved estimating and pricing system).

(5) Other approved methods.

(f) When the same item is being fabricated for more than one project, the completed space hardware, related independent systems and subsystems, spare parts, and work in process shall be reported by contract item.

(g) When a contract provides for two or more different completed space hardware items, some of which are not included in the Annual List of Selected Items of Space Hardware, cost of those items to be reported

shall be determined on an actual basis where possible or on a basis considered reasonable within the contractor's records or as provided in paragraph (e) above.

(h) The cost of items of space hardware, systems, and subsystems shall be reported using the contractor's records which are a part of the prescribed property or financial control system as provided in Section 3; however, fee, tooling, and other nonrecurring costs shall be excluded. Fabrication costs shall be based on the contractor's approved estimating and pricing system or property control system and should include—

(1) Direct labor;

(2) Direct materials and purchased parts (costs of purchased items shall be consistent with the contractor's approved pricing methods);

(3) Other direct costs (e.g., computer costs, travel, and transportation);

(4) Overhead—a percentage factor or rate applied to the direct costs or other applicable base; and

(5) Costs of Government-furnished property applied (data available from the shipping document—e.g., DD Form 250, 1149, or similar form—or estimated where necessary).

7. Completed Space Hardware

(a) Completed space hardware shall include completed configurations of spacecraft, satellites, rockets, etc. (including integrated systems and subsystems) and completed, but not yet integrated, systems and subsystems which are held by the prime contractor and first tier subcontractors.

(b) Deliverable completed items of space hardware covered in paragraph (a) above shall not be broken down into systems and subsystems for the purpose of reporting.

(c) The cost of items returned for modifications or rehabilitation shall be redetermined by the contractor to include the appropriate amount of original costs plus any improvement thereto. Costs to modify single shelf items to perform specific tests shall not be included. Space hardware shall be dropped from reporting by the contractor when launched, delivered to another contractor or to the Government, or disposed of as authorized by the contracting officer.

8. Completed Spare Parts and Components for Space Hardware

(a) The reporting of completed spare parts and component items for space hardware shall include, as a single amount for each contract item (as provided in paragraph 6(d)), the aggregate cost of those spares and components (see subparagraph 1(i)(2)) related to the selected list of completed items.

(b) Standard items available from commercial or other sources and held on an inventory basis until requisitioned for use are excluded here but shall be included in "Material" on NASA Form 1018. Items of spares or components reported in Schedule II, Space Hardware Reportable Items, of NASA Form 1018 shall not be included in "Material" on page 1, NASA Form 1018.

9. Space Hardware Work in Process

(a) Space hardware work in process shall consist of the total costs by contract item as provided in paragraph 6(d). The costs as of the date of the report of those unfinished space hardware units pertaining to the selected list of completed items to be reported shall be computed as provided in paragraph 6(e). This shall include the costs of such associated systems, subsystems, and spare parts and components which are provided or acquired and charged to work in process pending incorporation into a finished item. These types of items comprise what is sometimes called production inventory and includes programmed extra units to cover replacement during the fabrication process (production spares). Also included are end items on which work has begun, either by the prime contractor or a subcontractor.

(b) Space hardware spare parts and components returned for repair or modification normally shall not be included in the in-process inventory (or spare parts and components inventory) unless accountability has been transferred to the contractor. Units or lots which are not complete for any reason, such as obsolescence, faulty fabrication, or by direction of the contracting officer shall not be reported in NASA Form 1018, Schedule II.

(c) "Work in Process" historical costs on NASA Form 533, Contractor Financial Management Reports may be used (see paragraph 6(e)) if such costs apply to the selected items to be reported and are consistent with the costing of completed items. When costs are taken from the NASA Form 533, the cost of applicable Government-furnished property shall be added (where applicable) or listed as provided in subparagraph 2(a)(5). These costs shall then be adjusted for completed items and spare parts, etc., inventoried elsewhere or shipped to and accepted by a third party.

10. Contractor's Privileged Financial and Business Information

Where a transfer of property between contractors involves costs of a proprietary nature, applicable unit prices shall be furnished only on the copy of the shipping documents sent to the shipping and receiving NASA installations. The property shall be transferred to the receiving contractor on a no-cost basis.

1845.7102 Instructions for the preparation of DD Form 1342.

This instruction is to be used in the preparation of DD Form 1342, DOD Property Record, to report newly acquired equipment, items not previously reported, when major changes occur in the data initially submitted, or equipment which is no longer required for or actively being used in the pursuit of NASA programs or projects. Only one initial report is required. In-use items will be reported initially to the Equipment Visibility System (EVS) through the contracting officer (see 1845.505–6) by use of this form by marking "active" and "initial" in Block 1. Idle items being initially reported are to be identified by marking "idle" and "initial" in Block 1.

Block 1. Check appropriate boxes to indicate "Active" or "Idle" report and that the report is an "Initial" or "Changed" report.

Block 2. Enter the Julian date of preparation of the form. The first character will be the last digit of the current calendar year, and the next three characters will be the Julian date of the year.

Block 3. Enter the Identification Number/ Government Tag Number as recorded on the identification plate affixed to the equipment.

Section I—Inventory Record

Block 4. Not applicable.

Block 5. Enter the first four digits of the National Stock Number, if known.

Block 6. Indicate in dollars (omit any symbols, decimal points, commas, etc.) the acquisition cost used for property accounting purposes. The acquisition cost will be the price of the basic item plus accessories and auxiliary equipment procured and delivered with the basic unit. If the initial acquisition cost data are not available, an appraised acquisition cost (based on known costs at the time of manufacture of the some or similar equipment), price lists for the period involved, or the best available price from other sources in NASA or DOD should be used, which will achieve conformity of prices for like items of equipment.

Block 7. Not applicable.

Block 8. Enter the last two digits of the year the item was manufactured. If the actual year of manufacture cannot be determined, estimate the date, and place an "E" immediately preceding the entry.

Block 9. Not applicable.

Block 10. Not applicable.

Block 11. Not applicable.

Block 12. Not applicable.

Block 13. Not applicable.

Block 14. Enter the name of the manufacturer of the equipment being reported. Do not use a distributor's or vendor's name.

a. Enter the name of the manufacturer under which the item is listed in the Directory of Metalworking Machinery, Directory of Welding, Heat Cutting, and Metalizing Equipment or appropriate handbook. In some cases, manufacturers have merged or become subsidiaries of another company; therefore, in reporting the manufacturer's name, use the appropriate manufacturing division of subsidiary name and not the parent company.

b. Enter the work "Unknown" when the name of the manufacturer is not known.

Block 15. This is a five digit numerical code identifying the manufacturer. The manufacturer's code will be obtained from Cataloging Handbook H4–1.

Block 16.

a. Enter the manufacturer's model, style, or catalog number for the equipment being reported. Always use the model number, if available. Style number would be next in preference. When the manufacturer does not assign a model, style, or catalog number, the word "None" will be inserted.

b. When unable to locate a model number, refer to manufacturer's brochure or purchase order. If the model number is obtained from other than the equipment, indicate the source in "Remarks," Block 54.

Block 17. Enter the serial number taken from the equipment. If a serial number is not assigned to the item, enter "NONE."

Blocks 18 through 24. Not applicable.

Block 25. Enter the complete contract number which the contractor is accountable for the item. This normally will be a facility contract number. Otherwise, procurement contract number will be entered.

Block 26. Enter the complete description of the item.

Block 27. Not applicable.

Block 28. Enter the NASA installation or company name, street address, city, state, and zip code of the actual location of the equipment. If the actual location is a subcontractor's plant, enter the name of the prime contractor above the subcontractor's name. Do not use the office address if different from the plant address. If no street address exists, insert "No Street Address."

Block 28a. Not applicable.

Block 29. Not applicable.

Section II—Inspection Record

Not applicable, except for Block 52, which should be completed when reporting (in accordance with 1845.505–6) that an item is no longer required for or actively being used in pursuit of NASA programs or projects.

Section III—Remarks

Not applicable.

Section IV—Disposition Record

Not applicable.

Section V—Validation Record

Not applicable.

1845.7103 Instructions for the preparation of DD Form 1419.

(a) The essential information covering Sections I and II is required to be completed prior to submission of DD Form 1419, DOD Industrial Plant Equipment Requisition, to the EVS coordinator who will review each submission for completeness and authenticity. Incomplete or invalid requests will be returned for correction. The original and two copies of the approved DD Form 1419 may be forwarded to DIPEC for screening of inventories. Upon completion of the screening process, DIPEC will annotate the results of the screening in section IV or V. Certification of nonavailability when cited in Section V is evidence that screening has been accomplished by NASA/DIPEC. The original and one copy of the request will be returned by DIPEC to the EVS coordinator of the cognizant NASA installation indicated in Section III.

(b) When a suitable item is allocated in Section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach NASA/DIPEC within 30 days after allocation. A copy of the DD Form 1419 will serve as the clearance document to inspect the equipment at the storage site. Acceptance or rejection of item, without inspection or after inspection, is to be noted in Section VI. If it is determined that the item is acceptable, Section VII is to be executed. The NASA appropriation symbol must be cited where applicable in Section VII. In either instance, acceptance or rejection, the original of the DD Form 1419 is to be returned to DIPEC by the EVS coordinator when items have been offered by DIPEC.

Requisition Number. The EVS coordinator will assign a requisition number to each DD Form 1419 request. When DIPEC is to be screened, each number assigned will be coded for automatic data processing by DIPEC. It will also identify the requiring installation and provide a serial number and date of submission for subsequent reference. The requisition number will begin with the appropriate FEDSTRIP/MILSTRIP Activity Address Code set forth below:

Ames Research Center	809101
Goddard Space Flight Center	803201
Johnson Space Center	807402
Kennedy Space Center	804200
Langley Research Center	803301
Lewis Research Center	805501
Marshall Space Flight Center	804101
NASA Headquarters	803302
NASA Resident Procurement Office-JPL	809143
National Space Technology Laboratories	804412

Next will be a four digit entry comprised of the last digit of the current calendar year and the Julian date of the year, i.e. 9035 for February 4, 1969. The last entry will be a four digit number from 0001 to 9999 to sequentially number requisition forms prepared on the same date. For example: the ninth requisition prepared on February 1, 1969 would be 9032–0009 preceded by the FEDSTRIP/MILSTRIP Activity Address Code, an example being Langley—"803301 3032–0009." When submitting subsequent DD Forms 1419 related to the item requested, the same requisition number is to be used and alpha code added to the end of the requisition number to indicate a second or third action on the basic request. Alpha "A" would indicate a second request, "B" a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing by the use of the requisition number.

Section I

Item Description. It is necessary to provide a complete description of the item desired, to obtain maximum screening results. Requests for single purpose or general purpose equipment with special features must contain detailed descriptive data as to the size and capacities, setting forth special operating features or particular operations required to be performed by the item.

Block 1. Not applicable.

Block 2. Enter the manufacturer's name and Federal supply code for manufacturer (Cataloging Handbook H4–1) of the item requested.

Block 2a. Enter the manufacturer's model, style, or catalog number assigned to the equipment being requisitioned. Always use the model number if available. The style number is the next preference. Insert "NONE" in this block if the model, type, or catalog number is not known.

Block 3. Enter the 4 digit Federal Supply Class (FSC).

Block 4. Not applicable.

Block 5. Self-explanatory.

Block 6. Place and "X" in the applicable block to indicate whether physical inspection prior to acceptance is or is not desired.

Block 7. Self-explanatory.

Block 8. Enter the complete description of the item. Continue the item description in Block 51 if additional space is required to describe the item desired.

Section II

Block 9. Enter the contractor's name, street address, city, state, and zip code from which the requisition is being initiated. The address should be the one to which inquiries of a technical nature are to be referred. Include the name and telephone number of the individual to be contacted concerning the item requested.

Blocks 10 and 10a. Enter the contract number or document number and the date of the document which authorizes the acquisition of the items shown in Section I. Normally this will be a facility contract number, otherwise it should be a purchase order number or purchase request number.

Block 11. Not applicable.

Block 12. Disregard the "Military" block. Show NASA contract number and program for which item is to be used.

Block 13. Enter the specific function to be performed by the equipment. When applicable, enter the tolerances, capacities, specifications, etc., which equipment must satisfy.

Block 14. Enter the date the item must be installed in place to meet production requirements. From this date, deduct the estimated number of days required for installation. Enter the adjusted date in this block.

Block 15. Enter the date by which NASA must issue a Certificate of Nonavailability. The date will be developed by subtracting the procurement leadtime and 30 days administrative leadtime from the date shown in Block 14.

Block 16. Enter the Defense Material System Priority Rating that is assigned to the contract or anticipated purchase order, if applicable.

Block 17. Place an "X" in the appropriate box. If for replacement, identify the item to be replaced and the reason for replacement.

Block 18. Enter an "X" in the appropriate box. Show the appropriation symbol if answer is "yes."

Block 19. Not applicable.

Blocks 20 and 21. In addition to the offical's title and signature, enter the signing official's typed name, office symbol or name, and telephone number and extension. The signing official should be the company representative who prepares and submits the requirement to the cognizant NASA certifying office.

Block 22. Self-explanatory.

Block 23. Certification of need for the item requisitioned is the function of the contracting officer of the NASA installation

having jurisdiction over the contract. For NASA in-house requirements, certification can be made by the EVS coordinator.

Block 23a. Not applicable.

Block 23b. Name and address of the installation certifying the requirement.

Block 23c. Signature of the property administrator or contracting officer at plant level.

Block 23d. Self-explanatory.

Block 23e. Signature of NASA installation official certifying the requirement.

Block 23f. Self-explanatory.

Section III.

This section is for the EVS coordinator's certification of the requirement to DIPEC, when applicable.

Block 24. Self-explanatory.

Block 25. Self-explanatory.

Block 26. Self-explanatory.

Block 27. Self-explanatory.

Section IV.

To be completed by DIPEC (copy is used for admittance to storage site for inspection of property offered).

Section V.

To be completed by DIPEC or EVS Coordinator if equipment is not available.

Section VI.

Blocks 42, 43, 44, and 45. To be completed by the requesting official signing the requisition in Section II. (See Block 20.) Reasons for non-acceptance are to be shown in Section VIII, Remarks, or by separate document attached to the DD Form 1419.

Section VII.

Block 46. Enter complete name, street address, city, state, and zip code of the contractor or installation to which the item is to be shipped. Indicate rail head and truck delivery points when other than the address named.

Block 47. Self-explanatory.

Block 48.

Blocks 49a and b. Insure that NASA appropriation symbols are included with work order number.

Block 49c. Enter NASA appropriation symbol chargeable for any special work ordered, i.e., rebuild, repair, accessory replacement.

Block 49b. Enter NASA installation and office symbol which will make payment for transportation and packing, crating, and handling of item requisitioned.

Block 50. Self-explanatory.

Block 51. This block can be used to expand or explain entries made in Blocks 1 through 50. When requisitioning equipment from excess listings, identify issuing office, list number, date, control number, and item number assigned to equipment.

PART 1846—QUALITY ASSURANCE

Subpart 1846.6—Material Inspection and Receiving Reports

Sec.

1846.670 Introduction.
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1846.671 Procurement quality assurance on shipments between contractors.
1846.672 Preparation of the DD Form 250 and DD Form 250c.
1846.672–1 Preparation instructions.
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1846.672–6 Receiving instructions.
1846.673 Distribution of DD Form 250 and DD Form 250c.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.

1846.670–1 General.

(a) This Subpart 1846.6 contains procedures and instructions for the use, preparation, and distribution of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and suppliers' commercial shipping/packing lists used to evidence Government Procurement Quality Assurance (PQA).

(b) MIRR's are used to document PQA, acceptance of supplies and services, and shipments; they are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities. MIRR's are not required to be used for—

(1) Shipments by subcontractors where direct shipment is not made to the Government;

(2) Shipment of contractor inventory (see FAR 45.601); or

(3) Movement of Government property unless for original acquisition.

(c) To preclude delays in shipments or payments and avoid multiple corrections, contractors are encouraged to consult with the cognizant Government representative regarding implementation of this Subpart.

1846.670–2 Applicability

(a) The provisions of this Subpart are applicable to all deliveries of supplies or services procured by or for NASA. Exceptions are as follows:

(1) Procurements effected under FAR Part 13.

(2) Negotiated subsistence procurements.

(3) Subcontracts where direct shipment is not made to the Government.

(4) Contracts for which the end item is a technical or scientific report.

(b) When NASA provides PQA and/or Acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this Subpart unless otherwise specified in the contract.

1846.670–3 Use.

(a) The DD Form 250 is a multi-purpose report used for—

(1) PQA—to provide evidence of PQA at origin or destination;

(2) Acceptance—to provide evidence of acceptance at origin or destination;

(3) Packing list;

(4) Receiving;

(5) Shipping;

(6) Contractor invoice;

(7) Contractor invoice support; and

(8) Contractor internal use.

1846.670–4 Application.

(a) The DD Form 250 shall be used for delivery of contract line, subline, exhibit line, or exhibit subline items.

(b) If the "Shipped To," "Marked For," "Shipped From," "PQA," and "Acceptance" data are the same for more than one shipment made on the same day under the same contract one MIRR shall be prepared to cover all such shipments, except that, if the volume of the shipments precludes the use of a single car, truck, or other vehicle, either a copy of the single MIRR or a separate MIRR shall be provided for each vehicle.

(c) The DD Form 250 may be, but is not required to be, used under imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against an indefinite-delivery type contract, delivery orders placed against a blanket purchase agreement, or whenever the purchasing, requisitioning, or ordering document adequately provides for inspection and/or acceptance.

1846.670–5 Forms.

(a) Contractors may obtain from the contracting office upon request and at no cost MIRR forms required for use in connection with Government contracts.

(b) Contractors may print forms provided that the format and dimensions (DD Forms 250 and 250c—8 1/2 in. x 11 in.) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250 and 61 lines vertically border to border for the DD Form 250c.

1846.671 Procurement quality assurance on shipments between contractors.

(a) The suppliers' commercial shipping document/packing list shall indicate performance of required PQA actions at subcontract level. The following entries shall be made on the supplier's

commercial shipping document/packing list:

Required PQA of listed items has been performed.

Date: (Signature of Authorized Government Representative) (Typed Name and Office)

(b) Distribution for Government purposes shall be one copy—

(1) With shipment;

(2) For the Government representative at consignee (via mail); and

(3) For the Government representative at consignor.

1846.672 Preparation of the DD Form 250 and DD Form 250c.

1846.672-1 Preparation instructions.

DD Form 250, Material Inspection and Receiving Report (MIRR), and DD Form 250c, Material Inspection and Receiving Report—Continuation Sheet, shall be prepared as follows:

(a) *General.*

(1) The date, where required, shall utilize seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 07AUG07, 07SEP24.

(2) The address, where required, shall consist of the name, street address/P.O. Box, city, state, and ZIP code.

(3) When the DD Form 250c is used, the data entered in the blocks at the top of the form shall be identical to the comparable entries as shown in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with appropriate block cross reference. Additional DD Form 250c sheets, solely for continuation of Block 23 data, shall not be numbered or distributed as part of the MIRR.

(b) *Classified information.* Classified information shall not be included in or appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1*—CONTRACT NUMBER.

(1) Enter the contract number as contained in the contractual document, including the applicable call/order number, if any.

(2) Enter the name of the contracting office immediately below the contract number. This requirement may be satisfied by inclusion of the approved prefix used in the contract number to identify the contracting office.

(d) *Block 2*—SHIPMENT NO.

(1) The shipment number is composed of a three-alpha character prefix and a four-character numeric or alpha-numeric serial number.

(i) The shipment number prefix shall be controlled and assigned by the prime contractor and shall consist of three alphabetic characters for each "Shipped From" address (Block 11).

(ii) The first shipment under a prime contract from each "Shipped From" address shall be numbered 0001; all subsequent shipments under that prime contract shall be consecutively numbered.

(A) Alpha-numeric numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with the alpha in the first position followed by the three-position numeric serial number. The following alpha-numeric sequence shall be (the letters I and O shall not be used)—

(*1*) A001 through A999 (10,001 through 10,999);

(*2*) B001 through B999 (11,001 through 11,999); to

(*3*) Z001 through Z999 (34,001 through 34,999).

(B) When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned where a "Replacement Shipment" is involved (see Block 16(b)(4)).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a "Z" in addition to that required for line items (see Block 17). Where the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect to direct the subcontractor to suffix the "Z" or, on receipt of the subcontractor final shipment information, to correct the DD Form 250 (see FAR Subpart 12.1) covering the last shipment from the prime contractor's plant by addition of a "Z" to that shipment number.

(e) *Block 3*—DATE SHIPPED. Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of PQA and/or Acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(f) *Block 4*—B/L TCN. When applicable, enter—

(1) The commercial or Government bill of lading number after "B/L"; and

(2) The Transportation Control Number after "TCN."

(g) *Block 5*—DISCOUNT TERMS. The discount, in terms of percentages and corresponding days allowed, shall be entered as described below:

(1) The contractor may, at its option, enter the discount terms on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 18-46.672-4.

(h) *Block 6*—INVOICE NO./DATE. Enter the invoice number and date as described below:

(1) The contractor may, at its option, enter the invoice number and date on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 18-46.672-4.

(i) *Block 7*—PAGE/OF. Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

(j) *Block 8*—ACCEPTANCE POINT. Enter an "S" for Origin or "D" for Destination as specified in the contract as the point of acceptance. Enter an alphabetic "O" for Other if the point of acceptance is not specified in the contract.

(k) *Block 9*—PRIME CONTRACTOR. Enter the address.

(l) *Block 10*—ADMINISTERED BY. Enter the address of the contracting office cited in the contract.

(m) *Block 11*—SHIPPED FROM/CODE/FOB.

(1) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(2) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter "See Block 9."

(3) Enter on the same line and to the right of "FOB" and "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the FOB point cited in the contract is other than origin or destination.

(n) *Block 12*—PAYMENT WILL BE MADE BY. Enter the address of the payment office cited in the contract.

(o) *Block 13*—SHIPPED TO. Enter the address of the consignee as contained in the contract or shipping instructions.

(p) *Block 14*—MARKED FOR. Enter the "Marked For" address and/or other designation as contained in the contract or shipping instructions.

(q) *Block 15*—ITEM NO. Enter the contract line item, subline line, exhibit line, or exhibit subline identification as set forth in the contract. If four or less digits are used, they will be positioned to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) *Block 16*—STOCK/PART NO./DESCRIPTION.

(1) Enter, as applicable, for each line item, using single spacing between each line item, the following:

(i) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix. When a number is not provided or it is necessary to supplement the number, include other identification, e.g., manufacturer's name or Federal Supply Code, as published in Cataloging Handbook H4-1, and part numbers. Additional part numbers may be shown in parentheses. Also enter the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/material control code. In the case of equal kind supply items, the first entry shall be the description without regard to kind, i.e., "Resistor" or "Vacuum Tube". Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(ii) On the next printing line if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) In addition to entries required above, enter on the next line the following as appropriate (where applicable to all line item numbers identified in the MIRR, enter such

data only once after the last line entry. Entries may be extended through Block 20):

(i) Enter in capital letters any special handling instruction/limits for material environmental control, i.e., temperature, humidity, aging, freezing, and shock.

(ii) When an FSN is required by, but not cited in, a contract and has not been furnished by the Government, shipment may be made without such FSN at the direction of the contracting officer. Enter the authority for such shipment.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(iv) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See subparagraph (s)(3) below for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): FSN or comparable identification ———, Quantity ———, Estimated Value ———, Authority ———."

(vi) When shipment is made of components which were short on a prior shipment, enter and complete the following: "These components were listed as shortages on Shipment Number ———, date shipped ———."

(vii) When shipments involve drums, cylinders, reels, containers, skids, and so forth designated as returnable under contract provisions, enter and complete the following: "Return to ———, Quantity ———, Item ———, Ownership *(Government/contractor)*."

(viii) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviation from contract specifications, including the source and authority for the waiver or deviation; for example, the contracting office authorizing the waiver or deviation and the identification of the authorizing document.

(x) For shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-inch outline-type style letters.

(xi) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The contracting officer shall advise (A) the consignee of the results (approval/disapproval) and (B) the contractor to withhold invoicing pending attachment to its invoice of the approved test/evaluation results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or ARP origin acceptance (additional copy furnished to the QAR) shall be identified entering "PAYMENT COPY" in approximately one-half inch outline-type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17*—QUANTITY SHIPPED/RECEIVED.

(1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a "Z" below the first digit of the quantity when—

(i) The total quantity of the line item is delivered, including variations within contract terms; and

(ii) All shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter "A" to designate first replacement, "B" for second replacement, and so forth. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

(t) *Block 18*—UNIT. Enter the abbreviation of the unit of measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marketing and Storage.

(u) *Block 19*—UNIT PRICE. Enter the unit price on all MIRR copies whenever the MIRR is used for voucher or receiving purposes.

(v) *Block 20*—AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21*—PROCUREMENT QUALITY ASSURANCE. The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross reference.

(1) "A ORIGIN."

(i) The authorized Government representative shall—

(A) Place an "X" when applicable in the appropriate PQA and/or Acceptance box(es) to evidence origin PQA and/or Acceptance. When the contract requires PQA at destination in addition to origin PQA, an asterisk will be entered at the end of the statement and an explanatory note entered in Block 16;

(B) Enter the date of signature;

(C) Sign; and

(D) Enter the typed, stamped, or printed name of the signer and office code.

(2) "B. DESTINATION."

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When PQA and Acceptance or Acceptance is at destination the authorized Government representative shall—

(A) Place an "X" in the appropriate box(es);

(B) Enter the date of signature;

(C) Sign; and

(D) Enter typed, stamped, or printed name and title.

(x) *Block 22*—RECEIVER'S USE. This block shall be used by the receiving activity (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) *Block 23*—CONTRACTOR USE ONLY This block is provided and reserved for contractor use.

1846.672-2 Consolidated shipments.

When individual shipments are held at the contactor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of PQA or Acceptance prior to the time of actual shipment (see Block 3).

1846.672-3 Correction instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) The words "CORRECTIONS HAVE BEEN VERIFIED" shall be entered on page 1. The authorized Government representative shall date and sign immediately below the statement.

(c) MIRR's shall not be corrected for Blocks 19 and 20 entries.

(d) Pages of the MIRR requiring correction shall be clearly marked "CORRECTED COPY," avoiding obliteration of any other entries. Where corrections are made only on continuation sheets, page 1 shall also be marked "CORRECTED COPY."

(e) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

1846.672-4 Invoice instructions.

Contractors are encouraged to use copies of the MIRR as an invoice in lieu of a commercial form, but are not required to do so. When used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(a) Complete Blocks 5, 6, 19, and 20.

(b) Mark, in letters approximately one inch high, the first copy "ORIGINAL INVOICE" and the remaining three copies "INVOICE COPY."

(c) Forward the four copies to the payment office (Block 12 address).

1846.672–5 Packing list instructions.

Copies of the MIRR may be used as a packing list. If so, the packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked "PACKING LIST."

1846.672–6 Receiving instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If PQA and Acceptance or Acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

1846.673 Distribution of DD Form 250 and DD Form 250c.

(a) Subject to the requirements of paragraph 217 of NHB 5330.7, Management of Government Quality Assurance Functions for Supplier Operations, DD Forms 250 and 250c shall be distributed in accordance with the procedures prescribed by the installation.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

PART 1847—TRANSPORTATION

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

Sec.

1847.200 Scope of subpart.
1847.200–70 Charter of aircraft.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.
1847.304–3 Shipments from CONUS for overseas delivery.
1847.304–370 NASA export privilege.
1847.305 Solicitation provisions, contract clauses, and transportation factors.
1847.305–10 Packing, marking, and consignment instructions.
1847.305–13 Transit arrangements.
1847.305–70 NASA contract clause.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.
1847.506–70 Compliance with the Cargo Preference Act.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

1847.200 Scope of subpart.

1847.200–70 Charter of aircraft.

When procuring aircraft by charter, contracting officers shall comply with NMI 7910.1, NASA Aircraft Management.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304–3 Shipments from CONUS for overseas delivery.

1847.304–370 NASA export privilege.

NASA has certain export licensing privileges for the moving of commodities to foreign destinations. Advice should be obtained from the transportation officer to make full use of these privileges.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305–10 Packing, marking, and consignment instructions.

In contracts which provide for delivery f.o.b. origin and shipment under Government bills of lading, consignment instructions may be limited to the mail address of the consignee (receiving activity), provided the contract instructions state that "Shipment other than mail shall be consigned as indicated on the Government bill of lading furnished to the contractor." Various receiving activities may have different consignment points for the various transportation media or for particular carriers within a medium, depending on the weight, shape, size, or nature of the shipment involved.

1847.305–13 Transit arrangements.

(a) When using the provision in FAR 52.247–56, the solicitation also shall state that offers will be evaluated on the basis of the lowest overall cost to the Government, including transportation costs to NASA from point of origin to final destination, taking into account any applicable transit privileges.

(b) If the nature of the procurement is such that carload or truckload shipments may be made by the contractor from one point (such as a subcontractor's plant) to another point for processing or fabrication and delivery to the Government, solicitations shall provide for the contractor to furnish information that will enable the Government to benefit from any transit privilege that might apply in shipment to final destination.

1847.305–70 NASA contract clause.

Insert the clause at 1852.247–70, Returnable Gas Cylinders, in contracts involving the purchase of gas in contract-furnished returnable cylinders where the contractor retains title to the cylinders. The clause may be used, with appropriate modification, in contracts for other supplies involving reels, spools, drums, carboys, liquid petroleum gas containers, or other reusable containers, where the contractor is to retain title to the containers.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.

1847.506–70 Compliance with the Cargo Preference Act.

(a) A register will be established and maintained by the transportation officer in each field installation to reflect adherence to the Cargo Preference Act. Where there is no transportation officer available, it will be maintained by the procurement office. Such registers shall contain pertinent details of ocean shipments, including, but not limited to, the ports of origin and destination of shipments, commodity descriptions, and gross weight, freight revenue, name of vessel, operator of vessel, and date of loading. Registers shall be maintained on a current basis and organized so that adherence to the Cargo Preference Act can be ascertained at all times. Insofar as practicable, compliance with the 50 percent minimum requirements of the Cargo Preference Act shall be maintained on a quarter-year basis. Any deficiencies to maintain such compliance shall be corrected by the end of the calendar year.

(b) On the basis of the registers maintained under (a) above, quarterly reports reflecting actual ocean shipments shall be submitted to the Division of National Cargo, Maritime Administration, Department of Transportation, Washington, D.C. 20590 (see FAR 47.506(d)). Negative reports are required when applicable. Such reports will be made by the transportation officers and contracting officers responsible for maintaining the registers described in paragraph (a) above.

PART 1848—VALUE ENGINEERING

Subpart 1848.1—Policies and Procedures

Sec.

1848.102 Policies.

Subpart 1848.2—Contract Clauses

1848.202 Clause for construction contracts.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1848.1—Policies and Procedures

1848.102 Policies.

As authorized at FAR 48.102(a), NASA has elected to exempt all contracts other than fixed-price construction contracts from value engineering requirements at FAR Part 48.

Subpart 1848.2—Contract Clauses

1848.202 Clause for construction contracts.

(a) The contracting officer shall insert the clause at FAR 52.248–3, Value Engineering—Construction, only in those fixed-price construction solicitations and contracts when the contract amount is estimated to be $100,000 or more.

(b) Questions on the implementation and administration of this clause that cannot be resolved at the local level should be referred to the Assistant Administrator for Procurement (Code HP–1).

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.1—General Principles

Sec.

1849.101 Authorities and responsibilities.
1849.101–70 Appointment/Delegation.
1849.101–71 Termination authority.
1849.102 Notice of termination.
1849.102–70 Prior clearance of significant contract terminations.
1849.105 Duties of termination contracting officer after issuance of notice of termination.
1849.105–70 Termination docket checklist.
1849.110 Negotiation memorandum.
1849.111 Review of proposed settlements.
1849.111–70 Settlement Review Boards.
1849.111–71 Required review and approval.
1849.111–72 Scope of review.
1849.111–73 Action by the Board.
1849.111–74 Subcontracts.

Subpart 1849.5—Contract Termination Clauses

1849.502 Termination for convenience of the Government.
1849.503 Termination for convenience of the Government and default.
1849.505 Other termination clauses.

Subpart 1849.6—Contract Termination Forms and Formats

1849.670 Format for Termination Contracting Officer's Settlement Memorandum for fixed-price type contract terminated for convenience of the Government.
1849.671 Format for Termination Contracting Officer's Settlement Memorandum for cost-reimbursement type contracts.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1849.1—General Principles

1849.101 Authorities and responsibilities.

1849.101–70 Appointment/Delegation.

(a) Heads of installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as that individual's primary function. Such duties should include—

(1) Receiving and reviewing NASA Forms 1412, Termination Authority.

(2) Reviewing the contract and other related documents prior to issuing the notice of termination to ensure protection of the Government's rights under the contract.

(3) Issuing notices of termination, reinstatement, and recission to contractors.

(4) Assigning termination docket control numbers.

(5) Developing, maintaining, and managing basic controls relating to contract termination and settlement actions.

(6) Carrying out the duties, functions, and responsibilities in FAR Part 49 and this Part 1849.

(b) Contracting offices shall utilize the services of DOD and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the termination function will be made in accordance with FAR Subpart 42.2 and Subpart 1842.2.

1849.101–71 Termination authority.

NASA Form 1412, Termination Authority, is prescribed for use by cognizant NASA installations when initiating action to terminate a contract for either convenience of the Government or for default of the contractor. The termination authority shall normally be originated by the project manager or other NASA officials responsible for the decision to terminate and shall be submitted to the contracting office for use in recording subsequent decisions regarding the type of termination and assignment of the responsibility for final settlement.

1849.102 Notice of termination.

1849.102–70 Prior clearance of significant contract terminations.

(a) Prior NASA Headquarters clearance of the information release is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor and release of information to Congress or the public is the responsibility of NASA Headquarters through its liaison point designated in paragraph (b) below. In a labor surplus area, a lesser number than 100 may be significant and, if so, should be similarly cleared.

(b) The following information will be submitted to the Office of Legislative Affairs, NASA Headquarters (Code C), which, in coordination with the Office of External Relations (Code L), has been designated the NASA liaison point.

(1) Contract number, date of award, type of contract.

(2) Name of company.

(3) Nature of contract or end item.

(4) Reasons for the termination.

(5) Contract price of items terminated.

(6) Total number of contractor employees involved including the Government's estimate of the number that may be discharged.

(7) Statement of anticipated impact on the company and the community (identify). Identify area labor category and whether contractor is large or small business, and include any known impact on hardcore disadvantaged employment programs.

(8) Total number of subcontractors involved as well as the impact in this area, if known.

(9) Unclassified draft of suggested press release of information.

(c) Clearance to release the information will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance to release, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required. Copies of the above will be furnished to the Office of External Relations (Code L), the cognizant Program Office, and the Assistant Administrator for Procurement (Code HP–1).

(d) The liaison office will act promptly on the request for clearance to release information (not days after receipt) to avoid the accrual of termination costs.

1849.105 Duties of termination contracting officer after issuance of notice of termination.

1849.105–70 Termination docket checklist.

NASA Form 1413, Termination Docket Checklist, is prescribed for use as a checklist to ensure adequacy of records under FAR 49.105.

1849.110 Negotiation memorandum.

Recommended memorandum formats for settlements requiring review board action appear in 1849.670.

1849.111 Review of proposed settlements.

1849.111-70 Settlement Review Boards.

Procurement Officers at each NASA installation shall establish a Settlement Review Board (the Board) to review proposed settlements or determinations as required by 1849.111-71(a). Each Board should be composed of at least three qualified employees of the installation who shall possess broad business and contracting experience. The membership of each Board should include a lawyer, an engineer or industrial specialist, and, in appropriate cases an accountant. Three members of the Board shall constitute a quorum; the Board may act by a majority of the members present. No person shall serve as a member of a Board in reviewing a settlement in which that member has participated.

1849.111-71 Required review and approval.

(a) *When required.* Prior to executing a settlement agreement, issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the TCO shall submit each such settlement or determination for review and approval by the Board if—

(1) The settlement or determination involves $50,000 or more (see FAR 49.002(d));

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and (i) in the case of a complete termination, the fee, as adjusted, is $50,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

(3) The Procurement Officer concerned determines that a review is desirable; or

(4) The TCO desires review by the Board.

(b) *Submission of information.* The TCO shall submit to the Board the Termination Settlement Supplemental Agreement, supported by such detailed documentation as is required for an adequate review. The supporting documentation should normally include copies of (1) the contractors's or subcontractor's settlement proposal, (2) the audit report, (3) termination inventory schedules, (4) consolidated SF 1424, Inventory Disposal Report, (5) the TCO's negotiation memorandum explaining the settlement (see FAR 49.110), and (6) when appropriate, the opinion of any other Settlement Review Board which previously reviewed the settlement. The Board will prescribe the number of copies of the information it requires and may require the submission of additional information.

1849.111-72 Scope of review.

The function of the Board is to determine the overall reasonableness of the proposed settlement agreement or determination from the standpoint of protecting the Government's interest. The Board may vary the scope and intensity of the review according to the size and complexity of the proposed settlement agreement or determination and any other relevant factors. It is not intended that the Board examine in detail every element entering into the proposed settlement agreement or determination, but the Board may inquire into selected elements of the proposed settlement agreement or determination to assure that it has been conducted competently and is based on adequate information.

1849.111-73 Action by the Board.

The Board shall submit to the TCO a written opinion regarding the proposed settlement agreement or determination and any other matter considered by the Board setting forth its approval or disapproval thereof or other decision thereon. Failure of the Board to submit a written opinion as to any proposed settlement agreement or determination within 30 days after submission to the Board of all the information required under 1849.111-71(b) shall operate as an approval by the Board.

1849.111-74 Subcontracts.

A TCO may authorize the contract administration office cognizant of an upper-tier subcontractor to grant approval or ratification, including necessary board approvals, of proposed subcontractor settlements described in FAR 49.108-3(c), which are first reviewed and referred by the prime contractor to the TCO. This procedure may be used only for specific contracts and is not applicable to settlements between the contractor and its immediate subcontractors.

Subpart 1849.5—Contract Termination Clauses

1849.502 Termination for convenience of the Government.

The clause at 1852.249-70 shall be used in all letter contracts contemplating fixed-priced type definitive contracts.

1849.503 Termination for convenience of the Government and default.

The clause at 1852.249-71 shall be used in all letter contracts contemplating cost reimbursement type definitive contracts.

18-49.505 Other termination clauses.

The contracting officer shall insert the clause at 1852.249-72, Termination (Utilities), in all contracts for utilities services.

Subpart 1849.6—Contract Termination Forms and Formats

1849.670 Format for Termination Contracting Officer's Settlement Memorandum for fixed-price type contract terminated for convenience of the Government.

The following settlement memorandum is required for use by TCO's (see FAR 18-49.110). Contractors and subcontractors should be encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

Part I—General Information

(a) *Identification.* (Identify memorandum as to its purpose and content.)

(1) Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

(2) Name and titles of both contractor and Government personnel who participated in the negotiation.

(b) *Description of terminated contract.*

(1) Date of contract and contract number.

(2) Type of contract.

(3) General description of contract items.

(4) Total contract price.

(5) Cite the applicable contract termination provisions and clause.

(c) *Termination notice.*

(1) Reference termination notice and state effective date of termination.

(2) Scope and nature of termination (complete or partial), items terminated, unit price, and total price of items terminated).

(3) State whether termination notice was amended, and if so, explain.

(4) State whether contractor stopped work on effective termination date. If it did not, furnish details. Also state whether subcontracts were terminated promptly.

(5) Statement as to diversion of common items and return of goods to suppliers, if any.

(6) Furnish information as to contract performance and timely deliveries on part of contractor.

Part II—Contractor's Settlement Proposal

(a) *Date and amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

(b) *Basis of claim.* State whether claim was filed on inventory, total cost, or other basis. Explain approval granted in connection with submission on other than inventory basis.

(c) *Examination of proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Contractor's Claim

Prepare a summary substantially as follows:

(WHERE FIELD RECOMMENDATIONS ARE TO BE CONSIDERED, EXPAND THE FORMAT TO INCLUDE SUCH RECOMMENDATIONS.)

Auditor's Recommendation	Item Claimed	Contractor's Proposal	$ Accepted		TCO Negotiated Amount
			Cost Questioned	Unresolved Items	
1. Contractor's Costs as set forth on Settlement Proposal, Metals, Raw materials, etc. Total					
2. Profit					
3. Settlement Expense					
4. Total					
5. Settlement with Subs					
6. Acceptable Finished Product					
7. Gross Total					
8. Disposal and Other Credits					
9. Net Settlement					
10. Partial, Progress & Advance Payments					
11. Net Payment Requested					

Part IV—Discussion of Settlement

(a) Contractor's cost.

(1) If the settlement was negotiated on the basis of individual items, specify the factors and consideration with respect to each item.

(2) In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included therein.

(3) Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

(4) If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

(5) Comment on any unadjusted contractual changes which are included in the settlement.

(6) Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.

(7) Furnish other information believed helpful to the Settlement Review Board or any reviewing authority in understanding the recommended settlement.

(b) *Profit.* Explain the basis and factors considered in arriving at a fair profit.

(c) *Settlement expenses.* Comment on and summarize those expenses not included in audit review.

(d) *Subcontractor's settlements.*

	No. of Settlements	Net Amount
Approved by contracting officer		
Concluded by contractor under delegation of authority		
Approved by Settlement Review Board		
No Cost Settlements		
Total		

(e) *Partial payments.* Furnish total amount of partial payments, if any.

(f) *Progress or advance payments.* Furnish total of unliquidated amounts, if any.

(g) *Claims of the Government against the contractor included in Settlement Agreement reservations.* List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion thereof.

(h) *Assignments.* List any assignments, giving name and address of assignee.

(i) *Disposal credits.* Furnish information as to applicable disposal credits and, give dollar amounts of all disposal credits.

(j) *Plant clearance.* State whether all plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearance. Consolidated closing plant clearance report is attached.

(k) *Government property.* State whether all Government property has been accounted for.

(l) *Special tooling.* If involved, furnish comment on disposition.

(m) *Summary of settlement.* Summarize the settlement in tabular form substantially as follows:

TABULAR SUMMARY FOR COMPLETE OR PARTIAL TERMINATION

	Amount Claimed	Allowed Amount
Prime Contractor's Charges (before disposal credits)		
Plus: Subcontractor charges (after disposal credits)		
Gross Settlement		
Less: Disposal Credits—Prime		
Net Settlement		
Less: Prior Payment Credits (This Settlement)		
Previous Partial Settlements		
Other Credits or Deductions		
Total		
Net Payment		
Total Contract Price (Complete Termination)		
CPIT (for partial termination)		
Less: Total Payments to date		
Net Payment from this Settlement		
Fund Reserved for Reservations		
Final Contract Price (Terminated Portion for partial termination)		
Reduction in Contract Price		

(n) *Exclusions.* Describe any proposed reservation of rights to the Government or to the contractor.

Part V—Recommendation

(a) *Recommendation.* Include statement as to the amount of the gross settlement and recommendation that it is fair and reasonable to the Government and the contractor.

(b) *Signature.* The Contracting Officer will sign and date the memorandum.

1849.671 Format for Termination Contracting Officer's Settlement Memorandum for cost-reimbursement type contracts.

The following settlement is required for use by TCO's (see FAR 1849.110). This format may be appropriate by modified and used to cover subcontract settlements.

Part I—General Information

(a) *Identification.* (Identify memorandum as to its purpose and content.)

(1) Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

(2) Names and titles of contractor and Government personnel who participated in the negotiation.

(b) *Description of terminated contract.*

(1) Date of contract and contract number.

(2) Type of contract.

(3) General description of contract items.

(4) State total contract cost and fee data if complete termination.

(5) Cite the applicable contract termination provisions and clauses.

(c) *Termination notice.*

(1) Reference termination notice and state effective date of termination.

(2) Scope and nature of termination (complete or partial, items terminated, estimated costs and fee data applicable to items terminated).

(3) State whether termination notice was amended, and if so, explain.

(4) Explain scope of the settlement as to whether settlement concerns fee only or whether costs are also included.

Part II—Contractor's Settlement Proposal

(a) *Date and amount.* Indicate data and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

(b) *Examinations of proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Settlement

(a) *Summary.* Summarize the proposed settlement in tabular form substantially as shown in Attachments A and B. Partial settlements may be summarized on Attachment B.

(b) *Comments.* Furnish comments in amplification of tabular summaries. Summary of final settlement is at Attachment A.

(1) If the auditor's final report was not available for consideration, state the circumstances.

(2) Explain how the fixed fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.

(5) Explain substantial or otherwise-important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump-sum basis, explain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why they were not.

(9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken thereon.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show settlements with subcontractors by breakdown as follows:

	Number Settlements	Total Dollar Amount
Approved by Termination Contracting Officer		
Concluded by contractor under delegation of authority		
Approved by Settlement Review Board		
No Cost Settlements		
Total		

(12) The following summary will be followed where settlement includes costs and fixed fee in a complete termination.

Gross Settlement	
Less: Disposal credits	
Net Settlement	
Less: Prior Payments	
Other credits or deductions	
Total	
Net Payment	
Total contract estimated cost plus fixed fee	
Less: Net settlement	
Estimated returns for exclusions	
Final contract price (Consisting of $—— for reimbursement of costs and $—— for adjusted fixed fee)	
Reduction in contract price (credit)	

(13) If the settlement is restricted to an adjustment of the fixed fee only, then the following summary will be included.

Amount of reduction in estimated costs	
Amount of reduction in fixed fee	
Reduction in contract price (credit)	

Part IV—Recommendation

(a) *Recommendation.* Set forth the amount of the proposed negotiated settlement and make recommendation that the settlement is fair and reasonable to the Government and the contractor and should be approved.

(b) *Signature.* The termination contracting officer and negotiator will sign and date the memorandum.

Attachment A

SUMMARY OF SETTLEMENT—COST TYPE CONTRACT[1]

Contract No. —— Termination No. ——

	Amount Claimed	Amount Allowed
1. Previous Reimbursed Costs—Prime and Subs	$	$
2. Previous Unreimbursed Costs	$	$
3. Total Cost Settlement	$	$
4. Previous Fees Paid—Prime		
5. Previous Fees Unpaid—Prime	$	$
6. Total Fee Settlement		
7. Gross Settlement	$——	$——
Less: Deductions not reflected in Items 1–7:		
a. Disposal credits	$——	
b. Other charges against contractor arising from contract	$——	
8. Net Settlement		$
Less: Prior Payment Credits		$
9. Net Payment		
10. Amount allowed for prime contractor acquired property taken over by Government in connection with this settlement		$
11. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):		
Aggregate gross amount of previous partial settlements		$——
Aggregate net amount of previous partial settlements		$——
Aggregate net payment provided in previous partial settlements		$——
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements		$——
12. Status of Contract (Fill out to extent applicable):		
a. Date of discontinuance of Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal		—— Date
b. Audit Status Date		—— Date
c. Total amount of any GAO Exceptions outstanding at date of settlement		$——

[1] Use applicable portion for partial settlement.

Attachment B

UNREIMBURSED COSTS SUBMITTED ON DD FORM 547 [1]

Costs	Amounts claimed by Contractor's Proposal	Auditor's Recommendation		TCO's Computation
		Cost Questioned	Unresolved Items	
1. Direct material.				
2. Direct labor.				
3. Indirect factory expense.				
4. Dies, jigs, fixtures and special tools.				
5. Other costs.				
6. General and administrative expense.				
7. Fee.				
8. Settlement expense.				
9. Settlement with subs.				
10. Total costs (Items 1–9)				

[1] Expand the format to include recommendations of technical personnel as required.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1850.1—General

Sec.

1850.102 Policy.

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

1850.202 Contract adjustment boards.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.
1850.305–70 Submission of request to the Contract Adjustment Board.
1850.306 Disposition.

1850.306–70 Implementation of Contract Adjustment Board's decision.

Subpart 1850.4—Residual Powers

1850.401 Standards for use.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1850.1—General

1850.102 Policy.

It is NASA policy not to use the "residual powers" authorized by the Act and FAR Subpart 50.4. It is also NASA's policy not to include in its contracts the clause at FAR 52.250–1, Indemnification Under Pub. L. 85–804.

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

1850.202 Contract adjustment boards.

NMI 1152.5, Contract Adjustment Board, establishes the Contract Adjustment Board as the approving authority to consider and dispose of requests for extraordinary contractual adjustments by NASA contractors.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.

1850.305–70 Submission of request to the Contract Adjustment Board.

(a) After completing the investigation of the facts and issues relevant to the contractor's request, the cognizant contracting officer shall forward the request to the Chairman, Contract Adjustment Board (CAB), NASA Headquarters (Code GG–1), and shall include the following in the forwarding letter:

(1) The nature of the case.

(2) The disposition recommended for the request.

(3) If contractual action is recommended, the opinion of the contracting officer that such action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request and all supporting material submitted by the contractor together with such additional material as the contracting officer has obtained from Government sources or personnel in the course of investigating the facts and issues relevant to the request. The contracting officer's forwarding letter and all enclosures shall be submitted in duplicate. Any classified information included in the material forwarded shall be so identified. The CAB, acting through its Counsel, may further investigate the facts and issues involved to obtain such additional facts and evidence, from the contractor, the contracting officer, or others, as are necessary to make a determination on the contractor's entitlement to the relief requested or to other equitable relief.

1850.306 Disposition.

1850.306–70 Implementation of Contract Adjustment Board's decision.

(a) Copies of the CAB's decision will be transmitted to the cognizant contracting officer, who shall take such action as is authorized by the decision. Where the CAB's decision is to reject the contractor's request for relief, the cognizant contracting officer shall advise the contractor of that decision.

(b) Except as provided in paragraph (c) below, immediately upon execution of a contract or contract amendment implementing the CAB decision, the contracting officer shall forward two copies of the contractual document to the CAB Chairman, marked for the attention of its Counsel, for retention with the CAB's permanent files.

(c) Contracts or contract amendments for which approval of NASA Headquarters is otherwise required under the provisions of the FAR or this Regulation shall be forwarded for such approval. After approval has been received, the contracting officer shall comply with paragraph (b) above.

Subpart 1850.4—Residual Powers

1850.401 Standards for use.

See 1850.102.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.101 Policy.

1851.102 Authorization to use Government supply sources.

1851.102–70 Acquisition of filing cabinets by contractors.

1851.103 Ordering from Government supply sources.

1851.104 Furnishing assistance to contractors.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.101 Policy.

The policy governing the use of official Government mailing privileges by NASA contractors is in NMI 1450.11, NASA Mail Management Program.

1851.102 Authorization to use Government supply sources.

(a) In addition to the requirements of FAR 51.102(a) (1) through (5), the contracting officer shall also consider the potential for abuse by contractors authorized access to Government supply sources.

(b) Letters of authorization shall be forwarded by the contracting officer to the installation Supply and Equipment Management Officer, Attention: Activity Address Code Coordinator, who will forward the authorization to the Supply and Equipment Management Division, NASA Headquarters (Code NIE–8), for verification and transmittal to the General Services Administration. Letters of autorization forwarded to Headquarters must include copies of the supporting determination and findings. This latter document will not be forwarded to GSA.

(c) Substantially the following format shall be used for the determination and findings authorizing contractor use of Government supply sources:

Subject: Authorization to Lease, Rent or Purchase from General Services Administration Supply Sources

(Contractor's name)
(Address)

(1) You are hereby authorized to act for the Government in the following matters:

(i) The acquisition of property under Contract No. —— which is available for purchase by Government agencies either directly from the General Services Administration stock or under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth herein.

(ii) The leasing or rental of equipment for use on Contract No. —— which is available for lease or rental by Government agencies under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth herein.

(iii) The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the Government is not liable on property purchased under this authorization.

(2)(i) *Purchase orders under GSA schedules and contracts.* Orders shall be placed in accordance with the terms and conditions of GSA schedules and/or contracts and this authorization. A copy of this authorization shall be attached to the order (unless a copy was previously furnished to the applicable GSA contractor) and shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. (———), pursuant to written authorization dated ——, a copy of which (is attached) (you have on file). In the event of any inconsistency between the terms and conditions of this order and those of the applicable GSA schedule/contract, the latter will govern.

(ii) *Orders for items in the General Services Administration Supply Catalog.* Orders shall be placed in accordance with the General Services Administration Supply Catalog and this authorization. Include the

address to which billings are to be sent. Bills are not issued by General Services Administration until after shipment has been made and should therefore be paid promptly. Necessary adjustments, if any, will be made by General Services Administration subsequent to payment. All orders shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration, in furtherance of United States Government Contract No. (———), pursuant to written authorization dated ——, a copy of which (is attached) (you have on file).

(iii) (Insert any other provisions and restrictions.)

(iv) This authority hereby granted is not transferable or assignable.

———— *(Contracting Officer)*

(d) When requisitioning from the Veterans Administration, the contractor should use FEDSTRIP or MILSTRIP, as appropriate, Optional Form 347, or Center-prescribed form.

1851.102–70 Acquisition of filing cabinets by contractors.

(a) Prior to ordering filing cabinets where title to such equipment vests in the Government, NASA contractors are required to take the following actions:

(1) Transfer inactive records to contractor storage areas.

(2) Dispose of unnecessary records in accordance with their corporate procedures.

(3) Use less expensive shelf filing methods.

(4) Take other actions which will reduce needs for filing cabinets.

(5) Furnish statement to cognizant contracting officer that the above prerequisite actions have been taken and that sufficient additional filing capacity has not been produced.

(b) The contractor will then submit its request to the contracting officer who will confer with the Records Management Officer, Property and Supply Officer, and Project Officer and, if appropriate, will certify on all letter requests that the prerequisite actions have been taken by the contractor and that such actions have not produced the required filing cabinets.

(c) If the need for the filing cabinets is approved by the contracting officer, excess items of the type requested will be furnished, if available, through appropriate property accountability channels.

(d) Approved requests which cannot be filled from excess will be returned to the originating contractor, with an authorization to obtain file cabinets, preferably through GSA.

1851.103 Ordering from Government supply sources.

(a) All orders for GSA stock shall contain the statement in paragraph (c)(2)(ii) of the format for authorization in 1851.102(f).

(b) Contracting officers shall use NMI 4050.2, Assignment and maintenance of FEDSTRIP and MILSTRIP Activity Address Codes, to obtain FEDSTRIP/MILSTRIP activity codes.

1851.104 Furnishing assistance to contractors.

When necessary, assist the contractor in preparing and submitting the initial FEDSTRIP or MILSTRIP requisitions, the Optional Form 347, or Center-prescribed forms.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

1852.000 Scope of part.

Subpart 1852.1—Instructions for Using Provisions and Clauses

1852.101 Using FAR Part 52.
1852.102 Incorporating provisions and clauses.
1852.102–2 Incorporation in full text.
1852.103 Identification of provisions and clauses.
1852.104 Procedures for modifying and completing provisions and clauses.
1852.107 Provisions and clauses prescribed in FAR Subpart 52.1.
1852.107–70 NASA contract clause.

Subpart 1852.2—Texts of Provisions and Clauses

1852.203–70 Contracts between NASA and former NASA employees.
1852.204–70 Report on NASA subcontracts.
1852.204–71 NASA Financial Management Reporting.
1852.204–72 NASA Financial Management Reporting (Monthly Analysis Report).
1852.208–7000 [Reserved]
1852.208–7001 [Reserved]
1852.208–7002 Rates.
1852.208–7003 Public regulation and change of rates.
1852.208–7004 Change in class of service.
1852.208–7005 Contractor's facilities.
1852.208–7006 Technical provisions.
1852.208–7007 Renewal of contract.
1852.208–7008 Change in rates.
1852.208–7009 Connection charge.
1852.208–7010 Termination charge.
1852.208–7011 Multiple service locations.
1852.208–7012 Contractor's facilities (short form).
1852.209–70 Product removal from qualified products list.
1852.209–71 Limitation of future contracting.
1852.210–70 Brand name or equal.
1852.212–13 Stop-work order.
1852.212–70 Notice of delay.
1852.214–23 Late submissions, modifications, and withdrawals of technical proposals under two-step formal advertising.
1852.215–2 Audit—negotiation.
1852.215–10 Late submissions, modifications, and withdrawals of proposals.
1852.215–70 Increase in estimated costs.
1852.215–71 Adjustment for subcontract price redetermination.
1852.216–7 Allowable cost and payment.
1852.216–13 Allowable cost and payment—facilities.
1852.216–7001 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.
1852.216–7002 Economic price adjustment—nonstandard steel items.
1852.216–7003 Evaluation of bids subject to economic price adjustment.
1852.216–7004 Estimated cost and cost sharing.
1852.216–7005 Estimated cost and fixed fee.
1852.216–7006 Payment of fixed fee.
1852.216–7007 Award fee.
1852.222–70 Facilities nondiscrimination notice.
1852.222–71 Facilities nondiscrimination.
1852.223–70 Safety and health.
1852.223–71 Frequency authorization.
1852.225–70 Percent foreign content.
1852.225–71 Nondomestic construction materials.
1852.228–70 Aircraft ground and flight risk.
1852.228–71 Aircraft—flight risks.
1852.228–470 Reimbursement for war hazard losses.
1852.231–70 Pricing of adjustments.
1852.232–1 Payments.
1852.232–2 Payments under fixed-price research and development contracts.
1852.232–4 Payments under transportation contracts and transportation-related services contracts.
1852.232–7 Payments under time-and-materials and labor-hour contracts.
1852.232–10 Payments under fixed-price architect-engineer contracts.
1852.232–70 [Reserved]
1852.232–71 Invoices.
1852.232–72 Payments (letter contracts).
1852.232–73 Payments (utility services).
1852.232–74 Payments (facilities).
1852.232–75 Security for advance payments.
1852.232–76 Authority to obligate funds.
1852.232–77 Limitation of funds (fixed-price-contract).
1852.233–1 Disputes.
1852.235–70 Scientific and Technical Information Service.
1852.235–71 Key personnel and facilities.
1852.236–70 Option for supervision and inspection services.
1852.243–70 Engineering change proposals.
1852.244–70 Geographic participation in the aerospace program.
1852.245–70 Acquisition of existing Government equipment.
1852.245–71 Installation-provided Government property.
1852.245–72 Liability for Government property furnished for repair or other services.
1852.245–73 Financial reporting of Government-owned contractor-held property.

1852.247–70 Returnable gas cylinders.
1852.249–70 Termination—fixed-price letter contract.
1852.249–71 Termination—cost-reimbursement type letter contract.
1852.249–72 Termination (Utilities).
1852.250–1 Indemnification under Public Law 85–804.
1852.252–70 Compliance with NASA FAR Supplement.

Authority: 42 U.S.C. 2473(c)(1).

1852.000 Scope of part.

This part, in conjunction with FAR Part 52, (a) gives instructions for using provisions and clauses prescribed by this regulation, (b) contains those solicitation provisions and contract clauses, and (c) presents composite matrices listing both the FAR and NASA FAR Supplement provisions and clauses applicable to each principal contract type and/or purpose.

Subpart 1852.1—Instructions for Using Provisions and Clauses

1852.101 Using FAR Part 52.

NASA contracting offices prescribing or developing clauses under the authority of FAR 52.101(b)(2)(i) (B) or (C) shall ensure that the requirements of FAR Subpart 1.4 and Subpart 1801.4 are met.

1852.102 Incorporating provisions and clauses.

1852.102–2 Incorporation in full text.

All provisions and clauses prescribed or developed by NASA contracting offices (see FAR 52.101(b)(2)(i) (B) or (C)) shall be incorporated in solicitations and/or contracts in full text as required by FAR 52.102–2(a)(4).

1852.103 Identification of provisions and clauses.

In the hypothetical example of clause identification at FAR 52.103(d)(2), NASA contracting offices shall number their first clause 52.236–90, the second clause 52.236–91 etc. (see FAR 1.303(a) and 1801.104–2(b)).

1852.104 Procedures for modifying and completing provisions and clauses.

NASA FAR Supplement provisions and clauses shall not be modified (see FAR 52.101(a)) unless authorized by this regulation, and when authorized, contracting officers must comply with the procedures in FAR 52.104.

1852.107 Provisions and clauses prescribed in FAR Subpart 52.1.

1852.107–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.252–70, Compliance with the NASA FAR Supplement, in all contracts including letter contracts.

1852.203–70 Contracts between NASA and former NASA employees.

As prescribed at 1803.7002, insert the following provision in all solicitations:

Contracts Between NASA and Former NASA Employees (April 1984)

The offeror represents that he or she () is, or () is not, an individual who was employed by NASA during the past two (2) years, or a firm in which such former employee is a partner, principal officer, majority shareholder, or which is otherwise controlled or predominantly staffed by such former employees.

(End of provision)

1852.204–70 Report on NASA subcontracts.

As prescribed in 1804.672–1, insert the following clause in all NASA contracts of $500,000 or more and contracts where a modification increases the contract amount to $500,000 or more.

Report on NASA Subcontracts (April 1984)

(a) The Contractor agrees to submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code HM–1), Washington, DC 20546, substantially as follows with respect to each subcontract or modification thereof exceeding $10,000 as soon as possible after execution thereof:

(1) The name and address of the prime contractor and the NASA prime contract number;

(2) The name and address of the subcontractor;

(3) Whether the subcontractor is a large or small business concern and/or a minority business concern;

(4) Whether the type of effort being performed involves research and development;

(5) A brief description of the subcontract work;

(6) The amount of the subcontract; and

(7) The principal location where the subcontract work is to be performed, if known.

(b) The Contractor and its subcontractors will submit negative reports annually, when applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. The negative reports will be submitted not later than October 31 for the 12 months' period ending September 30th of each year. The negative reporting will be continued until the contract or subcontract has been physically completed and the National Aeronautics and Space Administration (Code HM–1), Washington, DC 20546, so notified by the Contractor or subcontractor.

(c) The term "subcontract" as used herein means procurement in excess of $10,000 by the Contractor or first-tier subcontractor of articles, materials, or services entering into the performance of this contract, except purchases, regardless of amount, of stock items, materials, or services which cannot be specifically identified with this contract.

(d) The term "research and development" as used herein means basic and applied research, and design and development of prototypes and processes to (1) pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes and (3) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.

(e) The Contractor further agrees to insert the provisions of paragraphs (a), (b), (c) and (d) of this clause in each subcontract in excess of $50,000. The Contractor will instruct its subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code HM–1), Washington, DC 20546, and will provide its subcontractors with the number of the NASA prime contract.

(End of clause)

1852.204–71 NASA Financial Management Reporting.

As prescribed by 1804.675–1(a), insert the following clause in contracts that require financial management reporting in accordance with NMI 9501.1B and NHB 9501.2A.

NASA Financial Management Reporting (April 1984)

(a) Financial Management Reports shall be submitted by the Contractor on NASA Form 533 series of reports in accordance with the instructions set forth in NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2A) and on the reverse side of the form, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with the technical/schedule reporting, will be set forth in the Schedule of this contract. Implementation by the Contractor of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category, and will give due regard to the Contractor's established financial management information system.

(b) Lower level detail, which the Contractor utilizes for its own management purposes to validate information reported to NASA, shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule of this contract or as designated administratively in writing by the Contracting Officer. Upon completion, and acceptance by NASA, of all contract schedule line items, the contractor, unless otherwise directed in writing by NASA, shall discontinue submitting the detailed NASA Form 533 report, and shall limit subsequent reporting to specific line items reflecting cost increases or decreases on a quarterly basis.

(d) The Contractor agrees to insert the substance of this clause in all first-tier cost type subcontracts specifically identified in writing by the Contracting Officer and shall include the cost of such subcontracts in his cost reports.

(e) During the performance of this contract, if NASA requires a change, either an increase or decrease in the information or reporting requirements specified in the Schedule, or as provided for in (a) or (c) above, such change shall be effected by the Contracting Officer in accordance with the procedures of the Changes clause of this contract.

(End of clause)

1852.204–72 NASA Financial Management Reporting (Performance Analysis Report).

As prescribed in 1804.675–1(b), insert the following clause in contracts that require the Monthly Performance Analysis Report in accordance with NMI 9501.1B and NHB 9501.2A.

NASA Financial Management Reporting (Performance Analysis Report) (April 1984)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P) in accordance with the instructions set forth in NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2B) and on the reverse side of the form, as supplemented in the Schedule of this contract.

(End of clause)

1852.208–7000 [Reserved]

1852.208–7001 [Reserved]

1852.208–7002 Rates.

Insert the following clause as prescribed in 1808.309(a)(1).

Rates (April 1984)

(a) For and in consideration of the faithful performance of the stipulations of this contract, the Contractor shall be paid at the rates set out in Appendix A, *provided* that the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the billing period in which service is initially furnished thereto, and continuing until this contract is terminated, except that the minimum monthly charge, if any, specified in this contract shall be equitably prorated for the billing periods in which commencement and termination of this contract shall become effective.

(b) The Contractor hereby declares that the rates applicable to the service furnished under this contract are not in excess of the lowest rates available to any prospective customer under like conditions, and agrees that during the life of this contract the Government shall continue to be billed at the lowest rates applicable for similar conditions of service.

(End of clause)

1852.208–7003 Public regulation and change of rates.

Insert the following clause as prescribed in 1808.309(a)(2).

Public Regulation and Change of Rates (April 1984)

(a) Rates established under this contract shall be subject to regulation in the manner and to the extent prescribed by law by any Federal, State, or local regulatory agency having jurisdiction. The Contractor agrees to give the Contracting Officer written notice of the filing of an application for rate changes concurrently with the filing of the application. Such notice shall fully describe the proposed rate change. If during the term of this contract the public regulatory agency having jurisdiction approves rates that are higher or lower than those stipulated herein, for like conditions of service, the Contractor agrees to continue to furnish service as stipulated in this contract and the Government agrees to pay for such service at the higher or lower rates from and after the date when such rates are made effective. In the event that the regulatory agency promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately notify the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(b) In the event the Contractor, during the term of this contract, shall make effective any new rate schedule or amended rate schedule applicable to the class of service furnished the Government at the service location, which may contain a lower rate or conditions more favorable to the Government for such class of service, the Contractor shall forward to the Contracting Officer a copy of such rate schedule or amended rate schedule within 15 days after the effective date thereof, and, upon receipt of written request from the Government, shall substitute such rate schedule or amended rate schedule for the rate schedule then in effect hereunder for such service location, commencing with the billing period in which such written request is received.

(End of clause)

1852.208–7004 Change in class of service.

Insert the following clause as prescribed in 1808.309(a)(3).

Change in Class of Service (April 1984)

(a) In the event of a permanent change in the class of service furnished the Government at the service location, service shall be furnished to such service location at the lowest available rate schedule of the Contractor which is applicable to the class of service furnished following such permanent change subject to the clause hereof entitled "Rates."

(b) Where the Contractor's rate schedule on file with the regulatory agency and applicable to services provided by the Contractor does not contain a schedule applicable to the class of service furnished the Government, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service finished.

(End of clause)

1852.208–7005 Contractor's facilities.

Insert the following clause as prescribed in 1808.309(a)(4).

Contractor's Facilities (April 1984)

(a) The Contractor, at its expense, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder to, and measure such service as of, the point of delivery specified in the Service Specifications. Title to all such facilities shall be and remain in the Contractor and the Contractor shall be responsible for all loss or damage to such facilities.

(b) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties hereto for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises, all of which facilities shall be and remain the sole property of the Contractor and shall, at all times during the life of this contract, be operated and maintained by the Contractor at its expense; and all taxes and other charges in connection therewith, together with all liabilty of the Contractor in construction, operation, or maintenance of such facilities, shall be assumed by the Contractor. Authorized representatives of the Contractor will be allowed access to the facilities of the Contractor at suitable times to perform the obligations of the Contractor regarding such facilities. Such facilities shall be removed and Government premises restored to their original condition by the Contractor at its expense within a reasonable time after the Government shall revoke the permit or license herein granted and in any event a reasonable time after termination of this contract, *provided* that in the event of termination of this contract due to the fault of the Contractor such facilities may be retained in place at the option of the Government until service comparable to that provided for hereunder is obtained elsewhere. It is expressly understood, however, that proper Government authority may limit or restrict the right of access herein granted in any manner considered by such authority to be necessary for the National security.

(End of clause)

1852.208–7006 Technical provisions.

Insert the following clause as prescribed in 1808.309(a)(5). Minor changes may be made in the following clause when insisted upon by the contractor to conform with established procedure or with procedures contained in the contractor's published rates filed with a regulatory agency. The following types of changes, when made for this purpose, are not considered within the intent of 1808.307–71 relating to contracts requiring NASA Headquarters approval.

(a) *Measurement of service.* (1) The words "billed conjunctively" in the second sentence of paragraph (a)(1) refer to the combination of similar quantities measured by two or more meters into a single quantity for the purpose of billing as if the bill were prepared for a single meter. This

sentence may be deleted, or the word "separately" may be inserted in lieu of the word "conjunctively" to conform to the contractor's regulated practice and/or when the schedule under which bills are computed is such that billing separately will be more economical than billing conjunctively.

(2) In paragraph (a)(2), the periodic intervals prescribed between meter readings may be changed to conform to the contractor's regulated practice.

(b) *Meter test.* (1) The first sentence of paragraph (b), requiring testing at intervals not exceeding one year, may be changed to provide for meter tests in accordance with the Contractor's regulated practice.

(2) In the third sentence of paragraph (b), the percentage error (shown as 2 percent) may be changed to comply with the Contractor's regulated practice.

(c) *Continuity of service and consumption.* (1) In paragraph (d)(1), the adjustment provision may be deleted or changed, if necessary, to conform with the provisions of the Contractor's field rate schedules. This subparagraph may be ended after the word "facilities" and before the word "provided" for the period "10 hours" may be changed.

(2) Paragraph (d)(2) may be deleted or changed, if the contractor's filed rates contain a provision requiring a continuation of demand, or similar charges, on a ready-to-serve basis during a period that the Government is unable to operate the service location for any cause beyond its control.

Technical Provisions (April 1984)

(a) *Measurement of service.*

(1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at the service location, the readings thereof shall be billed conjunctively. In the event any meter fails to register or registers incorrectly the service furnished therethrough, the parties shall agree upon the length of period during which such meter failed to register or registered incorrectly and the quantity of service delivered therethrough during such period and, upon agreement, an appropriate adjustment based thereon shall be made in the Government's bills. For the purpose of the preceding sentence, any meter which registers not more than 2 percent slow or fast shall be deemed correct.

(2) The Contractor shall read meters on the same day of each month; if, however, that day falls on a Saturday, Sunday, or legal holiday, or if the Contractor is otherwise prevented from reading the meters on that day, the Contractor shall read the meters on the next succeeding business day on which it is able to do so, *providing* that all bills based on meter readings of less than 27 days or more than 33 days shall be prorated accordingly, and *providing further* that there shall be no more than 12 billings in any one year.

(b) *Meter test.* The Contractor, at its expense, shall periodicaly inspect and test the meters installed by it at intervals not exceeding 1 year. At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all of such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than 2 percent slow or fast. No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of 2 percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall, so far as possible, be given by the Contracting officer to the Contractor regarding any material changes proposed in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* (1) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages, breach of contract or otherwise to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophes, strikes, or failure or breakdown of transmission or other facilities; *provided* that when any such failure, suspension, diminution, or variation of service shall aggregate more than 10 hours during any billing period hereunder, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge).

(2) In the event the Government is unable to operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, or strikes, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate such service location in whole or in part shall exceed 15 days during any billing period hereunder.

(End of clause)

1852.208–7007 Renewal of contract.

Insert the following clause as prescribed in 1808.309(b)(1).

Renewal of Contract (April 1984)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least — days before this contract is to expire. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed — years.

(End of clause)

1852.208–7008 Change in rates.

Insert the following clause, as prescribed in 1808.309(b)(2), in lieu of the clause in 1852.7003 if the rates applicable to the service furnished under the contract are negotiated between the contractor and the Government without recourse to the approval of any Federal, State, or local regulatory agency, or if the service to be furnished under the contract is otherwise not subject to regulation by any Federal, State, or local regulatory agency, or if the contractor also acts as the local public regulatory agency and its decisions are not subject to review by a higher regulatory agency.

Change in Rates (April 1984)

(a) If at any time during the term of this contract either of the parties hereto considers it appropriate that all or part of the rates applicable to the service furnished under this contract be changed, the parties agree to promptly negotiate such rates upon receipt by one party of a written request from the other (1) specifying the rates as to which a change is considered appropriate, (2) setting forth the proposed change in rates, and (3) stating in detail the reasons for the proposed changes. Any rate changes agreed to by the parties as the result of such negotiations shall be made a part of this conract by the issuance of a supplemental agreement hereto and shall become effective as of the date of the request for a change in rates, unless otherwise agreed to by the parties.

(b) The Contractor agrees that a duly authorized representative of NASA shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor relating to costs which form the basis for the rate.

(End of clause)

1852.208–7009 Connection charge.

Insert the following clause, as prescribed in 1808.309(b)(3) when (a) a connection charge is to be paid by the Government, and (b) the conditions permitting the incorporation of a nonrecurring, nonrefundable fee in Appendix A do not exist. Also attach Appendix C to the contract (see 1808.304–572(a)(4)).

Connection Charge (April 1984)

(a) *Charge.* The Government, in consideration of the furnishing and installation by the Contractor at the Contractor's expense of the New Facilities described in Appendix C, attached hereto and made a part hereof, shall pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, the sum $ — representing the sum of $ — less the agreed salvage value in the amount of $ — as shown in Appendix C; *provided* that, as a condition precedent to final payment, the Contractor shall, if

required by the Contracting Officer, execute a release in terms acceptable to the Contracting Officer, of claims against the Government arising under or by virtue of such installation.

(b) *Ownership, operation, and maintenance of new facilities to be provided hereunder.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated and maintained by the Contractor at its expense, and all taxes and other charges in connection therewith, together with all liability arising out of the construction, operation, or maintenance of such facilities, shall be the obligation of the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government on each monthly bill for service furnished under this contract to the Service Location, a credit of — percent of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge, provided that the Contractor may at any time so allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, prior to any termination of this contract but subsequent to completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or at all) by means of such facilities, the corresponding benefit to the Contractor is hereby recognized. It is therefore agreed that upon initiation of such service, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge, or accelerate the credits provided for under subparagraph (c)(1) of this clause to 100 percent of each monthly bill until there is fully credited a sum equitably representing the same proportion of the uncredited balance of the connection charge as of the date of initiation of such service, as agreed upon by the parties hereto, as the portion of the facilities utilized in serving such customer bears to complete facilities described in Appendix C.

(d) *Termination prior to completion of facilities.* The Government reserves the right to terminate this contract at any time prior to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to such facilities.

(e) *Termination subsequent to completion of facilities.*

(1) *Termination by the Government.* In the event the Government terminates this contract subsequent to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge, but prior to the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the possible continued usefulness of such facilities is hereby recognized. It is, therefore, agreed that upon such termination the Contractor shall have the following options:

(i) To retain in place for twelve months or more after the notice of termination by the Government such facilities on condition that (A) if, during such twelve month period, the Contractor serves any other customer by means of such facilities, the Contractor shall, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credits provided for under paragraph (c) of this clause prior to such termination and (B) immediately after such twelve-month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(ii) To remove such facilities at the Contractor's own expense within twelve months after the effective date of the termination by the Government; *provided,* that if the Contractor elects to so remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth in Appendix C hereto; and *provided further,* that the Contractor will, at the request of the Government, leave in place such facilities located on Government property which the Contractor elects to so remove and which the Government elects to purchase at the agreed salvage value.

(2) *Termination by the Contractor.* In the event the Contractor terminates service under, or otherwise defaults in performance of, this contract prior to the crediting in full, in accordance with the terms of this contract, of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of such termination.

(End of clause)

1852.208–7010 Termination charge.

Insert the following clause, as prescribed in 1808.309(b)(4), and also attach Appendix C to the contract when a payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. The length of time, not in excess of 60 months, as negotiated with the contractor will be entered in the first blank. In the second blank enter the amount of the maximum termination charge as negotiated with the contractor, but not in excess of cost of facilities furnished and installed by the contractor less the agreed salvage value, as shown in Appendix C. Enter in the third blank the figure obtained by dividing the figure in the second blank by the figure in the first blank. The use of this clause does not affect the term of the contract; however, its use is subject to Headquarters approval in accordance with 1808.307–71.

Termination Charge (April 1984)

In consideration of the furnishing and installation by the Contractor at its expense of the New Facilities described in Appendix C, attached hereto and made a part hereof the Government shall, in the event of termination of this contract by the Government prior to ——— months from the date on which service commences, pay the Contractor as a termination charge ——— less ——— multiplied by the number of months service has been received prior to the date of such termination.

(End of clause)

1852.208–7011 Multiple service locations.

Insert the following clause, as prescribed in 1808.309(b)(5), when it is desired to provide for possible alternative service locations.

Multiple Service Locations (April 1984)

(a) The Contracting Officer may at any time, by written order, designate any service location within the service area of the Contractor at which service shall be furnished or discontinued thereunder, and the contract shall be modified in writing accordingly by adding to or deleting from the Service Specifications the name and location of the appropriate service location, by specifying a different rate if applicable, the appropriate point of delivery, different service specifications if applicable, and any other appropriate terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitably prorated from the billing period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

(End of clause)

1852.208–7012 Contractor's facilities (short form).

As prescribed in 1808.309(a)(6) insert the following clause only when the estimated annual cost is $2,500 or less.

Contractor's Facilities (Short Form) (April 1984)

The Contractor, at its expense, shall furnish, install, operate, maintain, retain title to, and be responsible for all loss of or damage to all facilities required to furnish the service provided for herein. The Contractor will be allowed access to its facilities on Government premises at suitable times and shall, at the Contractor's expense, remove them and restore the premises to original condition within a reasonable time after termination of this contract.

(End of clause)

1852.209–70 Product removal from qualified products list.

As prescribed in 1809.208–71, the contracting officer shall insert the following clause in all solicitations/contracts that contain either of the clauses at FAR 52.209–1 or 52.209–2.

Product Removal From Qualified Products List (April 1984)

If, during the performance of this contract, the product being furnished is, for any reason, removed from the Qualified Product

List, the Government may terminate this contract for default pursuant to the clause of this contract entitled Default, in the case of fixed-price contracts, or Termination in the case of cost-reimbursement type contracts.

(End of clause)

1852.209–71 Limitation of future contracting.

As prescribed in 1809.508–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts in compliance with FAR 9.508.

Limitation of Future Contracting (April 1984)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of all prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is (describe the conflict).

(c) The restrictions upon future contracting are described below:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described within that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. Such restrictions shall remain in effect for a reasonable time as agreed to by the Contracting Officer and the Contractor sufficient to avoid the circumstances of unfair competitive advantage or potential bias; but, usually for a period no less than when the first production contract using the Contractor's specifications or work statement is awarded. It is further agreed that NASA will not unilaterally require the Contractor to prepare such specification or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(End of clause)

1852.210–70 Brand name or equal.

As prescribed in 1810.011, insert the following provision in solicitations where a "brand name or equal" purchase description is included. The provision may be modified for use in negotiated procurements:

Brand Name or Equal (April 1984)

(a) As used in this provision the term "brand name" includes identification of products by make and model.

(b) If items called for by this Invitation for Bids have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products, including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the Invitation for Bids.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the Invitation Bids.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in the bid, as well as other information reasonably available to the contracting activity. CAUTION TO OFFERORS. The contracting office is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, it shall (i) include in the bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of provision)

1852.212–13 Stop-work order.

The clause at FAR 52.212–13 is not authorized for use in research contracts with educational or other nonprofit institutions.

1852.212–70 Notice of delay

As prescribed at 1812.104(a), insert the following clause when desired:

Notice of Delay (April 1984)

If the Contractor becomes unable to complete the contract work at the time specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of clause)

1852.214–23 Late submissions, modifications, and withdrawals of technical proposals under two-step formal advertising.

Deviation. As prescribed at 1814.20–6, substitute the following for paragraphs (a) and (b) of the provisions at FAR 52.214–23 in step one of all two-step formally advertised procurements:

(a) Any technical proposal or any modification of a technical proposal under step one of two-step formal advertising received at the office designated in this solicitation after the exact time specified for receipt need not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of technical proposals (e.g., a technical proposal submitted in response to a solicitation requiring receipt of technical proposals by the 20th of the month must have been mailed by the 15th);

(2) Was sent (i) by mail, or (ii) if authorized, by telegram (including mailgram) (a telegram (or mailgram) is authorized for submitting modifications to technical proposals), and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or;

(3) Is the only technical proposal received.

(b) However, the Government reserves the right to consider technical proposals for modifications thereof received after the date indicated for such purpose, but before the invitation for bids in step two is issued, should such action be in the best interest of the Government.

1852.215–2 Audit—negotiation.

As prescribed at 1815.106–270 insert the clause at FAR 52.215–2 in the supplemental agreement and make it applicable to the set-aside portion only.

1852.215–10 Late submissions, modifications, and withdrawals of proposals.

As prescribed in 1815.407, substitute the following Alternate I for paragraphs (a) and (b) of FAR 52.215–10 in NASA solicitations:

NASA Alternate I (April 1984)

(a) Any proposal or any modification of a proposal (except a modification resulting from the Contracting Officer's request for "best and final" offers) received at the office designated in the solicitation after the exact time specified for receipt need not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) Is the only proposal received.

(b) However, the Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, but before award is made, should such action be in the best interest of the Government.

1852.215–70 Increases in estimated costs.

The contracting officer shall insert the following solicitation provision, as prescribed at 1815.613–72:

Increases in Estimated Costs (April 1984)

Once the prospective Contractor has been selected, the estimated costs submitted with its proposal shall not be subject to increase, except for changes in certified cost or pricing data submitted with the proposal, unless changes are made in the requirements of the request for proposals. Furthermore, increases shall be considered only in regard to those requirements that are actually affected by the changes (whether the changes result in an increase or decrease in the requirements and whether they are initiated by the Government or the offeror), and then only to the extent that such changes are specifically identified and justified. Negotiation of such increases will be conducted separately, and not as part of a combined overall negotiation of the estimated cost and fee of the proposed contract.

(End of provision)

1852.215–71 Adjustment for subcontract price redetermination.

In accordance with 1815.870–2, insert the clause below in contract modifications to price redetermination or fixed-price incentive contracts that established revised contract prices in those cases when final subcontract prices have not been determined. The clause provides for adjustment of the total amount paid or to be paid under the contract due to subsequent redetermination of the specified subcontracts:

Adjustment for Subcontract Price Redetermination (April 1984)

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract.

[List Subcontracts]

(End of clause)

1852.216–7 Allowable cost and payment.

In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7 the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

1852.216–13 Allowable cost and payment—facilities.

In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13 the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

1815.216–7001 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.

As prescribed in 1816.203(b), insert the following clause when applicable.

Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (April 1984)

(a) The Contractor warrants that the unit price stated herein for . . . is not in excess of the Contractor's applicable established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. The term "unit price" excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice. The term "established price" means one which is an established catalog or market price for a commercial item sold in substantial quantities to the general public and thus meets the criteria of paragraph 15.804–3(c) of the Federal Acquisition Regulation. Such price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price shall be decreased by the same percentage that the said established price is decreased. Such decrease shall apply to items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify on each invoice that each unit price stated therein reflects all decreases required by this clause or shall certify on the final invoice that all price decreases required by this clause have been applied in the manner herein required.

(c) If the Contractor's applicable established price is increased after the date set for opening of bids (or the contract date, if this is a negotiated contract) the corresponding contract unit price shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased and the contract shall be modified accordingly; *provided* that—

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within 10 days thereafter but, if not, the effective date of increased unit price shall be the date of receipt by the Contracting Officer of such request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before such date results from causes beyond the control and without the fault or negligence of the Contractor within the meaning of the Default clause of this contract.

(4) No modification incorporating an increase in a contract unit price shall be executed under this clause until the increase in the applicable established price has been verified by the Contracting Officer.

(d) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of such cancellation. However, if the Contractor certifies to the Contracting Officer by notice received within 10 days after the Contractor receives the cancellation notice that certain items were completed or in the

process of manufacture at the time the Contractor received the cancellation notice, the Contractor may then deliver those items, and the Government shall pay for them at the increased contract unit price to the extent provided by paragraph (c) above. Any standard steel supply shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(e) Pending any cancellation of this contract as provided in paragraph (d) above and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for such deliveries at the contract unit price increased to the extent provided by paragraph (c) above.

(End of clause)

1852.216–7002 Economic price adjustment—nonstandard steel items.

As prescribed in 1816.203(b), insert the following clause when applicable.

Economic Price Adjustment—Nonstandard Steel Items (April 1984)

(a) The term "established price," as used in this clause, is one which is an established catalog or market price of commercial items sold in substantial quantities to the general public and thus meets the criteria of paragraph 15.804–3(c) of the Federal Acquisition Regulation. Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or scheduled price. (But see subparagraph (i)(8) below.)

(b) Each contract unit price shall be subject to revision under this clause to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be . . . percent, and the proportion of the contract unit price attributable to the cost of steel shall
be . . . percent. (See subparagraph (i)(1) below.)

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight-time hourly earnings of the Contractor's employees in the . . . shop of the contractor's . . . plant (see subparagraph (i)(2)) for any particular month. The word "month" as used herein means "calendar month;" *provided*, however, that if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month". Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of . . . , 19 . . . , (see subparagraph (i)(3)) the month immediately preceding and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of suppliers is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the base "base steel index," which shall be the Contractor's established price (see subparagraph (i)(8)) including all applicable extras of $ . . . per . . . (see subparagraph (i)(4)) for . . . (see subparagraph (i)(5)) on . . . , 19 . . . , (see subparagraph (i)(6)) and the "current steel index," which shall be the Contractor's established price (see subparagraph (i)(8)) of said item including all applicable extras in effect . . . days (see subparagraph (i)(7)) prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery is made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (1) The amount (representing the adjusted cost of labor) obtained by multiplying . . . percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (2) the amount (representing the adjusted cost of steel) obtained by multiplying . . . percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (3) the amount equal to . . . percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision (see subparagraph (i)(1)); provided, however, that any revised contract unit price made under this clause shall in no event exceed 110 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit prices, if any, to be made under this clause, the Contractor shall be paid the contract unit prices for deliveries made. Within thirty days after the final delivery of supplies or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (1) the average straight-time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index" and (2) the Contractor's established prices (see subparagraph (i)(8)) including all applicable extras for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer, the Contractor shall make available its records used in the computation of the labor indices. After the receipt of such certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with this clause and this contract shall be modified accordingly. However, no modification to this contract shall be made under this clause until the revised established price (see subparagraph (i)(8)) has been verified by the Contracting Officer.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which the delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and steel indices under paragraphs (c) and (d) hereof; *provided*, however, that as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any steel item for default of the Contractor, any price revision shall be limited to the quantity of such item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause, the month in which delivery of supplies is required to be made under this contract means any month in which a specific quantity of units of the supplies called for by this contract is required to be delivered; *provided*, however, that if the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract, the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule in this contract shall be amended accordingly.

(i) Offerors shall complete all blanks above in accordance with the following:

(1) Insert the same percentage figures for the corresponding blanks in paragraphs (b) and in (e)(1) and (2). In paragraph (e)(3); bidder insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Insert the month of bid opening, or the month in which the Contractor submitted his proposal if this is a negotiated contract.

(4) Insert the unit price and unit measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotiated contract.

(7) Insert the number of days which represents the Contractor's best estimate of the period of time required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) If this is a negotiated procurement and when there is no "established price" or when it is not desirable to use such price, refer to another appropriate price basis in paragraph (d), such as an established interplant price.

(End of clause)

1852.216–7003 Evaluation of bids subject to economic price adjustment.

As prescribed at 1816.203–4(h), insert the following provision:

Evaluation of Bids Subject to Economic Price Adjustment (April 1984)

Notwithstanding the requirements of the clause entitled "*. . . .," bids shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Bids which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Bids which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum adjustment is stipulated in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

**Insert the title of the clause providing for economic price adjustment.*

(End of provision)

1852.216–7004 Estimated cost and cost sharing.

As prescribed at 1816.303(d)(4), insert the following clause in all contracts resulting from unsolicited proposals and under which the contractor will share costs.

Estimated Cost and Cost Sharing (April 1984)

(a) It is estimated that the total cost of performing the work under this contract will be *(insert total estimated cost)* $. . . .

(b) For the performance of the work under this contract, the Contractor shall be reimbursed for not more than . . . percent of the costs of performance determined to be allowable under the clause of this contract entitled Allowable Cost and Payment. The remaining . . . percent or more of the costs of performance so determined shall constitute the Contractor's share for which it will not be reimbursed by the Government.

(c) For purposes of the clause of this contract entitled Limitation of Cost, the total estimated cost to the Government is hereby established as *(insert estimated Government share)* $. . . .; this amount is the maximum cost for which the Government is obligated.

(d) The Contractor will maintain records of all contract costs claimed by the Contractor as constituting part of its share, and such records shall be subject to audit by the Government. Cost contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(End of clause)

1852.216–7005 Estimated cost and fixed fee.

As prescribed at 1816.307–70(a) insert the following clause:

Estimated Cost and Fixed Fee (April 1984)

The estimated cost of this contract is . . . exclusive of the fixed fee of . . . The total of estimated cost and fixed fee is . . . . .

(End of clause)

1852.216–7006 Payment of fixed fee.

As prescribed at 1816.307–70(b), insert the following clause:

Payment of Fixed Fee (April 1984)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

1852.216–7007 Award fee.

As prescribed at 1816.405, the contracting officer shall include the following clause in solicitations and contracts when a cost-plus-award-fee contract is contemplated:

Award Fee (April 1984)

(a) The Government shall pay the Contractor for performing this contract such base fee, if any, and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; *provided*, that after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

(End of clause)

1852.222–70 Facilities nondiscrimination notice.

As prescribed at 1822.7002(a), insert the following clause in all solicitations involving leases and resulting leases:

Facilities Nondiscrimination Notice (April 1984)

If the total annual rental under this lease exceeds $10,000 per year, or if the total annual rental under this lease combined with the total annual rental under all other NASA leases of space in the building in which the space covered by this lease is located exceeds $10,000 per year, the lessor agrees to comply with the requirements of the Facilities Nondiscrimination clause.

1852.222–71 Facilities nondiscrimination.

As prescribed at 1822.7002(b), insert the following clause in leases:

Facilities Nondiscrimination (April 1984)

(a) As used in this clause, the term "facility" means stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in the building in which the space covered by this lease is located.

(b) The lessor agrees not to discriminate by segregation or otherwise against any person or persons because of race, color, religion, or national origin in furnishing or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants, their employees, customers, patients, clients, guests, and invitees.

(c) It is agreed that the lessor's noncompliance with the provisions of this clause shall constitute a material breach of this lease. In the event of such noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law. In the event of termination, the lessor shall be liable for all excess costs of the Government in acquiring substitute space, including but not limited to the cost of moving to such space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible and moving costs will be limited to the actual expenses thereof as incurred.

(d) It is agreed that from and after the date hereof the lessor will, at such time as any agreement is to be entered into or a concession is to be permitted to operate, include or require the inclusion of the foregoing provisions of this clause in every such agreement or concession pursuant to which any person other than the lessor operates or has the right to operate any facility. Nothing herein contained, however, shall be deemed to require the lessor to include or require the inclusion of the foregoing provisions of this clause in any existing agreement or concession arrangement or one in which the contracting party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend. The lessor also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as NASA may direct as a means of enforcing the intent of this clause, including, but not limited, to termination of the agreement or concession and institution of court action.

(End of clause)

1852.223-70 Safety and health.

As prescribed at 1823.7004, insert the following clause:

Safety and Health (April 1984)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the Schedule of the contract, submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor shall comply with all applicable Federal, State and local laws, applicable to safety and health which are in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions as set forth in the Schedule of the contract.

(b) The Contractor shall take or cause to be taken such other safety and health measures as the Contracting Officer may direct. To the extent that the Contractor may be entitled to an equitable adjustment for such measures under the terms and conditions of this contract, such equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; *provided,* that no adjustment shall be made under this clause for any change for which an equitable adjustment is expressly provided under any other provision of this contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable threshold limits set forth in the Schedule of the contract, or property loss of $25,000 or more arising out of work performed under this contract; *provided,* however, the Contractor will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. Service Contractors (excluding construction contracts) will provide quarterly reports which specify lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the Schedule of the contract. The Contractor will investigate all such work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer with a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(d)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with the provisions of this clause and may also specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (1) above, the Contracting Officer may invoke the provisions of the Stop Work Order clause in this contract or any other remedy legally available to the Government in the event of such failure by the Contractor.

(e) The Contractor (or subcontractor or supplier) shall cause the substance of this clause including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, to be inserted in subcontracts of every tier which (1) amount to $1,000,000 or more unless the Contracting Officer makes a written determination that this is not required, (2) require construction, repair, or alteration in excess of $25,000, or (3) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) The Contractor agrees that authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the Contractor's safety plan (and health plan, where applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) of this clause, and shall in addition furnish a list of other major or key operations required or planned in the performance of the contract although not deemed hazardous by the Contractor. NASA and the Contractor will jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor will develop and submit for NASA concurrence *either or both* of the following as required by the Schedule of the contract or as may be required at the direction of the Contracting Officer:

(1) Written Hazardous Operating Procedures for all hazardous operations.

(2) A certification program for personnel involved in hazardous operations.

(End of clause)

1852.223-71 Frequency authorization.

As prescribed at 1823.7101, insert the following clause:

Frequency Authorization (April 1984)

(a) Authorization of radio frequencies required in support of this contract shall be obtained through the Contracting Officer by the Contractor or subcontractor in need thereof. Frequency management procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. NASA Form 566, "Application for Radio Frequency Assignment," shall be used for this purpose and shall be prepared in accordance with instructions contained on the form.

(c) This clause including this paragraph (c), shall be included in all subcontracts which call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.225-70 Percent foreign content.

As prescribed at 1825.109-70, insert the following provision in all solicitations except those made outside the United States:

Percent Foreign Content (April 1984)

Approximately . . . . percent of the proposed contract price represents foreign content or effort.

(End of provision)

1852.225-71 Nondomestic construction materials.

As prescribed at 1825.205-70, insert the following clause in all construction contracts.

Nondomestic Construction Materials (April 1984)

The requirements of the clause entitled "Buy American Act—Construction Materials" do not apply to construction materials or their components as set forth below:

(End of clause)

1852.228-70 Aircraft ground and flight risk.

As prescribed in 1828.370-1(a), the contracting officer shall insert the following clause:

Aircraft Ground and Flight Risk (April 1984)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, loss, or destruction of aircraft "in the open," during "operation," and in "flight", as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(i) Aircraft (including (A) complete aircraft, and (B) aircraft in the course of being manufactured, disassembled, or reassembled; *provided,* that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract; including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; *provided,* however, that such aircraft and property are not covered by a separate bailment agreement.

(2) The term "in the open" means located wholly outside of buildings on the

Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. With respect to land based aircraft, "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises. With respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises. With respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged. With respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; *provided*, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) The term "flight crew members" means the pilot, copilot, and unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the Contracting Officer finds that any of such aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the Contractor shall act promptly to correct such conditions, regardless of whether it agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting such conditions and the contract shall be modified in writing accordingly.

(3) If the Contracting Officer finds that the Contractor has failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made in the contract price to compensate the Contractor for any additional costs incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with subparagraph (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government Property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with subparagraph (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may or may not elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to or loss or destruction of such aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant or separate location at which this contract is performed or a separate and complete major industrial operation in connection with the performance of this contract);

(2) Sustained during flight if the flight crew members conducting such flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) To the extent that such damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage, or destruction covered by this clause; *provided*, however, in the case of Government-furnished property, if such damage consists of reasonable wear and tear or deterioration or results from inherent vice in such property, this exclusion shall not apply;

(6) Sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss, or destruction is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e) With the exception of damage to or loss or destruction of aircraft in "flight," the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft "in the open" or during "operation" resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) below shall not include the dollar amount of the risk assumed by the Contractor under this paragraph. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage to or loss or destruction of aircraft while in its possession or control, except to the extent that the

subcontract, with the prior written approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to or loss or destruction of the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to or loss or destruction of aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft "in the open."

(h)(1) In the event of damage to, or loss or destruction of, aircraft "in the open," during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order, and, further, except in cases covered by paragraph (e) above, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering any part of the interest in such commingled property.

(2) Except in cases covered by paragraph (e) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i) If, prior to delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss, or destruction, the Government shall either require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage or shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft, and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the Contractor to complete the aircraft (or any work to be performed on said aircraft), together with anticipated profit, if any, on any such uncompleted work and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts thereof, and, if any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor.

(j) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

Alternate I (APRIL 1984) In paragraph (b) of the basic clause, certain of the defined terms may be modified by insertion of appropriate additional definitions, (see subparagraphs (a) through (c) below). The purpose of the clause is to have the Government assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the clause may not cover all situations which should be covered if the above purpose is to be accomplished.

(a) Since the standard definition of "aircraft" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other non-conventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition.

(b) The definition of "in the open" may be modified to include "hush houses," test hangars, comparable structures, and other designated areas.

(c) "Contractor's premises" shall be expressly defined in the Schedule and shall be limited to those locations where aircraft may be located during and for the performance of the contract. "Contractor's premises" may include, but are not limited to, premises owned or leased by the contractor or premises for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

Alternate II (APRIL 1984). Paragraph (d)(3) of the baisc clause may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways were the Contracting Officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work performed under the contract.

1852.228–470 Reimbursement for war-hazard losses.

As prescribed at 1828.309, insert the following clause:

Reimbursement for War-Hazard Losses (April 1984)

(a) The Contractor's costs for assuming liability for employee protection against war-hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Worker's Compensation and War-Hazard Insurance Overseas" shall be an allowable cost under this contract, subject to the following:

(1) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(2) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by the Contracting Officer, the Contractor shall convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(3) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at the time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(4) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title, and interest of the Contractor to any refund, rebate, or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to

be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of clause)

1852.228–71 Aircraft—flight risks.

(a) As prescribed in 1828.311–70, insert the following clause:

Aircraft—Flight Risks (April 1984)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not (1) be relieved of liability for, damage to, or loss or destruction of aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto; *provided,* however, that such aircraft and property are not covered by a separate bailment agreement.

(2) The term "flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract or for the purpose of safeguarding the aircraft or previously approved in writing by the Contracting Officer. As to land-based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line. As to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp. As to helicopters, "flight" shall commence upon the engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged. For vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.

(3) The term "flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) If any aircraft is damaged, lost, or destroyed during flight and if the amount of such damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragrah (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (1) in the estimated cost, delivery schedule, or both and (2) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; *provided,* in determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor which materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

Alternate I (APRIL 1984). In paragraph (b) of the basic clause, the definition of "aircraft" may be appropriately modified if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

1852.231–70 Pricing of adjustments.

In accordance with 1831.102–70, include the following clause in fixed-price contracts that include a Changes clause or provisions for adjustment of the contract price.

Pricing of Adjustments (April 1984)

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other provision of this contract, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation as in effect on the date of this contract.

(End of clause)

1852.232–1 Payments.

When using the clause at FAR 52.232–1 delete the words "upon submission of proper invoices" from the first sentence and substitute the words "within 30 days after receipt of proper invoices, as determined under the 'Invoices' clause of this contract."

1852.232–2 Payments under Fixed-Price Research and Development Contracts.

When using the clause at FAR 52.232–2, delete the words "upon submission of proper invoices" from the first sentence and substitute the words "within 30 days after receipt of proper invoices."

1852.232–4 Payments under Transportation Contracts and Transportation-Related Services Contracts.

When using the clause at FAR 52.232–4, delete the words "upon the submission of properly certified invoices or vouchers" from the first sentence and substitute the words "within 30 days after receipt of properly certified invoices, as determined under the 'Invoices' clause of this contract."

1852.232–7 Payments under Time-and-Materials and Labor-Hour Contracts

When using the clause at FAR 52.232–7, in the last sentence of subparagraph (a)(1) delete the word "Promptly" and substitute the words "Within 30 days." In the third sentence of paragraph (e) delete the word "promptly" and substitute the words "within 30 days."

1852.232–10 Payments under Fixed-Price Architect-Engineer Contracts

When using the clause of FAR 52.232–10, in the first sentence of paragraph (b) delete the words "payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable", and substitute the words "within 30 days after receipt of properly certified vouchers, payment shall be made to the Contractor."

1852.232–70 [Reserved]

1852.232–71 Invoices.

As prescribed in 1832.111–70(a), insert the following clause in fixed-price contracts and solicitations therefor, except those for construction work, architect-engineer services, or utility services:

Invoices (April 1984)

(a)(1) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

(i) Invoice date.

(ii) Name of Contractor.

(iii) Contract number (including order number, if any), contract line item number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total.

(iv) Shipment number and date of shipment (bill-of-lading number and weight of shipment will be shown for shipments on Government bills of landing).

(v) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment).

(vi) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice.

(vii) Any other information or documentation required by other provisions of the contract (such as evidence of shipment).

(2) Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Pub. L. 97–177)—

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which a check for such payment is dated;

(3) Progress payments if authorized under this contract, are solely for financing purposes and shall not accrue interest under the Prompt Payment Act;

(4) Payment terms (e.g., "net 20") offered by the Contractor will not be deemed a "required payment date;" and

(5) The following periods of time will not be included:

(i) After receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 15 days (or any lesser period established by this contract).

(ii) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

(End of clause)

1852.232-72 Payments (letter contracts).

As prescribed in 1832.111-70(b), insert the following clause in letter contracts and solicitations therefor.

Payments (Letter Contracts) (April 1984)

(a) If this Letter Contract is on a fixed-price basis, and is governed generally by the provisions of a fixed-price contract, the Government will pay to the Contractor, not to exceed the maximum amount specified in Article IIIa of the Schedule, within 30 days of receipt of proper invoices or vouchers, the prices, if any, specified in Article III of the Schedule for supplies delivered and accepted or services rendered and accepted, less deductions, if any, provided for in this Letter Contract. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government.

(b) If this Letter Contract is on a cost-reimbursement basis and is governed generally by the provisions of a cost-reimbursement type contract, the Government will make payments to the Contractor within 30 days after receipt of each proper invoice or voucher in accordance with the Payments of Allowable Costs Before Definitization clause of this Letter Contract.

(c) Nothing shall be paid under this Letter Contract to the Contractor for profit or fee, except as provided in the Termination clause of this Letter Contract.

(d) This clause shall not be applicable after this Letter Contract is converted into a fully definitized contract.

(End of clause)

1852.232-73 Payments (utility services).

As prescribed in 1832.111-70(c), insert the following clause in negotiated utility service contracts and solicitations therefor:

Payments (Utility Services) (April 1984)

(a) Payments for the service rendered under this contract shall be made monthly by the designated disbursing office or officer under the terms and conditions of this contract upon the submission of proper invoices.

(b) All bills shall be paid without penalty or interest and the Government shall be entitled to any discounts customarily applicable to payment of bills by all customers of the Contractor.

(c) Invoices for services rendered hereunder shall contain statements of the meter readings at the beginning of the billing period, meter constants, consumption during the billing period, and such other pertinent data as shall be required by the Government.

(End of clause)

1852.232-74 Payments (facilities).

As prescribed in 1832.111-70(d), insert the following clause in consolidated facilities contracts and solicitations therefor:

Payments (Facilities) (April 1984)

The Government will make payments to the Contractor within 30 days after receipt of each proper invoice or voucher and statement of cost, in accordance with paragraph (b) of the Allowable Cost and Payment—Facilities clause of this contract, except as otherwise may be provided in this contract, subject to the provisions of paragraph (f) of the aforementioned clause.

(End of clause)

1852.232-75 Security for advance payments.

As prescribed in 1832.412, the contracting officer, in consultation with General Counsel, may require special security provisions if appropriate in particular cases. For example, the following clause may be included in publications and contracts with nonprofit organizations or educational institutions that include the clause at FAR 52.232-12, Advance Payments:

Security for Advance Payments (April 1984)

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the Contractor now owned or hereafter acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor that are allocated to the performance of this contract and with respect to which the Government has a lien hereunder, without the prior written consent of the Contracting Officer.

(End of clause)

1852.232-76 Authority to obligate funds.

As prescribed in 1832.705-270(a), insert the following clause in letter contracts and solicitations therefor:

Authority To Obligate Funds (April 1984)

The maximum amount for which the Government shall be liable if this contract is terminated is specified in the Limitation of Liability clause, and any expenditure or obligation by the Contractor in excess of that amount, in furtherance of performance hereunder, shall be at the Contractor's own risk.

(End of clause)

1852.232-77 Limitation of funds (fixed-price-contract).

As prescribed in 1832.705-270(b), insert the following clause in fixed-price incrementally-funded contracts for research and development, and solicitations therefor. Contracting officers are authorized, in appropriate cases, to revise paragraphs (a), (b), and (g) of the clause to specify the work required under the contract in lieu of contract numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

Limitation of Funds (Fixed-Price Contract) (April 1984)

(a) Of the total price of items . . . through . . ., the sum of $ . . . is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to this contract in accordance with the following schedule until the total price of said item is allotted:

Schedule for Allotment of Funds

Date ——— Amounts ———.

The Contractor agrees to perform or have performed work on said items up to the point at which, in the event of termination of this contract pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable in respect of subcontracts and settlement costs) pursuant to paragraphs (f) and (g) thereof, would in the exercise of reasonable judgment by the Contractor approximate the total amount at the time allotted to the contract. The Contractor shall not be obligated to continue performance of the work beyond such point. The Government shall not be obligated in any event to pay or reimburse the Contractor in excess of the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause of this contract notwithstanding.

(c) It is contemplated that funds presently allotted to this contract will cover the work to be performed until . . . . In the event funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until the above date, or an agreed date in substitution thereof, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, in the event of termination of this contract pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable in respect of subcontracts and settlement costs) pursuant to paragraphs (f) and (g) thereof will approximate seventy-five percent (75%) of the

total amount then allotted to the contract. The notice shall state the estimated date when such point will be reached and the estimated amount of additional funds required to continue performance to the above or an agreed substituted date. The Contractor shall, 60 days prior to the date above written or agreed substituted date, advise the Contracting Officer in writing as to the estimated amount of additional funds which will be required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties. If after such latter notification, additional funds are not allotted by the date above written or by an agreed date in substitution thereof, the Contracting Officer will, upon written request of the Contractor, terminate this contract on such date or the date set forth in the request, whichever is later, pursuant to the provisions of the Termination for Convenience of the Government clause of this contract.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance which shall be covered by such funds. The provisions of paragraphs (b) and (c) above shall apply to such additional allotted funds and substituted date pertaining thereto, and the contract shall be amended accordingly.

(e) If the Contractor incurs additional costs, or is delayed in the performance of the work under this contract, solely by reason of the failure of the Government to allot additional funds in amounts sufficient for the timely performance of this contract, and if additional funds are alloted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing and ceiling prices where applicable) of said items or in the time of delivery or both.

(f) The Government may at any time prior to termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit, the rights of the Government under the Default clause of this contract. The provisions of this clause are limited to the work on and allotment of funds for the items set forth in paragraph (a) above. This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

1852.233–1 Disputes.

Insert the Alternate I at FAR 52.233–1, as prescribed in 1833.014.

1852.235–70 Scientific and technical information service.

Insert the following clause as prescribed in 1835.070(a):

Scientific and Technical Information Service (April 1984)

(a) The Contractor, if not already registered with the NASA Scientific and Technical Information Facility, is encouraged to register by requesting registration forms from the address below. Registration forms will inform the Contractor of the products and services available in support of work under the contract—

NASA Scientific and Technical Information Facility
Attn: Registration
P.O. Box 8757
Baltimore/Washington, International Airport, MD 21240

(b) NASA reserves the right, in the event of the unavailability of any scientific and technical information requested, to notify the Contractor of such unavailability. Failure of NASA to furnish any information requested shall not entitle the Contractor to any adjustment in the price, cost (estimated or target), fee, time required for performance, or delivery schedule of the contract.

(End of clause)

1852.235–71 Key personnel and facilities.

Insert the following clause as prescribed in 1835.070(b):

Key Personnel and Facilities (April 1984)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; *provided*, that the Contracting Officer may ratify in writing the change, such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the Contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of clause)

1852.236–70 Option for supervision and inspection services.

As prescribed in 1836.609–70, the following clause may be included in fixed-price architect-engineer contracts, and solicitations therefor, if supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

Option for Supervision and Inspection Services (April 1984)

At any time prior to 6 months after satisfactory completion and acceptance of the work to be furnished hereunder, the Government at its option, may direct, by a written order, the Contractor to perform any part of all of the supervision and inspection services provided under Appendix A. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

(End of clause)

1852.243–70 Engineering change proposals.

As prescribed in 1843.205–70, insert the following clause. The term "price" in paragraph (b) may be changed consistent with the type of contract. When desirable, delete the second reference in paragraph (a) of the clause to MIL–STD–480 and enter local format, if any.

Engineering Change Proposals (April 1984)

(a) The Contracting Officer may, at any time, request in writing, that the Contractor prepare and submit an Engineering Change Proposal (ECP) as that term is defined in MIL–STD–480. Upon receipt of the request, the Contractor shall submit to the Contracting Officer, the information specified by paragraph 4 of MIL–STD–480 in the format required therein.

(b) Any Contractor ECP shall include a "not-to-exceed" price and delivery adjustment or a "not-less-than" price* and delivery adjustment acceptable to the Contractor if the Government subsequently orders such ECP. If ordered, the equitable increase shall not exceed, nor shall the equitable decrease be less than such "not-to-exceed" or "not-less-than" amounts. This paragraph does not preclude any revision(s) or correction(s) of an ECP in accordance with paragraphs 4.10 and 4.11 of MIL–STD–480. Concurrently with the submission of any ECP under this contract in which the proposed aggregate cost is $500,000 or more, the Contractor shall submit to the Contracting Officer a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet, and at the time of agreement upon the price of the ECP, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of clause)

Alternate I (APRIL 1984). As prescribed in 1843.205–70(a), include the following paragraph to the basic clause after inserting in the space provided the appropriate percentage of the contract price or dollar amount.

(c) If the price adjustment proposed for any Contractor originated ECP (excluding any Government requested ECP or Value Engineering Change Proposal) is ..... (percent of contract price) (or $.....) or less, such change shall be made at no adjustment of the contract price.

(End of clause)

Alternate II (APRIL 1984). As prescribed in 1843.205–70(b), substitute the following sentence for the first sentence in paragraph (b) of the basic clause.

Change orders issued pursuant to the Change clause of this contract shall not be

considered an authorization to the Contractor to exceed the estimated cost in the schedule in the absence of a statement in the change order or other contract modification increasing the estimated cost.

1852.244–70 Geographic participation in the aerospace program.

Insert the following clause as prescribed in 1844.170.

Geographic Participation in the Aerospace Program (April 1984)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use his best efforts to solicit subcontract sources on the broadest feasible geographic basis, consistent with efficient contract performance, and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of $100,000 and over.

(End of clause)

1852.245–70 Acquisition of existing government equipment

As prescribed in 1845.106–70(a), insert the following clause in all solicitations and contracts which contain a Government property clause:

Acquisition of Existing Government Equipment (April 1984)

"Centrally reportable equipment," as used in this clause means that plant equipment, special test equipment (including components), special tooling and non-flight space property (including ground support equipment) which is (a) generally commercially available and used as a separate item or component of a system, (b) is valued at $1,000 or more, and (c) is identifiable by a manufacturer and model number.

Prior to the acquisition of any item of centrally reportable equipment under this contract (unless for incorporation into deliverable end items), the Contractor shall provide the Contracting Officer, at the earliest possible date, a detailed listing of requirements for screening of existing Government inventories. DD Form 1419, DOD Industrial Plant Equipment Requisition, will be prepared for each item of centrally reportable equipment to be acquired and forwarded through the Contracting Officer to the Equipment Visibility System Coordinator at the cognizant NASA installation at least (30) days in advance of his intention to acquire or fabricate such equipment. In the event a certificate of nonavailability is not received within such period, the contractor may proceed to acquire the equipment or components, subject to any other applicable provisions of this contract. Instructions for preparing the DD Form 1419 are contained in the NASA FAR Supplement 1845.7103.

(End of clause)

1852.245–71 Installation-provided government property.

As prescribed in 1845.106–70(b), insert the following clause in solicitations and contracts when Government property is to be provided to on-site contractors:

Installation-Provided Government Property (April 1984)

(a) In performance of work under this contract, certain Government property identified in this contract shall be made available to the Contractor on a no-charge-for-use basis by the installation Supply and Equipment Management Officer. Such property shall be utilized in the performance of this contract at the installation administering this contract or at such other installation(s) or location(s) specified elsewhere in this contract. Under this clause, the Government retains accountability as well as title to the property and the Contractor assumes user responsibilities prescribed in installation property management directives, which are listed elsewhere in this contract.

(b) The official accountable record keeping and financial control and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation Supply and Equipment Management and Financial Management Officers. However, the Government will provide the Contractor a record of all items of property including copies of all transaction documents used to describe changes to this record. The Contractor shall maintain this record and transaction documentation in such a condition that at any stage of completion of work under this contract, the status of the property including location, utilization, consumption rate, and identification may be readily ascertained. The Contractor shall also adhere to all other procedures (and be subject to sanctions related thereto) prescribed by the installation director which have been established for the management of installation property. The records and documentation shall be made available, upon request, to the installation Supply and Equipment Management Officer and other formally designated representative(s) of the Contracting Officer.

(c) In the event the Government fails to provide the Government property specified in this contract such as to adversely affect the Contractor's ability to perform hereunder, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the effect occasioned the Contractor and shall equitably adjust the contract in accordance with the procedure provided in the Changes clause of this contract. Equitable adjustments made pursuant to this paragraph, however, shall not include adjustments in fee unless the property to be provided was described in specific quantities of specific items.

(d) Government property made available under this clause shall in every respect be subject to the provisions of the Government Property clause of this contract except as provided in paragraphs (a), (b), and (c) above, and as may otherwise be provided in this contract with respect to (1) the Contractor's responsibilities for repair and maintenance of Government property, or (2) the Contractor's liability for any loss of or damage to such property which is attributable to the Contractor's failure to maintain and administer a program for maintenance and repair in accordance with sound industrial practice.

(End of clause)

1852.245–72 Liability for government property furnished for repair or other services.

As prescribed in 1845.106–70(c), insert the following clause in solicitations and contracts for repair, modification, rehabilitation, or other servicing for Government property when such property is furnished to contractor for that purpose:

Liability for Government Property Furnished for Repair or Other Services (April 1984)

(a) The provisions of this clause shall govern with respect to any Government property furnished to the Contractor for repair or other services, and which is to be returned to the Government. Such property is hereinafter referred to as "Government property furnished for servicing" and shall not be subject to the provisions of any clause of this contract entitled Government Furnished Property or Government Property.

(b) The official accountable record keeping, and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to assure that the Government property furnished for repair or servicing may be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The contractor shall be liable for any loss or destruction of or damage to the Government property furnished for repair or servicing (1) caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances, or (2) sustained while the property is being worked upon and directly resulting therefrom, including but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for repair or servicing resulting from any other cause except to the extent that such loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for repair or servicing, the amount and coverage of which the Contractor agrees to maintain, the Contractor agrees to obtain

such additional insurance covering loss or destruction of or damage to Government property furnished to the Contractor for repair or servicing as may, from time to time, be required by the Contracting Officer. The requirements for such additional insurance shall be effected under the procedures established by the Changes clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for repair or servicing or arising from the presence of said property on the premises or property of the Contractor.

(End of clause)

1852.245–73 Financial reporting of government-owned/contractor-held property.

As prescribed in 1845.106–70(d), insert the following clause:

Financial Reporting of Government-Owned/Contractor-Held Property (April 1984)

(a) The Contractor shall prepare and submit annually a NASA Form 1018 Report of Government-Owned/Contractor-Held Property, in accordance with the instructions on the form and Subsection 1845.505–14 of the NASA FAR Supplement, except the reporting of space hardware shall be required only upon the written direction of the Contracting Officer identifying the specific project items to be reported.

(b) If administration of this contract has been delegated to the Department of Defense, the original and three copies of NASA Form 1018 shall be submitted through the DoD Property Administrator to the NASA office identified below. If administered by NASA, the forms shall be submitted directly to the designated NASA office:

(Insert the address and office code of the organization within cognizant NASA Installation responsible for control and distribution of the NASA Form 1018)

_____

_____

_____

(c) The annual reporting period shall be from July 1 of each year to June 30 of the following year. The report shall be submitted by July 31.

(d) The Contractor agrees to insert the reporting requirement in all first-tier subcontracts, except that such requirement shall provide for the submission of the subcontractor reports directly to the Contractor. The Contractor shall require the subcontractor reports to be submitted to him in sufficient time to meet the reporting date in paragraph (c) above.

(e) The Contractor's annual report shall consist of a consolidation of subcontractor's reports and the contractor's report.

(End of clause)

1852.247–70 Returnable gas cylinders.

As prescribed at 1847.305–70, insert the following clause. The 30 day time period in paragraph (a) may be modified to comply with the customary commercial practice for the particular type of container being rented. The clause may also be modified for use in contracts involving other reusable containers, where the contractor is to retain title:

Returnable Gas Cylinders (April 1984)

(a) Cylinders shall remain the property of the Contractor but will be loaned without charge to the Government for a period of 30 days after the date of delivery of the cylinders to the f.o.b. point specified in the contract. Beginning with the first day after the expiration of the 30 day loan period to and including the day the cylinders are delivered to the Contractor where the original delivery was f.o.b. origin, or to and including the date the cylinders are delivered or are made available for delivery to the Contractor's designated carrier in the case where the original delivery was f.o.b. destination, the Government shall pay the Contractor a rental of _____ dollars ($_____) per cylinder per day, regardless of type or capacity.

(b) This rental charge will be computed separately for cylinders of differing types, sizes and capacities, and for each point of delivery named in the contract. A credit of 30 cylinder days will accrue to the Government for each cylinder, regardless of type or capacity, delivered by the Contractor. A debit of 1 cylinder day will accrue to the Government for each cylinder for each day after delivery to the f.o.b. point specified in the contract. At the end of the contract, if the total number of debits exceeds the total number of credits, rental shall be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no rental charges will be made for the cylinders. No rental shall accrue to the Contractor in excess of the replacement value per cylinder specified in paragraph (c) below.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid therefor:

(1) Oxygen cylinders of 100–110 cubic foot capacity $_____;

(2) Oxygen cylinders of 200–220 cubic foot capacity $_____;

(3) Acetylene cylinders of 100–150 cubic foot capacity $_____; and

(4) Acetylene cylinders of 230–300 cubic foot capacity $_____.

(d) Cylinders lost, or damaged beyond repair, and paid for by the Government shall become the property of the Government, subject to the following: If any lost cylinder is located within _____ (insert period of time) after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the government an amount equal to the replacement value, less rental computed in accordance with paragraph (a) above, beginning at the expiration of the 30 day loan period specified in paragraph (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

1852.249–70 Termination—Fixed-Price Letter Contract.

As prescribed in 1849.502, the following clause shall be included in letter contracts which are expected to be converted to fixed-price type definitive contracts.

Termination Fixed-Price Letter Contract (April 1984)

(a) In case a definitive contract is not executed by the date specified in Article VI of the Schedule, because of the inability of the parties to agree upon a definitive contract, this Letter Contract may be terminated in its entirely by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than 30 days after receipt of such notice.

(b) The performance of work under this Letter Contract also may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under this Letter Contract is terminated, and the date upon which such termination becomes effective.

(c)(1) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall—

(i) Stop work under this Letter Contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontract for materials, services or facilities, except as may be necessary for completion of such portion of the work under this Letter Contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) Subject to the approval or ratification of the Contracting Officer, as required, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts;

(vi) Transfer title and, in the manner, to the extent, and at the times directed by the Contracting Officer, delivery to the

Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if this Letter Contract had been completed, would be required to be furnished to the Government;

(vii) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided,* however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this Letter Contract or shall otherwise be credited to the price or cost of the work covered by this Letter Contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Letter Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(2) At any time after expiration of the plant clearance period, as defined in the Federal Acquisition Regulation, Part 45, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter in to a storage agreement covering them. Not later than 15 days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; *provided,* that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 1 year period or authorized extension thereof. However, the Contracting Officer may if the facts justify such action, receive and act upon any such termination claim at any time after such 1 year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect on the date of the execution of this Letter Contract, determine, on the basis of available information, the amount, if any, due to the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provisions of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect as of the date of execution of this Letter Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) hereof, such amount or amounts shall not include any allowance for profit. In the event of any termination pursuant to paragraph (b) hereof, such amount or amounts may include a reasonable allowance for profit, but only on work actually done in connection with the terminated portion of this Letter Contract. Any such amount shall not exceed the maximum liability specified in the Schedule. Any such agreement shall be embodied in an amendment to this Letter Contract, and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e), as to the amount or amounts to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by NASA regulations in effect as of the date of execution of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the Federal Acquisition Regulation as in the effect on the date of this Letter Contract, the amount, if any, due to the Contractor by reason of the termination and shall pay such amount to the Contractor. In the event of the termination of this Letter Contract pursuant to paragraph (a) hereof, no allowance for profit shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the Disputes clause of this Letter Contract from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any disputes as to whether termination has in fact taken place pursuant to paragraph (a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) above and has failed to request extension of such time, no such right of appeal shall exist. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following:

(1) If there is no right or appeal hereunder or if no timely appeal has been taken the amount so determined by the Contracting Officer.

(2) If an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted—

(1) All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Letter Contract;

(2) Any claim which the Government may have against the Contractor in connection with this Letter Contract; and

(3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Letter Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. (b)(2) for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided,* however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) Unless otherwise provided in this Letter Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of 3 years after final settlement under this Letter Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, without direct charge to the Government, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this Letter Contract and relating to the work terminated hereunder or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

1852.249–71 Termination—cost-reimbursement type letter contract.

As prescribed in 1849.503(a), the following clause shall be included in letter contracts which are expected to be converted to cost-reimbursement type definitive contracts:

Termination—Cost-Reimbursement Letter Contract (April 1984)

(a) In case a definitive contract is not executed by the date specified in the Schedule, because of the inability of the parties to agree upon a definitive contract, this Letter Contract may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than 30 days after receipt of such notice.

(b)(1) The performance of work under this Letter Contract also may be terminated by the Government in accordance with this clause in whole, or from time to time in part—

(i) Whenever the Contractor shall default in performance of this Letter Contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

(2) Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under this Letter Contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this Letter Contract for default under subdivision (1)(i) above, it is determined for any reason that the Contractor was not in default pursuant to subdivision (1)(i) above, or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this Letter Contract relating to excusable delays, the Notice of Termination shall be considered to have been issued under subdivision (1)(ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(c)(1) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer the Contractor shall:

(i) Stop work under this Letter Contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials services, or facilities, except as may be necessary for completion of such portion of the work under this Letter Contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) Subject to the approval or ratification of the Contracting Officer, as required, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Letter Contract;

(vi) Transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the time directed by the Contracting Officer, deliver to the Government: (A) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if this Letter Contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools, and tooling acquired or manufactured for the performance of this Letter Contract for the cost of which the Contractor has been or will be reimbursed under this Letter Contract;

(vii) Use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above, *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further*, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this Letter Contract or shall otherwise be credited to the price or cost of the work covered by this Letter Contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Letter Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(2) The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining the amount of any items of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Part 45 of the Federal Acquisition Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 1 year period or authorized extension thereof. However, the Contracting Officer may if the facts justify such action, receive and act upon any such termination claim at any time after such 1 year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect on the date of the execution of this contract, determine, on the basis of information available to the Contracting Officer, the amount, if any, due to the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provisions of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect as of the date of execution of this Letter Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) or (b)(1)(i) hereof, such amount or amounts shall not include any allowance for fee. In the event of any termination pursuant to paragraph (b)(1)(i) hereof, such amount or amounts may include a reasonable allowance for fee, but only on work actually done in connection with the terminated portion of this Letter Contract. Any such amount shall not exceed the maximum liability specified in the Schedule. Any such agreement shall be embodied in an amendment to this Letter Contract and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e) above, as to the amount or amounts to be paid to the Contractor in connection with the termination of work

pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Subpart 1849.1 of the NASA FAR Supplement in effect as of the date of execution of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the Federal Acquisition Regulation as in effect on the date of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the Federal Acquisition Regulation as in effect on the date of this Letter Contract, the amount, if any, due to the Contractor by reason of the termination and shall pay such amount to Contractor. In the event of the termination of this Letter Contract pursuant to paragraph (a) or (b)(1)(i) hereof, no allowance for fee shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause of this Letter Contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any disputes as to whether termination has in fact taken place pursuant to paragraph (a) or (b)(1)(i) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) above and has failed to request extention of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following:

(1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer.

(2) If an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this Letter Contract;

(2) Any claim which the Government may have against the Contractor in connection with this Letter Contract; and

(3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Letter Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments in in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2), for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(End of clause)

1852.249–72 Termination (utilities).

As prescribed in 1849.505 insert the following clause in all contracts for utilities services; however, see FAR 49.505(e) and FAR 52.249–15 for communication services contracts. The period of 30 days may be varied not to exceed 90 days.

Termination (Utilities) (April 1984)

This contract may be terminated at the option of the Government by giving of not less than 30 days advance written notice of the effective date of termination.

(End of clause)

1852.250–1 Indemnification under Pub. L. 85–804.

In accordance with 1850.102, contracting officers shall not include in NASA contracts the clause at FAR 52.250–1.

1852.252–70 Compliance with NASA FAR Supplement

As prescribed in 1852.107–70, insert the following clause in all contracts, including letter contracts:

Compliance With NASA FAR Supplement (April 1984)

Any statements in this contract requiring compliance with specific provisions of the Federal Acquisition Regulation (e.g., Subpart 45.5) shall be construed to also require compliance with any corresponding implementing or supplementing provisions in the NASA FAR Supplement in effect on the date of this contract.

(End of clause)

PART 1853—FORMS

Subpart 1853.1—General

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1853.100 Scope of subpart.
1853.101 Requirements for use of forms.
1853.102 Current editions.
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1853.204–70 General (NF's 507, 533M, 533P, 533Q, 667, 1098, 1356, DD 1593, DD 1594, DD 1597).
1853.207 Acquisition planning (NF's 1451, 1452).
1853.208 Required sources of supplies and services.
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1853.232 Contract financing (SF 272, 272A).
1853.242 Contract administration.
1853.242–70 Delegation (NF's 1430, 1430A, 1431, 1432, 1433).
1853.242–71 Administrative service request (NF 1434).
1853.242–72 Notifications (NF 456).
1853.245 Property (NF 1081, DD 1342, DD 1419).
1853.246 Quality assurance (DD 250, DD 250c).
1853.249 Termination of contracts (NF's 1412, 1413).

Subpart 1853.3—Illustrations of Forms

1853.300 Scope of subpart.
1853.301 Standard forms.
1853.302 Agency forms.
1853.303 Agency forms.
1853.301–272 Standard Form 272, Federal Cash Transaction Report.
1853.301–272A Standard Form 272 A. Federal Cash Transaction Report. (continuation).
1853.301–1080 Standard Form 1080, Voucher for Transaction Between Appropriations and/or Funds (Disbursement).
1853.303–456 NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved.
1853.303–507 NASA Form 507, Individual Procurement Action Report.
1853.303–523 NASA Form 523, NASA-Defense Purchase Request.
1853.303–533M NASA Form 533M, Monthly Contractor Financial Management Report.
1853.303–533P NASA Form 533P, Monthly Contractor Financial Performance Analysis Report.
1853.303–533Q NASA Form 533Q, Quarterly Contractor Financial Management Report.
1853.303–543 NASA Form 543, Justification for Authority to Negotiate.
1853.303–558 NASA Form 558, Materials Requirements Report.
1853.303–566 NASA Form 566, Application For Radio Frequency Assignment.

1853.303–634 NASA Form 634, Structural Approach-Profit/Fee Objective.
1853.303–667 NASA Form 667, Report on NASA Subcontracts.
1853.303–778 NASA Form 778, Contractor's Release.
1853.303–779 NASA Form 779, Assignee's Release.
1853.303–780 NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts.
1853.303–781 NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.
1853.303–1018 NASA Form 1018, Report of Government-Owned/Contractor-Held Property.
1853.303–1098 NASA Form 1098, Checklist for Negotiated and Advertised File Content (Award File).
1853.303–1356 NASA Form 1356, C.A.S.E. Report on College and University Projects.
1853.303–1412 NASA Form 1412, Termination Authority.
1853.303–1413 NASA Form 1413, Termination Docket Checklist.
1853.303–1430 NASA Form 1430, Letter of Contract Administration Delegation, General.
1853.303–1430A NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions.
1853.303–1431 NASA Form 1431, Letter of Acceptance of Contract Administration Delegation.
1853.303–1432 NASA Form 1432, Letter of Contract Administration Delegation, Termination.
1853.303–1433 NASA Form 1433, Letter of Audit Delegation.
1853.303–1434 NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.
1853.303–1451 NASA Form 1451, Request for Procurement Plan Approval.
1853.303–1452 NASA Form 1452, Procurement Plan Signature Page (Installation).
1853.303–1611 NASA Form 1611, Contract Completion Statement.
1853.303–1612 NASA Form 1612, Contract Closeout Checklist.
1853.303–DOC–ITA–999 Department of Commerce Form ITA–999, Request for Special Priorities Assistance.
1853.303–DD–250 Department of Defense Form DD 250, Material Inspection and Receiving Report.
1853.303–DD–250c Department of Defense Form DD–250c, Material Inspection and Receving Report-Continuation Sheet.
1853.303–DD–614 Department of Defense Form DD–614, Materials Requirements (Steel and Nickel Alloys).
1853.303–DD–614–1 Department of Defense Form DD–614–1, Materials Requirements (Copper and Aluminum).
1853.303–DD–1342 Department of Defense Form 1342, DOD Property Record.
1853.303–DD–1419 Department of Defense Form 1419, DOD Industrial Plant Equipment Requisition.
1853.303–DD–1593 Department of Defense Form 1593, Contract Administration Completion Record.
1853.303–DOE EV 375 Department of Energy Form EV 375, Isotope Order Blank.
1853.303–NRC–313I Nuclear Regulatory Commission Form 313I, Application for Byproduct License, Industrial.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1853.1—General

1853.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

1853.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in Parts 1801 through 1852, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in Subpart 1853.2.

1853.102 Current editions.

The form prescriptions in Subpart 1853.2 and the illustrations in Subpart 1853.3 contain current editions, unless otherwise noted. Contracting officers shall use the current editions, unless otherwise authorized under this regulation.

1853.103 Exceptions.

Alteration of any NASA or NASA-adopted form prescribed by this regulation is prohibited, unless prior approval has been obtained from the NASA Forms Officer (through the Installation Forms Manager) who will coordinate the request with the Office of Procurement, Code H. Use for the same purpose of any form other than one prescribed by this regulation requires prior approval of Code H. Requests for exceptions to standard or optional forms, as prescribed in FAR 53.103, shall be forwarded through the Installation Forms Manager and the NASA Forms Officer to the Procurement Policy Division, Code HP–1, which will take, as appropriate, the actions set forth in FAR 53.103.

1853.104 Overprinting.

NASA and other forms may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any other way. Exception approval for overprinting is not needed.

1853.105 Computer preparation.

NASA and (NASA-adopted forms prescribed by this regulation) may be adopted for computer preparation by following the exception procedures in 1853.103. (See FAR 53.105 regarding standard or optional forms.) Such forms should correspond exactly with all other specifications pertaining to that standard form, including overall size, wording, and arrangement.

1853.106 Special construction and printing.

Contracting offices may request exceptions to NASA and NASA-adopted and standard and optional forms for special construction and printing by following the procedures of 1853.103.

1853.107 Obtaining forms.

NASA and other agency forms shall be obtained through NASA's regular forms distribution channels.

1853.108 Recommendations concerning forms.

Coordination with the FAR Secretariat, as specified in FAR 53.108, is the responsibility of the Procurement Policy Division, Code HP–1.

Subpart 1853.2—Prescription of Forms

1853.200 Scope of subpart.

This subpart prescribes NASA forms and other forms adopted by NASA for use in acquisition. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of this regulation in which the form usage requirements are addressed. (See FAR 53.200 for an example.)

1853.201 NASA regulation.

1853.204 Administrative matters.

1853.204–70 General NF's 507, 533M, 533P, 533Q, 667, 1098, 1356, DD 1593, DD 1594, DD 1597.

(a) *NASA Form 507, Individual Procurement Action Report.* NF 507, prescribed at 1804.671–4, shall be used to provide acquisition records and statistics.

(b) *NASA Form 533M, Monthly Contractor Financial Management Report.* NF 533M, prescribed at 1804.675, shall be used when financial management reporting is required.

(c) *NASA Form 533P, Monthly Contractor Financial Management Performance Report.* NF 533P, prescribed at 1804.675, shall be used when monthy performance analysis reports are required.

(d) *NASA Form 533Q, Quarterly Financial Management Report.* NF 533Q, prescribed at 1804.675, shall be used when quarterly cost projection reports are required.

(e) *NASA Form 667, Report on NASA Subcontracts.* NF 667, prescribed at 1804.673, shall be used by contractors to submit information to NASA on each subcontract or modification thereof in excess of $10,000.

(f) *NASA Form 1098, Checklist for Negotiated and Advertised Contract File Content (Award File).* NF 1098, prescribed at 1804.7205, shall be used as a guide in compiling contract files and shall accompany contracts and supplemental agreements submitted to Headquarters for approval.

(g) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* NF 1356, prescribed at 1804.7202, shall be used to report information applicable to colleges and universities.

(h) *NASA Form 1611, Contract Completion Statement.* NF 1611, prescribed at 1804.804–2, shall be used for closeout of contract files when another office administers the contract.

(i) *NASA Form 1612, Contract Closeout Checklist.* NF 1612, prescribed at 1804.804–5, shall be used for contract closeout when the NASA contracting office retains contract administration.

(j) *DOD Form DD 1593, Contract Administration Completion Record.* Form DD 1593, prescribed at 1804.804–5 shall be used for closeout when the NASA contracting office retains contract administration.

1853.207 Acquisition planning (NF's 1451, 1452).

(a) *NASA Form 1451, Request for Procurement Plan Approval.* NF 1451, prescribed at 1807.170–1(a), shall be used in preparing procurement plans requiring approval by Headquarters.

(b) *NASA Form 1452, Procurement Plan Signature Page (Installation).* NF 1452, prescribed at 1807.170–1(a), shall be used in obtaining installation-level signatures request by 1807–103–2.

1853.208 Required sources of supplies and services.

1853.208–70 Other Government sources (SF 1080, NF 558, DOE EV 375, NRC 3131).

(a) *Standard Form 1080, Voucher For Transfers Between Appropriations And/or Funds (Disbursement).* SF 1080, prescribed at 1808.002–74(e), shall be used to reimburse the Air Force for Shipments of propellants.

(b) *NASA Form 558, Materials Requirements Report.* NF 558, prescribed at 1808.072(f)(1), shall be used to report periodic estimated requirements for missile propellants and related items to the Department of the Air Force.

(c) *Department of Energy Form EV 375, Isotope Order Blank.* DOE Form EV 375, prescribed at 1808.070(a), shall be used for the procurement of radioisotopes.

(d) *Nuclear Regulatory Commission Form 313I, Application for Propellant Material License, Industrial.* NRC Form 313I, prescribed at 1808.070(b), shall be used to apply for a NRC license for the procurement of radioisotopes.

1853.212 Contract delivery or performance (DD 614, DD 614–1, DOC ITA–999).

(a) *DOD Form 614, Materials Requirements (Steel and Nickel Alloys).* DD Form 614, prescribed at 1812.371–2(a), shall be used in preparing quarterly requirements for controlled materials.

(b) *DOD Form 614–1, Materials Requirements (Copper and Aluminum).* DD Form 614–1, prescribed at 1812.371–2(a), shall be used in preparing quarterly requirements for controlled materials.

(c) *Department of Commerce Form ITA–999, Request for Special Priorities Assistance.* DOC ITA–999, prescribed at 1812.372–4, shall be used for all special priorities assistance requests.

1853.215 Contracting by negotiation.

1853.215–2 Price negotiation (NF 634).

NASA Form 634, Structured Approach-Profit/Fee Objective. NF 634, prescribed at 1815.905, shall be used for determining the profit or fee objective by the structured approach.

1853.215–70 Justification for authority to negotiate (NF 543).

NASA Form 543, Justification for Negotiation. NF 543, prescribed at 1815.372, shall be prepared by the contracting officer when a justification for authority to negotiate is required.

1853.216 Types of contracts.

1853.216–70 Assignees under cost-reimbursement contracts (NF's 778, 779, 780, 781).

(a) *NASA Form 778, Contractor's Release.* NF 778, prescribed at 1816.370(a), shall be used for obtaining a release from the contractor.

(b) *NASA Form 779, Assignee's Release.* NF 779, prescribed at 1816.370(a), shall be used for obtaining a release from each assignee.

(c) *NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.* NF 780, prescribed at 1816.370(a), shall be used in obtaining any refunds, rebates, credits or other amounts from the contractor.

(d) *NASA Form 781, Assignee's Assignment of Returns, Rebates, Credits, and Other Amounts.* NF 781, prescribed at 1816.370(a), shall be used in obtaining any refunds, rebates, credits or other amounts due from each assignee.

1853.217 Special contracting methods (NF 523).

NASA Form 523, NASA-Defense Purchase Request. NF 523, prescribed at 1817.70, shall be used for requesting procurement of supplies or services from all activities of the Military Departments.

1853.223 Environment, conservation, and occupational safety (NF 566).

1853.223–566 NASA Form 566 Application for Radio Frequency Assignment.

NF 566, prescribed at 1823.7102(a), shall be used to request all frequency assignments.

1853.232 Contract financing (SF 272, 272A).

(a) *1853.232–272, Standard Form 272, Federal Cash Transaction Reports.* SF 272, prescribed at 1832.406–70, will be submitted on contracts with non-profit organizations which receive advance funding by the letter of credit method.

(b) *1853.232–272A, Standard Form 272A, Federal Cash Transaction Report.* SF 272A, prescribed at 1832.406–70, will be submitted by non-profit organizations which receive funding by the letter of credit method.

1853.242 Contract administration.

1853.242–70 Delegation (NF's 1430, 1430A, 1431, 1432, 1433).

(a) *NASA Form 1430, Letter of Contract Administration Delegation, General.* NF 1430, prescribed at 1842.202–70(a)(4), shall be used to delegate and redelegate contract administration functions and to amend existing contract administration delegations.

(b) *NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions.* NF 1430A, prescribed at 1842.20–70(a)(4), shall be used to supplement NF 1430 when special instructions are necessary.

(c) *NASA Form 1431, Letter of Acceptance of Contract Administration Delegation.* NF 1431, prescribed at 1842.202–70(a)(8), shall be used in conjunction with NF 1430 to evidence receipt and acceptance of delegation by other agencies.

(d) *NASA Form 1432, Letter of Contract Administration Delegation, Termination.* NASA Form 1432, presecribed at 1842.202(a)(2)(i), shall be used to delegate and redelegate termination functions and to amend existing termination delegations.

(e) *NASA Form 1433, Letter of Audit Delegation.* NF 1433, prescribed at 1842.202–71(c), shall be used to delegate and redelegate audit functions and to amend existing audit delegations.

1853.242-71 Administrative service request (NF 1434).

NASA Form 1434, Letter of Request for Pricing Audit Technical Evaluation Services. NF 1434, prescribed at 1842.202-70(f), shall be used to request contract administration and audit services incident to pre-award of a contract, but exclusive of pre-award surveys.

1852.242-72 Notifications (NF 456)

NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. NF 456, prescribed at 1842.803, will be used by the auditor and contracting officer to notify the contractor of any suspended and/or disallowed contract costs.

1853.245 Property (NF 1081, DD 1342, DD 1419).

The following forms are prescribed, as specified below, for use in reporting redistribution, and disposal of contractor inventory (defined in FAR 45.601) and in accounting for this property.

(a) *NASA Form 1018, Report of Government-Owned/Contractor-Held Property.* NF 1018, prescribed at 1845.505-14(d), shall be used by contractors for reporting Government-owned property.

(b) *DOD Form 1342, DOD Property Record.* Form DD 1342, prescribed at 1845.505-670., shall be used by contractors for reporting NASA-furnished or contractor-acquired centrally reportable equipment.

(c) *DOD Form 1419, DOD Industrial Plant Equipment Requisition.* Form DD 1419, prescribed by the clause at 1852.245-70, shall be used by contractors to list requirements for centrally reportable items for screening of existing Government inventories.

1853.246 Quality assurance (DD 250, DD 250c).

(a) *DOD Form 250, Material Inspection and Receiving Report.* Form DD 250, prescribed at 1846.670-7100, shall be used to document procurement quality assurance, acceptance of supplies and services, and shipments.

(b) *DOD Form 250c, Material Inspection and Receiving Report-Continuation Sheet.* Form DD 250c, prescribed at 1846.670-7100, shall be used to document procurement quality assurance, acceptance of supplies and services, and shipments.

1853.249 Termination of contracts (NF's 1412, 1413).

The following forms are prescribed for use in connection with the termination of contracts, as specified in Subpart 1849.6:

(a) *NASA Form 1412, Termination Authority.* NF 1412, prescribed at 1849.101-71, shall be used for initiating action to terminate a contract for either default or convenience of the Government.

(b) *NASA Form 1413, Termination Docket Checklist.* NF 1413, prescribed at 1849.101-71, shall be used to ensure adequacy of termination records.

Subpart 1853.3—Illustrations of Forms

1853.300 Scope of subpart.

This subpart contains illustrations of those NASA Forms and other forms which are used by NASA in acquisitions, but which are not prescribed by FAR. Suffixed parenthetical letters are used here for pagination purposes, when the form itself consists of more than one page.

1853.301 Standard forms.

This section illustrates standard forms that are specified by this NASA FAR supplement for use in acquisitions.

1853.303 Agency forms.

This section illustrates agency forms that are specified by this NASA FAR supplement for use in acquisitions. The forms are arranged numerically by agency, following an initial listing of NASA forms.

Note.—NASA forms will not appear in the Code of Federal Regulations.

BILLING CODE 7510-01-M

1984 Edition 18–53.301–272

FORMS

FEDERAL CASH TRANSACTIONS REPORT

(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272–A.)

Approved by Office of Management and Budget, No. 80–R0182

1. Federal sponsoring agency and organizational element to which this report is submitted

2. RECIPIENT ORGANIZATION

Name

Number and Street

City, State and ZIP Code:

3. FEDERAL EMPLOYER IDENTIFICATION NO.

4. Federal grant or other identification number

5. Recipient's account number or identifying number

6. Letter of credit number

7. Last payment voucher number

Give total number for this period

8. Payment Vouchers credited to your account

9. Treasury checks received (whether or not deposited)

10. PERIOD COVERED BY THIS REPORT

FROM (*month, day, year*)

TO (*month, day year*)

11. STATUS OF FEDERAL CASH *(See specific instructions on the back)*		
	a. Cash on hand beginning of reporting period	$
	b. Letter of credit withdrawals	
	c. Treasury check payments	
	d. Total receipts (*Sum of lines b and c*)	
	e. Total cash available (*Sum of lines a and d*)	
	f. Gross disbursements	
	g. Federal share of program income	
	h. Net disbursements (*Line f minus line g*)	
	i. Adjustments of prior periods	
	j. Cash on hand end of period	$

12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING *Days*	13. OTHER INFORMATION	
	a. Interest income	$
	b. Advances to subgrantees or subcontractors	$

14. REMARKS (*Attach additional sheets of plain paper, if more space is required*)

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purposes and conditions of the grant or agreement

AUTHORIZED CERTIFYING OFFICIAL

SIGNATURE

DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE (*Area Code, Number, Extension*)

THIS SPACE FOR AGENCY USE

272–102

☆ GPO: 1976 0-281-187 P.O. 5073

STANDARD FORM 272 (7–76)
Prescribed by Office of Management and Budget
Cir. No. A–110

NASA/FAR SUPPLEMENT

18-53.301-272-(A)

1984 Edition

FORMS

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item	Entry
3	Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code. If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272-A, Report of Federal Cash Transactions—Continued; otherwise;
4	Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.
5	This space reserved for an account number or other identifying number that may be assigned by the recipient.
6	Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.
7	Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.
11a	Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.
11b	Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.
11c	Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.
11f	Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.
11g	Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
11i	Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.
11j	Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).
12	Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash requirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.
13a	Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.
13b	Enter amount of advance to secondary recipients included in item 11h.
14	In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

☆ GPO: 1979 0-281-187 P.O. 5073

1984 Edition 18–53.301–272A

FORMS

FEDERAL CASH TRANSACTIONS REPORT
CONTINUATION

(This form is completed and attached to Standard Form 272 only when reporting more than one grant or assistance agreement.)

2. RECIPIENT ORGANIZATION *(Give name only as shown in item 2, SF 272)*

Approved by Office of Management and Budget No. 80–R0182

1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

3. PERIOD COVERED BY THIS REPORT *(As shown on SF 272)*

FROM (month, day, year) TO (Month, day, year)

4. List information below for each grant or other agreement covered by this report. Use additional forms if more space is required.

FEDERAL GRANT OR OTHER IDENTIFICATION NUMBER *(Show a subdivision by other identifying numbers if required by the Federal Sponsoring Agency)* (a)	RECIPIENT ACCOUNT NUMBER OR OTHER IDENTIFYING NUMBER (b)	FEDERAL SHARE OF NET DISBURSEMENTS: NET DISBURSEMENTS *(Gross disbursements less program income received)* FOR REPORTING PERIOD (c)	FEDERAL SHARE OF NET DISBURSEMENTS: CUMULATIVE NET DISBURSEMENTS (d)
		$	$

18–53.301–1080

1984 Edition

Standard Form No. 1080
7 0A0 0000
1000-104

FORMS

VOUCHER FOR TRANSFERS BETWEEN APPROPRIATIONS AND/OR FUNDS (DISBURSEMENT)

D.O. Vou. No. .....
Bu. Vou. No. .....
Bill No. .....

PAID BY

U.S. ..... (Department, establishment, bureau, or office billed), Dr.,

To U.S. ..... (Department, establishment, bureau, or office billing)

ORDER NO.	DATE OF DELIVERY	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT
				Cost	Per	Dollars and Cents
					TOTAL,	

Remittance in payment hereof should be sent to—

ACCOUNTING CLASSIFICATION—*Billing Office* (Appropriation Symbol must be shown; other classification optional)

CERTIFICATE OF OFFICE BILLED

I certify that the above articles were received and accepted or the services performed as stated and should be charged to the appropriation(s) and/or fund(s) as indicated below; or that the advance payment requested is approved and should be paid as indicated.

..... (Authorized administrative or certifying officer)

..... (Date)

..... (Title)

ACCOUNTING CLASSIFICATION—*Office Billed* (Appropriation Symbol must be shown; other classification optional)

Paid by check No. .....

U.S. GOVERNMENT PRINTING OFFICE: 1980—O-317048

CFR TITLE 48 CHAPTER 18

1984 Edition 18–53.303–456

FORMS

NASA Form 456 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

NASA/FAR SUPPLEMENT

18-53.303-456-(A) 1984 Edition

FORMS

NASA Form 456 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

FORMS

NASA Individual Procurement Action Report

1 TYPE OF RECORD (See Data Tables)
2 CONTRACT/GRANT P.O. NUMBER
3 MODIFICATION NUMBER
4 ACCOUNTING INSTALLATION NO
5 PROCURING INSTALLATION NUMBER
6 OTHER AGENCY CONTRACT NUMBER
7 CIC NUMBER
8 CONTRACTOR NAME (Not to exceed 20 positions on tape)
9 CONTRACTOR DIVISION (20 positions)
10 CONTRACTOR ADDRESS (Cols. - 24 positions) STATE (2 positions)
11 PLACE OF PERFORMANCE (Cols. 24 positions)
12 STATE (2 positions) ZIP CODE
13 CONTRACT/MOD DATE (YYMMDD)
14 COMPLETION DATE (YYMMDD)
15 PROCUREMENT PLACEMENT CODE*

16 KIND OF ACTION
01 New Letter Contract
02 Def. Contr. Supr. Ltr. Contract
03 Definitive Contract
04 Order Under Contract (BOA's, Indef. Del., Fed. Sched., etc.)
05 Intragovernmental
06 Grant
21 Cooperative Agreement
07 New Work Mod
08 Supplemental Agreement
09 Change Order
10 S/A Delimitizing Change Order
11 Administrative
12 Termination for Default
13 Termination for Convenience

17 TYPE OF CONTRACTOR
Business
01 Section 8a - Disadvantaged
03 Disadvantaged Direct
04 Other Business
Nonprofit Institutions
05 Educational
06 Hospital
07 Research Foundation/Laboratories
08 Other Nonprofit
State/Local Government
09 Educational
10 Hospital
11 Research Organization
12 Other State/Local Government

18 TYPE OF CONTRACT
01 Fixed Price, Firm
02 Fixed Price Redetermination
03 Fixed Price, Escalation/Price Adjustment
04 Fixed Price, Incentive
05 Cost No Fee
06 Cost Sharing
07 Cost Plus Fixed Fee
08 Cost Plus Incentive Fee
09 Time & Materials
10 Labor - Hour
11 Retroactive Price Redetermination
12 Cost Plus Award Fee

19 LABOR SURPLUS AREA
N Awards Not in a Labor Surplus Area
1 Labor Surplus Area - No Preference
2 Labor Surplus Area - Tie Bid Preference
3 Total Labor Surplus/Small Business Set-Asides Preference
4 Total Labor Surplus Set-Aside Preference

20 SUBJECT TO SATUTORY REQUIREMENTS
N Not Subject to Statutory Requirements
1 Walsh-Healy Act, Manufacture
2 Walsh-Healy Act, Regular Dealer
3 Service Contract Act
4 Davis-Bacon Act

21 EXTENT OF COMPETITION
Advertised
1 Two-Step
2 Other Advertised
Competitive Negotiated
3 Source Evaluation Board
4 No Source Evaluation Board
Noncompetitive Negotiated
5 Follow-on After Competition
6 Other Noncompetitive Negotiated
7 Unsolicited Proposal

22 REASON FOR NOT SELECTING SMALL BUSINESS
Small Business Not Solicited
01 No Known Small Business Source
02 Unsolicited Proposal
03 Other Noncompetitive Awards
04 Other
Small Business Solicited
05 Bid Not Received
06 Bid Not Low
07 Bid/Proposal Not Responsive
08 Proposal Not Accepted
09 Company Not Responsible
10 Other

23 TYPE OF SERVICE OR PRODUCT (See Data Tables)
(Use AR codes for R&D effort)
(Use codes beginning with "F" thru "Z" for other services)
(Use codes beginning "1005 thru 9999" for supplies & equip.)

24 PROPOSED PROCUREMENT SYNOPSIZED
(1 = Yes, 2 = No, 3 = No, due to emergency)

ITEMS 25–33 Y = YES, N = NO

25 CONTRACT ADMINISTRATION DELEGATED
26 CONSULTANT TYPE CONTRACT
27 SUPPORT SERVICES TYPE CONTRACT
28 COST ACCOUNTING STANDARDS CLAUSE
29 NEW TECHNOLOGY CLAUSE
30 SUBCONTRACTING PROGRAM PLAN (Use "W" for Waiver)
31 REPORT ON GEOGRAPHICAL DISTRIBUTION OF NASA SUBCONTRACTS
32 AFFIRMATIVE ACTION PLAN (Use "E" for Exempt)
33 PREVIOUSLY HELD CONTRACT SUBJECT TO AFFIRMATIVE ACTION PROGRAM (Use "E" for Exempt)
34 CONTRACT PHYSICALLY COMPLETE
35 MODIF OBLIGATIONS (To nearest dollar)

36 [redacted]
Y YES
N NO
1 NOT CERTIFIED

37 MRR: COST AND PERFORMANCE REPORTING
N None required
2 NF 533M only
3 NF 533M & 533Q
4 NF 533M & 533P
5 NF 533P & 533Q
9 [redacted]

38 MRR: PROPERTY AND SPACE HARDWARE REPORTING
N None required
2 NF 1018 without Space Hardware
3 NF 1018 with Space Hardware

39 TRADE DATA
No. of Bidders Offering Foreign Item (0-9)
Buy American Act Percent Difference (2 positions)
Country of Manufacturer (2 positions)

40 TOTAL PRICE OR ESTIMATED COST (To nearest dollar)
41 TOTAL PROFIT OR FEE (To nearest dollar)

42 DESCRIPTION OF CONTRACT/MODIFICATION

PREPARED BY DATE

*See Matrix

NASA FORM 507 JUL 83 PREVIOUS EDITION MAY BE USED [redacted]

NASA/FAR SUPPLEMENT

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FORMS

NASA-Defense Purchase Request

PAGE OF PAGES

1. DATE

2. REQUEST NO.

3. AMENDMENT NO.

NOTE - See attached pages for delivery schedules, preservation and packaging, shipping, disposition of property, and special instructions.

4. TO

5. FROM *(Agency, name, telephone number of originator)*

National Aeronautics and Space Administration

6. ITEM DESCRIPTION

ITEM NO. a.	DESCRIPTION OF SUPPLIES OR SERVICES *(Federal Stock Number, Nomenclature, Specification and/or Drawing No., etc.)* b.	QUANTITY c.	UNIT d.	ESTIMATED UNIT PRICE e.	ESTIMATED TOTAL PRICE f.

7. GRAND TOTAL ▶

8. THIS REQUEST ☐ IS ☐ IS NOT SUBJECT TO SECTION 306 OF THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958. *(See special instructions on reverse side.)*

9. MAIL SF 1080 BILLINGS TO:

10. NASA APPROPRIATION SYMBOL

11. AUTHORIZING OFFICER *(Typed name and title)*

12. SIGNATURE

NASA FORM 523 OCT 79 PREVIOUS EDITIONS MAY BE USED.

CFR TITLE 48 CHAPTER 18

1984 Edition 18–53.303–523–(A)

FORMS

INSTRUCTIONS

The NASA-Defense Purchase Request is to be used by NASA to request the procurement of supplies or services from the Department of Defense. These instructions pertain to preparation and use of the form by NASA activities. Attachments should be prepared in sufficient quantity so that each copy of a request is complete with a copy of every attachment listed therein.

Block 4: The original and 5 copies of the purchase request, each complete with all attachments, will be forwarded to the DOD activity shown in this block.

Block 6b: Describe the required services or supplies accurately and in sufficient detail to enable the purchasing activity to understand the requirement. When applicable, the particular NASA program and/or project to which the request or amendment pertains will be indicated. Attachments may be used as required. For items of hardware stocked by DOD, the item identification of the Army, Navy or Air Force and the National Stock Number will be entered if known. When applicable, the specification number, manufacturer's part number and other descriptive data, such as the desired grade, style, type, color, size, rating, etc.

SHIPPING INSTRUCTIONS: When names and addresses of consignees of all supplies to be delivered are not contained herein, or otherwise furnished, request for the issuance of shipping instructions shall be made to the appropriate NASA originating office not less than 30 days prior to date on which any of the articles is to be ready for shipment. Three copies of shipping documents shall be forwarded to the NASA originating office and each consignee.

DISPOSITION OF PROPERTY: Include instructions for the disposition of any non-expendable or other residual property purchased with NASA funds.

PRIORITY RATING: Include applicable priority rating and claimant program identification *(Example: Priority Rating DO-A2)*. In procurement for DX programs, identification will also include the unclassified program name.

Block 8: If this request or any part of the supplies or services covered by this request is subject to Section 305 of the National Aeronautics and Space Act of 1958 *(42 U.S.C. 2457)*, a copy of the long form or short form New Technology clause, together with the appropriate instructions for the inclusion of the clause in contracts shall be furnished the purchasing activity in accordance with NASA Procurement Regulations *(9.107-9)*

Block 10: Cite appropriation symbol, cost coding, or any other accounting data to be included in the ensuing documentation.

Security Classification: If the purchase request or any part thereof is classified, DD Form 254, "DOD Contract Security Classification Specification" *(NASA Procurement Regulation 16.811)*, or other written notice of security requirements will be prepared.

Changes: All changes that affect the contents of the purchase request must be processed as a purchase request amendment. This includes such changes as a decrease in quantity, increase or decrease in funds, change in the specifications or in the part, stock or drawing numbers, etc. Such changes may be made initially by expeditions means such as telegraph or telephone communication, but each change will be confirmed by a purchase request amendment. The original and 5 copies of purchase request amendments will be forwarded to the DOD recipient of the original purchase request. In preparing an amendment, Blocks 1 through 5 must always be completed. Only those remaining blocks of the form that are applicable to the change or revision of the data in the purchase request or prior amendments thereto need be filled in. The unused blocks, however, should have "N/C" inserted to reflect no change.

NASA/FAR SUPPLEMENT

PAGE _____ OF _____ PAGES

NASA — **Monthly Contractor Financial Management Report** — Form Approved O.M.B. No. 2700-0003

TO:	FROM:	2 REPORT FOR MONTH ENDING	NUMBER OF REPORTING DAYS
		3 CONTRACT VALUE a. COSTS $	b. FEE $
1 DESCRIPTION OF CONTRACT a. TYPE	b. CONTRACT NO. AND LATEST DEFINITIZED AMENDMENT NO.	4 FUND LIMITATION $	$
c. SCOPE OF WORK	e. AUTH. CONTR. REP. (Signature)	DATE	5 BILLING a. INVOICE AMTS BILLED $	b. TOTAL PYTS RECEIVED $

6. REPORTING CATEGORY	7 COSTS INCURRED HOURS WORKED — DURING MONTH: ACTUAL a.	PLANNED b.	CUM TO DATE: ACTUAL c.	PLANNED d.	8 ESTIMATED COSTS/HRS TO COMPLETE — DETAIL e.	b.	BALANCE OF CONTRACT c.	9 ESTIMATED FINAL COSTS/HOURS: CONTRACTOR ESTIMATE e.	CONTRACT VALUE b.	10 UNFILLED ORDERS OUTSTANDING

Baseline Plan Identification (Col. 7b & 7d): Revision No. _____, Dated _____.

NASA FORM 533M FEB 83 PREVIOUS EDITIONS MAY BE USED. NCSL0PUBL0417

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18-53.303-533M-(A)

FORMS

INSTRUCTIONS

General Information: All paragraph references below refer to NASA Handbook NHB 9501.2A which includes additional instructions for completing the NASA 533 series of reports. Copies of the handbook are available thru the NASA Contracting Officer or from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Forms: Forms will be obtained by the contractor thru the contracting officer When directed or approved by the contracting officer, other means than the NASA Form 533 may be used for transmitting the data required by these instructions; e.g., punched cards, tapes, or electronic transmission such as transceivers or TWX machines.

Security Classification: If the information in the report is classified, appropriate security classification shall be given the report (see par. 107).

Submission: The NASA Form 533M report is due in the office of the addressee on a negotiated date not later than the 10th operating day following the close of the contractor's accounting month being reported (operating day: any calendar day worked within the contractor's fiscal accounting period). For Initial Reports and other related items of significance see par. 300-5, 301 and the contract. The addresses and number of copies to be submitted will be as specified by the contract or by an administrative instruction.

Amounts: Report dollar amounts in even thousands and hours in tenths of thousands (e.g., $32,600 as $33 or 462 hours as .5).

Instructions for Form Headings: The form headings shall be completed as follows.

1. To – Enter the full name and address of the NASA field installation and contracting officer or other designated recipient.

2. From – Enter the full name and address of the contractor, and if applicable, the contractor's division performing the contract.

Preparation Instructions:

1. Description of Contract:

a. Type - Cost Plus Fixed Fee, Cost Plus Incentive Fee, etc.

b. Number – Enter complete letter or contract symbol, number and number of latest definitized amendment.

c. Scope of Work – Enter a brief description of the contract effort. Identify the service, project, system or subsystem and where hardware is concerned, the quantity being procured or proposed for the contract.

d. Signature and Date – The authorized Contractor Representative shall sign and date his approval. When such Representative is other than the project manager, the project manager shall add his signature to signify his review of the content. Date shall signify date of approval and signature of report.

2. Report for Month Ending (Report Date) – Enter the ending date of the contractor's accounting month and the number of operating days for that accounting month

3. Contract Value – Enter the total definitized cost (a) and fee (b) of all work to be performed under the contract as of the report date. Include dollar amounts through the latest definitized amendment as noted in 1b above. For all incentive contracts, enter the negotiated target cost and target fee

4. Fund Limitation – Enter the total funding obligated and the latest corresponding contract amendment number as of the report date.

5. a. Invoice Amounts Billed – Enter the total amount of invoices billed by the contractor against this contract and the latest invoice number as of the report date.

b. Total Payments Received – Enter the total amount of payments received by the contractor for this contract as of the report date.

6. Reporting Category – Enter the captions of the reporting categories specified in the contract. (See par. 301-3)

7. Cost Incurred/Hours Worked. All cost and hour data shall be reported by the categories negotiated in the contract (par. 301-4).

a. Actual During Month – Enter the total actual cost incurred/hours worked for the accounting month being reported.

b. & d. Planned Costs (optional) – Enter the planned (budgeted) cost for the month being reported in column 7b and cumulative to date in column 7d The planned costs are obtained from the time phased baseline plan which includes the original contract value plus authorized changes. The baseline plan to date consists of the sum of the budgets for all authorized work that is scheduled for completion through the report date. The plan shall include a pro rata share of the budgets for work-in-process. Identify the baseline plan used by date and revision number at the bottom of the report.

c. Cumulative Actual Cost/Hours to Date – Enter the cumulative actual cost incurred/hours worked as of the report date.

8. Estimated Cost/Hours to Complete – Enter the current estimates for performing currently authorized work which is included in the most recently executed contract amendment, plus additional authorized work (directions-to proceed) for which execution of amendments are pending. The estimates will be used for planning purposes only and will not be binding on either the contractor or NASA.

a. & b. These columns may be used at the option of the installation to obtain any desired combination of subsequent month(s), fiscal year(s) and/or balance of fiscal year data. The required data element(s) shall be specified in the contract. (See par. 301-5)

c. Enter the cost/hour data for the balance of the contract not including columns 8a and 8b. Where amounts reported in this column exceed one fiscal year, a breakdown by fiscal year may be required

9. Estimated Final Costs/Hours

a. Contractor Estimate – Enter the total estimated cost/hours for completion of the contracted effort (this should equal the sum of comumns 7c, 8a, 8b and 8c).

b. Contract Value – Enter the distribution of the Contract Value to the reporting categories. The total of this column shall agree with Item 3, above Significant differences between columns 9a and 9b shall be explained in the "Contractor's Remarks." Where there are no changes from the prior reports submitted, the data may be omitted if the contractor and the contracting officer jointly agree.

10. Unfilled Orders Outstanding – Enter the total of unfilled orders outstanding as of the report date. (See par. 301-6)

11. Contractor's Remarks:

a. Analytical remarks on significant items materially affecting historical or projected cost or preformance shall accompany each monthly report (e.g., see item 9b above and par. 304).

b. Include a reconciliation from the original contract value (Original Negotiated Baseline) to the present Contract Value as reported in Item 3. A sample format is set forth in the instructions on the back of NASA Form 533Q and par. 304.

c. Changes authorized but not finalized may be required by the field installation to be further subdivided as follows.

(1) changes negotiated but not definitized

(2) changes pending negotiation

(3) changes pending quotation

d. Report new change orders per sample format set forth in the instructions on the back of NASA Form 533Q or par. 304

GPO 887-929

NASA/FAR SUPPLEMENT

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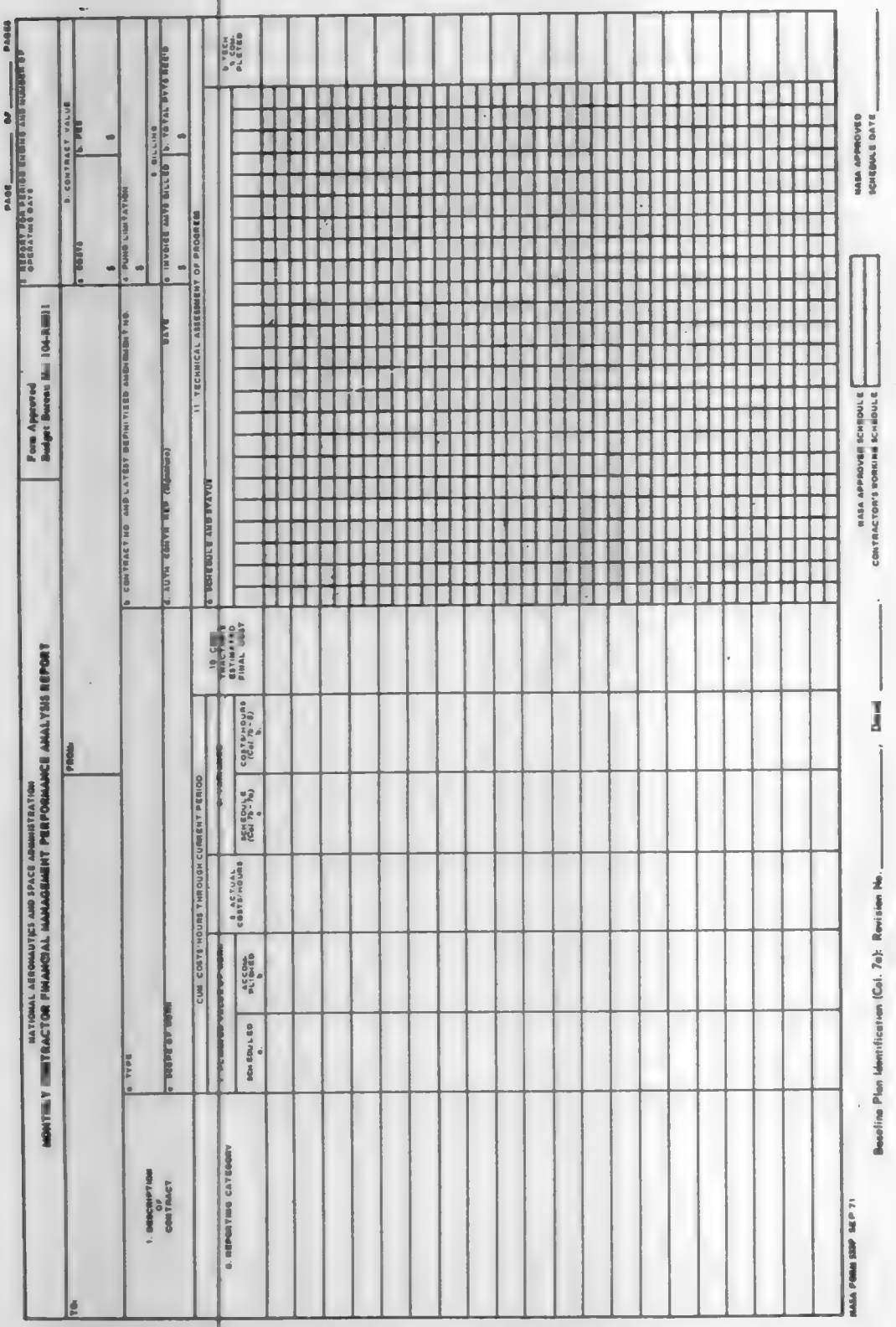

CFR TITLE 48 CHAPTER 18

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INSTRUCTIONS

General Information: All paragraph references below refer to NASA Handbook NHB 9501.2A which includes additional instructions for completing the NASA 533 series of reports. Copies of the handbook are available thru the NASA Contracting Officer or from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

Forms: Forms will be obtained by the contractor thru the contracting officer. When directed or approved by the contracting officer, other means than NASA 533 format may be used for transmitting the data required by these instructions, e.g., punched cards, tapes or electronic transmission such as transceivers or TWX [illegible].

Security Classification: If the information in the report is classified, appropriate security classification will be given the report (see par. 107).

Submission: The NASA Form 533P report is due in the office of the addressee on a negotiated date not later than the 10th operating day following the close of the contractor's accounting month being reported (Operating Day - any calendar day worked within the contractor's fiscal accounting period). The addressee and number of copies to be submitted will be as specified by the contract or by an administrative instruction.

Amounts: Report dollar amounts in even thousands and hours in tenths of thousands (e.g., $32,600 as $33 or 462 hours as .5)

Instructions for Form Headings. The form headings shall be completed as follows:

1. To - Enter the full name and address of the NASA field installation and contracting officer or other designated recipient.
2. From - Enter the full name and address of the contractor, and if applicable, the contractor's division performing the contract.

Preparation Instructions

1. Description of Contract:
   a. Type - Cost Plus Fixed Fee, Cost Plus Incentive Fee, etc.
   b. Number - Enter complete letter or contract symbol, number, and number of latest definitized amendment.
   c. Scope of Work - Enter a brief description of the contract effort. Identify the service, project, system or subsystem and where hardware is concerned, the quantity being procured or proposed for the contract.
   d. Signature and Date - The authorized Contractor Representative shall sign and date his approval. When such Representative is other than the project manager, the project manager shall add his signature to signify his review of the content. Date shall signify date of approval and signature of report.
2. Report for Month Ending (Report Date) - Enter the ending date of the contractor's accounting month and the number of operating days for that accounting month.
3. Contract Value - Enter the total definitized cost (a) and fee (b) of all work to be performed under the contract as of the report date. Include dollar amounts through the lastest definitized amendment as noted in 1b above. For all incentive contracts, enter the negotiated target cost and target fee.
4. Fund Limitation - Enter the total funding obligated and the latest corresponding contract amendment number as of the report date.
5. a. Invoice Amounts Billed - Enter the total amount of invoices billed by the contractor against this contract and the latest invoice number as of the report date.
   b. Total Payments Received - Enter the total amount of payments received by the contractor for this contract as of the report date.
6. Reporting Category - Enter the captions of the reporting categories specified in the contract (see par. 303-3).
7. Planned Value of Work - The contractor shall establish a time phased baseline cost plan for each reporting category by assigning budgets at the lower levels of [illegible].
   a. Planned Value of Work Scheduled (PVWS) shall be the sum of the cumulative budgets assigned for all effort scheduled to be completed thru the period being reported. Include a pro rata share of the budgets for scheduled work in process. Identify the baseline plan used by date and revision number at bottom of form.
   b. Planned Value of Work Accomplished (PVWA) - shall be the sum of the cumulative budgets assigned for all effort actually completed thru the period being reported plus a pro rata share of the budgets assigned to completed portions of work in process.
8. Actual Cost (AC) - Report cumulative actual cost for each reporting category as of the report date. The actual cost reported on this report shall agree with the actual cost reported on the NASA Form 533M when both reports are required.
9. Variance - Variances exceeding the criteria (dollar/hour or percentage limits) set forth in the contract shall be explained in the narrative report.
   a. Schedule Variance - Enter for each reporting category the result of PVWA minus PVWS. A positive variance indicates a favorable position - ahead of schedule, a negative variance indicates an unfavorable position - behind schedule.
   b. Cost Variance - Enter for each reporting category the result of PVWA minus AC. A positive variance indicates a favorable position - an underrun of cost; a negative variance indicates an unfavorable position - an overrun of cost.
10. Contractor Estimated Final Cost - Enter the current estimates for performing currently authorized work which is included in the most recently executed contract amendment, plus additional authorized work (directions to proceed) for which execution of amendments are pending.
11. Technical Assessment of Progress - This portion of the report shall reflect the Contractor's (Technical Manager's) evaluation of the schedule and technical status for each reporting category as of the report date.
   a. Schedule and Status - Figure A illustrates the symbology to be used to reflect schedules and status.
      (1) Top Line - Enter the appropriate calendar year.
      (2) Second Line - Enter the first letter of each month.
      (3) Shaded Blocks - Enter the current NASA Approved Schedule for each reporting category and enter the date approved by the NASA Project Manager at the bottom of the form. Use inverted open triangles to indicate beginning and ending milestones.
      (4) Unshaded Blocks - Enter the Contractor's current working schedule.
         (i) Use an open schedule bar to indicate time span for which effort is planned. Use an open inverted triangle to represent beginning and ending [illegible].
         (ii) The Contractor's current working schedule may be the same as or different from the NASA Approved Schedule. If the work status as of report date indicates a necessity to revise the current working schedule, show such revision in the next monthly report.
         (iii) Black in triangles when each milestone is reached.
         (iv) To report Schedular Status, determine the length of time planned for the technical achievement to date. Black in the schedule bar to that point in time. Consider any modifications made in the current working schedule. Note: The percent ratio of the blacked in portion of the schedule bar to its total schedule is not necessarily the same as (1) the technical assessment - percent complete, or (2) the percent man hours or dollars used to date (e.g., as determined by the ratio of actuals to the total estimate).
         (v) Use arrows to indicate a break in schedule span.
         (vi) Place a number (1, 2, 3, 4, etc.) next to the triangle to indicate number of times rescheduled.
         (vii) Time Now Indicator - Use a broken vertical line to indicate report [illegible].
   b. Technical Assessment (% Complete) - Evaluate the progress toward meeting the technical requirement of each reporting category. The Contractor's project manager or system engineer makes this assessment. He should consider all aspects of progress - technical specification, quality, production of hardware, software achievement, etc. Subjective factors, such as complexity of tasks, state of the art and level of confidence that the objective can be achieved should be considered.
12. Contractor's Remarks - Analytical remarks on significant items materially affecting cost or performance are required. See paragraph 304 for more detailed [illegible].

SYMBOLOGY TABLE

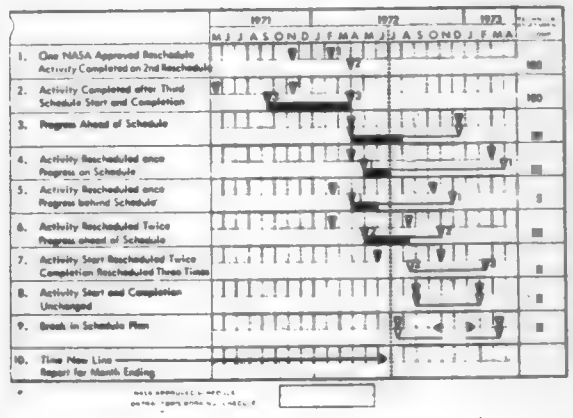

Figure A

GPO 010-290

NASA/FAR SUPPLEMENT

18–53.303–533Q

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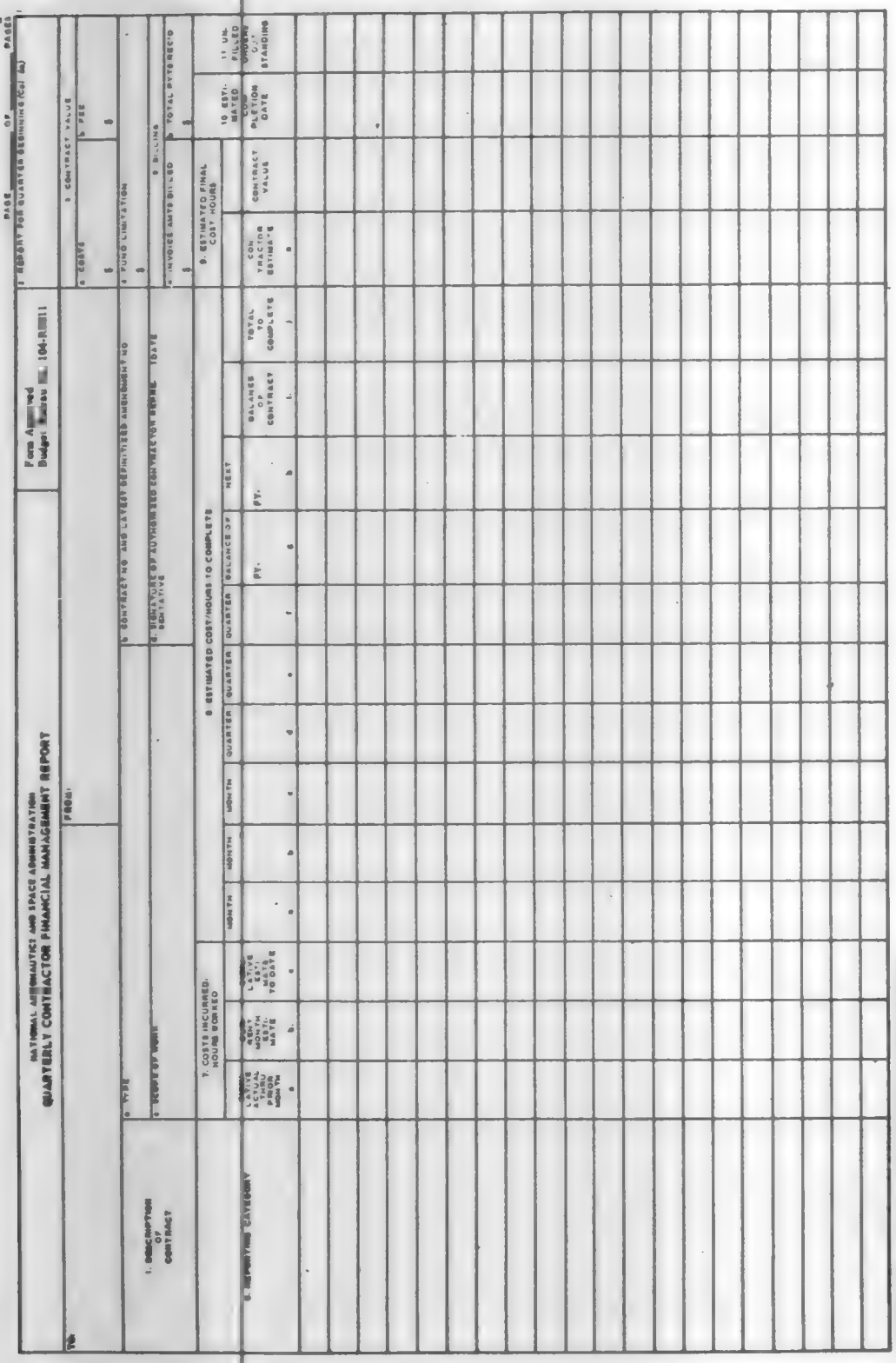
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
QUARTERLY CONTRACTOR FINANCIAL MANAGEMENT REPORT

1. DESCRIPTION OF CONTRACT

2. REPORTING CATEGORY

6. TYPE

7. DESCRIPTION OF WORK

7. COSTS INCURRED/HOURS WORKED

8. ESTIMATED COST/HOURS TO COMPLETE

9. ESTIMATED FINAL COST/HOURS

10. ESTIMATED COMPLETION DATE

11. UNLIMITED ORDERS O/S/ STANDING

NASA FORM 533Q SEP 71 REPLACES NASA FORM 533 WHICH IS OBSOLETE.

CFR TITLE 48 CHAPTER 18

1984 Edition

18-53.303-533Q-(A)

FORMS

INSTRUCTIONS

General Information: All paragraph references below refer to NASA Handbook NHB 9501.2A which includes additional instructions for completing the NASA 533 series of reports. Copies of the handbook are available thru the NASA Contracting Officer or from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Forms: Forms will be obtained by the contractor thru the contracting officer. When directed or approved by the contracting officer, other means than NASA 533 format may be used for transmitting the data required by these instructions; e.g., punched cards, tapes, or electronic transmission such as transceivers or TWX machines.

Security Classification: If the information in the report is classified, appropriate security classification shall be given the report (see par. 107).

Submission: The NASA Form 533Q report when required is due in the office of the addressee on a quarterly frequency (i.e., calendar quarter or other designated 3 month interval) not later than the 15th day of the month preceeding the quarter being projected in columns 8a, b and c. For Initial Reports and other related items of significance see par. 300-5, 302 and the contract. The addressees and number of copies to be submitted will be as specified in the contract or by an administrative instruction.

Amounts: Report dollar amounts in even thousands and hours in tenths of thousands (e.g., $32,600 as $33 or 462 hours as .5).

Instructions for Form Headings: The form headings shall be completed as follows:

1. To – Enter the full name and address of the NASA field installation and contracting officer or other designated recipient.

2. From – Enter the full name and address of the contractor, and if applicable, the contractor's division performing the contract.

Preparation Instructions:

1. Description of Contract:

a. Type – Cost Plus Fixed Fee, Cost Plus Incentive Fee, etc.

b. Number – Enter complete letter or contract symbol, number and number of latest definitized amendment.

c. Scope of Work – Enter a brief description of the contract effort. Identify the service, project, system or subsystem and where hardware is concerned, the quantity being procured or proposed for the contract.

d. Signature and Date – The authorized Contractor Representative shall sign and date his approval. When such Representative is other than the project manager, the project manager shall add his signature to signify his review of the content. Date shall signify date of approval and signature of report.

2. Report for. Quarter Beginning (Report Date) – Enter the beginning date of the quarter being projected in columns 8a, b and c and the number of operating days in the quarter.

3. Contract Value – Enter the total definitized cost (a) and fee (b) of all work to be performed under the contract as of the report date. Include dollar amounts through the latest definitized amendment as noted in 1b above. For all incentive contracts, enter the negotiated target cost and target fee.

4. Fund Limitation – Enter the total funding obligated and the latest corresponding contract amendment number as of the report date.

5. a. Invoice Amounts Billed – Enter the total amount of invoices billed by the contractor against this contract and the latest invoice number as of the report date.

b. Total Payments Received – Enter the total amount of payments received by the contractor for this contract as of the report date.

6. Reporting Category – Enter the captions of the reporting categories specified in the contract. (See par. 302-3)

7. Cost Incurred/Hours Worked

a. Enter the cumulative actual cost incurred/hours worked thru the first two months of the quarter preceeding the quarter projected in columns 8a, 8b and 8c.

b. Enter an estimate for the month in which the report is due (see "Submission" above).

c. Enter the sum of columns 7a and 7b.

8. Estimated Cost/Hours to Complete (columns 8a thru 8i) – Enter the appropriate month, quarter and fiscal year designations in the column headings. Enter the current estimates for performing currently authorized work which is included in the most recently executed contract amendment plus additional authorized work (directions to proceed) for which execution of amendments are pending. These estimates will be used for planning purposes only and will not be binding on either the contractor or NASA. The sum of columns 8a thru 8i will be entered in 8j. If the totals reported in column 8i, Balance of Contract, exceed more than one fiscal year, each fiscal year shall be identified and reported separately.

9. Estimated Final Cost/Hours

a. Contractor Estimate – Enter the total estimated cost/hours for completion of the contracted effort for each reporting category. (This should equal the sum of columns 7c, and 8j.)

b. Contract Value – Enter the distribution of the Contract Value to the reporting categories. The total of this column shall agree with Item 3, above. Significant differences between columns 9a and 9b shall be explained in the "Contractor's Remarks." When there are no changes from the prior reports submitted, the data may be omitted if the contractor and the NASA Contracting Officer jointly agree.

10. Estimated Completion Date – Enter the estimated completion date for each subdivision of work if a correlated cost-schedule activity report is not required. The entry shall not serve as notice to NASA of late delivery or as acquiescence in such late delivery by NASA.

11. Unfilled Orders Outstanding – Enter the total of unfilled order outstanding as of the report date. (See par. 301-6)

12. Contractor's Remarks – The narrative report submitted with the quarterly cost projection report shall normally be limited to those items materially affecting projected cost and performance which have not been addressed in the preceeding monthly narrative reports. (See par. 304)

a. Explain any significant items affecting cost; e.g., technical and schedule problems, changes in plans, incurred over/under runs, etc.

b. Include a reconciliation from the original contract value (Original Negotiated Baseline) to the present Contract Value as reported in Item 3. A sample format is set forth in Figure A below.

c. Changes authorized but not finalized may be required by the field installation to be further subdivided as follows:

(1) changes negotiated but not definitized
(2) changes pending negotiation
(3) changes pending quotation

d. Report new change orders per sample format set forth in Figure B below.

ORIGINAL CONTRACT VALUE	$_____
SUPPLEMENTAL AGREEMENTS (Identify; i.e., inclusive modification numbers)	_____
PRESENT CONTRACT VALUE (Col. 9b)	$_____
CHANGES AUTHORIZED BUT NOT FINALIZED (Identify items as to change order number)	$_____
ANTICIPATED OVER (under)/RUN	_____ _____
CONTRACTOR ESTIMATE (Col. 9a)	$_____
CHANGES UNDER CONSIDERATION BUT NOT AUTHORIZED (Identify items)	$_____

Figure A

NEW CHANGE ORDERS IDENTIFIED TO SUBDIVISION OF WORK				
CHANGE ORDER NO.				
SUBDIVISION OF WORK	AMOUNT			
TOTAL				

Figure B

NASA/FAR SUPPLEMENT

18-53.303-543

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NASA Justification for Authority to Negotiate	1. CONTROL NO
2. INSTALLATION ORIGINATOR	3. DATE PREPARED
	4. AUTHORITY 10 U.S.C. 2304(a)(

5. PROCUREMENT CONTEMPLATED BY THE ATTACHED D & F *(Describe)*

6. ESTIMATED COST	7. TYPE OF CONTRACT PROPOSED

8. NASA AGENCY-WIDE PROGRAM PROJECT TITLE *(Include name of approval official and date)*

9. COMPETITIVE *(If competitive show number of sources to be solicited)*	10. NONCOMPETITIVE *(If noncompetitive show name of firm with whom negotiations are to be conducted)*

11. PROCUREMENT PLAN *(Indicate approval authority and date. If Procurement Plan is not required, cite appropriate circumstance as set forth in NASA FAR Supp. 18-7.103)*

12. JUSTIFICATION FOR NONCOMPETITIVE NEGOTIATIONS *(See NASA FAR Supp. 18-15.105-70). Indicate approval authority and date. If not required, indicate appropriate exception set forth in NASA FAR Supp. 18-15.105-70(b))*

13. OTHER PERTINENT INFORMATION *(i.e., urgency of procurement, unsolicited proposal number, interagency participation and funding arrangements, or such other facts that are relevant to the requirement)*

14. JUSTIFICATION PREPARED BY ▶	a. TYPED NAME	b. TELEPHONE NO.	
	c. SIGNATURE	d. CODE	e. DATE
15. COUNSEL REVIEWING D & F ▶	a. TYPED NAME	b. TELEPHONE NO.	
	c. SIGNATURE	d. CODE	e. DATE
16. CONTRACTING OFFICER ▶	a. TYPED NAME	b. TELEPHONE NO.	
	c. SIGNATURE	d. CODE	e. DATE

NASA FORM 543 OCT 83 PREVIOUS EDITIONS ARE OBSOLETE.

CFR TITLE 48 CHAPTER 18

1984 Edition 18–53.303–558

FORMS

NASA Materials Requirements Report

TO: (Name of office to which report is being submitted)

FROM: (NASA Field Installation or Headquarters Program office submitting report)

DATE PREPARED

PREPARED BY

TELEPHONE

OFFICE CODE

MATERIAL BEING REPORTED

UNIT OF MEASURE

CONTRACT NO., PROGRAM, PROJECT, AND TASK / OR END USE-CONTRACTOR AND LOCATION OF USE	SOURCE[2]	CALENDAR YEAR 19___ ___QTR	___QTR	___QTR	___QTR	CALENDAR YEAR 19___ ___QTR	___QTR	___QTR	___QTR	CALENDAR YEAR 19___ ___QTR	___QTR	___QTR	___QTR

[1] Identify each entry by (a) Contract No., (b) Program, (c) Project, (d) by specific Task within the project or by End Use when not associated with a named project, (e) by contractor, and (f) by the location of use of the material (shipping destination). Specific attention is directed to reporting requirements for Helium. In addition to the above information, Helium requirements will be further classified as follows: (a) Missile Systems and Aeronautics, (b) Astrology (includes weather research), (c) Aeronautical Research (includes wind tunnels), (d) Welding and (e) Other (Identify specifically).

[2] C - Commercial; A - Army; N - Navy; AF - Air Force; BP - Defense Petroleum Supply Center; BM - Bureau of Mines; U - Undetermined; X - Other (Specify)

[3] Report first six months by month, balance by quarter.

RCS [illegible]

NASA FORM 566 SEP 80 PREVIOUS EDITIONS MAY BE USED.

NASA/FAR SUPPLEMENT

VOL
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18–53.303–566

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18-53.303-634

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FORMS

NASA

Structured Approach
Profit/Fee Objective

CONTRACTOR	RFP/CONTRACT NO
BUSINESS UNIT	CONTRACT TYPE
ADDRESS	

CONTRACTOR EFFORT

1. COST CATEGORY	GOVERNMENT'S COST OBJECTIVE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE ((a) x (c)) (d)
MATERIAL ACQUISITION		1% TO 4%		
DIRECT LABOR		4% TO 12%		
OVERHEAD		3% TO 8%		
OTHER COSTS		1% TO 3%		
GENERAL MANAGEMENT (G & A)		4% TO 8%		
1. A TOTAL				

2. OTHER FACTORS

FACTOR	MEASUREMENT BASE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE 1.A (a) x (c) (d)
COST RISK	TOTAL COST OBJECTIVE 1 A (a)	0% TO 7%		
INVESTMENT		-2% TO +2%		
PERFORMANCE		-1% TO +1%		
SOCIO ECONOMIC PROGRAMS		-.5% TO +.5%		
SPECIAL SITUATIONS				
2.A TOTAL OTHER FACTORS				

3.	SUBTOTAL PROFIT/FEE LINES (1.A) + (2.A)		
4.	*LESS FACILITIES CAPITAL COST OF MONEY*		–
5.	TOTAL PROFIT/FEE OBJECTIVE LINE (3) – (4)		

NASA FORM 634 FEB 80

CFR TITLE 48 CHAPTER 18

1984 Edition

18–53.303–667

FORMS

SECTION I.	1. PRIME CONTRACT NO.	Form Approved OMB No. 2700-0004	For NASA Use Only A.
	2. PRIME CONTRACTOR		B.
	3. ADDRESS		
II. FIRST-TIER SUBCONTRACT	4. SUBCONTRACTOR		C
	5. ADDRESS		D
	6. SMALL BUSINESS ☐ YES ☐ NO	7. DISADVANTAGED BUSINESS ☐ YES ☐ NO	8. SUBCONTRACT NO.	9. SUBCONTRACT AMOUNT (Dollars) a. PRIOR b. THIS ACTION c. NEW TOTAL	E. F.
	10. PRINCIPAL PLACE OF PERFORMANCE (Address, City and State)				
	11. DESCRIPTION OF WORK			12. TYPE OF EFFORT ☐ a. R&D ☐ b. NON-R&D	G.
III. SECOND-TIER SUBCONTRACT	13. SUBCONTRACTOR				H.
	14. ADDRESS				I
	15. SMALL BUSINESS ☐ YES ☐ NO	16. DISADVANTAGED BUSINESS ☐ YES ☐ NO	17. SUBCONTRACT NO.	18. SUBCONTRACT AMOUNT (Dollars) a. PRIOR b. THIS ACTION c. NEW TOTAL	J. K.
	19. PRINCIPAL PLACE OF PERFORMANCE (Address, City and State)				
	20. DESCRIPTION OF WORK			21. TYPE OF EFFORT ☐ a. R&D ☐ b. NON-R&D	L
	22. COMPANY SUBMITTING REPORT		23. SUBMITTED BY (Typed name)		24. DATE

NASA FORM 867 SEP 82 PREVIOUS EDITION MAY BE USED. Report on NASA Subcontracts RCS NSPUBL00433

INSTRUCTIONS—GENERAL AND SPECIFIC

A. This report form is for use by NASA prime contractors and first-tier subcontractors participating in the NASA subcontracting reporting program. (*See Paragraph 21.500 of the NASA Procurement Regulation.*) Parts I and II of the form are for use by the prime contractors; Parts I, II and III are for use by the first-tier subcontractors.

B. NASA prime contractors will complete and submit Parts I and II of the form for each subcontract (*as defined in Paragraph E, below*), placed by them which is estimated will exceed $10,000 and for each action (*modification*) in excess of $10,000 on such subcontract. Modifications to be reported include actions which result in the decommitment of funds as well as commitments.

C. First-tier subcontractors having any subcontracts which are estimated will exceed $50,000 will complete and submit the form in entirety for each subcontract (*as defined in Paragraph E, below*) placed by them which is estimated will exceed $10,000 and for each action (*modification*) in excess of $10,000 on such subcontract. Modifications to be reported include actions which result in the decommitment of funds as well as commitments.

D. For use in reporting on NASA subcontracts, "research and development" means basic and applied research, and design and development of prototypes and processes to (1) pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes, and (3) apply existing knowledge in the improvement or modification of present products or processes. It excludes subcontracts for the purchase of standard commercial items and services.

E. The term "subcontract" as used herein means procurement in the excess of $10,000 by the prime contractor or first-tier subcontractor of articles, materials, or services entering into the performance of a specific NASA prime contract. It does not include purchases, regardless of amount, of stock items, materials, or services which cannot be identified with a specific NASA prime contract.

F. NASA prime contractors will provide the number of the NASA prime contract to their first-tier subcontractors for entry on the reports.

G. The report is to be submitted as soon as possible after placement of the subcontract to the National Aeronautics and Space Administration, Office of Procurement, Code HM-1, Washington, DC 20546.

H. Prime contractors will obtain a supply of the forms from their NASA Contracting Officer. Subcontractors will obtain the forms from the prime contractor.

Item 1. Enter the NASA prime contract number.

Item 2. Enter name, and division if applicable, of the prime contractor.

Item 3. Enter address (*City and State only*) of the prime contractor.

Item 4. Enter name, and division if applicable, of the subcontractor.

Item 5. Enter address of the subcontractor.

Item 6. Check applicable box. (*For definition of a small business concern, see Paragraph 1.701 of the NASA Procurement Regulation.*)

Item 7. Check applicable box. (*For definition of a disadvantaged business concern, see par. 1-701.2 of the NASA Procurement Regulation.*)

Item 8. Enter subcontract or purchase order number specified by the contractor initiating the action.

Item 9. Enter in terms of commitments, to the nearest dollar, the amount of the subcontract, or amount of modification of the subcontract. Modifications resulting in decommitments are to be enclosed in parentheses. On line 9a, enter the cumulative amount of the subcontract prior to the action being reported. If the reported action is a new subcontract, enter the word "New." On line 9b, enter the amount of the action being reported. On line 9c, enter the new cumulative amount (*total of lines 9a and 9b*).

Item 10. Enter the location (*Address, City and State*) of the principal plant or place of business where the items will be produced or supplied from stock or where the work will be performed. For construction subcontracts, enter the site of construction.

Item 11. Enter a brief description of the item to be furnished or the work to be performed under the subcontract. (*For example: Electrical Indicating Meters for Shuttle Orbiters.*)

Item 12. Check applicable box to indicate whether effort involves research and development. (*See Instruction D.*)

Items 13 through 21. See items 4 through 12.

Item 22. Enter the name of the company submitting the report. This should be the name of the prime contractor for reports on first-tier subcontracts; it should be the name of the first-tier subcontractor for reports on second-tier subcontracts.

Item 23. Typed name and signature of company individual submitting the report.

Item 24. Enter the date of signature.

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18–53.303–778

1984 Edition

FORMS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION CONTRACTOR'S RELEASE	CONTRACT NO.

Pursuant to the terms of Contract No. _____ and in consideration of the sum of _____
(Total of amounts paid and payable)

Dollars ($ _____) which has been or is to be paid under the said contract to _____
(Contractor's name and address)

(hereinafter called the Contractor) or his assignees, if any, the Contractor upon payment of the said sum by the United States of America *(hereinafter called the Government)*, does hereby remise, release, and discharge the Government, its officers, agents, and employees of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

A. Specified claims in fixed amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows *(if none, so state)*: _____

B. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the time period specified in said contract.

C. Claims for reimbursement of costs including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

D. When the contract includes an article entitled "*Optional Data Requirements*," claims pursuant to such article when, within the one-year period after final payment under the contract, the Contracting Officer requests in writing that the Contractor furnish such data.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that he will comply with all of the provisions of the said contract, including without limitation, those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

The Contractor further agrees that payments on account of claims not released as set forth above shall be subject to adjustment in accordance with paragraph (i) of the clause of the contract entitled "Allowable Cost, Incentive Fee and Payment," if such clause is a provision of the contract.

IN WITNESS WHEREOF, this release has been executed this _____ day of _____, 19____.

_____
(Contractor)

WITNESSES

_____ BY _____

_____ TITLE _____

(NOTE: In the case of a corporation witnesses are not required, but the certificate below must be completed.)

CERTIFICATE

I, _____, certify that I am the _____
(Official Title)

of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor was then _____ of said corporation;
(Official Title)

that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____

(CORPORATE SEAL)

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FORMS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ASSIGNEE'S RELEASE	CONTRACT NO.

Pursuant to the terms of Contract No. _____ and in consideration of the sum _____
(Total of amounts paid and payable)
Dollars ($_____) which has been or is to be paid under the said contract by the United States of America *(hereinafter called the Government)* to the Contractor or his assignees, the _____
(Assignee's name and address)

(i) a corporation organized and existing under the laws of the State of _____,
(ii) a partnership consisting of _____,
(iii) an individual trading as _____,

(hereinafter called the Assignee), upon receipt of that part of the said sum due under his assignment does hereby remise, release, and discharge the Government, its officers, agents, and employees of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract and assignment, except:

A. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows: _____
(If none, so state)

B. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor or Assignee on the date of the execution of this release and of which the Contractor or Assignee gives notice in writing to the Contracting Officer within the time period specified in the said contract.

C. Claims for reimbursement of costs including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

D. When the contract includes an article entitled "Data Requirements," claims pursuant to such article when, within the one-year period after final payment under the contract, the Contracting Officer requests in writing that the Contractor furnish such data.

The Assignee agrees, in connection with claims which are not released as set forth above, that final payment under the said contract does not modify the requirements and limitations imposed on the Contractor or Assignee by the contract or the assignment, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

The Assignee further agrees that payments on amount of claims not released as set forth above shall be subject to adjustment in accordance with paragraph (i) of the clause of the contract entitled "Allowable Cost, Incentive Fee and Payment," if such clause is a provision of the contract.

IN WITNESS WHEREOF, this release has been executed this _____ day of _____, 19__

_____
(Assignee)

WITNESSES

_____ BY _____

_____ TITLE _____

(NOTE: In the case of a corporation witnesses are not required, but the certificate below must be completed.)

CERTIFICATE

I, _____, certify that I am the _____
(Official Title)
of the corporation named as Assignee in the foregoing release; that _____ who signed said release on behalf of the Assignee was then _____
(Official Title)
of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____

(CORPORATE SEAL)

NASA FORM 779 APR 68 DESTROY EXISTING STOCK. GPO 942-029

NASA/FAR SUPPLEMENT

18–53.303–780

1984 Edition

FORMS

NASA — Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts

CONTRACT NO.

Pursuant to the terms of Contract No. _____ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, the _____ *(Contractor's name and address)* _____ *(hereinafter called the Contractor)* does hereby:

1. Assign, transfer, set over and release to the UNITED STATES OF AMERICA *(hereinafter called the Government)* all right, title, and interest to all refunds, rebates, credits, and other amounts *(including any interest thereon)*, arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits and other amounts *(including any interest thereon)* due or which may become due, and to promptly forward to the NASA Contracting Officer certified checks *(made payable to the National Aeronautics and Space Administration)* for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable cost when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.

3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits, or other amounts due *(including any interest thereon)*; to execute any protest, pleading, application, power of attorney, or other papers in connection therewith; and to permit the Government to represent the Contractor at any hearing, trial, or other proceeding; arising out of such claim or suit.

IN WITNESS WHEREOF, this assignment has been executed this _____ day of _____, 19____.

_____
(Contractor)

WITNESSES

_____ BY _____

_____ TITLE _____

NOTE: In the case of a corporation, witnesses are not required, but the certificate below must be completed.

CERTIFICATE

I, _____, certify that I am the _____ *(Official Title)* of the corporation named as Contractor in the foregoing assignment; _____ who signed said assignment on behalf of the Contractor was then _____ *(Official Title)* of said corporation, that said assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL) _____

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1984 Edition 18–53.303–781

FORMS

ASSIGNEE'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS	CONTRACT NO.

Pursuant to the terms of Contract No. _____ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and assignment thereunder, the _____
(Assignee's name and address)

(i) a corporation organized and existing under the laws of the state of _____

(ii) a partnership consisting of _____

(iii) an individual trading as _____

(hereinafter called the Assignee), does hereby assign, transfer, set over, and release to the UNITED STATES OF AMERICA, all right, title, and interest to all refunds, rebates, credits, and other amounts *(including any interest thereon)* arising out of the performance of the said contract, together with all rights of action accrued or which may hereafter accrue thereunder.

IN WITNESS WHEREOF, this assignment has been executed this _____ day of _____, 19___.

_____
(Assignee)

WITNESSES

_____ BY _____

_____ TITLE _____

(NOTE: In the case of a corporation, witnesses are not required, but the following certificate must be completed.)

CERTIFICATE

I, _____, certify that I am the _____
(Official Title)

of the coporation named as Assignee in the foregoing assignment; that _____

who signed said assignment on behalf of the Assignee was then _____
(Official Title)

of said corporation; that said assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____

(CORPORATE SEAL)

NASA FORM 781 JAN 68 GPO 942548

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1984 Edition

FORMS

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New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

1984 Edition 18-53.303-1018-(A)

FORMS

18. SCHEDULE I -- ANALYSIS OF GOVERNMENT-FURNISHED ADDITIONS *(Col. b, Page 1)* AND CONTRACTOR DISPOSALS *(Col. c, Page 1)*

	CENTER OR AGENCY *(Abbreviate)*	LAND *(Item 6)*	BUILDINGS *(Item 7)*	OTHER STRUCTURES AND FACILITIES *(Item 8)*	LEASEHOLD IMPROVEMENTS *(Item 9)*	PLANT EQUIPMENT *(Item 10)*	SPECIAL TOOLING *(Item 11)*	SPECIAL TEST EQUIPMENT *(Item 12)*
GOVERNMENT-FURNISHED *(See col. b, page 1)*								
	TOTAL							
CONTRACTOR DISPOSALS *(See col. c, page 1)*								
	TOTAL							

NASA/FAR SUPPLEMENT

18-53.303-1018-(B) 1984 Edition

FORMS

19. SCHEDULE II – SPACE HARDWARE REPORTABLE ITEMS				
		DESCRIPTION*	QUANTITY a.	COST (Net) b.
COMPLETED SPACE HARDWARE, SYSTEMS AND SUBSYSTEMS				
COMPLETED COMPONENTS AND SPARE PARTS				
WORK IN PROCESS				
		TOTAL (Transfer to item 18, column f, Page 1) ▶		

*From Annual List of Reportable Items. Continue itemization and remarks on separate sheets.

3.

CFR TITLE 48 CHAPTER 18

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FORMS

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NASA/FAR SUPPLEMENT

18-53.303-1356

1984 Edition

FORMS

C.A.S.E. Report on College and University Projects

PART I—TECHNICAL DATA *(To be completed by procurement request initiator)*

Procurement request initiators are required to complete part I and to include this form with their procurement requests (PR's) for certain obligations to educational institutions. Forms need not be submitted with all PR's; for details, see the brief instructions on the back of this page.

PLEASE TYPE OR PRINT LEGIBLY. ATTACH COMPLETED FORM TO PROCUREMENT REQUEST.

1. UNIVERSITY NAME, CITY AND STATE	3. PRINCIPAL INVESTIGATOR *(Two initials and surname)*
	4. SECOND PRINCIPAL INVESTIGATOR *(If any, two initials and surname)*
2. PROPOSAL IDENTIFICATION *(If any)*	5. THIRD PRINCIPAL INVESTIGATOR *(If any, two initials and surname)*
6. PRIMARY NASA TECHNICAL OFFICER *(Two initials and surname)*	7. INSTALLATION NAME / 8. MAIL CODE *(HQ only)*
9. ALT. NASA TECHNICAL OFFICER *(If any, two initials and surname)*	10. INSTALLATION NAME / 11. MAIL CODE *(HQ only)*

12. WILL THIS PROJECT BE CONDUCTED IN OR BY A MEDICAL SCHOOL? ☐ YES ☐ NO

13. MAIN OBJECTIVE OF WORK *(Circle one code)*

R&D ▶	11 BASIC RESEARCH	12 APPLIED RESEARCH	13 DEVELOPMENT	
OTHER ▶	96 OTHER ACTIVITIES RELATED TO SCIENCE AND ENGINEERING	93 R&D PLANT AND EQUIPMENT	92 TRAINING GRANT *(NGT prefix only)*	

14. FIELD OF SCIENCE OR ENGINEERING *(Circle the one code number which represents the most appropriate field. See instructions on reverse)*

PHYSICAL SCIENCES 11 ASTRONOMY 12 CHEMISTRY 13 PHYSICS 19 PHYSICAL SCIENCES, NEC*	MATH/COMPUTERS 21 MATHEMATICS 22 COMPUTER SCIENCES 29 MATH/COMPUTERS, NEC*	ENGINEERING 41 AERONAUTICAL 42 ASTRONAUTICAL 43 CHEMICAL 44 CIVIL 45 ELECTRICAL 46 MECHANICAL 47 METALLURGY AND MATERIALS 49 ENGINEERING, NEC*	LIFE SCIENCES 51 BIOLOGICAL SCIENCES 54 ENVIRONMENTAL BIOLOGY 55 AGRIC. SCIENCES 56 MEDICAL SCIENCES 59 LIFE SCIENCES, NEC*	SOCIAL SCIENCES 71 ANTHROPOLOGY 72 ECONOMICS 73 HISTORY 74 LINGUISTICS 75 POLITICAL SCIENCE 76 SOCIOLOGY 79 SOCIAL SCIENCE, NEC*	
ENVIRONMENTAL SCIENCE 31 ATMOSPHERIC SCIENCES 32 GEOLOGICAL SCIENCES 33 OCEANOGRAPHY 39 ENVIRONMENTAL SCIENCES, NEC*			PSYCHOLOGY 61 BIOLOGICAL 62 SOCIAL ASPECTS 69 PSYCHOLOGY, NEC*	OTHER SCIENCES** 99 ALL DISCIPLINE(S)	

*Not Elsewhere Classified (For interdisciplinary projects and others not listed by discipline name).
**For interdisciplinary projects which cannot be classified within any of the preceding main fields.

PART II—PROCUREMENT DATA *(To be completed by procurement office. See instructions on last page)*

15. AGREEMENT NO. *(Including prefixed letters)*	16. MODIFICATION NO.	17. AMOUNT OBLIGATED	18. COST SHARING PERCENTAGE
1 2 3 4 5 6 7 8 9 10 11			

19. TYPE OF ACTION BEING REPORTED *(Circle one code number)*

1 NEW AWARD *(New agreement number assigned)*
2 ADDITIONAL FUNDS, SAME DURATION *(Excludes incremental funding)*
3 ADDITIONAL FUNDS AND TIME *(Excludes incremental funding)*
4 NO COST TIME EXTENSION
5 CHANGE IN PRINCIPAL INVESTIGATOR OR TECHNICAL OFFICER
6 INCREMENTAL FUNDING *(Applies only to contracts conforming to PR 7.204-53)*

20. TITLE OR BRIEF DESCRIPTION OF TECHNICAL PURPOSE OF AGREEMENT *(Required only for new awards)*

21. PROPOSAL TYPE *(Circle one) (See Instruction 7.16)*	22. START *(This action)*			23. END *(Completion)*			24. GOV'T SIGNATURE		
UNSOLICITED UC—Spec. Announcement UN—No Announcement UX—Other SOLICITED SA—Ann. of Opportunity SR—RFP/RFQ SU—Advertised SX—Other	MO. a.	DAY b.	YR. c.	MO. a.	DAY b.	YR. c.	MO. a.	DAY b.	YR. c.

25. SPECIAL DATA	26. VALIDATION BY RESPONSIBLE INDIVIDUAL				27. AD HOC DATA					
	NAME AND INSTALLATION	MO. a.	DAY b.	YR. c.	a.	b.	c.	d.	e.	f.
					g.	h.				

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(LIFT HERE: PART I INSTRUCTIONS ON BACK OF THIS PAGE) 1. ORIGINAL

CFR TITLE 48 CHAPTER 18

1984 Edition 18–53.303–1356–(A)

FORMS

INSTRUCTIONS FOR COMPLETION OF PART I BY PROCUREMENT REQUEST INITIATORS

This form must accompany all PR's for obligations to domestic or foreign colleges and universities, including their operationally affiliated nonprofit organizations or foundations *(NMI 5101.12E)*. The form is not required with procurements for training of NASA employees; for non-research procurements under $5,000 made by Purchase Order; or for obligations made during close-out well after the effort is completed.

The initiator completes blocks 1-14 for new awards, and blocks 1-11 for continuations *(and blocks 13-14 if there is a change)*. Part II is completed by the procurement office.

Block 1 - Use complete college or university name to avoid confusion among institutions with similar names.

Block 2 - Use NASA-assigned proposal number, AO, or RFP/RFQ number.

Block 3 - The principal investigator is a person proposed by the university who bears the prime responsibility for the overall technical direction of the work.

Block 12 - University named in block 1 must have a medical school if "Yes" is checked. For investigators with multiple departmental appointments, check "Yes" if primary affiliation is with a medical school component.

Block 13 - Almost all of NASA's work in educational institutions is "R" or "D." Only a few types of projects, primarily information dissemination and conferences, fall into "Other Activities Related to Science and Engineering. "R&D definitions":

Research is systematic intensive study directed toward the fuller scientific knowledge or understanding of the subject studied. Information on the distinction between basic and applied research, including examples, appears in the NASA section of the National Science Board's 10th Annual Report. *(An excerpt is available from the Headquarters Procurement Management Division.)* To summarize the definitions in the NASA context:

Basic Research is work directed toward an increase in fundamental knowledge, both general and specific, of properties and processes in fields relevant to aeronautical and space activities.

Applied Research is the application of the knowledge gained through basic research to specific problems associated with the conduct of aeronautical and space activities.

Development is systematic use of the knowledge and understanding gained from research, directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. It excludes quality control, routine product testing and production.

Block 14 - Location of selected disciplines in fields of science and engineering:

11 ASTRONOMY — Astrophysics.

13 PHYSICS — Acoustics; atomic and molecular; condensed matter; elementary particles; optics; plasma.

31 ATMOSPHERIC SCIENCES — Solar; weather modification; extraterrestrial atmospheres.

32 GEOLOGICAL SCIENCES — Geophysics; geodesy and gravity; geomagnetism; hydrology; geochemistry; paleomagetism; physical geography and cartography; seismology; soil sciences.

33 OCEANOGRAPHY — Chemical; geological; physical; marine geophysics.

44 CIVIL ENGINEERING — Environmental; hydrologic; sanitary; structural; transportation.

47 METALLURGY/MATERIALS ENGINEERING — Ceramic; mining; textile; welding.

49 OTHER ENGINEERING — Agricultural; industrial; management; nuclear; ocean; systems.

51 BIOLOGICAL SCIENCES *(Excludes environmental biology)* — Anatomy; biochemistry; biology; biometry and biostatistics; biophysics; botany; cell biology; entomology and parasitology; genetics; microbiology; neuroscience *(biological)*; nutrition; physiology; zoology.

54 ENVIRONMENTAL BIOLOGY — Ecosystem sciences; evolutionary biology; limnology; physiological ecology; population biology; population and biotic community ecology; systematics.

55 AGRICULTURAL SCIENCES — Agronomy; animal sciences; food science and technology; fish and wildlife; forestry; horticulture; plant sciences; soils and soil sciences; other agriculture.

56 MEDICAL SCIENCES — Internal medicine; neurology; opthalmology; otolaryngology; preventative medicine; pharmacology; psychiatry; radiology; surgery; dentistry; pharmacy; veterinary medicine, and other medical not otherwise classified.

61 PSYCHOLOGY-BIOLOGICAL — Animal behavior.

74 LINGUISTICS — Computational.

75 POLITICAL SCIENCE — Regional studies; international relations; public administration; management.

76 SOCIOLOGY — Complex organizations.

18-53.303-1356-(B)

1984 Edition

FORMS

DETAILED INSTRUCTIONS FOR PROCUREMENT OFFICES*

(Initiating Office Instructions Are on Back of First Page)

CONTENTS

1.00 Need for NASA Form 1356.

2.00 Organizations for which the Form is Required

3.00 Types of Actions Requiring Form Preparation

4.00 Procurement Office Actions on Forms Provided by Procurement Request Initiators

5.00 Procurement Office Actions on Part II

6.00 Contents of Forms Initiated by Procurement Offices

7.00 How Individual Blocks on Form are Completed

8.00 Corrections to Submitted Forms

9.00 What to Do with the Form

1.00 NEED FOR NASA FORM 1356. NASA Form 1356 is the primary source of information for use in a Government-wide reporting system. It is also the basis for numerous internal NASA reports, for example, NASA's University Program, a published listing of active grants, cooperative agreements and contracts. Submission is prescribed by NPR21.760 and NHH 5800.1A.

2.00 ORGANIZATIONS FOR WHICH THE FORM IS REQUIRED. The NASA Form 1356 requirement applies to all procurements from domestic and foreign institutions of higher education *(colleges and universities)*, including their operationally affiliated non-profit organizations or foundations.

3.00 TYPES OF ACTIONS REQUIRING FORM PREPARATION. A NASA Form 1356 is required for each individual obligation to an educational institution, with the exception of procurements for the training of NASA employees; for non-research procurements under $5,000 made by Purchase Order; for adjustments in the estimated cost of a contract; or for negative obligations *(de-obligations)*. Reports are not necessary for obligations made during closeout for overruns, overhead changes and similar minor adjustments, unless the ending date is changed *(See 5.11)*. The requirement applies regardless of the funding instrument used *(grant, contract, cooperative agreement, purchase order, or award made under the authority of Sec. 203(c)(5) of the Space Act)*, the solicited or unsolicited nature of the proposal, the nature of supported work, the fund source within NASA, the procuring installation, or whether the funding is full, step or incremental. Forms are prepared at the basic contract or modification level; there will be only one form per modification. For each case involving a funding action, a NASA Form 1356 must be included in the procurement package by the initiator. If the NASA Form 1356 is missing or incomplete, the procurement office must rectify matters prior to execution of the final procurement documents *(NMI 5101.12E)*. In addition, the procurement office must initiate a NASA Form 1356 in several situations not involving obligation of funds *(See 6.00)*.

4.00 PROCUREMENT OFFICE ACTIONS ON FORMS PROVIDED BY PROCUREMENT REQUEST INITIATORS.

4.10 Ensure blocks 1-3, 6-8, 12-14 have been completed for new awards; 1-3, 6-8 and 12 are required for other actions. Blocks 4, 5, and 9-11 must be completed whenever there are multiple investigators or technical officers.

4.20 Only one NASA Form 1356 is to be completed for each action; i.e., basic award or modification. Consolidate the data if multiple procurement requests covering a single procurement result in receipt of more than one NASA Form 1356; consult the procurement request initiators, if necessary, to obtain agreement on incompatible Part I entries.

4.30 Verify the information in blocks 1-11, paying particular attention to the following blocks:

4.31 Block 1 - University Name. Make sure the name is valid and uniquely identifies the proper institution. This is particularly important for new awards. The name of the parent university is listed rather than research foundation, institute or laboratory names. System names as "State University of New York (SUNY)," "University of Alabama," "University of Missouri," "University of California," are meaningless. The specific campus performing the work must be readily identifiable. For example, the SUNY Research Foundation in Albany negotiates awards on behalf of over 70 campuses in the state; awards made through the Foundation must be attributed to the performing campus.

4.32 Block 2 - Proposal Identification. Insert NASA-assigned proposal number, Announcement of Opportunity number, RFP/RFQ number, "unavailable" or "N.A." *(not applicable)*, as appropriate.

4.33 Block 3 - Principal Investigator. Make sure principal investigators are as designated on the face of the award instrument. For agreements which do not specify a principal investigator, per se, university person bearing primary responsibility for overall technical direction of the project should be named. Provide a brief explanation in blocks 3-5 if there is no principal investigator for the project.

5.00 PROCUREMENT OFFICE ACTIONS ON PART II.

5.10 For NEW AWARDS *(Type of Action 1)*.

5.11 Take actions described in 4.00.

5.12 Complete blocks 15, 17-24 and 28.

5.20 For ADDITIONAL FUNDS, SAME DURATION *(Type of Action 2)*.

5.21 Take actions described in 4.00.

5.22 Complete blocks 15-19, 23, 24 and 28.

5.30 For ADDITIONAL FUNDS AND TIME *(Type of Action 3)*:

5.31 Take actions described in 4.00.

5.32 Complete blocks 15-19, 21-24 and 28.

5.40 For INCREMENTAL FUNDING *(Type of Action 4)*. *(Follow this instruction if procurement request for augmenting an incrementally funded contract is received from a source external to the procurement office. If internally generated, see 6.30.)*

5.41 Take actions described in 4.00.

5.42 Complete blocks 15-19, 23, 24 and 28.

6.00 CONTENTS OF FORMS INITIATED BY PROCUREMENT OFFICES.

6.10 For NO-COST TIME EXTENSIONS *(Type of Action 4)*.

6.11 Complete blocks 1, 6-8, 15, 16 *(If applicable)*, 19, 22, 23 and 28. Treat an ending date change during close-out as a no-cost time extension *(See 3.00)*.

6.20 For CHANGE IN PRINCIPAL INVESTIGATOR OR TECHNICAL OFFICER *(Type of Action 5)*:

6.21 Complete blocks 1, 15 and 28.

6.22 Complete at least one of the following sets of blocks: 3-5; 6-8; 9-11.

6.23 ALTERNATIVE PROCEDURE. A copy of the letter of notification

*These instructions also apply to offices making awards under Space Act Section 203(c)(5) or (6) authority.

(Continued on other side)

(August 1982)

FORMS

Procurement Office Actions on Part II, continued)

to the institution regarding a change in principal investigator or technical officer may be submitted in lieu of a NASA Form 1356.

6.30 For INCREMENTAL FUNDING OF CONTRACTS *(Type of Action 6)*.

6.31 Where an individual procurement request from an external source is not required *(PR initiated by procurement office, funds obligated against existing PR or "master" committing document, etc.)*, procurement office must initiate NASA Form 1356 *(See also 5.40)*.

6.32 Complete blocks 1, 15-19, 23, 24 and 26.

6.33 Complete blocks 3 and 6-8 only if there has been a change since the last incremental action.

7.00 HOW INDIVIDUAL BLOCKS ON FORM ARE COMPLETED. Provide for each block only information specified on the form and in these instructions. Do not modify printed material or add explanatory notes. In the event of situations not covered by the instructions, consult the Headquarters Procurement Management Division.

7.10 Block 15 - Agreement No. Identification number must include complete prefix and suffix. Do not include modification or task order numbers, if any.

7.11 Block 16 - Modification No. Leave blank for new awards and for changes to which a modification number is not assigned.

7.12 Block 17 - Amount obligated. Report to nearest dollar only amount actually obligated by the action at hand. Do not show estimated total cost of incrementally funded contracts.

7.13 Block 18 - Cost Sharing Percentage. Use percentage figure appearing in the agreement cost sharing clause. Insert 0 if there is no cost sharing.

7.14 Block 19 - Type of Action Being Reported. In addition to the instructions in block 19, itself, note that assignment of a new modification number does not constitute a new award and that grants or cooperative agreements are, by definition, never incrementally funded.

7.15 Block 20 - Title or Brief Description of Technical Purpose of Agreement. This should be a brief, yet clear statement, suitable for public release. Avoid use of non-technical procurement-type terms or obscure abbreviations. Use of grant/cooperative agreement title or other wording on the award instrument is preferred.

7.16 Block 21 - Proposal Type. Special Announcements are Dear Colleague Letters, Space Science Notices, Applications Notices and similar widely distributed announcements of NASA's interest in receiving unsolicited proposals in certain areas. Proposals resulting from general brochures or discussion with NASA individuals would fall into the "No Announcement" category. Proposals that do not fit into the above categories would be classified as "Other."

7.17 Block 22 - Start Date This Action. For new awards, use date for which agreement authorizes initiation of effort. Where both additional funds and time *(Type of Action 3)* or no-cost extensions *(Type of Action 4)* are involved, use day next following agreement ending date as it existed before the award was made. Note that for step-funded awards *(with or without the NGL prefix)* the start date can be two to three years in the future. Leave the start date blank for Type of Action 2 *(Additional Funds, Same Duration)* and incremental funding *(Type 6)*.

7.18 Block 23 - End (Completion) Date. Use ending date as shown on agreement. Include this date even if it hasnot changed since last action. For periods of performance based on variables such as successful flight experiments, give best current estimate of ending date.

7.19 Block 24 - "Gov't Signature." Use date signed by Grants or Contracting Officer.

7.20 Block 25 - Special Data. Reserved for future use.

7.21 Block 26 - Validation by Responsible Individual. Forms must be reviewed for compliance with instructions. Reviewing individual certifies that both parts I and II have been properly prepared.

7.22 Block 27 - Ad Hoc Data. Reserved for future use.

8.00 CORRECTIONS TO SUBMITTED FORMS.

8.10 Inadequately prepared forms may be returned by Headquarters to the sender's organization for correction. A covering memo will provide handling instructions.

8.20 The initiating organization may correct a previously submitted form. Such corrections must be made on a carbon or facsimile copy of the erroneous form. Insert the correct information in red so as not to obscure the original error and forward to the Headquarters Procurement Management Division.

8.21 Correction should always be made for wrong agreement number *(Block 22)* for a new award. These and other corrections should be made no later than two months after the close of the Fiscal Year in which the error was made.

9.00 WHAT TO DO WITH FORM.

9.10 NASA Form 1356 should be completed as soon as practicable after the obligation or other action giving rise to the form is accomplished. Send it directly to Headquarters Procurement Management Division, Code HM-1.

9.20 Forms should be sent as soon as possible after completion. Preparation of special cover memos should be avoided to conserve resources.

9.30 Headquarters can accept only the original blue form as a final submission. Machine copies are not acceptable *(Except for corrections. See 8.20)*.

9.40 Carbons should be detached before transmitting form to Headquarters. Distribution of carbons is governed by individual installation guidelines; however, a copy should be retained in the official award file for future reference.

9.50 Forms submitted more than two months after the close of the Fiscal Year in which the action occurred may not be useable. Consult Headquarters prior to submitting any such "misplaced" forms.

NASA/FAR SUPPLEMENT

18-53.303-1412

1984 Edition

FORMS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
TERMINATION AUTHORITY

INSTRUCTIONS

1. This form will be used to initiate termination of a NASA contract.
2. Include all pertinent remarks or instructions for completing this termination. Attach additional pages if necessary *(one copy of attachment for each copy of this form)*.
3. Insofar as practicable, this form shall be HAND CARRIED to avoid expense to the Government occasioned by delay in accomplishing termination.
4. A complete termination is a termination of all undelivered items on a contract after the termination becomes effective. A partial termination is a termination wherein items remain on the contract to be delivered after the termination becomes effective.
5. Initiating authority will complete items 1 through 9 of this form and item 10 if a partial termination.
6. Use part III, "Remarks," if necessary.
7. Number of copies required: 6.

TERMINATION REQUEST

1.

1. TO *(Procurement office, including organization code)*	2. FROM *(Activity originating Procurement Request, including initiator, organization code, and telephone extension)*
3. NAME OF CONTRACTOR	4. STREET ADDRESS OF CONTRACTOR *(Including ZIP Code)*
5. CONTRACT OR PURCHASE ORDER NO. / 6. PROPERTY CL	7. TERMINATION EFFECTIVE: ☐ IMMEDIATELY ☐ DATE ☐ OTHER *(Explain in part III)*

8. TYPE OF TERMINATION RECOMMENDED

a. CONVENIENCE OF THE GOVERNMENT			b. DEFAULT OF THE CONTRACTOR
☐ COMPLETE ☐ PARTIAL	CONTRACT PRESENTLY DELINQUENT ☐ YES ☐ NO	ACTIONABLE BASIS FOR DEFAULT ☐ YES ☐ NO	☐ COMPLETE ☐ PARTIAL *(Specify items)*

9. JUSTIFICATION FOR TERMINATION

10. ITEMS TO BE TERMINATED *(SECURITY REQUIREMENT: If contract is classified, prepare in accordance with NASA Security Regulations)*

CONTRACT ITEM NO.		NOMENCLATURE	UNIT OF MEASURE	QUANTITY TO BE TERMINATED	TOTAL *(Dollars)*
		TOTAL CPLT *(Estimate when necessary)* ▶			

11. COORDINATION AND APPROVAL

COORDINATION			APPROVAL		
DATE	INITIALS	ORG CODE	TYPED NAME AND SIGNATURE	SRB CODE	DATE

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FORMS

II. TERMINATION AUTHORIZATION			
12. TO *(Authorized Termination Contracting Officer)*		13. FROM *(Procurement Office: initiator, organization code, and telephone extension)*	
14. INFORMATION CONTAINED IN PART I HEREOF HAS BEEN EXAMINED AND IS: ☐ CORRECT ☐ INCORRECT *(Note corrections, if any, in part III, "Remarks")*			
15. TYPE OF TERMINATION RECOMMENDED			
a. CONVENIENCE OF THE GOVERNMENT			b. DEFAULT OF THE CONTRACTOR
☐ COMPLETE ☐ PARTIAL	CONTRACT PRESENTLY DELINQUENT ☐ YES ☐ NO	REVIEWED FOR ACTIONABLE BASIS FOR DEFAULT ☐ YES ☐ NO	☐ COMPLETE ☐ PARTIAL *(Specify items)*
16. JUSTIFICATION FOR TERMINATION *(Attach additional page if necessary)*			
17. TERMINATION EFFECTIVE ☐ IMMEDIATELY ☐ DATE _____ ☐ OTHER *(Explain in part III)*		18. AGENCY OF ADMINISTRATION	
19. CONTRACT PRICE ITEMS TERMINATED	20. AMOUNT OF CONTRACT *(Include all supplements)*	21. TYPE OF CONTRACT	
22. TERMINATION CLAUSE NO.	23. AUTHORIZED CERTIFYING OFFICER		
24. NAME AND ADDRESS OF ☐ SURETY ☐ ASSIGNEE			

25. COORDINATION AND APPROVAL					
COORDINATION			APPROVAL		
DATE	INITIALS	ORG CODE	TYPED NAME, GRADE AND SIGNATURE	ORG CODE	DATE

III. REMARKS *(Use additional pages if necessary)*

IV. TERMINATION ASSIGNMENT	
26. TO *(Activity to which assigned for settlement)*	27. FROM *(Assigning Activity; organization code and telephone extension)*
INFO COPY TO:	
28. DOCKET NO. _____ IS ASSIGNED TO YOUR ACTIVITY FOR SETTLEMENT. DATE _____	

29. ATTACHMENTS	30. TYPED NAME AND TITLE OF AUTHORIZED INDIVIDUAL	31. SIGNATURE

GPO 881-265

NASA/FAR SUPPLEMENT

18-53.303-1413 1984 Edition

FORMS

NASA Form 1413 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

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1984 Edition 18–53.303–1430

FORMS

NASA Letter of Contract Administration Delegation, General	1. NASA CONTROL NO.	2. RECEIVING OFFICE CONTROL NO.
3. TO:	4. FROM:	
5. PRIME CONTRACTOR OR SUBCONTRACTOR AND PLACE OF PERFORMANCE *(See instructions on reverse)*	6. CONTRACT NO. AND DATE	7. FACE VALUE
	8. CONTRACT TYPE	9. COMPLETION DATE
10. CONTRACT END ITEM OR SERVICE *(Describe briefly)*		

11. You are hereby authorized to act as my representative in the administration of this contract. The functions delegated to you for administration are those listed on the reverse of this form *(Less those that are specifically withheld on NASA Form 1430A attached hereto, (if any)* and additional functions described on NASA Form(s) 1430A attached hereto, if any.

12. You are further authorized, within the limits of the contract, to redelegate the functions delegated to you by par. 11 above, unless redelegation authority is specifically withheld on NASA Form 1430A attached hereto. Redelegation of functions to be performed on NASA installations, or NASA-controlled launch sites, will bedirected to the NASA Procurement Officer of the installation concerned. Should you desire that the redelegated functions be performed by other than the NASA Procurement Office receiving the delegation, your letter of redelegation shall so state.

13. The Production Surveillance category requested is _____. *(Use only for delegations to DOD.)*

14. You are requested to provide the NASA Contracting Officer with copies of all communications relating to the administration of this contract that you consider significant.

15. Please acknowledge acceptance of this delegation by returning two signed copies of NASA Form 1431 *(attached)* to the NASA Contracting Officer within 5 days of receipt.

16. TYPED NAME OF CONTRACTING OFFICER	17. SIGNATURE OF CONTRACTING OFFICER	18. DATE SIGNED

19. NASA PERSONNEL TO CONTACT WHEN NECESSARY

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NASA/FAR SUPPLEMENT

18-53.303-1430-(A) 1984 Edition

FORMS

The functions listed below are delegated pursuant to paragraph 11 of this form. The functions shall be performed only when necessary to the administration of this contract and when not specifically withheld by the NASA Contracting Officer on NASA Form 1430A.

(i) Review contractor's compensation structure;

(ii) Review contractor's insurance plans;

(iii) Review and approve or disapprove contractor's requests for payments under the progress payments clause;

(iv) Negotiate provisional overhead rates, or determine billing rates, when the contract contains a negotiated overhead rates clause. Negotiate final overhead rates when the contract contains a negotiated overhead rates clause and when the contractor *is not* under the negotiation overhead rates procedure pursuant to Tri Service Negotiation;

(v) Negotiate advance understandings on particular cost items for the signature of the NASA Contracting Officer, except when responsibility is placed elsewhere;

(vi) Review and evaluate contractor's proposals for contract changes and furnish comments and recommendations to the NASA Contracting Officer. Negotiate with the contractor when requested by the NASA Contracting Officer;

(vii) Manage special bank accounts;

(viii) Assure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-type contracts; evaluate and advise NASA Contracting Officer;

(ix) Review, approve or disapprove, and maintain surveillance of the contractor's procurement system when consent to the placement of subcontracts has been delegated;

(x) Monitor contractor's financial condition and advise the NASA Contracting Officer when contract performance is jeopardized thereby;

(xi) Issue tax exemption certificates when applicable, and assure that the contractor advises NASA of changes in contract price, if any;

(xii) Assist in post-award orientation conferences;

(xiii) Prepare findings of fact under the Disputes Clause and forward with recommendations to the NASA Contracting Officer;

(xiv) Assure processing of duty free entry certificates for execution by the NASA Contracting Officer;

(xv) Assure contractor's compliance with small business, labor surplus area, and minority business enterprises, mandatory subcontracting programs; conducting on an as-required basis, small business and labor surplus area set-aside surveillance; and providing advice to small business, labor surplus area concerns, and minority business enterprises;

(xvi) Issue cure and show cause letters after approval of the NASA Contracting Officer;

(xvii) Monitor the contractor's system for control of overtime;

(xviii) Assure that overtime compensation is in accordance with the terms of the contract, or in the absence of contractual coverage, that any excepted overtime charged is reasonable and properly allocable;

(xix) Perform Property Administration;

(xx) Perform plant clearance officer functions, assuring screening of contractor inventory by NASA prior to additional screening, redistribution and disposal;

(xxi) Evaluate contractor's requests for facilities and changes to existing facilities, and provide the NASA Contracting Officer with appropriate recommendations;

(xxii) Assure required screening of centrally reportable equipment items before acquisition by contractor;

(xxiii) Evaluate contractor's requests for approval to use facilities in accordance with the Use and Charges Clause and provide the NASA Contracting Officer with appropriate recommendations;

(xxiv) Assure collection of any rental due for use of facilities;

(xxv) Assure reporting of NASA centrally reportable equipment no longer needed by the contractor in support of NASA programs;

(xxvi) Perform production support and surveillance (including production engineering) and status reporting of potential and actual slippages in contract schedules;

(xxvii) Monitor compliance with labor and industrial relations matters under the contract, apprising the NASA Contracting Officer of actual or potential labor disputes, and removing material from strikebound contractor's plants upon instructions from the NASA Contracting Officer;

(xxviii) Assure contractor compliance with applicable safety requirements of the contract, including the handling of hazardous and dangerous materials and processes;

(xxix) Make appropriate comments to the NASA Contracting Officer on any inadequacies noted in specifications;

(xxx) Assure timely submission of required reports;

(xxxi) Determine adequacy of prime contractor's Disclosure Statements;

(xxxii) Determine whether prime contractor's Disclosure Statements are in compliance with Cost Accounting Standards.

(xxxiii) Determine contractor compliance with Cost Accounting Standards and Disclosure Statements, if applicable; and

(xxxiv) Negotiate price adjustments pursuant to the Cost Accounting Standards clause and advise the NASA Contracting Officer of results;

(xxxv) Analyze quarterly limitation on payments statements and recover overpayments from the contractor; and

(xxxvi) Negotiate changes to interim billing prices when authorized by the NASA Contracting Officer.

INSTRUCTIONS FOR BLOCK 5 – This block should contain the place of contract performance, if known, and not the place of contract *signature*, unless they are the same. For example, when a contract is signed by company "x" at corporate headquarters in New York, but the place of performance is Tucson, Arizona, block 5 should read "Company 'x,' Tucson, Arizona."

1984 Edition

18–53.303–1430A

FORMS

NASA Letter of Contract Administration Delegation, Special Instructions	1. CONTRACT NO.	2. DELEGATION NO.

This form is to be used to provide special instructions to NASA Forms 1430 and 1432.

3. FUNCTIONAL AREA *(Enter applicable functional area in this space, such as Contract Administration, Production Administration, Quality Assurance, etc. Use separate forms for each functional area delegated.)*

4. SPECIAL INSTRUCTIONS

5. NASA CONTACT DESIGNATED FOR THIS FUNCTION

a. NAME	b. PHONE

NASA FORM 1430A OCT 83 PREVIOUS EDITION IS OBSOLETE.

NASA/FAR SUPPLEMENT

18-53.303-1431

1984 Edition

FORMS

NASA Letter of Acceptance of Contract Administration Delegation	1. NASA CONTROL NO.	2. RECEIVING OFFICE CONTROL NO.
3. TO	4. FROM:	
5. THE DELEGATION OF FUNCTIONS TO BE PERFORMED ON THE CONTRACT NUMBER SHOWN AT RIGHT IS HEREBY ACCEPTED SUBJECT TO REMARKS BELOW. ▶		CONTRACT NO.

6. PERSONS ASSIGNED BY THIS ORGANIZATION TO MONITOR THE DELEGATED FUNCTIONS *(The NASA Contracting Officer will be advised in the event there is a change in any of the assignments listed below)*

FUNCTIONAL AREA	NAME (1)	TELEPHONE NO (2)
a. CONTRACT ADMINISTRATION		
b. QUALITY ASSURANCE		
c. PRODUCTION ADMINISTRATION		
d. PROPERTY ADMINISTRATION		
e. PLANT CLEARANCE		
f. TRANSPORTATION		
g. ENGINEERING SUPPORT *(Other than Production and Quality Engineering)*		

7. REMARKS

8. TYPED NAME OF AUTHORIZED OFFICIAL	9. SIGNATURE OF AUTHORIZED OFFICIAL	10. DATE

NASA FORM 1431 OCT 80 PREVIOUS EDITIONS ARE OBSOLETE.

1984 Edition 18–53.303–1432

FORMS

NASA Form 1432 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

NASA/FAR SUPPLEMENT

18-53.303-1433 1984 Edition

FORMS

NASA Letter of Audit Delegation	1. NASA CONTROL NO.	2. AUDITOR CONTROL NO. (For Auditor's use only)
3. TO:	4. FROM:	
5. NAME AND ADDRESS OF PRIME CONTRACTOR OR SUBCONTRACTOR	6. CONTRACT NO. AND DATE	7. FACE VALUE
	8. CONTRACT TYPE	9. COMPLETION DATE
10. CONTRACT END ITEM OR SERVICE (Describe briefly)		

11. You are hereby delegated the authority to perform the required audit services for this contract in accordance with your agency's audit policies and procedures, the cost principles cited in the contract and special instructions, if any, set forth below. In case of conflict, the cost principles cited in the contract and special instructions shall govern.

12. It is requested that properly executed signature cards and vouchers be forwarded to:

13. Please indicate your acceptance of this delegation by completing items 19 through 22, below, and return two copies within 5 work days of receipt.

14. The NASA contact designated for this function is:

_____ (Name) _____ (Mail Code) _____ (Phone No.)

15. Special instructions and remarks: (Do not use NASA Form 1430A to issue special instructions to audit delegations.)

16. TYPED NAME OF CONTRACTING OFFICER	17. SIGNATURE OF CONTRACTING OFFICER	18. DATE SIGNED

THE ABOVE DELEGATION IS HEREBY ACCEPTED

19. TYPED NAME OF AUDITOR		20. TELEPHONE NO.
21. SIGNATURE OF AUDITOR		22. DATE SIGNED

NASA FORM 1433 OCT 69 PREVIOUS EDITION IS OBSOLETE.

1984 Edition

18-53.303-1434

FORMS

NASA Form 1434 is now being revised.

New edition (Oct. 1983) will be available by and must be used subsequent to March 31, 1984.

NASA/FAR SUPPLEMENT

18-53.303-1451

1984 Edition

FORMS

Request for Procurement Plan Approval

1. Plan Title *(See Tab A for description)*

2. Name of Installation	3. Plan Prepared By	4. Date

5. Responsible Technical Office	6. Project Approval Document *(Citation and date)*	7. Total Estimated Cost of This Procurement

8. Separate Approvals Required *(Check appropriate boxes)*

- ☐ a. Negotiation D&F—10 U.S.C. 2304(a)(11) thru (a) (16)
- ☐ b. Justification for Noncompetitive
- ☐ c. SEB Appointment Letter
- ☐ d. Letter Contract
- ☐ e. Prenegotiation Position
- ☐ f. Deviation to Procurement Regulations
- ☐ g. Notice of Intent to Award
- ☐ h. ADP Acquisition Plan
- ☐ i. Incentive Plan

9. Proposed Funding by Fiscal Year and Project

10. Competitive ☐ a. Yes ☐ b. No. *(If "No," complete item 10c)* — c. Noncompetitive Source

11. Type of Contract

12. FACILITIES AND GOVERNMENT FURNISHED PROPERTY

FACILITIES	YES (1)	NO (2)	AMOUNT ($)	OTHER GFP *(Identify below)*	AMOUNT (4)
a. Real Property *(Existing)*				e.	
b. Real Property *(New or Mod.)*				f.	
c. Plant Equipment *(Existing)*				g.	
d. Plant Equipment *(New)*				h.	

13. PROCUREMENT ACTION SCHEDULE *(Enter date for first step and calendar days thereafter)*

DESCRIPTION	DATE (1)	DAYS (2)	DESCRIPTION	DAYS (3)
a. Procurement Plan to HDQS.			g. Incentive Plan Submitted	
b. Procurement Plan Approved			h. HDQS. Prenegotiation Presentation *(If required)*	
c. Issue to RFP			i. Negotiations Complete	
d. Proposal(s) Submitted			j. Contract(s) Submitted to HDQS.	
e. Proposal Evaluation(s) Complete			k. HDQS. Approval of Contract(s)	
f. SEB Presentation to Source Selection Official *(If applicable)*			l. TOTAL DAYS ▶	

NASA FORM 1451 AUG 82 PREVIOUS EDITIONS MAY BE USED.

1984 Edition

18–53.303–1452

FORMS

NASA	Procurement Plan Signature Page (Installation)
PLAN TITLE	

INSTALLATION		
1. CONCURRENCE		
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
TITLE	SIGNATURE	DATE
2. RECOMMENDED FOR APPROVAL/APPROVED		
TITLE	SIGNATURE	DATE

NASA FORM 1452 SEP 82 PREVIOUS EDITIONS ARE OBSOLETE.

NASA/FAR SUPPLEMENT

18-53.303-1611

1984 Edition

FORMS

NASA — Contract Completion Statement

1. FROM: (Office administering contract)	2a. CONTRACT NUMBER
	2b. LAST MODIFICATION NUMBER
	2c. CALL/ORDER NUMBER
3. TO: (Name and Address of Purchasing Office and Office Symbol of the PCO, if known)	4. CONTRACTOR NAME AND ADDRESS
	5. EXCESS FUNDS ☐ YES ☐ NO $ _____

6a. IF FINAL PAYMENT HAS BEEN MADE, COMPLETE ITEMS 6b., AND 6c.	6b. VOUCHER NUMBER	6c. DATE
7a. IF FINAL APPROVED INVOICE FORWARDED TO FINANCIAL MANAGEMENT OFFICE OF ANOTHER ACTIVITY AND STATUS OF PAYMENT IS UNKNOWN, COMPLETE ITEMS 7b AND 7c.	7b. INVOICE NUMBER	7c. DATE FORWARDED

8. REMARKS

9a. ALL CONTRACT ADMINISTRATION ACTIONS REQUIRED HAVE BEEN FULLY AND SATISFACTORILY ACCOMPLISHED. THIS INCLUDES FINAL SETTLEMENT IN THE CASE OF A PRICE REVISION CONTRACT.

9b. TYPED NAME OF RESPONSIBLE OFFICIAL	9c. SIGNATURE	9d. DATE

FOR PROCUREMENT OFFICE USE ONLY

10a. ALL PROCUREMENT OFFICE ACTIONS REQUIRED HAVE BEEN FULLY AND SATISFACTORILY ACCOMPLISHED. CONTRACT FILE OF THIS OFFICE IS HEREBY CLOSED AS OF:

☐ DATE SHOWN IN ITEM 9d. ABOVE.

☐ DATE SHOWN IN ITEM 10a. BELOW. *(Check this box only if final completion of any significant procurement office action extends more than three months beyond close-out date shown in item 9d. above. In such cases, submit a copy of the completed form upon final accomplishment of all procurement office actions in the office administering contract. Upon receipt, the office administering contract shall extend its contract file close-out date accordingly.)*

10b. REMARKS

10c. TYPED NAME OF RESPONSIBLE OFFICIAL	10d. SIGNATURE	10e. DATE

NASA FORM 1611 OCT 83

CFR TITLE 48 CHAPTER 18

1984 Edition 18–53.303–1612

FORMS

NASA National Aeronautics and Space Administration

Contract Closeout Checklist

NAME OF CONTRACTOR	CONTRACT NO.	CONTRACT AMENDMENT (As amended by modifications numbered through)

ACTION ITEMS	MILESTONES/CALENDAR DAYS AFTER PHYSICAL COMPLETION		FORECAST FOR COMPLETION (Date)	ACTION COMPLETED (Date) ("NA" if not applicable)
DATE OF PHYSICAL COMPLETION				
	CATEGORY B	CATEGORY C		
DISPOSITION OF CLASSIFIED MATERIAL COMPLETED				
NEW TECHNOLOGY REPORT SUBMITTED (Inventions Disclosures)				
PROPERTY RIGHTS AND INVENTIONS REPORT				
PLANT CLEARANCE REPORT RECEIVED				
PROPERTY CLEARANCE RECEIVED				
SETTLEMENT OF ALL INTERIM OR DISALLOWED COSTS (NASA Form 456)				
PRICE REVISION COMPLETED				
SETTLEMENT OF SUBCONTRACTS BY THE PRIME CONTRACTOR				
PRIOR YEAR OVERHEAD RATES COMPLETED				
CONTRACTOR'S CLOSING STATEMENT RECEIVED				
TERMINATION DOCKET COMPLETED				
CONTRACT AUDIT COMPLETED				
CONTRACTOR'S CLOSING STATEMENT COMPLETED				
FINAL VOUCHER SUBMITTED				
FINAL PAID VOUCHER RECEIVED				
ISSUANCE OF REPORT OF CONTRACT COMPLETION				
FINAL REMOVAL OF EXCESS FUNDS RECOMMENDED				
ISSUANCE OF CONTRACT COMPLETION STATEMENT	180	600		
OTHER REQUIREMENTS COMPLETED (Specify)				

REMARKS (Continue on reverse if necessary)

TYPED NAME AND TITLE OF RESPONSIBLE OFFICIAL	SIGNATURE (To be signed only upon completion of all actions)	DATE

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18-53.303-DOC-ITA-999

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FORMS

Form ITA-999 (FORMERLY DIB-0001) (REV. 6-79)

U.S. DEPARTMENT OF COMMERCE
INDUSTRY AND TRADE ADMINISTRATION

REQUEST FOR SPECIAL PRIORITIES ASSISTANCE
(TO BE FILED WITH SPONSORING GOVERNMENT AGENCY)
READ INSTRUCTIONS ON REVERSE SIDE

(Typewriting or print in ink)

FORM APPROVED: OMB NO. 41-R1447

FOR ITA USE ONLY

Case No.

Received

No priorities assistance may be granted unless a completed application form has been received (50 U.S.C. App. Sec. 2155). Information furnished herewith is deemed confidential pursuant to 50 U.S.C. App. Sec. 2155(c).

1. TO: *(Fill in name and address of appropriate Sponsoring Govt. Agency)*

Routed to

Division

2. a. Applicant's name and complete address *(Street, City, State & Zip code)*

b. Telephone No. *(Include Area Code)* _____

c. Contact's Name _____

3. Name and address of applicant's customer

4. Purchase order or contract number of applicant's customer

No. _____

5. Rating on customer's purchase order

6. Date Applicant accepted customer's purchase order

7. If known, identify the Government program, end item, and contract number for which Applicant's product or service is required by customer

8. Description of product or class of products to be delivered, or service rendered by Applicant through use of item(s) shown in (10).

9. How will item(s) shown in (10) be used? *(Check)*

☐ As Production Material ☐ For Construction Project

☐ As Capital Equipment ☐ As Maintenance, Repair and Operating Supplies

10. MATERIAL OR ITEM(S) FOR WHICH APPLICANT REQUESTS ASSISTANCE TO OBTAIN OR EXPEDITE DELIVERY.

Indicate quantity (Lbs., ft., pcs.) (a)	Description *(As appearing in Applicant's purchase order with additional information, such as: model, part, dia number, etc.)* (b)	Approximate dollar value of quantity shown (c)

11. a. Applicant's purchase order number to Supplier and date *(Attach copy and all amendments and change orders.)*

b. Rating on Applicant's purchase order. If none, so state. If controlled material order, show allotment symbol and delivery quarter.

c. Date Applicant's purchase order accepted by Supplier *(Attach copy of acceptance)*

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12. a. Supplier's name and complete address (Street, City, State and Zip code)

b. Contact's name _____

c. Telephone number _____ (Include Area Code)

d. Supplier's shop order number

e. If Supplier is an agent or distributor, give producer's name and address. (Provide name and telephone number, including Area Code, of person to contact and supplier's purchase order number, if known.)

13. Original Shipment Schedule of materials or item(s) shown in 10 - Supplier to Applicant

a. Applicant's Original Shipment Requirement	Month Year							
	No. of units							Total units
b. Supplier's Original Shipment Promise	Month Year							
	No. of units							Total units

Current Shipment Schedule of materials or item(s) shown in 10 - Supplier to Applicant

c. Shipment(s) Now Required by Applicant	Month Year							
	No. of units							Total units
d. Supplier's Present Shipment Promise	Month Year							
	No. of units							Total units

USE CONTINUATION BLOCK OR SEPARATE SHEET, IF NECESSARY, FOR ANSWERS TO 14, 15 AND 16 BELOW

14. Reasons given by Supplier for inability to meet Applicant's required shipment date(s), including interfering record orders or programs, if known.

15. List at least two other Suppliers contacted. (If none contacted, explain why)

Date (a)	Name and complete address (b)	Best quoted shipment date(s) and other pertinent data (c)

16. Explain fully the overall situation regarding delivery commitment for item in (10) and effect of delay i.e., production stoppage, delayed ship sailing, etc. in receipt of material in (13). Give specific reasons to justify the rendering of assistance by the Government. Describe attempts to resolve delivery problems.

17.

a. Is quantity shown in 10(a) entire amount on purchase order listed in 11(a)? ☐ Yes ☐ No

b. Is the same material also on order from another supplier? (If "Yes," explain) ☐ Yes ☐ No

_____

c. Does the Applicant have an inventory of the material shown in 10? ☐ Yes ☐ No

d. If answer to (c) above is yes, state number of days of production the inventory will support. _____

e. State minimum leadtime (Number of days the material in 10 must be received before Applicant can ship to Customer). _____

CERTIFICATION - The undersigned Applicant and the official executing this certification on its behalf, hereby certify that the information contained in items (2) to (17) inclusive of this form, as supplemented by any information attached hereto and similarly signed, is correct and complete to the best of their knowledge and belief.

_____ Name of applicant

_____ Signature and typed name of authorized official

_____ Date

_____ Title

The U.S. Code, Title 18 (Crimes and Criminal Procedure), Section 1001, makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. The individual company information requested on this form is for use in defense mobilization activities. The unauthorized publication or disclosure of individual company information by Government personnel is prohibited by law, and such personnel having access thereto are subject to fine and imprisonment for unauthorized disclosure.

USCOMM-DC 10037-P71

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FORMS

FOR USE OF GOVERNMENT DEPARTMENT OR AGENCY ENDORSING THIS REQUEST (FIELD)		
18. a. Actions taken to attempt resolution of applicant's problem	By whom	Date
b. Estimate of realistic shipment date		
c. Coordination or other action taken	By whom	Date

FOR USE OF GOVERNMENT DEPARTMENT OR AGENCY SPONSORING THIS REQUEST (HEADQUARTERS ONLY)		
19. a. Name of Sponsor	b. Sponsor's Address	
c. Sponsor's Case Reference No.	d. Name of person handling case in Sponsor's office	Telephone No.
e. Sponsor's program or service to be benefited by Applicant's product or service (Item (7) on first page)	f. Recommendation	

g. Statement of urgency of particular program or service and Applicant's part in it. Also, extent to which failure to obtain requested assistance will adversely affect the program or service.

h.

(Signature of sponsor's authorized official) (Title)

(Type name of authorized official) (Date)

INSTRUCTIONS FOR FILING FORM ITA-999

Requests for Special Priorities Assistance may be filed:

A. When the regular procedures of the Defense Materials System and Defense Priorities System will not obtain delivery of materials[1] in time to meet required delivery schedules in support of authorized national defense programs,[2] and

If the applicant is a sub-contractor, he should contact his customer to ascertain the appropriate Claimant Agency. In the event the Claimant Agency cannot be determined, the application may be filed with the Priorities and Allocations Division, Room 4184, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

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FORMS

B. to request assistance in placing rated or authorized controlled materials (ACM) orders.

Requests for assistance must establish:

A. the urgent defense related need for the products, materials or services covered by the associated mandatory acceptance order.

B. that the applicant has exercised reasonable effort to resolve the problem through employment of his own resources.

C. that the request for assistance is timely.

Applicants are required to demonstrate that reasonable efforts have been made to locate at least two alternative sources of supply prior to requesting special priorities assistance on Form ITA-999.

WHERE TO FILE – Each ITA-999 must be sponsored by a Claimant Agency [3]. Complete forms should be filed with the Government agency having jurisdiction over the contract.

Department of Defense – File with local Defense Contract Administration Services Office or plant representative.

Department of Energy (DOE) – File with appropriate Field Office.

General Services Administration – File with the contracting officer in the Regional Office or the Headquarters Office in Washington, D.C., whichever issued the contract.

COPIES TO BE FILED – The applicant should file an original and five (5) copies of this form with the appropriate Claimant Agency.

APPLICATIONS FOR PRIORITY RATING TO OBTAIN CAPITAL/PRODUCTION EQUIPMENT – Prime and subcontractor applications for a priority rating to obtain capital/production equipment for the performance of a rated order or contract for a Department of Defense Form DO-601, "Application for Rating for Production Equipment," in accordance with the instructions on that form. DOE contractors do not use Form DO-601 – contact appropriate DOE Field Office.

SPECIAL INSTRUCTIONS

If the space in any block is insufficient for a clear and complete statement of the information called for, use the "continuation" space provided or a separate sheet or letter with a copy attached to each copy of the form. Identify each such statement with the block number concerned.

Entries in block 10 must be restricted to those appearing on a single purchase order of the applicant, except in those instances where "special priorities assistance" is requested for additional purchase orders that have been placed with the same supplier for the same material or item in which case such purchase orders may be combined on one application; however, each purchase order number must be identified and the quantities and rating on each purchase order must be shown separately.

If disclosure of the use to which the particular customers will put applicant's product is prohibited by security regulations, give a general description in block 10 and enter "classified."

[1] "Material" is defined in DPS Reg. 1 as any raw, in process, or manufactured commodity, equipment, component, accessory, part, assembly, or product of any kind.

[2] "National defense programs" mean programs for military and atomic energy production and construction, and military assistance to any friendly foreign nation and directly related activities.

[3] "Claimant Agency" means the Department of Defense, the Department of Energy, Industry and Trade Administration, or other Government agencies or subdivisions thereof which may be designated as such by the Federal Preparedness Agency. (DPS Reg. 1, Schedule H, lists the Claimant Agencies which have been authorized.

"Person" means any individual, corporation, partnership, association, or any organized group of persons, and includes any agency of the United States Government or any friendly foreign government.

CONTINUATION
(Identify each statement with the block number concerned)

FORM ITA-999 (FORMERLY DO-998) (REV.) *Please sign verification on back of form* LEADING EDGE PRODUCTS

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FORMS

MATERIAL INSPECTION AND RECEIVING REPORT	1. PROC. INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.	6. INVOICE NO. DATE	7. PAGE OF
				8. ACCEPTANCE POINT

2. SHIPMENT NO.	3. DATE SHIPPED	4. B/L TCN	5. DISCOUNT TERMS

9. PRIME CONTRACTOR CODE		10. ADMINISTERED BY CODE	

11. SHIPPED FROM (If other than 9) FOB:	12. PAYMENT WILL BE MADE BY CODE	

13. SHIPPED TO CODE		14. MARKED FOR CODE	

15. ITEM NO.	16. STOCK/PART NO. DESCRIPTION (Indicate number of shipping container-type of container-container number.)	17. QUANTITY SHIPPED*	18. UNIT	19. UNIT PRICE	20. AMOUNT

21. PROCUREMENT QUALITY ASSURANCE		22. RECEIVER'S USE
A. ORIGIN ☐ Yes ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract except as noted herein or on supporting documents.	B. DESTINATION ☐ Yes ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.	Quantities shown in column 17 were received in apparent good condition except as noted.
DATE / SIGNATURE OF AUTH. GOVT. REP. / TYPED NAME AND OFFICE	DATE / SIGNATURE OF AUTH. GOVT. REP. / TYPED NAME AND TITLE	DATE RECEIVED / SIGNATURE OF AUTH. GOVT. REP. / TYPED NAME AND TITLE
		*If quantity received by the Government is the same as quantity shipped, indicate by (✓) mark. If different, enter actual quantity received below quantity shipped and explain.

23. CONTRACTOR USE ONLY

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FORMS

MATERIAL INSPECTION AND RECEIVING REPORT - *CONTINUATION SHEET* | PAGE | OF

SHIPMENT NO.	DATE SHIPPED	PROC. INSTRUMENT IDEN. (CONTRACT)	(ORDERING)	INVOICE NO.

ITEM NO.	STOCK/PART NO. DESCRIPTION (Indicate number of shipping containers- type of container - container number.)	QUANTITY SHIP/REC'D	UNIT	UNIT PRICE	AMOUNT

DD FORM OCT 88 250c

☆ U.S. GOVERNMENT PRINTING OFFICE: 1985 — 000-000

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18-53.303-DD-614 1984 Edition

FORMS

MATERIALS REQUIREMENTS STEEL AND NICKEL ALLOYS	REPORTING AGENCY	PROCUREMENT (Claimant) PROGRAM	REPORT CONTROL SYMBOL
		JOB NUMBER	DATE

DD CODE a	ITEM DESCRIPTION[1] b	TOTAL FOR QUARTERS c	QUARTER C.Y. d	QUARTER C.Y. e	QUARTER C.Y. f	QUARTER C.Y. g
		(Short Tons)	(Short Tons)	(Short Tons)	(Short Tons)	(Short Tons)
1200	CARBON STEEL (Incl Wr. Iron) TOTAL					
1211	CASTINGS					
1212	INGOTS, BILLETS, ETC. (Excl. 1215)					
1215	BILLETS, STOCK FOR SHELL BODIES					
1221	BARS, COLD FINISHED					
1222	BARS, HOT ROLLED (Excl. 1223 + 1225)					
1223	BARS, REINFORCING					
1225	BARS, STOCK FOR SHELL BODIES					
1231	STRUCTURAL SHAPES					
1232	PILING					
1240	PIPE & TUBING, INCL. THRD. CPLGS.					
1251	PLATES					
1252	SHEET AND STRIP (Excl. 1261)					
1261	SHEET, GALVANIZED					
1262	TIN, TERNE, TIN MILL BLACK PLATE					
1270	RAILS AND TRACK ACCESSORIES					
1280	WHEELS, TIRES AND AXLES					
1290	WIRE RODS, WIRE AND WIRE PROD.					
1300	ALLOY STEEL (Excl. 1000 & 1400) TOTAL					
1311	CASTINGS (Excluding armor)					
1312	INGOTS, BILLETS, ETC.					
1314	CASTINGS, ARMOR					
1321	BARS, COLD FINISHED					
1322	BARS, HOT ROLLED					
1331	STRUCTURAL SHAPES					
1340	PIPE & TUBING INCL. THRD. CPLGS.					
1351	PLATES (Excluding 1355)					
1352	SHEET AND STRIP					
1356	PLATES, ROLLED ARMOR					
1370	TRACK ACCESSORIES					
1380	WHEELS, TIRES AND AXLES					
1390	WIRE RODS, WIRE AND WIRE PROD					
		(M Pounds)	(M Pounds)	(M Pounds)	(M Pounds)	(M Pounds)
1000	STAINLESS STEEL - NON-NICKEL BEARING - TOTAL					
1400	STAINLESS STEEL - NICKEL BEARING - TOTAL					
0000	NICKEL ALLOYS - TOTAL					
0001	5% THRU 29.9% NICKEL CONTENT					
0002	30% THRU 49.9% NICKEL CONTENT					
0003	50% THRU 100% NICKEL CONTENT					

[1] Detailed item definitions are given in the "Consolidated List of Materials", 1 July 1956, issued pursuant to DOD Instruction 4120.1

DD, FORM 1 JUN 57 614 PREVIOUS EDITIONS ARE OBSOLETE. GPO 1957 O—437077

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18–53.303–DD–614–1

FORMS

MATERIALS REQUIREMENTS COPPER AND ALUMINUM	REPORTING AGENCY	PROCUREMENT (Check one) PROGRAM	REPORT CONTROL SYMBOL
		JOB NUMBER	DATE

DD CODE a	ITEM DESCRIPTION[1] b	TOTAL FOR QUARTERS c	QUARTER C.V. d	QUARTER C.V. e	QUARTER C.V. f	QUARTER C.V. g
		(In Pounds)	(In Pounds)	(In Pounds)	(In Pounds)	(In Pounds)
1010	BRASS MILL COPPER BASE ALLOY PRODUCTS - TOTAL					
1011	PLATE, SHEET AND STRIP (Except [illegible])					
1012	RODS, BARS AND WIRE					
1013	TUBE AND PIPE					
1014	AMMO CUPS AND DISCS					
1000	BRASS MILL UNALLOYED COPPER PRODUCTS - TOTAL					
1001	PLATE, SHEET AND STRIP					
1002	RODS, BARS AND WIRE					
1003	TUBE AND PIPE					
1010 thru 1020	BRASS MILL PRODUCTS - TOTAL (Sum Lines 1000 and 1010)					
1090	WIRE MILL ROD (Cu Content)					
1040	FOUNDRY PRODUCTS					
1000	POWDER - TOTAL					
1001	POWDER, COPPER, UNALLOYED					
1002	POWDER, COPPER BASE ALLOYS					
1000	ALUMINUM - TOTAL					
1010	RODS AND BARS, PORCELAIN COATED					
1011	RODS AND BARS, ROLLED (Excl. 1630 & 1612 & Excl. stock for 1620, 1630 & 1661)					
1012	RODS AND BARS, ROLLED, FORGING AND IMPACT EXTRUSION STOCK					
1020	WIRE AND CABLE (Excl. 1630)					
1000	RIVETS AND RIVET WIRE					
1001	SAND CASTINGS					
1002	MOLD CASTINGS					
1003	DIE CASTINGS					
1004	OTHER CASTINGS					
1001	SHAPES, ROLLED STRUCTURAL					
1002	SHAPES, EXTRUDED (Excl. 1663 & 1664)					
1003	SHAPES, EXTRUDED FORGING STOCK					
1004	SHAPES, EXTRUDED, PORCELAIN COATED					
1070	SHEET, STRIP & PLATE (Excl. 1671 & stock for 1693)					
1071	SHEET, STRIP & PLATE PORCELAIN COATED					
1000	TUBING					
1001	POWDER					
1002	INGOT					
1000	FOIL (.005" and thinner)					

[1]Standard item definitions are given in the "Coded List of standards", 1 Aug 1964, issued pursuant to DOD Instruction 4120.1

DD FORM 1 Jun 67 614-1 PREVIOUS EDITIONS ARE OBSOLETE. GPO: 1975-618

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18–53.303–DD–1342

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FORMS

DOD PROPERTY RECORD | 1. [ ] ACTIVE [ ] INITIAL [ ] IDLE [ ] CHANGE | 2. JULIAN DATE | 3. I.D./GOVERNMENT TAG NO. | Form Approved OMB No. 0704-0029

SECTION I - INVENTORY RECORD

4. COMMODITY CODE	5. STOCK NUMBER	6. ACQUISITION COST	7. TYPE CODE	8. YR OF MFG	9. POWER CODE	10. STATUS CODE	11. SVC CODE	12. COMMAND CODE	13. ADM OFFICE CODE

14. NAME OF MANUFACTURER	15. MFR'S CODE	16. MANUFACTURER'S MODEL NO.	17. MANUFACTURER'S SERIAL NO.

18. LENGTH	19. WIDTH	20. HEIGHT	21. WEIGHT	22. CERTIFICATE OF NON-AVAILABILITY NUMBER	23. PEP NO.	24. ARD	25. CONTRACT NUMBER

26. DESCRIPTION AND CAPACITY

CONTINUED ON REVERSE SIDE [ ] YES [ ] NO

27. ELECTRICAL CHARACTERISTICS

QUANTITY	HORSEPOWER	VOLTS	PHASE	CYCLES	AC	DC	SPEED	TYPE AND FRAME NUMBER

28. PRESENT LOCATION

28a. DIPEC CONTROL NO.

29. PEPEIVABLE ITEM

SECTION II - INSPECTION RECORD

	YES	NO
30. CAN ITEM BE STORED AND MAINTAINED ON SITE FOR AT LEAST 12 MONTHS?		
31. HAS ITEM BEEN REBUILT/OVERHAULED? DATE IF SO, WHEN?		
32. HAS ITEM BEEN MODIFIED FROM ORIGINAL CONFIGURATION? IF SO, EXPLAIN UNDER REMARKS BELOW.		
33. WAS ITEM INSPECTED UNDER POWER? IF NOT EXPLAIN UNDER REMARKS BELOW.		
34. ARE MAINTENANCE COSTS NORMAL? IF NOT, EXPLAIN UNDER REMARKS BELOW.		
35. ARE SAFETY DEVICES ADEQUATE AND SATISFACTORY? IF NOT, EXPLAIN UNDER REMARKS BELOW.		
36. ARE INSTALLATION INSTRUCTIONS AVAILABLE FOR TRANSFER?		
37. ARE OPERATING INSTRUCTIONS AVAILABLE FOR TRANSFER?		
38. WAS ITEM LAST USED ON A FINISHING OPERATION?		
39. WILL ADJUSTMENTS OR CALIBRATION CORRECT DEFICIENCIES?		
40. IS ITEM SEVERABLE WITHOUT DAMAGE TO COMPONENTS? IF NOT, GIVE THEIR REPLACEMENT COST. $		
41. IS ITEM IN OPERABLE CONDITION?		

	YES	NO
42. MUST ITEM BE REPAIRED/REBUILT/OVERHAULED TO PERFORM ALL FUNCTIONS? $		
43. DO QC RECORDS INDICATE SATISFACTORY PERFORMANCE? IF NO, EXPLAIN UNDER REMARKS BELOW.		
44. ARE MANUALLY OPERATED MECHANISMS IN WORKING ORDER? IF NO, DESCRIBE UNDER REMARKS BELOW.		
45. ARE SCALES, DIALS, AND GAUGES WORKING AND READABLE? IF NO, DESCRIBE UNDER REMARKS BELOW.		
46. ARE HYDRAULIC PUMPS, VALVES, AND FITTINGS OPERATING PROPERLY? IF NO, DESCRIBE UNDER REMARKS BELOW.		
47. ARE ELECTRONIC SYSTEMS AND CONTROLS OPERATING PROPERLY? IF NO, DESCRIBE UNDER REMARKS BELOW.		
48. HOW MANY HOURS WAS ITEM USED BY CURRENT POSSESSOR?		
49. EXPLAIN UNDER REMARKS LAST USE OF EQUIPMENT DESCRIBED IN ITEM 26 ABOVE.		
50. ESTIMATED COST FOR PACKING, CRATING, HANDLING. $		
51. INDICATE DATE ITEM WILL BE AVAILABLE FOR REDISTRIBUTION.		
52. CONDITION CODE.		
53. OPERATING TEST CODE.		

SECTION III - REMARKS

54. REMARKS

REMARKS CONTINUED ON REVERSE SIDE [ ] YES [ ] NO

SECTION IV - DISPOSITION RECORD

55. CONSIGNEE (NAME AND ADDRESS, INCLUDING ZIP CODE)	56. TYPE OF DISPOSITION	56a. DATE OF DISPOSITION AND REMARKS IF SOLD
	[ ] DONATION [ ] DESTRUCTION [ ] SALE [ ] ABANDONMENT	

SECTION V - VALIDATION RECORD

57. VALIDATION (TYPED NAME(S) AND SIGNATURE(S))

DD FORM 1 MAY 78 1342 PREVIOUS EDITION IS OBSOLETE IN THE USAF

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FORMS

☐ ACTIVE ☐ INITIAL ☐ IDLE ☐ CHANGE | JULIAN DATE | I. D./GOVERNMENT TAG NUMBER

SECTION VI - NUMERICALLY CONTROLLED MACHINE DATA

58. CONTROL MFR	59. MODEL	60. SERIAL NO.	61. MFG DATE

62. CONTROL DESIGN
☐ I.C. ☐ CNC ☐ STORED PROGRAM ☐ SOFT ☐ SOLID STATE ☐ VACUUM TUBE ☐ OTHER:

63. TYPE NUMERICAL CONTROL SYSTEM	64. DIRECT NC	65. AXES NAMED PER RS-267 FIGURE
☐ POSITIONING ☐ CONTOURING ☐ CONTOURING/POSITIONING	☐ NO ☐ YES (IF YES, "X" FOLLOWING ITEM(S)) ☐ READER BY-PASS ☐ MDI DATA ☐ DEDICATED COMPUTER	

66. EIA FORMAT DETAIL

67. EIA FORMAT CLASSIFICATION SHORTHAND	68. ROTARY MOTIONS UNDER NC (NAME AND IDENTIFY)	69. SPECIFY AXES UNDER POSITIONING CONTROL	70. SPECIFY AXES UNDER CONTOURING CONTROL

71. AXES MAXIMUM TRAVEL (ENTER AXES; X, Y, Z, ETC. AND SPECIFY INCHES OR MM)

72. POSITIONING RATE, MAX

73. FEED RANGE

ROTARY, RPM	LINEAR, IPM	LINEAR, F

74. SPINDLE DATA →	A. NO. OF SPINDLES	B. NO OF SPDL MOTORS	C. HP/SPDL MOTOR	D. TAPER	E. SPEED RANGE	F. NO. OF INCREMENTS	G. TAPE CONTROL ☐ YES ☐ NO

75. EIA ASSIGNED "G" FUNCTION CODES (IDENTIFY FUNCTIONS IN REMARKS THAT ARE NOT EIA ASSIGNED)

76. EIA ASSIGNED "M" FUNCTION CODES (IDENTIFY FUNCTIONS IN REMARKS THAT ARE NOT EIA ASSIGNED)

77. INPUT DATA →	A. STANDARD ☐ RS-273 ☐ RS-274 ☐ RS-538	B. FORMAT ☐ WORD ADD ☐ TAB SEQ ☐ FIXED SEQ ☐ BLOCK	C. CODE ☐ RS-244 ☐ RS-358 ☐ BINARY	D. DIMENSIONAL INPUT ☐ INCH ☐ METRIC ☐ BOTH

78. TOOL CHANGE DATA →	A. NO. OF TURRETS	B. NO. STATIONS EA	C. AUTOMATIC CHANGER ☐ YES ☐ NO	D. NO. OF TOOLS	E. SELECTION ☐ SEQUENTIAL ☐ RANDOM	F. MAX. TOOL DIA.	G. TOOL LENGTH	H. MAX. TOOL WT.	I. TOOL CODING METHOD

79. ROTARY TABLE DATA →	A. INDEXING ☐ MANUAL ☐ NC	B. NO. OF STOPS	C. POSITIONING, NC ☐ YES ☐ NO	D. NO. OF POSITIONS	E. CONTOURING, NC ☐ YES ☐ NO	F. FEED RATE, RPM

80. NO. OF READERS	81. READER TYPE ☐ PHOTO ☐ TAPE ☐ OTHER:	82. READER SPEED	83. INTERPOLATION ☐ PARABOLIC ☐ LINEAR ☐ CIRCULAR ☐ NONE	84. BUFFER STORAGE ☐ YES ☐ NO	85. THREADCUTTING MAX. LEAD

86. CUTTER DIA. COMPENSATIONS		87. TOOL OFFSETS		88. READOUTS
NUMBER OF	MAX. AMOUNT	NO. OF TOOL OFFSETS	MAX. AMOUNT	☐ SEQ. NO. ☐ POSITION ☐ COMMAND DATA ☐ OTHER:

89. FEEDBACK DEVICE ☐ ANALOG ☐ TAPE ☐ DIGITAL	90. MIN. PROGRAMMABLE INCREMENT	91. MOTOR DRIVE ☐ STEPPING ☐ DC ☐ HYDRAULIC	92. POST PROCESSOR (NAME)

93. DEVELOPED BY (NAME)	94. COMPUTER LANGUAGE USED	95. PART PROGRAM LANGUAGE	96. APPLICABLE COMPUTER (NAME, MODEL & MIN CORE STORAGE)

97. REQUIRED MANUALS (TITLE AND MANUAL EDITION)

98. REMARKS (FEATURES NOT COVERED ABOVE, FUNCTIONS NOT EIA ASSIGNED, ETC.)

REMARKS CONTINUED ON REVERSE SIDE ☐ YES ☐ NO

NASA/FAR SUPPLEMENT

18-53.303-DD-1419 1984 Edition

FORMS

DOD INDUSTRIAL PLANT EQUIPMENT REQUISITION	REQUISITION NUMBER	Form Approved O.M.B. No. 0704-0032

SECTION I - ITEM DESCRIPTION

1. COMMODITY CODE	2. MANUFACTURER			2a. MODEL NUMBER
3. STOCK NUMBER	4. POWER CODE	5. ESTIMATED COST	6. PHYSICAL INSPECTION REQUIRED ☐ YES ☐ NO	7. PROCUREMENT SPECIFICATION ATTACHED ☐ YES ☐ NO
8. DESCRIPTION				
CONTINUED UNDER REMARKS SECTION ☐ YES ☐ NO				

SECTION II - REQUIRING AGENCY/FACILITY CONTRACTOR

9. NAME AND ADDRESS (Include ZIP Code)	10. CONTRACT NUMBER	10a. DATE	11. COMMAND CODE
	12. PROGRAM ☐ MILITARY ☐ CONTRACTOR		
13. INTENDED USE	14. DATE ITEM REQUIRED AT DESTINATION	15. DATE CERT N A REQUIRED	16. PRIORITY
17. BASIS FOR AUTHORIZATION ("X" applicable box) ☐ PRODUCTION ☐ MOBILIZATION ☐ REPLACEMENT	18. PROCUREMENT PLANNED ☐ YES ☐ NO If "YES", cite Appropriation:		19. REBUILD OVERHAUL CANDIDATE ☐ YES
20. TYPED NAME AND TITLE OF REQUESTING OFFICIAL	21. SIGNATURE OF REQUESTING OFFICIAL		22. DATE
23. CERTIFICATION OF NEED BY ADMINISTERING ACTIVITY:	a. ADMINISTERING OFFICE CODE		
b. NAME AND ADDRESS (Include ZIP Code)	c. TYPED NAME AND SIGNATURE OF PRODUCTION REPRESENTATIVE		d. DATE
	e. SIGNATURE OF ADMIN. CONTRACTING OFFICER		f. DATE

SECTION III - APPROVAL AUTHORITY

24. NAME AND ADDRESS (Include ZIP Code)	25. TITLE, SYMBOL AND TELEPHONE NO. OF APPROVING OFFICIAL	
	26. TYPED NAME & SIGNATURE OF APPROVING OFFICIAL	27. DATE

SECTION IV - ALLOCATION AND AUTHORITY TO INSPECT *(TO BE COMPLETED BY DIPEC)*

28. COMMODITY CODE	29. I.D./GOVERNMENT TAG NUMBER	30. DESCRIPTION (See attached copy of DD Form 1342, dated:
31. PRESENT LOCATION (Name, address and ZIP Code)	32. SHIPPED TO	

33. ESTIMATED TIME REQUIRED FOR SHIPMENT FROM DATE OF ACCEPTANCE *(Enter number of days)*

a. AS IS CONDITION	b. TEST REQUIRED	c. REPAIR REQUIRED	d. REPAIR OVERHAUL REQUIRED	e. STANDARD ATTACHMENTS REQUIRED

34. TYPED NAME AND SIGNATURE OF ALLOCATING OFFICIAL	35. DATE	36. DATE OFFER EXPIRES

SECTION V - NON-AVAILABILITY CERTIFICATE *(TO BE COMPLETED BY DIPEC)*

37. The item described in Section I of this form has been screened by DIPEC against the idle inventory of the Department of Defense and it is hereby certified as not available or cannot be delivered on or before the date specified in Section II (item 14). Procurement action resulting from this Certification of Non-Availability must be initiated within 45 calendar days of the date included in this Section (item 40) or complete rescreening is required. Equipment offered by DIPEC in Section IV must be considered if the supplier cannot deliver new equipment before expiration of the period specified in Section IV (item 33).

38. TYPED NAME AND SIGNATURE OF CERTIFYING OFFICIAL	39. DATE CERTIFICATE ISSUED	40. DATE CERTIFICATE EXPIRES	41. CERTIFICATE NUMBER

DD FORM 1 FEB 68 1419 PREVIOUS EDITIONS ARE OBSOLETE

CFR TITLE 48 CHAPTER 18

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FORMS

SECTION VI - CERTIFICATION OF ACCEPTANCE

42. THE ITEM ALLOCATED IN SECTION IV OF THIS FORM

☐ HAS BEEN PHYSICALLY INSPECTED AND IS ACCEPTABLE. ☐ IS ACCEPTABLE WITHOUT PHYSICAL INSPECTION

ITEM IS ACCEPTED UNDER ONE OF THESE CONDITIONS: a. ☐ AS IS CONDITION b ☐ REPAIR REQUIRED

c. ☐ TEST REQUIRED d. ☐ REBUILD OVERHAUL REQUIRED e ☐ OTHER

☐ IS NOT ACCEPTABLE (A complete description of conditions making item unacceptable must be stated under REMARKS below)

43. TYPED NAME AND TITLE OF CERTIFYING OFFICIAL	44. SIGNATURE OF CERTIFYING OFFICIAL	45. DATE

SECTION VII - SPECIAL SHIPPING INSTRUCTIONS

46. SHIP TO (Include ZIP Code)	47 FOR TRANSSHIPMENT TO

48. MARK FOR:

49. APPROPRIATION CHARGEABLE FOR		d. PAYING OFFICE/ACTIVITY NAME AND ADDRESS (Include ZIP Code)
a. PACKING/CRATING/HANDLING		
b. TRANSPORTATION		
c. OTHER		

50 SPECIAL DISTRIBUTION OF SHIPPING DOCUMENTS AND OTHER INSTRUCTIONS

SECTION VIII - REMARKS

51. REMARKS

GPO 865-788

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FORMS

CONTRACT ADMINISTRATION COMPLETION RECORD	1. SUSPENSE DATE
2. FROM:	3. CONTRACT NUMBER AS AMENDED BY MODIFICATIONS NUMBERED THROUGH _____
4. TO: *(Organizational element performing function checked below)*	5. NAME OF CONTRACTOR

The contract identified above has been physically completed *(i.e., all required deliveries or shipments have been made and/or services performed or terminated)*.

Request column 6c or 6d and 6e and 6f be completed with regard to the function checked in column 6a and this form returned by the suspense date indicated in item 1. If only an anticipated date of completion of required actions can be given by the suspense date, a subsequent advice of final action is requested.

If contract being closed is classified, send signed copy of this form marked "INFORMATION COPY" to cognizant Industrial Security Office.

6. STATUS OF ACTION(S)

"X" a	FUNCTION b	"X" IF REQUIRED ACTION(S) COMPLETED c	ANTICIPATED DATE FOR COMPLETION OF ACTION(S) d	SIGNATURE e	DATE f
	PROPERTY ADMINISTRATION				
	PLANT CLEARANCE				
	CONTRACT TERMINATION				
	OTHER *(Specify)*				

7. REMARKS

9. TYPED NAME OF RESPONSIBLE OFFICIAL	9. SIGNATURE	10. DATE

DD FORM 1 APR 80 1593

EDITION OF FEB 67 MAY BE USED UNTIL EXHAUSTED

CFR TITLE 48 CHAPTER 18

1984 Edition 18–53.303–DOE–EV 375

FORMS

DOE Form EV-375
(4-78)
10 CFR 30

U.S. DEPARTMENT OF ENERGY

ISOTOPE ORDER BLANK

FOR USE BY FEDERAL AGENCIES ONLY—SUBMIT IN DUPLICATE

1. FROM: Name and address of requisitioning agency	2. Requisitioning Agency Order No.:
	3. Date

4. SHIP TO:	5. BILL TO:
6. VIA: 7. G/BL No.:	

8. TO: Insert name of the DOE facility from which materials or services will be obtained.

9. The undersigned certifies that he (it) is authorized by

☐ (a) UNITED STATES NUCLEAR REGULATORY COMMISSION License No. _____, or

☐ (b) Exemption or General License provided by NRC regulations to receive the following described byproduct material:

NOTICE: Disregard Item 9 if order is for stable isotopes, technical service not inducing radioactivity, or for cyclotron-produced radioisotopes.

MATERIAL OR SERVICE

10. Catalog Item No. (If any)	BYPRODUCT MATERIAL OR OTHER RADIOISOTOPE: State isotope, chemical form, desired total activity, specific activity. TECHNICAL SERVICE: State desired service. STABLE ISOTOPE: State isotope, chemical form, quantity, isotopic concentration [specifying desired enrichment, minimum enrichment]. (Use continuation sheet if required)	Purchase Price	Rental Fee
	Shipping Schedule		
	TECHNICAL SERVICE CHARGE (if any)		
	HANDLING CHARGE (if any)		
	TOTAL		

THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS ON REVERSE SIDE

ACCEPTED FOR THE U.S. DEPARTMENT OF ENERGY

By _____

DATE _____

Requisitioning Agency

_____

By _____

Title _____

DATE _____

NASA/FAR SUPPLEMENT

18-53.303-DOE-EV 375-(A) 1984 Edition

FORMS

TERMS AND CONDITIONS

1. This order is placed in accordance with and subject to the Code of Federal Regulations, Title 10, Atomic Energy, Part 30, issued under Authority of the Atomic Energy Act of 1954, as amended.

2. Byproduct material, technical services or other isotopic materials (other than source and special nuclear material) are furnished at prices and service fees as fixed by the U.S. Department of Energy and in effect on the date of shipment of material or performance of the services. Prices in catalogs issued by the Department or the operator of any DOE facility are subject to change without notice. All transportation costs will be paid by the requisitioning agency, and materials will be shipped F.O.B. the DOE facility handling the transaction. When shipment of material pursuant to this order requires the use of returnable Government-owned containers, title to such containers shall remain in the Government. The buyer will keep the containers in good condition, will not use them for any materials other than the materials shipped therein, and will *deliver* them *to a carrier for return* to the point of shipment, transportation prepaid, within thirty days from the date of receipt *by the buyer* of the shipment. *The buyer agrees to pay to the Department a demurrage charge on each returnable Government-owned container for that period of retention which is in excess of the said 30-day period.*

3. The right to revoke or cancel this order is reserved to DOE.

4. Material ordered from a DOE facility will be shipped as nearly approximating the activity specified in the order as is possible, but no representation is made that radioisotopes will be of a particular quality, quantity, or activity, or will be delivered at specified times. The requisitioning agency agrees to report promptly any discrepancies between the material supplied and that ordered so that replacement or other appropriate adjustment may be made.

5. Payment will be made direct to the operator of the DOE facility from which the materials or services are obtained.

INSTRUCTIONS

1. This isotope order blank has been prepared for use by all Federal agencies ordering byproduct material, technical services, or other isotopic materials (other than source and special nuclear material) from DOE or DOE facilities owned by the U.S. Department of Energy and operated for DOE by contractors. No other type of order blank, purchase order, or contract will be accepted by DOE or DOE facilities.

2. When submitting this order form the requisitioning agency should furnish a prepared bill of lading on which shipment will be made. If such bill of lading is not furnished, shipment will be made collect on a commercial bill of lading to be converted at destination.

3. The DOE utilizes the services of contractors operating its facilities to perform distribution functions for DOE under cost-type contractual arrangements whereby expenses of the facilities are borne by DOE and revenue from distribution of byproduct materials, special technical services, and other isotopic materials is deposited for the account of the Government, used to reduce costs of operation, or paid over as directed by DOE in accordance with applicable contract provisions.

4. The contractor or DOE office accepting the order for DOE will retain the original and return an accepted copy of the order to the requisitioning agency.

FOR INFORMATION ON HOW TO APPLY FOR A "BYPRODUCT MATERIAL LICENSE," FORM NRC-374, OR TO OBTAIN ADDITIONAL COPIES OF THIS ORDER BLANK WRITE TO:

U.S. NUCLEAR REGULATORY COMMISSION
MATERIALS BRANCH
DIVISION OF MATERIALS AND FUEL CYCLE
FACILITY LICENSING
WASHINGTON, D.C. 20555

CFR TITLE 48 CHAPTER 18

1984 Edition

18–53.303–NRC–313I

FORMS

NRC Form 313 I (12-81) 10 CFR 30

U.S. NUCLEAR REGULATORY COMMISSION

APPLICATION FOR BYPRODUCT MATERIAL LICENSE
INDUSTRIAL

See attached instructions for details.

Completed applications are filed in duplicate with the Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety, and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or applications may be filed in person at the Commission's office at 1717 H Street, NW, Washington, D. C. or 7915 Eastern Avenue, Silver Spring, Maryland.

1. APPLICATION FOR: *(Check and/or complete as appropriate)*
- ☐ a. NEW LICENSE
- ☐ b. AMENDMENT TO. LICENSE NUMBER
- ☐ c. RENEWAL OF. LICENSE NUMBER

2. APPLICANT'S NAME *(Institution, firm, person, etc.)*

TELEPHONE NUMBER: AREA CODE – NUMBER EXTENSION

3. NAME AND TITLE OF PERSON TO BE CONTACTED REGARDING THIS APPLICATION

TELEPHONE NUMBER: AREA CODE – NUMBER EXTENSION

4. APPLICANT'S MAILING ADDRESS *(Include Zip Code)*
(Address to which NRC correspondence, notices, bulletins, etc., should be sent.)

5. STREET ADDRESS WHERE LICENSED MATERIAL WILL BE USED *(Include Zip Code)*

(IF MORE SPACE IS NEEDED FOR ANY ITEM, USE ADDITIONAL PROPERLY KEYED PAGES.)

6. INDIVIDUAL(S) WHO WILL USE OR DIRECTLY SUPERVISE THE USE OF LICENSED MATERIAL
(See Items 16 and 17 for required training and experience of each individual named below)

FULL NAME	TITLE
a.	
b.	
c.	

7. RADIATION PROTECTION OFFICER — *Attach a resume of person's training and experience as outlined in Items 16 and 17 and describe his responsibilities under Item 15.*

8. LICENSED MATERIAL

LINE NO.	A. ELEMENT AND MASS NUMBER	B. CHEMICAL AND/OR PHYSICAL FORM	C. NAME OF MANUFACTURER AND MODEL NUMBER *(If Sealed Source)*	D. MAXIMUM NUMBER OF MILLICURIES AND/OR SEALED SOURCES AND MAXIMUM ACTIVITY PER SOURCE WHICH WILL BE POSSESSED AT ANY ONE TIME
(1)				
(2)				
(3)				
(4)				

	E. DESCRIBE USE OF LICENSED MATERIAL
(1)	
(2)	
(3)	
(4)	

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9. STORAGE OF SEALED SOURCES

LINE NO.	CONTAINER AND/OR DEVICE IN WHICH EACH SEALED SOURCE WILL BE STORED OR USED. A.	NAME OF MANUFACTURER B.	MODEL NUMBER C.
(1)			
(2)			
(3)			
(4)			

10. RADIATION DETECTION INSTRUMENTS

LINE NO.	TYPE OF INSTRUMENT A	MANUFACTURER'S NAME B	MODEL NUMBER C	NUMBER AVAILABLE D	RADIATION DETECTED (alpha, beta, gamma, neutron) E	SENSITIVITY RANGE (milliroentgens/hour or counts/minute) F
(1)						
(2)						
(3)						
(4)						

11. CALIBRATION OF INSTRUMENTS LISTED IN ITEM 10

☐ a. CALIBRATED BY SERVICE COMPANY
NAME, ADDRESS, AND FREQUENCY

☐ b. CALIBRATED BY APPLICANT
Attach a separate sheet describing method, frequency and standards used for calibrating instruments.

12. PERSONNEL MONITORING DEVICES

TYPE (Check and/or complete as appropriate.) A	SUPPLIER (Service Company) B	EXCHANGE FREQUENCY C
☐ (1) FILM BADGE ☐ (2) THERMOLUMINESCENCE DOSIMETER (TLD) ☐ (3) OTHER (Specify) _____		☐ MONTHLY ☐ QUARTERLY ☐ OTHER (Specify) _____

13. FACILITIES AND EQUIPMENT (Check were appropriate and attach annotated sketch(es) and description(s).

☐ a. LABORATORY FACILITIES, PLANT FACILITIES, FUME HOODS (Include filtration, if any), ETC
☐ b. STORAGE FACILITIES, CONTAINERS, SPECIAL SHIELDING (fixed and/or temporary), ETC
☐ c. REMOTE HANDLING TOOLS OR EQUIPMENT, ETC
☐ d. RESPIRATORY PROTECTIVE EQUIPMENT, ETC

14. WASTE DISPOSAL

a NAME OF COMMERCIAL WASTE DISPOSAL SERVICE EMPLOYED

b IF COMMERCIAL WASTE DISPOSAL SERVICE IS NOT EMPLOYED, SUBMIT A DETAILED DESCRIPTION OF METHODS WHICH WILL BE USED FOR DISPOSING OF RADIOACTIVE WASTES AND ESTIMATES OF THE TYPE AND AMOUNT OF ACTIVITY INVOLVED. IF THE APPLICATION IS FOR SEALED SOURCES AND DEVICES AND THEY WILL BE RETURNED TO THE MANUFACTURER, SO STATE.

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FORMS

INFORMATION REQUIRED FOR ITEMS 15, 16 AND 17
Describe in detail the information required for Items 15, 16 and 17. Begin each item on a seperate page and key to the application as follows: 15. RADIATION PROTECTION PROGRAM. Describe the radiation protection program as appropriate for the material to be used including the duties and responsibilities of the Radiation Protection Officer, control measures, bioassay procedures *(if needed)*, day-to-day general safety instruction to be followed, etc. If the application is for sealed source's also submit leak testing procedures, or if leak testing will be performed using a leak test kit, specify manufacturer and model number of the leak test kit. 16. FORMAL TRAINING IN RADIATION SAFETY. Attach a resume for each individual named in Items 6 and 7. Describe individual's formal training in the following areas where applicable. Include the name of person or institution providing the training, duration of training, when training was received, etc. a. Principles and practices of radiation protection. b. Radioactivity measurement standardization and monitoring techniques and instruments. c. Mathematics and calculations basic to the use and measurement of radioactivity. d. Biological effects of radiation. 17. EXPERIENCE. Attach a resume for each individual named in Items 6 and 7. Describe individual's work experience with radiation, including where experience was obtained. Work experience or on-the-job training should be commensurate with the proposed use. Include list of radioisotopes and maximum activity of each used.

18. CERTIFICATE *(This item must be completed by applicant)*	
The applicant and any official executing this certificate on behalf of the applicant named in Item 2, certify that this application is prepared in conformity with Title 10, Code of Federal Regulations, Part 30, and that all information contained herein, including any supplements attached hereto, is true and correct to the best of our knowledge and belief. **WARNING.–18 U.S.C., Section 1001; Act of June 25, 1948; 62 Stat. 749; makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction.**	
a. LICENSE FEE REQUIRED *(See Section 170.31, 10 CFR 170)*	b. CERTIFYING OFFICIAL *(Signature)*
	c. NAME *(Type or print)*
(1) LICENSE FEE CATEGORY:	d. TITLE
(2) LICENSE FEE ENCLOSED: $	e. DATE

NRC FORM 313 I (12-81) GPO 886-426

NASA/FAR SUPPLEMENT

[FR Doc. 84–7536 Filed 3–28–84; 8:45 am]
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federal register

Thursday
March 29, 1984

Part III

Veterans Administration

48 CFR Ch. 8

Acquisition Regulation; Interim Final Rule

VETERANS ADMINISTRATION

48 CFR Chapter 8

Acquisition Regulations

AGENCY: Veterans Administration.

ACTION: Interim Final Rule.

SUMMARY: The VA (Veterans Administration) is issuing an interim final regulation pursuant to OFPP (Office of Federal Procurement Policy) Policy Letter 83–2, section 5. This regulation will be effective April 1, 1984, but will not become a final regulation until assessment of all comments submitted by April 30, 1984. This regulation will be known as the VAAR (Veterans Administration Acquisition Regulation) and is codified as Chapter 8 of Title 48 of the Code of Federal Regulations.

The purpose of the VAAR is to implement and supplement the FAR (Federal Acquisition Regulation). The FAR was issued on September 19, 1983, in the **Federal Register** by the General Services Administration, Department of Defense and National Aeronautics and Space Administration. The FAR is a uniform system of acquisition regulations promulgated pursuant to Executive Order 12352, Federal Procurement Reforms.

The FAR becomes effective on April 1, 1984 and will take the place of the Federal Procurement Regulations, Defense Acquisition Regulations and the NASA Procurement Regulations. Consequently the VAPR (Veterans Administration Procurement Regulation) codified as Chapter 8, Title 41, CFR, is superseded by Chapter 8 of Title 48, CFR on April 1, 1984. The VAAR implements the FAR where implementation is necessary, and interprets or supplements the FAR where no FAR provisions provide specific coverage for areas unique to the VA.

DATES: This interim regulation is effective April 1, 1984. Written comments should be submitted not later than April 30, 1984, for consideration in the final regulation.

ADDRESS: Interested persons are invited to submit written comments, suggestions or objections to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office in room 132 of the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, (202) 389–2334.

SUPPLEMENTARY INFORMATION:

I. Background

This interim regulation does not generally establish new policy. It primarily transplants the current VAPR into the new format prescribed by the FAR. However new coverage includes the designation of the Agency Procurement Executive in Part 801; new provisions in Part 849 regarding contract termination; and revised negotiation authority for scarce specialist services and mutual use, or exchange of use, of specialized medical resources (38 U.S.C. 4117 and 38 U.S.C. 5053), contained in Part 815.

To the extent that the substance of the present VAPR will be modified, those changes will consist of interpretative rules, general statements of policy or rules of VA organization procedure or practice. For the reasons discussed below, the VA finds that publication for prior public comment is impracticable, unnecessary and contrary to public interest.

Due to the extremely short time allowed for conversion of our acquisition regulation, the new VAAR published herein does not include coverage for a few acquisition subjects now included in the FAR. The VA is currently reviewing topical areas including Acquisition Plans (FAR Subpart 7.1), Contractor Versus Government Performance (FAR Subpart 7.3) and ADP Acquisitions (FAR Part 39) for possible development of additional VAAR regulations. Such development will be promulgated as proposed rules with full public participation.

Under Pub. L. 93–400 all executive agency procurement policies and regulations are subject to those prescribed by the Office of Federal Procurement Policy. Office of Federal Procurement Policy Letter 83–2, "Publicizing the Development of Procurement Policies and Regulations," prescribes the general policy for obtaining views of the public prior to issuing final procurement rules. Paragraph 5. of the Policy Letter provides for waiver of the requirement to solicit views when circumstances make such solicitation impracticable. Since it is necessary to provide VA acquisition regulation coverage consistent with the new FAR system, on the effective date of the FAR (April 1, 1984), this option is being exercised and this VAAR will become effective April 1, 1984, as an interim final rule. It is essential to have the VAAR in place on that date in order to avoid disruption, confusion, and delays in the VA procurement process, in the interest of both the VA and the VA's contractors. The VAAR will not become final until all comments are assessed and any changes warranted have been published in the **Federal Register**. This process is in accordance with OFPP Policy Letter 83–2.

II. Executive Order 12291

Pursuant to the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowle, Administrator, Office of Federal Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs, dated December 15, 1983, this interim final rule is exempt from Sections 3, 4, and 5 of the Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this interim final rule does not come within the term "rule" as defined in the RFA (54 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities because the VAAR will consist primarily of a reformating of the content of the present VAPR's. To the extent that the VAAR changes or goes beyond the VAPR's, it does so by implementing and interpreting the FAR. Any economically significant change will result from the FAR, not this implementing VA regulation.

IV. Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed upon the public under these regulations have been approved by the Office of Management and Budget, in accordance with section 3504(h) of the Paperwork Reduction Act.

Information on and copies of the information collection requirements can be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Comments and questions about the information collections and recordkeeping requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Dick Eisinger, Desk Officer for the VA, 726 Jackson Place, NW., Washington, D.C. 20503, (202) 395–6880.

List of Subjects in 48 CFR Chapter 8

Government procurement, VA acquisition regulations.

Approved: March 20, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

For the reasons set out in the preamble, Title 48 of the Code of Federal Regulations is amended by establishing Chapter 8 to read as follows:

CHAPTER 8—VETERANS ADMINISTRATION

SUBCHAPTER A—GENERAL

PART 801—VETERANS ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

PART 802—DEFINITIONS OF WORDS AND TERMS

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

PART 804—ADMINISTRATIVE MATTERS

PART 805—PUBLICIZING CONTRACT ACTION

SUBCHAPTER B—ACQUISITION PLANNING

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

PART 809—CONTRACTOR QUALIFICATIONS

PART 810—SPECIFICATIONS, STANDARDS AND PURCHASE ORDER DESCRIPTION

PART 812—CONTRACT DELIVERY OR PERFORMANCE

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

PART 814—FORMAL ADVERTISING

PART 815—CONTRACTING BY NEGOTIATION

PART 816—TYPES OF CONTRACTS

PART 817—SPECIAL CONTRACTING METHODS

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

PART 820—LABOR SURPLUS AREA CONCERNS

PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

PART 823—ENVIRONMENTAL, CONSERVATION AND OCCUPATIONAL SAFETY

PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

PART 825—FOREIGN ACQUISITION

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 828—BONDS AND INSURANCE

PART 829—TAXES

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

PART 832—CONTRACT FINANCING

PART 833—DISPUTES AND APPEALS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 834—MAJOR SYSTEMS ACQUISITION

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

PART 837—SERVICE CONTRACTING

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 842—CONTRACT ADMINISTRATION

PART 846—QUALITY ASSURANCE

PART 847—TRANSPORTATION

PART 849—TERMINATION OF CONTRACTS

SUBCHAPTER H—CLAUSES AND FORMS

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

PART 853—FORMS

PART 870—SPECIAL PROCUREMENT CONTROLS

PART 871—LOAN GUARANTY AND EDUCATION AND REHABILITATION PROGRAMS

SUBCHAPTER A—GENERAL

PART 801—VETERANS ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

Sec.

801.000 Scope of part.

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.
801.102 Authority.
801.103 Applicability.
801.103–70 Exclusions.
801.104 Issuance.
801.104–1 Publication and code arrangement.
801.104–3 Copies.

Subpart 801.2—Administration

801.201 Maintenance of the FAR.
801.201–1 The two councils.
801.201–70 Agency Procurement Executive.

Subpart 801.3—Agency Acquisition Regulations

801.301 Policy.
801.301–70 Paperwork Reduction Act requirements.
801.303 Codification and public participation.
801.304 Agency control and compliance procedures.

Subpart 801.4—Deviations from the FAR or VAAR

801.403 Individual deviations.
801.404 Class deviations.
801.470 Rulemaking.

Subpart 801.6—Contracting Authority and Responsibilities

801.601 General.
801.602 Contracting officers.
801.602–2 Responsibilities.
801.602–70 Legal/technical review requirements to be met prior to contract execution.
801.602–71 Processing contracts for legal/technical review.
801.602–72 Documents to be submitted for legal review.
801.602–73 Certification by reviewing official.
801.602–74 Results of General Counsel's legal review.
801.603 Selection, appointment, and termination of appointment.
801.603–3 Appointment.

801.603-4 Termination.
801.603-70 Representatives of contracting officers.
801.603-71 Representatives of contracting officers; receipt of equipment, supplies and nonpersonal services.
801.603-72 Ratification of unauthorized contract awards.
801.670 Special and limited delegation.
801.670-1 Architectural and engineering service—Central Office.
801.670-2 Construction contracts—Central Office.
801.670-3 Utility-connection and other site facility contracts—Central Office.
801.670-4 Construction contracts—field stations, supply depots.
801.670-5 Publications Service—Central Office.
801.670-6 Issue of Government bills of lading—Transportation of remains of deceased beneficiaries.
801.670-7 Issue of Government bills of lading—Transportation of property.
801.670-8 Building and Supply Service—Central Office.
801.670-9 Architectural and engineering services—field stations, supply depots.
801.670-10 Loan guaranty program.
801.670-11 Education and rehabilitation programs.
801.670-12 Medical, dental, and ancillary service.
801.670-13 Department of Memorial Affairs.
801.670-14 Letters of agreement.
801.670-15 $300 small purchase authority for Prosthetic Service personnel.
801.680 Contracting authority of the Inspector General.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

801.000 Scope of part.

This part prescribes general policies and background regarding the Veterans Administration Acquisition Regulations (VAAR). It includes information regarding the maintenance and administration of the VAAR and includes procedures for deviations from the VAAR and the Federal Acquisition Regulations (FAR).

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.

(a) This subpart establishes Chapter 8, Veterans Administration Acquisition Regulations, of Title 48—Federal Acquisition Regulation System, Code of Federal Regulations.

(b) The VAAR must be utilized in conjunction with the FAR. The VAAR cannot be utilized by itself.

801.102 Authority.

The VAAR and any amendments thereto are issued by the Administrator of Veterans Affairs as provided by 38 U.S.C. 210 and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)).

801.103 Applicability.

(a) The FAR and the VAAR apply to all acquisitions of the agency (including construction) made with appropriated funds and procurements made with Supply Fund monies (38 U.S.C. 5021).

(b) The FAR and VAAR will apply to the special procurement programs authorized by Title 38, United States Code (Viz., Veterans Canteen Service and the Loan Guaranty programs), to the extent indicated in the VAAR.

801.103-70 Exclusions.

The FAR and VAAR will not apply to purchases and contracts which utilize General Post Funds when such regulations would infringe upon a donor's prerogative to specify the exact item to be purchased and/or the source of supply.

801.104 Issuance.

801.104-1 Publication and code arrangement.

(a) VA (Veterans Administration) acquisition policies and procedures which directly affect the public will be published in the **Federal Register** as Chapter 8 of Title 48, Code of Federal Regulations. Related material, not affecting the public, may also be published in the **Federal Register** when its inclusion will provide a logical, comprehensive statement of Veterans' Administration acquisition policies and procedures.

801.104-3 Copies.

Cumulative editions of Chapter 8 of Title 48, Code of Federal Regulations are printed annually and may be purchased by the public from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Subpart 801.2—Administration

801.201 Maintenance of the FAR.

This subpart describes the Veterans Administration's participation in the maintenance of the FAR.

801.201-1 The two councils.

A designee of the Office of Procurement and Supply will represent the Veterans Administration on the CAA (Civilian Agency Acquisition) Council.

801.201-70 Agency Procurement Executive.

The Associate Deputy Administrator for Logistics (005) is the VA Agency Procurement Executive appointed in accordance with Executive Order 12352, dated March 17, 1982. The Agency Procurement Executive is responsible for the development and oversight of agency-wide procurement systems. This responsibility includes overseeing the development of the agency position on proposed FAR policies and the implementing VAAR and the evaluation and monitoring of the agency procurement systems performance.

Subpart 801.3—Agency Acquisition Regulations

801.301 Policy.

(a) VAAR, amendments and interim changes thereto will be issued by the Administrator of Veterans Affairs after necessary reviews by cognizant VA officials.

(b) Implementing procedures, instructions and guidelines necessary to implement the VAAR and the FAR may be issued by the heads of contracting activities. Such issuances may include delegations of authority, review and approval for acquisition action up to the dollar level delegated to that contracting activity by this regulation as well as providing procedural guidance for users. Such issuances will be the minimum necessary to provide a logical implementation of FAR and VAAR requirements and will be internal to the facility, i.e., it will not specify reporting/recordkeeping requirements for the public (see 801.301-70(b)).

801.301-70 Paperwork Reduction Act requirements.

(a) It is the policy of the Government to keep to the minimum the amount of recordkeeping and reporting required of the public. This objective applies to the Veterans Administration acquisition system.

(b)(1) Contractors will not be requested to maintain systems of records unless prescribed in FAR or this VAAR. A deviation to this prohibition may be processed in accordance with § 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.

(2) The Director, Office of Procurement and Supply (91) will review the request and upon concurrence will likewise submit the request to OMB (Office of Management and Budget) for approval as prescribed by the Paperwork Reduction Act of 1980. If approved, the Director, Office of Procurement and Supply will send the approval back to the requester with the OMB clearance number.

(c) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this VAAR have been approved by OMB and have been given the following approval numbers:

48 CFR part or section where identified and described	Current OMB control number
809.504(d)	2900–0418
836.606–2	2900–0422
852.236–72(b)	2900–0422
852.236–79	2900–0422
852.236–81 through 852.236–85	2900–0422
852.236–88	2900–0422
871.201–2	2900–0418

801.303 Codification and public participation.

The VAAR is codified as Chapter 8 of Title 48, Code of Federal Regulations. Codified changes to the VAAR will be published in the **Federal Register**. The Director, Office of Procurement and Supply, arranges distribution of the issues to VA contracting activities and the Office of Procurement and Supply should be notified of changes to the distribution list.

801.304 Agency control and compliance procedures.

Office of Procurement and Supply is responsible for ensuring that the VAAR and amendments thereto are developed as prescribed by the FAR.

Subpart 801.4—Deviations From the FAR or VAAR

801.403 Individual deviations.

(a) When contracting officers, other than those assigned to the Office of Construction, consider it necessary to deviate from the policies set forth in the FAR or VAAR, a request for authority to do so will be submitted to the Director, Office of Procurement and Supply (91). The request will clearly set forth the circumstances warranting the deviation and the nature of the deviation.

(b) Contracting officers assigned to the Office of Construction will, in individual cases, secure prior authorization from the Director, Office of Construction (08) before any deviation is taken. A copy of each such authorization that is granted will be furnished the Director, Office of Procurement and Supply (91).

(c) When a deviation in an individual case is authorized by either the Director, Office of Procurement and Supply, or the Director, Office of Construction, the authorization will be filed in the purchase or contract file, whichever is appropriate. The Director, Office of Procurement and Supply, will review each deviation authorized and when considered necessary either prepare a change to the VAAR or recommend a change to the FAR through the CAA Council.

801.404 Class deviations.

The Director, Office of Procurement and Supply is responsible for determining the need for class deviations. If determined necessary, the Director, Office of Procurement and Supply will request deviation authority from the Deputy Administrator through the Agency Procurement Executive as well as complying with the provisions in FAR 1.404.

801.470 Rulemaking.

(a) VAAR amendments which implement FAR requirements, OFPP (Office of Federal Procurement Policy) directives and legislation or are related to agency management or personnel, will be issued as "Final Rules" in the **Federal Register** as provided in the Administrative Procedures Act, 5 U.S.C. 553.

(b) VAAR amendments which significantly affect the public and for which the Veterans Administration has discretion (as opposed to amendments required by FAR, OFPP or legislation) will be developed in accordance with the proposed rulemaking procedures of the Administrative Procedures Act. This procedure generally involves issuing a notice of proposed rulemaking in the **Federal Register** inviting public comment. Any comments received will be reviewed and when appropriate will be incorporated in the final rule. The final rule will also be published in the **Federal Register** and will include a discussion of the comments received and their disposition.

Subpart 801.6—Contracting Authority and Responsibilities

801.601 General.

(a) This subpart establishes general contracting officer authority and responsibility. However, other provisions in both the FAR and the VAAR contain some contracting officer limitations and it is incumbent upon each contracting officer to be aware of those limitations.

(b) Personnel, other than those designated in 801.602, may determine quality, quantity and delivery requirements for items or services to be purchased. However, under no circumstances will individuals who have not been delegated contracting authority commit the Government for purchases of supplies, equipment or services. Individuals making such commitments may be held financially liable for the amount of the obligation.

801.602 Contracting officers.

(a) Except as otherwise provided for by law, VA regulations and these acquisition regulations, the authority vested in the Administrator to execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds involved in the acquisition of personal property, or services (excluding construction and architect engineer service), and for the sale of personal property, is hereby delegated to the Agency Procurement Executive for further delegation to those employees of the Veterans Administration appointed or designated to the following positions:

(1) Director, Office of Procurement and Supply.

(2) Directors, VA Supply Depots.

(3) Director, VA Marketing Center.

(4) Director, Procurement Service, Central Office.

(5) Chiefs, Marketing Divisions, VA Marketing Center.

(6) Chiefs, Supply Services, VA field stations.

(b) The contracting officers named in paragraph (a) of this section may appoint one or more of their subordinates as a contracting officer and authority is hereby delegated to such subordinates, to execute, award and administer contracts, purchase orders, and other agreements for the acquisition of supplies, equipment, nonpersonal services, and for the sale of personal property. Appointments will be made in accordance with FAR 1.603–3 and 801.603–3.

(c) When exercising the authority contained in this chapter 8, the designated employee is identified as the contracting officer and will function within the limits prescribed by law, VAAR and FAR.

801.602–2 Responsibilities.

(a) In the administration of a contract, many problems can and do arise that make the advice and assistance of the General Counsel either desirable or necessary. The final decision as to the action to be taken, however, must be made by the contracting officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the contracting officer shall, except as provided in paragraphs (b) and (c) of this section, submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

(b) Default action may be taken without consulting the General Counsel when the contractor fails to deliver supplies or equipment, or to render the services required within the specified time, or fails to comply with the applicable specifications, unless the contracting officer has reason to doubt that the default action is legal or proper.

(c) Contracts containing a mutual termination clause may be terminated without reference to the General Counsel.

801.802–70 Legal/technical review requirements to be met prior to contract execution.

(a) The following categories of proposed contracts and agreements will be reviewed and concurred in by the Office of Procurement and Supply and/or General Counsel.

(1) All fixed-price formally advertised (or Small Business Restricted Advertised) contracts involving $250,000 or more in either appropriated or nonappropriated funds and indefinite quantity contracts where expenditures of $250,000 or more can reasonably be expected. (Technical reviews from $250,000 through $499,999; technical and legal review for $500,000 or more.) (For contracts awarded by the Veterans Administration Marketing Center, the dollar amount is $1,000,000.)

(2) All fixed-price construction contracts involving $500,000 or more in either appropriated or nonappropriated funds.

(3) All negotiated contracts, including proposed Small Business Administration 8(a) contracts, for which it is anticipated that more than $200,000 in appropriated or nonappropriated funds will ultimately be involved. (For contracts awarded by the Veterans Administration Marketing Center, the dollar amount is $500,000.) The contract audit required by 815.805–5 and FAR 15.805–5 remains applicable as specified.

(4) All proposed agreements and contracts coming within the purview of one or more of the following:

(i) Contracts for insurance.

(ii) Utility connection agreements involving $50,000 or more.

(iii) Utility service agreements involving $50,000 or more.

(iv) Contracts for consulting services (see Subpart 837.2) and management and professional services (see 837.271).

(v) Contracts for research or research and development involving $50,000 or more.

(vi) Automatic data processing equipment, when purchased from other than a Federal Supply Service contract, involving $50,000 or more.

(vii) All contracts for scarce medical specialist services.

(viii) All contracts for the mutual use, or exchange of use, of specialized medical resources.

(ix) Agreements with other Federal agencies involving the expenditures of Veterans Administration funds of $5,000 or more.

(5) All proposed letter contracts and ensuing formal contracts involving expenditures of $5,000 or more.

(6) Any proposed agreement that is unique, novel or unusual (including all consignment agreements, regardless of anticipated dollar value).

(7) Step One of two-step formally advertised procurements when the anticipated value is more than $200,000.

(b) The review and concurrence of the General Counsel is also required for proposed change orders, final decisions or settlement agreements by contracting officers imposing additional liability upon the Government amounting to 10 percent of the amount originally obligated or $10,000, whichever is greater.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, the following require review and concurrence of the General Counsel:

(1) Changes or revisions to all contract clauses.

(2) Changes or revisions to prescribed VA contract forms.

(d) In addition to meeting the legal review requirements of paragraphs (a), (b) and (c) of this section, solicitations and contracts awarded and administered by the Office of Construction also require prior legal review by the General Counsel in the situations outlined below. Requests for review will be made and recorded by the contracting officer.

(1) Terminations, including final decision (cure) letters disputes and claims in excess of $25,000.

(2) Assignment of claims.

(3) Substantive modifications, including proceed orders, of contracts. For purposes of this paragraph any modification or proceed order which may result in a change in the contract price of more than $25,000 or any modification or proceed order granting a time extension of more than 20 days, will be deemed substantive.

(4) Proposed awards to other than the low evaluated bidder.

(5) Proposed no-awards for reasons other than excessive prices.

(6) Proposed consideration of late bids, late offers and later modifications of bids, when it is anticipated that the circumstances involved may result in protest.

(7) Findings and determinations to support negotiations for contracts over $100,000.

(8) Determinations of nonresponsibility and nonresponsiveness.

(e) When legal assistance is requested by any Central Office contracting activity, the contracting officer will brief the General Counsel regarding the facts and points of issue to facilitate prompt resolution.

(f) With regard to solicitations and contracts awarded and administered by the Central Office contracting activities, the General Counsel will be requested to participate in conferences where it is expected that legal problems or contract provisions will be considered, and in meetings attended by legal representatives of private parties or other Government agencies. Assigned procurement counsel will be requested to participate in the drafting of correspondence involving controversial or sensitive contractual matters of a significant nature.

(g) All protests against award will be reviewed by General Counsel in accordance with the provisions specified in 814.407–8(a).

(h) Excluded from these legal review requirements are:

(1) Agreements, licenses, easements, or deeds dealing with management, sale, or lease of properties acquired by the Veterans Administration as a result of liquidation of guaranteed, direct, acquired or vendee loans.

(2) Orders or contracts for procurement of leased telecommunications systems, installation of and changes to telephone PBX systems at individual Veterans Administration locations or orders issued under GSA area-wide contracts with the American Telephone and Telegraph Company and local telephone companies.

801.602–71 Processing contracts for legal/technical review.

(a) All competitively awarded solicitations requiring legal and/or technical review will have such reviews completed prior to opening of bids or proposals.

(b) *Department of Medicine and Surgery Field Stations, VA Marketing Center, VA Supply Depots.* (1) Proposed contracts or agreements specified in 801.602–70(a) (1), (2), (3), (4) (iii) through (vi), (5), (6) and (7) will be forwarded by the contracting officer directly to the Director, Office of Procurement and Supply (93). The Director, Office of Procurement and Supply will review the submissions and when applicable,

forward them directly to the General Counsel (025).

(2) Proposed sharing agreements and contracts for specialized medical services specified in 801.602–70(a)(4)(vii) and (viii) will be forwarded to Central Office in accordance with 815.204 for review and submission to the General Counsel (023).

(3) Proposed interagency agreements specified in 801.602–70(a)(4)(ix) will be forwarded by the approving official to the Director, Office of Procurement and Supply (91). The Director, Office of Procurement and Supply, will review the submissions and forward them directly to the General Counsel (025).

(4) Proposed utility connection agreements specified in 801.602–70(a)(4)(ii) will be forwarded by the contracting officer directly to the Director, Engineering Service. The Director, Engineering Service, will review the submissions and forward them to the General Counsel (025) through the Director, Office of Construction.

(5) Proposed change orders specified in 801.602–70(b) will be forwarded by the contracting officer directly to the Director, Engineering Service. The Director, Engineering Service will review the submissions and forward them to the General Counsel (025).

(6) Proposed final decisions or settlement agreements specified in 801.602–70(b) will be forwarded by the contracting officer directly to the Director, Office of Procurement and Supply. The Director, Office of Procurement and Supply, will review the submissions and forward them to the General Counsel (025).

(7) Proposed revisions to contract clauses specified in 801.602–70(c) will be forwarded by the contracting officer directly to the Director, Office of Procurement and Supply. If concurred in, the Director, Office of Procurement and Supply, will forward them directly to the General Counsel.

(c) *Department of Veterans Benefits field stations.* (1) All proposed State reimbursement contracts and Guidance Center and Vocational Rehabilitation contracts which are anticipated to ultimately involve the expenditure of $100,000 or more, will be forwarded by the contracting officer directly to the Director, Vocational Rehabilitation and Counseling Service, for review and approval. The Director, Vocational Rehabilitation and Conseling Service will review the submissions and forward them to the General Counsel.

(2) Any other proposed agreement or contract specified in 801.602–70(a) will be forwarded by the station Director to the appropriate Regional Director for coordination with Director(s) of the concerned service(s) and submission to the General Counsel.

(3) Any other element of contracting falling within 801.602–70 (b) and (c) will be processed in accordance with paragraph (b)(2) of this section.

(d) *Central Office.* Any element of contracting prescribed for legal review in 801.602–70 originating in Central Office, will be submitted for legal review by the contracting officer, or approving official in the case of agreements with other Government agencies, in accordance with department and staff office instructions.

801.502–72 Documents to be submitted for legal review.

The following documents are to be submitted for legal review:

(a) For proposed construction contracts, a copy of all solicitation documents, excluding drawings. These documents will be submitted no later than at the time they are furnished to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are furnished to prospective bidders.

(b) For sharing agreements and scarce medical specialist contracts, the documents referred to in 815.204(e).

(c) For all other proposed contracts and agreements, a copy of the documents to be used in the solicitation and/or award of contract, including any other documents which support the proposed procurement action, e.g., determination and findings in the case of negotiated procurement. Solicitation documents will be submitted no later than at the time they are mailed to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are mailed to prospective bidders.

(d) Contract changes described in 801.602–70(b) and 801.602–71(a)(5).

(1) A *draft* of the proposed change order. This should be prepared on an SF (Standard Form) 30, Amendment of Solicitation/Modification of Contract, and should specify the exact language to be used. Changes in work, time and cost should be specifically described.

(2) The contracting officer's statement describing the need for the changed work. This should also be accompanied by any back-up documentation. Include a statement that the work is or is not within the original scope of the contract.

(3) A copy of the pertinent technical sections of the Master Specifications which are involved in the proposed change work. Also, include a copy of the drawing which the contracting officer's technical representative (COTR) has marked up to delineate the proposed changed work.

(4) The COTR's technical evaluation of the proposed change.

(5) Costing information including:

(i) The contractor's cost proposal in the format required by the Changes Clause in the General Conditions.

(ii) The COTR's independent cost breakdown.

(iii) The architectural engineer's independent cost breakdown.

(iv) Any other relevent costing information, such as independent market research, which will be used as negotiating critera.

(v) The COTR's technical evaluation report on the contractor's cost proposal.

(6) The telephone numbers of the contracting officer and the COTR.

(7) If a proceed order is necessary for the continuation of logical progress of construction, the Office of Procurement and Supply should be called prior to issuing the document.

801.602–73 Certification by reviewing official.

In submitting proposed agreements or contracts received from field stations to the General Counsel, the Central Office reviewing officials will state on the transmittal memorandum or within the file that the proposal conforms to the Federal Acquisition Regulations and Veterans Administration Acquisition Regulations to the best of their knowledge.

801.602–74 Results of General Counsel's legal review.

(a) Upon completion of the review, the General Counsel will advise the appropriate Central Office activity or contracting officers as to whether the proposal was approved as submitted or provide them with the recommended changes. The appropriate Central Office activity will advise the contracting officer as to whether: (1) The submission was approved as is, or (2) provide a copy of the changes required. Where changes are required, the contracting officer will take immediate action to amend the solicitation document.

(b) The General Counsel's review will be completed as expeditiously as possible, with due regard to those procurement actions where circumstances dictate an unusually short period for completing procurement action.

801.603 Selection, appointment, and termination of appointment.

801.603–3 Appointment.

(a) When an employee's qualifications are established by his/her supervisor

and the individual is to be appointed as a contracting officer in accordance with 801.602(b), SF 1402, Certificate of Appointment, will be issued for display in the employee's working area. The certificate will be signed by the next higher superior who fills one of the positions listed under 801.602(a). (Existing appointments will be confirmed by issuance of SF 1402.)

(b) The appointee's class title of position will be shown beneath the appointee's name on the SF 1402. The name of the station and organization will be entered on the face of SF 1402.

801.603-4 Termination.

(a) Appointments will remain effective, unless revoked sooner, until the contracting officer is reassigned or employment is terminated.

(b) A new Certificate of Appointment will be issued and the old certificate terminated when there is any change in the contracting officer's grade and corresponding class title of position or limitation of authority.

801.603-70 Representatives of contracting officers.

(a) In carrying out the responsibilities of FAR 1.602-2, the contracting officer may designate another Government contracting officer, or other Government employees, or another contractor:

(1) To furnish technical guidance and advice or generally supervise the work performed under the contract. Such designations will be in writing and will define the scope and limitation of the representative's authority; and, will be addressed to the designee with a copy to be forwarded to the contractor except as indicated in 801.603-71. Except as provided in paragraph (c) of this section representatives will not be authorized to make any commitments or changes which will affect the price, quantity, quality or delivery terms. (All changes to a contract must be authorized by a contracting officer acting within the scope of his/her authority.)

(2) To take actions authorized in the contract, such as issue delivery orders, reject unsatisfactory items, order replacement of such items (materials or services) and, when necessary, declare contractor in default on specific delivery orders. Except for blood, this authority will be delegated only to other Government contracting officers under centralized indefinite delivery type contracts and the contract will so state. Centralized contracts for blood will provide that contracting officers at ordering offices are authorized to designate representatives and alternate representatives to place delivery orders subject to the same restrictions stated in paragraph (a)(3) of this section.

(3) To place oral or other informal delivery orders for items such as, but not limited to, bread, milk, and blood against local indefinite delivery type contracts on which blanket purchase arrangements have been established and funds have been obligated. The designation of representatives and alternates will be in writing and will define the scope and limitations of the representative's authority, and will be addressed to the employee(s) with a copy to the contractor. Such designations will be made only by the prime contracting officer and are not redelegable.

(b) In the administration of research and development contracts, any representative appointed pursuant to this section must be acceptable both to the contracting officer and the department head or staff office director concerned. When it is necessary to designate a representative under this paragraph (b), the clause in 852.270-1 will be observed.

(c) Contracting officers of the Office of Construction may authorize resident engineers assigned to that office to make individual contract changes within the following limits:

(1) Resident engineers in grade GS-14 may be authorized to make changes not exceeding $20,000 and 20 days of time extension.

(2) Resident engineers in grade GS-13 may be authorized to make changes not exceeding $10,000 and 10 days of time extension.

801.603-71 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, any contracting officer may, without prior notification to the contractor or vendor, designate the Chief, Storage and Distribution Section, or other competent personnel, to represent him/her in receiving and inspecting supplies, equipment and services at his/her station. Duties such as, but not limited to, the following will be performed by these designees:

(1) The inspection and certification as to compliance with the quality and quantity requirements of the purchase order or contract; and

(2) Inspection of supplies and equipment for condition and quantity and the acceptance of supplies, equipment, and services, based on quality inspection made by other authorized representatives.

(b) The Chief, Central Office Library Division, and the Chief, Library Service, at a field station, are designated the representatives of the contracting officer to receive, inspect and accept library books, newspapers, and periodicals. Purchase documents will specify that delivery will be made direct to the library.

(c) The Chief, Stock Control Division, VA Supply Depot, Hines, Ill., is hereby designated as the representative of each contracting officer and purchasing agent of the various marketing divisions of the VA Marketing Center, Hines, Ill., for the purpose of accepting, on behalf of the Veterans Administration, items purchased for stock. The Chief, Stock Control Division, may designate one or more employees of the Incoming Property Section, Supply Control Division, to represent him/her and authority is hereby delegated to such designees to accept such property on behalf of the Veterans Administration. Designations will be confined to those employees to whom such responsibility has been assigned by their position descriptions. The Chief, Fiscal Service, will be furnished a list of such designees. Where inspection for compliance with specifications, purity, quality, or other element must be made by the Service and Reclamation Division or other testing agency, acceptance will be contingent upon receipt of a property prepared inspection report.

(d) The Chiefs, Service and Reclamation Divisions, Veterans Administration Supply Depots at Hines, Ill., Somerville, N.J., and Bell, Calif., are hereby designated as the respresentatives of the contracting officers and purchasing agents of the various marketing divisions of the Veterans Administration Marketing Center, Hines, Ill., for the purpose of inspecting, when requested, supplies and equipment for compliance with technical, mechanical, operating, and other specifications. The results of such inspections will be forwarded to the Chief, Stock Control Division, Veterans Administration Supply Depot, Hines, IL 60141, when the item(s) involved is for stock, and to the appropriate contracting officer or purchasing agent for all other items.

(e) The Chief of each Service and Reclamation Division may designate one or more employees of his/her division to represent him/her; and, authority is hereby delegated to such designees to perform the inspection functions set forth in paragraph (d) of this section. (Designations shall be in writing with a copy furnished to the Director, Veterans Administration Marketing Center, Hines, Ill. Designations will remain in effect unless revoked. The reassignment

or termination of either the designee or the Chief, Service and Reclamation Division, issuing the designation will serve as an automatic rescission of the designation.)

801.603-72 Ratification of unauthorized contract awards.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom procurement authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, Chapters 1 and of Title 48, Code of Federal Regulations, and good procurement practice; e.g., certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met; i.e., certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, certification of current pricing data, price-cost analysis, administrative approvals, negotiations of appropriate contract clauses, etc.

(1) Contracting officers shall not ratify contractual commitments made by other personnel of VA without prior approval. At field stations, the approving authority is the director of the field station concerned. For Central Office contracting officers, the approving authorities are the heads of the departments and directors of the staff offices concerned, and the Director, Office of Administration. This approval authority shall not be redelegated.

(2) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(i) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(ii) The contracting officer will review the file and forward it to the approving authority with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the approving authority will coordinate the request for ratification with the Office of General Counsel or the District Counsel, as appropriate.

(iii) If ratification is authorized, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate.

(b) In the case of otherwise proper contract awards made by contracting officers in excess of the limits of their delegated authority, the need for ratification will be brought to the attention of the head of the contracting activity. That individual will take such action as may be indicated to preclude future instances of such awards.

801.670 Special and limited delegation.

The authority vested in the Administrator to execute, award and administer contracts, purchase orders and other agreements for the expenditure of funds involved in the acquisition of the specific services set forth in this 801.670 and its subsections, is hereby delegated to the Agency Procurement Executive for further delegation to those employees appointed or designated to the positions specified in these subsections.

801.670-1 Architectural and engineering services—Central Office.

(a) Authority to execute, award, and administer contracts and related documents involving the expenditure of funds for the acquisition or architectural and engineering services and of services of artists for works of art authorized in connection with new buildings, is delegated to the following:

(1) Director, Office of Construction.

(2) Project Directors.

(b) The contracting officers named in paragraph (a) of this section may designate the Deputy Project Director and/or the Senior Project Supervisors as a contracting officer; and, authority is hereby delegated to such subordinates to execute, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority.

801.670-2 Construction contracts—Central Office.

(a) Authority to execute, award, and administer contracts and related documents involving the expenditure of funds for the acquisition of construction services is delegated to the following:

(1) Director, Office of Construction.

(2) Project Directors.

(b) The contracting officers named in paragraph (a) of this section may designate the Deputy Project Director and/or the Senior Project Director Supervisors as a contracting officer; and, authority is hereby delegated to such subordinates to execute, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority.

801.670-3 Utility-connection and other site facility contracts—Central Office.

(a) Authority to execute, award, and administer contracts and related documents involving the expenditure of funds for the acquisition of utility connections and other site facilities is delegated to the following:

(1) Director, Office of Construction.

(2) Director of Engineering.

(3) Chief, Utilities Contract Administration Division.

(b) Contracting officers identified in paragraph (a) may delegate contracting authority to the Chief, Supply Service, at the facility involved.

801.670-4 Construction contracts—field stations, supply depots.

The Chief, Supply Service, at a field station, the Director, VA Supply Depot, and any employee designated by them in accordance with 801.602(b) of this chapter are authorized to execute, award, and administer contracts for construction projects assigned by the Chief Medical Director, under delegation of the Director, Office of Construction, or those accomplished with station or depot funds. Contracting officers, in executing, awarding and administering construction contracts, including those for maintenance and repair projects, will be guided by Federal Acquisition Regulations, Veterans Administration Acquisition Regulations, and procedures established by the Director, Office of Construction.

801.670-5 Publications Service—Central Office.

Authority to place orders for printing services against contracts established by the Government Printing Office, and for specialty forms, tabulating cards, marginally punched continuous paper, and art and design services, against contracts established by the General Services Administration, and for printing, duplicating, or other reproduction services, as well as microfilming, against contracts established by the Office of Procurement and Supply, is delegated as follows:

(a) To the Director, Publications Service, Office of Administration, Central Office.

(b) To the Chief, Printing Procurement Division, and the Supervisors of both the Commercial and Government contracting activities for orders not exceeding $10,000 per transaction, when so delegated by the Director, Publications Service.

801.670-6 Issue of Government bills of lading—transportation of remains of deceased beneficiaries.

The Chief, Medical Administration Service, at a Veterans Administration medical center, or the person acting in that capacity, is delegated authority to issue and to sign as "Issuing Officer," Government bills of lading for the shipment of the remains of beneficiaries expiring in a Veterans Administration medical center.

801.670-7 Issue of Government bills of lading—transportation of property.

(a) Authority to issue and sign Government bills of lading for the transportation of supplies, material, and equipment is delegated to the following:

(1) Chiefs, Transportation Sections, VA Supply Depots.

(2) Chief, Warehouse Section, VA Forms and Publications Depot.

(3) Traffic Manager, Office of Procurement and Supply, Central Office.

(b) The employees named in paragraph (a) of this section may designate one or more of their subordinates as a contracting officer; and, authority is hereby delegated to such subordinates to issue and sign Government bills of lading for the transportation of supplies, material, and equipment. Designations will be in writing and specifically set forth the scope and limitation of the designee's authority.

801.670-8 Building and Supply Service—Central Office.

(a) Authority is delegated to the Chief, Supply Division, Building and Supply Service, Office of Administration, VA Central Office, to execute, award and administer contracts, purchase orders and other agreements for the acquisition of personal property or services and for the sale of personal property for Central Office activities as set forth below:

(1) Small purchases pursuant to FAR Part 13.

(2) Orders under existing Federal Government contracts, not to exceed the maximum order limitation specified in the contract.

(3) ADP maintenance contracts, not to exceed the small purchase limitation specified in FAR Part 13.

(4) Special space alteration services delegated to agencies by General Services Administration for space occupied by the VA Central Office within the National Capital Region.

(b) The contracting officer named in paragraph (a) of this section may designate one or more subordinates as a contracting officer; and, authority is hereby delegated to such subordinates to execute, award and administer contracts, purchase orders, and other agreements for the acquisition of supplies, equipment, nonpersonal services, and for the sale of personal property. Designations will be in writing, specifically state the scope and limitation of the designee's contractual authority and shall be confined to only those subordinates who are actively engaged in purchasing and contracting functions.

(c) When exercising the authority contained in this section, the designated employee is identified as the contracting officer and will function within the limits prescribed by law, VA Acquisition Regulations and the Federal Acquisition Regulations.

801.670-9 Architectural and engineering services—field stations, supply depots.

The Chief, Supply Service, at a field station, the Director, VA Supply Depot, and any employee designated by them in accordance with 801.602 of this chapter are authorized to execute, award, and administer contracts for the acquisition of architectural and engineering services when the cost of such services are chargeable to station or depot funds.

801.670-10 Loan guaranty program.

(a) The authority to execute, award, and administer contracts, purchase orders, and other agreements for the expenditure of funds for supplies or services necessary to carry out the provisions of chapter 37 of Title 38, United States Code, including but not limited to contracts for the services of technical fee personnel, and contracts for the maintenance, protection, repair, rehabilitation, enlargement, completion, conversion, or demolition of properties acquired under chapter 37 of Title 38, United States Code, is delegated to:

(1) Chief Benefits Director.

(2) Director, Loan Guaranty Service.

(3) Director, Regional Office.

(4) Director, VA Medical and Regional Office Center.

(5) Director, VA Center.

(6) Loan Guaranty Officer.

(7) Assistant Loan Guaranty Officer.

(b) The contracting officers named in paragraph (a) of this section may designate one or more of their subordinates as a contracting officer; and, authority is hereby delegated to such subordinates to execute, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority.

801.670-11 Education and rehabilitation programs.

(a) Except as stated in this section, the authority to negotiate, award, and administer contracts, purchase orders, and other agreements for the expenditure of funds for the vocational rehabilitation program is delegated to:

(1) Chief, Benefits Director.

(2) Director, Vocational Rehabilitation and Counseling Service.

(3) Director, Regional Office.

(4) Director, VA Medical and Regional Office Center.

(5) Director, VA Center.

(b) The Chief Benefits Director, and the Director, Education Service and Director, Vocational Rehabilitation and Counseling Service, are delegated authority to execute, award and administer contracts, agreements, or supplements thereto for correspondence courses. The authority of the Director, Vocational Rehabilitation and Counseling Service, is limited to correspondence courses for the vocational rehabilitation program.

(c) The Chief Benefits Director, Director, Vocational Rehabilitation and Counseling Service, and Directors, Regional Office and VA Medical and Regional Office Centers, are delegated authority to execute, award and administer contracts, agreements, or supplements thereto with educational institutions and other approved agencies for the purpose of providing services relative to the counseling of persons eligible for vocational rehabilitation or educational assistance under Title 38, United States Code.

(d) The Chief Benefits Director, and the Director, Education Service, are delegated authority to execute, award and administer contracts, agreements, or supplements thereto with State approving agencies for services relating to approving courses offered by educational institutions and training establishments.

(e) The contracting officers named in paragraphs (a), (b), and (c) of this section may designate one or more of their subordinates and authority is hereby delegated to such subordinates to negotiate, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraphs (a), (b), and (c) of this

section. Designation of subordinates will be in writing by name or position title and will specifically state the scope and limitations of the contractual authority of each designee.

801.670–12 Medical, dental, and ancillary service.

(a) The Chief of Staff, the physician assigned the responsibility for the ambulatory care function, and Chief, Medical Administration Service, at a Veterans Administration station are delegated authority to execute authorizations for medical, dental, and ancillary services under $10,000 per authorization when such services are not available from existing contracts or agreements. Forms specified in Part 853 of this chapter will be used for this purpose and when ordering such services from existing contracts.

(b) The contracting officers named in paragraph (a) of this section may designate one or more or their subordinates to execute the forms for purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically set forth the scope and limitations of the designee's authority.

801.670–13 Department of Memorial Affairs.

Authority for the Department of Memorial Affairs to procure supplies, equipment and nonpersonal services is delegated as follows:

(a) Authority to execute, award, and administer contracts and related documents involving the expenditures of funds for the acquisition and transportation of headstones and markers is delegated to the Director, Monument Service, the Assistant Director for Procurement, and the Chief, and Assistant Chief, Funds and Contracts Division, of the Monument Service.

(b) Authority to issue and sign Government bills of lading for the transportation of headstones and markers is further delegated to:

(1) Staff Assistant for Transportation, Monument Service.

(2) Chief, Transportation Division, Monument Service.

(c) Authority to procure, in emergency situations when the servicing supply organization cannot be utilized, and in accordance with the provisions of FAR Part 13, supplies, equipment, and nonpersonal services (including construction) required for the operation of national cemeteries is delegated to:

(1) Chief Memorial Affairs Director and Deputy Chief Memorial Affairs Director.

(2) Director and Deputy Director, National Cemetery Area Office.

(d) Authority to procure items and nonpersonal services up to $300 per transaction for the operation of national cemeteries is delegated to the Director of each national cemetery. The authority is to be used only in emergency situations when the servicing supply organization cannot be utilized, and the method of purchase is limited to the use of SF 44, Purchase Order—Invoice—Voucher, (FAR 13.505–3).

801.670–14 Letters of agreement.

(a) Authority to execute, award, and administer letters of agreement (subject to the limitation prescribed in 837.270) is delegated to the following:

(1) General Counsel.

(2) Director, Office of Personnel and Labor Relations.

(3) Chief Medical Director.

(4) Chief Benefits Director.

(5) Chief Memorial Affairs Director.

(6) Director, Office of Procurement and Supply.

(7) Inspector General.

(8) Directors, Regional Medical Education Centers (limited to obtaining instructors and training pursuant to section 4122 of Title 38, United States Code).

(9) Directors, Domiciliary and Medical Centers (limited to obtaining peer review of research (see 837.270)).

(b) The contracting officers named in paragraph (a)(1) through (7) of this section may designate one or more subordinates, and authority to execute the same duties and responsibilities is hereby delegated to such subordinates. Such subordinates will be no more than one organizational level below the contracting officers designated in paragraph (a) of this section, except that the Chief Medical Director may designate the Regional Directors. All such designations will be in writing, will specifically state the scope and limitations of the designees' contractual authority, and will also specifically prohibit further delegation by the designees. Copies of the delegation will be submitted to the Office of Procurement and Supply (93).

(c) Copies of all letters of agreement issued by the designees identified in paragraphs (a) and (b) will be forwarded to the servicing contracting activity in order that the procurement action may be entered into the Federal Procurement Data System.

801.670–15 $300 small purchase authority for Prosthetics Service personnel.

As prescribed by the VA Department of Medicine and Surgery Manual M–2, Part IX, Chapter 4, Section A, Prosthetics Service personnel at VA Medical Centers may issue orders for open market prothetic items or prosthetic items not in excess of $300 per transaction. VA Form 10–2421, Prosthetics Authorization and Invoice will be used for such orders.

801.680 Contracting authority of the Inspector General.

(a) As provided by section 6(a) of Pub. L. 95–452 (October 12, 1978), the Inspector General is authorized to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of the Act, to the extent and in such amounts as may be provided in advance by appropriations Acts.

(b) In exercising the special authority provided in paragraph (a) of this section, the Inspector General may request the assistance of the servicing Supply Service in developing appropriate contract or agreement documents.

(c) If, in the opinion of the Inspector General, a reason to exercise the special authority does not exist, the services required by the Inspector General shall be obtained by the servicing Supply Service in accordance with the provisions of FAR and VAAR.

(d) Contracts entered into under the authority of paragraph (a) of this section are subject to the provisions of the Federal Acquisition Regulations. In addition, such contracts are subject to those provisions of VAAR which implement and supplement the FAR on matters other than those stemming from or related to delegations of the Administrator's contracting authority.

PART 802—DEFINITIONS OF WORDS AND TERMS

Subpart 802.1—Definitions

802.100 Definitions.

In the Veterans Administration, "head of contracting activity" means the Director, Procurement Service, Central Office; Project Directors, Office of Construction; Director, Building and Supply Service, Central Office; Director, Publications Service, Central Office; Director, Monument Service, Central Office; Chiefs, Marketing Divisions, VA Marketing Center; and the Chief, Supply Service at a field facility.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 803.1—Safeguards

Sec.
803.101 Standards of conduct.
803.101–3 Agency regulations.

Subpart 803.2—Contractor Gratuities to Government Personnel

803.203 Reporting suspected violations of the Gratuities clause.

Subpart 803.3—Reports of Identical Bids and Suspected Antitrust Violations

803.301 General.
803.303 Reporting suspected antitrust violations.

Subpart 803.4—Contingent Fees

803.408 Evaluation of the SF 119.
803.408–1 Responsibilities.
803.409 Misrepresentations or violations of the Convenant Against Contingent Fees.

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.

Subpart 803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

803.603 Responsibilities of the contracting officer.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 803.1—Safeguards

803.101 Standards of conduct.

803.101–3 Agency regulations.

(a) Standards of conduct for all VA employees, including contracting officials, are found in 38 CFR Part O. From time to time supplementing guidance regarding Agency-authorized exceptions to FAR 3.101–2 and disciplinary measures for persons violating the standards of conduct, may be issued by the Administrator or the designated VA Ethics Officer. Heads of contracting activities will ensure that all employees are cognizant of the applicable regulations.

(b) Requirements for employee financial disclosure are contained in 38 CFR Part O, Subpart D. Generally contracting officers and all supervisory contracting officials must file financial disclosure statements.

(c) *Ethics in Government Act.* Former employees are not specifically prohibited under section 207 of Title 18, United States Code, from acting as consultants for the Veterans Administration. However, former employees are prohibited, for certain periods of time, from representing or otherwise acting as agents of other parties for the purpose of obtaining Government contracts.

(d) The certification in 852.203–70 will be made a part of all solicitations.

Subpart 803.2—Contractor Gratuities to Government Personnel

803.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities Clause will be reported to the head of the contracting activity through the contracting officer. The head of the contracting activity will confirm that violations are evident and that reporting these violations to officials designated in paragraph (b) would be warranted.

(b) When violations of the Gratuities Clause warrant actions described in FAR 3.204(c) the head of the contracting activity will request instructions from the VA General Counsel (025) through the Director, Office of Procurement and Supply (90).

Subpart 803.3—Reports of Identical Bids and Suspected Antitrust Violations

803.301 General.

Executive Order 10936 of April 1961 requiring reporting of identical bids to the Attorney General has been revoked by Executive Order 12430 of July 1983. Identical bids and other suspected antitrust violations will be reported in the manner prescribed in FAR 3.303 and this subpart.

803.303 Reporting suspected antitrust violations.

Instances of possible antitrust violations will be reported by procurement activities in accordance with FAR 3.303 to the Director, Office of Procurement and Supply (90) for review and submission to the General Counsel, who will determine whether or not to submit the case to the Attorney General.

Subpart 803.4—Contingent Fees

803.408 Evaluation of the SF 119.

803.408–1 Responsibilities.

When determining an appropriate course of action with respect to information furnished on a Standard Form 119, Statement of Contingent or Other Fees, the head of the contracting activity will review the contracting officer's recommendations. The review by the head of the contracting activity shall be documented on the contract file.

803.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Suspected violations of the Covenant Against Contingent Fees shall be reported to the head of the contracting activity for evaluations as prescribed in FAR 3.408–2.

(b) Before taking any administrative action the head of the contracting activity shall consult with their respective VA District Counsels. Contracting officers in Central Office shall consult with the Office of the General Counsel.

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.

Suspected violations of the Anti-kickback Act will be reported to the Office of the General Counsel.

Subpart 803.6—Contracts With Government Employees Or Organizations Owned or Controlled by Them

803.603 Responsibilities of the contracting officer.

Excepting those contracts which pertain to the sale of manual arts and occupational therapy products, Veterans Administration contracting officer shall, prior to entering into a contract with Government employees or business concerns substantially owned or controlled by Government employees, make the written determinations required by FAR 3.603.

PART 804—ADMINISTRATIVE MATTERS

Subpart 804.1—Contract Execution

804.101 Contracting officer's signature.

(a) Contracting officers will personally sign all contracts, changes thereto and contract enforcement correspondence in accordance with FAR 4.101. The signing of the contractual documents will not be accomplished by facsimile stamps.

(b) In the event a contracting officer's name and title has been typed, stamped or printed on the contract and the contracting officer is not available to sign the contract, a designee may sign for the contracting officer. Such designee must be a contracting officer as specified in 801.602 and must have specific contracting authority to cover the contract to be signed.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 805—PUBLICIZING CONTRACT ACTION

Subpart 805.2—Synopses of Proposed Contracts

Sec.
805.202 Exceptions.
805.205 Special situations.
805.207 Preparation and transmittal of synopses.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 805.2—Synopses of Proposed Contracts

805.202 Exceptions.

(a) In accordance with 8(e)(1)H of the Small Business Act, as amended, competitive procurements of perishable subsistence are exempted from the requirement for synopsizing. This execption does not apply to annual requirements-type contracts (such as milk and bread) for which the synopsizing can be timely accomplished.

(b) Scarce medical specialist and mutual use, or exchange of use contracts negotiated under the authority of 38 U.S.C. 4117 and 5053, are exempt from the synopsizing requirement, when such contract awards are made pursuant to the authority contained in 815.204–70. This exemption is based upon Comptroller General Decision B–195559.2, dated November 2, 1981.

805.205 Special situations.

To facilitate the use of the alternative procedure in FAR 5.205(c)(2), contracting officers are hereby delegated authority to procure paid advertising in a daily newspaper circulated in the local area, for the purpose of publicizing a proposed procurement of architect-engineer services expected not to exceed $10,000.

805.207 Preparation and transmittal of synopses.

(a) Synopses of proposed procurements will be forwarded to the Department of Commerce for publication in the Commerce Business Daily (CBD) via teletype Advanced Records System (ARS).

(1) For this purpose the CBD synopsis form will be completed in accordance with the instructions on the reverse side of that form and forwarded to the teletype office with completed Standard Form 14, Telegraphic Message, as a cover transmittal. "See attached" will be noted on the SF 14 in the block marked "Message to be transmitted."

(2) Routing symbol "RUCHODY" will be used in transmitting the material to the Department of Commerce.

(b) At such time as an architect-engineer evaluation board is ready to advertise for architect-engineer services, it must establish the geographic area within which architect-engineer firms (including joint ventures) will be considered. The area determined must be large enough to assure selection of three to five firms highly qualified for the particular project involved, but not so large as to make the evaluation process unduly burdensome.

(1) For large projects, the area will generally be Statewide, but may be limited to sections of States or the metropolitan areas. Where there is a scarcity of qualified firms, the area of consideration may include more than one State. In addition, special consideration may be given to projects located near State lines, particularly where the economic, cultural and social centers for the worksite are located across the State boundary in a contiguous State.

(2) For small projects, the geographic area of consideration is appropriately local, but will be wide enough to assure the selection of at least three highly qualified firms.

(3) Special problems of evaluation and of contract administration arise with respect to joint-venture applications representing numerous firms from all over the nation organizing with a small local firm not otherwise qualified. Accordingly, notices may contain a statement that "Joint-venture participation will be considered and evaluated on the demonstrated interdependency of each joint-venture member on the other, which makes that union a viable design force for this particular project."

SUBCHAPTER B—ACQUISITION PLANNING

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

808.001 Priorities for use of Government supply sources.

Subpart 808.3—Acquisition of Utility Services

808.304–1 GSA long-term contracts.
808.304–2 GSA area-wide contracts.
808.304–4 Consolidated purchase, joint use, or cross-service.
808.304–5 Agency acquisition.
808.307–2 Precontract review by GSA.
808.307–70 Alternative precontract review by VA.

Supbart 808.4—Ordering From Federal Supply Schedules

808.401 General.
808.404–1 Mandatory use.
808.404–3 Requests for waivers.
808.405–5 Termination for default.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

808.001 Priorities for use of Government supply sources.

(a) Procurement will be effected from the following sources in the descending order of priority as indicated herein:

(1) VA excess.

(2) VA supply depot stock.

(3) Other government agencies excess.

(4) Federal Prison Industries.

(5) Procurement list of products available from the Committee for Purchase from the Blind and Other Severely Handicapped.

(6) GSA stock and other Government Agency Inventory.

(7) VA decentralized contracts.

(8) Mandatory Federal Supply Schedule contracts.

(9) Optional use Federal Supply Schedule contracts.

(10) Commercial concerns, educational, or nonprofit institutions, as applicable.

(b) *Public exigency.* A source lower in priority may be utilized in a public exigency as defined in FAR 15.202 and in Federal Property Management Regulation 41 CFR 101–25.101–5. Justification for each deviation must be included in the procurement file.

(c) *Eligible Beneficiaries.* When it is determined that a therapeutic benefit to eligible beneficiaries will result from personal selection of shoes, clothing and incidentals, acquisition from the Veterans Canteen Service or commercial sources is authorized. When dress shoes similar to Federal Prison Industries, Inc., Style No. 86–A are purchased from commercial sources, FPI clearance No. 1206 will be cited on the purchase document.

Subpart 808.3—Acquisition of Utility Services

808.304–1 GSA long-term contracts.

(a) If the contracting officer determines that a GSA long-term contract may be justified in accordance with the provisions outlined in FAR 8.304–1, GSA will be requested to negotiate a long-term contract.

(b) The request will be submitted to General Services Administration, Federal Supply and Services, Public Utilities Management Division, Washington, D.C. 20406. It will state the reason a long-term contract is believed justified and will include the following information:

(1) Copy of existing contract or agreement.

(2) Copies of all current rate schedules.

(3) Record of past 12 months usage, preferably in the form of copies of bills or invoices.

(4) Statement regarding any anticipated or planned future changes.

(5) Point and characteristics of delivery.

(6) Statement covering equipment or connection requirements and ownership.

(7) Names and addresses of all suppliers, both regulated and unregulated, of the required service.

808.304–2 GSA area-wide contracts.

When a GSA area-wide contract for the required utility service is available, utility services will be procured thereunder as provided by FAR 8.304–2, unless special rates can be negotiated under the area-wide contract or a separate contract. When provided in the area-wide contract, connection agreements may also be obtained thereunder.

808.304–4 Consolidated purchase, joint use, or cross-service.

If a consolidated purchase, joint use, or cross-service agreement would be advantageous, an appropriate memorandum of understanding will be entered into, as provided by FAR 8.304–4. If assistance is required, requests will be forwarded to GSA.

808.304–5 Agency acquisition.

When either GSA area-wide contracts, GSA long-term contracts, consolidated purchase, joint use, or cross-service agreements are not available, the contracting officer will obtain required utility services and/or connections as provided in FAR 8.304–5.

808.307–2 Precontract review by GSA.

Except as provided in FAR 8.307–3, proposed utility procurements meeting the criteria of FAR 8.307–1 will be forwarded to General Services Administration, Federal Supply and Services, Public Utilities Management Division, Washington, D.C. 20406, for prior review.

808.307–70 Alternative precontract review by VA.

Prior review of contracts for utility connections and contracts for combined utility connections and services consumated by the designated contracting officer(s) in Central Office will be made by technical and administrative personnel in the Office of Construction, when required by FAR 8.307–1.

Subpart 808.4—Ordering From Federal Supply Schedules

808.401 General.

The Director, VA Marketing Center, advertises, negotiates, awards the contracts, and is responsible for contract administration for FSS (Federal Supply Schedule) Groups 65 and 89. The Director issues the Federal Supply Schedules containing the necessary information for placing delivery orders with the contractors for the above FSS Groups.

808.404–1 Mandatory use.

The contracting officer shall submit a request to the Director, VA Marketing Center to negotiate a separate contract when requirements will exceed the maximum order limitation cited in the contract.

808.404–3 Requests for waivers.

When an ordering agency finds an item which is identical to an item which is the lowest cost acceptable item available from Federal Supply Group 65 and 89 but available at a lower delivered price from a lower priority source, the ordering activity must obtain the approval of the Director, VA Marketing Center, prior to initiating purchase action with the lower priority source. An identical item is defined as: (a) Nondrug item—same manufacturer and model number, (b) drug item—having the same NDC (National Drug Code) number. Approval requests must identify the item available on contract including contract number, item number, and description, vendor and delivered price. A description of the proposed item, name of the vendor, quantity, proposed price, and the name of the vendor representative making the offer must be included.

808.405–5 Termination for default.

The Director, VA Marketing Center is the authorized contracting officer to terminate for default any and all items covered by Federal Supply Groups 65 and 89. When notified of default action by the Director, VA Marketing Center, the contracting officer shall:

(a) Refuse to accept further performance by the contractor;

(b) Place no further orders with the contractor;

(c) Repurchase against the contractor in default from sources designated by the Director, VA Marketing Center; or

(d) Proceed as otherwise directed by the Director, VA Marketing Center.

PART 809—CONTRACTOR QUALIFICATIONS

Subpart 809.1—Responsible Prospective Contractors

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809.104–2 Special standards.
809.106–1 Conditions for preaward surveys.

Subpart 809.2—Qualified Products

809.206 Acquiring qualified products.
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Subpart 809.4—Debarment, Suspension, and Ineligibility

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809.406 Debarment.
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Subpart 809–5—Organizational Conflicts of Interest

809.504 Contracting officer's responsibilities.
809.505 General rules.
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Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

Authority: 38 U.S.C. 210, 40 U.S.C. 486(c) and 42 U.S.C. 2453(c).

Subpart 809.1—Responsible Prospective Contractors

809.104–2 Special standards.

Standards applicable to subsistence will be established based on preaward surveys prescribed by 809.106–1.

809.106–1 Conditions for preaward surveys.

(a) Preaward on-site evaluation will be made for contracts covering the products and services of bakeries, dairies, ice cream plants and laundry and dry cleaning activities. A committee under the direction of the contracting officer and composed of representatives of the medical service and/or using service chiefs or designees appointed by the station director will inspect and evaluate the plant, personnel, equipment and processes of the prospective contractor. Prior to any inspection, the contracting officer will inquire whether the plant has been recently inspected and approved by another Veterans Administration station or Federal agency. Approved inspection reports of another Veterans Administration station will be accepted by Veterans Administration stations and approved inspection reports of other Federal agencies may be accepted as satisfactory evidence that the facilities of the bidder meet the requirements of the Invitation for Bid, provided inspection was made not more than 6 months prior to the proposed contract period.

(b) Preaward on-site evaluation of dairy plants will not be made by the Veterans Administration when acceptable bids are received from suppliers of those dairy products designated as No. 1 in the Federal Specifications. Suppliers must have received, prior to opening of bids, a pasteurized milk rating of 90 percent or more for the type of product being

supplied, on the basis of the U.S. Public Health Service milk ordinance and code. Such rating must be current (not over 2 years old), and will have been determined by certified State milk sanitation rating officer in the State of origin or by the Public Health Service and will continue at 90 percent or more during the period of the contract. Firms not so rated may only offer dairy products designated as No. 2 in the Federal Specifications. Award to such firms may be made only after completion of a preaward on-site evaluation conducted in accordance with paragraph (a) of this section.

(c) Prior to any open market purchase of fresh bakery products (such as pies, cakes, cookies), the plant where these products are produced or prepared will be inspected and evaluated as provided in paragraph (a) of this section. On-site evaluation will be made at least annually.

Subpart 809.2—Qualified Products

809.206 Acquiring qualified products.

(a) Federal Qualified Products Lists are lists of products qualified under the applicable Federal or interim Federal specification. Such lists may be used as authorized by the appropriate department or staff office. Requests to receive copies of existing Federal Qualified Products Lists will be submitted to the Director, Office of Procurement and Supply (91) for transmittal to General Services Administration. Requests to establish a Federal Qualified Products List for a commodity will be submitted to the Director, Office of Procurement and Supply (91), supported by one or more of the following justifications:

(1) The time required for testing after award would unduly delay delivery of the supplies being purchased.

(2) The cost of repetitive testing would be excessive.

(3) The tests would require expensive or complicated testing apparatus not commonly available.

(4) The interest of the Government requires assurance, prior to award, that the product is satisfactory for its intended use.

(5) The determination of acceptability would require performance data to supplement technical requirements in the specification.

(b) VA Qualified Products Lists are lists of products qualified by the VA under VA specifications or purchase descriptions. Such lists may be established as authorized by the appropriate department or staff office.

(1) VA Qualified Products Lists will be supported by one or more of the justifications in 809.206(a) or the following:

(i) Where tests result in substantial or repetitive rejections, or

(ii) Where professional requirements of performance, balance, design, or construction cannot economically be developed into clear specifications, and professional judgment is required in determining the acceptability of items meeting VA requirements.

(2) In the event that the requirement for VA Qualified Products List is established for any given product, known suppliers of the type of item required will be notified and given an opportunity to submit samples for inspection, and test based upon guarantee that they will deliver the item to be inspected, provided the item is acceptable. A qualified products list shall not be used as a means of restricting competition to favored suppliers. All suppliers so desiring shall be given an opportunity to have their products tested for acceptability.

(3) Costs involved in the inspection and test will be borne by the VA. The supplier will be required to bear the cost of the sample and its transportation to the inspecting point. After inspection, the sample shall be returned to the supplier "as is" unless it is destroyed by inspection or disposed of or retained by the VA as authorized by the supplier.

(4) Items which have been accepted for the qualified products list will be subject to constant review for compliance with the applicable specification. Where there is a variance between the specification and item, the supplier shall be requested to furnish an item that conforms to the specification. Failure or inability on the part of the supplier to provide an item that conforms to the specification will be sufficient cause to consider the item unacceptable in response to subsequent invitations.

(5) The acceptance of an item for the qualified products list does not guarantee acceptance in any future purchase, nor does it constitute a waiver of the requirements of the specifications as to acceptance, inspection, testing or other provisions of any future contract involving such item.

(6) Bid invitations covering products which have been included in a qualified products list will include the clause set forth in FAR 52.209–1 or 52.209–2 as applicable.

809.270 Qualified products for convenience/labor saving foods.

(a) Each VA medical district's Dietetic Service representative is delegated authority to establish a common Qualified Products List for convenience/labor-saving foods for the use of medical centers within his/her respective district. The medical district Dietetic Service representative will notify the Director, Dietetic Service, VA Central Office, of the establishment of each Qualified Products List and amendments to each established list.

(b) Each medical center is authorized to use its district Qualified Products List. Each medical center may test food of its own choice, but will submit test results to the district Dietetic Service representative. The Dietetic Service representative will coordinate and consolidate the test results and recommendations of individual medical centers with other medical centers within the district in order to avoid unnecessary duplication.

(c) The approved medical district Qualified Products List will be furnished each Supply office within the district. The Supply Services will have access to complete and accurate records of established Qualified Products Lists and all test results. These records will be made available to the Office of Procurement and Supply, VA Central Office, upon request.

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

This subpart prescribes procedures for debarring or suspending contractors and the inclusion of those contractors on the consolidated list of debarred, suspended or ineligible bidders.

809.403 Definitions.

"Fact-finding" as used in this subpart shall mean a gathering of facts which is accomplished through informal meetings with the contractor, submission of information, either verbally or in writing, by the contractor, and any other method deemed appropriate by the debarring official.

809.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Office of Procurement and Supply (93) shall be responsible for the action described in FAR 9.404(c) (1), (2), (4) and (6).

(b) The Office of Procurement and Supply (91) shall be responsible for the actions described by FAR 9.404(c) (3) and (5).

809.405 Effect of listing.

The Director, Office of Procurement and Supply shall make the determinations required by FAR 9.405(a) and 9.405–2 to solicit from, award contracts to, or consent to subcontracts with contractors whose names are

included on the consolidated list of debarred, suspended or ineligible contractors.

809.406 Debarment.

809.406–1 General.

(a) The Director, Office of Procurement and Supply is the debarring official for the Veterans Administration.

(b) Any Veterans Administration employee may submit a recommendation to the Director, Office of Procurement and Supply that a firm or individual be debarred by the Veterans Administration.

(c) Such recommendations must be supported by documentary evidence of a cause listed in FAR 9.406–2.

809.406–3 Procedures.

(a) The Director, Office of Procurement and Supply shall, upon a receipt of recommendations for debarment, appoint a designee to conduct an investigation, initiate debarment and present the facts to the debarring official for consideration and action.

(b) The appointed designee shall issue the proposed debarment notice as required by FAR 9.406–3(c).

(1) If no reply is received from the firm or individual to the notice of proposed debarment, the case will be referred to the debarring official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the appointed designee prior to making a recommendation to the debarring official. If the contractor's submission in opposition to the debarment raises a genuine dispute over facts material to the proposed debarment, the designee appointed by the Director, Office of Procurement and Supply will conduct a fact-finding as prescribed by FAR 9.406–3(b)(2).

(3) Upon completion of the fact-finding with respect to disputed facts, a written finding of facts will be provided to the debarring official.

(4) The debarring official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

809.406–4 Period of debarment.

The period of debarment will be based upon the circumstances involved but will not, except in unusual circumstances, exceed a period of 3 years. The Director, Office of Procurement and Supply may for those firms or individuals debarred by the Veterans Administration decide to remove the debarment, reduce the period of debarment, or amend the scope of the debarment, if indicated, after review of documentary evidence submitted by or in behalf of the contractor setting forth the appropriate grounds for granting of such relief. Such grounds may be, but are not limited to, newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management or the elimination of the cause for which debarment was imposed.

809.407 Suspension.

809.407–1 General.

The Director, Office of Procurement and Supply is the suspending official for the Veterans Administration.

809.407–3 Procedures.

(a) Suspension may be recommended by any Veterans Administration employee. These recommendations will be submitted to the Director, Office of Procurement and Supply and must be supported by documentary evidence of a cause listed in FAR 9.407–2.

(b) The Director, Office of Procurement and Supply shall designate an official to initiate suspension, conduct an investigation and present the facts to the suspending official for consideration and appropriate action.

(c) The designee shall issue the proposed suspension notice as required by FAR 9.407–3(c).

(1) If no reply is received from the contractor to the notice of proposed suspension, the case will be referred to the suspending official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the official conducting the suspension proceedings prior to referring the case with recommendations to the suspending official. If the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the proposed suspension, the designee of the Director, Office of Procurement and Supply will conduct a fact-finding as prescribed by FAR 9.407–3(b)(2).

(3) Upon completion of the informal hearing with respect to the disputed facts, a written findings of facts will be prepared and presented to the suspending official.

(4) The suspending official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

Subpart 809.5—Organizational Conflicts of Interest

809.504 Contracting officer's responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and/or potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by his/her own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Government. In that case, the contracting officer may set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible, with the approval of the head of the contracting activity.

(d) The contracting officer will, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract and/or the proposed use of subcontractors during the contract.

809.505 General rules.

The determination that organizational conflicts of interest exist can only be made when facts surrounding individual contracting situations are known. Therefore, it is up to the contracting officer to exercise common sense, good judgment and sound discretion in making such a determination and to take steps to mitigate to the greatest extent possible organizational conflicts of interest. The contracting officer will be guided by at least two underlying principles. These are that organizational conflicts of interest may result from (a) conflicting roles and interests of the contractor, in which case he/she would be unable to give unbiased and objective advice or may otherwise produce a biased work product; or (b) unfair competitive advantage which

exceeds a normal flow of benefits from the award of the contract.

809.508-2 Contract clause.

The representation in 852.209-70, Organizational Conflicts of Interest, will be made a part of all solicitation for consulting services.

Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

Veterans Administration contracting officers will be advised of, consider bids from, and make awards to, Small Business and Defense Production Pools. The Chief Medical Director, or designee, will notify the appropriate departments and staff offices when such pools are approved.

PART 810—SPECIFICATIONS, STANDARDS AND PURCHASE ORDER DESCRIPTIONS

Sec.

810.005 Management of purchase descriptions.
810.006 Using specifications and standards.
810.007 Deviations.
810.011 Solicitation provisions and contract clauses.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

810.005 Management of purchase descriptions.

(a) *General requirements.* When a purchase description is used to describe required items of mechanical equipment, the invitation for bids or request for proposals will include the service data manual clause (852.210-70) and guarantee clause (852.210-71).

(b) *Invitation for bids, "brand name or equal" descriptions.* The invitation for bids or request for proposals on mechanical equipment using "brand name or equal" purchase descriptions will contain the service data manual clause (852.210-70) and guarantee clause (852.210-71).

810.006 Using specifications and standards.

(a) *Exceptions to mandatory use of Federal specifications.* The exception to the mandatory use of Federal specifications, with respect to purchases not exceeding $10,000 authorized by FAR 10.006(a)(ii) does not apply to items (1) purchased from GSA stock, (2) available from a Federal supply schedule contract, or (3) identified by a VA X-Series Specification.

(b) *Optional use of interim Federal specifications.* (1) Interim Federal specifications, developed by VA, as indicated in the preamble, are mandatory under the same conditions and with the same exceptions as provided for Federal specifications.

(2) Suggested changes to interim Federal specifications used on an optional basis will be handled as in 810.007.

(c) *Military and departmental specifications.* (1) The monetary exemption to the use of Federal specifications contained in FAR 10.006(a)(ii) is equally applicable to Veterans Administration, military and departmental specifications. Contracting officers may, when they deem it to be advantageous to the Veterans Administration, utilize these specifications when procuring supplies and equipment costing less than $10,000. However, when purchasing items of perishable subsistence, contracting officers shall observe only those exemptions set forth in paragraphs (c)(5) and (6) of this section.

(2) When circumstances will not permit a field station to use a Veterans Administration specification without deviation, the contracting officer shall, prior to taking any procurement action, submit to the Director, Office of Procurement and Supply, or Director, VA Marketing Center, Hines, Ill., whichever is appropriate, a request for authority to deviate from the specification. The request will specifically detail the reasons why the deviation is essential to the station's operation. The approving authority will coordinate the request with the using service in Central Office. The contracting officer will be advised as to the approval or disapproval of the request. If approved the letter of approval will be filed in the appropriate purchase or contract file.

(3) The Veterans Administration has adopted for use in the procurement of packinghouse products, the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS), and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for Veterans Administration use, are contained in the Federal Hospital Subsistence Guide. A copy of this guide and the IMPS may be obtained from any Veterans Administration contracting officer.

(4) Contract terms and conditions governing the procurement of subsistence items listed in the Federal Hospital Subsistence Guide and IMPS are set forth in VA Form 10-1365. This form shall be attached to and made a part of each solicitation for such items when applicable.

(5) The military specifications for meat and meat products contained in Federal Hospital Subsistence Guide shall be used by the Veterans Administration only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in Federal Hospital Subsistence Guide may be used when purchasing either from DLA or from local dealers.

(6) Except as authorized in Part 846 of this chapter, contracting officers shall not deviate from the specifications contained in Federal Hospital Subsistence Guide, and the IMPS without prior approval of the Director, Office of Procurement and Supply.

(7) Items of meat, cured pork and poultry, not listed in either the Federal Hospital Subsistence Guide or the IMPS, will not be purchased without prior approval of the Director, Office of Procurement and Supply.

(8) In the absence of mandatory documents, specifications or purchase descriptions of other agencies may be used by the various Marketing Divisions when appropriate. These specifications or purchase descriptions may be modified to meet the needs of the Veterans Administration. If repeated use of a modified specification or purchase description is required, the Director, VA Marketing Center shall consider converting it to a Veterans Administration specification.

(9) A field station may use a specification or purchase description of another agency without prior approval when the specification or description will, without modification, satisfy its needs. If, however, the specification or description must be modified to meet the station's needs, the procedure set forth in paragraph (c)(2) of this section will be followed.

(10) The Director, Publications Service, is responsible for developing, publishing, and distributing Veterans Administration specifications covering printing and binding.

(11) Veterans Administration specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. Station requirements of these specifications will be requisitioned from that source.

(d) *Government paper specification standards.* Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify

the paper stocks to be used in buying printing, binding, or duplicating will require that such paper stocks be in accordance with the government Paper Specification Standards issued by the Joint Committee on Printing of Congress.

(e) *Veterans Administration binding specifications.* (1) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases and boxes will be procured in accordance with Government Printing Office (GPO) specifications and will be procured from the servicing GPO Regional Printing Procurement Office for procurements exceeding $500 or, when appropriate, from commercial sources, Subpart 808.75.

(2) There are three types of binding/rebinding: (i) Class A (hard cover); (ii) Perfect (glued); and (iii) Lumbinding (sewn). The most suitable type of binding will be procured to satisfy the requirements, based upon the intended use of the bound material.

(f) *Mandatory use and applications of Federal standards.* (1) Requests for exceptions to Federal Standards not authorized by FAR 10.006(a)(ii) will be submitted with adequate justification to the Director, Office of Procurement and Supply (91A) for submission to General Services Administration.

(2) Federal standards do not preclude the use of existing Government stocks or acceptance of excess property not in full conformity with the standard items.

810.007 Deviations.

(a) *Deviations from Federal specifications.*—(1) *Field station.* When a deviation from a Federal specification is deemed necessary because of a specific requirement, the contracting officer will request such authority from the Director, Office of Procurement and Supply, prior to procurement. The request will specify exactly how the station proposes to deviate from the current specification and why the particular deviation is essential to the station's operations. The contracting officer will be advised as to approval or disapproval of the request. If approved, the Director, Office of Procurement and Supply, will, when necessary, forward the notice required by FAR 10.007(a)(4) to the General Services Administration.

(2) *Marketing center.* When the essential needs of the Veterans Administration are not adequately covered by an existing Federal specification, the Chief of the Marketing Division concerned will:

(i) When the required deviation affects only the packing, packaging, marking or labeling, and the item is being purchased for depot stock, coordinate the deviation with the Director, VA Supply Depot, Hines, Ill., through the Director, VA Marketing Center. If, in the opinion of the Director, VA Supply Depot, the proposed deviation will not affect storage, handling or transportation, the Director, VA Marketing Center, will be advised of his/her concurrence. The Director, VA Marketing Center, will then approve the deviation.

(ii) When the deviation specified in paragraph (a)(2)(i) of this section is for an item that is not being purchased for depot stock, document the reasons why the deviation is essential, and obtain the approval of the Director, VA Marketing Center, who will report the approval to the Director, Office of Procurement and Supply.

(iii) When the required deviation affects other than packing, packaging, marking, or labeling, coordinate the required deviation with the using service in Central Office. If approved by the using service, a request for authority to deviate will be submitted to the Director, Office of Procurement and Supply, through the Director, VA Marketing Center, Hines, Ill. It will specify in detail why the specific deviation is essential to the Veterans Administration's operations and be accompanied by a copy of the using service's comments. The appropriate marketing division chief will be advised as to the approval or disapproval of the request. If approved, the Director, Office of Procurement and Supply, will when necessary forward the notice required by FAR 10.007(a)(4) to the General Services Administration.

810.011 Solicitation provisions and contract clauses.

(a) *Specifications.* When product specifications are cited in an invitation for bids or requests for proposals, the citation shall include: (1) Desired options, (2) deviations authorized in accordance with 810.007, listed in numerical sequence, and (3) shall conform to the following:

Shall be type ———, grade ———, in accordance with (type of specification) No. ———, dated ——— and amendment ——— dated ———, except paragraphs ——— and ——— which are amended as follows:

PART 812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 812.1—Delivery or Performance Schedules

Sec.
812.104 Contract clauses.

Subpart 812.2—Liquidated Damages

812.202 Policy.
812.204 Contract clauses.

Subpart 812.3—Priorities, Allocations, and Allotments

812.302 General.

Subpart 812.5—Suspension on Work, Stop-Work Orders, and Government Delay of Work

812.503 Stop-work orders.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 812.1—Delivery or Performance Schedules

812.104 Contract clauses.

When delivery is required by or on a particular date, the time of delivery clause set forth in FAR 52.212–1 as it relates to f.o.b. destination contracts will state that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the clause will state that the date specified is the date shipment is to be accepted by the carrier.

Subpart 812.2—Liquidated Damages

812.202 Policy.

Liquidated damages provisions will not be routinely included in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions will conform to the criteria in FAR 12.202. In making this decision, consideration will be given to whether the necessity for timely delivery or performance as required in the contract schedule is so critical that a probable increase in contract price is justified. Liquidated damages provisions will not be included as insurance against selection of a non-responsible bidder, as a substitute for efficient contract administration, or as a penalty for failure to perform on time.

812.204 Contract clauses.

When the liquidated damages clause prescribed in FAR 52.212–4 and 52.212–5 is to be used and where partial performance may be utilized to the advantage of the Government, the clause in 852.212–70 will be included in the contract.

Subpart 812.3—Priorities, Allocations, and Allotments

812.302 General.

(a) Priorities, allocations, and allotments of critical materials are controlled by the Department of Commerce. Essentially such priorities, etc., are restricted to projects having a direct connection with supporting current defense needs. The Veterans Administration is not authorized to assign a priority rating to its purchase

orders or contracts involving the acquisition or use of critical materials.

(b) In those instances where it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist us in obtaining critical materials for maintenance and repair projects. They will also, where possible, render assistance in connection with the purchase of new items, which may be in short supply because of their use in connection with the defense effort.

(c) Contracting officers having problems in acquiring critical materials will ascertain all the facts necessary to enable the Department of Commerce to render assistance to the Veterans Administration in acquiring these materials. The contracting officer will submit a request for assistance containing the following information to the Director, Office of Procurement and Supply (90):

(1) A description of the maintenance and repair project or the new item, whichever is applicable.

(2) The critical material and the amount required.

(3) The contractor's sources of supply including any addresses. If the source is other than the manufacturer or producer, also list the name and address of the manufacturer or producer.

(4) The Veterans Administration contract or purchase order number.

(5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the solicitation or offer.

(6) The additional time the contractor claims will be necessary to effect delivery if priority assistance is not provided.

(7) The nature and extent of the emergency that will be generated at the station, e.g., (i) damage to the physical plant, (ii) impairment of the patient care program, (iii) creation of safety hazards, and (iv) any other pertinent condition that will result because of failure to secure assistance in obtaining the critical materials.

(8) If applicable, a statement that the item required is for use in a construction contract which was authorized by the Director, Office of Construction (08), to be awarded and administered by the station contracting officer.

Subpart 812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

812.503 Stop-work orders.

When the contracting officer has determined that it is advisable to suspend work, pending a decision by the Government, and a supplemental agreement providing for the suspension is not feasible, he/she will request approval to issue a stop-work order to the appropriate contracting officer designated in 809.602.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 813.5—Purchase Orders

Sec.
813.505–2 Agency forms in lieu of Optional Forms 347 and 348.
813.506–70 Oral purchase orders.
813.507 Clauses.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 813.5—Purchase Orders

813.505–2 Agency forms in lieu of Optional Forms 347 and 348.

(a) VA Form 90–2138, Order for Supplies or Services, and VA Form 90–2139, Order for Supplies or Services (Continuation), provide in one interleaved set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of and in the same manner as Optional Form 347, Order for Supplies or Services and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(b) The following order forms are for use when ordering the indicated medical, dental and ancillary services up to $10,000 per authorization when such services are not available under existing contracts.

(1) VA Form 10–7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10–7079, Request for Outpatient Medical Services.

(3) VA Form 10–2570d, Dental Record, Authorization and Invoice for Outpatient Services.

(c) In authorizing patient travel as set forth in VA Manual MP–1, Part II, Chapter 3, VA Form 10–2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as provided by that manual.

(d) Standard Form 182, Request, Authorization, Agreement, and Certification of Training, will be utilized for the procurement of training in the manner prescribed in 870.104.

(e) VA Form 10–2421, Prosthetics Authorization and Invoice, will be used as prescribed in 801.670–15 for indicated services not in excess of $300.

813.506–70 Oral purchase orders.

Oral purchase orders, when considered advantageous to the Veterans Administration, may be used for transactions not in excess of $2,500. The transaction will be assigned a purchase order number and receipt documentation will be obtained on the copies of the purchase request utilized as a property voucher and receiving report. Documentation as to competition will be in accordance with FAR 13.106c.

813.507 Clauses.

When using VA Form 90–2138 for maintenance contracts involving services performed on Government property and which have the potential for property damage and liability claims, the Contractor's Responsibilities clause found in 852.237–70 will be attached. Applicable maintenance contracts include but are not limited to window washing, pest control and elevator maintenance.

PART 814—FORMAL ADVERTISING

Subpart 814.1—Use of Formal Advertising

Sec.
814.103 Policy.
814.106–1 General.
814.104 Types of contracts.
814.104–70 Fixed-price contracts with escalation.

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids.
814.202 General rules for solicitation of bids.
814.202–4 Bid samples.
814.203 Methods of soliciting bids.
814.203–1 Mailing or delivery to prospective bidders.
814.206–2 Dissemination of information concerning invitations for bids.
814.204 Records of invitations for bids and records of bids.
814.205 Solicitation mailing lists.
814.205–1 Establishment of lists.
814.205–2 Removal of names from solicitation mailing lists.
814.205–5 Release of solicitation mailing lists.
814.208 Amendment of invitation for bids (construction).

Subpart 814.3—Submission of Bids

814.301 Responsiveness of bids.
814.302 Bid submission.
814.304 Late bids, late modifications of bids, or late withdrawal of bids.
814.304–2 Notification to late bidders.
814.304–4 Records.

Subpart 814.4—Opening of Bids and Award of Contract

814.402 Opening of bids.
814.406 Recording of bids.
814.404 Rejection of bids.
814.404–1 Cancellation of invitations after opening.
814.404–2 Rejection of individual bids.
814.404–70 Questions involving the responsiveness of a bid.
814.406 Mistakes in bids.
814.406–3 Other mistakes disclosed before award.

814.406–4 Mistakes after award.
814.407 Award.
814.407–1 General.
814.407–8 Protests against award.
814.407–70 Award when only one bid is received.
814.407–71 Recommendation for award (construction).
814.408 Information to bidders.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 814.1—Use of Formal Advertising

814.103 Policy.

814.103–1 General.

Contracts in excess of the small purchase limitation or in excess of $1,000 for contracts made for repairs to property acquired by the Veterans Administration under chapter 37, Title 38, United States Code, will be made by formal advertising when all of the following elements necessary to formal advertising are present.

(a) A complete, adequate and realistic specification or purchase description is available or can be written.

(b) There are two or more suppliers who are willing and able to compete effectively for the contract.

(c) There is sufficient time to prepare the invitation completely setting forth the needs of the VA, the terms and conditions upon which it will do business and to complete the administrative determinations, including evaluation, essential to this type of procurement.

(d) The award can be made on the basis of price alone to a reasonable and responsive bidder.

814.104 Types of contracts.

814.104–70 Fixed-price contracts with escalation.

When contracts of this nature are authorized pursuant to 816.102(b), contracting officers will be guided by the provisions of FAR 16.203.

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids.

(a) Invitations for bids for supplies, equipment and services will be serially numbered at the time of issue. The number will consist of the station or marketing division number, the serial number of the invitation, and the fiscal year in which issued, e.g., 101–24–84. A series beginning with the number 1 will be started each fiscal year. Invitations for bids for supplies, equipment and services which are issued, accepted and become contracts in the same fiscal year but, because of procurement leadtime, will not be performed until the ensuing fiscal year will be numbered in the series of the year in which they are issued. However, invitations issued in one fiscal year that will result in a contract that will become effective and performed only in the ensuing fiscal year will be numbered in the ensuing fiscal year series.

(b) Invitations for construction contracts will bear the applicable specification number and project number, if assigned. When no specification or project number is assigned, the invitation will be assigned a number in the current fiscal year series as provided in paragraph (a) of this section.

(c) In order to preclude adverse criticism of the Veterans Administration by prospective bidders relative to the disclosure of bid prices prior to bid opening, the provision entitled "Caution to Bidders Bid-Envelopes," as set forth in 852.214–70, will be prominently placed in all invitations for bids.

(d) To realize the greatest possible price advantage for the Government, items that may be processed by a contractor to effect a reduction in cost factors such as production, inspection and delivery, may be listed for award on both individual item and summary item bases. Items will be listed individually and, in addition, a summary price will be solicited for those items the contracting officer determines to be of a related character and normally handled by a majority of prospective bidders.

(1) When different products are to be combined for a summary price, the quantity, unit and unit price columns opposite the summary item will be crossed out, e.g.:

(Item No.) Summary bid for furnishing items ——— to ——— inclusive on an all or none basis:

Quantity	Unit	Unit price	Amount
XX.....	XX.....	XX.....	XX.

(Bidder will enter amount.)

(2) When a single unit price is solicited for a single product for delivery to various destinations, or for multiple deliveries, the total quantity required will be listed opposite the summary item, e.g.:

(Item No.) Summary bid for furnishing items ——— to ——— inclusive on all or none basis:

Quantity	Unit	Unit price	Amount
XX.....	XX.....	XX.....	XX.

(Bidder will enter unit price and amount.)

(3) Invitations containing a summary bid request will contain the following statement:

The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.

(e) Bid invitations for supplies, equipment, or services (other than construction) must define the extent to which alternate bids will be authorized and considered. Alternates specified on construction projects will be considered for acceptance only as a part of the basic item.

(1) When an alternate item will be considered only if no bids or insufficient bids are received on the item desired, the clause set forth in 852.214–71(a) will be included in the invitation.

(2) When an alternate item will be considered on or equal basis with the item specified, the clause set forth in 852.214–71(b) will be included in the invitation.

(3) In addition to the clauses referenced in paragraph (e) (1) or (2) of this section, the clause set forth in 852.214–71(c) will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

(f) When a contracting officer determines that it will be advantageous to the Government to make the award by group or groups of items, a provision for such award will be included in the invitation for bids.

(1) This may apply when:

(i) The items in the group or groups are readily available from the sources to be solicited; and

(ii) It is desirable to make a minimum number of contracts; or

(iii) Furniture or fixtures are required for a single project and uniformity of design is desirable; or

(iv) The articles required will be assembled and used as a unit.

(2) Solicitations for supplies and services, other than construction, will contain the "Aggregate Award" clause set forth in 852.214–72.

(3) Solicitations for construction contracts which solicit prices on an item and alternate item basis (when it is intended that a single aggregate award will be made for all items in the solicitation within certain fiscal limitations) will contain a statement as to the order of priority in which the alternate items will be awarded. This priority will be based on the relative importance of an item, the Veterans Administration's estimate, and the amount of funds available. Such

schedules will be substantially as follows:

Item No. 1—Furnish all labor, material, equipment, etc., to paint buildings No. 1, 2, and 3, $———.
Alternate items in order of priority. Furnish all labor, material, equipment etc. to paint:
Item No. 2—Building No. 1 only $———.
Item No. 3—Building No. 2 only $———.
Item No. 4—Building No. 3 only $———.

A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2, or a combination of Items Nos. 2 and 3. Offerors should quote a price on each item listed.

814.202 General rules for solicitation of bids.

814.202-4 Bid samples.

When it has been determined that samples are necessary to the proper awarding of a contract, the clause set forth in 852.214-73 will be added to the provision in FAR 52.214-20.

814.203 Methods of soliciting bids.

814.203-1 Mailing or delivery to prospective bidders.

(a) The contracting officer will include either a bid envelope, or Optional Form 17, Sealed Bid Label, with each invitation for bids furnished to prospective bidders.

(b) Standard Form 1442, Solicitation, Offer, and Award, may be distributed 10 to 14 days prior to the issue of drawings and specifications.

814.203-2 Dissemination of information concerning invitations for bids.

Except as provided in 805.205 and 38 CFR 2.3 and 2.4, paid advertising for procurement of supplies, equipment, and services will be used only upon written approval of the Administrator. Each request for approval will set forth the circumstances which preclude procurement being accomplished satisfactorily by normal advertising methods. The request will be submitted through channels and routed through the Director, Office of Procurement and Supply (93), for preparation of recommendations to the Administrator.

814.204 Records of invitations for bids and records of bids.

(a) A single register will be established and maintained by the issuing office on a fiscal year basis for all solicitations by invitations for bid or requests for proposal number, date of issue, date of opening, commodity or service involved and disposition, i.e., contract number or purchase order number or, when applicable, no award.

(b) Maintenance of the contract file prescribed by Part 804 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FAR 14.204.

814.205 Solicitation mailing lists.

814.205-1 Establishment of lists.

From the bidders mailing list applications received, each contracting activity will compile and keep current a Bidders Mailing List file. The lists will be maintained according to the commodity classification or group of items normally listed on the same invitation for bids.

814.205-2 Removal of names from solicitation mailing lists.

Except as provided for in FAR 14.205-2, no Veterans Administration contracting officer, or other employee, shall remove from the bidders mailing list the name of any prospective bidder.

814.205-5 Release of solicitation mailing lists.

When invitations for bids for supply and service contracts have been issued, contracting officers may furnish, upon request of an individual or institution having a bona fide interest in such information, a list of the prospective bidders to whom invitations for bids were submitted. The provisions of FAR 14.205-5 will be observed with respect to invitations for bids for construction contracts.

814.208 Amendment of invitation for bids (construction).

Amendments will be sent to holders of drawings and specifications by certified mail, return receipt requested. (Amendments may be made by telegram, if time does not permit mailing.)

Subpart 814.3—Submission of Bids

814.301 Responsiveness of bids.

Where the timeliness of the submission of a bid, modification or withdrawal cannot be administratively determined in accordance with FAR 14.301, the matter will be submitted by the contracting officer directly to the Comptroller General for decision. The submission will include copies of all pertinent papers. A copy of each submission will be forwarded to the Director, Office of Procurement and Supply.

814.302 Bid submission.

A bid hand-carried by the bidder or his agent will be considered late unless delivered to the addresses designated in the bid invitation prior to the time set for opening.

814.304 Late bids, late modifications of bids, or late withdrawal of bids.

814.304-2 Notification to late bidders.

The notification to late bidders will specify the final date by which the evidence must be received to be considered. This date must be within the time allowed by the apparent low bidder for acceptance of his bid.

814.304-4 Records.

All bids received by mail (or telegram where authorized) will be time and date stamped immediately upon receipt at the VA installation mail room and in the office of the addressee designated in the invitation. This will firmly establish the time of receipt of bids, or when bids are received in the office of the addressee subsequent to the time of opening, and it will establish whether or not the delay was due to mishandling on the part of the VA.

Subpart 814.4—Opening of Bids and Award of Contract

814.402 Opening of bids.

(a) The contracting officer shall serve as, or designate, a bid opening officer, and shall also designate a recorder.

(b) The form and amount of bids security and name of surety will be read aloud and recorded.

814.403 Recording of bids.

The information required for bid evaluation shall be recorded on the appropriate Abstract of Offers form (SF 1409 or SF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-2237b, Request for Dietetic Supplies, providing that such supplemental sheets or forms are covered by one of the forms authorized above for recording bid or price data. In addition to those instructions set forth in FAR 14-403, the bid opening officer shall certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeovers, or changes in price are noted at the time of opening, a statement to that effect will also be included on, or attached to, the abstract or record of bids.

814.404 Rejection of bids.

814.404-1 Cancellation of invitations after opening.

A copy of each invitation for bids which is canceled as provided for in FAR 14.404-1, together with the abstract showing to whom such bids were sent, will be filed in a separate folder identified by the invitation number. Invitations for bids which result in no bids being received will be handled in

like manner. In each instance the abstract will be annotated to show why an award was not made. These folders will be retained for the current and two succeeding fiscal years.

814.404–2 Rejection of individual bids.

(a) When a bid that is being considered for an award is found to be incomplete, e.g., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions that is appropriate:

(1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. Such a determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material terms and conditions of the invitation.

(2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.

(b) When a single bid is received in response to a solicitation, the offer shall not be rejected simply because it specifies a bid acceptance time which is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer shall be considered a compelling reason for rejection; however, the contracting officer will first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.

Note.—In those cases where more than one bid is received, an individual bid which is not in compliance with the Government's bid acceptance time shall be rejected as nonresponsive since consideration of such an offer would unfairly disadvantage other bidders.

814.404–70 Questions involving the responsiveness of a bid.

Questions involving the responsiveness of a bid which cannot be resolved by the contracting officer may be submitted to the Comptroller General through the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction (08), as appropriate. Pertinent documentation must accompany the submission.

814.406 Mistakes in bids.

814.406–3 Other mistakes disclosed before award.

(a) In accordance with the provisions of the FAR 14.406–3(e), the authority of the Administrator to make the administrative determinations set forth in FAR 14.406–3 (a), (b), (c), and (d) is hereby delegated, without power of redelegation to the Director, Office of Procurement and Supply. This delegation in no way impairs the delegations contained in Comptroller General decision B–122003, dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid prior to award, after complying with the provisions of FAR 14.406–3, the contracting officer will submit the complete file to the Director, Office of Procurement and Supply (93B) for an administrative determination. Based upon the evidence submitted, the Director, Office of Procurement and Supply, will determine the action to be taken by the contracting officer. Prior to its release to the contracting officer, this determination will be submitted to the General Counsel (025) for approval. Pending receipt of the determination, no award shall be made.

(c) Based on the evidence, when the Director, Office of Procurement and Supply, believes that the case should be submitted to the Comptroller General for decision, he/she will prepare the submission and forward it to the Comptroller General through the General Counsel (025). The decision of the Comptroller General will be furnished to the contracting officer by the Director, Office of Procurement and Supply (93B). A copy of each such decision will be furnished to the General Counsel (025).

814.406–4 Mistakes after award.

(a) When a contracting officer corrects a mistake in bid pursuant to FAR 14.406–4(a), a copy of the contract amendment or supplemental agreement together with a copy of the contracting officer's determination will be forwarded to the Director, Office of Procurement and Supply (93B).

(b) For mistakes in bid alleged after award, the contracting officer's proposed determination, prepared in accordance with FAR 14.406–4, will be forwarded to the General Counsel (025) through the Director, Office of Procurement and Supply (93B) for legal coordination. The results of this coordination will be transmitted to the contracting officer by the Director, Office of Procurement and Supply (93B). The final determination on the alleged mistake in bid after award will be made by the contracting officer.

(c) The Director, Office of Procurement and Supply (93B) will maintain the agency records of mistakes in bids after award required by FAR 14.406–4.

814.407 Award.

814.407–1 General.

(a) Prior to award of a contract for the purchase of a firm or indefinite quantity of supplies, equipment or services (excluding construction) at an actual or estimated cost of $200,000 or more, contracting officers will forward to the Chief, Supply Service for station-level contracts, to the Director, VA Marketing Center, for Market Center contracts, and the Director, Procurement Service (93) for Central Office contracts.

(1) By written notice:

(i) Name and address of proposed awardee.

(ii) Amount of contract.

(iii) Statement of clean bid (no exceptions, protests or mistakes, etc.)

(iv) Contracting officer's determination of bidder's responsibility (history of performance with the Veterans Administration).

(2) On other than routine awards:

(i) A copy of the appropriate specification.

(ii) A copy of each bid received including any correspondence accompanying a bid.

(iii) Copies of correspondence received in lieu of a bid.

(iv) A copy of the abstract.

(v) Contracting officer's determination of bidder's responsibility.

(vi) Statement as to proposed inspection and testing to assure compliance with specifications.

(vii) Contracting officer's analysis of bids received and his/her determination as to the award.

(b) The official designated in paragraph (a) of this section after completion of his/her review, will inform the contracting officer whether an award should or should not be made. In the event an award is not recommended, the specific reason for such a decision will be furnished the contracting officer.

(c) Multiple bids submitted by one individual on his/her own behalf or on behalf of two or more companies, or by two or more affiliated companies, may be considered in making an award, provided the bids were not submitted:

(1) For the purpose of circumventing a law such as the Davis-Bacon Act or the Walsh-Healy Public Contracts Act, or

(2) For any other purpose which would be prejudicial to the United States or to other bidders.

(d) To preclude any bidder from gaining an unfair advantage through the submission of multiple bids which are equal in all respects to other low bids received under the same invitation for bids, only one such bid shall be

considered in the award by lot. The selection of the bid (of the equal multiple bids received) to represent the person or firm, or affiliates thereof, shall be by lot.

814.407–6 Protests against award.

(a) *General.* When a protest against the award of a contract or a request from the GAO (General Accounting Office) for an agency report relative to a protest against an award lodged with that agency is received in Central Office, the protest or request will be immediately forwarded to the Director, Office of Procurement and Supply (93B). Protests or requests concerning Central Office architect-engineer or construction contracts will be forwarded to the Director, Office of Construction (08). The Director, Office of Construction or the Director, Office of Procurement and Supply (93B), whichever is appropriate, will immediately notify the contracting officer, furnish him/her a copy of the protest and request that he/she furnish the information required by FAR 14.407–8(a)(2). The contracting officer will notify all parties involved in or affected by the protest and secure from them their views as provided in FAR 14.407–8(a) (3) and (c). The documented file required by FAR 14.407–8(a)(1) will be prepared by the contracting activity and forwarded to either the Director, Office of Procurement and Supply (93B) or Director, Office of Construction (08) and must be received within 10 workdays after notification of a protest lodged with the General Accounting Office. All reports to GAO specified in FAR 14.407–8 will be submitted through the General Counsel (025) for legal review.

(b) *Letter to protester.* When a protest has been lodged with the contracting officer and has been subsequently denied by the contracting officer, the letter to the protestor detailing the contracting officer's reasons for denying the protest will conclude with the following statement, naming the appropriate VA official:

> Should you disagree with this decision, you may file an appeal with either the (Director, Office of Procurement and Supply (93B), or the Director, Office of Construction) VA Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420, or the Comptroller General, General Accounting Office, ATTN: Bid Protest Control Unit, Washington, D.C. 20548. Appeals must be received within 10 workdays after receipt of this letter. By filing an appeal with the (Director, Office of Procurement and Supply (93B), or the Director, Office of Construction) VA Central Office, you may waive your right of further appeal to the Comptroller General at a later date.

(c) *Protest before award.* When a written protest has been lodged with the contracting officer, and he/she considers it desirable to do so, he/she may obtain the views of the Comptroller General. The submission to the Comptroller General will be sent through the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction, as appropriate, and will include the material indicated in FAR 14.407–8(a)(2). The contracting office will notify the protesting individual or firm promptly in writing of the decision of the Comptroller General.

(1) While a case involving a protest before award is pending with the Comptroller General, no award may be made except when, in the opinion of the contracting officer, the needs of his/her facility will not permit delay in awarding the contract. He/she will document the specific reasons why the award must be made and submit a request for approval to the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction (08), whichever is appropriate.

(2) The Director, Office of Procurement and Supply (93B) and the Director, Office of Construction (08), whichever is appropriate, will notify the Comptroller General of the contracting officer's intent to award and request advice as to the status of the case. Upon receipt of this advice, the Director, Office of Procurement and Supply or the Director, Office of Construction will approve the request or advise the contracting officer as to the action to be taken.

(d) *Protest after award.* When a written protest is lodged with the contracting officer, he/she will review the basis for award.

(1) If the contracting officer determines that the award was proper, he/she will furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer will advise the protester that he/she may appeal the determination to the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction in the case of a Central Office architect-engineer or construction contract, or the Comptroller General.

(2) If the contracting officer determines that the award is questionable, he/she will advise the contractor of the protest and invite him/her to submit his/her views and relevant information. At the same time, the contracting officer will seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis. Whether or not the contractor agrees, the case will be submitted promptly to the Director, Office of Procurement and Supply (93B) or the Director, Office of Construction in the case of a Central Office architect-engineer or construction contract, who will either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for his/her decision.

814.407–70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if (a) the specifications used in the invitation were not restrictive, (b) adequate competition was solicited, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such determination will be made in writing, and included on or attached to the abstract of bids.

814.407–71 Recommendation for award (construction).

(a) For Central Office contracts, the Director, Office of Construction, after analyzing all bids received, will submit a memorandum to the Administrator (00) recommending award or other disposition of the project. A copy of each of the following will accompany the memorandum:

(1) The invitation.

(2) Each bid received.

(3) The abstract.

(4) Any other pertinent data.

(b) On station level contracts, the Chief, Engineering Service, will analyze all bids received and submit to the contracting officer a memorandum recommending award or other disposition of the project. However, the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor shall be made by the contracting officer alone.

814.408 Information to bidders.

(a) Prior to award, no information as to probable acceptance or rejection of any offer shall be given to any bidder or other person outside the Veterans Administration.

(b) Except as provided in paragraphs (c) and (d) of this section, information as to performance under contract or an accepted bid is not public information and will be released to persons outside the VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information as to performance under a contract to those having a legitimate interest, such as

banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information will be furnished through the General Counsel (025).

PART 815—CONTRACTING BY NEGOTIATION

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815.901 General.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 815.1—General Requirements for Negotiations

815.103 Use of negotiation.

Contracts in excess of the small purchase limitation specified in FAR Part 13 (or $1,000 for repairs to properties acquired under Chapter 37, Title 38, United States Code), will be entered into by negotiation only in the absence of any one or more of the elements essential to formal advertising set forth in 814.103, or when:

(a) It is determined that the procurement should be effected from small business in accordance with FAR Part 19.

(b) It is determined that the procurement should be effected from labor surplus area concerns in accordance with FAR Part 20.

(c) Items to be purchased are for authorized resale.

815.104 Authorization and approval.

Proposed contracts for the purchase of a firm quantity of supplies or equipment, at a cost in excess of $200,000, are subject to the procedure set forth in 814.407–1.

Subpart 815.2—Negotiation Authorities

815.200 Scope of subpart.

(a) Subject to the requirements and limitations prescribed in FAR Subparts 15.1, 15.2, and 15.3, and Subparts 815.1, 815.2, and 815.3, Veterans Administration contracting officers, acting within the scope of their authority, may negotiate contracts for the acquisition of supplies, equipment and services. Each solicitation and contract will cite the negotiation authority selected.

(b) In those instances where a purchase in excess of the small purchase limitation specified in FAR Part 13 may be negotiated under more than one authority, the contracting officer will select the authority he/she deems most appropriate to accomplish the purchase and will include in the contract file complete justification for his/her selection in a determination and findings conforming to FAR Subpart 15.3.

(c) In addition to the controls specified in this Subpart, the Administrator's approval of certain proposed contracts is required as prescribed in Subpart 837.2.

815.203 Purchases under the small purchase limitation.

(a) Procurement of medical services and resources authorized by sections 4117 and 5053 of Title 38, United States Code, costing less than the small purchase limitation specified in FAR Part 13 may be procured by negotiation under authority of FAR 15.203 except as prescribed in 815.204–70. Each such contract and revision thereof is, however, subject to the same approval as those costing in excess of the small purchase limitation.

(b) Except as provided in this paragraph, purchases authorized to be negotiated under the special procurement authorities contained in Title 38, United States Code, will be negotiated under the authority of FAR 15.203 when the amount of purchase is not in excess of the small purchase limitation (FAR Part 13). An exception exists in the case of services or supplies purchased in support of property acquired under the Loan Guaranty program. For such purchases, 38 U.S.C. 1820(b) requires formal advertising if the amount will exceed $1,000.

(c) Procurements of consulting, management, administrative and professional services costing less than the small purchase limitation and made under the authority of 38 U.S.C. 213 are subject to the controls set forth in Subpart 837.2.

815.204 Personal or professional services.

(a) Various sections of Title 38, United States Code, authorize the Administrator to enter into contracts for the purpose of acquiring personal or professional services. These authorizations do not, however, stipulate the manner in which such contracts are to be entered into, i.e., negotiation or formal advertising. Civilian agencies are, under the authority of FAR 15.204, authorized to procure such services by negotiation. Therefore, when the services listed in this section are to be acquired by the Veterans Administration, at a cost in excess of the small purchase limitation (FAR Part 13), a contract will be negotiated by the contracting officer. These contracts will cite in addition to the authority to negotiate (except for those negotated under 38 U.S.C. 4117 or 38 U.S.C. 5053), FAR 15.204, the appropriate section of Title 38 which authorizes the contract.

(b) Architect-engineer services when required in conjunction with construction (see Subpart 836.6 of this chapter) will cite as the authority for such negotiations FAR 15.204 and 38 U.S.C. 5002.

(c) Contracts with medical schools, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Veterans Administration facilities (including but not limited to services of physicians, dentists, podiatrists, optometrists, nurses, physicians' assistants, expanded function dental auxiliaries, technicians, and other medical support personnel) will be negotiated under authority of 38 U.S.C. 4117. Such contracts must provide that services are rendered at Veterans Administration facilities.

(d) Contracts with hospitals (or medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools, or clinics in the medical community for:

(1) The mutual use, or exchange of use, of specialized medical resources when such a contract will obviate the need for a similar resource to be provided in a Veterans Administration facility; or

(2) The mutual use, or exchange of use, of specialized medical resources in a Veterans Administration facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective

capacity will be negotiated under authority of 38 U.S.C. 5053.

(e) Proposed contracts for the services and resources specified in paragraphs (c) and (d) of this section may be entered into for one year only. When deemed essential to the mission of the stations, proposed renewal contracts will be negotiated for the subsequent year. Except as provided in paragraph (f) of this section, such proposed contracts will be submitted for approval to the Deputy Associate Deputy Chief Medical Director for Operations (10BA), when authority is 38 U.S.C. 5053, or Director, Office of Procurement and Supply (90), when authority is 38 U.S.C. 4117, so as to reach Central Office 60 days prior to effective date of the contract.

(1) Complete justification for all contracts will be submitted, as approval depends on the adequacy of the justification.

(2) Proposed contracts under authority of 38 U.S.C. 4117 will be submitted in five copies, and contracts under authority of 38 U.S.C. 5053 will be submitted in six copies.

(3) The transmittal letter and each supporting document will be submitted in the same number of copies as the contract. As an incomplete submission delays processing of the proposed contract in Central Office, care should be exercised to assure that the proper number of copies are submitted, and that submissions are complete (e.g., complete name and address of the other party or parties to the contract are included).

(4) Proposed contracts of the type specified in paragraph (d) (1) and (2) of this section will be accompanied by a recommendation of the station director as to the geographical limits to be applied to the medical community.

(5) A copy of all executed sharing contracts, both new and renewal, will be forwarded to the Deputy Associate Deputy Chief Medical Director for Operations (10BA) for review and for purposes of making the annual report to Congress as required by 38 U.S.C. 5057.

(f) Proposed renewal sharing contracts under the authority of 38 U.S.C. 5053 and proposed renewal scarce medical specialist services contracts under the authority of 38 U.S.C. 4117 may be approved by the appropriate Medical District Director when such contract proposals meet the following conditions:

(1) No new services are being added to the sharing contract. (Services may be deleted from the contract without Central Office approval, but only if such deletions do not effectively result in an individual item or total cost increase in excess of 10 percent over the cost in the previous contract.) No individual cost item that is being acquired from the contractor (non-Veteran Administration facility identified in the contract) will increase in cost more than 10 percent over the cost for that same item in the previous contract and there will be no increases in full-time equivalent employee requirements for scarce medical specialist service contracts.

(2) The total cost of a scarce medical specialist services contract will not increase more than 10 percent over the total cost of the previous contract.

(3) The sharing proposal has been reviewed for legal sufficiency by the District Counsel responsible for servicing the Veterans Administration facility involved. The District Counsel shall be sent, along with the sharing proposal, a copy of the previous sharing agreement for the same services so that a comparison can be made of the two documents.

(4) All contract clauses required by Chapters 1 and 8, Title 48, Code of Federal Regulations, are included in the proposal.

(5) Equal Employment Opportunity clearance has been obtained, when required (see Part 822).

(6) Certified cost or pricing data was obtained from the contractor when required by FAR 15.804. Cost or pricing data was submitted by the contractor on Standard Form 1411, Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804–6.

(7) When cost or pricing data was required, an audit was obtained in accordance with FAR 15.805–5 and 815.805–5.

(8) When cost or pricing data was required, a technical analysis has been performed on the contractor's proposal in accordance with FAR 15.805–4 and 815.805–4.

(g) Contracts for professional or technical services with private or public agencies not specifically authorized in any other section of Title 38, United States Code, may be acquired under 38 U.S.C. 213 and negotiated under FAR 15.204 when the cost of such services will exceed the small purchase limitation (See FAR Part 13). (See Subpart 837.2 regarding controls over the procurement of consulting, management, administrative and professional services).

(h) See 837.104 regarding personal service contracts having an employer-employee relationship.

815.204–70 Medical schools and related institutions.

Contracts of the type specified in 815.204, paragraphs (c) and (d), and 815.203(a) may be negotiated with medical schools and related institutions without competition (see Comptroller General Decision B–195559.2). Such contracts shall be negotiated under the authority of this 815.204–70 and 38 U.S.C. 4117 and 38 U.S.C. 5053, as appropriate. The requirements of 815.204, paragraphs (e) and (f), shall be applicable to all such procurement actions.

815.207 Medicines or medical supplies.

(a) Except as provided in this 815.207 or when specific prior approval has been granted by the Director, Office of Procurement and Supply, to a field station contracting officer, no Veterans Administration contracting officer shall enter into a contract by negotiation under authority of FAR 15.207, when the estimated cost of the item(s) required, singly or collectively, is in excess of the small purchase limitation (see FAR Part 13) for a single transaction.

(b) When an individual is designated to act in the capacity of one of the positions specified in this 815.207, that individual is authorized to consummate contracts in excess of the small purchase limitation (FAR Part 13) in the same manner as the incumbent of the position. The contracting officer's title will be indicated on the contract documents and official correspondence with the contractor. This will verify to the contractor that the contracting officer possesses the necessary contracting authority. Additionally, the contracting officer's title will appear on the applicable determinations and findings.

(c) The following contracting officers are authorized to award negotiated contracts in excess of the small purchase limitation (FAR Part 13) for medicines or medical items:

(1) Director, Office of Procurement and Supply.

(2) Director, Procurement Service.

(3) Director, Veterans Administration Marketing Center.

(4) Chief of each of the following Marketing Divisions:

(i) Medical Supplies;

(ii) Medical Equipment;

(iii) Federal Supply Schedules;

(iv) Pharmaceutical Products;

(5) Four contracting officers for each Marketing Division when so designated by the Marketing Division Chief.

815.209 Subsistence supplies.

(a) Except as provided in this 815.209 or when specific prior approval has been granted by the Director, Office of Procurement and Supply, to a field station contracting officer, no Veterans

Administration contracting officer shall enter into a contract by negotiation under authority of FAR 15.209 when the estimated cost of the item(s) required, singly or collectively, is in excess of the small purchase limitation (FAR Part 13) for a single transaction.

(b) When an individual is designated to act in the capacity of one of the positions specified in this 815.209, that individual is authorized to consummate contracts in excess of the small purchase limitation (FAR Part 13) in the same manner as the incumbent of the position.

(c) The following contracting officers are authorized to negotiate contracts in excess of the small purchase limitation (FAR Part 13) for the purchase of subsistence supplies:

(1) Director, Office of Procurement and Supply.

(2) Director, Procurement Service.

(3) Director, Veterans Administration Marketing Center.

(4) Chief, Marketing Division for Subsistence.

(5) Three senior contracting officers, Marketing Division for Subsistence, when so designated by the Marketing Division Chief.

815.210 Impractical to secure competition by formal advertising.

(a) Contracts for paid advertising for community placement homes and for recruitment purposes may be negotiated under the authority of this 815.210, after the request for the procurement of such advertising has been approved by one of the officials designated in 38 CFR 2.3 and 2.4

(b) Contracts for the procurement of paid advertising in the purchase or sale of supplies, equipment or services, may be negotiated under authority of this 815.210, only after the request for such procurement has been approved by the Administrator. (See FAR Subpart 5.5 regarding procedures for contracting for paid advertising).

815.211 Experimental, developmental, or research work.

Research authorized to be conducted by the Veterans Administration, in accordance with the provisions of Title 38, United States Code, will be negotiated under the authority of FAR 15.211 (except prosthetics research authorized by 38 U.S.C. 5023 will be negotiated under the authority of FAR 15.215).

815.215 Otherwise authorized by law.

Various sections of Title 38, United States Code, authorize the Administrator to enter into certain contracts, and certain types of contracts, without regard to any other provision of law. Veterans Administration contracting officers entering into contracts by negotiation for any of the following items or services, estimated to cost in excess of the small purchase limitation (See FAR Part 13), will cite, in addition to FAR 15.215 and 815.215, the appropriate section of Title 38, United States Code, as their authority to do so:

(a) Contracts for orthopedic and prosthetic appliances and related services including research. FAR 15.215 and 38 U.S.C. 5023. Contracts for items and services negotiated under this authority require a technical review under the provisions set forth in 801.602–70, even though the dollar amounts may not meet the levels specified in the section.

(b) Contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operations of the Veterans Canteen Service. FAR 15.215 and 38 U.S.C. 4202.

(c) Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 5009(b)(2), provided that (1) the establishment, operation and maintenance of such facilities have been authorized by the Administrator or designee; and (2) the station director determines in writing that operation by contract or lease is both desirable and warranted. FAR 15.215 and 38 U.S.C. 5009(b)(2).

(d) Contracts for laundry and other common services such as the purchase of steam, may be negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Administrator or designee and when such services are not reasonably available from private commercial sources, FAR 15.215 and 38 U.S.C. 5022(c). Requests to enter into such contracts will be submitted to the Associate Deputy Chief Medical Director (10B), for approval by the Administrator or designee.

(e) Contracts or agreements with public or private agencies for the services of translators. FAR 15.215 and 38 U.S.C. 213.

Subpart 815.8—Price Negotiation

815.800 Scope of subpart.

The principles set forth in FAR Subpart 15.8, as well as those in this subpart, on the basic policy, pricing techniques, requirements for cost or pricing data, and the evaluation and audit of cost and pricing data apply to all negotiated cost-reimbursement, time-and-material, labor hour, firm fixed-price contracts and contract modifications. These principles also apply to annual revisions of prices under cost-reimbursement contracts as well as to the negotiation of initial prices.

815.804–2 Requiring certified cost or pricing data.

Under the circumstances prescribed in FAR 15.804–2(a), the contracting officer will require the prospective contractor to submit and to have any prospective subcontractor submit to the prime contractor, cost or pricing data and to certify to its accuracy and completeness. This data will be submitted by the contractor on SF 1411, Contract Pricing Proposal Cover Sheet, and will be used by the contracting officer in the evaluation of the offer and in the negotiation of the contract price or contract modification. The cost or pricing data is required to determine the reasonableness of the proposed price where such price is based on the cost of the proposed work. It is not required when the contracting officer determines that prices are based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation. To receive an exemption from the requirement for submission or certification of cost or pricing data when prices are based on established catalog or market prices or prices set by law or regulations, the contractor must ordinarily claim it on Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when required by FAR Subpart 15.804–3(e).

815.804–70 Preproduction and start-up and other nonrecurring costs.

In evaluating start-up and other nonrecurring costs, the extent to which these costs are included in the proposed price and the intent to absorb or recover any such costs in any future noncompetitive procurement or other pricing action will be determined. The contracting officer will ascertain, with the assistance of the Assistant Inspector General, Office of Audit (52), as required or considered necessary, that payment of such costs is not duplicated. For example, cost of equipment paid for by the Government through a setup or connection agreement will not be included in depreciation costs of a subsequently negotiated agreement.

815.805–4 Technical analysis.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into and ensuring

that all legal and technical reviews are accomplished. To this end, initial and revised pricing of all negotiated prime contracts (including subcontract pricing under them) and contract modifications will be subject to technical analyses to the degree the contracting officer deems necessary (see 801.602–70 for required legal reviews). Technical analyses of the proposals will be requested by the contracting officer from the appropriate technical personnel to address, as a minimum, the items set forth in FAR Subpart 15.805–4. Contracting officers shall not begin negotiation of or award any negotiated contracts or contract modifications before receipt, analysis and consideration of documented technical evaluations for every procurement action requiring such analysis under the conditions prescribed in FAR 15.805–4. The results of such analyses will be documented in the contract file and will also be made available to the auditor performing the preaward audit required by 815.805–5.

(b) When, in the opinion of the contracting officer, the complexity of the proposed contract warrants, he/she will submit the proposed contract to the Director, Office of Procurement and Supply (93), for review and comment. When deemed advisable, the Director, Office of Procurement and Supply (93), will request the General Counsel to accomplish a legal review. This review is in addition to the legal review specified in 801.602–70.

815.805–5 Field pricing support.

(a) When cost or pricing data are required in accordance with FAR 15.804, the contracting officer will request an audit before negotiating any proposed contracts or contract modifications resulting from a proposal in excess of $500,000. When initiating the audit, contracting officers in the Office of Procurement and Supply and Office of Construction who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or requesting audits through the Assistant Inspector General for Policy, Planning and Resources (53C). All other contracting officers located in the VA Central Office and the Office of the General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C). Contracting officers located at the VA Medical Centers, marketing centers and supply depots are required to arrange for audits through the Director, Office of Procurement and Supply or the Director, Office of Construction.

(b) When cost or pricing data are required for proposal less than $500,000 and an audit is not required, the contracting officer will make a cost and price analysis to evaluate the reasonableness of individual cost elements and to ensure that the overall price offered is fair and reasonable. The price and cost analysis techniques are set forth in FAR 15.805–2 and 15.805–3. The contracting officer located in Central Office may request an audit or request the Assistant Inspector General for Policy, Planning and Resources (53C) to render such accounting assistance or technical advice deemed desirable. A field station contracting officer may request such assistance and advice from the Assistant Inspector General for Policy, Planning and Resources (53C).

(c) When cost or pricing data are required in accordance with FAR 15.804 and the proposal is in excess of $500,000, an audit may not be requested under the following conditions:

(1) Information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price.

(2) Prices for a contract modification to a formally advertised fixed-price contract have been established and written in the basic fixed-price contract.

(3) Negotiated fixed-price or cost-reimbursement utility connection or site facility agreements, developed by the Office of Construction, representing contracts for the construction of service facilities or site clearance where cost data submitted (construction cost estimates) will be evaluated by design and cost engineering staffs of the Office of Construction.

(d) When using the exclusions in paragraph (c) of this section as a basis for not submitting cost and pricing data for preaward audit, contracting officers will fully justify the reasons for so doing and document such justification in the contract file.

Subpart 815.9—Profit

815.901 General.

If a profit or fee is involved, it must be established as a dollar amount and not as a percentage of the cost estimate, in order to avoid the cost-plus-a-percentage-of-cost system of contracting which is not legal (see FAR Part 16). Once established, the profit or fee cannot be escalated during the period of the contract. However, when a change order materially affects the scope of the work, an additional profit or fee or an appropriate reduction may be negotiated.

PART 816—TYPES OF CONTRACTS

Subpart 816.1—Selecting Contract Types

Sec.
816.102 Policies.

Subpart 816.3—Cost-Reimbursement Contracts

816.306 Cost-plus-fixed-fee contracts.

Subpart 816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

816.603 Letter contracts.

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 816.1—Selecting Contract Types

816.102 Policies.

(a) Contracts for supplies or nonpersonal services awarded (except for small purchases under Part 813 and FAR Part 13) are to be of the following types:

(1) Firm fixed price for a period of one year or less.

(2) Firm fixed price for one year with options for succeeding years. (See 817.202 and FAR 17.2).

(3) Fixed price with economic price adjustment. (See FAR 16.203).

(b) Contracts of the type specified in paragragh (a)(3) of this section which include an economic price adjustment provision other than the clause for service contracts (FAR 22.1006(c)) require the prior approval of the Director, Office of Procurement and Supply (90). The request for approval is to clearly set forth the need for the provision.

(c) Contracts of the type specified in paragraphs (a) (2) and (3) of this section are to be entered into only when such contracts are clearly shown to be advantageous to the Veterans Administration. The contracting officer is to document the contract file to show the specific and compelling reasons for selection of the particular type contract.

(d) Any contract involving direct obligation of appropriations and which extends beyond the appropriation of the year in which the contract period begins or which is for more than one fiscal year, is to contain provisions to the effect that:

(1) It is made for the period covered by the contract, subject to the availability of appropriations in the ensuing year(s), and

(2) No service is to be performed by the contractor after September 30 of each fiscal year unless and until specifically authorized by the contracting officer or representative.

(e) Architect-engineer contracts, construction contracts, or professional engineer contracts, financed by "no year appropriations" are not subject to the requirements of paragraph (d) of this section.

Subpart 816.3—Cost-Reimbursement Contracts

816.306 Cost-plus-fixed-fee contracts.

(a) Contracts of this type may be entered into only after the contracting officer has made the determination required by FAR 16.301–3(c). The determination is to be made a part of the contract file.

(b) The amount of the fee to be paid or allowed to a prime contractor or subcontractor under this type of contract shall be negotiated by the contracting officer within the statutory limitations. (See FAR 15.903(d)).

Subpart 816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

816.603 Letter contracts.

Prior to execution of a letter contract, the department or staff office head concerned shall approve the contracting officer's written determination that no other type contract is suitable (See FAR 16.603–3). The determination is to establish the limit of the effectiveness of the letter contract; i.e., the date by which the definitive contract is to be executed, within the limits established in FAR 16.603–2 (c) and (d).

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

(a) *Description.* A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier primarily for the purpose of obtaining a place on the supplier's production or delivery schedule for long lead time items. Such a letter typically indicates that products or services are being considered for procurement, but that the statement of intent is not to be construed as a commitment. Such letters of availability are sometimes solicited by prospective contractors, or they may be originated by Government personnel. A letter of availability is distinguished from a letter contract which is specifically authorized in FAR 16.603.

(b) *Policy.*

(1) Unless specifically authorized by the Director, Office of Procurement and Supply, letters of availability are not to be utilized for the following reasons:

(i) While such letters of availability may disclaim Government liability, they may induce potential contractors to initiate costly preparations in anticipation of contract award.

(ii) Procurements announced in such letters do not always materialize. The result may be costly to the Government, the prospective contractor, or both. If the author of the letter of availability is an authorized contracting officer of the agency, the Government may be bound by action, even though the action is contrary to sound procurement practices and/or fiscal regulations. If the author of the letter of availability lacks procurement authority, the prospective contractor may incur substantial expenditures which may not be recovered from the Government, but for which the prospective contractor may seek to hold the unauthorized author personally liable.

(iii) The issuance of a letter of availability may violate the "Anti-Deficiency Act" (31 U.S.C. 1341).

(2) It is recognized that potential contractors have a need to obtain procurement information at the earliest possible moment in order to make timely preparations. To this end, procurement personnel are expected to act as efficiently and expeditiously as possible on all procurement actions.

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1—Multi-Year Contracting

Sec.
817.102 Policy.
817.102–1 Uses.

Subpart 817.2—Options

817.202 Use of options.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 817.1—Multi-Year Contracting

817.102 Policy.

817.102–1 Uses.

The Veterans Administration does not currently have statutory multi-year contracting authority. It is the policy of the VA not to exercise, at this time, multi-year contracting procedures for no year funds.

Subpart 817.2—Options

817.202 Use of options.

(a) All solicitations developed pursuant to Office of Management and Budget Circular A–76 (Revised) cost comparisons will provide for one year renewal options as prescribed in FAR Subpart 17.2. Requests to use less or more than the prescribed contract period for Circular A–76 (Revised) cost comparisons will be forwarded to the Director, Office of Procurement and Supply (90).

(b) Each contract awarded with renewal options and which is subject to the Service Contract Act of 1965 will use the clause prescribed in FAR 22.1006(c).

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

(a) Except as provided in 817.402(b), no leader company contracts shall be initiated or consummated.

(b) The Director, Office of Procurement and Supply (90) may designate a contracting officer to enter into a leader company contract when considered beneficial to the agency and the Government. When a contracting officer is designated the authority to enter into a leader company contract, the designation will be by name for a specific contract. The proposed contract with a determination and finding will be submitted for legal review in accordance with 801.602–71.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

819.000 Scope of part.

Subpart 819.2—Policies

819.201 General policy.
819.202–5 Data collection and reporting requirements.
819.202–70 Additional responsibilities.

Subpart 819.5—Set-Asides for Small Business

819.502–2 Total set-asides.
819.502–3 Partial set-asides.

Subpart 819.8—Contracting With the Small Business Administration (THE 8(a) PROGRAM)

819.801 General.
819.807–70 Commitments of the Office of Construction's funded projects for the 8(a) program.
819.809–70 Procurement of supplies, services, and research and development.
819.809–71 Procurement of construction.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

819.000 Scope of part.

This subpart sets forth the Veterans Administration small business program including section 8(a) contracts with SBA (Small Business Administration) and unilateral set-asides. It establishes responsibility for making such determinations, reviewing

determinations and evaluation of the program.

Subpart 819.2—Policies

819.201 General policy.

(a) The Associate Deputy Administrator for Logistics (005) is designated the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). The Deputy Director, OSDBU (005C), will report directly to the Director and will supervise and direct the OSDBU staff. The OSDBU will be responsible for the overall supervision of the Veterans Administration Small and Disadvantaged Business Utilization program and will assist departments and staff offices in developing their respective small business programs.

(b) The Director, Office of Construction will develop and coordinate the agency small business program, as it affects construction projects, with the OSDBU.

(c) The Director, Veterans Canteen Service (VCS), will designate an employee of his/her organization to serve as liaison between the VCS and the Office of Small and Disadvantaged Business Utilization on small business problems affecting the VCS.

(d) The Chief Memorial Affairs Director, Chief Benefits Director, Director, Office of Construction, Director, Office of Administration, Director, VA Marketing Center and Directors of Veterans Administration field stations with Supply activities will designate an employee of their respective organizations to serve as a small and disadvantaged business specialist. This employee will be a full-time employee of the respective contracting activity, will be familiar with the supplies and services purchased at the activity, and will be fully cognizant of the regulations implementing the Small Business Act. The principal duties will include assisting the Small Business Administration Procurement Center Representative (if assigned) in activities and functions relating to sections 8 and 15 of the Small Business Act. The name, telephone number, and mailing symbol of each designee and any successor will be forwarded to the Director, Office of Small and Disadvantaged Business Utilization, through the Director, Office of Procurement and Supply.

819.202-5 Data collection and reporting requirements.

Department heads, staff office directors and heads of contracting activities will, in addition to the responsibilities designated in FAR 19.202-5, cooperate with the Office of Small and Disadvantaged Business Utilization in formulating specific socio-economic procurement goals and providing other data necessary for goal assessment.

819.202-70 Additional responsibilities.

In addition to the duties designated in FAR 19.202, VA contracting officers will perform the following functions in furtherance of the small business and Labor Surplus Area (LSA) programs:

(a) Develop a plan of operation to increase the share of contracts and purchase orders awarded to small business and LSA concerns.

(b) Promote the disadvantaged business program through the SBA 8(a) procedures set forth in Subpart 819.8.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides and LSA set-asides. Class set-asides, established in accordance with criteria in FAR 19.503, shall be reviewed at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn. Updated lists of acquisitions reserved for small business on a class basis shall be maintained by heads of contracting activities.

(d) Make maximum utilization of the SBA small business source list (i.e., Procurement Automated Source System) when considering the disposition of all procurement requirements. Small business source lists are available through the SBA Regional Offices.

(e) Assure that small business firms are identified on bid abstracts.

(f) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent feasible.

(g) Assist and counsel small business firms with individual problems.

(h) Provide for counseling nonresponsive or nonresponsible small business bidders to help qualify them for future awards.

(i) Attend conferences and meetings publicizing the small business program.

(j) Promote the award of research contracts to small business and LSA firms.

(k) Promote goals for small business, small business set-asides, small business subcontracting, 8(a) procurements, labor surplus area set-asides, and purchases from women-owned businesses.

(l) Review all urgent and sole source procurements to determine that they are sparingly made, thoroughly documented and approved by the head of the contracting activity.

(m) If the contracting officer is assigned an SBA Resident Procurement Center Representative, assure that the representative is provided an opportunity and reasonable time to review any solicitation which meets the dollar threshold for which small business and small disadvantaged business subcontracting plans are required. Additionally, prior to the execution of any negotiated contractual document requiring a subcontracting plan, the total procurement package including the proposed subcontracting plan will be made available to the Resident Procurement Center Representative with a reasonable time allowed for review. The Procurement Center Representative may submit recommendations, which will be advisory in nature, to the contracting officer. The Procurement Center Representative will also be provided a copy of the subcontracting plan finally negotiated by the contracting officer. A copy of any subcontracting plan submitted pursuant to a formally advertised procurement will also be provided the Resident Procurement Center Representative upon execution of the contractual document.

(n) Assure that the small and disadvantaged business specialist notifies the SBA of the award of contracts, amendments, or modifications that contain subcontracting plans. The notification will contain the contractor's name and address, place of performance, dollar amount, performance period, description of contract item or items, and name and address of the contracting officer. A copy of the award document is sufficient for these purposes. The notification will be sent to the Assistant Regional Administrator for Office of Procurement and Technical Assistance in the SBA region where contract performance is to take place.

(o) Assure that plans are forwarded as specified in FAR 19.705-6(b).

Subpart 819.5—Set-Asides for Small Business

819.502-2 Total set-asides.

(a) When in accordance with FAR 19.502-2, the entire amount an individual or class of acquisitions is set-aside for exclusive small business participation, the face page of the solicitation shall include the appropriate product or service classification and related small business size standard in conjunction with one of the following notices:

(1) Notice of total small business set-aside, page , applies to all items in this solicitation.

(2) Notice of total small business set-aside, page , applies to items through in this solicitation.

(b) When a total small business-LSA set-aside is made, one of the following statements, as applicable, will be placed on the face of the solicitation:

(1) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page , applies to all items in this solicitation.

(2) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page , applies to items through in this solicitation.

(3) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page , applies to items in this solicitation.

(4) Notice of total set-asides for small business concerns agreeing to perform as LSA concerns, page , applies to items through in this section.

(c) Contracting officers must ensure that appropriate product or service classification and the related size standard are included in each solicitation.

(d) All proposed procurement for construction anticipated to cost between $2,000 and $1 million and all proposed procurements for architect-engineer services for minor construction projects ($2 million and less) will be considered as though SBA had initiated a set-aside request. Determinations of the need to deviate from this policy made by the head of a contracting activity will require review by the Director, Office of Small and Disadvantaged Business Utilization, as prescribed in 819.502.71.

819.502-3 Partial set-asides.

When, in accordance with the provisions of FAR 19.502-3, it is determined that a particular procurement will be partially set aside for exclusive small business participation, the solicitation for bids will have appropriate product or service classification, appropriate size standard and whichever of the following statements is applicable, placed on the face page:

(a) Notice of partial small business set-aside, page , applies to Item through Item in this solicitation.

(b) Notice of partial small business set-aside, page , applies to all items in this solicitation.

Subpart 819.8—Contracting With the Small Business Administration (the 8(a) Program)

819.801 General.

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of the Veterans Administration are appropriate for inclusion in this program, the contracting officer will make this fact known to the proper officials of the SBA regional office servicing his/her area. If the certification required by paragraph (a) of this section is received, the Veterans Administration contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to the Veterans Administration, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between the Veterans Administration and SBA and will be administered by the Veterans Administration.

(d) In addition to meeting the requirements of 801.602-70, contracting officers will secure cost and pricing data prescribed in FAR 15.804-2 when negotiating contracts under the SBA 8(a) program. Contracts with an anticipated value of $500,000 or more shall be processed for audit in accordance with 815.805-5.

819.807-70 Commitments of the Office of Construction's funded projects for the 8(a) program.

Major and minor projects funded by the Office of Construction (including those delegated to the Department of Medicine and Surgery) which have been committed to the 8(a) program will not be withdrawn from that program without the consent of the Office of Small and Disadvantaged Business Utilization (005C). Requests for consent from 005C will normally be in writing and will clearly set forth the circumstances necessitating 8(a) withdrawal. If the contracting officer determines that time does not permit a written request, an oral request will be made. Such an oral request will be confirmed in writing.

819.809-70 Procurement of supplies, services, and research and development.

(a) Contracts for supplies, equipment and services other than construction will be prepared as any other prime contract and in accordance with FAR Subpart 19.8.

(b) The Veterans Administration contracting officer will forward the prime contract to SBA in sufficient numbers to furnish two copies to SBA and one copy to each subcontractor. SBA will return the signed original to the Veterans Administration contracting officer.

819.809-71 Procurement of construction.

Construction projects which have been selected for inclusion in this program will be contracted for as provided in this section and FAR Subpart 19.8.

(a) The contracting officer will submit, for each project so identified, the complete project listing including technical specifications, drawings and wage rates to the proper official of the appropriate SBA regional office. Should SBA select a competent subcontractor capable of performing the work, they will so certify to the Veterans Administration contracting officer. They will furnish him/her the name and complete address of the subcontractor(s), the project involved and the price(s) quoted. If the price quoted is within the range acceptable to the Veterans Administration, the contracting officer will indicate acceptance to SBA.

(b) When the contracting officer receives Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), signed by SBA and the subcontractor, and the performance and payment bonds, the contracting officer will forward a notice to proceed to the subcontractor.

PART 820—LABOR SURPLUS AREA CONCERNS

Subpart 820.1—General

820.104 Specific policies.

Pursuant to FAR Part 20, LSA (labor surplus area) set-aside consideration will only apply to procurements above the small purchase limitation.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 822.3—Contract Work Hours and Safety Standards Act

Sec.

822.304 Variations, tolerances, and exemptions.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.471 Procedure for requesting determinations.

822.478 Contract terminations.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 822.3—Contract Work Hours and Safety Standards Act

822.304 Variations, tolerances, and exemptions.

When a contract is entered into for nursing home care, the clause prescribed by FAR 22.305 will be modified to reflect the variation contained in 29 CFR 5.15(d)(3) as set forth in 852.222–70.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.471 Procedure for requesting determinations.

Requests for project area or individual wage determinations will be submitted by the office or installation that will award the contract. In accordance with Department of Labor instructions, such wage determinations will be returned directly to the requesting office.

822.478 Contract terminations.

(a) Prior to terminating any contract because of violations of the labor standards provisions of the contract, contracting officers, other than those in the Office of Construction will, through the Director, Office of Procurement and Supply, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Director, Office of Procurement and Supply, as to the recommended action to be taken.

(b) Prior to terminating a contract managed by the Office of Construction for labor standards violation, the contracting officer will, through the Director, Office of Construction, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Director, Office of Construction as to the recommended action.

(c) If the contract is to be terminated, the Director, Office of Procurement and Supply or the Director, Office of Construction, will submit the reports required by 29 CFR 5.7(d).

PART 823—ENVIRONMENTAL, CONSERVATION AND OCCUPATIONAL SAFETY

Subpart 823.3—Hazardous Material Identification and Material Safety Data

823.300 Hazardous material identification and material safety data.

Contracting officers should be governed by the provisions of FAR Subpart 23.3 and MP–2, Subchapter E, Subpart 108–25.53 (Potentially Hazardous Products) in acquisitions of items that involve hazardous material.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 824.1—Protection of Individual Privacy

Sec.
824.102 General.

Subpart 824.2—Freedom of Information Act

824.202 Policy.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 824.1—Protection of Individual Privacy

824.102 General.

(a) The pertinent agency rules regarding the implementation of the Privacy Act of 1974 consist of 38 CFR 1.575 through 1.584.

Subpart 824.2—Freedom of Information Act

824.202 Policy.

Agency rules implementing the Freedom of Information Act are contained in 38 CFR 1.550 through 1.559.

PART 825—FOREIGN ACQUISITION

Subpart 825.1—Buy American Act—Supplies

Sec.
825.102 Policy.
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825.902 Policy.
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Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 825.1—Buy American Act—Supplies

825.102 Policy.

825.102.70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.108(b) will be prepared by the contracting officer for foreign construction materials costing less than $1 million. Each determination will be factually supported in writing and included in the contract file.

(b) Nonavailability determinations for foreign construction materials costing over $1 million must be requested by field station contracting officers from the Director, Office of Procurement and Supply (93). Each request for a determination must be fully justified with all pertinent facts.

(c) A copy of all determinations made in accordance with paragraph (a) of this section shall be forwarded to the Director, Office of Procurement and Supply (93) concurrently with the submissions required by FAR 25.108 (b) and (c).

825.105 Evaluating offers.

When a determination is required under FAR 25.105, the contracting officer will submit the proposed award to the Director, Office of Procurement and Supply (93) for approval by the Administrator. The submission will contain all the facts, including a comparison of all the bids or offers received, and any other pertinent information upon which a determination may be made. If approved, a report of

the transaction will be prepared and submitted by the Director, Office of Procurement and Supply, in accordance with Executive Order 10582, dated December 17, 1954, as amended.

825.108 Excepted articles, materials and supplies.

The following items are added to the list of exceptions contained in FAR 25.108(d):

Lead Glass
Wire Glass

Subpart 825.2—Buy American Act—Construction Materials

825.202 Policy.

825.202-70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.202(a)(3) will be made by the contracting officer for foreign construction material costing $100,000 or less. Each determination will be factually supported in writing and included in the contract file.

(b) Field station contracting officers must request approval of nonavailability determinations from the Director, Office of Procurement and Supply (93).

(c) A copy of all determinations made in accordance with paragraph (a) above shall be forwarded to the Director, Office of Construction (08), through the Director, Office of Procurement and Supply (93).

825.203 Evaluating offers.

When a contracting officer believes that the requirement of the "Buy American Act" is impracticable as provided in FAR 25.202(a)(2), or that it would be advantageous to the VA to deviate from the provisions of the Act as authorized by FAR 25.203, authority to consummate the contract will be requested. The request containing all the facts, including a comparison of all the bids or offers received and any other pertinent information upon which a determination may be made, will be submitted through the Director, Office of Procurement and Supply (93), for approval by the Administrator. If approved, a report of the transaction will be prepared and transmitted by the Director, Office of Construction in accordance with Executive Order 10582, dated December 17, 1954, as amended.

Subpart 825.3—Balance of Payments Program

825.302 Policy.

825.302-70 Deviations from the Balance of Payments Program.

When a contracting officer believes that the requirement of the "Balance of Payments Program" is not practicable as set forth in FAR 25.302 (b)(2) or (b)(3), he/she will request authority to consummate the contract through the Director, Office of Procurement and Supply (93) for approval. Each request must be fully justified, containing all pertinent facts.

825.304 Excess and near-excess foreign currencies.

825.304-70 Determination of feasibility to use excess or near-excess foreign currency.

In accordance with FAR 25.304(c), contracting officers will submit requests for determination to utilize excess or near-excess foreign currencies to the Director, Office of Procurement and Supply (93).

Subpart 825.6—Customs and Duties

825.603 Procedures.

825.603-70 Technical assistance.

Should the regulations contained in FAR 25.6 be inadequate to meet particular needs of a contracting officer in clearing items through customs and/or obtaining Duty Free Entry of goods, the nearest Regional Office of the United States Customs Service should be contacted for technical assistance. These offices are located as follows:

Regional Commissioner, U.S. Customs Service, 100 Summer St., Boston, Massachusetts 02110
Regional Commissioner, U.S. Customs Service, 99 S.E. 5th St., Miami, Florida 33131
Regional Commissioner, U.S. Customs Service, 585 Felipe St., Houston, Texas 77057
Regional Commissioner, U.S. Customs Service, 6 World Trade Center, New York, New York 10048
Regional Commissioner, U.S. Customs Service, 423 Canal St., New Orleans, Louisiana 70130
Regional Commissioner, U.S. Customs Service, 300 N. Los Angeles St., Los Angeles, California 90053
Regional Commissioner, U.S. Customs Service, 55 E. Monroe St., Chicago, Illinois 60603

Subpart 825.7—Restrictions on Certain Foreign Purchases

825.701 Policy.

825.703 Exceptions.

When felt to be in the best interest of the Government, the contracting officer may request exceptions to the requirements of FAR 25.7 for purchases in excess of $10,000 from the Administrator through the Director, Office of Procurement and Supply (93). Each such request must be fully justified, containing all pertinent facts.

Subpart 825.8—International Agreements and Coordination

825.870 Technical assistance

Contracting officers may obtain technical information or guidance on international agreements and treaties for procurements outside the United States by contacting the Director, VA Marketing Center.

Subpart 825.9—Omission of the Examination of Records Clause

825.902 Policy.

If the contracting officer determines that the "Examination of Records Clause" should be omitted after all reasonable efforts to include the clause have failed, and providing that omission of the clause is authorized in the instances cited in FAR 25.903, he/she may request, with appropriate documentation, a determination from the Administrator, through the Director, Office of Procurement and Supply (93). The Administrator, should he/she concur in the contracting officer's determination that the clause should be omitted, will then forward an agency request for omission of the clause to the Comptroller general for a final determination as required by FAR 25-903(a)(1), or submit the report required by FAR 25.903(b).

825.904 Determination and findings.

All determinations to omit the "Examination of Records Clause" will be supported by a determination and findings prepared by the contracting officer containing the information set forth in FAR 25.904. The completed determinations and findings will be made a part of the contract file. One copy of the determinations and findings will be forwarded to the Director, Office of Procurement and Supply (93).

PART 828—BONDS AND INSURANCE

Subpart 828.1—Bonds

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828.101 Bid guarantees.

828.101–3 Contract clause.
828.101–70 Safekeeping and return of bid guarantee.

Subpart 828.2—Sureties

828.203 Options in lieu of sureties.
828.203–1 United States bonds or notes.
828.203–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

Subpart 828.70—Performance and Payment Bonds

828.7000 Bond premium adjustment.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.
828.7101 General.
828.7102 Extent of indemnification.
828.7103 Financial protection.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 828.1—Bonds

828.101 Bid guarantees.

828.101–3 Contract clause.

Where a bid bond is required for supplies or services, the phrase "any cost of acquiring the work" in paragraph (e) of the BID GUARANTEE clause in FAR 52.228–1 may be modified to refer to the cost of "supplies," "services," etc.

828.101–70 Safekeeping and return of bid guarantee.

(a) Certified checks or other negotiable security furnished as bid security with the three lowest acceptable bids will be retained in a safe. These will be returned by certified mail or in person upon presentation of proper receipt after contract and bonds have been signed and approved.

(b) Certified checks or other negotiable security furnished in support of other than the three lowest acceptable bids should be returned promptly to the respective bidders by certified mail, or in person upon presentation of proper receipt.

(c) Commercial bid bonds are not returned unless specifically requested by the bidders, and, even if requested by any of the three low bidders, are not returned until contract and bonds have been executed by the successful bidder, or all bids have been rejected.

Subpart 828.2—Sureties

828.203 Options in lieu of sureties.

828.203–1 United States bonds or notes.

Contracting officers, with the exception of those located in the District of Columbia, receiving United States bonds or notes in lieu of corporate or individual sureties will forward such bonds and notes to the agent cashier for safekeeping. Contracting officers in the District of Columbia will deposit such bonds and notes with the Treasurer of the United States.

828.203–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Contracting officers receiving a certified or cashier's check, bank draft, post office money order or currency in lieu of corporate or individual sureties will deposit them with the agent cashier.

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, will contain the provision in 852.237–71.

(b) *Exceptions.* The provisions of this 828.306 do not apply to emergency or sporadic ambulance service authorized by VA Manual MP–1, part II, chapter 3; or other emergency or sporadic vehicle or aircraft services. *Provided,* That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further,* That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

Subpart 828.70—Performance and Payment Bonds

828.7000 Bond premium adjustment.

When performance and payment bonds are required, the contract will contain the clause prescribed in 852.228–70.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.

(a) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts which involve a risk of an unusually hazardous nature, covering medical research or development as authorized by 38 U.S.C. 4101.

(b) The authority to indemnify the contractor under this subpart does not create any rights to third parties which would not otherwise exist by law.

(c) As used in this subpart the term "contractor" includes subcontractors of any tier under a contract containing an indemnification provision pursuant to 38 U.S.C. 4101(c)(3)(A).

828.7101 General.

(a) The approval for the indemnification of contractors will be made by the Administrator of Veterans Affairs.

(b) Contracting Officers shall submit requests for approval, together with all available information, to the Director, Office of Procurement and Supply (93) for transmittal to the Administrator.

828.7102 Extent of indemnification.

(a) Any contract for medical research or development authorized by 38 U.S.C. 4101, the performance of which involves a risk of an unusually hazardous nature, may provide that the Government will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not covered by the financial protection required under 828.7103.

(1) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal Workmen's Compensation Acts to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with this subpart will also provide for:

(1) Notice to the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) Control of or assistance in the defense by the Government, at its election, of such suit or claim for which indemnification is provided in the contract.

828.7103 Financial protection.

(a) The financial protection to cover liability to third persons and loss of or damage to the contractor's property which the contractor is required to have and maintain shall be the maximum amount of insurance available from private sources; however, the Administrator may establish a lesser amount after taking into consideration the cost and terms of private insurance.

(b) The financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such forms to provide the maximum amount required. When the contractor elects to utilize self

insurance, proof of such financial responsibility up to the maximum amount required will be furnished the contracting officer prior to award.

PART 829—TAXES

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829.000 Scope of part.

Subpart 829.1—General

829.101 Resolving tax problems.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.
829.202–70 Tax exemptions for alcohol products.
829.270 Tax exempt tobacco products for State institutions.
829.270–1 Institution responsibilities and procedures.
829.270–2 Processing of order by Veterans Administration.

Subpart 829.3—State and Local Taxes

829.302 Application of State and local taxes to the Government.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

829.000 Scope of part.

This part prescribes policies and procedures for exemptions from Federal excise taxes imposed on tobacco and alcohol products for such items purchased for use in the Veterans Administration medical care program and specifies refund procedures for State and local taxes.

Subpart 829.1—General

829.101 Resolving tax problems.

Contracting officers will submit requests for legal advice through channels to the General Counsel.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.

829.202–70 Tax exemptions for alcohol products.

(a) General.

(1) The procurement of spirits free of tax for nonbeverage purposes is permitted to Government agencies by regulations of the Bureau of Alcohol, Tobacco, and Firearms (ATF) (see 27 CFR 211.231–237, 213.141–146 and 240.720–722). The use of tax-free alcohol, whiskey, beer, wine and denatured spirits for nonbeverage purposes shall include but not be limited to medicinal and scientific purposes and in the treatment of patients.

(2) Authority is hereby delegated to the Chief, Marketing Center, Hines, Illinois, and to the Chief, Supply Service, Veterans Administration medical facilities to sign application permits on Bureau of Alcohol, Tobacco, and Firearms (ATF) prescribed forms. This authority is not to be redelegated.

(b) Whiskey, alcohol, and denatured alcohol.

(1) Application forms for tax-free purchases are to be obtained from and submitted to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C. 20226.

(2) ATF Form 1486, Specially Denatured Spirits for Use of United States, is the application/permit required for denatured spirits, and ATF Form 1444, Tax-Free Spirits for Use of United States, is required for distilled spirits (whiskey and alcohol). These are continuing permits to procure items tax free. Copies must be made available to the supplier in support of each procurement.

(3) Purchases for excise tax-free whiskey and alcohol, not available through the depot can only be made from a distillery or a bonded premises. In accordance with 27 CFR 213.144, the vendor will also support each shipment with ATF 1473, Shipment and Receipt Specifically Denatured Tax-Free, or Recovered Spirits. The ATF 1473 will be completed by the accountable officer and the original copy will be forwarded to the Regional Regulatory Administrator whose address is shown in item 12 of the form. A copy of ATF 1473 will be retained in the purchase order file.

(c) *Wine.* No tax exemption form or ATF permit is required for the tax-free procurement of wine. An extra copy of a properly executed purchase order or requisition document may be furnished to the supplier (retailer, wholesaler or winery) to facilitate record keeping.

(d) *Beer.* Tax-free beer may be procured only from licensed breweries and only when such product is prescribed for therapeutic use of patients. The application for an ATF permit is to be submitted in letter form to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C. 20226. The following information is required.

(1) Name and address of facility;

(2) Specific purpose for which beer will be used;

(3) Quantity proposed to buy each month, year, etc.;

(4) Name and address of brewery; and

(5) Copy of document authorizing contracting officer to sign request.

A new permit is needed only when beer is to be purchased from a different brewery than the one for which the original permit was requested.

829.270 Tax exempt tobacco products for State institutions.

(a) Bureau of Alcohol, Tobacco, and Firearms regulations permit the withdrawal of tax-free tobacco products by facilities and institutions owned or controlled by State Governments, territories, and the District of Columbia for gratuitous distribution to present and former members of the Armed Forces of the United States who are patients in such institutions (27 CFR 295.31–37). These arrangements will be effective only with institutions where the official-in-charge abides by the procedures and controls prescribed by the Veterans Administration. The unauthorized or illegal use of these products may result in the withdrawal of this privilege by the Veterans Administration.

(b) No tax exemption form or certificate is required for the tax-free purchase of tobacco products. An extra copy of the purchase order will be provided the manufacturer to facilitate record keeping required by the Bureau of Alcohol, Tobacco, and Firearms.

829.270–1 Institution responsibilities and procedures.

(a) The official-in-charge of the institution will act as a representative of the Veterans Administration in the purchase, storage, and distribution of these products and in ensuring the product is distributed on a gratuitous and equitable basis to all eligible recipients. Under no circumstances will these items be offered for sale.

(b) The Veterans Administration will neither accept nor handle donations or funds for institutions.

(c) Payment or nonpayment of State taxes on tobacco products is a matter between the concerned State and the ordering institution.

(d) Orders will be on the institution's regular order form made out to the manufacturer of the desired product. The original and two copies of the order, each signed, will be forwarded to the nearest Veterans Administration medical center. Orders shall also be issued to cover receipt of unsolicited shipments of these products intended for use of veteran-patients. All copies of these orders will be marked CONFIRMATION—DO NOT RESHIP. All orders shall bear a certificate as follows:

> Tobacco products for free distribution to present and former members of the Armed Forces of the United States who are hospitalized or domiciled in this institution.

(e) Copies of all orders and other pertinent documents will be retained and be available to the Veterans Administration and the Bureau of

Alcohol, Tobacco, and Firearms for inspection purposes.

829.270–2 Processing of order by Veterans Administration.

(a) Full cooperation will be given institution representatives in implementing these procedures.

(b) The station head or designee will approve the institution order by signing the original and one copy in ink over his/her printed name and title. The approved orginal and copy shall be forwarded to the vendor as noted in 829.270. The additional copy shall be retained in the medical center's files.

Subpart 829.3—State and Local Taxes

829.302 Application of State and local taxes to the Government.

(a) Standard Form 1094, U.S. Tax Exemption Certificate, will be used as a basis for billing taxing authorities for a refund of taxes paid, if a vendor refuses to sell at a price exclusive of the State and local tax.

(b) SF 1094 will not be furnished to a vendor or used to claim reimbursement from the taxing authority, where the total amount of State and local tax on any one purchase is $10 or less.

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 831.70—Contract Cost Principles and Procedures

Sec.

831.7000 Scope of subpart.
831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.
831.7001–1 Tuition.
831.7001–2 Special services or courses.
831.7001–3 Books, supplies and equipment required to be personally owned.
831.7001–4 Medical services and hospital care.
831.7001–5 Administrator's Decision No. 557.
831.7001–6 Consumable instructional supplies.
831.7001–7 Reimbursement for other supplies and services.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 831.70—Contract Cost Principles and Procedures

831.7000 Scope of subpart.

This subpart contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost reimbursement type contracts pertaining to the furnishing of vocational rehabilitation, education, and training to eligible veterans under chapter 31 of Title 38, United States Code.

831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

831.7001–1 Tuition.

(a) Except as provided in this section, when the contractor has a customary cost of tuition the charge to the Veterans Administration may not exceed that charged to similarly circumstanced nonveteran students; provided that where the contractor has more than one standard charge for the same service, the charge to the Veterans Administration will be the lowest price for the entire course, semester, quarter, or term which is offered or published.

(b) The VA will not normally pay tuition or incidental fees to institutions or establishments furnishing apprentice or other training on-the-job. The VA may pay:

(1) For such charges customarily made by nonprofit workshop or similar establishment for providing work adjustment training to similarly circumstanced nonveterans even though an incentive wage is paid the trainee as part of the training; or

(2) For certain training expenses incurred by an employer providing on-the-job training following rehabilitation to the point of employability when such additional training is determined to be necessary by the VA.

(c) When the total cost of instruction is paid from Federal funds or a portion of the cost is covered by grants from the Federal Government, i.e., Smith-Hughes or other laws, excluding Federal Land Grant Funds, such subsidy will be taken into consideration in determining the charge to the Veterans Administration. The term, Federal Land Grant Funds, refers to those received under the Morrill-Nelson Act (Morrill Acts of 1862 and 1890 and the Nelson amendment of 1907) and section 22 of the Bankhead-Jones Act of 1935.

(d) Payments on behalf of a veteran who receives a fellowship, scholarship, grant-in-aid, assistantship, or similar award in complete or partial payment of tuition or fees or both will be made in accordance with the following:

(1) The award will reduce, to the extent of the award, the amount of tuition or fee or both that is payable by the Veterans Administation.

(2) Awards which are not paid in cash, except those which are made specifically for the purpose of defraying the cost of room and board in dormitories which will be disregarded, will reduce to the extent of the award the charges for which the Veterans Administration is responsible.

(3) Cash awards may be retained by the veterans and will not be deducted from charges ordinarily paid by the Veterans Administration.

(4) Waivers of tuition and fees provided under law by States or other Government authority will be utilized to reduce the charges payable by Veterans Administration in accordance with such waivers.

(e) Enrollment fees in an amount sufficient to cover the cost of registration may be paid, provided the institution or training establishment usually makes such a charge, and it does not exceed that charge made to other students or trainees.

831.7001–2 Special services or courses.

Special services or courses are those services requested by the Veterans Administration which are over and above those customarily required by the institution for similarly circumstanced nonveterans and are considered by the contracting officer to be necessary for the rehabilitation of the trainee. The costs of such special services or courses will be negotiated prior to being requested by the Veterans Administration.

831.7001–3 Books, supplies and equipment required to be personally owned.

(a) Reimbursement for books, supplies, or equipment and referred to as supplies, will be made as provided in this section.

(1) Reimbursement will be made for those supplies customarily required to be owned personally by all students taking the same course or courses except that reimbursement may be made for items which are not specifically required by the school for pursuit of the course, but are determined to be needed by the VA because of the demands of the course, general possession by other students, and the disadvantage imposed on the veterans by not having the item. In no instance will the supplies be in a greater variety, quality, or amount than required of nonveteran students. In this instance required is in contradistinction to requested or desirable to have or necessary for a future profession or job but not required by the institution of all students in the course.

(2) When supplies are available in several prices, grades, or qualities, reimbursement may be made only for such quality or grade that will meet the requirements.

(3) Partial payment agreements in which the Veterans Administration shares payment with the veterans is not allowable.

(4) The costs incurred by the institution in connection with the

veteran's thesis such as typing, printing, microfilming, or otherwise reproducing the required number of copies; research expenses when certified by the veterans committee chairman, major professor, department head, or appropriate dean that such expenses are required in order to complete the course requiring the preparation of a thesis are considered as supplies and are authorized for reimbursement.

(5) When the institution operates a bookstore or supply store for all students the reimbursement for supplies issued to trainees will be no greater than charges made to nonveteran students.

(6) Where the institution, training establishment, or employer arranges for issuance of supplies to all students by stores or establishments not institutionally owned and to pay such store or establishment for supplies issued to trainees, reimbursement is allowable provided the charges are no greater than those paid by nonveterans or to the institutions whichever is the lesser.

(7) Supplies purchased by the institution specifically for trainees will be reimbursed at the net cost to the institution.

(8) Where the institution does not provide or arrange for issuance of generally required books, tools and supplies for students attending the facility, the institution, in cooperation with the VA, may designate certain stores and establishments to provide generally required books, tools and supplies for veterans pursuing a vocational rehabilitation program. The vendor will be reimbursed in the same manner as for supplies provided or arranged for by the institutions.

(9) Where it is customary in a survey subject to permit each student to obtain the aggregate of books for the subject on a rental basis (commonly referred to as a rental set) and the ownership or permanent possession by the student is not required, reimbursement is authorized for the rental charge provided it does not exceed the charge made to nonveteran students.

(10) Educational and training institutions furnishing supplies to trainees which are required to be owned personally or on a rental basis by all students pursuing the same or similar course may be compensated for such services in an amount not exceeding 10 percent of the allowable charge for the supplies furnished or rented except:

(i) Where the tuition covers the charges for supplies or rentals or a stipulated fee is assessed all students, handling charges are not allowable.

(ii) The handling charge is not allowable for Government-owned books procured by the institution from the Library of Congress.

(iii) In cases where an item of equipment will exceed $50 in cost, effort will be made to secure a lower handling charge than for those costing a lesser amount. The agreed percent for such handling charges will be included in the contract or added as an addendum.

§31.7001-4 Medical services and hospital care.

(a) The VA may pay the customary student health fee when payment of the fee is required for similarly circumstanced nonveterans. If payment of the fee is not required for similarly circumstanced nonveterans payment, payment may be made if it is determined by the Department of Medicine and Surgery that such payment is in the best interest of the veteran and the government.

(b) Where medical services or hospital care not covered by the customary students health fee are available in the school operated facilities or arrangements have been made by the institution with doctors and hospitals in the immediate area, reimbursement by the Department of Veterans Benefits for such services may be made in a contract for such services provided that the Director, VA Medical Center, determines:

(1) That such arrangements are necessary to provide timely medical care for veterans attending the facility under provisions of chapter 31; and

(2) The general rates established for such services do not exceed the rates established by the Chief Medical Director.

(c) The VA may reimburse a rehabilitation facility for incidental medical services provided during a veteran's program at the facility.

§31.7001-5 Administrator's Decision No. 557.

(a) Fees and expenses authorized under Administrator's Decision No. 557 may be authorized for payment when the educational institution or training establishment makes such payments on behalf of the veteran.

(b) Payment for fees and expenses not made by the educational institution or training establishment will be made in accordance with Part 813 of this chapter or FAR 15-210(a)(1).

§31.7001-6 Consumable instructional supplies.

(a) Reimbursement for consumable instructional supplies which institutions require for the instruction of all students, veteran or nonveteran pursuing the same or comparable course or courses will be made when:

(1) The supplies are entirely consumed in the fabrication of a required project.

(2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse for further instructions by disassembling or dismantling the end product.

(b) Reimbursement for consumable instructional supplies is not allowable when:

(1) The supplies can be salvaged for reuse.

(2) The supplies used in a project which has been elected by the student as an alternate class project in order to produce an end product of greater value than that which is normally required to learn the skills of the occupation and which will become his property upon completion.

(3) The supplies used in a project which has been selected by the institution to provide the student with a more elaborate end product than is required to provide adequate instruction as an inducement to the veteran to elect a particular course of study.

(4) The salable value of the end product is equal to or greater than the cost of the supplies used in its fabrication or assembly and a reasonable use has not been made of such supplies so that they are not readily salvaged from the end product to be reused for instructional purposes.

(5) The end product is of premanent value and retained by the institution.

(6) A third party provides the articles or equipment for repair or improvement and for which he or she would otherwise pay a commercial price.

(7) The number of projects resulting in end products in excess of the numbers normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.

(8) The cost of supplies are included in the charge for tuition or as a fee designated for such purpose.

§31.7001-7 Reimbursement for other supplies and services.

Reimbursement shall be made for other services and assistance which may be authorized under provisions of applicable chapter 31 regulations including but not limited to employment and self-employment, initial and extended evaluation, and independent living services.

PART 832—CONTRACT FINANCING

Subpart 832.4—Advance Payments

Sec.

832.402 General.
832.404 Exclusions.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.
832.502–2 Contract finance office clearance.

Subpart 832.8—Assignment of Claims

832.805 Procedure.
832.805–70 Distribution/notification of assignment of claims.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 832.4—Advance Payments

832.402 General.

The determination required by FAR 32.402(c)(1)(iii) will be made by the Director, Office of Procurement and Supply. Prior to award, contracting officers will submit, through channels, the information required by FAR 32.409–1 for such determinations.

832.404 Exclusions.

(a) Under the provisions of 31 U.S.C. 3324(d)(2), as amended, advance payment is authorized for subscriptions or other charges for newspapers, magazines, periodicals and other publications for official use of any office under the Government from appropriations available therefore, notwithstanding the provisions of 31 U.S.C. 3324(a). The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual usage.

(b) Under the provisions of 31 U.S.C. 1535, advance payment may be made for services and supplies obtained from another Government agency. This includes items such as coupons from the Government Printing Office and Operator Permits, Civilian Defense Radio System, and from the Federal Communications Commission.

(c) Under the provisions of 5 U.S.C. 4109, advance payment may be made for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities. This includes the purchase or rental of books, materials and supplies or services directly related to the training of a Government employee.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.

832.502–2 Contract finance office clearance.

Prior approval of actions listed in FAR 32.502–2 will be obtained from the Director, Office of Procurement and Supply (93). Requests for approval shall be accompanied by full justification together with the recommendations of the contracting officer.

Subpart 832.8—Assignment of Claims

832.805 Procedure.

832.805–70 Distribution/notification of assignment of claims.

(a) The Contracting officer will file the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the General Accounting Office copy of the contract.

(b) Contracting officers will notify field stations of any recognized assignment of payments under contracts executed in Central Office or by the Marketing Divisions in all cases where payment for articles and services under such contracts are certified and approved for payment in the field.

PART 833—DISPUTES AND APPEALS

Sec.
833.009 Suspected fraudulent claims.
833.011 Contracting officer's decision.
833.012 Contracting officer's duties upon appeal.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

833.009 Suspected fraudulent claims.

Matters relating to suspected fraudulent claims will be referred to the Assistant Inspector General, Office of Investigations (51) for investigation and referral to the Department of Justice. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General.

833.011 Contracting officer's decision.

(a) When a dispute cannot be settled by agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer shall furnish the contractor his/her final decision in the matter.

(b) The decision must be identified as a final decision, be in writing, and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. It will normally be in the form of a statement of the claim or other description of the dispute with necessary references to the pertinent contract provisions. It will set forth those facts relevant to the dispute, with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) Except as provided in paragraph (d), the decision shall, in addition to the material required by FAR 33.011(a)(4), contain the following:

The Veterans Administration Board of Contract Appeals (VABCA) is the authorized representative of the Administrator for hearing and determining such disputes. The rules of the VABCA are published in § 1.783, of Title 38, Code of Federal Regulations.

(d) If the decision involves a contract entered into prior to the effective date of the Contracts Disputes Act of 1978, i.e. March 1, 1979, and the decision is on a claim which was pending before the contracting officer, or initiated thereafter, the decision shall contain the following:

The Veterans Administration Contract Appeals Board (VACAB) is the authorized representative for hearing such disputes. The rules of the VACAB are published in § 1.774, of Title 38, Code of Federal Regulations.

The appeal must be filed within 30 days of receipt of the final decision. Any request for an extension of the 30-day appeal period will be denied by the contracting officer. In the alternative, the contractor may elect to proceed under the Contract Disputes Act of 1978, 41 U.S.C. 601–613, in which case, you must within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Board of Contract Appeals and provide a copy to the contracting officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. Instead of appealing to the Board of Contract Appeals, you may bring an action directly in the U.S. Claims Court (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision. If you appeal to the Board of Contract Appeals, you may, solely at your election, proceed under the Board's small claims procedure for claims of $10,000 or less or its accelerated procedure for claims of $50,000 or less.

(e) The contracting officer's final decision will be forwarded to the contractor by certified mail, return receipt requested.

833.012 Contracting officer's duties upon appeal.

(a) When a notice of appeal in any form has been received by the contracting officer, that officer will endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days, will forward said original notice of appeal and a copy of the contracting officer's final decision letter to the Veterans Administration Board of Contract Appeals (VABCA). Copies of the notice of appeal and the final decision letter will be transmitted

concurrently to the Director, Office of Procurement and Supply (93) and the Assistant General Counsel (025). (In cases of construction contracts administered by the Office of Construction, copies of appeal and final decision letter need not be transmitted to the Director, Office of Procurement and Supply (93).)

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer will assemble and transmit to the VABCA, through the Office of General Counsel (025), an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the VABCA; and

(5) Any additional information considered pertinent.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 834—MAJOR SYSTEMS ACQUISITION

834.002 Policy.

VA policy regarding major system acquisition is contained in Central Office Operating Instructions OI–1, Part VI, Chapter 11, "Major System Acquisitions." Normally, VA major system acquisitions involve a minimum of $50 million one time costs or $150 million life cycle costs. Persons wishing to review these procedures may obtain copies by writing the Associate Deputy Administrator for Information Resources Management (004), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

(38 U.S.C. 210 and 40 U.S.C. 486(c))

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 836.2—Special Aspects of Contracting for Construction

Sec.
836.202 Specifications.
836.206 Liquidated damages.
836.208 Concurrent performance of firm fixed-price and other types of construction contracts.
836.209 Construction contracts with architect-engineer firms.
836.211 Distribution of advance notices and solicitations.

Subpart 836.3—Special Aspects of Formal Advertising in Construction Contracting

836.302 Presolicitation notices.
836.371 Notice to proceed.

Subpart 836.6—Architect-Engineer Services

836.601 Policy.
836.602 Selection of firms for achitect-engineer contracts.
836.602–1 Selection criteria.
836.602–2 Evaluation boards.
836.602–3 Evaluation board functions.
836.602–4 Selection authority.
836.602–5 Procedure for procurements estimated not to exceed $10,000.
836.606–70 General.
836.606–71 Architect-engineer's proposal.
836.606–72 Contract price.
836.606–73 Application of 6-percent architect-engineer fee limitation.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 836.2—Special Aspects of Contracting for Construction

836.202 Specifications [Reserved].

836.206 Liquidated damages.

Liquidated damage provisions may be included in construction contracts when the criteria of 812.202 is met. If partial performance may be accepted and utilized to the advantage of the Government, the clause substantially as set forth in 852.212–70 will be included in addition to the clause set forth in FAR 52.212–5.

836.208 Concurrent performance of firm fixed-price and other types of construction contracts.

When concurrent contracts of the type specified in FAR 36.208 are considered necessary or advantageous, prior approval will be requested of the Chief Medical Director for contracts involving M&R (Maintenance and Repair) funds or of the Director, Office of Construction for contracts involving construction (major and minor) funds. Complete justification will be furnished in the request.

836.209 Construction contracts with architect-engineer firms.

When it is considered necessary or advantageous to award a contract for construction of a project to a firm or person that designed the project, prior approval will be requested of the Chief Medical Director for contracts involving M&R funds or of the Director, Office of Construction for contracts involving construction funds. Complete justification will be furnished in the request.

836.211 Distribution of advance notices and solicitations.

(a) On the issue date shown on SF 1442, Solicitation, Offer and Award, specifications, drawings, and all other material necessary to prepare a bid will be issued to each eligible prospective bidder and other agencies who request them in writing and who meet the qualifications stated in the solicitation.

(b) On the issue date, two copies of the drawings and specifications for station level projects funded from construction appropriations will be furnished to the Director, Office of Construction.

(c) Distribution of specifications and drawings on Central Office projects will be in accordance with that established by the Project Director.

(d) Advance (presolicitation) notices should also be sent to Chambers of Commerce, Builders Exchanges, various trade journals, and other organizations which make a practice of publishing such information for the benefit of the construction industry. Drawings and specifications should be sent to Chambers of Commerce and Builders Exchanges when requested. These organizations frequently make drawings and specifications available for review and inspection to suppliers and subcontractors who cannot receive drawings and specifications from the Government.

Subpart 836.3—Special Aspects of Formal Advertising in Construction Contracting

836.302 Pre-solicitation notices.

An SF 1417, Pre-Solicitation Notice (Construction Contract), shall be used as a pre-solicitation notice on proposed contracts expected to equal or exceed $100,000. When so used, it will be submitted to prospective bidders at least 15 days prior to the date on which the drawings and specifications will be issued. When pre-solicitation notices are not used, see 836.211.

836.371 Notice of proceed.

(a) Construction contractors will be given a written "Notice to Proceed" with the work. SF 1442 serves that purpose of contracts not in excess of $25,000 when completed by the contracting officer and returned to the contractor. For contracts exceeding $25,000, a letter will be used. A letter notice to proceed will normally be sent only after performance and payment bonds and the completed contract forms, where applicable, have been returned by the contractor and are accepted by the contracting officer. If the urgency of the work or other proper

reason requires the contractor to begin work immediately, the award letter may include the "Notice to Proceed" with the reservation that payments are contingent upon receipt and approval of the required bonds.

(b) If the contract provides for liquidated damages, the notice to proceed will be sent by certified mail, return receipt requested. It will advise the contractor that the work will be completed within —— (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office.

(c) If the contract does not provide for liquidated damages, certified mail is not required. Notices to proceed for these contracts will establish a date for completion taking into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, a copy will be furnished to the resident engineer or the Chief, Engineering Service. A copy of the notice to proceed will be filed with copy A of the contract. When certified mail is used, the certified mail receipt card returned by the post office will be attached to the copy of the notice to proceed. Copies of the notice to proceed will be filed with copies C and D of the contract after the date of receipt has been established and indicated thereon.

Subpart 836.6—Architect-Engineer Services

836.601 Policy.

The provisions of this subpart pertain to the general policies and procedures for the procurement of professional architect-engineer services as set forth in FAR subpart 36.6 and are not applicable to contracts entered into pursuant to the authority of 38 U.S.C. 1820. The provisions of the Small Business Act are applicable to the procurement of architect-engineering services. Consequently, consideration of procurement set-asides for small business concerns will be made in accordance with FAR subpart 19.5.

836.602 Selection of firms for architect-engineer contracts.

836.602–1 Selection criteria.

In addition to the evaluation criteria set forth in FAR 36.602–1, the board will consider the factors set forth in this section as they apply to the project or purpose of the selection. Values will be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the preselection process. The values may be confirmed or adjustments may be made as a result of the discussions.

(a) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.

(b) Record of significant claims against the client because of improper or incomplete architectural and engineering services.

(c) Geographic location and facilities of the working office which would provide the professional services.

(d) Specific experience and qualifications of personnel proposed for assignment to the project, and record of working together as a team.

836.602–2 Evaluation boards.

Central Office architect-engineer contractors will be selected by the board appointed by the Director, Office of Construction. Field station architect-engineer contractors will be selected by the board appointed by the station director.

(a) The evaluation board will be chaired by either the Chairman or Vice Chairman of the Architect-Engineer Evaluation Board, or the Project Director (or Deputy Project Director) will be designated to act when necessary. The board's members, as appointed by the Director, Office of Construction, will include the appropriate Project Director or designated Project Supervisor and as many qualified professional architects or engineers from the Office of Construction technical services as may be considered for appropriate for the particular project. Additional members from the Office of Construction or from the other VA departments and staff offices will be designated for special type projects when appropriate.

(b) The evaluation board for a Veterans Administration field station will consist of no less than two members, one of whom will be the senior contracting officer, and the other the Engineer Officer. Where a station has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairman of the board will be the senior engineer.

836.602–3 Evaluation board functions.

(a) The evaluation board will review the data submitted by the firms and from that file will preselect the firms which possess the basic qualifications for performing the services needed. The factors stated in the announcement publicizing the proposed procurement (see FAR 5.207) will be used in determining whether a firm is qualified for inclusion in the preselection list.

(b) In the evaluation of the qualifications of the firms on the preselection list, the board will perform the functions as outlined in FAR 36.602–3, applying the evaluation criteria set forth in FAR 36.602–1 and that established in 836.602–1. The board will recommend at least three firms for interviews to the Director, Office of Construction in the case of Central Office contracts, and to the field station director in the case of station contracts.

(c) After approval of the list of selected firms recommended for interviews by the Director, Office of Construction or by the station director, the board will arrange discussions with each firm to obtain information, supplementing that which is already available. The board will select in order of preference, at least three firms considered the most highly qualified. This recommended listing will be submitted to the Director, Office of Construction or to the station director, as appropriate, for consideration and approval before the contracting officer enters into negotiations with the top-rated firm.

836.602–4 Selection authority.

The Director, Office of Construction (for Central Office contracts) and the station director (for field station contracts), or persons acting in those capacities, are designated as the approving officials for the recommendations of the evaluation boards.

836.602–5 Procedure for procurements estimated not to exceed $10,000.

Either of the procedures provided in FAR 36.602–5 may be used when authorized by the Director, Office of Construction or the station director.

836.606–70 General.

Negotiations shall be conducted in accordance with FAR Part 15 and VAAR Part 815, beginning with the most preferred firm in the final selection. Application of the 6-percent fee limitation cited in FAR 15.903(d)(1)(ii) is set forth in 836.606–73. The policy set forth in that section and the provisions of FAR Part 15 provide all the available latitude in the negotiation of the contract price. The VAAR policy does not, however, relieve the contracting officer of the responsibility to determine that the fee negotiated is consistent with the services to be performed and the nature of the project. The contract ordinarily will cover all services to be rendered by the firm. To assure that the fee limitation is not violated, the contracting officer will maintain suitable

records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.

836.606-71 Architect-engineer's proposal.

The use of VA Form 08-6298, Architect-Engineer Fee Proposal, is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be $50,000 or over. The use of VA Form 08-6298 for design contracts less than $50,000 is at the discretion of the contracting officer. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, VA Form 08-6298 shall also be used but supplemented or modified as needed for the particular project type. The contracting officer shall require the contractor or prospective contractor to submit (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) certified cost or pricing data when required by FAR Subpart 15.804.

836.606-72 Contract price.

Where negotiations with the top-rated firm are unsuccessful, the contracting officer will terminate the negotiations and undertake negotiations with the firm next in order of preference after authorization by the Director, Office of Construction or by the station director to do so. Recommendation for award of the contract at the negotiated fee, with a copy of the negotiation memorandum prepared in accordance with FAR 15.808 and, will be submitted whenever a field pricing report has been received (see MP-1, Part II, Chapter 23), to the Director, Office of Construction or the station director, as appropriate.

836.606-73 Application of 6-percent architect-engineer fee limitation.

(a) The 6-percent fee limitation on architect or engineer services set forth in section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended, and referred to in FAR 15.903(d)(1)(ii), applies to those services generally required in preparing working drawings and specifications which form the basis for bidding and for the award of construction contract. The fixed fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to:

(i) Determination of program requirements including schematic or preliminary plans and estimates.

(ii) Determination of feasibility of proposed project.

(iii) Preparation of measured drawings of existing facility.

(iv) Subsurface investigation.

(v) Structural, electrical, and mechanical investigation of existing facility.

(vi) Surveys: Topographic, boundary, utilities, etc.

(2) Special consultant services not normally available in organizations of architects or engineers not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required.

(3) Other:

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media.

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications.

(iii) Supervision or inspection of construction, review of shop drawings or samples and other services performed during the construction phase.

(iv) All other services that are not integrally a part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

(b) The total cost of the architect or engineer services contracted for may not exceed 6 percent of the estimated cost of the construction project plus the estimated cost of related services and activities such as those shown in paragraph (a) of this section. To support project submissions, VA Form 10-1193, Application for Health Care Facility Project, and VA Form 10-6238, EMIS Construction Program-Estimate Worksheet, will be used and the proposed technical services shown where necessary and applicable.

PART 837—SERVICE CONTRACTING

Subpart 837.1—Service Contracting—General

Sec.
837.103 Contracting officer responsibility.
837.104 Personal services contracts.

Subpart 837.2—Consulting Services

837.200 Scope of subpart.
837.203 Types of consulting services.
837.204 Policy.
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837.271 Management and professional services.
837.271-1 Scope.
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Appendix A Information to be Included in Requests for Contractual Services.
Appendix B Management and Professional Services and Special Studies and Analyses.

Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

Subpart 837.70—Mortuary Services

837.7001 General.
837.7002 List of qualified funeral directors.
837.7003 Funeral authorization.
837.7004 Administrative necessity.
837.7005 Unclaimed remains—all other cases.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 837.1—Service Contracts—General

837.103 Contracting officer responsibility.

When the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or nonpersonal services, he/she shall gather all the pertinent facts and request the opinion of District Counsel responsible for servicing the VA facility involved.

837.104 Personal services contracts.

(a) Personal service contracts having an employer-employee relationship, except to the extent indicated in 815.204 and Subpart 837.2, shall not be awarded but will be consummated in accordance with MP-5, Parts I and II.

(b) In addition to the elements used in assessing whether or not a contract is personal in nature identified in FAR 37.104(d), the following circumstances may also indicate a possible personal service contract.

(1) The contract does not call for an end product which is adequately described in the contract.

(2) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(3) Office space, equipment and supplies for contract performance are to be furnished by the Veterans Administration.

(4) Contractor personnel are to be used interchangeably with Veterans Administration personnel to perform the same function.

(5) The Veterans Administration retains the right to control and direct the

means and methods by which contractor personnel accomplish the work.

Subpart 837.2—Consulting Services

837.200 Scope of subpart.

This subpart implements FAR Subpart 37.2 and supplements it with the agency control procedures established pursuant to OMB guidance. This subpart also applies to the procurement of management and professional services, special studies and analysis, and the management and support services for research and development activities as indicated in 837.271.

837.203 Types of consulting services.

For the purpose of this subpart the definition of consulting services shall, in addition to examples listed in FAR 37.203, include peer review of research proposals.

837.204 Policy.

In addition to policy considerations listed in FAR 37.204, contracting officers will be guided by the following additional policy.

(a) Consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

(b) Grants and cooperative agreements will not be used as legal instruments for consulting service arrangements.

(c) A competitive solicitation is the preferred method of obtaining consulting services and should be used to the maximum extent practicable to insure that costs are reasonable. To that end, requests for approval of the use of consulting services must be made in sufficient time to enable the appropriate procurement action to be taken. A FFP (firm fixed-price) contract is the preferred contract type and will be used to the maximum extent possible. The contracting officer will determine the feasibility of using an FFP contract and may solicit further detail from the requesting official in order to make that determination.

(d) Sponsoring offices will avoid any contact or discussion with prospective contractors that may impinge on the integrity of the procurement process. Final selection of contractors and negotiation of terms, conditions and prices are matters lying solely within the province of the contracting officer.

(e) Requesting official submitting requirements for consulting services will submit work statements which are specific, complete, and which specify fixed periods of service. End products must be specific and unambiguous, and defined in terms which directly relate to the problem at hand.

(f) Sole-source contracts for consulting services resulting from unsolicited proposals are generally not appropriate. Therefore, when a using activity receives an unsolicited proposal for consulting services, and determines it has a need for such services, a contracting officer shall synopsize the requirement for publication in the Commerce Business Daily to determine if there are other qualified contractors interested in submitting a proposal. Qualified contractors shall be solicited.

(g) If program or contracting officials become aware of serious deficiencies in the performance of duties and responsibilities outlined in this subpart, they will report such deficiencies to their respective department head or staff office director for corrective action. These reports, including corrective actions taken, will be forwarded to the Agency Procurement Executive.

837.205 Management controls.

(a) *Contracting officer responsibilities.* (1) The contracting officer is responsible for making the determination that the requirements submitted by the requesting official are in fact consulting services. The contracting officer will be guided by definitions in FAR 37.201. Upon an affirmative determination that consulting services are being requested, the contracting officer will insure that all justifications for approval required by 837.205(c) are prepared and submitted properly.

(2) The contracting officer will require as a condition of the contract that the contractor will submit all reports with covers which display the following information:

(i) Name and business address of the contractor.

(ii) Contract number.

(iii) Dollar amount of award (including modifications).

(iv) Type of award, i.e., competitive or noncompetitive.

(v) Identification of the official who requested the consulting services, including the name of the organization and telephone number.

(vi) The following notation will be included:

> Note.—Pub. L. 97–101, section 412, requires that upon the transfer of the contents of this report, or any other Government document, the new document shall appropriately identify the contract and contractor involved in the development of this report.

(3) The contracting officer is responsible for assessing actual and potential organizational conflicts of interest. These determinations will be governed by 809.5. The contracting officer should pay particular attention to proposed contract requirements which call for advice on future agency decisions to contract, particularly when the development of specifications and work statements is involved.

(b) *Technical support.* (1) Contracting officers will designate a representative of the sponsoring officer as the COTR (Contracting Officer's Technical Representative).

(2) The designated COTR will monitor contract performance in accordance with the plan required by Appendix A of this subpart and submit to the contracting officer all resulting documentation for inclusion in the contract file.

(3) No consulting contract file will be closed out until the sponsoring official has provided for the file a written evaluation of the performance of each consulting contractor as well as a statement of the extent to which the contractor's report (or other end product) has been used or is expected to be used. Also, the contracting officer should, in conjunction with the responsible program official, compare the original contract cost with the final cost and determine the nature of any other deviations from the original contract specifications. Any irregularities should be reported to the Inspector General. Final evaluations should also specify reasons for rejecting any of the contractor's recommendations.

(4) Copies of all final evaluations should be sent to the Director, Procurement and Supply (93).

(c) *Approval procedures.* (1) Contracts for consulting services will be approved by the Administrator regardless of amount, except as provided for in 837.205–70. The methodology for obtaining the approvals required by this paragraph are set forth in paragraph (c)(3) of this section. However, no request for approval of procurement shall be initiated by a contracting officer without the requirement for consulting services first having received the review required in paragraph (c)(2) of this section.

(2) Prior to the submission of an approval request to a contracting officer as required by paragraph (c)(3) of this section, the activity requesting the consulting services will have such requirements reviewed and approved at one level above the activity and, if occurring during the fourth quarter, two levels above. At field facilities this initial review need not exceed the facility head. In Central Office this

review need not exceed department heads, Associate Deputy Administrators, or staff office directors for requirements emanating within their respective jurisdictions. The purpose of this initial review will be to notify management in the chain of command of all consulting services requirements, and to insure that departmental policy pertaining to such services has been adhered to, including any budget restrictions imposed by the Office of Management and Budget.

(3) The approval of the Administrator will be requested by means of a notification of intent prepared by the contracting officer in the form of a letter or memorandum and submitted through channels to the Director, Office of Procurement and Supply. The Director, Office of Procurement and Supply will review the submission for consistency of application of agency policy, and will be responsible for maintaining a consolidated record of requests submitted to the Administrator and the results of those submissions. Subsequent to that review, the notices will be forwarded for the approval of the department heads, Associate Deputy Administrators or staff office directors having jurisdiction over the requesting activity. The General Counsel and the Director, Office of Budget and Finance will also review and concur in the requests.

(4) The notification of intent will cite the pertinent authority warranting negotiation and, in addition to any required determination and findings, will contain the information indicated in Appendix A to this subpart as applicable to the proposed procurement. Where a specific individual or concern is proposed, the notification of intent will also include a statement as to any previous or current contracts with that individual or concern, and as to the consideration given to organizational conflicts of interest.

(5) The approval of the Administrator is in addition to and does not replace technical and legal reviews of contract documents prior to award prescribed elsewhere in these regulations.

(d) *Contract data reporting.* (1) The contracting officer will take care to report correctly a contract award for consulting services in the Federal Procurement Data System.

(2) A separate log (in addition to any station contract register) for all consulting services contracts, regardless of dollar value, will be maintained at the procuring activity for management control purposes. Log entries will be made on separate sheets of paper for each contract award and in the following format:

(i) Contract/obligation number.
(ii) Date of award.
(iii) Requesting service.
(iv) Type of award, i.e., competitive or noncompetitive.
(v) Name and address of awardee.
(vi) Contract price.
(vii) A short narrative description of the work to be performed.

(3) The contracting officer will forward a copy of each log entry on standard size plain white bond paper to the Director, Office of Procurement and Supply (93) on a quarterly basis. Log entries should be received in Central Office no later than 15 days after the end of each quarter. Upon receipt of log entries, the Office of Procurement and Supply (93) will immediately enter all submissions into the consolidated listing. Negative responses, if applicable, are required on an annual basis and should be received in Central Office no later than 15 days after the end of the fiscal year. Reports Control Symbol 91–4 has been assigned to this report.

(4) Upon a change in status of a consultant contract, i.e., termination, modification, extension or completion, the contracting officer wil annotate the log entry and resubmit a copy of the entry to the Director, Office of Procurement and Supply (93).

837.270 Special controls for letters of agreement.

(a) Letters of agreement may be used to procure consulting services and advisory board memberships only by those individuals designated in 801.670–14(a) and individuals delegated authority under the conditions specified in paragraph (b) of that section, and will be limited to a value of $500 per letter and to an accumulated annual total of $2,500 to any individual or firm. Letters of agreement should only be used where normal procurement channels are not feasible and only for obtaining the following services:

(1) Consultant services including peer review of research proposals and advisory board memberships.

(2) Management and professional services (837.271)

(3) Instructors and training obtained pursuant to section 4122 of Title 38, United States Code.

(b) The delegated official will perform or have performed for each letter of agreement all those duties and requirements prescribed-in this subpart, as modified by paragraphs (c) and (d) of this section. That official will also insure that all reporting requirements are completed for each action.

(c) The department head or staff office director will be the highest level approving official for each procurement action which does not exceed $500 in consulting fees (excluding travel, per diem and other travel-related costs) and which does not award more than an accumulated total of $2,500 per year in consulting fees to any individual or firm. (Consulting services anticipated to exceed these dollar limitations will not be obtained through letters of agreement.)

(d) In lieu of the requirements outlined in Appendix A of subpart 837.2, justifications for letters of agreement will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services. The justification will also certify that the procurement action will not violate post-employment restrictions prescribed in the Ethics in Government Act and 803.101–3.

(e) All procurements for consulting services accomplished through letters of agreement will be entered into the agency consolidated listing of consultant contracts in the format prescribed by 837.205(d). All such log entries applicable to Central Office activities shall be forwarded to the Director, Office of Procurement and Supply (93). The office shall also be responsible for entering such information pertaining to Central Office letters of agreement into the Federal Procurement Data System.

837.271 Management and professional services.

837.271–1 Scope.

(a) The controls in this section are applicable to management and professional services, special studies and analyses and management and support services for research and development. Specific types of services to be controlled are listed in Appendix B of this subpart. Management and support services for research and development are the same services listed in Appendix B when procured with Research and Development funds. However, the controls do not apply to the conduct of research and development.

(b) Services in other than the categories listed in Appendix B are also controlled if covered by the definition in 837.271–2 and either represent unusual, nonroutine requirements or requirements having significant impact on agency operations. Contracting officers will be responsible for making such determinations.

(c) This section does not apply to contracts for the medical, dental and ancillary care of beneficiaries or to contracts for the provision of other

services directly to beneficiaries, such as educational services.

837.271-2 Definition.

The term "management and professional services" means those services related to the performance of operating functions of an agency, involving knowledge of an advanced type, and requiring the use of discretion and judgment. Management and professional services differ from consulting services in that the latter term refers to services of a purely advisory nature. Both categories of services involve selection of the contractor on the basis of qualifications, rather than price alone, and are therefore normally procured by negotiation.

837.271-3 Guidelines for use of contracts for management and professional services.

(a) Contracts are appropriate when:

(1) Unusual or peak workloads occur that cannot be accomplished by Government personnel.

(2) Work involved is of of an intermittent, occasional, or one-time nature for which the hiring of Government personnel is not feasible.

(3) They result in a more economical method of performing the work (see OMB Circular No. A-76, revised.)

(b) Contracts are inappropriate (improper or illegal) when:

(1) The service involves exercising a Governmental judgment; i.e., managing programs requiring value judgments; selection of priorities; direction of Federal employees; and all regulatory responsibilities.

(2) An employer-employee relationship would be established or involved.

(3) They circumvent personnel salary or ceiling limitations.

837.271-4 Approval for use of contractual services.

(a) All contracts controlled by this section require the approval of the Administrator except as provided in paragraph (b) of this section. The procedure to be used in obtaining approval is the same as that required for consulting service as prescribed in 837.205(c). The format and content of the supporting justification will be the same as that in Appendix A.

(b) Contracts not exceeding $500 may be approved by the heads of facilities, without higher level review, for requirements emanating at the local level. In Central Office, contracts not exceeding $500 may be approved at one level above the requesting activity, without higher level review. Supporting justifications will be the same as required in paragraph (a) of this section.

(c) The approvals of officials designated in paragraphs (a) and (b) of this section are in addition to and do not replace the technical and legal reviews of contract documents prior to award prescribed elsewhere in these regulations.

837.271-5 Contract administration.

(a) All the basic policy considerations contained in 837.204 are applicable to services controlled herein, including the development of work statements which are specific, complete and which specify fixed periods of service and the solicitation of other qualified sources for proposed sole-source awards emanating from unsolicited proposals.

(b) All responsibilities of contracting officers and their technical representatives as prescribed in 837.205, Contracting requirements, will apply to services controlled by this section, including the monitoring of contractor performance and the final evaluation of end products.

(c) All reporting requirements contained in 837.205(d) are applicable to services controlled by this section.

Appendix A—Information to be Included in Requests for Contractual Services

Requests for approval to procure contractual services, whether with individuals or firms, must contain statements on the following items where applicable. Items other than those listed may be added to clarify or justify the request.

Problem or Project

1. Description of the problem or project.
2. Length of time this problem or condition has existed.
3. Effect on the mission should the problem continue to exist.
4. Specific examples of losses or excessive costs caused by the problem.
5. Whether the proposed study or project is a small segment of a much greater project. If so, elaborate on the complete study or project and state what action will be taken concerning the overall project when this segment is completed.
6. Alternative approaches available to perform this work, and reasons for eliminating each approach.
7. Previous attempts to solve the problem or perform the work and their results, with an explanation why they were unsuccessful if that was the case.
8. Results or end products sought. End products can be as simple as a report containing recommendations, or as lengthy and detailed as a completely installed system for management.
9. Efforts made to determine if similar studies or other sources of information already exist, and whether this proposed effort duplicates other efforts known to have taken place or which are ongoing.
10. Whether a lack of equipment has a bearing on this problem. If so, what attempts were made to remedy the situation?
11. Type of skills required to solve problem or accomplish the project.

Personnel

12. Whether a shortage of qualified personnel has a bearing on the problem. If so, what attempts were made to remedy the situation?
13. Number of in-service personnel by descriptive title to be made available to work with the contractor.
14. If the services of a specific individual are requested, specific reasons why this individual or another equally competent individual cannot be temporarily employed as authorized by personnel regulations.
15. If a request is for a specific individual, reasons for selecting that person over other suitable persons. List of other suitable persons, or explanation if there are none.

Firms

16. If a specific firm is recommended, reasons for selecting it over other suitable firms, or explanation if there are none.

Cost of Contract and Funds

17. Estimated cost of contract.
18. Identification of funds to be used to pay for contract.

Attachments

19. Copies of staff studies and papers bearing on the problem.
20. Copy of proposed contract work statement.

Automated Data Processing

21. If the request includes a requirement for services related to ADP, a copy of any reports or requests submitted to GSA pursuant to FPMR Subpart 101-36.47.

Evaluation

22. The methodology by which contractor performance will be monitored including how departures from the original contract specifications will be documented and approved.
23. The methodology by which the final product will be evaluated and by whom.

Advance Procurement Planning

24. Does the requirement fall within the activity's advance procurement plan, and if not, why?

Appendix B—Management and Professional Services and Special Studies and Analyses

Federal procurement data system service code	Category
	Professional Services
R402	Management Data Collection Services.
R405	Operations Research Services.
R406	Policy Review/Development Services.
R407	Program Evaluation Services.
R408	Program Management/Support Services.
R409	Program Review/Development Services.
R410	Public Relations Services.
R412	Simulations.
R413	Specifications Development Services (Nonconstruction).
R498	Other Professional Services.

Federal procurement data system service code	Category
	Special Studies and Analyses
R505	Cost Benefit Analyses.
R507	Economic/Socio-Economic and Labor Studies.
R513	Feasibility Studies (Nonconstruction).
R521	Historical Studies.
R524	Mathematical/Statistical Analyses.
R527	Recreation Studies.
R528	Regulatory Studies.
R529	Scientific Data Studies (Non-medical).
R537	Control Health Studies.
R599	Other Special Studies and Analyses.

Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

Contracting officers should be cognizant of the requirements contained in VA Manual MP–3, Part II, Chapter 6, for approval necessary prior to entering into a contract for disposal of VA real property. Such approval(s) shall be included in the contract file.

Subpart 837.70—Mortuary Services

837.7001 General.

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of the Veterans Administration, as provided in 38 U.S.C. 903.

837.7002 List of qualified funeral directors.

Contracting officers will establish, in coordination with cognizant Medical Administration Service personnel, a list of funeral directors capable of performing the burial services specified in 837.7003. The contracting officer will attempt to establish a commitment to perform these services within the statutory limitation of $300. Each funeral director must be fully licensed in the jurisdiction in which the business operates. If there has been no prior experience with the funeral director which would ensure the adequacy of the funeral director's services and casket, arrangements will be made prior to contract negotiation to inspect the premises and the casket to be provided, and to check with the local business bureau and/or Chamber of Commerce. Certification of the funeral director's adequacy will be added to the list prescribed in this section.

837.7003 Funeral authorization.

(a) When a veteran dies while receiving care in a Veterans Administration health care facility or in a non-Veterans Administration institution at Veterans Administration expense, and the decedent's remains are unclaimed, the Chief, Medical Administration Service, will forward to the Chief, Supply Service, a properly executed VA Form 10–2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured. Burial will be made in the nearest National Cemetery having available grave space.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of $300. This service will consist of and will be specified on the purchase order, VA Form 90–2138, Order for Supplies or Services, as follows:

(1) Preparation of the body, embalming.

(2) Clothing.

(3) Casket. (The casket, as a minimum, will be constructed from thick, strong particle board and must be of sufficient strength to support the weight of an adult human body. Cardboard or press paper or similar materials are not acceptable).

(4) Securing all necessary permits.

(5) Ensuring that a United States Flag (provided the funeral director in accordance with M–1, Part I, paragraph 14.40) accompanies the casket to place of burial.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 903(a)(2). This allowance will cover the transportation cost of shipment of the body by common carrier or by hearse from the VA facility to the funeral home and to the place of burial, any charges for an outside (shipment) box, and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the $300 allowance.

(d) In accordance with M–1, Part I, paragraph 14.37, the contracting officer will designate the Chief, Medical Administration Service, or representative, to be responsible for the medical inspection of the mortuary services performed and inspection of the merchandise furnished. This designee will also be responsible for certifying receipt on the receiving report.

(e) The Chief, Supply Services will assist the Chief, Medical Administration Service in developing the local procedures specified in M–1, Part I, paragraph 14.37c.

837.7004 Administrative necessity.

(a) When persons die under Veterans Administration care who are not legally entitled to such care at Veterans Administration expense, and no relatives or friends will claim the remains, and the municipal, county or State officials refuse to provide for final disposition, arrangements will be made and expenses assumed for burial locally under separate contractual agreement.

(b) When a full and complete funeral and burial service as prescribed in 837.7003 cannot be obtained by the contracting officer within the statutory allowance, he/she will, prior to taking any further action, secure from the head of the station a written determination that the disposition of the remains must be accomplished by the Veterans Administration as an administrative necessity. The head of the station will also authorize in writing the expenditure of such additional funds as may be necessary for this purpose. The amount of these additional funds will be held to the minimum, keeping in mind, however, that the deceased must be given a proper and fitting interment.

(c) The determination and authorization by the head of the station will be made a part of the contract file.

837.7005 Unclaimed remains—all other cases.

Requests for information on the disposition of the unclaimed remains of a veteran whose death occurs while not under the direct care of treatment of the Veterans Administration will be referred to the Veterans Services Officer for processing in accordance with Manual M27–1, Part II. This manual is available at any Veterans Administration regional office, medical center or VA office.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 842—CONTRACT ADMINISTRATION

Sec.

842.000 Scope of part.
842.070 Definition.

Subpart 842.1—Interagency Contract Administration and Audit Services

842.101 Policy.
842.102 Procedures.

Subpart 842.2—Assignment of Contract Administration

842.202 Assignment of contract administration.

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

Subpart 842.8—Disallowance of Costs

842.801–70 Audit assistance prior to disallowing costs.
842.803 Disallowing cost after incurrence.

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 Processing agreements.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

842.000 Scope of part.

This part applies to all contracts, whether formally advertised or negotiated. (See paragraph 801.602–70 for requirements for legal review of certain contract administration actions.)

842.070 Definition.

Contract Administration is the coordination of actions required for the performance of a contract including the guidance and supervision necessary to assure that all contractural obligations are fulfilled.

Subpart 842.1—Interagency Contract Administration and Audit Services

842.101 Policy.

(a) Pursuant to FAR policy encouraging interagency cross-servicing in field contract support services, contracting officers of the Veterans Administration will utilize the support services of other agencies to the extent feasible. Examples of such services are: preaward surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems. Requirements for support services available from any other Government department or agency will be obtained on the basis of an approved negotiated interagency support agreement.

(b) An interagency support agreement is a written instrument of understanding executed between the parties to the agreement. The agreement should state clearly the accord which has been reached between the two parties involved, especially the obligations assumed by the rights granted each. The agreement will be specific with respect to resources to be provided by both the supplying and receiving activities. It will also provide for funding and reimbursement arrangements, and clauses permitting revisions, modifications thereto, or cancellation thereof, will be included.

842.102 Procedures.

(a) The Department of Defense Directory of Contract Administration Services Components and the Directory of Federal Contract Audit Offices are available through the Veterans Administration Forms and Publications Depot.

(b) Proposed interagency support agreements with any other Government department or agency involving the expenditures of Veterans Administration funds of $5,000 of more will be forwarded by the facility head (or Central Office official) to the Director, Office of Procurement and Supply (91), who will transmit with recommendation to the General Counsel for legal review and approval, as required by 801.602–72(a)(3).

(1) Proposed agreements, both new and renewal, will be submitted in an original and four copies so as to reach Central Office 60 days prior to the effective date of the agreement.

(2) Complete justification for all proposed agreements will be submitted, as approval depends on the adequacy of the justification.

Subpart 842.2—Assignment of Contract Administration

842.202 Assignment of contract administration.

Proposed assignments of contract administration responsibility outside of the procuring activity will be forwarded by the facility head to the Director, Office of Procurement and Supply (91), who will transmit the proposal to the General Counsel for legal review and approval, as required by 801.602–70(a)(5) and 801.602–71. Complete justification will be provided, specifically addressing the need for and benefits to be provided by assignment of contract administration. (See 801.603–70 for policy on designating representatives of contracting officers, and FAR 30–401 for contracts involving Cost Accounting Standards.)

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

(a) Contracting officers will request audits on proposed final indirect cost rates and billing rates for use in cost reimbursement, fixed price incentive and fixed price redeterminable contracts as described in FAR Subpart 42.7 unless the quick-closeout procedures described in FAR 42.708 are used. In this case, the contracting officers will perform a review and validation of the contractor's data submitted for accuracy and reasonableness of the proposed rates for negotiating the settlement of indirect costs for a specific contract.

(b) Contracting officers in the Office of Procurement and Supply and Office of Construction who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or requesting audits through the Assistant Inspector General for Policy, Planning and Resources (53C). All other contracting officers located in the VA Central Office and the Office of the General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C). Contracting officers located at field stations, Marketing Center and supply depots are required to arrange for the audits through the Director, Office of Procurement and Supply or the Director, Office of Construction. The Assistant Inspector General for Policy, Planning and Resources (53C) will provide such accounting assistance or technical advice as is deemed desirable by the contracting officers.

Subpart 842.8—Disallowance of Costs

842.801–70 Audit assistance prior to disallowing costs.

When a contracting officer determines during the performance of a cost reimbursement, fixed price incentive or fixed price redetermination contract exceeding the thresholds specified in FAR 15.804–2, that costs should be disallowed, audit assistance will be requested. Such requests submitted by field facility contracting officers will be directed to the Director, Office of Procurement and Supply (93) for review and forwarding to the Assistant Inspector General for Auditing (52), or other recognized audit agency, e.g., the Defense Contract Audit Agency.

842.803 Disallowing cost after incurrence.

Contracting officers may approve contractors' vouchers for payment and process them to the servicing fiscal office. Such approval must be within the limitations of the contracting officer and the contract for which the voucher is submitted must be within the contracting officers delegation of contracting authority. (Note 842.801–70 regarding disallowing costs).

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 Processing agreements.

Prior to execution of novation and change-of-name agreements by a Veterans Administration contracting officer, he/she will forward the agreement and related documents to the Office of General Counsel for review as to legal sufficiency. The documents will be submitted through the same channels as those prescribed for legal review of contracts in 801.602–72.

PART 846—QUALITY ASSURANCE

Subpart 846.3—Contract Clauses

Sec.

846.302 Fixed price supply contracts.

846.302–70 Inspection.

Subpart 846.4—Government Contract Quality Assurance

846.403 Inspection at destination.
846.406–70 Inspection of subsistence.
846.406–71 Waiver of USDA inspection and specifications.
846.406–72 Supply Depot selection of samples for test.
846.470 Use of commercial organizations for inspections and grading services.
846.471 Determination authority.
846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.
846.472–1 Repairs of $1,000 or less.
846.472–2 Repairs in excess of $1,000.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 846.3—Contract Clauses

846.302 Fixed price supply contracts.

846.302–70 Inspection.

Contracts for property will include the clause 852.210–72(a), "Rejected Goods," except that contracts for packinghouse, dairy products, bread and bakery products, and fresh and frozen fruits and vegetables will include the clause prescribed in 852.210–72(b), "Rejected Goods."

Subpart 846.4—Government Contract Quality Assurance

846.403 Inspection at destination.

(a) When inspection upon delivery indicates the items received are not in compliance with contract requirements, a report will be made to the contracting officer.

(b) VA supply depots will report all instances of noncompliance to the contracting officer on VA Form 10–2055, Sample Transmittal Sheet and Inspection Report. The supply depots are authorized to correct packaging, packing, or marketing not in accordance with contract requirements when the cost of correcting a partial receipt or projected cost of correcting total receipt does not exceed $100. When projected costs exceed $100, authorization will be obtained from the contracting officer prior to taking corrective action. The corrections made and the actual amount to be charged to the vendor will be shown on the reverse of VA Form 10–2055.

846.406–70 Inspection of subsistence.

(a) The contracting officer will determine at the time of issuance of the solicitation whether inspection for specification compliance will be made: (1) Prior to shipment by representatives of the Department of Agriculture or the Department of Commerce, or (2) at the time of delivery by personnel of the purchasing activity. The place of inspection will be indicated in the solicitation.

(b) When either the Department of Agriculture or the Department of Commerce is indicated as the inspection activity, the solicitation will also provide that the contractor is responsible for:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspection activity a certificate indicating the product complies with specifications. Such certificate, or copy, should accompany the shipment or be furnished to the receiving installation prior to shipment. The contractor shall notify the installation when the certificate is not immediately available.

(3) Seeing that acceptable products are covered by an inspection agency checkloading certificate or stamped by the inspector as prescribed by the contracting officer. Products not so identified shall be rejected.

(4) Furnishing samples for inspection at his/her expense.

(5) Indicating the address where inspection will be made.

(c) The contracting officer will furnish a copy of the purchase document to the inspecting activity.

846.406–71 Waiver of USDA inspection and specifications.

(a) Contracting officers may purchase butter; cheese (except cottage cheese); sausage; meat food products;[1] bacon, smoked; and bacon, Canadian style, without reference to the specifications in VAAR Program Guide G–1, and the U.S. Department of Agriculture (USDA) inspection requirements, when the amount of an item to be purchased will not exceed 500 pounds per delivery. When these items are procured together with items that are not exempt, the solicitation shall include the following:

Items * * * are not required to be in accordance with the specifications contained in VAAR Program Guide G–1, and the special USDA inspection is not required. Inspection for quality and condition will be made by VA upon delivery at destination. These items are, however, subject to the quality controls stated herein.

(b) As appropriate, the following statements shall be included in each invitation for bid, request for proposal or purchase order:

(1) Butter. This product must be graded by the USDA and labeled "Grade A" or the grade specified herein.

(2) Sausage and meat food products:

(i) This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome and fit for human consumption; and

(ii) This product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(3) Bacon, smoked; and bacon, Canadian style. This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome, and fit for human consumption.

(c) When using a "brand name or equal" purchase description every brand name item that is known to be acceptable and available in the area will be listed.

846.406–72 Supply depot selection of samples for test.

(a) The number of samples to be selected will be as stated in the item specifications or as specified by the contracting officer for items without lot numbers.

(b) On items bearing lot numbers, one unit will be selected from each lot to be tested, unless otherwise specified. Contracts will require that the contractor's shipping document or packing list indicate the lot numbers of items shipped to each depot on the contract. To reduce handling and transportation costs, samples of lots received at more than one location will be submitted as follows:

(1) The VA Supply Depot, Hines, Illinois, will submit samples from all lots received.

(2) The VA Supply Depot, Somerville, New Jersey, will submit samples from lots not received at Hines.

(3) The VA Supply Depot, Bell, California, will submit samples from lot not received at Hines or Somerville.

(c) On drug items, when there is only one unit in the lot to be tested or when five or more lots on the same order require sampling, the contracting officer will be notified and requested to furnish instructions. Such notification will be transmitted by teletype.

(d) To facilitate handling and packing, samples may be consolidated into one package. However, under no circumstances will shipment of samples be held more than 48 hours from time of receipt.

[1] Meat food products shall mean processed foods containing meat in substantial proportion and other listed ingredients including seasoning, e.g., frankfurters, coldcuts. Whole or prefabricated meats, e.g., pork chops, hamburger, are considered meats, not meat food products.

846.470 Use of commercial organizations for inspections and grading services.

Commercial organizations may be used for inspection and grading services when it is determined that the results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques, and it is further determined that:

(a) The Veterans Administration is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal Agency capable of providing the service.

(b) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.

(c) The services may be performed without direct Government supervision.

846–471 Determination authority.

The determinations required in 846.470 will be made by:

(a) The Director, Office of Construction, for those items and services for which purchase authority has been assigned to him/her.

(b) The Director, Veterans Canteen Service, DM&S, for those items and services purchased, or contracted for, by the Veterans Canteen Service (except those items purchased from Veterans Administration supply sources).

(c) The Director, Office of Procurement and Supply for all other supplies, equipment and services.

846–472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.

Final inspection will be made of all repair programs upon completion. In addition such intermediate or progress inspections will be made on extensive or technical jobs as specified in the contract.

846.472–1 Repairs of $1,000 or less.

(a) Generally, inspections required will be made by the management broker. If the property has not been assigned to a management broker or if it has been determined that the nature of the repairs requires supervision by a technician, the inspection will be made by a qualified fee or staff inspector.

(b) There is no form prescribed for this inspection but VA Form 26–1839, Compliance Inspection Report, may be used if desired. Regardless of the form in which the report is submitted, it will be in sufficient detail to identify the contractor, property, and the repair program and to enable the contracting officer to make a determination that the work is being performed satisfactorily or completed in accordance with the terms of the contract.

846.472–2 Repairs in excess of $1,000.

(a) The final inspection and any intermediate or progress inspections on repairs exceeding $1,000 will be made by a qualified fee or staff inspector. If a management broker is qualified to supervise major repairs, he/she may be authorized to conduct the inspections.

(b) Report of inspections will be made on VA Form 26–1839, Compliance Inspection Report. The form will be completed to identify the property, contractor, and repair program and will also include such detailed information to enable the contracting officer to make a determination that the work is being performed satisfactorily or that it has been completed in accordance with the terms of the contract. Any deficiencies noted will be itemized and explained in detail.

PART 847—TRANSPORTATION

Subpart 847.3—Transportation in Supply Contracts

847.303–1 F.o.b. origin.
847.303–70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.
847.304 Determination of delivery terms.
847.304–1 General.
847.305–70 Potential destinations known but quantities unknown.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 847.3—Transportation in Supply Contracts

847.303–1 F.o.b. origin.

(a) Normally shipments falling within this category will be shipped on a Government bill of lading, except for those shipments covered by 41 CFR 101–41.304–2.

(b) Shipment of flat bronze markers by the vendor, as directed by the Director, Monument Service, or his/her designee, will be made by parcel post. VA Form 40–4951, Order for Flat Bronze Marker, will be used for this purpose.

847.303–70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

(a) The delivery terms will be stated as "f.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice," under each of the following circumstances:

(1) when it has been carefully determined that an f.o.b. origin purchase or delivery order will have transportation charges not in excess of $100 and the occasional exception does not exceed that amount by an unreasonable amount;

(2) single parcel shipments via express, courier, small package, or similar carriers, *regardless of shipping cost,* if the parcel shipped weighs 70 pounds or less and does not exceed 106 inches in length and girth combined;

(3) multi-parcel shipments via express, courier small package, or similar carriers for which transportation charges do not exceed $250 per shipment.

(b) Orders issued on VA Form 90–2138, Orders for Supplies or Services, will direct the vendor's attention to shipping instructions on the reverse of the form. When VA Form 90–2138 is not used, the vendor will be instructed as follows:

(1) Consistent with the terms of the contract, pack, mark and prepare shipment in conformance with carrier requirements to protect the personal property and assure assessment of the lowest applicable transportation charge.

(2) Add transportation charges as a separate item on your invoice. The invoice must bear the following certification: "The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government's request."

(3) Do not include charges for insurance or valuation on the invoice unless the order specifically requires that the shipment be insured or the value be declared.

(4) Do not prepay transportation charges on this order if such charges are expected to exceed $100. Ship collect and annotate the commercial bill of lading, "To be converted to Government Bill of Lading."

(c) Each contracting officer is responsible for:

(1) Making a diligent effort to obtain the most accurate estimate possible of transportation charges; and

(2) Utilizing the authority in paragraph (a) of this section only when consistent with the circumstances in that paragraph.

(d) When in accordance with FAR Subpart 28.3 and FAR 47.102 it is determined that a shipment is to be insured or the value declared, the vendor will be specifically instructed to do so on the order, when a written order is used. If the order is an oral order, all copies of the purchase request will be annotated to show that insurance/declared value was specifically requested.

847-304 Determination of delivery terms.

847-304-1 General.

When alternative delivery terms are appropriate but the contracting officer elects to use only one in the invitation for bids, or request for proposals, he shall document the contract file to show his reasons for so doing.

847.305-70 Potential destinations known but quantities unknown.

When the VA Marketing Center contracts for decentralized procured items by all Veterans Administration installations, the evaluation of bids must follow specific procedures. To place each bid on an equal basis, even though specific quantities required by each hospital cannot be predetermined, an anticipated demand factor will be used in proportion to the number of hospital beds or patient workload. The clause prescribed in 852.247-70 shall be used in these instances.

PART 849—TERMINATION OF CONTRACTS

Subpart 849.1—General Principles

Sec.
849.106 Fraud and other criminal conduct.
849.107 Audit of prime contract settlement proposals and subcontract settlements.
849.111 Review and approval of proposed settlements.
849.111-70 Settlement review boards.
849.111-71 Required review and approval.
849.111-72 Submissions of information.

Subpart 849.4—Termination for Default

849.402 Termination of fixed-price contracts for default.
849.402-6 Repurchase against contractor's account.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 849.1—General Principles

849.106 Fraud or other criminal conduct.

When the circumstances set forth in FAR 49.106 are encountered, the contracting officer will immediately discontinue all negotiations. The contracting officer will submit all of the pertinent facts necessary to support his/her reasoning to the Director, Office of Procurement and Supply (93), (or the Director, Office of Construction (08) in the case of contracting officers from the Office of Construction). The Director, Office of Procurement and Supply (93), or the Office of Construction will review the submission and fully develop the facts. If the evidence indicates fraud or other criminal conduct, the Director, Office of Procurement and Supply, will forward the submission with his/her recommendations, through channels (to include the General Counsel, if appropriate), to the Inspector General (51) for referral to the Department of Justice. The contracting officer will be advised by the Director, Office of Procurement and Supply or the Office of Construction as to any further action to be taken. Pending receipt of this advice, the matter will not be discussed with the contractor. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General. If inquiry is made by the contractor, he/she will be advised only that the proposal has been forwarded to higher authority.

849.107 Audit of prime contract settlement proposals and subcontract settlements.

Contracting officers will submit settlement proposals for review and audit prior to taking any further action, in accordance with the provisions and claim limitations applicable to prime and subcontractors as set forth in FAR 49.107. Contracting officers in the Office of Procurement and Supply and Office of Construction who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or to request audits through the Assistant Inspector General for Policy, Planning and Resources (53C). All other contracting officers located in the VA Central Office and the Office of General Counsel will send requests for audit to the Assistant Inspector General for Policy, Planning and Resources (53C). Contracting officers located at field stations, the Marketing Center and the supply depots are required to arrange for audits through the Director, Office of Procurement and Supply or the Director, Office of Construction.

849.111 Review and approval of proposed settlements.

849.111-70 Settlement review boards.

The Director, Office of Procurement and Supply, and the Director, Office of Construction, will each establish within his/her own organization a settlement review board. The board may be established on a permanent or temporary basis. More than one such board may be established if settlements are to be made at different locations, if personnel with different qualifications are needed for different contracts, or if for other reasons, the establishment of more than one board is considered desirable. Each settlement review board should be composed of at least three qualified and disinterested employees. The membership of each board should include at least one lawyer and one accountant.

849.111-71 Required review and approval.

Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a settlement review board if:

(a) The amount of settlement, by agreement or determination, involves $50,000 or more; or

(b) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract, and:

(1) In the case of a complete termination, the fee, as adjusted, is $50,000 or more; or

(2) In the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more; or

(c) The head of the contracting activity concerned determines that a review of a specific case or class of cases is desirable; or

(d) The contracting officer, in his/her discretion, desires review by the settlement review board.

849.111-72 Submission of information.

(a) The contracting officer shall submit to the appropriate settlement review board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

(1) The contractor's or subcontractor's settlement proposal,

(2) The audit report,

(3) The property disposal report and any required approvals in connection therewith,

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the board in arriving at a decision to approve or disapprove the proposal. The board may, in its discretion, require the submission of additional information.

(b) When a review of a proposed settlement is required and the contract covers supplies, equipment or services, other than construction chargeable to Construction Appropriations, the contracting officer will submit the proposed settlement or determination to the settlement review board through the

Director, Office of Procurement and Supply.

(c) When the contract covers construction chargeable to Construction Appropriations and review is required, the proposed settlement or determination will be submitted by the contracting officer to the settlement review board through the Director, Office of Construction.

Subpart 849.4—Termination for Default

849.402 Termination of fixed-price contracts for default.

849.402–6 Repurchase against contractor's account.

(a) VA Form 90–2237, Request, Turn-in, and Receipt for Property or Services, or the file copy of the purchase order covering the purchase of supplies, equipment or services against a defaulting contractor shall be annotated to show the name of the defaulted contractor, the contract number, the contract price, the name of the contractor from whom procurement is made, the price paid, the competition secured and the difference in cost, if any, to the Veterans Administration. When reprocurement results in the payment of excess costs and the purchase is made through the Supply Fund, the excess costs, when collected, shall be deposited to the credit of the Supply Fund. In all other instances, the excess costs, when collected, shall be deposited to General Fund Receipts.

(b) Contracting officers, when purchasing against a defaulted contractor, shall procure the items in a manner that will protect the interests of the contractor as well those of the Government.

SUBCHAPTER H—CLAUSES AND FORMS

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.1—Instructions for Using Provisions and Clauses

Sec.

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852.236–73 Bonds.
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852.271–70 Services provided eligible beneficiaries.
852.271–71 Visits to Veterans Administration guidance centers.
852.271–72 Time spent by counselee in counseling process.
852.271–73 Use and publication of counseling results.
852.271–74 Inspection.
852.271–75 Extension of contract period.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 852.1—Instructions for Using Provisions and Clauses

852.101 Using Part 852.

Part 852 prescribes supplemental provisions and clauses to the FAR. Clause numbering is as prescribed in FAR 52.101 (i.e., supplementary Architect-Engineer and construction clauses are numbered 852.236–70, 852.236–71, etc.).

Subpart 852.2—Texts of Provisions and Clauses

852.203–70 Ethics in Government Act.

As prescribed by 803.101–3 the following certification will be made a part of all solicitations and requests for proposals anticipated to result in contracts exceeding the small purchase limitation:

Certification for the Ethics in Government Act

The offeror certifies that in developing a proposal in response to the solicitation of this contract, he/she did not utilize the services of any former Veterans Administration employee acting in violation of Title V of the Ethics in Government Act, 18 U.S.C. 207. That law provides that:

(a) A former Veterans Administration employee who, as such an employee, personally and substantially participated in a particular procurement process, is prohibited from appearing before the agency on behalf of an offeror responding to a solicitation resulting from that process and from making any contact with the agency on behalf of the offeror with intent of influencing action related to the solicitation;

(b) A former Veterans Administration employee who, during the last year as such an employee, was officially responsible for a particular procurement process, is prohibited, for two years after leaving the Veterans Administration, from appearing before the agency on behalf of an offeror responding to a solicitation resulting from that process and from making any contact with the agency on behalf of the offeror with the intent of influencing action related to the solicitation;

(c) Any former top-level Veterans Administration employee (i.e., executive-level employee; employee paid at the rate of GS–17 or above if designated pursuant to 5 CFR 737.25(b); and Senior Executive Service employee if designated pursuant to 5 CFR 737.25(b)) who, as such an employee, personally and substantially participated in a particular procurement process, is prohibited, for a period of two years, from representing, aiding, consulting, or assisting an offeror by presence before the Government at any formal or informal appearance related to that procurement process;

(d) For a period of one year, any former top-level employee of the Veterans Administration (as described in the preceding paragraph) is prohibited from appearing before the Veterans Administration on behalf of any offeror responding to a contract solicitation and is prohibited from making any oral or written communications with the Veterans Administration on behalf of such an offeror, with the intent of influencing action related to a contract.

(End of Clause)

852.208-70 Change in rates for public utilities.

When a contract covers services to be rendered by a public service corporation, and the rates charged for such services are regulated by a Federal, State, or municipal commission, the following clause will be included:

Change in Rates

The rates specified herein are not in excess of those charged the general public for similar service and will be increased or decreased when such action is approved by the governing regulatory commission.

(End of Clause)

852.209-70 Organizational conflicts of interest.

The following representation will be used as prescribed in 809.508-2:

Organizational Conflicts of Interest

(a) The offeror represents to the best of his/her knowledge and belief that the award of the contract would not involve organizational conflicts of interest as defined in this representation. The term organizational conflicts of interests shall mean that a relationship exists whereby an offeror or a contractor (including his/her chief executive, directors, proposed consultants and subcontractors) has interests which may: (1) Diminish his/her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; or (2) result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(b) Based on this representation and any other information solicited by the contracting officer, it may be determined organizational conflicts of interest exist which would warrant disqualifying the contractor for award of the contract unless the organizational conflicts of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. In the case of a formally advertised solicitation, the apparent successful offeror may enter into a supplemental agreement which mitigates the organizational conflicts of interest.

(c) Nondisclosure or misrepresentations of organizational conflicts of interest at the time of the offer, or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

(End of Clause)

852.210-70 Requirements for operating and maintenance manuals.

(a) Solicitations and requests for proposals for technical medical equipment and devices issued by a field station will normally require the contractor to provide operating and maintenance manuals. Unless the station Chief, Engineering Service, indicates that such service manuals are not needed, each invitation for bid or request for proposal for technical medical equipment will include VA Specification No. X-1711, Documentation, Technical Service, for Technical Medical Equipment and Devices as a requirement. The number of such manuals required will be specified in both the solicitation and the resulting purchase order.

(b) Solicitations and requests for proposals for mechanical equipment (other than technical medical equipment and devices) issued by a field station will include the following clause:

Service Data Manual

The contractor agrees to furnish two copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of Clause)

(c) When the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, the following clause will be used:

Service Data Manual

The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by VA Specification X-1711 to the Service and Reclamation Division, VA Supply Depot, Hines, Ill. In addition, the contractor agrees to furnish two copies of the technical documentation required by VA Specification X-1711 with each piece of equipment sold as a result of the invitation for bid or request for proposal.

(End of Clause)

852.210-71 Guarantee clause.

(a) When the bid or proposal will result in any purchase, the following clause will be used:

Guarantee

The contractor guarantees the equipment against defective material, workmanship and performance for a period of ———,[1] said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material which are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor.[2]

(End of Clause)

(b) Where it is industry policy to furnish, but not install, replacement material and parts at the contractor's expense, the last sentence will be changed to indicate that cost of installation shall be borne by the Government. Where it is industry policy to: (1) Guarantee components for the life of the equipment (i.e., crystals in transmitters and receivers in radio communications systems); or (2) require that highly technical equipment be returned to the factory (at contractor's or Government's expense) for replacement of defective materials or parts, the clause used will be compatible with such policy.

852.210-72 Inspection.

(a) Contracts for property, other than packing house and dairy products and fresh and frozen fruits and vegetables will contain the following clause:

Rejected Goods

Rejected goods will be held subject to contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies which have been rejected will be charged to the contractor's account.

(End of Clause)

(b) Contracts for packinghouse and dairy products, bread and bakery products and for fresh and frozen fruits and vegetables will contain the following clause:

Rejected Goods

The contractor shall remove rejected supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Veterans Administration will not be responsible for nor pay for products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of Clause)

852.210-73 Frozen processed foods.

The following clause will be included in all solicitations for the purchase of frozen processed foods, issued by a field station:

Frozen Processed Foods

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer

[1] Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.

[2] The above clause will be modified to conform to standards of the industry involved.

burn and shall be transported and delivered to the consignee at a temperature of 10 degrees Fahrenheit or lower.

(End of Clause)

852.210–74 Telecommunications equipment.

(a) When a detailed purchase description of formal specification is the basis for solicitations for telecommunications equipment as defined in VA Manual MP–6, Part VIII, (available at any Veterans Administration station), solicitations, including those for construction, will include the following clause:

Special Notice

Descriptive literature. The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature which qualifies the offer will require rejection of the offer.

However, within 5 days after award of contract, the contractor will submit to the contracting officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements.

The contracting officer will, by written notice to the contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment proposed to be furnished. The notice of approval or conditional approval will not relieve the contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the contractor. A notice of disapproval will cite reasons therefor.

If the equipment is disapproved by the Government, the contractor will be subject to action under the Default provision of this contract. However, prior to default action the contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment.

The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(End of Clause)

(b) The descriptive literature to be furnished by the contractor after award in accordance with paragraph (a) of this section is subject to the controls established in 870.112(b).

(c) The time of delivery or performance to be specified in the solicitation will include the time required for submission, receipt, the evaluation and approval required by 870.112(b) of this chapter, and return to the contractor of the descriptive literature.

852.210–75 Technical industry standards.

When items are required to conform to technical industry standards, such as those adopted by Underwriter's Laboratories, Incorporated; Factory Mutual Laboratories; American Gas Association; American Society Mechanical Engineers; National Electrical Manufacturers' Association; American Society Heating, Refrigeration and Air Conditioning Engineers; or similar organizations where such standards are generally recognized and accepted in the industry involved, the invitation for bids, request for proposals or request for quotations will so state. In no instance, where there is a multiple choice of laboratories, shall the invitation for bid, request for proposal or request for quotation indicate that the label or certificate of only one such laboratory is acceptable. The following clause will be used unless comparable provisions are contained in the item specification:

Technical Industry Standards

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the ———[3] and ———[3] as to ———.[4] The successful bidder or offeror will be required to submit proof that the item(s) he furnishes conforms to this requirement. This proof may be in the form of a label or seal affixed to the equipment or supplies, warranting that they have been tested in accordance with and conform to the specified standards. The seal or label of any nationally recognized laboratory such as those listed by the National Fire Protection Association, Boston, Massachusetts, in the current edition of their publication "Research on Fire," is acceptable. Proof may also be furnished in the form of a certificate from one of these laboratories certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(End of Clause)

852.210–76 Noncompliance with packaging, packing, and/or marking requirements.

The following clause will be included in contracts for supplies for delivery to supply distribution warehouses or depots for storage and subsequent issue to a using activity. It may also be included when appropriate when delivery is direct to a using activity.

Noncompliance with Packaging, Packing and/or Marking Requirements

Failure to comply with the packaging, packing, and marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement, or repackaging, repacking, and/or marking. The Government reserves the right without obtaining authority from the contractor to perform the required repackaging, repacking, and/or marking services and charge the contractor therefor at a rate of $16 per manhour for the first or fractional hour and $10 for any succeeding or fractional hour, or have the required repackaging, repacking, and/or marking services performed commercially under Government orders and charge the contractor therefor at the above rates. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking, and/or marking services.

(End of Clause)

[3] Insert name(s) of organization(s), the standards of which are pertinent to the Government's needs.

[4] Insert pertinent standards, i.e. fire and casualty, safety and fire protection, etc.

852.212–70 Liquidated damages.

As prescribed in 812.204 and 836.206, the contracting officer may insert the following clause when appropriate:

Partial Performance and Acceptance

If any unit of the work contracted for is accepted in advance of the whole, the rate of liquidated damages assessed will be in the ratio that the value of the unaccepted work bears to the total amount of the contract. If a separate price for unaccepted work has not been stated in the contractor's bid, determination of the value thereof will be made from schedules of costs furnished by the contractor and approved by the contracting officer, as specified elsewhere in the contract.

(End of Clause)

852.214–70 Caution to bidders—bid envelopes.

As provided in 814.201, the following provision will be prominently placed on all IFB's:

Caution to Bidders—Bid Envelopes

It is the responsibility of each bidder to take all necessary precautions, including the use of a proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, when it suits a purpose, use any suitable envelope, identified by the invitation number and bid opening time and date. If a bid envelope is not furnished, the bidder will complete and affix the enclosed Optional Form 17, Sealed Bid Label, to the lower left-hand corner of the envelope used in submitting the bid.

(End of Provision)

852.214–71 Alternate items.

As prescribed in 814.201, consideration of alternate items may be appropriate. The following clauses may be used under the specified conditions:

(a) When an alternate item is to be considered only if no bids or insufficient bids are received on the item desired, the following will be included in the invitation:

Alternate Item(s)

Bids on ——— [6] will be considered only if acceptable bids on ——— [6] are not received or do not satisfy the total requirement.

(End of Clause)

(b) When an alternate item will be considered on an equal basis with the item specified, the following will be included in the invitation:

Alternate Item(s)

Bids ——— [6] will be given equal consideration along with the ——— [6] and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of:[7]

(End of Clause)

(c) In addition to the clause in paragraph (a) or (b) of this section, the following clause will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

Alternate Packaging and Packing

The bidder's offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

(End of Clause)

852.214–72 Aggregate award.

As provided in 814.201(f), the following clause is to be used:

Aggregate Award

The Veterans Administration reserves the right to make an award to the responsible bidder quoting the lowest aggregate price for all items, for any group of items, or on an item basis, whichever is more advantageous to the Government. Bids will be evaluated on the basis of additional cost to the Government that might result from making multiple awards. For this purpose, the cost of awarding and administering each additional contract is estimated to be $———.[7]

(End of Clause)

852.214–73 Bid samples.

As provided by and under the circumstances of 814.202–4, the following clause will be inserted in the IFB.

Bid Samples

All samples furnished must be plainly marked with the complete lettering and numbering of the item or subitems to which it relates, the name of the commodity, the Invitation for Bids number, and the name of the bidder. Cases or packages containing samples must be plainly marked "Samples" and all charges incident to the preparation and transportation of samples must be prepaid by the bidder. Bids must not be enclosed with samples.

(End of Clause)

852.216–70 Estimated quantities for requirements contracts.

(a) When definite quantities cannot be determined, solicitations for station-level requirements contracts will contain the applicable clause as set forth below. Solicitations issued by the Marketing Center will contain provisions developed by that Center for particular application to its operations, subject to legal review as prescribed in 801.602–70(c)(1).

(b) The following clause will be used for general equipment, supplies and services:

Estimated Quantities

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles or services that may be ordered during the contract term, except as he/she otherwise indicates in his/her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. Bids offering less than 75 percent of the estimated requirement or which provide that the Government shall guarantee any definite quantity, will not be considered. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Veterans Administration shall not be relieved of its obligation to order from the contractor all articles or services that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

(c) The following clause will be used in local coal-hauling contracts.

Estimated Quantity

The estimated requirements shown in this invitation for bids cover the requirements for the entire contract period. It is understood and agreed that during the period of this contract the Government may order and the contractor will haul such coal as may, in the opinion of the Government, be required, except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

(d) The following clause will be used for orthopedic, prosthetic, and optical supplies.

Quantities

The supplies and/or services listed in the attached schedule will be furnished at such time and in such quantities as they are required.

(End of Clause)

852.222–70 Contract Work Hours and Safety Standards Act—nursing home care contract supplement.

As prescribed in 822.304, nursing home care contracts will include the following clause.

Contract Workhours and Safety Standard Act—Nursing Home Care Contract Supplement

In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(End of Clause)

852.228–70 Bond premium adjustment.

The following clause will be utilized as prescribed by 828.7000.

Bond Premium Adjustment

When net changes in original contract price affect the premium of a Corporate Surety Bond by $5 or more, the Government in determining basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of Clause)

852.229–70 Purchases from patient's funds.

When contracts are for items to be purchased solely from personal funds of patients, the following tax clause will be used in lieu of the Federal, State and local tax clause in FAR 52.229–1.

Sales or Use Taxes

The articles listed in this bid invitation will be purchased from personal funds of patients and prices bid herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein,

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[6] Contracting officer will insert an alternate item that is considered acceptable.

[6] Contracting officer will insert the required item and item number.

[7] Insert a dollar amount between $100 and $500, the exact amount to be determined by the contracting officer based upon the anticipated workload that would result from administering an additional contract.

having jurisdiction to levy such a tax, applicable to the material in this bid.
(End of clause)

852.229–71 Purchases for patients using Government funds and/or personal funds of patients.

When contracts are for items to be purchased from both Government funds and personal funds of patients, the following clause will be included as a part of the Federal, State, and local tax clause in FAR 52.229–1:

Sales or Use Taxes

Any article purchased from this contract, payable from personal funds of patients, will be subject to any applicable sales or use tax levied thereon by any State, or by duly constituted taxing authority therein having jurisdiction to levy such a tax; the total amount of the tax applicable to such purchase payable from personal funds of patients will be computed on the total amount of the order and will be shown as a separate item on the purchase order and invoice. The bidder shall identify the applicable taxes and rates in his/her bid.
(End of Clause)

852.236–70 Clauses for fixed-price construction contracts.

(a) The clauses prescribed in this section are set forth for use in fixed-price construction contracts in addition to those in FAR Subpart 52.2.

(b) Additional clauses not inconsistent with those in FAR 36.5 and 52.2 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer, and when approved as provided in Subpart 801.4.

(c) Clauses inconsistent with those contained in FAR Subpart 36.5 and 52.2 and this subpart, but considered essential to the procurement of Veterans Administration requirements, shall not be used unless the deviation procedure set forth in Subpart 801.4 has been complied with.

852.236–71 Specifications and drawings for construction.

The clause entitled "Specifications and Drawings for Construction," in FAR 52.236–21 is supplemented as follows:

Specifications and Drawings for Construction

(a) The contracting officer's interpretation of the drawings and specifications will be final, subject to the disputes clause.

(b) Large scale drawings supersede small scale drawings.

(c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.

(d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work, shall be verified by the contractor by actual measurement of the existing work. Any work at variance with that specified or shown in the drawings shall not be performed by the contractor until approved in writing by the contracting officer.
(End of Clause)

852.236–72 Performance of work by the contractor.

The clause entitled "Performance of Work by the Contractor," in FAR 52.236–1, is supplemented as follows:

Performance of Work by the Contractor

(a) Contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the contractor's payroll and under his/her direct supervision shall be included in establishing the percent of work to be performed by the contractor. Cost of material and equipment installed by such labor may be included. The work by contractor's executive, supervisory and clerical forces shall be excluded in establishing compliance with the requirements of the clause.

(b) The contractor shall submit, simultaneously with schedule of costs required by Payments under Fixed-Price Construction Contract provision of the General Conditions of these specifications, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining value of a branch or branches, or portions therof, of the work for the purpose of this article.

(c) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the contracting officer determines it to be in the best interests of the Government, the contracting officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(d) In the event the contractor fails or refuses to meet the requirement of paragraph (a) of this section, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement which is accomplished by others. For the purposes of this provision it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with paragraph (a) of this section.
(End of Clause)

852.236–73 Bonds.

Bonds

For contracts in excess of $25,000, the contractor must furnish a Performance Bond (Standard Form 25) for 100 percent of the amount of the contract, and a Payment Bond (Standard Form 25–A) in the penal sums set forth below:

Amount of contract	Penal sum of bond
$25,000 to $1,000,000	Fifty (50) percent of the amount of the contract.
$1,000,000 to $5,000,000	Forty (40) percent of the amount of the contract.
$5,000,000 and over	$2,500,000.

When net changes in original contract price affect the premium of a Corporate Surety Bond by $5 or more, the Government in determining basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.
(End of Clause)

852.236–74 Inspection of construction.

The clause entitled, "Inspection of Construction," in FAR 52.246–12, is supplemented as follows:

Inspection of Construction

(a) Inspection of materials and articles furnished under this contract will be made at the site by the resident engineer, unless otherwise provided for in the specifications.

(b) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The contractor shall notify the contracting officer, through the resident engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection.
(End of Clause)

852.236–75 Guaranty.

Guaranty

(a) Unless otherwise specifically provided for in the contract or specifications, the contractor, notwithstanding any final inspection, acceptance or payment, guarantees that all work performed and materials and equipment furnished under this contract are in accordance with the contract requirements. The contractor also guarantees that when installed all materials and equipment will be free from defects and will remain so for a period of at least one year from the date of acceptance by the Government.

(b) If defects of any kind should develop during the period such guarantees are in force, the contracting officer shall immediately notify the contractor in writing of such defects. The Government thereupon shall have the right, by a written notice to that effect, to require the contractor to repair or replace all inferior or defective work, material, or equipment or permit it to remain in place and assess the contractor the costs he/she (the contractor) would have incurred had he/she been required to effect repair or replacement.

(c) Any correction or replacement of parts, materials, equipment, supplies or construction made pursuant to the provisions of this clause shall also be subject to the provisions of this clause to the same extent as parts, materials, equipment, supplies or construction originally installed. The warranty with respect to such new or corrected parts, materials, equipment, supplies or construction shall be equal in duration as that set forth in (a) above and

shall run from the date that such parts, materials, equipment, supplies or construction are replaced or corrected and accepted by the Government.

(d) The contractor guarantees to reimburse the Government for, or to repair or replace, any damages to the site, buildings, or contents thereof that are caused by inferior or defective workmanship, or the use of inferior or defective materials or equipment in the performance of this contract. The contracting officer shall immediately notify the contractor in writing when such damage occurs. The Government shall have the right to require the contractor to repair or replace such damaged areas or equipment, or elect to permit such damage to remain as is and assess the contractor the costs he/she would have incurred had he/she been required to effect repair or replacement.

(e) Should the contractor fail to proceed promptly, after notification by the contracting officer, to repair or replace any inferior or defective work, material, or equipment, or damage to the site, buildings, or contents, thereof, caused by inferior or defective work, or the use of inferior or defective materials, or equipment, the Government may have such work, material, equipment or damage repaired or replaced and charge all costs incident thereto to the contractor.

(f) Any special guaranties that may be required under the contract, shall be subject to the elections set forth above unless otherwise provided in such special guaranties.

(g) The decision of the contracting officer as to liability of the contractor under this clause is subject to the appeal procedures provided for in the disputes clause of this contract.

(End of Clause)

852.236-76 Correspondence.

Correspondence

All correspondence relative to this contract shall bear Specification Number, Project Number, Veterans' Administration Contract Number, title of project and name of station.

(End of Clause)

852.236-77 Reference to "standards."

Standards

(a) Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in specifications.

(b) Federal Specification numbers refer to specifications issued by General Services Administration. Such specifications may be seen at the Office of Construction, Veterans Administration, Washington, D.C. or at the office of the resident engineer for this project.

(End of Clause

852.236-78 Government supervision.

Government Supervision

(a) The work will be under the direction of the Veterans Administration contracting officer, who may designate another VA employee to act as resident engineer at the construction site.

(b) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements.

(c) Within the limits of any specific authority delegated by the contracting officer, the resident engineer may by written direction make changes in the work. The contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(End of Clause)

852.236-79 Daily report of workers and materials.

Daily Report of Workers and Material

The contractor shall furnish to the resident engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/forewomen and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work which they perform such as concrete, plastering, masonry, plumbing, sheet metal work, etc. The report shall give a breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

(End of Clause)

852.236-80 Subcontracts and work coordination.

The following clause is for use except as provided in 852.236-81:

Subcontracts and Work Coordination

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the contractor and subcontractors or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work or require dismissal from the work of any subcontractor who, by reason of previous unsatisfactory work on Veterans Administration projects or for any other reason, is considered by the contracting officer to be incompetent or otherwise objectionable.

(End of Clause)

852.236-81 Work coordination (alternate provision).

For new construction work with complex mechanical-electrical work, the following provision relating to work coordination may be substituted for paragraph (b) of the clause set forth in 852.236-80:

Work Coordination

The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than ⅜-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades which will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the contractor and to the Government. In the event the contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the contracting officer immediately. In doing so, the contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the

coordination drawings until the conflicts have been corrected to the satisfaction of the contracting officer. It is the responsibility of the contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

(End of Clause)

852.236–82 Payments under fixed-price construction contracts (without NAS).

For contracts that do not contain a section entitled "Network Analysis System (NAS)," the clause entitled "Payments under Fixed-Price Construction Contracts" in FAR 52.232–5 will be supplemented as follows:

Payments Under Fixed-Price Construction Contracts

Clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232–5 is implemented as follows:

(a) Retainage:

(1) In accordance with the clause entitled "Payments to Contractor," the contracting officer may retain funds:

(i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure to meet schedule in Schedule of Work Progress;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications or contract requirements.

(2) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of cost to the contracting officer for approval. Such schedule will be signed and submitted in triplicate. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed. This schedule shall show cost by the branches of work for each building or unit of the contract, as instructed by the resident engineer.

(1) The branches shall be subdivided into as many subbranches as are necessary to cover all component parts of the contract work.

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire he/she may require the contractor to submit the original estimate sheets or other information to substantiate detailed makeup of schedule.

(3) The sum of subbranches, as applied to each branch, shall equal the total cost of such branch. The total costs of all branches shall equal the contract price.

(4) Insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed below. The percentages listed below are proportions of the cost listed in contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

Value of adjusting, correcting, and testing system

System:	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

852.236.83 Payments under fixed-price construction contracts (including NAS).

For contracts that contain a section entitled "Network Analysis System (NAS)," the clause entitled "Payments under Fixed-Price Construction Contracts" in FAR 52.232–5 is supplemented as follows:

Payments Under Fixed-Price Construction Contracts

Clause entitled "Payments under Fixed-Price Construction Contracts in FAR 52.232–5 is implemented as follows:

(a) Retainage:

(1) In accordance with the clause entitled "Payments to Contractor," the contracting officer may retain funds:

(i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure either to meet schedules in Section NAS (Network Analysis System), or to process the Interim Arrow Diagram/ Complete Project Arrow Diagram;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications or contract requirements.

(2) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of costs in accordance with the requirements of Section NAS (Network Analysis System) to the contracting officer for approval. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

(1) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit his/her original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.

(2) The total costs of all activities shall equal the contract price.

(3) Bonds, insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.

(4) The CPM network shall include a separate cost loaded activity for adjusting and testing of the systems listed below. The percentages listed below will be used to determine the cost of adjust and test activities and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.

(5) Payment for adjust and test activities will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

Values of adjusting correcting, and testing system

System:	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Prefab temperature rooms (cold, constant temperature)	5

Values of adjusting correcting, and testing system—Continued

	Percent
Entire air-conditioning system (Specified under 700 Sections)	5
General supply conveyors	5
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Enginer-generator system	5
Primary switchgear	5
Secondary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Redio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

852.236-84 Schedule of work progress.

Schedule of work progress

(a) The contractor shall submit with the schedule of costs, as required by supplemental "Payments under Fixed-Price Construction Contracts" clause a progress curve indicating anticipated work progression against lapsed contract time, for approval of the contracting officer. Submission shall be in quadruplicate on VA Form 08-6159, Construction Progress Chart, furnished by the Veterans Administration, and shall be signed by the contractor. The curve shall start on the date the contractor receives the "Notice to Proceed" and terminate on the original contract completion date. Both dates shall be indicated on the Construction Progress Chart.

(b) The scheduled percent completion will be compared to the actual percent completion to determine if the contract work is on schedule. Monthly progress reports will be prepared by the Veterans Administration on a Contract Progress Report form (VA Form 08-6001 or 08-6001a, as appropriate). This report will indicate both scheduled percent completion and actual percent completion. The scheduled percent completion will be taken from the approved progress curve. The actual percent completion will be based on the value of work in place divided by current contract amount.

(c) The progress curve will be revised when additional time is granted for any reason. The curve will be revised only for individual or cumulative time extensions of 15 days or more. Either of the following methods of revising the curve will be used, depending on circumstances.

(1) Where there is additional time granted for reasons which do not immediately affect the job progress, such as changed work, use the following method: The curve is replotted between two points, starting with the point on the original or current curve established by the date when the change was ordered. The second point is the extended contract completion date resulting from the change.

(2) Where there is additional time granted for reasons which immediately affect the job progress, use the following method: The curve is replotted by means of horizontal displacement to the original or current curve. The point on the original or current curve established by the date when the change was ordered or when job progress was affected is determined. The number of days granted is plotted horizontally from this point to establish the displacement. The remainder of the curve is replotted to the extended contract completion date.

(d) The revised curve will be used for reporting future scheduled percent completion.

(End of Clause)

852.236-85 Supplementary labor standards provisions.

Supplementary Labor Standards Provisions

(a) The wage determination decision of the Secretary of Labor is set forth in section GR, General Requirements, of this contract. It is the result of a study of wage conditions in the locality and establishes the minimum hourly rates of wages and fringe benefits for the described classes of labor in accordance with applicable law. No increase in the contract price will be allowed or authorized because of payment of wage rates in excess of those listed.

(b) The contractor shall submit the required copies of payrolls to the contracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH-347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH-347, and in addition be accompanied by Department of Labor Form WH-348, Statement of Compliance, or any other form containing the exact wording of this form.

(End of clause)

852.236-86 Workmen's compensation.

Workmen's Compensation

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several states to apply their workmen's compensation laws to all lands and premises owned or held by the United States.

(End of Clause)

852.236-87 Safety requirements.

The following clause is included to designate the VA Safety Officer and his/her responsibilities:

Accident Prevention

(a) The resident engineer on all assigned construction projects is designated as the VA Safety Officer, and as such is responsible for enforcing all safety regulations as they apply to the safety of Veterans Administration employees, visitors, and patients. Regular safety inspections are conducted by the resident engineer weekly, and all noted violations of safety and health regulations will be brought to the attention of the contractor who will take immediate action to correct such violations. If corrective action is not taken promptly, a copy of the resident engineer's report will be forwarded to the Department of Labor.

(b) "Safety and Health Regulations for Construction," may be obtained from any regional office of the Occupational Safety and Health Administration, Department of Labor.

(End of Clause)

852.236-88 Contract changes.

The Clauses, entitled "Changes" in FAR 52.236-2 and "Differing Site Conditions" in FAR 52.236-2 will be supplemented with the following two clauses. The clause in paragraph (a) will apply to negotiated changes exceeding $500,000 and does not provide ceiling rates for indirect expenses. Such expenses will be included as part of the submission of certified cost and pricing data, will be negotiated by the contracting officer and will be audited in accordance with 815.805-5. When the negotiated change will be less than $500,000 the clause specified in paragraph (b) will apply. If cost and pricing data is required it will be certified and will include indirect expenses, notwithstanding the ceilings specified in the clause. It must be emphasized that these indirect cost rates are ceiling rates only, and the contracting officer will negotiate the indirect expense rates within the ceiling limitations. The contractor, therefore, will not propose ceiling rates in lieu of his/her actual indirect expense rates.

(a) Applicable to changes costing $500,000 or more:

Changes—Supplement (for Changes Costing $500,000 or More)

Clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR Subpart 15.804, the cost of pricing data shall be submitted on Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804-6. No itemized breakdown will be required for proposals amounting to less than $1,000.

(b) When the necessity to proceed with a change does not allow sufficient time to check a proposal or because of failure to reach an agreement, the contracting officer may order the contractor to proceed (proceed order) on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, if a proceed order is issued the contractor shall submit a proposal for changes in work within 30 calendar days.

(c) If the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached, the contracting officer will consider issuing a unilateral change order.

(End of Clause)

(b) Applicable to changes costing less than $500,000:

Changes)—Supplement (for Changes Costing Less than $500,000)

Clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. No itemized breakdown will be required for proposals amounting to less than $1,000.

(b) When the necessity to proceed with a change does not allow sufficient time to check a proposal or because of failure to reach an agreement, the contracting officer may order the contractor to proceed (proceed order) on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, if a proceed order is issued the contractor shall submit a proposal for changes in work within 30 calendar days.

(c) If the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached, the contracting officer will consider issuing a unilateral change order.

(d) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first $20,000; 7½ percent overhead and 7½ percent profit on the next $30,000; 5 percent overhead and 5 percent profit on balance over $50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(e) The prime contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the prime contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first $20,000; 7½ percent fee on the next $30,000; and 5 percent fee on balance over $50,000.

(f) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

(g) Where the contractor's or subcontractor's portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The contractor's fee is limited to the net increase to contractor of subcontractor's portions cost computed in accordance herewith.

(h) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the contractor if he/she had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(i) Cost of Federal Old Age Benefit (Social Security) tax and of Workmen's Compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, prime contractor's fee will be allowed on such items in subcontractor's proposals.

(j) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, watchmen, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefor.

(End of Clause)

852.237-70 Contractor responsibilities.

(a) Fixed-Price negotiated or advertised service contracts, other than automobile, ambulance and aircraft services, will include the following clause:

Contractor Responsibilities

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employee's fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of ———. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury and liability resulting therefrom.

(End of Clause)

(b) Automobile, ambulance and aircraft service contracts will utilize the clause prescribed in 852.237-71.

852.237-71 Indemnification and insurance (vehicle and aircraft service contracts).

(a) Contracts for vehicle and aircraft services will utilize the following clause as provided in 828.306.

Indemnification and Insurance

(a) *Indemnification.* The contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this agreement. Further, it is agreed that any negligence or alleged negligence of the Government, its offficers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the contractor, and subject to the approval by the contracting officer of the sources, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of a contract. In general, a successful bidder must present safisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workman's compensation and employer's liability coverage will conform to applicable State law requirements for the service contemplated, whereas general liability and automobile liability of comprehensive type, shall in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage. State approved sources of insurance coverage ordinarily will be deemed acceptable to the Veterans' Administration installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. (In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least $200,000 per passenger and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.)

(End of Clause)

(b) *Exceptions.* The provisions of this 852.237-71 do not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, Part II, Chapter 3: *Provided,* That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further,* That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

852.247-70 Transportation clause for bid evaluation.

In circumstance enunciated in 847.305-70, the following clause will be inserted in the IFB:

Determining Transportation Costs for Bid Evaluation

For the purpose of evaluating bids and for not other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

Anticipated Demand

	Factor
Area destination:	
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	5
Total of factors	20

(End of Clause)

852.270-1 Representatives of contracting officers.

Whenever it is considered necessary to designate a representative under 801.603-70, the following provisions will be made a part of the request for proposal or invitation to bid:

Representatives of Contracting Officers

The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally supervise the work to be performed under this contract. Such designation will be in writing and will define the scope and limitations of the designee's authority. A copy of the designation shall be furnished the contractor.

(End of Clause)

852.270-2 Bread and bakery products.

The following clause will be inserted in all contracts for bread and bakery products:

Quantities

The bidder agrees to furnish up to 25 percent more or 25 percent less than the quantities awarded when ordered by the Veterans Administration.

(End of Clause)

852.270-3 Purchase of shell fish.

Invitations for bids or requests for proposals covering oysters, clams or mussels, fresh or frozen, will contain the following clauses:

Shellfish

The bidder certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shell fish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shell fish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of Clause)

852.270-4 Commercial advertising.

All invitations for bids will include the following clause:

Commercial Advertising

The bidder agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Veterans Administration endorses a product, project or commercial line of endeavor.

(End of Clause)

852.271-70 Services provided eligible beneficiaries.

The following clause will be included in all contracts covering services provided to eligible beneficiaries:

Nondiscrimination in Services Provided Beneficiaries

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Chief Medical Director, or designee, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of Clause)

852.271-71 Visits to Veterans Administration guidance centers.

The following clause will be included in contracts entered into for services relating to vocational counseling:

Inspection

Any duly authorized representative of the Veterans Administration shall at all reasonable times be permitted to inspect the counseling and testing operations being performed under this contract and the records of these operations.

(End of Clause)

852.271-72 Time spent by counselee in counseling process.

Insert the following clause in contracts entered into for services relating to vocational counseling:

Time Spent by Counselee in Counseling Process

The contractor agrees that no counselee referred under the provisions of this agreement will be required to give any extra time in connection with the counseling process to supply test results or other information for purposes other than those specified in this contract.

(End of Clause)

852.271-73 Use and publication of counseling results.

Insert the following clause in contracts entered into for services relating to vocational counseling:

Publishing Results

The contractor agrees that none of the information or data gathered in connection with the services specified in this contract or studies or materials based thereon or relating thereto will be publicized without the prior approval of the Chief Benefits Director or his/her designee.

(End of Clause)

852.271-74 Inspection.

Insert the following clause in contracts entered into with educational institutions and training establishments for education and rehabilitation:

Inspection

The contractor will permit the duly authorized representative of the Veterans Administration to visit the place of instruction as may be necessary and examine the training facilities and work of the veterans in training under this contract.

(End of Clause)

852.271-75 Extension of contract period.

The following clause will be included in contracts where appropriate pertaining to services for education and rehabilitation:

Extension of Contract Period

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

(End of Clause)

PART 853—FORMS

Sec.

853.000 Scope of part.

Subpart 853.1—General

853.107 Obtaining forms.

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853.201 Federal acquisition system.
853.201-1 Contracting authority and responsibilities (SF 1402).
853.213 Small purchase and other simplified purchase procedures (VA Forms 90-2138, 10-7078, 10-7079, 10-2570d, 10-2511, and 10-2421).
853.215 Contracting by negotiation (VA Form 10-1170).
853.236 Construction and architect-engineer contracts.
853.236-1 Construction (VA Form 08-6159).
853.236-2 Architect-engineer services (VA Form 08-6298).
853.271 Loan Guaranty, Education and Vocational Rehabilitation and Counseling Programs.
853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).
853.271-2 Vocational Rehabilitation and Counseling Programs (VA Forms 22-1903, 22-1905 and 22-1931).
853.271-3 Education Programs (VA Forms 22-1982, 22-1982e, 22-1982c, and 22-7398).

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

853.000 Scope of part.

This part prescribes Veterans, Adminsitration forms for use in the acquisition of goods and services. It only identifies forms which are used between the VA and its contractors or the general public. It does not identify forms for uses internal to the VA or between the VA and another federal agency.

Subpart 853.1—General

853.107 Obtaining forms.

VA forms may be obtaind from any VA contracting office of by requesting such forms from the Director, Office of Procurement and Supply (91), Veterans, Adminsitration, 810 Vermont Avenue NW., Washington, D.C. 20420.

Subpart 853.2—Prescription of Forms

853.201 Federal acquisition system.

853.201-1 Contracting authority and responsibilities (SF 1402).

Current delegations of contracting authority appointed with VA Form 90-2267, Certificate of Designation (contracting officer), will remain in effect until replaced with an executed SF 1402, Certificate of Appointment, in accordance with 801.603-3.

853.213 Small purchase and other simplified purchase procedures (VA Forms 90-2138, 10-7078, 10-7079, 10-2570d, 10-2511, and 10-2421).

The following forms are prescribed as stated below and in the circumstances and within the limitations provided:

(a) VA Form 90-2138, Order for Supplies or Services shall be used as indicated in 831.505-2. It will be used in lieu of but similar to OF 347, Order for Supplies and Services.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.505-2:

(1) VA Form 10-7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10-7079, Request for Outpatient Medical Services.

(3) VA Form 10-2570d, Dental Record, Authorization and Invoice for Outpatient Services.

(c) VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.505-2(c).

(d) VA Form 10-2421, Prosthetics Authorization and Invoice, will be used from indicated procurements not to exceed $300 as prescribed in 813.505-2.

853.215 Contracting by negotiation (VA Form 10-1170).

VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of the Veterans Administration, will be utilized for establishing contract nursing home care for VA beneficiaries.

853.236 Construction and architect-engineer contracts.

853.236-1 Construction (VA Form 08-6159).

VA Form 08-6159, Construction Progress Chart, will be used as prescribed by 852.236-84.

853.236-2 Architect-engineer services (VA Form 08-6298).

VA Form 08-6298, Architect-Engineer Fee Proposal, will be used as prescribed in 836.606-71.

853.271 Loan Guaranty, Education, and Vocational Rehabilitation and Counseling Programs.

853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).

(a) VA Form 26-6724, Invitation, Bid, and/or Acceptance or Authorization, will be used in obtaining services specified in Subpart 871.1.

(b) VA Form 26-1839, Compliance Inspection Report, will be used for inspection of repairs for properties under the Loan Guaranty Program as specified in 846.472.

853.271-2 Vocational Rehabilitation and Counseling Programs (VA Forms 22-1903, 22-1905, and 22-1931).

The following forms will be used in acquiring education or rehabilitation services as prescribed in Subpart 871.2:

(a) VA Form 22-1903, Contract for Education and Training.

(b) VA Form 22-1905, Authorization and Certification of Entrance or Reentrance into Training and Certification of Trainee Status.

(c) VA Form 22-1931, Contract for Services Relating to Vocational Counseling.

853.271-3 Education Programs (VA Forms 22-1982, 22-1982e, 22-1982c, and 22-7398).

The following forms are prescribed for use in obtaining services for the Department of Veterans Benefits Education programs:

(a) VA Form 22-1982, State Approving Agency (SAA) Reimbursement Contract.

(b) VA Form 22-1982e, Schedule No. 1 to the SAA Reimbursement Contract; Accredited and Non-Accredited Courses Under Chapter 32, 34, and 35, or 36, of Title 38 United States Code, whichever is applicable.

(c) VA Form 1982c, Schedule No. 2 to the SAA Reimbursement Contract; Apprentice Or Other Training On-the-Job.

(d) VA Form 22-7398, Quarterly Report of State Approving Agency Activities Under Chapter 36, Title 38, United States Code.

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

VA Forms will not be illustrated in this VAAR. Persons wishing to obtain copies of VA forms prescribed in the VAAR may do so in accordance with 853.107.

PART 870—SPECIAL PROCUREMENT CONTROLS

Subpart 870.1—Controls

Sec.

870.111 Subsistence.
870.111-5 Frozen processed food products.
870.112 Telecommunications equipment.
870.113 Paid use of conference facilities.
870.114 Asbestos.
870.114-1 General.
870.114-2 Background.
870.114-3 Approving authority.
870.114-4 Exempted products containing asbestos.
870.115 Food service equipment.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 870.1—Controls

870.111 Subsistence.

870.111-5 Frozen processed food products.

(a) All frozen, processed food products procured which contain meat, poultry or a significant proportion of eggs, will be processed or prepared in plants operated under the supervision of the USDA (U.S. Department of Agriculture). The product will be inspected and approved in accordance with the regulations of the USDA governing meat, poultry or egg inspection. A label or seal, affixed to the container, indicating compliance with these regulations will be accepted as evidence of compliance. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(b) All frozen, processed food products procured which contain fish or fish products will be processed or prepared in plants operated under the supervision of the USDC (U.S. Department of Commerce). The products listed in USDC publication titled, "Approved List of Sanitarily Inspected Fish Establishments" are processed in plants under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or USDC seal, affixed to a container, indicating compliance with USDC regulations will be accepted as evidence of compliance. In lieu thereof, the shipment may be lot inspected by the USDC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(c) Producers of frozen bakery products which are shipped in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, it must be vertified that the product, in fact was shipped interstate or that the producer ships products to other purchasers interstate.

In addition, the product must bear a label complying with the Act which requires that all ingredients be listed according to the order of their predominance.

870.112 Telecommunications equipment.

(a) Solicitations, including those for construction, based on detailed purchase descriptions or formal specifications for telecommunications equipment, as defined in Manual MP–6, Part VIII,[8] will include the clause required by 852.270–4.

(b) The descriptive literature to be furnished by the contractor after award, required by the clause in 852.270–4, is to be reviewed and approved by the Office of Data Management and Telecommunications prior to delivery and/or installation by the contractor. Promptly upon receipt of the descriptive literature, contracting officers will forward it together with a copy of the contract, the formal specification, or the detailed purchase description to the Director, Office of Procurement and Supply (93).

(c) Solicitations, including those for construction, for telecommunications equipment based on "brand name or equal" purchase description are subject to the following:

(1) Prior to award, contracting officers will forward to the Director, Office of Procurement and Supply (93), the abstract of bids, one copy of each offer received, including descriptive literature and pertinent letters, and the comments and recommendations of the contracting officer.

(2) No commitments are to be made to contractors prior to receipt of Central Office reaction.

(3) Allowance of at least 30 days time for acceptance will be specified in the solicitation in order to allow sufficient time for the review required by this paragraph (c). (See FAR 52.214–16.)

870.113 Paid use of conference facilities.

(a) The rental of space for VA-sponsored symposia and training sessions may be unwarranted when other alternatives are available at no expense or reduced expense to the Government. After the geographical location for a VA conference has been selected, based on minimum overall travel costs for all Government participants and other relevant factors, a request for conference space will be forwarded to the servicing Supply activity. The request for conference space should afford the contracting officer every opportunity to secure rent-free facilities.

(b) The following criteria for the selection of an appropriate facility will apply:

(1) A thorough effort will be made to schedule conferences and training sessions so that the conference facilities of VA installations in the city where the conference is held may be used.

(2) Where no VA space is available, the General Services Administration will be contacted to determine if there is other Government agency space which may be used.

(3) Efforts will be made to schedule conferences, where Government space is not available, through hotels and motels which offer free conference facilities in exchange for a stipulated number of lodging reservations for participants. Surcharges per lodging or increased room rates, to offset the cost of the conference room, shall be considered payment for such space.

(4) In the event none of these is available on the desired dates, consideration will be given to rescheduling the conference to avail the VA of the use of facilities without payment of a fee.

(5) If none of the above is practical, rental conference space will be obtained. Complete documentation of efforts to secure free conference space, as outlined above, will be maintained in the purchase order file. The costs of coffee, refreshments, meals, lodging, tips and other supplies and services not directly related to the presentations within the conference space are not allowable.

(c) The conference coordinator of the requesting organization will continue to be responsible for individual room reservations, including any cancellations.

870.114 Asbestos.

870.114–1 General.

This section applies to the purchase and use of asbestos products and equipment or materials containing asbestos products in the Veterans Administration.

870.114–2 Background.

Exposure to asbestos is associated with chronic and debilitating lung disease and cancer. To reduce the health hazard related to the exposure to asbestos, the U.S. Environmental Protection Agency and the U.S. Department of Labor (Occupational Safety and Health Administration) have issued specific regulations on asbestos. Although these regulations do not call for a complete ban on the use of asbestos, they do impose strict requirements on its use, airborne contamination and disposal.

870.114–3 Approving authority.

Asbestos products and equipment or materials containing asbestos products shall not be specified nor purchased for use in the Veterans Administration if any suitable substitutes are available. If suitable substitutes are not available, specific authorization to purchase and use asbestos products and equipment or materials specifying asbestos products, must be granted by the Administrator or designee. Requests for authorization will be submitted through the Director, Engineering Service (10A4A5). The following information will be provided:

(a) The name of the product, source of supply, and physical form of asbestos as used in the product or equipment;

(b) A description of use, including purpose, urgency, methodology, qualities, and by whom; and

(c) Safeguards being employed, with particular emphasis on the identification of the asbestos products, and procedures to be taken to prevent airborne contamination and disposal.

870.114–4 Exempted products containing asbestos.

VA Central Office, Engineering Service (10A4A5), is responsible for maintaining a list of products containing asbestos which are exempted by the Administrator or designee from this policy.

870.115 Food service equipment.

(a) All new food service equipment purchased for Dietetic Service through other than the Defense General Supply Center (DGSC) sources must meet requirements set forth by the National Sanitation Foundation (NSF).

(b) The contracting officer will accept an affixed NSF label and/or documentation of the certification by NSF from the contractor as evidence that the subject equipment meets sanitation standards issued by the Foundation.

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS

Subpart 871.1—Loan Guaranty Program

Sec.

871.100 Scope of subpart.
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871.103 Repair specifications.
871.104 Qualification of bidders.
871.105 Debarred, suspended, and ineligible bidders.
871.106 Lien waivers.

[8] Available at any Veterans Administration station.

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Subpart 871.2—Vocational Rehabilitation and Counseling Program

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Subpart 871.3—Education Program [Reserved]

Authority: 38 U.S.C. 210, 40 U.S.C. 486(c), 38 CFR 36.4320, 38 U.S.C. Chs. 31, 32, 34, 35, and 37 and Pub. L. 98–77.

Subpart 871.1—Loan Guaranty Program

871.100 Scope of subpart.

This subpart sets forth policy and procedure with respect to the loan guaranty and direct loan programs as it pertains to property management, including the acquisition, management, and disposition of property, real, personal, or mixed, which were secured by loans guaranteed, insured, or made pursuant to Title 38, United States Code.

871.101 Policy.

It is the policy of the Veterans Administration that all procurement effected by formal advertising or negotiation pertaining to the expenditure of funds for the repair and maintenance of Veterans Administration property acquired under Chapter 37, Title 38, United States Code, be made in accordance with those regulations as set forth in FAR Parts 14, 15 and 16 as supplemented or implemented by Parts 814, 815 and 816 of this chapter and otherwise authorized by this Subpart 871.1 and specific subparts or sections as stated in this subpart.

871.102 Authorization for repairs to properties.

(a) Except as provided in this subpart, Directors, VA Regional Offices, are authorized to purchase supplies and services for the repair to any Veterans Administration property acquired under Chapter 37, Title 38, United States Code, where the cost does not exceed $5,000 on any single transaction.

(b) In those cases where the expenditure is known or estimated to exceed $5,000, the request, together with the loan guaranty folder, will be forwarded to the Chief Benefits Director for approval.

(c) During the period when the Veterans Administration has assumed custody of the property from a holder and prior to its conveyance to the Veterans Administration pursuant to 38 CFR 36.4320, repairs are authorized not in excess of $2,000 when appropriate to make the property ready for sale at an earlier date than would otherwise be possible if the repair program was delayed until such time as the Veterans Administration acquired absolute title.

(d) No repairs may be made to property by the holder when it has continued custody except for emergeny repairs not in excess of $200 unless adequate notice has been given the Director, VA Regional Office. Emergency repairs as applied in this paragraph will be deemed to mean those requiring immediate action to preserve the property from serious damage or to correct a situation imminently dangerous to life or limb, and includes the initial cleanup of the property in order to prevent the risk of damage by fire or vandalism.

(e) An approved management broker may be authorized, at the time a property is listed with him/her, to incur expenses for fuel and utilities or other recurring items which are required to be furnished by the Veterans Administration to its tenants or are required in the maintenance of the property. Advance blanket authorizations to management brokers will be limited to repairs not in excess of $200 in any transaction, (the management broker will either submit receipts with his/her invoice or maintain such receipts for inspection). Expenditures in excess of $200 require prior approval of the Director, Regional Office, having jurisdiction of the property. Repair jobs may not be split to circumvent this restriction.

871.103 Repair specifications.

(a) Repair specifications covering authorized repairs will be formulated in sufficient detail to permit competitive bids on an identical basis and as a mimimum will contain the following.

(1) Requirement that the contractor obtain all necessary permits.

(2) Requirement that inspection will be made at stated intervals if appropriate and that final inspection will be made in all cases.

(3) Any other requirement necessary to protect the interests of the Government.

(b) The minimum construction requirements may be used as a guide in the preparation of repair specifications. Specifications should not require conformance with minimum construction requirements in cases where scope of repairs are minor, the relatively small value of the property or its poor salability. The quality of repairs to be specified shall be consistent with the type and value of the property.

(c) In all cases, the specifications for repairs will be based on one of the following categories:

(1) Minimum specifications for rental purposes.

(2) Average specifications for sales purposes.

(3) Above average specifications for desirable properties.

871.104 Qualification of bidders.

(a) Qualification of bidders shall be established in accordance with procedures outlined in FAR Subpart 9.1 and Subpart 809.1 of this chapter.

(b) Management brokers are not considered acceptable bidders for repair contracts due to their close association on a fee basis with the Veterans Administration. This restriction would apply equally to any contracting firm in which the management broker has an interest and in which it could be presumed that such firm would have an advantage over the other bidders. This does not preclude the performance of work by management brokers of a routine recurring maintenance category or minor repairs by personnel employed directly on the payroll of the broker. In these cases, it must be established that any charges for such services are not in excess of the prevailing fees for like services in the area.

871.105 Debarred, suspended and ineligible bidders.

Firms or individuals will be debarred and suspended in accordance with FAR Subpart 9.4 and Subpart 809.4 of this chapter.

871.106 Lien waivers.

(a) Contracts in the amount of $2,500 or more will contain a requirement that the contractor will sign a formal release in full or a lien waiver before payment may be made. The release or waiver will accompany the contractor's invoice.

(b) Contractors will be required to notify the Director, Regional Office, of any subcontractors for services or materials in excess of $2,500. Such subcontractors or material men will be required to sign the release or waiver jointly with the prime contractor or to

execute release or waiver in his/her own name.

(c) Prior to any authorized partial payment the contractor will be required to execute a release or waiver.

(d) Due to the variations of local law, no standard release or waiver is prescribed. Each release or waiver will be prepared in accordance with local law and will be in form acceptable by the District Counsel.

871.107 Stipulations against liens.

(a) Where determined necessary by the Director, Regional Office, contracts in an amount less than $2,500 may contain the following:

The contractor expressly waives any and all rights to file or maintain any mechanics lien or claim against the aforesaid premises.

(b) Contracts in the amount of $2,500 or more where there is doubt as to the final responsibility of the contractor will provide maximum potection to the Government by including such requirements as are available under local law. Advice and approval of any contract stipulation or legal stipulations against liens will be obtained from the District Counsel.

Subpart 871.2—Vocational Rehabilitation and Counseling Program

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and counseling program as it pertains to contracts for training and rehabilitation services, approval of institutions (including rehabilitation facilities), training establishments, and employers under Chapter 31, Title 38, United States Code, and contracts for counseling services under Chapter 32, 34, and 35, Title 38, United States Code and Pub. L. 98–77, Emergency Veterans' Jobs Training Act of 1983.

871.201 General.

871.201–1 Requirements for the use of contracts.

Contracts will be negotiated for tuition, fees, books, supplies and other allowable expenses incurred by the institution, training establishment or employer for the training and rehabilitation of eligible veterans under Chapter 31, Title 38, United States Code, under the following conditions:

(a) With institutions offering courses of instruction by correspondence. Courses of instruction by correspondence is deemed to mean a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work which involves the application or principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) With institutions, training establishments, employers, or individuals approved to provide training and rehabilitation services under Chapter 31, Title 38, United States Code, for whom special services or special courses are furnished at the request of the Veterans Administration. The terms "special services" or "special courses" have the same meaning as under 831.7001–2.

871.201–2 Requirements when contracts are not required.

(a) When a contract is not required, a signed statement of charges will be obtained from the educational institution or training establishment for courses to be offered, including the rate of tuition, fees, and separate charges, if any, for books, supplies, and equipment handling charges, refund policy and such other provisions as are required to determine proper payment. The statement of charges may be in the form of a statement on VA Form 22–1905, Authorization and Certification of Entrance of Reentrance into Training, that charges will be in accordance with catalog or other published document (identify publication). The statement of charges may not exceed those charges paid by nonveterans or that is published in the school catalog or other published document.

(b) For the purpose of this section a contract will not be required when all tuition, fees, books, supplies, or services necessary to train, or educate an eligible veteran under Chapter 31, Title 38, United States Code, are published in the school catalog or other published document.

871.201–3 Medical services.

The medical services provided trainees under vocational rehabilitation and education contracts, agreements, or arrangements are separate and distinct from any other medical service under the jurisdiction of the Department of Medicine and Surgery to which the veteran may be entitled and no certificate of eligibility is required from that department.

871.201–4 Letter contracts.

Letter contracts are authorized for use in accordance with the provision of FAR 16.603 and in those cases in which it is not possible to complete a formal contract with an approved educational institution prior to the enrollment of eligible veterans for training.

871.202 Marking and release of supplies.

Supplies will not be marked to indicate ownership by the United States and will be deemed released to the trainee at the time they are furnished.

871.203 Renewals or supplements to contracts.

Except for contracts for educational and vocational counseling, contracts may be renewed from year to year, providing there is no change in the schedule or provisions as originally consummated by completion of a renewal agreement no later than 30 days prior to the expiration of the contract.

(a) Supplements may be negotiated at any time during the contract period upon the completion of the supplemental agreement.

(b) Contracts for educational and vocational counseling may provide for automatic extension from year to year.

871.204 Guarantee payment.

No contract or agreement may be entered into with any institution or training establishment whereby the Veterans Administration will be required to pay a minimum charge, or required to enroll a minimum number of participants per quarter, semester, term, course, or other period.

871.205 Proration of charges.

The contract will include the exact formula agreed on for the proration of charges in the event that the veteran's program is interrupted or discontinued prior to the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

871.206 Other fees and charges.

Fees and other charges which are not prescribed by law but are by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment during a period in which the veteran is a chapter 31 participant, may be paid provided there are no facilities feasibly available whereby the necessary training can be feasibly accomplished or employment obtained without paying such charges.

Payment for such fees will be made in accordance with Part 813.

871.207 Payment of tuition or fees.

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees will provide for the following:

(1) Payment for tuition or fees will be made in arrears and will be prorated in installments over the school year or the length of the course except that institutions may be paid in accordance with the provision of paragraph (a)(2) of this section, provided such institutions operate on a regular term, quarter, or semester basis and normally accept students only at the beginning of the term, quarter, or semester and provided for further such institutions are either:

(i) Institutions of higher learning that use a standard unit of credit recognized by accrediting associations (such institutions will include those which are members of recognized national or regional educational accrediting associations, and those which, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions which are members of national on regional accrediting associations).

(ii) Public tax supported institutions.

(iii) Institutions operated and controlled by State, county, or local boards of education.

(2) Institutions coming within the exceptions of paragraph (a)(1) of this section which have a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(3) Proration of charges will not apply to a fee which is for noncontinuing service such as registration fee, etc.

(b) The period for which payment of charges may be made will be the period of actual enrollment and subject to the following:

(1) The effective date will be the date of the trainee's entrance into training status except that payment may be made for an entire-semester, quarter, or term in institutions operating on that basis if the training enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or will not set a date acceptable to the Veterans Administration, payment may be prorated on the basis of attendance regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

(c) The terminal date to which payment will be made is the day following:

(1) The end of the semester, term or quarter during which the training is furnished.

(2) The date of interruption or discontinuance of training.

(3) The date of completion of the course.

871.208 Rehabilitation facilities.

The provisions for payment of charges to rehabilitation facilities for the rehabilitation services provided under Chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

871.209 Records and reports.

Contracts, agreements, or arrangements will provide for the number and frequency of reports, adequate financial records to support payment for each trainee and maintenance of attendance and progress records. Such records will be preserved for a period of three years.

871.210 Correspondence courses.

Contracts with institutions for correspondence courses will provide that:

(a) Major changes in courses or course material will not be binding on the Veterans Administration until such time as a supplemental agreement is negotiated to the contract.

(b) Minor changes in course or course material not affecting the length of the course or number of lessons and not lowering the educational value of the course or the quality of the course material such as revision of text, the substitution of a newer lesson for an older one, or the substitution of equipment of equal or greater value, are permitted without supplemental agreements. Such minor changes and revisions shall be placed on file with the contracting officer at the time of the change or revision.

(c) Trainees be provided with prompt and adequate lesson service and, unless otherwise specified in the contract, be furnished the same texts, lessons service, diplomas, and other services as are normally provided for regularly enrolled nonveteran students.

(d) All lessons be adequately serviced on an individual basis. Grouping of lessons into units or partial servicing does not meet this requirement.

(e) Each lesson must have a separate examination adequate in terms of lesson content.

(f) The training of persons under a Veterans Administration contract or the fact that the United States is utilizing the facilities of the institution for training veterans shall not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under Chapter 31, Title 38, United States Code, and shall not be directed or pointed specifically to veterans.

(g) The rates, fees, and charges are not in excess of those charged nonveterans.

(h) That payment will be made on a lesson completed basis in areas for assignments sent in by trainees and serviced during a pay period as established by the contract.

(i) Payment will be made only once for each lesson even through it is necessary to service a lesson more than once.

871.211 Information concerning correspondence courses.

Specific questions on correspondence courses as to the content of courses, academic credit, and entrance requirements for courses included in Veterans Administration contracts may be directed to the institutions offering the courses.

Subpart 871.3—Education Program [Reserved]

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Part IV

Federal Emergency Management Agency

48 CFR Ch. 44
Acquisition Regulations; Interim Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

48 CFR Ch. 44

FEMA Implementation of the Federal Acquisition Regulation (FAR); FEMA Acquisition Regulation (FEMAAR)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule and invitation for comments.

SUMMARY: This document establishes an interim rule known as the Federal Emergency Management Agency Acquisition Regulation (FEMAAR). This rule is codified as Chapter 44 of Title 48 of the Code of Federal Regulations. The purpose of the FEMAAR is to prescribe acquisition regulations needed to implement specific requirements of the Federal Acquisition Regulation (FAR) as well as statutory requirements peculiar to FEMA.

The FAR is being promulgated as the uniform, simplifed acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The FAR will supersede the Defense Acquisition Regulation (DAR), the Federal Procurement Regulation (FPR) and the National Aeronautics and Space Administration Procurement Regulation (NASAPR). Except for certain new requirements of the FAR, the regulatory material in the FEMAAR will supersede the current Federal Emergency Management Agency Procurement Regulations (FEMAPR).

DATES: *Effective Date:* April 1, 1984.

Comments: Due not later than May 31, 1984.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Joseph A. Pegnato, Chief, Policy and Evaluation Division, Office of Acquisition Management, Federal Emergency Management Agency, 500 C Street SW., Washington, D.C. 20472, Telephone (202) 287–3826.

SUPPLEMENTARY INFORMATION:

Background

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result of this is the current system of procurement policies that vary from agency to agency and cause confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR was published in the **Federal Register** on September 19, 1983 with a scheduled effective date of April 1, 1984. (See 48 FR 42102.) The FAR will be codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes the agencies to issue regulations to implement FAR policies and procedures within the agency, and to include additional policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulations being published today represent the Agency's necessary implementation and supplementation of the FAR.

The content of the interim FEMAAR is, with but a few exceptions that will be noted, drawn from the FEMAPR of August 19, 1980. The changes that have been made in the material brought forward from the FEMAPR can be categorized correctly as editorial, made in the interest of clarity, brevity, and consistency. Signficant other portions of the FEMAPR have been made unnecessary by material written into the FAR.

Most new material has been incorporated in response to explicit or implied FAR requirements. As an example: FAR 3–204 requires that an agency have procedures for handling violations of the Gratuities clause. FEMAAR 4403.204 establishes a minimum procedural framework and assigns responsibilities.

These new FEMAAR segments are:

4401.405 Deviations pertaining to treaties and executive agreements
4403.101–2 Solicitation and acceptance of gratuities by Government personnel
4403.101–3 Agency regulations
4403.203 Reporting suspected violations of the gratuities clause
4403.204 Treatment of violations
4405.502 Authority
4407.307 Appeals
4408.802 Policy
4412.303 Procedures
4415.307 Signatory authority
4419.201 General policy
4424.202 Policy

FEMAAR 4415.413–2 also is new. It requires written approval of the Head of the Contracting Activity (HCA) to use Alternate II procedures governing disclosure and use of information before award.

Since the FAR is to be the uniform Government-wide acquisition regulation, reviewers of this rule must remember that lack of coverage of a particular toxic in the FEMAAR means that the Agency accepts the FAR coverage of the topic without need for further regulatory implementation.

Procedural Requirements

A. *Executive Order 12291.* David Stockman, Director of the Office of Management and Budget, has exempted procurement regulations from the requirements of a regulatory impact analysis and review required by Executive Order 12291 in a memorandum dated December 15, 1983 to Don Sowle, Administrator, Office of Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs.

B. *Regulatory Flexibility Act.* This interim rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. FEMA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities; and, therefore, no regulatory flexibility analysis has been prepared.

C. *National Environmental Policy Act.* FEMA has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976) and the regulations (40 CFR Parts 1500–1508), therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

D. *Administrative Procedure Act.* Section 553 of the Administrative Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking.

However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. In OFPP Policy letter 83–2, OFPP states that an agency must provide an opportunity for public

comment before adopting procurement regulations if the regulations represent a "significant" change of existing regulations. "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Agency has determined that this rule does not represent a significant change. As described earlier in the preamble, changes made to FEMA's procurement regulations are principally in the areas of format and internal procedures. The internal procedural changes are necessary to implement new or modified material established by the FAR.

The Agency traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act (see 44 CFR 1.4). Although this is the general policy of the Agency, it has been determined in this instance, for the reasons already stated, that it would be impractical, unnecessary and contrary to all interests involved to provide for prior notice and comment in this rulemaking. In addition, the FAR has a scheduled effective date of April 1, 1984. It is imperative that FEMA's procurement regulations be effective at the same time as the FAR. For these reasons, the Agency is issuing the FEMA acquisition regulations as an interim rule. Because of the Agency's general policy to solicit comments to the extent practicable, comments are invited on these regulations through May 31, 1984. All comments received will be reviewed, considered and implemented if necessary prior to this regulation becoming final.

List of Subjects in 48 CFR Ch. 44

Government procurement, Federal Emergency Management Agency (FEMA) acquisition regulations.

For the reasons set forth in the preamble, Title 48 of the Code of Federal Regulations is amended by establishing Ch. 44 as set forth below.

CHAPTER 44—FEDERAL EMERGENCY MANAGEMENT AGENCY ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

Part 4401—Federal Emergency Management Agency (FEMA) acquisition regulation system
Part 4402—Definition of words and terms
Part 4403—Improper business practices and personal conflicts of interests
Part 4405—Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

Part 4407—Adquisition planning
Part 4408—Required sources of supplies and services
Part 4409—Contractor qualifications
Part 4412—Contract delivery or performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 4414—Formal advertising
Part 4415—Contracting by negotiation
Part 4416—Types of contracts

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 4419—Small business and small disadvantaged business concerns
Part 4420—Labor surplus area concerns
Part 4422—Application of labor laws to Government acquisitions
Part 4424—Protection of privacy and freedom of information

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 4429—Taxes
Part 4432—Contract financing

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 4435—Research and development contracting
Part 4436—Construction and architect-engineer contracts

SUBCHAPTER H—CLAUSES AND FORMS

Part 4452—Solicitation provisions and contract clauses

SUBCHAPTER A—GENERAL

PART 4401—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ACQUISITION REGULATION SYSTEM

Sec.
4401.000 Scope of part.

Subpart 4401.1—Purpose, Authority, Issuance

4401.101 Purpose.
4401.103 Applicability.
4401.104 Issuance.
4401.104–1 Publication and code arrangement.
4401.104–3 Copies

Subpart 4401.3—Agency Acquisition Regulations

4401.301 Policy.
4401.303 Codification and public participation.

Subpart 4401.4—Deviations from the FAR

4401.403 Individual deviations.
4401.404 Class deviations.
4401.405 Deviations pertaining to treaties and executive agreements.

Subpart 4401.6—Contracting Authority and Responsibilities

4401.600–70 Scope of subpart.
4401.601 General.
4401.603 Selection, appointment, and termination of appointment.
4401.603–2 Selection.
4401.603–3 Appointment.

Subpart 4401.70—Procurement Contracts Versus Assistance Instruments

4401.7000 Scope of subpart.
4401.7001 Procurement contracts.
4401.7001–1 Situations for use.
4401.7001–2 Examples.
4401.7002 Assistance.
4401.7002–1 Grants.
4401.7002–2 Cooperative agreements.
4401.7002–3 Examples of unsubstantial involvement.
4401.7002–4 Examples of substantial involvement.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

4401.000 Scope of part.

This part sets forth policies and procedures concerning the Federal Emergency Management Agency Acquisition Regulation (FEMAAR) System.

Subpart 4401.1—Purpose, Authority, Issuance

4401.101 Purpose.

FEMAAR is a supplement to the Federal Acqusition Regulation (FAR) and is established for the codification and publication of uniform policies and procedures for acquisitions by FEMA.

4401.103 Applicability.

This regulation applies to all acquisitions within FEMA, but not to placement or administration of cooperative agreements or grants.

4401.104 Issuance.

4401.104–1 Publication and code arrangement.

(a) The FEMAAR is published in (1) the daily issue of the **Federal Register** and (2) cumulated form in the Code of Federal Regulations (CFR).

(b) The FEMAAR is issued as Chapter 44 of Title 48, CFR.

4401.104–3 Copies.

Copies of the FEMAAR in **Federal Register** and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Agency offices may request copies of the FEMAAR from the Policy and Evaluation Division, Office of Acquisition Management.

Subpart 4401.3—Agency Acquisition Regulations

4401.301 Policy.

Policies, procedures, and guidance of an internal nature may be issued through internal FEMA issuances such as manuals, standard operating procedures, or instructions.

4401.303 Codification and public participation.

If subject matter in FAR requires no implementation, the FEMAAR will not contain a corresponding part, subpart, section, or subsection number. FAR subject matter governs.

Subpart 4401.4—Deviations from the FAR

4401.403 Individual deviations.

The Director, Office of Acquisition Management, must authorize individual deviations in advance. Requests for authorization must:

(a) Cite the specific parts of the FAR or FEMAAR from which it is desired to deviate;

(b) Describe the deviation fully;

(c) Indicate the circumstances which require the deviation;

(d) Give reasons supporting the action requested; and

(e) Give reasons why the action is in the best interest of the Government.

4401.404 Class deviations.

The Director, Office of Acquisition Management, must authorize class deviations in advance.

4401.405 Deviations pertaining to treaties and executive agreements.

The Director, Office of Acquisition Management, is the central control point for all deviations including those pertaining to treaties and executive agreements.

Subpart 4401.6—Contracting Authority and Responsibilities

4401.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting offices.

4401.601 General.

The Director, Office of Acquisition Management, is designated the head of the contracting activity and FEMA's procurement executive. The Director, Office of Acquisition Management, shall establish policy throughout the agency; monitor the overall effectiveness and efficiency of the agency's contracting offices; establish controls to assure compliance with laws, regulations, and procedures; and delegate contracting officer authority.

4401.603 Selection, appointment, and termination of appointment.

4401.603–2 Selection.

In the areas of experience, training, and education, the following shall be required unless contracting authority is limited to simplified purchase procedures. Waiver of any of these criteria shall be in writing:

(a) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have a minimum of two years experience performing contracting, procurement, or purchasing functions in a Government or commercial contracting office. Additionally, where a contracting officer will work in a specialized field, experience in the field shall be a criterion for the appointment.

(b) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have the equivalent of a bachelor's degree from an accredited college or institution with major studies in business administration, law, accounting, or related fields. The appointing official may waive this requirement when a candidate is otherwise qualified by virtue of extensive contract-related experience and training, business acumen, judgment, character, reputation, and ethics.

(c) An individual contracting officer or an individual appointed to a position having contracting authority shall have successfully completed training courses in both Government basic procurement and Government contract administration, each of not less than 80 class hours. Incumbents not meeting the special training requirements shall be given 24 months to meet the minimum qualification standards.

4401.603–3 Appointment.

Except for disaster-related activities and unusual circumstances as determined by the head of the contracting activity, it is policy to delegate contracting officer authority to individuals rather than to positions. The head of the contracting activity is the appointing authority. Except where the delegation of authority specifically includes the authority for further redelegation, no other delegations or redelegations may be made. Delegations of contracting officer authority shall include a clear statement of such authority, its responsibilities and limitations.

Subpart 4401.70—Procurement Contracts Versus Assistance Instruments

4401.7000 Scope of subpart.

This subpart describes the situations appropriate for the use of procurement contracts, grants, or cooperative agreements and provides examples of each.

4401.7001 Procurement contracts.

4401.7001–1 Situations for use.

Procurement contracts are to be used whenever the principal purpose of the instrument is acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government.

4401.7001–2 Examples.

Procurement contracts normally will be used when the principal purpose of the relationship is:

(a) Evaluation (including research if an evaluative character) of the performance of Government program, projects, or grantee activity initiated by FEMA.

(b) Projects funded by administrative funds.

(c) Technical assistance rendered on behalf of the Government to any third party including those receiving grants or cooperative agreements.

(d) Surveys, studies, and research which provide specific information desired by the Government for its direct activities or for dissemination to the public.

(e) Consulting or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(f) Planning for Government use.

(g) Conferences conducted in behalf of the Government.

(h) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(i) Design or development of items for Government use or pursuant to agency definition or specifications.

(j) Generation of management information or other data for Government use.

4401.7002 Assistance.

Assistance may take the form of either grants or cooperative agreements and include:

(a) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing such assistance.

(b) Financial assistance (stimulation or support) to a specific program activity eligible for such assistance under specific legislation authorizing such assistance.

4401.7002–1 Grants.

Grants are to be used whenever the principal purpose of the relationship is to transfer money, property, services, or

anything else of value to a recipient to accomplish a public purpose. The support of stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is not anticipated.

4401.7001-2 Cooperative agreements.

Cooperative agreements are to be used whenever the principal purpose of the relationship is the transfer of money, property, service, or anything else of value to recipients to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is anticipated.

4401.7002-3 Examples of unsubstantial involvement.

Involvement is not substantial and a grant is the proper instrument if the following types of involvement are planned:

(a) Approval of recipient plans prior to award.

(b) Normal Federal stewardship such as site visits, performance reporting, financial reporting, and audits to ensure that objectives, terms, and conditions of the grants are met.

(c) Unanticipated involvement to correct deficiencies in project or financial performance from the terms of the grants.

(d) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provision for the handicapped.

(e) Review of performance after completion.

(f) General administrative requirements, such as those included in OMB Circulars A-21, A-95, A-110, and A-102.

4401.7002-4 Examples of substantial involvement.

Involvement is substantial and a cooperative agreement is the proper instrument when the following types of involvement are planned.

(a) Agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the cooperative agreement.

(b) Agency and recipient collaboration or joint participation in the performance of the assisted activities.

(c) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation and other management processes, coupled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(d) General administrative requirements beyond those included in OMB Circulars A-102 and A-110.

PART 4402—DEFINITION OF WORDS AND TERMS

Subpart 4402-1—Definitions

4402.100 Definitions.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Director" means the Director of the Federal Emergency Management Agency.

"Interagency agreement" means an agreement between two or more agencies, bureaus, or departments of the Federal Government by which supplies, services, or property are provided to, or obtained from, one or more agencies, bureaus, or departments of the Federal Government. Funds are transferred between the parties as consideration for the supplies, services, or property.

"Memorandum of Understanding" means an agreement between two or more agencies, bureaus, or departments of the Federal Government. Funds are not transferred between parties.

"Program office" means any office which generates requests for procurement actions.

"Project officer" means the program office representative cognizant over the technical aspects of a given procurement action.

(Sec. 205(c), 63 Stat. 390; 49 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 4403.1—Safeguards

Sec.

4403.101-2 Solicitation and acceptance of gratuities by Government personnel.
4403.101-3 Agency regulations.
4403.103 Independent pricing.
4403.103-2 Evaluating the certification.

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.
4403.204 Treatment of violations.

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4403.1—Safeguards

4403.101-2 Solicitation and acceptance of gratuities by Government personnel.

Exceptions to the prohibition against soliciting or accepting gratuities are explained in 44 CFR 3, Subpart B.

4403.101-3 Agency regulations.

FEMA "Standards of Conduct" are published in 44 CFR 3. They include requirements for financial disclosure.

4403.103 Independent pricing.

4403.103-2 Evaluating the certification.

The Director, Office of Acquisition Management, is authorized to make the determination described in FAR 3.103-2(b)(2).

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.

Suspected violations shall be reported to the FEMA Office of the Inspector General. A report shall include all facts and circumstances relevant to the case.

4403.204 Treatment of violations.

Following review and any necessary investigation, the Inspector General shall make recommendations to the Director or a designee. If action is to be taken against a contractor, the contractor shall be given the opportunity for a hearing in accordance with FAR 3.204(b).

Subpart 4403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

The Director, Office of Acquisition Management, may authorize an exception to the policy in FAR 3.601, based on facts and circumstances provided by the program office.

PART 4405—PUBLICIZING CONTRACT ACTIONS

Sec.

4405.001 Policy.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

4405.001 Policy

The agency shall continually search for and develop information on sources (including small businesses owned and controlled by one or more socially or economically disadvantaged individuals) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be used for this purpose. The search should include a review of data or brochures furnished by sources seeking to do business with the agency. It also should include program personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider seeking other sources by publication of proposed procurements.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Unless it is not in the Government's interest, the contracting officer shall make the solicitation source list available to firms requesting it for subcontracting opportunities on contracts exceeding $10,000.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

In accordance with 44 CFR 2.67, authority to approve publication of paid advertisements in newspapers has been delegated to the Director, Office of Administrative Support.

SUBCHAPTER B—ACQUISITION PLANNING

PART 4407—ACQUISITION PLANNING

Subpart 4407.3—Contractor Versus Government Performance

4407.307 Appeals.

FEMA's A–76 appeals procedures are published in 44 CFR 11.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 4408.8—Acquisition of Printing and Related Supplies

4408.802 Policy.

Contracting officers shall obtain approval from the Director, Office of Administrative Support, FEMA's central printing authority, before contracting for printing.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978; 43 FR 41943)

PART 4409—CONTRACTOR QUALIFICATIONS

Subpart 4409.4—Debarment, Suspension, and Ineligibility

Sec.
4409.404 Consolidated list of debarred, suspended, and ineligible contractors.
4409.406 Debarment.
4409.406–1 General.
4409.406–3 Procedures.
4409.407 Suspension.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4409.4—Debarment, Suspension, and Ineligibility

4409.404 Consolidated list of debarred, suspended, and ineligible contractors.

The Director, Office of Acquisition Management, will notify GSA, maintain records, establish procedures, and direct inquiries as required by FAR 9.404(c).

4409.406 Debarment.

4409.406–1 General.

The Executive Administrator shall be the debarring official.

4409.406–3 Procedures.

(a) Determination to debar or take other action concerning a firm or individual for a cause listed in FAR 9.406–2 shall be made by the Executive Administrator. Whenever cause for debarment becomes known to any contracting officer, the matter shall be submitted, with recommendations of the Director, Office of Acquisition Management, to the Executive Administrator for appropriate action. The documented file of the case will be included in the submission.

(b) If the Executive Administrator concurs in the proposed debarment, a notice of proposal to debar shall be issued by the Executive Administrator or designee.

(c) The Executive Administrator or designee shall conduct any hearings requested in connection with debarment proceedings. The firm or individual shall have the opportunity to appear with witnesses and counsel to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, or if the firm or individual does not respond within 30 days from receipt of the written notice, the reviewing authority will make the decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

(d) Appeals may be taken within 30 days after receipt by the firm or individual of a decision to debar. Appeals shall be filed with the Director, FEMA, who shall make a decision based on the record. The Director's decision shall be final.

4409.407 Suspension.

4409.407–1 General.

The Executive Administrator shall be the suspending official.

4409.407–3 Procedures.

(a) Any contracting officer may recommend suspension of bidders. These recommendations shall be accompanied by the documented file in the case and be submitted through the Director, Office of Acquisition Management, to the Executive Administrator. The Executive Administrator shall issue the notice of suspension.

(b) The Director, Office of Acquisition Management, shall develop and maintain suspension procedures.

PART 4412—CONTRACT DELIVERY OR PERFORMANCE

Subpart 4412.3—Priorities, Allocations, and Allotments

4412.303 Procedures.

Rejected rated orders or ACM orders shall be sent to the Department of Commerce through the head of the contracting activity.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 4414—FORMAL ADVERTISING

Subpart 4414.2—Solicitation of Bids

Sec.
4414.202 General rules for solicitation of bids.
4414.202–1 Bidding time.
4414.202–2 Telegraphic bids.

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.
4414.402 Opening of bids.
4414.406 Mistakes in bids.
4414.406–3 Other mistakes disclosed before award.
4414.407 Award.
4414.407–8 Protests against award.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4414.2—Solicitation of Bids

4414.202 General rules for solicitation of bids.

4414.202-1 Bidding time.

(a) Procurement action which does not provide for at least 30 calendar days shall be justified by the contracting officer before releasing the invitation for bids. This justification shall be a finding of fact which establishes the basis for the exception.

(b) Thirty calendar days shall not be construed as the maximum bidding time. Each prospective procurement shall be examined on its own merits to determine the bidding time that will facilitate competition on reasonable and equal terms.

4414.202-2 Telegraphic bids.

Telegraphic bids will be authorized only by the contracting officer who shall document the file as to the need for telegraphic bids.

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.

(a) Envelopes or other outer coverings containing identified bids shall be stamped or otherwise marked to show the office of receipt, the time of day received, and the date. The individual receiving the bids shall then initial under the marking.

(b) A copy of the envelope or other covering bearing the documentation of a bid that was opened by mistake shall be retained in the file.

4414.402 Opening of bids.

The contracting officer, or duly authorized representative, shall be designated as the bid opening officer.

4414.406 Mistakes in bids.

4414.406-3 Other mistakes disclosed before award.

The Director, Office of Acquisition Management, is delegated the authority to make the determinations concerning mistakes in bid other than obvious clerical errors discovered prior to award. Each such determination shall be approved by the Office of General Counsel prior to notification of the bidder.

4414.407 Award.

4414.407-8 Protests against award.

(a) *General.* (1) The contracting officer shall pursue resolution of all protests. If the protest cannot be resolved, or if it has filed with GAO, the contracting officer shall send a report to the HCA. Report contents are as described in FAR 14.407-8(a)(2). The HCA shall recommend a course of action or send the report to the Office of General Counsel. All communication with GAO concerning a protest shall be coordinated through the HCA and the Office of General Counsel.

(2) The contracting officer shall give the protestor the final decision within 30 working days after receipt of the protest. A formal report shall be submitted to GAO within 25 working days after receipt of a request from GAO. To meet these dates, the contracting officer shall submit the report to the HCA within 10 working days after receipt of the protest or GAO's request for comment.

(b) *Protests before award.* If there is a protest, the contracting officer must have the approval of the HCA before awarding a contract. The contracting officer shall send a written determination with the request for approval. When the protest has been filed with GAO, the HCA shall notify the Office of General Counsel before authorizing award.

(c) *Protests after award.* The contracting officer's report also shall contain:

(1) Current status of the contract, indicating whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued, and

(2) Copies of any agreement with the contractor, if applicable, to suspend performance.

(d) *Timeliness.* A protest filed with the contracting officer shall be filed to be received at the procuring office not later than five working days after the basis for protest is known or reasonably should have been known, whichever is earlier.

(3) *Records.* The HCA shall maintain records relating to all protests received. The records shall show the number and nature of formal protests received (whether filed directly with FEMA or with GAO), their disposition, and the time for resolutions. These records will be reviewed annually to update protest procedures.

PART 4415—CONTRACTING BY NEGOTIATION

Subpart 4415.1—General Requirements for Negotiation

Sec.
4415.105 Competition.
4415.105-70 Noncompetitive acquisitions.
4415.105-71 Preference for local contractors.

Subpart 4415.3—Determinations and Findings To Justify Negotiation

4415.307 Signatory authority.

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

4415.406-5 Part IV—Representations and instructions.
4415.413 Disclosure and use of information before award.
4415.413-2 Alternate II.
4415.413-70 Policy.
4415.413-71 Release of information during the solicitation phase.
4415.413-72 Disposition of unsuccessful proposals.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.
4415.502 Policy.
4415.502-70 Cost sharing.
4415.506 Agency procedures.

Subpart 4415.6—Source Selection

4415.612 Formal source selection.

Subpart 4415.8—Price Negotiation

4415.803 General.

Subpart 4415.10—Preaward and Postaward Notifications, Protests, and Mistakes

4415.1002 Debriefing of unsuccessful offerors.
4415.1003 Negotiated procurement protests.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4415.1—General Requirements for Negotiation

4415.105 Competition.

4415.105-70 Noncompetitive acquisitions.

Program offices shall give the contracting office a detailed recital of the circumstances justifying noncompetitive acquisition. If the acquisition is expected to exceed $1,000 but not the small purchase limit, the contracting officer can approve it. For all other acquisitions, both the justification and the contract file shall be submitted to the appropriate approval authority before issuing a solicitation:

(a) Acquisitions over the small purchase limit but not over $100,000—level above the contracting officer.

(b) Acquisitions over $100,000 but not over $500,000—the head of the contracting activity.

(c) Acquisitions over $500,000—the Executive Administrator.

4415.105-71 Preference for local contractors.

(a) This subsection establishes policies relating to local contractor preference to receive contract awards resulting from competitively negotiated solicitations under a Presidentially

declared major disaster or emergency operation.

(b) The geographic areas to which local contractor preference shall apply are those affected by the Presidentially declared disaster and designated in the Federal Register by the Assistant Associate Director, Office of Disaster Assistance Programs. Geographical areas shall be identified by county or other political subdivision.

(c) Pursuant to the provisions of Pub. L. 93–288(k), the provision set forth in 4452.215–70 shall be included in each competitively negotiated solicitation for disaster relief response.

(d) If the contracting officer determines it to be in the best interest of the Government, the provision set forth in 4452.215–70 need not be included in solicitations. Such determination shall be documented in the contract file with a findings and determination signed by the contracting officer and approved by the head of the contracting activity.

(e) If the contracting officer makes the determination of paragraph (d) above, local participation may be encouraged by:

(1) Setting the procurement aside for labor surplus area if the disaster area has been established as a labor surplus area;

(2) Advertising only in the local disaster area; and/or

(3) Dividing large requirements into several smaller requirements.

Subpart 4415.3—Determinations and Findings To Justify Negotiation

4415.307 Signatory authority.

The head of the contracting activity shall sign all class D&Fs not reserved to the agency head in FAR Table 15–1.

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

4415.406–5 Part IV—Representations and instructions.

Each competitive solicitation shall contain the significant selection criteria, including the numerical weighting of each.

4415.413 Disclosure and use of information before award.

4415.413–2 Alternate II.

These alternate FAR procedures may be used if approved in writing by the head of the contracting activity.

4415.413–70 Policy.

It is FEMA policy to use information contained in proposals only for evaluation purposes unless information (a) is generally available to the public, (b) is already the property of the Government, (c) is already available to the Government with unrestricted use rights, or (d) is or has been made available to the Government without restriction.

4415.413–71 Release of information during the solicitation phase.

No information shall be released during the solicitation phase, except as follows:

Each solicitation for a negotiated acquisition shall name an individual in the contracting office to respond to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions whether of a procedural or substantive nature shall be directed to that individual. No one else shall exchange comments with offerors or potential offerors. Questions requiring clarification of substantive portions of the solicitation shall be answered by amendment of the solicitation. A copy of the amendment shall be sent to each recipient of the solicitation.

4415.413–72 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) All but one copy of each unsuccessful proposal shall be destroyed upon contract award. The one remaining copy of each shall be retained in the official contract file. At the end of six months it may be destroyed.

(b) Unsuccessful proposals shall not be used for purposes other than internal reference unless (1) written permission has been obtained from the offeror or (2) the proposal expressly states that unrestricted use is given to the Government regardless of its success in the competition.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.

This subpart sets forth procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

4415.502 Policy.

4415.502–70 Cost sharing.

FEMA's Appropriation Act requires the contractor to cost share if a research contract results from an unsolicited proposal. This requirement may be waived only when it would not be equitable for the Government to require cost sharing. To waive, (a) the offeror must certify in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research and that it has no means of recovering any cost on such projects; and (b) the contracting officer must make a written determination that there is no measurable gain to the performing organization and no mutuality of interest. This determination shall be placed in the contract file.

4415.506 Agency procedures.

(a) The Office of Acquisition Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals. Unsolicited proposals and requests for additional information regarding their preparation shall be submitted to:

Federal Emergency Management Agency, Office of Acquisition Management, Policy & Evaluation Division, 500 C Street SW., Room 728, Washington, DC 20472.

(b) Unsolicited proposals received by other FEMA offices shall be sent immediately to the Office of Acquisition Management, Policy & Evaluation Division.

(c) Unsolicited proposals shall be submitted in an original and five copies at least six months in advance of the date the offeror desires to begin work so that there will be enough time to evaluate the proposal and negotiate a contract.

4415.506–1 Receipt and initial review.

The Office of Acquisition Management shall acknowledge an unsolicited proposal. Simultaneously, copies of the proposal shall be sent to the appropriate program offices for evaluation.

Subpart 4415.6—Source Selection

4415.612 Formal source selection.

(a) All competitive acquisitions in excess of the small purchase limit shall be subject to a formal source selection procedure.

(b) The source selection organization consists of an evaluation board and a selection official. The contracting officer is the source selection official for acquisitions under $500,000. The head of the cognizant program office is the source selection official for acquisitions of $500,000 or more.

(c) The contracting officer shall establish the competitive range on all acquisitions. The range determination on acquisitions in excess of $500,000 will be approved by the source selection official.

(d) The contracting officer shall enter into final negotiations to reach agreement on terms and conditions with the firm or firms selected.

Subpart 4415.8—Price Negotiation

4415.803 General.

When all efforts to get a contractor to agree to a reasonable price or fee have failed, the contracting officer shall refer the matter to the head of the contracting activity.

Subpart 4415.10—Preaward and Postaward Notifications, Protests, and Mistakes

4415.1002 Debriefing of unsuccessful offerors.

Any unsuccessful offeror may write for a debriefing within two months after contract award. The contracting officer shall provide the debriefing.

4415.1003 Negotiated procurement protests.

Protests against award of negotiated contracts shall be processed in accordance with 4414.407–8 and FAR 14.407–8.

Part 4416—Types of Contracts

Subpart 4416.3—Cost-Reimbursement Contracts

Sec.
4416.303 Cost-sharing contracts.

Subpart 4416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

4416.603 Letter contracts.
4416.603–3 Limitations.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4416.3—Cost-Reimbursement Contracts

4416.303 Cost-sharing contracts.

(a) This subsection sets forth basic guidelines governing cost-sharing contracts.

(b)(1) Cost sharing with non-Federal organizations shall be encouraged in contracts for basic or applied research in which both parties have considerable interest.

(2) Contracting officers shall assure themselves of the following in determining contract type:

(i) The research effort has more than minor relevance to the non-Federal activities of the performing organization and is not primarily a service to the Government.

(ii) The performing organization has adequate non-Federal sources of funds from which to make a cash contribution.

(iii) The performing organization is engaged primarily in production or other service activities, as opposed to research and development, and is in a favorable position to make a cost contribution.

(iv) The principal purpose of the contract is research.

(v) Payment of the full cost of the project is not necessary in order to obtain the services of the particular organization.

(3) FEMA's Appropriation Act requires cost sharing by the contractor under research contracts resulting from unsolicited proposals. See 4415.502–70.

(c) Guidelines for determining the amount of cost sharing.

(1) For educational institutions and other not-for-profit or non-profit organizations, cost sharing may vary from 1 to 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic-year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(2) The amount of cost participation by commercial or industrial organizations may vary from 1 percent or less to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. Recognize, however, that organizations predominately engaged in research and development with little other activity may not be able to derive a monetary benefit from the research under Federal agreements.

(3) A fee will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing normal fee on the research. However, if the research is expected to be of major value to the performing organization and if cost sharing is not required by statue, it may be appropriate for the performer to make a contribution in the form of a reduced fee rather than sharing the costs of the project.

(4) Each cost-sharing contract negotiated shall contain the clause in 4452.216–70.

Subpart 4416.6—Time-and-Materials, Labor-Hours, and Letter Contracts

4416.603 Letter contracts.

4416.603–3 Limitations.

A letter contract may be used only if the head of the contracting activity executes a determination and finding that not other contract type is suitable.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 4419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 4419.2—Policies

4419.201 General policy.

(a) The Director, Office of Equal Opportunity, is also the Director, Office of Small and Disadvantaged Business Utilization.

(b) The Chief, Policy and Evaluation Division, Office of Acquisition Management, is the small business technical advisor.

(c) Each contracting officer is a small and disadvantaged business utilization specialist.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 4424.2—Freedom of Information Act

4424.202 Policy.

FEMA's Freedom of Information Act policy is codified at 44 CFR 5.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978; 43 FR 41943)

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 4429—TAXES

Subpart 4429.1—General

4429.101 Resolving tax problems.

(a) The Office of General Counsel is responsible, within FEMA, for handling all tax problems. It also is responsible for asking the Department of Justice for representation or intervention in proceedings concerning taxes.

(b) The contracting officer shall request, in writing, the assistance of the Office of General Counsel in resolving a tax problem. The request shall detail the problem and include supporting information. The Office of General Counsel shall inform the contracting officer of the disposition of the tax problem and the contracting officer will tell the contractor.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4432—CONTRACT FINANCING

Subpart 4432.4—Advance Payments

4432.402 General.

The head of the contracting activity has responsibility and authority to make findings and determinations and to approve or disapprove contract terms.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 4435—RESEARCH AND DEVELOPMENT CONTRACTING

4435.003 Policy.

Cost-sharing policy for research and development contracts is stated in 4415.502–70.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943)

PART 4436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 4436.6—Architect-Engineer Services

Sec.
4436.602–2 Evaluation boards.
4436.602–4 Selection authority.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4436.6—Architect-Engineer Services

4436.602–2 Evaluation boards.

(a) Each architect-engineer evaluation board, permanent or ad hoc, shall have at least five voting members and one alternate. These will be Federal employees. A majority of the voting members will be from the program office.

(b) During the selection process, a board member or advisor may have, or appear to have, a conflict of interest regarding a firm in the competition. Immediately upon becoming aware of a potential conflict or an appearance of a conflict, the member or advisor shall notify the board chairperson who shall, in turn, inform the Office of General Counsel. The Office of General Counsel shall make a final determination on the conflict issue.

(c) The evaluation board is to be insulated from outside pressures. Information concerning board deliberations shall be divulged only to persons having a need-to-know.

(a) Heads of program offices which may require architect-engineer services are designated as selection authorities for acquisitions of architect-engineer services.

(b) A determination shall be sent to the contracting officer listing the selected firms in order of preference.

SUBCHAPTER H—CLAUSES AND FORMS

PART 4452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 4452.2—Texts of Provisions and Clauses

Sec.
4452.215–70 Preference for local contractors in Presidentially declared major disasters or emergencies.
4452.227–70 Reproduction of reports.
4452.227–71 Coordination of Federal reporting requirements.
4452.227–72 Publication.
4452.239–70 Rights in technical data and computer software.
4452.239–71 Rights in technical data—specific acquisition.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978, 43 FR 41943.

Subpart 4452—Clauses and Forms

4452.215–70 Preference for local contractors in Presidentially declared major disasters or emergencies.

Pursuant to the provisions of Pub. L. 93–288 and 4415.105–71, the following provisions shall be included in each competitively negotiated solicitation for on-site disaster relief response:

Preference for Local Contractors

In awarding any contract pursuant to this solicitation, the Government shall give preference to local organizations, firms, and individuals residing or doing business primarily in the geographic area identified as the disaster area.

The contracting officer reserves the right to request offerors to furnish documentation to demonstrate eligibility for local contractor preference. To be eligible, the offeror shall have been residing (in the case of individuals) or doing the major portion of its business (in the case of business entities) in the disaster area.

An offeror for which eligibility is established (local offeror) shall be permitted to meet the lowest price received from an otherwise eligible non-local offeror, provided that the proposed price from the local offeror does not exceed 130 percent of the price of the non-local offeror. The lowest priced local offeror within 130 percent of the lowest non-local price shall have the first chance to meet the non-local price. If the local offeror meets the lowest non-local price and is determined to be responsible, award shall be made. If the non-local offer is not met, the next lowest local offeror within 130 percent shall have the chance to meet the lowest non-local price. This process shall continue until award is made to a local offeror within the 130 percent requirement or the supply of such local offerors is exhausted and award made to the lowest non-local offerors.

(End of clause)

4452.227–70 Reproduction of reports.

Include the following clause when the product of the contract is a report, data, or other written material.

Reproduction of Reports

Reproduction of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is to be determined by multiplying pages times copies. A production unit is one sheet, size 8½ by 11 inches or less, printed on one side only, and in one color. All copy preparation to produce camera-ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used on single-unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera-ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written material.

(End of clause)

4452.227–71 Coordination of Federal reporting requirements.

The following clause shall be included in contracts when appropriate:

Coordination of Federal Reporting Services

In the event that it is a contractual requirement to collect information from 10 or more public respondents, the provisions of 44 U.S.C., Chapter 35 (Coordination of Federal Reporting Requirements), shall apply to this contract. The contractor shall obtain through the project officer the required Office of Management and Budget clearance before making public contacts for the collection of data or expending any funds for such collection. The authority to proceed with the collection of data from public respondents and the expenditure of funds therefore shall be in writing signed by the contracting officer.

(End of clause)

4452.227–72 Publication.

The following clause shall be used in all contracts under which it is anticipated that a report will be a product:

Publication

(a) *Definition.* For the purpose of this clause, "publication" includes (1) any document containing information intended

for public consumption or (2) the act of, or any act which may result in, disclosing information to the public.

(b) *General.* The results of the research and development and studies conducted under this contract are to be made available to the public through dedication, assignment to the Government, or such other means as the Director of the Federal Emergency Management Agency shall determine.

(c) *Reports furnished the Government.* All intermediate and final reports of the research and development and studies conducted hereunder shall indicate on the cover or other initial page that the research and development and studies forming the basis for the report were conducted pursuant to a contract with the Federal Emergency Management Agency. Such reports are official Government property and may not be published or reproduced (in toto, in verbatim excerpt, or in a form approximating either of these) as an unofficial paper or article. The contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish such reports in whole or in part in a non-Government publication only in accordance with this paragraph (c) and paragraph (e)(1) of this clause.

(d) *Publication by Government.* The Government shall have full right to publish all information, data, and findings developed as a result of the research and development and studies conducted hereunder.

(e) *Publication by contractor or technical personnel.*—(1) *Publication in whole or in part of contractor's reports furnished the Government.* Unless such reports have been placed in the public domain by Government publication, the contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish a report furnished the Government, in toto or in verbatim excerpt, but consistent with paragraph (c) of this clause may not secure copyright therein, subject to the following conditions, and the conditions in paragraph (e)(4) and paragraph (f):

(i) During the first six months after submission of the full final report, if written permission to publish is obtained from the contracting officer.

(ii) After six months following submission of the full report, and if paragraph (e)(3) is inapplicable, if a foreword or footnote in the non-Government publication indicates the source of the verbatim material.

(2) *Publication, except verbatim excerpts, concerning or based in whole or in part on results of research and development and studies hereunder.* The contractor or technical personnel may issue a publication concerning, or based in whole or in part on the results of, the research and development and studies conducted under this contract and may secure copyright therein, but in so publishing is not authorized thereby to inhibit the unrestricted right of the Director of the Federal Emergency Management Agency to disclose or publish, in such manner as he may deem to be in the public interest, the results of such research and development and studies, subject to the following conditions and the requirement in paragraph (e)(4):

(i) During the first six months after submission of the full final report, and if paragraph (e)(3) is inapplicable, if written waiver of the waiting period is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, subject to Government exercise of an option that the publication contain a foreword or initial footnote substantially as follows:

The (research) (development) (studies) forming (part of) the basis for this publication were conducted pursuant to a contract with the Federal Emergency Management Agency. The substance of such (research) (development) (studies) is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained herein.

(3) *General condition if FEMA determines that contractor's final report contains patentable subject matter developed in contract performance.* If the contracting officer determines that the contractor's full final report contains patentable subject matter developed in the performance of this contract and so notifies the contractor in writing prior to six months from date of submission of such report, no publication of verbatim excerpts from contractor's reports or publication concerning or based in whole or in part on the results of the research and development and studies hereunder shall be made without the written consent of the contracting officer.

(4) *Copies of contractor and technical personnel publications to be furnished the Government.* The contractor or technical personnel will furnish the contracting officer six copies of any publications which are based in whole or in part on the research and development and studies conducted under this contract.

(f) *Administratively confidential information.* The contractor shall not publish or otherwise disclose, except to the Government and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(g) *Inclusion of provisions in contractor's agreements.* The contractor shall include provisions appropriate to effectuate the purposes of this clause in all contracts of employment with persons who perform any part of the research or development or study under this contract and in any consultant's agreements or subcontracts involving research or development or study hereunder.

(End of clause)

4452.239–70 Rights in technical data and computer software.

Rights in Data

(a) *Definitions.* (1) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost or pricing, and management data or other information incidental to contract administration.

(2) Computer means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on these data, or a device that operates on analog data by performing physical processes on the data.

(3) Computer software means computer programs and computer data bases.

(4) Computer program means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(5) Computer data base means a collection of data in a form capable of being processed and operated on by a computer.

(6) Computer software documentation means technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) Unlimited rights means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(8) Limited rights means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government; (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or (c) used by a party other than the Government, except for:

(i) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release of disclosure; or

(ii) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above.

(9) Restricted rights apply only to computer software, and include, as a minimum, the right to:

(i) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) Copy computer programs for safekeeping (archives) or backup purposes;

(iv) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights; and

(v) Treat computer software bearing a copyright notice as a published copyrighted work; and in addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(b) *Government right.*—(1) *Unlimited rights.* The Government shall have unlimited rights in:

(i) Technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) Computer data bases, prepared under Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) Technical data necessary to enable manufacture of end items, components, and modifications, or to enable the performance of processes, when the items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental, or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (2)(ii) below);

(v) Technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data pertaining to end items, components, or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("form, fit, and function" data; e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) Manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance, or training purposes;

(viii) Technical data or computer software which is in the public domain, or has been or is normally furnished without restriction by the contractor or subcontractor; and

(ix) Technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis or subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited rights.* The Government shall have limited rights in:

(i) Technical data listed or described in an agreement incorporated into the Schedule of this contract which the parties have agreed will be furnished with limited rights; and

(ii) Technical data pertaining to items, components, or processes developed at private expense, and computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (viii), and (ix); provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), that the piece of data is marked with the legend below in which is inserted:

A. The number of the contract under which the technical data is to be delivered.

B. The name of the contractor and any subcontractor by whom the technical data was generated, and

C. An explanation of the method used to identify limited rights data.

Limited Rights Legend

Contract No. _____
Contractor: _____

Explanation of Limited Rights

Identification Method Used

_____

_____

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above contractor, be either (a) used, released, or disclosed in whole or in part outside the Government; (b) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software; or (c) used by a party other than the Government, except for: (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure; or (ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted rights.* The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which parties have agreed will be furnished with restricted rights, provided however notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(9)(i) through (v). Such restricted rights are of no effect unless the computer software is marked by the contractor with the following legend: Restricted Rights Legend

Use, duplication, or disclosure is subject to restrictions stated in Contract No.————— with————(name of contractor)————, and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this paragraph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Material covered by copyright.* (1) In addition to the rights granted under the provisions of (b) above, the contractor agrees to and does hereby grant to the Government a royalty-free nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data, except computer software documentation bearing a copyright notice and furnished in support of restricted rights computer software, and unlimited rights computer software prepared or required to be delivered under the contract, now or hereafter covered by copyright.

(2) Copyrighted matter shall not be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyright matter in the manner described in (c)(1) above, unless the written approval of the contracting officer is obtained.

(3) The contractor shall report to the Government (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the contractor with respect to any technical data or computer software delivered hereunder.

(d) *Removal of unauthorized markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder if:

(1) The contractor fails to respond within 60 days to a written inquiry by the Government concerning the propriety of the markings; or

(2) The contractor's response fails to substantiate, within 60 days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the contractor of the action taken.

(e) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on charges for data and computer software.* The contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program, or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the contractor for charges for the use of technical data or computer software on account of such a contract. The contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the contractor with respect to any such charges not so excluded.

(g) *Acquisition of data and computer software from subcontractors.* (1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime contractor.

(3) The contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

4452.239-71 Rights in technical data—specific acquisition.

Rights in Data—Specific Acquisition

(a) *Definition.* Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost or pricing, and management data, or other information incidental to contract administration.

(b) *Government rights.* The Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the contractor to the Government under this contract.

(c) *Material covered by copyright.*

(1) In addition to the rights granted under the provisions of (b) above, the contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive, and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data required to be delivered under the contract now or hereafter covered by copyright.

(2) Copyrighted matter shall not be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyrighted matter in the manner described in (c)(1) above, unless the written approval of the contracting officer is obtained.

(3) The contractor shall report to the Government (or higher-tier contractor) promptly, and in reasonable written detail, each notice or claim of copyright infringement received by the contractor with respect to any technical data delivered hereunder.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on charges for data.* The contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the contractor for charges for the use of technical data on account of such a contract. The contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the contractor with respect to any such charges not so excluded.

(End of clause)

Dated: March 22, 1984.

Louis O. Giuffrida,

Director.

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Part V

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Parts 320, 323, 325, and 330

Regulations for Controlling Certain Activities in Waters of the United States; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

33 CFR Parts 320, 323, 325, and 330

Proposal To Amend Permit Regulations for Controlling Certain Activities in Waters of the United States

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to amend the Corps of Engineers permit regulations for controlling certain activities in the waters of the United States. These amendments are being proposed in accordance with a settlement agreement reached in *National Wildlife Federation v. Marsh*, No. 83–3632 (D.D.C. December 22, 1982). We are proposing several policy and procedural changes and modifications to certain nationwide permits. These modifications would become effective after public comment and opportunity to request a public hearing and determination that these modifications are in the public interest.

DATE: Written comments must be received by May 29, 1984.

ADDRESS: Office of the Chief of Engineers, ATTN: DAEN–CWO–N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson or Mr. Bernie Goode, Regulatory Branch (202) 272–0199.

SUPPLEMENTARY INFORMATION:

Why Revisions to the Regulations Are Being Proposed

In December of 1982, 16 environmental organizations filed suit against the Army and the U.S. Environmental Protection Agency (*NWF v. Marsh*) over several provisions of the Corps of Engineers interim final regulation published in the July 22, 1982, **Federal Register** (47 FR 31794). On February 10, 1984, the court approved a settlement agreement between the plaintiffs and defendants whereby the Army agreed to publish regulations proposing several policy and procedural changes and modifications to certain nationwide permits. This settlement agreement has been endorsed by the Army, EPA, the Department of Justice and by the 16 environmental organizations. The Army believes the settlement agreement strikes a reasonable balance between environmental protection and an effective and responsive regulatory program. The settlement agreement does not commit the Army to promulgate any particular final regulations. The Army will consider the comments received on these proposed regulations in promulgating its final regulations. Final regulations will be issued following evaluation of comments received on these proposes rules. The settlement agreement requires that we publish final regulations by September 8, 1984.

The Proposed Changes

Part 320—General Regulatory Policies

Section 320.4(a)(1): This section would be changed to clarify that 404 discharges must comply with the 404(b)(1) guidelines. This section would also be revised to state that, subject to applicable legal requirements, a Corps permit will be granted unless the district engineer determines that it will be contrary to the public interest.

Section 320.4(b)(4): The last two sentences of this section would be changed to state that the district engineer shall apply the 404(b)(1) guidelines (40 CFR 230.10(a) (1), (2), (3)) in evaluating whether a particular discharge affecting wetlands should be permitted.

Section 320.4(c): The last sentence of this section would be replaced with a sentence that states that district engineers will give "full consideration" to the views of federal and state fish and wildlife agencies in permit decisions.

Section 320.4(g)(1): This section would be reworded to recognize the rights of property owners to reasonable prove use of their property, and that these rights are subject to national interests and the rights of the general public in waters of the United States. If this subparagraph is adopted, existing subparagraphs (1) through (4) would be renumbered (2) through (5) respectively.

Section 320.4(j)(2): This section would be changed by adding "preservation of special aquatic areas, including wetlands, with significant interstate importance" to the list of significant issues of overriding national importance.

Part 323—Permits for Discharges of Dredged or Fill Materials Into Waters of the United States

Section 323.4(a)(3): This section would be revised to clarify the types of appurtenant structures to irrigation facilities for which associated discharges are exempt from the provisions of these regulations, except as specified in paragraph (b) and (c) of this section.

Section 323.6(a): This section would be revised to state that district engineers will deny permits for discharges which fail to comply with the 404(b)(1) guidelines, unless the economic impact on navigation and anchorage necessitate permit issuance pursuant to Section 404(b)(2).

Part 325—Permit Processing

Section 325.3: A new paragraph (b) would be added to clarify public notice procedures for any new general permit, or for modification or reissuance of existing general permits. This paragraph would provide that the public notice state the availability of information which indicates that the proposed activities comply with general permit requirements. If this paragraph is adopted, the existing paragraphs (b) and (c) would be redesignated as paragraphs (c) and (d), respectively.

Section 325.4: This section would be revised to clarify the district engineers' authority to condition permits and to identify circumstances in which he shall deny permits if conditions which are necessary to protect the public interest cannot be reasonably implemented or enforced, or cannot otherwise be required. This section would also provide that under certain conditions off-site mitigation may be required.

Part 330—Nationwide Permits

Section 330.4: This section would be replaced with a new section discussing public notice requirements for nationwide permits including making available to the public information which demonstrates compliance with general permit criteria. The nationwide permits now found in § 330.4 will be consolidated, revised, and placed at § 330.5(a)(26). See discussion below.

Section 330.5(a) (7), (17), (21): These nationwide permits would be modified to include a reference to new § 330.7.

Section 330.5(a)(23): This nationwide permit would be modified to require that the Chief of Engineers would solicit comments through a **Federal Register** notice on another Federal agency's categorical exclusions prior to determining whether those categorical exclusions qualify for authorization under this nationwide permit.

Section 330.5(a)(26): This nationwide permit is a modification of the headwaters and isolated waters nationwide permits found at § 330.4(a) (1) and (2) in the interim final regulations. We are proposing to exclude from nationwide permit (26) any discharge which would cause the loss or substantial adverse modification of 10 or more acres of water of the United States including wetlands. This nationwide permit would be further modified to require a pre-discharge notification to the district engineer for any discharge

which would cause the loss or substantial adverse modification of from 1 to 10 acres.

Section 330.7: This new section establishes procedures which would be followed by district and division engineers upon receipt of pre-discharge notifications required for certain of the nationwide permits. These procedures provide for coordination with Federal and State resource agencies in certain situations and that each notification be reviewed for compliance with the terms and conditions of the appropriate nationwide permit and with the definition of a general permit. Any discharge which does not so comply will require an individual permit. Section 330.7 of the interim final regulations would be revised and moved to § 330.8 as discussed below.

Section 330.8: This section would also be changed to recognize that the general permittee's right to proceed under the nationwide permits may be modified, suspended or revoked only in accordance with procedures similar to those for individual permittees. Section 330.8 in the interim final regulations would become § 330.9.

State Certification of Nationwide Permits

In our proposed regulation changes of May 12, 1983 (48 FR 21466), we stated that we were allowing all States to reconsider certification of nationwide permits pursuant to Section 401 of the Clean Water Act. Also, coastal States with approved coastal zone management plans were allowed to reconsider consistency determinations under the Coastal Zone Management Act. The Office of the Chief of Engineers is now sending a letter to those States which expressed 401 certification and CZM consistency concerns to ask for a final position. All of the changes to the nationwide permit program being proposed today should reduce the earlier concerns expressed by the States.

Public Hearing Requests

Any person may request a public hearing on proposed modifications to the nationwide permits. If the Corps determines that a public hearing or hearings would assist in making a decision on the proposed modifications, a 30-day advance notice will be published in the **Federal Register** advising interested parties of the date(s) and location(s) for the hearing(s).

Nationwide Permits Documentation

The Corps will update the statement of finding and environmental documentation before modifying any of the nationwide permits. The documentation will include that required by the EPA guidelines adopted under Section 404(b)(1) of the CWA. The Corps will modify these permits only if they are found to be in the public interest and in compliance with the 404(b)(1) guidelines.

Note 1.—The Department of the Army has determined that the proposed regulation revisions do not contain a major proposal requiring the preparation of a regulatory analysis under E. O. 12291.

Note 2.—The term "he" and its derivatives used in these regulations is generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 320

Environmental protection, Intergovernmental relations, Navigation, Water pollution control, Waterways.

33 CFR Part 323

Navigation, Water pollution control, Waterways.

33 CFR Part 325

Administrative practice and procedure, Intergovernmental relations, Environmental protection, Navigation, Water pollution control, Waterways.

33 CFR Part 330

Navigation, Water pollution control, Waterways.

Dated: March 22, 1984.

Approved:

Robert K. Dawson,

Deputy Assistant Secretary of the Army (Civil Works).

Accordingly, the Department of the Army proposes to amend 33 CFR Parts 320, 323, 325, and 330 as set forth below:

Authority: 33 U.S.C. 401 et seq., 33 U.S.C. 1344, 33 U.S.C. 1413.

PART 320—GENERAL REGULATORY POLICIES

1. Section 320.4 is amended by revising paragraphs (a)(1), (b)(4), (c), (g)(1), and (j)(2) to read:

§ 320.4 General policies for evaluating permit applications.

* * * * *

(a) *Public interest review.* (1) The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For acivities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the proceding sentence and any other applicable guidelines or criteria (see §§ 320.2 and 320.3), a permit will be granted unless the district engineer determines that it would be contrary to the public interest.

* * * * *

(b) *Effect on wetlands.* * * *

(4) No permit will be granted which involves the alternation of wetlands identified as important by paragraph (b)(2) of this section or because of provisions of paragraph (b)(3) of this section, unless the district engineer concludes, on the basis of the analysis required in paragraph (a) of this section, that the benefits of the proposed alteration outweigh the damage to the wetlands resource. In evaluating whether a particular discharge activity should be permitted, the district engineer shall apply the Section 404(b)(1) guidelines (40 CFR 230.10(a)(1), (2), (3)).

* * * * *

(c) *Fish and wildlife.* In accordance with the Fish and Wildlife Coordination Act (see paragraph 320.3(e) of this Part), district engineers will consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the state in which work is to be performed, with a view to the

conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in a permit application. The Army will give full consideration to the views of those agencies on fish and wildlife considerations in deciding on the issuance, denial, or conditioning of individual or general permits.

* * * * *

(g) *Consideration of property ownership.* Authorization of work or structures by the Department of the Army does not convey a property right, nor authorize any injury to property or invasion of other rights.

(1) An inherent aspect of property ownership is a right to reasonable private use. However, this right is subject to the rights and interests of the public in the navigable and other waters of the United States, including the federal navigation servitude and federal regulations for environmental protection.

* * * * *

(j) *Other Federal, state or local requirements.* * * *

(2) The primary responsibility for determining zoning and land use matters rests with state, local and tribal governments. The district engineer will normally accept decisions by such governments on those matters unless there are significant issues of overriding national importance. Such issues would include but are not necessarily limited to nationa security; navigation; national economic development; water quality; preservation of special aquatic areas, including wetlands, with significant interstate importance; and national energy needs. Whether a factor has overriding importance will depend on the degree of impact in an individual case.

* * * * *

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

2. Section 323.4 is amended by revising paragraph (a)(3) to read:

§ 323.4 Discharges not requiring permits.

(a) *General.* * * *

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

* * * * *

3. Section 323.6 is amended by revising paragraph (a) to read:

§ 323.6 Special policies and procedures.

(a) The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 404 permits. The district engineer will review applications for permits for the discharge of dredged or fill material into waters of the United States in accordance with guidelines promulgated by the Administrator, EPA, under authority of Section 404(b)(1) of the Clean Water Act (see 40 CFR Part 230). Subject to consideration of any economic impact on navigation and anchorage pursuant to Section 404(b)(2), a permit will be denied if the discharge that would be authorized by such permit would not comply with the EPA 404(b)(1) guidelines. If the district engineer determines that the proposed discharge would comply with the 404(b)(1) guidelines, he will grant the permit unless issuance would be contrary to the public interest.

* * * * *

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

4. Section 325.3 is amended by adding a new paragraph (b) and redesignating paragraphs (b) and (c) as (c) and (d) respectively as follows:

§ 325.3 Public notice.

* * * * *

(b) *Public notice for general permits.* District engineers will publish a public notice for all proposed regional permits and for significant modifications to, or reissuance of, existing regional permits within their area of jurisdiction. Public notices for statewide regional permits may be issued jointly by the affected Corps districts. The notice will include all applicable information necessary to provide a clear understanding of the proposal. In addition, the notice will state the availability of information at the district office which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance of general permits. District engineers will publish a public notice for nationwide permits in accordance with 33 CFR 330.4.

(c) *Evaluation factors.* * * *

(d) *Distribution of public notices.*

* * *

* * * * *

5. Section 325.4 is revised to read:

§ 325.4 Conditioning of permits.

(a) District engineers will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirement. Permit conditions will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.

(1) Legal requirements which may be satisfied by means of Corps permit conditions include compliance with the 404(b)(1) guidelines, the EPA ocean dumping criteria, the Endangered Species Act, and requirements imposed by conditions on state Section 401 water quality certifications.

(2) Where appropriate, the district engineer may take into account the existence of controls imposed under other federal, state, or local programs which would achieve the objective of the desired condition, or the existence of an enforceable agreement between the applicant and another party concerned with the resource in question, in determining whether a proposal complies with the 404(b)(1) guidelines, ocean dumping criteria, and other applicable statutes, and is not contrary to the public interest. In such cases, the Department of the Army permit will be conditioned to state that material changes in, or a failure to implement and enforce such program or agreement, will be grounds for modifying, suspending, or revoking the permit.

(3) Such conditions may be acomplished on-site, or may be accomplished off-site for mitigation of significant losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment.

(b) District engineers are authorized to add special conditions, exclusive of paragraph (a) of this section, at the applicant's request or to clarify the permit application.

(c) If the district engineer determines that special conditions are necessary to insure the proposal will not be contrary to the public interest, but those conditions would not be reasonably implementable or enforceable, he will deny the permit.

(d) *Bonds.* If the district engineer has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

PART 330—NATIONWIDE PERMITS

6. Section 330.4 is revised to read as follows:

§ 330.4 Public notice.

(a) *Chief of Engineers.* Upon proposed issuance of new nationwide permits, modification to, or reissuance of, existing nationwide permits, the Chief of Engineers will publish a notice in the **Federal Register** seeking public comments and including the opportunity for a public hearing. This notice will state the availability of information at the Office of the Chief of Engineers and at all district offices which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance under general permit authority. The Chief of Engineers will prepare this information which will be supplemented, if appropriate, by division engineers.

(b) *District engineers.* Concurrent with publication in the **Federal Register** of new or reissued nationwide permits by the Chief of Engineers, district engineers will so notify the interested public within the district by an appropriate notice. The notice will include regional conditions, if any, developed by the division engineer.

7. Section 330.5 is amended by revising the introductory text paragraph of (a), paragraphs (a)(7), (a)(17), (a)(21), and (a)(23) and adding (a)(26) as follows:

§ 330.5 Nationwide permits.

(a) *Authorized activities.* The following activities, including discharges of dredged or fill material, are hereby permitted provided the conditions listed in paragraph (b) of this section and the notification procedures, where required, of § 330.7 are met:

* * * * *

(7) Outfall structures and associated intake structures where the effluent from that outfall has been permitted under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act) (see 40 CFR Part 122) provided that the district or division engineer makes a determination that the individual and cumulative adverse environmental effects of the structure itself are minimal in accordance with § 330.7(c)(2) and (d). Intake structures per se are not included—only those directly associated with an outfall structure are covered by this nationwide permit.

* * * * *

(17) Fills associated with small hydropower projects at existing reservoirs where the project which includes the fill is licensed by the Department of Energy under the Federal Power Act of 1920, as amended; has a total generating capacity of not more than 1500 kw (2,000 horsepower); qualifies for the short-form licensing procedures of the Department of Energy (see 18 CFR 4.61); and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment are minimal in accordance with § 330.7(c)(2) and (d).

* * * * *

(21) Structures, work, and discharges associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977; the appropriate district engineer is given the opportunity to review the Title V permit application and all relevant Office of Surface Mining or state (as the case may be) documentation prior to any decision on that application; and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment from such structures, work, or discharges are minimal in accordance with § 330.7(c)(2) and (3) and (d).

* * * * *

(23) Activities, work, and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: DAEN–CWO–N) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this nationwide permit of any agency's categorical exclusions, the Chief of Engineers will solicit comments through publication in the **Federal Register**.

* * * * *

(26) Discharges of dredged or fill material into the waters listed in subparagraph (i) and (ii) of this paragraph which do not cause the loss or substantial adverse modification of 10 acres or more of waters of the United States, including wetlands. For discharges which cause the loss or substantial adverse modification of 1 to 10 acres of such waters, including wetlands, notification of the district engineer is required in accordance with § 330.7 of this part.

(i) Non-tidal rivers, streams, and their lakes and impoundments, including adjacent wetlands, that are located above the headwaters.

(ii) Other non-tidal waters of the United States, including adjacent wetlands, (see 33 CFR 323.2(a)(3)) that are not part of a surface tributary system to interstate waters or navigable waters of the United States (i.e., isolated waters).

8. Section 330.8 is redesignated as § 330.9.

9. Section 330.7 is redesignated 330.8 and new § 330.7 added to read as follows:

§ 330.7 Notification procedures.

(a) The general permittee shall not begin discharges requiring pre-discharge notification pursuant to the nationwide permit at § 330.5(a)(26):

(1) Until notified by the district engineer that the work may proceed under the nationwide permit with any special conditions imposed by the district or division engineer; or

(2) If notified by the district or division engineer that an individual permit may be required; or

(3) Unless 20 days have passed from receipt of the notification by the district engineer and no notice has been received from the district or division engineer.

(b) Notification pursuant to the nationwide permit at § 330.5(a)(26) must be in writing and include the information listed below. Notification is not an admission that the proposed work would result in more than minimal impacts to waters of the United States; it simply allows the district or division engineer to evaluate specific activities for compliance with general permit criteria.

(1) Name, address, and phone number of the general permittee;

(2) Location of the planned work;

(3) Brief description of the proposed work, its purpose, and the approximate size of the waters, including wetlands, which would be lost or substantially adversely modified as a result of the work; and

(4) Any specific information required by the nationwide permit and any other information that the permittee believes is appropriate.

(c) *District engineer review of notification.* Upon receipt of

notification, the district engineer will promptly review the general permittee's notification to determine which of the following procedures should be followed:

(1) If the nationwide permit at § 330.5(a)(26) is involved and the district engineer determines either, (i) the proposed activity falls within a class of discharges or will occur in a category of waters which has been previously identified by the Regional Administrator, Environmental Protection Agency; the Regional Director, Fish and Wildlife Service; the Regional Director, National Marine Fisheries Service; or the heads of the appropriate state natural resource agencies as being of particular interest to those agencies; or (ii) the particular discharge has not been previously identified but he believes it may be of importance to those agencies, he will promptly forward the notification to the division engineer and the head and appropriate staff officials of those agencies to afford those agencies an adequate opportunity before such discharge occurs to consider such notification and express their views, if any, to the district engineer concerning whether individual permits should be required.

(2) If the nationwide permits at § 330.5(a) (7), (17) or (21) are involved and the Environmental Protection Agency, the Fish and Wildlife Service, the National Marine Fisheries Service or the appropriate state natural resource or water quality agencies forward concerns to the district engineer, he will forward those concerns to the division engineer together with a statement of the factors pertinent to a determination of the environmental effects of the proposed discharges, including those set forth in the 404(b)(1) guidelines, and his views on the specific points raised by those agencies.

(3) If the nationwide permit at § 330.5(a)(21) is involved the district engineer will give notice to the Environmental Protection Agency and the appropriate state water quality agency. This notice will include as a minimum the information required by paragraph (b) of this section.

(d) *Division engineer review of notification.* The division engineer will review all notifications referred to him in accordance with paragraph (c)(1) or (c)(2) of this section. The division engineer will require an individual permit when he determines that an activity does not comply with the terms or conditions of a nationwide permit or does not meet the definition of a general permit (see 33 CFR 322.2(f) and 323.2(n)) including discharges under the nationwide permit at § 330.5(a)(26) which have more than minimal adverse environmental effects on the aquatic environment when viewed either cumulatively or separately. In reaching his decision, he will review factors pertinent to a determination of the environmental effects of the proposed discharge, including those set forth in the 404(b)(1) guidelines, and will give full consideration to the views, if any, of the federal and state natural resource agencies identified in paragraph (c) of this section. If the division engineer decides that an individual permit is not required, and a federal or appropriate state natural resource agency has indicated in writing that an activity may result in more than minimal adverse environmental impacts, he will prepare a written statement, available to the public on request, which sets forth his response to the specific points raised by the commenting agency. When the division engineer reaches his decision he will notify the district engineer, who will immediately notify the general permittee of the division engineer's decision.

10. The redesignated § 330.8 is amended by revising the beginning paragraph and adding a new paragraph (d) as follows:

§ 330.8 Discretionary authority.

Except as provided in paragraph (d) below, division engineers on their own initiative or upon recommendation of a district engineer are authorized to modify nationwide permits by adding regional conditions or to override nationwide permits by requiring individual permit applications on a case-by-case basis. Discretionary authority will be based on concerns for the aquatic environment as expressed in the guidelines published by EPA pursuant to Section 404(b)(1). (40 CFR Part 230)

* * * * *

(d) For the nationwide permit found at § 330.5(a)(26), after the applicable provisions of § 330.7(a) (1) and (3) have been satisfied, the permittee's right to proceed under the general permit may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 325.7.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 102

Federally Licensed Grain Warehouses; Warehouse Bonds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: An interim final rule was published in the **Federal Register**, on November 25, 1983, which made it possible for grain warehousemen licensed under provisions of the United States Warehouse Act, as amended (7 U.S.C. 241, *et seq.*), to provide, and for the Department to recognize, protection for depositors other than the usual bond furnished by a corporate surety. Governmental units have enacted or are considering indemnification plans which will offer as much protection for depositors as is presently required under warehouse regulations. Federally licensed warehousement will have the choice of participating in such a program without the added cost of furnishing the usual form of surety. This action finalizes the interim final rule with one minor change which would delete reference to indemnity or insurance funds established by the Federal Government or a combination of the Federal Government with a State.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Orval Kerchner, 202–447–3616.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and the Regulatory Flexibility Act Certification

This rule has been reviewed under the USDA procedure established in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified "non-major" because the proposal does not meet the criteria contained therein for major regulatory actions.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because (i) this action imposes no additional economic costs on small entities; (ii) licensed warehousemen are not required to participate in any indemnity or insurance fund and may choose to provide bond as presently authorized; and (iii) the use of the service is voluntary.

Paperwork Reduction Act

Reporting and recordkeeping requirements have received OMB clearance under OMB No. 0581–0027.

Background

Governmental units have enacted or are considering programs to indemnify grain warehouse depositors for losses caused by the breach of the warehouseman's obligations. A properly drafted indemnification plan could provide as much protection for depositors as the traditional corporate surety bond. The Department has determined that federally licensed warehousemen should have the choice of furnishing such evidence of protection without the added cost of furnishing the usual form of surety bond. Therefore the interim final action, 48 FR 53085, effective November 25, 1983, and this final action with one minor change, amend the regulations for grain warehouses. These amendments enable the Department to accept as a bond either a corporate surety bond or a certificate of participation in and coverage by an indemnity or insurance fund, as approved by the Secretary, established and maintained by a State. The fund must be backed by the full faith and credit of the applicable State and must guarantee depositors of the licensed warehouse full indemnification for the breach of any obligation of a licensed warehouseman.

The U.S. Warehouse Act was passed by Congress in 1916. The Act provides for the licensing of such warehousemen as may apply to the Secretary of Agriculture, and (1) meet departmental standards, (2) agree to abide by the law and the regulations thereunder, and (3) who are, in his discretion, proper warehousemen within the intent of the law for the storage of agricultural products.

The primary objectives of the U.S. Warehouse Act are to: (1) Protect producers and others who store their property in public warehouses; (2) assure the integrity of warehouse receipts as documents of title to be used as collateral for loans, and to facilitate trading, interstate commerce of agricultural commodities; and (3) set and maintain a standard for sound warehouse operations.

A warehouse receipt is acceptable only when it has integrity. Integrity means that the original depositor or a subsequent holder of a receipt must have reasonable assurance that the product covered by the warehouse receipt will be returned upon surrender of the receipt and a valid request for delivery. Failing to receive return of the product, the depositor or holder of the receipt must have the further assurance that the warehouseman is able to pay him for this breach of contract.

Historically, the responsibility of a licensed warehouseman to fulfill his obligations to depositors has been backed by a corporate surety bond. Such bonds have not been for full coverage and depositors could suffer a loss should losses occur which exceed the amount of the bond. Before the interim final rule became effective, the regulations required a licensed warehouseman to maintain allowable net assets amounting to 20 cents a bushel for the maximum number of bushels that can be stored, with a minimum of $25,000 and to provide a bond, the amount of which is computed at a rate of 20 cents per bushel for the first 1,000,000 bushels of licensed capacity; 15 cents per bushel for the next 1,000,000 bushels of licensed capacity; and 10 cents per bushel for all licensed capacity over 2,000,000 bushels: provided, that in any case the amount of bond shall not be less than $20,000 nor more than $500,000, except in case of a deficiency in net assets above the $25,000 minimum required there shall be added to the amount of bond an amount equal to such deficiency.

Most, if not all, licensed warehousemen also operate a grain marketing business buying grain from producers through the same facilities used for the storage of grain. As grain is

received over the scale, the optimum situation would be that it is either deposited for storage with a warehouse receipt demanded and issued or sold with payment demanded and made. However, often the grain's status is not declared by the owner as delivered; or it is deposited for storage with no receipt demanded or issued; or it is sold and payment not demanded or made. The sale or other disposition of grain deposited in a licensed warehouse leads to a full marketing relationship between the depositor and the warehouseman.

Usual marketing relationships have been complicated by another kind of transaction commonly known as price later or deferred pricing or delayed price grain. Such a transaction may be described as a sales contract that constitutes a bona fide sale and change of ownership from the seller to buyer, but which permits the seller to fix the price of the grain at a later date at a pre-agreed formula for determining such price. The seller may continue to have some control of the pricing of his grain but has no physical claim. Generally, no advance payment is made to the seller. The buyer has only a grain payable position with the seller. The seller has only a money receivable position, a common creditor status.

The business of storing and marketing often becomes inseparable and likewise the funds available to the total business often cannot be segregated. These situations create continuous, dual and at times uncertain obligations leading to a commingling of grain assets and liabilities.

Consequently, there are risks for producers who sell deposited grain as well as for producers who store such grain. To date, the Secretary has not asserted his jurisdiction pursuant to the U.S. Warehouse Act, in the area of grain merchandising at licensed elevators. A number of States have and have sought to protect producers in such dealings both at State and federally licensed facilities. Historically, this has been by additional bonds for this purpose, a preventative action. Lately, a few States have turned to remedial actions such as indemnification or insurance funds.

The State of Illinois in legislation known as Senate Bill 800, "The Illinois Grain Insurance Act," signed into law August 16, 1983, has established in the State a Grain Insurance Fund ("Fund") to pay producers of grain for all of their financial losses caused by a failure of a grain warehouseman and 85 percent to a maximum of $100,000, of their financial losses cause by the failure of a grain dealer. The Fund would be financed by an assessment on each licensed grain dealer and grain warehouseman for a period of three years and then as needed to maintain a fund balance of 3 million dollars. State appropriations would also be used to pay claims, if the money in the Fund were insufficient. The Act requires every Illinois-licensed grain dealer and grain warehouseman to participate in the Fund. Those Illinois-licensed grain dealers and grain warehousemen participating in the Fund are exempted from the initial bond requirements of Illinois law. The Act allows federally licensed warehousemen to participate in the fund on a voluntary basis.

The Illinois Act provides as much or more protection for the depositors as was afforded by the bonding provisions of federal regulations in force before the interim final rule became effective. For this reason some federally licensed warehousemen in Illinois requested permission to participate in the Fund.

These licensees also requested that participation in the Fund be accepted in lieu of the corporate surety bond required by the federal regulations in force before the interim final rule became effective. The warehousemen pointed out that if a federally licensed warehouseman, wishing to do so, were permitted to participate in the Fund, the warehouseman would have to pay the assessments required by the Illinois Act and, under the federal regulations in force at that time, would also have to purchase a corporate surety bond. This arrangement would put the federally licensed warehouseman at an economic disadvantage as compared to Illinois-licensed warehousemen and would discourage the federal licensee from participating in the Fund.

Based on the foregoing, the Secretary has determined that it would further the objectives of the U.S. Warehouse Act to permit federally licensed warehousemen to participate in a State indemnity or insurance fund, provided that such participation: (1) Affords as much or more monetary protection to depositors as do the corporate surety bonding requirements of the regulations; (2) does not lessen the responsibilities or privileges of the warehouseman; (3) does not dilute the rights of a depositor; and (4) does not diminish the exclusive jurisdiction and authority of the Secretary with respect to the licensees.

In order not to discourage participation in such an indemnity or insurance fund, the interim final rule amended §§ 102.6 and 102.13 to require a federally licensed warehouseman to file either a corporate surety bond or a certificate of participation in an indemnity or insurance fund which the Secretary had approved. In either situation the warehouse must have and maintain a minimum of $25,000 in allowable net assets. The interim final rule invited comments which were to be received on or before December 27, 1983.

Based on a careful review of the Illinois Grain Insurance Act and all other pertinent information available at this time, the Secretary determined that participation by federally licensed warehousemen in the Illinois Grain Insurance Fund would comply with the above requirements and was approved. Therefore, those federally licensed warehousemen who choose to do so may, if accepted by Illinois, participate in the Fund and may file a certificate of participation in the Fund in lieu of a corporate surety bond.

Four letters of comment were received; one letter did not address the issue, another asked a question as to whether the writer's State would qualify, and two letters commented directly on the regulations. One of these stressed "over the shoulder" monitoring of a warehouseman's financial condition by sureties; the other, while voicing no objection to approving the Illinois arrangement, also stressed this function of sureties and argued that to do away with the function might place an increased regulatory burden on State and Federal agencies and could encourage irresponsible business management if the protection of the warehouseman's monetary accountability to producers were not maintained.

The Department has considered these possibilities but has determined that adequate administrative control is ensured by the requirements that the indemnity or insurance fund must: (1) Be approved by the Secretary; (2) be established by a State; (3) be backed by the full faith and credit of that State; and (4) guarantee depositors full indemnification.

The interim final rule also provided for the acceptance of participation in indemnity or insurance funds established and maintained by the Federal Government or a combination of the Federal Government and a State. One comment objected to this provision on the ground that the clause might possibly be construed as encouraging the establishment of a Federal indemnity or insurance fund. Because there are no such funds and the Department does not anticipate that such a fund will be established in the near future, this final action deletes that provision in § 102.13(b). No other changes to the interim final rule have been made by this final action.

List of Subjects in 7 CFR Part 102

Administrative practice and procedure, Grain, Surety bonds, Warehouses.

PART 102—GRAIN WAREHOUSES

Accordingly, 7 CFR Part 102 is amended as follows:

1. Section 102.6 is amended by adding a paragraph (h).

§ 102.6 Financial requirements.

* * * * *

(h) In case a warehouseman files a bond in the form of a certification of participation in an indemnity or insurance fund as provided for in § 102.13(b), the licensed warehouseman shall have and maintain a minimum of $25,000 in allowable net assets and any deficiency in assets above the $25,000 minimum shall be covered by an acceptable and valid certificate.

2. Section 102.13 is revised to read:

Warehouse Bonds

§ 102.13 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary or his designated representative a bond either:

(a) In the form of a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of one year commencing ——, or until the termination of said licenses(s) in the event of termination prior to the end of the one year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said one year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said one year period or are assumed during said period and prior to termination of said licenses(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

The bond shall be subject to §§ 102.14 through 102.17; or:

(b) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Secretary, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the the terms of the Act and regulations. A certificate of participation and coverage in such fund shall be furnished to the Secretary annually. If administration or application of the fund shall change after being approved by the Secretary, the Secretary may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon such revocation the licensed warehouseman then must comply with paragraph (a). Such certificate of participation shall not be subject to §§ 102.14 and 102.15.

(Sec. 28, 39 Stat. 490, 7 U.S.C. 268)

Done at Washington, D.C., March 26, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-8523 Filed 3-29-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regs. 457 and 456, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period April 1–7, 1984, and increases the quantity of lemons that may be shipped to 295,000 cartons during the period March 25–31, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective April 1, 1984, and the amendment is effective for the period March 25–31, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on March 27, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.757 is added as follows:

§ 910.757 Lemon Regulation 457.

The quantity of lemons grown in California and Arizona which may be handled during the period April 1, 1984,

through April 7, 1984, is established at 275,000 cartons.

2. Section 910.758 Lemon Regulation 456 (49 FR 10921) is revised to read as follows:

§ 910.758 Lemon Regulation 456.

The quantity of lemons grown in California and Arizona which may be handled during the period March 25, 1984, through March 31, 1984, is established at 295,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 28, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-8714 Filed 3-28-84; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investments and Deposits

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board adopts revised regulations concerning Federal credit union investments and deposits. The regulations authorize Federal credit unions to invest, under certain conditions, in bankers' acceptances, Eurodollars and Yankee Dollars. The regulations do not prohibit or restrict the use of brokers, as long as the transaction and underlying investment are legal. The regulations retain, but simplify and clarify, provisions of existing regulations prohibiting or restricting certain transactions because of their speculative nature. The regulations have been reorganized and rewritten in a manner that reduces their volume and makes them easier to understand and use.

EFFECTIVE DATE: May 21, 1984.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Director, or Steven R. Bisker, Senior Attorney, Department of Legal Services at the above address. Telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1983, the National Credit Union Administration Board (Board) proposed a revised rule on Investments and Deposits for public comment. 48 FR 43182 (1983). The Board proposed various changes from its existing rules including: expanded authority for investment by Federal credit unions in Eurodollar and Yankee Dollar deposits; removal of outdated and ineffective rules restricting Federal credit unions' use of third parties when investing in certificates of deposit issued by other financial institutions; and, clarification and simplification of existing rules that restrict certain investment transactions because of their speculative nature. The Board specifically requested comment in three areas: (1) The use of brokers or money finders for investments in certificates of deposit; (2) whether Eurodollar deposits, if authorized as permissible investments, should be considered risk assets for purposes of the reserve requirements imposed by section 116 of the Federal Credit Union Act (12 U.S.C. 1762); and (3) whether, and to what extent, it would be appropriate to permit investments in futures contracts. In addition to these areas, the Board asked for comments concerning the entire proposed rule. A total of 60 comments were received—41 from natural person Federal credit unions, 15 from Corporate credit unions, and 4 from parties outside the credit union movement.

Based on the comments and its further review and analysis, the Board has adopted final rules. The Board has reorganized and simplified the previous rules in a manner that reduces their volume and makes them easier to understand and use. Specifically, the new rules begin with a Scope (§ 703.1) which explains that the statutory investment authority of Federal credit unions is limited, with certain exceptions, to government securities, shares of and loans to other credit unions, and deposit-type investments in other financial institutions. The Scope section explains that the investment rules do not apply to loans to members, which are governed by separate statutory and regulatory provisions. The Scope section is followed by a Definitions section (703.2) which defines the key terms used in the rules. The remaining two sections, §§ 703.3 and 703.4, set forth authorized and prohibited investment activities, respectively. The comments on these latter sections, and the changes from the present rules, are described in detail below in the *Analysis* portion of this discussion.

Among the more significant substantive changes reflected in the final rule are: (1) Authorization for Federal credit unions to invest in Eurodollars, Yankee Dollars and bankers' acceptances, on the condition that, in each case, the issuing institution is one in which a Federal credit union may legally make a deposit; (2) a determination not to regulate Federal credit union use of brokers or other third parties when investing in certificates of deposit issued by other financial institutions; (3) elimination of existing regulations concerning investments in loans to other credit unions; (4) a determination not to authorize Federal credit unions to invest in futures contracts; and (5) adoption of a provision prohibiting Federal credit union officials, employees and their family members from receiving compensation in connection with the making of an investment or deposit by the credit union.

Analysis

This section first addresses the two specific areas that the board has determined will not be subject to regulation and then the remainder of the rule:

Money Finders and Deposit Brokers

In the proposal, the Board suggested elimination of the previous rule which required that a Federal credit union, when investing in a certificate of deposit (CD), make payment "itself" to the institution issuing the CD. The Board requested comments, however, "concerning the extent of Federal credit union utilization of third parties in investing in deposits of other financial institutions, the negative aspects of such third party involvement with Federal credit union operations, the contribution that brokers may provide to the efficiency of Federal credit union operations, and the extent, if any, to which the National Credit Union Administration should regulate Federal credit union involvement in such activity."

A substantial majority of the credit union commenters stated that they have used services provided by money brokers. Many indicated that they use brokers for the bulk of their investments in CD's. A uniform criticism of broker use was that it can lead to dependence on advice of brokers and on $100,000 deposit insurance as the major bases of investment policy. Most commenters did, however, recognize that analysis of the soundness of the financial institutions issuing the CD's should not be solely dependent upon that provided by the brokers. These commenters recognized the potential conflict of interest of brokers recommending investments in financial institutions where the fee paid to the brokers for their service comes from those same

financial institutions. Almost all commenters who addressed the issue of brokers' effect on the efficiency of Federal credit union operations stated that the time saved by having a broker survey the market for the best CD rates is substantial.

In response to the issue of the extent, if any, to which NCUA should regulate the use of brokers for investments in financial institutions, the overwhelming majority of the commenters expressed the opinion that NCUA should not regulate. (One commenter argued that the current rules are inconsistent in that brokers may be used for purchases of GNMA's and other types of legal investments but cannot be used for CD investments.) The commenters did, however, recommend that NCUA stress the need for proper financial analysis of the issuing institutions and the soundness and integrity of the brokers through which they make investments. Numerous commenters recommended that NCUA require Federal credit unions to have written investment policies that include, among other things, the names of financial institutions and brokers that the Federal credit unions board has approved for its investment activity. Some commenters suggested that Federal credit unions only use the services of those brokers and investment advisers registered with the SEC. Others believed that NCUA should make a special effort to educate Federal credit unions regarding their use of brokers and should publish guidelines on the proper use of brokers when purchasing CD's.

Having reviewed all the comments, the Board continues to believe that the so-called "itself" requirement of the previous rule is unnecessary and ineffective. As discussed in the preamble to the proposed rule, this requirement did not prevent Federal credit unions from accepting the advice of "money finders" or other third parties, or even making payment through a broker or other third party by characterizing that party as the Federal credit union's agent. Further, after reviewing the comments and thoroughly reconsidering this issue, the Board has determined that it is neither necessary nor advisable for NCUA to issue new regulations concerning Federal credit union use of brokers in making investments.

Both the comment letters received by NCUA and recent developments in the marketplace regarding brokered deposits have shown that credit unions recognize the risks in relying on the advice of, and placing deposits through, money finders and deposit brokers. In response, many credit unions have turned to local institutions whose financial condition they are thoroughly familiar with, such as their corporate credit union or local banks, to place deposits. Others have minimized risk by placing deposits, through brokers or otherwise, in separately insured $100,000 increments in several different institutions. While the Board is not unmindful of the concerns that this latter practice presents to the Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation, the Board defers to those agencies to address the issue of increased risk to their insurance funds.

Also, the Board urges Federal credit unions not to rely on deposit insurance alone, as that practice can, in the event of failure of the issuing institution, lead to loss of interest income and temporary loss of control of funds. Further, the lack of financial analysis that results from reliance solely on deposit insurance is not conducive to sound investment habits.

While the Board has chosen not to regulate in this area, the Board recognizes and stresses the need for written policies and it will instruct its examiners to particularly scrutinize those Federal credit unions where written investment policies do not exist in order to determine whether they are operating in a safe and sound manner. It is noted that section 6121 of NCUA's *Accounting Manual for Federal Credit Unions* contains detailed guidance concerning the nature and recommended content of investment policies. Also, the Board agrees that educational efforts are a high priority. In this connection, credit union associations have stepped up their efforts, resulting, for example, in the development of an educational videotape on investment practices. The Board firmly encourages these efforts.

Finally, the Board notes that there have been isolated instances of brokers channelling funds into Federal credit unions in a manner that contributes to supervisory problems. NCUA has been successful in early detection of and swift reaction to these problems, and the Board intends to continue to address any such situations through strong supervisory action.

Loans to Nonmember Credit Unions

The Board proposed to eliminate § 703.2 of the previous rule, concerning loans to nonmember credit unions. This section reiterated the statutory limitation that aggregate loans to nonmember credit unions may not exceed 25% of the lending credit union's unimpaired capital and surplus, and imposed loan documentation and maturity requirements that the Board considered a matter of business judgment that should not be controlled by regulation. The commenters agreed. Accordingly, that section of the previous rule has been eliminated as proposed. The 25% lending limit of the Federal Credit Union Act is, in the interest of clarity and comprehensiveness, referenced at § 703.3(c) of the final rule concerning loans, shares and deposits of other financial institutions.

Definitions

The definitions (§ 703.2 in both the proposed and final rule) have been alphabetized in the final rule. Also a definition has been added, at § 703.2(n), for the term "Section 107(8) institution." This term refers to institutions in which Federal credit unions may legally make deposits pursuant to section 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(8)), i.e., any institution that either is insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or is a State bank, trust company or mutual savings bank operating in accordance with the laws of a state in which the Federal credit union maintains a facility. The term (or its equivalent) appeared throughout the proposed rule but was not defined. The inclusion of the definition in the final rule eliminates the need to refer to a copy of the Federal Credit Union Act in order to understand the term.

Authorized Investments—§ 703.3 of the Rule

Cash Forward Agreements. A cash forward agreement is an agreement to purchase or sell a security at an agreed-upon price, but at a future date. As a carry-over from the previous rule, the proposal would allow cash forward agreements if delivery and acceptance are mandatory and take place within 120 days from the date of the agreement. One commenter expressed disapproval of the 120 day limitation. Although acknowledging the possibility of speculative use of cash forward agreements, the commenter believed that the 120 days limitation was somewhat arbitrary and did not serve a useful purpose.

Agency experience has not shown that the 120 day limitation has caused problems for Federal credit unions. Further, without a time limitation, cash forward agreements can be used for speculative futures trading, posing safety and soundness concerns. The Board has adopted the proposed rule (§ 703.3(b)) without amendment.

Loans, shares and deposits—other financial institutions. Section 703.3 of the proposed rule addressed the authority of Federal credit unions to make *deposits* in section 107(8) institutions. This section of the rule is necessary primarily to clarify that the authority is generally limited to institutions that are either federally insured or operating in accordance with the laws of a state where the credit union does business. As proposed, however, the section omitted reference to the authority of Federal credit unions to establish share accounts and similar accounts with other federally insured credit unions and with corporate credit unions pursuant to section 107(7) of the Act (12 U.S.C. 1757(7)). Section 703.3 of the final rule has been revised to include reference to this authority.

Repurchase transactions. A repurchase transaction is a transaction in which a bank, broker or other third party sells securities to an investor (in this case a Federal credit union) with an agreement to "repurchase" the securities at an established time and fixed price. The transaction is functionally similar to a short term loan by the credit union that is collateralized by the securities, with the difference between the sales price and the repurchase price representing interest on the loan.

Since Federal credit unions may, with limited exceptions, make loans only to members, it has been necessary for a repurchase transaction to have the legal characteristics of an investment in the underlying security in order for a Federal credit union to participate. Thus, the previous rule distinguished between loan and investment type repurchase transactions, with only the latter being authorized for Federal credit unions.

The proposed rule carried over this distinction. The final rule carries it over with one significant exception: Since Federal fund transactions, which are essentially short term unsecured lending, have been authorized for Federal credit unions pursuant to the authority to make deposits in other financial institutions, it makes little sense to restrict repurchase transactions (which are secured) with those same institutions. Accordingly, the final rule has been amended to authorize Federal credit unions to engage in repurchase transactions with other financial institutions without regard to the distinction between loan-type and investment-type transactions. Of course, since the authorization is pursuant to the deposit authority, the financial institution must be a section 107(8) institution. (*See*, §§ 703.2(1), 703.3(d).)

Reverse repurchase transactions. A reverse repurchase transaction is a transaction whereby a Federal credit union borrows Funds for a fixed period and pledges securities (typically GNMA's or Treasury securities) owned by it as collateral. The borrowed funds are usually reinvested in other securities or in loans to members. The final rule, in a carry over from the previous rule and the proposal, requires that either the securities in which the borrowed funds are reinvested or the securities used as collateral have a maturity date not later than the repayment date on the reverse repurchase transaction. (*See*, § 703.3(e).) The purpose of the limitation is to avoid maturity mismatches that in past experience have resulted in serious losses during periods of interest rate swings. The commenters generally supported a continuation of this limitation. Some misunderstood the limitation, however, and believed that the rule would require that both the securities pledged as collateral and the securities in which the borrowed funds are reinvested would be required to have a maturity not later than the repayment date. The final rule has been revised to clarify that this is not the case.

Federal Funds. A Federal funds transaction is an overnight or short term loan to another financial institution. These transactions have been authorized, pursuant to NCUA Interpretive Ruling 81–2 (46 FR 14887), by interpretation of the deposit authority of section 107(8) of the Act. The proposed rule incorporated the Interpretive Ruling into the regulation, at § 703.3(f), in the interest of clarity and comprehensiveness. The commenters agreed with this proposal. Several commenters noted, however, that with the incorporation of the Interpretive Ruling, investment in "Term Federal Funds" (Federal funds having a maturity of more than one day), which had been authorized, had become restricted. This was unintended, and § 703.3(f) has been revised to allow both overnight and term Federal funds. With the inclusion of Federal funds in the final rule, IRPS 81–2 is unnecessary and is therefore repealed.

The Board takes this opportunity to alert Federal credit unions to at least one inherent risk of Federal funds investments that may not have been previously considered. There may be instances where under state law (e.g. West Virginia, Iowa, Oregon) if a Federal credit union sells Federal funds to a state bank (authorized as depositories under section 107(8) of the Act) and that bank is placed into liquidation, unlike other "depositors" who are given a priority in the payout under the state law, the Federal credit union would be paid after depositors along with other creditors. Under these circumstances a Federal credit union's risk of loss is greater than if it had purchased a CD from the state bank (even where the CD was in excess of the $100,000 deposit insurance limit), because of the priority given to depositors over other creditors. Therefore, the common perception that Federal funds have no greater risk associated with them than uninsured CD's is not accurate in all instances.

Yankee Dollars. A Yankee Dollar deposit is a dollar denominated deposit in a United States branch or subsidiary of a foreign bank. If the branch or subsidiary is federally insured or operating in accordance with the laws of a state in which the Federal credit union does business, then a Federal credit union deposit in the branch or subsidiary is authorized pursuant to section 107(8) the Act. Section 703.3(g) of the proposal set forth this authority. It has been carried over to the final rule without substantive change.

Eurodollars. A Eurodollar deposit is a dollar denominated deposit in either a foreign branch or subsidiary of a United States bank or in a foreign bank located outside the United States. The Board proposed authorizing such deposits, but only in foreign branches of parent U.S. banks and only if the parent U.S. bank is one in which a Federal credit union may make a deposit pursuant to section 107(8) of the Act. The Board also requested comment on whether such deposits should be treated as risk assets for purposes of the statutory reserve transfer requirements of section 116 of the Federal Credit Union Act (12 U.S.C. 1762).

The vast majority of commenters agreed that Eurodollar deposits in foreign branches of U.S. banks should be a permissible investment for Federal credit unions. However, the commenters were split on the issue of whether Eurodollars should be considered risk assets. While the commenters generally agreed that Eurodollars do involve credit risk, liquidity risk, sovereign risk, and general risk associated with increased operational complexity, their approach to the problem varied.

Those not in favor of treating Eurodollars as risk assets believe that with strong internal controls investment losses can be prevented. Commenters in favor of treating Eurodollar deposits as risk assets argued that classification as risk assets would help credit unions more accurately recognize the credit risk inherent in these investments.

The Board has determined to authorize Eurodollar deposits as

proposed, but not to treat them as risk assets at this time. Deposits and government securities generally have not been treated as risk assets for purposes of statutory reserve transfer requirements. Treatment of Eurodollar deposits as risk assets is a matter which may be more appropriately considered in the context of an overall review of statutory reserve transfer requirements and the regulatory definition of risk assets (*See*, 12 CFR 700.1(j)). Also, deposits in overseas branches of U.S. banks are generally considered to be legal liabilities of the domestic parent bank. There may, however, be instances where the foreign host government takes some action to freeze, stop, or delay payment of the deposits of the branch bank, and the U.S. parent bank may be relieved of its liability for the deposits of its overseas branch. Under these circumstances, the relied-on protection of the parent domestic bank against loss of the deposit may be of no avail. Therefore, the Board is alerting all Federal credit unions that Eurodollar deposits are not free of risk and that extreme care must be exercised in engaging in such investment activity.

Bankers' Acceptances. A bankers' acceptance is a time draft drawn on a U.S. bank and represents an irrevocable obligation of the bank. Bankers' acceptances arise in a variety of ways, but generally are used initially by a corporate customer of the bank to "pay" for goods or services, and are subsequently discounted and traded as money market instruments. The proposed rule included bankers' acceptances in the category of prohibited investments. A majority of those commenting on this issue recommended that Federal credit unions be permitted to invest in bankers' acceptances. These commenters argued that it is inconsistent to classify bankers' acceptances as prohibited investments when Federal funds, certificates of deposit, and Eurodollar deposits are held to be permissible investments. All of these investments (including bankers' acceptances) appear on the issuing bank's balance sheet as direct liabilities of the bank. Some commenters suggested that bankers' acceptances, which are obligations of both the accepting bank and its corporate customer, are less risky than Federal funds, Eurodollar deposits, and uninsured CD's.

The Board agrees and finds that bankers' acceptances may be authorized pursuant to the same rationale applied to Federal funds and repurchase transactions with financial institutions; i.e., by considering the acceptance to be a type of deposit liability. Also, it seems clear that bankers' acceptances present no greater risk than these other investments. Accordingly, the Board has incorporated into the final rule a new § 703.3(i) authorizing investments in bankers' acceptances issued by section 107(8) institutions.

Prohibited Investments—Section 703.4

Comments were received on three prohibited activities: standby commitments § 703.4(a)), futures contracts § 703.4(b)), and kickbacks (§ 703.4(e)).

Standby Commitments. A standby commitment is a commitment to purchase (or sell) a security at a set price at a future date, wherein the seller of the commitment receives a fee in exchange for agreeing to "stand by" to purchase (or sell) the security at the option of the buyer of the commitment. Several commenters suggested that the definition, now § 703.2(r), of standby commitment be reworded. They stated that the proposed definition was unclear as to who is the buyer and who is the seller of the commitment, and fails to include an additional element of the transaction—the predetermined price. The Board agrees and has revised the definition accordingly. In conformance with the amended definition, the Board has amended § 703.4(a) to clarify that a Federal credit union may not purchase or sell a standby commitment.

Some commenters recommended that the prohibition on standby commitments be amended to permit Federal credit unions to purchase standby commitments. They noted that the substantial risk in the transaction is always on the seller of the commitment, and that the buyer's loss can be restricted to the amount advanced to purchase the commitment, since the buyer has the option to either exercise the sale or purchase or do nothing. They suggested that standby commitments can be used as a hedging tool in asset/liability management.

The Board does not consider standby commitments an essential tool to reduce the potential risks that Federal credit unions may have because of maturity mismatches between their assets and liabilities. Because of their complexity and their inherently speculative nature, reliance on standby commitments to offset mismatching can only lead to confusion, uncertainty, and ultimately to safety and soundness problems. As explained below in the discussion of futures contracts, there are already a range of other business strategies available to Federal credit unions to manage their assets and liabilities.

Futures contracts. A futures contract is a standardized agreement offered on one of the futures exchanges to buy or sell an underlying investment at an established future date and at a specified price. While the proposed rule carried over the previous rule's prohibition on futures contracts, the Board requested comment on whether investment in futures contracts should be authorized as an asset/liability management tool.

The comments were mixed. Commenters in support believed that with increased competition, greater interest rate sensitivity of member shareholders, and recent fluctuation in interest rates, it is important that Federal credit unions have the flexibility to hedge interest rate risk through the use of interest rate futures.

Commenters in opposition to authorizing futures contracts believed that they are too complex and too often result in sizable losses. Further, they felt that with the relatively short maturities of credit union loans and the authority to make variable rate loans, Federal credit unions have adequate tools to protect against interest rate swings.

The Board has determined not to authorize investments in futures contracts at this time. To the extent that futures contracts are seen as tools to reduce the interest rate risk that results from a mismatch between asset and liability maturities, the Board believes that there are already a range of other business strategies available to FCU's. Such strategies include: (a) Not investing or lending at long term fixed rates; (b) using variable rate lending and floating rate investments; (c) using secondary markets to sell long-term loans to limit or manage the level of exposure; (d) using improved funds management strategies under deregulation to create a "basket" of share maturities which would compliment the duration of longer term assets; and (e) using reserves (established for this purpose) to temporarily cover losses should rising interest rates lead to short-term mismatches. Further, it is the opinion of the Board that as long as Federal credit unions take in short-term funds and elect to invest or lend in long-term instruments, there is a risk. No option, including futures or standby commitments, eliminates the risk; they may, at best, just reduce some of the potential costs.

Kickbacks. The commenters were nearly unanimous in approving of the proposed rule (now § 703.4(e)) prohibiting a Federal credit union's directors, officials, committee members, employees, and immediate family

members of such individuals from receiving pecuniary consideration in connection with the making of an investment or deposit by the Federal credit union.

The Board has approved § 703.4(e) without substantive change, but has added a new § 703.2(i) which defines what is meant by the term "immediate family member." By specifically defining the term, the Board expects to minimize any uncertainty as to who may fall within the "immediate family" for purposes of the rule.

Adjusted trading and short sales. Both the previous regulation and the proposal contained prohibitions against engaging in adjusted trading and short sales. Adjusted trading is the sale of a security at an inflated price above market with the simultaneous purchase of another security, also at an inflated price. The purpose is to hide or defer losses and avoid recording the losses in the accounting period in which they occur. It is a misrepresentation on the balance sheet and is not in accordance with "full and fair disclosure" required in 12 CFR 702.3.

A short sale is the sale of a security not owned at the time of the sale. The seller is speculating that the price of the security will fall prior to his purchase and thus enable him to sell it at a higher previously agreed to price pursuant to the short sale. The practice is considered to be unsafe and unsound.

No commenters objected to the prohibition against these two types of transactions and the prohibitions have been carried over to the final rule, § 703.4 (c) and (d).

IRPS 79-4—Investments

NCUA Interpretive Ruling and Policy Statement 79-4 was originally issued to elaborate on the requirements of Part 703 and to establish accounting procedures to be used in conjunction with certain authorized investment transactions. In light of the fact that the accounting procedures are now covered in NCUA's *Accounting Manual for Federal Credit Unions* and considering the changes and clarifications in the proposed rule, NCUA proposed to repeal IRPA 79-4. The commenters agreed. Accordingly, IRPS 79-4 is repealed.

Delayed Effective Date

This final rule has been issued with a delayed effective date (May 21, 1984) in order to provide Federal credit unions a full opportunity to study the changes in investment authority and responsibilities and develop an understanding of the new investment vehicles before committing funds to any particular type of investment.

Regulatory Procedures

The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions because the rule would increase their management flexibility, enhance their competitive positions and reduce their paperwork burdens. A regulatory flexibility analysis is not required. 5 U.S.C. 603(a), 604(a).

List of Subjects in 12 CFR Part 703

Credit unions, Investments.

Dated: March 22, 1984.

Rosemary Brady,

Secretary of the Board.

1. 12 CFR Part 703, Investment and Deposit Activities, is revised to read as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

Sec.
703.1 Scope.
703.2 Definitions.
703.3 Authorized activities.
703.4 Prohibited activities.

Authority: 12 U.S.C. 1757(7), 1757(8), 1766(a), and 1789(a)(11).

§ 703.1 Scope.

Sections 107(7) and 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8)) set forth those securities, deposits, and other obligations in which Federal credit unions may invest. Included are securities issued or fully guaranteed by the United States Government or any of its agencies, shares of central credit unions and any federally insured credit union, accounts in other federally insured financial institutions, and other specified investments. This part interprets several of the provisions of sections 107(7) and 107(8) and places certain limits on the types of transactions that Federal credit unions may enter into in connection with the purchase and sale of authorized securities, deposits and obligations. This part does not apply to investments in loans to members, which are governed by § 701.21 (12 CFR 701.21). Also, other sections of NCUA's regulations affect certain specific investments. For example, investments in credit union service organizations are subject to § 701.27 (12 CFR 701.27), and investments in fixed assets are subject to § 701.36 (12 CFR 701.36).

§ 703.2 Definitions.

(a) *Adjusted trading* means any method or transaction used to defer a loss whereby a Federal credit union sells a security to a vendor at a price above its current market price and simultaneously purchases or commits to purchase from the vendor another security at a price above its current market price.

(b) *Bailment for hire contract* means a contract whereby a third party, bank or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers.

(c) *Bankers' Acceptance* means a time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(d) *Cash forward agreement* means an agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of thirty (30) days from the trade date.

(e) *Eurodollar deposit* means a deposit in a foreign branch of a United States depository institution.

(f) *Facility* means the home office of a Federal credit union or any suboffice thereof, including but not necessarily limited to a wire service, telephonic station, or mechanical teller station.

(g) *Federal funds transaction* means a short-term or open-ended transfer of funds to a Section 107(8) institution.

(h) *Futures contract* means a contract for the future delivery of commodities, including certain government securities, sold on commodities exchanges.

(i) *Immediate family member* means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such individual.

(j) *Market price* means the last established price at which a security is sold.

(k) *Maturity date* means the date on which a security matures, and shall not mean the call date or the average life of the security.

(l) *Repurchase transaction* means a transaction in which a Federal credit union agrees to purchase a security from a vendor and to resell the same or any identical security to that vendor at a later date. A repurchase transaction may be of three types:

(1) *Investment-type repurchase transaction* means a repurchase transaction where the Federal credit union purchasing the security takes physical possession of the security, or receives written confirmation of the purchase and a custodial or safekeeping receipt from a third party under a written bailment for hire contract, or is recorded as the owner of the security through the Federal Reserve Book-Entry System;

(2) *Financial institution-type repurchase transaction* means a

repurchase transaction with a Section 107(8) institution.

(j) *Loan-type repurchase transaction* means any repurchase transaction that does not qualify as an investment-type or financial institution-type repurchase transaction.

(m) *Reverse repurchase transaction* means a transaction whereby a Federal credit union agrees to sell a security to a purchaser and to repurchase the same or any identical security from that purchaser at a future date and at a specified price.

(n) *Section 107(8) institution* means an institution in which a Federal credit union is authorized to make deposits pursuant to section 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(8)), i.e., an institution that either is insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or is a State bank, trust company or mutual savings bank operating in accordance with the laws of a state in which the Federal credit union maintains a facility.

(o) *Security* means any security, obligation, account, deposit, or other item authorized for investment by a Federal credit union pursuant to section 107(7) or 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8)), other than loans to members.

(p) *Settlement date* means the date originally agreed to by a Federal credit union and a vendor for settlement of the purchase or sale of a security.

(q) *Short sale* means the sale of a security not owned by the seller.

(r) *Standby commitment* means a commitment to either buy or sell a security, on or before a future date, at a predetermined price. The seller of the commitment is the party receiving payment for assuming the risk associated with committing either to purchase a security in the future at a predetermined price, or to sell a security in the future at a predetermined price. The seller of the commitment is required to either accept delivery of a security (in the case of a commitment to buy) or make delivery of a security (in the case of a commitment to sell), in either case at the option of the buyer of the commitment.

(s) *Trade date* means the date a Federal credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(t) *Yankee Dollar deposit* means a deposit in a United States branch of a foreign bank licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

§ 703.3 Authorized Activities.

(a) *General authority.* A Federal credit union may contract for the purchase or sale of a security provided that:

(1) The delivery of the security is to be made within thirty (30) days from the trade date; and

(2) The price of the security at the time of purchase is the market price.

(b) *Cash forward agreements.* A Federal credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(1) The period from the trade date to the settlement date does not exceed one hundred and twenty (120) days;

(2) If the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(3) If the credit union is the seller, it owns the security on the trade date; and

(4) The cash forward agreement is settled on a cash basis at the settlement date.

(c) *Loans, shares and deposits—other financial institutions.* A Federal credit union may invest in the following accounts of other financial institutions as specified in section 107(7) and 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8)): loans to nonmember credit unions in an aggregate amount not exceeding 25 percent of the lending credit union's unimpaired capital and surplus; shares, share certificates or share deposits of federally insured credit unions; shares or deposits of any central credit union specifically authorized by the board of directors; and deposits of any Section 107(8) institution. Any such investment is subject to the other applicable provisions of this Part (703).

(d) *Repurchase transactions.* A Federal credit union may enter into an investment-type repurchase transaction or a financial institution-type repurchase transaction provided the purchase price of the security obtained in the transaction is at or below the market price. A repurchase transaction not qualifying as either an investment-type or financial institutions-type repurchase transaction will be considered a loan-type repurchase transaction subject to section 107 of the Federal Credit Union Act (12 U.S.C. 1757), which generally limits Federal credit unions to making loans only to members.

(e) *Reverse repurchase transactions.* A Federal credit union may enter into a reverse repurchase transaction, provided that either any securities purchased with the funds obtained from the transaction or the securities collateralizing the transaction have a maturity date not later than the settlement date for the reverse repurchase transaction. A reverse repurchase transaction is a borrowing transaction subject to section 107(9) of the Federal Credit Union Act (12 U.S.C. 1757(a)), which limits a Federal credit union's aggregate borrowing to 50 percent of its unimpaired capital and surplus.

(f) *Federal funds.* A Federal credit unions may sell Federal funds to a Section 107(8) institution, provided that the interest or other consideration received from the financial institution is at the market rate for Federal funds transaction and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(g) *Yankee Dollars.* A Federal credit union may invest in Yankee Dollar deposits in a Section 107(8) institution.

(h) *Eurodollars.* A Federal credit unions may invest in Eurodollar deposits in a branch of a Section 107(8) institution.

(i) *Bankers' acceptances.* A Federal credit unions may invest in bankers' acceptances issued by a Section 107(8) institution.

§ 703.4 Prohibited activities.

(a) A Federal credit union may not purchase or sell a standby commitment.

(b) A Federal credit union may not buy or sell a futures contract.

(c) A Federal credit union may not engage in adjusted trading.

(d) A Federal credit union may not engage in a short sale.

(e) A Federal credit union's directors, officials, committee members and employees, and immediate family members of such individuals, may not receive pecuniary consideration in connection with the making of an investment or deposit by the Federal credit union.

3. NCUA Interpretive Ruling and Policy Statement 79–4—Investments (August 31, 1979, 44 FR 51195), is repealed.

2. NCUA Interpretive Ruling and Policy Statement 81–2—Federal Funds (March 3, 1981, 46 FR 14887), is repealed.

[FR Doc. 84-8520 Filed 3-29-84; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ASW-7; Amdt. 39-4831]

Airworthiness Directives; Hughes Helicopters, Inc., Model 369 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Hughes Helicopters, Inc., Model 369 helicopters by priority mail. The AD requires the inspection of the swashplate bearing assembly to determine if the ball bearing cage is installed and replacement of swashplate bearing assembly if the bearing cage is missing. The AD is needed to prevent possible loss of control of the rotor system in flight and subsequent loss of the helicopter.

DATE: Effective April 9, 1984, as to all persons except those persons to whom it was made immediately effective by priority mail AD 84-01-02, issued January 10, 1984, which contained this amendment.

Compliance required before further flight after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Hughes Helicopters, Inc., Centinela and Teale Avenues, Culver City, California 90230. Copies of the Mandatory Service Information Notices are contained in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Jerry Sullivan, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, telephone number (213) 536-6166.

SUPPLEMENTARY INFORMATION: On January 10, 1984, a priority mail airworthiness directive was issued and made effective immediately upon receipt as to all known U.S. owners and operators of Hughes Helicopters, Inc., Model 369 helicopters. The AD required inspection of the swashplate bearing to determine if the ball bearing cage is installed and replacement of bearing assembly if the ball bearing cage is missing. The priority mail AD was issued because of a report of a swashplate bearing failure. After landing the pilot heard a loud bang, shut down the aircraft, and found the rotating star of the swashplate separated from the lower support. There was no control of the rotor system. Upon inspection it was determined that the swashplate bearing assembly was not manufactured in accordance with the design specification in that the ball bearing cage was not installed during assembly. Hughes Helicopters, Inc., has found 15 improperly assembled bearings since this situation has come to light. The failed bearing had been in service 2½ hours. Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority mail letters issued to all known U.S. owners of Hughes Helicopters, Inc., Model 369 (Army YOH-6A), 369A (Army OH-6A), D, E, H, HE, HM, and HS helicopters. After the AD was issued on January 10, 1984, the manufacturers submitted information which verified that the suspect swashplate bearings are limited to the post June 1, 1983, period. Therefore, the original AD has been amended to provide relief for helicopters with bearings installed prior to June 1, 1983. The AD published in the **Federal Register** is the same as the priority mail AD dated January 10, 1984, except for the relieving feature noted above. The conditions which led to the initial issuance still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Hughes Helicopters, Inc. (Hughes Helicopters): Applies to Hughes Helicopters, Inc., Model 369 series including Army YOH-6A, and OH-6A helicopters certificated in all categories.

Compliance is required prior to further flight, unless already accomplished.

To prevent possible loss of control of rotor system in flight, accomplish the following:

For Hughes Helicopters, Inc., Model 369 (Army YOH-6A), 369A (Army OH-6A) D, E, H, HE, HM, and HS helicopters with swashplate bearing assembly P/N 369A7003-3 installed after June 1, 1983:

(a) Comply with paragraphs A through J of procedures section of Hughes Helicopters, Inc., Mandatory Service Information Notices DN-125, EN-12, and HN-191, as applicable, all dated December 23, 1983, or FAA approved equivalent. Model 369 series are to comply with Mandatory Service Information Notice HN-191 or FAA approved equivalent.

(b) Replace deficient swashplate bearing assembly with serviceable unit.

(c) Swashplate bearing assembly P/N 369A7003-3 with positively identified serial numbers 9000 through 9999 or with a ⅛-inch-diameter blue dot on the outer surface of the snap ring has been determined to contain the ball bearing cage and need not be reinspected.

(d) Only subject bearing assembly positively identified as being S/Ns 9000-9999 or bearing assemblies with blue dot on the outer surface of snap ring or FAA approved equivalent bearing assemblies approved by the Manager, Western Aircraft Certification Office may be used as replacement swashplate bearing assemblies.

Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

This amendment becomes effective April 9, 1984, as to all persons except those persons to whom it was made immediately effective by priority mail AD 84-01-02, issued January 10, 1984, which contained this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; 14 CFR 11.89)

Note.—The FAA has detemined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas on March 9, 1984.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84-8494 Filed 3-28-84; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 256

[Economic Reg. Enactment of Part 256 Docket 41686; Reg. ER-1377]

Display of Joint Operations in Carrier-Owned Computer Reservations Systems

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board is adopting an emergency rule that would prevent airlines owning computer reservations systems (CRS's) from denying access to their systems to carriers who coordinate their services under the same airline designator code. The rule also prohibits display discrimination against carriers who conduct such operations. The rule is intended to ensure that systems owners do not use their control of CRS's to limit the ways in which other carriers compete in marketing their services. The Board's action responds to petitions by several air carriers.

DATES: *Adopted:* March 27, 1984.
Effective: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn (202) 673-5450. Paul Samuel Smith (202) 673-5450, Barry L. Molar (202) 673-5205, George S. Baranko (202) 673-6011, or Robert D. Young (202) 673-6060, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

EDR-470, 49 FR 9430, March 13, 1984, proposed an emergency rule that would prevent air carriers owning computer reservations systems (CRS's) from eliminating other carriers' flight information from their CRS's when the other carriers' flights are operated under a single airline designator code, absent a determination by the Board that the other carriers' use of a common code constitutes a violation of section 411. We instituted this rulemaking in response to requests of Frontier Airlines and a group of other carriers that we declare such action to be an unfair and deceptive practice and an unfair method of competition. They made their requests in a concurrent rulemaking proceeding, covered by EDR-466C (49 FR 11644, March 27, 1984), where we proposed comprehensive rules on CRS-owning airline activities. We indicated that we are proceeding separately with this rule in order to respond to United's announced intention to remove carriers using common designator codes from its APOLLO system on April 1, 1984. The proposed rule would prevent such action pending a determination on the legality of carriers' use of common designator codes, a question that is currently before us in Docket 41875.

The proposed rule is based on essentially the same facts and conclusions that led us to propose EDR-466C, and we incorporated our proposed findings there into this proceeding. Our examination of the CRS industry led us to tentatively conclude that the CRS market is dominated by a few airline owners. Their CRS's are travel agents' primary information source. Agents, in turn, are the primary distributors of scheduled air transportation services. As a result, we found that CRS owners have gained substantial control over the agency distribution system, particularly on a regional level, and are in position to use that power to affect air transportation competition adversely.

This proceeding is concerned with the use of CRS power to inhibit air transportation competition through the use of cooperative service agreements. Generally these agreements provide for some integration of operations, such as the coordination of departure and arrival times and the common use of baggage, terminal and computer facilities. In some cases, the cooperating carriers share common or very similar trade-marks. Most importantly for the purposes of this proceeding, the cooperating carriers also use the same two-letter code to designate their services in the Official Airline Guide and elsewhere. The OAG treats flights having the same two-letter code as on-line connections.

CRS owners obtain their flight information from the OAG and afford commonly designated flights the same treatment, i.e., they are listed as on-line services. On-line connections are generally given higher display priority than inter-line connections and are more likely to be sold.

We found that such cooperative agreements appear to be an attractive method to compete in the marketplace. In exchange for support services, the use of some of its trademarks, and the coordination of schedules, a larger, established carrier can gain valuable feed traffic. Some of the feed traffic they gain is a consequence of the common use of designator codes. Pan American, among others, states that the service provided by these cooperative agreements is attractive to many travelers.

However, the few carriers owning CRS's are in a position to substantially reduce the attractiveness of such operations by denying carriers sharing a designator code access to their systems. United's notice that it would no longer list connecting flights operated by separate carriers under a common code in its APOLLO CRS after April 1, 1984, seemed to illustrate the possible exercise of CRS market power. Faced with the possibility of exclusion from a CRS, we concluded that carriers using common codes can either lose the traffic and other benefits they gain from such arrangements or lose their access to a substantial portion of the travel agent distribution system. In short, we found that United and the other CRS providers have the power to force competitors to abandon their competitive marketing strategy for reasons unrelated to its merits.

United has apparently attempted to justify its decision to delete carriers using common designator codes from APOLLO on the grounds that consumers are being deceived by the implicit representation that the carrier whose code is shared will be providing all the service purchased. When the consumer arrives at the gate of the second carrier, however, he or she finds the service will be provided by an independent airline, usually with small commuter-type aircraft and that the consumer protection rules normally associated with scheduled service are not available. United and certain other carriers believe this constitutes an unfair and deceptive practice under section 411 of the Act.

While we have not unconditionally sanctioned the unrestrained use of common designator codes, we have approved the practice in some circumstances. *See, e.g.*, Order 79-2-106. Some cooperative agreements may affirmatively benefit the public by ensuring service to particular communities. Moreover, travel agents can disclose to consumers the equipment to be used on a particular flight, which appears on the CRS display. We also note that if a certificated carrier owned and operated small aircraft directly, those operations would be exempt from certain consumer protection regulations. 14 CFR 298.90 *et. seq.* On the other hand, we recognized that there may well be circumstances under which the use of common designator codes would be deceptive. However, that was a question that the Board should properly determine. It is

not, in our view, to be resolved by the competitors of the carriers providing these services.

The rule we proposed foreclosed CRS carriers from deleting or discriminating against carriers that use the same designator code, absent our determination that the use of common designator codes by these carriers was a violation of the Act. Our intention was to preserve the *status quo* and retain for ourselves the responsibility to determine if carriers had violated section 411. We indicated that when a CRS carrier, or any other carrier, believed its competitors were using common designator codes to deceive the public, their recourse would be to file a complaint challenging the practice.

The Comments

Comments in support of our proposed rule have been filed by Alaska Airlines; Eastern Air Lines; Empire Airlines; Frontier Airlines, Frontier Horizon, and Combs Airways (the Frontier Group); Air Kentucky Airlines, Chautaugua Airlines, Crown Airways, Fischer Brothers Aviation, Henson Aviation, Pennsylvania Airlines, Piedmont Aviation, Pocano Airlines, Southern Jersey Airways, Suburban Airlines, and USAir, (the Joint Carriers); Metro Airlines; and Pan American World Airways. Crown Airways, Henson Aviation, Pennsylvania Airlines, and Suburban Airlines also filed separate comments in support of the proposed rule.

Opposing comments were filed by Excellair; the General Services Administration (GSA); and United Air Lines. In addition, Aspen Airways, Britt Airways, Command Airways, and San Juan Airlines filed letters indicating their opposition to the proposed rule. Generally, these commenters raise three arguments in opposition to the proposed rule. First, they argue that our conclusions with respect to CRS carrier power and the importance of access to particular CRS's are incorrect and unsupported by the record. Second, they argue that the use of common designator codes is, if not per se deceptive, misleading and anticompetitively deceptive in particular circumstances. Finally, they argue that the proposed rule will have a substantial adverse impact on independent commuter carriers that cannot or will not use the designator codes of a major carrier.

The Aviation Consumer Action Project (ACAP) and American Airlines Inc. comments take no specific position on the proposed rule. However, both suggest there are circumstances in which the sharing of designator codes injures the public. ACAP suggests that we address the features which must be present for a coordinated operation to be listed and advertised as an "on-line" connection. American asks that we expedite consideration of its complaint in Docket 41875 to establish guidelines for the use of such codes. American also questions the factual and legal analysis underlying EDR–470 and suggests that we withdraw that analysis "since it is not necessary to the adoption of the proposed rule." It also suggests that the proposed action should have been undertaken in an enforcement proceeding rather than a rulemaking proceeding.

Delta does not take a position on the proposed rule. It asks, however, that we affirm its understanding that its rights to comment in the broader rulemaking proceeding will not be prejudiced by its decision not to comment here. Its understanding is correct. Similarly People Express Airlines has only filed in order to make sure that our proposed rule is only applicable to computer reservations systems having multi-carrier listing and booking capabilities. In fact, our proposed rule only applies to carriers that own, control or operate CRS's for travel agents in the United States. The computer system People Express' personnel use to book reservations when agents contact People Express does not fall within this definition.

The Final Rule

For the reasons set out in EDR–470, as supported by our tentative findings in EDR–466C, we have decided to adopt the rule preventing airlines owning computer reservations systems from denying access or discriminating against carriers who coordinate their services under the same airline designator code. The specific objections of commenters, our responses, and some clarifying details are set out below.

This rule is based upon the facts we have gathered on CRS industry and common designator code practices. Parties in the comprehensive rulemaking proceeding will have the opportunity to present additional facts and present new argument on our conclusions here. Consequently, after we decide the issues presented in those proceedings, we may re-examine the rule we are adopting here.

Discussion

The first challenge to the proposed rule is the assertion that our analysis of competition in the CRS and air transport industries was incorrect and unsupported by the record. American promises that it will support its assertion to that effect when it submits its comments on EDR–466C. United restates its assertions, made more fully in comments submitted prior to the issuance of EDR–470, that its CRS is not an "essential facility" and that United has not market power in any market. We will not at this stage repeat the detailed analysis that mandates our action here. We simply note that no party has submitted any new evidence or argument relating to our analysis of the CRS industry since we issued EDR–470, and we have no basis for revising our conclusions on those issues at this time.

On the basis of the information we have and the arguments presented so far, we continue to believe that airline CRS vendors have a substantial degree of market power, that there is a danger of their wielding that power in ways that may cause substantial injury to air transport competition and to consumers, and that our responsibilities under section 411 together with the more specific strictures contained in section 102 and other sections of the Federal Aviation Act require that we take immediate action to safeguard the competitive structure of the air transport industry. We note that section 411 requires that we take a somewhat more functional approach than that contained in the case law developed under the Sherman Act. Moreover, if United had succeeded in forcing its competitors to agree to eliminate their common listing practices, those agreements could be construed as agreements in restraint of trade and as violations of section 1 of the Sherman Act. *See Home Placement Service* v. *Providence Journal Co.*, 682 F.2d 274, 279 (1st Cir. 1982). Preventing such developments in their incipiency is a large part of our responsibility under section 411.

Excellair argues that the sharing of a major carrier's designator code by a commuter carrier is anticompetitive because it undermines the competitive position of commuter carriers like Excellair who will not or cannot coordinate their operations with a major carrier and use the latter carrier's designator code. We found in Order 79–2–108 that USAir's agreements with two Allegheny commuters were franchising agreements which are not inherently anticompetitive. Our analysis there remains valid, for such agreements will not necessarily injure competition and may enhance it in some smaller markets.

The remaining arguments made by opponents to the rule relate to the merits of the use of common designator codes. The opponents generally claim that the practice is misleading to the public. Although we found in the case of

several Allegheny commuter agreements that the commuter carrier's analogous use of the carrier's trade name is neither inherently deceptive nor unfair, Order 79–2–106, these arguments appear to merit serious scrutiny in some cases, for example, GSA's complaint against Henson. However, the determination of whether, and to what extent, the use of common designator codes is deceptive is one for the Board to make. Clearly, if the practice were "inherently and unfailingly deceptive," we would have no basis for requiring CRS owners to participate in the practice. *Home Placement Service* v. *Providence Journal Co.*, 682 F.2d at 277. We believe that the question is close enough in some cases to warrant further investigation, either in the context of a rulemaking or enforcement proceedings. We will shortly decide which form is the most appropriate. Thus, in adopting this rule we seek to maintain the status quo. We are not giving our imprimatur to the unbridled use of common designator codes. What we are concluding here is that a CRS owner may not, consistent with section 411, use its market power to dictate the business practices of its competitors.

American contends that the action we take here would more appropriately be taken in the context of an enforcement proceeding. Its basis for that claim is the fact that only one CRS vendor—United—has threatened the action that this rule would prohibit. We are proceeding by rule instead of adjudication for two reasons. First, although United is the only carrier that has threatened action in this regard, the potential remains that other CRS vendors could take similar action. Second, the CRS industry has been, up to this point, completely unregulated. It is our judgment that the introduction of prospective ground rules for the industry should be accomplished as even-handedly as possible and in circumstances where all affected parties may have an opportunity to comment on our decision. Rulemaking is the ideal vehicle for achieving that result.

Several parties have requested that, if a rule is adopted, we make certain clarifying amendments or statements in connection with the rule. American has requested that we amend proposed § 256.4(b) to make it clear that the rules' prohibition on discrimination against common code usage only extends to the system vendor's CRS activities. Since that limitation was intended in the first place, we will make that clear by adding the words ". . . relating to providing the system" at the end of proposed § 256.4(b). United suggests that we should adopt a provision requiring participating carriers who use a common code to indemnify the CRS vendor for any claims arising from their use. We see no reason to adopt that suggestion since we do not interpret our rule or any other requirement as prohibiting vendors from obtaining indemnification if claims are made against the vendor because of the alleged inaccuracy of information supplied by another carrier.

Final Regulatory Flexibility Analysis

The discussion above constitutes the Board's final regulatory flexibility analysis of this rule pursuant to 5 U.S.C. 604. Copies of this document can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673–5432, by referring to the "ER" number at the top of the document.

Effective Date

The Board finds good cause to make this rule effective on publication in the **Federal Register.** United, one of the CRS owners, has stated that on April 1, 1984, it will eliminate from its CRS the schedules of carriers who share one designator code. United's plan will force other carriers to lose their access to United's CRS display or to change their method of conducting coordinated operations, a method followed by several carriers for over 15 years. The Board is adopting the rule to keep any airline CRS owner from so determining how its competitors conduct their operations. To prevent United from taking such action, the Board must make this rule effective immediately.

List of Subjects in 14 CFR Part 256

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Accordingly, the Civil Aeronautics Board adds a new Part 256 to Chapter II of Title 14, Code of Federal Regulations, to read:

PART 256—DISPLAY OF JOINT OPERATIONS IN CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

Sec.
256.1 Purpose.
256.2 Applicability.
256.3 Definitions.
256.4 Display of Information.

Authority: Secs. 102, 204, 404, 411, 412, 419, 1102 Pub. L. 85–726 as amended, 72 Stat. 740, 743, 760, 769, 770, 797; 92 Stat. 1732; 94 Stat. 42; 49 U.S.C. 1302, 1324, 1374, 1381, 1382, 1389, 1502.

§ 256.1 Purpose.

The purpose of this part is to set forth a requirement for operation by air carriers of computer reservation systems used by travel agents so as to prevent unfair, predatory, and anticompetitive practices in air transportation.

§ 256.2 Applicability.

This rule applies to air carriers or foreign air carriers that own, control, or operate computerized reservation systems for travel agent subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 256.3 Definitions.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C 1301(22), and § 298.2(f) of this chapter, respectively that is engaged directly in the operation of aircraft in passenger air transportation.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of computer terminal.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry in general, and that has entered into an agreement for the use of a system.

"System" means a computerized airline reservation system offered by a carrier to subscribers, for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to issue tickets.

"System vendor" means a carrier that owns, controls or operates a system.

"Designator code" means the airline designations allotted and administered pursuant to Agreements CAB 24606 and 26056.

§ 256.4 Display of information.

(a) A system vendor shall not deny access to its system to two or more carriers whose flights share a single designator code, absent a determination by the Board that the use of the code constitutes a violation of 49 U.S.C. 1381.

(b) A system vendor shall not discriminate against any carrier on the basis of that carrier's using the same designator code as another carrier, either by display bias, or any other means relating to providing the system.

By the Civil Aeronautics Board.
Phyllis T. Kaylor.
Secretary.
[FR Doc. 84-8370 Filed 3-29-84; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 379, and 399

[Docket No. 40124-07]

Amendments to the Commodity Control List

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule imposes licensing requirements under the national security provisions of the Export Administration Act of 1979, as amended (EAA) on export and reexport of certain commodities to all destinations. The changes result from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). In addition, this rule imposes licensing requirements on shipment of certain technical data to all destinations except Canada. It has been determined that these controls are necessary to protect U.S. national security interests in accordance with the criteria in sections 3(2)(A) and 5 of the EAA.

EFFECTIVE DATE: March 30, 1984. Comments must be received by the Department May 29, 1984.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporters' Service Staff (Telephone: (202) 377-3856).

SUPPLEMENTARY INFORMATION: The United States controls exports for national security reasons under the authority of section 5 of the Export Administration Act of 1979, as amended. The Office of Export Administration maintains the Commodity Control List (CCL), which includes all commodities subject to Department of Commerce export controls.

National security concerns have necessitated changes to the CCL and other parts of the Export Administration Regulations, including expansion and clarification of export controls involving general industrial equipment; transportation equipment; electronics and precision instruments; metals, minerals, and their manufactures; chemicals, metalloids, and petroleum products; and rubber products. These changes result from the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

Changes to the Export Administration Regulations include the following:

1. Certain types of technical data are added to a list of data requiring a validated license for export to all destinations except Canada. These data include, among others, technology specific to the production of "superalloys," and inert gas and vacuum atomizing technology.

2. Certain types of commodities are added to the Commodity Control List (Supplement No. 1 to § 399.1). These commodities include, among others, equipment specially designed for the production of "superalloys"; equipment designed for the manufacture or testing of printed circuit boards; and various materials for the manufacture of high-temperature fine technical ceramic products.

3. An entry covering "rockets and missiles, guided or unguided" is removed from the Commodity Control List because such commodities are under the export licensing jurisdiction of the Office of Munitions Control, Department of State.

Saving Clause

Shipments of commodities or technical data that are removed from general license authorizations as a result of changes set forth in this rule, that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export prior to March 30, 1984, may be exported under the previous general license provision up to and including April 13, 1984. Any such commodity or technical data not actually exported before midnight April 13, 1984 require a validated export license.

Rulemaking Requirements and Invitation to Comment

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. app. 2401 *et seq.*) ["the Act"], this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

The period for submission of comments will close May 29, 1984. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001-B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in

accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

List of Subjects in 15 CFR Parts 370, 379 and 399

Administrative practice and procedure, Exports, Science and technology

PART 370—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. Supplement No. 2 to Part 370, "U.S. Munitions List," is amended by removing the phrase "(except meteorological sounding rockets)" from paragraph (a) of Category IV.

PART 379—[AMENDED]

2. Section 379.4 is amended by revising in the first sentence of paragraph (d) the phrase—"No technical data relating to the following commodities"—to read—"No technical data relating to the following commodities or processes"; and by removing the word "and" from paragraph (d)(9); by redesignating (d)(10) as (d)(13); and by adding a new (d) (10), (11) and (12), reading as follows:

§ 379.4 General License GTDR: Technical Data Under Restriction.

* * * * *

(d) *Restrictions applicable to all destinations except Canada.*

* * * * *

(10) Technical data specific to the production of "superalloys" (see ECCN 1301A of the Commodity Control List), regardless of the export controls on the equipment used with such technical data; melting, remelting and degassing techniques specific to the production of "superalloys"; and technical data specific to the production of "superalloys" in crude and semi-fabricated forms;

(11) Technical data (including processing conditions) and procedures for the regulation of temperature, pressure and/or atmosphere in autoclaves when used for the production of composites or partially processed composites using materials controlled by ECCN 1763A of the Commodity Control List:

(12) Inert gas and vacuum atomizing technology to achieve sphericity and uniform size of particles in metal powders, regardless of the type of metal and the export controls on the powder; and

* * * * *

3. Section 379.4 is amended by revising in paragraph (g) the sentence—"See ECCNs 1091A, 1355A and 1527A."—to read "See ECCNs 1091A, 1354A, 1355A, 1527A, and 1532A."

PART 399—[AMENDED]

4. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 3, General Industrial Equipment, is amended by adding a new entry 1301A (in numerical order, disregarding the first digit) reading as follows:

1301A Equipment specially designed for the production of "superalloys."

Controls for ECCN 1301A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: None.

Notes.—1. Equipment controlled by this ECCN 1301A does *not* include:

(i) Electric arc and induction furnaces, basic oxygen furnaces, and remelting equipment using other techniques for the production of carbon steels, low-alloy steels and stainless steels;

(ii) Degassing equipment used for the production of carbon steels, low-alloy steels and stainless steels;

(iii) Hot and cold rolling mills, extrusion presses, and swaging and forging machines;

(iv) Decarburizing and annealing and pickling equipment;

(v) Surface finishing equipment; and

(vi) Slitting and cutting equipment.

2. Vacuum induction furnaces used in the production of superalloy powders *are* covered by this ECCN 1301A.

3. See ECCN 1203A for export controls on other electric vacuum furnaces.

4. Equipment specially designed for the production of "superalloys" in crude and semi-fabricated forms *is* controlled by this ECCN 1301A.

5. See other CCL entries for materials and manufacturing processes at later stages in the production process; for example, ECCNs 1431A and 1460A for gas turbine engines.

6. See § 379.4(d) for technical data requiring a validated license for export to all destinations except Canada.

Technical Note.—"Superalloys" are nickel-, cobalt-, and/or iron-base alloys having strengths superior to the AISI 300 series, (as of May 1, 1982) at temperatures over 922K (649°C) under severe environmental and operating conditions. *Excluded* are carbon steels, low-alloy steels and stainless steels having strengths inferior to the AISI 300 series (as of May 1, 1982). (The strengths of "superalloys" covered by this Technical Note are interpreted to mean 90,000 psi tensile strength or 70,000 psi 2% yield tensile strength at 1200°F, per ASTM Special Technical Publication 124.)

5. In the Commodity Control List (Supplement No. 1 to § 399.1), ECCN 2319A of Commodity Group 3, General Industrial Equipment, is amended by revising the heading to read as follows:

2319A Environmental chambers capable of pressures below 10^{-4} Torr, and specially designed components therefor.

* * * * *

6. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 3, General Industrial Equipment, is amended by adding a new entry 1354A (in numerical order, disregarding the first digit) reading as follows:

1354A Equipment designed for the manufacture or testing of printed circuit boards, and specially designed components and accessories, and specially designed software for such equipment.

Controls for ECCN 1354A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1000 for Country Groups T and V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE for paragraphs (c), (f) and (g); EE for all other paragraphs.

Reason for Control: National security.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 1354A

(a) Equipment specially designed for removal of resists or printed circuit board materials by dry (*e.g.* plasma) methods;

(b) Computer-aided design (CAD) equipment for printed circuit boards, having any of the following functions:

(1) Generation of artwork design with an interactive capability;

(2) Generation of test string lists for multilayer boards;

(3) Generation of data or programs for "digitally controlled" printed circuit board drilling equipment;

(4) Generation of data or programs for "digitally controlled" printed circuit board shaping and profiling equipment;

(5) Generation of data for control of the sequencing of processes of the equipment for printed circuit board manufacture covered by paragraph (c):

(c) High-speed automated continuous panel processors for plating capable of delivering 860 A/m^2 (80 A/ft^2) or more plate current;

(d) "Digitally controlled" inspection equipment for the detection of defects in printed circuit boards using optical pattern comparison or other machine scanning techniques;

(e) "Digitally controlled" electrical test equipment for the identification of open and short circuits on bare printed circuit boards, capable of:

(1) Continuity testing (less than or equal to 4 ohm) at a rate of 2,500 or more measurements per second; or

(2) High voltage testing (greater than or equal to 50 volts) at a rate of 10,000 or more measurements per minute;

(f) "Digitally controlled" multispindle drills and routers which have any of the following characteristics:

(1) Absolute positioning accuracy of #10 micrometers (0.0004 inch) or better;

(2) Minimum time needed for drill bit changes less than or equal to 5 seconds;

(3) X and Y positioning speeds higher than or equal to 0.125 m/sec. (300 inch/min.) for drilling or for routing;

(g) "Digitally controlled" cyclic voltametric stripping equipment specially designed for printed circuit board plating bath monitoring and analysis.

Notes.—1. See ECCN 1522A(b) for the control of printed circuit board manufacturing equipment incorporating a laser.

2. This ECCN 1354A does *not* cover equipment with controls using the following:

(a) Cams and other purely mechanical means;

(b) Switches including thumbwheel switches;

(c) Plugboards;

(d) On-off and analog controllers;

(e) Diode matrices;

(f) Punched paper tape controllers without a capability to compute, manipulate, or store and rerun program data.

Technical Note.—The term "digitally controlled" refers to equipment, the functions of which are, partly or entirely, automatically controlled by stored and digitally coded electrical signals.

7. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 3, General Industrial Equipment, ECCN 1357A is revised to read as follows:

1357A Equipment for the production of fibers covered by ECCN 1763A, or their composites, and specially designed components and accessories therefor.

Controls for ECCN 1357A

Unit: Report in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1000 for Country Groups T and V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE

Reason for Control: National security.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 1357A:

(a) Filament winding machines of which the motions for positioning, wrapping and winding fibers are coordinated and programmed in three or more axes, specially designed to fabricate composite structures or laminates from fibrous and filamentary materials; coordinating and programming controls therefor;

(b) Tape-laying machines of which the motions for positioning and laying tape and sheets are coordinated and programmed in two or more axes, specially designed for the manufacture of composite airframes and missile structures;

(c) Interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers to fabricate composite structures, *except* textile machinery which has not been modified for the above end-uses;

(d) Specially designed or adapted equipment for the production of fibrous and filamentary materials covered by paragraphs (a) and (b) above, as follows:

(1) Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, or polycarbosilane) including special provision to strain the fiber during heating;

(2) Equipment for the vapor deposition of elements or compounds on heated filamentary substrates; and

(3) Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

(e) Specially designed or adapted equipment for special fiber surface treatment or for producing prepregs and preforms covered by ECCN 1763A(c);

Notes.—1. Equipment covered by paragraph (e) above includes, but is not limited to, rollers, tension stretchers, coating equipment, cutting equipment and clicker dies.

2. Specially designed or adapted components and accessories for the machines covered by this ECCN 1357A include, but are not limited to, moulds, mandrels, dies, fixtures and tooling for the preform pressing, curing, casting, sintering or bonding of composite structures or laminates covered by paragraph (d) of the "LIST" in ECCN 1763A.

3. See section 379.4(d) for technical data requiring a validated license for export to all destinations except Canada.

8. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 3, General Industrial Equipment, ECCN 1370A is amended by revising the heading, the introductory text of paragraph (a) and paragraph (a)(5), and paragraphs (b), (c) and (d) to read as follows:

§ 1370A Machine-tools for generating optical quality surfaces, specially designed components and accessories therefor, and specially designed software.

Controls for ECCN 1370A

* * * * *

List of Commodities Controlled by ECCN 1370A

(a) Turning machines using a single point cutting tool and having all of the following characteristics:

(1) ***

(2) ***

(3) ***

(4) ***

(5) Slide perpendicularity less than 0.001 mm per 300 mm of travel, TIR (peak-to-peak);

(b) Fly cutting machines having both of the following characteristics:

(1) Spindle run-out (radial and axial) less than 0.0004 mm TIR (peak-to-peak);

(2) Angular deviation of slide movement (yaw, pitch and roll) less (finer) than 2 seconds of arc (peak-to-peak) over full travel;

(c) Specially designed components, as follows:

(1) Spindle assemblies consisting of spindles and bearings as a minimal assembly, except those assemblies with axial and radial axis motion measured along the spindle axis in one revolution of the spindle equal to or greater (coarser) than 0.0008 mm TIR (peak-to-peak);

(2) Linear induction motors used as drives for slides, having all of the following characteristics:

(i) Stroke greater than 200 mm;

(ii) Nominal force rating greater than 45 N; and

(iii) Minimum controlled incremental movement less than 0.001 mm; or

(d) Specially designed accessories, *i.e.*, single point diamond cutting tool inserts having all of the following characteristics:

(1) Flawless and chipfree cutting edge when magnified 400 times in any direction;

(2) Cutting radius between 0.1 and 5 mm; and

(3) Cutting radius out-of-roundness less than 0.002 mm TIR (peak-to-peak).

Technical Note.—Machines will be evaluated under the conditions yielding the most accurate values, including but not limited to, the incorporation of control systems that permit mechanical, electronic and software compensation.

9. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 3, General Industrial

Equipment, ECCN 1371A is amended by removing the phrase "(ABEC 5 in the case of hollow bearings)" from paragraph (b) of the "Definitive List of Commodities"; by redesignating paragraph (d) of the "Definitive List" as (e), and adding a new (d); and adding a paragraph (d) to the *Commodity Interpretation*, reading as follows:

1371A Anti-friction bearings.

Controls for ECCN 1371A

* * * * *

Definitive List of Commodities Controlled by ECCN 1371A

* * * * *

(d) Gas-lubricated foil bearings;

(e) Bearing parts usable only for bearings controlled by this ECCN 1371A, as follows: Outer rings, inner rings, retainers, balls, rollers, and subassemblies.

* * * * *

Commodity Interpretation

* * * * *

(d) Ceramic bearings controlled by ECCN 1371A consist of bearing elements (*e.g.*, balls, rollers and/or races) made from ceramic or hybrid (ceramic plus metal) materials and designed to operate at temperatures over 150°C and at DN values equal to or greater than 1.5×10^6.

Note.—DN is defined as the product of the bearing bore diameter in millimeters (mm) and the bearing rotational velocity in revolutions per minute (r.p.m.)

Note.—Hollow bearings are *not* controlled by this ECCN 1371A.

* * * * *

10. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 4, Transportation Equipment, ECCN 2404A, "Rockets and missiles, guided or unguided," is removed.

11. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 4, Transportation Equipment, ECCN 2406A is amended by revising the heading; by removing the "List of Vehicles Controlled by ECCN 2406A" with sub-paragraphs (a) through (d); by revising the word "parts" to read "components" wherever it appears in paragraph (b) and its title of the *Commodity Interpretation;* by designating the sub-paragraph under (b) as (1), and by adding a paragraph (b)(2). As amended, paragraph (b) under *Commodity Interpretation* reads as follows:

2406A Vehicles specially designed for military purposes and specially designed components therefor, excluding vehicles listed in Supp. No. 2 to Part 370.

* * * * *

Commodity Interpretation:

* * * * *

(b) Components for military automotive vehicles.

(1) Functional components are defined as those components making up the power train of the vehicles, the electrical system, the cooling system, the fuel system, and the control system (brake and steering mechanism), the front and rear axle assemblies including the wheels, the chassis frame, springs and shock absorbers. (Components specifically designed for military automotive vehicles on the Munitions List are licensed for export by the U.S. Department of State.)

(2) The following are examples of specially designed components for specially designed military vehicles:

(i) Pneumatic tire casings of a kind specially constructed to be bullet-proof or to run when deflated (excluding types for agricultural and garden tractors and farm implements); and

(ii) Engines for the propulsion of the vehicles described in this ECCN 2406A specially designed or essentially modified for military use, including specially designed components therefor.

12. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 5, Electronics and Precision Instruments, ECCN 1532A is amended by revising the heading, the title of the "List", and the Advisory Note to read as follows:

1532A Precision linear and angular measuring systems, and specially designed components and software therefor.

Controls for ECCN 1532A

* * * * *

List of Precision Linear and Angular Measuring Systems, and Specially Designed Components and Software therefor Controlled by ECCN 1532A

* * * * *

Advisory Note.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QSWY of equipment defined in paragraph (a) and (d) of the "List" in this ECCN 1532A to civil end-users not engaged in aerospace activities.

13. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 5, Electronics and Precision Instruments, ECCN 1564A is amended by revising paragraph (a) of the "List of Electronic Component Assemblies, Subassemblies, Printed Circuit Boards, and Microcircuits Controlled by ECCN 1564A" to read as follows:

1564A Economic component assemblies, sub-assemblies, printed circuit boards, and microcircuits.

* * * * *

List of Electronic Component Assemblies, sub-assemblies, printed circuit boards, and microcircuits controlled by ECCN 1564A

(a) Substrates for printed circuits including ceramic substrates and coated metal substrates (single-sided, double-sided or multilayer), and thin copper foils therefor, *except:*

(1) Printed circuit boards manufactured from any of the following materials:

(i) Paper base phenolics;

(ii) Glass cloth melamine;

(iii) Glass epoxy resin uncoated or coated with copper foil of a thickness of 18 micrometers (0.00071 inch) or greater;

(iv) Polyethylene terephthalate; or

(v) Any other insulating material having all of the following characteristics;

(A) A maximum continuous rated operating temperature not exceeding 150°C;

(B) A dissipation factor equal to or greater than 0.009 at 1 MHz;

(C) A relative dielectric constant equal to or less than 6 at 1 MHz; and

(D) A coefficient of expansion equal to or greater than 10^{-5} per 0°C over a temperature range of 0 to 120°C;

(2) Ceramic substrates having not more than two layers of interconnection, including the ground plane; and

(3) Copper foil having a thickness of 18 micrometers (0.00071 inch) or greater.

14. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 1715A is amended by removing paragraphs (c)(4) and (5) from the "List of Boron Controlled by ECCN 1715A," and revising (c)(1), (2), and (3) to read as follows:

1715A Boron, as described in this entry.

* * * * *

List of Boron Controlled by ECCN 1715A

* * * * *

(c) * * *

(1) Non-ceramic boron-mitrogen compounds (*e.g.*, borozanes, borozines and boropyrazoyls);

(2) Boron hydrides (*e.g.*, boranes), *except* sodium boron hydride, potassium boron hydride, monoborane, diborane and triborane;

(3) Organoboron compounds, including metalloorganoboron compounds.

15. In the Commodity Control List (Supplement No. 1 to section 399.1),

Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, a new entry 1733A is added (in numerical order, disregarding the first digit) reading as follows:

1733A Base materials, non-composite ceramic materials, ceramic-ceramic composite materials and precursor materials for the manufacture of high-temperature fine technical ceramic products.

Controls for ECCN 1733A

Unit: Report in "lbs."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: CM.

Reason for Control: National security.

Special Licenses Available: See Part 373.

List of base materials, non-composite ceramic materials, ceramic-ceramic composite materials, and precursor materials for the manufacture of high temperature fine technical ceramic products controlled by ECCN 1733A:

(a) Base materials, *i.e.*, "high purity" "fine powders with uniform particle-size distribution," of the following description:

(1) Single or complex non-composite oxides, borides, carbides or nitrides of silicon, aluminium, boron, zirconium or tantalum, *except:*

(i) Single oxides of silicon, boron, aluminum or tantalum;

(ii) Single or complex borides of silicon; and

(iii) Single or complex borides or carbides of aluminium;

(b) Non-composite ceramic materials, in crude or semi-fabricated form, having compositions of the base materials covered by paragraph (a) above;

(c) Granular or fibrous ceramic-ceramic composite materials, containing finely dispersed particles or phases or any non-metallic fibrous or whiskerlike materials, whether externally introduced or grown in situ during processing, where the following materials form the host matrix:

(1) All oxides, including glasses;

(2) Carbides or nitrides of silicon or boron;

(3) Borides, carbides or nitrides of zirconium, hafnium tantalum;

(4) Carbon; or

(5) Any combination of the materials enumerated in (1) to

(4) above;

(d) Precursor materials, *i.e.* special-purpose polymeric or metallo-organic materials for producing any phase or phases of the materials covered by paragraphs (b) or (c) above, as follows:

(1) Polycarbosilanes and polydiorganosilanes (for producing silicon carbide);

(2) Polysilazanes (for producing silicon nitride); or

(3) Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen components).

Notes.—1. For compounds of thorium or hafnium, see section 370.10(e) and ECCN 3608A, respectively.

2. For compounds of zirconium, see ECCN 3604A.

3. For compounds of tantalum, see ECCN 1760A.

Technical Notes.—1. For the purpose of this ECCN 1733A, "high purity" is defined as a total metallic impurity, excluding intentional or desired additions, of less than:

(a) 1,000 ppm for single oxides or single carbides;

(b) 5,000 ppm for complex compounds, single borides or single nitrides.

2. "Fine powders with uniform particle size distribution" are defined as powders with at least 90% of the particles being less than or equal to 10 micrometers, and the average particle size being less than or equal to 5 micrometers. (For zirconia, these limits are 5 micrometers and 1 micrometer, respectively.)

16. In the Commodity Control List (Supplement No. 1 to § 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 1746A is amended by removing paragraph (p) "polysilazanes"; and redesignating paragraphs (q), (r), (s) and (t) as (p), (q), (r) and (s) in the "List of Polymeric Substances and Manufactures Thereof Controlled by ECCN 1746A."

17. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals Metalloids, Petroleum Products and Related Materials, ECCN 1757A is amended by revising the "List of Compounds and Materials Controlled by ECCN 1757A" and the Advisory Notes to read as follows:

1757A Compounds and materials, as described in this entry.

* * * * *

List of Compounds and Materials Controlled by ECCN 1757A

Compounds and materials, as follows:

(a) Monocrystalline silicon, except metallurgical-grade monocrystalline silicon having a purity not better than 99.97%;

(b) Gallium of a purity equal to or greater than 99.9999% and gallium III/V compounds of any purity level, *except:*

(1) Gallium phosphide; or

(2) Other gallium III/V compounds having a dislocation density (etch pit density-EPD) greater than 500,000 per cm^2;

(c) Indium and indium compounds containing more than 1% indium;

(d) Hetero-epitaxial materials consisting of a monocrystalline insulating substrate epitaxially layered with silicon, compounds of gallium or compounds of indium;

(e) Elemental Cd and Te of purity levels equal to or greater than 99.999%, and CdTe compounds of a purity level equal to or greater than 99.99% or single crystals of CdTe of any purity level;

(f) Polycrystalline silicon, *except* polycrystalline silicon having a purity not better than 99.99% and containing at least 0.5 part in 10^6 each of iron, carbon, boron and phosphorus, plus other impurities;

(g) Compounds used in the synthesis of the materials covered by paragraph (f) above, having a purity level of 99.5% or better, including but not limited to SiH_4, $SiClH_3$, $SiCl_4$, $SiCl_3$, and $SiCl_2H_2$;

(h) Single crystal sapphire substrates;

(i) B_2O_3 with a purity of 99.9% or greater, containing 1,000 parts per million of H_2O) or less, in powder or cast form;

(j) Monocrystalline germanium with a resistivity greater than 100 ohm cm.;

(k) Resist materials with any of the following characteristics:

(1) Sensitive to X-rays or deep ultraviolet light (wavelength less than 436 nanometers) with a sensitivity of 500 millijoules/cm^2 or better;

(2) Sensitive to electrons or ion beams with a sensitivity of 100 microcoulombs/cm^2 or better;

(3) Specified or optimized for dry development; and

(l) Single-crystal forms of bismuth germanium oxide having piezoelectric properties and single-crystal forms of lithium niobate, of lithium tantalate and or aluminium phosphate.

Note.—The purity level of a mixture containing a silicon-bearing compound shall be taken to be the same as that of the silicon-bearing compound.

Advisory Notes.—1. Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of monocrystalline silicon having a purity not better than 99.999% and containing at least 0.5 part in 10^6 each of iron, carbon, boron and phosphorus, plus other impurities.

2. Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of N type 1–1–1 silicon wafers or slices with a resistivity of 50 ohm cm. or less, based on volume of frequency of shipments.

3. Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of

China of gallium III/V compounds intended for light-emitting diodes and having all of the following characteristics:

(a) Dislocation density (etch pit density-EPD) greater than 10,000 per cm^2;

(b) Carrier concentration greater than 1×10^{15} per cm^3; and

(c) Carrier mobility less than 3,000 $cm^2/V.sec$.

18. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 4757B, "Single crystal sapphire substrates," is removed.

19. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 1760A is amended by adding a NOTE after the "List of Forms of Compounds of Tantalum and Niobium (Columbium) Controlled by ECCN 1760A" reading as follows:

1760A Compounds of tantalum and niobium (columbium).

* * * * *

List of Forms of Compounds of Tantalum and Niobium (Columbium) Controlled by ECCN 1760A

* * * * *

Note.—This ECCN 1760A does *not* cover single-crystal lithium niobate and single-crystal lithium tantalate. See paragraph (1) of the List of Compounds and Materials in ECCN 1757A.

20. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 1763A is amended by revising the heading, the "List of Fibrous and Filamentary Materials," the Technical Notes and Advisory Notes to read as follows:

1763A "Fibrous and filamentary materials" that may be used in composite structures or laminates, and such composite structures and laminates.

* * * * *

List of Materials Controlled by ECCN 1763A

(a) "Fibrous and filamentary materials" having both of the following characteristics:

(1) "Specific modulus" greater than 3.18×10^6 m (1.25×10^8 in.);

(2) "Specific tensile strength" greater than 7.62×10^4 m (3×10^6 in.);

(b) "Fibrous and filamentary materials" having both of the following characteristics:

(1) "Specific modulus" greater than 2.54×10^6m (1×10^8 in.);

(2) Melting or sublimation point higher than 1,922 K (1,649°C) (3,000°F) in an inert environment, *except*:

(i) Carbon fibers having a "specific modulus" less than 5.08×10^6 m (2×10^8 in.) and a "specific tensile strength" less than 2.54×10^4 m (1×10^6 in.);

(ii) Multi-phase polycrystalline alumina fibers having a "specific modulus" less than 3.56×10^6 m (1.4×10^8 in.);

(c) Resin-impregnated fibers (prepregs) and metal-coated fibers (preforms) made with materials covered by paragraphs (a) or (b) above;

(d) Composite structures, laminates and manufactures thereof made either with an organic matrix or a metal matrix utilizing materials covered by paragraphs (a) or (b) above.

Technical Notes.—1. "Fibrous and filamentary materials" includes:

(a) Continuous monofilaments,

(b) Continuous yarns and rovings,

(c) Tapes, woven fabrics and random mats,

(d) Chopper fibers, staple fibers and coherent fiber blanket, and

(e) Whiskers, either monocrystalline or polycrystalline, of any length.

2. "Specific modulus" is defined as Young's modulus in N/m^2 (lbs force/sq. in.) divided by specific weight in N/m^3 (lbs force/cu. in.), measured at a temperature of (296±2) K ((23±2)°C) ((73.4±3.6)°F) and a relative humidity of (50±5)%.

3. "Specific tensile strength" is defined as ultimate tensile strength in N/m^2 (lbs force/sq. in.) divided by specific weight in N/m^3 (lbs force/cu. in.) measured at a temperature of (296±2) K ((23±2)°C) ((73.4±3.6)°F) and a relative humidity of (50±5)%.

Advisory Note.—Licenses are likely to be approved for export to Country Groups QWY and the People's Republic of China for bona fide civil end-uses of carbon fibers covered by paragraphs (a) and (b) above and having both of the following characteristics:

(a) "Specific modulus" less than 11.43×10^6m (4.5×10^8 in.); and

(b) "Specific tensile strength" less than 10.16×10^4m (4×10^6 in.).

21. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 4799B is amended by revising the heading to read as follows:

4799B Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN), except in individual containers with a net weight of 20 grams or less; smoke bombs; non-irritant smoke flares, canisters, grenades and charges; other pyrotechnic articles having dual military and commercial use; and fingerprinting powders, dyes and inks.

* * * * *

22. In the Commodity Control List (Supplement No. 1 to section 399.1), Commodity Group 8, Rubber and Rubber Products, ECCN 1801A is amended by removing paragraph (a) from the "List of Types of Synthetic Rubber Controlled by ECCN 1801A," by redesignating paragraphs (b) and (c) as (a) and (b), and by removing the phrase "and polyisobutylene" from paragraph (d) and redesignating (d) as (c).

Authority: Secs. 5, 13 and 15, Pub. L. 96-72, 93 Stat. 503, as amended 50 U.S.C. app. 2401 *et seq.*, Executive Order No. 12214 (45 FR 29783, May 6, 1980); Executive Order No. 12451 of December 20, 1983 (48 FR 56568, December 22, 1983).

Dated: March 26, 1984.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 84-8438 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 145, 146 and 147

Schedules of Fees for Requests for Commisson Records, Reports of the Commission, and Transcripts of Commission Meetings; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; corrections.

SUMMARY: This document corrects certain authority citations and errors contained in final regulations implementing schedules of fees for requests for Commission records, reports, and transcripts which were published October 11, 1983 (48 FR 46010). In addition, this document redesignates certain sections of Part 145. The purpose of the redesignations is to make citations to appendices more consistent throughout the Commission's regulations.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Stacy Dean, Counsel to the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-7360.

List of Subjects

17 CFR Part 145

Freedom of Information, Commission records and information, Fees.

17 CFR Part 146

Privacy records maintained on individuals, Fees.

17 CFR Part 147

Sunshine Act, Open Commission meetings, Fees for transcripts and tapes.

1. Accordingly, the Commission makes the following correction: In FR Doc. 83-27403 appearing on page 46010 in the **Federal Register** issue of October 11, 1983, the first full paragraph in the middle column on page 46011 is revised to read as follows: "In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, 7 U.S.C. 4a(j) and in 7 U.S.C. 16a as amended by Pub. L. 97-444, 96 Stat. 2294 (1983), and in 5 U.S.C. 552, 5 U.S.C. 552a and 5 U.S.C. 552b, the Commission hereby amends Parts 145, 146 and 147 of Chapter 1 of Title 17 of the Code of Federal Regulations as follows:".

PART 145—COMMISSION RECORDS AND INFORMATION

2. Sections 145.9a 145.9b and 145.9c are redesignated as Appendix A, Appendix B and Appendix C to Part 145.

3. Headings of Appendix A, Appendix B and Appendix C to Part 145 are revised as follows:

Appendix A—Compilation of Commission Records Available to the Public

Appendix B—Schedule of Fees

Appendix C—Schedule of Fees for Reports

4. Section 145.3 is amended by removing the reference to "(17 CFR Part 145a)."

5. In § 145.7, paragraph (e) is amended by removing the reference to "(§ 145b)."

6. Section 145.8 is amended by removing the reference to "(17 CFR Part 145b)."

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

7. In FR Doc. 83-27403 appearing on page 46010 in the **Federal Register** issue of October 11, 1983, item 4. under Part 146—RECORDS MAINTAINED ON INDIVIDUALS is corrected by changing "4. In Part 146, Appendix A is revised to read as follows:" to "4. In Part 146, subsections a. and b. of Appendix A are revised to read as follows:"

PART 147—OPEN COMMISSION MEETINGS

8. In § 147.9, paragraph (a) is amended by removing the reference to "17 CFR 145.9b" and inserting in lieu thereof "17 CFR Part 145, Appendix B."

* * * * *

Parts 145, 146 and 147 of Chapter 1 of Title 17 of the Code of Federal Regulations are amended pursuant to the authority contained in the Commodity Exchange Act and, in particular, 7 U.S.C. 4a(j) and in 7 U.S.C. 16a as amended by Pub. L. 97-444, 96 Stat. 2294 (1983), and in 5 U.S.C. 552, 5 U.S.C. 552a and 5 U.S.C. 552b.

Issued on March 23, 1984 in Washington, D.C.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 84-8301 Filed 3-29-84; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 202

[Release Nos. 33-6521, 34-20788, 35-23260, 39-896, IC-13841, IA-904]

Organization and Address Changes

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules relating to organization and address changes. These changes are being made to reflect current functions and names of Commission offices and to update Commission addresses and telephone numbers.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: George G. Kundahl, Executive Director, SEC, 450 Fifth Street, NW., Washington, D.C. 20549-6004 (202) 272-2700.

SUPPLEMENTARY INFORMATION: The Commission finds, in accordance with the Administrative Procedure Act ("APA") (15 U.S.C. 533(b)(3)(B)) that this amendment relates solely to agency organization, procedures, or practices and that notice and procedures pursuant to the APA are therefore not necessary and that such amendment shall be adopted, effective immediately.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

Text of Amendments

Part 200 of 17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION: CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. By revising the fourth sentence of the introductory text of § 200.1 and by revising paragraph (i) to read as follows:

§ 200.1 General statement and statutory authority.

* * * In addition, under the Bankruptcy Code, the Commission is a statutory party in cases arising under Chapters 9 and 11. * * *

* * * * *

(i) Protection of the interests of public investors involved in bankruptcy reorganization cases and in bankruptcy cases involving the adjustment of debts of a municipality.

* * * * *

2. By revising paragraph (g) under § 200.2, as follows:

§ 200.2 Statutory functions.

* * * * *

(g) *Chapters 9 and 11 of the Bankruptcy Code.* Chapters 9 and 11 of the Bankruptcy Code provides for Commission participation as a statutory party in reorganization cases in cases involving a judgment of debts of a municipality administered in the federal courts. Under 1109(a) of the Bankruptcy Code, the Commission "may raise and may appear and be heard on any issue in the case . . .".

3. By revising the addresses for Regions 5, 6, and 7 in paragraph (b) of § 200.11, as follows:

§ 200.11 Headquarters Office—Regional Office relationship.

* * * * *

(b) * * *

Region 5. Oklahoma, Arkansas, Texas, that part of Louisiana lying west of the Atchafalaya River, and Kansas—Regional Administrator, 8th Floor, 411 West 7th Street, Fort Worth, Texas 76102.

Region 6. Wyoming, Colorado, New Mexico, Nebraska, North Dakota, South Dakota, Utah—Regional Administrator, Two Park Central, Suite 700, 410 Seventeenth Street, Denver, Colorado 80202.

Region 7. California, Nevada, Arizona, Hawaii, Guam—Regional Administrator, 5757 Wilshire Boulevard, Suite 500 East, Los Angeles, California 90036-3648.

* * * * *

4. By revising the last sentence of the existing text to read as follows, by redesignating the existing text as introductory text, by adding paragraphs (a) through (d), and by adding a flush paragraph at the end of the section to read as follows:

§ 200.13 Executive Director.

* * * He or she also provides executive direction to and exercise administrative control over the Office of Consumer Affairs and Information Services, Office of Information Systems Management, Office of Personnel, Office of Public Affairs, and the Office of Applications and Reports Services. In addition, the Executive Director is responsible for the full range of program administration functions for the

purposes of implementing the following statutes, regulations, and Executive Orders, as well as others designated by the Chairman.

(a) Pub. L. 96–511—The Paperwork Reduction Program.

(b) 16 U.S.C. 644—The Small and Disadvantaged Business Utilization Program.

(c) Government Printing and Binding Regulations, U.S. Congress Joint Committee on Printing (1977).

(d) Executive Order 11807 and 29 CFR 1960—The Occupational Safety and Health Program.

These functions include, but are not limited to, the appointment of program officials; the review and approval of program policies, procedures and regulations; the authorization and transmittal of required reports; and the assurance of appropriate resource requirements to implement the programs.

(15 U.S.C. 78d–1, 78d–2)

5. By revising the section heading of § 200.20a to read as follows, by amending the introductory paragraph by changing "The Director of the Division of Corporate Regulation" to read "The Director of the Office of Public Utility Regulation", by removing paragraph (a) and the introductory text of paragraph (b), and by redesignating paragraphs (b)(1) through (b)(3) as paragraphs (a) through (c).

§ 200.20a Director of the Office of Public Utility Regulation.

* * * * *

6. By revising the section heading of § 200.20c to read as follows, by amending the first sentence by changing "The Office of Reports and Information Services" to read "The Office of Applications and Reports Services" and by removing the last sentence.

§ 200.20c Office of Applications and Reports Services.

* * * * *

7. By revising the second sentence of § 200.21 to read as follows:

§ 200.21 General Counsel.

* * * He or she is responsible for the representation of the Commission in judicial proceedings in which it is involved as a party or as amicus curiae, for directing and supervising all civil litigation involving the Commission in the United States District Courts, for directing and supervising the Commission's responsibilities under the Bankruptcy Code and all related litigation, and for representing the Commission in all cases in appellate courts.

8. By revising the section heading § 200.21a to read as follows and by amending paragraph (a) by changing "The Counsel for Professional Responsibility" to read "The Ethics Counsel".

§ 200.21a Ethics Counsel.

* * * * *

9. By adding a new § 200.23a, as follows:

§ 200.23a Office of the Chief Economist.

The Office of the Chief Economist is responsible to the Commission for providing an objective economic perspective to understand and evaluate the economic dimension of the agency's regulatory oversight. The Chief Economist provides the Commission with economic analyses of proposed rule changes, current or proposed policies, and capital market topics. Advice is designed to address such questions as whether proposed rules or policies accomplish their objectives, what benefits are produced by proposed rules or policies, and what costs accompany those benefits. Upon request, the Chief Economist provides professional advice and technical support to operating divisions.

10. By redesignating § 200.23 as § 200.23b and revising it to read as follows:

§ 200.23b Directorate of Economic and Policy Analysis.

The Directorate of Economic and Policy Analysis is responsible to the Commission, in coordination with its other divisions and offices, for the continuing analysis of the economic effects of existing and proposed Commission regulations and developments in the securities industry and markets. Based on its analysis, the Directorate is responsible for recommending to the Commission the adoption or modification or programs, policies and regulations under the statutes administered by the Commission. The Directorate also has the responsibility for coordinating and, together with the Office of the General Counsel, ensuring compliance with the requirements of the Regulatory Flexibility Act.

(15 U.S.C. 78d–1, 8d–2)

11. By revising § 200.24, as follows:

§ 200.24 Office of the Comptroller.

This Office, under the direction of the Comptroller, is responsible to the Executive Director, Chairman and Commission for the internal financial management and programming functions of the Securities and Exchange Commission. These functions include: budgeting, accounting, payroll and adminstrative audit. The Comptroller, and his designees, serves as liaison to the Commission before the Office of Management and Budget and Congressional Appropriations Committees on appropriation matters, and the Treasury Department and the General Accounting Office on financial and progamming matters.

12. By revising the section heading of § 200.24a to read as follows, by amending the first sentence by changing "The Office of Consumer Affairs" to read "The Office of Consumer Affairs and Information Services", and by adding a new sentence to read as follows:

§ 200.24a Office of Consumer Affairs and Information Services.

* * * This Office is also charged with managing the Commission's public reference facilities and with processing general inquiries under the Freedom of Information Act (Pub. L. 90–23, 81 Stat. 54) and the Privacy Act (Pub. L. 93–579, 88 Stat. 1896).

(15 U.S.C. 78d–1, 78d–2)

13. By revising the section heading of § 200.26a to read as follows, by amending the first phrase by changing "The Office of Data Processing" to read "The Office of Information Systems Management", by removing the word "and" before the last phrase, and by adding a new last phrase to read as follows:

§ 200.26a Office of Information Systems Management.

* * * and, development of microcomputer and office automation capabilities and support within the Commission.

14. By amending § 200.27 by removing the parenthetical phrase in the first sentence and by revising the last sentence to read as follows:

§ 200.27 The Regional Administrators.

* * * In addition, the New York Regional Administrator is responsible for the participation in cases under chapters 9 and 11 of the Bankruptcy Code in the New York and Boston Regions, and in the State of Pennsylvania; the Atlanta Regional Administrator in the Atlanta and Washington Regions, except the State of Pennsylvania; the Chicago Regional Administrator in Chicago, Fort Worth and Denver regions, except for the State of Utah; and the Los Angeles Regional Administrator in the Los Angeles and Seattle regions, plus the State of Utah.

15. By revising the section heading of § 200.30–2 to read as follows, by amending the introductory text by changing "Director of the Division of Corporate Regulation" to read "Director of the Office of Public Utility Regulation", and by revising paragraphs (a)(2), (a)(5) and (c) to read as follows:

§ 200.30–2 Delegation of Authority to Director of Office of Public Utility Regulation.

* * * * *

(a) * * *

* * * * *

(2) To authorize the issuance of orders where a notice has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the matter involved presents no issue that the director believes has not previously been settled by the Commission and it does not appear to the director to be necessary in the public interest or the interest of investors or consumers that a hearing be held; section 20(c) of the Act (15 U.S.C. 79t(c));

* * * * *

(5) To issue notices and grant applications by a holding company or any subsidiary company thereof, under section 3(c) of the Act (15 U.S.C. 79c(c)), for revocation of previously granted exemptions from registration, unless, upon examination, the application appears to the director to present issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest of investors or consumers requires that a hearing be held;

* * * * *

(c) Notwithstanding anything in the foregoing in any case in which the Director of the Office of Public Utility Regulation believes it appropriate he may submit the matter to the Commission.

16. By revising the section heading of § 200.30–11 to read as follows, by amending the introductory text by changing "Director of the Office of Reports and Information Services" to read "Director of the Office of Applications and Reports Services" by removing paragraph (d), redesignating paragraph (e) as (d), and by amending newly designated (d) by changing "Director of the Office of Reports and Information Services" to read "Director of the Office of Applications and Reports Services".

§ 200.30–11 Delegation of authority to Director, Office of Applications and Reports Services.

* * * * *

17. By revising § 200.30–12, as follows:

§ 200.30–12 Delegation of authority to Director, Office of Consumer Affairs and Information Services.

Pursuant to the provisions of Pub. L. 87–592; 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates the following functions to the Director of the Office of Consumer Affairs and Information Services to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Freedom of Information Act, 5 U.S.C. 552 and the Privacy Act, 5 U.S.C. 552a:

(1) To waive or reduce fees for searching and/or duplicating requested records under the Freedom of Information Act whenever it shall be determined that waiver or reduction of fee is in the public interest;

(2) To waive or reduce fees for reproduction under the Privacy Act whenever it shall be determined that good cause therefor exists.

(3) Notwithstanding anything in the foregoing, in any case in which the Director of the Office of Consumer Affairs and Information Services believes it appropriate, he or she may submit the matter to the Commission.

18. By amending paragraph (c)(1)(iii) of § 200.80 in Subpart D to revise the address of the Denver, Fort Worth and Los Angeles Regional Offices, by revising the office hours for the Seattle Regional Office, and by revising the telephone number of the Washington Regional Office, by amending paragraph (d)(7)(i) to add a sentence following the second sentence, as follows:

§ 200.80 Commission records and information.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

Chicago Regional Office: * * * 315–353–7390.

Denver Regional Office, Two Park Central, Suite 700, 410 Seventeenth Street, Denver, Colorado 80202 (303–837–2071). Office Hours—8:00 a.m. to 4:30 p.m. m.s.t.

Fort Worth Regional Office, Eighth Floor, 411 West Seventh Street, Fort Worth, Texas 76102 (817–334–3821). Office Hours—8:30 a.m. to 5:00 p.m. c.s.t.

Los Angeles Regional Office, 5757 Wilshire Boulevard, Suite 500 East, Los Angeles, California 90036–3648 (213–473–3098). Office Hours—8:30 a.m. to 5:00 p.m. p.s.t.

* * * * *

Seattle Regional Office: * * * 8:00 a.m. to 4:30 p.m. p.s.t.

Washington Regional Office: * * * 703–235–3701.

* * * * *

(d) * * *

(7) * * *

(i) * * * Some records have been disposed of in accordance with the Commission's Records Control Schedule (17 CFR 200.80(f)). * * *

* * * * *

§ 200.80b [Amended]

19. By amending paragraph (b) in § 200.80b to change "*Statistical Bulletin*" to "SEC Monthly Statistical Review".

§ 200.80c [Amended]

20. By amending item 3 under paragraph (b) in § 200.80c to change "Statistical Bulletin" to "SEC Monthly Statistical Review".

§ 200.310 [Amended]

21. By amending paragraph (b) of § 200.310 by changing "Director of the Office of Reports and Information Services" to read "Director of the Office of Consumer Affairs and Information Services".

22. By adding paragraph (a) to § 200.503 to read as follows:

§ 200.503 Senior agency official.

* * * * *

(a) The Deputy Executive Director is the Senior Agency Official for purposes of the Paperwork Reduction Act of 1980. In this capacity, the Deputy Executive Director will carry out all responsibilities required by the Act (Pub. L. 96–511, 3506(b)), as well as serving as "Agency Clearance Officer" for purposes of the publication of notices in the Federal Register.

PART 202—INFORMAL AND OTHER PROCEDURES

§ 202.3 [Amended]

23. By amending paragraph (b) of § 202.3 by changing "Office of Reports and Information Services" to read "Office of Applications and Reports Services" in the first and eighth sentences.

(11 U.S.C. 901, 1109(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

March 26, 1984.

[FR Doc. 84–8472 Filed 3–29–84; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Part 230

[Release No. 33-6518 File No. S7-998]

Options Material Not Deemed a Prospectus

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to Rule 134a under the Securities Act of 1933 relating to options material not deemed a prospectus. The amendments expand the scope of the rule to permit offerors of options products to include certain explanatory information in advertisements of those products and to modify certain of the conditions to the rule's availability. The purpose of the rule amendments is to permit a fuller explication of the nature of newly developed options products.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ann Glickman (202) 272-2573, Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Rule 134a [17 CFR 230.134a] under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq. (1976 & Supp. V 1981) as amended by Bus Regulatory Reform Act of 1982, and Pub. L. 97-261, section 19(d), 96 Stat. 1121 (1982)) was adopted in September 1982 as a part of a comprehensive new registration framework for standardized options (Release No. 33-6426 (September 16, 1982) (47 FR 41950) September 23, 1982). As adopted, the rule was intended to permit the dissemination of educational or instructional materials about standardized options without such communications being deemed a prospectus. Since its adoption, however, materials distributed in reliance upon the rule have included not only educational materials designed to explain to investors the nature of options trading, but advertisements promoting particular options products. Because of the rapidly evolving nature of options trading and the number of new and complex options products being offered to the public, and in recognition of the uniqueness of options trading and options products, the Commission proposed amendments to Rule 134a to formalize the availability of the rule for such advertisements (Release No. 33-6494 (October 27, 1983) (48 FR 51328) November 8, 1983).

As proposed, the amendments made clear that Rule 134a would apply to advertisements as well as other written materials, provided that all of its conditions are satisfied. The proposed amendments also sought to modify the conditions of the rule to permit the identification of certain options classes, such as broad-based stock index options and options on exempt securities, in Rule 134a communications.

II. Comments and Discussion

The only persons commenting on the proposal were three stock exchanges,[1] all of which supported the proposals but suggested further amendments or interpretations.

The commentators suggested that the Commission make clear that the amendments are not intended to circumscribe current industry advertising practices or to preclude industry advertising that satisfies the spirit, if not the letter, of Rule 134 (17 CFR 203.134). The Commission wishes to make clear that in amending Rule 134a it took into account the practices of the options exchanges, and that it was the Commission's intent that the amendments define the limits of appropriate options advertising. The Commission is of the view that options offerors cannot exceed the scope of Rule 134a through expansive interpretations of Rule 134.[2] Offerors who rely on Rule 134 must comply with all of its provisions, not simply their reading of its "spirit".[3]

The Commission has made three revisions to Rule 134a suggested by the commentators. First, the commentators suggested that the Commission delete from Rule 134a the requirement that advertisements contain a legend indicating the name and address of the person from whom a prospectus can be obtained, because the required legend detracts from the effectiveness and readibility of advertisements. Taking into account the specialized registration framework applicable to options trading,[4] including the fact that Rule 153(b) (17 CFR 230.153b) provides that the prospectus delivery requirements of the Securities Act is satisfied by the delivery of copies of an options prospectus to the options market, and to customers upon their request, the Commission believes it is unnecessary to continue Rule 134a's prospectus legend requirement and has modified the rule accordingly. As amended, the rule continues to require the identification of the source of an options disclosure document.

Secondly, the Commission has revised the rule to permit identification of the securities comprising an index.[5] The Commission believes that this is consistent with the purpose of the proposed revisions to the rule.

Finally, the Commission has amended Rule 134a to permit identification of foreign currency options ("fco's") in advertising materials. The Commission agrees with the commentators' view that fco's have features and risks that can be appreciated only if it is clear on which foreign currencies options may be traded. Accordingly, the amendments have been revised to make clear that particular currencies may be identified.

The Commission is making the amended rule available for options offerors immediately upon publication in the **Federal Register**. In accordance with 5 U.S.C. 553(d), the amendments are designed to relieve certain restrictions on options offerors, and the Commission is of the view that it is appropriate to permit such offerors to utilize the amendments promptly.

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[1] The Commission received submissions from the American Stock Exchange, the Chicago Board Options Exchange and the Philadelphia Stock Exchange. Copies of the comment letters are available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549 (*see* File No. S7-998).

[2] Similarly, Rule 134 defines the limits of permissible advertising by issuers generally. The Commission notes that some issuers, including issuers of securities other than options, have exceeded these limits in recent months. In some cases, such issuers have justified their advertising practices by noting their similarity to registered investment companies, which are permitted by Rule 134 to include certain special categories of information in their advertisements. This view has no basis, since the Commission indicated in Release No. 33-5536 (November 4, 1974) (39 FR 39869) that the specialized provisions of Rule 134 are applicable only to companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.). The Commission is concerned about these advertising practices and may take further action in this regard in the near future.

[3] Part of the commentators' concern appears to be grounded in the view that Rule 134a mandates detailed or analytical communications, but it was not the intention of the Commission that the rule require a high level of detail or analysis. Therefore, as amended, the rule will provide the flexibility needed for the sort of options advertising that is appropriate and in the public interest.

[4] Rule 9b-1 (17 CFR 240.9b-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78kk (1976 & Supp. V 1981), as amended by Act of June 6, 1983, Pub. L. 98-38) requires the preparation of an options disclosure document for those options required to be registered under the Securities Act.

[5] Of course, any specific identification of the components of an index should not emphasize particular securities in such a way as to be misleading. The Commission believes that generally an entity wishing to identify some of the securities in an index would be required to identify all of them.

III. Statutory Authority

The revisions of Rule 134a are being adopted by the Commission pursuant to Sections 2, 7, 10 and 19(a) of the Securities Act of 1933. (Secs. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 210, 48 Stat. 905, 906, 908; secs. 1–4, 8, 68 Stat. 683, 685; sec. 12(a), 73 Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 308(a)(2), 90 Stat. 57.)

IV. List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

V. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is hereby amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising the introductory text and paragraphs (d) and (e) and removing paragraph (f) of § 230.134a (rule 134a) as follows:

§ 230.134a Options material not deemed a prospectus.

Written materials, including advertisements, relating to standardized options, as that term is defined in Rule 9b–1 under the Securities Exchange Act of 1934, shall not be deemed to be a prospectus for the purposes of Section 2(10) of the Securities Act of 1933; *Provided*, That such materials are limited to explanatory information describing the general nature of the standardized options markets or one or more strategies; *And, Provided further*, That:

* * * * *

(d) No specific security is identified, other than

(i) An option or other security exempt from registration under the Act, or

(ii) An index option, including the component securities of the index; and

(e) If there is a definitive options disclosure document, as defined in Rule 9b–1 under the Securities Exchange Act of 1934, the materials shall contain the name and address of a person or persons from whom a copy of such document may be obtained.

By the Commission.
Dated: March 22, 1984.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-8535 Filed 3-29-84; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Parts 240 and 249

[Release No. 34-20784; File No. S7-997]

Suspension of Periodic Reporting Obligation

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of revisions to Rule 12h–3 under the Securities Exchange Act of 1934 that permit immediate suspension of the Section 15(d) reporting obligation with respect to any class of securities held of record by less than 300 persons or, in the case of certain small businesses, 500 persons. The Commission also announces the adoption of a new simplified form for reporting such suspension. These changes are intended to eliminate an inconsistency in the provisions suspending the obligation of issuers to file periodic reports and to standardize and simplify the suspension process.

EFFECTIVE DATE: Effective March 30, 1984.

FOR FURTHER INFORMATION CONTACT: William E. Toomey (202) 272–2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 13 of the Securities Exchange Act of 1934 (the "Exchange Act")[1] establishes a periodic reporting obligation for every issuer of a class of securities registered under Section 12 of that Act. Section 15(d) of the Exchange Act imposes the same reporting obligation on every issuer which has filed a registration statement that has become effective under the Securities Act of 1933.[2] Pursuant to Rule 12g–4 (17 CFR 240.12g–4), a Section 12 issuer can effect immediate suspension of this obligation whenever it has fewer than three hundred security holders by filing a certification with the Commission. Under Section 15(d) of the Exchange Act and Rule 15d–6 (17 CFR 240.15d–6), a Section 15(d) issuer is entitled to a comparable suspension, but only if it has fewer than three hundred security holders at the beginning of a fiscal year. As a result, a Section 15(d) issuer may be required to continue to report in circumstances where a Section 12 issuer can effect an immediate cessation. Since this distinction does not appear to serve a useful function, the Commission published proposals in October 1983 to establish uniformity, to the extent practicable, in the treatment of Section 12 and 15(d) issuers, to simplify the suspension process and to assist small businesses consistent with investor protection.[3]

The proposals consisted of four parts. First, the proposed revisions to Rule 12h–3 were designed to permit immediate cessation of the periodic reporting requirement for Section 15(d) issuers whenever the number of record holders of a class of registered securities falls below 300 persons or, for certain businesses, below 500 persons. Second, proposed Form 15, a simplified form for reporting suspension under section 15(d) and termination of registration under Section 12(g), would replace form 12g–4/15d–6 (17 CFR 249.323 and 333). Third, conforming amendments to Rules 12g–4 and 15d–6 were proposed to provide uniformity. Fourth, Rule 12h–4 was proposed to be rescinded since its provisions would be included in proposed Rule 12h–3. The Commission received four comment letters which generally supported the proposals.[4]

The proposals are being adopted as proposed with two modifications to Rule 12h–3 and one revision to Rule 15d–6. With respect to Rule 12h–3, the Commission requested specific comment on whether a 90 or 120 day period should be permitted for the filing of an annual report on Form 10–K upon the discontinuance of a suspension. The Commission agrees with the commentators that 120 days, the same period allowed for the filing of Form 10 (17 CFR 249.210) is appropriate. In addition, the first sentence of paragraph (c) of proposed Rule 12h–3 has been clarified to limit its application to a registration statement relating to the class of securities for which suspension is sought. The Commission is of the view

[1] 15 U.S.C. 78a–78kk (1976 and Supp. V. 1981), *as amended by* Act of June 6, 1983, Pub. L. 98–38.

[2] 15 U.S.C. 77a–77aa (1976 and Supp. V. 1981), *as amended by* Bus. Regulatory Reform Act of 1982, Pub. L. 97–261, section 19(d), 96 Stat. 1121 (1982).

[3] Release No. 34–20263 (October 5, 1983) (48 FR 48245).

[4] The commentators consisted of two bar associations, one law firm and one corporation. The comment letters are availabe for inspection and copying at the Commission's Public Reference Room, File No. S7–997. One commentator suggested that proposed revised Rule 15d–6 be rescinded as superfluous. Rule 15d–6 is necessary as it continues to be possible for an issuer to effect a suspension under the basic suspension authority contained in Section 15(d) of the Exchange Act. Another commentator observed that the filing of Form 15 should not be required where a national securities exchange has filed a Form 25 with respect to a class of securities. Form 25 does not provide information relevent to the status of a reporting obligation under either Section 12(g) or Section 15d. Therefore, the Commission believes that the public files should clearly reflect the reporting status of a registrant and that the Form 15 will do this in the least burdensome way.

that this modification will enhance the purpose of the rule by broadening its application in situations where there should be no adverse impact on investors or the public. Finally, Rule 15d–6 has been revised to emphasize that an issuer that has already filed Form 15 with respect to a class of securities pursuant to the provisions of Rule 12h–3, need not make a duplicative filing for that class because of the provisions of Rule 15d–6.

I. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding the revisions to Rule 12h–3. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing the changes to Rule 12h–3 at 48 FR 48245. Members of the public who wish to obtain a copy of the Final Regulatory Analysis should contact William E. Toomey in the manner specified above.

II. List of Subjects

List of Subjects in 17 CFR Parts 240 and 249

Forms, Reporting and recordkeeping requirements, Securities.

III. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising § 240.12h–3, Rule 12h–3, to read as follows:

§ 240.12h–3 Suspension of duty to file reports under section 15(d).

(a) Subject to paragraphs (c) and (d) of this section, the duty under section 15(d) to file reports required by section 13(a) of the Act with respect to a class of securities specified in paragraph (b) of this section shall be suspended for such class of securities immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by section 13(a), without regard to Rule 12b–25 [17 CFR 249.322], for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

(b) The classes of securities eligible for the suspension provided in paragraph (a) of this section are:

(1) Any class of securites held of record by: (i) Less than 300 persons; or (ii) by less then 500 persons, where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years;

(2) Any class of securities of a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4), held of record by: (i) Less than 300 persons resident in the United States or (ii) less than 500 persons resident in the United States where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years. For purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance with the provisions of Rule 12g3–2(a) (§ 240.12g3–2(a)); and

(3) Any class or securities deregistered pursuant to section 12(d) of the Act if such class would not thereupon be deemed registered under section 12(g) of the Act or the rules thereunder.

(c) This section shall not be available for any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act of 1933, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the case of paragraphs (b)(1)(ii) and (b)(2)(ii), the two succeeding fiscal years; *Provided, however,* That this paragraph shall not apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significant assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, except for changes resulting from the exercise of dissenting shareholder rights under state law.

(d) The suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a class of securities, does not affect any other duties imposed on that class of securities, and shall continue as long as criteria (i) and (ii) in either paragraph (b)(1) or (b)(2) is met on the first day of any subsequent fiscal year; *Provided, however,* That such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer with no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.

(e) If the suspension provided by this rule is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) by filing an annual report on Form 10–K for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

§ 240.12g3–2 [Amended]

2. By revising Rule § 240.12g3–2, Rule 12g3–2, to delete paragraph (a)(2) and redesignate paragraph (a)(1) as (a).

3. By revising § 240.12g–4, Rule 12g–4, to read as follows:

§ 240.12g–4 Certification of termination of registration under section 12(g).

(a) Termination of registration of a class of securities shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 that:

(1) Such class of securities is held of record by: (i) Less than 300 persons; or (ii) by less than 500 persons, where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's most recent three fiscal years; or

(2) Such class of securities of a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4), is held of record by: (i) Less than 300 persons resident in the United States or (ii) less than 500 persons resident in the United States where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's most recent three fiscal years. For purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance with the provisions of Rule 12g3–2(a) (§ 240.12g3–2(a)).

(b) The issuer's duty to file any reports required under section 13(a) shall be suspended immediately upon filing a certification on Form 15; *Provided, however,* That if the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of such withdrawal or denial, file with the Commission all reports which would have been required had the certification

on Form 15 not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the certification shall be filed by the successor issuer.

§ 240.12h–4 [Amended]

4. By removing in its entirety § 240.12h–4, Rule 12h–4.

5. By revising § 240.15d–6, Rule 15d–6, to read as follows:

§ 240.15d–6 Suspension of duty to file reports.

If the duty of an issuer to file reports pursuant to section 15(d) of the Act as to any fiscal year is suspended as provided in section 15(d) of the Act, such issuer shall, within 30 days after the beginning of the first fiscal year, file a notice on Form 15 informing the Commission of such suspension unless Form 15 has already been filed pursuant to Rule 12h–3. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the notice shall be filed by the successor issuer.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. By revising § 249.323 to read as follows:

§ 249.323 Form 15, certification of termination of registration of a class of security under section 12(g) or notice of suspension of duty to file reports pursuant to sections 13 and 15(d) of the Act.

(a) This form shall be filed by each issuer to certify that the number of holders of record of a class of security registered under section 12(g) of the Act is reduced to less than 300 persons, or that the number of holders of record of a class of security registered under section 12(g) of the Act is reduced to less than 500 persons and the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's most recent three fiscal years. Registration terminates 90 days after the filing of the certificate or within such shorter time as the Commission may direct.

(b) This form shall also be filed by each issuer required to file reports pursuant to section 15(d) of the Act, as a notification that the duty to file such reports is suspended pursuant to section 15(d) of the Act because all securities of each class of such issuer registered under the Securities Act of 1933 are held of record by less than 300 persons at the beginning of its fiscal year, or otherwise pursuant to the provisions of Rule 12h–3 (17 CFR 240.12h–3).

§ 249.333 [Removed]

2. By deleting in its entirety § 249.333.

BILLING CODE 8010-01-M

OMB APPROVAL
OMB No. 3235-0167
Exp. October 30, 1986

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 15

Certification and Notice of Termination of Registration under Section 12(g) of the Securities Exchange Act of 1934 or Suspension of Duty to File Reports Under Sections 13 and 15(d) of the Securities Exchange Act of 1934.

Commission File Number _____

_____
(Exact name of registrant as specified in its charter)

_____
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____
(Title of each class of securities covered by this Form)

_____
(Titles of all other classes of securities for which a duty to file reports under section 13(a) or 15(d) remains)

Please place an X in the box(es) to designate the appropriate rule provision(s) relied upon to terminate or suspend the duty to file reports:

Rule 12g-4(a)(1)(i)	[ ]	Rule 12h-3(b)(1)(i)	[ ]
Rule 12g-4(a)(1)(ii)	[ ]	Rule 12h-3(b)(1)(ii)	[ ]
Rule 12g-4(a)(2)(i)	[ ]	Rule 12h-3(b)(2)(i)	[ ]
Rule 12g-4(a)(2)(ii)	[ ]	Rule 12h-3(b)(2)(ii)	[ ]
		Rule 15d-6	[ ]

Approximate number of holders of record as of the certification or notice date: _____

Pursuant to the requirements of the Securities Exchange Act of 1934 (Name of registrant as specified in charter) has caused this certification/notice to be signed on its behalf by the undersigned duly authorized person.

DATE: _____ BY: _____

Instruction: This form is required by Rules 12g-4, 12h-3 and 15d-6 of the General Rules and Regulations under the Securities Exchange Act of 1934. The registrant shall file with the Commission three copies of Form 15, one of which shall be manually signed. It may be signed by an officer of the registrant, by counsel or by any other duly authorized person. The name and title of the person signing the form shall be typed or printed under the signature.

SEC 2069 (3-84)

BILLING CODE 8010-01-C

IV. Statutory Authority

The amendments to Rule 12h–3 are adopted by the Commission pursuant to Sections 12(g)(4), 12(h), 13(a), 15(d), and 23(a) of the Exchange Act.

(Secs. 12(g)(4), 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 78*l*(g)(4), 78*l*(h), 78m(a), 78o(d), 78*w*(a))

Dated: March 22, 1984.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8094 Filed 3-29-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 389

[Docket No. RM84-11-000]

Commission Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

March 26, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB Control Numbers.

SUMMARY: The Federal Energy Regulatory Commission is codifying the control numbers that have been issued by the Office of Management and Budget (OMB) for information collection requirements in Commission rules that are approved under the Paperwork Reduction Act. Control numbers will no longer appear as part of the section or part containing the information collection requirement, but will be centrally located in a table in new Part 389.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426, (202) 357–8033.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1983), requires that OMB review certain information collection requirements imposed by agency rules. Upon approval of the agency requirement, OMB issues a control number. The agency must display this control number in its regulations to inform the public that the agency's information collection requirements have been approved by OMB.

In the Commission's initial implementation of the Paperwork Reduction Act, control numbers were published in either of two fashions. For control numbers that applied only to specific sections of the Commission's regulations, the Commission inserted a parenthetical after the section, stating that the information collection requirement in that section was approved under a certain control number. For information collection requirements that cover an entire Part of Commission's regulations, the Commission inserted a similar parenthetical after the Table of Contents of that Part.

The Commission will no longer display its control numbers in this manner. Rather, the Commission is establishing a new Part 389 which will contain all the control numbers that have been issued for its regulations. The Commission believes that it will be easier for the Commission to update this table and that it will be easier for members of the public to determine which regulations have been approved by OMB. Accordingly, the Commission is removing any control numbers which appear as part of individual Parts and Sections and adding a new Part 389 that lists all control numbers in a single table.

List of Subjects in 18 CFR Part 389

Paperwork Reduction Act, OMB Control Numbers.

In consideration of the foregoing, a new Part 389 is added to Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

Lois D. Cashell,

Acting Secretary.

1. The Authority Citation for Part 389 reads as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520(1982).

2. A new Part 389 is added to read as follows:

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

§ 389.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980. This Part fulfills the requirements of Section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

18 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 1902–)
2.56a	0055
2.69	0060
2.75	0052
2.76	0056
2.77	0056
2.78	0066
2.79	0060
2.80	0128
2.82	0105
Part 4 Subpart D	0073
Part 4 Subpart E	0058
Part 4 Subpart F	0058
Part 4 Subpart G	0115
Part 4 Subpart H	0115
Part 4 Subpart J	0115
Part 4 Subpart L	0058
Part 4 Subpart L	0115
4.30	0073
4.31	0073
4.32	0073
4.33	0073
4.34	0073
4.60	0073
4.61	0073
4.62	0073
Part 6	0068
Part 9	0069
11.26	0087
11.31	0087
13.1	0087
24.1	0078
Part 33	0082
Part 34	0043
Part 35 Subpart A	0096
35.12	0096
35.13	0096
Part 45	0083
46.3	0114
46.6	0099
Part 101	0092
Part 104	0029
Part 116	0021
Part 125	0096
141.1	0021
141.2	0029
141.14	0105
141.61	0024
Part 152	0116
Part 153	0062
154.36	0070
154.61	0070
154.62	0070
154.63	0070
154.64	0070
154.65	0070
154.66	0070
154.67	0070
154.91	0052
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 201, 203, 204, 205, 207, 220, 221, 232, 234, 242, 244, and 250

[Docket No. R-84-1149; FR-1911]

Introduction; Mutual Mortgage Insurance and Rehabilitation Loans; Multifamily Housing Mortgage Insurance; Correction of Structural Defects—Eligibility for Assistance; Insurance of Loans and Mortgages in American Samoa; Nonoccupant Mortgagors—Maximum Mortgage Amounts; Payment of MIP; Occupancy Requirements—Manufactured Home Parks; Removal of Refinancing Limitations on Certain Multifamily Projects; Assignments of Certain Mortgages Under the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements recent statutory amendments that change or clarify certain existing regulatory provisions respecting (1) the eligibility of mortgagors to make claims for structural defects in connection with one- to four-family dwellings that were approved for VA guaranty, insurance or direct loans before construction, but were ultimately insured by FHA; (2) eligibility of loans and mortgages for insurance in American Samoa along with an expanded definition of jurisdictional eligibility; (3) the maximum insurable amount on mortgages on one- to four-family dwellings that are executed by non-occupant mortgagors; (4) the relationship of the one-time mortgage insurance premium (MIP) to the determination of maximum insurable mortgage amounts; (5) the provision of mortgage insurance on manufactured home parks designed exclusively for the elderly; (6) the removal of refinancing limitations previously governing substantial rehabilitation of certain multifamily projects; and (7) elimination of the "buy-back" feature contained in Section 221(g)(4) of the National Housing Act and the procedures to be used by those with outstanding mortgages who choose to exercise the option to assign their mortgages to HUD.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: John Coonts, Director, Single Family Development Division, Room 9270, telephone number (202) 755-6720; or April LeClair, Director, Development Division, Office of Multifamily Housing Development, Room 6132, telephone number (202) 755-6500. (These are not toll-free numbers.) Written communications to the above-named persons should be sent to the Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: This final rule implements the following provisions of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, approved November 30, 1983 (the "1983 Act"):

1. Section 427 of the 1983 Act amends Section 518(a) of the National Housing Act (NHA) (12 U.S.C. 1735b(a)(B)). Section 518(a) authorizes the Secretary to make expenditures for, among other things, the correction of structural defects in one- to four-family dwellings that were approved for FHA mortgage insurance before construction. Section 203(b)(2) of the NHA provides that the mortgage on a one- to four-family dwelling approved for guaranty, insurance, or a direct loan by the Veterans Administration is eligible for FHA insurance. Before the 1983 Act's amendment, section 518(a) of the NHA provided that the Secretary's authority to make expenditures to correct structural defects existed only if the

housing had been approved for mortgage insurance before the beginning of construction. This provision created an ambiguity, since it was unclear whether a dwelling originally approved by VA, but ultimately insured by FHA, was eligible for the protection afforded by section 518(a).

Section 427 of the 1983 Act makes clear that expenditures and reimbursements may be made for correcting defects in FHA-insured dwellings even though they were approved for guaranty, insurance, or a direct loan by the Veterans Administration before construction, instead of having been given preconstruction approval by FHA. Accordingly, 24 CFR 200.507(b) is revised to reflect Section 427 of the 1983 Act.

2. Section 407 of the 1983 Act amends Sections 9, 201(d) and 207(a)(7) of the NHA (12 US.C. 1706d, 1707, 1713) to add American Samoa to the list of jurisdications to which the Department's loan and mortgage insurance authorities in titles I and II of the NHA are applicable. Amendments are included in this rule for definitions in 24 CFR Parts 201, 203, 204, 205, 232, 234, 242, 244, and 250 to reflect this change. The rule also spells out for the first time (in sections 201, 203, and 220) the names of all eligible jurisdictions in which HUD-approved or HUD-insured property may be located.

3. Section 425 of the 1983 Act amends section 203(b)(8) of the NHA (12 U.S.C. 1709(b)(8)) to provide that a mortgage on a dwelling owned by a non-occupant mortgagor is eligible for insurance if the principal obligation is no greater than the lesser of: (1) The amount prescribed under Section 203(b)(2) of the NHA (i.e., the insurable amount for an occupant mortgagor), or (2) 85 percent of the appraised value of the property on the date the mortgage is accepted for insurance. Previously, Section 203(b)(8) had provided that the principal obligation could not, under most circumstances, exceed 85 percent of the amount computed under Section 203(b)(2). This amendment, by increasing the insurable mortgage amount for investors, should heighten investor interest in single-family homes, thereby resulting in an increased supply of rental housing. The amendment is implemented by changes in 24 CFR 203.18(c).

4. Section 423 of the 1983 Act added a new subsection (d) to Section 203 of the NHA. This new subsection allows the maximum insurable mortgage amount determined under any provision of title II of the NHA for a mortgage secured by a one- to four-family dwelling to be increased "by the amount of the mortgage insurance premium (MIP) paid at the time the mortgage is insured."

The Department recently published a final rule that established a new system for collecting MIPs for certain single family mortgages that HUD insures under Section 203. See 48 FR 28794 (June 23, 1983). Under this system, the borrower pays a single MIP when the mortgage loan is closed, which represents the total premium obligation for the insured loan.

As part of implementing the new system, HUD proposed in 1982 to amend certain sections of the NHA to increase the otherwise applicable maximum mortgage amounts by the amount of the MIP, and to exclude the amount of the premium from "cost of acquisition" for purposes of determining minimum down payment requirements. Congress enacted these proposals as Section 201 of the Omnibus Budget Reconciliation Act of 1982, Pub. L. 97–253, approved September 8, 1982.

One of the purposes of the amendments was to permit the homebuyer to add the amount of the MIP to the amount of the insured loan, thereby enduring that implementation of the new system would not increase existing downpayment requirements. Because of their placement, however, the amendments did not completely fulfill this intent.

In addition to statutory provisions directly addressing downpayment requirements, the amount of the required downpayment is also affected by maximum loan-to-value ratios. For example, Section 203(b)(2) of the NHA generally provides that insured loans may not exceed an amount equal to the sum of 97 percent of the first $25,000 of the appraised value of the property and 95 percent of the appraised value in excess of $25,000. No amendment to this or other loan-to-value ratio requirements was included in the 1982 Reconciliation Act. The result is that, in the case of loans that are at the maximum loan-to-value ratio before consideration of the up-front premium, the required downpayment is increased by the percentage resulting from the applicable loan-to-value ratio (5 percent in the case of a loan covered by the ratio provision cited above where the value exceeds $25,000). Section 423 of the 1983 Act corrects this unintended result by providing in one place the general authority to increase, by the amount of the MIP, the otherwise applicable single family maximum mortgage amount—irrespective of whether the amount is arrived at as a result of the relevant dollar or loan-to-value limitation.

Accordingly, this rule adds a new § 203.18c to make clear that all of the one-time mortgage insurance premium amount may be added to the insured mortgage. The rule also removes § 203.18b(d), the provision included in HUD's final rule implementing procedures for one-time MIP payments (see 48 FR 28794, at 28804 June 23, 1983). § 203.18b(d) permitted maximum dollar limits to be increased by the amount of the financed one-time premium, but did not permit loan-to-value limitations to be affected by the addition of the premium to the mortgage amount. The new § 203.18c includes, and expands the reach of, the removed provision, as authorized under Section 423 of the 1983 Act. Affected mortgage insurance programs include HUD's basic home mortgage insurance program under Section 203(b) of the NHA (24 CFR 203.18, 203.18a, 203.18b, 203.29); mortgage insurance for disaster victims under Section 203(h) of the NHA (24 CFR 203.18(e)); mortgage insurance for single family homes in outlying areas under Section 203(i) (24 CFR 203.18(d)); mortgage insurance for single-unit cooperatives under Section 203(n) of the NHA (24 CFR 203.43c); mortgage insurance under title II of the NHA for qualifying manufactured homes (24 CFR 203.43f); and graduated payment mortgages under section 245 of the NHA (24 CFR 203.45, 203.46).

Section 423(c) of the 1983 Act provides that the amendments affecting the treatment of single family premiums may take effect only if the Secretary of Housing and Urban Development has determined that the program of payment of insurance premiums at the time of loan closing—with specific regard to Section 423's changes—is actuarially sound.

The one-time MIP concept was originally developed on the assumption that mortgagors would enjoy the option of including all of their MIP in the insured mortgage. As noted above, it was only a technical oversight in the authorizing legislation that obliged the Department to limit the amount of MIP financed as part of the mortgage by subjecting that amount to statutory loan-to-value limits. In submitting the original methodology paper to the Congress on January 25, 1983, the Secretary found that the option of including *all* of the MIP in the mortgage would be actuarially sound. There is no reason at this time to question or modify this finding with respect to implementing the amendments of Section 423 of the 1983 Act. The Secretary, in approving this rule for publication, has made the

determination required under Section 423(c).

5. Section 435 of the 1983 Act amended Section 207(b) of the NHA to permit the insurance of mortgages on manufactured home parks designed exclusively for occupancy by elderly persons. Formerly, Section 207(b) prohibited the provision of insurance under Section 207 unless the mortgagor certified under oath that there would be no discrimination "by reason of the fact that there are children in the family. . . ." Section 435 retains this basic rule, but provides language clarifying that exceptions may be made with regard to manufactured home parks designed exclusively for the elderly.

Accordingly, 24 CFR 207.20(a) is amended to provide that mortgagors must certify under oath that they will not discriminate against families with children, except in the case of mortgagors who own manufactured home parks designed exclusively for occupancy by the elderly.

6. Section 432 of the 1983 Act amends the mortgage limit provisions of Sections 220(d)(3), 221(d)(3), and 221(d)(4) of the NHA to facilitate refinancing to perform substantial rehabilitation. Before this amendment, the limits on mortgages for substantial rehabilitation of properties were based upon the sum of the cost of repair plus the value of the property before rehabilitation. However, where there was an existing mortgage and application to insure a new mortgage under one of these provisions was made, the mortgage limits were based upon the sum of the estimated cost of repair plus the existing indebtedness (rather than the value of the property before repair). Section 432 deletes the special mortgage limits provision, so that mortgage limits may be determined in the same manner for project refinancing as they are for new financing to carry out substantial rehabilitation.

Amendments to §§ 220.507, 220.508, 221.514, and 221.556 contained in this rule conform the regulations applicable to Sections 220(d)(3), 221(d)(3), and 221(d)(4) of the National Housing Act to reflect the 1983 statutory amendment. 24 CFR 221.515 has been removed as a result of the legislative amendment to these sections of the NHA. The amendment has rendered inapplicable the distinctions based on the status of the property contained in the now-deleted § 221.515.

7. Before it was amended by Section 409 of the 1983 Act, Section 221(g)(4) of the NHA permitted mortgagees holding mortgages insured under Section 221 to assign them to HUD and receive the benefits of insurance, if the mortgage was not in default at the expiration of 20 years from the date of endorsement for insurance. Section 409 terminates this 20-year "buy-back" provision for future insured mortgages. The 20-year "buy-back" continues to be available (under the terms of amended Section 221(g)(4)) for mortgages for which conditional or firm commitments were issued on or before November 30, 1983.

The Department issued a rule-related Notice on December 5, 1983 (48 FR 54571), explaining the effect of Section 409. Today's rule includes amendments to §§ 221.255(a) and 221.770 to conform HUD's regulations to the statutory change previously announced in the Notice. These amendments also provide for the implementation of Section 408 of the 1983 Act, which permits the Commissioner to direct mortgagees submitting claims under the buy-back provision to deliver the credit instrument and mortgage directly to GNMA, in lieu of assigning them to the Commissioner.

As a matter of policy, the Department submits most of its rulemakings to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that good cause exists for publishing this document as a final rule. Public procedure is believed to be unnecessary because each of the revisions to existing HUD regulations included in this document is being made solely for the purpose of implementing new statutory direction from the Congress where the revised law is self-executing (eligibility of American Samoa (Section 407), mortgage insurance for manufactured home parks for the elderly (Section 435), and termination of the Section 221(g)(4) buy-back (Section 409)); removes ambiguity (correction of defects (Section 427)); makes technical correction of a matter previously subjected to public comment rulemaking (amortization of the one-time MIP (Section 423)); liberalizes the terms and conditions under which a client group may participate in ongoing HUD programs (mortgage limits for non-occupant mortgagors (Section 425), amortization of the one-time MIP (Section 423), and maximum mortgage amounts for the substantial rehabilitation of multifamily projects involving refinancing (Section 432)); or involves an internal administration matter not affecting the rights of regulated groups (assignment of mortgages under the buy-back option to GNMA (Section 408)). Under these circumstances, immediate implementation of these several amendments would best serve the public interest.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street SW., Washington, D.C. 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely implements statutory amendments and conforms regulatory provisions to statutory law, without imposing any new administrative or economic burdens on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47422) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.110, 14.117, 14.138, 14.157, 14.400, 14.402, 64.114, 64.118, and 64.119.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, Incorporation by reference.

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Manufactured homes, Manufactured homes and lots.

24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 205

Community facilities, Mortgage insurance, Land development.

24 CFR Part 207

Mortgage insurance, Rental housing, Manufactured home parks.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs: housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: health, Loan programs: housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 242

Hospitals, Mortgage insurance.

24 CFR Part 244

Health facilities, Mortgage insurance.

24 CFR Part 250

Intergovernmental relations, Low and moderate income housing mortgage insurance.

Accordingly, the Department amends 24 CFR Parts 200, 201, 203, 204, 205, 207, 220, 221, 232, 234, 242, 244, and 250 as follows:

PART 200—INTRODUCTION

1. Section 200.507 is revised to read as follows:

§ 200.507 Eligibility requirements.

To be eligible for consideration by the Commissioner for receiving assistance in the correction of structural defects, the mortgagor must establish that:

(a) The mortgagor is the owner of a one- to four-family dwelling covered by an individual mortgage.

(b) The dwelling was approved for mortgage insurance by the Commissioner, or for guaranty, insurance or a direct loan under chapter 37 of Title 38 of the United States Code (38 U.S.C. 1801–1827) by the Administrator of Veterans Affairs, before the beginning of construction.

(c) The mortgagor has made reasonable efforts to obtain a correction of a structural defect in his or her property by the builder, seller, or other persons, and that the defect has not been corrected.

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

2. In § 201.6, paragraph (a) is revised to read as follows:

§ 201.6 Eligible loans.

(a) *Property location.* The property to be improved shall be located within the United States, Puerto Rico, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands.

* * * * *

3. In § 201.525, paragraph (a) is revised to read as follows:

§ 201.525 Mobile home location standards.

(a) *In general.* The mobile home shall be located within the United States, Puerto Rico, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mobile home shall be placed in a mobile home park approved by the Commissioner, on a site owned by the borrower which meets certain requirements prescribed by the Commissioner, or on a site leased from a municipality or other political subdivision, where the leased site otherwise meets the requirements of paragraph (c) of this section.

* * * * *

4. § 201.1110, paragraph (k) is revised to read as follows:

§ 201.1110 Definitions.

* * * * *

(k) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

* * * * *

5. Section 201.1503 is revised to read as follows:

§ 201.1503 Eligibility requirements.

Loans shall be made only for financing, in combination, the purchase of a mobile home and a developed or undeveloped mobile home lot, or a developed or undeveloped mobile home lot by an owner of a mobile home, which mobile home is the principal residence of that owner. Furniture may not be included in the loan, or financed with the proceeds of the loan. The mobile home shall be located within the United States, Puerto Rico, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

6. In § 203.18, paragraph (c) is revised to read as follows:

§ 203.18 Maximum mortgage amounts.

* * * * *

(c) *Nonoccupant mortgagors.* A mortgage executed by a mortgagor who is not the occupant of the property shall not exceed:

(1) The lesser of the amount computed under paragraph (a) of this section or 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance; or

(2) The amount computed under paragraph (a) of this section (even if it is greater than 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance), if the mortgage covers a one- to two-family residence and the Commissioner is furnished with certificates indicating that:

(i) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property before the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(ii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iii) The mortgagor agrees that, if the property is not sold before the due date of the 18th amortization payment of the mortgage to a purchaser, acceptable to the Commissioner, who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage; and

(iv) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the

provisions of this paragraph, shall be deducted from the amount of the insurance benefits to which the mortgagee would otherwise be entitled if a claim for insurance benefits is filed.

* * * * *

§ 203.18b [Amended]

7. Section 203.18b is amended by removing paragraph (d).

8. Part 203 is amended by adding a new § 203.18c, to read as follows:

§ 203.18c One-time mortgage insurance premium excluded from limitations on maximum mortgage amounts.

After determining any maximum insurable mortgage amount under the provisions of this subpart, the maximum insurable amount of any mortgage subject to the provisions of § 203.259a may be increased by the amount of any one-time mortgage insurance premium that will be financed as part of the mortgage.

9. Section 203.40 is revised to read as follows:

§ 203.40 Location of property.

The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, or American Samoa. The mortgaged property, if otherwise acceptable to the Commissioner, may be located in any community where the housing standards meet the requirements of the Commissioner.

10. In § 203.251, paragraph (s) is revised to read as follows:

§ 203.251 Definitions.

* * * * *

(s) "State" includes the several States, Puerto Ricoe, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 204—COINSURANCE

11. In § 204.251, paragraph (p) is revised to read as follows:

§ 204.251 Definitions.

* * * * *

(p) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

12. In § 205.1, paragraph (p) is removed, and paragraph (m) is revised to read as follows:

§ 205.1 Definitions.

* * * * *

(m) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

13. In § 207.20, the introductory text of paragraph (a) is revised to read as follows:

§ 207.20 Occupancy requirements.

(a) *Nondiscrimination against families with children.* Except in the case of a mortgage with respect to a manufactured home park designed exclusively for occupancy by elderly persons, the mortgagor shall certify under oath to the Commissioner that:

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

14. In § 220.103, paragraph (a) is revised to read as follows:

§ 220.103 Type and location of property.

* * * * *

9(a) Constitute real property located within the United States, Puerto Rico, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands.

* * * * *

15. In § 220.507, the introductory text of paragraph (d)(2) and (d)(2)(ii) are revised to read as follows:

§ 220.507 Maximum mortgage amounts.

* * * * *

(d) * * *

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness that is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of:

(i) * * *

(ii) The Commissioner's estimate of the value of the property before repair or rehabilitation; or

* * * * *

§ 220.508 [Amended]

16. In § 220.508, paragraph (d) is removed and reserved.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

17. In § 221.255, paragraph (a) is revised to read as follows:

§ 221.255 Assignment option.

(a) A mortgagee holding a mortgage insured pursuant to a conditional or firm commitment issued on or before November 30, 1983 has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. In processing a mortgagee's claim for insurance benefits under this section, the Commissioner may direct the mortgagee to assign, transfer and deliver the original credit instrument, and the mortgage securing it, directly to the Government National Mortgage Association (GNMA). Upon such assignment, transfer and delivery, either to the Commissioner or to GNMA, as directed, the mortgage insurance contract shall terminate and the mortgagee shall be entitled to receive insurance benefits in accordance with this section.

* * * * *

18. In § 221.514, the introductory text of paragraph (a) and the introductory text of paragraph (a)(3) are revised as follows:

§ 221.514 Maximum mortgage amounts.

(a) The mortgage shall involve a principal obligation not in excess of the lesser of the following:

* * * * *

(3) *Repair or rehabilitation (including projects to be refinanced).*

* * * * *

§ 221.515 [Reserved]

19. Section 221.515 is removed and reserved.

20. Section 221.556 is revised to read as follows:

§ 221.556 Reduction in mortgage amount—rehabilitation.

(a) In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with § 221.550, and the applicable cost certification procedure described therein will be required.

(b) If the principal obligation of the mortgage exceeds in the case of:

(1) General or limited distribution mortgagors, 90 percent;

(2) All other mortgagors, when the mortgage is to be insured under section 221(d)(4), 90 percent; or

(3) All other mortgagors, when the mortgage is to be insured under section 221(d)(3), 100 percent.

of the actual cost of the repair or rehabilitation plus the Commissioner's estimate of the fair market value of the land and existing improvements, the mortgage shall be reduced by the amount of such excess before final endorsement for insurance.

(c) *Nonapplicability to rehabilitation sales mortgagors.* The provisions of paragraphs (a) and (b) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

21. § 221.770 is revised to read as follows:

§ 221.770 Assignment option.

A mortgagee holding a mortgage insured pursuant to a conditional or firm commitment issued on or before November 30, 1983 (or, in the Direct Endorsement program described in 24 CFR 200.163, a property appraisal report signed by the mortgagee's approved underwriter on or before November 30, 1983) has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided that the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. In processing a mortgagee's claim for insurance benefits under this section, the Commissioner may direct the mortgagee to assign, transfer and deliver the original credit instrument, and the mortgage securing it, directly to the Government National Mortgage Association (GNMA). Upon such assignment, transfer and delivery either to the Commissioner or to GNMA, as directed, the mortgage insurance contract shall terminate and the mortgagee shall be entitled to receive insurance benefits in accordance with § 221.780.

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

22. In § 232.1, paragraph (h) is revised to read as follows:

§ 232.1 Definitions.

* * * * *

(h) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

23. In § 234.505, paragraph (i) is revised to read as follows:

§ 234.505 Definitions.

* * * * *

(i) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

24. In § 242.1, paragraph (g) is revised to read as follows:

§ 242.1 Definitions.

* * * * *

(g) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES (TITLE XI)

25. In § 244.1, paragraph (g) is revised to read as follows:

§ 244.1 Definitions.

* * * * *

(g) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

26. In § 250.101, paragraph (h) is revised to read as follows:

§ 250.101 Definitions.

* * * * *

(h) *"State Housing Agency (Agency)"*—Any public body, agency, or instrumentality created by a specific act of a State legislature and empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction or rehabilitation, for persons and families of low and moderate income. The term "State" shall include the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

* * * * *

Authority: National Housing Act, Secs. 9, 201, 203, 207, 220, 221; 12 U.S.C. 1706d, 1707, 1709, 1713, 1715k, 1715*l*; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 23, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-8421 Filed 3-29-84; 8:45 am]

BILLING CODE 4210-27-M

Office of Assistant Secretary for Public and Indian Housing

24 CFR Part 941

[Docket No. R-84-1063; FR-1665]

Public Housing Development; Approval of Projects With Dwelling Construction and Equipment Costs in Excess of Prototype Cost Limits

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing public housing development to require approval by the Assistant Secretary for Public and Indian Housing for any public housing project dwelling construction and equipment costs that will exceed 100 percent of the appropriate prototype cost limits for the area. The existing regulations permit the HUD Field Office to approve such projects.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Public Housing Development Division, Office of Public Housing, Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 426-0938. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This final rule amends (1) § 941.204(e) to require approval by the Assistant Secretary for Public and Indian Housing for all projects proposed to have dwelling construction and equipment costs (DC&E) in excess of 100 percent of the applicable project prototype cost limit published under Part 941; (2) deletes the list of factors specified in current regulations which may justify approval by Field Offices of requests to exceed prototype cost limits; and (3) conforms the regulations to the current HUD policy stated in a HUD Headquarter's memorandum to Field Offices dated October 22, 1981 and is applicable to all projects, whether funded before or after October 1, 1980. The current HUD policy permits the Deputy Assistant Secretary for Public and Indian Housing to approve DC&E costs for projects up to 110 percent of the prototype cost limits. Requests for

approval under this rule must be supported by a justification describing the circumstances involved for the particular project and demonstrating that approval is needed. Appropriate changes will be made to HUD Handbook 7417.1 and 7417.1 REV–1 after this rule becomes effective.

At present, HUD Field Offices are authorized under 24 CFR 941.204(e), which became effective on October 1, 1980, to approve any project which has DC&E costs up to 110 percent of the appropriate project prototype cost limit, but only under specified circumstances. Before October 1, 1980, Field Offices had the authority to approve projects with DC&E costs up to 105 percent of the project prototype cost limit and Regional Administrators could approve projects with costs up to 110 percent (24 CFR 841.115(b)(2); 42 FR 5883, January 31, 1977).

On June 24, 1983, the Department published a proposed rule in the **Federal Register** (48 FR 29003) to amend Field Offices' authority to approve public housing projects with DC&E in excess of 100 percent of the appropriate area prototype cost limits. Interested parties were invited to submit comments until August 23, 1983. Comments were received from six entities, including four public housing agencies, one housing commission, and one community development commission. The comments are summarized, together with HUD's response to them in the "Discussion of Comments" section which follows.

In a separate rulemaking (48 FR 55452, December 13, 1983), the Department moved all regulations affecting the programs administered by the Assistant Secretary for Public and Indian Housing to 24 CFR Chapter IX. This rule, originally proposed as an amendment to Part 841 (Chapter VIII of Title 24 of the Code of Federal Regulations) is now an amendment to Part 941—the redesignated location of regulations affecting Public Housing Development.

Discussion of Comments

The following is a summary of the concerns raised by the public and an explanation of the Department's position with respect to each.

1. Some commenters opposed the proposed rule on the ground that the staff in HUD Headquarters lacks sufficient knowledge of local conditions, including building material and labor costs and urged instead that the cost containment provisions in the current regulations and HUD handbooks relating to public housing development be used. Another commenter suggested that a lesser quality housing would result from the rule, and requirements of the Total Development Cost (TDC) cap and the February 23, 1982 policy memorandum on excessive amenities were adequate to contain costs. The Department considered these points in drafting the proposed rule, but concluded that quality projects could be built within the established prototype costs, which are based on the costs of material, labor, and equipment for the housing construction industry in a geographic area. It should be noted that it is the policy of the Department to contain costs to the maximum extent practicable. The Department found that project costs were not being contained satisfactorily under the existing handbooks and regulations. The TDC cap, the policies on excessive amenities and this rule, together, are intended to ensure that costs are contained. This rule recognizes that certain unique circumstances may warrant authorization to exceed 100 percent of project prototype cost limits, and provision has been made for consideration of such requests.

2. One commenter indicated that the rule would result in additional approval processing and cause an unnecessary hardship in the production of public housing units. It was suggested that the prototype cost limits are not realistic for the time period at which they appear in the **Federal Register**, and the subsequent time lag has only served to increase the difference between HUD prototype and mounting construction costs. In addition, it was stated that adequate provision has not been made for a realistic projection of construction costs at a time when inflationary trends have produced a critical condition in all phases of the construction industry.

It should be noted that HUD publishes the unit prototype cost schedules at least annually, and that the schedules may be revised based on public comments or other evidence that construction costs exceed the limits determined by HUD.

The Department believes that this rule will not result in additional or costly delays or inaccurate decisions, because the determinations will be made based on supportive justification from the Field. Furthermore, the Department finds that past inflationary trends are not being sustained and, for a number of areas, prototype cost limits have been reduced as a reflection of locally reduced construction costs.

3. One commenter expressed an opinion that public housing funds should be provided directly to public housing agencies and that their performance in the production of units should then be monitored by HUD, using a set of performance standards. The Department has considered several approaches to providing public housing funds directly to the public housing agencies; however, no final determinations have been made. The Department believes that it has a responsibility to ensure that funds provided by the Congress are used to assist the greatest number of eligible families possible.

Other Matters

This rule does not constitute a "major rule," as that term is defined in Section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule may have some economic impact on builders or developers of public housing, some of whom may constitute small entities, but it is believed that neither the number of small entities affected, nor the degree of economic impact, will be substantial.

This rule is listed at 48 FR 47442 as item H–103–82 in the Department's Semiannual Agenda of Regulations, published on October 17, 1983, under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title is 14.146, Low-Income Housing-Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 941

Loans programs, Housing and Community Development, Public Housing, Prototype costs, Cooperation Agreement, Turnkey.

The information collection requirements contained in 24 CFR 941.204(e) have been approved by the Office of Management and Budget (OMB). The approval OMB number is 2502–0153.

PART 941—[AMENDED]

Accordingly, the Department amends 24 CFR Part 941 by revising paragraph (e) of § 941.204 to read as follows:

§ 941.204 Prototype costs.

* * * * *

(e) *Project Prototype Cost Limit.* (1) The Field Office shall determine the project prototype cost limit by multiplying the base project prototype cost by the prototype cost adjustment factor. The amount approvable by the Field Office for dwelling construction and equipment may not exceed the project prototype cost limit. The limit may be exceeded (in accordance with Section 6(b) of the Act) by up to ten percent, with the approval of the Assistant Secretary for Public and Indian Housing. (Approval by the Assistant Secretary to exceed 100 percent prototype costs is also required for projects being processed under a Program Reservation issued before October 1, 1980.) (2) A request for approval to exceed 100 percent of the project prototype cost limit shall be supported by a justification describing the circumstances involved for the particular project and demonstrating that such approval is needed.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0153)

Authority: (Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Section 6, U.S. Housing Act of 1937, 42 U.S.C. 1437(d)).

Dated: March 20, 1984.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 84-8553 Filed 3-29-84; 8:45 am]
BILLING CODE 4210-33-M

NEIGHBORHOOD REINVESTMENT CORPORATION

24 CFR Parts 4100, 4101, 4102, 4103 and 4104

Central and Field Organization

AGENCY: Neighborhood Reinvestment Corporation.

ACTION: Final rule.

SUMMARY: This final rule replaces the earlier description of the central and field organization of Neighborhood Reinvestment, statements of the general course and method by which the functions of Neighborhood Reinvestment are channeled and determined, and public information regarding meetings of the board of directors. The purpose of this document is to simplify and update the current description and statements of organization.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Timothy S. McCarthy, Associate Director for Communications, 202–653–2705.

SUPPLEMENTARY INFORMATION:

List of Subjects

24 CFR Part 4100

Organization and functions (Government agencies).

24 CFR Part 4101

Community development, Grant programs—housing and community development, Housing.

24 CFR Part 4102

Sunshine Act.

24 CFR Part 4103

Freedom of information.

24 CFR Part 4104

Civil rights.

Carol J. McCabe,

Secretary/General Counsel.

24 CFR Parts 4101, 4102, 4103, and 4104 are removed, and 24 CFR Parts 4100 is revised to read as follows:

PART 4100—ORGANIZATION AND CHANNELING OF FUNCTIONS

Sec.

4100.1 Functions and activities.
4100.2 General organization.
4100.3 Field activities.
4100.4 Inquiries.

Authority: Title VI, Pub. L. 95–557, 92 Stat. 2115 (42 U.S.C. 8101 et seq.); as amended by Sec. 315, Pub. L. 96–399, 94 Stat. 1645; and Sec. 710, Pub. L. 97–320, 96 Stat. 1544.

§ 4100.1 Functions and activities.

(a) *General statement.* The Neighborhood Reinvestment Corporation (referred to in this Part as "the Corporation") was established by Congress in the Neighborhood Reinvestment Corporation Act (Title VI of the Housing and Community Development Amendments of 1978, Pub. L. 95–557, October 31, 1978). The Corporation is not a department, agency, or instrumentality of the Federal Government.

(b) The Corporation is authorized to receive and expend Federal appropriations and other public and private revenues to conduct a variety of programs designed to reverse decline in residential neighborhoods. These programs include:

(1) *Neighborhood Housing Services.* The major effort of the Corporation is to assist local communities in the development, expansion and provision of technical services to local Neighborhood Housing Services (NHS) programs. NHS programs are based upon partnerships of community residents, and representatives of local governments and financial institutions. Each local program is administered by an autonomous, private, non-profit corporation, and conducts a comprehensive revitalization effort in locally selected neighborhoods. Services to neighborhood residents include rehabilitation counseling, construction assistance, financial counseling, loan referrals and loans at flexible rates and terms to homeowners who do not meet private lending criteria. Programs and strategies to remove blighting influences, obtain improved public services and amenities, and improve the neighborhood's image and the functioning of its real estate market are also undertaken. To insure the continuing effectiveness of NHS programs, the Corporation provides grants, training, information and technical services to NHS programs.'

(2) *Neighborhood Preservation Projects; Neighborhood Program Development:* The Corporation identifies, monitors, evaluates and supports through demonstration grants and technical assistance other promising neighborhood preservation strategies based on local, public-private partnerships. Those which show particular promise after the monitoring and evaluation stage are developed and replicated as complementary programs and stategies to treat specific problems in other neighborhoods.

(3) *Neighborhood Housing Services of America:* The Corporation also supports Neighborhood Housing Services of America (NHSA), an independent, private, non-profit corporation which provides a variety of services to local NHS programs, including a secondary market for NHS revolving loan fund loans, and the strengthening of private sector resources available to the network of local NHSs.

§ 4100.2 General organization.

(a) *The Board of Directors.* (1) The Corporation is under the direction of a Board of Directors composed of six members: the Chairman of the Federal Home Loan Board; the Secretary of Housing and Urban Development; a Member of the Federal Reserve Board designated by its Chairman; the Chairman of the Federal Deposit Insurance Corporation; the Comptroller of the Currency;' and the Chairman of the National Credit Union Administration. Members of the Board serve *ex officio* during their tenure in the offices mentioned without additional compensation. The Board elects from among its members a Chairman and Vice-Chairman. The Bylaws of the Corporation provide for the creation of an Audit Committee, and such other committees as the Board may from time to time establish.

(2) The Board holds an Annual Meeting each year during the month of May (or as the Bylaws or the Board may specify). The Board also holds regular meetings at least quarterly and special meetings as required. The meetings of the Board are conducted in accordance with provisions of the Neighborhood Reinvestment Corporation Act, the Government in the Sunshine Act (5 U.S.C. 552b), the Corporation's Bylaws, and when not inconsistent with the foregoing, with Robert's Rules of Order. Every portion of every meeting of the Board is open to public observation except as provided by the Government in the Sunshine Act. Interested members of the public may attend such meetings, but may not participate therein unless invited or permitted to do so by the Board.

(3) The Secretary of the Corporation, in consultation with the Corporation's General Counsel, is responsible for taking such steps as are required to ensure the Corporation's compliance with the Government in the Sunshine Act, as that Act may be amended from time to time. Consistent with this responsibility, the Secretary of the Corporation provides to the Communications Department at the principal office of the Corporation such records as the Act requires to be made available to the public for access during regular office hours on regular business days.

(b) *The Officers.* (1) The officers of the Corporation are the Executive Director, the Deputy Executive Director, the Secretary, the Treasurer, and such other officer positions as the Board may, in consultation with the Executive Director, create. The Board elects the officers of the Corporation annually.

(2) The Neighborhood Reinvestment Corporation Act provides that the Executive Director shall serve as the chief executive officer of the Corporation. Consistent with that authority, the Corporation's Bylaws provide that the Executive Director shall have the responsibility and authority for the day-to-day administration of the affairs of the Corporation under the general supervision of the Board. The Board periodically reviews the activities of the Executive Director and, from time to time, provides guidance and policy direction to the Executive Director in the exercise of his or her authority.

(3) The responsibilities and authorities of the other officers of the Corporation are set forth in the Corporation's Bylaws, resolutions and policies adopted by the Board, duties and authorities delegated to each officer, other statutes and this statement. (See, for example, the Government in the Sunshine Act and paragraph (a)(3) of this section for specific duties of the Secretary and General Counsel.)

(c) *Principal Office.* The Corporation maintains its principal office in the District of Columbia. Currently, the principal office is maintained at 1850 K Street NW., Suite 400, Washington, DC 20006.

§ 4100.3 Field activities.

The Corporation conducts its field activities from regional and field offices around the country. Regional offices provide coordination of field activities in support of local programs within the geographic limits of each region. Field offices within each region provide assistance in the development and support of local programs. A current directory of all regional and field offices can be obtained upon request from the Communications Department, Neighborhood Reinvestment Corporation, 1850 K Street NW., Suite 400, Washington, DC 20006.

§ 4100.4 Inquiries.

(a) *General.* All requests for information, forms, and records should be addressed to: Communications Department, Neighborhood Reinvestment Corporation, 1850 K Street NW., Suite 400, Washington, DC 20006.

(b) *Applications.* Applications for the Corporation's assistance in the development of NHS programs and complementary programs and strategies, or the support of other promising neighborhood strategies are accepted on an ongoing basis. Local governmental or nonprofit entities should submit completed applications (forms are available upon request), including supportive materials, to the Corporation at the address stated in paragraph (a) of this section. The Corporation reviews applications to determine their readiness for development or support. Promising applications are selected for field reviews. Subject to the availability of the Corporation's resources, the Corporation may enter into agreements with top ranking applicants to provide financial and technical assistance in the development or support of selected programs. The application form contains a list of the criteria used for determining the readiness and promise of applications.

(c) *Records.* (1) The Corporation maintains such records and information for public inspection and copying as are required by the Freedom of Information Act (5 U.S.C. 552), as that Act may be amended from time to time. Records are available for public inspection and copying during regular business hours on regular business days at the address stated in paragraph (a) of this section. Requests for records should be submitted in writing and state the full name and address of the person requesting the records and a description of the records or other information sought that is reasonably sufficient to permit their identification without undue difficulty. A request should be submitted sufficiently in advance of the date inspection or copying is desired, preferably by mail. Requests for information which can be produced only by processing through an information system program especially designed for that purpose are not regarded as requests for records that must be disclosed pursuant to the Freedom of Information Act.

(2) Although the Corporation finds that the publication of indexes of statements of policy and interpretations or administrative staff manuals and instructions would be unnecessary and impracticable, such information will be made available upon request.

(d) *Fees for providing copies of records.* (1) A person requesting access to or copies of particular records shall pay the cost of searching or copying such record at the rate of $10 per hour for searching and 10 cents per page for copying. Records may be furnished without charge or at a reduced charge where the Executive Director determines that waiver or reduction of fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Unless the person making the request states in his or her initial request that he or she will pay all costs regardless of amount, the Corporation will notify him or her as

soon as possible if there is reason to believe that the cost for obtaining access to and/or copies of such records will exceed $50. If such notice is given, the time limitations contained in the Freedom of Information Act shall not commence until the person making the initial request agrees in writing to pay such cost. The Associate Director of Communications is authorized to require an advance deposit whenever in his or her judgment such a deposit is necessary to insure that the Corporation will receive adequate reimbursement of its costs. If such a deposit is required, the time limitations contained in the Freedom of Information Act shall not commence until the deposit is paid.

(2) The Associate Director for Communications is authorized to waive payment in instances in which total charges are less than three dollars.

[FR Doc. 84-8041 Filed 3-29-84; 8:45 am]
BILLING CODE 6000-00-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 2, 5, and 33

Procedures and Practice, and Indian Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes technical changes to the regulations regarding Procedures and Practice, and Indian education. The reason for the changes is to correct certain references to regulations of the Secretary of the Interior and the Office of Personnel Management.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Sam Adams, Acting Chief, Division of Management Research and Evaluation, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245, telephone number (202) 343-7684.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Bureau of Indian Affairs is publishing a final rule document that corrects references in various parts of 25 CFR Chapter I and corrects one paragraph designation. The corrections became necessary because previous references cited were changed and the paragraph designation is numbered incorrectly.

Since this document contains only administrative changes, advance notice and public comment would have no impact on the nature of the rule and they are hereby dispensed with in accordance with section (b)(B) of 5 U.S.C. 553 (1970). For the same reason, the 30-day deferred effective date is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (1970). Accordingly, these amendments will become effective upon the date of publication of this document in the **Federal Register**.

This document does not impact upon any of the requirements of Executive Order 12291 and the Regulatory Flexibility Act since it is only administrative in content.

The List of Subjects normally required in rulemaking documents is not included in this document since the amendments contained herein are only administrative.

PART 2—[AMENDED]

References in various Parts of Chapter I of 25 CFR are hereby amended as follows:

§ 2.19 [Amended]

1. In paragraph (c)(2) of § 2.19, Action by Commissioner on appeal, the reference to 43 CFR 4.354 and 4.355 is removed and the reference 43 CFR 4.310 is added. The footnote to §§ 4.354 and 4.355 is removed.

PART 5—[AMENDED]

§ 5.2 [Amended]

2. In paragraph (b) of §5.2, Appointment actions, the reference to 5 CFR 213.3112(a)(7) is removed and the reference Exception Number 213.3112(a)(7) is added. The footnote to Section 213.3112(a)(7) of title 5 is removed.

PART 33—[AMENDED]

§ 33.7 [Amended]

3. In § 33.7, Implementing procedures, paragraph (b)(3) is hereby redesignated as paragraph (b)(2).

John W. Fritz,
Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 84-8077 Filed 3-29-84; 8:45 am]
BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

Statement of Procedural Rules; Miscellaneous Amendments

AGENCY: Internal Revenue Service; Treasury.

ACTION: Correction.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 48 FR 15623 which set forth miscellaneous amendments to the statement of procedural rules, Part 601 of Title 26 of the Code of Federal Regulations.

EFFECTIVE DATE: The amendments that are subject of this correction were effective April 12, 1983. The correction is effective on the same date.

FOR FURTHER INFORMATION CONTACT: Michel A. Dazé of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attn: CC:LR:T. Telephone 202-566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1983, the **Federal Register** published miscellaneous amendments to the statement of procedural rules (48 FR 15623). The amendments were issued under the authority contained in 5 U.S.C. 301 and 552.

Need for a correction

Subparagraph 1 of paragraph 4 of the miscellaneous amendments revised paragraph (d)(5) of § 601.702. However, the revised text of paragraph (d)(5) incorrectly omitted the final sentence of that revised paragraph.

Correction of Publication

§ 601.702 Publication and public inspection.

Accordingly, the publication of the miscellaneous amendments to the statement of procedural rules that was the subject of FR Doc. 83-9620 is corrected by adding to the end of the revised text of paragraph (d)(5) of § 601.702 the sentence, "Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, or apparatus, or

confidential data or any other matter within the prohibition of 18 U.S.C. 1905."

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-8563 Filed 3-29-84; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

41 CFR Part 10-60

48 CFR Part 1033

Disputes and Appeals

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: This rule explains the process for handling disputes and appeals arising between the Department of the Treasury and contractors as the result of changes made by the Federal Acquisition Regulations. This is in an effort to consolidate the acquisition regulations into a single Title and a single body of regulations.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas P. O' Malley or Susan M. Hubbard, Office of Procurement, 1500 Pennsylvania Ave., NW., Washington, D.C. 20220, telephone (202) 566-2586.

SUPPLEMENTARY INFORMATION: This document changes, without substantive modification, the citations of the text previously codified at 41 CFR 10-60.100 through 10-60.204 to 48 CFR 1033.070 through 1033.075.

Background

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The development of this System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (P.L. 93-400), as amended by Pub. L. 96-83.

Under Federal Acquisition Regulation 1.301 and 1.303 which become effective April 1, 1984, each agency is to codify under the assigned chapter in Title 48, Code of Federal Regulations, any agency acquisition regulation that controls the relationship between the agency and contractors or prospective contractors. This is in an effort to consolidate the acquisition regulations into a single Title and a single body of regulations.

As explained herein, this rule merely recodifies material currently at 41 CFR Part 10-60 into 48 CFR Part 1033. The former citation refers to the rules of the General Services Administration's Board of Contract Appeals (GSBCA) pertaining to disputes and appeals published at 41 CFR Part 5-60; the new citation refers to such rules of the GSBCA now pending publication at 48 CFR Part 533. Although minor technical and stylistic changes have been made to the Treasury rule, no substantive modifications have been made. For these reasons, the Department of the Treasury has determined that notice and public procedures and a delayed effective date, normally required by 5 U.S.C. 553(b) and (d), respectively, are unnecessary with respect to this rule.

Executive Order 12291

In accordance with the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowle, Administrator, Office of Federal Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs, dated October 4, 1982, this rule is exempt from the provisions of Executive Order 12291.

Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. Since this rule reformats existing procurement policies to comply with the FAR structure and does not promulgate any new procurement policies which would impact the public, the Department of the Treasury certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Part 1033

Department of the Treasury Acquisition/Procurement Regulations, Disputes and appeals, Government procurement.

The revisions are as follows:

PART 10-60—PROCEDURES FOR SETTLING CONTRACT DISPUTE APPEALS

1. Part 10-60 of Title 41, Code of Federal Regulations is removed.

2. Part 1033 of Title 48, Code of Federal Regulations is amended by establishing Chapter 10, consisting of Part 1033 to read as set forth below:

Chapter 10—Department of the Treasury Acquisition/Procurement Regulation

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1033—DISPUTES AND APPEALS

Sec.

1033.070 Treasury contract appeals to be heard by General Services Administration Board of Contract Appeals
1033.071 Rules regarding contract dispute appeals.
1033.072 Notice of appeal.
1033.072-1 Filing.
1033.072-2 Forwarding of appeals.
1033.073 Appeal file.
1033.074 Treasury representation before the General Services Administration Board of Contracts Appeals.
1033.075 Effective date.

Authority: Office of Federal Procurement Policy Act of 1974, Pub. L. 93-400, as amended (41 U.S.C. 401 note) and Pub. L. 95-563 (41 U.S.C. 601-613).

§ 1033.070 Treasury contract appeals to be heard by General Services Administration Board of Contract Appeals.

The General Services Administration Board of Contract Appeals (herein called the Board) is the designated and authorized representative of the Secretary of the Treasury in hearing, considering, and determining, as fully and finally as would the Secretary, all appeals of decisions of contracting officers filed by contractors on disputed questions taken pursuant to the provisions of contracts (other than contracts of the Comptroller of the Currency) when such appeals require the determination by the Secretary or a duly authorized representative. (Formally 41 CFR 10-60.100.)

1033.071 Rules regarding contract dispute appeals.

The rules and regulations pertaining to the appeals of General Services Administration contract disputes prescribed in or pursuant to Part 533 of this title and this part shall govern the appeal of all contract disputes with the Department of the Treasury, or with any bureau (other than the Comptroller of the Currency) or other organization in the Department of the Treasury, except for the rules entitled "Notice of appeal", "Request, preparation and submission," "Payment of claims", now contained in Part 533 of this title. Wherever the rules of the GSA Board in Part 533 of this title refer to the General Services Administration (or GSA) or the Administrator or the General Counsel, GSA, there shall be substituted the terms Department of the Treasury, the Secretary or the General Counsel,

Department of the Treasury, respectively. (Formerly 41 CFR 10–60.200.)

1033.072 Notice of appeal.

1033.072–1 Filing.

A notice of appeal must be in writing, and shall be filed with the office of the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed with the contracting officer within the time specified therefor in the contract, or as allowed in applicable provisions of regulation or law. (Formerly 41 CFR 10–60.201–1.)

1033.072–2 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he or she shall endorse thereon the date of mailing and the date of receipt (or the date of receipt only, if otherwise conveyed) and within 20 days shall forward said notice of appeal, together with the envelope in which same was enclosed, to the Board with a copy to the General Counsel, Department of the Treasury, Washington, DC 20220. Following receipt by the Board of the original notice of appeal (whether through the contracting officer or otherwise), the contractor, the contracting officer, and the General Counsel, Department of the Treasury, will be advised promptly thereof, and the contractor will be furnished a copy of the Board's rules. (Formerly 41 CFR 10–60.201–2.)

1033.073 Appeal file.

Following receipt of a notice of appeal, the contracting officer shall promptly, and in any event within 30 days, compile and transmit to the General Counsel, Department of the Treasury, two (2) copies of the appeal file as prescribed in Part 533 of this title. The General Counsel will submit the appeal file to the Board as promptly as possible after receipt of the Board's request therefor, and in any event so as to reach the Board within 45 days after such receipt. (Formerly 41 CFR 10–60.202.)

1033.074 Treasury representation before the General Services Administration Board of Contract Appeals.

The General Counsel of the Department of the Treasury will assure representation of the interests of the Government in proceedings before the General Services Administration Board of Contract Appeals. All officers and employees of the Department of the Treasury will appear and give testimony as required and will cooperate with the General Services Administration Board of Contract Appeals and Government counsel in the processing of appeals so as to assure their speedy and just determination. (Formerly 41 CFR 10–60.203.)

1033.075 Effective date.

The regulations in 1033.070–1033.075 are effective on April 1, 1984. The regulations in this part shall apply to all cases now pending or in which appeal from the contracting officer's decision is taken on or after the effective date. (Formerly 41 CFR 10–60.204.)

David E. Pickford,

Acting Assistant Secretary (Administration).

[FR Doc. 84-8485 Filed 3-29-84; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

Grazing Administration, Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule correction.

SUMMARY: A final rulemaking amending the regulations in Part 4100 of Title 43 of the Code of Federal Regulations regarding grazing on public lands was published in the **Federal Register** on February 21, 1984 (49 FR 6440). The publication contained a number of errors which are corrected by this notice.

ADDRESS: Any inquiries or suggestions should be sent to: Director (220), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Alexander (202) 653–9210; or Mr. Richard Miller (202) 343–8735.

SUPPLEMENTARY INFORMATION: The corrections are as follows:

1. On page 6449, right column, § 4100.0–2, item 2, is corrected by removing the semicolon following the words "public lands" and replacing it with a comma, and by removing the semicolon following the words "public range" and replacing it with a comma.

2. On page 6449, right column, § 4100.0–3(d) item 3.c, is corrected by inserting a closing parenthesis following the citation "118(d)" where it appears, and correcting item d. by removing the period at the end of the first sentence in paragraph (e) and replacing it with a semicolon followed by the word "and".

3. On page 6450, left column, § 4110.0–5, item f, is corrected by removing it. As discussed in the preamble, item f was replaced in final rulemaking by a new definition of "consultation, cooperation and coordination," found at item h. The proposed revision was inadvertently retained in the final rulemaking.

4. On page 6450, center column, § 4100.0–5, is corrected by inserting the word "and" following the word "shelf" where it appears.

5. On page 6450, right column, § 4110.3–1(c), item 11.b., is corrected by removing the citation "§ 4110.5" where it appears and replacing it with the citation "§ 4130.1–2".

6. On page 6451, center column, § 4110.4–2(b), is corrected in line 6 by removing the comma and inserting a parenthesis preceding the word "national" where it first appears and closing the parenthesis following the word "etc.", and the word "waver" in line 13 is corrected to read "waiver".

7. On page 6452, center column, § 4120.3–3(b), is corrected by removing the word "improvement" where it first appears and replacing it with the word "improvements".

8. On page 6452, center column, § 4120.3–3(c), is corrected by removing the words "or wells" where they first appear.

9. On page 6452, center column, § 4120.3–6(b), is corrected by inserting the word "or" following the word "objectives" where it appears.

10. On page 6453, left column, § 4130.1–1(a), is corrected by removing the word "affecting" where it appears in the first sentence and replacing it with the word "affected" and removing the word "required", where it appears in the second sentence and replacing it with the word "require".

11. On page 6453, left column, § 4130.1–2(c), is corrected by removing the word "applicants," and replacing it with the word "applicant's".

12. On page 6453, left column, § 4130.2(a), is corrected by removing the semicolon following the word "title" and replacing it with a period.

13. On page 6453, center column, § 4130.5(b), is corrected by removing the word "and" following the word "bulls", inserting a period following the word "sanitation" and removing the semicolon and the word "and" and replacing it with a period.

14. On page 6453, right column, § 4130.6–2, is corrected by placing the following paragraphs immediately following paragraph (d):

"(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;

"(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to allow for the reproduction,

establishment, or restoration of vigor to plants, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth; and

"(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee."

15. Beginning on page 6453, right column, § 4130.6–3 (e), (f), and (g) are removed in their entirety.

16. On page 6454, left column, § 4130.7–2(b) is corrected by removing the word "amount" where it appears and replacing it with the word "among".

17. On page 6454, center column, § 4130.7–3, is corrected by adding a closing parenthesis to the citation "(43 U.S.C. 1734(a)".

18. On page 6454, right column, § 4150.4–2, is corrected by inserting the word "or" before the figure "§ 4150.4–1(c)" where it appears.

19. On page 6455, left column, § 4160.3(c), is amended by placing a period after the word "appeal" in the third sentence and deleting the remainder of the sentence. As presently written, the final words of this sentence refer to paragraphs 4160.3 (d) and (e) which are deleted by the final rulemaking at page 6455, center column, item 45 c.

20. On page 6454, right column, § 4160.1–1 inserted a new second sentence that should have replaced the second sentence of the existing regulation. The second sentence of section 4160.1–1 is removed because it is inconsistent with the new sentence.

21. On page 6455, center column, item 46, is corrected by inserting the words "or lessee" following the word "permittee".

Dated: March 27, 1984.

Leona A. Power,

Acting Assistant Secretary of the Interior.

[FR Doc. 84–8531 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

Restrictions on Amateur Service Use of the 1900–2000 kHz Band Imposed Due to LORAN–A Operations.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends Parts 2 and 97 of its Rules to remove restrictions on Amateur Service use of the 1900–2000 kHz band which were imposed due to LORAN–A radiolocation operations. This action eliminates provisions now obsolete because of discontinued LORAN–A operations.

EFFECTIVE DATE: March 27, 1984.

FOR FURTHER INFORMATION CONTACT:

Mr. Fred Thomas, Office of Science and Technology, 2025 M Street, NW., Washington, D.C. 20554, (202) 653–8171.

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 97

Radio.

Order

In the Matter of Amendment of Parts 2 and 97 to remove restrictions on Amateur Service use of the 1900–2000 kHz band due to LORAN–A operations.

Adopted: March 22, 1984.

Released: March 27, 1984.

By the Commission.

1. In General Docket 80–739, Implementation of the 1979 World Administrative Radio Conference (FCC 83–511, 49 FR 2357), footnote NG15 to the Table of Frequency Allocations contained in Section 2.106 was modified to provide continued protection from harmful interference to Canadian LORAN–A radiolocation operations in the 1900–2000 kHz band until January 1, 1984. There is no reason to continue protection to the Canadian LORAN–A radiolocation operations, as they were discontinued on December 31, 1983. Therefore, this Order modifies the Table of Frequency Allocations by removing footnote NG15 and by modifying footnote US290, which makes reference to footnote NG15. Further, Part 97, governing the Amateur Radio Service, is also modified to remove restrictions on amateur use which were imposed to protect the LORAN–A operations. The appropriate modifications to Parts 2 and 97 are listed in the Appendix.

2. Because this amendment simply removes obsolete restrictions on spectrum use and is to the benefit of FCC licensees, compliance with the prior notice and effective date provisions of the Administrative Procedure Act (5 U.S.C. § 553) is unnecessary.

3. Accordingly, It is ordered, that effective March 27, 1984, §§ 2.106, 97.61 and 97.185 are amended as set forth in the Appendix. Authority for this action is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

4. For further information about this item contact Fred Thomas, (202) 653–8171.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—[AMENDED]

A. Part 2 Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

1. Section 2.106 is amended by removing footnote designation NG15 at column 5 for the 1900–2000 kHz band, by removing the text of footnote NG15 in its entirety from the list of footnotes following the Table of Frequency Allocations and by revising the text of footnote US290 at the list of footnotes following the Table of Frequency Allocations.

§ 2.106 Table of Frequency Allocations.

UNITED STATES TABLE

Government	Non-Government
Allocation kHz (4)	Allocation kHz (5)
* * * * *	
1900–2000 RADIOLOCATION US290	1900–2000 RADIOLOCATION US290

* * * * *

US290 In the band 1900–2000 kHz amateur stations may continue to operate on a secondary basis to the radiolocation service, pending a decision as to their disposition through a future rule making proceeding in conjunction with the implementation of the standard broadcasting service in the 1625–1705 kHz band.

* * * * *

PART 97—AMENDED

B. Part 97 Amateur Radio Service.

1. Section 97.61 is amended by amending paragraph (a) by changing the first entry in the table to read 1800–2000, by removing the second entry in the table in its entirety, and by removing the texts of paragraphs (b)(1) and (b)(2), while reserving their paragraph designators.

§ 97.61 Authorized frequencies and emissions.

(a) * * *

Frequency band	Emissions	Limitations (see paragraph (b))
MHz: 1800 to 2000	A1, A3	

* * * * *

(b) Limitations:
(1) [Reserved]
(2) [Reserved]

* * * * *

2. Section 97.185 is amended by amending § 97.185(b) by removing limitation designator one (1) in the table and by amending subsection 97.185(c) by removing the text of limitation one (1) in its entirety, while reserving its designator.

§ 97.185 Frequencies available.

* * * * *

FREQUENCY OR FREQUENCY BANDS

	Limitations
MHz: 1975–2000	

* * * * *

(c) Limitations:
(1) [Reserved.]

* * * * *

[FR Doc. 84-8545 Filed 3-29-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-192]

Organization and Delegation of Powers and Duties; Emergency Preparedness Functions of the Maritime Administration

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment revokes the separate delegation to the Maritime Administration (MarAd) to carry out defense mobilization and emergency preparedness functions, since MarAd has now been integrated into DOT's general plan for defense mobilization and emergency preparedness of all civilian transportation.

DATE: The effective date of this amendment is March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–50, Department of Transportation, Washington, DC (202) 426–4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**.

When MarAd was transferred to DOT from the Commerce Department in 1981, the existing delegation to MarAd to conduct defense mobilization and emergency preparedness was left in force pending integration of MarAd's responsibilities into the DOT-wide plan for defense mobilization and emergency preparedness of all United States civilian transportation. This plan is carried out for the Secretary by the Office of Emergency Transportation in the Research and Special Programs Administration; that office has completed the integration of MarAd into its DOT-wide plan and there is no longer any reason for a direct delegation to MarAd.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies); Organization and functions (government agencies).

PART 1—[AMENDED]

§ 1.66 [Amended]

In consideration of the foregoing, § 1.66 of Part 1 of Title 49, Code of Federal Regulations, is amended by removing paragraph (p).

Authority: 49 USC 322.

Issued in Washington, DC, on March 15, 1984.

Elizabeth Hanford Dole,
Secretary of Transportation.

[FR Doc. 84-8606 Filed 3-29-84; 8:45 am]
BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 49, No. 63
Friday, March 30, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 332 and 337

Check-Guaranty and Credit Card; Sponsorship Programs

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (the "FDIC") hereby gives notice that it has withdrawn its outstanding proposed rule published on June 12, 1981 (46 FR 31018) that would have specifically authorized nonmember insured banks to conduct check-guaranty and credit card sponsorship programs, subject to fixed limitations on risk. The proposal, which was intended to remove an uncertainty concerning the applicability of existing regulatory proscriptions to these programs, is being withdrawn because of its stale date. The FDIC is currently considering a new proposal which would have the same effect as the June 12, 1981 proposal and which reflects commentary received as a result of the earlier proposal.

DATE: The withdrawal is effective March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Janis R. Blake, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, (202) 389-4271.

By Order of the Board of Directors, March 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-8560 Filed 3-29-84; 8:45 am]
BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6519; 34-20785; File No. S7-12-84]

Electronic Filing, Processing and Information Dissemination System

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of comments.

SUMMARY: The Commission today is publishing a release requesting indications of interest from companies in participating in a pilot electronic filing, processing and information dissemination system. The judgment and experience of companies participating in the pilot operation will influence the development and specifications of the system. The release includes a questionnaire directed to potential participants in the pilot which is designed to provide the Commission with information necessary to implement the pilot. The Commission expects experience with the pilot system to assist it in the creation of an operational electronic filing, processing and dissemination system which will permit corporations to make their required filings electronically and allow investors, securities analysts and the public to instantly access such information on home and business computer screens. The Commission also is soliciting comments from securities analysts and other potential users of the electronic disclosure system.

DATE: Comments and questionnaires should be received on or before May 11, 1984.

ADDRESS: Comments and questionnaires should be addressed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. All comment letters should refer to File No. S7-12-84. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Herbert Scholl (202) 272-2589, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is seeking volunteer registrants to participate in a pilot electronic disclosure system, designated "EDGAR" for Electronic Data Gathering, Analysis and Retrieval, which will begin in September 1984. The pilot program's equipment specifications and processing systems will be based, in large part, on the information derived from the response to the attached questionnaire. Accordingly, only those registrants which complete the questionnaire will be eligible to file electronically during the pilot period. Therefore, all registrants who are potentially interested in participating are urged to complete the questionnaire.

The remainder of this release sets forth background on the development of EDGAR, information concerning the pilot program, a questionnaire to be completed by potential participants and a solicitation of comments from other registrants and potential users of the electronic disclosure system.

I. Background

Technological developments have revolutionized information analysis and distribution in the financial community. The traditional paper-supported system of data processing and reporting is being replaced by sophisticated electronic communication and data management systems. Computer literacy, instant data retrieval and electronic mail are having a profound impact on information gathering and dissemination.

The Commission has studied these developments with great interest. It has recognized for some time that the potential use of the information contained in corporate filings has not been fully realized by analysts or investors. With the adoption of the integrated disclosure system, which provides for a uniform disclosure system under the Securities Act of 1933 and the Securities Exchange Act of 1934,[1] a new data base framework for filed information has been created. The Commission is committed to providing the public with convenient and immediate access to this data base.

Accordingly, the Commission has formed a Computer Task Force with the purpose of determining, in conjunction

[1] Release No. 33-6383 (March 3, 1982) [47 FR 11380].

with the Mitre Corporation,[2] the most effective and efficient means of using computer technology to improve the receipt, storage, review and dissemination of filed information. The Task Force is seeking to develop the requirements for the EDGAR operational system, which will permit registrants to make their required filings electronically, provide investors with instant access to Commission information on their computer screens, and provide the Commission with the capability to process and analyze filings on an electronic basis. Such a system should reduce registrants' costs, improve the dissemination of information to investors and accelerate Commission reviews.

II. Pilot Program

In furtherance of these objectives, a "request for proposals" (RFP) has been issued seeking proposals from contractors to install and support a pilot program to test electronic filing, processing and dissemination on a limited basis.[3] The solicitation period closed on March 9 and the Commission anticipates award of the contract in May.

The Commission is establishing a pilot branch within the Division of Corporation Finance. The branch will begin processing and reviewing electronic filings in September 1984. The number of filings being processed electronically will increase as familiarity with the new system develops. When the pilot program is fully operational, the Commission anticipates that up to 1,000 registrants will be able to participate.[4]

The pilot branch also will evaluate various decision support systems (including data base access) and office automation tools, as well as test new automated selective review techniques. The judgment and experience of the participation companies and the Commission with the pilot operation will determine, in large part, the configuration of the fully operational system.

The Commission therefore is seeking volunteer companies will file their required disclosure documents electronically. The potential savings and efficiencies provided by electronic filing should be attractive to many registrants, and the Commission encourages registrants to take advantage of these benefits. Limitations on filing formats and graphics will be kept to a minimum during the test period.

In order to provide the Commission with the information necessary to establish the pilot, interested companies are requested to fill out the attached two part questionnaire. The first part provides general information about the registrant and the name of the person to contact for further information. The second part requests information on potential cost savings and technical data, such as requirements for electronic filing and computer storage capacity, which the Commission will use in developing the system's technical specifications.

After the Commission evaluates the responses to the questionnaire, it will contact registrants directly to explore more fully the mechanics of participating in the pilot program.

The Commission recognizes that certain of its current rules and regulations concerning signatures, fee receipt and general filing requirements will need to be revised. Commentators are requested to suggest rules that may need revisions and to recommend specific changes. Following the award of the pilot contract, the Commission will take necessary steps to accommodate the pilot system.

III. Solicitation of Comments

The Commission also is requesting comments on EDGAR from potential users, such as securities analysts and investors, as well as from registrants who initially may not wish to participate in the pilot. The Commission is seeking specific information on the estimated annual dollar benefits which may accrue from the electronic system. Information on potential cost savings (printing, delivery, clerical, etc.), expedited delivery times and immediate information access for purpose of research, analysis, and investment decisions is sought. The Commission also is interested in (1) whether commentators would be willing to invest in hardware or software, assuming a reasonable cost, to view Commission filings on their computer screens; (2) whether the ability to analyze and compare individual data items (e.g., sales, income, names of directors, management's discussion and analysis) found in Commission filings, with or without additional software, is important to effective use of the system; and (3) if so, which items are important. Responses to these questions will aid the Commission as it constructs its system to meet the needs of investors and the business and financial communities.

By the Commission.

Dated: March 22, 1984.

George A. Fitzsimmons,
Secretary.

BILLING CODE 8010-01-M

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[2] Mitre Corporation is a Federal contract research center.

[3] Copies of the RFP are available from the Commission's Public Reference Room.

[4] Investment company filings, which are handled by the Division of Investment Management, will not be included in the pilot program.

OMB Approval
OMB No. 3235-0319
Expires March 31, 1985

EDGAR QUESTIONNAIRE

(Please Type or Print)

COMPANY INFORMATION

1. Name:

2. Address: Zip Code

3. Name of Person to Contact:

4. Telephone Number: ( )

5. Industry (SIC Code):

6. Number of Shareholders:

7. Common Stock Traded on:

☐ NYSE ☐ AMEX ☐ NASDAQ ☐ Regional Exchange ☐ Other (Specify)

8. Total Assets (End of 1983 Fiscal Year):
$

9. Total 1983 Fiscal Year Sales (Revenues):
$

10. Which 1933 Act registration statement Form types would the Company use for a primary offering of equity securities for cash?

☐ Form S-3 ☐ Form S-2 ☐ Form S-1

TECHNICAL QUESTIONS

11. What type of equipment is used to prepare mailings to shareholders (such as annual reports and proxy statements), periodic reports (Forms 10-K, 10-Q, 8-K) and registration statements filed under the Securities Act of 1933? (Please identify equipment brand name.)

	Shareholder Mailings	Periodic Reports	1933 Act Registration Statements
Word processor:			
Computer Typesetter:			
Other (specify):			

12. Would you be willing to obtain, assuming a reasonable cost, additional hardware or software in order to file documents electronically for the pilot program? For the operational System?

Pilot Program ☐ Yes ☐ No

Operational Program ☐ Yes ☐ No

SEC 2064 (2-84)

13. Who presently transmits mailings to shareholders, periodic reports and registration statements to the Commission?

	Shareholder Mailings	Periodic Reports	1933 Act Registration Statements
In-house staff	☐	☐	☐
Attorneys	☐	☐	☐
Accountants	☐	☐	☐
Financial printers	☐	☐	☐
Other: _____	☐	☐	☐

14. Which would be your preferred method of filing periodic reports and registration statements?

	Periodic Reports	Registration Statements
On magnetic diskette (please give size, type and format)		
On magnetic tape (please give number of tracks, format, density and code)		
Via direct transmission over communications facilities		

15. Do you presently transmit materials similar to SEC documents over electronic communications links? (If so, please identify communications facilities.)

☐ Yes _____ ☐ No

16. Would you be using your own facilities to transmit documents electronically or those of an agent, if available? (If an agent, such as a financial printer, please identify type of agent.)

☐ Own facilities ☐ Agent facilities _____

17. What communications equipment would you use to transmit filings (e.g., IBM 3705)?

18. Do you anticipate sending your filings over a public network such as Telenet or Tymnet? (If yes, please identify the network.)

☐ Yes _____ ☐ No

19. Which would be your preferred communications protocol (e.g., X.25)?

20. What is the highest line speed you would desire for transmission of filings?

21. What is the highest line speed you desire for interactive communications at logon or signoff?

22. Do you prefer that communication be:

☐ (i) Asynchronous? or ☐ (ii) Synchronous?

☐ (a) Half duplex? ☐ (b) full duplex?

23. Which character sets do you use?

☐ ASCII ☐ ASCII-2 ☐ Other (specify) _____

24. Would you use any of the following characters in your filings?

Italics	☐ Yes	☐ No
Foreign language	☐ Yes	☐ No

Other non-standard characters? (identify) _____

25. Would you use the ASCII graphics character set? ☐ Yes ☐ No

26. Please complete the following chart with respect to documents submitted to the Commission during the Company's 1983 fiscal year.

Document	No. of Original Documents	No. of Amendments	Total No. of Pages
Form 10-K			
Form 10-Q			
Form 8-K			
Annual Proxy Statement			
Annual Report to Shareholders			
Special Proxy Statement			
Form S-3			
Form S-2			
Form S-1			
Form S-14			
Form S-8			
Other Forms			

27. In what filings did you include graphics (photographs, specimens, maps, logos, designs) during the last year?

☐ Form 10-K ☐ Annual Reports to Shareholders ☐ 1933 Act Registration Statements

☐ Form 10-Q ☐ Proxy Statements ☐ Other _____

28. How many pages of graphics in each type of filing?

Filing	Number of Pages	Filing	Number of Pages	Filing	Number of Pages

29. Assuming graphics are to be digitized, at what scanning density (bit per inch) would you be rendering your graphic materials?

30. How would you signify the beginning, end, scan density and compression of a graphic imbedded in a stream of text?

31. Could you tag and identify predetermined data items in your transmission? If so, how?

☐ Yes _____ ☐ No

32. What total cost savings would you expect each year from electronic filing and processing?

Printing? .....$ _____

Professional Fees? ..... _____

Time? ..... _____

Delivery (Mail or messenger)? ..... _____

Other (specify)? ..... _____

Total .....$ _____

33. Please include any other comments or suggestions you may have with respect to EDGAR.

[FR Doc. 84-8586 Filed 3-29-84; 8:45 am]
BILLING CODE 8010-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM82-22-001 and Docket No. RM83-48-001]

Natural Gas Policy Act; Termination of Rulemaking Dockets; Miles Laboratories, Inc. and Church and Dwight Co., Inc.

Issued: March 26, 1984.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Order denying rehearing.

SUMMARY: On January 6, 1984, the Federal Energy Regulatory Commission (Commission) issued Order No. 354, terminating fifteen rulemaking dockets. Order No. 354 withdrew two Notices of Proposed Rulemaking and denied 13 petitions for rulemaking.

The Commission received two timely requests to rehear Order No. 354 from Miles Laboratories, Inc., Docket No. RM82–22–001, and from Church and Dwight Company, Inc., Docket No. RM83–48–001. For exemptions from incremental pricing for citric acid (Miles) and sodium bicarbonate used in animal feed (Church and Dwight). In this order, the Commission denies these requests for rehearing.

DATE: This order denying rehearing is effective March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withnell, Office of the General Counsel, Rulemaking and Legislative Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 29428, (202) 357–8033.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying requests to rehear Order No. 354 [1] which were submitted by Miles Laboratories, Inc. (Miles), in Docket No. RM82–22–001, and by Church and Dwight Company, Inc. (Church and Dwight), in Docket No. RM83–48–001. Order No. 354 among other actions, denied petitions for rulemaking filed by the two companies requesting exemptions from incremental pricing for citric acid (Miles) and sodium bicarbonate used in animal feed (Church and Dwight).

[1] Termination of Rulemaking Dockets, Docket No. RM79–50–000, *et al.*, issued Jan. 6, 1984, 49 FR 1525 (Jan. 12, 1984).

II. Discussion

A. Miles Laboratories, Inc.

Miles Laboratories, Inc. is one of two manufacturers of citric acid. Miles petitioned the Commission to exempt the boiler fuel use of natural gas to manufacture citric acid, arguing that production of this chemical is food processing exempt from incremental pricing surcharges under section 206(b) of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3346(b) (1981).[2] In Order No. 354, the Commission denied the petition. The Commission noted that Miles had failed to file its request for exemption by the date the Commission had set for consideration of agricultural exemptions under section 206(b) of the NGPA. The Commission was also not convinced that the exemption should be granted in any case because citric acid is not a food and therefore its production is not food processing, as that term is used in the Commission's regulations. Nothing in Miles' rehearing request persuades the Commission to change this view.

Miles disputes the Commission's authority to establish a date by which petitions for exemptions had to be filed, arguing that the NGPA requires the Commission to exempt any agricultural use. The Commission believes that its decision to require the filing of requests for exemption by a date certain fully comports with its Congressional grant of discretion to administer the incremental pricing program.[3] The Commission has initiated five separate rulemaking proceedings regarding the scope of exemptions under section 206 of the NGPA, spanning a period of nearly three years.[4] The Commission has not foreclosed the possibility of granting additional exemption requests. It nevertheless believes that those filing petitions asking the Commission to initiate a new rulemaking docket on agricultural exemptions must provide clear evidence that would warrant committing additional agency resources to this area. Miles has not sustained that burden. In any case, the Commission's decision to deny Miles' petition for rulemaking was not predicated solely on Miles' delay in filing its request, but primarily on the Commission's view that citric acid is a chemical additive and not a food and therefore its manufacture is not food processing.

The Commission has decided that the constituent chemicals that may eventually be combined with other ingredients to form "food" must themselves be "food" prior to the act of being combined in order for their separate manufacture to be considered food processing. The fact that food may eventually result from the addition of chemicals or that the chemicals may eventually be considered as part of food does not mean that the chemical, by itself, is food. Citric acid is a chemical used in food in a variety of ways. Its manufacture, however, is not the manufacture of food and is therefore not food processing.[5]

Miles disagrees with this substantive finding. To support its position, the company notes that citric acid is listed in the *Food Chemical Codex (FCC)*, "an authoritative compilation of foods and food additives." The inclusion of citric acid in the *FCC*, however, does not make citric acid a food.

The *FCC* contains specifications for over 450 chemical additives that contribute to the appearance, flavor, preservation or other aspects of food. While some of these chemicals may themselves be regarded as food, it would be inappropriate under the law to exempt the manufacture of any these products simply by virtue of their inclusion in the *FCC*.

The company also argues that the Commission's distinction between organic chemicals added to food and discrete food substances, such as spices, "does not withstand analysis because many organic chemicals which the Commission regards as food are chemical additives." The Commission regards as "food" those items that are generally considered by the industry to

[2] Section 206(b) exempts agricultural users of natural gas from surcharges designed to recoup increases in the average cost of natural gas. Agricultural uses of natural gas include gas used for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping or crop drying. 15 U.S.C. 3346(b)(3)(A) (1982).

[3] *See, e.g.*, H.R. Rept. No. 1752, 95th Cong., 2d Sess. 91, *reprinted in* 1978 U.S. Code Cong. & Ad. News 8005, 8012.

[4] Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79–14–000 issued Sept. 28, 1979 (Order No. 49), 44 FR 57726 (Oct. 5, 1979); Agricultural Uses Exemption; Interim Rule Amending Commission's Regulations under the Natural Gas Policy Act of 1978, Docket No. RM80–75–000, issued Oct. 6, 1980, 45 FR 67276 (Oct. 9, 1980); Definition of Agricultural Use; Incremental Pricing; Final Rule, Docket No. RM80–48–000, issued Dec. 5, 1980 (Order No. 114), 45 FR 82915 (Dec. 17, 1980); Incremental Pricing; Final Rule, Docket No. RM80–18–000, issued Sept. 24, 1981 (Order No. 177), 46 FR 50000 (Oct. 9, 1981); Definition of Agricultural Use, Docket No. RM81–17–000, issued Nov. 16, 1981, (Order No. 189), 46 FR 57469 (Nov. 24, 1981).

[5] *See also* Definition of Agricultural Use; Incremental Pricing; Final Rule, Docket No. RM80–48–000, issued Dec. 5, 1980, (Order No. 114), 45 FR 82915 (Dec. 17, 1980) (the processing of agricultural products and by-products does not constitute food processing).

be food and are so classified by the Office of Management and Budget (OMB) in its *Standard Industrial Classification Manual (SIC Manual)*.[6] In the *SIC Manual*, citric acid is not a food. Recognizing that the *SIC Manual* is not the only source of information on what is food, the Commission also classifies as "food" those items that are commonly considered food.

Spices are listed as food preparations in the *SIC Manual* (SIC. Code 2099 Miscellaneous Food Preparations and Kindred Products, Food Preparations, Not Elsewhere Classified). Spices are also the kind of products commonly regarded as food. Although they are added to foods, they are also sold separately as discrete products. Monosodium glutamate, which the Commission also regards as food, is not categorized as food by the *SIC Manual* but, like spices, it is a discrete product that is available separately from the products in which it may be used.[7] Citric acid is not a discrete product like spices that is available separately from the food products in which it is used.[8]

Finally, Miles points out that granting the company the requested exemption would have only very narrow implications. The Commission disagrees. A large number of chemicals used in food potentially could be exempt from incremental pricing under Miles' definition of food processing. The Commission's decision to draw the line at seasonings akin to spices reflects its view that at some point in the food production chain the manufacture of a substance becomes sufficiently attenuated to lose its distinction as a food. The Commission believes that the manufacture of citric acid is at this point. Miles' request for rehearing accordingly is denied.

B. Church and Dwight Company, Inc.

Church and Dwight Company, Inc. produces sodium bicarbonate which is used to adjust the content of the rumen of cattle in order to increase feed efficienty. Church and Dwight petitioned the Commission to exempt the boiler fuel use of natural gas in the production of sodium bicarbonate because, in their view, the substance is an animal feed. The Commission denied the petition in Order No. 354 on the basis that sodium bicarbonate is a non-feed ingredient added to animal feed, the primary purpose of which is not to provide nutrition but to promote the conversion of animal feed. The company disputes the Commission's decision.

When the Commission issued the final rule exempting from incremental pricing the boiler fuel use of natural gas in the manufacture of animal feed,[9] sodium bicarbonate was not included as an exempt animal feed. Church and Dwight argues that because it filed comments in the docket and because those comments were not cited in the Commission's final rule, its exclusion could only have been accidental. The Commission considered all comments submitted and arguments made before issuing its final rule. Nevertheless, the Commission wishes to point out that if Church and Dwight believed a clarification of the Commission's decision was necessary, the time to request such a clarification was during the statutory rehearing period following issuance of the final order. Church and Dwight, however, did not request rehearing.

Church and Dwight makes reference to its compliance with unspecified Federal and state animal feed regulations. The implication of this reference is apparently that such compliance proves the company manufactures animal feed. The Commission disagrees. Because Church and Dwight produces a regulated component of animal feed does not prove that it is an animal feed manufacturer. In implementing the NGPA, the Commission has the responsibility to determine precisely which facilities qualify under the exemption categories in Section 206 of the NGPA.[10]

The company further contends that sodium bicarbonate is an important element in proper animal digestion and thus qualifies as an animal feed. In reaching the contrary conclusion, the Commission first consulted the *SIC Manual* for animal feed. Sodium bicarbonate is not listed under the SIC Code for Prepared Feeds and Feed Ingredients for Animals and Fowls (SIC Code 2048). The Commission also considered the information initially supplied by Church and Dwight about its product and has reexamined its decision in light of the additional statements the company provided in the rehearing request. Upon reconsideration, however, the Commission does not believe its original determination should be modified. Just as the Commission's exemption for food processing distinguishes between the processing of food and the processing of non-food substances that are used in foods, the Commission's exemption for animal feed is designed to distinguish between the manufacture of animal feed and the manufacture of non-feed components of that feed. Sodium bicarbonate falls in this latter category.

Church and Dwight's final contention is that the Commission's decision on their exemption petition is contrary to Congressional intent. Congress gave the Commission broad authority under section 206(d) of the NGPA to decide who should be covered by its exemption rules.[11] The Commission believes its decision to deny Church and Dwight an exemption fully comports with its statutory authority to define the scope of its discretionary exemptive rules. Accordingly, the company's request for rehearing of Order No. 354 is denied.

The Commission orders:

For the foregoing reasons, the Commission denies rehearing of Order No. 354 as requested by Miles Laboratories, Inc. in Docket No. RM82–22–001 and by Church and Dwight Company in Docket No. RM83–48–001.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8669 Filed 3-29-84; 8:45 am]

BILLING CODE 6717-01-M

[6] The *SIC Manual*, while initially published as a government statistical tool, is now widely used by private industry. Office of Management and Budget, Standard Industrial Classification Manual 3 (1972).

[7] The same analysis holds true for naturally-occurring vitamins which also have an incremental pricing exemption for boiler fule used in their production.

[8] The Commission is not alone in distinguishing food on the basis of its availability as a discrete product. In determining that the use of natural gas to produce food-grade salt is an essential agricultural use, the Department of Agriculture used a similar analysis, which Miles quotes in its rehearing petition.

The NGPA does not permit distinction in determining the types of food products to be certified as essential agricultural uses. Instead, its language indicates that all food products are to be so certified. The production of food-grade salt should be included in the list of essential agricultural uses under section 401(f)(1)(A) because it is manufactured under food-grade standards for sanitation and cleanliness, is used as a food additive for preservative, and is sold in retail stores for food use. Proposed Amendment Regarding Certification of Essential Agricultural Uses and Requirements; Natural Gas Policy Act, 48 FR 23438, 23439 (May 25, 1983).

[9] Incremental Pricing, Final Rule, Docket No. RM80–18–000, issued Sept. 24, 1981 (Order No. 177), 46 FR 50060 (Oct. 9, 1981).

[10] Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79–14–000, issued Sept. 28, 1979 (Order No. 49) 44 FR 57728, 57731 (Oct. 5, 1979).

[11] H. R. Rep. No. 1752, 95th Cong., 2d Sess. 102, *reprinted in* 1978 U.S. Code Cong. & Ad. News 8863, 8915.

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Correction of proposed rule.

SUMMARY: The Parole Commission is correcting a clerical error in its proposed rule revising its Paroling Policy Guidelines, 28 CFR 2.20 published on March 7, 1984 at 49 FR 8447–8448.

EFFECTIVE DATE: March 7, 1984.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–6108 published March 7, 1984 at page 8448, first column the title of Section 921 of Chapter Nine, Subchapter C of the Offense Behavior Severity Index, 28 CFR 2.20 is incorrect. This section title is corrected to read:

921 Distribution or Possession With Intent to Distribute.

Dated: March 26, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84–8515 Filed 3–29–84; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

[Docket No. T–4]

Submission of the New York State Plan for Public Employees Only and Its Availability for Public Comment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed Initial State Plan Approval.

SUMMARY: This document gives notice of the submission by the New York Department of Labor of a State plan for the enforcement of occupational safety and health standards applicable to public sector (state and local government) employment only. After an opportunity for public comment, the Assistant Secretary of Labor for Occupational Safety and Health will approve the plan if it is determined that the plan meets the criteria set forth in the Occupational Safety and Health Act of 1970 and applicable regulations.

DATES: Written comments, data, views, and arguments on the proposal must be postmarked by April 30, 1984. Objections and requests for a hearing must be postmarked by April 30, 1984.

ADDRESSES: Written comments, objections and requests for a hearing should be submitted in quadruplicate, to the Docket Officer, Docket T–4 Room S–6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523–7894.

Location of Plan for Inspection and Copying

A copy of the plan may be inspected and copied during normal business hours at the following locations: Docket Office, Docket T–4, U.S. Department of Labor, Occupational Safety and Health Administration, Third Street and Constitution Avenue, NW., Room S–6212, Washington, D.C. 20210; Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza) Room 3445, New York, New York 10036; State of New York Department of Labor, State Office Building Campus, Building 12, Room 579, Albany, New York 12226; Division of Occupational Safety and Health, State of New York Department of Labor, Room 6994, 2 World Trade Center, New York, New York 10047.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Authority

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 667) provides that a State which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated may submit a plan to the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") describing in detail the proposed program. Regulations promulgated pursuant to the Act at 29 CFR Part 1956 provide that a State may submit a State plan for the development and enforcement of occupational safety and health standards applicable only to employees of the State and its political subdivisions ("public employees"). Under these regulations the Assistant Secretary will approve a State plan for public employees if, in his judgment, the plan provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective as in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced under section 6 of the Federal Act, giving due consideration to differences between public and private sector employment. In making this determination the Assistant Secretary will consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR Part 1956, Subpart B.

Background

A State plan for the enforcement of occupational safety and health standards in New York was approved by the Assistant Secretary on May 14, 1973 (39 FR 13482; 29 CFR 1952.180 et seq.). This plan included coverage of private workplaces as well as a program for public employees. The plan was subsequently withdrawn effective June 30, 1975 under the authority of then Governor Hugh L. Carey (40 FR 27655). During 1980, the New York State legislature passed legislation, signed into law by the governor on June 30, 1980, which provided the basis for establishing a comprehensive occupational safety and health program applicable to the public employees in the State. This statute, the Public Employee Safety and Health Act (the "New York Act"), Chapter 729 of the Laws of 1980, became effective on December 29, 1980. Pursuant to the New York Act, the State formally submitted for Federal appoval a plan applicable only to public employees on February 11, 1982. In response to Federal review of the proposed State plan, supplemental assurances, and revisions, corrections and additions to the plan were submitted on March 4, 1984 and March 15, 1984.

Description of the Plan

The plan designates the New York Department of Labor as the State agency responsible for administering the plan throughout the State. The State has pledged to adopt within three months of initial plan approval all Federal standards promulgated as of July 1, 1983 and to incorporate future OSHA revisions in accord with 29 CFR 1953.21. The plan includes legislation, the Public Employees Safety and Health Act (Chapter 729 of the Laws of 1980),

passed by the New York legislature in 1980. Under that legislation the Industrial Commissioner (now Commissioner of Labor), head of the State of New York Department of Labor, has full authority to enforce and administer all laws and rules protecting the safety and health of employees of the State and its political subdivisions.

The plan includes provisions for the granting of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the Federal Act. The State provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance.

Section 5 of the New York Act provides for inspections of covered workplaces including inspections in response to employee complaints. If a determination is made that an employee complaint does not warrant an inspection, the complainant shall be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. Additionally, section 5 of the New York Act provides the opportunity for an employer and employee representatives to accompany an inspector during an inspection for the purpose of aiding in the inspection.

The plan provides for notification to employees of their protections and obligations under the plan by such means as a State poster, and required posting of notices of violation. Section 10 of the New York Act provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State's Act in terms essentially identical to section 11(c) of the Federal Act.

The plan provides a scheme of enforcement for compelling compliance under which employers are issued notices of violation and orders to comply, for any violation of standards and orders. Such notices shall fix a reasonable time for compliance. Employers, employees and other affected parties may seek informal review with the Department of the notice of violation including the reasonableness of the abatement period, and/or may seek formal administrative review with the Industrial Board of Appeals. Judicial review of the decision of the Industrial Board of Appeals may be sought pursuant to Article 78 of New York's Civil Practice Law and Rules. The Commissioner of Labor may seek judicial enforcement (mandamus actions) of orders to comply by commencing a proceeding pursuant to Article 78 of the Civil Practice Law and Rules against non-complying employers.

Also included in the plan are provisions for right of entry for inspection, prohibition of advance notice of inspection and employers' obligations to maintain records and provide reports as required. Further the plan provides assurances of a fully trained, adequate staff, including 30 safety and 8 health compliance officers for enforcement inspections, and 10 safety and 12 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of adequate funding to support the plan. 29 CFR 1956.10(g) requires that State plans for public employees provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards. The staffing requirements (or "benchmarks") for State plans covering both the private and public sectors are established based on the "fully effective" test established in *AFL–CIO* v. *Marshall,* 570 F.2d 1030 (D.C. Cir., 1978). There is some question whether this staffing test, and the complicated formula used to derive benchmarks for complete private/public sector plans, was intended, or is appropriate for application to, the staffing needs for public sector only plans. However, the State has given satisfactory assurance in its plan that it will meet the compliance staffing benchmarks established for public sector only coverage in accord with the 1980 benchmarks formula or any subsequent revisions thereto, and the schedule for their attainment, thereby meeting the requirements of 29 CFR 1956.10.

Although the New York Act sets forth the general authority and scope for implementing the New York Public Employee Only Plan, the plan is developmental under the terms of 29 CFR 1956.2(b), in that specific rules and regulations must still be adopted to carry out the plan and make it fully operative. The plan sets forth a timetable for the accomplishment of these and other developmental goals. This timetable addresses such general areas as the development of procedures governing enforcement, consultation, variances and review of contested cases in addition to development of a Field Operations Manual and various forms and instructions.

During the course of Federal review of the New York Plan, a number of issues were raised which in OSHA's judgment required further clarification by the State. By letter dated March 4, 1984, from Lee O. Smith, Deputy Commissioner of Labor for Legal Affairs, the State provided assurances that (1) the New York State Department of Labor has full and complete authority to promulgate and enforce occupational safety and health standards in regard to employees of the public schools of the various political subdivisions within the State, (2) that despite the existence of a 60 day period for contest of notices of violation, judicial enforcement for nonabatement may and will be sought, as appropriate, at the expiration of the abatement period specified in the notice of violation (which period is often less than 60 days), and (3) that the New York Department of Labor has the authority to enter without delay and at reasonable times public sector workplaces to investigate and inspect for occupational safety and health violations. In order to prevent any questions concerning the State's right of entry, the State has sought a legislative amendment to the Public Employee Safety and Health Act, through a bill introduced in the 1984 session of the New York State Legislature. The State further assures that should the State's position on any of these issues be successfully challenged, legislative amendment will be sought.

Public comment on the New York Public Employee Plan is hereby requested. Any interested person(s) who submit particularized written objections to federal approval of the proposed plan may request an informal hearing concerning the proposed plan or any part thereof. If the Assistant Secretary finds that substantial objections have been filed, a hearing may be held on the subjects and issues involved. The Assistant Secretary will consider all relevant comments, arguments and requests which are submitted. He will thereafter issue the decision on the approvability of the plan, which decision will be published in the **Federal Register.**

Regulatory Impact and Regulatory Flexibility Act Analysis

The proposed approval of the New York State Public Employee Plan is not a major action as defined by Executive Order No. 12291 as it will not have an annual effect on the economy of $100 million or more, cause major increases in costs or prices, or have any other significant adverse effects. By its own terms, the plan will have no effect on private sector employment, but rather, is limited to the State and its political subdivisions. Moreover, the New York legislation has been in effect since 1980, public sector employers have been

subject to its terms since that time, and accordingly no new obligations would be placed on public sector employers as a result of Federal approval of the plan.

For the same reasons, OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this proposed initial approval will not have a significant adverse economic impact on a substantial number of small entities.

List of Subjects in 29 CFR Part 1956

Administrative practice and procedure, Government employees, Intergovernmental relations, Law enforcement, Occupational safety and health.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Secs. 8(g), 18; 84 Stat. 1600, 1608; (29 U.S.C. 657(g), 667); 29 CFR Part 1956, Secretary of Labor's Order 9–83 (48 FR 35736))

Signed at Washington, D.C. this 23rd day of March, 1984.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 84–8598 Filed 3–29–84; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 81–80B]

Shipping Safety Fairway Amendments, Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend existing shipping safety fairways and to establish new fairway anchorages in the Gulf of Mexico. The safety fairway modifications and anchorages are necessary to provide for safe access routes in areas of high traffic density and offshore structures. This action modifies proposals which were published in a notice of proposed rulemaking on August 9, 1982 (47 FR 34432). Under authority of the Ports and Waterways Safety Act (33 U.S.C. 1223) the Coast Guard is proposing a new fairway at the mouth of the Mermentau River; a widening of the existing fairway at the entrance to Southwest Pass; and new fairway anchorages at Sabine Bank and Calcasieu Pass. The regulations governing shipping safety fairways (33 CFR Part 166) provide that offshore structures are not permitted within designated safety fairways, and are permitted within fairway anchorages only if the structures are two miles apart.

DATE: Comments must be reached on or before June 28, 1984.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/44) (CGD81–80B), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, room 4402, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Project Manager, or Commander Galen Siddall, Chief, Marine Information and Rules Branch, Office of Navigation (G–NSR–3), room 1418, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593, telephone (202) 245–0108.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 81–80B, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this rulemaking are: Mr. Christopher Young, Project Manager, Office of Navigation, and Lt. David Shippert, Project Attorney, Office of Chief Counsel.

Background

In 1978, the Ports and Waterways Safety Act (PWSA) was amended to authorize the Coast Guard to establish shipping safety fairways (Pub. L. 95–474; 92 Stat. 1473; 33 U.S.C. 1223(c)). Prior to this amendment fairways were established by the Corps of Engineers. Although the Coast Guard now designates the fairways, the authority to issue permits for structures remains with the Corps.

A shipping safety fairway is an area or corridor of a waterway where the right of navigation is paramount over other uses, and where no fixed structures are permitted. A fixed structure in a fairway would be considered an obstruction to navigation, and the Corps of Engineers will not issue a permit for the construction of a structure therein. The fairways exist to ensure that an obstruction free corridor is available during development and production of offshore resources. Although the proposed fairways will be indicated on navigation charts, the use of fairways by vessels is voluntary.

The authority to create a fairway may be exercised by the Coast Guard only after a study of potential traffic density and use conflicts has been conducted to determine the need for designated safe access routes for vessels proceeding to and from U.S. ports. The study for this rulemaking was initiated by a notice in the **Federal Register** in April 1979 (44 FR 22543, modified in 45 FR 7027). The study results for the ports along the Gulf of Mexico were published on October 8, 1981 (46 FR 49989).

The study concluded that new vessel traffic fairways are necessary at the mouth of the Mermentau River and at Southwest Pass, and that fairway anchorages are needed at Sabine Bank and Calcasieu Pass. Before these findings could be implemented, it was necessary that Gulf fairways already established by the Corps of Engineers be adopted by the Coast Guard. This was accomplished by a Final Rule published in the **Federal Register** on May 13, 1982 (47 FR 20589). That action adopted the Corps' regulations with no substantive changes and the regulations formerly found at 33 CFR 209.135 are now contained in 33 CFR Part 166.

On August 9, 1982, the Coast Guard published a notice of proposed rulemaking to amend 33 CFR 166. That NPRM included editorial changes to Part 166, as well as specific proposals to add new fairways and anchorages in the Gulf of Mexico. Several comments were received which caused the Coast Guard to reevaluate the proposed fairways and anchorages. A Final Rule was published on June 30, 1983 (48 FR 30108), to promulgate only the editorial changes to Part 166. The present Supplementary NPRM contains the proposed amendments to specific fairways and anchorages. In drafting it, the Coast Guard has considered the comments received on the NPRM as well as newly available information such as the results

of the Outer Continental Shelf (OCS) lease sale for the Gulf of Mexico held on May 30, 1983.

Discussion of Proposed Regulations

The following discussion describes the proposals to establish specific safety fairways and fairway anchorages, with particular reference to changes made in response to comments on the NPRM published on August 9, 1982. Of eight comments received, one expressed concerns which were relevant to the Final Rule published on June 30, 1983, and addressed therein (48 FR 30109). Three commenters expressed support for the proposals as enhancements of navigation safety. Four comments identified specific objections to the proposed locations of new anchorages or fairways. Comments received on each proposal are addressed in the following discussion of the affected areas.

1. Sabine Bank/Port Arthur Anchorages

As in the original NPRM (August 9, 1982), it is proposed that two new fairway anchorages be established in the vicinity of Sabine Bank, adjacent to the existing Sabine Pass Safety Fairway in the approach to Sabine Lake and Port Arthur, Texas (as described in 33 CFR 200(d)(12)). One anchorage will be available to general cargo vessels, while the other will be designated for vessels carrying Liquefied Natural and Petroleum Gas (LGN/LPG). These anchorages are intended to improve navigation safety by providing areas where vessels may anchor during periods of reduced visibility or during times when scheduling of port facilities or pilot services causes a delay in arrival. The Sabine Bank/Port Arthur area is a major petrochemical area with a volume of vessel traffic which warrants the designation of fairway anchorage areas. Siting of structures in these anchorage areas will be governed by the spacing limitations described in 33 CFR 166.200(c).

The general anchorage will encompass an area approximately one and one-half miles by two miles. Although one commenter asserted that the proposed location overlapped a leased block, a review of the charts indicates that only unleased blocks 155, 156 and 162 in the West Cameron Area, West Addition, would be affected. Therefore, there is no change to the description as proposed in the NPRM.

The LNG/LPG anchorage will encompass an area approximately one and one-half miles by two and one-half miles. As originally proposed in the NPRM, this anchorage would have occupied portions of West Cameron Area, West Addition lease blocks 295, 296, 297 and 298. As observed by one commenter, a 12" pipeline lies approximately 800 feet to the northwest of the northwest corner of the proposed location. No other conflicts with the proposal have been identified. If the anchorage is shifted so that its northern boundary coincides with the northern boundary of blocks 297 and 298, the pipeline would clear the anchorage by approximately 1,000 feet, a more comfortable margin for navigation safety purposes. The area lost to this shift can be regained by moving the southern boundary of the proposed anchorage south to coincide with the southern boundary of blocks 297 and 298. The appropriate changes have been made in the geographical descriptions in the regulations proposed below.

As a consequence of these new anchorage areas, the existing Sabine Pass Anchorage area, described at 33 CFR 166.200(d)(13)), would be renumbered as 33 CFR 166.200(d)(13)(i).

2. Calcasieu Pass/Lake Charles Anchorage

As in the NPRM published on August 9, 1982, it is proposed that a new fairway anchorage be established adjacent to the existing Calcasieu Pass Safety Fairway in the approach to Calcasieu Lake and the port of Lake Charles, Louisiana (described at 33 CFR 166.200(d)(15)). This anchorage will be designated for vessels carrying LNG/LPG and will encompass an area approximately three and one half miles by two miles. The volume of deep draft vessels and the operations of LNG/LPG facilities in the area have created a need for a new anchorage area in the interest of navigation safety.

Siting of structures in this anchorage will be governed by the spacing limitations described at 33 CFR 166.200(c).

The proposed anchorage described in the August 1982 NPRM lies within the West Cameron Area. Two commenters objected to the location of this proposal as interfering with leased blocks. It appears that blocks 203, 204, 213 and 214 would be affected by the original proposal. Also, a 20" pipeline crosses block 213 from its southeast to northwest corners. Permits for this pipeline were issued in May 1981. Although any lease right awarded after April 1979 is subject to the results of the Coast Guard Port Access Route Study initiated at that time, a review by the Coast Guard indicates that the interests of navigation safety can be accommodated by locating the anchorage approximately 14 miles farther south along the western boundary of the Calcasieu Pass Fairway. In consultation with the Minerals Management Service, it was determined that blocks 257, 258 and 267 in the West Cameron Area, and block 366 in the West Cameron West Addition Area contained the closest area to shore free of structures, pipelines, leases and sanctuaries. Additionally, the MMS examined formation surveys and noted that the structure of the formation in these blocks is unlikely to bear hydrocarbons. Local Coast Guard officials in Port Arthur found that the increased distance offshore was acceptable to the pilots. The appropriate changes have been made in the geographical descriptions in the regulations proposed below.

As a consequence of this new anchorage, the existing Calcasieu Pass Anchorage Area would be designated as a general anchorage and would be renumbered as 33 CFR 166.200(d)(16)(i).

3. Mud Lake Fairway

As in the August 1982 NPRM, it is proposed that a new fairway be established at the channel entrance to Lower Mud Lake. This fairway would be approximately two miles wide and one and one half miles long to ensure obstruction free access to the channel which is in steady use by offshore crew boats and fishing vessels. In essence, it will replace the fairway which was located at the entrance to Mermentau River. After determining that vessel traffic uses this channel rather than Mermentau River to gain access to Mud Lake, the Corps of Engineers deleted the Mermentau River fairway from its regulations [33 CFR 209.135(d)(17)] on October 29, 1981 (46 FR 53408). This was prior to the Coast Guard adoption of the corps' fairway regulations on May 13, 1982 (47 FR 20580). The proposed fairway would be inserted at 33 CFR 166.200(d)(17). No comments were received regarding the Mud Lake Fairway as proposed in the NPRM, and no change is made in the geographical description in the proposed regulations below.

Currently there are two pipelines crossing the area of this proposed fairway: A 20" pipeline buried to a depth of 7 feet below the mudline; and a 12" pipeline buried to a depth of 3 feet. There is also a small production platform south of the end of the proposed fairway. However, the pipelines that cross the area have not interfered with a safe access for vessel traffic to or from Lower Mud Lake (crew boats, fishing vessels and recreational boats). In the event anchoring was required within the fairway, the anchors generally used aboard the small vessels

that ply these waters should pose little threat to the integrity of the pipelines located under it.

The presence of the production platform off the southeast end of the fairway does not present a significant obstruction to vessel movement in the fairway. The vessels that operate in and out of Lower Mud Lake handle sufficiently well to avoid the structure, and the new fairway will provide sufficient distance for lining up in a direct approach to the channel. Additionally, contacts with leaseholders in the area indicated no impact on their operations from the proposed fairway.

4. Southwest Pass Fairways and Anchorage

As in the August 1982 NPRM, it is proposed that the existing Southwest Pass (Mississippi River) Safety Fairway and anchorage (33 CFR 166.200(d) (28) and (29)) be amended by expanding a portion of the fairway and reducing the size of the anchorage at the entrance to Southwest Pass. However, where the NPRM originally proposed expansion of the fairway both to the west and to the east, the current proposal is to expand the fairway only to the East, with resulting changes in the anchorage area.

The proposed changes to the Southwest Pass fairway are intended to establish a greater obstruction-free maneuvering area for taking on and letting off pilots near the sea buoy. Pushing the anchorage area to the east will reduce confusion between anchored vessels and vessels maneuvering for a pilot.

The proposed westward triangular expansion of the fairway near the mouth of Southwest Pass would have moved the fairway into West Delta Area lease block 109 where an 8" oil pipeline is located. This pipeline currently runs south to north parallel to the existing western fairway boundary. The pipeline is 1000 feet away from the boundary and it is buried to a depth of 4 feet below the mudline.

Three commenters expressed concern about including this pipeline within the fairway limits. After reviewing the comments and the totality of circumstances affecting navigation in the area, the Coast Guard has concluded that the limited benefit to navigation in increasing the fairway slightly to the west is outweighed by the concern for safety of the pipeline or the cost of having it reburied to a safer depth below the mudline. Therefore, only the expansion of the fairway to the east, with resulting changes to the anchorage area, are proposed at this time. The appropriate changes have been made in the geographical descriptions in the regulations proposed below.

Regulatory Evaluation

Although shipping safety fairways interfere with the direct exploration for and production of oil and gas on the Outer Continental Shelf, and fairway anchorages limit how closely platforms may be situated, there is no indication that the acreage involved in the proposed regulations will obstruct OCS development. Indeed, the Coast Guard, in revising the original proposals, has minimized each identifiable cost impact while also satisfying the needs of safe navigation.

As explained in the NPRM, in circumstances where the Coast Guard is convinced that fixed structures must be placed in an area designated as a fairway to gain access to significant quantities of oil or gas, and that navigation safety would not be jeopardized by a modification of that fairway, a request would be given the appropriate consideration in accordance with the Ports and Waterways Safety Act (PWSA), and rulemaking procedures. In many cases a fairway modification will require a PWSA port access study before rulemaking can be commenced.

These proposed regulations are considered to be nonmajor under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). There are no costs associated with the proposed new fairways and anchorages. These designations will contribute to navigation safety without interfering with development of the OCS. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 166

Marine safety, Shipping safety fairways, Anchorage areas.

PART 166—SHIPPING SAFETY FAIRWAYS

In consideration of the foregoing, the Coast Guard proposes to amend Title 33 of the Code of Federal Regulations Part 166 as follows:

In Section 166.200, paragraphs (d)(13), (d)(16), (d)(17), (d)(28) (i) and (ii), and (d)(29) are revised and introductory text is added to paragraph (d) to read as follows: **§ 166.200 Areas in the Gulf of Mexico.**

* * * * *

(d) *Designated Areas.* All geographical positions in the following designations are North Latitude and West Longitude.

* * * * *

(13) *Sabine Pass Anchorage areas*—(i) *Sabine Pass Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°37'32"	[illegible]
29°37'32"	[illegible]
29°32'52"	[illegible]
29°36'28"	93°47'14"
[illegible]	[illegible]

(ii) *Sabine Bank General Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°26'06"	[illegible]
29°26'06"	[illegible]
29°24'06"	[illegible]
29°24'06"	[illegible]
29°26'06"	93°43'00"

(iii) *Sabine Bank LNG/LPG Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°16'55"	[illegible]
29°16'55"	[illegible]
29°14'29"	[illegible]
29°14'29"	[illegible]
29°16'55"	[illegible]

* * * * *

(16) *Calcasieu Pass Anchorage Areas*—(i) *Calcasieu Pass General Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°41'12"	[illegible]
29°41'12"	[illegible]
29°31'16"	[illegible]
29°37'30"	93°16'15"
29°41'12"	[illegible]

(ii) *Calcasieu Pass LNG/LPG Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
28°59'30"	[illegible]
28°59'30"	[illegible]
28°56'00"	[illegible]
28°56'00"	[illegible]
28°59'00"	[illegible]

(17) *Lower Mud Lake Safety Fairway.* The area between a rhumb line joining points at:

Latitude	Longitude
29°43'24"	[illegible]
29°42'09"	[illegible]
and a rhumb line joining points at:	
29°43'33"	93°00'48"
29°42'00"	[illegible]

* * * * *

(28) *Southwest Pass (Mississippi River) Safety Fairway*—(i) *Southwest Pass (Mississippi River) to Gulf Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°54'33"	89°26'07"
28°52'42"	89°27'06"
28°50'00"	89°27'06"
28°02'32"	[illegible]
and rhumb lines joining points at:	
28°54'18"	[illegible]
28°53'30"	[illegible]
28°53'30"	[illegible]
28°50'40"	[illegible]
28°48'48"	[illegible]
28°47'24"	[illegible]
28°00'36"	[illegible]

(ii) *Southwest Pass (Mississippi River) to Sea Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°54'33"	89°26'07"
28°52'42"	[illegible]
28°50'00"	[illegible]
28°47'24"	[illegible]
28°36'26"	[illegible]
and rhumb lines joining points at:	
28°54'18"	[illegible]
28°53'30"	[illegible]
28°53'30"	[illegible]
28°50'40"	[illegible]
28°48'48"	[illegible]
28°45'06"	[illegible]
28°43'27"	89°21'01"
28°37'54"	[illegible]

* * * * *

(29) *Southwest Pass (Mississippi River) Anchorage.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°53'30"	89°23'48"
28°53'30"	89°21'48"
28°55'06"	89°21'48"
28°55'06"	89°19'18"
28°52'41"	89°19'30"
28°50'40"	89°21'14"
[illegible]°50'48"	89°24'48"
28°53'30"	89°23'48"

(Sec. 4(c), Pub. L. 95–474, 92 Stat. 1473 (33 U.S.C. 1223); 49 CFR 1.46(n)(4))

Dated: March 28, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84-8433 Filed 3-29-84; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Medical-Dental Internships and Residencies

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The regulation which the VA (Veterans Administration) uses in determining whether to recognize medical and dental residencies has become outdated. Changes in accrediting associations and the structure of medical and dental residencies are reflected in the proposal. This proposal states how the VA will determine which residencies are institutional training.

DATES: Comments must be received on or before April 30, 1984. It is proposed to make these regulations effective the date of final approval.

ADDRESSES: Send written comments to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 10, 1984. Anyone visiting VA Central Office in Washington, D.C. for the purpose of inspecting any of these comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, Washington, D.C. 20420 (202–389–2092).

SUPPLEMENTARY INFORMATION: Section 21.4265, Title 38, Code of Federal Regulations is amended to show that accreditation by the Accreditation Council for Graduate Medical Education is sufficient for the VA to recognize a medical residency as institutional training. If the council has delegated its accrediting authority to a Residency Review Committee, accreditation by the committee will be sufficient for recognition of the medical residency as institutional training. The Commission on Dental Accreditation now accredits dental residencies. Section 21.4275, Title 38, Code of Federal Regulations is amended because medical and dental internships have been phased out.

The VA has determined that these proposed regulations are not a major rule as that term is defined by Executive Order 12291, entitled "Federal Regulation". The annual effect on the economy will be less than $100 million. The proposal will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that the proposed regulations, if made final, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this is a technical change only. The VA does not expect substantial changes in recognition of residencies to result from this regulatory change. Consequently the proposal will have no significant impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 14, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration proposes to amend 38 CFR Part 21 as set forth below:

1. In § 21.4265, paragraph (a) is revised as follows:

§ 21.4265 Practical training approved as institutional training or on-job training.

(a) *Medical-dental internships and residencies.* (1) Medical and dental residencies, and osteopathic internships and residencies may be approved and recognized as institutional courses only when an appropriate accrediting agency accredits and approves them as leading to certification for a recognized professional objective.

(2) The appropriate accrediting agencies are:

(i) The Accreditation Council for Graduate Medical Education, or where the Accreditation Council for Graduate Medical Education has delegated accrediting authority, the appropriate Residency Review Committee,

(ii) The American Osteopathic Association, and

(iii) The Commission on Dental Accreditation of the American Dental Association.

(3) Residency programs—

(i) Must lead to certification by an appropriate Specialty or Subspecialty Board, the American Osteopathic Association, or the American Dental Association; and

(ii) Will not be approved to include a period of practice following completion of the education requirements even though the accrediting agency requires the practice.

(4) No other medical or dental residency or osteopathic internship or residency will be approved or recognized as institutional training.

(38 U.S.C. 1788(b))

* * * * *

2. In § 21.4275, paragraph (a) is revised as follows:

§ 21.4275 Practical training courses; measurement.

(a) Medical and dental residencies and osteopathic internships and residencies. The Veterans Administration will measure medical and dental residencies, and osteopathic internships and residencies as provided in § 21.4270(b) if they are accredited and approved in accordance with § 21.4265(a).

(38 U.S.C. 1788(b))

* * * * *

[FR Doc. 84-8605 Filed 3-29-84; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6561]

Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Cortlandt, Westchester County, New York.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the **Federal Register** at 49 FR 1775 on January 13, 1984, and hence supersedes those previously published proposed rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Town Clerk's Office, Municipal Building, Croton-on-Hudson, New York.

Send comments to: Honorable Charles DiGiacomo, Cortlandt Town Supervisor, Municipal Building, Croton-on-Hudson, New York 10520.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Cortlandt, Westchester County, New York, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Annsville Creek	At confluence with Hudson River	*8
	At confluence with Peekskill Hollow Brook and Sprout Brook	*8
Peekskill Hollow Brook	At confluence with Annsville Creek and Sprout Brook	*8
	Upstream side of Pump House Dam	*231
	Approximately 0.72 mile upstream of Gallows Hill Road	*280
	At first upstream corporate limits	*288
	At third upstream corporate limits	*1123
Sprout Brook	At confluence with Annsville Creek and Peekskill Hollow Brook	*8
	Upstream side of abandoned road	*14
	Upstream side of Cortlandt Lake Dam	*87
Furnace Brook	Approximately 130' downstream of Furnace Dock Road	*77
	Upstream side of Washington Street	*188
	Upstream side of Furnace Brook Drive (2nd crossing)	*238
	Approximately 0.36 mile upstream of Furnace Brook Drive (2nd crossing)	*251
Croton River	At downstream corporate limits	*8
	Approximately 50' upstream of Quaker Bridge Road (1st crossing)	*44
	At upstream corporate limits	*80
Hudson River	Entire shoreline within community	*8
Lake Meahagh	Entire shoreline within community	*8
New Croton Reservoir	Entire shoreline within community	*199

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44

FR 19367; and delegation of authority to the Administrator)

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

Issued: March 20, 1984.

[FR Doc. 84-8525 Filed 3-29-84; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 67

[Docket No. FEMA-6586]

Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Griswold, New London County, Connecticut.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the **Federal Register** at 49 FR 6754 on February 23, 1984, and hence supersedes those previously published proposed rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Building Inspector's Office, 50 School Street, Griswold, Connecticut.

Send comments to: Honorable Donald Burdick, First Selectman of the Town of Griswold, 50 School Street, Griswold, Connecticut 06351-2398.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Griswold, New London County, Connecticut, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Quinebaug River	Downstream corporate limits	*77
	Upstream of Connecticut Turnpike.	*83
	Most upstream corporate limits.	*100
Pachaug River	Downstream corporate limits	*129
	Upstream of Connecticut Turnpike.	*134
		*152
	Upstream of Bitgood Road (downstream crossing).	*155
	Downstream of dam located at confluence of Pachaug Pond.	
Pachaug Pond	Entire shoreline within corporate limits.	*160
Glasgo Pond	Entire shoreline within corporate limits.	*187

Maps available for inspection at the Building Inspector's Office, 50 School Street, Griswold, Connecticut.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: March 20, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-8524 Filed 3-29-84; 8:45 am]

BILLING CODE 6718-01-M

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44 CFR Part 67

[Docket No. FEMA-6586]

Proposed Flood Elevation Determinations

Correction

In FR Doc. 84-2963 beginning on page 6752 in the issue of Thursday, February 23, 1984, make the following corrections.

1. On page 6755, in the second line of the location column for Barrington, Cook and Lake Counties, Illinois, "360 downstreams" should have read "360 feet downstreams".

2. On page 6759, in the source of flooding column for Franklin County, Missouri, "Little Calvey" should have read "Little Calvey Creek".

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 508

[Docket No. 83-45]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Republic of the Philippines Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of request for further comment.

SUMMARY: The purpose of this Notice is to provide further opportunity for comment on the Notice of Proposed Rulemaking published at 48 FR 45800 (Oct. 7, 1983) and to address certain factual, legal, procedural, and policy matters raised by the initial round of comments. In addition, a synopsis of the factual allegations contained in the comments is provided in the Appendix to this Notice.

DATE: Comments on or before May 2, 1984 (original and 15 copies).

ADDRESS: Send comments to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking proceeding under section 19 of the Merchant Marine Act, 1920 was instituted by the Commission, on its own motion, in response to allegations of the existence of unfavorable conditions in the foreign oceanborne trade between the United States and the Republic of the Philippines.[1] The Proposed Rule would

[1] Section 19(1)(b), Merchant Marine Act, 1920, (46 U.S.C. 876), as implemented by Commission General Order No. 33 (G.O. 33) (46 CFR Part 506) authorizes the Commission to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

suspend the tariffs of Philippine carriers operating in the United States/Republic of the Philippines trade or, alternatively, bar access of Philippine carriers to United States ports and cargoes unless these carriers obtain authorization from the United States Government.[2] The effect of the Rule would be to adjust or meet any unfavorable conditions by imposing burdens on Philippine carriers equal to those imposed on non-Philippine carriers by Philippine laws and regulations.

At the request of counsel for the Philippine carriers, the comment period on the Rule was extended from December 5, 1983 to January 20, 1984. A total of 13 comments were received. Philippine-flag [3] and U.S.-flag carriers [4] opposed the Proposed Rule. Comments either supporting the Proposed Rule, favoring some action by the Commission, or expressing concern over conditions in the United States/Republic of the Philippines trade were received from third-flag carriers,[5] port authorities,[6] shipper interests,[7] and foreign shipowners.[8] A motion by four Executive Branch Departments to file a comment after other comments were received was denied.

The purpose of this Notice of Request For Further Comment is to solicit comment on the allegations of unfavorable conditions which were presented in the initial round of comment. In addition, comment is specifically invited on certain matters which were not addressed or not sufficiently explored in the initial round of comment. Finally, this Notice affords an opportunity to dispose of some threshold legal and policy issues raised in the comments and thereby focus any further comment on the remaining issues. The Commission does not believe that further comment on legal and policy matters disposed of herein would be useful at this time and the parties are urged to avoid reargueing these matters. A synopsis of factual allegations made in the initial round of comment is provided in an Appendix to this Notice.

Discussion

The Philippine carriers present various legal, procedural, and policy arguments in opposition to the Proposed Rule. Certain U.S.-flag carriers also oppose the Proposed Rule and state that no action should be taken pending ongoing government negotiations. Many of these arguments, although expressed somewhat differently, were raised and recently addressed in a section 19 proceeding involving the United States/Venezuela trade. *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade*, Interim Report on Current Status of Proceeding, 21 S.R.R. 1621 (1983). For reasons stated below, we conclude that these arguments are without merit and that there are no statutory, procedural or policy impediments to Commission action in this proceeding.

I. The Philippine carriers argue that section 19 was not enacted for the benefit of third-flag carriers or shippers and that the Commission is without authority to make rules under that section on their behalf. These carriers read the language and legislative history of the Merchant Marine Act of 1920 as authorizing action solely for the purpose of promoting and protecting the U.S. merchant marine. The Philippine carriers contend that U.S. carriers in the United States/Philippines trades have, in fact, been favored as a result of Philippine cargo reservation laws and that section 19, therefore, cannot be invoked. The U.S. carriers, in their comment, also contend that the congressional policy underlying the Merchant Marine Act, as expressed in section 1 of the Act (46 U.S.C. 861), limits the exercise of section 19 authority to measures which serve the statutory purpose of aiding the U.S. merchant marine.

Maersk argues that section 19 may be invoked for the benefit of third-flag carriers. Maersk states that the objective of the statute is to ensure fair and competitive access of all carriers in U.S. trades and not only to guarantee access to U.S. carriers. Maersk asserts that the Commission has, in the past, taken action specifically for the benefit of a third-flag vessel and cites the recent example of Commission action in the United States/Venezuela trade as support for such relief. CMA, in its comment, also argues that third-flag carriers, as well as shippers, are protected by section 19.

This argument of the Philippine carriers has been previously considered and rejected in other section 19 proceedings. The Commission has authority under section 19 to provide relief from *any* conditions unfavorable to shipping in the foreign trades of the United States. Section 19 authorizes the Commission:

> To make rules and regulations affecting shipping in the foreign trade * * * to adjust or meet general or special conditions unfavorable to shipping in the foreign trade whether in any particular trade or upon any particular route or in commerce generally * * *.

Nothing contained in the language of section 19 limits relief to U.S. carriers. Nor can the promotional goals of the Act, as expressed in the Preamble, in section 1, and in the legislative history, be construed to restrict relief under section 19 to U.S. carriers only. G.O. 33 states that any person "who has been harmed by, or who can reasonably expect harm from existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for relief" under section 19 (46 CFR 506.4).[9] G.O. 33 specifically includes importers, exporters, shippers and operators of liner vessels as persons who may petition for section 19 relief. Finally, the Commission has consistently held that section 19 relief extends to third-flag carriers and shippers.[10]

II. The Philippine carriers argue that one option under the Proposed Rule i.e., suspension of tariffs, goes beyond the present factual record and would be an

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[2] The Notice of Proposed Rulemaking was published in the **Federal Register** on October 7, 1983 (48 FR 45800).

[3] A comment opposing the Proposed Rule was filed on behalf of National Galleon Shipping Corporation (Galleon) and the Maritime Company of the Philippines (MCP).

[4] A comment filed by the members of the U.S.-Flag Far East Discussion Agreement (Agreement No. 10050) opposes any action by the Commission. The members of Agreement No. 10050 are: American President Lines, Ltd.; Lykes Bros. Steamship Co., Inc.; Sea-Land Service, Inc., United States Lines, Inc.; and Waterman Steamship Co.

[5] Separate comments were filed by Maersk Line (Maersk) and Barber Blue Sea Lines (BBSL).

[6] The port authorities filing comments are: Port of Portland (Portland); Virginia Port Authority (VPA); The Port Authority of New York and New Jersey (New York); Philadelphia Port Corporation (Philadelphia); and the Maryland Port Administration (Baltimore).

[7] P.L. Thomas Paper Co., Inc., the New York Chamber of Commerce and Industry, and the Chemical Manufacturers Association (CMA) supported Commission action.

[8] The Council of European & Japanese National Shipowners' Associations (CENSA).

[9] Certain comments filed in Docket No. 72-62 (which led to the promulgation of present G.O. 33) suggested that the G.O. 33 regulations be restricted to protecting U.S.-flag ships. It was also proposed that other shipping interests in the foreign trade of the United States be protected in separate regulations. The Commission rejected these suggestions stating: "The intent of the Commission is not, however, so narrow. It is shipping in the foreign trade which is to be protected." The Commission also stated in connection with changes to another section of the regulations that: "The interests of the United States are much broader, however, than the conditions affected U.S. flag ships. Therefore, these rules have been amended to broaden the application to conditions affecting shipping in the foreign trade of the United States which are unfavorable." (39 FR 38647, November 1, 1974).

[10] *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade*, 21 S.R.R. 1621 (1983); *Petition of Ace Lines, Ltd.*, 19 S.R.R. 481 (1979).

unacceptable act of retaliation not legally permitted under section 19. They contend that section 19 only permits the Commission to take action which *adjusts* or *meets* general or special *existing* conditions unfavorable to shipping. Allegedly, no actual trade dislocation has been established. The U.S. carriers also state that the Commission may exercise its section 19 authority "only if unfavorable conditions *exist*."

Maersk argues that section 19 is not limited to relief from existing unfavorable conditions and that Commission action may be taken in response to prospective harm which can reasonably be expected. It states that it is not unreasonable to predict that Maersk an other third-flag lines will ultimately be excluded from the trade if enforcement of the Philippine cargo reservation system is unchecked. Maersk also contends that, in this case, it has provided evidence of actual harm to Maersk Line.

The Commission is granted broad authority under section 19 to make rules and regulations not in conflict with law in order to meet unfavorable trade conditions. One remedy available to the Commission is the suspension of tariffs such as is proposed under Option A of the Proposed Rule. Although tariff suspension is admittedly a serious sanction, the Commission has the authority to take such an action should trade conditions warrant it. While the Philippine carriers do not state that tariff suspension is never available as a remedy under section 19, they do contend that such a sanction exceeds what would be legally permitted on the present record.

Section 19 contemplates the use of countervailing measures to correct an unfavorable trade condition. In some instances, *e.g.*, where a fine or charge is levied, a precisely mirrored penalty may be devised. In other cases, the remedy may not be so easy to devise but the Commission will consider all reasonable alternatives. In this instance, it is alleged that Philippine cargo reservation laws have the effect of excluding third-flag carriers from the trade. The suspension of tariffs, as proposed in Option A, would impose a similar effect on Philippine carriers. It should be noted that the Commission has merely issued a Proposed Rule and has not taken any final action. However, should conditions be established for which the only remedy is tariff suspension, then such action would not be an act of excessive retaliation under section 19. Suspension, in whole or in part, of any tariff is one of the actions specifically authorized under the Commission's rules. *See* 46 CFR 506.9(c).

Finally, it should be noted that section 19 relief may be granted upon a showing of prospective harm. Such action is provided for in the Commission's rules which state that an unfavorable condition is one which precludes or *tends to preclude* other vessels in the trade from competing in the trade on the same basis as any other vessel. *See* 46 CFR 506.3(a). In the recent Venezuela case, the Commission stated that it is not necessary to wait until a third-flag carrier is actually forced out of the trade or other actual harm is suffered before taking action.[11] Relief may be granted for prospective and potential harm which may reasonably be expected to occur.

III. The Philippine carriers argue that the foreign policy implications of tariff suspension make it an improper exercise of Commission authority under section 19. They state that the legislative history of the Act indicates that section 19 was not intended to authorize retaliatory sanctions with serious foreign policy implications through a summary administrative action. The Philippine carriers cite other provisions of the Shipping Act and argue that elsewhere the Commission is authorized to invoke severe sanctions affecting foreign entities only upon formalized hearings or consultations with the President.[12] The Philippine carriers argue that section 19 does not provide for such hearings or consultation. Therefore, they infer that the Commission may not so use section 19.

The Commission's procedures under G.O. 33 expressly provide for cooperation and consultation between the Commission and the Executive Branch and establish avenues for resolution of section 19 matters through diplomatic channels (46 CFR 506.8). Moreover, G.O. 33 states that:

> The Commission shall postpone or discontinue any or all such actions if the President informs the Commission that postponement, discontinuance, or suspension is required for reasons of foreign policy or national security. 46 CFR 506.13.

As discussed above, tariff suspension is a permissible remedy under section 19. The fact that tariff suspension has foreign policy implications does not make it an improper or an unlawful exercise of Commission authority. G.O. 33 is sensitive to foreign policy ramifications and tariff suspension is a proper exercise of Commission authority.

Finally, we note that the Philippine carriers object to the Proposed Rule as a "summary administrative device." However, Congress intended that section 19, which was modeled on the British Orders in Council, provide a summary administrative instrument for dealing swiftly and effectively with conditions unfavorable to shipping. Although the statute does not expressly provide for a hearing, the Commission has always taken care to afford parties who may be adversely affected by section 19 action with an adequate opportunity to be heard.

IV. The Philippine carriers argue that the Proposed Rule is procedurally defective under the Commission's own regulations. The carriers cite that section of G.O. 33 which sets forth the requirements for a petition for relief under section 19 (46 CFR 506.6). The Philippine carriers do not contend that the Commission must adhere to the same technical requirements as a private petitioner. However, they do argue that the Commission must adhere to comparable standards for proceedings initiated on its own motion. The carriers argue that the record relied upon by the Commission is insufficient even for the Commission to *propose* a rule under section 19.

Maersk Line argues that the laws and actions of the Philippine Government, in themselves, establish a *prima facie* case for the imposition of the Proposed Rule.

Whatever the minimum requirement for the Commission to merely propose a rule under section 19 might be, we believe that there is more than an adequate basis for the Commission to take the step of issuing a proposed rule where: (1) There is evidence of the existence of a legal and regulatory regime having as its stated purpose the limitation of third-flag carriers' participation in the trade; and (2) there have been complaints from interested parties that these laws are producing unfavorable conditions. Both of these factors were present in this case when the Commission took the action of issuing a notice of proposed rulemaking.

V. The Philippine carriers argue that this proceeding fails to meet minimum standards of due process established by constitutional and administrative law.

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[11] "The Commission is not inclined to wait for carriers to suffer irreparable harm in the form of declining shares before it takes action, when it is nevertheless clear that the foreign law on its face would create unfavorable conditions and the foreign government is beginning enforcement." 21 S.R.R. at 1627.

[12] The Philippine carriers note that section 14a of the Shipping Act, 1916 (46 U.S.C. 813), which provides for exclusion of a vessel from U.S. ports, requires a full evidentiary hearing on the record. The Commission is referred to other sections of the Shipping Act where authority to suspend tariffs, *i.e.*, sections 18(b)(7) and 22(c)(2) (46 U.S.C. 817(b)(7) and 821(c)(2)), is subject to review by the President.

They argue that they have a constitutionally protected property right in their authorization to pursue a lawful business. This property right is allegedly vested in their tariffs and may not be taken without due process of law. According to the carriers, due process guarantees them an opportunity to present evidence and to challenge allegations and evidence introduced against them. They argue that under principles of administrative law, a party may not be deprived of a property right in an adjudicatory proceeding without an evidentiary hearing. The Philippine carriers assert that no final action should be taken by the Commission without an opportunity to prepare rebuttal evidence and to present that evidence in an appropriate proceeding.

Comments by several ports express concern that the Philippine cargo-sharing plan and the waiver program will lead to a diversion of cargo presently moving through those ports. Maersk argues that the actions of the Philippine Government have been shown to unfairly burden third-flag carriers, as well as shippers, exporters, importers and ports and are otherwise unfavorable to shipping in the foreign trade of the United States. Maersk urges the Commission to issue the Proposed Rule without a further proceeding.

The essence of the Philippine carriers argument is that the Commission cannot take any retaliatory action or impose any sanction, based on the present record, without some opportunity for further participation in this proceeding by the Philippine carriers. The carriers do not argue that a formal trial-type hearing is necessary, but they do assert that, at a minimum they should have an opportunity to respond to adverse comments which were filed simultaneously with theirs. As indicated above, section 19 was intended by Congress to provide a means for dealing in the swiftest manner possible with unfavorable trade conditions. the statute does not contain any express requirement for an evidentiary hearing on the record. Moreover, G.O. 33 provides for summary disposition in section 19 proceedings. Nevertheless, the Commission through this Notice of Request for Further Comment is affording the Philippine carriers an opportunity to respond to adverse comments and to submit additional information in support of their position.

VI. The Philippine carriers state that the cargo sharing program of the Philippine Government is only a modest attempt to encourage the development of its own liner companies. They assert that this is a legitimate sovereign goal and suggest that the Philippine program is closely akin to United States cargo preference programs.

The Commission in the Notice of Proposed Rulemaking specifically stated that it does not question the sovereign right of a foreign government to impose conditions on its own domestic commerce. The Commission stated:

> Many nations, including the United States, have legitimate interests in promoting the economic well-being of their maritime commerce. However, it is not reasonable to expect the export commerce of the United States to bear the burden of the economic costs of the carrier promotion policies of the Republic of the Philippines.[13]

As further noted in the Notice of Proposed Rulemaking, the laws and regulations promulgated by the Philippine Government attempt to impose unilaterally a strict 40–40–20 cargo sharing formula on the trade of the United States.[14] This regime covers a substantial portion of the export cargo from the United States and is not comparable to the much more limited cargo reservation programs of the United States. A recent report of the U.S. General Accounting Office would appear to indicate that U.S. cargo preference programs do not cover a substantial portion of the total oceanborne liner cargo in the U.S. foreign trade.[15]

To the extent that specific information on the amount of cargo in the United States/Philippines trade affected by U.S. cargo preference laws is available, such information would be useful in this proceeding. Executive Branch departments or other interested persons with access to this information are invited to submit this data to the Commission.

VII. The U.S. carriers argue that no action should be taken by the Commission at the present time because of ongoing governmental and commercial efforts to resolve maritime issues in the United States/Philippines trade. According to the U.S. carriers, Commission action at this time would undermine these efforts. These carriers cite past commercial efforts to harmonize conflicting national policies through the filing of a proposed U.S.-Philippine Equal Access Agreement (Agreement No. 10461). They also cite recent maritime consultations in Manila between the United States and Philippine delegations at which the delegations agreed to meet again in the near future to draw up a bilateral agreement governing liner transport in the United States/Philippines trade. Implementation of sanctions under section 19 would allegedly chill these government negotiations.

The U.S. carriers present no reasonable basis to favor a suspension of this proceeding at this time. Agreement No. 10461 was withdrawn and is no longer being pursued as a commercial alternative. As to government negotiations, should the diplomatic situation change, it is presumed that the Executive Branch would advise the Commission of significant diplomatic developments which might affect any final decision by the Commission. Suspension of this proceeding at this time does not appear to be warranted.

Conclusion

An Appendix is included with this Notice which summarizes factual assertions made in the various comments. This synopsis is provided solely for the convenience of interested persons and in order to facilitate further comment. The synopsis should not be construed as factual findings nor is any further Commission action limited to matters contained in the synopsis.

The Commission declines analysis of the factual record established at this time and has limited its discussion in this notice to issues of law and policy raised by the comments. This absence of discussion of the factual record, however, should not be construed as a determination that the present record is not, in itself, sufficient to support a finding of unfavorable conditions.

In fact, serious allegations of unfavorable conditions have been made and factual information supporting those allegations has been provided. The present record establishes the existence of a comprehensive cargo sharing regime which seeks to allocate shares in the trade on a 40–40–20 basis. The record also shows that this regime is being implemented through a waiver program which affects only third-flag carriers.

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[13] Docket No. 83–45, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Republic of the Philippines Trade*, Notice of Proposed Rulemaking, October 7, 1983, p. 11; see also the Commission's Interim Report in the Venezuela proceeding at 21 S.R.R. 1628.

[14] This cargo sharing formula would appear to apply to all cargo except for that cargo covered by P.D. 1466, all of which is reserved for carriage by Philippine-flag vessels.

[15] Although the data presented in the GAO report does not provide specific information on the United States/Philippines trade, it does indicate that in 1980, U.S.-flag vessels carried 6.0 million tons of U.S. government cargo which was 9.5% of the total liner cargo shipped on U.S. flag vessels between U.S. and foreign ports. *See* U.S. General Accounting Office, *Economic Effects of Cargo Preference Laws*, Report To The Chairman, Committee on Merchant Marine and Fisheries House of Representatives, p. 10 (1984).

The Commission wishes through this Notice to provide parties that would be adversely affected by the Proposed Rule with the opportunity to address other comments which were filed simultaneously with theirs and to present any other additional factual information relevant to this proceeding. In addition, Executive Branch Departments will have an opportunity to address the comments filed and advise the Commission of their views. It should be noted, however, that further rounds of comment may not be necessary for the Commission to take some final action and should not be anticipated.

As discussed above, the present record does not indicate the extent to which cargo moving in the United States/Philippines trade is governed by U.S. cargo preference laws. Such data would be helpful to the Commission in this proceeding. Interested persons are invited to submit information which shows the percentage of the total oceanborne liner cargo in the U.S. export trade to the Philippines which was carried by U.S.-flag vessels because of the requirements of U.S. cargo preference laws. Such data for the most recent year available would be useful and relevant.

The Commission also invites further comment regarding the options proposed as remedies. Although some commentators opposed both options and others favored one option or another, the Commission believes that further comment on these options may be beneficial. In particular, port interests are invited to comment on whatever relief other than the proposed options they believe may be adequate to meet their specific concerns.

Interested parties are given until May 2, 1984 to file comments on the Proposed Rule. Factual submissions relating to conditions in the United States/Philippines trade should, to the extent possible, be supported by sworn documents and affidavits.

List of Subjects in 46 CFR Part 506

Maritime carriers, Tariffs.

By the Commission.

Francis C. Hurney,

Secretary.

Appendix: Synopsis of Comments

The purpose of this synopsis is to summarize the comments received in response to the Notice of Proposed Rulemaking in order to make this information broadly available to persons interested in this proceeding and thereby facilitate further comment on the Proposed Rule. This synopsis is limited to factual matters contained in the comments and does not include legal, procedural or policy matters which are raised by the comments and which are discussed in the supplementary information section of this Notice of Request for Further Comment. Moreover, it should be noted that this synopsis focuses, for the most part, on those factual matters which are in dispute among the several commentators, or which involve allegations of unfavorable conditions in the trade. However, not every factual assertion contained in the comments which may be relevant is necessarily included. This synopsis is not intended to be a substitute for the comments themselves which are available to interested persons in the Office of the Secretary. The comments in their entirety make up the present record in this proceeding. The synopsis is organized so that comments alleging facts which would be supportive of the Proposed Rule are summarized first, following by the comments of those who oppose the Proposed Rule.

I. The Waiver Program

A. Supporting Comment. Third-flag carrier commentators assert generally that the provisions, implementation and administration of the Philippine Government waiver program has caused unreasonable delay, unnecessary cost, and has placed shippers at a disadvantage to their foreign competitors. Both BBSL and Maersk note that only third-flag carriers are required to obtain a waiver. BBSL states that such a requirement puts third-flag carriers at a competitive disadvantage to national-flag carriers that do not need a waiver. Maersk states that a third-flag carrier may book cargo, and not know until the "eleventh hour" whether a national-flag vessel will claim that cargo. Maersk states that this uncertainty has an adverse impact on commitments of equipment and relationships with shippers. Maersk states that there are only eight Philippine consulates in the United States where waivers may be obtained. Shippers, particularly small shippers, located in areas distant from a consulate may simply decide to ship with a carrier not requiring a waiver. In order to reduce this burden on shippers, Maersk states that third-flag lines have undertaken to arrange for waivers on behalf of shippers and have absorbed the fee paid for waivers.

CMA contends that virtually all responding CMA members with significant involvement in the United States/Philippine export trade reported that they had experienced delays in shipments and incurred costs due to the waiver system. CMA contends that in recent months the waiver process has become even more time-consuming, often requiring extensive negotiations with Philippine carriers and the Philippine consulate. Finally, CMA cites examples of alleged arbitrary administration of the waiver system, such as refusal to grant waivers even where waiver criteria are met.

B. Opposing Comment. The Philippine carriers make an extensive defense of the waiver system including a point-by-point refutation of specific allegations mentioned in the Notice of Proposed Rulemaking. According to the Philippine carriers, all waiver requests are acted upon within 24 hours and 90 percent of these requests are granted. The specific grounds for issuing waivers are stated on the waiver form. However, MARINA allegedly has been flexible in administering the waiver program and has granted waivers for any good reason. The Philippine carriers assert that no complaints about the waiver system have been received by MARINA for some time. Waivers allegedly are granted automatically or for extended periods in appropriate cases, as where Philippine vessels do not call at a port, or where sailings are infrequent. They assert that there is no known instance of interruption of waiver service at New York or any other consulate office within the United States. According to the Philippine carriers, MARINA maintains a constant oversight of the waiver program in order to ensure its efficient operation.

The Philippine carriers explain that a lower freight rate is a valid reason for obtaining a waiver only where the third-flat rate is at least 15 percent below a national-flag carrier rate. The Philippine carriers state that this requirement is rarely met because the Philippine carriers have resigned from conferences and now offer rates which are competitive with other low-priced independents. The Philippine carriers conclude that the waiver system has not burdened shippers with either adverse rate or service conditions.

II. Fines and Penalties

A. Supporting Comment. Third-flag carriers, shippers and others assert generally that third-flag carriers are subjected to fines and penalties for failure to comply with regulations issued under E.O. 769. They note that section 48 of the "Rules & Regulations Implementing Executive Order No. 769" empowers MARINA to impose sanctions and administrative fines in an amount not to exceed the cost of freight covered by a particular violation.

B. Opposing Comment. The Philippine carriers assert that the fines imposed for violation of the waiver system have been so small as to be insignificant. They assert that the penalty provision, which would potentially subject a carrier offloading cargo from the United States in the Philippines without a waiver to a fine equal to the freight rate, has rarely, if ever, been applied. Furthermore, they state there are no present plans to apply this penalty. In the majority of cases, according to the Philippine carriers, fines have been a nominal 200 pesos (approximately $14). However, they do state that where violations have been repeated, the fine has been increased to 750 pesos (approximately $54).

III. Central Bank Memorandum Requirements

A. Supporting Comment. Maersk interprets the language of section 3 of the Central Bank Memorandum[1] as requiring third-flag carriers to wait until the national-flag lines have carried 80 percent of cargo for the year before they could participate for their 20 percent. Maersk notes that literal application of such a rule would, as a practical matter, exclude all third-flag service. CMA and the Port of New York interpret this Central Bank rule in the same manner as Maersk.

B. Opposing Comment. The Philippine carriers argue that section 3 of the Central Bank Memorandum has been interpreted to allocate cargo on a current basis throughout the year. The 20 percent share for third-flag carriers is not withheld until the bilateral share is obtained but rather is allocated on a current proportional basis. Otherwise, the Philippine carriers note, third-flag carriers would have to shut down operations until the 80 percent share for national-flag carriers had been achieved.

[1] Section 3 of the Central Bank Memorandum states:

In accordance with MARINA's guidelines, compliance with the 40–40–20 cargo sharing arrangement shall be determined periodically on the basis of the aggregate of Philippine import liner cargoes from the United States not covered by P.D. No. 1466 and not on the basis of import liner cargoes of each importer. *Moreover, the 40–40 share of the Philippines and the United States should first be filled up during the year to ensure compliance therewith.* Accordingly, all importations covered shall be shipped thru national flag vessels of the Philippines or the United States unless the prescribed waiver is secured. (Emphasis added).

IV. Cargo Shares in the United States/Philippines Trade

A. Supporting Comment. Maersk, BBSL[2] and CMA all contend that the Philippine cargo reservation program has already resulted in a shift of cargo from third-flag carriers to U.S. and Philippine-flag carriers. Maersk and CMA have provided Journal of Commerce data which shows the following recent trend in third-flag participation in United States/Philippines export trade:

	1981		1982		First Half 1983	
	Tons	Percent	Tons	Percent	Tons	Percent
U.S.-flag	117,560	32.7	158,392	34.1	81,806	43.7
Philippine-flag	59,374	16.5	90,561	19.5	42,970	20.4
Third-flag	183,122	50.8	215,877	46.4	85,466	45.9

These data document a decline in third-flag share following implementation of the Philippine cargo sharing system. Maersk provides further data which attempts to document more specifically the impact of Philippine laws. Maersk states that these laws were first implemented in the third quarter of 1982. Maersk provides the following comparative third quarter data in the export trade for 1982 and 1983.

	Third quarter 1982		Third quarter 1983	
	Tons	Percent	Tons	Percent
U.S.-flag	123,772	33.7	144,870	44.2
Philippine-flag	72,674	19.8	60,839	18.6
Third-flag	170,752	46.5	116,768	35.6

These figures show a decline in the overall third-flag share for the third quarter from 47 percent to 36 percent. Maersk's own share of the export trade for this quarter dropped from 15.7 percent (57,547 tons) to 10.8 percent (34,716 tons).

Maersk states that during the period 1980–82 its annual revenues from the trade were approximately $18 million. In 1983, Maersk estimates revenues at $6 million. Prior to the implementation of Philippine laws, 9.1 percent of Maersk's total revenues were earned in United States/Philippines trades. Maersk now earns approximately 4.3 percent of total revenues from the trade. Annual average tonnage for Maersk has declined from 110,000 freight tons to about 50,000 freight tons in 1983.

Finally, Maersk provides data on its cargoes to the Philippines shipped in less-than-containerloads. During 1982, 34 percent of Maersk cargoes to the Philippines were less-than-containerloads, whereas in 1983 the comparable figure was 19 percent. Maersk concludes that these figures demonstrate that small shippers are turning away from third-flag carriers as a result of Philippine cargo reservation laws because it is easier for the small shipper to deal with a national-flag carrier.

CMA also provides documentation of third-flag carrier cargo losses. CMA claims that its members report a shift of between 50 to 75 percent of their entire cargo from third-flag carriers to national-flag lines. CMA cites one member company which had shipped approximately 50 percent of its shipments with third-flag carriers and 50 percent with United States carriers. CMA states that, after this company's third-flag carriers began to have difficulty in obtaining waivers in May of 1983, this shipper shifted nearly all of its cargo to U.S.-flag vessels. CMA states that another company reported that in January of 1982, 80 percent of its traffic was transported by third-flag carriers. Now this company uses third-flag carriers for approximately 20 percent of its volume.

B. Opposing Comment. The Philippine carriers acknowledge that U.S.-flag carriers have increased their share of the U.S. export trade at the expense of third-flag carriers. They state:

"That is not to say there have been no changes in the trade as a result of the Philippine cargo-sharing program. The most important change is that while the Philippine Carriers' share of the trade has remained constant, there has been a substantial increase in the share of the trade carried by U.S.-flag vessels. This increase has been at the expense of third-flag carriers." (Philippine Carriers' Comment at 27).

They state, however, that section 19 does not provide relief for third-flag carriers' loss of share of the trade. The Philippine carriers also state that their own share of the total volume of the United States/Philippines trade has

[2] BBSL states that implementation of Philippine laws has resulted in actual cargo and revenue losses to third-flag carriers but does not provide specific data as does Maersk.

remained more or less unchanged at approximately 17 percent.

V. Rates

A. Supporting Comment. A number of comments allege generally that Philippine cargo reservation laws will have an adverse impact on freight rates. However, only CMA provides specific information which attempts to establish that the Philippine cargo reservation system has resulted in rates which are higher than would otherwise prevail under current economic conditions. The CMA data show that rates on two commodities—borax and phosphates—in the United States/Philippines trades were not consistent with rates on these commodities in other comparable trades. These data show that rates on these commodities did not decrease as sharply between 1982 and 1984 in the Philippines trade as they did in the trades to Hong Kong, Taiwan and South Korea. CMA suggests that the rates on these commodities were insulated from the full impact of downward economic trends by the Philippine cargo reservation program. CMA believes that rates are 25 to 50 percent higher than they would be absent the Philippine cargo reservation system. CMA also cites the example of one member who reported that its freight rates increased by 19 percent when Yang Ming Line allegedly was driven out of the Philippine trade by the cargo reservation system.

B. Opposing Comment. The Philippine carriers note that both MCP and Galleon have resigned from their conferences and now offer rates that are competitive with other low priced independents. This comment is made in response to the allegation, cited in the Notice of Proposed Rulemaking, that shippers will be forced to pay higher conference rates.

VI. Service

A. Supporting Comment. Maersk asserts that third-flag carriers provide approximately 77 percent of the sailings in the United States/Philippines trade. Maersk states that restrictions on third-flag participation will severely diminish the available quantity of service necessary to satisfy the trade. Maersk asserts that without the competitive incentive provided by third-flag carriers, there will be deterioration in the quality of service. Maersk notes that third-flag carriers provide both all-water and intermodal service and that shippers will be deprived not only of a choice of carrier but also of service options. Maersk estimates that its revenues from this trade will continue to decline in 1984 and that such losses will result in a retrenchment in Maersk's overall service. Maersk does not present evidence of cutbacks in its own service or of other third-flag carriers.

BBSL states that Philippine laws are antithetical to regular third-flag liner service. BBSL states that the potential impact on service may be particularly severe on the U.S. Atlantic Coast where third-flag carriers have provided the vast majority of sailings. BBSL does not present evidence of actual service cutbacks.

CMA cites the withdrawal of Yang Ming Line from the Philippine trade in the second half of 1983 as an example of actual adverse impact on service. CMA believes that Yang Ming Line withdrew because it concluded that it could no longer effectively compete in the trade as a third-flag carrier. CMA states that Yang Ming Line had provided 36 sailings a year to the Philippines. CMA also believes that East Asiatic Company, and perhaps other lines, have refused to accept bookings to the Philippines due to the difficulty in obtaining waivers CMA also states that many of its members regard Philippine carrier service as inferior because of their infrequent sailings. CMA believes that U.S. shippers will be disadvantaged by inferior service should the cargo reservation system be fully implemented.[3]

B. Opposing Comment. The Philippine carriers state that they offer about 5 percent of the liner sailings in the trade. They maintain that this percentage has not changed under the cargo reservation system. They contend that liberal administration of the waiver system has resulted in minimal, if any, disruptive impact on service. They contend that where Philippine vessels do not call at a port or where sailings are infrequent, waivers are given automatically or for extended periods. They point out that to the extent cargo has been shifted, it has gone for the most part to U.S. carriers that maintain high quality service. The U.S. carriers, it is alleged, offer a full range of service options, including intermodal service.

VII. Cargo Routing

A. Supporting Comment. The Port Authority of New York and New Jersey filed a comment expressing concern over the potential adverse impact of the Philippine waiver system on cargo routing. New York notes that virtually all of the liner cargo—both import and export—in the United States/Philippines trade that moves through the Port of New York is carried by third-flag carriers. Only one U.S.-flag carrier (Waterman) and one Philippine-flag carrier (MCP) serve New York in this trade. According to the port, exporters and importers at New York currently are not experiencing difficulties in obtaining waivers. Nevertheless, New York expresses concern that a more aggressive policy by the Philippine Government could drastically change the situation. New York contends that exclusion of third-flag carriers would effectively close New York to the trade and force shippers to turn to other ports, the most likely being minibridge service through Pacific Coast ports. Should such a situation occur, New York notes that neither option of the Proposed Rule—tariff suspension or restricted entry—would provide relief to the port. New York, therefore, requests the Commission, in fashioning an appropriate remedy to consider the special problem which the Philippine cargo sharing regime causes for ports served almost exclusively by third-flag carriers.

Virginia Port Authority states that the current waiver system is so burdensome as not to be a viable option. VPA asserts that it is losing cargo through minibridge service to the Pacific Coast. VPA states that it has no U.S.-flag service and only monthly Philippine-flag service.

Philadelphia states that the port is not served by either U.S. or Philippine-flag carriers. As a result, shippers must either use minibridge service to the Pacific Coast or obtain a waiver in order to use third-flag direct service to and from Philadelphia. Because there is no Philippine consultate in Philadelphia, obtaining a waiver is a time-consuming process. Philadelphia expresses the view that the solution to this problem is

[3] P. L. Thomas Paper Co., Inc. states generally that it has had problems with infrequent sailings and shipping delays but does not provide specific data.

a blanket exemption for Philadelphia and third-flag carriers serving the port with direct service to the Philippines.

Baltimore's concern is that full implementation of the Philippine cargo-sharing program might result in routing of cargo to the Pacific Coast to the detriment of Baltimore, third-flag carriers, and shippers.

The Port of Portland notes that it is not served by either U.S. or Philippine-flag carriers. Consequently, shippers must either ship cargo via Seattle, and perhaps incur additional trucking charges, or obtain a waiver. Because there is no consulate in Portland, the waiver must be obtained from San Francisco or Seattle. Portland states that it attempted to obtain a blanket exemption for all cargoes moving through Portland from the waiver requirement until U.S.-flag or Philippine-flag service is available. MARINA denied the requested exemption. Portland also states that Philippine government assurances that waivers will automatically be granted are not sufficient to protect the port's interests.

B. Opposing Comment. The Philippine carriers assert that waivers are granted for extended periods where Philippine vessels do not call at a port or where sailings are infrequent. In such circumstances the granting of a waiver is automatic. The Philippine carriers state that such a waiver has been provided for the Port of Portland. The Philippine carriers also respond to specific allegations of adverse impact on ports cited in the Notice of Proposed Rulemaking.

[FR Doc. 84-8548 Filed 3-29-84; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 49, No. 63
Friday, March 30, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Second Quarterly Estimate

Pub. L. 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55, and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1984 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As published on December 30, 1983 (48 FR 57576), the estimated aggregate quantity of meat articles prescribed by subsection 2(c), as adjusted by subsection 2(d) of the Act for calendar year 1984, is 1,117 million pounds.

In accordance with the requirements of the Act, I have determined that the second quarterly estimate for 1984 of the aggregate quantity of meat articles which would, in the absence of limitations under the act, be imported during calendar year 1984, is 1,190 million pounds.

Done at Washington, D.C. this 27th day of March, 1984.

John R. Block,

Secretary.

[FR Doc. 84–8527 Filed 3–29–84; 8:45 am]

BILLING CODE 3410–10–M

CIVIL AERONAUTICS BOARD

Announcement of Approval of Reporting Requirements by the Office of Management and Budget Under the Paperwork Reduction Act (44 U.S.C. 35)

On March 2, 1984, the Office of Management and Budget approved the following reporting requirement: "War Air Service Program Questionnaire"—approved through January 31, 1985, under OMB No. 3024–0073.

Dated: March 23, 1984.

Robin A. Caldwell,

Chief, Information Management Division, Office of Comptroller.

[FR Doc. 84–8600 Filed 3–29–84; 8:45 am]

BILLING CODE 6325–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of extension of the submission of information by air carriers receiving subsidy pursuant to the reporting requirements contained in Sections 382.21, 382.22 and 382.23 of Part 382 of the Board's Special Regulations.

DATED: March 26, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION: Agency Clearance Officer From Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell, (202) 673–5922.

How Often the Collection of Information Must Be Filed: Occasionally.

Who is Asked or Required to Report: U.S. Air Carriers receiving subsidy.

Estimate of Number of Annual Responses: 76.

Estimate of Number of Annual Hours Needed To Complete the Collection of Information: 106.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8591 Filed 3–29–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–3–107]

Rejection of Foreign Forwarder Registration

AGENCY: Civil Aeronautics Board.

ACTION: Rejection of Foreign Forwarder Registration; Order 84–3–107.

SUMMARY: The Board, having previously established in Orders 83–4–103, and 83–6–65 that there is unsatisfactory Philippines reciprocity for U.S. freight forwarders, rejected only the interstate and overseas air transportation portions of the foreign freight forwarder registration request of Queen's Maritime Ltd., which is 60 percent owned by citizens of the Philippines—Order 84–3–107 adopted March 26, 1984. The foreign air transportation portion of the applicant's registration was granted on February 10, 1984 and continues in effect.

To obtain a copy of the complete order, contact the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5432. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Dean L. Johnson, (202) 673–5134, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 26, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8598 Filed 3–29–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84-3-92; Docket 42056]

Order Instituting Investigations

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting Investigation: Order 84-3-92, Docket 42056.

SUMMARY: The Board is instituting the *London-Frankfurt Route Proceeding* to select primary and back-up carriers to operate local service between London and Frankfurt. The complete text of Order 84-3-92 is available as noted below.

DATES: Applications, motions to consolidate applications conforming to the scope of this proceeding, petitions from interested persons, and petitions for reconsideration shall be filed by April 5, 1984. Answers shall be filed by April 12, 1984.

ADDRESSES: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 42056 *London-Frankfurt Route Proceeding.*

FOR FURTHER INFORMATION CONTACT: Don Hainbach, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5035.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-3-92 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-3-92 Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 22, 1984.

Phillis T. Kaylor,

Secretary.

[FR Doc. 84-8597 Filed 3-29-84; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et seq.); Week Ended March 23, 1984

Subpart Q Applications

The due date for answers, comforming application, or motions to modify scope are set forth below for each application. Following the anwser period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Mar. 19, 1984	42051	Aerotours Dominicano, C. por A, c/o Ralph R. Curry, 2055 North 15th Street, Arlington, Va. 22201. Application of Aerotours Dominicano, C. por A. pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations for a foreign air carrier permit to engage in non-scheduled foreign air transportation between the Dominican Republic and the U.S. Virgin Islands; San Juan Puerto Rico; Miami, Fla.; and Foreign Charter Air Transportation. Answers may be filed by April 16, 1984.
Do.	42053	Trans-Panama, S. A., c/o Richard P. Taylor, Steptoe & Johnson, 1250 Connecticut Avenue, NW., Washington, D.C. 20036. Application of Trans-Panama, S. A. pursuant to Section 402 of the Act for renewal of its foreign air carrier permit authorizing applicant to engage in non-scheduled foreign air transportation of property and mail between any point or points in the Republic of Panama and Miami, Florida, New York, N.Y., and Los Angeles, California, in the United States.
Mar. 21, 1984	42055	Arrow Air, Inc., c/o Lawrence D. Wasko, Seamon, Wasko, Ozment, 1211 Connecticut Ave., NW., Suite 300, Washington, D.C. 20036. Application of Arrow Air, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property and mail as follows: Between Tampa, Florida and Merida, Cancun, and Cozumel, Mexico. Answers may be filed by April 18, 1984.
Mar. 23, 1984	42061	Malaysian Airline System Berhad, c/o James L. Devall, Zuckert, Scoutt, Rasenberger & Johnson, 888 Seventeenth Street, N.W., Washington, D.C. 20006. Application of Malaysian Airlines System Berhad pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit to engage in foreign air transportation of persons, property and mail on the following route: Between a point or points in Malaysia and the terminal point San Francisco, California, via the intermediate point Tokyo, Japan. MAS does not request authority to carry persons originating in Tokyo to the United States or passengers originating in the United States whose final destination in Tokyo. Answers may be filed by April 20, 1984.
Do.	41342	Polynesian Airlines (Holdings) Limited and Polynesian Airlines (Operations) Limited, c/o Robert D. Paplin, Squire, Sanders & Dempsey, 1201 Pennsylvania Ave., NW., Washington, D.C. 20004. Amendment No. 1 to the Joint Application of Polynesian Airlines (Holdings) Limited and Polynesian Airlines (Operations) Limited requests (1) additional authority to engage in foreign air transportation of persons, property and mail between Apia, Western Somoa and Honolulu, Hawaii, via Pago Pago, American Samoa and Christmas Island, Republic of Kiribati; and (2) the inclusion of Niue as an additional point to be served beyond Pago Pago on the Applicants' initial route. As amended, the two requested routes would read as follows: Between the terminal point Apia, Western Samoa, the terminal point Pago Pago, American Samoa, and beyond Pago Pago to Rarotonga, the Cook Islands, Niue, and Papeete, Tahiti; Between the terminal point Apia, Western Samoa, the intermediate points Pago Pago, American Samoa and Christmas Island, Republic of Kiribati, and the terminal point Honolulu, Hawaii. Answers may be filed by April 20, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-8594 Filed 3-29-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 42056]

London-Frankfurt Route Proceeding; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated at Washington, D.C., March 26, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-8592 Filed 3-29-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40962]

Lone Star Certificate Amendment and Transfer Case; Postponement of Hearing

At the request of the applicant and with the concurrence of the Bureau of International Aviation, the hearing in

the above-titled case is postponed. The hearing will commence on April 10, 1984, at 10:00 a.m. (local time), in Hearing Room 1 Lower Level, 2120 L Street, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., March 23, 1984.

William A. Kane, Jr.,
Administrative Law Judge.

[FR Doc. 84-8585 Filed 3-29-84; 8:45 am]
BILLING CODE 6220-01-M

[Docket 41675]

Skystar International, Inc., Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to commence on April 11, 1984, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Ave., NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., March 23, 1984.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[FR Doc. 84-8584 Filed 3-29-84; 8:45 am]
BILLING CODE 6220-01-M

CIVIL RIGHTS COMMISSION

Arizona Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 6:00 p.m., on April 27, 1984, at the Grenada Royale Hometel, Aztec Room, 3211 East Pinchot Street, Phoenix, Arizona 85018. The purpose of the meeting is to discuss the Arizona University system.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Mr. Richard Zazueta, at (602) 267-5691, or the Western Regional Office at (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 27, 1984.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 84-8629 Filed 3-29-84; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-058]

Amoxicillin Trihydrate and Its Salts From Spain; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on amoxicillin trihydrate and its salts from Spain. The review covers the period January 1, 1982 through December 31, 1982. As a result of the review the Department has preliminarily determined the net subsidy to be 3.17 percent *ad valorem* for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Laura Kneale, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 8322) the final results of its last administrative review of the countervailing duty order on amoxicillin trihydrate and its salts from Spain (44 FR 44154, July 27, 1979) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Spanish amoxicillin trihydrate and its salts ("amoxicillin"), an antibiotic which is a semi-synthetic penicillin. Such merchandise is currently classifiable under item 411.7400 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1982 through December 31, 1982, and four programs: (1) A rebate of indirect taxes upon exportation, under the Desgravacion Fiscal a la Exportacion ("the DFE"); (2) an operating capital loans program; (3) a short-term export credit program; and (4) research and development incentives.

Analysis of Programs

(1) Desgravacion Fiscal a la Exportacion

Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the DFE, rebates both these accumulated IGTE indirect taxes and certain final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

Physical incorporation is a question of fact to be determined for each product in each case. In this case, the physically incorporated inputs are the raw materials previously allowed by the Department. The rebate of two final stage taxes, the parafiscal tax on export licenses and the tax on freight and insurance, is also allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE.

As of January 1, 1982, the Spanish government increased the IGTE rate from 3.80 percent to 4.60 percent, while maintaining the previous rate for the export rebate. We concluded in our last review that an earlier increase in the IGTE rate had eliminated the overrebate previously found countervailable. Based on our analysis of the indirect taxes on physically incorporated inputs and the two indirect taxes on the final product, we preliminarily find that the additional change in the IGTE rate for 1982 continues to eliminate the overrebate. Therefore, we preliminarily determine the net subsidy attributable to this program during the period of review to be zero percent.

(2) Operating Capital Loans

The Spanish government requires banks to set aside funds to provide short-term operating capital loans, as part of its Privileged Circuit Exporter Credit Program. These loans are granted for a period of less than one year. For 1982, the Spanish government fixed the interest rate for such loans at 10 percent. To determine the interest rate on comparable commercial loans, we took the average national prime interest rate for loans of comparable length, added the prevailing interest charge over prime facing borrowers of average creditworthiness and added the legally established fees and commissions. Comparing this benchmark with the 10 percent interest rate established for the operating capital loans program, we found a differential of 9.38 percent during the period of review.

In the absence of information regarding loans received on worldwide exports, we calculated the benefit under this program by multiplying the amount of operating capital loans received by the only known exporter of this merchandise to the United States, Antibioticos, S.A., in 1982 on its exports of amoxicillin to the U.S. by the interest rate differential in 1982. We then divided the results by Antibioticos' exports of amoxicillin to the U.S. in 1982. Using this methodology, we preliminarily determine the net benefit conferred under this program to be 2.48 percent *ad valorem* for 1982.

The maximum loan principal available to a given exporter is determined as a percentage of the firm's previous year's exports. This amount may be increased by 10 percent if the firm has a government-issued Exporter's Card. Antibioticos has such a card. Effective January 1, 1984, the Spanish government reduced the maximum percentage of eligibility for operating capital loans (including Exporter's Card eligibility) to 10.5 percent of the previous year's exports. Antibioticos has used its maximum eligibility on exports to the United States. Therefore, by multiplying this eligibility level by the interest rate differential for 1982 (9.38 percent) as the most recent information available, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the net subsidy conferred under this program is 0.98 percent *ad valorem*.

(3) Short-Term Export Credits

The short-term export credit program, which is part of the Privileged Circuit Exporter Credit Program, provides loans for up to 90 percent of the value of a company's export shipment at a 10 percent interest rate for a maximum of one year. The Spanish government, in its response to our questionnaire, stated that Antibioticos obtained a loan under this program in 1982 to finance a shipment of amoxicillin to the U.S. Antibioticos held this loan for less than three months. Again we chose as our benchmark the average national prime interest rate for loans of comparable length and added the prevailing interest charge over prime facing borrowers of average creditworthiness plus the legally established fees and commissions. We multiplied the interest rate differential by the portion of the year over which the loan was outstanding, and then multiplied this prorated differential by the loan amount to find Antibioticos' interest savings. Dividing this amount by Antibioticos' 1982 exports of amoxicillin to the U.S., we preliminarily find an *ad valorem* benefit of 0.69 percent. As with the operating capital loan program, we used information on U.S. exports in the absence of information on worldwide exports.

(4) Research and Development Incentives

In its final determination in the countervailing duty investigation on certain steel products from Spain, the Department found that firms may receive government loans covering up to 50 percent of the cost of R&D projects. In its questionnaire response, the Spanish government informed us that Antibioticos received assistance under this program. However, we preliminarily determine that the project for which Antibioticos received funding was for the development of new products and did not benefit the production of amoxicillin.

Preliminary Results of the Review

As a result of the review, we preliminarily determine that the aggregate net subsidy conferred by the four programs is 3.17 percent *ad valorem* during 1982. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 3.17 percent of the f.o.b. invoice price on all shipments of Spanish amoxicillin exported on or after January 1, 1982 and entered, or withdrawn from warehouse, for consumption on or before June 30, 1982.

On July 1, 1982, the International Trade Commission ("the ITC") notified the Department that the Spanish Government had requested an injury determination for this order under section 104(b) of the Trade Agreements act of 1979. Should the ITC find that there is material injury or likelihood of material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties in the amount of the estimated duties required to be deposited on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 1982, and through the date of the ITC's notification to the Department of its determination.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing tudies of 1.67 percent of the entered value on all shipments of Spanish amoxicillin entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 26, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-8609 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-054]

Ampicillin Trihydrate and Its Salts From Spain; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on ampicillin trihydrate and its salts from Spain. The review covers the period January 1, 1982 through December 31, 1982. As a result of the review, the Department has preliminarily determined the net subsidy to be 1.67 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Laura Kneale, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 20, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 8323) the final results of its last administrative review of the countervailing duty order on ampicillin, trihydrate and its salts from Spain (44 FR 17484, March 22, 1979) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Spanish ampicillin trihydrate and its salts ("ampicillin"), an antibiotic which is a semi-synthetic penicillin. Such merchandise is currently classifiable under item 411.6000 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1982 through December 31, 1982, and four programs: (1) A rebate of indirect taxes upon exportation, under the Desgravacion Fiscal a la Exportacion ("the DFE"); (2) an operating capital loans program; (3) a short-term export credit program; and (4) research and development incentives. There were no known shipments of ampicillin to the United States in 1982 and there are no known unliquidated entries for the period.

Analysis of Programs

(1) Desgravacion Fiscal a la Exportacion

Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the DFE, rebates both these accumulated IGTE indirect taxes and certain final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

Physical incorporation is a question of fact to be determined for each product in each case. In this case, the physically incorporated inputs are the raw materials previously allowed by the Department. The rebate of two final stage taxes, the parafiscal tax on export licenses and the tax on freight and insurance, is also allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE.

As of January 1, 1982, the Spanish government increased the IGTE rate from 3.80 percent to 4.60 percent, while maintaining the previous rate for the export rebate. We concluded in our last review that an earlier increase in the IGTE rate had eliminated the overrebate previously found countervailable. Based on our analysis of the indirect taxes on physically incorporated inputs and the two indirect taxes on the final product, we preliminarily find that the additional change in the IGTE rate for 1982 continues to eliminate the overrebate. Therefore, we preliminarily determine the net subsidy attributable to this program during the period of review to be zero percent.

(2) Operating Capital Loans

The Spanish government requires banks to set aside funds to provide short-term operating capital loans, as part of its Privileged Circuit Exporter Credit Program. These loans are granted for a period of less than one year. For 1982, the Spanish government fixed the interest rate for such loans at 10 percent. To determine the interest rate on comparable commercial loans, we took the average national prime interest rate for loans of comparable length, added the prevailing interest charge over prime facing borrowers of average creditworthiness and added the legally established fees and commissions. Comparing this benchmark with the 10 percent interest rate established for the operating capital loans program, we found a differential of 9.38 percent during the period of review.

The maximum loan principal available to a given exporter is determined as a percentage of the firm's previous year's exports. This amount may be increased by 10 percent if the firm has a government-issued Exporter's Card. The only known exporter of this merchandise to the United States, Antibioticos, S.A., has such a card. Effective January 1, 1984, the Spanish government reduced the maximum percentage of eligibility for operating capital loans (including Exporter's Card eligibility) to 10.5 percent of the previous year's exports.

By multiplying this eligibility level by the interest rate differential for 1982 (9.38 percent) as the most recent information available, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the net subsidy currently attributable to this program is 0.98 percent *ad valorem*.

(3) Short-Term Export Credits

The short-term export credit program, which is part of the Privileged Circuit Exporter Credit Program, provides loans for up to 90 percent of the value of a company's export shipment at a 10 percent interest rate for a maximum of one year.

Absent shipments of ampicillin to the U.S., we estimated the potential benefit from this program to be the subsidy received by Antibioticos under this program on exports of amoxicillin to the U.S. in 1982. We have made this decision based on our knowledge that Antibioticos is eligible for and has received loans under this program. Therefore, we have reason to believe that the firm would have received loans on exports of ampicillin. We preliminarily find a potential *ad valorem* benefit of 0.69 percent.

(4) Research and Development Incentives

In its final determination in the countervailing duty investigation on certain steel products from Spain, the Department found that firms may receive government loans covering up to 50 percent of the cost of R&D projects. In its questionnaire response, the Spanish government informed us that Antibioticos received assistance under this program. However, we preliminarily determine that the project for which Antibioticos received funding was for

the development of new products and did not benefit the production of ampicillin.

Preliminary Results of the Review

As a result of the review, we preliminarily determine the potential aggregate net subsidy conferred by the four programs is 1.67 percent *ad valorem*.

Accordingly, as provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 1.67 percent of the entered value on all shipments of Spanish ampicillin entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 26, 1984.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

[FR Doc. 84-8610 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-009]

Tubes for Tires, Other Than for Bicycle Tires, From the Republic of Korea; Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice in forms the public that the department of Commerce (the Department) has received a request from counsel for petitioners, Carlisle Tire & Rubber Company; Copper Tire & Rubber Company; Cupples Company, Manufacturers; Firestone Tire & Rubber Company; B.F. Goodrich Company; Indianapolis Rubber Company; and Robbins Tire Company, that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(B) of the Tariff Act of 1930, as amended (the Act); and, that the Department has determined to postpone its final determination as to whether sales of tubes for tires, other than for bicycle tires from the Republic of Korea have occurred at less than fair value, until not later than June 25, 1984.

EFFECTIVE DATE: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, Telephone (202) 377-1776 or 0161.

SUPPLEMENTARY INFORMATION: On August 12, 1983, the Department of Commerce published a notice in the **Federal Register** (48 FR 36637) that it was initiating under section 732(b) of the Act (19 U.S.C. 1673(b)) an antidumping investigation to determine whether tubes for tires, other than for bicycle tires, from the Republic of Korea were being, or were likely to be, sold at less than fair value. On February 10, 1984, the Department published a negative preliminary determination (49 FR 5155). The notice stated that if the investigation proceeded normally, we would make a final determination by April 23, 1984. Section 735(a)(2)(B) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value if the petitioner requests an extension after a negative preliminary determination.

All written views should be filed in accordance with 19 CFR 353.46 no later than April 27, 1984 and in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

Dated: March 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-8609 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Receipt of Application for Permit; William S. Lawton

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Mr. William S. Lawton (P340).

b. Address: 3300 34th Avenue S., Seattle, Washington 98144.

2. Type of Permit: Scientific Research/ Scientific Purposes.

3. Name and Number of Animals: Humpback whale (*Megaptera novaeagliae*)—Unspecified number.

4. Type of Take: Potential harassment while conducting fluke and dorsal fin photography, underwater acoustical recording for population estimates and distribution.

5. Location of Activity: Southeast Alaska, Alexander Archipelago.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publicatioin of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300

Whitehaven Street, NW., Washington, D.C.;

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau Alaska, 99802.

Dated: March 26, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-8614 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal; Receipt of Application for Permit; North Wind Undersea Institute

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: North Wind Undersea Institute (P339).

b. Address: 610 City Island Avenue, City Island, Bronx, New York 10464.

2. Type of Permit: Scientific Research/ Scientific Purposes.

3. Name and Number of Animals: Gray Whale (*Eschrichtius robustus*)—1.

4. Type of Take: Importation of one skeleton found dead.

5. Location of Activity: Baja California, Mexico.

6. Period of Activity: 1 Year.

Concurrent-with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinon contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northeast region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930–3799

Dated: March 26, 1984

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-8638 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Man-Made Fiber Textiles Exported From Mexico

March 27, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 2, 1984. For further information contact William Boyd, International Trade Specialist (202) 377–4212.

Background

On December 27, 1983 a notice was published in the **Federal Register** (48 FR 56987) which established an import restraint limit of 703,471 pounds for acrylic spun yarn in Category 604pt. (only TSUSA 310.5049), produced or manfactured in Mexico and exported during the ninety-day period which began on January 1, 1984 and extends through March 31, 1984. The notice also stated that the Government of Mexico is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the twelve-month period which began on January 1, 1984, to 759,421 pounds.

The notice also stated that merchandise which exceeded the levels established for Category 604pt. (only TSUSA 310.5049) during 1983 and the aforementioned 90-day period might be charged to the twelve-month limit. Shipments from these prior periods are in excess of that limit. As a result, the twelve-month limit of 759,421 pounds will be filled at opening.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mexico, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 27, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 2, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 604pt. (only TSUSA 310.5049), produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1984, in excess of 759,421 pounds.[1]

Textile products in Category 604pt. (only T.S.U.S.A. No. 310.5049) which have been exported to the United States prior to January 1, 1984 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

[1] The level of restraint has not been adjusted to reflect any imports after December 31, 1983.

to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Mexico and with respect to imports of man-made fiber textiles from Mexico has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-8607 Filed 3-29-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to procurement list a commodity to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: March 30, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 28, November 25, and December 23, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (48 FR 49904, 48 FR 53148, and 48 FR 56819) of proposed additions to Procurement List 1984, October 18, 1983 (48 FR 48415).

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce or provide a commodity and services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1984:

Class 7360

Dining Packet, Inflight: 7360-01-167-2610

SIC 7349

Janitorial Service, Federal Regional Center, Pinetree Boulevard, Thomasville, Georgia

SIC 7389

Commissary Shelf Stocking and Custodial, Peterson Air Force Base, Colorado.

C. W. Fletcher,

Executive Director.

[FR Doc. 84-8561 Filed 3-29-84; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1984; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1984 commodities to be produced by and a service to be provided by workshops for the blind and other severley handicapped.

Comments must be received on or before: May 2, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1984, October 18, 1983 (48 FR 48415):

Class 7110

Bookcase, Steel, Contemporary Style: 7110-00-601-9823; 7110-00-149-1621

Class 7510

Envelope, Transparent, Type II: 7510-00-667-2604

SIC 7349

Janitorial Service; U.S. Post Office and U.S. Courthouse, 245 East Capitol Street, Jackson, Mississippi.

C. W. Fletcher,

Executive Director.

[FR Doc. 84-8552 Filed 3-29-84; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Equal Opportunity Management Institute Board of Visitors; Meeting

The Defense Equal Opportunity Management Institute (DEOMI) Board of Visitors will meet at Patrick Air Force Base, Florida, 2-4 May 1984.

The purposes of the meeting will be to review the Accreditation Report of the Southern Association of Colleges and Schools, and to insure the DEOMI curriculum is responsive to changing mission requirements.

The meeting will convene at 3:00 p.m. on 2 May 1984, and adjourn on 4 May 1984 at 1:00 p.m. The meeting is open to the public. For further information, contact the DEOMI Public Affairs Office at (305) 494-6096.

Dated: March 28, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 84-8519 Filed 3-29-84; 8:45 am]

BILLING CODE 3810-01-M

DoD-University Forum; Meeting

The DoD-University Forum will meet in open session April 17, 1984, from 1:30 until 4:30 p.m. at the Pentagon, Washington, D.C.

The mission of the DoD-University Forum is to advise and assist the Department of Defense on university research and related education issues important to the national defense.

The meeting is one of two formal meetings to be held annually as called for by the Charter. The purpose of this meeting is to examine various issues related to the Forum's mission. Public attendees will be accommodated as space permits. Public attendees are requested to telephone Edward Blake or Jeanne Carney in the DoD Office of Research and Laboratory Management, on Area Code 202/694-0205, before COB

April 6, 1984 to arrange for seating and to be advised of entry procedures to the Pentagon.

Dated: March 27, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84-8521 Filed 3-29-84; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 1, 1984; Tuesday, May 8, 1984; Tuesday, May 15, 1984; Tuesday, May 22, 1984; and Tuesday, May 29, 1984 at 10:00 a.m. in Room 1E801, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "considered with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

Dated: March 27, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-8522 Filed 3-29-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Military Justice Act of 1983 Advisory Commission; Public Meeting

The Military Justice Act of 1983 Advisory Commission will meet on Thursday and Friday, April 12-13, 1984, commencing each day at 9:30 a.m. in the Air Force Office of Scientific Research Conference Room, room 200, building 410, Bolling Air Force Base, D.C. The meeting will be open to the public.

Anyone requiring additional information may contact the Commission Chairman, Colonel Thomas L. Hemingway, at 693-5770 or 693-5336.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8601 Filed 3-29-84; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments in the proposed information collection requests as required by the Paperwork Reduction Act.

DATES: Interested persons are invited to submit comments on or before April 30, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208 New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B., Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The requirement for public consultation may be amended or waived by OMB to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform the statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information requests prior to the submission of these requests to the Office of Management and Budget. Public comment is invited from the OMB at the address specified above. Copies of the requests may be obtained from Margaret Webster at the address specified above.

Dated: March 26, 1984.

Charles L. Heatherly,

Deputy Under Secretary for Management.

Office of Postsecondary Education

New

Talent Search and Educational Opportunity Centers Programs Performance and Financial Status Reports

Annually

State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions

Reporting Burden, Responses: 200; Burden Hours: 400

Abstract: These reports combine the separate financial and status reporting requirements of the two programs: Talent Search and Educational Opportunity Centers. Grantees are required to submit annual financial status and performance reports. The reports are used to determine whether progress is being made toward project goals, objectives, and program purpose.

Application for the Strengthening, Special Needs and Challenge Grant Programs under Title III, Higher Education Act of 1965

Annually

State or Local Governments; Non-Profit Institutions

Reporting Burden, Responses: 1,000; Burden Hours: 20,000

Abstract: This application consolidates the application forms for three programs: The Strengthening,

Special Needs and College Grant programs under Title III, Higher Education Act of 1965. The application will enable the program to evaluate the needs of the applicants to determine which applications should be funded and the total amount of any grant that may be awarded.

Revision

Pell Grant Program Student Validation Roster for 1983–1984
ED 255–4
Annually
State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden, Responses: 5,000; Burden Hours: 81,250
Recordkeeping Burden, Recordkeepers: 5,000; Burden Hours: 2,500

Abstract: The Student Validation Roster is the form which ED uses to collect adjustments or corrections to data originally reported on Student Aid Reports, and to obtain institutional verification of funds actually disbursed to each Pell Grant recipient. The Department uses this data to make end-of-year adjustments to the authorization of Pell Grant funds.

Extension

Request for Collection Assistance Under Federal Insured Student Loan Program
ED 1249
On Occasion
State or Local Governments; Businesses or Other For-Profit; Individuals or Households; Small Businesses or Organizations
Reporting burden, Responses: 32,500; Burden Hours: 10,725
Recordkeeping Burden, Recordkeepers: 13,000; Burden Hours: 1,040

Abstract: ED form 1249 is used by lenders to request skip trace assistance on delinquent student loans where the lender is unable to locate the student borrower. Prior to submission of a claim a lender must show due diligence. Skip tracing is a part of due diligence.

Existing

Financial and Performance Reports Under the Graduate and Professional Study Fellowships Program
ED 591A; ED 591B
Annually
State and Local Governments; Non-Profit Institutions
Reporting Burden, Responses: 30; Burden Hours: 3,840
Recordkeeping Burden, Recordkeepers: 128, Burden Hours: 6.4

Abstract: The reports are utilized to obtain information from grant recipients to assure that Federal funds were expended within the provision of all applicable laws and regulations and to assess the accomplishment of project goals and objectives.

State Student Incentive Grant Program Records
Annually
State or Local Governments
Reporting Burden, Responses: 114; Burden Hours: 342
Recordkeeping Burden, Recordkeepers: 40; Burden Hours: 2,280

Abstract: In each State, the designated agency responsible for the State Student Incentive Grant Program must maintain certain records to ensure proper administration of program funds.

Reinstatment

Application for Veterans' Cost-of-Instruction Payments to Institutions of Higher Education
ED 269
Annually
State of Local Governments; Businesses or Other For-Profit; Non-Profit Institutions Small Businesses or Organizations
Reporting Burden, Responses: 900; Burden Hours: 900
Recordkeeping Burden, Recordkeepers: 4; Burden Hours: 3,440

Abstract: Pub. L. 36–374 mandates payments to postsecondary institutions based on veteran student enrollments. The Veterans' Cost-of-Instruction Payments application obtains the necessary data to verify eligibility and calculate awards.

Office of Vocational and Adult Education

Extension

Financial Status Report for State Administered Vocational Education
ED 2465
Annually
State or Local Governments
Reporting Burden, Responses: 53; Burden Hours: 2,915
Recordkeeping Burden, Recordkeepers: 2,000; Burden Hours: 106,000

Abstract: The financial status report is needed to determine each State's compliance with the enabling statute, to close out each year's grant, and to provide information for the Secretary's Report to Congress on the status of vocational education.

Office of Bilingual Education and Minority Languages Affairs

Existing

Information Service Reaction Form
ED 933
On Occasion
Individuals or Households; State or Local Governments; Businesses or Other For-Profit; Federal Agencies or Empolyees; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden, Responses: 3,000; Burden Hours: 150

Abstract: The Information Service Reaction Form is sent to individuals, groups, or organizations that request information or services from the National clearinghouse for Bilingual Education (NCBE) to have them appraise its services and performance. The information is used to modify NCBE services. The form is sent out with every request for information. NCBE asks users of its services to return the form on a voluntary basis.

Office of Educational Research and Improvement

New

Pilot Study for Integrated Postsecondary Education Data System (IPEDS)
Non-Recurring
State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden, Responses: 616; Burden Hours: 5,107

Abstract: This pilot study will test forms and procedures to be used in the Integrated Postsecondary Education Data System (IPEDS). IPEDS is planned as a general statistical data system that will provide a description of the entire postsecondary education enterprise.

Office or the Secretary

New

A Survey of Education Partnerships
On Occasion
State or Local Governments; Non-Profit Institutions
Reporting Burden, Responses: 106,057; Burden Hours: 53,828

Abstract: This data collection is part of the Secretary's initiative to implement the President's National Partnership in Education Program.

[FR Doc. 84–8569 Filed 3–29–84; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

National Petroleum Council, Refineries Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Refineries Task Group of the Committee on the Strategic Petroleum Reserve will

meet in April 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the Refineries Task Group meeting follows:

The Refineries Task Group will hold its first meeting on Monday, April 16, 1984, starting at 12:00 p.m., in Room Three, Amoco Oil Company, Third Floor, 200 East Randolph Drive, Chicago, Illinois.

The tentative agenda for the Refineries Task Group meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.

2. Discuss the scope of the overall study.

3. Discuss the study assignment of the Refineries Task Group.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refineries Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refineries Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353–3032 prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meetings will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 23, 1984.

William A. Vaughn,

Assistant Secretary for Fossil Energy.

[FR Doc. 84-8627 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, SPR Facilities Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the SPR Facilities Task Group of the Committee on the Strategic Petroleum Reserve will meet in April 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the SPR Facilities Task Group meeting follows:

The SPR Facilities Task Group will hold its first meeting on Tuesday, April 10, 1984, starting at 11:00 a.m., in the Dauphine Room of the Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana.

The tentative agenda for the SPR Facilities Task Group meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.

2. Discuss the scope of the overall study.

3. Discuss the study assignment of the SPR Facilities Task Group.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the SPR Facilities Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the SPR Facilities Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353–3032 prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 23, 1984.

William A. Vaughn,

Assistant Secretary for Fossil Energy.

[FR Doc. 84-8626 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; EURATOM

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–EU–800, one gram of uranium, enriched to approximately one percent in U–235, for use as standard reference material at the Atomic Energy Research Establishment, the United Kingdom.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen (15) days after the date of publication of this notice.

For the Department of Energy.

Dated: March 23, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-8624 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; EURATOM

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the

export of 1,500,000 kilograms of natural uranium to various sites within the European Community for conversion to uranium hexafluoride and subsequent enrichment and ultimate use as fuel for power reactors within the European Community.

This subsequent arrangement is to be carried out under the above mentioned agreement in accordance with section 402(a) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2153a).

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 23, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-8625 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of January 30 Through March 9, 1984

During the period of January 30 through March 9, 1984, the proposed decision and order summarized below was issued by the Office of Hearing and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person received actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeeding involving the exception matter.

Copies of the full text of this proposed decision and order is available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: March 22, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

A. O. Smith Corporation, Milwaukee, Wisconsin, HXE-0072, Testing Requirements

On June 2, 1983, the A. O. Smith Corporation (Smith) filed an Application for Extension of Exception Relief from the testing requirements of 10 CFR Part 430, Subpart B, Appendix N, insofar as those requirements apply to the finned copper tube (FCT) boilers which it manufactures. In its submission, Smith asked that it receive an extension of the exception relief which it was previously granted in *A. O. Smith*, 9 DOE ¶ 81,042 (1982), until the Department of Energy modifies the testing procedures.

Proposed regulations addressing the problems recited in Smith's exception were issued for public comment on June 17, 1983. *See* 48 Fed. Reg. 28014 (1983). The DOE tentatively determined that in order to alleviate the gross inequity suffered by Smith, the firm should be granted an extension of exception relief until the final adoption of those amended testing procedures. On March 7, 1984, the DOE issued a Proposed Decision and Order which determined that Smith be granted exception relief to permit it to use the testing procedures specified for FCT boilers that were proposed by the DOE in June 1983. *See* 48 FR 28022 (1983).

[FR Doc. 84-8638 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $92,691 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Willis Distributing Company, Inc., a reseller of refined petroleum products located in Erie, Pennsylvania.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0197.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Willis Distributing Company, Inc., which settled possible pricing violations in the firm's sales of motor gasoline to its customers during the April 1, 1979 through September 30, 1979 audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Willis pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Willis products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: March 19, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Willis Distributing Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0197.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a Remedial Order. The Subpart V process is intended to be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons are eligible to receive as a result of enforcement proceedings. *See Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Willis Distributing Company, Inc. (Willis). Willis is a "reseller" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Erie, Pennsylvania. The firm was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). A DOE audit of Willis' records revealed possible regulatory violations in the amount of $213,557 with respect to the firm's pricing of motor gasoline during the period April 1 through September 30, 1979 (the audit period). In order to settle all claims and disputes between Willis and the DOE regarding the firm's sales of motor gasoline during the audit period, Willis and the DOE entered into a consent order on December 31, 1980, in which Willis agreed to remit $92,691 to the DOE. This payment was deposited into an interest-bearing escrow account for ultimate distribution to the parties injured by the alleged overcharges. This Proposed Decision concerns the distribution of the $92,691 that was deposited into the escrow account, plus accrued interest.

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Willis consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See generally Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to refund moneys to identifiable purchasers of motor gasoline who may have been injured by Willis' pricing practices during the period April 1 through September 30, 1979. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

A. Refunds to Identifiable Purchasers

We propose that the Willis consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Willis' alleged pricing practices. The ERA has identified 97 customers who were overcharged in their purchases of Willis motor gasoline. Of these 97 customers, 92 were identified as first purchasers and are listed in Appendix A. The 5 remaining customers who were not identified as first purchasers are listed in Appendix B. The motor gasoline purchased by these claimants was purchased either directly from Willis or from other firms in a chain of distribution leading back to Willis.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of Willis motor gasoline for the period April through September 1979. If the gasoline was not purchased directly from Willis, the claimant must include a statement setting forth his reasons for believing the product originated with Willis. In addition, a reseller or retailer of motor gasoline that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each claimant will be required to show that it maintained "blanks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. (*1*) *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased motor gasoline from Willis, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

However, as in many prior special refund cases, an applicant will not be required to submit any additional proof of injury if its refund claim is based on monthly purchases of less than 50,000 gallons. (*2*) *Ada* at 88,122. The adoption of a threshold level below which a claimant does not have to submit any evidence of injury is based on several factors. To conduct special refund proceedings with efficiency and reduced administrative costs, the Subpart V regulations authorize the use of presumptions. *See* 10 CFR 205.282(e). We are especially concerned that the cost of compiling information sufficient to show injury not exceed the amount of the refund to be gained. On balance, we believe that the establishment of a presumption of injury for all claims below 50,000 gallons per month is reasonable under the circumstances of this case. *See Office of Special Counsel: In the Matter of Conoco, Inc.,* 11 DOE ¶ ———, Case No. DFF-0003 (January 23, 1984) and cases cited therein.

If a reseller made only spot purchases from Willis, however, we propose that it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case, and we will establish a rebuttable presumption that spot purchasers were not injured. Accordingly, a spot purchaser which files a claim should sumbit additional evidence to rebut the presumption and to establish that it was unable to recover the increased prices it paid for Willis motor gasoline. *See Amoco* at 88,200.

With respect to customers who were consumers or end-users of Willis motor gasoline, a showing of injury wil not be required in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.,* 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway,* 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchased volumes). Therefore, in this proceeding a consumer need only document the specific quantities of Willis motor gasoline it purchased during the consent order period.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amoung is calculated by dividing the settlement amount by the total gallonage of motor gasoline covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.0144298 per gallon ($92,691 received from Willis divided by 6,423,576 gallons of motor gasoline sold by Willis during the audit period). Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proprotionate share of the interest accrued on the consent order fund since it was remitted to the DOE. As of January 31, 1984, accrued interest will increase the per gallon refund amount to $.024252. Consequently, a successful claimant who purchased 50,000 gallons of Willis motor gasoline during each of the six months of the audit period will receive a refund of $7,276.

As in previous cases, we will establish a minimum refund amount of $15.00 for first

stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the Federal Register, notice will be provided to the Independent Gasoline Marketers council, the National Oil Jobbers Council, the service Station Dealers of America, and the Society of Independent Gasoline Marketers of America. These organizations should be helpful in advising potential claimants of this proceeding. In addition, we are continuing our efforts to obtain a more complete list of the names and addresses of firms and individuals who purchased Willis motor gasoline.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, they could be deposited into the miscellaneous receipts account of the United States Treasury. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The $92,691 refund amount remitted by Willis Distributing Company, Inc. pursuant to the consent order executed on December 31, 1980 will be distributed in accordance with the foregoing Decision.

Footnotes

(*1*) The price rules applicable to sales of motor gasoline by retailers were amended effective July 14, 1979. 44 FR 42542 (July 19, 1979). The amended regulation, 10 CFR 212.93(a)(2), provided for a fixed per-gallon markup of 15.4 cents (later increased) for retail sales of motor gasoline, and eliminated the "banking" provisions formerly in effect. Since the fixed markup rule was in effect through part of the period covered by the Willis consent order, no showing of cost banks will be required of retailers from July 14, 1979 through September 30, 1979. The use of banking remained optional for larger resellers of motor gasoline; firms that elected to continue cost banking will be required to submit this information throughout the audit period if they apply for refunds based on purchases greater than 50,000 gallons per month.

(*2*) Resellers whose monthly purchases during the period for which a refund is claimed exceed 50,000 gallons, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 50,000 gallons per month threshold amount without being required to submit evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

Appendix A

Identified First Purchasers With Addresses

Bel Aire Motel, 2800 West 8th Street, Erie, PA 16505
Benjamin Insulation, 9030 Benjamin Road, Erie, PA 16509
Bill's Atlantic Service, 1951 West 26th Street, Erie, PA 16508
Blue Bird Garage, 501 East 19th Street, Erie, PA 16503
Coca-Cola Bottling Company, 50th & Pittsburgh Avenue, Erie, PA 16509
County Fair, 1533 East 12th Street, Erie, PA 16511
Dodsworth, Inc., 928 West 19th Street, Erie, PA 16502
Ed's Mobil, 653 East 19th Street, Erie, PA 16503
Erie Cemetary, 2116 Chestnut Street, Erie, PA 16502
Erie Flexlume Corporation, 2646 West 14th Street, Erie, PA 16505
Erie Press Systems, 1253 West 12th Street, Erie, PA 16503
Erie Strayer Company, 1851 Rudolph Road, Erie, PA 16502
Erie Tool Works, 735 West 12th Street, Erie, PA 16415
Ettwein Service Station, 2505 Buffalo Road, Erie, PA 16510
Exit 4 Truck Stop, 8036 Avonia Road, Erie, PA 16415
Fogglebacк Excavating Contractor, 3419 Sterrettania Road, Erie, PA 16506
Fort LeBoeuf School District, 122 East 2nd Street, Waterford, PA 16441
Gene's Transmission Service, 2502 East Lake Road, Erie, PA 16511
General Electric, 2901 East Lake Road, Erie, PA 16511
Glenwood Beer Distributors, 2177 West Grandview Boulevard, Erie, PA 16509
Hammett Motors, 7311 Wattsburg Road, Erie, PA 16509
William Heidt & Sons Contractors, 5111 Emmaline Drive, Erie, PA 16509
Horton Precast Concrete, Inc., 432 Noble Road, Girard, PA 16417
Howard Neon & Plastic Displays, 2910 Pittsburgh Avenue, Erie, PA 16508
Frederick Huttel's Auto Service, 5434 West Lake Road, Erie, PA 16505
Independent Iron & Metal Corp., 235 East 20th Street, Erie, PA 16503
Jemko Petroleum Equipment Co., 929 Buffalo Road, Erie, PA 16503
Jerge Service, 2529 Parade Street, Erie, PA 16503
Jabe Construction & Equipment, Inc., 2501 Manchester Road, Erie, PA 16506
Kelly Erectors, 2023 Linwood Avenue, Erie, PA 16510
Larry's Truck Stop, 12201 East Main Street, North East, PA 16428
Laurel Hill Cemetery, 4523 Love Road, Erie, PA 16506
Lord Corporation, 2000 West Grandview Boulevard, Erie, PA 16509
Marina Gas Dock, 3333 Bolivar Street, Erie, PA 16508
Matz Mobil Service, 9068 West Main Street, McKean, PA 16426
Michalak Tire, 1564 West 26th Street, Erie, PA 16508
Mike's Arco, RD 3 Station Road, North East, PA 16428
Port Erie Plastics, 909 Troupe Road, Harborcreek, PA 16421
Presque Isle Yacht Club, Peach Street, Erie, PA 16501
R. D. McAllister & Son, Ltd., East Bay Front, Erie, PA 16501
Rich Miller Kendall Service, 97 Rice Avenue, Lake City, PA 16423
Seaway Aluminum Mfg. Corp., 2250 East 33rd Street, Erie, PA 16510
Skindell's Service Station, 5661 East Lake Road, Erie, PA 16511
Southern Tier Erector, Inc., 5055 Iroquois Avenue, Erie, PA 16511
Sam Travis Mobil Service, 3715 Peach Street, Erie, PA 16508
United Parcel Service, 1821 Beaver Avenue, Pittsburgh, PA 15233
U.S. Army Reserve Training Center, 3938 Old French Road, Erie, PA 16504
Union 76 Truck Stop, I90 & US20, North East, PA 16428
Allen Whipple Construction Co., 1625 Lowell Avenue, Erie, PA 16505
Wilson Machine Movers, Inc., 816 East 11th Street, Erie, PA 16503
Carl E. Wise, 2117 Bird Drive, Erie, PA 16510
Zurn Industries, Inc., 1 Zurn Place, Erie, PA 16501
Highway Oil, 1505 Buffalo Road, Erie, PA 16503

First Purchasers Without Addresses

Avonia
Bay City Auto
Clair Ferry
Corry Car Wash
Coughey's Mobil
Don Morse
F & R Bus Lines
Frontier Mobil
Gas-N-Glo
Gerry Hoyes
Glenn's Mobil
Hercules
Hertz Rent-A-Car
J. A. Holtz, Inc.
Jet Oil
Kane Liquid Fuels
Lake Erie Oil Company
Larry's Shortman
Liberty Homes
OK Service
R & R Linnger & Son
Rick & Dave's
Rick's Mobil
Ron Motz
Sanray Corporation
Sherman Tractor
Southland Corporation
Spoeder & Sons
T. C. Motors
Truck Stops of America
Union Fuel & Oil
Valley View Gas
Baer
Herman Drilling
Mowery
R. Aims Construction

Richard Young Contractors
Saurs
Savers Golf Club

Appendix B

Gartner-Harf Company, 9360 Peach Street, Waterford, PA 16441
L & A Equipment Sales, 1507 Liberty Road, Erie, PA 16502
Hoover Sand & Gravel Co., RD 1 Troupe Road, Harborcreek, PA 16421
J. Lechtner, 5575 Meehl Road, North East, PA 16428
James M. Quinlisk, 72 Lakeview Avenue, Fairview, PA 16415

[FR Doc. 84-8637 Filed 3-29-84; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $36,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving the Windham Gas Oil Company, a reseller of refined petroleum products located in Windham, Ohio.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0198.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by the Windham Gas Oil Company, which settled possible pricing violations in the firm's sales of motor gasoline to its customers during the March 1, 1979 through August 31, 1979 audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Windham pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Windham products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: March 20, 1984.

George B. Breznay,
Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case: Windham Gas Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0198.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a Remedial Order. The Subpart V process is intended to be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons are eligible to receive as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with the Windham Gas Oil Company (Windham). Windham is a "reseller" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Windham, Ohio. The firm was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). A DOE audit of Windham's records revealed possible regulatory violations in the amount of $384,534.49 with respect to the firm's pricing of motor gasoline during the period March 1 through August 31, 1979 (the audit period). In order to settle all claims and disputes between Windham and the DOE regarding the firm's sales of motor gasoline during the audit period, Windham and the DOE entered into a consent order on February 10, 1981, in which Windham agreed to remit $36,000 to the DOE. This payment was deposited into an interest-bearing escrow account for ultimate distribution to the parties injured by the alleged overcharges. This Proposed Decision concerns the distribution of the $36,000 that was deposited into the escrow account, plus accrued interest.

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Windham consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See generally Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to refund moneys to identifiable purchasers of motor gasoline who may have been injured by Windham's pricing practices during the period March 1 through August 31, 1979. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

A. Refunds to Identifiable Purchasers

We propose that the Windham consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Windham's alleged pricing practices. The information available to us at this time regarding Windham's operations during the consent order period does not provide specific names and addresses of the firm's customers. However, from our experience with Subpart V proceedings, we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers) of motor gasoline, and (2) firms, individuals, or organizations that were consumers (end-users) of motor gasoline. The motor gasoline purchased by these claimants was purchased either directly from Windham or from other firms in a chain of distribution leading back to Windham. In order to received a refund,

each claimant will be required to submit a schedule of monthly purchases of Windham motor gasoline for the period March through August 1979. If the gasoline was not purchased directly from Windham, the claimant must include a statement setting forth his reasons for believing the product originated with Windham. In addition, a reseller or retailer of motor gasoline that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each claimant will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased motor gasoline from Windham, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

However, as in many prior special refund cases, a reseller will not be required to submit any proof of injury if its refund claim is based on monthly purchases of less than 50,000 gallons.* *Ada* at 88,122. The adoption of a threshold level below which a claimant does not have to submit any evidence of injury is based on several factors. To conduct special refund proceedings with efficiency and reduce administrative costs, the Subpart V regulations authorize the use of presumptions. *See* 10 CFR ¶ 205.282(e). We are especially concerned that the cost of compiling information sufficient to show injury not exceed the amount of the refund to be gained. On balance, we believe that the establishment of a presumption of injury for all claims below 50,000 gallons per month is reasonable under the circumstances of this case. *See Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ ——, Case No. DFF–0003 (January 23, 1984) and cases cited therein.

If a reseller made only spot purchases from Windham, however, we propose that it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Windham motor gasoline. *See Amoco* at 88,200.

With respect to customers who were consumers of Windham motor gasoline, a showing of injury will not be required in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes). Therefore, in this proceeding a consumer need only document the specific quantities of Windham motor gasoline it purchased during the consent order period.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of motor gasoline covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.0041597 per gallon ($36,000 received from Windham divided by 8,654,389 gallons of motor gasoline sold by Windham during the audit period). Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE. As of January 31, 1984, accrued interest will increase the per gallon refund amount to $.0061285. Consequently, a successful claimant who purchased 50,000 gallons of Windham motor gasoline during each of the six months of the audit period will receive a refund of $1,839.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds receiving as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In addition to publishing notice in the **Federal Register**, notice will be provided to the Southeastern Independent Oil Marketers Association, and also to the Independent Gasoline Marketers Council, the National Oil Jobbers Council, the Service Station Dealers of America, the National Association of Convenience Stores, the National Association of Truck Stop Operators, and the Society of Independent Gasoline Marketers of America. These organizations should be helpful in advising potential claimants of this proceeding. In addition, we are continuing our efforts to obtain a list of the names and addresses of first purchasers of Windham motor gasoline.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, they could be deposited into the miscellaneous receipts account of the United States Treasury. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by the Windham Gas & Oil Company pursuant to the consent order executed on February 10, 1981 will be distributed in accordance with the foregoing Decision.

Footnote

*Resellers whose monthly purchases during the period for which a refund is claimed exceed 50,000 gallons, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 50,000 gallons per month threshold amount without being required to submit evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

[FR Doc. 84–8540 Filed 3–29–84; 8:45 am]
BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $91,913 in consent order funds to members of the public. This moeny is being held in escrow following the settlement of enforcement proceedings involving Waller Petroleum Company, Inc., a reseller-retailer of middle distillates and residual fuel located in Towson, Maryland.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0191.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and

Order set out below. The Proposed Decision relates to a consent order entered into by Waller Petroleum Company, Inc., which settled possible pricing violations in the firm's sales of middle distillates and residual fuel to its customers during the November 1, 1973 through May 31, 1974 audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Waller pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Waller products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Apropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: March 19, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Waller Petroleum Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0191.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals formulate and implement special procedures to make refunds in order to remedy the effects of violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. The Subpart V process is intended to be used in situations where DOE is unable readily to ascertain the persons who may be eligible to receive refunds as a result of enforcement proceedings or the amounts that such persons should receive. *See Office of Enforcement*, 9 DOE ¶82,553 (1982).

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Proceedings in connection with a consent order entered into with Waller Petroleum Company, Inc. (Waller). Waller is a "reseller-retailer" of middle distillates and residual fuel oils as those terms were defined in 10 CFR 212.31, and is located in Towson, Maryland. A DOE audit of the firm's records revealed possible pricing violations in the firm's sales of No. 2 heating oil and Nos. 4, 5 and 6 fuel oil to its customers during the period from November 1, 1973 through May 31, 1974 (the audit period). In order to settle all claims and disputes between Waller and the DOE regarding the firm's sales of middle distillates and residual fuel oils during the audit period, the firm and the DOE entered into a consent order on August 21, 1979, in which Waller agreed to pay $508,087 directly to 50 identified customers plus $91,913 (including interest to that time) to the DOE in settlement of the firm's potential liability with respect to sales to Waller's other customers during the audit period. The payment to the DOE was deposited into an interest bearing escrow account for ultimate distribution to the parties bearing the burden of the alleged overcharges. This Decision concerns the distribution of the $91,913 that was deposited into the escrow account, plus accrued interest to date.

During the audit of the firm, 61 customers were identified by the ERA has having been overcharged. Pursuant to the Consent Order, 50 of these customers have received payment for their alleged injuries. On September 7, 1979, each of these customers were paid amounts specifically set forth in the Consent Order from the $508,087 fund. Eleven other customers, which were identified as first purchasers, have not yet been paid. These identified first purchasers, together with the amount of the firm's settlement payment attributable to each, are set forth in the table below.

Customer	Portion of settlement amount
Annapolis Utilities, P.O. Box 1871, Annapolis, MD 22404	$1,779
Bulk Sales, 1015 Ingleside Ave., Baltimore, MD 21228	1,270
Eastern Petroleum 706 Baltimore Annapolis Blvd. NE., Glen Burnie, MD 21061	1,766
E. Stewart Mitchell, 1400 Caddox St., Baltimore, MD 21225	1,259
Southern Maryland Oil, Route 301 South, La-Plata, MD 20646	3,506
Space Petroleum, 5602 Baltimore National Pike, Suburban Building, Suite 701, Baltimore, MD 21228	13,188
Stape Beat Co., 3465 North 6th St., Harrisburg, PA 17105	3,017
Tower Sales, 936 East Grant Ave., Tower City, PA 17980	22,492
Tri Gas & Oil Co., P.O. Box 246, Federalsburg, MD 21632	1,770
Way Oil Co., 1062 Old Manheim Pike, P.O. Box 4768, Lancaster, PA 17604	56,825
Wooten Oil & Fuel, P.O. Box 1277, Goldsboro, NC 27530	5,847
Total	91,913

On the basis of the information in the record at this time, we are inclined to distribute the money in the Waller refund pool to the customers indicated above in the amounts specified. In view of the small amount of money involved in this proceeding and since the record indicates that these firms are the parties most likely to have been injured by Waller pricing practices, we have tentatively decided that this would be most equitable and efficient method of accomplishing restitution. (*1*) We recognize, however, that other customers not identified by the ERA audit may be entitled to a portion of the consent order fund. If additional meritorious claims are filed, the appropriate amount of refund to each firm will be determined after analyzing those claims.

In order to obtain a refund, each of the firms will be required to file a refund application in which it certifies to the Office of Hearings and Appeals the amount of its purchases from Waller during the audit period and that there has been no change in ownership of the refund applicant since that time. If there has been a change in ownership, we will determine which owner is entitled to the refund. In addition, a firm that requests a refund of more than $25,000 will need to show that it did not pass through the effects of the alleged overcharges to its customers. (*2*) *See, e.g., Enterprise Products Company*, 10 DOE ¶ 85,017 (1982); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

In the event that money remains after all claims are disposed of, undistributed funds could be distributed in various ways. For example, they could be deposited into the miscellaneous receipts account of the United States Treasury or be distributed to the states or counties where the firms' sales were apparently made, provided the state or county files a plan with this Office to use these funds for an energy related project which meets with our approval. *See Worldwide Energy Corp.*, 11 DOE ¶ 85,023 (1983). However, it is premature to decide this issue now, since we do not know how much, if any, money will remain unclaimed. We therefore reserve judgment on this issue.

It Is Therefore Ordered That:

The $91,913 refund remitted to the Department of Energy by Waller Petroleum Company, Inc. pursuant to the Consent Order executed on August 21, 1979 will be distributed in accordance with the foregoing Decision.

Footnotes

(*1*) In previous decisions concerning special refund proceedings, we have generally required a party claiming a portion of a consent order fund who is not a consumer to demonstrate that it did not pass through the effects of the overcharges to its customers. We have also stated in our prior decisions, however, that a party that purchased a relatively small amount of product need not make such a showing. *See Office of Special Counsel (Tenneco)*, 9 DOE ¶ 82,536 at 85,202–05 (1982); *Office of Enforcement (Lyon County Cooperative)*, 10 DOE ¶ 85,016 (1982). In the present case, although data pertaining to the purchase volumes of the customers identified are not in the record, it appears that all except one of the purchase volumes and refunds will be relatively small. We therefore propose that all firms except Way

Oil Co. not be required to demonstrate that they absorbed the alleged overcharges.

(2) Our decision to adopt a threshold level below which applicants do not have to submit any further evidence of injury permits the OHA to conduct special refund proceedings with much greater efficiency and lower administrative costs. It also lessens the burden of what might otherwise be an onerous or impossible task for small firms and is authorized by the Subpart V regulations. *See* 10 CFR 205.282(e). In the past, we have set the threshold level on the basis of volumetric purchases. *See, e.g., Office of Special Counsel (Tenneco),* 9 DOE ¶ 85,538 at 82,203–05 (1982); *Office of Enforcement (Vickers),* 8 DOE ¶ 82,597 at 85,396 (1981). However, because we do not have adequate volumetric information in this case, we have established a threshold level based on the claimant's potential refund amount. This amount was determined by consideration of the same factors considered in setting volumetric thresholds. *See Office of Enforcement (Sid Richardson),* 10 DOE ¶ 85,056 at 88,275–76 (1983).

[FR Doc. 84–8539 Filed 3–29–84; 8:45 am]
BILLING CODE 6450–01–M

Western Area Power Administration

Fryingpan-Arkansas Project Reallocation; Intent To Reallocate Power and Call for Applications for Allocations

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to reallocate power and call for applications for allocations.

SUMMARY: The Western Area Power Administration (Western) adopted a final marketing plan for power from the Mt. Elbert Pumped-Stofage Powerplant of the Fryingpan-Arkansas Project (Fry-Ark) which was published in the **Federal Register** on June 23, 1981 (46 FR 32491). That marketing plan provided, in part, for the reallocation of power allocated under the plan but not placed under contract. Western has calculated the amount of Fry-Ark power to be reallocated, and is publishing this notice to announce the reallocation and solicit applications for allocations from eligible entities.

DATES: Written comments on the proposal and/or applications for power are due in the office of the Area Manager at the address given below, no later than 30 days from the publication of this notice in the **Federal Register**. This proposal will become final 30 days from its publication in the **Federal Register** unless Western publishes another **Federal Register** notice reflecting any differences between this proposal and any amended final determination.

ADDRESS: Comments and/or applications for allocations may be mailed to:

Mr. Peter G. Ungerman, Area Manager, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224–7201.

FOR FURTHER INFORMATION CONTACT:

Mr. Peter G. Ungerman, Area Manager, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224–7201.

Mr. John DiNucci, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1545.

SUPPLEMENTARY INFORMATION:

I. Regulatory Procedural Requirements

A. *Determination Under Executive Order 12291.* The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). In addition, Western has an exemption from sections 3, 4, and 7 of the Executive Order.

B. *Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact to the proposed rule on small entities.

The Administrator of Western certified that the Fry-Ark power marketing plan (46 FR 32491) is not a rule under the Regulatory Flexibility Act, and that it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The Administrator's certification was published with the marketing plan and was sent to the Chief Counsel for Advocacy of the Small Business Administration.

C. *Environment Evaluation.* The reallocation of power under the existing marketing plan was evaluated before implementation of the plan and found not to be a major Federal action which significantly affects the environment. An environmental assessment or environmental impact statement is, therefore, not required under the National Environmental Policy Act of 1969.

D. *Statutory Basis.* This reallocation was authorized in the final marketing plan for power from the Mt. Elbert Powerplant established by Western pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*) as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Fryingpan-Arkansas Project Acts (Pub. L. 87–590, 76 Stat. 389 (August 16, 1962) and Pub. L. 93–493, 88 Stat. 1486 (October 27, 1974)).

II. Background

Western's Loveland-Fort Collins Area Office markets power generated at 18 hydroelectric powerplants in Colorado, Wyoming, and Montana to 56 customers in a 200,000 square mile service area. Seventeen of these powerplants and their associated transmission facilities comprise the Pick-Sloan Missouri Basin Program-Western Division power system. The remaining powerplant, the Mt. Elbert Powerplant, and its associated transmission line comprise the Fry-Ark from which power is to be allocated under this **Federal Register** notice.

On March 9, 1976, the United States Bureau of Reclamation published a proposed marketing plan and rate for power from Fry-Ark (41 FR 10116).

After reviewing the proposal and the public comments on that proposal, Western held a public meeting on April 12, 1978, at which Western presented a modified plan for marketing Fry-Ark power. Delays in the scheduled inservice date of the Mt. Elbert Powerplant caused delays in preparing a final marketing plan. On receipt of notification of a new scheduled inservice date for the powerplant, Western reviewed the changing power supply conditions in the Loveland-Fort Collins Area and determined that additional public participation would be helpful in developing a final marketing plan. On September 30, 1980, a public information meeting was held at which additional public comments were solicited.

A proposed marketing plan was published in the **Federal Register** on March 31, 1981 (46 FR 19809). Public information and comment forums were held in Thornton, Colorado, on April 8, 1981, and April 29, 1981. After consideration of the comments received at these public forums, a final marketing plan was published in the **Federal Register** on June 23, 1981 (46 FR 32491).

Allocations of Fry-Ark power were approved by the Administrator of Western and were announced by a letter to all customers and interested parties in the marketing area as well as by press release. Because of problems

encountered by allottees in securing transmission arrangements for the delivery of Fry-Ark power and/or pump-back energy, and problems encountered in the operation of the first unit of the Mt. Elbert Powerplant, Western extended the deadline for placing allocations under contract on several occasions. On September 13, 1983, Western sent certified letters to all allottees of Fry-Ark power informing the allottees that any Fry-Ark allocation not under contract by November 30, 1983, would be rescinded. Ten customers responded prior to the deadline with total allocations under contract of 129,794 kilowatts in summer seasons and 133,224 kilowatts in winter seasons. The remaining Fry-Ark power, to be reallocated under the marketing plan, is 70,206 kilowatts in summer seasons and 66,776 kilowatts in winter seasons.

The reallocation method for Fry-Ark power appears below.

Reallocation of Fryingpan-Arkansas Project Power

1. *Applicability of Final Marketing Plan.* Except as otherwise specifically provided in this **Federal Register** notice, all power to be allocated hereunder shall be allocated and furnished in accordance with the provisions of the "Fryingpan-Arkansas Project Power Marketing Plan" published in the **Federal Register** on June 23, 1981 (46 FR 32491).

2. *Allocation Procedures.* In lieu of the procedures set forth in section 6 of the "Fryingpan-Arkansas Project Power Marketing Plan," the following procedures will be followed in reallocating the available Fry-Ark capacity:

a. Entities desiring an allocation of the available Fry-Ark capacity shall submit a request so that it is received by the Area Manager within 30 days after publication of this notice in the **Federal Register**. Entities should request power separately for the winter and summer seasons. System peakloads for the 1982–1983 winter season and the 1983 summer season should be set forth as part of the application. For preference entities that have a portion of their load within the marketing area, peakloads should be calculated only for that portion of its system within the marketing area.

b. Allotment of the available Fry-Ark capacity will be made first to preference entities in the Fry-Ark market area.

c. *Undersubscription.* If preference entities in the Fry-Ark market area do not subscribe for all the capacity available, the remaining capacity will be allotted first to preference entities outside the marketing area, then to nonpreference entities. If capacity remains undersubscribed, it may be sold on a seasonal, short-term, or withdrawable basis by Western through the 1989 summer season.

d. *Oversubscription.* If the total amount of capacity applied for exceeds the capacity available, a percentage of the total available capacity shall be reserved for the group of requesting preference entities having 1980 Fry-Ark marketing area peakloads of 20 MW or less. The percentage to be reserved for this group of small customers shall be determined by considering the number of members of this group and the total capacity requested by all preference entities.

If all of the capacity reserved for this group is not subscribed, the remainder will be added to the amount available for the group of preference entities with loads greater than 20 MW.

Capacity available in any season for each group will be apportioned among the members of the group by using the following formula:

$$(\text{Fry-Ark Allocation} + \text{CROD}_I) \div \text{Loads}_I = (\text{CROD}_A + \text{CROD}_T) \div \text{Load}_T$$

Where: Fry-Ark Allocation = The amount of Fry-Ark capacity allocated to the individual group member for the service season

Load_I = 1983 seasonal load of the individual group member

CROD_I = Federal resources allocated to the group member

Load_T = Total 1983 seasonal load of all the members of the group

CROD_A = Fry-Ark capacity available for allocation to the group

CROD_T = Federal resource allocated to all members of the group

If use of this formula results in a negative allocation to any group member, that member shall receive a zero allocation. The remaining allocations shall then be recomputed using the above formula. Separate allocations will be made for the summer and winter seasons, as defined in the marketing plan. No entity shall receive an allocation larger than that for which it applies.

3. *Term of Contract:* In place of the provisions set forth in section 9 of the Fryingpan-Arkansas Project Marketing Plan the following shall be applied to allocations made pursuant to this **Federal Register** notice:

Contracts for Fry-Ark capacity allocated hereunder shall be entered into on or before July 15, 1984. The term of these contracts shall be through the 1989 summer season.

Western reserves the right to rescind any allocation if, by July 15, 1984, an allottee has not entered into a contract to take and/or pay for its allotted capacity from and after the date specified in its contract. Power which is allocated, but not contracted for by the allottee by July 15, 1984, may be sold on a seasonal, short-term, or withdrawable basis by Western through the 1989 summer season.

Allottees may contract to take the allocated capacity on a staged basis, until the first full service season which occurs 1 year after the inservice date of the second Mt. Elbert unit. Power available during the buildup period, because of allocations being taken on a stepped up basis, may be sold by Western on a short-term basis, subject to withdrawal.

Issued at Golden, Colorado, March 22, 1984.

Robert L. McPhail,

Administrator.

[FR Doc. 84-8628 Filed 3-29-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2555-4]

Availability of Environmental Impact Statements Filed March 19 Through March 23, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information, (202) 382–5073 or (202) 382–5075.

EIS No. 840121, Final, FHW, OR, Chambers Connector Construction, River Road to 6th/7th Avenue Couplet, Lane County, Due: Apr. 30, 1984.

EIS No. 840122 Draft, OSM, WA, John Henry No. 1 Mine, Operation, Permit, King County, Due: May 21, 1984.

EIS No. 840123, Draft, FAA, FL, Palm Beach International Airport Fan Out Departure Procedures Elimination, Approval, Palm Beach County, Due: May 31, 1984.

EIS No. 840125, DSuppl, FHW, ID, St. Joe River Road/ID FH–50 Improvement, Marble Creek to Avery, Shoshone County, Due: May 14, 1984.

EIS No. 840126, Draft, FHW, TN, TN–27 Improvement, Alabama State Line to TN–156, Marion County, Due: May 14, 1984.

EIS No. 840127, Draft, FHW, TX, US 183 Upgrading, TX–71 to Ranch to Market Road 620, Travis and Williamson Counties, Due: May 14, 1984.

EIS No. 840128, Final, FHW, CA, CA–41 Freeway Extension, Bullard Avenue to Audubon Drive, Fresno County, Due: Apr. 30, 1984.

EIS No. 840129, Draft, OSM, WY, East Gillette Federal Mine, Operation,

Approval/Permit, Campbell County, Due: May 14, 1984.

EIS No. 840130, Draft, FHW, DC, Whitehurst Freeway/US 29 Corridor Improvements, Due: May 31, 1984.

EIS No. 840131, Draft, COE, MO, Ste. Genevieve Flood Control Plan, Mississippi River, Ste. Genevieve County, Due: May 14, 1984.

Amended Notices:

EIS No. 830669, Draft, AFS, IN, Hoosier National Forest, Land/Resource Management Plan, Bartholomew, Brown, Crawford, Dubois, Johnson, Lawrence, Martin, Monroe, Orange and Perry Cos., Due: 5/31/84. Published FR 01-13-84 Review extended.

Dated: March 27, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-8532 Filed 3-29-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Meetings of the FCC Advisory Committee on DBS Standards

March 26, 1984.

There will be a meeting of the W.G. on *Signal Format* on March 30, 1984. Time of meeting is 9:30 AM. Location of meeting is CBS TV Network Inc., 1800 M Street, third floor.

There will be a meeting of the Sub-Commmittee on *Transmission Standards* on March 30, 1984. Time of meeting is 2:00 PM. The meeting location is CBS TV Network Inc., 1800 M Street, third floor.

The chairmen of the above groups will gladly supply further details, or contact B. Pattan, FCC/OST, (202) 653-9098.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8548 Filed 3-29-84; 8:45 am]

BILLING CODE 6712-01-M

Meeting of the Assembly of the Telecommunications Industry Advisory Group

Pursuant to Section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's Assembly scheduled to meet on Wednesday, May 2, 1984. The meeting will be held at 9:30 a.m. in Room 856 of the Federal Commission's offices at 1919 M Street, NW., Washington, D.C. The meeting will be open to the public.

The agenda is as follows:

I. General Administrative Matters
II. Proposed Amendment To The By-Laws
III. Review Final Steering Committee Account Proposal
IV. Other Business
V. Presentation of Oral Statements
VI. Adjournment

With prior approval of the Group Chairman, Gerald P. Vaughan, oral statement, while not favored or encouraged, may be allowed if time permits and if the Group Chairman determines that an oral presentation is conducive to the effective attainment of Advisory group objectives. Anyone not a member of the Assembly and wishing to make an oral presentation should contact Stephen T. Duffy, Group Vice-Chairman (202/634-1509), at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8546 Filed 3-29-84; 8:45 am]

BILLING CODE 6712-01-M

Radio Advisory Committee; Meeting

April 12, 1984.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled for 9:30 a.m., Thursday, April 12, 1984, in Room 330, 1200 19th Street, NW., Washington, D.C.

The Committee will consider recommendations to the FCC concerning: Implementation of the new bilateral agreement between the United States and Canada on AM broadcasting which adapts to particular U.S. and Canadian needs the Final Acts of the 1981 Rio de Janeiro Conference on AM broadcasting in Region 2 and supersedes the North American Regional Broadcasting Agreement (NARBA), insofar as the United States and Canada are concerned; the development of similar revisions to the U.S. Mexican AM Radio Broadcasting Agreement; and other business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for April 1984, may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please contact the Committee Chairman, Louis C. Stephens, or Jonathan David, at F.C.C. Headquarters, (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8547 Filed 3-29-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-284; File No. BPCT-831027KH]

John R. Powley, et al.; Hearing Designation Order

Adopted: March 21, 1984.
Released: March 23, 1984.

In re Applications of John R. Powley, MM Docket No. 84-284, File No. BPCT-831027KH; Matlock Communications, Inc., MM Docket No. 84-285, File No. BPCT-831121KI; Barbara Chavez and Robert Vinson, d.b.a. Logan Television Company, Ltd., MM Docket No. 84-286, File No. BPCT-840104KG; For Construction Permit for new TV Station on Channel 12, Logan, Utah.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of John R. Powley, Matlock Communications, Inc. (Matlock), and Logan Television Company, Ltd. (Logan) for authority to construct a new commercial television station on Channel 12, Logan, Utah.

2. No determination has been made that the tower heights and locations proposed by the applicants would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.[1]

3. John R. Powley and Logan each proposes to construct transmitting facilities at the same site on top of Mount Pisgah. This site is 55 miles from the reference point of Channel 13, Salt Lake City, Utah. Section 73.610(c)(1) of the Commission's Rules requires a minimum separation of 60 miles. The applicants, therefore, would be short-spaced 5 miles to Channel 13, Salt Lake City, Utah.[2] An issue will be specified to determine whether circumstances exist warranting a waiver. In assessing the circumstances to determine whether a waiver is warranted, the Administrative Law Judge should consider the fact that the other applicant in this proceeding has specified a fully-spaced site.

4. Section V-C, Item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Matlock has not submitted figures for the population. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Matock will be required to submit an amendment

[1] The Commission is not in receipt of FAA's determination for John R. Powley and Matlock.

[2] There are six (6) pending applications for Channel 13, Salt Lake City, Utah. However, the site proposed by John R. Powley and Logan is not short-spaced to any of the sites specified by the Salt Lake applicants.

showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. The presiding Administrative Law Judge will consider any significant difference in the areas and populations served under the standard comparative issue.

5. The terrain profiles submitted by Matlock have not been determined in accordance with Section 73.684 of the Commission's Rules. Section 73.684(g) generally requires use of U.S. Geological Survey Topographic Quadrangle Maps, if available for the area involved, in constructing terrain profiles from which average terrain elevations are determined. Use of information from the *National Oceanic and Atmospheric Administration Thirty Second Interval Point Elevation Data Base* does not comply with § 73.684(g). Matlock will be required to compute the radial elevations, site elevation and contour distances in accordance with § 73.684 and to submit copies of the profile graphs and topographic maps employed to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

6. An applicant seeking authority to construct a commercial television station is required to afford equal employment opportunity to qualified persons. See § 73.2080 of the Commission's Rules and Section VI, FCC Form 301. Pursuant to this requirement, an applicant who proposes to employ five or more full-time station employees must establish a program of practices to assure equal employment opportunities. Although Logan intends to employ at least five full-time employees, it has failed to submit the model EEO program required by FCC Form 301. Therefore, we cannot conclude that the applicant has complied with § 73.2080. Accordingly, Logan will be required to submit its model EEO program to the presiding Administrative Law Judge within 20 days after this Order is released.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine where there is a reasonable possibility that the tower height and location proposed by each applicant would constitute a hazard to air navigation.

2. To determine whether the proposals of John R. Powley and Logan are consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules, and if not, whether circumstances exist which would warrant a waiver of the rule.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That Matlock shall submit an amendment stating the population within its predicted Grade B contour, within 20 days after this Order is released, to the presiding Administrative Law Judge.

10. It is further ordered, That Matlock shall compute its radial elevations, site elevation and contour distances in accordance with § 73.684 and to submit copies of the profile graphs and topographic maps employed to the presiding Administrative Law Judge within 20 days of the date of the release of this Order.

11. It is further ordered, That Logan shall submit its model EEO program to the presiding Administrative Law Judge within 20 days of the date of the release of this Order.

12. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 1.

13. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-8580 Filed 3-29-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 18, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation,* New York, New York; to engage *de novo* through its subsidiary, BT Commercial Corporation, in making or acquiring loans and other extensions of credit such as would be made by a commercial finance company, including commercial loans secured by a borrower's accounts receivable, inventory, or other assets; purchasing or acquiring accounts receivable and making advances thereon as would be done by a factor, servicing such loans or accounts for others; and acquiring and selling participants in such obligations; making or acquiring leases and installment sale contracts of personal property; servicing such leases and installment sales contracts for others; acting as agent, broker or adviser in connection with such transactions; and acquiring participations in the obligations arising for such transactions; 225.25(b) (1) and (5).

2. *B.N.Y. Holdings (Delaware),* Wilmington, Delaware, and *The Bank of New York Company, Inc.,* New York, New York; to engage *de novo* through their subsidiaries, ARCS Mortgage, Inc., Canoga Park, California, ARCS Mortgage Corp., New York, New York, The Bank of New York Trust Company of Florida, N.A., Miami, Florida, the Bank of New York Life Insurance Co., Inc., Phoenix, Arizona, and BNY Financial Corporation, New York, New York in the following activities: ARCS Mortgage Corp.—making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made by a mortgage company; ARCS Mortgage, Inc.—making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made by a mortgage company; The Bank of New York Life Insurance Co., Inc.—underwriting, on a reinsurance basis, credit life insurance and credit accident lending affiliates of the Bank of New York Company, Inc., serving the states of New York and Delaware; The bank of New York Trust Company of Florida, N.A.—performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law including acceptance of deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law, deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances, serving the state of Florida; B.N.Y. Financial corporation—making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made by a mortgage company.

Board of Governors of the Federal Reserve System, March 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8503 Filed 3-29-84; 8:45 am]

BILLING CODE 6210-01-M

Citizens Bancorp of Morehead, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 20, 1984.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens Bancorp of Morehead, Inc.,* Morehead, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of the Citizens Bank, Morehead, Kentucky. Comments on this application must be received not later than April 23, 1984.

2. *Jessamine Bancshares, Inc.,* Nicholasville, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank & Trust Company, Nicholasville, Kentucky. Comments on this application must be received not later than April 23, 1984.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *C.S.B. Holding Corporation,* Wyoming, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens State Bank, Wyoming, Iowa.

2. *Peoples Bankshares, Ltd.,* Waterloo, Iowa; to acquire 80 percent of the voting shares of First State Bank, Britt, Iowa.

C. **Federal Reserve Bank of St. Louis** (Delmar P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Community Bancorp of McLean County, Kentucky, Inc.,* Island, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of First Security Bank of McLean County, Island, Kentucky.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Britton Bancshares, Inc.,* Ellsworth, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank & Trust Co., Ellsworth, Kansas.

Board of Governors of the Federal Reserve System, March 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8504 Filed 3-29-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the

premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 84-0155—Mr. Alan E. Symonds' proposed acquisition of voting securities of Vertipile, Incorporated.	Mar. 8, 1984.
(2) 84-0156—Vertipile Incorporated's proposed acquisition of assets of Quaker Fabric Corporation (Mr. Alan E. Symonds, UPE).	Do.
(3) 84-0160—K mart Corporation's proposed acquisition of voting securities of Newco.	Do.
(4) 84-0162—Hechinger Company's proposed acquisition of voting securities of Newco.	Do.
(5) 84-0171—Asgot Incorporated's proposed acquisition of voting securities of Altair International Incorporated (Charles Hamitzy, UPE).	Do.
(6) 84-0176—Asgot Incorporated's proposed acquisition of voting securities of Altair International Incorporated (Clifford Cloutier, UPE).	Do.
(7) 84-0169—Kings Entertainment Company's proposed acquisition of assets of Taft Broadcasting Company.	Do.
(8) 84-0164—Wetterau Incorporated's proposed acquisition of assets of The Kroger Company.	Do.
(9) 84-0167—International Thoroughbred Breeders, Incorporated's proposed acquisition of assets of Eagle Downs Racing Association.	Do.
(10) 84-0166—International Thoroughbred Breeders, Incorporated's proposed acquisition of assets of Continental Thoroughbred Racing Association (Herbert Barness and Irma Barness, UPE's).	Do.
(11) 84-0161—David A. Jones (Concord Corporation), proposed acquisition of Bishop Incorporated.	Mar. 13, 1984.
(12) 84-0106—General Instrument Corporation's proposed acquisition of TOCOM Incorporated.	Do.
(13) 84-0133—Land of Lincoln Savings and Loan's proposed acquisition of voting securities of The Illinois Company, Incorporated.	Do.
(14) 84-0136—The 1964 Simmons Trust's proposed acquisition of voting securities of GAF Corporation.	Do.
(15) 84-0148—GFI/Knoll International Holding Company's proposed acquisition of voting securities of Masonite Corporation.	Do.
(16) 84-0168—IMASCO Limited's proposed acquisition of voting securities of Peoples Drug Stores Incorporated.	Do.
(17) 84-0167—IMASCO Limited's proposed acquisition of voting securities of Peoples Drug Stores Incorporated.	Do.
(18) 84-0154—Richard W. Snyder's proposed acquisition of assets of Arco Comfort Products Company (Atlantic Richfield Company, UPE).	Mar. 14, 1984.
(19) 84-0144—GB-Inno-BM's proposed acquisition of voting securities of Scotty's Incorporated.	Do.
(20) 84-0122—Allegheny and Western Energy Corporation's proposed acquisition of voting securities of Columbia Gas of West Virginia, Incorporated (The Columbia Gas System, Incorporated, UPE).	Mar. 15, 1984.
(21) 84-0168—John W. Kluge's proposed acquisition of voting securities of Metromedia Incorporated.	Do.
(22) 84-0173—Reed International P.L.C.'s proposed acquisition of assets of Whitcom Investment Company.	Do.
(23) 84-0176—Gerber Products Company's proposed acquisition of voting securities of Bates Nitewear Company and Bates Realty Company (Victor Bates, UPE).	Do.
(24) 84-0165—Campbell Soup Company's proposed acquisition of voting securities of Mendeleon-Zeller Company, Incorporated.	Do.
(25) 84-0189—Ashland Oil Incorporated's proposed acquisition of voting securities of Daniel, Mann, Johnson and Mendenhall.	Do.
(26) 84-0194—Crownx Incorporated's proposed acquisition of assets of Seven Nursing and Convalescent Centers (Sidney B. Ames, UPE).	Do.
(27) 84-0199—Elsinore Corporation's proposed acquisition of voting securities of Playboy of New Jersey, Incorporated, Playboy Enterprises, Incorporated (Hugh M. Hefner, UPE).	Do.
(28) 84-0202—Pantry Pride, Incorporated's proposed acquisition of voting securities of Devon Stores Corporation (Philip Devon, UPE).	Do.
(29) 84-0102—Roy M. Huffington (Huffington, Inc.), proposed acquisition of assets of Pacific Oasis Corporation.	Mar. 19, 1984.
(30) 84-0191—Safeway Stores Incorporated's proposed acquisition of assets of Thriftmart Incorporated.	Do.
(31) 84-0132—Energy Methods Corporation's proposed acquisition of voting securities of Tenneco, Incorporated.	Mar. 20, 1984.
(32) 84-0183—Schlumberger Limited's proposed acquisition of voting securities and assets of the Offield Service Business in U.S. and Canada (The Dow Chemical Company, UPE).	Do.
(33) 84-0192—Schlumberger Limited's proposed acquisition of voting securities of NEWCO.	Do.
(34) 84-0193—The Dow Chemical Company's proposed acquisition of voting securities of NEWCO.	Do.
(35) 84-0153—Sumitomo Corporation's proposed acquisition of voting securities of Auburn Steel Company, Incorporated (Chisenachi Tatemono Company, Limited, UPE).	Do.
(36) 84-0185—Gibraltar Financial Corporation of California's proposed acquisition of Cathedral Mortgage Company Incorporated (Avco Corporation, UPE).	Do.
(37) 84-0196—Bitoil PLC's proposed acquisition of assets of Amax Petroleum Corporation (Amax, Incorporated, UPE).	Do.

FOR FURTHER INFORMATION CONTACT:
Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-8517 Filed 3-29-84; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator Advisory Board; Meeting

Notice is hereby given that the GSA Advisory Board's subcommittees on Supply and Distribution and Contracting will meet on April 17, 1984 from 9:00 a.m. to 4:30 p.m. in room 1121, Crystal Mall 4, 1941 Jefferson Davis Highway Arlington, Va. 20406.

The agenda will cover management initiatives of GSA's Office of Federal Supply & Services (FSS), including productivity improvement efforts; actions to maximize civilian agency procurement through FSS sources; and, FSS business relationships with foreign and mutli-national corporations. This meeting is open to the public.

Questions regarding this meeting should be directed to Mr. James Dean on (202) 566-0382.

Dated: March 20, 1984.

Roger C. Dierman,

Deputy Associate Administrator.

[FR Doc. 84-8399 Filed 3-29-84; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 23.

Public Health Service

Office of the Assistant Secretary for Health

Subject: National Health and Nutrition Examination Survey I Epidemiologic Followup Study: Continued Followup 1985-86—new
Respondents: Individuals
Subject: Evaluation of Data Dissemination and Data Use—new
Respondents: Individuals, State and local governments, businesses, Federal agencies or employees
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Environmental Impact Considerations—existing collection
Respondents: Business firms
Subject: Notice of Participation—existing collection
Respondents: Business firms
Subject: Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report (0910-0012)—extension no change
Respondents: Business firms

Subject: (Petition for) Administrative Reconsideration of Action—existing collection
Respondents: Business firms
Subject: Advisory Opinions—existing collection
Respondents: Business firms
OMB Desk Officer: Bruce Artim

Office of the Secretary

Subject: Awareness of and Attitudes About Selected Types of Consumer Information—new
Respondents: Households
OMB Desk Officer: Milo Sunderhauf

Social Security Administration

Subject: Vocational Rehabilitation "301" Program Development (0960–0282)—revision
Respondents: State vocational rehabilitation agencies
Subject: Quality Control Negative Case Action Worksheet/Review Schedule (0960–0156)—revision
Respondents: State agencies administering Aid to Families with Dependent Children and adult financial assistance programs
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: March 26, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-8533 Filed 3-29-84; 8:45 am]
BILLING CODE 4150-04-M

Food and Drug Administration

[FDA-225-84-2003]

Memorandum of Understanding With the Interstate Shellfish Sanitation Conference

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed an agreement with the Interstate Shellfish Sanitation Conference (ISSC). The purpose of the agreement is to establish a basis upon which to foster and to improve the sanitation and quality of shellfish in this country by stating the responsibilities of FDA and ISSC in the establishment of the Interstate Sanitation Program (ISSP) and the ISSC Procedures (Procedures).

EFFECTIVE DATE: This agreement became effective March 14, 1984.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the Interstate Shellfish Sanitation Conference and the Food and Drug Administration

I. Purpose

This agreement will establish a basis upon which to foster and improve the sanitation and quality of shellfish in this country by stating the responsibilities of the Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) in the establishment of the Interstate Shellfish Sanitation Program (ISSP) and the ISSC Procedures (Procedures).

II. Definitions

A. "Conference meetings" means the duly called meetings of the ISSC.

B. "ISSC" means the Interstate Shellfish Sanitation Conference. The ISSC consists of agencies from shellfish producing and receiving States, FDA, the shellfish industry, and the National Marine Fisheries Service of the U.S. Department of Commerce.

C. "ISSP" means the Interstate Shellfish Sanitation Program adopted by the ISSC. The ISSP is a set of guidelines for sanitary control of shellfish that is adequate to insure that the shellfish produced in States that comply with these guidelines will be safe and sanitary.

D. "NSSP" means the National Shellfish Sanitation Program. The NSSP consists of agencies from shellfish producing States, FDA, and the shellfish industry. Under international agreements with FDA,foreign governments also participate in the NSSP.

E. "Procedures" means the formally adopted methods of accomplishing ISSC business not otherwise established in the constitution or bylaws of the ISSC. The Procedures will establish methods for uniform application of the ISSP and will guide the activities and relationships of ISSC participants.

F. "Shellfish" means all edible species of molluscan bivalves, the most common of which are the fresh frozen oyster, clam, and mussel. All scallop species from the family Pectinidae are excluded from this definition.

G. "State shellfish regulatory officials" means those officials that have responsibility for any one of the following regulatory activities: Classification of shellfish growing waters; patrol of shellfish growing waters; sanitation of shellfish processing, storage or distribution facilities, or laboratory analysis of shellfish samples.

III. Background

FDA is the Federal agency responsible for enforcing the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., the Fair Packaging and Labeling Act, 15 U.S.C. 1451 et seq., and certain portions of the Public Health Service Act, including 42 U.S.C. 241, 242, 243, and 264. These laws require that all foods shipped in interstate commerce, including shellfish, be prepared, packed, and held at all times under sanitary conditions; that they be honestly and informatively labeled; and that the food itself be safe, clean, and sanitary. FDA is authorized to accept assistance from State and local authorities in the enforcement of laws to prevent and to suppress the spread of communicable disease, 42 U.S.C. 243 and 21 U.S.C. 372.

This latter authority gave rise to the NSSP, which was initiated in 1925 and has continued, to date, as a voluntary FDA, State, and shellfish industry program. The NSSP Manual of Operations, last published in 1965, sets forth the standards and procedures that govern the NSSP, including the recommended sanitary control practices for regulating the production and shipment of shellfish in interstate commerce.

The ISSC was formed September 21, 1982, at a meeting held in Annapolis, MD. Participants at the meeting included regulatory officials from 22 States, FDA, the National Marine Fisheries Service of the U.S. Department of Commerce, and members of the shellfish industry. At this meeting, the State officials ratified a constitution, bylaws, and minimum procedures for the formation of the ISSC.

The purpose of the ISSC is to provide a formal structure wherein State

regulatory authorities can establish updated guidelines, and procedures for the uniform application of those guidelines, for sanitary control of the shellfish industry. The ISSC is a voluntary organization and is open to all persons interested in fostering controls that will assure sources of safe and sanitary shellfish.

IV. Substance of Agreement

A. FDA agrees to:

1. Recognize the ISSC as the primary voluntary national organization of State shellfish regulatory officials that will provide guidance and counsel on matters for the sanitary control of shellfish.

2. Evaluate State shellfish sanitary control programs using the guidelines of the ISSP, the Procedures, and other appropriate criteria including applicable Federal laws and regulations.

3. Provide the ISSC with information on any State shellfish sanitation control program that FDA finds not to be in substantial compliance with the criteria referenced in IV.A.2.

4. Promote and maintain shellfish sanitation Memorandums of Understanding (MOU) with foreign countries that have agreed to follow the NSSP Manual of Operations. FDA will inform the ISSC of the agency's evaluation of these foreign shellfish sanitation control programs. FDA will take appropriate steps to assure that references to the NSSP in existing MOU's are changed to the ISSP as the MOU's are revised or updated.

5. Coordinate Federal interagency affairs on matters of concern to the ISSC, including classification of shellfish growing waters under Federal jurisdiction.

6. Support or provide shellfish sanitation training, seminars, technical assistance, and scientific research as resources permit. FDA will make every effort to maintain a current scientific basis for the ISSP guidelines and standards.

7. In a manner consistent with paragraph IV.C.2. of this agreement, publish revisions to the ISSP and issue interpretations of the ISSP.

8. Publish and distribute monthly a current listing of all State certified interstate shippers as furnished to FDA on Form FD–3038b, SHELLFISH CERTIFICATION, by each State.

9. Participate to the fullest extent possible in the ISSC meetings, committees, and other deliberative groups that are necessary for the ISSC and the ISSP to function effectively.

B. ISSC agrees to:

1. Adopt the NSSP Manual of Operations, Parts I and II, and the amendments adopted at Workshops as the ISSP. The ISSC further agrees that the Procedures and any future revisions and documents adopted by the ISSC will be used as the set of guidelines for sanitary control of shellfish.

2. Furnish FDA with any pertinent information that indicates that a member State's program may not be in substantial compliance with the ISSP and assist FDA by whatever means available to secure necessary corrective measures.

3. Notify FDA of any interstate shipments of shellfish that may not be in compliance with the ISSP or that may be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act.

4. Furnish FDA with copies of all revisions or changes to the ISSP or Procedures for review for consistency with existing laws, regulations, and policies of FDA.

5. Review evaluation reports of State shellfish sanitation control programs submitted by FDA in accordance with paragraph IV.A.3. of this agreement and request appropriate reviews among ISSC members. The ISSC will inform FDA of the recommendations or actions taken in response to the information furnished.

6. Allow representatives of foreign governments that have effective agreements with FDA concerning sanitary control of shellfish to attend the Conference meetings.

C. ISSC and FDA mutually agree to:

1. Exchange information concerning the Procedures, the ISSP, and the matters that arise from the Conference meetings in a timely manner.

2. Resolve problems of interpretations and policy that involve the Procedures, the ISSP, and the ISSC.

3. Recognize that the ISSP and the ISSC Procedures contain the principal standards and procedures for the sanitary control of shellfish.

References

1. U.S. Department of Health and Human Services, Public Health Service (PHS). National Shellfish Sanitation Program, Manual of Operations: Part I, Sanitation of Shellfish Growing Areas, 1965 Revision; and Part II, Sanitation of the Harvesting and Processing of Shellfish, 1965 Revision.

2. National Shellfish Sanitation Program Policies and Interpretations, issued by the Public Health Service and Food and Drug Administration with respect to the National Shellfish Sanitation Program. A bound volume of these documents is maintained in the offices of the Shellfish Sanitation Branch, HFF–344, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

3. Official Methods of Analysis, 13th ed., 1980, Association of Official Analytical Chemists (AOAC), Box 540, Benjamin Franklin Station, Washington, DC 20044.

4. Food and Drug Administration, "Interstate Certified Shellfish Shippers List," published monthly and distributed to food control officials and other interested persons by FDA, Bureau of Foods, Shellfish Sanitation Branch, HFF–344, 200 C St. SW., Washington, DC 20204.

5. Federal Food, Drug and Cosmetic Act, U.S. Code, Title 21.

6. Fair Packaging and Labeling Act, Pub. L. 89–755, approved November 3, 1966.

7. Public Health Service Act with respect to research and investigation, 42 U.S.C. 241F; international cooperation, 42 U.S.C. 242F; Federal—State cooperation, 42 U.S.C. 243; and control of communicable diseases, 42 U.S.C. 264.

8. American Public Health Association "Recommended Procedures for the Examination of Seawater and Shellfish," 4th ed., 1970. APHA, Inc., 1015 18th St. NW., Washington, DC 20036.

9. Food and Drug Administration, "Current Good Manufacturing Practice in Manucafturing, Processing, Packing, or Holding Human Food" regulations, 21 CFR Part 110.

10. Food and Drug Administration Definitions and Standards for Food, "Fish and Shellfish" regulations, 21 CFR Part 161.

11. Control of communicable diseases regulations, specific provision for shellfish, 21 CFR 1240.60.

12. Interstate Conveyance Sanitation regulation concerning food service sanitation on land and air conveyances, and vessels. Special food requirements, 21 CFR 1250.26.

13. Interstate Shellfish Sanitation Conference Constitution, Bylaws and Procedures adopted September 21, 1982, Annapolis, MD. A certified copy is on file with the Shellfish Sanitation Branch, HFF–344, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

V. Name and Address of Participating Organizations

A. Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857.

B. Interstate Shellfish Sanitation Conference (current address), 2111 Kenbridge Drive, Austin, TX 78758.

VI. Liaison Officers

The liaison officer for each party will be responsible for facilitating exchanges of information and expeditiously informing other interested parties within each respective organization on matters requiring prompt attention. Each party agrees to provide notification of any changes in liaison officer appointments. Such notification shall constitute an amendment to and not require a revision of this agreement.

A. For Food and Drug Administration: FDA member to ISSC Executive Board (currently J. David Clem), Chief, Shellfish Sanitation Branch, HFF–344, Bureau of Foods, Food and Drug Administration, 200 C St. SW.,

Washington, DC 20204, FTS: 202–485–0149, Commercial: 202–485–0149.

B. For Interstate Shellfish Sanitation Conference: ISSC Chairman of the Board (currently Mr. Neil B. Travis), 2111 Kenbridge Drive, Austin, TX 78758, 512–458–7537.

VII. Period of Agreement

This agreement will become effective upon acceptance by both parties and shall continue until terminated. The agreement may be revised by mutual consent, or terminated by either party upon a 30-day advance written notice to the other party.

VIII. Acceptance

Approved and Accepted for the Interstate Shellfish Sanitation Conference.

By: Neil B. Travis.

Title: ISSC Chairman of the Board.

Date: March 14, 1984.

Approved and Accepted for the Food and Drug Administration, Department of Health and Human Services.

By: Mark Novitch.

Title: Acting Commissioner of Food and Drugs.

Dated: March 14, 1984.

Effective date. This agreement became effective March 14, 1984.

Dated: March 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–8500 Filed 3–29–84; 8:45 am]

BILLING CODE 4160–01–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Advisory Council on Historic Preservation, Protection of Historic and Cultural Properties; Comments

AGENCY: Advisory Council on Historic Preservation (ACHP).

ACTION: Notice.

SUMMARY: Pursuant to Section 106 of the National Historic Preservation Act of 1966 and Section 800.6(d) of the regulations of the Advisory Council on Historic Preservation (Council), "Protection of Historic and Cultural Properties," the Council met on February 27, 1984, to consider a proposal by the Federal Highway Administration to assist in construction of the Presidential Parkway, Atlanta, Georgia. This project will adversely affect the following historic properties: The Druid Hills Historic District, the Inman Park Historic District, and the Candler Park Historic District, three historic districts included in the National Register of Historic Places; the Moreland Historic District, the North Highland/North Avenue Historic District, and an extension of the Martin Luther King, Jr., Historic District, areas eligible for inclusion in the National Register; and possible historic archaeological remains associated with the 1864 Battle of Atlanta. At the meeting, the Council adopted comments which have been transmitted to the Secretary of Transportation.

This notice, pursuant to 36 CFR 800.6(d)(5), is to advise parties that copies of these comments are available upon request from the Executive Director, Advisory Council on Historic Preservation, The Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20004, 202–786–0505, Attn: Ronald D. Anzalone.

Dated: March 26, 1984.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 84–8507 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Final Federal Coal Lease Form

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By notice published December 18, 1980, the Bureau of Land Management issued a Notice of Revision of Coal Lease Form 3400–12 (formerly 3520–1 (July 1977)), to solicit comments on the revisions proposed to bring the coal lease form into conformance with new coal-related laws and regulations. Public comments were received from an industry trade association, four energy companies, and two individuals.

On April 28, 1983, the Bureau of Land Management requested comments on a proposed combined mineral lease form, which included coal as well as phosphate, sodium, potassium, gilsonite, sulfur in the States of Louisiana and New Mexico, asphalt in Oklahoma, and hardrock minerals. Seven mining companies, three mining associations, and two individuals submitted comments on the combined mineral lease form.

The combined mineral lease form proposed was an attempt to establish consistency among the leasing of various federally owned commodities. Generally, the comments received on the proposed combined lease form supported the concept of consistency; however, they preferred separate forms for each of the various minerals, particularly coal and phosphate. By virtue of this notice a separate form is established for the leasing of Federal coal. The final coal lease form closely follows the format of the combined mineral lease form from which it was separated. All comments received on the two proposed lease forms have been considered in the development of the final Federal coal lease form, which follows this notice. A discussion of the comments follows.

EFFECTIVE DATE: April 30, 1984. Director (650), Bureau of Land Management, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carole Smith, (202) 343–4774.

SUPPLEMENTARY INFORMATION: The comments are discussed below as they appear section-by-section in the proposed combined mineral lease form. Discussion of the comments received on the December 18, 1980, proposed coal lease form are integrated by subject matter under the appropriate section.

Part I. Lease Rights Granted

Sec. 1—All commenters objected to the phrase "or . . . hereafter in force," which appeared in section 1. They stated that the terms and conditions of mineral leases cannot be altered by regulation until the leases are subject to readjustment. The April 1983 lease form proposed to require lessees to comply with later-promulgated regulations and orders "where not inconsistent with the lease terms, regulations and orders hereafter promulgated."

Upon consideration, it has been decided to adopt for use in the Federal coal lease form the concept which has been used for the Federal oil and gas lease forms since the 1930's. Coal lessees will be subject to later promulgated regulations only when those regulations are not inconsistent with the specific provisions of the lease. The "when not inconsistent" clause now appears in all Federal coal, geothermal, and oil and gas lease forms.

It is thought that the use of the "when not inconsistent" clause will provide the lessor needed flexibility in administering the lease terms and conditions and the lessee stronger assurance that the terms and conditions of his lease will not necessarily change with each regulatory revision.

One commenter requested that the phrase "for a period of 20 years and so long thereafter as the condition of continued operation is met" be changed to "for a term of 20 years and for so long thereafter as coal is produced annually

in commercial quantities from that lease." The latter wording conforms with the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 181–287). The language has been changed to reflect the Act and the comment.

Sec. 2—Four comments were received on this section of the April 28, 1983, proposed lease form. One commenter objected to the granting clause, believing that it made the lessee responsible for paying all bonuses due at one time. To clarify that each coal lease is issued subject only to those lease-related payments which become due, the word "any" has been inserted before the word "bonuses."

Thus, a competitive coal lease issued on the basis of a deferred bonus would bind the lessee to submit one-fifth of the bonus bid at the time of the sale, and the remaining four-fifths of the bonus in four equal payments due on each anniversary date of the coal lease. Royalties would be payable monthly once production begins in the manner prescribed in the regulations.

Section 2 gives the lessee broad authority to drill for, mine, remove, and dispose of the coal leased. Specific development methods and conditions are addressed in exploration plans and later in the resource recovery and protection plans and mining permit packages which must be approved prior to entry upon the lands. The language of this section answers the objections of five commenters on the December 1980 coal lease form, who were concerned about restrictions on their rights to mine coal by unconventional methods—coal gasification, synthetic fuel development, and the like. Lessees' obligations to meet diligence and maximum economic recovery requirements on all coal leases, whether mined by conventional methods or not, will be addressed during approval of the resource recovery and protection plan and/or the mining permit application package.

The section also grants "on-lease rights-of-way." Separate rights-of-way under Title V are not needed for roads, power lines, and similar improvements within the boundaries of the lease. Lessor reserves the power to manage these activities as part of the mining plan; however, no separate authorization or payment of fees is needed.

Part II. Terms and Conditions

Sec. 1. Rentals—No comments specific to coal were received on the April 28, 1983, proposed lease form. No comments were received on the rental section of the December 1980 coal lease form. Nevertheless, to clarify that the August 4, 1976, coal amendments to the Act eliminated lessees' rights to credit coal lease rentals against coal lease royalties, a new paragraph, b, has been added to section 1 in this final coal lease form.

Sec. 2. Royalties.—Four comments received on the December 1980 proposed lease form objected to the method used to calculate the value of coal for royalty computation purposes. The valuation method remains unchanged. During the coal management program regulatory review (1981–1982), several methods for valuing coal were analyzed. It was concluded that any other method than one used currently would result in closer government scrutiny of individual coal lessees and additional paperwork requirements without any appreciable increase in the amount collected.

No comments relevant to coal were received on this section on the April 28, 1983, proposed lease form.

Sec. 3. Bonds—Two commenters on the April 28, 1983, form and three commenters on the December 1980 form requested clarification of the language on coal lease bonds. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) established a reclamation bond for surface-mined coal separate and apart from the lease bond required as part of lease issuance. The bond required by section 3 does not include this reclamation bond or any lessee protection bond, also required by SMCRA, if such a bond is required. Office of Surface Mining Reclamation and Enforcement regulations at 30 CFR Chapter VII, describe these bonding requirements in detail.

Sec. 4. Diligence—Two commenters on the December 1980 form requested greater detail on the diligence and continued operation requirements for coal in the lease form. The language of section 4 is an attempt to provide more information about coal production requirements.

Sec. 5. Logical Mining Units (LMU)—No comments were received on this section.

Sec. 6. Documents, evidence and inspection—Eight comments were received on this section of the April 28, 1983, form, and eight comments were received on the corresponding section of the December 1980 coal lease form. All objected to the types of information required or to the access and copying requirements.

The language of this section has been revised to reflect the comments received. The reservation of the authority to copy lessee records has been limited to those documents necessary to verify compliance with lease terms and conditions. The manner of access to and examination of coal lease-related records and reports is described in the regulations at 43 CFR Group 3400 and 30 CFR Chapter VII.

The Secretary may exercise his reserved authority to inspect such documents or arrangements as, for example, contracts for the sale of production from leased deposits, processing agreements, transportation agreements, or marketing arrangements. The right of the Secretary to have access to such documents is intended to include transactions to which the lessee or its related corporate entities are parties.

To emphasize that much of the information contained in these documents and arrangements is protected from disclosure under the Freedom of Information Act, the language of the last sentence of the section has been changed.

Sec. 7. Damages to property and conduct of operations—Eight comments were received on this section and five comments were received on related sections of the December 1980 coal lease form. The section has been rewritten to reflect the concerns expressed and to state the lessor's and lessee's responsibilities with respect to multiple mineral development.

The first paragraph of this section adopts the language of one commenter, who noted that the language appears in Federal oil and gas leases and in Indian leases. Because one of the goals of this final coal lease form is to make it consistent with other leasable mineral forms to the extent possible (the language appears in the final combined mineral lease form as well as the two forms mentioned earlier), this language is adopted. The third paragraph of this section entirely adopts the language of one commenter and accomplishes several purposes: it notifies the coal lessee of his/her obligations to prevent injury or damage to life, health, or property and to prevent waste, damage or degradation to the environment of the leased area; and it informs the lessee that other uses may be made of the leased lands so long as they do not interfere with the lessee's rights. The third paragraph also mentions the concept of "multiple use" as established by the Federal Land Policy and Management Act of 1976 and the Multiple Mineral Development Act of 1955 (30 U.S.C. 521–531).

Section 14, Cultural Resources, and Section 15, Paleontological Resources, of the December 1980 coal form have been eliminated as standard stipulations in this final lease form. All commenters on this form objected to some aspect of these two lease sections. The primary

objection was the requirement that cultural and paleontological inventories be conducted on both the mine plan area and the areas adjacent to it.

A consideration of the comments led to the conclusion that the cultural and paleontological resources of leased areas differ sufficiently so that standard protection stipulations for these resources would be inadequate. Therefore, the general environmental protection language of section 6 of this final form will authorize the lessor to require the lessee to protect cultural and paleontological as well as other environmental resources.

For leases in areas where cultural or paleontological resources occur, site-specific (special) stipulations will be developed to protect these resources. If further protection measures are necessary, then they can be included in approved mine plans for the lease area.

Sec. 8. Protection of diverse interests and equal opportunity—Three comments were received on this section. One commenter questioned the meaning of the term "complete freedom of purchase." One requested deletion of the section and its replacement with a statement that lessees comply with all applicable laws. The third commenter questioned the requirement for an 8-hour workday.

The final lease form retains the language of the proposed form of April 1983 because section 30 of the Mineral Leasing Act of 1920 requires that these provisions be included in all mineral leases issued under the Act.

No comments were received on the applicable sections of the proposed coal lease form published for comment in December 1980.

Sec. 9. Transfer of lease interest and relinquishment of lease—Three comments were received on this section. They requested clarification of the term "legal subdivision" and a recognition of partial relinquishments. The language of this section has been revised to delete the term "legal subdivision" and to recognize partial relinquishments.

One commenter also requested a recognition of reduction in the rental when the lease was partially relinquished. The language of this section now reflects this reduction.

Consistent with the regulations, relinquishment only relieves the lessee of obligations which have not yet arisen. For obligations that have already accrued, the lessee remains liable and the period of liability under lessee's bond will not be terminated until these obligations are satisfied.

Sec. 10. Delivery of premises, removal of machinery, equipment, etc.—The five comments received on this section were concerned that the language of the section exceeds the authority of the Department under existing laws and regulations. For reclamation requirements for surface-mined coal, the provisions of the Surface Mining Control and Reclamation Act of 1977 and its implementing regulations apply. For underground mined coal, the approved mine plan required by the Act governs the conduct of mining and reclamation operations.

The language of this section merely states, in general terms, the requirements for reclamation and abandonment of mined-out areas. No comments were received on this topic on the December 1980 proposed coal lease form.

Sec. 11. Proceedings in case of default—This section is similar to Section 23 of the December 1980 coal lease form. No objections specific to coal were received on either proposed lease form for this subject.

Sec. 12. Heirs and successors-in-interests—No coal-related comments were received on this subject.

Sec. 13. Indemnification—This section was inadvertently omitted from the April 1983 lease form, although it appeared in the December 1980 coal lease form. It requires the lessee to indemnify and hold the United States harmless from all claims against lessee's activities and operations under the lease.

Sec. 14. Special statutes—This section was inadvertently omitted from the April 1983 lease form. The Federal Coal Leasing Amendments Act of 1976 specifically requires all Federal coal leases to contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151–1175) and the Clean Air Act (42 U.S.C. 1857 *et seq.*). The reference to the requirements of Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), appears in this section also. As two commenters on the December 1980 coal lease form pointed out, that law does not grant leasing authority and was incorrectly placed in the leasing authority section.

In addition, coal lessees must comply with the provisions of a number of other laws and their implementing regulations. These include, but are by no means limited to, the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; and the laws governing the handling and disposal of hazardous waste materials on public lands, including the Comprehensive Environmental Response, Conservation, and Liability Act of 1980 (94 Stat. 2767 *et seq.*) and the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*).

Three commenters on the December 1980 coal lease form objected to language which conditioned lease issuance to compliance with the Federal Water Pollution Control Act and the Clean Air Act. This objection has been responded to in the final lease form by changing the word "conditioned" to the phrase "is subject to."

We believe that this final coal lease form is more concise and clearer than the proposed coal lease form, that it is consistent with the other Federal mineral lease forms to the extent possible, and that it reflects public concerns within the extent allowable by law and regulations.

The primary author of this final coal lease form is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by staff of the Division of Energy and Resources, Office of the Solicitor, Department of the Interior, and other Bureau of Land Management staff.

The environmental impacts of coal leasing were addressed in the environmental assessment prepared for the July 1982 revisions to the Federal coal management rules at 43 CFR Group 3400 and 30 CFR Part 211 (now 43 CFR Part 3480). That document resulted in the finding that no significant impact would result from publication of the final rulemaking. The rulemaking was published in the **Federal Register** on July 30, 1982, on pages 33114 through 33151. This lease form was specifically mentioned in that rulemaking at 43 CFR 3475.1 as a revision to the then-existing rules and is therefore included in the environmental assessment for the revised rules. The environmental assessment is incorporated by reference here.

The July 1982 rulemaking also concluded that the final rules did not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) was required. Because this coal lease form results from that rulemaking, the determination of no significant impact is incorporated by reference for this form.

The Department of the Interior determined that the July 1982 rulemaking from which this form arises was not a major rule under Executive Order 12291 and would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as described in the July 1982 final coal rulemaking. That

determination is incorporated by reference here.

The information collection requirements contained in the coal lease form have been approved by the Office of Management and Budget and assigned clearance numbers 1004–0073, 1004–0143, and 1004–0144. Therefore, no additional approval is required.

The final coal lease form follows below.

Dated: March 9, 1984.

Robert F. Burford,

Director.

BILLING CODE 4310-84-M

Form 3400-12
(April 1984)
(Formerly 3520-11)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

COAL LEASE

Serial Number

PART I. LEASE RIGHTS GRANTED

This lease, entered into by and between the UNITED STATES OF AMERICA, hereinafter called lessor, through the Bureau of Land Management, and *(Name and Address)*

hereinafter called lessee, is effective *(date)* , for a period of 20 years and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of the 20th lease year and each 10-year period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

☐ Mineral Lands Leasing Act of 1920, Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act;

☐ Mineral Leasing Act for Acquired Lands, Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 351-359;

and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessor, in consideration of any bonuses, rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the following described lands:

containing acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

PART II. TERMS AND CONDITIONS

Sec. 1. (a) RENTAL RATE - Lessee shall pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of $ for each lease year.

(b) RENTAL CREDITS - Rental shall not be credited against either production or advance royalties for any year.

Sec. 2. (a) PRODUCTION ROYALTIES - The royalty shall be percent of the value of the coal as set forth in the regulations. Royalties are due to lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the lessee, the authorized officer may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty shall be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Sec. 3. BONDS - Lessee shall maintain in the proper office a lease bond in the amount of $. The authorized officer may require an increase in this amount when additional coverage is determined appropriate.

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years shall terminate the lease. Lessee shall submit an operation and reclamation plan pursuant to Section 7 of the Act not later than 3 years after lease issuance.

The lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

Sec. 5. LOGICAL MINING UNIT (LMU) - Either upon approval by the lessor of the lessee's application or at the direction of the lessor, this lease shall become an LMU or part of an LMU, subject to the provisions set forth in the regulations.

The stipulations established in an LMU approval in effect at the time of LMU approval will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease shall then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as lessor may prescribe, lessee shall furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of lessor, the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee shall allow lessor access to and copying of documents reasonably necessary to verify lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section shall be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee shall comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee shall not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area shall be submitted to the authorized officer.

Lessee shall carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation to any land, air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee shall take measures deemed necessary by lessor to accomplish the intent of this lease term. Such measures may include, but are not limited to, modification to proposed siting or design of facilities, timing of operations, and specification of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee shall: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at lease twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years shall be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither lessee nor lessee's subcontractors shall maintain segregated facilities.

Sec. 9. (a) TRANSFERS

- ☐ This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.
- ☐ This lease may be transferred in whole or in part to another public body or to a person who will mine the coal on behalf of, and for the use of, the public body or to a person who for the limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.
- ☐ This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

Transfers of record title, working or royalty interest *must* be approved in accordance with the regulations.

(b) RELINQUISHMENT - The lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon lessor's acceptance of the relinquishment, lessee shall be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such time as all portions of this lease are returned to lessor, lessee shall deliver up to lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, lessee shall remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the authorized officer. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, shall become the property of the lessor, but lessee shall either remove any or all such property or shall continue to be liable for the cost of removal and disposal in the amount actually incurred by the lessor. If the surface is owned by third parties, lessor shall waive the requirement for removal, provided the third parties do not object to such waiver. Lessee shall, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease shall be subject to cancellation by the lessor only by judicial proceedings. This provision shall not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver shall not prevent later cancellation for the same default occurring at any other time.

Sec. 12. HEIRS AND SUCCESSORS-IN-INTEREST - Each obligation of this lease shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 13. INDEMNIFICATION - Lessee shall indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease.

Sec. 14. SPECIAL STATUTES - This lease is subject to the Federal Water Pollution Control Act (33 U.S.C. 1151—1175), the Clean Air Act (42 U.S.C. 1857 et. seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et. seq.).

Sec. 15. SPECIAL STIPULATIONS -

Sec. 15. SPECIAL STIPULATIONS (Cont'd.) -

THE UNITED STATES OF AMERICA

By _____

_____
Company or Lessee Name

_____
(Signature of Lessee)

_____
(Signing Officer)

_____
(Title)

_____
(Title)

_____
(Date)

_____
(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

This form does not constitute an information collection as defined by 44 U.S.C. 3502 and therefore does not require OMB approval.

[FR Doc. 84-8502 Filed 3-29-84; 8:45 am]
BILLING CODE 4310-84-C

Realty Action; Exchange of Public Lands; Lassen and Modoc Counties; California

Correction

In FR Doc. 84–6972 beginning on page 9781 in the issue of Thursday, March 15, 1984, make the following corrections.

1. On page 9781, second column, remove the word "lots" in the eleventh, twelfth, and thirteenth lines.

2. On page 9781, third column, sixth line, "R. 13 E." should read "R. 12 E."; and in the tenth line "SE ⅛ " should read "SE ¼ ".

BILLING CODE 1505–01–M

Agency Forms Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collections requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Reviewing Official at 202–395–7340.

Title: 43 CFR 2564, "Native Indian or Eskimo of Alaska Trustee Deed Application"
Bureau Form Number: AK 2564–20
Frequency: Once
Description of Respondents: Claimants of lands reserved for the benefit of Indian or Eskimo occupants in trustee townsite in Alaska
Annual Responses: 500
Annual Burden Hours: 250
Bureau clearance officer (alternate): Linda Gibbs at 202–653–8853

Dated: March 12, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84–8630 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–84–M

Lakeview District Multi-Use Advisory Council; Meeting

Notice is hereby given, in accordance with Pub. L. 92–463 and 43 CFR 1784 that a meeting of the Lakeview District Multi-Use Advisory Council will be held May 16, 1984, at 10:00 a.m. in the BLM's Conference Room at 1000 S. 9th Street, Lakeview, Oregon 97630.

The agenda will include the following topics:

1. Introductory Remarks by New District Manager.
2. Election of Officers.
3. Cooperative Management Areas.
4. Progress Report on District Programs.
5. Bombing Range Update.
6. Wilderness Briefing.
7. Wildlife Briefing.
8. Forestry Briefing.
9. Geothermal.
10. Public Comment—1:30–2:30 p.m.

The meeting will be open to all interested parties who desire to attend. Interested persons may make oral statements to the Council or file a written statement for the Council's consideration.

Summary minutes of the Council meetings will be maintained in the District Office and available for public inspection during regular business hours within 30 days following the meeting.

Dated: March 19, 1984.

Jerry E. Asher,

District Manager.

[FR Doc. 84–8632 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–84–M

Lakeview Grazing District Advisory Board; Meeting

Notice is hereby given, in accordance with Pub. L. 94–579 and 43 CFR 4120.6–1(e) that a meeting of the Lakeview Grazing District Advisory Board will be held May 10, 1984, at 10:00 a.m. at the BLM's Poor Jug Administrative Site, approximately 65 miles north of Lakeview, in Lake County, Oregon.

The agenda will include the following:

1. Tour of Fire Rehabilitation Area.
2. Specifics on Allocation of Forage From Estimated Forage Increase.
3. Presentation of Commendation Resolutions.
4. Public Comment—1:30–2:30 p.m.
5. Progress Report on District Programs.

The meeting will be open to all interested parties who desire to attend. Interested persons may make oral statements to the Board or file a written statement for the Board's consideration. Persons interested in attending the meeting can obtain a map to the Poor Jug site at the Lakeview District Office, 1000 South 9th Street, Lakeview, Oregon 97630.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection during regular business hours within 30 days following the meeting.

Dated: March 19, 1984.

Jerry E. Asher,

District Manager.

[FR Doc. 84–8631 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–84–M

[W–23432]

Nebraska; Classification Revoked and Lands Open to Entry

March 16, 1984.

Public Land Order 5323, dated December 21, 1972, published as FR Doc. 73–13 on pages 735–736 of the issue of January 4, 1973, classified the following described lands for lease or sale under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended. The classification segregated the lands from other use or disposition under the public land laws.

Sixth Principal Meridian, Nebraska

T. 31 N., R. 7 W.,
Sec. 4, lot 1.
T. 32 N., R. 8 W.,
Sec. 17, lot 3.
T. 32 N., R. 10 W.,
Sec. 1, lot 4.
T. 32 N., R. 31 W.,
Sec. 1, lots 1 and 2.
T. 33 N., R. 30 W.,
Sec. 31, SW¼SE¼.

The areas described aggregate 132.90 acres in Knox, Boyd, and Cherry Counties, Nebraska.

The classification of the above described land is hereby revoked and the segregation on the lands is terminated.

This land is now open to all forms of appropriation under the public land laws including location under the mining laws, subject to valid existing rights, and the requirements of applicable law. All valid applications received shall be considered in the order of filing. The land has been and will remain open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 84–8629 Filed 3–29–84; 8:45 am]

BILLING CODE 4310–22–M

[NM 036230]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, Energy Reserve Group, Inc., and

Conoco, Inc., petitioned for reinstatement of oil and gas lease NM 036230 covering the following described lands located in Eddy County, New Mexico:

T. 19 S., R. 31 E., NMPM
Sec. 1: NE¼SE¼.
Sec. 11: N½NE¼.
Containing 120.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, November 1, 1983.

Dated: March 21, 1984.

Leroy C. Montoya,

Acting State Director.

[FR Doc. 84-8633 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Request for Supplemental Information; Sand and Gravel Leasing Offshore Alaska

Purpose

The Secretary of the Interior is reviewing ongoing Outer Continental Shelf (OCS) lease sales. Interested parties are invited to provide him with up-to-date information on the necessity of holding sand and gravel lease sales offshore Alaska. Comments are also requested on the proposed Mineral Materials Lease form.

Use of Information

The information will assist the Secretary in determining if any Alaska sand and gravel sales should be held in the next 2 years under the Department of the Interior's (DOI) hardrock mineral leasing program.

Background Information

In 1982, the DOI developed a program for hardrock mineral leasing for the OCS. In 1983, prelease steps were completed for a Beaufort Sea proposed sand and gravel lease sale. Subsequently, the following related documents were issued: on March 3, 1983, a final environmental impact statement; on April 11, 1983, a Notice of Tentative Terms and Conditions for an Arctic Sand and Gravel Sale (see 48 FR 15541); and on July 27, 1983, a proposed Mineral Materials Lease form (see 48 FR 34143). Comments were requested and considered on the documents.

Four oil and gas companies and the State of Alaska commented on the Beaufort Sea Notice of Tentative Terms and Conditions. The State generally supported the proposal but recommended that areas around Weller Bank, Stamuki Shoals, and part of Stefansson Sound be deleted from the proposed sale. Sohio Alaska Petroleum Company commented that the lease terms and conditions should be designed to meet two additional goals: (1) Avoid exclusivity of the mineral holdings; and (2) provide a mechanism whereby sales could be held on a regular basis. Exxon Company, U.S.A., believed that holding an Arctic sand and gravel sale was premature until issues related to correlative rights were addressed. Marathon Oil Company and Texaco Inc. provided technical comments.

On August 16, 1983, comments were also requested on four proposed sand and gravel lease sales to be located in the Beaufort and Bering Seas. These sales were scheduled through 1986 (see 48 FR 37087). Comments by Exxon on that schedule indicated the first sale was premature and should be delayed and that sand and gravel sales in the Bering Sea are unnecessary. Sohio commented that the proposed conditions for the first Arctic sale, previously scheduled for October 1983, were unsatisfactory and recommended several changes. These included using a Call for Nominations on individual blocks, definition of the term "highest cash bonus" (i.e., highest bid per cubic yard), requiring the submittal of 5 percent of the bonus with the bid, treating the bonus as the royalty, and allowing multiple leases of the same tract by requiring late participants to pay an identical bonus to the Government and a rising fee based on time to the original leaseholder. Sohio had no comments on the other proposed sales. Amoco Production Company had no comment on the timing of proposed sales and was supportive of the April 11 proposed terms and conditions.

Instructions on Request for Supplemental Information

Information on industry interest is requested on the need for holding offshore sand and gravel lease sales. If such sales are necessary, information on their location, sequence, and timing is also desired. It is believed there may be insufficient industry interest to hold sales in the next 2 years in any of the following planning areas: Diapir Field, Navarin, St. George, or North Aleutian Basins. Comments are requested on that conclusion. The Mineral Materials Lease form, first published on July 27, 1983, has been revised and is also published for comment.

Information should be provided by letter. If new or supplemental information is submitted on specific areas which industry would like to have offered for lease sale, it should be depicted on the request for Supplemental Information Map, available free from the Regional Supervisor, Leasing and Environment. Interest should be defined as specifically as possible by outlining blocks or area(s) along block lines. Although individual and industry indications of interest are considered to be privileged and confidential information, the names of persons or entities submitting such information will be a matter of public record.

In order to be incorporated in the review process, information must be submitted no later than 30 days following publication of this document in the **Federal Register**. Correct receipt of the information will be facilitated if envelopes are marked "Request for Supplemental Information on Proposed Sand and Gravel Lease Sales Offshore Alaska."

Letters and maps should be sent to the Regional Supervisor for Leasing and Environment, Alaska OCS Region, P.O. Box 101159, 620 East 10th Avenue, Anchorage, Alaska 99510. A copy should be sent to the Chief, Offshore Leasing Management Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 645, Reston, Virginia 22091. Hand deliveries to the DOI may be made to 18th and C Sts., N.W., Room 2510, Washington, D.C. Telephone contacts may be made to Joan Hagans (907) 261-2469 (Alaska) or to Yvonne Morehouse (202) 343-5121 (Washington, D.C.).

Dated: March 23, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

Dated: March 27, 1984.

Approved:

Leona A. Power,

Acting Assistant Secretary for Land and Minerals Management.

Form MMS-2038 (September 1983)

UNITED STATES DEPARTMENT OF THE INTERIOR MINERALS MANAGEMENT SERVICE

Mineral Lease of Submerged Lands Under the Outer Continental Shelf Lands Act

This form does not constitute an information collection as defined by 44 U.S.C.

3502 and therefore does not require approval by the Office of Management and Budget.

Office ———
Serial Number ———
Cash bonus ———
Acres, hectares ———
Rental rate per acre, hectare or fraction thereof ———
Minimum royalty rate per acre, hectare or fraction thereof ———

This lease is effective as of ——— (hereinafter called the "Effective Date") and shall continue for an initial period of ——— years (hereinafter called the "Initial Period") by and between the United States of America (hereinafter called the "Lessor"), by the Minerals Management Service, its authorized officer, and (hereinafter called the "Lessee"). In consideration of any cash payment heretofore made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, and covenants contained herein, including the Stipulation(s) numbered ——— attached hereto, the Lessee and Lessor agree as follows:

Sec. 1. *Statutes and Regulations.* This lease is issued pursuant to the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 et seq., as amended (92 Stat. 629), (hereinafter called the "Act"). The lease is issued subject to the Act; all regulations and orders issued pursuant to the Act and in existence upon the Effective Date of this lease; all regulations and orders issued pursuant to the Act in the future providing for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein; and all other applicable statutes, regulations, and orders.

Sec. 2. *Rights of Lessee.* The Lessor hereby grants and leases to the Lessee the exclusive right and privilege to prospect for, mine, extract, remove, and dispose (hereinafter referred to as "production"), of all (hereinafter referred to as the "Leased Mineral"), located in, on, or under the submerged lands of the Outer Continental Shelf containing approximately ——— acres or ——— hectares (hereinafter referred to as the "Leased Area"), described as follows:

These rights include:

(a) The nonexclusive right to conduct within the Leased Area geological and geophysical explorations and core sampling activities in accordance with applicable regulations, and orders; (b) the nonexclusive right to drill water wells within the Leased Area, unless the water is part of geopressured-geothermal and associated resources, and to use the water produced therefrom for operations pursuant to the Act free of cost, on the condition that the drilling is conducted in accordance with procedures approved by the Director of the Minerals Management Service or the Director's delegate (hereinafter called the "Director"); and (c) the right to construct or erect and to maintain within the Leased Area artificial islands, equipment, installations, and other devices permanently or temporarily attached to the seabed and other works and structures necessary to the full enjoyment of the lease, subject to compliance with applicable laws, regulations, and orders.

Sec. 3. *Term.* This lease shall continue from the Effective Date of the lease for the Initial Period and thereafter so long as the Leased Mineral is produced from the Leased Area, or approved mining activities are conducted, or an approved suspension of operations is in effect, or as otherwise provided by regulation or orders.

Sec. 4. *Rentals.* The Lessee shall pay the Lessor, on or before the first day of each lease year which commences prior to production of the Leased Mineral on the Leased Area, a rental as shown on the face hereof.

Sec. 5. *Minimum Royalty.* The Lessee shall pay the Lessor at the expiration of each lease year which commences after production has begun, a minimum royalty as shown on the face hereof.

Sec. 6. *Payments.* The Lessee shall make all payments to the Lessor by check, bank draft, or money order unless otherwise provided by regulations, orders, or by direction of the Lessor. Rentals, royalties, and any other payments required by this lease shall be made payable to the Minerals Management Service and tendered to the Director. Determinations made by the Lessor as to the amount of payment due shall be presumed to be correct and paid as due.

Sec. 7. *Bonds.* The Lessee shall maintain at all times a bond in the amount specified in the notice of lease offering conditioned on compliance with all requirements applicable to this lease and shall furnish such additional security as may be required by the Lessor if, after operations have begun, the Lessor deems such additional security to be necessary.

Sec. 8. *Plans.* The Lessee shall conduct all operations on the Leased Area in accordance with the provisions of an approved mining plan, this lease, regulations, and orders. The Lessee may depart from an approved mining plan only as provided by applicable regulations, orders, or written instructions.

Sec. 9. *Performance.* The Lessee shall comply with all applicable regulations, orders, written instructions, and the terms and conditions set forth in the notice of lease offering. After due notice in writing, the Lessee shall conduct such Outer Continental Shelf mining activities at such rates as the Lessor may require in order that the Leased Area or any part thereof may be properly and timely developed and produced in accordance with sound operating principles.

Sec. 10. *Inspection.* The Lessee shall permit duly authorized and identified representatives of the Secretary of the Interior to conduct periodic on-site inspections, both scheduled and unscheduled, of any mining facility to assure compliance with applicable operating, environmental, and safety regulations.

Sec. 11. *Safety Requirements.* The Lessee shall: (a) Maintain all places of employment within the Leased Area in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating within the Leased Area; (b) maintain all operations within the Leased Area in compliance with regulations and orders intended to protect persons, property, and the environment on the Outer Continental Shelf; and (c) allow prompt access, at the site of any operation subject to safety regulations, to any authorized Federal inspector and shall provide any documents and records which are pertinent to occupational or public health, safety, or environmental protection as may be requested.

Sec. 12. *Suspension and Cancellation.* (a) The Lessor may suspend or cancel this lease pursuant to section 5 of the Act and compensation shall be paid as provided by the Act. (b) The Lessor may, upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by Congress or the President of the United States, suspend operations under the lease, as provided in section 12(c) of the Act, and just compensation shall be paid to the Lessee for such suspension.

Sec. 13. *Indemnification.* The Lessee shall indemnify the Lessor for, and hold it harmless from, any claim, including claims for loss or damage to property or injury to persons caused by or resulting from any operation on the Leased Area conducted by or on behalf of the Lessee. However, the Lessee shall not be held responsible to the Lessor under this section for any loss, damage, or injury caused by or resulting from: (a) Negligence of the Lessor other than the commission or omission of a discretionary function or duty on the part of a Federal agency whether or not the discretion involved is abused; or (b) the Lessee's compliance with an order or directive of the Lessor against which an administrative appeal by the Lessee is filed before the cause of action for the claim arises and is pursued diligently thereafter.

Sec. 14. *Disposition of Production.* In time of war, or when the President of the United States shall so prescribe, the Lessor shall have the right of first refusal to purchase at the market price all or any portion of the Leased Mineral produced from the Leased Area, as provided in section 12(b) of the Act.

Sec. 15. *Unitization Agreements.* Within such time as the Lessor may prescribe, the Lessee shall subscribe to and operate under a unit agreement embracing all or part of the lands subject to this lease as the Lessor may determine to be appropriate or necessary. Where any provision of a unit agreement, approved by the Lessor, is inconsistent with a provision of this lease, the provision of the agreement shall govern.

Sec. 16. *Equal Opportunity Clause.* During the performance of this lease, the Lessee shall fully comply with paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended (reprinted in 41 CFR 60–1.4(a)), and the implemention regulations, which are for the purpose of preventing employment discriminating against persons on the basis of race, color, religion, sex, or national origin. Paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended, are incorporated in this lease by reference.

Sec. 17. *Certification of Non-segregated Facilities.* By entering into this lease, the Lessee certifies, as specified in 41 CFR 60–1.8, that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and

that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Lessee further agrees that it will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts unless they are exempt under 42 CFR 60–1.5.

Sec. 18. *Reservations to Lessor.* All rights in the Leased Area not expressly granted to the Lessee by the Act, the regulations, orders, the notice of lease offering, or this lease are hereby reserved to the Lessor. Without limiting the generality of the foregoing, reserved rights include: (a) The right to authorize geological and geophysical exploration in the Leased Area which does not unreasonably interfere with or endanger actual operations under the lease, and the right to grant such easements or rights-of-way upon, through, or in the Leased Area as may be necessary or appropriate to the working or development of other lands which may or may not be leased or to the treatment and shipment of products therefrom by or under authority of the Lessor; (b) the right to grant leases for any minerals other than the Leased Mineral within the Leased Area, except that operations under such leases shall not unreasonably interfere with or endanger operations under this lease; (c) the right, as provided in section 12(d) of the Act, to restrict operations in the Leased Area or any part thereof which may be designated by the Secretary of Defense, with approval of the President, as being within an area needed for national defense, and so long as such designation remains in effect no operations may be conducted on the surface of the Leased Area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under this lease within any designated area are suspended pursuant to this paragraph, any payments of rentals and royalty prescribed by this lease likewise shall be suspended during such period of suspenion of operations and production, and the term of this lease shall be extended by adding thereto any such suspension period, and the Lessor shall be liable to the Lessee for such compensation as is required to be paid under the Constitution of the United States.

Sec. 19. *Transfer of Lease.* The Lessee shall file for approval (in the appropriate field office of the Minerals Management Service), any instrument of assignment or other transfer of interest in this lease. This requirement includes changes in lease ownership and any obligation to make royalty or other payments under the lease or the Act.

Sec. 20. *Surrender of Lease.* The Lessee may surrender this entire lease or any officially designated subdivision of the Leased Area by filing with the appropriate field office of the Minerals Management Service a written relinquishment, in triplicate, which shall be effective as of the date of filing. No surrender of this lease or of any portion of the Leased Area shall relieve the Lessee or its surety of the obligation to pay all accrued rentals, royalties, and other financial obligations or to abandon the area to be surrendered in a manner satisfactory to the Director.

Sec. 21. *Removal of Property on Termination of Lease.* Within a period of 1 year after termination of this lease in whole or in part, the Lessee shall remove all devices, works, and structures from the premises no longer subject to the lease in accordance with applicable regulations, orders, and instructions of the Director. However, the Lessee may, with the approval of the Director, continue to maintain devices, works, and structures on the Leased Area for operations on other leases. Artificial islands may be abandoned if approved by the Director.

Sec. 22. *Remedies in Case of Default.* (a) Whenever the Lessee fails to comply with any of the provisions of the Act, the regulations or orders issued pursuant to the Act, or the terms of this lease, the lease shall be subject to cancellation in accordance with the provisions of section 5 (c) and (d) of the Act and the Lessor may exercise any other remedies which the Lessor may have, including the penalty provisions of section 24 of the Act. Furthermore, pursuant to section 8(o) of the Act, the Lessor may cancel the lease if it is obtained by fraud or misrepresentation. (b) Nonenforcement by the Lessor of a remedy for any particular violation of the provisions of the Act, the regulations or orders issued pursuant to the Act, or the terms of this lease shall not prevent the cancellation of this lease or the exercise of any other remedies under subparagraph (a) of this section for any other violation or for the same violation occurring at any other time.

Sec. 23. *Unlawful Interest.* No member of, or Delegate to, Congress, or Resident Commissioner, after election or appointment, or either before or after they have qualified, and during their continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR Part 20, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom. The provisions of section 3741 of the Revised Statutes, as amended, 41 U.S.C. 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 18 U.S.C. 431–433, relating to contracts made or entered into, or accepted by or on behalf of the United States, form a part of this lease insofar as they may be applicable.

The United States of America, Lessor

_____

(Lessee)

(Signature of Authorized Officer) _____

_____

(Name of Signatory) _____

(Title) _____

(Date) _____

(Address of Lessee) _____

(Signature of Authorized Officer) _____

_____

(Name of Signatory) _____

(Title) _____

(Date) _____

If this lease is executed by a corporation, it must bear the corporate seal.

[FR Doc. 84-8630 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Minerals Management Service Request for Supplemental Information; Gulf of Alaska/Cook Inlet Sale 88

Purpose

The Secretary of the Interior is reviewing ongoing Outer Continental Shelf (OCS) oil and gas lease sales. Interested parties are invited to provide him with up-to-date information so a reassessment can be made on the advisability of offering areas in the Gulf of Alaska/Cook Inlet (GOA/CI) for lease. The proposed offering for Lease Sale 88 is scheduled for October 1984.

The Secretary is seeking specific information on the current level of industry interest in leasing and exploring the area covered by the GOA/CI Federal proposal. This is the area studied in the draft environmental impact statement (EIS) and outlined on the attached map. The EIS was made available to the public in January 1984; public hearings were held in Alaska the week of February 13, 1984. In addition, the Minerals Management Service has been examining a number of options affecting lease terms for Sale 88. They involve variations in bidding systems royalty rates, length of lease term, size of lease block, minimum bid level, and rental rates. The effects of the alternatives on the economics of exploration and development are being examined both individually and in various combinations. We would appreciate your comments relative to these factors, as will as any other lease terms and conditions that you feel are appropriate.

Use of Information

The information will assist the Secretary in determining if portions of the proposed sale area should be deferred or eliminated or whether the proposed sale should be rescheduled in the current 5-year Planning Schedule or cancelled.

Description of the Area

The general location of the areas for which information is requested is offshore the State of Alaska in the Gulf

of Alaska and Cook Inlet. It is the area studied in the EIS as the Federal proposal (see the attached map). With some exceptions it lies between the 3-geographical-mile boundary and the 2,000-meter isobath. It covers 4,792 blocks (approximately 10.1 million acres).

Summary of Comments Received From the Call for Information

The Call for Information covered two planning areas, the Gulf of Alaska and Cook Inlet. Together they contain about 37 million acres. Four companies responded to the Call; three indicated leasing interest in a total of about 18.3 million acres. Industry interest in the Gulf of Alaska planning area began west of Icy Bay and continued east and south until the U.S./Canada jurisdiction line was reached. Interest began at the 3-geographical-mile line and generally went out to the 2,000-meter isobath.

In Cook Inlet interest was shown in two areas: south of Kalgin Island to the northern end of Augustine Island and south of the Barren Islands, through the Shelikof Strait, to approximately 57°30′ N. latitude.

Comments were received from the State of Alaska; U.S. Department of Commerce, National Marine Fisheries Service; the City of Cordova; and Yak-Tat Kwaan, Inc. Agencies of the State provided comments on the possible effects of hydrocarbon development on the fisheries industry; on renewable resources and their habitats (fish, waterfowl, shorebirds, seabirds, and marine mammals); on the lack of technology to contain and clean up large offshore oil spills; on industry's ability to safely conduct activities in severe weather and sea conditions; on the advisability of using drilling rigs with zero pollution/discharge containment systems; on refuges, monuments, and State critical habitat areas; and on the culture of Native villages adjacent to the Call area.

The National Marine Fisheries Service commented on the possible conflicts between fisheries and marine mammal resources and oil and gas exploration. The City of Cordova commented on fisheries conflicts and Costal Zone Management funding. The Yak-Tat Kwaan generally supported leasing in certain portions of the Gulf of Alaska planning area and commented on the importance of salmon stocks.

The Environmental Impact Statement

If a copy of the draft EIS would be helpful in responding to this supplemental request, inquiries may be made to the Regional Supervisor for Leasing and Environment, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99510, (907) 261–2464.

Instructions on Request for Supplemental Information

Information on the interest industry has in leasing and exploring in the GOA/CI should be provided by letter. If new or supplemental information is submitted on areas which industry would like to have offered for lease sale, it should be depicted on the Request for Supplemental Information Maps. These maps are available at no cost from the Regional Supervisor for Leasing and Environment. Industry interest should be defined as specifically as possible by outlining blocks or area(s) along block lines. Areas of concern may also be indicated on these maps in the same manner. Although individual and industry indications of interest are considered to be privileged and confidential information, the names of persons or entities submitting such information and/or comments will be a matter of public record.

Respondents should rank blocks and/or areas according to priority of interest (e.g., priority 1 (high), 2, or 3). Priority information submitted will be proprietary.

In order to be incorporated in the review process, information and comments must be submitted no later than 30 days following publication of this document in the **Federal Register**. Correct receipt of the information will be facilitated if envelopes are marked "Request for Supplemental Information on Proposed Lease Sale 88—Gulf of Alaska/Cook Inlet".

Letters and maps should be sent to the Regional Supervisor for Leasing and Environment, Alaska OCS Region, P.O. Box 101159, 620 East 10th Avenue, Anchorage, Alaska 99510. A copy should be sent to the Chief, Offshore Leasing Management Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 645, Reston, Virginia 22091. Hand deliveries to the Department of the Interior may be made at 18th and C Sts., N.W., room 2510, Washington, D.C. Telephone contacts may be made to Joan Hagans (907) 261–2469 (Alaska), or to Yvonne Morehouse (202) 343–5121 (Washington, D.C.).

Date: March 27, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

Approved:

Leona A. Power,

Assistant Secretary for Land and Minerals Management.

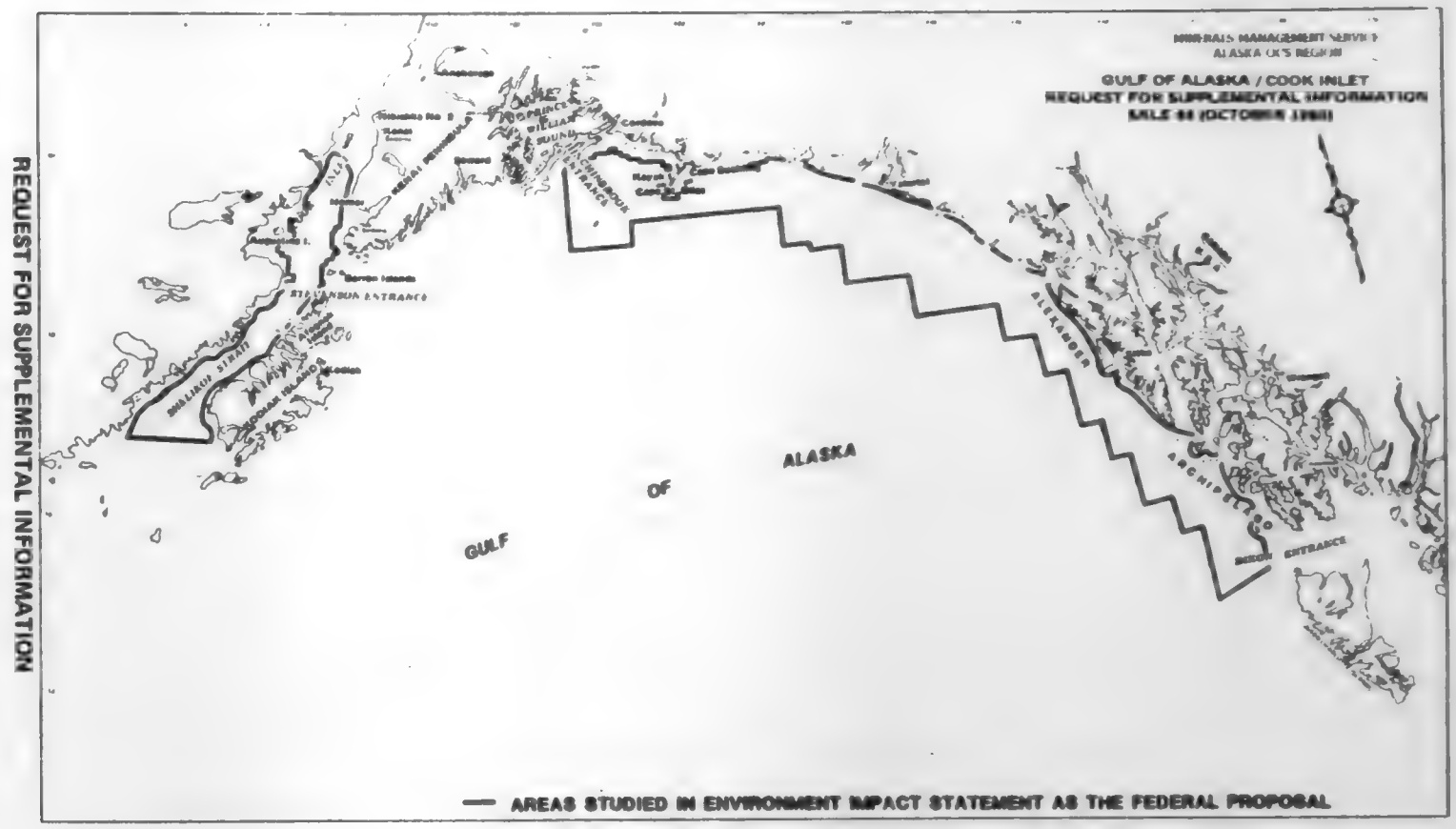

REQUEST FOR SUPPLEMENTAL INFORMATION

March 1984

[FR Doc. 84-8634 Filed 3-29-84; 8:45 am]
BILLING CODE 4310-MR-M

Request for Supplemental Information Sale 90—South Atlantic

Purpose of Request

As part of the Secretary of the Interior's ongoing review of Outer Continental Shelf (OCS) lease sales, interested parties are invited to provide up-to-date information related to the Federal proposal for Sale 90—South Atlantic, scheduled for January 1985 (see attached map).

The Secretary is seeking specific information on the current level of industry interest in leasing and exploring within the South Atlantic area depicted on the attached map. Potential bidders are requested to provide new information or clarify or supplement earlier information indicating their interest in areas for possible oil and gas leasing under the OCS Lands Act (43 U.S.C. 1331–1343).

In addition, the Minerals Management Service has been examining a number of options that affect lease terms and conditions for Sale 90. They involve variations in bidding systems, royalty rates, length of lease term, size of lease block, minimum bid level, and rental rates. The effects of the alternatives on the economics of exploration and development are being examined both individually and in various combinations. We would appreciate your comments relative to these factors, as well as any other lease terms and conditions that you feel are appropriate.

Use of Information From Request

Information received in response to this request will be used to help design a proposed sale area which best reflects a reasonable balance between industry interest and environmental, national defense, or other potential resource conflicts.

Description of Area

The area covered by this request is generally offshore the States of North Carolina, South Carolina, Georgia, and Florida and is depicted as the cross-hatched area on the attached map. The area shown represents the Area Identification decision made in August 1983 (40.8 million acres) and is the proposed Federal action.

Summary of Response to Call for Information

The Call for Information encompassed approximately 99 million acres. Two companies responded indicating leasing interest in about 22 million acres.

Comments were received from the States of North Carolina, South Carolina, and Florida, the National Oceanic and Atmospheric Administration, and the Natural Resources Defense Council. Concerns expressed included: leasing within the 200-meter isobath off North Carolina; leasing within the 500-meter isobath south of the 30° N. latitude; leasing adjacent to marine and estuarine sanctuaries; effects of leasing on tourism and environmentally sensitive areas; and length of lease terms. The Department of Defense and National Aeronautics and Space Administration have requested deferral of the area south of 31° N. latitude.

Instructions on Request

Information on the interest industry has in leasing and exploring in the South Atlantic should be provided by letter. If new or supplemental information is submitted on specific areas which

industry would like to have offered for lease sale, it should be depicted on the Request for Supplemental Information map, available free from the Regional Manager, Atlantic Region, MMS, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Interest should be as specific as possible and should be shown by outlining blocks or area(s) along block lines. Areas of concern may be indicated on these maps in the same manner. Although individual indications of interests are considered to be privileged and proprietary information, the names of persons or entities submitting indications of interest and/or comments will be a matter of public record.

Respondents should rank blocks and/or areas according to priority of interest (e.g., priority 1 (high), 2, or 3). Priority information submitted will be held proprietary.

Supplemental information on indications of interests and comments must be submitted no later than 30 days following publication of this document in the **Federal Register** in envelopes labeled "Request for Supplemental Information on Proposed Lease Sale 90—South Atlantic."

Letters and maps should be sent to the Regional Supervisor for Leasing and Environment, Atlantic Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia, 22180. A copy should be sent to the Chief, Offshore Leasing Management Division, MMS, Mail Stop 645, 12203 Sunrise Valley Drive, Reston, Virginia 22091 or hand delivered to the Department of the Interior, Room 2510, 18th and C Streets, NW., Washington, D.C. 20240. Telephone contacts should be made to Wallace Macnow (202) 343–5121 (Washington, DC) or Home Benton (703) 285–2207 (Vienna, Virginia). For additional information, please refer to the Call for Information published in the **Federal Register** on May 26, 1983 at 48 FR 23723.

Dated: March 23, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

Dated: March 27, 1984.

Approved:

Leona A. Power,

Acting Assistant Secretary for Land and Minerals Management.

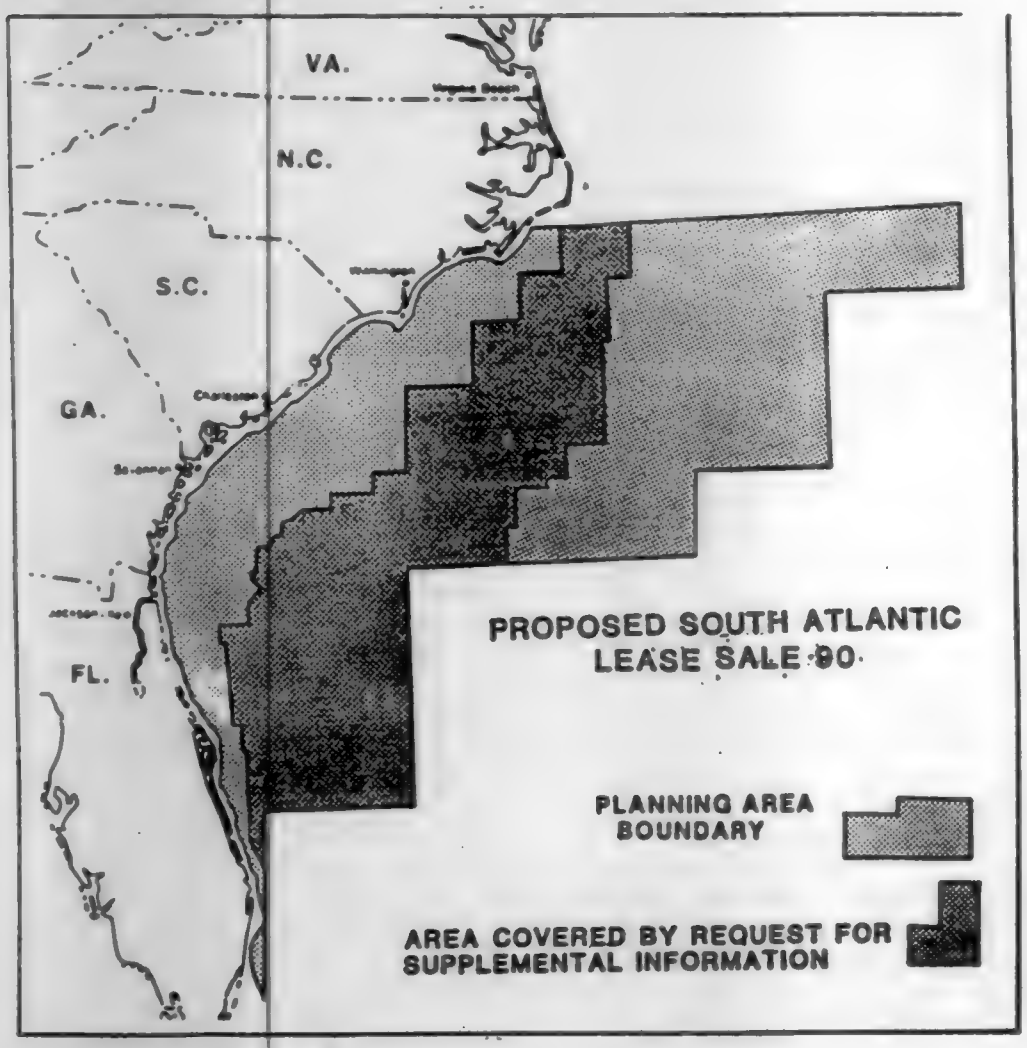

[FR Doc. 84-8666 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders; Chevron U.S.A. Inc., et al.

This Notice supersedes the List of Restricted Joint Bidders published in the **Federal Register** on October 4, 1983, at 48 FR 43318. Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period of May 1, 1984, through October 31, 1984.

Group I: Chevron U.S.A. Inc.; Standard Oil Company of California.
Group II: Exxon Corporation.
Group III: Mobil Oil Corporation; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas & New Mexico Inc.
Group IV: MTS Limited Partnership (Mesa Petroleum Co., Texaco Inc., and Sequoia Petroleum Inc.); Texaco Inc.
Group V: Shell Offshore Inc.; Shell Oil Company; Shell Western E&P Inc.

Dated: March 26, 1984.

William D. Bettemberg,

Director, Minerals Management Service.

[FR Doc. 84-8622 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Notification of Procedural Changes for OCS Bid Adequacy

AGENCY: Minerals Management Service, Interior.

ACTION: Notification of Procedural Changes.

SUMMARY: The Minerals Management Service has made three modifications in its existing bid adequacy procedures for ensuring receipt of fair market value on OCS leases. These procedures: (1) Allow for the classification of tracts as nonviable in Phase 1 only when adequate data and maps exist to support such a determination; (2) discontinue application of items labeled D through M in the discussion of the Phase 2 criteria, with the exception of item H (drainage costs), until a rigorous procedure is developed for quantitatively applying them; and (3) eliminate the geometric mean of the bids rule in Phase 1.

DATE: These modifications will be implemented beginning with the Navarin Basin Lease Offering (April 1984).

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Minerals Management Service, MS643, 12203 Sunrise Valley Drive, Reston, Virginia 22091, telephone (703) 860-7571.

SUPPLEMENTARY INFORMATION: On February 22, 1983, the Department of the Interior (Department) adopted new procedures to evaluate bids received on tracts in OCS lease offerings to assure receipt of fair market value.

The refined bid adequacy system placed increased reliance upon competition in the free market through implementation of a two-phase process. All bids received would be evaluated through at least the first phase proceeding, if necessary, to a detailed economic and engineering analysis. The two-phase postsale review of bids allowed for bid adequacy decisions to be made shortly after the offering date. Bid adequacy guidelines incorporating these changes were promulgated on April 21, 1983. In conjunction with the changes listed above, the current bid adequacy procedure is described below:

Phase 1

Phase 1 is composed of criteria designed to partition block receiving bids into three general categories:

- Those receiving bids which Minerals Management Service (MMS) has identified as being non-prospective;
- Those where opportunities for strategic underbidding, information asymmetry, collusion, and other noncompetitive practices might most likely occur and where the Government has the most detailed and reliable data; and
- Those where the competitive market forces can be relied upon to assure fair market value.

Based on these categories, the following three Phase 1 criteria are applied to all blocks receiving bids:

1. High bids on all blocks classified by MMS as being either development or drainage will be referred directly for further evaluation in Phase 2.

2. All legal high bids for blocks judged by MMS not to be located on a viable prospect will be accepted.

3. After screening for anomalously low bids through application of the "one-eighth rule," [1] all legal high bids will be accepted for prospective wildcat and proven blocks receiving three or more bids and more than the average number of bids for prospective blocks bid upon in the offering, i.e., whichever is more.

Phase 1 is conducted block-by-block and will generally be completed within 3 days of the Bid Opening.

Phase 2

All prospective wildcat and proven blocks which are not accepted as a result of the application of the Phase 1 criteria and all drainage and development blocks will receive further evaluation by comparing the high bids with the MROV, DMROV, and GAEOT. In addition, if in the judgment of the Regional Manager a block is or may be subject to drainage, the relevant costs due to delays associated with bid rejection will be considered in the bid adequacy determination.

While it is expected that most analyses would be undertaken based upon data available at the time of the sale, additional geological and geophysical analyses can be undertaken postsale at the discretion of the Regional Manager.

The bid adequacy recommendations developed in Phase 2 will generally be completed within 3 weeks of the sale, however, the Regional Manager may extend this period when necessary to assure a thorough evaluation.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 84-8623 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Women's Rights National Historical Park

AGENCY: National Park Service: Women's Rights NHP Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of Women's Rights Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: May 9, 1984—1:00 to 4:00; May 10, 1984—8:30 to 1:00.

There will be a public forum from 4:00 to 6:00 on May 9 at the same address, providing an opportunity for all interested persons to present their role in the creatioin of the Park.

ADDRESS: Women's Rights National Historical Park, 116 Fall Street, P.O. Box 70, Seneca Falls, New York 13148.

FOR FURTHER INFORMATION CONTACT: Judy Hart, Superintendent, Women's Rights National Historical Park, 116 Fall Street, P.O. Box 70, Seneca Falls, New York 13148, (315) 568–2991.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by Public Law 96–607 to meet, consult and advise the Secretary with respect to matters relating to the administration of the Park. The agenda for the meeting will include; (1) Park development and (2) National constituency development project.

The meeting will be open to the public. Facilities and space to accommodate members of the public are limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Women's Rights National Historical Park, P.O. Box 70, Senaca Falls, New York 13148. Minutes of the meeting will be available for inspection at the same address above. The facility at which the meeting will be held is physically accessible. If interpretive services are requested by deaf or hearing impaired individuals they will be provided if notification is received within five working days before the meeting, at the Park Office.

Dated: March 12, 1984.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

[FR Doc. 84-8561 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, George D. Bailey has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Denali Natinal Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8572 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Theodore W. VanZelst has filed a plan of operations in support of proposed mining operations on lands embracing four Mining Claim Groups within the Wrangell-St. Elias National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8574 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Donald E. Dippel has filed a plan of operations in support of proposed mining operations on lands embracing Mining Claim Groups within the Wrangell-St. Elias National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8575 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9,

[1] Anomalously low bids will not be included in the bid number; e.g., if the lowest bid on a block is less than ⅛ of the next lowest bid, the lowest bid will not be included in the number of bids. This rule can exclude no more than one bid for a given block or bidding unit.

Silver Star Mining Company has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Wrangell-St. Elias National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8580 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Yukon-Charley Rivers National Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, James R. Layman has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Groups within the Yukon-Charley Rivers National Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Regional.

[FR Doc. 84-8570 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Yukon-Charley Rivers National Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Frank M. Hall has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Yukon-Charley Rivers National Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8576 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Kenai Fjords National Park; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, John M. Kinney has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Kenai Fjords National Park. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8578 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Lake Clark National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Howard N. Bowman has filed a plan of operations in support of proposed mining operations on lands embracing four Mining Claim Group within the Lake Clark National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8577 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Gates of the Arctic National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Glen D. Bouton has filed a plan of operations in support of proposed mining operations on lands embracing Mining Claim Groups within the Gates of the Arctic National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8571 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

Mining Plans of Operations at Denali National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Kantishna Mines Ltd., has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group within the Denali National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-8573 Filed 3-29-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. *Parent Corporation and Address of Principal Office*: Wickland Oil Company, a California corporation, 1765 Challenge Way, Sacramento, California 95815.

2. Wholly-owned Subsidiaries Which Will Participate in the Operations, and States of Incorporation:

(i) Wickland, Inc., a California corporation;

(ii) Olive City Service, Inc., a California corporation;

(iii) Regal Stations, Inc., a California corporation;

(iv) Wickland Oil Terminals, a California corporation;

(v) Wickland Oil Transport, a California corporation.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8512 Filed 3-29-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30409]

The Chesapeake and Ohio Railway Co.; Trackage Rights Exemption Between Kanauga, OH and Point Pleasant, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 *et seq.*, the acquisition by The Chesapeake and Ohio Railway Company of trackage rights over 3.5 miles of rail line owned by Consolidated Rail Corporation, extending from Kanauga, OH, to Point Pleasant, WV.

DATES: This exemption will be effective on April 30, 1984. Petitions for reconsideration must be filed by April 19, 1984. Petitions to stay this decision must be filed by April 19, 1984. Petitions to stay this decision must be filed by April 9, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30409 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Rene J. Gunning, 100 North Charles Street, Baltimore, MD. 21201.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: March 23, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8513 Filed 3-29-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30425]

Norfolk and Western Railway Co.; Exemption; Discontinuance of Service in Pike County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the discontinuance of service by Norfolk and Western Railway Company over a 6-mile rail line in Pike County, IL from the requirement of prior approval under 49 U.S.C. 10903 et seq., subject to employee protection conditions.

DATES: This exemption shall be effective on April 30, 1984. Petitions for reconsideration must be filed by April 19, 1984. Petitions to stay must be filed by April 9, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30425 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC. 20423.

(2) Petitioners' representative: Angelica D. Lloyd, 204 South Jefferson Street, Roanoke, VA 24042.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC. 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: March 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate. Chairman Taylor would have required the petitioners to notify the Commission within 30 days of consummation.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8514 Filed 3-29-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Judgment Orders Pursuant to the Clean Air Act; Jones & Laughlin Steel Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Judgment Order in *United States of America, et al.* v. *Jones & Laughlin Steel, Incorporated, et al.*, Civil Action Numbers 79-426-K and 79-1193-A, has been lodged with the United States District Court for the Western District of Pennsylvania. Also, a proposed Judgment Order in *United States of America* v. *Jones & Laughlin Steel Incorporated, et al.*, Civil Action Number H-79-65, has been lodged with the United States District Court for the northern District of Indiana. Further, a proposed Judgment Order in *United States of America, et al.*, v. *Jones & Laughlin Steel Incorporated, et al.*, Civil Action Numbers C-77-144-Y and C-81-12, has been lodged with the United State District Court for the Northern District of Ohio.

Motions for entry of the proposed Judgment Orders were made by Jones & Laughlin Steel Incorporated and The LTV Corporation. The United States has preliminarily indicated that it does not oppose entry of the Judgment Orders, conditioned upon the publication of this Notice, and the evaluation of any comments received in response to this Notice.

The contempt motions previously filed by the United States alleged violations of existing Federal Consent Decrees and the Clean Air Act by Jones & Laughlin Steel Incorporated and The LTV Corporation at its Aliquippa Works, Aliquippa, Pennsylvania; Pittsburgh Works, Pittsburgh, Pennsylvania; Indiana Harbor Works, East Chicago, Indiana; Campbell Works, Campbell, Ohio; and Cleveland Works, Cleveland, Ohio. The contempt motions sought injunctive relief to require Jones & Laughlin Steel Incorporated and The LTV Corporation to comply with its existing Federal Consent Decrees and the Clean Air Act. The contempt motions also sought stipulated civil penalties for past violations of the Consent Decrees.

The Judgment orders provide that Jones & Laughlin Steel Incorporated and The LTV Corporation will comply with the Clean Air Act and undertake installation of necessary pollution control equipment in accordance with a schedule set forth in the Judgment Orders. Jones & Laughlin Steel Incorporated and The LTV Corporation are required to pay a civil penalty of $4,000,000 in settlement of stipulated civil penalty claims.

The U.S. Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Judgment Orders. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States of America, et al.* v. Jones & Laughlin Steel Incorporated, et al., D.J. Ref. 90-5-2-3-1011.

The proposed Judgment orders may be examined at the offices of the United States Attorney for the Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219; United States Attorney for the Northern District of Indiana, Room 312, Federal Building, 507 State Street, Hammond, Indiana 46320; and the United States Attorney for the Northen District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114. Further, the proposed Judgment Orders may be examined at the offices of Region III of the U.S. Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106 and Region V of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Judgment Orders may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. department of Justice, Room 1517 or 1644, 9th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Judgment Orders may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $20.00 ($0.10 per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-8560 Filed 3-29-84; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances Application; Ciba-Geigy Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 19, 1983, Pharmaceuticals Division, Ciba-Geigy Corporation, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Methylphenidate (1724).

Any other applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than (30 days from publication).

Dated: March 23, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-8603 Filed 3-29-84; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Hoffman La Roche Inc.

By Notice dated May 9, 1983, and published in the **Federal Register** on May 18, 1983 (48 FR 22385), Hoffman La Roche Inc., Kingland Road and Bloomfield Avenue, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alphaprodine (9010)	II
Levorphanol (9220)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 23, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-8602 Filed 3-29-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-14,709, 15,103, 15,104]

Wean United, Inc., Youngstown and Warren, Ohio, Vandergrift, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Pursuant to section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued two notices of certification of eligibility to apply for worker adjustment assistance on February 2, 1984 in response to three petitions from workers and former workers of Wean United, Incorporated, in Youngstown, Ohio (TA-W-14,709), Warren, Ohio (TA-W-15,103) and Vandergrift, Pennsylvania (TA-W-15,104). The Notices of Certification were published in the **Federal Register** on February 14, 1984 (49 FR 5703).

Subsequently, the United Steelworkers of America asked to have the November 30, 1982 impact date for workers at the Vandergrift, Pennsylvania plant changed to May 6, 1982 because of investigation findings that production at that plant was integrated with the Youngstown and Warren plants. The USWA claims that the scope of the Department's factfinding investigation conducted in response to the first petition filed on behalf of workers of Wean United's Youngstown plants should have been expanded to include the Vandergrift and Warren plants when integration of production of the plants was identified rather than requiring the USWA to file separate petitions for the Warren and Vandergrift plants.

Findings in the investigation file show integration of production among all four plants and support the USWA's position that the scope of the initial investigation for Wean workers at the Youngstown plant under petition TA-W-14,709 dated May 6, 1983 should have been expanded to include Wean United's workers at the Warren and Vandergrift plants. Had the Department taken this action, Wean workers at Vandergrift and Warren would have been controlled by the earlier petition, TA-W-14,709 which permits an earlier impact date. Findings in the investigation file support an earlier impact date.

Other findings which support the USWA position show that domestic sales and production of finishing line machinery decreased in 1982 compared to 1981 and in the first eight months of

1983 compared to the same period in 1982 for all four plants.

Aggregate employment decreased at the four plants in 1982 compared to 1981 and in the first eight months of 1983 compared to the same period in 1982.

U.S. imports of metal-forming presses and miscellaneous machines for working metal increased relative to U.S. shipments in 1982 compared to 1981 and in the first 6 months of 1983 compared to the same period in 1982. U.S. imports of rolling mill machinery and parts increased absolutely in the first 9 months of 1983 compared to the same period in 1982.

Wean United submits bids for most of its capital equipment sales. The Department of Labor findings on lost bids by Wean United in 1981, 1982 and 1983 show that potential customers representing a significant portion of Wean's sales declines in 1982 and in the first 8 months of 1983 compared to the respective period in 1982, awarded bids to foreign sources where Wean United was the low domestic bidder. Because of the lead time involved in the capital goods industry between bids and the commencing of production, lost bids by Wean in 1981 would impact on 1982 production. Therefore, lost bids in 1981 were a factor in reduced production by Wean United in 1982 and would support an earlier impact date.

The Department's findings support consolidating Wean United facilities covered by the three petitions under one certification and certifying all workers producing finishing line machinery who were adversely affected by increased imports. Therefore, the certification for workers at Wean United's Vandergrift, Pennsylvania plant (TA–W–15,104) and Wean United Warren, Ohio plant (TA–W–15,103) are hereby withdrawn. Aggregate sales, production and workforce data, and increased imports of like or directly competitive products support changing the impact date to May 6, 1982.

The amended certification for TA–W–14,709 is hereby issued as follows: "All workers of Wean United in Youngstown and Warren, Ohio and Vandergrift, Pennsylvania who became totally or partially separated from employment on or after May 6, 1982 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 21st day of March 1984.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 84-8686 Filed 3-29-84; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs

[Application No. D–4514 et al.]

Proposed Exemptions; Canterbury Tales, Inc. Employee Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Canterbury Tales, Inc., Employee Profit Sharing Plan (the Plan), Located in Alexandria, Virginia

[Application No. D–4514]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of a certain limited partnership interest (the Partnership Interest) in the Canterbury Tales Limited Partnership (the Partnership), located in Washington, D.C. by the Plan to David H. Pensky and Richard J. Hindin, parties in interest with respect to the Plan, provided the sales price is not less than the fair market value of the Partnership Interest at the time of sale.

Summary of Facts and Representations

1. The Plan is a multi-employer profit sharing plan that had approximately 113 participants and total assets of $1,375,867 as of February 28, 1982. The sponsors (the Sponsors) of the Plan are Canterbury Tales, Inc. and its wholly-owned subsidiaries, Britches of Georgetown, Inc., D.C., Britches of Lenox Square, Britches of Georgetowne-Preachtree Ctr., Inc., Britches of Georgetowne, Inc., Maryland and Britches of Georgetowne, Inc., Virginia, all of which are engaged in the retail or wholesale clothing trade. The investment decisions of the Plan are

made by the trustees (the Trustees), who are David H. Pensky and Richard J. Hindin, the principal shareholders and officers of the Plan Sponsors and the combined owners of 95% and the general partner of the Partnership.

2. In 1970, prior to the enactment of the Act, as part and parcel of an equity participation loan (the Loan), the Plan made a $16,000 loan to the Partnership, in exchange for a ten-year promissory note from the Partnership in the amount of $16,000, with interest at the then prevailing interest rate of 9% per annum, plus a 5% Partnership Interest in the Partnership. The business of the Partnership is the ownership and operation of a parcel of improved real property (the Property), located at 1241 Wisconsin Avenue, N.W., Washington, D.C. The Property, which is encumbered by a first mortage (the Mortgage) held by First National Bank of Maryland (the Bank), is rented on a net-net lease basis to its tenants (Tenants). In 1980, the Loan, together with all interest, was paid in full. It is represented that the Loan did not constitute a prohibited transaction by reason of the transitional rules contained in section 414 of the Act.[1] It is further represented that neither the Bank nor any of the Tenants is related to the parties to the transaction.

3. The 5% Partnership Interest has been and continues to be non-income producing. Since its inception, the Partnership incurred net losses in each year except for 1981 and 1982. In 1981 and 1982, the Partnership produced a small net profit due to the fact that the building on the Property had then been fully depreciated. As a result of the income received above, the negative capital accounts of the Partners in the Partnership decreased from $77,341 to $37,938. It is anticipated that future cash distributions to the Plan relative to the market value of the 5% Partnership Interests will be small.

4. In addition to the fact that the 5% Partnership Interest is non-income producing, the Trustees believe that the projected liquidity needs of the Plan support the conversion of this asset to cash. The Trustees, therefore, propose to sell the Partnership Interest to themselves, as individuals, for $20,087, which is based upon the sales price for Partnership Interests sold in March of 1983. At that tie a 25% partnership interest was sold by Mr. Stanley Smith, an unrelated limited partner, to Messrs. Hindin and Pensky for $100,000 payable with a note for the full sales price with interest at 10%. The note provides for interest only payments for 60 months with the entire principal due on April 1, 1988.

No commissions will be paid in connection with the sale nor will the Plan be required to pay the Partnership any portion of its negative capital balance. The outstanding balance of the Mortgage as of May, 1983 was $113,252. An appraisal performed by Kevin O. Curnyn, president of Thos J. Owen & Son, Inc. of Washington, D.C., on March 14, 1983, valued the Property at $515,000. Accordingly, the net equity of the Partnership in the Property is $401,748. It is represented that on the basis of $401,748, the fair market value of the Partnership Interests is $20,087.

5. In summary, the applicant represents that the proposed sale by the Plan would meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Trustees have determined that the transactions are appropriate for the Plan and are in the best interests of the Plan's participants and beneficiaries; (b) the sale is a one-time transaction for cash; (c) the Plan will be able to dispose of the investment which is non-income producing for cash and reinvest the proceeds in more liquid income producing investments; (d) the sales price is equal to the most recent sales price paid for Partnership Interest; and (e) no commissions will be paid in connection with the sale.

Notice to Interested Persons: Notice to interested persons will be provided by the applicant within 30 days of the date of publication in the **Federal Register.** Comments and hearing requests are due 60 days after the date of publication.

For Further Information Contact: Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Norquist Salvage Corp., Inc. Profit Sharing Plan (the Plan), Located in Burlingame, California

[Application No. D–4598]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of an interest (the Partnership Interest) in a real estate limited partnership to Norquist Salvage Corp., Inc. (the Employer), the sponsor of the Plan, for $50,000 in cash, provided that the sales price for the Partnership Interest is no less than the fair market value of the Partnership Interest at the time of such sale.

Summary of Facts and Representations

1. The Plan is a qualified profit sharing plan with 89 participants and assets of approximately $400,000 as of December 31, 1982. The Plan is administered by Brandt M. Norquist (the Trustee), who is an officer of the Employer. On June 6, 1982, an investment committee of the Plan headed by the Trustee purchased on behalf of the Plan the Partnership Interest in a California real estate limited partnership known as REYN Fairmont "A" Ltd. (the Partnership) for a purchase price of $50,000. The general partner of the Partnership was REYN Financial, Inc. (REYN), a California corporation which operated as a general partner for a number of other projects similar to the Partnership. The Partnership Interest consists of an undivided 12.5 percent interest in a twelve-month deed of trust note (the Note) in the principal amount of $400,000. The Note was to provide a return of 22 percent over its twelve-month term. The Note was executed July 27, 1982 and provided for monthly payments of $7,333.33 with a balloon payment of all unpaid principal and interest on August 1, 1983. Investors in the Partnership consisted primarily of qualified employees benefit plans and other retirement vehicles in the San Francisco Bay area. The Trustee represents that the Plan's purchase of the Partnership Interest was highly recommended by reliable local investment advisors, that 150 plans and individuals had invested in excess of five million dollars into similar REYN projects, and a careful study of REYN supported the Trustee's opinion at the time of the purchase of the Partnership Interest that such investment would be an exercise of prudent financial responsibility on behalf of the Plan.

2. In September of 1982, REYN encountered major financial difficulties and the Partnership along with eleven other REYN projects went into default. On October 19, 1982, the Partnership filed a voluntary bankruptcy petition in the U.S. Bankruptcy Court for the Northern District of California. On behalf of the Plan the Trustee retained an attorney, Thomas J. LoSavio (LoSavio), to protect the Plan's investment in the Partnership. After a

[1] The Department expresses no opinion as to the applicability of section 414 of the Act in this instance.

review of the facts and circumstances surrounding the bankruptcy of the Partnership, LoSavio gave his opinion on June 21, 1983 that the likelihood of recovery of the Plan's investment in the Partnership was not great enough to justify pursuit of a case on behalf of the Plan on a contingency fee basis. The agent of the Partnership's general partner, Arthur Bigelow, president of REYN, verified to the Trustee on August 1, 1983 that the Partnership, which is no longer in existence, is without any assets. The Trustee represents that the Partnership Interest is now worthless and that there is no likelihood that legal proceedings could recover the Plan's original investment of $50,000 in the Partnership Interest.

3. The Trustee is requesting an exemption to permit the Employer to purchase the Partnership Interest from the Plan for $50,000 in cash. The Partnership Interest represents approximately 12.6 percent of the Plan's total assets as of December 31, 1982. The Trustee represents that, in light of the likelihood that legal action to recover the original investment in the Partnership Interest would not recover the investment, it is appropriate for the Plan to dispose of the Partnership Interest to prevent a hardship on the Plan and its participants and beneficiaries. If the Employer is allowed to purchase the Partnership Interest from the Plan, all of the Plan's rights with respect to the Partnership Interest will be transferred to the Employer. The pursuit of legal recovery efforts will be the responsibility of and at the expense of the Employer and the risk of a complete loss on the original investment of $50,000 will become the Employer's. The Trustee represents that there is no market for the Partnership Interest and that if the Employer does not purchase the Partnership Interest from the Plan the Plan will realize a principal loss of $50,000 and any opportunity for income on that amount for as long as it holds the Partnership Interest.

4. In summary, the Trustee represents that the Employer's purchase of the Partnership Interest from the Plan for $50,000 in cash will satisfy the criteria of section 408(a) of the Act because (1) the purchase of the Partnership Interest will constitute a single cash transaction which will not require any subsequent monitoring; (2) the sale of the Partnership Interest by the Plan is necessary to prevent a principal and interest loss to the Plan; and (3) the purchase of the Partnership Interest by the Employer will allow the Plan to invest in more liquid assets with a definite income potential rather than incurring legal expenses toward a likely loss of the original investment in the Partnership Interest.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

First American Corporation Comprehensive Employee Benefit Plan and Trust (the Plan), Located in Nashville, Tennessee

[Application No. L-4622]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act shall not apply to the proposed transfer of a group term life insurance policy (the Policy) to the Plan by First American Corporation (the Corporation), a party in interest to the Plan, provided that in the event the Corporation claims a deduction on its Federal income tax return for the transfer of the Policy, the deduction will not exceed the fair market value of the Policy on the date of its transfer to the Plan.

Summary of Facts and Representations

1. The Corporation is a bank holding company organized under the laws of the State of Tennessee. The Corporation established the Plan for the benefit of its own employees and the employees of 12 of its subsidiaries that have adopted the Plan.

The Plan, which provides survivor income, death, disability and health care benefits, had 1,962 participants and $1,983,082 in assets as of December 31, 1982. The trustee of the Plan (the Trustee) is First American National Bank of Nashville, a subsidiary of the Corporation.

2. To be eligible for the survivor income benefit under the Plan, a Plan participant was required to have a year of service and to participate in a group term life insurance plan maintained by the Corporation and its subsidiaries under which the participant contributed a fixed dollar amount per month. Pursuant to the group term life insurance plan, the Corporation has been the group policyholder of the Policy number GL-18279 issued by Bankers Life Company of Des Moines (Bankers). The Corporation, with contributions from its affiliates, has made all premium payments and other payments necessary to maintain the Policy in excess of the fixed rate of contributions made by the participants of the group term life insurance plan.

3. The most recent amendment to the Plan, which became effective as of May 1, 1983, adds group term life insurance benefits to Part I of the Plan which previously had provided for survivor income benefits. Pursuant to this amendment, the Plan will become the group policyholder of a group term life insurance policy and will pay all of the premiums and other amounts necessary to provide the benefits under Part I in excess of the contributions which will be required of those participants who elect to participate in Part I of the Plan. By combining the group life insurance benefit with the survivor income benefit, all interest, dividends and experience rating refund payments received on the group insurance policy will be made to the Plan.

In order to implement the latest amendment to the Plan, it is proposed that the Corporation transfer the Policy to the Plan. Following the transfer, the Plan would make the premium payments on the Policy from employee and employer contributions and would receive all dividends, interest and experience rating refunds on the Policy.

4. Reserves under the Policy amounted to $23,763 on January 1, 1983. These reserves for incurred but unreported claims would be held by Bankers for 13 months following cancellation of the Policy and at that time any remaining reserves and the final dividends which had accrued to the date of termination would be paid to the policyholder. In addition to the reserves, $105,000 is being held by Bankers to pay future death claims for persons who are currently disabled. These claims are payable whether or not the Policy is in force. If a disabled person recovers while the Policy is in force, the amount being held to pay the claim is credited to the policyholder. If the Policy is cancelled and a disabled person recovers, no funds revert to the prior policyholder. Both the $23,763 reserves and the $105,000 would transfer with the Policy.

5. The Policy would be transferred to the Plan at no cost to the Plan. The Policy has no readily ascertainable dollar value and no attempt has been made to place a specific value on the Policy due to the many contingencies involved in any value for the Policy. No deduction would be claimed by the Corporation for Federal income tax purposes in connection with the transfer of the Policy unless it were determined by the Internal Revenue Service that the transfer created taxable income for the Corporation, in which case an offsetting

deduction equal to the amount of such income would be claimed. In no event would a deduction be claimed by the Corporation for more than the fair market value of the Policy on the date of its transfer to the Plan.

There are no liabilities associated with the Policy other than the obligation, if the Policy is to be maintained in force, to pay monthly premiums as they become due. The Corporation is not delinquent with respect to the payment of any premium.

6. Bankers reviewed the Policy and determined that in addition to the reserves under the Policy which would transfer with the Policy, there were other advantages to the Plan in accepting the Policy rather than acquiring a new policy. Bankers estimates that a new policy would have gross retention charges of 8.9% of the first year premium as compared with 8.7% on the Policy. Further, during the first year of a new policy, reserve requirements of 12% of the non-pooled portion of the premium would be fulfilled by deducting the amount required from paid premiums, thereby reducing the amount of premium on which dividends would be payable.

Bankers concluded that in view of the potential cost savings if the Policy is transferred, it is in the best interest of the Plan and its participants and beneficiaries for the Trustee to accept the transfer of the Policy to the Plan. The Trustee also considers the transfer of the Policy to be in the best interests of the Plan and its participants and beneficiaries.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The transfer of the Policy is a one-time transaction which will be docu nented with Bankers; (b) the transfer of the Policy will result in lower costs to the Plan in providing group term life insurance benefits than would result if the Plan purchased a new group term life insurance policy; (c) Bankers has reviewed the Policy and determined that it would be in the best interests of the Plan and its participants to accept the transfer of the Policy; and (d) the Trustee also has concluded that the transfer of the policy would be in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Drs. Bickmore, Boyles & Steinfurth, Inc. Employees' Profit-Sharing Plan (the Profit Sharing Plan) and Drs. Bickmore, Boyles & Steinfurth, Inc. Employees' Pension Plan (the Pension Plan) (collectively, the Plans) Located in Dayton, Ohio

[Application Nos. D–4911 and D–4912]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted and restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of a parcel of unimproved real property (the Property) by the Plans to Practical Interests Limited (PIL), a party in interest with respect to the Plans, provided that the price paid for the Property is no less than its fair market value at the time the sale is consummated.

Summary of Facts and Representations

1. The Plans are both defined contribution plans with 13 participants in each. As of March 31, 1983, the Profit Sharing Plan had assets of $763,125.17 and the Pension Plan has assets of $722,803.73. The trustees of the Plans (the Trustees) are John T. Bickmore, M.D., John H. Bolyes, Jr., M.D., and Lee Steinfurth, M.D. Each Trustee owns 25% of the shares of Dayton Ear, Nose & Throat Surgeons, Inc., the sponsor of the Plans (the Sponsor). Arthur Gardikes, M.D., a plan participant, owns the remaining shares of the Sponsor. The Trustees have the right to direct the investment of the Plans' assets.

2. On July 28, 1978, the Plan purchased the Property from Scott H. Cappel, an unrelated party with respect to the Plans, for investment purposes. On the same date, Dr. Boyles purchased an adjacent parcel of real property from Mr. Cappel.[1] The Plans paid $40,000 in cash for the Property with each Plan paying one-half of the purchase price and receiving a one-half interest in the Property. Since the purchase, the Plans have paid $1,286.89 in real estate taxes. The Plans have incurred no other holding costs with respect to the Property. The Property has produced no income for the Plans.

3. The Property has appreciated an average of 4.5% per annum since it was purchased. The assets of the Profit Sharing Plan, excluding its share of the Property, have appreciated an average of 10.7% per annum. The assets of the Pension Plan, excluding its share of the Property, have appreciated an average of 10.9% per annum. The Plans desire to convert the Property into cash in order to invest in assets that will provide a higher rate of return.

4. Accordingly, the Plans propose to sell the Property for $50,000 in cash to PIL. PIL is a partnership which is owned one-third by Dr. Boyles, one-third by Dr. Steinfurth, and one-third by Dr. Gardikes. On August 22, 1983, Donald E. Stout, MAI, appraised the Property and determined that the fair market value of the Property as of that date was $50,000. With respect to the property owned by Dr. Boyles which is adjacent to the Property, in a letter dated January 27, 1984, Mr. Stout states that the value of assemblage does not exist to any degree in this instance because the developer platted the individual lots equal to the optimum size for whatever improvements would normally be constructed in this development. The Plans will incur no costs with respect to the sale of the Property to PIL.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price of the Property was determined by an independent appraiser; and (c) the sale will enable the Plans to divest themselves of a non-income producing asset which is appreciating at a lower rate than the other assets of the Plans.

For Further Information Contact: David M., Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Pitometer Associates, Inc. Profit Sharing Plan (the Plan) Located in New York, New York

[Application No. D–5129]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application

[1] In this proposed exemption, the Department expresses no opinion as to whether the Plans' acquisition or holding of the Property violates any provision of Part 4 of Title I of the Act.

of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of loans (the Loans) by the Plan under the terms of a loan commitment (the Loan Commitment) of the lesser of $250,000 or an amount not to exceed 25 percent of the net assets of the Plan, to Pitometer Associates, Inc. (the Employer), provided the terms and conditions of the Loans are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Temporary Nature of Exemption: This exemption is temporary in nature and will expire ten years after the date of the grant.

Summary of Facts and Representations

1. The Employer is an engineering firm which has engaged in business throughout the world since 1904. The Employer specializes in waste water and trunk main surveys, water distribution studies and water measurement and special hydraulic investigations. The Employer maintains its principal offices at 100 Church Street, New York, New York.

2. The Plan is a non-contributory profit sharing plan that was established by the Employer on December 27, 1945 for the benefit of the Employer's eligible employees and their beneficiaries. As of December 31, 1982, the Plan had 43 participants and total assets of $1,460,858. The trustees of the Plan (the Trustees), who serve as directors or officers of the Employer, are Messrs. G. Brewster Cole, William F. H. Gros and William D. Hudson. The Trustees make investment decisions for the Plan.

3. Over the past several years, the Employer has found it necessary to enter the credit market on a short term basis to meet part of its cash flow needs at certain times of the year. These periods generally coincide with the payment by the Employer of periodic bonuses to its employees, or the unexpected arrival of other extraordinary expenses. To offset its cash flow needs, the Employer has entered into loans with third party lenders. Typically, these loans have been made at the prime rate or one-half of one point over the prime rate and have been repaid by the Employer within a six month period.

4. To pay the expenses incident to the operation of its business, the Employer requests an exemption that will allow it to borrow amounts, which when aggregated with other Loans to the Employer that are outstanding, represent the lesser of $250,000 or 25 percent of the net value of the Plan's assets. The Loans will be drawn in varying amounts by the Employer. Any such Loans will be repaid within five years. No Loan entered into under the Loan Commitment will be made or continued ten years from the date of the grant of this exemption.

5. The Loans will carry interest at the rate of one percent above the prime rate charged by the Irving Trust Company (Irving) of New York for similar-type loans. In addition, the interest rate will feature a floor of ten percent per annum. Mr. John Kilminster (Mr. Kilminster), who will serve as the independent fiduciary for the Plan in monitoring the Loans, will have the discretion to adjust the interest rate on a quarterly basis as of the first day of each quarter following the date of the making of a Loan. Mr. Kilminster will be empowered to adjust the interest rate upward and in excess of one percent over Irving prime if the circumstances dictate an increase is required. However, Mr. Kilminster will not have the power to reduce the interest rate below the 10 percent level.

6. As documentation of the transaction, the Plan, the Employer and Mr. Kilminster will enter into a loan agreement (the Loan Agreement) that will set forth the terms and conditions of the Loans as well as the rights of the parties. To evidence each of the Employer's Loans under the Loan Agreement, a separate promissory note will be issued. The note will require repayment over a period of no longer than five years in equal quarterly payments of principal plus accrued interest. Each note may be prepaid in whole or in part at any time and will not subject the Employer to a penalty or premium.

7. The Loans will be secured by a first security interest in all of the accounts receivable (the Receivables) of the Employer. The Plan's security interest in the Receivables will constitute a continuing general lien on all such Receivables, including those arising or coming into existence after the date the Loan Commitment is executed until the Loans are paid in full. The Plan's security interest in the Receivables will be granted pursuant to a security agreement and UCC financing statement which will be executed and filed with the New York Secretary of State. At all times, the value of the collateral will exceed 150 percent of the outstanding balance of the Loans. If the value of the collateral falls below 150 percent of the outstanding balance of the Loans, Mr. Kilminster will require that the Employer pledge additional security.

8. A description of the Employer's Receivables has been provided by Mr. John W. Lappin (Mr. Lappin), the Employer's accountant. Although Mr. Lappin describes both firm and unbilled Receivables in his letter to the Department dated November 10, 1983, the Employer has represented that it will pledge only firm Receivables as security for the Loans.

In his letter, Mr. Lappin states that in 1981, the Employer's balance sheet reflected year-end Receivables of $721,155 which included unbilled Receivables of $165,991. In 1982, Mr. Lappin represents, the year-end figures were $535,063 including unbilled Receivables of $143,354. Mr. Lappin explains that the figures for both years, including the unbilled amounts, are placed on the Employer's books after field work required on any given contract has been completed and the right to receive payment is firm. According to Mr. Lappin, the unbilled Receivables represent the final payments to be made under a given contract and are the equivalent of a "retainage" which is customary in most engineering and construction contracts.

Mr. Lappin also states that historically, the Employer's Receivables are very secure since the Employer's clientele consists largely of governments, municipalities and public authorities. During the year 1981, Mr. Lappin represents that the Employer collected the Receivables in full on the average, within 60 days of the time they were due. In 1982, Mr. Lappin states that the collection period was reduced to an average of 45 days.

9. As discussed above, Mr. Kilminster, an attorney having experience in the areas of estate administration and taxation and who has no present relationship with either the Plan or the Employer, has agreed to serve as the independent fiduciary for the Plan with respect to approving, enforcing and collecting the Loans. Mr. Kilminster's appointment is set forth in the Loan Agreement. In addition to the independent fiduciary duties described previously, Mr. Kilminster will have authority and responsibility for: (a) Reviewing Employer and Plan financial statements; (b) approving or disapproving amounts drawn by the Employer; (c) requesting and receiving monies from the Trustees for the purpose of making disbursements to the Employer or paying fees or expenses; (d) obtaining and holding promissory notes and other documents; (e) collecting principal and interest payments on the Loans; (f) enforcing collection on the promissory notes and the secured party's rights; (g) accelerating any Loan if default occurs under a promissory note, the security agreement or the Loan Agreement or if the conditions of the

exemption are not satisfied or maintained; and (h) taking any steps that are necessary to protect the interests of the Plan.

Mr. Kilminster states that he intends to treat each request by the Employer for a Loan as a separate transaction. He indicates he would feel constrained to approve these requests unless the circumstances which might affect the Employer's financial position and past loan history are not fully examined. He also states that whenever any Loan is proposed (or while any earlier Loan remains outstanding) he will periodically confirm that the position of the Receivables has not changed in any material way that may be detrimental to the Plan's security.

Mr. Kilminster states that he has reviewed the exemption application and the various documents that are to be executed at the time any individual Loan is undertaken. Based on the terms set forth therein, he considers the Loans to be an appropriate and suitable investment for the Plan and its participants and beneficiaries. He also feels that there are adequate safeguards to ensure that the Plan will be fully protected.

Among the factors considered in determining the suitability of this type of investment for the Plan, Mr. Kilminster states that he has examined the overall investment portfolio of the Plan and its cash flow need as reflected in the Plan's balance sheets for the years 1979–1982. Since the Plan's portfolio consists basically of stocks and bonds of a high investment quality, Mr. Kilminster asserts that the Plan's cash flow needs are very limited. In view of this situation, he thinks the addition of the Loans will comport very well with the basic diversification and investment scheme of the Plan since the notes to be given are in many respects similar to the corporate bonds already maintained in the Plan's portfolio. In fact, he states, they will add a desired element since they will be of relatively short duration and thus Plan assets will not be locked into a specified interest rate for extended periods of time.

In addition, Mr. Kilminster regards the interest rate that each promissory note will bear to be in the Plan's best interest because it is higher than what is available in the marketplace for investments of a comparable grade. He states that he has examined the Employer's Receivables and shares Mr. Lappin's opinion that the Receivables are an appropriate form of collateral. He thinks the Receivables will render the Plan fully secure in the event of a default on any Loan.

Mr. Kilminster also believes the 25 percent limitation on the amount of the Plan's assets that can be borrowed and the Plan's first security interest in the Receivables are adequate and prudent safeguards which fully protect the Plan. Additional safeguards, Mr. Kilminster notes, are provided to the Plan in the powers afforded him as the independent fiduciary.

10. In summary, it is represented that the proposed transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because: (a) The Loans will be approved and administered by Mr. Kilminster, who will monitor the Loans and also be authorized to protect the interests of the participants and beneficiaries of the Plan; (b) the Loans will be secured by a first security interest in all of the Receivables of the Employer; (c) any Loan made under the Loan Agreement will be limited to five years' duration; and (d) the Loans will at no time exceed 25 percent of the assets of the Plan.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of March 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–8565 Filed 3–29–84; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84–28]

NASA Advisory Council, Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee, Informal Advisory Subcommittee on Microgravity Science and Applications.

DATE AND TIME: April 2, 1984, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226B, 600 Independence Avenue SW., Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, D.C. 20546 (202/453–1420).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Microgravity Science and Applications will meet to develop a position paper for microgravity science and applications. The Subcommittee chaired by Dr. Robert F. Sekerka, is comprised of five members

The meeting will be open to the public up to the seating capacity of the room (approximately 10 people including the Subcommittee members and participants). The meeting has been scheduled for this date to coincide with an already-scheduled meeting of the full NAC Space Applications Advisory Committee to be held on April 3 and 4, 1984.

Type of Meeting: Open.

Dated: March 26, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-8506 Filed 3-29-84; 8:45 am]

BILLING CODE 7510-01-M

[84-29]

NASA Advisory Council, Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee, Informal Advisory Subcommittee on Remote Sensing.

DATE AND TIME: April 4, 1984, 1 p.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226B, 600 Independence Avenue, SW., Washington, DC. 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC. 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Remote Sensing was established to investigate the details of the NASA program in remote sensing on behalf of the Committee and report its findings to the Committee. The Subcommittee chaired by Mr. Ernest L. LaPorte is comprised of four members.

The meeting will be open to the public up to the seating capacity of the room (approximately 10 people including the Subcommittee members and participants). The meeting has been scheduled for this date to coincide with an already-scheduled meeting of the full NAC Space Applications Advisory Committee to be held on April 3 and 4, 1984.

Type of Meeting: Open.

Agenda:

April 4, 1984

1 p.m.—Review the Earth Radiation Budget Experiment.

2 p.m.—Review the Upper Atmosphere Research Satellite program.

3 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-8505 Filed 3-29-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Office of the General Counsel

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506:

1. Date: April 18-19, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: M-07.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after October 1, 1984.

2. Date: April 19-20, 1984.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted for Special Projects/ Programs Development Programs, Division of General Programs, for projects beginning after October 1, 1984.

3. Date: April 25, 1984.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

4. Date: April 26, 1984.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in History II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

5. Date: April 26-27, 1984.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Panel in Media, Division of General Programs, for projects beginning after October 1, 1984.

6. Date: April 27, 1984.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in English and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

7. Date: April 30, 1984.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in the Arts, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority To Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 84-8515 Filed 3-29-84; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel Social and Developmental Psychology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science

Foundation announces the following meeting:

Name: Advisory Panel for Social and Developmental Psychology.

Date and Time: April 18–20, 1984: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C.

Type of Meeting: Part Open—Open April 19—9:00 a.m.—11:00 a.m. Closed April 18—9:00—5:00. Closed April 19—11:00—5:00. Closed April 20—9:00—5:00.

Contact Person: Dr. Jean B. Intermaggio, Program Director for Social and Developmental Psychology, Room 320, National Science Foundation, Washington, D.C. 20550, telephone/202–357–9485.

Summary Minutes: May be obtained from the contact person as listed above.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Social and Developmental Psychology.

Agenda: Open—April 19, 9:00 a.m.—11:00 a.m. General discussion of research trends and opportunities in Social and Developmental Psychology.

Closed—to review and evaluate research proposals as part of the selection process for awards.

Reason for Closng: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF, on July 6, 1979.

Dated: March 26, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–8508 Filed 3–29–84; 8:45 am]

BILLING CODE 7555–01–M

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date, Time and Place: April 16, 1984—9:00 a.m.–6:00 p.m., Bldg. 26, Room 414, Laboratory for Nuclear Science and Engineering, Massachusetts Institute of Technology, Cambridge, Massachusetts.

April 17, 1984—9:00 a.m.–4:30 p.m., Conference Room, Bates Linear Accelerator, Middleton, Massachusetts.

Type of Meeting: Open.

Contact Person: Dr. Harvey B. Willard, Head, Nuclear Science Section, National Science Foundation, Washington, D.C. 20550, 202/357–7993.

Summary Minutes: May be obtained from Ms. Dawn Frohlich, Physics Division, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice on a continuing basis to both DOE and NSF on the management of and long range planning for basic nuclear science in the United States.

Agenda:

April 16, 1984—9:00 a.m.–6:00 p.m.

Presentations and discussions concerning the physics opportunities that can be addressed with a relativistic heavy ion collider facility. A round table/panel discussion of the accelerator performance criteria necessary for execution of the highest priority lines of research.

April 17, 1984—9:00 a.m.–4:30 p.m.

Continuation of above discussions, tour of Bates Facility, Subcommittee activities, and other business.

Dated: March 26, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–8510 Filed 3–29–84; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and Time: April 16 and 17, 1984—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Nancy L. Stanton, Program Director, Ecology (202) 357–9734, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: March 26, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–8509 Filed 3–29–84; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Reports, Recommendations and Responses

Reports Issued:

Marine Accident Report: Ramming of the Bayou Steel Company Pier Facility Two Miles South of LaPlace, Louisiana, by the Dutch Bulk Carrier M/V AMSTELVOORN, September 26, 1982 (NTSB/MAR–83/08) (NTIS Order No. PB83–916408).

Marine Accident Report: Ramming of the Poplar Street Bridge by the Towboat M/V CITY OF GREENVILLE and its Four-Barge Tow, St. Louis, Missouri, April 2, 1983 (NTSB/MAR–83/10) (NTIS Order No. PB83–916410).

Marine Accident Report: Sinking of the Charter Fishing Boat JOAN LA RIE III Off Manasquan Inlet, New Jersey, on October 24, 1982 (NTSB/MAR–84/02) (NTIS Order No. PB84–916402).

Highway Accident Report: Multiple Vehicle Collisions and Fires Under Limited Visibility conditions, Interstate Route 75, at Ocala, Florida, February 28, 1983 (NTSB/HAR–83/04) (NTIS Order No. PB83–916204).

Railroad Accident Report: Derailment of Burlington Northern Railroad Company Freight Train No. MTC–0718, near Crystal City, Missouri, July 18, 1983 (NTSB/RAR–84/01) (NTIS Order No. PB84–916301).

Railroad Accident Reports: Brief Format, Issue Number 2—1982 (NTSB/RAB–83/05) (NTIS Order No. PB83–917205).

Railroad Accident Reports: Brief Format, Issue Number 3—1982 (NTSB/RAB–84/01) (NTIS Order No. PB84–917201).

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703–487–4650 and to order subscriptions to reports call 703–487–4630.

Recommendations to

Aviation—*Federal Aviation Administration: Feb. 21: A–84–7:* In conjunction with the United Kingdom Civil Aviation Authorities, evaluate Rolls-Royce Modification 1736 and 1719 as presented in Rolls-Royce Dart Aero Engine Service Bulletin Numbers Da–72–423 and Da–72–443, respectively, for modification of flame tube suspension systems in Rolls Royce Dart 520 and 530 series engines to determine which of these modifications are appropriate for mandatory installation. Upon completion of this review, require the installation of the appropriate modification in applicable Rolls Royce Dart 520 and 530 series turboprop engines at the earliest feasible date. *Feb. 8: A–84–10:* Issue an Airworthiness Alert

(Advisory Circular 43-16) to operators of Piper model PA-28 airplanes advising of the hazard of operating high-time engines in very cold weather conditions without winterization kits on crankcase breather lines. *A-84-11:* Evaluate the design of crankcase breather line installations of all Piper model 28 airplanes and piper models with similar engine installations to determine the need to provide icing protection on crankcase breather tubes for cold weather operations, and take appropriate action to initiate a retrofit of those models of airplanes that need such protection. *Feb. 8: A-84-12:* Require that after December 3, 1984, only devices which meet the standards of TSO-C69a will be acceptable for installation on newly manufactured airplanes which are to be equipped with passenger evacuation devices. *A-84-13:* Specify a date by which airplane passenger evacuation devices which do not meet the standards of TSO-C69a must be taken out-of-service or upgraded to meet the standards of TSO-C69a. *Mar. 14: A-84-14:* Issue an air carrier maintenance bulletin to emphasize: (1) the need for air carrier airworthiness inspectors to require during the certification process that the air carrier's manuals and maintenance organizational structure conform to regulatory requirements regarding the separation of maintenance and inspection functions, and (2) the need to conduct surveillance in a manner that will verify that the air carrier is performing maintenance/inspections functions and duties in accordance with the requirements. *A-84-15:* Issue air carrier maintenance and operations bulletins to emphasize to air carrier airworthiness and operations inspectors the regulatory requirements related to the recording of mechanical irregularities in aircraft maintenance logs and the need for proper surveillance to confirm conformity with the requirements, including scrutiny of aircraft maintenance logs and other maintenance records to verify that applicable maintenance corrective actions correlate to mechanical irregularities recorded by flightcrews in the aircraft maintenance logs. *Mar. 9: A-84-16:* Extend the terms of FAA Order 8440.5A Section 5, Waiver of Section 91.79(a) and (c), Motion Picture and Television Flight Operations Manual, to require an FAA-approved flight operations manual for all types of aircraft.

Highway—*Motor Vehicle Manufacturers Association: Feb. 23: H-84-3:* Review current state-of-the-art technology related to motor vehicle fuel systems and determine which elements of that technology might be used in the design, engineering, placement in the vehicle, and protection of fuel system components to reduce breaches of the fuel system and to minimize fuel spillage if the fuel system is breached. Consider high-speed impacts and underride/override impact dynamics in selecting effective countermeasures. *H-84-4:* After selecting the technology to enhance fuel system integrity, strongly encourage all Association members to employ that technology in the manufacture of motor vehicles.

Marine—*Saint Lawrence Seaway Development Corporation: Feb. 8: M-84-1:* Establish a lighted range at Point Vivian for the channel centerline between Comfort Island Shoal and Pullman Island Shoal. *M-84-2:* Restrict large vessels from attempting to meet and pass at night in the Saint Lawrence River, American Narrows Channel, between Comfort Island Shoal and Pullman Shoal until a lighted range can be established on Point Vivian which accurately delineates the centerline of the channel between those shoals. *M-84-3:* Publish in suitable form for use by mariners the available Saint Lawrence River current and velocity survey measurement data, and update such information as additional survey data become available.

Railroad—*Burlington Northern Railroad Company: Feb. 21: R-84-4:* Issue instructions which embody the guidelines of the Association of American Railroads, the Federal Railroad Administration, and the Railway Progress Institute Track Train Dynamics program for train makeup to those personnel who are involved in the makeup of trains and provide training in the instructions. *R-84-5:* In situations where train makeup does not conform with the guidelines of the Association of American Railroads, the Federal Railroad Administration, and the Railway Progress Institute Track Train Dynamics program, advise train engineers so that they can take compensating action in handling the train. *Feb. 22: R-84-8:* Revise and enforce inspection and maintenance requirements for maintenance-of-way cars to be moved in revenue freight trains to make the cars suitable for safe operation up to the maximum speeds at which the cars will be operated. *R-84-9:* Revise the procedure for the issuance and cancellation of a restricting train order due to high ambient temperatures to require that the order be issued for a specific restricting speed and be cancelled by the dispatcher when the ambient temperature falls below a predetermined level.

Association of American Railroads: Feb. 21: R-84-6: Advise its members of the consequences of improper distribution of loaded and empty cars in trains as illustrated by the derailment on the Missouri Pacific Railroad on July 25, 1981, near Jacksonville, Texas; the derailment on the Illinois Central Gulf Railroad on September 28, 1982, near Livingston, Louisiana; and the derailment on the Burlington Northern Railroad on May 6, 1983, near Hallet, Oklahoma. *R-84-7:* Form an Advisory Committee to develop a methodology for the practical application in railroad operations of the guidelines on train makeup, train handling, and engineer training developed in the joint Association of American Railroads, Federal Railroad Administration, Railway Progress Institute Track Train Dynamics program. *Feb. 22: R-84-11:* Urge its member railroads to review and revise as necessary their procedures for inspecting, maintaining, and operating maintenance-of-way cars to be moved in revenue freight trains so as to prevent accidents similar to that which occurred near Crystal City, Missouri, on July 18, 1983. *R-84-12:* Notify the Safety Board of the results of the reviews by its member railroads of their procedures for inspecting, maintaining, and operating maintenance-of-way cars to be moved in revenue freight trains. *Mar. 15: R-84-13:* Immediately advise member railroads, shippers, and receivers that handle hazardous materials in tank cars of the accident at Baton Rouge, Louisiana, on July 30, 1983, and of the subsequent findings regarding improperly positioned excess flow valves for protection against an undesired outward flow of hazardous materials from tank cars during loading, unloading, maintenance, or repair operations. *R-84-14:* Immediately issue a service bulletin to all Association of American Railroads-certified facilities emphasizing the need to verify the proper installation, maintenance, and testing of excess flow valves on tank cars.

Federal Railroad Administration: Feb. 22: R-84-10: Require that maintenance-of-way cars meet the Railroad Freight Car Safety Standards or, in the alternative, impose operating restrictions on maintenance-of-way cars being moved in revenue freight trains to compensate for the actual mechanical condition of the cars. *Mar. 15: R-84-15:* Immediately initiate inspections of tank cars equipped with excess flow valves to determine the extent to which these tank cars may have improperly positioned excess flow valve seats, determine the cause of deficient conditions found, and require correction of deficiencies before inspected tank cars are returned to service.

Chemical Manufacturers Association: Mar. 15: R-84-16: Immediately advise its members of the hazardous materials accident at Baton Rouge, Louisiana, on July 30, 1983, and of the subsequent findings regarding improperly positioned excess flow valve seats, and alert them not to rely upon tank car excess flow valves for protection against an undesired outward flow of hazardous materials from tank cars during loading, unloading, maintenance, or repair operations.

The American Short Line Railroad Association: Mar. 19: R-84-16: Immediately advise its members of the hazardous materials accident at Baton Rouge, Louisiana, on July 30, 1983, and of the subsequent findings regarding improperly positioned excess flow valve seats, and alert them not to rely upon tank car excess flow valves for protection against an undesired outward flow of hazardous materials from tank cars during loading, unloading, maintenance, or repair operations.

Pipeline—*Municipality of Anchorage, Alaska: Mar. 22: P-84-5:* Require contractors and other persons who perform excavation activities to notify, at least 48 hours in advance of beginning excavations, operators of nearby underground facilities either by contacting each operator or by providing notice to a one-call excavation notification system. *P-84-6:* Encourage and assist operators of underground facilities in the Anchorage area to develop and implement a one-call excavation notification and damage prevention system.

Note.—Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include recommendation number in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopied will be billed at a

cost of 14 cents per page ($1 minimum charge).

Recommendation Responses From

Aviation—*Federal Aviation Administration: Feb. 23: A–83–61:* Is investigating the susceptibility of the hydraulic tubing in Fairchild (Swearingen) airplanes to stress of fatigue cracking. *Mar. 15: A–81–100:* The main cabin door markings of Nord 262 aircraft, operated by certificated air carriers, conform to those described in the flight attendant's manual. *Mar. 13: A–83–56:* Is conducting a special certification review of Mitsubishi MU–2 airplanes. *Mar. 15: A–82–132:* February 1984 issue of the General Aviation Airworthiness Alerts (Advisory Circular 43–16) emphasizes the proper maintenance and inspection of mixture control linkage assemblies of general aviation airplanes.

Highway—*Federal Highway Administration: Feb. 17: H–81–54:* Efforts to expedite, complete, validate, and increase the use of barrier impact computer simulation programs are underway. *Mar. 5: H–78–2:* Specifications for the design of dolphins, fenders, and other energy-absorption and/or vessel redirection devices for the protection of both bridge and vessel during an accidental impact have been developed by the Coast Guard through a research contract and have been submitted to FHWA for further action. *Mar. 19: H–82–51:* The issue of distance gap between the end of railroad-highway crossing gates and the middle of the road is addressed in the Tariff Control Devices Handbook issued in November 1983. *H–83–52:* Is studying the use of median barriers and channelizing devices at railroad/highway grade crossing to deter motorists from driving around lowered railroad crossing gates.

Rhode Island Department of Transportation: Feb. 17: H–83–51: Will provide information on the misuse of child safety seats to persons who instruct seat users on the use these seats.

Washington State Superintendent of Public Instruction: Feb. 17: H–83–67: Will require that any schoolbus interior that is refurbished must be done so in compliance with Federal Motor Vehicle Safety Standard 222.

American Association of Motor Vehicle Administrators: Feb. 21: H–84–2: Checked various State driver manuals and some privately issued ones and did not find any information about driving in smokes of any kind—either natural or chemical. Will discuss the smoke problem at it International Driver License, Driver Control Workshop.

State of New Jersey: Feb. 22: H–82–18: The Conference of Northeastern Governors passed a resolution calling for a uniform regional minimum drinking age at its December meetng. Raising the drinking age in New Jersey has resulted in a reduction in drunk driving fatal accidents.

Research and Special Programs Administration: Mar. 7: H–83–29: RSPA and FHWA are reviewing and rewriting the regulations governing the manufacture, maintenance, repair, and retest of DOT Specification MC–306, MC–307, and 312 cargo tanks. *H–83–30:* RSPA and FHWA have jointly funded an ongoing research study involving the integrity of DOT Specification MC–307/312 cargo tanks.

State of Massachusetts: Mar. 16: H–83–51: Will continue to emphasize the misuse of child passenger restraints in its safety programs.

California Highway Patrol: Feb. 29: H–83–67: Although supportive of the concept of upgrading seats and restraining barriers of pre-1973 type 1 schoolbuses to the specifications of Federal Motor Vehicle Safety Standard 222, implementation would be a problem because of product liability and costs.

Marine—*C.L. Dill Co., Inc.: Mar. 9: M–80–49 through –51:* Has no record of receiving recommendations regarding employee supervision at tank batteries and other hazardous locations in oil fields; employee training in emergency procedures; and employee attendance at safety meetings.

Marine Transport Lines, Inc.: Mar. 13: M–83–53: The Military Sealift Command intends to supply exposure suits to the nine Sealift Class Tankers which Marine Transport Lines operates as well as all contract operated tankers.

Faris, Ellis, Cutrone & Gilmore (representing the owner of the M/V TESTBANK): Mar. 14: M–81–36: Will forward recommendation regarding on-deck placement of containers with dangerous cargo on board vessels to the TESTBANK owners.

Texaco, U.S.A.: Mar. 12: M–80–44 through –48: Has ordered and has applied for permits to install signs warning where active pipelines cross navigable waters of the Mississippi River Delta to prohibit mooring with spuds or anchors and warning against smoking at tank batteries.

New Oreleans Steamboat Company: Mar. 16: M–81–34: The Natchez was guarding both the VTS channel and the bridge-to-bridge channel at the time of the accident with the Exxon Baltimore on Mar. 29, 1980. *M–81–35:* The Natchez has always participated fully in VTS.

American Bureau of Shipping: Feb. 14: M–84–9: Issued a revised circular recommending that surveyors consider structural gaugings at the drydocking intervals, which is very 30 months in the present ABS Rules, after a vessel reaches 20 years of age. *M–84–10:* Issued a revised circular indicating the allowable thicknesses for wastage at which hatch covers should be considered for extensive renewals or replacement of sections, and requesting surveyors to carry out gaugings of hatch covers at special surveys whenever there is an indication upon examination of serious general wastage. *M84–11:* Issued a circular to require the examination of the tops and bottoms of hatch covers visually for wastage at all annual surveys. .

Trans-Atlas Marine Corporation: Feb. 24: M–81–81: Participates in the New Orleans VTS System. All pilots are trained and cognizant of the inland rules of the road and the New Oreleans VTS System, and a notice to all pilots and crews about the VTS system is posted in the wheelhouse of all vessels.

U.S. Coast Guard: Feb. 22: M–83–45 and –46: Does not feel that modification of the raked bow barge design would have a significant effect on the extent of collision damage to other vessels and structures because of the amount of energy that must be absorbed. The use of extensive fendering would most likely result in some reduction in the extent of collision damge. *Feb. 23: M–83–79:* Is considering changing 46 CFR 185.25–1(d) to require a safety orientation announcement and a general list of conditions under which passengers will be requested or required to don life preservers on board small passenger vessels that operate on other than protected waters. *M83–80:* A regulatory requirement specifying that life preservers be worn by children when departing protected waters is too broad and cannot be justified. *M–83–81:* Is considering changing 46 CFR 180.25–5 to require a life preserver suitable for each person carried on board a vessel for any voyage. *Mar. 19: M–83–82:* Does not concur with the recommendation to establish a requirement that self-propelled vessels of 1,600 gross tons or greater navigating in narrow rivers, channels, and harbors of the United States have the steering gear compartment manned by a competent person trained to switch the steering gear to all alternate modes of control and operation. A properly designed, constructed, and maintained main and auxiliary steering system obviates the need for manning of the steering gear compartment. *M–83–83:* Issued a Notice of Proposed Rulemaking (NPRM) on Oct. 14, 1983, proposing that all self-propelled vessels over 1,600 gross tons be required to conduct emergency steering drills at least once every 3 months and to have instructions for steering gear changeover procedures permanently displayed on the navigating bridge and in the steering gear compartment. *M–80–42:* The NPRM published on Oct. 14, 1983, proposes to require each self-propelled vessel of 1,600 gross tons or greater navigating in confined or congested waters of the United States to have operating instructions and a block diagram that clearly and simply explain the changeover procedures for the remote steering gear control systems and steering gear power units on the vessel. *M–83–3:* The recommendation to have operating instructions for vital emergency equipment and vital ship data, such as stability information, printed in a language which is readily understood by the ship's officers was raised at a meeting of the International Maritime Organization Subcommittee on Ship Design and Equipment in Feb. 1984. *Mar. 2: M–83–50:* Existing boarding requirements for inflatable liferafts will be improved under provisions of the revised Chapter III on Lifesaving Systems and Arrangements to the Safety of Life at Sea Convention (SOLAS), 1974. *M–83–51:* The final rule published on Feb. 7, 1984, regarding requirements for vessels to carry exposure suits did not exempt vessels operating between 35 degrees north latitude and 35 degrees south latitude on the outer continental shelf in the Atlantic Ocean because the water temperature there may be below 60 degrees in the winter. *M–83–52:* The final rule published on Feb. 7, 1984, requires tank vessels, cargo and miscellaneous vessels, mobile offshore drilling units, offshore supply vessels, and

oceanographic vessels to have exposure suits for each crewmember when operating in areas where the water temperature is below 60 degrees. Small passenger vessels are not included in any plans for exposure suit requirements at this time. The revision of SOLAS Chapter III includes provisions for individual thermal protection for everyone on board ships with open life boats. Our regulation proposals to incorporate the new SOLAS requirements will include provisions for this equipment on oceangoing passenger vessels.

The Barge and Towing Industry Association: Feb. 29: M–83–89: Informed its members of the benefits of having formal qualification procedures to insure that operators piloting towing vessels have sufficient experience and knowledge regarding all areas of their assigned routes to navigate safely in all prevailing waterway conditions.

Federal Highway Administration: Mar. 5: M–81–20: Because of the low probability of occurrence of ship-bridge collisions, the extraordinary costs required to design bridge piers to withstand the massive forces associated with the impacts of large ships, and the limited funds available to carry out the national bridge program, the FHWA and the Coast Guard have agreed that it is usually neither cost-effective nor desirable to design all water piers in navigable waters to withstand the full impact loads of modern vessels. Instead, each bridge crossing is being evaluated on by case-case basis and the degree of pier protection determined for the particular navigational conditions associated with the crossing. *M–81–21:* Does not have the resources to conduct a study to determine which existing bridges over the navigable waterways of United States ports and harbors are not equipped with adequate structural pier protection; however, all highway bridges are now being inspected regularly by the respective highway agencies. *M–81–22:* The results of each bridge inspection are provided to the appropriate bridge authorities for the review and subsequent action to correct identified deficiencies.

United States Power Squadrons: Mar. 10: M–83–75: References to alcohol usage will be included in the rewritten Boating Course given to 40,000 to 50,000 persons annually.

Railroad—*The Kansas City Southern Railway Company, Louisiana & Arkansas Railway Company: Feb. 23: R–83–60 and –61:* While we will continue to closely monitor the performance of our operating employees in regard to intoxicants or narcotics, we do not plan to advise others of the contents of our instructions and procedures or the number of or outcome of checks that are made by supervisors.

Burlington Northern Railroad: Mar. 8: R–84–4: Placement of cars in a train cannot always conform to the guidelines of the Association of American Railroads (AAR), the Federal Railroad Administration (FRA), and the Railway Progress Institute Track Train Dynamics because of craft work agreements, blocking requirements, and train placement restrictions for placarded cars. *R–84–5:* BN's air brake and train handling rules include specific instructions regarding appropriate train handling and operation procedures with specific reference to train makeup. *Mar. 8: R–84–8:* Currently established inspection and maintenance instructions for maintenance-of-way cars will be reissued to all mechanical personnel. Regional field inspectors will be instructed to give increased attention to maintenance-of-way cars during their routine inspections to insure this equipment conforms to all applicable AAR and FRA rules and procedures. *R–84–9:* Has formulated guidelines to assist in reduction of track buckling occurrences which will alleviate the necessity for issuing a train order regarding ambient temperatures.

State of California: Mar. 2: R–83–45: Has requested the Public Utilities Commission to respond to the recommendation concerning the State's operating practice inspections of railroad operations.

Southern Pennsylvania Transportation Authority: Mar. 8: R–82–111: Will not be modifying the inward opening passenger doors in the existing diesel rail cars to facilitate passenger evacuation in emergency situations because the rail diesel cars are being taken out of service and will not be returned to service.

Association of American Railroads: Feb. 14: R–83–108 and –109: Has distributed a circular to member railroads concerning abnormal weather conditions that may adversely affect train movements.

Terminal Railroad Association of St. Louis: *Mar. 20: R–83–60:* Forwarded documents regarding supervisory procedures at crew-change terminals for determining that operating department employees coming on duty at any hour of the day are physically fit and capable of complying with all pertinent operating rules. *R–83–61:* Forwarded copies of training courses attended by railroad officers.

Pipeline—El Paso Natural Gas Company: *Mar. 2: P–83–31:* Each plant superintendent is responsible for reviewing his maintenance records at least once per month. *P–83–32:* All plants that operate reciprocating compressors will incorporate in their maintenance and operations manual appropriate torquing specifications for each compressor in critical service. *P–83–33:* Plant maintenance personnel will be instructed and tested in torquing procedures. *P–83–34:* All emergency plant plans will be reviewed to make sure that they contain proper instructions that explain the intended use and operation of all shutdown and blowdown facilities. *P–83–35:* Employees will go through a simulated fire drill and be tested at least once per year on emergency procedures. *P–83–36:* Emergency blowdown activators for compressor plants A & B at Blanco Station will be installed in 1984. *P–83–37:* It would be impossible to familiarize a volunteer fire department on a continuing basis because of the high turnover in such departments. Will use our own trained personnel to shut down and blow down the plant and contain the fire with existing firefighting facilities.

Alaska Public Utilities Commission: *Mar. 1: P–84–1:* It is more appropriate to implement one-call systems on a regional rather than a statewide basis where utilities have installed underground facilities for distribution of flammable materials. *P–84–2:* Would support legislation requiring persons excavating near underground utilities to contact the one-call system operator.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

March 27, 1984.

[FR Doc. 84-8584 Filed 3-29-84; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Panel for the Decontamination of Three Mile Island, Unit 2

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 will be meeting on April 12, 1984, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg, Pennsylvania 17101. The meeting will be open to the public.

The purpose of this meeting is for the Advisory Panel to discuss issues pertaining to the ongoing cleanup activities at the Three Mile Island Nuclear Station, Unit 2.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–7466.

Dated: March 27, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-8620 Filed 3-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company; Exemption

I.

Florida Power and Light Company (the Licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41 which authorize the operation of the Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) at steady-state power level not in excess of 2200 megawatts thermal. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Dade County, Florida.

II

Section III.A of Appendix R to 10 CFR Part 50 requires "two separate water supplies shall be provided to furnish necessary water volume and pressure to the main fire loop." In the case of Turkey Point Plant this required that Florida Power and Light Company (FPL) must, as a minimum (1) modify the existing on-site 500,000-gallon water tank by installing a new standpipe to dedicate a minimum of 300,000 gallons of capacity of that tank to fire protection purposes; (2) design, engineer, procure, and construct a new on-site water tank of 750,000-gallon capacity, to include a redundant water supply of at least 300,000 gallons; and (3) install an automatic starting diesel fire pump to supply the fire systems.

The schedule, set out in § 50.48(c)(2) applies to the installation of the modifications described above. That schedule requires that those modifications be installed nine months after the effective date of the rule, or by November 19, 1981. By letter dated November 9, 1981, the NRC granted FPL an exemption form the schedular requirements of 10 CFR 50.48(c)(2). The exemption extended the date by which Turkey Point Plant must be in compliance with Section III.A of Appendix R to 10 CFR Part 50 to March 31, 1984. The basis for granting the schedular exemption was the time required for engineering, procurement and construction associated with the modifications described above.

III

By letter dated February 10, 1984, FPL requests that an extension be granted to December 31, 1984, by which time they must be in compliance with Section III.A of Appendix R. The extension is required due to premature failure of protective coatings in both the existing and new Raw Water Storage Tanks (RWT) which contain the water supply for fire protection and identification of non-dedicated water connections on the fire main.

The problem was identified initially in preparing to place the new RWT in service. It was noted that rust spots were developing on the roof plating where the protective coating had failed. The upper portion of the existing tank was inspected indicating the original protective coating had completely failed on the interior ceiling and roof framing, the heavy rust scale resulting from the failed protective coating could impact the structural capability. The wall coating also exhibited cracks and blistering which could result in additional rusting.

In addition to the protective coating problem, water connections on the fire protection main have been identified which are not for fire protection purposes. Some of the connections were installed underground during the initial construction of Turkey Point fossil Units 1 and 2. These connections were not identified by the licensee or the NRC during the initial fire protection reviews. However, the licensee identified the connections during a recent internal audit and intends to remove all connections from the fire mains which are not dedicated for fire protection purposes.

The request for the schedular extension to December 31, 1984, is necessary to perform the following corrective actions:

(1) Make necessary repairs to the RWT's structure and protective coatings.

(2) Remove the connections from the fire protection main which are not for fire protection purposes.

(3) Perform modifications necessary to transfer the non-dedicated connections to the Service Water System.

(4) Perform other modifications to improve and enhance the Fire Protection System operability including installation of redundant jockey pumps.

The preventive and corrective maintenance performed on the RWTs will minimize future tank downtime and the removal of the non-dedicated connection from the fire protection main will assure dedication of the required water volume for fire protection purposes.

In the interim period, FPL will maintain one of the two RWTs available for a source of fire water and the capability to provide additional fire water from the discharge header of the three screen wash pumps. Each of the screen wash pumps are capable of supplying 1,680 gallons per minute and are sufficient to meet the maximum area of water demand. The analysis to support the adequacy of this interim action is provided in the licensee's letter dated May 7, 1980 relating to fire protection. Thus, the necessary redundancy of fire water supplies is met. This compensatory action coupled with the Turkey Point Fire Protection Program provides sufficient protection against fire hazards.

Based on the details provided above, the Commission has determined that an extension of the schedular requirements identified in § 50.48(c)(2) to assure compliance with Section III.A "Water Supplies for Fire Suppression System" of Appendix R to 10 CFR Part 50 should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to the schedular requirements of § 50.48(c)(2) as it relates to Section III.A of Appendix R to 10 CFR Part 50:

The date which FPL must be in full compliance with Section III.A of Appendix R to 10 CFR Part 50 is December 31, 1984.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 21st day of March, 1984.

For the Nuclear Regulatory Commission.

Edson G. Case,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-8617 Filed 3-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Plant Unit Nos. 3 and 4 located in Dade County, Florida.

The proposed license amendments were initially noticed December 21, 1983 (48 FR 56502). This notice includes requested changes provided in a submittal dated October 26, 1983 which were not included in the initial notice of December 21, 1983. The proposed amendments request the deletion of non-radiological Environmental Technical Specifications (Appendix B) which address the groundwater monitoring program and environmental protection limits. The justification for the requested deletions are based on the results of eight years of studies, the revised agreement with the South Florida Water Management District and an effective

National Pollutant Discharge Elimination System (NPDES) Permit from the Environmental Protection Agency in accordance with the licensee's applicaton for amendment dated September 12, 1983, as modified October 26, 1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possiblity or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The amendments would delete the nor-radiological monitoring programs related to the groundwater monitoring and environmental protection limits. The amendments would not change any current limitations related to the operation of the plants. Since no operational limitations are being changed, the staff proposes to determine that the amendments do not involve a significant increase in the probability or consequences of an accident from any accident previously evaluated, do not create the possibility of a new or different kind of accident from any accident previously evaluated and do not involve a significant reduction in a margin of safety. The staff, therefore, proposes to determine that the amendments do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission,. Washington, D.C. 20555, Attn: Docketing and Service Branch.

By April 27, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject mater of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involve no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephoine call to Western Union operator at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Branch Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication

date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Suite 1214, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 20th day of March 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 84-8618 Filed 3-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–388]

Pennsylvania Power & Light Company, Allegheny Electric Cooperative, Inc., Susquehanna Steam Electric Station, Unit No. 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF–22, to Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (licensees) which authorizes operation of the Susquehanna Steam Electric Station, Unit No. 2 (the facility) at reactor core power levels not in excess of 3293 megawatts thermal in accordance with the provision of the License and the Technical Specifications. Authorization to operate beyond five percent (164.4 megawatts thermal) is still under consideration and will require specific Commission approval.

Susquehanna Steam Electric Station, Unit 2 is a boiling water nuclear reactor located at the licensees' site in Luzerne County, Pennsylvania. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on August 9, 1978 (43 FR 35406).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–22, complete with Technical Specifications, (2) the report of the Advisory Committee on Reactor Safeguards, dated August 11, 1981, (3) the Commission's Safety Evaluation Report, dated April 1981, Supplement No. 1, dated June 1981, Supplement No. 2, dated September 1981, Supplement No. 3, dated July 1982, Supplement No. 4, dated November 1982, Supplement No. 5, dated March 1983, and Supplement No. 6 dated March 1984, (4) the Final Safety Analysis Report and amendments thereto; and (5) the Final Environmental Statement, dated June 1981.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of Facility Operating License No. NPF–22 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG–0776) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders can call (301) 492–9530.

Dated at Bethesda, Maryland, this 23rd day of March 1984.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 84-8619 Filed 3-29-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23261; 70–6964]

Central and South West Corp.; Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan

March 26, 1984.

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Dallas, Texas 75266–0164, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

By orders entered in File No. 70–6529, CSW was authorized to issue and sell through December 31, 1985, not to exceed 4,000,000 shares of its authorized and unissued common stock, par value $3.50 per share, pursuant to CSW's Dividend Reinvestment and Stock Purchase Plan ("Plan"). As of December 31, 1983, CSW has issued and sold pursuant to the Plan 3,261,199 shares of its common stock. CSW now requests authority to increase the number of shares of common stock authorized to be issued and sold under the Plan by 2,000,000 shares ("New Shares") to bring the total number of shares authorized to be issued and sold under the Plan to 6,000,000 shares. No other changes in the Plan are contemplated at this time. CSW states that since the effective date of the Plan, participation by shareowners has increased each year. Based on CSW's current estimate, approximately 2,702,702 additional shares will be issued under the Plan during the period January 1, 1984 to December 31, 1985, resulting in a total requirement of 5,963,901 shares. Proceeds derived by CSW from the sale of the New Shares will be applied through loans or equity contributions toward the continuing construction program of CSW's subsidiary companies.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested person wishing to comment or request a hearing should submit their views in writing by April 23, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8021 Filed 3-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20786; Filed No. SR-AMEX-84-9]

Self-Regulatory Organizations; Proposed Rule Change; American Stock Exchange, Inc.; Exchange's Equities Specialist Allocations Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 12, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or the "Exchange") hereby files for Commission approval a 12-month pilot program under the Exchange's equities allocations procedures which would permit a newly listed company which so desires to select its specialist from a list composed of seven specialist units selected by the Exchange's Committee on Equities Allocations.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The Exchange has previously filed and is awaiting Commission approval of its procedures for the evaluation of equities specialist performance and for the allocation and reallocation of equities (File No. SR-AMEX-83-27). These allocations procedures include a procedure which permits those newly listed companies which so desire to participate to a limited extent in the selection of their specialist. The purpose of this proposed rule change is to substitute for this procedure, on a pilot basis, a new modified procedure which will expand a company's participation in the section of its specialist, without significantly impinging on the integrity of the performance-based allocations process.

Under the current procedure, the Committee on Equities Allocations ("Allocations Committee")[1] submits a list of ten eligible specialist units to a newly listed company which has indicated its desire to participate in the specialist selection process. The Company may eliminate up to three units on the list from further consideration. The Allocations Committee then reconvenes to make its final selection from the remaining seven or more units.

In the Exchange's efforts to list new companies it has become clear that the selection of a specialist is extremely important to prospect companies, and the inability to be more directly involved in the selection process may be a disincentive to listing.

To address the concerns of these companies, the Exchange has adopted, on a 12-month pilot basis, a new procedure designed to increase company involvement in the allocation process. Under this procedure, the company would be given the choice of either letting the Allocations Committee acting independently select its specialist, or of participating in the process itself. If the company chooses to participate, the Allocations Committee would select a list of seven specialist units, based on the same performance-related criteria it presently uses for making allocations, and the company would be permitted to select its specialist unit from that list.

Moreover, whether or not the company chooses to participate, if a newly listed company should become dissatisfied with its specialist unit within the first year of listing, it would be permitted to request a change. Such a request could not be made until at least 120 days after the commencement of trading and the company would be expected to furnish an explanation of the basis for its dissatisfaction. If after counseling the company and the specialist unit such a change were still desired, the Exchange would reallocate the stock within 30 days. In any such reallocation the Exchange would follow its regular procedures, without any company involvement. Since the initial selection of a specialist unit under this new procedure would be in effect a conditional allocation, the subsequent reallocation would be without prejudice to the initial specialist.

The proposed procedure would be available only to those companies which complete the listing process during the pilot period; a company could only invoke the reallocation request once during the one year period following its listing.

The pilot program would allow newly listed companies greater participation in what is viewed by them as a major decision affecting the market for their securities, while preserving the basic concept of performance-based allocations procedures. The Allocations Committee, in furnishing the company with a list of seven specialist units, would continue to select the most eligible units for that particular stock, based on the perfomance criteria now used by Allocations Committees. The new procedure would thus continue to reward superior performance and encourage competition among specialists units for such new allocations.

To address the possibility that this new procedure could increase the likelihood of companies and specialists developing inappropriate or prohibited

[1] The Allocations Committee has been delegated authority by the Board to allocate securities, and to reallocate securities on the recommendation of the Committee on Specialist and Registered Trader Performance.

relationships, the Exchange intends to monitor the pilot program closely. The Exchange's rules and policies at present prohibit business and other types of relationships that might raise problems of conflict of interest, receipt of non-public information, and improper communications, and these policies will continue in place. During the pilot period, prospect companies and specialists will be reminded of the limits on their relationships. Additional surveillance measures will also be instituted which will be geared to close surveillance of trading in those companies which are participating in the pilot, as well as those specialists units which are allocated stocks under the new procedure.

(2) *Basis.* The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that the proposed procedure is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change also furthers the purposes of Section 11A(a)(1)(C)(ii) in that it will stimulate fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. Rather, the proposed rule change, by rewarding superior performance, will enhance competition among Exchange specialists, and, by improving the ability of the Exchange to attract prospect companies which desire greater participation in the specialist selection process, will enhance competition among markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 22, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8611 Filed 3-29-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2114; Amdt. No. 2]

Texas; Declaration of Disaster Loan Area

The above-numbered Declaration (49 FR 2041 January 17, 1984) and Amendment No. 1 (49 FR 6196 February 17, 1984), are amended in accordance with the President's declaration of January 7, 1984, to include Dimmit and Zavala Counties, Texas, because of damage from freezing temperatures beginning on or about December 22, 1983. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on May 8, 1984, and for economic injury until the close of business on October 8, 1984.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: March 23, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-8589 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 615200]

Texas; Designation of Disaster Loan Area

Colorado County in the State of Texas constitutes a disaster area because of a freeze which occurred during December 1983. Eligible small businesses may file applications for economic injury assistance until the close of business on December 27, 1984, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, 214–767–7571, or other locally announced locations. The interest rate for eligible applicants is 8 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 27, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-8588 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, South Carolina, will hold a public meeting at 9:30 a.m. on Tuesday, April 17, 1984, at the Marriott Hotel, 1208 Washington Street, Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call John C. Patrick, Jr., District Director, U.S. Small Business Administration, 1835 Assembly Street, Room 358, Columbia, South Carolina 29201—(803) 765–5373.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 12, 1984.

[FR Doc. 84-8584 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Public Meeting

The Small Business Administration, Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting at 9:30 a.m., on Wednesday, April 11, 1984, in Room 752, U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Valmer W. Cameron, District Director, U.S. Small Business Administration, Room 651, U.S. Courthouse Building, Post Office Box 2167, Spokane, Washington 99210, telephone (509) 456–3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 26, 1984.

[FR Doc. 84-8585 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Public Meeting

The Small Business Administration, Region X Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 9:00 a.m., on Wednesday, April 18, 1984, at the Prince Kuhio Federal Building, 300 Ala Moana, Room 3316 (3rd Floor), Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call David K. Nakagawa, District Director, U.S. Small Business Administration, 300 Ala Moana, Room 2213, Honolulu, Hawaii 96850, (808) 546–8950.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 26, 1984.

[FR Doc. 84-8586 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Public Meeting

The Small Business Administration Region X Advisory Council, located in the geographical area of Seattle, will hold a public meeting at 9:30 a.m., on Thursday, April 12, 1984, at 915 Second Avenue, Room 1948, Seattle, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present. For further information, write or call John J. Talerico, District Director, U.S. Small Business Administration, Room 1792, 915 Second Avenue, Seattle, Washington 98174, (206) 442–2786.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 26, 1984.

[FR Doc. 84-8587 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Fargo, North Dakota, will hold a public meeting at 9:30 A.M., Thursday, April 19, 1984, at the Federal Building, Room 319, 657 2nd Avenue North, Fargo, North Dakota, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration and others attending.

For further information, write or call Robert L. Pinkerton, District Director, U.S. Small Business Administration, 657 2nd Avenue North, Fargo, North Dakota 58102—(701) 237–5771, extension 5131.

Dated: March 26, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-8582 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting; Amended

The Small Business Administration, Region VIII Advisory Council, located in the geographical area of Sioux Falls, South Dakota, has cancelled its public meeting for Thursday, April 26, 1984 (49 FR 7689, March 1, 1984) and rescheduled as follows—Thursday, April 19, 1984, 9:00 a.m. to 3:00 p.m., at the Community Room, First National Bank in Sioux Falls, 100 South Phillips, Sioux Falls, South Dakota 57102, to discuss such matters as may be presented by members, the staff of the Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101 Security Building, 101 South Main, Sioux Falls, South Dakota 57102, 605/336–2980, Ext. 231.

Dated: March 26, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-8583 Filed 3-29-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Information Security Policy; Directive Concerning the Classification, Declassification and Control of National Security Information

AGENCY: Department of Transportation.

ACTION: Notice of directive concerning information security policy.

SUMMARY: The Department of Transportation is required by Section 5.3 of Executive Order 12356 of April 2, 1982, to publish in the **Federal Register** unclassified regulations that establish agency security policy and unclassified guidelines for systematic declassification review. Department of Transportation (DOT) Order 1640.4C constitute these regulations and guidelines. This notice publishes the directive, except for those portions that do not significantly affect the public. The directive is unclassified and is available for inspection in its entirety at the address below.

FOR FURTHER INFORMATION CONTACT: Thomas P. Colihan, Acting Chief, Security Staff, Department of Transportation, 400 7th Street, SW., Washington, D.C., 20590, Room 2318. The telephone number for this office is (202) 426–4677. The office is open Monday thru Friday, from 9:00 a.m. to 5:30 p.m. e.t.

Issued in Washington, D.C. on February 2, 1984.

Jon Seymour,

Deputy Assistant Secretary for Administration.

Classification, Declassification, and Control of National Security Information

1. *Purpose.* This Order implements Executive Order 12356, National Security Information, and Executive Order 10865, Safeguarding Classified Information Within Industry.

2. *Cancellation.*

a. DOT Order 1640.4B, Classification, Declassification, and Control of National Security Information, of 2–11–80.

b. DOT Order 1640.3C, National Security Information, of 11–21–79.

3. *Assignments.*

a. In addition to other actions directed by this Order, the Chief, Security Staff, Office of the Secretary, shall evaluate the overall application of and adherence to security policies and requirements prescribed herein and report his findings and recommendations to the Assistant Secretary for Administration and, as appropriate, to the heads of operating

administrations and the Secretary. The Chief, Security Staff, shall be the Departmental point of contact with the Information Security Oversight Office, established by E.O. 12065, and shall furnish such information as that office may require. The Chief, Security Staff, shall develop changes to Departmental directives which may be needed to comply with amendments to E.O. 12065, supplementing instructions from the National Security Council, or resulting from changed conditions.

b. Secretarial Officers and Heads of Operating Administrations shall assure:

(1) The effective administration of the provisions prescribed;

(2) That adequate personnel and funding are provided for this purpose, and;

(3) That corrective actions which may be warranted are taken promptly.

Paragraph

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Chapter I. General

1–1. Discussion

a. The interests of the United States and its citizens are best served by making information regarding the affairs of government readily available to the public. This concept of an informed citizenry is reflected in the Freedom of Information Act and in the current public information policies of the Executive Branch.

Within the Federal Government there is some official information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation and the safety of our people and our allies. To protect against actions hostile to the United States, of both and overt and covert nature, it is essential that such official information and material be given only limited dissemination.

To ensure that such information and material is protected against unauthorized disclosure, this Order identifies the information to be protected, prescribes classifications, downgrading, declassification and safeguarding procedures to be followed, and establishes a monitoring system to ensure its effectiveness.

b. This Departmental Order is intended to achieve a coordinated and uniform policy throughout the Department of Transportation (DOT) in maintaining the security of classified information. It is applicable to all classified information in the custody of DOT regardless of whether the information or material was produced within DOT or originated outside DOT and released to it.

1–2. Security Principles

a. Official information which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed "national security") is designated classified information. Classification of information shall be solely on the basis of national security considerations.

b. Knowledge or possession of classified information shall be permitted only to persons whose official duties or contractual obligations require such access, and only if they have been determined to be trustworthy. Unless both standards are met, i.e., need-to-know and trustworthiness, the individual obtaining access is an unauthorized person and his/her gaining access constitutes an unauthorized disclosure.

c. The policies, standards, and requirements established by this Order are designed to assure proper classification/declassification of information and to prevent unauthorized persons from gaining knowledge of information designated as classified. These principles shall be kept foremost in mind when local procedures are developed to implement the provisions of this Order.

1–3. Security Planning.

Security is not an end of itself. Rather, it is an integral part of operations and of program administration. Accordingly, managers of programs or projects which may involve classified information shall consult with the appropriate security element to assure that security planning, which includes classification and declassification planning, is provided at the outset and as the project develops.

1–4. Order Format and Use.

This Order is designed to be both a statement of Departmental policies and requirements and an employee operating manual. Headquarters, facility and office implementing procedures should be filed in the appropriate Chapter. In this way the reader may find easily and quickly the answers and guidance he/she is seeking. Requests for any modification or deviation from this Order, including supporting justification shall be submitted to the OST, Chief Security Staff, M–441, through appropriate channels.

1–5. Notification by Field Activities of Classified Material Held.

Field activities shall advise the security element of the appropriate region, district or national headquarters when any of the following occur:

a. An activity which does not have custody of classified material receives such material. The notification shall include a statement as to the highest classification level of the material received.

b. The highest classification level of the material held changes. For example, an activity which holds Confidential material receives Secret material, or an activity having had both Secret and Confidential material destroys or otherwise gives up custody of the Secret material.

c. An activity which had custody of classified material no longer possesses such material.

Chapter III. Declassification and Downgrading

3–1. Discussion

a. Information which is properly classified at the time it is developed does not necessarily require protection indefinitely. Most classified information has diminishing significance to the national security as time passes and as technological or other developments occur.

b. The lack of attention to downgrading and declassification in the past has resulted in the accumulation and protection of large volumes of material which actually no longer require protection, or which require a lesser degree of protection than afforded. Although attempts to correct this condition have been made, emphasis is still needed in this area.

c. The salient downgrading/declassification features of E.O. 12356 are:

(1) Declassification of classified material shall be given emphasis comparable to that afforded classification.

(2) Classified information shall be declassified as early as national security considerations permit.

(3) Decisions concerning declassification shall be based on the loss of the information's sensitivity with

the passage of time or on the occurrence of a declassification event.

3–2. Definitions

a. *Downgrade*—To determine that classified information requires a lesser degree of protection against unauthorized disclosure in the interest of national security than that currently assigned, e.g., Top Secret is downgraded to Secret; Secret is downgraded to Confidential. Material will be remarked to reflect this determination.

b. *Declassify*—To determine that information no longer requires protection against unauthorized disclosure in the interest of national security. Material will be remarked to reflect this determination, e.g., Top Secret, Secret or Confidential material is remarked as Unclassified.

3–3. Authority to Downgrade or Declassify

a. *Originally Classified Material.* Original classification authorities, a successor in capacity or a supervisory official of either, a higher authority, and the Departmental Security Review Committee, are authorized to downgrade or declassify information originally classified by DOT. In addition, the following headquarters security elements are authorized to downgrade or declassify information originally classified by an official within their respective organizational element and to resolve classification conflicts or doubts as to the appropriate classification of that information:

OST and DOT Administrations other than USCG and FAA-OST Security Staff
FAA—Office of Civil Aviation Security
USCG—Intelligence and Security Division
MARAD—Deputy Administrator; Deputy Administrator for Inland Waterways and Great Lakes; Chief Counsel; Associate Administrators for Maritime Aids, Shipbuilding and Ship Operations, Marketing and Domestic Enterprise, and Research and Development; Eastern, Central, Western, and Great Lakes Region Directors; Superintendent, U.S. Merchant Marine Academy; and Security Officer.

b. *Derivatively Classified Material.* Declassification authority designated above and the appropriate District or Regional security elements within the USCG and FAA are authorized to declassify or downgrade derivatively classified material when such action does not conflict with classification decisions evidenced by the source material or instructions from an original classification authority.

3–4. Marking New Material for Declassification or Downgrading

a. New material which derives its classification from information classified on or after August 1, 1982, shall be marked with the declassification date or event assigned to the source document.

b. New material that derives its classification from information classified prior to August 1, 1982, shall be treated as follows:

(1) If the source material bears a declassification date or event twenty (20) years or less from the date of origin, that date or event shall be carried forward on the new material.

(2) If the source material bears a downgrading date or event, that date or event shall be carried forward on the new material.

3–5. Notification to holders

a. Whenever information is declassified by appropriate authority, other than changes pre-determined to occur automatically, the authority making the determination shall notify all known holders of the change.

b. This notification shall include the authority for the change (name and title) and the effective date of the change. Notification may be by general notice rather than personal notice so long as the general notice is designed to achieve the intended result.

3–6. Automatic Downgrading or Declassification

Old material which is marked for automatic downgrading or declassification requires no further authority from the originator by any holder to remark the material. The marking itself conveys this authority.

3–7. Effect of Open Publication

The fact that information currently classified has been disseminated by a public medium of communication does not automatically mean that it has been declassified. Classification shall continue to be respected until advised to the contrary by the originating agency or higher authority. Questions as to the propriety of continued classification in these cases should be promptly brought to the attention of the originator. If the originator cannot be readily identified, the matter should be referred to the OST Chief, Security Staff.

3–8. Declassification of Presidential Papers

The Archivist of the United States has the authority to review for declassification or downgrading, information and material which has been classified by a President, his/her White House Staff or special committee or commission appointed by him/her and which the Archivist has in his/her custody at any archival depository, including a Presidential Library. Such declassification shall only be undertaken in accord with: (i) The terms of the donor's deed or gift, (ii) consultations with the Departments having a primary subject-matter interest, and (iii) the provisions of this Chapter with respect to the material of concern to DOT.

3–9. Mandatory Review for Declassification

a. E.O. 12356 requires that procedures be established to handle requests by a U.S. Citizen or permanent resident alien, a federal agency, or a State or local government, to declassify and release information. In order to be acted upon, a request needs to describe the information with sufficient particularity to permit the record to be identified and located. Agency responses to mandatory declassification review requests shall be governed by the amount of search and review time required to process the request. After review, the record or any reasonably segregable portion thereof that no longer is in the interest of national security shall be declassified and released unless withholding is otherwise warranted under applicable law.

b. Requests for classified records made under the Freedom of Information Act (FOIA), as amended, are processed differently than requests made under the Mandatory Review provision. (See Paragraph 3–11.)

c. An agency in possession of a classified document may not, in response to a request for the document made under the Freedom of Information Act or the Mandatory Review provision of E.O. 12356, refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classified.

3–10. Procedures for Submitting and Handling Requests for Mandatory Review

a. The Chief, Security Staff, M–441, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, is hereby designated as the official to whom a member of the public or another department or agency will submit a request for mandatory review of classified material produced by or under the primary cognizance of the Department of Transportation. Elements of the Department which may receive a

request directly shall immediately notify the Chief.

b. If the request involves material produced by or under the cognizance of the U.S. Coast Guard or the Federal Aviation Administration, the Chief will forward the request to the headquarters security staff of the element for action. If the request involves material produced by other Departmental elements, the Chief shall serve as the action officer.

c. Action offices shall:

(1) Immediately acknowledge receipt of the request and provide a copy of the correspondence to the Chief. If a fee for search of records is involved, pursuant to the Department of Transportation regulations, 49 CFR Part 7, in implementation of the Freedom of Information Act, the requester shall be so notified.

(2) Conduct a security review which shall include consultation with the office which produced the material and with source authorities when the classification, or exemption of material from automatic declassification, was based upon determinations by an original classifying authority.

(3) Assure that the requester is notified of the determination in a timely manner (or given an explanation as to why further time is necessary) and provide a copy of the notification to the OST Chief, Security Staff.

d. Whenever a request does not reasonably describe the records sought, the requester shall be notified that no further action can be taken without more specificity as to the records in question.

e. If the determination reached is that continued classification is required, the determination shall include a statement as to why the requested material cannot be declassified. The determination shall also advise the requester of the right to appeal. A requester who may wish to appeal a classification review decision, or who has not been notified of a decision after sixty (60) days, should submit the appeal to the Chairman, Security Review Committee, M–1, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590.

f. If the determination reached is that continued classification is not required, the information shall be declassified and the material remarked. The action office will then refer the request to the Director of the Office of Public Affairs or to the head of the operating element, as the case may be, responsible for the material to determine if it is otherwise available for public release under 5 U.S.C. 552 (The Freedom of Information Act) and implementing regulations.

(1) If the material is releasable, the requester shall be advised that the material has been declassified and is available. If the request involves the furnishing of copies and a fee is to be included, the requester shall be so advised pursuant to 49 CFR 7.91 through 7.95.

(2) If the material is not releasable, the requester shall be advised that the material has been declassified but that the record is exempt from disclosure, pursuant to the Freedom of Information Act, and that the provisions of 49 CFR 7.81, which pertains to appeals, is applicable.

g. Upon receipt of an appeal from a classification review determination based upon continued classification, the Departmental Security Review Committee shall immediately acknowledge receipt and act on the matter within thirty (30) days. With respect to information originally classified by or under the primary cognizance of DOT, the Committee, acting for the Secretary, has the authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the DOT-produced material was based upon a classification determination made by another department or agency, the Security Review Committee (SRC) will immediately consult with its counterpart committee for that department.

(1) If it is determined that the DOT material requires continued classification, the requester will be so notified.

(2) If it is determined that the material no longer requires classification, it shall be declassified and remarked. The Committee shall refer the request to the Director of the Office of Public Affairs, or the head of the operating element concerned, as the case may be, to determine if the material is otherwise available for public release under Title 5, U.S.C. Section 552, and implementing directives, and the provisions set forth in subparagraphs (1) and (2), paragraph f, above, shall be followed. A copy of the response shall be provided to the Committee.

3–11. Procedures for Handling Requests Under the Freedom of Information Act Involving Classified Records

a. Amendments to the Freedom of Information Act, Title 5, U.S.C., Section 552, authorize withholding of records from public availability which are "(A) specifically authorized under criteria established by an Executive Order to be kept Secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order."

b. Persons who request records from an agency under the provisions of the Act, and whose requests are denied, may petition the courts to enjoin the agency from withholding the record, and in this event, the burden is on the agency to sustain its actions.

c. The Amendments also impose time limits for determinations on FOIA reqeusts. A determination on an initial request must be made within ten (10) working days after receipt of the request. In case of an appeal to an initial denial, a determination must be made within twenty (20) working days after receipt of the appeal. Except for unusual circumstances, failure to make a determination within the stated time limits means that a requester has exhausted the administrative remedies and may bring suit immediately.

d. To assure that FOIA requests involving classified records are subjected to a thorough classification review and response is made within the specified time limits, the procedures in paragraphs e. and f. shall apply.

e. The procedure for initial requests involving classified records is as follows:

(1) The office having responsibility to act upon a FOIA request shall consult immediately with the appropriate security element which shall conduct a classification review.

(2) If the record is declassified, the action officer shall be so advised and a determination of releasability shall be made without further reference to security considerations. A copy of the declassification decision shall be forwarded to the OST Chief, Security Staff.

(3) If the record warrants continued classification, the action officer shall be advised prior to the expiration of the time limit. The action officer shall advise the requester of the denial following the provisions of 49 CFR 7.21, "Initial Determination."

(4) If the classification review cannot be completed within the statutory time limit, due to unusual circumstances, the security element will so advise the action officer. The action officer will arrange for an extension of time in accordance with the Act (5 U.S.C. 552 (a)(6)(B) and 49 CFR 7.25, "Extension" and implementing Departmental regulations.

(5) A copy of the determination to deny based on classification of the record shall be forwarded immediately to:

(a) The OST Director of the Office of Public Affairs, the General Counsel, or

to the head of an operating element, as the case may be; and

(b) The OST Chief, Security Staff, through the appropriate headquarters security staff.

f. The procedure for receipt of an appeal for reconsideration of release of a classified record is as follows:.

(1) The Departmental official receiving the appeal shall immediately refer the matter to the Departmental Security Review Committee which shall conduct a classification review. With respect to information originally classified by or under the primary cognizance of the Department, the Committee, acting for the Secretary, has authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the record produced in the Department is based upon a classification determination made by another department or agency, the Security Review Committee shall consult immediately with its counterpart committee for that department. Before reaching a decision the Committee may consult with additional departments or committees as may be appropriate.

(2) If the Committee determines that the record is in fact properly classified pursuant to an Executive Order, the Committee shall so inform the head of the operating element concerned and the OST General Counsel. The head of the operating element concerned, or the General Counsel, as the case may be, shall issue a final denial to the requester.

(3) If the Committee determines that the record no longer requires classification, the head of the operating element concerned or the General Counsel, as the case may be, will be so informed. The head of the operating element or the General Counsel, as the case may be, shall determine if the material is otherwise available for public release and notify the requester.

(4) In its deliberations and notification to the head of the operating element or the General Counsel, as the case may be, the Committee shall determine, to the maximum extent possible, what portions of a requested record contains information properly classified and what unclassified portions may be reasonably segregated for the purpose of public availability.

(5) Actions upon appeal for reconsideration of requested records shall be completed within the prescribed time limits.

g. The OST Chief, Security Staff, is designated as the officer to whom another department or agency should submit a request for a classification review of classified material produced by or under the primary cognizance of the Department. If the reason for the review is based upon a request received by the other department or agency under the Freedom of Information Act, the Chief shall immediately inform the Chairman of the Security Review Committee who shall assure that action which is appropriate to the circumstances is taken. If the reason for the request for review is not based on the Freedom of Information Act, the Chief shall refer the matter to the operating element concerned or shall act directly on the matter. In either event, he shall assure that a proper and timely response is made.

3–12. Public Availability of Declassified Information

a. It is a fundamental policy of DOT to make information available to the public to the maximum extent permitted by law. Information which is declassified, for any reason, loses its protective status in the interest of national security. Accordingly, declassified information shall be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Department of Transportation regulations (49 CFR Part 7) in implementation of the Freedom of Information Act and public information policies and procedures.

b. Information may be classified or reclassified after an agency has received a request under the Freedom of Information Act (5 U.S.C. 552) or the order if such classification meets the requirements of the order and is accomplished personally and on a document-by-document basis by officials designated by the Order.

Chapter XI. Dissemination of Classified Information

11–1. Discussion.

Information has no real value unless it is made available to those who can use it. This principle applies also to classified information. However, The Dissemination of Classified Information is Limited to Those Whose Official Duties Require Knowledge or Possession Thereof and Further to Those who Will Respect This Limitation.

11–2. Basic Provisions

a. Classified information may be released only to persons who have an official need for the information and only after they have been determined by designated authorities to be trustworthy for the classification level of information to be disclosed. For example, persons who are cleared at the SECRET level may not be given access to information at the TOP SECRET LEVEL. However, clearance for one level, i.e., TOP SECRET, conveys authority for release of information classified at lower levels, i.e., SECRET or CONFIDENTIAL when a need for release exists. The mere fact that an individual is employed by DOT or another Department or Agency of the Government or is a member of the Armed Forces does not mean that he has been Cleared for Access to Classified information.

b. A security clearance shall be administratively rescinded when an individual no longer requires access to classified information in the performance of official duties. Likewise, when an individual no longer needs access to a particular security classification category, the security clearance will be adjusted to the classification category still required for the performance of his/her duties. In both instances, such action shall be taken without prejudice to the person's eligibility for security clearance should the need arise again. DOT Order 1630.2, Personnel Security Program, sets forth policies, standards, procedures, and designated authorities for issuing and withdrawal of security clearances for DOT personnel.

c. After a person has been found eligible for access to classified information, but before being allowed such access, the individual shall be required to sign a SF–189, "Classified Information Nondisclosure Agreement". The completed agreement will be retained in a file system that will assure its expeditious recovery for the 50 year retention.

d. Access to certain types of information may require additional authorization and controls. As an example, a person having access to Sensitive Compartmented Information (SIC) would be required to sign a Form 4193, "Sensitive Compartmented Information Nondisclosure Agreement".

e. Supervisors are responsible for controlling the dissemination of classified information received or generated in their offices to persons under their jurisdiction.

f. The responsibility for determing whether an individual has a need for specific items of classified information rests with the person or activity which has possession or control of the information and not with the prospective recipient.

g. Classified material originated by another department or agency and furnished to DOT shall not be further distributed outside DOT without the prior consent of the originating

department or agency. This restriction applies to the distribution to contractors who require the informatin in performance of DOT contracts.

h. Classified material shall not be released to an employee or other person for his/her private use (personal, commercial, or as background material) even though the individual may have been partly or solely responsible for producing the material.

i. Before approving a release of classified information to a person who serves in more than one capacity, e.g., a contractor employee who also acts as a private consultant, the releasing official shall determine in which capacity the intended recipient is acting and will follow the release and clearance procedures established for the appropriate category.

j. Personnel shall refuse access to classified information for which they lack either the required authorization or need-to-know.

k. Officials who disclose classified information verbally will insure that the recipients have the proper security clearance and also advise the recipients of the classification of the information divulged.

l. Additional provisions for dissemination in connection with visiting are set forth in Chaptr XII.

11–3. Dissemination within the Executive Branch.

Classified information originated by DOT activities may be disseminated to other departments and agencies of the Executive Branch as necessary for the conduct of official business.

11–4. Dissemination Outside the Executive Branch.

Classified information shall not be disseminated outside the Executive Branch without the specific authorization of designated officials as indicated below. Classified material which is to be physically released to the U.S. entities outside the Executive Branch shall be marked as prescribed by Chapter IV.

11–5. To the Congress

a. Provided other Departmental policies and procedures regarding legislative affairs are met, classified information may be disseminated to the Congress when necessary in the interests of the national security and as authorized by the Secretary or the head of an operating administration. As used herein, the Congress includes members, committees, subcommittees, and staffs of members and committees.

b. DOT personnel who are to appear as witnesses before a Congressional Committee or who will met with staff representatives shall obtain prior approval from an authority designated above for the disclosure of classified information which he/she anticipates will be requested.

c. A DOT witness who is requested to disclose classified information which he/she has not been authorized to release shall respectfully state that he/she does not have authority to testify on the matter but that he/she will endeavor to obtain authority or have the information furnished.

d. Witnesses shall request that classified testimony be given in Executive session only, that any record of such testimony be identified as classified and not appear in any document subject to public inspection or availability, and shall obtain the assurance of a committee representative that everyone present has a security clearance commensurate to the classification of the information to be released or discussed.

e. Offices which release classified documents are responsible to assure that they will be provided adequate physical safeguards.

f. Personal communications to Congress shall not include classified information. Classified information shall not be furnished for further release to a constituent.

g. Classified information to be disclosed shall be reviewed specifically to assure that the assigned classification is still valid.

11–6. To Representatives of the General Accounting Office (GAO)

Properly cleared and identified representatives of the GAO may be granted acess to DOT classified information at DOT activities when such information is relevant to the performance of their statutory responsibilities and duties in accordance with the following:

a. The GAO will give advance notice to the heads of DOT activities to be visited. Each announcement of a planned visit will include the purpose of the visit, names of the representatives, and if access to classified information is anticipated, a certification as to the level of clearance of each representative.

b. The following GAO officials are authorized to certify security clearances: the Comptroller General, his Deputy, and Assistants; the General Counsel and Deputy General Counsel; the Director and Deputy Director, Office of Policy; the Directors, Deputy Directors, Associate Directors, and Assistant Directors of the following Divisions: General Government Resources and Economic Development, Resources and Economic Development, Manpower and Welfare, International, Transportation and Claims, Procurement and Systems Acquisition, Federal Personnel and Compensation, Logistics and Communications, Financial and General Management Studies; and Regional Managers.

c. GAO personnel can be identified by special credential cards issued by the Comptroller General. Each card is serially numbered and bears the photograph and signature of the authorized holder.

d. Requests for the following types of information shall be forwarded to the OST Chief, Security Staff, for the determination of whether or not the information is relevant to the performance of the GAO's statutory responsibilities and for authorization for release or access:

(1) Top Secret information;

(2) Other sensitive classified information falling in the general areas of tactical operations, intelligence and communications security; and

(3) Classified information originated by another department or agency of the Executive Branch, including FBI reports.

e. When classified documents are furnished to GAO representatives, they shall be informed of the classified nature of the information and of the need for safeguarding it properly. In this connection, the Comptroller General has agreed to establish a security system at least equal to that prescribed by the Executive Branch.

11–7. To the Government Printing Office (GPO).

Classified material, except TOP SECRET and similarly unique material, may be released to GPO plants, Washington and field, for reproduction when necessary as determined by DOT officials responsible for meeting printing and reproduction needs. The Public Printer has established policies and standards commensurate with those of the Executive Branch for the clearance of GOP personnel and for the safeguarding of classified information.

11–8. To the Judiciary

Every effort shall be taken to prevent the disclosure of classified information in proceedings before civil courts or a general courts-martial. If classified information becomes, or it appears that it might become, involved, the matter will be referred immediately to the OST General Counsel. The General Counsel in consultation with the OST Chief, Security Staff, will furnish advice and

guidance as appropriate to the circumstances of the given situation.

11–9. To Foreign Governments, Foreign Nationals, and International Organizations

a. The release of classified information to foreign nationals (orally, visually or in documentary form) requires special attention and controls. This paragraph deals only with the protection and controlled release of classified information. Other Departmental directives in the area of international relations should be consulted also. The term Foreign National includes a U.S. citizen acting as a representative of a foreign government or firm and is defined in Appendix 2—Item 23.

b. In rate instances, a DOT activity may wish to hire a foreign national as an employee or consultant in his/her capacity as a private individual. In this regard, the provisions of applicable directives and the Federal Personnel Manual will be followed. In addition, if access to classified information is involved, the activity or office shall submit a request to the security manager of the headquarters of the respective operating administration or the OST Chief, Security Staff for authorization together with necessary personnel security forms. The following requirements shall be fulfilled:

(1) The request shall identify precisely the classified information intended for release. The security staff shall determine RELEASIBILITY of the information in the manner described below as though the information were to be released to the government of the country of which the individual is a national. Activities shall permit access only to that classified information for which authorization has been obtained. Procedural controls shall be established to effectively screen all information furnished to the foreign national employees.

(2) A full field investigation shall be completed and evaluated before access is granted. Interim authorizations are not permitted. Since investigations overseas will be involved, delays in completing the investigation should be anticipated. If it is not possible to obtain full investigation coverage, authorization shall be denied. Upon completion and evaluation, a clearance as defined by Appendix 2, Item 13, will not be issued. Rather, authorization will be granted for access only to specifically identified information.

c. Except for the above, classified information as a matter of principle and policy is not made available to a foreign national as an individual, but is disclosed to his/her government. By this means, the parent government accepts responsibility for the clearance of the individual and for the protection of the information.

(1) Policies governing the disclosure of classified military information to foreign governments are formulated by the National Military Information Disclosure Policy Committee (NDPC). Releases of certain other classified information, including Restricted Data, intelligence, and communications security information, are made pursuant to policies established by the agency or interagency entity having cognizance of the information proposed for release. Often the determination of cognizance is difficult and involved and, in many cases, more than one department or agency may need to be consulted for approval.

(2) As a prerequisite for release the department or agency proposing such release must make a clear determination that the benefits to the U.S. outweigh the disadvantages of disclosure. The cognizant department or agency must concur in this determination.

(3) The foreign government proposed as a recipient of U.S. classified information must officially assure this government that the information will be used only for official purposes, will be afforded protection at least equal to our requirements, will not be released to any other person or nation without our express permission, and corporate or proprietary rights (if any) in the information will be respected.

d. No release of classified information to a foreign national or foreign government may be made by a DOT activity without the express consent of the chief of the security manager of the headquarters of the appropriate operating administration or the OST Chief, Security Staff.

e. Application for visits of foreign nationals to DOT activities wherein access to classified information may be involved, shall be made to the appropriate security manager or OST Chief, Security Staff, at least thirty days in advance of the proposed visit. In the case of a civilian or military representative of a foreign government application may be made by a civilian or military attaché of the mission of the country concerned. For all other foreign nationals (including U.S. citizens representing foreign interests), application shall be made by the Chief of Mission (ambassador, minister, etc.) of the country concerned. Applications shall contain the following information concerning the proposed visitor:

(1) Name in full, rank, title, and position;

(2) nationality, date and place of birth (in case of a civilian, furnish passport number);

(3) employer or sponsor (if other than government making appliction);

(4) name and address of installation(s) to be visited;

(5) date, time, and duration of proposed visit;

(6) purpose of visit in detail, including estimated degree of access required;

(7) security clearance status of visitor with his/her own government;

(8) where known and appropriate, names of individuals to be visited; and

(9) a certification that the visitor has been subjected to a military and political screening and does not constitute a security risk to the United States, that the visit and visitor are officially sponsored by his/her government which has officially cleared him/her to receive information on the stated purpose, that responsiblity for the security of the information obtained is officially accepted by his/her government, that all information obtained will be used for official purposes only and will not be released to any other person or nation without the express consent of the U.S. Government, and that corporate or proprietary rights involved, patented, or not, will be respected and protected.

f. Requests for documentary release of classified information shall be processed generally in accordance with the procedures prescribed in 11–9c above. Documents containing classified information approved for release shall be delivered to the appropriate security manager or OST Chief, Security Staff for onward transmission by means appropriate to the circumstances.

g. It is emphasized that these provisions apply to all situations where in a foreign national may gain access to classified information in the custody of DOT. They apply to visits of DOT personnel to foreign countries, participants in exchange missions, conferences, meetings, symposia, etc. To avoid embarrassment, personnel should be careful to avoid firm initations or commitments to foreign nationals which may involve access to classified information until the express consent for acess is obtained. Other department or agency approval of sponsorship of a foreign national visit, sometimes referred to as a clearance, does not authorize access to classified information in the custody of DOT. Any proposed release of, or access to, classified information involving a foreign national, which is not covered in these provisions shall be submitted to the appropriate security manager, or

chief, Security Staff, OST, for handling on a case-by-case basis.

(1) That he/she will abide by regulations issued by DOT:

11–10. To Historical Researchers.

a. Persons outside the Executive Branch who are engaged in historical research projects may have access to classified information provided that: (1) Access to the information will be clearly consistent with the interests of national security, and (2) the person to be granted access is trustworthy.

b. The provisons of this paragraph apply only to persons who are conducting historical research as private individuals or under private sponsorship and do not apply to research conducted under government contract or sponsorship. Further, the provisions are applicable only to situations where the classified information concerned, or any part of it, was orginated by DOT or by DOT contractors or where the information, if originated elsewhere, is in the sole custody of DOT. If any person requests access to material originated in another agency or to information under the exclusive jurisdiction of the National Archieves and Records Service, General Services Administration, he/she should be referred to the other agency or to the National Archives and Records Service.

c. When a request for access to classified information for historical research is received, it will be referred to the appropriate local security office. The security office shall obtain from the applicatnt completed Standard Form 86 in triplicate, Investigation Data for Sensitive Position, and Stndard Form 87, Fingerprint Chart; a statement in detail to justify access, including identification of the kind of information desired and the organization or organizations, if any, sponsoring the research; and a written statement (signed, dated, and witnessed) with respect to the following:

(1) That he/she will abide by regulations issued by DOT:

(a) To safeguard classified information: and

(b) To protect information which has been determined to be proprietary or privileged and is not eligible thereby for public dissemination.

(2) That he/she understands that any classified information which he/she receives affects the security of the U.S.

(3) That he/she acknowledges an obligation to safeguard classified information or privileged information of which he/she gains possession or knowledge as a result of his/her access to files of the Department.

(4) That he/she agrees not to reveal to any person or agency any classified information or privileged information obtained as a result of his/her access, except as specifically authorized in writing by the DOT and further agrees that he/she shall not use the information for purposes other than that set forth in his/her application.

(5) That he/she agrees to authorize a review of his/her notes and manuscript for the sole purpose of determining that no classified information or material is contained therein.

(6) That he/she understands that failure to abide by conditions of this statement will constitute sufficient cause for cancelling his/her access to classified information and for denying him/her any future access, and may subject him/her to criminal provisions of Federal law as referred to in this statement.

(7) That he/she is aware and fully understands the provisions of Title 18, U.S. Code, Crimes and Criminal Procedures, and of the Internal Security Act of 1950, as amended. Title 50, U.S. Code, prescribes, under certain circumstances, criminal penalties for the unauthorized disclosure of information respecting the national security and for loss, destruction or compromise of such information.

(8) That this statement is made to the U.S. Government to enable it to exercise its responsibilities for the protection of information affecting the national security. That he/she understands that any material false statement which he/she makes knowingly and willfully will subject him/her to the penalties of Title 18, U.S. Code, Section 1001.

d. The security office shall process the forms in the same manner as specified for a preappointment National Agency Check (NAC) for a critical-sensitive position. Upon receipt of the completed NAC, the security office, if warranted, may determine that access by the applicant to the information will be clearly consistent with the interests of national security and the person to be granted access is trustworthy. If deemed necessary, before making its determination, the office may conduct or request further investigation. Before access is denied in any case, the matter will be referred through channels to the OST Chief, Security Staff, for review and submission to the Secretary for final denial.

e. If access to TOP SECRET, intelligence or communications security information is involved, a full field investigation is required. However, this investigation shall not be requested until the matter has been referred through channels to the OST Chief, Security Staff, for determination as to adequacy of the justification and consent of other agencies as required.

f. When it is indicated that an applicant's research may extend to material originating in the records of another agency, approval must be obtained from the other agency prior to the grant of access.

g. Approvals for access shall be valid for the duration of the current research project but no longer than two years from the date of issuance, unless renewed. If a subsequent request for similar access is made by the individual within one year from the date of completion of the current project, access may again be granted without obtaining a new NAC. If more than one year has elapsed, a new NAC must be obtained. The local security office shall promptly advise its security manager of the appropriate headquarters, of all approvals of access granted under these provisions.

h. An applicant should be given access only to that classified information which is directly pertinent to his/her approved project. He/she may review files or records containing classified information only in offices under the control of DOT. Procedures should be established to identify classified material to which he/she is given access. He/she should be briefed on local procedures established to prevent unauthorized access to the classified material while in the custody, for the return of the material for secure storage at the end of the daily working period, and for the control of his/her notes until they have been reviewed. In addition to the security review of the applicant's manuscript, the manuscript should be reviewed by appropriate offices to assure that it is technically accurate insofar as material obtained from the Department is concerned and is consistent with the Department's public release policies.

11–11. To Former Presidential Appointees

Persons who previously occupied policy-making positions to which they were appointed by the President may be granted access to classified information or material which they originated, reviewed, signed, or received while in public office, provided that:

a. It is determined that such access is clearly consistent with the interests of national security; and

b. The person agrees to safeguard the information, to authorize a review of his/her notes to assure that classified information is not contained therein, and that the classified information will

not be further disseminated or published.

11–12. To Contractors.

Classified information may be disclosed to DOT contractors, subcontractors, bidders, and grantees, and to contractors of other Government agencies, provided access to the information is necessary to the performance of the contract and required security clearances have been issued (see Chapter XII).

11–13. To the National Defense Executive Reservists (NDER's).

For the purposes of dissemination, members of the DOT NDER program are considered to be in the same category as employees. Classified information may be disclosed to DOT NDER's for which they have a need provided clearances have been issued pursuant to the provisions of DOT Order 1630.2, Personnel Security Program. However, classified material shall not be physically released to the custody of NDER's except upon request to the Director of Emergency Transportation, RSPA, and in accordance with procedures established by the latter after consultation with the OST Chief, Security Staff.

11–14. To Reserve Military Personnel for Training and to Retired and Inactive Status Military Personnel.

The Commandant, U.S. Coast Guard, shall establish policies and procedures for the dissemination of classified information to reserve, retired, and inactive status personnel. Releases to retired and inactive status personnel shall be on a selective basis, limited to those persons and to that information deemed warranted in the furtherance of the USCG or overall Departmental mission. Dissemination shall be orally or visually as distinguished from the physical release of documentary material. Classified information to be used in training courses for reserve personnel shall be screened and justified.

11–15. Contact with News Media.

No person in DOT will discuss with or provide classified information to the news media. All contacts with the news media involving classified information, whether written or oral, will be referred to the OST Chief, Security Staff. The security element shall be consulted before any commitment to or understanding with the individual or entity has been made.

11–16. Prepublication Review.

Persons having access to Sensitive Compartmented Information (SCI) will be reqired to submit for security review to the Headquarters Security Staff all information or materials, including works of fiction, which contain or purport to contain SCI or description of activities that produce or relate to SCI or are believed to be derived from SCI. The request must be submitted in written form with complete justification.

11–17. Dissemination Through Meetings.

a. DOT activities which host or convene a classified conference, symposium, seminar, exhibit, or scientific and technical gathering (hereinafter referred to as a meeting) shall assure that security measures, appropriate to the circumstances, are taken. Requirements include, but are not limited to, the following:

(1) All persons attending the meeting shall be properly authorized and have a need for the information. In this regard, all attendees may not have a need for all of the information to be presented, particularly at a meeting covering a wide range of topics. In such instances, the agenda should be drawn and the meeting conducted in a manner to provide for selective attendance.

(2) Attendees shall be positively identified before being admitted to the meeting room.

(3) Persons who present classified information shall be advised of any limitations on their presentations which may be necessary because of the level of clearance or need-to-know of certain members of the audience. The speaker is responsible also for seeking such guidance and for keeping his/her disclosures within the prescribed limits.

(4) Notes, minutes, summaries, recordings, proceedings, reports, etc., on the classified portions of the meeting shall be safeguarded and controlled throughout the duration of the meeting. Such material, as appropriate, shall be forwarded to attendees by secure means at the conclusion of the meeting rather than being handcarried by them from the meeting site (except for local attendees).

(5) Physical and technical security controls shall be established as appropriate to the classification and sensitivity of the information to be discussed. Because of the security hazards inherent in the use of any normally public meeting place for the presentation or discussion of classified information, classified meetings or classified sessions of a meeting, shall, whenever possible, be held only on a U.S. Government installation or a cleared contractor facility. Exception to this provision may be approved by the appropriate security element.

[FR Doc. 84–8561 Filed 3–29–84; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

Draft Advisory Circular on Use of Child/Infant Seats in Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to issue an Advisory Circular.

SUMMARY: The FAA has prepared an Advisory Circular that provides information on the proper use of child or infant seats aboard aircraft and precautions for rapid evacuations during emergencies. The Advisory Circular is not a regulation and will be issued for guidance purposes only.

DATE: Commenters must identify file number 120–XX (AWS–110) and comments must be received on or before May 14, 1984.

ADDRESSES: Send all comments on the draft Advisory Circular AC to:

Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness—File No. 120–XX (AWS–110), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591

Or deliver comments to:

Room 335D, 800 Independence Avenue, SW., Washington, D.C. 20591

FOR FURTHER INFORMATION CONTACT: Arthur J. Hayes, Policy and Procedures Branch, AWS–110, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone: (202) 426–8374.

Comments received on the draft AC may be inspected, before and after the closing date for comments, in Room 335D, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between 8:00 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION: The telephone number given at the end of the draft AC may be used by the general public to obtain information on child or infant restraint devices approved for use in aircraft. When the AC is issued, that telephone number will be changed to an FAA Office of Public Affairs telephone number. Until then, public inquiries are still welcomed at the telephone number in the draft AC.

Comments Invited

Interested persons are invited to comment on the draft AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC file number 120–XX (AWS–110) and comments should be submitted to the address specified above. All comments received on or before the closing date specified above for comments will be considered by the Director of Airworthiness before issuing the final AC.

How to Obtain Copies

A copy of the draft AC may be obtained by contacting the person under "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C. on March 21, 1984.

M. C. Beard,

Director of Airworthiness.

Draft Advisory Circular

Subject: Use of Child/Infant Seats in Aircraft

Initiated by: AWS–110

[*AC No:* 120]

1. *Purpose.* This advisory circular provides information to assist the public in the proper use of child/infant seats aboard aircraft and provides precautions so all passengers are able to evacuate aircraft rapidly during emergencies.

2. *Related Federal Aviation Regulations (FAR) Sections.* Section 91.14, 121.311, 125.211, and 127.109.

3. *Background.*

a. *Establishing the Need.* A Federal Aviation Administration (FAA) Task Force on Child Restraint was convened in February 1979 to evaluate child restraint device use aboard aircraft and to explore the options for allowing child restraint devices in aircraft. Based on work previously done by the Civil Aeromedical Institute and the Flight Standards National Field Office in the FAA and the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation, the Task Force submitted a recommendation to the FAA Administrator on June 1, 1979; the recommendation indicated that the most suitable manner of allowing child restraint devices aboard aircraft would be to adopt the Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, with additional provisions for the aircraft environment.

b. *The Aircraft Environment.* (1) In most nontransport category aircraft, there are small cabins; passenger seats with safety belts and shoulder harnesses; a need to evacuate entire aircraft rapidly in emergencies; aft, forward, and side facing passenger seats; passenger seats with backs that fold over, occasionally a single entrance/exit door; and up and down loads during inflight turbulance/gusts.

(2) In transport category aircraft, there are passenger seats with fold-over backs, safety belts, and arm rests (some may be folded up out of the way); a need to evacuate entire aircraft rapidly in emergencies; aft, forward, and side facing passenger seats; and up and down loads during inflight turbulence/gusts.

c. *Performance Standards.* Following development of the performance standards that account for the aircraft environment and after providing public notice, the FAA issued the standards in Technical Standard Order (TSO) C100, Child Restraint Systems, on May 28, 1982. The FAA issued the TSO for child restraint systems, i.e., child/infant seats, to provide for use of child/infant seats, which would not be a hazard to the child/infant or other passengers during an emergency in the air transportation environment.

d. *FAA approval.* A child/infant seat with an FAA TSO approval or a Parts Manufacturer Approval (PMA) may be used in all phases of flight and fully complies with FAR §§ 121.311(b), 125.211(b), and 127.109(b).

4. *Discussion.*

a. *Child/Infant Seats are Optional.* The FAA does not require the use of child/infant seats for small children aboard aircraft; however, air travelers are given the option, at their own expense, to use child/infant seats in accordance with paragraph 4b during all phases of an airline's flight operations. To exercise this option, the air traveler may be obliged, at the discretion of the airline, to purchase a ticket for an infant less than 2 years old.

b. *Approved Child/Infant Seats.* An air traveler may use a child/infant seat that either complies with TSO–C100 or is approved under a supplemental type certificate (STC)–PMA issued by the FAA. The child/infant seat should be clearly marked with one of these approvals or the original Federal Motor Vehicle Safety Standard label should be attached, and the seat's use should be acceptable to the airline (see paragraph 7).

c. *General Precautions.* (1) The owner of an FAA-approved child/infant seat has the responsibility to maintain and to use the seat in accordance with the maintenance, care, and use instructions provided with each seat.

(2) Instructions are provided with each child/infant seat to assure its proper use. All straps, especially shoulder straps, should always be used per the instructions, which should always be available and followed carefully. If all instructions are not followed for proper use of the child/infant seat, the device will at best provide only false security to the user, and at worst, be an actual hazard to a child/infant and other passengers.

(3) Unless the child/infant seat is stowed as carry-on luggage under a passenger seat, in an overhead compartment, or in another secured area identified by a flight attendant, the child/infant seat should be properly secured to a passenger seat at all times during flight, even while unoccupied by a child/infant; no other passenger may occupy that same seat.

(4) If a passenger seat is not available for an infant less than 2 years old, only the infant may be held by an adult. The infant should be taken out of the child/infant seat and held in the adult's lap. An infant in a child/infant seat held by an adult is more hazardous to other passengers.

(5) During takeoff or landing, the child/infant seat should not be occupied if placed in a sideward facing passenger seat.

5. *Precautions (Nontransport Category Aircraft).*

a. *Weight.* The weight of the child/infant seat should be considered in the weight and balance of the aircraft.

b. *Location.* Regardless of where the child/infant seat is placed in a small aircraft cabin, the possibility of it hindering evacuation in an emergency is real; however, the following precautions should improve evacuation capabilities:

(1) The child/infant seat should be located in an aft located passenger seat when available. Although the child/infant seat may be located anywhere, *an aft located seat is the preferred location* when another adult is also a passenger.

(2) The child/infant seat should not be located near an entry door or emergency exit except in 2-place aircraft where there is no other choice.

(3) The child/infant seat should not interfere with the full travel of the control wheel/yoke. Controls should be moved in all directions with the occupied child/infant seat in place. A special emphasis item may be placed in the takeoff and landing check list to ensure full travel of controls before takeoff and sufficient freedom of controls for landing. After a child/infant seat is secured in a safe position, care should be exercised if the seat is moved in flight.

c. *Shoulder Harnesses.* The child/infant seat should be attached using only the lap belt per manufacturer's instructions. Aircraft shoulder harnesses

should not be used to secure or to stabilize the child/infant seat as shoulder harnesses may result in injury to the child/infant.

6. *Precautions (Transport Category Aircraft).*

a. *Weight.* The weight of the child/infant seat is considered to be negligible in the normal situation where only a few passenger seats are occupied with children in restraint devices.

b. *Location.* (1) The child/infant seat should be located in a row that is neither the same row of an emergency exist nor the row forward or aft of an emergency exist. *A window passenger seat is the preferred location;* however, other locations are acceptable provided a responsible person occupies a seat next to the child/infant.

(2) The child/infant seat may also be located in the middle row of seats in a 2-aisle airplane but should not be located in an aisle seat. Again, an aisle seat may be acceptable provided all other seats in that row are occupied by persons responsible for the child/infant.

(3) More child/infant seats per row are allowed if the children are from the same family or traveling group.

(4) The child/infant seat should not block access ways and passageways to any emergency exit.

c. *Safety Belt Signs.* The child/infant should occupy its seat when the crew turns on the "Fasten Safety Belt" signs.

d. *Emergency Evacuation.* During an actual evacuation, any child/infant seat should remain attached to the passenger seat. Only the child/infant should be removed from the aircraft.

7. *Approval of Existing "Car Seats."*

a. *Privileges.* If a manufacturer receives a TSO–C100 authorization or an STC–PMA approval for a previously NHTSA approved model "car seat" without changes, each owner may be allowed to use one of those model "car seats" as a child/infant seat in an aircraft. To use the "car seat," the original Federal Motor Vehicle Safety Standard label should be attached, the "car seat" should be of a make and model that is FAA-approved, and the seat's use should be acceptable to the airline.

b. *Eligibility.* All airlines are provided with an updated listing of approved "car seat" models to allow a determination of the eligibility of a particular "car seat" for use on aircraft. An air traveler may check with the FAA (telephone: (202) 426–8374 on weekdays between 8:30 a.m. and 4:30 p.m.) or an airline to determine whether a particular "car seat" is eligible for use in aircraft and may check with the airline providing the transportation to determine whether it will accept the seat's use and whether it will require the purchase of a ticket for the seat's use.

[FR Doc. 84–8495 Filed 3–29–84; 8:45 am]
BILLING CODE 4910–13–M

[Docket No. 8429]

Petition for Reconsideration of Denial of Exemption From Northern Air Cargo, Inc.; Meeting and Invitation for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting and invitation for comments.

SUMMARY: This notice requests comments and announces a public meeting to afford interested persons the opportunity to present information and views regarding the petition of Northern Air Cargo Inc. (NAC), to the Administrator to reconsider denial of Exemption No. 770N issued on December 27, 1983. That action denied a petition for exemption from NAC to extend and expand Exemption No. 770 which authorized NAC to use restricted category C–82 airplanes to carry only out-sized cargo for compensation or hire within Alaska. The FAA plans to use information received at the meeting in reconsidering its decision.

DATES: Public Meeting: Wednesday, April 25, 1984, 9:00 a.m. until all interested persons present are heard. Written Comments by: April 27, 1984.

ADDRESSES: Public Meeting: Sheffield Anchorage Hotel, 720 West Fifth Avenue, Anchorage, Alaska: Telephone: (907) 276–7676. Send written comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. 8429, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Bedor, Project Development Branch, Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 472–4621.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Act of 1958 (FA Act) requires the FAA to give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest and to make classifications of such standards, rules, regulations, and certificates appropriate to the differences between air transportation and other air commerce. To fulfill this responsibility, the Federal Aviation Regulations specify that airplanes engaged in carrying cargo for compensation or hire shall meet the airworthiness standards for certification in the normal or transport category. Until December 31, 1983, NAC was exempted from these standards in the public interest to allow it to carry, in its C–82 airplanes, only out-sized cargo, within the State of Alaska, which was too large, heavy, or bulky to be loaded aboard, unloaded from, or carried by conventional (side-loading) cargo airplanes.

In issuing Exemption No. 315 to Sholton and Carlson (now NAC) on April 7, 1964, the FAA based its grant of exemption on the fact that standard category airplanes which meet all required safety standards were not available in the Alaska area to fill the public need for the ventral-loading capabilities of the C–82 type airplane. After nearly two decades of granting relief to NAC, the FAA determined on December 27, 1983, that it would no longer be in the public interest to renew or expand NAC's exemption based on the grounds that standard category airplanes, which meet the minimum airworthiness safety standards prescribed in the FAR, are now available to meet the public safety and air transportation needs of Alaska.

The FAA is requesting public participation in the consideration of the NAC petition. The season for high activity in air transportation in Alaska is short and approaching rapidly. Accordingly, the FAA is making every effort to complete action on the NAC petition with all deliberate speed. Therefore, the schedule for the public meeting and the period for receiving written comments is not as liberal as might otherwise be the case. The FAA urges interested persons to mail written comments to the Docket to ensure they arrive by the closing date for comments.

Request To Make a Presentation

Interested persons are invited to attend the meeting and to participate by making oral or written statements. Written statements should be submitted in duplicate and will be made a part of the docket. Requests to make an oral presentation at the meeting should identify Docket No. 8429, indicate the time required, and be sent to: Ms. Ronnie Davis, Flight Standards Division, AAL–200, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, Alaska 99513; Telephone: (907) 271–5514. Requests must be received on or before April 20, 1984.

Presentations will be scheduled on a first-come first-served basis.

Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to made a presentation.

(b) The meetings will begin at 9:00 a.m. (local time). There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space available basis. All persons wishing to make a statement will be permitted to do so, however, the meeting will be adjourned once all persons present have had an opportunity to speak.

(c) All meeting sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted at the discretion of the presiding officer. Participants submitting handout materials must present and original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the hearing should not be taken as expressing a final FAA position.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1355(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Issued in Washington, D.C., on March 27, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84-8007 Filed 3-29-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department clearance Officer, Room 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0015
Form Number: IRS Form 706
Type of Review: Existing Collection
Title: United States Estate Tax Return

Alcohol, Tobacco and Firearms

OMB Number: 1512-0076
Form Number: ATF Form 1485
Type of Review: Extension
Title: Application and Withdrawal Permit of User to Procure Specially Denatured Spirits

OMB Number: 1512-0065
Form Number: ATF Form 1450
Type of Review: Extension
Title: Application and Withdrawal Permit to Procure Spirits Free of Tax

OMB Number: 1512-0175
Form Number: ATF Form 4327
Type of Review: Extension
Title: Limited Withdrawal Permit to Procure Specially Denatured Spirits or Tax-Free Alcohol

OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: New
Form Number: None
Type of Review: Existing Regulation
Title: Declaration of Artist, Seller, or Shipper That Goods Imported are Original Works of Art

Comptroller of the Currency

OMB Number: 1557-0157
Form Number: CC 7022-12
Type of Review: Revision
Title: Rules, Policies, and Procedures for Corporate Activities; Conversions

Office of the Secretary

OMB Number: New
Form Number: None
Type of Review: New
Title: Economic Dislocation Certification

Bureau of Government Financial Operations

OMB Number: New
Form Number: TFS Forms 469, 460, 458, and 459
Type of Review: Existing Collection
Title: Financial Institution Offer to Contract and Application for Designation as a Depositary for Federal Taxes; Resolutions Authorizing the Financial Institution Offer to Contract and Application for Designation as a Depositary for Federal Taxes; Financial Institution Offer to Contract and Application for Designation as a Treasury and Loan Depositary; Resolutions Authorizing the Financial Institution Offer to Contract and Application for Designation as a Treasury and Loan Depositary

OMB Reviewer: Judy McIntosh (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: March 26, 1984.

Gary Kowalczyk,

Department Reports, Management Office.

[FR Doc. 84-8016 Filed 3-29-84; 8:45 am]

BILLING CODE 4810-25-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 506; Ref: ATF O 1100.126A]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 13, the Gauging Manual; Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100-126, Delegation Order—Delegation to the Assistant Director (Regulatory Enforcement) of Authorities of the Director in 27 CFR Part 13, dated April 1, 1980, is canceled.

3. *Background.* Under current regulations, the Director has the authority to take final action on matters relating to the gauging manual. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To approve the use of other instruments for determination of specific gravity, under 27 CFR 13.21.

b. To approve other devices or methods and to authorize their use for determination of the quantity of distilled spirits or denatured spirits by volume; and to authorize the determination of the quantity of distilled spirits or denatured spirits by a statistical control method, under 27 CFR 13.36 and 13.51.

5. *Redelegation.*

a. The authorities in paragraph 4 may be redelegated to Bureau Headquarters personnel not lower than the position of branch chief.

b. The authorities in paragraph 4 may be redelegated to regional directors (compliance) to approve, without submission to Headquarters, subsequent requests which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate these authorities to personnel not lower than the position of technical section supervisor.

6. *For Information Contact.* Virginia Yusken, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566–7602.

7. *Effective Date.* This delegation order becomes effective on March 30, 1984.

Approved: March 23, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84–8530 Filed 3–29–84; 8:45 am]

BILLING CODE 4810–31–M

[Notice No. 508; Ref: ATF O 1100.84A]

Delegation to the Associate Director (Compliance Operations) of Authority of the Director in 27 CFR Part 252, Exportation of Liquors; Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.84, Delegation Order—Delegation to the Assistant Director (Regulatory Enforcement) of Authorities of the Director in 27 CFR Part 252, dated March 9, 1978, is canceled.

3. *Delegation.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701–9, there is delegated to the Associate Director (Compliance Operations) the authority to prescribe, pursuant to 27 CFR 252.2, all forms required by 27 CFR Part 252.

4. *Redelegation.* The authority delegated to the Associate Director (Compliance Operations) may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

5. *For Information Contact.* David M. Purcell, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226, (202) 566–7602.

6. *Effective Date.* This delegation order becomes effective on March 30, 1984.

Approved: March 23, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84–8529 Filed 3–29–84; 8:45 am]

BILLING CODE 4810–31–M

Customs Service

Domestic Interested Party Petition Concerning Tariff Classification of Polypropylene Rope; Additional Comments Requested

AGENCY: U.S. Customs Service, Treasury.

ACTION: Domestic interested party petition; additional comments requested.

SUMMARY: This document requests additional comments from interested members of the public with respect to a domestic interested party petition concerning the tariff classification of certain imported polypropylene ropes. Imported polypropylene ropes are currently classified for duty purposes as other articles of plastics, not specially provided for. If these ropes are products of a beneficiary developing country, they are accorded duty-free entry under the Generalized System of Preferences (GSP). The petitioner contends that these ropes should be classified under the tariff provision for cordage of man-made fibers subject to a higher rate of duty and not eligible for duty-free entry under the GSP even if imported from a beneficiary developing country. A notice inviting the public to comment on the receipt of this petition was previously published in the **Federal Register**. Based upon Customs review of this matter and analysis of the comments received, additional matters have been raised regarding the proper classification. Customs believes that because of the complexity of the issues involved, additional comments on the new matters are warranted before a final determination is made with regard to the tariff classification of the subject articles.

DATE: Comments must be received on or before May 29, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

A petition dated November 9, 1982, was filed with the Customs Service under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by the Sunshine Cordage Corporation, an American manufacturer of synthetic twines, ropes, and cordage. The petitioner contends that certain imported polypropylene ropes made from strips and "plexiform filaments", which are currently classified by Customs under the provision for other articles of plastics, not specially provided for, in item 774.55, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), are more appropriately classified under the provision for cordage of man-made fibers in items 316.55 and 316.58, TSUS, depending on diameter. The current rate of duty for articles classified under item 774.55, TSUS, is 6.5 percent ad valorem and the current rate of duty for articles classified under items 316.55 and 316.58, TSUS, is 6 cents per pound plus 11.5 percent ad valorem and 12.5 cents per pound plus 15 percent ad valorem, respectively. The petitioner correctly notes that articles classified under item 774.55, TSUS, can be entered free of duty under the Generalized System of Preferences ("GSP") (see sections 10.171–10.178, Customs Regulations (19 CFR 10.171–10.178)), if imported directly from a beneficiary developing country, whereas articles classified under items 316.55 and 316.58, TSUS, cannot be entered free of duty under the GSP.

An amended petition, dated December 14, 1982, was submitted by the Sunshine Cordage Corporation and filed with Customs to support its original petition and set forth further arguments as to why the classification of polypropylene ropes should be changed. The polypropylene ropes which are the subject of both the petition and the amended petition, are composed of fibrillated strips, which Customs has considered to be man-made plexiform

filaments, in a folded, twisted, or crimped condition.

A notice inviting the public to comment on the receipt of this petition was published in the Federal Register on April 29, 1983 (48 FR 19510). A document correcting certain omissions in the April 29, 1983, notice was published on May 25, 1983 (48 FR 23513), and a subsequent document extending the period of time for submitting comments was published on July 26, 1983 (48 FR 33961).

In reviewing the comments received, additional questions concerning the appropriateness of classification have been raised. These questions were not presented in the original notice for public consideration and comments. Customs believes that the public should have the opportunity to present comments in regard to the new issues under consideration that were not previously mentioned.

New Issues

Issue 1

The first issue that was not previously considered is whether fibrillated strips, even those which are derived from solid strips measuring less than 1 inch in width, are plexiform filaments. As the tariff schedules were originally drafted, no provisions were made for plexiform filaments. In a submission made by the Man-Made Fiber Producers Association to the U.S. Tariff Commission, it was urged that a provision for plexiform fibers or filaments be included in the new tariff schedules. The following is an excerpt from that submission which describes plexiform fibers.

> Following the major classification categories of monofilaments and bands or strips we recommend a new category for plexiform fibers or filaments. These new manmade fibers of very recent development are neither in the traditional form of monofilaments or grouped filaments. Their structure is as the term connotes a complicated networklike fibrous structure in strands. In the manufacture of a manmade fiber of this type the filament comes out of a single orifice in the spinneret and as the solvent evaporates the nature of the material is such that the filament breaks into fibrils. Some of these may have free ends like splinters. Others may go back into the main body of the fiberlike loops. The fibrils are literally a plexus, or network, being intertwined or intermeshed in random fashion. The fiber or filament so composed is a retiform or weblike structure which is decidedly longitudinal in dimension.
>
> Essentially, the plexiform fiber is a monofilament of continuous length and should receive the same duty treatment as monofilaments. A separate classification is recommended because these plexiform filaments are quite new to commerce and their plexus nature may lead to some uncertainty as to whether they are grouped filaments or monofilaments. Since they are a distinct form of manmade fiber, they should be separately provided for and it is our judgment that they are more like monofilamentrs and, hence, should be dutiable at the rate applicable to monofilaments. (Tariff Classification Study, Explanatory and Background Materials, schedule 3, November 15, 1960, at pg. 516).

In view of the above, a substantial question has been raised whether any filbrillated strips can constitute plexiform filaments and, therefore, whether Customs' established and uniform practice of considering fibrillated strips derived from man-made fiber strips to be plexiform filaments is clearly wrong.

Issue 2

The second issue to be considered is, assuming that plexiform filaments are determined not to include filbrillated strips, are those filbrillated strips considered textile man-made fibers for tariff purposes. Headnote 3(f), schedule 3, TSUS, defines the term "fibers" as including filaments and strips and any other fibrous structure suitable for the manufacture of textiles. It would appear that a fibrillated strip used in the manufacture of cordage is fibrous structure which is suitable for the manufacture of textiles and, therefore, should be considered to be included under the definition for "fibers." If this merchandise were considered to be within the definition of "fibers," and is suitable for the manufacture of textiles, it would appear to be classifiable when imported in article form as opposed to material, under the provision for articles of textile materials not specially provided for, not ornamented and not knit, of man-made fibers, in item 389.62, TSUS, at a higher rate of duty than if it were classifiable as plexiform filaments, in item 309.10, TSUS.

Issue 3

The third issue not previously mentioned is whether a single fibrillated strip which has been twisted and imported as twine or cord may constitute cordage for tariff purposes. Headnote 1(a), part 2, schedule 3, TSUS, defines the term "cordage" as meaning "assemblages of textile fibers or yarn, in approximately cylindrical form and of continuous length." Customs has an established and uniform practice to classify twine or cord made from a single fibrillated strip as cordage. However, in view of the language contained in headnote 1(a), which refers to *assemblages* of textile fibers or yarns, the correctness of that practice is doubtful and the merchandise may be more properly classifiable under the provision for articles not specially provided for, not ornamented, of man-made fibers, in item 389.62, TSUS. Comments in this area should be directed to whether the present practice of classification applicable to single fibrillated strips being imported as twine or cord is clearly wrong.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the petition and the correctness of Customs classification of these articles.

The domestic interested party petition and the amended petition, as well as all comments received in response to the first notice and this notice, will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

This notice is published in accordance with section 175.21(a), Customs Regulations (19 CFR 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: March 16, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-8558 Filed 3-29-84; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Privacy Act of 1974; Report of New System

AGENCY: United States Information Agency.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to establish a new system of records. The system will be manually operated at first, and will be for internal use only. It

is intended to maintain, in one location, the names, backgrounds and qualifications of USIA employees who are working in positions which involve procurement activity, or who are proposed for appointment to positions as Contracting Officers. The system will also be used to monitor the contracting workforce of USIA.

DATE: Comments are due by April 30, 1984.

ADDRESS: The public should address comments to: Director, Office of Contracts, U.S. Information Agency, 1717 H Street NW., Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Director, Office of Contracts, U.S. Information Agency, 1717 H Street NW., Washington, D.C. 20547.

SYSTEM NAME:

USIA Procurement Personnel Information System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Contracts, U.S. Information Agency, 1717 H Street NW., Washington, D.C. 20547.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USIA employees involved with procurement activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office, position title, series and grade, service computation date, position description, education, training, experience, professional recognition, career objectives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system is derived from the Federal Records Act, 44 U.S.C. 3101, and Federal Acquisition Regulation, Subpart 1–6.

PURPOSE(S):

The U.S. Information Agency intends to establish a register of trained and qualified individuals who may be appointed as Contracting Officers at all grade levels. In accordance with Section 1(g) of Executive Order 12352, clear lines of contracting authority and accountability must be established. The system will be used to establish and monitor the contracting workforce.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Identification of employees who have met standards of experience, education, and training for appointment as Contracting Officers and to analyze procurement system performance such as functional placement, system training needs, and workforce size. Information is available to personnel of the U.S. Information Agency as may be required for performance of official duties. Information on individuals will not normally be available outside the U.S. Information Agency as it falls within the excepted guidelines of the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information will be maintained in a paper hard copy file which will be automated as soon as possible.

RETRIEVABILITY:

Records are retrieved by name, office, series and grade.

SAFEGUARDS:

Files are kept in the Office of Contracts in bar lock cabinets and may be accessed only by the office staff. As soon as the file is automated, it will be password protected.

RETENTION AND DISPOSAL:

Files will be retained as long as the individual remains an employee of the U.S. Information Agency, and will be destroyed upon the employee's separation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Contracts, U.S. Information Agency, 1717 H Street NW., Washington, D.C. 20547.

NOTIFICATION PROCEDURE:

Access to Information Officer (M/AGP), U.S. Information Agency, 301 Fourth Street SW., Washington, D.C. 20547.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to Access to Information Officer (M/AGP), U.S. Information Agency, 301 Fourth Street SW., Washington, D.C. 20547.

CONTESTING RECORD PROCEDURES:

The U.S. Information Agency's rules for access and for contesting contents and appealing initial determinations by the individual concerned are published in Part 505, Title 22, United States Code of Federal Regulations.

RECORD SOURCE CATEGORY:

Information is provided by the individual concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: March 23, 1984.

Charles Z. Wick,

Director.

[FR Doc. 84–8324 Filed 3–29–84; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 63
Friday, March 30, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Consumer Product Safety Commission	1
Equal Employment Opportunity Commission	2
International Trade Commission	3
Legal Services Corporation	4
Nuclear Regulatory Commission	5
Securities and Exchange Commission	6

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, April 4, 1984.

LOCATION: Third Floor Hearing Room, 1111-18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Squeeze Toys: Options

The staff will brief the Commission on options to address the choking hazards associated with squeeze toys and similar infant products.

2. Gas Heating Systems: Status

The staff will brief the Commission on the current status of this priority project.

3

FOIA Regulations: Proposed Amendment

The staff will brief the Commission on the proposed amendments to the regulations implementing the Freedom of Information Act, 16 CFR 1015.

For a recorded message containing the latest agenda information call, 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207 301-492-6800

Sheldon D. Butts,

Deputy Secretary.

March 28, 1984.

[FR Doc. 84-8679 Filed 3-28-84; 12:53 pm]

BILLING CODE 6355-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (Eastern Time), Tuesday, April 3, 1984.

PLACE: Commission Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Freedom of Information Act Appeal No. 83-1-FOIA-4-BI, concerning a request for information from a charge file.
4. Freedom of Information Act Appeal No. 84-02-FOIA-6-IN, concerning a request for information from a charge file.
5. Freedom of Information Act Appeal No. 84-2-FOIA-22-CL, concerning a request for documents from a closed ADEA charge file.
6. Freedom of Information Act Appeal No. 84-1-FOIA-2-NO, concerning a request for information from a closed Title VII charge file.
7. Proposed Annual Report—Coordination of Federal Equal Employment Opportunity Programs
8. Proposed Compliance Manual Section 612, Plant Relocation
9. Ten Proposed Compliance Manual sections of Volume I.
10. Proposed Amendments to Title VII Procedural Regulations

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Consideration of Certain Subpoenas

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

Dated: March 27, 1984.

Treva McCall,

Executive Secretary to the Commission.

[FR Doc. 84-8604 Filed 3-27-84; 4:44 pm]

BILLING CODE 6750-01-M

3

INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: 49 FR 11748 (3/27/84).

PREVIOUSLY ANNOUNCED TIMES AND DATES OF THE MEETINGS: Monday, April 2, 1984 and Thursday, April 5, 1984.

CHANGES IN THE MEETING: Cancellation of the meeting to be held on Monday, April 2, 1984, and addition of those agenda items to the meeting on Thursday, April 5, 1984, at 2:30 p.m., as follows:

4. Investigations 731-TA-134 and -135 [Final] (Color Television Receivers from the Republic of Korea and Taiwan)—briefing and vote.
5. Agenda.
6. Minutes.
7. Ratifications.
8. Any items left over from previous agenda.

In conformity with 19 CFR 201.37(b), Commissioners Eckes, Stern, Haggart, and Lodwick, determined by action jacket CO59-84-003, on March 26, 1984, that item No. 5 on the agenda for April 2, 1984, should be rescheduled to the meeting of April 5, 1984. By deliberations on March 27, 1984, the Commission voted to reschedule the items remaining on the April 2nd agenda to the meeting on April 5, 1984, determined that Commission business requires the changes to the agenda and affirmed that no earlier announcement of the changes was possible, and directed issuance of this notice at the earliest practicable time. Commissioner Rohr did not participate in the vote.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8693 Filed 3-28-84; 1:59 pm]

BILLING CODE 7020-02-M

4

LEGAL SERVICES CORPORATION (BOARD OF DIRECTORS)

PREVIOUSLY ISSUED: March 19, 1984 (Published March 21, 1984).

PREVIOUSLY ANNOUNCED TIME AND DATE: It will commence at 10:00 a.m. and continue until all official business is completed; Friday, March 30, 1984.

CHANGE IN NOTICE: Deletion under **MATTERS TO BE CONSIDERED:**

Under 5. Report from the Office of General Counsel
—Proposed Final Regulation
1612—Restrictions on Lobbying and Other Certain Activities

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272-4040.

DATE ISSUED: March 28, 1984.

Donald P. Bogard,

President.

[FR Doc. 84–8694 Filed 3–28–84; 1:59 pm]

BILLING CODE 6820–35–M

5

NUCLEAR REGULATORY COMMISSION

DATE: Tuesday, March 27, 1984 (Revised), Friday, March 30, 1984 (Revised), and Week of April 2, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Tuesday, March 27

10:00 a.m.
Briefing on Status of Utility and NRC Compliance with TMI Action Plan (Public Meeting) (As Announced)

2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1) (Replaces Discussion of the Terms "Important to Safety" and "Safety Related")

Friday, March 30

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (New Item) a. Earthquakes—Diablo Canyon (postponed from March 23)

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for WPPSS–2 (Public Meeting) (As Announced)

3:30 p.m.
Discussion of Letter to Mr. J. Miller (Ref: 2/28 Human Factors Meeting) (Public Meeting) (New Item)

Week of April 2

Tuesday, April 3

10:00 a.m.
Briefing on COBALT–60 Contamination of Mexican Steel (Public Meeting)

2:00 p.m.
Discussion and Possible Vote on QA Report to Congress and Status of QA Initiatives (Public Meeting)

Wednesday, April 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Briefing on PORVs in CE Plants (Public Meeting)

Thursday, April 5

10:00 a.m.
Briefing on Intergrated Safety Assessment Program (ISAP) (Public Meeting)

2:00 p.m.
Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

ADDITIONAL INFORMATION: Briefing on Public Comments on ANPR—Role of the Staff scheduled for March 22, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording), (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

[FR Doc. 84–8612 Filed 3–27–84; 4:56 pm]

BILLING CODE 7590–01–M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (49 FR 10772 3/22/84)

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 16, 1984.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting scheduled for Tuesday, March 27, 1984, at 9:30 a.m.

Litigation matter.

Chairman Shad and Commissioners Treadway and Cox determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272–3195.

George A. Fitzsimmons,

Secretary.

March 27, 1984.

[FR Doc. 84–8678 Filed 3–28–84; 12:53 pm]

BILLING CODE 8010–01–M

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federal register

Friday
March 30, 1984

Part II

Department of Energy

41 CFR Ch. 109

Property Management Regulations; Proposed Rule

DEPARTMENT OF ENERGY

41 CFR Ch. 109

Property Management Regulations

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend the DOE Property Management Regulations (DOE/PMR) (41 CFR Chapter 109) which were published on January 3, 1979 (44 FR 986). The revisions are intended to update the regulations to reflect (i) organizational, policy, and procedural changes that have occurred subsequent to their issuance; (ii) amendments to the Federal Property Management Regulations (41 CFR Chapter 101); and (iii) the proposed issuance of the Federal Acquisition Regulations (FAR) and the Department of Energy Acquisition Regulations (DEAR) which will become effective April 1, 1984. Because of the extensive changes to the DOE-PRM, with the exception of Parts 109–35 and 109–40, they are printed in their entirety in this proposed amendment.

DATE: Comments must be submitted on or before April 30, 1984.

ADDRESS: Comments should be addressed to the Department of Energy, Property and Equipment Management Division, MA–422, Forrestal Building, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:
John D. French, Director, Property and Equipment Management Division, Procurement and Assistance Management, Department of Energy, Washington, D.C. 20585, (202) 252–8255.
Elliot Winnick, Office of General Counsel, Department of Energy, Room 6B–190, Washington, D.C. 20585, (202) 252–1526.

SUPPLEMENTARY INFORMATION:

I. Legislative Background
II. Procedural Requirements
III. Public Comments

I. Legislative Background

Under Section 644 of the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101 *et seq*) the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in him. The Department of Energy Property Management Regulations (DOE–PMR) were promulgated on January 3, 1979 (44 FR 986, 41 CFR Chapter 109).

Significant changes in the regulations being proposed by this amendment are: (1) Clarification of definitions of heads of field offices and of contractors (109–1.100–51); (92) description of the DOE–PMR (109–1.102–50); (3) description of delegated authority (109–1.5004); (4) clarification of the responsibilities of various Department officials (109–1.5005); (5) requirement for designation of property management officers (109–1.5005–2 and –5); (6) more detailed physical inventory requirements (109–1.5106–5); (7) revised listing of required reports (109–1.5148); (8) a new subpart on policy and responsibilities for contractor's personal property management programs (109–1.52); (9) requirement to report precious metals and lead to the DOE pool in lieu of reporting them to GSA (109–14.103–1.50); (10) requirement to utilize existing furniture and office machines (109–25.104); (11) inclusion of inventory management objectives (109–27.50); (12) revised definition of equipment held for future projects (109–27.5101); (13) requirement to maintain records of equipment held for future projects (109–27.5103); (14) a new subpart on policies, principles, and guidelines to be used in the management of precious metals (109–27.53); (15) requirement for control of GSA shopping plates (109–28.3); (16) requirement to purchase fuel efficient light trucks (109–38.1307); (17) a new subpart on policy and procedures for management of watercraft (109–38.53); (18) changes in the reporting of excess property for utilization within DOE (109–43.311–1.50); (19) establishment of the DOE lead bank (109–43.313–57); (20) policies for utilization and disposal of chemically contaminated property (109–45.50); and (21) deletion of the requirement for reclamation of wastepaper (109–42.50).

In addition to the foregoing significant changes, numerous other sections of the DOE–PMR are proposed to be revised or deleted for reasons of clarification, to reflect organizational changes, or because they are no longer deemed necessary.

II. Procedural Requirements

A. Review Under Executive Order 12291

Inasmuch as this proposed rule relates to agency management of personal property under the DOE procurement function, the OMB clearance procedures set forth in Executive Order 12291 (February 17, 1981) are not applicable.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Publ. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed on the public by this proposed rulemaking have been cleared by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* OMB clearance number 1901–0261 has been assigned with an expiration date of March 31, 1984.

D. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the Nation's economy of large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organizational Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DOE–PMR amendments set forth in this notice. All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final regulation.

List of Subjects in 41 CFR Ch. 109

Government property, DOE property management regulations.

For the reasons set in the preamble, Chapter 109 of Title 41 of the Code of Federal Regulations, is proposed to be amended by revising Parts 109–1, 109–14, 109–25—109–28, 109–30, 109–36, 109–38, 109–39, 109–42—109–46, 109–48, 109–50, 109–51, and 109–60 as set forth below.

Issued in Washington, D.C. March 20, 1984.

Thomas J. Davin, Jr.,
Deputy Director, Procurement and Assistance, Management Directorate.

Chapter 109—Department of Energy Property Management Regulations

SUBCHAPTER A—GENERAL

Part
109–1—Introduction

SUBCHAPTER C—DEFENSE MATERIALS

109–14—National Defense Stockpile

SUBCHAPTER E—SUPPLY AND PROCUREMENT

109–25—General
109–26—Procurement sources and programs
109–27—Inventory management
109–28—Storage and distribution
109–30—Federal catalog system

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

109–36—ADP management

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

109–38—Motor equipment management
109–39—Interagency motor vehicle pools

* * * * *

SUBCHAPTER H—UTILIZATION AND DISPOSAL

109–42—Property rehabilitation services and facilities
109–43—Utilization of personal property
109–44—Donation of personal property
109–45—Sale, abandonment, or destruction of personal property
109–46—Utilization and disposal of personal property pursuant to exchange/sale authority
109–48—Utilization, donation, or disposal of abandoned and forfeited personal property
109–50—Programmatic disposal of DOE property

SUBCHAPTER I—INDUSTRIAL PLANT EQUIPMENT

109–51—Loans of industrial plant equipment from the defense industrial plant equipment center

SUBCHAPTER K—GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

109–60—Management of government property in the possession of off/site contractors

SUBCHAPTER A—GENERAL

PART 109–1—INTRODUCTION

Sec.
109–1.000–50 Scope of part.

Subpart 109–1.1—Regulation System

109–1.100–50 Scope of subpart.
109–1.100–51 Definitions.
109–1.102–50 Department of Energy Property Management Regulations.
109–1.103–50 DOE–PMR Bulletins.
109–1.104–50 Publication and distribution of DOE–PMR.
109–1.104–1–50 Publication.
109–1.104–2–50 Distribution.
109–1.106–50 Applicability of Federal and Departmental regulatory issuances.
109–1.107–50 Consultation regarding DOE–PMR.
109–1.108 Agency implementation and supplementation of FPMR.
109–1.109–50 Numbering of DOE–PMR.
109–1.110–50 Deviation procedures.

Subpart 109–1.50—Personal Property Management Program

109–1.5000 Scope of subpart.
109–1.5001 Policy.
109–1.5002 Property management program objectives.
109–1.5003 Definitions.
109–1.5004 Delegation of authority.
109–1.5005 Responsibilities.
109–1.5005–1 The Director of Procurement and Assistance Management.
109–1.5005–2 The Departmental Property Management Officer.
109–1.5005–3 The Director of Administration.
109–1.5005–4 Director, Office of Procurement Operations, Procurement and Assistance Management.
109–1.5005–5 Heads of field offices.
109–1.5005–6 Organizational Property Management Officer.
109–1.5005–7 Contracting officers.

Subpart 109–1.51—Personal Property Management Standards and Practices

109–1.5100 Scope of subpart.
109–1.5101 Definition.
109–1.5102 Official use of property.
109–1.1503 Maximum use of property.
109–1.5104 Loan of property.
109–1.5105 Borrowing of property.
109–1.5106 Control of property.
109–1.5106–1 Identification marking of property.
109–1.5106–2 Segregation of property.
109–1.5106–3 Physical protection of property.
109–1.5106–4 Control of sensitive items.
109–1.5106–5 Physical inventories.
109–1.5107 Retirement of property.
109–1.5108 Property belonging to others.
109–1.5109 Employee participation.
109–1.5110 Use of non-Government-owned property.
109–1.5148 Personal property management reports.

Subpart 109–1.52—Contractors' Personal Property Management Program

109–1.5200 Scope of subpart.
109–1.5201 Policy.
109–1.5202 Designation of property administrator.
109–1.5203 Review and approval of contractor's property management system.
109–1.5204 Property management appraisals.
109–1.5205 Reporting.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–1.000–50 Scope of part.

This part establishes a system by which the Department of Energy (DOE) implements and supplements the Federal Property Management Regulations (FPMR) (41 CFR Chapter 101) issued by the General Services Administration (GSA).

Subpart 109–1.1—Regulation System

§ 109–1.000–50 Scope of subpart.

This subpart established the Department of Energy Property Management Regulations (DOE–PMR), Chapter 109 of the Federal Property Management Regulations System (FPMR), (41 CFR Chapter 109).

§ 109–1.000–51 Definitions.

As used in this chapter for following definitions apply:

(a) "Heads of field offices" are the heads of any Departmental office located outside the Washington, D.C. metropolitan area. In addition, the Federal Energy Regulatory Commission, Headquarters, shall be considered a field office for purposes of these regulations. See § 109–1.5005–4 concerning the responsibilities of the Director, Office of Procurement Operations, Procurement and Assistance Management Directorate, Headquarters.

(b) "Direct operations" means operations conducted by DOE personnel.

(c) "Contractor" means a management and operating contractor, as that term is defined in the Federal Acquisition Regulation (FAR) 48 CFR 17.601 as supplemented by the Department of Energy Acquisition Regulations (DEAR) 48 CFR 917.604–70, and such other contractors as may be designated by the Procurement Executive or head of the contracting activity as subject to the provisions of this chapter.

§ 109–1.102–50 Department of Energy Property Management Regulations.

The DOE–PMR, established in this part, implement and supplement the FPMR provisions governing the acquisition, utilization, management, and disposal of personal property. The DOE–PMR are issued to establish uniform property management policies and, as necessary, procedures for the Department of Energy. (See 109–1.106–50(d) and (e) with respect to management of property in the possession of other DOE contractors and financial assistance recipients).

§ 109–1.103–50 DOE–PMR Bulletins.

A DOE–PMR Bulletin will be used to disseminate information not affecting policy or to clarify instructions in actions required by the FPMR or the DOE–PMR.

§ 109–1.104–50 Publication and distribution of DOE–PMR.

§ 109–1.104–1–50 Publication.

The DOE–PMR will be published in the **Federal Register** and will appear in the Code of Federal Regulations as Chapter 109 of Title 41, Public Contracts and Property Management. Looseleaf publications will be distributed to DOE offices.

§ 109–1.104–2–50 Distribution.

The responsibilities and authorities for distribution of publications in the FPMR series are as follows:

(a) The Director of Procurement and Assistance Management—

(1) Designates an official to serve as liaison with GSA;

(2) Establishes and maintains distribution patterns; and

(3) Processes DOE–PMR Handbooks for final approval and publication.

(b) The Director of Administration—

(1) Distributes publications in accordance with established patterns;

(2) Maintains a stock of FPMR and DOE–PMR publications for furnishing additional copies; and

(3) Provides additional support services as required.

(c) Heads of field offices—

(1) Provide the Director of Procurement and Assistance Management with field organization requirements;

(2) Forward one-time requests for additional copies of centrally distributed publications to the Office of Administrative Services, Headquarters (MA–234.2); and

(3) Distribute publications to their offices and contractors in accordance with established distribution patterns.

§ 109–1.106–50 Applicability of Federal and Departmental regulatory issuances.

(a) The FPMR and this DOE–PMR apply to all direct operations.

(b) Unless otherwise provided in the appropriate part or subpart, contracting officers shall assure that the FPMR and DOE–PMR are applied to contractors.

(c) The FPMR and DOE–PMR, as appropriate, shall be used by contracting officers in the administration of contracts, and in the review, approval, or appraisal of such contractor operations.

(d) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulations, Part 45 (48 CFR Chapter 1) and in the DOE Acquisition Regulations, Part 945 (48 CFR Chapter 9).

(e) Regulations for the management of property held by financial assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR Part 600) and the Financial Assistance Procedures Manual, DOE Order 4600.1.

§ 109–1.107–50 Consultation regarding DOE–PMR.

The DOE–PMR shall be fully coordinated with all Departmental elements substantively concerned with the subject matter.

§ 109–1.108 Agency implementation and supplementation of FPMR.

(a) The DOE–PMR shall include regulations deemed necessary to understand basic and significant Departmental property management policies and procedures which implement, supplement, or deviate from the FPMR. In the absence of any DOE–PMR issuance, the basis FPMR material shall govern.

(b) The DOE–PMR shall be consistent with the policies and procedures contained in the FPMR and shall not duplicate or paraphrase the FPMR material.

(c) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DOE–PMR may be issued by Headquarters or field organizations provided that the implementing procedures, instructions and guides—

(1) Are consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this regulation; and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

§ 109–1.109–50 Numbering of DOE–PMR.

(a) Where the DOE–PMR implement the FPMR, the implementing part, subpart, section or subsection of the DOE–PMR will be numbered and captioned, to the extent possible, to correspond to the applicable part, subpart, section, or subsection of the FPMR.

(b) Where the DOE–PMR supplement the FPMR, the numbers 50 and up will be assigned to the parts, subparts, sections or subsections involved.

§ 109–1.110–50 Deviation procedures.

(a) Requests for deviations from the FPMR and the DOE–PMR shall be forwarded to the Headquarters organization having functional responsibility, as follows:

(1) Part 109–35—Director, Division of Telecommunications.

(2) Part 109–40—Assistant secretary for Defense Programs.

(3) All other parts—Director of Procurement and Assistance Management.

(b) In individual cases, deviations from the FPMR and DOE–PMR may be authorized by the Headquarters organization having functional responsibility. A supporting statement for each individual deviation, which indicates briefly the nature of the deviation, the reasons for such special action, and the Headquarters approval, shall be maintained by the Headquarters organization concerned.

(c) In classes of cases, requests for deviations from the FPMR and the DOE–PMR shall be accompanied by a supporting statement. Requests shall be considered on an expedited basis and coordination with Headquarters organizations will be obtained as appropriate. Requests involving the FPMR will be considered jointly by DOE and GSA, unless, in the judgment of the Headquarters organization having functional responsibility, circumstances preclude such joint effort. In such cases, the organization having functional responsibility will approve such class deviations as determined to be necessary and notify GSA.

Subpart 109–1.50—Personal Property Management Program

§ 109–1.5000 Scope of subpart.

This subpart supplements the FPMR, states DOE personal property management policy and program objectives, and prescribes authorities and responsibilities for the conduct of an effective property management program in DOE.

§ 109–1.5001 Policy.

It is DOE policy that a program for the management of Government personal property (sometimes referred to as personal property or as property) shall be established and maintained to meet program needs economically and efficiently and in accordance with applicable Federal statutes and Federal agency regulations.

§ 109–1.5002 Property management program objectives.

The objectives of the DOE property management program are to provide—

(a) A system for effectively managing Government personal property in the custody or possession of DOE organizations and DOE contractors; and

(b) Uniform principles, policies, standards, and procedures for economical and efficient management of Government personal property that are sufficiently broad in scope and flexible

in nature to facilitate adaptation to local needs and various kinds of operations.

§ 109–1.5003 Definitions.

As used in these regulations, the following definitions apply:

(a) "Government personal property" means property of any kind or type which is Government-owned or -rented or -leased from commercial sources in the custody of DOE or its contractors except real property; records; special source materials, which includes source materials and special nuclear material, and those other materials to which the provisions of DOE Order 5630.2 "Control and Accountability of Nuclear Materials, Basic Principles" apply, such as deuterium, enriched lithium, neptunium 237 and tritium, and atomic weapons and byproduct materials as defined in Section II of the Atomic Energy Act of 1954, as amended; enriched uranium in stockpile storage; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

(b) "Personal property management" means the development, implementation, and administration of policies, programs and procedures for effective and economical acquisition, receipt, storage, issue, use, control, physical protection, care and maintenance, determination of requirements and maintenance of related operating records, and disposal, as appropriate, for Government personal property exclusive of the accounting records.

§ 109–1.5004 Delegation of authority.

(a) The Secretary of Energy has delegated to the Assistant Secretary, Management and Administration, on a non-exclusive basis, the authority to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors.

(b) The Assistant Secretary, Management and Administration has delegated to the Director, Procurement and Assistance Management, the authority to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors.

(c) The Director of Administration and Heads of field offices are delegated appropriate procurement authority by memorandum from the Director, Procurement and Assistance Management, to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors, consistent with policies, standards, and procedures as contained in this regulation.

§ 109–1.5005 Responsibilities.

§ 109–1.5005–1 The Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management provides direction and general supervision in the development and administration of an effective and efficient personal property management system for the Department, to include:

(a) The establishment of Department-wide policies, standards, systems, regulations, and procedures in accordance with applicable laws and regulations and sound management practice; and

(b) The review, evaluation, and improvement of personal property management programs, functions, operations, and procedures in the Department.

§ 109–1.5005–2 The Departmental Property Management Officer.

The Departmental Property Management Officer shall be the Director, Property and Equipment Management Division, Headquarters. This individual is responsible for developing, promoting, monitoring, administering, coordinating, and evaluating the Department-wide personal property management program, and shall—

(a) Develop and maintain Departmental personal property policies, standards and procedures;

(b) Develop and publish Departmental regulations relating to personal property management;

(c) Represent the Department with GSA and other agencies on matters relating to personal property management;

(d) Submit Departmental personal property management reports to GSA, the Congress and other Federal agencies, as required;

(e) Provide staff assistance to Departmental organizations performing personal property management functions;

(f) Conduct review and appraisals of Departmental personal property management functions; and

(g) Prepare the Departmental aircraft and motor vehicle budget.

§ 109–1.5005–3 The Director of Administration.

The Director of Administration—

(a) Manages personal property for DOE direct operations located in the Washington, D.C. metropolitan area with the exception of the Federal Energy Regulatory Commission.

(b) Exercises responsibilities cited in § 109–1.5005–5 as they relate to functions under his/her management control; and

(c) Appoints an Organizational Property Management Officer to be responsible for his/here organization's personal property management program.

§ 109–1.5005–4 Director, Office of Procurement Operations, Procurement and Assistance Management.

The Director, Office of Procurement Operations, Procurement and Assistance Management Directorate, Headquarters, shall exercise the responsibilities of the head of a field office as set forth in these regulations with respect to the management of property held under contracts for which his/her office is responsible.

§ 109–1.5005–5 Heads of field offices.

Heads of field offices shall—

(a) Appoint an Organizational Property Management Officer who shall be responsible for the organization's personal property management program; and

(b) Establish and administer a personal property management program within the organization which will provide for—

(1) Effective management of Government personal property in the custody of DOE and its contractors, consistent with applicable laws and regulations;

(2) Application of personal property management regulations, instructions, standards, procedures, and practices as prescribed in the FPMR and DOE–PMR;

(3) Planning and scheduling of property requirements to assure that supplies and equipment are readily available to satisfy program needs while minimizing operating costs and inventory levels;

(4) Development and maintenance of complete and accurate inventory control and accountability record systems;

(5) Maximum utilization of available property for official purposes;

(6) Proper care and securing of property to include storage, handling, preservation, and preventative maintenance;

(7) Identification of property excess to the needs of the organization, and proper reutilization of this property within the Department and reporting to GSA for transfer, donation, or disposal;

(8) The development and submission of required property management reports;

(9) Assuring that DOE employees and contractors are aware that acts of theft, illegal possession, and unlawful destruction or use of Government personal property are violations

punishable under Fedral law, notwithstanding disciplinary measures taken under administrative policy;

(10) Assuring that DOE employees and contractors are aware that every user of Government personal property is responsible for its physical protection and for reporting the loss, theft, destruction or damage of property;

(11) The conducting of periodic management reviews within the activity to assure compliance with prescribed policies, regulations, standards, and procedures; and

(12) The establishment of equipment and supply subsidiary reccords and accounts to support general ledger control accounts for personal property.

§ 109–1.5005–6 Organizational Property Management Officer.

The Organizational Property Management Officer (OPMO)—

(a) Provides advice and guidance for the organization's personal property mangement program;

(b) Coordinates and conducts the activities of the organization's personal property management program;

(c) Serves as principal contact point for the organization in matters concerning personal property management; and

(d) Represents the organization, or designates a representative, to attend Department meetings concerning personal property management issues, and acts as liaison with other DOE offices or other Federal agencies in property management matters affecting their organization.

§ 109–1.5005–7 Contracting officers.

Contracting officers shall—

(a) Assure that all contracts that involve property contain the applicable DEAR property clause; and

(b) Assure that contractors' personal property management systems are reviewed, appraised, and approved as provided for in § 109–1.52.

Subpart 109–1.51—Personal Property Management Standards and Practices

§ 109–1.5100 Scope of subpart.

This subpart provides guidance on DOE standards and practices to be applied in the management of Government personal property.

§ 109–1.5101 Definition.

"Sensitive items" are those items of property, regardless of value, which are considered to be susceptible to being appropriated for personal use or which can be readily converted to cash, for example: firearms, portable photographic equipment, binoculars, portable tape recorders, portable calculators, and portable power tools.

§ 109–1.5102 Official use of property.

Property shall be used only in the performance of official work of the United States Government, except (a) in emergencies threatening loss of life or property, or (b) as otherwise authorized by law and approved by the Director of Administration and heads of field offices for their respective organizations, or by the contracting officer for contractor-held property.

§ 109–1.5103 Maximum use of property.

Property management practices shall assure that the best possible use is made of property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE effectively. Adequate staff review shall be made of operating programs to coordinate and plan future supply activities and to assure against overstocking, waste, and improper use of property.

§ 109–1.5104 Loan of property.

(a) Property which would otherwise be out of service for temporary periods (and not excess) may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. Such loans shall be covered by written agreements or memorandum receipts which shall include all terms of the loan (such as loan period, delivery time, method of payment of transportation, point of delivery and return, conditions of use, responsibilities of the borrower for condition of property on return, inspection requirements, etc.) that may be required to ensure proper control and protect DOE's interest. The loan period should not exceed one year, but may be renewed.

(b) Requests for loan by foreign Governments and other foreign organizations shall be submitted through the Property and Equipment Management Division (MA–422) to the Assistant Secretary for International Affairs for approval, with a copy to the cognizant Headquarters program office.

§ 109–1.5105 Borrowing of property.

(a) DOE organizations and contractors are encouraged to borrow property within DOE to further DOE programs. Property classified as "Equipment Held For Future Projects (EHFFP)" or as "In Standby" should be reviewed by those receiving availability inquiries for short-term loans (one year or less). Borrowing of Government property from other Federal agencies is also encouraged when required for short periods of time. Such transactions shall be covered by written agreements which include all the terms of the transaction.

(b) In determining whether it is practical and economical to borrow property, consideration shall be given to suitability, condition, value, extent and nature of use, extent of availability, portability, cost of transportation, and other similar factors.

§ 109–1.5106 Control of property.

§ 109–1.5106–1 Identification marking of property.

(a) All Government property, including capitalized, sensitive, and non-capital equipment shall be identified as U.S. Government property. Capitalized and sensitive property shall also be identified by numbering for control purposes. Other property susceptible to unauthorized personal use, such as hand tools, should be considered for marking as a control measure. Marking may be accompanied by any means which will produce a permanent marking and which is most adaptable to the particular item of property.

(b) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE, or additional markings may be added to indicate such disposal.

(c) Property which by its nature cannot be marked is exempted from this requirement. Such Government property in the custody of contractors should not be commingled with contractor-owned property unless it is determined by the contracting officer to be advantageous to the Government.

§ 109–1.5106–2 Segregation of property.

Ordinarily, provisions shall be made for the contractor to keep Government property segregated from contractor-owned property. Commingling of Government-owned and contractor-owned property may be allowed only when—

(a) The segregation of the property would materially hinder the progress of the work, i.e., segregation is not feasible for reasons such as small quantities, lack of space, or increased costs; and

(b) Control procedures are adequate, i.e., the Government property is specifically marked or otherwise identified as being Government property.

§ 109–1.5106–3 Physical protection of property.

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, marking of tools, and perimeter fencing shall be

established as required to prevent loss, theft, or unauthorized movement of property from the premises on which such property is located.

§ 109–1.5106–4 Control of sensitive items.

(a) Controls shall be established over the acquisition, storage, issue use, and return of sensitive items of property.

(b) Items on capital equipment which are also designated as sensitive items will be controlled as sensitive items and as capital equipment.

(c) A list of sensitive items shall be maintained for property considered to require special controls before and after issue. Determination of specific sensitive items shall be a matter for management judgment at individual locations, taking into consideration the dollar value of the items to be controlled and costs of administration.

(d) Written procedures shall be established for control of sensitive items, to include:

(1) Approval of purchase requisitions or issue documents at an appropriate supervisory level prior to acquisition or issue;

(2) Establishment of administrative controls in the central receiving and warehousing department. Such controls should include extraordinary physical protection, guidance for receiving and warehousing personnel as to procedures for protection, and a current listing of sensitive items;

(3) Establishment and maintenance of appropriate property management records;

(4) Requirements for tagging and identification;

(5) Use of memorandum receipts or custody documents at time of assignment or change in custody;

(6) Establishment of custodial responsibilities describing—

(i) Need for extraordinary physical protection;

(ii) Requirement for prompt reporting of apparent loss, damage or destruction;

(iii) Requirement to return items in condition beyond economical repair to an appropriate organizational element;

(iv) Requirement for promptly reporting changes in custody or extended loans;

(v) Reminder of prohibition of use for other than official purposes, and penalties for misuse;

(vi) Requirement for effective physical and administrative control of sensitive items assigned for general use within an organizational unit as appropriate to the type of property and the circumstances; and

(vii) A clear definition of the extent of responsibility or financial accountability, depending on contractor policy.

(7) Requirement for annual physical inventory;

(8) Requirement for prompt and thorough investigation of losses;

(9) Requirement for an employee transfer or termination checkout procedure and examination and adjustment of records; and

(10) Other property management procedures which, through experience and independent audit, have demonstrated effective physical and administrative control over sensitive items.

§ 109–1.5106–5 Physical inventories.

(a) Physical inventories of property shall be conducted at all DOE and contractor locations, consistent with approved procedures and generally accepted accounting procedures.

(b) The preferred method of performing physical inventories is by the use of personnel other than the property staff or custodian of the property. Where staffing restraints or other considerations require, the inventory may be performed by the property staff or the custodian.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE organization and contractor. The Director of Administration and heads of field offices shall approve the procedures for their respective DOE operation. The appropriate field organization staff shall review and approve contractor's procedures.

(d) The taking of a physical inventory will be observed, or follow-on audits made, by independent representatives, e.g., finance, audit, or property staffs, to the extent deemed necessary to assure that the procedures are being followed and the results are accurate. These observations or audits should be documented and the documentation should be retained in the inventory record file.

(e) Procedures that are limited to a check-off of a listing of recorded property without actual verification of the location and existence of such property do not meet the requirements of a physical inventory.

(f) The frequency of physical inventories shall be as follows:

(1) *Moveable capital equipment*—not less frequently than every two years.

(2) *Sensitive items*—not less frequently than every twelve months.

(3) *Precious metals*—not less frequently than every six months.

(g) A physical inventory shall be performed at intervals more frequently than required in § 109–1.5106–5(f) whenever experience at any given location or with any given item or items indicates that this action is necessary for effective property accounting, utilization, or control.

(h) Special inventories may be required on certain types of property or on certain items or kinds of items when circumstances arise requiring such action, such as audits or special reviews.

(i) The results of physical inventories shall be reconciled with the property records and, except for non-capital sensitive items, with the financial control accounts in accordance with Chapter VI of the DOE Accounting Practices and Procedures Handbook.

(j) Physical inventories of capital equipment and stores inventories may be conducted by the "statistical sampling" method in lieu of the normal "wall-to-wall" method. In addition, the "inventory by exception" method may be used for capital equipment physical inventories. However, the system and procedures for taking physical inventories by these methods must be fully documented and approved by the Director of Administration and by heads of field offices for their respective organizations.

§ 109–1.5107 Retirement of property.

When Government property is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be supported by an investigation, if necessary, as to the date and circumstances surrounding loss, theft, destruction, abandonment, or damage. The retirement work order shall be reviewed by the property management staff and signed by the responsible official initiating the report and reviewed and approved by an official at least one supervisory echelon above the official initiating the report.

§ 109–1.5108 Property belonging to others.

Procedures shall be established which will provide for adequate attention to the management of property belonging to other Federal agencies in the possession or custody of DOE organizations or its contractors.

§ 109–1.5109 Employee participation.

Full advantage shall be taken of suitable methods for stimulating employee participation and cooperation in carrying out an effective and economical program of property management. Some examples of effective methods are (a) indoctrination

of new employees and others who have access to or use property, (b) the use of incentive award plans to promote interest, and (c) the use of visual aids such as posters, plant publications, outdoor signboards, and displays to keep employees informed as to progress and to remind them of their responsibilities.

§ 109–1.5110 Use of non-Government-owned property.

Non-Government-owned personal property shall not be installed in, affixed to, or otherwise made a part thereof, of any Government-owned personal or real property. This restriction does not apply to the use and installation of privately owned decorative items or memorabilia to the workplace, provided that the structure of safety of the facility is not thereby degraded.

§ 109–1.5148 Personal property management reports.

Property management reports to be submitted to the Property and Equipment Management Division (MA–422) are listed below.

Report title.	Due at DOE Headquarters	Reference	Form No.
(a) Reports required of all offices.			
(1) Utilization and Disposal of Personal Property Pursuant to Exchange/Sale Authority.	Nov. 30	FPMR 101–46.407, DOE–PMR 109–46.407.	Letter.
(2) Excess Personal Property Furnished to Non-Federal Recipients.	Nov. 15	FPMR 101–43.4701(c), DOE–PMR 109–43.4701(c).	Letter.
(3) Contractor Property Holdings	Oct. 31	DOE–PMR 109–1.5205	Letter.
(4) Precious Metals	Oct. 31	FPMR 101–42.301–1, DOE–PMR 109–42.301–1.	Letter.
(5) Agency Report of Motor Vehicle Data.	Oct. 31	FPMR 101–38.1, DOE–PMR 109–38.1	SF 82.
(6) Unused Passenger Vehicle Replacement Authorizations.	June 15	DOE–PMR 109–38.5101–5(b)	Letter.
(7) Report of Exempted Motor Vehicles.	On request	FPMR 101–38.607, DOE–PMR 109–38.607.	Letter.
(8) Annual Forecast for Acquisition of Fuel Efficient Passenger Automobiles.	Dec. 1	Executive Order 12375, DOE–PMR 109–38.1306.	Letter.
(9) Aircraft Cost and Operations	Dec. 31	DOE–PMR 109–38.5212(a)	DOE F 4450.1.
(b) Reports required from field offices not reporting through the DOE Financial Information System.			
(1) Utilization and Disposal of Excess and Surplus Personal Property.	Nov. 15	FPMR 101–43.4701(a), DOE–PMR 109–43.4701(a).	SF 121.
(2) Summary of Excess Property Received from Other Agencies.		DOE Order 2200, Chapter XI	CR 85–4.
(3) Supply Activity Report	Nov. 15	DOE–PMR 109–25.48	GSA F 1473.
(4) Direct Labor Costs of Stores Warehousing Activities.	Nov. 15	DOE Order 2200, Chapter XI	CR 85–7.
(5) Completed Plant and Equipment	Oct. 31	DOE Order 2200, Chapter XI	CR 84–32.
(6) Equipment Held for Future Projects	Oct. 31	DOE Order 2200, Chapter XI	CR 57.

Subpart 109–1.52—Contractors' Personal Property Management Program

§ 109–1.5200 Scope of subpart.

This subpart prescribes policy and responsibilities for the establishment, maintenance, review and appraisal of a contractor's program and system for the management of Government personal property.

§ 109–1.5201 Policy.

(a) Contractors shall establish, maintain, and administer a program for the effective management of Government personal property consistent with the terms of the contract and directives for the contracting officer.

(b) Contractors shall maintain their personal property management systems in writing on a current basis.

(c) Contractors shall require those subcontractors provided Government property under the prime contract to establish and maintain a system for the management of such property. Procedures for assuring effective property management shall be included in the contractor's property control system. As a minimum, a subcontractor's system for control of Government property shall provide for the following:

(1) Adequate records.

(2) Controls over acquisitions.

(3) Identification as Government property.

(4) Physical inventories.

(5) Proper care, maintenance, and protection.

(6) Reporting, redistribution, and disposal of excess and surplus property.

(7) A retirement work order procedure to account for property that is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair.

(8) Periodic reporting, including physical inventory results and, at least annually, the total acquisition cost of Government property in the possession of the subcontractor.

(9) An internal surveillance system including periodic reviews to ensure that property is being managed in accordance with established procedures.

§ 109–1.5202 Designation of property administrator.

The contracting officer shall designate a property administrator to be responsible for property administration. This property administrator will be delegated the authority to assist the contracting officer on all matters involving the Government-owned personal property held by the contractor. If a property administrator has not been designated, the contracting officer is the property administrator.

§ 109–1.5203 Review and approval of contractor's property management system.

(a) A contractor's property management system should be reviewed by the property administrator within one year after the execution date of the contract, and the property administrator shall approve or disapprove the system in writing. If the system is disapproved, the property administrator shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of the corrective actions.

(b) The purpose of the review is to determine whether the system will adequately protect, maintain, utilize, and dispose of Government personal property in accordance with the FPMR, the DOE–PMR, and applicable DOE directives.

(c) Appropriate follow-up will be made by the property administrator to ensure that corrective actions are taken.

(d) Any change to the approved property management system made after the original review and approval should be reviewed by the property administrator at the earliest possible time. Such changes should then be approved/disapproved by the property administrator as appropriate.

§ 109–1.5204 Property management appraisals.

(a) At least every two years (with a maximum period of three years) after the execution date of the contract, the property administrator shall make an appraisal of the property management operation of the contractor. The appraisal may be based on a formal in-depth appraisal on-site or a series of formal appraisals of the functional segments of the contractor's property management system to determine if the contractor is managing the Government personal property in its custody in accordance with its previously approved

policies and procedures, the FPMR, the DOE–PMR, and applicable DOE directives. The property administrator shall bring deficiencies in the contractor's property management operation to the attention of the contractor's management for correction.

(b) Appropriate follow-up will be made by the property administrator to ensure that corrective actions are taken.

§ 109–1.5205 Reporting.

Within 30 days after the end of each fiscal year, heads of field offices shall report the following information to the Director, Property and Equipment Management Division (MN–422):

(a) Name and address of each contractor.

(b) Contract number.

(c) Date contractor's property management system was approved.

(d) Date of most current appraisal of contractor's property management system, and status of the system (satisfactory or unsatisfactory).

SUBCHAPTER C—DEFENSE MATERIALS

PART 109–14—NATIONAL DEFENSE STOCKPILE

Sec.

109–14.000 Scope of part.

Subpart 109–14.1—Transfer of Strategic and Critical Materials Excess to Agency Needs to the National Defense Stockpile

109–14.103–1–50 Exceptions to reporting.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–14.000 Scope of part.

This part implements and supplements FPMR Part 101–14, National Defense Stockpile.

Subpart 109–14.1—Transfer of Strategic and Critical Materials Excess to Agency Needs to the National Defense Stockpile

§ 109–14.103–1–50 Exceptions to reporting.

The following materials excess to the needs of a DOE organization or contractor shall be reported to the DOE pool instead of to GSA:

(a) Precious metals, which include gold, silver, and the platinum family (See § 109–43.313–54).

(b) Lead (See § 109–43.313–57).

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 109–25—GENERAL

Sec.

109–25.000–50 Scope of subchapter.
109–25.001–50 Scope of part.

Subpart 109–25.1—General Policies

109–25.100 Use of Government personal property and nonpersonal services.
109–25.101–1–50 Definitions.
109–25.104 Acquisition of office furniture and office machines.
109–25.109 Laboratory and research equipment.
109–25.109–1 Identification of idle equipment.
109–25.109–2 Equipment pools.
109–25.110–4 Recordkeeping responsibilities.
109–25.113 Leasing of motor vehicles.

Subpart 109–25.3—Use Standards

109–25.302 Office furniture, furnishings and equipment.
109–25.302–1 Executive type office furniture and furnishings.
109–25.302–2–50 Filing cabinets and equipment.
109–25.302–3 Electric typewriters.
109–25.302–4 Figuring machines.
109–25.302–6 Electronic office machines.
109–25.304 Additional systems and equipment for passenger motor vehicles.
109–25.304–50 Communications equipment exemption.
109–25.350 Use of furnishings and household goods in Government personnel quarters.
109–25.351 Furnishing of Government clothing and individual equipment to employees.

Subpart 109–25.4—Replacement Standards

109–25.401–50 Replacement approvals.

Subpart 109–25.48—Reports

109–25.4800 Scope of subpart.
109–25.4800–50 Applicability.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–25.000–50 Scope of subchapter.

This subchapter implements and supplements FPMR Subchapter E, Supply and Procurement.

§ 109–25.001–50 Scope of part.

This part implements and supplements FPMR Part 101–25, General, and provides cross-references to the DOE Acquisition Regulations (DEAR) where appropriate.

Subpart 109–25.1—General Policies

§ 109–25.100 Use of Government personal property and nonpersonal services.

The Director of Administration and heads of field offices for their respective organizations shall ensure that the provisions of FPMR 101–25.100 are enforced to restrict the use of Government property/services to officially designated activities.

§ 109–25.101–1–50 Definitions.

As used in this subpart, the following definitions apply:

(a) "Equipment" consists of those items of nonexpendable personal property having an anticipated service life of one year or more regardless of use or source of funding.

(b) "Equipment pool" is a formally designated collection of equipment, generally functionally associated, which is available for loan or temporary use. The pool may be a physical collection of equipment or may be a record system which provides identification, location and availability information on equipment available for loan or temporary use.

(c) "Equipment in storage" is all equipment not in use, whether stored in formal storage areas, stored in or adjacent to work areas, held for future projects, or retained in standby or abandoned facilities.

§ 109–25.104 Acquisition of office furniture and office machines.

In making a determination as to whether requirements can be met through the utilization of already owned furniture and office machines as contemplated in FPMR § 101–25.104, reasonable efforts shall be made to determine whether such items are available from other DOE organizations and contractors within a reasonable transport distance. Such efforts shall include direct inquiries and shall not be limited to a review of available property circularized in accordance with § 109–43.311–1–50.

§ 109–25.109 Laboratory and research equipment.

(a) The provisions of FPMR 101–25.109 and this section shall apply to all types of personal property, including office furniture and office machines, in addition to laboratory and research equipment.

(b) The provisions of FPMR 101–25.109 and this section apply to all DOE field organizations and contractors, and are not limited to Federal laboratories.

§ 109–25.109–1 Identification of idle equipment.

(a) See § 109–25.109(b).

(b) As a minimum, management walk-through inspections shall be scheduled to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property. The frequency of management walk-through inspections may vary with the operation or area involved. A report of walk-throughs conducted, including participants, areas covered, findings, recommendations, and results achieved shall be submitted to the head of the laboratory or other facility involved. Equipment identified as idle and unneeded shall be redeployed, reassigned, placed in

equipment pools or declared excess, as appropriate.

(c) In accordance with FPMR § 101–25.109–1(c), members of management walk-through inspection teams should be appointed by the head of the DOE or contractor facility.

(d) Heads of field offices and contracting officers shall periodically review walk-through procedures and practices of organizations under their jurisdiction to evaluate their effectiveness. This review should include actual walk-through inspections of representative DOE or contractor facilities.

§ 109–25.109–2 Equipment pools.

(b) In accordance with FPMR § 101–25.109–2(b), equipment pools shall be established where practicable to obtain optimum utilization of equipment. The number and types of pools to be established will depend upon local circumstances. In addition to those provided in FPMR § 101–25.109–2, factors to be considered are types of equipment, number and location of potential users and distances involved.

(c) In accordance with FPMR § 101–25.109–2(c), surveys of equipment holdings should be conducted periodically to determine those items which are suitable for pooling. Criteria for placing an item in a pool should include (but not be limited to) the following: The item is suitable for use by more than one individual or group; its use is intermittent rather than full time; it has a degree of portability; and it has sufficient cost or value to merit controlling. It is anticipated that items pooled would vary from one activity to another due to local conditions, and each activity should develop its own criteria for items to be pooled. Items to be considered for pooling include (but are not limited to) certain types of measuring and recording equipment, pumps, electric motors, photographic equipment, portable tools, microscopes, portable radios, power supplies, amplifiers, business machines, radiation detection instruments, and construction and automotive equipment. Where feasible, equipment pools should be combined with existing calibration and maintenance services to foster use and control of pooled equipment.

(d) Records of usage shall be maintained to permit the evaluation of need for quantities and types of equipment in pools. Reviews of usage should be conducted periodically (at least annually) to eliminate items which are no longer required. Heads of field offices shall require DOE and contractor facilities to submit to them annually the report on the use and effectiveness of equipment pooling required by FPMR § 101–25.109–2(d).

(e) Heads of field offices and contracting officers shall require periodic independent reviews of equipment pool operations as required by FPMR § 101–25.109–2(e).

§ 109–25.110–4 Recordkeeping responsibilities.

In accordance with FPMR 101–25.110–4, heads of field offices shall establish procedures for promptly identifying and locating all tires whether in storage or in use on vehicles so that tire recall notices may be acted upon expeditiously.

§ 109–25.113 Leasing of motor vehicles.

See DEAR 908.11 and FPMR §§ 101–26.501–9 and 101–39.601 for additional guidance concerning the leasing of motor vehicles.

Subpart 109–25.3—Use Standards

§ 109–25.302 Office furniture, furnishings, and equipment.

(a) The criteria contemplated in FPMR § 101–25.302 shall be established by the Director of Administration and heads of field offices for their respective DOE operations, consistent with FPMR § 101–25.302–1 and this subpart. Office furniture, furnishings, and equipment shall be limited to that required for immediate needs, considering such factors as ordering lead time, potential emergency needs and economical ordering quantities. Requirements shall be met to the fullest extent practicable and economical from available excess or by rehabilitation or repair.

(d) Contractors should be encouraged to limit executive-type furniture and furnishings to contractor personnel who organizationally are in positions that are similar or comparable to DOE positions authorized to use executive type office furniture as provided in FPMR § 101–25.302–1, when such action will effect economy without decreasing efficiency.

§ 109–25.302–1 Executive type office furniture and furnishings.

The Director of Administration and heads of field offices for their respective organizations are authorized to make the determination contemplated by FPMR § 101–25.302–1.

§ 109–25.302–2 Filing cabinets and equipment.

In addition to the use standards prescribed in FPMR § 101–25.302–2, Departmental policies, standards, procedures, and guidelines for the files management program is contained in DOE Order 1324.3.

§ 109–25.302–3 Electric typewriters.

The Director of Administration and heads of field offices for their respective organizations shall establish policies, procedures, and standards for the use of electric typewriters as contemplated in FPMR § 101–25.302–3, and are authorized to approve exceptions to the criteria contained in that section.

§ 109–25.302–4 Figuring machines.

The Director of Administration and heads of field offices for their respective organizations shall establish standards for the use of figuring machines as contemplated in FPMR § 101–25.302–4.

§ 109–25.302–6 Electronic office machines.

The Director of Administration and heads of field offices for their respective organizations shall establish standards for the use of electronic office machines as contemplated in FPMR § 101–25.302–6.

§ 109–25.304 Additional systems and equipment for passenger motor vehicles.

(a) If an item is determined to be essential and the guidelines in FPMR § 101–25.304 cannot be met, or the required item is not shown in Federal Standard 122, requisitions, accompanied by supporting justifications, shall be submitted to the Property and Equipment Management Division (MA–422), for further coordination with the Commissioner, Federal Supply Service, General Services Administration, prior to acquisition.

(b) See FPMR § 101–26.501, "Purchase of new motor vehicles," and DEAR 908.7101–2, "Consolidated purchase of new vehicles by General Services Administration."

§ 109–25.304–50 Communications equipment exemption.

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of § 109–25.304. Communications equipment may be acquired and installed in motor vehicles operated by DOE and its' contractors after approval by the Director of Administration and heads of field offices for their respective organizations.

§ 109–25.350 Use of furnishings and household goods in Government personnel quarters.

The Director of Administration and heads of field offices for their respective organizations have the authority to authorize the use of furnishings and household goods in Government personnel quarters.

§ 109–25.351 Furnishing of Government clothing and individual equipment to employees.

(a) Government-owned clothing and individual equipment may be furnished employees under the circumstances indicated below. Care should be exercised to avoid the acquisition and furnishing of clothing and individual equipment to be fitted to an employee who my soon be separated from service or permanently assigned to other duties. This section does not apply to provision of uniforms or uniform allowances under the Federal Employees Uniform Allowances Act of 1954, as amended.

(b) Special clothing and individual equipment for the protection of personnel from physical injury or occupational disease may be furnished employees.

(c) Articles of clothing and individual equipment may be furnished employees when the items are such that the employee could not reasonably be required to furnish them as a part of their personal clothing and equipment necessary to enable them to perform the regular duties of the position to which they are assigned or for which services were engaged.

Subpart 109–25.4—Replacement Standards

§ 109–25.401–50 Replacement approvals.

The Director of Administration and heads of field offices for their respective organizations are authorized to approve replacement of office machines, furniture, and materials handling equipment under the conditions cited in FPMR Subpart 101–25.4.

Subpart 109–25.48—Reports

§ 109–25.4800 Scope of subpart.

This subpart supplements information concerning the reporting of supply management data to GSA as contained in FPMR §§ 101–25.48 and 101–25.49.

§ 109–25.4800–50 Applicability.

The provisions of FPRM Subparts 101–25.48 and 101–25.49 and this subpart apply only to those DOE direct operations and contractors controlling Government-owned stores inventories. However, based on an agreement with GSA, the DOE Supply Activity Report is prepared at Headquarters from supply management data available in DOE's financial reports and is sent to GSA by the Property and Equipment Management Division (MA–422). Therefore, no additional reports are required from those field organizations or contractors reporting under the DOE financial reporting system. Those activities with stores operations which do not report under the DOE financial reporting system shall submit Supply Activity Reports to the Property and Equipment Management Division (MA–422) by November 15 for inclusion in the Departmental report.

PART 109–26—PROCUREMENT SOURCES AND PROGRAMS

Sec.

§ 109–26.000 Scope of part.
§ 109–26.050 Applicability.

Subpart 109–26.2—Federal Requisitioning System

§ 109–26.203 Activity address codes.

Subpart 109–26.4—Purchase of Items From Federal Supply Schedule Contracts

109–26.406–1 General.

Subpart 109–26.5—GSA Procurement Programs

§ 109–26.501 Purchase of new motor vehicles.

§ 109–26.000 Scope of part.

This part implements and supplements FPMR Part 101–26, Procurement Sources and Programs.

§ 109–26.050 Applicability.

FPMR Part 101–26 and this part are applicable to contractors to the extent that Government supply sources are made available. For DOE policy on the use of Government supply sources by contractors, see DEAR Subpart 970.51.

Subpart 109–26.2—Federal Requisitioning System

§ 109–26.203 Activity address codes.

In accordance with FPMR § 101–26.203, the Property and Equipment Management Division (MA–422) has been designated the DOE point of contact with GSA for matters concerning activity address codes. DOE organizations shall designate a point of contact who shall coordinate all matters concerning activity address codes with the DOE point of contact.

Subpart 109–26.4—Purchase of Items from Federal Supply Schedule Contracts

§ 109–26.406–1 General.

The Director of Administration and heads of field offices for their respective organizations may authorize the use of U.S. Government National Credit Cards in accordance with FPMR § 101–26.406–1. See FPMR § 101–38.12 and 109–38.12 for information on the assignment of billing address code numbers and the control of U.S. Government National Credit Cards.

Subpart 109–26.5—GSA Procurement Programs

§ 109–26.501 Purchase of new motor vehicles.

In addition to the provisions of FPMR § 101–26.501, DEAR 908.7101 contains DOE requirements concerning the purchase of new motor vehicles, and DEAR 908.11 contains the DOE requirements concerning the leasing of motor vehicles.

PART 109–27—INVENTORY MANAGEMENT

Sec.

109–27.000 Scope of part.
109–27.001–50 Definitions.

Subpart 109–27.1—Stock Replenishment

109–27.102–2 Guidelines.

Subpart 109–27.2—Management of Shelf-Life Materials

109–27.202 Applicability.

Subpart 109–27.3—Maximizing Use of Inventories

109–27.302 Applicability.

Subpart 109–27.4—Elimination of Items from Inventory

109–27.402 Applicability.

Subpart 109–27.50—Inventory Management Policies, Procedures and Guidelines

109–27.5001 Scope of subpart.
109–27.5002 Objectives.
109–27.5003 Stores inventory turnover ratio.
109–27.5004 Stock control.
109–27.5004–1 General.
109–27.5004–2 Construction inventories.
109–27.5005 Guide levels for construction inventories.
109–27.5006 Sub-stores.
109–27.5007 Shop, bench, cupboard or site stock.
109–27.5008 Stores catalogs.
109–27.5009 Physical inventories.
109–27.5009–1 Procedures.
109–27.5009–2 Inventory adjustments.
109–27.5010 Control of drug substances and potable alcohol.
109–27.5011 Containers returnable to vendors.
109–27.5012 Identification marking of metals and metal products.
109–27.5012–1 General.
109–27.5012–2 Exception.
109–27.5012–3 Federal standards applicable to marking.

Subpart 109–27.51—Management of Equipment Held for Future Projects

109–27.5100 Scope of subpart
109–27.5101 Definition.
109–27.5102 Objective.
109–27.5103 Records.
109–27.5104 Storage.
109–27.5105 Justification and review procedures.
109–27.5106 Field organization review.
109–27.5107 Utilization.

Subpart 109-27.52—Management of Spare Equipment

109-27.5200 Scope of subpart.
109-27.5201 Definition.
109-27.5202 Exclusions.
109-27.5203 Management policy.

Subpart 109-27.53—Management of Precious Metals

109-27.5300 Scope of subpart.
109-27.5301 Definition.
109-27.5302 Policy.
109-27.5303 Precious metals control officer.
109-27.5304 Practices and procedures.
109-27.5304-1 Acquisitions.
109-27.5304-2 Designation of custodians.
109-27.5304-3 Physical protection and storage.
109-27.5304-4 Perpetual inventory records.
109-27.5304-5 Physical inventories.
109-27.5304-6 Stock issue.
109-27.5304-7 Control by using organization.
109-27.5305 Management reviews and audits.
109-27.5306 Precious metals pool.
109-27.5306-1 Purpose and operation.
109-27.5306-2 Withdrawals.
109-27.5306-3 Returns.
109-27.5306-4 Withdrawals/returns forecasts.
109-27.5306-5 Assistance.
109-27.5307 Recovery of silver from used hypo solution and scrap film.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-27.000 Scope of part.

This part implements and supplements FPMR Part 101-27, Inventory Management, but excludes atomic weapons or byproducts and source or special nuclear materials as defined in the Atomic Energy Act of 1954, as amended, enriched uranium in stockpile storage, and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

§ 109-27.001-50 Definitions.

As used in this part the following definitions apply:

(a) "Construction inventories" are supplies, materials and parts held for exclusive use on construction projects.

(b) "Economic order quality (EQQ)" means the size of the order which produces a level at which the combined costs of procuring and carrying inventory are at a minimum.

(c) "Expensed inventories" are items for which the cost is charged to operations and are not under financial control.

(d) "Inventories" are stocks of stores, construction, special reactor and other special materials, supplies and parts used in support of DOE programs.

(e) "Inventory level," usually expressed in the number of months supply on hand based on anticipated usage, is the amount of supplies authorized to be on hand and due-in less any amount due-out.

(f) "Inventory management" means the effective use of methods, procedures and techniques for recording, analyzing, and adjusting inventories in accordance with established policy. The following related functions are included:

(1) Providing adequate protection against misuse, theft, and misappropriation.

(2) Providing accurate analyses of quantities to determine requirements so that only minimal obsolescence losses will be encountered, while ensuring adequate inventory levels to meet program schedules.

(3) Providing adequate and accessible storage facilities and services based upon analyses of program requirements so that a minimum and economical amount of time is required to service the program.

(g) "Other special materials" include precious metals and other rare materials having a very high monetary value in relation to volume or weight, special barrier materials, and any others that have been specifically approved by the DOE Controller.

(h) "Physical inventory" means the process of counting the quantities of items on hand and reconciling quantities counted with the quantities shown on control records.

(i) "Quantity control" means the management of inventories through control of levels, determination of requirements, and replenishment of stock.

(j) "Safety stock" is that portion of inventories under stock control carried for protection against stock depletion due to an increase in demand or when lead time is greater than anticipated.

(k) "Shop, bench, cupboard or site stock" is a collection or store of materials located at or near the point of use.

(l) "Special reactor materials" include special materials approved for research and for use in reactors but not generally available through the usual channels in sufficient quantity because of limited commercial production applications.

(m) "Standardization" is the reduction of stores inventories to the least practicable variety of sizes, shapes and materials compatible with program needs.

(n) "Stock record" is a device for collecting, storing, and providing historical data on recurring transactions for each line item of inventory. The stock record of a line item may be visible register of transactions recorded by hand or by machine for that item, or it may be the input, output, stored data, or the corresponding print-out of such data representing transactions on the item in an electronic data processing system.

(o) "Stores catalog" means a listing of stock items for use in requistioning supplies and materials.

(p) "Sub-store" is a geographically removed part of the main store's operation conducted as a subordinate element of it and subject to the same management policies and inventory controls.

Subpart 109-27.1—Stock Replenishment

§ 109-27.102-2 Guidelines.

Procedures and practices shall provide for replenishment of stock items having recurring demands to minimize costs involved. When considered more suitable, contractors may use other generally accepted approaches to EQQ.

Subpart 109-27.2—Management of Shelf-Life Materials

§ 109-27.202 Applicability.

Procedures and practices shall provide for managing shelf-life items to minimize loss and ensure maximum use prior to deterioration. When considered more suitable, contractors may use other generally accepted approaches to the management of shelf-life items.

Subpart 109-27.3—Maximizing Use of Inventories

§ 109-27.302 Applicability.

Procedures and practices shall provide for maximizing use of inventories. When considered more suitable, contractors may use other generally accepted approaches to maximizing use of inventories.

Subpart 109-27.4—Elimination of Items From Inventory

§ 109-27.402 Applicability.

Procedures and practices shall provide for eliminating from inventory items that can be obtained more economically from readily available sources on a timely basis. When considered more suitable, contractors may use other generally accepted approaches to determine which items should be retained in inventory.

Subpart 109-27.50—Inventory Management Policies, Procedures, and Guidelines

§ 109-27.5001 Scope of subpart.

This subpart supplements FPMR Part 101-27 by providing additional policies, principles and guidelines for the

economical and efficient management of inventories in support of DOE programs.

§ 109–27.5002 Objectives.

Necessary inventories shall be established and maintained at reasonable levels, consistent with program requirements. They shall be managed and controlled in the most practicable and economical manner consistent with program needs, applicable laws and regulations and the following objectives:

(a) Provide materials and supplies as needed to meet DOE requirements.

(b) Maintain reasonable inventory levels.

(c) Provide adequate safeguards for protection.

(d) Maintain adequate quantity controls for effective management over all inventories, including those not under financial controls.

(e) Assure maximum efficient utilization and avoid waste.

(f) Maintain an economical operation.

(g) Standardize inventories to the greatest extent practicable.

§ 109–27.5003 Stores inventory turnover ratio.

Comparison of investment in stores inventories to annual issues shall be made to assure that minimum inventories are maintained for the support of programs. This comparison may be expressed either as a turnover ratio (issues divided by dollar value of inventory) or in the average number of month's supply on hand. Turnover or number of month's supply is calculated only on "current-use" inventory. Performance goals, i.e., a six months investment or a turnover ratio of 2.0, shall be established for each stores using activity. However, it is recognized that extenuating operating circumstances may preclude the achievement of such objectives.

§ 109–27.5004 Stock control.

§ 109–27.5004–1 General.

Stock control shall be maintained on the basis of stock record accounts of inventories on hand, on order, received, issued, and disposed of, and supported by proper documents in evidence of these transactions. Stock record accounts shall be available for review and inspection.

§ 109–27.5004–2 Construction inventories.

Stock control from construction inventories shall be maintained by the regular checking of individual items to assure that the quantities ordered plus amounts on hand do not exceed current job requirements. To test the effectiveness of such checks, they should be supplemented with DOE reviews of inventory items on a selective basis at approximately the 25 percent, 50 percent, and 75 percent construction completion stages. Undelivered portions of purchase orders, which these checks and reviews indicate are not needed to complete the project, should be canceled.

§ 109–27.5005 Guide levels for construction inventories.

To ensure that inventories maintained for construction programs and activities are reasonable, the following standards are established as guides (variations may be used where it is established by field organizations that they will more effectively or economically assure that inventory levels are held to the amount required to complete the construction project):

(a) Ordinary construction materials and supplies readily available from commercial sources, and not available as Government excess, permit phasing of deliveries and cancellation of undelivered quantities that may prove excess to project requirements. The onhand inventory of such materials generally should not exceed a three or four months supply at the anticipated usage rates.

(b) Ordinary construction materials and supplies readily obtainable from Government excess should be acquired only in the amounts estimated to complete the construction project.

(c) Items obtainable only by special manufacture or fabrication should be limited to the estimates of requirements to complete the project as determined from project plans and specifications, except as outlined in (d) below.

(d) Inventory levels in excess of estimates to complete the project should be confined to items so unusual in character or unique to the DOE project that they are obtainable only by special manufacture and will be required for maintenance purposes or for operation of the completed plant.

§ 109–27.5006 Sub-stores.

(a) Sub-stores shall be established when necessary to expedite delivery of materials and supplies to the users, serve emergencies, provide economy in transportation, reduce shop and site stocks, and enable stores personnel to provide assistance in obtaining materials and supplies as needed.

(b) Items stored for issue in the sub-stores shall be treated as inventory items for control and reporting purposes. Stock records shall be integrated with central stock records so that the total amount on hand of any item at all locations is known.

§ 109–27.5007 Shop, bench, cupboard or site stock.

(a) Shop, bench, cupboard or site stocks are an accumulation of small inventories of fast-moving materials at the point of use. Normally, these inventories are expensed. However, when stocks of such inventories are not consumed or do not turn over in a reasonable period of time, which normally should not exceed 90 days, these items should be subject to the required physical controls and recorded in the proper inventory account.

(b) Care shall be exercised to prevent excessive accumulation of inventories at such points. As a control measure, requisitions should be screened against issue data as reflected in stock records at the supply point. Also, work orders, retirement notices, minor construction projects, maintenance programs, and research and experimental projects, involving removal and dismantling should be reviewed and screened to prevent excessive inventories at point of use. However, the most effective control at point of use may be effected by administrative action through visual examination of quantities on hand, and close supervisory control and training of persons who requisition materials and supplies.

§ 109–27.5008 Stores catalogs.

A suitable stores catalog for customer use in requisitioning stores items shall be established for each stores operation. Exceptions to this requirement are authorized where establishment of a catalog is impracticable or uneconomical because of small total value or number of items involved, or temporary need for the facility. Revisions to the catalog should be made at reasonable intervals.

§ 109–27.5009 Physical inventories.

§ 109.27–5009–1 Procedures.

The following procedures shall be established for taking physical inventory of stocks subjected to quantity controls as well as those under financial control:

(a) Completion of a physical inventory not less frequently than every twelve months.

(b) Reconciliation of inventory quantities with the stock records.

(c) Preparation of a report of the physical inventory results.

§ 109–27.5009–2 Inventory adjustments.

(a) Discrepancies between physical inventories and stock records shall be adjusted and the supporting adjustment records shall be reviewed and approved by a responsible official at least one

supervisory echelon above the supervisor in charge of the warehouse or storage facility. Items on an adjustment report which are not within reasonable tolerances for particular items shall be thoroughly investigated before approval.

(b) Such inventory adjustment reports, when properly approved, support adjustments to the stock records and debits and credits to the financial inventory accounts. Adjustment reports shall be retained on file for inspection and review.

§ 109–27.5010 Control of drug substances and potable alcohol.

(a) The term "controlled substance" means any drug or substance which has been assigned a "Bureau of Controlled Substance Code Number" pursuant to 21 CFR Part 1308–Schedule of Controlled Substances.

(b) Effective procedures and practices shall provide for the management and physical security of controlled substances and potable alcohol from receipt to the point of use. Such procedures shall, as a minimum, provide for safeguarding, proper use, adequate records, and compliance with applicable laws and regulations. Controls and records of potable alcohol shall be maintained on quantities of one quart and above.

(c) Effective procedures and practices shall provide for the management and physical security of hypodermic needles to prevent illegal use. Controls shall include supervisory approval for issue, storage in locked repositories, and the rendering of the needles useless upon disposal.

§ 109–27.5011 Containers returnable to vendors.

Containers furnished by vendors shall be adminstratively and physically controlled before and after issuance. Prompt action shall be taken to return such containers to vendors for credit after they have served their intended use.

§ 109–27.5012 Identification marking of metals and metal products.

§ 109–27.5012–1 General.

Metals and metal products shall be identification marked in accordance with applicable Federal standards. This requirement applies to direct charges as well as to items procured for store, shop or floor stock, or for use on construction projects. Additional markings not covered by the Federal standards should be used to show special properties, corrosion data or test data as required. The preferred process is for the marking to be done in the manufacturing process, but it may be applied by jobbers or other vendors when circumstances warrant.

§ 109–27.5012–2 Exception.

Exception to the marking requirement may be made when—

(a) It is necessary to procure small quantities from suppliers not equipped to do the marking;

(b) It would delay delivery of emergency orders; or

(c) Procurement is from DOE or other Federal agency excess.

§ 109–27.5012–3 Federal standards applicable to marking.

The Federal standards listed below can be obtained from the General Services Administration, Federal Supply Service (3 FRI), Washington, D.C. 20407.

(a) Federal Standard 182A(2) "Identification Marking of Nickel and Nickel Base Alloys."

(b) Federal Standard 183B "Continuous Identification Marking of Iron and Steel Products."

(c) Federal Standard 184A "Identification Marking of Aluminum, Magnesium and Titanium."

(d) Federal Standard 185 "Continuous Marking of Copper and Copper Base Alloy Mill Products."

Subpart 109–27.51—Management of Equipment Held for Future Projects

§ 109–27.5100 Scope of subpart

This subpart provides policies, principles and guidelines to be used in the management of equipment held for future projects.

§ 109–27.5101 Definition.

"Equipment held for future projects (EHFFP)" is equipment that is being retained, based on approved justifications, for a known future use, or for a potential use in planned projects. This classification excludes spare equipment retained as backup for equipment in service or equipment placed in equipment pools (classified as "In Service"), spare and other equipment constituting a part of the facilities in standby (classified as "Standby"), excess equipment, and equipment classified as "Plant and Equipment Changes in Progress".

§ 109–27.5102 Objective.

The objective of the "equipment held for future projects" program is to enable DOE offices and contractors to retain equipment not in use in current programs but which has a known or potential use in future DOE programs, while providing visibility on the types and amounts of equipment so retained through review and reporting procedures. It is intended that equipment be retained which is economically justifiable for retention, considering costs of replacement, storage, obsolescence, deterioration, or future availability, that it be made available for use by others, and that equipment no longer needed be promptly excessed.

§ 109–27.5103 Records.

Records of all EHFFP shall be maintained by the holding organization. Included shall be a listing of items with original date of classification as EHFFP, initial justifications for retaining EHFFP, rejustifications for retention, and documentation of reviews made by higher levels of management.

§ 109–27.5104 Storage.

EHFFP should be stored in warehouse space designated for that purpose. When such space can not be made available, such equipment may be stored in storage yards or other areas with due consideration to the type of property and protection required.

§ 109–27.5105 Justification and review procedures.

Procedures shall provide for the following:

(a) The original decision to classify and retain equipment as EHFFP shall be justified in writing, providing sufficient detail to support the need for retention of the equipment. This justification will cite the project for which retained, the potential use to be made of the equipment, or other reasons for retention.

(b) The validity of initial classification of equipment held for future projects shall be reviewed at a level of management one echelon above that of the individual making the initial determination.

(c) Retention of EHFFP must be rejustified annually to ensure that original justifications remain valid. These rejustifications will be supported with sufficient detail to support retention.

(d) Annual rejustifications for retention of EHFFP for longer than one year shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the equipment as held for future projects. EHFFP retained for periods longer than three years should be approved by the head of the DOE field office or his designee.

§ 109–27.5106 Field organization review.

Heads of field offices and contracting officers shall conduct periodic reviews to ensure the validity of justifications for retaining EHFFP. These reviews should

include onsite surveys of a representative sample of equipment in this classification.

§ 109–27.5107 Utilization.

It is DOE policy that, where practicable and consistent with program needs, EHFFP be considered as a source of supply to avoid or postpone acquisition. Procedures shall be established to provide for—

(a) Distribution within the holding organization of lists of EHFFP to acquisition offices (or some other central screening office) and potential users for screening against requirements prior to acquisition; and

(b) Exchange of lists of EHFFP which can be made available for loan between organizations involved in the same or similar programs.

Subpart 109–27.52—Management of Spare Equipment

§ 109–27.5200 Scope of subpart.

This subpart provides policy guidance to be used in the management of spare equipment.

§ 109–27.5201 Definition.

"Spare equipment" is equipment held as replacement spares for equipment in current use in DOE programs.

§ 109–27.5202 Exclusions.

The following categories of equipment will not be considered spare equipment:

(a) Equipment installed for emergency backup, e.g., an emergency power facility, or an electric motor or a pump, any of which is in place and electrically connected.

(b) Equipment-like items properly classified as stores inventory.

§ 109–27.5203 Management policy.

(a) Procedures shall require records of spare equipment and purpose for retention, cross-referenced to location in facility and engineering drawing number.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. Frequency of review should be biennial. In addition, individual item levels shall be reviewed when spare equipment is installed for use, the basic equipment is removed from service, or the process supported is changed.

(c) Procedures shall be established to provide that unneeded spare equipment be identified and reported as excess.

Subpart 109–27.53—Management of Precious Metals

§ 109–27.5300 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of DOE-owned precious metals by DOE organizations and contractors.

§ 109–27.5301 Definition.

"Precious metals" means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are gold, silver, and the platinum group metals—platinum, palladium, rhodium, iridium, ruthenium and osmium.

§ 109–27.5302 Policy.

DOE organizations and contractors shall establish effective procedures and practices for the administrative and physical control of precious metals in accordance with the provisions of this subpart.

§ 109–27.5303 Precious metals control officer.

Each DOE organization and contractor holding precious metals shall designate a responsible individual as Precious Metals Control Officer. This individual shall be the organization's primary point of contact concerning precious metals control and management, and shall be responsible for the following:

(a) Assuring that the organization's precious metals activities are conducted in accordance with the requirements of this subpart and Chapter IV of the DOE Accounting Practices and Procedures Handbook.

(b) Maintenance of an accurate list of the names of precious metals custodians.

(c) Providing instructions and training to precious metals custodians and/or users as necessary to assure compliance with regulatory responsibilities.

(d) Insuring that physical inventories are performed as required by, and in accordance with, these regulations.

(e) Witnessing physical inventories.

(f) Performance of periodic unannounced inspections of custodian's precious metals inventory and records.

(g) Conduct of an annual review of precious metals holdings to determine excess quantities.

(h) Preparation and submission of the annual forecast of anticipated withdrawals from, and returns to, to DOE precious metals pool.

(i) Conduct of a program for the recovery of silver from used hypo solution and scrap film in accordance with FPMR §§ 101–42.3 and 109–42.3.

(j) Preparation and submission of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109–42.301–1.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals for stockrooms.

§ 109–27.5304 Practices and procedures.

§ 109–27.5304–1 Acquisitions.

DOE organizations and contractors shall contact the DOE Precious Metals Pool Manager to determine the availability of precious metals prior to acquisition on the open market.

§ 109–27.5304–2 Designation of custodians.

Responsible individuals shall be designated as precious metals custodians. Custodians shall be responsible for proper control and safeguarding of the precious metals when issued for use.

§ 109–27.5304–3 Physical protection and storage.

Precious metals shall be afforded exceptional physical protection from time of receipt until disposition. Precious matals not in use shall be stored in a noncombustible combination locked repository with access limited to the custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately.

§ 109–27.5304–4 Perpetual inventory records.

Perpetual inventory records shall be maintained as specified in Chapter V of the DOE Accounting Practices and Procedures Handbook.

§ 109–27.5304–5 Physical inventories.

(a) Physical inventories shall be conducted semiannually by custodians, and witnessed by the Precious Metals Control Officer or his designee.

(b) Precious metals not in use shall be inspected and weighed on calibrated scales. The inventoried weight and form shall be recorded on the physical inventory sheets by class of metal. Metals in use in an experimental process, or which are contaminated and therefore cannot be weighed, shall be listed on the physical inventory sheet as observed and/or not observed as applicable.

(c) Any obviously idle or damaged metals should be recorded during the physical inventory. Justification for further retention of idle materials shall

be required from the custodian or disposed of in accordance with established procedures.

(d) The dollar value of physical inventory results shall be reconciled with the financial records. All adjustments shall be supported by appropriate adjustment reports, and approved by a responsible official.

§ 109-27.5304-6 Stock issue.

Metals in stock are metals held in a central location and later issued to individuals when authorized requests are received. The following control procedures shall be followed for such metals:

(a) Stocks shall be held to a minimum consistent with effective and economical support to programs.

(b) The name and organizations number of each individual authorized to withdrawn precious metals, and the type and kind of metal, shall be prominently maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated semiannually. Issue of metals will be made only to authorized persons.

(c) Accurate records of all movements (receipts, issues, returns, and disposals) shall be developed by, and maintained in, the stockroom.

(d) Receipts for metal issues and returns to stock shall be provided to users. Such receipts, signed by the authorized requesting individual and the stockroom clerk, shall list the requesting organization, type and form of metal, quantity, and date of transaction.

§ 109-27.5304-7 Control by using organization.

(a) After receipt, the using organization shall provide the necessary controls for the precious metal. Materials shall be stored in a locked repository at all times except for small quantities at the actual point of use.

(b) Each using organization shall maintain a log showing the individual user, type and form of metal, and the time, place, and purpose of each use. The log shall be kept in a locked repository when not in use.

(c) The logs and secured locked storage facilities are subject to review by the Precious Metals Control Officer and other audit or review staffs as required.

(d) Cognizant Department Managers are responsible for assuring that minimum quantities of precious metals are withdrawn consistent with work requirements and that quantities excess to requirements are promptly returned to the stockroom.

(e) Employee termination and transfer procedures shall include clearance for precious metals possession.

§ 109-27.5305 Management reviews and audits.

(a) Unannounced inspections of custodian's precious metals inventory and records may be conducted between scheduled inventories.

(b) DOE organizations and contractors holding precious metals shall annually review the quantity of precious metals on hand to determine if this quantity is in excess of programmatic requirements. Precious metals which are not needed for current or foreseeable requirements shall be promptly reported to the DOE Precious Metals Pool. The results of this annual review are to be documented and entered into the precious metals inventory records.

§ 109-27.5306 Precious metals pool.

§ 109-27.5306-1 Purpose and operation.

The purpose of the precious metals pool is to recycle DOE-owned precious metals within the Department at the minimum cost to participants. The pool is operated by a private firm under a contract with the Oak Ridge Operations Office. Current information regarding the contractor's name, address, and telephone number and processing charges can be obtained by request through the Chief, Property Management Branch, Oak Ridge Operations Office.

§ 109-27.5306-2 Withdrawals.

Pure metal, parts, fabricated products, catalysts, or solutions, are generally available and the DOE pool contractor can provide assistance in supplying such requirements. Metals can be shipped to any facility to fulfill fabrication requirements.

§ 109-27.5306-3 Returns.

The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals should be returned to the pool for recycling. With the exception of silver, this includes precious metals in any form, including shapes, scrap, or radioactively contaminated. Only high grade nonradioactively contaminated silver should be included. Procedures have been developed by the precious metals pool contractor for metal returns, including storing, packaging, shipping, and security.

§ 109-27.5306-4 Withdrawals/returns forecasts.

The precious metals pool contractor will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

§ 109-27.5306-5 Assistance.

DOE organizations or contractors may obtain specific information relative to the operation of the precious metals pool by contracting the Oak Ridge Operations Office as indicated in § 109-27.5306-1.

§ 109-27.5307 Recovery of silver from used hypo solution and scrap film.

The requirements for the recovery of silver from used hypo solution and scrap film are contained in § 109-42.302.

PART 109-28—STORAGE AND DISTRIBUTION

Sec.
109-28.000 Scope of part.
109-28.001-50 Policy.
109-28.001-51 Storage guidelines.

Subpart 109-28.3—Self Service Stores

109-28.308-3 Limitations on use.
109-28.308-6 Safeguards.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-28.000 Scope of part.

This part implements and supplements FPMR Part 101-28, Storage and Distribution.

§ 109-28.001-50 Policy.

Storage and warehouse services shall be—

(a) Established for the receipt, storage, issue, safekeeping and protection of Government-owned property when advantageous to the Government;

(b) Provided in the most economical and efficient manner through the use of Government-owned facilities, and where necessary available commercial facilities, consistent with program requirements; and

(c) Operated in accordance with generally accepted industrial management practices and principles.

§ 109-28.001-51 Storage guidelines.

(a) Adequate storage facilities shall be provided to ensure the proper safeguarding of all Government property.

(1) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(2) Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the Government's interest.

(3) Storage areas shall be prominently posted to clearly indicate that the

property stored therein is U.S. Government property. Entrance to such areas should be restricted to authorized personnel only.

(b) The following general storage principles shall be observed in the planning for the storage of Government personal property.

(1) Efficient storage demands the maximum utilization of space with a minimum amount of labor. Where practicable, labor should be conserved by use of modern materials handling equipment and storage aids which permit stacking by unit loads rather than by individual container units.

(2) Fast-moving items should be stored in convenient locations from which they can be issued with minimum handling. Stocks of individual items or classes of items should be segregated to facilitate handling, issuing, and inventorying.

(3) Property should be stored according to the kind of protection required. All items must be protected from fire and theft. Certain items require protection from dampness, heat, freezing, or extreme temperature changes. Others must be stored away from light and odors, protected from vermin infestation, or, because of their hazardous characteristics, stored separate from other stocks. These factors, as well as maximum protection of property against all causes of deterioration or destruction, must be considered in selecting proper storage locations.

(4) Orderly arrangement is essential to efficient operation of storehouses. All items should be so arranged that nomenclature and quantity may be readily determined.

(5) Stock rotation is based on the general storage principle of "first in, first out." Many items, such as perishables, food stuffs, medicines, paints, and chemicals, are subject to deterioration or infestation which require that the older stock be issued first.

Subpart 109–28.3—Self Service Stores

§ 109–28.308–3 Limitations on use.

The Director of Administration and heads of field offices for their respective organizations shall establish internal controls for the use of GSA shopping plates in accordance with FPMR § 101–28.308–3.

§ 109–28.308–6 Safeguards.

The Director of Administration and heads of field offices for their respective organizations shall establish internal controls for safeguarding of GSA shopping plates in accordance with FPMR § 101–28.308–6.

PART 109–30—FEDERAL CATALOG SYSTEM

Sec.
109–30.000 Scope of part.
109–30.000–50 Applicability.

Subpart 109–30.5—Maintenance of the Federal Catalog System

109–30.503 Maintenance actions required.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–30.000 Scope of part.

This part supplements FPMR Part 101–30, Federal Catalog System.

§ 109–30.000–50 Applicability.

The provisions in FPMR Part 101–30 and this part do not apply to contractors.

Subpart 109–30.5—Maintenance of the Federal Catalog System

§ 109–30.503 Maintenance actions required.

(b) Standard Form 1303 shall be sent directly to GSA for processing. Inquiries concerning policy should be directed to the Property and Equipment Management Division (MA–422).

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

PART 109–36—ADP MANAGEMENT

Sec.
109–36.000 Scope of part.

Subpart 109–36.3—Reutilization of Automatic Data Processing Equipment and Supplies

109–36.300–50 Scope of subpart.
109–36.302–50 Reassignment of ADPE within DOE.
109–36.303–1 Designation of agency ADPE point of contract.
109–36.303–3–50 Reporting excess or exchange/sale ADPE within DOE.
109–36.304 Availability list.
109–36.306 Requests for transfer of excess ADPE or exchange/sale ADPE.

Subpart 109–36.47—Reports

109–36.4700 Scope of subpart.
109–36.4702 Reporting excess or exchange/sale ADPE.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–36.000 Scope of part.

This part implements and supplements FPMR Part 101–36 as it relates to utilization and disposal of excess automatic data processing equipment (ADPE).

Subpart 109–36.3—Reutilization of Automatic Data Processing Equipment and Supplies

§ 109–36.300–50 Scope of subpart.

This subpart implements and supplements FPMR Part 101–36.3. Policies and procedures relating to acquisition, reassignment, or retention of excess ADPE are contained in policies and procedures established by the Office of the Director of Administration.

§ 109–36.302–50 Reassignment of ADPE within DOE.

(a) Transfers within DOE of excess ADPE having a current market price equal to or greater than that specified for major items as defined in the DOE Program Budget Structure are made pursuant to the requirement for proposals submitted in accordance with instructions from the Office of the Director of Administration.

(b) Transfers within DOE of excess ADPE with a current market price of less than that specified for major items shall be approved by the head of the field office and the head of the Headquarters organization having ADPE responsibility for the equipment. However, when more than one request is received, the field office head shall notify the requestors that acquisition proposals prepared in accordance with instructions from the Office of the Director of Administration shall be forwarded to the field organization for review. After receipt of all proposals, the field office head shall—

(1) Approve the request for transfer which is judged to be in the best interest of DOE; or

(2) Where this judgement cannot be made locally, forward the proposals to the Director of Administration for action in a manner similar to proposals for equipment having a current market price equal to or greater than that specified for major items.

§ 109–36.303–1 Designation of agency ADPE point of contact.

The Director of Administration shall designate the DOE point of contact to carry out the responsibilities contained in FPMR § 101–36.303–1.

§ 109–36.303–3–50 Reporting excess or exchange/sale ADPE within DOE.

(a) All ADPE, either Government-owned or—leased, which is no longer needed or is scheduled for replacement, shall be made available for utilization within DOE as soon as plans for the release of such equipment are known.

(b)(1) Government-owned ADPE shall be reported for utilization screening

within DOE on Standard Form (SF) 120, Report of Excess Personal Property. The SF 120 shall contain the information required in FPMR 101–36.4702 and, for internal screening purposes, a release date (date of availability). If the release date is not firm, a tentative release date should be given, which would be subject to change until the actual release date is established.

(2) The SF 120 shall be submitted to the Property and Equipment Management Division (MA–422) for inclusion in the Reportable Excess Automated Property System (REAPS) in accordance with § 109–43.311–1–50.

(3) ADPE shall not be reported to GSA as excess until this screening has been accomplished and it has been established that there are no DOE claimants. Concurrent screening within DOE and GSA is not authorized. A minimum of 45 days should be allowed for screening ADPE prior to reporting it to GSA. In those instances where the release date can be determined sufficiently in advance, additional screening time should be allowed to permit maximum time for processing of requests to acquire excess ADPE.

(c) The procedures prescribed in § 109–36.303–350(b) shall be followed for leased ADPE. However, when time does not permit sequential DOE and GSA circularization, excess leased ADPE may be circularized concurrently in DOE and GSA to assure earned credits are not lost to the Government. The SF 120 should clearly indicate concurrent screening by DOE and GSA. Where time does not permit assurance that earned credits are not lost to the Government, announcement of availability of excess leased ADPE may be circularized within DOE by teletype (TWX). The TWX should be sent to all DOE field offices with a request to further distribute to applicable contractors, and copies should be sent to the Office of ADP Management (MA–24) and to the Property and Equipment Management Division (MA–422) at Headquarters.

§ 109–36.304 Availability list.

The Director of Administration shall develop and maintain distribution patterns for availability lists of excess and exchange/sale ADPE as contemplated in FPMR § 101–36.304.

§ 109–36.306 Requests for transfer of excess ADPE or exchange/sale ADPE.

The Director of Administration, heads of field offices, the Administrator, energy Information Administration and contracting officers are authorized to sign Standard Form (SF) 122, Transfer Order Excess Personal Property, after appropriate approvals, involving requests for transfer of excess or exchange/sale ADPE, as required by FPMR § 101–36.306(a).

Subpart 109–36.47—Reports

§ 109–36.4700 Scope of subpart.

This subpart implements and supplements FPMR Subpart 101–36.47 as it relates to reporting excess or exchange/sale ADPE to GSA.

§ 109–36.4702 Reporting excess or exchange/sale ADPE.

Excess Government-owned or-leased ADPE and exchange/sale ADPE shall be reported to GSA on Standard Form (SF) 120, Report of Excess Personal Property, in accordance with the requirements of FPMR § 101–36.4702. No provision is made in FPMR § 101–36.4702 for the use of a TWX as a substitute for the SF 120 in reporting excess ADPE to GSA. When a TWX is used to report excess leased ADPE to GSA, it shall be followed up with an SF 120 to GSA, providing appropriate cross-reference information.

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

PART 109–38—MOTOR EQUIPMENT MANAGEMENT

Sec.

109–38.000 Scope of part.
109–38.000–50 Policy.

Subpart 109–38.0—Definition of Terms

109–38.001 Definitions.

Subpart 109–38.1—Reporting Motor Vehicle Data

109–38.100–1–50 Reporting DOE motor vehicle data.
109–38.102–2–50 Reporting DOE domestic and foreign vehicles.

Subpart 109–38.2—Registration and Inspection

109–38.202–50 Registration in foreign countries.
109–38.202–51 Shipment to foreign countries.

Subpart 109–38.3—Official U.S. Government Tags

109–38.302 Records.
109–38.303 Procurement.
109–38.305–50 Security.
109–38.305–51 Lost or stolen license tags.

Subpart 109–38.4—Official Legend and Agency Identification

109–38.404 Procurement of decalcomanias.
109–38.404–50 Security of decals.

Subpart 109–38.6—Exemptions From Use of Official U.S. Government Tags and Other Identification

109–38.602 Unlimited exemptions.
109–38.602–50 Additional Department of Energy exemptions.
109–38.605 Additional exemptions.
109–38.606 Approval of tag requests for exempted vehicles in the District of Columbia.
109–38.607 Report of exempted motor vehicles.

Subpart 109–38.7—Transfer of Title to Government-Owned Motor Vehicles

109–38.701 Methods of transfer.
109–38.701–50 Delegation of authority to sign Standard Forms 97 and 97A.

Subpart 109–38.9—Motor Vehicle Replacement Standards

109–38.900–50 Policy.
109–38.907 Fleets.
109–38.908 Exception.
109–38.908–50 Prompt disposal of replaced passenger vehicles.

Subpart 109–38.10—Scheduled Maintenance of Motor Vehicles

109–38.1003–50 DOE guidelines.

Subpart 109–38.12—Preparation and Control of Standard Form 149, U.S. Government National Credit Card

109–38.1200 General.
109–38.1201 Billing Code.
109–38.1202 Administrative control of credit cards.
109–38.1202–50 Additional control of credit cards.

Subpart 109–38.13—Energy Conservation in Motor Vehicle Management

109–38.1304 Mandatory provisions affecting the acquisition and use of all motor vehicles.
109–38.1304–50 Selection of type of motor vehicles.
109–38.1305 Mandatory provisions affecting the acquisition, use, and replacement of passenger automobiles.
109–38.1306 Acquisition of fuel-efficient passenger automobiles.
109–38.1306–50 Certification of fuel-efficient passenger automobile acquisitions.
109–38.1307 Acquisition of fuel-efficient light trucks.
109–38.1350 Conservation of motor vehicle fuels.

Subpart 109–38.50—Utilization of Motor Vehicles

109–38.5000 General.
109–38.5001 Utilization controls and practices.
109–38.5002 Use objectives for motor vehicles.
109–38.5003 Application of use goals.

Subpart 109–38.51—Acquisition of Motor Vehicles

109–38.5100 General requirements.
109–38.5101 Authority required for acquisition or hire of passenger motor vehicles.
109–38.5102 Passenger motor vehicle allocations.
109–38.5103 Acquisition.

Subpart 109–38.52—Aircraft

109–38.5200 Scope of subpart.
109–38.5201 Definitions.
109–38.5202 General.

109–38.5203 Aircraft safety.
109–38.5204 Pilot responsibility and authority.
109–38.5205 Authority required for the acquisition, hire, or borrowing of aircraft.
109–38.5205–1 Statute.
109–38.5206 Aircraft authorization.
109–38.5207 Management responsibility.
109–38.5208 Registration and identification.
109–38.5209 Airworthiness.
109–38.5210 Maintenance.
109–38.5211 Operation.
109–38.5212 Records.
109–38.5213 Reports.

Subpart 109–38.53—Watercraft

109–38.5300 Scope of subpart.
109–38.5301 Definitions.
109–38.5302 General.
109–38.5303 Watercraft safety.
109–38.5304 Watercraft operations.
109–38.5305 Watercraft identification and numbers.
109–38.5306 Display of flags and seal.

Subpart 109–38.54—Official Use of Motor Vehicles and Aircraft

109–38.5400 Scope of subpart.
109–38.5401 Statutory requirement.
109–38.5402 Policy.
109–38.5403 Official purposes.
109–38.5404 Approval of authorizations.
109–38.5405 Duration of authorizations.
109–38.5406 Use of a motor vehicle to drive to residence at start of official travel.
109–38.5407 Use of Government-owned or Government-furnished motor vehicle in travel status.
109–38.5408 Use of Government-owned or -leased bus systems.
109–38.5409 Use of Government motor vehicles in emergencies.
109–38.5410 Use of motor vehicles by the Postal Service.
109–38.5411 Instructions to motor vehicle operators.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§109–38.000 Scope of part.

This part implements and supplements FPMR Part 101–38 concerning the management of motor equipment, vehicles, aircraft and watercraft.

§109–38.000–50 Policy.

Necessary motor equipment, vehicles, aircraft and watercraft shall be provided, maintained and utilized in support of DOE programs in the most practical and economical manner consistent with program requirements, safety considerations, fuel economy and applicable laws and regulations.

Subpart 109–38.0—Definition of Terms

§109–38.001 Definitions.

As used in this Part the following definitions apply:

(a) "Motor equipment" means any item of equipment which is self-propelled or drawn by mechanical power, including motor vehicles, motorcycles and scooters, construction and maintenance equipment, materials handling equipment, aircraft and watercraft.

(b) "Motor vehicle" means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on the highways in the transportation of property or passengers. This includes both motorcycles and motor scooters.

(c) A "replacement off-set" is an authorization to one DOE field organization to acquire a new passenger motor vehicle to replace an old passenger motor vehicle which has become excess to another DOE field organization. The transaction does not require the physical transfer of the excess vehicle, but is limited to a documentary transfer.

(d) "Special purpose vehicles" have limited but essential missions. They are not generally used to carry passengers, freight or other materials. Trucks with permanently mounted equipment, (such as fire trucks, special tank trucks, wreckers and trucks with compressors or generators in fixed mounting on the body), may be classified as special purpose trucks. Vehicles other than sedans and station wagons which are to be used only during a defined or specified contingency, such as evacuation or other similar emergency, may also be classified as special purpose vehicles. For reporting purposes within DOE, motorcycles and motor scooters will also be reported as special purpose vehicles.

(e) "Experimental vehicles" are those acquired solely for testing and research purposes or otherwise designated for experimental purposes. Such vehicles are to be the object of testing and research as differentiated from those used as vehicular support to testing and research. Experimental vehicles are not to be used for passenger carrying services, and they are not subject to statutory price limitations or to authorization limitations.

Subpart 109–38.1—Reporting Motor Vehicle Data

§109–38.1001–50 Reporting DOE motor vehicle data.

(a) Organizations operating DOE-owned and/or commercially term leased (60 continuous days or more) motor vehicles shall provide one copy of the following reports to the Property and Equipment Management Division (MA–422) by October 31 of each year.

(1) DOE Report of Motor Vehicle Data.

(2) DOE Report of Truck Data.

(b) Copies of the report forms may be obtained by contacting the Property and Equipement Division.

§109–38.102–2–50 Reporting DOE domestic and foreign vehicles.

Separate forms shall be prepared for vehicles located: (a) In the United States, including territories and possessions, and (b) in a foreign country.

Subpart 109–38.2—Registration and Inspection

§109–38.202–50 Registration in foreign countries.

Motor vehicles used in foreign countries are to be registered and carry license tags in accordance with the existing motor vehicle regulations of the country concerned.

§ 109–38.202–51 Shipment to foreign countries.

(a) When motor vehicles are being shipped for use in a foreign country, the desk officer or individual handling the affairs pertaining to the country in the Department of State shall be contacted before shipment is made for information concerning the licensing and shipping of the vehicle

(b) The person responsible for, and expected to use, a motor vehicle in a foreign country shall make inquiry at the United States Embassy, Legation, or Consulate concerning the regulations that apply to registration, licensing, and operation of motor vehicles and shall be guided accordingly.

Subpart 109–38.3—Official U.S. Government Tags

§ 109–38.302 Records.

(a) The Property and Equipment Management Division (MA–422) assigns "blocks" of U.S. Government license tag numbers to DOE organizations and maintains a current record of such assignments. Additional "blocks" will be assigned upon request.

(b) Each Departmental organization shall maintain a current record of individual assignments of license tags to the motor vehicles under its jurisdiction as required by FPMR § 101–38.302.

§109–38.303 Procurement.

The procedures for acquiring official Government license tags by DOE organizations are covered in DEAR 908.7101–7.

§ 109–38.305–50 Security.

Unissued license tags shall be stored in a locked drawer, cabinet or storage area with restricted access to prevent possible fraud or misuse.

§ 109–38.305–51 Lost or stolen license tags.

Fleet managers, upon receipt of information on lost or stolen Government license tags, should promptly report the loss to the local DOE security office and local law enforcement authorities. Lost or stolen Interagency Motor Pool Vehicle license tags should be reported to the applicable General Services Administration motor pool manager. District of Columbia or state license tags which are lost or stolen should be reported to the District of Columbia, Department of Transportation, or the appropriate state agency.

Subpart 109–38.4—Official Legend and Agency Identification

§ 109–38.404 Procurement of decalcomanias.

The official legend and agency identification for DOE shall be of elastomeric pigmented film type decalcomania which are currently available in black (DOE From 1530.1) and white (DOE Form 1530.2). These forms shall be requisitioned from the Logistics Management Division (MA–235) using DOE Form 4250.2, "Requisition for Supplies, Equipment or Services", a local supply request form or a memorandum.

§ 109–38.404–50 Security of decals.

Unissued decals shall be stored in a locker drawer, cabinet or storage area with restricted access to prevent possible fraud or misused.

Subpart 109–38.6—Exemptions From Use of Official U.S. Government Tags and Other Identification

§ 109–38.602 Unlimited exemptions.

(e) Exemptions from the requirement for the display of Federal license tags and other official identification may be approved by heads of field offices and the Director of Administration for motor vehicles under their cognizance which are used in the conduct of security operations or in the enforcement of security regulations of DOE.

§ 109–38.602–50 Additional Department of Energy exemptions.

The requirements for the display of Federal license tags and other identification do not apply to motor vehicles used in foreign countries, Trust Territories, or the Pacific Test Areas (see FPMR §§ 101–38.202 and 109–38.202–50).

§ 109–38.605 Additional exemptions.

(a) Requests made pursuant to FPMR § 101–38.605 for exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles which are not within the criteria in FPMR § 101–38.602 shall be submitted through normal administrative channels to the Property and Equipment Management Division (MA–422). Each such request shall describe the vehicle for which exemption is sought, the nature of the work on which it is used, and include a certification to the effect that conspicuous identification would interfere with such use.

(b) The Property and Equipment Management Division (MA–422) shall be notified promptly when the need for a previously authorized exemption no longer exists.

(c) Copies of certifications and cancellation notices required to be furnished to GSA pursuant to FPMR § 101–38.605 will be transmitted to GSA by the Property and Equipment Management Division.

§ 109–38.606 Approval of tag requests for exempted vehicles in the District of Columbia.

The Director of Administration is designated as the DOE liaison representative to approve requests for regular District of Columbia license tags for Headquarters motor vehicles exempted from carrying U.S. Government license tags and other official identification, and furnishes annually to the District of Columbia Department of Motor Vehicles the name and specimen signature of each representative authorized to approve such requests.

§ 109–38.607 Report of exempted motor vehicles.

The Director of Administration and heads of field offices for their respective organizations shall maintain records of motor vehicles exempted from displaying Federal license tags and other identification which will permit the submission of reports by the Property and Equipment Management Division upon request of GSA in accordance with FPMR § 101–38.607. The records shall contain a listing by type of each exempted vehicle operated during the previous fiscal year, giving the information for each vehicle on hand at the beginning of the year and each of those newly authorized during the year, including—

(a) By whom exemption was authorized, by name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemptions and limitations on uses of the exempted vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemption for vehicles continuing in use.

Subpart 109–38.7—Transfer of Title to Government-Owned Motor Vehicles

§ 109–38.701 Methods of transfer.

(c) The certificates and copies of Certificate of Release of a Motor Vehicle (SF's 97 and 97A) shall be numbered consecutively by each DOE field and Headquarters organization disposing of motor vehicles.

§ 109–38.701–50 Delegation of authority to sign Standard Forms 97 and 97A.

(a) Heads of DOE field offices and the Director of Administration may delegate the authority to sign SF's 97 and 97A to responsible DOE personnel under their jurisdiction. The name of the officer delegated to sign will be typed on the certificate in addition to the signature in ink.

(b) All DOE field and Headquarters organizations shall establish proper controls to prevent blank copies of SF's 97 and 97A from being obtained by unauthorized persons.

Subpart 109–38.9—Motor Vehicle Replacement Standards

§ 109–38.900–50 Policy.

It is the policy of DOE to continue in service motor vehicles which meet prescribed replacement standards, but which are in usable and workable condition, provided that—

(a) A continued need exists for the vehicle;

(b) The vehicle can be operated safely and dependably without excessive repair and maintenance costs. Normally, when any single repair job exceeds 25 percent of the estimated current market value of a vehicle, consideration should be given to replacement in lieu of repair and retention;

(c) Repair parts are readily obtainable; and

(d) Retention will not substantially reduce the exchange/sale value of the vehicle.

§ 109–38.907 Fleets.

The replacement limitations cited in FPMR § 101–38.907 are applicable to each of DOE's field organizations and may not be exceeded.

§ 109–38.908 Exception.

Motor vehicles may be replaced without regard to the replacement standards in FPMR § 101–38.9 only after certification by the appropriate head of the field or Headquarters organization that a vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

§ 109–38.908–50 Prompt disposal of replaced passenger vehicles.

Because of the limitation on the total number of passenger vehicles which DOE may own, replaced passenger vehicles shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement equipment to avoid concurrent operation of both vehicles. Because of disposal problems, there may be occasions where quick disposal of the old equipment may not be feasible or advantageous to the Government, e.g., it may be determined that there is an insufficient number for economical sale, or that sale would bring substantially better prices at a later date because of seasonal effects on sale prices. Under such circumstances, temporary retention of the replaced passenger vehicle may be justified. However, such retention may not be used as justification for concurrent operation of the new and replaced vehicles.

Subpart 109–38.10—Scheduled Maintenance of Motor Vehicles

§ 109–38.1003–50 DOE guidelines.

(a) Whenever practicable, existing Government service facilities shall be consolidated, or commercial services shall be utilized, to reduce to a minimum the maintenance facilities and equipment, supplies, parts, stocks and overhead costs.

(b) Maintenance also shall be geared to a planned replacement program. Individual vehicle maintenance record files shall be kept and made readily available to appropriate maintenance personnel to provide historical records of past repairs, as a control against unnecessary repairs and excessive maintenance, and as an aid in determining the most economical time for replacement.

(c) One-time maintenance and repair limitations shall be established by heads of field offices. To exceed repair limitations, approval from heads of field offices is required, particularly as the time of replacement approaches.

(d) Adequate maintenance schedules shall be provided to accomplish the following objectives in the most economical manner:

(1) To maintain equipment in safe and economical operating condition.

(2) To prevent equipment failures resulting in program delays and excessive downtime.

(3) To prevent premature wear and deterioration.

(4) To prevent undue depreciation.

(5) To conserve materials and manpower.

(e) Warranties.

(1) Special attention shall be devoted to the warranty on each motor vehicle to ensure that maximum benefits are realized. A system should be established to assure that defective materials and workmanship on vehicles under warranty are corrected under the terms of the warranty to avoid maintenance and repair of such vehicles at Government expense.

(2) When motor vehicles are maintained in Government shops in isolated locations that are distant from franchised dealer shops, or when it is not practical to return the vehicles to a dealer, billback agreement shall be sought from manufacturers to permit warranty work to be performed in Government shops on a reimbursable basis.

Subpart 109–38.12—Preparation and Control of Standard Form 149, U.S. Government National Credit Card

§ 109–38.1200 General.

FPMR § 101–26.406 authorizes the use of Standard Form 149, U.S. Government National Credit Card for Federal agencies for obtaining service station deliveries and services. The use of the SF–149 by each field organization or by Headquarters is optional. When a field organization elects to use the form, it shall be used on a field organization basis.

§ 109–38.1201 Billing Code.

DOE organizations shall request the assignment of billing address code numbers from the Property and Equipment Management Division (MA–422). Following the assignment, DOE organizations shall submit orders for issuance of national credit cards in accordance with FPMR § 101–26.406–5 and the current Federal Supply Schedule FSC Group 75, Part VII. The billing code consists of the following:

(a)(1) The first three digits of the 10–digit billing code embossed on national credit cards in use by DOE will always be 000.

(2) The fourth digit may be used by DOE organizations and contractors to designate the vehicle class or provide additional billing code numerals. If not used for either of these purposes, zero will be used.

(3) The fifth and sixth digits will be "89", the agency code assigned to DOE.

(4) The seventh, eighth, and ninth digits indicate the billing address code number.

§ 109–38.1202 Administrative control of credit cards.

(a) The head of each organization using credit cards shall be responsible for establishing procedures to provide for the administrative control of credit cards in accordance with the guidelines set forth in FPMR Part § 101–38.1202.

§ 109–38.1202–50 Additional control of credit cards.

(a) All vehicle operators should be provided with appropriate instructions regarding the use and protection of credit cards against theft and misuse.

(b) In the event an SF–149 is lost or stolen, reasonable precautions shall be taken to minimize the opportunity of purchases being made by unauthorized persons. In addition to the written notification required in FPMR § 101–38.1202(b)(1), the paying office shall be promptly notified of the loss or theft and to be on the alert for any unauthorized bills.

Subpart 109–38.13—Energy Conservation in Motor Vehicle Management

§ 109–38.1304 Mandatory provisions affecting the acquisition and use of all motor vehicles.

(c) The use of motor vehicles for official purposes within DOE is governed by the provisions of DOE Subpart 109–38.54.

(d) All requirements for term rentals or leases of sedans, station wagons or light trucks under 8,500 pounds gross vehicle weight shall be submitted to the Property and Equipment Management Division (MA–422) in accordance with §§ 109–38.1306–50, 109–38.1307 and DEAR 908.1170.

§ 109–38.1304–50 Selection of type of motor vehicles.

(a) All vehicles acquired for use, whether by buy, hire, lease, forfeiture or transfer from another agency, shall be limited to the minimum body and engine size, and to only that operational equipment (if any) necessary to fulfill programmatic needs.

(b) The least expensive unit overall should be used, considering both acquisition and operating costs for units to be bought, and rental rates for rented or leased units.

(c) Dual-purpose vehicles capable of hauling both personnel and light cargo shall be used whenever appropriate to avoid the need for two vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid limitations on the number of passenger vehicles which may be acquired.

(d) Motor scooters and motorcycles in place of higher cost motor vehicles can be used advantageously for certain applications within plant areas, such as mail and messenger service and small parts and tool delivery. Their advantage, however, should be weighed carefully from the standpoint of overall economy (comparison with cost for other types of motor vehicles) and increased safety hazards, particularly when mingled with other motor vehicle traffic.

(e) Electric vehicles may be used advantageously for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

§ 109–38.1305 Mandatory provisions affecting the acquisition, use, and replacement of passenger automobiles.

In accordance with FPMR § 101–38.1305, all requests to acquire passenger automobiles larger than class 1A, 1B or II shall be forwarded with justifications through normal administrative channels to the Property and Equipment Management Division (MA–422) for certification to GSA.

§ 109–38.1306 Acquisition of fuel-efficient passenger automobiles.

(a) Organizations conducting motor vehicle operations shall forward annually (on or before December 1) to the Property and Equipment Management Division (MA–422) a plan for acquisition of passenger motor vehicles for the next fiscal year. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Order 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the Property and Equipment Management Division (MA–422) as required. This organization shall also review each submission for conformance with established fuel efficiency standards and shall develop and forward to GSA the Departmental consolidated annual motor vehicle acquisition forecast.

§ 109–38.1306–50 Certification of fuel-efficient passenger automobile acquisitions.

(a) Requisitions for the buying of passenger motor vehicles shall be forwarded to the Property and Equipment Management Division (MA–422) for review, certification and submission to GSA.

(b) Proposals/ requests for commercially leased passenger automobiles, for a period of 60 continuous days or more, shall be forwarded to the Property and Equipment Management Division (MA–422) for review and certification prior to entering into an agreement to lease to insure compliance with Executive Order 12375 as implemented by GSA.

§ 109–38.1307 Acquisition of fuel-efficient light trucks.

In accordance with FPMR § 101–38.1307 and Executive Order 12375, the requirements of §§ 109–38.1306 and 109–38.1306–50 also apply to the acquisition of any truck under 8,000 pounds gross vehicle weight and covered by Federal Standards 292 and 307.

§ 109–38.1350 Conservation of motor vehicle fuels.

In furtherance of energy conservation objectives, each organization within DOE shall establish programs which will ensure achievement of the reduced motor vehicle fuel consumption objectives. The following actions shall be adopted to achieve the conservation goals of reduced motor vehicle fuel consumption:

(a) Do not idle engine for long periods of time.

(b) Reduce motor vehicle travel to the maximum extent practicable without jeopardizing essential business.

(c) Use the smallest vehicle that is feasible for the job.

(d) Maintain tire pressure to tire manufacturer's recommendations. Check pressure at least once each week.

(e) Give wide publicity on proper driving techniques as prescribed by GSA to conserve fuels and require that all drivers diligently follow them.

(f) Limit speed to the National Speed Limit.

(g) Ensure proper maintenance and servicing procedures, such as tuneups, in accordance with the manufacturer's latest specifications.

Subpart 109–38.50—Utilization of Motor Vehicles

§ 109–38.5000 General.

It is DOE policy to keep the number of motor vehicles at the minimum needed to satisfy program requirements. To assure attainment of this goal, continuing attention shall be given to developing and implementing controls and practices which will help achieve the most practical and economical utilization of vehicles.

§ 109–38.5001 Utilization controls and practices.

Controls and practices to be used by DOE organizations and contractors for achieving maximum economical utilization of motor vehicles shall include, but not be limited to—

(a) The maximum use of equipment pooling arrangements, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of equipment to individuals, groups or specific organizational components with periodic documented reviews of such assignments to determine if underutilization exists and whether reassignment is necessary;

(c) Frequent review of vehicle utilization statistics by appropriate levels of management, with prompt reassignment and/or disposal action performed as required;

(d) The careful selection of equipment types to permit the maximum appropriate use of multi-purpose equipment;

(e) The rotation of equipment between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy; and

(f) The maintenance of individual equipment use records, such as trip tickets or vehicle logs, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage.

§ 109–38.5002 Use objectives for motor vehicles.

The following use goals are established for DOE as average objectives:

(a) Sedans and station wagons—3,000 miles per quarter or 12,000 miles per year.

(b) Light trucks and general purpose vehicles, one ton and under (less than 12,500 GVW)—10,000 miles per year.

(c) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 16,999 GVW)—7,500 miles per year.

(d) Heavy trucks and general purpose vehicles, three ton and over (17,000 GVW and over)—7,500 miles per year.

(e) Truck tractors—10,000 miles per year.

(f) All-wheel-drive vehicles—7,500 miles per year.

(g) Other motor vehicles—No average use goals for other trucks, ambulances, buses, and special purpose vehicles are established. The use of such equipment shall be reviewed and necessary action taken to ensure that the equipment is fully utilized or declared excess to the Department's needs.

§ 109–38.5003 Application of use goals.

Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. Other measures of use will need to be considered. Accordingly, as an aid in achieving maximum feasible utilization, local use objectives which represent practical units of measurement for vehicle utilization and for planning and evaluating future vehicle requirements must be established. Such objectives should generally be initiated by the organization involved and reviewed and adjusted as appropriate, but not less often than annually. The objectives will take into consideration past performance, future requirements and special operating conditions, and should be consistent with the justifications used to obtain vehicles authorizations. Both Department-wide and local use objectives should be applied in such a manner that their application does not stimulate vehicle use for the purpose of meeting the objective. The ultimate standard against vehicle use must be measured is that the minimum number of vehicles will be retained to satisfy program requirements.

Subpart 109–38.51—Acquisition of Motor Vehicles

§ 109–38.5100 General requirements.

The acquisition of motor vehicles shall be limited to the minimum number needed to adequately serve program requirements and satisfy the intent of Congress. Any additions to the fleet must be fully justified and the justification shall include substantiation that the intent of 109–38.000–50 and 109–38.50 are satisfied.

§ 109–38.5101 Authority required for acquisition or hire of passenger motor vehicles.

(a) In accordance with 31 U.S.C. 1343, authority for the buying, leasing, or hire of passenger motor vehicles is contained in the annual appropriation act for DOE.

(b) The acquisition of passenger motor vehicles by transfer from another Government agency shall be considered as an addition to the DOE passenger motor fleet.

(c) Passenger motor vehicles may not be bought or acquired by transfer or loan unless they are—

(1) Specifically authorized by the Director of Procurement and Assistance Management, pursuant to the appropriation concerned or other law;

(2) Acquired from excess for upgrading or replacement purposes and an equal number of replaced vehicles are reported for disposal as excess within 30 days; or

(3) For temporary emergency needs not in excess of three months in lieu of commercial rentals.

(4) For temporary emergency needs over three months and approved by the Director of Procurement and Assistance Management.

§ 109–38.5102 Passenger motor vehicle allocations.

(a) To assure that DOE acquisitions do not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Director of Procurement and Assistance Management shall allocate to and inform the field organizations of the number of passenger motor vehicles which may be acquired each fiscal year. These allocations and the statutory cost limitations shall not be exceeded.

(b) In order that unused allocations to acquire passenger motor vehicles may be reassigned within the Department, the organizations concerned shall notify the Property and Equipment Management Division (MA–422) when allocations will not be used. Such notification shall be submitted as soon as possible but not later than June 15 of each year.

(c) Passenger motor vehicles acquired from excess to meet temporary emergency needs for longer than three months shall be charged against the number authorized for purchase unless otherwise approved by the Director of Procurement and Assistance Management (See Comp. Gen. Decision. B–154282 dated October 15, 1966).

(d) In order that passenger vehicles no longer needed by one field organization may be used by another, either by actual transfer for continued use or as replacement off-sets, they shall be reported to the Property and Equipment Management Division (MA–422) prior to any disposal action so that such use can be properly coordinated within DOE.

§ 109–38.5103 Acquisition.

(a) Policies and procedures for the procurement of new motor vehicles, including provisions for the acquisition of additional systems, and equipment for sedans and station wagons, are set forth in FPMR 101–25.304 and 101–26.5 and DEAR 908.7101.

(b) Policies and procedures for the leasing of motor vehicles are set forth in FPMR § 101–39.601 and DEAR 908.11. The Director of Administration and heads of field offices for their respective organizations are responsible for certifying that leased passenger vehicles larger than type II (compact) are essential to the mission of the organization concerned.

Subpart 109–38.52—Aircraft

§ 109–38.5200 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of aircraft and aircraft services, excluding aircraft owned and operated by other Federal activities for DOE.

§ 109–38.5201 Definitions.

As used in this subpart the following definitions apply:

(a) "Aircraft" means a device that is used or intended to be used for flight in the air, including: heavier than air, and lighter than air and ultra-light aircraft, gliders, helicopters, rigid and nonrigid airships, and balloons.

(b) "Chartered aircraft" are aircraft rented or hired on an intermittent basis, with or without the services of a pilot or other operating aircrew members.

(c) "Leased aircraft" are aircraft obtained on a contractual basis, for a stipulated time interval, as distinguished from intermittent charter or short-term rental.

(d) "Military aircraft" are aircraft on loan from the Department of Defense (DOD).

(e) "Pilot" is an individual possessing the required FAA credentials and meeting the qualification requirements and other criteria as required by the employing organization.

(f) "Part-time pilot" is one who is employed specifically to operate aircraft on a "when-needed" basis.

§ 109–38.5202 General.

Department-wide policies, standards, guidelines and procedures for management of aircraft and aviation services, necessary staff assistance, and general liaison with other Federal agencies are provided by the Director of Procurement and Assistance Management. Heads of field offices

must ensure that management, review, approval and accounting procedures and systems are implemented to comply with the requirements of OMB Circular A–126, "Improving the Management and Use of Government Aircraft."

§ 109–38.5203 Aircraft safety.

(a) Policy development and general overview of aircraft safety in Departmental operations is exercised by the Assistant Secretary for Policy, Safety and Environment.

(b) Aviation operations and aircraft safety standards, criteria and procedures for DOE aviation operations are established by the Assistant Secretary for Policy, Safety and Environment. Heads of field offices may establish higher safety standards, criteria and procedures when they have determined that it is necessary to assure the safety of specific operations under their jurisdiction.

§ 109–38.5204 Pilot responsibility and authority.

(a) It shall be the responsibility of the pilot to be aware of, and conform to, Federal Aviation Regulations and other requirements of the Federal Aviation Administration (FFA), Department policies and field organization directives, and the regulations and directives of other applicable authority, including those relating to use for official purposes only.

(b) The pilot is responsible for ensuring that all necessary maintenance, repairs and FAA inspections are accomplished and for determining that the aircraft is airworthy.

(c) The pilot is at all times responsible for the safe operation of his aircraft and for the safety of his crew and passengers. Insofar as the loading of the aircraft, weather, mechanical, and other safety conditions are concerned, the pilot shall have final authority for determining whether a particular flight shall be continued or terminated and how it shall be made.

§ 109–38.5205 Authority required for the acquisition, hire, or borrowing of aircraft.

§ 109–38.5205–1 Statute.

(a) In accordance with 31 USC 1343(d), authority for the buying, leasing, or hire of aircraft is contained in the annual appropriation act for DOE.

(b) The acquisition of aircraft by transfer from another Government agency shall be considered as an addition to the DOE aircraft fleet.

(c) Aircraft may not be bought, leased, or acquired by transfer or loan unless they are—

(1) Specifically authorized by the Director of Procurement and Assistance Management, pursuant to the appropriations concerned or other laws (except for temporary rentals or loans of 30 days or less);

(2) Temporary rental or loans (30 days or less) approved by the head of the field office; or

(3) Acquired from Government excess for upgrading or replacement purposes, provided: (i) That such acquisition is without reimbursement, (ii) that the aircraft can be certified as airworthy without extensive or costly modification, and (iii) that an equal number of aircraft is reported for disposal as excess within 30 days after delivery of the replacement aircraft.

§ 109–38.5206 Aircraft authorization.

(a) To assure that acquisitions do not exceed the number of aircraft authorized to be acquired in any fiscal year, the Director of Procurement and Assistance Management shall inform DOE field organizations each fiscal year of the number of aircraft which may be acquired. These authorizations shall not be exceeded.

(b) The acquisition of specific aircraft by type shall be coordinated with the Office of Operational Safety (PE–242) to assure that the selected aircraft type can perform the mission requirements safely and meet all applicable safety standards.

§ 109–38.5207 Management responsibility.

The head of each field organization having an aircraft operation shall establish procedures to ensure—

(a) That the acquisition of aircraft, including military aircraft, is centrally controlled to ensure that authorizations are not exceeded;

(b) Because of the statutory limitations on the number of aircraft which DOE may acquire, replaced aircraft must be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement equipment to avoid concurrent operation of both aircraft.

(c) That each aircraft is equipped with the appropriate avionics and accessories required by its FAA type certification or military department's operators manual for the type of flight intended. Life jackets shall be provided and readily available for all occupants of aircraft or extended overwater flights as defined in Federal Aviation Regulation 1.1. Aircraft on flights into isolated areas shall be equipped with emergency rations and appropriate survival gear;

(d) Conformance with FAA requirements for the registration, certification, maintenance, and operation of aircraft, engines, and component equipment;

(e) Selection of qualified pilots and crew members and the maintenance of pilot and crew competence commensurate with job requirements;

(f) Establishment of dispatching and tracking procedures or other controls that will assure knowledge of aircraft location when operating in areas where flight plan service is not available;

(g) Overall safe, efficient, and economical operation, maintenance, utilization, and replacement of aircraft;

(h) That pooling is used as necessary to obtain maximum utilization;

(i) That contract or charter pilots are duly certified to meet all requirements and regulations established by the FAA for the particular aircraft;

(j) That chartered, leased, or rented aircraft are operated and maintained in compliance with all rules, regulations, and minimum standards of the FAA;

(k) That any charter, rental or hire of aircraft and operators shall meet the requirements of 14 CFR 135; and

(l) That DOE-owned, -leased, and borrowed aircraft are used for official purposes only and that all flight and operational personnel, including the pilots, are aware of the provisions of § 109–38.54.

§ 109–38.5208 Registration and identification.

(a) Department-owned aircraft shall be registered with the FAA. The certificate of registration shall be displayed in the aircraft in accordance with FAA requirements. A similar requirement shall be included in any arrangement for the charter, rent, hire, loan or lease of aircraft.

(b) All aircraft shall display markings as required by the Federal Aviation Regulations for registered aircraft of the United States.

§ 109–38.5209 Airworthiness.

With the exception of public use aircraft being operated under special regulations of the FAA, all aircraft shall be required to have a currently effective FAA Airworthiness Certificate appropriate to the proposed usage. This certificate shall be displayed in the aircraft. Exceptions to this requirement are: (a) Uncertified aircraft may be ferried with minimum crew when there is a written determination by the head of the field office or his designee that the aircraft is safe for flight, and (b) aircraft obtained by transfer from the Department of Defense or the U.S. Coast Guard may be ferried incident to such transfer when the aircraft has been released as airworthy for flight.

§ 109-38.5210 Maintenance.

As a minimum, all aircraft, aircraft engines, propellers, accessories, and equipment shall be maintained and serviced in accordance with FAA requirements for air carrier and non-air carrier aircraft, as appropriate, and the instructions of the manufacturer. All repairs and alterations shall be performed and approved in accordance with applicable FAA or military standards and requirements. Preventive maintenance inspections shall be made of the airframe, engine, and accessory equipment in conformance with the equipment manufacturer's recommendations and FAA or military requirements, as applicable.

§ 109-38.5211 Operation.

(a) Flight operations must comply with the Federal Aviation Regulations, and responsibility for such compliance rests with the pilot of the aircraft (§ 109-38.5204). Any special problem requiring deviation from the regulations shall be submitted through normal administrative channels to the Assistant Secretary for Policy, Safety and Environment for review and possible referral to the FAA for an appropriate waiver. Such a waiver is required for all fixed-wing aircraft engaged in low-level flying, and any change of conditions shall be reported to the responsible FAA District Office.

(b) Flight plans are required for all flights over isolated areas, and are also required for flights under visual flight rules (VFR) conditions except where the flight is of a local nature. Where normal flight plan channels are not available, the procedures as stated in § 109-38.5207(f) or other controls shall be followed that will assure current knowledge by responsible DOE or DOE contractor personnel of the aircraft's operating plan and of its arrival at destination.

(c) Aircraft, engines, and equipment shall be operated within the operating limits prescribed by the manufacturer.

(d) Adequate preflight and in-flight check lists shall be provided to, and used by, all pilots. A visual preflight inspection shall be made by the pilot before each takeoff, and any deficiency which might affect the safety of the flight shall be corrected before takeoff.

(e) All flights shall be planned and conducted so that the aircraft will arrive over its destination with a fuel reserve sufficient to reach a planned alternate destination. Flights conducted under FAA Instrument Flight Rules shall be required to conform to FAA fuel-time minimum requirements, or better.

§ 109-38.5212 Records.

As a minimum, flight, aircraft, and engine logs shall be maintained in accordance with FAA requirements, and records of operations, maintenance, and costs shall be maintained as required for management budgetary and reporting purposes. Heads of field offices shall establish requirements for other records needed.

§ 109-38.5213 Reports.

(a) Organizations operating aircraft shall complete a DOE Form 4450.1, Aircraft Cost and Operations Report, for each DOE-owned, -leased, (over 30 days) or borrowed aircraft operated during the fiscal year. The completed forms shall be submitted to the Property and Equipment Management Division (MA-422) by December 31 of each year, or upon receipt or disposal of individual aircraft.

(b) Reports shall be submitted as required by the Federal Aviation Administration, the National Transportation Safety Board, the General Services Administration, and the Assistant Secretary for Policy, Safety and Environment. Heads of field offices shall establish the requirements for other reports that may be needed for management or other purposes.

(c) All accidents involving aircraft shall be reported promptly to the National Transportation Safety Board, the Federal Aviation Administration as required, the head of the field organization concerned and the Assistant Secretary for Policy, Safety and Environment.

Subpart 109-38.53—Watercraft

§ 109-38.5300 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of all watercraft operated by DOE organizations and contractors. The policies and procedures set forth herein are minimal, and the head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the effective and efficient management of watercraft.

§ 109-38.5301 Definitions.

As used in this subpart the following definitions apply:

(a) "Watercraft" means any vessel used to transport persons or material on water.

(b) "Qualified Operator" means any person who has exhibited skill in handling watercraft, knowledge of "Rules of the Road," and other basic watercraft knowledge necessary for safe and efficient operation.

(c) "Rules of the Road" means laws which govern the operation of watercraft on: (1) Great Lakes, (2) western rivers, (3) Inland, and (4) International Waters.

§ 109-38.5302 General.

Departmental-wide policies, standards, guidelines and procedures for management of watercraft are established by the Director of Procurement and Assistance Management.

§ 109-38.5303 Watercraft safety.

Policy development and general overview of watercraft safety in Departmental operations is exercised by the Assistant Secretary for Policy, Safety and Environment.

§ 109-38.5304 Watercraft operations.

(a) No person may operate a watercraft on a waterway until skill of operation, knowledge of rules of the road, and basic watercraft knowledge have been exhibited to the head of the field office. The U.S. Coast Guard Auxiliary (USCG), American Red Cross and U.S. Power Squadrons teach public courses in some locations which are applicable to small boat operations (non-commercial watercraft up to 65' overall length).

(b) Before a watercraft is put underway, the operator shall check the vessel to ensure that the necessary equipment, including personal flotation devices and lights, as required by laws applicable to the area of operation, are present, properly stowed and in proper working order. Optional equipment recommended by USCG or other competent authority shall also be included when determined to be necessary by the responsible field office.

(c) Operators shall comply with all applicable Federal, state and local laws pertaining to the operation of watercraft. Where no state boating law exists, the requirements of the Federal Boating Act of 1958, as amended, shall apply.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

§ 109-38.5305 Watercraft identification and numbers.

(a) Watercraft in the custody of DOE or DOE contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, state or local field office. The numbers will be in addition to Departmental property control or other identification. Numbers shall be in block form affixed to the bow section, on both sides. Numbers and/or letters shall read from left to right in

contrasting color to background not less than three (3) inches in height. When a watercraft is not registered by either the U.S. Coast Guard or state, the field organization shall assign and alpha-numeric designation, which will reflect Departmental and field office issue. Example—DOE–4560–SR. (Note: Some states specify the arrangement of numbers and letters which shall be used by Federal small boats home posted in the state's waters. Compliance with such a requirement is appropriate.)

(b) DOE is not required to have DOE-owned watercraft inspected and registered by the U.S. Coast Guard, but these services may be provided upon request.

§ 109–38.5306 Display of flags and seal.

Watercraft with overall length of twenty (20) feet or more, except barges, shall display the U.S. Ensign (National Flag). The display of the Departmental flag is optional. Location and times of display of flags shall be in accordance with accepted practice. A facsimile of the Departmental seal may also be displayed. When the seal is used it shall be placed on the superstructure in a prominent place and a size appropriate to the superstructure; except that if there is no superstructure, the seal shall be placed above the water line in the midship section of watercraft.

Subpart 109–38.54—Official Use of Motor Vehicles and Aircraft

§ 109–38.5400 Scope of subpart.

This subpart supplements FPMR Part 101–38, implements the provisions of statutes concerning the use of Government-owned, -rented or -leased motor vehicles and aircraft for official purposes and prescribes policies and procedures governing the use of such vehicles and aircraft acquired for official purposes.

§ 109–38.5401 Statutory requirement.

(a) 31 U.S.C. 1344(a) provides that, unless otherwise specifically provided, no appropriation available for any department shall be expended for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes. Official purposes shall not normally include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on outpatient medical service, and where officers and employees are performing field work which makes such transportation necessary and which has been approved by the head of the department concerned.

(b) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of any Government-owned motor vehicle or aircraft or any motor vehicle or aircraft leased by the Government, for other than official purposes, shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant.

(c) Under the provisions of 18 U.S.C. 641, any person who knowlingly misuses any Government property (which includes Government motor vehicles) is subject to criminal prosecution and, upon conviction, to fines up to $10,000 and/or imprisonment for up to 10 years.

(d) In addition to the potential administrative sanctions and criminal prosecution cited above, 31 U.S.C. 1344 is interpreted to preclude reimbursement to Government contractors for the maintenance, operation or repair of Government-owned, -rented, or -leased passenger motor vehicles or aircraft which are used by contractor personnel for other than official purposes.

§ 109–38.5402 Policy.

All Government-owned, -rented or -leased motor vehicles and aircraft operated by DOE and its contractors shall be utilized for official purposes only, and officers, employees and contractors of the Department shall not use or authroize others to use any Government-owned, -rented or -leased motor vehicle or aircraft for other than official purposes. It should be understood that use of Government-owned, -rented or -leased motor vehicles between an employee's domicile and place of employment when adequately justified may be authorized only as an exceptional action but not as a routine occurance.

§ 109–38.5403 Official purposes.

(a) The term "official purposes" means those purposes required to carry out authorized programs, including program work carried out under contracts made pursuant to authority vested in the Department. "Official purpose" largely is a matter of administrative discretion and determination based on the particular facts of the case and the Government interest in the proposed use of the Government motor vehicle. It is the responsibility of the person authorizing or approving the use to examine the circumstances surrounding such use and assure that the facts sufficiently justify a conclusion of "official purpose."

(b) The term "field work" as used in 31 U.S.C. 1344a quoted above refers to the nature of the work performance; it is not restricted to "field service" as distinguished from "Headquarters service."

§ 109.38.5404 Approval of authorizations.

(a) The Director of Administration and heads of field offices for their respective organizations may approve the use of a Government-owned, -rented, or -leased motor vehicle between a DOE employee's domicile and place of employment. This authority may be redelegated but not below the chief administrative officer level.

(b) Heads of field offices and contracting officers shall require:

(1) Contracting officer approval for all contractor authorizations over 10 days;

(2) That contractors prescribe and issue, subject to approval by the head of the field organization or contracting officer, such local written guidelines regarding the official use of motor vehicles or aircraft and the penalties for unauthorized use as may be necessary and appropriate for particular operating situations; and

(3) That the use of Government-owned, -rented, or -leased motor vehicles or aircraft by contractor employees for transportation between places of employment and domiciles, including storage at or near such domiciles, is justified in accordance with § 109–38.5403, and that such justifications, administrative determinations, and authorizations for such use and storage by contractor employees are documented and approved at appropriate supervisory levels within the contractor's organization and by the contracting officer when required by § 109–38.5404(b)(1).

(c) The approving official shall determine whether the official duties of the employees justify a conclusion of official purpose in accordance with § 109–38.5403. All approvals and supporting documentation shall be in writing and retained for three calendar years.

§ 109–38.5405 Duration of authorizations.

An authorization to use a motor vehicle for transportation between a domicile and place of employment shall be limited to the period of actual need or 60 days, whichever is less. Requests for renewals of such authorizations shall be subject to the same justification and document retention procedures as original requests, and must also indicate what attempts were made during the

original period to eliminate the necessity for such use.

§ 109–38.5406 Use of a motor vehicle to drive to residence at start of official travel.

The use of a Government motor vehicle by an officer or employee to drive to his/her residence when it is in the interest of the Government that the employee start on official travel in the vehicle from that point, rather than from his/her place of business, is not regarded as prohibited by 31 USC 1344(a), (25. Comp. Gen. 844) or by Departmental policy.

§ 109–38.5407 Use of Government-owned or Government-furnished motor vehicles in travel status.

The use of Government-owned or Government-furnished motor vehicles by Government employees while in travel is governed by the Federal Travel Regulations (FTR 1–2.6a) and Chapter III–3 of DOE Order 1500.2 (DOE Travel Policy and Procedures Manual).

§ 109–38.5408 Use of Government-owned or-leased bus systems.

The provisions of this subpart do not affect passenger use of Government-owned or -leased bus systems (regardless of type of vehicle used in such system) established under the provisions of section 161e of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201e).

§ 109–38.5409 Use of Government motor vehicles in emergencies.

In limiting the use of Government motor vehicles to official purposes, it is not intended to preclude their use in emergencies threatening loss of life or property (see § 109–1.5102). Such use shall be documented.

§ 109–38.5410 Use of motor vehicles by the Postal Service.

(a) Section 411 of the Postal Reorganization Act provides that executive agencies are authorized to furnish property and services to the Postal Service under such terms and conditions, including reimbursability, as the Postal Service and the agency concerned deem appropriate. Executive Order 11672 establishes a requirement for reimbursement at fair market value of such property or at a rate based on appropriate commercial charges for comparable property , as agreed to by the agency head and the Postmaster General, unless the Director of the Office of Management and Budget finds that a different basis of valuation is more equitable or better serves the public interest.

(b) Pursuant to the authority in 39 U.S.C 411, motor vehicles may be made available to the Postal Service for temporary use. The rental rate to be charged shall be the same as is charged by the General Services Administration for similar motor vehicles available from the interagency motor pool serving the geographical area involved, with appropriate allowances for any fuel and oil furnished by the Postal Service.

§ 109–38.5411 Instructions to motor vehicle operators.

Procedures shall be established to inform motor vehicle operators concerning—

(a) The statutory requirement that motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of motor vehicles, and for compliance with Federal, State, and local laws and regulations, and all accident reporting requirements;

(c) Protection for DOE employees under the Federal Tort Claims Act (28 U.S.C. 2671) when acting within the scope of their employment;

(d) The penalties for unauthorized use of motor vehicles;

(e) The prohibition against picking up strangers or hitchhikers, and the transportation of non-official passengers:

(f) The proper care, control and use of credit cards; and

(g) Any other duties and responsibilities assigned to motor vehicle operators with regard to use, care, operation, and maintenance of motor vehicles.

PART 109–39—INTERAGENCY MOTOR VEHICLE POOLS

Sec.

109–39.000 Scope of part.

Subpart 109–39.3—Motor Vehicle Exemptions

109–39.302 Unlimited exemptions.
109–39.303 Limited exemptions.

Subpart 109–39.4—Establishment, Modification, and Discontinuance of Motor Pools

109–39.404–3 Problems involving service or cost.
109–39.404–4 Agency requests to withdraw participation.

Subpart 109–39.6—Official Use of Government Motor Vehicles and Related Motor Pool Services

109–39.602–1 Government vehicles.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–39.000 Scope of part.

This part implements and supplements FPMR Part 101–39 concerning the establishment and operation of interagency motor vehicle pools and systems.

Subpart 109–39.3—Motor Vehicle Exemptions

§ 109–39.302 Unlimited exemptions.

In those instances where it is determined that an unlimited exemption from inclusion of a vehicle in a motor pool system is warranted under the criteria set forth in FPMR § 101–39.302, full particulars shall be forwarded to the Property and Equipment Management Division (MA–422) for consideration and possible referral to the Administrator of General Services.

§ 109–39.303 Limited exemptions.

The procedure established in § 101–39.202 shall be followed in seeking limited exemptions under the criteria set forth in FPMR § 101–39.303.

Subpart 109–39.4—Establishment, Modification, and Discontinuance of Motor Pools

§ 109–39.404–3 Problems involving service or cost.

To resolve problems involving motor pool service or cost, the affected field or Headquarters organization shall bring the matter to the attention of the chief of the motor pool providing the vehicles. In the event a satisfactory solution does not result, full particulars shall be forwarded to the Property and Equipment Management Division (MA–422) for consideration and possible referral to the Administrator of General Services.

§ 109–39.404–4 Agency requests to withdraw participation.

Should circumstances arise at a given interagency motor pool location which tend to justify discontinuance or curtailment of participation by a DOE organization, as contemplated in FPMR § 101–39.404–4, the participating organization should forward complete details to the Property and Equipment Management Division (MA–422) for consideration and possible referral to the Administrator of General Services.

Subpart 101–39.6—Official Use of Government Motor Vehicles and Related Motor Pool Services

§ 109–39.602–1 Government vehicles.

(a) Subpart 109–38.54, Official Use of Motor Vehicles and Aircraft, prescribes DOE policies and procedures governing the official use of Government motor vehicles.

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 109–42—PROPERTY REHABILITATION SERVICES AND FACILITIES

Sec.
109–42.000 Scope of part.
109–42.000–50 Applicability.

Subpart 109–42.3—Recovery of Precious Metals and Strategic and Critical Materials

109–42.301 General.
109–42.301–1 Guidelines for conducting agency surveys and reporting to GSA.
109–42.302 Recovery of silver from used hypo solution and scrap film.
109–42.350 Excess precious metals.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–42.000 Scope of part.

This part implements and supplements FPMR Part 101–42, Property Rehabilitation Services and Facilities.

§ 109–42.000–50 Applicability.

The provisions of FPMR 101–42 and this part apply to contractors which generate used hypo solution, scrap film, other precious metals scrap and other recoverable scrap materials.

Subpart 109–42.3—Recovery of Precious Metals and Strategic and Critical Materials

§ 109–42.301 General.

The Director of Administration and heads of field offices for their respective organizations are responsible for establishing a program for the recovery of precious metals and strategic and critical materials in accordance with FPMR 101–42.3 and this subpart.

§ 109–42.301–1 Guidelines for conducting agency surveys and reporting to GSA.

Each DOE organization and contractor generating silver or other precious metals shall prepare the report on precious metals recovery in accordance with FPMR § 101–42.301–1, except that the reports shall be prepared on an annual basis for the fiscal year. Negative reports are required. Contractors shall submit reports to the DOE contracting office for review and approval. DOE organizations shall submit reports, including contractor reports, to the Property and Equipment Management Division (MA–422) not later than 30 days after the end of the fiscal year.

§ 109–42.302 Recovery of silver from used hypo solution and scrap film.

The Director of Administration and heads of field offices for their respective organizations are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film in accordance with FPMR § 101–42.302.

§ 109–42.350 Excess precious metals.

See § 109–43.313–54 for procedures for reporting excess precious metals to the DOE precious metals pool for recovery and subsequent redistribution within DOE.

PART 109–43—UTILIZATION OF PERSONAL PROPERTY

Sec.
109–43.000 Scope of part.
109–43.000–50 Applicability.
109–43.001–14 Personal property.

Subpart 109–43.1—General Provisions

109–43.101 Surveys.
109–43.102 Reassignment of property within executive agencies.
109–43.103 Agency utilization officials.

Subpart 109–43.3—Utilization of Excess

109–43.301–50 Policy.
109–43.302–50 Utilization and disposal by contractors.
109–43.303–1 Acquisition of mercury.
109–43.308 Property not required to be reported.
109–43.311–1–50 DOE utilization screening.
109–43.311–1–51 Procedures for effecting transfers within DOE.
109–43.311–5 Property at installations due to be discontinued.
109–43.312 Exceptions to reporting.
109–43.313–2 Printing, binding, and blankbook equipment and supplies.
109–43.313–50 Radioactively and chemically contaminated property.
109–43.313–51 Automatic data processing equipment.
109–43.313–52 Classified property.
109–43.313–53 Naval gun mounts.
109–43.313–54 Precious metals.
109–43.313–55 Shielding material.
109–43.313–56 Property in which the Government has an interest.
109–43.313–57 Lead.
109–43.315–5 Procedure for effecting transfers.
109–43.317–1 Cost of care and handling.
109–43.317–2 Proceeds.
109–43.319 Use of excess property on cost-reimbursement type contracts.
109–43.321 Certification of non-Federal agency screeners

Subpart 109–43.5—Utilization of Foreign Excess Personal Property.

109–43.503 Holding agency responsibilities.
109–43.504–50 Disposition of property not selected for return to the United States.

Subpart 109–43.47—Reports

109–43.4701 Performance reports.

Subpart 109–43.51—Utilization of Personal Property Held for Facilities in Standby

109–43.5100 Scope of subpart.
109–43.5101 Definition.
109–43.5102 Policy.
109–43.5103 Reviews to determine need for retaining items.
109–43.5104 Utilization of property in facilities in standby status.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–43.000 Scope of part.

This part implements and supplements FPMR Part 101–43, Utilization of Personal Property.

§ 109–43.000–50 Applicability.

The provisions of FPMR Part 101–43 and this part are applicable to contractors unless otherwise provided herein.

§ 109–43.001–14 Personal property.

For the purposes of this part personal property means property of any kind or type except real and related personal property; records; special source materials, which includes source materials and special nuclear material, and those other materials to which the provisions of DOE Order 5630.2 "Control and Accountability of Nuclear Materials, Basic Principles" apply, such as deuterium, enriched lithium, neptunium 237 and tritium, and atomic weapons and byproduct materials as defined in Section 11 of the Atomic Energy Act of 1954, as amended; enriched uranium in stockpile storage; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

Subpart 109–43.1—General Provisions

§ 109–43.101 Surveys.

The Director of Administration and heads of field offices are responsible for continuously surveying property under their control to assure efficient use and shall promptly identify and report excess property available for use elsewhere. See 109–25.109–1 for DOE policy on the conduct of management walk-through inspection tours to identify idle and unneeded equipment.

§ 109–43.102 Reassignment of property within executive agencies.

See Chapter XI of the DOE Accounting Practices and Procedures Handbook for preparation of the feeder reports upon which the consolidated DOE report of internal property reassignments is based.

§ 109–43.103 Agency utilization officials.

The Director, Property and Equipment Management Division, Headquarters, is designated as the DOE National Utilization Officer.

Subpart 109–43.3—Utilization of Excess

§ 109–43.301–50 Policy.

It is the policy of DOE to consider excess property as the first source of supply. In no case, however, will excess property be acquired unless a present or foreseeable program need exists for the property. In carrying out this policy, the objective of which is to obtain maximum effective and economical utilization of property already owned by the Federal Government, consideration should be given to such factors as—

(a) Nature and cost of any repairs required to restore excess equipment to a safe, dependable, and economical operating condition;

(b) Duration of the job on which the equipment will be used;

(c) Economic feasibility of ownership vs. loan or rental of the equipment. Frequency of use, particularly where the equipment will be needed only infrequently, is one of the factors which must be considered in determining the most economical method of acquisition; and

(d) Handling and transportation costs involved in acquisition of excess property.

§ 109–43.302–50 Utilization and disposal by contractors.

Heads of field officers may authorize contractors to perform the functions pertaining to utilization and disposal of excess property, provided such activities are in accordance with written policies and procedures which they have approved as being consistent with this part and those contained in FPMR Part 101–45 and Part 109–45.

§ 109–43.303–1 Acquisition of mercury.

Requests for 76 pound flasks of mercury, for use by DOE or its contractors, shall be forwarded to the Director, Supply Division, Oak Ridge Operations Office, Oak Ridge, Tennessee.

§ 109–43.306 Property not required to be reported.

To the extent practicable and economical, notification of availability of nonreportable excess property (See FPMR § 101–43.312) shall be made on an informal basis to other DOE installations in the area known to use such property. If no requirement is established within a reasonable time, usually not more than 30 days after the availability of the property is announced, the property will be considered excess to the needs of the DOE and made available to GSA as provided for in FPMR Part 101–43.306.

§ 109–43.311–1–50 DOE utilization screening.

(a) Prior to reporting excess personal property to GSA as required by FPMR § 101–43.311–1, reportable property, as identified in FPMR § 101–43.4801, shall be reported to the Property and Equipment Management Division (MA–422) through the DOE Reportable Excess Automated Property System (REAPS) for completion of the 30-day DOE screening period. Information regarding REAPS reporting and screening procedures are provided in instructions and directives issued by MA–422.

(b) In exceptional cases where time does not permit formal DOE utilization screening through REAPS, notification of the availability of excess property may be made by telegram, teletype or telephone, with due consideration to the additional costs involved.

(c) Concurrent utilization screening within DOE and to other Federal agencies generally shall not be permitted.

(d) If, after DOE circularization, reportable property is desired by another Federal agency, it may be transferred as provided in FPMR § 101–43.315–5(a).

§ 109–43.311–1–51 Procedures for effecting transfers within DOE.

In accordance with instructions provided for the operation of the REAPS program, transfers between DOE organizations and contractors shall be effected by completion of an SF–122, Transfer Order Excess Personal Property. Except for those contractors authorized by the DOE contracting office to executed transfer orders, transfers to DOE contractors must be approved by the cognizant DOE contracting officer for the contractors receiving the property.

§ 109–43.311–5 Property at installations due to be discontinued.

(a) In closing out installations or any activities where it is important that upon completion of the work the personnel be released and activities ended as quickly as possible in order to avoid large expenditures, arrangements may be made for expediting the utilization and disposal of excess inventories and other excess property.

(b) Personal and real property staffs of DOE field organizations shall work with appropriate GSA regional offices to develop a utilization and disposal program which takes into consideration all the factors involved, is expedited to the maximum degree, and is mutually satisfactory and in the best overall interest of the Government. When closeout involves an activity which is not located geographically in a DOE installation, information concerning the situation shall be given to the appropriate regional administrator of GSA, as early as possible, by letter (copy to the Property and Equipment Management Division (MA–422)). The information should include the types of property available and indicate that the activity is to be discontinued, the scheduled date for the removal of personnel from the location, and the last dates when the property will be needed. The following guidelines are furnished for possible use, although variations may be used as long as agreement is reached with GSA and there is no conflict with DOE requirements except as noted in (1) below:

(1) If a proposed expedited program provides for deviation from the DOE policy or procedural requirements, approval of the Director of Procurement and Assistance Management shall be obtained.

(2) Approval of the proposed program by the appropriate GSA regional office, when deviation from existing GSA regulations is involved, will be sufficient to validate the program. A copy of the approved program should be forwarded for information to the Property and Equipment Management Division (MA–422).

(3) In developing an expedited disposal program, property shall be determined to be excess to DOE before it is reported to GSA. Concurrent circularization of lists of DOE excess property within DOE and to other Federal agencies generally is not permitted.

(4) Summary catalog listings of certain categories of excess property, such as property in classes 48, 51, 55, 56, etc., showing estimated release dates, might be furnished GSA with good utilization results. Excess property in such classes as 23, 24, 32, 34 and 38 shall normally be listed by individual item with sufficient description for ready identification.

(5) In order to obtain maximum utilization of the property by other Federal agencies, the disposal program shall provide that the field organization will furnish assistance to GSA, upon request, to arrange for invitational inspections by Federal agency representatives.

(6) Upon request, DOE can provide assistance to GSA in its circularization of reportable items to other Federal agencies or in locating potential users within the government.

(7) Care should be exercised to be sure that orders from other Federal agencies for excess property are processed through GSA, as may be

required by the GSA regional office concerned.

(8) Although it may be possible to arrange for expediting donations for educational, public health, or civil defense purposes, adequate time must be allowed for the screening of all donable property.

(9) Provisions should be made for accelerated release by GSA of excess property for disposal as surplus, particularly where there is little or no potential use by other Federal Agencies.

(10) Methods should be developed whereby last minute requests for surplus property, cataloged for an auction sale or listed in a sealed bid invitation and inspected by prospective bidders, can be kept to a minimum.

§ 109–43.312 Exceptions to reporting.

In addition to the categories of nonreportable property identified in FPMR § 101–43.312 (a) through (g), the following property, when determined excess to a DOE installation, is not reportable and shall not be formally circularized within DOE or reported to GSA—

(h) Asphalt products in less than carload (LCL) quantities (roofing tile, paving materials);

(i) Cement and fabricated cement products in LCL quantities (concrete block, pumic block, cinder block, pipe and fittings);

(j) Fabricated clay products in LCL quantities (brick, tile, pipe and fittings);

(k) Fuels in LCL quantities (gasoline, diesel fuels, coal, coke and kerosene);

(l) Special purpose or site fabricated shelving, cabinets, shop tables, etc., of limited adaptability or with high cost of disassembly or transportation;

(m) Uncrated window glass; and

(n) Equipment, parts, accessories, jigs and components, which are of special design, composition, or manufacture and which are intended for use only by specific DOE installations, such as spare parts for equipment used in atomic processes.

§ 109–43.313–2 Printing, binding, and blankbook equipment and supplies.

DOE organizations shall report excess printing, binding and blankbook equipment to the Office of Administrative Services, Headquarters, for processing in accordance with the Joint Committee on Printing Regulations.

§ 109–43.313–50 Radioactively and chemically contaminated property.

Radioactively and chemically contaminated property should be handled in accordance with § 109–45.50.

§ 109–43.313–51 Automatic data processing equipment.

Automatic data processing equipment should be handled in accordance with FPMR §§ 101–36.3 and 109–36.3.

§ 109–43.313–52 Classified property.

Classified personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be classified, or otherwise rendered unclassified prior to disposal, in accordance with instructions of the head of the field organization concerned. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the property.

§ 109–43.313–53 Naval gun mounts.

When a naval gun mount obtained from the Naval Sea Systems Command, Department of the Navy, becomes excess, it may be listed, circularized, and transferred within DOE in the same manner as other excess property. However, when a naval gun mount is determined to be excess to DOE, it shall be reported to the Department of the Navy, Naval Sea Systems Command, Washington, D.C. 20360, and shall be disposed of in accordance with instructions of that Department.

§ 109–43.313–54 Precious metals.

All precious metals which become excess to current or foreseeable requirements shall be reported to the Oak Ridge Operations Office. With the exception of silver, this includes precious metals in any form, including shapes, scrap or radioactively contaminated. Only high grade nonradioactively contaminated silver should be reported, i.e., silver-bearing photo solutions, scrap film, or other low grade silver scrap should not be reported. (See § 109–27.53)

§ 109–43.313–55 Shielding material.

All excess movable shielding material of any type will be circularized within DOE using normal excessing procedures. However, prior to disposal outside DOE, the Property and Equipment Management Division (MA–422) shall be advised concerning the types and quantities which remain available.

§ 109–43.313–56 Property in which the Government has an interest.

Personal property in which the Government has an interest means: (a) Government-owned property which is available for exchange or sale, and (b) property leased with an option to purchase. Such property shall be circularized within DOE in accordance with § 109–43.311–1–50 for possible utilization whenever it is practicable to do so, considering the contract terms, cost in relation to remaining useful life, location of item, purchase option time remaining, etc.

§ 109–43.313–57 Lead.

Excess lead and lead bearing scrap, such as batteries, with the exception of radioactively contaminated lead, should be reported to the Idaho Operations Office for reclaiming and subsequent redistribution within DOE from the DOE lead bank. Only quantities of 40,000 pounds or more should be reported. The Idaho Operations Office will furnish shipping instructions upon request.

§ 109–43.315–5 Procedure for effecting transfers.

In accordance with a DOE agreement with GSA, execution of transfer orders by a DOE official is not required in those cases where heads of field offices have authorized contractors to perform this function, and GSA has been notified of such authorization. GSA regional offices will furnish the cognizant DOE field organization a copy of each transfer ordered received from contractors. This copy of the transfer order will be reviewed by the cognizant DOE field organization to determine if the contractor has been authorized to submit orders for excess property. If the contractor submitting the transfer order to the GSA regional office has not been authorized in writing to submit such orders, GSA will not honor such requests unless they are subsequently executed by an appropriate DOE official.

§ 109–43.317–1 Cost of care and handling.

DOE field organizations and contractors shall comply with the provisions of Chapter III of the DOE Accounting Practices and Procedures Handbook as they relate to billings for direct costs incurred in the transfer of excess property.

§ 109–43.317–2 Proceeds.

For DOE procedures on the handling of proceeds from transfer of excess property to another Government agency with reimbursement, see Chapter III of the DOE Accounting Practices and Procedures Handbook.

§ 109–43.319 Use of excess property on cost-reimbursement type contracts.

(b) It is DOE policy for contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in FPMR § 101–43.319(b) does not apply to such contracts and the acquisitions of

Government excess personal property by these contractors are not subject to the annual reporting requirements of FPMR § 101–43.4701(c). The procedures prescribed in § 109–43.315–5 for execution of transfer orders apply.

§ 109–43.321 Certification of non-Federal agency screeners.

Contracting officers shall maintain a record of the number of certified non-Federal agency screeners operating under their authority and shall immediately notify the appropriate GSA regional office of any changes in screening arrangements.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

§ 109–43.503 Holding agency responsibilities.

(a) Property which remains excess after utilization screening within the general foreign geographical area where the property is located should be reported by the accountable field office or Headquarters program organization to the Property and Equipment Management Division (MA–422) for consideration for return to the U.S. for further utilization within DOE, by other Government agencies, or for donation, based on such factors as cost, residual value, usefulness in ongoing or future programs, condition, and cost of transportation.

§ 109–43.504–50 Disposition of property not selected for return to the United States.

Property not selected for return to the United States for utilization within DOE or the Government or for donation in accordance with FPMR § 101–44.7 shall be disposed of in accordance with 109–45.5105.

Subpart 109–43.47—Reports

§ 109–43.4701 Performance reports.

(a) The DOE report of the utilization of domestic excess personal property as required in FPMR § 101–43.4701(a) is submitted to GSA by the Property and Equipment Management Division (MA–422). DOE field organizations and contractors reporting under the DOE financial reporting system should furnish this information to the Office of Controller in accordance with Chapter III of the DOE Accounting Practices and Procedures Handbook. Those activities which do not report under the DOE financial reporting system shall submit an SF 121 directly to MA–422 by November 15.

(c) The report required in FPMR § 101–43.4701(c) shall be submitted to the Property and Equipment Management Division (MA–422) within 45 days after the close of each fiscal year, in the format illustrated below. This reporting requirement does not apply to excess property acquired by management and operating contractors.

Name and address of recipient	Recipient's status	Original cost of property	Federal supply classification group

Subpart 109–43.51—Utilization of Personal Property Held for Facilities in Standby

§ 109–43.5100 Scope of subpart.

This subpart supplements FPMR Part 101–43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

§ 109–43.5101 Definition.

"Facility in standby" is a significant segment of plant and equipment, such as a complete plant or section of a plant, which is neither "in service" or declared "excess".

§ 109–43.5102 Policy.

Procedures and practices shall assure economical and efficient utilization of property associated with facilities placed in standby status as provided for in this subpart.

§ 109–43.5103 Reviews to determine need for retaining items.

Procedures and practices shall require an initial review at the time the plant is placed in standby to determine which items can be made available for use elsewhere within the established startup criteria, periodic reviews (no less than biennially) to determine need for continued retention of property, and special reviews when a change in startup time is made or when circumstances warrant. Such procedures should recognize that: (a) Generally, equipment, spares, stores items, and materials peculiar to a plant should be retained for possible future operation of the plant, (b) where practicable, common-use stores should be removed and used elsewhere, and (c) uninstalled equipment and other personal property not required should be utilized elsewhere onsite or be disposed of as excess.

§ 109–43.5104 Utilization of property in facilities in standby status.

(a) Procedures and practices shall require that property comprising the plant in standby, to the extent consistent with program requirements reflected by the startup criteria, be considered as a source of supply prior to procurement. Such procedures should provide for: (1) Furnishing potential users and procurement officers or some other responsible screening office with listings of equipment and other significant property holdings available for loan or transfer, and (2) removal and use elsewhere of installed equipment which can be replaced or returned within the established startup criteria.

(b) In addition to the above procedures, DOE organizations and contractors should encourage informal contacts between their technical staffs and those engaged in similar work at other DOE locations for the purpose of ascertaining the availability of Government property to meet their program requirements.

PART 109–44—DONATION OF PERSONAL PROPERTY

Sec.

109–44.000 Scope of part.

Subpart 109–44.7—Donations of Property to Public Bodies

109–44.701 Findings justifying donation to public bodies

Subpart 109–44.47—Reports

109–44.4701 Reports.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–44.000 Scope of part.

This part implements and supplements FPMR Part 101–44, Donation of Personal Property. For donation of surplus personal property in foreign areas, see § 109–45.51.

Subpart 109–44.7—Donations of Property to Public Bodies

§ 109–44.701 Findings justifying donation to public bodies.

The Director of Administration and heads of field offices for their respective organizations shall appoint officials to make findings and reviews as required in FPMR § 101–44.7.

Subpart 109–44.47—Reports

§ 109–44.4701 Reports.

The report of the donation of surplus personal property is furnished to GSA in combination with the report of the utilization of domestic excess personal property required in FPMR § 101–43.4701. See § 109–43.4701 for DOE reporting requirements.

PART 109–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Sec.
109–45.000 Scope of part.

Subpart 109–45.1—General

109–45.101–50 Applicability.
109–45.103–1 Responsibilities of the General Services Administration.
109–45.103–2 Responsibilities of holding agencies.
109–45.105–3 Exemptions.

Subpart 109–45.3—Sale of Personal Property

109–45.301–50 Sales by DOE contractors.
109–45.302–50 Sales to DOE and contractor employees.
109–45.303–50 Contractor reporting of property for sale.
109–45.304–2–50 Negotiated sales and negotiated sales at fixed prices.
109–45.304–6 Reviewing authority.
109–45.304–50 Processing bids and award of contract.
109–45.304–51 Documentation.
109–45.307 Proceeds from sales.
109–45.309–50 Unserviceable property (salvage and scrap).
109–45.310 Antitrust laws.
109–45.316 Report on identical bids.

Subpart 109–45.5—Abandonment or Destruction of Surplus Property

109–45.501–1 General.
109–45.502–1 Reviewing authority.

Subpart 109–45.47—Reports

109–45.4701 Performance reports.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

109–45.5001 Scope of subpart.
109–45.5002 Policy.
109–45.5003 Responsibilities.
109–45.5003–1 Development of criteria for utilization and disposal outside DOE.
109–45.5003–2 Approval of requests for utilization and disposal outside DOE.
109–45.5004 Procedures.
109–45.5004–1 Suspect personal property.
109–45.5004–2 Handled as uncontaminated equipment.

Subpart 109–45.51—Disposal of Excess Personal Property in Foreign Areas

109–45.5100 Scope of subpart.
109–45.5101 Authority.
109–45.5102 General.
109–45.5103 Definitions.
109–45.5104 Responsibilities.
109–45.5104–1 Director of Procurement and Assistance Management.
109–45.5104–2 Heads of offices in foreign areas.
109–45.5105 Disposal.
109–45.5105–1 General.
109–45.5105–2 Methods of disposal.
109–45.5106 Reports.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–45.000 Scope of part.

This part implements and supplements FPMR 101–45, Sale, Abandonment, or Destruction of Personal Property, but does not apply to (a) properties which are sold or otherwise disposed of pursuant to special statutes, or (b) disposal of personal property in foreign areas (see § 101–45.51).

Subpart 109–45.1—General

§ 109–45.101–50 Applicability.

The provisions of FPMR 101–45 and this part are applicable to contractors authorized to dispose of surplus personal property.

§ 109–45.103–1 Responsibilities of the General Services Administration.

GSA regional offices are responsible for the conduct of sales of surplus and replacement property in the custody of DOE direct operations, except that DOE will continue to sell replacement property where trade-in offers are also involved in the transaction.

§ 109–45.103–2 Responsibilities of holding agencies.

See §§ 109–45.105–3 and 109–45.3 for policy and procedures governing the sale of personal property by DOE contractors.

§ 109–45.105–3 Exemptions.

The General Services Administration, by letter dated May 28, 1965, authorized DOE contractors to sell contractor inventory, including replacement property. This exemption is for sales of contractor inventory only. All surplus property in the custody of DOE direct operations (except replacement property where trade-in offers are involved) will be reported to GSA in accordance with FPMR § 101–45.303.

Subpart 109–45.3—Sale of Personal Property

§ 109–45.301–50 Sales by DOE contractors.

Sales of surplus contractor inventory will be made by DOE contractors when heads of field offices determine that it is in the best interests of the Government to do so.

§ 109–45.302–50 Sales to DOE and contractor employees.

(a) Employees of DOE and DOE contractors shall be afforded the same opportunity to acquire Government-owned property as is afforded the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly—

(1) Participated in the determination to dispose of the property;

(2) Participated in the preparation of the property for sale;

(3) Participated in determining the method of sale; or

(4) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the property.

(b) Special clothing and other articles of personal equipment acquired for the exclusive use of and fitted to an individual employee, when not otherwise usable by, and in all respects excess to the needs of, the holding organization, may be sold to DOE or contractor employees at the best price obtainable in the event of termination of their employment or their permanent assignment to duties not requiring such clothing or equipment.

§ 109–45.303–50 Contractor reporting of property for sale.

GSA normally initiates sales action from the items remaining as surplus after utilization and donation screening. In order to assure no misunderstanding at GSA regional offices as to who is to perform the sale function for contractor inventory, each Standard Form 120 report forwarded to GSA shall bear a capitalized notation in a prominent place reading either "To BE SOLD BY GSA" or "NOT TO BE SOLD BY GSA" as appropriate.

§ 109–45.304–2–50 Negotiated sales and negotiated sales at fixed prices.

(a) Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the contracting officer determines and documents that the use of this method of sale is essential to expeditious contract closeout, or is otherwise justified on the basis of circumstances enumerated below, provided that the Government's interests are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, shall be at prices which are fair and reasonable and if the property was offered for competitive sale. Specific conditions justifying negotiated sales are when—

(1) No acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(2) Property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(3) The disposal will be to States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair

market value of the property and other satisfactory terms of disposal are obtained;

(4) The specialized nature and limited use potential of the property would create negligible bidder interest;

(5) Removal of the property would result in a significant reduction in value, or the accrual of disproportionate expense in handling; or

(6) It can be clearly established that such action is in the best interests of the Government.

(b) Negotiated sales at fixed prices. When determined to be in the best interests of the Government, heads of field offices may authorize fixed-price sale of contractor inventory by DOE contractors provided (1) the reasonable recovery value of the property to be sold to any one purchaser at any one time does not exceed $1000, (2) adequate procedures for publicizing such sales have been established, (3) the sales prices are not less than could reasonably be expected if competitive bid sales were employed and the prices have been approved by a reviewing authority designated by the heads of field offices, and (4) the warranty prescribed in § 109–45.302–50(a) is obtained when sales are made to employees.

§ 109–45.304–6 Reviewing authority.

The reviewing authority required under FPMR § 101–45.304–6 may consist of one or more persons designated by the head of the field office who will be responsible for providing an adequate and independent review of proposed sales for the purpose of determining whether—

(a) The method of sale is in accordance with established policies and procedures; and

(b) Proceeds constitute a reasonable return for the property sold.

§ 109–45.304–50 Processing bids and award of contract.

The procedures established in Federal Acquisition Regulation 14.4 and DEAR 914.4 shall be made applicable to execution, receipt, safeguarding, opening, abstracting, and evaluation of bids and awarding contracts, except that in evaluating bids and awarding contracts, disposal under conditions most advantageous to the Government based on high bids received shall be the determining factor. For mistakes in bids, see FPMR 101–45.6.

§ 109–45.304–51 Documentation.

Files pertaining to sales shall contain copies of all documents necessary to provide a complete record of the transaction and as a minimum shall include the following:

(a) A copy of request for proposals if written proposals are employed.

(b) A list of prospective bidders contacted.

(c) An abstract of proposals received, whether oral or written.

(d) Copies of written proposals or confirming proposals received, including Standard Forms 119 (see FPMR § 101–45.313–9) which have been received from prospective bidders, together with other relevant information.

(e) A notation concerning basis for determination that proceeds constitute a reasonable return for property sold.

(f) Full and adequate justification for not advertising for competitive bids when the fair market value of property sold in this manner in any one case exceeds $1,000.

(g) A notation concerning any award made to other than the high bidder.

(h) The approval of reviewing authority when required.

(i) A copy of notice of award.

(j) All related correspondence.

(k) In the case of auction or spot bid sales, the following additional information should be included:

(1) A list of items or lots sold indicating book cost and sales price for each item or lot sold.

(2) A copy of advertising literature distributed to prospective bidders.

(3) A summary listing of advertising by means of newspapers, radio, television, public posting, etc.

(4) The names of prospective bidders who attended sale if list was made.

(5) A copy of any pertinent contract for auctioneering services and related documents or appropriate reference to files containing such documents.

(6) A record of deposits and payments made or appropriate reference to files containing such records.

§ 109–45.307 Proceeds from sales.

DOE installations shall comply with the provisions of Chapter IV of the DOE Accounting Practices and Procedures Handbook.

§ 109–45.309–50 Unserviceable property (salvage and scrap).

(a) A continuous cleanup program shall be maintained at all DOE installations to locate, efficiently handle, and promptly dispose of unserviceable property (salvage and scrap). Property inventories and construction, wrecking, dismantling and other projects which might produce scrap, should be regularly reviewed, particularly for metals and other items which offer potential as marketable materials and for economic returns to the Government. (See FPMR Part 101–42 and Part 109–42 for recovery of precious metals and reporting requirements.)

(b) Scrap metals shall be segregated to the maximum economical extent consistent with good industrial practice.

(c) Scrap metal which is contaminated with radioactive material and/or chemically hazardous materials shall be segregated and appropriately marked at the source as to type and degree of contamination and shall be controlled and disposed of in accordance with application regulations. (See Subpart 109–45.50).

§ 109–45.310 Antitrust laws.

Selling organizations shall submit to the Office of the General Counsel, with a copy of the Director of Procurement and Assistance Management, the report on proposed sales of surplus personal property with an acquisition cost of $3,000,000 or more, or a patent, process, technique, or invention, regardless of cost. Information to be included is contained in FPMR § 101–45.310.

§ 109–45.316 Report on identical bids.

Selling organizations shall forward the report on identical bids required by FPMR § 101–45.316 to the Office of the General Counsel, with a copy of the Director of Procurement and Assistance Management.

Subpart 109–45.5—Abandonment or Destruction of Surplus Property

§ 109–45.501–1 General.

(a) The finding required by FPMR § 101–45.501–1(a) that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale shall be in writing and shall be made by an official designated by the head of the field office concerned.

§ 109–45.501–2 Reviewing authority.

The head of the field office concerned with the reviewing authority for approval to abandon or destroy property with an acquisition cost of more than $1,000.

Subpart 109–45.47—Reports

§ 109–45.4701 Performance reports.

The report of the sale or other disposition of surplus personal property is furnished to GSA in combination with the report of the utilization of domestic excess personal property required in FPMR § 101–43.4701. See § 109–43.4701 for DOE reporting requirements.

Subpart 109–45.50–Excess and Surplus Radioactively and Chemically Contaminated Personal Property

§ 109–45.5001 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and disposal outside of DOE of excess and surplus personal property which has been radioactively or chemically contaminated.

§ 109–45.5002 Policy.

When the holding organization determines it is appropriate to dispose of contaminated personal property, such contaminated personal property shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure to the public and contamination in the environment. In special cases where Federal regulations do not exist or apply, appropriate national consensus standards shall be used.

§ 109–45.5003 Responsibilities.

§ 109–45.5003–1 Development of criteria for utilization and disposal outside DOE.

The Assistant Secretary for Policy, Safety and Environment (PE–241) has responsibility for the development of criteria for utilization and disposal of excess and surplus radioactively and chemically contaminated personal property outside of DOE.

§ 109–45.5003–2 Approval of requests for utilization and disposal outside DOE.

Requests for utilization and disposal outside DOE shall be forwarded to the Director of Procurement and Assistance Management for approval and coordination with PE–241.

§ 109–45.5004 Procedures.

§ 109–45.5004–1 Suspect personal property.

(a) Each excess item of personal property (including scrap), having a history of use in an area where exposure to radioactively or chemically contaminated materials may occur, shall be considered suspect and shall be monitored using appropriate instruments and techniques by qualified personnel of the DOE office or contractor generating the excess.

(b) Prior to utilization or disposal outside DOE, with due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of items of excess or surplus property to the lowest practicable level.

(c) If contamination is suspect and the property is of such size, construction, or location as to make the contamination inaccessible for the purpose of measurement, such property shall not be utilized or disposed of outside DOE through normal channels.

§ 109–45.5004–2 Handled as uncontamination equipment.

If monitoring of suspect equipment indicates that the contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated equipment, provided the guidance in § 109–45.5004–1(b) has been considered. However, recipients shall be advised where levels of radioactive contamination require specific controls for shipment as provided in Department of Transportation Regulations for shipment of radioactive materials (49 VFR Parts 171–179, inclusive). In addition, when any contaminated equipment is circularized within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

Subpart 109–45.51—Disposal of Excess Personal Property in Foreign Areas

§ 109–45.5100 Scope of subpart.

This subpart sets forth policies and procedures governing the disposal of DOE-owned foreign excess and surplus personal property.

§ 109–45.5101 Authority.

The policies and procedures contained in this subpart are issued pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471). Title IV of that Act entitled "Foreign Excess Property" provides that, except where commitments exist under previous agreements, all excess property located in foreign areas shall be disposed of by the owning agency, and directs that the head of such agency conform to the foreign policy of the United States in making such disposals.

§ 109–45.5102 General.

Disposal of Government-owned property in the custody of DOE organizations or its contractors in foreign areas shall be made in an efficient and economical manner, and in conformance with the foreign policy of the United States.

§ 109–45.5103 Definitions.

As used in this subpart, the following definitions apply:

(a) "Foreign" means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(b) "Foreign service post" means the local diplomatic or consular post in the area where the excess property is located.

§ 109–45.5104 Responsibilities.

§ 109–45.5104–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management develops and interprets policies, principles, and general procedures for the disposal of excess property in foreign areas.

§ 109–45.5104–2 Heads of offices in foreign areas.

Heads of DOE foreign offices—

(a) Are authorized to handle foreign excess disposal matters in accordance with Title IV, "Foreign Excess Property" of the Federal Property and Administrative Services Act of 1949, as amended and this subpart;

(b) Shall refer to the Property and Equipment Management Division (MA–422), any requests for advice or approval of the State Department on proposed disposals of excess property in foreign areas for review, coordination and handling through appropriate channels; and

(c) Shall approve the exchange or lease of foreign excess property when in their opinion such action is clearly in the best interest of the Government as provided in § 109–45.5105–2(b).

§ 109–45.5105 Disposal.

§ 109–45.5105–1 General.

(a) Foreign excess property which is not required for transfer within DOE or to other U.S. Government agencies shall be considered surplus and may be disposed of by transfer, sale, exchange, or lease, for cash, credit, or other property and upon such other terms and conditions as may be deemed proper. Such property may also be donated, abandoned, or destroyed under the conditions specified in § 109–45.5105–2(c). Most foreign governments have indicated to the State Department that they wish to be consulted before U.S. Government property is disposed of in their countries (except in the case of transfers to other U.S. Government agencies). Matters concerning customs duties and taxes, or similar charges, may require prior agreement with the foreign government involved. The State Department shall be contacted in regard to these problems. Whenever advice or approval of the State Department is required by this subpart, it may be obtained either through the foreign service post in the foreign area involved or from the State Department in

Washington, D.C. If the problem is to be presented to the State Department in Washington, D.C., it shall be referred through appropriate administrative channels to the Director of Procurement and Assistance Management, for review, coordination and handling.

(b) Foreign excess property which is not transferred for use may be transferred to other U.S. Government agencies for disposal. This procedure may often prove advantageous, particularly when only small amounts of property are involved or when personnel of the other agencies are generally engaged in disposal activities.

§ 109–45.5105–2 Methods of disposal.

(a) Sales of foreign excess shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of surplus foreign excess property shall be conducted under the competitive bid process unless it is advantageous and more practicable to the Government not to do so. When competitive bids are not solicited, reasonable inquiry of prospective purchasers shall be made in order that sales may be made on terms most advantageous to the U.S. Government.

(2) In no event shall any property be sold in foreign areas without a condition which states that its importation into the United States is forbidden unless the U.S. Secretary of Agriculture (in the case of any agricultural commodity, food, or cotton or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), determines or has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States.

(3) Sales documents shall provide that the purchaser must pay any import duties or taxes levied against property sold in the country involved and further provide that the amount of this duty or tax shall not be included as a part of the price paid the U.S. Government for the property. In the event the levy is placed upon the seller by law, the buyer will be required to pay all such duties or taxes and furnish the seller copies of his receipt prior to the release of the property to him. However, if the foreign government involved will not accept payment from the buyer, the seller will collect the duties or taxes and turn the amounts collected over to the foreign government. Accounting for the amounts collected shall be coordinated with the disbursing officer of the nearest United States foreign service post. The property shall not be released to the purchaser until the disposal officer is satisfied that there is no responsibility for payment by the United States (as contrasted to collection by the United States) of taxes, duties, excises, etc.

(4) Certain categories of property, including small arms and machine guns; artillary and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and ordnance vehicles; chemical and biological agents, propellents and explosives; vessels of war and special naval equipment; aircraft and all components, parts and accessories for aircraft; military electronic equipment; aerial cameras, military photo-interpretation, stereoscopic plotting and photogrammetry equipment; and all material not enumerated which is classified from the standpoint of military security (United States Munitions List, 22 CFR 121.01), are subject to restrictions as to disposal. Advance approval must be obtained from the State Department for the sale of all such articles. Therefore, prior to the sale of any of the articles enumerated in the U.S. Munitions List, the foreign service post in the area shall be consulted.

(5) Prior to the sale of property which had a total acquisition cost of $250,000 or more, plans for such sale shall be reported to the Property and Equipment Management Division (MA–422) in ample time to allow considerations of possible foreign policy aspects and advice thereon from the State Department. (See § 109–45.5106(a)). All proposed sales, regardless of the total acquisition cost of the property involved, which the head of the DOE foreign office believes might have a significant effect on the economic or political situation in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus property, such authority shall be exercised only when such action is clearly in the best interests of the U.S. Government. Disposals by exchange are subject to the same requirements as disposals by sale under § 109–45.5105–2(a).

(c) Foreign excess or surplus property (including waste, salvage, and scrap) may be donated, abandoned, or destroyed provided (1) the property has no commercial value, or the estimated cost of its care and handling would exceed the estimated proceeds from its sale, and (2) a written finding to that effect is made and approved by the head of the DOE foreign office. No property shall be abandoned or destroyed if donation is feasible. Donations under these conditions may be made to any agency of the U.S. Government, or to educational, public health or charitable nonprofit organizations of governments. Foreign excess property may also be abandoned or destroyed when such action is required by military necessity, safety, or considerations of health or security. A written statement explaining the basis for disposal by this means and approval by the head of the DOE foreign office is required. Property shall not be abandoned or destroyed in a manner which is detrimental or dangerous to public health and safety, or which will cause infringement on the rights of other persons.

§ 109–45.5106 Reports.

(a) Proposed sales of foreign excess property having an acquisition cost of $250,000 or more reported to the Property and Equipment Management Division (MA–422) should present all pertinent data, including the following:

(1) The description of property to be sold, including—

(i) Identification of property (description should be in terms understandable to persons not expert in technical nomenclature); property covered by the Munitions List and regulations pertaining thereto (as published in 22 CFR 121.01) should be clearly indicated;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (i.e., bid, negotiated sale, etc.).

(3) Any currency to be received and payment provisions (i.e., U.S. dollars, foreign currency, or credit, including terms of proposed agreement).

(4) Any restrictions on use of property to be sold (such as retransfer of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms.

(6) The categories of prospective purchasers (e.g., host country, other foreign countries, special qualifications, etc.).

(7) How taxes, excises, duties, etc. will be handled.

(b) Instructions for reporting foreign excess utilization and disposal transactions are contained in Chapter III of the DOE Accounting Practices and Procedures Handbook.

PART 109–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

Sec.

109–46.000 Scope of part.
109–46.000–50 Applicability.

Subpart 109–46.4—Disposal

109–46.406 Records.
109–46.407 Records.

Authority: Sec. 644, Pub. L. 95–91, Stat. 599 (42 U.S.C. 7254).

§ 109–46.000 Scope of part.

This part implements and supplements FPMR Part 101–46.

§ 109–46.000–50 Applicability.

Except as set forth below, the requirements of FPMR Part 101–46 and this part are not applicable to DOE contractors. Contractors shall comply with the following requirements:

FRMR § 101–46.201
FPMR § 101–46.202(a)
FPMR § 101–46.202(d) (1), (4), (5), (6), (7), and (10)
FPMR § 101–46.202(e)
FPMR § 101–46.401
DOE–PMR § 109–46.406

Subpart 109–46.4—Disposal

§ 109–46.406 Records.

Contractor shall prepare and maintain such records as will show full compliance with the applicable provisions of FPMR Part 101–46.

§ 109–46.407 Reports.

The report of exchange/sale transactions required by FPMR § 101–46.407 shall be submitted through normal administrative channels to the Property and Equipment Management Division (MA–422) within 60 days after the close of the fiscal year. Negative reports are required.

PART 109–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

Sec.
109–48.000 Scope of part.
109–48.001–50 Applicability.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

109–48.101–6 Transfer to other Federal agencies.
109–48.102–4 Proceeds.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–48.000 Scope of part.

This part implements and supplements FPMR Part 101–48, Utilization, Donation, or Disposal of Abandoned and Forfeited Personal Property.

§ 109–48.001–50 Applicability.

The provisions of FPMR 101–48 and this part are applicable to contractor operations where the abandoned or forfeited personal property is found on premises owned or leased by the Government.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

§ 109–48.101–6 Transfer to other Federal agencies.

(d) Transfer orders covering requests for transfers of forfeited or voluntarily abandoned distilled spirits, wine and malt beverages for medicinal, scientific or mechanical purposes shall be forwarded through normal administrative channels for signature by the Property and Equipment Management Division (MA–422) and for subsequent forwarding to GSA for release.

§ 109–48.102–4 Proceeds.

After retention of any monies received from disposal of abandoned or forfeited property for the three-year period specified in FPMR § 101–48.102–4 with no claim being filed, such monies shall be deposited as provided in Chapter IV of the DOE Accounting Practices and Procedures Handbook.

PART 109–50—PROGRAMMATIC DISPOSAL OF DOE PROPERTY

Sec.
190–50.000 Scope of part.
190–50.001 Applicability.

Subpart 109–50.1—General

190–50.101 Authority.

Subpart 109–50.3—Used Energy-Related Laboratory Equipment Grant Program

190–50.300 Scope of part.
190–50.301 Applicability.
190–50.302 General.
190–50.303 Authority.
190–50.304 Definitions.
190–50.305 Responsibilities and authorities.
190–50.305–1 Director of Procurement and Assistance Management.
190–50.305–2 Director, Office of Field Operations Management, Office of Energy Research.
190–50.305–3 Heads of field offices.
190–50.305–4 Contracting officers.
190–50.305–5 Excess used energy-related laboratory equipment holding organizations.
190–50.305–6 Screening locations.
190–50.306 Types of equipment which may be granted.
190–50.307 Types of equipment which may not be granted.
190–50.308 Procedure.
190–50.309 Reports.
190–50.310 Screening locations.

Subpart 109–50.4—Programmatic Disposal to Contractor of DOE Property in a Mixed Facility

190–50.400 Scope of subpart.
190–50.401 Definitions.
190–50.402 Responsibilities and authorities.
190–50.402–1 Director of Procurement and Assistance Management.
190–50.402–2 Heads of Headquarters program organizations.
190–50.402–3 Heads of field offices and contracting officers.
190–50.403 Programmatic disposal of DOE property in mixed facilities.
190–50.403–1 Submission of proposals.
190–50.403–2 Need to establish DOE program benefit.
190–50.404 Notification.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–50.000 Scope of part.

This part provides guidance on the authorities, policies, and procedures for the disposal of DOE property for programmatic purposes.

§ 109–50.001 Applicability.

The provisions of this Part 109–50 apply to direct DOE operations, but do not apply to contractors unless specifically provided in the appropriate subpart.

Subpart 109–50.1—General

§ 109–50.101 Authority.

Programmatic disposals of DOE property generally are made under the authority and subject to the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), the Energy Reorganization Act of 1974 (42 U.S.C. 5801), the Department of Energy Organization Act (42 U.S.C. 7101), and other special laws which provide authority for DOE program activities.

§ 109–50.300 Scope of subpart.

This subpart provides guidance on the granting of used, energy-related laboratory equipment to universities and colleges and other nonprofit educational institutions of higher learning in the United States for use in energy-oriented educational programs.

§ 109–50.301 Applicability.

This subpart is applicable to direct operations and to contractors.

§ 109–50.302 General.

DOE, to encourage research in the field of energy, awards grants of used energy-related laboratory equipment to eligible institutions for use in energy-oriented educational programs. Under the Used Energy-Related Laboratory Equipment Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and contractors may be made to eligible institutions prior to reporting the equipment to GSA for utilization.

§ 109–50.303 Authority.

The used Energy-Related Laboratory Equipment Grant Program is conducted under the authority of Article 31 of the Atomic Energy Act of 1954, as amended, section 103, paragraph 10, of the Energy Reorganization Act of 1974, and Title III of the Department of Energy Organization Act.

§ 109–50.304 Definitions.

As used in this subpart the following definitions apply:

(a) "Book value" means acquisition cost less depreciation.

(b) "Eligible institution" means any nonprofit educational institution of higher learning, such as universities, colleges, junior colleges, hospitals, and technical institutes or museums located in the United States and interested in establishing or upgrading energy-oriented educational programs.

(c) "Energy-oriented education program" means one that deals partially or entirely in energy or energy-related topics.

(d) "DOE Financial Assistance Rules" (10 CFR Part 600) is the Department of Energy directive which establishes a uniform administrative system for application, awards, and administration of assistance awards, including grants and cooperative agreements.

§ 109–50.305 Responsibilities and authorities.

§ 109–50.305–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management establishes policies and procedures for the award and administration of grants.

§ 109–50.305–2 Director, Office of Field Operations Management, Office of Energy Research.

The Director, Office of Field Operations Management, Office of Energy Research—

(a) Has program responsibility for the Used Energy-Related Laboratory Equipment Grant Program;

(b) Issues general instructions and information on the program to institutions;

(c) Reviews and, where appropriate, approves requests from institutions for used equipment where the book value of an item of equipment exceeds $100,000 or where the cumulative book value of used equipment grants to any one institution exceeds $100,000; and

(d) Issues annual summary reports of equipment granted under this program to field and Headquarters organizations. Advises when grants to individual institutions approach the $100,000 book value coumulative limit.

§ 109–50.305–3 Heads of field offices.

Heads of field offices shall establish procedures for review and evaluation of equipment grant proposals in accordance with this subpart.

§ 109.50.305–4 Contracting officers.

Contracting Officers—

(a) Award energy-related laboratory equipment grants under this program in accordance with the DOE Financial Assistance Rules and program instructions issued by the Director, Office of Energy Research and this subpart;

(b) Forward a copy of each approved and accepted grant to the Office of Energy Research; and

(c) Forward to the Office of Field Operations Management, Office of Energy Research, for approval prior to award of grant, requests from institutions for used equipment where the book value of the equipment exceeds $100,000 or where the cumulative book value of grants to an institution exceeds $100,000.

§ 109–50.305–5 Excess used energy-related laboratory equipment holding organizations.

Each DOE and contractor organization holding excess used energy-related laboratory equipment shall forward copies of excess reports (SF–120) to screening locations cited in § 109–50.310 after DOE screening through the REAPS program (See § 109–43.311–150).

§ 109–50.305–6 Screening locations.

Organizations designated in § 109–50.310 shall retain current files of reports of excess used energy-related laboratory equipment for review by eligible institutions.

§ 109–50.306 Types of equipment which may be granted.

Examples of types of equipment which may be granted under the Used Energy-Related Laboratory Equipment Grant Program are listed below. These examples are merely illustrative and not inclusive.

—Radiation detectors, monitors, scalers, and counters
—Nuclear reactors and accelerators
—Neutron howitzers and generators
—Critical and subcritical assemblies
—Bubble and cloud chambers
—Dosimerters, survey meters, radiometers, and spectroscopes
—Radiation shields and reactor associate components
—Mass spectrometers, infrared spectrometers, and ultraviolet spectrometers
—Gas and liquid chromatographs
—Ammeters, voltmeters, electrometers
—Linear and pulse-height analyzers
—Power supplies
—Catalyst test units
—Distillation columns
—Temperature and pressure recorders
—Ion control gauges
—Gas tracers and analyzers
—Solar collectors and heliometers

§ 109–50.307 Types of equipment which may not be granted.

Types of equipment which will not be granted include.

(a) Any equipment determined to be required by DOE direct operations or DOE contractors;

(b) General supplies, such as Bunsen burners, hoods and work benches; furniture; office equipment, such as typewriters, adding machines, and duplicating machines; drafting and office supplies; refrigerators; tools; presses, lathes, furnaces, hydraulic and mechanical jacks, cranes and hoists; and computing equipment; or

(c) Any equipment which has been obtained as excess from another Federal agency.

§ 109–50.308 Procedure.

(a) After completion of DOE utilization screening, copies of excess reports (SF 120) of used energy-related laboratory equipment will be forwarded by each holding organization to the sites listed in § 109.50.310 for use by eligible institutions in reviewing and earmarking specific equipment. These reports will be separately prepared and identified with the caption "Used Energy-Related Laboratory Equipment."

(b) The following periods have been established during which time equipment will remain available to this program prior to reporting it to the General Services Administration for utilization by other Federal agencies:

(1) Sixty days from the date DOE utilization screening is completed and the report is issued to screening locations, to permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional sixty days after the equipment is earmarked to permit the eligible institutions to prepare and submit an equipment proposal request and to provide time for field organizations to review and evaluate the proposal and take appropriate action.

(c) Upon approval of the proposal, the issuance of the grant instrument and acceptance by the institution are deemed to constitute transfer of title.

(d) A Standard Form 120, accompanied by a copy of the completed grant, shall be used to drop accountability of the granted equipment from the financial records.

(e) The cost of care and handling of property incident to the grant shall be charged to the receiving institution. Such costs may consist of packing, crating, shipping and insurance, and are limited to actual costs. In addition, where appropriate, the cost of any repair and/or modification to any equipment shall be borne by the recipient institution.

§ 109–50.309 Reports.

(a) In addition to the copy of the awarded grant required to be forwarded in accordance with § 109–50.305–4(b), each awarded grant shall be reported in the Procurement Assistance Data System.

(b) Heads of field offices shall include grants made under this program in the annual report of property transferred to non-Federal recipients, as required by FPMR § 101–43.4701(c).

§ 109–50.310 Screening locations.

The locations shown on the following pages shall retain current files of SF–120s, reports of excess used energy-related laboratory equipment, for review by eligible institutions. After completion of DOE utilization screening through REAPS, DOE activities shall forward copies of SF 120s covering used energy-related laboratory equipment to these locations.

California

Property Management Office Atomics International Division, Rockwell International Corporation, 8900 DeSoto Avenue, Canoga Park, California 91305
Property Manager, Lawrence Livermore Laboratory, University of California, Livermore, California 94720
Business Services, L–53, Lawrence Livermore Laboratory, University of California, Livermore, California 94550

Colorado

Department of Energy, P.O. Box 26247, Belmar Branch, 1075 S. Yukon, Lakewood, Colorado 80226
Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, Colorado 80401

District of Columbia

Department of Energy, ER–44 Room 3F–053, 1000 Independence Avenue., SE. Washington, DC 20585. Attn: Dr. Larry L. Barker, (202) 252–6512
Department of Energy, MA–422, Room 8H–089, 1000 Independence Avenue., SE. Washington, DC 20585. Attn: Mr. J. H. Mackey, (202) 252–8261

Georgia

Department of Energy, 1655 Peachtree Street, NE., 8th Floor, Atlanta, Georgia 30309

Idaho

EG & G, Property Management Branch, 539 Second Street, Idaho Falls, Idaho 83401
Department of Energy, Idaho Operations Office, Property Management and Administrative Services Branch, 550 Second Street, Idaho Falls, Idaho 83401

Illinois

Argonne National Laboratory, Plant Operations, Plant Management 9700 South Cass Avenue, Argonne, Illinois 60439

Iowa

Ames Laboratory, Iowa State University, Materials Handling and Property Office, Room 152, Research Building, Ames, Iowa 50010

Missouri

Department of Energy,, 23rd Floor, 324 E. 11th St., Kansas City, Missouri 64106
Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, Missouri 64141

Nevada

Department of Energy, Nevada Operations Office, Contract and Property Division, Property Management Branch, P.O. Box 14100, Las Vegas, Nevada 89114

New Mexico

Sandia Laboratories, Office of University Relations, P.O. Box 5800, Albuquerque, New Mexico 87115

New York

Brookhaven National Laboratory, Supply and Materials Office, Upton, Long Island, New York 11973

Ohio

Monsanto Research Corporation, Mound Laboratory, Property Management, P.O. Box 32, Miamisburg, Ohio 45342

Pennsylvania

Department of Energy, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 10102

South Carolina

E. I. Dupont de Nemours & Co., Savannah River Laboratory, University Relations Office, Aiken, South Carolina 29801

Tennessee

Oak Ridge National Laboratory, Material and Services, P.O. Box X, Oak Ridge, Tennessee 37830

Texas

Department of Energy, P.O. Box 5800, 2628 Mockingbird Lane, Dallas, Texas 75235

Washington

Department of Energy, 1992 Federal Building, 915 Second Avenue, Seattle, Washington 98174
Rockwell Hanford, Excess Utilization, Building 1167–A. P.O. Richland, Washington 99352

Subpart 109–50.4—Programmatic Disposal to Contractor of DOE Property in a Mixed Facility

§ 109–50.400 Scope of subpart.

This subpart contains guidance to be followed when it is proposed to sell or otherwise transfer DOE personal property located in a mixed facility to the contractor who is the operator of that facility.

§ 109–50.401 Definitions.

As used in this subpart, the following definitions apply:

(a) "DOE property" is the DOE-owned personal property in a mixed facility.

(b) "Contractor" is the operator is the operator of the mixed facility.

(c) "Mixed facility" is a partly DOE-owned and partly contractor-owned facility. For purposes of this subpart, however, this definition does not apply to such a facility operated by an educational or other nonprofit institution under a basic research contract with DOE.

§ 109–50.402 Responsibilities and authorities.

§ 109–50.402–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management is authorized to approve proposals for the programmatic disposal of DOE personal property in a mixed facility to the contractor operating that facility.

§ 109–50.402–2 Heads of Headquarters program organizations.

Heads of Headquarters program organizations shall review and forward to the Property and Equipment Management Division (MA–422) for approval, proposals for programmatic disposal of DOE personal property in a mixed facility to the contractor operating that facility.

§ 109–50.402–3 Heads of field offices and contracting officers.

Heads of field offices and contracting officers shall submit proposals involving programmatic disposals of DOE property in mixed facilities through appropriate administrative channels to the cognizant Headquarters program organization for review and forwarding for approval.

§ 109–50.403 Programmatic disposal of DOE property in mixed facilities.

§ 109–50.403–1 Submission of proposals.

Proposals involving programmatic disposals for DOE personal property in mixed facilities to contractors operating the facility shall be forwarded through the appropriate program organization to the Property and Equipment Management Division (MA–422) for review and processing for approval. Each such request for review and approval shall include all information necessary for a proper evaluation of the

proposal. The proposal shall include, as a minimum—

(a) The purpose of the mixed facility;

(b) The character, condition and present use of the DOE property involved, as well as its acquisition cost, accumulated depreciation, and net book value;

(c) The programmatic benefits which would acrue to DOE from the disposal to the contractor (including the considerations which become important if the disposal is not made);

(d) The appraised value of the DOE property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal (covering for example, (1) price, (2) priority to be given work for DOE requiring the use of the transferred property, and including the basis for any proposed charge to DOE for amortizing the cost of plant and equipment items, (3) recapture of the property if DOE foresees a possible future urgent need, and (4) delivery of the property, whether "as is-where is," etc.).

§ 109–50.403–2 Need to establish DOE program benefit.

When approval for a proposed programmatic disposal of DOE personal property in a mixed facility is being sought, it must be established that the disposal will benefit a DOE program. For example, approval might be contingent on a showing that—

(a) The entry of the contractor as a private concern into the energy program is important and significant from a programmatic standpoint; and

(b) The sale of property to the contractor will remove obstacles which otherwise discourage his entry into the field.

§ 109–50.404 Notification.

The Under Secretary will be advised prior to any disposal which is considered sensitive.

SUBCHAPTER I—INDUSTRIAL PLANT EQUIPMENT

PART 109–51—LOANS OF INDUSTRIAL PLANT EQUIPMENT FROM THE DEFENSE INDUSTRIAL PLANT EQUIPMENT CENTER

Sec.

109–51.000 Scope of part.
109–51.001 Policy.
109–51.002 Memorandum of Agreement.
109–51.003 General provisions.
109–51.004 DIPEC Handbook.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–51.000 Scope of part.

This part prescribes the policy and conditions for loans of industrial plant equipment (IPE) from the Department of Defense General Reserve under the management of the Defense Industrial Plant Equipment Center (DIPEC) and makes reference to the DOE DIPEC Handbook which prescribes procedures for arranging loans of IPE from DIPEC.

§ 109–51.001 Policy.

Since loan of DIPEC equipment is at no cost, except for packing, crating, handling, and transportation charges, DOE field organizations and contractors are encouraged to use DIPEC as a source of industrial plant equipment in lieu of purchasing such equipment.

§ 109–51.002 Memorandum of Agreement.

An agreement between DOE and the Defense Logistics Agency establishes the policies, procedures and conditions by which DOE may obtain loans of IPE from DIPEC. (Exhibit A of the DIPEC Handbook).

§ 109–51.003 General provisions.

(a) DOE field organizations and contractors may requisition IPE on a loan basis for periods up to five years. The IPE loan period may be extended on mutual agreement between DIPEC and the DOE field office involved.

(b) DOE has a 30-day period to accept or reject IPE placed on hold by DIPEC.

(c) DOE field organizations or contractors will pay costs of transportation, dismantling, crating and handling of IPE from and to DOD.

(d) On completion of the loan period, the DOE field organization or contractor shall return the DIPEC–IPE in the same condition as received except for fair wear and tear.

(e) DOE is required under terms of the agreement to decontaminate IPE prior to return or replace the equipment with an equivalent item.

§ 109–51.004 DIPEC Handbook.

The DIPEC Handbook is available through field organizations or by request to the Property and Equipment Management Division (MA–422). The Handbook cites the procedures for arranging loan of IPE, illustrates the forms used and provides a bibliography of DIPEC publications which list the available IPE by type of equipment and by DIPEC control numbers.

SUBCHAPTER K—GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

PART 109–60—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

Sec.

109–60.000 Scope and applicability of part.
109–60.001 Definitions.

Subpart 109–60.1—Contractor's Responsibility

109–60.100 General.
109–60.101 Assumption of responsibility.
109–60.102 Contractor's liability.
109–60.103 Segregation of Government property.
109–60.104 Physical protection of property.
109–60.105 Control of sensitive items of property.
109–60.106 Disposition.
109–60.107 Relief from responsibility.

Subpart 109–60.2—Records and Financial Reports

109–60.200 General.
109–60.201 Unit Cost.
109–60.202 Records of plant and capital equipment.
109–60.203 Records of material maintained in stores.
109–60.204 Records of material issued upon receipt.
109–60.205 Financial property control reports.
109–60.206 DOE plant and equipment asset types.

Subpart 109.60–3—Identification

109.60.300 General

Subpart 109–60.4—Physical Inventories

109–60.400 General.
109–60.401 Frequency.
109–60.402 Reporting results of inventories.
109–60.403 Records of inventories.
109–60.404 Inventories upon termination or completion.

Subpart 109.3–60.5—Care and Maintenance

109–60.500 General.
109–60.501 Contractor's maintenance program.

Subpart 109.3–60.6—Utilization, Disposal, and Retirement

109–60.600 General.
109–60.601 Maximum use of property.
109–60.602 Disposal.
109–60.603 Retirement of property.

Subpart 109.3–60.7—Motor Vehicle and Aircraft Management

109–60.700 Scope of subpart.
109–60.701 Definition.
109–60.702 Policy.
109–60.703 Classification of motor vehicles.
109–60.704 Acquisition of motor vehicles.
109–60.705 Identification of motor vehicles.
109–60.706 Use of the GSA Interagency Motor Pool System.
109–60.707 Official use of motor vehicles.
109–60.708 Maintenance.
109–60.709 Disposition of motor vehicles.
109–60.710 Required motor vehicle reports.
109–60.711 Aircraft.

Subpart 109–60.8–109–60.46—[Reserved]

Subpart 109–60.47—Reports

109–60.4700 Required reports.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–60.000 Scope and applicability of part.

This part sets forth the minimum requirements to be observed by off-site contractors in establishing and maintaining control over Government property provided pursuant to a contract with DOE. This part does not apply to transportation contracts, grants, cooperative agreements, contracts with state and local governments, and to operating and on-site service contractors. To the extent of any inconsistency between this part and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

§ 109–60.001 Definitions.

As used in this part the following definitions apply:

(a) "Accessory item" means an item that facilitates or enhances the operation of capitalized equipment but which is not essential for its operation, such as remote control devices.

(b) "Auxiliary item" means an item without which the basic unit of equipment cannot operate, such as motors for pump and machine tools.

(c) "Capital equipment" means personal property items having a unit acquisition cost of generally $500,00 or more and an anticipated service life in excess of one (1) year, regardless of types of funding, are not properly chargeable to buildings or utilities, and having the potential for maintaining their integrity as capital items, i.e., not expendable due to use.

(d) "Government personal property" means all property provided at Goverment expense for performance of the contract, regardless of the method by which it is provided, including rented or leased equipment, except real property, records of the Federal Government, nuclear and special source materials, and atomic weapons and by-product materials.

(1) "Government-furnished property" means property in the possession of or directly acquired by the Government and subsequently made available to the contractor for use in performance of the contract.

(2) "Contractor-acquired Government property" means property acquired or otherwise provided by the contractor for performance of a contract and to which the Government has title or the right to take title under the contract terms.

(e) "Materials" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in normal use in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, or supplies.

(f) "Property administrator" means an authorized representative of the contracting officer assigned to administer the contract requirements and obligations relative to Government property. If an authorized representative has not been designated as the property administrator, the contracting officer is the property administrator.

(g) "Plant and equipment" means land, land rights, depletable resources, improvements to land, buildings and structures, utilities, and capital equipment having an anticipated service life of 1 year or more, the individual units of which satisfy the monetary and other criteria for capital charges and which therefore justify the maintenance of continuing plant and equipment records.

(h) "salvage" means that property which has some value in excess of its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit and its repair or rehabilitation for use is clearly impracticable.

(i) "Scrap" means property that has no value except for the recoverable value of its basic material content.

(j) "Sensitive items" means those items of property which are susceptible to being appropriated for personal use or which can be readily converted to cash. Examples are firearms, photographic equipment, binoculars, tape recorders, calculators, and power tools.

(k) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for the installation of special test equipment), and equipment items used for general testing purposes.

(l) "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for the installation of special tooling), general or specical machine tools, or similar capital items.

Subpart 109–60.1—Contractor's Responsibility

§ 109–60.100 General.

(a) The contractor is directly responsible and accountable for all Government property in its possession or control in accordance with the provisions of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. The contractor shall establish and maintain a system, in accordance with the provisions of this part, to control, protect, preserve and maintain all Government property. It the contractor is expected to acquire and be accountable for, or does acquire Government personal property with an acquisition value of $500,000 or more, the contractor's property management system shall be in writing. Contractors holding Government personal property with an acquisition value of less than $500,000 may, at the discretion of the contracting officer, be required to have their property management system in writing. The requirement for written systems may be waived in writing by the contracting officer where the contracting officer determines that maintenance of a written system is unnecessary. The system shall be reviewed and if satisfactory, approved in writing by the contracting officer.

(b) The contractor shall maintain and make available such records as are required by Subpart 109–60.2 and shall account for all Government property until relieved of that responsibility. Liability for loss, damage, or improper use of property in a given instance will depend upon all the circumstances surrounding the particular case and will be determined in accordance with the provisions of the contract. The contractor shall furnish all data necessary to substantiate any request for discharge from responsibility.

(c) The contractor shall require subcontractors provided Government property under the prime contract to comply with the provisions of this part. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system.

(d) If any portion of the contractor's property control system is found to be inadequate upon review by the property administrator, necessary corrective action will be accomplished by the contractor prior to approval of the

system. When agreement as to adequacy of control or corrective action cannot be reached between the contractor and the property administrator, the matter will be referred to the contracting officer.

(e) The property records and the premises where any Government property is located shall be accessible to the property administrator or other authorized representative during contract performance, at contract completion or termination, or at all reasonable times. The contractor's property control system is subject to audit by the Government as often as circumstances warrant during the contract's performance, at its completion or termination, or at any time thereafter while the contractor is required to retain the contract records. All these records, including related correspondence, shall be made available to the auditors.

§ 109–60.101 Assumption of responsibility.

(a) The contractor becomes responsible for Government-furnished property upon its delivery into the contractor's custody or control. For contractor-acquired Government property, the contractor assumes responsibility in accordance with the property provisions of the contract.

(b) All Government-furnished property shall be inspected and checked promptly at the of time receipt. Any visible or other external evidence of damage or error in quantity should be noted on the waybill with the signature of the carrier's agent. As soon as possible, the contractor shall send the contracting officer a full report of the damage or quantity error, including extent, apparent cause, and the estimated cost of repairs. The contracting officer will advise the contractor of the action to be taken.

(c) It is the contractor's responsibility to inspect, at the time of receipt, all property not furnished by the government that is acquired in the performance of the contract, and to take any necessary action with the vendor and/or carrier if there should be any damage or error in quantity.

(d) Procedures shall be established to protect any warranty rights which accrue to the Government with the acquisition of Government property.

§ 109–60.102 Contractor's liability.

(a) Subject to the terms of the contract, the contractor may be liable for shortage, loss, damage, or destruction of Government property or when there is evidence of improper or unreasonable use or consumption of Government property.

(b) The contractor shall report promptly to the property administrator any shortage, loss, damage, or destruction of Government property in its possession or control, or in the possession or control of any subcontractor, together with all the facts and circumstances of the case.

(c) Any loss that may be due to theft shall be reported by the contractor immediately to the local police and/or Federal Bureau of Investigation and the property administrator.

§ 109–60.103 Segregation of Government property.

Ordinarily, provisions shall be made by the contractor to keep Government property segregated from contractor-owned property. Commingling of Government and contractor-owned property may be allowed only when the segregation of the property would materially hinder the progress of the work, (e.g., segregation is not feasible for reasons such as quantities, lack of space, or costs caused by additional handling), and where control procedures are adequate, i.e., the Government property is identified as being Government property. Commingling must be approved in advance by the property administrator, In case of research and development contracts with educational institutions, commingling is authorized without the requirement for advance approval unless physical segregation is otherwise required by the contracting officer.

§ 109–60.104 Physical protection of property.

(a) Controls such as property pass systems, memorandum records, marking of tools, regular or intermittent gate checks and perimeter fencing shall be implemented, recognizing the value of the property, to prevent loss, theft, or unauthorized movement of Government property from the premises on which such property is located.

(b) Classified Government property will be handled in accordance with instructions of the contracting officer.

§ 109–60.105 Control of sensitive items of property.

(a) The contractor shall assure that effective procedures and practices are established for the administrative and physical control of sensitive property items before and after issuance. Each contractor shall prepare a list of the types of property considered to be sensitive. This list, together with control procedures, shall be provided to the property administrator for review and approval.

(b) At a minimum, controls on sensitive property shall include property records, memorandum receipts, bin or tool check systems, or combinations thereof. Procedures shall provide for physical inventories at least once each year, and methods for adjustment of inventory levels due to losses, thefts and damage. More frequent inventories of sensitive property may be necessary where the value of the property, degree of security achieved, or loss experience indicates greater controls are required in order to protect the Government's interest. Such procedures and practices shall be subject to review and approval by the property administrator.

§ 109–60.106 Disposition.

The contractor is responsible for disposing of Government property as provided for in the contract or as directed by the contracting officer. The contractor shall promptly advise the property administrator of any Government property that becomes excess to requirements for contract performance and to take such action for its disposition as directed.

§ 109–60.107 Relief from responsibility.

Subject to instructions of the contracting officer and the terms of the contract, the contractor may be relieved of responsibility for Government property when the property is—

(a) Consumed or expended in contract performance—to the extent the contracting officer has determined that its consumption or expenditure was for proper purposes and in reasonable quantity for performance of the contract;

(b) Removed from contractor's possession—when removed as directed by the property administrator or contracting officer;

(c) Lost, damaged or destroyed (including property consumed or expended in excess of reasonable requirements, and non-severable Government-owned property which has been connected to contractor-owned property for the performance of the contract and cannot be removed without destroying its serviceability)—when the contracting officer has determined the contractor's liability, if any; the Government has been reimbursed to the extent required by the contracting officer's determination; and, property disposition has been made of any property rendered unserviceable by damage; or

(d) Retained by the contractor, with approval of the contracting officer, and

for which the Government has received adequate consideration.

Subpart 109–60.2—Records and Financial Reports

§ 109–60.200 General.

(a) The contractor shall establish and maintain adequate property control records, either manual or mechanized and consistent with the requirements of this subpart, for all Government property provided under a contract, including property provided under such contract as may be in the possession of control of a subcontractor. Unless otherwise directed by the contracting officer, records of Government property established and maintained by the contractor under the terms of the contract shall be designated and utilized as the official contract records. Duplicate records shall not be furnished to nor be maintained by the Government.

(b) If a contractor has multiple contracts with DOE, separate property records for each contract should be maintained. However, if approved by the contracting officer, a consolidated property record may be maintained if it provides the pertinent information set forth in this subpart and the property is identified to the applicable contract.

(c) Property records of the type established for components acquired separately shall be used for serviceable components removed from items of Government property as a result of modification.

(d) The contractor's property control system shall contain a system or technique to locate any item of Government property with reasonable promptness.

§ 109–60.201 Unit cost.

(a) The unit cost of each item of Government property shall consist of the acquisition cost and the cost of any additional components, and shall be contained in the contractor's property control system. Unless the contractor's quantitative inventory record contains unit cost, the supplementary records containing this information must be identified and recognized as a part of the official property records. For Government-furnished property, copies of documents needed for record purposes, including pricing, will be furnished to the contractor.

(b) For property record purposes, original transportation and installation costs are to be considered as part of the acquisition cost of an item. Subsequent costs incurred in transporting and/or installing transferred or relocated property should not be added to the original acquisition cost.

§ 109–60.201 Records of plant and capital equipment.

(a) For each item of plant and capital equipment (as defined in § 109–60.001), the contractor shall maintain an individual item record containing, at a minimum the—

(1) Contract number;
(2) Asset type (Ref. § 109–60.206);
(3) Nomenclature or description of item;
(4) U.S. Government identification tag number;
(5) Manufacturer's name;
(6) Manufacturer's model number;
(7) Serial number;
(8) Acquisition document reference and date;
(9) Location; and
(10) Unit cost (including transportation and installation).

(b) Accessory and auxiliary items that are attached to, part of, or acquired for use with a specific item of capital equipment shall be recorded on the record of the associated item of capital equipment. Useable accessory and auxiliary items that are removed from items of Government equipment shall also be separately recorded, and the cost of the basic item reduced proportionally.

§ 109–60.203 Records of material maintained in stores.

Records of Government-owned material maintained by the contractor in stores, and held under inventory control, shall contain the—

(a) Contract number;
(b) Nomenclature or description of item;
(c) Quantity received;
(d) Quantity issued;
(e) Balance on hand;
(f) Posting reference and date of transaction;
(g) Unit price;
(h) Location; and
(i) Disposition.

§ 109–60.204 Records of material issued upon receipt.

(a) The property administrator may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided materials that is issued for immediate consumption and not entered in the inventory records as a matter of sound business practice.

(b) With respect to non-profit organizations, where material is issued directly upon receipt, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the contractor and issued directly so to be considered consumed under the contract.

§ 109–60.205 Financial property control reports.

The contractor shall prepare a semi-annual report, as of March 31 and September 30 of each year, for each contract and subcontract thereunder showing the dollar amount and the number of line items of plant and capital equipment, by DOE asset type (see § 109–60.206), acquired or disposed or during the period. The report will show, at a minimum, the beginning balance, acquisition, disposition, and ending balance. The report format and the DOE office to which the report will be furnished will be as direced by the property administrator. The reports are due not later than 45 days after the end of the reporting period.

§ 109–60.206 DOE plant and equipment asset types.

401 Land
410 Land Rights
430 Minerals
440 Timber
460 Site Preparation, Grading and Landscaping
470 Roads, Walks, and Paved Areas
480 Fences and Guard Towers
490 Other Improvements to Land
501 Buildings
550 Other Structures
610 Communications Systems
615 Electric Generation, Transmission and Distribution Systems
620 Fire Alarm Systems
625 Gas Production, Transmission and Distribution Systems
630 Irrigation Systems
635 Railroad Systems
640 Sewerage Systems
645 Steam Generation and Distribution Systems
650 Water Supply, Pumping, Treatment and Distribution Systems
655 Nuclear Steam and Electric Generation and Transmission Systems
660 SPR Crude Oil Piping System
665 NPR Crude Oil Extraction and Distribution System
710 Heavy Mobile Equipment
715 Hospital and Medical Equipment
720 Laboratory Equipment
725 Motor Vehicles and Aircraft
730 Office Furniture and Equipment
735 Process Equipment
740 Railroad Rolling Stock
745 Reactors and Accelerators
750 Security and Protection Equipment
755 Shop Equipment
760 Reserve Construction Equipment Pool
770 Automatic Data Processing Equipment

799 Miscellaneous Equipment
800 Improvements to Property of Others
900 Unclassified Plant and Equipment

Subpart 109-60.3—Identification

§ 109-60.300 General.

(a) The contractor shall identify, mark, and record all capital and sensitive items of equipment promptly upon receipt, except leased or rented equipment, and shall maintain this identification as long as such property remains in the custody, possession, or control of the contractor. Property identification numbers will be recorded on all applicable receiving, shipping, and disposal documents, and any other documents pertaining to the property control system where practicable. Marking and numbering shall be accomplished by etching, stamping, painting, attaching metal or plastic tags or decalcomanias. Each item shall be marked "Property of the U.S. Government, Department of Energy." Information on property numbers will be furnished by the property administrator. If practicable, such markings shall be removed or obliterated from the property involved, if and when Government ownership is relinquished. Leased or rented equipment shall be identified in such manner as will not damage the property. Property which by its nature or size cannot be marked shall not be commingled with contractor-owned property unless approved by the property administrator. When items are not susceptible to marking, they shall be subject to other specific control measures, such as custodial receipts.

(b) Where special tooling or special test equipment is utilized under a contract or subcontract, it shall be identified as required by the contracting officer.

Subpart 109-60.4—Physical Inventories

§ 109-60.400 General.

The contractor shall periodically physically inventory Government property in its possession or control and shall require such inventories of property held by subcontractors. The physical inventory shall be consistent with approved contractor procedures and generally accepted accounting principles. Procedures that are limited solely to a check-off of a listing of recorded property do not meet the requirements of a physical inventory. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

§ 109-60.401 Frequency.

Physical inventories of permanently affixed plant (such as fencing, buildings, other structures, utilities and systems) are to be taken not less frequently than every 10 years. Inventories of movable capital equipment are to be taken not less frequently than every 2 years. Inventories of sensitive items (capital and non-capital) shall be taken not less frequenlty than annually. Substantial quantities of materials (stores) held under inventory control shall be inventoried annually. Small quantities of material representing bench stock need not be inventoried.

§ 109-60.402 Reporting results of inventories.

The contractor shall, at a minimum, submit to the property administrator a listing of all discrepancies disclosed by a physical inventory, and a signed statement that the physical inventory was completed on a certain date and that the official property records were found to be in agreement with the physical inventory, except for the discrepancies reported. As a minimum, the discrepancy listing shall contain the property number, nomenclature, and unit cost. The listing and signed statement shall be furnished with a minimum of delay after completion of the physical inventory, but no later than 60 days after its completion.

§ 109-60.403 Records of inventories.

Appropriate inventory records and reports shall be maintained and will serve as a basis for (a) effecting maximum utilization of available property, (b) prompt identification and reporting of excess property, (c) effective physical protection of property, and (d) the preparation of special and recurring reports. Full use will be made of accounting records and reports to avoid duplication.

§ 109-60.404 Inventories upon termination or completion.

(a) Immediately upon termination or completion of a contract, the contractor shall submit an inventory report adequate for determining appropriate disposal of all Government property applicable to the terminated or completed contract. Further, this report shall include an inventory report of all Government property in a subcontractor's possession or control which is also applicable to the terminated or completed contract. This inventory report will be submitted to the property administrator for verification and disposition action.

(b) Exception. The requirement for physical inventory of Government property at the completion of a contract may be waived by the contracting officer when the property is authorized for use on a follow-on contract, provided that—

(1) Past experience has established the adequacy of property controls; and

(2) A statement is provided by the contractor indicating that transfer of record balances has been made in lieu of preparing a formal inventory list and the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

Subpart 109-60.5—Care and Maintenance

§ 109-60.500 General.

The contractor shall be responsible for the proper care and maintenance of Government property in its possession or control from the time of receipt until properly relieved of responsibility. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

§ 109-60.501 Contractor's maintenance program.

The contractor's maintenance program shall be consistent with sound economic industrial practice, the manufacturer's recommendation, and the terms of the contract, and shall include the following:

(a) Preventive maintenance. Preventive maintenance is generally performed on a regularly scheduled basis in order to detect and correct unfavorable conditions or defects before they result in breakdowns and to maximize the useful life of the equipment. An effective preventive maintenance program shall consist of, but not be limited to—

(1) Inspection of equipment at periodic intevals to detect maladjustment, wear, or impending breakdown;

(2) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(3) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;

(4) Removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time;

(5) Taking necessary precautions to prevent deterioration from contamination and corrosion; and

(6) Proper storage and preservation of accessories and special tools furnished with an item of equipment but not regularly used with it.

(b) Major repairs or rehabilitation. The maintenance program of the contractor shall provide for the disclosure and reporting to the property administrator of the need for major repairs, replacement, and other rehabilitation work on Government property in its possession or control.

(c) Records of maintenance. The contractor shall keep records sufficient to disclose the maintenance and repair performed and associated cost.

Subpart 109–60.6—Utilization, Disposal, and Retirement

§ 109–60.600 General.

It is DOE's policy that all property furnished under a contract shall be utilized to the fullest extent possible. The contractor's procedures shall be adequate to assure that Government property will be utilized only for those purposes authorized in the contract, and that the contracting officer's approval is obtained prior to noncontract use.

§ 109–60.601 Maximum use of property.

Property and supply management practices shall assure that the maximum and best possible use is made of property. Materials and equipment shall be limited to those items essential for effective execution of work performed under the contract.

§ 109–60.602 Disposal.

Unless otherwise authorized, contractors having property determined to be excess shall contact the property administrator for instruction as to the proper method of disposal. Property shall not be disposed of without prior approval of the contracting officer.

§ 109–60.603 Retirement of property.

When capital equipment is worn out, lost, stolen, destroyed, abandoned or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be made, supported by an investigation, if necessary, as to the date and circumstances surrounding loss, theft, destruction, or damage. The retirement work order shall be signed by the responsible contractor administrative official initiating the report and reviewed and approved by an official at least one supervisory echelon above the official initiating the report, and the property administrator. Detailed information concerning the retention and/or submission of retirement work orders will be furnished by the property administrator.

Subpart 109–60.7—Motor Vehicle and Aircraft Management

§ 109–60.700 Scope of subpart.

This subpart prescribes basic policies and procedures for the management of Government-owned motor vehicles and aircraft in the possession of off-site contractors.

§ 109–60.701 Definition.

"Government-furnished motor vehicles" are DOE-owned vehicles, vehicles leased from the General Services Administration Interagency Motor Pool System (GSA–IMPS), and vehicles leased from commercial sources.

§ 109–60.702 Policy.

(a) Government-furnished motor vehicles and aircraft shall be provided to or acquired by off-site contractors when considered essential for the performance of the contract work and when approved by the contracting officer.

(b) Government-owned motor vehicles and aircraft shall be maintained and utilized by contractors in the most practical and economical manner consistent with DOE program requirements, safety considerations, fuel economy, and applicable laws and regulations.

(c) DOE–PMR Parts 109–38 and 109–39 (41 CFR Chapter 109) contain the requirements for management DOE-owned motor vehicles and aircraft. DOE contracting officers shall apply the applicable provisions contained therein in their management of contractor motor vehicle and aircraft operations.

(d) Contractors shall conform fully to the average fuel economy standards established by law and these regulations in the selection of Government-furnished motor vehicles.

(e) Contractors shall maintain and operate motor vehicles in such a manner as to foster reduced fuel consumption.

(f) Normally, motor vehicles will not be furnished to fixed-price contractors.

(g) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA–IMPS; and

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by a GSA–IMPS.

§ 109–60.703 Classification of motor vehicles.

Because of differences in controls or limitations on possession and use, Government vehicles are classified as follows:

(a) *Passenger vehicles.*

(1) Sedans and station wagons (small, subcompact, compact, mid-size, and large).

(2) Ambulances.

(3) Buses.

(b) *Trucks.*

(1) Light, less than 8,500 GVWR (Gross Vehicle Weight Rating).

(i) 4 x 2.

(ii) 4 x 4.

(2) Light, 8,500 to 12,499 GVWR.

(i) 4 x 2.

(ii) 4 x 4.

(3) Medium, 12,500 to 23,999 GVWR.

(4) Heavy, 24,000 GVWR or more.

(c) *Special purpose vehicles.*

(1) Fire trucks.

(2) Construction vehicles.

(3) Other vehicles equipped for special purposes.

§ 109–60.704 Acquisition of motor vehicles.

(a) GSA has the responsibility for procurement of motor vehicles for Government agencies.

(b) Contractors shall submit motor vehicle requirements to the contracting officer for approval.

(c) The acquisition of passenger vehicles is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards.

(d) The DOE Procurement and Assistance Management Directorate, Headquarters, (MA–422), shall certify all requisitions for the following:

(1) The acquisition of small, subcompact, and compact passenger vehicles.

(2) The lease (60 continuous days or more) of light trucks less than 8,500 GVWR.

(e) Purchase requisitions for acquisition of passenger vehicles by purchase or lease must be processed in accordance with 41 CFR 109–38.1306.

(f) Purchase requisitions for other motor vehicles may be submitted to GSA as directed by the contracting officer.

(g) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

§ 109–60.705 Identification of motor vehicles.

(a) Except as indicated in § 109–60.705(b), DOE-owned motor vehicles will have Government license tags and the following identification, which will be furnished and displayed as specified by the property administrator:

For Official Use Only
U.S. Government

Department of Energy

(b) Security vehicles may be exempted from the above requirements by the contracting officer. All other exemptions require approval by the DOE Director of Procurement and Assistance Management Directorate.

§ 109–60.706 Use of the GSA Interagency Motor Pool System.

Where authorized by the contracting officer, contractors may use the services of the GSA–IMPS.

§ 109–60.707 Official use of motor vehicles.

Government-owned vehicles are to be used for "Official Use Only." Contracting officers may approve home-to-work or work-to-home transportation on a one-time exceptional basis. Home-to-work or work-to-home transportation on a continuing basis requires approval of the head of the cognizant DOE field office. Records of such approval will be kept on file.

§ 109–60.708 Maintenance.

Contractors shall maintain Government-owned vehicles according to a systematic written procedure and in accordance with manufacturer's specifications and the terms of the warranty. The GSA publication "Guide for the Preventive Maintenance of Motor Vehicles" provides guidance for the maintenance of Government-owned vehicles.

§ 109–60.709 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must excecute the Title Transfer forms.

§ 109–60.710 Required motor vehicle reports.

Contractors shall submit the following annual fiscal year-end reports of Government-furnished motor vehicles to the contracting officer. Information on preparation and submission of the reports will be furnished by the property administrator.

(a) Agency Report of Motor Vehicle Data (Standard Form 82).

(b) Special Purpose Vehicle Report.

(c) Age and Mileage Analysis.

§ 109–60.711 Aircraft.

(a) Acquisition of aircraft requires statutory authority. Contracting officers may authorize a lease, rental, hire, or loan of an aircraft if the period is less than 30 days. If longer than 30 days, approval must be obtained from the DOE Director of Procurement and Assistance Management.

(b) Aircraft shall be used for official purposes only.

Subpart 109–60.8–109–60.46—[Reserved]

Subpart 109–60.47—Reports

§ 109–60.4700 Required reports.

Following is a summary listing of those property reports required to be submitted by the contractor, along with the frequency of the reports and the subpart which describes the report:

(a) Loss, damage, or destruction of Government property (On occurrence) § 109–60.102(b).

(b) Loss due to theft (On occurrence) § 109–60.102(c).

(c) Financial property control reports (Semi-annual) § 109–60.205.

(d) Physical inventories of permanently affixed plant (Not less frequently than every 10 years) § 109–60.402.

(e) Physical inventories of capital equipment (Not less frequently than biennial) § 109–60.402.

(f) Physical inventories of sensitive items (Not less frequently than annual) § 109–60.402.

(g) Termination inventories (Termination or completion) § 109–60.404.

(h) Motor vehicle reports (Annual) § 109–60.710.

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Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Colorado: CO83–5113	July 15, 1983.
Idaho: ID82–5128	Nov. 26, 1982.
Indiana: IN83–2073	Sept. 9, 1983.
Kentucky: KY84–1003	Jan. 9, 1984.
Michigan: MI83–2020	Mar. 18, 1983.
Minnesota:	
MN83–2058	July 29, 1983.
MN83–2059	Do.
New York: NY80–3054	Sept. 5, 1980.
North Dakota:	
ND84–5006	Mar. 16, 1984.
ND81–5131	July 6, 1981
Utah: UT83–5120	Sept. 30, 1983.
Washington: WA83–5110	June 3, 1983.
Wisconsin: WI83–2041	May 13, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California: CA83–5126 (CA84–5001)	Dec. 9, 1983.
Kentucky: KY82–1060 (KY84–1010)	Oct. 8, 1982.
Massachusetts: MA83–3049 (MA84–3008)	Nov. 18, 1983.
Minnesota: MN81–2065 (MA84–5010)	Dec. 11, 1981.

Cancellation of General Wage Determination Decision

The General Wage Decision listed below is cancelled. Agencies with construction projects pending to which the cancelled decision would have been applicable should utilize the Project Determination procedure by submitting Form SF–308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.7(b)(2), the incorporation of the cancelled decision in contract specifications, the opening of bids for which is within (10) days of this notice, need not be affected.

MN83–2060, Blue Earth, Faribault, Freeborn, Mower, and Olmsted Counties, Minnesota—Building and Residential Construction.

Signed at Washington, D.C. this 23rd day of March 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CO83-5113 - MOD. #3
(48-FR-32451 July 15, 1983)
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit and Weld Counties, Colorado

Change:
Denver only:
TRUCK DRIVERS:

	Basic Hourly Rates	Basic Hourly Rates
	Zone 1	Zone 2
Group 1	$14.63	$15.13
Group 2	14.71	15.21
Group 3	14.81	15.31
Group 4	14.86	15.36
Group 5	14.91	15.41
Group 6	14.96	15.46
Group 7	15.01	15.51
Group 8	15.06	15.56
Group 9	15.16	15.66
Group 10	15.21	15.71
Group 11	15.31	15.81
Group 12	15.51	16.01
Group 13	15.46	15.96
Group 14	15.61	16.11
Group 15	15.71	16.21
Group 16	15.81	16.31
Group 17	15.91	16.41
Group 18	16.11	16.61

FRINGE BENEFITS:
$2.94

DECISION NO. MI83-2020 - Mod. #3
(48 FR 11615 - March 18, 1983)
Genesee, Huron, Lapeer, Saginaw, St. Clair, Sanilac, and Shiawassee Counties, Michigan

	Basic Hourly Rates	Fringe Benefits
Delete:		
Laborers	$8.85	$1.69
Add:		
Laborers:		
Genesee, Lapeer, Shiawassee Counties	$11.66	$2.13
Remainder of Counties	6.95	1.69

DECISION NO. [illegible], MY84-10[illegible]3
Mod # 1
(49 FR 9057 - January 9, 1984)
McCracken County, Kentucky

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS & LATHERS	$14.00	2.13
MILLWRIGHTS & PILE-DRIVERMEN	14.50	2.13

DECISION NO. ND81-5131 - Mod. #7
(46 FR 35008 - July 6, 1981)
Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Traill, Walsh and Ward Counties, North Dakota

	Basic Hourly Rates	Fringe Benefits
Change:		
ELECTRICIANS:		
Area 2:	$14.00	10½%+ 1.90

DECISION NO. ND84-5006 - Mod. #2
(49 FR 10006 - March 16, 1984)
Statewide, North Dakota

	Basic Hourly Rates	Fringe Benefits
Change:		
ELECTRICIANS:		
Burleigh and Ward Counties	$14.00	10½%+ 1.90

DECISION NO. UT83-5120 - Mod. #5
(48 FR 44992 - September 30, 1983)
Statewide, Utah

	Basic Hourly Rates	Fringe Benefits
Change:		
POWER EQUIPMENT OPERATORS HEAVY AND HIGHWAY CONSTRUCTION:		
FRINGE BENEFITS		$6.16

DECISION NO. ID82-5128 Mod # 8
(47 FR 53612 Nov 26, 1982)
Statewide Idaho

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Area 2:		
Fringe benefits (all groups and zones)		$4.70

DECISION NO. WA83-5110 - Mod#11
(48 FR 25108 - June 3, 1983)
Statewide Washington

	Basic Hourly Rates	Fringe Benefits
OMIT:		
BOILERMAKERS:		
Storage Tank Erection	$17.25	$4.00
Storage Tank Repair	16.05	4.00
All other work	19.67	4.00
ADD:		
BOILERMAKERS:	19.67	4.00

DECISION #WI83-7041-MOD#1
(48 FR 21811-May 13,1983)
Statewide, Wisconsin

	Basic Hourly Rates	Fringe Benefits
ADD:		
Well Driller Helper	$12.66	$2.45

DECISION NO. IN83-2073 - Mod. #4

(48 FR 40832 - September 9, 1983)
Statewide (except Lake, LaPorte, Porter and St. Joseph Counties, Indiana

	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
Change:				
LABORERS:				
Utility Construction:				
Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wabash, Wells and Whitley Counties				
Top laborers; Well point leadman; Jackhammer & air tool op.	$9.75	$1.84		
Pipelayer	10.05	1.84		
Air track drillers; wagon drill men; Dynamite man; Powderman	10.60	1.84		
Omit:				
POWER EQUIPMENT OPERATORS:				
Underground and Utility Construction:				
Wabash County				
Add:				
POWER EQUIPMENT OPERATORS:				
Underground and Utility Construction:				
Adams, Allen, Dekalb, Huntington, Noble, Steuben, Wabash, Wells and Whitley Counties				
Group 1	$12.94	1.85		
Group 2	11.63	1.85		
Group 3	10.96	1.85		
Group 4	9.79	1.85		

DECISION NO. IN83-2073 - Mod. #4 Cont'd

POWER EQUIPMENT OPERATORS
(Underground and Utility Construction)

GROUP 1: Air Compressor (pressurizing shafts, tunnels & drifters); Air tugger; Auto patrol; Back filler; Backhoe; Boom cat; Boring-machine; Bull dozer; Caisson drilling machine; Cherry picker; Compactor (with dozer blade); Concrete mixer (dual drum); Concrete plant; Crane with all attachments; Crane - electric overhead; Derrick; Dual purpose truck (pitman type); Ditching machine (18" and over); Dredge; Elevators (when hoisting material or tools); Fork Lift; Formless paver; Generator (power for welders or compressors); Gradall; Helicopter; Helicopter winch operator; High lift - front end loader; Hoist; Locomotive and/or dinkey engine; Mechanic on job site; Mucking machine; Pangl board concrete plant; Pile driver; Push cat; Scoop & tractor; Scraper - rubber tired; Spreader - tractor mounted; Straddle carrier - ross type; Sub base finish machine (C.M.I. or similar); Tower crane; Tractor with backhoe (½ yard and over); Trench box - power driven; Tunnel shield.

GROUP 2: A Frame Truck; Batcher plant (automatic dry batch); Bending machine - power driven; Bituminous mixer; Bituminous paver; Bituminous plant engineer; Boatman; Bull float; Compactor or tamper-self propelled; Concrete mixer (21 cu.ft. or over); Concrete spreader - power driven; Ditching machine (less than 18"); Finish machine & bull float; Finishing machine; Fireman - pile driving & boilers; Gunite Machine; Head greaser; Mesh depressor - mesh placer; P.C.C. concrete belt placer; Roller - asphalt, stone & sub base; Rotary drill; Sheepfoot roller - self propelled; Spreader or base paver-self propelled; Sub grader; Throttle valve with air compressor or boiler; Tractor with backhoe (under ½ yd.); Tractor - high lift - farm type; Tractor - industrial type; Tractor with winch; Well points; Winch Trunk.

GROUP 3: Air compressor (210 cu. ft. & over); Bituminous distributor; Chair cart; Concrete curing machine; Concrete saw; Dope pot - power agitated; Flex plane; Form grader; Hydrohammer; Jacks - hydraulic power driven; Minor equipment operator (2,3,4); Paving joint machine; Post hole digger; Roller - earth; Throttle valve; Track jack - power driven; Tractor - farm type; Truck crane driver.

GROUP 4: Air compressor (less than 210 cu. ft.); Concrete mixer(under 21 cu. ft.); Conveyor; Generator; Mechanical heater; Oiler; Power broom; Pump; Welding machine.

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DECISION NO. MN83-2059 - MOD. #1
(48 FR 34617 - July 29, 1983)
Benton, Sherburne, & Stearns Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons	$15.24	$.50
Carpenters:		
Building Construction:		
Benton (Little Rock & Skaja) Co.:		
Millwrights	16.36	3.62
Benton (Rem. of Co.), Sherburne (Except Southern Tip), & Stearns Cos.:		
Carpenters; Millwrights; & Piledrivermen:		
Commercial Building	14.93	.90
Residential	13.23	.70
Sherburne (Southern Tip) Co.:		
Millwrights	16.36	3.62
Cement Masons; Plasterers:		
Building Construction:		
Benton & Stearns Cos.	14.45	.50
Roofers	14.33	1.57
Sprinkler Fitters	16.47	3.23
Laborers:		
Site Preparation, Excavation, & Incidental Paving:		
Benton & Stearns Cos.:		
Class 1	11.42	2.50
Class 2	11.60	2.50
Class 3	11.65	2.50
Class 4	11.80	2.50
Class 5	11.90	2.50
Class 6	12.15	2.50
Sherburne Co.:		
Class 1	12.35	2.60
Class 2	12.50	2.60
Class 3	12.55	2.60
Class 4	12.70	2.60
Class 5	12.80	2.60
Class 6	13.05	2.60

	Basic Hourly Rates	Fringe Benefits
Omit:		
Electricians:		
Sherburne (Rem. of Co.) Co.:		
Commercial Building:		
Electricians	$16.80	10½% +3.59
Cable Splicers	16.95	10½% +3.59
Residential	13.75	17.5% +.20
Truck Drivers Classifications (Site Preparation, Excavation & Incidental Paving)		
Add:		
Electricians:		
Sherburne (Rem. of Co.) Co.:		
New Construction of Multiple dwellings in excess of 4-plexes and all residential remodeling, rewiring, & repairing of any apartment project exceeding 8 units or 400 amp service:		
Electricians	16.80	12½% +3.54
Cable Splicers	17.40	12.½% +3.54
Construction of all new single family dwellings with separate service, & multiple dwellings up to & Inclu. 4-plexes; & all residential remodeling, rewiring & repairing except that any single apartment project including a change of main service entrance, shall not exceed 8 living units or 400 amp service	14.30	23%

DECISION NO. MN83-2058 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Truck Drivers (Site Prep., Excav. & Incidental Paving):		
Benton & Stearns Cos.:		
Group 1	$12.87	$2.10
Group 2	12.26	2.10
Group 3	12.13	2.10
Group 4	11.86	2.10
Add (Cont'd):		
Sherburne Co.:		
Group 1	$14.95	$2.10
Group 2	14.40	2.10
Group 3	14.30	2.10
Group 4	14.00	2.10

GROUP 1: Boom; Mechanic; Off-Road; Tractor Trailer; Truck Driver (Operation of Hand & Power Operated Winches); & Truck Trains
GROUP 2: Tri Axles (Including Four Axles)
GROUP 3: Bituminous Distributor; & Tandem Axles
GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Pilot Car; Self-Propelled Packer; Single Axles; Slurry Operator; Tank Truck (Gas, Oil, Road Oil & Water); Teamster & Stableman; Tractor Operator (Wheel Type Used for any Purpose)

The Following Classifications Shall Come Under The Appropriate Axle Rate Wage Group:
"A" Frame; Dry Batch Hauler; Dump; Ready-Mix Concrete; Slurry; Tank (Gas, Oil, Road Oil & Water)

DECISION NO. MN83-2059 - MOD. #1
(48 FR 3460 - July 29, 1983)

Carlton, Cook, Itasca, Koochiching, Lake, & St. Louis Counties, Minnesota	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$18.90	$1.71
Bricklayers; Stonemasons:		
Carlton, Cook, Lake, & St. Louis (N. of a line bet. Twp. 54 & 53 and 2 mi. N. of Cotton) Cos.	15.73	1.95
Itasca & St. Louis (Rem. of Co.) Cos.	15.73	1.95
Electricians:		
Carlton, Cook, Itasca (S. part, inclu. Blackberry, Goodland, & Wawina), Lake, & St. Louis (bounded on the north by the lines of Kelsey Twp. extended East & West) Cos.	15.75	31½%
Itasca (Exclu. section S. of a line extending East & West of the South line of Grand Rapids & Trout Lake Twp.), Koochiching, & St. Louis (Northern part bounded by the South line of Ellsburg Twp. extended East & West) Cos.:		
All Work, exclu. Residential Up to & inclu. 6-plexes under 1 roof:		
Electricians	15.93	32½%
Cable Splicers	16.48	32½%
Residential up to & inclu. 6-plexes under 1 roof	9.19	3%+1.44
Elevator Constructors:		
Lake & St. Louis Cos.:		
Mechanics	15.23	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	
Ironworkers	14.97	3.85
Plumbers; Steamfitters:		
Itasca, Cook (N ½), Lake (N½), & St. Louis (N½) Cos.	15.80	3.60
Koochiching Co.	17.20	2.25
Roofers:		
Itasca, Koochiching, & St. Louis (N 2/3) Cos.:		
Roofers	12.98	1.52
Sheet Metal Workers:		
Itasca, Koochiching, & St. Louis (N 2/3) Cos.:		
Commercial Building	15.15	2.94+d
Residential	68%JR	2.94+d
Sprinkler Fitters	16.47	3.23

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Laborers:		
Building Construction:		
Carlton, Cook, Lake, & St. Louis (S. of T 55N) Cos.:		
Class 1	12.05	2.65
Class 2	12.20	2.65
Class 3	12.45	2.65
Class 4	12.78	2.65
Site Preparation, Excav. & Incid. Paving:		
Carlton, Cook, Lake, & St. Louis (S. of T 55N) Cos.:		
Class 1	11.88	2.40
Class 2	12.03	2.40
Class 3	12.08	2.40
Class 4	12.23	2.40
Class 5	12.33	2.40
Class 6	12.58	2.40
Itasca & St. Louis (N. of T 55N) Cos.:		
Class 1	12.68	1.95
Class 2	12.83	1.95
Class 3	12.88	1.95
Class 4	13.03	1.95
Class 5	13.13	1.95
Class 6	13.33	1.95
Koochiching Co.:		
Class 1	10.00	1.15
Class 2	10.15	1.15
Class 3	10.20	1.15
Class 4	10.35	1.15
Class 5	10.45	1.15
Class 6	10.70	1.15
Truck Drivers:		
Site Preparation, Excav. & Incid. Paving:		
Carlton, Cook, Itasca (E. of T.H. 6), Lake, & St. Louis Cos.:		
Group 1	14.95	2.10
Group 2	14.40	2.10
Group 3	14.30	2.10
Group 4	14.00	2.10
Itasca (Rem. of Co.), & Koochiching Cos.:		
Group 1	12.87	2.10
Group 2	12.26	2.10
Group 3	12.13	2.10
Group 4	11.86	2.10
Add:		
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Itasca County:		
Millwrights	16.36	3.62

DECISION NO. MN83-2059 (Cont'd)

Laborers Classifications:
Building Construction:
Carlton, Cook, Lake, & St. Louis (S. of T 55N) Cos.:

CLASS 1: General; Carpenter Tender; Concrete Laborer; Damp Proofer below grade; Drill Runner Tender; Dumpman - dirt, asphalt, concrete, cement; Heater Tender; Hot Tar Caulker - Corker; Joist Handlers (Inclu. Power Buggy); Rebar; Snow Blower Op.; Tool Crib Checker

CLASS 2: Chain Saw Op.; Concrete Saw, Drill Op.; Concrete Vibrator; Demolition & Wrecking, exclu. Remodeling; Gunite, Sandblasting Machine Operator; Mason Tender; Mortar Mixer - Cement or any other substitute material or composition; Pipe Handler; Pneumatic & Electric Tools, Jackhammer, Paving Buster, Chipping Hammer, Tamper Op., etc.; Swing Stage Line Scaffold (not including "patent" scaffolding); Torchman - gas, electric, thermal or similar device

CLASS 3: Caisson Work; Nozzle Op. - gunite, cement, sandblasting; Pipelayer; Refractory Worker; Sheeting Setter and Drivers, Heavy Building Excavation; Underground Work - open ditch or excavation 6' below grade; & Underpinning

CLASS 4: Driller for Blasting Purposes; Dynamite Blasters or substitute products Tovex TR, water, gas, gel, bristar, silent dynamite, etc.

Truck Drivers Classifications:
Site Preparation, Excavation & Incidental Paving:

GROUP 1: Boom; Mechanic; Off-Road; Tractor Trailer; Truck Driver (Operation of Hand & Power Operated Winches); & Truck Trains
GROUP 2: Tri Axles (Including Four Axles)
GROUP 3: Bituminous Distributor; & Tandem Axles
GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Pilot Car; Self-Propelled Packer; Single Axles; Slurry Operator; Tank Truck (Gas, Oil, Road Oil & Water); Teamster & Stableman; Tractor Operator (Wheel Type Used for any Purpose)

The Following Classifications Shall Come Under The Appropriate Axle Rate Wage Group:
"A" Frame; Dry Batch Hauler; Dump; Ready-Mix Concrete; Slurry; Tank (Gas, Oil, Road Oil & Water)

Add:
Footnotes:
c. 5 to 12 years' service - 2 weeks' paid vacation; 12 or more years' service - 3 weeks' paid vacation
d. $.56 to SASMI

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DECISION NO. NY80-3054 - MOD. #9
(45 FR 59104 - Smpt. 5, 1980)
JEFFERSON CO., NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & STEAMFITTERS	16.31	2.47
LINE CONSTRUCTION:		
Signal work for Railroads:		
Journeyman Lineman & Technician	14.20	3.95+ 5%+a
Cable Splicer	18.92	3.95+ 5%+a
Groundman Digging Machine Operator, Groundman Dynamite Man	12.78	3.95+ 5%+a
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	11.36	3.95+ 5%+a
Groundman Truck Driver (Tractor Trailer)	12.07	3.95+ 5%+a
Driver Mechanic, Groundman - Experienced	10.65	3.95+ 5%+a
All Overhead Transmission Line Work and Lighting for Athletic Fields:		
Journeyman Lineman & Technician	16.32	3.95+ 5%+a
Groundman Digging Machine Operator, Groundman Dynamite Man	14.688	3.95+ 5%+a
Groundman Mobile Equipment Operator, Mechanic First Class Groundman Truck Driver	13.056	3.95+ 5%+a
Groundman Truck Driver (Tractor Trailer Unit)	13.872	3.95+ 5%+a
Driver Mechanic Groundman	12.24	3.95+ 5%+a
Sub-Station Switching Substructures (when not part of the line), Electrical, Telephone or CATV Commercial Work; Street Lighting & Signal Systems:		
Journeyman Lineman & Technician	17.20	3.95+ 5%+a
Cable Splicer	18.92	3.95+ 5%+a
Groundman Digging Machine Operator, Groundman Dynamite Man	15.48	3.95+ 5%+a
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	13.76	3.95+ 5%+a
Groundman Truck Driver (Tractor Trailer Unit)	14.62	3.95+ 5%+a
Driver Mechanic, Groundman	12.90	3.95+ 5%+a
All Pipe-type Cable Installations Maintenance Jobs or Projects:		
Journeyman Lineman	17.20	3.95+ 5%+a
Certified Lineman Welder	18.06	3.95+ 5%+a
Cable Splicer	18.92	3.95+ 5%+a
Groundman Equipment Operator	17.20	3.95+ 5%+a
Groundman Truck Driver (Tractor Trailer Unit)	14.62	3.95+ 5%+a
Groundman Truck Drivers	13.76	3.95+ 5%+a
Groundman	12.90	3.95+ 5%+a

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

SUPERSEDEAS DECISION

STATE: California
COUNTIES: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba

DECISION NUMBER: CA84-5001 DATE: Date of Publication
Supersedes Decision No. CA83-5128 dated December 9, 1983, in 48 FR 55239
DESCRIPTION OF WORK: Building; Heavy (excluding Water Well Drilling) and Highway Projects; and Residential Projects (excluding Alpine, Butte, Colusa, Fresno, Glenn, Kings, Lake, Lassen, Madera, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Stanislaus, Tehama, Trinity, and Tulare Counties)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$24.20	$4.51
BOILERMAKERS	21.39	3.96
BRICKLAYERS; STONEMASONS:		
Area 1	18.52	6.10
Area 2	18.90	4.95
Area 3	17.35	3.30
Area 4	16.53	2.82
Area 5	18.30	3.53
Area 6	20.10	3.87
Area 7	17.57	3.89
Area 8	17.19	4.11
BRICK TENDERS:		
Area 1	13.80	4.76
Area 2	15.48	3.70
Area 3	15.24	4.91
Area 4	15.24	4.91
Area 5	16.24	4.91
Area 6	14.19	6.10
Area 7	15.15	4.45
Area 8	16.05	4.45
Area 9 (Residential Construction 2 stories+less)	12.55	4.96
CARPENTERS:		
Area 1:		
Carpenters	19.28	6.455
Hardwood Floorlayers; Shinglers; Power Saw Operator; Steel Scaffold Erector and Steel Shoring Saw Filers	19.43	6.455
Millwrights	19.28	7.455
Piledrivermen	19.38	7.705
Area 2:		
Carpenters	16.65	6.455
Hardwood Floorlayers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	16.80	6.455
Millwrights	17.55	7.455
Piledrivermen	19.38	7.705
CARPENTERS: (Cont'd)		
Area 3 (Residential)	$11.80	$6.205
Area 4:		
Carpenters	16.95	6.455
Hardwood Floor Layers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	17.10	6.455
Millwrights	17.85	7.455
Piledrivermen	19.38	7.705
Insulator (Hopper or Blower Operator) (Residential)	8.475	6.455
Area 5 (Residential)	12.00	6.205
CEMENT MASONS:	15.52	5.93
Cement Masons		
Swing or Slip Form Scaffolds or Composition Masons	15.77	5.93
COMMUNICATION TECHNICIAN	12.85	3.07
DIVERS:		
Divers	33.89	6.225
Stand-by Divers	18.05	6.225
DRYWALL INSTALLERS/LATHERS:		
Drywall Installers; Lathers	20.12	6.225
Residential Drywall; Lathers:		
Area 1	13.57	6.225
ELECTRICIANS:		
Area 1:		
Electricians	22.56	6.295 +3%
Area 2:		
Electricians	15.80	3.10+ 3%
Cable Splicers	17.38	3.10+ 3%
Residential Electrician	12.30	3.35

DECISION NO. CA84-5001

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Area 3:		
Electricians	$22.78	$4.14+ 3%
Cable Splicers	24.91	4.14+ 3%
Area 4:		
Electricians	15.71	4.41 +3%
Cable Splicers	17.28	4.41 3%
Residential Electricians	12.87	3.91+ 3%
Area 5:		
Electricians	19.81	4.24+ 3½%
Cable Splicers	22.29	4.24+ 3½%
Residential Electricians	10.25	1.20+ 3%
Area 6:		
Electricians	24.16	5.20+ 3%
Cable Splicers	26.16	5.20+ 3%
Area 7:		
Electricians	17.08	1.54+ 25%
Cable Splicers	18.45	1.54+ 25%
Area 8:		
Electricians	18.40	4.06+ 3%
Cable Splicers	20.24	4.06+ 3%
Residential Electricians	10.00	1.01+ 3%
Area 9:		
Electricians	22.85	3.81+ 3%
Cable Splicers	25.14	3.81+ 3%
Area 10:		
Electricians	15.37	3.25%+ 4.45
Cable Splicers	16.91	3.35% +4.45
Residential Electricians	9.25	1.15+ 3%
Area 11:		
Electricians	18.89	6.68+ 3%
Cable Splicers	21.25	6.68+ 3%
Residential Electricians	9.45	4.12+ 4%
Area 12:		
Electricians	23.34	5.05+ 3%

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	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Area 12: (Cont'd)		
Cable Splicers	$26.26	$5.05+ 3%
Area 13:		
Electricians	$24.40	$7.17
Cable Splicers	27.45	7.17
Area 14:		
Electricians	25.24	4.87+ 3%
Cable Splicers	28.39	4.87+ 3%
Area 15:		
Electricians	25.00	5.42+ 3%
Area 16:		
Electricians	20.42	4.41+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	28.35	3.00+ a
Helpers	19.845	3.00+ a
Probationary Helper	14.175	
GLAZIERS:		
Area 1	20.92	5.66
Area 2	15.75	6.44
Area 3 (Residential)	10.00	2.72
Area 4 (Residential)	9.82	1.70
Area 5	16.40	5.52
Area 6	13.58	2.83
Area 7	20.06	6.11
IRONWORKERS:		
Fence Erectors	16.41	8.53
Reinforcing, Ornamental, and Structural	17.30	8.53
LINE CONSTRUCTION:		
Area 1:		
Groundman	18.12	5.20 3%
Line Equipment Operator	21.74	5.20+ 3%
Linemen	24.16	5.20+ 3%
Cable Splicers	26.16	5.20+ 3%
Area 2: (Zone 1):		
Group 1	20.03	3.00 3½%
Group 2	18.11	3.00 3½%
Group 3	16.35	3.00 3½%
Group 4	15.61	2.30+ 3½%

DECISION NO. CA84-5001

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 2-Zone 1 (Cont'd)		
Group 5	$13.66	$2.30+ 3½%
Group 6	13.66	2.30+ 3½%
Group 7	12.84	2.30+ 3½%
Zone Differential (add to Zone 1 rate):		
Zone 2 - $2.40		
Zone 3 - 3.15		
Zone 4 - 3.90		
Zone 5 - 5.15		
Area 3:		
Groundmen	17.38	4.21+ 3%
Linemen	18.20	4.21+ 3%
Area 4:		
Groundmen	14.86	4.24+ 3½%
Line Equipment Operators	17.83	4.24+ 3½%
Linemen	19.81	4.24+ 3½%
Cable Splicers	22.29	4.24+ 3½%
Area 5:		
Groundmen	11.60	2.75+ 3½%
Linemen	15.47	2.75+ 3½%
Cable Splicers	17.02	2.75+ 3½%
Area 6:		
Groundmen	16.42	5.86+ 3%
Linemen, Technicians; Equipment Operators	21.89	7.23+ 3%
Cable Splicers	24.63	7.23+ 3%
Area 7:		
Groundman & Truck Driver	14.68	4.09+ 3%
Linemen	22.30	4.09+ 3%
Cable Splicers	22.30	4.09+ 3%

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	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 8:		
Groundmen	$12.57	$4.41+ 3%
Linemen; Equipment Operators	15.71	4.41+ 3%
Cable Splicers	17.28	4.41+ 3%
Area 9:		
Groundmen and Truck Drivers	18.42	6.20 + 3%
Linemen	24.56	6.20+ 3%
Heavy Equipment Operators	22.10	6.20+ 3%
Area 10:		
Groundmen	16.14	4.75+ 4%
Equipment Operators	18.16	4.75+ 4%
Linemen	20.18	4.75+ 4%
Cable Splicers	22.20	4.75+ 4%
Area 11:		
Groundmen	21.25	5.42+ 3%
Line Equipment Operators	22.50	5.42+ 3%
Linemen	25.00	5.42+ 3%
Area 12:		
Groundmen	13.66	1.54+ 25%
Heavy Equipment Operators	15.37	1.54+ 25%
Linemen	17.08	1.54+ 25%
Cable Splicers	18.45	1.54+ 25%
Area 13:		
Groundmen	20.85	4.84+ 3%
Linemen; Technicians	24.535	4.84+ 3%
Cable Splicers	27.60	4.84+ 3%

DECISION NO. CA83-5001

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Area 1:		
Electricians	$19.00	$3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 2:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 3:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 4:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 5:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 6:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 7:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 8:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 9:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 10:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 11:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 12:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%

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	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Area 13:		
Electricians	$19.00	$3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 14:		
Electricians	19.00	3.75+ 3%
Cable Splicers	21.09	3.75+ 3%
Area 15:		
Electricians	19.00	3.75+ 3%
Area 16:		
Electricians	19.00	3.75+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	28.35	3.00+ a
Helpers	19.845	3.00+ a
Probationary Helper	14.175	
GLAZIERS:		
Area 1	20.92	5.66
Area 2	15.75	6.44
Area 3 (Residential)	10.00	2.72
Area 4 (Residential)	9.82	1.70
Area 5	16.40	5.52
Area 6	13.58	2.83
Area 7	20.06	6.11
IRONWORKERS:		
Fence Erectors	16.41	8.53
Reinforcing, Ornamental, and Structural	17.30	8.53
LINE CONSTRUCTION:		
Area 1:		
Groundman	18.12	5.20 3%
Line Equipment Operator	21.74	5.20+ 3%
Linemen	24.16	5.20+ 3%
Cable Splicers	26.16	5.20+ 3%
Area 2: (Zone 1):		
Group 1	20.03	3.00 3½%
Group 2	18.11	3.00 3½%
Group 3	16.35	3.00 3½%
Group 4	15.61	2.30+ 3½%

DECISION NO. CA83-5001

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 2-Zone 1 (Cont'd)		
Group 5	$13.66	$2.30+ 3½%
Group 6	13.66	2.30+ 3½%
Group 7	12.84	2.30+ 3½%
Zone Differential (add to Zone 1 rate):		
Zone 2 - $2.40		
Zone 3 - 3.15		
Zone 4 - 3.90		
Zone 5 - 5.15		
Area 3:		
Groundmen	17.38	4.21+ 3%
Linemen	18.20	4.21+ 3%
Area 4:		
Groundmen	14.86	4.24+ 3½%
Line Equipment Operators	17.83	4.24+ 3½%
Linemen	19.81	4.24+ 3½%
Cable Splicers	22.29	4.24+ 3½%
Area 5:		
Groundmen	11.60	2.75+ 3½%
Linemen	15.47	2.75+ 3½%
Cable Splicers	17.02	2.75+ 3½%
Area 6:		
Groundmen	16.42	5.86+ 3%
Linemen, Technicians; Equipment Operators	21.89	7.23+ 3%
Cable Splicers	24.63	7.23+ 3%
Area 7:		
Groundman & Truck Driver	14.68	4.09+ 3%
Linemen	22.30	4.09+ 3%
Cable Splicers	22.30	4.09+ 3%

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	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 8:		
Groundmen	$12.57	$4.41+ 3%
Linemen; Equipment Operators	15.71	4.41+ 3%
Cable Splicers	17.28	4.41+ 3%
Area 9:		
Groundmen and Truck Drivers	18.42	6.20 + 3%
Linemen	24.56	6.20+ 3%
Heavy Equipment Operators	22.10	6.20+ 3%
Area 10:		
Groundmen	16.14	4.75+ 4%
Equipment Operators	18.16	4.75+ 4%
Linemen	20.18	4.75+ 4%
Cable Splicers	22.20	4.75+ 4%
Area 11:		
Groundmen	21.25	5.42+ 3%
Line Equipment Operators	22.50	5.42+ 3%
Linemen	25.00	5.42+ 3%
Area 12:		
Groundmen	13.66	1.54+ 25%
Heavy Equipment Operators	15.37	1.54+ 25%
Linemen	17.08	1.54+ 25%
Cable Splicers	18.45	1.54+ 25%
Area 13:		
Groundmen	20.85	4.84+ 3%
Linemen; Technicians	24.535	4.84+ 3%
Cable Splicers	27.60	4.84+ 3%

DECISION NO. CA84-5001	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 14:		
Groundman	$10.70	$3.75+3%
Linemen; Line Equipment Operators	22.00	5.75+3%
Cable Splicers	24.70	5.75+3%
Area 15:		
Groundmen	10.20	4.74+3%
Heavy Equipment Operator	20.57	4.74+3%
Linemen	22.85	4.74+3%
Cable Splicers	25.14	4.74+3%
MARBLE SETTERS	20.52	5.10
MARBLE FINISHERS:		
Area 1	13.12	3.47
PAINTERS:		
Area 1:		
Brush	13.39	4.60
Spray	14.14	4.60
Sheetrock; Taper; Swing Stage; Scaffold; Sandblaster; Structural Steel	13.79	4.60
Area 2:		
Brush; Roller; Taper	15.23	1.59
Spray; Sandblasters; Structural Steel; Paperhangers; and Bazooka Operators	15.72	1.59
Area 3:		
Brush	16.20	3.57
Hazardous Coating	17.20	3.57
Spray; Sandblasting; Taping	16.70	3.57
Area 4:		
Brush	20.58	4.18
Tapers	21.38	4.18
Area 5:		
Brush	20.08	4.18
Tapers	21.38	4.18
Area 6:		
Brush and Roller	17.45	1.95
Spray; Sandblaster; Paperhanger; and Taper	17.55	1.55
Brush - Swing Stage up to 40 ft.; Brush-steel	17.70	1.95
Spray - Swing Stage up to 40 ft; Spray-steel	18.20	1.95

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	Basic Hourly Rates	Fringe Benefits
PAINTERS: (Cont'd)		
Area 7:		
Brush	$20.53	$5.38
Spray; Sandblasting; Steam Cleaning	21.03	5.38
Drywall Finisher	21.53	5.38
Brush (exterior stage) 5, 6, and 7 story buildings; Erected steel over 50 ft.	21.01	5.38
Paperhangers	21.53	5.38
Area 8:		
Brush; Pot Tenders; Rollers	9.80	1.35
Spray; Sandblaster; Structural Steel; Swing Stage; Tapers	10.30	1.35
Area 9:		
Brush	19.79	5.38
Spray	20.29	5.38
Spray (coating) and Paperhangers	20.54	5.38
Tapers (paint)	20.18	5.38
Area 10:		
Brush	11.00	2.87
Spray; Sandblasters; Structural Steel; Swing Stage; Tapers; Paperhangers	11.33	2.67
PARKING LOT STRIPING WORK and/or HIGHWAY MARKERS:		
Area 1:		
Traffic Delineating Device Applicator	14.48	1.65+b
Wheel Stop Installer; Traffic Surface Sandblaster; Striper	13.95	1.65+b
Slurry Seal Operation:		
Mixer Operator	13.95	1.65+b
Squeegee Man; Applicator Operator; and Shuttleman	12.37	1.65+b
Top Man	10.39	1.65+b

DECISION NO. CA83-5001	Basic Hourly Rates	Fringe Benefits
PARKING LOT STRIPING WORK and/or HIGHWAY MARKERS: (Cont'd):		
Area 2:		
Traffic Delineating Device Applicator; Wheel Stop Installer; Traffic Surface Sandblaster	$12.37	$1.55+b
Striper	13.57	1.55+b
Slurry Seal Operation:		
Mixer Operator	12.37	1.55+b
Squeegee Man	10.60	1.55+b
Applicator Operator	10.60	1.55+b
Top Man	8.91	1.55+b
PLASTERERS:		
Area 1	19.63	5.88
Area 2	20.18	7.65
Area 3	16.06	5.91
Area 4	16.63	5.44
Area 5	18.44	6.58
Area 6	16.55	6.94
Area 7	18.81	3.61
Area 8	14.30	7.45
PLASTERERS' TENDERS:		
Area 1	13.62	5.05
Area 2	16.85	5.01
Area 3	13.84	5.45
Area 4	13.71	4.45
Area 5	13.27	4.45
Area 6	13.82	4.45
Area 7	17.50	4.05
Area 8	16.15	3.10
Area 9	13.75	4.45
Area 10	14.95	2.70
PLUMBERS:		
Area 1	25.81	5.43
Area 2	25.86	6.79
PLUMBERS; Steamfitters:		
Area 1	19.72	6.71
Area 2	20.34	2.43
Area 3	26.64	8.30
Area 4	22.03	6.55
Area 5	26.40	5.84
Area 6	16.47	9.15
Area 7	24.17	7.80
Area 8	23.36	6.47

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	Basic Hourly Rates	Fringe Benefits
ROOFERS:		
Area 1:		
Roofers	$16.75	$6.37
Mastic Workers; Kettlemen (2 kettles w/o pumps)	17.00	6.37
Bitumastic; Enamelers; Pipewrappers; Coal Tar Build-up	18.75	6.37
Area 2	16.94	3.15
Area 3	14.80	3.34
Area 4	15.30	3.35
Area 5:		
Roofers	16.00	6.64
Mastic Workers; Kettlemen (2 kettles w/o pumps)	18.25	6.64
Bitumastic; Enamelers; Pipewrappers; Coal Tar Pitch	18.00	6.64
Area 6	18.32	1.15
Area 7	19.10	4.00
Area 8:		
Roofers	16.80	6.09
Mastic Workers; Kettlemen (2 kettles w/o pumps)	17.25	6.09
Bitumastic; Enamelers; Pipewrappers; Coal Tar	18.80	6.09
Area 9:		
Roofers (slate, tile and composition)	14.45	7.34
Enameler and Pitch	16.45	7.34
Area 10:		
Roofer; Kettleman (1 kettle)	15.83	5.92
Kettlemen (2 kettles)	16.83	5.92
Bitumastic; Enamelers; Coal Tar; Pitch and Mastic	17.83	5.98
SHEET METAL WORKERS:		
Area 1	25.73	5.04
Area 2	16.93	4.67
Area 3	17.54	4.55+12%
Area 4	18.25	4.32
Area 5	20.57	6.86
Area 6	17.80	3.76
Area 7	26.18	4.74

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	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS: (Cont'd)		
Area 8	$18.38	$4.22
Area 9	25.06	5.92
Area 10	22.16	4.70
Area 11	21.76	6.52
Area 12	24.51	8.84
Area 13	25.73	5.14
SOFT FLOOR LAYERS:		
Area 1	16.01	3.00
Area 2	13.74	.90
Area 3	19.42	3.93
Area 4	11.96	2.27
SPRINKLER FITTERS:		
Area 1	26.72	7.29
Area 2	21.87	3.23
STEAMFITTERS:		
Area 1	29.16	4.47
TERRAZZO WORKERS:		
Area 1	20.52	6.10
Area 2	17.53	3.46
Area 3	20.25	2.87
TILE SETTERS:		
Area 1	20.76	4.17
Area 2	18.02	3.05
TERRAZZO WORKERS and TILE SETTERS:		
Area 1	16.15	2.90
Area 2	20.23	3.69
TERRAZZO FINISHERS:		
Area 1:		
Terrazzo Finishers	15.81	3.46
Base Machine Operator	16.31	3.10
TILE FINISHERS:		
Area 1	13.90	4.73
LABORERS:		
Tunnel & Shaft Laborers:		
Group 1	17.46	5.11
Group 2	17.03	5.11
Group 3	16.78	5.11
Group 4	16.62	5.11
Housemoving Laborers:		
Group 1	13.56	5.11
LABORERS:		
Area 1:		
Group 1	14.56	5.11
Group 1-a	14.785	5.11
Group 1-b	15.06	5.11
Group 1-c	14.61	5.11
Group 1-d	14.81	5.11
Group 1-e	15.11	5.11
Group 1-f	15.145	5.11
Group 2	14.41	5.11
Group 3	14.31	5.11
Group 4	8.00	5.11

	Basic Hourly Rates	Fringe Benefits
LABORERS: (Cont'd Area 1)		
Gunnite Laborers:		
Group 1	$15.02	$5.11
Group 2	14.43	5.11
Group 3	14.41	5.11
Wrecking Work:		
Group 1	14.56	5.11
Group 2	14.41	5.11
Group 3	14.31	5.11
Area 2		
Group 1	13.56	5.11
Group 1-a	13.785	5.11
Group 1-b	14.06	5.11
Group 1-c	13.61	5.11
Group 1-d	13.81	5.11
Group 1-e	14.11	5.11
Group 1-f	14.145	5.11
Group 2	13.41	5.11
Group 3	13.31	5.11
Group 4	8.00	5.11
Gunnite Laborers:		
Group 1	14.02	5.11
Group 2	13.43	5.11
Group 3	13.31	5.11
Wrecking Work:		
Group 1	13.56	5.11
Group 2	13.41	5.11
Group 3	13.31	5.11

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POWER EQUIPMENT OPERATORS*:	AREA 1 Basic Hourly Rates	AREA 2 Basic Hourly Rates	AREA 3 Basic Hourly Rates	AREA 4 Basic Hourly Rates	Basic Hourly Rates
Group 1	$14.05	$16.05			
~~Group 2~~	~~14.55~~	~~16.55~~			
Group 3	14.85	16.85			
Group 4	15.62	17.62			
Group 5	15.92	17.92			
Group 6	16.13	18.13			
Group 7	16.35	18.35			
Group 8	16.97	18.97			
Group 9	17.28	19.28			
Group 10	17.60	19.60			
Group 10-A	17.77	19.77			
Group 11	18.01	20.01			
Group 11-A	19.65	21.65			
Group 11-B	20.04	22.04			
Group 11-C	20.05	22.05			
FRINGE BENEFITS: $8.75					
*Residential Construction 3 stories and under to be paid the Area 1 rate.					
DREDGING - SCHEDULE I Clamshell and Dipper Dredging (New Construction):					
Group 1	14.11	15.37	15.75	16.11	
Group 2	17.01	18.37	18.75	19.14	
Group 3	17.01	18.37	18.75	19.14	
Group 4	18.06	19.43	19.80	20.19	
Group 4-A	19.68	21.06	21.49	21.88	
DREDGING - SCHEDULE II Hydraulic Suction Dredging and all other Dredging:					
Group A-1	14.09	15.35	15.71	16.09	
Group A-2	15.45	16.76	17.16	17.54	
Group A-3	16.36	17.72	18.12	18.50	
Group A-4	17.60	18.98	19.35	19.74	
FRINGE BENEFITS: $8.56					

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: (Cont'd)		
Group 5	$16.13	$5.11
Group 6	16.35	5.11
Group 7	16.97	5.11
Group 8	17.28	5.11
Group 9	17.60	5.11
Group 10	17.77	5.11
Group 11	18.01	5.11
Group 11-A	19.65	5.11
Group 11-B	20.04	5.11
Group 11-C	20.05	5.11
Area 2		
Group 1	16.05	5.11
Group 2	16.55	5.11
Group 3	16.85	5.11
Group 4	17.62	5.11
Group 5	17.92	5.11
Group 6	18.13	5.11
Group 7	18.35	5.11
Group 8	18.97	5.11
Group 9	19.28	5.11
Group 10	19.60	5.11
Group 10-A	19.77	5.11
Group 11	20.01	5.11
Group 11-A	21.65	5.11
Group 11-B	22.04	5.11
Group 11-C	22.05	5.11
Area 3		
Group 1	16.15	5.11
Group 2	16.65	5.11
Group 3	16.95	5.11
Group 4	17.72	5.11
Group 5	18.02	5.11
Group 6	18.23	5.11
Group 7	18.45	5.11
Group 8	19.07	5.11
Group 9	19.38	5.11
Group 10	19.70	5.11
Group 10-A	19.87	5.11
Group 11	20.11	5.11
Group 11-A	21.75	5.11
Group 11-B	22.14	5.11
Group 11-C	22.15	5.11
Area 4		
Group 1	16.55	5.11
Group 2	17.05	5.11
Group 3	17.35	5.11
Group 4	18.12	5.11
Group 5	18.42	5.11
Group 6	18.63	5.11
Group 7	18.85	5.11
Group 8	19.47	5.11
Group 9	19.78	5.11
Group 10	20.10	5.11
Group 10-A	20.27	5.11
Group 11	20.51	5.11
Group 11-A	22.15	5.11
Group 11-B	22.54	5.11
Group 11-C	22.55	5.11

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: (Cont'd)		
Area 5		
Group 1	$16.05	$5.11
Group 2	16.55	5.11
Group 3	16.85	5.11
Group 4	17.62	5.11
Group 5	17.92	5.11
Group 6	18.13	5.11
Group 7	18.35	5.11
Group 8	18.97	5.11
Group 9	19.28	5.11
Group 10	19.60	5.11
Group 10-A	19.77	5.11
Group 11	20.01	5.11
Group 11-A	21.65	5.11
Group 11-B	22.04	5.11
Group 11-C	22.05	5.11
Area 6		
Group 1	16.05	5.11
Group 2	16.55	5.11
Group 3	16.85	5.11
Group 4	17.62	5.11
Group 5	17.92	5.11
Group 6	18.13	5.11
Group 7	18.35	5.11
Group 8	18.97	5.11
Group 9	19.28	5.11
Group 10	19.60	5.11
Group 10-A	19.77	5.11
Group 11	20.01	5.11
Group 11-A	21.65	5.11
Group 11-B	22.04	5.11
Group 11-C	22.05	5.11
Area 7		
Group 1	16.05	5.11
Group 2	16.55	5.11
Group 3	16.85	5.11
Group 4	17.62	5.11
Group 5	17.92	5.11
Group 6	18.13	5.11
Group 7	18.35	5.11
Group 8	18.97	5.11
Group 9	19.28	5.11
Group 10	19.60	5.11
Group 10-A	19.77	5.11
Group 11	20.01	5.11
Group 11-A	21.65	5.11
Group 11-B	22.04	5.11
Group 11-C	22.05	5.11

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
DREDGING (Cont'd)		
TOW BOATS:		
Work on self-propelled vessels (except Skiffs powered by outboard motors) engaged in towing vessels and water borne craft or in the transportation by water of personnel, materials, equipment and supplies:		
Deckhand/Mechanics	$10.88	$3.37
Operator Mechanic/ Watch Engineer	12.17	3.86
Work on self-propelled vessels):		
Boat Operators	12.17	3.86
PILEDRIVING:		
Group 1	14.12	8.75
Group 1A	14.61	8.75
Group 1B	14.90	8.75
Group 2A	14.90	8.75
Group 2B	15.68	8.75
Group 2C	15.98	8.75
Group 2D	16.20	8.75
Group 3	16.41	8.75
Group 3A	17.04	8.75
Group 4	17.82	8.75
Group 5	18.08	8.75
Group 6	19.71	8.75
STEEL ERECTION:		
Group 1	14.79	8.75
Group 2	15.33	8.75
Group 3	16.81	8.75
Group 4	17.00	8.75
Group 4A	17.46	8.75
Group 5	18.18	8.75
Group 6	18.79	8.75
Group 7	19.23	8.75
Group 8	19.65	8.75
Group 9	21.15	8.75

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Group 1	$17.55	$4.29
Group 2	17.63	4.29
Group 3	17.65	4.29
Group 4	17.66	4.29
Group 5	17.67	4.29
Group 6	17.68	4.29
Group 7	17.70	4.29
Group 8	17.72	4.29
Group 9	17.73	4.29
Group 10	17.75	4.29
Group 11	17.76	4.29
Group 12	17.80	4.29
Group 13	17.81	4.29
Group 14	17.82	4.29
Group 15	17.85	4.29
Group 16	17.86	4.29
Group 17	17.87	4.29
Group 18	17.89	4.29
Group 19	17.90	4.29
Group 20	17.91	4.29
Group 21	17.96	4.29
Group 22	17.99	4.29
Group 23	18.00	4.29
Group 24	18.09	4.29
Group 25	18.10	4.29
Group 26	18.10	4.29
Group 27	18.13	4.29
Group 28	18.15	4.29
Group 29	18.19	4.29
Group 30	18.20	4.29
Group 31	18.23	4.29
Group 32	18.29	4.29
Group 33	18.22	4.29
Group 34	18.44	4.29
Group 35	18.54	4.29
Group 36	18.59	4.29
Group 37	18.74	4.29
Group 38	18.89	4.29

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years' service, and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day

b. Employer contributes $.32 per hour to Holiday Fund plus $.21 per hour to Vacation Fund for the first year of employment; 1 year but less than 5 years $.42 per hour to Vacation Fund; 5 years but less than 10 years $.60 per hour to Vacation Fund; over 10 years $.80 per hour to Vacation Fund

AREA DESCRIPTIONS

BRICKLAYERS; STONEMASONS:
Area 1: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Cos.
Area 2: Alameda and Contra Costa Counties
Area 3: Fresno, Kings, Madera, Mariposa, and Merced Counties
Area 4: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba Counties
Area 5: Monterey and Santa Cruz Counties
Area 6: San Benito and Santa Clara Counties
Area 7: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties
Area 8: Tulare County

BRICK TENDERS:
Area 1: Amador, El Dorado, Nevada, Placer, Sacramento, and Yolo Cos.
Area 2: San Francisco and San Mateo Counties
Area 3: Fresno, Kings, Madera, and Tulare Counties
Area 4: Remaining Counties
Area 5: Marin County
Area 6: Alameda and Contra Costa Counties
Area 7: Santa Cruz County
Area 8: San Benito and Santa Clara Counties
Area 9: (Residential construction of 2 stories or less) Monterey and Napa Counties

CARPENTERS:
Area 1: Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties
Area 2: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties
Area 3: (Residential) Calaveras, Mariposa, and Merced Counties
Area 4: Monterey and Santa Clara Counties
Area 5: (Residential) Del Norte and Humboldt Counties

AREA DESCRIPTIONS (Cont'd)

DRYWALL INSTALLERS/LATHERS:
Residential:
Area 1: Calaveras, Mariposa, Merced, and Tuolumne Counties

ELECTRICIANS:
Area 1: Alameda County
Area 2: Amador, Colusa, Sacramento, Sutter, Yolo, and Yuba Counties; Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions west of the Sierra Mountain Watershed)
Area 3: Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions east of the Main Watershed Divide)
Area 4: Butte and Glenn Counties; Lassen County (excluding the Sierra Army Depot (Herlong); Modoc, Plumas, Shasta, Siskiyou, Tehama and Trinity Counties
Area 5: Calaveras and San Joaquin Counties
Area 6: Contra Costa County
Area 7: Del Norte and Humboldt Counties
Area 8: Fresno, Kings, Madera, and Tulare Counties
Area 9: Lake, Marin, Mendocino, and Sonoma Counties
Area 10: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 11: Monterey, San Benito, and Santa Cruz Counties
Area 12: Napa and Solano Counties
Area 13: Santa Clara County
Area 14: San Francisco County
Area 15: San Mateo County
Area 16: Sierra Army Depot (Herlong) In Lassen Counties

GLAZIERS:
Area 1: Alameda, Contra Costa, Monterey, Napa, San Benito, Santa Clara, and Santa Cruz Counties
Area 2: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Tuolumne, Yolo, and Yuba Counties
Area 3: (Residential) Sutter and Yuba Counties
Area 4: (Residential) Amador, Calaveras, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Solano, Tuolumne, and Yolo Counties
Area 5: Fresno, Madera, Mariposa, Merced, Kings, and Tulare Counties
Area 6: Del Norte and Humboldt Counties
Area 7: Lake, Marin, Mendocino, San Francisco, San Mateo, and Sonoma Counties

LINE CONSTRUCTION:
Area 1: Contra Costa County
Area 2: Del Norte, Modoc, and Siskiyou Counties:
Group 1: Cable Splicer, Leadman Pole Sprayer
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lindman Welder
*Group 3: Tree Trimmer
Group 4: Line Equipment Man
Group 5: Head Groundman, Powderman, Jackhammer Man
*Group 6: Head Groundman (Chipper)
Group 7: Groundman
*Groups 3 and 6 receive BASE RATE (ZONE 1) ONLY (no Zone Differential)

AREA DESCRIPTIONS (Cont'd)

LINE CONSTRUCTION: (Cont'd)
Area 2: (Cont'd)
Zone Definitions: Zone 1: 0 to 3 miles radius from the geographical center of Alturos and Yreka, California
Zone 2: 3 to 20 miles radius
Zone 3: 20 to 35 miles radius
Zone 4: 35 to 50 miles radius
Zone 5: Over 50 miles radius
BASE RATE (ZONE 1) is paid when working out of employer's Permanent Shop
Area 3: Fresno, Kings, Madera, and Tulare Counties
Area 4: Calaveras and San Joaquin Counties
Area 5: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 6: Monterey, San Benito, and Santa Cruz Counties
Area 7: Napa and Solano Counties
Area 8: Butte, Glenn, Lassen, Plumas, Shasta, Tehama, and Trinity Cos.
Area 9: Alameda County
Area 10: Amador, Colusa, Sacramento, Sutter, Yolo, and Yuba Counties; Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions west of the Main Sierra Mountain Watershed)
Area 11: San Mateo County
Area 12: Humboldt County
Area 13: San Francisco County
Area 14: Santa Clara County
Area 15: Lake, Marin, Mendocino, and Sonoma Counties

MARBLE FINISHERS:
Area 1: Alameda, Alpine, Amedor, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Uba Counties, and the City and County of San Francisco, San Benito County

PAINTERS:
Area 1: Alpine, Amador, Calaveras, and San Joaquin Counties
Area 2: Fresno, Kings, Madera, and Tulare Counties
Area 3: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 4: San Benito, San Mateo, and Santa Clara Counties
Area 5: Monterey and Santa Cruz Counties
Area 6: Lassen County (that portion that lies eastward of Highway #395, northward to and including Honey Lake); Lake Tahoe Area
Area 7: Lake, Marin, Mendocino, San Francisco, and Sonoma Counties
Area 8: Butte, Colusa, and Glenn Counties; Lassen County (excluding the extreme SE corner); Modoc, Plumas, Shasta, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties
Area 9: Alameda, Contra Costa, El Dorado, Napa, Nevada, Placer, Sacramento, Sierra, Solano, and Yolo Counties (excluding portions of Counties in the Lake Tahoe Area)
Area 10: Del Norte and Humboldt Counties

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AREA DESCRIPTIONS (Cont'd)

PARKING LOT STRIPING WORK and/or HIGHWAY MARKERS:
Area 1: Fresno, Kings, and Tulare Counties
Area 2: Remaining Counties

PLASTERERS:
Area 1: Alameda and Contra Costa Counties
Area 2: San Francisco and San Mateo Counties
Area 3: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo and Yuba Cos.
Area 4: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties
Area 5: San Benito, Santa Clara, and Santa Cruz Counties
Area 6: Fresno, Kings, Madera, and Tulare Counties
Area 7: Monterey County
Area 8: Mariposa, Merced, Stanislaus, and Tuolumne Counties

PLASTERERS' TENDERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Fresno, Kings, Madera, and Tulare Counties
Area 3: San Francisco and San Mateo Counties
Area 4: Alpine, Amador, El Dorado, Nevada, Placer, Sacramento, Sierra and Yolo Counties
Area 5: Calaveras and San Joaquin Counties
Area 6: Marin County
Area 7: Monterey County
Area 8: San Benito, Santa Clara and Santa Cruz Counties
Area 9: Solano County
Area 10: Napa County

PLUMBERS:
Area 1: Alameda County
Area 2: Contra Costa County

PLUMBERS; STEAMFITTERS:
Area 1: Amador County (northern half); El Dorodo, Nevada, Sacramento, and Yolo Counties (excluding Lake Tahoe Area), Sierra County
Area 2: Lake Tahoe Area
Area 3: Marin, Mendocino, San Francisco, and Sonoma Counties
Area 4: Alpine County; Amador County (southern portion); Butte, Calaveras, Colusa, Fresno, Glenn, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Monterey, Plumas, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba Counties
Area 5: Lake, Napa, and Solano Counties
Area 6: Del Norte and Humboldt Counties
Area 7: San Benito and Santa Clara Counties
Area 8: San Mateo County

ROOFERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Alpine, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus, and Tuolumne Counties

AREA DESCRIPTIONS (Cont'd)

ROOFERS: (Cont'd)
Area 3: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties
Area 4: Fresno, Kings, Madera, and Tulare Counties
Area 5: Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties
Area 6: Del Norte and Humboldt Counties
Area 7: Monterey and Santa Cruz Counties
Area 8: San Francisco and San Mateo Counties
Area 9: Amador, Sacramento, and Yolo Counties
Area 10: San Benito and Santa Clara Counties

SHEET METAL WORKERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Alpine, Calaveras, and San Joaquin Counties
Area 3: Amador, Butte, Colusa, El Dorado, Glenn, Modoc, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Yolo, and Yuba Counties
Area 4: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 5: Monterey and San Benito Counties
Area 6: Del Norte, Humboldt, and Trinity Counties
Area 7: San Mateo County
Area 8: Fresno, Kings, Madera, and Tulare Counties
Area 9: San Francisco County
Area 10: Marin, Mendocino, Sonoma, and Lake Counties
Area 11: Santa Cruz Counties
Area 12: Santa Clara County
Area 13: Napa and Solano Counties

SOFT FLOOR LAYERS:
Area 1: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, and Lassen Counties (excluding Honey Lake Area); Merced County (east of San Joaquin River); Plumas, Sacramento, San Joaquin, Shasta, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba Counties; El Dorado, Nevada, Placer, and Sierra Counties (those portions excluding Lake Tahoe Area)
Area 2: Honey Lake Area and Lake Tahoe Area
Area 3: Alameda, Contra Costa, Lake, Marin, Mendocino, Merced, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma Counties
Area 4: Del Norte and Humboldt Counties

SPRINKLER FITTERS:
Area 1: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties
Area 2: Remaining Counties

STEAMFITTERS:
Area 1: Alameda and Contra Costa Counties

AREA DESCRIPTIONS (Cont'd)

TERRAZZO WORKERS:
Area 1: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Counties
Area 2: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba Counties
Area 3: San Benito and Santa Clara Counties

TILE SETTERS:
Area 1: Alameda, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Mateo, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba Counties
Area 2: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties

TERRAZZO WORKERS and TILE SETTERS:
Area 1: Fresno, Kings, Madera, Mariposa, Merced, and Tulare Counties
Area 2: Monterey and Santa Cruz Counties

TERRAZZO FINISHERS:
Area 1: Alameda, Alpine, Amador, Butte, Calaveras, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties, and the City and County of San Francisco, San Benito County

TILE FINISHERS:
Area 1: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties, and the City and County of San Francisco

LABORERS

Area 1: Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara Counties
Area 2: Remaining Counties

Group 1: Asphalt Ironers and Rakers; Asphalt Spreader Boxes (all types); Barko, Wacker and similar type Tampers; Buggymobile; Chainsaw, Faller, Logloader and Bucker; Compactors of all types; Concrete and Magnesite Mixer, 1/2 yd. and under; Concrete Pan Work; Concrete Saw; Concrete Sander; Cribber and/or Shoring; Cut Granite Curb Setter; Form Raisers; Slip Forms; Green Cutters, Headerboardmen, Hubsetters, Aligners; Jackhammer Operators; Jacking of Pipe over 12 inches; Jackson and similar type Compactors; Kettlemen, Potmen and Men applying asphalt, lay-kold, creosote, lime, caustic and similar type materials; Lagging, Sheeting, Whaling, Bracing, Trenchjacking, hand-guided Lagging Hammer; Magnesite, Epoxyresin, Fiberglass, Mastic Workers (wet or dry); Perma Curbs; Precast-manhole Setters; Cast-in-place Manhole Form Setters; Pressure Pipe Tester; Pavement Breakers and Spaders, including Tool Grinder; Pipelayers, Caulkers, Banders, Pipewrappers, Conduit Layers, Plastic Pipelayers; Post Hole Diggers, air, gas, and electric; Power Broom Sweepers; Power Tampers of all types (except as shown in Group 2); Ram Set Gun and Stud Gun; Riprap-stonepaver and Rock-slinger, including placing of sacked concrete and/or sand (wet or dry); Rotary Scarifier, Multiple Head Concrete Chipper; Davis Trencher, 300 or similar type (and all small Trenchers); Roto and Ditch Witch; Roto-tiller; Sandblasters, Potmen, Gunman, Nozzleman; Signalling and Rigging; Tank Cleaners; Tree Climbers; Vibra-screed, Bull Float in connection with Laborers' work; Vibrators; Dri-pak-it Machine; High Pressure Blow Pipe (1½" or over, 100 lbs. pressure and over); Hydro Seeder and similar type; Laser Beam in connection with Laborers' work

Group 1(a): Joy Drill Model TWM-2A; Gardener-Denver Model DH143 and similar type drills; Track Drillers; Jack Leg Drillers; Diamond Drillers; Wagon Drillers; Mechanical Drillers, all types regardless of type or method of power; Multiple Unit Drills; Blasters and Powdermen; all work of loading, placing and blasting of all power and explosives of whatever type regardless of method used for such loading and placing; High Scalers (including drilling of same); Tree Topper; Bit Grinder

Group 1(b): Sewer Cleaners receive an additional $4.00 per day, $5.00 per day on recently active large diameter sewers or sewer manholes

Group 1(c): Burning and Welding in connection with Laborers' work

Group 1(d): Repair Trackmen and Road Buds (cut and cover work of subway after the temporary cover has been placed)

Group 1(e): Laborers on general construction work on or in Bell Hole Footings and Shaft

Group 1(f): Wire Winding Machine In Connection with Guniting or Shotcrete - Aligner

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LABORERS - AREAS 1 and 2 (Cont'd)

Group 2: Asphalt Shovelers; Cement Dumpers and handling dry cement or gypsum; Choke-setter and Digger (clearing work); Concrete Bucket Dumper and Chuteman; Concrete Chipping and Grinding; Concrete Laborers (wet or dry); Chuck Tender; High Pressure Nozzleman, Adductors; Grout-crew; Hydraulic Monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh Chipper and similar type Brush Shredders; Sloper; Singlefoot, hand held, Pneumatic Tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1(f); Jacking of Pipe under 12 inches

Group 3: All Cleanup work of debris, grounds and buildings including but not limited to street cleaners; Cleaning and washing windows; Construction Laborers including Bridge and General Laborers; Dumpman; Load Spotter; Fire Watcher; Street Cleaners; Gardeners, Horicultural and Landscape Laborers; Jetting; Limbers; Brush Loaders; Pilers, Maintenance Landscape Laborers on new construction; Maintenance, Repair Trackmen and Road beds; Streetcar and Railroad Construction Track Laborers; Temporary air and water lines, Victaulic or similar; Tool Room Attendent; Fence Erectors; Guardrail Erectors; Pavement Markers (button setters)

Group 4: Brick Cleaners; Lumber Cleaners

GUNNITE

Group 1: Nozzleman (including Gunman, Potman); Rodmen, Groundman

Group 2: Reboundman

Group 3: General Laborers

TUNNEL and SHAFT WORK

Group 1: Diamond Driller; Groundman; Gunite and Shotcrete Nozzlemen; Rodmen; Shaft Work and Raise (below actual or excavated ground level)

LABORERS - AREAS 1 and 2 (Cont'd)

TUNNEL and SHAFT WORK (Cont'd)

Group 2: Bit Grinder; Blaster; Drillers, Powderman-heading; Cherry Pickerman - where car is lifted; Concrete Finisher in Tunnel; Concrete Screed Man; Grout Pumpman and Potman; Gunite and Shotcrete Gunmen and Potmen; Headermen; High Pressure Nozzleman; Miners - Tunnel, including Top and Bottom Man on Shaft and Raise Work; Nipper Nozzleman on slick line; Sandblaster-Potman (work assignment interchangeable); Steel Form Raisers and Setters; Timberman, Retimberman - wood or steel or substitute materials therefore; Tugger

Group 3: Cabletender; Chucktender; Powderman - Primer House; Vibratormen, Pavement Breakers

Group 4: Bull Gang - Muckers, Trackmen; Concrete Crew - includes rodding and spreading; Dumpmen (any method); Grout Crew Reboundmen; Swamper

WRECKING WORK

Group 1: Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electric fixtures)

Group 2: Semi-skilled Wrecker (salvaging of other building materials)

Group 3: General Laborer (Includes all cleanup work, loading lumber, loading and burning of debris)

HOUSEMOVING

Group 1: Skilled Housemover

POWER EQUIPMENT OPERATORS
AREAS I and II

Group 1: Assistants to Engineers (Brakeman; Fireman; Heavy Duty Repairman Tender; Oiler; Deckhand; Signalman; Switchman; Tar Pot Fireman); Partsman (heavy duty repair shop parts room)

Group 2: Compressor Operator; Concrete Mixer (up to and including 1 yd.); Conveyor Belt Operator (tunnel); Fireman Hot Plant; Hydraulic Monitor; Mechanical Conveyor (handling building materials); Mixer Box Operator (concrete plant); Pump Operator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 3: Box Operator (bunker); Helicopter Radioman (Signalman); Motorman; Locomotive (30 tons or under); Oiler; Ross Carrier (construction job site); Rotomist Operator; Screedman (except asphaltic concrete paving); Self-propelled, automatically applied concrete curing machine (on streets, highways, airports and canals); Trenching Machine (maximum digging capacity 5 ft. depth); Tugger Hoist, single drum; Truck Crane Oiler; Boiler Tender

Group 4: Ballast Jack Tamper; Ballast Regulation; Ballast Tamper Multipurpose; Boxman (asphalt plant); Elevator Operator (inside); Fork Lift or Lumber Stacker (construction job site); Line Master; Material Hoist (1 drum); Shuttlecar; Tie Spacer; Towermobile

Group 5: Compressor Operator (over 2); Concrete Mixers (over 1 yd.); Concrete Pumps of Pumpcrete Guns; Generators; Grouting Machine; Pressweld (air operated); Pumps (over 1); Welding Machines (powered other than by electricity)

Group 6: BLH Lima Road Pactor or similar; Boom Truck or Dual Purpose A-Frame Truck; Concrete Batch Plants (wet or dry); Concrete Saws (self-propelled unit) on streets, highways, airports and canals; Drilling and Boring Machinery, vertical and horizontal (not to apply to Waterliners, Wagon Drills or Jackhammers); Gradesetter, Grade Checker (mechanical or otherwise); Highline Cableway Signalman; Locomotives (steam of over 30 tons); Maginnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mechanical Finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical Burm, Curb and/or Curb and Gutter Machine, concrete or asphalt; Portable Crusher; Post Driver (M-1500 and similar); Power Jumbo Operator (setting slip forms, etc. in tunnels); Roller (except asphalt); Screedman (Barber-Greene and similar) (asphaltic concrete paving); Self-propelled Compactor (single engine); Self-propelled Pipeline Wrapping Machine, Perault, CRC, or similar types; Slip Forms Pumps (lifting device for concrete forms); Small Rubber Tired Tractor; Surface Heater; Self-propelled Power Sweeper; Self-propelled Tape Machine; Auger-type drilling equipment, up to and including 30 ft. depth digging capacity M.R.C.

Group 7: Concrete Conveyor or Concrete Pump, Truck or equipment mounted (boom length to apply); Concrete Conveyor, building site; Deck Engineers; Dual Drum Mixer; Fuller Kenyon Pump and similar types; Gantry Rider (or similar); Hydra-hammer (or similar); Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Mixermobile; Pavement Breaker with or without Compressor Combination; Pipe Bending Machine (pipelines only); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Refrigeration Plant; Roller Operator (finish asphalt); Self-propelled boom type lifting device (center mount) (10 tons or less M.R.C.); Self-propelled Elevating Grader Plane; Slusher Operator; Small Tractor (with boom); Soil Tester; Truck type Loader; Welding Machines (gasoline or diesel)

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 8: Armor-Coater (or similar); Asphalt Plant Engineer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Dozer; Heading Shield Operator; Heavy Duty Repairman and/or Welder; Ken Seal Machine (or similar); Kolman Loader; Loader (up to 2 yds.); Mechanical Trench Shield; Portable Crushing and Screening Plants; Push Cat; Rubber Tired Earth-moving Equipment (up to and including 45 cu. yds. "struck" M.R.C) (Euclids, T-Pulls, DW-10, 20, 21, and similar); Rubber Tired Dozer; Self-propelled Compactor with Dozer; Sheepfoot; Timber Skidder (rubber tired or similar equipment); Tractor drawn Scraper; Tractor; Trenching Machine; Tri-batch Paver; Tunnel Mole Boring Machine; Welder; Woods-mixer (and other similar Pugmill equipment)

Group 9: Canal Finger Drain Digger; Chicago Boom; Combination Mixer and Compressor (Gunite); Combination Slurry Mixer and/or Cleaner; Highline Cableway (5 tons and under); Lull Hi-lift or similar (20 ft. or over); Mucking Machine (rubber tired, rail or track type); Tractor (with boom) (D-6 or larger and similar)

Group 10: Boom-type Backfilling Machine; Bridge Crane; Cary-lift (or similar); Chemical Grouting Machine, truck mounted; Combination Backhoe and Loader (up to and including 1/2 cu. yd. M.R.C.); Derrick (2 operators required when swing engine remote from Hoist); Derrick Barges (except excavation work); Do-mor Loader; Adams Elegrader; Elevating Grader; Heavy Duty Rotary Drill Rig (including Caisson Foundation work and Euclid Loader and similar type; Robbins type drills; Koehring Skooper (or similar); Lift Slab Machine (Vagtborg and similar types); Loader (2 yds. up to and including 4 yds.); Locomotive, 100 tons (single or multiple units); Multiple Engine Earthmoving Machine (Euclids, Dozers, etc.)(no tandem Scraper); Pre-stress Wire Wrapping Machine; Reservoir-debris Tug (self-propelled floating); Rubber-tired Scraper, Self-loading (paddle wheels, etc.); Shuttle Car (reclaim station); Single engine Scraper over 45 yds.; Soil Stabilizer (P & H or equal); Sub-grader (Gurtler or other automatic type); Tractor, Compressor Drill Combination; Track Laying type Earth Moving Machine (single engine with Tandem Scrapers); Train Loading Station; Trenching Machine, multi-engine with sloping attachment, Jeffco or similar; Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons)

Group 10-A: Backhoe (Hydrdulic)(up to and including 1 cu. yd. M.R.C.); Backhoe (cable)(up to and including 1 cu. yd. M.R.C.); Combination Backhoe and Loader (over 3/4 cu. yd. M.R.C.); Continuous Flight Tie Back Auger (Crane attached/separate controls); Cranes not over 25 tons, Hammerhead and Gantry; Gradalls (up to and including 1 cu. yd.); Power Blade Operator (single engine); Power Shovels, Clamshells, Draglines (up to and including 1 cu. yd. M.R.C.)(Long Boom Pay); Rubber-tired Scraper, self-loading (Paddle Wheel, twin engine); Self-propelled Boom-type lifting device (center mount)(over 10 tons up to and including 25 tons); CMI Dual Lane Auto Grader SP-30 or similar

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POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 11: Automatic Concrete Slip-form Paver (Gradesetter, Screedman); Automatic Railroad Car Dumper; Canal Trimmer with ditching attachments; Cary Lift, Campbell or similar, Continuous Flight Tie Back Auger (Crane attached, single controls); Cranes (over 25 tons up to and including 125 tons); Drott Travelift 650-A-1 or similar (45 ton or over); Euclid Loader when controlled from the Pullcat; Highline Cableway (over 5 tons); Loader (over 4 cu. yds., up to and including 12 cu. yds.); Miller Formless M-900 Slope Paver or similar (Grade Setter required); Multiple Engine Scraper (when used as Push Pull); Power Blade Operator (multi-engine); Power Shovels, Clamshells, Draglines, Backhoes, Gradalls (over 1 cu. yd. and up to and including 7 cu. yds. M.R.C., Long Boom Pay); Rubber-tired Earthmoving Machines (multiple propulsion power units and two or more Scrapers) (up to and including 75 cu. yds. Struck M.R.C.); Self-propelled Compactor Boom-type lifting device (center mount) (over 25 tons M.R.C.); Single engine Rubber-tired Earthmoving Machines (with Tandem Scrapers); Slip-form Paver (concrete or asphalt) (Screedman required); Tandem Cats; Tower Cranes Mobile (including rail mounted); Trencher (pulling attached shield); Tower Cranes, Universal Liebher and similar types (in the erection, dismantling and moving of equipment); Wheel Excavator (up to and including 750 cu. yds. per hour); Whirley Crane (over 25 tons); Multi-earthmoving Equipment (up to and including 75 cu. yds. "struck" M.R.C.); Truck mounted Hydraulic Crane when remote control equipped (over 10 tons up to and including 25 tons)

Group 11-A: Band Wagons (in conjunction with wheel excavator); Cranes (over 125 tons); Loader (over 12 cu. yds., up to and including 13 cu. yds.); Power Shovels, Clamshells, Backhoes, Gradalls, and Draglines (over 7 cu. yds. M.R.C.); Rubber-tired Multi-purpose Earth Moving Machines (2 units over 75 cu. yds. "struck" M.R.C.); Wheel Excavator (over 750 cu. yds. per hour)

Group 11-B: Loader (over 18 yards)

Group 11-C: Operator of Helicopter (when used in erection work); Remote controlled Earthmoving equipment

POWER EQUIPMENT OPERATORS (Cont'd)

DREDGING

AREA DEFINTIONS FOR SCHEDULES I and II

Four Centers designated: City Halls of Oakland, San Francisco, Sacramento and Stockton, California
Area 1: Up to 20 road miles from said Centers
Area 2: More than 20 road miles to and including 30 road miles from said Centers
Area 3: Outside of 30 road miles from said Centers
Area 4: An area extending 25 road miles from shoreline of Lake Tahoe

SCHEDULE I
CLAMSHELL and DIPPER DREDGING (New Construction)

Group 1: Bargeman; Deckhand; Fireman; Oiler

Group 2: Deck Engineers; Deck Mate

Group 3: Welder; Mechanic Welder; Watch Engineer

Group 4: Clamshell Operator (up to and including 7 cu. yds. M.R.C.) (Long Boom Pay)

Group 4A: Clamshell Operator (over 7 cu. yds. M.R.C.) (Long Boom Pay)

SCHEDULE II
HYDRAULIC SUCTION DREDGING and all other CLAMSHELL and DIPPER DREDGING

Group A-1: Bargeman; Deckhand; Leveehand; Fireman; Oiler

Group A-2: Winchman (Stern Winch on Dredge); Deck Engineer

Group A-3: Watch Engineer; Welder; Welder Mechanic; Deckmate; Booster Pump Operator (Mud Cat)

Group A-4: Leverman; Clamshell Operator

PILEDRIVING

Group 1: Assistant to Engineer (Fireman, Oiler, Deckhand)

Group 1A: Compressor Operator

Group 1B: Assistant to Engineer (Truck Crane Oiler)

Group 2A: Tugger Hoist Operator (hoisting material only)

Group 2B: Forklift Operator

POWER EQUIPMENT OPERATORS (Cont'd)
PILEDRIVING (Cont'd)

Group 2C: Compressor Operator (over 2); Generators; Pumps (over 4); Welding Machines (powered by other than electricity)

Group 2D: A-Frames

Group 3: Deck Engineer (Deck Engineer Operator required when deck engine is used); Self-propelled Boom-type lifting device (center mount) (10 ton capacity or less M.R.C.)

Group 3A: Heavy Duty Repairman and/or Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending boiler or compressor attached to Crane Piledriver; Operator of Piledriving Rigs, Skid or Floating and Derrick Barges (Assistant to Engineer required); Operator of diesel or gasoline power Crane Piledriver (without boiler) up to and including 1 cu. yd. rating (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only) (Assistant to Engineer required)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (with boiler) over 1 cu. yd. rating (Assistant to Engineer required); Operator of Crane (with steam, flash boiler, pump or compressor attached) (Group 4 Engineer required); Operator of steam powered Crawler or Universal type Driver (Raymond or similar) (Assistant to Engineer required) Truck Crane Operator (over 25 tons) (Hoisting material or performing Piledriving work) (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)

Group 6: Cranes (over 125 tons) (Assistant to Engineer required)

STEEL ERECTION

Group 1: Assistant to Engineer (Oiler)

Group 2: Compressor Operator, Generator, gasoline or diesel driven (100 K.W. or over) (structural steel or tank construction only)

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (Over 6 additional Engineers required) (structural steel or tank erection only)

Group 4: Heavy Duty Repairman, Tractor Operator

Group 4A: Combination Heavy Duty Repairman and/or Welder

POWER EQUIPMENT OPERATORS (Cont'd)
STEEL ERECTION (Cont'd)

Group 5: Boom Truck or Dual Purpose A-Frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons M.R.C. or less) (Assistant to Engineer required); Self-propelled Boom type lifting device (center mount) (10 ton capacity or less M.R.C.); Single drum Hoist; Tugger Hoist

Group 6: Cary Lift, Campbell or similar; Crawler Cranes and Truck Cranes (over 15 tons M.R.C.) (Assistant to Engineer required); Derricks (2 Operators when swing engine remote from hoist); Gantry Rider (or similar equipment); Highline Cableway (Signalman required); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Tower Cranes Mobile including rail mounted (Assistant to Engineer required); Tower Cranes, Universal Liebher and similar types (in the erection, dismantling and moving of equipment there shall be an additional Operating Engineer)

Group 7: Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)

Group 8: Cranes (over 125 tons) (Assistant to Engineer required)

Group 9: Helicopter Operator

TRUCK DRIVERS

Group 1: Bulk Cement Spreader (w/wo Auger, under 4 yds. water level); Bus or Manhaul Driver; Concrete Pump Machine; Concrete Pump Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Dump (under 4 yds. water level); Dumpcrete Truck (under 4 yds. water level); Dumpster (under 4 yds. water level); Escort or Pilot Car Driver; Nipper Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Pickups; Skids (Debris Box, under 4 yds. water level); Team Drivers; Trucks (Dry Pre-Batch Concrete Mix, under 4 yds. water level); Warehousemen

Group 2: Teamster Oiler and/or Greaser and/or Service Man

Group 3: Bulk Cement Spreader (w/wo Auger, 4 yd. and under 6 yds. water level); Dump (4 yds. and under 6 yds. water level); Dumpcrete (4 yds. and under 6 yds. water level); Dumpster (4 yds. and under 6 yds. water level); Skids (Debris Box, 4 yds. and under 6 yds. water level); Single Unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical Tailgate); Trucks (Dry Pre-batch Concrete Mix, 4 yds. and under 6 yds. water level)

Group 4: Jetting Truck and Water Truck (under 2,500 gallons)

Group 5: Road Oil Trucks or Boot Man

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TRUCK DRIVERS (Cont'd)

Group 6: Lift Jitneys, Fork Lift

Group 7: Transit Mix, Agitator (under 6 yds.)

Group 8: Fuel and/or Grease Truck Driver or Fuelman

Group 9: Vacuum Truck, under 3,500 gallons

Group 10: Scissor Truck; Single unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical tailgate); Small rubber tired tractor (when used within Teamsters' jurisdiction)

Group 11: Jetting Truck and Water Trucks, 2,500 gallons and under 4,000 gallons

Group 12: Combination Winch Truck with Hoist; Transit Mix Agitator (6 yds. and under 8 yds.)

Group 13: Vacuum Truck, 3,500 gallons and under 5,500 gallons

Group 14: Rubber-tired Muck Car (not self-loaded)

Group 15: Bulk Cement Spreader (w/wo Auger, 6 yds. and under 8 yds. water level); Dump (6 yds. and under 8 yds. water level); Dumpcrete (6 yds. and under 8 yds. water level); Dumpster (6 yds. and under 8 yds. water level); Skids (Debris Box, 6 yds. and under 8 yds. water level); Trucks (Dry Pre-batch Concrete Mix, 6 yds. and under 8 yds. water level)

Group 16: A-Frame, Winch Truck; Buggymobile; Jetting and Water Truck (4,000 gallons and under 5,000 gallons); Rubber tired Jumbo

Group 17: Heavy Duty Transport (high bed)

Group 18: Ross Hyster and similar Straddle Carrier

Group 19: Transit Mix Agitator (8 yds. through 10 yds.)

Group 20: Vacuum Truck (5,500 gallons and under 7,500 gallons)

Group 21: Jetting Truck and Water Truck (5,000 gallons and under 7,000 gallons)

Group 22: Combination Bootman and Road Oiler

Group 23: Transit Mix Agitator (over 10 yds. through 12 yds.)

Group 24: Bulk Cement Spreader (w/wo Auger, 8 yds. and including 12 yds. water level); Dump (8 yds. and including 12 yds. water level); Dumpcrete (8 yds. and including 12 yds. water level); Self-propelled Street Sweeper with self-contained refuse bin; Skids (Debris Box, 8 yds. and including 12 yds. water level); Snow Go and/or Snow Plow; Truck (Dry Pre-batch Concrete Mix, 8 yds. and including 12 yds. water level)

TRUCK DRIVERS (Cont'd)

Group 25: Heavy Duty Transport (Gooseneck Lowbed)

Group 26: Transit Mix Agitator (over 12 yds. through 17 yds.)

Group 27: Ammonia Nitrate Distributor Driver and Mixer; Bulk Cement Spreader (w/wo Auger, over 12 yds. and including 18 yds. water level); Dump (over 12 yds., and including 18 yds. water level); Dumpcrete over 12 yds. and including 18 yds. water level); Dumpster (over 12 yds. and including 18 yds. water level); Truck (Dry Pre-batch Concrete Mix, over 12 yds. and including 18 yds. water level)

Group 28: Double Gooseneck (7 or more axles); Heavy Duty Transport Tiller Man

Group 29: P.B. or similar type self-loading Truck

Group 30: Transit Mix Agitator (over 14 yds. through 16 yds.)

Group 31: Bulk Cement Spreader (w/wo Auger, over 18 yds. and including 24 yds. water level); Combination Dump and Dump Trailer; Dump (over 18 yds. and including 24 yds. water level); Dumpcrete (over 18 yds. and including 24 yds. water level); Dumpster (over 18 yds. and including 24 yds. water level); Skid (Debris Box, over 18 yds. and including 24 yds. water level); Transit Mix Agitator (over 12 yds. through 16 yds.); Trucks (Dry Pre-batch Concrete Mix, over 18 yds. and including 24 yds. water level)

Group 32: Bulk Cement Spreader (w/wo Auger, over 24 yds. and including 35 yds. water level); Dump (over 24 yds. and including 35 yds. water level); Dumpcrete (over 24 yds. and including 35 yds. water level); Dumpster (over 24 yds. and including 35 yds. water level); DW 10's, 20's, 21's and other similar Cat type, Terra Cobra, LeTournapulls, Tournarocker, Euclid and similar type equipment when pulling Fuel and/or Grease Tank Trailers or other misc. Trailers; Skids (Debris Box, over 24 yds. and including 35 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 24 yds. and including 35 yds water level)

Group 33: Truck Repairman

Group 34: Bulk Cement Spreader (w/wo Auger, over 35 yds. and including 50 yds. water level); Dump (over 35 yds. and including 40 yds. water level); Dumpcrete (over 35 yds. and including 50 yds. water level); Dumpster (over 35 yds. and including 50 yds. water level); Skids (Debris Box, over 35 yds. and including 50 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 35 yds. and including 50 yds. water level)

Group 35: DW 10's 20's, 21's and other similar Cat type, Terra Cobra, LeTournapulls, Tournarocker, Euclid and similar type equipment when pulling Aqua/Pak or Water Tank Trailers

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TRUCK DRIVERS (Cont'd)

Group 36: Bulk Cement Spreader (w/wo Auger, over 50 yds. and under 65 yds. water level); Dump (over 50 yds. and under 65 yds. water level); Dumpcrete (over 50 yds. and under 65 yds. water level); Dumpster (over 50 yds. and under 65 yds. water level); Helicopter Pilot (when transporting men or materials); Skids (Debris Box, over 50 yds. and under 65 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 50 yds. and under 65 yds. water level)

Group 37: Bulk Cement Spreader (w/wo Auger, over 65 yds. and including 80 yds. water level); Dump (65 yds. and including 80 yds. water level); Dumpcrete (over 65 yds. and including 80 yds. water level); Dumpster (over 65 yds. and including 80 yds. water level); Skids (Debris Box, 65 yds. and including 80 yds. water level); Trucks (Dry Pre-batch Concrete Mix, 65 yds. and including 80 yds. water level)

Group 38: Bulk Cement Spreader (w/wo Auger, over 80 yds. and including 95 yds. water level); Dump (over 80 yds. and including 95 yds. water level); Dumpcrete (over 80 yds. and including 95 yds. water level); Dumpster (over 80 yds. and including 95 yds. water level); Skids (Debris Box, over 80 yds. and including 95 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 80 yds. and including 95 yds. water level)

AREA DESCRIPTIONS
FOR
POWER EQUIPMENT OPERATORS
AREAS I and II

**AREA I: All areas included in the description defined below which is based upon Township and Range Lines of AREAS I and II.

Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S.
Thence Easterly along the Southerly line to Township 19S, crossing the Mt. Diablo Meridian to the S.W. corner of Township 19S, range 6E, Mt. Diablo Base Line and Meridian,
Thence Southerly to the S.W. corner of township 20S, range 6E,
Thence Easterly to the S.W. corner of township 20S, range 13E,
Thense Southerly to the S.W. corner of township 21S, range 13E,
Thence Easterly to the S.W. corner of township 21S, range 17E,
Thence Southerly to the S.W. corner of township 22S, range 17E,
Thence Easterly to the S.E. corner of township 22S, range 17E,
Thence Southerly to the S.W. corner of township 23S, range 18E,
Thence Easterly to the S.E. corner of township 23S, range 18E,
Thence Southerly to the S.W. corner of township 24S, range 19E, falling on the Southerly Line of Kings County, thence Easterly along the Southerly Boundary of Kings County and the Southerly Boundary of Tulare County, to the S.E. corner of township 24S, range 29E,

AREA DESCRIPTIONS (Cont'd)
FOR
POWER EQUIPMENT OPERATORS
AREAS I and II

Thence Northerly to the N.E. corner of township 21S, range 29E,
Thence Westerly to the N.W. corner of township 21S, range 29E,
Thence Northerly to the N.E. corner of township 13S, range 28E,
Thence Westerly to the N.W. corner of township 13S, range 28E,
Thence Northerly to the N.E. corner of township 11S, range 27E,
Thence Westerly to the N.W. corner of township 11S, range 27E,
Thence Northerly to the N.E. corner of towhship 10S, range 26E,
Thence Westerly to the N.W. corner of township 10S, range 26E,
Thence Northerly to the N.E. corner of township 9S, range 25E,
Thence Westerly to the N.W. corner of township 9S, range 25E,
Thence Northerly to the N.E. corner of township 8S, range 24E,
Thence Westerly to the N.W. corner of township 8S, range 24E,
Thence Northerly to the N.E. corner of township 6S, range 23E,
Thence Westerly to the S.E. corner of township 5S, range 19E,
Thence Northerly to the S.E. corner of township 5S, range 19E,
Thence Westerly to the N.W. corner of township 5S, range 19E,
Thence Northerly to the N.E. corner of township 3S, range 18E,
Thence Westerly to the N.W. corner of township 3S, range 18E,
Thence Northerly to the N.E. corner of township 2S, range 17E,
Thence Westerly to the N.W. corner of township 2S, range 17E,
Thence Northerly crossing the Mt. Diablo Baseline to the N.E. corner of township 2N, range 16E,
Thence Westerly to the N.W. corner of township 2N, range 16E,
Thence Northerly to the N.E. corner of township 3N, range 15E,
Thence Westerly to the N.E. corner of township 3N, range 15E,
Thence Northerly to the N.E. corner of township 4N, range 14E,
Thence Westerly to the N.W. corner of township 4N, range 14E,
Thence Northerly to the N.E. corner of township 5N, range 13E,
Thence Westerly to the N.E. corner of township 5N, range 13E,
Thence Northerly to the N.E. corner of township 10N, range 12E,
Thence Easterly to the S.E. corner of township 11N, range 14E,
Thence Northerly to the N.E. corner of township 11N, range 14E,
Thence Westerly to the N.E. corner of township 11N, range 13E,
Thence Northerly to the N.E. corner of township 15N, range 13E,
Thence Easterly to the S.E. corner of township 16N, range 13E,
Thence Northerly to the N.E. corner of township 16N, range 13E,
Thence Easterly to the S.E. corner of township 17N, range 14E,
Thence Southerly to the S.W. corner of township 14N, range 14E,
Thence Easterly to the S.E. corner of township 14N, range 15E,
Thence Southerly to the S.W. corner of township 13N, range 16E,
Thence Easterly to the S.E. corner of township 13N, range 16E,
Thence Southerly to the S.W. corner of township 12N, range 17E,
Thence Easterly along the Southern Line to township 12N to the Eastern Boundary of the State of California, to the State of California to the N.E. corner of township 17N, range 18E,
Thence Westerly to the N.W. corner of township 17N, range 11E,
Thence Northerly to the N.E. corner of township 20N, range 10E,

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AREA DESCRIPTIONS (Cont'd)
FOR
POWER EQUIPMENT OPERATORS
AREAS I and II

Thence Westerly to the N.W. corner of township 20N, range 20E,
Thence Northerly to the N.E. corner of township 21N, range 9E,
Thence Westerly to the N.W. corner of township 21N, range 9E,
Thence Northerly to the N.E. corner of township 22N, range 8E,
Thence Westerly to the N.W. corner of township 27N, range 8E,
Thence Northerly to the S.W. corner of township 27N, range 8E,
Thence Easterly to the S.E. corner of township 27N, range 8E,
Thence Northerly to the N.E. corner of township 28N, range 8E,
Thence Westerly to the N.W. corner of township 28N, range 7E,
Thence Northerly to the N.E. corner of township 30N, range 6E,
Thence Westerly to the N.W. corner of township 30N, range 1E,
Thence Northerly along the Mt. Diablo Meridian to the N.E. corner of Township 34N, range 1W,
Thence Westerly to the N.W. corner of township 34N, range 6W,
Thence Southerly to the N.E. corner of township 32N, range 7W,
Thence Westerly to the N.W. corner of township 32N, range 7W,
Thence Southerly to the S.W. corner of township 30N, range 7W,
Thence Easterly to the S.E. corner of township 30N, range 7W,
Thence Southerly to the S.W. corner of township 16N, range 6W,
Thence Easterly to the S.E. corner of township 16N, range 6W,
Thence Southerly to the S.W. corner of township 14N, range 5W,
Thence Westerly to the S.E. corner of township 14N, range 7W,
Thence Northerly to the N.E. corner of township 14N, range 7W,
Thence Westerly to the N.W. corner of township 14N, range 7W,
Thence Northerly to theN.E. corner of township 15N, range 8W,
Thence Westerly to the S.E. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 16N, range 12W,
Thence Westerly to the N.W. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 18N, range 12W,
Thence Westerly to the N.W. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 18N, range 14W,
Thence Easterly to the S.E. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 16N, range 13W,
Thence Westerly to the N.W. corner of township 15N, range 14W,
Thence Southerly to the S.W. corner of township 14N, range 14W,
Thence Easterly to the S.E. corner of township 17N, range 14W,
Thence Southerly to the S.W. corner of township 13N, range 13W,
Thence Easterly to the S.E. corner of township 13N, range 13W,
Thence Southerly to the S.W. corner of township 11N, range 12W,
Thence Easterly to the S.E. corner of township 11N, range 12W,
Thence Southerly along the Eastern Line to range 12W, to the Pacific Ocean excluding that portion of Northern California within Santa Clara County included within the following line:
Commencing at the N.W. corner of township 6S, range 3E, Mt. Diablo Baseline and Meridian:
Thence in a Southerly direction to the S.W. corner of township 7S, range 3E,
Thence in a Easterly direction to the S.E. corner of township 7S, range 4E,
Thence in a Northerly direction to the N.E. corner of township 6S, range 4E,

AREA DESCRIPTIONS (Cont'd)
for
POWER EQUIPMENT OPERATORS
AREAS I and II

Thence in a Westerly direction to the N.W. corner of township 6S, range 3E, to the point of beginning which portion is a part of Area 2.

AREA 1: also includes that portion of Northern California within the following lines:
Commencing in the Pacific Ocean on a extension of the Southerly line to township 2N, Humboldt Baseline and Meridian:
Thence Easterly along the Southerly line to Township 2N, to the S.W. corner of Township 2N, range 1W,
Thence Southerly to the S.W. corner of township 1N, range 1W,
Thence Easterly along the Humboldt Baseline to the N.W. corner of township 1N, range 2E,
Thence Southerly to the S.W. corner of township 2S, range 2E,
Thence Easterly to the S.E. corner of township 2S, range 2E,
Thence Southerly to the S.W. corner of township 4S, range 3E,
Thence Easterly to the S.E. corner of township 4S, range 3E,
Thence Northerly to the N.E. corner of township 2S, range 3E,
Thence Westerly to the N.W. corner of township 2S, range 3E,
Thence Northerly crossing the Humboldt Baseline to the S.W. corner of township 1N, range 3E,
Thence Easterly along the Humboldt Baseline to the S.E. corner of township 1N, range 3E,
Thence Northerly to the N.E. corner of township 9N, range 3E,
Thence Westerly to the N.W. corner of township 9N, range 2E,
Thence Northerly to the N.E. corner of township 10N, range 1E,
Thence Westerly along the Northerly line to township 10N, into the Pacific Ocean.

AREA I: also includes that portion of Northern California included within the following lines:
Commencing at the Northerly boundary of the State of California at the N.W. corner of township 48N, range 7W, Mt. Diablo Baseline and Meridian:
Thence Southerly to the S.W. corner of township 44N, range 7W,
Thence Easterly to the S.E. corner of township 44N, range 7W,
Thence Southerly to the S.W. corner of township 43N, range 6W,
Thence Easterly to the S.E. corner of township 43N, range 5W,
Thence Northerly to the N.E. corner of township 48N, range 5W, on the Northerly boundary of the State of California,
Thence Westerly along the Northerly boundary of the State of California to the point of beginning.

AREA II: All areas not included within AREA I as defined.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

STATE: KENTUCKY

COUNTY: FORT CAMPBELL (CHRISTIAN COUNTY, KY. & MONTGOMERY CO., TN

DECISION NUMBER: KY84-1010

DATE: DATE OF PUBLICATION

Supersedes Decision Number KY82-1010, dated October 8, 1982 in 47 FR 44668

DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.15	2.81
BOILERMAKERS	18.05	3.175
BRICKLAYERS, STONE MASONS, MARBLE MASONS, TILE SETTERS, TERRAZZO WORKERS, CEMENT MASONS & PLASTERERS	13.75	1.75
CARPENTERS, LATHERS, & SOFT FLOOR LAYERS	14.00	2.13
ELECTRICIANS:		
KENTUCKY PORTION:		
Industrial (*See Scope of Work):		
Wireman	15.84	.85+ 13⅛%
Cable Splicer	16.09	.85+ 13⅛%
Commercial (*See Scope of Work):		
Wireman	12.50	.85+ 13⅛%
Cable Splicer	12.75	.85+ 13⅛%
TENESSEE PORTION:		
Wireman	14.10	1.05+ 3⅛%
Cable Splicer	14.35	1.05+ 3⅛%
ELEVATOR CONSTRUCTORS:		
Mehcanics	12.44	2.69
Helpers	8.71	2.69 +a
Probationary Helpers	6.22	
GLAZIERS	12.50	1.12+a
IRONWORKERS	12.35	2.17
LABORERS:		
Group 1	10.75	2.00
Group 2	10.90	2.00
Group 3	11.25	2.00
MILLWRIGHTS & PILEDRIVERMEN	14.50	2.13

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Industiral - (applies to power plants, water & sewage treatment plants & any industrial manufacturing plant that engages in the producing of a project; & related site facilities):		
Brush & Roller	11.35	1.55
Spray & Drywall Finishing	11.60	1.55
Structural Steel, Swing Stage & Chair, Motor Stage	11.70	1.55
Paperhanger	11.85	1.55
Sandblaster	12.60	1.55
Commercial (all other building construction):		
Brush	9.75	1.55
Spray, Sandblast, Boswain Chair or heights over 50'	10.25	1.55
PLUMBERS & PIPEFITTERS	14.14	1.89
POWER EQUIPMENT OPERATORS:		
Kentucky Portion:		
CLASS A	14.97	2.18
CLASS B	12.23	2.18
CLASS C	11.46	2.18
Tennessee Portion:		
CLASS A	11.45	1.65
CLASS B	10.78	1.65
CLASS C	10.10	1.65
CLASS D	9.56	1.65
ROOFERS	10.60	1.46
SHEET METAL WORKERS	16.03	1.14
SPRINKLER FITTERS:		
Kentucky Portion	16.47	3.23
Tennessee Portion	14.57	3.23
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

CLASSIFICATION DEFINITIONS - LABORERS:

Group 1 - General Laborers, Wrecking Labor on buildings, Clearing right-of-way & building site, Carpenter Tender, Truck Spotter & Dumper, Axe & Cross Cut Saw Filer, Concrete Pudler & Form Stripper.

Group 2 - All power driven tools, Hod Carrier, Mason Tender, Finisher Tender, Mortar Mixer, Jackhammer, Vibrator, Wagon Drill, Core Drill, Test Drill, Well Drill Concrete Pump Machine, Tunnel Boring Machine, Men in tunnel and crib ditch work, Signal Men, Riprap Rock Setter & Handler, Asphalt Raker, Tamper & Smoother, Pipe Layer, Grout Pump Men, Chain Saw, Pipe Clearing, Doping & Wrapping, Swamper & Straight Cable Hooking, Cement Gun, Grade Checker Machine Excavating, Batch Plant Semlm Man, Sand Hog Free Air, Sand Hog Compressed Air, Cutting Torch Man on salvage work, Road Form Setter, Brick Slinger, Hand Spiker, Power Buggy, Handling of creosote material, Sandblaster, Curing of concrete & apply hardener, Air & Gas Tamper, Concrete Saw, Power Post Hole Digger & Green Cut Man on concrete work.

Group 3 - Powderman, Blaster.

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS (KENTUCKY PORTION)

Class A - Auto Patrol, Batcher Plant, Bituminous Paver, Cable Way, Central Compressor Plant, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Pump, Crane, Crusher Plant, Derrick, Derrick Boat, Ditching & Trenching Machine, Dragline, Dredge Operator, Dredge Engineer, Elevating Grader & all types of Loaders, Hoe type Machine, Hoist (1-drum when used for stack or chimney construction or repair), Hoisting Engine (2-drums or more), Locomotive, Motor Scraper, Carry-all Scoop, Bulldozer, Heavy Duty Welder, Mechanic, Orangepeel Bucket, Pile Driver, Power Blade, Motor Grader, Roller (bituminous), Scarifier, Shovel, Tractor Shovel, Truck Crane, Winch Truck, Push Dozer, High Lift, Fork Lift (regardless of lift height & except when used for masonry construction), All types of Boom Cats, Core Drill, Hopto, Tow or Push Boat, A-Frame Winch Truck, Concrete Paver, Gradeall, Hoist, Hyster, Pumpcrete, Ross Carrier, Boom, Tail Boom, Rotary Drill, Hydro Hammer, Mucking Machine, Rock Spreader attached to equipment, Scoopmobile, KeCal Loader, Tower Cranes (French, German & other types), Hydro Crane, Backfiller, Curries, Sub-Grader.

Class B - All Air Compressors (over 900 CFM), Bituminous Mixer, Joint Sealing Machine, Concrete Mixer (under 21 cu. ft.) Form Grader, Roller (rock), Tractor (50 HP & over), Bull Float, Finish Machine, Outboard Motor Boat, Flexplane, Fireman, Boom type Tamping Machine, Truck Crane Oiler, Greaser on grease facilities servicing heavy equipment, Switchman or Brakeman, Mechanic Helper, Whirley Oiler, Self-Propelled Compactor, Tractair & Road Widening Trencher, Farm Tractor with attachments (except Backhoe, High Lift & End Loader), Elevator (when used to hoist building materials), Hoisting Engine (1-drum or buck hoist), Fork Lift (when used for for masonry construction), Well Points Grout Pump, Throttle-Valve Man, Tugger, Electric Vibrator Compactor.

Class C - Bituminous Distributor, Cement Gun, Conveyor, Mud Jack, Paving Joint Machine, Roller (earth), Tamping Machine, Tractors (under 50 HP), Vibrator, Oiler, Concrete Saw, Burlap & Curing Machine, Hydro-Seeder, Power Form Handling Equipment, Deckhand Steersman, Hydraulic Post Driver, Drill Helper,

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CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS (TENNESSEE PORTION)

Class A - Shovel, backhoe, dragline, crane, derrick, gentry, grademll, winches with boom, motor patrol, trenching machine (18" or over), pile driver, tug boat operator, mechanic, fork lift, central mixing plant, locomotive engineer, straddle carrier, core drill, tower crane, hydrocrane, Austin Western & all similar type crane, drilling of piling (all types), tugger, hoist (2-drums or more), earth freezing equipment, sideboom, dredge operator & engineer, hopto, pump crete, mucking machine, cableway, finishing machine, central compressor, derrick boat, concrete pump, welders, helicopters, de-waterting system (all types), sweeper, bulldozer, pan, pull, scraper, traxcavator, front end loader, concrete planing machine

Class B - Trenching machine (18" or smaller), tandem roller, paver, mixer mobile, backfiller, blade grader, dinkey operator, elevating grader, winch operated from truck & tractor without boom, distributor bituminous surface, hoist (1-drum), mixer, grout pump, motor boat, switchman, brake man, elevator earth compactor.

Class C - Locomotive fireman on boiler, air compressor (satimnary), earth drill, smale operator, motor crane driver & oiler, pump (4" & larger), oiler on gantrey, greaser, drill helper.

Class D - Air compressor, mechanic helper, firemen (low pressure pump under 4"), oiler, welding machine operator, deckhand.

*SCOPE OF WORK

ELECTRICIANS - KENTUCKY PORTION

Commercial - consists of alterations, renovations and new construction on the following structures:

1) Elementary, middle & high schools, 2) churches, 3) restaurants, 4) warehouses (limited to 50,000 sq. ft. or less, 5) free standing small commercial buildings - A) service station, B) convenience stores, C) launderettes, D) one & two story motels

Industrial - All other building construction

FOOTNOTES:

a. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; Vacation Pay Credit: Employer contributies 8% of the basic hourly rate of employees with 5 years or more of service, or 6% for employees with 6 months to 5 years.

b. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Massachusetts COUNTY: Worcester
DECISION NUMBER: MA84-3008 DATE: Date of Publication
Supersedes Decision Number MA83-3049 dated November 18, 1983, in 48 FR 52559.
DESCRIPTION OF WORK: Building construction Projects (including Residential Projects) Heavy and Highway construction Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.23	2.67+ a
BOILERMAKERS	18.16	3.441
BRICKLAYERS; CEMENT MASONS; PLASTERERS; and STONEMASONS:		
Area 1	14.05	4.24
Area 2	16.16	4.42
Area 3	18.06	2.52
Area 4	17.05	2.80
CARPENTERS; LATHERS; SOFT FLOOR LAYERS:		
Area 1	15.25	2.87
Area 2	15.86	3.60
ELECTRICIANS:		
Area 1	15.83	3.78+ 3%
Residential (Single Family Housing)	12.00	2.03+ 3%
Area 2	15.90	4.27+ 3%
Residential (Single Family Housing)	11.75	2.27+ 3%
Area 3	16.00	1.81+ 3%
Residential (Single Family Housing)	12.00	1.84+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.71	3.00+ b+c
Helpers	11.70	3.00+ b+c
Probationary Helpers	8.355	
GLAZIERS:		
Area 1	14.12	3.32
Area 2	17.30	3.45
IRONWORKERS	16.65	4.25
LABORERS:		
BUILDING CONSTRUCTION:		
Group 1	13.20	2.75
Group 2	13.45	2.75
Group 3	13.70	2.75
Group 4	13.95	2.75
Group 5	14.20	2.75

	Basic Hourly Rates	Fringe Benefits
WRECKING:		
Group 1	9.95	2.80
Group 2	13.05	2.80
Group 3	13.15	2.80
Group 4	13.30	2.80
Group 5	13.55	2.80
Group 6	13.80	2.80
HEAVY & HIGHWAY CONSTRUCTION:		
Group 1	13.20	2.80
Group 2	13.45	2.80
Group 3	13.95	2.80
Group 4	14.20	2.80
Tunnels, Caisson and Cylinder Work in Compressed Air:		
Group 5-A	18.70	2.80
Group 5-B	20.20	2.80
Group 5-C	20.35	2.80
Group 5-D	20.45	2.80
Group 5-E	20.95	2.80
Free Air Operation: Shield driven and Liner Plate in Free Air:		
Group 6-A	14.50	2.80
Group 6-B	13.65	2.80
Cleaning Concrete and Caulking Tunnel (both new and existing):		
Group 6-C	13.65	2.80
Group 6-D	13.975	2.80
Rock shaft, Concrete Lining of same and Tunnel in Free Air:		
Group 6-E	13.40	2.80
Group 6-F	13.55	2.80
Group 6-G	13.65	2.80
Group 6-H	14.50	2.80
OPEN AIR CAISSON, UNDERPINNING and TEST BORING INDUSTRIES:		
Open Air Caisson, Underpinning Work and Boring Crew:		
Group 1-A	13.20	2.80
Group 1-B	13.95	2.80
Test Boring:		
Group 2-A	13.20	2.80
Group 2-B	14.07	2.80

DECISION NO. MA84-3008	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION		
Line	17.50	2.10+ 4.375% +d
Equipment Operator	14.88	2.10+ 4.375% +d
Driver Groundman	14.00	2.10+ 4.375% +d
Groundman	9.63	2.10+ 4.375% +d
MARBLE, TILE and TERRAZZO WORKERS:		
Area 1	16.50	3.45
MARBLE & TILE FINISHERS	15.04	2.85
TERRAZZO FINISHERS	17.85	1.50
MILLWRIGHTS	16.90	4.25
PAINTERS:		
Areas 1, 2, and 3:		
Sign Painters, Erectors and Fabricators	13.00	1.84
Area 1:		
Brush and Tapers	13.56	2.89
Spray and Sandblasting	17.43	2.89
Swing and chair work and steel riding under 40 feet	13.75	2.89
Swing and chair work and steel riding 40 feet and over	14.06	2.89
Area 2:		
New Commercial Work		
Brush	14.30	2.68
Spray and Sandblast	15.30	2.68
Steel	15.55	2.68
Repaints & Residential:		
Brush	13.75	2.68
Spray and Sandblast	14.75	2.68
Steel	15.00	2.68
Area 3:		
Brush	16.08	3.15
Wall Coverings	16.33	3.15
Spray; Sandblasting	17.08	3.15
Steel	18.20	3.15
Repaint	13.67	3.15
Residential	12.06	3.15
PILEDRIVERMEN	16.90	3.20
PLUMBERS and PIPEFITTERS:		
Area 1	15.50	6.13
Area 2	15.08	3.70
Area 3		
Plumbers	18.33	2.35
Pipefitters	15.98	2.45

	Basic Hourly Rates	Fringe Benefits
ROOFERS	16.76	4.25
SHEET METAL WORKERS:		
Area 1	20.10	5.29
Residential	14.07	3.79
Area 2	15.66	4.79
SPRINKLER FITTERS	16.37	3.23
POWER EQUIPMENT OPERATORS		
Area 1:		
BUILDING CONSTRUCTION:		
Group 1	15.53	2.40+e
Group 2	15.33	2.40+e
Group 3	15.13	2.40-e
Group 3-A	14.76	2.40+e
Group 4	13.23	2.40-e
Group 5	12.53	2.40+e
Group 6	11.38	2.40+e
Group 7	16.28	2.40+e
Group 8	12.55	2.40-e
Group 9	16.11	2.40+e
Group 10	16.03	2.40+e
Group 11	16.53	2.40-e
HEAVY and HIGHWAY CONSTRUCTION:		
Group 1	15.63	2.40+e
Group 2	15.43	2.40+e
Group 3	15.23	2.40+e
Group 3-A	14.86	2.40-e
Group 4	13.33	2.40-e
Group 5	12.63	2.40-e
Group 6	11.48	2.40-e
Group 7	16.38	2.40+e
Group 8	12.655	2.40+e
Group 9	16.21	2.40+e
Group 10	16.13	2.40+e
Group 11	16.63	2.40+e
Area 2:		
BUILDING, HEAVY, HIGHWAY and MARINE CONSTRUCTION:		
Group 1:	18.11	3.43+e
Hourly Premium for boom lengths including jib:		
Over 150 ft.: + 0.64		
Over 185 ft.: + 1.14		
Over 210 ft.: + 1.59		
Over 250 ft.: + 2.41		
Over 295 ft.: + 3.35		
Group 2	17.99	3.43+e
Group 3	15.16	3.43+e
Group 4	16.53	3.43+e
Group 5	13.43	3.43-e
Group 6	14.26	2.43-e

DECISION NO. MA84-3008	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Group 1	12.86	3.00+ g+h
Group 2	13.03	3.00+ g+h
Group 3	13.10	3.00+ g+h
Group 4	13.22	3.00+ g+h
Group 5	13.32	3.00+ g+h
Group 6	13.61	3.00+ g+h
Group 7	13.90	3.00+ g+h

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WELDERS: Receive rate for craft to which welding is incidental

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independance Day;
D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Paid Holiday: Day before Christmas, providing the employee works the three days prior to the holiday
b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit
c. Paid Holidays: A through F and the Friday after Thanksgiving
d. Paid Holidays: A through F and Bunker Hill Day, provided the employee has worked 10 days prior to the holiday
e. Paid Holidays: A through F, Washington's Birthday and Veterans Day
f. Paid Holidays: A through F, Washington's Birthday, Columbus Day and Veterans Day
g. Paid Holidays: A through F, Washington's Birthday, Patriots Day, Columbus Day and Veterans Day
h. Paid Vacation: 4 months to 1 year - half (1/2) day's pay per month; 1-5 years - 1 week; 5-10 years - 2 weeks; 10 years or more - 3 weeks. Employee must have received pay for 120 days during last year of employment

AREA DESCRIPTIONS

BRICKLAYERS; CEMENT MASONS; PLASTERERS; and STONEMASONS:
Area 1: Warren Township
Area 2: Hopedale, Milford, and Southboro Townships
Area 3: Ashburnham, Athol, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Petersham, Phillipston, Princeton, Royalston, Sterling, Templeton, Westminister and Winchendon Townships
Area 4: Remainder of County

CARPENTERS, LATHERS, and SOFT FLOOR LAYERS:
Area 1: Hardwick, Warren, and West Brookfield Townships
Area 2: Remainder of County

ELECTRICIANS:
Area 1: Warren, and West Warren Townships
Area 2: Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Phillipston, Westminister, and Winchendon Townships
Area 3: Remainder of County

GLAZIERS:
Area 1: Warren, and West Warren Townships
Area 2: Remainder of County

AREA DESCRIPTIONS (Cont'd)

MARBLE, TILE, and TERRAZZO WORKERS:
Area 1: Ashburnham, Fitchburg, Harvard, Lancaster, Leominster, Lunenburg, Princeton, Sterling, and Westminister Townships

PAINTERS:
Area 1: Warren and West Warren Townships
Area 2: Hopedale, Mendon, Milford, Southboro, Upton, and Westboro Townships
Area 3: Remainder of County

PLUMBERS and PIPEFITTERS:
Area 1: Hopedale and Southboro
Area 2: Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Petersham, Phillipston, Royalston, Templeton, Westminister, and Windendon Townships
Area 3: Remainder of County

SHEET METAL WORKERS:
Area 1: Harvard and Lancaster Townships
Area 2: Remainder of County

POWER EQUIPMENT OPERATORS:
Area 1: Royalston, Phillipston, Athol, Petersham, Hardwick, New Braintree, Brookfield, East Brookfield, North Brookfield, Oakham, Barre, Templeton, Winchendon, Strubridge, West Brookfield, and Warren Townships
Area 2: Remainder of County

LABORERS CLASSIFICATONS
BUILDING CONSTRUCTION

Group 1: Laborers, Carpenters Tenders

Group 2: Jackhammer Operator; Pavement Breakers; Asphalt Rakers; Carbide Core Drilling Machine; Chain Saw Operator; Pipelayer; Barco Type Jumping Tampers; Laser Beam; Concrete Pump; Mason Tenders; Motorized Mixers; Ride-on Motorized Buggy; Fence and Beam Rail Erectors

Group 3: Air Track; Block Pavers; Rammers; Curb Setter

Group 4: Blasters, Powdermen

Group 5: Pre-cast Floor and Roof Plank Erectors

WRECKING CONSTRUCTION

Group 1: Yardmen Laborers

Group 2: Yardmen Burners; Sawyers

Group 3: Wrecking Laborers

Group 4: Adzeman

LABORERS CLASSIFICATIONS (Cont'd)

WRECKING CONSTRUCTION (Cont'd)

Group 5: Burners; Jackhammers

Group 6: Asbestos Removers; Small Front Loaders on Tracks and Bobcat Operators

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Laborers; Carpenter Tenders; Cement Finisher Tenders

Group 2: Asphalt Rakers; Fence and Guard Rail Erector; Laser Beam Operator; Mason Tender; Pipelayer; Pneumatic Drill Operator; Pneumatic Tool Operator, Wagon Drill Operator

Group 3: Air Track Operator; Block Pavers; Hammer; Curb Setters

Group 4: Blasters, Powdermen

Tunnel, Caisson and Cylinder Work in Compressed Air:

Group 5-A: Powder Watchmen; Top Man on Iron Bolt; Change House Attendant

Group 5-B: Brakeman; Trackman; Groutman; Laborer; Outside Lock Tender; Lock Tender; Guage Tenders

Group 5-C: Motormen

Group 5-D: Blaster

Group 5-E: Mucking Machine Operator

Free Air Operation - Shield Driven and Liner Plate Tunnel in Free Air:

Group 6-A: Miners; Miner Welder; Conveyor Operator; Motorman; Mucking Machine Operator; Nozzle Men; Grout Men; Shaft and Tunnel Steel and Rodmen; Shield and Erector Arm Operators

Group 6-B: Brakemen, Trackmen

Cleaning Concrete and Caulking Tunnel (both new and existing):

Group 6-C: Concrete Workers; Strippers and Form Movers (wood and steel)

Rock Shaft, Concrete Lining of Same and Tunnel in Free Air:

Group 6-H: Change House Attendants

Group 6-F: Laborers; Topside

Group 6-G: Brakeman; Trackman; Tunnel Laborers; Shaft Laborees

Group 6-H: Miner, Cage Tender; Bellman

LABORERS CLASSIFICATIONS (Cont'd)

OPEN AIR CAISSONS, UNDERPINNING And TEST BORING INDUSTRIES:

Includes installation and performance of caissons of all types, underpinning, soil test borings, core borings, diamond drill soundings, wash borings, auger borings, shot drilling, grouting (cement, chemical, etc.), installation of earth and rock anchors, tiebacks, ground water observation wells and monitoring wells, installation of instrumentation, drilling and installation of horizontal drains, lagging (carrying of bands and setting bands in place), installation and extraction of grout pipes, pit work, hand excavation and labor required in piledriving and related work, welding of caissons not driven by pile driving equipment, pouring of concrete piles and caissons of all types, cutting-off concrete piles and clean-up:

Air Air Caisson, Underpinning Work and Boring Crew:

Group 1-A: Laborers; Top Man

Group 1-B: Bottom Man

Test Boring:

Group 2-A: Laborers

Group 2-B: Driller

POWER EQUIPMENT OPERATORS CLASSIFICATIONS
AREA 1

BUILDING CONSTRUCTION

Group 1: Shovels; Cranes (including all Tower, Climbing and Bridge Cranes, as used in Building Construction); Hydraulic Cranes, 10 ton capacity or over; Draglines; Derricks; Elevators with Chicago Boom; Backhoes; Gradalls; Elevating Graders; Pile Driving Rigs; Concrete Road Pavers; all three Drum Hoisting and Trenching Machines; Belt-type Loaders; Front End Loaders, 5½ yds. or over; Dual Drum Paver; Automatic Grader (i.e. C.M.I.); Combination Backhoe/Loader, 3/4 yd. or over; Jet Engine Dryer; Tree Shredder; Post Hole Digger; Post Hole Hammer; Post Extractor; Truck-mounted Concrete Pump with Boom; Roto-mill

Group 2: Rotary Drill (with mounted Compressor); Compressor House (3 to 6 Compressors); Rock and Earth Boring Machines (excluding McCarthy and similar Drills); Graders; Front End Loaders, 4 yds. to 5½ yds.; two Drum Hoists; High Fork Lifts with capacity of 15 ft. and over; Scraper, 21 yds. and over (struck load); Sonic Hammer Console; Road Planer; Cal Tracks; Ballast Regulators; Rail Anchor Machines; Switch Tampers

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POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 1 (Cont'd)

BUILDING CONSTRUCTION (Cont'd)

Group 3: Combination Backhoe/Loader, up to 3/4 yd. Hoe; Bulldozers; Push Cats; Scrapers, up to 21 yds. (struck load) (self-propelled or tractor drawn); Tireman; Front End Loaders, up to 4 yds.; Asphalt Paver; Well Drillers; Mechanics; Welder; Pumpcrete Machines; Concrete Pumps and similar type Pumps; Engineer or Fireman on High Pressure Boiler (on job); Self-loading Batch Plant; Well Point Operators (including installing); Electric Pumps used in Well Point System; Pumps, 12 inches and over (total discharge); Compressor, one or two 900 cu. ft. and over; Engineers in charge of Powered Grease Truck; all Automatic Elevators (permanent or temporary)(operated manually or remote control) (not to be confused with elevators operating from conventional hoist, 1, 2, or 3 drum); Grout Pumps; Boom Truck; Hydraulic Cranes, under 10 ton

Group 3-A: Asphalt Rollers; Self-powered Rollers and Compactors; Tractor without blade drawing Sheepsfoot Roller; Rubber Tire Roller; Vibratory Roller, or other type of Compactors including Machines for pulverizing and aerating Soil

Group 4: Single Drum Hoist; Power Pavement Breakers; Concrete Pavement Finishing Machines; Two Bag Mixers with Skip; McCarthy and similar Drills; Batch Plants (not self-loading); Bulk Cement Plants; Self-propelled Material Spreaders; A-Frame Trucks; Fork Lifts, up to 15 ft.; 3 or more 10 KW Light Plants; 30 KW or more Generators

Group 5: Compressors (one or two)(315 cu. ft. to 900 cu. ft.); Pumps, 4 inches to 12 inches (total discharge)

Group 6: Compressors, up to 315 cu. ft.; Small Mixers; Pumps, up to 4 inches; Power Heaters, except when 3 or more Heaters are used on one job, classification 4 rate shall be paid; Welding Machines, except when 3 or more Welding Machines are used on one job, classification 4 rate will be paid; Conveyors; Oiler; Helpers on Grease Trucks with hand greasing equipment

Group 7: Truck Crane Crews

Group 8: Oiler

Group 9: Master Mechanic

Group 10: Boom lengths over 184 ft. including Jib

Group 11: Boom lengths over 225 ft., including Jib

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 1 (Cont'd)

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Shovels; Crawler and Truck Cranes; Derricks; Backhoes; Trenching Machines; Elevator Graders; Belt-type Loaders; Gradalls; Pile Drivers; Concrete Pavers, On-site Processing Plant (Engineer in charge); Dragline; Clamshell; Cableways; Shaft Hoists; Mucking Machines; Front End Loader, 5½ yds. and over Tower Cranes; Self-propelled Hydraulic Cranes, 10 tons and over; Dual Pavers; Automatic Grader, Excavator (C.M.I. or equal); Scrapers towing Pan or Wagon; Tandem Dozers or Push Cats (2 units in Tandem); Welder using Semi-automatic Welding Machine; Shotcrete Machine; Tunnel Boring Machine; Combination Back Hoe/Loader, 3/4 yd. Hoe or over; Jet Engine Dryer; Tree Shredder; Post Hole Digger; Post Hole Hammer; Post Extractor; Truck mounted Concrete Pumps with boom; Roto-mill

Group 2: Rotary Drill, with mounted Compressor; Compressor House, 3 to 6 Compressors; Rock and Earth Boring Machines, excluding McCarthy and similar Drills; Grader; Front End Loaders, 4 yds. to 5½ yds.; Scraper, 21 yds. and over (struck load); Forklifts, 7 ft. lift and over or 3 ton capacity and over; Sonic Hammer Console; Road Planer; Cal Tracks; Ballast Regulators; Rail Anchor Machines; Switch Tampers

Group 3: Bulldozer; Push Cats; Scrapers, up to 21 yds., struck load, self-propelled or Tractor Drawn; Self-powered Asphalt Paver; Front End Loaders, up to 4 yds.; Mechanics, Welders; Well Driller; Pumpcrete Machine; Engineer or Fireman on High Pressure Boiler (on job); Self-loading Batch Plant (on job); Well Point Operators; Electric Pumps used in Well Point System; Tireman; Pumps, 16 in. or over total discharge; Compressors (1 or 2) 900 cu. ft. and over; Powered Grease Truck; Tunnel Locomotives and Dinkeys; Grout Pumps; Hydraulic Jacks (jacking pipe, slip forms, etc.); Boom Truck, self-propelled Hydraulic Cranes, up to 10 ton; Combination Backhoe Hoe/Loader, up to 3/4 yd. Hoe

Group 3A: Asphalt Rollers; Self-powered Rollers and Compactors; Tractor without blade drawing Sheeps Foot Roller; Rubber Tire Roller; Vibratory Roller or other type of Compactors including Machines for pulverizing and aerating soil

Group 4: Hoists; Conveyors; Power Pavement Breaker; Self-propelled Material Spreader; Self-powered Concrete Finishing Machine; Two bag Mixer with Skip; McCarthy and similar Drills; Batch Plant (not self-loading); Bulk Cement Plant; 3 or more 10 KW Light Plants; 30 KW or more Generators

Group 5: Compressor, 315 cu. ft. to 900 cu. ft., 1 or 2; Pumps, 4" to 16" total discharge

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 1 - HEAVY and HIGHWAY CONSTRUCTION (Cont'd)

Group 6: Compressor, up to 315 cu. ft.; Small Mixers with Skip; Oiler; Pumps up to 4"; Grease Truck; Helper on powered Grease Trucks; Power Heaters; Welding Machines, when 3 or more Welding Machines are used, Classification 4 rate shall be paid; A-Frame Trucks; Forklifts, up to 7 ft. Lift and up to 3 ton capacity; Hydro Boom; Power Safety Boat

Group 7: Truck Crane Crews

Group 8: Oiler

Group 9: Master Mechanic

Group 10: Boom Lengths over 184 feet, including Jib

Group 11: Boom Lenghts over 225 feet, including Jib

AREA 2

BUILDING CONSTRUCTION

Group 1: Cranes; Shovels; Truck Cranes; Cherry Pickers; Dragline; Trench Hoes; Backhoes; Three Drum Machines; Derricks; Pile Drivers; Elevator Towers; Hoists; Gradalls; Shovel Dozers; Front End Loaders; Fork Lifts; Augers; Boring Machines; Rotary Drills; Post Hole Hammers; Post Hole Diggers; Pumpcrete Machines; Asphalt Plant, on site; Concrete Batching and/or Mixing Plant, on site; Crusher Plant, on site; Paving Concrete Mixers; Timber Jacks

Group 2: Sonic or Vibratory Hammers; Graders; Tandem Scrapers; Concrete Pumps; Bulldozers; Tractors; York Rakers; Mulching Machines; Portable Steam Boiler; Portable Steam Generators; Rollers; Spreaders; Tampers (self-propelled or tractor drawn); Asphalt Pavers; Mechanics Maintenance; Paving Screed Machines; Stationary Steam Boilers; Paving Concrete Finishing Machines; Cal track; Ballast Regulators; Switch Tampers; Rail Anchor Machinery; Tire Trucks (when operated by the employer on the job site)

Group 3: Pumps, 1-3 grouped; Compressors; Welding Machines, 1-3 grouped; Generators; Concrete Vibrators; Lighting Plants; Heaters (power driven, 1-5); Well-point Systems, operating and installing; Syphones/Pulsometers; Concrete Mixers; Valves controlling Permanent Plant, air or steam; Conveyors; Jackson type Tampers; Single Diaphragm Pump; Lighting Plants

Group 4: Assistant Engineers (Fireman)

Group 5: Assistant Engineers (other than Truck Cranes and Gradalls)

Group 6: Assistant Engineers (on Truck Cranes and Gradalls)

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 2 (Cont'd)

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Power Shovels; Cranes; Truck Cranes; Derricks; Pile Drivers; Trenching Machines; Mechaniclal Hoist Pavement Breakers; Cement Concrete Pavers; Draglines; Hoisting Engines; Three Drum Machines; Pumpcrete Machines; Uka Loaders; Shovel Dozers; Front End Loaders; Mulching Machines; Shaft Hoists; Steam Engine; Backhoe; Gradalls; Cable Ways Fork Lifts; Cherry Pickers; Boring Machines; Rotary Drills; Post Hole Hammer; Post Hole Diggers; Asphalt Plant on job site, Concrete Batching and/or Mixing Plant on job site; Crusher Plant on job site; Paving Concrete Mixers; Timber Jacks

Group 2: Sonic or Vibratory Hammers; Graders; Scrapers; Tandem Scrapers; Bulldozer; Tractors; Mechanic Maintenance; York Rakes; Mulching Machines Paving Screed Machines; Stationary Steam Boilers; Paving Concrete Finishing Machines; Grout Pumps; Potable Steam Boilers; Portable Steam Generators; Rollers; Spreaders; Asphalt Pavers; Locomotives or Machines used in place thereof; Tampers, self-propulled or tractor drawn; Cal Tracks; Ballast Regulators; Rail Anchor Machines; Switch Tampers

Group 3: Pump, 1-3 grouped; Compressors; Welding Machine, 1-3 grouped; Generators; Lighting Plants; Heaters, power driven, 1-5; Syphons/Pulsometers; Concrete Mixers; Valves controlling Permanent Plant, air or steam; Conveyors; Wellpoint System, operating and installing

Group 4: Assistant Engineers (Fireman)

Group 5: Assistant Engineers (other than Truck Cranes and Gradalls)

Group 6: Assistant Engineers (on Truck Cranes and Gradalls)

MARINE CONSTRUCTION

Group 1: Shovels; Cranes; Truck Cranes; Cherry Pickers; Derricks; Pile Drivers two or more Drum Machines; Lighterns; Derrick Boats; Trenching; Mechanic Hoists; Pavement Breakers; Cement Concrete Pavers; Draglines; Hoisting Engines; Pumpcrete Machines; Elevating Graders; Shovels; Dozers; Front End Loaders; Backhoe; Gradalls; Cable Way; Boring Machines; Rotary Drills; Post Hole Hammer; Post Hole Diggers; Fork Lifts; Timber Jacks; Asphalt Plant (on site); Concrete Batching and/or Mixing Plant (on site); Crusher Plant (on site); Paving Concrete Mixers

Group 2: Portable Steam Boilers; Portable Steam Generators; Sonic or Vibratory Hammer; Graders; Scrapers; Tandem Scrapers; Concrete Pumps; Bulldozers; Tractors; York Rakers; Mulching Machines; Rollers; Spreader; Tamper, self-propelled or tractor drawn; Asphalt Pavers; Concrete Mixers with side Loaders; Mechanics, maintenance; Cal Track; Ballast Regulator; Switch Tampers; Rail Anchor Machines; Tire Trucks

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POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Cont'd)
AREA 2 - MARINE CONSTRUCTION (Cont'd)

Group 3: Pumps; Compressors; Welding Machines; Heaters (power driven); Valves controlling Permanent Plant, air or steam; Well Point Systems; Augers, powered by Independence Engines and attached to Pile Drivers; Hydraulic Saws; Generators; Lighting Plants; Syphons-Pulsometers; Concrete Mixers; Conveyors

Group 4: Assistant Engineers (Firemen)

Group 5: Assistant Engineers (other than Truck Cranes and Gradalls)

Group 6: Assistant Engineers (on Truck Cranes and Gradalls)

TRUCK DRIVERS

Group 1: Station Wagons; Panel Trucks and Pickup Trucks

Group 2: Two Axle Equipment; Helpers on Low Bed when assigned at the discretion of the employer; Warehousemen; Forklift Operators

Group 3: Three axle equipment and Firemen

Group 4: Four and five axle equipment

Group 5: Specialized earth moving equipment, under 35 tons other than conventional type trucks; Low Bed; Vac-haul; Paving Restoration equipment; Mechanics

Group 6: Specialized earth moving equipment over 35 tons

Group 7: Trailers for earth moving equipment (double hookup)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

SUPERSEDEAS DECISION

STATE: MINNESOTA
COUNTIES: BIG STONE, CHIPPEWA, DOUGLAS, GRANT, KANDIYOHI, LAC QUI PARLE, POPE, RENVILLE, STEVENS, SWIFT, & TRAVERSE
DECISION NUMBER: MN84-5010 DATE: Date of Publication
Supersedes Decision Number MN81-2065, dated December 11, 1981 in 46 FR 60755
DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$12.85	$.95
CEMENT MASONS	13.31	2.01
IRONWORKERS	13.90	2.71
LABORERS:		
Common	8.38	
Pipelayers	8.50	
Rakers	8.47	1.03
TRUCK DRIVERS:		
Bituminous Distributor Driver	10.11	1.03
Five Axle	10.46	.72
Lowboy	10.46	.72
Packer	9.43	.88
Single; Two Axle	8.34	
Tandem	10.02	.72
Wheel Tractor	9.43	1.03

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor Spreader	$11.33	$.72
Asphalt Plant; Bituminous Plant	11.21	.45
Cranes; Derricks; Draglines; Backhoes; & Boom Truck Ops.	12.03	1.97
Crusher & Screening Plant	11.33	.72
Fireman	10.11	1.03
Front End Loader (Up to 1 cubic yard)	8.50	.72
Front End Loader (Over 1 cubic yard)	10.92	.96
Grader Operator; Blade Op.	10.89	.84
Mechanics	10.91	.72
Motor Patrols; Blade Op. (Finish); & Grader (Finish)	11.33	.72
Rollers, Self-Propelled	10.02	.72
Rollers (Over 6 Tons)	10.50	.86
Screedman	10.86	.89
Tractor; Bulldozer	10.91	.72
Turnapull	9.87	.55

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

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March 30, 1984

Part IV

Department of Energy

Federal Energy Regulatory Commission
Interstate Commerce Commission

18 CFR Parts 341, 342, 343, 344, 345, 346, and 347
49 CFR Part 1300
Transfer of Oil Pipeline Regulations; Final Rule

49 CFR Part 1300
Revision of Tariff Regulations, All Carriers; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 341, 342, 343, 344, 345, 346, and 347

49 CFR Part 1300

[Docket No. RM83-78-000; Order No. 367]

Transfer of Oil Pipeline Regulations

Issued: March 23, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is transferring oil pipeline regulations to Title 18 of the Code of Federal Regulation (CFR), which title concerns areas under Commission jurisdiction, from Title 49 of the CFR, which deals primarily with the work of the Interstate Commerce Commission (ICC). These regulations are currently published in Title 49 of the CFR because oil pipelines came under the jurisdiction of the ICC before the 1977 Department of Energy Organization Act transferred jurisdiction to the Commission. This transfer will avoid confusion since the ICC intends to revise the regulations in 49 CFR in the near future.

EFFECTIVE DATE: July 2, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Background

Jurisdiction over oil pipelines, as related to the establishment of rates or charges for the transportation of oil by pipeline and to the establishment of valuations for oil pipelines, was transferred in 1977 from the Interstate Commerce Commission (ICC) to the Federal Energy Regulatory Commission (Commission) under sections 306 and 402(b) of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7155 and 7172(b) (Supp. V 1981), and Executive Order No. 12,009, 3 CFR Part 142 (1978). Section 705(a) of the DOE Act further provides that regulations relating to functions transferred to the Commission shall continue in effect until modified by the Commission. 42 U.S.C. 7295(a) (Supp. V 1981). When the DOE Act became effective, the regulations relating to the Commission's jurisdiction over oil pipelines were in Title 49 of the Code of Federal Regulations (CFR).

Soon after the effective date of the DOE Act, the Commission also announced that regulations in Title 49 of the CFR that relate to the Commission's jurisdiction over oil pipelines would remain in effect until modified.[1] Effective January 28, 1981, the Commission transferred most of these ICC regulations from 49 CFR to 18 CFR.[2] However, regulations related to various oil pipeline filings and applications in Parts 1002, 1010, 1300, 1301, 1305, 1330, and 1331 of Title 49 were not transferred at that time. On July 7, 1983, the ICC announced that it intends to remove most or all of these regulations from 49 CFR on or before February 1, 1984.[3]

To avoid a confusing hiatus with respect to these regulations and to effect the most efficient and least costly relocation of these regulations, the Commission by this rule is transferring those Parts into Title 18 of the CFR. This action is being coordinated with the ICC.[4]

II. Amendments to Title 18

The rulemaking will transfer to 18 CFR the regulations in Parts 1002, 1010, 1300, 1301, 1305, 1330 and 1331 of 49 CFR that are applicable to the Commission's oil pipeline jurisdiction.[5] Part 1002 covers the fees charged by the Commission for services rendered to oil pipeline companies. Part 1010 covers competitive bids under section 10 of the Clayton Antitrust Act. Parts 1300, 1301, and 1305 cover the construction, posting, and filing of pipeline tariffs and related documents. Part 1330 governs the filing of quotations for government shipments at reduced rates. Part 1331 addresses applications under section 5a of Interstate Commerce Act for authority to establish and control agreements between or among carriers.

The transfer of these Parts will add to 18 CFR basically the same regulatory text that existed at the time the DOE Act took effect in 1977 and that still remains in effect today. The rule, however, makes minor editorial modifications that are necessary because of the transfer. For example, the rule revises the cross-references to sections that are being redesignated when transferred to 18 CFR. However, no substantive changes are intended by these revisions.

This rulemaking completes the Commission's previously stated goal of publishing the regulations related to its jurisdiction over oil pipelines in 18 CFR. This effort generally will have three positive impacts on the regulated pipelines, the public, and the Commission itself. First, the regulations applicable to the Commission's oil pipeline jurisdiction will continue to be printed in the CFR without the hiatus that would otherwise result from the ICC's actions. Second, the transfer will eliminate any confusion caused by the ICC's post-1977 amendments to Part 1300 that may appear to affect the regulations applicable to oil pipelines, but which as a legal matter under section 705(a) of the DOE Act do not actually do so. Third, the transfer will benefit the public, the oil pipelines, and the Commission by combining the Commission's regulations into one Title, 18 CFR.

III. Paperwork Reduction Act Statement and Effective Date

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3520 (Supp. V 1981), and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1984), require that OMB approve certain information collection requirements or revisions thereof imposed by agency rule. Therefore, all information collection revisions in this rule are being submitted to OMB for its approval.

Interested persons can obtain information on these information collection provisions by contacting the Office of the General Counsel, Rulemaking and Legislative Analysis Division, Federal Energy Regulatory Commission, RC-421, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Joseph Hartsoe (202) 357-8033). Comments relating to the burden imposed by the proposed information collection provisions may be sent to the Officer of Information and Regulatory Affairs of OMB (Attention: Desk Office for the Federal Energy Regulatory Commission).

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[1] Interim Regulations for the Operations of the Federal Energy Regulatory Commission, "Order Providing for the Continuation of Functions Vested in, or Delegated to, the Federal Energy Regulatory Commission," 42 FR 55450 (October 17, 1977) (Docket No. RM78-1-000, Order No. 1).

[2] Final Rule, "Redesignation of Oil Pipeline Regulations," 46 FR 9043 (Jan. 28, 1981) (Docket No. RM81-6-000, Order No. 119).

[3] 48 FR 31265 (July 7, 1982).

[4] The Interstate Commerce Commission is publishing a final rule contemporaneously with this order that redesignates regulations from Title 49 of the CFR to Title 18 of the CFR.

[5] The word "transfer" as used in this docket does not mean that the ICC is entirely eliminating every one of these regulations from 49 CFR. Rather, the ICC may retain parts of the regulations insofar as they affect companies that are still subject to the ICC's regulatory jurisdiction. As a result, even though the term "transfer" is used to most accurately portray the technical form of this rule, there are instances when the Commission will as a practical matter be duplicating some regulations that will also be retained by the ICC.

This final rule concerns solely matters of agency practice and procedure because it transfers existing regulations from 49 CFR to 18 CFR and editorially revises these rules to ensure clarity of scope. These changes will aid oil pipelines subject to the Commission's jurisdiction in locating, understanding, and meeting the applicable procedural requirements. The Commission, therefore, finds pursuant to section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), that prior notice and opportunity for public comment are unnecessary.

The ICC has decided to remove Part 1300 from 49 CFR effective July 2, 1984. In addition, information collection revisions of this rule are being submitted to OMB for clearance. Therefore, this rule will become effective on July 2, 1984. If the necessary OMB approvals and control numbers have not been received by that effective date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects

49 CFR Part 1300

Oil pipelines, Tariffs.

18 CFR Parts 341, 342, 343, 344, and 345

Oil pipelines, Tariffs.

18 CFR Part 346

Oil pipeline fees.

18 CFR Part 347

Oil pipeline, Transportation.

In consideration of the foregoing. Part 1300 of Title 49, Chapter X and Parts 341, 342, 343, 344, 345, 346, and 347 of Title 18, Chapter I, Code of Federal Regulations, are amended as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

I. Part 1300 of 49 CFR Chapter X is removed from Title 49 and transferred to 18 CFR Chapter I and redesignated as Part 341; the sections are redesignated accordingly; and the Part title and section heading for § 341.57 are revised to read as follows:

PART 341—OIL PIPELINE TARIFFS: PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT AND CARRIERS JOINTLY THEREWITH

* * * * *

341.57 Newly constructed pipelines.

* * * * *

II. The authority citation for 18 CFR Part 341 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12009, 3 CFR Part 142 (1978).

III. 18 CFR Part 341 is amended as follows:

a. By changing all references to "Interstae Commerce Commission" throughout Part 341 to read "Federal Energy Regulatory Commission";

b. By changing all references to "Interstate Commerce Commission, Washington, D.C. 20423" throughout Part 341 to read "Federal Energy Regulatory Commission, Washington, D.C. 20426";

c. By changing all references to "ICC" or "I.C.C." throughout Part 341 to read "FERC";

d. By removing the "NOTE:" and "CROSS REFERENCE" that precede § 341.0;

e. By revising § 341.0(a)(1) to read as follows:

§ 341.0 General provisions; definitions.

(a) *General application; conformation to rules; reissue.* (1) This part contains regulations issued by the Interstate Commerce Commission under the Interstate Commerce Act, as amended and transferred to the Federal Energy Regulatory Commission under authority of section 705(a) of the Department of Energy Organization Act, as amended, to govern the construction and filing of tariffs of pipeline companies filing under the Interstate Commerce Act. The regulations in this Part shall also govern the construction and filing of tariffs naming through routes and joint rates over the lines of common carriers by pipeline subject to the Interstate Commerce Act, on the one hand, and vessel-operating common carriers by water engaged in the foreign commerce of the United States, as defined in the Shipping Act, 1916, on the other hand, for the transportation of oil between any place in the United States and any place in a foreign country. See § 341.67.

* * * * *

§ 341.1 [Amended]

f. In § 341.1(a), by removing the words "size 8 by 11 inches" and inserting, in their place, the words "size 8½ by 11 inches";

g. In § 341.3, by removing paragraph (f)(3) and by revising paragraphs (b), (f)(1), (f)(2) and (h) to read as follows:

§ 341.3 Content of title page.

* * * * *

(b) On the upper right-hand corner, the FERC identification, in which each carrier or agent numbers each new issue consecutively. (All tariffs filed after January 1, 1985 must use a FERC identification number.) The type shall be bold-face and of not less than 12 point. Immediately under this number, in smaller type, shall be shown the FERC number of each tariff or the number of each supplement cancelled thereby. If the number of cancelled publications is so large as to render it impracticable to thus enter them on the title page, they must be shown immediately following the table of contents, provided specific reference thereto is entered on the title page directly under the FERC number.

* * * * *

(f)(1) Reference by name and FERC number to the rules tariff, if any, governing the tariff. The following form modified as required shall be used.

Governed, except as otherwise provided herein, by rules and regulations shown in FERC No. ——, supplements thereto or successive issues thereof.

(2) A tariff is not governed by a rules tariff, except when and to the extent stated on or in the tariff.

* * * * *

(h) On every tariff or supplement in which all the rates, rules, or regulations are made effective on less than 30 days' notice under authority of the Commission, notation that it is issued on ——— days' notice under authority of ——— (here show the authority).

* * * * *

h. In § 341.3(d), by removing the words "class or" and "or both"; and by removing the words "all-rail, rail-motor, all water, or rail-water rates" and inserting, in their place, the words "all-pipeline or intermodal pipeline rates";

i. By amending § 341.4 as follows:

1. In paragraph (c)(1), by removing the words "coal "Coal" " and inserting, in their place, the words "petroleum, "Petroleum" "; and removing the words " "Coal, anthracite," "Coal, bituminous," " and inserting, in their place, the words " "Petroleum, crude," "Petroleum Products, butane,";"

2. In paragraph (c)(3), by removing the words "or a combined class and commodity tariff";

3. In paragraph (d), the title is revised to read "*Index of origins and destinations.*"; and in paragraph (d)(1) by removing from the second sentence the words "station numbers" and inserting, in their place, the word "points";

4. In paragraph (d)(2), by removing the word "railroad" and inserting, in its place, the word "pipeline"; and by removing the words "as provided in § 1300.15";

5. In paragraph (d)(6), by removing the words "or when the points in a tariff are

arranged by States as authorized in paragraph (j) of this section";

6. By removing paragraphs (f), (h)(4)(i), (h)(4)(ii), and (k)(2)(iii) in their entirety; by adding a new paragraph (e), and by revising paragraphs (h)(2), (h)(4), (h)(8), (i)(1), (i)(7), and (k)(2)(ii) to read as follows:

§ 341.4 Content of tariffs.

* * * * *

(e) *Public holding out.* (1) Tariffs must contain only rates, charges, and related provisions that cover services in strict conformity with each carrier's public holding out. No provision may be published in tariffs, supplements, or revised pages which results in restricting service to less than the carrier's full obligation to the public to provide and furnish transportation or which exceeds such carrier's lawful public holding out.

(2) Unless each tariff filed on and after the effective date hereof contains a certification by the carrier filing the same that, with respect to all of the services described therein (except those services being published for the first time), it is in fact (i) fully offering and, when requested, impartially providing all of its obligated services, and (ii) fully observing all requirements of law and the regulations prescribed by the Commission, the tariff or supplement will be rejected until such time as certification thereof is made. Such service includes service on c.o.d., freight-collect, and order-notify shipments, including such services on shipments transported under combinations of rates.

* * * * *

(h) *Rules governing the tariffs.*

* * * * *

(2) Each rule or regulation should be given a separate number; portions which can be understandingly read without recourse to the whole may be published in separate paragraphs, and such paragraphs be given subnumbers or letters.

* * * * *

(4) Where it is not desirable or practicable * * * except as follows: The following tariffs will not be counted in applying the provisions of this section: Tariffs containing exclusively rules, regulations, and/or charges applying to the special services covered by § 341.10(a); tariffs containing rules and regulations governing the transportation of explosive materials and other dangerous substances.

* * * * *

(8) Tariffs which contain rates for the transportation of explosive materials and other dangerous substances must also contain the hazardous material regulations of the Department of Transportation governing the transportation thereof, must bear specific reference to the FERC number of the publication which contains such rules and regulations. When the latter plan is adopted, the tariff referred to shall contain no matter other than the regulations promulgated by the Department of Transportation.

* * * * *

(i) *Rates.* (1) An explicit statement of the rates, in cents or in dollars and cents, per 100 pounds, per ton, per gallon, per barrel, or other unit, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated plans or ambiguous terms must not be used.

* * * * *

(7) Minimum volumes governing the application of commodity rates must be specifically stated in immediate conjunction with such rates or shown in such manner as will avoid an extensive search therefor, except as provided in paragraph (i)(5) of this section.

* * * * *

(k) *Routing.*

* * * * *

(2) When in a tariff. * * *

* * * * *

(ii) Where complete through routes are shown in connection with joint rates (either in the rate tariff or in a routing guide or guides to which it is subject), such rates may be made subject to the separate routing guides of any of the carriers parties thereto for internal routing over their respective lines.

7. In paragraph (h)(3), by removing the words "§§ 1300.7(c)," and inserting, in their place, "§";

8. In paragraph (i)(8), by removing the word "articles" throughout the paragraph and inserting, in its place, the word "products"; and by removing the words "Iron and steel articles" and inserting, in their place, the words "Petroleum products"; and by removing the words "weight (or weights)" throughout the paragraph and inserting, in their place, the words "volume (or volumes)";

9. In paragraph (i)(9), by removing the words "article or articles" throughout the subparagraph and inserting, in their place, the words "product or products";

10. In paragraph (i)(10), by removing the words "or a combined class and commodity tariff" in the first sentence; by removing the words "class or" in the fourth sentence; and by removing the word "Staves," in the third sentence and inserting, in its place, the word "Butane,";

11. In paragraph (k)(1), by removing the word "lines" throughout the subparagraph and inserting, in its place, the word "pipeline";

12. In paragraph (k)(3), by removing from the first sentence the word "railroad" and inserting, in its place, the word "pipeline"; by removing the second paragraph in paragraph (k)(3) in its entirety;

13. In paragraph (k)(5), by removing from the example the words "pronounced traffic congestion" and inserting, in their place, the words "capacity shortage"; by removing from the example the word "wreck,"; and by removing from the example the word "lines" and inserting, in its place, the word "pipelines";

14. In paragraph (m)(3), the symbol and words "* to denote prepay stations or points" are removed in their entireties.

15. By removing paragraphs (d)(4) and (d)(5) in their entirety and redesignating paragraph (d)(6) as (d)(4);

16. By removing paragraphs (i)(4), (i)(5), (i)(6) and (i)(11) in their entirety and redesignating paragraphs (i)(7) through (i)(10) as paragraphs (i)(4) through (i)(7);

17. By removing paragraph (j) in its entirety and inserting, in its place, "(j) [Reserved].";

j. In § 341.5, by removing from the last sentence the word "traffic" throughout the sentence and inserting, in its place, the word "movements";

§ 341.6 [Amended]

k. By amending § 341.6 as follows:

1. In paragraph (a), by removing the parenthetical "(including tariffs of classification exceptions, but not classifications)";

2. In paragraph (b), by removing the comma and words "including tariffs of classification exceptions, but not classifications," following the words "other tariffs";

3. In paragraph (c), by removing from the parenthetical the words "Iron and Steel Articles" and inserting, in their place, the words "petroleum products"; and by removing from the last sentence the word "weights" and inserting, in its place, the word "volumes";

4. In paragraph (f), by removing from the first sentence the work "articles" and inserting, in its place, the word "products";

l. By amending § 341.7 as follows:

1. In paragraph (a), by removing the word "weight" throughout the paragraph

and inserting, in its place, the word "volume";

2. By removing the designation "(1)" from paragraph (a)(1) and by removing paragraph (a)(2) in its entirety;

3. By revising paragraph (b)(4) to read as follows:

§ 341.7 Alternating rates.

* * * * *

(b) *Alternative use of rates in sectional tariffs.*

* * * * *

(4) Each commodity tariff arranged in alternating sections shall also contain a section hereinafter referred to as the non-alternating section. That section shall contain only commodity rates which in all instances result in charges lower than would result from the application of the commodity rates in any other section. If the tariff contains only commodity rates, the non-alternating section shall be section 1. The title page of the non-alternating section shall contain either of the two following notations, as appropriate:

When rates are published in this section on a given shipment, such rates will apply to the exclusion of the rates in any other section.

or

When rates are published in this section on a given shipment, such rates will apply to the exclusion of the rates in any other section.

* * * * *

4. In paragraph (b)(6)(i), by removing the words "that class rates in one section may alternate with class rates in only one other section, and";

5. By removing paragraph (c) in its entirety;

§ 341.8 [Amended]

m. By amending § 341.8 as follows:

1. In paragraph (a)(2), by removing the last sentence of the paragraph;

2. In paragraph (e), by removing the words "or "Class rates will apply.";

n. By amending § 341.9 as follows:

1. By revising paragraphs (d)(3), (e)(11), (h), (i)(5), and (i)(6) to read as follows:

§ 341.9 Amendments and supplements.

* * * * *

(d) *Effective date: reissued matter.*

* * * * *

(3) Matter brought forward without change from a tariff which has not been in effect 30 days, also matter brought forward without change from one supplement to another, must be designated "Reissued" in distinctive type and must show the original effective date and the number of the supplement or tariff from which it is reissued; or must be uniformly indicated by the letter T in a square when reissued from another tariff or from a supplement to another tariff and by numerals commencing with 1 in squares when reissued from a prior supplement to the same tariff, printed in distinctive type and shown in a conspicuous manner, and the explanation thereof must be made in the tariff or supplement in which the symbols are used. Examples: "1 Reissued from FERC No. ——— or (supplement No. ——— to FERC No. ———), effective (date upon which item became effective in former tariff or supplement to another tariff ———, 19—)"; "1 Reissued from Supplement No. 1, effective ———, 19—", and so on numerically, the figures of the symbols always representing the number of the supplement to the same tariff from which the reissued item is brought forward. If items in a tariff or supplement are made effective on dates other than the general effective date shown on the title page, reissue of such items may be indicated in later publications by showing a letter suffix or other symbol in connection with, and as a part of, the letter T or the numerals in squares as authorized in this paragraph. When the reissued item became effective in a supplement to another tariff, the FERC number of that tariff must also be given.

* * * * *

(e) * * *

* * * * *

(11) Changes shall be indicated as required by § 341.2(a). Items which have been in effect 30 days or more need not be shown as reissued items on revised pages but may be republished as effective on 30 days' notice. Items which have not been in effect 30 days when brought forward on revised page must be shown as reissued in the manner prescribed in paragraph (d) of this section.

* * * * *

(h) *Supplement to tariff filed not yet effective.* (1) If a tariff is filed on statutory notice cancelling another tariff and after such filing a supplement to the tariff to be so cancelled should be issued effective prior to the general effective date of such new tariff, rates in such supplement could not continue in effect for the 30 days required by law because the cancellation of the former tariff also cancels supplements to it. In such a case, and confined to additions or to changes in rates or provisions which were brought forward in the new tariff without change, the provisions of paragraph (e) of this section need not be observed as to the old tariff, and a supplement making the same changes in or additions to both tariffs may be issued as supplements both to the tariff in effect and to the tariff which will effect cancellation, and be given both FERC numbers. In other words, such issue must be a supplement both to the old and the new tariffs and copies must be posted and filed accordingly. Only one such supplement may be in effect at any time.

(2) Rates or provisions which have been established in an old tariff and reproduced or reissued in a new tariff may be changed upon lawful notice by supplement to the new tariff, effective not earlier than the general effective date of the new tariff, by showing in the following manner in connection with the changed rates or provisions that the rates or provisions changed thereby have been in effect 30 days or more, in the former issue. Example: "Item 40–A cancels item 40. Item 40 effective ———, brought forward without change from Item No. ——— of FERC No. ——— (former issue)." New rates or provisions which do not change rates or provisions in either the old or new tariff may be established upon lawful notice by supplement to the new tariff, effective not earlier than the general effective date of the new tariff, by showing in the following manner, in connection with the new rates or provisions that the rates or provisions previously applicable have been in effect 30 days or more in a former issue, Example: "Addition. Changes commodity rates which became effective ——— in FERC No. ———." Unless the provisions of this paragraph are complied with no supplement to a tariff that is on file and not yet effective may be made effective within 30 days from the effective date of the tariff without special permission.

This section does not waive the requirements of §§ 341.14 and 341.54.

* * * * *

(i) *Complete adoption notice.*

* * * * *

(5) Tariffs issued by other carriers or agents in which the pipeline absorbed, taken over, * * *

(6) A similar adoption notice must immediately be filed by a receiver when he assumes possession and control of a carrier's lines. The adoption notice bears a FERC number and it must be consecutively numbered in the FERC series of the adopted carrier. When the receivership is terminated, the carrier taking over the properties shall file an adoption notice and shall also file supplements as hereinabove prescribed if a change in the name of the carrier has been made.

* * * * *

2. In paragraph (i)(1), by removing from the example the words "classifications," and "freight"; and by removing from the example the word "traffic" and inserting, in its place, the word "movements";

3. In paragraph (j)(1), by removing from the text of the example the word "classifications,"; and by removing the word "traffic" and inserting, in its place, the word "movement";

4. In paragraph (j)(6), by removing from the first sentence the word "line" and inserting, in its place, the word "pipeline";

5. In paragraph (k)(16), by removing the words "rule 9(k) of Tariff Circular No. 20" throughout the paragraph and inserting, in its place, the words "18 CFR 341.9(k)";

6. In paragraph (m), by removing the words "rule 9(m) of Tariff Circular No. 20" and inserting, in their place, the words "18 CFR 341.9(m)";

o. By amending § 341.10 as follows:

1. In paragraph (a), by removing the words "feeding, and grazing," and inserting, in their place, the words "odorization, coloration, filtration, loading and unloading, gathering, terminalling, in-line transfers, storage, batching, blending, commingling, etc.,"; and by removing the words "switching, floating,", "and drayage", and "icing, refrigeration,"; and by removing from the last sentence the words "traffic moving under less-than-carload or" and inserting, in their place, the words "volume moving under";

2. By amending paragraph (c) as follows:

A. In the title, by removing the words "switching, drayage, or";

B. In the first sentence, by removing the words "switching, drayage, or other transfer service"; and inserting, in their place, the words "transfer services";

C. In the second sentence, by removing the words "switching services" and inserting, in their place, the words "transfer services"; by removing the words "switching service" throughout the sentence and inserting, in their place, the words "transfer service"; and by removing the words "switching road" and inserting, in their place, the words "transferring line";

D. In the example at the end of the paragraph, by removing the words "switching, drayage, or other";

3. By amending paragraph (d) as follows:

A. By revising the title to read "(d) *Transfer charges.*";

B. By changing all references to "switching" throughout the paragraph to read "transfer";

C. In subparagraph (1), by removing the words "stations, warehouses, team, or industrial tracks, or other" and removing the words "within the switching limits, or must otherwise" and inserting, in their place, the words "or must";

D. In subparagraph (2)(ii), by removing the words "coal and coke" and inserting, in their place, the words "gasoline and diesel";

4. In paragraph (e), by changing all references to "switching" throughout the paragraph including the title to read "transfer";

5. By amending paragraph (f) as follows:

A. By revising the title to read "(f) *Transfer charges absorbed.*"

B. In the first sentence, by removing the words "for switching" and inserting, in their place, the words "for transfer"; by removing the words "such switching" and inserting, in their place, the words "such transferring"; and by removing the words "switching carrier" and inserting, in their place, the words "transferring carrier";

C. In the second sentence, by removing the words "switching charges" and inserting, in their place, the words "transfer charges";

D. In the third sentence, by removing the words "switching carrier" and inserting, in their place, the words "transferring carrier";

6. By revising paragraph (g)(1) to read as follows:

§ 341.10 Terminal and special services: Distance and mileage rates.

* * * * *

(g) *Distance rates may be used when no other rates provided.* (1) A carrier or an agent acting for two or more carriers may file tariffs containing distance or mileage commodity rates. Except as otherwise provided in §§ 341.7 and 341.27, distance or mileage commodity rates may be used only when no specific through commodity rates from and to the same points are provided. Except as otherwise provided in §§ 341.7 and 341.27, distance or mileage commodity rates will apply.

* * * * *

7. In paragraph (g)(6), by removing the words "notations for class or commodity or both class and commodity rates, as the case may be," and inserting, in their place, the words "notation for commodity rates,";

8. By removing paragraphs (g)(3) and (g)(5) and redesignating paragraph (g)(4) as (g)(3) and paragraphs (g)(6) and (g)(7) as paragraphs (g)(4) and (g)(5), respectively;

9. In paragraph (h), by changing throughout the paragraph all references to "station" to read "point"; all references to "stations" to read "points"; all references to "carload traffic" to read "volumes"; and all references to "railroad" to read "pipeline";

10. By removing paragraphs (i) and (j) in their entireties;

§ 341.11 [Amended]

p. By amending § 341.11 as follows:

1. In paragraph (a), by removing from the second sentence the word "all-rail" and inserting, in its place, the word "all-pipeline"; by removing from the fifth sentence the words "class and commodity tariffs, class tariffs"; by removing from the fifth sentence the words "billing books, classifications, exception sheets, switching tariffs," and inserting, in their place, the words "rules and regulations, loading/unloading, transfers,"; by removing from the seventh sentence the words " "Lumber, hardwood, Lumber, yellow pine" ", and inserting, in their place, the words " "Petroleum, crude, Petroleum, product" "; by removing from the eighth sentence, the words "class and commodity tariffs, and class tariffs,"; by removing from the ninth sentence the words "tariff publishing bureaus," throughout the sentence; and by removing from the ninth sentence the words "and classes";

2. In paragraph (b), by removing the words "Tariffs covering only specific circus movements and"; by removing the words "division sheets," in the third sentence;

3. By removing the "**Note**" at the end of the paragraph in its entirety;

q. By amending § 341.12 as follows:

1. By changing all references to "all-rail" to read "all-pipeline"; and

2. By revising the introductory text and paragraphs (a) and (e) to read as follows:

§ 341.12 Restoration and discontinuance of water service.

Tariffs containing pipeline-and-water rates applicable via routes upon which it is necessary to close navigation during a portion of each year, must provide for the restoration and discontinuance of service over such routes in the manner prescribed in paragraphs (a) to (e) of this section.

(a) *Notation on title page.* The following notation shall appear either (1) on the title page of the pipeline tariff, (2)

* * *

* * * * *

(e) *Tariffs may be reissued.* Tariffs containing pipeline-and-water rates may be reissued or amended at any time in the regular manner, but tariffs containing the clause prescribed by

paragraph (b) of this section which are made effective subsequent to the date of actual discontinuance of service must contain a statement that service was discontinued on ——— as per supplement No. ——— to FERC No. ——— (former tariff) and that supplement announcing discontinuance of service for that season will not be filed.

* * * * *

§ 341.13 [Amended]

r. In § 341.13, paragraph (c) is amended by removing the word "stations" and inserting, in its place, the word "offices";

s. By amending § 341.14 as follows:

1. By revising paragraphs (a) and (g) to read as follows:

§ 341.14 Statutory notice; additional procedure in filing tariffs.

(a) *Period of notice.* The act requires that all changes in rates, or in rules that affect rates, shall be filed with the Commission at least 30 days before the date upon which they are to become effective unless otherwise authorized by the Commission. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not statutory notice has been given. Therefore, except as otherwise authorized by the Commission, 30 days' notice to the public and to the Commission must be given as to every tariff publication filed with the Commission, regardless of whether or not changes are effected thereby. (See §§ 341.3(h), 341.9(d)).

* * * * *

(g) *Explanation of missing numbers required.* Tariffs bearing FERC numbers and supplements are required to be numbered consecutively. If, for any reason, this is not done, the tariff or supplement which is not numbered in sequence with the publication last filed must be accompanied by a memorandum explaining why consecutive numbers were not used.

* * * * *

2. In paragraph (f)(4), by removing the word "classifications,"; and by removing the word "statutory" and inserting, in its place, the words "thirty days";

3. In paragraph (h), by removing the word "classification,";

§ 341.15 [Amended]

t. By removing § 341.15 in its entirety and inserting, in its place, the following "§ 341.15 [Reserved].";

§ 341.16 [Amended]

u. By removing § 341.16 in its entirety and inserting, in its place, the following "341.16 [Reserved]."

§ 341.18 [Amended]

v. In § 341.18, paragraphs (b)(2), (c)(2) and (f)(2) are amended by removing the word "freight" from the examples;

§ 341.19 [Amended]

w. In § 341.19, paragraph (a) is amended by removing the word "freight" throughout the paragraph; and paragraph (c) is amended by removing the words "small or";

§ 341.20 [Amended]

x. In § 341.20, paragraph (b) is amended by removing the words "8 x 10½ inches" and inserting, in their place, the words "8½ x 11 inches";

§ 341.25 [Amended]

y. By amending § 341.25 as follows:

1. In paragraph (a), by removing the words "traffic officer" and inserting, in their place, the word "Officer";

2. In paragraph (c), all references to "rail-motor" throughout the paragraph (including the title) are changed to read "intermodal pipelines" and all references to "Rail-Motor" throughout the paragraph are changed to read "Intermodal Pipelines";

§ 341.27 [Amended]

z. By amending § 341.27 as follows:

1. In the introductory text, by removing the words "class or" and removing the parenthetical "(except for account of irregular-route motor carriers)";

2. In paragraph (b)(1), by removing the words "3, and 4" and inserting, in their place, the words "and 3"; and by removing **"Note 3"** in its entirety and redesignating **"Note 4"** as **"Note 3"**;

3. In paragraph (b)(2), by removing the words "3, and 4" and inserting, in their place, the words "and 3" and by removing **"Note 3"** in its entirety and redesignating **"Note 4"** as **"Note 3"**;

4. By removing paragraph (c) in its entirety;

5. In paragraph (d), by changing all references to "class (or commodity)" to read "commodity"; and all references to "classes (or commodities)" to read "commodities"; and by removing the word "stations" and inserting, in its place, the word "offices";

6. By redesignating paragraphs (d) through (f) as paragraphs (c) through (e), respectively;

aa. By adding a § 341.28 to read as follows:

§ 341.28 Tariff notations in connection with fourth section orders.

(a) *When relief from long-and-short haul provision is granted.* (1) When the Commission has issued an order granting to a carrier authority to depart from the provisions of the amended fourth section of the act and to charge higher rates for shorter than for longer distances over the same line or route, the title page of each tariff or supplement issued and filed under such authority must bear the following notation:

> This tariff (or supplement) contains rates that are higher for shorter than longer distances over the same route. Such departure from the terms of the amended fourth section of the Interstate Commerce Act is permitted by authority of Federal Energy Regulatory Commission fourth section order (or orders), as indicated in individual items herein.

(2) In connection with the item or items containing the rates as to which such authority has been granted, specific authority has been granted, specific reference to the Commission's fourth section order number and date must be given, except that in instances where all of the rates in the tariff or supplement are covered by one fourth section order references to the number and date thereof may be shown on the title page. When a general fourth section order is referred to, the particular section thereof granting such authority must be shown in addition to the order number.

(b) *When relief from aggregate of intermediate provision is granted.* (1) When the Commission has issued an order granting to a carrier authority to depart from the provisions of the amended fourth section of the Act and to charge rates higher than the aggregate of the intermediate rates subject to the act, the title page of each tariff or supplement issued and filed under such authority must bear the following notation:

> This tariff (or supplement), contains rates that exceed the aggregates of the intermediate rates subject to the Interstate Commerce Act. Such departure from the terms of the amended fourth section of the Act is permitted by authority of Federal Energy Regulatory Commission Fourth section order (or orders), as indicated in individual items herein.

(2) In connection with the item or items containing the rates as to which such authority has been granted, specific reference to the Commission's fourth section order number and date must be given, except that in instances where all of the rates in the tariff or supplement are covered by one fourth section order, reference to the number and date thereof may be shown on the title page. When a general fourth section order is referred to, the particular section thereof granting such authority

must be shown in addition to the order number.

(c) *When relief is denied.* When the Commission has denied authority to carriers to continue existing departures from the provisions of the amended fourth section of the act, but has not prescribed specific rates in lieu of those existing, and it becomes necessary for carriers to publish and file rates in full conformity with the provisions of that section, the rates so filed have not been approved by the Commission. Tariffs or supplements in which they are published should not indicate that they are prescribed by, or are in compliance with an order of the Commission. If desired, however, a clause reading substantially as follows may be shown:

Issued to bring rates into conformity with the provisions of the fourth section of the Interstate Commerce Act following the issuance by the Federal Energy Regulatory Commission of its fourth section order No.—— of ——— (date), denying carrier's application.

(d) *Fourth section not waived.* Nothing in this section may be construed as waiving any of the provisions of the amended fourth section of the Interstate Commerce Act.

§ 341.291 [Amended]

bb. By amending § 341.29 as follows:

1. In paragraph (a), by removing the words "8 by 10½ inches" and inserting, in their place, the words "8½ by 11 inches"; and by removing the words "GENERAL FREIGHT DEPARTMENT" from the example test;

2. In paragraph (b), by removing the sentence "Separate letters must be used for freight and passenger schedules.";

cc. IN § 341.30(b), by removing the comma and words "and publications reproducing service orders" following the words "announcing adoptions" in the last sentence;

§ 341.31 [Amended]

dd. By removing § 341.31 in its entirety and inserting, in its place, the following "§ 341.31 [Reserved].";

§ 341.51 [Amended]

ee. By amending § 341.51 as follows:

1. By removing paragraph (b) in its entirety;

2. In the last sentence of paragraph (c), by removing the word "articles" and inserting, in its place, the word "volumes"; by removing the word "returning" and inserting, in its place, the word "redeeming"; and by removing the words "have become shopworn or have gotten into a state of disrepair through use" and insert, in their place, the word "have been altered";

3. In paragraph (d), by removing from the last sentence the word "property" and inserting, in its place, the word "product";

4. By redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively;

§ 341.53 [Amended]

ff. In § 341.53, by removing the words "Not infrequently" and inserting, in their place, the words "On occasion";

gg. By adding a new § 341.54 to read as follows:

§ 341.54 Changes in rates.

Section 6(3) of the act, as amended, provides that:

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after 30 days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection.

(a) *Effectiveness; notice of change.* This provision plainly refers to rates which have already become effective, and also applies the term "proposed changes" to rates which have not become effective. It follows that after notice of a change in rates has been published and filed the new rates must be allowed to go into effect, and cannot be changed, withdrawn, or canceled for at least 30 days after the date when the rates have become effective except as otherwise specifically authorized by rule, decision, or order of the Commission. A tariff may provide that it will expire with a date specified therein and which is at least 30 days subsequent to the date upon which it becomes effective, or a tariff may contain a notation that certain rates therein stated will expire with a date specified which is at least 30 days subsequent to the date upon which such rates become effective, and this will be legal notice of the cancellation or withdrawal of such tariff or of such rates. A provision in a tariff or supplement that the same or any part thereof will expire with a given date is not a guaranty that the tariff, or supplement, or such part thereof, will remain effective until and including that date. Such provision must be understood to mean that the tariff, or supplement, or specified part thereof, will expire with the date named unless sooner canceled, changed, or extended in lawful way. (See § 341.3(g).)

(b) *Commission may allow exception.* Carriers must comply fully with the requirements of the law respecting the publication, filing, and taking effect of proposed rates, unless upon application and for good cause shown, the Commission, in the exercise of authority conferred upon it, shall allow rates to be changed or withdrawn upon less than 30 days' notice, or by formal order otherwise modify such requirements. No rule decision, or order of the Commission is authority to change rates or issue tariffs on less than statutory notice unless so specifically provided in the rule, decision, or order. (See § 341.14(f).)

§ 341.55 [Amended]

hh. In § 341.55, the "NOTE" is amended by removing from the first sentence the words "or gateway" and the words "or via a different gateway,";

ii. By adding a new § 341.56 to read as follows:

§ 341.56 Reduction of rate to equal the aggregate of the intermediate rates.

(a) Section 4 of the act, as amended, prohibits the charging of any greater compensation as a through rate than the aggregate of the intermediate rates that are subject to the act. The Commission has frequently held that through rates which are in excess of the sum of the intermediate rates between the same points via the same route are prima facie unreasonable. The Commission has no authority to change or fix a rate except after full hearing. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider a rate which is higher than the aggregate of the intermediate rates between the same points via the same route as prima facie unreasonable and that the burden of proof would be upon the carrier to defend such unreasonable rate.

(b) Where a rate is in effect by a given route from point of origin to destination which is higher than the aggregate of intermediate rates from and to the same points, by the same or another route, such higher rate may, on not less than 1 day's notice to the public and the Commission, be reduced to the actual aggregate of such intermediate rates. Such reduced rate must be published in a supplement to or a reissue of the tariff in which the rate so reduced appears. Any tariff or supplement containing a rate reduced under authority of this section must bear on its title page, or in connection with such item, the notation

"Issued on 1 day's notice under authority of 18 CFR 341.56. The rate (or rates) hereby reduced appears in ——— Tariff, FERC ———, item (or page) ———, and the factors to and from ——— (here insert point or points on which combination makes) used in making the new rate (or rates) are found in ———, Tariff, FERC No. ———, item (or page) ———, and ——— Tariff, FERC No. ———, item (or page) ———."

(c)(1) In order to facilitate the publication of rates which will be in accord with the aggregate of intermediates provision of the fourth section of the act the following rule may be incorporated in tariffs:

Carriers have endeavored to publish herein rates which do not exceed the aggregate of the intermediate rates between points between which there is an actual movement of traffic, but if there should be in this tariff any rate which is in excess of the aggregate of intermediates, or if through subsequent change in an intermediate factor any rate in this tariff becomes higher than the aggregate of intermediates in violation of the provisions of the fourth section of the Act, carriers will reduce such rates to the aggregate of the intermediate rates on 1 day's notice under authority of 18 CFR 341.56. On any commodity between points between which there is a movement or a prospective movement of that commodity. The publication of such reduced rate will be made within 30 days after such unlawful rate comes to carrier's notice.

Carriers, parties to this tariff, whose rate over the route of movement is higher than the aggregate of the intermediates over that route, further agree that on any shipment on which the higher rate named in this tariff for that route has been charged, application will be made promptly to the Federal Energy Regulatory Commission for authority to award reparation on the basis of the aggregate of intermediates in effect on date of shipment. (See note.)

Note.—Carriers or shippers who discover combinations which result in lower charges than the rates named herein, should promptly report such cases to the publishing agent of his tariff, showing the through rate and the item or page where it is found together with the separate factors which make up the combination, giving tariff reference by item or page, where possible, for each.

(2) In placing this rule in tariffs carriers must strictly adhere to the wording of the rule as no modification thereof will be permitted.

(3) The failure to publish and file reduced rates as provided in this part, within 30 days from the date that said rates are brought to the attention of the carriers parties thereto, or any of them, or their agents, will be considered by the Commission as sufficient ground for the issuance of an order prohibiting its use in connection with such carrier or carriers. A promise to publish certain rates, when published in a tariff, becomes the rule of the carriers parties to the tariff and therefore when a carrier or agent has been called upon to reduce rates under authority of the above rule it will not be necessary for such carrier or agent to secure any additional authority from the carriers parties to the tariff for the publication of the reduced rates and any delay on that account may cause carriers, to incur the penalties provided for violations of the fourth and sixth sections of the act in addition to losing the right to use the rule in tariffs.

jj. By amending § 341.57 as follows:

1. By revising the title to read "*Newly constructed pipelines*".

2. In paragraph (a), the first sentence is revised to read as follows:

§ 341.57 Newly constructed pipelines.

* * * * *

(a) * * * Charges applicable at, and rates, charges, rules or regulations applicable from, to, or via points on newly constructed pipelines including loops, branches and extensions of existing pipelines may be established in the first instance on not less than 10 days' notice.

* * * * *

3. In paragraph (b), by removing the word "classifications," throughout the paragraph; by removing from the example the words "rule 57, Tariff Circular 20" and inserting, in their place, the words "18 CFR 341.57"; and by removing from the example the words "stations on railroads (or pipeline or reached by water carrier, as case may be)." and inserting, in their place, the words "points on pipeline";

4. In paragraph (c), by removing the word "classifications," throughout the paragraph; by removing from the example the words "rule 57, Tariff Circular 20," and inserting, in their place, the words "18 CFR 341.57"; and removing the words "stations on railroads (or pipeline or reached by water carrier, as case may be)." and inserting, in their place, the words, "points on pipeline."; and removing the word "stations" and inserting, in its place, the word "points";

5. By revising paragraph (d) to read as follows:

* * * * *

(d) *Rates established may not be reduced by similar rates.* When a commodity rate has been established from, to, via, or between points on a newly constructed line, a different commodity rate from, to, via, or between the same points may not be established at a later date under authority of this section; but commodity rates may be established under authority of this section within the 60-day period prescribed herein. Interested carriers and publishing agents should be notified as much in advance of the opening of a newly constructed line as is possible in order that rates may be established which will give carriers and shippers fullest possible use of such newly constructed lines.

* * * * *

6. By removing paragraph (e) in its entirety;

§ 341.58 [Amended]

kk. By amending § 341.58 as follows:

1. In the title and paragraph (a), by changing the reference to "Section 10762" to read "Section 6";

2. In paragraph (a), by removing the words "less than statutory notice" and inserting, in their place, the words "a notice of less than 30 days";

3. In the first sentence of paragraph (c), by adding the words "sixth section" following the word "file" and removing the word "statutory" and inserting, in its place, the words "30 days' ";

4. In the last sentence of paragraph (c), by removing the number "10762" and by inserting the word "sixth" preceding the word "section";

5. In the second sentence of paragraph (d), by removing the number "10762" and by inserting the word "sixth" preceding the word "section";

6. By amending title of paragraph (e) to read:

(e) *Applications, form and number.* 7. By further amending paragraph (e) as follows:

A. By removing the word "in duplicate" in the first sentence and inserting, in its place, the word "with fourteen copies in conformance with Rule 2004 of Commission's Rules of Practice and Procedure.";

B. By removing the words "8 by 10½ inches" and inserting, in their place, the words "8½ by 11 inches";

C. In the first sentence under the words "Form of Application", by revising the number "10762" to read "6";

D. By removing from the example the word "articles" and inserting, in its place, the word "commodities"; and

E. By removing from the example the parenthetical "(state whether class, commodity or combination)";

11. By removing § 341.60 in its entirety and inserting, in its place, the following "§ 341.60 [Reserved].";

§ 341.63 [Amended]

mm. By removing § 341.63 in its entirety and inserting, in its place, the following "§ 341.63 [Reserved].";

§ 341.66 [Removed]

nn. By removing § 341.66 in its entirety and inserting, in its place, the following "§ 341.66 [Reserved].";

oo. By amending § 341.67 as follows:

(1) By revising paragraph (b)(1) to read as follows:

§ 341.67 Export and import traffic—ocean carriers.

* * * * *

(b) *Through routes and joint rates.* (1) A common carrier by pipeline subject to the Interstate Commerce Act (hereinafter referred to in this section as the domestic carrier), may establish a through route and joint rate with a vessel-operating common carrier by water engaged in the foreign commerce of the United States (hereinafter referred to in this section as the ocean carrier) as defined in the Shipping Act, 1916, for the transportation of property between any place in the United States and any place in a foreign country. Every tariff naming such a through route and joint rate shall be filed with this Commission. The tariff may be filed in the name of the ocean carrier, a conference of ocean carriers, the domestic carrier or the duly appointed tariff publishing agent of such carriers.

* * * * *

2. In paragraph (b)(2), by removing the words and parenthetical "Parts 1300 and 1305 (regulations in both parts included in Tariff Circular No. 20)" and inserting, in their place, the words "Parts 341 and 343"; by removing from the fourth sentence the words "and/or loaded containers"; by removing the sentence "If the tariff provides containerload rates, such rates must be made subject to a specified minimum weight or minimum measure per container, or a specified minimum charge per shipment per container, and a maximum weight per container."; by removing from the last sentence the words "freight is" and inserting, in their place, the words "volumes are"; and by removing from the last sentence the words "packed (loaded) or unpacked (unloaded) into or from the containers" and insert, in their place, the words "loaded or unloaded into or from the facilities";

(3) In paragraph (b)(5), by inserting in the third sentence the parenthetical "(such as tariffs (containing joint pipeline-ocean rates)" preceding the words "in which the domestic carrier desires";

4. By removing the "**Cross Reference**" at the end of the section and inserting, in its place, the following:

Cross Reference: For regulations governing the posting of tariffs of common carriers by pipeline see Part 343.";

pp. By removing the following sections or paragraphs in their entirety: §§ 341.2(a)(4); 341.9(n); 341.13(f); 341.32; 341.33; 341.34; 341.300, 341.310, 341.311, 341.312, 341.313, 341.314 and 341.315;

qq. By changing the following references throughout Part 341:

References to	Change to read
1300.0	341.0;
1300.2	341.2;
1300.2(b)	341.2(b);
1300.3(b)	341.3(b);
1300.3(g)	341.3(g);
1300.4	341.4;
1300.4(d)	341.4(d);
1300.4(h)	341.4(h);
1300.4(m)	341.4(m);
1300.6	341.6;
1300.7	341.7;
1300.8	341.8;
1300.8(e)	341.8(e);
1300.9	341.9;
1300.9(d)	341.9(d);
1300.9(k)	341.9(k);
1300.10(a)	341.10(a);
1300.11	341.11;
1300.12(d)	341.12(d);
1300.14	341.14;
1300.17	341.17;
1300.18	341.18;
1300.18(e)	341.18(e);
1300.1	341.1;
1300.2(a)	341.2(a);
1300.3	341.3;
1300.3(c)	341.3(c);
1300.3(h)	341.3(h);
1300.4(b)	341.4(b);
1300.4(e)(1)	341.4(e)(1);
1300.4(i)	341.4(i);
1300.5	341.5;
1300.6(a)	341.6(a);
1300.7(b)	341.7(b);
1300.8(d)	341.8(d);
1300.8(f)	341.8(f);
1300.9(c)	341.9(c);
1300.9(e)	341.9(e);
1300.10	341.10;
1300.10(g)	341.10(g);
1300.12	341.12;
1300.13	341.13;
1300.14(f)	341.14(f);
1300.17(a)	341.17(a);
1300.18(d)	341.18(d);
1300.18(f)	341.18(f);
1300.19	341.19;
1300.20	341.20;
1300.21	341.21;
1300.23	341.23;
1300.24	341.24;
1300.25(b)	341.25(b);
1300.26(b)	341.26(b);
1300.28	341.28;
1300.30	341.30;
1300.52	341.52;
1300.54	341.54;
1300.56	341.56;
1300.58	341.58;
1300.61	341.61;
1300.67	341.67;
1300.19(b)	341.19(b);
1300.20(b)	341.20(b);
1300.22	341.22;
1300.23(a)	341.23(a);
1300.25	341.25;
1300.26	341.26;
1300.27	341.27;
1300.29	341.29;
1300.51	341.51;
1300.53	341.53;
1300.55	341.55;
1300.57	341.57;
1300.59	341.59;
1300.64	341.64;
1300.67(b)	341.67(b).

rr. By changing all references to "circular" throughout Part 341 to read "tariff"; all references to "I. & S. Docket No." throughout Part 341 are changed to read "Docket No. IS"; all references to "Tariff Circular No. 20" throughout Part 341 are changed to read "this part"; all references to "station" throughout Part 341 are changed to read "point"; and all references to "stations" throughout Part 341 are changed to read "points".

IV. Part 342 is added to 18 CFR Chapter I to read as follows:

PART 342—LONG-AND-SHORT-HAUL AND AGGREGATE-OF-INTERMEDIATE RATES—PIPELINES

Sec.

342.11 [Reserved]
342.21 Disposition of fractions.
342.31 [Reserved]
342.61 Relief for departures in rates on transit shipments.
342.65 Filing schedules simultaneously with applications.
342.75 Applications, preparation and filing, conformity with rules.
342.76 [Reserved]
342.77 Long-and-short-haul and aggregate of intermediate applications separate.
342.78 Number of copies, form, general specifications and requirements, signatures, and verification.
342.79 Matters to be shown in the application.
342.80 Additional information required.
342.81 Additional matters to be shown.
342.82 Miscellaneous provisions.
342.83 Acceptance of applications.
342.84 Applications for relief previously denied.
342.85 Changes and additions.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981), Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12009. 3 CFR Part 142 (1978).

§ 342.11 [Reserved]

§ 342.21 Disposition of fractions.

(a) Applying the rule de minimis, all carriers are hereby authorized, in the making up of through rates on the aggregate of the intermediate rates, to disregard fractions of a cent less than .5 retaining the half cent in the rate when it is even .5, and making the rate in even cents when the fraction is more than .5.

(b) Tariffs need contain no reference to this order. The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any other provision of the act.

§ 342.31 [Reserved]

§ 342.61 Relief for departures in rates on transit shipments.

In those instances in which fourth-section orders have been or may be entered granting carriers relief from the provisions of section 4 of the act to

maintain lower rates for the transportation of like kind of property for longer than for shorter distances the same relief shall also apply when the said rates, with or without the addition of lawfully established charges to cover the cost of transit, are applied on transit shipments. This section shall not be construed as authorizing fourth-section departures which might result from the establishment of transit privileges at some points and not at other points on the route of movement, nor as approving any transit arrangements that may be established under this permission, all such arrangements being subject to complaint, investigation, and correction if in conflict with any other provision of the act.

§ 342.65 Filing schedules simultaneously with applications.

(a) Section 4(1) of the Interstate Commerce Act (49 U.S.C. 4(1)) has been amended by the Transportation Act of 1940, now effective, so as to eliminate the so-called equidistant clause and to provide:

> That tariffs proposing rates subject to the provisions of this paragraph may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice.

(b) Heretofore, the practice of carriers has been to file applications for, and to obtain, fourth-section relief of either a temporary or continuing character before publishing and filing rates which would without relief contravene the fourth section. The new proviso is construed as intended to shorten the period intervening between carrier's determination to publish rates and their effective date so that if relief is granted, the time now intervening between the filing of the application and its granting will be eliminated, but is not intended to set aside the 30 days' notice requirement of section 6 or to abridge the rights of interested persons to seek suspension under section 15(7). To facilitate administration of the new proviso and at the same time to avoid interference with other sections of the act, the following procedure has been adopted:

(1) Insofar as possible, fourth section applications filed under the proviso will be acted upon before the effective date of the tariffs.

(2) In cases where it is found possible to pass upon applications before the effective date of the tariffs, if relief is granted, such relief will be made effective not with issuance of the order but on the same date as the effective date of the tariffs.

(3) In cases where action upon the application has not been taken prior to the effective date of the schedules, or where the relief sought has been denied in whole or in part, the present intention is to suspend the tariffs in order to avoid the unauthorized fourth-section departures which otherwise would result.

(4) Where rates were suspended solely because of failure to act upon the fourth-section application and where the necessary relief is subsequently granted, the present intention is promptly to vacate the order of suspension, the vacating order to be effective with issuance.

(c) Pending modification of the Commission's Rules of Practice, carriers that file applications for relief from the provisions of section 4 with respect to rates or charges included in schedules filed concurrently with such applications, should include in the applications a complete statement of the tariffs and supplements containing such rates or charges in substantially the following form:

> The rates (charges) as to which relief is prayed herein have been published and filed to become effective ——— (date) in ——— (name of agent or carriers). Tariff, FERC ——— (No.) (supplement number to tariff should be shown if published therein).

(d) Tariffs and supplements filed under the above provision should show on the title page thereof a statement that they contain rates or charges, as the case may be, that contravene the long-and-short-haul (or aggregate-of-intermediates) provision of section 4, and should give specific reference to an item or page of the tariff or supplement on which shall be prominently displayed a complete and specific list of items and pages on which such rates are found, with specific number and date reference to the application for relief with respect to such rates or charges.

(e) When appropriate fourth section relief has been granted before the effective date of tariffs or supplements, and such tariffs or supplements become effective, number reference to the order granting such relief need be given only when the next supplement or reissue is filed.

(f) Many outstanding orders granting relief from the long-and-short-haul provision of section 4 contain conditions designed to give effect to the equidistant clause. The present intention is not to eliminate such conditions in the absence of petitions for reopening of proceedings in which such orders were entered as it is believed that in some cases retention of such conditions may be warranted notwithstanding the repeal of the equidistant clause and in others some substitute limitation may be necessary.

> Note.—See previous notice in this matter, 5 FR 3758, Sept. 25, 1940.

§ 342.75 Applications, preparation and filing, conformity with rules.

Any common carrier subject to the Act may apply to this Commission, under section 4(1) of the Act, for such authorization as it is empowered to grant thereunder. Such application must conform to the requirements hereinafter provided.

§ 342.76 [Reserved]

§ 342.77 Long-and-short-haul and aggregate of intermediate applications separate.

Separate applications shall be filed for relief from the long-and-short-haul provision, and for relief from the aggregate-of-intermediates provision of section 4 of the act.

§ 342.78 Number of copies, form, general specifications and requirements, signatures, and verification.

(a) Applications shall be substantially in the form shown below, and five copies of each, including all exhibits and maps must be furnished.

Form of Application for Relief Under Section 4(1) of the Act

Fourth Section Application

Commission's No. ——

Carrier's No. ——

The ——— Company, by ———, its ——— (Official title), hereby petitions the Federal Energy Regulatory Commission (FERC) for authority to establish rates or charges hereinafter set forth without observing the long-and-short-haul (or aggregate-of-intermediates) provision of section 4(1) of the Interstate Commerce Act. (If rates, etc., are to apply over the lines of more than one carrier, the application should show that it is made for and on behalf of all such carriers, naming them, or if made for or on behalf of all carriers parties to a particular tariff, reference may be made by FERC No. to such tariff for the names of such carriers.)

I. (State fully the rates, charges, etc., which it is desired to establish, with complete reference to the tariffs in which published and the effective date thereof, the routes over and the commodities upon which they are to apply, and name, or descriptions of the points of origin and destination. See Note A following.)

II. (State fully names or description of intermediate points at which it is desired to maintain higher rates etc., and rates etc., at such points or a sufficient number of such points to illustrate the situation, including the first and last higher-rated and the highest-rated intermediate points. Distances between all points shown should be included in this statement. In applications for relief from the aggregate-of-intermediates provision, set

forth typical examples of the higher through rates or charges, and the intermediate rates or charges that in the aggregate are less than the through rates etc. See Note A, following. Also show FERC Nos. of tariffs, and supplements thereto, containing the rates and distances stated.)

III. This application is based upon the following facts which present all of the circumstances and conditions relied upon by your applicant in justification of the relief herein prayed: (Make a complete and accurate statement as to the necessity for the proposed changes, and all of the circumstances and conditions relied upon as justifying the relief prayed. See Note A, following.)

IV. (Give specific reference to any proceeding pending before or determined by the Commission, by docket number, and report citation, if any, which may have any bearing upon, or be in any way related to the rates, etc., sought to be established or maintained. If none, state that fact.)

———— Company (Corporate title of applicant)
By (Personal signature of officer)————
Title of officer ————

Note A.—When more convenient this information may be given in an exhibit or exhibits, and here referred to: "As stated in exhibit —— attached to and made a part hereof." Information required under each numbered section, as above, should be shown in a separate exhibit.

Exhibits should conform to the following requirements:

Generally. Exhibits of a documentary character may have a maximum width of 22 inches by 12½ inches in height. Whenever practicable the sheets of each exhibit and the lines of each sheet should be numbered. If the exhibit consists of five or more sheets, the first sheet or title-page should be confined to a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained therein. The exhibit should bear an identifying number, letter, or short title which will readily distinguish it from other exhibits offered. It is desirable that, whenever practicable, rate comparisons and other evidence should be condensed into tables. Exhibits should not be argumentative, should be limited to statements of fact, and be relevant and material to the issue.

Reference to tariff authority, routes, and distances. All exhibits showing rates, charges, or other tariff or schedule provision must, by appropriate Federal Energy Regulatory Commission number reference, indicate the tariff or schedule authority therefor, and if distances are shown must also show the authority therefor and, by lines, highways, or waterways, and junction points, the routes over which the distances are computed; except that the routes over which the distances are computed need not be shown when such distances are specifically published in a tariff or schedule lawfully on file with the Commission, or definitely ascertainable from a tariff or schedule on file with the Commission showing rates prescribed by the Commission and based on short-lined distances, or short highway distances, provided the exhibit makes specific reference to such tariff or schedule as provided by this rule.

(b) Applications shall be on opaque, unglazed, durable paper not exceeding 8½ by 11 inches. To permit the binding in covers of uniform size, margins of at least 1½ and 1 inch, respectively, shall be allowed on the left and right margins. Binding shall be on the left margin. Reproduction may be by printing, multilithing, mimeographing, or any other process, provided the copies are clear and permanently legible. Whiteline blue prints which cannot be reproduced by photography are not desirable. If directly typewritten, or if in facsimile reproduction of typewriting, the impression must be on one side of the paper and must be double spaced, except that long quotations shall be single spaced and indented. If printed, nothing less than 10-point type shall be used, except that 8-point type may be used in footnotes.

(c) The original copy of the application must be over the personal signature of an executive officer, a responsible traffic officer, or a duly authorized attorney or agent, specifying his title, and sworn to before a notary public or other officer authorized by law to administer oaths. Verification shall be in the manner shown below:

Verification

State of ——— ss:
County of ———
——— (Name of affiant), being duly sworn, deposes and says: That he is the ——— (title of affiant) of the ——— (Name of applicant); that he is authorized by said applicant to sign and file with the Federal Energy Regulatory Commission this application and exhibits attached hereto, and to verify the facts and statements contained in said application and exhibits; that he has carefully examined all of such statements contained in said application and exhibits; and that the same are true and correct to the best of his knowledge, information, and belief.

Subscribed and sworn to before me, a ——— in and for the State and County above, this ——— day of ———, 19—.

(SEAL) My commission expires ———.

§ 342.79 Matters to be shown in the application.

(a) The information required in this section and in §§ 342.80 and 342.81, and 342.82, according to the grounds upon which relief is sought, shall be shown in the application when Commission action is desired on the presentation made therein, without hearing. When a hearing is desired and applicants propose to justify at the hearing the relief desired, the information specified in this section shall be included in the application, and the information required in §§ 342.80, 342.81 and 342.82 may, instead, be introduced at the hearing. It should be understood, however, that where the information included in the application does not fully justify the relief sought, or for other good cause, the application may be assigned for hearing at the Commission's discretion. The application shall show:

(b) The names of the carrier or carriers for, or on behalf of which it is made, or, if made on behalf of all carriers parties to a particular tariff, the application may refer to such tariff by the Federal Energy Regulatory Commission number (hereinafter abbreviated FERC No.).

(c) The FERC No. of all tariffs in which rates or charges referred to in the application or exhibits are published.

(d) The rates or charges proposed to be established; the basis or bases therefor; the commodities on which they are to apply; the points of origin and destination; and the routes between such points over which the rates or charges will apply. (Direct routes only with respect to applications for long-and-short-haul relief). When relief is desired from or to "related" points or "group" points, the points or groups shall be indicated in the map hereafter required to be furnished, or defined by reference to tariff publications providing the grouping.

(e) If long-and-short-haul relief is sought, the intermediate points at which it is proposed to maintain rates or charges higher than those proposed from or to more distant points and the rates or charges at such points. If relief from the aggregate-of-intermediate provision of section 4 is sought, the intermediate rates or charges that, in the aggregate, are less than the through rates or charges.

(f) A complete and accurate statement of the grounds relied upon as justification for the relief prayed.

(g) Applications for relief from the provisions of section 4 with respect to rates or charges included in schedules filed before the necessary relief has been obtained shall include in the opening or second paragraph a complete statement of the tariffs and supplements containing such rates or charges in substantially the following form:

The rates (charges) as to which relief is prayed herein have been published and filed to become effective——— (Date) in —— (Name of agent or carriers) tariff FERC —— (Number). (Supplement number should be shown if published in a supplement).

§ 342.80 Additional information required.

(a) *Long-and-short-haul relief.* Applications should show:

(1) That, where proposed rates are depressed to meet competition, the competitive rates they are being established to meet are not within the control of applicant carriers, and any other facts tending to show that such rates should not be observed as maxima at intermediate points.

(2) That the lower rates for longer than for shorter hauls over the same line or route are reasonably compensatory.

The following information is considered pertinent in a showing as to the reasonably compensatory nature of rates:

(i) Statement of ton-mile and per barrel-mile earnings under the competitive rates. When a general adjustment is involved covering rates between numerous competitive points and applicable or to be applied by numerous routes, it will be sufficient, ordinarily, to give representative examples of rates throughout the territory yielding the lowest earnings for the longest and shortest hauls involved.

(ii) Statement of ton-mile and barrel-mile expenses of petitioning carriers on the traffic involved, or other evidence showing that the proposed rates will be reasonably compensatory.

(3) A statement of rates at representative intermediate points at which rates exceed or would exceed the rates at more distant points under the proposed adjustment, including rates at the first and last higher-rated intermediate points and the distances from and to such intermediate points. This information need not be shown where the rates at the more distant points are constructed on the basis of a mileage scale and the rates at the intermediate points reflect the same mileage scale.

(4) That the higher rates for the shorter than for the longer hauls over the same line or route are reasonable. (The usual facts tending to show the reasonableness of rates should be presented).

(5) Whether there is a complaint pending as to the reasonableness of the rates at the intermediate points on the applicant line or route.

(6) In the event the rates proposed to be superseded by subsequent revisions are maintained under the authority of outstanding fourth-section orders, reference to such orders shall be furnished.

(7) Where the proposed adjustment is in any way related to a prior adjustment as to which relief has been authorized, that is, the addition of origins, destinations, commodities, etc., or involves rates for the return movement of commodities as to which relief for initial hauls has been authorized, reference to orders authorizing such relief shall be furnished.

(b) *Aggregate-of-intermediates relief.* Applications should show:

(1) The origins and destinations from and to which it is proposed to continue, or to establish and maintain through rates or charges which exceed the aggregate-of-intermediate rates or charges, together with the intermediate rates or charges that, in the aggregate, are less than the through rates or charges.

(2) That the intermediate rates or charges which, in the aggregate, are lower than the through rates or charges, are depressed by competitive conditions that do not affect the through rates, or charges; and the same information with respect to the conditions alleged as affecting the intermediate rates as that required in applications for long-and-short-haul relief with respect to similar conditions when alleged as grounds for maintaining lower rates for longer than for shorter distances.

(3) That the through rates or charges that would exceed the aggregate-of-intermediate rates or charges are reasonable. (The usual facts tending to show the reasonableness of rates should be presented).

§ 342.81 Additional matters to be shown.

(a) *Applications based on water competitions.* (1) The name of the competing water line or lines actually in operation between the water points and whether said water line or lines, in the transportation of the traffic involved, are subject to the Interstate Commerce Act.

(2) A detailed statement of the charges over the water line or lines, including marine insurance, wharfage, handling, shrinkage, and all other applicable incidental charges. Where such charges are named in tariffs on file with the Interstate Commerce Commission, reference should be made to such tariffs by ICC number.

(3) Whether facilities for loading into and unloading from barges or ships are available.

(4) The minimum tender that may be made to the water carrier or carriers, and whether shippers and receivers are equipped to handle such amounts.

(5) If the season of navigation is restricted, and, if so, that available storage will permit the handling by water of receivers' needs during the season of navigation.

(6) The cost of installation, maintenance, etc., of loading, unloading, and storage facilities which must be constructed or installed before water transportation is feasible.

(7) Evidence supporting water costs and accessorial charges which are not published in tariffs on file with the Interstate Commerce Commission.

(8) Certification that a copy of the application has been served upon the competing water line or lines named in paragraph (a)(1) hereof. The service and certification shall conform with the requirements of § 385.203 of this chapter.

(b) *Applications based on motor carrier competition.* The charges over the competing motor line or lines, including all incidental charges, and if interstate common contract carrier or carriers, reference to the applicable tariffs by ICC numbers.

(c) *Applications based on market competition.* (1) The names of the producing or receiving points whose competition is to be met.

(2) The short line or route and distances, or the class rate distances if the latter are normally used for rate making purposes, from the various producing points to the common market and tariff authority for the distances.

(3) The rates from the competitive producing points with reference by ICC No. to the tariffs naming the rates and whether they conform to the provisions of section 4 of the act. If relief has been granted or application is pending as to such rates, give reference to the ICC No. of the application or order.

(4) Whether similar competition is to be met at intermediate points.

(d) *Applications based on weak financial condition or high operating costs of the applicant line.* Financial statistics and operating conditions.

§ 342.82 Miscellaneous provisions.

(a) In addition to the above, applications should show any other conditions or circumstances relied upon as constituting a special case within the meaning of section 4(1) of the Act.

(b) Applications should contain a map, made a part thereof, showing the relative location of lines or routes, the competitive points, and representative intermediate points at which higher rates are to be charged, or representative points from or to which it is proposed to maintain through rates or charges which exceed the aggregate of intermediates.

§ 342.83 Acceptance of applications.

In any case when, upon inspection, the Commission is of the opinion that an application does not sufficiently set forth required material or is otherwise deficient, the Commission may decline to accept the application for filing and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiencies

and require that such deficiencies be corrected.

§ 342.84 Applications for relief previously denied.

If the Commission denies an application, and the carrier presents a new application based upon new or additional facts in justification of the proposed rates or charges, such facts should be clearly indicated as such, and the modified application must refer specifically to the previous application and the number of the order by which it was denied.

§ 342.85 Changes and additions.

Copies of any amendment to the application, or any additional information furnished to the Commission in connection therewith, including notices of any changes in the effective date of the rates or charges as set forth in compliance with § 342.79(g), shall be served by applicant upon all parties served with a copy of the application and upon all parties protesting the application. The service and certification thereof shall conform with the requirements of § 385.203 of this chapter.

V. Part 343 is added to 18 CFR Chapter I to read as follows:

PART 343—POSTING TARIFFS OF COMMON CARRIER PIPELINES

Tariffs of Common Carriers by Pipeline and Tariffs Containing Joint Intermodal Pipeline Rates

Sec.
343.0 Application-posting of tariffs defined.
343.1 Location of complete public files of tariffs.
343.2 Time of posting.
343.3 Tariff files to be accessible to the public.
343.4 Notice required to be posted.
343.5 Check-up on files of tariffs.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12,009, 3 CFR Part 142 (1978).

Tariffs of Common Carriers by Pipeline and Tariffs Containing Joint Intermodal Pipeline Rates

§ 343.0 Application-posting of tariffs defined.

(a) The regulations in this part shall also govern the posting (by carriers subject to the jurisdiction of the Federal Energy Regulatory Commission) of any tariff containing a through route and joint rate over the lines of a common carrier by pipeline subject to the Interstate Commerce Act, on the one hand, and a vessel-operating common carrier by water engaged in the foreign commerce of the United States, as defined in the Shipping Act, 1916, on the other hand, and all other tariffs governing the application of the rate tariff, for the transportation of property between any place in the United States and any place in a foreign country. The carrier subject to the jurisdiction of this Commission receiving shipments at a port for delivery to points in the United States under joint through rate and route arrangements shall post at its office at such port the tariffs naming such rates and its governing tariffs.

(b) The term "post" as used in this part means the maintenance of a file of tariffs in the custody of an agent of the carrier in a complete, accessible, and usable form, and keeping such file of tariffs available to the public upon request during ordinary business hours. The term "tariff" as used in this part includes tariff supplements or amendments.

§ 343.1 Location of complete public files of tariffs.

Each common carrier by pipeline shall post at its principal office a complete set of all tariffs which it issued or to which it is a party, together with an index thereto.

§ 343.2 Time of posting.

Each tariff must be posted at least 30 days before its effective date, excepting those as to which the Commission has authorized a shorter period of notice to the public. Each carrier shall require the agent at every office at which tariffs are posted to write or stamp on each tariff the date on which it was posted.

§ 343.3 Tariff files to be accessible to the public.

Each file of tariffs shall be in charge of an agent of the carrier. Each carrier shall require and instruct such agent to afford inquirers an opportunity to examine any of such tariffs without asking the inquirer to assign any reason therefor, and, upon request, to lend assistance to seekers of information therefrom with all promptness possible and consistent with proper performance of other duties.

§ 343.4 Notice required to be posted.

Each carrier shall also cause to be displayed continuously in a conspicuous public place at each office at which tariffs are required to be posted, a notice printed in large type reading as follows:

With only such exceptions as have been authorized by the Federal Energy Regulatory Commission, all tariffs which contain rates and charges applying from or at this location are on file, in this office, together with an index of all of this company's tariffs. The tariffs and index may be inspected by any person upon application and without the assignment of any reason for such inspection. The agent on duty in this office will lend any assistance desired in securing information therefrom.

If request is made for a tariff naming rates from this location, the posting of which has been discountinued because of nonuse, the agent will arrange to have it reposted within 20 days and thereafter keep it posted.

In addition a complete file of all of this company's tariffs, with indexes thereof, is maintained and kept available for public inspection at:

(Here indicate the place or places where complete tariff files are maintained, including the street address and, where appropriate, the room number.)

§ 343.5 Check-up on files of tariffs.

Each carrier shall place in effect a system of supervision that will insure the continued maintenance in proper and readily accessible form of tariff files required at each office where complete files are maintained. Such offices must be furnished at least once a year with a list of all of the tariffs which should be in their files. Upon receipt of the list the agent or employee in charge will immediately check the tariffs on hand against the list, and report any deficiencies. Evidence of improper maintenance of files at any office may incur the prescription of detailed instructions to the carrier by the Commission necessary to insure compliance with the regulations.

VI. Part 344 is added to 18 CFR Chapter I to read as follows:

PART 344— FILING QUOTATIONS FOR GOVERNMENT SHIPMENTS AT REDUCED RATES

Sec.
344.1 Applicability.
344.2 Manner of submitting quotations.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12009, 3 CFR Part 142 (1978).

§ 344.1 Applicability.

The provisions of this part shall apply to copies of quotations or tenders made by all pipeline common carriers to the United States Government, or any agency or department thereof, for the transportation, storage or handling of property at reduced rates as permitted by section 22 of the Interstate Commerce Act, as amended, except quotations or tenders which, as indicated by the United States Government or any department or agency thereof to any carrier or carriers, involves information the disclosure of which would endanger the national security.

§ 344.2 Manner of submitting quotations.

(a) *General.* Copies of all quotations or tenders by common carriers to which this part applies, concerning rates or charges for the transportation, storage, or handling of property, at reduced rates, including quotations or tenders for retroactive application whether negotiated or renegotiated after the services have been performed, which are submitted to the Federal Energy Regulatory Commission on and after the effective date of this part in conformity with the provisions of paragraph (2) of section 22 of the Interstate Commerce Act (49 U.S.C. 22) shall conform to the provisions of paragraphs (b), (c), (d), (e), (f) and (g) of this section.

(b) *Copies to be submitted concurrently with submittal to government agencies.* Exact copies of the quotation or tender shall be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

(c) *Filing in duplicate required.* All quotations or tenders shall be filed in duplicate, one copy of which will be maintained at the Washington office of this Commission for public inspection. One of such copies shall be signed and both shall clearly indicate the name and official title of the officer executing the document.

(d) *Filing procedure.* Both copies of the quotations or tenders shall be filed together with a letter of transmittal which clearly indicates that they are being filed in accordance with the requirements of section 22, as amended. They must be addressed to the "Federal Energy Regulatory Commission, Washington, D.C. 20426," with the envelope marked as containing "Section 22 Quotations", and delivered free of all charges. If receipt for the accompanying documents is desired, the letter of tramsmittal must be sent in duplicate, and one copy showing date of receipt by the Commission will be returned to the sender.

(e) *Numbering.* The copies of quotations or tenders which are filed with this Commission by each carrier or agent shall be numbered consecutively in a series maintained by such carrier or agent beginning with the number "1".

(f) *Quotation or tender superseding prior one.* A quotation or tender which supersedes a prior quotation or tender shall, by a statement shown immediately under the number of the new document, cancel the prior document by number.

(g) *Amendments or supplements to quotations or tenders.* When amendments or supplements are filed to quotations or tenders issued prior to August 31, 1957, copies of the original quotations or tenders, and any prior amendments thereto, must be filed with the amendments or supplements.

VII. Part 345 is added to 18 CFR Chapter I to read as follows:

PART 345—SECTION 5a APPLICATIONS

Applications for Authority To Establish or Control Agreements Between or Among Carriers

Sec.
345.1 Form and contents of application.
345.2 Required exhibits.
345.3 Procedure.
345.4 New parties to an agreement.
345.5 Public notice.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); E.O. 12009, 3 CFR Part 142 (1978).

Applications for Authority to Establish or Control Agreements Between or Among Carriers

§ 345.1 Form and contents of application.

The application and supporting exhibits shall conform to Rule 203 of the general rules of practice (§ 385.203 of this chapter) and shall show, in the order indicated, with the following paragraph designations, the following information:

(a) Full and correct name and business address (street and number, city and ZIP Code, county and State) of the carrier applicant or applicants (hereinafter called applicant); whether applicant is a corporation, individual, or partnership; if a corporation, the government, State or territory under the laws of which the applicant was organized and received its present charter, and if a partnership, the names of the partners and the date of formation of the partnership.

(b) Full and correct name and business address (city and State) of each carrier on whose behalf the application is filed and whether it is a corporation, individual, or partnership.

(c) If the agreement of which approval is sought pertains to a conference, bureau, committee, or other organization, a complete description of such organization, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations; and, if such organization has a working or other arrangement or relationship with any other organization, a complete description of such arrangement or relationship. If the agreement is of any other character, a precise statement of its nature and scope and the mode of procedure thereunder.

(d) The facts and circumstances relied upon to establish that the agreement will be in furtherance of the national transportation policy declared in the Interstate Commerce Act, as amended.

(e) The name, title, and post office address of counsel, officer, or other person to whom correspondence in regard to the application is to be addressed.

§ 345.2 Required exhibits.

There shall be filed with and made a part of each orginal application, and each copy, the following exhibits:

(a) As Exhibit 1, a true copy of the agreement.

(b) As Exhibit 2, if the agreement pertains to a conference, bureau, committee, or other organization, a copy of the constitution, by-laws, or other documents or writings, specifying the organization's powers, duties, and procedures, unless incorporated in the agreement filed as Exhibit 1.

(c) As Exhibit 3, if the agreement relates to a conference, bureau, committee, or other organization, an organization chart.

(d) As Exhibit 4, if the agreement relates to a conference, bureau, committee, or other organization, a schedule of its charges to members or, where expenses are divided among the members, a statement, showing how the expenses are divided.

(e) As Exhibit 5, opinion of counsel for applicant that the application made meets the requirements of law as set forth in section 5a of the Interstate Commerce Act, as amended, and will be legally authorized if approved by the Commission, with specific reference to any specially pertinent provisions of articles of incorporation or association.

§ 345.3 Procedure.

The following procedure shall govern the execution, filing, and disposition of the applications:

(a) The orginal application shall be made under oath and shall be signed in ink by applicant, if an individual; by all partners, if a partnership; and if a corporation, by an executive officer having knowledge of the matters therein contained; and shall show, among other things, that the affiant is duly authorized to verify and file the application.

(b) The original application and supporting papers and twenty copies thereof for the use of the Commission shall be filed with the Secretary of the

Federal Energy Regulatory Commission, Washington, D.C. 20426. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed, and the officer's seal may be omitted.

(c) A copy of the application shall be served by applicant by first-class mail upon the regulatory body having jurisdiction as to rates, fares, or charges of each State, territory, or district embraced within the scope of the agreement, and the original application filed with the Commission shall include a certificate naming the bodies upon whom the application has been so served.

(d) A public notice will be issued by the Commission and filed with the Director of the Federal Register stating the fact that an application has been filed under these rules and indicate how a hearing on such application may be obtained.

(e) A protest against the granting of an application should be filed in accordance with Rule 1403 of the general rules of practice (§ 385.1403 of this chapter).

(f) To the extent that matters of procedure are not covered by these special rules, the Commission's general rules of practice shall apply.

§ 345.4 New parties to an agreement.

Where a carrier becomes a party to an agreement which has been approved by the Commission, such approval will extend and be applicable to such carrier upon the filing with the Commission by the carrier or its authorized agent of a verified statement that it has become a party to the agreement, which statement shall show the information required by § 345.1(b): *Provided* (a) That such carrier is not, under the agreement, to act with carriers of a different class, within the meaning of section 5a(4) of the Interstate Commerce Act, except as the agreement relates to transportation under joint rates or over through routes, and (b) that no change is made in the agreement except the addition of such carrier.

§ 345.5 Public notice.

When independent action is announced and tariff publication is to be made by a publishing agent operating pursuant to an agreement under section 5a of the Interstate Commerce Act, notification thereof will be given by the agent to the same extent and in the same manner that the agent gives notice of actions proposed under procedures for collective consideration of the parties to the agreement; and no other joint or collective procedures under the agreement are thereby invoked.

VIII. Part 346 is added to 18 CFR Chapter I to read as follows:

PART 346—FEES

§ 346.1 Filing fees.

(a) *Manner of payment.* All filing fees will be payable at the time and place the application, petition, notice, tariff, contract, or other document is tendered for filing. Fees will be payable to the Federal Energy Regulatory Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency.

(b) *Fees not refundable.* Fees will be assessed for every filing in the types of proceedings listed in the schedule of fees contained in paragraph (d) of this section. After the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document is granted or approved, denied, dismissed, or withdrawn. If an application, petition, notice, tariff, contract, or other document is rejected by the Commission as incomplete or for some other reason, the fee will be returned.

(c) *Related or consolidated proceedings.* (1) Separate fees need not be paid on related applications filed by the same applicant which would be the subject of one proceeding. In such instances, the only fee to be assessed will be that applicable to the embraced proceeding which carries the highest filing fee as listed in paragraph (d) of this section.

(2) The Commission may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(d) *Schedule of filing fees.*[1]

Type of Proceeding Fee Applications To Enter Upon a Particular Financial Transaction of Joint Arrangement

(1) An application for the pooling or division of traffic. Section 5(1)—$100.

(2) An application for approval of, or to amend, a rate association agreement. Section 5a—$300.

Other Proceedings

(3) An application for relief from the long-and-short-haul and aggregate-of-intermediate provisions, including applications for relief with respect to additional commodities, origins or destinations, but not including petitions for modification of conditions, effective or not yet effective of outstanding orders, or amendments to applications not yet disposed of. Section 4—$250.

(4) An application for authority to establish released value rates or ratings, except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other calamitous visitation under section 22(1) of the act. Sections 20(11)—$200.

(5) An application for special permission for short notice or the waiver of tariff-publishing requirements, including applications to extend or eliminate the scheduled expiration date of an outstanding special permission or to broaden the application thereof to additional territory or tariffs, except amendments to pending applications not yet disposed of, and applications to postpone the effectiveness of suspended schedules, when carrier or agent is requested to do so, in order to afford the Commission more time for disposition of the proceeding or to postpone the scheduled effective date of protested schedules or those for which a fourth-section application has been filed, in order to afford the Oil Pipeline Board more time within which to process the protests or applications—$20.

(6) Application for basic (original) valuation of a pipeline carrier's operating property. Section 19a—$10/hr.

(7) Application for each annual valuation of a pipeline carrier's operating property as of the close of any calendar year following the carrier's basic valuation. Section 19a—

The following fees are based on the carrier's size:

Cost of reproduction (millions)	Fee
Under 10	$50
10 to 29.9	200
30 to 49.9	500
50 to 74.9	700
75 to 99.9	1,000
100 to 149.9	1,300
150 to 199.9	1,850
200 to 299.9	2,500
Over 300	4,300

(Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Executive Order 12,009, 3 CFR Part 142 (1976))

IX. Part 347 is added to 18 CFR Chapter I to read as follows:

PART 374—COMPETITIVE BIDS OIL PIPELINE

Sec.

347.1 Specifications, form of proposal and contract; publication of request for bids; variation from the generally applicable procedure.

347.2 Opening of bids; bonds; form and contents of bids.

347.3 Considerations for acceptance of bids; rejection; readvertising for new bids.

347.4 Statement of the transaction.

347.5 Examination.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp.

[1] Except as noted, statutory references are to the Interstate Commerce Act.

V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976) E.O. 12,009, 3 CFR Part 142 (1978).

§ 347.1 Specifications, form of proposal and contract; publication of request for bids; variation from the generally applicable procedure.

(a) When any pipeline, subject to the Interstate Commerce Act, is required by section 10 of the Clayton Antitrust Act (38 Stat. 734; 15 U.S.C. 20) to call for bids for securities, supplies, or other articles of commerce, or for the construction or maintenance of any kind or part of its carrier property such carrier shall prepare specifications, form of proposals and contract, setting forth clearly and so far as applicable in each case in detail a description or descriptions of the matters and things for which bids are requested, the terms, times and conditions of delivery and payment, the place or places where delivery or performance is to be made, the character, amount, and terms of securities offered or sought, and a full description of the supplies or other ariticles required or offered for sale, hypothecation, or purchase, and shall make and attach to such specifications such maps, drawings, and illustrations and state such other substantial facts or conditions as are or may be necessary to a full understanding of the premises and procedure by bidders. Such specifications, drawings and illustrations in each case shall be kept open at the principal office or offices of the carrier for full examination, free of charges, by persons desiring to examine the same with a view to bidding, and, upon request, such carrier shall furnish to any person or persons desiring the same true and accurate copies of such specifications, maps, drawings and illustrations; *Provided,* That the pipeline may make a charge for such copies so furnished, the charge not to exceed the reasonable cost of making and forwarding the copies requested.

(b) The pipeline shall publish in each case a request for bids in at least two daily newspapers of general circulation, at least two publications in each week for two weeks, the first publication to be at least two weeks immediately preceding the day when the bids are to be submitted; one such newspaper shall be published or shall be of general circulation in the city or town where the principal operating officer of the carrier is located and the other newspaper shall be published in one other of the following cities nearest to the operating or financial office of the carrier or the place where the contract is to be performed; namely: New York, N.Y., Boston, Mass., Chicago, Ill., St. Louis, Mo., Atlanta, Ga., San Francisco, Calif., and Portland, Oreg.; and a printed copy of the published notice in each case shall be posted in plain view, for two weeks immediately preceding the day on which bids are to be received, on a bulletin board, designated for that purpose, in a public and conspicuous place in the building where the principal operating office of the carrier is located.

(1) Such published notices shall describe in general but intelligible terms the proposed contract, giving its serial number, and the special matter or things for which bids are requested, and the date and time at or before which the bids must be submitted, and the person by whom and the office at which the bids submitted will be recieved and opened as provided in this part. The carrier may in said notice reserve the right to reject, any and all bids and may, at its option, require each bidder to tender a bond in a reasonable sum to be therein named, with sufficient surety or sureties conditioned upon the faithful and prompt performance of the terms of the contract.

(c) Upon application, a pipeline owned or operated by any state or by an agency of one or more states or a wholly-owned subsidiary corporation thereof, may be authorized by the Commission to employ a competitive bidding procedure or precedures varying from the generally applicable procedure provided by this regulation upon the following showing: (1) That the applicant carrier is owned or operated by a state or by an agency of one or more states, or is a wholly-owned subsidiary corporation thereof: (2) a detailed statement of the procedure for which authorization is requested and the variations thereof from the generally applicable procedure provided by this regulation and the purpose or reason for such variation; and (3) that the generally applicable procedure provided by this regulation imposes on the carrier an unreasonable burden or interferes with obtaining by the carrier of the most favorable bid.

§ 347.2 Opening of bids; bonds; form and contents of bids.

(a) Every bid to receive consideration shall be submitted at the place and at or before the hour specified in the notice for the receipt of bids. The time specified may be any hour from 10:00 a.m. until 3:00 p.m of any business day, and the bids shall be opened after the specified hour and before six o'clock on the day and at place and by the person or persons designated in the notice. Each bidder may attend in person or by a duly authorized representative at the opening of the bids, and shall be afforded an opportunity to do so and to examine each bid. The bids shall forthwith be tabulated in conformity with the form of proposal prepared and a copy of such tabulation shall be promptly furnished to any bidder or his authorized representative upon application therefor.

(b) When required by the notice, each bid shall be accompanied by tender of a bond in the amount specified in the notice with sufficient surety or sureties conditioned upon the faithful and prompt performance of the proposed contract. A bond shall be required only in cases where the notice for bids expressly calls for a bond.

(c) Each bid shall be enclosed with accompanying papers in a plain envelope securely sealed bearing no indication of the name of the bidder or the amount of the bid, and shall be marked "Bid under proposed contract No. ———," and shall be addressed to the officer of the carrier designated in the notice to receive the name.

(d) Each bid shall state the name and address of the bidder and, if the bidder be a corporation, the names and addresses of the officers, directors and general manager thereof and of the purchasing or selling officer or agent in that transaction and, if the bidder is a firm, partnership or association, the bid shall give the names and addresses of each member thereof, and of the manager, purchasing or selling officer or agent in that transaction.

§ 347.3 Considerations for acceptance of bids; rejection; readvertising for new bids.

(a) After receiving and opening bids as aforesaid, the carrier receiving the same shall within 48 hours in cases where the sale or purchase of securities is the undertaking, and within 21 days where bids are for supplies, equipment, other articles of commerce and for construction or maintenance work, accept the most favorable bid considering (1) the lowest price or prices for the supplies, equipment, and other articles of commerce, and for the construction or maintenance work, described in the advertisement, and the highest price or prices offered for any securities or property, so described, for sale by the carrier, and (2) the ability and reliability of the bidder, financial and otherwise, to deliver the property or to perform the work or transaction, or to pay for the securities, described in the advertisement, giving due consideration to any bond or security tendered by the bidder.

(b) If the right be reserved in the notice, all bids may be rejected and the pipeline may readvertise for bids. The pipeline shall notify the successful

bidder of the acceptance of his or its bid, and the bidder shall within 10 days execute the required contract, and, if required by the notice, execute a good and sufficient bond for the faithful and prompt performance of the contract. In case the successful bidder shall neglect or fail within said time to execute the contract or bond as aforesaid the carrier may within 5 days award the contract to the next most favorable bidder, ascertained as herein provided for determining the most favorable bidder. If neither the most favorable bidder nor the next most favorable bidder shall execute a contract and qualify as aforesaid, the carrier shall readvertise for new bids.

§ 347.4 Statement of the transaction.

Each pipeline after having made and executed a contract as and in the manner above specified shall within 30 days after the execution of such contract file with the Federal Energy Regulatory Commission a statement of the transaction giving, (a) a copy of the published notice; (b) the names of all bidders, and, if the bidder be a corporation, the names and addresses of the officers, directors and general managers thereof and of the purchasing or selling officer or agent in that transaction, or if the bidder be a partnership or firm, the names and addresses of the members of the firm, the general manager and purchasing or selling agent thereof, and the total amount of each bid; (c) the name of the bidder to whom the contract was awarded together with a copy of the contract; and (d) if any other than the lowest or the highest bid, as the case may be, is accepted as being most favorable to the carrier, the reasons for such acceptance. The statement shall be made in typewriting, in pamphlet form on pages not less than 8 by 10½ inches in size nor greater than 9½ by 12 inches, in size, bound on the longer edge of the page, the paper to be of durable quality fit for permanent record.

§ 347.5 Examination.

In the case of each bid so taken as aforesaid, the pipeline shall preserve and keep open for examination by the Federal Energy Regulatory Commission or any duly authorized examiner thereof, (a) a copy of the resolution or order of the Board of Directors, Executive Committee, or officers of the said common carrier specifying the purposes and terms of the contract for which the bids were invited; (b) a copy of the specifications, maps, drawings, and illustrations upon which bids were made; (c) copies of the notices published, sworn to by or on behalf of the publisher of each paper, respectively, giving the dates and times of publication; (d) the original bids received, designating the bid accepted and giving a statement of the reasons for accepting the same; (e) a copy of the contract entered into between the carrier and the accepted bidder, together with a copy of the bonds if any; (f) references by number of volume and page to the records of proceedings of the stockholders, directors, or executive committee of the pipeline. The files in each transaction shall be securely fastened together and given the contract number and each document therein shall be numbered consecutively and at the conclusion there shall be a sworn statement by the president, a vice president, or the general manager of the pipeline, stating that the files in No. ——— contain true and complete records and statements of all the negotiations had in connection with the contract therein set forth. Carriers subject to the requirements of section 10 of the Clayton Antitrust Act, 15 U.S.C. 20, may destroy such contracts or other records required thereby 10 years after the expiration thereof, without permission of the Commission: *Provided,* There is no litigation pending involving these records: *And further provided,* That the carrier has informed the Commission of its intended action at least 2 weeks prior to the date the records are to be destroyed.

[FR Doc. 84-8383 Filed 3-29-84; 8:45 am]
BILLING CODE 6717-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1300

[Docket No. 37321]

Revision of Tariff Regulations, All Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In this proceeding the Commission has proposed a revision and consolidation of its regulations in 49 CFR Parts 1300 to 1310. The new regulations would be located at 49 CFR Part 1312 and 49 CFR Parts 1300 to 1310 would be removed from the Code of Federal Regulations (CFR). The Federal Energy Regulatory Commission (FERC) also uses portions of 49 CFR Part 1300 in its regulation of rates and charges for the transportation of oil by pipeline. The purpose of this notice is to transfer 49 CFR Part 1300 from Title 49 of the CFR to Title 18 of the CFR, instead of removing the part from the CFR.

DATES: Effective July 2, 1984.[1]

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275–7428 or Charles E. Langyher, (202) 275–7739.

SUPPLEMENTARY INFORMATION: By a notice of proposed rules (NPR) published in the **Federal Register** on July 7, 1983 (48 FR 31265), we proposed a revision of our regulations governing the construction, posting, and filing of carriers' tariffs and related documents. The proposed new rules would be located at 49 CFR Part 1312 and the existing rules in 49 CFR Parts 1300 to and including 1310 would be removed.

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline and to the establishment of valuation for pipelines, was transferred from this Commission to FERC under the Department of Energy Organization Act, 42 U.S.C. 7155 and 7172(b). In its regulation of oil pipeline rates or charges, FERC has used 49 CFR Part 1300. Therefore, FERC has requested that this Commission transfer 49 CFR Part 1300 to Title 18 of the CFR, instead of removing it from the CFR entirely.

We are presently in the process of drafting final rules in response to our NPR in this proceeding. We expect to issue a final decision addressing the comments and adopting final rules for 49 CFR Part 1312 in the near future. However, granting FERC's request at this time will save that agency the cost of republishing the regulations in the **Federal Register** and will not adversely affect any of this Commission's regulations. Accordingly, we will grant FERC's request and order the redesignation of 49 CFR Part 1300 as 18 CFR Part 341. We have assigned a July 2, 1984, effective date for the redesignation. It is expected that our action regarding rules for 49 CFR Part 1312 should be finalized by that date.

The action we are taking by this notice concerns solely matters of agency practice and procedure because it merely transfers existing regulations from Title 49 CFR to Title 18 CFR. This change will aid oil pipeline companies subject to the procedural requirements. Therefore, we find pursuant to Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), that prior notice and opportunity for public comment is unnecessary.

[1] The FERC is publishing a final rule contemporaneously with this notice that transfers rules for the establishment of rates or charges for the transportation of oil by pipeline from Title 49 to Title 18 of the CFR.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered: Part 1300 of 49 CFR, Chapter X is transferred to 18 CFR, Chapter I and redesignated as Part 341.

List of Subjects in Part 1300

Pipelines.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321.

Decided: March 23, 1984.

By the Commisson, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8364 Filed 3-29-84; 8:45 am]

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Part V

Department of Labor

Employment and Training Administration

20 CFR Parts 652 and 653
Services for Veterans; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 652 and 653

Services for Veterans

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains final regulations to implement certain amendments to the veterans' employment and training laws administered by the Department. It reflects the provisions of 38 U.S.C. requiring State employment service agencies to provide veterans and eligible persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era. Further, these regulations clarify the role and responsibilities of the Assistant Secretary for Veterans' Employment and Training in administering certain veterans' programs and activities that were previously under the jurisdiction of the Employment and Training Administration.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph C. Juarez, telephone: (202) 523–9110.

SUPPLEMENTARY INFORMATION: The rules published in this document replace the veterans' service regulations at 20 CFR Part 653, Subpart C, issued March 27, 1979, with a new set of regulations in 20 CFR Part 652, Subpart B. The new rules implement amendments to the veterans' employment and training laws in 38 U.S.C., Chapters 41 and 42. They also clarify and simplify the administration of ongoing legislative mandates regarding employment services to veterans.

The Veterans' rehabilitation and Education Amendments of 1980 established the Assistant Secretary of Labor for Veterans Employment and Training (ASVET) and transferred to ASVET responsibilities for administration of employment services for veterans which were previously handled by the Employment and Training Administration. The 1980 amendments also established the Disabled Veterans Outreach Program (DVOP) as a permanent program administered by the ASVET. The Veterans' Compensation, Education and Employment Amendments of 1982 further clarified the responsibilities of the State and Assistant State Directors for Veterans' Employment and Training as well as the administration of the DVOP program. The new regulations in 20 CFR Part 652 implement these amendments.

The provisions of 38 U.S.C. continue to mandate that the "public employment service system" provide priority services to veterans. Sections 2004, 2007, and 2012 of 38 U.S.C. all contain specific references to functions to be carried out by the State employment service agencies. Further, 38 U.S.C. 2000, 2002, 2002A, and 2003 direct the ASVET to work closely with the State agencies to ensure that legislative mandates are carried out. These final rules continue to address State agency priority services to veterans. They also simplify the former regulations at 20 CFR Part 653, Subpart C, which they replace, by removing requirements that are more appropriately addressed through administrative guidelines.

Proposed rulemaking for the implementation of all amendments to Title 38, U.S. Code, Chapters 41 and 42 and to replace 20 CFR Part 653, Subpart C, was published on pages 34866–34869 of the **Federal Register** on August 1, 1983, for the purpose of soliciting public comment. The Department received written comments from a variety of sources including State agencies, veterans organizations, and other interested parties. The following summarizes the significant comments, recommendations, and actions taken:

Definitions

The Department agreed with several commentators and revised the definition for "Service Delivery Point" (SDP) under § 652.101 to encompass the area served by State agency local offices including extended service locations.

State Agency Services

Many commentators criticized the wording of § 652.120 for not containing a legislative reference, the services involved, or how such services relate to providing maximum employment and training opportunities to veterans and eligible persons. The Department has added the appropriate legislative reference, an explanation of services involved and a statement describing provision of maximum employment and training opportunities.

Local Veterans Employment Representatives (LVER)

Several commentators suggested that § 652.123 should be expanded to include the criteria for determining which local offices should be assigned full-time or part-time LVERs. The Department has added the full-time criteria at § 652.123(a)(1) requiring 1,000 new or renewed applications from veterans and eligible persons during the most recent twelve-month reporting period. Also added was § 652.123(a)(2) stating that part-time LVERs shall be assigned in proportion to the full-time criteria. If the ASVET determines that appropriations exigencies preclude full application of these criteria, it may permit appropriate limited adjustments.

State Agency Cooperation and Coordination

Some commentators suggested inclusion of references in § 652.124 to cover coordination with related programs under other legislation. A new subparagraph (b) was added to include such references.

Complaints of Veterans and Eligible Persons

The Department adopted a recommendation from several commentators to include references to the type of complaints covered by § 652.125.

Determination of Compliance

Some commentators expressed concern that removal of the statistical methodology and numerical values for the socalled "indicators of compliance" from the regulations would adversely affect enforcement of the standards of performance governing State agency services to veterans and eligible persons. The Department does not agree. State agencies are held to the qualitative, verbal standards described in §§ 652.120–652.125. The indicators of compliance merely provide a convenient numerical picture of the State agency's performance. Inclusion of the indicators in the regulations has proven to be cumbersome. Accordingly, § 652.130(b) provides that statistical indicators for evaluating services to veterans and eligible persons will be established administratively through negotiations between State agency administrators and State Directors for Veterans' Employment and Training. The numerical values thus established for each reporting period will be published as a public notice in the **Federal Register**. The Department believes that this approach permits greater sensitivity to change and to the particular needs of the individual State.

Technical and Editorial Changes

Finally, various technical and editorial changes were made throughout

the regulations for purposes of clarity and consistency.

Classification—Executive Order 12291

The regulations are procedural in character. Therefore, they are not classified as a "major rule" under Executive Order 12291 on Federal regulations because they are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required. In addition, these regulations do not affect any trade-sensitive activity because they do not apply in any way to governments, industries, or firms engaged in international trade.

Regulatory Flexibility Act

The Department believes that these regulations will not have "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because these regulations are procedural in character. The regulations implement amendments to 38 U.S.C. Chapters 41 and 42 and primarily concern changes at the national level in the administration of ongoing programs with no significant economic impact expected with respect to small entities. Accordingly, no regulatory impact analysis is required.

List of Subjects

20 CFR Part 652

Employment, Grant programs—Labor, Labor employment service programs, Veterans.

20 CFR Part 653

Agriculture, Employment, Equal employment opportunity, Labor, Migrant labor.

Accordingly, Parts 652 and 653 of Title 20, Chapter V of the Code of Federal Regulations are amended as set forth below:

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

1. The table of contents for Part 652 is amended by designating §§ 652.1–652.9 as "Subpart A—Employment Service Planning and Operations" and adding a table of contents for a new Subpart B, as follows:

Subpart A—Employment Service Planning and Operations

* * * * *

Subpart B—Services for Veterans

Purpose and Definitions

Sec.
652.100 Purpose and scope of subpart.
652.101 Definitions of terms used in subpart.

Federal Responsibilities

652.110 Roles of the Assistant Secretary for Veterans' Employment and Training (ASVET).

Standards of Performance Governing State Agency Services to Veterans and Eligible Persons

652.120 Standards of performance governing State agency services.
652.121 Performance standard on facilities and support for Veterans' Employment and Training Service (VETS) staff.
652.122 Reporting and budget requirements.
652.123 Performance standards governing the assignment and role of Local Veterans' Employment Representatives (LVERs).
652.124 Standards of performance governing State agency cooperation and coordination with other agencies and organizations.
652.125 Standards of performance governing complaints of veterans and eligible persons.

State Employment Service Agency Compliance

652.130 Determination of compliance.
652.131 Secretary's annual report to Congress.

Standards of Performance Governing the Disabled Veterans Outreach Program (DVOP)

652.140 Administration of DVOP.
652.141 Functions of DVOP staff.
652.142 Stationing of DVOP staff.

2. The authority citation for Part 652 is revised to read as follows:

Authority: Wagner-Peyser Act, 29 U.S.C. 49 et seq.; 38 U.S.C. Chapters 41 and 42.

3. A new Subpart A heading is added to §§ 652.1–652.9 to read as follows:

Subpart A—Employment Service Planning and Operations

* * * * *

4. A new Subpart B is added to Part 652 to read as follows:

Subpart B—Services for Veterans

Purpose and Definitions

§ 652.100 Purpose and scope of subpart.

(a) This subpart contains the Department of Labor's regulations for implementing 38 U.S.C. 2001–2012, Chapters 41 and 42, which require the Secretary of Labor to provide eligible veterans and eligible persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era, through the public employment service system established pursuant to the Wagner-Peyser Act, as amended.

(b) This subpart describes the roles and responsibilities of the Assistant Secretary for Veterans' Employment and Training (ASVET) and the staff of the Veterans' Employment and Training Service (VETS).

(c) This subpart describes the performance standards for determining compliance of State agencies in carrying out the provisions of 38 U.S.C., Chapters 41 and 42 with respect to:

(1) Providing services to eligible veterans and eligible persons to enhance their employment prospects,

(2) Priority referral of special disabled veterans and veterans of the Vietnam era to job openings listed by Federal contractors pursuant to 38 U.S.C. 2012(a), and

(3) Reporting of services provided to eligible veterans and eligible persons pursuant to 38 U.S.C. 2007(c) and 2012(c).

(d) Performance standards are contained in this subpart at §§ 652.140–652.142 on the conduct of the Disabled Veterans Outreach Program (DVOP) in accordance with 38 U.S.C. 2003A.

§ 652.101 Definitions of terms used in subpart.

"Assistant Secretary for Veterans' Employment and Training (ASVET)" shall mean the official of the Department of Labor as described in § 652.110.

"Assistant State Director for Veterans' Employment and Training Service (ASDVETS)" shall mean a Federal employee who is designated as an assistant to a State Director for Veterans' Employment and Training Service (SDVETS).

"Disabled Veteran" shall mean a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans Administration and who is not classified as a Special Disabled Veteran.

"Eligible person" shall mean:

(1) The spouse of any person who died of a service-connected disability; or

(2) The spouse of any member of the armed forces serving on active duty who at the time of application for assistance under this subpart, is listed, pursuant to 37 U.S.C. 556 and the regulations issued thereunder, by the Secretary concerned, in one or more of the following categories and has been so listed for a total of more than 90 days: (i) Missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power; or

(3) The spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

"Eligible veteran" shall mean a person who (1) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (2) was discharged or released from active duty because of a service-connected disability.

"Local Veterans' Employment Representative (LVER)" shall mean a member of the State agency staff designated and assigned by the State agency administrator to serve veterans and eligible persons pursuant to this subpart.

"Regional Director for Veterans' Employment and Training Service (RDVETS)" is the representative of the ASVET on the staff of the Veterans' Employment and Training Service (VETS) at the regional level; supervises all other VETS staff within the region to which assigned; and shall report to, be responsible to, and be under the administrative direction of the ASVET.

"Service Delivery Point (SDP)" shall mean a designated local employment service office which serves an area that may also contain extended service locations.

"Special disabled veteran" shall mean (1) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans Administration for a disability rated at 30 percent or more, or (2) a person who was discharged or released from active duty because of a service-connected disability.

"State agency" means the State governmental unit designated pursuant to section 4 of the Wagner-Peyser Act, as amended, to cooperate with the United States Employment Service in the operation of the public employment service system.

"State Director for Veterans' Employment and Training Service (SDVETS)" is the representative of ASVET on the staff of the Veterans' Employment and Training Service (VETS) at the State level.

"United States Employment Service (USES)" shall mean the component of the Employment and Training Administration of the Department of Labor, established under the Wagner-Peyser Act of 1933, as amended, to maintain and coordinate a national system of public employment service agencies.

"Veteran of the Vietnam era" shall mean an eligible veteran who (1) served on active duty for a period of more than 180 days, any part of which occurred during the Vietnam era (August 5, 1964, through May 7, 1975) and was discharged or released therefrom with other than a dishonorable discharge; or (2) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed during the Vietnam era.

"Veterans' Employment and Training Service (VETS)" shall mean the organizational component of the Department of Labor administered by the Assistant Secretary of Labor for Veterans' Employment and Training established to promulgate and administer policies and regulations to provide eligible veterans and eligible persons the maximum of employment and training opportunities according to 38 U.S.C. 2002.

Federal Responsibilities

§ 652.110 Role of the Assistant Secretary for Veterans' Employment and Training (ASVET).

(a) As the principal veterans' advisor to the Secretary of Labor, the ASVET shall formulate, promulgate, and administer policies, regulations, grant procedures, grant agreements and administrative guidelines and administer them through the Veterans' Employment and Training Service (VETS) so as to provide eligible veterans and eligible persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era, through existing programs, coordination, and merger of programs and implementation of new programs.

(b) ASVET shall oversee activities carried out by State agencies pursuant to 38 U.S.C., Chapters 41 and 42.

(c) ASVET shall ensure that appropriate records and reports are maintained by State agencies within their management information systems to fulfill their obligations under this subpart.

Standards of Performance Governing State Agency Services to Veterans and Eligible Persons

§ 652.120 Standards of performance governing State agency services.

(a) To the extent required by 38 U.S.C. 2002 and other applicable law, each State agency shall assure that all of its SDPs, using LVERs and other staff, shall provide maximum employment and training opportunities to eligible veterans and eligible persons with priority given to disabled veterans and veterans of the Vietnam-era, by giving them preference over non-veterans in the provision of employment and training services available at the SDP involved. Services are those activities or efforts including but not limited to registration, counseling, referral to supportive services, job development, etc., which are directed to help applicants find jobs or training. When making referrals from the group of applicants meeting the specific eligibility criteria for a particular program, State agencies shall observe the priority order to referral in paragraph (b).

(b) In making referrals of qualified applicants to job openings and training opportunities, to provide maximum employment and training opportunities under 38 U.S.C., SDPs shall observe the following order of priority:

(1) Special disabled veterans;

(2) Veterans of the Vietnam era;

(3) Disabled veterans other than special disabled veterans;

(4) All other veterans and eligible persons; and

(5) Nonveterans.

§ 652.121 Performance standard on facilities and support for Veterans Employment and Training Service (VETS) staff.

Each State agency shall provide adequate and appropriate facilities and administrative support such as office space, furniture, telephone, equipment, and supplies to VETS staff.

§ 652.122 Reporting and budget requirements.

(a) State agencies shall provide RDVETS, SDVETS, and ASDVETS with access to regular and special internal State agency reports which relate in whole or in part with services to veterans and/or eligible persons.

(b) Each State agency shall make reports and prepare budgets pursuant to instructions issued by the ASVET and in

such format as the ASVET shall prescribe.

§ 652.123 Performance standards governing the assignment and role of Local Veterans' Employment Representatives (LVERs).

(a) To carry out the requirements of 38 U.S.C. 2004, at least one member of each State agency staff, preferably an eligible veteran, shall be designated and assigned by each State agency . administrator as a full-time or part-time LVER in each SDP in accordance with terms/requirements of a grant agreement approved by the ASVET. The ASVET intends to use the following criteria in establishing the terms and requirements of grant agreements:

(1) At least one full-time LVER shall be assigned in each SDP which has had 1,000 new or renewed applications from veterans and eligible persons during the most recent twelve-month report period unless a waiver based on demonstrated lack of need is granted by the ASVET, and

(2) At least one part-time LVER whose time shall be devoted to veterans' services in proportion to the full-time criteria shall be assigned to each SDP not meeting the criteria for full-time LVERs in § 652.123(a)(1).

(b) Additional full-time or part-time LVERs may be assigned based on a determination of need by the State agency administrator and in accordance with terms/requirements of a grant agreement approved by the ASVET.

(c) Each LVER shall perform, at the SDP level, the duties prescribed at 38 U.S.C. 2003(c) required by 38 U.S.C. 2004.

§ 652.124 Standards of performance governing State agency cooperation and coordination with other agencies and organizations.

(a) Each State agency shall establish cooperative working relationships through written agreements with the Veterans Administration (VA) offices serving the State to maximize the use of VA employment and training programs for veterans and eligible persons.

(b) All programs and activities governed by this subpart will be coordinated to the maximum extent feasible with other programs and activities under 38 U.S.C., the Wagner-Peyser Act, the Job Training Partnership Act, and other employment and training programs at the State and local level.

(c) Such relationships or agreements may be described in the Governor's Coordination and Special Services Plan prepared according to section 121(b) of the Job Training Partnership Act (Pub. L. 97–300).

§ 652.125 Standards of performance governing complaints of veterans and eligible persons.

Each SDP shall display information on the various complaint systems to advise veterans and eligible persons about procedures for filing employment service, Federal contractor, equal opportunity, and other complaints.

State Employment Service Agency Compliance

§ 652.130 Determination of compliance.

(a) The ASVET shall have authority for applying the requirements and remedial actions necessary to implement 20 CFR 658, Subpart H.

(b) The ASVET shall establish appropriate program and management measurement and appraisal mechanisms to ensure that the standards of performance set forth in §§ 652.120–125 are met. Specific performance standards designed to measure State agency services provided to veterans and eligible persons required by § 652.120(a) will be developed administratively through negotiations between State agency administrators and SDVETS and numerical values of the standards will be published as public notices in the **Federal Register**. A full report of those State agencies in noncompliance with the standards of performance and their corrective action plans shall be incorporated into the Secretary's annual report to the Congress cited at § 652.131 of this subpart.

(c) Every effort should be made by the State agency administrator and the SDVETS to resolve all issues informally before proceeding with the formal process.

(d) If it is determined by the ASVET that certain State agencies are not complying with the performance standards at §§ 652.120–125, such State agencies shall be required to provide documentary evidence to the ASVET that their failure is based on good cause. If good cause is not shown, the ASVET, pursuant to Subpart H of Part 658 of this chapter, shall formally designate the State agency as out of compliance, shall require it to submit a corrective action plan for the following program year, and may take other action against the State agency pursuant to Subpart H of Part 658 of this chapter.

§ 652.131 Secretary's annual report to Congress.

The Secretary shall report, after the end of each program year, on the success of the Department and State agencies in carrying out the provisions of this subpart.

Standards of Performance Governing the Disabled Veterans Outreach Program (DVOP)

§ 652.140 Administration of DVOP.

(a) The ASVET shall negotiate and enter into grant agreements within each State to carry out the requirements of 38 U.S.C. 2003A for support of a Disabled Veterans Outreach Program (DVOP) to meet the employment needs of veterans, especially disabled veterans of the Vietnam era.

(b) The ASVET shall be responsible forthe supervision and monitoring of the DVOP program, including monitoring of the appointment of DVOP specialists.

(c) DVOP specialists shall be in addition to and shall not supplant local veterans' employment representatives assigned under § 652.123 of this subpart.

§ 652.141 Functions of DVOP staff.

Each DVOP specialist shall carry out the duties and functions for providing services to eligible veterans according to provisions of 38 U.S.C. 2003A (b) and (c).

§ 652.142 Stationing of DVOP staff.

DVOP specialists shall be stationed at various locations in accordance with 38 U.S.C. 2003A(b)(2).

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

§§ 653.200 through 653.231 [Removed]

5. In Part 653, §§ 653.200 through 653.231 (Subpart C—Services for Veterans) are removed.

Signed at Washington, D.C. this 23rd day of March 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-8497 Filed 3-29-84; 8:45 am]

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Part VI

Department of Education

34 CFR Part 796
National Diffusion Network; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 796

National Diffusion Network

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary is issuing final regulations for the National Diffusion Network. These final regulations are part of the Department of Education's deregulation effort. The intended effect of the action is to improve the operation of the National Diffusion Network.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Lois N. Weinberg, (202) 653–7006, Division of National Dissemination Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 613 Brown Bldg., Washington, D.C. 20202.

SUPPLEMENTARY INFORMATION:

Background

The National Diffusion Network (NDN) was established in 1974 to promote—at a fraction of their original developmental costs—the widespread national use of exemplary educational programs.

The NDN was originally authorized in Fiscal Year (FY) 1974 under the Elementary and Secondary Education Act, Title III, Section 306. In FY 1977, the program was authorized in Section 422(a) of the General Education Provisions Act (GEPA). The FY 1980 authority was contained in the Elementary and Secondary Education Act, Sections 303 and 376. Current authority is based on the Education Consolidation and Improvement Act of 1981, Pub. L. 97–35, Sec. 583(a)(1).

The NDN is a delivery system composed of two types of projects—

(a) *Developer Demonstrator Projects.* A Developer Demonstrator Project is funded to install a specific exemplary educational program in new settings nationwide.

(b) *State Facilitator Projects.* State Facilitator Projects disseminate a variety of exemplary educational programs within the particular State served.

Comments and Responses

On December 27, 1983, the Secretary published in the **Federal Register** (48 FR 57090) the Notice of Proposed Rulemaking for the National Diffusion Network. During the period allowed for comments in response to the proposed regulations, 20 letters with numerous comments and questions were received.

The provisions of these final regulations are substantially the same as those of the Notice of Proposed Rulemaking. However, § 796.15 has been changed to permit the use of instructional levels and special populations as independent priorities as well as to permit their use as limitations on other priorities. This change to the proposed rules is more consistent with the current operation of the NDN while adding the flexibility of establishing more precise priorities.

Section 796.34(a)(2) proposed that student population would be considered in determining the level of funding for State Facilitator awards. Based on further consideration within the Department, and on the comments received on this issue, the section has been removed. As in the past, the Secretary will consider the size and density of student population along with other factors in determining funding levels as part of the cost analysis required by the Education Department General Administrative Regulations (EDGAR) § 75.232.

The following is a summary of the comments received and the Secretary's response to these comments.

Section 796.3 What definitions apply to the NDN?

Comment. A commenter made suggestions for minor changes in several of the definitions in this section.

Response. No change has been made. The changes that were suggested were matters of style and not substantive issues.

Adoption-Agreement

Comment. A commenter asked whether a written agreement was required for each adoption, and expressed concern that additional paperwork would be required.

Response. No change has been made. A written agreement is not required. Many Developer Demonstrators and State Facilitators have found written agreements very effective. Whether or not a written agreement exists, there must be an understanding among all of the parties involved in the planning of an adoption of an exemplary educational program, including the State Facilitator, the Developer Demonstrator and the adopting educational service provider.

Certified Demonstration Site and Certified Trainer

Comment. A commenter asked whether the *sponsor* of an exemplary educational program was the most appropriate entity to make decisions concerning certified demonstration sites and certified trainers when the project director or other project personnel might be the persons most capable of making these decisions.

Response. No change has been made. In general, project personnel will make decisions concerning certified demonstration sites and certified trainers. However, the Department will not dictate how or at what organizational level a grantee should make a decision regarding demonstration sites and certified trainers.

Section 796.13 How long do approval and recertification by the Joint Dissemination Review Panel last?

Comment. One commenter suggested that the four-year period for funding eligibility before recertification of an exemplary educational program is required begin with the initial funding date rather than the date of JDRP approval, so that evaluation data from adoption sites would be available.

Response. No change has been made. The purpose of this requirement is to assure adopting educational service providers that programs remain as effective as when they were originally approved by the JDRP. Recertification replaces the reapproval requirement, contained in the previous regulations, under which all of the original JDRP approval requirements had to be met. Recertification will serve as a streamlined mechanism to reconfirm the quality of the original program by reviewing the program features, the educational effects, and the adoption costs every four years. Many exemplary educational programs do not receive dissemination grants from the NDN until several years after they have been approved by the JDRP. Since each exemplary educational program must have a demonstration site in order to be eligible for funding, recent evaluation data from this site may be used in lieu of or along with data from adoption sites for recertification. The JDRP approval date will serve as a consistent starting date for all programs, regardless of their funding status.

Section 796.15 Will priorities for funding Developer Demonstrator grants be established?

Comment. Several commenters expressed concern that early childhood

and special education programs could be funded only in conjunction with other priorities.

Response. A change has been made. This section has been revised to allow the identification of instructional levels and special populations as independent priorities, as well as to permit their use as limitations on other priorities.

Comment. Another commenter asked when funding priorities would be made public.

Response. Funding priorities are identified in the Application Notice, which is the official announcement published in the **Federal Register** of application deadlines and other information concerning how to apply for Department of Education grants. In most cases, funding priorities are announced annually at least 45–60 days before applications are due.

Section 796.34 What additional criteria exist for new and continuation awards?

Comment. Several commenters expressed concern about the use of student population to determine funding levels for State Facilitator projects, particularly for States with low and sparsely distributed populations.

Response. A change has been made. Proposed § 796.34(a)(2) has been removed because it appeared that undue weight was to be given to this criterion. As in the past, the Secretary will consider the size and density of student population along with other factors in determining funding levels a part of the cost analysis required by EDGAR § 75.232.

Comment. Another commenter asked on what basis the determination of project effectiveness would be made, and whether the number of adoptions and the cost effectiveness of the project would be considered.

Response. A determination of project effectiveness will be based on the annual report submitted by each project as part of the continuation application. Particular attention will be given to each applicant's report of its accomplishment of the activities described under § 796.12 or § 796.16, taking into consideration the criteria under which the original application was evaluated. The number of adoptions, the quality, and the cost effectiveness of the project will be considered.

Section 796.41 Are there restrictions on the kinds of items a grant may support?

Comment. A commenter asked whether grant funds could be used for training purposes.

Response. Many of the costs associated with training are allowable under these grants. However, stipends may not be paid to participants in training activities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 796

Dissemination, Education, Educational research, Grant programs—education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.073, National Diffusion Network)

Dated: March 27, 1984.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 796 of Title 34 of the Code of Federal Regulations to read as follows:

PART 796—NATIONAL DIFFUSION NETWORK

Subpart A—General

Sec.

796.1 What is the National Diffusion Network (NDN)?
796.2 What regulations apply to the NDN?
796.3 What definitions apply to the NDN?

Subpart B—What Kinds of Projects Does the Department Assist Under This Program?

796.11 What types of projects does the NDN assist?
796.12 What activities must a Developer Demonstrator project conduct?
796.13 How long do approval and recertification by the Joint Dissemination Review Panel last?
796.14 Who is eligible to apply for a Developer Demonstrator grant?
796.15 Will priorities for funding Developer Demonstrator grants be established?
796.16 What activities must a State Facilitator Project conduct?
796.17 Who is eligible to apply for a State Facilitator grant?
796.18 What types of awards does the Secretary make under the NDN?

Subpart C—How To Apply for a Grant—[Reserved]

Subpart D—How Is a Grant Made?

796.31 How does the Secretary evaluate an application for a Developer Demonstrator or a State Facilitator grant?
796.32 What selection criteria does the Secretary use to review an application for a new Developer Demonstrator grant?
796.33 What selection criteria does the Secretary use to review an application for a new State Facilitator grant?
796.34 What additional criteria exist for new and continuation awards?

Subpart E—What Conditions Must Be Met By a Grantee?

796.41 Are there restrictions on the kinds of items a grant may support?
796.42 Nonprofit private school requirements.

Authority: Section 583 of the Education Consolidation and Improvement Act of 1981 (Pub. L. 97–35) (20 U.S.C. 3851).

Subpart A—General

§ 796.1 What is the National Diffusion Network (NDN)?

The National Diffusion Network (NDN) funds activities designed to promote across the Nation the widespread use of exemplary educational programs by educational service providers. The NDN is designed—

(a) To identify potential exemplary educational programs nationwide;

(b) To acquaint educational service providers with information on exemplary educational programs; and

(c) To help these providers adopt the exemplary educational programs through training and technical assistance.

(20 U.S.C 3851)

§ 796.2 What regulations apply to the NDN?

(a) *Regulations.* The following regulations apply to the NDN:

(1) The Education Department General Administrative Regulations (EDGAR) in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions), Part 78 (Education Appeals Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(2) The regulations in this Part 796.

(b) *Exceptions to EDGAR.* Section 75.650, Participation of students enrolled in private schools, does not apply to this program. (However, see § 796.42 in this part, which governs this participation.)

(20 U.S.C 3474(a); 20 U.S.C 3851)

§ 796.3 What definitions apply to the NDN?

(a) *Definitions in EDGAR apply to the NDN.* The following terms used in this part are defined in Part 77 of EDGAR:

Applicant
Application
Award
Budget period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
State educational agency (SEA)

(20 U.S.C 3474(a))

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Adoption" means the use of a JDRP approved exemplary educational program by an educational service provider in a new setting.

"Adoption Agreement" means an understanding among a Developer Demonstrator grantee, a State Facilitator grantee, and officials of an educational service provider concerning the responsibilities of each for the adoption of an exemplary educational program.

"Certified Demonstration Site" means an adoption site that utilizes all key elements of an exemplary educational program and is authorized by the exemplary educational program sponsor to receive visitors and demonstrate the program.

"Certified Trainer" means an individual authorized by an exemplary educational program sponsor to perform certain functions such as awareness presentations, training, and assistance in the adoption of an exemplary educational project.

"Educational Service Provider" means any public or nonprofit private agency or organization responsible for the provision of educational services, including State educational agencies (SEAs), local educational agencies (LEAs), nonprofit private educational agencies, public or nonprofit private institutions of higher education, and other agencies such as correctional institutions and health facilities.

"Exemplary Educational Program" means a program, product, or practice approved by the Joint Dissemination Review Panel, and may be referred to as a "program" in these regulations.

"Joint Dissemination Review Panel" (JDRP) means a panel within the Department of Education that examines evidence of effectiveness in attaining goals of educational programs, products, or practices.

"JDRP Approval" means that a proposed exemplary educational program has demonstrated that a positive change has occurred that is directly attributable to the program; that the change was statistically and educationally significant; that the evidence supporting the program's claims was gathered and interpreted correctly; that the program is accurately described; that the program could be used effectively in other locations; that the cost was reasonable, considering the magnitude and the subject of change; that it has a high quality evaluation design; that it does not have any potential for educational harm to students; and that it is socially fair, e.g., free from race and sex-role stereotyping.

"JDRP Recertification" means that a program that was previously approved by the JDRP has demonstrated that the basic features of the program remain essentially the same as the originally approved program; that the educational effects at similar sites compare favorably to those that were demonstrated at the time of the initial JDRP approval; and that the costs of the program compare favorably to the costs of the originally approved program.

"Key Elements" are the components of an exemplary educational program that must be implemented if the program is to work as approved by the JDRP.

(20 U.S.C. 3851)

Subpart B—What Kinds Of Projects Does The Department Assist Under This Program?

§ 796.11 What types of projects does the NDN assist?

The National Diffusion Network assists two types of projects:

(a) Developer Demonstrator Projects—disseminate a specific exemplary educational program nationwide.

(b) State Facilitator Projects—disseminate a wide variety of exemplary educational programs within the particular State served by each project.

(20 U.S.C. 3851)

§ 796.12 What activities must a Developer Demonstrator project conduct?

A Developer Demonstrator project must—

(a) Develop and provide material—

(1) For educational service providers throughout the Nation to use in deciding whether to adopt the exemplary educational program;

(2) For training and instruction in the exemplary educational program; and

(3) For management and evaluation of the program;

(b) Negotiate adoption agreements with State Facilitator grantees and educational service providers;

(c) Install the exemplary educational program in new settings in other States by—

(1) Assisting potential adopters with preparatory stages;

(2) Providing training to staff members of the adopting educational service provider; and

(3) Providing technical assistance in the implementation and evaluation stages of an adoption;

(d) Evaluate the quality and effectiveness of the activities listed in paragraphs (a), (b), and (c) of this section as specified in the evaluation plan for the project;

(e) Monitor and evaluate the quality and effectiveness of the adoptions by collecting and analyzing impact data from a representative sample of adoption sites, as specified in the evaluation plan for the project;

(f) Maintain records during the grant period concerning the adoptions of the program including records of—

(1) Demographic data;

(2) Evaluation data; and

(3) Retention rates;

(g) Develop and implement a system to identify and train Certified Trainers;

(h) Identify and certify demonstration sites throughout the Nation;

(i) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(j) Cooperate with State Facilitator grantees in carrying out the activities in this section.

(20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0066)

§ 796.13 How long do approval and recertification by the Joint Dissemination Review Panel last?

For the purposes of NDN funding—

(a) JDRP approval granted on or before September 30, 1980, remains in effect for a four-year period beginning October 1, 1980;

(b) JDRP approval granted after September 30, 1980, remains in effect for a four-year period after the date of approval; and

(c) Any subsequent JDRP recertification of the same program remains in effect for four years after the recertification date.

(20 U.S.C. 3851)

§ 796.14 Who is eligible to apply for a Developer Demonstrator grant?

(a) Any public or nonprofit private agency, organization, or institution that has developed a program that has current JDRP approval or current JDRP recertification, and is available for visitation, may apply for a Developer Demonstrator grant.

(b) If the agency that developed the exemplary educational program does not apply, another public or nonprofit private agency, organization, or institution may apply if—

(1) The program is approved or recertified by the JDRP;

(2) The program continues in operation;

(3) The program is available for visitation; and

(4) The staff includes personnel who originally developed or operated the program, or who are experienced and knowledgeable about the program.

(c) Both federally and non-federally developed exemplary educational programs are eligible for NDN funding.

(20 U.S.C. 3851)

§ 796.15 Will priorities for funding Developer Demonstrator grants be established?

(a) Each year the Secretary may announce in an application notice published in the **Federal Register** the program priorities for which applicants may apply for assistance.

(b)(1) Each time the Secretary announces a competition, the Secretary may select one or more priorities.

(2) Applicants compete separately under each priority selected by the Secretary.

(3) The Secretary may select priorities under this section after taking into consideration any unmet national needs.

(c) The Secretary may select priorities from the following subject areas or special needs:

(1) English.

(2) Science.

(3) Social studies.

(4) Mathematics or higher mathematics.

(5) Reading.

(6) Written or oral communication.

(7) Health.

(8) Nutrition.

(9) Physical fitness.

(10) Environmental education.

(11) Foreign language programs that accomplish one or more of the following—

(i) Introduce students to non-English-speaking cultures;

(ii) Heighten awareness and comprehension of one's native tongue; or

(iii) Serve the Nation's needs in commerce, diplomacy, defense, and education.

(12) Computer science programs that enable students to accomplish one or more of the following—

(i) Understand the computer as an information, computation, and communication device;

(ii) Use the computer to enhance instruction in English, mathematics, science, social studies, or for personal and work-related purposes; or

(iii) Understand the world of computers, electronics, and related technologies.

(13) Programs that advance students' personal, educational, and occupational goals, such as courses in the fine and performing arts, vocational education, and industrial arts.

(14) Programs that improve students' skills in comprehension, analysis, problem solving, deductive and inductive reasoning, or study.

(15) Programs that improve teaching and the quality of instruction through either or both of the following—

(i) The identification and transfer of non-traditional practices;

(ii) The application of current research findings in learning, teaching, and management.

(16) Educational leadership programs designed to accomplish one or more of the following—

(i) Increase academic standards and expectations;

(ii) Increase the effective use of time in schools;

(iii) Bring esteem and respect to members of the teaching profession; or

(iv) Provide support of school boards and administrators who have demonstrated the ability to marshal community, business, or industry resources needed to promote educational excellence.

(d) In addition to the priorities listed in paragraph (c) of this section, the Secretary may establish priorities as specified in one or both of the following paragraphs.

(1) The Secretary may establish priorities at specified instructional levels, such as preschool, elementary, secondary, postsecondary, or adult education.

(2) The Secretary may establish as a priority one or more of the following special populations:

(i) Gifted and talented students.

(ii) Socioeconomically disadvantaged students.

(iii) Limited English-proficient students.

(iv) Handicapped students.

(v) Migrant students.

(vi) Functionally illiterate adults or pre-adults.

(e) The Secretary may also limit a priority established under paragraph (c) of this section to—

(1) An instructional level;

(2) One or more of the special populations listed in paragraph (d)(2) of this section; or

(3) To both an instructional level and one or more of the special populations listed in paragraph (d)(2) of this section.

(20 U.S.C. 385)

§ 796.16 What activities must a State Facilitator Project conduct?

A State Facilitator Project must—

(a) Inform educational service providers about the availability of all exemplary educational programs in the National Diffusion Network, both funded and non-funded, with a major focus on those developed in States other than the one served by the State Facilitator;

(b) Assist educational service providers in—

(1) Identifying and assessing their needs; and

(2) Matching those needs with exemplary educational programs;

(c) Negotiate adoption agreements with funded and non-funded Developer Demonstrator projects and educational service providers;

(d) Arrange for funded and non-funded Developer Demonstrator projects and Certified Trainers to train staff members of educational service providers that adopt exemplary programs;

(e) Arrange for and provide follow-up services during the implementation of the adoptions;

(f) Assist funded and non-funded Developer Demonstrator projects and adopters in the evaluation of the adoptions;

(g) Maintain records during the grant period concerning the exemplary

educational programs adopted in the State, including records of—

(1) Demographic data;

(2) Evaluation data; and

(3) Retention rates;

(h) Evaluate, as specified in the evaluation plan for the project, the quality and effectiveness of the activities listed under paragraphs (a) through (e) and the quality and effectiveness of the dissemination process;

(i) Monitor, as specified in the monitoring plan for the project, the activities listed under paragraphs (d), (e) and (f);

(j) Assist in the identification and training of Certified Trainers for Developer Demonstrator projects;

(k) Assist in the identification and development of local demonstration sites for Developer Demonstrator projects;

(l) Identify and assist in the submission to JDRP of potential exemplary educational programs developed in the State served by the State Facilitator;

(m) Participate with other NDN grantees in workshops and meetings arranged by the Secretary;

(n) Provide appropriate information to national, State, local, and private agencies about NDN on the State and local level; and

(o) Cooperate with Developer Demonstrator projects in carrying out the activities in this section.

(20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 796.17 Who is eligible to apply for a State Facilitator grant?

Any public or nonprofit private agency, organization, or institution located in the State to be served may apply for a State Facilitator grant.

(20 U.S.C. 3851)

§ 796.18 What types of awards does the Secretary make under the NDN?

(a) The Secretary awards grants and cooperative agreements under this program depending upon the nature of the relationship between the recipient and the Department.

(b) The Secretary evaluates cooperative agreements using the same procedures and criteria used to evaluate applications for grants.

(20 U.S.C. 3851)

Subpart C—How To Apply For A Grant—[Reserved]

Note.—EDGAR establishes the regulations for submission of applications. See, generally, 34 CFR 75.100–75.192.

Subpart D—How Is A Grant Made?

§ 796.31 How does the Secretary evaluate an application for a Developer Demonstrator or a State Facilitator grant?

(a) The Secretary evaluates an application—

(1) For a Developer Demonstrator grant on the basis of the criteria in § 796.32; and

(2) For a State Facilitator grant on the basis of the criteria in § 796.33.

(b) The Secretary awards up to 100 possible points under both—

(1) The Developer Demonstrator criteria; and

(2) The State Facilitator criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) For State Facilitator projects, only one award is made in each State, selected by a separate competition for each State.

(20 U.S.C. 3851)

§ 796.32 What selection criteria does the Secretary use to review an application for a new Developer Demonstrator grant?

(a) *Plan of operdtion.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project (see § 796.12 for a description of each of the activities that a Developer Demonstrator must conduct under the design);

(ii) A description of training required to install the program in new settings;

(iii) An effective plan of management that insures proper and efficient administration of the project;

(iv) A clear description of how the objectives of the project relate to the purpose of the program;

(v) The way the applicant plans to use its resources and personnel to achieve each objective;

(vi) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(vii) If the applicant is a local educational agency or State educational agency, a clear description of how the applicant will satisfy the applicable requirements for consultation with private school officials and an opportunity for participation by private school children as stated in § 796.42.

(b) *Quality of Key Personnel.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project;

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) An estimate of the costs to the adopter for installing the program in a new setting and a projection of the number of educational service providers that will adopt the program each year.

(d) *Evaluation Plan.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 75.590—Evaluation by grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(3) The Secretary looks for information that shows plans for evaluation of the following—

(i) The quality and effectiveness of awareness materials and conferences, of training and follow-up, and of internal management plans;

(ii) The implementation status of the adoptions, including key elements and implementation levels; and

(iii) The effectiveness of the adoption including the impact on the students or the changes in teacher or administrator behavior.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Monitoring.* (15 points) The Secretary looks for information that shows the extent to which the applicant clearly details plans that show promise of effective management of the project, including post adoption monitoring of the program implementation and resulting benefits at the adoption sites.

(g) *Effective dissemination strategies.* (10 points) The Secretary looks for information that shows the extent to which the applicant proposes effective dissemination strategies to meet specific characteristics of the program.

(20 U.S.C. 3851)

§ 796.33 What selection criteria does the Secretary use to review an application for a new State Facilitator grant?

(a) *Plan of operation.* (15 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project, (see § 796.16 for a description of each of the activities that a State Facilitator must conduct under the design);

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points.) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable, including evaluation of the impact of adoptions in the State served by the State Facilitator.

(e) *Adequacy of resources.* (4 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Consultation during application.* (5 points) The Secretary looks for information that shows the extent to which the applicant, in developing its application, has consulted with the SEA, LEAs, IHEs, nonprofit private elementary and secondary schools, and other educational service providers in the State to be served;

(g) *Consultation and participation during project.* (5 points) The Secretary looks for information that shows the extent to which the applicant, in carrying out project activities, provides for consultation with, and participation of the SEA, LEAs, IHEs, nonprofit private elementary and secondary schools, and other educational service providers in the State.

(h) *Monitoring plan.* (16 points) The Secretary looks for information that shows the extent to which the applicant clearly details plans to monitor and assist sites that adopt the programs, and provide follow-up services after training.

(i) *Effective dissemination strategies.* (10 points) The Secretary looks for information that shows the extent to which the applicant proposes effective dissemination strategies that may be used by other NDN grantees.

(20 U.S.C. 3851)

§ 796.34 What additional criteria exist for new and continuation awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for new Developer Demonstrator awards, the Secretary seeks diversity in the techniques used to teach a subject or meet a special need.

(b) If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(20 U.S.C. 3851)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 796.41 Are there restrictions on the kinds of items a grant may support?

Funds may not be used for stipends for educational personnel to participate in training activities, construction, repair, remodeling, or alteration of facilities or sites. See EDGAR Part 74, Subpart Q—Cost Principles.

(20 U.S.C. 1221e-3(a)(1))

§ 796.42 Nonprofit private school requirements.

(a) A grant to an LEA or SEA is subject to the requirements in § 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section, and § 76.652 of EDGAR.

(b) *Consultation.* (1)(i) An applicant shall comply with paragraphs (b)(1)(ii) of this section if the following conditions are met:

(A) The applicant is an LEA or SEA.

(B) The applicant applies for a Developer Demonstrator grant.

(C) The project proposed under the application is designed for adoption at elementary or secondary schools.

(ii) The applicant shall consult with officials of nonprofit private elementary and secondary schools to ensure that the project can benefit children in those schools.

(2)(i) An applicant shall comply with paragraph (b)(2)(ii) of this section if the following conditions are met:

(A) The applicant is an LEA or SEA.

(B) The applicant applies for a State Facilitator grant.

(ii) The applicant shall consult with officials of nonprofit private elementary and secondary schools in the State served by the project to determine appropriate strategies to ensure that children in those schools can benefit from the project.

(c) *Participation.* (1) An LEA or SEA that receives a Developer Demonstrator grant designed for adoption at elementary and secondary schools shall—

(i) Based on the consultation under paragraph (b)(1) of this section, ensure that nonprofit private elementary and secondary schools have an opportunity to adopt the program; and

(ii) Ensure that nonprofit private elementary and secondary schools in the area served by an adopter are informed about the opportunities to adopt the program.

(2) An LEA or SEA that receives a State Facilitator grant shall use the strategies developed under paragraph (b)(2) of this section to ensure that teachers and administrators from nonprofit elementary and secondary schools have an opportunity to participate to adopt the program.

(d) An applicant that must comply with paragraph (c) of this section shall include in its application a description of how the applicant will meet the Federal requirements for participation.

(e) An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(20 U.S.C. 3851, 3862)

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March 30, 1984

Part VII

Department of Education

34 CFR Part 770

Library Services and Construction Act Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 770

Library Services and Construction Act Program (Titles I and III of the Library Services and Construction Act)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education is issuing final regulations for the Library Services and Construction Act Program. These final regulations implement the Library Services and Construction Act (LSCA), Pub. L. 91–600, as amended. These regulations are necessary in order to provide guidance to State library administrative agencies in the development of their State plans so that the plans may meet the purposes of the authorizing legislation.

EFFECTIVE DATE: These regulations will take effect on October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Klassen, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 613, Brown Building), Washington, D.C. 20202. Telephone (202) 254–9664.

SUPPLEMENTARY INFORMATION:

Background

The Library Services and Construction Act (LSCA) was originally enacted as the Library Services Act in 1956, Pub. L. 84–597. Most recently, the LSCA has been extended through fiscal year 1984 by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35. In these regulations, the title of part 770 is changed from "Library Services, Public Library Construction, and Interlibrary Cooperation" to the "Library Services and Construction Act Program," and the regulatory provisions relating to both Title II (Public Library Construction) and Title IV (Older Readers Services) are removed. Under the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, no funds are authorized to be appropriated to carry out Title II for fiscal years 1982, 1983, or 1984. Thus, regulatory provisions relating to Title II have been removed. However, the effective date of these regulations is October 1, 1984. For purposes of administering grants made prior to October 1, 1984 under the Emergency Jobs Bill, Pub. L. 98–8, the Appalachian Regional Development Act of 1965, as amended, Pub. L. 89–4, or under any other authorizations to which LSCA Title II statutory requirements apply, the current Title II regulations will continue to apply until the construction projects funded with such grants are completed. Although the Library Services and Construction Act was amended by the Older American Comprehensive Services Amendments of 1973, Pub. L. 93–29, to include Title IV, this Title has never been funded and no specific funding authority was provided in the Omnibus Budget Reconciliation Act of 1981. Therefore, these regulations include no provisions relating to Title IV.

Comments and Responses

On February 28, 1983, the Secretary published in the **Federal Register** (48 FR 8303) the Notice of Proposed Rulemaking for the Library Services and Construction Act Program. During the period allowed for comments in response to the proposed regulations, 24 letters with numerous comments and questions were received. The comments were generally in favor of the deregulation effort in that it represented a Departmental effort to reduce regulatory burdens and clarify regulatory requirements. Comments were generally opposed to the removal of LSCA Title II (Public Library Construction) regulatory provisions and the removal of the "handicapped" criterion from the provision determining adequacy of public library services. Comments and responses to the NPRM can be found in the Appendix to these regulations.

While the provisions of these final regulations are substantially the same as those of the Notice of Proposed Rulemaking (NPRM), changes include: (1) The clarification of § 770.13(a)(2)(i) to show that under section 6(d)(2) of the LSCA, a State's long range program is to be reviewed and revised annually in accordance with the State's changing needs for assistance under the Act; and (2) the deletion of § 770.13(b)(3)(iv) of the NPRM because under section 6(d), criteria, policies and procedures exclusively for Title III are not required.

Paperwork Reduction Act of 1980

Information collections requirements contained in these regulations, (§§ 770.11 (The basic State plan), 770.13 (The long range program), 770.14 (The annual program), and 770.20 (State and local spending requirements as conditions for payment to States)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control numbers 1850–0528.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations apply to the "State library administrative agency" of each State. A State library administrative agency as defined in the statute is the official agency charged by the law of each State with the extension and development of public library services throughout the State, and which has adequate authority under State law to administer State plans in accordance with provisions of the LSCA. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 770

Correctional institutions—libraries, Education, Education of disadvantaged, Grant programs—education, Handicapped, Libraries, Mental health programs—libraries, Penal institutions—libraries, Prisons—libraries.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parenthesis on the

line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.034, Title I, Public Library Services and No. 84.035, Title III, Interlibrary Cooperation)

Dated: March 27, 1984.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 770 of Title 34 of the Code of Federal Regulations as follows:

PART 770—LIBRARY SERVICES AND CONSTRUCTION ACT PROGRAM

Subpart A—General

Sec.

770.1 The Library Services and Construction Act Program.
770.2 Who is eligible to apply for a grant under the Library Services and Construction Act Program?
770.3 What regulations apply to the Library Services and Construction Act Program?
770.4 What definitions apply to the Library Services and Construction Act Program?

Subpart B—How Does a State Apply for a Grant?

770.10 The State plan and the State advisory council on libraries.
770.11 The basic State plan.
770.12 Criteria for determining the adequacy of public library services.
770.13 The long-range program.
770.14 The annual program.

Subpart C—Payments and Reports

770.20 State and local spending requirements as conditions for payment to the States.
770.21 Reports.

Subpart D—Federal Financial Participation

770.30 Library services.
770.31 Interlibrary cooperation.
770.32 Use of Federal funds by State library administrative agency.
770.33 Federal and State shares of eligible expenditures.

Authority: The Library Services and Construction Act, Pub. L. 91–600, as amended, 84 Stat. 1660 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 770.1 The Library Services and Construction Act Program.

Under the Library Services and Construction Act, Federal funds are provided to assist States to—

(a) Extend and improve public library services in areas that are without these services or in which these services are inadequate;

(b) Establish, extend, and improve public library services including those for physically handicapped, institutionalized, and disadvantaged persons;

(c) Strengthen State library administrative agencies;

(d) Promote interlibrary cooperation;

(e) Strengthen major urban resource libraries; and

(f) Strengthen metropolitan public libraries which serve as national or regional resource centers.

(20 U.S.C. 351; 353)

§ 770.2 Who is eligible to apply for a grant under the Library Services and Construction Act Program?

Under the Library Services and Construction Act Program, States are eligible to apply for Library Services grants under Title I and Interlibrary Cooperation grants under Title III of the Act, respectively.

(20 U.S.C. 351d)

§ 770.3 What regulations apply to the Library Services and Construction Act Program?

The following regulations apply to the Library Services and Construction Act Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions), Part 78 (Education Appeal Board) and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 770.

(20 U.S.C. 1221e–3(a)(1))

§ 770.4 What definitions apply to the Library Services and Construction Act Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Department
ED
EDGAR
Fiscal Year
GEPA
Grant
Private
Project
Secretary
State

(b) The definitions provided for the following terms in section 3 (Definitions) of the Act, apply to this part:

Annual program
Basic State plan

Library service (For the purpose of this definition the Secretary defines "Library materials" to mean books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, and processed video and magnetic tapes, printed, published audiovisual materials, and non-conventional library materials designed specifically for the handicapped; and materials of a similar nature.

Library services for the physically handicapped
Public library
Public library services

Long-range program (Although section 3(12) of the Act refers to the long-range program as a "five year program", section 6(d)(1) of the Act provides that the long-range program may cover "a period of not less than three nor more than five years." In reconciling this inconsistency in the statute, § 770.13 (The long-range program) of this part provides that the long-range program may cover a period of "not less than three nor more than five fiscal years.")

State advisory council on libraries
State institutional library services
State library administrative agency
Major Urban resource libraries

(c) In addition, the following definitions apply to this part:

The "Act" means the Library Services and Construction Act, as amended.

"Disadvantaged" persons means persons whose socio-economic or educational deprivation, or cultural isolation from the community at large, prevent them from receiving the benefits of library services designed for persons without these deprivations.

"Interlibrary cooperation" under Title III of the Act, means the establishment, expansion and operation of local, regional, and interstate cooperative library networks. The purpose of a network is to provide for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers for improved supplementary services for the special clientele served by each type of library or center.

"Limited English-speaking ability", when used with reference to individuals, means individuals who—

(1)(i) Were not born in the United States or whose native language is a language other than English;

(ii) Come from environments where a language other than English is dominant; or

(iii) Are American Indian and Alaskan Native students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Because of the reason(s) listed in paragraph (1) (i), (ii), or (iii) of this definition, have sufficient difficulty speaking, reading, writing, or understanding the English language to be denied the opportunity to learn

successfully in classrooms where the language of instruction is English. (See section 703(a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 2701 *et seq.*).

(20 U.S.C. 351d(b)(4))

Subpart B—How Does a State Apply for a Grant?

§ 770.10 The State plan and the State advisory council on libraries.

(a) To receive its allotment for any fiscal year a State shall—

(1) Have in effect a basic State plan approved by the Secretary, in accordance with § 770.11 (The basic State plan);

(2) Submit or update a long-range program in accordance with § 770.13 (The long-range program);

(3) Submit an annual program for each allotment which is desired, in accordance with § 770.14 (The annual program); and

(4) Establish a State advisory council on libraries pursuant to the requirements of section 3(8) of the Act.

(b) The State plan must consist of three parts:

(1) The basic State plan.

(2) The long-range program.

(3) The annual program.

(c) The State shall make its plan available to the public.

Note.—34 CFR 76.106 (State documents are Public information) also applies.

(20 U.S.C. 351d; S. Rep. No. 1162, 91st Cong., 2nd Sess. 3)

§ 770.11 The basic State plan.

(a) The basic State plan must include—

(1) A document that—

(i) Provides for the administration, or supervision of the administration, of the programs authorized by the Act by the State library administrative agency;

(ii) Provides assurances that the officially designated State library administrative agency has the fiscal and legal authority and capability to administer all aspects of the Act;

(iii) Provides assurances for establishing the State's policies, priorities, criteria, and procedures necessary to the implementation of all programs under provisions of the Act;

(iv) Provides assurances that any funds paid to the State in accordance with a long-range program (§ 770.13 of this Part) and an annual program (§ 770.14 of this Part) must be expended solely for the purposes for which funds have been authorized and appropriated and that such fiscal control and fund accounting procedures have been adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State, including any such funds paid to any other agency, under the Act;

(v) Provides satisfactory assurance that the State administrative agency will make such reports, in such form and containing such information as the Secretary may reasonably require to carry out the Secretary's functions under the Act and to determine the extent to which funds provided under the Act have been effective in carrying out its purposes, including reports of evaluations made under the State plans; and

(vi) Provides satisfactory assurance that the State administrative agency will keep such records and afford such access to these records as the Secretary may find necessary to assure the correctness and verification of the reports required under paragraph (a)(1)(v) of this section.

(2) The statements of criteria required by § 770.12 of this part; and

(3) The certifications required by 34 CFR 76.104.

(b) The Secretary may approve the basic State plan for each fiscal year only if the Secretary determines that—

(1) The plan fulfills the conditions of a basic State plan as specified in paragraph (a) of this section and is in compliance with the requirements of the Act and of all applicable regulations; and

(2) The information contained in the basic State plan indicates that the State has adequate procedures to insure that the assurances and provisions of the basic State plan will be carried out.

(20 U.S.C. 351a(11); 351d(d); 351d(c))

(Approved by the Office of Management and Budget under control number 1850–0528)

§ 770.12 Criteria for determining the adequacy of public library services.

Among the criteria for determining the adequacy of public library services in geographical areas and for groups of persons in the State, the State library administrative agency shall include criteria which assure that priority will be given to programs or projects serving—

(a) Urban and rural areas with high concentrations of low-income families; and

(b) Areas with high concentrations of persons with limited English-speaking ability.

(20 U.S.C. 351d(b)(4))

§ 770.13 The long-range program.

(a)(1) The State shall develop the long-range program with the advice of the State advisory council on libraries and in consultation with the Secretary.

(2) The State shall—

(i) Review and revise annually the long-range program in accordance with changing needs of the State for assistance under the Act;

(ii) Use the results of evaluations and surveys by the State agency and the State advisory council on libraries in developing and revising the long-range program; and

(iii) Incorporate any revisions into the annual program for each fiscal year.

(b) The long-range program must contain the following—

(1) A description of the State's identified present and projected library needs;

(2) A plan for meeting those identified needs with Federal funds made available under the Act, covering a specified period of not less than three nor more than five fiscal years; and

(3) A statement of the following policies, criteria, priorities, and procedures, to be updated as required in meeting the state's library needs:

(i) Policies and procedures for the periodic evaluation of the effectiveness of programs and projects supported under the Act.

(ii) Policies and procedures for appropriate dissemination of the results of these evaluations and other information pertaining to these programs and projects.

(iii) Policies and procedures for the effective coordination of programs and projects supported under the Act with library programs and projects operated by institutions of higher education or local elementary or secondary schools and with other public or private library services programs.

(20 U.S.C. 351d(d); 351a(12); 354; 355e–2)

(Approved by the Office of Management and Budget under control number 1850–0528)

§ 770.14 The annual program.

The annual program must include—

(a) a description of a program for the use of funds under each of the titles of the Act;

(b) A description of how each program will fulfill the State's library needs stated in the long-range program, in a manner consistent with the policies, criteria, priorities, and procedures specified in the long-range program;

(c) The criteria used in allocating Title I funds for program purposes under section 102 of the Act. These criteria must insure that the State will expend from Federal, State, and local sources an amount not less than the amount expended by the State from such sources for State institutional library sevices, and library services to the physically handicapped during the

second fiscal year preceding the fiscal year for which the annual program is developed;

(d) During each fiscal year in which funds appropriated for Title I of the Act exceed $60,000,000, a program for that year under which the amount reserved under section 102(c) of the Act will be used for purposes contained in section 102(a)(3) of the Act. During such a year, a State shall not reduce the amount paid to a major urban resource library below the amount that it received in the preceding year;

(e) A program description of the specific activities to be carried out by the State in the fiscal year—

(1) With funds for library services under Title I (Library Services) of the Act, for the purposes and activities stated in section 102 (Uses of Federal Funds) of the Act and § 770.30 (Library services) of this Part; and

(2) With funds for interlibrary cooperation under Title III (Interlibrary Cooperation) of the Act, for the purposes and activities stated in section 302 (Uses of Federal Funds) of the Act and § 770.31 (Interlibrary Cooperation) of this part.

(f) An annual review and revision of the long-range program that must take into consideration the results of the evaluations of the State's library program.

(20 U.S.C. 351a(13); 354; 355e–2)

(Approved by the Office of Management and Budget under control number 1850–0528)

Subpart C—Payments and Reports

§ 770.20 State and local spending requirements as conditions for payment to the States.

The Secretary makes a payment to a State under Title I of the Act only after the Secretary has determined that—

(a) The State has satisfactorily assured the Secretary that it will have available for expenditure under Title I (Library Services) of the Act during the fiscal year of the allotment—

(1) From State and local sources—

(i) Sums sufficient to earn its minimum allotment as stated in section 5(a)(1) of the Act; and

(ii) Not less than the total amount actually expended for program purposes from State and local sources in the second preceding fiscal year.

(2) From State sources—

(i) Not less than the total amount actually expended for program purposes from State sources in the second preceding fiscal year.

(20 U.S.C. 351e)

(Approved by the Office of Management and Budget under control number 1850–0528)

§ 770.21 Reports.

The State agency shall submit to the Secretary one copy of all surveys, films, and other publications developed with Federal funds under the Act.

(20 U.S.C. 351d(b)(3)(A))

Subpart D—Federal Financial Participation

§ 770.30 Library services.

Funds allotted to a State for the purpose of section 101 (Grants to States for Library Services) of Title I (Library Services) of the Act, must be used solely for paying the Federal share of the cost of activities specified in section 102 (Uses of Federal Funds) of the Act.

(20 U.S.C. 353)

§ 770.31 Interlibrary cooperation.

Funds allotted to a State for the purposes of section 301 (Grants to States for Interlibrary Cooperation Programs) of Title III (Interlibrary Cooperation) of the Act, must be used solely to pay the cost of carrying out a State plan as it relates to interlibrary cooperation, which must include—

(a) Planning for and taking steps leading to the development of cooperative library networks; and

(b) Establishing, expanding, and operating local, regional, State or interstate cooperative networks of libraries.

(20 U.S.C. 355e–1)

§ 770.32 Use of Federal funds by State library administrative agency.

In addition to the program activities specified in section 102 (Uses of Federal Funds) of the Act, funds allotted to a State under the Act for the purposes of section 101 (Grants to States for Library Services) of Title I (Library Services) of the Act, may also be used to pay the Federal share of the cost of the following activities of the State library administrative agency:

(a) Administration of the State plan submitted and approved under the Act and Subpart B of this part, including obtaining the services of consultants.

(b) Statewide planning for and evaluation of library services.

(c) Dissemination of information concerning library services.

(d) The activities of the State advisory council on libraries and of other advisory groups and panels that may be necessary to assist the State library administrative agency in carrying out its functions.

(e) Strengthening the capacity of the State library administrative agency for meeting the needs of the people of the State.

(f) Administrative costs necessary to carry out activities in paragraphs (b) through (e) of this section.

(20 U.S.C. 353(b))

§ 770.33 Federal and State shares of eligible expenditures.

(a)(1) Under section 7(b)(2) of the Act, every two years the Secretary promulgates the Federal share for each State under Title I (Library Services) of the Act.

(2) The State share for Title I (Library Services) is the difference between the costs under the State plan and the applicable Federal share.

(3) The Federal share for each State under Title III (Interlibrary Cooperation) is 100 percent.

(b) All Federal funds used for administrative costs specified in § 770.32 (a) through (f) (Use of Federal funds by State library administrative agency) of this part must be matched equally by nonFederal funds.

(c) In computing its share for library services under Title I (Library Services) of the Act, the State may consider only funds, regardless of their source, expended by it, or a political subdivision, for purposes of the State plan as it applies to Title I.

(20 U.S.C. 351e; 351f)

Appendix—Summary of Comments and Responses

The following is a summary of the public comments received on the proposed regulations published in the Federal Register on February 28, 1983 (48 FR 8303), and the Secretary's responses to those comments including any changes. The comments, responses and any changes are organized in the same order as the referenced sections are organized in these final regulations.

Section 770.1 The Library Services and Construction Act Program and provisions pertaining to Title II, Public Library Construction.

Comment. Several commenters felt that the regulatory provisions for LSCA Title II (Public Library Construction) should be retained. Many commenters believed the removal of the provisions for public library construction would hamper the implementation of any specific authorizations such as the $50 million under the supplemental Emergency Jobs Bill (Pub. L. 98–8) for public library construction.

Response. No change has been made. The final regulations delete all provisions relating to Title II (Public Library Construction) of the Library Services and Construction Act. Under the Omnibus Budget Reconciliation Act

of 1981, Pub. L. 97–35, no funds are authorized to be appropriated to carry out Title II for fiscal years 1982, 1983, or 1984, and with the exception of the supplemental Emergency Jobs Bill appropriation of March 24, 1983, there have been no appropriations for Title II since 1973. However, the effective date of these final regulations is October 1, 1984. Thus, for the purpose of administering grants awarded to States prior to October 1, 1984, under any authorizations to which LSCA Title II statutory provisions apply including the Jobs Bill and the Appalachian Regional Development Act, the current Title II regulations will apply until the projects funded with such grants are completed.

Comment. One commenter felt that the word "establish" should be retained in this section of the final regulations.

Response. No change has been made. As part of the effort to bring the LSCA program regulations into closer accord with the statutory language and requirements, the term "establish" was deleted from § 770.1(a) of the NPRM. Congress did not specifically include the establishing of libraries as a purpose in Sec. 2(a) of the Act, Declaration of Policy. That section states that it is the purpose of the LSCA to "assist the States in the *extension and improvement* of public library services in areas of the States which are without such services or in which such services are inadequate * * *" (emphasis added). Nor did Congress specifically include the establishing of libraries in areas without library services or where such services are inadequate as a purpose in the similarly-worded Title I purpose, in Sec. 102(a)(2)(A). Thus the term "establish" does not appear in § 770.1(a) of the NPRM nor does it appear in this section of these final regulations.

Section 770.1(b) The Library Services and Construction Act Program.

Comment. One commenter questioned the deletion of the reference to persons of limited English-speaking ability which appears in the current regulations, from this provision of the NPRM. This provision implements the overall purpose section of the statute, Sec. 2(a) (Declaration of Policy) as well as Sec. 102 of the statute (Use of Federal Funds.)

Response. No change has been made. Statutory reference to persons of limited English-speaking ability does not appear in Secs. 2(a) or 102 of the Act, but rather in Sec. 6(b)(4) of the Act. Section 6(b)(4) requires that States, in setting forth criteria to be used in determining the adequacy of public library services, include criteria to assure that priority will be given to projects serving, among others, "areas with high concentrations of persons with limited English-speaking ability". Thus, in these final regulations reference to persons of limited English-speaking ability appears in § 770.12, implementing Sec. 6(b)(4) of the Act, rather than in § 770.1(b).

Section 770.3 What regulations apply to the Library Services and Construction Act Program?

Comment. One commenter expressed the opinion that it would be helpful if this section included a listing, by priority, of the regulations noted as applicable in the event that there are any inconsistencies between regulations.

Response. No change has been made. Generally, in the event of any inconsistency the controlling regulations would be the program regulations in this Part. However, anyone who suspects that an inconsistency exists between the applicable regulations is strongly encouraged to contact the Department for guidance.

Section 770.4(b) Definitions.

Comment. One commenter felt that "online services" should be included in the definition of the term "library materials".

Response. No change has been made. The term "library materials" refers to those *materials* which may be provided by a public library to its clientele. Thus, it is believed that the inclusion of *services* such as "online services" in the definition of "library materials" would be inappropriate. However, access to a computer terminal resulting in the retrieval of computerized data is among the services which a public library may provide.

Section 770.4(c) Definitions.

Comment. One commenter felt that the new definition of "disadvantaged" deleted several qualifying statements which in the opinion of the commenter clarified and more sharply delineated the groups covered by this term. The commenter felt that the previous definition, with its specificity, was nonetheless sufficiently broad, and that the new definition could be interpreted to include many groups (e.g., the physically handicapped and institutionalized) which are already covered in other statutory and regulatory provisions.

Response. No change has been made. The definition for "disadvantaged" persons was changed in an effort to reflect congressional intent more accurately. In the 1970 amendments to the LSCA (Pub. L. 91–600), Congress added one of the requirements which now appears in Sec. 6(b)(4) of the Act. As of the 1970 amendments it has been required that in setting forth the criteria for determining the adequacy of public library services to certain geographical areas and groups, States must include in their State plans "criteria designed to assure that priority will be given to programs or projects which serve urban and rural areas with high concentrations of low-income families." The legislative history to the 1970 amendments indicates that, in making this amendment to the Act, Congress intended to equate the term "disadvantaged" with low economic status. (See December 7, 1970 Congressional Record, House, at H11229; and January 2, 1971 Congressional Record, Extension of Remarks, at E11001). The definition currently in effect lists specific target groups, which has tended to restrict States in their development of disadvantaged projects, in a manner inconsistent with congressional intent. It is hoped that the new definition will increase flexibility while providing the States with guidance as to what is meant by the statutory term "disadvantaged". It is not intended that the term "disadvantaged" include groups such as the physically handicapped or the institutionalized, except to the extent that any handicapped or institutionalized person is also a "disadvantaged" person as defined in § 770.4(c) of these final regulations.

Comment. Several commenters felt that "planning" should be included in the definition of "interlibrary cooperation".

Response. No change has been made. The definition of "interlibrary cooperation" in these final regulations, at § 770.4(c), does not include "planning" (nor does the current regulatory definition at § 770.3(b) include "planning") because although "planning" may be necessary for, and closely related to, a given program activity such as "interlibrary cooperation", it is not necessary to include the planning process in the definition of that activity. Moreover, it should be noted that § 770.31 (Interlibrary cooperation) of these regulations states clearly that funds may be used for planning purposes as specified in Sec. 302(a)(1) of the Act. Thus, planning for and taking other steps leading to the development of cooperative library networks would, of course, be a permissible purpose under Title III of the Act, even though

"planning" is not included in the definition of "interlibrary cooperation."

Comment. Several commenters felt that the definition for limited English-speaking ability was too restrictive in that it was applicable only to formal educational school settings and not to public libraries.

Response. No change has been made. Under the Education Amendments of 1974 (Pub. L. 93–380), the Library Services and Construction Act was amended to include library services for persons of limited English-speaking ability. The applicable definition, required by Sec. 6(b)(4) of the Act, is that of Sec. 703(a) of Title VII of the Elementary and Secondary Education of 1965, as amended, 20 U.S.C. 2701 *et seq.*, which cannot be changed except by legislative amendment.

Comment. One commenter felt that the "existing language" of the definition of the term "limited English-speaking ability" was preferable to that of the definition quoted in the NPRM.

Response. No change has been made. Section 6(b)(4) of the statute mandates that the definition of "limited English-speaking ability" found in Sec. 703(a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 2701 *et seq.*, be used in defining the term for purposes of the LSCA. Pursuant to Sec. 6(b)(4), it is clear that the entire definition of the term is applicable, not portions thereof. Moreover, the entire definition, as it has appeared in the ESEA, has applied to the term since July 1, 1974 pursuant to Sec. 197 (b) and (c) of Pub. L. 93–380, regardless of whether it has or has not been quoted in its entirety in the program regulations.

Section 770.10 The State plan and the State advisory council on libraries.

Comment. Several commenters requested that membership requirements currently in § 770.4(b) of the regulations be retained in § 770.10(a)(4). The current advisory council membership requirements are that the councils must include persons broadly representative of public, school, academic, special, and institutional libraries, as well as of libraries serving the handicapped. The current regulations, at § 770.4(b), also require that State advisory councils on libraries be broadly representative of the users of these various types of libraries, that "users" comprise at least one-third of the council, and that at least one member be representative of disadvantaged persons.

Response. No change has been made. Sec. 3(8) of the Act, pursuant to which State advisory councils are to be established, requires these councils to be broadly representative of public, school, academic, special, and institutional libraries and libraries serving the handicapped in the States and of persons using such libraries, including disadvantaged persons within each State. The State library administrative agency for each State retains the discretion of fulfilling this requirement in a manner it deems appropriate, so long as the advisory council in any given State is "broadly representative" of each of the libraries named.

Comment. One commenter wanted an explanation of what is meant in § 770.10 of the NPRM by the phrase: "the State plan shall be made public."

Response. In requiring the State plan to be made public it is intended that at a minimum, the State library administrative agency make the State plan available for inspection or copying or both at its main office.

Section 770.12 Criteria for determining the adequacy of public library services.

Comment. The current regulations (§ 770.17) require that in determining the adequacy of public library services to geographical areas and groups of persons, the State must give special consideration to the library needs of certain named groups. Several commenters expressed the desire that groups currently named in § 770.17 as being due special consideration, but not named in § 770.12 of the NPRM, be retained.

Response. No change has been made. Sec. 6(b)(4) of the Act requires States to include in their basic State plans criteria to be used in determining the adequacy of public library services in geographical areas and for groups of persons in the State, including criteria designed to assure that priority will be given to programs or projects which serve areas with (1) high concentrations of low-income families, and (2) high concentrations of persons of limited English-speaking ability. However, Sec. 6(b)(4) does not require that the other "special populations" currently included in § 770.17 be assigned priority. Thus, § 770.12 of the NPRM and these final regulations require no more than the statute mandates.

Comment. One commenter expressed the opinion that the terms "urban" and "rural" should be deleted from § 770.12(a). Under § 770.12 of the NPRM, among the criteria for determining the adequacy of public library services in geographical areas and for groups of persons in the States, the State must include criteria which assure that priority will be given to programs or projects serving "urban and rural areas with high concentrations of low-income families * * *"

Response. No change has been made. The language of § 770.12(a), including the terms "urban" and "rural", is taken from the statute at Section 6(b)(4).

Section 770.13(a)(2)(i) The long-range program.

Comment. Several commenters felt that this section should be clarified to show that under Sec. 6(d)(2) a State's long-range program is to be reviewed and revised annually in accordance with the State's changing needs for assistance.

Response. A change has been made. Section 770.13(a)(2)(i) now reads: "review and revise annually the long-range program in accordance with changing needs of the State for assistance under the Act."

Section 770.13(b)(3)(iv) The long-range program.

Comment. One commenter suggested that there is an inconsistency in requiring criteria, policies, and procedures for Title III and not including such a requirement for Title I in the long-range program.

Response. A change has been made. Section 770.13(b)(3)(iv) has been deleted. Under Sec. 6(d) of the Act, criteria, policies, and procedures exclusively for Title III are not required. Rather, States must set forth a program under which all funds received under the Act will be used, as is already stated in § 770.13(b)(2).

Section 770.14 The Annual Program.

Comment. Several commenters wanted the criteria for the allocation of Title I funds (§ 770.14(c)) and provisions dealing with major urban resource libraries (§ 770.14(d)) placed under the long-range program, and the maintenance of effort requirements for institutional libraries, deleted.

Response. No change has been made. Section 103 of the Act places the criteria for the use of Title I funds and major urban resource libraries in the annual program. The maintenance of effort requirements for State institutional library services and library services to the physically handicapped are statutory and are also set forth in Sec. 103 (State Annual Program for Library Services) the Act.

Comment. One commenter asked whether under § 770.14(d), the provision on expenditure of funds for major urban resource libraries requires a State to maintain the same level of spending on such libraries in a year when the State

receives "set-aside" funds under Sec. 102(c), as it had in the year preceding the Sec. 102(c) determination, even though the Federal appropriation may be below that of the preceding year.

Response. Based upon the language of Sec. 103(5), in a year when a State receives "set-aside" funds for major urban resource libraries pursuant to a Sec. 102(c) determination, which would be in a year that Title I appropriations exceed $60,000,000, it may not reduce the amount paid to a given major urban resource library below the amount paid to that library in the preceding year. The legislative history of this prohibition against reduction of the level of spending for years where Title I appropriations exceed $60,000,000, indicates congressional intent that funds allocated pursuant to Sec. 102(c) be used by the States in a supplemental fashion. By including Sec. 103(5) in the 1977 amendments to the Act, it is believed that Congress intended to prevent States from using money made available under Sec. 102(c) in place of existing funds spent on major urban resource library programs. (See House Conference Report No. 95-607, 95th Cong., 1st Sess. at 7). In response to the commenter, the requirement in § 770.14(d) remains in effect regardless of any decline in Title I appropriation. Of course, for any year that the Title I appropriation does not exceed $60,000,000, States need not concern themselves with the Sec. 103(5) and § 770.14(d) requirement as no set-aside funds would be available for major urban resource libraries.

Section 770.20 State and local spending requirements as conditions for payment to the States.

Comment. One commenter suggested that maintenance of effort requirements be deleted for Title I.

Response. No change has been made. Sections 7(a) (1)(B) and 7(a)(2) of the Act require maintenance of effort on the part of States and on the part of States and local libraries, respectively, receiving Title I funds, and thus the requirement cannot be deleted from the regulations.

Comment. One commenter felt that the "State and local" maintenance of effort requirement of Sec. 7(a)(1)(B) of the Act was meant by Congress to refer only to local maintenance of effort; and that § 770.20(a)(1)(ii) should be changed accordingly.

Response. No change has been made. The statutory language is clear. No payments can be made to any State (except the Trust Territory of the Pacific Islands) from appropriations for the purposes of Title I, for any fiscal year, unless the Secretary determines the following: That "there will be available for expenditure under the programs from *State and local sources* during the fiscal year for which the allotment is made * * * not less than the total amount actually expended, in the areas covered by the programs for such year, for the purposes of such programs from such sources in the second preceding fiscal year * * *" (emphasis added) (LSCA, Secs. 7(a)(1) and 7(a)(1)(B)). This requirement is one of joint maintenance of State and local effort.

Section 770.31 Interlibrary cooperation.

Comment. Two commenters felt that by using the term "cooperative library networks", activities such as collection of statistics, compilation of directories, and union lists would not be allowable expenditures.

Response. No change has been made. Sec. 302 (Uses of Federal Funds) requires that Title III grants be used "(1) for planning for, and taking other steps leading to the development of, cooperative library networks; and (2) establishing, expanding, and operating local, regional, and interstate cooperative networks of libraries, which provide for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers for improved supplementary services for the special clientele served by each type of library or center." Generally, there is no restriction placed on "activities" to reach these goals so long as the activities engaged in are in the course of "carrying out the State plan as it relates to interlibrary cooperation," as required by Sec. 301 of the Act, and as long as the costs, incurred by these activities are allowable under the Act and under the Cost Principles of 34 CFR Part 74, Appendix C. In general, the activities mentioned by the commenter, namely the collection of statistics and the compilation of directories and union lists, when conducted in the course of planning for or operating a cooperative library network which provides for the "systematic and effective coordination of * * * resoureces * * *" (LSCA, Sec. 302(a) (2)), would be allowable under these final regulations.

Comment. One commenter suggested that the phrase "but is not limited to" should be inserted after the word "includes" in this provision governing the use of Title III funds. The commenter felt that the insertion of this phrase would permit States to use Title III funds for "developmental thrusts other than establishing and funding permanent cooperatives", and that, presumably, such forms of spending would be permissible under the LSCA.

Response. No change has been made. This provision implements Sec. 302(a) of the Act which requires that Title III funds be used, among other things, for "planning for, and taking other steps *leading to the development of,* cooperative library networks * * *" (emphasis added). It is not entirely clear what the commenter means when referring to developmental thrusts *other* than those leading to the establishment of cooperative networks. However, it is believed that whatever interlibrary planning or development activities a State might undertake and wish to fund in part with Title III moneys, the State must intend for such planning and development to result, ultimately, in one or more cooperative library networks.

Comment. One commenter felt that the proposed regulations at § 770.31 emphasized "networks" rather than cooperation and that such language would exclude cooperative projects that did not fit into a formal network structure.

Response. The distinction between a "formal" network structure and an "informal" network structure is not made clear by the commenter. However, neither the statute nor these final regulations preclude the use of Title III funds for any form of interlibrary cooperation project so long as the project is used to promote the systematic and effective coordination of the resources of the libraries involved in the project, and otherwise complies with applicable statutory and regulatory requirements.

Comment. One commenter asked whether a "network" must include a public library.

Response. As a matter of policy and in furtherance of the general purpose stated in Sec. 2 of the Act, States are strongly encouraged to include public libraries in all interlibrary cooperative networks. However, the inclusion of public libraries in all interlibrary cooperative networks is not clearly mandated by the statute nor is it required by these final regulations.

Section 770.32 Use of Federal funds by State library administrative agency.

Comment. Two commenters inquired as to whether the deletion of "training" from this section meant either that the use of LSCA funds for training was now considered impermissible or that training was now considered implicitly included under other definitions of "service".

Response. No change has been made. Generally, the cost of training and education are allowable under 34 CFR Part 74, (Appendix C, Principles for

Determining Costs Applicable to Grants and Contracts with State and Local Governments), which provides in Part II, B.26: "The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs, is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency."

Comment. One commenter felt that this provision of the NPRM—dealing with costs of administration of the LSCA program—conveyed an implicit prohibition against the use of LSCA funds for indirect costs.

Response. No change has been made. Pursuant to Sec. 102(b) of the Act, costs incurred by the State in administering State plans submitted under the Act, may be covered with Title I funds, subject to the match requirement of Sec. 8. Section 770.32(f) of the NPRM and of these final regulations sets out the types of administrative activities for which Title I funds may be expanded, as contained in Sec. 102(b) of the Act. To the extent that a State expects to incur indirect administrative costs as a result of its LSCA program, an indirect cost rate may be negotiated with the cognizant Federal agency for that State pursuant to the provisions of 34 CFR Part 74, Appendix C, and 34 CFR 75.560 and 75.561.

Removal of Title IV (Older Readers Services) from the regulations

Comment. Several commenters wanted the regulatory provisions for Older Readers Services retained.

Response. No change has been made. Although the Library Services and Construction Act was amended by Pub. L. 93–29, Older Americans Comprehensive Services Amendments of 1973, to include Title IV, this Title has never been funded and no specific funding authority was given in the Omnibus Budget Reconciliation Act of 1981. Thus, § 770.23 of the current regulations as well as other references to Title IV, have been eliminated.

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Part VIII

Department of Agriculture

Food and Nutrition Service

7 CFR Part 245

Verification of Eligibility for Free and Reduced Price Meals in Schools; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

Verification of Eligibility for Free and Reduced Price Meals in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: On March 25, 1983, the Department published an interim rule which established minimum verification requirements for a sample of applications for school meal and milk benefits in each School Food Authority in the National School Lunch, School Breakfast and Special Milk Programs for School Year 1983–84 and subsequent school years. This proposed rule responds both to the comments received and to the results of the income verification pilot study mandated by Pub. L. 97–35. This proposed rule would: (1) Allow use of an alternate verification method which focuses on those applications more likely to contain errors and which require fewer verifications; (2) Require additional income information on the free and reduced price application; (3) Allow food stamp households to provide their Food Stamp Program case number in lieu of income information on the application; (4) Require that households selected for verification receive written notice of selection; and (5) Require verification activity to be completed by each School Food Authority by November 15 of each school year. This proposed rule is intended to facilitate the certification process, to reduce program abuse and to result in an additional savings of Federal funds.

DATE: To be assured of consideration comments must be postmarked on or before April 30, 1984.

ADDRESSES: Comments should be sent to Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public viewing in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22303, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Garnett at the address listed above, or call (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. The proposed rule will decrease administrative costs by providing States, School Food Authorities and institutions more flexibility in administering the National School Lunch Program. No major increase in cost or prices for program participants, individual industries, Federal agencies, or geographic regions is anticipated. The proposal is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This proposal has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service (FNS) has certified that this proposal will not have a significant economic impact on a substantial number of small entities. The substance of this rule provides schools with an alternative method of conducting verification. The Department believes this alternative will reduce the administrative burdens associated with the current rule.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting and recordkeeping requirements contained in this proposed rule will be submitted to the Office of Management and Budget (OMB) for approval. They are not effective until OMB approval has been obtained.

The Administration of the Food and Nutrition Service has determined that an urgent need exists to limit the comment period to 30 days since the provisions of this rule directly affect the application and verification process for School Year 1984–85. In order to meet the timeframes required by States and School Food Authorities for effective implementation by the beginning of the next school year, a short comment period is necessary for this proposed rule.

Background

On March 25, 1983, for the National School Lunch, School Breakfast and Special Milk Programs, the Department published an interim rule in the **Federal Register** (48 FR 12505) which recommended minimum verification requirements for a sample of applications in each School Food Authority for School Year 1982–83 and required minimum verification standards in School Year 1983–84 and subsequent school years. An initial comment period of 60 days was subsequently extended until November 30, 1983, to allow commentors to gain operational experience with verification. A total of 183 comments were received on the interim rule. Commentors represented State educational personnel, School Food Authority personnel, private citizens, advocacy groups, and professional organizations. The Department would like to thank all commentors who responded to the interim rule. Especially appreciated were the suggestions based on practical experience which were helpful in the development of this proposed rule.

The interim rule on verification was developed in response to Congressional concern regarding fraud and abuse in federally supported school meal programs. This concern was reflected in Pub. L. 97–35, which also mandated that the Department conduct a pilot study of verification procedures designed to reduce fraud and abuse in these federally supported programs. This study, *The Income Verification Pilot Project,* involved a large-scale nationally representative test of a variety of quality assurance procedures conducted in 114 School Food Authorities during the 1982–83 School Year. These procedures were designed to deter household misreporting on the free and reduced price application and to enable School Food Authorities to verify income information submitted on these applications. One of the major findings of this study was that a revised application which requests income by source and by household member can significantly reduce misreporting. The study also determined that costs associated with this revised application are relatively low. The second major study finding concerns the method by which applications are selected for verification. The study reveals that it is significantly more cost-effective to verify applications which have been identified as likely to be high in error, "focused sampling", rather than to select applications by chance, "random sampling." The study revealed that non-food stamp household applications and, in particular, applications reflecting household income within $1200 of the annual income eligibility limit, are more likely to contain errors.

The remainder of this preamble will discuss the major concerns expressed by commentors on the interim rule and the findings of the pilot study as they affect this proposed rule.

General Comments on Interim Rule

Eighty-seven commentors expressed concerns regarding the increased administrative reponsibility associated

with verification. These commentors viewed the interim rule as requiring increased paperwork and staff time with resultant increases in administrative costs to School Food Authorities. While the Department recognizes that there are additional responsibilities associated with verification, the Department believes that current verification requirements are both reasonable and supported by Congressional intent. However, in response to these comments and the findings of the pilot study, the Department is proposing both an alternative system of verification and streamlined application/certification procedures for food stamp recipients (discussed later in the preamble). As an alternate to the 3 percent verification requirement contained in the interim rule, School Food Authorities may choose to verify approximately half as many applications if "focused sampling" is used to identify applications. This new option would require that School Food Authorities verify the eligibility of a sample of applications, selected from non-food stamp households claiming monthly or yearly income within specified dollar amounts below the eligibility limit. The dollar amount is within $100 for monthly income or $1,200 for yearly income. The number of applications reviewed for this group must be the lesser of 1,000 or 1 percent of the total applications certified by the School Food Authority. School Food Authorities choosing the new option would also be required to confirm food stamp recipient status of the lesser of one half of 1 percent or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information on the application. This means that those School Food Authorities which select the new verification option will be required to perform less than half as many verifications as those School Food Authorities which select the current 3 percent verification requirement. Since the new optional verification method utilizes a focused sampling which identifies applications most likely to be in error, the Department is proposing to reduce the number of applications which must be verified. By providing School Food Authorities the flexibility to determine the verification method most suitable to local conditions, the Department believes that the administrative task may, in many cases, be reduced.

Twenty-five commentors stated that they did not believe that the level of fraud and abuse in school meal programs supported the need for any verification system. In the 1981 report entitled, "Nationwide Statistical Sample of Program Participation for May, 1980 and Verification of Free and Reduced Price Application Information," the Office of Inspector General (OIG) estimated that, prior to implementation of a verification system, approximately one of every four recipients of free and reduced price school means was receiving benefits improperly. The pilot study also confirmed that a number of recipients were not eligible for the benefits they were receiving. Further, the pilot study findings revealed that the use of an improved application, which requires that income information be identified by source and by individual household member, significantly reduced misreporting. These commentors also suggested that the administrative costs associated with verification would exceed any cost savings achieved by a verification system. The pilot study suggests that significant and worthwhile improvements in program integrity are likely to occur with a limited verification system which focuses on deterrence rather than detection. While direct recoveries or cost savings achieved through individual verification efforts may not equal the initial cost of verification, the overall deterrent effect of this verification system over time is likely to be cost-effective. Therefore, the Department is proposing that the application for free and reduced-price benefits be modified to include income information identified by source and by household member, and an abbreviated verification requirement is offered.

Thirteen commentors suggested that additional administrative funds be provided to School Food Authorities to cover the administrative costs associated with verification. Currently, program legislation contains no authorization for payment of local administrative costs. The Department recognizes that there are additional responsibilities associated with the verification process, but given the size of the verification sample and the magnitude of abuse cited by OIG, the Department does not believe that the verification responsibility imposed by the interim rule or this proposed rule is disproportionate. In most cases, the responsibility should be absorbed by existing staff and should not require additional personnel. However, this proposed rule does provide School Food Authorities with an alternative method of verification at lower administrative cost. Utilization of the focused method of verification will permit School Food Authorities to substantially reduce the number of verifications required by focusing on these applications most likely to contain errors.

More importantly, in an effort to simplify the application/certification process for School Food Authorities as well as applicants, the Department is proposing to allow food stamp households to establish eligibility without completing the income portion of the application. In many school districts, the majority of households receiving free meal benefits are also food stamp recipients. The certification process will be much faster for all such applicant households which choose to provide food stamp case numbers instead of income information. The school officials will quickly determine eligibility without calculating each household's monthly or annual income. The administrative time saved here should exceed that consumed by either verification method utilized by the School Food Authority.

Thirty-two commentors objected to the potential for the educator to be considered an investigator. These commentors believed that this perception will damage the educator's relationship with parents. The Department has intentionally provided flexibility for the State agency and local School Food Authorities to fulfill verification responsibilities. The Department believes that this flexibility should permit an adequate verification system which protects the parent-educator relationship. Both the interim rule and this proposed rule permit School Food Authorities to utilize non-teaching staff rather than educators to perform verification functions. School Food Authorities may opt to place verification responsibilities completely with non-teaching staff to avoid any possibility of endangering the parent-educator relationship.

Seventeen commentors believed that it is impossible to completely verify income if such income is not reported on the application. The Department believes that collecting income information by source and by household member, as required by this proposed rule, will alleviate much of this problem. While the Department does not expect that all failure to report income will be deterred or detected during verification efforts, the Department believes that this proposed rule represents a significant contribution to program integrity.

The pilot study findings show that an improved application, as proposed in this rule, successfully reduced misreporting especially among ineligible households. By gathering more complete information on the application, the

Department believes that the proposed improved application addresses the concerns of these commentors.

Three commentors believe that collection of social security nubers alone is sufficient to deter misreporting of income. This belief finds little support in the pilot study which suggests that more effective deterrance is predicated on an improved application/verification system as proposed by this rule.

Eleven commentors believed that verification should be a State agency/local School Food Authority option. Several of these commentors stated that their School Food Authority routinely verifies questionable applications. The Department believes that the degree of abuse identified by OIG requires that verification be mandatory on a national basis. While some individual School Food Authorities may, in prior years, have performed verification under certain circumstances, the abuse identified by OIG was national in scope and requires a consistent national response. Although both the interim rule and this proposed rule provide considerable flexibility to local School Food Authorities, the obligation to perform a minimal amount of verification is not optional.

Fourteen commentors expressed concern that children will be penalized by uncooperative parents and suggest that verification requirements may so frighten eligible households that they will not apply. The Department shares the concern that verification activity may discourage eligible applicants and wishes to point out that if a needy family fails to apply, School Food Authorities may complete and file an application for the children by using the best income and family size information available. This procedure may only be used in individual cases, not as a common form of certification.

Fourteen commentors objected to mandatory verification procedures prior to the final evaluation of the results of the pilot study on verification. In *Ernest Sargent et al.* v *John R. Block* (Civil Action No. 83–2727) the Court held that implementation of a mandatory verification system prior to the completion of the pilot study was consistent with the Department's statutory authority. Further, the results of the pilot study are now available, and the Department is proposing the improved verification system contained in this rule in response to the findings of that pilot study.

Twenty commentors suggested that verification activities be placed in either local food stamp or other welfare offices more familiar with verification requirements. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) specified that the responsibility for verification is to be assumed by States and School Food Authorities. Consequently, the Department has imposed the primary administrative responsibility for conducting verification upon State and local school officials.

Two commentors sugested that households be required to submit income tax records at the time of application. The pilot study on verification found that requiring income documentation at the time of application did not produce a significant reduction in misreporting over and above that achieved by an improved application. Further, such income documentation resulted in a barrier to participation by eligible households. Given these two study outcomes, the Department does not believe that such a documentation requirement would be productive, and is very concerned that eligible applicants may be barred from applying for benefits under such a system.

Seven commentors suggested that verification should be required or allowed at the time of application. This proposed rule requires that households selected to provide verification information be given written notice of such selection and adequate time, as determined by the School Authority, to reply. In addition, any verification system selected must not unduly delay or deny the access of eligible children to program participation pending verification. Therefore, the Department believes that this type of verification is not possible.

Section 245.2 Definitions.

Four commentors addressed the interim definition of verification. The interim rule defined verification as " * * * confirmation of eligibility for free or reduced price benefits under the Program. At a minimum, verification shall include confirmation of income eligibility and, at State or local discretion, verification may also include confirmation of household size."

Two commentors believe that the current definition should include mandatory verification of household size. The Department believes that the current definition provides the flexibility to State agencies and School Food Authorities necessary for effective implementation of any verification system. If it is determined that verification of household size on either a State or local basis is appropriate, the current definition provides the authority for this decision.

Two commentors suggested additions to the definition section. One commentor suggested that definitions of written evidence, collateral contact and system of records be included in the definition section. The Department has provided lengthy descriptions of these sources of information at § 245.6(b) and does not believe any additional clarification would be provided by duplicating this material in the definition section.

Section 245.6(a) Verification Requirements.

Sample Size: Seven commentors addressed the provisions requiring School Food Authorities to verify 3 percent or 3,000 (whichever is less) of approved applications. Six of these commentors suggested that this level or a higher level of verification be required. One commentor suggested that this requirement be phased in over a three year period with 1 percent required the first year, 2 percent the second and 3 percent in the third and subsequent years. Another commentor suggested that recipients of other forms of assistance, such as Aid to Families with Dependent Children (AFDC), be excluded from the sample selected.

Although those commentors which specifically addressed the sample size were, in general, supportive of the number required by the interim rule, the Department is proposing an alternate method of verification in this proposed rule. This focused method of verfication consists of selecting and verifying the lesser of 1 percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within $100 or yearly income within $1200 below the income eligibility limit and the lesser of one-half of one percent or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information. Selection of applications which claim income within specified limits below the income eligibility cutoff has been determined by the pilot study to sharply increase the likelihood of identifying applications which contain misreported income information. Verification of households which elect to provide their food stamp case numbers rather than provide income information is necessary to reduce the chance of households falsely claiming to be food stamp recipients to avoid verification of eligibility. Verification of households supplying food stamp numbers can be accomplished by submitting a list of names and food stamp case numbers to the food stamp office for confirmation of participation, or at School Food Authority discretion, the household may be asked to provide evidence of eligibility for food stamps

by providing the "Notice of Eligibility" which is issued to the household periodically and which states the period of eligibility for food stamp benefits.

The Department believes that by providing alternate methods of verification the administrative responsibilities related to verification cited by other commentors will be reduced while maintaining an improved level of verification activity.

Five Month Timeframes

A total of fourteen commentors addressed the timeframe for completion of verification requirements by School Food Authorities. Two commentors supported the five month timeframe as adequate, while the remainder believed that five months was not sufficient for a variety of reasons. In this proposal the Department has replaced the five month timeframes with a specific deadline of November 15 of each school year. The Department recognizes that this fixed date may impose a more difficult task on those School Food Authorities which open schools later in the school year. However, the Department believes that it is necessary to identify ineligible recipients as soon as possible and thereby reduce the loss to the Federal Government. Further, completion of verification activity in School Food Authorities by November 15 will provide State agencies sufficient time to perform the monitoring activities required of them during the school year. The Department believes that the proposed streamlined application certification procedures for food stamp households discussed earlier in this preamble will allow school officials to complete the application process more quickly than in previous years. Such expedited procedures will allow school officials to proceed with verification much earlier in the school year. In addition, this proposed rule provides an alternative method of verification which reduces the number of verifications required for School Food Authorities. These provisions should eliminate the need for an extensive period of time for completion of verification. Therefore, the Department is proposing that verification be completed by November 15 of each school year. However, the Department recognizes that under certain circumstances, such as strikes which delay the start of the school year, it may be necessary to extend the time for completion of verification activity. Therefore, this proposed rule provides that extensions may be granted in writing by FNS.

Section 245.6(a)(1) Confirmation of income information.

Verification shall not delay approval of applications: A total of ten commentors addressed this provision. One commentor opposed requiring additional documentation with the application suggesting that this could discourage eligible families from applying. Seven commentors suggested that this section be amended to allow additional information requested with the application to be considered in the application review process if such verification does not delay the approval process. Several commentors suggested that all applications be verified to identify all ineligible applicants.

The pilot study indicates that requiring additional documentation at the time of application discourages some eligible households from applying and does not substantially reduce misreporting. This proposed rule establishes minimum verification requirements and does not prevent a School Food Authority from verifying all applications. The proposed rule, like the interim rule, requires that verification efforts shall not unduly delay the approval of applications. The Department is concerned that verification efforts at the time of application review could prevent prompt approval activity. Therefore, this proposed rule requires that households selected to provide verification information be given written notice of verification and adequate time, as determined by the School Food Authority, to reply. This proposed rule precludes requiring documentation at the time of application.

Confirmation of income: One commentor addressed this provision. This commentor suggested that vertification be focused on the validity of the income figure submitted on the application at the time of application and not income from a later period. This proposed rule provides that verification be completed by November 15 of each school year. This requirement should move many verifications much closer to the month of application thereby reducing the time lag which concerns this commentor. It should be noted however that both verification and continued eligibility are based on the most recent income of the household and not that received in the month of application.

Section 245.65(a)(2) Notification of Selection.

Sample Selection: The interim rule provided maximum State and local flexibility in the selection of applications to be verified. There were sixteen commentors who addressed sample selection. These commenters, in general, suggested that they desired additional guidance and direction on sample selection in order to avoid the potential for discriminatory selection. In response to these comments and to the pilot study findings, the Department is proposing an alternate method of verification which focuses on those applications most likely to contain errors. This method, if selected by School Food Authorities, will provide a clear and non-arbitrary standard for seletion of applications as requested by these commentors.

One commentor requested clarification of the need to nofity households when the School Food Authority is using a system of records to verify eligibility. The interim rule and this proposal both require that households asked to provide information be notified. However, when a system of records to which the school may legally gain access is utilized, schools would not be required to notify households. Of course, this presupposes that the application submitted by these households contains a statement, as required by the Privacy Act, to the effect that social security numbers may be utilized for vertification activity.

School Conferences: Three commentors questioned the provision which describes a school conference as a method of verification. The Department agrees that the language contained in the interim rule at § 245.6a(b)(4) concerning school conferences is confusing. The Department has determined that these conferences are not a method of verification but rather a situation in which verification activity may take place. Therefore, the Department is proposing in this rule that references to school conferences as a method of verification be eliminated. However, the Department wishes to emphasize that it views formal and informal discussion between parents and representatives from the School Food Authority as practical methods to expedite the verification process.

Special Milk Program: The Department is proposing in this rule to eliminate references to verification in the Special Milk Program for Children (Part 215). The Department believes that the potential for abuse in the Special Milk Program does not justify the administrative costs associated with a verification system.

Summary of Proposed Changes: This proposed rule would implement several changes in the verification procedures

required by the interim rule. These major changes are: (1) An alternative method of verification which focuses on those applications more likely to contain errors. School Food Authorities selecting this method must verify the eligibility of the lesser of 1 percent or 1,000 of total applications selected from the non-food stamp applications on file as of October 15. In addition, the School Food Authority must confirm the food stamp recipient status of the lesser of one half of 1 percent or 500 applications for food stamp households which provide food stamp case numbers in lieu of income information. (2) An improved application for free and reduced price meals which requires applicants to provide total household income identified by source of income for each household member. (3) Households selected to provide verification information shall receive written notice of selection and adequate time for response. (4) Verification activity shall be completed by each School Food Authority by November 15 of each school year.

Commentors are requested to direct their comments to those major proposed changes as summarized above and other conforming proposed changes as discussed in the preamble. Commentors are specifically requested not to comment on those provisions of the interim rule not modified by this proposed rule since the opportunity for comment on provisions in the interim rule was previously provided.

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs—social programs, National school lunch program, School breakfast program, Special milk program, Reporting and recordkeeping requirements.

PART 245—DETERMINATION OF ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

Accordingly, Part 245 is proposed to be amended as follows:

1. In § 245.2, paragraphs (a–3) and (k) are revised as follows:

§ 245.2 Definitions.

* * * * *

(a–3) "Documentation" means the completion of the following information on a free and reduced price application: (1) Names of all household members; (2) social security number of each adult household member or an indication that a household member does not possess one; (3) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; or in lieu of income information, the Food Stamp Program case number for those households currently receiving food stamps; and (4) signature of an adult member of the family.

* * * * *

(k) "Verification" means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. At a minimum, verification shall include confirmation of income eligibility or current participation in the Food Stamp Program. At State or local discretion, verification may also include confirmation of household size.

2. In § 245.5, paragraph (a)(1)(iii) is revised; paragraphs (a)(1) (iv) through (x) are redesignated as paragraphs (a)(1) (v) through (xi); and a new paragraph (a)(1)(iv) is added. The revision and addition read as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) * * *

(iii) An explanation that in order to be considered eligible for free or reduced price benefits, an application must contain complete documentation of eligibility information including names of all household members, social security numbers of all adult household members or an indication that a household member does not possess one, total household income and the amount and source of income received by each household member, and the signature of an adult household member; (iv) an explanation that households currently receiving food stamps may submit their Food Stamp Program case number instead of income information;

* * * * *

3. In § 245.6:

a. Introductory paragraph (a), is amended by revising the third sentence; and by adding two sentences after the fourth sentence;

b. Paragraph (a)(1) is amended by adding the words "contacting a Food Stamp Office to determine current receipt of food stamps," between the words "determine income," and "contacting the State" in the fifth sentence;

c. Paragraph (a)(2) is amended by removing the second sentence; and

d. Paragraph (d) is removed.

The revision and addition reads as follows:

§ 245.6 Application for free and reduced price meals and free milk.

(a) * * * The information requested in the application with respect to the current annual income of the family shall be limited to the total household income, the income received by each member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation and social security). * * * The application shall require applicants to provide total household income and the income received by each household member identified by source of income. The application shall enable households receiving food stamps to provide their Food Stamp Program case number in lieu of income information.

* * * * *

4. In § 245.6a:

a. Introductory paragraph (a) is revised;

b. The first sentence of paragraph (a)(2) is revised;

c. Paragraph (a)(3) is revised; and

d. Paragraph (b) is amended by removing the words "school conferences" in the first sentence, and by removing paragraph (b)(4).

The revisions and addition read as follows:

§ 245.6a Verification requirements.

(a) *Verification Requirement.* Unless a written extension of time is obtained from FNS, by November 15 of each School Year, School Food Authorities shall, at a minimum, select and verify the eligibility of a sample of the approved free and reduced price applications on file as of October 15. School Food Authorities shall satisfy the verification requirement by using either random sampling or focused sampling as described below. *Random* sampling consists of verifying the lesser of 3 percent or 3,000 applications which are selected by the School Food Authority. *Focused* sampling consists of selecting and verifying (1) the lesser of 1 percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within $100 or yearly income within $1,200 of the income eligibility limit for free or reduced price meals; and (2) the lesser of one half of 1 percent (.5%) or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information. School Food Authorities may choose to verify up to 100 percent of all applications to improve program integrity. Any State may, with the written approval of FNS, assume responsibility for complying with the verification requirements of

this Part within any of its School Food Authorities. When assuming such responsibility, States may utilize alternate approaches to verification provided that the results achieved meet the requirements of this Part.

* * * * *

(2) Households selected to provide verification shall be provided written notice that they have been selected for verification and that they are required, by such date as determined by the School Food Authority, to submit the requested verification information to confirm eligibility for free or reduced price benefits.

* * * * *

(3) Verification of the eligibility of households who provide their Food Stamp Program case number on the application in lieu of income information shall be accomplished either by confirming with the local food stamp office that the household is currently receiving Food Stamp Program benefits *or* by obtaining a copy of a current "Notice of Eligibility" for Food Stamp Program benefits from the household. If it is determined that the household is not currently receiving food stamp benefits, the household shall be notified that they shall resubmit a complete application which includes income information and documentation which confirms household income. The School Food Authority shall promptly verify such applications to determine if the household continues to be eligible for benefits.

* * * * *

(Sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758))

Dated: March 26, 1984.

Mary C. Jarratt,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 84–8542 Filed 3–29–84; 8:45 am]

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Part IX

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

School Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Proposed Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

School Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend those sections of the regulations governing the establishment of local contribution rates under the Impact Aid Program. The rates are used by the Secretary to compute assistance to school districts in federally affected areas.

The Secretary is proposing these changes to clarify the regulations and, thus, provide additional guidance to school districts applying under Pub. L. 81–874 (the Act) for assistance for maintenance and operations.

DATE: Comments must be received on or before May 14, 1984.

ADDRESS: Comments should be addressed to Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2107, Washington, D.C. 20202–6272.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips. Telephone: (202) 245–1975.

SUPPLEMENTARY INFORMATION: Under section 3 of Pub. L. 81–874, commonly referred to as the Impact Aid Program, the Secretary provides to certain local educational agencies (LEAs) assistance for maintenance and operations. LEAs eligible to participate in the program are those providing a free public education to certain types of so-called federally connected children; that is, children who reside on Federal property; children whose parents are employed on Federal property; children residing on Federal property with parents employed on Federal property; and children whose parents are on active duty in the uniformed services.

The proposed amendments to these regulations would affect implementation of section 3 of the Act. This section describes the process by which the Secretary determines payments to eligible applicants.

Payments are based on the number and type(s) of federally connected children attending the schools of an applicant LEA and on the applicant's local contribution rate. Among other provisions, section 3 requires the Secretary to establish for each applicant a local contribution rate and, in the case of certain applicants, to determine which LEAs in their respective States are generally comparable to the applicants.

Because of a number of inquiries regarding the methods used by the Secretary to select generally comparable districts, the Secretary has reviewed the current regulations for the program and determined that the provisions governing the methods should be simplified and clarified.

The changes proposed by the Secretary would permit the use of new methods of determining local contribution rates, in addition to rates derived under the two methods known as the "group rate" method and the "individually selected comparable district" method. Under the proposed changes, each LEA and its respective State educational agency (SEA) would have the opportunity to recommend for the Secretary's approval a rate to be used in computing payments to the LEA under section 3 of the program.

The proposed regulations would permit each applicant LEA—unless otherwise precluded by the Act or the regulations from doing so—to recommend a rate, based on one of three methods, to be used by the Secretary in determining the LEA's payment:

- The rate guaranteed by the Act.
- A rate on which the Secretary based the LEA's payment during any one of the three years preceding the year these amended regulations take effect.
- A rate based on appropriate data from generally comparable LEAs within the State. The applicant LEA would identify the generally comparable LEAs—using information supplied by its SEA—and would be permitted to recommend this method provided there were at least 10 LEAs (including the applicant itself, except in certain cases) within the generally comparable group. The regulations also would permit the LEA flexibility in selecting the type or types of LEAs it regards as generally comparable. The following chart depicts the methods described above.

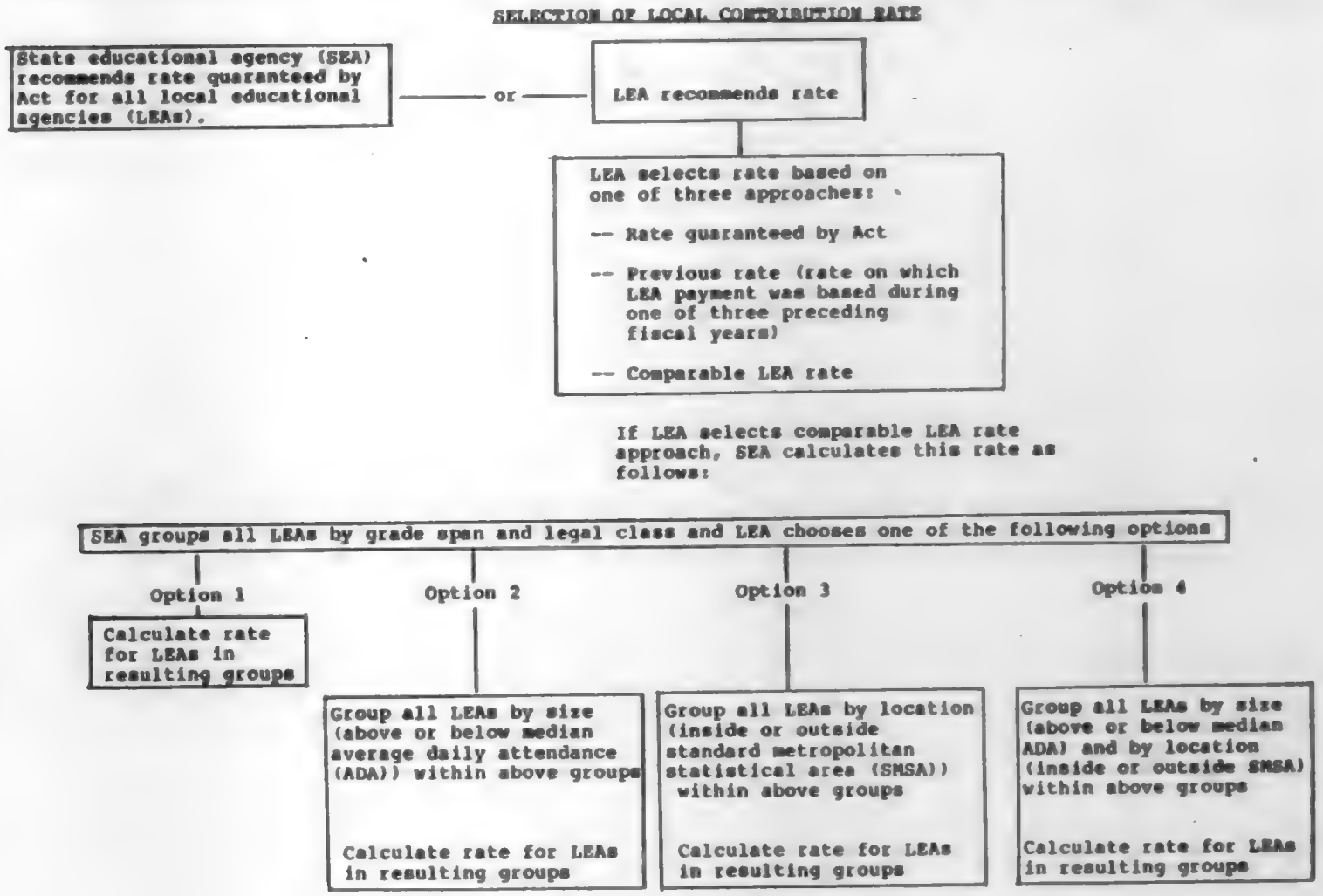

Regardless of the method recommended, no LEA would receive a rate less than the rate guaranteed to the applicant by the Act.

The proposed regulations would also continue the current practice of allowing an SEA to recommend to the Secretary that the local contribution rate for all eligible LEAs in that State be the rate guaranteed by the Act. In that case the Secretary would accept the recommendation, and individual LEAs within the State would not then recommend another method for establishing their respective rates.

The proposed regulations would also clarify the requirements the Secretary applies to any LEA that requests additional assistance under section 3(d)(2)(B) of the Act. The regulations would specify, for example, that if the applicant LEA recommends for its regular payment a method based on generally comparable LEAs in its State, the Secretary uses those same LEAs in determining any additional assistance to the applicant. If an applicant recommends for its regular payment a rate based on the rate guaranteed by the Act or on a rate previously determined for the LEA, the Secretary, for purposes of determining any additional assistance, would regard the applicant LEA as being comparable to all LEAs in its State.

The changes proposed in these regulations would offer applicants a simpler and more flexible approach to the selection of comparable districts than those methods in current use. The proposed methods would reduce significantly the administrative burden for participating school districts that formerly used the "individually selected comparable district" method and would require no additional effort on the part of SEAs.

The Secretary believes that this new approach to selecting generally comparable LEAs is educationally sound. The Secretary considers the approach to be equitable because it is based on objective factors that produce a more uniform method for setting rates—among States as well as within States. For these reasons the Secretary regards this approach as preferable to the current practice.

Except for the changes to provisions governing the local contribution rate and additional assistance under section 3(d)(2)(B), these proposed regulations contain no other changes to the regulations implementing Pub. L. 81–874.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected by the regulations are small LEAs. The regulations will not

have a significant economic impact on a substantial number of small LEAs because they permit three types of methods to be used in determining an LEA's local contribution rate, including a rate on which the Secretary based the LEA's payment during any one of the three years preceding the year these regulations take effect.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before (the 45th day after publication of this document) will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2107, 400 Maryland Avenue SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Paperwork Reduction Act

The information collection requirements in these proposed regulations will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980.

Comments concerning information collection requirements only should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue NW., Washington, D.C. 20503, Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act and their overall requirements of reducing regulatory burden, public comment is especially invited on whether there may be further opportunities to reduce any regulatory burden found in these proposed regulations.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations)

Dated: March 27, 1984.

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Part 222 of Title 34 of the code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The table of contents for Subpart D of Part 222 is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates

Sec.

222.30 Determination of local contribution rates: general.
222.31 Recommendation of local contribution rate.
222.32 Local contribution rate guaranteed by the Act.
222.33 Local contribution rate based on generally comparable LEAs.
222.34 Selection of generally comparable LEAs.
222.35 Computation of local contribution rates.
222.36 Determination of additional assistance.

2. Subpart D of Part 222 is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates.

§ 222.30 Determination of local contribution rates: general.

(a) Before computing the amount to be paid to an applicant local educational agency (LEA) under section 3 of the Impact Aid Program, the Secretary—after consultation with the LEA and its State educational agency (SEA)—determines the LEA's local contribution rate.

(b) The provisions in §§ 222.30 through 222.36 describe the methods that may be recommended by SEAs and LEAs to be used the Secretary in the determination of local contribution rates.

(c) Except as specified in § 222.31(c), the provisions in §§ 222.30 through 222.36 apply to all applicant LEAs except those located in—

(1) Puerto Rico;
(2) Wake Island;
(3) Guam;
(4) American Samoa;
(5) The Northern Mariana Islands;
(6) The Virgin Islands;
(7) Any State in which a substantial portion of the land is in unorganized territory; and
(8) Any State in which there is only one LEA.

(20 U.S.C. 238(d)(3))

§ 222.31 Recommendation of local contribution rate.

(a) An SEA may recommend to the Secretary that all the applicants in the State receive the local contribution rate guaranteed by the Act. If the SEA makes this recommendation—

(1) The Secretary accepts the recommendation if it meets the requirements of the Act and this Part 222; and

(2) No LEA in the State may exercise the options in paragraph (b) of this section.

(b) Except as provided in paragraph (a) of this section, an LEA may recommend to the Secretary one of the following types of local contribution rates on which the Secretary would base the LEA's payment:

(1)(i) The LEA may recommend the local contribution rate guaranteed by the Act.

(ii) The provisions governing this rate are in § 222.32.

(2)(i) The LEA may recommend the local contribution rate on which the Secretary based the LEA's payment during any one of the three fiscal years preceding the fiscal year in which this section takes effect.

(ii) However, if during the fiscal year selected, the LEA received assistance under section 3(d)(2)(B) of the Act in addition to regular assistance under section 3, the LEA may recommend only the rate used for determining its regular assistance under section 3 for the year selected.

(3)(i) The LEA may recommend a local contribution rate based on appropriate data from generally comparable LEAs within the State.

(ii) The provisions governing this rate rate are in §§ 222.33 through 222.35.

(c) In the case of a jurisdiction listed or identified in § 222.30(c), the Secretary establishes as the local contribution rate

the rate guaranteed by the Act, as described in § 222.32(b).

(20 U.S.C. 238(d)(3))

§ 222.32 Local contribution rate guaranteed by the Act.

(a) If an LEA recommends to the Secretary as its local contribution rate the rate guaranteed by the Act, the Secretary accepts the recommendation if it meets the requirements of the Act and this Part 222.

(b) The local contribution rate guaranteed by the Act is the greater of—

(1) Fifty percent of the average per pupil expenditure in the LEA's State during the second fiscal year preceding the fiscal year for which the computation is made; or

(2)(i) Fifty percent of the average per pupil expenditure in all of the 50 States and the District of Columbia during the second fiscal year preceding the fiscal year for which the computation is made.

(ii) However, the Secretary does not approve a local contribution rate that exceeds 100% of the average per pupil expenditure in the State in which the LEA is located.

(20 U.S.C. 238(d)(3)(B))

§ 222.23 Local contribution rate based on generally comparable LEAs.

(a) If an LEA recommends to the Secretary as its local contribution rate a rate based on appropriate data from generally comparable LEAs within its State, the Secretary accepts the recommendation if it meets the requirements of the Act and this Part 222.

(b)(1) The SEA for that State shall—

(i) Group all of the LEAs within the State according to each of the factors in § 222.34; and

(ii) Compute the local contribution rate for each group according to the provisions of § 222.35.

(2) In grouping LEAs under any factor or factors for purposes of establishing generally comparable LEAs, the SEA may not identify any group that contains fewer than 10 LEAs.

(c) In preparing its recommended rate, the LEA shall use the following steps:

(1) *Step 1.* The LEA shall select the factor or factors in § 222.34 the LEA wishes to use as the basis for general comparability.

(2) *Step 2.* (i) Using State-supplied data, the LEA shall identify within the State the entire group of LEAs that match the selected factor or factors.

(ii) Except as provided in paragraph (c)(2)(iii) of this section, the minimum number specified in paragraph (b) of this section shall include the applicant LEA.

(iii) The following may not be included in any group of generally comparable LEAs:

(A) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is computed for the applicant LEA—20 percent or more of its average daily attendance constituted by children identified under section 3(a) of the Act.

(B) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is computed for the applicant LEA—50 percent or more of its average daily attendance constituted by children identified under section 3(b) of the Act, or under both sections 3(a) and 3(b) of the Act.

(3) *Step 3.* (i) Using State-supplied data for the group of LEAs identified under Step 2, the LEA shall recommend to the Secretary its local contribution rate, which the SEA has computed according to the provisions of § 222.35.

(ii) In making this computation, the LEA or SEA may not include data for any LEA identified under paragraph (c)(2)(iii) of this section.

(d) An LEA identified under paragraph (c)(2)(iii) of this section is entitled to—

(1) Apply for assistance under the program; and

(2) Recommend as its local contribution rate any type of rate described in § 222.31 for which the LEA is eligible.

(20 U.S.C. 238(d)(3)(A))

§ 222.34 Selection of generally comparable LEAs.

In selecting generally comparable LEAs within its States, an LEA—

(a) Shall use the following factors:

(1) The LEA's grade span in the current year.

(2) The LEA's legal classification within the State in the current year, if the Secretary regards this classification as sufficiently different from grade span within the State; and

(b) May also use either or both of the following factors:

(1)(i) The LEA's size in the current year, as determined by placement above or below the median average daily attendance (ADA) for the LEA's grade span within the State.

(ii) The Secretary considers an ADA that is equal to the median as being below the median.

(2) The LEA's location in the current year, as determined by placement inside or outside a standard metropolitan statistical area as defined by the U.S. Bureau of the Census.

Example. An LEA applies for assistance under section 3 of the Impact Aid program and wishes to recommend to the Secretary a local contribution rate based on generally comparable LEAs within its State.

Characteristics of Applicant LEA

The grade span of the applicant LEA is kindergarten through grade 8 (K–8). In the applicant's State, legal classification of LEAs is based on grade span.

The average daily attendance (ADA) of the applicant LEA is above the median ADA of LEAs serving only K–8 in the State.

The applicant LEA is located outside a standard metropolitan statistical area (SMSA).

Characteristics of Other LEAS Serving Same Grade Span

The SEA of the applicant's State groups all LEAs in its State according to the factors in § 222.34.

The SEA identifies the following groups:

One hundred LEAs serve only K–8. One of these LEAs has 20 percent of its ADA comprised of children identified under section 3(a) of the Act and, therefore, may not be used by the applicant LEA in any determination of general comparability.

One of the remaining 99 LEAs in the group, the SEA has identified a group of 49 LEAs having an ADA above the median ADA for the group of 99, one LEA having an ADA at the median, and a group of 49 LEAs having an ADA below the median ADA; thus, according to § 222.34(b)(1)(ii), 50 LEAs are considered to have an ADA below the median ADA.

Of the 99 LEAs in the group, the SEA has identified a group of 63 LEAs as being inside an SMSA and a group of 36 LEAs as being outside an SMSA.

Among the group of 49 LEAs having an ADA above the median, the SEA has identified a group of 36 LEAs as being inside an SMSA and a group of 13 LEAs as being outside an SMSA.

Among the group of 50 LEAs having an ADA below the median, the SEA has identified a group of 27 LEAs as being inside an SMSA and 23 LEAs as being outside an SMSA.

On the basis of § 222.35 the SEA computes the local contribution rate for each group of generally comparable LEAs that the SEA has identified.

Selection of Generally Comparable LEAS

The applicant LEA selects the group of generally comparable LEAs on which it wishes to base its recommended local contribution rate.

Under the requirements of § 222.34, the applicant LEA must begin with the group that includes all LEAs in its grade span and legal classification. In this case grade span and legal classification happen to be the same. Thus, the group would include 100 LEAs. However, the applicant LEA must exclude from the group the one LEA that has 20 percent of its ADA comprised of children identified under section 3(a) of the Act. This reduces the group to 99 LEAs.

The applicant LEA then has several options:

Option 1: The LEA may select as its group of generally comparable LEAs on which to base its recommended local contribution rate

the group of 99 LEAs serving K–8. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 2: Instead of selecting the group of 99, the LEA may select as its generally comparable group only those LEAs within the 99 that have an ADA above the median ADA for the 99; that is, the group of 49. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 3: Instead of selecting either of the groups described in Options 1 and 2, the LEA may select as its generally comparable group only those LEAs within the 99 that are outside an SMSA; that is, the group of 36. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 4: Instead of selecting any of the groups described in Options 1, 2, and 3, the LEA may select as its generally comparable group only those LEAs that *both* have an ADA above the median ADA for the 99 *and* are outside an SMSA; that is, the group of 13. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

However, as provided in § 222.339(b)(2), if the SEA were to have identified fewer than 10 LEAs under any factor or combination of factors, the SEA would not have established a group for this factor or combination of factors, and the LEA would be precluded from using this factor or combination of factors in recommending its local contribution rate to the Secretary.

(20 U.S.C. 238(d)(3)(A))

§ 222.35 Computation of local contribution rates.

Except as otherwise specified in the Act, if an LEA wishes to recommend to the Secretary a local contribution rate based on generally comparable LEAs within its State, the LEA selects the group of generally comparable LEAs, and the SEA, subject to the Secretary's review and approval, computes the LEA's local contribution rate as follows:

(a)(1) The SEA shall compile the aggregate current expenditures of the comparable LEAs during the second fiscal year preceding the fiscal year for which the computation is made.

(2) For purposes of this section, the SEA shall consider only those aggregate current expenditures made by the comparable LEAs from revenues derived from local sources.

(b) The SEA shall compile the aggregate number of children in ADA to whom the generally comparable LEAs provided free public education during the second fiscal year preceding the fiscal year for which the computation is made.

(c) The SEA shall divide—

(1) The aggregate current expenditures determined under paragraph (a) of this section; by

(2) The aggregate number of children determined under paragraph (b) of this section.

(d) If a rate computed under this section is lower than the rate guaranteed by the Act, the Secretary bases the LEA's payment on the guaranteed rate.

(20 U.S.C. 238(d)(3)(A))

§ 222.36 Determination of additional assistance.

(a) The provisions of this section govern an LEA that applies to the Secretary for assistance under section 3(d)(2)(B) of the Act, in addition to apply for a regular payment under section 3.

(b) If the LEA is applying for a regular payment under section 3 based on a local contribution rate guaranteed by the Act or a rate previously determined for the LEA under § 222.31(a)(2), the Secretary—

(1) In determining the amount of additional assistance, considers the LEA comparable to all LEAs in its State; and

(2) Establishes a rate of the additional assistance.

(c) If the LEA, in applying for a regular payment under section 3, recommends to the Secretary a local contribution rate based on generally comparable LEAs in its State, the Secretary—

(1) In determining the amount of the additional assistance, considers as comparable LEAs the same LEAs that the applicant identifies as comparable in its application for a regular payment under section 3; and

(2) Establishes a rate for additional assistance.

(20 U.S.C. 238(d)(2)(B))

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Friday
March 30, 1984

Part X

Department of Commerce

48 CFR Ch. 13
Acquisition Regulations; Final Rule

DEPARTMENT OF COMMERCE

48 CFR Ch. 13

Aquisition Regulations; Establishment of Chapter

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (DOC) issues this rule to be known as the Commerce Acquisition Regulation (CAR). This rule is established as Chapter 13 of Title 48 of the Code of Federal Regulations. The purpose of the CAR is to implement and supplement the Federal Acquisition Regulation (FAR) which has been separately promulgated by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration as Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR was published in the September 19, 1983 issue of the **Federal Register**. The FAR is promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms.

The FAR will supersede the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation. Civilian agency implementations of the Federal Procurement Regulations will become obsolete as a result of the promulgation of the FAR. For this reason, the Department of Commerce Procurement Regulations (DOCPR), codified as Chapter 13 of Title 41 of the Code of Federal Regulations, and all related implementation and supplementation thereof is superseded by this final rule.

The intended effect of the FAR is to simplify the Federal procurement process by adopting a uniform regulation for all agencies. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the CAR is to implement the FAR where required and to supplement the FAR in areas where there is no FAR coverage of Commerce unique policy.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: John Dammeyer, Office of Procurement Management, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, D.C. 20230, Telephone: (202) 377–4248

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking was published on Page 6508 of the **Federal Register** on February 22, 1984 and invited comments by March 23, 1984.

Executive Order 12291

This rule is exempt from the provisions of Executive Order 12291. The application of this exemption to this rule has been agreed to by the Office of Management and Budget.

Regulatory Flexibility Act

DOC certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

This rule does not impose information collection and recordkeeping requirements on the public beyond those requirements established by the FAR. This rule was reviewed by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

National Environmental Policy Act

DOC has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976) and the regulations (40 CFR Parts 1500–1508) and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Chapter 13

Government procurement, Commerce acquisition regulations.

For the reasons set forth in the preamble, Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., March 27, 1984.

Hugh L. Brennan,

Director, Office of Procurement and Federal Assistance.

Title 48 of the CFR is amended by establishing Chapter 13 to read as follows:

Chapter 13—Department of Commerce

SUBCHAPTER A—GENERAL

Part

1301—General
1302—Definitions of words and terms
1303—Improper business practices and personal conflicts of interest
1305—Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

1307—Acquisition planning
1308—Required sources of supplies and services
1309—Contractor qualifications

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

1313—Small purchase and other simplified purchase procedures
1314—Formal advertising
1315—Contracting by negotiation
1316—Types of contracts
1317—Special contracting methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1319—Small business and small disadvantaged business concerns
1322—Application of labor laws to government acquisitions
1324—Protection of privacy and freedom of information
1325—Foreign acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1331—Contract cost principles and procedures
1332—Contract financing
1333—Disputes and appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

1334—Major system acquisition
1336—Construction and architect-engineer contracts
1337—Service contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

1342—Contract administration
1345—Government property

SUBCHAPTER H—CLAUSES AND FORMS

1352—Solicitation provisions and contract clauses
1353—Forms

SUBCHAPTER A—GENERAL

PART 1301—GENERAL

Subpart 1301.1—Purpose, Authority, Issuance

Sec.
1301.100 Scope of subpart.
1301.101 Purpose.
1301.102 Authority.
1301.103 Applicability.
1301.104 Issuance.
1301.104–1 Publication and code arrangement.
1301.104–2 Arrangement of regulations.
1301.104–3 Copies.

Subpart 1301.2—Administration

1301.201–1 The two FAR councils.

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.
1301.303 Codification and public participation.

Subpart 1301.4—Deviations

1301.402 Policy.

Subpart 1301.5—Agency and Public Participation.

Sec.

1301.501 Solicitation of agency and public views.

Subpart 1301.6—Contracting Authority and Responsibilities

1301.601 General.
1301.601–70 Responsibilities of Heads of Contracting Activities.
1301.601–71 Responsibilities of the Office of Procurement and Federal Assistance.
1301.603 Selection, appointment, and termination of appointment.
1301.603–70 Ratification of unauthorized contract awards.
1301.603–71 Responsibility of other Government personnel.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1301.1—Purpose, Authority, Issuance

1301.100 Scope of subpart.

This subpart states the relationship of the Commerce Acquisition Regulation (CAR) to the Federal Acquisition Regulation (FAR). This subpart also explains the purpose, authority and issuance of the CAR.

1301.101 Purpose.

(a) Chapter 13 of Title 48 of the Code of Federal Regulations shall be known as the Commerce Acquisition Regulation (CAR).

(b) The purpose of the CAR is to implement and supplement the FAR within the Department of Commerce. Since the CAR is intended to supplement and implement the FAR without paraphrasing or duplicating FAR language, the CAP should be read in relation to the FAR.

1301.102 Authority.

The CAR is prescribed by the Department Procurement Executive pursuant to a delegation initiating from the Secretary of Commerce in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law and regulation.

1301.103 Applicability.

The FAR and CAR apply to all acquisitions within the Department of Commerce.

1301.104 Issuance.

1301.104–1 Publication and code arrangement.

(a) The CAR is published in (1) daily issues of the **Federal Register**, (2) cumulative form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf edition.

(b) The CAR is issued as Chapter 13 of Title 48 of the CFR.

1301.104–2 Arrangement of regulations.

(a) *General.* The CAR is divided into the same parts, subparts, sections, subsections and paragraphs as the FAR. When FAR coverage is adequate by itself, there will be no corresponding CAR coverage.

(b) *Numbering.* Where the CAR implements the FAR, the CAR part, subpart, section or further subdivision will be numbered the same as the corresponding FAR part, subpart, section, or further subdivision except that the CAR implementation will be preceded by a 13 or 130 so that there are four numbers to the left of the first decimal. Where the CAR supplements the FAR, supplementing material will be assigned the number 70 and above. The placement of the sequence of 70 numbers in relation to the decimal point will depend on what division of the FAR is supplemented.

(c) *References and citations.* (2) This regulation may be referred to as the Commerce Acquisition Regulation (CAR).

(3) References to FAR materials will include FAR and the identifying number, for example, FAR 1.402. Reference to CAR materials will consist of the identifying number, for example 1301.402.

1301.104–3 Copies.

(a) Copies of the CAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402. Requests should reference the CAR as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Loose-leaf copies of the CAR are distributed within the Department by the Office of Procurement Management, Office of Procurement and Federal Assistance.

Subpart 1301.2—Administration

1301.201–1 The two FAR councils.

(b) The Department representative to the Civilian Agency Acquisition Council will be a staff member of the Office of Procurement and Federal Assistance who will be appointed for that purpose by the Procurement Executive. The Office of Procurement and Federal Assistance (OPFA) will be responsible for coordinating and advocating Department proposed revisions to the FAR.

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.

(a) The Procurement Executive will issue Department acquisition policy and procedure in the CAR when necessary to implement or supplement the FAR.

(b) The Office of Procurement and Federal Assistance may issue internal Department guidance in the form of Procurement Letters, policy manuals, or model operating procedures.

(c) Heads of Contracting Activities may issue internal operating procedures for their contracting activities. These internal operating procedures may include routine office procedures, procedures which implement policy prescribed by the Office of Procurement and Federal Assistance, and the dissemination of guidance or information to program officials who may be affected by the policy. Heads of Contracting Activities shall not prescribe policy and shall not issue any procedures which appear to be in conflict with policy issued by the Office of Procurement and Federal Assistance.

1301.303 Codification and public participation.

(a) The CAR is published as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Public participation procedure is described in 1301.5.

Subpart 1301.4—Deviations

1301.402 Policy.

Requests for authority to deviate from the provisions of the FAR or the CAR shall be submitted to the Office of Procurement and Federal Assistance as soon as the need to deviate is known. Requests shall be in writing and reasonably describe the deviation desired, the reason for the deviation, and the time by which a decision is needed. When timing is crucial, the written request should be preceded by a telephone request to the Office of Procurement and Federal Assistance. Requests for both individual deviations and class deviations shall be considered and decided upon by the Procurement Executive. When requests are received for class deviations from FAR provisions, the Procurement Executive shall consult with the chairperson of the Civilian Agency Acquisition Council. (see FAR 1.404). Individuals responsible for unauthorized deviations may be considered for disciplinary action as described in the Department Administrative Order on *Discipline* (DAO 202–751).

Subpart 1301.5—Agency and Public Participation

1301.501 Solicitation of agency and public views.

The initial CAR was published with a notice of proposed rulemaking inviting public comments, review and analysis of comments received, and publication of a final rule. The final rule included a discussion of the public comments received and described any changes made as a result of the comments. A future issuance under this title may or may not require publication for public participation, depending on whether the issuance is a significant revision of the FAR which alters the substantive meaning of any coverage in the FAR having a substantive impact on the public. Each future issuance will be considered on a case-by-case basis. If a future issuance is determined by the Procurement Executive to be a significant revision of the FAR, that issuance shall be published for public participation. Any issuance under this title shall be done by or with the concurrence of the Office of Procurement and Federal Assistance.

Subpart 1301.6—Contracting Authority and Responsibilities

1301.601 General.

Contracting authority vests with the Secretary of Commerce. The Secretary has delegated this authority to the Assistant Secretary for Administration who has delegated this authority, with the right to redelegate, to the Procurement Executive, as prescribed in the Department Administrative Order on *Procurement Authority* (DAO 208–2).

1301.601–70 Responsibilities of heads of contracting activities.

Heads of Contracting Activities shall be responsible for directing and maintaining efficient contract operations within their contracting activities. Adequate controls shall be established to assure compliance with applicable laws, regulations, and policy guidance from the Office of Procurement and Federal Assistance. Heads of Contracting Activities shall provide the necessary coordination and cooperation required for periodic oversight reviews conducted by the Office of Procurement and Federal Assistance.

1301.601–71 Responsibilities of the Office of Procurement and Federal Assistance.

The Office of Procurement and Federal Assistance shall establish Department-wide policy for contracting activities. Also, the Office of Procurement and Federal Assistance shall conduct periodic oversight reviews of Department contracting activities to assure that Department contracting activities are operating efficiently and in accordance with the provisions of the FAR, the CAR, and OPFA policy.

1301.603 Selection, appointment, and termination of appointment.

The Department's systems for selection, appointment and termination of appointment of contracting officers is contained in the *Contracting Officer Certification/Warrant Program.*

1301.603–70 Ratification of unauthorized contract awards.

(a) The Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. When these unauthorized acts are discovered they shall be immediately reported to the Head of the Contracting Activity concerned. The Head of the Contracting Activity shall:

(1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(2) Inform the person who made the unauthorized commitment of the seriousness of the act and the possible consequences;

(3) Ensure receipt of documentation detailing the actions taken and the reasons for those actions; and

(4) Decide whether ratification of the unauthorized act is proper, and take appropriate action.

1301.603–71 Responsibility of other Government personnel.

The responsibility of other Government personnel is generally described in the Department's procurement requisitioning guides and the Department Administrative Order on the *Procurement Planning System* (DAO 208–15). These documents are designed for internal Department use.

PART 1302—DEFINITIONS OF WORDS AND TERMS

Subpart 1302.1—Definitions

1302.1–1 Definitions.

Acquisition Executive The Acquisition Executive, as defined in OMB Circular A–109, means the Assistant Secretary for Administration. The Acquisition Executive monitors the development of major systems and reviews their progress through the major systems acquisition process.

Department When used in the CAR, Department means the Department of Commerce.

Head of the Agency means the Secretary of Commerce and those designees which have been delegated the authority to act for the Secretary of Commerce in specifically delegated areas. The head of the agency for procurement matters is the Assistant Secretary for Administration. This authority for procurement matters has been further delegated to the Procurement Executive pursuant to the Department Administrative Order on *Procurement Authority* (DA) 208–2). Where the term "Agency head or designee" is used, that term shall mean the Procurement Executive unless otherwise indicated in the CAR.

Head of the Contracting Activity means the official who has overall responsibility for managing the contracting activity, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208–2).

Head of the contracting office means the official who heads the office that awards and administers contracts, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208–2).

Procurement Executive means the official delegated broad procurement authority under the Department Administrative Order on *Procurement Authority* (DAO 208–2). Duties of the Procurement Executive include the following:

(a) Prescribe and publish Department procurement policies, regulations and procedures;

(b) Enter into, make determinations and decisions and take other actions, consistent with appropriate policies, regulations and procedures with respect to purchases, contracts, leases, sales, agreements and other transactions, except those required by law or regulation to be made by other authority;

(c) Designate contracting officers and representatives thereof;

(d) Establish clear lines of contracting authority;

(e) Exercise priorities authority concerning the internal procurement needs of the Department, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.), Department of Defense Delegation of Priorities Authority, dated October 21, 1958, and applicable policies and regulations;

(f) Evaluate and monitor the Department's procurement system performance;

(g) Manage and enhance career development of the procurement work force;

(h) Examine, in coordination with the OFPP, the procurement system to determine specific areas where Government-wide performance standards should be established and applied and participate in the development of Government-wide procurement policies, regulations and standards;

(i) Determine areas for Department unique standards and develop unique Department-wide standards;

(j) Be the advocate for competition; and

(k) Certify to the Department head that the procurement system meets approved standards.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

Sec.
1303.101–3 Agency regulations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302–70 Reporting requirements.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or Violations of the Covenant Against Contingent Fees.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1303.1—Safeguards

1303.101–3 Agency regulations.

The agency rules implementing Executive Order 11222 are contained in the Department Administrative Order on *Employee Responsibilities and Conduct* (DAO 202–735).

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Suspected violations of the Gratuities clause shall be reported to the head of the contracting office in writing detailing the circumstances. The head of the contracting office will evaluate the report and if the allegations appear to support a violation the matter will be referred to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207–10).

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302–70 Reporting requirements.

(a) Executive Order 12430 revoked the requirement of Executive Order 10936 to submit a report to the Attorney General on identical bids.

(b) Suspected anti-competitive practices and antitrust law violations as described in FAR 3.301 and FAR 3.303 shall be reported to the general counsel through the Head of the Contracting Activity. A copy of the report shall be sent to the Procurement Executive concurrently with the submission to the general counsel.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or Violations of the Covenant Against Contingent Fees.

Suspected violations of the Covenant Against Contingent Fees shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207–10).

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207–10).

PART 1305—PUBLICIZING CONTRACT ACTIONS

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

The authority to approve the publication of paid advertisements in newspapers for recruitment of personnel was delegated to personnel managers pursuant to the Department Administrative Order on *Recruitment, Selection and Placement* (DAO 202–330). The authority to approve the publication of paid advertisements in newspapers for other than recruitment of personnel is delegated to the heads of contracting offices.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

SUBCHAPTER B—ACQUISITION PLANNING

PART 1307—ACQUISITION PLANNING

Subpart 1307.1—Acquisition Plans

Sec.
1307.103 Agency-head responsibilities.

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition considerations.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1307.1—Acquisition Plans

1307.103 Agency-head responsibilities.

The Department's procedures for acquisition planning are contained in the Department Administrative Order on the *Procurement Planning System* (DAO 208–15) and the Department Administrative Order on *Management of Automatic Data Processing Resources* (DAO 212–1).

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

The Department's appeals procedures of the cost-comparison is contained in the Department Administrative Order on the *Acquisition of Commercial or Industrial Products and Services Needed by the Department of Commerce* (DAO 201–41).

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition considerations.

The contracting officer shall decide whether to acquire equipment by lease or purchase.

PART 1308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1308.1—Excess Personal Property

Sec.
1308.101 Definition.

Subpart 1308.8—Acquisition of Printing and Related Services

1308.802 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1308.1—Excess Personal Property

1308.101 Definition.

The authority to designate personal property as excess is delegated to the Director of the Office of Property and Building Management or designee.

Subpart 1308.8—Acquisition of Printing and Related Services

1308.802 Policy.

The Director of the Office of Information Services is the central printing authority for liaison with the Joint Committee on Printing and the Public Printer.

PART 1309—CONTRACTOR QUALIFICATIONS

Subpart 1309.4—Debarment, Suspension and Ineligibility

Sec.

1309.403 Definitions.
1309.470 Procedures for debarment, suspension and ineligibility.
1309.470–1 Scope of section.
1309.470–2 Consolidated list of debarred, suspended, and ineligible contractors.
1309.470–3 Agency records.
1309.470–4 Procedures on debarment.
1309.470–5 Period of debarment.
1309.470–6 Scope of debarment.
1309.470–7 Procedures on suspension.
1309.470–8 Period of suspension.
1309.470–9 Scope of suspension.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1309.4—Debarment, Suspension and Ineligibility

1309.403 Definitions.

"Debarring official" means the Procurement Executive.

"Suspension official" means the Procurement Executive.

1309.470 Procedures for debarment, suspension and ineligibility.

1309.470–1 Scope of section.

This section prescribes Department procedures for: (a) Distribution, use and maintenance of GSA's consolidated list of debarred, suspended, and ineligible contractors; and (b) debarment and suspension of Government contractors.

1309.470–2 Consolidated list of debarred, suspended, and ineligible contractors.

The following procedures apply to GSA's consolidated list of debarred, suspended, and ineligible contractors:

(a) The Procurement Executive shall notify GSA of any Department imposed debarments or suspensions of a contractor or any modification or rescission of these actions.

(b) GSA's consolidated list shall be distributed to the Department contracting activities by the Office of Small and Disadvantaged Business Utilization (OSDBU).

(c) Preliminary and ordinary inquiries concerning GSA's consolidated list should be made from the contracting office to the agency or authority which took the action. When unique or complex matters are concerned, the contracting office shall also inform the Office of Procurement and Federal Assistance.

(d) Personnel in all contracting offices should be familiar with GSA's consolidated list and all updates.

1309.470–3 Agency records.

The Office of Small and Disadvantaged Business Utilization (OSDBU) shall maintain records relating to each suspension or debarment action taken by the Department.

1309.470–4 Procedures on debarment.

(a) *Investigation and referral.* Personnel in all contracting offices shall be familiar with the causes for debarment (FAR 9.406–2) and shall be alert to information which indicates that a contractor (to which the Department plans to award a contract) has committed an action which is a cause for debarment. If a contractor not on the list has committed an action which is a cause for debarment, heads of contracting offices shall determine which other agencies award contracts to this firm and if any of these agencies have initiated, or plan to initiate debarment actions.

(1) If another agency is considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. Within 30 days after receipt of notice, the Procurement Executive shall decide whether it is necessary for the Department to proceed with a debarment action.

(2) If another agency is not considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. The Head of the Contracting Activity shall attach all available documenting evidence to support the recommendation. The mere existence of a cause for debarment does not require that a contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors shall be considered in recommendations for action and any debarment decision.

(b) *Decision making process.* Upon receipt of a debarment recommendation, the Procurement Executive shall review all available evidence and shall promptly determine whether or not to proceed with debarment. The Procurement Executive may refer the matter to the Office of Inspector General for further investigation. After completion of any additional review or investigations, the Procurement Executive shall make a written determination. A copy of this determination shall be promptly sent to the initiating contracting office. (See FAR 9.406–3(b).)

(c) Notice of proposal to debar. (See FAR 9.406–3(c).)

(d) Debarring official's decision. (See FAR 9.406–3(d).)

(e) Notice of debarring official's decision. (See FAR 9.406–3(e).)

1309.470–5 Period of debarment.

(See FAR 9.406–4)

1309.470–6 Scope of debarment.

(See FAR 9.406–5)

1309.470–7 Procedures on suspension.

(a) *Investigation and referral.* Heads of contracting offices may recommend suspension of a firm or individual based on the causes for suspension listed in FAR 9.407–2. The procedures for investigation and referral of suspension are the same as those contained in 1309.470–4(a). When using that subsection for suspension procedures, substitute the word "suspension" for the word "debarment".

(b) *Decision making process.* Procedures for the decision making process of suspensions are the same as those contained in 1309.470–4(b) except that an initial decision by the Procurement Executive regarding debarment results in a proposal to debar, whereas the initial decision for suspension results in immediate suspension. (See FAR 9.407–3(b).)

(c) Notice of suspension. (See FAR 9.407–3(c).)

(d) Suspending official's decision. (See FAR 9.407–3(d).)

1309.470–8 Period of suspension.

(See FAR 9.407–4)

1309.470–9 Scope of suspension.

(See FAR 9.407–5)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1313—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1313.1—General

1313.106–70 Technical evaluation and written or oral discussion procedure for negotiated small purchases.

Subpart 1313.1—General

1313.106–70 Technical evaluation and written or oral discussion procedure for negotiated small purchases.

(a) *Technical evaluation.* A technical evaluation may be requested for negotiated small purchases, at the discretion of the contracting officer. The manner and extent of the technical evaluation shall be determined by the contracting officer, except that the technical evaluation shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

(b) *Written or oral discussions.* Written or oral discussions may be conducted with all qualified sources which submit quotations for negotiated small purchases. The contracting officer shall determine the manner, extent, and need for written or oral discussions, except that discussions shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

PART 1314—FORMAL ADVERTISING

Subpart 1314.4—Opening of Bids and Award of Contract

Sec.
1314.406–3 Other mistakes disclosed before award.
1314.407–8 Protests against award.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1314.4—Opening of Bids and Award of Contract

1314.406–3 Other mistakes disclosed before award.

(e) The authority to make the determinations listed in FAR 14.406–3(e) concerning mistakes in bids was delegated to the Heads of Contracting Activities.

1314.407–8 Protests against award.

(a) *General.*

(1) Protests must be received within ten working days after the basis for protest is known or should have been known unless good cause is shown to extend the time limit. However, protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing time for receipt of initial proposals shall be filed prior to bid opening or the closing time for receipt of initial proposals.

(2) The Department-wide contact point for protests to GAO against an award of a contract is the Office of the Assistant General Counsel for Administration. This office shall represent the Department before the GAO on protests against award. This office shall furnish all necessary correspondence concerning protests to GAO, including the Department's report in response to the protest to GAO.

(b) *Protests before award.* The head of the contracting office is the designated official to approve award of a contract before a protest against award is resolved.

PART 1315—CONTRACTING BY NEGOTIATION

Subpart 1315.3—Determinations and Findings to Justify Negotiation

Sec.
1315.307 Signatory authority.

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

1315.413–2 Alternate II.

Subpart 1315.5—Unsolicited Proposals

1315.501 Definitions.
1315.504 Advance guidance.
1315.506 Agency procedures.

Subpart 1315.6—Source Selection

Subpart 1315.612—Formal source selection.

Subpart 1315.8—Price Negotiation

1315.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
1315.805–70 Audit as an aid in proposal analysis.

Subpart 1315.9—Profit

1315.902 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1315.3—Determinations and Findings to Justify Negotiation

1315.307 Signatory authority.

Determinations and findings for contracts negotiated under 41 U.S.C. 252(c)(11) shall be signed by the Assistant Secretary for Administration when more than $25,000 will be obligated. Determinations and findings for contracts negotiated under 41 U.S.C. 252(c)(11) which obligate $25,000 or less may be signed by the head of the contracting office.

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

1315.413–2 Alternate II.

The procedures described in FAR 15.413–2 may be used if approved by the Head of the Contracting Activity or designee.

Subpart 1315.5—Unsolicited Proposals

1315.501 Definitions.

"Coordinating office" means the head of the contracting office.

1315.504 Advance guidance.

(a) Department employees should encourage inquiries on Department missions, needs and methods of operation and refer inquiries to the program office concerned with the subject matter of the inquiry. Any inquiry which could reasonably lead to a procurement action should be promptly coordinated with the appropriate head of the contracting office.

(b) When it appears that a person or firm is interested in making a proposal, that person or firm should be referred to the head of the contracting office concerned who will provide instructions for submission of an unsolicited proposal.

(c) Heads of contracting offices shall provide instructions for submission of unsolicited proposals to each person or firm which expresses an interest in submitting an unsolicited proposal.

1315.506 Agency procedures.

(a) The head of the contracting office is the contact point to coordinate the receipt and handling of unsolicited proposals.

(b) The head of the contracting office shall promptly acknowledge receipt of unsolicited proposals by letter.

(c) The head of the contracting office shall comply with FAR 15.509 concerning the limited use of data.

(d) Promptly after receipt of an unsolicited proposal which conforms to this regulation, the head of the

contracting office shall forward a copy of the proposal along with instructions for technical evaluation of unsolicited proposals to the appropriate program office for technical evaluation. If more than one Department activity has an interest in a proposal, copies of the proposal shall be circulated to each interested office.

(e) Program offices receiving unsolicited proposals for evaluation shall conduct the evaluation in accordance with this Subpart 1315.5, FAR Subpart 15.5, and any additional guidance provided by the Office of Procurement and Federal Assistance.

(f) Program offices shall complete the recommendation and evaluations and submit them along with all copies of the unsolicited proposal, and a written justification for a noncompetitive procurement action if appropriate, to the head of the appropriate contracting office within 60 days of receipt of a proposal for evaluation.

(g) No part of an unsolicited proposal shall be duplicated or circulated outside of the evaluation office. Each unsolicited proposal shall be closely safeguarded to prevent disclosure of any restricted data. Only heads of contracting offices or their designees may duplicate unsolicited proposals and then only to facilitate evaluation by more than one technical evaluation office.

Subpart 1315.6—Source Selection

1315.612 Formal source selection.

(e) *Safeguarding information.* The contracting officer is designated as the releasing authority for source selection information.

Subpart 1315.8—Price Negotiation

1315.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(i) *Waiver for exceptional cases.* The head of the contracting office is delegated the authority to waive the requirement for submission of certified cost or pricing data in exceptional cases.

1315.805–70 Audit as an aid in proposal analysis.

(a) Preaward audit services include:

(1) The submission of an auditor's report which sets forth the results of review and analysis of cost data submitted by contractors as part of their pricing proposals, reviews of contractors' accounting systems, recorded contract costs, and other related matters; and

(2) Personal consultation and advice regarding the use of the auditor's report in the negotiation and award of a contract.

(b) Requests for audit services should be sent to the External Audit Division, Office of Inspector General, Herbert C. Hoover Building.

(c) Preaward audits should not be routinely requested for actions below the dollar threshold specified in FAR 15.805–5. Before requesting audits below the dollar threshold, the contracting office should consider using price or cost analysis techniques, recent audit reports, price negotiation memoranda, and other relevant information regarding the offer to establish the reasonableness of price. However, audits should be considered for proposals below the specified dollar thresholds in the following circumstances:

(1) The contracting officer has reason to doubt the adequacy of the contractor's accounting policies or cost systems;

(2) The contractor has substantially changed its methods or levels of operation;

(3) Previous unfavorable experience indicates that the contractor's estimating, accounting, or purchasing methods may be unreliable; or

(4) The proposal concerns a new product for which cost experience is lacking.

Subpart 1315.9—Profit

1315.902 Policy.

(a) Except as provided in (b) and (c) below, a structured approach for determining profit or fee prenegotiation objectives shall be used in the negotiation of all contracts, subcontracts, and contract modifications above $100,000 where adequate price competition does not exist. A structured approach for determining profit or fee prenegotiation objectives may be used at lower dollar thresholds.

(b) Regardless of whether price competition exists, the structured approach for determining profit or fee prenegotiation objectives is not required for negotiation of contracts, subcontracts, and contract modifications for the following:

(1) Architect—engineering contracts;

(2) Management contracts for operation or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee contracts; and

(7) Unusual pricing situations where the structured approach has been determined to be unsuitable. This exception must be justified in writing and signed by the head of the contracting office.

(c) In many circumstances, an examination of cost and profits is not required. Where adequate price competition exists and in other situations where cost analysis is not required (e.g., established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation), contracts may be awarded without regard to the amount of profit involved.

(d) Additional internal instruction on the use of the structured approach can be found in Procurement Letters or policy manuals issued by the Office of Procurement and Federal Assistance.

PART 1316—TYPES OF CONTRACTS

Subpart 1316.3—Cost-Reimbursement Contracts

Sec.
1316.306 Cost-plus-fixed-fee contracts.

Subpart 1316.4—Incentive Contracts

1316.404–2 Cost-plus-award-fee contracts.

Subpart 1316.6—Time-and-Materials, Labor-Hour and Letter Contracts

1316.603–3 Limitations.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 206–2.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.306 Cost-plus-fixed-fee contracts.

The contracting officer is delegated the authority to sign a determination and findings establishing the basis for application of the statutory fee limitation.

Subpart 1316.4—Incentive Contracts

1316.404–2 Cost-plus-award-fee contracts.

(d) *Fee determination plans.* The award fee determination plan shall include both technical performance (including scheduling as appropriate) and business management consideration tailored to the needs of the particular situation. The goals and evaluation criteria should be results-oriented. The award fee should concentrate on the end product of the contract. However, equal employment opportunity, small business programs, and functional management areas, such as safety and security, cannot be disregarded and may be appropriately part of the criteria upon which to base the award fee. Specific

goals or objectives should be established in relation to each performance evaluation criterion against which contractor performance is measured.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.603–3 Limitations.

The head of the contracting office is the designated official for executing a determination and findings that no contract other than a letter contract is suitable.

PART 1317—SPECIAL CONTRACTING METHODS

Subpart 1317.4—Leader Company Contracting

Sec.
1317.402 Limitations.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1317.4—Leader Company Contracting

1317.402 Limitations.

Leader company contracting is authorized by the Department only when approved in writing by the Procurement Executive.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

The head of the contracting office is delegated the authority to determine if it is in the Government's interest to place orders for supplies or services with another agency.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1319—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1319.2—Policies

1319.201 General policy.

(c) The Director of the Office of Small And Disadvantaged Business Utilization (OSDBU) is responsible for administering the Department's small and small disadvantaged business programs.

(d) The Head of the Contracting Activity or designee shall appoint a small business and disadvantaged business specialist for the contracting activity concerned.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

PART 1322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1322.1 Basic–Labor Policies

Sec.
1322.103–4 Approvals.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608–4 Award pending final determination.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1322.1—Basic Labor Policies

1322.103–4 Approvals.

The contracting officer is the designated official for approving the total dollar amount and use of overtime for contract performance.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608–4 Award pending final determination.

If the contracting officer determines that award must be made before a determination of the offeror's eligibility as a manufacturer or regular dealer by DOL or SBA, that decision must be approved by the head of the contracting office.

PART 1324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1324.1—Protection of Individual Privacy

Sec.
1324.103 Procedures.

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1324.1—Protection of Individual Privacy

1324.103 Procedures.

(b)(2) The Department's procedures for implementing the Privacy Act are contained in 15 CFR Commerce and Foreign Trade, Subtitle A, Part 4b (Privacy Act) and the Department Administrative Order on *Implementing the Privacy Act of 1974* (DAO 205–15).

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

The Department's procedures for implementing the Freedom of Information Act (the Act) are contained in 15 CFR Commerce and Foreign Trade, Subtitle A, Part 4 (Public Information) and the Department Administrative Order on *Public Information* (DAO 205–12).

PART 1325—FOREIGN ACQUISITION

Subpart 1325.1—Buy American Act-Supplies

1325.102 Policy.

(a)(4) The contracting officer is authorized to make the written determination described by FAR 25.102(a)(4). If the contract is estimated to exceed $1 million, the Head of the Contracting Activity must approve the determination.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Orde 10–5 and Department Administrative Order 208–2)

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1331—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1331.2—Contracts With Commercial Organizations

1331.205–32 Precontract costs.

The payment of precontract costs must be approved in writing by the Head of the Contracting Activity.

PART 1332—CONTRACT FINANCING

Subpart 1332.1—General

Sec.
1332.102 Description of contract financing methods.

Subpart 1332.4—Advance Payments

1332.402 General.

Subpart 1332.6—Contract Debts

Sec.

1332.605 Responsibilities and cooperation among Government officials.

1332.616 Compromise actions.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1332.1—General

1332.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized for use as a payment method under Department contracts and subcontracts for construction, alteration, repair, ship construction, ship alteration, and ship repair. For all other contracts, progress payments shall be based on costs except when the head of the contracting office determines that progress payments based on costs cannot be practically employed. In those cases, progress payments based on a percentage or stage of completion may be authorized when the head of the contracting office also determines that adequate safeguards are provided for the administration of those payments.

Subpart 1332.4—Advance Payments

1332.402 General.

(e)(1) The Head of the Contracting Activity is delegated the authority to make findings and determinations and to approve contract terms concerning any advance payments, regardless of dollar amount.

(e)(2) Before authorizing advance payments, the Head of the Contracting Activity shall coordinate with the servicing finance office.

Subpart 1332.6—Contract Debts

1332.605 Responsibilities and cooperation among Government officials.

(b) The contracting officer has primary responsibility for determining the amount of contract debt and notifying the servicing finance office of the debt due to the Government. The servicing finance office has primary responsibility for debt collection and reporting of all contract debts under the Debt Collection Act of 1982.

1332.616 Compromise actions.

The Department's policy on compromise actions is contained in the Department Administrative Order on *Collection and Other Disposition of Claims of the United States* (DAO 203–23).

PART 1333—DISPUTES AND APPEALS

Subpart 1333.70—Department Board of Contract Appeals

Sec.

1333.70–1 Department Board of Contract Appeals.

The General Services Administration (GSA) Board of Contract Appeals serves as the Board of Contract Appeals for the Department.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1334—MAJOR SYSTEM ACQUISITION

§ 1334.003 Responsibilities.

(a) The Department's policy, procedures and responsibilites for implementing OMB Circular A–109 are contained in the Department Administrative Order on *Major System Acquisitions for the Department of Commerce* (DAO 208–3).

(b) When the Secretary approves a mission need, the Acquisition Executive shall designate the servicing contracting office for all phases of the major systems acquisitions.

(c) Within 60 days after identification of the servicing contracting office, the program manager shall complete and submit the overall acquisition plan to the Acquisition Executive for approval. The servicing contracting office shall assist in developing the overall acquisition plan. The overall acquisition plan shall include for each of the major systems acquisition phases (i.e., exploration of alternative systems, competitive demonstrations, full-scale development and production) a schedule for completion of at least each of the following functions:

(1) Solicitation development in terms of mission need;

(2) Advance publicity for the initial, exploration phase;

(3) Issuance of requests for proposals (RFPs)

(4) Closing dates for RFPs; and

(5) Evaluation and award.

(d) The program manager shall submit all changes in the overall acquisition plan to the Acquisition Executive along with a written explanation of the need for each change. (See 1307.1 for acquisition planning, in general).

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1336.2—Special Aspects of Contracting for Construction

Sec.

1336.209 Construction contracts with architect-engineer firms.

Subpart 1336.6—Architect-Engineer Services

1336.602–4 Selection authority.

1336.602–5 Short selection processes for contracts not to exceed $10,000.

1336.603 Collecting data on and appraising firms' qualifications.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1336.2—Special Aspects of Contracting for Construction

§ 1336.209 Construction contracts with architect-engineer firms.

The head of the contracting office is delegated the authority to approve the exceptional circumstance of awarding a contract for construction of a project to the firm that designed the project. Any approval of this type of award must be justified in writing and signed by the head of the contracting office.

Subpart 1336.6—Architect-Engineer Services

§ 1336.602–4 Selection authority.

(a) The Head of the Contracting Activity is the designated selection authority for architect-engineer service contracts over the small purchase dollar threshold.

§ 1336.602–5 Short selection processes for contracts not to exceed $10,000.

Both short selection processes prescribed in FAR 36.602–5 may be used for contracts not to exceed $10,000. However, in either case the contracting officer shall review the report, approve it and commence negotiations or return it for appropriate revision.

§ 1336.603 Collecting data on and appraising firms' qualifications.

(a) *Establishing offices.* The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for Department-wide receipt and maintenance of data on firms wishing to be considered for architect-engineer service contracts.

PART 1337—SERVICE CONTRACTING

Subpart 1337.2—Consulting Services

Sec.
1337.202 General.
1337.205 Management controls.

Authority: Federal Property and Administrative Services Act of 1949, ge a30mr0.115as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

Subpart 1337.2—Consulting Services

§ 1337.202 General.

The Department's contracts for consulting and related services are governed by FAR 37.2.

§ 1337.205 Management controls.

(b) The Department's management controls for acquisition of consulting and related services are contained in FAR 37.2.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1342—CONTRACT ADMINISTRATION

Subpart 1342.1—Interagency Contract Administration and Audit Services

§ 1342.102–70 Post award audit reviews.

(a) Generally, the final invoice shall not be approved until a close-out audit has been performed and all outstanding issues have been negotiated or resolved on the following types of contracts of $100,000 and above:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price contracts;

(3) Letter contracts which provide for reimbursement of costs;

(4) Time and materials contracts; and

(5) Labor-hour contracts.

(b) Even though the $100,000 postaward audit threshold generally applies, an audit may be requested regardless of the dollar amount when the contracting officer determines that an audit is justified under one of the following circumstances:

(1) There is some evidence of fraud or waste;

(2) The contractor's performance under the contract has been questionable;

(3) The contractor had a high incidence of unallowable costs under a previous contract;

(4) The contract is with a newly established firm, or a firm which has just begun dealing with the Government.

(c) All requests for audit services and all relevant documents shall be sent to the address listed in 1315.805–70(b). To ensure receipt and planned action on audit requests, all requests should include a request for confirmation of receipt of the request and the date planned for delivery of the audit report.

(d) See the Department's *Model Procedures for Closeout of Completed Contracts* for further information on audits, including desk audits for contracts of less than $100,000, and waiver of the need for post award audits.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

PART 1345—GOVERNMENT PROPERTY

Subpart 1345.1—General

1345.102 Policy.

The Department's policy and procedures on government property are contained in the *Property Management Policy Manual*, the *Property Management Procedure Handbook*, and the Department Administrative Order on *Property Management* (DAO 208–17).

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2)

SUBCHAPTER H—CLAUSES AND FORMS

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1352.0—General

Sec.
1352.000 Scope of part.
1352.001 General policy.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2).

Subpart 1352.0—General

1352.000 Scope of part.

This part implements and supplements FAR Part 52 by prescribing specific modifications, alterations, and deviations to FAR solicitation provisions and contract clauses for Department-wide use.

1352.001 General policy.

The Department's policy is to use the FAR and CAR prescribed solicitation provisions and contract clauses unless specific authority for deviations has been obtained. (See 1301.4 for authority to deviate.) The use of uniform solicitation provisions and contract clauses should: provide a less burdensome way for potential contractors to respond to the Government's request for information concerning the evaluation of bids and proposals; expedite solicitation and contract preparation; and facilitate contract negotiation, administration and review. Each solicitation which incorporates contract clauses or solicitation provisions which deviate from those prescribed by the FAR and the CAR must be submitted to the Office of Procurement and Federal Assistance for prior review. The Office of Procurement and Federal Assistance will coordinate requests for approval of these solicitations by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1980 and 5 CFR Part 1320.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Contracting officers within the Department shall incorporate solicitation provisions and contract clauses by reference in solicitations and contracts to the maximum extent provided by applicable law and regulation. Incorporation by reference is the listing only by title, regulatory citation, and date of the provision or clause rather than the full text. The full text of the referenced solicitation provision or contract clause is contained in the Code of Federal Regulations (CFR); Chapter 1 of Title 48 for FAR provisions and clauses; and Chapter 13 of Title 48 for CAR provisions and clauses.

PART 1353—FORMS

Sec.
1353.000 Scope of part.

Subpart 1353.1—General

1353.103 Exceptions.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.
1353.204 Administrative matters.
1353.204–2 Contract reporting (CD 338).
1353.232 Contract financing.
1353.232–2 (CD–45).

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

1353.000 Scope of part.

This part supplements FAR Part 53 by prescribing specific exceptions to FAR prescribed forms for Department-wide use.

Subpart 1353.1—General

1353.103 Exceptions.

The Department's policy is to use the FAR and CAR prescribed forms unless prior specific authority for exceptions or alterations has been obtained. Requests for exceptions to FAR or CAR forms shall be submitted to the Office of Procurement and Federal Assistance in the form prescribed by FAR 53.103 (See 1301.4 for authority to deviate).

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

This subpart prescribes forms for Department-wide use which are exceptions to FAR prescribed forms. This subpart is arranged by subject matter, in the same order and keyed to the parts of the FAR or CAR in which the form use requirements are addressed.

1353.204 Administrative matters.

1353.204-2 Contract reporting (CD 338).

(a) *CD 338 (9/82) FPDS Code Sheet.* CD 338 is prescribed for Department-wide use in reporting individual contract actions above the small purchase dollar threshold, in lieu of SF 279.

1353.232 Contract financing.

1353.232-2 (CD 45).

CD 45 (3/76) Requisitioning Form. CD 45 is prescribed for Department-wide use in requesting action from the servicing contract office. This form is the vehicle for administrative approvals, clearances, and certification of the availability of adequate funds as specified in FAR 32.702.

Note.—This Appendix A will not appear in the Code of Federal Regulations.

BILLING CODE 3510-03-M

Appendix A—Forms

BATCH NUMBER

FORM CD-338 (REV 9-82)

U.S. DEPARTMENT OF COMMERCE

FEDERAL PROCUREMENT DATA SYSTEM CODE SHEET

DE2 Contract Number (5-19) (Order Number)
Oper. U. | FY | C.O. | TT | Sequential Number
5-6 Oper. Unit Procured For, Table 1; 7-8 FY issued, 9-10 P or C Off., Table 1, 11 - TranType - Table 1A (DOC Proc. Data System Handbook.), 12-16 - Sequential No. 5 digits. (12 may be alpha for OS and NBS only). Left justified zero filled (e.g., 00012); 17-19 Leave blank.

DE3 Mod. No. (20-23) For Mods. - Use a sequential No. to identify 1st., 2nd., 3rd., etc. mod. to parent DOC contracts or to modify delivery orders against DOC or other agency contracts. Begin at right and leave unneeded spaces blank. On original contract leave blank.

DE4 Contract Number (24-38) (See DOC Proc. Data System Handbook.)

DE6 Effective Date of Award (44-47) Use 2 digits for Month
CY | MO

DE7 Type Data Entry (48) B - Original Record, 1 - Reversing Record, 2 - Correcting Record. (See DOC Proc. Data System Handbook for clarification)

DE8 Report Period FY–Qtr. (49-51) For Reversing or Correcting Report enter for current fiscal year. For Qtr. use 1 - 4.

DE10 Principal Place of Performance (61-67)
State or Country (61-62) | City or Place (County) (63-67)
See FIPS CODE 55 (ANS X3.47)

DE11 $ Total Dollars Obligated or Deobligated (68-75) (Round to nearest dollar)

DE14 Kind of Procurement Action (79) 1 - New Letter Contract. 2 - Definitive Contract Superceding Letter Contract. 3 - New Definitive Contract. 4 - Order under DOC Contract. 5 - Modification. 6 - GSA Supply Schedule. 7 - Order Under Another Agency's Contract. 8 - Termination for Cause. 9 - Termination for Convenience.

DE16 Labor Surplus Area (81) 1 - Labor Surplus Area – No Preference; 3 - Labor Surplus Area – Tie Bid Preference, 4 - (Reserved – Do Not Use). 5 - Not a Labor Surplus Area Preference Award; 6 - Combined Small Business/Partial Labor Surplus Area Set-Aside Preference, 7 - Total Labor Surplus/Small Business Set-Aside Preference (P.L. 95-89); 8 - Total Labor Surplus Set-Aside Preference (P.L. 95-89)

DE17 Consultant Type Award (82) 1 - Yes 2 - No

DE18 Prod./Service Code (83-86) See DOC Proc. Data System Handbook, Encl. E, Appendix I

DE19 Procurement Method (87) 1 - Two-step Formal Advertising, 2 - Other Formal Advertising, 3 - Negotiated Competitive, 4 - Negotiated Noncompetitive, 5 - Directed Proc. for Foreign Govts. If codes 1 or 2 are used, then DE20 -Extent of Competition and DE21 - Negotiation Authority do not apply and entries must be left blank.

DE20 Extent of Competition (88-89)
Competitive Negotiated: A1 - Small Business Total Set-Aside, A2 - Small Business Partial Set-Aside, A3 - Labor Surplus Set-Aside, A4 - Labor Surplus/Small Business Total Set-Aside, A9 - Other Negotiated Competitive.
Non-Competitive Negotiated: B1 - Buy Indian, B2-8(a) Program, B3 - Follow-on After Competition, B9 - Other Negotiated Non-Competitive.

DE21 Negotiation Authority (90-92)
C01 - National Emergency
C02 - Public Exigency
C03 - Purchases not more than $10,000
C04 - Personal or Professional Services
C05 - Services of Educational Institutions
C06 - Purchases Outside U.S.
C07 - Medicine or Medical Supplies
C08 - Supplies Purchased for Authorized Resale
C09 - Perishable or Non-Perishable Subsistence
C10 - Impractical to Secure Competition by Formal Advertising
C11 - Experimental, Developmental, Test or Research
C12 - Classified Purchases
C13 - Technical Equipment Requiring Standardization and Interchangeability of Parts
C14 - Negotiation after Advertising
C15 - Otherwise Authorized by Law

DE23 Type of Business (94-95)
A1 - Small Business-Disadvantaged 8(a)
A2 - Small Business-Owned by Minority Group
A3 - Other Small Business
B1 - Large Minority Business
B2 - Other Large Business
C1 - Non-Profit-Private Educational Organization
C2 - Non-Profit-Hospital
C3 - Non-Profit-Research Institution, Foundation, Laboratory
C4 - Other Non-Profit Institutions
D1 - State/Local Government-Educational
D2 - State/Local Government-Hospital
D3 - State/Local Government-Research Organization
D4 - Other State/Local
E1 - Procured and Used Outside U.S./Possessions
E2 - Other Procurements Outside U.S./Possessions

DE24 Women Owned Business (96) 0 - Exempt 1 - Yes 2 - No

DE26 Estimated Completion Date (98-101) Use 2 digits for Month.
CY | MO

Name of Preparer
Telephone Number | Date Prepared

Foreign Countries. For other Country Codes See ANS A39.27–1976. (NBS LC 1067–1).

Australia	AU	China (Taiwan)	TW	India	IN
Belgium	BE	Finland	FI	Iran	IR
Brazil	BR	France	FR	Israel	IL
Canada	CA	Germany, Federal Republic of	DE	Italy	IT
Chile	CL	Greece	GR	Japan	JP
Korea, Republic of	KR	[illegible]			SE
Mexico	MX	Switzerland			CH
Netherlands	NL	Thailand			TH
New Zealand	NZ	Union of Soviet Socialist Republics			SU
Norway	NO	United Kingdom			GB
Philippines	PH	[illegible]			VE

USCOMM–DC 1978

To Be Completed For Original Transactions Over $10,000

DE9 [ ][ ][ ][ ][ ][ ][ ][ ][ ] Contractor Establishment Code (52-60) See Duns CIC Conversion File

DE12 [ ] Subject to Stat. Req. (76)

A - Walsh-Healy Act, Manufacturer,
B - Walsh-Healy Act, Regular Dealer,
C - Service Contract Act,
D - Davis-Bacon Act,
E - Not subject to above statutory requirements.

DE13A [ ] Affirmative Action Plan on File (77) 1 - Yes 2 - No

DE13B [ ] Previously Held Contract Subject to Affirmative Action Program Requirements (78) 1 - Yes 2 - No

DE15 [ ] Multi-Year Procurement (80) 1 - Yes 2 - No

DE22 [ ] Type of Contract/Modification (93)

A - Fixed Price Redetermination
J - Firm Fixed Price
K - Fixed Price Economic Price Adjustment
L - Fixed Price Incentive
R - Cost Plus Award Fee
S - Cost No Fee
T - Cost Sharing
U - Cost Plus Fixed Fee
V - Cost Plus Incentive Fee
Y - Time and Materials
Z - Labor Hours

DE25 [ ] Cost Accounting Standards Clause (97) Required 1 - Yes 2 - No

DE27A [ ] No. of Offerors Offering Foreign Item (102) 0-9 (if none, enter 0, if nine or more, enter 9)

DE27B [ ][ ] Percent Difference (103/104) 01-99 Percent difference between award price and low bidder offering foreign end item computed before application of Buy American Act differential.

DE27C [ ][ ] Country of Manufacturer

DE2N _____ Reserved FPDC (107-120)

DE29 [ ] Government Furnished Property (121) 1 - Yes 2 - No

DE30 [ ] Handicapped Set Aside (Sec 7(h) and 15(c) SBA Act) (122) 1 - Yes 2 - No

DE31 [ ][ ][ ][ ][ ][ ] Reserved OADPM Use (123-128)

DE32 [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] Reserved OADPM Use (129-144)

Optional

Contractor Name _____

Address _____

_____

FORM CD-346-REV 8-82) USCOMM-DC 1978

PAGE 1 OF

FORM CD-65
(REV. 3-76)

U. S. DEPARTMENT OF COMMERCE

SUPPLY, EQUIPMENT OR SERVICE ORDER

FOR:

2. CHECK APPROPRIATE BLOCK

☐ PROCUREMENT ☐ OTHER (Specify)

1. THE NUMBER SHOWN IN BLOCK 5 MUST APPEAR ON ALL SHIPMENTS AND/OR DOCUMENTS RELATING TO THIS ORDER

3. REQUISITIONER DOCUMENT NO.	4. BUREAU CONTROL NO.	5. PURCHASE ORDER NO.

6. ISSUED TO:	7. DESTINATION SHIP TO

8. ACCOUNTING CODE	9. QUOTATION REF. OR CONTRACT NO.	10. DISCOUNT TERMS

11. DELIVERY F.O.B.	12. GOVT. B/L NO.	13. DELIVERY DATE

14. FUNDS AVAILABLE *(Budget Office)*	14a. STATION

ITEM NUMBER		17.	18.	19.	20.	21. ACTUAL	
15. LINE NO.	16. DO NOT USE	DESCRIPTION	QUANTITY	UNIT	ESTIMATED TOTAL COST	UNIT PRICE	TOTAL COST

22. SIGNATURE OF REQUISITIONER TITLE	DATE	23. SIGNATURE APPROVING OFFICER TITLE	DATE

24. ☐ ACCOUNTABLE PROPERTY	INITIALS	25. ☐ NOT AVAILABLE-BUREAU STOCK/EXCESS	INITIALS	26. SIGNATURE-BUREAU CONTROL OFFICER	27. ☐ NOT AVAILABLE-DEPARTMENT STOCK/EXCESS	INITIALS

28. APPROVAL	DATE	29. PURCHASING AGENT	DATE

30. **RECEIPT ACTION** - Quantities shown in Column 18 above have been received and accepted, except as follows: *(If additional space is needed, use reverse side.)*

31. SIGNATURE-RECEIVING OFFICER	DATE	32. PROPERTY CONTROL NO.	☐ TRADE-IN ☐ RECEIVING REPORT

33. SEND INVOICES IN DUPLICATE TO: ⟶	

1

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March 30, 1984

Part XI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1
Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

[Federal Acquisition Circular 84-1]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration, (GSA), National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This Federal Acquisition Circular (FAC) amends the Federal Acquisition Regulation (FAR) with respect to the following: OMB approval under the Paperwork Reduction Act, Pub. L. 96-511; deletion of the requirement for reporting of identical bids; increasing the limitation of civilian agencies for the negotiation of contracts using small purchase procedures from $10,000 to $25,000; updating coverage pertaining to purchases under the Trade Agreements Act of 1979, 19 U.S.C. 2501-2582; removing the coverage in FAR Subpart 22.10, Service Contract Act of 1965, and the related contract clauses; prescribing policies, procedures, and contract clauses pertaining to patents, data, and copyrights; and revising thresholds requiring advance agreements for independent research and development and bid and proposal costs. Also included in FAC 84-1 are (1) a copy of the Memorandum of Understanding for FAR Maintenance executed by the Defense Acquisition Regulatory/Civilian Agency Acquisition Councils, together with a forwarding letter executed by representatives of DoD, GSA, and NASA, and (2) items concerning procedures to be followed with respect to the following subjects: (a) Publicizing proposed procurements and noncompetitive procurements; (b) revised small business size standards; (c) labor standards for contracts involving construction; (d) implementation of labor standards for Federal service contracts; (e) cost of money for capital employed on facilities in use and capital assets under construction; and (f) leasing of real property (space).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4782.

SUPPLEMENTARY INFORMATION:

Background

The FAR is codified in Chapter 1, Title 48 of the Code of Federal Regulations.

The initial publication of the FAR was contained in Book 2, Volume 48, No. 182 of the **Federal Register** of September 19, 1983.

FAR 1.501, Solicitation of agency and public views, states that views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and regulations under the FAR, and provides that, normally, at least 60 days will be given for the receipt of comments. However, because it is essential that the coverage in FAC 84-1 be published before the FAR's effective date of April 1, 1984, it has been necessary to proceed to publish FAC 84-1 prior to the solicitation of views other than those of those agencies that are represented at the Defense Acquisition Regulatory and Civilian Agency Acquisition Councils. Consequently, agencies and nongovernmental parties or organizations may submit written comments after the publication of this final rule. Comments will be considered if received by June 1, 1984.

List of Subjects in 48 CFR Chapter 1

Government procurement.

Roger M. Schwartz,

Director, FAR Secretariat.

March 26, 1984.

Federal Acquisition Circular

[Number 84-1]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in this Federal Acquisition Circular is effective April 1, 1984.

Ray Kline

Acting Administrator of General Services.

S. J. Evans,

Assistant Administrator for Procurement.

Harvey J. Gordon,

Assistant Deputy Under Secretary of Defense for Acquisition.

Federal Acquisition Circular (FAC) 84-1 amends the Federal Acquisition Regulation (FAR) and prescribes procedures to be followed pending development of FAR coverage, as specified below. The following is a summary of the amendments and procedures:

Item I—OMB Approval Under the Paperwork Reduction Act

The Office of Management and Budget (OMB) requires the display of OMB control numbers in the FAR text to comply with the Paperwork Reduction Act in order to collect information associated with Federal acquisition.

A new Section 1.105 is added to place the appropriate OMB control numbers in the FAR text.

Item II—Reports of Identical Bids

Executive Order 12430, July 6, 1983, revokes the requirement for all Federal agencies to report identical bids to the Attorney General.

Subpart 3.3 is revised to delete the requirement to submit reports. Subparts 53.2 and 53.3 are revised to delete Form DJ-1500, Identical Bid Report for Procurement.

Item III—Procedures for Publicizing Proposed Procurements and Noncompetitive Procurements

Pending FAR coverage pertaining to procedures for publicizing proposed procurements and processing noncompetitive procurements under Public Law 98-72, civilian agencies, other than NASA, shall continue to follow policies and procedures in FPR Temporary Regulation 75, Procedures for Publicizing Proposed Procurements and Processing Noncompetitive Procurements, October 1, 1983. DoD and NASA will provide separate direction in accordance with their established procedures.

Item IV—Small Purchase Limitation

Public Law 98-191 amended the Federal Property and Administrative Services Act of 1949 by increasing the limitation of civilian agencies for the negotiation of contracts using small purchase procedures from $10,000 to $25,000.

Part 13 is revised to change the amount of the small purchase limitation for civilian agencies from $10,000 to $25,000.

Item V—Small Business Size Standards

Pending new FAR coverage pertaining to small business size standards, civilian agencies, other than NASA, shall continue to follow the policies and procedures in FPR Bulletin 63, March 19, 1984, Changes in Small Business Size Standards and Requirements Under the Trade Agreements Act of 1979. DoD and NASA will provide separate direction in accordance with their established procedures.

Item VI—Labor Standards for Contracts Involving Construction

Pending FAR coverage pertaining to labor standards for contracts involving construction, civilian agencies, other than NASA, shall continue to follow

policies and procedures in FPR Temporary Regulation 70, Labor Standards for Contracts Involving Construction, June 28, 1983, and agency procedures instituted thereunder. DoD and NASA will provide separate direction in accordance with their established procedures.

Item VII—Service Contract Act of 1965

Pending new FAR coverage pertaining to the Service Contract Act of 1965, civilian agencies, other than NASA, shall continue to follow policies and procedures in FPR Temporary Regulation 76, Revision of Labor Standards for Federal Service Contracts, February 23, 1984, and agency procedures instituted thereunder. DoD and NASA will provide separate direction in accordance with their established procedures.

The coverage in Subpart 22.10, Service Contract Act of 1965, and the contract clauses at 52.222–40 through 52.222–44 are removed.

Item VIII—Purchases Under the Trade Agreements Act of 1979

The FAR text and clause concerning Purchases Under the Trade Agreements Act of 1979 have been updated to implement actions taken by the U.S. Trade Representative and to eliminate references in the contract clause that are made obsolete by final editing of the FAR text.

Item IX—Patents, Data, and Copyrights

Part 27, Patents, Data, and Copyrights, has been added to prescribe policies, procedures, and contract clauses pertaining to patents, and to provide a general statement of policy for rights in data and copyrights.

General coverage on the subjects of rights in data and copyrights is being provided at this time. It was not possible to develop uniform coverage in more detail for use on the FAR's effective date, based on the public and agency comments received on the proposed FAR coverage published in the **Federal Register**. Additional coverage in this area is being developed and will be published as soon as it is available. In the interim, agency supplements to the FAR will contain regulations on rights in data and copyrights.

Item X—Cost of Money for Capital Employed on Facilities in Use and Capital Assets Under Construction

Pending FAR coverage pertaining to cost of money for capital employed on facilities in use and capital assets under construction, civilian agencies, other than NASA, shall continue to follow policies and procedures in FPR 1–3.13, and agency procedures instituted thereunder.

Item XI—Revised Thresholds Requiring Advance Agreements for Independent Research and Development and Bid and Proposal Costs (IR&D and B&P)

The DoD Authorization Act of 1981 provided that the Department of Defense may periodically adjust the threshold amounts in 31.205–18 based on economic changes. Accordingly, the $4,000,000 threshold and the $500,000 threshold in 31.205–18 are adjusted to $4,400,000 and $550,000, respectively.

Item XII—Leasing of Real Property (Space)

Pending consideration by the Defense Acquisition Regulatory/Civilian Agency Acquisition Councils of the need for coverage on the subject of leasing of real property (space) in the FAR, civilian agencies, other than NASA, shall continue to use as guidelines the policies and procedures in FPR Temporary Regulation 68, Leasing of Real Property (Space), March 14, 1983.

Item XIII—Memorandum of Understanding for FAR Maintenance

The attached Memorandum of Understanding for FAR Maintenance (Appendix A) provides a uniform and orderly basis for the processing of FAR cases and the maintenance of the FAR. It contains procedures for processing recommendations for FAR changes, establishing FAR cases, and resolving disagreements.

Therefore, 48 CFR is amended as set forth below. Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. Part 1 is amended by adding § 1.105 to read as follows:

* * * * *

1.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

FAR segment	OMB control No.
4.102	3090-0150
4.7	3090-0150
5.405	3090-0152
8.203-2	3090-0125
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PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. The heading for Subpart 3.3 is revised to read as follows:

Subpart 3.3—Reports of Suspected Antitrust Violations

* * * * *

3. Section 3.302 is revised to read as follows:

3.302 Definitions.

"Identical bids" means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (e.g., discount or transportation cost).

"Line item" means an item of supply or service, specified in an invitation for bids, for which the bidder must bid a separate price.

3.302-1 and 3.302-2 [Removed]

4. Subsections 3.302–1 and 3.302–2 are removed.

5. In section 3.303, paragraph (d) is revised to read as follows:

3.303 Reporting suspected antitrust violations.

* * * * *

(d) Identical bids shall be reported under this section if the agency has some reason to believe that the bids resulted from collusion.

* * * * *

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. Section 13.000 is revised to read as follows:

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed $25,000.

7. In section 13.101, the definition of "Small purchase" is revised to read as follows:

13.101 Definitions.

* * * * *

"Small purchase" means an acquisition of supplies, nonpersonal services, and construction in the amount of $25,000 or less using the procedures prescribed in this part.

* * * * *

8. In section 13.302, paragraph (a) is revised to read as follows:

13.302 Conditions for use.

* * * * *

(a) Individual orders do not exceed $25,000, except that executive agencies may establish higher dollar limitations for specified activities or items.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

* * * * *

Subpart 22.10—[Reserved]

* * * * *

9. The title and text of Subpart 22.10, consisting of sections 22.1000 through 22.1015, are removed, and the subpart is reserved.

PART 25—FOREIGN ACQUISITION

* * * * *

25.401 [Amended]

10. In section 25.401, the table in "Designated country" is amended by adding "Israel" to the list.

11. Section 25.402 is amended as follows:

In paragraphs (a) and (c) change "$169,000" to read "161,000".

Paragraph (b) is revised to read as follows:

25.402 Policy.

* * * * *

(b) Except when waived under section 302(b)(2) of the Trade Agreements Act, there shall be no purchases of foreign end products subject to the Act unless the foreign end products are designated country end products.

* * * * *

25.403 [Amended]

12. In section 25.403, paragraph (a) is amended by changing "$169,000" to read "$161,000".

25.405 [Amended]

13. In section 25.405, the introductory text and paragraph (e) are amended by changing "$169,000" to read "161,000".

25.406 [Amended]

14. Section 25.406 is amended by alphabetically inserting "Maritime Administration of the Department of Transportation" and "Peace Corps" to the list.

15. A new Part 27 is added to read as follows:

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27.601 General

AUTHORITY: 40 USC 486(c); Chapter 137, 10 USC ; and 42 USC 2453(c).

27.000 Scope of part.

This part prescribes policies, procedures, and contract clauses pertaining to patents and directs agencies to develop coverage for Rights in Data and Copyrights.

SUBPART 27.1—GENERAL

27.101 Applicability.

The policies, procedures, and clauses prescribed by this Part 27 are applicable to all agencies. Agencies are authorized to adopt alternate policies, procedures, and clauses, but only to the extent determined necessary to meet the specific requirements of laws, executive orders, treaties, or international agreements. Any agency action adopting such alternate policies, procedures, and clauses shall be covered in published agency regulations.

27.102 Reserved.

27.103 Policy.

The policies pertaining to patents, data, and copyrights are set forth in this Part 27 and the related clauses in Part 52.

27.104 General guidance.

(a) The Government encourages the maximum practical commercial use of inventions made while performing Government contracts.

(b) Generally, the Government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent.

(c) Generally, the Government encourages the use of inventions in performing contracts and, by appropriate contract clauses, authorizes and consents to such use, even though the inventions may be covered by U.S. patents and indemnification against infringement may be appropriate.

(d) Generally, the Government should be indemnified against infringement of U.S. patents resulting from performing contracts when the supplies or services acquired under the contracts normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or are the same as such supplies or services with relatively minor modifications.

(e) The Government acquires supplies or services on a competitive basis to the maximum practical extent, but it is important that the efforts directed toward increasing competition not improperly demand or use data relating to private developments.

(f) The Government honors the rights in data resulting from private developments and limits its demands for such rights to those essential for Government purposes.

(g) The Government honors rights in patents, data, and copyrights, and complies with the stipulations of law in using or acquiring such rights.

(h) Generally, the Government requires that contractors obtain permission from copyright owners before including privately-owned copyrighted works in data required to be delivered under Government contracts.

SUBPART 27.2—PATENTS

27.200 Scope of subpart.

This subpart prescribes policy with respect to—

(a) Patent infringement liability resulting from work performed by or for the Government;

(b) Royalties payable in connection with performing Government contracts; and

(c) Security requirements covering patent applications containing classified subject matter filed by contractors.

27.201 Authorization and consent.

27.201-1 General.

(a) In those cases where the Government has authorized or consented to the manufacture or use of an invention described in and covered by a patent of the United States, any suit for infringement of the patent based on the manufacture or use of the invention by or for the United States by a contractor (including a subcontractor at any tier) can be maintained only against the Government in the U.S. Claims Court and not against the contractor or subcontractor (28 U.S.C. 1498). To ensure that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, the Government shall give authorization and consent in accordance with this regulation. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) The contracting officer shall not include in any solicitation or contract—

(1) Any clause whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement; or

(2) Any authorization and consent clause when both complete performance and delivery are outside the United States, its possessions, and Puerto Rico.

27.201-2 Clauses on authorization and consent.

(a) The contracting officer shall insert the clause at 52.227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when small purchase procedures apply or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when small purchase procedures apply, it may be used with them.

(b) The contracting officer shall insert the clause with its Alternate I in all R&D solicitations and contracts (including those for construction and architect-engineer services calling exclusively for R&D work or exclusively for experimental work), unless both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. When a proposed contract involves both R&D work and supplies or services, and the R&D work is the primary purpose of the contract, the contracting officer shall use this alternate. In all other proposed contracts involving both R&D work and supplies or services, the contracting officer shall use the basic clause. Also, when a proposed contract involves either R&D or supplies and materials, in addition to construction or architect-engineer work, the contracting officer shall use the basic clause.

(c) If the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body, the contracting officer shall use the clause with its Alternate II.

27.202 Notice and assistance.

27.202-1 General.

The contractor is required to notify the contracting officer of all claims of infringement that come to the contractor's attention in connection with performing a Government contract. The contractor is also required, when requested, to assist the Government with any evidence and information in its possession in connection with any suit against the Government, or any claims against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the contract performance.

27.202-2 Clause on notice and assistance.

The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the dollar limit set forth at 13.000, except when small purchase procedures apply or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.

27.203 Patent indemnification of Government by contractor.

27.203-1 General.

(a) To the extent set forth in this section, the Government requires reimbursement for liability for patent infringement arising out of or resulting from performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. Appropriate clauses for indemnification of the Government are prescribed in the following subsections.

(b) A patent indemnity clause shall not be used in the following situations:

(1) When the clause at 52.227-1, Authorization and Consent, with its Alternate I, is included in the contract, except that in contracts calling also for supplies of the kind described in paragraph (a) above, a patent indemnity clause may be used solely with respect to such supplies.

(2) When the contract is for supplies or services (or such items with relatively minor modifications) that clearly are not or have not been sold or offered for sale by any supplier to the public in the commercial open market. However, a patent indemnity clause may be included in (i) formally advertised contracts to obtain an indemnity regarding specific components, spare parts, or services so sold or offered for sale (see 27.203-2(b) below), and (ii) contracts to be awarded (either by formal advertising or negotiation) if a patent owner contends that the acquisition would result in patent infringement and the prospective contractor, after responding to a solicitation that did not contain an indemnity clause, is willing to indemnify the Government against such infringement either (A) without increase in price on the basis that the patent is invalid or not infringed, or (B) for other good reasons.

(3) When both performance and delivery are to be outside the United States, its possessions, and Puerto Rico, unless the contract indicates that the supplies or other deliverables are ultimately to be shipped into one of those areas.

(4) When the contract is awarded by small purchase procedures.

(5) When the contract is solely for architect-engineer work (see Part 36).

27.203-2 Clauses for formally advertised contracts (excluding construction).

(a) Except when prohibited by 27.203-1(b) above, the contracting officer shall insert the clause at 52.227-3, Patent Indemnity, in formally advertised contracts for supplies or services (excluding construction and dismantling, demolition, and removal of improvements), if the contracting officer determines that the supplies or services (or such items with relatively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Also the clause may be included as authorized in 27.203-1(b)(2)(i).

(b) In solicitations and contracts (excluding those for construction) that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience and ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, use the basic clause with its Alternate III.

27.203-3 Negotiated contracts (excluding construction).

A patent indemnity clause is not required in negotiated contracts, (except construction contracts covered at 27.203-5), but may be used as discussed in 27.203-4 below. A decision to omit a patent indemnity clause in a negotiated fixed-price contract described in this subsection should be based on a price consideration to the Government for the foregoing indemnification rights normally received by commercial purchasers of the same supplies or services.

27.203-4 Clauses for negotiated contracts (excluding construction).

(a) The contracting officer may insert the clause at 52.227-3, Patent Indemnity—

(1) As authorized in 27.203-1(b)(2)(ii); and

(2) Except as prohibited by 27.203-1(b), in solicitations anticipating negotiated contracts (and such contracts) for supplies or services (excluding construction and dismantling, demolition, and removal of

improvements), if the contracting officer determines that the supplies or services (or such items with relatively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Ordinarily, the contracting officer, in consultation with the prospective contractor, should be able to determine whether the supplies or services being purchased normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. (For negotiated construction contracts, see 27.203-5).

(b) In solicitations and contracts that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience, and the ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, the clause shall be used with its Alternate III.

27.203-5 Clause for construction contracts and for dismantling, demolition, and removal of improvements contracts.

Except as prohibited by 27.203-1(b), the contracting officer shall insert the clause at 52.227-4, Patent Indemnity—Construction Contracts, in solicitations and contracts for construction or that are fixed-price for dismantling, demolition, or removal of improvements. If it is determined that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special, the contracting officer may expressly exclude them from the patent indemnification by using the basic clause with its Alternate I.

27.203-6 Clause for Government waiver of indemnity.

If, in the Government's interest, it is appropriate to exempt one or more specific United States patents from the patent indemnity clause, the contracting officer shall obtain written approval from the agency head or designee and shall insert the clause at 52.227-5, Waiver of Indemnity, in solicitations and contracts in addition to the appropriate patent indemnity clause. The contracting officer shall document the contract file with a copy of the written approval.

27.204 Reporting of royalties—anticipated or paid.

27.204-1 General.

(a) (1) To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with any Government rights in particular inventions, patents, or patent applications, contracting officers shall require prospective contractors to furnish certain royalty information and shall require contractors to furnish certain royalty reports. Contracting officers shall take appropriate action to reduce or eliminate excessive or improper royalties.

(2) Royalty information shall not be required (except for information under 27.204-3) in formally advertised contracts unless the need for such information is approved at a level above that of the contracting officer as being necessary for proper protection of the Government's interests.

(b) When it is expected that work may be performed in the United States, its possessions, or Puerto Rico, any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained (see 15.804) should contain a provision requesting information relating to any proposed charge for royalties. If the work is to be performed in the United States, its possessions, or Puerto Rico and the response to the solicitation includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information relating to the proposed payments of royalties to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall promptly advise the contracting officer of appropriate action. Before award, the contracting officer shall take action to protect the Government's interest with respect to such royalties, giving due regard to all pertinent factors relating to the proposed contract and the advice of the cognizant office.

(c) The contracting officer, when considering the approval of a subcontract for work to be performed in the United States, its possessions, or Puerto Rico, shall require and obtain the same royalty information and take the same action with respect to such subcontracts in relation to royalties as required for prime contracts under paragraph (b) above. However, consent need not be withheld pending receipt of advice in regard to such royalties from the office having cognizance of patent matters.

(d) The contracting officer shall forward the royalty information and/or royalty reports received to the office having cognizance of patent matters for the contracting activity concerned for advice as to appropriate action.

27.204-2 Solicitation provision for royalty information.

If it is expected that work may be performed in the United States, its possessions, or Puerto Rico, the contracting officer shall insert a solicitation provision substantially as shown in 52.227-6, Royalty Information, in any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained under 15.804. If the solicitation is for communication services and facilities by a common carrier, use the provision with its Alternate I.

27.204-3 Patents—notice of Government as a licensee.

(a) When the Government is obligated to pay a royalty on a patent because of a license agreement between the Government and a patent owner and the contracting officer knows (or has reason to believe) that the licensed patent will be applicable to a prospective contract, the Government should furnish information relating to the royalty to prospective offerors since it serves the interest of both the Government and the offerors. In such situations, the contracting officer should include in the solicitation a notice of the license, the number of the patent, and the royalty rate recited in the license.

(b) When the Government is obligated to pay such a royalty, the solicitation should also require offerors to furnish information indicating whether or not each offeror is a licensee under the patent or the patent owner. This information is necessary so that the Government may either (1) evaluate an offeror's price by adding an amount equal to the royalty, or (2) negotiate a price reduction with an offeror-licensee when the offeror is licensed under the same patent at a lower royalty rate.

(c) If the Government is obligated to pay a royalty on a patent involved in the prospective contract, the contracting officer shall insert in the solicitation, substantially as shown, the provision at 52.227-7, Patents—Notice of Government Licensee.

27.204-4 Clause for reporting of royalties (foreign).

In solicitations contemplating negotiated contracts (and such contracts) to be performed outside the United States, its possessions, and Puerto Rico, regardless of the place of delivery, the contracting officer shall insert the clause at 52.227-8, Reporting of Royalties (Foreign).

27.205 Adjustment of royalties.

(a) If at any time the contracting officer has reason to believe that any royalties paid, or to be paid, under an existing or prospective contract or subcontract are inconsistent with Government rights, excessive, or otherwise improper, the facts shall be promptly reported to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall review the royalties thus reported and such royalties as are reported under 27.204 and 27.206 and, in accordance with agency procedures, shall either recommend appropriate action to the contracting officer or, if authorized, shall take appropriate action.

(b) In coordination with the cognizant office, the contracting officer shall promptly act to protect the Government against payment of royalties on supplies or services—

(1) With respect to which the Government has a royalty-free license;

(2) At a rate in excess of the rate at which the Government is licensed; or

(3) When the royalties in whole or in part otherwise constitute an improper charge.

(c) In appropriate cases, the contracting officer in coordination with the cognizant office shall obtain a refund pursuant to any refund of royalties clause in the contract (see 27.206) or negotiate for a reduction of royalties.

(d) For guidance in evaluating information furnished pursuant to 27.204 and 27.205(a) above, see 31.205-37 and 31.311-34. See also 31.109 regarding advance understandings on particular cost items, including royalties.

27.206 Refund of royalties.

27.206-1 General.

When a fixed-price contract is negotiated under circumstances that make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or a subcontractor, such royalties may be included in the target or contract price, provided the contract specifies that the Government will be reimbursed the amount of such royalties if they are not paid. Such circumstances might include, for example, either a pending Government anti-trust action or prospective litigation on the validity of a patent or patents or on the enforceability of an agreement (upon which the contractor or subcontractor bases the asserted obligation) to pay the royalties to be included in the target or contract price.

27.206-2 Clause for refund of royalties.

The contracting officer shall insert the clause at 52.227-9, Refund of Royalties, in negotiated fixed-price contracts and solicitations contemplating such contracts if the contracting officer determines that circumstances make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or a subcontractor at any tier.

27.207 Classified contracts.

27.207-1 General.

(a) Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 792 et seq. (Espionage and Censorship), and related statutes, and may be contrary to the interests of national security.

(b) Upon receipt from the contractor of a patent application, not yet filed, that has been submitted by the contractor in compliance with paragraph (a) or (b) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application. Upon a determination that the application contains classified subject matter, the contracting officer shall inform the contractor of any instructions deemed necessary or advisable relating to transmittal of the application to the United States Patent Office in accordance with procedures in the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information. If the material is classified "Secret" or higher, the contracting officer shall make every effort to notify the contractor of the determination within 30 days, pursuant to paragraph (a) of the clause.

(c) In the case of all applications filed under the provisions of this section 27.207, the contracting officer, upon receiving the application serial number, the filing date, and the information furnished by the contractor under paragraph (d) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, shall promptly submit that information to personnel having cognizance of patent matters in order that the steps necessary to ensure the security of the application may be taken.

(d) A request for the approval referred to in paragraph (c) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, must be considered and acted upon promptly by the contracting officer in order to avoid the loss of valuable patent rights of the Government or the contractor.

27.207-2 Clause for classified contracts.

The contracting officer shall insert the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, in all classified solicitations and contracts and in all solicitations and contracts where the nature of the work or classified subject matter involved in the work reasonably might be expected to result in a patent application containing classified subject matter.

SUBPART 27.3—PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

27.300 Scope of subpart.

This subpart prescribes policies, procedures, and contract clauses with respect to inventions made in the performance of work under a Government contract or subcontract thereunder if a purpose of the contract or subcontract is the conduct of experimental, developmental, or research work, except to the extent statutory requirements necessitate different agency policies, procedures, and clauses as specified in agency supplemental regulations.

27.301 Definitions.

"Invention," as used in this subpart, means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the U.S. Code.

"Made," as used in this subpart, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

"Nonprofit organization," as used in this subpart, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application," as used in this subpart, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a

machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Small business firm," as used in this subpart, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used. See FAR Part 19).

"Subject invention," as used in this subpart, means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a Government contract.

27.302 Policy.

(a) *Introduction.* (1) The policy of this section is based on 35 U.S.C. Chapter 18 (Pub. L. 96-517), OMB Circular A-124, and the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983. The objectives of this policy are to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of industry in federally supported research and development efforts; to ensure that these inventions are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area.

(2) Some agencies are subject, in whole or in part, to one of the following statutes, which require that information as to uses, products, processes, patents, or other developments "be available to the general public": 31 U.S.C. 666, 22 U.S.C. 2572, 50 U.S.C. 167b, 30 U.S.C. 951(c), 30 U.S.C. 937(b), 40 U.S.C. App. 302(e), 30 U.S.C. 1226, and 15 U.S.C. 1395(c). Such agencies shall generally use the clauses herein allowing title to patents to be retained by the contractor, and the related procedures.

(b) *Contractor right to elect title.* Under the policy set forth in paragraph (a) above, each contractor may, after disclosure to the Government as required by the patent rights clause included in the contract, elect to retain title to any invention made in the performance of work under the contract. To the extent an agency's statutory requirements necessitate a different policy, or different procedures and/or contract clauses to effectuate the policy set forth in paragraph (a) above, such policy, procedures, and clauses shall be contained in or expressly referred to in that agency's supplement to this subpart. In addition, a contract may provide otherwise (1) when the contract is for the operation of a Government-owned research or production facility, (2) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title in any subject invention will better promote the policy and objectives of 35 U.S.C. Chapter 18 and the Presidential Memorandum, or (3) when it is determined by a Government authority which is authorized by statute or Executive Order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities. In those instances when the Government has the right to acquire title at the time of contracting the contractor may, nevertheless, request greater rights to an identified invention. (See 27.304-1(a).) The right of the contractor to retain title shall, in any event, be subject to the provisions of paragraphs (c) through (g) below unless for contracts with other than small business or nonprofit organizations the agency determines before contract award that all or portions of these provisions may be modified, waived, or omitted. (See 27.304-1(f).)

(c) *Government license.* The Government shall have (unless provided otherwise in accordance with 27.304-1(f)) at least a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, any subject invention throughout the world; and may, if provided in the contract (see Alternate I of the applicable patent rights clause), have additional rights to sublicense any foreign government or international organization pursuant to existing treaties or agreements identified in the contract, and any future treaty or agreement.

(d) *Government right to receive title.* (1) The Government has the right to receive title to any invention if the contract so provides pursuant to a determination made in accordance with subparagraph (b)(1), (2), or (3) above. In addition, to the extent provided in the patent rights clause, the Government has the right to receive title to an invention—

(i) If the contractor has not disclosed the invention within the time specified in the clause;

(ii) In any country where the contractor does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the clause;

(iii) In any country where the contractor has not filed a patent application within the time specified in the clause;

(iv) In any country where the contractor decides not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on the patent; and/or

(v) In any country where the contractor no longer desires to retain title.

(2) For the purposes of this paragraph, election or filing in a European Patent Office Region or under the Patent Cooperation Treaty constitutes election or filing in any country covered therein to meet the times specified in the clause, provided that the Government has the right to receive title in those countries not subsequently designated by the contractor.

(e) *Utilization reports.* Unless provided otherwise in accordance with 27.304-1(f), contracts provide that the Government shall have the right to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or its licensees or assignees. Such reporting by small business firms and nonprofit organizations may be required in accordance with instructions as may be issued by the Department of Commerce. Agencies should protect the confidentiality of utilization reports to the extent permitted by 35 U.S.C. 205 or other applicable laws and OMB Circular A-124.

(f) *March-in rights.* (1) With respect to any subject invention in which a contractor has acquired title, contracts provide that the agency shall have the right (unless provided otherwise in accordance with 27.304-1(f)) to require the contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such a license itself, if the agency determines that such action is necessary—

(i) Because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(ii) To alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(iii) To meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(iv) Because the agreement required by paragraph (g) below has neither been obtained nor waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to paragraph (g) below.

(2) This right of the agency shall be exercised only after the contractor has been provided a reasonable time to present facts and show cause why the proposed agency action should not be taken, and afforded an opportunity to take appropriate action if the contractor wishes to dispute or appeal the proposed action, in accordance with 27.304-1(g).

(g) *Preference for United States industry.* Unless provided otherwise in accordance with 27.304-1(f), contracts provide that no contractor which receives title to any subject invention and no assignee of any such contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the agency upon a showing by the contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(h) *Minimum rights to contractor.* (1) When the Government acquires title to a subject invention, the contractor is normally granted a revocable, nonexclusive, royalty-free license to that invention throughout the world. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the contracting officer except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with the applicable provisions in the Federal Property Management Regulations and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that country. See the procedures at 27.304-1(e).

(i) *Confidentiality of inventions.* The publication of information disclosing an invention by any party before the filing of a patent application may create a bar to a valid patent. Accordingly, 35 U.S.C. 205 and OMB Circular A-124 provide that Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office. The Presidential Memorandum on Government Patent Policy specifies that agencies should protect the confidentiality of invention disclosures and patent applications required in performance or in consequence of awards to the extent permitted by 35 U.S.C. 205 or other applicable laws.

27.303 Contract clauses.

In contracts (and solicitations therefor) for experimental, developmental, or research work (but see 27.304-3 regarding contracts for construction work or architect-engineer services), a patent rights clause shall be inserted as follows:

(a) (1) The contracting officer shall insert the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), if all the following conditions apply:

(i) The contractor is a small business concern or nonprofit organization as defined in 27.301 or, except for contracts of the Department of Defense (DOD), the Department of Energy (DOE), or the National Aeronautics and Space Administration (NASA), any other type of contractor.

(ii) No alternative patent rights clause is used in accordance with paragraphs (c) or (d) below or 27.304-2.

(2) To the extent the information is not required elsewhere in the contract, and unless otherwise specified by agency supplemental regulations, the contracting officer may modify paragraph (f) of the clause to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide notification of all subcontracts for experimental, developmental, or research work.

(iv) Provide, upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(v) Furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(3) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(b) (1) The contracting officer shall insert the clause at 52.227-12, Patent Rights—Retention by the Contractor (Long Form), if all the following conditions apply:

(i) The contractor is other than a small business firm or nonprofit organization.

(ii) No alternative clause is used in accordance with paragraph (c) or (d) below or 27.304-2.

(iii) The contracting agency is one of those excepted under subdivision (a)(1)(i) above.

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(c) (1) The contracting officer shall insert the clause at 52.227-13, Patent Rights—Acquisition by the Government, if any of the following conditions apply:

(i) No alternative clause is used in accordance with subparagraph (c)(2) or paragraph (d) below or 27.304-2.

(ii) The work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not small business firms, nonprofit organizations as defined in 27.301, or domestic firms. For purposes of this subparagraph, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See 27.304-4(a) regarding subcontracts with U.S. firms.)

(2) Pursuant to their statutory requirements, DOE and NASA may specify in their supplemental regulations use of a modified version of the clause at 52.227-13 in contracts with other than small business concerns or nonprofit organizations.

(3) If the acquisition of patent rights for the benefits of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(d) (1) If one of the following applies, the contracting officer may insert the clause prescribed in paragraph (a) or (b) above as otherwise applicable; agency supplemental regulations may provide another clause and specify its use; or the contracting officer shall insert the clause prescribed in paragraph (c) above:

(i) The contract is for the operation of a Government-owned research or production facility.

(ii) There are exceptional circumstances and the agency head determines that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 18 of Title 35 of the United States Code.

(iii) It is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that restriction or elimination of the right to retain any subject invention is necessary to protect the security of such activities.

(2) Any determination under subdivision (1)(ii) above will be in writing and accompanied by a written statement of facts justifying the determination. The statement of facts will contain such information as the agency deems relevant and, at a minimum, will (i) identify the organization involved, (ii) describe the extent to which agency action restricted or eliminated the right to retain title to a subject invention, (iii) state the facts and rationale supporting the agency action, (iv) provide supporting documentation for those facts and rationale, and (v) indicate the nature of any objections to the agency action and provide any documentation in which those objections appear. In the case of contracts with small business concerns or nonprofit organizations, a copy of each such determination and written statement of facts will be sent to the Comptroller General of the United States within 30 days after the award of the applicable funding agreement. In the case of contracts with small business concerns, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(e) To qualify for the clause at 52.227-11, a prospective contractor may be required by the agencies excepted under subdivision (a)(1)(i) above to certify that it is either a small business firm or a nonprofit organization. If one of these agencies has reason to question the status of the prospective contractor, the agency may file a protest in accordance with 13 CFR 121.3-5 if small business firm status is questioned or require the prospective contractor to furnish evidence of its status as a nonprofit organization.

(f) The Alternates to the clauses at 52.227-11, 52.227-12, and 52.227-13, as applicable, may be modified by deleting the reference to future treaties or agreements or by otherwise more narrowly defining classes of future treaties or agreements. It may also be modified to make clear that the rights granted to the foreign government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even assignment of title in the foreign country involved might be required. In addition, the Alternate may be modified to provide for direct licensing by the contractor of the foreign government or international organization.

27.304 Procedures.

27.304-1 General.

(a) *Greater rights determinations.* Whenever the contract contains the clause at 52.227-13, Patent Rights—Acquisition by the Government, the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in such clause. Requests for greater rights may be granted if the agency head or designee determines that the interests of the United States and the general public will be better served thereby. In making such determinations, the agency head or designee shall consider at least the following objectives:

(1) Promoting the utilization of inventions arising from federally supported research and development.

(2) Ensuring that inventions are used in a manner to promote free competition and enterprise.

(3) Promoting public availability of inventions made in the United States by United States industry and labor.

(4) Ensuring that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(b) *Retention of rights by inventor.* If the contractor does not elect to retain title to a subject invention, the agency may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraph (d) (except subparagraph (d)(1)), subparagraph (f)(4), and paragraphs (h), (i), and (j) of the applicable Patent Rights—Retention by the Contractor clause.

(c) *Government assignment to contractor of rights in Government employees' inventions.* When a Government employee is a coinventor of an invention made under a contract with a small business firm or nonprofit organization, the agency employing the coinventor may transfer or reassign whatever right it may acquire in the subject invention from its employee to the contractor, subject to the conditions of 35 U.S.C. Chapter 18 and OMB Circular A-124.

(d) *Additional requirements.* (1) If it is desired to have the right to require any of the following, the contract shall be modified to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide notification of all subcontracts for experimental, developmental, or research work.

(iv) Provide upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(v) Furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(2) To the extent provided by such modification (and automatically under the terms of the clauses at 52.227-12 and -13), the contracting officer may require the contractor to—

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate shall not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing subject inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work;

(iii) Submit information regarding the filing date, serial number and title, and, upon request, a copy of the patent application, and patent number and issue date for any subject invention in any country for which the contractor has retained title; and

(iv) Submit periodic reports on the utilization of a subject invention or on efforts at obtaining utilization that are being made by the contractor or its licensees or assignees.

(3) The contractor is required to deliver to the contracting officer an instrument confirmatory of all rights to which the Government is entitled and to furnish the Government an irrevocable power to inspect and make copies of the patent application file. Such delivery should normally be made within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed.

(e) *Revocation or modification of contractor's minimum rights.* Before revocation or modification of the contractor's license in accordance with 27.302(h)(2), the contracting officer will furnish the contractor a written notice of intention to revoke or modify the license, and the contractor will be allowed 30 days (or such other time as may be authorized by the contracting officer for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations, any decisions concerning the revocation or modification.

(f) *Modification, waiver, or omission of rights of the Government or obligations of the contractor.* (1) In contracts not subject to 35 U.S.C. Chapter 18, an agency may modify, waive, or omit, in whole or in part, any of the rights of the Government or obligations of the contractor described in 27.302(c) through (h) if the agency head or designee determines at the time of contracting (i) that the interests of the United States and the general public will be better served thereby as, for example, where this is necessary to obtain a uniquely or highly qualified contractor, or (ii) that the contract involves cosponsored, cost sharing, or joint venture research and development, and the contractor, cosponsor, or joint venturer is making a substantial contribution of funds, facilities, or equipment to the work performed under the contract.

(2) Any modification, waiver, or omission of the rights of the Government shall be in writing and accompanied by a written statement of facts justifying the determination. Inasmuch as these rights are normally considered the minimum rights necessary to protect the interests of the United States and the general public under the policy and objectives of 27.302(a)(1), such statement must specifically—

(i) Describe the extent to which the Government's rights are to be modified, waived, or omitted;

(ii) State the facts and rationale for such modification, waiver, or omission; and

(iii) Include a statement as to why the interests of the United States and the general public will be better served by such modification, waiver, or omission under the policy and objectives of 27.302(a)(1), with particular emphasis on (A) ensuring that the Government obtains sufficient rights to meet its needs competitively and at the lowest cost when relinquishing the Government's royalty-free license rights, (B) protecting the public against nonuse or unreasonable use of inventions arising out of the contract when relinquishing march-in rights intended to prevent suppression of such inventions and to assure their availability to meet health or safety needs or regulatory requirements, and (C) promoting the public availability of such inventions through commercialization by United States industry and labor.

(g) *Exercise of march-in rights.* The following procedures shall govern the exercise of the march-in rights set forth in 35 U.S.C. 203, paragraph (j) of the Patent Rights—Retention by the Contractor clauses, and subdivision (c)(1)(ii) of the Patent Rights—Acquisition by the Government clause:

(1) When the agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding in accordance with the procedures of subparagraph (2) below, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor. In the absence of any comments from the contractor within 30 days the agency may, at its discretion, initiate the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

(2) A march-in proceeding shall be initiated by the issuance of a written notice by the agency head or a designee to the contractor and its assignee or exclusive licensee, as applicable, stating that the Government has determined to exercise march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action is based, and shall specify the field or fields of use in which the Government is considering requiring licensing. The notice shall advise the contractor, assignee, or exclusive licensee of its rights as set forth in 33.011 and in any supplemental agency regulations or procedures. The determination to exercise march-in rights shall be made by the contracting officer, as a final decision for purposes of the Contract Disputes Act in accordance with 33.011.

(3) These procedures shall also apply to the exercise or march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term

"contractor" as used herein shall be deemed to include the inventor.

(4) The contractor, assignee, or exclusive licensee will not be required to grant a license and the Government will not grant any license until after either (i) 90 days from the date of the contractor's receipt of the contracting officer's decision, if no appeal of the decision has been made to a Board of Contract Appeals and if no action has been brought under 41 U.S.C. 609 within that time, or (ii) the board or court has made a final decision, in cases when an appeal or action has been brought within 90 days of the contracting officer's decision.

(h) *Licenses and assignments under contracts with nonprofit organizations.* If the contractor is a nonprofit organization, the clause at 52.227-11 provides that certain contractor actions require agency approval, as specified below. Agencies shall provide procedures for obtaining such approval.

(1) Rights to a subject invention in the United States may not be assigned without the approval of the contracting agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the contractor).

(2) The contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of—

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis the contracting agency approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention.

27.304-2 Contracts placed by or for other Government agencies.

The following procedures apply unless agency agreements provide otherwise:

(a) When a Government agency requests another Government agency to award a contract on its behalf, the request should explain any special circumstances surrounding the contract and specify and furnish the patent rights clause to be used. Normally, the clause will be in accordance with the policies and procedures of this subpart. If, however, the request states that a clause of the requesting agency is required (e.g., because of statutory requirements, a deviation, or exceptional circumstances) that clause shall be used rather than those of this subpart.

(1) If the request states that an agency clause is required and the work to be performed under the contract is not severable and is funded wholly or in part by the agency, then that agency clause and no other patent rights clause shall be included in the contract.

(2) If the request states that an agency clause is required, and the work to be performed under the contract is severable and is only in part for the requesting agency, then the work which is on behalf of the requesting agency shall be identified in the contract, and the agency clause shall be made applicable to that portion. In such situations, the remaining portion of the work (for the agency awarding the contract) shall likewise be identified and the appropriate patent rights clause (if required) shall be made applicable to that remaining portion.

(3) If the request states that an agency clause is not required in any resulting contract, then the appropriate patent rights clause shall be used, if a patent rights clause is required.

(b) Where use of the specified clause, or any modification, waiver, or omission of the Government's rights under any provisions therein, requires a written determination, the reporting of such determination, or a deviation, if any such acts are required in accordance with 27.303(d)(2), 27.304-1(f)(2), or 1.4, it shall be the responsibility of the requesting agency to make such determination, submit the required reports, and obtain such deviations, in consultation with the contracting agency, unless otherwise agreed between the contracting and requesting agencies. However, a deviation to a specified clause of the requesting agency shall not be made without prior approval of that agency.

(c) The requesting agency may require, and provide instructions regarding, the forwarding or handling of any invention disclosures or other reporting requirements of the specified clauses. Normally the requesting agency shall be responsible for the handling of any disclosed inventions, including the filing of patent applications where the Government receives title, and the custody, control, and licensing thereof, unless provided otherwise in the instructions or other agreements with the contracting agency.

27.304-3 Contracts for construction work or architect-engineer services.

(a) If a solicitation or contract for construction work or architect-engineer services has as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work and calls for, or can be expected to involve, the design of a Government facility or of novel structures, machines, products, materials, processes, or equipment (including construction equipment), it shall include a patent rights clause selected in accordance with the policies and procedures of this Subpart 27.3.

(b) A solicitation or contract for construction work or architect-engineer services that calls for or can be expected to involve *only* "standard types of construction" to be built by previously developed equipment, methods, and processes shall not include a patent rights clause. The term "standard types of construction" means construction in which the distinctive features, if any, in all likelihood will amount to no more than—

(1) Variations in size, shape, or capacity of otherwise structurally orthodox and conventionally acting structures or structural groupings; or

(2) Purely artistic or esthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, which may or may not be sufficiently novel or meritorious to qualify for design protection under the design patent or copyright laws.

27.304-4 Subcontracts.

(a) The policies and procedures covered by this subpart apply to all contracts at any tier. Hence, a contractor awarding a subcontract and a subcontractor awarding a lower-tier subcontract that has as a purpose the conduct of experimental, developmental, or research work is required to determine the appropriate patent rights clause to be included that is consistent with these policies and procedures. Generally, the clause at either 52.227-11, 52.227-12, or 52.227-13 is to be used and will be so specified in the patent rights clause contained in the higher-tier contract, but the contracting officer may direct the use of a particular patent

rights clause in any lower-tier contract in accordance with the policies and procedures of this subpart. For instance, when the clause at 52.227-13 is in the prime contract because the work is to be performed overseas, any subcontract with a nonprofit organization would contain the clause at 52.227-11.

(b) Whenever a prime contractor or a subcontractor considers the inclusion of a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the proffered clause, the matter shall be resolved by the agency contracting officer in consultation with counsel.

(c) It is Government policy that contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from subcontracts.

27.304-5 Appeals.

(a) The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for the action at the time the action is taken, including any relevant facts that were relied upon in taking the action:

(1) A refusal to grant an extension to the invention disclosure period under subparagraph (c)(4) of the clauses at 52.227-11 and 52.227-12.

(2) A request for a conveyance of title to the Government under 27.302(d)(1)(i) through (v).

(3) A refusal to grant a waiver under 27.302(g), Preference for U.S. Industry.

(4) A refusal to approve an assignment under 27.304-1(h)(1).

(5) A refusal to approve an extension of the exclusive license period under 27.304-1(h)(2).

(b) Each agency shall establish and publish procedures under which any of the agency actions listed in paragraph (a) above may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of 35 U.S.C. 200-206 and this subpart.

(c) Appeals procedures established under paragraph (b) above shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in Part 13e-g of OMB Circular A-124 whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under 27.302(d)(1)(i) through (v) including any dispute as to whether or not an invention is a subject invention.

(d) To the extent that any of the actions described in paragraph (a) above are subject to appeal under the Contract Disputes Act, the procedures under that Act will satisfy the requirements of paragraphs (b) and (c) above.

27.305 Administration of patent rights clauses.

27.305-1 Patent rights follow-up.

(a) It is important that the Government and the contractor know and exercise their rights in inventions conceived or first actually reduced to practice in the course of or under Government contracts in order to ensure their expeditious availability to the public and to enable the Government, the contractor, and the public to avoid unnecessary payment of royalties and to defend themselves against claims and suits for patent infringement. To attain these ends, contracts having a patent rights clause should be so administered that—

(1) Inventions are identified, disclosed, and reported as required by the contract, and elections are made;

(2) The rights of the Government in such inventions are established;

(3) Where patent protection is appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of such inventions is achieved.

(b) If a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

27.305-2 Follow-up by contractor.

(a) *Contractor procedures.* If required by the applicable clause, the contractor shall establish and maintain effective procedures to ensure its patent rights obligations are met and that subject inventions are timely identified and disclosed, and when appropriate, patent applications are filed.

(b) *Contractor reports.* Contractors shall submit all reports required by the patent rights clause to the contracting officer or other representative designated for such purpose in the contract. Agencies may, in their implementing instructions, provide specific forms for use on an optional basis for such reporting.

27.305-3 Follow-up by Government.

(a) Agencies shall maintain appropriate follow-up procedures to protect the Government's interest and to check that subject inventions are identified and disclosed, and when appropriate, patent applications are filed, and that the Government's rights therein are established and protected. Follow-up activities for contracts that include a clause referenced in 27.304-2 shall be coordinated with the appropriate agency.

(b) The contracting officer administering the contract (or other representative specifically designated in the contract for such purpose) is responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause. If the contractor fails to furnish documents or information as called for by the clause within the time required, the contracting officer shall promptly request the contractor to supply the required documents or information and, if the failure persists, shall take appropriate action to secure compliance. Invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses shall be promptly furnished by the contracting officer administering the contract (or other designee) to the procuring agency or contracting activity for which the procurement was made for appropriate action.

(c) Contracting activities shall establish appropriate procedures to detect and correct failures by the contractor to comply with its obligations under the patent rights clauses, such as failures to disclose and report subject inventions, both during and after contract performance. Ordinarily a contractor should have written instructions for its employees covering compliance with these contract obligations. Government effort to review and correct contractor compliance with its patent rights obligations should be directed primarily towards contracts that, because of the nature of the research, development, or experimental work or the large dollar amount spent on such work, are more likely to result in subject inventions significant in number or quality, and towards contracts when there is reason to believe the contractors may not be complying with their contractual obligations. Other contracts may be reviewed using a spot-check method, as feasible. Appropriate follow-up procedures and activities may include the investigation or review of selected contracts or contractors by those qualified in patent and technical matters

to detect failures to comply with contract obligations.

(d) Follow-up activities should include, where appropriate, use of Government patent personnel—

(1) To interview agency technical personnel to identify novel developments made in contracts;

(2) To review technical reports submitted by contractors with cognizant agency technical personnel;

(3) To check the Official Gazette of the United States Patent and Trademark Office and other sources for patents issued to the contractor in fields related to its Government contracts; and

(4) If additional information is required, to have cognizant Government personnel interview contractor personnel regarding work under the contract involved, observe the work on site, and inspect laboratory notebooks and other records of the contractor related to work under the contract.

(e) If it is determined that a contractor or subcontractor does not have a clear understanding of the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation conference or letter should ordinarily be used to explain these rights and obligations (see Subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on inventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see 4.801(c)(3)).

27.305-4 Conveyance of invention rights acquired by the Government.

(a) Agencies are responsible for those procedures necessary to protect the Government's interest in subject inventions. When the Government acquires the entire right, title, and interest in an invention by contract, this is normally accomplished by an assignment either from each inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor, so that the chain of title from the inventor to the Government is clearly established. When the Government's rights are limited to a license, there should be a confirmatory instrument to that effect.

(b) The form of conveyance of title from the inventor to the contractor must be legally sufficient to convey the rights the contractor is required to convey to the Government. Agencies may, by supplemental instructions, develop suitable assignments, licenses, and other papers evidencing any rights of the Government in patents or patent applications, including such instruments as may be required to be recorded in the Statutory Register or documented in the Government Register maintained by the U.S. Patent and Trademark Office pursuant to Executive Order 9424, February 18, 1944.

27.305-5 Publication or release of invention disclosures.

(a) In accordance with the policy at 27.302(i), to protect their mutual interests, contractors and the Government should cooperate in deferring the publication or release of invention disclosures until the filing of the first patent application, and use their best efforts to achieve prompt filing when publication or release may be imminent. The Government will, on its part and to the extent authorized by 35 U.S.C. 205, withhold from disclosure to the public any invention disclosures reported under the patent rights clauses of 52.227-11, 52.227-12, or 52.227-13 for a reasonable time in order for patent applications to be filed. The policy in 27.302(i) regarding protection of confidentiality shall be followed.

(b) The Government will also use reasonable efforts to withhold from disclosure to the public for a reasonable time other information disclosing a reported invention included in any data delivered pursuant to contract requirements; *provided*, that the contractor notifies the agency as to the identity of the data and the invention to which it relates at the time of delivery of the data. Such notification must be to both the contracting officer and any patent representative to which the invention is reported, if other than the contracting officer.

27.306 Licensing background patent rights to third parties.

(a) A contract with a small business firm or nonprofit organization will not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign justifications required for such provisions.

(b) The Government will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the contract and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for a hearing, and the contractor shall be given notification of the determination by certified or registered mail. The notification shall include a statement that any action commenced for judicial review of such determination must be brought by the contractor within 60 days after the notification.

SUBPART 27.4—RIGHTS IN DATA AND COPYRIGHTS

27.401 General.

It is necessary for Government departments and agencies, in order to carry out their missions and programs, to acquire or obtain access to many kinds of data developed under or used in performing their contracts. Such data are required in order to obtain competition among suppliers; to meet acquisition needs; to ensure logistic support; to fulfill certain responsibilities for disseminating and publishing the results of their activities; to ensure appropriate use of the results of research, development, and demonstration activities; and to meet other programmatic and statutory requirements. At the same time, the Government recognizes that its contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that the protection from unauthorized use and disclosure of this

data, and other data made available to the Government for use, is required in order to preclude the compromise of such property right or economic interest, jeopardizing the contractor's commercial position, and impairment of the Government's ability to obtain access to or use of such data. Protecting this data is therefore necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. Specific agency regulations shall be framed in light of the above considerations to strike a balance between the Government's need and the contractor's economic interest.

SUBPART 27.5—RESERVED

SUBPART 27.6—FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

27.601 General.

Agencies shall provide all necessary rules and regulations as are required for the proper application of the laws and policies of the U.S. Government regarding—

(a) Elimination in agreements between domestic concerns and foreign governments or foreign concerns of charges for the use of patents in which the U.S. Government has a royalty-free license or of charges in agreements for the use of data that the U.S. Government has a right to use and disclose to others, that is in the public domain, or that was acquired by the U.S. Government with the unrestricted right to use, duplicate, or disclose and to have or permit others to do so;

(b) Foreign license and technical assistance agreements between the U.S. Government and United States domestic concerns;

(c) Guidance on negotiating contract prices and terms concerning patents and data, including royalties, in contracts between the U.S. Government and a foreign government or foreign concern; and

(d) Regulations and guidance on controls on the exportation of data relating to certain designated items, such as arms or munitions of war, and guidance on reviews of agreements involving such data (see 22 CFR 124).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–18 [Amended]

16. In subsection 31.205–18, paragraphs (c)(1)(i) and (c)(1)(v) are amended by changing "$4 million" to read "$4,400,000", and paragraph (c)(1)(ii) is amended by changing "$500,000" to read "$550,000".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. The table of contents for Part 52 is amended by adding the following entries:

* * * * *

52.227–1 Authorization and Consent.
52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.227–3 Patent Indemnity.
52.227–4 Patent Indemnity—Construction Contracts.
52.227–5 Waiver of Indemnity.
52.227–6 Royalty Information.
52.227–7 Patents—Notice of Government Licensee.
52.227–8 Reporting of Royalties (Foreign).
52.227–9 Refund of Royalties.
52.227–10 Filing of Patent Applications—Classified Subject Matter.
52.227–11 Patent Rights—Retention by the Contractor (Short Form).
52.227–12 Patent Rights—Retention by the Contractor (Long Form).
52.227–13 Patent Rights—Acquisition by the Government.

* * * * *

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

18. The titles and text of subsections 52.222–40 through 52.222–44 are removed and reserved.

19. In paragraph (b) of the contract clause at subsection 52.225–9, the last sentence is revised to read as follows:

52.225–9 Buy American Act—Trade Agreements Act—Balance of Payments Program.

* * * * *

(b) * * * Contractors may not supply a foreign end product with a total value of $161,000 or more unless the foreign end product is a designated country end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(b)).

* * * * *

52.227 [Removed]

20. Section 52.227 [Reserved] is removed.

21. Subsections 52.227–1 through 52.227–13 are added to read as follows:

52.227-1 Authorization and Consent.

As prescribed at 27.201-2(a), insert the following clause:

AUTHORIZATION AND CONSENT
(APR 1984)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed $25,000; however, omission of this clause from any subcontract, under or over $25,000, does not affect this authorization and consent.

(End of clause) (R 7-103.22 1961 JAN)

Alternate I (APR 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(R 7-302.21 1964 MAR)

Alternate II (APR 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are *not* established by a government regulatory body, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the Contracting

Officer directing the manner of performance.

(R 7-1702.5(a) 1971 APR)

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed at 27.202-2, insert the following clause:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (APR 1984)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause) (R 7-103.23 1965 JAN)

52.227-3 Patent Indemnity.

Insert the following clause as prescribed at 27.203-1(b), 27.203-2(a), or 27.203-4(a)(2)as applicable:

PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause) (R 7-104.5 1975 JUN)

Alternate I (APR 1984). The following paragraph (c) is added to the clause:

(c) This patent indemnification shall not apply to the following items:

.....

[*Contracting Officer list and/or identify the items to be excluded from this indemnity*]

(R 7-104.5(a) 1964 SEP)

Alternate II (APR 1984). The following paragraph (c) is added to the clause:

(a) This patent indemnification shall cover the following items:.....

[*List and/or identify the items to be included under this indemnity*] (R 7-104.5(a) 1964 SEP)

Alternate III (APR 1984). The following paragraph is added to the clause:

( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over $5.000 issued under this contract and covering those communications services and facilities (1) that are or have been sold or offered for sale by the Contractor to the public, (2) that can be provided over commercially available equipment, or (3) that involve relatively minor modifications.

(R 7-1701.10 1971 APR)

52.227-4 Patent Indemnity—Construction Contracts.

As prescribed at 27.203-5, insert the following clause:

PATENT INDEMNITY—CONSTRUCTION CONTRACTS (APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause) (R 7-602.16 1964 JUN)

Alternate I (APR 1984) Designate the first paragraph as paragraph(a) and add the following to the basic clause as paragraph (b):

(b) This patent indemnification shall not apply to the following items:

.....

[*Contracting Officer specifically identify the item to be excluded*]

(R 7-602.16(b) 1966 APR)

NOTE: Exclusion from indemnity of specified, identified patents, as distinguished from items, is the exclusive prerogative of the agency head or designee (See 27.203-6).

52.227-5 Waiver of Indemnity.

As prescribed at 27.203-6, insert the following clause:

WAIVER OF INDEMNITY (APR 1984)

Any provision or clause of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the Contractor with respect to such patents:

.....

.....

[*Contracting Officer identify the patents by number or by other means if more appropriate*].

(End of clause) (AV 7-104.5(b) 1955 JAN)

52.227-6 Royalty Information.

As prescribed at 27.204-2, insert the following provision:

ROYALTY INFORMATION (APR 1984)

(a) *Cost or charges for royalties.* When the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit.

(6) Unit price of contract item.

(7) Number of units.

(8) Total dollar amount of royalties.

(b) *Copies of current licenses.* In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(End of provision) (R 7-2003.42 1961 AUG)

Alternate I. (APR 1984) Substitute the following for the introductory portion of paragraph (a) of the basic clause:

When the response to this solicitation covers charges for special construction or special assembly that contain costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(R 7-1710.12)

52.227-7 Patents—Notice of Government Licensee.

As prescribed at 27.204-3(c), insert the following provision:

PATENTS—NOTICE OF GOVERNMENT LICENSEE (APR 1984)

The Government is obligated to pay a royalty applicable to the proposed acquisition because of a license agreement between the Government and the patent owner. The patent number is ..... [*Contracting Officer fill in*], and the royalty rate is ..... [*Contracting Officer fill in*]. If the offeror is the owner of, or a licensee under, the patent, indicate below:

( ) Owner ( ) Licensee

If an offeror does not indicate that it is the owner or a licensee of the patent, its offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision) (R 7-2003.15 1974 APR)

52.227-8 Reporting of Royalties (Foreign).

As prescribed at 27.204-4, insert the following clause:

REPORTING OF ROYALTIES (FOREIGN) (APR 1984)

(a) If this contract is in an amount that exceeds 50,000 United States dollars, the Contractor shall report in writing to the Contracting Officer while performing this contract the amount of royalties paid or to be paid by the Contractor directly to others in performing this contract. The Contractor shall also (1) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer and (2) insert a provision similar to this clause in any subcontract at any tier that involves an amount in excess of the equivalent of 50,000 United States dollars.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like for the use of or for rights in patents or patent applications.

(End of clause) (R 7-104.8 1966 OCT)

52.227-9 Refund of Royalties.

As prescribed at 27.206-2, insert the following clause. In solicitations and contracts with an incentive fee arrangement, change "price" to "target cost and target profit" wherever it appears.

REFUND OF ROYALTIES (APR 1984)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) above, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause) (V 7-104.8(b) 1968 FEB)

52.227-10 Filing of Patent Applications—Classified Subject Matter.

As prescribed at 27.207-2, insert the following clause:

FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER (APR 1984)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

(End of clause) (R 7-104.6 1969 DEC)

52.227-11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 27.303(a), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SHORT FORM) (APR 1984)

(a) *Definitions.*

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Made", when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

"Small business firm" means a small domestic business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.*

(1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 12 months of disclosure; *provided*, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 2 years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above, or elects not to retain title (the agency may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) above; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to contractor.* (1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of

the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations (if any) and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(g) *Subcontracts.* (1) The Contractor shall incude this clause (52.227-11 of the Federal Acquisition Regulation (FAR)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* (1) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(i) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(ii) Such action is necessary to alleviate health or safety needs which are not reasonaby satisfied by the Contractor, assignee, or their licensees;

(iii) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(iv) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisons for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided, that such assignee will be subject to the same provisions as the Contractor);

(2) The Contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of—

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, the Federal agency approves a longer exclusive license. If exclusive field-of-use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The Contractor shall share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

(l) *Communications.* Reserved.

(End of clause) (R 7-302.23(h) 1981 JUL)

Alternate I (APR 1984). Add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: .....* or pursuant to any future treaties or agreements with foreign governments or international organizations.

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

(R 7-302.23(b) 1981 JUL)

52.227-12 Patent Rights—Retention by the Contractor (Long Form)

As prescribed at 27.303(b), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LONG FORM) (APR 1984)

(a) *Definitions.*

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Subject invention" means any invention of the Contractor conceived or first actaully reduced to practice in the performance of work under this contract.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"Small business firm" means a domestic small business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of principal rights.* The Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.* (1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or within 6 months after the Contractor becomes aware that a subject invention has been made, whichever is earlier. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency at the time of disclosure or within 8 months of disclosure, as to those countries (including the United

States) in which the Contractor will retain title; *provided*, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted, and will normally be granted unless the Contracting Officer has reason to believe that a particular extension would prejudice the Government's interest.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor elects not to retain title to a subject invention;

(2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above (the agency may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(3) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) above; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor.* (1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical applciation in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and subparagraph (n)(2) below, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and

other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and certifying that all subject inventions have been disclosed or that there are no such inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(8) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in subparagraph (g)(1) or (2) below, the Contractor (i) shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter and (ii) shall not proceed with such subcontracting without the written authorization of the Contracting Officer.

(10) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) *Subcontracts.* (1) The Contractor shall incude the clause at 52.227-11 of the Federal Acquisition Regulation (FAR), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include this clause (FAR 52.227-12) in all other subcontracts, regardless of tier, for experimental, developmental, or research work.

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assigneee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees,; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* Reserved.

(l) *Communications.* Reserved.

(m) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(n) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (f)(2) and (f)(3) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by subparagraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with subparagraphs (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(4) Any examination of records under this paragraph shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(o) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (f)(5) above;

(ii) Disclose any subject invention pursuant to subparagraph (c)(1) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (f)(7)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (f)(6) above.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (c)(1) above, an acceptable final report pursuant to subdivision (f)(7)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(End of clause) (R 7-302.23(b) 1981 JUL)

Alternate I (APR 1984). Add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: .....* or pursuant to any future treaties or agreements with foreign governments or international organizations.

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

(R 7-302.23(h) 1981 JUL)

52.227-13 Patent Rights—Acquisition by the Government.

As prescribed at 27.303(c), insert the following clause:

PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (APR 1984)

(a) *Definitions.*

"Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

"Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(b) *Allocations of principal rights.* (1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) below.

(2) *Greater rights determinations* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) below, in accordance with the procedures of paragraph 27.304-1(a) of the Federal Acquisition Regulation (FAR). A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Head of the Contracting Agency or designee at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) below, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) below, and to the reservations and conditions deemed to be appropriate by the Head of the Contracting Agency or designee.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.* (1) With respect to each subject invention to which the

Contractor retains principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify.. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with subdivision (ii) above. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subdivision (i) above in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subdivision (ii) above, and for the reporting of utilization information as required by subdivision (iii) above, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) below. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) When the Government has the right to receive title, and does not elect to secure a patent in a foreign country, the Contractor may elect to retain such rights in any foreign country in which the Contractor elects to secure a patent, subject to the Government's rights in subparagraph (c)(1) above.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall incude the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request,

the Contractor shall furnish the Contracting Officer a description of such procedures for evalution and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor shall promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) above have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (2) above.

(5) The Contractor agrees subject to FAR 27.302(i) that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) above;

(ii) Disclose any subject invention pursuant to subparagraph (e)(2) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) above;

(iv) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) below.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) above, and acceptable final report pursuant to subdivision (e)(3)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) The Contractor shall include this clause (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract,

and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(i) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
(End of clause) (R 7-302.23(a) 1981 JULY)

Alternate I (APR 1984). Add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: .....* or pursuant to any future treaties or agreements with foreign governments or international organizations.

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

(R 7-302.23(a) 1981 JUL)

PART 53—FORMS

53.203 [Amended]

22. In section 53.203, the reference to "DJ–1500" is removed from the title, and paragraph (b) is removed and reserved.

53.222 [Amended]

23. In section 53.222, the references to "98, 98a" are removed from the title, paragraph (a) is removed and reserved, and paragraph (b) is amended by removing "and 22.1009".

53.303 [Amended]

24. Section 53.303 is amended by removing Form DJ–1500, Identical Bid Report For Procurement.

Appendix A

Note.—The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4410-01-M

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OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON D.C. 20301

RESEARCH AND ENGINEERING

21 FEB 1984

Honorable Donald E. Sowle
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Sowle:

We are enclosing herewith a copy of the Memorandum of Understanding for FAR Maintenance executed by James T. Brannan, Director, Defense Acquisition Regulatory Council and William B. Ferguson, Chairman, Civilain Agency Acquisition Council and concurred in by the appropriate executives of DoD, GSA, and NASA. This memorandum provides a uniform and orderly basis for the processing of FAR cases and orderly maintenance of the FAR.

Sincerely,

MARY ANN GILLEECE
Deputy Under Secretary
(Acquisition Management)

ALLAN W. BERES
Assistant Administrator
for Acquisition Policy

S. J. EVANS
Assistant Administrator
for Procurement

MEMORANDUM OF AGREEMENT FOR FAR MAINTENANCE

RECOMMENDATIONS FOR FAR CHANGES

- Military Services, Defense Agencies, other components of the Department of Defense, and NASA shall submit recommendations for change to the DAR Council.
- Other Executive agencies governed by the FAR shall submit recommendations for change to the CAA Council.
- The others (e.g. the public and agencies not covered by the FAR) may submit recommendations for change to either Council.
  - -- Matters that may affect defense and civilian acquisition equally should be submitted to the FAR Secretariat who will refer it to the cognizant Council for consideration of the establishment of a FAR Case in accordance with the attached listing.
  - -- Matters primarily involving civilian agency aquisition may be submitted to the CAA Council.
  - -- Matters primarily involving defense acquisition may be submitted to the DAR Council.

ESTABLISHING A FAR CASE

- Either Council receiving a recommendation for a change may establish a FAR case after receiving concurrence of the other Council.
- A Council establishing a FAR case shall obtain a FAR case number from the FAR Secretariat. The FAR Secretariat shall examine the list of open FAR cases and advise whether an existing FAR case covers the same subject matter.
- A Council receiving a recommendation for change pertaining to the subject matter of an open FAR case shall consult with the other Council before establishing a FAR case; if appropriate, the new recommendation may be incorporated into the existing FAR case and may be transferred to the other Council for processing.
- A Council establishing a FAR case shall give the other Council an opportunity to provide a representative to work on the development of the case.
- A Council receiving a recommendation for change shall communicate, as necessary, with the proponent to obtain sufficient information to establish or develop the FAR case.
- A Council receiving a recommendation for change which it believes

FAR APPORTIONMENT LISTING

- A Council receiving a recommendation for change which it believes would more appropriately be processed by the other Council may request the other Council to establish it as a FAR case.

PROCESSING A FAR CASE

- The Council processing a FAR case shall keep the other Council advised of any significant change in scope or direction from the original recommendation for change.
- The Council processing a FAR case shall periodically keep the FAR Secretariat advised of the current status of the case.
- The Council processing a FAR case shall obtain the concurrence of the other Council in any proposed resolution, including rejection of the recommendation.
- The Council processing a FAR case shall respond to information requests concerning the case.
- The Council providing final concurrence shall forward the approved coverage to the FAR Secretariat for publication.
- The FAR Secretariat shall not publish a change or notice of proposed change in the Federal Register until both Councils concur.

RESOLVING DISAGREEMENTS

- When the two Councils cannot agree on the resolution of a FAR case, the matter shall be forwarded to the Deputy Under Secretary of Defense for Acquisition Management, DoD; the Assistant Administrator for Acquisition Policy, GSA; and the Assistant Administrator for Procurement, NASA for resolution. In the event an agreement cannot be reached within 30 days for reasons pertaining to substantive differences, the matter shall be deemed a disagreement in accordance with Public Law 98-191.

JAMES T. BRANNAN
Director
Defense Acquisition
Regulatory Council

WILLIAM B. FERGUSON
Chairman
Civilian Agency
Acquisition Council

CONCUR:

DoD GSA NASA

FAR APPORTIONMENT LISTING

PART	ASSIGNMENT
1	Both
2	As applicable
3	CAAC
4	CAAC except 4.4
5	CAAC
6	Reserved
7	DARC
8	CAAC except 8.3 (Both)
9	Both
10	DARC
11	DARC
12	CAAC
13	Both
14	CAAC
15	DARC
16	DARC
17	DARC except 17.6
18	Reserved
19	DARC
20	CAAC
21	Reserved
22	CAAC
23	CAAC
24	CAAC
25	DARC
26	Reserved
27	Both
28	CAAC except 28.3
29	DARC
30	DARC
31	DARC
32	DARC
33	Both
34	DARC
35	DARC
36	Both
37	CAAC
38	CAAC
39	CAAC
40	Reserved
41	Reserved
42	DARC
43	CAAC
44	DARC
45	DARC
46	DARC
47	DARC
48	DARC
49	DARC
50	DARC
51	CAAC
52	As applicable
53	As applicable

This list is subject to modification by agreement of both Councils.

UMI

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This list is subject to modification by agreement of both Councils.

* These parts have a shared community of interest and a case will be established on a case-by-case basis in accordance with procedures established in this Memorandum of Agreement.

[FR Doc. 84-8751 Filed 3-29-84; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 49, No. 64
Monday, April 2, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 430

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final a revision and reissuance of the Sugar Beet Crop Insurance Regulations, effective for the 1983 and succeeding crop years. The revision and reissuance of the regulations was implemented by the Federal Crop Insurance Corporation (FCIC) on an interim basis to allow insureds sufficient time to consider changes in the regulations for insuring sugar beets. The intended effect of this action is to confirm the interim rule.

EFFECTIVE DATE: April 2, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: On Friday, November 5, 1982, FCIC published an interim rule in the **Federal Register** at 47 FR 50188, revising and reissuing the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1983 and succeeding crop years in order to provide sufficient time for insureds to consider changes in the regulations for insuring sugar beets. Under the regulations, any amendments must be placed on file in the service office by a date 15 days prior to the cancellation date in order to be effective for the crop year. It was determined that there would not have been sufficient time to allow insureds to consider such changes and still comply with the regulations with respect to placing the changes on file 15 days prior to the cancellation date. Notification of changes for the 1983 crop year were sent on June 25, 1982, to all current insureds in Arizona and California, where the cancellation date is July 15, thus constituting notice as required by 7 CFR 430.7.

The public was given 60 days after publication of the interim rule in which to submit comments, data, and opinions on the rule and the rule was scheduled for review in order to provide for any amendments made necessary by such public comment, but no comments were received.

In reviewing this rule prior to issuance as a final rule, it was determined that the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations would be included for the purpose of codification as required by OMB, and that the level at which the Manager, FCIC, is authorized to take action to grant relief in cases of good faith reliance on misrepresentation be changed from $20,000 to $100,000 as approved by the Board of Directors of FCIC. These changes relate to internal agency practice and procedure and are therefore exempt from the notice and comment provisions of the Administrative Procedure Act.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

This action has been reviewed under USDA procedures established in Departmental Regulation No. 1512–1 (December 15, 1983). This action does not constitute a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is November 1, 1987.

List of Subjects in 7 CFR Part 430

Crop insurance, Sugar beets.

Final Rule

PART 430—[AMENDED]

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Interim Rule, revising and reissuing the Sugar Beet Crop Insurance Regulations as published at 47 FR 50189 on Friday, November 5, 1982, as amended in the following instances, is hereby adopted as final:

1. 7 CFR 430.3 is added to read as follows:

§ 430.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 430) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

2. 7 CFR 430.5(b) is revised to read as follows:

§ 430.5 Good faith reliance on misrepresentation.

* * * * *

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's

entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

Done in Washington, D.C., on February 23, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 23, 1984.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 84-8805 Filed 3-30-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1049

Milk in the Indiana Marketing Area; Order Terminating Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rules.

SUMMARY: This action terminates the seasonal incentive producer payment plan ("Louisville" plan) that was designed to encourage level milk production by dairy farmers throughout the year for the Indiana milk order. Hoosier Milk Marketing Agency, Inc., a federation of cooperative associations representing a large number of the producers who supply milk for the market, proposed the suspension of the provisions until December 1985. The comments received in response to a Notice of Proposed Suspension indicate that the plan no longer serves its intended purpose, a situation that likely will not change with the passage of time. Accordingly, termination of the provisions is more appropriate and is needed to maintain an appropriate alignment of producer prices with neighboring markets.

EFFECTIVE DATE: April 2, 1984.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S., Department of Agriculture, Washington, D.C. 20250, 202-447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension/ Termination: Issued February 16, 1984; published February 23, 1984 (49 FR 6499).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on dairy farmers and will not affect milk handlers.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Indiana marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 22, 1984 (FR 6499) concerning a proposed suspension/termination of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon by March 8, 1984. Two comments were filed in favor of suspending the specified provisions.

After consideration of all relevant information, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

1. In § 1049.61, paragraph (f), the words "For the months of January through March and August," and all of paragraphs (g) through (l).

2. In § 1049.75(a), the words ", and , for the months of April through July plus an additional 20 cents, or for the months of September through December minus the amount computed pursuant to § 1049.61(i)".

Statement of Consideration

This action removes from the Indiana order the provisions that contain the seasonal producer payment plan, commonly known as the "Louisville plan." Under those provisions, 20 cents per hundredweight of producer milk is deducted from the pooled value of milk in computing the uniform prices to producers during the months of April through July. The monies withheld plus accrued interest are added to the pooled funds in computing the uniform prices to producers for each month of September through December. This payment plan is intended to encourage relatively level milk production throughout the year.

Suspension of the Louisville plan for April 1984 through December 1985 was requested by Hoosier Milk Marketing Agency, Inc., a federation of cooperative associations representing more than two-thirds of the producers supplying the market. In the notice of proposed action, it was noted that the Louisville plan had been suspended from operation in 1983 in the Indiana order. The suspension last year and the proposed supension for two years raised a question whether the plan should be terminated. Interested parties were invited to comment whether the Louisville plan was accomplishing its intended purpose and whether it should be terminated.

This action is needed because the Louisville plan is no longer an adequate stimulus toward leveling out production. The 20 cents per hundredweight deduction represents less than two percent of the uniform price paid to producers by handlers regulated by the Indiana order. The amount of the deduction is too low to effectively encourage the desired adjustment to level production.

This action also is needed to maintain the alignment of producer pay prices with adjoining markets. The Louisville plan under the neighboring Louisville-Lexington-Evansville order was replaced with a seasonal base and excess payment plan in 1983. The Louisville plan under the adjoining Ohio Valley order was terminated on February 29, 1984. Producers shipping to handlers regulated by the Indiana, Louisville-Lexington-Evansville, and Ohio Valley orders are intermingled in some areas. Unless the Louisville plan is suspended or terminated in Indiana, a misalignment of pay prices among the three orders could result in disorderly marketing as producers change markets for temporary gains. These problems with current provisions will not be corrected merely with the passage of time.

The termination action, taken herein, is more appropriate than the suspension action requested by the proponent federation of cooperatives. The proponents had requested the Louisville plan be suspended from April 1984 through December 1985. The reasons offered for suspending the provisions are expected to continue through 1985 and beyond. Under a suspension, the provisions would have been inoperative for a period of three years. Accordingly, the more appropriate action is to terminate the Louisville plan provisions at this time. If the Indiana dairy industry would desire to implement another seasonal incentive producer payment plan after 1985, sufficient time is available to consider such a plan through an amendatory proceeding.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the program no longer achieves its intended purpose.

(b) Termination of the provisions does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for terminating the aforesaid provisions of the Indiana order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1049

Milk marketing orders, Milk, Dairy products.

It is Therefore Ordered

§ 1049.61 [Amended]

PART 1049—[AMENDED]

1. In § 1049.61, paragraph (f), the words "For the months of January through March and August," and all of paragraphs (g) through (l).

§ 1049.75 [Amended]

2. In § 1049.75(a), the words ", and, for the months of April through July plus an additional 20 cents, or for the months of September through December minus the amount computed pursuant to § 1049.61(i)".

Effective date: April 2, 1984.

(Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on March 27, 1984.

John E. Ford,

Deputy Assistant Secretary for marketing and Inspection Services.

[FR Doc. 84-8676 Filed 3-30-84; 8:45 am]
BILLING CODE 3410-02-M

Packers and Stockyards Administration

9 CFR Part 201

Regulations and Policy Statements; Clarification

AGENCY: Packers and Stockyards Administration, Agriculture.

ACTION: Final rule; clarification.

SUMMARY: This document clarifies the last sentence of paragraph (e) of regulation 201.56, which was published on February 17, 1984 (49 FR 6080), to make the language clear pertaining to disclosure of the relationship a buyer has with the market agency selling consigned livestock.

EFFECTIVE DATE: March 19, 1984.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, (202) 447–6951.

SUPPLEMENTARY INFORMATION: It has come to the attention of the Agency, subsequent to promulgation of paragraph (e) of regulation 201.56, that it is interpreted as incresing regulatory requirements concerning disclosure. The Packers and Stockyards Administration clarifies paragraph (e) of regulation 201.56, as it pertains to the disclosure of the relationship of a buyer to the market agency, at the time of sale, when the buyer is an owner, officer, agent or employee of the market agency selling consigned livestock. It was not the intention of the Administration to require disclosure of this relationship at the time of sale. Accordingly, the requirement of disclosure, at the time of sale, of a buyer's relationship to the market agency is deleted, but the requirement that such buyer's name be disclosed at the time of sale continues in effect. The requirement of full disclosure on the account of sale, including disclosure of the buyer's relationship with the market agency, is retained.

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

Authority: 7 U.S.C. 228.

Done at Washington, D.C. this 28th day of March 1984.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

PART 201—[AMENDED]

Accordingly, the Packers and Stockyards Administration is clarifying 9 CFR 201.56(e), as revised paragraph (e) reads as follows:

§ 201.56 Market agencies selling on commission; purchases from consignment.

* * * * *

(e) Purchase from consignments; disclosure required. When a market agency purchases livestock consigned to it for sale to fill orders or to support the market, or sells consigned livestock to any owner, officer, agent, employee, or any person in whose business such market agency, owner, officer, agent, or employee has an ownership or financial interest, the market agency shall disclose the name of the buyer and the nature of the relationship existing between the market agency and the buyer. Such disclosure shall be made on the account of sale and the name of the buyer shall be publicly announced at the time of sale.

[FR Doc. 84-8675 Filed 3-30-84; 8:45 am]
BILLING CODE 3410-KD-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 564

Brokered Deposits; Limitations on Deposit Insurance

Dated: March 28, 1984.

AGENCIES: Federal Deposit Insurance Corporation and Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") and the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), have adopted final regulations on deposits brokered by third parties into institutions whose accounts are insured by the FDIC or FSLIC ("insured institutions"). The regulations are intended to address the concern of the two Agencies with the problems arising from brokered funds, particularly in view of the recent decontrol of interest rates paid on deposits by insured institutions. As adopted, the regulations limit insurance coverage afforded to deposits placed with insured institutions by brokers engaged in the business of placing deposits, with certain specified exemptions.

EFFECTIVE DATE: October 1, 1984, with certain exceptions described in sections to be codified at 12 CFR 330.13 and 564.12.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Senior Attorney, Federal Deposit Insurance Corporation, Legal Division, (202) 389–4171, Room 4126B, 550 17th Street, N.W., Washington, D.C. 20429, or Christopher P. Bolle, Law Clerk, (202) 377–7057, or Robert S. Monheit, (202) 377–6465, Attorney, Federal Home Loan Bank Board, Office of General Counsel, 1700 G. Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1983, the FDIC and the Board ("Agencies") issued an Advance Notice of Proposed

Rulemaking, soliciting comments on the brokering of deposits of institutions whose accounts are insured by the FDIC or FSLIC ("insured institutions"). 48 FR 50399 (1983). The Advance Notice set forth the concerns shared by the FDIC and the Board about deposit brokerage, principally the swift receipt of large volumes of funds by insured institutions from outside their natural market areas irrespective of the institutions' managerial and financial soundness, and the increased costs to the FDIC and the FSLIC in the form of either greater insurance payments or higher assistance expenditures if the institutions are subsequently closed or merged because of insolvency. The Advance Notice posed a series of questions to the public concerning those issues and the possible means of dealing with them.

In January 1984, after reviewing the information received pursuant to the Advance Notice and other relevant data, the FDIC and the Board proposed amendments to their respective regulations governing the insurance coverage to be afforded deposits placed by or through brokers with insured institutions. 49 FR 2787 (1984). The proposal was designed to limit the insurance coverage on deposits placed by or through deposit brokers to $100,000 per insured institution per deposit broker. The term "deposit broker" was defined as any person or entity, other than an insured institution or its employee, engaged in the business of placing or listing for placement deposits of insured institutions. The proposal also limited insurance for deposit accounts established by a trustee or agent pursuant to an agreement to fund a prearranged loan. After careful consideration of the comments received and further analysis of other available information, the Agencies have decided to adopt the proposed amendments, with the modifications discussed below.

Overview of Comments Received

The FDIC received 3,498 comments on the proposed rule. The majority of these comments (2,823) were from individuals, with 281 from banks, 105 from savings and loan associations, 70 from brokers and other financial intermediaries, and 92 from credit unions. The other comments received were submitted by government agencies, local public units, Members of Congress, law firms, private businesses and trade associations.

The Board received 3,403 comments on the proposed rule, 2,776 of which were from individuals, 264 from savings institutions, 41 from commercial banks, and 104 from credit unions. Brokers and other financial intermediaries submitted 23 comments, and 195 letters were received from other entities, including government agencies, Members of Congress, law firms, trade associations and private businesses.

Virtually all the individuals who commented on the proposal identified themselves as customers of deposit brokers and opposed the rule, citing convenience, competitive rates and maturities, and liquidity of brokered funds. A small minority of individuals who commented favored the proposal, noting the negative economic implications of the abuses connected with brokered deposits. Credit union commenters, also identified as deposit brokerage customers, opposed the rule for similar reasons, noting that credit unions do not generally have the resources to place funds themselves in a cost-effective manner.

A slight majority of the banks that expressed an overall opinion about the proposal opposed it on the grounds of cost-effectiveness and the access to national markets provided by brokers. They recommended further supervisory action regarding the use of brokered funds. Banks favoring the proposal asserted that deposit brokerage increases an institution's cost of funds and could increase insurance premiums for all FDIC-insured banks, and causes funds to flow from local communities. The American Bankers Association and the Independent Bankers Association of America (the two major bank trade associations) supported the proposal.

One out of every twelve savings institutions (or 264 out of approximately 3,200 savings institutions) submitted individual comments. A slight majority of comments from individual savings institutions opposed implementation of the regulation as proposed, offering various approaches to ameliorate the problems addressed. Comments in opposition emphasized cost-effectiveness, competition and establishment of a national market, and the use of brokered funds for maturity matching. The National Council of Savings Institutions and the Texas Savings and Loan League also opposed the proposal. Thrifts favoring the rule referred to higher deposit liability costs to all institutions, resulting in higher borrowing costs; their major concern, however, is increased exposure of the deposit insurance funds and resulting increases in insurance premiums. The U.S. League of Savings Associations also favored the rule because of the threat brokered funds pose to the Insurance Fund. All but one of the state savings leagues which commented expressed general support for the proposed rule, although some suggested various modifications. These included the California League of Savings Institutions (California institutions hold sixty-three percent of all brokered deposits in the thrift industry), the New Hampshire Co-operative Savings and Loan League, the New York League of Savings Institutions, the New Jersey Savings League, the Ohio Savings and Loan League, the Florida League of Financial Institutions, the Pennsylvania Association of Savings Institutions, and the West Virginia League of Savings Institutions.

Deposit brokers and other financial intermediaries opposed the rule, which they argued was unfairly directed at them rather than at problems of institution mismanagement. These commenters warned of disruption in the secondary market for certificates of deposit with a consequent detrimental effect on individual investors and small and medium-sized institutions, and discrimination in favor of large institutions with the capacity to reach a national customer base. They recommended restricting the application of the rule to funds of "institutional" investors and funds invested in weak institutions, registration of deposit brokers with the Securities and Exchange Commission, and higher insurance premium assessments for institutions engaged in riskier activities.

Thirty-seven members of the United States Congress commented on the proposal; they acknowledged the negative aspects of deposit brokerage but requested that the Agencies defer action until Congress has had the opportunity to act on the matter. The Comptroller of the Currency criticized the proposal and recommended that the Agencies utilize a supervisory approach to the problems engendered by deposit brokerage; he suggested a limitation of $100,000 on the insurance coverage any single depositor could obtain on funds placed through any one broker, irrespective of the number of insured institutions involved. The Antitrust Division of the United States Department of Justice expressed the view that the proposal would cause competitive harm and recommended a more limited approach to the problem. The Comptroller and the Antitrust Division, as well as some other commenters, questioned the statutory authority supporting the restriction on deposit insurance coverage and the effectiveness and enforceability of the proposed approach.

Discussion of Issues Raised by Commenters

Statutory Authority

Several commenters expressed the view that the proposed rule would exceed express statutory authority regarding insurance coverage. They asserted a conflict between the proposal and the Congressional objective of protecting investors by insuring all deposits up to an aggregate amount per investor, pointing out that the federal deposit insurance system was intended to safeguard the savings of depositors, increase depositor confidence in financial institutions and promote economic growth through increased availability of credit.

Those commenters favoring the proposed approach frequently asserted that deposit brokerage has resulted in the misuse and exploitation of the deposit insurance funds. They noted that the legislative purpose in creating the federal deposit insurance system was to guarantee the safety of consumers' savings and not to maximize the investment yields of large investors. These commenters believe that deposit brokerage is unjustified and hazardous to the federal deposit insurance system.

The FDIC and the Board agree that insured deposit brokerage is inconsistent with the fundamental and overriding purposes which were meant to be served by the federal deposit insurance system. Deposit insurance was originally intended to establish stability and to promote confidence in the monetary and banking systems by protecting primarily small, relatively unsophisticated depositors in their relationships with banks and savings associations. It was not intended to protect investors seeking the highest yields available in money markets.

With regard to specific statutory authority, the Agencies note that they are clearly empowered to promulgate an insurance-limitation rule pursuant to provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811–1832) and Title IV of the National Housing Act (12 U.S.C. 1724 *et seq.*) which expressly authorize the promulgation of "legislative" rules clarifying, defining, and limiting the insurance coverage provided, and the promulgation of rules proscribing unsafe or unsound practices. The FDIC and the Board have carefully observed explicit statutory limitations in this area (and, for example, have excluded certain IRA and Keogh accounts from coverage under this rule).

Cost of Funds to Insured Institutions

Insured institutions opposing restrictions to deposit brokerage activities frequently cited substantial savings realizable by obtaining deposits through brokers, and suggested that such cost savings could be passed along to the public. Many commenters view such funds as an inexpensive alternative to direct solicitation, especially for smaller institutions lacking extensive branch networks, and argued that only money-center banks would be capable of attracting lower-cost funds outside the local area.

Financial institution commenters supporting the proposal expressed alarm at the prospect of being subjected to the vagaries of the marketplace through heavy dependence on brokered deposits. Because brokered funds are typically generated outside of the depository institution's retail deposit base, the institution is forced to pay the highest national market rates to attract these funds, leading ultimately to increased costs for all institutions operating in the same retail deposit area. In the view of these commenters, the proposal would eliminate the deposit brokers' retailing of certificates of deposit to the highest bidder and would return the deposits to their deposit base—the local community—thus containing the cost of raising funds through retail deposits.

The Agencies note that opinion was divided as the the actual effect of the use of brokers on an insured institution's cost of funds. Those who alleged that brokered deposits are less expensive often offered a branch network as the alternative, and did not consider the relative costs of raising funds through other low overhead means such as direct solicitation, advertising and deposit-listing services, none of which would be affected by the new rule.

Investor Convenience

Individual commenters generally praised the convenience of placing deposits in insured institutions through investment brokers. Many commenters stated that use of these third-party intermediaries provided small investors with access to national markets, permitting wider choices of deposit instruments, interest rates and maturities formerly available only to large investors. Commenters also cited the liquidity of brokered CDs facilitated by the active secondary market in these instruments.

The Agencies understand the desire of individual investors to use the most convenient method of obtaining high protected yields. The FDIC, however, does not agree that deposit insurance was ever intended to facilitate shopping by investors for the highest yields available in national money markets, irrespective of the credit-worthiness of the borrowing institutions. The Board concurs, and finds that limiting insurance of deposits placed through brokers is not necessarily detrimental to the investor's goal; deposit-listing services, for example, may offer a wider choice than a broker who merely recommends a particular depository. Furthermore, it does not appear unreasonable that investors should choose between accepting a broker's judgment as to the safety of an uninsured investment and doing minimal research to find an insured investment. An investor who believes that only a broker can offer the convenience needed may continue to use such a service, but full deposit insurance will not be provided to that investor.

Capital Markets

Redistribution of funds from "capital rich" to "capital poor" markets was frequently mentioned as a desirable by-product of deposit brokerage. Commenters suggested that this redistribution provided funds for housing and other lending needs in many areas of the country. In addition, many institutions viewed brokered CDs as valuable tools in balancing their assets and liabilities. Several commenters suggested that the prudent use of brokered funds could assist struggling institutions in restructuring their operations, ultimately saving the Insurance Funds from costly assisted mergers or liquidations.

The Agencies have seen no evidence that brokered funds move capital from one area to another in ways that are uniquely helpful to the financial institutions involved or to their depositors and borrowers. Rather, it appears that brokered funds move to the institutions willing to pay the highest rate, wherever located. Other mechanisms can be used to aid institutions in cash-poor areas in raising capital, such as the inter-bank market, advertisements, stock or debt sales, and secondary market activity in loans. In the view of the Board and the FDIC, there is not compelling reason to permit continued brokering of insured deposits to meet these needs when there are other less objectionable means available. Moreover, one comment, indicating that without brokered funds the commenting institution could not even meet its current obligations to pay interest on outstanding instruments, illustrated precisely the kind of dangerous "capital movement" practice the rule is intended to curb. Funds flows should be based on the creditworthiness

of the borrowing institution, not simply the rate of interest paid on a federally guaranteed instrument.

Appropriateness of Mechanism Based on Supervisory Concerns

The FDIC and the Board have reviewed their data on banks and savings associations which are involved with deposit brokerage. Indications are that, although brokered deposits at the present time comprise a modest percentage of total domestic deposits, a significantly greater proportion of poorly-rated institutions use brokered deposits than highly-rated institutions. The 77 commercial banks that failed in 1982 and 1983 had substantial brokered deposits, constituting, on the average, 16 percent of total deposits. In three instances, brokered deposits equalled more than 60 percent of the failed bank's total deposits. In 19 other cases, these deposits equalled between 20 and 50 percent of the failed bank's deposits. As of mid-March 1984, 13 commercial banks had failed in 1984; seven of these held brokered deposits ranging as high as 53 percent of total deposits.

In savings associations insured by the FSLIC, brokered deposits totaled approximately $3 billion in January, 1982, and had increased tenfold to almost $30 billion by December, 1983. Moreover, there has been a significant correlation between associations which use brokered deposits and those which have supervisory problems. In 1982 and 1983, more than half of the insured institutions that were closed by the FSLIC had brokered funds in excess of one-third of their deposits. Almost half of the institutions with a net worth below acceptable levels have brokered deposits in excess of 20 percent of their total deposits. For example, in one case, an institution had $240 million in brokered deposits, representing 90 percent of its deposit base. Another problem association used brokered deposits to increase its assets by over 2,500 percent, with brokered deposits representing 70 percent of its total liabilities. In 1983, only 670 of the approximately 3,200 FSLIC-member institutions reported any use of brokered deposits. The use of brokered deposits is even more highly concentrated than that figure indicates: 94 percent of all brokered deposits are concentrated in the 369 FSLIC-insured institutions (approximately one-tenth of the industry) that hold brokered deposits in excess of 5 percent of total deposits, and of these, 145 are troubled institutions. The FDIC and the Board are continuing to collect information on deposit brokerage and, as discussed below, are monitoring the use of brokered funds by problem institutions.

Commenters have questioned these figures by suggesting that a large portion of the brokered funds of recently failed banks and thrifts are in fact uninsured deposits of institutional investors. Cases handled recently indicate that quite the opposite is true, and suggest that, since the occurrence of several highly publicized depository institution failures, the great majority of investors have sought full insurance coverage of deposits.

In addition to their concern about the effects of deposit brokerage on already troubled institutions, the FDIC and the Board are concerned about the potential which exists for the abuse of brokered funds by insured institutions generally. There are a number of reasons why currently sound institutions might succumb to the opportunity to swiftly and dramatically increase their deposit size through massive infusions of brokered funds. These funds, which are often received in large amounts at high cost, must be invested quickly for purposes of economic efficiency. The Agencies' experience has shown that the speed required may not allow for the usual care to be taken in appraisals and credit checks relative to investments. Moreover, the need to offer a high rate of return to attract brokered funds may require institutions to take greater investment risks, a factor often aggravated where the broker or associated parties suggest or stipulate particular uses for the funds. Healthy institutions may become problem cases very quickly through a very few transactions of this sort. One institution, for example, used brokered deposits to quadruple its asset size in a year. Although this institution was healthy at the outset of the year, the brokered funds were used to invest in highly speculative commercial loans at a pace that precluded the association from using adequate underwriting procedures, so that it is now a problem for the FSLIC. In another transaction, brokered funds were deployed to fund transactions where the value of security properties were artificially inflated to levels bearing no resemblance to real value as security for loans.

Although only a small percentage of institutions currently engage in the brokered deposits market, the Board believes the expanded use of such funds could have a significant effect on the entire insured depository industry. If brokered deposits grew into a dominant source of funds, it is possible that high national market rates would become a "floor" even in remote areas, and therefore, as a commenter observed, raise the cost of home loans and other consumer borrowing, or force institutions into making more speculative investments in order to cover the cost of funds. In addition to increasing the cost of money, such a situation also could result in a standardization of terms and the imposition of minimum amounts of deposits.

The Board also in concerned that the continued use of brokered funds could, through the use of nationwide brokers, draw institutions away from direct contact with their local communities and that the "local nexus" could be lost. Particularly troublesome is the possibility that, if institutions rely heavily on brokered funds rather than the local savings base, they will feel less need to respond to the housing and credit needs of their local communities.

Several commenters suggested that the Agencies adopt a differential approach to the treatment of brokered funds. It was suggested that the funds be divided into uninsured accounts, insured individual accounts and insured institutional accounts. Only the latter would be regulated, since commenters asserted that these accounts represented the greatest risk to the Insurance Funds because they frequently are placed by brokers not registered with the SEC and do not receive the prudent analysis of risk enjoyed by insured individual depositors.

This approach is discussed in more detail in the section describing alternatives considered. In brief, however, the Agencies see no reason to differentiate between these two types of deposit: Both sources of funds are placed by brokers and result in large sums moving rapidly among institutions.

A number of commenters questioned the enforceability and effectiveness of the proposed approach. They expressed the belief that weak institutions could easily circumvent the proposed restrictions by advertising directly in nationally circulated newspapers or merely by bringing the brokerage function in-house. Further, the use of brokers could be concealed from deposit insurers, encouraging troubled institutions to use subterfuge as to the origin of deposits. Finally, these commenters noted that neither the Agencies nor the depository institution could easily distinguish between brokered deposits placed by individuals directly (although on the advice of a deposit-listing service) and other more readily ascertainable types of brokered deposits, thus making enforcement even more difficult.

The FDIC and the Board believe that institutions will comply with the final rule, and that attempts at evasion would be discovered in the course of regularly scheduled examinations through detection of account patterns. In addition, institutions probably would be unwilling to participate in such arrangements because of the uncertainty of ultimate insurability. Finally, the Agencies do not believe brokers would participate in such activities because the potential discovery of evasion could result in significant broker liability.

Consideration of Alternative Approaches

Many commenters suggested alternatives to the approach taken by the proposed regulation.

1. Focus on Institutional accounts. Several commenters recommended that a distinction be made between institutional and individual investors, and insured and uninsured brokered funds. They allege that insured institutional deposits, comprising less than 10 percent of the market, in which deposits are broken into $100,000 lots to achieve full insurance coverage, pose the most risk to the Insurance Funds because they generally are short-term and are largely placed by unregulated money brokers without the benefit of credit analysis.

The FDIC and the Board believe that this approach would not accomplish their objectives, and would not address many of the problems inherent in brokered funds. Even if the characterization of institutional insured brokered deposits is accurate, it does not argue strongly for a different approach; an account with a longer maturity does not carry the imminent threat of nonrenewal, but is nonetheless subject to the same reinvestment problems as a shorter-term account. Furthermore, the Agencies have not been presented with convincing evidence that there are significant differences between brokers of institutional funds and brokers of individuals' deposits; there are brokers of institutional funds who are registered, use credit analysis, and carefully select insured banks and thrifts for their clients, while brokers for individual investors have not been immune from placing deposits in troubled institutions. Assuming that a difference does exist, a rule allowing continued insurance of individual investors would merely invite institutional brokers to enter the individual investor market and to continue their allegedly inadequate practices. Moreover, the growth of the money market mutual fund industry indicates that insured third-party deposit brokerage, even if limited to the deposits of individuals, would continue to proliferate and present problems similar to those presented today.

2. Focus on Troubled Institutions Only. Commenters suggested limiting application of the regulation to institutions which fall below required levels of net worth or pose other supervisory problems.

The FDIC and the Board already have taken certain actions in this area and are proposing additional steps. The FDIC currently requires all of its regulated institutions subject to an enforcement action or party to a memorandum of understanding with the FDIC to notify the FDIC before the institution's proportion of brokered deposits to total deposits exceeds five percent. The Board has issued a supervisory directive, dated October 26, 1983, requiring any insured institution failing to meet its regulatory net-worth requirement to give ten days' notice prior to increasing its use of brokered funds to a level above five percent of total deposits, along with information indicating the sources and expected uses of the funds. In addition, the Board today is adopting a temporary regulation limiting to five percent of assets the amount of brokered deposits that may be taken in by an institution with net worth below a certain level; that regulation is intended to prevent unsafe practices by thinly-capitalized institutions which might seek to increase unreasonably their levels of insured brokered deposits prior to the October 1 effective date of the regulation set forth in this Resolution.

However, focusing only on the access of particularly vulnerable banks and thrifts to brokered funds would not prevent abuse by such institutions that were not of supervisory concern prior to their last examination, nor would it effectively protect the FDIC and the FSLIC from increased liabilities stemming from the actions of desperate bank or thrift managers willing to violate regulations in a gamble to use brokered deposits to stave off failure. In one case, a State-chartered, FSLIC-insured thrift institution raised over $40 million in brokered deposits in two days and used these funds to finance a transaction in direct violation of a State cease-and-desist order; while the State regulatory authority may take disciplinary action against the management of that institution, the cost to the FSLIC to resolve the case will nonetheless increase significantly.

The insurance-limitation rule will be "self-implementing" and thus very effective, without imposing substantial regulatory or reporting requirements, and it will encourage the market to discipline investors and recipients of brokered deposits. The rule also reduces the risk to the FDIC and the FSLIC from potential increased liabilities incurred by mangement in supervisory situations.

3. Limit Deposit Growth. Other comments suggested that limitations be placed on the rate of all deposit growth of institutions, based upon varying percentages of net worth, assets, liabilities or other determinants.

The FDIC and the Board find the suggestions to limit or monitor the deposit growth of all insured banks and thrifts to be a more burdensome regulatory approach. The FDIC believes that it is not apparent how any particular limit could be arrived at or supported. Moreover, any limit, such as 15 percent of deposits, which has been suggested by some, would be excessive for poorly operated institutions and unduly restrictive for institutions with strong management and financial ratios. The insurance-limitation approach allows each institution to utilize brokered funds to the extent it can attract them based on its own creditworthiness. The Board concurs, and notes that a rule effectively limiting but not over-regulating deposit growth could be quite complex; such an approach could impose significant regulatory burdens on types of growth that occur more slowly and therefore are of less regulatory concern than the use of brokered funds.

4. Registration of Brokers. A significant number of commenters recommended that all deposit brokers be required to register with the Securities and Exchange Commission ("SEC").

The Agencies find that requiring registration of brokers with the SEC would be a meaningless exercise so long as their customers' deposits were fully insured by the FDIC or the FSLIC, because there would be no market discipline in the placement of deposits. In this connection, the Agencies have found that SEC-registered brokers have not been immune from placing brokered deposits into troubled banks and thrifts; registering additional brokers will not provide additional assurances. Further, SEC registration requirements would not protect the FDIC or FSLIC funds, because they are not oriented toward the safety and soundness of insured institutions or the deposit insurance funds.

5. Variable-rate Insurance Premiums. A number of commenters recommended that deposit insurance premiums either be increased or varied to reflect the

increased risk factor created by deposit brokerage. The FDIC believes risk-related deposit insurance premiums should be implemented and has requested Congress to enact enabling legislation. Risk-related premiums, however, would not be a panacea. Assessment of higher premiums might discourage the acquisition of troubled banks or thrifts, or increase the amount of federal financial assistance required in connection with supervisory solutions for such institutions. A variable insurance premium, even if authorized, would not necessarily solve the problems addressed by the final rule. Such a premium structure, if based upon the level of brokered funds, could also invite circumvention through manipulation of brokered-deposit levels during phases of reporting periods. Consistent with the goals of deregulation, the insurance-limitation rule will act to deter investors from placing deposits in what the *market* determines to be high-risk institutions, rather than trying to deter such institutions from making investments that the *regulators* believe are high-risk. Lastly, the variable-premium suggestion erroneously assumes that the Congress intended insured banks and thrifts to pay higher premiums in order to permit deposit brokers to continue to profit through the marketing of FDIC- or FSLIC-insured products.

6. Increased Supervisory Efforts. A substantial number of commenters recommended increased examinations, reporting requirements and other forms of supervision to regulate the investment practices of institutions utilizing brokered funds. These alternatives could be applied to all institutions, or only to those experiencing net-worth deficiencies or other supervisory problems, or could be tied to a scale depending on the institution's rating, net worth, capital, or any other measure of economic viability. The Agencies have considered these alternatives, but believe that they would require constant monitoring, and would only serve to increase the regulatory burden on depository institutions and supervisory role of the Agencies. This is contrary to the spirit of deregulation and would necessitate an increase in the staff and costs of the Agencies, while doing little to protect the Insurance Funds from institutions unconcerned with the consequences of regulatory violation. Also, the ability of institutions to raise millions of dollars in brokered funds in a very short period would render ineffective any provision for additional monitoring or reporting, because the damage would already have been incurred.

7. Prohibition or Limitation on Receipt of Brokered Funds. The Agencies also considered a blanket prohibition on the use of brokered deposits, but rejected it because it would totally eliminate the benefits to insured institutions of brokered deposits. A stringent limitation would have much the same effect, and a generous percentage would allow continuation of current abuses. Limiting the insurance coverage of brokered deposits, on the other hand, will not defeat the liquidity benefits of brokered deposits for well-run institutions. Such deposits will still be obtainable, but without the insurance guaranty. Investment decisions will have to be made on the basis of analysis of the strength or weakness of the involved depository institution, and not on the insurance feature of the deposit. Inasmuch as a number of deposit-broker comments have indicated that this process has already been established for their individual investor depositors, the new rule should not prove unduly burdensome.

After careful consideration of all of the alternatives, the FDIC and the Board have found the insurance-limitation approach to be the most effective method for addressing the problems presented by the growth of brokered deposits in a deregulated environment. Further, the final rule achieves the Agencies' intended purposes by using market discipline rather than by imposing burdensome regulatory and reporting requirements. The alternatives suggested are, in contrast, ineffective and/or overly burdensome, and all assume that the Congress intended deposit brokers to benefit through the marketing of FDIC- or FSLIC-insured products without being directly subject to regulations intended to ensure the soundness of the Insurance Funds.

Explanation of the Rule

The Definition of Deposit Broker

Many commenters suggested modifications to the definition of the term "deposit broker" contained in the proposal. Most recommended exemptions of certain groups from the definition, such as beneficial owners of IRA, Keogh and qualified pension and profit-sharing plans and part-time investment advisers/agents, typically affiliated with small, community-based depository institutions. Other commenters urged a broader definition to encompass persons or entities, such as real estate and insurance agents, who solicit deposits generally for insured depository institutions lacking extensive branch networks. Other commenters, responding to a question posed in the proposal, recommended inclusion of insured institution subsidiary/joint ventures within the scope of the definition of deposit broker.

The final rule limits the insurance coverage of funds placed by or through a "deposit broker" to $100,000 per broker per insured institution. This differs from the current FDIC and Board regulations which, if certain requirements are met, deem the customer of the deposit broker to be the "depositor" or "member." "Deposit broker" is defined as any person or entity engaged in the business of placing deposits for others, or of placing funds in accounts to be sold to others, and an agent or trustee who establishes a deposit or member account in connection with an agreement with the institution to use the proceeds in the account to fund a prearranged loan.

The definition of "deposit broker" includes not only deposit brokerage arrangements where the broker is the holder of an account for a number of principals, but also where the broker directs or otherwise facilitates the transfer of funds of depositors to an institution without itself becoming a holder of an account. Except for the situations noted below, the definition includes anyone in the business of placing funds in an account for a third party, whether or not the deposit broker is the legal or beneficial owner of the account, and whether or not the placement of funds in accounts is that person's primary business. The term "deposit broker" excludes a depository institution which generates deposits for itself, but includes depository institutions generating deposits for other depository institutions. Also, the definition includes subsidiaries, service corporations or affiliates which place funds with related depository institutions. Likewise, no exception is made for depository institutions either owned by or affiliated with securities firms.

The definition does not include employees of depository institutions. Because the agencies are concerned, however, that too broad a definition of "employee" would lead to circumvention of the intent behind the proposed amendments, the rule adopts the proposed definition of an "employee" of an institution as a person: (1) Who is employed exclusively by the institution for which he or she is soliciting deposits; (2) whose primary compensation is in the form of a salary; (3) who does not share his or her compensation with a deposit broker; and (4) whose office space or place of

business is used exclusively for the benefit of his or her institution/employer.

The definition of "deposit broker" does not generally include trust departments of insured institutions; however, where a deposit broker places deposits through a trust department, all funds placed by that deposit broker will be insured only up to $100,000. Also, a trust department would be deemed a deposit broker in connection with trusts established primarily for the purpose of placing funds with insured institutions.

The definition of "deposit broker" in the proposed rule included all deposit-listing services. In light of the comments and other available information, the Agencies have concluded that it would be infeasible to identify deposits that are placed by reference to listing services that did not actually facilitate the placement of funds with insured institutions. In addition, where the only function of a deposit listing service is to provide information on the availability and terms of accounts, the Agencies believe that the service's minimal participation in the placement process does not merit treatment as a deposit broker. Therefore, the Agencies have specifically excluded from the definition of "deposit broker" any deposit-listing service that does not receive a commission for the number or amount of deposits placed as the result of its service, if the service provided is limited to the collection and transmission of information on the accounts available, and the customer, rather than the deposit-lister or its agent, transmits the funds to the insured institution.

The FDIC and the Board do not intend to disturb traditional deposit relationships. Accounts held by agents will remain insured up to $100,000 per principal, provided that the agent is not engaged in the business of placing deposits. Thus, arrangements such as real estate agent accounts and attorney escrow accounts will not be affected by the amendments because such accounts are held for a purpose incidental to the ordinary business activities of the agent.

Some commenters expressed concern that the rule as proposed could limit the insurance coverage available to trustees under the current regulations. While the agencies do not intend to alter the coverage currently available to traditional trust arrangements, they are concerned that a blanket exemption of all trustees from the definition of deposit broker could lead to substantial circumvention of the rule through various trust-type mechanisms. The final rule therefore exempts trustees from the definition of "deposit broker" provided that the trust in question is not used primarily for the purpose of placing funds in insured institutions. This will preserve the current insurance coverage for trusts while limiting the usefulness of trusts as devices to circumvent the rule.

The insurance coverage currently available to deposits held in connection with pension funds and other employee benefit plans will not be affected by the rule unless such deposits are placed by or through a deposit broker. In addition, trustees and custodians of IRA and Keogh accounts will not be deemed to be deposit brokers. Likewise, the insurance coverage of accounts of public units will not be affected, provided that a deposit broker is not employed to place the funds.

In situations where deposits of pension or other employee-benefit plans are placed by plan administrators or investment advisors, such deposits will not be deemed "placed by or through a deposit broker" as long as such plan administrator or investment advisor plays a managerial role relative to the applicable pension or employee-benefit plan. The reason for this exception is to prevent undue disruption in the pension-fund industry and to further the intent of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001–1462).

Negotiable Certificates of Deposit

Under the current regulations, for insurance purposes, the "depositor" of a negotiable or bearer-form deposit is the person holding the deposit on the date the institution is closed because of insolvency, 12 CFR 330.11 and 570.11. The Agencies were concerned that such deposits might be used to subvert the intent of the proposed amendments, and requested comments on amendments to current rules which would address this potential problem. After careful consideration of comments received in this regard, the Agencies have determined that it is not appropriate at this time to impose any special restrictions on negotiable certificates. The FDIC and the Board will monitor this area and will take appropriate action in the future if necessary.

Effective Date

The Agencies received numerous comments with regard to the effective date of the regulation. Some commenters endorsed an earlier effective date, while others supported a more gradual phase-out of insurance for brokered deposits. Still others recommended immediate emphasis on existing supervisory remedies for troubled institutions in conjunction with continued study of the issue, including deferral to legislative initiatives. The Agencies also received a petition for revision of this rulemaking process and request for an extension of the comment period from an owner of a listing service; the Board and the FDIC are taking this opportunity to deny that petition and request because they believe it essential that the issue of brokered funds abuse be promptly addressed, particularly in view of the recent decontrol of interest rates. The Agencies believe that the public has had ample time, during the comment periods provided for in the Advance Notice and the Proposal, to express its views on the issues raised by deposit brokerage and the means of addressing those issues.

The effective date for the final rule, as stated in the proposal, is October 1, 1984. Thus, except for the situations noted below, any brokered deposits placed or renewed on or after October 1, 1984, will be subject to the new regulations on insurance coverage. All deposits with insured institutions prior to October 1, 1984, irrespective of whether they would qualify as brokered deposits under the final rule, will be insured until their maturity dates under the regulations predating the final rule. The purposes of the delayed effective date and continuation of insurance on accounts existing before that date are: (1) To fulfill depositors' expectations as to terms and conditions of existing deposits which, because of the term remaining, could not be withdrawn without imposition of a penalty for early withdrawal; (2) to allow institutions relying heavily on brokered deposits time to adjust their deposit structures; and (3) to provide for an orderly adjustment of funding techniques. Based on their examination of the problems facing institutions in adjusting to the effects of the rule, and their analysis of comments received, the Agencies have concluded that an effective date of October 1, 1984, provides enough time for institutions and the purchasers of brokered deposits to adjust their business practices.

Questions arose in the comments about the treatment to be afforded money market deposit accounts ("MMDAs") and other accounts without existing maturities placed before October 1, 1984. The issue was raised whether such accounts placed by or through a broker prior to the effective date of the final rule would be insured under the pre-existing regulations until the funds are withdrawn or whether the insurance coverage on those accounts would change as of the effective date of the rule. Upon consideration of the comments, the Agencies have decided that funds in such accounts placed by brokers with insured institutions before

October 1, 1984, will be insured under the insurance coverage rules predating the final rule until November 30, 1984. This treatment allows for a two-month period after the general effective date of the final rule in which holders of such accounts may adjust their deposit-placement practices. Deposits with no fixed Maturities placed by brokers on or after October 1, 1984, will be subject to the final rule and its general effective date of October 1, 1984.

Certificates of deposit held in trust for bondholders under "loans-to-lenders" or industrial development bond ("IDB") programs are covered by the final rule. These programs entail a transaction where the proceeds of an IDB issuance are placed with an insured institution, in exchange for a certificate of deposit, to fund a designated project. Because of the trust arrangement involved, under the Agencies' current insurance coverage rules each bondholder owns an insured interest in the deposit up to $100,000 and the deposit, therefore, may be fully insured by either the FDIC or the FSLIC. The final rule will limit the insurance coverage of such deposits to $100,000 inasmuch as it specifically defines a trustee in this type of transaction to be a "deposit broker." Thus, beginning October 1, 1984, IDB programs will no longer be buttressed by full deposit insurance. A question arises, however, about existing IDB programs in which the deposit in question has a term shorter than the period of the underlying loan, as opposed to the date of the maturity of the underlying bond. If such existing deposits are deemed to be placed or renewed after October 1, 1984, under the final rule, they will be subject to the new regulations and will therefore be ineligible for multiple insurance coverage. Such a result would trigger acceleration of the maturity dates of the underlying bonds, an event which could result in the bankruptcy of the project and severe liquidity problems for the involved depository institution. In order to avoid this undue hardship, and because of the mandatory nature of the rollover provisions in the bond indentures, the Agencies believe that the maturity dates of such deposits should be deemed to be those of the bonds they secure. Therefore, the final rule provides that deposits issued by an institution to a trustee who is a "deposit broker" with respect to such certificates under either § 330.0(b)(2) or § 561.2a(a)(2) shall not be deemed to be renewed, for purposes of the regulation, unless such renewal is discretionary. This exception will apply only to IDB transactions entered into prior to October 1, 1984.

As already noted, brokered deposits placed or renewed on or after October 1, 1984, will be subject to the restrictive insurance coverage provisions of the final rule. Upon considering the many comments on this issue and analyzing other available data, the Agencies believe it is necessary to safeguard against liquidity problems for insured institutions that have relied heavily in the recent past on brokered deposits as a source of funding. Thus, the final rule provides that brokered deposits held at insured institutions on the date the final rule is adopted by the Agencies may be renewed one or more times by the depositor within a period of two years after the effective date of the final rule (up to October 1, 1986) and continue to qualify for deposit insurance under the regulations predating the final rule until their first maturity after October 1, 1986. However, such deposits may not be renewed for a dollar amount greater than their original denomination, and must be held by the owners in their individual capacities. Deposits held prior to the date of adoption of the final rule (March 26, 1984) in custodial or trust capacities by or through deposit brokers may become eligible for this "rollover" exception only if, by June 30, 1984, the institution is provided with the names and ownership interests of the parties for whom such deposits are maintained. The resulting insurance coverage will then apply only to the owner so identified.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (Sept. 19, 1980), the FDIC and the Board are providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the rules.* These elements have been incorporated elsewhere in the supplementary information regarding the rule.

2. *Small entities to which the rules apply.* The rules apply to insured institutions.

3. *Impact of the rules on small institutions.* As brokered deposits do not yet constitute a significant portion of total deposits of most insured institutions, the rules will not have a significant impact on a substantial number of small entities.

4. *Overlapping or conflicting federal rules.* There are no federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the rules.* The rule limits federal deposit insurance on brokered deposits. Other alternatives considered, such as increased monitoring and approval mechanisms and blanket prohibitions on brokered deposits, would be more burdensome to the regulatees or would eliminate the benefits of a regulated activity, including availability of liquidity.

List of Subjects

12 CFR Part 330

Bank deposit insurance, Banks, Banking.

12 CFR Parts 561 and 564

Bank deposit insurance, Banks, Banking, Savings and loan associations.

Accordingly, the FDIC hereby amends Part 330 of Title 12 of the Code of Federal Regulations and the Board hereby amends Parts 561 and 564 of Title 12 of the Code of Federal Regulations as set forth below.

PART 330—CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

1. The authority citation for Part 330 is as follows:

Authority: 12 U.S.C. 1813, 1817, 1819, 1821, 1822.

2. Section 330.0 is hereby revised as follows:

§ 330.0 Definitions.

(a) For the purpose of this Part 330, the term "insured bank" includes an insured branch of a foreign bank.

(b) Except as provided in paragraph (c) of this section, the term "deposit broker" includes: (1) Any person engaged in the business of placing funds, or facilitating the placement of funds, of third parties with insured banks or the business of placing funds with insured banks for the purpose of selling interests in those deposits to third parties; and (2) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured bank to use the proceeds of the account to fund a prearranged loan.

(c) The term "deposit broker" shall not include the following: (1) An insured bank, with respect to funds placed with that bank; (2) an employee of an insured bank, with respect to funds placed with his or her employer/bank; (3) a trust department of an insured bank or of an institution insured by the Federal Savings and Loan Insurance Corporation, provided that the trust in question has not been established for the primary purpose of placing funds with insured depository institutions; (4) the trustee of a pension or other employee benefit plan, with respect to funds of the plan; (5) a person acting as a plan administrator or an investment

adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan; (6) the trustee of a testamentary account under section 330.3 of this Part; (7) the trustee of an irrevocable trust (other than one described in paragraph (b)(2) of this section), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions; (8) a trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) of 408(a) of the Internal Revenue Code of 1954, as amended; (9) an agent or nominee whose primary purpose is not the placement of funds with depository institutions.

(d) The term "employee," for purposes of this section only, includes only an employee: (1) Who is employed exclusively by the insured bank for which he or she is soliciting deposits; (2) whose compensation is primarily in the form of a salary; (3) who does not share his or her compensation with a deposit broker; and (4) whose office space or place of business is used exclusively for the benefit of his or her insured bank/employer.

(e) For purposes of this section only, the term "business of placing funds or facilitating the placement of funds" shall not include deposit listing services where: (1) The person or entity listing the deposit is compensated only by means of a subscription fee which is not calculated on the basis of the number or dollar amount of deposits placed as the result of information provided by such service; (2) the service provided is limited to the gathering and transmission of information concerning the availability of deposits; and (3) any funds to be invested in deposit accounts are remitted directly by the depositor to the insured bank and not, directly or indirectly, through the person or entity providing the listing service.

3. Section 330.2 is hereby revised as follows:

§ 330.2 Individual accounts.

Funds owned by an individual (or by the community between husband and wife of which the individual is a member) and deposited into one or more deposit accounts in his or her own name shall be insured up to $100,000 in the aggregate.

4. Section 330.10 is hereby revised as follows:

§ 330.10 Trust accounts.

All trust interests for the same beneficiary deposited into deposit accounts established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, except time and savings deposits of the same beneficiary which qualify as pension or profit-sharing plans under section 401(d) or 408(a) of the Internal Revenue Code of 1954, as amended. The vested and ascertainable interest (excluding any remainder interest) of each beneficial owner in a time or savings deposit established under either of the above sections, shall be added together and insured to an additional $100,000 maximum for each beneficial owner, notwithstanding the insurance provided in this section to other types of deposit accounts. Except where the trustee is a deposit broker, the insurance of such trust interests shall be separate from that afforded deposit accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangement.

5. Section 330.13 is hereby added as follows:

§ 330.13 Accounts held by or established through intermediaries.

(a) Except as provided in paragraph (b) of this section, funds owned by a principal and deposited into one or more deposit accounts in the name or names of agents or nominees shall be added to any individual accounts of the principal and insured up to $100,000 in the aggregate.

(b) Notwithstanding any other provision of this part, funds deposited into one or more deposit accounts by or through a deposit broker shall be added to any other deposits placed by or through that deposit broker and insured up to $100,000 in the aggregate. This subsection shall apply to all accounts opened, added to, or renewed on or after October 1, 1984, except that it shall not apply until:

(1) Either October 1, 1986, or the maturity date of the deposit account, whichever is later, with respect to renewals of all time deposits in existence on March 26, 1984, provided that: (i) Only the interests of persons in such accounts as of March 26, 1984, shall be recognized for purposes of insurance coverage; and (ii) the identities and interests of those beneficial owners are reflected on the books and records of the bank by June 30, 1984;

(2) November 30, 1984, with respect to deposit accounts which have no specified maturity date; and

(3) The maturity date of the corresponding loan with respect to renewals of deposits established before October 1, 1984, by a person who is a deposit broker under section 330.0(b)(2) of this part, only if renewals of such deposits are mandatory under the underlying account agreement.

(c) Funds held by a guardian, custodian or conservator for the benefit of a ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited into one or more accounts in the name of the guardian, custodian or conservator shall be added to any individual accounts of the ward or minor and insured up to $100,00 in the aggregate.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for Part 561 is as follows:

Authority: 12 U.S.C. 1724, 1725, 1726, 1728, 1730.

2. Add new § 561.2a, as follows:

§ 561.2a Definition of "deposit broker."

(a) Except as provided in paragraph (b) of this section, the term "deposit broker" includes: (1) Any person engaged in the business of placing funds, or facilitating the placement of funds, of third parties in accounts issued by an insured institution or the business of placing funds in accounts issued by insured institutions for the purpose of selling interests in such accounts to third parties; (2) an agent or trustee who establishes an account to facilitate a business arrangement with the institution to use the proceeds of the account to fund a prearranged loan.

(b) The term "deposit broker" does not include the following: (1) An insured institution, with respect to accounts issued by that institution; (2) an employee of an insured institution, with respect to accounts issued by his or her employer; and (3) a trust department of a bank, the accounts of which are insured by the Federal Deposit Insurance Corporation, or of an insured institution, provided that the trust in question has not been established for the primary purpose of placing funds in accounts issued by insured depository institutions; (4) the trustee of a pension or other employee benefit plan, with respect to funds of the plan; (5) a person acting as a plan administrator or an investment adviser in connection with a pension or other employee benefit plan, provided that that person is performing managerial functions with respect to the plan; (6) the trustee of a testamentary account; (7) the trustee of an irrevocable express trust (other than one described in paragraph (a)(2) of this section), provided that the trust in question has not been established and is not being used primarily for the purpose of placing

funds in accounts issued by insured institutions; (8) the trustee or custodian of a pension or profit-sharing plan which qualifies under sections 401(d) or 408(a) of the Internal Revenue Code of 1954 as amended; and (9) an agent or custodian, provided that the primary function of the relationship pursuant to which the funds are invested is not investment of funds in insured accounts.

(c) The term "employee," for purposes of this section only, includes only an employee: (1) Who is employed exclusively by the institution for which he or she is soliciting deposits; (2) whose compensation is primarily in the form of a salary; (3) who does not share his or her compensation with a deposit broker; and (4) whose office space or place of business is use exclusively for the benefit of his or her institution/employer.

(d) For purposes of this section, the term "business of placing funds or facilitating the placement of funds" does not include the provision of deposit-listing services where: (1) the person or entity providing the service is compensated only by means of a subscription fee which is not calculated on basis of the number or dollar amount of accounts placed as a result of information provided by such service; (2) the service provided is limited to the gathering and transmission of information concerning availability of accounts; and (3) any funds to be invested in accounts are transmitted directly to the insured institution by the depositor and not, directly or indirectly, through the person or entity providing the listing service.

PART 564—SETTLEMENT OF INSURANCE

3. The authority citation for Part 564 is as follows:

Authority: 12 U.S.C. 1724, 1725, 1728, 1728, 1730.

5. Revise § 564.3 as follows:

§ 564.3 Individual accounts.

Funds owned by an individual (or by the husband-wife community of which the individual is a member) and invested in one or more accounts in his or her own name shall be insured up to $100,000 in the aggregate.

6. Amend § 564.10 by adding a sentence at the end thereof, as follows:

§ 564.10 Trust accounts and IRA and Keogh accounts.

* * * Except where the trustee is a deposit broker, the insurance of such trust interests shall be separate from that afforded deposit accounts of the trustee of such trust funds or the settler or beneficiary of such trust arrangement.

7. Add § 564.12, as follows:

§ 564.12 Accounts held by or established through intermediaries.

(a) Except as provided in paragraph (b) of this section, funds owned by a principal and invested in one or more accounts in the names of agents or nominees shall be added to any individual accounts held directly by the principal, and insured up to $100,000 in the aggregate.

(b) Notwithstanding any other provision of this Part, funds invested in one or more accounts by or through a deposit broker shall be added to any other deposits placed by or through that deposit broker and insured up to $100,000 in the aggregate. This paragraph shall apply to all accounts opened, funds placed in existing accounts, and renewals of existing accounts, where such opening, placement, or renewal occurs on or after October 1, 1984, except that it shall not apply until:

(1) Either October 1, 1986, or the maturity date of the account, whichever is later, with respect to renewals of time deposits in existence on March 26, 1984, provided that: (i) Only interests of persons in such accounts as of March 26, 1984, will be recognized for purposes of insurance coverage, and (ii) the identities and interests of such beneficial owners are reflected on the records of the insured institution by June 30, 1984;

(2) November 30, 1984, with respect to accounts which have no specified maturity date; and

(3) The maturity date of the corresponding loan, with respect to renewals of accounts established prior to October 1, 1984, and held by a person who is, with respect to such accounts, a deposit broker under § 561.2a(a)(2), only if such renewal is mandatory under the terms of the account agreement or trust agreement governing the rights and obligations of the trustee or agent.

(c) A loan servicer who receives loan payments and places or maintains such payments in an insured institution prior to remittance to the lender or other parties entitled to the funds shall, for insurance-of-accounts purposes, be considered an agent of each borrower.

(d) Funds held by a guardian, custodian, or conservator for the benefit of a ward or a minor under a Uniform Gifts to Minors Act, and invested in one or more accounts in the name of the guardian, custodian, or conservator, shall be added to any individual accounts of the ward or minor and insured up to $100,000 in the aggregate.

By Order of the Board of Directors, March 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

By Order of the Board, March 26, 1984.

Federal Home Loan Bank Board.

J. J. Finn,

Secretary to the Board.

[FR Doc. 84-8673 Filed 3-30-84; 8:45 am]

BILLING CODE 6714-01-M, 6720-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

Brokered Deposits; Limitations Applicable to Institutions With Low Net Worth

Dated: March 26, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Interim final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted an interim final rule amending the regulations applicable to institutions the accounts of which are insured by the Corporation ("insured institutions"), by limiting to five percent the amount of deposits that certain insured institutions may acquire by or through a deposit broker. This rule will apply only to insured institutions whose net worth at the beginning of any quarter is less than three percent of their liabilities, without averaging or phase-in calculations. The amendment is intended to address the possibility that institutions with low net worth could have accumulated large amounts of insured deposits through brokers prior to the effective date of the final rule adopted today by the Board limiting insurance on such deposits. This regulation will expire on October 1, 1984.

DATES: Effective from March 26, 1984, through September 30, 1984.

FOR FURTHER INFORMATION CONTACT: Wendy B. Samuel, Attorney, (202) 377-6447, Federal Home Loan Bank Board, Office of General Counsel, 1700 G Street, N.W. Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On November 1, 1983, the Board (together with the Federal Deposit Insurance Corporation) issued an Advance Notice of Proposed Rulemaking soliciting comments on the use of brokered deposits by insured institutions. 48 FR 50339. On January 23, 1984, the FDIC and

the Board issued a proposed rule which would limit the insurance on accounts placed by or through a broker to $100,000 per broker. *See* 49 FR 2787 (January 23, 1984). That regulation was adopted substantially as proposed, in final form, today, March 26, 1984, effective October 1, 1984.

Among the concerns raised by the Advance Notice, the proposed rule, and the comments received was the problem presented by troubled or weak institutions having unlimited access to brokered funds. Access to brokered deposits was seen as making it possible for institutions with little net-worth "cushion" to continue operating beyond the time at which natural market forces would otherwise have precipitated their failure. Brokered deposits also enable insured institutions to obtain deposits more rapidly than they may be able to find safe and sound investments to purchase with the funds thus obtained, and the Board's experience indicates that an institution with low net worth is particularly vulnerable to failure under such circumstances. Noting this possibility, a number of commenters suggested increased monitoring and supervision of brokered funds acquisition by institutions with low net worth. Commenters also suggested that a limit be placed on the amount of brokered funds a troubled or weak institution may acquire.

The Board is seriously concerned by a perceived trend toward rapid increases in the deposit base of troubled and potentially troubled institutions without a concomitant increase in their net worth. The level of brokered deposits in insured institutions has risen rapidly since the beginning of 1980. Of those institutions which obtained more than five percent of their deposits through brokers, 42 percent had regulatory net worth below three percent. In 1983, two-thirds of the insured institutions closed by the FSLIC had brokered deposits in excess of five percent of their total deposits. The Board is concerned about the adverse effect that the acquisition of substantial amounts of high-rate brokered deposits by institutions with a low net worth may have on such institutions and ultimately on the FSLIC.

While the Board believes that the final rule adopted today limiting insurance of brokered deposits will reduce the availability of such funds to weak or troubled institutions, it is also concerned that such institutions will seek to take in substantial amounts of insured brokered deposits prior to the effective date of that rule. The delayed effective date, while necessary to permit insured institutions to adjust to the final rule limiting deposit insurance for funds placed by or through brokers, may offer an incentive for weak or thinly-capitalized institutions to accept large amounts of brokered deposits without prudent reinvestment plans. While solvent, well-managed institutions should be able to absorb any losses associated with brokered-fund investments in the few months before the effective date, an institution with little net-worth cushion would substantially increase its chances of failure.

Consequently, the Board is adopting this interim final regulation to prohibit institutions with low net worth from having more than five percent of their deposits acquired by or through deposit brokers. "Deposit broker" is defined as in the final regulation limiting insurance coverage for deposits obtained by or through brokers. The definition includes any person or entity engaged in the business of placing or listing for placement deposits of an insured institution. It also includes agents or trustees who establish an account to facilitate a business arrangement with the institution to use the proceeds of the account to fund a prearranged loan. Excluded from the definition are: (1) An insured institution, with respect to accounts issued by that institution; (2) employees of the insured institution, with respect to accounts issued by their employer; (3) trust departments of insured institutions; (4) trustees of pension and other employee-benefit funds investing such funds; (5) investment advisers of pension funds; (6) trustees of testamentary trusts; (7) trustees of irrevocable express trusts, to the extent that the beneficiaries of such trusts have not, directly or indirectly, contributed to the corpus of the trust; (8) trustees or custodians of IRA and Keogh deposits; and (9) agents or custodians, provided that the primary function of the relationship pursuant to which the funds are invested is not investment in insured account funds.

This interim final regulation will apply to institutions that have net worth of less than three percent of liabilities. Liabilities are computed in the same manner as in the minimum net-worth requirement of 12 CFR 563.13(b)(2), with two exceptions. First, the calculation of net worth does not permit the averaging of liabilities over a five-year period. The Board believes that five-year averaging permits rapidly expanding institutions to understate their true net-worth requirements. Second, net worth will not be calculated by use of the twenty-year "phase-in" method. That method permits institutions that have not reached the twentieth anniversary of account insurance to "phase in" their net-worth requirement by multiplying three percent of liabilities by a fraction of which the numerator is the number of consecutive years of insurance and the denominator is twenty. Use of the twenty-year phase-in would permit institutions with net worth as low as 0.15 percent of liabilities to avoid limitation of their use of brokered deposits. By excluding the use of the twenty-year phase-in calculation, the rule will permit the Board to limit the use of brokered funds by many potentially troubled and very thinly-capitalized institutions. *De novo* institutions subject to the requirements of 12 CFR 563.13(b)(2)(iii) will be subject to this regulation if their net worth is less than the percentage of liabilities required by that provision.

Rather than absolutely prohibiting the use of brokered deposits by these institutions, the rule allows funds to be obtained by or through deposit brokers in amounts up to five percent of deposits, determined quarterly. The Board believes that this provision will preserve the ability of institutions with low net worth to raise deposits through brokers without significantly increasing their chance of failure.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Board hereby certifies that the interim final rule would not have a significant economic impact on a substantial number of small entities. The reason for this certification is that only a few institutions would have both net worth below the proposed requirement and brokered deposits in excess of five percent of deposits. Therefore, an initial regulatory flexibility analysis is not required, 5 U.S.C. 605(b).

The Board finds that observance of the public notice and comment period set forth at 5 U.S.C. 552(b) and 12 CFR 508.11, and the delay of the effective date set forth at 5 U.S.C. 552(d) and 12 CFR 508.14, would be impracticable and contrary to the public interest for the reasons described above.

List of Subjects in 12 CFR Part 563

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, of Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

Add a new § 563.4 as follows:

§ 563.4 Brokered deposits.

(a) For purposes of this section, the term "net-worth requirement" means: (1) An amount at least equal to three percent of all liabilities (i.e., total assets, net of the following: loans in process, specific reserves, and deferred credits other than deferred taxes; minus net worth as defined by § 561.13 of this Subchapter); or (2) for institutions subjects to the requirements of § 563.13(b)(2)(iii) of this Part, the applicable percentage of such liabilities required by § 563.13(b)(2)(iii).

(b) Any insured institution which, at the beginning of any calendar quarter, does not meet its net-worth requirement shall not, during that quarter, accept deposits obtained by or through a deposit broker, as defined in § 561.2a of this Subchapter, in excess of five percent of its total deposits.

(c) This section expires October 1, 1984.

(12 U.S.C. 1724, 1725, 1728, 1728)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-8674 Filed 3-30-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-88-AD; Amdt. 39-4837]

Airworthiness Directives; British Aerospace Viscount Models 700 and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which increases the scope of an inspection of the nosewheel assembly on British Aerospace, Aircraft Group, Viscount Model 700 and 800 series airplanes. In addition, a modification on the nosewheel steering lock detent cable assemblies is required on all Model 700 series airplanes. The inspections and modifications are necessary to prevent possible collapse of the nose landing gear. This action will supersede an existing AD applicable to the same components.

EFFECTIVE DATE: May 6, 1984.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. James Leeder, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 446-2826. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98165.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has classified British Aerospace Preliminary Technical Leaflets (PTL) No. 262, Issue 4, for all Model 700 series airplanes and PTL No. 125, Issue 4, for all Model 800 series airplanes as mandatory. Compliance with Issue 3 of these PTL's is required by AD 70-16-06.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthinesss directive requiring inspections, repairs, and modifications, as necessary, of the nose wheel landing gear was published in the **Federal Register** on December 27, 1983 (48 FR 56959). The comment period closed February 13, 1984, and interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received.

It is estimated that the cost impact to the U.S. operators will be less than $745 per airplane, or less than $25,330 for the entire fleet, which includes repetitive inspections for the next 10 years. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

British Aerospace, Aircraft Group: Applies to all Viscount Model 700 series and 800 series airplanes certificated in all categories. Compliance required as indicated. To prevent collapse of the nose landing gear, accomplish the following:

1. Within the next six months time in service after the effective date of this AD, unless previously accomplished within the last six months, and thereafter at intervals not to exceed six months, inspect and repair, as necessary, the nose landing gear in accordance with the Paragraph 2, Accomplishment Instructions, of British Aerospace Preliminary Technical Leaflet No. 125, Issue 4, for all Model 800 series airplanes. Paragraphs 2.5 and 2.5.1 must be accomplished at the first inspection and thereafter at intervals not to exceed one year.

2. Within the next six months time in service after the effective date of this AD, unless previously accomplished within the last six months, and thereafter at intervals not to exceed six months, inspect and repair, as necessary, the nose landing gear in accordance with the Accomplishment Instructions of paragraphs 2.1 through 2.4, and 2.7 of the British Aerospace Preliminary Technical Leaflet No. 262, Issue 4, for all Model 700 series airplanes; and during the first inspection only, accomplish paragraph 2.6 and BA Modification D.3284, if applicable. Paragraph 2.5 must be accomplished at the first inspection and thereafter at intervals not to exceed one year.

3. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

4. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This supersedes Amendment 39-1058 (35 FR 12325), AD 70-16-06.

This amendment becomes effective May 6, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model Viscount 700 and 800 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on March 22, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-8641 Filed 3-30-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-102-AD; Amdt. 39-4838]

Airworthiness Directives; McDonnell Douglas Model DC-9-10 and -30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires eddy current inspection, and repair, if necessary, of the non-ventral aft pressure bulkhead on certain McDonnell Douglas Model DC-9 airplanes. There have been reports of cracks in the webs. This action is necessary to detect fatigue cracks which could lead to possible structural failure of the non-ventral aft pressure bulkhead and loss of cabin pressurization.

DATES: Effective May 6, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require eddy current inspection for fatigue cracks and repair, if necessary, of the non-ventral aft pressure bulkhead on certain McDonnell Douglas Model DC-9 airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** November 25, 1983 (48 FR 53128). The comment period for the proposal closed on January 11, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Six comments were received. One commenter objected to the intent of this proposed rule and questioned the validity of imposing AD action against the modified bulkhead structures after the accomplishment of preventive modification per McDonnell Douglas DC-9 Service Bulletin 53-174. This commenter considered the repetitive inspection an appropriate item for inclusion in the Supplemental Inspection Document (SID). In view of the demonstrated safety problem, and the fact that the SID program has not been mandated for the DC-9, the FAA considers inclusion of the repetitive inspections for all airplanes necessary.

One commenter felt that the compliance time for the final rule should be extended to 6,000 landings as recommended by McDonnell Douglas DC-9 Service Bulletin 53-174, instead of 4,500 landings as proposed in the NPRM. The FAA considers that the 4,500 landing requirement is appropriate based upon the anticipated effective date of this rule.

Several editorial comments have been suggested to rewrite and/or rephrase portions of the accomplishment instructions of the proposed rule. The comments do not significantly affect the intent of the proposed rule. Therefore, the FAA concurs and the suggested changes have been incorporated in this AD as appropriate.

Two commenters agreed with the intent of the AD as proposed, and one commenter disagreed with the number of U.S. registered airplanes that were affected. The FAA concurs and this AD has been changed to specify the correct number of affected airplanes.

The estimated costs associated with the proposed AD are as follows: 156 U.S. registered airplanes are affected which will require approximately 386 manhours per airplane to accomplish the required repair/rework, and 356 manhours per airplane to accomplish the required repetitive inspections. Average labor charge is $35 per hour and replacement parts can be obtained at an estimated cost of $800 per unit assembly. Based on these figures, the inspection cost would be $1,943,760, and repair cost is $2,232,360. Therefore, the total expected economic impact is estimated to be $4,176,120. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule, with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to certain McDonnell Douglas Model DC-9-10 and -30 series airplanes, certificated in all categories, which correspond to the factory serial numbers listed in McDonnell Douglas DC-9 Service Bulletin No. 53-174, dated August 4, 1983 (hereinafter referred to as S/B 53-174), or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. Compliance required as indicated in the body of this AD, unless previously accomplished.

To detect fatigue cracks in the non-ventral aft pressure bulkhead and repair, if necessary, accomplish the following:

A. Prior to the accumulation of 50,000 landings, or within the next 4,500 landings after the effective date of this AD, whichever occurs later, perform initial eddy current inspection of the pressure bulkhead webs as shown on McDonnell Douglas Service Sketch 3483 of S/B 53-174, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. If no cracks are found in aircraft Group I, as referenced in S/B 53-174, perform repetitive eddy current inspections at intervals not to exceed 14,000 landings until a preventive modification has been accomplished in accordance with the Accomplishment Instructions in S/B 53-174, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. After the accumulation of an additional 30,000 landings from the date of the crack preventive modification installation, reinstate eddy current inspections at intervals not to exceed 17,500 landings.

C. For aircraft Groups II and III, as referenced in S/B 53-174: If no cracks are found, perform repetitive eddy current inspections at intervals not to exceed 17,500 landings until a crack preventive modification has been accomplished in accordance with the Accomplishment Instructions in S/B 53-174, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. After the accumulation of an additional 30,000 landings from the date of

the crack preventive modification installation, reinstate the eddy current inspection at intervals not to exceed 17,500 landings.

D. For all aircraft Groups (i.e. I, II, and III, as referenced in S/B 53–174): If cracks are found, repair cracked area per the crack preventive modification in accordance with the Accomplishment Instructions in S/B 53–174, and, after the accumulation of an additional 30,000 landings from the date of repair, reinstate the repetitive eddy current inspection at intervals not to exceed 17,500 landings.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Upon request of operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the initial repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplanes unpressurized to a base in order to comply with the requirements of this AD.

H. For the purposes of complying with this AD, Subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time in service by the operator's fleet average time from takeoff to landing for the DC–9 airplane.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 6, 1984.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC–9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on March 22, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84–8642 Filed 3–30–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 83–CE–42–AD; Amdt. 39–4615]

Pilatus Britten-Norman Ltd. BN–2, BN–2A and BN–2B; Islander Series and BN–2A MK. III Trislander Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 83–07–12, Amendment 39–4615 (48 FR 14353, 14354), applicable to Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B Islander Series and BN–2A MK. III Trislander Series airplanes. This correction is necessary because the applicability statement inadvertently included the BN–2T series airplanes.

EFFECTIVE DATE: April 9, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. A. Astorga, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; telephone 513.38.30; or Mr. Larry Werth, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 83–07–12, Amendment 39–4615 (48 FR 14353, 14354), applicable to Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B Islander Series and BN–2A MK. III Trislander Series airplanes equipped with wing tip tanks, the FAA found that the applicability statement should not have included the BN–2T series airplanes. The Pilatus Britten-Norman Ltd modification (NB/M/364), equipping the BN–2 series airplanes with wing tip fuel tanks, is not authorized for the BN–2T series airplanes. Therefore, action is taken herein to make this correction. Since this action is both clarifying and relieving in nature, notice and public procedure hereon are not considered necessary.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

In FR Doc. 83–8612 (48 FR 14353, 14354), appearing on page 14354 in the **Federal Register** of April 4, 1983, make the following correction:

Restate the applicability statement to read as follows:

"**Pilatus Britten-Norman Ltd.:** Applies to BN–2, BN–2A and BN–2B Islander Series equipped with wing tip fuel tanks and BN–2A MK. III Trislander Series (all Serial Numbers) airplanes certificated in any category."

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Issued in Kansas City, Missouri, on March 21, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84–8643 Filed 3–30–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21CFR Part 173

[Docket No. 81F–0197]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Dimethylamine-Epichlorohydrin Copolymer

AGENCY: Food and Drug Administration.

ACTION: Final rule; clarification.

SUMMARY: The Food and Drug Administration (FDA) is publishing additional information on a final rule published in the **Federal Register** of August 19, 1983 (48 FR 37614), that amended the food additive regulations to provide for the use of dimethylamine-epichlorohydrin copolymer for use as a flocculant and/or decolorizer in the clarification of refinery sugar liquors and juices. The agency is providing an additional 30-day period for submitting objections or additional information in support of objections already filed in response to this regulation.

DATE: Objections or additional information in support of previously filed objections by May 2, 1984.

ADDRESS: Written objections or additional information in support of previously filed objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: FDA published a final rule in the **Federal Register** of August 19, 1983 (48 FR 37614) that amended the food additive regulations (21 CFR 173.60) to provide for the safe use of dimethylamine-epichlorohydrin copolymer for use as a flocculant and/or decolorizer in clarifying refinery-sugar liquors and juices. That action responded to a petition (FAP OA3500) filed by American Cyanamid Co., Wayne, NJ 07470.

The preamble to the regulation explained that the agency had evaluated data in the petition and had concluded that the proposed use of the substance was safe, and that the food additive regulations should be amended as requested in the petition. The document did not discuss the specific nature of the data evaluated.

Subsequently, the Natural Resources Defense Council, Inc., 122 East 42d St., New York, NY 10168; and Public Citizen's Health Research Group, 2000 P St. NW., Washington, DC 20036, filed objections to the regulation. The objections argued that the agency did not provide adequate information about the additive and the basis for FDA's decision to approve it.

The objections stressed that the preamble to the **Federal Register** document did not disclose that the agency's action involved consideration of whether the Delaney anticancer clause might apply to the additive. According to the objections, omission of such an explanation foreclosed interested persons from effectively commenting on or objecting to the regulation. The objections requested that FDA publish a supplemental **Federal Register** notice discussing the factual and legal bases for the decision. The objections also argued that the final regulation is illegal because it relies on the constituents theory, which the objections characterize as contrary to the Delaney anticancer clause. Finally, the objections requested an immediate stay of the regulation and an additional opportunity for objection, and they reserved the right to request a hearing at a later stage in the process.

This clarification of the final rule responds to the request for supplemental information about the reasons for FDA's decision and provides an additional 30 days for the submission of objections or additional information in support of objections that have already been filed. FDA will act on the remaining issues raised by the objections and requests for a hearing after it has evaluated any further objections or other information filed in response to this document. The agency is not staying the regulation because FDA believes that the additive is safe, and that a stay would not serve the public interest.

In evaluating American Cyanamid's petition, FDA considered data bearing on the possible presence in food of tiny amounts of a carcinogenic chemical that might be present as a constituent in the finished additive. After evaluating all the available data, FDA concludes that there is no reason to expect that even trivial amounts of epichlorohydrin (the carcinogenic chemical) will be added to food. Any attempt to quantitate risk would, therefore, be meaningless, because it would be based on an assumption that FDA believes to be unsupported by fact.

Nevertheless, the agency has done an informal risk estimate to assure itself of the safety of the use of this additive. The agency has estimated that a consumer could ingest 4.5 micrograms per day of dimethylamine-epichlorohydrin copolymer if all sugar consumed were prepared with this additive. Under the specifications established by the agency, the additive may contain no more than 10 parts per million epichlorohydrin (although, in fact, epichlorohydrin has never been found in the additive). If the additive did contain 10 parts per million epichlorohydrin, and if epichlorohydrin remained in the sugar at the same level at which it was added as part of the additive, the epichlorohydrin would present a lifetime risk of cancer of no more than 2 in 1 trillion. The agency concludes that a finding of such a low risk, even using speculative, worst case assumptions, establishes that there is effectively no risk of cancer from the use of dimethylamine-epichlorohydrin copolymer.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition, the administrative record, and all documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection. Among the documents that the agency has relied upon are the following:

1. FAP OA3500, submission of January 31, 1980, Parts II and III.1.

2. Memorandum: Food Additive and Animal Drug Chemistry Evaluation Branch to Petitions Control Branch; March 7, 1980; FAP OA3500, submission of January 31, 1980.

3. FAP OA3500, submission of May 7, 1981.

4. Memorandum: Food Additive and Animal Drug Chemistry Evaluation Branch to Petitions Control Branch; June 2, 1981; FAP OA3500, submission of May 7, 1981.

5. Memorandum: Food Additives Evaluation Branch to Petitions Control Branch; November 10, 1982; Risk assessment for epichlorohydrin found as a constituent in dimethylamine-epichloro-hydrin copolymer.

6. Memorandum to the file: from W. Gary Flamm and Taylor M. Quinn; August 19, 1983; FAP OA3500.

List of Subjects in 21 CFR Part 173

Food additives, Food processing aids.

For convenience, FDA is republishing in its entirety the final regulation that appeared in the **Federal Register** of August 19, 1983. This clarification of the final rule does not amend the regulation in any way. This clarification of the final rule is issued under the Federal Food, Drug, and Cosmetic Act.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

§ 173.60 Dimethylamine-epichlorohydrin copolymer.

Dimethylamine-epichlorohydrin copolymer (CAS Reg. No. 25988–97–0) may be safely used in food in accordance with the following prescribed conditions:

(a) The food additive is produced by copolymerization of dimethylamine and epichlorohydrin in which not more than 5 mole-percent of dimethylamine may be replaced by an equimolar amount of ethylenediamine, and in which the mole ratio of total amine to epichlorohydrin is approximately 1:1.

(b) The additive meets the following specifications:

(1) The nitrogen content of the copolymer is 9.4 to 10.8 weight percent on a dry basis.

(2) A 50-percent-by-weight aqueous solution of the copolymer has a minimum viscosity of 175 centipoises at 25° C as determined by LVT-series Brookfield viscometer using a No. 2 spindle at 60 RPM (or by another equivalent method).

(3) The additive contains not more than 1,000 parts per million of 1,3-dichloro-2-propanol and not more than 10 parts per million epichlorohydrin. The epichlorohydrin and 1,3-dichloro-2-propanol content is determined by an analytical method entitled "The Determination of Epichlorohydrin and 1,3-Dichloro-2-Propanol in Dimethylamine-Epichlorohydrin Copolymer," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100, L St. NW., Washington, DC 20408.

(4) Heavy metals (as Pb), 2 parts per million maximum.

(5) Arsenic (as As), 2 parts per million maximum.

(c) The food additive is used as a decolorizing agent and/or flocculant in the clarification of refinery sugar liquors and juices. It is added only at the defecation/clarification stage of sugar liquor refining at a concentration not to exceed 150 parts per million of copolymer by weight of sugar solids.

(d) To assure safe use of the additive, the label and labeling of the additive shall bear, in addition to other information required by the act, adequate directions to assure use in compliance with paragraph (c) of this section.

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 2, 1984 submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto or submit additional information in support of previously filed objections and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identtfied with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–8555 Filed 3–27–84; 4:04 pm]

BILLING CODE 4160–01–M

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21 CFR Parts 175 and 178

[Docket No. 82F–0055]

Indirect Food Additives: Adhesive Coatings and Components; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule; clarification.

SUMMARY: The Food and Drug Administration (FDA) is publishing additional information on a final rule published in the **Federal Register** of August 19, 1983 (48 FR 37615), that amended the food additive regulations to provide for the use of 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)propionate] as an antioxidant and/or stabilizer in polystyrene, rubber-modified polystyrene, and olefin polymers and as a component in adhesive formulations. The agency is providing an additional 30-day period for submitting objections or additional information in support of objections previously filed in response to the August 19, 1983 regulation.

DATE: Objections or additional information in support of previously filed objections by May 2, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of August 19, 1983 (48 FR 37615), FDA provided for the use of 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)propionate] as an antioxidant and/or stabilizer in polystyrene, rubber-modified polystyrene, and olefin polymers and as a component in adhesive formulations (21 CFR 175.105(c)(5) and 178.2010(b)). That action responded to a petition (FAP 2B3592) filed by Uniroyal Chemical, Naugatuck, CT 06770.

The August 19, 1983 final rule explained that FDA believed that one of the materials used in manufacturing the additive was a carcinogenic compound but did not identify the substance because FDA had concluded that its identity was a trade secret. The final rule did discuss the rationale for regulating the additive and described the results of the agency's assessment of the risk from the constituent. Subsequently, The Natural Resources Defense Council, Inc., 122 East 42d St., New York, NY 10168; and Public Citizen's Health Research Group, 2000 P St. NW., Washington, DC 20036, filed objections to the regulation. The objections requested that the agency publish a supplemental **Federal Register** notice disclosing the constituent's chemical identity and discussing all other relevant health and safety issues. The objections also argued that the final regulation is illegal because it relied on the constituents theory, which the objections characterized as contrary to the Delaney clause. Finally, the objections requested an immediate stay of the regulation and an additional opportunity for objection and reserved the right to request a hearing at a later stage in the process.

Following FDA's receipt of the objections, Uniroyal informed FDA that it would waive trade secret status for the constituent at issue here. FDA is reissuing the final rule to provide the identity of the carcinogenic constituent and to respond to the request for a discussion of the health and safety issues involved. The agency is also providing an additional 30 days for the submission of objections or additional information in support of objections already filed to the final rule. FDA will act on the remaining issues raised by the objections and requests for a hearing after it has evaluated any further objections filed in response to this document. The agency is not staying the final rule because it believes that the additive is safe, and that a stay would not serve the public interest.

Although the food additive has not itself been found to induce cancer, it may contain trace amounts of dibutyltin diacetate, a carcinogenic compound, which is used in the manufacture of the additive. Residual amounts of reactants and manufacturing aids are commonly found as contaminants in all chemical products, even in highly purified reagent grade chemicals, including many food additives.

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless the data presented to FDA establish that the food additive is safe for that use. The concept of safety embodied in this requirement was explained in the legislative history of the Food Additives Amendment of 1958. "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H.R. Rep. No. 2284, 85th Cong., 2d Sess. 1 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The Delaney anticancer clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive can be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to list a use of a food additive that contained or was suspected of containing minor amounts of a carcinogenic chemical, even if the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though that color additive contains a carcinogenic constituent.

Since that decision, FDA has approved the use of three such color additives, D&C Green No. 5 (47 FR 24278; June 4, 1982) and D&C Red No. 6 and D&C Red No. 7 (47 FR 57681; December 28, 1982), on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for those decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, which was published in the **Federal Register** of April 2, 1982 (47 FR 14464). In brief, the agency believes that the Delaney anticancer clause is not triggered unless the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer but that contains a carcinogenic constituent may properly be evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported ty *Scott* v. *FDA*, —— F.2d —— (Nos. 82–3544/3759) (6th Cir. February 23, 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which, as explained above, contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

Because 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl) propionate] has not been shown to cause cancer, the anticancer clause does not apply to it. FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive, and has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures used are similar to the methods used to examine the risk associated with the presence of minor carcinogenic impurities in D&C Green No. 6 (47 FR 14138; April 2, 1982), D&C Green No. 5 (47 FR 24278; June 4, 1982), and D&C Red No. 6 and D&C Red No. 7 (47 FR 57681; December 28, 1982). This risk evaluation of a carcinogenic constituent consists of two parts: (1) Assessment of the probable exposure to the constituent from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

FDA estimated the potential exposure to dibutyltin diacetate from extraction studies, taking into account what fraction of the daily diet might be packaged in materials containing 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)propionate]. FDA used data from the National Cancer Institute (NCI) carcinogenicity bioassays in which dibutyltin diacetate was administered in the diet of rats and mice to estimate the upper level of human risk from exposure to dibutyltin diacetate stemming from the proposed use of 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)propionate]. The results of the NCI bioassay on dibutyltin diacetate indicated compound-related increases in the incidence of hepatocellular adenomas in male and female mice. (The rat study was negative.) These particular lesions, while not frank malignancies, are considered by the agency to be precursors to carcinomas and, therefore, indicative of the carcinogenicity of dibutyltin diacetate.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. FDA estimates that the upper limit individual lifetime risk from potential exposure to dibutyltin diacetate at the level considered to be a conservative estimated daily intake is 7×10^{-8} or less than 1 in 10 million. Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to dibutyltin diaceatte is expected to be substantially less than the estimated daily intake, and therefore the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to dibutyltin diacetate that results from the use of 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxphenyl)propionate].

The agency has calculated an estimated daily intake of 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxphenyl)propionate] based on considerations such as migration of the additive under maximum intended use conditions into food stimulants and estimates of the probable fraction of the daily diet that packaging containing the additive may contact. The estimated daily intake for 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxphenyl)propionate] under the intended use conditions is 0.6 milligram per day (mg/day) for a 60-kilogram (kg) person (0.2 part per million (ppm) in the daily diet).

The petitioner (Uniroyal Chemical Co., Naugatuck, CT 06770) has submitted the results of several studies to demonstrate that there is a reasonable certainty of no harm from the intended use of 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)-propionate].

These studies include an acute oral toxicity study in rats, a range-finding study (14-day maximum tolerated dose feeding study in dogs), an Ames-type mutagenicity test, and 90-day (subchronic) feeding studies in rats and dogs. The subchronic rat study included an in utero phase. The acute oral toxicity in rats is greater than 10 grams per kilogram body weight. No adverse effects were observed in the range-finding study at feeding levels of 15 percent or less. The mutagenicity test was negative. No tissue abnormalities or other compound-related adverse effects were observed in either the dog or rat subchronic feeding studies over the range of doses tested.

For the level of dietary exposure (0.2 ppm) estimated for 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)propionate], the agency ordinarily requires, at a minimum, a subchronic toxicology study in a rodent with in utero exposure and a subchronic toxicology study in a nonrodent (Refs. 1 and 2). The toxicology studies submitted by the petitioner, therefore, satisfy the agency toxicology testing requirements for this indirect food additive. The data from the submitted toxicology studies indicate no need for additional toxicology studies. In particular, the toxicology information gives no reason to suspect 2,2'-oxamidobis[ethyl 3-(3,5,-di-*tert*-butyl-4-hydroxyphenyl)propionate] to be a carcinogen.

The level at which exposure to a food additive can be considered safe is called the acceptable daily intake. The acceptable daily intake is determined by first establishing a highest no-adverse-effect level for each of the required subchronic animal feeding studies, by applying a safety factor of 1000 to each of these no-adverse-effect levels, and by selecting the study that leads to the lower level. In both subchronic studies, the highest no-adverse-effect level was the highest level at which the additive was fed: 500 milligram per kilogram per day (mg/kg/day) for dogs and 2000 mg/kg/day for rats. A safety factor of 1000 is applied to these studies yielding 0.5 mg/kg/day for dogs and 2 mg/kg/day for rats. The study yielding the lower level is the dog study. Therefore, the agency has established the acceptable daily intake for humans as 0.5 mg/kg/day or 30 mg/day for a 60 kg person. This acceptable daily intake is 50 times greater than estimated daily intake of 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxphenyl]propionate].

FDA applied a thousandfold safety factor rather than the hundredfold safety factor set forth in 21 CFR 170.22 because the agency's calculation is based on subchronic studies. It has been the agency's general practice to apply a thousandfold safety factor when subchronic studies are relied upon to support safety, and when lifetime studies are neither required nor available (Ref. 2).

The agency has considered whether a specification is necessary to control the amount of dibutyltin diacetate that might migrate to food. The agency finds that a specification is not necessary for the following reasons: (1) The upper limit lifetime risk resulting from exposure to dibutyltin diacetate is very low; (2) use of the 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)propionate] is limited to 0.5 percent or less of a formulation, except for use of the additive in adhesives, where migration to food is expected to be much less than migration from the regulated polymeric food-contact surfaces; and (3) when used in accordance with current good manufacturing practice, it is likely that dibutyltin diacetate will be used in the manufacture of this additive in amounts consistent with those reviewed by the agency.

FDA has reviewed the available toxicity data and its exposure calculation for the additive, and it has determined that the risk posed by exposure to dibutyltin diacetate is very low. The agency has therefore concluded that the proposed use of the food additive 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)propionate] is safe.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection. Among the documents that the agency has relied upon are Refs. 3 through 15.

References 1 and 2 have been placed on display in the Dockets Management Branch (address above) and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday. The remaining references can be inspected at the Center for Food Safety and Applied Nutrition (address above) by making an appointment with the information contact person.

References

1. Carr, G. M., "Carcinogen Testing Programs," *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, United States Senate, July 1979, p. 59.

2. Kokoski, C. L., "Regulatory Food Additive Toxicology" presented at the "Second International Conference on Safety Evaluation and Regulation of Chemicals," October 24, 1983, Cambridge, MA.

3. Food Additive Petition (FAP 2B3592), Uniroyal Chemical Co., submission, dated October 15, 1981.

4. Memo from Food Additive and Animal Drug Chemistry Evaluation Branch to Petitions Control Branch, dated November 23, 1981, concerning FAP 2B3592 submission, dated October 15, 1981, "2,2'-Oxamidobis[Ethyl 3-(3,5-di-*tert*-Butyl-4-Hydroxyphenyl)Propionate] for Use as an Antioxidant in Plastics."

5. Memorandum from Food Additive and Animal Drug Chemistry Evaluation Branch to Petitions Control Branch, dated February 16, 1982, concerning FAP 2B3592 "Recalculation of EDI for 2,2-Oxamidobis [Ethyl 3-(3,5-di-*tert*-Butyl-4-Hydroxyphenyl)Propionate]."

6. Memorandum from Food Additive Evaluation Branch to Petitions Control Branch, dated February 26, 1982, concerning FAP 2B3592 "2,2'-Oxamidobis[Ethyl 3-(3,5-di-*tert*-Butyl-4-Hydroxyphenyl)Propionate) for Use as an Antioxidant in Plastics."

7. FAP 2B3592 submission, dated May 7, 1982.

8. Memorandum from Food Additive and Animal Drug Chemistry Evaluation Branch to Petitions Control Branch, dated June 7, 1982, concerning FAP 2B3592 submission, dated May 7, 1982 "High Density Polyethylene (HDPE) Extraction Data."

9. FAP 2B3592 submission, dated April 12, 1983.

10. FAP 2B3592 submission, dated April 19, 1983.

11. Memorandum from Food Additive and Animal Drug Chemistry Evaluation Branch to Petitions Control Branch, dated May 13, 1983, concerning FAP 2B3592 submissions, dated April 12, 1983 and April 19, 1983.

12. Memorandum of conference, Bureau of Foods' Cancer Assessment Committee, dated October 18, 1979, concerning "Dibutyltin Diacetate."

13. Memorandum from Executive Secretary of the Bureau of Foods' Cancer Assessment Committee to Food Additive Evaluation Branch, dated May 23, 1983, concerning "Estimation of a Safe Dose for Dibutyltin Diacetate."

14. Memorandum from Food Additive Evaluation Branch to Petitions Control Branch, dated May 24, 1983, concerning "Risk Assessment for Dibutyltin Diacetate Found as a Constituent Catalyst in the Antioxidant/Stabilizer 2,2'-Oxamidobis[Ethyl 3-(3,5-di-*tert*-Butyl 4-Hydroxyphenyl)Propionate]."

15. Memorandum from Food Additive and Animal Drug Chemistry Evaluation Branch to Petitions Control Branch, dated July 7, 1983, concerning FAP 2B3592 "Memorandum for the Record."

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

For convenience, FDA is republishing in its entirety the final regulation that appeared in the **Federal Register** of August 19, 1983. This clarification of the final rule does not amend the regulation in any way.

This clarification of the final rule is issued under the Federal Food, Drug, and Cosmetic Act.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES COATINGS AND COMPONENTS

1. Part 175 is amended in § 175.105(c)(5) by alphabetically inserting a new item in the list of substances, to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
2,2'-Oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)propionate] (CAS Reg. No. 70331–94–1).	
* * * * *	

* * * * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

2. Part 178 is amended in § 178.2010(b) by alphabetically inserting a new item in the list of substances, to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
2,2'-Oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)propionate] (CAS Reg. No. 70331–94–1).	For use only: 1. At levels not to exceed 0.5 percent by weight of polystyrene and rubber-modified polystyrene complying with § 177.1640 of this chapter. 2. At levels not to exceed 0.5 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, and 1.3. 3. At levels not to exceed 0.5 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1, 3.2, 3.3, 3.4, 3.5, and 4.0 that contact food types I, II, IV–B, VI, VII–B and VIII described in Table 1 of § 176.170(c) of this chapter. 4. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1, 3.2, 3.3, and 4.0 that contact food types III, IV–A, V, VII–A, and IX described in Table 1 of § 176.170(c) of this chapter; except that olefin copolymers complying with items 3.1 and 3.2 where the majority of polymer units are derived from propylene may contain the additive at levels not to exceed 0.5 percent by weight. 5. At levels not to exceed 0.1 percent by weight of olefin polymers complying with item 3.4 of § 177.1520(c) of this chapter, that contact food types III, VII–A, and IX described in Table 1 of § 176.170(c) of this chapter; except that olefin copolymers complying with item 3.4 where the majority of the polymer units are derived from propylene may contain the additive at levels not to exceed 0.5 percent by weight.
* * * * *	

* * * * *

Any person who will be adversely affected by the regulation may at any time on or before May 2, 1984, submit to the Dockets Management Branch (address above) written objections or additional information in support of previously filed objections and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: March 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–8587 Filed 3–27–84; 4:04 pm]

BILLING CODE 4160–01–M

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21 CFR Part 176

[Docket No. 82F–0087]

Indirect Food Additives; Paper and Paperboard Components; Components of Paper and Paperboard in Contact with Aqueous and Fatty Foods

AGENCY: Food and Drug Administration.

ACTION: Final rule; clarification.

SUMMARY: The Food and Drug Administration (FDA) is publishing additional information on a final rule published in the **Federal Register** of August 19, 1983 (48 FR 37617), that amended the food additive regulations by removing the upper viscosity limit of a currently regulated retention aid. The retention aid is polyamide-epichlorohydrin water-soluble thermosetting resins prepared by reacting adipic acid with diethylenetriamine to form a basic polyamide and further reacting the polyamide with an epichlorohydrin and dimethylamine mixture. The agency is providing an additional 30-day period for submitting objections or additional information in support of objections already filed in response to this regulation.

DATE: Objections or additional information in support of previously filed objections by May 2, 1984.

ADDRESS: Written objections or additional information in support of previously filed objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–334), Food and Drug

Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: FDA published a final rule in the **Federal Register** of August 19, 1983 (48 FR 37617), that amended the food additive regulations (21 CFR 176.170) by removing the upper viscosity limit of a currently regulated retention aid. The retention aid is polyamide-epichlorohydrin water-soluble thermosetting resins prepared by reacting adipic acid with diethylenetriamine to form a basic polyamide and further reacting the polyamide with an epichlorohydrin and dimethylamine mixture. That action responded to a petition (FAP 2B3622) filed by Sandoz Colors and Chemicals, East Hanover, NJ 07936.

The preamble to the regulation explained that the agency had evaluated data in the petition and had concluded that the proposed use of the substance was safe, and that the food additive regulations should be amended as requested in the petition. The document did not discuss the specific nature of the data evaluated.

Subsequently, The Natural Resources Defense Council, Inc., 122 East 42d St., New York, NY 10168; and Public Citizen's Health Research Group, 2000 P St. NW., Washington, DC 20036, filed objections to the regulation. The objections argued that the agency did not provide adequate information about the additive and the basis for FDA's decision to approve it. The objections stressed that the preamble to the **Federal Register** document did not disclose that the agency's action involved consideration of whether the Delaney anticancer clause might apply to the additive. According to the objections, omission of such an explanation foreclosed interested persons from effectively commenting on or objecting to the regulation. The objections requested FDA to publish a supplemental **Federal Register** notice discussing the factual and legal bases for the decision. The objections also argued that the final regulation is illegal because it relies on the constituents theory, which the objections characterize as contrary to the Delaney anticancer clause. Finally, the objections requested an immediate stay of the regulation and an additional opportunity for objection, and they reserved the right to request a hearing at a later stage in the process.

This clarification of the final rule responds to the request for supplemental information about the reasons for FDA's decision and provides an additional 30 days for the submission of objections or additional information in support of objections that have already been filed. FDA will act on the remaining issues raised by the objections and requests for a hearing after it has evaluated any further objections or other information filed in response to this document. The agency is not staying the regulation because FDA believes that the additive is safe, and that a stay would not serve the public interest.

In evaluating Sandoz's petition, FDA considered data bearing on the safety of the additive, including the safety of the various constituents of the additive. The polyamide-epichlorohydrin water-soluble thermosetting resins that constitute the food additive have not been found to induce cancer. However, the resins may contain trace amounts of a carcinogenic compound, epichlorohydrin which is used in the manufacture of the additive.

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless the data presented to FDA establish that the additive is safe for that use. The concept of safety embodied in this requirement was explained in the legislative history of the Food Additives Amendment of 1958. "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H.R. Rep. No. 2284, 85th Cong., 2d Sess. 1 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The Delaney anticancer clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive can be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to list a use of a food additive that contained or was suspected of containing minor amounts of a carcinogenic chemical, even if the additive as a whole has not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of food additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though the color additive contains a carcinogenic constituent. Since that decision, FDA has approved the use of three such color additives, D&C Green No. 5 (47 FR 24278; June 4, 1982) and D&C Red No. 6 and D&C Red No. 7 (47 FR 57681; December 28, 1982), on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for those decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, which was published in the **Federal Register** of April 2, 1982 (47 FR 14464). In brief, the agency believes that the Delaney anticancer clause is not triggered unless the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer but that contains a carcinogenic constituent may properly be evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, —— F.2d —— (Nos. 82–3544/3759) (6th Cir. February 23, 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which, as explained above, contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

The agency calculated the upper bound limit of lifetime risk of cancer resulting from exposure to epichlorohydrin from the previously regulated uses of polyamide-epichlorohydrin water-soluble copolymer resins to be no more than 1.3×10^{-6}. Removing the upper viscosity limit for the polymer allows for a higher molecular weight copolymer, which is more efficient as a retention aid for paper and paperboard. FDA concludes that a higher molecular weight copolymer is not likely to contain any more epichlorohydrin monomer than the copolymer resin with the lower viscosity. The upper bound risk estimate for the lower viscosity resin was based on the conservative assumption that all uncoated paper was treated with the resin. Therefore, FDA concludes that the decision to allow a higher viscosity resin

would not increase the exposure to epichlorohydrin monomer from that previously assumed.

The agency has not performed a risk estimate for all food exposure to epichlorohydrin because it does not have, nor could it reasonably obtain, adequate, reliable data on the total dietary exposure to epichlorohydrin from other regulated additives. Nonetheless, in this specific situation, despite its inability to cumulate exposure to the carcinogenic constituent, FDA still finds the use of polyamide-epichlorohydrin is safe. FDA has reached this conclusion for the following reasons: (1) The exposure to epichlorohydrin from the use of this retention aid is so small that it will not contribute significantly to the level of epichlorohydrin in the diet. (2) The agency regards the upper-bound limit of risk calculated for exposure to epichlorohydrin from use of polyamide-epichlorohydrin to be sufficiently low to assure safe use of this additive even with additional exposure to epichlorohydrin from other products. (3) The food additive regulation at issue does not approve a new additive; it merely changes the conditions of use of an already approved additive and does so in such a way as not to increase exposure to epichlorohydrin. Thus, the agency concludes that there is a reasonable certainty that no harm will result from the proposed removal of the upper viscosity limit.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection. Among the documents that the agency has relied upon are the following:

1. FAP 3B2856, Exhibit B, Appendix II, April 11, 1972.

2. FAP 3B2856, Exhibit B, August 9, 1973.

3. Memorandum: Organic and Additives Chemistry Branch to Petitions Control Branch; August 21, 1973; FAP 3B2856.

4. Memorandum: Food Additive and Animal Drug Chemistry Evaluation Branch to Petitions Control Branch; November 29, 1982; FAP 2B3622 estimated daily intake for epichlorohydrin.

5. Memorandum: Color and Cosmetics Evaluation Branch to Marcia Van Gemert, November 29, 1982; Risk estimation for epichlorohydrin.

6. Memorandum: Food Additives Evaluation Branch to Petitions Control Branch; December 16, 1982; FAP 2B3622.

7. Memorandum: Associate Director for Compliance, Bureau of Foods to Associate Commissioner for Regulatory Affairs, May 9, 1983; Amendment to § 176.170; FAP 2B3622.

List of Subjects in 21 CFR Part 176

Food additives; Food packaging; Paper and paperboard.

For convenience, FDA is republishing in its entirety the final regulation that appeared in the **Federal Register** of August 19, 1983. This clarification of the final rule does not amend the regulation in any way.

This clarification of the final rule is issued under the Federal Food, Drug, and Cosmetic Act.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Polyamide-epichlorohydrin water-soluble thermosetting resins [CAS Reg. No. 68583-79-9] prepared by reacting adipic acid with diethylenetriamine to form a basic polyamide and further reacting the polyamide with an epichlorohydrin and dimethylamine mixture such that the finished resins have a nitrogen content of 17.0 to 18.0 percent on a dry basis, and that a 30-percent-by-weight aqueous solution has a minimum viscosity of 350 centipoises at 20° C, as determined by a Brookfield viscometer using a No. 3 spindle at 30 r.p.m. (or equivalent method).	For use only under the following conditions: 1. As a retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 0.12 percent by weight of dry paper or paperboard. 2. The finished paper or paperboard will be used in contact with food only of the types identified in paragraph (c) of this section, table 1, under types I and IV–B and under conditions of use described in paragraph (c) of this section, table 2, conditions of use F and G.
* * * * *	

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 2, 1984, submit to the Dockets Management Branch (address above), written objections thereto or submit additional information in support of previously filed objections and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-8556 Filed 3-27-84; 4:01 pm]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1601, 1610, 1611, and 1626

Provisional Revisions Necessitated by Reorganization of Field Office Structure

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission has recently approved a reorganization of its field office structure which will enable it to more efficiently administer and enforce the employment discrimination statutes for which it is responsible. There will now be three types of field office instead of two. This document amends the Commission's regulations to reflect this change.

DATES: This Final Rule is effective on April 1, 1984.

FOR FURTHER INFORMATION CONTACT: The Office of Legal Counsel, Legal Services, Nicholas M. Inzeo (634–6592) or Thomas J. Schlageter (634–6592).

List of Subjects

7 CFR Part 1601

Administrative practice and procedure.

7 CFR Part 1610

Freedom of information.

7 CFR Part 1611

Privacy.

7 CFR Part 1626

Administrative practice and procedure.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

PART 1601—PROCEDURAL REGULATIONS

§ 1601.5 [Amended]

1. Section 1601.5 is amended by adding the following after the fourth sentence:

* * * The term "local office" shall mean an EEOC office with responsibility over a part of the United States within a district fixed by the Commission as a particular sub-unit of a district. The term "local director" shall refer to that person designated as the Commission's chief officer for the local office. * * *

2. Section 1601.5 is amended by adding "and local" after "area" in the next to the last sentence.

§ 1601.8 [Amended]

3. Section 1601.8 is amended by removing "district or area" and replacing it with "district, area or local".

4. Section 1601.8 is amended by removing "district" in the last sentence and replacing it with "field".

§§ 1601.10, 1601.14, 1601.20 and 1601.28 [Amended]

5. Sections 1601.10, 1601.14(b), 1601.20(a) and 1601.28(c) are amended by adding "Local Directors," after "Area Directors" wherever it appears.

§§ 1601.19 and 1601.24 [Amended]

6. Sections 1601.19(g) and 1601.24(b) are amended by adding "or Local Directors" after "Area Directors" wherever it appears.

§ 1601.21 [Amended]

7. The introductory paragraph of § 1601.21(d) is amended by adding "or Local Directors" after "Area Directors" in the first sentence.

8. The introductory paragraph of § 1601.21(d) is amended by substituting "Each" for "Such" in the next to the last sentence.

9. The introductory paragraph of § 1601.21(d) is amended by substituting "each Area Director and each Local Director" for "and each Area Director" in the last sentence.

§ 1601.28 [Amended]

10. Section 1601.28(a)(2) is amended by adding "the Local Director" after "the Area Director".

11. Section 1601.28(a)(3) is amended by inserting "Local Director;" after "Area Director" in the first sentence.

12. Section 1601.28(c) is amended by inserting "Local Directors," after "Area Directors".

PART 1610—AVAILABILITY OF RECORDS

§ 1610.4 [Amended]

13. Section 1610.4(b) is amended by removing "district and area" and replacing it with "district, area and local."

14. Section 1610.4(c) is amended by removing "District and Area" and replacing it with "District, Area and Local."

15. Section 1610.4(c) is amended by removing "Area" after "Buffalo", "El Paso," "Fresno," "Greensboro," "Greenville," "Minneapolis," "Oakland," "San Diego" and "San Jose" and replacing it with "Local."

16. Section 1610.4(c) is amended by substituting the below listed addresses for the following offices:

§ 1610.4 Public reference facilities and current index.

* * * * *

(c) * * *

Atlanta * * *, Citizens Trust Bank Building, 10th Floor, 75 Piedmont Avenue, NE., Atlanta, Georgia 30335

Baltimore * * *, 109 Market Place, Suite 4000, Baltimore, Maryland 21202

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Boston * * *, J. F. Kennedy Federal Bldg., Room 409B, Boston, Massachusetts 02203

Buffalo * * *, 210 Franklin Street, Room 503, Buffalo, New York 14202

Charlotte * * *, 1301 East Morehead Street, Charlotte, North Carolina 28204

Chicago * * *, Federal Building, Room 930A, 536 South Clark Street, Chicago, Illinois 60605

* * * * *

Cleveland * * *, 1 Playhouse Square, 1375 Euclid Avenue, Cleveland, Ohio 44115

Dallas * * *, 1900 Pacific Building, 13th Floor, Dallas, Texas 75201

* * * * *

El Paso * * *, 1st National Building, Suite 1112, 109 North Oregon Street, El Paso, Texas 79903

* * * * *

Greensboro * * *, Post Office Building, 324 West Market Street, Room B27, Post Office Box 3363, Greensboro, North Carolina 27402

Greenville * * *, Bankers Trust Building, 7 North Laurens Street, Suite 1001, Greenville, South Carolina 29601

Houston * * *, 405 Main street, 6th Floor, Houston, Texas 77002

Indianapolis * * *, Federal Building, Room 456, 46 East Ohio Street, Indianapolis, Indiana 46205

Jackson * * *, New Federal Building, 100 West Capitol Street, Suite 721, Jackson, Mississippi 39269

Kansas City * * *, 911 Walnut Street, 10th Floor, Kansas City, Missouri 64106

Little Rock * * *, Savers Building, Room 621, 320 West Capitol Avenue, Little Rock, Arkansas 72201

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Louisville * * *, U.S. Post Office and Courthouse, 601 West Broadway, Room 104, Louisville Kentucky 40202

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Milwaukee * * *, Henry S. Reuss Federal Plaza, Suite 800, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203

Minneapolis * * *, Federal Building, Room 178, 110 South 4th Street, Minneapolis, Minnesota 55401

Nashville * * *, Parkway Towers, Suite 1820, Nashville, Tennessee 37219

Newark * * *, Military Park Building, 3d Floor, Newark, New Jersey 07102

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New York * * *, 90 Church Street, Room 1501, New York, New York, 10007

Norfolk * * *, Federal Building, Room 412, 200 Granby Mall, Norfolk, Virginia 23510

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Oklahoma City * * *, 50 Penn Place, Suite 504, Oklahoma City, Oklahoma 73118

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Phoenix * * *, 135 North Second Avenue, 4th Floor, Phoenix, Arizona 85003

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Raleigh * * *, Professional Bldg., Suite 500, 127 W. Hargett, Raleigh, North Carolina 27601

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San Francisco * * *, 10 United Nations Plaza, 4th Floor, San Francisco, California 94102

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St. Louis * * *, 625 North Euclid Street, 5th Floor, St. Louis, Missouri 63108

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§1610.7 [Amended]

17. Section 1610.7(a) is amended by removing "district or area" from the first sentence and replacing it with "district, area of local office."

18. Section 1610.7(a)(1)–(3) is amended by removing "district or area" and replacing it with "district, area or local" wherever it appears.

PART 1611—PRIVACY ACT REGULATIONS

§ 1611.3 [Amended]

19. Section 1611.3(b)(1) is amended by removing "District or Area" and replacing it with "District, Area or Local," and by removing "29 CFR 1610.21(b)" and replacing it with "29 CFR 1610.4(c)."

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

§ 1626.5 [Amended]

20. Section 1626.5 is amended by removing "District or Area" in the first sentence and replacing it with "District, Area or local" and by removing "District" in the second sentence and replacing it with "District, Area and Local."

[FR Doc. 84–8613 Filed 3–30–84; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 947

Surface Mining and Reclamation Operations Under a Federal Program for Washington

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Responses to public comments on interim final rule.

SUMMARY: The Office of Surface Mining (OSM) is responding to public comments submitted regarding the interim final rule which promulgated a Federal surface coal mining program for Washington (48 FR 7078, February 24, 1983). The Secretary of the Interior has reviewed all comments, and no changes to the interim final rule were found to be necessary. Therefore, that rule remains effective as published on February 24, 1983 (48 FR 7078).

DATES: None.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240. Telephone: (202) 343–5866.

SUPPLEMENTARY INFORMATION: On February 24, 1983, OSM promulgated a surface coal mining regulatory program for the State of Washington by means of an interim final rule, 48 FR 7870, pursuant to Section 504 of the Surface Mining Control and Reclamation Act (the Act), 30 U.S.C. 1254. The rule provided for a comment period of fifty days. OSM requested comments on how OSM's revisions to its permanent program rules at 30 CFR Chapter VII effected the interim final rule for Washington. The effective date of the program was to be April 25, 1983, but in response to several requests, OSM extended the comment period to April 28, 1983, and changed the affective date of the program to May 13, 1983 (48 FR 16058, April 14, 1983).

The Washington Irrigation and Development Company (WIDCO) brought suit on April 23, 1983, challenging the program, claiming principally that persons who would be required to file a permit application within two months of the effective date of the program were not given enough lead time to prepare the application. See *Washington Irrigation and Development Co.* v. *Watt, et al.*, No. C83–244T (U.S.D.C. E.D. Wash.). OSM met with the plaintiff's representatives on May 12 and 13, 1983, and the parties agreed to dismiss the action dependent upon OSM taking certain actions.

OSM published a notice in the **Federal Register** on May 13, 1983, announcing an effective date for the Washington program of May 16, 1983, and making several changes in the program rules in response both to public comments and to issues raised in the litigation. 48 FR 22292. Although OSM considered all public comments on the Washington program in its May 13, 1983, notice, it did not formally respond to all such comments because of the short period of time between the end of the extended comment period and the date of the notice. This notice, then, responds to the remaining unanswered comments on the interim final rule notice of February 24, 1983. The Secretary of the Interior has reviewed all comments, and no changes to the interim final rule were found to be necessary. Therefore, that rule remains effective as published on February 24, 1983 (48 FR 7078).

Six different persons or entities submitted comments, including comments from a prospective operator. Extensive comments were received from WIDCO. Two comments were submitted by individuals residing in King County who could be affected by operations of the prospective operator mentioned above. Weyerhaeuser Company, which owns a substantial amount of land in the State, some of which is underlain with coal, and the King County Department of Planning and Community Development, in which county a small operation is presently located and a moderate sized one is proposed, also submitted comments.

1. WIDCO took issue with the use of cross-referencing as a means of promulgating the Washington Federal Program. The company contented that the use of cross-referencing provides inadequate public notice, violates the Federal Program regulations at 30 CFR 736.12(a)(2) and the Administrative Procedure Act (5 U.S.C. 553), and causes uncertainty as to which rules comprise the program because of OSM's revision of its permanent program rules. Specifically, WIDCO stated that cross-referencing does not allow adequate consideration of differing regional conditions, that OSM has omitted certain applicable regulations from cross-referencing, and that cross-referencing does not allow for a necessary review period on amendments to permanent program rules as they affect cross-referenced Federal programs. The company urged a two step amendment process for Federal program rules: Amendment of the OSM permanent program rules followed by a separate rulemaking for a similar change to cross-referenced Federal programs.

This comment constitutes the principal grounds on which WIDCO brought suit. In settling the litigation, the parties agreed that for any proposed OSM rule revisions appearing in the **Federal Register** after the effective date of the program, OSM would follow the procedures in 30 CFR Part 736 for amending Federal programs. Further, for any proposed OSM rule revisions appearing in the **Federal Register** before the effective date of the Washington Federal program, no separate rulemaking would be necessary for amending the program if the final rule appeared in the **Federal Register** after the program effective date.

It is OSM's position that cross-referencing does provide adequate notice to the public under the Surface Mining Act and the Federal Administrative Procedure Act. It allows for adequate consideration of regional differences because changes to particular permanent program rules can be made in the cross-referencing

provisions of the Federal program. Further, 30 CFR 947.700(g), allows for specific modifications or variances from the permanent program rules based on local or regional conditions in Washington.

With the concurrent promulgation of the Federal program rules and revisions to the permanent program rules, confusion as to which rules form the Washington program could understandably result. However, OSM completed its permanent program rule revisions and promulgation of all Federal programs, all of which now utilize cross-referencing, on September 30, 1983, and obtained a delay from the Office of the Federal Register for the annual revision of Title 30 of the Code of Federal Regulations. When that edition is available, around July 1984, it will contain all of the permanent program rules, as revised, and all cross-referenced Federal program rules. Thus, all rules will be in one volume, readily available to any member of the public.

2. WIDCO raised several matters concerning the supersession of State law under 30 CFR 947.700(f). The commenter contended that OSM's regulations should be superseded when they are in conflict with State law even if the State law is less environmentally effective.

The Federal act and permanent program regulations set minimum standards for comparison with State law and regulations. If compliance with State laws or regulations would interfere with the purposes of the Federal program, then the State law and regulations are to be superseded pursuant to Section 504(g) of the Act. The Washington Surface Mining Act and implementing regulations establish standards which are less stringent than those in the Federal act and regulations (See Comment 3). Thus, if they establish performance standards that are less stringent than the Federal program, they will interfere with the accomplishment of the Federal program and must be superseded.

With respect to other State statutes and regulations which regulate aspects of surface coal mining and reclamation, there may be a need for supersession of a particular performance standard as a result of a conflict with one of the Federal program standards (30 CFR 947.700(e)(1)–(9). Such supersession is left to a case-by-case determination.

3. WIDCO urged that OSM complete a stringency analysis of the Federal and Washington State programs before superseding any State laws.

While OSM did not produce a formal document, it did conduct such analyses for all Federal programs. In this case, OSM has been unable to conclude that there is any provision of the Washington Surface Mining Act and regulations that establishes more stringent standards than the Federal program. Further, OSM sees no basis for superseding any other State law. *See* the discussion below under Comment no. 5.

4. WIDCO also stated that when OSM supersedes a State statute or regulation because of conflict with a Federal program standard, formal rulemaking is required rather than the mere publication of a notice of such action in the **Federal Register**.

OSM agrees and intends to conduct formal rulemaking in all supersession cases. OSM has used the formal rulemaking process to supersede a State statutory provision under Section 505(a) of the Act. *See* 48 FR 17071 (April 21, 1983) and 48 FR 46028 (October 11, 1983) involving the Virginia State regulatory program. Should a case arise when a provision of State law would have to be superseded, OSM must take the necessary steps of adequately informing the public and then of making the decision whether to supersede the law.

5. WIDCO pointed out that while generally the Washington Surface Mining Act, RCW 78–44, and implementing regulations, WAC 332–18, establish less stringent standards than the Federal program, confidentiality and bonding provisions are more stringent and should not be superseded.

OSM disagrees. The State bonding provisions are not as stringent as the Federal provisions. The commenter suggested that the annual bond modification in the State program establishes a more stringent standard than that in the Federal program. However, the revised Federal bonding regulations, 30 CFR Part 800 (July 19, 1983 48 FR 32932), provide for incremental bonding which could be done on an annual basis. *See* 30 CFR 800.11(b). Since 30 CFR 800 is cross-referenced in § 942.800 of the Federal program, no change in program is required.

With respect to confidentiality, RCW 78.44.180 provides that all reclamation plans, operators' reports, and other required information submitted to the State are for its confidential use. This provision is less stringent than Section 507(b)(17) of the Act, which requires information pertaining to coal seams, test borings, core samplings, or soil samples to be made available to any person with an interest that is or may be adversely affected, except that information pertaining to the analysis of the chemical contents of the coal shall be kept in confidence. OSM believes that the State confidentiality provision interferes with the achievement of the public disclosure and public participation purposes of the Act and the Federal program, and requires supersession.

6. Another commenter has sought OSM's determination that a King County ordinance requiring a grading permit interferes with the purposes of the Federal program and, consequently, should be superseded. The commenter contended that some of the ordinance's provisions sometime conflict with Federal requirements.

It is only when a State statute or regulation interferes with the achievement of the purposes and requirements of the Federal program that a State law may be superseded under Section 504(g) of the Act. A State law which is inconsistent with a provision of the Federal statute may be superseded under Section 505(a) of the Act. Review of the King County grading ordinance, §§ 16.82.010–16.82.140, does not indicate any interference or inconsistency with the Act or the Federal program. However, there may be duplication. The commenter has not pointed to any particular design criteria in the ordinance that conflict with the Federal requirements. In light of the detail of the Federal regulatory program, compliance with the county grading ordinance could be viewed as unnecessary. However, there is no basis for superseding it since it does not interfere with the Federal program. Here duplication is an insufficient basis for supersession.

7. King County, through its Department of Planning and Community Development, submitted a comment stating that its understanding was that unless local ordinances were less stringent than Federal standards, there would be no supersession.

OSM agrees. However, no local zoning ordinance other than the grading ordinance has been brought to OSM's attention. There is, at this time, no basis for superseding any local ordinances.

8. WIDCO urged revision of the variance provision of 30 CFR 947.900(g). Rather than granting the variance where necessary due to the unique conditions in the State and the achievement of equal or greater environmental protection, the commenter suggested simple consideration of consistency with Federal environmental protection requirement standards with no consideration of uniqueness.

In settlement of the litigation and in response to the comment, the parties agreed to revise the variance provision. In the final rule, published on May 18, 1983, OSM provided for the granting of a variance where: (1) It is necessary due

to the conditions in the area of the mine, and (2) the practice sanctioned by the variance will result in environmental protection provisions which are no less effective than the Federal regulations and consistent with the Act. It is incumbent on an applicant, however, to justify the granting of the variance in any particular instance.

9. WIDCO raised other questions in connection with the variance as proposed, including the meaning of the term "necessary," the procedures for the issuance of a variance, and the length of time a variance may last.

"Necessary" means that the practice is dictated by the particular environmental conditions, not simply economic conditions, although there may be economic benefits to the operator. The variance must be sought in the permit application or, if a condition arises during mining operations, in the permit revision process. The applicant has the burden of demonstrating that the variance is necessary due to the physical conditions in the mine area and that the variance, if granted, will produce a result which is no less effective than the Federal regulations and consistent with the Federal Act.

The practice sought to be approved through the variance need not be the only manner in which the practice can be accomplished, but it must be tied to the environmental conditions at the mine site and be demonstrated to be no less effective than the Federal standards. Such demonstration does not involve a showing of how the Federal standard may be unworkable. Rather it is a postitive showing of the necessity of the alternative for which the variance is sought. The OSM office which reviews the permit application will make the decision on the variance request. The justification for the variance must be made in the application. Should the variance not be granted, the applicant may appeal the decision to the Office of Hearings and Appeals pursuant to 43 CFR 4.1280. The information submitted in support of a requested variance is in lieu of the information required under the performance standard for which the variance is sought. Should the variance request not be granted, then the particular permit information would have to be furnished. A variance becomes a part of the permit once it is granted. Unless the permit specifies to the contrary, the variance lasts as long as the permit term and is subject to renewal in the same manner as a permit.

10. WIDCO also advocated that there be recognition of a need for a variance beyond the mine site.

In recognition of regional differences in the State of Washington, OSM modified the alluvial valley floor provisions in 30 CFR 947.701 and 947.842 to except the coal fields located in the State west of the crest of the Cascade mountain range. Those coal fields are not in an arid or semi-arid area. Therefore, operators in this area need not comply with the alluvial valley floor provisions.

11. WIDCO presented seven different situations in which it might request a variance, including the construction of roads without removal of vegetative mats. The commenter has sought seven such variances in its permit application.

OSM believes it is inappropriate at this time to comment on these seven instances since WIDCO is seeking these variances through the permitting process and OSM has no decisions thereon.

12. Another commenter asked whether a proposed postmining land use to develop a new lake and wetlands and to develop a new city park should be treated as a request for a variance under 30 CFR 947.700(g). A permit application has been submitted in which a final cut lake is proposed.

OSM will consider the reclamation plan indicating the final cut lake and wetlands as a request for a variance, and make its decision in the course of the permitting process.

13. WIDCO advocated an addition to the definition of the term "agricultural use" to include "forest practices" as defined in Washington Administrative Code 222–16–010(19), and the inclusion of an exception for agricultural use in the term "disturbed area." Another commenter advocated a clear separation of the regulation of surface mining under the Federal program and forest practices pursuant to the Washington Forest Practices Act, Revised Code of Washington Chapter 76.009, and the Forest Practice Act rules and regulations, Title 222 of the Washington Administration Code.

The adoption of these comments would preclude OSM jurisdiction under the law of Washington during the time such forest practices occur. There is a clear overlap in at least one activity that may constitute both a forest practice and a surface mining activity: road construction. Road and trail construction is included in the definition of the term "forest practices" in WAC 22–16–010(19), and road building standards are set in 30 CFR 816.150 and 817.150 (*See* 48 FR 22110, May 16, 1983). Thus, what the commenters seek is either a relinquishment of jurisdiction to the State when activities falling under the definition of "forest practices" are involved, or the supersession of any such exercise of jurisdiction by the State. Rather than set a clear demarcation between Washington State jurisdiction under the Forest Practices Act and OSM jurisdiction, OSM has opted to defer to the State's regulation under the Forest Practices Act, yet retain the authority to exercise its jurisdiction should an instance arise in which there is a clear environmental consequence prohibited by surface mining standards, which appears to be permitted under the forest practices regulations. The settlement agreement in the litigation indicated above contains the following provision: "The Federal officials agree that the term 'surface coal mining operations' shall exclude activities which are forest practices under the Washington Forest Practices Act and regulations, except to the extent that they constitute surface coal mining operations under 30 CFR 700.5."

OSM recognizes that the Washington Forest Practices Act is one of the most stringent State statutes regulating such practices. 13 Natural Resources Lawyer 421, 432 (1980). It addresses a broad array of forest management activities.

However, the statute is limited to forest management activity. No State forest practices statute regulates all activities that may take place within the forest boundaries such as surface mining. *Id.* at 428. Therefore, OSM may not completely defer to the State's exercise of jurisdiction under the Forest Practices Act.

14. One commenter has requested that records and permit application information be made available to the public at the local, county, or municipal level.

The revised permit application public participation requirements at 30 CFR 773.13(a)(2) (48 FR 44393, September 28, 1983), require an applicant to make a copy of such information available by filing the same with the recorder at the courthouse of the county where the mining is to occur.

The interim final rule at 30 CFR 947.701(c) has a provision requiring the retention of such records at the county recorder's office of the county in which the operation is located and at the nearest OSM Field Office. That section cites 30 CFR 701.14, which should be 30 CFR 700.14, the availability of records provision. OSM will correct the citations in a later **Federal Register** notice.

15. WIDCO raised several questions concerning the Federal and State permit coordination process. It questioned the rejection in the interim final rule of an implementation task force.

OSM decided against an implementation task force because there are only two existing and one proposed surface mining operations in the State. Three permit reviews, two of which would be for small operators less than 100,000 tons of coal per year, do not warrant the creation of a task force. OSM does not expect circumstances to change which would warrant the creation of such a task force. Further, OSM has coordinated with two States agencies, the departments of Ecology and Natural Resources. OSM and the two State agencies have designated contact persons who will manage the State review of permit applications.

16. WIDCO also raised questions about the lead OSM office for the Federal program conducting inspections and permit application review.

OSM's Casper Field Office located in Mills, Wyoming, has the responsibility for implementation of the Washington Federal program, including inspections. OSM has also established a sub-field office in Olympia, Washington. The OSM Western Technical Center in Denver, Colorado has the lead responsibility for the review of permit applications.

17. The King County Department of Planning and Community Development asked what process OSM will use to coordinate other Federal and State permits.

OSM will coordinate, as explained above, through the two persons serving as liaison between OSM and the two State agencies.

18. WIDCO raised a concern about the air quality monitoring requirement found at 30 CFR 947.780 of the Washington Federal program and, in particular, the requirement in 30 CFR 780.15(a) that surface mining operations producing more than 1 million tons of coal per year west of the 100th west longitude devise an air pollution control plan. The commenter claimed that surface mining operations west of the crest of the Cascades produce no fugitive dust and, therefore, meet air quality standards because of the wet climate. Thus, an air quality monitoring plan is unnecessary.

The **Federal Register** notice announcing the program effective date accepts compliance with 30 CFR 780.15(a). A surface coal mining operation in Washington producing one million tons of coal or more per year need not provide an air quality monitoring program unless the regulatory authority requires one. *See* also the response to the following comment.

19. The King County Department of Planning and Community Development commented on the air quality control provisions of the Program. It objected to the exemption of mines producing one million tons per year from compliance with local air pollution requirements.

As stated above in response to comment No. 18, a surface coal mining operation producing one million tons or more per year of coal need not automatically submit an air quality monitoring program nor a plan for fugitive dust control. Under 30 CFR 780.15(b), OSM has the discretion to require a monitoring program if it determines one is necessary. However, OSM's authority to regulate air quality is limited to that pollution produced as a result of erosion. *See In re: Permanent Surfacing Mining Regulation Litigation*, No. 79–1144 (U.S.D.C., D.C.), Memorandum opinion filed May 16, 1980, at p. 28.

On the other hand, OSM is not superseding any Washington State laws regulating air quality control. Both 30 CFR 947.780(b) and 947.784(b) mandate specific demonstration of compliance with local air pollution control requirements and the Washington Clean Air Act if production of coal exceeds one million tons per year. Further, an operation of King County which meets the definition of a new air contaminate source must obtain a notice of construction from the Puget Sound Air Pollution Control Agency.

However, only a mine producing one million tons or more per year should provide a copy of that notice to OSM under 30 CFR 947.780(b).

20. The company proposing to open a small mine in King County commented that OSM should become a joint lead agency with King County in the issuance of the final Environmental Impact Statement (EIS)—one which will suffice under the State Environmental Policy Act and the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(C). This action would expedite the permitting process and avoid duplication of State and Federal requirements.

Implementation of the program came too late to have joint lead agencies. OSM has determined that the EIS prepared by King County is not adequate for NEPA compliance. Therefore, separate Federal NEPA compliance is necessary.

21. WIDCO pointed out the difficulty of complying with bonding requirements which OSM proposed to change, but for which no final rulemaking notice had appeared by the close of the final comment period on the Washington Federal Program. OSM had proposed to cross-reference only 30 CFR 800 since that was the only part which the revised OSM bonding rules would use, while the other parts, 801, 805, 806, 807, and 808, were still in effect.

The final rulemaking notice on the bonding rules appeared on July 19, 1983, at 48 FR 32932. The final rulemaking notice for the self-bonding rules appeared on August 10, 1983 at 48 FR 36418. Thus, all of the bonding rules are now located in 30 CFR 800, and are in effect in the Washington Federal program through cross-referencing.

22. WIDCO questioned OSM's decision not to except the area west of the crest of the Cascade Mountain range from the alluvial valley floor requirements. The alluvial valley floor provisions of the Act and regulations apply to the region west of the 100th meridian on the presumption that those lands are in arid and semi-arid areas. The Weyerhaeuser Company also questioned the inclusion of the alluvial valley floor requirements for the area west of the crest of the Cascade Mountains. In the company's view, the average annual rainfall, which is almost 60 inches per year, dictates the removal of the area from the alluvial valley floor requirements.

The May 18, 1983, **Federal Register** notice made two changes in the program with respect to alluvial valley floors, which satisfy the commenters' concerns. The definition in 30 CFR 947.701(b)(1) of the term "arid and semi-arid area" excepts the coal fields in the State west of the crest of the Cascade Mountains. The cross-reference in 30 CFR 947.822 to the alluvial valley floor performance standards also added the same exception.

23. An individual commented that the enforcement part of the Washington program should have more provisions to force operators to pay fines, and should provide that no new permits be issued to operators with outstanding penalties.

OSM's former rule at 30 CFR 780.17(c) prohibited the regulatory authority from issuing a permit to an operator who had an outstanding violation of any Federal or State law, rule, or regulation pertaining to air or water environmental protection, unless the violation had been corrected or was in the process of review either administratively or judicially. OSM has revised the provision but has retained the same substantive prohibition in 30 CFR 773,15(b) (48 FR 44394, September 28, 1983).

24. Another individual commenter asked whether copies of each inspection report could be made available at the local planning agency.

30 CFR 947.842 and 947.843 require that OSM furnish a copy of each enforcement action to the local planning

department of the county government of the county where the operation is located. Such enforcement action includes the inspection report.

25. WIDCO pointed out that OSM must develop a blaster training, examination, and certification program. The revised blaster rules, 30 CFR Parts 816, 817 and 850 (48 FR 9486, March 4, 1983), require the regulatory authority to develop such a program. The commenter urged OSM to develop such a program in consultation with a number of other Federal agencies and other interested parties.

OSM has begun the development of a blaster program. It will consult with other governmental agencies having a interest in the program during its development.

26. An operator asked about permit fees, when will they be established, and the amount of such fees.

OSM has not yet proposed a Federal program permit fee schedule. The proposed rulemaking notice may appear in the next several months. However, OSM will not require payment of such a fee until promulgation of the rule. Even though a fee will not be assessed or payable until the final fee-schedule rule is effective, an operator may receive a permit prior to the rule's effective date.

27. WIDCO commented that the Washington, Surface Mining Act is not superseded with respect to bonding requirements on areas under State permit prior to the implementation of the permanent program performance standards and the posting of a bond under the Federal program.

The commenter is correct that the State can continue to require a bond under its law for areas under State permit which would not be a part of the permit area under the Federal program. Thus, the State could forfeit a bond on an area for which a bond was posted under the State statute as long as that area is not within a Federal program permit area. Once OSM has made the decision to issue a permit and the operator has posted bond under that permit, the State bonding requirement would be superseded and the bond payable to the State would no longer be required. However, the operator could change the payee of any such bond from the State to the United States and adjust the bond amount, if necessary.

28. WIDCO requested guidance for a significant departure which would require a revision to a permit. It pointed out that a surface mine which supplies an electric generating plant has a variable production rate in the northwest depending on the availability of hydropower. Thus, operators have to vary their production levels, often significantly.

A change in the rate of production would not require a revision to the permit as long there is no deviation from the mining and reclamation plan. However, if there is a change in the steps indicated in the mining and reclamation plan, a permit revision is required. The revised permit revision rules, 30 CFR Part 774, indicate that revision is necessary when there is a change in any of the permit application information. (48 FR 44396, September 28, 1983). Pursuant to 30 CFR Part 774.13(b)(2), if the revision is a significant one, additional requirements and procedures are required.

Carl C. Close,

Assistant Director, Program Operations and Inspections.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 80-2]

Compulsory License for Cable Systems

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting amendments to 37 CFR 201.11 and 201.17, as amended through final regulations on June 27, 1978, and July 3, 1980, and through interim regulations on May 20, 1982. These regulations implement portions of section 111 of the Copyright Act of 1976, title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of Notices of Identity and Signal Carriage Complement and Statements of Account, and the submission of statutory royalty fees. The amendments revise or clarify certain requirements governing the form and content of such Notices and Statements.

EFFECTIVE DATES: June 1, 1984. Written comments on the specific language of the regulations should be received on or before May 2, 1984.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Copyright Act of 1976 (Act of October 19, 1976, 90 Stat. 2541) establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirements that the cable systems comply with provisions regarding recordation of Notices of Identity and Signal Carriage Complement and Notices of Change of Identity or Signal Carriage Complement under section 111(d)(1), and deposit of Statements of Account and statutory royalty fees under section 111(d)(2).

On June 27, 1978, the Copyright Office announced in the **Federal Register** (43 FR 27827) the adoption of Statement of Account forms and published amendments to its regulations (37 CFR 201.17) to reflect changes necessitated by the new forms.

Further experience with these regulations led the Copyright Office to publish in the **Federal Register** on July 3, 1980 (45 FR 45270) certain clarifying and technical amendments to its regulations (37 CFR 201.17) governing the form, content, and filing of Statements of Account.

During the July 3, 1980, rulemaking proceeding, the Copyright Office received several comments suggesting substantive revisions to the regulations and Statement of Account forms (45 CFR 45273):

Based on their experience reviewing the Statements of Account submitted during the first three accounting periods, copyright owners noted in their comments particular areas where they feel further information and/or clarifications are needed. These areas principally concern the designation of local and distant stations, classification of Canadian and Mexican stations, and problems resulting from the filings submitted on behalf of joint "individual" cable systems. In addition, some copyright owners proposed changes that they contend would streamline the royalty calculation steps required on forms CS/SA-2 and CS/SA-3.

Comments on behalf of the cable operators, on the other hand, suggested that a good deal of the information required on the Statement of Account for the purpose of assisting

copyright owners and the Copyright Royalty Tribunal in the distribution of cable royalties is, in fact, unnecessary. They also advocated a review of our definition of "gross receipts for the 'basic service of providing secondary transmission of primary broadcast transmitters' " based on recent technological advances and new marketing strategies affecting the types of services now available for a single monthly fee.

Although these issues were outside the scope of the rulemaking, the Copyright Office stated its belief "that some of these developments do warrant a review of our cable regulations and Statement of Account forms at an appropriate time" (45 CFR 45273).

Subsequently, several administrative actions were taken, or judicial decisions rendered, affecting the cable television compulsory license mechanism.[1]

The Copyright Office decided that these administrative determinations warranted attention and might provide an adequate basis for a review of the cable television regulations and Statement of Account forms. To this end, the Copyright Office, on June 10, 1981, published in the **Federal Register** (46 FR 30649) a Notice of Public Hearing to be held on July 28, 1981, intended to elicit comments, views, and information regarding these matters.

During the public hearing, the Copyright Office received testimony and written submissions from two cable television operators and representatives of the Motion Picture Association of America (MPAA), the National Cable Television Association (NCTA), and professional sports. The Copyright Office also received written comments from other interested parties in response to the Notice of Public Hearing. Because the Commission's actions had an immediate impact on the responsibility of cable systems under the copyright compulsory license, the Office decided to publish in the **Federal Register** (47 FR 21786) regulations concerning this impact effective May 20, 1982, on an interim basis.[2]

At that time, the Office also announced that proposed regulations pertaining to the other issues addressed during the Office's July 1981 public hearing would be forthcoming. Initially, the Office believed only a few months would elapse before publication of proposed rules. On October 20, 1982, however, the Copyright Royalty Tribunal adopted a final rule in CRT Docket No. 81–2 (published at 47 FR 52146 on November 19, 1982). By this rule, the Tribunal made two types of cable royalty rate adjustments [3] and set January 1, 1983, as the effective date for both. Both rate adjustments were appealed to the U.S. Court of Appeals for the D.C. Circuit (which upheld the Tribunal's rate determination on December 30, 1983).[4]

In December 1982, Congress, as part of an appropriations measure, imposed a bar on the expenditure of funds to implement the 3.75% portion of the rate adjustment until final decision by the Court of Appeals or until March 15, 1983, whichever occurred first.[5]

In late 1982 and early 1983, the Copyright Office received numerous requests for advice or interpretive rulings regarding the 1982 cable rate adjustment. Our urgent guidance was requested before March 15, 1983, the expiration of the legislative stay. The Office published a Notice of Inquiry, Docket No. RM 83–3 (48 FR 6372; February 11, 1983), in which we summarized the issues presented to us for guidance and requested comment. Based upon our preliminary analysis of the issues and the comment letters, the Office issued a letter of opinion on March 11, 1983 (published at 48 FR 13166; March 30, 1983) in which we expressed tentative, limited views about intepretation of the 3.75% portion of the rate adjustment.[6]

During this same period, the National Cable Television Association formally requested that the Office act immediately on two issues covered by this rulemaking, on the ground that these issues were now critical in light of the CRT's 1982 cable rate adjustment. ("Petition for Expedited Action"; February 3, 1983.) The two issues identified were: computation of the cable royalty fees affected by: (1) Addition or replacement of a regularly carried distant signal in the middle of an accounting period and (2) carriage of a distant broadcast signal on a tier with non-broadcast services for a single fee—the so-called "tiering" issue.[7]

The Office believes that its position regarding the first issue was made clear in the interim rules issued May 20, 1982 (47 FR at 21786), and this view was repeated in letters of opinion from the Office to the NCTA on December 27, 1982,[8] and December 30, 1982. In our

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[1] On September 11, 1980, the Federal Communications Commission (FCC) published in the **Federal Register** (45 FR 60186) its decision to remove the cable television distant signal limitations and syndicated program exclusivity rules from the FCC regulations. The Court of Appeals for the Second Circuit upheld the authority of the FCC to repeal these rules in *Malrite* v. *FCC*, 652 F.2d 1140 (2d Cir. 1981), and the Supreme Court on January 11, 1982, denied a petition for certiorari on this issue in *National Association of Broadcasters* v. *FCC*, 102 S.Ct. 1002 (1982).

On September 23, 1980, the Copyright Royalty Tribunal published in the **Federal Register** (45 FR 63026) its determination of the 1978 cable royalty distribution. The Court of Appeals for the D.C. Circuit generally upheld the Tribunal's royalty distribution in *NAB* v. *CRT, et al.*, No. 80–2273 (D.C. Cir. April 9, 1982); *NPR* v. *CRT, et al.*, No. 80–2281 (D.C. Cir. April 9, 1982); *Major League Baseball, NBA, NHL and NASL* v. *CRT, et al.*, No. 80–2284 (D.C. Cir. April 9, 1982); *CBS* v. *CRT, et al.*, No. 80–2290 (D.C. Cir. April 9, 1982); and *ASCAP* v. *CRT, et al.*, No. 80–2298 (D.C. April 9, 1982). On January 5, 1981, the Copyright Royalty Tribunal published in the **Federal Register** (46 FR 892) its first adjustment of the compulsory license royalty rates (the "1981 inflationary" rate adjustment). This determination was upheld on appeal by the Court of Appeals for the D.C. Circuit, *NCTA* v. *CRT*, 688 F.2d 1077 (1982), and the Copyright Office subsequently implemented the rate adjustment.

[2] The interim rules are clearly interpretive, as noted in a footnote. 47 FR 21788. Moreover, since the Copyright Office considered it prudent to wait until the Supreme Court acted on the petition for certiorari in the *Malrite* case, before the Office issued any interpretation of the impact of the FCC's 1980 deregulation order on cable system Statement of Account filings, it was necessary to act on an interim basis in order to give cable systems guidance for the then current accounting period. (We refer to the first half of 1982; the Supreme Court denial of certiorari was handed down on January 11, 1982.)

[3] One adjustment is a "surcharge" on certain distant signals to compensate copyright owners for the carriage of syndicated programming formerly prohibited by the FCC's syndicated exclusivity rules in effect on June 24, 1981 (former 47 CFR 76.151 et seq.) ("syndicated exclusivity surcharge"). The second adjustment raised the royalty rate to 3.75% of gross receipts per additional distant signal equivalent (DSE) with respect to carriage of distant signals not generally permitted to be carried under the FCC's distant signal rules prior to June 25, 1981. Under the Tribunal's initial order, both rates were to be effective on January 1, 1983.

[4] The Court of Appeals affirmed the Tribunal's rate adjustment in all respects. *NCTA, Inc.* v. *Copyright Royalty Tribunal*, No. 83–2389 (D.C. Court of Appeals, December 30, 1983). In a Statement of Views concerning the 1982 cable rate adjustment, the Office noted that we would not take affirmative steps to implement the rate adjustment pending a final decision of the Court of Appeals. 48 FR 13166. *See infra.* The Office is now in the process of developing procedures, forms, and policies to implement the rate adjustment.

[5] Section 143 of House Joint Resolution 631, Pub. L. 97–377. In fact, the legislative stay expired on March 15, 1983, since the decision of the Court of Appeals was rendered on December 30, 1983.

[6] The issues addressed in Docket No. 83–3 and rules concerning implementation of the Tribunal's 1982 cable rate adjustment will be taken up in a separate proceeding. As the Office noted in the March 1983 Statement of Views, the comment letters received in February 1983 will be considered now in implementing the cable rate adjustment.

[7] The Motion Picture Association of America and the Professional Sports Leagues, while differing with NCTA on the merits, also asked the Office to issue regulations on the tiering issue.

[8] In our December 27, 1982 letter, we said, at page 2: "[W]e have concluded, for reasons hereafter given, that royalty fees must be paid, at least at the current rates, for any affected distant signal carried during any part of the accounting period January–June 1983 as if it were carried for the entire accounting period." Published in the Copyright Office Notice of Inquiry, 48 FR at 6373.

opinion, proration of the DSE value defined by 17 U.S.C. 111(f) is permitted only in the specific cases set forth in the definition of the DSE value. Except as expressly permitted by the DSE definition, partial carriage of a signal at any time during a given accounting period must be computed at full value for that type of signal, as though the signal were carried the entire accounting period.[9]

As discussed below, with respect to the "tiering" issue, the Office has taken a position as part of practices adopted in examining Statements of Account that allocation of gross receipts is not expressly permitted by the Copyright Act. Some have interpreted the Office's definition of "gross receipts," in effect since 1978, as a regulatory position on the "tiering" issue. The issue is now addressed fully in this proceeding.

In response to letters from motion picture copyright owners regarding the "tiering" issue and compliance with the compulsory license, a cable system, Cablevision Systems Development Company, brought an action for declaratory judgment in June 1983 against the Motion Picture Association of America, Inc. and its eight-member motion picture production companies. *Cablevision Systems Development Company* v. *Motion Picture Association of America, et al.* Civ. No. 83–1655 (D.D.C., filed June 8, 1983). The complaint generally seeks an adjudication that 17 U.S.C. 111 permits a cable system to allocate gross receipts in some way to reflect the "tiering" practices of cable systems. The defendants have counterclaimed for copyright infringement.

In September 1983, the NCTA also filed an action in the federal court for the District of Columbia, seeking a declaratory judgment regarding the "tiering" issue. *NCTA, Inc.* v. *Columbia Industries, Inc., et al.,* Civ. No. 83–2785 (D.D.C., filed September 21, 1983).

Finally, with respect to the "tiering" issue, a Petition for Adoption of Rule was filed on December 9, 1983, on behalf of the "professional sports leagues" (Major Leagues Baseball, the National Basketball Association, the National Hockey League, and the North American Soccer League). The Petition requested that the Office terminate RM 80–2 by adopting a rule "consistent with, and indeed mandated by, the language and legislative history of the Copyright Act, prior Copyright Office rulings and sound policy considerations." (Petition of Major League Baseball, et al., at 6). The NCTA, Cablevision, and a law firm filed comments opposing adoption of rule by the Copyright Office relating to the "tiering" issue on the general ground that the issue is now before the courts and the Office cannot, in any event, decide the matter finally since definitive interpretation of a statute is the province of the courts.

As noted, the Office has decided to address the "tiering" issue in this proceeding. On this issue specifically, the rule is interpretive. While the courts will determine the correct interpretation of the Act and the Copyright Office will welcome the guidance of the courts on "tiering" and other issues, the Office finds no justification for further delay in specifically addressing in regulations and important issue that continues to affect the filing of Statements of Account. At one time or another, the major interests affected by the compulsory license (cable systems and copyright owners) have asked the Office to "take a position" (cable systems generally) or "confirm a position" (copyright owners generally) regarding "tiering." Interpretation of the Act for purposes of administering the compulsory license of 17 U.S.C. 111 is within the authority of the Copyright Office—*e.g.,* to develop forms, practices, and policies. The statement in Copyright Office regulations at 37 CFR 201.2(a)(iv) that the Office does not give "legal opinions or advice" regarding the "sufficiency, extent or scope of compliance with the copyright law" has been interpreted and applied by the Office to mean that is will not act as a lawyer for members of the general public. The Office does not give *specific* advice whether certain conduct actually constitutes copyright infringement. With respect to administration of the Copyright Act in general and the compulsory licenses in particular, the Copyright Office must and does, however, interpret the Act. In appropriate cases, courts have accorded weight to Office interpretations.[10] The courts, of course, are the final arbiters of what the law means.

After careful consideration of all the hearing testimony and written comments, the Copyright Office now has decided to adopt several amendments to the cable regulations and changes in the Statement of Account forms. A discussion of the amendments and major substantive comments appears below.

1. *Proration of DSE's.* Paragraph (f) of section 111 of the Copyright Act sets forth the definition of "distant signal equivalent" (DSE), which has been incorporated by reference in § 201.17(f) of the Copyright Office regulations. The DSE is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system, in whole or in part, beyond the local service area of the primary transmitter of such programming. Cable systems that complete Statement of Account form CS/SA–3 compute their statutory royalty payments on the basis of their total number of DSE's.

Under the compulsory license, each year is divided into two semi-annual accounting periods: January 1 through June 30, and July 1 through December 31. Ordinarily, the DSE of a distant television station carried full time for an entire accounting period is that station's full type value—that is, either 1.0 for an independent station, or .25 for a network or noncommercial educational station. Cable systems and their representatives have frequently questioned the appropriate calculation of the DSE value when a station is carried for an entire broadcast day during an accounting period, but is not carried every day of the period.

The Office has rejected similar if not identical proration arguments in past rulemaking proceedings. (45 FR 45270; July 30, 1980, which established 37 CFR 201.17(f)(3).) Nevertheless, responsive to the requests of cable systems, the Office sought testimony and comments specifically on whether "a cable system should be permitted to make a prorated adjustment to the full DSE value of a distant television station added, deleted or carried on a part-time basis during an accounting period if that station is also carried full time during any portion of that accounting period?"

Representatives from the cable industry maintained the compulsory license mechanism is sufficiently flexible to enable a cable system to prorate the ordinary DSE value in any of the above circumstances to reflect actual carriage. Furthermore, they asserted that the statutory division of

[9] The central question of the NCTA, to which the Office responded in December 1982, was "whether an affected television station which is dropped prior to March 15 (the expiration of the legislative stay) must be paid for through March 15 or through June 30." The Office responded that, in light of the meager legislative history concerning Section 143 of the H.S. Resolution 631, we were unable to conclude that a modification of our existing non-proration regulation was intended. Therefore, payment must be made for the entire accounting period, but different rates apply before and after March 15, 1983.

[10] *Mazer* v. *Stein,* 347 U.S. 201, 211–213 (1954); *DeSylva* v. *Ballentine,* 351 U.S. 570, 577–78 (1955); *Norris Industries, Inc.* v. *International Telephone and Telegraph Corp. and Ladd,* 696 F.2d 918 (11th Cir. 1983), *cert. denied,* 52 U.S.L.W. 3282 (U.S. Oct. 4, 1983); *Esquire, Inc.* v. *Ringer,* 591 F.2d 796, 801–02 (D.C. Cir. 1978); *Eltra Corp.* v. *Ringer,* 579 F.2d 294, 298–99 (4th Cir. 1978).

the year into two accounting periods is merely procedural for purposes of royalty and Statement of Account submissions and is not a substantive element or condition of the compulsory license. The cable industry representatives suggested that a strict interpretation of this provision would result in an unjustified windfall to copyright proprietors.

Representatives of the program supply industry, on the other hand, noted that the statute itself specifies only a few, narrow instances where DSE proration is permissible and that all other types of limited carriage must be computed as full time carriage.

After careful consideration, the Copyright Office once more confirms its interpretation that proration of DSE's is not permitted under 17 U.S.C. 111 except in the specific cases included in the DSE definition in section 111(f). The statute, therefore, requires the computation of the DSE value on the basis of full-time carriage [11] in the above-mentioned circumstances irrespective of the amount of actual carriage during the accounting period. The Office finds no basis in the Copyright Act or its legislative history for a departure from the views expressed at 45 FR 45271–2. In sum, actual carriage is not the sole basis for computation of cable copyright royalties;[12] "distant signal equivalent" is a phrase which was uniquely crafted and defined in the Copyright Act; and the brief references to proration in the legislative committee reports confirm that proration would be permissible only in the cases specially defined in the statute. H.R. Rept. No. 1476, 94th Cong., 2d Sess. 100 (1976). Section 111(d)(2)(B), moreover, in part requires the computation of a "*total* royalty fee for the *period covered by the statement*" (emphasis added). The Copyright Office believes that this language illustrates that the division of each year into two separate accounting periods represents a substantive element of the compulsory license mechanism which we have no statutory authority to alter. In an effort to clarify this point further with respect to the appropriate calculation of DSE's, the Copyright Office is amending § 201.17(f) by adding a new subsection (2)(A) to read as follows:

(2)(A) Where a cable system carries a primary transmitter on a full-time basis during any portion of an accounting period, the system shall compute a DSE for that primary transmitter as if it was carried full-time during the entire accounting period.

2. *Multiple part time carriage.* The "distant signal equivalent" value can be prorated in the case of lack of activated channel capacity, and in the case of permissive substitution for programming primarily of interest to the distant community. These bases for proration of DSE's are unaffected by the FCC deregulation effective June 25, 1981.

In its comments to the Copyright Office rulemaking proceeding under Docket No. 79–4 (regulations issued July 3, 1980), the MPAA raised questions concerning the appropriate total DSE value to be assigned where two or more distant television stations having different DSE type values are carried part time on any one cable channel during an acounting period. The MPAA advocated that in this circumstance, a cable system should be required to set the total DSE values for those stations at not less than full value of the signal carried most frequently during the accounting period.[13] In support of this position, the MPAA noted that it is illogical to suggest that Congress intended to require cable systems to pay the value of a full DSE for full-time carriage of one signal, but some lesser value if the same amount of programming is delivered to the cable subscriber from two or more part-time signals with different DSE type values.

Comments submitted on behalf of three multi-system operators (MSO's) opposed the MPAA position. They asserted that the treatment of multiple stations carried part time on a single channel should be consistent with the treatment of any single station carried on a part-time basis.

The Copyright Office has emphasized its inability to alter the clear and unambiguous statutory definition of "distant signal equivalent":

We cannot emphasize too strongly that the "distant signal equivalent" is a statutory definition, and one which was created *sui generis* in the Copyright Act. The Copyright Office was not given any authority by Congress to elaborate on this definition. General principles of statutory construction require that clear and unambiguous definitions, and provisos contained in and limiting the operative effect of definitions, shall be given controlling effect. This is especially true where the term or phrase was created by the very statute in which it appears. Thus, if the Copyright Office should attempt to modify this statutory definition, there is no other body of law to which we could look for guidance. (45 FR 45271)

Because the DSE definition does not *require* the accumulation of part-time DSE values based on lack of activated channel capacity to equal, at a minimum, the full DSE value of the part-time station most frequently carried, the Copyright Office does not believe it has the authority to impose such requirement by regulation.

3. *Classification of Canadian, Mexican, and Specialty television stations.* Although the cable compulsory license principally concerns the retransmission of domestic signals, section 111(c)(4) extends the compulsory license to the retransmission of Mexican and Canadian signals by "grandfathered" U.S. cable systems and by U.S. cable systems located within the limited border zones of Mexico and Canada respectively. As part of its comments to Docket No. RM 79–4, the MPAA questioned the validity of form CS/SA–3 filings which classify carriage of Canadian television stations as "network" stations and assign to them a DSE value of one-quarter. Because of its significance in the royalty calculation process, the Office sought testimony during the July 1981 hearing as to whether Canadian and Mexican

[11] By "full-time carriage" the Office means carriage in excess of the partial or limited carriage for which proration is specifically allowed in the DSE definition.

[12] The NCTA at the July 28, 1981, public hearing and in briefs submitted to the D.C. Court of Appeals in *NCTA* v. *Columbia Pictures Industries*, Civ. No. 83–2765, D.D.C. Sept. 21, 1983 (made part of this record by NCTA's submission of December 22, 1983) argued that payment of royalties based upon the amount of amount of actual use is a basic principle of copyright law. In support of that argument, NCTA cites *Sheldon* v. *M-G-M*, 81 F.2d 49 (2nd Cir. 1936) *aff'd.* 300 U.S. 390 (1940). The Copyright Office finds no support for this proposition in copyright law generally and certainly not in the *Sheldon* case. *Sheldon* applied the patent rule of apportionment of profits attributable to the infringment. The case does not affect actual damages or statutory damages; it certainly does not purport to confirm a principle that the copyright owner may expect compensation based on the amount of the use only and not on factors such as the value of property, the nature of the work and the market for it, and the transaction costs of a per use method of payment. In the ordinary case, the Copyright Act does not regulate the amount of compensation a copyright owner may receive. The copyright owner enjoys an exclusive right and if someone wishes to make use of a copyrighted work in a way restricted by 17 U.S.C. 106 (the exclusive rights provision), the compensation is set by voluntary agreement between the copyright owner and the user. Those voluntary agreements may be based on use, but are not necessarily so. For example, performing rights for nondramatic music are generally licensed on a "blanket" basis—the opposite of a per use basis. Many contracts for other works or other uses are for a term of years and permit unlimited use during the period. It is true that motion pictures are frequently licensed on a per use basis, but this is not a "principle of copyright law." In any event, cable retransmission of broadcast programming is subject to a compulsory license. Compensation is set by the statute (as adjusted by the CRT). The formula is complex and varies depending on the size of the cable system and the definition of DSE value. Actual carriage is important in some cases, but it is clearly not the sole principle on which cable royalties are computed. A cable system grossing less than $55,500 for a given six month period pays $20 in copyright royalties irrespective of the amount of actual carriage.

[13] The MPAA made its proposal before FCC deregulation, when proration of the DSE was also permitted for part time carriage pursuant to the FCC's late night and specialty rules.

television stations carried on a distant basis should be classified instead as "independent stations" with a corresponding DSE value of one. The Copyright Office received three comments in response to this inquiry. Two large MSO's suggested that the Office resolve this issue through use of the FCC definition of "independent station" under 47 CFR 76.5(n):

> (n) *Independent station.* A commercial television broadcast station that generally carries in prime time not more than 10 hours of programming per week offered by the three major national television networks.

The MSO's imply that adoption of this definition would enable certain Canadian stations to be classified as "network" stations.

Testimony offered by representatives of the program supply industry, on the other hand, suggested that classification of foreign television stations as "network" stations is contrary to the definition of "network" and "independent" stations included in section 111(f) of the copyright law and that Canadian and Mexican stations must be classified as "independent stations," for purposes of computing DSE values. The Copyright Office agrees with this view.

Section 111(f) defines a "network station" as:

> * * * a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day.

The subsection then defines an "independent station" as "* * * a commercial television broadcast station other than a network station."

Canadian and Mexican television stations fail to meet several of the qualifying "network" standards set forth above. First, neither Canadian nor Mexican stations are owned or operated by, or affiliated with any of the United States television networks. Second, with respect to Canadian stations, the regulations of the Canadian Radio-Television Telecommunications Commission impose foreign content limits of 40% in every Canadian licensee's program schedule, with 45% allowable in prime time. Although specific limits are not included in the U.S. copyright law definition of "network station," it is unlikely that carriage under the Canadian foreign content limits would constitute a *"substantial* part of the programming *supplied* by such networks for a *substantial* part of that station's typical broadcast day." (Emphasis added). Third, even if the "substantiality" test noted above were met, foreign stations would still fail to meet the "supplied" test since they acquire broadcast rights to such programming directly from the program supply copyright holders rather than through U.S. television networks.

If foreign stations cannot be considered "network stations" within the meaning of section 111(f), and they plainly cannot be considered "noncommercial educational stations" as defined in section 397 of title 47 United States Code, then they must be classified as independent stations for the purpose of assigning the DSE value.

Although the Office did not specifically invite comment with respect to the DSE value for specialty stations in the United States, one cable system operator suggested that the Copyright Office should encourage carriage of "socially useful" signals by permitting cable systems to assign either no DSE value, or a greatly reduced DSE value, for carriage of specialty stations. The general reasoning applicable to Canadian and Mexican stations leads to the same conclusion when applied to specialty stations. The Copyright Office in examining Statements of Account has consistently taken the position that specialty stations must be assigned a DSE value of one, since they do not meet the more specific alternative definitions of "network station" or "noncommercial educational station." The Office emphasizes that this interpretation applies to 17 U.S.C. 111 solely for the purposes of computing DSE values. In order to make these points clear, the Office is adding a new subparagraph (5) to § 201.17(f), which is concerned with computation of DSE's. The new language reads:

> (5) For the purposes of computing DSE values, specialty primary television transmitters in the United States and all Canadian and Mexican primary television transmitters shall be assigned a value of one.

4. *Part-time carriage log.* Under present Copyright Office regulations, cable systems are required to log in Space J of Statement of Account forms CS/SA–2 and CS/SA–3 their carriage on a part-time basis of specialty and late-night programming, and other part-time carriage where they lack the activated channel capacity to retransmit on a full-time basis all signals which they are authorized to carry. These logging requirements first were imposed in 1978 on the assumption that this information "may reasonably be relevant to the question of royalty distribution." (43 FR 960.) Since 1978, the CRT and the copyright claimants to the cable royalty pools have had practical experience in several royalty distribution proceedings. In light of this experience, the Copyright Office decided to review the underlying basis for these logging requirements. The review, however, was limited to form CS/SA–2 since the information on part-time carriage included in form CS/SA–3 remains essential to the royalty calculation process.

The Copyright Office heard testimony and received comments from eight diverse organizations in response to this inquiry. Of these groups, only the National Association of Broadcasters (NAB) advocated retention of the log, at least until the CRT and the claimants gain further experience in the distribution of royalties. The NAB also was critical of any distinction made between "form 2" and "form 3" systems noting that the degree of harm caused copyright owners or the benefits received by multiple "form 2" cable systems is equivalent to the harm and benefits accruing from one "form 3" system serving the same number of subscribers. Therefore, the NAB suggests that these systems be treated equally with respect to their filing requirements.

The Copyright Office takes no position on the validity of the NAB "harm-benefit" analysis. Notwithstanding, the Office proposes to eliminate the part-time carriage log from form CS/SA–2 for several reasons. First, the log is employed on form CS/SA–2 solely to provide information for the CRT royalty distribution proceedings, which have, to date, concentrated on cable systems filing form CS/SA–3. Second, the Office's interim regulation of May 20, 1982 (47 FR 21786) eliminated the part-time logging requirements for carriage of late-night and specialty programming, which should further reduce the utility of the log in the royalty distribution process. Finally, the proposal by the Copyright Office to clarify the occasions when a cable system may appropriately claim part-time carriage because of "lack of activated channel capacity," discussed *infra*, may further reduce the significance of the log.

5. *Lack of activated channel capacity.* The DSE definition permits a cable system that completes form CS/SA–3 to reduce the full DSE value of television broadcast stations carried on a part-time basis where "the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry * * *" (hereafter "LAC capacity"). During its examination of Statements of Account, the Copyright Office has noted several

instances where cable systems have employed this provision and, at the same time, appeared to be using one or more of their activated channels for services other than secondary transmissions (*e.g.*, local origination, subscription services, etc.). Because of the uncertainty surrounding the applicability of the LAC capacity provision in this circumstance, the Copyright Office sought the views of the interested parties.

The Office received testimony and comments from seven groups in response to this inquiry. Organizations representing cable operators commented favorably on the ability of a system to utilize "lack of activated channel capacity" as a basis to reduce the ordinary DSE value in the situation noted above. In particular, they contended that cable operators should not be obligated to pay royalties for full-time carriage when a signal is carried only part-time. They also noted that, under the recent FCC deregulation eliminating its distant signal limitations, it is no longer *possible* for a cable system to retransmit all signals which it may be *authorized* to carry. Thus, the cable spokesmen suggest that all "form 3" cable systems now should be able to apply this provision for any and all part-time carriage. On the other hand, representatives of copyright proprietors advocated a strict interpretation of the DSE definition to eliminate use of the LAC capacity provision in cases where non-secondary transmission services are provided by a cable system.

After a thorough review of the parties' comments and the Copyright Act and its legislative history, the Copyright Office has determined for the following reasons that the intent of the LAC capacity provision limits its application to occasions where *all* of a cable system's activated channel capacity is devoted to secondary transmissions. First, as has been discussed in detail in previous Copyright Office rulemakings relating to this issue, the Office has concluded "that Congress clearly did not intend to establish an open-ended policy of permitting the reduction of DSE values to correspond to actual signal carriage." (45 FR 45271). Acceptance of the cable industry's position on this matter would invariably lead to this unintended result. Second, the statute specifically provides that proration of a DSE under the guise of lack of activated channel capacity may be available only where it is not *possible* for a cable system to retransmit all signals which it is authorized to carry. While the Commission's deletion of its distant signal limitations theoretically negates any possibility of carriage by a cable system of all signals which it is authorized to carry, the devotion of one or more of a system's activated channels to non-secondary transmission services evidences a conscious decision by the cable operator to refrain from carrying as many secondary transmissions as otherwise possible.[14]

In order to effectuate this decision, the Office is adopting a new definition in § 201.17(b) to read as follows:

> (10) For purposes of this section, a cable system "lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry" only if: (A) All of its activated television channels are used exclusively for the secondary transmission of television signals; and (B) the number of primary television transmitters secondarily transmitted by the cable system exceeds the number of its activated television channels.

The Office also proposes to make corresponding modifications to the Statement of Account forms, by June 1984.

6. *Gross Receipts for "Basic Service"—the "Tiering Issue."* Section 111(d)(2) of the Act requires cable systems to compute their statutory royalty payments on the basis of their gross receipts paid by subscribers "for the basic service of providing secondary transmissions of primary broadcast transmitters." Cable systems have frequently questioned the appropriate determination of gross receipts in cases where: (1) The minimum service package includes services in addition to the retransmission of radio and television signals, or (2) secondary transmissions are included in various tiers of service packages upon payment of separate charges for each service package or "tier." Since the choice of service packages above minimum service ordinarily rests with the subscriber, different subscriber groups arise for a given tier of service. Cable systems frequently have urged to the Copyright Office that they should be allowed to allocate the gross receipts in some way to reflect the precise amounts received from subscriber groups for the "secondary transmission" services.

In 1978, the Copyright Office specifically addressed the meaning of "gross receipts" (43 FR 27828) with respect to the inclusion in minimum cable service of local origination services (such as time and weather and automated services). At that time, the Office concluded that a cable system could not allocate a portion of the monthly service fee to the local origination services and report only the balance as "gross receipts." The Office's rationale for this decision was that the origination and retransmission services are clearly part of an integral package offered to subscribers and that there is no statutory justification or basis for allocating the monthly fee.

The Copyright Office, in examining Statements of Account since 1978, has generally questioned any allocation of gross receipts where secondary transmission service has been combined with a non-broadcast service for a single subscriber fee for the package of services, either with respect to minimum service or through the tiered approach. If a cable system has reported gross receipts applying its own formula for allocation, however, the Office would not ordinarily be aware of this in examining Statements of Account, unless the cable system voluntarily disclosed to us its allocation of gross receipts.

Since 1978, many cable systems have made various satellite origination networks (such as CNN, ESPN, and USA) and other non-broadcast services available to their subscribers, sometimes in combination with secondary transmission service. When the copyright law was enacted in 1976, cable systems generally transmitted all of their secondary transmissions to their subscribers for a single monthly service charge. Computer micronization has led to the development of "addressable" channel converters enabling cable systems to offer their subscribers a wider range of program selection through different tiers of service consisting of a specified number of channels, purchasable by subscribers at various increments of cost.

In light of these developments, the NCTA suggested in its comments to the Office's July 3, 1980, rulemaking proceeding, that the Office reconsider its earlier decision concerning "gross receipts." The Office decided to consider the "tiering" issue in general, and, as part of the July 1981 hearing, the Copyright Office sought testimony and comments on the implications of tiering.

Many of the comments indicated that the issue is best addressed with respect to the determination of "gross receipts" rather than DSE's. Comments received from cable television operators asserted that cable systems should be required to include as part of their basic service "gross receipts," only that part of their minimum service or tiered revenues attributable to secondary transmission service. The NCTA suggested that, for purposes of simplicity, a cable system

[14] *See In re Arlington Telecommunications Corp.*, Memorandum Opinion and Order of the FCC, 84-87; No. 34233; (February 3, 1984).

should report its entire receipts for all tiers as part of its basic service "gross receipts" in cases where the tier contains any secondary transmissions, but application of these receipts in the royalty calculation process should be limited to that subscriber segment receiving the tiered signals rather than the system's total number of subscribers. On the other hand, representatives of professional sports and the MPAA opposed any allocation or apportionment of gross receipts by subscriber groups, as suggested by the NCTA or by any other method. Instead, these groups requested that the regulations specify that all gross receipts attributable either to minimum service or to any tier of service containing secondary transmissions must be included in the calculation of royalties for the entire cable system, and that the gross receipts and DSE's should be aggregated.

As noted, tiering marketing strategies were not fully contemplated when the current law was enacted. Accordingly, the statute does not specifically accommodate tiering. The Act provides no guidance whatsoever either to the Copyright Office or cable systems regarding the method [15] for attempting any allocation of gross receipts.[16] The Office has been given no specific delegation of regulatory authority to establish a method for allocation. Under the circumstances, the Office has doubted whether it has the authority to establish a method for allocation of gross receipts. Even if that authority could be found under the general rulemaking power of 17 U.S.C. 702, what allocation method would be fair to all interests, and what kinds of controls and verification would be needed to avoid abuse?

The 1982 cable rate adjustment tends to enlarge the Office's doubts about the appropriate method for allocation, if any, since certain signals will cost substantially more than others. Thus, the NCTA's suggestion that the royalty should be calculated based on the segregated revenues for each tier applied to the DSE's for that tier, rather than on aggregated gross receipts and DSE's, would seem open to substantial manipulation of signals and tiers.

The Copyright office has concluded that the Copyright Act does not permit any proration or other allocation of either DSE's or gross receipts by subscriber groups where any secondary transmission service is combined with nonbroadcast services in program packages, clusters, or tiers. We confirm in regulations the interpretation of the Copyright Act applied by the Licensing Division of the Office since 1978.

The Office recognizes that cable marketing practices have changed drastically since 1976, but the Office cannot provide the flexibility requested by cable systems absent guidance from the Congress or the courts. To a large extent, subject to arrangements with local franchising authorities, a cable system can control its own "tiering" destiny. The system can offer secondary transmission services solely as part of minimum service or on discrete tiers, excluding expensive origination services in either case.

Accordingly, the Office is amending the definition of gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" to specify that allocation is not permitted where broadcast and non-broadcast services are combined in separate packages or tiers, chargeable at a single fee for the combined service. Section 201.17(b)(1) as amended reads:

(1) Gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees. All such gross receipts shall be aggregated and the DSE calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services: Provided That, the origination services are not offered in combination with secondary transmission service for a single fee.

7. *All-band FM.* One of the most difficult issues that the Copyright Office has faced in administering the cable television compulsory license has concerned the appropriate identification of FM radio signals carried by a cable system on an "all-band" basis. In an effort to assure compliance by cable systems with their statutory responsibilities while minimizing burdensome monitoring by them, the Copyright Office adopted a two-pronged regulation in 1978. The first element of the regulation permits cable systems carrying "all-band" FM, to adopt monitoring systems such as the periodic use of a good FM receiver during optimum weather conditions for the area, which can *reasonably be expected* to identify radio signals meeting certain specified time and strength standards. The second part of the regulation requires these affected cable systems to describe in part 3 of Space H of the Statement of Account form the monitoring systems so employed.

As part of the July 1981 hearing, the Office sought testimony and comments on whether or not cable systems carrying "all-band" FM should continue to be required to describe their monitoring activities. All of the comments received on this point favored the elimination of this reporting requirement and the Office is deleting subclause (v) of the § 201.17(e)(10) of its regulations and will eliminate part 3 of Space H of the Statement of Account form accordingly. It should be emphasized, however, that cable systems which continue to retransmit FM radio signals on an "all-band" basis still are required to identify the signals so carried.

Representatives of National Public Radio (NPR), the American Society of Composers, Authors and Publishers (ASCAP), and the National Association of Broadcasters (NAB) expressed the view that, based on their examination of submitted Statements of Account, many cable systems either misunderstand or disregard the instructions relating to Space H. The commentators noted that some cable systems properly answer "No" in part 1, designating no "all-band" carriage, but then neglect to complete part 2 to indicate those radio signals which the cable system processed separately. The Copyright Office agrees that part 1 of Space H may result in some confusion and believes that it can

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[15] The first allocation question is whether allocation would be permitted with respect to minimum service received by all subscribers, as well as tiered services received by different subscriber groups. Secondly, in addition to the segmentation by subscriber groups proposed by NCTA, other methods might be: (1) Simple apportionment of revenues for each signal on a tier (a cable system might then "load-up" a secondary transmission tier with inexpensive or free program origination services, thereby diluting the amount of royalties due); (2) evaluation of the programming carried on certain tiers, with respect to the market value of the programming and/or the popular appeal of the signal, as measured by some marketing device. Another method, not relating to gross receipt allocation, would be to prorate the DSE to reflect the protion of subscribers receiving a secondary transmission (this method is contrary to the Office's interpretation of the Act that the DSE value cannot be prorated or allocated except as specifically provided in the definition itself).

[16] The Act permits allocation of gross receipts in one instance, unrelated to tiering: where a cable system is located partly within and partly without the local service area of a primary transmitter, gross receipts are allocated to reflect gross receipts derived from subscribers located outside the local service area of such primary transmitter. 17 U.S.C. (d)(2)(B)(iv). The Office has concluded that this provision, which is based on the fundamental distinction between distant and local signals, does not evince any congressional intent to allow allocation in the unrelated case of tiering.

be reduced through simplification of the Statement of Account form. Accordingly, the office intends to delete part 1 of Space H in its entirety and add a new column to part 2 for identifying a radio station that was electronically processed by the system as a separate and discrete signal.

ASCAP and NPR also noted problems which they have encountered during the CRT royalty distribution proceedings due to the lack of an adequate statutory or regulatory definition of "distant" radio carriage. The commentators have asked the Copyright Office to resolve this situation through the adoption in our regulations of a definition of "distant" radio carriage. The Copyright Office has decided not to act on this request. Section 111(f) of the copyright law provides in part that

> The "local service area of a primary transmitter," in the case of a radio broadcast station, comprises the primary service area of such station, pursuant to the rules and regulations of the Federal Communications Commission.

Carriage outside of this local service area constitutes "distant" carriage. The Office cannot provide the desired clarification.

8. *Specification of local television carriage.* Cable systems that complete Statement of Account form CS/SA-3 compute their statutory royalty payment on the basis of their carriage of distant non-network programming. For this purpose, a television station is considered as "local," and hence not considered in the calculation of royalties, if it "is entitled to insist upon its signal being retransmitted * * * pursuant to rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976" (*i.e.*, within Grade B contour, significantly viewed, etc.). Copyright Office regulations and Statement of Account forms CS/SA–2 and CS/SA–3 currently [17] require cable system operators to indicate whether television stations carried by them are "local" or "distant."

In their comments to the July 3, 1980, Copyright Office rulemaking proceeding, the MPAA suggested that cable systems also be required to specify the particular basis under which they classify particular television station carriage as local. The MPAA believes that this additional requirement would reduce the number of innocent errors in the designation of carriage and would enhance the reviewability of the Statement of Account forms by copyright proprietors and cable system operators. As part of our July 1981 hearing, the Copyright Office sought the views of other interested parties regarding this suggestion.

In response, the Office received comments from four groups of cable operators, all objecting to the suggestion. They noted that the information is presently readily available in FCC files and numerous cable television data publications.

Although the Office does not believe that the further specification of local television carriage would impose great burdens on cable operators, we have decided against adding this regulatory requirement in light of the availability of the information from other sources.

9. *Statement of Account forms and royalty computations.*

a. *CS/SA–2 forms.* Cable systems completing Statement of Account form CS/SA–2 compute their statutory royalty payments through use of either a seven- or eight-step mathematical formula set forth in Space L. In their comments to the July 3, 1980, Copyright Office rulemaking proceedings, the MPAA proposed that the Office adopt a simplified, four-step formula which, they suggest, achieves the same results as the present formulas. Prior to the July 1981 hearing, the Copyright Office published the proposed formula in the **Federal Register** (46 FR 30651) for comment and review.

During the hearing, both the MPAA and the NCTA testified that the proposed formula reached comparable results as the two somewhat longer formulas now used and, therefore, favored its adoption. On the other hand, comments received from two multi-system operators requested that the Copyright Office delay consideration of this matter until completion of judicial review of the CRT "inflationary" rate adjustment, which has now been sustained on appeal.[18]

Although the proposed formula is shorter than the two existing formulas, the Copyright Office believes that the benefits to be gained through simplification are minimal. Furthermore, the two existing formulas track the statutory language of the calculations as set forth in sections 111(d)(2) (C) and (D) of the statute, and, in the opinion of the Copyright Office, lead to a better understanding by cable operators of the royalty computation process under the compulsory license. The Copyright Office believes that this instructional aspect, in addition to its familiarity in use during the last eight accounting periods, far outweighs any benefits that may be derived through use of a simplified formula. Accordingly, the Office has decided to retain the two formulas as presently written.

b. *CS/SA–3 forms.* The MPAA has, for several years, also sought the revision of the royalty calculation process on form CS/SA–3 through the use of a table to convert total DSE's to percentage decimals. The Copyright Office suggests that representatives of the cable industry meet with copyright proprietors to develop joint recommendations concerning simplification of this calculation process.

c. *All forms.* In its July 1981 testimony, the MPAA pointed out that many combined "individual" cable systems often innocently report as several individual systems in violation of the statute and Copyright Office regulations. In an effort to detect and possibly avoid these innocent infractions, the MPAA recommended that: (1) The Statement of Account forms prominently set forth the circumstances when two or more individual systems must report as one system; (2) the system specify the location of its headend; and (3) the system provide its FCC-assigned "physical system" and "community name" code numbers.

The Copyright Office believes that the number of inadvertent "individual" filings has decreased since 1978 due, in part, to the better understanding by cable operators of their obligations under the compulsory license. Therefore, while the Office will continue prominently to include in the Statement of Account instructions the combined "individual" system filing requirements, we have decided against imposing additional filing requirements on cable operators, subject to our ongoing review of procedures to implement the 1982 cable rate adjustment.

d. *Special form for small systems.* Finally, one cable television operator suggested that the Copyright Office define "small" cable television systems as those serving fewer than 1,000 subscribers and allow more liberal reporting requirements for such systems.

The Office has attempted, throughout its administration of the compulsory license mechanism, to reduce the filing burdens imposed on smaller cable systems. the amendments included in this rulemaking attempt to continue this trend. However, the Office has no authority to waive or reduce certain statutory-prescribed filing requirements on the basis of the number of a cable system's subscribers.

* * * * *

[17] As discussed at point 4 *supra*, the Office is eliminating the part-time carriage log for CS/SA–2 systems in the final regulation.

[18] NCTA v. CRT, 689 F. 2d 1077 (D.C. Court of Appeals; 1982).

For the foregoing reasons, the Copyright Office is amending the stated portions of 37 CFR 201.11 and 201.17, effective June 1, 1984. The issues and policies covered by this rulemaking have been the subject of a public hearing and extensive public comment. The regulations are either interpretive of the Copyright Act or concern technical adjustments in the Statement of Account forms. In order to prepare the revised forms for publication in June 1984, the final regulations will be effective on June 1, 1984. The Office invites public comment specifically on the language of the final regulations, but they will be effective on June 1, 1984, in the form they are published today, unless the Office subsequently publishes a notice to the contrary. To the extent that the rules are interpretive of the Copyright Act and confirm past examining practices of the Copyright Office, the Office may cite these regulations in examining Statements of Account from today forward.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the United State Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[19] To the extent that the regulations are interpretive, moreover, they are not subject to the Regulatory Flexibility Act in any event.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that the regulations will have no significant impact on small businesses. The regulations primarily affect large MSO cable systems who file CS/SA–3 forms.

[19] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

List of Subjects in 37 CFR Part 201

Cable television, Copyright, Copyright Office.

Final Regulations

In consideration of the foregoing, Part 201 of 37 CFR Chapter II is amended in the manner set forth below.

A. Section 201.11 is amended as follows:

1. Paragraph (c)(2) of § 201.11 is removed in its entirety.

* * * * *

2. Paragraph (d)(4) of § 201.11 is removed in its enfirety and paragraph (d)(5) is redesignated paragraph (d)(4).

* * * * *

3. Paragraph (e)(2) of § 201.11 and accompanying footnote 5 are removed in their entirety.

4. Paragraph (e)(3) of § 201.11 is redesignated paragraph (e)(2) and is revised to read as follows:

§ 201.11 Notice of identity and signal carriage complement of cable systems.

* * * * *

(e) * * *

(1) * * *

(2) *Special (Required) Amendments for Certain Cable Systems.* Any cable system which records an Initial Notice of Identity and Signal Carriage Complement and is required by the last sentence of paragraph (c)(1)(iv)(B) of this section to record a special amendment shall, no later than one hundred and twenty days after recordation of the Initial Notice, record an amendment to that Notice identifying the primary transmitter or primary transmitters of FM signals generally receivable by the system as of the date of the amendment in accordance with paragraphs (c)(1)(iv) (A) and (B) of this section. Such amendment shall: (i) Be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specifically identify the Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; and (iii) be signed and dated in accordance with paragraph (c)(1)(v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.

* * * * *

5. The reference to "paragraph (e)(3)" in the last sentence of paragraph (B) of § 201.11(c)(1)(iv) is changed to read "paragraph (e)(2)."

* * * * *

B. Section 201.17 is amended as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

1. Paragraph (b)(1) of § 201.17 is revised to read as follows:

(b) *Definitions.* (1) Gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees. All such gross receipts shall be aggregated and the DSE calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services: Provided That, the origination services are not offered in combination with secondary transmission service for a single fee.

* * * * *

2. A new paragraph (b)(10) is added to § 201.17 and reads as follows:

* * * * *

(b) * * *

(10) For purposes of this section, a cable system "lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry" only if: (A) All of its activated television channels are used exclusively for the secondary transmission of television signals; and (B) the number of primary television transmitters secondarily transmitted by the cable system exceeds the number of its activated television channels.

* * * * *

3. Paragraph (e)(5) of § 201.17 is revised to read as follows:

* * * * *

(e) * * *

(5) The designation "Channels," followed by: (i) The number of channels on which the cable system made secondary transmissions to its subscribers, and (ii) the cable system's total activated channel capacity, in each case during the period covered by the Statement.

* * * * *

4. Paragraph (e)(8) of § 201.17 is revised to read as follows:

* * * * *

(e) * * *

(8) The designation "Services Other Than Secondary Transmissions: Rates," followed by a description of each package of service which consists solely of services other than secondary transmission services, for which a separate charge was made or established, and which the cable system furnished or made available to subscribers during the period covered by the Statement of Account, together with the amount of such charge. However, no information need be given concerning services furnished at cost. Specific amounts charged for pay cable programming need not be given if the rates are on a variable, per-program basis. (The fact of such variable charge shall be indicated.)

* * * * *

5. Paragraph (e)(9)(vii) of § 201.17 is revised to read as follows:

* * * * *

(e) * * *

(9) * * *

(vii) The information indicated by paragraph (e)(9), subclauses (v) and (vi) of this section, is not required to be given by any cable system that appropriately completed Form CS/SA–1 or Form CS/SA–2 for the period covered by the Statement.

* * * * *

6. Paragraph (e)(10)(i) of § 201.17 is revised to read as follows:

* * * * *

(e) * * *

(10) * * *

(i) A designation as to whether each primary transmitter was electronically processed by the system as a separate and discrete signal.

* * * * *

7. Paragraph (e)(10)(v) of § 201.17 is removed in its entirety.

* * * * *

8. Paragraph (f)(2) of § 201.17 is revised to read as follows:

* * * * *

(f) * * *

(2)(A) where a cable system carries a primary transmitter on a full-time basis during any portion of an accounting period, the system shall compute a DSE for that primary transmitter as if it was carried full-time during the entire accounting period.

(B) where a cable system carries a primary transmitter solely on a substitute or part-time basis, in accordance with subparagraph (3) of this paragraph (f), the system shall compute a DSE for that primary transmitter based on its cumulative carriage on a substitute or part-time basis. If that primary transmitter is carried on a full-time basis as well as on a substitute or part-time basis, the full DSE for that primary transmitter shall be the full DSE type value for that primary transmitter, for the entire accounting period.

* * * * *

9. A new paragraph (f)(5) is added to § 201.17 and reads as follows:

* * * * *

(f) * * *

(5) For the purposes of computing DSE values, specialty primary television transmitters in the United States and all Canadian and Mexican primary television transmitters shall be assigned a value of one.

* * * * *

10. The last sentence of § 201.17(g) is amended by removing the numerals "0.675" and substituting "0.799" in lieu thereof.

(17 U.S.C. 111, 702)

Dated: March 20, 1984.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 84-8511 Filed 3-30-84; 8:45 am]

BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-VI-FRL-2553-4]

Oklahoma Regulation 1.4—Air Resources Management—Permits Required

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice approves a revision to Oklahoma Air Pollution Control Regulation 1.4—Air Resources Management—Permits Required which adds 2 parts to subsection 1.4.1(c) Necessity to Obtain Permits. The revision was adopted by the Oklahoma State Board of Health on May 12, 1983, and submitted by the Governor on May 19, 1983. The purpose of the revision is to make subsection 1.4.1(c) clear. On September 23, 1983, the State submitted a letter of clarification on subsection 1.4.1(c)(3).

DATE: This action will be effective May 2, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Incorporation by reference material is available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NW., Washington, D.C., Rm. 8401.

Environmental Protection Agency, Public Information Reference Unit, EPA Library Rm. 2404, 401 M Street SW., Washington, D.C. 20460

Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270

Oklahoma State Department of Health, 1000 Northeast 10th Street, P.O. Box 53551, Oklahoma City, Oklahoma 73152

FOR FURTHER INFORMATION CONTACT: Kathryn Griffth, State Implementation Plan Section, Environmental Protection Agency, Region 6, Air and Waste Management Division, Air Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767–9853.

SUPPLEMENTARY INFORMATION: On May 19, 1983, the Governor of Oklahoma submitted a revision to Regulation 1.4—Air Resources Management—Permits Required. The revision adds two parts to subsection 1.4.1(c) Necessity to Obtain Permits to make it clear. EPA has reviewed the State's submittal and developed an evaluation report.[1] This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office and the other addresses listed above.

The State submitted a letter of clarification dated September 23, 1983, on subsection 1.4.1(c)(3) which clarified "minor significance." EPA's concern was whether or not a major source or modification could ever be of minor significance and therefore not require a permit. The letter of clarification states "A major source or modification could not be minor. Therefore, all major emission sources will have permits." Major sources or major modifications, as defined in Regulation 1.4 and approved by EPA, are required to have a permit. This exemption only applies to those other sources which are determined on a case by case basis to be of minor significance. EPA accepts the State's clarification. Therefore, EPA is approving the revision.

Since the revision included in this approval notice is considered

[1] EPA Review of Oklahoma State Implementation Plan Revision to Regulation 1.4—Air Resources Management—Permits Required.

administration in nature and minor in substance, EPA is approving this revision without prior proposal. The public should be advised that this action will be effective 60 days from the date of this Federal Register Notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Incorporation by reference of the State Implementation Plan for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by Reference.

Dated: March 21, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart LL—Oklahoma

1. Section 52.1920, is amended by adding paragraph (c)(29) as follows:

§ 52.1920 Identification of Plan.

* * * * *

(c) * * *

(29) Revision of Oklahoma Regulation 1.4—Air Resources Management—Permits Required was submitted by the Governors on May 19, 1983. A letter of clarification on subsection 1.4.1(c)(3) was submitted by the State on September 23, 1983.

[FR Doc. 84-8142 Filed 3-30-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-III-FRL-2555-8; EPA Docket No. 107-PA-10

Designation of Areas for Air Quality Planning Purposes Approval of Section 107 Designation for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today announcing the approval of a request submitted by the Commonwealth of Pennsylvania to redesignate the Lower Beaver Valley Air Basin (Beaver County) to a "Better than National Standards" status with respect to the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). This change is based on a dispersion modeling study and on eight consecutive calendar quarters of air quality monitoring data showing attainment.

EFFECTIVE DATE: May 2, 1984.

ADDRESSES: Copies of the revision and accompanying documents are available during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Management Branch, Curtis Building, 2nd floor, Sixth & Walnut Streets, Philadelphia, PA 19106. Attn: Eileen M. Glen

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120. Attn: Gary Triplett.

FOR FURTHER INFORMATION CONTACT: Eileen M. Glen (3AW11) at the EPA, Region III address above or call 215/597-8187.

SUPPLEMENTARY INFORMATION: The Pennsylvania Department of Environmental Resources has submitted to the U.S. Environmental Protection Agency (EPA), a request to redesignate the Lower Beaver Valley Air Basin (Beaver County, Pennsylvania) from nonattainment to "Better than National Standards" status for SO_2 under Section 107 of the Clean Air Act and 40 CFR Part 81.

The air quality data for January 1980 through the later part of 1982 indicate that this area shows no violations of the SO_2 air quality standards. EPA has examined the air quality data collected from the three monitoring sites used to demonstrate attainment and found that the data were collected in accordance with all EPA requirements. Also, the H.E. Cramer modeling study (EPA-903/9-81-001) has demonstrated SO_2 attainment for the Lower Beaver Valley Air Basin, considering the greater of either SIP allowable or actual emissions for the sources in that area.

EPA, on August 8, 1983, published a proposed rulemaking at 48 FR 35920 approving the redesignation. As a result of the Federal Register notice, EPA received two comments regarding the proposed redesignation for the Lower Beaver Valley Air Basin. One comment, received from a local company, was in favor of the redesignation and one comment, also received from a local company, was opposed to the redesignation.

In its letter dated September 6, 1983, the opposing company questioned both the emission inventory used for their boilers and the modeling results showing the impact of the individual sources. As a result, we requested the Pennsylvania Department of Environmental Resources (DER) review the emission factors and the validity of the modeling results used in the Cramer report.

In response to the emission inventory that was used, DER stated that the emission inventory was developed back in 1976 using the best available information and this was then projected to 1980 using reasonable operating levels and taking into consideration future modifications. Thus, the inventory developed was a 1980 compliance inventory and not an actual 1980 emission inventory as referred to by the Company. This inventory has been updated using 1980 data for not only this company but all the other sources in the Lower Beaver Valley. Using the revised emission estimates, attainment of the SO_2 standard was still predicted.

With respect to the comment regarding the modeling analysis, DER has stated, and EPA agrees, that the proximity of individual sources is one of the least contributing factors when modeling on both an annual and a short-term basis.

Conclusion

In view of these comments and DER's response, we find that sufficient cause to disapprove the proposed redesignation does not exist. Therefore, EPA is today approving Pennsylvania's request to redesignate the Lower Beaver

Valley Air Basin (Beaver County) to "Better than National Standards" status for SO_2. All other Section 107 designations for the Commonwealth of Pennsylvania remain intact.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of the Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

§ 81.339 Pennsylvania, Pennsylvania—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
V. Southwest Pennsylvania Intrastate AQCR				
*(C) Beaver Valley Air Basin (Beaver County)				X

[FR Doc. 84-8687 Filed 3-30-84; 8:45 am]

BILLING CODE 6560-50-M

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Intergovernmental relations.

Authority: Sec. 107, Clean Air Act (42 U.S.C. 7407).

Dated: March 23, 1984.

William Ruckelshaus,

Administrator.

PART 81—[AMENDED]

Part 81 of Title 40, Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designations

1. In § 81.339, Pennsylvania, the table entitled "Pennsylvania—SO_2", is amended by adding an "X" under the column head "Better than national standards" for Beaver Valley Air Basin (Beaver County) as follows:

40 CFR Part 145

[WH-FRL 2553-7]

Colorado Oil and Gas Conservation Commission; Underground Injection Control; Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Colorado has submitted an application under section 1425 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Class II oil and natural gas related injection wells. After careful review of the application and comments received for the public, the Agency has determined that the State's injection well program for Class II wells meets the requirements of Section 1425 of the Act. Therefore, this application covering Class II injections is approved.

EFFECTIVE DATE: April 2, 1984.

FOR FURTHER INFORMATION CONTACT: Richard Long, Ground Water Section, Drinking Water Branch, Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295. PH: (303) 837-3914. Copies of EPA's summary response to public comment are available at the above address.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which in his judgment a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The SDWA was amended on December 5, 1980, to include Section 1425, which establishes an alternative method by which a State may obtain primary enforcement responsibility for those portions of its UIC program related to the recovery and production of oil and natural gas (Class II wells). Specifically, instead of meeting the Federal Regulations (40 CFR Parts 124, 144, and 145) and related Technical Criteria and Standards (40 CFR Part 146), a State may demonstrate that its program meets the more general statutory requirements of Section 1421(b)(1) (A) through (D) and represents an effective program to prevent endangerment of underground sources of drinking water.

The State of Colorado was listed as needing a UIC program on September 25, 1978 (43 FR 43420). The State submitted an application under Section 1425 on May 3, 1983, for the approval of a UIC program governing Class II injection wells to be administered by the Colorado Oil and Gas Conservation Commission (COGCC). EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the UIC program submitted by the COGCC on July 10, 1983 (48 FR 26842). A public hearing was held in Denver, Colorado, on June 12, 1983. After careful review of this application and comments received from the public, I have determined that the Colorado UIC program submitted by the COGCC for Class II injection wells meets the requirements of Section 1425 of the SDWA, and hereby approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of Colorado. The requirements of this program include State statutes and regulations set forth at: Colo. Rev. Stat., 1973, § 34-60-101 *et seq.* (1983 Cum. Supp.); Colo. Rev. Stat., 1973, § 25-8-101 *et seq.* (1982); 2 Code of Colorado Regulations 404-1, Rules 101-529 (1983).

Since this action simply adopts as the Federal program the State laws and regulations already in effect, EPA is publishing this approval effective immediately. This will enable Colorado to begin immediately issuing UIC permits for Class II injection wells under the Federally approved program.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 145, which sets forth the requirements for a State requesting the authority to operate its

own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply.

In this application, Colorado chooses not to assert jurisdiction over Indian lands or reservations for purposes of its UIC program. Therefore, the EPA will, at a future date, prescribe a UIC program governing injection wells on any Indian lands or reservations.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under section 1425 of the Safe Drinking Water Act of the application by the Colorado Oil and Gas Conservation Commission will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

(42 U.S.C. 300)

Dated: March 27, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-8683 Filed 3-30-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6593]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 287-0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Maine: Worcester	Oakham, town of	250324B	Nov. 18, 1983, emergency; Apr. 3, 1984, regular; Apr. 3, 1984, suspended.	Aug. 2, 1974 and Aug. 20, 1976	Apr. 3, 1984
Berkshire	Williamstown, town of	250046B	Feb. 18, 1972, emergency; Aug. 15, 1977, regular; Apr. 3, 1984, suspended.	Feb. 8, 1974 and July 5, 1977	Do.
Region II					
New Jersey: Essex	Glen Ridge Borough, township of	340183B	Apr. 15, 1975, emergency; Apr. 3, 1984, regular; Apr. 3, 1984 suspended.	July 8, 1973 and June 11, 1976	Do.
New York: Westchester	Mamaroneck, village of	360916D	Mar. 24, 1972, emergency; Dec. 1, 1977, regular; Apr. 3, 1984 suspended.	Sept. 14, 1973, Jan. 16, 1976, Dec. 1, 1977, and Oct. 29, 1982.	Do.
Region III					
Pennsylvania: Delaware	Darby, township of	421603B	Nov. 8, 1974, emergency; Apr. 3, 1984, regular; Apr. 3, 1984, suspended.	Aug. 30, 1974 and Oct. 17, 1975	Do.
West Virginia: Mingo	Matewan, town of	545536B	Feb. 3, 1970, emergency; Feb. 3, 1970, regular; Apr. 3, 1984, suspended.	Feb. 3, 1970, July 1, 1974, and Dec. 26, 1975.	Do.
Region IV					
Florida: Martin	Ocean Breeze Park, town of	120163C	Apr. 15, 1976, emergency; Dec. 15, 1983, regular; Apr. 3, 1984, suspended.	Aug. 2, 1974 and Apr. 2, 1976	Do.
Region V					
Ohio: Montgomery and Warren.	Carlisle, Village of	390606A	Mar. 19, 1976, emergency; Apr. 3, 1984, regular; Apr. 3, 1984 suspended.	July 25, 1975	Do.
Champaign	Urbana, city of	390060B	Apr. 21, 1975, emergency; Apr. 3, 1984, regular; Apr. 3, 1984, suspended.	June 7, 1974 and May 28, 1976	Do.
Wisconsin: Dodge	Beaver Dam, city of	550095D	May 16, 1975, emergency; Apr. 3, 1984, regular; Apr. 3, 1984, suspended.	Dec. 17, 1973, Oct. 10, 1975, Sept. 24, 1976, and Jan. 1, 1978.	Do.
Region VI					
Louisiana: Cameron Parish.	Unincorporated areas	225194C	June, 12, 1970, emergency; Sept. 4, 1970, regular; Apr. 3, 1984, suspended.	Sept. 4, 1970, July 1, 1974, and Oct. 1, 1983.	Do.
Region VII					
Iowa: Mills	Emerson, city of	190202A	July 28, 1975, emergency; Apr. 3, 1984, regular; Apr. 3, 1984, suspended.	Dec. 13, 1974	Do.
Nebraska: Dakota	Homer, village of	310241B	Mar. 26, 1975, emergency; Apr. 3, 1984, regular; Apr. 3, 1984, suspended.	Sept. 6, 1974 and June 4, 1976	Do.
Region X					
Oregon: Douglas	Reedsport, city of	410065D	May 13, 1975, emergency; Apr. 3, 1984, regular; Apr. 3, 1984, suspended.	June 21, 1974, Apr. 23, 1976, and Aug. 23, 1977.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: March 23, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–8681 Filed 3–30–84; 8:45 am]

BILLING CODE 6718–03–M

Proposed Rules

Federal Register
Vol. 49, No. 64
Monday, April 2, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Exceptions to Notice and Comment Rulemaking Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would amend the Commission's rules of practice by revising Commission rulemaking procedures contained in 10 CFR 2.804 and 2.805 to clarify the Commission's use of the exceptions to notice and comment rulemaking contained in section 4 of the Administrative Procedure Act (5 U.S.C. 553(b)) This clarification is necessary in light of the U.S. Court of Appeals for the District of Columbia decision in *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, No. 82–2000 (D.C. Cir. June 30, 1983).

DATE: Comment period expires May 2, 1984. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

ADDRESS: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the Executive legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7688.

SUPPLEMENTARY INFORMATION: The U.S. Court of Appeals for the District of Columbia, in its recent decision in *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, No. 82–2000 (D.C. Cir. June 30 1983) (*"UCS* v. *NRC"*), vacated the Commission's rule of June 30, 1982 which amended operating licenses by removing the deadline for the environmental qualification of electrical equipment. 47 FR 28363, June 30, 1982. The D.C. Circuit held that by making the rule immediately effective instead of providing for notice and comment, the NRC had among other things, violated Commission regulations. This holding was based on language in 10 CFR 2.804 which the Court read, contrary to the Commission's interpretation, as a requirement for notice and opportunity for prior comment in all Commission rulemakings. The Court concluded that the NRC had divested itself of whatever discretion applicable statutes might allow for dispensing with notice and comment.

It is the Commission's intention in the present rulemaking to clarify its regulations so as to leave no doubt that the Commission does assert, to the extent allowable, its discretion under Section 4 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)) to make exceptions to the general requirements for notice and opportunity for comment in informal rulemaking.

In making this clarification, however, the Commission notes that the D.C. Circuit in *UCS* v. *NRC* had called into question the extent to which the Commission can lawfully claim such discretion. As an alternative reason for vacating the rule under review, the D.C. Circuit held that notice and hearing requirements in Section 189a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239a, prevented the Commission from relying on the APA "good cause" exception in the June 30, 1982 rulemaking. In the Commission's view, however, the Court's explanation of this holding left unclear whether the Court saw Section 189a as a general bar to use of the APA "good cause" exception in any NRC rulemaking affecting the activities of licensees or as a less sweeping restriction.

The Commission moved the D.C. Circuit to vacate this part of its opinion. The Commission noted to the Court that the discussion of the relation between Section 189a and the APA "good cause" exception was unnecessary to the result of the case, raised issues which had not been briefed, was ambiguous in its scope, and could if read broadly interfere severely with the Commission's ability to act promptly in the interest of public health and safety. The Court then called for simultaneous briefing by the parties on the availability of the APA "good cause" exception in Commission rulemaking. The Commission filed a brief which maintained that Section 189a does not restrict use of the "good cause" exception. The Union of Concerned Scientists argued that there was a virtually total bar to use of the exception. After receiving this additional briefing the Court on December 5, 1982 denied without opinion the Commission's motion to amend the decision, offering no further explanation or clarification of its holding, and ordered that its mandate should issue.

In these circumstances, the Commission believes it is reasonable to give the Court's opinion an interpretation no more restrictive than the language and the context appear to require. In addition, the Commission continues to hold the view that any reading of Section 189a which interferes with the Commission's ability to take immediate action affecting the activities of NRC licensees, whether by individual order or by rulemaking, when safety requires it, is contrary to the intent of Congress and is an erroneous interpretation of the Atomic Energy Act. A limitation on use of the APA "good cause" exception clearly has the potential for such interference and therefore should be interpreted narrowly. Accordingly, the Commission reads the language in *UCS v. NRC* relevant to the availability of the "good cause" exception as applying only to the kind of rulemaking under review in that case, *i.e.*, rules that amend reactor licenses, while leaving unaffected the Commission's authority under the APA to make other kinds of rules effective without prior notice and comment when there is good cause.

This reading of *UCS* v. *NRC* leaves intact for the most part the Commission's longstanding and consistent interpretation of its statutory authority and of the rulemaking procedures contained in 10 CFR Part 2, Subpart H, that the Commission could avail itself of the exceptions to notice and comment rulemaking contained in the APA for—

- Interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A); or

• When the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B)

The Commission sees no reason why this interpretation should not be reaffirmed, except as it is affected by *UCS* v. *NRC*. To assure that the regulation unambiguously reflects the Commission's intentions, the proposed rule would amend 10 CFR 2.804, and 2.805 to provide explicitly for Commission discretion to invoke in appropriate situations the APA exceptions to notice and comment rulemaking cited above, as permitted by law. Under the proposed rule, notice and comment will not be mandatory in Commission rulemaking within the scope of section 553 of the U.S. Code, when they involve interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or where the Commission for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. In response to the D.C. Circuit's opinion in *USC* v. *NRC*, however, the Commission proposes to include in Section 2.804(2) language providing that the APA exceptions to notice and comment rulemaking will apply only where notice and comment are not required by statute.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. It merely clarifies and affirms existing Commission practice on utilizing the statutory exceptions to notice and comment rulemaking contained in section 553(b) of the Administrative Procedure Act.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

Subpart H—Rulemaking

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239) Section 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Sections 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended. (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1437 (42 U.S.C. 2135).

2. In § 2.804, paragraph (a) is revised and a new paragraph (d) is added to read as follows:

§ 2.804 Notice of proposed rulemaking.

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the **Federal Register** a notice of proposed rulemaking, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

* * * * *

(d) The notice and comment provisions contained in paragraphs (a), (b), and (c) of this section will not be required to be applied—

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(2) When the Commission for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

3. In § 2.805, paragraph (a) is revised to read as follows:

§ 2.805 Participation by interested persons.

(a) In all rulemaking proceedings conducted under the provisions of § 2.804(a), the Commission will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Commission may grant additional reasonable opportunity for the submission of comments.

* * * * *

Dated at Washington, D.C., this 27th day of March 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-8717 Filed 3-30-84; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Parts 2 and 50

Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Reviews and Hearings for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: In response to a remand by the U.S. Court of Appeals for the D.C. Circuit, the Nuclear Regulatory Commission (NRC) proposes a rule which eliminates financial qualifications review and findings for electric utilities that are applying for operating licenses for utilization facilities if the utility is a regulated public utility or authorized to set its own rates.

DATE: Comment period expires June 1, 1984.

Comments received after that date will be considered if it is practical to do so, but assurances of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposal to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission

may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Carole F. Kagan, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (Telephone: (202) 634–1493).

SUPPLEMENTARY INFORMATION:

I. Background

On March 31, 1982, the Commission published a notice of rulemaking in the Federal Register (47 FR 13750) to amend the Rules of Practice for Domestic Licensing Proceedings, 10 CFR Part 2 (1982), and its substantive requirements governing Domestic Licensing of Production and Utilization Facilities, 10 CFR Part 50 (1982), to entirely eliminate requirements for financial qualifications review and findings for electric utilities applying for construction permits or operating licenses for production or utilization facilities. The background of this rule was detailed in the notice of rulemaking, as well as in the notice of proposed rulemaking, 46 FR 41786 (Aug. 18, 1981).

The New England Coalition on Nuclear Pollution and others petitioned for review of the rule in federal court under 28 U.S.C. 2342(4) (1976). Review was granted, and the U.S. Court of Appeals for the D.C. Circuit heard argument on February 23, 1983. On February 7, 1984, that court handed down a decision which remanded the rule to the Commission for clarification of its accompanying statement of basis and purpose. *New England Coalition on Nuclear Pollution* v. *NRC*, No. 82–1581 (D.C. Cir. Feb. 7, 1984).

The court found the Commission's explanation of the final rule internally inconsistent because, in the court's view, the reasons the Commission advanced for dispensing with the financial qualifications review for electric utilities would, if supported by the facts, apply generally to all license applicants and would not support a rule that singled out utilities for special treatment. The court found that in promulgating the final rule the Commission had abandoned the first premise on which the proposed rule had rested, *i.e.*, that regulated utilities were presumed financially able to construct and operate nuclear plants safely because of their regulated status.

Commenters on the proposed rule had questioned whether rate commissions could be counted on to support plant construction. Recent cancellations and deferrals of nuclear plants under construction do in fact suggest that a utility's status as a regulated entity does not by itself always ensure that the necessary funds will be forthcoming to complete construction. It does not necessarily follow from this that plants will be or are being constructed in an unsafe manner. However, the financial difficulties experienced at some plants under construction do suggest that elimination of financial qualifications reviews at the construction permit stage is a matter that will require further study by the Commission. There are no construction permit proceedings currently pending, so the matter of construction permit financial qualifications reviews is of small practical consequence. Given this fact, and the fact that any further study of possible elimination of construction permit financial qualifications reviews would delay a response to the court's remand, the Commission has decided that its response on remand will focus on financial qualifications reviews at the operating license stage. The part of the rule subject to the court's remand which eliminated financial qualifications reviews at the construction permit stage should be withdrawn pending further study. In effect, the old rule providing for construction permit reviews will be reinstated pending further study.

At the operating license review stage, however, the regulated status of electric utilities continues to provide a reliable basis for finding financial qualification. Here the focus is not on construction but on safe operation. The Commission believes that case-by-case review of financial qualifications for all electric utilities at the operating license stage is unnecessary for the following reason. Utilities are usually regulated through state and/or federal economic agencies, and generally are allowed to recover all or a portion of the costs of constructing generating facilities and all of the costs of operation, subject to the oversight of such state and/or federal agencies. *See, e.g., FPC* v. *Hope Natural Gas Co.*, 320 U.S.C. 519 (1944); *Bluefield Water Works and Improvement Co.* v. *Public Service Commission of the State of West Virginia*, 269 U.S. 679 (1923). These landmark court decisions established the principle that public utility commissions are to set a utility's rates such that all reasonable costs of serving the public may be recovered, assuming prudent management of the utility. Obviously, the funds needed to operate the plant in conformance with NRC safety regulations shoud be recoverable as reasonable costs of operation. The Commission believes it reasonable to conclude that, as a general rule, the rate regulation process assures for regulated electric utilities (or those able to set their own rates) the ability to meet the costs of safe operation of a nuclear power facility.[1]

Under the financial qualifications reviews at the operating license stage conducted under the original rule, the Commission has found in every case that the state and local public utility commissions could be counted on to provide all reasonable operating costs to licensees, including costs of compliance with NRC requirements associated with safe plant operation. As a result, electric utilities applying for operating licenses have invariably been found financially qualified. This case experience bolsters the Commission's conclusion that as a generic matter electric utilities should be presumed financially qualified to operate the nuclear plants they have constructed and that further case-by-case review on this issue is neither necessary nor productive.

Accordingly, the Commission propcses to eliminate the financial qualifications review at the operating license stage for nuclear power reactor operating license applicants who are regulated public utilities or who are authorized to set their own rates. The Commission proposes to retain its current review under § 50.33(f) at the construction permit stage, and at the operating license stage for applicants for any production or utilization facility licenses who are not electric utilities having either a regulated status or the authority to set their own rates for service. The § 50.33(f) financial qualifications review is also unchanged as to production or utilization facilities not covered by § 50.21b or § 50.22, *i.e.*, medical utilization facilities, research and development facilities, and testing facilities.

II. Invitation to Comment

The Commission seeks comment on this proposed rule. In addition, all interested parties are invited to comment on whether financial qualifications review might be eliminated completely for all license or permit applicants including, but not limited to, electric utilities, on the

[1] A study of state public utility commissions, the Federal Energy Regulatory Commission and publicly owned utilities is currently being conducted by the National Association of Regulatory Utility Commissioners to determine whether, historically, utilities which have requested rate increases or rate provisions for operating safety requirements have regularly received them. The results of the study are expected to be available before promulgation of the final rule. If this study should indicate that Commission is mistaken in its present view that the late process assures electric utilities the financial resources needed for safe operation, the Commission will of course reassess its position on the proposed rule.

ground that no link has been shown between financial qualification reviews and assurance of safety. The Commission's experience leads it to question whether pre-licensing reviews of applicants' future ability to pay for the cost of safety measures provide any significant additional assurance of safety beyond the assurance provided by the prelicensing review of facility structures, systems and components, operating and materials handling procedures, and technical qualifications, and by the Commission's inspection and enforcement program. However, the Commission has not conducted any detailed study to determine whether there exists any significant correlation between its financial qualifications reviews and later safe operation and use of nuclear materials. Therefore, the Commission does not propose such a rule at this time but might consider doing so later if there is adequate support. Commenters are invited to address this issue.

III. Additional Information That Can Be Required

By this proposed rule, the Commission does not intend to waive or relinquish its residual authority under Section 182a of the Atomic Energy Act of 1954, as amended, to require such additional information in individual cases as may be necessary for the Commission to determine whether an application should be granted or denied or whether a license should be modified or revoked. In addition, an exception to or waiver from the proposed rule precluding consideration of financial qualifications in an operating license proceeding could be made if, pursuant to 10 CFR 2.758, special circumstances are shown. For example, such an exception to permit financial qualifications review for an operating license applicant might be appropriate where a threshold showing is made that, in a particular case, the local public utilities commission will not allow the total cost of operating the facility to be recovered through rates.

IV. Practical Impacts

The proposed rule will, in normal circumstances, reduce the time and effort which the applicants, licensees, the NRC staff and NRC adjudicatory boards devote to reviewing the applicant's or licensee's financial qualifications in comparison to the rule which existed before March 31, 1982. The proposed rule aims at eliminating staff review at the operating license stage in cases where the applicant is an electric utility presumed to be able to finance activities to be authorized under the license. The rule will be applied both to ongoing licensing reviews and proceedings and to past proceedings subject to the remanded rule. The rationale for the proposed rule is in effect a generic determination that regulated public utilities are financially qualified to operate nuclear power plants. Accordingly, a decision by the Commission to make the proposed rule final will amount to a generic resolution of financial qualifications issues that may be pending in operating license proceedings involving electric utilities. NRC neither intends nor expects that the rule will affect the scope of any issues or contentions related to a cost/benefit analysis performed pursuant to the National Environmental Policy Act of 1969. Under NEPA, the issue is not whether the applicant can demonstrate reasonable assurance of covering certain projected costs, but what costs to the applicant of constructing and operating the plant are to be put into the cost-benefit balance. As is now the case, the rule of reason will continue to govern the scope of what costs are to be included in the balance, and the resulting determinations may still be the subject of litigation.

Commissioner Bernthal's Additional Views

As a general policy matter, I have always questioned whether the NRC has the necessary resources and expertise to justify its involvement in assessing financial qualifications of applicants. An assessment of financial qualifications, in my view, is clearly not required under the Atomic Energy Act (Section 182), which only requires an applicant to include such information in an application as the Commission, by rule or regulation, "may deem necessary to decide such of the . . . financial qualifications of the applicant . . . as the Commission may deem appropriate for the license." Thus, the option clearly lies with the Commission to determine whether any financial information is required for the Commission to carry out its public health and safety responsibilities.

Nor is it clear that the Commission has the capability to act on a wise and informed basis in making judgments of financial qualification. Such matters, in every case, ultimately remain within the purview of the state and local public utility commissions; no matter what finding the Commission might make in judging financial capability of a utility, the public utility commissions have final authority to render a Commission finding meaningless and inaccurate.

I do not believe that the NRC should second-guess the public utility commission of jurisdiction on the question of what constitutes financial qualification of an applicant. The principal question, therefore, is whether the task of the Commission to insure public health and safety would be rendered unacceptably more difficult by the possible financial inadequacy of a utility.

Should an applicant find itself in financial difficulty, its options are two: to delay or abandon the project, or alternatively, to cut corners on safety. There are no health and safety implications if applicant chooses the first course. If an applicant chooses the second course, that is clearly the Commission's concern.

However, denying a license for lack of financial qualification in this context means that the Commission would be prejudging the ability of applicant to construct and operate the plant consistent with public health and safety; the Commission would be denying a license because of *the possibility* that the applicant might cut corners on safety. That finding, in turn, must stem from a conclusion that the applicant *may* not have the requisite character and integrity to carry out its responsibilities pursuant to the Commission's regulations. Thus, the Commission would, in effect, be making an adverse finding on the character and integrity of the applicant without any basis for doing so other than financial status of the applicant. Denial of a license by the Commission on this basis would be arbitrary and capricious, and could in my view, be successfully challenged as such. As noted earlier, a judgment on an applicant also amounts to a judgment on the public utility commission of oversight jurisdiction. For these reasons, I question whether the Commission should require any financial review *unless* there is an independent concern about the management integrity of an applicant.

I urge special public attention and comment on the Commission's alternative proposal, i.e. that the Commission completely eliminate financial qualifications review for all license or permit applicants, including but not limited to electric utilities, not only on the grounds that no link has been shown between financial qualification review and assurance of safety, but because even having carried out such a review, the Commission is powerless to insure continued financial qualification of an applicant, or to predict what financial resources the public utility commission of jurisdiction might place at applicant's disposal.

I hope that the pending NARUC study, along with the public comments on the

proposed rule, will shed further light on the appropriate role of the Commission in judging financial qualification of license applicants.

Commissioner Asselstine's Additional Views

"Commissioner Asselstine adds that he does not believe that the Commission now has sufficient documented evidence to support a final rule to exclude financial qualification reviews at the operating license stage. However, he supports issuance of the proposed rule for public comment in the expectation that the NARUC study and other comments submitted on the proposed rule may provide the documentation needed to support a final rule."

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, OMB Approval No. 3150–0011.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule reduces certain minor information collection requirements on the owners and operators of nuclear power plants licensed pursuant to sections 103 and 104b of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, 2134b. These electric utility companies are dominant in their service areas. Accordingly, the companies that own and operate nuclear power plants are not within the definition of a small business found in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Classified information, Confidential information, Freedom of information, Hazardous materials, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Fire prevention, Classified information, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, the NRC is proposing to adopt the following amendments to 10 CFR Parts 2 and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134,2135,2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300–2.309 also issued under Pub. L. 97–415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 557.

Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.4, paragraph (s) is revised to read as follows:

§ 2.4 Definitions.

As used in this part,

* * * * *

(s) "Electric utility" means any entity that generates or distributes electricity and which recovers the costs of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and state and federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility."

3. In § 2.104, paragraph (c)(4) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(c) * * *

(4) Whether the applicant is technically and financially qualified to engage in the activities to be authorized by the operating license in accordance with the regulations in this chapter, except that the issue of financial qualifications shall not be considered by the presiding officer in an operating license hearing if the applicant is an electric utility seeking a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22;

* * * * *

4. In Appendix A to Part 2, paragraph (b)(4) of Section VIII is revised to read as follows:

Appendix A—Statement of General Policy and Procedure: Conduct of Proceedings for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing Is Required Under Section 189A of the Atomic Energy Act of 1954, as Amended.

* * * * *

VIII. Procedures Applicable to Operating License Proceedings

* * * * *

(b) * * *

(4) Whether the applicant is technically and financially qualified to engage in the activities to be authorized by the operating license in accordance with the Commission's regulations, except that the issue of financial qualifications shall not be considered by the board if the applicant is an electric utility seeking a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50–78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as

amended (42 U.S.C. 2201(b), §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 50.2, paragraph (x) is revised to read as follows:

§ 50.2 Definitions.

As used in this part,

* * * * *

(x) "Electric utility" means any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and state and federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility."

7. In § 50.33, paragraph (f) is revised to read as follows:

§ 50.33 Contents of applications; general information.

Each application must state:

* * * * *

(f) Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought. As applicable, the following should be provided:

(1) If the application is for a construction permit the applicant shall submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs. The applicant shall submit estimates of the total construction costs of the facility and related fuel cycle costs, and shall indicate the source(s) of funds to cover these costs.

(2) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility and estimates of the costs to permanently shut down the facility and maintain it in a safe condition. The applicant shall also indicate the source(s) of funds to cover these costs. An application to renew or extend the term of an operating license must include the same financial information as required in an application for an initial license.

(3) Each application for a construction permit or an operating license submitted by a newly-formed entity organized for the primary purpose of constructing or operating a facility must also include information showing:

(i) The legal and financial relationships it has or proposes to have with its stockholders or owners;

(ii) Their financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualifications.

(4) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to permanently shut down the facility and maintain it in a safe condition.

* * * * *

8. In § 50.40, paragraph (b) is revised to read as follows:

§ 50.40 Common standards.

* * * * *

(b) The applicant is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter. However, no consideration of financial qualifications is necessary for an electric utility applicant for an operating license for a utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

9. In § 50.57, footnote one is set out for the convenience of the reader and paragraph (a)(4) is revised to read as follows:

§ 50.57 Issuance of operating license.[1]

(a) * * *

(4) The applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations in this chapter. However, no finding of financial qualifications is necessary for an electric utility applicant for an operating license for a utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

10. In Appendix M to Part 50, paragraph 4.(b) is revised to read as follows:

Appendix M—Standardization of Design; Manufacture of Nuclear Power Reactors; Construction and Operation of Nuclear Power Reactors

* * * * *

4. * * *

(b) The financial information submitted pursuant to § 50.33(f) shall be directed at a demonstration of the financial qualifications of the applicant for the manufacturing license to carry out the manufacturing activity for which the license is sought.

* * * * *

Dated at Washington, D.C., this 28th day of March 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-8716 Filed 3-30-84; 8:45 am]

BILLING CODE 7590-01-M

[1] The Commission may issue a provisional operating license pursuant to the regulations in this part in effect on March 30, 1970, for any facility for which a notice of hearing on an application for a provisional operating license or a notice of proposed issuance of a provisional operating license has been published on or before that date.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Surety Bond and Insurance Coverage for Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to revise, update and simplify the existing § 701.20—Surety Bond and Insurance Coverage for Federal Credit Unions ("FCUs"). The proposal is issued pursuant to NCUA's ongoing program of regulatory review. Section 701.20 sets forth the requirements for surety bond coverage for losses caused by credit union employees and officials and for general insurance coverage for losses caused by persons outside of the credit union (e.g., losses due to theft, holdup or vandalism). The proposal would change

the requirement that each FCU board of directors conduct a semiannual review of bond and insurance coverage to a requirement for an annual review. It would also change the requirement for faithful performance bond coverage for all officers and employees. Under the proposal, faithful performance coverage would be required only of the financial officer of the credit union. Fraud and dishonesty coverage would continue to be required for all officers and employees. The proposal also contains new schedules for minimum bond and insurance coverage and maximum deductibles. The regulation has been rewritten in plain English and portions of the regulation that are redundant with the Federal Credit Union Act ("Act") and/or regulations have been deleted.

DATE: Comments must be received on or before June 4, 1984.

ADDRESS: Send comments to Rosemary Brady, Secretary, NCUA Board, 1776 G Street, NW., Washington, D.C., 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Director, Department of Legal Services, or Hattie Ulan, Staff Attorney, NCUA, at the above address or Telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

1. Background

The Act sets forth statutory requirements for the bonding of credit union employees and appointed and elected officials. (*See* Sections 112, 113(2) and 120(h) of the Act, 12 U.S.C. 1761a, 1761b(2) and 1766(h).) The NCUA Board is directed to promulgate regulations setting forth both the amount and character of bond requirements for employees and officials. The Act requires a bond for faithful performance coverage of the financial officer of the credit union. The NUCA Board is also granted the following powers concerning bonding:

To approve bond forms;

To set minimum requirements for bond coverage;

To require such other surety coverage as the Board may determine to be reasonably appropriate;

To approve a blanket bond in lieu of individual bonds; and

To approve bond coverage in excess of minimum surety coverage.

In addition, NCUA's general rulemaking authority provides a statutory basis for both the bonding requirements of § 701.20 and the insurance coverage requirements related to losses caused by persons outside the credit union (*see*, Sections 120(a) and 290(a)(11) of the Act, 12 U.S.C. 1766(a), 1789(a)(11)).

On June 2, 1981, the NCUA Board published a proposed regulation in the **Federal Register** (47 FR 29482) simplifying the current regulation and establishing new minimum coverage and deductible requirements. A final rule was not promulgated. At this time, the NCUA Board is again requesting comments on a new proposed surety bond and insurance coverage regulation. This proposal is similar to the one made in 1981. The major distinction is that this proposal, if adopted, would eliminate required faithful performance coverage for all officials and employees, except for the financial officer.

2. Present Regulation and Proposed Changes Thereto

The following lettered paragraphs first describe the current regulation and then describe and analyze the proposed change.

a. *Scope section.* New 701.20(a)—The present regulation does not contain a scope section. It is being added by this proposal to clearly describe what is covered by the regulation. The regulation only addresses surety bond coverage for losses caused by credit union employees and officials and general insurance coverage for losses caused by persons outside of the credit union (e.g., protection for losses due to theft, holdup or vandalism). This regulation does not address account insurance coverage by the National Credit Union Share Insurance Fund. Account insurance coverage is addressed in Part 745 of NCUA's regulations, 12 CFR Part 745. Nor does the regulation address insurance coverage for losses due to fire or disturbances of nature (e.g., for losses due to hurricane or earthquake). This is not to say that the NCUA Board believes that fire and disaster insurance are not appropriate for FCUs. Rather, NCUA has chosen not to set specific requirements for such insurance through regulation. Such insurance is obtained in the normal course of business. The decision as to the precise nature and amount of coverage is left to the business judgment of each FCU.

b. *Review of coverage.* Present 701.20(a)—Requires the board of directors to conduct a semiannual review of all insurance coverages, including surety coverage.

Proposed Change—New 701.20(b)—The proposal requires that the board of directors conduct an annual rather than a semiannual review. It is incumbent upon each board of directors to carefully review coverages, deductibles and costs when designing a surety and insurance program that both meets the minimum requirements of NCUA's regulation and most efficiently deals with the risks of operating the credit union. Critical to any decision on surety coverage is the need to ensure that the credit union's solvency is not impaired by a non-covered loss. Safety and soundness considerations would dictate that each credit union's board of directors perform at least an annual review of surety and insurance coverage. Rapid growth in a given credit union or other circumstances may dictate a more frequent review.

c. *Faithful performance coverage.* Present 701.20(b)—Requires that all surety bonds provide faithful performance of duty coverage for any officer or employee while performing any of the duties of the treasurer. The bond forms approved under the current regulation extend coverage for faithful performance to *all* credit union employees and officials, excluding directors acting as directors. The approved bond forms also provide coverage for the fraud or dishonesty of all employees and officials.

Proposed Change—New 701.20(c)—Pursuant to Section 112 of the Act, only the board-elected financial officer is *required* to give a bond conditioned upon the faithful performance of his/her trust. (The Act was amended in 1982 to require this bond of the financial officer rather than the treasurer.) Thus, the regulation and approved forms, in requiring the coverage for all employees and officials, exceed the minimum requirement of the Act. Also, this coverage, as compared to fraud and dishonesty coverage, imposes a strict standard of care that court decisions have interpreted to include coverage for the bonded officer's negligence. It has been suggested to NCUA that this coverage is becoming prohibitively expensive, that the requirement for this coverage is keeping potential underwriters out of the marketplace for credit union bonds, and that the coverage is inconsistent with the bond standards that exist in financial institutions generally. Accordingly, as a means of obtaining comment on these issues, the Board has proposed to eliminate the faithful performance coverage requirement for officials and employees other than the financial officer. Of course, the requirement for coverage of the financial officer cannot be eliminated by regulation inasmuch as it is imposed by the Act. In this connection, the proposed regulations defines financial officer as the official of the credit union responsible for performing the duties of the financial officer as prescribed in Article VIII, Section 5 of the Federal Credit Union

Bylaws. If a final change is adopted, the approved bond form will be revised in conjunction with the final regulation. It is noted both that the NCUA Board would retain the authority to require more than the minimum coverage in individual cases (see section 120(h) of the Act) and that each FCU board would retain the ability to obtain faithful performance coverge for other officials and employees.

d. *Fraud and dishonesty.* New 701.20(c)—Section 113(2) of the Act requires that any FCU officer or employee handling funds give a bond in compliance with regulations of the Board. Section 120(h) of the Act requires that every person appointed or elected by an FCU to a position requiring the receipt, payment or custody of the FCU's money or personal property give bond with reference to loss by reason of fraud or dishonesty on a form approved by the Board. The current regulation does not contain a fraud or dishonesty requirement, but such coverage is provided for in the bond forms approved in the regulation. The Proposal contains a requirement for all employees, committee members and directors to give bond covering their fraud or dishonesty. This change will simply make the regulations and approved bond language consistent with each other.

e. *Bond forms.* Present 701.20(c)—Section 120(h) of the Act directs that the NCUA Board approve bond forms prior to their use by FCUs. Section 701.20(c) implements this requirement. This section provides that only NCUA Board-approved bond forms may be used and establishes Standard Form 23 as the minimum acceptable coverage. It also provides approval for other types of blanket bond forms.

Proposed Change—New 701.20(c)—While the language of this section is simplified, the content remains basically unchanged. In addition to Credit Union Blanket Bond Form No. 23, Credit Union Blanket Bond Forms 576, 577, 578, 579, 580 and 581 are approved in the current regulation. Each approved bond provides both the surety and insurance coverages required by the Act and NCUA's regulations. Bond Form 581 is by far the most common bond form in use today. The NCUA Board believes that bond forms 576, 577, 578, 579 and 580 may not be in use at all. For that reason the NCUA Board proposes that the approval of Forms 576, 577, 578, 579, and 580 be revoked in the final regulation. Specific comments are requested on the proposed revocation of these bond forms. If the forms are in use, their approval will not be revoked. Bond Forms 23 and 581 and any other forms approved in the final regulation will be revised prior to the effective date of any final regulation to reflect any change in who must be bonded for faithful performance.

f. *Certificate of authority.* Present 701.20(d)—Requires that Federal credit unions obtain bond coverage from companies which hold a cerificate of authority from the Secretary of the Treasury.

Proposed Change—Deletion—This section is proposed to be deleted because it duplicates the language in Section 120(h) of the Act. It should be borne in mind that the requirement itself remains in force.

g. *Cash fund and cash in transit.* Present 701.20(e)—Requires that coverage be increased to the greater of the FCU's daily cash fund or cash in transit when either exceeds minimum requirements. The increased coverage must be obtained within thirty days after discovery of the need for the increase.

Proposed Change—New 701.20(e)—While the language of this section is simplified, the content remains unchanged. This section remains necessary so that an FCU will be insured for its entire potential loss of cash should one of the insuring clauses of the bond be invoked (less any applicable deductible). If an FCU is robbed the bond will cover the entire potential loss under this section of the regulation.

h. *Minimum coverage.* Present 701.20(f)—Establishes a schedule of minimum surety and insurance coverages for FCUs according to asset size and fixes responsibility with the board of directors of each FCU to ensure adequate coverage.

Proposed Change—New 701.20(d)—The schedule of minimum coverages is simplified. While the schedule would appear to increase the minimum required coverage for credit unions with less than $50,000 in assets, this is not expected to have any practical impact inasmuch as it is NCUA's understanding that the actual bonds on these credit unions are routinely written in amounts equalling or well in excess of their assets. Comment is of course welcome on this point. The minimum coverage for FCUs with between $50,000 and $1,000,000 in assets is decreased. Credit unions with more than $50,000,000 in assets have a slight decrease in required bond coverage. The ceiling of $5,000,000 on minimum coverage requirements has been retained. The following tables show the minimum coverages from the current regulation and the proposal:

CURRENT REGULATION

Assets	Minimum coverage
$0 to 5,000	$1,000
$5,001 to $10,000	2,000
$10,001 to $20,000	4,000
$20,001 to $30,000	5,000
$30,001 to $40,000	9,000
$40,001 to $50,000	10,000
$50,001 to $75,000	15,000
$75,001 to $100,000	20,000
$100,001 to $150,000	30,000
$150,001 to $200,000	40,000
$200,001 to $300,000	50,000
$300,001 to $400,000	60,000
$400,001 to $500,000	70,000
$500,001 to $750,000	85,000
$750,001 to $1,000,000	100,000
$1,000,001 to $50,000,000	[1]100,000
$50,000,001 to $150,000,000	[2]2,500,000
Over $150,000,000	5,000,000

[1] Plus $50,000 for each million or fraction thereof of assets over $1,000,000.
[2] Plus $25,000 for each million or fraction thereof of assets over $50,000,000.

PROPOSAL

Assets	Minimum bond
$0 to $10,000	Coverage equal to the credit union's assets.
$10,001 to $1,000,000	$10,000 for each $100,000 or fraction thereof.
$1,000,001 to $50,000,000	$100,000 plus $50,000 for each million or fraction thereof over $1,000,000.
$50,000,001 to $295,000,000.	$2,550,000 plus $10,000 for each million or fraction thereof over $50,000,000.
Over $295,000,000	$5,000,000

A credit union may choose to have more than the minimum surety and insurance coverage if deemed appropriate by its board of directors. Section 120(h) of the Act requires the NCUA Board to set reasonable standards for bond coverage. The NCUA Board believes that the proposed changes in minimum coverage will give each board of directors more flexibility while at the same time maintaining the requirement in the Act for reasonable standards. Beyond these minimum standards, it is the board of directors' duty to ensure that areas of risk or loss exposure under each surety or insuring clause are covered in an amount necessary to protect the credit union.

i. *NCUA Board approval for reduced coverage.* Present 701.20(g)—Establishes that the schedule provided in Section 701.20(f) is the minimum coverage for all surety bonds for Federal credit unions and requires that reduced coverage have the prior approval of the NCUA Board.

Proposed Change—New 701.20(g)—The language of this section of the present regulation is redundant with the Act and other sections of the regulation. Therefore, most of the verbiage has been deleted in the proposal. The information concerning mandatory advanced approval for credit unions seeking a

reduction in minimum coverage is retained in the proposal.

j. *Deductibles.* Present 701.20(h)—Establishes a schedule of permissible deductibles for required coverages, prohibits deductibles for dishonesty and lack of faithful performance and requires that increased deductibles have the prior approval of the NCUA Board.

Proposed Change—New 701.20(h)—Two alternative new deductible schedules are set out in this section. The first appeared in the 1981 proposal. The second was informally suggested to NCUA by an underwriter of credit union surety bonds. Comments and preferences on these two options are requested. Both options represent substantial changes from the current regulation. First, the maximum amount of deductible has been increased, and second, the deductible has been made permissible for any bond coverage, including loss due to lack of faithful performance and fraud or dishonesty. Both options allow an FCU's board of directors more flexibility in making rational economic decisions on coverage versus risk. At the same time the proposals do not allow the deductible to become so large as to endanger an FCU's safety and solvency. It is hoped that these changes will aid in preventing the steady escalation of premium costs. The following tables show the deductibles allowed under the present regulation and the two options set out in the proposal:

CURRENT REGULATION

Assets	Maximum deductible
$0 to $100,000	No deductible allowed.
$100,001 to $250,000	$500.
$250,001 to $5000,00	$750.
$500,001 to $750,000	$1,000.
$750,001 to $1,000,000	$1,500.
$1,000,001 to $2,000,000	$2,000.
$2,000,001 to $3,000,000	$3,000.
$3,000,001 to $5,000,000	$4,000.
Over $5,000,000	$5,000.

PROPOSAL—OPTION A

Assets	Maximum deductibles
$0 to $100,000	No deductible allowed.
$100,001 to $250,000	$1,000.
$250,001 to $1,000,000	$2,000.
Over $1,000,000	$2,000 plus 1/1000 of total assets up to a maximum deductible of $200,000.

PROPOSAL—OPTION B

Assets	Maximum deductibles
Less than $500,000	$1,000.
$500,000 to $5,000,000	$5,000.
$5,000,001 to $10,000,000	$10,000.
$10,000,001 to $25,000,000	$15,000.

PROPOSAL—OPTION B—Continued

Assets	Maximum deductibles
$25,000,001 to $50,000,000	$20,000.
$50,000,001 to $100,000,000	$25,000.
Over $100,000,000	$100,000.

The proposed regulation retains the provision of the present rule that no deductible may exceed ten percent of an FCU's Regular Reserve unless a Contingency Reserve for the amount of the deductible is set aside. While a credit union with little or no reserves may be well operated and solvent, there may not be enough capital to write off the deductible portion of the loss and the uncovered loss would impair the soundness of a credit union.

3. Federally Insured State Chartered Credit Unions

Part 741 of NCUA's regulations requires, as a condition of account insurance coverage by the National Credit Union Share Insurance Fund (NCUSIF), that a credit union possess the minimum bond coverage stated in Section 701.20. Thus, the proposed changes to Section 701.20 would affect state chartered credit unions whose accounts are insured by NCUSIF. The Board welcomes comments from those credit unions and their state supervisory authorities on the advisability of the proposed changes.

Regulatory Procedures

The NCUA Board has determined and certifies that the proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small credit unions because the proposed regulation reduces restrictions, lowers minimum coverage requirements and increases management flexibility. Therefore, a regulatory flexibility analysis is not required. Since the proposed rule would relieve burdens and delays would cause unnecessary harm, the NCUA Board also finds that full and separate consideration of all of the requirements of the Financial Regulation Simplification Act is impractical. Most of these policies, however, have been considered by the NCUA Board as set forth in the above discussion.

List of Subjects in 12 CFR Part 701

Credit unions, Surety bonds.

Authority: 12 U.S.C. 1761a; 12 U.S.C. 1761b; 12 U.S.C. 1766 (a) & (h); 12 U.S.C. 1789(a)(11).

Dated: March 22, 1984.

Rosemary Brady,

Secretary of the Board.

PART 701—[AMENDED]

It is proposed that § 701.20 of the NCUA Rules and Regulations be revised to read as follows:

§ 701.20 Surety Bond and Insurance Coverage for Federal Credit Unions.

(a) *Scope.* This Part provides the requirements for surety bonds for credit union employees and officials and for general insurance coverage for losses caused by persons outside of the credit union (protection for losses due to theft, holdup, vandalism, etc.).

(b) *Review of coverage.* The board of directors of each Federal credit union shall, at least annually, carefully review the bond and insurance coverage in force in order to ascertain its adequacy in relation to risk exposure and to the minimum requirements fixed from time to time by the Board.

(c) *Minimum Coverage; Approved Forms.* Every Federal credit union will maintain bond and insurance coverage with a company approved by the NCUA Board. Credit Union Blanket Bond Standard Form No. 23 of the Surety Association of America (revised to May, 1950) plus new Faithful Performance Rider (faithful performance coverage for the individual charged with the responsibilities of the financial officer set forth in Article VIII, Section 5 of the Federal Credit Union Bylaws) is considered the minimum coverage required and is approved. Credit Union Blanket Bond Form 581 (with new faithful performance rider) is also approved. Any other form must receive the prior written approval of the NCUA Board. All surety bonds must provide faithful performance of duty coverage for the financial officer elected by the board of directors. Surety bonds must provide coverage for the fraud and dishonesty of all employees, directors, officers, and supervisory and credit committee members.

(d) *Minimum Coverage Amounts.* The minimum amount of bond coverage required will be computed based on the credit union's total assets. The following table lists the minimum requirements:

Assets	Minimum bond
$0 to $10,000	Coverage equal to the credit union's assets.
$10,001 to $1,000,000	$10,000 for each $100,000 or fraction thereof.
$1,000,001 to $50,000,000	$100,000 plus $50,000 for each million or fraction thereof over $1,000,000.
$50,000,001 to $200,000,000	$2,550,000 plus $10,000 for each million or fraction thereof over $50,000,000.

Assets	Minimum bond
Over $295,000,000	$5,000,000

It is the duty of the board of directors of each Federal credit union to provide adequate protection to meet its unique circumstances by obtaining, when necessary, bond and insurance coverage in excess of the above minimums.

(e) *Increased Coverage, Cash On Hand Or In Transit.* When either of the following amounts exceed a Federal credit union's minimum coverage limits as specified in paragraph (d) of this regulation, the minimum coverage limits for that Federal credit union will be increased to be equal to the greater of the following amounts within thirty days of the discovery of the need for such increase:

(1) The aggregate amount of the daily cash fund (change fund plus maximum anticipated daily receipts) and food stamps (if any), on the Federal credit union's premises, or

(2) The aggregate amount of the Federal credit union's money, currency, coin, banknotes, Federal Reserve notes and food stamps (if any) placed in transit in any one individual shipment.

(f) *Increased Cash Coverage; Exception.* Subsection (e) notwithstanding, no increase in coverage will be required where a Federal credit union temporarily increased its cash fund because of an extraordinary event which reasonably cannot be expected to recur.

(g) *Reduced Coverage; NCUA Approval.* Any proposal for reduced coverage must be approved in writing by the NCUA Board at least 20 days in advance of the proposed effective date of the reduction.

(h) *Deductibles.* (1) The maximum amount of deductibles allowed are based on the credit union's total assets. The following table sets out the maximum deductibles:

OPTION A

Assets	Maximum deductible
$0 to $100,000	No deductibles allowed.
$100,001 to $250,000	$1,000.
$250,001 to $1,000,000	$2,000.
Over $1,000,001	$2,000 plus 1/1000 of total assets up to a maximum deductible of $200,000.

OPTION B

Assets	Maximum deductibles
Less than $500,000	$1,000
$500,000 to $5,000,000	5,000
$5,000,001 to $10,000,000	10,000
$10,000,001 to $25,000,000	15,000
$25,000,001 to $50,000,000	20,000

OPTION B—Continued

Assets	Maximum deductibles
$50,000,001 to $100,000,000	25,250
Over $100,000,000	100,000

(2) A deductible may be applied separately to one or more insuring clauses in a blanket bond. Deductibles in excess of those shown in this section must have the written approval of the NCUA Board at least 20 days prior to the effective date of such deductibles.

(3) No deductible will exceed ten percent of a Federal credit union's Regular Reserve unless the credit union creates a segregated Contingency Reserve for the amount of the deductible. Valuation allowance accounts, e.g., allowance for loan losses, may not be considered part of the Regular Reserve when determining the maximum deductible.

(i) *Additional Coverage.* The NCUA Board may require additional coverage for any Federal credit union when, in the opinion of the Board, current coverage is insufficient. The board of directors of the Federal credit union must obtain additional coverage within 30 days after the date of written notice from the NCUA Board.

[FR Doc. 84-8682 Filed 3-30-84; 8:45 am]
BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In conjunction with an SBA notice of policy published concurrently in the **Federal Register** which authorizes deposits in small minority owned and controlled financial institutions (as defined in that notice as specific commercial banks and savings and loan associations) to qualify as subcontracts for purposes of meeting subcontracting goals and credits, this size standard is needed to establish what constitutes a small financial institution. This regulation would establish, upon publication in final form in the **Federal Register**, a size standard applicable to financial institutions. SBA has determined that a financial institution with assets of not more than $100 million will be considered small.

DATE: Comments will be received until June 1, 1984.

ADDRESS: Comments should be addressed to Andrew A. Canellas, Director, Size Standards Staff, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Andrew A. Canellas; (202) 653-6373.

SUPPLEMENTARY INFORMATION: SBA has set forth a notice of policy with respect to the interpretation of sections 8(d) and 15(g) of the Small Business Act, 15 U.S.C. 637(d) and 644(g). This policy broadens the definition of the term "subcontract" for purposes of these sections. It permits contracts for provision of specified services by small minority owned and controlled financial institutions to qualify as subcontracts for purposes of meeting subcontracting goals and credits. Consequently, a size standard is needed for financial institutions to establish which minority financial institutions are to be considered small for purposes of that notice.

Several minority banks have indicated to SBA that permitting contracts for financial services, including deposits, by prime contractors with minority financial institutions to meet subcontracting goals and credits is urgently needed to sustain the minority banking community. Furthermore, in SBA's opinion such a position will result in enhanced availability of capital to small and minority owned businesses since the financial institutions providing such services will be better able to service these businesses. This is the case because of the "pass-through effect" that additional deposits in minority financial institutions would have on minority businesses. The pass-through effect presumes that more money deposited in minority financial institutions would make more loans available at more favorable terms to minority bsuinesses and individuals because such businesses and individuals are likely to be located in the vicinity of minority financial institutions. This would result in aiding the development of minority businesses, which is also urgently needed. Such a position by SBA is consistent with the letter and intent of section 7(j)(9) of the Small Business Act.

Rationale for the Rule

SBA has determined that a size standard for financial institutions should be based upon the assets of the financial institution since this is a commonly accepted measure of bank size. In a study of bank size and financial performance by Kolari and Fraser done for SBA entitled "Size and

Financial Performance in Banking," the authors note the "inherently arbitrary dichotomy between small and large banks." While this may be so, there is a rought consensus among persons who write about banking and size distinctions. SBA reviewed several opinions regarding the size of a small bank. These opinions come from various articles which generally examine banks' performance, industry structure, and competition.

These opinions indicate that the range of $25–$100 million in assets constitutes a small bank. Within this range, data compiled by the Federal Deposit Insurance Corporation permit examination of three size classes: $25, $50, and $100 million. As indicated in Table 1 below, about 85 percent of all banks have assets of less than $100 million, and the average bank size is $149 million in assets.

Data on minority-owned bank sizes have been provided to SBA by the Federal Reserve System. Table 3 below has been constructed from these data. The differences in assets between all banks, Table 2 below, can thus be compared to Table 3 for minority-owned banks. As expected, minority banks generally have less assets, and control of assets is more dispersed among a greater number of these banks. Average size is $43 million in assets compared to $149 million for all banks.

After inspection of this data, various size standards for a small bank were considered by SBA's Size Standards Staff. Clearly a size standard of $25 million in assets would be too small, as it encompasses only 4 percent of all bank assets and 16 percent of minority bank assets. At the other extreme, a size standard of $300 million in assets is so large that most states have only a few banks in this size category. In addition, there are only two minority-owned banks with $300 million in assets.

The two other size standard candidates are $50 and $100 million, both within the range suggested above in the cited articles. On average, a bank with $50 million in assets would do business from a head office and one branch; at $100 million in assets, a second or third branch might be added, although this varies considerably. The $100 million bank is also more likely to be capable of handling electronic funds transfers, a faster paperless way of handling money.

Banks of $50 million or less in assets have 9 percent of all assets; for $100 million, this increases to 17 percent and includes 85 percent of all banks. For minority banks, 38 percent of assets are in banks having $50 million in assets or less; 64 percent are in banks having $100 million in assets or less, representing 95 percent of minority-owned banks. For minority-owned banks, a size standard of $50 million would include 73 of 96 banks; at $100 million, 89 banks would be included.

SBA thus proposes that a size standard of $100 million in assets is within the range suggested by the available data. It falls midway between the $149 million all bank and $43 million minority bank average sizes; should be large enough to handle electronic funds transfer, yet excludes several of the largest minority-owned banks. This size standard would exclude only the largest 15 percent of all financial institutions in the United States, which clearly are not in need of the benefits available by being categorized as small. This standard would result in making the minority banking program, for which this rule is being proposed, available to all but the 7 largest minority-owned banks. For these reasons, SBA proposes that a financial institution with assets of not more than $100 million will be considered small.

For purposes of Executive Order 12291 and the Regulatory Flexibility Act, SBA hereby states that this rule if promulgated in final form may result in significant economic impact upon the minority banking program which this rule is intended to facilitate may be such that this rule be considered a major rule. Therefore, the following regulatory analysis information is provided:

1. *Description of Potential Benefits of the Rule.* The benefit to be derived is the facilitation of the minority banking program described above.

2. *Description of Potential Costs of the Rule.* There are no costs associated with this rule.

3. *Description of Net Benefits of the Rule.* The rule will encourage the placement of deposits by Federal contractors in banks owned and controlled by socially and economically disadvantaged individuals. As such, those banks will be benefited, and the businesses which they serve will have more loanable funds available to them.

4. *Description of Reasons Why This Action is Being Considered.* This action is needed to facilitate the minority banking program described above.

5. *Statement of Legal Basis for the Proposed Rule.* 15 U.S.C. 632(a)).

6. *Description of Entities to Which the Proposed Rule Will Apply.* Commercial Banks and Savings and Loan Associations which are 51 percent owned by one or more socially and economically disadvantaged individuals; or in the case of a publicly owned institution, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose daily business operations are controlled by one or more such individuals.

7. *Description of Reporting and Recordkeeping Requirements.* There are none associated with this rule.

List of Subjects in 13 CFR Part 121

Inventions and patents, Small business.

PART 121—[AMENDED]

Accordingly, pursuant to section 3(a) of the Small Business Act, 15 U.S.C. 632(a), SBA hereby proposes to amend Part 121 of 13 CFR to add a new § 121.13 as follows:

§ 121.13 Definition of small business financial institution for purposes of sections 8(d) and 15(g) of the Small Business Act.

(a) For the purpose of sections 8(d) and 15(g) of the Small Business Act, a small financial institution is a commercial bank or savings and loan association the average annual assets of which for the preceding three fiscal years do not exceed $100 million.

(b) For purposes of this regulation, the term assets shall include all assets reflected on the institution's financial balance sheet for a given fiscal year.

TABLE 1

[Percent of banks and assets distributed by asset size of bank]

Bank size ($M)	Less than $5M	$5–9.9M	$10–24.9M	$25–49.9M	$50–99.9M	$100–299.9M	$300–499.9M	$500–999.9M	$1–4.9B	$5B +
No. banks: 14,763	5	10	29	25	16	10	1	1	1	<1
Assets: $2,196,621 (millions)	<1	>1	5	6	8	10	8	8	16	44

TABLE 2

[Cumulative percent of banks and assets by bank size]

Bank size	Cumulative percent of assets	Cumulative percent of banks
$25M	4	44
$50M	9	68
$100M	17	85
$100M +	27	95

Average size (assets) = $149M.
Median size (assets) = $31M.
Source: "1982 Statistics on Banking," Federal Deposit Insurance Corporation, Table 105, p. 20.

TABLE 3

[Cumulative percent of minority-owned banks and assets by bank size (1983)]

Bank size	Cumulative percent of assets	Cumulative percent of banks
$25M	15	50
$50M	38	78
$100M	64	95
$100M +	100	100

Average size (assets) = $43M.
Total assets of minority-owned banks = $4,117M.
Number of minority-owned banks = 96.
Source: "Minority-Owned Banks by District, March 31, 1983" Computer Printout, Federal Reserve System, Division of Research and Statistics, Washington, D.C.

Dated: March 22, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-8362 Filed 3-30-84; 8:45 am]

BILLING CODE 4910-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-13-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes a new airworthiness directive (AD) applicable to Boeing Model 747 series airplanes, which would require inspection of the body and canted bulkhead structure for cracks at the nose gear wheel well forward corners. This action is prompted by reports from five operators that twelve crack were found on nine airplanes. This action is necessary because an undetected cracks may result in sudden loss of cabin pressurization and extensive structural damage.

DATE: Comments must be received on or before May 21, 1984.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-13-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. O. E. Schrader, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-13-AD, 17900 Pacific Highway South,C-68966, Seattle, Washington 98168.

Discussion

The Boeing Company has conducted a structural reassessment of the Boeing Model 747 airplane as part of their program to develop a Supplemental Structural Inspection Document (SSID) for the airplane. In conducting this assessment, Boeing used advanced analysis techniques which were not available during the original design and certification of the Model 747 and used as guidelines the requirements of Federal Aviation Regulations (FAR) 25.571, Amendment 25-45. The reassessment included structural details that have a history of cracking. The analysis has revealed that certain of these details should receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The nose wheel well lower forward corners are one such detail.

Numerous cracks up to six inches long have been found by five operators in the body and canted buklhead structure at the nose gear wheel well forward corner on nine airplanes. These cracks are caused by a combination of cabin pressurization loads, flight loads, and landing loads.

Undetected, cracks in the exterior skin could progress forward to the next frame and cracks in the canted bulkhead could grow and result in sudden loss of cabin pressure and extensive structural damage.

Boeing has issued Service Bulletin 747-53-2112, Revision 3, which defines the specific procedures to be used to inspect for cracks in the body and canted bulkhead structure at the nose gear wheel well forward corners on certain Model 747 airplanes. A modification is described in the service bulletin which consists of installing skin doublers on certain airplanes and modifying the forward hinge fitting-to-body attachment on other airplanes. The repetitive inspection requirements would continue after modification.

Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed AD would require inspections of the nose gear wheel well forward corners on certain Model 747 series airplanes.

It is estimated that 94 airplanes of U.S. operators would be affected by this AD, that it would take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost would be $35 per manhour. Repair parts are estimated at $2000 per airplane. Based on these figures, the total cost impact of the proposed AD is estimated to be $850,000. This is a worst case analysis, since not all aircraft would need modification.

For these reasons the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes certificated in all categories listed in Boeing Service Bulletin 747–53–2112, Revision 3, dated November 4, 1983, or later FAA approved revisions. To prevent failure of the body skin and the canted pressure bulkhead structure, accomplish the following, unless already accomplished:

A. For airplanes that have not been modified in accordance with Service Bulletin 747–53–2112, Revision 3, or later FAA approved revisions;

(1) Within the next 250 landings for Group I airplanes and 500 landings for Group II airplanes after the effective date of this AD, or prior to the accumulation of 4,000 landings, whichever occurs later; and thereafter at intervals not to exceed 1000 landings for Group I airplanes and 2000 landings for Group II airplanes, visually inspect the nose gear wheel well lower forward corners exterior and interior area for cracks in accordance with the service bulletin. Additionally, high frequency eddy current (HFEC) inspect the chord and doubler for cracks at the two forward hinge fairing attach bolt locations identified for inspection in Service Bulletin 747–53–2112, Revision 3, or later FAA approved revisions.

(2) For Group I airplanes, if a crack is visible only from outside the airplane and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of skin fasteners, repair may be deferred for 500 landings with inspection at 100 landing intervals. If the crack exceeds the above limits, repair in accordance with Service Bulletin 747–53–2112, Revision 3, or later FAA approved revisions, prior to next pressurized flight.

(3) If cracks are found on Group II airplanes, repair in accordance with a method approved by the Manager, FAA, Seattle Aircraft Certification Office prior to further flight.

B. For airplanes that have been modified in accordance with Service Bulletin 747–53–2112, Revision 3, or later FAA approved revisions; within the next 200 landings for Group I airplanes and 500 landings for Group II airplanes after the effective date of the AD or prior to the accumulation of the threshold landings specified in Table I, below, whichever occurs later, inspect the nose gear wheel well lower forward corners in accordance with Table I. Reinspect at intervals not to exceed those specified in Table I. If cracks are found, repair in accordance with an FAA approved procedure prior to further flight.

C. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance if accordance with Sections 21.197 and 21.199 of the Federal Aviation Regulations.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

TABLE I.—NOSE GEAR WHEEL WELL LOWER FORWARD CORNER INSPECTION FOR CRACKS

[Applicable only for airplanes modified per Boeing Service Bulletin 747–53–2112, revision 3, or latest revision.]

Airplane and inspection	Inspection threshold landings	Repeat inspection interval landings
Group I		
Option I.—External inspection: Airplanes modified per S/B 747–53–2112, Rev. 3: Perform an external visual inspection of the structure adjacent to the left and right forward corners of the nose gear wheel well forward bulkhead in accordance with Service Bulletin 747–53–2112, Rev. 3.	Within 200 landings from effective date of AD, or 1,000 landings after modification, whichever is later.	1,000
Option II.—Internal inspection: Perform an internal visual inspection of the nose gear wheel well lower forward corner structure in accordance with Service Bulletin 747–53–2112, Rev. 3.	Within 200 landings from effective date of AD, or 1,000 landings after modification, whichever is later.	1,500
Group II: Airplanes modified per S/B 747–53–2112, Rev. 3. Perform a low frequency eddy current inspection in the under skin doubler at the nose gear wheel well lower forward corners in accordance with Service Bulletin 747–53–2112, Rev. 3.	Within 500 landings from effective date of AD, or 6,000 landings after modification, whichever is later.	3,000

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, since no small entities operate Boeing Model 747 airplanes. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on March 22, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84–8945 Filed 3–30–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–12–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes a new airworthiness directive (AD) applicable to Boeing Model 747 series airplanes, which would require inspection of the front spar pressure bulkhead chord for cracks. This action is prompted by reports of numberous cracks on five airplanes. An undetected crack could result in loss of cabin pressurization and extensive structural damage.

DATE: Comments must be received on or before May 21, 1984.

ADDRESSES: Send comments on this proposal in duplciate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–12–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. O. E. Schrader, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2926. Mailing

address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–12–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Boeing Company has conducted a structural reassessment of the Boeing Model 747 airplane as part of their program to develop a Supplemental Structural Inspection Document (SSID) for the airplane. In conducting this reassessment, Boeing used advanced analysis techniques which were not available during the original design and certification of the Model 747 and used as guidelines the requirements of Federal Aviation Regulation (FAR) 25.571, Amendment 25–45. The reassessment included structural details that have a history of cracking. The analysis has revealed that certain of these details should receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The front spar pressure bulkhead chords are one such detail.

Numberous cracks ranging from 0.10 to 2.0 inches have been found on five airplanes by two operators in the wing front spar pressure bulkhead lower chord. The cracks are caused by a combination of cabin pressurization loads, flight loads, and landing loads.

Cracks remaining undetected could grow and result in sudden loss of cabin pressurization and extensive structural damage.

Boeing has issued Service Bulletin 747–53–2064, Revision 4, which defines the specific inspection procedures to be used to inspect for cracks in the front spar pressure bulkhead chord on certain Model 747 airplanes. A modification is described in the service bulletin which consists of installing reinforcements to the front spar pressure bulkhead chord and reworking the drag splice fitting. The repetitive inspection requirements would continue after modification but at an increased interval.

Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed AD would require inspection and, if necessary, repair or modification of certain Model 747 series airplanes.

It is estimated that 102 airplanes of U.S. operators would be affected by this AD, that it would take approximately 422 manhours per airplane to accomplish the required actions, and that the average labor cost would be $35 per manhour. Repair parts are estimated at $3550 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $1,868,000. For these reasons the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes certificated in all categories listed in Boeing Service Bulletin 747–53–2064, Revision 4, dated September 23, 1983, or later FAA approved revisions. To prevent front spar pressure bulkhead chord failures, accomplish the following unless already accomplished:

A. For airplanes that have not been modified in accordance with Service Bulletin 747–53–2064, Revision 4, or latter FAA approved revisons; within the next 1000 landings after the effective date of this AD or prior to the accumulations of 10,000 landings, whichever occur later, and thereafter at intervals not to exceed 7000 landings, high frequency eddy current (HFEC) inspect the chord for cracks between stringers S–37 and S–39 at the chord radius, heel, and flanges adjacent to the fastener holes identified for inspection in Service Bulletin 747–53–2064, Revision 4, or later FAA approved revisions. If cracks are found in the pressure bulkhead chord, accomplish the repair and modification in accordance with the service bulletin before further flight. Repair of cracks along the chord radius under five inches in length or acorss a chord flange that have not severed the chord flange may be deferred 1000 landings by stop drilling and reinspecting for crack progression every 200 landings using high frequency eddy current. If crack progression is found, repair prior to further flight.

B. For airplanes that have been modified in accordance with Service Bulletin 747–53–2064, Revision 4, or later FAA approved revisions; within the next 1000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings after the modification, whichever is later, and thereafter at intervals not to exceed 10,000 landings, high frequency eddy current (HFEC) inspect for cracks in the front spar pressure bulkhead lower chord heel from stringers S–37 to S–39 and ultrasonicly inspect for cracks in the fuselage skin orignating at the indicated fastener holes beneath the forward drag splice fitting flanges in accordance with the service bulletin. If any cracks are found, repair in accordance with the service bulletin before further flight.

C. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average from takeoff to landing for the airplane type.

E. Aircarft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) involves a proposed regulation which is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, would not have a

significant economic impact on a substantial number of small entities, since no small entities operate Model 747 airplanes. A regulatory evaluation had been prepared and has been placed in the public docket.

Issued in Seattle, Washington on March 22, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-8844 Filed 3-30-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-11-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes, which would require inspection of the body station 1241 bulkhead splice strap and forging for cracks. Numerous cracks have been reported. An undetected crack may result in cracking of the station 1241 bulkhead frame forging, which could result in loss of cabin pressure.

DATES: Comments must be received on or before May 21, 1984.

ADDRESSES: Send comments on this proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-11-AD, 17900 Pacific Highway South, C-86966, Seattle, Washington 98168.

The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. O. E. Schrader, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2923. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date of comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-11-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Boeing Company has conducted a structural reassessment of the Boeing Model 747 airplane as part of their program to develop a Supplemental Structural Inspection Document (SSID) for the airplane. In conducting this reassessment, Boeing used advanced analysis techniques which were not available during the original design and certification of the Model 747 and used as guidelines the requirements of Federal Aviation Regulation (FAR) 25.571, Amendment 25-45. The measurement included structural details that have a history of cracking. The analysis has revealed that certain of these details should receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The body station 1241 bulkhead splice strap is one such detail.

Thirty-three incidents of cracking have been reported. The cracks were caused by cyclic loading and corrosion.

Undetected cracks in the station 1241 bulkhead frame forging could result in sudden in-flight depressurization of the airplane and the inability to withstand fail-safe loads.

Boeing has issued Service Bulletin 747-53-2219, Revision 1, which describes the specific procedures to be used to inspect for cracks in the body station 1241 bulkhead splice strap on certain Model 747 airplanes. A modification is described in the service bulletin which consists of replacing the lower portion of the bulkhead splice strap with a wider strap of different material. Repetitive inspections are required after modification.

Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed AD would require inspection and, if necessary, repair or modification of the body station 1241 bulkhead splice strap on certain Model 747 series airplanes.

It is estimated that 142 airplanes of U.S. operators would be affected by this AD, that it would take approximately 800 manhours per airplane to accomplish the required actions, and that the average labor cost would be $35 per manhour. Repair parts are estimated at $8000 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $5,112,000. For these reasons the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes certificated in all categories listed in Boeing Service Bulletin 747-53-2219, Revision 1, dated October 13, 1983, or later FAA approved revisions. To prevent failure of the body station (B.S.) 1241 bulkhead splice strap, accomplish the following:

A. For airplanes that have not been modified in accordance with Service Bulletin 747-53-2219, Revision 1, or later FAA approved revisions:

(1) Perform an eddy current inspection for cracks in the B.S. 1241 bulkhead frame splice strap and other structure common to the aft hole in accordance with the Service Bulletin instructions within the next 1000 landings (1500 landings for 747-100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for 747-100SR) whichever occurs later.

(2) If no cracks are found at the aft large bolt hole common to the longeron fitting identified in the Service Bulletin, eddy current inspect thereafter at intervals not to exceed 7000 landings (10,500 landings for 747-100SR).

(3) If a crack is found in the bulkhead splice strap at the aft hole, perform an eddy current inspection for cracks in the bulkhead frame splice strap and frame forging and other structure common to the adjacent

forward hole in accordance with the Service Bulletin instructions.

(4) If no cracks are found in the forward hole, or if cracks are found only in the bulkhead splice strap at the aft hole, reinspect with an eddy current procedure the bulkhead splice strap and frame forging for cracks at the forward hole at intervals not to exceed 3000 landings (4500 landings for 747–100SR).

(5) If cracks are found at the forward hole in the bulkhead frame forging, repair in accordance with Service Bulletin 747–53–2219, Revision 1, or later FAA approved revisions, prior to next flight.

B. For airplanes that have been modified in accordance with Service Bulletin 747–53–2219, Revision 1, or later FAA approved revisions; within the next 1000 landings (1500 landings for 747–100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for 747–100SR) after the modification, whichever occurs later, and thereafter at intervals not to exceed 10,000 landings (15,000 landings for 747–100SR), perform the following inspections in accordance with Service Bulletin 747–53–2219, Revision 1, or later FAA approved revisions:

(1) Perform an ultrasonic inspection for bulkhead frame forging corner cracks at forward fastener hole.

(2) Perform an ultrasonic inspection for bulkhead splice strap edge crack extending throught the aft hole.

(3) Perform a close visual inspection for fastener hole cracks in the external splice plate and the forward and aft internal splice straps.

If cracks are found, repair in accordance with FAA approved procedure prior to further flight.

C. Alternate means of compliance with the AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance in accordance with Section 21.197 and 21.199 of the Federal Aviation Regulations.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document involves a proposed regulation which: (1) Is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); an it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, since no small entities operate Boeing Model 747 airplanes. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on March 22, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84–8846 Filed 3–30–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–20–AD]

Airworthiness Directives; Lockheed-California Company Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of the "C" hydraulic system in Lockheed Model L–1011–385 series airplanes to minimize the probability of loss of three hydraulic systems during takeoff. This action is prompted by a recent incident wherein three of the four hydraulic systems in one airplane were lost when multiple main landing gear tire failures were experienced during the takeoff run. The loss of three hydraulic systems would significantly reduce the capability of the flight control system.

DATE: Comments must be received no later than May 21, 1984.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin Tiangsing, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548–2831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or argumants as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "Availability of NPRMS." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–20–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

One incident has been reported where an L–1011 had two main landing gear tires fail due to foreign object damage as the airplane approached V_1 speed during the takeoff run. Fragments of the failed tires ruptured the "A" and "B" system hydraulic lines and the truck leveler and downlock lines of the "C" system. The takeoff was successfully aborted, although the "B" and "C" system hydraulic brake accumulators were depleted during the stop. Additionally, the "C" system steering was lost shortly after the aircraft had taxied off the runway.

Therefore, in consideration of the hazardous consequence of multiple hydraulic system failures, the proposed AD is considered to be necessary.

Cost Estimate

The estimated costs associated with this proposed AD are as follows: 70 domestic airplanes would be affected requiring approximately 37.6 manhours per airplane to accomplish the required actions at an average labor cost of $35 per manhour. The kit costs are approximately $3,542 per airplane. Based on these figures, the total cost impact of this AD on the U.S. fleet is

estimated to be $340,060. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 30.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L–1011–385 series airplanes, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To prevent the loss of flight control capability due to loss of hydraulic fluid through the landing gear truck leveler, the downlock supply, or "C" system return line failures, accomplish the following:

A. Within 180 calendar days after the effective date of this AD, modify the "C" hydraulic system by installing a hydraulic fuse and associated hydraulic tubing and replace aluminum return lines with steel lines in accordance with Lockheed L–1011 Service Bulletins No. 093–29–065, Revision 4, dated August 9, 1983, and 093–29–085, dated December 8, 1983, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L–1011 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on March 22, 1984.

Charles R. Foster,

Director Northwest Mountain Region.

[FR Doc. 84–8647 Filed 3–30–84; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD–FRL–2556–3]

Proposed Revisions to the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Public hearing announcement.

SUMMARY: On March 20, 1984, EPA proposed revisions to the national ambient air quality standards for particulate matter (49 FR 10408). In accordance with Section 307(d)(5) of the Clean Air Act, today's notice is to announce a public hearing to be held in Washington, D.C. for the purpose of receiving public comment on the proposed revisions to the standards and on related notices that set out proposed revisions to EPA's regulations concerning ambient air monitoring reference and equivalent methods (49 FR 10454) and ambient air quality surveillance (49 FR 10435).

DATE: The hearing will be on April 30, 1984 beginning at 9:30 a.m.

ADDRESS: The hearing will be held at the Environmental Protection Agency, 401 M Street, S.W., Room 3906, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, Strategies and Air Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Drop 12, Research Triangle Park, N.C. 27711. Telephone (919) 541–5531 (FTS: 629–5531).

SUPPLEMENTARY INFORMATION: Individuals planning to make oral presentations at the hearing should notify John H. Haines, at the above address, at least seven days prior to the date of the hearing. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during or within 30 days after the hearing. Written statements (duplicate copies preferred) should be addressed to: Central Docket Section (LE–131), Environmental Protection Agency, Attn: Docket No. A–82–37, 401 M Street, S.W., Washington, D.C. 20460.

A verbatim transcript of the hearing and written statements will be available for copying during normal working hours at the Central Docket Section, Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, S.W., Washington, D.C.

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Ozone, Sulfur oxides, Particulate matter, Nitrogen dioxide, Lead.

Dated: March 26, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 84–8669 Filed 3–30–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 60

[AH–FRL 2551–1]

Standards of Performance for New Stationary Sources; Fossil-Fuel-Fired Steam Generators

Correction

In FR Doc. 84–7877 appearing on page 10950 in the issue of Friday, March 23, 1984, make the following corrections.

1. In the Dates paragraph "(30 days from the date for today's notice)" should have read "April 23, 1984".

2. The signing official's name at the end of the document should have read "Joseph A. Cannon".

BILLING CODE 1505–01–M

Notices

Federal Register
Vol. 49, No. 64
Monday, April 2, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Development of Extra Long Staple Cotton Multi-Peril Crop Insurance

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Crop Insurance Corporation (FCIC), USDA has accepted a proposal developed by private multi-peril crop insurers through the Crop Hail insurance Actuarial Association, to provide insurance for producers in five (5) Arizona Counties approved by FCIC for extra long staple (Pima) cotton crop insurance, using only FCIC approved rates and forms for this purpose, beginning with the 1984 crop year. Insurers wishing to write this business may be reinsured under FCIC's Reinsurance Agreements. Extra long staple (Pima) cotton producers wishing to contact participating insurance companies or to have cotton yields certified, should contact their county ASCS Office. Would be insurers wishing further information may contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Alan S. Walter, Chief, Reinsurance Branch, Federal Crop Insurance Corporation, P.O. Box 293, Kansas City, MO 64141, telephone (816) 926–7939.

The Arizona Counties where this insurance will be available are:

Graham
Maricopa
Pima
Pinal
La Paz

Done in Washington, D.C. on March 22, 1984.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Dated: March 23, 1984.

Approved by:

Merritt W. Sprague,
Manager.

[FR Doc. 84–8700 Filed 3–30–84; 8:45 am]
BILLING CODE 3410–08–M

Federal Grain Inspection Service

Designation Renewal of Chattanooga Grain Inspection Company, Inc. (TN), and Enid Grain Inspection Company, Inc. (OK)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Chattanooga Grain Inspection Company, Inc., and Enid Grain Inspection Company, Inc., as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: May 1, 1984.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Department Regulation 1512–1; therefore, the Executive Order and Department Regulation do not apply to this action.

The October 28, 1983, issue of the Federal Register (48 FR 49896) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Chattanooga's and Enid's designations terminate on April 30, 1984, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by November 28, 1983.

Chattanooga and Enid were the only applicants for each respective designation.

FGIS announced the names of these applicants and requested comments on same in the January 3, 1984, issue of the Federal Register (49 FR 128). Comments were to be postmarked by February 17, 1984.

No comments were received regarding the designation renewal of Chattanooga and Enid.

FGIS has evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), has determined that Chattanooga and Enid are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the October 28 Federal Register issue.

Effective May 1, 1984, and terminating April 30, 1987, the responsibility for providing official inspection services in their respective specified geographic areas are assigned to Chattanooga and Enid.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection services and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons also may obtain a list of the specified service points by contacting the agencies at the following address:

Chattanooga Grain Inspection Company, Inc., Judd Road, P.O. Box 5113, Chattanooga, TN 37406

Enid Grain Inspection Company, Inc., 2305 N. 10th Street, P.O. Box 229, Enid, OK 73701

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 23, 1984.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 84-8602 Filed 3-30-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Areas Currently Assigned to Georgia Department of Agriculture (GA) and Schneider Inspection Service, Inc. (IN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Georgia Department of Agriculture and Schneider Inspection Service, Inc.

DATE: Comments to be postmarked on or before May 17, 1984.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Department Regulation 1512-1; therefore, the Executive Order and Department Regulation do not apply to this action.

The February 1, 1984, issue of the **Federal Register** (49 FR 4019) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by March 2, 1984.

Georgia Department of Agriculture and Schneider Inspection Service, Inc., the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than May 17, 1984.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 23, 1984.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 84-8603 Filed 3-30-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Perform Official Services in the Geographic Areas Currently Assigned to Oregon Department of Agriculture (OR) and Southern Illinois Grain Inspection Service, Inc. (IL)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Oregon Department of Agriculture and Southern Illinois Grain Inspection Service, Inc.

DATE: Applications to be postmarked on or before May 2, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Department Regulation 1512-1; therefore, the Executive Order and Department Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. Oregon Department of Agriculture (Oregon), Agriculture Building, Salem, OR 97310, was designated under the Act as an official agency for the performance of inspection functions on November 5, 1978. Southern Illinois Grain Inspection Service, Inc. (Southern Illinois), 5900 North Illinois Street, P.O. Box 3099, Fairview Heights, IL 62208, was designated under the Act as an official agency for the performance of inspection functions on August 10, 1981.

The agencies' designations will terminate on September 30, 1984. This date reflects administrative extensions of official agency designations, as discussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Oregon, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Oregon, except those export port locations within the State.

The geographic area presently assigned to Southern Illinois, in the State of Illinois, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the following:

Bounded on the North along a straight line from the junction of State Route 111 and the northern Macoupin County line southeast to the junction of Interstate 55 and State Route 16; State Route 16 east-

northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines; the northern and eastern Jasper County lines south to State Route 33; State Route 33 east-southeast to U.S. Route 50; U.S. Route 50 east to the eastern Lawrence County line;

Bounded on the East by the eastern Lawrence, Wabash, Edwards, White, and Gallatin County lines;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River; and

Bounded on the West by the Mississippi River north to Interstate 270; Interstate 270 east to Interstate 70; Interstate 70 east to State Route 4; State Route 4 north to Macoupin County; the southern and eastern Macoupin County lines.

The following location, outside of the foregoing contiguous geographic area, is presently assigned to Southern Illinois and is part of this geographic area assignment: Sigel Elevator Company, Inc., Sigel, Shelby County.

An exception to the described geographic area is the following location situated inside Southern Illinois' area which has been and will continue to be serviced by Springfield Grain Inspection Department: OK Grain Company, Litchfield, Montgomery County.

Interested parties, including Oregon and Southern Illinois, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(b) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning October 1, 1984, and ending September 30, 1987. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 23, 1984.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 84-8404 Filed 3-30-84; 8:45 am]

BILLING CODE 3410-EN-M

Rural Electrification Administration

Intent To Conduct Public Meetings and Prepare an Environment Assessment; Georgia

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Notice of intent to conduct public meetings and prepare an environmental assessment (EA).

SUMMARY: REA intends to conduct public meetings and prepare an Environmental Assessment in connection with possible REA financing assistance to Oglethorpe Power Corporation (Oglethorpe), 2100 East Exchange Place, Tucker, Georgia 30085. The public meetings and EA will consider the environmental aspects of a proposed transmission line project between Woodstock and Alpharetta, with the preferred and alternate corridors located in Fulton, Cobb and Cherokee Counties. REA will conduct public meetings as follows:

Dates: May 1, 1984 and May 2, 1984.
Location: Milton High School, School Street, Alpharetta, Ga.
6:30 p.m. Registration to present verbal comments.
7:00 p.m. Public meeting.

ADDRESS: All interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the public meetings, in order for the comments to be considered in the preparation of the EA. Comments should be sent to Mr. James A. Ruspi, Chief, Distribution and Transmission Engineering Branch, Southeast Area—Electric, Room 0262, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. James Ruspi, at the above address, (202) 382–8436, or Mr. F. F. Stacy, Jr., Oglethorpe Power Corporation, 2100 East Exchange Place, Tucker, Georgia (404) 496–7600.

SUPPLEMENTARY INFORMATION: REA intends to hold public meetings and prepare an EA in connection with possible financing assistance to Oglethorpe for a transmission line from Woodstock to Alpharetta, Georgia. The proposes 230 kV transmission line would be approximately 14 miles long. Such a project is of the type for which REA normally prepares an EA. REA does not normally hold public meetings for proposed projects of this category, however, REA has become aware of public interest in the siting of the line and has decided that meetings should be held on the proposed Woodstock to Alpharetta line.

Oglethorpe has prepared a Borrower's Environmental Report which provides information on the environmental aspects of the proposed route, the route alternatives, and possible environmental effects. Copies of the BER are available for public review and comment at:

Woodstock Public Library, 15 North Main Street, Woodstock, Georgia 30188
Cobb County Public Library, 30 Atlanta Street, Marietta, Georgia 30060
Alpharetta Public Library, 15 Academy Street, Alpharetta, Georgia 30201

Also, a limited supply of BER's are available from Oglethorpe and REA at the addresses given above.

Based upon information in the BER and comments at the public meetings, as well as other comments and information, REA will prepare an EA on the proposed project. Alternatives to be considered by REA include, among other options:

(1) No action; (2) load management and energy conservation; and (3) alternative transmission line routes. After the EA has been prepared, a decision will be made on whether REA should prepare a Finding of No Significant Impact or an Environmental Impact Statement. Notice of this decision will be published in the **Federal Register.**

The public meetings, to be conducted by a representative of REA, will be held to solict public input and comments concerning, but not limited to, the nature of the proposed project, possible routes and alternatives, and any significant environmental issues and concerns that should be addressed in the EA. If numerous people wish to comment at these meetings, commenters may be asked to keep their comments brief so that everyone can be give an opportunity to speak. Potential commenters should consider this when preparing their statements. Written comments can be submitted at the meetings, or mailed to REA at the address given above.

REA's financing assistance to Oglethorpe will be subject to and is contingent upon reaching satisfactory conclusions with respet to the environmental effects of the proposed project. Final action will be taken only after the National Environmental Policy Act requirements have been met.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: March 28, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-8709 Filed 3-30-84; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Withdrawal of preliminary finding of need to accredit laboratories that test portable fire extinguishers.

SUMMARY: In a notice published in the **Federal Register** on October 5, 1983 (48 FR 45453–45455) the National Bureau of Standards (NBS) requested public comments on its preliminary finding that there is a need to accredit laboratories that test portable fire extinguishers. The comments received included two requests for an informal public hearing on the preliminary finding of need. In a notice published in the **Federal Register** on November 8, 1983 (48 FR 51353–51354) NBS announced a public hearing to be held on November 29, 1983. The majority of the testimony presented and the written comments received objected to the establishment of a laboratory accreditation program (LAP) which has led NBS to the conclusion that the preliminary finding of need should be withdrawn. Accordingly, NBS hereby announces the withdrawal of the Preliminary Finding of Need to Accredit Laboratories that Test Portable Fire Extinguishers.

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, TECH B141, Washington, D.C. 20234, (303) 921–3431.

SUPPLEMENTARY INFORMATION:

Background: On October 5, 1983, the National Bureau of Standards published in the **Federal Register** (48 FR 45453–45455) for public comment a request from Dennis R. Dewar, Director, Division of the State Fire Marshal, Tallahassee, Florida, under the provisions of 15 CFR Part 7a, to establish a Laboratory Accreditation Program (LAP) for laboratories that test portable fire extinguishers and invited public comments over a 60-day period. That notice also established a 15-day period, to request an informal public hearing. Two requests for a hearing were received, one a letter dated October 14, 1983, from John H. Addington of the Fire Equipment Manufacturers' Association, Inc., the other a letter dated October 17, 1983, from Mr. G. T. Castino of Underwriters Laboratories, Inc. (UL). A total of five written statements were filed in response to the preliminary finding of need. The written statements and a copy of the oral testimony presented at the hearing are available for inspection and copying at the Department of Commerce (DOC) Central Reference and Records Inspection Facility (CRRIF), Room 6628, Herbert C. Hoover Building (HCHB), 14th Street between E Street and Constitution Avenue, N.W., Washington, D.C. 20234.

These written comments and the testimony given at the hearing have been analyzed and considered. The result of this analysis is a document entitled, "Summary and Analysis of Comments on the Preliminary Finding of Need to Accredit Laboratories that test Portable Fire Extinguishers". That document, which lists the members of the public who provided written comments, is also available for inspection and copying at CRRIF mentioned above.

Summary of Comments. Four respondents objected to the establishment of the LAP.

Only one respondent favored the establishment of a LAP for portable fire extinguishers indicating that in his view fire marshals, purchasing authorities, manufacturers and testing laboratories, as well as the general public, would benefit from having more listing and labeling services available for portable fire extinguishers.

One respondent objected to the use of the UL standards claiming that they are not "nationally accepted standards," but the property of UL which are not arrived at through input of all interested parties. He indicated that he would be pleased to reconsider his position on the proposed LAP when national standards are referenced.

Another respondent stated that there is a lack of a demonstrated need for a LAP, that a LAP cannot be practically and effectively implemented for these products, and that a LAP could be counterproductive from a safety standpoint.

Another respondent objected to the establishment of a LAP to accredit laboratories that merely test but do not certify the safety of portable fire extinguishers.

Another respondent acknowledged the need for a set of standards that are nationally acceptable, but felt that the interest and needs of the requestor of the LAP would be best met by relying on ANSI to adopt UL standards which would negate the need for a LAP.

Further details and analysis of the responses are summarized in the above referenced summary and analysis document.

The respondent who favored the LAP did not provide supporting testimony as to the benefit from or need for the LAP.

Conclusion. Based upon the comments and analysis set out above, NBS hereby announces the withdrawal of the preliminary finding of need to accredit laboratories that test portable fire extinguishers.

Dated: March 27, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 84-8672 Filed 3-30-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The North Pacific Fishery Management Council will meet in Anchorage, AK, on April 25–28, 1984, to discuss its policies and operating procedures. The meeting will begin at 8:30 a.m., each day, in the Old Federal Building, 605 W. 4th Avenue, and may extend, if necessary, into Friday, April 27.

The Council will also meet in closed session at 1:30 p.m., on April 25, to discuss personnel matters. Other than the closed session, the meeting is open to the public. The Council's Advisory Panel and Scientific and Statistical Committee will *not* meet in April. An agenda will be available to the public around April 12.

FOR FURTHER INFORMATION CONTACT: Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: March 19, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-8726 Filed 3-30-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Cotton and Man-Made Fiber Textile Products From the Federative Republic of Brazil, Effective April 1, 1984

March 28, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 2, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377–4212.

Background

The Bilateral Cotton and Man-Made Fiber Textile Agreement of March 31, 1982, as amended, between the Governments of the United States and the Federative Republic of Brazil establishes an aggregate and group limits and within those limits specific limits for Categories 300/301, 313, 317, 319, 338/339, 347/348, 350, 361, 363, 369pt. and 604, among others, during the agreement year which begins on April 1, 1984. It also provides consultation levels for certain other categories, such as Categories 314, 320, and 614, which are not subject to specific limits and which may be adjusted during the agreement year. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 300/301, 313, 314, 317, 319, 320, 338/339, 347/348, 350, 361, 363, 369pt, 604, and 614, produced or manufactured in Brazil and exported during the twelve-month period which begins on April 1, 1984 and extends through March 31, 1985, in excess of the designated levels of restraint.

The limit for Category 300/301 has been adjusted to deduct carryforward used during the previous agreement year which began on April 1, 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

This letter and the action taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of March 31, 1982, as amended, between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 2, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 300/301, 313, 314, 317, 319, 320, 338/339, 347/348, 350, 361, 363, 369 pt.[1] 604, and 614, produced or manufactured in Brazil and exported during the twelve-month period beginning on April 1, 1984 and extending through March 31, 1985, in excess of the following levels:

Category	12-mo. level
300/301	7,465,218 lbs.
313	28,050,060 sq. yds.
314	1,500,000 sq. yds.
317	10,418,590 sq. yds.
319	8,014,300 sq. yds.
320	4,000,000 sq. yds.
338/339	416,111 doz.
347/348	300,562 doz.
350	48,255 doz.
361	290,323 nos.
363	11,556,000 nos.
369 pt.[1]	1,356,955 lbs.
604	354,931 lbs.
614	3,000,000 sq. yds.

[1] In category 369, all T.S.U.S.A. numbers except 360.2000, 360.2500, 360.3000, 360.7800, 360.8100, 361.0515, 361.1820 361.5000, 361.5420, and 361.5630.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Brazil, which have been exported to the United States on and after April 1, 1983, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period which began on April 1, 1983 and extends through March 31, 1984. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of March 31, 1982 between the Governments of the United States and the Federative Republic of Brazil which provide, in part, that: (1) within the aggregate and group limits, specific limits may be exceeded by designated percentages; (2) specific ceilings may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

The actions taken with respect to the Government of the Federative Republic of Brazil and with respect to imports of cotton and man-made fiber textile products from Brazil have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–8707 Filed 3–30–84; 8:45 am]

BILLING CODE 3510–DR–M

Announcing New Tariff Schedule Numbers To Provide for the Proper Category Placement of Parts of Certain Garments

March 28, 1984.

On March 20, 1984 (49 FR 10325) the Chairman of the Committee for the Implementation of Textile Agreements (CITA) announced the creation of new Tariff Schedule of the United States, Annotated, (T.S.U.S.A.) numbers to provide for the proper category placement of parts of certain garments. These T.S.U.S.A. numbers will appear in the April 1, 1984 supplement to the T.S.U.S.A. In the letter published below the Chairman for the Committee for the Implementation of Textile Agreements directs the Commissioner to Customs to begin implementation of the new Tariff Schedule numbers for parts of certain garments for goods imported for consumption, withdrawn from warehouse for consumption, or entered into warehouse on or after July 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on

December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584). A description of the new T.S.U.S.A. numbers and the categories to which thay are assigned also follows this notice.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 28, 1984

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: To facilitate implementation of the United States' 28 bilateral textile and apparel agreements, I request that you begin implementation of the Tariff Schedule of the United States, Annotated (T.S.U.S.A.) numbers listed below for parts of certain garments for imports entered for consumption, withdrawn from warehouse for consumption, or entered into warehouse on or after July 1, 1984. These T.S.U.S.A. numbers will appear in the April 1, 1984 supplement to the Tariff Schedules.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

T.S.U.S.A.	Description	Textile category
	Cotton, Men's and Boy's, Ornamented	
379.0420	Parts of sweaters, knit	345
379.0425	Parts of shirts, knit	338
379.0430	Other parts of garments, knit	359
379.0642	Parts of shirts, not knit	340
379.0646	Parts of trousers, slacks and shorts, not knit	347
379.0650	Parts of other garments, knit	359
	Wool, Men's and Boys', Ornamented	
379.1535	Parts of sweaters, knit	445
379.1540	Parts of other garments, knit	459
379.2015	Parts of trousers, slacks and shorts, not knit	447
379.2025	Parts of other garments, not knit	459
	Man-Made Fibers Men's and Boys', Ornamented	
379.2650	Parts of sweaters, knit	845
379.2655	Parts of shirts, knit	838
379.2660	Parts of other garments, not knit	659
379.3333	Parts of shirts, not knit	640
379.3335	Parts of trousers, slacks and shorts, not knit	647
379.3337	Parts of other garments, not knit	659
	Cotton, Men's and Boys', Not Ornamented	
379.4135	Parts of sweaters, knit	345
379.4137	Parts of shirts, knit	338
379.4139	Parts of other garments, knit	359
379.6441	Parts of shirts, not knit	340
379.6449	Parts of trousers, slacks and shorts, not knit	347
379.6444	Parts of other garments, not knit	359
	Wool, Men's and Boys' Not Ornamented	
379.7542	Parts of sweaters, knit	445
379.7544	Parts of other garments, knit	459
379.8414	Parts of trousers, slacks, and shorts, not knit	447
379.8416	Parts of other garments, not knit	459
	Man-Made Fibers, Men's and Boys', Not Ornamented	
379.9225	Parts of shirts, knit	638
379.9230	Parts of sweaters, knit	645
379.9235	Parts of other garments, knit	659
379.9644	Parts of shirts, not knit	640
379.9646	Parts of trousers, slacks, and shorts, not knit	647
379.9647	Parts of other garments, not knit	659
	Cotton, Women's, Girls', Infants', Ornamented	
383.0352	Parts of sweaters, knit	345
383.0353	Parts of shirts, knit	339
383.0354	Parts of other garments, knit	359
383.0665	Parts of trousers, slacks and shorts, not knit	348
383.0666	Parts of blouses, not knit	341
383.0671	Parts of other garments, not knit	359
	Wool, Women's Girls', Infants', Ornamented	
383.1327	Parts of sweaters, knit	446
383.1329	Parts of other garments, knit	459
	Man-Made Fibers, Women's, Girls', Infants', Ornamented	
383.2044	Parts of sweaters, knit	646
383.2046	Parts of shirts, knit	639
383.2048	Parts of other garments, knit	659
383.2367	Parts of trousers, slacks, and shorts, not knit	648
383.2370	Parts of blouses, not knit	641
383.2372	Parts of other garments, not knit	659
	Cotton, Women's, Girls', Infants', Not Ornamented	
383.5061	Parts of sweaters, knit	345
383.3062	Parts of shirts, knit	339
383.3063	Parts of other garments, knit	359
383.5076	Parts of trousers, slacks, and shorts, not knit	348
383.5077	Parts of blouses, not knit	341
383.5079	Parts of other garments, not knit	359
	Wool, Women's, Girls', Infants', Not Ornamented	
383.5833	Parts of sweaters, under $5, knit	446
383.5836	Parts of other garments, under $5, knit	459
383.6367	Parts of sweaters, over $5, knit	446
383.6369	Parts of other garments, over $5, knit	459
	Man-Made, Women's, Girls', Infants', Not Ornamented	
383.8662	Parts of sweaters, knit	645
383.8664	Parts of shirts, knit	639
383.8666	Parts of other garments, knit	659
383.9262	Parts of trousers, slacks, and shorts, not knit	648
383.9263	Parts of blouses, not knit	641
383.9264	Parts of other garments, not knit	659

[FR Doc. 84-8706 Filed 3-30-84; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Exported From Indonesia

March 28, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 3, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377–4212.

Background

On March 7, 1984 a notice was published in the **Federal Register** (49 FR 8472) which established import restraint limits for cotton gloves and mittens in Category 331, women's, girls' and infants' woven blouses in Category 341, and other yarn, wholly on non-continuous filament in Catetory 604, produced or manufactured in Indonesia and exported during the ninety-day periods which began on December 29, 1983 and extends through March 27, 1984 in the case of Categories 331 and 604 and December 30, 1983 through March 28, 1984 in the case of category 341, pursuant to a newly agreed consultation provision under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended. The notice also stated the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on a level for these categories during consultations, to limit its exports during the periods which began on December 29 and 30, 1983 and extend through June 30, 1984 to following limits:

Category	Prorated limit	Restraint period
331	146,837 doz.	Dec. 29, 1983–June 30, 1984.
341	141,261 doz.	Dec. 30, 1983–June 30, 1984.
604	286,492 lbs.	Dec. 29, 1983–June 30, 1984

The notice also stated that merchandise in the indicated categories which is in excess of the ninety-day limits, if it is allowed to enter, may be charged to the prorated limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 14, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 28, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 3, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products

in Categories 331, 341 and 604, produced or manufactured in Indonesia and exported during the indicated periods, in excess of the following restraint limits:

Category	[illegible] limit [1]		Restraint period
[illegible]	148,837 [illegible]	Dec. 29,	1983–June 30, 1984
341	141,261 [illegible]	Dec. 30,	1983–June 30, 1984.
[illegible]	[illegible] lbs	Dec. 29,	1983–June 30, 1984.

[1] The limits have not been adjusted to reflect any exports exported after December 29, 1983 (Cat. 341), and after December 28, 1983 (Cats. 331 and 604).

Textile products in Categories 331, 341 and 604 which have been exported to the United States during the ninety-day periods which began on December 29 and 30, 1983 and extended through March 27 and 28, 1984 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Indonesia and with respect to imports of cotton and man-made fiber textiles and textile products from Indonesia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-8708 Filed 3-30-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Data Network (Defensive Systems Subgroup); Advisory Committee Meeting

The Defensive Systems Subgroup of the Defense Science Board Task Force on Defense Data network will meet in closed session on 24–25 April 1984 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 24–25 April 1984 the Task Force will discuss the application of technology to systems designed to improve future U.S. air defense capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552(b)(1) (1976), and that accordingly this meeting will be closed to the public.

March 28, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-8668 Filed 3-30-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Minnesota Mining and Manufacturing Co.; Intent To Grant Exclusive Patent License

Pursuant to the provisions of Part 101–4 of Title 41, Code of Federal Regulations (47 FR 34148, August 6, 1982), the Department of the Air Force announces its intention to grant to Minnesota Minning and Manufacturing Company of St. Paul, Minnesota, a corporation of the State of Delaware, an exclusive license under United States Patent Number 4,200,875 entitled "Apparatus For, And Method Of, Recording And Viewing Laser-Made Images On High Gain Retroreflective Sheeting" issued April 29, 1980 to Demosthenes G. Galanos.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the patent may be obtained for one dollar ($1.00) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, S.W., Washington, D.C., 20324, Telephone No. 202–693–5710.

Dated: April 2, 1984.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8665 Filed 3-30-84; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 21, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on Strategic Reconnaissance Technologies will meet at Pentagon, Washington, DC on May 11, 1984.

The purpose of the meeting will be to study the future of strategic reconnaissance technologies. The meetings will convene at 8:00 a.m. to 5:00 p.m.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8664 Filed 3-30-84; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 8, 1984.

The USAF Scientific Advisory Board (SAB) will meet in general session on April 24, 25, and 26, 1984 at the Space Technology Center, Kirtland AFB, New Mexico. The Board will meet in executive session on April 24 from 3:00 p.m. to 6:00 p.m., on April 25 from 8:30 a.m. to 5:00 p.m., and on April 26 from 8:30 a.m. to 4:00 p.m.

The purpose of the meeting will be to receive classified briefings and hold classified discussions on Air Force Space R&D activities and Innovation for Air Power in the 21st Century.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof and will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8662 Filed 3-30-84; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 22, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on the Feasibility of Air Force Logistics Command's Network

Architecture will meet at the Pentagon, Washington, DC on May 4, 1984.

The purpose of the meeting will be to obtain background information on design and management plans for AFLC Logistics Force Structure Management System. The meeting will be held from 8:00 a.m. to 5:00 p.m.

The meeting will be open to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–8845.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–8883 Filed 3–30–84; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Naval Research Advisory Committee; Panel on Reduced Observables; Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the Naval Research Advisory Committee Panel on Reduced Observables on April 3–4, 1984, as published in the issue of March 19, 1984 (49 FR 10144).

Dated: March 29, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 84–8805 Filed 3–30–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Advisory Board; Light Water Reactor R&D Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Light Water Reactor R&D Panel of the Energy Research Advisory Board (ERAB)

Date and time: May 1–2, 1984 from 9 a.m. to 5 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 8E–089, Washington, DC 20585

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research (ER–6), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/252–5444

Purpose of the parent board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative agenda:

Discuss the first draft of a report on Light Water Reactor R&D

Public Comment (10 minute rule)

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on March 27, 1984.

J. Ronald Young,

Director of Management.

[FR Doc. 84–8880 Filed 3–30–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA84–1–20–004]

Algonquin Gas Transmission Co.; Rate Reduction Filing Under Rate Schedule S–IS

March 28, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on March 23, 1984 tendered for filing three tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, as follows:

Substitute Third Revised Sheet No. 213
Substitute Fourth Revised Sheet No. 213
Fifth Revised Sheet No. 213.

Algonquin Gas states that Substitute Third Revised Sheet No. 213 and Substitute Fourth Revised Sheet No. 213, proposed to be effective January 1, 1984 and February 1, 1984 respectively, are being filed to include in Algonquin Gas' Rate Schedule S–IS Payment for Inventory Sale Gas a decrease in Consolidated Gas Supply Corporation's ("Consolidated") underlying Rate Schedule E. Fifth Revised Sheet No. 213, proposed to be effective March 1, 1984 is being filed to reflect in Algonquin Gas' Rate Schedule S–IS Payment for Inventory Sale Gas, a subsequent decrease by Consolidated in its Rate Schedule E.

Algonquin Gas requests the Commission accept the above-mentioned tariff sheets to be effective as proposed.

Algonquin Gas also requests that the Commission grant such special permission as may be necessary to allow Algonquin Gas to provide a credit if necessary on the next month's billing subsequent to acceptance by the Commission of the tariff sheets filed hereunder in order to effectuate the result of the proposed effective dates.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8737 Filed 3–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA84–1–20–005]

Algonquin Gas Transmission Co. Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

March 28, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on March 23, 1984 tendered for filing Substitute Fourth Revised Sheet No. 201 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Substitute Fourth Revised Sheet No. 201 is being filed pursuant to Algonquin Gas' Purchased Gas Cost Adjustment as set forth in Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such tariff sheet is being filed to track revised rates filed by its pipeline supplier, Texas Eastern Transmission Corporation, pursuant to Commission's order issued January 31, 1984 in Docket No. TA84–1–17–001.

Algonquin Gas proposes the effective date of Substitute Fourth Revised Sheet No. 201 to be March 1, 1984.

Algonquin Gas request permission to credit the subsequent month's bill following Commission acceptance to

effectuate such rate change as of March 1, 1984, in the event Algonquin Gas does not receive approval in time for the April 7, 1984 billing of March, 1984 sales.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Steet, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8738 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-282-000]

ANR Pipeline Co.; Request Under Blanket Authorization

March 28, 1984.

Take notice that on March 5, 1984, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-282-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that ANR proposes to undertake a transportation service for 3M Corporation (3M), an eligible end-user, under authorization issued in Docket No. CP82-480-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement (Agreement) between ANR and Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), dated November 7, 1983, as amended January 18, 1984, wherein Northern acts as agent for various end-users, including 3M. ANR is advised that Northern, as agent for 3M, has entered into a gas purchase contract dated August 18, 1983, with Colony Natural Gas Corporation and Reliancy Pipeline Company for the purchase of natural gas. It is explained that to effectuate delivery of the purchased volumes, ANR on January 10, 1984, commenced transportation services on behalf of 3M for an initial automatic period of 120 days and subject to Commission authority, has agreed to provide transportation services through June 30, 1985. It is stated that pursuant to the Agreement ANR would take receipt of up to 7,000 dt equivalent of gas per day which 3M, through its agent, Northern, would cause Oklahoma Natural Gas Company (ONG) to render to ANR at the point of interconnection of the pipeline systems of ANR and ONG in Custer County, Oklahoma, and ANR would transport and deliver equivalent volumes to Northern for 3M's account at an existing point of interconnection of the pipeline systems of Northern and ANR near Greensburg, Kansas. ANR is advised that Northern and Northern States Power Company (NSP) would provide additional transportation for, or on behalf of, 3M.

ANR estimates peak day and average day transportation volumes of 7 and 4.5 billion respectively, and annual volumes of 1,219,500 million Btu. ANR advises that NSP has indicated NSP has sufficient capacity to perform the transportation service without detriment to its other customers. ANR also indicates that no facilities need be constructed to provide the transportation service. ANR also has submitted an affadavit from 3M indicating that the gas would be used at its St. Paul, Minnesota, plant for boiler fuel.

ANR proposes to charge 3M 16.5¢ per dt for all gas transported and delivered to Northern for 3M's account after February 11, 1984, the date ANR's Rate Schedule EUT-1 went into effect.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules and (18 CFR 385.214) a motion to intervene or notice of intervention pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8739 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-207-000]

Albert D. Klain; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 28, 1984.

On March 9, 1984, Albert E. Klain; (Applicant), of Turtle Lake; North Dakota 58575, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10 kilowatt wind facility will be located in McLean County, North Dakota.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary

[FR Doc. 84-8736 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4945-001]

City of Ukiah, California; Surrender of Preliminary Permit

March 27, 1984.

Take notice that City of Ukiah, California, Permittee for the proposed Eden Creek Hydroelectric Project, has requested that its preliminary permit be terminated. The preliminary permit was issued on March 21, 1983, and would have expired September 30, 1984. The project would have been located on

Eden Creek in Mendocino County, California.

The Permittee filed its request on February 13, 1984, and the surrender of the preliminary permit for Project No. 4945 is deemed accepted as of February 13, 1984, and effective 30 days after the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8740 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-44-000]

Commercial Pipeline Co., Inc.; PGA Filing

March 28, 1984.

Take notice that on March 22, 1984, Commercial Pipeline Co., Inc. ("Commercial") tendered for filing its 44th Revised Sheet No. 3A, superseding Second Amended 43rd Revised Sheet No. 3A reflecting Purchased Gas Adjustments and effective dates as set forth below.

Sheet No.	Current adjustment	Cummulative adjustment	Surcharge adjustment	Total rate
44th Revised Sheet No. 3A.	(base) $.5139. (excess) .5295.	$.5432	$.4091	$5.5092
		.6589	.4091	5.6334

The effective date of Commercial's filing is April 23, 1984.

Commercial states that this filing reflects adjustments in its purchased gas cost to provide for the tracking of a corresponding PGA adjustment by Commercial's role supplier, Northwest Central Pipeline Corporation. The filing also reflects surcharge adjustments in accordance with Commercial's PGA.

Copies of the filings were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Steet, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8741 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA84-4-000]

Connecticut Yankee Atomic Power Co.; Termination of Proceeding

March 28, 1984.

On February 21, 1984, Connecticut Yankee Atomic Power Company filed a letter notifying the Commission that it no longer disagrees with the accounting adjustments required by the Commission's January 19, 1984 letter order. Accordingly, there is no need to initiate further proceedings, pursuant to Part 41 of the Commission's regulations, and this docket is terminated.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8742 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-200-000]

Delta Energy Project—Phase IV; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 28, 1984.

On March 5, 1984, Delta Energy Project—Phase IV (Applicant), of 177 Bovet Road, Suite 520, San Mateo, California 94402, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The windpark facility is designed to provide up to 7.875 megawatts of power and will be located in the Altamont Pass area near Tracy, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8743 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-325-000]

Enerex; Filing

March 28, 1984.

The filing Company submits the following:

Take notice that on March 19, 1984, Enerex, a partnership, tendered for filing (as the authorized representative of the five public utilities named below) an Interchange Agreement (Agreement) between Iowa Electric Light and Power Company, Iowa-Illinois Gas and Electric Company, Iowa Power and Light Company, Iowa Public Service Company, and Iowa Southern Utilities Company, dated as of January 1, 1984, with schedules using existing and new rates for wholesale energy transactions between the above-named parties and existing rates for wholesale energy transactions between the above-named parties and other utility companies.

Enerex states that the Agreement (and its service schedules) uses existing rates and in certain transactions between the parties uses of new rates. The principal purpose of the Agreement is to facilitate energy transactions between the parties so that they may operate their generating facilities as one control area so as to utilize the lowest cost energy for the group.

Enerex proposes an effective date of March 19, 1984, and therefore requests waiver of the Commission's notice requirements.

According to Enerex copies of this filing have been served upon the five utility companies named above, the Iowa State Commerce Commission, the Illinois Commerce Commission, and the South Dakota Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8744 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-226-000]

Iowa-Illinois Gas & Electric Co.; Filing

March 28, 1984.

The filing Company submits the following:

Take notice that on March 19, 1984, Iowa-Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing a Louisa Transmission Operating Agreement (Agreement) between Iowa-Illinois, Iowa Power and Light Company (Iowa Power), Iowa Public Service Company (Public Service), Central Iowa Power Cooperative (Central Iowa), Interstate Power Company (Interstate), City of Tipton, City of Harlan, City of Waverly, dated May 27, 1983.

Iowa-Illinois states that the Agreement provides for the operation by the parties of Louisa Transmission, which has been constructed to transmit each party's respective share of Louisa Generation Station capacity toward its respective load center.

Iowa-Illinois further states the parties, by separate agreements, have provided for the construction of Louisa Generating Station in Louisa County, Iowa and for the construction of the associated 345 kv Louisa Transmission facilities. Iowa-Illinois indicates that, in addition to providing for the operation of Louisa Transmission, the Agreement provides for the determination and establishment of capacity schedules in Louisa Transmission and for assignment of each capacity schedules by a party to another party, or nonparty, including the associated rights, obligations and charges. Iowa-Illinois further indicates that the purpose of the proposed rate for assignment of such capacity schedules is to compensate the assigning parties for the costs of the portion of Louisa Transmission over which the capacity schedule flows.

Iowa-Illinois requests an effective date of October 13, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing has been mailed to each of the other parties to the Agreement, the Iowa State Commerce Commission, the Illinois Commerce Commission, the Minnesota Public Utilities Commission and the South Dakota Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8745 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-286-000]

Lone Star Gas Co., a Division of ENSERCH Corp.; Request Under Blanket Authorization

March 28, 1984.

Take notice that on March 8, 1984, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood St., Dallas, Texas 75201, filed in Docket No. CP84-286-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Lone Star proposes to construct and operate an additional delivery point under the authorization issued in Docket Nos. CP83-59-000 and CP83-59-002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Lone Star proposes to add a second meter parallel to an existing meter to permit the sale or natural gas to Republic Gypsum Company (Republic) in Jackson County, Oklahoma. Lone Star states that the additional meter is required because Republic is adding facilities to its plant and requires additional gas. It is stated that deliveries at the two delivery points would total 1,236,000 Mcf per year. It is further stated that the increase of 738,000 Mcf per year over the 498,000 Mcf authorized for the existing delivery points has been authorized for the existing delivery point has been authorized by the Commission. It is asserted that the rate to be charged for the gas would be one approved by the Oklahoma Regulatory Commission.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request, shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8746 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-10133-001 et al.]

Mapco Oil & Gas Co.; Application To Amend Certificates of Public Convenience and Necessity and in Any Related Proceedings

March 28, 1984.

Take notice that on January 23, 1984, Mapco Oil & Gas Company (Mapco) of P.O. Box 2115, Tulsa, Oklahoma 74101-2115, filed an application to amend Certificates of Public Convenience and Necessity so as to substitute Mapco Oil & Gas Company for Mapco Production Company in such certificates and in any other related proceedings. Mapco is filing contemporaneously herewith a Certificate of Adoption and Requests for Redesignation of Mapco Production Rate Schedules listed in the attached Appendix.

Effective December 31, 1983, Mapco Production Company was changed to Mapco Oil & Gas Company.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with th Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to

intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX

Certificate docket No.	Filing schedule No.	Pipeline purchaser
G-10133	1	Colorado Interstate Gas Co.
G-15050	2	Mississippi River Transmission Corp.
G-15052	4	Do.
G-15052	5	Do.
G-16146	6	Northern Natural Gas Co.
G-16146	7	Colorado Interstate Gas Co.
G-16146	8	Do.
G-16146	9	Northern Natural Gas Co.
G-16146	10	Do.
G-6086	11	Do.
G-6086	12	Southwestern Public Service Co.
CI67-337	14	Do.
G-19480	16	Colorado Interstate Gas Co.
G-20148	17	Do.
CI74-302	19	Northern Natural Gas Co.
CI74-646	20	Do.
CI75-30	21	Do.
CI75-151	22	Do.
CI75-243	23	Florida Gas Transmission Co.
CI76-397	24	Colorado Interstate Gas Co.
CI76-577	25	Florida Gas Transmission Co.
CI77-747	26	Do.
CI77-748	27	Do.

[FR Doc. 84-8747 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC84-4-000]

Mississippi River Transmission Corp.; Proposed Tariff Change

March 27, 1984.

Take notice that on March 15, 1984, Mississippi River Transmission Corporation (Mississippi), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. TC84-4-000 the following revised tariff sheets in its FERC Gas Tariff, Second Revised Volume No. 1, to become effective April 15, 1984:

First Revised Sheet No. 79
First Revised Sheet No. 80
First Revised Sheet No. 82
First Revised Sheet No. 83

Mississippi states that this filing reflects changes in the Index of Protected Essential Agricultural Use (Step 19) Entitlements and in the Index of High Priority (Step 11) Entitlements. The proposed tariff sheets would be effective during the period, April 15, 1984, through October 31, 1984, pursuant to paragraph 8.2(a)(i) of Mississippi's curtailment plan, it is explained.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before April 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8748 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4987-002]

Modesto Irrigation District; Surrender of Preliminary Permit

March 27, 1984.

Take notice that Modesto Irrigation District, Permittee for the China and Camp Creeks Power Project, FERC No. 4987, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 4987 was issued on February 18, 1983, and would have expired on August 31, 1984. The project would have been located on China and Camp Creeks, in Humboldt County, California.

Modesto Irrigation District filed its request on January 16, 1984, and the surrender of the preliminary permit for Project No. 4987 is deemed accepted as of January 16, 1984, and effective as of 30 days after the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8749 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-201-000]

Munson Geothermal Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 28, 1984.

On March 5, 1984, Munson Geothermal Inc. (Applicant), of Suite 1290, 1380 Lawrence Street, Denver, Colorado 80204, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Churchill County, Nevada. The primary energy source will be a geothermal resource. The power production capacity will be no more than 10 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petititon to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8750 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-278-000 and CP84-278-001]

Northern Natural Gas Co.; Division of InterNorth, Inc.; Request Under Blanket Authorization

March 28, 1984.

Take notice that on March 2, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-278-000 a request as amended on March 20, 1984 in Docket No. CP84-278-001 pursuant to § 157.205 of the Commission's Regulations that Northern proposes to perform a transportation service on behalf of 3M Corporation (3M), a low priority end-user of natural gas, under authorization issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern indicates that it has arranged as agent for 3M to purchase a supply of gas from Colony Natural Gas Corporation and Reliance Pipeline Company.

Northern states that the proposed transportation service would be performed pursuant to the terms of the transportation agreement dated January 3, 1984. It is said that the agreement provides for the transportation of up to 7 billion Btu of natural gas per day on

behalf of 3M for use at its manufacturing plant located in St. Paul, Minnesota.

Northern states that 3M would cause natural gas to be delivered to Northern at the existing interconnection between Northern and Oklahoma Natural Gas Company (ONG) located in Section 32, Township 22N, Range 22W, Woodward County, Oklahoma (Woodward #1) and/or the existing interconnection between Northern and ONG located in Section 24, Township 21N, Range 21N, Woodward County, Oklahoma (Woodward #2) and/or the existing interconnection between Northern and ONG located in Section 4, Township 12N, Range 22W, Roger Mills County, Oklahoma, and/or the existing interconnection between Northern and ANR Pipeline Company located in Section 16, Township 28S, Range 19W, Kiowa County, Kansas. Northen would transport equivalent thermal quantities to Northern States Power Company (NSP), for the account of 3M, at the existing interconnection between Northern and NSP located in Section 15, Township 115N, Range 19W, Dakota County, Minnesota, it is explained.

Northen proposes to provide this transportation service for a term not to extend beyond June 30, 1985, or the termination of the gas purchase agreement between 3M and its natural gas supplier, whichever occurs first.

Northern states that no additional facilities are required to be constructed to facilitate this transportation service.

Northern proposes to charge 3M the following transportation rates:

(a) 37.08 cents per Mcf of gas received at Woodward #1,

(b) 37.55 cents per Mcf of gas received at Woodward #2,

(c) 40.94 cents per Mcf received at the Roger Mills County receipt point,

(d) 30.57 cents per Mcf received at the Kiowa County receipt point,

Northern also indicates it would retain for fuel and unaccounted for gas 3 percent of all Btu's received at Woodward #1 and Woodward #2, 4.75 percent of all Btu's received at the Roger Mills receipt point and 2.5 percent of all Btu's received at the Kiowa County receipt point. Northern states that these rates are derived from its Rate Schedule EUT–1 of its FERC Gas Tariff, Third Revised Volume No. 1, which provides for rates of 4.65 cents per 100 miles of forward haul plus 1 cent per Mcf for general and administrative expenses.

In addition Northern proposes to collect an added incentive charge of up to 5 cents per Mcf of gas transported and which is dreived from Northern's Rate Schedule AIC–1 and also to charge 3M a GRI funding unit of 1.25 cents per Mcf transported.

Northern estimates peak day and average day transportation volumes of 7 and 4.5 billion Btu, respectively, and annual volumes of 1,219,500 million Btu. Northern also states that 3M hs indicated that the gas would be used at its St. Paul, Minnesota, plant for boiler fuel.

Northern also indicates it may need to add or delete gas sources for 3M and/or Northern receipt points and advises that it would comply with certain filing requirements in implementing these changes. It advises that within 30 days following the addition or deletion of any gas suppliers or receipt points, Northern would file the following information:

(1) A copy of the gas purchase contract;

(2) A statement as to whether the supply is attributable to gas under contract to or released by a pipeline or distributor, and if so, identification of the parties and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) A statement that the gas is not committed or dedicated within the meaning of NGPA Section 2(18);

(5) The location of the Northern receipt points being added or deleted and the identity of the seller with respect to any deletion;

(6) The information required by Section 157.209(c)(1)(ix) of the Regulations in the event an intermediary participates in the transaction between the seller and 3M;

(7) The identity of any other pipeline involved in the transportation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8727 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-43-000]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

March 28, 1984.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on March 23, 1984, tendered for filing Third Revised First Revised Sheet No. 6 and Third Revised Sheet Nos. 7 and 8 to its FERC Gas Tariff, Original Volume No. 1. Northwest Central states that pursuant to the Purchased Gas Adjustment in Article 21 and the Incremental Pricing Provisions in Article 24 of its FERC Gas Tariff, it proposes to decrease its rates effective April 23, 1984, to reflect:

(1) An increase of 0.38¢ per Mcf in the Cumulative Adjustment due to a change in purchase and sales volume relationship from Northwest Central's last PGA adjustment. The Projected Cost of Purchased Gas is still the 272.52¢ per Mcf as projected and targeted for in Northwest Central's last PGA filing;

(2) A decreased Surcharge Adjustment of 3.80¢ per Mcf (to a negative 8.62¢ per Mcf from a negative 4.82¢ per Mcf per last filing) to amortize the Deferred Purchased Gas Cost Account balance and other projected items to maintain levelized jurisdictional rates over an eighteen-month period; and

(3) A 1.09¢ per Mcf rate reduction for Advance Payments subject to approval of the Stipulation and Agreement filed February 14, 1984, in Docket No. RP82–114–000, *et al.*

This filing reflects the continuation of a pattern of gas purchases designed to produce a purchase gas cost level which will permit gas to be sold competitively in Northwest Central's markets.

Northwest Central has made significant efforts to provide competitive rates to the customers. Northwest Central is herein filing a procedure which will basically levelize rates at the April 23, 1984, level for the following eighteen months.

Northwest Central has been provided this opportunity to propose levelized rates in a large part due to the significant credit subaccount balance in Account 191 at the end of February of $(58.8) million.

By utilizing this large credit balance as a starting point, Northwest Central

proposes to add other major amounts which are expected to occur due to unusual circumstances during the eighteen-month period to estimate the fund which Northwest Central anticipates will accumulate in Account 191 over the eighteen-month period.

The Advance Payment Rate Adjustment is subject to approval of the Stipulation and Agreement filed with the Commission February 14, 1984, in Docket No. RP82–114–000, *et al.* This Stipulation and Agreement has not been approved by the Commission as yet. Northwest Central reserves the right to recover any monies refunded by this Advance Payment Rate Adjustment through a future surcharge if this Stipulation and Agreement is not approved by the Commission.

Northwest Central states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceedings in Docket Nos. RP82–114–000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8728 Filed 3–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–20–003]

Panhandle Eastern Pipe Line Co.; Proposed Changes In FERC Gas Tariff

March 28, 1984.

Take notice that on March 20, 1984, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised tariff sheets to supersede the sheets originally filed in the above-referenced docket as well as the sheets submitted as a compliance filing on January 13, 1984.

Panhandle's filing provides for a revised Additional Incentive Charge Rate Schedule and is to be effective as of the date of the Commission order approving this tariff and will not affect any transportation transactions prior to that date.

Panhandle states that if its settlement in Docket No. RP82–58 has not been approved by the Commission, then the rates provided in Attachment A of their filing shall become effective and, in the alternative, if the Commission accepts their settlement in Docket No. RP82–58, Attachment B of this filing shall provide the effective rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8729 Filed 3–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6955–001]

Pan-Pacific Hydro, Inc.; Surrender of Exemption

March 27, 1984.

Take notice that Pan-Pacific Hydro, Inc., Exemptee for the proposed Stoney Creek Project No. 6955 has requested that its exemption be terminated. The exemption was issued on May 26, 1983. The project would have been located on Stoney Creek in Trinity County, California.

Pan-Pacific Hydro, Inc. filed its request on March 1, 1984, and the surrender of its exemption for Project No. 6955 is deemed accepted effective 30 days from the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8730 Filed 3–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket ER84–227–000]

Pennsylvania-New Jersey-Maryland Interconnection; Filing

March 28, 1984.

The filing Company submits the following:

Take notice that on March 19, 1984, the parties to the Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement tendered for filing proposed Schedule 4.01 Revision No. 7 to the original Agreement between them as heretofore amended and supplemented, which is filed with the Commission under the following Rate Schedule designations:

	Rate schedule (FERC [illegible])
Public Service Electric and Gas Co	23
Philadelphia Electric Co	21
Pennsylvania Power & Light Co	21
Baltimore Gas and Electric Co	[illegible]
Jersey Central Power & Light Co	7
Metropolitan Edison Co	7
Pennsylvania Electric Co	24
Potomac Electric Power Co	19
Atlantic City Electric Co	[illegible]

The PJM parties state that proposed Schedule 4.01 sets forth the rate for capacity deficiency transactions under the PJM Agreement for the 12-month Planning Period beginning June 1, 1984.

The PJM parties further state that no new facilities will be installed nor will existing facilities be modified in connection with the proposed schdedule. It is requested that the proposed schedule become effective on June 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8731 Filed 3–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84-255-000]

The River Gas Co.; Application

March 28, 1984.

Take notice that on February 24, 1984, the River Gas Company (Applicant), 324 Fourth Street, Marietta, Ohio 45750, filed in Docket No. CP84-255-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization to transport, sell, and assign natural gas in interstate commerce as if Applicant were an interestate pipeline as defined in Subparts C, D, and E of Part 284 of the Commission's Regulations, as well as § 284.203 thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that 2,360,000 Mcf of natural gas from outside the state of Ohio were received by Applicant during the 12-month period ending December 31, 1983, within or at the state boundary. All of such volumes were exempt from the Commission's jurisdiction under the Natural Gas Act by reason of Applicant's Section 1(c) exemption. A total of 4,043,000 Mcf of gas were received by Applicant's Hinshaw system in Ohio from all sources during the most recent 12-month period ending December 31, 1983, it is stated.

Applicant states that it received a Declaration of Exemption issued by the Commission under Section 1(c) of the Natural Gas Act of January 4, 1955, in Docket No. G-5294.

Applicant asserts that it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations. It is also stated that Applicant would petition the Commission for rate approval in accordance with § 294.123(b)(2) of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8732 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI77-428-004]

Southern Union Exploration Co.; Corporate Name Change

March 28, 1984.

Take notice that on February 1, 1984, Southern Union Exploration Company (Southern Union) of 1217 Main Street, Suite 400, Dallas, Texas 75202, filed in Docket No. CI77-428-004, *et al.*, an application to amend certificates of public convenience and necessity to succeed to the interests of Southern Union Exploration Company of Texas (Southern), and to amend the related rate schedules as listed in the attached Appendix to reflect a change of name from Southern Union Exploration Company of Texas to Southern Union Exploration Company.

By Certificate of Merger dated December 22, 1983, Southern was merged into Southern Union. The effective dated was January 1, 1984, whereupon Southern Union took over all of Southern's properties as listed in the attached appendix.

Notice is hereby given that all the certificates and rate schedules as listed in the attached Appendix are hereby redesignated to reflect the corporate name change from Southern Union Exploration Company of Texas to Southern Union Exploration Company effective January 1, 1984.

Lois D. Cashell,

Acting Secretary.

Appendix

EXHIBIT II.—DOCKET NUMBERS OF SOUTHERN UNION EXPLORATION COMPANY OF TEXAS

Docket nos.	Rate schedule Nos.	Purchaser
CI77-428-004	1	Western Gas Interstate.
CI77-489-002	2	El Paso Natural Gas Co.
CI76-578-003	3	Southern Union Co.
CI76-579-003	4	El Paso Natural Gas Co.
CI77-677-002	5	Western Gas Interstate.

[FR Doc. 84-8733 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-74-011]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 27, 1984.

Take notice that on March 21, 1984, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revisions to its FERC Gas Tariff, Original Volume No. 2:

Third Revised Sheet No. 919
Superseding Revised Substitute
Second Revised Sheet No. 919.

Texas Gas states that this sheet identifies the rate for transportation service rendered for General Electric and that a copy of the filing has been sent to them.

An effective date of April 21, 1984 is requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8734 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-30-000]

Tuthill and Barbee, Petition To Reopen Final Well Category Determination for K&G Gas Corporation's Margaret Moore No. 201 Well

March 28, 1984.

On January 3, 1984, under 18 CFR 275.205 (1983), Barbee filed a request [1] with the Federal Energy Regulatory Commission (Commission) to reopen the final determination that the K&G Gas Corporation's Margaret Moore No. 201 Well[2] qualifies as a new onshore production well under section 103 of the Natural Gas Policy Act of 1978 (NGPA).[3]

Tuthill and Barbee's request arises out of the Commission's Final Finding Reversing Well Category Determinations in Docket No. GP83-38-000. That finding reversed, among others, a determination by the Oklahoma Corporation Commission that Tuthill and Barbee's Simpson Walker No. 1-31 Well qualified under NGPA section 103.[4] The Commission found that surface drilling of the Simpson Walker No. 1-31 well did not commence on or after February 19, 1977, as required under NGPA section 103, since the substantial additional drilling had not been performed upon reentry of the well in April, 1978.

Tuthill and Barbee request that the Commission reopen the *K&G* case under § 275.205 of the Commission's regulations because both the Commission and the jurisdictional agency, the State of New York, relied on an untrue statement of material fact in approving the K&G application. Tuthill and barbee claim that K&G's application stated that the surface drilling of the well was begun on or after February 19, 1977. They then argue that based upon the rationale set forth in the *Tuthill and Barbee* case, drilling of the K&G well was really commenced before February 19, 1977, and thus it does not qualify under NGPA section 103. Therefore, Tuthill and Barbee request that the Commission reopen the *K&G* case.

Any person who desires to be heard or to make a protest to the requested reopening should file, within 30 days after this notice is published in **Federal Register**, with the Commission a motion to intervene or protest in accordance with Rules 211 or 214 or the Rules of Practice and Procedure. Such motion to intervene or protest should be filed at 825 North Capitol Street, N.E., Washington, D.C. 20426. All protests filed will be considered but will not make the protestants parties to the proceeding. Any party who wishes to become a party must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8735 Filed 3-30-84; 8:45 am]

BILLING CODE 6717-01-M

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[1] Tuthill and Barbee in the same filing, also requested the Commission to rehear its final finding with respect to the Simpson Walker No. 1-31 Well. The Secretary informed them, by letter dated February 15, 1984, that rehearing does not lie for a final finding under NGPA section 503.

[2] NY-NGPA Request No. 1844, FERC No. JD82-00153.

[3] 15 U.S.C. 3301-3432 (1982).

[4] 25 FERC ¶ 61,350 (1983).

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 2555]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Water Permits Programs

Title: Uniform Federal Transportation and Utility System Application for Use on Alaskan Conservation System Unit Lands (EPA #0958).

Abstract: Parties seeking to construct or operate transportation or utility projects on Alaskan public lands must submit a consolidated application form to the appropriate Federal agency. EPA uses the information on application (for projects under its jurisdiction) to determine whether or not to issue permits under NPDES, RCRA and UIC programs.

Respondents: Businesses or government agencies seeking to construct or operate transportation or utility projects on Alaskan public lands.

Toxics Programs

Title: Compliance Requirement for the Child Resistant Packaging Act (EPA #0616).

Abstract: The Child Resistant Packaging Act requires child-resistant containers for pesticides to protect against serious illness or injury from accidental ingestion or contact with the product. EPA reviews the information to ensure compliance with this program.

Respondents: Pesticides manufacturers.

* * * * *

Agency PRA Clearance Requests Completed by OMB

EPA 0959—Reporting, Recordkeeping and Planning Requirements for Groundwater Monitoring—was approved March 12, 1984 (OMB #2000-0423).

* * * * *

Comments on all parts of this notice should be sent to:

David Bowers (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, S.W., Washington, D.C. 20460, and

Wayne Leiss, Carlos Tellez or Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, N.W., Washington, D.C. 20503

Dated: March 23, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-8691 Filed 3-30-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 83-1145; Phase I]

Investigation of Access and Divestiture Related Tariffs

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order.

SUMMARY: In this order, the FCC takes action on tariffs filed by the Bell Operating Companies and independent telephone companies as part of its investigation of regulations and rates for interstate and foreign access to local telephone exhange service facilities. The purpose of this order is to give the carriers directions on revising their tariffs prior to refiling them with the FCC.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, Common Carrier Bureau, Federal Communications Commission, (202) 632–6387.

Memorandum Opinion and Order

In the matter of Investigation of Access and Divestiture Related Tariffs; CC Docket No. 83–1145, Phase I.

Adopted: March 6, 1984.
Released: March 7, 1984.

By the Chief, Common Carrier Bureau:

1. The Commission's *ECA Tariff Order,* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, FCC 84–51 (released February 17, 1984), discussed in detail the National Exchange Carrier Association (ECA) access and special construction tariffs. It said in that order that the Common Carrier Bureau would act on delegated authority to adopt an order addressing changes needed in other, non–ECA access tariffs. This order addresses these 74 Bell Operating Company (BOC) and independent telephone company tariffs.

2. Like the *ECA Tariff Order,* this order contains an appendix which includes a section-by-section review of each non-ECA access tariff (Appendix B).[1] We have attempted to review all sections of these tariffs, but have not listed all necessary changes. In most instances, these non-ECA access tariffs mirror the ECA tariff. As the Commission stated in the *ECA Tariff Order,* para. 86, the policy decisions and specific corrections required by that order apply to all access tariff provisions which are the same or relatively similar to the ECA's. In this order, accordingly, we do not generally address these already-decided issues. Our review is limited to tariff provisions which differ from those discussed in the *ECA Tariff Order.* Filing carriers are of course required to implement the directives of the *ECA Tariff Order* as well as the specific corrections listed in Appendix B.

[1] To avoid duplicative review of Central Telephone Company tariffs, we reviewed only those tariffs filed by Central of Florida, Ohio and Texas and Merchants and Farmers Telephone Company. In the case of United Telephone Company, we reviewed only United Arkansas.

3. In general, as was the case with the ECA tariff, the other access tariffs appear to be functional vehicles for implementing access charges, so long as changes necessary to conform to the Commission's recent access charge *Second Reconsideration Order,* CC Docket No. 78–72, Phase I, FCC 84–36, released February 15, 1984 and the *ECA Tariff Order* are made. Many of our comments and directions in this review are editorial in nature and seek to eliminate ambiguity or errors in the tariff language. In a few instances, we request further explanation or find that some specific provisions are unreasonable or unjustified. We also discuss a number of issues of more general concern in the body of this order.

4. Appendix A contains a list of parties filing comments in CC Docket No. 83–1145, along with abbreviations for those parties. These abbreviations are used throughout our discussion of the non-ECA tariffs. This appendix also contains a summary list of access tariff filings, a table showing references to the ECA tariff, and instructions for filing revisions to those tariffs.

A. Availability of Currently Offered Services

5. Several commenters raise issues concerning services which are offered under the ECA access tariff but not offered under the BOCs access tariffs. For instance, many BOCs [2] list services they would not provide under Section 14 of their proposed access tariffs, "Exceptions to Access Service Offerings." [3] RCA claims that a number of telcos propose to withdraw or substantially degrade the quality of interconnection for many existing service offerings in apparent violation of Section 214 of the Act and Part 63 of the Rules. Western Union objects to the proposal of certain telcos to delete Group/Supergroup offerings or limit these offerings to existing customers, a practice Western Union claims is contrary to our *Memorandum Opinion and Order* in Docket 21449, 92 FCC 2d 1217 (1983), *recon. denied,* FCC 83–550, released December 12, 1983, 48 FR 7596 (February 23, 1983), that required AT&T to make these facilities available to OCCs and to the public. Western Union further objects to Mountain States Telephone's proposal in Section 14.2 of its tariff to limit metallic wire-pairs to existing locations.[4]

6. The present access tariff investigation has been primarily directed towards designing compensation arrangements whereby local exchange carriers may recover the costs of providing access services needed to complete interstate and foreign telecommunications. We do not believe this is the time or place for reductions in the level or quality of interconnection absent clear justification. Neither the Access Charge Rules nor the Bell System divestiture provides any such justification. *See* our *Notice of Proposed Rulemaking* in Phase III of CC Docket 78–72, FCC 83–178, released May 31, 1983, which is addressing the physical, technical and operational details of interconnected service under our access charge plan. Thus, we remind all telcos that they must comply with Section 214(a) of the Act and with Part 63 of our Rules as applicable in proposing to discontinue existing or currently offered services or facilities without prior Commission approval, regardless of whether such services are actually being utilized.[5] This applies equally to cases where the service or facility has been provided on a non-tariff basis. Telcos should also provide complete justification for any proposals to limit services or facilities for existing customers or existing locations. However, the issue of efficient use of Group/Supergroup channels for wideband services remains under consideration. *See Memorandum Opinion and Order* in Docket 21499, *supra,* at paras. 27 and 30–31. Until this issue is resolved, local distribution or Special Access channels for Group/Supergroup applications can be offered on an individual case basis. On the other hand, restrictions limiting Group/Supergroup facilities to existing customers would effectively preserve these services for AT&T while

[2] *E.g.,* New York Telephone, New England Telephone, Southern New England Telephone, Cincinnati Bell, Mountain States Telephone, Nevada Bell, and Southern Bell.

[3] Several independents, *e.g.,* Orchard Farm Telephone Co., Walnut Hill Telephone Co., and Matanuska Telephone Association, Inc., have indicated that Section 9 of their access tariffs, dealing with Directory Assistance Service (DA), has been left blank intentionally. The Telephone Utilities Exchange Carrier Association, instead of listing rates and charges in Section 9.4(C) and 9.8 of its tariff, cross-references its Section 5.3, which indicates that the inventory and personnel to provide DA service might not be available. If these (and other) carriers are not going to offer DA service, an offering provided for in § 69.109 of our Rules, their tariffs should state this fact for purposes of clarity.

[4] MCI claims that certain telcos will not offer VG13 service, which provides voice grade channels for intraLATA services that are jurisdictionally interstate. MCI asserts that for telcos with LATAs that cross state lines, omission of this offering will preclude MCI from offering interstate, intraLATA services. On this point, see our discussion in the introduction to Appendix B.

[5] *See* AT&T, Docket 20099, 69 FCC 2d 1696, 1696 (1978).

eliminating them for all OCCs, which is contrary to our decisions in Docket 21499 and unduly restrictive. Such restrictions should be deleted. Telcos should review their proposed access tariffs to determine if changes are necessary in accordance with all of the above guidelines. (See, *e.g.*, Section 7.2 throughout the BOC tariffs.)

B. Non-ECA Rates

7. In the *ECA Tariff Order* the Commission discussed in detail changes that it deemed necessary to conform that tariff to *Reconsideration Orders*,[6] changes in some of these rates would be necessary to implement and reflect the *Second Reconsideration Order*. Specifically, we said that with the deferral of the residential and single line business end user charges, the carrier common line rate element would presumable increase to recover this shortfall. In addition, the flat monthly rate for ENFIA-type access for OCCs could require adjustments in other carrier rate elements. Other rates, such as Special Access, could be indirectly affected because of shifts in demand caused by other rate changes and the revised application of Special Access Surcharges.

8. Notwithstanding the need for these changes, however, we were able to review and evaluate the ECA's proposed cost and rate development, including many individual rates which were not likely to change substantially, in order to determine the reasonableness of the methodology and support information used in that filing. We concluded that the support material filed by the ECA and the local exchange companies, including the BOCs, did not contain adequate information from which to judge whether the filed rates should be allowed to become effective. In a recent Information Request to the ECA,[7] the Common Carrier Bureau directed the submission of additional information needed for the Commission's review.[8]

9. Also in the *ECA Tariff Order* the Commission found that the proposed pricing structure for Special Access Service was unreasonable under Section 201(b) of the Communications Act, 47 U.S.C. section 201(b). We therefore required that the Special access rate structure be revised to correct the deficiencies noted in the order. In the Information Request, the Bureau stated that, because the proposed rates represented substantial increases for existing facilities and services, it was essential that the filing carriers explain fully the basis for their proposals. We thus instructed the ECA to provide adequate information to meet its burden of proving that its proposed special Access increases are reasonable and to specify all changes of circumstances which support the increases. Finally, in the *ECA Tariff Order* we concluded that the rate structure proposed for switched Access Service Access Connections, which bases the rate on busy hour minutes of capacity ordered, is unreasonable. We therefore directed the ECA and the BOCs to eliminate the Access Connection element for Switched Access Service, while permitting existing nonrecurring charges to be applied on an interim basis if the filing carrier wishes.

10. To the extent that other filing carriers have not joined ECA pools, their tariffs must implement the changes in rate provisions and structures required by the *ECA Tariff Order*. Most of those tariffs are similar in format, structure, and provisions to the ECA tariffs. Specific rates, however, often differ. Those rates are also likely to require changes in many cases to reflect our orders. For the ECA and the BOCs, we requested additional information to specifically trace the rate development for Switched Access and to justify the Special Access rates and the proposed increases. It is our expectation that this additional information will allow us to determine whether the filed rates may be allowed to become effective as scheduled. For the non-ECA, non-BOC independents we are not requiring the submission of specific additional information. Nonetheless, the support material filed with the independent tariffs will be judged by a similar standard. The material should detail clearly the source of the origianal cost data, the methodology used, the assumptions, and such other information as may be necessary to understand and evaluate the proposed rates. In particular, we need to trace the cost elements through the steps in the carrier's methodology through to the overall rates, so that we may judge the overall reasonableness of the rates and their compliance with the Part 69 Rules. The carriers should also explain and justify proposed changes in Special Access rates and structures, as compared to existing local private line offerings. We have attached a copy of the information request as Appendix C as guidance for filing carriers

C. Directions to Filing Carriers

11. We expect that the information supplied with the new non-ECA filings and the specific rates and provisions will comply with this order, so that we may allow the revised non-ECA tariffs to become effective. In any event, we will continue our investigation in CC Docket No. 83–1145 to monitor these filings and consider additional issues which we have not fully or permanently resolved here, and the new issues certain to arise. Any issues which have not been fully addressed or resolved in this order will be included in the continuing investigation.

12. Because of the tight schedule we are trying to meet and the mass of material the filing carriers must prepare and we must review, by this order we are establishing a specific set of requirements for all revised non-ECA access fillings, essentially identical to those for the ECA, except for a brief deferral of the filing date:

- Filing carriers must make no revisions, corrections, alterations, or other changes in the rates, terms, or conditions of the access tariff in the prescribed filing (other than to correct typographical errors such as spelling), except as expressly required or approved in this order, the *ECA Tariff Order* or the *Second Reconsideration*. These revisions shall conform to the applicable rule requirements of §§ 61.55(e), 61.94 and 61.118(a). However, the carriers need not symbolize material ressued without change as is required by § 61.118(b). To do so would result in symbolization that would be confusing. Specific instructions concerning the administrative details of filing these revisions can be found in Appendix A. Other changes which the filing carrier wishes to propose must be made in a separate filing pursuant to Part 61 of the Commission's Rules. 47 CFR Part 61.
- Filing carriers shall file in a separate volume as part of their support material a report specifying all revisions on a section-by-section basis, listing the language now pending, the proposed language (if any) and a reference to the specific Commission order, page and section or paragraph number which is implemented. The carrier may include

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[6] MTS/WATS Market Structure, CC Docket No. 78–72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983) modified on reconsideration FCC 83–356, released August 22, 1983.

[7] Letter to G.R. Evans, Director—Tariff and Regulatory Matters, NECA from the Chief, Common Carrier Bureau, February 24, 1984.

[8] Essentially, this information was required to trace the development of the ECA and BOC proposed rates, showing at each stage the source of the data, the assumptions and projections applied (and their justification), the specific process used to transform the data and the data which then resulted. In order to limit the information requested to that which we believed was necessary and manageable, we requested information for specific categories of carriers and for one individual carrier, New York Telephone, as a case study.

any explanation or justification of the proposed revisions in a separate section-by-section format.

13. We do not expect to modify or waive the requirements of this order before the effective date of conforming tariffs, absent exceptional circumstances. Reconsideration petitions or additional tariff filings should provide adequate opportunities to present any claims that revisions are needed. If a carrier does wish to request a waiver to allow a tariff provision which does not conform with this order to become effective immediately, it should present a full explanation and justification for all request for immediate relief in the form of a single waiver request submitted no later than March 12, 1984. We are currently considering pending requests for waivers in connection with these filings. We will allow these carriers four additional days beyond the scheduled ECA tariff filing date. Carriers are directed to file revised tariffs conforming with this order no later than March 19, to be effective April 3, 1984. A few carriers have stated that they may be unable to meet this filing date. We expect to consider their requests for a later date individually. We will strive to maintain this schedule. However, as we noted in the *ECA Tariff Order*, the task of revisions will be a lengthy and difficult one. It is nonetheless of crucial importance to meeting the April 3 date that filings be done correctly and well—and even more important that they be done quickly. We hope that the information provided and modifications made by carriers to be provisions and structure of their tariffs will remedy most of the problems identified concerning rates.

D. Ordering Clauses

14. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), 201, 202, 203, 204(a) and 205, of the Communications Act, 47 U.S.C. 154(i), (j), 201, 202, 203, 204(a), and 205, that the tariff material submitted under the transmittals referenced above is unlawful to the extent indicated herein.

15. It is further ordered, That the Bell Operating Companies and Independent Telephone Companies shall file revised tariff material in compliance with this order no later than March 19, 1984 with a scheduled effective date of April 3, 1984.

16. It is further ordered, That §§ 61.58, 61.59, 61.74 and 61.118(b) of the Commission's Rules, 47 CFR 61.58, 61.59, 61.74 and 61.118(b) are waived to the extent required to file tariff revisions implementing this Order.

17. This order is exempt from the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It involves a rule applicable to particular rates and to practices relating to such rates within the meaning of the exemption contained in 5 U.S.C. 601[2].

Federal Communications Commission.

Jack D. Smith,

Chief, Common Carrier Bureau.

[FR Doc. 84-8549 Filed 3-30-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 84-12)

Ceres Gulf, Inc. v. Baton Rouge Marine Contractors, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Ceres Gulf, Inc. against Baton Rouge Marine Contractors, Inc., and six other terminal operators located in the State of Louisiana was served March 23, 1984. Complainant alleges that respondents have violated sections 15, 16 First, and 17 of the Shipping Act, 1916, in connection with their activities regarding the use and lease of certain terminal areas at the Port of New Orleans.

This complaint has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8723 Filed 3-30-84; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 9522-48]

Med-Gulf Conference; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement No. 9522-48 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

The agreement is between Atlanttrafik Express Service, Achille Largo, C.I.A. Venezolana de Navegacion, Constellation Lines, S.A., Costa Line, D'Amico Line S.N.p.A., Egyptian Navigation Co., Ltd., Farrell Lines, Flota Mercante Grancolombiana S.A., Italian Line, Jugolinija, Jugooceanija, Lykes Lines, Nedlloyd Lines, Nordana Line/Dannebrog Lines, Sea-Land Service, Inc., Spanish Line and Zim Israel Navigation Co., Ltd.

The proposed amendment would primarily provide for conference intermodal authority within the scope of the Italy, South-France, South Spain, Portugal/U.S. Gulf and Puerto Rico trade. This authority is now being exercised by individual members.

This Finding of No Significant Impact (FONSI) will become final within 20 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8724 Filed 3-30-84; 8:45 am]

BILLING CODE 6730-01-M

[Agreement Nos. 2846-54, 5660-37 and 9615-38]

West Coast of Italy, Sicilian and Adriatic Port/North Atlantic Range Conference; Marseilles/North Atlantic U.S.A. Freight Conference; and Iberian/U.S. North Atlantic Westbound Freight Conference; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement Nos. 2846-54, 5660-37 and 9615-38 will not constitute major Federal actions significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparations of environmental impact statements are not required.

Agreement No. 2846–54 is between Atlanttrafik Express Service, Spanish Line, Constellation Lines, S.A., Costa Line, Egyptian Navigation Co., Ltd., Farrell Lines, Inc., Italia S.p.A.N., Jugolinija, Nedlloyd Lines, Sea-Land Service, Inc. and Zim Israel Navigation Co., Ltd. The primary purpose of the proposed amendment is to place certain intermodal ratemaking authority within the scope of The West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference. This authority is now being exercised by individual members.

Agreement No. 5660–37 is between Nedlloyd Lines, Sea-Land Service, Inc., and Zim Israel Navigation Co., Ltd. The amendment would primarily place intermodal ratemaking authority within the scope of the Marseilles/North Atlantic U.S.A. Freight Conference. This authority is now being exercised by individual members.

Agreement No. 9615–38 is between Atlanttrafik Express Service, Spanish Line, Costa Line, Egyptian Navigation Co., Farrell Lines, Inc., Hapag Lloyd AG, Italia S.p.A.N., Nedlloyd Lines, Sea-Land Service and Zim Israel Navigation Co., Ltd. The proposed amendment of the Iberian/U.S. North Atlantic Westbound Freight Conference would provide for Conference U.S. intermodal authority. This authority is now being exercised by individual members.

This Finding of No Significant Impact (FONSI) will become final within 20 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84–8725 Filed 3–30–84; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve four existing information collections.

DATE: Comment date: Submit comments on these collections before April 20, 1984.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Kathleen M. Lannon, Acting GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Acquisition Policy, 202–523–4799.

SUPPLEMENTARY INFORMATION:

1. Economic Price Adjustment

a. *Purpose.* The requirement is necessary to determine the appropriate price adjustments required under a fixed-price contract.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 283, hours 71.

2. Indirect Cost Rates

a. *Purpose.* This clause requires contractors to submit cost data for establishing final indirect cost rates.

b. *Annual reporting burden.* This is estimated as follows: Respondents, responses and hours 200.

3. Payments

a. *Purpose.* This clause requires contractors to provide evidence to support requests for payments under fixed-price construction contracts for determining the appropriate progress payments.

b. *Annual reporting burden.* This is estimated as follows: Respondents 13,700; responses 287,700; hours 5,754.

4. Price Redetermination

a. *Purpose.* This clause requires contractors to provide data on current and future costs for the establishment of appropriate price adjustments.

b. *Annual reporting burden.* This is estimated as follows: Respondents, responses and hours 100.

Obtaining copies of proposals. Copies of the proposals may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3004, GS Building, Washington, DC 20405, telephone 202–566–0666.

Dated: March 26, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84–8702 Filed 3–30–84; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81D–0319]

Public Meetings; Platelet Workshop; Availability of Draft Revised Guideline; Request for Comments

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the National Heart, Lung, and Blood Institute of the National Institutes of Health (NIH) are announcing a forthcoming 2-day public workshop to discuss issues concerning platelets. FDA is announcing the availability of, and requesting comments on, a draft revised guideline prepared by the Center for Drugs and Biologics (formerly the National Center for Drugs and Biologics) for the collection of Platelets, Pheresis perpared by mechanical pheresis. FDA also is announcing that any comments received on the draft revised guideline will be discussed during the second day of the public workshop..

DATES: The first day of the workshop, on storage of platelets, will be held on May 21, 1984, from 9 a.m. to 5 p.m. The second day of the workshop, to discuss comments on FDA's draft revised guideline, will be held on May 22, 1984, from 9 a.m. to 1 p.m. Comments on the draft revised guideline must be submitted by June 15, 1984; however, any comments to be discussed at the meeting should be received by May 1, 1984.

ADDRESSES: On May 21, 1984, the workshop will be held at Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. On May 22, 1984, the workshop will be held in Bldg. 29, Rm. 115, 8800 Rockville Pike, Bethesda, MD 20205. Requests for a copy of the workshop agenda and any written comments or suggestions on the agenda may be submitted to Joseph Fratantoni, Center for Drugs and Biologics (HFN–833), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205. FDA may change the planned agenda following its review of comments. Single copies of the draft revised guideline are available form the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Comments on the draft revised guideline may be submitted to the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Joseph Fratantoni, Center for Drugs and Biologics (HFN–883), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–496–2577.

SUPPLEMENTARY INFORMATION: For several years, FDA's Center for Drugs and Biologics and NIH's National Heart, Lung, and Blood Institute have been holding joint workshops related to current scientific knowledge regarding platelet function, viability, and physiology. On May 21, 1984, FDA and NIH will jointly sponsor a workshop concerning problems related to extended platelet storage. On May 22, 1984, FDA will hold a workshop to evaluate comments received in response to FDA's draft revised guideline for preparing Platelets, Pheresis. Platelets, Pheresis is a licensed biological product that may be prepared using automated equipment in a blood banking facility, such as by centrifugation of whole blood with a continuous or intermittent return of platelet-poor red blood cells and plasma to the donor. FDA and NIH will consider information provided during these meetings to develop plans for scientific and regulatory activities.

In the **Federal Register** of October 27, 1981 (46 FR 52430), FDA announced the availability of a guideline for the collection of Platelets, Pheresis prepared by mechanical pheresis using a currently approved instrument. FDA made available the guideline to recommend criteria for donor safety and to help ensure that final platelet products are safe and effective. FDA now is announcing the availability of a draft revised guideline intended to replace the current guideline for the product made available in 1981. The draft revised guideline differs from the current guideline in several ways, including a revised standard for Platelets, Pheresis, a provision for donation of platelets for a specific recipient, and removal of some required platelet testing and processing procedures during donation periods.

FDA is making available the draft revised guideline under 21 CFR 10.90(b), which provide for the use of guidelines to outline procedures or standards of general applicability that are acceptable to FDA for a subject matter that falls within the laws administered by FDA. Although guidelines are not a legal requirement, a person may be assured that in following an agency guideline the procedures followed and standards used will be acceptable to FDA. A person may also choose to use alternative procedures or standards for which there is scientific rationale even though they are not provided for in a guideline. A person who chooses to use procedures or standards different from procedures or standards in a guideline may discuss the matter further with the agency to prevent an expenditure of resources for work that FDA may later determine to be unacceptable.

Copies of the draft revised guideline have been distributed to blood bank establishments and plasma centers that have pending or approved license applications to prepare Platelets, Pheresis using pheresis instruments for which the Center for Drugs and Biologics has acceptable data. Additional copies of the draft revised guideline may be obtained from the Dockets Management Branch (address above).

Interested persons may, on or before June 15, 1984, submit to the Dockets Management Branch (address above) written comments regarding this notice and the draft revised guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–8650 Filed 3–28–84; 10:31 am]

BILLING CODE 4165–01–M

National Institutes of Health

Board of Scientific Counselors, NIA; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, May 8–10, 1984, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 8:30 a.m. on Tuesday, May 8, until approximately 4:00 p.m. and will be open to the public from 8:30 a.m. on Wednesday, May 9, until 4:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 8, from 4:00 p.m. until recess, and again on May 9 from 4:00 p.m. until adjournment on May 10, for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA Building 31, Room 2C–05, National Institutes of Health, Bethesda, Maryland 20205, (telephone: 301/496–5898) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No 13.866, Aging Research, National Institutes of Health.)

Dated: March 14, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–8652 Filed 3–30–84; 8:45 am]

BILLING CODE 4140–01–M

National Digestive Diseases Advisory Board; Change in Meeting Location

Notice of the meeting location for the National Digestive Diseases Advisory Board meeting scheduled for May 4, 1984, 8:30 a.m. to 4:00 p.m., at Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland, published in the **Federal Register** on March 20, 1984 (48 FR 10372) has been changed to Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20205. The agenda and times remain the same.

Dated: March 26, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–8655 Filed 3–30–84; 8:45 am]

BILLING CODE 4140–01–M

National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board on May 8, 1984, 8:30 a.m. to adjourment, at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The meeting which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range plan to combat diabetes mellitus. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the Hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, P.O. Box 30174, Bethesda, Maryland 20205, (301) 496–6045, will provide an agenda and rosters of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: March 16, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–8651 Filed 3–30–84; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, June 25 and 26, 1984, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20205. This meeting will be open to the public from 9:30 a.m. to 4:00 p.m. June 25 and from 9:30 a.m. to 12 noon on June 26 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 12 noon to adjournment June 26 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, inlcuding consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide summaries of the meeting and rosters of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: March 14, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–8657 Filed 3–30–84; 8:45 am]

BILLING CODE 4140–01–M

NIH Conference Titled, Is the Marmoset an Experimental Model for the Study of Digestive Disease?

Notice is hereby given of the NIH conference titled "Is the Marmoset an Experimental Model for the Study of Digestive Disease?", sponsored by the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, the National Cancer Institute, the Division of Research Resources and the Oak Ridge Associated Universities and the National Foundation for Ileitis and Colitis. The conference will be held on April 18–20, 1984 in the Pollard Auditorium of the Oak Ridge Associated Universities, Oak Ridge, Tennessee.

The inflammatory bowel diseases continue to be perplexing and significant problems in the cohort of digestive diseases. Although some advances have been made in our understanding of their pathophysiology, significant advances have not yet been made in the treatment and prevention of these diseases. A recent publication in Gastroenterology suggested a correlation between a spontaneously occurring colitis and cancer of the large bowel in the cottontop tamarin (marmoset), *Saguinus oedipus oedipus* (Gastroenterology 80:942–946, 1981). The purpose of this conference is to critically review the data on colitis and cancer of the colon in this species in order to develop a better understanding of whether or not the marmoset might serve as a model for the study of the corresponding human diseases.

Information on the program may be obtained from Dr. Kirt Vener, Program Director for Esophageal, Gastric and Colonic Diseases, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Westwood Building, Room 3A16, Bethesda, Maryland 20205, (301) 496–7821.

Dated: March 26, 1984.

James B. Wyngaarden, M.D.,

NIH, Director.

[FR Doc. 84–8656 Filed 3–30–84; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research Programs Advisory Committee; Meeting

Pursuant to Pub. L. 92–463 notice is hereby given of the meeting of the National Institute of Dental Research Programs Advisory Committee from 9:00 a.m. to recess on May 3 and from 9:00 a.m. to adjournment on May 4, 1984, in Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Anthony Rizzo, Deputy Associate Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 504, Bethesda, Maryland 20205 (telephone 301 496–7748) will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Programs No. 13.840–Caries Research, 13.841–Periodontal Diseases Research, 31.842–Craniofacial Anomalies Research, 13.843–Restroative Materials Research, 13.844–Paine Control and Behavioral Studies, 13.878-Soft Tissue Stomatology and Nutrition Research, National Institutes of Health)

Dated: March 26, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–8653 Filed 3–30–84; 8:45 am]

BILLING CODE 4140–01–M

Ad Hoc Working Group To Develop Radioepidemiological Tables

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Ad Hoc Working Group to Develop Radioepidemiological Tables, April 20, 1984, in Building 31A, Conference Room 4, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 9.00 a.m. to approximately 5:00 p.m. to develop radioepidemiological tables in response to Pub. L. 97–414. Attendance by the public will be limited to space available.

For additional program information, summaries of the meeting and roster of the Committee members, contact Dr. Victor H. Zeve, Landow Building, Room 3A10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5200.

Dated: March 22, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–8650 Filed 3–30–84; 8:45 pm]

BILLING CODE 4140–01–M

Amended Notice of Meeting; President's Cancer Panel

The notice of the meeting of the President's Cancer Panel, National Cancer Institute, April 9, 1984, at the Mayer Auditorium, University of Southern California, School of Medicine, 20205 Zonal Avenue, Los Angeles, California 90033, commencing at 9:00

a.m. and published in the **Federal Register** on February 28 (49 FR 7296), is hereby amended. The meeting has been extended to April 10 to allow adequate time to cover an expanded agenda. The entire meeting will be open to the public on April 9 from 8:30 a.m. through adjournment on April 10. Attendance by the public will be limited to space available. For further information, please contact Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20205 (301/496–1148).

Dated: March 16, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-8858 Filed 3-30-84; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Cooperative Agreements; Preventive Health Services Study of Family Members of Heterosexual Patients With Acquired Immunodeficiency Syndrome (AIDS); Availability of Funds for Fiscal Year 1984

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1984 for cooperative agreements for a collaborative study of family members of heterosexual patients with Acquired Immunodeficiency Syndrome (AIDS), Catalog of Federal Domestic Assistance Number 13.118. This program is authorized by section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended. Office of Management and Budget clearance may be required for this project.

The objectives of this program are to study the risk of acquiring AIDS or signs and symptoms associated with AIDS among family members or other household contacts of heterosexual AIDS patients.

The collaborative and programmatic involvement of recipient(s) of funds and CDC is as follows:

1. *Recipient Medical Institution(s) Activities.*—a. Design an epidemiologic protocol and interview questionnaire for studying heterosexual AIDS patients, their family members, and control families.

b. Develop procedures for identifying, contacting, and scheduling AIDS patients, their family members, and control patients.

c. Interview, provide physical examinations, and obtain biological specimens from patients, their family members, and control patients. Physical examinations and collection of specimens will be repeated every 4 months for a year.

d. Collaborate with CDC in the analysis, presentation, and publication of study results.

e. Provide prevention counselling to study participants based upon findings of the study.

2. *Centers for Disease Control Activities.*—a. Assist in developing the study protocol and designing the interview questionnaire.

b. Provide epidemiologic assistance in conducting the study including selection of cases and controls for inclusion in the study and training of interviewers.

c. Perform laboratory studies on specimens obtained from study participants.

d. Provide data analysis and assist in the presentation and publication of study findings.

Progress reports of cooperative agreement activities will be submitted by recipient(s) of funds quarterly for the first year and semiannually thereafter. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Approximately $250,000 will be available to fund one to three cooperative agreements. Applications should be submitted for a 1-year budget period and 1- to 3-year project period. Continuation awards within the project period will be made by CDC on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change due to budgetary uncertainties. Cooperative agreement funds may be used to support personnel and to purchase supplies and services directly related to conducting a study of family members of heterosexual patients with AIDS. Funds may not be used to support construction or renovation costs.

Eligible applicants include medical institutions or complexes (e.g., affiliated hospitals) which:

1. Have cared for and reported to CDC at least twenty-five heterosexual adult and/or pediatric AIDS patients who meet the CDC surveillance case definitions. For adults, this definition requires that patients be less than 60 years of age and have biopsy-proven Kaposi's sarcoma and/or biopsy-proven or culture-proven infection at least moderately predictive of cellular immunodeficiency. Excluded are patients who either received immunosuppressive therapy before the onset of illness or had preexisting illnesses associated with immunosuppression. For children, the same definition applies with the additional requirements of excluding patients with congenital infections or known congenital immunodeficiency syndrome.

2. Expect to acquire enough new patients meeting the above criteria over a 12-month period so that the institution will be able to follow 100 family members of heterosexual adult or pediatric AIDS cases. A family member is defined as:

a. A natural child of an adult index case or the natural parent of a child index case regardless of whether they are residing or have resided in the same household, or

b. Any other persons sharing the same household of the index case for at least 3 months during the time period from 2 years prior to onset of AIDS symptoms in the index case to the present.

3. Will be able to identify and follow a suitable control group (families reasonably matched for socioeconomic factors, size, and compositon).

Evaluation and ranking of applications will be based on the following factors:

1. The total number of heterosexual adult and/or perdiatric AIDS patients reported since June 1981 that meets the CDC surveillance case definition.

2. The applicant's understanding of the problem and the purpose of the AIDS cooperative agreement.

3. The applicant's current activities in AIDS research and their relationship with other AIDS investigators in the area.

4. The details of how the applicant plans to develop and implement a study among family members of heterosexual AIDS patients describing how patients, family members, and controls will be selected, located, and interviewed.

5. The size, qualification, and time allocation of the proposed staff and the availability of facilities to be used during the study.

6. How the project will be administered.

7. A proposed schedule for accomplishing the activities of the cooperative agreement including time frames.

Appications must include a narrative which summarizes:

1. The background and need for project support, including information that relates to factors by which the applications will be evaluated.

2. The objectives of the proposed project which are consistent with the purpose of the cooperative agreement and which are measurable and time-phased.

3. The methods which will be used to accomplish the objetives. (Of special importance will be the methods used to identify, contact, schedule for interview, and collect biologic specimens from AIDS petients and their family members and controls.)

4. The methods which will be used to evaluate the success of study components.

5. Fiscal information pursuant to utlizaiton of awarded funds in a manner consistent with the purpose and objectives of the project.

6. Any other inforamtion that will support the request for assistance.

The original and one copy of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 107A, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.d.t.) on May 31, 1984.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. *Late Applications.*—Applications which do not meet the criteria in either paragraph 1. or 2. above are considered late applications and will not be considered in the current competition.

Applications are not subject to the review requirements of the National Health Planning and Resource Development Act of 1974, as amended, to intergovernmental review pursuant to Executive Order 12372.

Information on application procedures, copies of application forms, and other material may be obtained from Luther DeWeese, Grants Managements Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 107A, Atlanta, Georgia 30304, or by calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Harold W. Jaffe, M.D., and Martha Rogers, M.D., AIDS Activity, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–3162 or FTS 236–3162.

Dated: March 22, 1984.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 84–8701 Filed 3–30–84; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notification of Owyhee Canyonlands Wilderness Hearings Location Change and Public Comment Period Change

Information regarding the availability of the Draft Owyhee Canyonlands Wilderness EIS, the timing and location of Wilderness Hearings, and the public comment period was published in the **Federal Register** on February 24, 1984; Vol. 49, No. 38, pages 7002 and 7003. Since this publication, the following changes have been made:

1. The public hearings scheduled in Portland Oregon will be held at the Cosmopolitan Hotel, 6th floor conference room, 1030 NE Union in place of at the Thunderbird-Coliseum Motel. The times and date have not been changed.

2. The public comment period will close on May 31, 1984, in place of May 24, 1984.

J. David Brunner,

Associate District Manager.

[FR Doc. 84–8704 Filed 3–30–84; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications; Patricia G. Lincoln et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Patricia G. Lincoln, Columbia, S.C. APP #597502.

The applicant requests a permit to take (=collect) seeds from 200 flowers, 100 whole flowers and approximately 5 whole plants of salt marsh bird's beak (*Cordylanthus m. maritimus*) for scientific research.

Applicant: Aryan I. Roest, San Luis Obispo, CA. APP #560090.

The applicant requests a permit to take Morro Bay kangaroo rats (*Dipodomys heermanni morroensis*) for enhancement of propagation.

Applicant: Zoological Society of San Diego, San Diego, CA. APP #153239.

The applicant requests a permit to import two pairs of the black-footed cat (*Felis nigripes*) from Zoo Wuppertal, West Germany, for enhancement of propagation.

Applicant: Frank S. Porcari, College Point, NY. APP #152598.

The applicant requests a permit to take (capture, band, release) Arctic and American peregrine falcons (*Falco peregrinus tundris, F. p. anatum*) in New York for scientific research.

Applicant: Dr. Joseph M. Meyers, Aiken, SC. APP #591958.

The applicant requests a permit to take (=harass) 200 wood storks (*Mycteria americana*). Eight adult and eight 6-week old birds are to be radio-tagged and approximately 150–190 will be color leg-banded for scientific research.

Applicant: Zoological Society of San Diego, San Diego, CA. PRT 2–8649.

The applicant requests a permit to import 4 male and 8 female wild-caught cheetahs (*Acinonyx jubatus*) from Namibia for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 North Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, of data to the Director at the above address. Please refer to the appropriate PRT 2 # or APP # when submitting comments.

Dated: March 27, 1984.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 84–8680 Filed 3–30–84; 8:45 am]

BILLING CODE 4310–67–M

Issuance of Permit for Marine Mammals; Richard M. Silverstein

On January 26, 1983, a notice was published in the **Federal Register** (48 FR 3664) that an application had been filed with the Fish and Wildlife Service by Richard M. Silverstein, M.D., *et al.*, for a permit to sacrifice one adult polar bear (*Ursus Maritimus*) for biomedical research.

Notice is hereby given that on March 2, 1984, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fish and Wildlife Service issued a permit (PRT 2–

9931), to Dr. Silverstein subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 605, 1000 North Glebe Road, Arlington, Virginia.

Dated: March 27, 1984.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 84-8601 Filed 3-30-84; 8:45 am]

BILLING CODE 4310-07-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30436]

Union Pacific Railroad Company, Operation Exemption; Missouri Pacific Railroad Company; Exemption

Union Pacific Railroad Company (UP) has filed a notice of exemption to operate over approximately 424 feet of track owned by the Missouri Pacific Railroad Company (MP) at Hiawatha, KS. Also at Hiawatha there will be an installation of two No. 14 turnouts in MP's main track and rearrangement of UP's trackage to connect with these turnouts. This installation and connection will eliminate the need for the existing UP–MP railroad crossing frog. Both carriers are part of the Union Pactific System.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employee affected by the transfer shall be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights-BN,* 354 I.C.C. 605 (1978), and modified by *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: March 16, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8706 Filed 3-30-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Advisory Committee on Sheltered Workshops—Subcommittee on Learning Disabilities

The Subcommittee on Learning Disabilities of the Advisory Committee will meet in Room S3215B of the Frances Perkins Building, 200 Constitution Avenue NW., Washington, D.C. on April 18, at 2:00 p.m.

The Advisory Committee provides advice and recommendations to the Department concerning the administration and enforcement of the Fair Labor Standards Act and other federal labor laws as these laws relate to the employment under certificate of handicapped individuals with impaired productivity in sheltered workshops, hospitals, and institutions at special wage rates below the minimum wage otherwise applicable. The Subcommittee on Learning Disabilities will meet to consider the conditions under which individuals who have been diagnosed as learning disabled may be considered to be handicapped for purposes of the applicable laws.

The purpose of the Subcommittee, as set forth by the Committee, is threefold: (1) To recommend language defining learning disabilities; (2) to recommend whether or not learning disabilities should be accepted as a handicap under the Department of Labor regulations authorizing payment of subminimum wages under the Fair Labor Standards Act; and (3) to provide guidance to the full Advisory Committee on any parameters or limitations when learning disabilities may not meet the appropriate definition of handicapped conditions.

Members of the public are invited to attend the proceedings. Written data, views, or arguments pertaining to the business before the Subcommittee are also invited. Such comments must be received by the Committee's Secretariat prior to the meeting.

Questions concerning this meeting should be directed to: Arthur H. Korn, Secretariat for the Advisory Committee on Sheltered Workshops, Room C4316, Frances Perkins Building, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone number (202) 523–8727. This is not a toll free telephone number.

Signed in Washington, D.C. this 28th day of March 1984.

William M. Otter,

Administrator.

[FR Doc. 84-8758 Filed 3-30-84; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 19, 1984–March 23 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–14,896; A & E Machine Shop, Inc., Lone Star, TX

TA–W–14,983; The Potters Supply Co., East Liverpool, OH

TA–W–14,814: Mesta Machine Co., West Homestead, PA

TA–W–14,988; Sew What's, Inc., Hialeah, FL

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–14,996; U.S. Steel Corp., Great Lakes Fleet, Inc., Rogers City, Mi

Affirmative Determination

TA–W–14,946; Jo-Je Manufacturing Co., Inc., Summit Hill, PA

A certification was issued covering all workers separated on or after June 21, 1982 and before June 30, 1983.

I hereby certify that the aforementioned determinations were issued during the period March 19, 1984–March 23, 1984. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 27, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84–8759 Filed 3–30–84; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 12, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 12, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601, D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 26th day of March 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84–8652 Filed 3–29–84; 8:45 am]

BILLING CODE 4510–64–M

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Hoist, American Crane Div. (USWA)	Fort Wayne, IN	3/23/84	3/12/84	TA–W–15,260	Model 500 cranes, carriers, backhoes and hoist.
Atlas Chain Co. (UAW)	West Pittston, PA	3/19/84	3/19/84	TA–W–15,261	Precision roller chains.
Bucyrus-Erie Co. (USWA)	S. Milwaukee, WI	3/20/84	3/13/84	TA–W–15,262	Foundry-mining equipment, drag lines cranes.
Cities Service Co., Butyl Rubber Plant, Columbian Chemicals (workers).	Lake Charles, LA	3/19/84	3/15/84	TA–W–15,263	Butyl rubber production.
Diamond Power Specialty Co. (USWA)	Lancaster, Ohio	3/16/84	3/14/84	TA–W–15,264	Boiler cleaning equipment.
Harley-Davidson Motor Co., Inc. (AIW)	Milwaukee, WI	3/20/84	3/16/84	TA–W–15,265	Motorcycle engines, transmissions, parts and accessories.
Do.	Wauwatosa, WI	3/20/84	3/16/84	TA–W–15,266	Do.
Do.	Tomahawk, WI	3/20/84	3/16/84	TA–W–15,267	Do.
M & E Sportswear (ILGWU)	New York, NY	3/5/84	2/29/84	TA–W–15,268	Contractor of ladies skirts and slacks.
McQuay-Norris Manufacturing Co. (workers)	Connersville, IN	3/20/84	3/15/84	TA–W–15,269	Bearing shells, aluminum pistons, cast iron tractor sleeves, cast iron auto water pumps.
Ontario Forge Corp. (USWA)	Muncie, IN	3/19/84	3/14/84	TA–W–15,270	Jet engine airfoil blades forgings.
Reed & Barton Corp. (United Silverworkers)	Taunton, MA	3/19/84	3/13/84	TA–W–15,271	Flatware, silverplated hollowware, knives, forks, spoon, bowls, pots, etc.
Scotts Run Manufacturing Co. (workers)	Radford, VA	3/20/84	3/13/84	TA–W–15,272	Ladies' blouses.
Sylvania Shoe Manufacturing Corp. (workers)	Waynesboro, PA	3/20/84	3/17/84	TA–W–15,273	Sews shoes together.
Do.	Greencastle, PA	3/20/84	3/17/84	TA–W–15,274	Sews shoes and lasted shoes.
Utica Cutlery Co. (USWA)	New York Mills, NY	3/19/84	3/14/84	TA–W–15,275	Stainless steel flatware, pocket knives, and butcher knives.
Do.	Utica, NY	3/19/84	3/14/84	TA–W–15,276	Do.

[FR Doc. 84–8757 Filed 3–30–84; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84–30]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be reviewed in writing by April 12, 1984. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546. Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453–2921.

Reports

Title: NASA Grant and Cooperative Agreement Handbook, Property.

Type of Request: Existing collection in use without an OMB control number.

Frequency of Report: Annual.

Type of Respondent: Non-profit institutions.

Number of Recordkeeping Hours: 78,525.

Abstract-Needs/Users: Property records and reporting are required to ensure appropriate utilization, safekeeping, accountability and internal control for items provided by NASA or acquired with NASA provided funds.

Title: NASA Grant and Cooperative Agreement Handbook, Financial.

Type of Request: Existing collection in use with an OMB approval number.

Frequency of Report: Monthly.

Type of Respondent: Non-profit institutions.

Number of Recordkeeping Hours: 125,640.

Abstract-Needs/Users: Financial recordkeeping and reporting are required to ensure proper accountability for and use of NASA-provided funds.

Title: NASA Grant and Cooperative Agreement Handbook, Patents.

Type of Request: Existing collection in use with an OMB approval number.

Type of Respondent: Non-profit institutions.

Frequency of Report: As required.

Number of Recordkeeping Hours: 37,692.

Abstract-Needs/Users: Reports and records regarding patents are required to comply with statutes and the OMB and NASA implementing regulations.

Title: NASA Grant and Cooperative Agreement Handbook, Renewal Proposals.

Type of Request: Existing collection in use with an OMB approval number.

Type of Respondent: Non-profit institutions.

Frequency of Report: Annual.

Annual Responses: 1221.

Annual Reporting Hours: 24,420.

Abstract-Needs/Users: The continued applicability of sponsored research to NASA's needs and the intrinsic merit of project effort is verified by requiring updated technical proposals for review and evaluation prior to re-authorizing on-going work.

Dated: March 27, 1984.

L. W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 84-8648 Filed 3-30-84; 8:45 am]

BILLING CODE 7510-01-M

[84-31]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to Taylor Wang of Pasadena, California, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,279,632 for a "Method and Apparatus for Producing Concentric Hollow Spheres" which issued on July 21, 1981, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by June 1, 1984.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 453–2430.

Dated: March 20, 1984.

S. Neil Hosenball,

Acting General Counsel.

[FR Doc. 84-8649 Filed 3-30-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Senior Executive Service; Performance Review Board Membership

March 26, 1984.

NCLIS Performance Review Board—The following Members of the National Commission on Libraries and Information Science (NCLIS) serve as the Performance Review Board for SES employees of NCLIS:

Bessie B. Moore, Chair
Carlos A. Cuadra
Jerald Newman
William A. Welsh

For additional information please contact: Sarah G. Bishop, Deputy Director, 202–382–0840.

Sarah G. Bishop,

Deputy Director.

[FR Doc. 84-8666 Filed 3-30-84; 8:45 am]

BILLING CODE 7527-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (US/Japan Fellowships Section) to the National Council on the Arts will be held on April 19, 1984, from 9:30 a.m.–12:30 p.m. in Room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel, National Endowment for the Arts.

March 26, 1984.

[FR Doc. 84–8699 Filed 3–30–84; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composer Prescreening) to the National Council on the Arts will be held on April 26–28, 1984, from 9:00 a.m.– 5:30 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C.

This meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506 or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations National Endowment for the Arts.

March 26, 1984.

[FR Doc. 84–8696 Filed 3–30–84; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Prescreening Section) to the National Council on the Arts will be held on April 16–17, 1984, from 9:00 a.m.–5:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and 9(b) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

March 26, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–8697 Filed 3–30–84; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Prescreening Section) to the National Council on the Arts will be held on April 19, 1984, from 9:00 a.m.–5:30 p.m. in room 716 and on April 20, 1984, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 26, 1984.

[FR Doc. 84–8697 Filed 3–30–84; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, The National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics.

Date and Time: April 19, 20, & 21, 1984:
Thursday—9:00 am to 7:00 pm
Friday—9:00 am to 7:00 pm
Saturday—9:00 am to 5:00 pm

Place: Room 1224, National Science Foundation, 18th and G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Daniel H. Newlon, Program Director for Economics, Room 312, National Science Foundation, Washington, DC 20550 Telephone (202) 357–9674.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Economics Program.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, of July 6, 1979.

Dated: March 28, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–8753 Filed 3–30–84; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Law and Social Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Sciences.

Date and Time: April 19–20, 1984: 9:00 A.M. to 5:30 P.M. each day.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed—9:00 A.M. to 5:00 P.M., April 19–20, 1984.

Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Sciences, Room 312, National Science Foundation, Washington, DC 20550 telephone (202) 357–9567.

Summary of Minutes: May be obtained from the contact person Dr. Felice J. Levine at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research and research-related projects in law and Social Sciences.

Agenda: Review and evaluation of research and research-related proposals as part of the award selection process.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: March 28, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-8754 Filed 3-30-84; 8:45 am]

BILLING CODE 7555-01-M

Materials Research Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee.

Place: Room 543, National Science Foundation, 1800 "G" Street, NW., Washington, DC 20550.

Date: Thursday, April 19; Friday, April 20; and Saturday, April 21, 1984

Time: 9:00 a.m.—5:00 p.m., those days

Type of Meeting: Part Open—April 19, 9–1 (Open), April 19, 1–5 (Closed); Part Open—April 20, 9–1 (Open), April 20, 1–5 (Closed); Part Open—April 21, 9–1 (Closed), April 21, 1–5 (Open).

Contact Person: Dr. Lewis H. Nosanow, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC, 20550. Telephone: (202) 357–[illegible].

Summary Minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosanow at the above stated address.

Purpose of Subcommittee: To provide advice and recommendations concerning support of materials research.

Agenda

Thursday, April 19, 1984—9:00 a.m. to 1:00 p.m. (Open)

9:00 a.m. Introductory remarks, overviews of the NSF, the Mathematical and Physical Sciences Directorate, and the Division of Materials Research (DMR)
10:30 a.m. Overviews of the Materials Research Laboratory Program (MRL), the Facilities Program (FAC), and the Instrumentation for Materials Research Program (IMR).
12:00 noon Lunch
1:00 p.m. Oversight review of the Materials Research Laboratories, the Facilities, and the Instrumentation for Materials Research Program. Review and comparison of declined proposals (and supporting documentation) with successful awards including review of peer review and other privileged materials. (CLOSED)
5:00 p.m. Adjourn

Friday, April 20, 1984—9:00 a.m. to 1:00 p.m. (Open)

9:00 a.m. Convene
9:15 a.m. Discussion of Current Status of Materials Research Groups Program
10:00 a.m. Discussion of Creativity Extensions
10:45 a.m. Trends and Opportunities in Materials Research
12:00 noon Lunch
1:00 p.m. Oversight review (Continued)
5:00 p.m. Adjourn

Saturday, April 21, 1984—9:00 a.m. to 1:00 p.m. (Closed)

9:00 a.m. Convene
9:15 a.m. Oversight review (Continued)
12:00 noon Lunch
1:00 p.m. Concluding Discussion
5:00 p.m. Adjourn

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: March 28, 1984.

M. Rebecca Winkler,

Committee Mangement Coordinator.

[FR Doc. 84-8752 Filed 3-30-84; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Technology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Technology.

Place: Rm. 540, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Date: Thursday and Friday, April 19–20, 1984.

Time: Thursday, 9–5 p.m.; Friday, 9–3 p.m.

Type of Meeting: Open.

Contact Person: Ms. Jane Stutsman, Executive Secretary of the Committee, National Science Foundation, Rm. 425, 1800 G Street, N.W., Washington, D.C. 20550 Telephone: 202/357–9418.

Purpose of Committee: To provide advice to the Foundation on policies and activities of the Foundation to encourage full participation of women, minorities, the handicapped and other groups currently underrepresented in scientific, engineering, professional and technical fields.

Summary Minutes: May be obtained from the contact person at the above stated address.

Agenda: To review progress by the two subcommittees of the NSF Committee on Equal Opportunities in Science and Technology and to meet with the Director and other NSF staff.

M. Rebecca Winkler,

Committee Management Coordinator.

March 28, 1984.

[FR Doc. 84-8755 Filed 3-30-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-237; License No. DPR-19 EA 83-103]

Commonwealth Edison Co. (Dresden Nuclear Power Station Unit 2); Order Imposing Civil Monetary Penalty

I

Commonwealth Edison Company (the "licensee") is the holder of Operating License No. DPR–19 issued by the Nuclear Regulatory Commission (the "Commission") that authorizes the licensee to operate the Dresden Nuclear Power Station, Unit 2, in accordance with the conditions specified therein. The license was issued on December 22, 1969.

II

A special inspection of the licensee's activities under the license was conducted during the period June 6 through September 8, 1983. As a result of this inspection, it appears that the licensee has not conducted its activities in full compliance with the conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated November 18, 1983. The Notice states the nature of the violation,

requirements of the Commission that the licensee had violated, and the amount of civil penalty proposed for the violation. An answer dated January 20, 1984, to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

Upon consideration of Commonwealth Edison Company's response and the statements of fact, explanation, and argument contained therein, as set forth in the Appendix to this Order, the director of the Office of Inspection and Enforcement has determined that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether on the basis of such violation this Order should be sustained.

Dated at Bethesda, Maryland this 23rd day of March 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusions

On November 18, 1983 the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty to the Commonwealth Edison Company for violations identified at the Dresden Nuclear Power Station. Commonwealth Edison's response to the Notice dated January 20, 1984 has been reviewed by the NRC Staff. The Staff's evaluation of this response is presented below.

Summary of Licensee's Response

In its response the licensee admits that the violation occurred as described in the Notice of Violation; however, the licensee asserts that the violation should not be categorized at Severity Level III and requested the NRC to reclassify the violation as a Severity Level IV. The licensee stated, "The Severity Level of any violation should be characterized by the safety significance of the event. In this matter we do not believe the characterization of the event as a Severity Level III violation is appropriate. This conclusion stems from the fact that, although we exceeded the allowable primary containment leakage rate in Section 3.7.2 of the Technical Specifications, our own conservative calculations showed that had a release occurred it would not have exceeded Part 100 guidelines. The safety significance of this event should be based on 10 CFR Part 100 criteria and not on the conservation limits set within the Technical Sepcifications. These leakage limits, as noted in the bases of the Technical Sepcifications, are conservatively derived from Part 100 limits and, therefore, we are being unnecessarily penalized because of conservative Technical Specifications."

NRC Evaluation

As described in the Notice, the violation was not based on allowable primary containment leakage rates but instead on whether the quality assurance requirements of 10 CFR Part 50, Appendix B, were met. The licensee failed to classify vacuum breaker shaft arm seals in accordance with 10 CFR Part 50, Appendix B, and failed to ensure that the seals would perform their safety function if called upon in an event. The licensee's assumption that the leak rate under accident conditions would be the same as those observed during 10 CFR Part 50, Appendix J, tests cannot be supported. The seals were not qualified to function in an environment that could exist during an accident condition. Therefore, the leak rate under these conditions was indeterminate. The General Policy and Procedure for NRC Enforcement Actions (10 CFR Part 2, Appendix C), Supplement I, Section C.2, cites as an example of a Severity Level III violation, "A system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions (e.g., . . . materials or components not environmentally qualified)." Since the seals had not been qualified to perform within an accident environment, this violation has been properly classified at Severity Level III.

Conclusion

As discussed above, the violation did occur as described in the Notice and the violation was correctly classified as a Severity Level III in accordance with the NRC Enforcement Policy.

The licensee has not provided adequate reason to justify mitigation of the proposed civil penalty.

[FR Doc. 84–8720 Filed 3–30–84; 8:45am]
BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: NRC Form 313—Application for Material License.

3. The form number if applicable: NRC Form 313.

4. How often the collection is required: new applications may be submitted at any time. Renewals are submitted every five years.

5. Who will be required or asked to report: Persons desiring a specific license to possess, use, or distribute byproduct or source material.

6. An estimate of the number of responses: 6,200.

7. An estimate of the total number of hours needed to complete the requirement or request: 54,250.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC Form 313, "Application for Material License," simplifies and consolidates in one form the Materials license applications which previously required five different forms. It will replace NRC Forms 2, 3131, 313R, 313M, and 313T.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 28th day of March 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84–8721 Filed 3–30–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–275]

Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1)

Notice is hereby given that the Director, Office of Inspection and Enforcement, has denied a petition under 10 CFR 2.206 filed by Joel R. Reynolds *et al.*, attorneys for the joint intervenors to the Diablo Canyon operating license proceeding. In its petition, the joint intervenors alleged that Pacific Gas and Electric Company failed to report the existence of a 1977 audit performed by Nuclear Services Corporation of Pullman Power Products' quality assurance program for Pullman's activities as the principal piping contractor for Diablo Canyon. On this basis, the joint intervenors asked that the Commission revoke or continue the suspension of the low power license.

Although the staff agrees that the audit should have been reported, license suspension or revocation is not warranted and, accordingly, the joint intervenors' request has been denied. The reasons for the denial of the joint intervenors' petition are fully described in the "Director's Decision Under 10 CFR 2.206" issued on this date, which is available for pubic inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. 20555, and in the local public comment room for the Diablo Canyon Power Plant located at San Luis Obispo County Free Library, 888 Morro Street, San Luis Obispo, California 93406. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 26 day of March 1984.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84–8722 Filed 3–30–84; 8:45 am]

BILLING CODE 7590–01–M

Meeting on Mission Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) announces a meeting with the U.S. Department of Energy (DOE), to review NRC staff comment on high-level waste repository portion of the draft DOE Civilian Radioactive Waste Management Program Mission Plan.

TIME AND DATE: The meeting will be held on April 11, 1984, at 10:00 a.m.

ADDRESS: The meeting will be held at the Department of Energy, Forrestal Building, Room 1E 245, Washington, D.C. 20585.

Status: Open to the public as observers.

FOR FURTHER INFORMATION CONTACT: Hubert J. Miller, Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427–4177 or FTS 427–4177.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the NRC comments on the repository portion of the DOE December 20, 1983 draft Mission Plan in more detail and to provide additional information to DOE on NRC regulations and licensing requirements as needed. The Mission Plan is being prepared by DOE pursuant to Section 301 of the Nuclear Waste Policy Act of 1982. NRC's comments on the draft Mission Plan were sent to DOE in a letter on February 8, 1984. Later meetings may be held to discuss other aspects of the Mission Plan if needed.

Dated at Silver Spring, Maryland, this 27th day of March 1984.

For the Nuclear Regulatory Commission.

Hubert J. Miller,

Chief, Repository Projects Branch, Division of Waste Management.

[FR Doc. 84–8719 Filed 3–30–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting (Revised)

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on April 5–7, 1984, in Room 1046, 1717 H Street NW., Washington, DC. Prior notice of this meeting was published in the **Federal Register** on March 26, 1984 (49 FR 11268). This notice is now being revised to schedule an item regarding the Diablo Canyon Nuclear Plant Operating License. Urgent ACRS consideration of this subject was requested by the Nuclear Regulatory Commission on March 27, 1984 because of matters related to the safety of the facility. It has been determined that good cause exists for publishing the revised agenda with less than 15 days notice.

The agenda for the subject meeting has been revised as noted below:

Thursday, April 5, 1984

8:30 a.m.–8:45 a.m.: Chairman's Report (Open)—The ACRS Chairman will report briefly to the Committee regarding items of current interest.

8:45 a.m.–12:00 noon: Maintenance Policies and Practices (Open/Closed)—The members will hear and discuss the report of its subcommittee and members of the NRC staff regarding maintenance policies and practices in nuclear power plants.

A portion of this session will be closed to discuss information provided in confidence by a foreign source.

1:00 p.m.–3:00 p.m.: Ginna Nuclear Power Plant (Open)—The members will hear and discuss reports from its subcommittee, the NRC Staff, and the Licensee regarding the request for a full term operating license for this facility.

Portions of this session will be closed as necessary to discuss Proprietary material applicable to this matter.

3:00 p.m.–3:30 p.m.: Future Activities—The members will discuss anticipated ACRS subcommittee activity and items proposed for consideration by the full Committee.

3:30 p.m.–4:30 p.m.: Activities of NRC Regional Offices (Open)—The members will hear and discuss a report from an NRC Regional Director regarding the activities of NRC regional offices.

4:30 p.m.–5:00 p.m.: Subcommittee Activities (Open)—The members will hear and discuss reports of designated Subcommittees regarding the status of assigned activities including provisions for ECCS and decay heat removal.

Friday, April 6, 1984

8:30 a.m.–12:30 a.m.: Diablo Canyon Nuclear Plant (Open)—The members of the Committee will discuss a Differing Professional Opinion related to the quality assurance/quality control of small bore and large bore piping in this plant.

1:30 p.m.–2:15 p.m.: Implementation of Regulatory Guide 1.97, Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident (Open)—The members will hear a briefing regarding the status of implementation of Regulatory Guide 1.97.

2:15 p.m.–3:00 p.m.: Nuclear Power Plant Operating Experience (Open)—The Committee will hear and discuss a proposed NRC Bulletin regarding operation of undervoltage trip devices in nuclear power plant circuit breakers.

3:00 p.m.–3:30 p.m.: Passive Containment System (Open)—The Committee will discuss a proposed ACRS reply to the request for a preapplication review of the passive containment system.

3:30 p.m.–5:30 p.m.: Preparation of ACRS Report (Open/Closed)—The Committee will discuss proposed ACRS reports/letters regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being considered and to discuss information involved in an adjudicatory proceeding.

Saturday April 7, 1984

8:30 a.m.–9:15 a.m.: Appointment of ACRS Members (Closed)—The members will discuss the qualifications of candidates proposed for appointment to the Committee.

This portion of the meeting will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy.

9:15 a.m.–12:30 p.m.: Preparation of ACRS Report (Open/Closed)—The Committee will complete preparation of reports/letters regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being considered and information involved in an adjudicatory proceeding.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1983 (48 FR 44291). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)), information involved in an adjudicatory proceeding (5 U.S.C. 552b(c)(10)), information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m. est.

Dated: March 28, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84–8718 Filed 3–30–84; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

Procurement Assistance

AGENCY: Small Business Administration.

ACTION: Notice of policy.

SUMMARY: This Notice sets forth Small Business Administration policy with respect to the interpretation of sections 8(d) and 15(g) of the Small Business Act, 15 U.S.C. 637(d) and 644(g). It broadens the definition of the term "subcontract" for purposes of sections 8(d) and 15(g) of the Act. It permits agreements for purchase of business services and, in conjunction with section 7(j)(9) of the Act, agreements for provision of financial services with small minority owned and controlled financial institutions to qualify as subcontracts for purposes of meeting subcontracting goals and credits. This policy change represents a significant expansion of past SBA procedures regarding subcontracting goals and credits. Therefore, SBA invites public comment on this notice for a period of 60 days following its publication in the **Federal Register**.

DATE: This notice will be effective July 2, 1984.

ADDRESS: Comments should be addressed to William Smith, Office of Capital Ownership Development, Small Business Administration, 1441 L Street, NW., Room 602, Washington, D.C. 20416 (telephone 202/653–6475).

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Policy

The Small Business Administration is hereby making this statement of policy with respect to interpretation of sections 8(d) and 15(g) of the Small Business Act, 15 U.S.C. and 637(d) and 644(g). Parts of this statement of policy were announced on September 19, 1982, in a letter from the Deputy Associate Administrator for Procurement System Implementation of OFPP to the then Associate Administrator for Minority Small Business and Capital Ownership Development of SBA. The text of that letter is reprinted below:

Dr. Robert L. Wright, Jr.,
Associate Administrator for Minority Small Business,
Small Business Administration,
Washington, D.C. 20416

Dear Dr. Wright: In your letter of August 30, 1982, you refer to an earlier letter to E.G. Bowman Company, Inc., of January 18, 1982, in which we advised that a proportionate share of premiums paid to a small disadvantaged insurance broker may be included as part of the goal of a prime contractor for subcontracts to be placed with small disadvantaged companies if the prime contractor elects to include indirect costs, generally, in his subcontracting goals. Your August 30 letter raises the question of whether subcontracting goals may also include the use of minority financial institutions by prime contractors. In our opinion deposits with such institutions are properly includable if the prime contractor elects to include indirect costs, generally, in its subcontracting goals.

It will be necessary, of course, to develop a method to determine, either uniformly or on a case-by-case basis, the "value" or worth to the financial institution of such deposits. Such "value" would be used in calculating the indirect costs creditable against percentage goals under Policy Letter 80–2. Care should be taken, of course, as noted in your letter, that the "value" of such deposits not constitute a disproportionate share of the total subcontracts placed with small disadvantaged firms.

Sincerely,

Owen Birnbaum,

Deputy Associate Administrator for Procurement System Implementation.

In furtherance of the policy announced in the OFPP letter SBA hereby announces the following additional policies with respect to further implementation of sections 8(d) and 15(g) of the Small Business Act.

For purposes of sections 8(d) and 15(g) of the Small Business Act:

(1) The term "Sucontract" shall include an agreement for the purchase of insurance, bonding, and other general business services.

a. In the event that the full amount of the insurance, bonding, and other general business expenses is directly necessary for the performance of the contract by the prime contractor, the full amount of such expenses may be included in calculating subcontracting goals and credits

b. In the event that such expenses are normally allocated as indirect or overhead costs, the proportionate share allocable to the contract may be included in calculating subcontracting goals and credits

(2) The term "Subcontract" shall also include an agreement for financial services from any authorized financial institution, including provision of checking accounts, Federal or State tax withholding accounts, escrow trust accounts, credit related services, cash management services.

a. In the event that the full value of financial services, as defined herein, is directly related to the performance of a contract by a prime contractor, the full value of such services may be included in calculating subcontracting goals and credits. Value shall be determined as per paragraph 2(c) of this notice and is subject to the limitations contained in paragaph 2(d).

b. In the event that a portion of the value of the financial services is related to the performance of the contract by the prime contractor, the proportionate share allocable to the contract may be included in calculating subcontracting goals and credits.

c. Calculation of Value

(1) For loans and other cost-bearing services, value shall be defined as the full amount of interest or other fees actually paid to the financial institution.

(2) For non-interest bearing depository accounts, the value of the deposits shall be the average daily net collected balance of the account over the term of the contract as determined according to generally accepted banking principles.

d. In order to ensure that a disproportionate share of subcontracting goals are not met by the use of financial institutions, the value of financial services which may be credited towards section 15(g) subcontracting goals shall not exceed ten percent of the overall subcontracting goal for small socially and economically disadvantaged business of a given prime contractor.

e. This policy is applicable to prime contractors who have approved annual section 8(d) subcontracting plans and for those who submit section 8(d) subcontracting plans on a single contract basis. Federal Contracting Officers are to present this option to prime contractors in their deliberations on the subcontracting provisions of the Small Business Act. Federal prime contractors who elect to use this option are to use minority owned and controlled financial institution supplied documents to verify their deposits and the value of such deposits.

f. Pursuant to this notice of policy, only small minority financial institutions will be considered "authorized financial institutions" for purposes of subcontracting goals and credits. A small minority financial institution is defined as a commercial bank or savings and loan association which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or in the case of a publicly owned institution, at least 51 per centum of the stock which is owned by one or more socially and economically disadvantaged individuals; and whose daily business operations are controlled by one or more such individuals. Also for purposes of this notice, the term "socially and economically disadvantaged individual" shall have the same meaning as given to it pursuant to section 8(d) of the Small Business Act, 15 U.S.C 637(d), and the regulations promulgated by SBA interpreting that provision.

Dated: February 17, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–8361 Filed 3–30–84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

Establishment of United Nations Educational, Scientific, and Cultural Organization Monitoring Panel

The Department of State, pursuant to the Federal Advisory Committee Act, is establishing a Monitoring Panel for the United Nations Educational, Scientific, and Cultural Organization. Its purpose is to monitor and report on the activities of, practices of, and developments within UNESCO's five sectors, during the calendar year 1984. The Panel will report to the Secretary of State. The Panel's functions are solely advisory and it will assist the Secretary of State to determine the future relations of the United States with UNESCO.

In approving the decision to withdraw from UNESCO, announced on December 28, 1983, the President instructed the Secretary of State to make every effort during the one-year notice period to return UNESCO to its original laudatory goals and purposes. The President directed the Secretary of State to create an advisory group, composed of members of the academic, media, and business communities, to provide the government with private counsel concerning future U.S. policy vis-a-vis UNESCO. The Monitoring Panel is necessary and in the public interest as it will provide the Secretary of State with a source of disinterested advice.

For further information, call or write: Lee Sanders, IO/MP, Room 4808, Department of State, 2201 C Street, NW., Washington, D.C. 20520, (202) 632–2874.

Dated: March 29, 1984.

Richard V. Hennes,

Executive Director, International Organization Affairs.

[FR Doc. 84–8616 Filed 3–30–84; 9:40 am]

BILLING CODE 4710-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the Executive Steering Committee of the Federal Aviation Administration National Airspace Review Advisory

Committee. The agenda for this meeting is as follows:

Opening Remarks
Presentation of Task Group Staff Studies, including recommendations:
- Task Group 1–6.4—SID and STAR Charts and the Airport/Facility Directory
- Task Group 2–2.4—Parachute, Glider and Ultralight Operations
- Task Group 3–1.2—Flight Plan Format
- Task Group 3–2.1—International Delegated Airspace

Unfinished business.

DATE: April 24, 1984, convenes at 10 a.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, room 1010, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., AAT–30, Washington, D.C. 20591, 202–426–3560.

Attendence is open to the interested public, but limited to the space available. To ensure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Associate Administrator for Air Traffic, AAT–1, 800 Independence Avenue, SW., Washington, D.C. 20591, by April 17, 1984. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on March 26, 1984.

R. J. Van Vuren,

Executive Director, NARAC.

[FR Doc. 84–8639 Filed 3–30–84; 8:45 am]

BILLING CODE 4910–13–M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 2–3 of the Federal Aviation Administration National Airspace Review Advisory Committee. The agenda for this meeting is as follows: A review of Federal Aviation Regulations, Part 91 Subpart B, for simplification and reduction of regulations including associated equipment requirements.

DATE: Beginning Monday, April 30, 1984, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed three weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 9A/B, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 426–3560.

Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Execurive Director, National Airspace Review Advisory Committee, Associate Administrator for Air Traffic, AAT–1, 800 Independence Avenue, SW., Washington, D.C. 20591, by April 23. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C. on March 26, 1984.

John Watterson,

Acting Manager, Special Projects Staff Office of the Associate Administrator for Air Traffic.

[FR Doc. 84–8640 Filed 3–30–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 27, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535–6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0805
Form Number: IRS Form 5472
Type of Review: Revision
Title: Information Return of Foreign Owned Corporation

OMB Number: 1545–0215
Form Number: IRS Forms 5712 and 5712–A
Type of Review: Revision
Title: Election to be Treated as a Possessions Corporation Under Section 936; Election to Use the Cost Sharing or Profit Split Method Under Section 936(h)(5)

OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: 1515–0023
Form Number: Customs Form 7543
Type of Review: Extension
Title: Certificate of Delivery of Imported Merchandise

OMB Number: 1515–0028
Form Number: Customs Form 7585
Type of Review: Extension
Title: Certificate of Manufacture and Delivery

OMB Number: 1515–0033
Form Number: Customs Form 7545
Type of Review: Extension
Title: Certificate of Delivery of Delivery of Alcohol—Tax Paid

OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Gary Kowalczyk,

Departmental Reports Management Office.

[FR Doc. 84–8756 Filed 3–30–84; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 64
Monday, April 2, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Mine Safety and Health Review Commission	1
Tennessee Valley Authority	2

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 28, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, April 4, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Turner Brothers, Inc., Docket No. CENT 83-12.

2. Green Hill Mining Co., Inc., Docket No. KENT 83-251 (Issues include whether the administrative law judge erred in entering an order of default against the operator.)

3. Jack Gravely v. Ranger Fuel Corporation, Docket No. WEVA 83-101-D; (Issues include whether the administrative law judge erred in dismissing the miner's discrimination complaint.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 84-8809 Filed 3-29-84; 3:21 pm]
BILLING CODE 6735-01-M

2

TENNESSEE VALLEY AUTHORITY

TIME AND DATE: 10:15 a.m. (EST), Wednesday, April 4, 1984.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA ITEMS: Approval of minutes of meeting held on March 19, 1984.

DISCUSSION ITEM: 1. TVA report, "How Clean Is Our Air?: An Update."

ACTION ITEMS:

Old Business

1. Supplement to Contract No. TV-61177A between TVA and Redark Development Authority (formerly Southeast Oklahoma Public Facilities Authority) for the purpose of furthering economic development in the southeast Oklahoma area.

New Business

B—Purchase Awards

* B1. Sales Inquiry V1-442011-A—Proposed sale of unused fabricated carbon steel pipe and accessories at Hartsville and Yellow Creek nuclear plants to Piping Products, Incorporated.

B2. Requisition 89—Coal for Cumberland Steam Plant.

C—Power Items

C1. Sale of lease of the Fabius coal washing facility, Jackson County, Alabama—Tract No. XACOR-3L.

E—Real Property Transactions

E1. Sale of permanent easement to Cecil C. Sanders for the construction, operation, and maintenance of a road affecting approximately 0.52 acres of Chatuge Reservoir land in Towns County, Georgia—Tract No. XCHR-73H.

E2. Filing of condemnation cases.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

DATED: March 28, 1984.

W. F. Willis,
General Manager.

[FR Doc. 84-8860 Filed 3-29-84; 1:23 pm]
BILLING CODE 8120-01-M

* Items approved by individual Board members. This would give formal ratification to the Board's action.

federal register

Monday
April 2, 1984

Part II

Office of Management and Budget

Budget Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report three new deferrals of budget authority totaling $42,632,000.

The deferrals affect the Departments of Justice and Transportation. The details of the deferrals are contained in the attached reports.

Ronald Reagan,

The White House,
March 26, 1984.

BILLING CODE 3110-01-M

Deferral No: D84-57

CONTENTS OF SPECIAL MESSAGE

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral #	Item	Budget Authority
	Department of Justice	
	Interagency Law Enforcement	
D84-57	Organized crime drug enforcement.....	272
	Federal Bureau of Investigation	
D84-58	Salaries and expenses.....	42,000
	Department of Transportation	
	Federal Aviation Administration	
D84-59	Facilities, engineering and development....	360
	Total, deferrals.....	42,632

****

SUMMARY OF SPECIAL MESSAGES
FOR FY 1984
(in thousands of dollars)

	Rescissions	Deferrals
Eighth special message:		
New items.....	---	42,632
Revisions to previous special messages.....	---	---
Effects of eighth special message.....	---	42,632
Amounts from previous special messages that are changed by this message (change noted above).....	---	---
Subtotal, rescissions and deferrals.....	---	42,632
Amounts from previous special messages that are not changed by this message.....	636,411	7,261,525
Total amount proposed to date in all special messages.....	636,411	7,304,157

Deferral No: D84-57

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Justice	New budget authority (P.L.) $
Bureau: Interagency Law Enforcement	Other budgetary resources 18,143,000
Appropriation title & symbol: Organized Crime Drug Enforcement 15X0323 1/	Total budgetary resources 18,143,000
	Amount to be deferred: Part of year
	Entire year 272,000
OMB identification code: 15-0323-0-1-751	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: This appropriation finances renovation of existing penal and correctional institutions. Projects are undertaken to relieve current conditions of overcrowding and provide safe, efficient and adequately sized and equipped facilities for the operation of correctional programs within the Federal Prison System in support of overall criminal justice system initiatives. The deferral of $272,000 is related to the work performed on the Leavenworth Control/Segregation unit project which is scheduled for completion in May 1985. Due to the time required for the work in process, it would be impossible to complete the project during 1984.

Estimated Program Effect: None.

Outlay Effect: None.

1/ This account was the subject of a deferral in 1983 (D83-55).

Deferral No: 084-58

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Justice	New budget authority (P.L. 98-166): $ 63,000,000
Bureau: Federal Bureau of Investigation	Other budgetary resources:
Appropriation title & symbol:	Total budgetary resources: 63,000,000
Salaries and Expenses 15X/80200	Amount to be deferred: Part of year: Entire year: 42,000,000
OMB identification code: 15-0200-0-1-751	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [X] Multiple-year: September 30, 1985 (expiration date) [ ] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account provides for expenses necessary for detection, investigation, and prosecution of crimes against the United States by the Federal Bureau of Investigation (FBI). In 1984, $52 million for automated data processing and telecommunications, $10 million for the relocation within the District of Columbia of the Washington field office, and $1 million for undercover operations were made available until September 30, 1985. Due to changes required in the design of a major ADP system for fingerprint identification processing and a decision to release functional specifications before an RFP is published, obligations of $34 million will be delayed until 1985. In addition, due to delays in finding new space for the FBI's Washington field office, $8 million will not be obligated until 1985.

Estimated Program Effect: None.

Outlay Effect: None.

Deferral No: 084-59

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L.): $
Bureau: Federal Aviation Administration	Other budgetary resources: 3,971,000
Appropriation title & symbol: Facilities, Engineering and Development, FAA	Total budgetary resources: 3,971,000
69X1303	Amount to be deferred: Part of year: Entire year: 360,000
OMB identification code: 69-1303-0-1-402	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: The 1983 appropriation provided funds to procure four Evaluation, Currency and Training (ECT) aircraft being leased through the Operations appropriation under a lease-purchase arrangement. Two of these aircraft will be purchased during the first quarter of 1984 using unobligated funds brought forward in this appropriation. A reprogramming during 1983 to meet unanticipated requirements left insufficient funds in this appropriation to purchase the remaining two aircraft in 1984. They will continue to be leased through the Operations appropriation during 1984, thereby making purchase possible in 1985 through this appropriation at a reduced price. This deferral is necessary to assure that sufficient funds will be available in 1985 to execute the purchase.

Estimated Program Effect: None.

Outlay Effect: None.

[FR Doc. 84-8703 Filed 3-30-84; 8:45 am]
BILLING CODE 3110-01-C

Deferral No: 084-58

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Justice	New budget authority (P.L. 98-166): $ 63,000,000
Bureau: Federal Bureau of Investigation	Other budgetary resources:
Appropriation title & symbol:	Total budgetary resources: 63,000,000
Salaries and Expenses 15X/80200	Amount to be deferred: Part of year: Entire year: 42,000,000
OMB identification code: 15-0200-0-1-751	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [X] Multiple-year: September 30, 1985 (expiration date) [ ] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account provides for expenses necessary for detection, investigation, and prosecution of crimes against the United States by the Federal Bureau of Investigation (FBI). In 1984, $52 million for automated data processing and telecommunications, $10 million for the relocation within the District of Columbia of the Washington field office, and $1 million for undercover operations were made available until September 30, 1985. Due to changes required in the design of a major ADP system for fingerprint identification processing and a decision to release functional specifications before an RFP is published, obligations of $34 million will be delayed until 1985. In addition, due to delays in finding new space for the FBI's Washington field office, $8 million will not be obligated until 1985.

Estimated Program Effect: None.

Outlay Effect: None.

Deferral No: 084-59

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L.): $
Bureau: Federal Aviation Administration	Other budgetary resources: 3,971,000
Appropriation title & symbol: Facilities, Engineering and Development, FAA	Total budgetary resources: 3,971,000
69X1303	Amount to be deferred: Part of year: Entire year: 360,000
OMB identification code: 69-1303-0-1-402	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: The 1983 appropriation provided funds to procure four Evaluation, Currency and Training (ECT) aircraft being leased through the Operations appropriation under a lease-purchase arrangement. Two of these aircraft will be purchased during the first quarter of 1984 using unobligated funds brought forward in this appropriation. A reprogramming during 1983 to meet unanticipated requirements left insufficient funds in this appropriation to purchase the remaining two aircraft in 1984. They will continue to be leased through the Operations appropriation during 1984, thereby making purchase possible in 1985 through this appropriation at a reduced price. This deferral is necessary to assure that sufficient funds will be available in 1985 to execute the purchase.

Estimated Program Effect: None.

Outlay Effect: None.

[FR Doc. 84-8703 Filed 3-30-84; 8:45 am]
BILLING CODE 3110-01-C

Reader Aids

Federal Register

Vol. 49, No. 64

Monday, April 2, 1984

INFORMATION AND ASSISTANCE

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Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
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PUBLICATIONS AND SERVICES

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FEDERAL REGISTER PAGES AND DATES, APRIL

13001-13098.....2

LIST OF PUBLIC LAWS

Last List March 30, 1984.

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030)

S.J. Res. 241/Pub. L. 98-247

To authorize and request the President to issue a proclamation designating May 6 through May 13, 1984 as "Jewish Heritage Week". (March 28, 1984, 98 Stat. 111) Price $1.50

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1984

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
April 2	April 17	May 2	May 17	June 1	July 2
April 3	April 18	May 3	May 18	June 4	July 2
April 4	April 19	May 4	May 21	June 4	July 3
April 5	April 20	May 7	May 21	June 4	July 5
April 6	April 23	May 7	May 21	June 5	July 5
April 9	April 24	May 9	May 24	June 8	July 8
April 10	April 25	May 10	May 25	June 10	July 9
April 11	April 26	May 11	May 29	June 11	July 10
April 12	April 27	May 14	May 29	June 11	July 11
April 13	April 30	May 14	May 29	June 12	July 12
April 16	May 1	May 16	May 31	June 15	July 16
April 17	May 2	May 17	June 1	June 18	July 16
April 18	May 3	May 18	June 4	June 18	July 17
April 19	May 4	May 21	June 4	June 18	July 18
April 20	May 7	May 21	June 4	June 19	July 19
April 23	May 8	May 23	June 7	June 22	July 23
April 24	May 9	May 24	June 8	June 25	July 23
April 25	May 10	May 25	June 11	June 25	July 24
April 26	May 11	May 25	June 11	June 25	July 25
April 27	May 14	May 29	June 11	June 26	July 26
April 30	May 15	May 30	June 14	June 29	July 30

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1982 Compilation and Parts 100 and 101)	6.00	Jan. 1, 1982
4	7.50	Jan. 1, 1983
5 Parts:		
1–1199	8.50	Jan. 1, 1983
1200–End, 6 (6 Reserved)	6.00	Jan. 1, 1983
7 Parts:		
0–45	9.00	Jan. 1, 1983
46–51	7.50	Jan. 1, 1983
52	9.00	Jan. 1, 1983
53–209	7.50	Jan. 1, 1983
210–299	7.00	Jan. 1, 1983
*300–399	7.50	Jan. 1, 1984
400–699	6.50	Jan. 1, 1983
700–899	6.50	Jan. 1, 1983
900–999	8.50	Jan. 1, 1983
1000–1059	7.50	Jan. 1, 1983
1060–1119	6.50	Jan. 1, 1983
1120–1199	7.00	Jan. 1, 1983
1200–1499	7.00	Jan. 1, 1983
1500–1899	6.50	Jan. 1, 1983
1900–1944	8.00	Jan. 1, 1983
1945–End	7.00	Jan. 1, 1983
8	6.50	Jan. 1, 1983
9 Parts:		
1–199	7.50	Jan. 1, 1983
*200–End	9.50	Jan. 1, 1984
10 Parts:		
0–199	9.00	Jan. 1, 1983
*200–399	12.00	Jan. 1, 1984
400–499	6.50	Jan. 1, 1983
500–End	7.00	Jan. 1, 1983
11	5.50	July 1, 1983
12 Parts:		
1–199	7.00	Jan. 1, 1983
200–299	8.00	Jan. 1, 1983
300–499	7.00	Jan. 1, 1983
500–End	8.00	Jan. 1, 1983
13	8.00	Jan. 1, 1983
14 Parts:		
1–59	7.00	Jan. 1, 1983
60–139	7.00	Jan. 1, 1983
*140–199	7.00	Jan. 1, 1984
200–1199	7.00	Jan. 1, 1983
*1200–End	7.50	Jan. 1, 1984
15 Parts:		
0–299	6.50	Jan. 1, 1983
300–399	7.00	Jan. 1, 1983
400–End	7.50	Jan. 1, 1983

Title	Price	Revision Date
16 Parts:		
0–149	7.00	Jan. 1, 1983
150–999	7.00	Jan. 1, 1983
1000–End	7.00	Jan. 1, 1983
17 Parts:		
1–239	8.00	Apr. 1, 1983
240–End	7.00	Apr. 1, 1983
18 Parts:		
1–149	7.00	Apr. 1, 1983
150–399	8.00	Apr. 1, 1983
400–End	6.50	Apr. 1, 1983
19	8.50	Apr. 1, 1983
20 Parts:		
1–399	5.50	Apr. 1, 1983
400–499	7.00	Apr. 1, 1983
500–End	7.50	Apr. 1, 1983
21 Parts:		
1–99	5.00	Apr. 1, 1983
100–169	6.50	Apr. 1, 1983
170–199	6.50	Apr. 1, 1983
200–299	4.75	Apr. 1, 1983
300–499	9.00	Apr. 1, 1983
500–599	6.50	Apr. 1, 1983
600–799	5.00	Apr. 1, 1983
800–1299	6.00	Apr. 1, 1983
1300–End	5.00	Apr. 1, 1983
22	8.50	Apr. 1, 1983
23	7.00	Apr. 1, 1983
24 Parts:		
0–199	6.00	Apr. 1, 1983
200–499	8.00	Apr. 1, 1983
500–799	5.00	Apr. 1, 1983
800–1699	6.50	Apr. 1, 1983
1700–End	6.00	Apr. 1, 1983
25	8.00	Apr. 1, 1983
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[1] No amendments to these volumes were promulgated during the period Apr. 1, 1982 to March 31, 1983. The CFR volumes issued as of Apr. 1, 1982 should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

CFR ISSUANCES 1984
January 1984 Editions and Projected April, 1984 Editions

This list sets out the CFR issuances for the **January 1984** editions and projects the publication plans for the **April, 1984** quarter. A projected schedule that will include the **July, 1984** quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1983–1984 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

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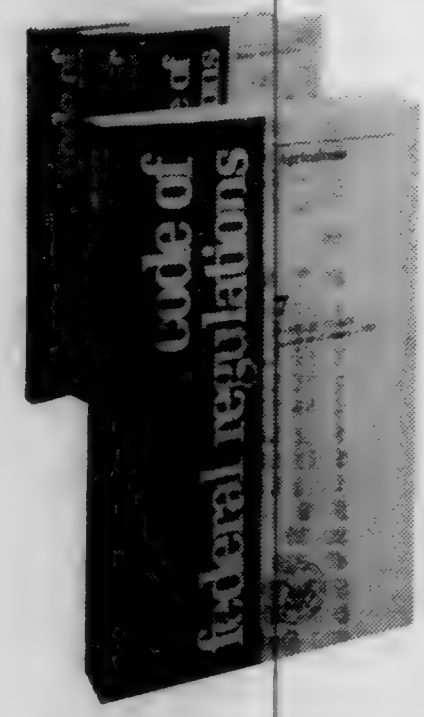

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Immigration and Naturalization Service

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Title 3—

The President

Executive Order 12470 of March 30, 1984

Continuation of Export Control Regulations

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) (hereinafter referred to as "the Act"), and 22 U.S.C. 287c,

I, RONALD REAGAN, President of the United States of America, find that the unrestricted access of foreign parties to United States commercial goods, technology, and technical data and the existence of certain boycott practices of foreign nations constitute, in light of the expiration of the Export Administration Act of 1979, an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national economic emergency to deal with that threat.

Accordingly, in order (a) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States; (b) to further significantly the foreign policy of the United States, including its policy with respect to cooperation by United States persons with certain foreign boycott activities, and to fulfill its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious economic impact of foreign demand, it is hereby ordered as follows:

Section 1. Notwithstanding the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*), the provisions of that Act, the provisions for administration of that Act and the delegations of authority set forth in Executive Order No. 12002 of July 7, 1977 and Executive Order No. 12214 of May 2, 1980, shall, to the extent permitted by law, be incorporated in this Order and shall continue in full force and effect.

Sec. 2. All rules and regulations issued or continued in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, including those published in Title 15, Chapter III, Subchapter C, of the Code of Federal Regulations, Parts 368 to 399 inclusive, and all orders, regulations, licenses and other forms of administrative action issued, taken or continued in effect pursuant thereto, shall, until amended or revoked by the Secretary of Commerce, remain in full force and effect, the same as if issued or taken pursuant to this Order, except that the provisions of sections 203(b)(2) and 206 of the Act (50 U.S.C. 1702(b)(2) and 1705) shall control over any inconsistent provisions in the regulations with respect to, respectively, certain donations to relieve human suffering and civil and criminal penalties for violations subject to this Order. Nothing in this section shall affect the continued applicability of administrative sanctions provided for by the regulations described above.

Sec. 3. Provisions for the administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this Order also shall constitute authority for the issuance and continuation in full force and effect of all rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative action issued, taken or continued in effect pursuant thereto, relating to the administration of section 38(e).

Sec. 4. This Order shall be effective as of midnight between March 30 and March 31, 1984 and shall remain in effect until terminated. It is my intention to terminate this Order upon the enactment into law of a bill reauthorizing the authorities contained in the Export Administration Act.

Ronald Reagan

THE WHITE HOUSE,
March 30, 1984.

[FR Doc. 84-8919
Filed 3-30-84; 3:07 pm]
Billing code 3195-01-M

Editorial note: The President's message to Congress of Mar. 30, 1984 reporting on the continuation on export controls, is printed in the *Weekly Compilation of Presidential Documents* (vol. 20, no. 13).

Presidential Documents

Executive Order 12471 of March 30, 1984

Amending the Generalized System of Preferences

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Title V of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2461 *et seq.*), as amended, section 604 of the Trade Act (19 U.S.C. 2483), and section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), in order to modify, as provided by sections 504 (a) and (c) of the Trade Act (19 U.S.C. 2464(a) and (c)), the limitations on preferential treatment for eligible articles from countries designated as beneficiary developing countries; to adjust the original designation of eligible articles after taking into account information and advice received in fulfillment of sections 131–134 and 503(a) of the Trade Act (19 U.S.C. 2151–2154, 2463); to provide for the continuation, to the greatest extent possible, of preferential treatment under the Generalized System of Preferences (GSP) for articles which are currently eligible for such treatment and which are imported from countries designated as beneficiary developing countries, following changes to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) made by Proclamation 5140 (48 FR 56553); and to make technical changes in the identification of certain beneficiary developing countries, it is hereby ordered as follows:

Section 1. In order to subdivide and amend the nomenclature of existing items for purposes of the GSP, the TSUS are modified as provided in Annex I to this Order.

Sec. 2. Annex II of Executive Order No. 11888, as amended, listing articles that are eligible for benefits of the GSP when imported from any designated beneficiary developing country, is amended by substituting therefor the new Annex II to this Order.

Sec. 3. Annex III of Executive Order No. 11888, as amended, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those specified in General Headnote 3(c)(iii) of the TSUS, is amended by substituting therefor the new Annex III to this Order.

Sec. 4. General Headnote 3(c)(iii) of the TSUS, listing articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite those articles, is modified by substituting therefor the General Headnote 3(c)(iii) set forth in Annex IV to this Order.

Sec. 5. In order to provide staged reductions in the rates of duty for those new TSUS items created by Annex I to this Order, Annex III to Proclamation 4707, and Annex III to Proclamation 4768, are amended as set forth in Annex V to this Order.

Sec. 6. Whenever the column 1 rate of duty in the TSUS for any item specified in Annex I to this Order is reduced to the same level as, or to a lower level than, the corresponding rate of duty in the column entitled "LDDC" by Annex I to this Order, the rate of duty in the column entitled "LDDC" for such item shall be deleted from the TSUS.

Sec. 7. Annexes III and IV of Proclamation 4707, Annexes II, III, and IV of Proclamation 4768, and Annex I of Executive Order No. 12413, are superseded to the extent inconsistent with this Order.

Sec. 8. General Headnote 3(c)(i) of the TSUS listing the designated beneficiary developing countries for purposes of the GSP is modified as provided in Annex VI to this Order.

Sec. 9. In order to clarify the eligibility of certain articles for benefits of the GSP, headnote 1 to subpart C, part 2 of the Appendix to the TSUS is modified by deleting "the Appendix to". This modification is effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after January 1, 1984.

Sec. 10. Unless otherwise specified, the amendments made by this Order shall be effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after March 30, 1984.

Ronald Reagan

THE WHITE HOUSE,
March 30, 1984.

Billing code 3195-01-M

ANNEX I

GENERAL MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES

Notes:

1. Bracketed matter is included to assist in the understanding of ordered modifications.
2. The following items, with or without preceding superior descriptions, supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form, and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", "Rates of Duty LDDC", and "Rates of Duty 2", respectively.

Subject to the above notes the TSUS is modified as follows:

Section A. Effective as to articles entered, or withdrawn from warehouse for consumption, on and after March 30, 1984.

1. Item 406.40 and the superior heading thereto are superseded by:

Item	Articles	Rates of Duty 1	Rates of Duty LDDC	Rates of Duty 2
	[Cyclic...:]			
	[Other:]			
	[Heterocyclic...:]			
	[Other:]			
"406.37	1,2-Dihydro-2,2,4-trimethylquinoline polymer; 2-Mercaptobenzothiazole; and N-(Oxydiethylene)benzothiazole-2-sulfenamide.....	1.7¢ per lb. + 16.2% ad val.		7¢ per lb. + 52% ad val.
	Other:			
406.39	Products provided for in the Chemical Appendix to the Tariff Schedules.....	1.7¢ per lb. + 16.2% ad val.		7¢ per lb. + 52% ad val."

2. Item 406.48 is superseded by:

	[Cyclic...:]			
	[Other:]			
	[Sulfonamides,...:]			
	[Sulfonamides:]			
"406.47	4-Amino-6-chloro-m-benzenedisulfonamide.....	[See Annex V]	6.8% ad val.	7¢ per lb. + 41% ad val.
406.49	2-Amino-N-ethylbenzene-sulfonanilide; 5-Amino-α,α,α-trifluorotoluene-2,4-disulfonamide; Benzenesulfonamide; Benzenesulfonyl hydrazide; 2-Chloro-4-amino-5-hydroxybenzenesulfonamide; 2,5-Dimethoxysulfanilide; and Metanilamide.....	[See Annex V]	6.8% ad val.	7¢ per lb. + 41% ad val."

3. Item 411.56 and the superior heading thereto are superseded by:

	[Products...:]			
	[Obtained,...:]			
	[Drugs:]			
	[Other:]			
	[Antihistamines,...:]			
"411.53	Meclizine hydrochloride...	[See Annex V]	9.2% ad val.	7¢ per lb. + 82% ad val.
	Other:			
411.55	Products provided for in the Chemical Appendix to the Tariff Schedules.....	[See Annex V]	9.2% ad val.	7¢ per lb. + 82% ad val."

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4.(a) Items 411.81 and 411.83 and the superior heading for item 411.83 are superseded by:

	[Products...:]			
	[Obtained,...:]			
	[Drugs:]			
	[Other:]			
	[Anti-infective...:]			
	[Anti-infective...:]			
"411.82	Acetylsulfisoxazole; Sulfamerazine, sodium; Sulfamethazine, sodium; Sulfamethoxazole; Sulfisoxazole; Sulfacetamide, sodium; Sulfanilamide; and Sulfaquinoxaline.....	[See Annex V]	10.8% ad val	7¢ per lb. + 96% ad val.
	Other:			
411.87	Products provided for in the Chemical Appendix to the Tariff Schedules.....	[See Annex V]	10.8% ad val	7¢ per lb. + 96% ad val."

(b) Conforming change: Item 411.86 is redesignated as 411.88.

5. Items 412.67 and 412.69 and the superior heading for item 412.69 are superseded by:

	[Products...:]			
	[Obtained,...:]			
	[Drugs:]			
	[Other:]			
"412.67	Chlorothiazide; Chlorpropamide; Hydrochlorothiazide; and Tolbutamide.....	[See Annex V]	6.9% ad val.	7¢ per lb. + 45% ad val.
	Other:			
412.69	Products provided for in the Chemical Appendix to the Tariff Schedules.....	[See Annex V]	6.9% ad val.	7¢ per lb. + 45% ad val."

6. Items 610.80 and 610.81 are superseded by:

	[Pipe...:]			
	"Other fittings:			
610.82	Ductile fittings.....	[See Annex V]	6.2% ad val.	45% ad val.
	Other:			
610.84	Flanges.....	[See Annex V]	6.2% ad val.	45% ad val.
610.86	Couplings.....	[See Annex V]	6.2% ad val.	45% ad val.
	Other:			
	Butt-weld type fittings:			
	Under 14 inches (inside diameter):			
610.88	Other than alloy iron or steel.....	[See Annex V]	6.2% ad val.	45% ad val.
610.89	Alloy iron or steel..	[See Annex V]	6.2% ad val.	45% ad val.
610.90	14 inches and over (inside diameter).....	[See Annex V]	6.2% ad val.	45% ad val.
610.92	Other.....	[See Annex V]	6.2% ad val.	45% ad val.
610.93	Any article described in the foregoing items 610.82 to 610.92, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6).....	Free"		

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7. Item 661.95 is superseded by:

	[Centrifuges;...:]			
	[Other:]			
	"Other:			
661.94	Portable air purifiers, not specially designed for industrial use, and filters therefor.....	[See Annex V]	3.9% ad val.	35% ad val.
661.95	Other.....	[See Annex V]	3.9% ad val.	35% ad val."

8. Item 674.32 is superseded by:

	[Machine...:]			
	[Metal-working...:]			
	"Boring, drilling, and milling machines, including vertical turret lathes:			
	Drilling machines:			
674.31	Not used or rebuilt, valued under $2,500 each.....	[See Annex V]	4.2% ad val.	30% ad val.
674.33	Other.....	[See Annex V]	4.2% ad val.	30% ad val.
674.34	Other.....	[See Annex V]	4.2% ad val.	30% ad val."

9.(a) Item 685.19 is superseded by:

	[Radiotelegraphic...:]			
	[Radiotelegraphic...:]			
	[Television...:]			
	"Other television apparatus and parts thereof:			
685.20	Antennas (except parabolic reflectors).....	[See Annex V]	3.7% ad val.	35% ad val.
685.22	Other.....	[See Annex V]	3.7% ad val.	35% ad val."

(b) Conforming change: Item 685.21 is redesignated as 685.23.

10.(a) Item 722.12 is superseded by:

	[Photographic...:]			
	[Other...:]			
	"Fixed-focus:			
	Hand-held type:			
722.08	110 cameras and disc cameras...	[See Annex V]	4% ad val.	20% ad val.
722.09	Instant-print cameras.....	[See Annex V]	4% ad val.	20% ad val.
722.11	Other.....	[See Annex V]	4% ad val.	20% ad val.
722.13	Other.....	[See Annex V]	4% ad val.	20% ad val."

(b) Conforming change: Item 722.10 is redesignated as 722.06.

11.(a) Item 727.50 is superseded by:

	[Furniture,...:]			
	[Of rubber...:]			
	"Other:			
727.53	Waterbed mattresses and liners, and parts of the foregoing.....	[See Annex V]		25% ad val.
727.59	Other.....	[See Annex V]		25% ad val."

(b) Conforming change: Items 727.51, 727.52, 727.55, and 727.56 are redesignated as 727.60, 727.65, 727.70, and 727.71, respectively.

Section B. Effective as to articles entered, or withdrawn from warehouse for consumption, on and after January 1, 1988.

1. Items 411.55 and 411.58 and the superior heading thereto are superseded by:

[Products...:]			
[Obtained,...:]			
[Drugs:]			
[Other:]			
[Antihistamines,...:]			
"411.57	Other.....	9.2% ad val.	7¢ per lb. + 82% ad val."

2. Items 411.87 and 411.88 and the superior heading thereto are superseded by:

[Products...:]			
[Obtained,...:]			
[Drugs:]			
[Other:]			
[Anti-infective...:]			
[Anti-infective...:]			
"411.8[illegible]	Other.....	10.8% ad val.	7¢ per lb. + 96% ad val."

ANNEX II

ARTICLES THAT ARE ELIGIBLE FOR PREFERENTIAL TREATMENT WHEN IMPORTED FROM ANY BENEFICIARY DEVELOPING COUNTRY

100.25
100.31
105.30
105.60
105.84
106.70
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107.45
107.65
107.70
107.78
110.28
110.35
110.45
111.10
111.15
111.18
111.56
111.60
112.03
112.21
112.36
112.40
112.94
113.30
113.40
113.50
113.60
114.04
114.25
114.55
117.65
117.67
119.50
119.55
120.17
121.10
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121.30
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121.52
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121.56
121.62
123.50
124.20
124.25
124.30
124.40
124.60
124.65
124.70
124.80
125.01
125.10
125.15
125.20
125.32
125.34
125.50
125.82
125.84
126.01
126.41
127.10
130.20
130.30
130.32
130.37
130.40
130.45
130.63
131.20
131.35
131.80
132.55
135.12
135.14
135.30
135.41
135.50
135.60
135.70
135.80
135.99
136.10
136.40
136.50
136.60
136.90
136.92
136.95
136.97
137.04
137.84
137.88
137.93
138.40
138.41
140.10
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140.16
140.20
140.35
140.38
140.46
140.54
140.56
140.70
140.76
141.05
141.20
141.35
141.45
141.50
141.70
141.78
141.82
141.85
141.87
141.98
144.14
145.02
145.09
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145.30
145.50
145.52
145.53
145.54
145.65
145.70
146.12
146.42
146.66
146.69
146.74
146.78
146.82
146.87
146.90
147.21
147.29
147.33
147.36
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147.80
147.85
148.08
148.19
148.30
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148.52
148.77
148.81
149.15
152.00
152.05
152.30
152.40
152.43
152.58
152.60
152.72
152.78
153.03
153.05
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154.43
154.60
155.30
155.40
155.60
155.75
156.25
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161.05
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162.03
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ANNEX II

-2-

167.40	182.20	206.65	252.10
167.50	182.30	206.95	252.13
168.12	182.32	207.00	252.15
168.13	182.35	220.10	252.17
168.14	182.36	220.15	252.20
168.16	182.40	220.31	252.25
168.36	182.45	220.35	252.27
168.37	182.46	220.36	252.30
168.39	182.49	220.37	252.35
168.41	182.52	220.39	252.40
168.42	182.58	220.41	252.42
168.54	182.90	220.47	252.45
168.57	182.96	220.50	252.50
168.59	183.01	222.30	252.57
168.61	183.05	222.32	252.59
168.96	184.50	222.34	252.61
168.98	184.51	222.36	252.63
169.04	184.53	222.40	252.70
169.07	184.58	222.41	252.73
169.08	184.65	222.42	252.75
169.32	186.10	222.44	252.77
169.37	186.15	222.55	252.81
169.38	186.20	222.57	252.84
169.39	186.30	222.60	252.86
169.42	186.40	222.62	252.90
169.44	186.50	222.64	253.05
169.47	188.30	240.10	253.10
169.48	188.34	240.12	253.15
169.49	188.50	240.14	253.20
169.58	190.10	240.16	253.25
169.59	190.25	240.19	253.30
170.10	190.68	240.21	253.35
170.15	190.85	240.30	253.40
170.63	191.18	240.32	253.45
170.67	192.17	240.34	254.05
170.70	192.45	240.36	254.09
175.36	193.10	240.40	254.15
176.01	200.06	240.50	254.18
176.14	200.45	240.52	254.20
176.29	202.38	240.54	254.25
176.30	202.54	240.56	254.30
176.49	202.56	240.58	254.35
176.50	202.60	240.60	254.40
176.70	202.66	245.00	254.42
177.12	203.10	245.10	254.44
177.16	203.20	245.30	254.46
177.22	203.30	245.45	254.48
177.24	204.05	245.50	254.50
177.26	204.10	245.60	254.54
177.40	204.20	245.70	254.56
177.58	204.30	245.80	254.58
177.62	204.35	251.10	254.63
177.69	206.30	251.15	254.65
177.72	206.45	251.20	254.70
178.30	206.50	251.25	254.80
182.05	206.52	251.30	254.85
182.10	206.53	251.45	254.90
182.11	206.54	252.05	254.95
182.15			

ANNEX II

-3-

256.05
256.10
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256.80
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256.90
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ANNEX II

-4-

410.36	416.45	419.32	421.54
410.40	417.10	419.34	421.60
410.44	417.14	419.38	421.62
410.48	417.16	419.40	421.72
410.52	417.18	419.42	421.74
410.56	417.20	419.44	421.76
410.60	417.22	419.50	421.84
410.64	417.24	419.52	421.86
410.66	417.26	419.54	421.90
410.68	417.28	419.60	422.00
410.72	417.32	419.70	422.10
410.76	417.34	419.74	422.12
410.80	417.36	419.76	422.14
410.84	417.38	419.80	422.20
410.88	417.42	419.82	422.24
410.92	417.44	419.84	422.26
410.96	417.50	419.90	422.30
411.00	417.52	420.00	422.58
411.04	417.54	420.02	422.60
411.08	417.64	420.04	422.62
411.10	417.70	420.06	422.70
411.20	417.72	420.08	422.72
411.24	417.74	420.14	422.74
411.26	417.76	420.16	422.78
411.53	417.78	420.18	422.80
411.64	417.80	420.20	422.82
411.80	417.90	420.22	422.90
411.82	417.92	420.24	422.92
411.91	418.00	420.26	422.94
412.22	418.14	420.28	423.00
412.31	418.18	420.30	423.80
412.67	418.22	420.34	423.84
412.72	418.24	420.36	423.86
412.76	418.26	420.40	423.88
412.80	418.28	420.54	423.94
412.84	418.32	420.60	423.96
412.88	418.40	420.68	425.00
412.92	418.42	420.70	425.02
412.96	418.44	420.78	425.04
413.00	418.50	420.82	425.06
413.04	418.52	420.84	425.08
413.08	418.60	420.86	425.09
413.12	418.62	420.88	425.10
413.16	418.68	420.94	425.12
413.20	418.72	420.98	425.14
413.24	418.74	421.04	425.18
413.28	418.76	421.06	425.20
413.30	418.78	421.08	425.22
413.32	418.80	421.10	425.24
413.36	418.94	421.14	425.26
413.40	419.00	421.16	425.28
413.50	419.02	421.18	425.32
413.51	419.04	421.22	425.34
415.20	419.10	421.34	425.36
415.27	419.20	421.36	425.38
415.50	419.22	421.44	425.41
416.05	419.24	421.46	425.42
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ANNEX II

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ANNEX II

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ANNEX II

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622.15	629.60	644.18	646.89
622.17	629.65	644.20	646.92
622.20	632.02	644.22	646.95
622.22	632.04	644.24	646.97
622.25	632.12	644.26	646.98
622.35	632.18	644.28	647.01
622.40	632.34	644.30	647.03
624.02	632.42	644.32	647.05
624.04	632.60	644.36	647.10
624.10	632.62	644.38	648.51
624.12	632.66	644.40	648.53
624.14	633.00	644.42	648.57
624.16	640.05	644.46	648.61
624.18	640.10	644.48	648.63
624.20	640.20	644.52	648.67
624.22	640.25	644.56	648.69
624.24	640.30	644.60	648.71
624.30	640.35	644.64	648.73
624.32	640.40	644.68	648.75
624.34	642.06	644.72	648.80
624.40	642.08	644.76	648.85
624.42	642.09	644.80	648.89
624.50	642.15	644.84	648.93
624.52	642.18	644.88	648.95
624.54	642.20	644.92	649.01
626.15	642.25	644.95	649.03
626.17	642.27	644.98	649.05
626.18	642.31	646.02	649.07
626.20	642.34	646.04	649.11
626.22	642.45	646.06	649.14
626.24	642.47	646.17	649.17
626.30	642.50	646.20	649.19
626.31	642.52	646.22	649.21
626.35	642.54	646.27	649.23
626.40	642.56	646.28	649.24
626.42	642.58	646.30	649.25
626.45	642.60	646.34	649.26
628.05	642.62	646.36	649.27
628.10	642.64	646.40	649.29
628.15	642.66	646.41	649.31
628.20	642.68	646.42	649.32
628.25	642.70	646.45	649.33
628.30	642.72	646.47	649.35
628.35	642.74	646.51	649.41
628.40	642.76	646.53	649.43
628.45	642.78	646.57	649.44
628.50	642.80	646.65	649.46
628.55	642.82	646.72	649.47
628.59	642.85	646.74	649.48
628.70	642.87	646.75	649.49
628.74	642.93	646.76	649.53
628.90	644.02	646.77	649.57
628.95	644.06	646.78	649.67
629.05	644.08	646.82	649.71
629.10	644.09	646.85	649.73
629.20	644.11	646.86	649.75
629.25	644.12	646.87	649.77
629.26	644.15	646.88	649.79
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ANNEX II

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ANNEX II

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670.90	681.36	688.34	703.85
672.10	681.39	690.05	704.34
672.14	682.05	690.10	704.75
672.20	682.07	690.20	704.80
672.22	682.20	690.35	704.95
672.25	682.25	690.40	705.30
674.10	682.30	692.04	705.82
674.20	682.41	692.14	705.83
674.30	682.45	692.16	705.90
674.33	682.50	692.35	706.04
674.34	682.52	692.40	706.19
674.40	682.55	692.45	706.33
674.42	682.70	692.53	706.37
674.50	682.80	692.55	706.42
674.52	682.90	694.31	706.44
674.53	682.95	694.50	706.47
674.55	683.07	694.61	706.50
674.56	683.20	694.63	708.01
674.60	683.30	694.64	708.03
674.70	683.32	694.65	708.05
674.75	683.40	694.66	708.07
674.80	683.50	694.67	708.09
674.90	683.60	694.70	708.21
676.07	683.65	696.05	708.23
676.10	683.90	696.15	708.25
676.12	683.95	696.30	708.27
676.15	684.20	696.50	708.29
676.22	684.28	700.54	708.41
676.23	684.40	702.08	708.43
676.25	684.64	702.14	708.56
676.50	685.10	702.15	708.58
678.20	685.20	702.20	708.61
678.30	685.26	702.25	708.63
678.32	685.34	702.28	708.65
678.35	685.36	702.30	708.71
678.40	685.42	702.32	708.72
678.45	685.60	702.35	708.73
680.05	685.70	702.37	708.75
680.07	686.18	702.40	708.76
680.12	686.24	702.45	708.78
680.13	686.40	702.47	708.80
680.14	686.50	702.85	708.82
680.17	686.60	702.90	708.85
680.19	686.70	702.95	708.87
680.25	686.80	703.20	708.89
680.27	686.90	703.25	708.91
680.42	687.10	703.30	708.93
680.46	687.20	703.35	709.01
680.49	687.30	703.40	709.03
680.59	687.42	703.45	709.05
680.62	687.70	703.50	709.06
680.92	687.72	703.55	709.07
681.10	688.04	703.60	709.09
681.13	688.06	703.65	709.10
681.15	688.20	703.70	709.11
681.21	688.25	703.72	709.13
681.27	688.30	703.75	709.15
681.33	688.32	703.80	709.17

ANNEX II

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ANNEX II

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732.43	745.30	756.35	773.15
732.50	745.32	756.40	773.20
732.52	745.34	756.45	773.25
732.62	745.42	756.50	773.30
734.05	745.45	756.55	773.35
734.30	745.50	756.60	774.20
734.32	745.52	760.10	774.25
734.34	745.54	760.12	774.35
734.40	745.56	760.15	774.40
734.42	745.58	760.20	774.50
734.45	745.60	760.30	790.00
734.60	745.62	760.32	790.07
734.71	745.65	760.34	790.15
734.75	745.66	760.36	790.23
734.77	745.67	760.38	790.25
734.80	745.68	760.40	790.30
734.85	745.70	760.42	790.37
734.88	748.05	760.45	790.40
734.91	748.10	760.50	790.45
734.93	748.12	760.52	790.47
734.95	748.15	760.54	790.50
735.01	748.20	760.56	790.55
735.02	748.25	760.58	790.59
735.04	748.32	766.20	790.60
735.06	748.34	770.05	790.61
735.10	748.36	770.07	790.62
735.11	748.50	770.10	790.63
735.15	748.55	770.30	791.05
735.17	750.05	770.40	791.10
735.18	750.10	770.45	791.17
737.09	750.15	770.70	791.19
737.35	750.32	770.80	791.20
737.42	750.47	771.05	791.27
737.47	750.55	771.20	791.28
737.55	750.60	771.25	791.30
737.70	750.65	771.30	791.35
740.05	750.70	771.31	791.45
740.38	750.75	771.35	791.48
740.50	750.80	771.40	791.50
740.55	751.10	771.41	791.54
740.60	751.15	771.50	791.57
740.70	751.25	771.55	791.60
740.75	755.05	772.03	791.65
740.80	755.10	772.06	791.70
741.06	755.20	772.09	791.80
741.10	755.30	772.15	791.90
741.15	755.40	772.20	792.10
741.20	755.45	772.25	792.22
741.30	755.50	772.40	792.30
741.35	756.02	772.42	792.32
741.40	756.04	772.45	792.40
741.50	756.06	772.54	792.70
745.04	756.10	772.65	799.00
745.08	756.15	772.80	
745.10	756.21	772.85	
745.20	756.23	772.95	
745.25	756.25	772.97	
745.28	756.30	773.10	

ANNEX III

ARTICLES THAT ARE ELIGIBLE FOR PREFERENTIAL TREATMENT WHEN IMPORTED FROM BENEFICIARY DEVELOPING COUNTRIES OTHER THAN THOSE SPECIFIED IN GENERAL HEADNOTE 3(c)(iii) OF THE TSUS

107.48	220.25	646.90	684.62	734.87
107.80	220.48	648.55	684.70	734.90
113.01	222.10	648.91	685.24	735.07
114.06	222.50	648.97	685.29	735.09
121.55	240.38	649.37	685.40	735.12
121.61	245.20	650.89	685.90	735.20
121.64	256.60	651.21	686.30	737.07
121.65	256.87	651.33	688.10	737.15
135.51	305.26	651.37	688.12	737.21
135.90	319.01	651.46	688.15	737.23
135.95	319.03	651.49	688.43	737.26
136.00	319.05	651.53	690.15	737.28
136.20	337.40	652.03	692.29	737.30
136.22	355.81	652.60	692.32	737.40
136.30	365.84	652.84	692.60	737.43
136.61	366.84	653.39	696.10	737.49
136.80	389.61	653.47	696.35	737.51
137.02	406.20	653.48	696.40	737.60
137.10	407.16	653.85	696.60	737.65
137.40	416.10	653.93	700.90	737.80
137.50	422.76	653.94	703.14	737.95
137.63	425.84	653.99	706.39	740.11
137.71	428.58	654.08	706.45	740.12
137.75	445.42	654.30	706.61	740.13
137.79	452.44	654.40	708.45	740.14
137.89	473.52	654.55	708.47	740.15
138.05	473.56	654.60	709.40	740.30
138.35	522.21	654.65	709.54	740.34
140.21	532.22	657.24	711.38	741.25
141.77	532.31	657.25	713.15	748.21
146.22	534.81	660.42	713.17	750.20
146.44	534.91	660.48	722.08	750.22
146.76	534.94	661.06	722.11	750.25
148.03	535.31	661.09	722.14	750.35
148.12	536.11	661.65	725.01	750.40
148.17	545.53	661.94	725.03	750.45
148.25	545.65	662.35	725.32	750.50
148.65	545.85	664.10	725.50	751.05
148.72	545.87	672.16	726.25	751.11
149.50	601.33	674.31	727.06	751.20
149.60	602.10	674.35	727.23	755.25
152.54	603.40	676.20	727.29	771.43
154.53	606.36	676.30	727.35	771.45
155.20	606.37	676.52	727.70	772.35
155.35	606.44	678.50	728.22	772.51
161.83	610.65	682.35	730.94	772.60
167.05	610.70	682.60	732.60	772.70
176.15	610.74	683.05	734.10	773.05
192.21	610.82	683.15	734.15	774.45
192.85	610.88	683.70	734.20	774.55
200.91	612.03	683.80	734.25	790.03
202.62	612.06	684.10	734.51	790.10
204.40	618.02	684.15	734.54	790.39
206.47	642.14	684.25	734.56	790.70
206.60	642.16	684.48	734.70	791.15
206.98	642.17	684.53	734.72	792.50
220.20	646.32	684.55	734.86	792.60
				792.75

ANNEX IV

"(iii) The following designated eligible articles provided for in TSUS item numbers preceded by the designation "A*", if imported from a beneficiary developing country set opposite the TSUS item numbers listed below, are not entitled to the duty-free treatment provided for in subdivision (c)(ii) of this headnote:

107.48	Brazil	206.47	Taiwan
107.80	Argentina	206.60	Mexico
113.01	Thailand	206.98	Taiwan
114.06	Republic of Korea	220.20	Portugal
121.55	India	220.25	Portugal
121.61	Argentina	220.48	Portugal
121.64	India	222.10	Hong Kong
121.65	Argentina	222.50	Taiwan
135.51	Mexico	240.38	Philippines
135.90	Mexico	245.20	Brazil
135.95	Mexico	256.60	Republic of Korea
136.00	Dominican Republic	256.87	Mexico
136.20	Mexico	305.28	India
136.22	Mexico	319.01	India
136.30	Mexico	319.03	India
136.61	Mexico	319.05	India
136.80	Mexico	337.40	Hong Kong
137.02	Dominican Republic		Republic of Korea
137.10	Mexico	355.81	Taiwan
137.40	Mexico	365.84	Philippines
137.50	Mexico	366.84	Philippines
137.63	Mexico	389.61	Hong Kong
137.71	Mexico		Taiwan
137.75	Costa Rica	406.20	Israel
137.79	Mexico	407.16	Venezuela
137.89	Dominican Republic	416.10	Turkey
138.05	Mexico	422.76	Mexico
138.35	Costa Rica	425.84	Netherlands Antilles
140.21	Mexico	428.58	Brazil
141.77	Mexico	445.42	Taiwan
146.22	Turkey	452.44	Brazil
146.44	Philippines	473.52	Mexico
146.76	Mexico	473.56	Mexico
148.03	Mexico	522.21	Mexico
148.12	Mexico	532.22	Republic of Korea
148.17	Mexico	532.31	Mexico
148.25	Mexico	534.81	Taiwan
148.65	Taiwan	534.91	Taiwan
148.72	Chile	534.94	Taiwan
149.50	Mexico	535.31	Mexico
149.60	Thailand	536.11	Israel
152.54	Brazil	545.53	Mexico
154.53	Taiwan	545.65	Mexico
155.20	Brazil	545.85	Taiwan
	Dominican Republic	545.87	Taiwan
	Philippines	601.33	Mexico
155.35	Dominican Republic	602.10	Peru
161.83	India	603.40	Chile
167.05	Mexico	606.36	Brazil
176.15	India	606.37	Brazil
192.21	Colombia	606.44	Brazil
192.85	Mexico	610.65	Republic of Korea
200.91	Honduras	610.70	Taiwan
202.62	Mexico	610.74	Republic of Korea
204.40	Taiwan		Taiwan
		610.82	Republic of Korea
		610.88	Taiwan

ANNEX IV

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612.03	Chile
612.06	Chile
618.02	Venezuela
642.14	Republic of Korea
642.16	Republic of Korea
642.17	Republic of Korea
646.32	Republic of Korea
646.90	Mexico
648.55	Taiwan
648.91	Taiwan
648.97	Taiwan
649.37	Taiwan
650.89	Hong Kong, Taiwan
651.21	Taiwan
651.33	Hong Kong
651.37	Taiwan
651.46	Republic of Korea, Taiwan
651.49	Taiwan
651.53	Taiwan
652.03	Republic of Korea
652.60	Taiwan
652.84	Mexico
653.39	Taiwan
653.47	Taiwan
653.48	Taiwan
653.85	Taiwan
653.93	Taiwan
653.94	Republic of Korea
653.99	Taiwan
654.08	Taiwan
654.30	Republic of Korea, Taiwan
654.40	Taiwan
654.55	Taiwan
654.60	Hong Kong
654.65	Brazil
657.24	Taiwan
657.25	Taiwan
660.42	Brazil
660.48	Brazil, Mexico
661.06	Hong Kong, Taiwan
661.09	Singapore
661.65	Israel
661.94	Hong Kong, Taiwan
662.35	Mexico
664.10	Taiwan
672.16	Taiwan
674.31	Taiwan
674.35	Taiwan
676.20	Taiwan
676.30	Taiwan
676.52	Hong Kong, Mexico, Republic of Korea, Singapore, Taiwan
678.50	Hong Kong, Mexico, Republic of Korea, Taiwan
682.35	Mexico
682.60	Hong Kong, Mexico, Taiwan
683.05	Republic of Korea, Taiwan
683.15	Mexico
683.70	Hong Kong, Taiwan
683.80	Hong Kong
684.10	Taiwan
684.15	Singapore
684.25	Republic of Korea
684.48	Hong Kong
684.53	Taiwan
684.55	Mexico
684.62	Hong Kong, Taiwan
684.70	Republic of Korea, Taiwan
685.24	Hong Kong, Republic of Korea, Singapore, Taiwan
685.29	Hong Kong, Republic of Korea, Taiwan
685.40	Republic of Korea, Taiwan
685.90	Mexico, Taiwan
686.30	Taiwan
688.10	Taiwan
688.12	Mexico, Taiwan
688.15	Mexico
688.43	Hong Kong, Taiwan
690.15	Mexico
692.29	Mexico

ANNEX IV

-3-

692.32	Brazil Mexico Taiwan
692.60	Taiwan
696.10	Taiwan
696.35	Taiwan
696.40	Taiwan
696.60	Republic of Korea
700.90	Mexico
703.14	Mexico
706.39	Hong Kong Republic of Korea Taiwan
706.45	Hong Kong
706.61	Hong Kong Taiwan
708.45	Taiwan
708.47	Hong Kong
709.40	Hong Kong
709.54	Trinidad and Tobago
711.38	Mexico
713.15	Mexico
713.17	Hong Kong
722.08	Hong Kong Republic of Korea Taiwan
722.11	Hong Kong Republic of Korea Taiwan
722.14	Taiwan
725.01	Republic of Korea
725.03	Republic of Korea
725.32	Taiwan
725.50	Taiwan
726.25	Taiwan
727.06	Mexico
727.23	Taiwan
727.29	Taiwan
727.35	Taiwan
727.70	Taiwan
728.22	Taiwan
730.94	Republic of Korea
732.60	Taiwan
734.10	Taiwan
734.15	Taiwan
734.20	Hong Kong Taiwan
734.25	Hong Kong
734.51	Taiwan
734.54	Taiwan
734.56	Haiti
734.70	Republic of Korea
734.72	Taiwan
734.86	Taiwan
734.87	Taiwan
734.90	Taiwan
735.07	Republic of Korea
735.09	Taiwan
735.12	Taiwan
735.20	Taiwan
737.07	Hong Kong
737.15	Hong Kong
737.21	Hong Kong
737.23	Taiwan
737.26	Taiwan
737.28	Republic of Korea
737.30	Republic of Korea
737.40	Republic of Korea
737.43	Hong Kong
737.49	Hong Kong Taiwan
737.51	Republic of Korea
737.60	Hong Kong
737.65	Taiwan
737.80	Hong Kong
737.95	Hong Kong Taiwan
740.11	Hong Kong Israel Peru
740.12	Hong Kong
740.13	Hong Kong
740.14	Hong Kong
740.15	Hong Kong
740.30	Hong Kong
740.34	Hong Kong
741.25	Hong Kong
748.21	Taiwan
750.20	Taiwan
750.22	Taiwan
750.25	Hong Kong
750.35	Taiwan
750.40	Hong Kong
750.45	Republic of Korea
750.50	Republic of Korea
751.05	Taiwan
751.11	Taiwan
751.20	Taiwan
755.25	Hong Kong
771.43	Taiwan
771.45	Taiwan
772.35	Taiwan
772.51	Republic of Korea
772.60	Republic of Korea
772.70	Taiwan
773.05	Taiwan
774.45	Hong Kong
774.55	Taiwan
790.03	Taiwan
790.10	Taiwan
790.39	Taiwan
790.70	Republic of Korea
791.15	Republic of Korea
792.50	Philippines
792.60	Hong Kong
792.75	Hong Kong"

ANNEX V

A. Annex III to Presidential Proclamation 4707 of December 11, 1979 is amended--

a) by deleting from Section A of the Annex the following TSUS item numbers with their corresponding rates of duty and footnotes:

610.80 661.95 674.32 685.19 722.12 727.50

b) by inserting in Section A of that Annex the following TSUS item numbers in numerical sequence, with their corresponding rates of duty and footnotes, as follows:

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/ effective with respect to articles entered on or after January 1 —							
		1980	1981	1982	1983	1984	1985	1986	1987
610.80 3/	11% ad val.	11%	11%	10.2%	9.4%	8.6% 3/	3/	3/	3/
610.82 3/	3/	3/	3/	3/	3/	8.6% 3/	7.8%	7%	6.2%
610.84 3/	3/	3/	3/	3/	3/	8.6% 3/	7.8%	7%	6.2%
610.86 3/	3/	3/	3/	3/	3/	8.6% 3/	7.8%	7%	6.2%
610.88 3/	3/	3/	3/	3/	3/	8.6% 3/	7.8%	7%	6.2%
610.89 3/	3/	3/	3/	3/	3/	8.6% 3/	7.8%	7%	6.2%
610.90 3/	3/	3/	3/	3/	3/	8.6% 3/	7.8%	7%	6.2%
610.92 3/	3/	3/	3/	3/	3/	8.6% 3/	7.8%	7%	6.2%
661.94 3/	3/	3/	3/	3/	3/	4.5% 3/	4.3%	4.1%	3.9%
661.95 3/	5.5% ad val.	5.3%	5.1%	4.9%	4.7%	4.5% 3/	4.3%	4.1%	3.9%
674.31 2/	2/	2/	2/	2/	2/	4.9% 2/	4.7%	4.4%	4.2%
674.32 2/	6% ad val.	5.8%	5.6%	5.3%	5.1%	4.9% 2/	2/	2/	2/
674.33 2/	2/	2/	2/	2/	2/	4.9% 2/	4.7%	4.4%	4.2%
674.34 2/	2/	2/	2/	2/	2/	4.9% 2/	4.7%	4.4%	4.2%
685.19 5/	5% ad val.	4.8%	4.7%	4.5%	4.4%	4.2% 5/	5/	5/	5/
685.20 5/	5/	5/	5/	5/	5/	4.2% 5/	4%	3.9%	3.7%
685.22 5/	5/	5/	5/	5/	5/	4.2% 5/	4%	3.9%	3.7%
722.08 2/	2/	2/	2/	2/	2/	6.3% 2/	5.5%	4.8%	4%
722.09 2/	2/	2/	2/	2/	2/	6.3% 2/	5.5%	4.8%	4%
722.11 2/	2/	2/	2/	2/	2/	6.3% 2/	5.5%	4.8%	4%
722.12 2/	10% ad val.	9.3%	8.5%	7.8%	7%	6.3% 2/	2/	2/	2/
722.13 2/	2/	2/	2/	2/	2/	6.3% 2/	5.5%	4.8%	4%
727.50 3/	4% ad val.	3%	2.4%	2.4%	2.4%	2.4% 3/	3/	3/	3/
727.53 3/	3/	3/	3/	3/	3/	2.4% 3/	2.4%	2.4%	2.4%
727.59 3/	3/	3/	3/	3/	3/	2.4% 3/	2.4%	2.4%	2.4%

Footnote 3 for items 610.80, 610.82, 610.84, 610.86, 610.88, 610.89, 610.90, and 610.92:

3/ Item 610.80 is discontinued effective March 30, 1984, and is superseded by 610.82, 610.84, 610.86, 610.88, 610.89, 610.90, and 610.92.

Footnote 3 for items 661.94 and 661.95:

3/ Item 661.95 is discontinued effective March 30, 1984, and is superseded by 661.94 and 661.95.

Footnote 2 for items 674.31, 674.32, 674.33, and 674.34:

2/ Item 674.32 is discontinued effective March 30, 1984, and is superseded by 674.31, 674.33, and 674.34.

Footnote 5 for items 685.19, 685.20, and 685.22:

5/ Item 685.19 is discontinued effective March 30, 1984, and is superseded by 685.20 and 685.22.

Footnote 2 for items 722.08, 722.09, 722.11, 722.12, and 722.13.

2/ Item 722.12 is discontinued effective March 30, 1984, and is superseded by 722.08, 722.09, 722.11, and 722.13.

Footnote 3 for items 727.50, 727.53, and 727.59:

3/ Item 727.50 is discontinued effective March 30, 1984, and is superseded by 727.53 and 727.59.

c) Section A of that Annex is also amended by redesignating items 685.21, 722.10, 727.52, and 727.55 as items 685.23, 722.06, 727.65, and 727.70, respectively, effective March 30, 1984.

B. Annex III to Presidential Proclamation 4768 of June 28, 1980, is amended--

a) by deleting from Section A of that Annex the following TSUS item numbers and their corresponding rates of d ▾ and their footnotes:

406.48	411.81	411.84	412.68
411.56	411.83	412.67	412.69

b) by inserting in Section A of that Annex the following TSUS item numbers in numerical sequence, with their corresponding rates of duty and footnotes, as follows:

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/ effective with respect to articles exported to the United States on and after July 1, 1980, and entered on or after—							
		July 1, 1980	January 1, 1981	January 1, 1982	January 1, 1983	January 1, 1984	January 1, 1985	January 1, 1986	January 1 1987
406.47 2/	2/	2/	2/	2/	2/	9.2% 2/	8.4%	7.6%	6.8%
406.48 2/	1.7¢ per lb. + 12.8% ad val.	12.4%	11.6%	10.8%	10%	9.2% 2/	2/	2/	2/
406.49 2/	2/	2/	2/	2/	2/	9.2% 2/	8.4%	7.6%	6.8%
411.53 6/	6/	6/	6/	6/	6/	14.4% 6/	12.7%	10.9%	9.2%
411.55 6/	6/	6/	6/	6/	6/	14.4% 6/	12.7%	10.9%	9.2%
411.56 6/	1.7¢ per lb. + 22.8% ad val.	21.3%	19.6%	17.8%	16.1%	14.4% 6/	6/	6/	6/
411.81 4/	4/	4/	4/	4/	18.9% 4/	16.9% 4/	4/	4/	4/
411.82 4/	4/	4/	4/	4/	4/	16.9% 4/	14.9%	12.8%	10.8%
411.83 4/	4/	4/	4/	4/	18.9% 4/	16.9% 4/	4/	4/	4/
411.84 4/	1.7¢ per lb. + 26.6% ad val.	25%	23%	20.9%	18.9% 4/	4/	4/	4/	4/
411.87 4/	4/	4/	4/	4/	4/	16.9% 4/	14.9%	12.8%	10.8%
412.67 4/	4/	4/	4/	4/	10.3% 4/	9.5% 4/	8.6%	7.8%	6.9%
412.68 4/	1.7¢ per lb. + 13.6% ad val.	12.9%	12%	11.2%	10.3% 4/	4/	4/	4/	4/
412.69 4/	4/	4/	4/	4/	10.3% 4/	9.5% 4/	8.6%	7.8%	6.9%

Footnote 2 for items 406.47, 406.48, and 406.49:

2/ Item 406.48 is discontinued effective March 30, 1984, and is superseded by items 406.47 and 406.49.

Footnote 6 for items 411.53, 411.55, and 411.56:

6/ Item 411.56 is discontinued effective March 30, 1984, and is superseded by items 411.53 and 411.55.

Footnote 4 for items 411.81, 411.82, 411.83, 411.84, and 411.87:

4/ Item 411.84 was discontinued effective March 31, 1983, and was superseded by items 411.81 and 411.83.
Items 411.81 and 411.83 are discontinued effective March 30, 1984, and are superseded by items 411.82 and 411.87, respectively.

Footnote 4 for items 412.67, 412.68, and 412.69:

4/ Item 412.68 was discontinued effective March 31, 1983, and was superseded by items 412.67 and 412.69.
Items 412.67 and 412.69 are discontinued effective March 30, 1984, and are superseded by items 412.67 and 412.69, respectively.

ANNEX VI

General headnote 3(c)(i) of the TSUS is modified--

(a) by inserting in alphabetical order in the list of designated independent countries "Brunei",

(b) by deleting "Brunei" from the list of non-independent countries and territories,

(c) by inserting in alphabetical order "Brunei" as a member country of the Association of South East Asian Nations (ASEAN), and

(d) by inserting in alphabetical order "Bahamas" as a member country of the Caribbean Common Market (CARICOM).

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Presidential Documents

Proclamation 5170 of March 31, 1984

National Eye Donor Month, 1984

By the President of the United States of America

A Proclamation

One of the most magnificent presents that one human being can bestow upon another is the gift of sight. Human eye tissue which is donated at death may be used in research and cornea transplant operations. Each year, thousands of Americans suffer from impaired vision caused by congenital defects, injuries, and diseases. Cornea transplant surgery can improve or restore the sight of many of these people. Unfortunately, all too many people are unable to retain their sight because there is not enough corneal tissue available.

Through the efforts of 93 eyebanks across the Nation, these problems are being alleviated. The eyebanks help coordinate the nationwide distribution of donated eye tissue for use in medical education, continuing research efforts, and cornea transplants. Developing from a single institution in 1944, the eyebanks have greatly encouraged research into the prevention and treatment of eye disease and helped increase national awareness of the urgent need for more eye donations, so that others may receive the gift of sight.

The Congress, by Senate Joint Resolution 225, has designated March 1984 as "National Eye Donor Month" and has authorized and requested the President to issue a proclamation in observance of that occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of March 1984 as National Eye Donor Month. I urge all citizens, health care professionals, educators, and other public and private organizations concerned with vision and vision research to join with the Nation's eyebanks in recognizing this humanitarian cause with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-9056
Filed 4-2-84; 11:31 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 49, No. 65
Tuesday, April 3, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-313]

Mexican Fruit Fly; Expansion of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Interim rule.

SUMMARY: This document amends subpart 301.64 ("Subpart—Mexican Fruit Fly") of the domestic quarantine notices (7 CFR Part 301.64 *et seq.*) by expanding the area listed as a regulated area in Los Angeles County, California. This action is necessary as an emergency measure in order to prevent the artificial spread of the Mexican fruit fly, *Anastrepha ludens* (Loew), into noninfested areas of the United States. The effect of this amendment is to impose certain restrictions on regulated articles moving interstate from the regulated area.

DATES: Effective date of amendment April 3, 1984. Written comments concerning this final rule must be received on or before June 4, 1984.

ADDRESS: Written comments concerning this rulemaking should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728, Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 663, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this final action because of the possibility that Mexican fruit fly could be spread artificially to noninfested areas of the United States. This situation requires immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register.** Comments will be solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is an extremely destructive pest of certain fruits and vegetables. The Mexican fruit fly can cause serious economic loss and it has a short life cycle that allows rapid development of serious outbreaks.

Infestations of Mexican fruit fly were found in portions of Los Angeles County, California, on October 25, 1983. Based on these findings, an emergency rulemaking document, effective upon publication, was published in the **Federal Register** on December 6, 1983 (48 FR 54577-54584). This document amended the Mexican fruit fly regulations (7 CFR 301.64 *et seq.*) by, among other things, designating a portion of Los Angeles County as a regulated area in § 301.64-3(c). On January 16, 1984 and February 17, 1984, § 301.64-3 of the Mexican fruit fly regulations was further amended by expanding the portion of Los Angeles County designated as a regulated area by approximately 7 miles and 12 miles respectively (see 49 FR 1871-1872 and 49 FR 6075-6076). These actions were taken because of findings by the Department that the infestation of Mexican fruit fly had spread beyond the perimeter of the original regulated area.

The portion of Los Angeles County previously designated as a regulated area remains infested at this time. However, additional Mexican fruit flies have since been found outside the regulated area in Los Angeles County. These findings were based on trapping surveys conducted by inspectors of the U.S. Department of Agriculture and state agencies of California and indicate that the Mexican fruit fly has spread beyond the outer perimeter of the regulated area in Los Angeles County. Therefore, in order to prevent further spread of the Mexican fruit fly it is necessary as an emergency measure to amend § 301.64-3 of the Mexican fruit fly regulations. This amendment expands the area in Los Angeles County, California designated as a regulated area prior to the publication of this document by approximately 14 square miles to cover a previously nonregulated portion of Los Angeles County where Mexican fruit fly has been found and now occurs.

The portion of Los Angeles County that is designated as a regulated area by this rulemaking document is described as follows (the area added by this rulemaking document is enclosed in arrows):

Los Angeles County. Beginning at the point where the Santa Monica Freeway (Interstate 10) intersects the Harbor Freeway (State Highway 110;) then southerly along the Harbor Freeway to its intersection with El Segundo Boulevard; then easterly along El Segundo Boulevard to its intersection with Alpine Avenue; then northerly along Alpine Avenue to its intersection with Magnolia Avenue; then easterly along Magnolia Avenue to its intersection with Long Beach Boulevard; then northerly along Long Beach Boulevard to its intersection with Imperial Highway; then easterly along Imperial Highway to its intersection with Garfield Avenue; then northerly along Garfield Avenue to its intersection with Eastern Avenue; then northerly along Eastern Avenue to its intersection with Atlantic Boulevard; then northeasterly along Atlantic Boulevard to its intersection with Garvey Avenue; then westerly along Garvey Avenue to its intersection with the northern boundary line

of the city of Monterey Park; then westerly along said line to its intersection with the boundary line between the city of Los Angeles and Los Angeles County territory; then westerly along said line to its intersection with Medford Street; then westerly along Medford Street to Soto Street; then southwesterly along Soto Street to its intersection with San Bernardino Freeway (Interstate 10); then westerly along the San Bernardino Freeway to its intersection with the Golden State Freeway (Interstates 5 and 10); then ►northwesterly along the Golden State Freeway to the Glendale Freeway (State Highway 2); then southwesterly along the Glendale Freeway to a point due east of the intersection of Cove Avenue and Silver Lake Boulevard; then due west along an imaginary line to the intersection of Cove Avenue and Silver Lake Boulevard; then southwesterly along Silver Lake Boulevard to its intersection with Temple Street; then southerly along an imaginary line to its intersection with Council Street and Hoover Street; then south along Hoover Street through Lafayette Park to the intersection of Hoover Street and Olympic Boulevard; then easterly along Olympic Boulevard to the Harbor Freeway; then southerly along the Harbor Freeway to the point of beginning.◄

Executive Order 12291 and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, the review provisions required by sections three, four and seven of Executive Order 12291 have been waived by OMB for purposes of this interim rule.

Mr. Bert W. Hawkins, Administrator of Animal and Plant Health Inspection Service, has determined that this action will not have a significant impact on a substantial number of small entities. This amendment affects the interstate movement of regulated articles from a portion of Los Angeles County, California, previously unregulated that is about 14 square miles in size. It appears that there is very little or no commercial activity that occurs in this area. Specifically, there are some local street vendors and one produce market. With the exception of some activity at the produce market, none of the regulated articles sold commercially are sold for interstate commerce. The produce market consists of approximately 200 dealers and 30 of these dealers appear to sell regulated articles interstate. Further, certain procedures followed at this market in handling the fruit diminish the possibility that any of the regulated articles would be found infested with Mexican fruit fly. These procedures include covering the fruit during the day, and selling and shipping covered fruit at night. The fruit fly is not active at night. Therefore, it is expected that because of these handling procedures little or no treatment will be required of regulated articles before they are moved interstate. Thus, this amendment will not have a significant impact on a substantive number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Mexican fruit fly.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the description of the regulated area in Los Angeles County, California, found in paragraph (c) of § 301.64–3 is revised to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) The areas described below are designated as regulated areas:

California

Los Angeles County. Beginning at the point where the Santa Monica Freeway (Interstate 10) intersects the Harbor Freeway (State Highway 110); then southerly along the Harbor Freeway to its intersection with El Segundo Boulevard; then easterly along El Segundo Boulevard to its intersection with Alpine Avenue; then northerly along Alpine Avenue to its intersection with Magnolia Avenue; then easterly along Magnolia Avenue to its intersection with Long Beach Boulevard; then northerly along Long Beach Boulevard to its intersection with Imperial Highway; then easterly along Imperial Highway to its intersection with Garfield Avenue; then northerly along Garfield Avenue to its intersection with Eastern Avenue; then northerly along Eastern Avenue to its intersection with Atlantic Boulevard; then northeasterly along Atlanic Boulevard to its intersection with Garvey Avenue; then westerly along Garvey Avenue to its intersection with the northern boundary line of the city of Monterey Park; then westerly along said line to its intersection with the boundary line between the city of Los Angeles and Los Angeles County territory; then westerly along said line to its intersection with Medford Street; then westerly along Medford Street to Soto Street; then southwesterly along Soto Street to its intersection with the San Bernardino Freeway (Interstate 10); then westerly along the San Bernadino Freeway to its intersection with the Golden State Freeway (Interstates 5 and 10); then northwesterly along the Golden State Freeway to the Glendale Freeway (State Highway 2); then southwesterly along the Glendale Freeway to a point due east of the intersection of Cove Avenue and Silver Lake Boulevard; then due west along an imaginary line to the intersection of Cove Avenue and Silver Lake Boulevard; then southwesterly along Silver Lake Boulevard to its intersection with Temple Street; then southerly along an imaginary line to its intersection with Council Street and Hoover Street; then south along Hoover Street through Lafayette Park to the intersection of Hoover Street and Olympic Boulevard; then easterly along Olympic Boulevard to the Harbor Freeway; then southerly along the Harbor Freeway to the point of beginning.

* * * * *

Authority: Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); secs. 105 and 106, 71 Stat. 32, 71 Stat. 33 (7 U.S.C. 150dd, 150ee); 37 FR 28464, 38477, as amended; 45 FR 8564, 8565.

Done at Washington, D.C., this 29th day of March 1984.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84–8761 Filed 4–2–84; 8:45 am]

BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

7 CFR Part 421

Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing dates.

SUMMARY: Under the authority of the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of sales closing dates for accepting applications for cotton crop insurance in all counties in Oklahoma, New Mexico, and Texas having either a March 31 or April 15 closing date. This action is necessary because prospective insureds need additional time to consider adjustments in premium rate calculations being made by FCIC. The intended effect of this notice is to advise all interested parties of the extension of sales closing dates and to comply with the provisions of the cotton crop insurance regulations with respect to the authorty of the Manager, FCIC, to extend closing dates.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculutre, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: Under the provisions of the Cotton Crop Insurance Regulations (7 CFR Part 421), the closing dates for accepting applications for cotton crop insurance in certain counties in Oklahoma, New Mexico, and Texas are March 31 and April 15. Because of adjustments in the method of calculating premium rates, which may result in average premium rate reductions in some cases, it is necessary to provide additional time for prospective insureds to consider this fact in their plans for crop insurance, and for agents to fully understand the adjustment in order to properly explain to applicants. For this purpose, FCIC is extending the March 31 sales closing date in all counties in Oklahoma, New Mexico, and Texas, to April 15, and the April 15 sales closing date to April 30.

Under the authority contained in the Cotton Crop Insurance Regulations (7 CFR 421.7(b), the closing date for accepting applications for crop insurance may be extended by placing the extended date on file in the service office and by publishing a notice in the Federal Register upon determination that no adverse selectivity will result during the period of such extension. If adverse conditions should develop during such period, FCIC will immediately discontinue the acceptance of applications.

Notice

Accordingly, under the authority contained in the Cotton Crop Insurance Regulations (7 CFR 421.7(b)), the Federal Crop Insurance Corporation herewith gives notice that the closing date for accepting applications for all counties in Oklahoma, New Mexico, and Texas, with a March 31 or April 15 closing date is hereby extended, effective for the 1984 crop year only, as follows:

March 31 closing date extended through close of business April 15.

April 15 closing date extended through close of business April 30.

Done in Washington, D.C., on March 26, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 27, 1984.

Merritt W. Sprague,

Manager.

[FR Doc. 84–8762 Filed 4–2–84; 8:45 am]

BILLING CODE 3410–08–M

Soil Conservation Service

7 CFR Part 631

Great Plains Conservation Program

Correction

In FR Doc. 84–7998, beginning on page 11141, in the issue of Monday, March 26, 1984, on page 11142, in the second column, in the table of contents for Part 631, the section headings now say "6631." They should say "631.".

BILLING CODE 1505–01–M

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1983–84 Crop Year for Certain Varietal Types of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule designates final free and reserve percentages for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins from California's 1983 production. Reserve raisins must be held by handlers in a pool for the account of the Raisin Administrative Committee, the agency which works with the USDA in administering the marketing order program. The percentages were recommended unanimously by the Committee as a means of promoting orderly market conditions for these varietal types of raisins. Reserve raisins may be sold by the Committee to handlers for free use, exported to authorized countries, carried over as a hedge against a short crop the following year, sold to government agencies, or disposed of in other outlets noncompetitive with those for free tonnage raisins.

EFFECTIVE DATES: August 1, 1983 through July 31, 1984.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) in that: (1) The relevant provisions of this part require that the percentages designated herein for the 1983–84 crop year apply to all Natural (Sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins acquired by handlers from the beginning of that crop year; (2) handlers are marketing 1983–84 crop raisins of these varietal types and this action must be taken promptly to achieve its purpose of making the full trade demand quantity computed by the Committee for these varietal types available to handlers; (3) this action relieves restrictions on handlers by making the full trade demand quantity available to handlers; and (4) handlers are aware of this action unanimously recommended by the Committee at an open meeting and need no additional time to comply with these percentages.

This final rule designates final free and reserve percentages for the 1983–84 crop year for Natural (sun-dried) Seedless raisins of 37.5 percent and 62.5 percent, for Dipped Seedless raisins of 56 percent and 44 percent, for Oleate and Related Seedless raisins of 75.5 percent and 24.5 percent, and for Monukka raisins of 30 percent and 70 percent, respectively. These percentages would apply to all standard raisins of these varietal types acquired during the 1983–84 crop year.

These final marketing percentage designations would be pursuant to §§ 989.54 and 989.55 of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989; 48 FR 32973), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Pursuant to § 989.54(a), on or before August 15 of each crop year, the Committee is required to hold a meeting to review shipment data, inventory data, and other matters relating to the quantity of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the Committee is required to compute a trade demand under a formula prescribed in that

paragraph. In accordance with these provisions, the Committee computed and announced a trade demand of 130,069 tons for Natural (sun-dried) Seedless raisins, 4,654 tons for Dipped Seedless raisins, 5,251 tons for Oleate and Related Seedless raisins, and 600 tons for Monukka raisins.

As required under § 989.54(b), the Committee met on September 29, 1983, and computed and announced preliminary percentages to make 85 percent of the trade demand computed for these varietal types available to handlers as follows:

(1) Natural (sun-dried) Seedless, 35 percent free and 65 percent reserve tons.

(2) Dipped Seedless, 36 percent free and 64 percent reserve.

(3) Oleate and Related Seedless, 62 percent free and 38 percent reserve.

(4) Monukka, 18 percent free and 82 percent reserve.

Under § 989.54(c), the Committee may modify prior to February 15, the preliminary free and reserve percentages computed for a varietal type to release less than the computed trade demand. On November 21, 1983, the Committee made an interim change in the marketing percentages for Monukka raisins increasing the free percentage to 30 percent and reducing the reserve percentage to 70 percent. This was done on the basis of a handler survey conducted after the preliminary crop estimate which indicated that Monukka production for 1983–84 would total 1,760 natural condition tons, not 2,800 tons, as originally estimated.

Under § 989.54(d) of the order, no later than February 15 of a crop year, the Committee is required to recommend, to the Secretary, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. Section 989.54(d) also provides that the difference between any final free percentage designated by the Secretary and 100 percent shall be the final reserve percentage.

On February 13, 1984, the Committee met and recommended final free and reserve percentages for the 1983–84 crop year and made its final production estimates for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins.

The Committee estimated the 1983–84 season production of Natural (sun-dried) Seedless raisins at 347,498 tons (27,498 tons more than its preliminary estimate of 320,000 natural condition tons). Dividing the computed trade demand of 130,069 natural condition tons by the estimated production results in a final free percentage of 37.43 percent. The Committee rounded that percentage to 37.5 percent which results in a final reserve percentage of 62.5 percent.

For Dipped Seedless raisins, the Committee estimated the 1983–84 production at 8,344 natural condition tons (2,666 tons less than its preliminary estimate of 11,000 tons). Dividing the computed trade demand of 4,654 tons by the estimated production results in a free percentage of 55.78 percent. The Committee rounded that percentage to 56 percent which results in a reserve percentage of 44 percent.

For Oleate and Related Seedless raisins, the Committee estimated the 1983–84 production at 6,967 natural condition tons (233 tons less than the preliminary estimate of 7,200 tons). Dividing the computed trade demand of 5,251 tons by the final estimate of production for this varietal type results in a free percentage of 75.37 percent. The Committee rounded that percentage to 75.5 percent which results in a final reserve percentage of 24.5 percent.

For Monukka raisins, the Committee's final estimate of production totaled 2,670 tons (910 tons more than its interim estimate of 1,760 tons). Dividing the computed trade demand of 600 tons by the final production estimate results in a free percentage of 23.1 percent. The final free percentage cannot be lower than the preliminary or interim free percentages computed by the Committee, so the Committee recommended a final free percentage of 30 percent the same as the interim free percentage.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee, and other available information, it is further found that the designation, under §§ 989.54 and 989.55, of final free and reserve percentages for the 1983–84 crop year for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 989

Marketing agreement and orders, Grapes, Raisins, California.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Therefore, § 989.236 is added to 7 CFR Part 989 reading as follows: (The following section will not be published in the Code of Federal Regulations).

§ 989.236 Final free and reserve percentages for the 1983–84 crop year.

The percentages of standard Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins acquired by handlers during the crop year beginning August 1, 1983, which shall be free tonnage and reserve tonnage, respectively, are designated at follows:

	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	37.5	62.5
Dipped Seedless	56	44
Oleate and Related Seedless	75.5	24.5
Monukka	30	70

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 28, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Divison.

[FR Doc. 84–8818 Filed 4–2–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100 and 103

Statement of Organization; Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This document changes the position title of the equal employment opportunity officer originally designated by the INS reorganization published on March 30, 1983 (48 FR 13146) to Director for Equal Employment Opportunity. This change is made for more effective Service management.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: On March 30, 1983, at 48 FR 13146, the Immigration and Naturalization Service published the reorganization of its Central and Regional offices as approved by the Attorney General and Congress. The Equal Employment Opportunity Complaints Processing Section was placed under the direction of the Associate Commissioner for

Management with immediate supervision being handled by an Equal Employment Opportunity Officer. Since that time, the Office of Equal Employment Opportunity has been reorganized and now both the Central Office Affirmative Action Program Branch and the complaints processing function are under the Office of Equal Employment Opportunity with the office supervisory position title being changed from "Equal Employment Opportunity Officer" to "Director for Equal Employment Opportunity."

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates solely to agency management. This document will not have a significant impact on a substantial number of small entities and is not a rule within the definition of section (1)(a) of Executive Order 12291.

List of Subjects

8 CFR Part 100

Administrative practice and procedures, Authority delegation, Organization and functions (government agencies).

8 CFR Part 103

Administrative practice and procedures, Authority delegation, Organization and functions (government agencies).

Accordingly, Title 8 of Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

In § 100.2, paragraph (b)(2)(iv) is revised to read as follows:

§ 100.2 Organization and functions.

* * * * *

(b) * * *

(2) * * *

(iv) Office of Equal Employment Opportunity, and

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE; AVAILABILITY OF SERVICE RECORDS

In § 103.1, paragraph (d) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(d) *Associate Commissioner for Management.* Under the direction of the Deputy Commissioner, the Associate Commissioner for Management is delegated authority and responsibility for program planning, development, coordination, evaluation, counseling, and staff direction of the Comptroller, Personnel and Training, Administration, Equal Employment Opportunity, and Evaluation programs, and general direction to and supervision of:

(1) Comptroller,

(2) Assistant Commissioner for Personnel and Training,

(3) Assistant Commissioner for Administration,

(4) Director for Equal Employment Opportunity, and

(5) Director for Evaluation.

* * * * *

(Section 103, Immigration and Nationality Act, as amended; (8 U.S.C. 1103))

Dated: March 28, 1984.

Harold F. Sylvester,

Acting Associate Commissioner, Management, Immigration and Naturalization Service.

[FR Doc. 84-8795 Filed 4-2-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 385 and 399

[Docket No. 40320-34]

Exports of Potassium Fluoride and Other Chemicals to Iran and Iraq; Validated Export License Required

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule imposes foreign policy controls on the export from the United States to Iran and Iraq of certain chemicals used in producing chemical weapons. These chemicals are: potassium fluoride, dimethyl methylphosphonate, methyl phosphonyl difluoride, thiodiglycol, phosphorus oxychloride.

The Department of Commerce, having complied with the requirements of section 6 of the Export Administration Act and consulted with the Department of State, has determined that these controls are necessary to further significantly the foreign policy of the United States and that, notwithstanding any availability of these commodities from foreign sources, adequate evidence is available that absence of controls would prove detrimental to such interests. This rule furthers U.S. policies of opposing prohibited use of chemical weapons and maintaining neutrality in the Iran/Iraq war, and promoting a mediated end of that war.

As of the effective date and time a validated export license is required for all exports from the United States of the chemicals listed above to Iran and Iraq.

Exporters are advised that the Office of Export Administration in consultation with other agencies will review other chemicals with potential use in chemical warfare to determine whether to expand the list of commodities subject to these controls.

EFFECTIVE DATE: 12:00 noon e.s.t., March 30, 1984. Comments must be received by the Department June 4, 1984.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporter Services Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporter Services Division (Telephone: (202) 377-3856).

SUPPLEMENTARY INFORMATION: Rulemaking Requirements and Invitation to Comment. In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act.

However, because of the importance raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

2. Applicants for the validated license required by this rule will use ITA Form 622P. This form has been approved by the Office of Management and Budget under control number 0625-0001.

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is exempt from the requirements of Executive Order 12291 (49 FR 13193, February 19, 1981), "Federal Regulation," because it relates to a foreign affairs function of the United States.

The period for submission of comments will close 60 days after publication. All comments received before the close of the comment period will be considered by the Department in

the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

List of Subjects in 15 CFR Parts 385 and 399

Communist countries, Exports.

PART 385—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. Section 385.4 is amended by adding a paragraph (e), reading as follows:

§ 385.4 Country groups T & V.

* * * * *

(e) *Iran and Iraq.* In support of U.S. foreign policy, and particularly U.S. policies of opposing prohibited use of chemical weapons and maintaining neutrality in the Iran/Iraq war and of promoting a mediated end to that war, an individual validated license is required to export from the United States potassium fluoride, dimethyl methylphosphonate, methyl phosphonyl difluoride, thiodiglycol and phosphorus oxychloride to Iran and Iraq. Applications for validated licenses will be cosidered on a case-by-case basis. Applications will generally be denied where there is reason to believe that these chemicals will be used in producing chemical weapons or will otherwise be devoted to chemical warfare purposes. The reexport provisions of Part 374 and the provisions of § 376.12 are not applicable to the foreign policy controls covered by this paragraph 385.4(e). However, the export of these commodities from the United States to any destination with knowledge that they will be reexported, directly or indirectly, in whole or in part, to Iran or Iraq is prohibited without a validated license.

* * * * *

§ 399.1 [Amended]

2. Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, of the Commodity Control List (Supplement No. 1 to § 399.1) is amended by inserting the following sentence at the end of the *Validated License Required* paragraph of entry 6799G: "A validated license is also required for exports of potassium fluoride, phosphorus oxychloride and thiodiglycol to Iran and Iraq."

§ 399.1 [Amended]

3. Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, of the Commodity Control List (Supplement No. 1 to § 399.1) is amended by inserting the following sentence at the end of the *Validated License Required* paragraph of entry 5799D: Validated license is also required for export of dimethyl methylphosphonate and methyl phosphonyl difluoride to Iran and Iraq and by revising the *Reasons for Control* paragraph to read as follows: "National security; foreign policy. Foreign policy controls apply only to exports of dimethyl methylphosphonate and methyl phosphonyl difluoride to Iraq and Iran."

§ 399.2 [Amended]

4. Interpretation 24, Chemicals, of Supplement No. 1 to § 399.2, is amended by adding a footnote to "Potassium fluoride," (Other Inorganic Chemicals N.E.S.) "Phosphorus oxychloride" (Inorganic Chemicals Elements, Acids, Oxides, Hydroxides, Peroxides, and Halogen Salts) and "Thiodiglycol" (Organic Chemicals) reading as follows:

"[1] A validated license is required for export of potassium fluoride to Iran and Iraq."

"[1] A validated license is required for export of phosphorus oxychloride to Iran and Iraq."

"[1] A validated license is required for export of thiodiglycol to Iran and Iraq."

Authority: Sections 6, 13 and 15, Pub. L. 96–72, 93 Stat. 503, as amended, (50 U.S.C. app. 2401, et seq.); Executive Order No. 12214 (45 FR 29783, May 6, 1980); Executive Order No. 12451 (48 FR 56563, December 22, 1983).

Dated: March 30, 1984.

Vincent F. DeCain,

Deputy to the Deputy Assistant Secretary for Export Administration.

[FR Doc. 84–8686 Filed 3–30–84; 12:00 pm]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that the table in § 305.9, which sets forth the representative average unit energy costs for four residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This notice revises the table to incorporate the lastest figures for average unit energy costs as published in the **Federal Register** on February 16, 1984 by DOE.

EFFECTIVE DATES: The mandatory dates for using these revised DOE cost figures are detailed below.

FOR FURTHER INFORMATION CONTACT: James Mills, 202–376–2893 or Lucerne D. Winfrey, 202–376–2805, attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in § 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201 (1975). The rule requires the disclosure of energy efficiency or cost information on labels and in retail

sales catalogs for seven categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The rule also requires a general disclosure, on certain point-of-sale promotional materials, of the availability of energy cost or energy efficiency information, and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on results of the standardized test procedures. The cost and efficiency information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE.

Table 1 in § 305.9 of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in Section 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE. Table 1 was first revised by publication of new DOE figures on January 13, 1981 in the Federal Register (46 FR 2974).

On February 16, 1984, DOE published (49 FR 6005) the most recent figures for representative average unit energy costs. Consequently, Table 1 must again be updated in order to reflect these latest cost figures. Accordingly, Table 1 in 16 CFR 305.9 is revised as follows:

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FOUR RESIDENTIAL ENERGY SOURCES (1984)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu's [1]
Electricity	7.63¢/kWh [2, 3]	$0.0763/kWh	$22.36
Natural Gas	69.6¢/therm [4] or $7.07/MCF [5, 6]	0.000006897/Btu	5.96
No. 2 heating oil	$1.09/gallon [7]	0.000007867/Btu	7.86
Propane	84.2¢/gallon [8]	0.000009257/Btu	9.25

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,413 Btu's.
[4] 1 therm=100,000 Btu's.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,016 Btu's.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu's.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,000 Btu's.

The dates when use of these figures becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1984 Submissions of Data Under § 305.8 of the Commission's Rule: The new cost figures must be used in all 1984 submissions except clothes washers. Because the 1984 costs were not in effect on the mandatory submission date for these products, clothes washer submissions for 1984 had to be based on the 1983 cost figures.

For Labeling and Advertising of Products Under the Commission's Rule: Only those products for which new ranges have been published based on 1984 submissions using these 1984 DOE cost figures should be labeled with estimated annual cost figures calculated using these 1984 DOE representative average unit costs for energy. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the Federal Register. Advertising for these products must also be based on the new costs and ranges beginning ninety days after publication of the new ranges in the Federal Register.

Advertising of Products Covered by EPCA but not by the Commission's Rule: Manufacturers of products covered by § 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, central air conditioners, and home heating equipment, not including furnaces) must use the 1984 representative average unit costs for energy in all representations effective July 2, 1984.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Emily H. Rock,

Secretary.

[FR Doc. 84–8803 Filed 4–2–84; 8:45 am]

BILLING CODE 6755–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C–0179]

Listing of Color Additives for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of February 6, 1984, for a final rule that provides for the safe use in coloring contact lenses of the colored polymeric reaction products formed by chemically bounding certain dyes, used singly or in combination, with poly(hydroxyethyl methacrylate). These reaction products are called "poly(hydroxyethyl methacrylate)-dye copolymers." The rule responded to a petition filed by Ciba Vision Care.

DATE: Effective date confirmed: February 6, 1984.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In a final rule published in the Federal Register of January 4, 1984 (49 FR 372), FDA amended the color additive regulations to provide for the safe use of the colored polymeric reaction products formed by chemically bonding certain reactive dyes, used singly or in combination, with poly(hydroxyethy methacrylate) for coloring contact lenses. The final rule added new § 73.3121 *Poly(hydroxyethyl methacrylate)-dye copolymers* (21 CFR 73.3121) that provides for the listing of these color additives for use in coloring contact lenses. The reactive dyes listed in § 73.3121 are Reactive Black 5, Reactive Blue 21, Reactive Orange 78, and Reactive Yellow 15.

In the final rule, FDA gave interested persons until February 3, 1984, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the Federal Register of January 4, 1984, for these color additives should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the final rule of January 4, 1984. Accordingly, the final rule adding § 73.3121 to provide for the safe use of these poly(hydroxyethyl

methacrylate)-dye copolymers in coloring contact lenses became effective February 6, 1984.

Dated: March 15, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-8708 Filed 4-2-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 74, 81 and 82

[Docket Nos. 76N-0366 and 83C-0126]

D & C Yellow No. 10; Listing as a Color Additive in Drug and Cosmetics; Termination of Stay, Confirmation of Effective Date, and Further Amendment

Correction

In FR Doc. 84-6183, beginning on page 8429, in the issue of Wednesday, March 7, 1984, on page 8431, in the second column, in the third complete paragraph in the fifth line "§ 74.2710" should read "§ 74.1710".

BILLING CODE 1505-01-M

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21 CFR Part 175

[Docket No. 82F-0161]

Indirect Food Additives: Adhesive Coatings and Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sulfated castor oil as a miscellaneous material in resinous and polymeric coatings for food-contact use. This action responds to a petition filed by NL Chemicals/NL Industries, Inc.

DATES: Effective April 3, 1984; objections by May 3, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 15, 1982 (47 FR 25772), FDA announced that a petition (PAP 2B3628) had been filed by NL Chemicals/NL Industries, Inc., Wyckoff Mills Road, Hightstown, NJ 08520, proposing that the food additive regulations be amended to provide for the safe use of sulfated castor oil as a miscellaneous material in resinous and polymeric coatings for food-contact use.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Foods (21 CFR 5.61), Part 175 is amended in § 175.300(b)(3)(xxxiii) by alphabetically inserting a new item in the list of substances to read as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxiii) * * *

Castor oil, sulfated, sodium salt (CAS Reg. No. 8002-33-3), for use only in coatings for containers intended for repeated use.	

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 3, 1984 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective April 3, 1984.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: March 13, 1984.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 84-8771 Filed 4-2-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 83F-0098]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate at increased levels as an antioxidant and/or stabilizer in acrylic and modified acrylic plastics intended to contact food. This action responds to a petition filed by the Ciba-Geigy Corp.

DATES: Effective April 3, 1984; objections by May 3, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC, 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 12, 1983 (48 FR 15720), FDA announced that a petition (FAP 3B3714) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY. 10532, proposing that the food additive regulations be amended to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as an antioxidant and/or stabilizer in acrylic and modified acrylic plastics complying with § 177.1010 (21 CFR 117.1010) intended for use in contact with food.

The current regulation provides for the use of the additive at levels not exceeding 0.01 percent by weight in rigid and semirigid acrylic and modified acrylic plastics intended for repeated food-contact use. The petition requested that § 177.1010 be amended to: (1) Increase the permitted amount of the additive to 0.2 percent by weight, and (2) permit the use of the additive in single use applications. However, the petitioner did not submit data in support of the single use of the additive with foods containing more than 15 percent alcohol. Accordingly, above 15 percent alcohol, the existing limitation remains in effect, that is, the additive is restricted to use in articles for repeated food-contact use. Additionally, the Chemical Abstracts Registry Number for the additive has been included in the regulation to ensure correct identification.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment, and therefore an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Bureau of Foods (21 CFR 5.61), Part 177 is amended in § 177.1010(a)(5) by revising the entry for octadecyl 3,5-di-*tert*-butyl-4-hydroxy-hydrocinnamate to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.1010 Acrylic and modified acrylic plastics, semirigid and rigid.

* * * * *

(a) * * *

(5) * * *

Octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate (CAS Reg. No. 2082–79–3): For use only: (1) At levels not exceeding 0.2 percent by weight in semirigid and rigid acrylic and modified acrylic plastics, where the finished articles contact foods containing not more than 15 percent alcohol; and (2) at levels not exceeding 0.01 percent by weight in semirigid and rigid acrylic and modified acrylic plastics intended for repeated food-contact use where the finished article may be used for foods containing more than 15 percent alcohol.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 3, 1984 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation becomes effective April 3, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: March 13, 1984.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 84–8772 Filed 4–2–84; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 182 and 184

[Docket No. 80N–0362]

GRAS Status of Propionic Acid, Calcium Propionate, and Sodium Propionate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that propionic acid, calcium propionate, and sodium propionate are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under a comprehensive safety review conducted by the agency.

DATES: Effective May 3, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1081, 184.1221, and 184.1784 on May 3, 1984.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Bureau of Foods (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on August 13, 1982 (47 FR 35243), FDA published a proposal to affirm that propionic acid, calcium propionate, and sodium propionate are generally recognized as safe (GRAS) as direct human food ingredients. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on propionates; a teratogenic evaluation of calcium propionate; mutagenic evaluations of propionic acid, calcium propionate, and sodium propionate; and the report of the Select

Committee on GRAS Substances (the Select Committee) have been made available for public review in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents have also been made available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of propionic acid, calcium propionate, and sodium propionate, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for these substances, other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions so that the safety of the prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these propionates recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181), or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate. FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction to any future time.

No reports of prior-sanctioned uses for propionic acid, calcium propionate, or sodium propionate were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for uses of these substances under conditions different from those set forth in this final rule has been waived.

Five comments were received in response to the proposal. A summary of these comments and the agency's responses follow:

1. Three comments stated that the proposed regulations for calcium propionate and sodium propionate did not include the use of these ingredients in jams and jellies, preserves, fruit, butter, and sweet spreads. The comments requested that the final regulations for calcium propionate and sodium propionate include the food category jams and jellies as defined by § 170.3(n) (28) (21 CFR 170.3(n)(28)). One of these comments from a trade association provided information on the permitted use of calcium propionate and sodium propionate as preservatives in the standards of identity for artificially sweetened fruit jelly (21 CFR 150.141(a)(6)) and artifically sweetened fruit preserves and jams (21 CFR 150.161(a)(6)). The comment further stated that the standards of identity for conventional jams and jellies provide for the optional use of "safe and suitable" preservatives, and the comment questioned whether this term would permit the use of calcium propionate and sodium propionate in these foods.

FDA acknowledges that calcium propionate and sodium propionate may be used as optional ingredients in jams or jellies because FDA considers these ingredients to be safe and suitable preservatives. FDA also acknowledges that these substances may be used as preservatives in artificially sweetened fruit jelly, preserves, or jams when they are listed for this use in the standards of identity for these foods. Because the agency failed to include the use of calcium propionate and sodium propionate in jams and jellies in the proposed GRAS affirmation regulations for these ingredients, in response to the comments, FDA is amending those regulations (21 CFR 184.1221(c)(2) and 184.1784(c)(2)) in this final rule to include the food category jams and jellies. This change affirms as GRAS the use of calcium propionate and of sodium propionate as ingredients in jams or jellies or in artificially sweetened fruit jelly, jams, or preserves as described in the standards of identity for these foods.

2. Three comments asserted that it was not clear whether the use of sodium propionate or calcium propionate in jams and jellies used as fillings in a variety of baked goods was included in the proposal. One comment requested that an appropriate food category be established for jam- or jelly-filled baked goods because these products could be categorized either as baked goods (§ 170.3(n)(1)) or as jams and jellies (§ 170.3(n)(28)).

As described in comment 1 above, FDA has modified the regulations for calcium propionate and sodium propionate to affirm as GRAS the use of these ingredients in jams and jellies as well as in baked goods. FDA believes that this change adequately provides for the use of these ingredients in jam- or jelly-filled baked goods.

The agency has carefully considered the request that it establish a new category for jam- and jelly-filled baked goods. FDA has reviewed the definitions of the food categories established in § 170.3(n) and finds that this section incorporates by reference exhibit 33B to the report of the National Academy of Sciences/National Research Council (NAS/NRC), entitled "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe" (September 1972). This exhibit lists the foods included in each food category and shows that jam- or jelly-filled baked goods are listed as a subcategory of both the baked goods category on page 267 and the jams and jellies category on page 247. Thus, jam- or jelly-filled baked goods are already provided for in § 170.3(n) (1) and (28). The agency thus concludes that it is not necessary to create a new food category for these foods. The agency further advises that an ingredient may be used in the jam or jelly portion of a jam- or jelly-filled baked good when the ingredient is affirmed as GRAS for use in either baked goods or in jams or jellies.

3. Two comments requested that the baked goods category listed in the final regulations for calcium propionate and sodium propionate be modified to include fried foods such as doughnuts, waffles, and pancakes or that a new food category be added to § 170.3(n) to provide for such fried dough foods. One comment asserted that doughnuts, as well as some other dough products, are regarded as baked goods although they are not produced in ovens.

The agency has considered the need to create a new category in § 170.3(n) to include doughnuts and other fried dough products. It finds that dough products are listed in exhibit 33B of the NAS/NRC survey as a subcategory of baked goods, and that therefore, because this exhibit is incorporated by reference in § 170.3(n), dough products specified in the comment are provided for in § 170.3(n)(1). The agency believes that establishing a new category called "fried foods," which would include doughnuts as well as other dough products, would not be helpful because a wide variety of foods other than dough foods can be fried. A fried foods category could, if established, cover all existing food categories. For these reasons, the agency concludes that the use of propionates in dough products are covered by the proposed regulation, and modification of the regulation is not necessary.

4. One comment from a food manufacturer stated that calcium propionate is currently used as a substitute for sodium propionate as an antimicrobial agent in baked and certain fried foods and in various components of these foods, such as frostings. The comment specifically questioned whether the proposed regulation would permit the substitution of calcium for sodium propionate in frostings and fillings that are components of baked goods. The comment also noted that substituting the calcium salt for the

sodium salt will reduce the sodium ion intake for the consumer.

The agency finds no basis to deny the substitution of calcium for sodium salt under certain conditions of use. In fact, substitution for sodium salt is encouraged because of the agency's stated concern about sodium consumption (see the Federal Register of June 18, 1982; 47 FR 26590). The agency advises that it was the intent of the proposed regulations for calcium and sodium propionate to affirm as GRAS the use of both ingredients in baked goods. The agency advises further that the intent also was to permit the use of either salt in components of baked goods, such as fillings and frostings. To make clear, however, that calcium and sodium propionates may be used as antimicrobial agents in baked goods and fillings and frostings used in baked goods as well as in confections and frostings and gelatins and fillings when they are sold as separate products, the agency is modifying the regulation for calcium propionate to include two new food categories, confections and frostings (21 CFR 170.3 (n)(9)) and gelatins, puddings, and fillings (21 CFR 170.3(n)(22)). The agency cautions, however, that for any food product in which the calcium salt of propionic acid is used as a substitute for the sodium salt, the labeling must name the ingredient that is actually present.

5. Two comments expressed a concern that the listing of food categories in the proposed regulations for calcium propionate and sodium propionate has the effect of excluding their use in other foods categories.

The agency advises that the food categories listed in the proposed regulations for calcium and sodium propionate were the uses reported in the NAS/NRC survey. They are not intended to be specific limitations and do not preclude the use of these ingredients in any food category. Persons who desire to use these substances in other food categories may make independent GRAS determinations on their own responsibility. Alternatively, persons seeking FDA approval of any new uses of these ingredients may submit a food additive or GRAS petition in accordance with § 171.1 or § 170.35 (21 CFR 171.1 or 170.35).

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency had determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, the agency has previously considered the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by that Order. FDA has not received any new information or comments that would alter its previous determination.

The agency's finding of no economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Indirect food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.90 [Amended]

a. In § 182.90 *Substances migrating to food from paper and paperboard products*, by removing the listing for "Propionic acid."

§ 182.3081 [Removed]

b. By removing § 182.3081 *Propionic acid.*

§ 182.3221 [Removed]

c. By removing § 182.3221 *Calcium propionate.*

§ 182.3784 [Removed]

d. By removing § 182.3784 *Sodium propionate.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1061 to read as follows:

§ 184.1061 Propionic acid.

(a) Propionic acid ($C_3H_6O_2$, CAS Reg. No. 79–09–4) is an oily liquid having a slightly pungent, rancid odor. It is manufactured by chemical synthesis or by bacterial fermentation.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 254, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an antimicrobial agent as defined in § 170.3(o)(2) of this chapter and a flavoring agent as defined in § 170.3(o)(12) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1221 to read as follows:

§ 184.1221 Calcium propionate.

(a) Calcium propionate ($C_6H_{10}CaO_4$, CAS Reg. No. 4075–81–4) is the calcium salt of propionic acid. It occurs as white crystals or a crystalline solid, possessing not more than a faint odor of propionic acid. It is prepared by neutralizing propionic acid with calcium hydroxide.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 60, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal

Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an antimicrobial agent as defined in § 170.3(o)(2) of this chapter.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: baked goods as defined in § 170.3(n)(1) of this chapter; cheeses as defined in § 170.3(n)(5) of this chapter; confections and frostings as defined in § 170.3(n)(9) of this chapter; gelatins, puddings, and fillings as defined in § 170.3(n)(22) of this chapter; and jams and jellies as defined in § 170.3(n)(28) of this chapter.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

c. By adding new § 184.1784 to read as follows:

§ 184.1784 Sodium propionate.

(a) Sodium propionate ($C_3H_5NaO_2$, CAS Reg. No. 137–40–6) is the sodium salt of propionic acid. It occurs as colorless, transparent crystals or a granular crystalline powder. It is odorless, or has a faint acetic-butyric acid odor, and is deliquescent. It is prepared by neutralizing propionic acid with sodium hydroxide.

(b) The ingredients meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 296, which is incorporated by reference. Copies are available from the the National Academy Press, 2101 Constitution Ave. NW., Washington DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an antimicrobial agent as defined in § 170.3(o)(2) of this chapter and a flavoring agent as defined in § 170.3(o)(12) of this chapter.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: baked goods as defined in § 170.3(n)(1) of this chapter; nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter; cheeses as defined in § 170.3(n)(5) of this chapter; confections and frostings as defined in § 170.3(n)(9) of this chapter; gelatins, puddings, and fillings as defined in § 170.3(n)(22) of this chapter; jams and jellies as defined in § 170.3(n)(28) of this chapter; meat products as defined in § 170.3(n)(29) of this chapter; and soft candy as defined in § 170.3(n)(38) of this chapter.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation is effective May 3, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: March 5, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–8770 Filed 4–2–84; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co., requesting waiver of the requirements of section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(m)) to manufacture finished feeds for chickens and swine from premixes containing not more than 50 grams of lincomycin per pound.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, is sponsor of NADA 97–505 providing for use of Lincomix® 20 and 50 (20-and 50-gram-per-pound lincomycin premixes) for manufacturing broiler and swine feeds. In the **Federal Register** of April 8, 1983 (48 FR 15246), FDA approved supplemental NADA 97–505 providing that intermediate premixes and finished poultry and swine feeds manufactured from premixes containing no more than 20 grams of lincomycin per pound are not required to comply with the provisions of section 512(m) of the act. The Upjohn Co. has filed an additional supplement to NADA 97–505 providing that finished poultry and swine feeds manufactured from premixes containing no more than 50 grams of lincomycin per pound are not required to comply with the provisions of section 512(m) of the act. The supplemental NADA is approved and the regulations are amended accordingly.

Lincomix® 50 meets the uniform criteria set forth in the 1971 Bureau of Veterinary Medicine memorandum for administrative waiver of the requirements of section 512(m) of the act. The pertinent provisions of the memorandum indicate that the waiver is appropriate if:

1. The feeding of 1.5X to 2X level of the product in the finished feed does not have an impact on the tissue residue picture, i.e., an impact on an existing withdrawal period or tolerance.

2. The product is not a known carcinogen or is not classed with a family of known carcinogens.

3. Appropriate documentation covering animal safety is on file. This will not require additional data since the documentation is by definition a part of the NADA.

4. The margin of safety to the animal and the consumer is such that the product label does not have to contain a statement such as "Use as the sole source of * * *."

5. Data are on file to demonstrate that the product is effective over the approved range. This data should generally satisfy current standards for the demonstration of effectiveness.

6. Except under special circumstances, the product has been used at least 3 years in the target species without significant complaints related to or associated with it. Applications of this criterion require a review of available drug experience reports.

Although Lincomix® 50 has not been used for 3 years in both target species, the sponsor has held approvals for use of other concentrations of lincomycin premix for over 3 years (broilers—35 FR 7300, May 9, 1970; swine—41 FR 28855, June 30, 1976). The agency concluded that this requirement could be satisfied on the basis of use of those premixes without significant complaints.

The 1971 memorandum explains that waiver of the ministerial requirements of section 512(m) of the act is permitted only for specific effectiveness claims or at specific levels of the drug, and that distinct products with corresponding labeling for those claims or levels

should exist. This is necessary to cover those premixes that can be made into finished feeds with various concentrations of the drug.

The foregoing criteria established in the 1971 memorandum constitute an interim agency policy, as discussed in the **Federal Register** of May 28, 1982 (47 FR 23446). In waiving the ministerial requirements of section 512(m) of the act, the agency has not waived the current good manufacturing practice regulations under Part 225 (21 CFR Part 225) for feed mills mixing such feeds.

Approval of this supplement does not change the use of the drug. Consequently, approval poses no increased risk of human exposure to residues of the animal drug and does not change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the safety and effectiveness data in the parent NADA.

Because approval of this supplement is an administrative action that did not require reevaluation of the effectiveness or safety data in support of the waiver, a freedom of information summary is not required for this action.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal fees.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.325 is amended by adding new paragraph (e)(3) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.325 Lincomycin.

* * * * *

(e) * * *

(3) Finished poultry and swine feeds manufactured from premixes containing no more than 50 grams per pound and conforming to the requirements of paragraph (f) of this section are not required to comply with the provisions of section 512(m) of the act.

* * * * *

Effective date. April 3, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 13, 1984.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-8706 Filed 4-2-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 7949]

Employment Taxes and Collection of Income Tax; Removal of Regulations on Mandatory Withholding From Interest and Dividends

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides a Treasury decision that removes the final regulations contained in T.D. 7880 relating to 10 percent withholding on interest and dividends. Repeal of the applicable tax law was made by the Interest and Dividend Tax Compliance Act of 1983. This Treasury decision affects persons who would have been required to withhold under the repealed provisions.

DATES: The Treasury decision is effective on March 22, 1983, except for § 31.3452 (f)–1 which is effective February 1, 1983. The regulations apply to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, except that the regulations relating to exemption certificates (§ 31.3452 (f)–1 are effective on February 1, 1983.

FOR FURTHER INFORMATION CONTACT: Diane Kroupa of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224.

SUPPLEMENTARY INFORMATION:

Background

Final regulations under section 3451 *et seq.* relating to 10 percent withholding on interest and dividends were published in the **Federal Register** for March 28, 1983 (48 FR 12940), after a public hearing was held on February 1, 1983. Those amendments were issued to conform the regulations to statutory changes enacted by sections 301 through 308 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248, 96 Stat. 324, 576). Section 102 of the Interest and Dividend Tax Compliance of 1983 (97 Stat. 369) repealed the statutory provisions. This document, therefore, removes the regulatory provisions issued under section 3451 *et seq.*

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this Treasury decision is not a major rule subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, a regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of this Treasury decision is Diane Kroupa of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated, however, in developing this Treasury decision, both on matters of substance and style.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad Retirement, Social security, Unemployment tax, Withholding, Interest, Dividends, Patronage Dividends.

PART 31—[AMENDED]

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 31 is amended as follows:

The following paragraphs and sections are removed:

1. Section 31.3451(a)–1
2. Section 31.3451(b)(1)–1
3. Section 31.3451(b)(2)–1
4. Section 31.3451(b)(3)–1
5. Section 31.3451(b)(4)–1
6. Section 31.3451(c)–1
7. Section 31.3452(a)–1
8. Section 31.3452(b)–1
9. Section 31.3452(c)–1
10. Section 31.3452(d)–1
11. Section 31.3452(e)–1
12. Section 31.3452(f)–1
13. Section 31.3453(a)–1
14. Section 31.3453(b)–1
15. Section 31.3453(c)–1

16. Section 31.3453(d)–1
17. Section 31.3453(e)–1
18. Section 31.3454(a)–1
19. Section 31.3454(b)–1
20. Section 31.3454(c)–1
21. Section 31.3455(b)–1
22. Section 31.3456(b)–1
23. Section 31.3456(c)–1
24. Section 31.3456(d)–1
25. Section 31.6011(a)–10
26. Section 31.6071(a)–2
27. Section 31.6302(c)–5
28. Section 31.7512–1

This Treasury decision removes the regulations issued to conform to statutory provisions that have been repealed. For this reason, it is found impracticable and unnecessary to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: March 30, 1984.

John E. Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 84-8932 Filed 3-30-84; 3:59 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-V-FRL 2556-4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On November 29, 1982, and December 9, 1982, the State of Indiana submitted amended rule 325 IAC 11–4 as a revision to the Total Suspended Particulates (TSP) portion of its State Implementation Plan (SIP). This regulation contains site specific emission limitations for Knauf Fiber Glass in Shelby County, Indiana and constitutes an alternative emission control program (bubble). The regulation also contains procedures which allow emission limits contained in future operating permits to supersede emission limitations contained in this regulation.

EPA has reviewed this regulation and has determined that it has more stringent emission limits than the present SIP, conforms with EPA's emission trading policy, and will have an insignificant impact on the TSP National Ambient Air Quality Standards (NAAQS) in Shelby County. There were no public comments received by the Agency. Therefore, EPA approves this regulation.

EFFECTIVE DATE: This final rulemaking becomes effective on May 3, 1984.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, N.W., Room 8401; Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6036 before visiting the Region V Office.)

U.S Environmental Protection Agency, Air and Radiation Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20400.

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6036.

SUPPLEMENTARY INFORMATION: On April 7, 1982 (47 FR 15076), the EPA issued a proposed Emission Trading Policy Statement (ETPS). This statement indicates that it is the policy of EPA to encourage use of emission trades to achieve more flexible, rapid, and efficient attainment of the NAAQS. This policy statement describes emissions trading, sets out general principles EPA will use to evaluate emissions trades under the Clean Air Act, and expands opportunities for States and industry to use these less costly control approaches. The April 7, 1982, notice indicates that until EPA takes final action on its policy statement, State actions involving emission trades will be evaluated under the provisions set forth in the proposed policy statement.

The State of Indiana on November 29, 1982, submitted amendments to 325 IAC 11–4, Fiber Glass Insulation Manufacturing (Superfine Process) Limitations, as a revision to the Indiana TSP SIP. The State submitted technical information to support the amended rule on December 9, 1982. The amendments change/delete particulate emission limitations for six facilities operated by Knauf Fiber Glass Company in Shelby County, Indiana. EPA has designated Shelby County as an attainment area for TSP under Section 107 of the Act (March 3, 1978, 43 FR 8962).

The amendments also add a new section (325 IAC 11–4–3.5) which contains procedures to allow emission limits contained in future operating permits to supersede emission limitations contained in this regulation.

The changes for the particulate emission limitations for the six facilities operated by Knauf Fiber Glass Company are summarized below:

Facility description	Emission rate (lbs/hr)		
	Old	New	Change
204 oven	2.4	8.00	+5.6
204 furnace	13.75	10.00	−3.75
204 forming	15.62	15.00	−3.62
205 oven	2.44	0	−2.44
205 furnace	8.62	0	−8.62
205 forming	18.18	0	−18.18

In addition to a decrease in plant emission rate (lbs/hr), annual allowable emissions should decrease by 136.9 tons/year.

EPA proposed this regulation for approval on September 1, 1983 (48 FR 39653). A more detailed discussion of the technical information and EPA's review of the information can be found in this proposal and in the accompanying technical support document. No comments were received by the Agency during the public comment period.

Therefore, EPA approves the revisions to 325 IAC 11–4 because they will not interfere with the attainment and maintenance of the TSP NAAQS in Shelby County, fulfill the requirements of the proposed ETPS, and meet the requirements of Section 110 of the Clean Air Act.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of

Indiana was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: March 26, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52, of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 52.770 is amended by revising paragraph (c)(46).

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(46) On November 29, 1982, and December 9, 1982, Indiana submitted amendments to 325 IAC 11–4, Fiber Glass Insulation Manufacturing (Superfine Process) Limitations.

* * * * *

[FR Doc. 84–8868 Filed 4–2–84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A–9–FRL 2557–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules.

SUMMARY: The purpose of this action is to withdraw approval of revisions to the California State Implementation Plan for the Monterey Bay Unified Air Pollution Control District (APCD). These revisions consist of two permit fee rules which were approved on November 18, 1983 (48 FR 52451). EPA is publishing a notice of proposed rulemaking elsewhere in today's **Federal Register** on these rules. EPA is taking this action in accordance with the procedures described in the November 18, 1983, final rulemaking notice.

DATE: This action is effective April 3, 1984.

ADDRESSES: Copies of the Monterey Bay Unified APCD submittal are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906.

FOR FURTHER INFORMATION CONTACT: Thomas Rarick, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7641.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1983 the California Air Resources Board submitted revisions to the State Implementation Plan. These revisions included Monterey Bay Unified APCD permit fee Rules 300, "Permit Fees" and 301, "Permit Fee Schedules."

On November 18, 1983 EPA approved this submittal as a revision to the California SIP. (For further information about these revisions, see 48 FR 52451.)

In the approval notice EPA advised the public that the effective date of approval would be deferred for 60 days to provide an opportunity to submit comments on the revisions. EPA announced that, if within 30 days of the publication of the approval notice EPA received notice that someone wished to submit an adverse or critical comment, it would withdraw its approval and begin a new rulemaking by proposing the action and establishing a 30-day comment period. EPA also published a general notice explaining this special procedure on September 4, 1981. (See 46 FR 44476.)

EPA has received a request to provide comments concerning Rules 300 and 301 as mentioned above. Therefore, in accordance with the procedures described above, EPA is today withdrawing its November 18, 1983 approval of these revisions and is proposing to approve Rules 300 and 301 elsewhere in today's **Federal Register.**

EPA is withdrawing the original approval without providing prior notice and opportunity to comment because it finds there is good cause within the meaning of 5 U.S.C. 553(b) to do so. Notice and comment would be impractical because EPA needs to withdraw its approval quickly in order to consider the comments which members of the public want to submit. In addition, further notice is not necessary because EPA has already informed the public that it would follow this procedure if a request was received to comment on the revision (see 48 FR 52451 and 46 FR 44476). For the same reasons, EPA finds it has good cause under 5 U.S.C. 553(d) to make this withdrawal immediately effective.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP actions do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: Section 110(a) and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Dated: March 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 paragraph (c) is amended by revising subparagraph (127)(v)(A) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(127) * * *

(v) * * *

(A) New or amended Rule 601.

* * * * *

[FR Doc. 84–8801 Filed 4–2–84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A–V–FRL 2556–2]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This final rulemaking action addresses the air quality attainment status redesignations of five areas in the State of Wisconsin. These areas, their respective pollutants, and the final revisions are as follows:

Sub-city area of Beloit, Total Suspended Particulates (TSP)—from "does not meet primary standards" to "does not meet secondary standards", and a reduction in the size of the secondary nonattainment area.

Vilas, Brown, Columbia, and Dane Counties, Ozone—from "does not meet primary standards" to "cannot be classified, or better than national standards" (attainment).

These final redesignations are based on a request, dated March 14, 1983, from the Wisconsin Department of Natural Resources (WDNR), and on supporting monitoring, dispersion modeling, and compliance data submitted by the WDNR. Under the Clean Air Act, an attainment status designation can be changed if sufficient data are available to warrant a redesignation. In today's action, EPA is approving the redesignations as requested by the State of Wisconsin.

EFFECTIVE DATE: May 3, 1984.

ADDRESSES: Copies of the redesignation request, the technical support documents, and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886–6034.

SUPPLEMENTARY INFORMATION: In the October 13, 1983, Federal Register (48 FR 46550), EPA proposed approval of the WDNR's redesignation request for seven areas located throughout the State of Wisconsin. These seven revisions were based on two factors: (1) A request from the WDNR to revise the Section 107 attainment status designations for the seven areas; and, (2) technical support documents containing summaries of recent ambient air quality data collected from monitoring sites within the State. The WDNR submitted additional ambient monitoring data on April 18, 1983. They also submitted certifications of compliance with the emission limitations contained in the SIP for certain sources in these areas on May 13, 1983.

During the public comment period, no comments were submitted. Therefore, EPA is taking final action to approve five of the redesignation requests submitted by the WDNR. The area redesignations being approved are: (1) A sub-city area of Beloit for TSP from "does not meet primary standards" to "does not meet secondary standards", and a revision to the boundaries of the secondary nonattainment area, as specified below; and, (2) Vilas, Brown, Columbia, and Dane Counties for Ozone from "does not meet primary standards" to attainment of the Ozone National Ambient Air Quality Standards (NAAQS). Action on the sulfur dioxide (SO_2) redesignations for the two remaining areas, the sub-city area of Madison and the corporate limits of Brokaw, has been postponed pending final determination of stack height regulations. A detailed discussion of the basis for EPA's action can be found in the notice of proposed rulemaking. A brief synopsis of this discussion is given below for each geographic area.

Beloit—TSP

On March 14, 1983, WDNR requested that EPA revise the nonattainment designation for a sub-city area of Beloit from primary nonattainment to secondary nonattainment of the TSP NAAQS, and that EPA reduce the size of the secondary nonattainment area. The new boundaries of the secondary nonattainment area are as follows:

North Boundary: Portland Avenue east from Fourth Street to intersection with Woodward Avenue, Woodward Avenue east to Park Avenue

East Boundary: Park Avenue south from Woodward Avenue to Broad Street

South Boundary: Broad Street west from Park Avenue to Fourth Street

West Boundary: Fourth Street north from Broad Street to Portland Avenue.

To support its request, WDNR submitted a technical support document with summaries of the TSP ambient air monitoring data collected in Beloit during 1980–1982. WDNR also submitted a status report on the compliance of affected sources with the reasonably available control technology (RACT) particulate emission limits contained in the SIP.

EPA has determined that all available data support a redesignation of the subcity area of Beloit from primary nonattainment to secondary nonattainment of the TSP NAAQS, and that the data also support a reduction in the size of the secondary nonattainment area. The data collected during 1980–1982 show no violations of the primary TSP NAAQS at any of the monitoring sites during the last eight quarters. Two violations of the secondary TSP NAAQS were monitored in 1981.

Vilas County—Ozone

On March 14, 1983, the WDNR requested that EPA revise the designation for Vilas County from nonattainment to attainment of the ozone NAAQS. In addition, the State submitted monitoring data collected in this area during the 1981 and 1982 ozone seasons, which show that there were no exceedances of the standard. Therefore, EPA is approving the State's request to redesignate the County to attainment.

Brown County—Ozone

On March 14, 1983, the WDNR requested that EPA revise the designation for Brown County from nonattainment to attainment of the ozone NAAQS. The Green Bay monitor provides the only ozone monitoring data in Brown County. Available data show that the Green Bay monitor obtained valid daily maximum concentrations for over 80 percent of the days during the 1981 and 1982 ozone seasons. No exceedances were recorded during either year. Wisconsin also has limited data collected from this monitor by an industry in 1979 and 1980, but these data are not quality assured by the State. These data also show no exceedances of the standard. The data from 1981 and 1982 indicate attainment of the standard. Therefore, EPA is revising the designation to attainment for ozone.

Dane and Columbia Counties

On March 14, 1983, the WDNR requested that EPA redesignate Dane and Columbia Counties from nonattainment to attainment of the ozone NAAQS. EPA considers Dane and Columbia to be a single source-receptor area for ozone, so EPA reviewed the State's request and supporting monitoring data for both Counties together. Only one exceedance occurred in Dane and Columbia Counties between 1980 and 1982, as recorded by the Military Road site on May 23, 1980. This site would be expected to have a 0.4 exceedance per year. All other sites in Dane and Columbia Counties would be expected to show a 0.0 exceedance per year. The ozone standard allows up to 1.0 expected exceedance. Consequently, EPA is approving the State's request to designate these Counties to attainment for ozone.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Intergovernmental relations.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: March 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES—WISCONSIN

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 81.350—*Wisconsin*, the attainment status designation table for Total Suspended Particulates is amended by revising the designation for a sub-city of Beloit, Rock County, as follows:

§ 81.350 Wisconsin

WISCONSIN—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
•	•	•	•	•
AQCR 73:				
Rock County: Beloit sub-city defined as follows:		X		
North: Portland Avenue east from Fourth Street to intersection with Woodward Avenue, Woodward Avenue east to Park Avenue				
West: Fourth Street north from Broad Street to Portland Avenue.				
South: Broad Street west from Park Avenue to Fourth Street.				
East: Park Avenue south from Woodward Avenue to Broad Street.				
•	•	•	•	•

2. The attainment status designation table for Ozone is amended by revising the designations for Brown, Vilas, Columbia, and Dane Counties (O_3) as follows:

§ 81.350 Wisconsin.

WISCONSIN—OZONE(O_3)

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
•	•	•
AQCR 227:		
Brown County	X	
•	•	•
AQCR 238:		
•	•	•
Vilas County	X	
•	•	•
AQCR 240:		
Columbia County	X	
Dane County	X	
•	•	•

[FR Doc. 84-8686 Filed 4-2-84; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 49, No. 65
Tuesday, April 3, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Conditions for Obtaining or Withholding Official Services, and Delegations, Designations, Approvals, and Contractual Arrangements

AGENCY: Federal Grain Inspection Service.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) has reviewed and is proposing to revise the regulations under the United States Grain Standards Act, as amended (Act), concerning Conditions for Obtaining or Withholding Official Services, and Delegations, Designations, Approvals, and Contractual Arrangements. The proposed revision involves rewriting, revising, and reorganizing these regulations to simplify, clarify, and condense certain language; and promote a better understanding of policy and procedure.

In addition, as mandated by changes in the Act, other revisions are proposed to allow additional eligible States to be delegated, and to include automatic terminaiton of a delegation or designation when user fees are not paid within 30 days of the due date.

DATE: Comments must be submitted on or before June 4, 1984.

ADDRESS: Comments should be submitted, in writing, in duplicate, to Lewis Lebakken, Jr., Information and Resources Management Branch, Resources Management Division, USDA, FGIS, Room 0667 South Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* because: (a) It applies to a limited number of (1) State and private grain inspection and weighing agencies which are delegated or designated under the Act, (2) scale testing and certification organizations, and (3) persons under contract with the Service; all of which are not considered to be small entities because they are dominant in their area of operation; (b) most users of the inspection and weighing services do not meet the requirements for small entities; and (c) this action poses no new or additional duties or obligations to business entities involved in the loading, weighing, handling, or sampling of grain.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504(h) of that Act, the previously approved information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Agriculture, Room 3201, NEOB, Washington, D.C. 20503.

Regulations Review

The review of the regulations on Conditions for Obtaining or Withholding Official Services (7 CFR 800.45–800.52); and Delegations, Designations, Approvals, and Contractual Arrangements (7 CFR 800.195–800.208) included a determination of the continued need for and consequences of the regulations.

An objective of the review was to ensure that the language of the regulations is clear and that the regulations are consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS proposes, however, to make certain changes to §§ 800.45–800.52 and §§ 800.195–800.208.

Section 800.46 contains requirements for obtaining official services. Sections 800.195–800.208 also contain provisions regarding conditions for obtaining official services (approval of weighing facilities). FGIS proposes to consolidate all the provisions for obtaining official services in § 800.46.

In addition, FGIS proposes other amendments in the following sections.

(a) *Section 800.45,* Availability of official services, by (1) clarifying and condensing language; (2) eliminating superfluous references to U.S. grain in Canadian ports; (3) combining language regarding inspecition, sacked grain, and weighing; and

(4) restructuring the section as: Original inspection and weighing services; Reinspection, review of weighing, and appeal inspection services; and Proof of authorization.

(b) *Section 800.46,* Requirements for obtaining official services, by (1) clarifying and condensing language, and adding representative samples as a condition for accessibility, and (2) including present §§ 800.116 (a) and (b), 800.126 (a) and (b), and 800.136 (a) and (b) provisions for completing application forms in § 800.46(b)(8).

(c) *Section 800.47,* Withdrawal of request for official services, by (1) clarifying and condensing language; (2) eliminating subparagraph (b) which already appears in § 800.51; and (3) restructuring so there are no subparagraphs.

(d) *Section 800.48,* Dismissal of request for official services, by (1) clarifying and condensing language; (2) restructuring subparagraph (a) to read General, Original services, Reinspection and appeal inspection services, and Review of weighing services; and (3) including provisions for dismissing

requests for official services presently contained in §§ 800.117, 800.127, and 800.137 of the regulations.

(e) *Section 800.49,* Conditional withholding of official services, by clarifying and condensing language.

(f) *Section 800.50,* Refusal of official services, no change is proposed.

(g) *Section 800.51,* Expenses of agency, field office, or Board of Appeals and Review, by clarifying and condensing language.

(h) *Section 800.52,* Official services not to be denied, no change is proposed.

The proposed revision to §§ 800.195–800.208 involves reorganizing the sections by subject. Thus, the four subject topics, Delegations, Designations, Approvals, and Contracts, would each be addressed in a separate section.

In addition, FGIS proposes revisions in the following sections:

(a) *Section 800.195,* would be amended by changing the heading to read Delegation, condensing language, and including pertinent provisions presently contained in §§ 800.71, 800.200, 800.201(a), 800.202(a), 800.204, 800.206(a), 800.207, and 800.208. Other proposed changes include incorporating recent amendments to the Act. The Agriculture and Food Act of 1981 (Pub. L. 97–98, December 22, 1981, 95 Stat. 1213), amended Section 7(e) of the Act to allow additional eligible States to be delegated. Prior to the amendment, only State agencies that were performing official inspection at export port locations under the Act on July 1, 1976, and were qualified and met the criteria in Section 7(f)(1)(A) of the Act could be delegated. The amendment to the Act provides for delegation of additional States which (1) were performing official inspection at an export port location at any time prior to July 1, 1976; (2) were designated under Section 7(f) of the Act on December 22, 1981; and (3) operate in a State from which total annual grain exports do not exceed, as determined by the Administrator, 5 percent of the total amount of grain exported from the United States annually. FGIS proposes to address this new provision in § 800.195(c).

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, August 13, 1981), amended Sections 7(j) and 7A(1) of the Act by providing for automatic termination of a delegation for failure to pay user fees within 30 days after the date due. The amendment also provides for reinstatement upon payment of the fees plus late payment penalties. These provisions have already been included in § 800.71. FGIS proposes to address these provisions in § 800.195(g).

FGIS also proposes to change the description of the area of responsibility assigned to a delegated State from either the switching limits, or the area within a 25-mile radius, to providing official services to export elevators at export port locations in the State (see § 800.195(f)(1) of the proposal). This will alleviate the confusion caused when a request for service is made at an export port location by a nonexport elevator within these limits.

FGIS proposes to delete the requirement that file copies of official certificates be carbon copies. This will allow the use of microrecords to maintain copies of official certificates.

Section 800.195 would also be revised to provide for: (1) Rotation of licensees, where feasible, among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems; (2) prohibiting delegated States or their employees from engaging in any outside work or activity that consists, in whole or in part, of performing unofficially any function or related activity they perform officially; and (3) a statement of the responsibility to adhere to the conflict-of-interest provisions of the Act and regulations. These provisions are part of the delegation of authority signed by each delegated State and FGIS proposes to include them in § 800.195(f). Further revision would provide explicitly for Class Y weighing at export elevators at export port locations. FGIS has provided Class Y weighing at export elevators at export port locations since November 24, 1980. FGIS proposes to include these provisions in § 800.195(a).

(b) *Section 800.196,* would be revised by changing the heading to read Designation, expanding certain language, and clarifying and condensing other language including pertinent provisions presently contained in §§ 800.200, 800.200(a), 800.201(b), 800.203, 800.205, 800.206(b), 800.207, and 800.208, and by incorporating an amendment to the Act by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, August 13, 1981). The Omnibus Budget Reconciliation Act amended Sections 7(j) and 7A(1) of the Act by providing for automatic termination of a designation for failure to pay user fees within 30 days after due. The amendment also provides for reinstatement of the designation upon payment of the fees plus late payment penalties. These provisions are already in § 800.71. FGIS proposes to address these new provisions in § 800.196(h)(2).

FGIS proposes to delete the requirement that file copies of official certificates be carbon copies. This will allow designated agencies to use microrecords to maintain copies of official certificates.

Section 800.196 would also be revised to provide for: (1) Rotating agency licenses, where feasible, among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems; (2) prohibiting designated agencies, or their employees, from engaging in any outside work or activity that consists, in whole or in part, of performing unofficially any function or related activity they perform officially; and (3) a statement of the responsibility of agencies to adhere to the conflict-of-interest provisons of the Act and regulations. These provisions are part of the designation agreement signed by each agency, and FGIS proposes to include them in § 800.196(g).

(c) *Section 800.197,* would be revised by changing the heading to read Approval of scale testing and certification organizations, clarifying and condensing language, and including pertinent provisions presently contained in §§ 800.200, 800.201(c), and 800.208. Other proposed changes including requiring State and local governmental agencies, which want to perform scale testing and certification under the Act and are not already approved, to request approval. The current regulations (§ 800.198(c)) grant automatic approval to State and local government weights and measures organizations operating on September 29, 1977. A request for approval is not required. Automatic approval was included to ensure that there would be no lapse in scale testing and certification services, for purposes of the Act, when the regulations were implemented.

FGIS evaluated and approved several State organizations to perform scale testing and certifying for Class X and Class Y weighing. Since the initial approval process has been completed, exemption for State and local governments scale testing and certification organizations is no longer needed. FGIS proposes to delete the exemption provisions and require that a request be submitted.

Furthermore, State and local governmental scale testing and certification organizations which were operating on September 29, 1977, would be made subject to the termination of approval provisions. These organizations were exempted from the termination of approval provisions in conjunction with their exemption from the application provisions previously discussed. Approvals of scale testing and certification organizations would not have a termination date but would

be subject to termination for cause. FGIS proposes to delete the exemption in current § 800.201(c).

(d) *Section 800.198*, would be amended by changing the heading to read Contracts, adding language from current § 800.196(d), redefining the types of services that FGIS may contact, and including pertinent provisions presently contained in §§ 800.200, 800.201(d), and 800.202(d).

(e) *Section 800.199*, would be amended by changing the heading to read Conflict of interest and adding pertinent language from current § 800.196(e).

(f) Sections 800.200–800.208, would be deleted and the provisions moved to sections 800.45–800.52, and 800.195–800.199 as described above.

List of Subjects in 7 CFR Part 800

Administrative practices and procedure, Export, Grain.

PART 800—GENERAL REGULATIONS

Accordingly, it is proposed that Part 800 be amended by:

1. Revising the undesignated center heading and §§ 800.45–800.49, to read as follows:

Conditions for Obtaining or Withholding Official Services

§ 800.45 Availability of official services.

(a) *Original inspection and weighing services.* Original inspection and weighing services on grain are available according to this section and §§ 800.115 through 800.119, when requested by an interested person.

(b) *Reinspection, review of weighing, and appeal, inspection services.* Reinspection, review of weighing, appeal inspection, and Board appeal inspection services are available when requested by an interested person, according to §§ 800.125 through 800.130 and §§ 800.135 through 800.140.

(c) *Proof of authorization.* If an application for official services is filed by a person representing the applicant, the agency or the field office receiving the application may require written proof of the authority to file the application.

(Approved by the Office of Management and Budget under control number 0580–0003)

§ 800.46 Requirements for obtaining official services.

(a) *Consent and agreement by applicant.* In submitting a request for official services, the applicant and the owner of the grain consent to the special and general requirements specified in paragraphs (b) and (c) of this section. These requirements are essential to carry out the purposes or provisions of the Act.

(b) *General requirements.*—(1) *Accesss to grain.* Grain on which official services are to be performed shall, except as provided in §§ 800.85, 800.86, 800.98, and 800.99, be made accessible by the applicant for the performance of the requested official service and related monitoring and supervision activities. For the purposes of this section, grain is not "accessible" if it is offered for official services (i) in containers or carriers that are closed and cannot, with reasonable effort, be opened by or for official personnel; (ii) when any portion is located so as to prohibit the securing of a representative sample; or (iii) under conditions prescribed in the Instructions as being hazardous to the health or safety of official personnel.

(2) *Working space.* When official services are performed at an elevator, adequate and separate space must be provided by the applicant for the performance of the requested service and related monitoring and supervision activities. Space will be "adequate" if it meets the space, location, and safety requirements specified in the Instructions.

(3) *Notice of changes.* The operator of each facility at which official services are performed must notify the appropriate agency or field office promptly, in full detail of changes in the grain handling and weighing facilities, equipment, or procedures at the elevator that could or would affect the proper performance of official services.

(4) *Loading and unloading conditions.* As applicable, each applicant for official services must provide or arrange for suitable conditions in the (i) loading and unloading areas and the truck and railroad holding areas; (ii) gallery and other grain-conveying areas; (iii) elevator legs, distributor, and spout areas; (iv) pier or dock areas; (v) deck and stowage areas in the carrier; and (vi) equipment used in loading or unloading and handling the grain. Suitable conditions are those which will facilitate accurate inspection and weighing, maintain the quantity and the quality of the grain that is to be officially inspected or weighed, and not be hazardous to the health and safety of official personnel as prescribed in the Instructions.

(5) *Time arrangements.* A request for official services shall be made in a timely manner; otherwise, official personnel may not be available to provide the requested service. For the purpose of this paragraph, "timely manner" shall mean not later than 2 p.m., local time, of the preceding business day.

(6) *Observation of activities.* Each applicant for official services must provide any interested person, or his agent, an opportunity to observe sampling, inspection, weighing, and loading or unloading of the grain. Appropriate observation areas shall be mutually defined by the Service and facility operator. The areas shall be safe and shall afford a clear and unobstructed view of the performance of the activity, but shall not permit a close over-the-shoulder type of observation by the interested person.

(7) *Payment of bills.* Each applicant for services under the Act must pay bills for the services according to §§ 800.70 through 800.73.

(8) *Written confirmations.* When requested by the agency or field office, verbal requests for official services shall be confirmed in writing. Each written request shall be signed by the applicant, or the applicant's agent, and shall show or be accompanied by the following information: (i) The identification, quantity, and specific location of the grain; (ii) the name and mailing address of the applicant; (iii) the kind and scope of services desired; and (iv) any other information requested by the agency or field office.

(9) *Names and addresses of interested persons.* When requested, each applicant for official services shall show on the application form the name and address of each known interested person.

(10) *Surrender of superseded certificates.* When a request for official service results in a certificate being superseded, the superseded certificate must be promptly surrendered.

(11) *Recordkeeping and access.* Each applicant for official services must comply with applicable recordkeeping and access-to-facility provisions in §§ 800.25 and 800.26.

(12) *Monitoring equipment.* Owners and operators of elevators shall, upon a finding of need by the Administrator, provide equipment necessary for the monitoring by official personnel of grain loading, unloading, handling, sampling, weighing, inspection, and related activities. The finding of need will be based primarily on a consideration of manpower and efficiency.

(c) *Special requirements for official Class X and Class Y weighing services.*—(1) *General.* Weighing services shall be provided only at weighing facilities which have met the conditions, duties, and responsibilities specified in section 7A(f) of the Act and this section of the regulations. Weighing

services will be available only in accordance with the requirements of § 800.115(b). Facilities desiring weighing services should contact the Service in advance to allow the Service time to determine if the facility complies with the provisions of the Act and regulations.

(2) *Conditions.* The facility shall provide the following information annually to the Service: (i) The facility owner's name and address; (ii) the facility operator's name and address; (iii) the name of each individual employed by the facility as a weigher and a statement that each individual: (A) Has a technical ability to operate grain weighing equipment and (B) has a reputation for honesty and integrity; (iv) a blueprint or similar drawing of the facility showing the location of: (A) The loading, unloading, and grain handling systems; (B) the scale systems used or to be used in weighing grain; and (C) the bins and other storage areas; (v) the identification of each scale in the facility that is to be used for weighing grain under the Act; (vi) the following information regarding automated data processing systems: (A) Overall system intent, design, and layout; (B) make, model, and technical specifications of all hardware; (C) description of software, language used, and flow charts of all programs, subprograms, routines, and subroutines; and (D) complete operating instructions; and (vii) any other information deemed necessary to carry out the provisions of the Act. If a facility has, or plans to have, an automated data processing system which is used in conjunction with any portion of the scale system, grain handling system, or the preparing or printing of official weight certificates, the facility shall make available to the Service sufficient documentation to ensure that the system cannot be used deceptively or otherwise provide inaccurate information. The Service or approved scale testing and certification organization shall conduct an onsite review to evaluate the performance and accuracy of each scale that will be used for weighing grain under the Act, and the performance of the grain loading, unloading, and related grain handling equipment and systems.

(3) *Duties and responsibilities of weighing facilities requesting official services.*—(i) *Providing official services.* Upon request, each weighing facility shall permit official weighing services to be performed promptly.

(ii) *Supervision.* Each weighing facility shall supervise its employees and shall take action necessary to assure that employees are performing their duties according to the Act, regulations, and Instructions and are not performing prohibited functions or are not involved in any action prohibited by the Act, regulations, and Instructions.

(iii) *Facilities and equipment.*—(A) *General.* Each weighing facility shall obtain and maintain facilities and equipment which the Service determines are needed for weighing services performed at the facility. Each facility shall operate and shall maintain each scale system and related grain handling system used in weighing according to instructions issued by the manufacturer and by the Service. A scale log book for each approved scale used for official weighing services shall be maintained according to Instructions at each weighing facility.

(B) *Malfunction of scales.* Scales or scale systems that are operating in other than a correct and approved manner shall not be used for weighing grain under the Act. Before the malfunctioning scale or scale system can be used again for weighing grain under the Act it shall be repaired and determined to be operating properly by the Service or approved scale testing and certification organization.

(iv) *Oral directives.* FGIS oral directives issued to elevator personnel shall be confirmed in writing upon request by elevator management. Whenever practicable, the Service shall issue oral directives through elevator management officials.

(Approved by the Office of Management and Budget under control number 0580–0003)

§ 800.47 Withdrawal of request for official services.

An applicant may withdraw a request for official services any time before official personnel release results, either verbally or in writing. See § 800.51 for reimbursement of expenses, if any.

§ 800.48 Dismissal of request for official services.

(a) *Conditions for dismissal.*—(1) *General.* An agency or the Service shall dismiss requests for official services when (i) § 800.78 prohibits the requested service; (ii) performing the requested service is not practicable; (iii) the agency or the Service lacks authority under the Act or regulations; or (iv) sufficient information is not available to make an accurate determination.

(2) *Original services.* A request for original services shall be dismissed if a reinspection, review of weighing, appeal inspection, or Board appeal inspection has been performed on the same lot at the same specified service point within 5 business days.

(3) *Reinspection, appeal inspection, or Board appeal inspection services.* A request for a reinspection, appeal inspection, or Board appeal inspection service shall be dismissed when (i) the kind and scope are different from the kind and scope of the last inspection service; (ii) the condition of the grain has undergone a material change; (iii) the request specifies a representative file sample and a representative file sample is not available, (iv) the applicant requests that a new sample be obtained and a new sample cannot be obtained; or (v) the service cannot be performed within 5 business days of the date of the last inspection date.

(4) **Review of weighing services.** A request for review of weighing services shall be dismissed when the request (i) is filed before the weighing results have been released, or (ii) is filed more than 90 calendar days after the date of the original service.

(b) *Procedure for dismissal.* When an agency or the Service proposes to dismiss a request for official services, the applicant shall be notified of the proposed action. The applicant will then be afforded reasonable time to take corrective action or to demonstrate there is no basis for the dismissal. If the agency or the Service determines that corrective action has not been adequate, the applicant will be notified again of the decision to dismiss the request for service, and any results of official services shall not be released.

§ 800.49 Conditional withholding of official services.

(a) *Conditional withholding.* An agency or the Service shall conditionally withhold requests for official services when an applicant fails to meet any requirement prescribed in § 800.46.

(b) *Procedure and withholding.* When an agency or the Service proposes to conditionally withhold official services, the applicant shall be notified of the reason for the proposed action. The applicant will then be afforded reasonable time to take corrective action or to show that there is no basis for withholding services. If the agency or the Service determines that corrective action has not been adequate, the applicant will be notified. Any results of official services shall not be released when a request for service is withheld.

2. Revising § 800.51 to read as follows:

§ 800.51 Expenses of agency, field office, or Board of Appeals and Review.

For any request that has been dismissed or withdrawn under §§ 800.47, 800.48, or 800.49, respectively,

each applicant shall pay expenses incurred by the agency or the Service.

3. Revising the undesignated center heading and §§ 800.195–800.199 and removing §§ 800.200–800.208 as follows:

* * * * *

Delegations, Designations, Approvals, Contracts, and Conflict-of-Interest

Sec.
800.195 Delegations.
800.196 Designations.
800.197 Approval as a scale testing and certification organization.
800.198 Contracts.
800.199 Conflict-of-interest provisions.

Authority: Secs. 8, 9, 10, 13, and 16, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e.

* * * * *

Delegations, Designations, Approvals, Contractual Arrangements, and Conflict of Interest

§ 800.195 Delegations.

(a) *General.* Eligible States may be delegated authority to perform official services (excluding appeal inspection) at export port locations within their respective States.

(b) *Restrictions.* Only the Service or the delegated State may perform official inspection, Class X, and Class Y weighing services at an export port location within the State. If official inspection services, at export port locations within the State, are performed by the Service, only the Service may perform Class X and Class Y weighing services at the locations. If official inspection services are performed by a delegated State, either the State or the Service may perform Class X and Class Y weighing services at the export port locations within the State.

(c) *Who can apply.* States which (1) were performing official inspection at an export port location under the Act on July 1, 1976, or; (2)(i) performed official inspection at an export port location at any time prior to July 1, 1976; (ii) were designated under section 7(f) of the Act on December 22, 1981, to perform official inspections; and (iii) operate in a State from which total annual exports of grain do not exceed, as determined by the Administrator, 5 per centum of the total amount of grain exported from the United States annually may apply to the Service for a delegation.

(d) *When and how to apply.* A request for authority to operate as a delegated State should be filed with the Service not less than 90 calendar days before the State proposes to perform the official services. A request for authority to operate as a delegated State shall show (1) the export port location(s) where the State proposes to perform official inspection, Class X, and Class Y weighing services; (2) the estimated annual volume of inspection and weighing services for each location; and (3) the schedule of fees the State proposes to assess. A request for a revision to a delegation shall (A) be filed with the Service not less than 90 calendar days before the desired effective date, and (B) specify the change desired.

(e) *Review of eligibility and criteria for delegation.* Each applicant for authority to operate as a delegated State shall be reviewed to determine whether the applicant meets the eligibility conditions contained in paragraph (c) of this section and the criteria contained in section 7(f)(1)(A) of the Act. The requested delegation may be granted if the Service determines that the applicant meets the eligibility conditions and criteria. If an application is dismissed, the Service shall notify the applicant promptly, in writing, of the reasons(s) for the dismissal.

(f) *Responsibilities*—(1) *Providing official services.* Each delegated State shall be responsible for providing each official service authorized by the delegation at all export elevators at export port locations in the State. The State shall perform each official service according to the Act, regulations, and Instructions.

(2) *Staffing, licensing, and training.* Delegated States shall employ official personnel on the basis of job qualifications rather than political affiliations. The State shall employ sufficient personnel to provide the services normally requested in an accurate and timely manner. The State shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. The State shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(3) *Rotation of personnel.* Where feasible, each delegated State shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems.

(4) *Supervision.* The State and its officials shall be responsible for the actions of the official personnel employed by the State, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities in the State. The State shall supervise official activities according to the Act, regulations, and Instructions and shall take action necessary to ensure that its employees are not performing prohibited functions and are not involved in any action prohibited by the Act, regulations, or Instructions. Each State shall report to the Service information which shows or may show a violation of any provision of the Act, regulations, or Instructions and information on any instructions which have been issued to State personnel by Service personnel or by any other person which are contrary to or inconsistent with the Act, regulations, or Instructions.

(5) *Conflict of interest.*—(i) *General.* The delegated State and any commissioner, director, employee, or other related person or entity shall not have a conflict of interest, as defined in section 11 of the Act and § 800.199 of the regulations. A conflict of interest may be waived pursuant to § 800.199(d).

(ii) *Unofficial activities.* The delegated State or personnel employed by the State shall not perform any unofficial service that is the same as any of the official services covered by the delegation.

(6) *Fees.* The delegated State shall charge fees according to § 800.70.

(7) *Facilities and equipment*—(i) *General.* The laboratory and office facilities of each delegated State shall be: Located; equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each delegated State shall test the equipment that it uses for official services according to the Instructions.

(8) *Security.* Each delegated State shall provide sufficient security to assure that official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each delegated State shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for (i) recording the numbers of the official certificates printed or received; (ii) protecting unused certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each delegated State shall maintain the records specified in §§ 800.145–800.155.

(g) *Termination*—(1) *Automatic Termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the delegation.

The delegation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(2) *Voluntary cancellation.* A State may request that its delegation be canceled by giving 90 days written notice to the Service.

(3) *Revocation.*—(i) *Without hearing.* The Administrator may revoke the delegation of a State without first affording the State opportunity for a hearing. Unless otherwise provided, the revocation shall be effective when the State receives a notice from the Service regarding the revocation and the reason(s) therefor.

(ii) *Informal conference.* At the discretion of the Administrator, before the delegation of a State is revoked under paragraph (g)(3)(i), the Service may (A) notify the State of the proposed action and the reason(s) therefor, and (B) afford the State an opportunity to express its views in an informal conference before the Administrator.

(h) *Provision of services following termination.* If a State's delegation is terminated, official services at the export port locations in the State shall be provided by the Service.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0580–0003. The information collection requirements contained in paragraphs (f)(2) and (f)(4) were approved under control number 0580–0006.)

§ 800.196 Designations.

(a) *General.* Eligible persons or governmental agencies may be designated to perform official services (excluding appeal inspection) within a specified area (other than export port locations).

(b) *Restrictions*—(1) *General.* If official inspection services are performed in an area by a designated agency, Class X and Class Y weighing services in that area may be performed only by the designated agency if the agency applies for designation to provide weighing services and is found qualified by the Service. If the agency designated to provide official inspection services is found not qualified or does not apply, the Class X and Class Y weighing services may be performed by another available agency that is found qualified and is designated by the Service, or the official services may be performed by the Service.

(2) *Interim authority*—(i) *By agency.* A designated agency may perform official services outside its specified area on an interim basis when authorized by the Service.

(ii) *By Service.* Official inspection services and/or Class X and Class Y weighing services may be performed by the Service in an area (other than export port locations) on an interim basis in accordance with sections 7(h) and 7A(c) of the Act.

(c) *Who can apply.* Any State or local governmental agency or any person may apply, subject to sections 7 and 7A of the Act, to the Service for designation as an official agency to perform official inspection services (excluding appeal inspection) and/or Class X and Class Y weighing services in a given area (other than export port locations) in the United States.

(d) *When and how to apply.* An application for designation should be filed with the Service, according to the provisions of the **Federal Register** notice which requests applicants for designation to perform official services in existing or new geographic areas. The application for designation (1) shall be submitted on a form furnished by the Service; (2) shall be typewritten or legibly written in English; (3) shall show or be accompanied by documents which show all information requested on the form, or otherwise required by the Service; and (4) shall be signed by the applicant or its chief operating officer.

(e) *Review of conditions and criteria for designation.*—(1) *Application.* Each application for a designation shall be reviewed to determine whether it complies with paragraph (d) of this section. If an application is not in compliance, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not submitted within a reasonable time, as determined by the Service, the application may be dismissed. When an application is dismissed, the Service shall notify the applicant, in writing, of the reason(s) for the dismissal.

(2) *Applicant.* Each applicant for authority to operate as a designated agency shall be reviewed to determine whether the applicant meets the conditions and criteria contained in sections 7(f)(1) (A) and (B) of the Act, § 800.199 of the regulations, and paragraph (g) of this section. The requested designation may be granted if the Service determines that (i) the requested action is consistent with the need for official services; (ii) the applicant meets the conditions and criteria specified in the Act and regulations; and (iii) the applicant is better able than any other applicant to provide official services.

(f) *Area of responsibility.*—(1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service.

(2) *Amending.* A request for an amendment to an assigned area of responsibility shall (i) be submitted to the Service in writing; (ii) specify the change desired; (iii) be signed by the applicant or its chief operating officer; and (iv) be accompanied by the fee prescribed by the Service. The assigned area may be amended if the Service determines that the amendment is consistent with the provisions and objectives of the Act, regulations, and Instructions. Upon a finding of need, the Service may initiate action to change an assigned area of responsibility.

(3) *Specified service points.* An agency may change its specified service points by notifying the Service in advance. Interested persons may obtain a list of specified service points within an agency's area of responsibility by contacting the agency. The list shall include all specified service points and shall identify each specified service point which operates on an intermittent or seasonal basis.

(g) *Responsibilities.*—(1) *Providing official services.* Insofar as practicable, each agency shall be responsible for providing at all locations in its assigned area each service authorized by the designation. An agency may, subject to Service approval, make arrangements with a neighboring agency to provide official services requested infrequently. The agency shall perform all official services according to the Act, regulations, and Instructions in effect at the time of designation of which may be promulgated subsequently.

(2) *Fees.* The agency shall charge fees according to § 800.70.

(3) *Staffing, licensing, and training.*—(i) *General.* The agency shall employ sufficient personnel to provide the official services normally requested in an accurate and timely manner. Each agency shall only use personnel licensed by the Service for the performance of official services and shall train and assist its personnel in acquiring and maintaining the necessary skills. Each

agency shall keep the Service informed of the employment status of each of its licensees and any substantial change in a licensee's duties.

(ii) *State agencies.* State agencies shall employ official personnel on the basis of the job qualifications rather than political affiliations.

(4) *Rotation of personnel.* Where feasible, each agency shall rotate licensees among elevators and other facilities as is necessary to preserve the integrity of the official inspection and weighing systems.

(5) *Supervision.* The agency and its officials shall be responsible for the actions of the official personnel employed by the agency, for direct supervision of the daily activities of such personnel, and for the conduct of official services and related activities at the agency. The agency shall supervise official activities, in accordance with the Act, regulations, and Instructions, and shall take action necessary to ensure that its employees are not performing prohibited functions and are not involved in any action prohibited by the Act, regulations, or Instructions. Each agency shall report to the responsible field office information which shows or may show a violation of any provision of the Act, regulations, or Instructions and information on any instructions which have been issued to agency personnel by Service personnel or by any other person which are inconsistent with the Act, regulations, or Instructions.

(6) *Conflict of interest.*—(i) *General.* Each agency and any officer, director, stockholder, employee, or other related entity shall not have a conflict of interest, as defined in section 11 of the Act and § 800.199 of regulations. A conflict of interest may be waived pursuant to § 800.199(d). The agency shall advise the Service immediately of any proposed change in name, ownership, officers or directors, or control of the agency and, if a trust, any change affecting the trust agreement.

(ii) *Unofficial activities.* The agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

(7) *Facilities and equipment*—(i) *General.* The laboratory and office facilities of each agency shall be: located; equipped; and large enough so that requested services are provided in an orderly and timely manner.

(ii) *Equipment testing.* Each agency shall test the equipment it uses for official services according to the Instructions.

(8) *Security.* Each agency shall provide sufficient security to ensure that official samples, records, equipment, and forms are reasonably secure from theft, alteration, or misuse.

(9) *Certificate control system.* Each agency shall establish a certificate control system for all official certificates it receives, issues, voids, or otherwise renders useless. The system shall provide for (i) recording the numbers of the official certificates printed or received; (ii) protecting unused certificates from fraudulent or unauthorized use; and (iii) maintaining a file copy of each certificate issued, voided, or otherwise rendered useless in a manner that would permit retrieval.

(10) *Records.* Each agency shall maintain the records specified in §§ 800.145–800.155.

(h) *Termination and renewal*—(1) *Triennial.* (i) *Termination.* A designation shall terminate at a time specified by the Administrator, but not later than 3 years after the effective date of the designation. A notice of triennial termination shall be issued by the Service to a designated agency at least 120 calendar days in advance of the termination date. The notice shall provide instructions for requesting renewal of the designation. Failure to receive a notice from the Service shall not exempt a designated agency from the responsibility of having its designation renewed on or before the specified termination date.

(ii) *Renewal.* Designations may be renewed, upon application, in accordance with the criteria and procedures for designation prescribed in section 7(f) of the Act and this section of the regulations. The Administrator may decline to renew a designation if (A) the requesting agency fails to meet or comply with any of the criteria for designation set forth in the Act, regulations, and Instructions, or (B) the Administrator determines that another qualified applicant is better able to provide official services in the assigned area.

(2) *Automatic Termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the designation. The designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(3) *Voluntary cancellation.* An agency may request that its designation be canceled by giving 90 days written notice to the Service.

(4) *Suspension or revocation of designation.*—(i) *General.* A designation is subject to suspension or revocation, under section 7(g)(3) of the Act, by the Service, whenever the Administrator determines that (A) the agency has failed to meet one or more of the criteria specified in section 7(f) of the Act or the regulations for the performance of official functions, or otherwise has not complied with any provision of the Act, regulations, or Instructions, or (B) has been convicted of any violation of other Federal law involving the handling or official inspection of grain.

(ii) *Summary suspension.* The Service may, without first affording the agency (hereafter referred to in this subparagraph as the "respondent") an opportunity for a hearing, suspend a designation or refuse to reinstate a designation when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the designation and considers such action to be in the best interest of the official inspection and weighing system. A suspension or refusal to reinstate a suspended designation shall be effective upon the respondent's receipt of a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall afford the respondent an opportunity for a hearing under paragraph (iii) of this section. The Service may terminate the action if it finds that alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(iii) *Other than summary suspension.* Except as provided in paragraph (h)(4)(ii) of this section, before the Service revokes or suspends a designation, the respondent shall be (A) notified by the Service of the proposed action and the reason(s) therefor, and (B) afforded an opportunity for a hearing in accordacne with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR Part 1, Subpart H). Before initiating formal adjudicatory proceedings, the Service may, at its discretion, afford the respondent an opportunity to present its views on the proposed action and the reasons(s) therefor in an informal conference. If, as a result of the informal conference, a consent agreement is reached, no formal adjudicatory proceedings shall be initiated.

(i) *Provision of services following suspension or termination.* If the designation of an agency is suspended, terminated, or the renewal of a designation is not granted, the Service shall attempt, upon a finding of need, to

arrange for a replacement agency. If a qualified replacement agency cannot be designated on a timely basis, a qualified agency, if available, shall be designated on an interim basis. If a qualified agency is not available on an interim basis, the Service shall provide needed services on an interim basis.

(The information collection requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 0580–0003. The information collection requirements contained in paragraphs (g)(3) and (g)(5) were approved under control number 0580–0006.)

§ 800.197 Approval as a scale testing and certification organization.

(a) *Who may apply.* Any State, local government, or person may request approval to perform scale testing and certification under the Act.

(b) *When and how to apply.* A request for approval to perform scale testing and certification under the Act should be filed with the Service not less than 90 calendar days before the requested action's effective date. A request for approval to perform scale testing and certification shall (1) show or be accompanied by documents which show all information required by the Service; (2) certify that each employee scheduled to perform official scale testing and certification services is competent to test weighing equipment and has a working knowledge of the regulations and Instructions applicable to such services; (3) be accompanied by the fee prescribed in § 800.71; and (4) be signed by the applicant or its chief operating officer.

(c) *Review of applicant.* The review of an applicant for authority to perform scale testing and certification shall include an evaluation of the applicant's policies and procedures for testing and certifying scales for Class X and Class Y weighing.

(d) *Termination.*—(1) *Voluntary.* A scale testing and certification organization may request cancellation of its approval by notifying the Service.

(2) *Suspension of revocation of approval*—(i) *General.* An approval is subject to suspension or revocation whenever the Administrator determines that the approved organization has violated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(ii) *Summary suspension.* The Service may, without first affording the organization an opportunity for a hearing, suspend an approval or refuse to reinstate an approval when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the approval and considers such action to be in the best interest of the official weighing system. A suspension or refusal to reinstate a suspended approval shall be effective when the organization receives a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall give the organization an opportunity for a hearing under paragraph (d)(2)(iii) of this section. The Service may terminate its action if it finds that alternative managerial, staffing, or operational arrangements satisfactory to the Service can be and are made by the organization.

(iii) *Other than summary suspension.* Except as provided in paragraph (d)(2)(ii) of this section, before the Service revokes or suspends an approval, the organization shall be notified by the Service of the proposed action and the reason(s) therefor and shall be given an opportunity for a hearing. Before the Service initiates a hearing, it may, at its discretion, give the organization an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If a consent agreement is reached during the informal conference, no formal adjudicatory proceedings shall be initiated.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0580–0003)

§ 800.198 Contracts.

(a) *Services contracted and who may apply.* The Service may enter into a contract with any person, State, or governmental agency to perform on an occasional basis (1) specified official sampling, laboratory testing, or other similar objective technical activities involved in the testing of grain for official factors or official criteria, and (2) monitoring activities in foreign ports with respect to export grain that has been inspected and weighed under the Act.

(b) *Restrictions*—(1) *Conflict of interest.* A person, State or governmental agency with a conflict of interest prohibited by section 11 of the Act or § 800.199 shall not be eligible to enter into a contract with the Service.

(2) *Appeal service.* An agency or employees of agencies shall not be eligible to enter into a contract with the Service to obtain samples for, or to perform other services involved in, appeal inspection or Board appeal inspection services. However, agencies may forward file samples to the Service in accordance with § 800.154(b).

(3) *Monitoring services.* Agencies, employees of agencies, organizations, employees of organizations, and other persons that regularly provide official services to persons who export grain from the United States are eligible to enter into a contract with the Service to perform monitoring services on export grain in foreign ports only if they are under Service employees' direct supervision during monitoring activities.

(c) *When and how to apply.* An application for a contractual arrangement shall (1) be typewritten or legibly written in English: (2) conform to the invitation to bid or other instructions issued by the Service or be filed on a form furnished by the Service; (3) show or be accompanied by documents which show any information requested by the Service; and (4) be signed by the applicant or its chief operating officer. All contracts shall be issued by the Department and shall follow Departmental procedures.

(d) *Termination and renewal.* A contract with the Service shall terminate annually unless otherwise provided in the contract. A contract may be renewed in accordance with Departmental procedures.

(e) *Cancellation.* A contract may, upon request of the governmental agency or person that entered into the contract with the Service, be canceled by the Department in accordance with the terms of the contract or Departmental procedures and regulations.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 0580–0003)

§ 800.199 Conflict-of-interest provisions.

(a) *Meaning of terms.* For the purpose of this section, the following terms shall have the meaning given for them below:

(1) *Grain business.* The term "grain business" shall include (i) any entity that is engaged in the commercial transportation, storage, merchandising or other commercial handling of grain, which includes: the commercial buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than as a grower of grain or the disposition of inspection samples); the cleaning, treating, or fitting of carriers or containers for transporting or storing of grain; the merchandising of equipment for cleaning, drying, treating, fumigating, or other processing, handling, or storing of grain; the merchandising of grain

inspection and weighing equipment (other than the buying or selling by an agency or official personnel of the equipment for their exclusive use in the performance of their official inspection or Class X or Class Y weighing services); and the commercial use of official inspection and Class X or Class Y weighing services and (ii) any board of trade, chamber of commerce, grain exchange, or other trade group composed, in whole or in part, of one or more such entities.

(2) *Interest.* The term "interest" when used with respect to an individual, shall include the interest of a spouse, minor child, or blood relative who resides in the immediate household of the individual.

(3) *Related.* The term "related" when used in reference to a business or governmental entity means an entity that owns or controls another entity, or is owned or controlled by another entity, or both entities are owned or controlled by another entity.

(4) *Substantial stockholder.* The term "substantial stockholder" means any person holding 2 per centum or more, or 100 shares or more of the voting stock of the corporation, whichever is the lesser interest.

(b) *Prohibited conflicts of interest.* Unless waived on a case-by-case basis by the Administrator under section 11(b)(5) of the Act, the following conflicts of interest for a business or association are prohibited:

(1) *Agency and contractor.* No agency or contractor, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency or contractor, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any grain business or otherwise have any conflict of interest specified in § 800.187(b).

(2) *Grain business.* No grain business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by, or directly or indirectly have any stock or other financial interest in, any agency or contractor.

(3) *Stockholder in any agency or contractor.* No substantial stockholder in any agency or contractor shall be employed in or otherwise engaged in, or be a substantial stockholder in, any grain business, or directly or indirectly have any other kind of financial interest in any such business or otherwise have any conflict of interest specified in § 800.187(b).

(4) *Stockholder of a grain business.* No substantial stockhoder in any grain business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financal interest in, an incorporated agency or contractor.

(5) *Gratuity.* No person described in paragraph (b)(1) of this section shall give to or accept from a person described in paragraph (b)(2) of this section any gratuity, and no person described in paragraph (b)(2) of this section shall give to or accept from a person described in paragraph (b)(1) of this section any gratuity. A "gratuity" is defined in § 800.187(a).

(c) *Exempt conflicts of interest*—(1) *Agency and contractor.* An agency or contractor may use laboratory or office space or inspection, weighing, transportation, or office equipment that is owned or controlled, in whole or in part, by a grain business or related entity when the use of the space or equipment is approved by the Service for the performance of onsite official services under the Act.

(2) *Financial institution.* A bona fide financial institution that has a financial relationship with one or more grain businesses or related entities may have a financial relationship with an agency, contractor, or related agency.

(3) *Grain business.* A grain business or related entity may furnish laboratory or office space or inspection, weighing, transportation, or office equipment for use by an agency, contractor, or field office when use of the space or equipment is approved by the Service for the performance of onsite official inspection or weighing service.

(d) *Disposition of a conflict of interest.* Upon being informed that a prohibited conflict of interest exists in the ownership, management, or operation of an agency and that remedial action is required, the agency shall take immediate action to resolve that conflict of interest and inform the Service of the action taken. An agency which believes that remedial action will cause undue economic hardship or other irreparable harm may request a waiver by forwarding to the Service a written statement setting forth the facts, the circumstances, and the reasons for requesting a waiver.

§§ 800.200–800–208 [Removed]

(Secs. 8, 9, 10, 13, and 18, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2880 and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

Dated: March 17, 1984.

Kenneth A. Gilles,

Administrator,

[FR Doc. 84–8713 Filed 4–3–84; 8:45 am]

BILLING CODE 3410–EN–M

CIVIL AERONAUTICS BOARD

14 CFR Part 255

[Economic Regulations Docket 41686]

Carrier-Owned Computer Reservations Systems

March 1, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Correction to proposed rulemaking.

SUMMARY: This notice corrects an inadvertent error in the statement of the review and termination date in the text of the proposed rule, § 255.10(b), EDR–466C published March 27, 1984 (49 FR 11644) relating to operation of computer reservation systems by airlines.

FOR FURTHER INFORMATION CONTACT: Barry L. Molar (202) 673–5205, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

Supplementary Information

In EDR–466C, 49 FR 11644, the Board proposed to adopt rules governing operation of computer reservation systems by airlines. The Board proposed to include a provision calling for review of the rules and automatic termination of its proposed rules on December 31, 1990 unless specifically extended on the basis of that review. EDR–466C at 62. The termination date was inadvertently stated in the text of the proposed rule itself, § 255.10(b) as December 31, 1991.

On page 11674, first column, § 255.10(b) should be corrected to read as follows:

§ 255.10 Review and termination.

* * * * *

(b) Unless extended on the basis of the review specified above, this rule shall terminate on December 31, 1990.

Dated: March 28, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8821 Filed 4–2–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 100, 182, and 184

[Docket No. 83N-0211]

Copper Gluconate, Copper Sulfate, Cuprous Iodide, and Peptonized Copper; Proposed Actions on GRAS Status as Direct Human Food Ingredients

Correction

In FR Doc. 84-2695 beginning on page 4008 in the issue of Wednesday, February 1, 1984, make the following correction.

On page 4012, third column, second line of § 184.1261(a), the portion of the formula reading "$15H_20$" should have read "$5H_2O$".

BILLING CODE 1505-01-M

21 CFR Part 161

[Docket No. 84N-0023]

Quick-Frozen Shrimps or Prawns; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

Correction

In FR Doc. 84-6184, beginning on page 8627, in the issue of Thursday, March 8, 1984, in the page 8628, in the first column, in paragraph 2.3.3(iv), in the second line, "preparation of" should read "preparation as described in 2.3.3, the peeled segments of".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-279-81]

Incentive Stock Options; Proposed Rulemaking

Correction

In FR Doc. 84-3336 beginning on page 4504 in the issue of Tuesday, February 7, 1984, make the following corrections:

§ 1.422A-1 [Corrected]

1. On page 4507, column two, § 1.422A-1(b)(2), line ten, "form" should read "from".

§ 1.422A-2 [Corrected]

2. On page 4509, column three, § 1.422A-2(b)(4)(i), line thirteen, "limited" should read "limit".

3. On same page, column three, § 1.422A-2(b)(4)(ii), line nine, "Th" should read "The".

4. On page 4512, column one, § 1.422A-2(h)(3), Example (2), line five, "the number of" should appear between "of" and "P".

§ 1.422A-3 [Corrected]

5. On page 4514, column one, § 1.422A-3(a)(2), lines four and five, "converted into incentive stock options, but only if the" should be removed.

§ 1.425-1 [Corrected]

6. On page 4518, column three, § 1.425-1(a)(6), line thirty-two, "entitled" should read "entitling"; also in line thirty-four, "of" should appear between "stock" and "X".

7. On page 4519, column three, § 1.425-1(e)(5)(iii), line eight, "be" should read "by".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Permanent State Regulatory Program of Arkansas

AGENCY: Office of Surface Mining Reclamation and enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Arkansas to promulgate rules governing the training, examination and certification of blasters. On March 9, 1984, Arkansas requested a 120 day extension of time for the submission of its blaster certification regulations. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments not received by May 3, 1984 at the address below, no later than 5:00 p.m. will not necessarily be considered by OSM.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert Markey, Field Office Director, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Field Office Director, Tulsa Filed Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 745-7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Arkansas's program, the applicable date is 12 months after the approval of the State program, or March 4, 1984.

On March 9, 1984, the State of Arkansas submitted to OSM a request for a 120 day extension to submit final rules addressing the blaster certification program. The State's letter stated that the extension was needed for the State regulatory authority (Department of Pollution Control and Ecology) to work out procedures for the development of the program with the Arkansas Department of Labor, which presently certifies Arkansas blasters. The State has indicated a need for additional time in which to develop an adequate program consistent with the requirements of 30 CFR Part 850.

Therefore, OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August

28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328, 91 Stat. 40532).

Dated: March 29, 1984.

Carson W. Culp, Jr.,

Acting Director, Office of Surface Mining.

[FR Doc. 84-8606 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 934

Public Comment Period and Opportunity for Public Hearing on an Amendment to the North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of North Dakota to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The approval was effective upon publication of the notice of conditional approval in the December 15, 1980 **Federal Register** (45 FR 82215–82248). The proposed program amendment consists of proposed provisions to implement a blaster training, examination and certification program as required by the Federal regulations at 30 CFR Part 850.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4 p.m. on May 3, 1984 will not necessarily be considered by OSM. A public hearing on the proposal will be held on April 30, 1984, at the address listed below under "**ADDRESSES.**" Any person interested in making an oral or written presentation at the hearing should contact Mr. William Thomas at the OSM Casper Field Office by 4:00 p.m. on April 18, 1984. If no one has contacted Mr. Thomas to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing will be held at the North Dakota State Capitol Building, Bismark, North Dakota.

Written comments should be mailed or hand-delivered to Mr. William Thomas, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

See "**SUPPLEMENTARY INFORMATION**" for address where copies of the North Dakota program amendment and administrative record on the North Dakota program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644. Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION: Copies of the North Dakota program amendment, the North Dakota program and the administrative record on the North Dakota program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 "L" Street, N.W., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644

North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismarck, North Dakota 58505

Background

The North Dakota program was approved by the Secretary of the Interior on December 15, 1980, conditioned on the correction of 13 minor deficiencies. Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82215–82248), February 9, 1983 **Federal Register** (48 FR 8902), and the November 9, 1983 **Federal Register** (48 FR 51458).

Proposed Amendment

On February 27, 1984, the State of North Dakota submitted to OSM an amendment to its approved permanent regulatory program. The proposed amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of a narrative description of the blaster's training, examination and certification program; proposed regulations governing the use of explosives and the training, examination and certification of blasters; and a comparison of State and Federal regulations for blaster certification.

At the time of the Secretary's approval of the North Dakota program, OSM has not yet promulated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the North Dakota program, the Secretary specified that North Dakota would be required to adopt such provisions following promulgation of the Federal standards (45 FR 82233 December 15, 1980).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). OSM is seeking comment on whether the North Dakota proposed modifications are no less effective than the

requirements of the Federal regulations and satisfy the criteria for approval of State program amendment at 30 CFR 732.15 and 732.17.

The full text of the program modification submitted by North Dakota for OSM's consideration is available for public review at the addresses listed under "ADDRESSES."

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Sec. 503, Pub. L. 95–87 (30 U.S.C. 1253).

Dated: March 29, 1984.

Carson W. Culp, Jr.,

Acting Director, Office of Surface Mining.

[FR Doc. 84–8807 Filed 4–2–84; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Ohio as amendments to the State's permanent regulatory program (hereafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted are proposed changes to the Ohio regulations concerning surface water information required in an underground mining permit application. This notice sets forth the times and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., May 3, 1984, will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Ohio regulatory program. A public hearing on the proposed amendments will be held only if requested. If no one requests a public hearing, none will be held. If only one person requests a public hearing a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record. If a hearing is requested and scheduled, a notice announcing the time and location of the hearing will be announced in the **Federal Register.** Requests for a public hearing should be directed to Ms. Nina Rose Hatfield at the address or telephone number listed below by 4:00 p.m., April 18, 1984.

ADDRESSES: Written comments and requests for a hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240.

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.**

II. Submission of Revisions

By letter dated March 9, 1984, Ohio submitted regulatory amendments to revise the surface water information requirements in an underground mining permit application.

Specifically, the proposed amendments include the following revisions to Ohio rule 1501:13–4–13 *Underground Mining Permit Application Requirements for Information on Environmental Resources:*

(1) Paragraph (E)(2)(a) is revised to require water quantity descriptions including, at a minimum, information on seasonal flow rates; and

(2) Paragraph (E)(2)(b)(vii) is revised to require total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five degrees centigrade.

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulations. If approved, the amendments will become part of the Ohio program.

III. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

Dated: March 29, 1984.

Carson W. Culp, Jr.,

Acting Director, Office of Surface Mining.

[FR Doc. 84-8808 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD5–83–04]

Anchorage Ground; Hampton Roads, VA

Correction

In FR Doc. 84–7725, appearing on page 10678, in the issue of Thursday, March 22, 1984, in the second column, in the fifth line from the bottom, "7°21'21" W. Should read "76°21'12" W.".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking, in accordance with the Alaska National Interest Lands Act (ANILCA), provides a relatively comprehensive regulation concerning cabins and other structures on National Park System lands in Alaska. The rulemaking attempts to provide guidance by addressing the following types of cabin use in park areas:

(1) Use pursuant to a valid existing lease or permit;

(2) Personal occupancy and use by a qualified occupant of a cabin not under valid existing lease or permit;

(3) New cabins and other structures necessary for subsistence uses;

(4) New cabins and other structures otherwise authorized by law;

(5) Use for authorized commercial activities;

(6) General public use;

(7) Use for official government business;

(8) Use of temporary facilities directly and necessarily related to the taking of fish and wildlife;

(9) other uses (including extraordinary hardship).

Consistent with the purposes of the park areas, the intent of today's proposed regulations is to permit both the continuation of appropriate existing cabin use and the development of appropriate new cabin use where the law allows. The Department is persuaded that much existing cabin use in Alaska is compatible with the purposes and values of the park areas. To the extent possible, therefore, the Department is hopeful that this proposed regulation will minimize the regulatory burden on Alaskan residents required by law, but without sacrificing the "due process"—i.e., legal procedures—necessary for protection of these residents' interests.

The Department invites thorough public discussion of these and related issues before promulgation of the final rulemaking.

DATES: Written comments, suggestions, or objections will be accepted until June 4, 1984.

ADDRESS: Comments should be addressed to: Alaska Regional Director, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Roger J. Contor, Alaska Regional Director, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503. Telephone: (907) 271–4196.

SUPPLEMENTARY INFORMATION:

Background

The Alaska National Interest Lands Conservation Act ("ANILCA"), signed into law (Public Law No. 96–487, 94 Stat. 2371, 16 U.S.C. 3101, *et seq.*) on December 2, 1980, contains several provisions which pertain to cabins and other structures on Federal lands in Alaska. In regulations promulgated on June 17, 1981 (46 FR 31836 codified at 36 CFR Part 13), by the National Park Service (NPS), provided interim guidance on certain kinds of cabin use authorized by ANILCA. For the most part, these existing regulations repeat the statutory language and consequently, leave interpretation of the statutory language to field application in individual cases. Thus, in an effort to assure uniform treatment of cabin permit applicants in Alaska park areas, the Alaska Regional Office (ARO) of the National Park Service developed guidelines in 1982 to instruct Superintendents in the issuance of cabin permits. The Citizens Advisory Commission on Federal Areas and other persons raised procedural and substantive questions regarding guidelines. The Department of the Interior also agreed that the guidelines merited additional Departmental review. As a result of this review, the Department proposes to revise § 13.17 of the existing Alaska NPS regulations to provide a relatively comprehensive regulation concerning cabins and other structures in park areas in Alaska.

Throughout this preamble and the proposed regulations, the phrase "park areas" is used in accordance with its definition in 36 CFR 13.1(m) to mean "lands and waters administered by the National Park Service within the State of Alaska."

Section-by-Section Analysis

Section 13.17(a) Administration.

(1) *Policy:* This paragraph declares that the NPS shall manage cabins in Alaska park areas in accordance with applicable with applicable law, particularly ANILCA and the NPS Organic Act (16 U.S.C. 1, *et seq.).*

Sections 1303, 1315, 1316, and 205 of ANILCA pertain directly to cabins. There are other sections of ANILCA that pertain indirectly to cabins, e.g., §§ 201, 202, 203, 801, 802, 810, 1301, and 1313. Title 16 U.S.C. §§ 3193, 3203, 3204, 410hh–4; 410hh, 410hh–1, 410hh–2, 3111, 3112, 3120, 3191, 3201 are also relevant. Several of these statutory sections authorize the use of cabins in park areas, subject to certain conditions and reasonable regulations. No statutory section, however authorizes cabin use

that may cause significant detriment to the principal purpose of the affected park area.

What are the purposes of the park area? Title II of ANILCA, establishes and expands most of Alaska's park areas, and lists several of the purposes, although the list is expressly non-exhaustive. (*1*) For pre-ANILCA park areas, including areas that were subsequently expanded by ANILCA, the various enabling acts, as amended, set forth most of the purposes. (*2*) In addition, the "fundamental purpose" of all units of the National Park System, according to the NPS Organic Act:

"* * * is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations * * * 16 U.S.C. 1: *see also, id.* 1a–1 *et seq.*

With respect to park areas layered with a wilderness designation (*see,* 16 U.S.C. § 1132), the Wilderness Act, as modified by relevant sections of ANILCA, establishes additional purposes for the establishment and management of wilderness areas. *See,* 16 U.S.C. 1131, 1133; ANILCA, section 707. Finally, the various management plans for each park area, *e.g.,* the general conservation and management plan required by 16 U.S.C. 3191 and 1a–7(b), statements for management, specific resource management plans, and land protection plans, shed additional light on the purposes and values of the area.

Section 13.17, as proposed, attempts to provide guidance on most types of cabin use allowed in park areas. Section 13.17(a) includes, as paragraphs (i) through (ix), a list of cabin use categories covered in § 13.17.

(2) *Permittee's Interest Limited to Occupancy and Use:* This paragraph reflects the principle that, to the extent that a trespass structure on parklands is government property, the Federal Government must authorize its alienation, as by sale or exchange. Nothing in these regulations, however, abrogates a permittee's interest in the personal property within a cabin other structure, unless such personal property has been legally abandoned.

(3) *Notice and Comment on Proposed Permit:* This paragraph requires the Superintendent to publish notice and invite public comment for at least thirty days before issuing a permit for cabin use on parklands except short-term (14 days or less) public cabin use. The purpose of this procedure is to elicit competing claims to the cabin as well as additional evidence relevant to the existing claim before the permit is issued. This procedure should aid conflict resolution and improve decisionmaking on cabins with complex or disputed histories of use and occupancy.

(4) *Access:* For cabins and other structures on Federal lands which were not under a valid existing lease or permit on December 2, 1980, the Superintendent will specify resonable methods and routes of access, if necessary, consistent with the purposes and values for which the park area was established. In most cases, the NPS anticipates that the cabin occupant will not have to request special access provisions since section 1110(a) of ANILCA, 16 U.S.C. 3170(a), and the NPS general regulations on access in park areas, 36 CFR 13.10–13.14, establish a liberal "open unless closed" policy concerning most access. *See, also,* proposed 43 CFR 36.11, **Federal Register** notice 48 FR 32515 (July 15, 1983). If the cabin occupant's desired access is restricted, however, the Superintendent will specify the appropriate access in the cabin permit in accordance with traditional NPS authorities and policies. The Superintendent will work with these cabin occupants to determine a mutually acceptable method and route of access to their cabins or structures compatible with park purposes. As § 13.17(a)(4) makes clear, however, those cabin occupants not subject to a valid existing lease or permit on December 2, 1980 and who by definition possess no interest in the land on which their cabins are located—do not qualify for the privilege of guaranteed "adequate and feasible" access granted by section 1110(b) of ANILCA, 16 U.S.C. 3170(b), and implemented by 36 CFR 13.15 (*see, also,* proposed 43 CFR 36.10, 48 FR 32515 (July 15, 1983).

Section 13.17(b) Valid Existing Lease or Permit.

Section 13.17(b), that implements § 1303(d) of ANILCA, 16 U.S.C. 3193(d), applies to valid existing leases or permits in effect at the time of ANILCA's enactment on December 2, 1980, for cabins, homesites, or similar structures on Federal lands in park areas. These cabins are not so-called "trespass" cabins; rather, the leaseholders or permittees to these structures recognized and complied with the legal requirements for cabin occupancy on Federal lands at some point before the enactment of ANILCA. Section 13.17(b) would direct the Superintendent to renew these valid existing leases or permits upon expiration (as long as the expiring lease or permit does not prohibit renewal), unless the Superintendent factually determines that the particular cabin use consititutes a direct threat to, or impairment of, the purposes of the park area. The provisions of the new lease or permit would conform to the provisions of the expiring lease or permit, subject to any modifications or new conditions necessary for protection of the values and purposes of the park area.

Since section 1303(d) of ANILCA does not specifically address revocation of a valid existing lease or permit, the NPS is today proposing in § 13.17(b)(4) a regulatory interpretation of the law. Section 13.17(b)(4)(i) borrows the procedural protections of section 1303(c)(2) of ANILCA to govern revocation of a lease or permit for a "residential structure" i.e., a structure in which the leaseholder or permittee has lived during a "substantial" portion of the term of the lease or permit. With respect to revocation of a lease or permit for a "non-residential structure," § 13.17(b)(4)(ii) uses the less elaborate procedural protections established for lease or permit renewal by section 1303(d) itself, requiring "specific findings following notice and opportunity for the leaseholder or permittee to respond."

Finally, in regard to the transferability of the valid existing lease or permit, in contrast to most other permittees under § 13.17, the § 13.17(b) leaseholder or permittee or his/her estate may transfer (*e.g., sell*) the property interests contained in a valid existing lease or permit to another person.

Section 13.17(c) Personal Occupancy and Use by a Qualified Occupant to a Cabin Not under Valid Existing Lease or Permit.

Section 13.17(c) implements section 1303(a) (1) and (2) of ANILCA, 16 U.S.C. 3193(a) (1) and (2), regarding so-called "trespass cabins" in certain park areas. These "trespass cabins" are cabins on Federal lands in which the occupants have no legal interest for one reason or another, *e.g.,* the lands were closed to entry, the occupants did not file an application for the cabin with the Federal Government, etc. Referring to such cabin occupants, the Senate Committee on energy and Natural Resources said the following:

> While recognizing that many of these occupants hold no legal interest in these sites, it is the intent of the Committee that the Secretary be fair and equitable in his administration of the permitting authority granted under provisions of this Act * * * The Committee intends that the Secretary utilize this permitting system wherever possible and where there is not real conflict or danger to the resources for which the units have been established.

(Senate Report No. 96–413, 96th Cong., 1st Session 304 (1979))

As detailed below, the proposed regulations would authorized the NPS to permit a qualifying "claimant" to continue to use his/her trespass cabin according to a sliding scale of terms and conditions based on the date of the cabin claim and the length of the claimant's occupancy.

Applicability: Section 1303(a) (1) and (2) apply to National Park System units "created or enlarged" by ANILCA. Proposed § 13.17(c)(1) would interpret the quoted phrase as including all park areas except Klondike Gold Rush and Sitka National Historical Parks, whose boundaries were not affected by ANILCA. The Department believes that Congress intended section 1303(a) to be the sole ANILCA provision governing "trespass cabins" in park areas. As a result, the Department has applied traditional park authorities prohibiting residences on parklands to Klondike and Sitka.

It should be noted that, in contrast to today's proposed interpretation, the June 17, 1981 interim regulations interpreted the phrase "unit[s] of the National Park System created or enlarged" by ANILCA to exclude the former (pre-December 2, 1980) Mt. McKinley National Park, Glacier Bay National Monument, and Katmai National Monument, in addition to Klondike Gold Rush and Sitka National Historical Parks. Upon review, however, the Department has decided that the quoted phrase more accurately includes the three former park areas that were enlarged by ANILCA. This proposed interpretation should not have much practical effect since the NPS knows of no "trespass cabins" in its three former park areas (and no subsistence cabins will be permitted under proposed § 13.17(d) since subsistence uses are prohibited in these former park areas). Nevertheless, the Department recognizes that the quoted statutory phrase is not free from ambiguity and, consequently, welcomes comments as to the appropriate interpretation.

Definitions: The proposed regulations would use the definitions of key terms in section 1303(a) (1) and (2) of ANILCA, and particularly the term "claimant," to implement certain limitations which Congress intended to impose on the legitimization of trespass cabins. The statute requires a "claimant" to a cabin or other structure to demonstrate a "possessory interest" in, or "right of occupancy" to, the structure. Congress provided no specific guidance as to the meaning of the terms "claimant," "possessory interest," or "right of occupancy," making definition of the phrases a matter of regulatory interpretation. The statutory terms raise several questions. For example, how can a claimant have a "right" of occupancy to a *trespass* cabin? Is ownership of a woodburning stove or a doorknob in the cabin a sufficient "possessory interest" to entitle a claimant to a cabin permit? As a final example, if two claimants seek permits for occupancy and use of the same cabin based on respective claims of "possessory interest" and "right of occupancy," to whom should the Superintendent award the permit?

Fortunately, Congress' purpose in enacting section 1303(a) (1) and (2), as expressed in the legislative history, suggests meaningful approaches to the definition of these key terms. The legislative history, albeit short, consistently emphasizes Congress' intent to permit the "continued use and occupancy" of the trespass cabins grandfathered by the statute by their "occupants" or "residents," so that these people may carry on their "unique lifestyles." *See* Senate Report No. 413, *supra*. To implement this intent, the NPS proposes to define the key word "claimant" as a person who not only demonstrates a "possessory interest" or "right of occupancy" in the cabin, but who also has *lived in* the cabin or structure during a "substantial portion" of the time since the date of his/her claim. As a general guide, the Department proposes that the phrase "substantial portion of time" means occupancy of the cabin or structure as a place of residence at least 33⅓ percent of the time since the date of the claim (as soon as the cabin was suitable for occupancy) and, in addition, at least four consecutive months each year since January 1, 1979. The Department believes that, consistent with Congressional intent, these residency guidelines will generally preclude occasional recreational cabin users from obtaining permits under this subsection of the regulations, but generally allow "bush" residents to qualify for cabin permits necessary to continuation of their special lifestyles. The Department welcomes comments on whether these particular residency guidelines—33⅓ percent of the claim period and four consecutive months annually in recent years—constitute a reasonable implementation of Congressional intent.

As explained above, the Department has chosen to make the word "claimant" the key to a person's qualification for a cabin permit under § 13.17(c) of the proposed regulations. Conversely, in light of the problems mentioned above, the Department has not attempted to make the definitions of the phrases "possessory interest" and "right of occupancy" critical to a person's cabin permit qualifications. The Department welcomes comments on this regulatory approach.

Permit Terms Dependent on Cabin Age and Occupancy: In general, according to the scheme of section 1303(a) (1) and (2) of ANILCA, the longer a claimant has occupied a "trespass cabin" in a park area, the greater the privileges the claimant may obtain in a cabin permit under § 13.17(c) of the proposed regulations. This statutory scheme no doubt reflects the lengthy tradition of personal use of such cabins, the uncertain status of Federal lands in the late 1960's and early 1970's, and the often substantial investment, in effort if not money, that some claimants have put into their structures. *See,* Senate Report No. 413, *supra;* Senate Committee on Energy and Natural Resources, Transcript of Proceeding (not reviewed for accuracy or edited): Markup Session on S. 9, Alaska Lands, at 134–140 (October 11, 1979) (hereinafter referred to as "Senate Committee Markup"); NPS Alaska National Monuments-General Management Regulations, **Federal Register** notice 44 FR 37732, at 37733–34, 37736–37, 37745–46 (June 28, 1979).

ANILCA's scheme creates two categories of claims eligible for different degrees of privilege under proposed section 13.17(c):

(1) Claims dating from December 18, 1973 or earlier, and

(2) Claims dating between December 18, 1973 and December 1, 1978.

All claims based on a date after December 1, 1978 are eligible for a residential permit under proposed § 13.17(c); however, claimants to these post December 1, 1978 cabins should be aware that they may qualify for a cabin use permit under another provision of the proposed regulations, *e.g.*,, § 13.17(g) concerning public use cabins.

With respect to the first category of residential cabin claims, *i.e.* those based on pre-December 18, 1973 occupancy and use, § 13.17(c)(3)(i) of the proposed regulations would make clear that qualifying claimants to these cabins may obtain a five-year, renewable, nontransferable permit for occupancy and use, as long as such use is compatible with the principal purposes of the affected park area. Upon application and subject to revocation (*see* discussion, below), the Superintendent would renew the permit, with any necessary modifications, every five years until the death of the "last immediate family member of the claimant residing in the cabin or structure under permit." ANILCA,

section 1303(c)(1), 16 U.S.C. 3193(c)(1). Section 13.17(c)(3)(i) of the proposed regulations would define this quoted phrase to mean any person related to the claimant by blood, marriage, or adoption who resides in the cabin under permit during a "substantial portion" of the term of the expiring permit. As a general guideline, the Department again proposes that four consecutive months a year constitutes a "substantial portion of time," but exceptions to this general guideline may be appropriate in such cases as a family member away for school or a clearly temporary or seasonal job. Proposed section 13.17(c)(4)(i)(F) would require the claimant to list in the permit application all family members residing in the cabin for substantial portions of time and to specify respective periods of residence during the expiring term and for the proposed term. The claimant would update this list every five years upon application for renewal of the permit; in addition, the NPS recommends that the permittee contact the Superintendent to update the list as appropriate in light of changed circumstances.

As for the second category of claims, *i.e.*, those based on occupancy and use beginning between December 18, 1973 and December 1, 1978, § 13.17(c)(3)(ii) of the proposed regulations would allow qualifying claimants to these cabins to obtain a one-year, generally nonrenewable, nontransferable permit for occupancy and use, as long as such use is compatible with the principal purposes of the affected park area. Although this category of permit is generally nonrenewable, the Superintendent may nevertheless extend the term of the permit, subject to additional appropriate permit conditions, for such reasons as the Superintendent determines are equitable and just on a case-by-case basis after opportunity for informal hearing upon the permittee's request. In other words, this provision fulfills the legislative intent to give the Superintendent "the discretion to judge cases in which the equity clearly is with those who have put up the cabins." Senate Committee Markup, *supra*, at 139. In a close case, the Superintendent should err on the side of the permittee in order "to permit the continuation of * * * [the claimant's special] lifestyle wherever possible and where there is no real conflict or danger to the resources for which the units have been established." Senate Report No. 413, *supra*.

Permit Applications: Proposed § 13.17(c)(4) sets forth the requirements and procedures for residential permit applications. Present 36 CFR § 13.31, which articulates the procedures for permit application as well as appeal of permit decisions and which is cross-referenced at several points throughout proposed § 13.17(c), reads as follows:

§ 13.31 Permits.

(a) *Application.* (1) Application for a permit required by any section of this part shall be submitted to the Superintendent having jurisdiction over the affected park area, or in the absence of the Superintendent, the Regional Director. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application.

(2) The superintendent shall grant or deny the application in writing within 45 days. If this deadline cannot be met for good cause, the Superintendent shall so notify the applicant in writing. If the permit application is denied, the Superintendent shall specify in writing the reasons for the denial.

(b) *Denial and appeal procedures.* (1) An applicant whose application for a permit, required pursuant to this part, has been denied by the Superintendent has the right to have the application reconsidered by the Regional Director by contacting him/her within 180 days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, which demonstrates the applicant satisfies the criteria set forth in the section under which the permit application is made.

(ii) The basis for the permit applicant's disagreement with the Superintendent's findings and conclusions; and

(iii) whether or not the permit applicant request an informal hearing before the Regional Director.

(2) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearings, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

Abandonment (Permit Application Deadline): In § 13.17(c)(5), the NPS proposes to establish a deadline of December 31, 1985 for permit applications under § 13.17(c). The NPS considers this administrative deadline desirable for two reasons. First, the establishment of an application deadline for these residential cabin permit applications would enable the NPS thereafter to identify cabins not under permit and finalize management plans for these remaining cabins. Cabins are a valuable resource in park areas. Cabins which are not subject to permits under § 13.17 (c) or (b) will be made available to the public for use in emergencies involving the safety of human life (*see*, proposed § 13.17(h)) and, where appropriate, for general use in accordance with a public use allocation system (*see*, proposed § 13.17(g)). In addition, the NPS may designate certain cabins for subsistence use (*see* proposed § 13.17(d)), authorized commercial activities (*see* proposed § 13.17(f)), temporary hunting or fishing use (*see*, proposed § 13.17(i)), official government business, including park administrative purposes (*see* proposed § 13.17(h)), or other authorized use. Second, the establishment of an application deadline for § 13.17(c) cabin permits might work as an administrative tool to reinforce Congress' intent behind these residential cabin permts, *i.e.*, to allow continuation of a special lifestyle rather than occasional use of a private recreational cabin. Since the NPS plans to provide ample and, to the extent possible, personal notice of its cabin regulations to "bush" residents, all potential permitees should know to apply for a permit well before the December 31, 1985 deadline. Of course, proposed § 13.17(c)(5) provides that the Superintendent may extend the permit application deadline in extraordinary cases.

Revocation: Proposed § 13.17(c)(6) would implement section 1303(c)(2) of ANILCA governing revocation of permits. The statute requires notice, hearing, and a determination:

> * * * On the basis of substantial evidence in the administrative record as a whole, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the * * * [park area] was established.
>
> (16 U.S.C. 3193(c)(2))

In the proposed regulation, the NPS has added a second possible reason for revocation, i.e., breach of a permit condition. Furthermore, the NPS has interpreted the statutory language as requiring an adjudicatory hearing upon request if the Superintendent and the permittee cannot beforehand agree to a solution. *See*, 5 U.S.C. 554.

The proposed regulation would require an administrative law judge (ALJ) from the Department's Office of Hearings and Appeals to conduct a trial-type hearing and render to the Superintendent a "recommended decision," based on substantial evidence in the administrative record as a whole. The Superintendent would then review and accept, reject, or modify the "recommended decision," setting forth in writing the basis for the decision. The

proposed regulation would allow the permittee to ask the Regional Director to review the Superintendent's decision pursuant to the procedures of 36 CFR 13.31(b). Under this provision, the permittee first specifies his/her disagreements with the Superintendent's decision. The Regional Director then reconsiders the ALJ's "recommended decision" and the basis for the Superintendent's decision. In addition, if the permittee requests an informal hearing, the Regional Director provides the permittee an opportunty to be heard (this informal hearing is not another adjudicatory hearing). Within a reasonable period of time, the Regional Director affirms, reverses, or modifies the Superintendent's decision in writing, setting forth the basis for this final agency decision.

Section 1303(c)(2) of ANILCA establishes the revocation procedure which the proposed regulations would apply to several types of cabin use permits covered by proposed § 13.17. Accordingly, regulatory language similar to proposed § 13.17(c)(6) also appears in proposed regulations § 13.17(b) (4)(i), (d)(5), and (f)(2). The above explanation of the revocation procedure similarly applies to these three other regulatory provisions.

Section 13.17(d) New Cabins and Other Structures Necessary for Subsistence Uses.

Section 13.17(d) of the proposed regulations would implement the provision in section 1303(a)(4) of ANILCA which authorizes permits for "the temporary use, occupancy, construction, and maintenance of new cabins or other structures * * * necessary to reasonably accommodate subsistence uses." 16 U.S.C. 3193(a)(4). In recognition of the value of the subsistence culture in certain park areas, this provision, among other things, authorizes an exception to the traditional NPS prohibition against construction of new cabins in parks for non-government use. This exception, however, has important limitations reflected in the permit decisionmaking standards of the proposed regulation. For example, as discussed more fully below, the applicant for a subsistence cabin permit must be a "local rural resident"; the subsistence cabin may be located only in locations within park areas where subsistence uses are allowed; the applicant's desired use must involve a legitimate "subsistence use" under ANILCA; the applicant's desired use should be a customary and traditional aspect or outgrowth of the applicant's—and his/her community's—subsistence lifestyle; the Superintendent must decide whether an existing, or less elaborate, structure can "reasonably accommodate" the applicant's subsistence uses; as a general rule, the permit decision should minimize any impact on other local rural residents engaged in subsistence uses; the cabin permit must be compatible with the purposes and values of the affected park area; the period of occupancy under the permit should be limited to only those weeks or months reasonably necessary to accommodate the permittee's specified subsistence uses; the Superintendent must disallow primarily residential or recreational cabin use under the pretense of a subsistence cabin permit.

Applicability: Section 13.17(d)(1) would substantially define the "who," "where," and "for what purpose" criteria of subsistence cabin permits. *Who* may apply for subsistence cabin permits? Only "local rural residents". Present 36 CFR § 13.42(a) defines a "local rural resident" with respect to national parks and monuments as a person who either lives in a designated "resident zone" (*see* 36 CFR 13.42(b), 13.43) or holds a "subsistence permit" (*see* 36 CFR 13.44). In brief, "resident zones" are designated, and "subsistence permits" are issued, on the basis of customary and traditional utilization of park or monument lands for subsistence uses without use of aircraft as a means of access except as permitted under ANILCA. *See* 46 FR 31840–42, 31849–52 (June 17, 1981). Proposed § 13.17(d)(1) would use the same functional approach to defining "local rural residents" in national preserves as present 36 CFR 13.42(a) uses for national parks and monuments, but without the procedural steps of designating resident zones and issuing subsistence permits. Proposal § 13.17(d)(1) would provide the Superintendent alternative grounds for adjudging a person to be a "local rural resident" with respect to a national preserve. Under § 13.17(d)(1), the Superintendent would determine, in his/her best judgment, whether a permit applicant for a subsistence cabin in a preserve maintains legal domicile within or near that preserve. Alternatively, under § 13.17(d)(1)(i)(ii), the Superintendent would determine whether the permit applicant has customarily and traditionally engaged in a pattern of subsistence uses, without use of an aircraft for access, that involves the affected national preserve as a past, or appropriate new, location. It might be noted that the proposed regulations would use the idea that people engaged in subsistence uses generally do not use aircraft for access to subsistence activities. The proposed regulations, as the existing June 17, 1981 regulations, do not prohibit the use of aircraft for access to subsistence uses in national preserves.

Where may subsistence cabins be located? Proposed § 13.17(d)(1) states, subsistence cabins may be located only in park areas, or portions thereof, where subsistence uses are allowed. Present 36 CFR 13.41 lists these areas as the following:

(a) In national preserves;

(b) In Cape Krusenstern National Monument and Kobuk Valley National Park;

(c) Where such uses are traditional (as may be further designated for each park or monument in Subpart C of [36 CFR Part 13] in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the Denali National Park addition.

For what *purpose* may subsistence cabins be requested? The purpose of subsistence cabins is to reasonably accommodate "subsistence uses," as that term is defined in present 36 CFR 13.42(c). *See* detailed discussion at 46 FR 31849–50 (June 17, 1981). In essence, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles from the nonedible by-products of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. The regulatory definition generally conforms to section 803 of ANILCA, 16 U.S.C. 3113, but expands upon it in one aspect in order to provide guidance as to the statutorily-undefined term "customary trade." Present 36 CFR § 13.42(c) limits "customary trade" to the exchange of furs for cash and, in Kobuk Valley National Park and in the southwestern preserve unit of Gates of the Arctic National Park and Preserve, the selling of handicraft articles made from plant materials. With respect to trapping as well as other consumptive uses, the Superintendent must distinguish trapping as a subsistence use, which could warrant a subsistence cabin permit, from commercial or even "recreational" trapping, which could not. The preamble to the June 17, 1981 regulations characterized subsistence trapping as follows:

> With respect to the exchange of furs for cash, trapping furbearers is an integral and

longstanding part of the subsistence lifestyle in many regions of Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to fur trading is intended to provide continuity to the traditional and customary harvest of furbearers by those who are authorized to engage in subsistence uses within * * * [park areas].

46 FR 31849–50 (June 17, 1981)).

Permit Decisionmaking Steps: Section 13.17(d)(3) of the proposed regulations sets forth the following three categories of questions to guide the Superintendent in exercising his/her discretion whether, and under what terms and conditions, to issue a subsistence cabin permit.

(i) *Is a New Cabin "Necessary to Reasonably Accommodate" Subsistence Uses?* Under this first criterion, the Superintendent would examine the subsistence uses at issue to determine whether a cabin or other structure would, in fact, be necessary to the reasonable pursuit of these subsistence uses. The Superintendent would compare the desired subsistence uses with the applicant's past patterns of subsistence uses and future subsistence use plans. In this regard, the possible use of a subsistence cabin in a park area should not serve as an artificial incentive for new patterns of subsistence uses in park areas; rather, it should serve as an accommodation of ongoing subsistence use patterns, including the natural evolution of such patterns. The Superintendent must exercise his/her best judgment in making these difficult distinctions so as to permit subsistence cabin use consistent with an applicant's past and future subsistence patterns as they might have developed in the absence of government regulation.

Also under this first criterion, the Superintendent would analyze the applicant's desired cabin use and associated subsistence uses in light of the affected subsistence community or communities. In this regard, the subsistence culture, and particularly the Native subsistence culture, which Congress recognized as a value of certain park areas, generally depends for its vitality on community custom and tradition. Therefore, the Superintendent should closely scrutinize any permit application which would allow a subsistence activity or use not traditional to a specific location or resource. The Superintendent should also scrutinize closely an application that would adversely affect the subsistence uses of other local rural residents. As with all discretionary cabin permit decisions, the analysis required by §810 of ANILCA, 16 U.S.C. 3120, will facilitate the Superintendent's decisionmaking.

Finally, under this first criterion, the Superintendent would decide whether a structure of any kind requiring a permit would be necessary to accommodate the applicant's subsistence uses in light of custom, tradition, past and future subsistence use patterns, available and reasonable alternatives to either the desired subsistence uses or the desired method of engaging in the subsistence uses. For example, the Superintendent might conclude that a portable wall tent could accommodate the applicant's subsistence uses reasonably, with less departure from custom and tradition, and/or with less impact on other subsistence uses. Or, the Superintendent might conclude that a smaller, less elaborate structure than the one applied for could accommodate the applicant's subsistence uses reasonably.

(ii) *Is a New Cabin Necessary?* Under this second criterion, the Superintendent would allow construction of a *new* cabin on parklands only if a less permanent or disruptive alternative were unavailable. Proposed § 13.17(d)(ii) suggests two categories of generally less intrusive alternatives. One category would include available existing cabins or other structures, either not under permit or under nonexclusive use permits. The second category would include new cabins new cabins or other new structures designed originally for other nonexclusive uses, such as temporary hunting and fishing facilities or public use cabins. If a structure in either of these alternative categories could reasonably accommodate the applicant's subsistence uses—causing no significant hardship for the applicant while reducing the potential impact of a new cabin on the park area—then the Superintendent should authorize use of the alternative structure in the subsistence cabin permit.

(iii) *Should the Permit be Issued?* The ultimate decision on a subsistence cabin application is discretionary with the Superintendent. The Superintendent must evaluate several, sometimes conflicting, management considerations before deciding whether, and/or under what terms and conditions, to issue a subsistence cabin permit. The factors listed in proposed § 13.17(d)(3)(iii) for the Superintendent's consideration are the same factors listed in existing 36 CFR 13.17(c). In the final analysis, the Superintendent's decision must be compatible with the purposes and values of the park area.

Permit Terms: Section 13.17(d)(4) of the proposed regulations focuses on certain permit terms which underscore the circumscribed nature of a subsistence cabin permit. The purpose of a subsistence cabin permit is solely to facilitate a local rural resident's continued participation in subsistence uses consistent with custom and tradition. Toward this end, the Superintendent would tailor the permitted periods of cabin use and occupancy during the year to the applicant's specific plans for subsistence uses. Under no circumstances would the Superintendent permit primarily residential use of cabin or structure under a subsistence permit; rather, a local rural resident would have to obtain a residential cabin permit under the provisions of proposed § 13.17(c) in order to "live in" the cabin. Thus, a particular cabin occupied for a time by local rural resident engaged in subsistence uses in accordance with § 13.17(d) might be available at other times of the year for other uses.

Revocation: As with residential cabin permits under proposed § 13.17(c), section 1303(c)(2) of ANILCA is the statutory provision governing the revocation procedures for subsistence cabin permits. Section 13.17(d)(5) of the proposed regulations implementing this statutory provision, is identical to § 13.17(c)(6) of the proposed regulations. Therefore, see discussion of § 13.17(c)(6), *above*, for an explanation of the substantive and procedural aspects of revocation.

Section 13.17(e) New Cabins and Other Structures Otherwise Authorized by Law.

Section 13.17(e) of the proposed regulations implements language in section 1303(a)(4) of ANILCA concerning specifically authorized structures. Its application is intended to be narrow. An example of its application might include cabin permits for researchers specifically authorized to conduct field studies in park areas.

The NPS proposes to interpret section 1303(a)(4) of ANILCA for "specifically authorized" cabins in § 13.17(e) as it does for subsistence cabins in § 13.17(d). For example, proposed § 13.17(e) would make existing cabins and other structures, not otherwise under permit or under nonexclusive use permits, available for permit for "specifically authorized" use. Furthermore, unless the law unequivocably mandates non-

discretionary issuance of a "specifically authorized" permit, the decisions to issue a § 13.17(e) permit would be discretionary with the Superintendent. In reaching a decision, the Superintendent would examine the same decisionmaking steps expressly outlined in § 13.17(d)(3) of the proposed regulations. The Superintendent would tailor the permit terms narrowly to allow only—but reasonably—for the purpose specifically authorized by law. If revocation of a permit were at issue, the Superintendent would comply with the requirements expressly outlined in § 13.17(d)(5) of the proposed regulations.

Section 13.17(f) Authorized Commercial Activities.

In an attempt to provide a relatively comprehensive index of cabin use on parklands in Alaska, § 13.17(f) of the proposed regulations (1) refers to cabin use authorized under concession contracts, business use licenses, and mining plans of operations, and (2) repromulgates and elaborates upon the existing regulation on cabin use authorized in connection with valid existing commercial fishing rights.

Concessions, Business Uses, and Mining Operations: Section 13.17(f)(1) recognizes that, consistent with the general management plan and/or statement for management for the park area, the Superintendent may permit the use of cabins on parklands in accordance with the terms of a concessions contract or permit (*see* 36 CFR Part 51), a business use license (*see* 16 U.S.C. 20, *et seq.*), or a mining plan of operations (*see* 36 CFR Part 9). Proposed § 13.17(f)(1) does not expressly address the construction of new cabins on parklands in connection with authorized commercial activities. As a general rule, the Superintendent would follow the basic approach of proposed § 13.17(d) with regard to new cabins. The Superintendent would permit the construction of a new cabin or other new structure if (1) no existing structure were available which could adequately and reasonably accommodate the commercial interest's needs with a lesser impact on the values and purposes for which the park area was established, and (2) no other type of new structure (*e.g.*, a temporary facility or a public use cabin) could adequately and reasonably accommodate the commercial interest's needs with a lesser impact on the park area.

Cabins Directly Incident to Certain Commercial Activities: Section 13.17(f)(2) would repromulgate and expand upon the second sentence in existing 36 CFR § 13.21(b). This regulation implements section 205 of ANILCA, 16 U.S.C. 410hh-4, which allows the continuation of valid commercial fishing rights and privileges obtained prior to December 2, 1980, as well as certain directly related uses of parklands, including existing campsites, cabins, and other structures, in Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve.

The proposed regulation would fulfill Congress' direction that:

> • • • The Secretary allow these existing land based facilities to continue • • • [subject to] reasonable regulations to insure that such activities do not result in any permanent or substantial harm to the environment.
>
> (Senate Report No. 413, *supra*, at 172)

The clear intent of section 205 of ANILCA is to grandfather, at their pre-ANILCA level, certain parkland uses directly incident to valid commercial fishing offshore of the specified park areas. "It is not to authorize or permit any significant expansion or new use to occur." *Id.* Proposed § 13.17(f)(2)(ii) would implement this cap at about the 1979 level of similar activities in the general vicinity within the park area and at a level of use which would not jeopardize the park area's purposes.

Please note that the permit revocation provision under proposed § 13.17(f)(2) is identical to proposed § 13.17 (c)(6) and (d)(5). See *above*, therefore, for a discussion of this provision.

Section 13.17(g) General Public Use.

Under the authority of section 1303(a)(3) and section 1315 (c) and (d) of ANILCA and the NPS Organic Act, § 13.17(g) of the proposed regulations provides for the designation and/or establishment of public use cabins in park areas in accordance with the applicable general management plan and/or statement for management. In general, in non-wilderness park areas, the Superintendent would consider available existing cabins (either not under permit or under nonexclusive use permits) and possible new cabins; then, from this pool, the Superintendent could designate and/or establish for public use such cabins as he/she determines necessary for public health and safety or for appropriate enjoyment of the area. In park wilderness areas, the Superintendent would consider available existing cabins as well as a minimal number of possible new cabins, and could then designate and/or establish for public use any cabins deemed necessary for public health and safety. The Superintendent would ensure that new cabins in park areas use only materials which blend in and are compatible with the park landscapes.

The NPS recognizes that the public is concerned over both the removal and the construction of public use cabins in park areas. Proposed § 13.17(g)(1) would require the Superintendent to provide prior notice to the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources concerning the removal of an existing or construction of a new public use cabin in a park area. Notification can be accomplished by sending the committees either a letter on the matter or a copy of the general management plan or statement for management which discusses the matter. This proposed notification requirement would expand upon the notification requirement contained in section 1315(c) of ANILCA so as to apply equally in wilderness and non-wilderness park areas.

Allocation System: Under proposed § 13.17(g)(3), the Superintendent would develop a system for allocating public use cabins among people desiring to use them. Typically, as in most units of the National Park System, the allocation system would provide for short-term use of cabins on, for exaple, a first come, first served basis. The Superintendent would provide information to the public on the system upon request.

Proposed § 13.17(g)(3) suggests a "prior qualified user" option, unique to Alaska, for allocation of certain public use cabins. Where the Superintendent determines that an applicant has persuasively demonstrated a consistent history of use of a particular cabin for at least five years prior to the park area's establishment, the Superintendent may permit the applicant to continue this demonstrated pattern of use. The reasons for this allocation option are equitable: although the applicant may not qualify for or desire an exclusive residental cabin permit under § 13.17(c) of the proposed regulations, he/she may have made a significant investment in the cabin in money or effort, and may have achieved personal identification with the cabin in the local community. The Superintendent would not permit under this provision, however, either a significant expansion of the applicant's past use or more than four months' total annual occupancy. At other times of the year, the cabin would be available for other uses. In addition, the NPS is proposing a December 31, 1985 deadline for first applications for this "prior qualified user" privilege, since applicants genuinely interested in and

identified with a particular cabin should have ample notice and sufficient motivation to apply to the Superintendent by this date.

The Superintendent would exercise management discretion in deciding whether to include this "qualified prior user" privilege in the park area's allocation system, as well as whether to award the privilege to a particular applicant. The Superintendent's decision on these issues is appealable pursuant to the procedures of existing 36 CFR § 13.31(b).

Section 13.17(h) Use for Official Government Business.

Section 13.17(h) of the proposed regulations implements the NPS authority, under section 1303(a)(3) of ANILCA as well as the NPS Organic Act, to establish cabins and other structures for administrative purposes and other official government business. In accordance with the NPS basic approach in these proposed cabin regulations, the Superintendent would first consider for official government purposes existing cabins either not under permit or under nonexclusive use permit. Only where the Superintendent determines that use of existing cabins is infeasible would he/she authorize construction of a new cabin for official government business. As a matter of good public policy, the regulations require the Superintendent to justify in writing the government's need for each official government business cabin.

The superintendent may fulfill this requirement by preparing a separate document on each official government business cabin project or by including a discussion of these projects in the general management plan and/or statement for management for the park area.

Section 13.17(i) Use of Temporary Facilities Directly and Necessarily Related to the Taking of Fish and Wildlife.

Section 13.17(i) of the proposed regulations implements § 1316 of ANILCA which allows use of certain equipment and facilities essential to authorized hunting and fishing activities and compatible with the values and purposes of the affected park areas. This proposed paragraph would extend exceptional accommodation to the hunter or fisher in Alaska who reasonably requires use of a temporary facility in order to pursue an "allowed use" in a park area. The purpose of this provision is to regulate the temporary facilities in order to protect the park area; it is not to regulate the hunting or fishing activity itself.

Applicability: proposed § 13.17(i) would apply only in park areas where the applicant's hunting or fishing activity is permitted. For example, a sport hunter may obtain a temporary facility permit in a national preserve, where sport hunting is allowed, but not in national park or monument, where sport hunting is prohibited. As another example, a sport fisher may obtain a temporary facility permit in a park area, where sport fishing is allowed; however, a commercial fisher may not obtain this permit in most park areas, because commercial fishing is generally prohibited in park areas except where specifically authorized by statute or regulation (*e.g.*, non-wilderness waters of Glacier Bay). Please note that, with regard to certain land-based activities associated with commercial fishing activities off Cape Krusenstern National Monument, the Malaspina Glacier area of Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve, the applicant should apply for a permit pursuant to the specific provisions of proposed § 13.17(f)(2). Similarly, with regard to cabins and other structures necessary to reasonably accommodate subsistence uses, the applicant should apply for a permit pursuant to the specific provisions of proposed § 13.17(d).

Proposed § 13.17(i)(1) would provide guidance on the types of "temporary facilities" encompassed by the regulation. *See* H.R. Rep. No. 97, 96th Cong., 1st Sess. 208 (1979). Proposed § 13.17(i)(1) would also provide guidance on the interpretation of the term "temporary" for purposes of subsection to the regulations. *Cf.* 36 CFR § 13.1(t). The clear meaning of "temporary" is a limited period of time. Section 1316(a) of ANILCA states that the temporary facilites need not necessarily be removed "upon regular or seasonal cessation" of use. Therefore, under permit terms and conditions that will ensure compatibility with the values and purposes of the park area, the Superintendent may authorize a time period longer than the regular or seasonal period of use if the applicant cannot practically remove the facilities upon each cessation of use. Of course, the Superintendent may require regular or seasonal removal if the applicant agrees, seasonal relocation of temporary facilities if necessary for park protection, annual removal if practical, etc.

Permit Decisionmaking Steps: Section 13.17(i)(3) of the proposed regulations sets forth several factors which the Superintendent would consider in determining whether a temporary facility is "directly and necessarily related" to the applicant's hunting or fishing activity and, if so, what type of temporary facility to permit. The Superintendent would consider a temporary facility to be "directly and necessarily related" to an applicant's hunting or fishing activity, for example, if the applicant could not practically engage in the activity "but for" the facility. Consistent with Congress' intent, then, the Superintendent would authorize the minimal facility necessary to accommodate reasonably the applicant's activity. *See* H.R. Rep. No. 97, *supra*. The Superintendent would include in any temporary facility permit whatever terms and conditions would be necessaary to ensure the facility's compatibility with the values and purposes of the park area.

Consistent with the NPS basic approach in these proposed regulations, the Superintendent would not authorize construction of a temporary facility unless no available existing structure could reasonably accommodate the applicant's needs with less impact on the park area. Furthermore, as proposed § 13.17(i)(3)(iii) makes clear, the Superintendent would have discretion to deny an application for significant expansion of existing facilities or uses beyond the pre-ANILCA levels if such expansion would impair the purposes for which the park area was established. ANILCA, § 1316(b).

Permit Terms: As a general rule the Superintendent would include in any temporary facility permit whatever terms and conditions would be necessary to ensure the facility's compatibility with the park area. In addition, § 13.17(i)(4) of the proposed regulations provides some guidance on specific permit terms, *e.g.*, times of use, removal or relocation of facilities, type of construction, expiration of permit.

Revocation: The proposed revocation provision for temporary facility permits is virtually identical to the revocation provisions for valid existing permits for non-residential structures (proposed § 13.17(b)(4)(ii) and public use cabin permits (proposed § 13.17(b)(4)). It would not require an adjudicatory hearing presided over by an administrative law judge. It would require, however, notice and opportunity for the permittee to respond, and specific findings supporting a determination either that a permit term had been breached or that continuation of the permit constituted a direct threat to, or significant impairment of, the purposes of the park area. *Cf.* ANILCA, § 1303(d).

Section 13.17(j) Other Uses—Extraordinary Hardship.

This final subsection of the proposed regulations authorizes the Superintendent to deal equitably with extraordinary hardship cases so long as issuance of a cabin permit would neither threaten the park area nor violate a statutory prohibition. Under the proposed regulation, the extraordinary hardship special use permit would be rare.

(1) The applicant would have to show his/her inability to obtain a cabin permit under any other § 13.17 category.

(2) The applicant would have to demonstrate an established pattern of using a specified structure for legitimate, nonrecreational, noncommercial purposes.

(3) The applicant would have to show a continued need to use the structure for these purposes.

(4) The Superintendent would have to find that the applicant would suffer "extraordinary hardship" if he/she were prohibited from continuing to use the structure.

Furthermore, the terms of an extraordinary hardship special use permit would be limited. For example, the permit term could not exceed two years, and the Superintendent could revoke the permit on thirty days' notice.

The Department welcomes comments on this proposal for an extraordinary hardship special use permit.

Footnotes

(1) *Purpose of ANILCA Park Areas:* For the areas established or expanded by ANILCA, Title II provides in pertinent part as follows: "Section 201 * * * (1) Aniakchak National Monument * * * and Aniakchak National Preserve * * * shall be managed for the following purposes, among others: to maintain the caldera and its associated volcanic features and landscape, including the Aniakchak River and other lakes and streams, in their natural state; to study, interpret, and assume continuation of the natural process of biological succession; to protect habitat for, and populations of, fish and wildlife, including, but not limited to, brown/grizzly bears, moose, caribou, sea lions, seals, and other marine mammals, geese, swans, and other waterfowl and in a manner consistent with the foregoing, to interpret geological and biological processes for visitors.

"(2) Bering Land Bridge National Preserve * * * shall be managed for the following purposes, among others: To protect and interpret examples of arctic plant communities, volcanic lava flows, ash explosions, coastal formations, and other geological processes; to protect habitat for internationally significant populations of migratory birds; to provide for archeological and paleontological study, in cooperation with Native Alaskans, of the process of plant and animal migration, including man, between North America and the Asian Continent; to protect habitat for, and populations of, fish and wildlife including, but not limited to, marine mammals, brown/grizzly bears, moose, and wolves; subject to such reasonable regulations as the Secretary may prescribe, to continue reindeer grazing use, including necessary facilities and equipment, within the areas which on January 1, 1976, were subject to reindeer grazing permits, in accordance with sound range management practices; to protect the viability of subsistence resources; and in a manner consistent with the foregoing, to provide for outdoor recreation and environmental education activities including public access for recreational purposes to the Serpentine Hot Spring area."

"(3) Cape Krusenstern National Monument * * * shall be managed for the following purposes, among others: To protect and interpret a series of archeological sites depicting every known cultural period in arctic Alaska; to provide for scientific study of the process of human propulation of the area from the Asian Continent; in cooperation with Native Alaskans, to preserve and interpret evidence of prehistoric and historic Native cultures; to protect habitat for seals and other marine mammals; to protect habitat for and populations of, birds, and other wildlife, and fish resources; and to protect the viability of subsistence resources."

"(4)(a) Gates of the Arctic National Park * * * [and] Gates of the Arctic National Preserve * * * shall be managed for the following purposes, among others: To maintain the wild and undeveloped character of the area, including opportunities for visitors to experience solitude, and the natural environmental integrity and scenic beauty of the mountains, forelands, rivers, lakes, and other natural features; to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering, and other wilderness recreational activities; and to protect habitat for and the populations of, fish and wildlife, including, but not limited to, caribou, grizzly bears, Dall sheep, moose, wolves, and raptorial birds."

"(5) Kenai Fjords National Park * * * shall be managed for the following purposes, among others: To maintain unimpaired the scenic and environmental integrity of the Harding Icefield, its outflowing glaciers, and coastal fjords and islands in their natural state; and to protect seals, sea lions, other marine mammals, and marine and other birds and to maintain their hauling and breeding areas in their natural state, free of human activity which is disruptive to their natural processes."

"(6) Kobuk Valley National Park * * * shall be managed for the following purposes, among others: To maintain the environmental integrity of the natural features of the Kobuk River Valley, including the Kobuk, Salmon, and other rivers, the boreal forest, and the Great Kobuk Sand Dunes, in an undeveloped state; to protect and interpret, in cooperation with Native Alaskans, archeological sites associated with Native cultures; to protect migration routes for the Arctic caribou herd; to protect habitat for, and populations of, fish and wildlife including but not limited to caribou, moose, black and grizzly bears, wolves, and waterfowl; and to protect the viability of subsistence resources."

"(7)(a) Lake Clark National Park * * * and Lake Clark National Preserve * * * shall be managed for the following purposes, among others: To protect the watershed necessary for perpetuation of the red salmon fishery in Bristol Bay; to maintain unimpaired the scenic beauty and quality of portions of the Alaska Range and the Aleutian Range, including active volcanoes, glaciers, wild rivers, lakes, waterfalls, and alpine meadows in their natual state; and to protect habitat for and populations of fish and wildlife including but not limited to caribou, Dall sheep, brown/grizzly bears, bald eagles, and peregrine falcons."

"(8)(a) Noatak National Preserve * * * shall be managed for the following purposes, among others: To maintain the environmental integrity of the Noatak River and adjacent uplands within the preserve in such a manner as to assure the continuation of geological and biological processes unimpaired by adverse human activity; to protect habitat for, and populations of, fish and wildlife, including but not limited to caribou, grizzly bears, Dall sheep, moose, wolves, and for waterfowl, raptors, and other species of birds; to protect archeological resources; and in a manner consistent with the foregoing, to provide opportunities for scientific research."

"(9) Wrangell-Saint Elias National Park * * * and Wrangell-Saint Elias National Preserve * * * shall be managed for the following purposes, among others: To maintain unimpaired the scenic beauty and quality of high mountain peaks, foothills, glacial systems, lakes, and streams, valleys, and coastal landscapes in their natural state; to protect habitat for, and populations of, fish and wildlife including but not limited to caribou, brown/grizzly bears, Dall sheep, moose, wolves, trumpeter swans and other waterfowl, and marine mammals; and to provide continued opportunities, including reasonable access for mountain climbing, mountaineering, and other wilderness recreational activities."

"(10) Yukon-Charley Rivers National Preserve * * * shall be managed for the following purposes, among others: To maintain the environmental integrity of the entire Charley River basin, including streams, lakes and other natural features, in its undeveloped natural condition for public benefit and scientific study; to protect habitat for, and populations of, fish and wildlife, including but not limited to the peregrine falcons and other raptorial birds, caribou, moose, Dall sheep, grizzly bears, and wolves; and in a manner consistent with the foregoing, to protect and interpret historical sites and events associated with the gold rush on the Yukon River and the geological and paleontological history and cultural prehistory of the area."

"Section 202 * * * (1) * * * Glacier Bay National Preserve [and] 'Glacier Bay National Park' * * * shall be managed for the following purposes, among others: To protect a segment of the Alsek River, fish and wildlife habitats and migration routes, and a

portion of the Fairweather Range including the northwest slope of Mount Fairweather."

"(2) * * * Katmai National Preserve [and] 'Katmai National Park' * * * shall be managed for the following purposes, among others: To protect habitats for, and populations of, fish and wildlife including, but not limited to, high concentrations of brown/grizzly bears and their denning areas; to maintain unimpaired the water habitat for significant salmon populations; and to protect scenic, geological, cultural and recreational features."

"(3)(a) * * * Denali National Preserve [and] Denali National Park * * * shall be managed for the following purposes, among others: To protect and interpret the entire mountain massif, and additional scenic mountain peaks and formations; and to protect habitat for, and populations of fish and wildlife including, but not limited to, brown/grizzly bears, moose, caribou, Dall sheep, wolves, swans and other waterfowl; and to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering and other wilderness recreational activities."

(*2*) *Purposes of Pre-ANILCA Park Areas: See, e.g.*, Sitka National Historical Park, Proc. No. 959 (March 23, 1910), Proc. No. 2965 (Feb. 25, 1952), 16 U.S.C. § 2, note; Katmai National Monument, Proc. No. 1487 (Sept. 24, 1918), Proc. No. 1950 (April 24, 1931), Proc. No. 2177 (June 15, 1936), Proc. No. 2564 (Aug. 4, 1942), Proc. No. 3890 (Jan 20, 1969), Proc. No. 4619 (Dec. 1, 1978); Glacier Bay National Monument, Proc. No. 1733 (Feb. 26, 1925), Proc. No. 2330 (April 18, 1939), Proc. No. 4618 (Dec. 1, 1978); Klondike Gold Rush National Historical Park, 16 U.S.C. § 410bb: Mount McKinley National Park, 16 U.S.C. 347, *et seq.*

Additional Issues

As stated previously, this proposed rulemaking attempts to provide a relatively comprehensive regulation concerning cabins and other structures on National Park System lands in Alaska. It does not address cabins on private lands within park areas. The Department realizes that the proposed rulemaking does not cover every issue concerning cabins on parklands that will arise in Alaska. For example, the proposed rulemaking does not address whether, or according to what rate, rental should be charged for each type of cabin use on parklands in Alaska. In addition, it does not address fees for cabin permit applications. The Department welcomes comments on these and all other cabin issues not expressly covered in the proposed rulemaking.

Public Participation

The Department encourages public participation in the development of these regulations. Interested persons may submit written comments and suggestions about the proposed regulations to the address noted at the beginning of this rulemaking. To aid the Department in the review and analysis of public comments, any person wishing to comment should address each regulation separately, preferably in a separate paragraph. The Department specifically requests draft or revised regulatory language in the instances where the commenter judges the proposed regulation to be inadequate, or on issue on which the proposed rule is silent.

Public hearings on these proposed regulations will be held following publication of these proposed regulations in the **Federal Register**. Specific locations, dates and times will be announced later in the **Federal Register** and in local publications.

Drafting Information

The primary author of these proposed regulations is Molly N. Ross, Division of Conservation and Wildlife, Office of the Solicitor, Washington, D.C.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3504(h)

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order No. 12291 (46 FR 13193, February 19, 1981). The Department certifies that the regulations proposed in this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* nor does it require the preparation of a regulatory analysis. The Department makes this finding because the proposed regulations will impose no significant costs on any class or group of small entities.

As required by the National Environmental Policy Act (42 U.S.C. 4332, *et seq.*), the National Park Service has prepared an environmental assessment and finding of no significant impact. Copies of these documents are available at the address listed at the beginning of this rulemaking.

Listing of Subjects in 36 CFR Part 13

Aircraft, Alaska, National parks, Penalties, Traffic regulations.

Authority: Act of August 25, 1916 (39 Stat. 535, as amended,) 16 U.S.C. 1, *et seq*; Act of December 2, 1980 (94 Stat. 2371), 16 U.S.C. 3101.

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter 1 by revising § 13.17, paragraphs (a) through (d) as follows:

1. Section 13.17 is revised to read as follows:

§ 13.17 Cabins and other structures.

(a) *Administration.*—(1) *Policy.* It is the policy of the National Park Service to manage cabins in park areas in accordance with the language and intent of ANILCA, the National Park Service Organic Act (16 U.S.C. 1, *et seq.*), and other applicable law. Except as Congress has directly and specifically provided to the contrary, the use and disposition of cabins in park areas shall be compatible with the values and purposes for which these park areas have been established. In accordance with this policy, this section governs all authorized types of cabin use in park areas, as follows:

(i) Use pursuant to a valid existing lease or permit;

(ii) Personal occupancy and use by a qualified occupant to a cabin not under valid existing lease or permit;

(iii) New cabins and other structures necessary for subsistence uses;

(iv) New cabins and other structures otherwise authorized by law;

(v) Use for authorized commercial activities;

(vi) General public use;

(vii) Use for official government business;

(viii) Use of temporary facilities directly and necessarily related to the taking of fish and wildlife;

(ix) Other uses.

(2) Permittee's Interest Limited to Occupancy and Use. A cabin or other structure on park lands may not be sold, bartered, exchanged, or included as a portion of any sale or exchange of other property by the permittee unless specifically authorized by law. A permittee shall not accrue any compensable interest in a cabin or other structure on park lands unless specifically authorized by law.

(3) *Notice and comment on proposed permit.* Before a permit for a cabin or other structure is issued pursuant to this section, the Superintendent shall publish notice of the proposed issuance of the permit in the local media and provide a public comment period of at least thirty days, subject to the following exception: prior notice and comment is not required for permits authorizing short-term occupancy and use (i.e., 14 days or less) of a public use cabin under § 1317(g).

(4) *Access.* Permittees under § 13.17 (c), (d), (e), (g), (i), (j), who hold permits to cabins or other structures not under valid existing leases or permits in effect on December 2, 1980, on public lands in park areas, shall not be deemed to hold a "valid property or occupancy interest" for purposes of ANILCA § 1110(b) and the regulations on "Access to Inholdings" implementing ANICLA § 1110(b). Permits granted under these subsections shall provide such reasonable access as the Superintendent deems appropriate, consistent with the purposes and values for which the park area was established.

(b) *Valid existing lease or permit.* This paragraph applies to valid existing leases or permits in effect on December 2, 1980, for a cabin, homesite, or similar structure on federally owned land in park areas.

(1) Renewal. Except as otherwise provided in § 13.17(b)(3) the Superintendent shall renew valid existing renewable leases or permits upon their expiration. The provisions of the new lease or permit shall conform to the provisions of the existing lease or permit, subject to any modifications or new conditions which the Superintendent deems necessary for protection of the values and purposes of the park area. The leaseholder or permittee may ask the Regional Director to reconsider any provision of the new lease or permit to which the leaseholder or permittee objects pursuant to the procedures set forth in § 13.31(b).

(2) *Transfer.* Subject to any prohibitions or restrictions on transfer in the existing lease or permit, the Superintendent may transfer a valid existing lease or permit to another person at the election or death of the named leaseholder or permittee if the Superintendent determines that such transfer is compatible with the values and purposes of the park area. The leaseholder or permittee (or his/her legal representative) may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(3) *Denial of renewal.* The Superintendent shall not renew a valid existing renewable lease or permit if the Superintendent determines, based upon specific findings following notice and opportunity for the leaseholder or permittee to respond, that renewal constitutes a direct threat to, or a significant impairment of, the purposes for which the park area was established. The leaseholder or permittee may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(4) *Revocation*—(i) *Residential structures.* The superintendent may revoke a valid existing lease or permit for a cabin, homesite, or similar residential structure in which the leaseholder or permittee has lived in substantial portion (at least 33⅓ percent) of time under the lease or permit if the Superintendent decides that:

(A) A condition of the lease or permit has been breached, or

(B) The use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established.

The Superintendent shall attempt to reach a decision with the agreement of the leaseholder or permittee. If the Superintendent cannot reach agreement with the leaseholder or permittee, and the leaseholder or permittee submits a written request for a hearing, the matter shall be assigned to an administrative law judge who, after notice and hearing and based on substantial evidence in the administrative record as a whole, shall render a "recommended decision" for the Superintendent's review. The Superintendent shall accept, reject, or modify the administrative law judge's "recommended decision," in whole or in part, setting forth in writing the basis for his/her decision. The leaseholder or permittee may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(ii) *Non-residential structures.* The Superintendent may revoke a valid existing lease or permit for a cabin, homesite, or similar structure in which the leaseholder or permittee has not lived a substantial portion (at least 33⅓ percent) of time under the lease or permit if the Superintendent determines, based upon specific findings following notice and opportunity for the leaseholder or permittee to respond, that:

(A) A term of the lease or permit has been breached, or

(B) Continuation of the permit constitutes a direct threat to, or significant impairment of, the purposes for which the park area was established. The leaseholder or permittee may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(c) *Personal occupany and use by a qualified occupant to a cabin not under valid existing lease or permit.*

(1) *Applicability.* This paragraph provides procedures and guidance for claimants who do not have an existing lease or permit to existing cabins and other residential structures in certain park areas. Unless otherwise specified, this paragraph applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(2) *Definitions.* As used in this section, the following terms mean:

"Claimant" means a person who has a "possessory interest" or "right of occupancy" in a cabin or other structure and who has lived in the cabin or structure during a substantial portion of the time since the date of the claim. The Superintendent shall determine what constitutes a "substantial portion of time" on a case-by-case basis in light of the permit applicant's particular circumstances. As a general guide, "substantial portion of time" shall mean occupancy of the cabin or structure as a place of residence at least 33⅓ percent of the time since the date of the claim (as soon as the cabin or structure was suitable for occupancy) and, in addition, at least four consecutive months in each year since January 1, 1979.

"Possessory Interest" means the partial or total ownership of the cabin or structure.

"Right of Occupancy" means residency in the cabin or structure.

(3) *Permit terms dependent on cabin age and occupancy.*—(i) *Pre-December 18, 1973 cabins.* Cabins and other residential structures in existence and suitable for occupancy on or before December 18, 1973, may be occupied and used by the claimants of these structures pursuant to a renewable, nontransferable five-year permit, unless revoked pursuant to § 13.17(c)(6). This permit shall be renewed upon request every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. For purposes of this paragraph, the term "last immediate family member of the claimant residing in the cabin or structure under permit" means any person related to the claimant by blood, marriage or adoption residing with the claimant within his/her cabin or structure under permit during a substantial portion of the time (i.e., at least four consecutive months a year, as a general rule) during the term of the expiring permit.

(ii) *December 18, 1973–December 1, 1978 cabins.* Cabins and other residential structures in existence suitable for occupancy between December 18, 1973, and December 1, 1978, may be occupied and used by the claimant to these structures pursuant to a nonrenewable, nontransferable one-year permit, unless revoked pursuant to § 13.17(c)(6). The Superintendent may extend the term of the permit upon

request for an additional period, subject to additional appropriate permit conditions, for such reasons as the Superintendent determines are equitable and just on a case-by-case basis after an opportunity for informal hearing.

(iii) Post-December 1, 1978 cabins. Cabins and other residential structures in existence and suitable for occupancy only after December 1, 1978 shall not be available for personal occupancy and use under this subsection.

(4) *Permit applications.*—(i) *Content.* In an application for a permit (or removal of a permit) for a cabin or other residential structure under this paragraph, a claimant must do the following:

(A) Reasonably demonstrate proof of possessory interest or right of occupancy in the cabin or structure by affidavit, bill of sale, or other documentation;

(B) Submit a sketch or photograph that accurately depicts the cabin or structure;

(C) Submit a map that shows the geographic location of the cabin or structure;

(D) Agree to vacate and remove all personal property from the cabin or structure upon expiration of the permit;

(E) Acknowledge that he/she has no legal interest in the real property on which the cabin or structure is located;

(F) Demonstrate that he/she has lived in the cabin or structure during a substantial portion of time since the date of the claim (or during the term of the expiring permit, as appropriate); and

(G) Submit a list of all persons residing with the claimant within his/her cabin or structure who might in the future qualify as the "last immediate family member to the claimant residing in the cabin or structure" as the quoted phrase is defined in § 13.17(c)(3)(i). This list should also include an accurate account of the periods of residency in the cabin or structure for each person on the list.

(ii) *Procedure.* The procedures set forth in § 13.31 shall govern permit applications under this paragraph, except that the applicant may not exercise the option of presenting application requirements in § 13.17(c)(4)(i)(B)(C)(E) orally.

(5) *Abandonment (permit application deadline).* Any existing cabin not under lease or permit on December 2, 1980, and for which no permit application has been received pursuant to this paragraph on or before December 31, 1985, shall be considered abandoned. The Superintendent may extend this permit application deadline for a reasonable period of time only where the permit applicant demonstrates that extraordinary circumstances prevented timely application.

(6) *Revocation.* The Superintendent may revoke a permit issued pursuant to § 13.17(c)(3) (i) or (ii) if the Superintendent decides that a term of the permit has been breached, or the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent shall attempt to reach a decision with the agreement of the permittee. If the Superintendent cannot reach agreement with the permittee, and the permittee submits a writtem request for a hearing, the matter shall be assigned to an administrative law judge who, after notice and hearing and based on substantial evidence in the administrative record as a whole, shall render a "recommended decision" for the Superintendent's review. The Superintendent shall accept, reject, or modify the administrative law judge's "recommended decision," in whole or in part, setting forth in writing the basis for his/her decision. The permittee may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(d) *New cabins and other structures necessary for subsistence uses.*—(1) *Applicability.* This paragraph provides procedures and guidance for local rural residents who determine that the construction, temporary use, occupancy, reconstruction, and/or maintenance of a cabin or other structure is necessary to reasonably accommodate their subsistence uses, as defined in § 13.42(c). This paragraph applies to park areas, or portions thereof, where subsistence uses are allowed, as outlined in § 13.41. For purposes of this paragraph, the term "local rural resident" is defined, with respect to national parks and monuments, in § 13.42(a). With respect to national preserves, the term "local rural resident" shall mean either of the following:

(i) Any person who has his/her primary, permanent home within or near the national preserve and, whenever absent from this primary, permanent home, has the intention of returning to it; or

(ii) Any person who does not qualify under paragraph (d)(1)(i) of this section, but who nevertheless can demonstrate that,

(A) Without using aircraft as a means of access for purpose of taking fish and wildlife for subsistence uses, the person has (or is a member of a family—as defined in § 13.44(c)—which has) customarily and traditionally engaged in subsistence uses within the national preserve; or

(B) The person is a local rural resident (or meets the requirements of paragraph (d)(1)(ii)(A) of this section for another park area, and there exists a pattern of subsistence uses (without use of an aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses) between the park area which the person has previously utilized and the national preserve in which he/she now wishes to engage in subsistence uses.

(2) *Permit application.*—(i) *Content.* A local rural resident who determines that construction, temporary use, occupancy, reconstruction, and/or maintenance of a cabin or other new structure is necessary to reasonably accommodate his/her subsistence uses, may apply for a permit under this paragraph by submitting an application which contains the following information:

(A) An explanation of the applicant's need for the cabin or structure;

(B) A description of past, present, and future subsistence uses of the applicant relevant to his/her need for the cabin or structure;

(C) A blueprint, sketch, or photograph of the cabin or structure;

(D) A map that shows the geographic location of the cabin or structure;

(E) A description of the types of occupancy and schedule for use of the cabin or structure.

(ii) Procedure. The procedures set forth in §13.31 shall govern permit applications under this paragraph, except that the applicant may not exercise the option of presenting application requirements in § 13.17(d)(2)(i)(C)(D) orally.

(3) *Permit decisionmaking steps.* (i) Is a cabin "necessary to reasonably accommodate" the applicant's subsistence uses? In making a decision on the permit application, the Superintendent shall determine whether a cabin or structure is "necessary to reasonably accommodate" the applicant's subsistence uses by examining the applicant's particular circumstances, including but not limited to his/her past patterns of subsistence uses and his/her future subsistence use plans, reasonable subsistence use alternatives consistent with the applicant's experience, the specific nature of the subsistence uses to be accommodated by the cabin or structure, and the impacts of the cabin or structure on other local rural residents who depend on subsistence uses.

(ii) *Is a new cabin necessary?* The Superintendent shall permit the

construction of a new cabin or other new structure under this paragraph only if:

(A) No existing cabin or structure is available which would adequately and reasonably accommodate the applicant's subsistence uses without significant hardship and with a lesser impact on the value and purposes for which the park area was established, and;

(B) No other type of new cabin or other new structure provided for in this section (e.g., a temporary facility under § 13.17(i) or a public use cabin under § 13.17(g) can adequately and reasonably accommodate the applicant's subsistence uses with a lesser impact on the values and purposes for which the park area was established.

(4) *Permit terms.* (1) A permit issued under this paragraph shall allow for occupancy and use during the harvest or gathering of subsistence resources, at such times as may be reasonably necessary to prepare for a harvest season (e.g., opening or closing the cabin or structure at the beginning or end of a period of use), and at any other times reasonably necessary to accommodate the permittee's specified subsistence uses. A permit under this paragraph shall not allow for primarily residential or recreational use.

(ii) A permit issued under this paragraph shall remain in effect for a reasonable period of time specified in the permit (not to exceed five years). Renewal of the permit requires submission of a new application pursuant to § 13.17(d)(2).

(5) Revocation. The Superintendent may revoke a permit issued under this paragraph if the Superintendent decides that:

(i) A term of the permit has been breached, or

(ii) The use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established.

The Superintendent shall attempt to reach a decision with the agreement of the permittee. If the Superintendent cannot reach agreement with the permittee, and the permittee submits a written request for a hearing, the matter shall be assigned to an administrative law judge who, after notice and hearing and based on substantial evidence in the administrative record as a whole, shall render a "recommended decision" for the Superintendent's review. The Superintendent shall accept, reject, or modify the administrative law judge's "recommended decision," in whole or in part, setting forth in writing the basis for his/her decision. The permittee may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(3) *New cabins and other structures otherwise authorized by law.* The Superintendent may issue a permit under this paragraph for the construction, temporary use, occupancy, reconstruction, and/or maintenance of a cabin or other structure which is specifically authorized by law but not governed by any other paragraph in this section.

(f) *Authorized commercial activities.* (1) Concessions, business uses, and mining operations. Consistent with the general management plan and/or statement for management for the park area, the Superintendent may authorize use of cabins and other structures (not otherwise under permit), if appropriate, in accordance with the terms of a concessions contract or permit (*see,* 36 CFR Part 51), a business use license, or a plan of operations for mining activities (*see,* 36 CFR Part 9).

(2) *Cabins directly incident to certain commercial fishing activities.*—(i) *Continuation of existing uses.* With respect to Cape Krusenstern National Monument, the Malaspina Glacier area of Wrangell-Saint Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve, the exercise of valid commercial fishing rights or privileges obtained prior to December 2, 1980, pursuant to existing law—including use of park area lands for existing campsite, cabins, and other structures, motorized vehicles, and aircraft landing on existing airstrips, all of which use is directly incident to the exercise of such rights or privileges—may continue, unless the Superintendent determines, based upon specific findings following notice and opportunity for response, that continuation of such use of park area lands constitutes a direct threat to, or significant impairment of, the purposes for which the park area was established.

(ii) *Expansion of uses.* Should the person holding the valid commercial fishing right or privilege wish to expand his/her use of park area lands beyond the level of such use during 1979, he/she may apply to the Superintendent for a permit to do so. The Superintendent may deny the permit, or otherwise restrict the use of park area lands directly incident to the exercise of such rights or privileges, if the Superintendent determines, after conducting a public hearing in the affected locality, that such use constitutes either:

(A) A significant expansion of the use of park area lands beyond the level of such use during 1979 (taking into consideration the relative levels of use in the general vicinity, not just the applicant's relative levels of use), or

(B) A direct threat to, or significant impairment of, the purposes for which the park area was established.

(iii) *Permit terms.* A permit issued under this paragraph may provide that the permittee shall remove his/her campsites and temporary facilities from the park upon termination of his/her exercise of the valid commercial fishing right or privilege involving park area lands.

(iv) *Revocation.* The Superintendent may revoke a permit issued under this paragraph if the Superintendent decides that:

(A) A term of the permit has been breached, or

(B) The use of park area lands under the permit constitutes a direct threat to, or significant impairment of, the purposes for which the park area was established.

The Superintendent shall attempt to reach a decision with the agreement of the permittee. If the Superintendent cannot reach agreement with the permittee, and the permittee submits a written request for a hearing, the matter shall be assigned to an administrative law judge who, after notice and hearing and based on substantial evidence in the administrative record as a whole, shall render a "recommended decision" for the Superintendent's review. The Superintendent shall accept, reject, or modify the administrative law judge's "recommended decision," in whole or in part, setting forth in writing the basis for his/her decision. The permittee may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(g) *General public use.*—(1) *Public use cabins.* For purposes of this paragraph, public use cabins may include any existing cabin or shelter determined necessary for the protection of the public health and safety or, in nonwilderness park areas only, for the appropriate enjoyment of the park area. A new cabin shall be constructed only of materials which blend with, and are compatible with, the immediate and surrounding park landscapes. The Superintendent shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources concerning his/her intention to remove an existing cabin or to construct a new public use cabin in a park area.

(2) *Use of public use cabins.* The Superintendent may designate cabins and other structures not otherwise under permit (or under permit for a part of the

year only) for the use of the general public in accordance with the general management plan and/or statement for management for the park area (*see* ANILCA, § 1301). The Superintendent shall mark these public use cabins with a sign and shall maintain a map and list of them in the Superintendent's office. During emergencies involving the safety of human life, public use cabins (and other cabins not otherwise under permit) may be used for protection and shelter.

(3) *Allocation system.* The Superintendent shall develop a system for allocating the use and occupancy of designated public use cabins among the general public wishing to use them. In general, the allocation system shall provide for short-term (e.g., 1–14 days) occupancy for persons using the park for recreational or other purposes. However, the allocation system may also provide a preferential, nontransferable privilege for a "qualified prior user" of a specified cabin or structure to continue to use the cabin or structure for the same period of time during the year (not to exceed four months) as he/she has historically used it. For purposes of this paragraph a "qualified prior user" is a person who can demonstrate a regular annual pattern of using the cabin or structure over the course of five years of more prior to the park area's establishment. To be considered for preferential privilege a "qualified prior user" must present the Superintendent:

(i) Proof of his/her past use pattern, including time of year and length of stay;

(ii) A blueprint, sketch, or photograph of the cabin or structure; and

(iii) A map which shows the geographic location of the cabin or structure.

The Superintendent need not consider any request for a preferential privilege under this paragraph made for the first time after December 31, 1985. Decisions of the Superintendent made under this paragraph may be appealed to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(4) *Revocation.* The Superintendent may revoke a permit issued under this paragraph if the Superintendent determines, based upon specific findings following notice and opportunity for the permittee to respond, that:

(i) A term of the permit has been breached, or

(ii) Continuation of the permit constitutes a direct threat to, or significant impairment of, the purposes for which the park area was established. The permittee may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(h) *Use for official government business.* The Superintendent may designate any cabin or other structure not under permit for purposes of official government business, including, but not limited to, park administrative purposes, in accordance with the general management plan and/or statement for management for the park area (*see* ANILCA, § 1301). Prior to designating a cabin for official government business, the Superintendent shall justify the government's need for the cabin in writing. During emergencies involving the safety of human life, these government cabins may be used for protection and shelter.

(i) *Use of temporary facilities directly and necessarily related to the taking of fish and wildlife.*

(1) Applicability. This paragraph provides guidance and procedures for the use of temporary facilities directly and necessarily related to hunting or fishing in park areas, or portions thereof, in which such hunting or fishing is permitted. For purposes of this paragraph:

(i) The term "temporary facilities" shall include temporary campsites, tent platforms, shelters, and other temporary facilities and equipment directly and necessarily related to the applicant's hunting or fishing activities, but shall not include cabins or other structures primarily for residential use;

(ii) The term "temporary" means a limited period of time, but may include periods of time longer than twelve months in appropriate circumstances.

(2) *Permit application.*—(i) *Content.* Any person who reasonably requires use of a temporary facility to carry out his/her legitimate hunting or fishing activities may apply for a permit under this paragraph by submitting an application which contains the following information:

(A) An explanation of the applicant's need for the temporary facility, including a description of the applicant's hunting or fishing activities relevant to his/her need for the facility;

(B) A diagram, sketch, or photograph of the temporary facility;

(C) A map that shows the geographic location of the temporary facility;

(D) A description of both the past use (if any) and the desired use of the temporary facility, including a schedule for its use.

(ii) *Procedure.* The procedures set forth in § 13.31 shall govern permit applications under this subsection, except that the applicant may not exercise the option of presenting application requirements in § 13.17(i)(2)(i)(B)(C) orally.

(3) *Permit decisionmaking steps.* (i) Is the temporary facility "directly and necessarily related to" the applicant's legitimate hunting or fishing activities? In making a decision on the permit application, the Superintendent shall determine whether a temporary facility is "directly and necessarily related to" the applicant's legitimate hunting or fishing activities by examining the applicant's particular circumstances, including, but not limited to his/her reasonable need for a temporary facility and reasonable alternative (if any) consistent with the applicant's needs.

(ii) What type of facility is necessary? The Superintendent shall authorize the minimal facility necessary to reasonably accommodate the allowed uses of the applicant. The Superintendent shall permit use of an existing temporary facility or construction of a new temporary facility only if no alternative existing facility or structure is available which would adequately and reasonably accommodate the applicant's needs without significant hardship and with a lesser impact on the values and purposes for which the park area was established.

(iii) Should the permit be issued? If the Superintendent concludes that a temporary facility is "directly and necessarily related to" the applicant's legitimate hunting or fishing activities, then the Superintendent shall issue a permit compatible with the purposes and values for which the park area was established, subject to the following discretionary exception:

(A) With respect to a new temporary facility, the Superintendent may deny the permit if the Superintendent determines, after notice to the applicant and opportunity for the applicant to respond, that the establishment and use of a new temporary facility would constitute

(*1*) A significant expansion of existing facilities or uses beyond their pre-ANILCA levels, and

(*2*) This significant expansion would be detrimental to the purposes for which the park area was established (including the wilderness character of any wilderness area within the park area). In making his/her decision under this paragraph, the Superintendent shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, search activities, protection of cultural and scientific values, subsistence uses, endangered or threatened species conservation, and other management

considerations necessary to ensure that the new facility is compatible with the purposes for which the park area was established.

(4) *Permit terms.* (i) A permit issued under this paragraph shall allow for use of a temporary facility only to the extent that such facility is directly and necessarily related to the permittee's hunting or fishing activities. The permit shall provide that the temporary facility be used and maintained in a manner consistent with the protection of the park area in which it is located, as may be further specified in the permit. As a general rule, use under the permit shall be limited to a specified term not to exceed the relevant hunting or fishing season and such brief periods as may be necessary to maintain the facility before and after the season.

(ii) A permit issued under this paragraph may provide that the permittee shall remove any temporary facilities from the park area upon termination of the permittee's hunting or fishing activities and related use of the facilities. The permit may specify a date by which the facilities must be removed based upon the description of the permittee's activities and needs contained in the permit. This removal date may be at the end of each season of use if appropriate, or if the permittee agrees to such regular or seasonal removal; otherwise, the removal date shall be at the end of a period of use when the permittee has no present plans for continued use in the reasonable future (e.g., within the next three years). Notwithstanding the above provisions on removal, the permit may require reasonable seasonal relocation of the temporary facilities in order to protect the values and purposes for which the park area was established.

(iii) If the Superintendent determines that a new temporary facility is necessary, it shall be constructed, used, and maintained in a manner consistent with the protection of the park area in which it is located, as specified in the permit. For example, a new facility must be constructed of materials which blend with, and are compatible with, the immediately surrounding landscape.

(iv) A permit issued under this paragraph shall remain in effect for a reasonable period of time (not to exceed three years).

(5) *Revocation.* The Superintendent may revoke a permit issued under this paragraph if he/she determines, based upon specific findings following notice and opportunity for the permittee to respond, that:

(i) A term of the permit has been breached, or

(ii) Continuation of the permit constitutes a direct threat to, or significant impairment of, the purposes for which the park area was established. The permittee may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth in § 13.31(b).

(j) *Other uses.* (1) *Extraordinary hardship.* Any person who does not meet the requirements for a cabin use permit under one of the foregoing categories, but who nevertheless has an established pattern of using specified cabin or other structure for legitimate nonrecretional, noncommercial purposes and continues to need to use the cabin or structure for such purposes, may apply to the Superintendent for a permit. If the Superintendent finds that the applicant will suffer extraordinary hardship if he/she is prohibited from continuing to use the cabin or structure, the Superintendent may issue a special use permit (not to exceed two years in term, revocable on 30 days notice) to accommodate the applicant's needs so long as:

(i) The use is compatible with the values and purposes for which the park area was established, and

(ii) The use is not specifically prohibited by law.

(2) *Revocation.* The Superintendent may revoke a special use permit issued under this paragraph if the Superintendent determines, based upon specific findings following notice and opportunity for the permittee to respond, that:

(i) A term of the permit has been breached, or

(ii) Continuation of the permit is incompatible with the values and purposes for which the park area was established, or

(iii) The land is needed for government purposes. The permittee may appeal the Superintendent's decision to the Regional Director pursuant to the procedures set forth at § 13.31(b).

(3) *Other uses prohibited.* Occupancy and use of cabins or other structures in park areas, except as specifically authorized under § 13.17, is prohibited.

2. In § 13.21, paragraph (b) is revised to read as follows: § 13.21 Taking of fish and wildlife.

* * * * *

(b) *Fishing.* Fishing is permitted in all park areas in accordance with applicable State and Federal law, and such laws are hereby adopted and made part of these regulations to the extent they are not inconsistent with § 2.3 of this chapter.

* * * * *

Dated: March 19, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-8617 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2557-1]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve, as revisions to the California State Implementation Plan (SIP) amended permit fee rules of the Monterey Bay Unified Air Pollution Control District. The California Air Resources Board submitted these rules for incorporation into the SIP.

DATE: Comments must be received by May 3, 1984.

ADDRESSES: Written comments should be addressed to the EPA Region 9, Air Programs Branch (address below). Copies of the rules are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95814

Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906.

FOR FURTHER INFORMATION CONTACT: Thomas Rarick, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1983, the California Air Resources Board (ARB) submitted to EPA permit fee Rules 300 "Permit Fees" and 301 "Permit Fee Schedules" for the Monterey Bay Unified Air Pollution Control District (APCD)

On November 18, 1983 (48 FR 52451) EPA announced the availability of these SIP revisions along with revisions for several other counties in California and took final action to approve them. In

that notice, EPA advised the public that it was deferring the effective date of its approval for 60 days. EPA announced that, if within 30 days of the publication of the approval notice EPA received notice that someone wished to submit adverse or critical comments, EPA would withdraw the approval and begin a new rulemaking by proposing the action and establishing a 30-day comment period. EPA also published a general notice announcing this special procedure on September 4, 1981. (See 46 FR 44476.)

On December 8, 1983, a comment letter was received by EPA from the law offices of Pillsbury, Madison, & Sutro which objected to EPA's approval of the two rules on behalf of Lone Star Industries and requested a comment period.

EPA did not receive notice or comments from the public on the approval of the other revisions to the California SIP, as listed in the **Federal Register** of November 18, 1983 (48 FR 52451).

Discussion

The revision to Rule 300, "Permit Fees", increases the fees for the filing of permits and adds a "New Source Evaluation Fee" for any applicant whose permit application is subject to the provisions of Rule 207.

The revision to Rule 301, "Permit Fee Schedules", increases the fees for fuel burning equipment, incinerators, stationary containers, internal combustion engines and miscellaneous equipment.

Section 110(a)(2)(k) of the Clean Air Act as amended requires that the State Implementation Plan require that the owner or operator of each major stationary source pay a permit fee. The permit fee should be sufficient to cover the reasonable costs of reviewing and acting upon any application for such a permit, and implementing and enforcing the terms and condition of any such permit. These rules meet and perhaps exceed the minimum requirements of Section 110(a)(2)(k). Section 116, however, requires EPA to approve any stricter measures that a State chooses to impose.

Proposed Action

In accordance with the procedure described above, EPA proposes to approve Rules 300 and 301. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Regulatory Process

Elsewhere in today's **Federal Register**, EPA is taking final action to withdraw its November 18, 1983 approval of Rules 300 and 301 of the Monterey Bay Unified APCD. Other rules addressed in the November 18, 1983 notice remain approved. Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: Sections 110(a), 116 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7416, and 7601(a)).

List of Subjects in 40 CFR Part 52:

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbon.

Dated: February 21, 1984.

John Wise,

Acting Regional Administrator.

[FR Doc. 84-8802 Filed 4-2-84; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 49, No. 65
Tuesday, April 3, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Policy and Technical Advisory Committees on Science and Education Research Grants

Notice is hereby given that the Secretary of Agriculture proposes to reestablish the Policy Advisory Committee and the Technical Advisory Committee on Science and Education Research Grants. The purpose of the Policy Advisory Committee is to advise the Secretary with respect to areas of agricultural research to be supported, priorities to be adopted, and procedures to be followed in implementing programs of research grants to be awarded competitively. The purpose of the Technical Advisory Committee is to advise the Secretary of Agriculture on the relative technical and scientific research grant applications submitted to Science and Education of the U.S. Department of Agriculture. The activities of the Technical Advisory Committee may be accomplished primarily through subcommittees consisting of peer scientists in areas of research to be funded.

Both Advisory Committees will meet at least annually in Washington, D.C.

It has been determined that the reestablishment of these Advisory Committees is in the public interest in connection with the work of the U.S. Department of Agriculture.

The Committee Management Secretariat, GSA, has approved a less than 15-day appearance of this notice in the **Federal Register** pursuant to the filing of the Charter for the Policy and Technical Advisory Committees for the Science and Education Research Grants Program to enable the Technical Advisory Committee to conduct its previously scheduled meeting on April 4–6, 1984.

Interested parties are invited to submit written comments, views, or data concerning this proposal to Edgar L. Kendrick, Administrator, Office of Grants and Program Systems, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., this 29th day of March 1984.

John J. Franke, Jr.,
Assistant Secretary for Administration.

[FR Doc. 84-8679 Filed 4-2-84; 8:45 am]
BILLING CODE 3410-MT-M

Office of Grants and Program Systems

Subcommittee for Biological Stress on Plants; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Biological Stress for Plants (Entomology) of the Technical Advisory Committee for Science and Education Research Grants Program.
Date: April 4–6, 1984.
Time: 9:00 a.m. to 5:00 p.m.
Place: U.S. Department of Agriculture, Room 024 West Auditors Building, Washington, D.C.

Purpose of Subcommittee

To provide advice and recommendation concerning support for research in the Biological Stress on Plants (Entomology) program.

Agenda

To review and evaluate research proposals and projects as part of the selection process for awards.
Type of meeting: Closed.

Reason for Closing

The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), the Government in the Sunshine Act.

Authority to Close Meeting

This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92-463.

Contact Person

Anne Holiday Schauer, Associate Chief, Competitive Research Grants Office, Office of Grants and Program Systems, Room 112, West Auditors Building, Washington, D.C. 20251.

This notice appears in a less than 15-day notice period prior to the meeting since the review of this Committee by the General Services Administration, in progress since February 28, 1984, was recently completed on March 29, 1984. On February 23, 1984, the Department notified GSA that a review of this Committee would need to be completed prior to the April 4, 1984, meeting.

Done at Washington, D.C., this 29th day of March 1984.

Anne Holiday Schauer,
Executive Secretary, Subcommittee for Biological Stress on Plants.

[FR Doc. 84-8678 Filed 4-2-84; 8:45 am]
BILLING CODE 3410-MT-M

Packers and Stockyards Administration

Ozarks Regional Stockyard; Posted Stockyard

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock market named below is a stockyard within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owner and to the public by posting notices at the stockyards as required by said section 302, on respective date specified below.

Facility No., name, and location of stockyard	Date of posting
MO-260 Ozarks Regional Stockyard West Plains, Missouri.	Mar. 20, 1984

Done at Washington, D.C., this 28th day of March, 1984.

Jack W. Brinckmeyer,
Chief, Financial Protection Branch Livestock Marketing Division.

[FR Doc. 84-8786 Filed 4-2-84; 8:45 am]
BILLING CODE 3420-02-M

CIVIL AERONAUTICS BOARD

[Order 84-3-118; Dockets 39251, 41721, 41769]

Order To Show Cause; Dallas/Ft. Worth-Brazil, et al.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause.

SUMMARY: The Board proposes to suspend the certificate authority of American Airlines to serve Dallas/Ft. Worth-Brazil, activate the back-up authority of Capitol to serve San Juan-Brazil, and dismiss the applications of Arrow Air, and Eastern Air Lines to serve Miami-Brazil.

Objections: All interested persons having objections to the Board's tentative findings and conclusions, as described in the order cited above, shall, no later than April 5, 1984, file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 39251, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428) and mail copies to all affected carriers and the Departments of State and Transportation.

A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board will issue an order which will make final the Board's tentative findings and conclusions and issue the proposed certificate.

To get a copy of the complete order, request it from the C.A.B. Distribution Section Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5432. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: William J. Wagner (202) 673–5514, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 28, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8624 Filed 4–2–84; 8:45 am]

BILLING CODE 6325–01–M

London-Frankfurt Route Proceeding; Prehearing Conference

[Docket 42056]

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on April 17, 1984 at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., March 27, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84–8625 Filed 4–2–84; 8:45 am]

BILLING CODE 6325–01–M

Order Establishing International Cargo Rate Flexibility Policy

The Board, by Policy Statement PS–109, effective February 27, 1983, adopted a policy of not suspending international cargo rate changes within a specified zone, except in extraordinary circumstances. That policy, implemented by Regulation ER–1322, effective February 27, 1983 (14 CFR Part 221), eliminates the requirement of economic justification for international cargo rates which are within Board established zones of flexibility. As stated in ER–1322, the Board has taken action to allow air carriers to respond more quickly to changing costs and competitive conditions.

In establishing the SFRL for the two-month period starting April 1, 1984 we have projected nonfuel costs based on the year ended September 30, 1983 and have determined fuel prices on the basis of experienced monthly fuel cost levels.

By Order 84–3–119 cargo rates may be increased by the following adjustment factors over the April 1, 1982, level:

Atlantic 1.0203
Western Hemisphere 1.0584
Pacific .9384

Copies of the Borad's order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact: John D. Coakley, (202) 673–5196.

By the Civil Aeronautics Board: March 28, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–8626 Filed 4–2–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Wholesale Inventory Valuation Supplement.

Form Numbers: Agency—B–350; OMB—0607–0183.

Type of Request: Extension of Expiration Date of Currently Approved Collection.

Burden: 2,800 respondents; 232 reporting hours.

Needs and Uses: This survey is conducted to determine the amount of wholesale inventory valued by different accounting methods in the monthly wholesale trade survey. Wholesale firms use different methods of valuation to calculate inventories. This survey will also determine how much total inventory was derived using each method. The Bureau of Economic Analysis uses information from this survey to compute change in the business inventory component of the gross national product (GNP). Nongovernmental users analyze the inventory statistics to forecast future developments in business activity.

Affected Public: Business of other for-profit institutions; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Timothy Sprehe. 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collecion should be sent to Timothy Sprehe, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84–8775 Filed 4–2–84; 8:45 am]

BILLING CODE 3510–DW–M

International Trade Administration

[A–301–004]

Fresh Cut Roses From Colombia: Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for respondents in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) 19 U.S.C. 1673d(a)(2)(A)); and, that we have determined to postpone our final determination as to whether sales of fresh cut roses from Colombia have

occurred at less than fair value, until not later than July 27, 1984.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Paul Thran, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377–4929 or 377–3963.

SUPPLEMENTARY INFORMATION: On October 26, 1983, the Department of Commerce published notice in the **Federal Register** (48 FR 49530) that it was initiating under section 732(b) of the Act (19 U.S.C. 1673(b)), an antidumping investigation to determine whether fresh cut roses from Colombia were being, or were likely to be, sold at less than fair value. On March 14, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 9597). The notice stated that if this investigation proceeded normally we would make our final determination by May 22, 1984.

On March 13 and March 28, 1984, counsel for respondents in this case requested that we extend the period for the final determination until July 27, 1984, 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it publishes notice of its preliminary determination if the exporters who account for a significant proportion of the merchandise request an extension after an affirmative preliminary determination. Accordingly, we will issue a final determination in this case not later than July 27, 1984.

The date for the public hearing originally scheduled for March 30 is being changed. If requested, we will hold a public hearing on April 5, 1984, at 10:00 a.m. in room 4830, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230. This notice is published pursuant to section 735(b) of the Act.

Dated: March 28, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-8619 Filed 4-2-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-401]

Bars and Shapes From Mexico; Initiation of Countervailing Duty Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of certain deformed concrete reinforcing bars, hot-rolled carbon steel bars, and hot-rolled carbon steel bar-size shapes (bars and shapes), as described in the "Scope of Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before June 6, 1984.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Terry Link or Mary Jenkins, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–0189 or 377–1756.

SUPPLEMENTARY INFORMATION:

Petition

On March 13, 1984, we received a petition from the Labor-Management Committee for Fair Foreign Competition, Inc., on behalf of U.S. producers of bars and shapes who represent a major proportion of that industry. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufactures, producers, or exporters in Mexico of bars and shapes receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). Also, critical circumstances have been alleged under section 703(e) of the Act.

"Since Mexico is not a "country under the Agreement" and the merchandise is dutiable" the critical circumstances provision is not applicable." Therefore, under section 303(b)(3) of the Act the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on bars and shapes, and we have found that the petition meets the requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in Mexico of bars and shapes, as described in the "Scope of Investigation" section of this notice, receive bounties or grants. Since Mexico is not a "country under the Agreement" and this investigation is under section 303 of the Act, the critical circumstances provision is not applicable (see section 303(b)(3)). Accordingly, we will take no further action on the critical circumstances allegation. If our investigation proceeds normally, we will make our preliminary determination by June 6, 1984.

Scope of Investigations

The products covered by these investigations are certain deformed concrete reinforcing bars, hot-rolled carbon steel bars, and hot-rolled carbon steel bar-size shapes. For a further description of these products, see Appendix A of this notice.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Mexico of bars, and shapes receive the following benefits which constitute bounties or grants:

- Fund for the promotion of exportation of Mexican manufactured products (FOMEX)
- Industrial equipment fund providing credit for the production of exports (FONEI)
- Mexican foreign trade institute (IMCE)
- Tax rebates for exports through tax rebate certificates (CEDIs)
- Import duty reduction and exemption
- Preferential federal tax credits (CEPROFI)
- State tax incentives and provision of land on favorable terms
- Investment and development incentives for exports through the Fund for Medium and Small Business (FOGAIN); Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN);

National Fund for Industrial Promotion (FOMIN); and National Preinvestment Fund for Studies and Projects (FONEP)
- Preferential prices for natural gas, oil, and electricity
- Iron ore and coal at preferential terms
- National Financiera, S.A. (Nafinsa)
- Article 94 loans
- Dual exchange rates
- Provision of equity and other benefits by virture of government ownership and control
- Wage controls
- Port facilities
- Subsidized rail transportation
- Plant security

In addition, we will include in these investigations the Mexican government programs which, in prior cases, we have found might confer countervailable benefits; i.e., preferential federal and state investment incentives; government financed technology development, preferential vessel, freight, and terminal benefits; and investment credits for new machinery. We are not investigating the following:

- Petitioner alledged that FOMEX lends to banks which give credits at preferential terms and interest rates to Mexican consumer durable goods' dealers in border regions to purchase Mexican goods at wholesale. Bars and shapes are not in the category of durable consumer goods to which these benefits apply.
- Petitioner alleged that export credit under FOMEX, is available to companies which purchase Mexican made capital goods as substitutes for imported capital goods. From petitioner's description of this program if there is any benefit, it flows to the producers of Mexican capital goods (not bar and shape producers) who become more competitive with respect to imports of their products. Consequently, we are not investigating this allegation.
- Petitioner alleged that Mexican manufacturers are provided with commerical risk insurance at preferential rates by the Mexican company for security of credit (COMESEC). We found this not to be a subsidy in our *Final Affirmative Countervailing Duty Determination on Certain Iron-Metal Construction Castings (certain castings) from Mexico* (48 FR 8834). Such a program is countervailable if the premium charged is inadequate to cover the long-term operating costs of the program. Petitioner did not allege this to be the case and has presented no new facts to alter our view of this program.
- Petitioner also alleged that Mexican companies are allowed to temporarily import, duty-free, raw materials not available in Mexico which are used for the production of exports. We found this not to be a subsidy in our final determination on certain castings from Mexico, and petitioner has provided no new information to alter our view of this program.
- Petitioner alleged that the construction industry and other industries, receive special rates or favorable methods of taxation. Petitioner did not allege a relationship between the construction industry or any other benefiting industry, and the manufacturers of bars and shapes. Furthermore, petitioner did not demonstrate that benefits received by any of these industries have been passed through to the manufacturers of bars and shapes. Therefore, we will not investigate this allegation.
- Finally, petitioner alleged that certain areas have been declared free zones into and from which merchandise and equipment may be moved on a temporary basis without the payment of customs duties if the latter are re-exported or consumed in processing re-exported items. We found this not to be a subsidy in our final determination on certain castings from Mexico, and petitioner has presented no new facts to alter our view of this program.

Dated: March 28, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix A—Product Description

1. the term "certain deformed concrete reinforcing bars" cover hot-rolled steel bars, of solid cross-section, having deformations of various patterns on their surfaces; as currently provided for in items 606.7900 and 606.8100 of the *Tariff Schedules of the United States Annotated* (TSUSA).

2. the term "hot-rolled carbon steel bars" covers hot-rolled carbon steel products of solid section not conforming completely to the respective specification given in the headnotes to Schedule G, Part 2, Subpart B of the TSUSA for blooms, billets, slabs, sheet pads, wire rods, plates, sheets, strip, wire, rails, joint bars or tie plates which have cross-sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons; as currently provided for items 606.8310, 606.8330, 606.8350, and 606.8600 of the TSUSA. Includes flat hot-rolled carbon steel products in coils or cut to length with a width of 8 inches or less and a thickness of 0.1875 inch or more.

3. the term "hot-rolled carbon steel bar-size shapes" covers hot-rolled carbon steel angles, shapes and sections, not drilled, not punched and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule G, Part 2, Subpart B of the TSUSA for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates or any tubular products set forth in the USUSA having a maximum cross-sectional dimension of less than 3 inches, as currently provided for in items 609.6050, 609.6070 or 609.6090. This definition includes carbon steel angles, channels, special secions and other assorted carbon steel shapes with a maximum cross sectional dimension of less than 3 inches.

[FR Doc. 84-8820 Filed 4-2-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings with Partially Closed Session and Public Meetings of its Scientific and Statistical Committee, Salmon Plan Development Team, Salmon Advisory Subpanel, Groundfish Advisory Subpanel, Groundfish Task Force, Budget Committee, and Indian Affairs Committee

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meetings with partially closed session.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Pacific Fishery Management Council (Council), its Scientific and Statistical Committee (SSC), Salmon Plan Development Team (SPDT), Salmon Advisory Subpanel (SAP), the joint Groundfish Advisory Sub panel/Task Force (GAP), Indian Affairs Committee, and Budget Committee. The Council was established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–625, as amended), and the Council has established a SSC, planning teams, advisors, and committees to assist the Council in carrying out its responsibilities.

DATES: April 10–12, 1984.

ADDRESS: The meetings will be held at the Holiday Inn—San Francisco Airport, 245 South Airport Blvd., So. San Francisco, CA 94080.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S. W. Mill Street, Portland, OR 97201, (503–221–6352).

SUPPLEMENTARY INFORMATION: *Agendas*—Council (open session)—April 11–12, 1984, (8 a.m. April 11, 8:30 April 12, to completion of scheduled

agenda items each day) in the Maple Ballroom. The Council will consider its FY85 budget proposal, hear a summary of public hearings on the 1984 ocean salmon management measure options, an analysis of those options from the SPDT and comments from the SSC, SAP, the public, state and federal agencies and the Indian Affairs Committee, adopt ocean salmon management measures for 1984, consider a groundfish landing system across management area boundaries amenable to enforcement people and fishermen, consider mid-season adjustment in groundfish management measures and other matters that are brought before the council. A public comment period is scheduled for 4 p.m., Wednesday, April 11, 1984.

Council (closed session)—April 12, 1984 (8 a.m.–8:30 a.m.) in the Maple Ballroom. This session is scheduled contingent upon the need to discuss litigation or pesonnel matters. Only those Council members and staff having security clearance will be allowed to attend this closed session.

SSC—April 10–11, 1984 (10 a.m. to 5 p.m., April 10; 8 a.m. to 5 p.m., April 11) in the Rosewood room. Review the SPDT analysis of the 1984 ocean salmon management measure options adopted by the Council for public review, review the status of the 1984 groundfish fishery and a mid-season adjustment in that fishery recommended by the Groundfish Management Team and the GAP and other matters that may be referred to the Committee, and prepare recommendations for the Council. All sessions are open to the public. A public Comment period is scheduled for 3 p.m., April 10, 1984.

SAP—April 10, 1984, 10 a.m. to 5 p.m. in the Maple room. To discuss the SPDT analysis of the 1984 ocean salmon management measures adopted by the Council for public review and other matters that may be referred to the panel, and prepare recommendations for the Council. All sessions are open to the public. A public comment period is scheduled for 1 p.m.

GAP—April 10, 1984, 10 a.m. to 5 p.m. in the Cyprus room. This joint meeting of the Groundfish Advisory Subpanel and ad hoc Groundfish Task Force will discuss a report from the ad hoc Groundfish Landings System group; review the GMT status report on the 1984 groundfish fishery and recommendations for a mid-season adjustment in that fishery; consider the report on the role of groundfish advisors and other matters that may be referred to this joint group and prepare recommendations for the Council. All sessions are open to the public. A public comment period is scheduled for 2 p.m.

SPDT—April 10–12, 1984, meeting intermittently during the course of Council and related meetings in Conference room A. To meet with the SAP, SSC, and the Council during their deliberation to present their analysis of the 1984 ocean salmon management measures adopted by the Council for public review, and to analyze additional option(s) developed by the Council. Sessions are open to the public and public comment may be presented for the SPDT during the public comment periods scheduled during any of the related meetings while the Team is present.

Budget Committee—April 10, 1984, 3 p.m. to 5 p.m., in Conference room A. Review a proposed FY85 administrative and programmatic budget submitted by the staff and prepare recommendations for the Council. This session is open to the public.

Indian Affairs Committee—April 10, 1984, 7 p.m. to 9 p.m., in the Rosewood room. Develop recommendations for Indian ocean salmon management measures for consideration by the Council. This session is open to the public.

Dated: March 28, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-8782 Filed 4-2-84; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, Inc., having a place of business in Colts Neck, New Jersey 07722 an exclusive right to manufacture, use, and sell products embodied on the invention entitled "Nitroimidazoles of Low Toxicity and High Activity as Radiosensitizers of Hypoxic Tumor Cells," U.S. Patent Application S.N. 6–075,603 and Continuation-in-Part S.N. 6–180,373. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing, Office of Government Inventions and Patents, Department of Commerce, National Technical Information Service.

[FR Doc. 84-8812 Filed 4-2-84; 8:45 am]

BILLING CODE 3510-04-M

Patent and Trademark Office

Delegation of Authority

AGENCY: Patent and Trademark Office, Commerce.

The following memorandum is a delegation of authority from Assistant Secretary for Trade Administration to Assistant Secretary and Commissioner of Patents and Trademarks under the Export Administration Act of 1979, as amended, and other statutes.

February 17, 1984.

Memorandum to Gerald J. Mossinghoff, Assistant Secretary and Commissioner of Patents and Trademarks

From: William Archey, Acting Assistant Secretary for Trade Administration

Subject: Delegation of Authority under the Export Administration Act of 1979, as amended, and other statutes.

You have requested our clearance of a final rule, entitled "Revision of Foreign Filing License Procedure" (37 CFR Parts 1 and 5), scheduled to become effective June 1, 1984. This rule, among other things, revises procedures for obtaining licenses authorizing the foreign filing of patent applications for U.S. inventions as required under the patent laws (35 U.S.C. 184). In addition, it revises procedures under which the Patent and Trademark Office (PTO) authorizes the export of technical data for purposes related to the filing of a foreign patent application. The export of such data is normally subject to licensing under the Export Administration Regulations (EAR) (15 CFR Part 379), issued under the Export Administration Act of 1979, as amended (50 U.S.C. app section 2401 *et seq.*), and the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3201 et seq.). However, the EAR delegates licensing authority to the PTO in instances where the patent regulations (37 CFR Part 5) are complied with.

We have reviewed the final rule referred to above and have no objections to its issuance.

Additionally, in order to assure that PTO has adequate authority to administer the licensing procedures set out in 37 CFR Part 5, you are hereby delegated any necessary authority under the Export Administration Act of 1979, as amended, and the Nuclear Non-Proliferation Act of 1978. This authority is delegated to me by Part VI, section 1.01, paragraph (q) and (t), of ITA Organization and Function Order No. 41–1 of February 15, 1982, as amended.

Dated: March 30, 1984.

Donald J. Quigg,

Deputy Commissioner of Patents and Trademarks.

[FR Doc. 84–8887 Filed 4–2–84; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Level for Certain Cotton Textile Products Produced or Manufactured in Pakistan

March 29, 1984.

ACTION: Reducing from 560,020 dozen pairs to 528,617 dozen pairs the limit established during 1984 for cotton gloves and mittens in Category 331, produced or manufactured in Pakistan, to account for carryforward used in 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

SUMMARY: The Bilateral Cotton Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan provides for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used being deducted from the category level in the succeeding year. Under the terms of the bilateral agreement, as amended, the level of restraint established for cotton textile products in Category 331 is being adjusted for carryforward used in 1983 which amounted to 31,403 dozen pairs.

EFFECTIVE DATE: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 16, 1983, a letter was published in the **Federal Register** (48 FR 55892) from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton textile products, including Category 331, produced or manufactured in Pakistan, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1984 and extends through December 31, 1984. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to reduce the level of restraint established for Category 331 to 528,617 dozen pairs.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 29, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: On December 13, 1983, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of cotton textile products exported during the twelve-month period beginning on January 1, 1984 and extending through December 31, 1984, produced or manufactured in Pakistan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Effective on April 4, 1984, paragraph 1 of the directive of December 13, 1983 is hereby amended to include an adjusted level of restraint of 528,617 dozen pairs [2] for cotton textile products in Category 331.

The action taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–8787 Filed 4–2–84; 8:45 am]

BILLING CODE 3510–DR–M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan which provide, in part, that: (1) Within the aggregate limit, specific levels of restraint may be exceeded by designated percentages; (2) specific levels may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to account for any imports after December 31, 1983.

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines, Effective January 1, 1984; Correction

On December 21, 1983 a notice was published in the **Federal Register** (48 FR 56425), which established import restraint levels for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of the Philippines and exported during 1984. In the letter to the Commissioner of Customs of December 16, 1983, which followed that notice, the limit for man-made fiber textile products in Category 631 pt. should have been 1,802,283 dozen pairs, instead of 1,802,203 dozen pairs. The limit for cotton textile products in Category 352 pt. should have been 104,448 dozen, instead 87,925 dozen.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–8788 Filed 4–2–84; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

United States Army Medical Research and Development Advisory Committee, Subcommittee on Medicinal Chemistry; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, Sections 1–15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Medicinal Chemistry.

Date of meeting: April 26 and 27, 1984.

Time and place: 0830 hrs, Room 3092, Walter Reed Army Institute of Research, Washington, DC

Proposed Agenda

This meeting will be open to the public from 0830–1030 hrs on April 26 for the administrative review and discussion of the scientific research program of the Medicinal Chemistry Group. Attendance by the public at open

sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), U.S. Code, Title 5 and Sections 1–15 of Appendix, the meeting will be closed to the public from 1100–1200 hrs and 1300–1630 hrs on 26 April and from 0900–1215 hrs on April 27 for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Bldg 40, Room 1111, Walter Reed Army Medical Center, Washington, DC 20307 (202/576–2436) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Harry G. Dangerfield,

Colonel, MC, Deputy Commander.

[FR Doc. 84-8869 Filed 4-2-84; 8:45 am]

BILLING CODE 3710-08-M

United States Army Medical Research and Development Advisory Committee, Subcommittee on Pharmacology; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, Sections 1–15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Pharmacology

Date of meeting: April 25, 1984.

Time and place: 0830 hrs, Room 3092, Walter Reed Army Institute of Research, Washington, D.C.

Proposed Agenda

This meeting will be open to the public from 0830–0945 hrs on April 25 for the administrative review and discussion of the scientific research program of the Pharmacology Group. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), U.S. Code, Title 5 and Sections 1–15 of Appendix, the meeting will be closed to the public from 1000–1200 hrs and 1300–1630 hrs for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Bldg 40, Room 1111, Walter Reed Army Medical Center, Washington, DC 20307 (202/576–2436) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Harry G. Dangerfield,

Colonel, MC, Deputy Commander.

[FR Doc. 84-8868 Filed 4-2-84; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Small Boat Harbor at Chignik, Alaska

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action is to determine the feasibility of constructing a small boat harbor near the village of Chignik. The harbor would shelter the area's fishing fleet.

2. Two alternative sites in Anchorage Bay near the village will be considered in detail. Each site alternative would be identical in size and in shape, approximately 8 acres of protected mooring and maneuvering space. The harbor basin would be dredged to a depth of −9.5 to −14.5 feet Mean Lower Low Water, resulting in approximately 21,000 cubic yards of material. The material would most likely be used as fill for a staging area located between the shoreline and the basin boundary. A no action alternative also would be considered.

(3). (a) A Reconnaissance Report was completed in September 1983 and agency coordination initiated. Public meetings on the project were held in Chignik in June 1981, April 1982, and June 1983. Scoping of the DEIS will include continued coordination with interested local, State and Federal agencies and other interested parties. Scoping meetings are not planned at this time.

(b) Anticipated subjects to be addressed include, but are not limited to: alternatives, social economic impacts, cultural resources, water quality, marine flora and fauna, endangered species, aesthetics, and measures to minimize adverse impacts.

4. The expected competition date of the DEIS is not known at this time.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: William D. Lloyd, Chief, Environmental Resources Section, U.S. Army Engineer District, Alaska, Pouch 898, Anchorage, Alaska 99506.

Dated: March 26, 1984.

L. L. Saage,

Acting District Engineer.

[FR Doc. 84-8773 Filed 4-2-84; 8:45 am]

BILLING CODE 3710-NL-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Special Services for Disadvantaged Students Program

AGENCY: Education Department.

ACTION: Notice of proposed priority for Fiscal Year 1984.

SUMMARY: The Secretary of Education proposes a funding priority for new awards for Fiscal Year 1984 under the Special Services for Disadvantage Students (Special Services) Program.

Under this proposal, the Secretary will give priority to each "acceptable application" submitted under the Special Services Program Fiscal Year 1984 competition by an eligible applicant located in Guam, American Samoa, and the Trust Territory of the Pacific Islands, notwithstanding § 646.30 of the Special Services Program regulations, 34 CFR 646.30.

Authority for the Special Services Program is contained in sections 417A and 417D of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070d, 1070d–1b. Under the program the Secretary is authorized to make grants to institutions of higher education only. The purpose of the grant is to permit an applicant to carry out a project designed to provide supportive services to disadvantaged students who are pursuing programs of postsecondary education.

DATE: Comments regarding the proposed priority must be received on or before May 3, 1984.

ADDRESS: All comments should be sent to Frances A. Bergeron, Program Development Branch, Division of Student Services, U.S. Department of Education (Room 3514, ROB–3), 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Frances A. Bergeron, Telephone: (202) 245–2511.

SUPPLEMENTARY INFORMATION: Section 1204(a) of the Higher Education Act of 1965 as amended provides in pertinent part that:

> The Secretary is authorized to provide such modifications of any programs under this Act as the Secretary deems necessary in order to adapt such programs to the needs of Guam, * * * American Samoa, [and] the Trust Territory of the Pacific Islands, * * *. Such program modifications shall be established in cooperation with the governments of such territories and shall be governed by a memorandum of understanding between such governments and the Department of Education.

Under this authority, the Secretary has entered into a memorandum of understanding with Guam, American Samoa and the Trust Territory of the Pacific Islands. With regard to modifications in the Special Services Program, each memorandum of understanding provides that

> Subject to the public comment and other requirements of section 431 of the General Education Provisions Act, the Secretary may give funding priority for new awards under the Special Services Program, Fiscal Year 1984 competition to each "acceptable application" submitted by an eligible applicant located in * * * [Guam, American Samoa, or the Trust Territory of the Pacific Islands] notwithstanding * * * [§] 646.30 of the Special Services regulations.

An "acceptable application" is defined as an application that receives a score of not more than 15 points below the application with the lowest score that would otherwise have been selected for funding under the criteria set forth in §§ 646.31 and 646.32 of the Special Services Program regulations.

The Secretary is requesting comment on whether such a funding priority should be given.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 30th day after publication of this document will be considered before the Secretary issues the final priority.

All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period at the address given at the beginning of this notice, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1070d–1b and 1144a)

(Catalog of Federal Domestic Assistance Number 84.042 Special Services for Disadvantaged Students Program)

Dated: March 28, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84–8613 Filed 4–2–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP84–312–000]

ANR Pipeline Co.; Request Under Blanket Authorization

March 28, 1984.

Take notice that on March 21, 1984, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84–312–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that ANR proposes to transport natural gas for Stone Container Corporation (Stone) under the authorization issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport up to 1,300 dt equivalent of natural gas per day on an interruptible basis on behalf of Stone for an initial term ending not later than June 30, 1985. ANR states that Stone has entered into a gas purchase contract with ANR Production Company (Production Company) for the purchase of up to 1,300 dt equivalent of natural gas per day. ANR further states it would receive the natural gas at either the interconnections of the pipeline systems of ANR and Production Company at various locations in the State of Oklahoma or Production Company would cause Producer's Gas Company (Producer's) or other to tender the natural gas to ANR for Stone's account at existing interconnections of the pipeline systems of ANR and Producer's in the State of Oklahome. ANR would then transport and deliver equivalent volumes to Texas Gas Transmission Corporation (Texas Gas) for Stone's account at the existing interconnection of the pipeline systems of ANR and Texas Gas at Slaughters, Kentucky. ANR indicates that Texas Gas and The Cincinnati Gas & Electric Company would provide additional transportation services for Stone for ultimate use at Stone's facilities located in Warren County, Ohio.

ANR proposes to charge Stone a transportation rate of 55.0 cents per dt for all gas received from Production Company or others in Oklahoma and transported and delivered to Texas Gas for Stone's account. ANR states that such rate is based upon its Rate Schedule EUT–1 on file in FERC Gas Tariff, Original Volume No. 1. ANR further states the proposed rate of 55.0 cents per dt is derived on the basis of a transportation haul of 1,025.5 miles times 3.6 cents per Mcf per 100 miles for a transportation cost of 36.9 cents plus fuel of 18.1 cents.

ANR indicates that the natural gas would be used at Stone's facilities for boiler fuel.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8631 Filed 4–2–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2239–002]

E. J. Grassmann Trust et al; Application for Transfer of License (Minor) and Amendment of Order Approving Lease of Project Properties

March 29, 1984.

Take notice that E. J. Grassmann Trust, Caleb Development Corporation, and Tomahawk Power and Pulp Company (Company) formerly Tomahawk Power Company, Lessee for the Kings Dam Project No. 2239, have requested that the project license be

transferred from E. J. Grassmann Trust and Caleb Development Corporation to Tomahawk Power and Pulp Company. The Company also requested that the order approving the lease of project properties for Project No. 2239 be amended to reflect its name change. Realty Transfer Company sold its interest in the project to Caleb Development Corporation on July 31, 1978.

The Kings Dam Project is located on the Wisconsin River in Lincoln County, Wisconsin. The project is currently in operation with an installed capacity of 2,770 kW.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 C.F.R. 385.211 or 385.215, 47 Fed. Reg. 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before May 10, 1984.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8832 Filed 4-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-276-000]

Natural Gas Pipeline Company of America; Request Under Blanket Authorization

March 28, 1984.

Take notice that on March 2, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP84-276-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Natural proposes to transport natural gas on behalf of Stauffer Chemical Company (Stauffer) under the authorization issued in Docket No. CP82-402-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Natural proposes to continue to transport up to 500 Mcf per day of natural gas, less retainage, for Stauffer from May 12, 1984, through June 30, 1985, which term follows the commencement of initial gas deliveries on January 13, 1984. Natural states that the gas to be transported hereunder would be purchased from Producer's Gas Company (Producer's Gas) by Stauffer and would be used to start-up Stauffer's new processing plant in Texas. Natural indicates that the gas to be purchased by Stauffer is not released by Producer's Gas as such is new or surplus gas. It is further stated that Natural would receive volumes of natural gas from Producer's Gas at an existing interconection in Grady County, Oklahoma, and redeliver such gas supplies to Producer's Gas for Stauffer's account at their interconnection in Cass County, Texas.

Natural states that it would charge Stauffer a transportation fee equal to 12.2 cents per million Btu of gas based on Natural's interim settlement cost of onshore transmission in Docket No. RP83-68. It is also stated that Stauffer would pay Natural an added incentive charge of 5.0 cents per million Btu of gas received for transportation through January 31, 1985.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commmission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois d. Cashell,

Acting Secretary.

[FR Doc. 84-8833 Filed 4-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-317-000]

Texas Gas Transmission Corporation; Request Under Blanket Authorization

March 28, 1984.

Take notice that on March 23, 1984, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in docket No. CP84-317-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Texas Gas proposes to transport natural gas for Stone Container Corporation (Stone) under the authorization issued in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 1,300 Mcf of natural gas per day and up to 474,500 Mcf of natural gas per year on an interruptible basis on behalf of Stone pursuant to a gas transportation agreement dated December 27, 1983. Texas Gas asserts that it would receive the gas from Stone at Slaughters, Kentucky, and redeliver such gas to The Cincinnati Gas and Electric Company in Butler County, Ohio, for further delivery to Stone. Texas Gas explains that the proposed transportation service would be rendered through the use of existing mainline transmission facilities located between Slaughters, Kentucky, and the Butler meter station in Ohio.

Texas Gas proposes to charge for its services the rate provided in its Rate Schedule T-3/T-4 and in addition would charge Stone an additional incentive charge of 5.0 cents per Mcf as provided in its Rate Schedule AIC. Texas Gas further proposes to retain 1.28 percent of the volumes received as reimbursement for fuel gas.

Texas Gas indicates that the gas would be used at Stone's Franklin, Ohio, plant for the generation of steam heat for use in the paper drying operation with a small amount being used to generate electricity for use in the plant. It is further asserted that Stone has purchased the gas from ANR Production Company (ANR) and that no intermediary participated in the transaction between ANR and Stone.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8834 Filed 4-2-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AAA-FRL-2556-5]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of March 19, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475-8025.

Dated: March 28, 1984.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division (PM-216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
Anderson, John A. (Kearney, NE)	[illegible]	D	11-02-83	05-01-84	§ 32.200 (a)(7).
Anderson, Scott (Walnut Creek, CA)	[illegible]	D	[illegible]-17-83	05-16-88	§ 32.200 (a)(3)(ii)(a)(7).
Ashland-Warren, Inc. (McMinnville, TN)	82-0401	D	[illegible]-22-82	05-[illegible]-88	§ 32.200 (a)(4).
Atlas Prestressing Corp. (Panorama City, CA).	82-0052-00	D	[illegible]-03-83	06-01-88	§ 32.200 (a).
Averill, Ernest Jr. (Fort Myers, FL)	83-0008-00	S	12-02-83	Open	§ 32.200 (b).
Bowe, Welsh and Associates, Inc. (Melville, NY).	83-0040-01	D	04-14-83	04-13-88	§ 32.200 (a)(3).
Bowers Excavating & Fencing, Inc. (Klamath Falls, OR).	83-0058-01	D	06-27-83	12-27-84	§ 32.200 (b)(4)(i).
Bowers, Joe (Klamath Falls, OR)	83-0058-01	D	06-27-83	12-27-84	§ 32.200 (b)(4)(i).
Bowers, John (Klamath Falls, OR)	83-0058-02	D	06-27-83	12-27-84	§ 32.200 (b)(4)(i).
Christian, Burl Gene (Denver, CO)	83-0050-02	VE	11-03-83	11-02-84	§ 32.200 (a).
Errichetti, Angelo J. (Camden, NJ)	83-0040-04	D	04-14-83	04-13-88	§ 32.200 (a)(3).
Freidrich, Rene (Saratoga, CA)	83-0003-01	VE	12-23-83	12-22-84	§ 32.200 (a).
Gabey, Martin (Northport, NY)	83-0040-02	D	12-16-83	12-15-88	§ 32.200 (a).
Harry Johnson Plumbing, Co., Inc. (Walla Walla, WA).	83-0060-00	D	07-22-83	07-21-88	§ 32.200 (b)(2)(i)(ii).
Herbert G. Whyte, Associates, Inc.	82-0501	D	10-20-82	10-19-85	§ 32.200 (b)(4).
Hunter, James C. (Gardena, CA)	83-0002-02	D	07-07-83	07-06-88	§ 32.200 (a).
Jackson, Manly (San Jose, CA)	83-0046-02	D	06-27-83	06-26-88	§ 32.200 (a).
Johnson, Mark (Walla Walla, WA)	83-0060-01	D	07-22-83	07-21-88	§ 32.200 (b)(2)(i)(ii).
Keller, John (Timonium, MD)	83-0046-01	D	09-09-83	03-08-85	§ 32.200 (a).
L. A. Reynolds Co. (Winston Salem, NC)	83-0036-00	D	07-01-83	06-30-88	§ 32.200 (a).
Long, Harold Delmar (Los Gatos, CA)	83-0050-01	D	07-07-83	07-06-88	§ 32.200 (a).
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA).	82-0651 82-0408	D	10-07-82	02-16-87	§ 32.200 (b)(2)(i)(ii).
Newman, Fred M. (Vienna, VA)	83-0072-01	D	09-30-83	09-29-88	§ 32.200 (i).
Newman, Richard Gordon (Pierre, SD)	83-0041-00	D	11-28-83	11-28-88	§ 32.200 (a).
Post-Tensioning Service Corp. (Saratoga, CA).	83-0001-00	D	07-08-83	07-07-88	§ 32.200 (a).
Reynolds, Jon R. (Winston Salem, NC)	83-0036-01	D	07-01-83	06-30-88	§ 32.200 (a).
Rhoades, R. Michael (Newton, KS)	83-0005-01	VE	10-21-83	04-20-84	§ 32.200 (a).
Richmond, Elwood P. (Grand Forks, ND)	83-0006-01	D	06-06-83	06-05-88	§ 32.200 (a)(7).
Richmond Engineering, Inc. (Grand Forks, ND).	83-0006-00	D	06-06-83	06-05-88	§ 32.200 (a)(7).
Richmond, Lloyde W., Jr. (Grand Forks, ND).	83-0006-02	D	06-06-83	06-05-88	§ 32.200 (a)(7).
Shepherd, Frank A. (Savannah, TN)	83-0046-01	D	07-15-83	11-03-85	§ 32.200 (a).
Stramaglia, Louis Vito (Utica, MI)	83-0066-00	S	12-02-83	Open	§ 32.300.
Stresteel Corporation (Wilkes-Barre, PA)	83-0051-00	D	06-02-83	02-01-85	§ 32.200 (a).
Suburban Grading & Utilities, Inc. (Norfolk, VA).	83-0022-00	D	03-29-83	03-28-85	§ 32.200 (a).
Swanson, David (Los Gatos, CA)	83-003-002	VE	11-03-83	11-02-84	§ 32.200 (a)(7).
Vanderhurst, William (Saratoga, CA)	83-0001-01	D	07-08-83	07-07-88	§ 32.200 (a).
Walsh, Charles T. (Huntington Bay, NY)	83-0040-01	D	04-14-83	04-13-88	§ 32.200 (a).
Walstad, Merrill (Huntington Beach, CA)	83-0003-03	D	06-27-83	06-26-88	§ 32.200 (a).
Watts, Richard (Los Gatos, CA)	83-0003-04	VE	11-03-83	11-02-84	§ 32.200 (a).
Whyte, Herbert G. (Gary, IN)	82-0501	D	10-20-82	10-19-85	§ 32.200 (b)(4).
Wirt, David (Douglasville, GA)	82-0501 82-0408	D	10-07-82	02-16-87	§ 32.200 (b)(2)(i)(ii).
Wirt, Gordon D. (Douglasville, GA)	82-0408	D	12-07-82	02-16-87	§ 32.200 (c)(4).
Wirt, Judith C. (Douglasville, GA)	82-0408	D	12-07-82	02-16-87	§ 32.200 (c)(4)(ii).
Wm. Anderson Co., Inc. (Kearney, NE)	83-0032-00	D	11-02-83	05-01-84	§ 32.200 (a)(7).
Womack, Jerry T. (Norfolk, VA)	83-0022-01	D	03-29-83	03-28-85	§ 32.200 (a).
Young, Frederick M. (Fayetteville, TN)	83-0025-01	S	07-19-83	Open	§ 32.200 (a).
Zeigler, Beaty Stevens (Sumter, SC)	83-0045-01	VE	07-15-83	06-31-88	§ 32.200 (a).

[1] D=Debarred; S=Suspended; VE=Voluntarily Excluded.

[FR Doc. 84-8864 Filed 4-3-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 2049]

Cesar Justo Rizzoni DBA Omega Forwarding Co.; Reissuance of License

By Notice served and published in the **Federal Register**, Independent Ocean Freight Forwarder License No. 2049 was revoked, effective February 26, 1984 for failure to maintain a valid surety bond on file with the Commission. The Notice of Revocation was served on March 6, 1984.

An appropriate surety bond has been received in favor of Cesar Justo Rizzoni dba Omega Forwarding Company and compliance pursuant to section 44, Shipping Act, 1916, and section 510.15 of the Commission's General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in section 9.09(a) of Commission Order No. 1 (Revised), dated September 27, 1983, Independent Ocean Freight Forwarder License No. 2049 shall be reissued to Cesar Justo Rizzoni dba Omega Forwarding Company effective March 27, 1984. A copy of this notice shall be published in the **Federal Register** and served upon Cesar Justo Rizzoni dba Omega Forwarding Company.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-8785 Filed 4-2-84; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1376-R]

Sunvan International, Inc.; Reissuance of License

By Notice served and published in the **Federal Register**, Independent Ocean Freight Forwarder License No. 1376-R was revoked, effective March 16, 1984 for failure to maintain a valid surety bond on file with the Commission. The Notice of Revocation was served on March 21, 1984.

An appropriate surety bond has been received in favor of Sunvan International, Inc. and compliance pursuant to section 44, Shipping Act, 1916, and section 510.15 of the Commission's General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in section 9.09(a) of Commission Order No. 1 (Revised), dated September 27, 1983, Independent Ocean Freight Forwarder License No. 1376-R shall be reissued to Sunvan International, Inc. effective March 27, 1984. A copy of this notice shall be published in the **Federal Register** and served upon Sunvan International, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-8784 Filed 4-2-84; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Kenneth N. Garrison d.b.a. Ken Garrison & Co., 7211 North Loop East, Houston, TX 77028

Unlimited Shipping Agency, Inc., 9950 West Lawrence Avenue, Suite 111, Schiller Park, IL 60176, Officer: H. Ron Jordan, President, Edward Lieser, Myron Shore, Mayer Levin

International Trading Partners, Inc. d.b.a. ITP, 11 East 44 Street, Suite 301, New York, NY 10017, Officers: Philip J. Wahl, President, Mary J. Cesare, Executive Vice President

By the Federal Maritime Commission.

Dated: March 29, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8783 Filed 4-2-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0515]

Proposals to Reduce Risk on Large-Dollar Transfer Systems

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: The Board of Governors is requesting public comment on proposals to reduce risks on large-dollar wire transfer systems. The Board is concerned that developments that could arise in connection with such systems may destabilize financial markets and disrupt the nation's economy.

DATE: Comments must be received by July 27, 1984.

ADDRESS: Comments, which should refer to Docket No. R-0515, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules regarding availability of information, 12 CFR § 261.6(a).

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368); David B. Humphrey, Chief, Financial Studies Section, Division of Research and Statistics (202/452-2557); Elliott C. McEntee, Associate Director, Division of Federal Reserve Bank Operations (202/452-2231); Jeffrey C. Marquardt, Economist, Division of International Finance (202/452-2360); Gilbert T. Schwartz, Associate General Counsel, Legal Division (202/452-3625); or Joseph R. Alexander, Attorney, Legal Division (202/452-2489). Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

Large-dollar electronic funds transfer systems [1] have become an integral part of both the domestic and international dollar payments mechanism, and play a crucial role in support of U.S. financial and real economic activity. The manner in which private systems generally are structured, however, creates significant risks for the institutions that participate in them and other sectors of the economy as well.

Any depository institution wishing to transfer funds ("the sender"), for its own account or for the account of a customer, to another depository institution ("the receiver"), for the

[1] The term "large-dollar electronic funds transfer systems" (also referred to as "electronic payments systems" or "wire networks") refers here to networks composed of more than two participants transferring payment messages of both large average and large aggregate value, and providing for settlement, i.e. the actual transfer of funds. Such systems may involve a time lag between the transmission of the payment messages and settlement that gives rise to intra-day inter-bank credit exposures. Under these criteria, there are presently four large-dollar electronic funds transfer systems: Fedwire (the Federal Reserve's wire transfer system), CHIPS (Clearing House Interbank Payments System, operated by the New York Clearing House Association), CashWire (operated by a consortium of banks), and CHESS (Clearing House Electronic Settlement System, operated by the Chicago Clearing House Association).

benefit of the receiver or a customer of the receiver, has several networks that it might use.[2] The choice of a network can involve several business and technical considerations.

If a transfer is made over Fedwire, § 210.36(a) of Regulation J, 12 CFR § 210.36(a), provides that the transfer is final when the receiver's Reserve Bank credits the receiver's account or sends the advice of credit; at that point the transfer is irrevocable, and the receiver has actually and finally collected funds. If the sender's Reserve Bank processes the transfer when the sender did not have sufficient funds in its account to cover the amount of the transfer, the sender incurs a "daylight overdraft" in its account with the Federal Reserve. The Federal Reserve bears the risk of loss if the sender is unable to cover this overdraft. The failure of an institution to cover daylight overdrafts on Fedwire, therefore, would by itself have no effect on other institutions, including the receiver; all of the loss would be absorbed by the Federal Reserve.

Private wire networks, however, are typically net settlement networks; that is, they operate by the transmission of payment messages throughout the day with settlement of net positions at the end of the day. The temporal gap between the sending of payment messages and their settlement gives rise to net intra-day credit exposures among participants in private networks. These exposures are often quite large. Should a participant be unwilling or unable to settle a large net debit position,[3] its corresponding net creditors could experience a sudden, rapid deterioration in their financial positions. The term "systemic risk" refers to the possibility that the failure of one participant in a private network would so jeopardize the financial condition of its net creditors on that network, that its creditors, in turn, would also be unable to settle. The concept of systemic risk is also used to encompass the possible effects of settlement failure on the entire financial system. The failure of one participant to settle could affect not only other network participants, but also the full range of creditors of network participants, including bank and nonbank depositors. Sudden, large changes in the financial condition of both network participants and their creditors could lead to serious disruptions in money and other financial markets, as well as to the disruption of trade and commercial activities.

Industry groups, as well as the Federal Reserve, have been concerned by these risks for some time. For example, in April, 1982, the Association of Reserve City Bankers ("ARCB") published a *Report on the Payments System*, which identified risk as one of the major issues facing participants in the nation's payments system. The ARCB's Payments System Committee subsequently established a task force to study the issue further. The Risk Task Force issued its report, *Risks in the Electronic Payments Systems*, in October, 1983, suggesting, *inter alia*, that certain types of voluntary credit limits be established to minimize the possibility that any participant would be unable to settle its end-of-day position on any network.

The Federal Reserve is particularly concerned about current payments system risks. First and foremost, the Federal Reserve is concerned about developments that may destabilize financial markets. Moreover, Congress has given the Federal Reserve a unique role in the nation's payments mechanism that justifies attention on the part of the System with the efficiency and safety of large-dollar payments systems. Indeed, the Federal Reserve's responsibility for the implementation of monetary policy, as well as its responsibility as a bank supervisor, requires the preservation of a safe and efficient payments mechanism. Further, to reduce systemic risk, the Federal Reserve may be called upon as lender of last resort to prevent one participant's settlement failure from spreading further through the banking system and into the rest of economy.

Initially, the Federal Reserve's concern with payments system risks was centered on the problems associated with daylight overdrafts on Fedwire. In September, 1981, the Board directed reserve Banks to discourage daylight overdrafts and to prevent institutions from incurring large daylight overdrafts on a regular basis. Subsequently, in May, 1982, the Board announced a three-part policy for dealing with these overdrafts. The components of this policy are: (1) Moving toward collateralization of daylight overdrafts arising out of wire transfers of book-entry U.S. government and federal agency securities; (2) *ex post* monitoring of daylight overdrafts resulting from Fedwire funds transfers (those not arising out of book-entry securities transfers) and counseling those institutions incurring daylight overdrafts of inordinate frequency, duration, or size; and (3) full collateralization and real-time monitoring of Fedwire overdrafts of U.S. branches and agencies of foreign banks and Edge Act and agreement corporations.

The Board realized, however, that without a program to control risks across all wire transfer systems, reduction of Fedwire daylight overdrafts would not reduce systemic risks, because transfers (and overdrafts) on Fedwire would simply shift to other networks. To that end, the Board directed its staff to undertake a study of the risks associated with large-dollar wire transfer systems.

During the course of this study, there have been several other important developments:

- In October, 1982, the Board provided CashWire[4] access to the Federal Reserve's net settlement service. This access was conditioned on CashWire's adoption of an aggregate intra-day net debit limit applicable to each CashWire sender ("sender net debit cap"). CashWire has also adopted requirements that each participant adopt an intra-day net credit limit *vis-a-vis* each other participant ("bilateral net credit limits"), and that each participant guarantee irrevocable availability of funds received over CashWire to its customers. Each of these measures reduces the effect that a CashWire participant's inability to settle would have upon other participants and their customers.
- Also in late 1982, the Board established the Federal Advisory Council/Thrift Institutions Advisory Council (FAC/TIAC) Payments System Committee to consider the issue of payment system risk. In November, 1983, the Committee issued a report containing several important proposals that are discussed more fully below.[5]
- In August, 1983, the Federal Financial Institutions Examination Council adopted a uniform manual of procedures for examination of funds transfer activities of depository institutions on large-dollar wire transfer networks, as well as nonsettling

[2] Transfers of funds involving traditional correspondent banking arrangements are also a possibility. Banks may also transmit payment messages over a nonsettling communications network and settle later over a settling network or through adjustment of correspondent balances.

[3] The failure of an institution to settle may be related to its funds transfer activities, to other activities, or even to circumstances, such as political developments, that are beyond the institution's control.

[4] CashWire is a service offered by the Payment and Administrative Communication Corporation (PAC), which is owned by a consortium of 180 U.S. banks. PAC also offers a nonsettling communication service (BankWire II). The 17 banks using the CasWire service exchange about 350 messages per day, with an average value of $700,000 per transfer.

[5] Copies of this report are available from the Secretary of the Board at the address listed above.

communications networks. The new procedures have been designed to disclose deficiencies in the internal credit and operational controls of those institutions participating on these networks, and to assess the adequacy of senior management's supervision of such activities.

• In March, 1984, CHIPS [6] began testing bilateral net credit limits. Under this test, each participant sets the maximum amount of net payments it will accept from each of the other participants over CHIPS. CHIPS intends to have these credit limits fully implemented by October, 1984. When these limits are effective, however, receivers will not, as on CashWire, be required to provide the beneficiaries with irrevocable access to payments received over CHIPS prior to settlement. CHIPS has also decided in principle to adopt sender net debit caps, and has formed a task force to study the implementation of these caps. This task force will also explore ways of making CHIPS payments final. This task force is to report by year-end 1984.

• The ARCB has also formed a task force to develop guidelines and procedures for the establishment by each institution of voluntary sender net debit caps as recommended by its Risk Task Force and the FAC/TIAC Committee.

These developments demonstrate that participants in the large-dollar payments systems (the private sector as well as the Federal Reserve) are increasingly aware of the risks such systems entail and are beginning to take steps to control them. At this point, the Board believes that it is appropriate to solicit public comment on several methods that could be used, individually or in concert, by the banking industry, the Federal Reserve, or both to achieve these goals.

Objectives of a Risk Reduction Policy

The Board believes that there are several important goals that any policy to reduce risks on large-dollar transfer systems must seek. These goals are not mutually exclusive, although in some cases, attainment of one of the goals may, in the short-run, work against the attainment of one or more of the other goals. The Board realizes, therefore, the necessity of some short-run trade-offs among these goals.

1. *Contain the effects of a settlement failure.* Potential settlement failures pose the threat that their effects could spread beyond the participants to the banking system as a whole, to other financial markets, and to the rest of the economy. An important goal of a risk reduction policy is, therefore, to contain the effects of a settlement failure.

2. *Reduce the volume of intra-day credit exposures.* As noted above, the principal source of risk in wire networks is the amount of intra-day credit exposure incurred by senders and receivers in connection with wire transfers. Reduction of the aggregate volume of daylight credit exposure is, therefore, a primary goal of a risk reduction program.

3. *Control remaining credit risk.* Some extensions of credit are, perhaps, inescapable if large-dollar networks are to run smoothly. Another goal of a risk reduction policy is, accordingly, to encourage institutions participating on such networks to exercise prudent judgment in extending and managing such credit.

4. *Smooth operation of the payments system.* As was noted at the outset, large-dollar electronic funds transfer systems are an integral part of the payments mechanism. Any risk reduction program must, therefore, seek its objectives without causing undue operational disruptions to the payments mechanism.

The public may wish to comment on these goals and provide its views on whether there are other goals that should be sought.

Methods of Reducing Risks

In the course of its study of payment system risk, the Federal Reserve considered and discussed with the FAC/TIAC Committee and private sector participants numerous proposals for reducing risks. The methods discussed below, on which the Board is explicitly requesting comment, are those that appear to be best suited to attaining the goals discussed above. Each of these methods may be used singly or in concert, and the Board asks commenters for their views on whether a particular combination of these methods would be best. Commenters are, of course, free to suggest alternative methods which might be used, singly or in combination with other methods, to reduce payment systems risk.

The Board also considered several other risk reduction options, including collateralization of sender net debit positions, charging a fee for extending intra-day credit, and methods to assure settlement (such as settlement insurance or agreements among participants on a network to cover a failed sender's settlement obligations on that network). Each of these options poses difficulties that, in the Board's view, make them undesirable. For example, collateralization would appear merely to shift risks from those holding collateral to the deposit insurance funds, and available collateral is not likely to provide the liquidity necessary to assure settlement.[7] Any pricing proposal would have to overcome the exceedingly difficult problem of determining an appropriate price for the intra-day extension of credit. While settlement insurance and other methods of assuring settlement would tend to minimize the disruptions that a settlement failure would cause, they may tend to reduce the degree of prudence exercised by individual participants, who would look to others for the protection of their positions. Commenters may wish to provide their views on how these difficulties might be overcome.

While the Board requests specific comments on the issues presented below, it also requests comments on the degree to which the intensely competitive atmosphere in which payment services are offered may act as a constraint on some of the risk reduction options. For example, in the current environment, would completely voluntary measures be adequate, should examiner review of risk reduction measures be an essential part of a risk reduction program, or should the Federal Reserve and the other regulators of financial institutions take a more active role in designing and enforcing risk reduction measures?

1. *Sender net debit caps.* These limits would impose a maximum ceiling or "cap" on the aggregate net debit position (i.e., the value of all sends in excess of the value of all receives) that an individual sender could incur on any one network or across all networks during a day. A sender net debit cap applied across all networks would permit net debits on one network to be offset by net credits on another, and would impose a maximum intra-day debit exposure on each sending institution. CashWire, as previously noted, imposes a net debit cap of 50 percent of the sender's capital for net positions on that one network. This cap is applied on a real-time basis; any payment message that would bring the sender in excess of its cap is rejected. The Fedwire daylight overdraft policy, in principle, imposes a sender cap equal to 50 per cent of capital as well, but this

[6] CHIPS (Clearing House Interbank Payments System) is owned and operated by the New York Clearing House Association. This network processes about 75,000 transactions per day, each having an average size of about 3 million.

[7] As discussed below, collateralization may be useful in securing Fedwire daylight overdrafts of Edge Act and agreement corporations and U.S. branches and agencies of foreign banks, and for daylight overdrafts arising out of the transfers of book-entry U.S. Treasury and federal agency securities.

cap is monitored on an *ex post* basis. When funds transfers cause daylight overdrafts to exceed the cap, the overdrafting institution is counseled; individual transfers are not rejected.

The purpose of sender net debit caps is to reduce the size of intra-day credit exposure. Some have argued that to be effective and equitable, the cap must apply to a sender's total net debit position across all large-dollar transfer systems; otherwise, volume (and risk) would be shifted from networks which imposed caps to those that did not, or, if caps were imposed on each network, volume (and risk) would shift to networks with "unused" caps. New networks might also proliferate. Others have argued that caps on each network would be effective because a large number of networks would not develop.

While debit caps would reduce risks, one effect of such caps is the possibility that senders would be so severely constrained by these limits as to be unable to make the volume of payments requested by their customers.[6] Alternatively, individual senders may delay making payments in order to minimize the risk of being bound by their debit cap. This might shift the burden of the cap to other banks and generally slow the process of making payments.

Some have also argued that sender caps, if based on a percentage of capital and applied uniformly, would be unfair to banks located in unit banking states, because banks in those states fund a larger proportion of their assets through overnight federal funds borrowings. Thus, daylight overdrafts on Fedwire from the morning repayment of federal funds borrowed the previous day may be significantly larger for banks operating in unit banking states than for banks operating in states that permit branching.

There are several steps that could be taken to alleviate these concerns. One would be to set caps initially at higher than optimal levels, lowering them in stages over time. A second procedure which might be helpful would involve the adoption by individual networks of general "rules" which seek to minimize the extent to which one sender could purposely and consistently delay payments until later in the day in order to shift its daylight exposure problem to others who continue to send payments early in the day. With any form of binding net debit cap, it is likely that an intra-day funds market would develop and/or institutional changes would occur in the overnight funds markets (e.g., earlier transfer of the proceeds of borrowing, later repayments of borrowings, increased reliance on term funds, etc.) that would ease the burden of constraints on sender net debit positions. Such market developments would, however, involve adaptations that require lenders and borrowers to share explicitly risks and costs in a market-determined way, and should, as a result, reduce risk but increase participant costs.

Several private sector study groups support sender net debit caps. For example, the FAC/TIAC Payment Systems Committee recommended "[t]he prompt establishment of caps by each sending institution on its overall net debit position across all payments systems, including Fedwire * * *." The ARCB Task Force also recommended that caps be established, and the ARCB has formed a working group to develop guidelines and procedures to be used to aid depository institutions in setting their own sender net debit caps across all networks. The New York Clearing House Association has also adopted the principle of sender net debit caps for CHIPS participants, and has appointed a committee to study the implementation of these caps on CHIPS. The Board welcomes these and other efforts, believing that they are indications of the seriousness with which the private sector is approaching the issue of payments systems risk.

The Board seeks comment on whether sender net debit caps are a useful and appropriate method of reducing wire transfer risk. The Board especially desires comments on the following questions:

- Should institutions be encouraged to establish sender net debit caps?
- Should the caps be established across all networks, or be established separately for each network?
- Should each institution establish its own caps, or should each network, or the Federal Reserve, establish caps for participants based on objective criteria?
- Should examiners review the caps that are set?
- If caps are set individually or by private networks, how should Fedwire daylight overdrafts be treated?
- If caps are to be established on the basis of objective criteria, what should those criteria be?

—percentage of capital;
—other factors, such as an institution's internal controls, type of business, quality of management;
—a combination of percentage of capital and other factors?

- If caps are to be based on capital, what should the percentage be? Should this percentage be lowered over time to reduce risks further?
- How much lead-time is desirable between the adoption of a policy of caps and the date on which such caps become effective?
- Will the market respond to caps with developments, such as an intra-day federal funds market or institutional modifications in the overnight federal funds and other markets, that will reduce the possibility of payments mechanism disruptions?
- Would some institutions—such as those from unit banking states, Edge Act and agreement corporations, or U.S. branches and agencies of foreign banks—face special problems in the implementation of caps?
- How should caps be enforced? By voluntary compliance, network rules, examiner review?
- What policy should the Federal Reserve adopt if caps set by each bank for itself or by networks for their participants are either extremely high or frequently breached?
- Will caps increase costs significantly or otherwise reduce the efficiency of the payments mechanism? Will this be a temporary or long-run development? Are the higher costs or reduced efficiency worthwhile to achieve (or a necessary by-product of) risk reduction? If so, what alternatives should be used to reduce risks?
- Should Reserve Banks permit institutions to exceed their caps on Fedwire occasionally (if such caps are established) in order to provide some flexibility in the administration of caps? Should such "excess" overdrafts or "overline" credits be negotiated in advance, be collateralized, or be subject to penalty rates?
- If bilateral credit limits (see below) are established, are sender net debit caps necessary?

2. *Bilateral net credit limits.* Under this method, each receiver would itself determine the maximum amount of net transfers (i.e., value of receives in excess of the value of sends) that it is willing to receive from each sender either across all networks other than Fedwire or from each sender on a particular private network. The purpose of this limit is to reduce risk by limiting the exposure of receivers of payments in the event that a sender fails to settle. Presumably, the net credit limit would be based on the receiver's credit analysis of the sending bank.

[6] The FAC/TIAC Payment Systems Committee pointed out in its report that bilateral net credit limits, especially if coupled with receiver guarantees (discussed below), could have the same effect of restraining the volume of payments senders are able to make.

As with sender net debit caps, bilateral credit limits have support among private sector participants. Both the FAC/TIAC Payment System Committee and the ARCB Risk Task Force have recommended that receiving banks adopt bilateral credit limits. CashWire requires each of its participants to set bilateral net credit limits *vis-a-vis* other participants on that network, which CashWire monitors on a real-time basis. CHIPS has begun experimenting with bilateral credit limits for members of its network, and expects to have its program fully in effect by October, 1984. As with the CashWire sender net debit caps, any payment message which causes a CHIPS sender to exceed the credit limit established by its receiver will be rejected unless the receiver increases the limit.

The Board requests comment on whether bilateral net credit limits would be useful in reducing payment system risk. Specifically, the Board requests comments on the following questions:

- Would bilateral net credit limits be effective in reducing risks?
- What criteria should institutions use in establishing these limits?
- Would finality of payments (see below) be necessary or desirable to provide receivers of payments with appropriate incentives to establish bilateral credit limits that will lead to effective risk management?
- Should examiners review and comment on bilateral credit limits?
- If sender net debit caps are used, is there a need to have bilateral net credit limits?

3. *Finality of Payments.* As noted previously, transfers of funds made over Fedwire are final when the receiver's Reserve Bank credits the receiver's account or sends the advice of credit. The credit to the receiver is irrevocable (although subject to the Reserve Bank's right of setoff against the receiver), and the receiver agrees, under Regulation J, to make the amount of the transfer available to the beneficiary promptly. 12 CFR §§ 210.36, 210.30(b). In other words, the Federal Reserve guarantees "good funds" to the receiver.

CashWire also provides finality of payments, by providing that receivers of transfers over that network agreee to provide final credit to the beneficiaries. If the sender does not settle its net position at the end of the day, receivers of the failed sender's transfers do not have recourse to the funds that have been made available to the beneficiaries. CHIPS and CHESS, on the other hand, do not provide for finality in this sense.[9] Rather, finality is conditional upon settlement, and if settlement does not occur, the receiver has recourse to any funds provisionally credited to its customer's account.

Finality is achieved primarily through a receiver "guarantee" that irrevocable credit will promptly be given to the accounts of customers receiving payments. Such guarantees are likely to induce receiving banks to reduce their risk exposure by establishing lower bilateral net credit limits for each sender than they would without them. Indeed, if receiver guarantees were required, there would be little need to require bilateral credit limits, because such limits would naturally evolve as the method of managing receiver risk exposure.

An important advantage of finality is that it tends to insulate the nonbank sector from the effects of a settlement failure, thus protecting financial markets and the general economy. Moreover, because finality is achieved through receiver guarantees, receivers are induced to make more prudent credit evaluations of their senders and modify such evaluations promptly as new information becomes available, reducing risk to the banking system in the process.

Unlike bilateral credit limits and sender net debit caps, the concept of finality does not yet appear to have wide-spread support in the private sector. The FAC/TIAC Payment Systems Committee concluded that, while finality of payments is a worthwhile goal, its achievement through receiver guarantees is premature and should not now be required. That committee believes that the costs of receiver guarantees (reduction in volume of transfers and increased payment system cost to compensate the receivers for bearing the increased risk) cannot be justified at this time, and that other measures (such as bilateral credit limits and sender caps) can control risks significantly. The ARCB Risk Task force did not reach a consensus on the issue of finality, although its report noted that a minority of its credit risk working group believed that finality would be necessary for a network to compete effectively with CashWire and Fedwire, which do provide for finality. Although CHIPS currently does not provide for finality, its committee working on sender net debit caps is studying this issue.

The Board request comments on the following points:

- Should all private wire transfer systems provide for finality of payments?
- Should finality be achieved by receiver guarantees?
- If finality is desirable, would Federal or uniform state legislation or regulation on this topic be desirable?
- In lieu of finality by receiver guarantees, what methods of risk sharing designed to assure settlement (e.g., insurance, indemnity agreements, or collateralization) might be useful or appropriate?

4. *Edge Act and Agreement Corporations and U.S. Agencies and Branches of Foreign Banks.* There are special risks associated with the participation in large-dollar transfer systems of Edge Act and agreement corporations and U.S. agencies and branches of foreign banks. These institutions are often major participants in such networks, often making and receiving large volumes of payments on behalf of themselves, their parent organizations, and others. The size of their payment activities is generally quite large relative to their U.S. capital or U.S. assets.

Under current policy, the Board requires full collateralization of daylight overdrafts on Fedwire by all Edge Act and agreement corporations and by U.S. agencies and branches of foreign banks. In the case of agencies and branches, this collateralization requirement reflects the concern that the system does not have sufficient timely information on the financial condition of foreign banks to warrant Reserve Bank extension of uncollateralized daylight credit. The Board applied similar constraints to Edge and agreement corporations because of their small capital base relative to potential Fedwire payments. The Board will continue this policy during the period comments are being received and studied, and pending adoption of a more permanent policy regarding Edge Act and agreement corporations and U.S. branches and agencies of foreign banks.

The Board requests comment on what policies should be adopted with respect to these institutions. Commenters are asked to respond specifically to the following questions:

- Should Fedwire daylight overdrafts of Edge Act and agreement corporations and U.S. branches and agencies of

[9] CHIPS and CHESS transfers are final in the sense that in releasing a payment message, the sender becomes obligated to pay the amount of the transfer and, hence, to settle its net position. CHIPS rule 13a; CHESS rule 5.1.4; see also *Delbrueck & Co. v. Manufacturers Hanover Trust Co.*, 609 F.2d 1047, 1051 (2d Cir. 1979). CHIPS and CHESS transfers are not completely "final," however, because credits made to beneficiaries are in fact provisional until settlement, and receiving institutions have recourse to amounts credited to beneficiaries in the event a sender fails to settle.

foreign banks continue to be fully collateralized?

• If caps are established, how should Edge Act and agreement corporations be treated?

—As separate entities, with a cap determined by reference their own capital?

—As part their parent institutions with one overall cap for the parent and all of its subsidiaries?

• If caps are established, how should U.S. agencies and branches of foreign banks be treated?

—as separate entities, with a cap determined by reference to branch or agency assets, or some form of capital equivalent?

—as consolidated entities, with a cap determined by reference to the consolidated U.S. branch and agency assets of each foreign bank, or some form of capital equivalent based on a consolidated U.S. balance sheet?

—as part of their parent institutions with one overall cap for the parent, hence for all of its branches and agencies, detemined by reference to the parent's worldwide capital stated in U.S. dollars?

• Should monitoring of these entities be on a real-time or *expost* basis?

5. *Enhanced Examination Procedures.* As noted previously, the Federal Financial Institutions Examination Council ("FFIEC") has adopted a uniform manual of procedures for examining funds transfer activities on large-dollar wire transfer networks and nonsettling communications networks. These procedures have been designed to disclose deficiencies in the internal credit and operational controls of institutions participating in large-dollar networks, and to assess the adequacy of the senior management's supervision of these activities.

With the FFIEC's approval, the role of the examination process could be expanded further. Federal examiners could review and comment on the bilateral net credit limits and sender net debit caps voluntarily established by each institution. This review might include analysis of the procedures used by each institution to establish and periodically review its limits and caps, comparison of the size of an institution's limits and caps with those established by per group institutions, consideration of whether the limits and caps have ever been exceeded, and review of procedures used when limits or caps are exceeded.

The Board requests comment on whether it should seek FFIEC concurrence for expanded examination of wire transfer activities, and, if so, what this expanded examination should entail.

6. *Monitoring.* The FAC/TIAC Payment Systems Committee recommended that "[t]he Federal Reserve continue to collect and review information on daylight credit exposures on Fedwire and private wire systems." This monitoring may be done in a variety of ways. For example, the Federal Reserve requires, as a condition to access to Federal Reserve net settlement services, access to transaction data on an *ex post* basis, and the Board may collect similar information from all other networks.

The Board requests comment on this issue, specifically on the appropriate uses for transaction data from wire networks, and the type of analysis that would be necessary for continued monitoring of wire transfer activities.

7. *Book-Entry U.S. Government Securities Transfers.* When the Board announced its policy for dealing with Fedwire daylight overdrafts, it directed the Reserve Banks to develop, if legally and operationally possible, a plan for collateralizing, with the underlying securities being transferred, daylight overdrafts arising out of book-entry transfers of U.S. government and federal agency securities. This decision reflected the Board's concern that subjecting these overdrafts to overall controls could disrupt the government securities market and, hence, the conduct of monetary policy through open market operations. Technical difficulties have made it impossible so far to implement the Board's policy, and, pending development of an operationally feasible collateralization plan, Reserve Banks have been exempting overdrafts arising from the transfer of book-entry U.S. government and federal agency securities from the counseling guidelines the Board also adopted.

The Board will continue, for the time being, to exempt daylight overdrafts arising form book-entry government securities transfers from the limitations of the proposal. Procedures are being developed that will permit at least partial collateralization of such overdrafts by pools of pledgeable book-entry U.S. Treasury and agency securities, which the Board hopes to adopt by mid-1985.

Limiting Avoidance Techniques

The adoption of voluntary or regulatory risk reduction measures may induce some depository institutions to attempt to avoid the costs and restraints such measures may entail. The most probable vehicle for such avoidance would be the use of new or existing communcations networks that send payments messages during the day, coupled with periodic bilateral settlement through the exchange of individual Fedwire transfers. The use of such arrangements would circumvent risk reduction policies, and could seriously jeopardize the success of any Federal Reserve or private sector risk reduction program. To deter such a possibility, the Board has adopted a general policy statement declaring that the use of Fedwire to avoid risk reduction measures is an unacceptable use of Fedwire.

Interim Measures

In conjunction with seeking public comment on these proposals, the Board is lifting the System's moratorium on the provision of net settlement services for any wire networks that had not previously been specifically approved for net settlement services by the Board. This moratorium was established pending further Board consideration of the issue of risk on large-dollar transfer systems. During the period before the adoption of a final risk reduction program, Reserve Banks may, upon application, provide interim net settlement services to large-dollar transfer networks that had not previously received authorization from the Board. To be eligible for net settlement services, such networks and their participants must agree to the following conditions:

1. All participants must set bilateral net credit limits.

2. The network must adopt a sender debit cap of 50 percent of capital for each participant to be applied to transfers sent over that network.

3. The network must agree to provide *ex post* transaction data to the Federal Reserve.

When the Board adopts a final policy for large-dollar transfer networks, such policy will apply to both existing networks and those given access under the interim policy.

By order of the Board of Governors of the Federal Reserve System, March 29, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-8796 Filed 4-2-84; 8:45 am]

BILLING CODE 6210-01-M

Applications to Engage de novo in Permissible Nonbanking Activities; First Maryland Bancorp, et al.

The companies listed in this notice have filed an application under section 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval

under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20, 1984.

A. *Federal Reserve Bank of Richmond* (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Maryland Bancorp*, Baltimore, Maryland and *Allied Irish Banks Limited*, Dublin, Ireland; to engage *de novo* through a subsidiary, First Maryland Mortgage Corporation, in commercial and industrial real estate equity financing.

B. *Federal Reserve Bank of Atlanta* (Robert E. Heck, Vice President 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Citizens and Southern Georgia Corporation*, Atlanta Georgia; to engage *de novo* in the activity of management consulting to nonaffiliated bank and nonbank depository institutions and their subsidiaries.

C. *Federal Reserve Bank of San Francisco*, (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *New City Bancorp*, Orange, California; to engage *de novo* through its subsidary, New City Leasing, Orange, California in leasing of personal property, especially motor vehicles; insurance sales as an agent or broker with respect to any insurance directly related to an extension of credit by a bank or bank related firm, or any insurance directly related to the provision of other financial services by a bank or bank related firm, serving the state of California. Comments on this application must be received not later then April 23, 1984.

Board of Governors of the Federal Reserve System, March 27, 1984.

James McAfee,

Association Secretary of the Board.

[FR Doc. 8869 Filed 4-2-84; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; First Security Corporation

The organization listed in this notice has applied under section 225.23(a)(2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank or the offices of the Board of Governors not later than April 25, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Security Corporation*, Salt Lake City, Utah; to acquire Mission Bay Mortgage Company, San Diego, California, and thereby engage in making or acquiring loans and other extensions of credit such as would be made by a mortgage financing company, including making both residential and commericial mortgage loans for its own portfolio and for sale to others; the purchase of such loans from affiliated banks and other entities and from others; the assembly of loans into blocks for investors; servicing of such loans for others, and all activities incident thereto; limited insurance agency activities directly, through an affiliate, or through other insurance companies covering insurance related to the extension of credit.

Board of Governors of the Federal Reserve System, March 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8870 Filed 4-2-84; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Guyan Bankshares, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 23, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Guyan Bankshares, Inc., Gilbert, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Gilbert Bank & Trust Company, Gilbert, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank South Corporation,* Atlanta, Georgia, to merge with Cumming Bancshares, Inc., Cumming, Georgia, and thereby indirectly acquire Bank of Cumming, Cumming, Georgia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Bancorporation,* Sheboygan, Wisconsin; to acquire the assets and liabilities of Bancorporation of Wisconsin, Inc., West Allis, Wisconsin, and thereby indirectly acquire Southwest Bank, New Berlin, Wisconsin, and West Allis State Bank, West Allis, Wisconsin. Comments on this application must be received not later than April 17, 1984.

2. *Citizens Banking Corporation,* Flint, Michigan; to acquire 100 percent of the voting shares of Grayling State Bank, Grayling, Michigan. Comments on this application must be received not later than April 20, 1984.

4. *Northern Trust Corporation,* Chicago, Illinois; to acquire 100 percent of the voting shares of Northern Trust of Florida Corporation, Miami, Florida, and thereby indirectly acquire Northern Trust Bank of Florida, N.A., Miami, Florida; Northern Trust Bank of Florida/Naples, N.A., Naples, Florida; Northern Trust Bank of Florida/Palm Beach, N.A., Palm Beach, Florida; and Northern Trust Bank of Florida/Sarasota, N.A., Sarasota, Florida.

4. *Northern Trust of Florida Corporation,* Miami, Florida; to become a bank holding company by acquiring 99 percent of the voting shares of each of the following banks: Northern Trust Bank of Florida, N.A., Miami, Florida; Northern Trust Bank of Florida/Naples, N.A., Naples, Florida; Northern Trust Bank of Florida/Palm Beach, N.A., Palm Beach, Florida; and Northern Trust Bank of Florida/Sarasota, N.A., Sarasota, Florida.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Oak Ridge Bancshares, Inc.,* Oak Ridge, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Oak Ridge, Oak Ridge, Louisiana. Comments on this application must be received not later than April 25, 1984.

Board of Governors of the Federal Reserve System, March 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8671 Filed 4-2-84; 8:45 am]

BILLING CODE 6210-01-M

First Community Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 26, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Community Bancshares, Inc.,* Princeton, West Virginia, to acquire 100 percent of the voting shares of Oceana National Bank, Oceana, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First National Bancshares of West Alabama, Inc.,* Aliceville, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Aliceville, Aliceville, Alabama, and Bank of Gordo, Gordo, Alabama. Comments on this application must be received not later than April 25, 1984.

2. *NBC Bancshares of DeRidder,* Inc., DeRidder, Louisiana, to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Commerce of DeRidder, DeRidder, Louisiana. Comments on this application must be received not later than April 25, 1984.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illionis 60690:

1. *Evergreen of Wisconsin, Inc.,* Poy Sippi, Wisconsin, to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Poy Sippi, Wisconsin. Comments on this application must be received not later than April 25, 1984.

2. *Rockford City Bancorp, Inc.,* Rockford, Illinois, to merge with Boone Bancorp, Inc., Belvidere, Illinois and thereby indirectly acquire Boone State Bank, Belvidere, Illinois. Comments on this application must be received not later than April 25, 1984.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Amarillo Western Rancshares, Inc.,* Amarillo, Texas, to acquire 100 percent of the voting shares of City National Bank, Amarillo, Texas.

Board of Governors of the Federal Reserve System, March 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8798 Filed 4-2-84; 8:45 am]

BILLING CODE 6210-01-M

First Continental Bancshares, Inc. et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and

permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Continental Bancshares, Inc.*, Gretna, Louisiana; to engage *de novo* through its subsidiary Liberty Heritage Life Insurance Company, Shreveport, Louisiana, in the sale of life, accident and health insurance, and disability insurance directly related to its extensions of credit. These activities will be provided in the State of Louisiana.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firsnabanco, Inc.*, Viroqua, Wisconsin; to engage *de novo* in making or acquiring loans and other extensions of credit secured by a borrower's inventory, accounts receivable or other assets. These activities will be provided in the State of Wisconsin.

2. *First of America Bank Corporation*, Kalamazoo, Michigan; to engage *de novo* through its subsidiary First of America Insurance Company, Phoenix, Arizona, in the activity of underwriting, as reinsurer, credit life and credit disability insurance. The activities are directly related to the extension of credit by the credit-extending affiliates of First of America Bank Corporation. These activities will be provided in the State of Michigan. Comments on this application must be received not later than April 20, 1984.

3. *Midwest Financial Group, Inc.*, Peoria, Illinois; to engage *de novo* through its subsidiary Midwest Financial Data Corp., Peoria, Illinois, in providing data processing services to its affiliated banks and to customers of its affiliated banks, such data processing facilities being designed, marketed and operated for the transmission of financial, banking or economic data. These activities will be provided in the State of Illinois and states contiguous to Illinois.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Fresno Bancorp*, Fresno, California; to engage *de novo* through Fresno Bansystem, Inc., Fresno, California, in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), data bases on access to such services, facilities or data bases. Comments on this application must be received not later than April 17, 1984.

2. *Security Pacific Corporation*, Los Angeles, California; to engage *de novo* through its subsidiary Security Pacific Mortgage Corporation, Los Angeles, California, in the origination and acquisition of mortgage loans, including residential mortgage loans, development and construction loans on multi-family and commercial properties for its own account or for sale to others and the servicing, including the purchase and sale of such loans for others.

Board of Governors of the Federal Reserve System, March 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8799 Filed 4-2-84; 8:45 am]
BILLING CODE 6210-01-M

[Docket No. R-0516]

Policy Statement on Use of the Federal Reserve's Wire Transfer Network

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: In recent years, the Board has become concerned with the increasing risk associated with large-dollar wire transfer systems. In a related action, the Board issued for public comment proposals to reduce those risks and interim policies regarding the provision of Reserve Bank net settlement services to wire transfer networks. To ensure that institutions do not use the Federal Reserve's wire transfer network (Fedwire) to avoid Federal Reserve or private sector risk reduction policies, the Board is issuing a policy statement indicating that use of Fedwire to avoid risk reduction measures is inappropriate.

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, (202/452-3368), or David B. Humphrey, Chief, Financial Studies Section, Division of Research and Statistics (202/452-2557); Elliott C. McEntee, Associate Director, Division of Federal Reserve Bank Operations (202/452-2231); Jeffrey C. Marquardt, Economist, Division of International Finance (202/452-2360); or Gilbert T. Schwartz, Associate General Counsel (202)/452-3625), or Joseph R. Alexander, Attorney, Legal Division (202/452-2489), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Board has been increasingly concerned with the risks associated with participation on large-dollar wire transfer networks.[1] The Board has been considering several methods of reducing wire transfer risk, and has today requested public comment on several of these methods.

As the Board indicated in its request for comment, an effective program for reducing wire transfer risks may involve certain costs and constraints. These will likely include a reduction in the amount of intra-day credit exposure associated with wire transfers and an increase in the costs of effectively managing an institution's position. The increased

[1] The term "large-dollar wire networks" refers to networks composed of more than two participants transferring payment messages of both large average and large aggregate value, and providing for settlement, i.e. the actual transfer of funds. Such networks may involve a time lag between the transmission of the payment messages and settlement that gives rise to intra-day inter-bank credit exposures. Under these criteria, there are presently four large-dollar networks: Fedwire (the Federal Reserve's wire transfer system), CHIPS (Clearing House Interbank Payments System, operated by the New York Clearing House Association), CashWire (operated by a consortium of banks), and CHESS (Clearing House Electronic Settlement System, operated by the Chicago Clearing House Association).

costs and other constraints may provide incentives for participants to find ways of avoiding risk reduction policies adopted by the Federal Reserve and privately-owned wire networks. The most likely vehicle for such avoidance would be the use of periodic settlement between depository institutions (most likely at the end of the day) through the exchange of Fedwire transfers. It is clear that the widespread use of these kinds of settlement arrangements by wire network participants could undermine the effectiveness of any risk reduction measures. In order to assure that this result does not occur, the Board is issuing this policy statement to define more clearly the parameters of appropriate Fedwire use.

II. The Board's Authority Over Fedwire

Fedwire operates through the transmission of payment messages between Federal Reserve Banks and the debiting and crediting of accounts at Reserve Banks. The Federal Reserve Act gives the Board explicit, plenary authority to regulate all aspects of a Fedwire transfer. This includes the authority to regulate the withdrawal of funds from reserve accounts, 12 U.S.C. 464, and the authority to regulate the transfer of funds among Reserve Banks, 12 U.S.C. 248(o). The Board also possesses authority to promulgate all rules and regulations necessary to carry out its functions, duties, and services. 12 U.S.C. 248(i).

III. Interim Policy

During the pendency of the Board's consideration of the issue of wire transfer risk, Reserve Banks were instructed not to provide net settlement services to wire transfer networks that had not previously obtained Board approval. The purpose of this moratorium was to maintain the *status quo* to ensure that sufficient options remained open to the Board while it considered various approaches to the issue of risk on large-dollar transfer systems.

Today, the Board is requesting public comment on several proposals for dealing with the risk issue. Concurrently, the Board is lifting the moratorium, and Reserve Banks will now be able to offer net settlement services on an interim basis to large-dollar wire transfer networks that had not previously obtained Board approval. To be eligible for net settlement services, such networks and their participants must agree to the following conditions:

1. All participants must set bilateral credit limits.

2. The network must adopt a sender debit cap of 50 per cent of capital for each participant to be applied to transfers sent over that network.

3. The network must agree to provide *ex post* transaction data to the Federal Reserve.

When the Board adopts a final policy for large-dollar transfer networks such policy would apply to both existing networks and those given access under the interim policy.

The purpose of these requirements is to ensure that risks are not increased while the Board considers public comments and decides on its ultimate risk reduction policies. It is important, therefore, that networks and their participants do not seek to use Fedwire to avoid these conditions or the more permanent policies that may eventually be adopted.

IV. Inappropriate Uses of Fedwire

It is the Board's policy that use of Fedwire for the avoidance of Federal Reserve or private sector risk reduction measures is not appropriate. To achieve the objectives of this policy, the Reserve Banks will conduct *ex post* monitoring of Fedwire transactions for the purpose of detecting patterns indicating that institutions are using Fedwire for inappropriate purposes. Institutions that use Fedwire to avoid risk reduction measures will be counseled. Repeated abuse of Fedwire may result in an institution being removed from on-line access to Fedwire so that its Fedwire transactions may be individually screened, or an offending institution may be barred from using the Federal Reserve's wire transfer service.

The Board believes that depository institutions perceive the seriousness of the wire transfer risk issue. Accordingly, the Board anticipates that institutions will cooperate with this policy as the Board and the banking industry pursue appropriate measures to reduce these risks.

By order of the Board of Governors of the Federal Reserve System, March 29, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-8797 Filed 4-2-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0092]

Action Levels for Ethylene Dibromide in Processed Grain Products; Availability of Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of FDA Compliance Policy Guide 7120.23, Attachment M, that establishes action levels for residues of ethylene dibromide (EDB) in processed grain products. These action levels are based on recommendations from the Environmental Protection Agency (EPA) and are established in conjunction with EPA's tolerance for EDB residues in raw grains. FDA cannot enforce these action levels until the exemption from the requirement of a tolerance for organic bromide residues resulting from use of EDB on grains is revoked. Therefore, these action levels will become effective on the effective date of the revocation of exemption from and establishment of a tolerance for EDB on raw grains proposed by EPA (49 FR 6696 and 6697).

ADDRESS: Written comments on the action levels and requests for single copies of FDA Compliance Policy Guide 7120.23, Attachment M, are to be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John M. Taylor, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–310), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0187.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 6, 1984 (49 FR 4452), EPA announced the emergency suspension of the use of the insecticide EDB as a fumigant for grain stored in bulk and as a fumigant for spot treatment of grain milling equipment. In the **Federal Register** of February 22, 1984 (49 FR 6696–6702), EPA issued a proposal to revoke the exemption from the requirement of a tolerance for organic bromide residues on various grains resulting from the use of EDB as a post harvest fumigant, as well as companion proposals to revoke the

tolerances for inorganic bromide residues in grains and grain-based products. In the same issue of the **Federal Register** (49 FR 6697), EPA also proposed a tolerance for residues of EDB per se of 900 parts per billion (ppb) in barley, corn, oats, popcorn, rice, rye, sorghum (milo), and wheat to cover residues that resulted from treatment of the grain with EDB before the effective date of the suspension order.

Concurrent with the proposal for the 900 ppb tolerance for EDB in grains, EPA recommended that FDA set action levels for processed grain products once the final rules revoking the exemption and establishing the tolerance are effective. EPA believes that residues on all grain products will begin to decline almost immediately as a result of its recent actions and that the proposed tolerance and the recommended action levels will adequately protect the public health. The specific action levels that EPA recommended are 150 ppb for milled products, such as flour and 30 ppb for finished (ready-to-eat) consumer products. EPA has determined that the vast majority of milled products processed from raw grain containing 900 ppb or less of EDB should, if good manufacturing practice is followed, contain less than 150 ppb EDB. EPA also concluded that further processing, such as cooking, following good manufacturing practice would be expected to further reduce the EDB level to less than 30 ppb in the finished (ready-to-eat) consumer products. The information and considerations on which the recommended action levels are based are included in EPA's document "Scientific Support and Decision Document for Grain and Grain Milling Fumigation Uses." A copy of this document is on file with FDA's Dockets Management Branch (address above).

FDA is establishing the action levels for EDB residues in processed grain products as recommended by EPA on the basis of the data available. In order to provide additional information on residues remaining in grain products after processing using current good manufacturing practice, FDA has intiated studies on the effects of milling procedures on levels of EDB residues in the raw grains and of cooking on residue levels. Additionally, the agency will be obtaining residue data from the large scale sampling program it will conduct to enforce the tolerance on raw grains and these action levels. Data from the studies and the enforcement sampling will expand the available information on residues of EDB in grain-based processed foods. The agency will also consider data from other sources and welcomes comments, supported by data, regarding the appropriateness of the action levels.

FDA will review these data as they become available. In those rare instances where the data show that current good manufacturing practice results in different residue levels than currently expected, FDA will consider establishing a specific action level for the category of product in question. In the event that a higher action level is indicated for a milled product, FDA will not set an action level unless the agency has determined that the process for preparing the product to eat yields residues below the action level for ready-to-eat food. FDA will advise EPA of a new action level tht may be warranted for selective processed grain products. The agency reminds interested parties that, under 21 CFR 109.4, regulatory action may be taken at any time after an action level is established or changed, and need not await publication of a notice in the **Federal Register**. A **Federal Register** notice announcing an action level will be published as soon as possible after an action level is established or changed.

FDA cannot enforce these action levels until the exemption from the requirement of a tolerance for organic bromide residues resulting from use of EDB on grains is revoked. Therefore, these action levels will become effective on the effective data of the revocation of exemption from the establishment of a tolerance for EDB on raw grains proposed by EPA (49 FR 6696 and 6697).

As mentioned above, EPA has prepared a discussion of the considerations involved in developing the action levels. That decision document also includes determinations that the economic consequences of the action levels would not meet the criteria for a major rule under the criteria in Executive Order 12291 applicable to rules, nor would these consequences have a significant economic impact on small entities under the criteria in the Regulatory Flexibility Act (Pub. L. 96–354).

Interested persons may submit written comments, along with supportive data, on FDA Compliance Policy Guide 7120.23, Attachment M, or requests for single copies of the guide to the Dockets Management Branch (address above). Two comments of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 28, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-8765 Filed 3-29-84; 11:20 am]

BILLING CODE 4160-01-M

[Docket Nos. 79N-0426 and 80N-0310; DESI 2238]

Certain Sulfonamide Preparations for Vaginal Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug applications (NDA's) for Gantrisin Cream (NDA 9–173) and for Westhiazole Vaginal Jelly (NDA 5–514). The FDA is also withdrawing approval of the abbreviated new drug application (ANDA) for Koro-Sulf Cream (ANDA 83–863). Approval is being withdrawn for these sulfonamide preparations because these drug products lack substantial evidence of effectiveness. These products have been used in the treatment of vaginitis. Gantrisin Cream and Westhiazole Vaginal Jelly are no longer marketed.

EFFECTIVE DATE: May 3, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 2238 and directed to the Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Francis J. Sasinowski, Center for Drugs and Biologics (HFN–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 22, 1983 (48 FR 38093), the Director of the Center for Drugs and Biologics offered an opportunity for a hearing on a proposal to withdraw approval of the new drug applications for Gantrisin Cream and for Westhiazole Vaginal Jelly and to withdraw approval of the abbreviated new drug application for Koro-Sulf Cream. The basis of the proposal was that the products lack substantial evidence of effectiveness. Because none of the holders of the applications requested a hearing, approval of the following new drug applications is being withdrawn:

1. NDA 9–173; Gantrisin Cream containing sulfisoxazole; Roche Laboratories, Division of Hoffmann-LaRoche Inc., Nutley, NJ 07110.

2. NDA 5–514; Westhiazole Vaginal Jelly containing sulfathiazole; Westwood Pharmaceuticals, 468 DeWitt St., Buffalo, NY 14213.

3. ANDA 83–863; Koro-Sulf Cream containing sulfisoxazole; Holland-Rantos Co., Inc., 865 Centennial Ave., Box 385, Piscataway, NJ 08854.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 130.8). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

This notice does not apply to the following products which are the subjects of a pending hearing request. This hearing request is under review, and may be the subject of a future **Federal Register** notice.

Vagilia Cream and Suppositories (no NDA's) containing sulfisoxazole, aminacrine, and allantoin; Lemmon Co., 850 Cathill Rd., Sellersville, PA 18960.

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 stat. 1052–1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, that there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 9–173, NDA 5–514, and ANDA 83–863, and all their amendments and supplements is withdrawn effective May 3, 1984. Shipment in interstate commerce of the above products or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: March 26, 1984.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 84–8766 Filed 4–2–84; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 75N–0236; DESI No. 9418]

Pentaerythritol Tetranitrate in Combination with Hydroxyzine Hydrochloride; Denial of Hearing Request and Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is denying a hearing request and withdrawing approval of the new drug application (NDA) for Cartrax 10 and Cartrax 20 Tablets because the drugs lack substantial evidence of effectiveness. The drugs are used in the treatment of angina pectoris.

EFFECTIVE DATE: May 3, 1984.

FOR FURTHER INFORMATION CONTACT: Margery Erickson, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 9418) published in the **Federal Register** of October 20, 1971 (36 FR 20313), the Food and Drug Administration (FDA) announced its evaluation of a report received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group (NAS/NRC), on Cartrax 10 and Cartrax 20 Tablets (NDA 10–998 held by J. B. Roerig Division, Chas. Pfizer & Co., Inc., 235 East 42d St., New York, NY 10017 (Pfizer)). The notice stated FDA's conclusion that the two Cartrax products, which contain pentaerythritol tetranitrate (PETN) in combination with hydroxyzine hydrochloride (hydroxyzine), were possibly effective for the management or treatment of angina pectoris. The notice provided Pfizer an opportunity to submit substantial evidence of the effectiveness of its products. Pfizer submitted no data in response to the notice, and expanded the claimed indications for Cartrax to include angina decubitis, precordial pain, and status anginosis.

In a notice of opportunity for hearing published in the **Federal Register** of March 6, 1973 (38 FR 6090), FDA proposed to withdraw approval of the new drug applications for Cartrax 10 and Cartrax 20 Tablets and certain other combination organic nitrate drugs on the ground that the drugs lack substantial evidence of effectiveness for their labeled indications. Responding to the notice, Pfizer, on April 4, 1973, requested a hearing and submitted data in support of the effectiveness of Cartrax 10 and Cartrax 20 Tablets. On December 9, 1975 (40 FR 57378), FDA amended the March 6, 1973 notice to make it clear that the effectiveness issue raised for these combination products encompassed the lack of evidence showing compliance with FDA's policy for combination drugs (21 CFR 300.50). Pfizer made no additional filing in response to the December 9, 1975 notice.

The National Association of Pharmaceutical Manufacturers (NAPM), in response to the December 9, 1975 notice, submitted comments on combination organic nitrate drugs generally. No clinical data were included. NAPM's comments are addressed in Part V of this notice.

The sponsor of the product named below also submitted a hearing request and supporting data in response to the March 6, 1973, and December 9, 1975 notices. This hearing request is under review, and will be subject of a future **Federal Register** notice.

Miltrate Tablets containing PETN and meprobamate (NDA 11–502); Wallace Laboratories, Division of Carter-Wallace, Inc., Half Acre Rd., Cranbury, NJ 08512.

After considering all of the material submitted by Pfizer, and NAPM's comments, the Commissioner concludes that there is no genuine and substantial issue of fact presented to justify a hearing, and that the legal objections offered do not alter that conclusion. Specifically, the Commissioner finds that the sponsor has failed to demonstrate that the combination of PETN and hydroxyzine complies with the requirements of the combination policy (21 CFR 300.50). A full discussion follows.

I. The Drugs

Each Cartrax 10 tablet contains 10 milligrams (mg) pentaerythritol tetranitrate and 10 mg hydroxyzine hydrochloride. Each Cartrax 20 tablet contains 20 mg pentaerythritol tetranitrate and 10 mg hydroxyzine hydrochloride.

II. Recommended Uses and Dosage

Cartrax 10 and Cartrax 20 Tablets are currently labeled as possibly effective for the management or treatment of angina pectoris, angina decubitis, precordial pain, and status anginosis. At the time of the NAS/NRC review, the drugs were labeled only for use in the management of angina pectoris.

The recommended dosage range for Cartrax 10 is one to two tablets three to four time daily. The recommended dosage range for Cartrax 20 is one tablet three to foure times daily.

III. Data Submitted to Support Claims of Effectiveness

Pfizer's hearing request attempts to support the effectiveness of Cartrax only for its angina pectoris indication. To substantiate this claim, Pfizer submitted 69 published articles. On its face, the submission fails to demonstrate the effectiveness of either dosage form of Cartrax for angina pectoris. The Federal Food, Drug, and Cosmetic Act (the act) and implementing regulations require that the effectiveness of a drug product be shown by adequate and well-controlled studies (21 U.S.C. 355(d) and 21 CFR 314.111(a)(5)). The articles submitted by Pfizer include generalized descriptions of the disease state of angina and its treatment, isolated case reports, studies of other coronary diseases and other drugs, and uncontrolled studies. Moreover, none of the studies compare the effects of Cartrax with its individual components—PETN and hydroxyzine—as required by the agency's combination policy. Thus, the studies cited fail to provide evidence that each component makes a contribution to the claimed effects of the combination, as required by 21 CFR 300.50. As shown below, all of the articles [1] are facially inadequate to demonstrate the effectiveness of Cartrax for its intended use.

The six articles in Pfizer's submission listed below are written in a foreign language, and no English translation has been provided. This is contrary to the explicit requirements of 21 CFR 314.200(c)(2) (1974) (now codified at 21 CFR 10.20(c)(2)). From the brief English summaries and titles, it appears that none of the articles cited directly concerns the Cartrax combination. In any event, without a complete translation, the articles cannot be evaluated and therefore fail to provide substantial evidence of the effectiveness of Cartrax for the treatment of angina pectoris (21 CFR 10.20(c)(2) and 314.111(a)(5)(ii)((*c*)).

1. Meli, A., et al., "Sperimentazione Clinica di un Nuovo Prodotto di Associazione di un Farmaco Beta-bloccante con un Nitroderivato," *Minerva Medica*, 61:4271–4278, 1970 (Exhibit 27).

2. Salmini, G., et al., "Valutazione Clinica dell 'Attivita Terapeutica di un Beta-bloccante Associato ad un Nitroderivato," *Minerva Cardioangiologica*, 18:311–315, 1970 (Exhibit 29).

3. Buhlmeyer, K., "Behandlung von Rhythumusstorungen bei Herzkatheteruntersuchungen von Kindern," *Munchener Medizinische Wochenschrift*, 110:727–730, 1968 (Exhibit 43).

4. Kipka, E. H. and Enzenbach, "Hydroxyzin in der Anasthesie bei Neurochirurgischen Enigriffen," *Zentralblatt fur Neurochirurgie*, 31:149–156, 1970 (Exhibit 46).

5. Abaza, A., et al., "Hydroxyzine et Troubles du Rythme Cardiaque" *La Cardiologie Dans Le Monde*, p. 898, 1967 (Exhibit 54).

6. Bouvrain, Y., et al., "Activite du Service de Reanimation Cardiaque de l'Hopital Lariboisiere," *La Presse Medical*, 76:1393–1396, 1968 (Exhibit 55).

Seven of Pfizer's articles consist of general descriptions of angina pectoris and its treatment. Some of these also provide general discussions of cardiac arrhythmias and tranquilizer therapy, and two contain reports of animal tests. None of these articles describes the findings of clinical investigations. They therefore fail to provide substantial evidence of effectiveness as defined by 21 U.S.C. 355(d).

7. Fish, S., "Antianginal Drugs. Part IV. The Long-acting Nitrates," *American Heart Journal*, 71:712–713, 1966 (Exhibits 10 and 37). PETN and three other long-acting nitrate preparations are discussed. The author concludes that the value of the drugs for treating angina pectoris has not been satisfactorily demonstrated.

8. Riseman, J. E. F., "Current Concepts in Therapy. The Treatment of Angina Pectoris," *New England Journal of Medicine*, 261:1017–1020, 1959 (Exhibit 22). Methods of treating angina pectoris are reviewed and certain anti-anginal drugs are classified for effectiveness. PETN is listed as having a moderate degree of value in treating angina pectoris.

9. Rodman, M. J., "Drugs Used in Heart Disease," *RN*, 27:37–42, 1964 (Exhibit 68). Various preparations used in the treatment of angina pectoris are reviewed. The author states that conclusive evidence favoring the long-acting nitrates is lacking.

10. Robinson, S. J., "Treatment of Cardiac Arrhythmias," *Pediatric Clinics of North America*, 11:315–362, 1964 (Exhibit 62). Various types of arrhythmias encountered in children and available treatments are described. Hydroxyzine is mentioned as a possible treatment for supraventricular tachycardia.

11. Ayd, F. J., "The Use of Tranquilizing Medications in General Medical Practice," *Journal of the Indiana State Medical Association*, 52:516–521, 1959 (Exhibit 48). A general discussion of tranquilizer therapy is presented.

12. Winbury, M. M., et al., "Pentaerythritol tetranitrate and Dipyridamole on Cardiac Nutritive Flow and Blood Content," *American Journal of Physiology*, 220:1558–1563, 1971 (Exhibit 31). This study reports the effects of PETN and dipyridamole on the cardiac blood flow of swine.

13. Sarnoff, S. J., et al., "Hemodynamic Determinants of Oxygen Consumption of the Heart with Special Reference to the Tension-Time Index," *American Journal of Physiology*, 192:148–156, 1958 (Exhibit 35). Isolated, perfused dog heart was studied to determine the influence of various hemodynamic phenomena on the heart's utilization of oxygen.

Twenty-four of the articles cited by Pfizer describe studies of coronary conditions other than angina pectoris; therefore, these references fail to provide evidence of the effectiveness of Cartrax for the treatment of angina pectoris (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)). With the exception of one article (No. 37 below) in this group, Cartrax was not evaluated in this group of studies (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)). More important, all of the articles fail to address the contribution of the individual components to the effects of the combination as required by the combination policy (21 CFR 300.50).

14. Davidson, I. W. F., et al., "Pharmacodynamics and Biotransformation of Pentaerythritol Tetranitrate in Man," *Journal of Pharmaceutical Sciences*, 60:274–277, 1971 (Exhibit 30). Fifteen patients received 20 or 40 mg doses of radiolabeled PETN in a study of the absorption, biotransformation, and excretion of oral doses of PETN.

15. Likoff, W., et al., "Evaluation of 'Coronary Vasodilators' by Coronary Arteriography," *American Journal of Cardiology*, 13:7–9, 1964 (Exhibit 32). Dilation of the coronary arteries was observed in 20 patients with coronary heart disease following the administration of nitroglycerin and erythrityl tetranitrate.

16. Winer, N. J., "The Effect of Certain Drugs on Myocardial Dynamics as Recorded with the High-Frequency (Acceleration) Direct Body Ballistocardiograph," *Ballistocardiography and Cardiovascular Therapy," 26:160–173, 1970 (Exhibit 33). Several case histories are described that indicate certain beneficial effects on myocardial functions by a variety of drugs, including PETN.*

[1] The articles submitted by Pfizer have been regrouped and renumbered for discussion in this notice. Pfizer's exhibit numbers are given in this notice after the citation for each article.

17. Winsor, T., et al., "The Rectilinear Vectorcardiogram in Coronary Insufficiency," *Angiology*, 13:474–480, 1962 (Exhibit 34). A description of the procedure for rectilinear vectorcardiography is provided. The investigators state that the method appears to be well suited for the detection and evaluation of coronary insufficiency in its early stages, and state that they have confirmed the prophylactic effect of PETN against S–T segment changes produced by exercise.

18. Edgar, A. L., "Electrocardiogram of the Month: Ventricular Tachycardia Resistant to Treatment," *The Bulletin of the San Diego County Medical Society*, 46:41, 1959 (Exhibit 41). A case report is provided of a patient with ventricular tachycardia who received hydroxyzine and reserpine.

19. Salmons, J. A., "Treatment of Cardiac Arrhythmias with Hydroxyzine," *Disease of the Chest*, Vol. 38, July 1970 (Exhibit 42). Case reports are provided of four patients with arrythmias who were treated successfully with hydroxyzine.

20. Stanciu, L., et al., "Contributions on the Use of Hydroxyzine (Atarax) in the Treatment of Certain Arrhythmias," *Medicina Interna*, 22:417–422, 1970 (Exhibit 44). Sixteen patients with various types of atrial and ventricular arrhythmias of at least six etiologies were treated with hydroxyzine.

21. Burrell, Z. L., et al., "Treatment of Cardiac Arrhythmias with Hydroxyzine," American Journal of Cardiology, 1:624–628, 1958 (Exhibit 45). Fifty patients with various types of cardiac arrhythmias were treated with hydroxyzine. The investigators recommend the drug for treating acute ventricular arrhythmias.

22. Bozza, M. L. and G. C. Nicola, "Hydroxyzine Hydrochloride—Neuropsychical Adjustment and EEG," *Psychotropic Drugs*, Elsevier, pp. 569–571, 1957 (Exhibit 47). The effects of hydroxyzine were evaluated in 210 patients with various disorders who received the drug prior to surgery.

23. Pishkin, V., et al., "A New Method for Assessing Drug Effects Upon Human Decision Making and Stress: Hydroxyzine is Hospitalized Psychiatric Patients," Presented as a Scientific Exhibit at the Academy of Psychosomatic Medicine, December 1966 (Exhibit 49). One hundred and sixty-two psychiatric patients received hydroxyzine, placebo, or no drug treatment in a study of the effects of hydroxyzine on stress and thinking processes.

24. Pishkin, V., et al., "Stress: Psychophysiological and Cognitive Indices in an Acute Double-Blind Study with Hydroxyzine in Psychiatric Patients," *Archives of General Psychiatry*, 16:471–478, 1967 (Exhibit 50). Ninety male psychiatric patients received muscular hydroxyzine, placebo, or no drug treatment in a randomized crossover study of the effects of hydroxyzine in alleviating stress induced by problem solving and electric shock.

25. Breslow, I. H., "Evaluation of Hydroxyzine Pamoate Concentrate as an Ataractic: Double-Blind Study in a Neurotic Male Prison Group," *Current Therapeutic Research*, 10:421–427, 1968 (Exhibit 51). Fifty-six males were given hydroxyzine or placebo in a double-blind crossover study which measured the effects of hydroxyzine on various psychological prameters.

26. Smigel, J. O., et al., "Emotional and Psychic Problems of Institutionalized Geriatric Patients: Evaluation of Hydroxyzine," *Journal of the American Geriatric Society*, 7:61–66, 1959 (Exhibit 52). One hundred and one geriatric patients with emotional disturbances were treated with hydroxyzine for 3 to 9 months.

27. Papadopoulos, C. and C. J. Blazek, "Ventricular Tachycardia of 70 Days' Duration with Survival," *American Journal of Cardiology*, 11:107–111, 1963 (Exhibit 53). A case report is provided of a patient who had recurrent ventricular tachycardia. The patient received PETN and hydroxyzine in the course of treatment but the effects of these agents were not determined.

28. Edgar, A. L., "Electrocardiogram of the Month: Auricular Tachycardia with 2:1 A.V. Block," *The Bulletin of the San Diego County Medical Society*, 46:277, 1959 (Exhibit 56). A case report is provided of a female patient with auricular tachycardia. The patient converted to normal sinus rhythm after the first or second dose of hydroxyzine 25 mg.

29. Berger, H., "Cause of Drug-induced Thrombocytopenic Purpura Identified by the Passive Transfer Reaction," *Annals of Internal Medicine*, 56:618–623, 1962 (Exhibit 57). The case is reported of a 76-year-old woman who developed drug-induced thrombocytopenia when treated with quinidine for paroxysmal atrial tachycardia. Following the reaction, the patient was placed on hydroxyzine to treat the tachycardia.

30. Farah, L., "Preliminary Study on the Use of Hydroxyzine in Psychosomatic Affections," *International Record of Medicine and General Practice Clinics*, 169:379–389, 1956 (Exhibit 58). Hydroxyzine was administered to 96 patients in doses of 10 to 100 mg for the treatment of a variety of psychic and somatic disorders.

31. King, J. C., "The Use of Hydroxyzine in Internal Medicine," *International Record of Medicine*, 172:669–671, 1959 (Exhibit 59). Sixty-seven patients with various psychophysiological or functional disturbances received 100 to 200 mg of hydroxyzine daily for periods of 2 to 30 days.

32. Livingston, P. H., "Hydroxyzine as an Antiarrhythmic," *Journal of the Tennesee Medical Association*, 56:87–88, 1963 (Exhibit 60). The antiarrythmic effects of hydroxyzine were studies in 75 patients with a variety of cardiac arrhythmias.

33. Bradlow, B. A., "Supraventricular Paroxysmal Tachycardia Interrupted by Repeated Episodes of Total Cardiac Standstill with Syncopal Attacks," *Chest*, 58:122–128, 1970 (Exhibit 61). Three cases were reported in which paroxysmal supraventricular tachycardia was associated with episodes of cardiac standstill. One patient returned to normal sinus rhythm after receiving hydroxyzine.

34. Talusan, A. D., "hydroxyzine Therapy of Cardiac Dysrhythmia," *Maryland State Medical Journal*, 9:191–197, 1960 (Exhibit 63). A report is provided of 10 patients with various forms of cardiac arrhythmia who were treated with hydroxyzine.

35. Dobkin, A. B., et al., "Circulartory Response to Tilt with Hydroxyzine, Thiethylperazine Maleate, SA 97 and Perphenazine," *Anesthesia and Analgesia * * * Current Researches*, 42:225–231, 1963 (Exhibit 66). Ten healthy subjects received the drugs named in the title in a study of the effects on blood pressure and pulse rate.

36. Menger, H. C., "Use of Hydroxyzine (Atarax) in the Management of Ear, Nose, and Throat Disorders," *New York State Journal of Medicine*, 58:1684–1686, 1958 (Exhibit 67). Seventy-four patients ranging in age from 6 to 77 years received hydroxyzine for the treatment of various psychological complaints.

37. Samuels, S. S. and H. E. Shaftel, "New Clinical Approach to the Management of Intermittent Claudication (Angina Cruris)," *Angiology*, 9:378–381, 1958 (Exhibit 64). Cartrax was administered to a group of 31 patients in an effort to determine the effectivenes of the drug in the management of intermittent claudication. No control group was employed, and Cartrax was not evaluated for the treatment of angina pectoris (21 CFR 314.111(a)(5((ii)(*a*) (*2*) and (*4*)).

Twelve of the submitted articles present studies of angina pectoris that test various diagnostic methods or drugs other than the combination product or its individual ingredients. These articles are inadequate to demonstrate the effectiveness of Cartrax (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)). They also completely fail to demonstrate the contribution of the individual components to the claimed clinical effects of the combination (21 CFR 300.50).

38. Gold, H., et al., "The Xanthines (Theobromine and Aminophylline) in the Treatment of Cardiac Pain," *The Journal of the American Medical Association*, 108:2173–2179, 1937 (Exhibit 8). Theobromine, aminophylline, and placebo were administered to 100 patients with angina pectoris in a study of the effects of these drugs on cardiac pain.

39. Master, A. M., et al., "The Drug Treatment of Angina Pectoris Due to Coronary Artery Disease," *American Journal of Medical Sciences*, 197:774–782, 1939 (Exhibit 9). A variety of medications, including nitroglycerin, were administered in a placebo-controlled crossover study to 201 patients with angina pectoris. The author reports that the best results were obtained with placebo.

40. Demany, M. A., et al., "Correlation Between Coronary Arteriography and the Postexercise Electrocardiogram," *American Journal of Cardiology*, 19:526–530, 1967 (Exhibit 11). Seventy-five patients with chest pain were studied in an effort to determine the correlation between findings of a double Master exercise test and coronary cinearteriography in indicating the presence and severity of coronary artery disease.

41. Ascoop, C. A., et al., "Exercice Test, History, and Serum Lipid Levels in Patients with Chest Pain and Normal Electrocardiogram at Rest: Comparison to Findings at Coronary Arteriography," *American Heart Journal*, 82:609–617, 1971 (Exhibit 12). Several methods of diagnosing coronary artery disease, including the Master two-step and graded exercise test, were evaluated in 96 patients with chest pains.

42. Roughgarden, J. W. and E. V. Newman, "Circulatory Changes During the Pain of Angina Pectoris: 1772–1965—A Critical Review," *American Journal of Medicine*, 41:935–948, 1966 (Exhibit 13). This article reviews reports concerning circulatory changes observed in patients undergoing angina pectoris.

43. Roughgarden, J. W., "Circulatory Changes Associated with Spontaneous Angina Pectoris," *American Journal of Medicine*, 41:947–961, 1966 (Exhibits 13 and 40). Fifteen patients were evaluated in a study of the circulatory changes that occur during acute episodes of angina pectoris.

44. Battock, D. J., et al., "Effects of Propranolol and Isosorbide Dinitrate on Exercise Performance and Adrenergic Activity in Patients with Angina Pectoris," Circulation, 39:157–169, 1969 (Exhibit 26). The effects on exercise tolerance of propranolol and isosorbide dinitrate separately and in combination were compared to placebo in 12 patients with angina pectoris.

45. Battock, D. J. and C. A. Chidsey, "Beta Adrenergic Blockade and Combination Therapy in Coronary Artery Disease," *Advances of Cardiology*, 5:126–131, 1970 (Exhibit 28). Ten patients with angina were evaluated for exercise tolerance following the administration of propranolol and isosorbide dinitrate alone and in combination.

46. Kimura, E., et al., "Developmental Mechanism of Angina Pectoris and Action of Coronary Vasodilators," *Japan Heart Journal*, 8:219–233, 1967 (Exhibit 36). Forty-one subjects with angina pectoris and 12 healthy subjects received isosorbide dinitrate, a xanthine preparation, and a beta-blocking agent in a study of anginal pain and the action of these drugs.

47. Epstein, S. E., et al., "Angina Pectoris: Pathophysiology, Evaluation, and Treatment," *Annals of Internal Medicine*, 75:263–296, 1971 (Exhibit 38). A review is provided of the pathophysiology, evaluation techniques for diagnosis, and methods of treatment of angina pectoris. Included is an evaluation of the exercise performance of several angina patients who received isosorbide dinitrate.

48. Howard, J. C., "Rationale for Treating Coronary Patients with Psychotherapeutic Agents," American College of Cardiology Symposium, New York, edited by H. I. Russek and B. L. Lohman, 1971, Lippincott, pp. 313–318 (Exhibit 39). Psychological aspects of coronary artery disease are described and the author evaluates testimonial evidence which suggests that certain personality characteristics can be equated with an apparent coronary proneness and angina. The author concludes that the use of psychotropic agents for the coronary prone patient should be individualized according to the needs of the patient.

49. Kemp, G. L., "Use of Two Psychotropic Compounds in Treatment of Cardiovascular Disease," *Journal of the American Osteophatic Association*, 60:478–480, 1961 (Exhibit 65). A report is provided of the effects of nialamide in 25 patients with angina pectoris and hydroxyzine in 22 patients with cardiac arrhythmias.

The following 17 articles present data on PETN alone or in combination with drug substances other than hydroxyzine. None of the articles specifically mentions the combination of PETN with hydroxyzine. These articles clearly fail to address the contribution of either PETN or hydroxyzine to the claimed effects of Cartrax, which combines the two compounds together in a single dosage form. Accordingly, the articles described below fail to provide substantial evidence of the effectiveness of Cartrax as a fixed combination (21 CFR 300.50).

50. Russek, H. I. , "New Dimension in Angina Pectoris Therapy: Propranolol-Nitrate Synergism," *in* "Coronary Heart Diseases" edited by H. I. Russek and B. I. Zohman, Lippincott, 1971, pp. 291–302 (Exhibit 24). The effects of propranolol and isosorbide dinitrate were evaluated in 115 angina patients. One patient reportedly receive PETN.

51. Russek, H. I. "Propranolol and Isosorbide Dinitrate Synergism in Angina Pectoris," *American Journal of Cardiology*, 21:44–54, 1968 (Exhibit 25). Twenty-eight patients with angina pectoris were evaluated in a study of propranolol and isosorbide dinitrate. One patient received PETN in conjunction with propranolol and showed a favorable response.

52. Cole , S. L., et al., "Assay of Anti-Angina Agents. I. A Curve Analysis with Multiple Control Periods," *Circulation*, 15:405–413, 1957 (Exhibit 3). A placebo-controlled, double-blind study is described in which 14 patients received PETN in doses of 10 to 20 mg four times daily. No significant difference was shown between PETN and placebo for relief of angina pectoris.

53. Dagenais, G. R., et al., "Exercise Tolerance in Patients with Angina Pectoris: Daily Variation and Effect of Pentaerythritol Tetranitrate," *Johns Hopkins Medical Journal*, 125:301–311, 1969 (Exhibit 4). PETN was administered to 15 patients with angina pectoris in a double-blind crossover study. Although there were no significant differences between placebo and PETN in increasing exercise duration and altering ischemic electrocardiographic findings, the study reports that anginal pain was less frequent and less severe after administration of PETN.

54. Datey, K. K. and C. P. Dalvi, "Anti-Anginal Drugs, Their Evaluation by Double Blind Trail," *Angiology*, 21:520–525, 1970 (Exhibit 5). A double-blind crossover study is described in which the effects of PETN, placebo, and 5 other antianginal agents were compared in 26

angina patients. No significant difference was demonstrated between placebo and PETN.

55. Russek, H. I., "Evaluation of the Nitrites in the Treatment of Angina Pectoris", *The American Journal of the Medical Sciences*, pp. 136–144, 1960 (Exhibit 23). In this study, erythrol (now generally referred to as erythrityl or erethritol) tetranitrate was administered to 58 patients. Eight of these patients also received PETN, and exercise-electrocardiographic responses were measured. The investigator concluded that the time to onset of action and duration of action was longer for oral PETN than for sublingual erythrol tetranitrate.

56. Riseman, J. E. F., et al., "Nitroglycerin and Other Nitrites in the Treatment of Angina Pectoris: Comparison of Six Preparations and Four Routes of Administration," *Circulation*, 17:22–39, 1958 (Exhibit 2). The effects of PETN and 5 other nitrate preparations were studied in 34 patients by measuring exercise tolerance and clinical response. The report states that of 17 patients who responded well to sublingual nitroglycerin, 1 showed a marked response and 4 showed a moderate response to PETN administered orally. The investigators concluded that for a small percentage of patients PETN is of moderate value.

57. Winsor, T. and P. Humphreys, "Influence of Pentaerythritol Tetranitrate (Peritrate) on Acute and Chronic Coronary Insufficiency," *Angiology*, 3:1–15, 1952 (Exhibit 6). The effects of PETN were tested in 250 patients as measured by nitroglycerin requirements, exercise tolerance and exercise electrocardiographic tests, and frequency of anginal attacks. Only half of the patients had angina pectoris, and 78.4 percent of these were reported on PETN as compared with no treatment. In another test, 31 subjects received PETN and 5 others treatments over a 1-year period. The investigators report that PETN was more effective in reducing the frequency of anginal attacks in this group than were placebos, theocalcin, aminophyllin, or khellin.

58. Rusek, H. I., "Combined Vasodilator and Tranquilizer Therapy in Angina Pectoris: A Comparative Study with Statistical Analysis," *American Journal of the Medical Sciences*, 249:84–88, 1965 (Exhibit 7). Nineteen patients with angina pectoris recievied chlordiazepoxide, dipyridamole, a combination of chlordiazepoxide and dipyridamole, and a combination of chlordiazepoxide and PETN for 3-week periods separated by 1-week periods of placebo. The investigators state that the combination of chlordizepoxide and PETN was shown to be more effective than the other treatments in terms of the number of pain-free and minimal-pain days reported.

59. Plotz, M., "Pentaerythritol Tetranitrate: A New Drug for the Treatment of Coronary Insufficienty," *New York State Journal of Medicine*, 52:2012–2015, 1952 (Exhibit 14). Thirty patients with angina pectoris and five with status anginosis received PETN and placebo in a double-blind study. The investigator states that beneficial results were obtained in 24 anginal patients.

60. Rosenberg, H. N. and A. L. Michelson, "The Use of Pentaerythritol Tetranitrate in Chronic Coronary Insufficiency," *American Journal of Medical Sciences*, 230:254–258, 1955 (Exhibit 15). Twenty patients with angina pectoris are evaluated in a double-blind study of the effects of PETN. Five patients are reported to have shown significant improvement after administration of PETN in doses of 20 to 30 mg four times a day over a period of approximately 6 months.

61. Russek, H. I., "The Therapeutic Role of Coronary Vasodilators: Glyceryl Trinitrate, Isosorbide Dinitrate, and Pentaerythritol Tetranitrate," *American Journal of the Medical Sciences*, 252:43–53, 1966 (Exhibit 16). Exercise electrocardiographic studies and exercise tolerance tests were performed on a group of 14 patients to evaluate the effects of glyceryl trinitrate, isosorbide dinitrate, and PETN against placebo. The investigator states that 9 of the 10 patients who received a 40-mg dose of PETN manifested an increase in exercise tolerance that appeared in 60 to 90 minutes and persisted for 4 to 5 hours.

62. Cole, R. E. and R. I. Goldberg, "Timed-Release Pentaerythritol Tetranitrate and Placebo in the Management of Angina Pectoris," *Current Therapeutic Research*, 9:551–557, 1967 (Exhibit 17). A double-blind parallel study of angina pectoris is described in which 43 patients received sustained-release PETN or placebo for 4 weeks. It is reported that patients receiving PETN responded better than those receiving placebo.

63. Sapienza, P. L., "Treatment of Angina Pectoris: A Double-Blind Study," *Clinical Medicine*, pp. 30–32, December 1968 (Exhibit 18). Forty-eight patients with angina pectoris were treated with sustained-release PETN, 10 mg and 20 mg PETN, and placebo in a double-blind parallel study. Good to excellent results were observed with sustained-release PETN but no significant difference was found between 10 and 20 mg PETN and placebo.

64. Weitzman, D., "Penta-erythritol Tetranitrate in Treatment of Angina," *British Medical Journal*, pp. 1409–1412, December 1953 (Exhibit 19). In this study, 34 patients received PETN and 31 patients received placebo for at least 3 months. Fifteen patients in each group were also crossed over to the other treatment or no treatment. The investigator found a significant improvement for the PETN group in effort tolerance and the number and severity of anginal attacks, but found no significant differences between PETN and placebo for the patients who received both treatments.

65. Winsor, T. and C. C. Scott, "Further Observations of Cardiovascular Effects of Pentaerythritol Tetranitrate in Animals and Man," *American Heart Journal*, 49:414–427, 1955 (Exhibit 20). Various studies are reported of the effects of PETN on the cardiovascular system of animals and humans. In one study, an increase in exercise tolerance was observed in 12 patients who received 25 mg sublingual PETN and placebo. In another study of 20 patients who received 10 and 20 mg sublinqual PETN, sublingual nitroglycerin, and placebo, no significant difference between PETN and placebo was shown in treating acute episodes of angina pectoris. It was also observed that PETN administered orally in average daily doses of 69.2 mg and 35.6 mg decreased the nitroglycerin intake of 13 patients compared with placebo, and in doses of 30 mg per day reduced the nitroglycerin consumption of 12 patients more than triethanolamine trinitrate.

66. Russek, H. I., et al., "Objective Evaluation of Coronary Vasodilator Drugs," *American Journal of Medical Sciences*, 229:46–54, 1955 (Exhibit 21). In this study, 60 patients with angina pectoris were treated with 2 or more vasodilator drugs. The authors report that PETN produced a marked modifying influence on the electrocardiographic response to standard exercise in 14 of the 20 patients who received the drug.

Of the articles submitted by Pfizer, only article No. 37 (discussed above) and the three that follow concern studies with Cartrax. As explained below, these three remaining articles also fail to describe adequate and well-controlled studies, and provide no evidence of the contribution of the individual components to the combination product Cartrax (21 CFR 314.111(a)(5)(ii) and 300.50).

67. Garber, R. C., Jr., "Use of a PETN-Ataractic Combination (Cartrax) in the Long Term Management of the

Cardiovascular Geriatric Patient," *Florida M.A.*, 47:163–166, 1960 (Exhibit 1). This article reports the experience of an individual physician in treating 77 patients with Cartrax for a period of over 2 years. Eighty-seven percent of the patients were over 50 years of age and most patients showed evidence of some form of cardiovascular disease. The dosage used ranged from Cartrax 10 three times daily to Cartrax 20 four times daily. The investigator reported that the patients on Cartrax did as well as, if not better, than those patients taking nitroglycerin or long-acting nitrates. The investigator concluded that more than 89 percent of the patients showed a good to excellent response. The investigator also noted that for those patients who had previously taken larger quantities of nitroglycerin, the need for additional nitroglycerin tablets was markedly curtailed.

This study reports the author's subjective evaluation of a group of patients with cardiovascular problems. The article does not report the findings of an adequate and well-controlled study. There is no evidence of a control group as required by 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). The findings also lack any descripton of the measurements made and criteria utilized for demonstrating drug effectiveness (21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*c*)) Furthermore, no evidence is provided that any of the patients were diagnosed as suffering from angina pectoris. Thus, there is no assurance that any of the patients were even suitable for a study of that condition (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)). Finally, numerous other unspecified medications were administered concomitantly with the test drug. This additional medication served to confound and cloud any determination of the effects of the test drug (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)). These confounding effects were even acknowledged by the author, who stated that "[w]hen a second, third, or fourth drug, such as Cartrax is added, an honest evaluation as to the patient response is difficult to achieve."

This study also failed to provide any comparison of Cartrax with its individual components, PETN and hydroxyzine. Accordingly, the study is incapable of providing any evidence of the contribution of the components to the effects of the combination (21 CFR 300.50).

68. Clark, T. E. and G. G. Jochem, "Use of PETN-Ataractic Combination (Cartrax) in Coronary Heart Disease and Angina Pectoris," *Angiology*, 11:361–363, 1960 (Exhibit 68) In this study, 100 patients with arteriosclerotic heart disease and angina pectoris were treated with Cartrax 10 or Cartrax 20, which was administered three or four times a day for periods ranging from 2 to 8 weeks. Frequency and duration of attacks of angina pectoris while subjects were on Cartrax were compared with the individuals' previous clinical course while taking other drugs, mainly PETN. The patients were also evaluated for symptoms of emotional stress. All 31 patients classified as nervous and under emotional stress showed a decrease in the length, severity, and amount of angina pectoris; in the emotionally stable group, 53 patients "seems to have more angina pectoris" and 14 showed no change.

This study did not include either PETN or hydroxyzine as a separate treatment. Thus, no attempt was made in this study to compare the combination product with its individual components during the duration of the study. For that reason the study failed to demonstrate the effectiveness of Cartrax as a fixed combination (21 CFR 300.50).

Other fundamental defects are also apparent. Because criteria for determining emotional stress are not stated, there is no assurance that the subjects were assigned to either the "nervous" group or the "emotionally stable" group in such a way as to minimize bias (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*ii*)). More important, no adequate control group was employed. Because angina is a highly variable condition, it is essential to use a concurrent control group to account for the possibility of spontaneous change over time. Moreover, where subjective measurements like angina frequency are considered, it is particularly important to minimize patient and observer bias. This is usually accomplished through the mechanism of blinding. In this case, the patients were only compared with their baselines. This could not control for either the variable nature of the condition or the possibility of patient or observer bias. For the reasons stated, the study does not meet the requirements of 21 CFR 314.111(a)(5)(ii)(*a*) (*3*) and (*4*).

Finally, the validity of the study results cannot be evaluated. Although the investigators report that 100 percent of the "nervous" patients showed a decrease in angina attacks, they provide no data on periods of observation prior to treatment, actual attack rates, or the actual duration of treatment for each patient. Thus, the study is lacking the detail necessary for scientific evaluation (21 CFR 314.111(a)(5)(ii) (*a*)(*3*) and (*c*)).

69. Ende, M., "P.E.T.N. Hydroxyzine in the Treatment of Angina Pectoris," *Medical Times*, 90:703–708, 1962 (Exhibit 70). In this study, 52 patients with a clinical diagnois of angina pectoris were treated with Cartrax 10 or Cartrax 20 administered either three or four times daily for varied periods from 1 to 28 weeks. A "control" group consisting of 30 patients who received the same treatment as the test group together with 10 patients who received a placebo was also studied. The investigator reports that 92 percent of the test group showed excellent, moderate, or slight improvement in the frequency of anginal attacks and a reduction in need for nitroglycerin. The investigator also reported 83 percent of the treated patients in the control group experienced similar improvement. Finally, of the 10 placebo patients, 8 showed moderate to slight improvement.

This study did not include either PETN or hydroxyzine as a test drug, so it failed to provide a comparison between the effects of Cartrax and the effects of the individual components of this combination. Accordingly, the study does not demonstrate that the components of Cartrax contribute to the combination's therapeutic effects (21 CFR 300.50).

Many other defects are apparent. There is no protocol providing an explanation of the methods of observation and recording of results, or of the steps taken to minimize bias on the part of the observer (21 CFR 314.111(a)(5)(ii)(*a*)(*3*)). No description of the method of selection of subjects and assignment to test groups is provided as required (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)). The "control" group was also defective. Because the 30 "control" group patients received the test drug, they provided no comparison with the test group as to the effects of treatment (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). No statistical analysis is provided as required by 21 CFR 314.111(a)(5)(ii)(*a*)(*5*)); furthermore, there is no statistically significant difference between the response rate in the 10 patient placebo group and that in the treated groups. accordingly, the results provide not evidence that Cartrax has any beneficial effect when compared with a control.

IV. Summary

The data submitted by Pfizer are facially inadequate to support a request for hearing for Cartrax (21 CFR 300.50, 314.111(a)(5), and 314.200). Of the 69 references submitted, only 4 describe studies concerning the effects of Cartrax. the remainig references consist of untranslated articles, general reviews

and testimonials, and studies of other conditions and drugs.

Of the four studies relating to Cartrax, none are adequate and well-controlled within the meaning of 21 CFR 314.111(a)(5). One study (No. 37) evaluated Cartrax for a condition other than angina pectoris (21 CFR 314.111(a)(5)(ii)(*a*)(*2*), and was uncontrolled (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). Two of the other studies on cartrax (No. 67 and No. 78) did not include control groups (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). In the remaining study (No. 69), 75 percent of the control group received the test drug, providing no comparison of the effects of treatment (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). The remainder of this control provided a placebo comparison to the treatment but showed no meaningful statistical differences in response from treatment with Cartrax. Most significantly, none of the studies on Cartrax addressed the contribution of each component to the effects of the combination. Thus, all of the studies cited are incapable of demonstrating the effectiveness of Cartrax as a fixed combination (300.50).

Pfizer filed no submissions on the effectiveness of Cartrax for the indications relating to angina decubitis, precordial pain, and status anginosis. Thus, Cartrax has not been shown to be effective for any of those labeled indications either.

V. Legal Arguments

A. *Pfizer.* Pfizer asserts that acceptable test protocols to test anti-anginal drugs in man are not available and that physicians have accepted that the nitrate drugs are effective by virtue of their extensive use in medical practice over a long period of time without proof of this fact by controlled trails. Pfizer contends that "[t]wenty years of successful clinical experience cannot be ignored and the existence of a useful drug threatened because we cannot agree on how to measure academically what has been observed in clinical practice for years."

Pfizer's assertions are without merit. The act requires that the effectiveness of a drug product be shown by adequate and well-controlled studies (21 U.S.C. 355(d)). Neither the widespread acceptance of a product nor the difficulty of conducting such studies justifies a departure from this statutory standard. The contention that widespread acceptance of a product constitutes substantial evidence of effectiveness has been expressly rejected by the courts. *Hynson, Westcott & Dunning, Inc.*, v. *Weinberger*, 412 U.S. 609 (1973); *Cooper Laboratories, Inc.* v. *FDA*, 501 F.2d 772 (D.C. Cir. 1975); *Upjohn Co.* v. *Finch*, 422 F.2d 944 (6th Cir. 1970). Furthermore, guidelines for the clinical testing of anti-anginal drugs have been available from FDA since August 26, 1977 (42 FR 43127), and successful studies based on those guidelines have been completed. Accordingly, it is incorrect to assert that acceptable clinical testing methodology is not available. Pfizer has submitted no additional data to FDA since it filed a request for hearing in April 1973.

Pfizer also contends that Cartrax satisfies the requirements of the combination policy because it consists of an effective anxiolytic agent (hydroxyzine) and an effective anti-anginal agent (PETN). In support of that argument, Pfizer contends that hydroxyzine contributes to the claimed effects of the combination by reducing the anxiety that coexists with the anginal condition, thereby contributing to anginal distress. Pfizer also relies on the studies that it submitted on the effectiveness of PETN as evidence of the contribution of that component to the claimed effects of the combination.

Pfizer's reasoning lacks merit. It must be recognized that the effectiveness of hydroxyzine in treating anxiety does not establish its effectiveness in therapy for angina pectoris. Some anginal patients undoubtedly experience anxiety. Under Pfizer's hypothesis, however, successful stabilization of the anxiety state in a patient would virtually always produce improvement in the anginal syndrome. This has not been clinically demonstrated by Pfizer through well-controlled studies.

Pfizer's argument is also inadequate as a matter of law. Although each ingredient of a drug may be safe and effective by itself, it does not necessarily follow that a combination of those ingredients is safe and effective. The regulation for fixed combination drugs requires that each component of a combination be shown to contribute to the combination's claimed effects (21 CFR 300.50). This requirement is addressed by studies which include treatment with the combination and each of its ingredients alone to permit a comparison of the effects of the combination with those of its individual ingredients. If each ingredient makes a contribution to the combination's claimed effects, the combination will be shown to provide a greater benefit than each ingredient alone. The studies submitted by Pfizer on the individual effects of PETN and hydroxyzine did not include treatment with Cartrax and provided no comparison of the combination product with its individual ingredients. The studies offered failed to show the effectiveness of the combination for that reason. The submitted studies that tested the effects of Cartrax similarly failed to compare the combination with PETN or hydroxyzine. Accordingly, Pfizer has failed to establish the effectiveness of Cartrax as a fixed combination within the meaning of 21 CFR 300.50.

Pfizer also contents that the combination policy is satisfied by the greater convenience and reliability of its product, Cartrax. The Commission recognizes that a fixed-combination drug may provide patients with greater convenience, and may improve patient compliance. However, the combination policy expresses the agency's determination that these advantages are material only when the patient benefits from each component of the fixed combination, with the components being administered in set amounts and at set intervals that are appropriate to the patient's needs. As explained above, the sponsor has not demonstrated that each component of Cartrax contributes to the combination's claim effects. Pfizer's argument of improved patient convenience therefore does not meet its burden under the combination policy.

B. *National Association of Pharmaceutical Manufacturers.* In a comment filed on January 6, 1976, NAPM requested that the December 9, 1975 notice of opportunity for hearing be rescinded until acceptable methodology for testing anti-angina drugs became available. In support of this request, NAPM stated that FDA had recognized the difficulty of designing and executing controlled clinical studies for anti-anginal drugs, and that agreement between FDA and industry on acceptable clinical protocols had not yet been reached. NAPM also noted that substantial evidence of effectiveness for the combination organic nitrates cannot be submitted in the absence of acceptable clinical methodology, and argued that withdrawal of approval of the new drug applications would therefore be arbitrary and capricious.

These assertions do not support NAPM's request. Guidelines for the clinical testing of anti-anginal drugs have now been available for over 6 years (42 FR 43127; August 26, 1977) and are used for conducting studies of anti-anginal drugs. Thus, acceptable methodology for testing anti-anginal drugs does now exist. NAPM has submitted no data from controlled studies demonstrating the effectiveness of Cartrax or any other organic nitrate combination. Its request for rescission of the notice of opportunity for hearing is therefore denied.

VI. Findings

On the basis of the foregoing, the Commissioner finds: (1) That there is a lack of substantial evidence to demonstrate that Cartrax 10 Tablets and Cartrax 20 Tablets have the effects they are represented to have under the conditions of use prescribed, recommended, or suggested in their current labeling; (2) that there is a lack of substantial evidence to support the conclusion that each component of the Cartrax products contributes to the total effects claimed (21 CFR 314.111(a)(5)(ii) and 300.50); and (3) that Pfizer has failed to demonstrate the existence of a genuine and substantial issue of fact requiring a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1052–1053 as amended (21 U.S.C. 355(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the request for a hearing is denied, and approval of NDA 10–998 for Cartrax 10 and Cartrax 20 Tablets, and all amendments and supplements thereto, is hereby withdrawn. Distribution of these drug products in interstate commerce without an approved new drug application is illegal and subject to regulatory action. This order is effective May 3, 1984.

Dated: March 26, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-8797 Filed 4-2-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Reports for the following Office of the Assistant Secretary for Health Federal Advisory Committees have been filed with the Library of Congress:

Health Services Research and Developmental Grants Review Committee

Health Care Technology Study Section

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, S.W., Washington, D.C. 20201, Telephone (202) 245–6791. Copies may be obtained from Mr. Hoke S. Glover, National Center for Health Services Research, Room 1–52, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Dated: March 28, 1984.

John E. Marshall,

Director, National Center for Health Services Research.

[FR Doc. 84-8804 Filed 4-2-84; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-82139]

Realty Action; Leasing of Public Lands Near the Pedro Monument, Alaska

Under the authority of section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), the Bureau of Land Management is offering to lease for residential purposes approximately 5.5 acres of land within the SW¼ of Section 11 of T.2N., R.1E., Fairbanks Meridian.

These lands have been selected by the State of Alaska; however, tentative approval of conveyance is not imminent. The proposed lease is being offered with the concurrence of the State of Alaska, Department of Natural Resources. Its purpose is to authorize an inadvertent and long-standing unauthorized occupancy. For this reason, the lease is being offered on a non-competitive basis to the present occupants.

The proposed term is not to exceed ten years. The lease will be subject to renewal only if the lands remain under the jurisdiction of the Bureau of Land Management and will be subject to all prior existing rights. Processing costs and fair market value rental will be paid by the lessees.

Detailed information concerning this lease may be obtained from Jerry Valentine at the Yukon Resource Area Office on Fort Wainwright. Telephone (907) 356–5367.

For a period of 45 days following publication of this Notice, interested parties may submit comments to the Bureau of Land Management, Fairbanks District Office, Yukon Resource Area, P.O. Box 1150, Fairbanks, Alaska 99707.

Ruth McFadden,

Acting District Manager.

[FR Doc. 84-8777 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-84-M

Arizona Strip District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Grazing Advisory Board will meet on Thursday, April 26, 1984, at 8:30 a.m. in the banquet room, Sugar Loaf Restaurant, 290 East St. George Blvd., St. George, Utah.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 196 E. Tabernacle, St. George, Utah 84770, (801) 673–3545.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include projects for range improvement funding, changes in new grazing regulations, and Arizona water rights.

The meeting is open to the public. Interested persons may make oral statements to the Board at 2:00 p.m. or file written statements for the Board's consideration.

Dated: March 23, 1984.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 84-8778 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-2834]

Idaho; Termination of Classification for Multiple Use Management

1. Pursuant to the authority delegated by BLM Manual Section 1203—Delegation of Authority (48 FR 85), I hereby terminate, with the exception of those lands described in paragraph 2 below, the Bureau of Land Management Multiple-Use Classification Order dated December 4, 1970, and published in the **Federal Register** December 11, 1970, Vol. 35, No. 240, page 18883. These public lands are located in Custer County within the Salmon and Idaho Falls Districts of the Bureau of Land Management. The termination affects approximately 780,949 acres of public land.

2. The following-described lands, which were further segregated from appropriation under the general mining laws, will remain segregated by virtue of the classification order dated December 4, 1970, Vol. 35, No. 240, paragraph 3, page 18885.

Boise Meridian, Idaho

Upper East Fork Campground

T. 9 N., R. 17 E.,
Sec. 22, SE¼SW¼;
Sec. 27, NW¼SW¼;
Sec. 28, SW¼SE¼.

Jimmy Smith Lake Campground

T. 10 N., R. 18 E.,
Sec. 30, lot 4.

Sullivan Springs Campground

T. 11 N., R. 17 E.,
Sec. 22, lot 4.

Clayton Ranger Station Campground

T. 11 N., R. 17 E.,
Sec. 29, lot 11;
Sec. 30, lot 10.

Fox Creek Campground

T. 9 N., R. 18 E.,
Sec. 3, lots 3 and 4.

Ziegler's Hole Recreation Site

T. 10 N., R. 18 E.,
Sec. 24, SE¼SW¼.

East Fork Recreation Site

T. 11 N., R. 18 E.,
Sec. 22, lot 5.

Birch Creek Recreation Site

T. 11 N., R. 18 E.,
Sec. 22, lot 8.

Spud Creek Recreation Site

T. 11 N., R. 18 E.,
Sec. 22, lot 11;
Sec. 27, lots 1 and 2;
Sec. 28, lots 2 and 3.

Bayhorse Creek Recreation Site

T. 12 N., R. 18 E.,
Sec. 2, S½SE¼SE¼;
Sec. 11, N½NE¼NE¼.

Deadman Hole Recreation Site

T. 12 N., R. 19 E.,
Sec. 19, lot 7;
Sec. 30, lots 1, 2, and 3.

Lake Creek Picnic Site

T. 9 N., R. 19 E.,
Sec. 23, SE¼SE¼SE¼.

Wood Creek Recreation Site

T. 12 N., R. 19 E.,
Sec. 6, lot 13.

Round Valley Recreation Site

T. 13 N., R. 19 E.,
Sec. 10, lots 6 and 7.

Morgan Creek Recreation Site

T. 16 N., R. 19 E.,
Sec. 33, lot 2.

Pinto Creek Recreation Site

T. 8 N., R. 21 E.,
Sec. 30, lot 2.

Spring Gulch Recreation Site

T. 15 N., R. 20 E.,
Sec. 18, lot 1.

Mike Ellis Bridge Recreation Site

T. 16 N., R. 20 E.,
Sec. 34, lots 3, 4, and 7;
Sec. 35, lot 1.

Black Daisy Recreation Site

T. 7 N., R. 23 E.,
Sec. 11, SE¼SE¼;
Sec. 12, W½SW¼.

Double Springs Recreation Site

T. 12 N., R. 13 E.,
Sec. 31, lot 4.

Summit Creek Recreation Site

T. 11 N., R. 25 E.,
Sec. 22, NE¼NE¼;
Sec. 23, NW¼NW¼.

Ras Canyon Campground

T. 4 N., R. 24 E.,
Sec. 2, NW¼SW¼;
Sec. 3, NE¼SE¼.

School House Canyon Campground

T. 5 N., R. 24 E.,
Sec. 35, SE¼SE¼ (lot 4).

Marsh Canyon Campground

T. 5 N., R. 25 E.,
Sec. 29, NE¼NW¼.

Diversion Campground

T. 6 N., R. 25 E.,
Sec. 14, SW¼NE¼, NW¼SE¼.

The total area of these sites is approximately 1, 583.50 acres.

The lands described above in paragraph 1 have been and will continue to be open to the mining laws, and applications and offers under the mineral leasing laws.

3. The segregative effect on the lands described in paragraph 1 of this order will terminate upon publication of this notice in the **Federal Register** as provided by the regulations in 43 CFR 2461.5(c)(2). At 9:00 a.m. on April 30, 1984, these lands shall be open to operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on April 30, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquires concerning the lands should be addressed to the Chief, Branch of Land Operations, Bureau of Land Management, 3380 Americana Terrace, Bosie, Idaho 83706.

Dated: March 23, 1984.

Claire M. Whitlock,

State Director.

[FR Doc. 84-8776 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-GG-M

Idaho; Filing of Plat of Survey

March 23, 1984.

The plats of survey of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho on the dates hereinafter stated:

Boise Meridian

T. 11 S., R. 26 E., Accepted January 4, 1984, Officially Filed February 17, 1984.
T. 47 N., R. 1 W., Accepted January 10, 1984, Officially Filed February 22, 1984.
T. 7 N., R. 40 E., Accepted January 17, 1984, Officially Filed February 23, 1984.
T. 47 N., R. 1 W., Accepted January 16, 1984, Officially Filed February 23, 1984.
T. 6 N., R. 10 E., Accepted February 2, 1984, Officially Filed March 7, 1984.
T. 6 N., R. 5 E., Accepted January 27, 1984, Officially Filed March 7, 1984.
T. 42 N., R. 2 E., Accepted February 10, 1984, Officially Filed March 16, 1984.
T. 43 N., R. 2 E., Accepted February 10, 1984, Officially Filed March 16, 1984.
T. 5 N., R. 4 E., Accepted February 15, 1984, Officially Filed March 19, 1984.
T. 5 N., R. 5 E., Accepted February 15, 1984, Officially Filed March 19, 1984.
T. 5 S., R. 19 E., Accepted March 12, 1984, Officially Filed March 21, 1984.

The above-listed plats represent supplemental plats, dependent resurveys, and/or section subdivision.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, 83706.

Sharron Deroin,

Chief, Land Services Section.

[FR Doc. 84-8770 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-GG-M

[NM 038148]

New Mexico; Proposed Continuation of Withdrawal

Dated: March 23, 1984.

In accordance with the provisions of section 204 of the Federal Land Policy and Management Act of 1976, the Department of the Interior, Bureau of Reclamation has filed a statement of justification for the continuation of Public Land Order 2174 dated August 5, 1960. The Public Land Order withdrew the following lands from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws for use by the Department of the Interior, Bureau of Reclamation in connection with the Middle Rio Grande Project:

New Mexico Principal Meridian

T. 3 S., R. 1 E.,
Sec. 31, lots 50 and 51;
T. 4 S., R. 1 E.,
Sec. 5, lots 19 and 20;
Sec. 6, lot 1;
Sec. 8, lot 43;
Sec. 17, lot 19;
Sec. 21, lots 12, 13, 14, 17 and 18;
Sec. 28, lots 18 and 21.
Sec. 33, lots 13 and 14.

The areas described aggregate 150.60 acres.

The Bureau of Land Management proposes continuation of the withdrawal in its entirety for 50 years. The purpose of the withdrawal is for use in connection with the Middle Rio Grande Project. No change in the segregative

effect or use of the lands would be affected by the continuation.

Notice is hereby given that a public hearing may be afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned within 90 days of the publication of this notice. Upon a determination by the State Director, BLM, that a public hearing should be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. Public hearings will be scheduled and conducted in accordance with BLM Manual 2351.16B. Additionally, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned authorized officer of the BLM within 90 days of the date of publication of this notice.

The authorized officer of the BLM will undertake such investigations as are necessary and prepare a report for consideration by the Office of the Secretary of the Interior. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

All communications in connection with the proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-8780 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-FB-M

National Petroleum Reserve of Alaska; Call for Nominations and Comments on Oil and Gas Leasing

Pursuant to the authority prescribed in the Interior Department Appropriations Act of 1980 (Pub. L. 96-514) and as recommended by the Bureau of Land Management Record of Decision on Oil and Gas Leasing in the National Petroleum Reserve in Alaska, nominations and comments are hereby requested for areas in the NPR-A for future competitive oil and gas leasing. Selections of up to two million acres (86 townships) are to be made on maps available free of charge from the Bureau of Land Management offices listed below.

Bureau of Land Management, Alaska State Office, Public Room, Box 13, Federal Building, Anchorage, AK 99513.

Bureau of Land Management, Fairbanks District Office, Public Room, P.O. Box 1150, Fairbanks, AK 99707.

The pre-addressed map with the participant's nominations marked on it should be returned to the Fairbanks, Alaska office no later than May 15, 1984.

The individual selections returned will be statistically averaged with all returned selections to assess the leasing interest in the NPR-A. In no instance shall any individual responses be made public: individual areas of interest will remain strictly confidential.

For further information call: (907) 356-5130 in Alaska.

Ruth McFadden,

Acting District Manager.

[FR Doc. 84-8774 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 072, Block 12, South Pelto Area, Offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on March 27, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 27, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-8811 Filed 4-2-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 23, 1984. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 18, 1984.

Carol Dubie,

Acting Chief of Registration, National Register.

ARKANSAS

Crittenden County

Marion, *Crittenden County Bank and Trust Company,* Military Rd.

CALIFORNIA

Los Angeles County

Redondo Beach, *Woman's Club of Redondo Beach,* 400 S. Broadway

Napa County

Napa, *Hackett House,* 2109 First St.

Sacramento County

Sacramento, *Alkali Flat North Historic District,* D and 11th Sts.

San Francisco County

San Francisco, *Dallam-Merritt House,* 2355 Washington St.

San Joaquin County

Lodi vicinity, *Terminous Culling Chute,* 14900 W. CA 12

IOWA

Jackson County

Bellevue, *Potter's E.G., Jasper Flour Mill,* South and Second Sts.

Story County

Sheldahl, *Sheldahl First Norwegian Evangelical Lutheran Church*, 3rd and Willow Sts.

Winneshiek County

Freeport vicinity, *Freeport Bowstring Arch Bridge*, Spans Upper Iowa River

Woodbury County

Smithland vicinity, *Benson Archeological Site (13WD50)*, N of Smithland

KANSAS

Labette County

Harmon Site No. 2 (14LT323),

LOUISIANA

St. Martin Parish

Breaux Bridge vicinity, *Fontenette-Durand Maison Dimanche*, LA 94

MARYLAND

Cecil County

Port Deposit vicinity, *Snow Hill Site*, Off U.S. 222

Port Deposit vicinity, *Tome School for Boys Historic District*, Bainbridge Naval Training Grounds

MICHIGAN

Genesee County

Flint, *Industrial Savings Bank Building*, 432 N. Saginaw St.

Oakland County

Pontiac, *Grinnell Brothers Music House*, 27 S. Saginaw St.

MISSOURI

Crawford County

Sullivan, *Harney, Maj. Gen. William S., Summer Home*, 332 S. Mansion Ave.

Marion County

Hannibal vicinity, *Hendren Farm*, Off U.S. 61.

St. Louis County

Ladue, *Plant Samuel, House* 800 Cella Rd.

MONTANA

Gallatin County

Bozeman, *Hotel Baxter*, 105 W. Main St.
Bozeman, *Spieth and Krug Brewery (Maxey Block)*, 238–246 E. Main St.

NEW HAMPSHIRE

Merrimack County

Concord, *2½ Beacon Stree*, 2½ Beacon St.

NEW MEXICO

Bernalillo County

Albuquerque, *Kress, S. H., Building*, 414–416 Central Ave., SW

NEW YORK

Suffolk County

Patchogue, *United Methodist Church*, S. Ocean Ave. and Church St.

NORTH CAROLINA

Warren County

Oakville vicinity, *Hebron Methodist Church*, SR 1306

OHIO

Hamilton County

Cincinnati, *St. Francis Hospital* 1860 Queen City Ave.

Highland County

Hillsboro, *Hillsboro Historic Business District*, Roughly bounded by Beech, Walnut, East, and West Sts.

Pickaway County

Circleville vicinity, *Lawndale Farm Complex*, 26476 Gay Dreisbach Rd.

OKLAHOMA

Muskogee, County

Muskogee, *Cross, V.R., House (Territorial Homes of Muskogee TR)*, 1315 W. Okmulgee St.
Muskogee, *Murphy, George A., House (Territorial Homes of Muskogee TR)*, 1321 W. Okmulgee St.
Muskogee, *Patterson, A.W., House (Territorial Homes of Muskogee TR)*, 1320 W. Okmulgee St.
Muskogee, *Trumbo, A.C., House (Territorial Homes of Muskogee TR)*, 1321 W. Broadway St.
Muskogee, *Welch, J.C., House (Territorial Homes of Muskogee TR)*, 1403 Okmulgee St.

SOUTH CAROLINA

Abbeville County

Abbeville, *Abbeville Historic District (increase/decrease)*, Roughly bounded by Livingston, Chestnut, Walnut, and Long Branch Sts.

TENNESSEE

Davidson County

Nashville, *Belle Meade Apartments*, 715 Belle Mead Blvd.

Williamson County

College Grove vicinity, *Cannon, Newton, House*, Taliaferro Rd.

WASHINGTON

King County

Seattle, *Seattle, chief of the Suquamish Statue*, 5th Ave., Denny Way, Cedar St.

Spokane County

Spokane, *Peaceful Valley Historic District*, Roughly bounded by the Spokane River, Wilson Ave., Elm, and Cedar Sts.

[FR Doc. 84–8815 Filed 4–2–84; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Extension of Comment Period for Draft Environmental Impact Statement on Proposed Montco Mine, Rosebud County, Montana

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of extension of comment period for a draft environmental impact statement.

SUMMARY: The Office of Surface Mining (OSM) is announcing a 10-day extension of the comment period for draft environmental impact statement OSM–EIS–14 (EIS) on the proposed Montco mine in Rosebud County, Montana. Two organizations expressed the need for more time to prepare comments on the EIS and requested that OSM extend the comment period until May 9, 1984. Because an extension will delay the preparation of the final EIS and the decision on the Montco proposal, OSM is able to grant the request only in part and therefore will extend the comment period for 10 days until April 19, 1984.

DATE: The comment period for the draft EIS will be extended until 5:00 p.m. (eastern time) on April 19, 1984.

ADDRESS: Hand deliver or mail written comments to the Office of Surface Mining, U.S. Department of the Interior, Division of Environmental and Economic Analysis, Room 134, Interior South Building, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Anna May Orellana at the location given under "**ADDRESS**" or by telephone (202–343–5854).

SUPPLEMENTARY INFORMATION: Copies of the draft EIS are available at the OSM office given under "**ADDRESS.**" Background information was given in 49 FR 5000–5001 on February 9, 1984.

Dated: March 29, 1984.

Brent Wahlquist.

Acting Assistant Director, Technical Services and Research.

[FR Doc. 84–8827 Filed 4–2–84; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub–No. 91)]

Seaboard System Railroad, Inc., Abandonment In Robeson County, NC

The Commission has found that the public convenience and necessity permit the abandonment by the Seaboard

System Railroad, Inc., of its line of railroad between milepost AG 235.53 at Red Springs and milepost AG 222.99 at Parkton, a distance of 12.54 miles in Robeson County, NC. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in boldface on the lower left-hand corner of the envelope containing the offer: "Rail Section AB.OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8789 Filed 4-2-84; 8:45 am]

BILLING CODE 1035-01-M

DEPARTMENT OF JUSTICE

Privacy Act of 1974; Production or Disclosure of Material or Information

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice amends a Department of Justice system or records with respect to those records in the custody and control of the United States Attorney for the District of Columbia. The affected system of records, JUSTICE/USA-008, is amended below to reflect an additional system manager. This amendment will permit reader access by the public. [JUSTICE/USA-008 was last published on August 23, 1983, 48 FR 38336.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Susan A. Nellor, Assistant Director, Legal Services, Executive Office for United States Attorneys, Room 1627, Department of Justice, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530 (202-633-4024).

The Privacy Act system of records known as "Freedom of Information Act/ Privacy Act Files, JUSTICE/USA-008" is amended as follows:

* * * * *

SYSTEM MANAGERS AND ADDRESSES:

(a) Director, Executive Office for United States Attorneys; U.S. Department of Justice; 10th Street and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Address all inquiries, except those concerning the United States Attorney's office for the District of Columbia to System Manager (a) above.

Address those inquiries concerning the United States Attorney's office for the District of Columbia to System Manager (b) above.

RECORD ACCESS PROCEDURES:

* * * * *

All requests, except those concerning the United States Attorney's office for the District of Columbia, should be directed to System Manager (a) listed below.

Those requests concerning the United States Attorney's office for the District of Columbia should be directed to System Manager (b) listed above.

CONTESTING RECORD PROCEDURES:

All requests for correction, including those concerning the United States Attorney's office for the District of Columbia, should be directed to System Manager (a) listed above and should indicate the exact correction required.

* * * * *

Dated: March 27, 1984.

Carol A. Williams,

Federal Register, Liaison Officer, Department of Justice.

[FR Doc. 84-8582 Filed 3-29-84; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Final Judgment on Consent Pursuant to Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on March 20, 1984 a proposed Stipulation and Consent Decree in *United States* v. *Midland Water Association, et al.*, Civil No. 83-32, was lodged with the United States District Court for the District of Oregon. The Complaint alleged violations of the Safe Drinking Water Act and national interim primary drinking water regulations, including provisions setting forth maximum contaminant levels, in the operation of defendants' public water system. The proposed Stipulation and Consent Decree would require defendant to construct facilities needed to ensure permanent compliance with maximum contaminant levels, and to comply with sampling, reporting, and public notice provisions of the regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Midland Water Association*, D.J. Ref. 90-5-1-1-1877.

The proposed Final Judgment on Consent may be examined at the office of the United States Attorney, District of Oregon, 312 United States Courthouse, 620 S.W. Main Street, Portland, Oregon 97205 and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the Stipulation and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Final Judgment on Consent may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-8783 Filed 4-3-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Amendment to Prohibited Transaction Exemption 77-9; Application Nos. D-447 and D-1903; Prohibited Transaction Exemption 84-24]

Amendments to Class Exemption for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Amendment of class exemption.

SUMMARY: This document amends Prohibited Transaction Exemption 77-9 (PTE 77-9). The amendments exempt

certain transactions similar to those previously addressed in PTE 77–9 from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). The amendments will affect participants and beneficiaries of employee benefit plans, fiduciaries of such plans, and persons engaging in transactions to which the exemption applies.

EFFECTIVE DATE: October 31, 1977.

FOR FURTHER INFORMATION CONTACT: Douglas Wham, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 523–7923. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On April 6, 1982, the Department published in the **Federal Register** (47 FR 14808) notice of the pendency of proposed amendments to PTE 77–9. PTE 77–9 provides an exemption from the prohibited transaction restrictions of section 406 of ERISA and from the taxes imposed by sections 7975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) of the Code.[1] The notice gave interested persons an opportunity to comment on the proposal and to request a hearing on the matter.

Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Two commenters requested a public hearing, should the Department decide either not to adopt the proposed amendments or not to resolve in their favor certain issues that they raised in their comments. The Department has determined not to hold a public hearing on the matter since, as is discussed below, the Department believes that the exemption, as granted, provides the relief that those commenters have requested.

Discussion: I. General

In brief, PTE 77–9 provides that certain transactions, described in Section III of the exemption, are exempted from the prohibited transaction provisions of section 406 of ERISA. The transactions relate to the purchases, with plan assets, of investment company securities or insurance or annuity contracts and the payment of sales commissions in conjunction with such purchases. Insurance agents and brokers, pension consultants, insurance companies, investment companies, and investment company principal underwriters who are parties in interest with respect to an employee benefit plan because they either are, or are affiliated with, fiduciaries or other service providers for the plan may, subject to the conditions listed in sections IV and V, avail themselves of the exemption in order to engage in such transactions with the plan.

As is discussed more fully in the preamble to the proposed exemption, conditional relief has been available under PTE 77–9 for the purchase by a plan of securities issued by an investment company, where the investment company, its principal underwriter, or its investment adviser are parties in interest with respect to the plan. However, where an affiliate of any of those entities is a trustee of the plan, such relief was available only if the transaction was one described in section III(f) of the exemption, which is limited to situations where the entity is a party in interest solely by reason of the sponsorship of a master or prototype plan, including the provision of nondiscretionary trust or custodial services in connection therewith. The amendment to section V(a) being adopted in this notice, however, will permit the broader range of transactions described in sections III(a)–(d) where the party seeking to use the exemption provides nondiscretionary trust or custodial services to the plan but does not render investment advice with respect to any assets of the plan. With the adoption of amended section III(f), moreover, relief will also be available under that section to plans other than master or prototype plans sponsored by the investment company complex. In addition, the Department is adopting as proposed new section VI(g). That paragraph defines "nondiscretionary trustee" and "nondiscretionary trust services" as those terms are used in sections V(a) and III(f), respectively. For a more complete discussion of the background and scope of PTE 77–9 and the proposed amendments, see the preamble to the proposal of April 6, 1982 (47 FR 14808) and the preamble to the prior version of the exemption published in the **Federal Register** on June 24, 1977 (42 FR 32395).

II. Discussion of Comments Received

The Department received five written comments regarding the proposed amendments to PTE 77–9. Most of the commenters generally favored the adoption of the proposed amendments. Two commenters, however, suggested that the Department clarify, either in the preamble to the final version or in the final version of the exemption itself, that nondiscretionary custodians are to be treated in the same manner as nondiscretionary trustees and, thus, may take advantage of the exemption to the same extent as nondiscretionary trustees. These commenters requested a hearing on the matter if the Department contemplated not effecting the requested clarification. A third commenter requested assurances from the Department that all of the functions described in footnote three of the proposal are nondiscretionary trust or custodial services for purposes of PTE–77–9. A fourth commenter suggested that changes be made to the exemption to accommodate concerns that the commenter expressed regarding the applicability of the exemption to transactions involving securities issued by "no-load" mutual funds—i.e., securities sold with no sales charge. The fifth commenter offered no suggestion for change to the final version.

The issues raised by the commenters are discussed below.

(A) Nondiscretionary Custodians

Two commenters noted that, under the proposed amendments, PTE 77–9 would provide relief for transactions described in sections III(a)–(d) of the exemption where a trustee of the plan is affiliated with the investment company (or with its adviser or principal underwriter), provided that the trustee's duties are nondiscretionary. See section V(a) of the exemption. They argue, however, that since sections 401(f) and 408(h) of the Code provide that custodians shall be treated as trustees for certain purposes,[2] PTE 77–9 may not be available for purchases by plans of mutual fund shares where the mutual fund complex provides nondiscretionary custodial services to such plans through persons who are *not* trustees. Because of this concern, these commenters requested that a hearing be held on the matter unless the Department made clear that the provision by a mutual fund complex of such "in-house" custodial services would not operate as a bar to the availability of the exemption.

In the Department's opinion, the conditions contained in section V(a) of

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of the type granted herein to the Secretary of Labor. In the discussion of the exemption, references to the various provisions of section 406 of ERISA should be read to refer as well to the corresponding provision of section 4975 of the Code.

[2] Sections 401(f) and 408(h) of the Code provide, in part, that a custodial account that is not a trust shall be treated, nevertheless, as a trust for purposes of sections 401 and 408, respectively, if certain specified conditions are met. In such cases, the custodian of the account is treated as the account's trustee for purposes of the Code.

the exemption as amended herein do not create the difficulties perceived by the commenters. The availability of the exemption as amended to a person providing nondiscretionary custodial services to a plan is not affected by the person's designation as a trustee or custodian to the extent that the services are limited in the manner described in sections V(a) and VI(g) of the exemption.[3]

(B) List of Nondiscretionary Trust Services

On the matter of providing assurances regarding specific services, the Department cannot state categorically that certain services in all cases are nondiscretionary for purposes of PTE 77–9. Whether or not a particular trust or custodial service is nondiscretionary in nature generally will depend on the facts and circumstances surrounding the provision of the service. Those services listed in footnote three of the proposal were described in a submission by one of the applicants as typical nondiscretionary trust or custodial services, and, thus, "ministerial in nature". The Department believes that the provision of such services is within the scope of the definition of "nondiscretionary trust services" contained in section VI(g) of the exemption, if they are in fact ministerial in nature.[4]

(C) Additional Services and No-Load Mutual Fund Complexes

The Department received one comment on behalf of a no-load mutual fund complex, requesting the Department to amend the definition of "nondiscretionary trust services" to include any additional services described in section 408(b)(2) of ERISA. This would allow the provision of all such services in connection with a transaction decribed in section III(f) by any party qualifying for the exemption under that section. According to the commenter, no-load complexes in particular would benefit from such an amendment, as explained below. As an alternative, the commenter requested an amendment to section III(c) so that no-load mutual fund complexes which, according to the commenter, do not necessarily engage a principal underwriter, as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (the 1940 Act), qualify for the exemptions provided in section III(b)–(c). The exemptions described in those sections currently allow the provision of services in addition to "nondiscretionary trust services", but the exempted transactions are those engaged in by an "investment company principal underwriter."[5]

Amended section III(f) describes transactions engaged in by an investment company or its principal underwriter and, therefore, according to the commenter, can be used by no-load mutual fund complexes. That section, however, does not allow the provision of any services other than nondiscretionary trust or custodial services. Thus, the commenter contended that if no-load mutual fund complexes are not allowed to use the exemptions provided in section III(b)–(c), and if the definition of nondiscretionary trust services in section VI(g) is not expanded to include all services described in section 408(b)(2), no-load complexes will be more limited in their ability to provide additional services to employee benefit plans under PTE 77–9 than load complexes. By comparison, load mutual fund complexes, because they engage a principal underwriter, qualify for the exemptions in III (b) and (c). Consequently, they are able to provide any additional services described in section 408(b)(2) without contravening the terms of the exemption. The commenter argues that it was not the intent of PTE 77–9 to allow load mutual fund complexes to engage in certain transactions with employee benefit plans and provide certain additional servcies while not similarly permitting no-load complexes to engage in those same transactions and provide those same services.

After careful consideration, the Department has decided not to adopt the requested changes. The suggestion of the commenter with regard to amending the definition in section VI(g) would be inconsistent with one of the purposes of the exemption. Section III (b) and (c), as previously stated, do not preclude the provision by a mutual fund complex to a plan of additional services described in section 408(b)(2) of ERISA, provided, however, that the conditions in both sections IV and V are satisfied. Amended section III(f), on the other hand, is available only where an entity in the mutual fund complex is a fiduciary or service provider (or both) solely by reason of the sponsorship of a master or prototype plan, the provision of nondiscretionary trust or custodial services, or both. It covers situations where the relationship between the plan and the mutual fund complex is more limited than that permitted under sections III(b)–(c). In view of that more limited relationship, the Department has determined that only the conditions contained in Section IV (and not those contained in Section V) of the exemption need be satisfied in connection with transactions described in III(f). Thus, the provision of additional services to the plan in connection with a transaction described in section III(f), such as services described in ERISA section 408(b)(2), is not within the

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[3] It should be noted that the Code's treatment of certain custodians as "trustees" does not mean that the requirement contained in section 403(a) of ERISA, that the assets of a plan shall be held in trust by one or more trustees, is satisfied by reason of such treatment. In the case of a plan subject to the provisions of Title I of ERISA, and except as specifically provided otherwise in section 403(b) of ERISA, the assets of the plan must be held in trust notwithstanding the potential application, for purposes of the Code, of sections 401(f) and 408(h) of the Code. See H.R. Rep. 1280, 93d Cong., 2d Sess. 299 (1974).

[4] The Services listed in footnote three of the proposal are reprinted here for the sake of convenience. They are:

(a) Open and maintain plan accounts and, in the case of defined contribution plans, individual participant accounts, pursuant to the employer's instructions;

(b) Receive contributions from the employer and credit them to individual participant accounts in accordance with the employer's instructions;

(c) Invest contributions and other plan assets in shares of a mutual fund or funds or other products such as insurance or annuity contracts designated by the employer, plan trustee, or participants, and reinvest dividends and other distributions in such investments;

(d) Redeem, transfer, or exchange mutual fund shares or surrender insurance or annuity contracts as instructed by the employer, plan trustee, or participant;

(e) Provide or maintain "designation of beneficiary" forms and make distributions from the trust or custodial account to participants or beneficiaries in accordance with the instructions of the employer, plan trustee, participants, or beneficiaries;

(f) Deliver to participants or their employer all notices, prospectuses, and proxy statements, and vote proxies in accordance with the participants' instructions;

(g) Maintain records of all contributions, investments, distributions, and other transactions and report them to the employer and participants;

(h) Make necessary filings with the Internal Revenue Service and other government agencies;

(i) Keep custody of the plan's assets;

(j) Reply to and prepare correspondence, either directly or through the mutual fund distributor or adviser, regarding the investment account and the operation and interpretation of a master or prototype plan sponsored by the complex to which the nondiscretionary trustee or custodian belongs.

[5] The commenter indicates that shares of the funds in the complex on whose behalf the comment was written are sold through an entity that is wholly-owned by all of the funds in the complex. While the commenter does not assert that the entity is not a "principal underwriter" as defined in the 1940 Act, he does assert that there is "no clear authority" for the proposition that it is. In section VI(a) of the exemption, the term "principal underwriter" is defined in the same manner as it is defined in the 1940 Act.

The commenter does not state that the situation described above is representative of the no-load fund industry in general.

intended scope of the exemption provided under that section.

As to the suggestion to amend section III(c), it should be noted that the proposed exemption in this matter did not include a proposal to amend that paragraph.[6] The Department has no way of knowing, on the basis of one individual request, whether the factual situation described by the commenter regarding its own method of operation (which may be unique or at least unusual) is sufficiently representative of all parties potentially affected by such an amendment to justify the relief requested on a class basis, especially since it is not certain that additional relief is necessary (see note 4, *supra*). The Department believes it inappropriate to proceed along the lines requested in the absence of information that would provide a basis for determining how any such changes would affect employee benefit plans and the mutal fund industry as a whole.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary of a plan to which the exemption is applicable from certain othter provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties with respect to the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the plan and their beneficiaries.

(2) The exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act or Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(4) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of April 6, 1982, the Agency makes the following determination:

(i) The class exemption set forth herein is administratively feasible;

(ii) It is in the interest of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of the plans.

Exemption

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1954 (the Code), and in accordance with the procedure set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). For the sake of convenience, the entire exemption is reprinted here, including the amendments to sections III(f) and V(a) and new section VI(g) adopted in this notice.

Section I—Retroactive Application. The restrictions of sections 406(a)(1)(A) through (D) and 406(b) of the Act and the taxes imposed by section 4975 of the Code do not apply to any of the transactions described in section III of this exemption in connection with purchases made before November 1, 1977, if the conditions set forth in section IV are met.

Section II—Prospective Application. The restrictions of section 406(a)(1)(A) through (D) and 406(b) of the Act and the taxes imposed by section 4975 of the Code do not apply to any of the transactions described in section III of this exemption in connection with purchases made after October 31, 1977, if the conditions set forth in sections IV and V are met.

Section III—Transactions. (a) The receipt, directly or indirectly, by an insurance agent or broker or a pension consultant of a sales commission from an insurance company in connection with the purchase, with plan assets of an insurance or annuity contract.

(b) The receipt of a sales commission by a principal underwriter for an investment company registered under the Investment Company Act of 1940 (hereinafter referred to as an investment company) in connection with the purchase, with plan assets, of securities issued by an investment company.

(c) The effecting by an insurance agent or broker, pension consultant or investment company principal underwriter of a transaction for the purchase, with plan assets, of an insurance or annuity contract or securities issued by an investment company.

(d) The purchase, with plan assets, of an insurance or annuity contract from an insurance company.

(e) The purchase, with plan assets, of an insurance or annuity contract from an insurance company which is a fiduciary or a service provider (or both) with respect to the plan solely by reason of the sponsorship of a master or prototype plan.

(f) The purchase, with plan assets, of securities issued by an investment company from, or the sale of such securities to, an investment company or an investment company principal underwriter, when such investment company, principal underwriter, or the investment company investment adviser is a fiduciary or a service provider (or both) with respect to the plan solely by reason of: (1) The sponsorship of a master or prototype plan; or (2) the provision of nondiscretionary trust services to the plan; or (3) both (1) and (2).

Section IV—Conditions With Respect to Transactions Described in Section III. (a) The transaction is effected by the insurance agent or broker, pension consultant, insurance company or investment company principal underwriter in the ordinary course of its business as such a person.

(b) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be.

(c) The combined total of all fees, commissions and other consideration received by the insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter:

(1) For the provision of services to the plan; and

(2) In connection with the puchase of insurance or annuity contracts or securities issued by an investment company

is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and 408(c)(2) of the Act and sections 4975(d)(2) and 4975(d)(10) of the Code. If such total is in excess of "reasonable compensation," the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and the excise taxes imposed by

[6] Section 408(a) of the Act provides, in part, that before granting an exemption from section 406(a) of the Act, the Department shall, among other things, publish notice in the **Federal Register** of the pendency of the exemption, and afford interested persons an opportunity to present views. Section 408(a) also requires that, before granting an exemption from section 406(b), the Department must afford an opportunity for a hearing on the matter.

section 4975 (a) and (b) of the Code is the amount of compensation in excess or "reasonable compensation."

Section V—Conditions for Transactions Described in Section III (a) Through (d). The following conditions apply solely to a transaction described in paragraphs (a), (b), (c) or (d) of section III:

(a) The insurance agent or broker, pension consultant, insurance company, or investment company principal underwater is not (1) a trustee of the plan (other than a nondiscretionary trustee who does not render investment advice with respect to any assets of the plan), (2) a plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code), (3) a fiduciary who is expressly authorized in writing to manage, acquire or dispose of the assets of the plan on a discretionary basis, or (4) for transactions described in sections III (a) through (d) entered into after December 31, 1978, an employer any of whose employees are covered by the plan.

(b) (1) With respect to a transaction involving the purchase with plan assets of an insurance or annuity contract or the receipt of a sales commission thereon, the insurance agent or broker or pension consultant provides to an independent fiduciary with respect to the plan prior to the execution of the transaction the following information in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) If the agent, broker, or consultant is an affiliate of the insurance company whose contract is being recommended, or if the ability of such agent, broker or consultant to recommend insurance or annuity contracts is limited by any agreement with such insurance company, the nature of such affiliation, limitation, or relationship;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeding renewal years, that will be paid by the insurance company to the agent, broker or consultant in connection with the purchase of the recommended contract; and

(C) For purchases made after June 30, 1979, a description of any charges, fees, discounts, penalties or adjustments which may be imposed under the recommended contract in connection with the purchase, holding, exchange, termination or sale of such contract.

(2) Following the receipt of the information required to be disclosed in paragraph (b)(1), and prior to the execution of the transaction, the independent fiduciary acknowledges in writing receipt of such information and approves the transaction on behalf of the plan. Such fiduciary may be an employer of employees covered by the plan, but may not be an insurance agent or broker, pension consultant or insurance company involved in the transaction. Such fiduciary may not receive, directly or indirectly (e.g. through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(c)(1) With respect to a transaction involving the purchase with plan assets of securities issued by an investment company or the receipt of a sales commission thereon by an investment company principal underwriter, the investment company principal underwriter provides to an independent fiduciary with respect to the plan, prior to the execution of the transaction, the following information in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) If the person recommending securities issued by an investment company is the principal underwriter of the investment company whose securities are being recommended, the nature of such relationship and of any limitation it places upon the principal underwriter's ability to recommend investment company securities;

(B) The sales commission, expressed as a percentage of the dollar amount of the plan's gross payment and of the amount actually invested, that will be received by the principal underwriter in connection with the purchase of the recommended securities issued by the investment company; and

(C) For purchases made after December 31, 1978, a description of any charges, fees, discounts, penalties, or adjustments which may be imposed under the recommended securities in connection with the purchase, holding, exchange, termination or sale of such securities.

(2) Following the receipt of the information required to be disclosed in paragraph (c)(1), and prior to the execution of the transaction, the independent fiduciary approves the transaction on behalf of the plan. Unless facts or circumstances would indicate the contrary, such approval may be presumed if the fiduciary permits the transaction to proceed after receipt of the written disclosure. Such fiduciary may be an employer of employees covered by the plan, but may not be a principal underwriter involved in the transaction. Such fiduciary may not receive, directly or indirectly (e.g. through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(d) With respect to additional purchases of insurance or annuity contracts or securities issued by an investment company, the written disclosure required under paragraphs (b) and (c) of this section V need not be repeated, unless—

(1) More than three years have passed since such disclosure was made with respect to the same kind of contract or security, or

(2) The contract or security being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described in paragraphs (b) and (c) of this section was obtained.

(e)(1)) In the case of any transaction described in paragraphs (a), (b), or (c) of section III, the insurance agent or broker (or the insurance company whose contract is being described if designated by the agent or broker), pension consultant or investment company principal underwriter shall retain or cause to be retained for a period of six years from the date of such transaction, the following:

(A) The information disclosed pursuant to paragraphs (b), (c), and (d) of this section V;

(B) Any additional information or documents provided to the fiduciary described in paragraphs (b) and (c) of this section V with respect to such transaction; and

(C) The written acknowledgement described in paragraph (b) of this section.

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the insurance agent or broker, pension consultant, or principal underwriter, such records are lost or destroyed prior to the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504 (a)(2) and (b) of the Act, such records are unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, and any employer of plan participants and beneficiaries, any employee organization any of whose members are covered by the plan.

Section VI—Definitions. For purposes of this exemption:

(a) The term "principal underwriter" is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29)).

(b) The terms "insurance agent or broker," "pension consultant," "insurance company," "investment company," and "principal underwriter" mean such persons and any affiliates thereof.

(c) The term "affiliate" of a person means:

(1) Any person directly or indirectly controlling, controlled by, or under common control with such person;

(2) Any officer, director, employee (including, in the case of principal underwriter, any registered representative thereof, whether or not such person is a common law employee of such principal underwriter), or relative of any such person, or any partner in such person; or

(3) Any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term "master or prototype plan" means a plan which is approved by the Service under Rev. Proc. 72–7, 1972–1 C.B. 715, or Rev. Proc. 72–6, 1972–1 C.B. 716, or their successors.

(g) The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary, and the term "nondiscretionary trustee" of a plan means a trustee whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. For purposes of this exemption, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of his having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Signed at Washington, D.C., this 28th day of March 1984.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 84–8823 Filed 4–2–84; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–4228, et al.]

Proposed Exemptions; Mountain West Savings & Loan Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

MountainWest Savings and Loan Profit Sharing Plan (the Plan) Located in Ogden, Utah

[Application No. D–4228]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 404(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply effective November 30, 1979 to five interest-bearing loans (the Loans) from MountainWest Savings and Loan (MountainWest) to the Plan.

Effective Date: If the proposed exemption is granted, it will be effective November 30, 1979.

Summary of Facts and Representations

1. MountainWest is a state chartered capital stock savings and loan institution which sponsors the Plan for its employees. The Plan had 92 participants and net assets of $1,560,353.90 as of December 31, 1981. The current trustees of the Plan are Virginia Andrews, Ruth A. Feeny, Richard M. Heaton, M. LeRoy Mecham and Val A. Weathers, all of whom are

employees and officers of MountainWest.

2. Immediately prior to the Loans, the bulk of the assets of the Plan were invested in certificates of deposit (C.D.s) issued by MountainWest. Five of the C.D.s, which had been purchased between March 4, 1975 and February 8, 1978, were bearing interest at 7.75%. After purchase of these five C.D.s, interest rates payable on C.D.s and other investments rose significantly. The trustees of the Plan at that time (the Trustees) were Virginia Andrews, Andrew Brunetti, Ruth A. Feeny, Richard M. Heaton and M. LeRoy Mecham, all of whom were then employees and officers of MountainWest. The Trustees determined that it was in the best interest of Plan participants and beneficiaries to increase the rate of return on Plan investments by borrowing against the old C.D.s to buy new, higher-rate C.D.s.

3. On November 30, 1979, the Plan borrowed a total of $315,000 from MountainWest in three transactions. The three loans (Loans 1, 2, and 3), which were secured by C.D.s bearing 7.75% interest rates, carried interest rates of 8.75%, the lowest rate of interest which MountainWest could charge under regulations of the Federal Home Loan Bank Board. The proceeds from Loans 1, 2, and 3 were used to invest in a C.D. issued by MountainWest bearing interest at 10.55% and maturing November 30, 1983.

Loans 1 and 2 were repaid on March 4, 1981 and December 18, 1981, respectively, when the C.D.s securing those loans matured. Loan 3 was repaid on April 16, 1982 when the C.D. securing the loan was prematurely redeemed, thus triggering an early withdrawal penalty. The C.D. was prematurely withdrawn because the Trustees had been informed by the Department, in a letter dated March 31, 1982, that the Loans constituted prohibited transactions under the Act.

4. On January 24, 1980, the Plan borrowed a total of $171,000 from MountainWest in two transactions. The two loans (Loans 4 and 5), secured by C.D.s bearing 7.75% interest rates, carried interest rates of 8.75% which, as with Loans 1, 2 and 3, were the lowest rates MountainWest could charge.

The proceeds from Loans 4 and 5 were used to invest in a C.D. issued by MountainWest bearing interest at 13.875% and maturing July 28, 1980. When that C.D. matured, the proceeds were commingled with other funds and invested in a C.D. in the amount of $332,354.51 bearing interest at 9.125% and maturing October 27, 1980. On October 27, 1980, the proceeds of the matured C.D. were commingled with other available funds and rolled into a new C.D. in the amount of $335,700 having an interest rate of 13.25% and a maturity date of December 31, 1980. By December 31, 1980, the proceeds from Loans 4 and 5 were so commingled with other funds that it was impossible to identify them with any one investment. However, all during the year 1981, the investment rates were higher than the rate on the Loans from MountainWest.

On February 19, 1982, Loan 4 was repaid with funds available in the Plan, and Loan 5 was repaid by prematurely redeeming the C.D. securing the loan, by which action the Plan incurred an early withdrawal penalty. The Trustees decided to repay Loan 5 because, at the time, the Department had raised the issue that the Loans were prohibited transactions.

5. The Department, after advising the Trustees of its position that the Loans constituted prohibited transactions, referred the matter to the Internal Revenue Service (the Service). The Department never advised the Trustees that any losses had resulted to the Plan from the Loans. The Service has assessed an excise tax against MountainWest as a result of the Loans.

The Service has also taken the position that the interest earned on the C.D.s acquired from the Loan proceeds is unrelated debt-financed income. The Service calculates that the borrowed funds invested in C.D.s produced $29,225 of net unrelated debt-financed income which results in a tax of $6351. This tax has not yet been assessed against the Plan, and the Plan intends to vigorously pursue the issue with the Service. Even if the Plan must pay this tax, the C.D.s acquired from the Loan proceeds will have produced $22,874 of additional income for the Plan that would not have been received if the Trustees had failed to act to increase the return on Plan investments.

6. As a result of the Loans and reinvestment of the proceeds in higher yielding C.D.s, the Plan earned additional net income of $29,225. If the old, low rate C.D.s had been cashed in, the Plan would have suffered early withdrawal penalties amounting to $64,989.82. Prior to engaging in the Loans, the Trustees calculated that it would be more expensive to the Plan to pay early withdrawal penalties than to pay interest on the Loans at the low rate offered by MountainWest. The Trustees were aware of the exemption in section 408(b)(4) of the Act permitting investment of plan assets in a supervised bank or similar financial institution, and they assumed that they could use a transaction that took the form of a loan to obtain the highest possible rates of return on the Plan's investments in C.D.s. They viewed the substance of the transactions as amendments of rates paid on outstanding C.D.s from old, low rates to new, high rates, transactions which were to the benefit of Plan participants and beneficiaries and to the detriment of MountainWest.

7. In summary, the Trustees represent that the transactions satisfied the statutory criteria of section 408(a) of the Act for the following reasons: (1) The Loans were obtained to enable the Plan to increase its investment return; (2) the Loans were made at an interest rate which was the lowest rate MountainWest could charge under Federal banking regulations; and (3) the Trustees determined prior to engaging in the Loans that they were in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

ESI Profit Sharing Retirement Plan and Trust (the Plan) Located in Portland, Oregon

[Application No. D–4401]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed lease of certain improved real property by the Plan to Electro Scientific Industries, Inc. (the Employer), a party in interest with respect to the Plan, provided the terms of the lease are at least as favorable to the Plan as those the Plan could obtain in a similar lease with an unrelated party.

Summary of Facts and Representations

1. The Plan covered 609 participants as of December 31, 1982, and, as of May 31, 1983, had assets totalling $8,404,347. The trustee of the Plan is the United States National Bank of Oregon (the Trustee). The Employer has a variety of commercial accounts with the Trustee, which is one of the two largest banking

institutions in the State of Oregon and maintains a large commercial banking practice. It is represented that each individual account of the Employer with the Trustee represents less than 1% of the aggregate of similar accounts currently maintained by the Trustee. Section 10.05–2 of the Plan authorizes the Profit Sharing Committee (the Committee) for the Plan to elect to direct the investment of Plan assets. Each member of the Committee is an employee of the Employer and owns less than 1% of the Employer's stock.

2. The property in question (the Property) consists of 5.27 acres of land improved by a one-story engineering building of 21,424 square feet. The Property is located at 13900 N.W. Science Park Drive, Beaverton, Oregon, in a highly desirable, campus-like development near Portland, known as Sunset Science Park. The Trustee currently manages the Property. The building contained on the Property is a multi-purpose industrial building currently used by the Employer for research and development, some light manufacture, and general drafting and engineering. The land was acquired by the Plan in 1963 for about $31,000, and the building was constructed in 1963 by the Plan for about $340,000 as an income investment.

3. The Property has been leased to the Employer since September 1, 1963, for a term of 15 years at a rental rate of $2,674.65 per month with an option exercisable by the Employer to renew for an additional 15 years without an increase in the rent. The lease was extended in 1978 for an additional five years at a rental rate of $7,712.64 per month, which was established by an independent appraisal of the market and rental value of the Property as of January 19, 1978. The applicant believes that the original lease and the 1978 extension thereof were covered by the statutory exemption provided by section 414(c)(2) of the Act.[1] Under the original lease, the Employer had a right of first refusal in the event a sale of the Property was considered. In 1978, approximately one quarter of an acre of the original plot was sold to the Employer for $11,600 without a reduction in rentals. The purchase price of this portion of the Property was determined by an independent appraiser. The applicant believes that the 1978 sale was covered by the statutory exemption provided under section 414(c)(3).[2] In 1979, the Trustee allowed the Employer to place a temporary mobile structure on the Property, subject to the payment by the Employer for any costs, including site preparation. Pursuant to this arrangement, the Employer provided sidewalks and parking for the Property at no cost to the Plan. In the spring of 1982, the Plan paid $48,155 for landscape work on the Property. Except for the initial acquisition and building costs of the Property and the landscape work performed in 1982, the Plan has incurred no capital expense with respect to the Property. The Employer has paid for those items constituting maintenance of the Property, as required by the terms of the lease.

4. Information submitted shows that from the inception of the original lease through May 31, 1982 (18.75 years), the lease has provided income at a compound annual growth rate of 10.85% and that such rate for the Plan year ended 1982 was 13.82%. The Trustee has been involved with the original lease, which expired August 31, 1983. The applicant represents that the Plan's lease of the Property to the Employer has proven profitable and easy to administer and the Plan and the Committee wished to renew the lease. Accordingly, the Trustee authorized the extension of the lease through June 30, 1984, upon the same terms and conditions as the original lease except that the rental rate for the renewal period equals the fair market rental rate as of November 2, 1983, as determined by an independent appraiser. The applicant believes that this extension of the original lease is covered by the statutory exemption provided under section 414(c)(2) of the Act.[3] If the proposed exemption is granted, it is contemplated that the proposed lease would supersede the 1983 extension of the lease as of the date the proposed exemption is granted, or as soon thereafter as possible.

5. At the request of the Trustee, the Property is appraised annually by an independent appraiser. The most recent appraisal was done November 2, 1983, at the Employer's expense, by Mr. James A. Lyon and Mr. David E. Pietka, MAI, (the Appraisers), of Palmer, Groth & Pietka, an appraisal firm chosen by the Trustee. Both of the Appraisers are licensed real estate appraisers in the State of Oregon; Palmer, Groth & Pietka specializes in appraisals of all types of properties, provides various related appraisal services, and is not related to the Employer. The Appraisers estimated that as of November 2, 1983, the fair market value of the Property was $1,415,000 and the Property's fair rental value was $157,344 per year. The appraisal states that the highest and best use of the Property is the present research and development usage.

6. The Plan proposes to lease the Property to the Employer effective on the date the proposed exemption is granted, or as soon thereafter as possible, on the following terms:

(a) The rent will be at the fair rental value determined, at the Employer's expense, as of the date of the proposed lease by an independent appraiser chosen by the Trustee. An independent appraiser chosen by the Trustee will redetermine the rent every three years.

(b) The Employer will be responsible for all maintenance, repairs, utilities, and taxes with respect to the Property. The Employer will also pay for fire and liability insurance on the Property.

(c) The initial term of the proposed lease will be for 10 years with an option, exercisable by the Employer, to renew for an additional 10 years at the rental rate then existing subject to redetermination as provided in (a), above.

(d) If the Property is offered for sale or if the Plan receives a bona fide acceptable offer to purchase the Property, the Employer will have the privilege of purchasing the Property at the same price and upon the same terms.[4]

(e) The Employer will have an option to purchase the Property upon 90 days notice at a purchase price determined by an independent appraiser chosen by the Trustee.[5]

The applicant represents that the proposed lease is substantially a form lease provide by the Trustee and used on a regular basis in its trust business. A memorandum of the lease of the Property will be recorded with the appropriate county official.

7. To avoid any question arising out of the relationships between the Employers and the Committee members, the Committee proposes to announce that the Committee will not exercise its authority under Plan section 10.05–2 as it relates to the Property. The Committee

[1] The Department is expressing no opinion herein as to the applicability of section 414(c)(2) of the Act to the original lease or to the 1978 extension thereof.

[2] The Department is expressing no opinion herein as to the applicability of section 414(c)(3) of the Act to the 1978 sale.

[3] The Department is expressing no opinion herein as to the applicability of section 414(c)(2) of the Act to this extension of the lease.

[4] This proposed exemption provides no relief with respect to any future sale of the Property to the Employer. However, at the time any such sale is contemplated, any party in interest involved therein may apply for an administrative exemption pursuant to the procedures set forth in ERISA Proc. 75–1 (40 FR 18471, April 28, 1975).

[5] Please see footnote 4, above.

will leave to the Trustee the exclusive authority and control over, and responsibility for, the management and investment of the Property.

8. The fair market value of the Property represents 19.2% of the fair market value of the Plan's total assets as of May 31, 1983. After the 1983 contribution by the Employer to the Plan, the applicant estimates that the fair market value of the Property will represent 18.3% of the fair market value of the Plan's total assets. The applicant believes that holding the Property does not involve an undue concentration of Plan assets. The applicant also believes the proposed lease will serve the Plan as a hedge against inflation. Since the rental rate will be redetermined every three years by an independent appraiser, the rental rate under the proposed lease should compare favorably with the rental rates charged for similar property in the future. Although the Property cannot be guaranteed to increase in value in the future, the Property has substantially appreciated in value in the past. Recently, the Committee has researched and considered a number of real estate investments in the Portland area, including property located in Vancouver, Washington. The Committee has made an in-depth investigation of four of those possibilities but has found that none of those parcels have shown the same potential for return as the Plan's current holdings. The Plan has made no real property investments recently.

9. The applicant states that the lease has been easily administered, providing the Plan with both regular income and the substantial benefit of a single tenant over the past 20 years. Finally, the applicant states that the terms of the proposed lease have been set by negotiations between the Employer and the Trustee and are both fair to the Plan and commercially reasonable. The Trustee, having been involved with the original lease and all extensions thereof, has reviewed the exemption application. The Trustee states that in its opinion the proposed lease is in the best interests of the Plan and its participants and beneficiaries for the reasons set forth in the exemption application (described above).

10. In summary, the applicant represents that the proposed lease satifies the exemption criteria set forth in section 408(a) of the Act because (a) the initial rental rate will be determined, at the Employer's expense, by a qualified independent appraiser chosen by the Trustee, and such rate will be redetermined every three years by an independent appraiser chosen by the Trustee; (b) the Trustee, an independent fiduciary, believes the proposed lease is in the best interests of the Plan and its participants and beneficiaries; (c) the Trustee will have exclusive authority and control over, and responsibility for, the management and investment of the Property; and (d) the proposed lease involves less than 20% of the Plan's total assets.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

St. Paul Federal Savings Employees Pension Plan (the Pension Plan) and St. Paul Federal Savings and Loan Association Profit Sharing Plan (the Profit Sharing Plan) (Collectively, the Plans) Located in Chicago, Illinois

[Application Nos. D–4534 & D–4535, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply effective October 25, 1979 to certain interest-bearing loans (the Loans) from St. Paul Federal Savings and Loan Association of Chicago (the Association) to the Plans.

Effective Date: If the proposed exemption is granted, it will be effective October 25, 1979.

Summary of Facts and Representations

1. The Association is a mutually owned savings and loan association which sponsors the Plans covering employees of the Association. As of January 1, 1982, the Pension Plan had 419 participants and $4,994,348.32 in assets and the Profit Sharing Plan had 427 participants and $3,191,751.25 in assets. The members of the Pension and Profit Sharing Administrative Committee (the Committee), all of whom are employees of the Association, make all investment decisions for the Plans.

2. Both Plans invest in deposits of banks or similar financial institutions, including the Association. Some deposits with the Association have been in certificates of deposit (C.D.s). During the late 1970s and early 1980s, at a time when interest rates were rising significantly, the Plans had some C.D.s issued by the Association which were acquired in earlier years and which were paying rates of return lower than the rates that were then currently available. Accordingly, the Committee decided the take advantage of the higher interest rates available in the market by borrowing funds from the Association, using the low interest rate C.D.s as collateral, and investing the borrowed funds in higher yielding investments. None of the funds borrowed from the Association were invested in deposits of the Association.

3. The Pension Plan borrowed $500,000 (Loan 1) from the Association on November 8, 1979. Loan 1, which bore an interest rate of 9.75%, was secured by a C.D. issued by the Association which had a 7.75% interest rate. The Association charged a rate of interest 2% over the interest rate on the C.D. which secured Loan 1 because the policy of the Association at the time on such savings account loans was to charge 2% above the rate paid on the C.D. used for collateral. The lowest rate which the Association could have charged under applicable Federal banking regulations was 1% above the rate paid on the C.D. used as collateral.

The proceeds from Loan 1 were used along with other funds to purchase a bankers acceptance from Continental Illinois National Bank (CINB) paying 14% interest and a C.D. from Pioneer Bank and Trust Company (Pioneer) paying 14.4% interest. Loan 1 was paid in full on August 8, 1980.

4. The Profit Sharing Plan borrowed $375,000 in four transactions (Loans 2, 3, 4, and 5) with the Association on October 25, 1979. Loan 2, for $200,000, Loan 3, for $100,000, Loan 4, for $25,000, and Loan 5, for $50,000, carried interest rates of 9.5%, 9.75% 10% and 9.75%, respectively, and each was secured by a C.D. earning 2% less than the loan interest rate.

The proceeds from Loans 2, 3, 4 and 5 were used along with other funds to purchase a bankers acceptance from CINB paying 14.05% and a C.D. from Pioneer paying 15% interest. When the first bankers acceptance matured, another one was purchased from CINB paying 16.3%.

On July 17, 1980, Loans 3, 4 and 5 were repaid from maturing investment proceeds. Loan 2 was repaid on March 31, 1981, when the C.D. securing the loan matured.

5. On December 23, 1980, the Profit Sharing Plan borrowed $1,000,000 in four transactions (Loans 6, 7, 8, and 9) with the Association. Loan 6, for $90,000, Loan 7, for $20,000, Loan 8, for $40,000,

and Loan 9, for $850,000, carried interest rates of 10.75%, 11%, 10.75% and 13.75%, respectively, and each was secured by a C.D. earning 3% less than the loan interest rate.

By late 1980, the Association's policy with regard to the interest rate to be charged on all savings account loans had changed from charging a 2% differential over the rate the C.D. securing the loan was earning to charging a 3% differential on such loans. Thus, the rate charged the Profit Sharing Plan was the same rate charged to other account holders on savings account loans.

The proceeds from Loans 6, 7, 8, and 9 were used to purchase a 19% C.D. from CINB. When that C.D. matured, the proceeds were reinvested in a C.D. earning 15.25% interest issued by The First National Bank of Chicago. Loans 6, 7, and 8 were repaid on August 20, 1981, and Loan 9 was paid in full on November 30, 1982.

6. The Internal Revenue Service (the Service) examined the Plans in late 1982 and took the position that the Loans constituted prohibited transactions under section 4975(c)(1)(B) of the Code. The Service also took the position that the income earned on the investment of the Loan proceeds constitutes unrelated debt-financed income which is taxable income for the Plans.

The Service has not asessed any taxes at this time pending the Department's consideration of the prohibited transactions exemption application filed by the Association. The Association agreed to an extension of the statute of limitations for assessment of any taxes that may be determined to be due to the Service.

7. The Committee has consistently followed conservative and diversified investment strategies and has made investment decisions solely for the benefit of the Plans' participants. In 1979 and 1980, the Association had the highest volume of loans secured by C.D.s in its history. It was a common practice for C.D. holders to borrow on older lower interest rate C.D.s in order to reinvest the proceeds at a higher rate of return. The Committee determined that it would be in the best interests of the Plans to take advantage of the opportunity to increase investment yields through savings account loans.

At all times the Loan proceeds were placed in investments that returned a higher yield to the Plans than the interest charged on the Loans. The Plans had an investment gain as a result of all the Loans, and will still have a gain even if the Service determines that unrelated debt-financed income resulted from the transactions.

Prior to engaging in the Loans, the Committee computed the additional income which could be earned by the Plans from investing in higher yielding C.D.s. The net result to the Plans from engaging in the Loans is that they earned additional net income of approximately $30,000. If the Plans had instead cashed in the old, low rate C.D.s, the Plans would haved incurred early withdrawal penalities totaling $122,000.

8. In summary, the Committee represents that the transactions satisfied the statutory criteria of section 408(a) of the Act for the following reasons: (1) The Loans were obtained to enable the Plans to increase their investment yield; (2) the Loans were made at interest rates which were the same rates charged by the Association to all C.D. account holders on the same type loans; and (3) the Committee determined prior to engaging in the Loans that they were in the best interests of the Plans and their participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 30 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and/or to request a hearing. Comments and/or requests for a hearing are due within 60 days of the date of publication.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (this is not a toll-free number.)

Morgan Guaranty Trust Company of New York; Located in New York, New York Located in New York, New York.

(MGT)—commingled pension trust funds: Money Market Investments—Intermediate (Fund A), Special Situation Investments—International Dollar Fixed Income (Fund B), Bonds—Marketable Long term (Fund C), Bonds—Private Placements (Fund D), Fixed Income Direct Placements—Corporate Medium Term (Fund E).

[Application No. D-4775]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the proposed consolidation by MGT of (a) all of Funds A and C and all the public bonds, cash and cash equivalents held in Fund B into a new single commingled pension trust fund, and (b) all of Funds D and E and the private placements held in Fund B into another new single commingled pension trust fund, provided that the aggregate fair market value of the interests of each plan participating in any of these funds (collectively, the Funds) upon completion of the consolidation equals the aggregate fair market value of such plan's interests in the Funds immediately preceding the consolidation.

Summary of Facts and Representations

1. MGT manages more than $17 billion in assets of employee benefit plans subject to Title I of the Act, of which approximately $11 billion is invested through the medium of its 19 commingled pension trust funds, all of which have been determined by the Internal Revenue service to meet the requirements of section 401(a) and 501(a) of the Code. These funds were established for the purpose of providing diversified portfolios of securities for plans managed by MGT. Each commingled pension trust fund maintained by MGT is also authorized by the terms of its governing trust agreement to invest in other commingled trust funds maintained by MGT. Funds A anc C hold public bonds, Funds D and E hold private placements, and Fund B holds both public bonds and private placements.

2. The emphasis of the investments in Fund C, which was initially funded on October 1, 1975, is marketable long term fixed income secrities. As of July 29, 1983, 216 plans participated in Fund C, which then held 113 issues and had a total net asset value of $795,462,045. (Fund C and Fund D together comprise MGT's Commingled Pension Trust Fund (Bonds). However, each separate part of an MGT commingled pension trust fund established pursuant to a trust agreement is itself administered and treated for all purposes as a separate commingled trust fund.)

3. The Commingled Pension Trust Fund (Special Situation Investments) of MGT, established December 7, 1960, now consists of six parts, only one of which, Fund B, is involved in the proposed consolidation. The emphasis of the investments in Fund B, which was initially funded on August 29, 1977, is credit instruments of foreign obligors issued through public offerings and direct placements both in the United

States and in foreign countries, but denominated solely in U.S. dollars. As of July 29, 1983, 194 plans participated in Fund B, which then held (a) 15 issues of public bonds, cash and cash equivalents (comprising approximately 48.42% of the value of Fund B), and (b) 9 issues of privately placed credit instruments (comprising approximately 51.58% of the value of Fund B). At that time, Fund B had a total net assest value of $86,827,236. 97% of the plans participating in Fund B also participate in Fund C. 98% of the plans participating in Fund B also participate in Fund E.

4. The commingled pension trust fund now known as the Commingled Pension Trust Fund (Money Market Investments) of MGT, established February 5, 1969, now consists of four parts, only one of which, Fund A, is involved in the proposed consolidation. The emphasis of the investments in Fund A, which was initially funded on July 1, 1974, is marketable intermediate term income securities. As of July 29, 1983, 224 plans participated in Fund A, which then held 67 issues and had a total net asset value of $593,342,218. 95% of the plans participating in Fund A also participate in Fund C.

5. The emphasis of investments in Fund D, which was initially funded on May 31, 1956, is privately placed corporate bonds. As of July 29, 1983, 201 plans participated in Fund D, which then held 67 issues and had a total net asset value of $82,804,232. 99% of the plans participating in Fund D also participate in Fund E.

6. The commingled pension trust fund now known as the Commingled Pension Trust Fund (Fixed Income Direct Placements) of MGT, established December 7, 1960, now consists of two parts, only one of which, Fund E, is involved in the proposed consolidation. The emphasis on investments in Fund E, which was initially funded on October 1, 1974, is direct placements of fixed income obligations of corporations. As of July 29, 1983, 216 plans participated in Fund E, which then held 89 issues and had a total net asset value of $506,150,373.

7. MGT proposes to transfer all the assets held in Fund A and all the public bonds, cash and cash equivalents held in Fund B to Fund C and to issue units of participation in Fund C to the plans participating in Funds A and B so that such plans will own units of participation in Fund C having a market value on the date of transfer equal to the aggregate market value of each such plan's interest in the assets transferred from Funds D and B. (A plan participating in Fund B would receive for its interest in Fund B interests in Funds C and E in proportion to the value of assets transferred from Funds A and B. MGT also proposes to transfer all the assets held in Fund D and the private placements held in Fund B to Fund E and to issue units of participation in Fund E to the plans participating in Funds D and B so that such plans will own units of participation in Fund E having a market value on the date of transfer equal to the aggregate market value of each such plan's interest in the assets transferred from Fund B to Funds C and E.) Funds A, B, and D would there upon terminate. After the consolidation, Fund C will be renamed the Fixed Income—Public Bonds Fund and will be governed by an amended and restated trust agreement; and Fund E will be renamed the Fixed Income—Private Placements Fund and will be governed by an amended and restated trust agreement.

8. If the proposed exemption is granted, MGT will select a transfer date on which to transfer the public bonds from Funds A and B to Fund C and the same or a different transfer date to transfer the private placements from Funds B and D to Fund E. (Both transfer dates will be within 120 days of the date the grant notice is published in the **Federal Register**.) All of the securities to be transferred are either registered, exempt from registration, or transferable without registration pursuant to the provisions of the Securities Act of 1933. Each of the transferring and surviving Funds would be valued on the transfer date pursuant to the valuation provisions of each Fund's trust agreement. The value of a unit in each Fund would then be detemined by dividing the value of the Fund by the number of outstanding units on the valuation date. (The method of valuation used by MGT is set forth in a section of the Handbook supplied by MGT to each of its clients. Prices for non-publicly traded securities are determined based on a number of specified factors relating to the level of the public bond market and to recent activity in privately placed obligations of a similar nature.) Each plan participating in a Fund transferring securities would receive units of the Fund to which the securities were transferred equal in value to the value of the units such plan held in the Fund transferring securities. Since neither surviving Fund will issue fractions of a unit as a result of the consolidation, a plan entitled to a fraction of a unit in a surviving Fund will either receive cash from that Fund in lieu thereof or pay cash to that Fund in an amount necessary to acquire a full unit. As of July 29, 1983, no unit price of any of the Funds exceeded $130.

9. Any plan which informs MGT that it does not wish to participate in a surviving consolidated Fund will be permitted to withdraw, prior to the consolidation, its participation from all of the Funds. It is presently anticipated that all securities held by the Funds will be included in the consolidation. If, however, MGT determines on a transfer date that it is not appropriate to hold any security in a consolidated Fund, such security will be transferred to a liquidating account in the Fund holding such security prior to the consolidation and administered pursuant to the provisions of that Fund's trust agreement.

10. MGT believes that in simplifying the present structure of the Funds, the proposed consolidation will enable MGT both to manage the Funds more effectively in today's more volatile markets and to communicate its investment activities and results more easily to its clients. MGT believes that the additional flexibility achieved through the consolidation would greatly benefit all plans participating in the Funds and would be in each such plan's best interests.

11. MGT will not receive any fees or commissions for making the transfers described above that would be involved in the proposed consolidation. Further, MGT will not be making any actual sales or corresponding purchases of any of the participating plans' assets. The consolidation will be effected at values at which the Funds are normally valued. It is represented that since no transaction costs will be charged and no adverse market impact will result from the proposed consolidation, each participating plan is assured of being treated at least as fairly in connection with the proposed consolidation as if it had engaged in arm's-length open market transactions at the time of such transfer.

12. The applicant represents that the Funds are not parties in interest with respect to each other within the meaning of section 3(14) of the Act because they are not related as described in that section. The applicant has requested an exemption from the provisions of section 406(b)(2) only, which generally prohibits a plan fiduciary from acting on behalf of, or representing, an adverse party in a transaction with a plan. The applicant explains that the plans participating in the Funds may be deemed to have adverse interests under the proposed consolidation because certain plans may have a proportionate interest in each of the securities held in the surviving

Funds which differs from their proportionate interest in such securities immediately prior to the consolidation, even though upon completion of the consolidation each participating plan would own units in the surviving Funds equal in value to the value of the units it had held in the transferring Funds and surviving Funds immediately prior to the consolidation.

13. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) MGT will not be receiving any commissions in connection with the proposed consolidation and will not be making any actual sales or corresponding purchases of any of the plans' assets, (b) the proposed consolidation will be effected at values at which the Funds are normally valued, (c) no transaction costs will be charged and no adverse market impact will result from the proposed consolidation, and (d) MGT believes that in simplifying the present structure of the Funds, the proposed consolidation will enable MGT to manage the Funds more effectively in the best interests of each plan participating in the Funds.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Morgan Guaranty Trust Company of New York (MGT); Located in New York, New York

[Application No. D–4871]

Proposed Exemption

Commingled Pension Trust Fund—Common Stocks: Consumer and Service Sector (Fund I), Technology and Machinery Sector (Fund II), Finance, Regulated and Transportation Sector (Fund III), Natural Resources and Processing Sector (Fund IV).

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the proposed consolidation by MGT of Funds I, II, III, and IV (collectively, the Sector Funds) into a new single commingled pension trust fund provided that the fair market value of the interests of each plan participating in such fund shall upon completion of the consolidation equal the aggregate fair market value of such plan's interests in the Sector Funds immediately preceding the consolidation.

Summary of Facts and Representations

1. MGT manages more than $17 billion in assets of employee benefit plans subject to Title I of the Act, of which approximately $11 billion is invested through the medium of its 19 commingled pension trust funds, all of which have been determined by the Internal Revenue Service to meet the requirements of sections 401(a) and 501(a) of the Code. These funds were established for the purpose of providing diversified portfolios of securities for plans managed by MGT. Each commingled pension trust fund maintained by MGT is also authorized by the terms of its governing trust agreement to invest in other commingled trust funds maintained by MGT. Each separate part of a commingled pension trust fund established pursuant to a declaration of trust is itself administered and treated by MGT for all purposes as a separate commingled pension trust fund.

2. The Sector Funds were established by MGT in order to enable it to analyze and monitor the large-capitalization equity portfolio held in MGT's Commingled Pension Trust Fund-Common Stocks (the Common Stocks Fund) based on industry breakdown. On August 8, 1979, by resolution of the Board of Directors of MGT, the Declaration of Trust of the Common Stocks Fund (the Trust Agreement) was amended to establish the Sector Funds as separate parts of the Common Stocks Fund, pursuant to Article IV, Section 4.5 of the Trust Agreement. Each plan participating at the time of division had an interest in the assets held in the Sector Funds immediately following their establishment which was equal to its interest in the assets held in the Common Stocks Fund. The applicant believes that this division did not constitute a prohibited transaction.[1] The terms of the instruments governing each plan which paricipates in the Sector Funds specifically authorize MGT in its discretion to invest assets of such plan through the medium of such commingled pension trust funds in such proportions and to such extent as MGT deems advisable.

3. The same 171 plans participate in each of the Sector Funds. As of September 15, 1983: Fund I, Whose investments emphasize common stocks of companies whose businesses are concentrated in the consumer spending and service areas of the economy, held 20 issues (excluding cash equivalents) and had a total ne asset value of $321,022,829; Fund II, whose investment emphasize common stocks of companies related to the technology and machinery areas of the economy, held 19 issues (excluding cash equivalents) and had a total net asset value of $344,150,037; Fund III, whose investments emphasize common stocks of companies whose businesses are concentrated in the finance, transportation and regulated industry areas of the economy, held 15 issues (excluding cash equivalents) and had a total net asset value of $189,241,019; and Fund IV, whose investments emphasize common stocks of companies whose businesses are concentrated in the natural resources and intermediate processing industry areas of the economy, held 20 issues (excluding cash equivalents) and had a total net asset value of $250,187,289.

4. MGT proposes to consolidate all the assets held in the Sector Funds so that such assets will be held in the Common Stocks Fund, which will have been renamed MGT's Commingled Pension Trust Fund—Large Companies (the Large Companies Fund), to be governed by an amended and restated trust agreement. The consolidation will be effected by the transfer of the assets held in the Sector Funds in exchange for units of participation in the Large Companies Fund so that each participating plan will own units of participation in the Large Companies Fund having a market value on the date of transfer equal to the aggregate market value of each such plan's interest in the Sector Funds immediately prior to the consolidation. Each of the Sector Funds would thereupon terminate.

5. If the proposed exemption is granted, MGT will select a day within 120 days from the date of publication of the grant notice in the **Federal Register** on which to consolidate all the assets held in the Sector Funds into the Large Companies Fund. All of the securities involved in the consolidation are registered under the Securities Act of 1933 and listed on one or more national securities exchanges. Each of the Sector Funds would be valued on the transfer date pursuant to the valuation provisions of the Trust Agreement. The value of a unit in each Sector Fund would then be determined by dividing the value of the Sector Fund by the number of outstanding units on the valuation date. (The method of valuation used by MGT is set forth in a section of the Handbook supplied by MGT to each of its clients. Prices for listed stocks are determined as of the last sales price on the day on which the stock is to be valued. The prices are a composite based on the last trading

[1] The Department is expressing no opinion herein as to whether or not such division constituted a prohibited transaction.

price on the New York exchanges and one or more of the following: Midwest, Pacific, PBW, Boston, and Cincinnati exchanges and reported by the National Association of Securities Dealers and Instinet. If no sales price is reported, the bid quotation is used.) Each plan participating in the consolidation of the Sector Funds would receive units of the Large Companies Fund equal in value to the value of the units such plan held in the Sector Funds immediately prior to the consolidation. Since the Large Companies Fund will not issue fractions of a unit as a result of the consolidation, a plan entitled to a fraction of a unit in the Large Companies Fund will either receive cash from the Large Companies Fund in lieu thereof or pay cash to the Large Companies Fund in an amount necessary to acquire a full unit. As of September 15, 1983, no unit price of any Sector Fund exceeded $185.

6. Any plan which informs MGT that it does not wish to participate in the Large Companies Fund will be permitted to withdraw, prior to the consolidation, its participation from all of the Sector Funds. It is presently anticipated that all securities held by the Sector Funds will be included in the consolidation. If, however, MGT determines on a transfer date that it is not appropriate to hold any security in the Large Companies Fund, such security will be transferred to a liquidating account in the Sector Fund holding such security prior to the consolidation and administered pursuant to the provisions of the Trust Agreement.

7. MGT believes that although the technique of analyzing and monitoring the $1,100,000,000 invested in the Sector Funds by industry breakdown has proved valuable in the past, changes in the investment environment necessitate a broad perspective that cuts across industry sectors and emphasizes active shifts between them. In MGT's opinion, superior management of the Sector Funds is best achieved when they are viewed in their entirety. MGT believes that formally combining the Sector Funds would support a flexible, active management approach to investments by making flows of funds among industry sectors mechanically simpler, and, in addition, would enable MGT to communicate its investment activity and results more clearly to its clients. Further, MGT believes that such an approach is important in its management of large-capitalization equity holdings and is prudent and in the best interests of every participating plan.

8. MGT will not receive any fees or commissions for making the transfers described above that would be involved in the proposed consolidation. Further, MGT will not be making any actual sales or corresponding purchases of any of the participating plans' assets. The consolidation will be effected at values at which the Sector Funds are normally valued. It is represented that since no transaction costs will be charged and no adverse market impact will result from the proposed consolidation, each participating plan is assured of being treated at least as fairly in connection with the proposed consolidation as if it had engaged in arm's-length open market transactions at the time of such transfer.

9. The applicant represents that the Funds are not parties in interest with respect to each other within the meaning of section 3(14) of the Act because they are not related as described in that section. The applicant has requested an exemption from the provisions of section 406(b)(2) only, which generally prohibits a plan fiduciary from acting on behalf of, or representing, an adverse party in a transaction with a plan. The applicant explains that the plans participating in the Funds may be deemed to have adverse interests under the proposed consolidation because certain plans may have a proportionate interest in each of the securities held in the Large Companies Fund which differs from their proportionate interest in such securities immediately prior to the consolidation, even though upon completion of the consolidation each participating plan would own units in the Large Companies Fund equal in value to the value of the units it had held in the Sector Funds immediately prior to the consolidation.

10. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) MGT will not be receiving any commissions in connection with the proposed consolidation and will not be making any actual sales or corresponding purchases of any of the plans' assets, (b) the proposed consolidation will be effected at values at which the Sector Funds are normally valued, (c) no transaction costs will be charged and no adverse market impact will result from the proposed consolidation, and (d) MGT believes that the proposed consolidation will enable MGT to manage the Funds more effectively in the best interests of each plan participating in the Funds.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Verne Kallejian, Ph. D., a Psychological Corporation Pension Plan (the Plan) Located in Los Angeles, California

[Application No. D–4898]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed borrowing by the Plan of the maximum loan values on life insurance policies held by the Plan and issued by John Hancock Life Insurance Co. (the Insurer), which provides services to the Plan. Because Verne Kallejian, Ph.D. (Dr. Kallejian) is the sole participant in the Plan and is also the sole owner of Verne Kallejian, Ph. D., A Psychological Corporation (the Employer), the Plan is not subject to Title I of the Act, including section 406, pursuant to 29 CFR 2510.3–3 (b) and (c)(1). However, the Plan is subject to Title II of the Act, which includes section 4975 of the Code.

Summary of Facts and Representations

1. As mentioned above, Dr. Kallejian is the sole participant in the Plan and the sole owner of the Employer. He is also the trustee of the Plan. It is represented that the insurer is a fiduciary and provides administrative services to the Plan but that Dr. Kallejian, as Plan trustee, made the decision for the Plan to apply for loans to the extent of the maximum loan values of the life insurance policies held by the Plan and issued by the Insurer. Such loan proceeds will be reinvested in assets providing a higher annual return to the Plan.

2. The loans in question (the Loans) have not yet been made. They will be made on the present cash value of the policies mentioned above (the Policies) and will bear interest at the rate of six percent per annum. There is no repayment schedule for the principal amount of the Loans, which will mature upon the death of the participant or at the election of the Trustee to repay the Loans. Conditions of the Loans are the same as those of similar policy loans made by the Insurer to other policy holders.

Upon retirement, Dr. Kallejian will have the following options: (a) He may receive the Policies subject to the Loans; (b) he may surrender the Policies and receive any net proceeds thereunder; (c)

he may repay the Loans from other assets credited to his account under the Plan and receive the Policies free of the Loan encumbrance; or (d) the net proceeds, if any, under the Policies and the amount credited to his account under a side fund comprising part of the Plan's assets may be converted to an annuity payable to him in accordance with the terms of the Policies and the Plan. In the event of death before retirement and before the Loans are repaid, Dr. Kallejian's beneficiary will receive the face amount of the Policies reduced by the amount attributable to the unpaid Loans.

3. Dr. Kallejian states that the proposed Loans would be administratively feasible as they will involve nominal paperwork and are simple transactions and that they will benefit and protect Plan participants and beneficiaries by enabling the Plan to obtain increased return from reinvestment of the Loan proceeds, resulting in increased Plan assets from which to pay benefits.

4. In summary, Dr. Kallejian represents that the Loans meet the exemptive criteria provided by section 408(a) of the Act (a) for the reasons stated in 3, above, (b) because the Loan terms and conditions are the same as those of similar policy loans made by the insurer to other policy holders, and (c) because the Plan trustee, who is the only Plan participant to be affected by the proposed transaction, approves of the transaction, desires that it be consummated, and made the decision for the Plan to apply for the Loans.

Notice to Interested Persons

Since Dr. Kallejian is the only participant in the Plan and the sole owner of the Employer, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments are due 30 days after the date of publication of this notice in the Federal Register.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 29th day of March 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-8822 Filed 4-2-84; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Arkansas Power & Light Company (Arkansas Nuclear One Units 1 and 2); Exemption

[Docket Nos. 50-313 and 50-368]

I

Arkansas Power & Light Company (the licensee) is the holder of Facility Operating Licenses DPR–51 and NPF–6 (the licenses) which authorize operation of the Arkansas Nuclear One, Units 1 and 2, respectively (the facilities) at steady state reactor power level not in excess of 3293 megawatts thermal (rated power). The facilities consist of Babcock and Wilcox and Combustion Engineering designed pressurized water reactors (PWRs) located at the licensee's site in Pope County, Arkansas.

The licenses are subject to all rules, regulations, and Orders of the Commission.

II

10 CFR 50.54(q) requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of § 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.1 of Appendix E requires each licensee to conduct a full-scale emergency preparedness exercise at least annually.

By letters dated December 30, 1983 and January 18, 1984, the licensee requested an exemption from the annual full-scale exercise requirement of Appendix E. Since the last full-scale exercise was held at Arkansas Nuclear One on March 18, 1983, the next exercise was due to be conducted in March of 1984. The licensee requests that the next exercise involving State and local government participation be deferred until March of 1985.

The past three full-scale exercises held at this site (March 1981, May 1982, and March 1983) have been successful, and in each case the Federal Emergency Management Agency (FEMA) has noted no major deficiencies. The licensee asserts that this record demonstrates serious attention to emergency planning and preparedness by all parties concerned. In addition, the licensee points to a recent FEMA determination (letter to the State of Arkansas dated January 3, 1984) that based on the past record as cited in a FEMA memorandum dated November, 28, 1983, State and local participation in a 1984 full-scale exercise is not necessary.

The NRC staff has reviewed the record of the previous exercises and the FEMA determination and agrees that a full-scale exercise involving State and local governments is not needed. The state of emergency preparedness at the Arkansas Nuclear One site meets applicable NRC criteria, and the deferral of a full-scale exercise to March 1985 would not adversely affect emergency preparedness at this site. Moreover, as indicated by the State, granting of the exemption could allow strained local government resources to best serve the public in activities other than another full participation exercise.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter of December 30, 1983, as supplemented by letter dated January 18, 1984, as discussed above, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore the requested exemption from the exercise requirement of 10 CFR Part 50, Appendix E, Section IV.F.1.a involving the State and local governments is hereby granted.

The Commission has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 22nd day of March 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 84-8828 Filed 4-2-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-374]

Commonwealth Edison Company; Issuance of Amendment to Facility Operating License

On December 16, 1983, the U.S. Nuclear Regulatory Commission (the Commission) issued Facility Operating License No. NPF-18, to Commonwealth Edison Company (licensee), authorizing operation of the La Salle County Station, Unit 2 (the facility), at reactor core power levels not in excess of 166 megawatts thermal (5 percent power) in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan.

The Commission has now issued Amendment No. 1 to Facility Operating License No. NPF-18, which authorizes operation of the La Salle County Station, Unit 2, at reactor core power levels not in excess of 3323 megawatts thermal (100 percent power) in accordance with the provisions of the amended license.

La Salle County Station, Unit 2 is a boiling water nuclear reactor located in Brookfield Township, La Salle County, Illinois. The amendment is effective as of the date of issuance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amended license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on June 9, 1977 (42 FR 29576-29577). The increase in power level authorized by this amendment is encompassed by that prior public notice.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impacts other than those evaluated in the Final Environmental Statement and its addendum.

For further details with respect to this action, see (1) Amendment No. 1 to Facility Operating License No. NPF-18; (2) Facility Operating License No. NPF-18 dated December 16, 1983, authorizing five percent power; (3) the report of the Advisory Committee on Reactor Safeguards dated April 16, 1981; (4) the Commission's Safety Evaluation Report (NUREG-0519) dated March 1981, Supplement No. 1 dated June 1981, Supplement No. 2 dated February 1982, Supplement No. 3 dated April 1982, Supplement No. 4 dated July 1982, Supplement No. 5 dated August 1982, Supplement No. 6 dated November 1983, Supplement No. 7 dated December 1983, and Supplement No. 8 dated March 1984; (5) the Final Safety Analysis Report and amendments thereto; (6) the Environmental Report and Supplements thereto; (7) the Final Environmental Statement dated November 1978 and the Addendum to the Final Environmental Statement dated May 1981; and (8) NCR Flood Plain Review of La Salle Nuclear Plant Site dated January 29, 1981.

The items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555, and the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348. A copy of Amendment No. 1 to Facility Operating License No. NPF-18 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements 1, 2, 3, 4, 5, 6, 7 and 8 (NUREG-0519) may be purchased at current rates from the National Technical Information Service, U.S. Department of Commerce, 5238 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, DC 20555. GPO deposit account holders can call (301) 492-9530.

Dated at Bethesda, Maryland this 23rd day of March 1984.

For the Nuclear Regulatory Commission.

A Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 84-8829 Filed 4-2-84; 8:45 am]

BILLING CODE 7590-01-M

[ASLBP Docket No. 82-468-01 OL; NRC Docket Nos. 50-458-OL; 50-459-OL]

Gulf States Utilities Company, et al. (River Bend Station, Units 1 and 2); Order

March 8, 1984.

Upon consideration of the emergency planning contentions dated March 9, 1984, filed by Joint Intervenors with the Board, the anticipated responses by the parties thereto, and the entire record in this matter, it is, this 28th day of March, 1984

Ordered

1. That a prehearing conference will be held April 18, 1984, at the Court of Appeals, First Circuit, Courtroom 905, Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana, for the following purposes:

a. To consider the emergency planning contentions filed by Joint Intervenors;

b. To resolve any remaining matters concerning Unit 2, which has been cancelled;

c. To set a hearing date for Contentions 1 and 2 already admitted to this proceeding and schedule completion of all discovery, motions and other activities necessary to commence that hearing;

d. To set a hearing date for any emergency planning contentions that might be admitted to this preceeding and schedule completion of all discovery, motions, and other activities necessary to commence any such hearing; and

e. To consider any other matters relevant to the expeditious resolution of disputes in this proceeding:

2. That pending Judge Linenberger's anticipated return to fully active status on or about June 1, 1984, the Board will take all necessary actions in this proceeding pursuant to 10 CFR 2.721(d), as a quorum; and

3. To consider authorizing the withdrawal of Doris Falkenheiner as

attorney for Louisiana Consumer's League.

Dated at Bethesda, Maryland this 28th day of March, 1984.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman Administrative Judge.

[FR Doc. 84-8830 Filed 4-2-84; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Notice of Visit

March 28, 1984.

Notice is hereby given that a member of the Commission's advisory staff will be visiting the Charleston, South Carolina Management Section Center on April 5 and 6, 1984, to observe the operations of the USPS Task Force for the Joint Postal Service/Postal Rate Commission/Mailers Study Group on Third-Class Bulk Mail. A report of the visit will be on file in the Commission's Docket Room.

Charles L. Clapp,

Secretary.

[FR Doc. 84-8810 Filed 4-2-84; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-20791; File No. SR-MCC-84-1]

Self-Regulatory Organizations; Proposed Rule Change; Midwest Clearing Corp.; Enhancements to the OTC Match Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 15, 1984, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the MST System OTC Participant Bulletin regarding enhancements to the OTC Match Procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MCC has revised its OTC Match Procedures whereby it will provide an additional comparison of summarized data unmatched after the current T+1 procedure. In the revised procedures, identified as "M-3", if summarization does not give a compared trade, the trade moves into a third match attempt (full or partial two way match). In this match procedure, the identities of the executing brokers are disregarded. The purpose of this procedure is to reduce the number of OTC uncompared trades.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 in that it will promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8851 Filed 4-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20793; File No. SR-NSCC-84-03]

Filing and Immediate Effectiveness of a Proposed Rule Change by National Securities Clearing Corp.

March 27, 1984.

The National Securities Clearing Corporation ("NSCC") on February 23, 1984, submitted a proposed rule change to the Commission pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), that amends Section (II)(B)(2)(c) of NSCC's Procedures relating to the unilateral deletion of compared New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") trades by purchasers or sellers on the second day after trade date ("T+2"). The Commission is publishing this

notice to solicit comments from persons interested in the proposed rule change.

Under the proposal, NSCC members' use of the unilateral delete procedure will be limited to NYSE and Amex trades compared through (1) NSCC's suggested name procedure;[1] or (2) Advisory and Add-by-Seller mechanisms.[2] NSCC states that some members have been attempting to use the unilateral delete feature to eliminate locked-in trades submitted to NSCC by market regulators through their automated trading systems. By restricting members' use of the delete feature to trades compared via the suggested name procedure and the Advisory and Add-by-Seller trade correction mechanisms, NSCC's proposal effectively prohibits member use of unilateral deletes for locked-in trades.[3]

NSCC states in its filing that the proposal is consistent with the intentions of NSCC and the market regulators when automated trading systems began. At that time, NSCC and the appropriate market regulators agreed that trade adjustments in those systems would be resolved according to exchange procedures. In addition, NSCC believes that the proposal will eliminate the inefficient use of its resources in monitoring the use of the delete procedure in this context and will avoid any confusion that could result from the deletion of locked-in trade data. Therefore, NSCC believes that its proposal facilitates prompt and accurate clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the Federal Register. Persons desiring to make a written submission should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-84-03.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8849 Filed 4-2-84; 8:45 am]

BILLING CODE 8010-01-M

[1] If a purchaser and seller submit identical trade data, except for the name of the *contra* party, and the *contra* party submitted by one of them is the other party that submitted identical data, the transaction is deemed compared under NSCC's "suggested name" procedure. For example, if A submits trade data showing the purchase of 100 shares of XYZ at $10 per share from B and B submits data showing a sale of 100 shares of XYZ at $10 to C, the procedure will ignore C in B's trade submission and will suggest a compared trade with A. Suggested trades are identified specially on the T+1 Contract List. The parties to the trade are responsible for verifying that the "suggestion" is correct and may delete incorrect suggested matches on T+2.

[2] An Advisory Notice is issued to a member when a *contra* party submits to NSCC a trade with that member but that member has not submitted matching data. The member, among other things, can agree to the trade shown on the Advisory Notice by stamping the Notice and returning it to NSCC. On the other hand, the Add-by-Seller process enables members to correct uncompared trades. The selling member submits an Add-by-Seller ticket to NSCC, thereby generating a compared trade that will appear on the T+2 Supplemental Contract List. On T+2, either the purchaser or seller can use the unilateral delete feature to eliminate trades compared through Advisory Notices or Add-by-Seller tickets.

[3] Locked-in trade data is not subject to NSCC's suggested name procedure or Advisory or Add-by-Seller trade correction mechanisms.

[Release No. 13849; (811-2337)]

Southeastern Capital Small Business Investment Corp.; Filing of Application

March 27, 1984.

Notice is hereby given that Southeastern Capital Small Business Investment Corporation (Applicant"), Suite 100, 2285 Peachtree Road, N.E., Atlanta, GA 30309, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company, filed an application on February 23, 1984, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, on July 19, 1983, the boards of directors of Applicant and its parent, by joint action, approved the liquidation and dissolution of Applicant effective July 29, 1983. The application states that Applicant was liquidated and dissolved on July 29, 1983. Applicant states that it sold substantially all of its small business type investments and distributed cash in the amount of $252 to its parent and sole shareholder, Southeastern Capital Corporation, on July 29, 1983. Applicant states that it also distributed Certificates of Deposits ($245,000), U.S. Treasury Bills ($355,002), Time Certificates ($200,000) and TRUSCO Reserves ($436,255) to its parent on this date. Applicant further states that immediately preceeding the liquidation it had 10,000 shares of common stock, par value $100, outstanding with a net asset value of $1,437,307. Applicant states that it has surrendered its SBIC license to the Small Business Administration effective June 14, 1983, and has made no further investments.

The application represents that Applicant now has no shareholders and is not now engaged in, nor does it propose to engage in any business activities other than those necessary for the winding up of its affairs. Applicant further represents that it has retained no assets, no debts or other liabilities, and it is not a party to any litigation or administrative proceeding. Finally, Applicant states that it has not within the past 18 months transferred any of its assets to a separate trust.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

George A. Fitzsimmons

Secretary.

[FR Doc. 84-8850 Filed 4-2-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 13850; (812-5689)]

Stone Street Fund 1984 and Stone Street Corp.; Filing of an Application for an Order

March 27, 1984.

Notice is hereby given that Stone Street Fund 1984, a limited partnership (the "Partnership"), and its general partner, Stone Street Corp. ("General Partner", collectively "Applicants"), 85 Broad Street, New York, New York 10004, filed an application on October 31, 1983, and an amendment thereto on February 13, 1984, for an order of the Commission, pursuant to Sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act"), exempting Applicants and all similar partnerships offered to the same class of investors as the limited partner investors in the Partnership (such partnerships together with the Partnership, "Partnerships") from all provisions of the Act or, alternatively, from all provisions of the Act and the rules and regulations thereunder except: (1) Sections 9, 17 (with certain exceptions), 30 (with certain exceptions), 36 and 37 of the Act and the rules and regulations thereunder; (2) all Sections of the Act and the rules and regulations thereunder necessary to implement the above Sections of the Act; and (3) all administrative and jurisdictional Sections of the Act, and the rules and regulations thereunder necessary to enforce compliance with the terms of the order as granted. Applicants also request an order, pursuant to Section 45(a) of the Act, granting confidential treatment for certain reports to be filed with the Commission. All interested persons are referred to the application filed with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the provisions referred to herein and in the application.

According to the application, the Partnership is a limited partnership in formation under the laws of the State of New York conceived by partners and employees of Goldman, Sachs & Co. to meet the desire of key employees for an in-house tax-oriented and capital growth investment program. The Partnership is the first of a series of investment partnerships which Goldman, Sachs & Co. (together with its subsidiary companies "Goldman, Sachs") proposes to establish in order to enable certain key employees of Goldman Sachs to pool their investment resources and to receive the benefit of certain investment opportunities which come to the attention of Goldman Sachs. Applicants submit that limitations on the class of person who may subscribe for, acquire or hold interests in the Partnership, in conjunction with other characteristics of the Partnerships, qualify each Partnership as an "employees security company" under Section 2(a)(13) of the Act.

Applicants represent that partnership interests in the Partnerships will be offered only to employees of Goldman Sachs who are "accredited investors" under Rule 501(a)(7) of Regulation D under the Securities Act of 1933 ("1933 Act") and who have had a minimum reportable income from Goldman Sachs in excess of the standard of Rule 501(a)(7) of the 1933 Act in the calendar year immediately preceding his or her investment in a Partnership ("Eligible Employees"). Applicants further represent that Eligible Employees are experienced professionals in the investment banking, securities or commodities business, or in administrative, financial, accounting, legal or operational activities related thereto, equipped by experience and education to understand and evaluate the structure, management and plan of the Partnerships as compared to other investment opportunities, to evaluate the risks of investing in the Partnerships and to understand that the Partnerships are being offered without registration under the Act and the 1933 Act and the protections afforded thereby. Applicants assert that, as senior employees of Goldman Sachs, the Eligible Employees will have direct access to those individuals within Goldman Sachs who will serve as directors and officers of the the General Partner of the Partnerships. Interests in the Partnerships will generally be non-transferable except with the express consent of the General Partner and then only to other limited partners or Eligible Employees or to the General Partner. Interests will be offered and sold, without a sales load, under a section 4(2) exemption from the registration requirements of the 1933 Act pursuant to Regulation D.

Applicants state that the General Partner will manage the Partnerships, will be responsible for the direction of the Partnerships' activities and will make all investment decisions for the Partnerships. The directors and officers of the General Partner will be general and limited partners of Goldman, Sachs & Co. and Eligible Employees (who may but need not have an interest in a Partnership). The General Partner undertakes that it will secure from Goldman, Sachs & Co. an investment in each Partnership, by means of a capital contribution through the General Partner, of an amount equal to at least 10% of the aggregate capital contributions of the limited partners in each such Partnership. On the basis of the foregoing, and for the other reasons set forth in the application, Applicants submit that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Section 17(a)—An exemption from Section 17(a) is requested to the extent necessary to permit Goldman Sachs and Goldman Sachs partners' inventment vehicles (as that term is defined in the application) to engage in certain transactions as principal with a Partnership in addition to transactions as agent. This exemption is requested to permit the Partnerships to (a) purchase from Goldman Sachs or Goldman Sachs partners' investment vechicles securities or interests in properties previously acquired for the account of Goldman Sachs or Goldman Sachs partners' investment vehicles and of the type which are consistant with the investment objectives of the Partnerships, (b) purchase interest in a company or other investment vehicle in which Goldman, Sachs or Goldman Sachs partners' investment vehicles already own 5% or more of the voting securities of the company or vehicle or which company or vehicle is otherwise affiliated with a Partnership, (c) purchase securities underwritten on a principal basis by Goldman Sachs (including as member of a selling group) on terms at least as favorable as those offered to investors other than affiliated persons of Goldman, Sachs & Co., and (d) participate as a selling securityholder in a public offering that is underwritten on a principal basis by Goldman Sachs (including as a member of a selling group).

It is asserted that the principal reason for the requested exemption under clauses (a) and (b) is to assure that the Partnerships will be able to invest in attractive companies or properties in which Goldman Sachs or Goldman Sachs partners' inventment vehicles may have already made an investment; as such, the requested exemption is stated to be a complement to the

exemption requested under Section 17(d). It is further asserted that the requested exemption under clauses (c) and (d) above is sought to assure that the Partnerships will have the ability to buy and sell securities in underwritten offerings in which Goldman Sachs participates. It is represented that these transactions will only be effected upon a determination by the board of directors of the General Partner that the terms of the transaction are reasonable and fair to the limited partners of the Partnerships involved in the transaction and do not involve overreaching of the Partnerships or its limited partners on the part of any person concerned.

Section 17(d)—An exemption from Section 17(d) of the Act is requested to the extent necessary to permit the Partnerships to engage in certain transactions in which affiliated persons of the Partnerships may also be participants. It is stated that compliance with Section 17(d) might require the Partnerships to refrain from certain transactions in which Goldman, Sachs & Co. or any "affiliated person" of Goldman, Sachs & Co., as such terms is defined in Section 2(a)(3) of the Act, is also a participant. Applicants maintain that such a restriction would undermine the principal rationale of the Partnerships, which is to provide a vehicle for Eligible Employees to invest with the partners of Goldman, Sachs & Co. (acting either through Goldman Sachs or Goldman Sachs partners' investment vehicles).

Consequently, the Applicants request an exemption from Section 17(d) of the Act with respect to joint investments on the undertaking that the Partnerships will not make any joint investment in which Goldman Sachs, a Goldman Sachs partners' investment vehicle, or any officer or director or employee of the General Partner, is a participant or plans concurrently or otherwise directly or indirectly to become a participant (other than through an investment in or relationship with a Partnership or Partnerships), except that this undertaking shall not be applicable to (a) 25% of the total assets of each Partnership, and (b) as to the remaining 75% of the total assets of a Partnership, other investments by a Partnership in any other companies, partnerships or other investment vehicles which are not sponsored, managed or underwritten on a principal basis by Goldman, Sachs & Co. or its affiliates if the amount invested by the Partnership in any given investment does not exceed 20% of its total assets. Any investments which are made concurrently with Goldman Sachs, a Goldman Sachs partners' investment vehicle or any officer, director or employee of the General Partner will be made by the Partnerships on the same basis as such person. The exemption requested, however, will permit joint investment by a Partnership and (i) by individual partners of Goldman, Sachs & Co. making their own individual investment decisions apart from Goldman Sachs and Goldman Sachs partners' investment vehicles and/or (ii) by employees of Goldman Sachs who are not limited partners of the Partnership involved, subject to the following limitations: (i) the conditions as to joint investments stated above in this paragraph would apply if partners of Goldman, Sachs & Co. who hold in the aggregate 15% or more of the equity interest in Goldman, Sachs & Co. make a joint investment with a Partnership; and (ii) in the case of a joint investment with a Partnership (a) by any partner of Goldman, Sachs & Co. who is an officer, director or employee of the General Partner of a Partnership, (b) by partners of Goldman, Sachs & Co. who hold in the aggregate 15% or more of the equity interest in Goldman, Sachs & Co., or (c) by partners of Goldman, Sachs & Co. or employees of Goldman Sachs who hold individually or in the aggregate 10% or more of the equity interest of any joint investment with a Partnership, then in any such case the General Partner undertakes to obtain a commitment from each such person that such person will not dispose of his or her investment in such joint investment without giving sufficient, but not less than one day's, notice to the General Partner so that the Partnership has the opportunity to dispose of its investment in the joint investment prior to or concurrently with and on the same terms as such person.

Applicants specifically represent and concede that the General Partner is subject to Section 36 of the Act and will, at all times, comply with the requirements of Sections 57(f)(3) and 57(h) of the Act. Applicants also state that, the minutes of meetings of the board of directors and any investment committee of the General Partner, including all procedures adopted by the General Partner in connection with its evaluation of investments, will be available for inspection by limited partners and by the Commission. Applicants represent that officers and directors of the General Partner will review each co-investment situation for which exemption is requested and make a determination that any such investment by an affiliate would not disadvantage a Partnership in the making of such investment, maintaining its investment position or disposing of such position. Finally, in order to provide further assurance against any potential overreaching by Goldman Sachs or a Goldman Sachs partners' investment vehicle in connection with such joint participation, the General Partner undertakes that it will not invest the funds of any Partnership in a joint investment with Goldman Sachs or a Goldman Sachs partners' investment vehicle unless the investment of Goldman Sachs or such Goldman Sachs partners' investment vehicle (or the combined investment of all such persons) is at least three times as much as the amount invested by the Partnership at the time of investment by the Partnership and unless it obtains from Goldman Sachs or such Goldman Sachs partners' investment vehicle an undertaking to maintain at least such ratio of its investment to the investment of the Partnership in such joint investment and, also, to give the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment in such joint investment so that the Partnership has the opportunity to dispose of its investment in the joint investment prior to or concurrently with, and on the same terms as, Goldman Sachs or the Goldman Sachs partners' investment vehicle.

Applicants have also requested limited exemptions from Sections 17(f) and 17(g) of the Act and Rules 17f–1 and 17g–1 thereunder. In addition, Applicants request an exemption from Section 30 (a), (b) and (d) of the Act to the extent necessary to exempt the Partnerships from filing annual and quarterly reports with the Commission. Applicants state that the pertinent information contained in such filings must be sent to the limited partners, the only class of people, it is claimed, truly interested in such material. Applicants agree to file with the Commission, within 120 days after the end of each partnership year, a copy of the annual report of each Partnership required by the terms of the partnership agreements to be sent to Limited Partners. Applicants represent, however, that should the Commission adopt a replacement for the present form N–1R it will file such form with the Commission. Applicants further request that to the extent filings under Section 30 are made by the Partnerships, except for filings on any new form N–1R, such filings be afforded confidential treatment under Section 45(a) of the Act. Such confidential treatment is requested on the basis that the investment situations in which the Partnerships would be investing are not generaly available to

the public and, since there will be no public trading in the interests in the Partnerships, the only persons possibly interested in such information will have all such data sent directly to them.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 20, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8849 Filed 4-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13843; (811-3638)]

Acacia Fund Corp.; Application for Order

March 26, 1984.

Notice is hereby given that Acacia Fund Corporation ("Applicant"), 51 Louisiana Avenue, N.W., Washington, D.C. 20001, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on January 30, 1984, for an order of the Commission, pursuant to Section 8(f) of the Act and Rule 8f–1 thereunder, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on January 3, 1983, and that its registration statement on Form N–1 was filed on January 3, 1983, to register an indefinite number of shares. Applicant states that, as of January 30, 1984, the registration statement had not become effective and no initial public offering of securities had occurred.

Applicant states that, on July 25, 1983, it sold 100,000 shares of common stock to its sponsor, Acacia National Life Insurance Company ("Acacia Life"), for an aggregate price of $100,000. Applicant states further that the sale was made to meet the net worth requirement of Section 14(a) of the Act and those shares have been redeemed.

According to Applicant, on January 11, 1984, its sole shareholder, Acacia Life, and Applicant's Board of Directors voted to dissolve Applicant. On January 12, 1984, Acacia Life redeemed its shares and Applicant's assets of $104,224.26 were distributed to Acacia Life. Applicant states that it has no assets and that it has no debts and no liabilities. Applicant states further that it has no securityholders and that it is not a party to any litigation or administrative proceeding. It is stated that Applicant is not engaged and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 20, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8842 Filed 4-3-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13847; (812–5747)]

The Equitable Life Assurance Society of the United States, et al.; Application for an Order of Exemption

March 27, 1984.

Notice is hereby given that The Equitable Life Assurance Society of the United States ("Equitable"), 1285 Avenue of the Americas, New York, New York 10019, Separate Accounts J and K of Equitable, registered under the Investment Company Act of 1940 ("Act") as management investment companies and established by Equitable in connection with the proposed issuance of certain variable annuity contracts ("Accounts"), and Equitable Investment Management Corporation (the co-investment advisor (with Equitable)) (collectively, "Applicants") filed an application on January 13, 1984 and an amendment thereto on March 15, 1984 for an order pursuant to Section 6(c) of the Act granting exemptions from the provisions of Sections 15(a), 16(a), 17(f), 26(a), 26(a)(2)(C), and 32(a)(2) of the Act and Rule 17f–2 thereunder to the extent necessary to permit the transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein in support of the requested relief pursuant to section 6(c), which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants request exemption from Sections 15(a), 16(a) and 32(a)(2) to the extent necessary to allow the Accounts to operate without election of committee members, approval of an investment advisory contract, or ratification of independent public accountant by contract owners until action with respect to those matters is taken at an initial annual meeting to be held no later than April 30, 1985.

Applicants request relief from Section 17(f) and Rule 17f–2 to the extent necessary to permit not more than five officers or responsible employees of Equitable, as designated by the relevant Separate Account of Equitable to have access to the securities and similar investments of the Accounts under appropriate conditions, and request an exemption to permit inspection of such assets by representatives of the New York State Insurance Department.

Applicants request relief from Sections 26(a), 26(a)(2)(C), and 27(c)(2) to the extent necessary: to deduct any premium taxes; to impose on contracts a guaranteed administrative expense charge of the lesser of $30 or 2% of the value of the contract (plus any withdrawals made during the contract year) on the last day of each contract year; to impose a guaranteed expense charge of .60%, on an annual basis, of daily net assets; and to impose a guaranteed financial accounting services charge of .24%, on an annual basis, of daily net assets. Applicants

represent that these latter three charges are not designed to exceed the actual expenses incurred in connection with contract administration and are not designed to include an element of profit.

Applicants also request relief from these sections to the extent necessary to deduct an expense risk charge from the Accounts at an effective annual rate of .30% with respect to Account J and .15% with respect to Account K, and a mortality risk charge at an effective annual rate of .35% with respect to both Accounts. Applicants represent that these charges are reasonable in amount based on their evaluation of the risks assumed and guarantees provided by the contracts, and represent that these charges are reasonable in comparison with industry practice with respect to competitive and comparable annuity products, and that the basis for this representation is reflected in documents on file with Equitable. Applicants acknowledged that withdrawal charges imposed on contracts may be insufficient to cover all costs of distributing the contracts and that any shortfall wold be absorbed by the general account of Equitable, which might include assets attributable to the risk charges. In this regard, Equitable represents it has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Accounts and contractowners.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 19, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon it own motion.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8844 Filed 4-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23263; (70-6807)]

General Public Utilities Corp. and Jersey Central Power & Light Co.; Supplemental Notice of Proposal To Amend Revolving Credit Agreement

March 27, 1984.

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its electric utility subsidiary, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, have filed a post-effective amendment to their application-declaration with this Commission pursuant to Sections 6, 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50(a)(2) thereunder.

By orders dated September 26, 1983 (HCAR No. 23072) and September 30, 1983 (HCAR No. 23079) GPU, JCP&L and two other GPU subsidiaries, Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec"), (collectively, "GPU Companies") entered into an amendment to their revolving credit agreement ("Credit Agreement") previously authorized by order dated September 28, 1981 (HCAR No. 22207).

The Credit Agreement provides for the GPU Companies to issue, sell and renew to certain banks ("Banks"), from time to time through March 31, 1985, their respective promissory notes ("Notes"), maturing not more than four months from the date of issue. Up to $125 million at any one time outstanding may be borrowed under the Credit Agreement with sublimits for GPU, JCP&L, Met-Ed, and Penelec of $5, $50, $25, and $50 million, respectively. The GPU Companies were also authorized to issue and renew, to various banks, unsecured promissory notes through March 31, 1985. The total principal amount of such unsecured borrowings outstanding at any one time may not exceed $125 million. As of February 17, 1984 none of the GPU Companies had borrowings outstanding under either the Credit Agreement or the unsecured lines of credit.

JCP&L believes that, primarily as a result of higher than anticipated fuel and purchased power costs, its needs for short-term financing during 1984 will exceed the authorized levels. These requirements are expected to reach their highest levels in the spring and summer. Consequently, GPU, and JCP&L propose to enter into an amendment to the Credit Agreement ("Amendment") increasing JCP&L's loan limit thereunder from $50 million to $90 million for the period May 1 through September 30, 1984. The total authorized aggregate amount outstanding at any one time under the Credit Agreement for all the GPU Companies would remain at $125 million. The Amendment would also provide that, at the time of borrowings made pursuant to the Amendment, JCP&L submit a forecast reflecting full repayment of such borrowings from internally generated funds by December 31, 1984, rather than within the 120 days now provided.

The amended application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested person wishing to comment or request a hearing should submit their views in writing by April 20, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended application-declaration, as filed or as it may be amended further, may be permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8847 Filed 4-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23264; (70-6960)]

Georgia Power Co.; Proposal for Pollution Control Financing; Exception From Competitive Bidding

March 27, 1984.

Georgia Power Company ("Georgia"), 333 Piedmond Avenue, N.E., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to Sections 6, 7 and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44(b)(3) and 50(a)(5) thereunder.

Georgia proposes to finance the costs of the acquistion, construction, installation and equipping of certain pollution control facilities ("Facilities"), for use in connection with one or more

of its plants located in various counties in the State of Georgia. The Development Authority ("Authority") of each such county will issue its revenue bonds ("Revenue Bonds") for the purpose of making loans to Georgia to finance the facilities at the plant located in its county.

It is presently estimated that the aggregate principal amount of Revenue Bonds to be issued by the Authorities pursuant to this proposal will not exceed $200,000,000. While the actual amount of Revenue Bonds to be issued by each Authority has not yet been determined, such amount will be based upon the cost of the Facilities located in its county.

Georgia proposes to enter into a Loan Agreement with the Authority relating to each issue of the Revenue Bonds. Under the Agreement, the Authority will loan to Georgia the proceeds of the sale of the Authority's Revenue Bonds, and Georgia will issue a non-negotiable promissory note ("Note"). Such proceeds will be deposited with a Trustee ("Trustee") under an indenture to be entered into between the Authority and the Trustee ("Trust Indenture"), pursuant to which such Revenue Bonds are to be issued and secured, and will be applied by Georgia to payment of the "Cost of Construction" of the facilities.

The Note will provide for payments to be made at the time and in amounts corresponding to the payments with respect to the principal of, premium, if any, and interest on the Revenue Bonds wherever and in whatever manner they become due.

The Agreement will provide for the assignment to the Trustee of the Authority's interest in the moneys receivable by the Authority under the Agreement and Note. It will also obligate Georgia to pay the fees and charges of the Trustee and will permit Georgia to prepay the amount due under the Note, in whole or in part, at any time, such payment to be sufficient to redeem or purchase the outstanding Revenue Bonds in the manner and to the extent provided in the Trust Indenture.

The Trust Indenture will provide that the Revenue Bonds issued thereunder will be redeemable (i) at any time on or after a date not later than 10 years from the date of issuance (or the date on which the Revenue Bonds begin to bear interest at a fixed rate, if such Revenue Bonds bear interest initially at a fluctuating rate), in whole or in part, at the option of Georgia, initially with a premium of up to 3% of the principal amount and declining by not less than ½ of 1% annually thereafter, and (ii) in whole, at the option of Georgia, in certain other cases of undue burdens or excessive liabilities imposed with respect to the related facilities, its destruction or damage beyond practicable or desirable repairability or condemnation or taking by eminent domain, or if operation of the related plant is enjoined and Georgia determines to discontinue operation thereof, such redemption of all such outstanding Revenue Bonds to be at the principal amount thereof plus accrued interest, but without premium. It is proposed that the Revenue Bonds will mature from one to 30 years from the first day of the month in which they are initially issued and may, in the case of a maturity of 15 to 30 years and if it is deemed advisable for purposes of the marketability of the Revenue Bonds, be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the issue prior to maturity.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate, to require Georgia to purchase the Revenue Bonds from time to time, and arrangments may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Georgia also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to Federal Income Tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Georgia also may be required to indemnify the bondholders against any other additions to interests, penalties, and additions to tax.

In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of Georgia's first mortgage bonds outstanding under the indenture dated as of March 1, 1941 between Georgia and Chemical Bank, as Trustee ("Indenture Trustee"), as supplemented and amended, ("Mortgage") which ratings Georgia has been advised may be thus attained, Georgia may determine to secure its obligations under the Note by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds") in principal amount either (i) equal to the principal amount of the Revenue Bonds (bearing interest at a rate or rates equal to the interest rate or rates to be borne by the related Revenue Bonds) or (ii) equal to the sum of such principal amount of the Revenue Bonds plus interest payments thereon for a specified period (noninterest bearing). Such series of Collateral Bonds will be issued under an indenture supplemental to the Mortgage ("Supplemental Indenture") to be dated as of the first day of the month in which the Collateral Bonds are to be issued and delivered, will mature on the maturity date of such Revenue Bonds and will be non-transferable by the Trustee.

The Supplemental Indenture will provide that the obligation of Georgia to make payments with respect to the Collateral Bonds will be satisfied to the extent that payments are made under the Note sufficient to meet payment when due in respect of the related Revenue Bonds. The Supplemental Indenture will provide that, upon acceleration by the Trustee of the principal amount of all related outstanding Revenue Bonds under the Trust Indenture, the Trustee may demand the mandatory redemption of the related Collateral Bonds then held by it as collateral at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the date fixed for redemption. The Supplemental Indenture may also provide that, upon the optional redemption of the Revenue Bonds, in while or in part, at any time after they have been outstanding for a period of not longer than ten years, a related principal amount of the Collateral Bonds will be redeemed at an initial premium of up to 3% and declining by not less than ½ of 1% annually thereafter.

In the case of interest bearing Collateral Bonds, because interest accrues in respect of such Collateral Bonds until satisfied by payments under the Note, "annual interest charges" in respect of such Collateral Bonds will be included in computing the "interest earnings requirement" of the Mortgage which restricts the amount of first mortgage bonds which may be issued and sold to the public in relation to Georgia's net earnings. In the case of non-interest bearing Collateral Bonds, since no interest would accrue in respect of such Collateral Bonds, the "interest earnings requirement" would be unaffected.

The Trust Indenture will provide that, upon deposit with the Trustee of funds sufficient to pay or redeem all or any part of the related Revenue Bonds, or upon direction to the Trustee by Georgia to so apply funds available therefor, or upon delivery of such outstanding Revenue Bonds to the Trustee by or for the account of Georgia, the Trustee will be obligated to deliver to Georgia, or for the account of Georgia, the Collateral Bonds then held as collateral in an aggregate principal amount as they relate to the aggregate principal amount

of such Revenue Bonds for the payment or redemption of which such funds have been deposited or applied or which shall have been so delivered.

As an alternative to or in conjunction with Georgia's securing its obligations through the issuance of the Collateral Bonds, Georgia may cause an irrevocable Letter of Credit ("Letter of Credit") of a bank ("Bank") to be delivered to the Trustee. The Letter of Credit would be an irrevocable obligation of the Bank to pay to the Trustee, upon request, up to an amount necessary in order to pay principal of an accrued interest on the Revenue Bonds when due. Pursuant to a separate agreement with the Bank, Georgia would agree to pay to the Bank on demand all amounts that are drawn under the Letter of Credit, as well as certain fees and expenses. Such delivery of the Letter of Credit to the Trustee would obtain for the Revenue Bonds the benefit of a rating equivalent to the credit rating of the Bank. In the event that the Letter of Credit is delivered to the Trustee as an alternative to the issuance of the Collateral Bonds, Georgia may also convey to the Authority a subordinated security interest in the Facilities or other property of Georgia as further security for Georgia's obligations under the Agreement and the Note. Such subordinated security interest would be assigned by the Authority to the Trustee.

As a further alternative to, or in conjunction with, securing its obligations under the Agreement and Note, and in order to obtain a "AAA" rating for the Revenue Bonds by Standard and Poor's Corporation, Georgia may cause an insurance company to issue a policy of insurance guaranteeing the payment when due of the principal of and interest on such series of the Revenue Bonds. Such insurance policy would extend for the term of the related Revenue Bonds and would be non-cancellable by the insurance company for any reason. A non-refundable, one-time insurance premium for the policy would be fully paid by Georgia at the time the policy is issued. In addition, Georgia may be obligated to make payments of certain specified amounts into separate escrow funds and to increase the amounts on deposit in such funds under certain circumstances. The amount in each escrow fund would be payable to the insurance company as indemnity for any amounts paid pursuant to the related insurance policy in respect of principal of or interest on the related Revenue Bonds.

If, due to insufficiency of coverage or for other reasons, Georgia is unable or determines not to issue the Collateral Bonds or to deliver the Letter of Credit to the Trustee or to cause an insurance policy to be issued, the Revenue Bonds would be issued without the benefit of such security. In that event Georgia may convey to the Authority a subordinated security interest in the Facilities or other property of Georgia as security for its obligations under the Note. Such subordinated security interest would be assigned by the Authority to the Trustee. Alternatively, Georgia also may guarantee the payment of the principal of, premium, if any, and interest on the Revenue Bonds.

It is contemplated that the Revenue Bonds will be sold by the Authority pursuant to arrangements with one or more purchasers or underwriters. In accordance with the laws of the State of Georgia, the interest rate to be borne by the Revenue Bonds will be fixed by the Board of Directors of the Authority and will be either a fixed rate or a rate which will fluctuate in accordance with a specified prime or base rate or rates, which fluctuating rate may be convertible to a fixed rate. If Collateral Bonds are issued, such a fluctuating rate will not exceed a specified maximum rate or fall below a specified minimum rate. While Georgia may not be party to the purchase or underwriting arrangements for the Revenue Bonds, such arrangements will provide that the terms of the Revenue Bonds and their sale by Authority shall be satisfactory to Georgia. Bond Counsel will issue an opinion that, based upon existing law, interest on the Revenue Bonds is exempt from Federal Income Taxation. Georgia has been advised that the interest rates on obligations, the interest on which is tax exempt, recently have been and can be expected at the time of issuance of the Revenue Bonds to be approximately two to three percentage points lower that the rates on obligations of like tenor an comparable quality, interest on which is fully subject to Federal Income Taxation.

Georgia has requested that the Notes and Collateral Bonds be excepted from the requirements of Rule 50 as inappropriate because they are to be issued and pledged solely to evidence and secure Georgia's obligations to the Authorities and no public offering of the Notes and Collateral Bonds is to be made.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their veiws in writing by April 20, 1984, to the Secretary, Securities and Exchange Commission, Washington D.C. 20549, and service a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so request will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A Fitzsimmons,

Secretary.

[FR Doc. 84-8846 Filed 4-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23262; (70-6967)]

National Fuel Gas Co.; Proposal to Declare Two-For-One Stock Split, To Declare Ten Percent Stock Dividend and To Increase by One Hundred-Twenty Percent the Number of Shares Subject to Outstanding Options

March 27, 1984.

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, has filed an application-declaration with this Commission pursuant to Section 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(1) thereunder.

The Board of Directors ("Board") of National, at its meeting on March 15, 1984, declared a two-for-one stock split and a 10% stock dividend on National's Common Stock ("Common Stock"). The stock dividend will be in addition to the regular cash dividend on Common Stock declared by the Board at the same meeting. The two-for-one stock split will be effectuated first, and the 10% stock dividend will be issued as soon thereafter as possible.

The purpose of the proposed stock dividend is to enhance the market price of the Common Stock. Only by enhancing the ratio of Common Stock price to book value can National have the flexibility of issuing, in the future additional shares of Common Stock without significantly diluting the equity of current shareholders.

After the two-for-one stock split and stock dividend have been effectuated, the aggregate number of shares of Common Stock subject to the National Fuel Gas Company 1983 Incentive Stock Option Plan ("Plan") will be increased to 550,000, and the number of such shares subject to outstanding options granted pursuant to such Plan will be, in each case, be increased by one hundred twenty percent, in order to equitably compensate for the effects of such stock split and stock dividend pursuant to the provisions of section 6 of the Plan.

Currently National has issued an outstanding 5,264,126 shares of Common Stock as compared with the 20,000,000 shares authorized. Thus, if the proposed transactions are effectuated, the number of shares of Common Stock issued and outstanding will still be well within the number authorized.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 20, 1984, to the secretary, securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A Fitzsimmons,

Secretary.

[FR Doc. 84-8843 Filed 4-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13846; (812-5774)]

Security Benefit Life Insurance Co. and Variflex; Filing of Application

March 27, 1984.

Notice is hereby given that Security Benefit Life Insurance Company ("SBL"), depositor and underwriter for certain variable annuity contracts ("contracts") and Variflex, 700 Harrison Street, Topeka, Kansas 66636, registered under the Act as a unit investment trust and established by SBL in connection with the proposed issuance of the contracts, (collectively, "Applicants") filed an application on February 16, 1984, and amendments thereto on March 15, 1984 and March 23, 1984, for an order purusant to Section 6(c) of the Investment Company Act of 1940 ("Act") granting exemptions from the provisions of Sections 12(d)(1), 26(a), and 27(c)(2) to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein in support of the requested relief pursuant to Section 6(c), which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants propose that they be granted an exemption from Sections 26(a) and 27(c)(2) to allow as a deduction from the contract value: (1) a daily charge for mortality and expense risks equal on an annual basis to 1.2% of daily net assets, (approximately .50% for expense risks, including the risk of a shortfall in the contingent deferred sales load deducted from the contracts; .10% for death benefit risk; and .60% for mortality risk); (2) an annual charge of $30 for administrative fees which is guaranteed for cumulative payments up to $100,000 per participant; (3) a $10.00 charge for a change in allocation instructions or a transfer of account values, in excess of one per contract year; and (4) a charge for premium taxes.

With respect to (1) above, Applicants assert that the mortality and expense risk charge is consistent with the protection of investors standard set forth in Section 6(c) as it is reasonable as determined by industry practice with respect to comparable annuity products and reasonable in relation to the risks assumed. SBL represents that it has reviewed publicly available information about similar industry practices, taking into account such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. SBL further represents that the data supporting and setting forth this conclusion will be maintained on file at its home office and available to the Commission. Applicants further represent that as a condition of this relief, Variflex will invest only in funds which undertake to have a board of directors with a disinterested majority formulate and approve any plan Rule 12b-1 to finance distribution expenses.

With respect to (2), (3) and (4) above, Applicants assert that these charges have been set at levels no higher than the estimated acutual costs of administering the contracts and are not expected to exceed the actual expenses incurred.

Applicants request exemption from Section 12(d)(1) to the extent necessary to permit Variflex to invest in shares of series of SBL Fund, a registered management investment company and the underlying funding media for Variflex, without regard to the limitations therein.

Finally, Applicants request exemption from Sections 26(a) and 27(c)(2) to the extent necessary to permit SBL to hold Variflex's assets under agreement that does not create a trust and to hold the securities of SBL Fund in open account in lieu of stock certificates. Applicants represent that the assets of each series will be protected by the safeguards and conditions described in the application and that requiring the issuance of fund certificates would impose an unnecessary administrative burden.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 19, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8845 Filed 4-2-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting

The Small Business Adminstration, Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 1:00 p.m. on Monday, April 9, 1984, at the Federal Reserve Bank of Boston, 600 Atlantic Avenue (4th Floor), to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call James H. Angevine, Regional Administrator, U.S. Small Business Administration, 60 Batterymarch Street, 10th floor, Boston, Massachusetts 02110, (617) 223–660.

March 27, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-8790 Filed 4-2-84; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting

The Small Business Administration, Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting at 9:00 a.m. on Wednesday, April 18, 1984, at the Bank of Oak Ridge, 795 Main Street, Oak Ridge, Tennessee, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, Suite 1012 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37219. Telephone (615) 251–5850.

March 27, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-8793 Filed 4-2-84; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Miami, Florida, will hold a public meeting at 9:00 a.m., on Wednesday, April 18, 1984, at the Miami Airport Inn-Best Western, 1550 N.W. LeJeune Road, Miami, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, 2222 Ponce de Leon Blvd., 5th Floor, Coral Gables, Florida 33134. Telephone (305) 350–5521.

March 27, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-8792 Filed 4-2-84; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting

The Small Business Administration Region V Advisory Council, located in the geographical area of Madison, Wisconsin, will hold a public meeting at 10:00 a.m., on Tuesday, May 22, 1984, at the Small Business Administration office in the Federal Center at 212 East Washington Avenue, Madison, Wisconsin, Room 213, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call C. A. Charter, District Director, U.S. Small Business Administration 212 East Washington Avenue, Room 213, Madison, Wisconsin 53703, (608) 264–5205.

March 27, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-8791 Filed 4-2-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0477]

Unicorn Ventures II, L.P.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), has been filed by Unicorn Ventures II, L.P. (Unicorn), a limited partnership located at 14 Commerce Drive, Cranford, New Jersey 07016, with the Small Business Association (SBA), pursuant to 13 CFR 107.102 (1984).

The Applicant presently has about $1,150,000 committed for investment. The General Partner, Cranford Associates, will contribute $14,400 to the partnership capital. Cranford Associates is a general partnership consisting of the following individuals:

Arthur Bugs Baer, 115 Central Park West, New York, New York 10023.
Frank P. Diassi, 9 Indian Run, Scotch Plains, New Jersey 07076.

The limited partners of Unicorn which will own 10 percent or more of the partnership capital is The B.D. Fidanque Trust U/T/D 1–7–52, 455 Pennsylvania Avenue, Freeport, New York 11520.

Cranford Associates is the general partner of Unicorn Ventures, Ltd., License Number 02/02–0405, located at the same address.

The Applicant intends to conduct its operations principally in the State of New Jersey.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Cranford, New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 27, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-8794 Filed 4-2-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series—No. 8–84]

Notes of Series 1–1988; Interest Rates

March 28, 1984.

The Secretary announced on March 27, 1984, that the interest rate on the notes designated Series L–1988, described in Department Circular—Public Debt Series—No. 8–84 dated March 21, 1984, will be 12 percent. Interest on the notes will be payable at the rate of 12 percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-8764 Filed 4-2-84; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

Tax Forms Coordinating Committee; Public Hearings and Requests for Forms Suggestions

As part of its annual forms review process, the Internal Revenue Service will hold public hearings to receive comments and suggestions concerning its tax return forms, instructions, and

related schedules. While the comments may apply to any tax form issued by IRS, the Service would particularly appreciate specific suggestion on ways to reduce paperwork on the tax forms. The hearings will be held in three separate cities on Wednesday, May 9, 1984, beginning at 10 A.M. local time. The hearings will be held in Jackson, Mississippi; Milwaukee, Wisconsin; and San Jose, California.

A person wishing to speak at one of these hearings should write or call the Internal Revenue Service at the address or phone number given below for the city of the particular hearing he or she plans to attend. If the Service is contacted by letter, the letter should be marked "Public Hearings on Forms" and should give both the return address and telephone number of the person desiring to speak.

The addresses and phone numbers to contact the Internal Revenue Service regarding the hearings, as well as the hearing locations, are listed below:

Jackson

Internal Revenue Service, Attn: Public Affairs Office, 100 West Capitol Street, Jackson, Mississippi 39269, Phone (601) 490–4520

Milwaukee

Internal Revenue Service, Attn: Public Affairs Office, P.O. Box 493, 517 E Wisconsin Avenue, Milwaukee, Wisconsin 53201, Phone (414) 362–3386

San Jose

Internal Revenue Service, Attn: Chief, Taxpayer Service, P.O. Box 100, San Jose, California 95103, Phone (408) 291–7148

Hearing Location: Rose Garden Public Library, Community Room, 1580 Naglee, San Jose, California

Although not required, it would be helpful to receive a copy of any written comments and suggestions a speaker may prepare. These should be sent to the appropriate mailing address listed above or may be left with the hearing panel on the day of the hearing.

In order to allow as many speakers as possible a chance to participate, each speaker's remarks will be limited to 10 minutes. Persons who have advised IRS that they wish to speak at the hearings will be notified in advance of the approximate time for their schedule appearance. The last date for submitting requests to speak is May 1. However, if there is time remaining after scheduled speakers have been heard, the remaining time will be offered to persons in attendance not previously scheduled who wish to speak.

The panel for each hearing will be made up of representatives from the District Director's Office concerned and the National Office in Washington, D.C.

Request for Written Forms Suggestions

In addition to receiving comments at the public hearings, the Service also desires to receive written comments and suggestions for improving its tax return forms, instructions, and related schedules from those persons unable to attend the hearings. Again, it should be emphasized that the comments may apply to any tax form issued by the Internal Revenue Service. The written submissions should be self-explanatory and in sufficient detail to communicate clearly what is being suggested. Careful consideration will be given to all comments and suggestions received. However, individual responses to the submissions will not be made because of the volume of correspondence expected.

In order to meet our work schedule and early printing deadlines, we request that written submissions be made on or before June 1, 1984.

Comments and suggestions should be sent to the Chairman, Tax Forms Coordinating Committee, Room 5577, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Further information concerning this notice may be obtained by calling (202) 566–4866.

Dated: March 20, 1984.

Approved:

Robert I. Brauer,

Director, Tax Forms and Publications Division.

[FR Doc. 84–8814 Filed 4–2–84; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on April 17, 1984 from 10 a.m. to 4 p.m. in room 840, 301 4th Street, SW., Washington, D.C. The Commission will discuss matters relating to USIA's programs in the Far East, its television programs, and private sector committees.

Please call Elizabeth Fahl, (202) 485–2468, if you plan to attend because entrance to the building is controlled.

Dated: March 28, 1984.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84–8852 Filed 4–2–84; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 65
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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

AFRICAN DEVELOPMENT FOUNDATION

TIME AND DATE: 9:30 a.m., April 6, 1984 and 9:00 a.m., April 7, 1984.

PLACE: African Development Foundation, 1724 Massachusetts Avenue, NW., Washington, D.C.

SUBJECT:

April 6, 1984—Panel discussion: Overview of the African development
April 7, 1984—General Business Open.

STATUS: Open.

PERSON TO CONTACT: Kevin Callwood, African Development Foundation (202) 861–2900.

Dated: March 28, 1984.

Bunyan Bryant,

Acting General Counsel of the African Development Foundation.

[FR Doc. 84-8830 Filed 3-30-84; 8:45 am]
BILLING CODE 6115-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 5, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: *Statement of General Policy OS #5626*

The Commission will consider a Statement of General Policy concerning internal personnel practices of the Agency.

For a recorded message containing the latest agenda information, call 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207—301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

March 29, 1984.

[FR Doc. 84-8853 Filed 3-30-84; 9:40 am]
BILLING CODE 6355-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

March 29, 1984.

Deletion of agenda item from March 29th open meeting.

The following item has been deleted at the request of the Office of the Chairman from the list of agenda items scheduled for consideration at the March 29, 1984, Open Meeting and previously listed in the Commission's Notice of March 22, 1984.

Agenda, Item No., and Subject

Policy—6—Title: Amendments of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorization. Summary: The Commission will consider Petitions for Reconsideration of the *First Report and Order* in BC Docket No. 82–536, FM subchannels.

Issued: March 29, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8861 Filed 3-30-84; 10:32 am]
BILLING CODE 6712-01-M

4

FEDERAL RESERVE SYSTEM: Board of Governors.

TIME AND DATE: 11:00 a.m., Monday, April 9, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: March 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8931 Filed 3-30-84; 3:59 pm]
BILLING CODE 6210-01-M

federal register

Tuesday
April 3, 1984

Part II

International Development Cooperation Agency

Agency for International Development

48 CFR Ch. 7
Acquisition Regulations; Final Rule

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Ch. 7

Agency for International Development Acquisition Regulation (AIDAR)

AGENCY: Agency for International Development (AID).

ACTION: Final rule.

SUMMARY: AID is hereby establishing the AIDAR to supplement and implement the Federal Acquisition Regulation. The AIDAR is designed as much as possible to be consistent with the FAR and the procurement regulations of other Federal agencies, thereby reducing administrative impact on bidders and contractors. The AIDAR contains all of AID's significant policies and procedures on government procurement. The AIDAR supersedes the AID Procurement Regulation as of April 1, 1984.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: M/SER/CM/SD/POL, Mr. J. M. Kelly, Telephone (703) 235–9107.

SUPPLEMENTARY INFORMATION: Availability of a draft of the AIDAR for public review and comment was publicized in the December 23, 1984, **Federal Register** (48 FR 56806), as required by OFPP Policy Letter 83–2 (48 FR 24492), and FAR 1.303(b). Fifty-one firms, institutions, or individuals requested copies of the AIDAR. We received comments from six.

All of the comments received concerned areas where the AIDAR unnecessarily repeated, paraphrased, or restated material contained in the FAR; areas where the AIDAR material was not properly keyed to the FAR material it supplemented; and the numbering system used for material unique to AID.

Based on the comments received, we have removed all material identified by commentors as being redundant to FAR coverage; have redesignated material identified by commentors as improperly keyed to existing FAR material to correct this deficiency; and have revised the numbering system generally to simplify it, and key it more precisely to the FAR.

Although the AIDAR is being issued as a final rule, we recognize that it is new, and consider that further development will be required. Significant new items, or revisions to existing text will be issued for public review and comment. We will also be glad to receive and consider any comments on existing text, published as final rule.

Past users of the AID Procurement Regulations (AIDPR) will note a significant difference between the AIDPR and the AIDAR. The AIDAR contains no coverage of noncompetitive procurements. This is because FAR coverage of noncompetitive procurement rules and Pub. L. 98–72 have not been issued as of the date the AIDAR was prepared for issuance. AIDAR coverage, as required, will be issued as soon as possible after final FAR coverage is published in the **Federal Register**. Prior to such issuance noncompetitive procurements will continue to be governed by the FPR and AIDPR system, including FPR Temporary Regulation 75.

The AIDAR is a procurement regulation, and has been exempted by the Director, OMB, from the requirements of Executive Order 12291 (2/17/81) by memorandum dated April 8, 1981, as subsequently amended December 15, 1983.

As required by the Regulatory Flexibility Act, AID certifies that the AIDAR will not have a significant economic impact on a substantial number of small entities.

The collection of information requirements in the AIDAR have been submitted to OMB for review as required by the Paperwork Reduction Act (announcement of submission appeared in 49 FR 5001). No person may be penalized for failure to comply with any information collection requirement of the AIDAR unless the requirement has been approved and assigned a control number by OMB. The OMB control number(s) will be announced, when assigned, by notice in the **Federal Register**.

List of Subjects in 48 CFR Ch. 7

Government procurement.

Title 48 is hereby amended by establishing a new Chapter 7, as set forth below.

Dated: March 27, 1984.

John F. Owens,

AID Procurement Executive.

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT

General Structure

SUBCHAPTER A—GENERAL

Part 701—Federal Acquisition Regulation System
Part 702—Definitions of Words and Terms
Part 703—Improper Business Practices and Personal Conflicts of Interest
Part 704—Administrative Matters
Part 705—Publicizing Contract Actions

SUBCHAPTER B—ACQUISITION PLANNING

Part 707—Acquisition Planning
Part 708—Required Sources of Supplies and Services
Part 709—Contractor Qualifications

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 714—Formal Advertising
Part 715—Contracting by Negotiation
Part 716—Types of Contracts
Part 717—Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 719—Small Business and Small Disadvantaged Business Concerns
Part 722—Application of Labor Laws to Government Acquisition
Part 724—Protection of Privacy and Freedom of Information
Part 725—Foreign Acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 728—Bonds and Insurance
Part 731—Contract Cost Principles and Procedures
Part 732—Contract Financing
Part 733—Disputes and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 736—Construction and Architect-Engineer Contracts
Part 737—Service Contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 742—Contract Administration
Part 749—Termination of Contracts
Part 750—Extraordinary Contractual Actions

SUBCHAPTER H—CLAUSES AND FORMS

Part 752—Solicitation Provisions and Contract Clauses
Part 753—Forms
Appendices to Chapter 7

SUBCHAPTER A—GENERAL

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.3—Agency for International Development Acquisition Regulation

Sec.
701.370 Purpose.
701.371 Authority.
701.372 Applicability.
701.373 Code arrangement.
701.374 Publication.
701.375 Citation.
701.376 Agency implementation.
701.376–1 Responsibility.
701.376–2 AIDAR Notices.
701.376–3 Appendices.
701.376–4 Implementation within AID contracting activities.
701.377 Procurement policy.

Subpart 701.4—Deviations From the FAR or AIDAR

701.402 Policy.
701.470 Procedure.

Subpart 701.6—Contracting Authority and Responsibility

Sec.
701.601 General.
701.603 Selection, appointment and termination of appointment.
701.603–70 Designation of contracting officers.

Authority: Sec. 621, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 701.3—Agency for International Development Acquisition Regulation

701.370 Purpose.

The Agency for International Development Acquisition Regulation (AIDAR) supplements the Federal Acquisition Regulation (FAR) and implements the procurement related aspects of the Foreign Assistance Act, Executive Order 11223, and established AID policies on contracting as set forth in Supplement B to AID Handbook 1. The AIDAR provides for the codification and publication of procedures for the acquisition of services and personal property by AID.

701.371 Authority.

The AIDAR is prepared by the AID Procurement Executive by direction of the Administrator of AID pursuant to the Foreign Assistance Act of 1961. See FAR Subpart 1.3.

701.372 Applicability.

(a) Unless a deviation is specifically authorized in accord with Subpart 701.4, or unless otherwise provided, the FAR and AIDAR apply to all contracts (regardless of currency of payment) for personal property and nonpersonal services to which AID is a direct party.

(b) At Missions where joint administrative services are arranged, procuring offices may apply the Department of State Acquisition Regulation for all administrative and technical support contracts except in defined areas. The defined areas and administrative guidelines for procurement will be furnished to the overseas Missions by the Office of Management Operations. Administrative and local support services include the procurement accountability, maintenance and disposal of all office and residential equipment and furnishings, vehicles and expendable supplies purchased with administrative and/or technical support funds, either dollars or local currency.

701.373 Code arrangement.

(a) The Federal Acquisition Regulation System brings together, in Title 48 of the Code of Federal Regulations, the procurement regulations that apply to all agencies of the Government. The FAR is Chapter 1 of Title 48; the AIDAR is Chapter 7.

(b) The FAR is divided into 69 parts; Parts 1 through 69 of AIDAR expand upon or modify the policies and procedures included in the FAR. Material issued in the first 69 parts of the AIDAR will be numerically keyed to the corresponding sections of the FAR.

701.374 Publication.

(a) Those parts of the AIDAR which contain basic and significant policies and procedures considered to be of interest to the general public will be published in the daily issues of the **Federal Register** and, in cumulated form, in the Code of Federal Regulations. Copies of the AIDAR in **Federal Register** and Code of Federal Regulations form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(b) Public participation will be obtained for significant revisions to the AIDAR by soliciting comments in accordance with FAR 1.501.

701.375 Citation.

Any section of the AIDAR may be identified by "AIDAR" followed by the section number. Within the AIDAR itself, internal references to an AIDAR section will cite the number only, and will not include the term "AIDAR". Since the AIDAR is published in the **Federal Register**, any section may be incorporated into contracts by reference, using the citation "48 CFR" followed by the section number, as "48 CFR 703.375."

701.376 Agency implementation.

701.376–1 Responsibility.

Responsibility for the development and maintenance of the AIDAR is assigned to the Procurement Executive, and under him, to the Director, Office of Contract Management. Amendments and revisions will be prepared in coordination with the General Counsel, and such other offices as may be appropriate.

701.376–2 AIDAR Notices.

AIDAR Notices will be used to promulgate changes to the AIDAR. Such Notices will be prepared by the Procurement Executive.

701.376–3 Appendices.

Procurement policies and instructions which are essentially informational or procedural may be issued as Appendices to the AIDAR. Appendices are filed behind the main text of the AIDAR in a section entitled "Appendices to Chapter 7." The Appendices section contains a table of contents and individual Appendices. The Appendices are identified by letter and subject title (e.g. Appendix A, [title]).

701.376–4 Implementation within AID contracting activities.

The heads of the various AID contracting activities may issue operating instructions and procedures consistent with the FAR, AIDAR, and other Agency regulations, policies, and procedures for application within their organizations. One copy of each such issuance shall be forwarded to the Director, Office of Contract Management. Insofar as possible, such material will be numerically keyed to the AIDAR.

701.377 Procurement policy.

Subject to the direction of the Administrator, the Procurement Executive will be responsible for the development and maintenance of necessary uniform procurement policies, procedures, and standards; for providing assistance to the contracting activities as appropriate; for keeping the Administrator and Executive Staff fully informed on procurement matters which should be brought to their attention.

Subpart 701.4—Deviations From the FAR or AIDAR

701.402 Policy.

It is the policy of AID that deviation from the mandatory requirements of the FAR and AIDAR shall be kept at a minimum and be granted only if it is essential to effect necessary procurement and when special and exceptional circumstances make such deviation clearly in the best interest of the Government.

701.470 Procedure.

(a) Deviation from the FAR or AIDAR affecting one contract or transaction.

(1) Deviations which affect only one contract or procurement will be made only after prior approval by the head of the contracting activity. Deviation requests containing the information listed in paragraph (c) of this section shall be submitted sufficiently in advance of the effective date of such deviation to allow adequate time for consideration and evaluation by the head of the contracting activity.

(2) Requests for such deviations may be initiated by the responsible AID contracting officer who shall obtain clearance and approvals as may be required by the head of the contracting activity. Prior to submission of the deviation request to the head of the

contracting activity for approval, the contracting officer shall obtain written comments from the Office of Contract Management, Support Division. The Support Division shall normally be allowed 10 working days prior to the submission of the deviation request to the head of the contracting activity to review the request and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the Support Division for a shorter review period. In addition to a copy of the deviation request, the Support Division shall be furnished any background or historical data which will contribute to a more complete understanding of the deviation. The comments of the Support Division shall be made a part of the deviation request file which is forwarded to the head of the contracting activity.

(3) Coordination with the Office of General Counsel, as appropriate, should also be effected prior to approval of a deviation by the head of the contracting activity.

(b) Class deviations from the FAR or AIDAR: Class deviations are those which affect more than one contract or contractor.

(1) Class deviations from the AIDAR will be processed in the same manner as prescribed in paragraph (a) of this section.

(2) Class deviations from the FAR shall be considered jointly by AID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) (FAR 1.404) unless, in the judgement of the head of the contracting activity, after due consideration of the objective of uniformity, circumstances preclude such consultation. The head of the contracting activity shall certify on the face of the deviation the reason for not coordinating with the C/CAAC. In such cases, the Office of Contract Management, Support Division, shall be responsible for notifying the C/CAAC of the class deviation.

(3) Class deviations from the FAR shall be processed as follows:

(i) The request shall be processed in the same manner as paragraph (a) of this section, except that the Office of Contract Management, Support Division, shall be allowed 15 working days prior to the submission of the deviation request to the head of the contracting activity to effect the necessary coordination with the C/CAAC and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the Support Division for a shorter review and coordination period. The comments of the C/CAAC and the Support Division shall be made a part of the deviation request file which is forwarded to the head of the contracting activity.

(ii) The request shall be processed in the same manner as paragraph (a) of this section if the request is not being jointly considered by AID and the C/CAAC.

(4) Deviations involving basic agreements or other master type contracts are considered to involve more than one contract.

(5) Unless the approval is sooner rescinded, class deviations shall expire 2 years from the date of approval provided that deviation authority shall continue to apply to contracts or task orders which are active at the time the class deviation expires. Authority to continue the use of such deviation beyond 2 years may be requested in accordance with the procedures prescribed in paragraph (a) of this section.

(6) Expiration dates shall be shown on all class deviations.

(c) Requests for deviation shall contain a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the regulation being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation including any added or decreased cost to the Government, the name of the contractor, and the contract or task order number.

(d) Register of deviations: Separate registers shall be maintained by the procuring activities of the deviations granted from the FAR and AIDAR. Each deviation shall be recorded in its appropriate register and shall be assigned a control number as follows: the symbol of the procuring activity, the abbreviation "DEV", the fiscal year, the serial number [issued in consecutive order during each fiscal year] assigned to the particular deviation and the suffix "c" if it is a class deviation, e.g. CM-DEV-85-1, CM-DEV-85-2c. The control number shall be embodied in the document authorizing the deviation and shall be cited in all references to the deviation.

(e) Central record of deviations: Copies of approved deviations shall be furnished promptly to the Office of Contract Management, Support Division, who shall be responsible for maintaining a central record of all deviations that are granted.

(f) Semiannual report of class deviations:

(1) AID contracting officers shall submit a semiannual report to the Office of Contract Management, Support Division of all contract actions effected under class deviations to the FAR and AIDAR which have been approved pursuant to paragraph (b) of this section.

(2) The report shall contain the applicable deviation control number, the contractor's name, contract number and task order number (if appropriate).

(3) The report shall cover the 6-month periods ending June 30 and December 31, respectively, and shall be submitted within 20 working days after the end of the reporting period.

Subpart 701.6—Contracting Authority and Responsibility

701.601 General.

Except as otherwise prescribed, the head of each contracting activity (as defined in 702.170) is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his or her activity. The heads of AID contracting activities are vested with broad authority to carry out the programs and activities for which they are responsible. This authority includes procurement and the establishment of procurement policies, procedures, and standards appropriate for their programs and activities, subject to Government-wide and AID requirements and restrictions (see 701.376-4).

701.603 Selection, appointment, and termination of appointment.

701.603-70 Designation of contracting officers.

A contracting officer represents the U.S. Government through the exercise of his/her delegated authority to negotiate, sign, and administer contracts on behalf of the U.S. Government. The contracting officer's duties are sensitive, specialized, and responsible. In order to insure proper accountability, and to preclude possible security, conflict of interest, or jurisdiction problems, it is AID policy that AID contracting officers must be U.S. citizen employees of the U.S. Government.

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

Sec.

702.170-1 AID.
702.170-2 Administrator.
702.170-3 Contracting activities.
702.170-4 Cooperating country.
702.170-5 Cooperating country national (CCN).
702.170-6 Executive agency.

Sec.
702.170–7 Foreign Assistance Act.
702.170–8 Government, Federal, State, local and political subdivisions.
702.170–9 Head of the agency.
702.170–10 Head of the contracting activity.
702.170–11 Mission.
702.170–12 Overseas.
702.170–13 Procurement Executive.
702.170–14 Third country national (TCN).
702.170–15 U.S. national (USN).

Subpart 702.270—Definitions Clause

702.270–1 Definitions clause.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 702.170—Definitions

702.170–1 AID.

"AID" means the Agency for International Development and its predecessor agencies, including the International Cooperation Administration (ICA).

702.170–2 Administrator.

"Administrator" means the Administrator or Deputy Administrator of the Agency for International Development.

702.170–3 Contracting activities.

The contracting activities within AID are:

(a) *The AID/Washington activities.* The contracting activities located in Washington are the Office of Contract Management, Office of Management Operations, and Office of International Training. Subject to delegations of authority, the contracting activities are responsible for procurement related to programs and activities for their areas. The Office of Management Operations is responsible for administrative and program support procurements. The Office of International Training has limited authority for the procurement of training for participants. The Office of Contract Management is responsible for procurements which do not fall within the responsibility of other contracting activities or which are otherwise assigned to it. Delegations of authority to AID/Washington contracting activities are published in the **Federal Register**, and in AID Handbook 5, Delegations of Authority.

(b) *The overseas field contracting activities.* Mission Directors and specified subordinate individuals may be redelegated contracting authority by the Procurement Executive or his/her designee, based on the recommendation of the regional bureau involved.

702.170–4 Cooperating country.

"Cooperating country" means a foreign country in which there is a program or activity administered by AID.

702.170–5 Cooperating country national (CCN).

Cooperating country national (CCN) means an individual who is a cooperating country citizen or a non-cooperating country citizen lawfully admitted for permanent residence in the cooperating country.

702.170–6 Executive agency.

"Executive agency" includes the Agency for International Development (AID) and its predecessor agencies, including the International Cooperation Administration.

702.170–7 Foreign Assistance Act.

"Foreign Assistance Act" means the Foreign Assistance Act of 1961, as amended (22 U.S.C., Chapter 32).

702.170–8 Government, Federal, State, local and political subdivisions.

As used in the FAR and AIDAR, these terms do not refer to foreign entities except as otherwise stated.

702.170–9 Head of the agency.

"Head of the agency" means, for AID, the Administrator, and the Deputy Administrator.

702.170–10 Head of the contracting activity.

The heads of the contracting activities within AID are the Director, Office of Contract Management, and the Mission Directors or other officers in charge of overseas field activities who have been delegated contracting authority.

702.170–11 Mission.

"Mission means the AID mission or the principal AID office or representative (including an embassy designated to so act) in a foreign country in which there is a program or activity administered by AID.

702.170–12 Overseas.

"Overseas" means outside the United States, its possessions, and Puerto Rico.

702.170–13 Procurement Executive.

"Procurement Executive" is the AID official designated by the Administrator as the official responsible for the management of AID's procurement system, including development and maintenance of AID acquisition regulations, certification and designation of contracting officers, and similar functions. The procurement executive for AID is Mr. John F. Owens, the Associate Assistant to the Administrator for Management.

702.170–14 Third country national (TCN).

"Third country national (TCN)" means an individual who is neither a cooperating country national nor a U.S. national, but is a citizen of a Free World Country (i.e., Geographic Code 935).

702.170–15 U.S. national (USN).

"U.S. national (USN)" means an individual who is a U.S. citizen or a non-U.S. citizen lawfully admitted for permanent residence in the United States.

Subpart 702.270—Definitions Clause

702.270–1 Definitions clause.

Use the appropriate clause in 752.202–1, in addition to the clause in FAR 52.202–1.

PART 703—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 730.4—Contingent Fees

703.403 Applicability.

The exception stated in FAR 3.404(b)(6) for contracts to be made in foreign countries will not be used.

(Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

PART 704—ADMINISTRATIVE MATTERS

Subpart 704.4—Safeguarding Classified Information Within Industry

Sec.
704.405 Contract clause.

Subpart 704.8—Contract Files

704.803 Contents of contract files.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 704.4—Safeguarding Classified Information Within Industry

704.405 Contract clause.

If the contract involves access to classified ("Confidential", "Secret", or "Top Secret"), or administratively controlled ("Limited Official Use") information, use the contract clause in 752.204–2.

Subpart 704.8—Contract Files

704.803 Contents of contract files.

(a) In order that the official contract file may contain a full history of each procurement to support actions taken by various personnel in the procurement cycle, provide information for reviews conducted by AID or others, supply data for use in preparing replies to

Congressional inquiries, and furnish essential facts in the event of litigation, each such file shall contain the data required by 4.803 of the FAR, and the following additional data, as applicable:

(1) A full record of negotiations (memorandum of negotiation) including, but not limited to:

(i) Participants,

(ii) Dates and places of meetings,

(iii) Selection of the successful contractor, including reasons for selection,

(iv) Agreements on Government-furnished materials, equipment, or facilities,

(v) Technical or financial recommendations,

(vi) Terms, conditions and type of contract agreed to,

(vii) Agreements on subcontracting,

(viii) Justification for fixed fee or profit, and

(ix) Justification for final cost or price;

(2) Any required approvals and clearances (such as General Counsel, security, project office, Mission, Office of Small and Disadvantaged Business Utilization, Office of Information Resources Management, Communications Review Board);

(3) Any exceptions or exemptions to the Buy American Act, Foreign Assistance Act, or AID's nationality policy (Part 725 or Part 25 of the FAR);

(4) Copies of all amendments and task orders with supporting documents;

(5) Copy of contractor's established policies and practices covering compensation, leave, work week, promotions, etc.;

(6) Copy of contracting officer's decisions under the disputes clause (FAR 33.011);

(7) All other pertinent correspondence, documents and reports;

(8) Financial release upon completion of the contract (release forms, 753.270–3).

PART 705—PUBLICIZING CONTRACT ACTIONS

705.001 Policy.

AID's Office of Small and Disadvantaged Business Utilization maintains a Contractor's Index, which serves as a reference source and an indication of a prospective contractor's interest in performing AID contracts. Prospective contractors are invited to file the appropriate form (Standard Forms 254/255, Architect-Engineer and Related Services Questionnaire; or AID Forms 1420–50A, Consulting Organization Registration Form; or 1420–50B, Individual Consultant Registration Form) with AID's Office of Small and Disadvantaged Business Utilization (Department of State, Agency for International Development, Washington, D.C. 20523—Attention: Office of Small and Disadvantaged Business Utilization). These forms should be updated annually.

(Sec. 621, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

SUBCHAPTER B—ACQUISITION PLANNING

PART 707—ACQUISITION PLANNING

Subpart 707.1—Acquisition Plans—[Reserved]

PART 708—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 708.1—Excess Personal Property

708.102–70 Policy.

See AID Handbook 16, Excess Property.

(Sec. 621, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

PART 709—CONTRACTOR QUALIFICATIONS

Subpart 709.4—Debarment, Suspension and Ineligibility

709.402 Policy.

The regulations for debarment, suspension, and ineligibility of contractors and suppliers for the Agency for International Development are codified in 22 CFR Part 208.

(Sec. 621, 75 Stat. 445 (22 U.S.C. 2381); as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 714—FORMAL ADVERTISING

Subpart 714.4—Opening of Bids and Award of Contract

Sec.

714.406–3 Other mistakes disclosed before award.

714.406–4 Disclosure of mistakes after award.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 714.4—Opening of Bids and Award of Contract

714.406–3 Other mistakes disclosed before award.

The Head of the Agency is the designated central authority to make the determinations described in FAR 14.406–3.

714.406–4 Disclosure of mistakes after award.

The Procurement Executive is the designated central authority to make the determinations described in FAR 14.406–4.

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.2—Negotiation Authorities

Sec.

715.270 Negotiation authority.

Subpart 715.5—Unsolicited Proposals

715.502 Policy.

715.504 Advance guidance.

715.506 Agency procedures and point of contact.

715.506–1 Receipt, and initial review.

715.507 Contracting methods.

Subpart 715.6—Source Selection

715.605 Evaluation factors.

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715.1002 Debriefing of unsuccessful offerors.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 715.2—Negotiation Authorities

715.270 Negotiation authority.

All negotiated AID contracts are negotiated under the authority of section 633 of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223, May 12, 1965, 30 FR 6635. The files of negotiated AID contracts shall cite, as the circumstance permitting negotiation, FAR 15.215 ("Otherwise authorized by law"). No other circumstances as set forth in FAR 15.2 need be cited.

Subpart 715.5—Unsolicited Proposals

715.502 Policy.

(a) AID encourages the submission of unsolicited proposals which contribute

new ideas consistent with and contributing to the accomplishment of the Agency's objectives. However, the requirements for contractor resources are normally quite program specific, and thus widely varied, and must be responsive to host country needs. Futher, AID's projects are usually designed in collaboration with the cooperating country. These factors can limit both the need for, and AID's ability to use unsolicited proposals. Therefore, prospective offerors are encouraged to contact AID to determine the Agency's technical and geographical requirements as related to the offeror's interests before preparing and submitting a formal unsolicited proposal.

(b) AID's basic policies and procedures regarding unsolicited proposals are those established in FAR 15.5 and this Subpart.

(c) For detailed information on unsolicited proposals, see 715.504; for initial contact point within AID, see 715.506.

715.504 Advance guidance.

(a) Information concerning AID's policies and procedures for unsolicited proposals is available from the Department of State, Agency for International Development, Washington, D.C. 20523, to the attention of either PRE/SDB/SB, Room 647, SA–14, or, for research, S&T/RUR, Room 309, SA–18.

(b) The information available concerns:

(1) Contact points within AID;

(2) Definitions;

(3) Characteristics of a suitable proposal;

(4) Determination of contractor responsibility;

(5) Organizational conflict of interest;

(6) Cost sharing; and

(7) Procedures for submission and evaluation of proposals.

715.506 Agency procedures and point of contact.

Initial inquiries and subsequent formal unsolicited proposals (other than research) should be submitted to the Department of State, AID, Washington, D.C. 20523, Attention: PRE/SDB/SB, Room 647, SA–14. Formal unsolicited proposals for research should be submitted to the Department of State, AID, Washington, D.C. 20523, Attention: S&T/RUR, Room 309, SA–18.

715.506–1 Receipt, and initial review.

AID follows the policies and procedures established on FAR 15.506–1 and 15.506–2.

715.507 Contracting methods.

The justification for noncompetitive procurement based on an unsolicited proposal required by FAR 15.507(b) must be approved by the Assistant Administrator primarily responsible for the activity, for actions valued at or under $300,000. For actions over $300,000, approval of the Administrator is required. Each such justification will include a certification from the project officer that neither he/she, nor, to the best of his/her knowledge and belief, any other AID employee solicited the proposal from the offeror or had other prior contact with the offeror regarding the subject matter of the proposal other than to convey to the offeror an understanding of AID's mission and needs relative to the type of effort contemplated in the offer.

Subpart 715.6—Source Selection

715.605 Evaluation factors.

715.605–70 Adaptability to overseas conditions.

In addition to the factors set forth in FAR 15.605, AID will consider the adaptability of the prospective contractor and its employees to employment and residence in the overseas location or locations where work is to be performed.

715.608 Proposal evaluation.

(a) *AID evaluation committees.* An evaluation committee shall be established for each proposed procurement. In each case, these committees shall be composed of a chairman representing the project office, a representative of the contracting office, and representatives from other concerned offices as appropriate.

(b) *Functions and procedures of AID evaluation committees.*

(1) The functions of an evaluation committee shall be:

(i) To evaluate all proposals pursuant to the evaluation criteria established and set forth in the solicitation document.

(ii) To prepare a written listing of all offerors together with the results of the evaluation of their proposals. Such a listing shall be sent by the chairman to the contracting officer setting forth the results of the evaluation.

(iii) The contracting officer is responsible for reviewing the justification in support of the written evaluation results to determine that it is adequate and complete.

(2) The procedures for an evaluation committee shall be:

(i) The contracting officer will receive all proposals and provide a listing and copies to the chairman.

(ii) The chairman will promptly call a meeting of the committee to evaluate the proposals received. The evaluation will be based on the evaluation factors set forth in the solicitation document.

(iii) No member of the AID evaluation committee shall hold discussions with any offeror before or during the AID evaluation committee's proceedings.

715.613 Alternative source selection procedures.

715.613–70 Education institution and international research center selection procedure.

715.613–70–1 Scope of section.

The section prescribes policies and procedures for the selection of contractors to perform projects which have been determined to require the services of an educational institution or international research center (see 715.613–70–2 and 715.613–70–3 of this section).

715.613–70–2 Definitions.

(a) An educational institution, as used in this section, is any non-profit corporation, foundation, trust, or state or local governmental entity operated primarily as an institution of higher learning offering a course of general studies leading to the granting of academic degrees. Consortia whose membership consists exclusively of educational institutions, as defined above, are considered to be educational institutions.

(b) An international research center is an organization formally recognized and listed as such by the Assistant Administrator, Bureau for Science and Technology.

715.613–70–3 Applicability.

The provisions of this section are applicable when it has been determined by the project office, with the concurrence of the contracting officer, that the required skills or institutional relationships are available only from educational institutions or international research centers. This section is not applicable to contracts for collaborative assistance (see 715.613–71 of this subpart), or for architect-engineer services (see subpart 736.6).

715.613–70–4 Solicitation, evaluation, and selection procedures.

(a) A sufficient number of sources shall be solicited to insure that competition is obtained to the maximum practicable extent; this requirement shall be deemed satisfied when a contractor is selected pursuant to the procedures of this section.

(b) Following the concurrence of the contracting officer in the decision that the required services are available only from an educational institution or

international research center (see 715.613–70–3), the project office shall:

(1) Prepare selection criteria for evaluation of potential contractors for use in preparing the source list, determining predominantly qualified sources, and selecting the contractor;

(2) Prepare an initial source list of institutions considered qualified to perform the proposed project;

(3) Provide a statement providing a description of qualifications and areas of expertise considered essential, a statement of work, estimate of personnel requirements, special requirements (logistic support, government furnished property, and so forth) for the contracting officer's use in preparing the request for technical proposal.

(4) Send a memorandum incorporating paragraphs (b) (1) through (3) of this section, together with the "Action" copy of the PIO/T to the contracting officer, requesting him/her to prepare and distribute requests for technical proposal from the source list provided.

(c) Upon receipt and acceptance of the project officer's request, the contracting officer shall prepare requests for technical proposals (RFTP). The RFTP shall contain sufficient information to enable an offeror to submit a responsive and complete technical proposal; this includes a definitive statement of work, an estimate of the personnel required, and special provisions (such as logistic support, government furnished equipment, and so forth), a proposed contract format, and evaluation criteria. No cost or pricing data will be requested or required by the requests for technical proposals. The RFTP will be distributed to the sources recommended by the project office, and to others, if appropriate. The RFTP will normally allow a minimum of 60 days for preparation and submission of a proposal.

(d) Upon receipt of responses to the RFTP by the contracting officer, an evaluation committee will be established consisting of a representative of the project office as chairman, the contracting officer or his/her designee, and any other members considered appropriate by the project office and contracting officer.

(e) The evaluation committee will evaulate all proposals in accordance with the criteria set forth in the RFTP, and will prepare a selection memorandum which shall:

(1) State the evaluation criteria;

(2) List all of the institutions whose proposals were reviewed;

(3) Report on the ranking and rationale therefor for all proposals;

(4) Indicate the institution(s) considered best qualified.

(f) The evaluation committee will submit the selection memorandum to the contracting officer for review and approval.

(g) The contracting officer will either approve the selection memorandum, or return it to the evaluation committee for reconsideration for specified reasons.

(h) If the selection memorandum is approved, the contracting officer shall obtain cost, pricing, and other necessary data from the selected institution(s) and shall conduct negotiations with said institution(s). If a satisfactory contract cannot be obtained, the contracting officer will so advise the evaluation committee. The evaluation committee may then recommend alternate sources.

715.613–71 Collaborative assistance selection procedure.

715.613–71–1 Scope of section.

This section prescribes policies and procedures for the selection of contractors for collaborative assistance projects.

715.613–71–2 Definition.

(a) A collaborative assistance project is any project for which it has been determined (see 715.613–71–4 of this section) that:

(1) A continuing collaborative relationship between AID, the host country, and the contractor is required from project design through completion of the project. AID, host country, and contractor participation in a continuing review and evaluation of the project is essential for its proper execution; and

(2) The required skills or institutional relationship have been determined by the project office, with the concurrence of the contracting officer to be available only from an educational institution, international research center (as defined in 714.613–70–2), or cooperative development organization (which are organizations recognized and listed as such by the Assistance Administrator, Bureau for Food for Peace and Voluntary Assistance).

(b) The collaborative assistance method is fully defined and discussed in AIDAR Appendix F—Use of Collaborative Assistance Method for Aid Direct Contracts for Technical Assistance.

715.613–71–3 Applicability.

The provisions of this section are applicable to all contracts implementing collaborative assistance projects (see 715.613–71–4).

715.613–71–4 Determination.

In order to prepare a contract pursuant to the collaborative assistance method, the determinations in 715.613–71–2 of this section must be made in accordance with the following procedures:

(a) The responsible project office makes a preliminary finding that a project should be classed as collaborative assistance in accordance with 715.613–71–2(a) (1) and (2).

(b) Based upon this preliminary finding, the project office shall establish an evaluation panel consisting of a representative of the project office as chairman; a representative of the Bureau for Science and Technology, for projects where the services of an educational institution or international research center are deemed necessary; a representative of the Bureau for Food for Peace and Voluntary Assistance, for projects where the services of a cooperative development organization are deemed necessary; a representative of the Office of Contract Management; and any other representatives considered appropriate by the chairman.

(c) The evaluation panel will review the proposed project; based on the panel's findings, the chairman will make the formal, written determinations as to whether or not the project is collaborative assistance as required by 715.613–71–2(a)(1) and 715.613–71–2(a)(2).

715.613–71–5 Evaluation and selection.

(A) A sufficient number of sources will be considered to insure that competition is obtained to the maximum practicable extent; this requirement shall be deemed satisfied when a contractor is selected pursuant to the procedures of this section.

(b) Following determination that a project is in fact collaborative assistance, the evaluation panel shall:

(1) Prepare evaluation and selection criteria;

(2) Prepare an initial source list including all potential sources known to have capabilities and expertise in the areas required by the proposed project; and

(3) Evaluate the list, using the evaluation criteria previously determined, for the purpose of making a written determination of the source (or sources) considered most capable of performing the project.

(c) The chairman of the evaluation panel will prepare a memorandum to the contracting officer setting forth:

(1) The formal determination that the project is collaborative assistance,

(2) The evaluation criteria which have been determined, and

(3) The recommended source list and the rationale therefore, and requesting the contracting officer to prepare a

request for expressions of interest from the qualified institution (or institutions).

(d) The contracting officer will prepare a request for an expression (or expressions) of interest, containing sufficient information to permit an institution to determine its interest in the project, and to discuss the project with AID representatives, if appropriate. The request for expression of interest should include a concise statement of the purpose of the project, any special conditions or qualifications considered important, a brief description of the selection procedure and evaluation criteria which will be used (if expressions of interest are being requested from more than one institution), the proposed contract format, and any other information considered appropriate. The request for expression of interest will be issued to the institution or institutions recommended by the panel; it will normally allow a minimum of 60 days for submission of an expression of interest. Guidelines for preparation of expressions of interest are contained in Attachment 1 to AIDAR Appendix F.

(e) The contracting officer will transmit all expressions of interest to the evaluation panel for evaluation and selection recommendation. The panel may conduct on site evaluations at its discretion, as part of the evaluation process.

(f) The chairman of the evaluation panel will prepare a written selection recommendation with supporting justification, recommending that negotiations be conducted with the prospective contractor(s) selected by the evaluation panel. The selection recommendation shall be transmitted to the contracting officer together with the complete official file on the project which was being maintained by the evaluation panel.

(g) The contracting officer will review the selection recommendation, obtain necessary cost and other data, and proceed to negotiate with the recommended source.

Subpart 715.10—Preaward and Postaward Notifications, Protests, and Mistakes

715.1002 Debriefing of unsuccessful offerors.

(a) FAR 15.1002 provides general guidance on post-award notification and debriefing of unsuccessful offerors. This subsection 715.1002 provides additional guidance regarding notification and debriefing requirements and procedures.

(b) *Notification.* (1) The FAR provides for notification and debriefing *after* award. However, there are circumstances which make it proper to notify unsuccessful offerors *prior* to award; these are:

(i) When the procurement is limited to educational institutions or international research centers, pursuant to subsection 715.613–70;

(ii) When it is expected that negotiations with offerors whose proposals are in the competitive range are likely to exceed 30 days.

Notifications pursuant to paragraph (b)(1)(i) of this section, should be limited to a statement that the unsuccessful offeror's proposal was not in the competitive range, advising that further negotiations with the offeror are not contemplated, and that no revised proposal will be considered. The contracting officer shall inform each unsuccessful offeror by written notice of the name and location of the apparently successful offeror(s). Each apparently unsuccessful offeror should be advised that any subsequent revisions of its proposal will not be considered, since no further negotiations are contemplated. No further contact with the contracting officer should be made regarding the procurement unless the unsuccessful offeror has grounds to challenge the small business size status of the apparently successful offeror(s).

(2) Except as provided in paragraph (b)(1) of this section, notification of unsuccessful offerors will be made *after* award. Following the award of any negotiated contract over $25,000, all unsuccessful offerors will be promptly notified that their offer has not been accepted. It is not necessary to volunteer a debriefing in this notification, but the contracting officer may do so if desired. The notification will, as a minimum, tell the unsuccessful offerors the name(s) and address(es) of the contractor(s) receiving the award, the contract number(s), and the amount(s). The notification should also include, *in general terms*, the reasons why the unsuccessful offeror's proposal was rejected.

(c) *Debriefing.* If, after post-award notification, an unsuccessful offeror requests a debriefing, the contracting officer should take the following steps:

(1) Notify the cognizant project office, and arrange to have a project officer who was directly involved in the selection made available.

(2) Establish a mutually convenient time for the project office, the contracting office, and the unsuccessful offeror, for the debriefing.

(3) The cognizant project officer and negotiator should have a pre-debriefing meeting to establish the contents of the debriefing (see paragraph (c)(2) of this section).

(4) Conduct the debriefing (see paragraph (c)(2) of this section).

(5) A summary of this debriefing will be retained as part of the contract file.

PART 716—TYPES OF CONTRACTS

Subpart 716.3—Cost-Reimbursement Contracts

716.301-3 Limitations.

The requirement of FAR 16.301–3(c) shall not apply to negotiated amendments to cost reimbursement contracts. The original determination and findings justifying the initial use of a cost reimbursement-type contract shall be deemed applicable to all subsequent amendments to said contracts.

(Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

PART 717—SPECIAL CONTRACTING METHODS

Subpart 717.70—Pharmaceutical Products

717.700 General.

Section 606(c) of the Foreign Assistance Act bars procurement by the Government of drug and pharmaceutical products manufactured outside the United States if their manufacture involves the use of or is covered by an unexpired U.S. patent which has not been held invalid by an unappealed or unappealable court decision unless the manufacture is expressly authorized by the patent owner. Applicable policies and procedures are set forth in AID Handbook 15, AID-Financed Commodities, and in AID Handbook 1, Supplement B, Procurement Policies, Chapter 4C3.

(Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 719—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 719.2—Policies

Sec.

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719.271–2 The AID Office of Small and Disadvantaged Business Utilization (SDB).
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719.271–4 Heads of Contracting Activities.
719.271–5 Program/project officers.
719.271–6 Small business screening procedure.
719.271–7 Reports on procurement actions that are exempted from screening.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SUBPART 719.2—POLICIES

719.270 Small business policies.

(a) In keeping with section 602 of the Foreign Assistance Act of 1961 (22 U.S.C. 2352), as amended, AID shall, insofar as practicable and to the maximum extent consistent with the accomplishment of the purposes of said Act, assist United States small business to participate equitably in the furnishing of supplies and services for Foreign Assistance activities.

(b) It is the policy of AID to:

(1) Fully endorse and carry out the Government's small business program for placing a fair proportion of its purchases and contracts for supplies, construction (including maintenance and repair), research and development, and services (including personal, professional, and technical services) with small business, including minority small business concerns; and

(2) Increase their participation in AID procurement.

(c) In furtherance of this policy:

(1) Program/project officers shall make positive efforts (see 719.271–5) to identify potentially qualified small and minority business firms during precontract development of programs/projects and shall, with the responsible contracting officers, assure that such firms are given full opportunity to participate equitably;

(2) Small business set-asides shall be made for all contracts to be executed in AID/Washington which qualify for small business set-aside action under Part 19 of the FAR; and

(3) Consideration shall be given in appropriate cases to the award of the contract to the Small Business Administration for subcontracting to small business firms pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(d) This program shall be implemented by all AID/Washington contracting activities in order to attain these policy objectives. In accordance with 719.271, all AID/Washington direct-procurement requirements which exceed $5,000 shall be screened for small business opportunities by the Office of Small and Disadvantaged Business Utilization (SDB) except those exempted by 719.271–6(a).

(e) Where practicable and desirable, small business and minority business enterprise award goals will be established for the respective AID/Washington procuring activities to provide incentive for contracting personnel to increase awards to small firms. The goals will be set by SDB after consultation with the respective head of the contracting activity (see subsection 702.170–10).

(f) In the event of a disagreement between SDB and the contracting officer concerning: (1) A recommended set-aside, or (2) a request for modification or withdrawal of a class or individual set-aside, complete documentation of the case including the reasons for disagreement shall be transmitted within five working days to the head of the contracting activity (see 719.271–6(e)) for a decision. Procurement action shall be suspended pending a decision.

(g) The above suspension shall not apply where the contracting officer:

(1) Certifies in writing, with supporting information, that in order to protect the public interest award must be made without delay;

(2) Promptly provides a copy of said certification to SDB; and

(3) Includes a copy of the certification in the contract file.

(h) SDB shall be the Small Business Advisor and Minority Business Procurement Policy Manager for all AID/Washington procuring activities.

(i) The details on the Agency's direction and operation of the small business program are set forth in 719.271.

(j) No decision rendered, or action taken, under the coverage set forth in 719.271 shall preclude the Small Business Administration from appealing directly to the AID Administrator as provided for in Part 19 of the FAR.

(k) SDB may delegate the responsibilities set forth in 719.271–2(b)(8), (9), and (17) to the Director, Office of Management Operations with the power to redelegate. The delegation shall cover only supplies and services authorized to be procured by the Office of Management Operations. Responsibilities not delegated are reserved to SDB.

719.271 Agency program direction and operation.

719.271–1 General.

The purpose of this section is to prescribe responsibilities and procedures for carrying out the small business program policy set forth in 219.270, and in Part 19 of the FAR. Small Business concerns are defined in FAR Subpart 19.1; in addition, small business concerns are concerns organized for profit. Nonprofit organizations are not considered small business concerns. Small disadvantaged business enterprises are defined in FAR Subpart 19.1. Small disadvantaged business enterprises are included in the term "small business" when used in this subpart; specific reference to disadvantaged business enterprises is for added emphasis.

719.271–2 The AID Office of Small and Disadvantaged Business Utilization (SDB).

(a) SDB is responsible for administering, implementing, and coordinating the Agency's small business (including minority business enterprises) program.

(b) SDB, headed by the Director SDB, who also serves as the Minority Business Procurement Manager, shall be specifically responsible for:

(1) Developing policies, plans, and procedures for a coordinated Agency-wide small business and minority business enterprise procurement program;

(2) Advising and consulting regularly with AID/Washington procuring activities on all phases of their small business program, including, where practicable and desirable, the establishment of small business and minority business enterprise award goals;

(3) Collaborating with officials of the Small Business Administration (SBA), other Government Agencies, and private organizations on matters affecting the Agency's small business program;

(4) Developing and maintaining a Contractor's Index of bidders/offerors (annotated to identify small business and minority business enterprise firms) capable of furnishing services for use by the AID contracting activities;

(5) Cooperating with contracting officers in administering the performance of contractors subject to the Small Business and Minority Business Enterprises Subcontracting Program clauses;

(6) Developing a plan of operation designed to increase the share of contracts awarded to small business concerns, including small minority business enterprises;

(7) Establishing small business class set-aside for types and classes of items of services where appropriate;

(8) Reviewing each procurement requisition (PIO/T, PIO/C or other requisitioning document) to make certain individual or class set-asides are initiated on all suitable AID/Washington proposed contract actions

in excess of $5,000 which are subject to screening (see 719.271–6);

(9) Maintaining a program designed to:

(i) Locate capable small business sources for current and future procurements through GSA and other methods;

(ii) Utilize every source available to determine if an item is obtainable from small business; and

(iii) Develop adequate small business competition on all appropriate procurements;

(10) Taking action to assure that unnecessary qualifications, restrictive specifications, or other features (such as inadequate procurement lead time) of the programming or procurement process, which may prevent small business participation in the competitive process, are modified to permit such participation where an adequate product or service can be obtained;

(11) Recommending that portions of large planned procurements or suitable components of end items or services be purchased separately so small firms may compete;

(12) On proposed non-competitive procurements, recommending to the contracting officer that the procurement be made competitive when, in the opinion of SDB, there are small business or minority business enterprises believed competent to furnish the required goods or services, and supplying the contracting officer a list of such firms;

(13) Assisting small business concerns with individual problems;

(14) Promoting increased awareness by the technical staff of the availability of small business firms;

(15) Making available to GSA copies of solicitations when so requested;

(16) Counseling non-responsive or non-responsible small business bidders/offerors to help them participate more effectively in future solicitations; and

(17) Examining bidders lists to make certain small business firms are appropriately identified and adequately represented for both negotiated and advertised procurements.

719.271–3 AID contracting officers.

With respect to procurement activities within their jurisidiction, contracting officers are responsible for:

(a) Being thoroughly familiar with Part 19 of the FAR and this section dealing with the small business program;

(b) Screening abstracts of bids and other award data to determine set-aside potential for future procurements;

(c) Assuring that small business concerns and minority business enterprises are appropriately identified on source lists and abstracts of bids or proposals by an "S" and "M", respectively, or other appropriate symbol;

(d) Reviewing types and classes of items and services to determine where small business set-asides can be applied;

(e) Recommending that portions of large planned procurements of suitable components of end items or services be purchased separately so small firms may compete;

(f) Making a unilateral determination for total or partial small business set-asides in accordance with Subpart 19.5 of the Federal Acquisition Regulations;

(g) Submitting proposed procurement actions (PIO/Ts, PIO/Cs, or other requisitioning documents) for AID/Washington contracts to SDB for screening (see 719.271–6);

(h) Taking action to assure that unnecessary qualifications, restrictive specifications or other features (such as inadequate procurement lead time) of the programming or procurement process which may prevent small business participation in the competitive process are modified to permit such participation where an adequate product or service can be obtained;

(i) Prior to rendering a final decision on a proposed non-competitive procurement action, and as part of his/her findings and determinations, the contracting officer shall consider the recommendations, if any, of SDB together with the latter's list of additional sources;

(j) As appropriate, referring small business concerns, including small minority business enterprises, SDB for information and advice;

(k) Promoting increased awareness by the technical staff of the availability of small business concerns;

(l) Making available to SDB copies of solicitations when requested;

(m) Assisting SDB in counseling non-responsive or non-responsible small business bidders/offerors to help them to participate more effectively in future solicitations; and

(n) Including the Small Business and Minority Business Enterprises Subcontracting Program clauses in all contracts where required by Part 19 of the FAR.

719.271–4 Heads of Contracting Activities.

In order for the agency small business program to be effective, the active support of top management is required. The heads of the contracting activities shall be responsible for:

(a) Rendering decisions in cases resulting from non-acceptances by their contracting officers of set-aside recommendations made by SDB;

(b) Consulting with SDB in establishing small business and minority business enterprise award goals, where practicable and desirable; and

(c) Advising program/project officers of their responsibilities as set forth in 719.271–5.

719.271–5 Program/project officers.

Since the procurement process starts with the establishment of a program/project requirement, the actions of the program/project officers can affect the opportunity of small business to participate equitably; therefore, each program/project officer shall, during the formulation of programs/projects which will require contractural implementation:

(a) Consult with SDB on the availability and capabilities of small business firms to permit making a tentative set-aside determination where appropriate; and

(b) Provide sufficient procurement lead time in the program/project implementation schedule to allow potential small business participation.

719.271–6 Small business screening procedure.

(a) *General.* All AID/Washington proposed contract actions (PIO/Ts, PIO/Cs, or other requisitioning documents) in excess of $5,000 shall be screened by SDB, with the exception of:

(1) Class set-asides and those unilaterally set-aside by contracting officers (719.271–3(f));

(2) Those where the contracting officer certifies in writing that the public exigency will not permit the delay incident to screening (719.271–7(b));

(3) Contracts with educational or non-profit institutions, the object of which is "institution building", i.e., the development of a counterpart capability in the host country by the educational or non-profit institution; or collaborative assistance contracts with educational institutions, international research centers, or cooperative development organizations pursuant to 715.613–71 and Appendix F.

(4) Those involving the payment of tuition and fees for participant training at academic institutions; and

(5) Personal services contract requirements (see 719.270).

(b) *Preparation of Form AID 1410–14 (the Small Business/Minority Business Enterprise Procurement Review Form).*

(1) The contracting officer shall prepare the subject form in an original and 3 copies and forward the original and 2 copies to SDB within one working day of receipt by the contracting activity of a procurement requisition (PIO/T,

PIO/C, or other requisitioning document, such as an approved Noncapital Project Paper (PROP), which may be substituted for the PIO/T or PIO/C if required by the urgency of the procurement).

(2) The contracting officer will attach to his/her transmittal a complete copy of the procurement request and a copy of the recommended source list as furnished by the technical office and supplemented by him/her.

(3) The contracting officer shall complete blocks 2, 3, 4, 5, 9, and 10 (when appropriate) prior to submittal to SDB.

(c) *Screening of Form AID 1410–14 by SDB.* (1) SDB will screen the contracting officer's recommendations on set-aside potential, small business subcontracting opportunities, and section 8(a) subcontracting, and furnish him/her with either a written concurrence in his/her recommendations or written counter-recommendations on the original and duplicate copy within five working days from receipt of the form from the contracting officer.

(2) SDB will complete Blocks 1, 6, 7, 8, 11, and 12 (when appropriate) prior to returning the screened form to the contracting officer.

(d) *Concurrence or rejection procedure.* (1) The contracting officer shall complete Block 13 upon receipt of the original and duplicate copy of the screened form from SDB.

(2) If the contracting officer rejects the SDB counter-recommendation, he/she shall return the original and duplicate forms with his/her written reasons for rejection to SDB within two working days.

(3) Upon receipt of the contracting officer's rejection, SDB may: (i) accept, or (ii) appeal, the rejection. In the case of acceptance of the contracting officer's rejection, SDB shall annotate Block 14 when it renders a decision and return the original form to the contracting officer within two working days.

(e) *Appeal procedure.* (1) When informal efforts fail to resolve the set-aside disagreement between the contracting officer and SDB, the latter official may appeal the contracting officer's decision to the head of the contracting activity. Such an appeal will be made within five working days after receipt of the contracting officer's rejection.

(2) In the case of an appeal, SDB will send the original and duplicate form, with the appeal noted in Block 14, directly to the head of the contracting activity with its written reasons for appealing. The contracting officer will be notified of SDB's appeal by means of a copy of the written reasons for appealing.

(3) The head of the contracting activity shall render a decision on the appeal (complete Block 15) within three working days after receipt of same and return the original to SDB and the duplicate to the contracting officer.

719.271–7 Reports on procurement actions that are exempted from screening.

(a) *Unilateral and class set-asides.* The contracting officer shall prepare Form AID 1410–14 as stated in 719.271–6, but forward only the duplicate copy with the documentation required by Block 5 of the form to SDB. The original will be filed in the contract file.

(1) If, upon review of the material submitted under 719.271–7(a) above, SDB concludes that it would be practicable to accomplish all or a portion of the procurement involved under section 8(a) subcontracting, it shall so advise the contracting officer in writing within five days after receipt of such material.

(2) Such advice shall be considered a counter-recommendation and shall be processed in accordance with 719.271–6 (d) and (e).

(b) *Public exigency exemption.* The contracting officer shall prepare Form AID 1410–14 as stated in 719.271–6, but forward only the duplicate copy with the documentation required by Block 5 of the form to SDB. In addition to the documentation called for in 719.271–6, the contracting officer shall furnish a copy of his/her written determination exempting the procurement from screening. The determination shall cite the pertinent facts which led to his/her decision. This exemption is not intended to be used as substitute for good procurement planning and lead-time; SDB will report abuses of this exemption to the head of the contracting activity for appropriate action in accordance with 719.271–4(c).

(c) *Institution building contract (IBC) exemption.* The contracting officer shall prepare Form AID 1410–14 as stated in 719.271–6, but forward only the duplicate copy with the documentation required by Block 5 of the form to SDB.

(d) *Personal services contract exemption.* Preparation of Form AID 1410–14 is not required for personal services contracts.

PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 722.1—Basic Labor Policies

Sec.
722.103 Overtime.
722.103–1 Definitions.
722.103–70 Compensatory time off.
722.103–71 Policy.
722.103–72 Approvals.
722.170 Employment of third country nationals (TCN's) and cooperating country nationals (CCN's).

Subpart 722.8—Equal Employment Opportuntity

722.870–1 Introduction.
722.870–2 EEO clearance requirements.
722.870–3 Clearance procedures.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 722.1—Basic Labor Policies

722.103 Overtime.

722.103–1 Definitions.

722.103–70 Compensatory time off.

"Compensatory time off" means leave equal to overtime worked, which, unless otherwise authorized in a contract or approved by a contracting officer, must be taken not later than the end of the calendar month following that in which the overtime is worked.

722.103–71 Policy.

(a) Most contracts covered by this regulation call for the performance of professional or technical services overseas on a cost-reimbursement basis. The compensation for employees performing such services is normally fixed on a monthly or annual basis, and the contracts usually state minimum work week hours. It is not expected that these employees will receive additional pay, overtime or shift premiums, or compensatory time off.

(b) When the contracting officer determines it is in the best interests of the Government, specific provision may be made in contracts to permit such benefits for non-technical and non-professional employees serving overseas, subject to approvals to be required in the contract.

722.103–72 Approvals.

The contracting officer may make the determinations referred to in FAR 22.103–4.

722.170 Employment of third country nationals (TCN's) and cooperating country nationals (CCN's).

(a) *General.* It is AID policy that cooperating country nationals (CCN's) and third country nationals (TCN's), who are hired abroad for work in a cooperating country under AID-direct contracts, generally be extended the same benefits, and be subject to the same restrictions as TCN's and CCN's employed as direct hires by the AID Mission. Exceptions to this policy may be granted either by the Mission Director or the Assistant Administrator having program responsibility for the

project. (TCN's and CCN's who are hired to work in the United States shall be extended benefits and subject to restrictions on the same basis as U.S. citizens who work in the United States.)

(b) *Compensation.* Compensation, including merit or promotion increases paid to TCN's and CCN's may not, without the approval of the Mission Director or the Assistant Administrator having program responsibility for the project, exceed the prevailing compensation paid to personnel performing comparable work in the cooperating country as determined by the AID Mission. Unless otherwise authorized by the Mission Director or the Assistant Administrator having program responsibility for the project, the compensation of such TCN and CCN employees shall be paid in the currency of the cooperating country.

(c) *Alowances and differentials.* TCN's and CCN's, hired abroad for work in a cooperating country, are not eligible for allowances or differentials under AID-direct contracts, unless authorized by the Mission Director or the Assistant Administrator having program responsibility for the project.

(d) *Country and security clearances.* The contractor shall insure that the necessary clearances, including security clearances, if required, have been obtained for TCN and CCN employees in accordance with any such requirements set forth in the contract or required by the AID Mission, prior to the TCN or CCN starting work under the contract.

(e) *Physical fitness.* Contractors are required to insure that prospective TCN and CCN employees are examined prior to employment to determine whether the prospective employee meets the minimum physical requirements of the position and is free from any contagious disease.

(f) *Workweek, holidays, and leave.* The workweek, holidays, and leave for TCN and CCN employees shall be the same as for all other employees of the contractor, under the terms of the contract; however, TCN and CCN employees are not eligible for home leave or military leave unless authorized by the Mission Director or the Assistant Administrator having program responsibility for the project.

(g) *Travel and transportation for TCN's and CCN's.* Travel and transportation shall be provided TCN and CCN employees on the same basis as for all other employees of the contractor, under the terms of the contract.

(h) *Household effects and motor vehicles.* AID will not provide household effects to TCN and CCN employees; such employees may ship their household effects and motor vehicles to their place of employment on the same basis as for all other employees of the contractor, under the terms of the contract unless they are residents of the cooperating country.

Subpart 722.8—Equal Employment Opportunity

722.870–1 Introduction.

Executive Order 12086 consolidated the compliance responsibility for equal employment opportunity programs, which had previously been assigned to selected, designated compliance agencies, in the Department of Labor. The Department of Labor assumed full responsibility for verification of contractor's compliance with EEO requirements. Since there is no longer a compliance officer in AID, contracting officers will now obtain verification of contractor compliance directly from the cognizant regional Office of Federal Contract Compliance Programs (OFCCP) in accordance with the procedures in 722.870–3.

772.870–2 EEO clearance requirements.

(a) *General.* AID will not award a contract to a firm or institution unless it complies with EEO requirements.

(b) *Contracts for $1,000,000 or more.* For contracts with an estimated total value over the life of the contract of $1,000,000 or more, formal verification of compliance shall be obtained from the cognizant regional OFCCP in accordance with the procedures in paragraphs (a), (b), and (d) of 722.870–3.

(c) *Contracts over $10,000 but less than $1,000,000.* Contracts with an estimated total value over the life of the contract of more than $10,000, but less than $1,000,000 do not require formal verification of compliance from OFCCP. Compliance shall be determined in accordance with the procedures in paragraphs (a), (c), and (d) of 722.870–3.

(d) *Contract amendments.* Any amendment which increases the total estimated value of a contract to $1,000,000 or more, or any amendment which is itself $1,000,000 or more, requires formal verification of compliance from the cognizant regional OFCCP, i.e., the regional office responsible for the geographic area where the work is to be performed, in accordance with the procedures in 722.870–3(b). For other amendments, the method of verification of compliance is at the discretion of the contracting officer (see 722.870–3(c) and 722.870–3(d)(3)); formal verification is not required.

722.870–3 Clearance procedures.

(a) *General.* (1) All necessary representations and certifications (Reps and Certs) as required by FAR 22.810 is required for all AID contracts over $10,000. The (Reps and Certs) must be reviewed by the contracting officer when received to determine that they have been completed and signed as required, and are acceptable. Acceptable Reps and Certs are the first step in the EEO clearance process.

(2) If the Reps and Certs are not deemed acceptable on technical grounds (e.g. incomplete, not signed, etc.) the contracting officer must decide if they can be made acceptable within a reasonable period by corrective action on the part of the offeror, or if the fault is such that it renders the offer nonresponsive. In the first case, necessary corrective action should be taken; in the second case, negotiations with the non-responsive offeror will be terminated. If the Reps and Certs raise questions concerning EEO compliance, and this would be the basis for finding the offeror non-responsive, the matter must be referred to OFCCP regardless of the estimated value of the contract; only OFCCP may make determination of non-compliance with EEO requirements.

(b) *Contracts for $1,000,000 or more.* Contracts and amendments with an estimated value of $1,000,000 or more must have OFCCP verification of EEO compliance before award (see 722.870–2). This verification shall be obtained by:

(1) Getting completed, signed, Reps and Certs from the offeror (see 722.870–3(a).

(2) Contacting the cognizant regional OFCCP for verification of EEO compliance.

(i) OFCCP may require 30 days lead time for verification if a compliance study is required. This should be considered in the procurement planning process.

(ii) The contracting officer may make initial inquiry to OFCCP by telephone, and telephone verification of EEO compliance may be used in making an award; however, the inquiry and verification must be confirmed in writing.

(iii) The following information is normally required by OFCCP:

(A) The offeror's full name and address;

(B) Name, title, address, and telephone number of a contact person for the prospective contractor;

(C) A description of the type of organization (university, nonprofit, etc.) and its ownership (private, foreign, state, etc.).

(D) Names and addresses of organizations in joint venture (if any); names and addresses of subcontractors (if any).

(E) Type of procurement (new contract—RFP or IFB, amendment, etc.) and estimated dollar amount, and term.

(F) Copy of approved Reps and Certs. In the initial contact with OFCCP, the contracting officer and OFCCP should mutually determine what information is to be included in the written verification request. In the event that OFCCP reports that the offeror is not in compliance, negotiations with the offeror shall be terminated.

(c) *Contracts over $10,000, but less than $1,000,000.* Contracts and amendments within this range do not require formal verification by OFCCP (see 722.870–2). The method used to verify compliance is at the discretion of the contracting officer. The contracting officer may rely on the documentation submitted by the offeror (the Reps and Certs—see 722.870–3(a)), unless he or she is aware of some reason to doubt the documentation submitted. In case of doubt, then an informal check with OFCCP should be made. In the event that evidence of non-compliance is developed, the contracting officer must contact OFCCP for confirmation of EEO status; only OFCCP may determine non-compliance with EEO requirements. If OFCCP confirms non-compliance, negotiations with the offeror or contractor shall be terminated.

(d) *Documentation for the contract file.* (1) Every contract file must contain completed signed Reps and Certs. The file must clearly show that these documents have been reviewed and accepted by the contracting officer. If the Reps and Certs or O/S Team Agreement were revised to make them acceptable (see 722.870–3(a)), the file must show what changes were required and certify that the changes were made.

(2) For contracts or amendments of $1,000,000 or more, the file must contain:

(i) A record of the initial contact with OFCCP, specifying the name, address, and telephone number of the person contacted, a summary of the information presented, and the advice given by OFCCP;

(ii) A copy of the written follow-up request for EEO compliance verification to OFCCP; and

(iii) A copy of the compliance verification from OFCCP.

(3) For contracts or amendments over $10,000 but less than $1,000,000, the file must contain a memorandum from the contracting officer stating that the contractor is considered in compliance with EEO requirements, and giving the basis for this statement (see 722.870–3(c)).

(4) Documentation in the event of non-compliance. In the event that OFCCP determines that a prospective contractor is not in compliance, a copy of OFCCP's written determination, and a summary of resultant action taken (termination of negotiations, notification of offeror and project officer, negotiation with next offeror in competitive range, resolicitation, etc.) will be placed in the contract file for any contract which may result, together with other records related to unsuccessful offers, and retained for at least six months following award.

PART 724—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 724.1—Protection of Individual Privacy

Sec.

724.170 Protection of individual privacy.

Subpart 724.2—Freedom of Information Act

724.202 Policy.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 724.1—Protection of Individual Privacy

724.170 Protection of individual privacy.

The Privacy Act of 1974 is implemented in FAR Subpart 24.1 which summarizes statutory and regulatory requirements, and specifies procedures, notification requirements, and contract clauses.

Subpart 724.2—Freedom of Information Act

724.202 Policy.

The Agency for International Development's policies concerning implementation of the Freedom of Information Act are codified in 22 CFR Part 212 (AID Regulation 12).

PART 725—FOREIGN ACQUISITION

Subpart 725.1—Buy American Act—Supplies

Sec.

725.170 Exceptions for Foreign Assistance Act functions.

Subpart 725.2—Buy American Act—Construction Materials

725.270 Exceptions for Foreign Assistance Act functions.

Subpart 725.4—Purchases Under the Trade Agreement Act of 1979

725.403 Exceptions.

Subpart 725.70—Source, Origin, and Nationality

Sec.

725.701 General.

725.702 Designation of authorized geographic code.

725.703 Contractor employees.

725.704 Contract clause—source and nationality requirements.

725.705 Local cost financing—authorization and contract clause.

725.706 Geographic source waivers.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 725.1—Buy American Act—Supplies

725.170 Exceptions for Foreign Assistance Act functions.

In addition to the exception stated in FAR 25.102 for purchases for use outside the United States, there is an exception for economic assistance functions performed under authority of the Foreign Assistance Act. This exception is stated in Executive Order 11223, dated May 12, 1965 (30 FR 6635). U.S. procurement restrictions are applied by AID, however, as shown elsewhere in this part. These restrictions are generally tighter than the Buy American Act. As a general rule, the tighter AID restrictions will be used. In the case of certain procurements for use within the United States, the Buy American provision may be used instead in the interest of uniformity among Federal Agencies procuring for domestic use.

Subpart 725.2—Buy American Act—Construction Materials

725.270 Exceptions for Foreign Assistance Act functions.

In addition to the exception stated in FAR 25.202 for purchases for use outside the United States, there is an exception for economic assistance functions performed under authority of the Foreign Assistance Act. This exception is stated in Executive Order 11223, dated May 12, 1965 (30 FR 6635). U.S. procurement restrictions are applied by AID, however, as shown elsewhere in this part. These restrictions are generally tighter than the Buy American Act. As a general rule, the tighter AID restrictions will be used. In the case of certain procurements for use within the United States, the Buy American provision may be used instead in the interest of uniformity among Federal Agencies procuring for domestic use.

Subpart 725.4—Purchases Under the Trade Agreement Act of 1979

725.403 Exceptions.

FAR subpart 25.4 establishes procedures for purchases under the Trade Agreement Act of 1979. Under the General Agreement on Tariffs and Trade, the Agreement on Government Procurement exempts tied—aid procurements from the requirements of the General Agreement. Under this authority AID is not required to follow the procedures in FAR subpart 25.4 for any contract implementing a foreign assistance project. The procurement of goods or services for the direct benefit and use of AID, rather than for implementation of an assistance project, would be subject to the procedures in FAR subpart 25.4, unless otherwise exempted by one of the exceptions specified in FAR subpart 25.4.

Subpart 725.70—Source, Origin, and Nationality

725.701 General.

AID policies regarding source, origin, and nationality requirements for AID contractors and subcontractors are established in AID Handbook 1, Supplement B, primarily in Chapter 5. Additional related policies are set forth in Chapters 4, 7, and 18. These policies as they apply to subcontracts and purchases under AID-direct contracts have been incorporated into the contract clauses referenced in 725.704 and 725.705 of this subpart.

725.702 Designation of authorized geographic code.

(a) The authorized geographic code or codes for an AID contract shall be specified in the Schedule of each contract and shown on its cover page. If no geographic code is specified, the authorized code will be deemed to be Geographic Code 000, the U.S.

(b) Individual country and geographic codes are defined in Attachment A–11, Section III, of Appendix D to AID Handbook 18.

725.703 Contractor employees.

There are no nationality restrictions on employees or consultants of either contractors or subcontractors providing services under an AID-financed contract, except that they must be citizens of a Geographic Code 935 country, or non-U.S. citizens lawfully admitted for permanent residence in the U.S.

725.704 Contract clause—source and nationality requirements.

The clause in 725.704 is required in all AID direct contracts.

725.70–5 Local cost financing—authorization and contract clause.

(a) Local cost financing requires specific authorization under Chapter 18 of AID Handbook 1, Supplement B. The authorization must specify the U.S. Dollar amount which may be used for local cost financing.

(b) When local cost financing has been authorized, the contract must contain the clause specified in 752.7017.

725.706 Geographic source waivers.

(a) Authority to waive source, origin, nationality, and transportation services requirements is set forth in Delegation of Authority No. 40 (AID Handbook 5). Additional guidance is available in Chapters 5, 7, and 18 of Supplement B to AID Handbook 1.

(b) The contracting officer shall insert the authorized geographic code based on an approved geographic source waiver in the Schedule of the contract as provided for in 725.702. In addition, the contracting officer shall place a copy of any approved geographic source waiver in the official contract file.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 728—BONDS AND INSURANCE

Subpart 728.1—Bonds

Sec.

728.105–1 Advance payment bonds.

Subpart 728.3—Insurance

728.302 Notice of cancellation or change.
728.305 Overseas worker's compensation and war-hazard insurance.
728.307–2 Liability.
728.370 Contract clause.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 728.1—Bonds

728.105–1 Advance payment bonds.

(a) Generally, advance payment bonds will not be required in connection with AID contracts containing an advance payment provision. In lieu thereof, contracting officers will follow procedures set forth in FAR 32.409–3.

(b) Whenever a contracting officer considers that an advance payment bond is necessary, the contracting officer will: (1) Establish a bond penalty that will adequately protect interests of the Government, (2) use the AID Advance Payment Bond format, (3) place bond with a surety currently approved by the U.S. Treasury Department according to the latest Treasury Department Circular 570, (4) stipulate that the cost of the bond shall not exceed a rate of $7.50 per $1,000 per annum based on the penalty of the bond, without the prior written approval of the Insurance Advisor, Office of Contract Management.

(c) Where the surety's obligation under an advance payment bond covers all advances made to the contractor during the term of the contract, no release should be issued to the surety until all advances made and to be made under the contract have been fully liquidated in accordance with the provisions of the contract, such as no-pay vouchers, reports of expenditures, or by refund. Where the surety's obligation under the bond is limited to advances made during a specified period of time, no release should be issued to the surety until all advances made and to be made during the specified period have been liquidated as aforesaid.

Subpart 728.3—Insurance

728.302 Notice of cancellation or change.

All policies required by AID will provide that in the event of cancellation or change in policy coverage thirty days prior written notice will be given to the cognizant contracting officer. The contracting officer will, in turn, notify the Insurance Advisor, Office of Contract Management.

728.305 Overseas worker's compensation and war-hazard insurance.

(a) Upon the recommendation of the AID Administrator, the Secretary of Labor may waive the applicability of the DBA with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees. Either the contractor or AID can request a waiver from coverage. Such a waiver can apply to any employees who are not U.S. citizens, not residents of, or not hired in the United States. Waivers requested by the contractor are submitted to the contracting officer for approval and further submission to the Department of Labor, which grants the waiver. Application for a waiver is submitted on Labor Department Form BEC 565. AID has a number of blanket waivers already in effect for certain countries that are applicable to its direct contracts with contractors performing in such countries. Where such waivers are granted from coverage under the DBA, the waiver is conditioned on providing other workmen's compensation coverage to employees to which the waiver applies. Usually this takes the form of securing workmen's compensation coverage of the country where work will be performed or of the country of the employee's nationality,

whichever offers greater benefits. Copies of AID secured waivers should be made available for review by contractors. Contracting officers are responsible for advising contractors of applicable AID secured waivers. The Department of Labor has granted partial blanket waivers of Defense Base Act coverage for the countries listed below. The waivers are applicable to AID-financed contracts performed in the listed countries, and are subject to two conditions:

(1) Employees hired in the United States by the contractor, and citizens or residents of the United States are to be provided Defense Base Act insurance coverage:

(2) Waived employees (i.e., foreign nationals hired outside the United States) will be provided worker's compensation benefits prescribed in the applicable foreign laws as the contract requires. Countries for which waivers are in effect are:

1. Afghanistan
2. Antigua
3. Bahamas
4. Bangladesh
5. Barbados
6. Belize
7. Benin
8. Bolivia
9. Botswana
10. Brazil
11. Burundi
12. Cameroon
13. Cape Verde
14. Chad
15. Chile
16. Colombia
17. Costa Rica
18. Djibouti
19. Dominica
20. Dominican Republic
21. Ecuador
22. Egypt
23. El Salvador
24. Ethiopia
25. Fiji
26. Gambia
27. Ghana
28. Guatemala
29. Guinea
30. Guinea-Bissau
31. Guyana
32. Haiti
33. Honduras
34. India
35. Indonesia
36. Israel
37. Italy
38. Ivory Coast
39. Jamaica
40. Jordan
41. Kenya
42. Korea
43. Lebanon
44. Lesotho
45. Liberia
46. Madagascar
47. Malawi
48. Mali
49. Mauritania
50. Mauritius
51. Mexico
52. Morocco
53. Nepal
54. New Caledonia
55. Nicaragua
56. Niger
57. Nigeria
58. Oman
59. Pakistan
60. Panama
61. Papua New Guinea
62. Paraguay
63. Peru
64. Philippines
65. Portugal
66. Rwanda
67. St. Lucia
68. St. Vincent
69. Senegal
70. Seychelles
71. Sierra Leone
72. Sinai Support Mission
73. Somalia
74. Sri Lanka
75. Sudan.
76. Swaziland
77. Syria
78. Tanzania
79. Thailand
80. Togo
81. Tonga
82. Tunisia
83. Uganda
84. Upper Volta
85. Uruguay
86. Western Samoa
87. Yemen Arab Republic
88. Zambia
89. Zambia
90. Zimbabwe

(b) To assist contractors in securing insurance at minimal rates for the workmen's compensation insurance required under the DBA, and to facilitate meeting insurance requirements for such coverage, AID, after open and competitive negotiation, has entered into a contract with an insurance carrier to provide such coverage at a specified rate. The terms of this contract require the insurance carrier to provide coverage, and the contractor to make payments to and handle its claims with that insurance carrier. Contracting officers are responsible for explaining and advising contractors of the details of securing such insurance.

728.307-2 Liability.

If a contractor or any of its employees or their dependents transport or cause to be transported privately owned motor vehicles to a cooperating country, or they or any of them purchase a motor vehicle within a cooperating country, the contractor must give assurance that adequate liability coverage is provided and kept in force. Before such a motor vehicle is operated in a cooperating country, and whenever requested, the contractor will provide to the Mission Director, or his/her designee, satisfactory evidence of such coverage by an insurance carrier. Coverage will be for amounts equal in dollars or currency of the cooperating country to not less than $10,000/$20,000 for personal injury and $5,000 for property damage, or equal to not less than such minimums as the Mission Director may prescribe from time to time. The cost of such insurance is not reimbursable.

728.370 Contract clause.

In lieu of the clause prescribed in FAR 28.309, use the appropriate clause prescribed in 752.228-70 in all AID direct contracts under which worker's compensation insurance is required pursuant to Subpart 728.3 or Subpart 28.3 of the FAR.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.1—Applicability

Sec.
731.109 Advance agreements.

Subpart 731.2—Contracts With Commercial Organizations

731.205-6 Compensation for personal services.
731.205-46 Travel costs.

Subpart 731.3—Contracts With Educational Institutions

731.370 Predetermined fixed rates for indirect costs.
731.371 Compensation for personal services.

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 OMB Circular A–122; cost principles for nonprofit organizations; AID implementation.
731.771 Bid and proposal costs.
731.772 Compensation for personal services.
731.773 Independent research and development costs.

Authority: Sec. 621, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 731.1—Applicability

731.109 Advance agreements.

Advance agreements on selected costs may be negotiated with AID contractors by the Overhead and Special Cost Branch, Office of Contract Management. Such advance understandings will be applicable to all AID contracts with that contractor.

Subpart 731.2—Contracts With Commercial Organizations

731.205–6 Compensation for personal services.

(a) *General.* (1) Specific limitations on compensation for personal services, including fringe benefits, may be spelled out or incorporated by reference in AID contracts. Where the provisions of the contract are inconsistent with this section, such provisions will govern.

(2) Direct compensation of personnel will be reimbursable, in accordance with the contractor's established policies and procedures and FAR 31.205–6 except as provided in paragraphs (b) and (c) of this section. Such policies, procedures, and practices shall be the same as used in contracts and grants with other Government agencies and accepted by the U.S. Government agency assigned primary audit responsibility for the contractor, shall be in writing, and shall be made available to the contracting officer or his/her designated representative, upon request.

(3) Overseas recruitment incentive.

(i) Contract employees serving overseas under a contract who do not qualify, request, and receive an exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C 911) are eligible to receive an overseas recruitment incentive, provided that the average incentive for all such employees does not exceed 10 percent of the initial base annual salary of all employees eligible for the incentive under the contract.

(ii) The overseas recruitment incentive is payable under one of the following alternative methods:

(A) As a lump-sum amount after the eligible employee has completed his/her tour of duty in the Cooperating Country under a contract, and has furnished to the contractor a certification that he/she does not qualify, and will not apply for an exemption from overseas income as provided by 26 U.S.C. 911 (the contractor shall retain such certifications for post-audit); or

(B) At the option of the contractor, the overseas recruitment incentive may be paid in increments during an employee's tour of duty; provided however, that payments made by the contractor to employees who become eligible for an exemption from overseas income as provided by 26 U.S.C. 911, which payments were reimbursed by AID under the contract, shall be refunded to AID; and provided further, that neither the contractor's (nor the subcontractor's) inability to collect refunds from ineligible employees shall be used as a basis to excuse subsequent refunds by the contractor to AID.

(iii) If the overseas recruitment incentive causes the employee's salary to exceed the level for a Foreign Service Officer, Class FS–1, contracting officer approval must be obtained.

(b) *Salaries and wages.* (1) Salaries and wages exclude overseas differential and other allowances associated with overseas service but include payments for personal services (including fees and honoraria) computed on a daily rate or other time basis different from an annual rate. Daily rates of compensation are computed on the basis of a 260-day work year made up of 5-day (8 hour) work weeks.

(2) Any compensation (i.e., the employee's or consultant's base annual salary plus overseas recruitment incentive, if any) which exceeds the maximum payable annual or daily rate for a Foreign Service Officer Class FS–1 as set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended, will be reimbursed only with the written approval of the contracting officer. Contracting officer approval of salaries in excess of the maximum payable rate for a Foreign Service Officer Class FS–1 will be based upon a memorandum from the technical office and approved by the Assistant Administrator or Mission Director having program responsibility for the project in support of which the contract is written. The technical office is responsible for evaluating the reasonableness of the proposed salary, taking into account such factors as the degree of technical competence required, the scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the contractor's customary salary level, and other pertinent information. Copies of all memoranda approved by the Assistant Administrator or Mission Director will be furnished to the Support Division, Office of Contract Management.

(3) For policies on compensation of third country national or cooperating country national contractor employees, see 722.170.

(c) *Fringe benefits.* AID contracts spell out rules and principles governing reimbursement of specific fringe benefits related to overseas service, including leave, holidays, differential, allowances, travel, transportation, and similar costs. The contract provisions are set forth in Part 752.

731.205–46 Travel costs.

International travel costs are allowable only when the travel has received the specific prior approval of the contracting officer. For purposes of this provision, international travel is defined as any travel outside of the United States, or its territories and possessions.

Subpart 731.3—Contracts With Educational Institutions

731.370 Predetermined fixed rates for indirect costs.

Section 635(k) of the Foreign Assistance Act of 1961, as amended, authorizes AID to use predetermined fixed rates in determining the indirect costs applicable under contracts with educational institutions.

731.371 Compensation for personal services.

(a) Specific limitations on compensation for personal services are set forth in the contract clauses specified in 752.7007. Contracting officer approval of salaries in excess of the maximum payable annual or daily rate for a Foreign Service Officer Class FS–1, as set forth in the Uniform State/AID/USIA Regulations, as from time to time amended will be based upon a memorandum from the technical office and approved by the Assistant Administrator or Mission Director having program responsibility for the project in support of which the contract is written. The technical office is responsible for evaluating the reasonableness of the proposed salary, taking into account such factors as the degree of technical competence required, the scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the contractor's customary salary level, and other pertinent information. Copies of all memoranda approved by the Assistant Administrator or Mission Director will be furnished to the Support Division, Office of Contract Management.

(b) For policies on compensation of third country national or cooperating country national contractor employees, see 722.170.

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 OMB Circular A–122, Cost Principles for Nonprofit Organizations; AID implementation.

(a) Paragraph 6 of the transmittal letter for OMB Circular A–122 specifies that "Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular." The Director, Office of Contract Management, has been so designated. The Overhead and Special Cost Branch, Office of Contract Management (OSC) provides staff assistance to the Director concerning OMB Circular A–122. OSC is also responsible for obtaining cognizance under the criteria in the transmittal letter for OMB Circular A–122; for liaison with other cognizant agencies; for authorizing exclusion of OMB Circular A–122 coverage for a particular nonprofit organization pursuant to paragraph 5 of the OMB Circular A–122 transmittal letter; and for advice and assistance in applying OMB Circular A–122 cost principles.

(b) Paragraph 4b of the OMB Circular A–122 transmittal letter contains a definition of "prior approval" as follows:

> Prior approval means securing the awarding agency's permission in advance to incur costs for those items that are designated as requiring prior approval by OMB Circular A–122. Generally, this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitute approval of that cost.

Consequently, an award containing a budget constitutes prior approval of the direct cost item in the budget, unless otherwise annotated. Accordingly, award budgets should be appropriately annotated substantially as follows:

> Inclusion of any cost in the line item budget of this award does not obviate the requirement for prior approval of cost items designated as requiring prior approval by OMB Circular A–122 ; or
>
> In accordance with the requirements to OMB Circular No. A–122, approval is granted to incur costs for (name specific item or items) which are included in the budget of this award.

731.771 Bid and proposal costs.

Pending the establishment of Government-wide principles in Attachment B of OMB Circular A–122, AID will treat bid and proposal costs as follows:

(a) Bid and proposal costs are the costs of preparing bids, proposals, and applications for potential activities such as Government and non-Government grants, contracts and other agreements, including the development of scientific, cost, and other data needed to support such bids, proposals, and applications. Except as provided in (b) below, bid and proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs for allocation to all current activities, and no bid and proposal costs of past accounting periods will be allocable to the current period. However, if the organization's established practice is to treat bid and proposal costs by some other method, the results obtained may be accepted only if found to be reasonable and equitable.

(b) Bid and proposal costs incurred by the organization to obtain unrestricted funds are to be treated as fund raising and allocated an appropriate share of indirect costs under the conditions described in paragraph B.3 of Attachment A to OMB Circular A–122.

731.772 Compensation for personal services.

(a) It is AID policy to require prior approval by the contracting officer before reimbursing a contractor for employees compensation which exceeds the FS–1 rate, as set forth in the payment schedule of the Uniform State/AID/USIA Regulations. The contracting officer's approval will be obtained as specified in 731.205–6.

(b) For policies on compensation of third country national or cooperating country national contractor employees, see 722.170.

731.773 Independent research and development costs.

Pending establishment of Government-wide principles in Attachment B of OMB Circular A–122, AID will apply the cost principles at FAR 31.205–18 for independent research and development costs.

PART 732—CONTRACT FINANCING

Subpart 732.4—Advance Payments

Sec.
732.401 Statutory authority.
732.403 Applicability.
732.406–70 Letters of Credit (LOC)—AID procedures.
732.406–70–1 Purpose.
732.406–70–2 Circumstances for use of an LOC.
732.406–70–3 Establishing an LOC.
732.406–70–4 LOC contract clause.
732.406–70–5 Revocation of the LOC.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 732.4—Advance Payments

732.401 Statutory authority.

(a) Sections 635(b) of the Foreign Assistance Act and Executive Order 11223, May 12, 1955, 30 FR 6635, permit the making of advance payments with respect to functions authorized by the Foreign Assistance Act. Advance payments may also be made under section 305 of the Property Act, which provides authority, not otherwise available to AID, to take a paramount lien.

(b) The Act of August 28, 1968, Pub. L. 85–804 does not apply to AID.

732.403 Applicability.

References to nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work include nonprofit

contracts with nonprofit institutions for: (a) Technical assistance services provided to or for another country or countries, and (b) projects which concern studies, demonstrations and similar activities related to economic growth or the solution of social problems of developing countries.

732.406–70 Letters of Credit (LOC)—AID procedures.

732.406–70–1 Purpose.

This subsection provides guidance on use of the Letter of Credit—Treasury Financial Communication System (LOC–TFCS) and the Letter of Credit-Federal Reserve Bank (LOC–FRB), formerly know as an FRLC, for advance payments.

732.406–70–2 Circumstances for use of an LOC.

(a) The LOC–TFCS shall be used under the following circumstances:

(1) The contracting officer has determined that an advance payment is necessary and appropriate, in accordance with this subpart, the guidance provided in Subpart 32.4 of the FAR, and Chapter 15C of AID Handbook 1, Supplement B;

(2) The agency has, or expects to have, a continuing relationship of at least one year with the recipient organization, and the annual amount required for advance financing will be at least $120,000;

(3) To Office of Financial Management, Program Accounting Division (M/FM/PAD) agrees that the letter of credit payment method is appropriate; and

(4) The recipient organization's financial institution has entered into an agreement with the U.S. Treasury on the use of the LOC–TFCS.

(b) The LOC–FRB shall be used if the recipient organization's financial institution has not entered into an agreement with the U.S. Treasury on the use of the LOC–TFCS, provided that circumstances specified in 732.406–70–2(a)(1) through 732.406–70–2(a)(4) are met.

732.406–70–3 Establishing an LOC.

(a) An LOC is established by M/FM/PAD under rules and procedures issued by the Treasury Department. While the contract will provide for the use of an LOC when it is justified under 732.406–70–2, the LOC is a separate agreement between the contractor and M/FM/PAD, acting on behalf of the AID Controller. The terms and conditions of the LOC are established by the LOC.

(b) An LOC is established upon the request of the contracting officer, with the consent of M/FM/PAD. The request to M/FM/PAD must be made in writing early in the negotiation cycle as possible, and must include the following information:

(1) The name and address of the contractor, and the name, address, and telephone number of the contractor's representative for matters concerning establishment of the LOC.

(2) The name and address of the contractor's financial institution.

(3) The contracting officer's justification for an advance payment.

(4) The estimated total amount of the contract, and estimated frequency and amount of drawdowns against the LOC.

(5) A copy of the contractor's proposal.

(6) A copy of the PIO/T.

(7) Any other information specified by M/FM/PAD.

(8) Any special conditions or restrictions to be addressed in the LOC such as subadvances, special approval for subadvances, etc.

(c) M/FM/PAD will respond to the contracting officer's request within 5 working days of receipt by either:

(1) Concurring in the request (either as received, or with suggested changes).

(2) Requesting additional information.

(3) Rejecting the request for specified reasons.

(d) Rejection by M/FM/PAD may be appealed to the head of the contracting activity (HCA) and the AID Controller for a final decision.

(e) If a LOC is to be used:

(1) The contracting officer will:

(i) Prepare the appropriate findings, determination, and authorization for advance payment for signature by the HCA or his/her authorized designee.

(ii) Transmit a signed copy of the findings, determination and authorization to M/FM/PAD, together with a signed copy of the contract to authorize the LOC (see 732.406–70–4).

(iii) Include the LOC material provided by M/FM/PAD, under 732.406–70–3(e)(2)(v), in the official contract file.

(2) M/FM/PAD will:

(i) Determine the appropriate LOC type (LOC-TFCS or LOC-FRB) in accordance with 732.406–70–2(d) and (e).

(ii) Prepare the LOC in accordance with the procedures issued by Treasury and implemented by AID.

(iii) Enter into the LOC with the contractor.

(iv) Maintain the LOC in accordance with its terms, and Treasury and AID procedures and regulations.

(v) Provide the contracting officer(s) a copy of each LOC and any other material governing its use at the time the LOC is issued or when it is amended or modified.

732.406–70–4 LOC contract clause.

If payment is to be provided by LOC, the contract shall contain the clause in 752.232–70.

732.406–70–5 Revocation of the LOC.

After consultation with the contracting officer, M/FM/PAD may revoke the LOC by written notification to the contractor. A copy of any such revocation notice will immediately be provided to the cognizant contracting officer(s).

PART 733—DISPUTES AND APPEALS

Subpart 733.70—Aid Procedure

Sec.

733.7001 Designation of Armed Services Board of Contract Appeals (ASBCA) to hear and determine appeals under AID contracts.

733.7002 Special procedures regarding contract disputes appeals promulgated pursuant to Paragraph 2 of the Administrator's Designation.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp. p. 435.

Subpart 733.70—AID Procedure

733.7001 Designation of Armed Services Board of Contract Appeals (ASBCA) to hear and determine appeals under AID contracts.

(a) The ASBCA is hereby designated the authorized representative of the Administrator of the Agency for International Development (AID) in hearing, considering, and determining as fully and finally as might the Administrator, appeals by contractors from decisions on disputed questions taken pursuant to the provisions of contracts requiring the determination of such appeals by the Administrator or his/her duly authorized representative or Board.

(b) In acting under this designation, the ASBCA will follow such rules and procedures as are or may be prescribed for the conduct of Defense Department contract appeal cases, except for the rules entitled "Forwarding of Appeals" (Rule 3) and "Duties of the Contracting Officer" (Rule 4), which subjects will be governed by procedures to be promulgated by the General Counsel of AID with approval of the Chairman of the ASBCA.

(c) The General Counsel of AID will assure representation of the interests of the Government in proceedings before the ASBCA.

(d) All officers and employees of AID will cooperate with the ASBCA and Government counsel in the processing of appeals so as to assure their speedy and just determination.

(e) This designation will apply to appeals which have not been docketed by the AID Board of Contract Appeals before November 1, 1965, and, to such extent and in such manner as may be agreed upon by the General Counsel of AID and the Chairman of the ASBCA to appeals docketed before that date.

(f) The General Counsel of AID will assure that all matters docketed by the AID Board of Contract Appeals before November 1, 1965, are transferred or brought to completion, that no appeals will subsequently be docketed by that Board, that upon completion of its business the records and files of the Board will be transferred to the Executive Secretary of AID. The General Counsel will thereupon dissolve the Board.

733.7002 Special procedures regarding contract disputes appeals promulgated pursuant to Paragraph 2 of the Administrator's Designation.

(a) The following rules will apply, in lieu of Rules 3 and 4(a) of the ASBCA, to contract dispute appeals to the Administrator of the AID or his/her authorized representative which are docketed with that Board.

(b) Rule 3 (AID). *Forwarding of Appeals.* When a notice of appeal in any form has been received by the contracting officer, he/she shall endorse thereon the date of mailing (or date or receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board with a copy to the AID General Counsel in Washington, D.C. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor, the contracting officer, and the AID General Counsel will be promptly advised of its receipt, and the contractor will be furnished a copy of these rules.

(c) Rule 4 (AID). *Preparation, Contents, Organization, Forwarding, and Status of Appeal File* (Supersedes Rule 4, "Duties of Contracting Officer" of the ASBCA rules in effect on September 30, 1965).

(d) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the AID General Counsel in Washington, D.C., two copies of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) All transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(e) The General Counsel will compile the appeal file from such documents, which file must contain the items enumerated in (d) (1) through (5) above and will promptly, and in any event within 65 days after the appeal is docketed by the Board, transmit the appeal file to the Board. The General Counsel will notify the appellant when he/she has compiled the appeal file, will provide him/her with a list of its contents, and will afford him/her an opportunity to examine the complete file at the office of the Board and, if the General Counsel deems it appropriate, at any overseas location, for the purpose of satisfying himself/herself as to the contents, and furnishings or suggesting any additional documentation deemed pertinent to the appeal. After receipt of the foregoing file, as it may be augmented at the time of receipt, the Board will promptly advise the parties.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 736—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 736.6—Architect-Engineer Services

Sec.

736.602–2 Evaluation boards.
736.602–3 Evaluation board functions.
736.602–4 Selection authority.
736.602–5 Short selection procedure for procurements not to exceed $25,000.
736.603 Collecting data on and appraising firms' qualifications.
736.605 Government cost estimate for architect-engineer work.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 736.6—Architect-Engineer Services

736.602–2 Evaluation boards.

(a) The Senior Engineer, Engineering Staff, Bureau for Science and Technology, or the chief engineer at an AID Mission is the designated representative of the Agency head for the establishment of architect-engineer evaluation boards.

(b) No firm or organization shall be eligible for consideration for a contract where its principals or associates participated as a member of the evaluation board in the selection process for that project.

(c) Each evaluation board will include a representative of the contracting officer and, as appropriate, the cognizant bureau.

736.602–3 Evaluation board functions.

Agency architect-engineer evaluation boards shall perform the following functions:

(a) Prepare a selection memorandum recommending no less than three firms which are considered most highly qualified to perform the required services for submission to the head of the contracting activity for his/her approval. This selection memorandum shall include the information specified in 736.602–3(c).

(b) In evaluating architect-engineer firms, the architect-engineer evaluation board shall apply the following criteria, other criteria established by Agency regulations, and any criteria set forth in the public notice on a particular contract:

(1) Specialized experience of the firm (including each member of joint venture or association) with the type of service required;

(2) Capacity of the firm to perform the work (including any specialized services) within the time limitations;

(3) Past record of performance on contracts with AID or other Government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules, to the extent such information is available;

(4) Ability to assign an adequate number of qualified key personnel from the organization, including a competent supervising representative having considerable experience in responsible positions on work of a similar nature;

(5) The portions of the work the architect-engineer is able to perform with its own forces when required;

(6) Ability of the architect-engineer to furnish or to obtain required materials and equipment;

(7) If the geographical or topographical aspects of the project are deemed vital, familiarity with the locality where the project is situated;

(8) Financial capacity;

(9) Responsibility of the architect-engineer under standards provided in FAR subpart 9.1. No contract may be awarded to a contractor that does not meet these standards;

(10) Volume of work previously awarded to the firm by the Agency, with the object of effecting an equitable distribution of architect-engineer contracts among qualified firms. Each

architect-engineer evaluation board shall give favorable consideration, to the fullest extent practicable to the most highly qualified firms that have not had prior experience on Government projects (including small business firms and firms owned by the socially and/or economically deprived).

(c) The evaluation board shall prepare a selection memorandum for the approval of the head of the contracting activity. The selection memorandum will be signed by the board chairman and cleared by each board member. The selection memorandum shall include the following information:

(1) A listing by name of all firms reviewed by the board;

(2) A listing of the evaluation criteria applied;

(3) An analysis of the selection showing the rationale for the board's recommendation;

(4) The board's recommendation of the three most highly qualified firms, in order of preference;

(5) An independent Government cost estimate. The evaluation board shall require the project engineer to develop an independent Government estimate of the cost of the required architect-engineer services. Consideration shall be given to the estimated value of the services to be rendered, the scope, complexity, and the nature of the project and the estimated costs expected to be generated by the work. The independent Government estimate shall be revised as required during negotiations to correct noted deficiencies and reflect changes in or clarification of, the scope of the work to be performed by the architect-engineer. A cost estimate based on the application of percentage factors to cost estimates of the various segments of the work involved, e.g., construction project, may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent Government estimate.

736.602–4 Selection authority.

(a) The head of the contracting activity or his/her authorized designee shall review the selection memorandum and shall either approve it or return it to the board for reconsideration for specified reasons.

(b) Approval of the selection memorandum by the head of the contracting activity or his/her authorized designee shall serve as authorization for the contracting office to commence negotiation.

736.602–5 Short selection procedure for procurements not to exceed $25,000.

References to FAR 36.602–3 and 36.602–4 contained in FAR 36.602–5 shall be construed as references to 736.602–3 and 736.602–4 of this subpart.

736.603 Collecting data on and appraising firms' qualifications.

A Contractor's Index is maintained in Washington by the AID Office of Small and Disadvantaged Business Utilization. Architect-engineers wishing to perform contracts for AID should file the appropriate form with that office, as provided in subpart 705.001. Procurements are publicized in the *Commerce Business Daily*, as provided in FAR Part 5.

736.505 Government cost estimate for architect-engineer work.

See 736.602–3(c)(5).

PART 737—SERVICE CONTRACTING

Subpart 737.2—Services of Experts and Consultants

Sec.

737.200 Scope of subpart.
737.201 Definitions.
737.270 Contracting for consulting services.
737.271 Contract data reporting.
737.272 Identifying contracts for consulting services.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 737.2—Services of Experts and Consultants

737.200 Scope of subpart.

This subpart implements and supplements Subpart 37.2 of the FAR. It provides supplementary, AID-specific examples of activities excluded from the definition of consulting services; and establishes procedures for determination, justification, approval, and reporting of such services, as required by OMB Circular A–120 and Subpart 37.2 of the FAR. This subpart also establishes special marking requirements in 737.272 for contracts for consulting services.

737.201 Definitions.

Within the specific context of AID's operations, any consulting services for which the primary beneficiary is the host country are not considered to be consulting services.

737.270 Contracting for consulting services.

(a) In cases where a single contract finances activities included within the definition of consulting services, and activities excluded from the definition, the contracting officer is responsible for determining whether the primary purpose of the contract is consulting services, in which case the contract will be classed as a consulting services contract.

(b) A signed justification and approval, as specified in paragraph (c) of this section must accompany each request for a contract for consulting services. If the contracting officer determines that a requested contract is for consulting services, and the required justification and approval has not been prepared, the request will be returned to the cognizant project office, together with a memorandum stating that the requested contract has been determined to be for consulting services; that justification and approval is required; and that the request for contract services will be acted upon when it is returned accompanied by the required justification and approval.

(c) The justification and approval must be clearly identified as a justification for consulting services, and must provide the following information:

(1) *Need and Utilization:* State concisely the specific need for procuring the consulting service, including the objectives and the anticipated benefits for the Agency. State the estimated cost of the services, and evaluate the cost in terms of anticipated utilization of the work product.

(2) *Review of Prior Work:* Briefly describe efforts made to ensure that the proposed consulting service does not, in the given circumstances, duplicate work conducted previously. Where appropriate, describe the results of an AID Data Bank (located in the Acquisitions Development Information and Utilization Service, Bureau for Program and Policy Coordination) search.

(3) *In-House Capability:* Describe the expertise needed for the service and state whether such expertise exists in AID. If it is found that the expertise does exist in AID, and is available for assignment to the work, state why AID personnel are not being assigned to the task.

(d) The justification must be approved by an officer one level above the organizational unit within a Bureau or Office requesting the service but two levels above during the fourth quarter of the fiscal year. For Mission-awarded direct contracts, these guidelines regarding approval levels should be followed whenever possible; however, throughout the fiscal year, the approval officer need be no higher than the principal AID officer at the post.

(e) *Organizational conflict of interest.* (1) As required by FAR 37.205, offerors must disclose possible conflicts of interest. The offeror will be required to

submit the following representation with its proposal:

Organizational Conflicts of Interest Representation

(i) The offeror represents, to the best of its knowledge and belief, that the award to it of a contract or the modification of an existing contract does ( ) or does not ( ) involve an organizational conflict of interest.

(ii) The term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including its chief executives, directors, proposed consultants or subcontractors) has interest which: (A) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or, (B) may result in an unfair competitive advantage. It does not include the normal flow of benefits from the performance of a contract.

(iii) The term "Contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in FAR 19.101.

(2) If the offeror indicates that there are organizational conflicts of interest in the "Organizational Conflicts of Interest Representation", the offeror shall provide a statement which describes in a concise manner all relevant facts concerning any present or current planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed in the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to being able to render impartial, technically sound, and objective assistance or advice, or being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would eliminate or neutralize such organizational conflict.

(3) The contract clause entitled "Organizational Conflicts of Interest" set forth in subsection 752.7020 of the AIDAR shall be included in every contract award pursuant to this Subpart 737.2.

737.271 Contract data reporting.

Within AID, input into the Federal Procurement Data System is accomplished through the Contract On-Line Reporting System. The contracting officer is responsible for insuring that contracts for consulting services are identified as such on Form AID 1420–49, the Contract/Grant/ Cooperative Agreement Data Sheet.

737.272 Identifying contracts for consultant services.

The contracting officer is responsible for identifying all contracts, including purchase orders, work orders, and amendments thereto, determined to be for consulting services in accordance with Subpart 737.2. All copies of such contracts are to be legibly marked "Consulting Services" on the upper right-hand corner of the cover page of the contract.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 742—CONTRACT ADMINISTRATION

Subpart 742.7—Indirect Cost Rates

742.770 Negotiated indirect cost rate agreement.

Except for educational institutions having a cognizant agency (as defined in OMB Circular A–88, 44 FR 70094, 12/5/79) other than AID, AID may establish negotiated overhead rates in a Negotiated Indirect Cost Rate Agreement (Form AID 1420–47, as set forth in 753.270–1), executed by both parties. The Negotiated Indirect Cost Rate Agreement is automatically incorporated in each contract between the parties and shall specify: (a) The final rate(s), (b) the base(s) to which the rate(s) apply, (c) the period(s) for which the rate(s) apply, (d) the items treated as direct costs, and (e) the contract(s) to which the rate(s) apply. The Negotiated Indirect Cost Rate Agreement shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in each contract between the parties.

(Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435)

PART 749—TERMINATION OF CONTRACTS

Subpart 749.1—General Principles

Sec.

749.100 Scope of subpart.
749.111 Review of proposed settlements.
749.111–70 Termination settlement review boards.
749.111–71 Required review and approval.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 749.1—General Principles

749.100 Scope of subpart.

The Foreign Aid and Related Agencies Appropriation Act, 1963, and subsequent appropriation Acts, have imposed the following requirement:

> None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, as amended, may be used for making payments on any contract for procurement to which the United States is a party entered into after the date of enactment of this Act which does not contain a provision authorizing the termination of such contract for the convenience of the United States.

See, for example, section 110 of the Foreign Assistance and Related Agencies Appropriation Act, 1965.

749.111 Review of proposed settlements.

749.111–70 Termination settlement review boards.

(a) The AID Settlement Review Board shall be composed of the following members or their delegates (except as provided under 749.111–71(b)):

(1) Procurement Executive;

(2) Controller;

(3) General Counsel.

(b) The Procurement Executive or his/her delegate shall be designated as chairman of the board. Delegate members of the board shall have broad business and contracting experience and shall be senior AID officials. Each member or his/her delegate must be in attendance in order to conduct business, and the board shall act by majority vote. No individual shall serve as a member of a board for the review of a proposed settlement if he/she has theretofore reviewed, approved or disapproved or recommended approval, disapproval or other action with respect to any substantive element of such settlement proposal.

(c) The chairman shall appoint a nonvoting recorder who shall be responsible for receiving cases, scheduling and recording the proceedings at meetings, maintaining a log of all cases received by him/her for the board, and other duties as assigned by the board.

749.111–71 Required review and approval.

(a) *When required.* The AID Settlement Review Board shall receive and approve all AID/W and Mission proposed settlements or determinations if:

(1) The amount of settlement, by agreement or determination, involves $50,000 or more;

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and: (i) In the case of complete termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is

$50,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

(3) The head of the contracting activity concerned determines that a review of a specific case or class of cases is desirable; or

(4) The contracting officer, in his/her discretion, desires review by the board.

(b) *Level of review.* Proposed settlements in excess of $1 million shall be reviewed and approved by a board consisting of the Procurement Executive, the General Counsel, and the Controller, without power of redelegation.

(c) *Submission of information.* The contracting officer shall submit to the board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of: (1) The contractor's or subcontractor's settlement proposal, (2) the audit report, (3) the property disposal report and any required approvals in connection therewith, and (4) the contracting officer's memorandum explaining the settlement. The board may, in its discretion, require the submission of additional information.

PART 750—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.

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750.7000 Ratification of unauthorized contract awards.

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750.7110–5 Records.
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Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

750.000 Scope of part.

AID is not among the agencies named in the Act or authorized by the President to take actions under it; however, see Subpart 750.71—Extraordinary Contractual Actions to Protect Foreign Policy Interests of the United States.

Subpart 750.70—Ratification of Unauthorized Contract Awards

750.7000 Ratification of unauthorized contract awards.

(a) Execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. To be effective, such ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by a person authorized to ratify such acts. Generally such ratification may be made only by an official on whose behalf the contract was made and then only: (1) If he/she could have given authority to enter into the contract before it was awarded and (2) if he/she still has power to do so at the time of ratification.

(b) The Director, Office of Contract Management, is the official within AID who may ratify unauthorized contract awards in accordance with paragraph (a).

Subpart 750.71—Extraordinary Contractual Actions To Protect Foreign Policy Interests of the United States

750.7100 Scope of subpart.

This subpart sets forth the standards and the procedures for disposition of requests for extraordinary contractual actions under Executive Order 11223.

750.7101 Authority.

(a) Pursuant to section 633 of the Foreign Assistance Act of 1961, 75 Stat. 454 (22 U.S.C. 2933) as amended, Executive Order 11223, dated May 12, 1965 (30 FR 6635) as amended, and State Department Delegation of Authority No. 104, dated November 3, 1961 (26 FR 10608) as amended, the Administrator of the Agency for International Development has been granted authority to provide extraordinary contractual relief. The authority is set forth in sections 3 and 4 of the Executive Order as follows:

Section 3. With respect to cost-type contracts heretofore or hereafter made with nonprofit institutions under which no fee is charged or paid, amendments or modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or of the form of the contract amended or modified, or the amending or modifying contract and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

Section 4. With respect to contracts heretofore or hereafter made, other than those described in Section 3 of this Order, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof, if the Secretary of State determines in each case that such action is necessary to protect the foreign policy interests of the United States.

(b) The authority delegated to the Secretary of State under the Executive Order has been redelegated to the Administrator, Agency for International Development, under State Department Delegation 104, with power to redelegate.

750.7102 General policy.

Extra-contractual claims arising from foreign assistance contracts will be processed in accordance with this subpart, which is similar to that utilized to process claims for extraordinary relief under FAR Part 50, as modified to meet the circumstances involved under the Foreign Assistance Act and the different authority involved.

750.7103 Definitions.

(a) The term "approving authority" as used in this subpart means an officer or official having been delegated authority to approve actions under the Executive Order. This authority is distinguished from authority to take appropriate contractual action pursuant to such approval.

(b) The term "The Executive Order" shall mean Executive Order 11223 (30 FR 6635) as amended.

(c) The term "the Delegation of Authority" shall mean State Department Delegation of Authority No. 104 (26 FR 10608).

(d) The term "the Act" shall mean the Foreign Assistance Act of 1961, as amended.

750.7104 Types of actions.

Three types of actions may be taken by or pursuant to the direction of an approving authority under the Executive Order. These are contractual adjustments such as amendments without consideration, correction of mistakes, and formalization of informal commitments.

750.7105 Approving authorities.

Authority to approve actions processed under this subpart has been delegated as follows:

(a) The Director, Office of Contract Management, may approve actions up to $50,000 per contract under Section 3 of the Executive Order.

(b) The Associate Assistant to the Administrator for Management may approve actions up to $250,000 per contract under both Sections 3 and 4 of the Executive Order.

(c) The Administrator and Deputy Administrator must approve any action over $250,000.

750.7106 Standards for deciding cases.

750.7106–1 General.

The mere fact that losses occur under a Government contract is not, by itself, a sufficient basis for the exercise of the authority conferred by the Executive Order. Whether, in a particular case, appropriate action such as amendment without consideration, correction of a mistake or ambiguity in a contract, or formalization of an informal commitment, will protect the foreign policy interests of the United States is a matter of sound judgment to be made on the basis of all of the facts of such case. Although it is obviously impossible to predict or enumerate all the types of cases with respect to which action may be appropriate, examples of certain cases or types of cases where action may be proper are set forth in subsections 750.7106–2 through 750.7106–4. Even if all of the factors contained in any of the examples are present, other factors or considerations in a particular case may warrant denial of the request. These examples are not intended to exclude other cases where the approving authority determines that the circumstances warrant action.

750.7106–2 Amendments without consideration.

(a) Where an actual or threatened loss under a foreign assistance contract, however caused, will impair the productive ability of a contractor whose continued performance of any foreign assistance contract or whose continued operation as a source of supply is found to be essential to protect the foreign policy interests of the United States, the contract may be adjusted but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) Where a contractor suffers a loss (not merely a diminution of anticipated profits) on a foreign assistance contract as a result of Government action, the character of the Government action will generally determine whether any adjustment in the contract will be made and its extent. Where the Government action is directed primarily at the contractor and is taken by the Government in its capacity as the other contracting party, the contract may be adjusted if fairness so requires; thus where such Government action, although not creating any liability on its part, increases the cost of performance, considerations of fairness may make appropriate some adjustment in the contract.

750.7106–3 Mistakes.

A contract may be amended or modified to correct or mitigate the effect of a mistake, including the following examples:

(a) A mistake or ambiguity which consists of the failure to express or to express clearly in the written contract the agreements as both parties understood them;

(b) A mistake on the part of the contractor which is so obvious that it was or should have been apparent to the contracting officer; and

(c) A mutual mistake as to a material fact.

Amending contracts to correct mistakes with the least possible delay normally will protect the foreign policy interests of the United States by expediting the procurement program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly.

750.7106–4 Informal commitments.

Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without a formal contract; for example, where any person, pursuant to written or oral instructions from an officer or official of the Agency and relying in good faith upon the apparent authority of the officer or official to issue such instructions, has arranged to furnish or has furnished property or services to the agency and/or to a foreign assistance contractor or subcontractor without formal contractual coverage for such property or services. Formalization of commitments under such circumstances normally will protect the foreign policy interests of the United States by assuring persons that they will be treated fairly and paid expeditiously.

750.7107 Limitations upon exercise of authority.

(a) The Executive Order is not authority for:

(1) The use of the cost-plus-a-percentage-of-cost system of contracting;

(2) The making of any contract in violation of existing law relating to limitation on profit or fees;

(3) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding; or

(4) The waiver of any bid, payment performance or other bond required by law.

(b) No amendments, or modifications shall be entered into under the authority of the Executive Order:

(1) Unless, with respect to cases falling within Section 4 of the Executive Order, a finding is made that the action is necessary to protect the foreign policy interests of the United States;

(2) Unless other legal authority in the Agency is deemed to be lacking or inadequate;

(3) Except within the limits of the amounts appropriated and the statutory contract authorization.

(c) No contract shall be amended or modified unless the request therefor has been filed before all obligations (including final payment) under the contract have been discharged.

(d) No informal commitment shall be formalized unless:

(1) A request for payment has been filed within six months after arranging to furnish or furnishing property or services in reliance upon the commitment; and

(2) It is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

750.7108 Contractual requirements.

Every contract amended or modified pursuant to this subpart shall contain:

(a) A citation of the Act and Executive Order.

(b) A brief statement of the circumstances justifying the action;

(c) A recital of the finding, with respect to cases falling within Section 4 of the Executive Order, that the action is necessary to protect the foreign policy interests of the United States.

750.7109 Submission of requests by contractors.

750.7109–1 Filing requests.

Any person (hereinafter called the "contractor") seeking an adjustment under standards set forth in 750.7106 may file a request in duplicate with the cognizant contracting officer or his/her duly authorized representative. If such filing is impracticable, requests will be deemed to be properly filed if filed with the Director, Office of Contract Management, for forwarding to the cognizant contracting officer.

750.7109–2 Form of requests by contractors.

The contractor's request shall normally consist of a letter to the contracting officer providing the information specified in FAR 50.303.

750.7109–3 Facts and evidence.

The contracting officer or the approving authority may, where considered appropriate, request the contractor to furnish the facts and evidence as dsecribed in FAR 50.304.

750.7110 Processing cases.

750.7110–1 Investigation.

The Director, Office of Contract Management, shall be responsible for assuring that the cognizant contracting officer in all cases shall make a thorough investigation of all facts and issues relevant to each case. Facts and evidence shall be obtained from contractor and Government personnel, and shall include signed statements of material facts within the knowledge of the individuals where documentary evidence is lacking, and audits where considered necessary to establish financial or cost facts. The investigation shall establish both the facts essential to meeting the standards for deciding the particular case and the essential facts as to who has authority to approve the request.

750.7110–2 Intra-agency coordination.

Prior to the submission of a case to the approving authority recommending extraordinary contractual relief, the claim will be fully developed by the Office of Contract Management and concurrences or comments obtained from the Office of General Counsel and the Inspector General for the proposed relief to be granted. Such concurrences or comments shall be incorporataed in or accompany the action memorandum submited for consideration to the approving authority in accordance with 750.7110–3.

750.7110–3 Submission of cases to the approving authority.

Cases to be submitted for consideration shall be forwarded by means of an action memorandum signed by the Director, Office of Contract Management. The action memorandum shall state:

(a) The nature of the case;

(b) The basis for authority to act under 750.7101;

(c) The findings of fact essential to the case (see 750.7109–3) arranged chronologically with cross references to supporting enclosures;

(d) The conclusions drawn from applying the standards for deciding cases, as set forth in 750.7106, to the findings of fact;

(e) The disposition recommended, and, if contractual action is recommended with respect to cases falling within Section 4 of the Executive Order, the opinion of the signer that such action is necessary to protect the foreign policy interest of the United States; and

(f) The action memorandum shall enclose copies of the contracting officer's findings and recommendations, the evidentiary materials, all other reports and comments of cognizant Government or other officials, and a copy of the contractor's request with a cover sheet providing the following summary information related to the request.

(1) Date of request;

(2) Date request received by AID:

(3) Contract number;

(4) Contractor's name and address;

(5) Name, address, and phone number of contractor's representative;

(6) Name, office symbol, and phone number of cognizant contracting officer;

(7) Amount of request.

750.7110–4 Processing by approving authority.

In each case, the approving authority, whether approving or denying the request, shall sign a decision which shall be dated and shall contain the following:

(a) The name and address of the contractor, the contract identification, and the nature of the request;

(b) The decision reached and the actual cost or estimated potential cost, if any, of the settlement;

(c) A concise description of the property or services involved;

(d) A statement of the circumstances justifying the decision; and

(e) If some adjustment action is approved with respect to cases falling within section 4 of the Executive Order, a statement in substantially the following form: I find that the action authorized herein is necessary to protect the foreign policy interests of the United States.

750.7110–5 Records.

The following shall be retained in Agency files as a record of each action processed in accordance with this subpart:

(a) The decision required in 750.7110–4;

(b) The action memorandum and all enclosures as required in 750.7110–3; and

(c) A copy of the contractual document implementing any approved contractual action.

750.7110–6 Inter-agency coordination.

(a) *General.* Where a case involves matters of interest to more than one department or agency, AID should maintain liaison with other departments and agencies of the Government and take such joint action as may be proper under the circumstances, including holding joint meetings.

(b) *Cases involving funds of other departments or agencies.* Requests for adjustment within any category, involving the funds of another department or agency, shall not be approved by AID until advice is requested and received from the department or agency whose funds are involved.

SUBCHAPTER H—CLAUSES AND FORMS

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

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Subpart 753.3-70—AID Clause Matrices—[Reserved]

Authority: Sec. 621, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 752.2—Texts of Provisions and Clauses

752.200 Scope of subpart.

None of the clauses specified in this subpart are for use in AID personnel services contract. For personnel services contract clauses, see AIDAR Appendix D—Direct AID Contracts with U.S. Citizens or U.S. Residents for Personal Services Abroad.

752.202 Definitions.

(a) As prescribed in 702.270 and in FAR Subpart 2.2, AID contracts use the Definitions clause in FAR 52.202–1 and its Alternate I, as appropriate, and the following additional definitions.

(b) *Alternate 70.* For use in all AID contracts. Use in addition to the clause in FAR 52.202–1.

AID Definitions Clause—General Supplement for Use in All AID Contracts (Apr. 1984)

(a) "AID" shall mean the Agency for International Development.

(b) "Administrator" shall mean the Administrator or the Deputy Administrator of AID.

(c) When this contract is with an educational institution "Campus Coordinator" shall mean the representative of the Contractor at the Contractor's home institution, who shall be responsible for coordinating the activities carried out under the contract.

(d) When this contract is with an educational institution "Campus Personnel" shall mean representatives of the Contractor performing services under the contract at the Contractor's home institution and shall include the Campus Coordinator.

(e) "Consultant" shall mean any especially well qualified person who is engaged, on a temporary or intermittent basis to advise the Contractor and who is not an officer or employee of the Contractor who performs other duties for the Contractor.

(f) "Contractor employee" shall mean an employee of the Contractor assigned to work under this contract.

(g) "Cooperating Country or Countries" shall mean the foreign country or countries in or for which services are to be rendered hereunder.

(h) "Cooperating Government" shall mean the government of the Cooperating Country.

(i) "Economy class" air travel (also known as jet economy, air coach, tourist class, etc.) shall mean a class of air travel which is less than first class.

(j) "Federal Acquisition Regulations (FAR)", when referred to herein shall include Agency for International Development Acquisition Regulations (AIDAR).

(k) "Government" shall mean the United States Government.

(l) "Mission" shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(m) "Mission Director" shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(c) *Alternate 71.* For use in AID contracts with an educational institution for participant training. Use in addition to the clauses in FAR 52.202–1 and in 752.202–1(b) of this chapter.

AID Definitions Clause—Supplement for Contracts With an Educational Institution for Participant Training (Apr. 1984)

(a) "Catalog" shall mean any medium by which the Institution publicly announces terms and conditions for enrollment in the Institution, including tuition and fees to be charged. This includes "bulletins," "announcements," or any other similar word the Institution may use.

(b) "Director" shall mean the individual who fills the AID position of Director, Office of International Training, or his/her authorized representative acting within the limits of his/her authority. (c) "Fees" shall mean those applicable charges directly related to enrollment in the Institution. This shall not include any permit charge (e.g., parking, vehicle registration), or charges for services of a personal nature (e.g., food, housing, laundry) unless specifically called for in this contract.

(d) "Institution" shall mean the educational institution providing services hereunder. The terms "Institution" and "Contractor" are synonymous.

(e) "Tuition" shall mean the amount of money charged by an institution for instruction, not including fees as described in this section.

(d) *Alternate 72.* For use in all AID contracts which involve any performance overseas. Use in addition to the clauses in FAR 52.202–1 and in 752.202–1(b) of this chapter.

AID Definitions Clause—Supplement for AID Contracts Involving Performance Overseas (Apr. 1984)

(a) "Contractor's Chief of Party" shall mean the representative of the Contractor in the Cooperating Country who shall be responsible for supervision of the performance of all duties undertaken by the Contractor in the Cooperating Country.

(b) "Cooperating Country National (CCN) employee" means an individual who meets the citizenship requirements of 48 CFR 702.170–5 and is hired while residing outside the United States for work in a cooperating country.

(c) "Dependents" shall mean:

(1) Spouse;

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self support.

(3) Parents (including step and legally adoptive parents), of the employee or of the spouse, when such parents are at least 51 percent dependent on the employee for support; and

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the employee, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self support.

(d) "Local currency" shall mean the currency of the Cooperating Country.

(e) "Regular employee" shall mean a Contractor employee appointed to serve one year or more in the Cooperating Country.

(f) "Resident" shall mean an individual who has been physically present for 3 consecutive years, substantially uninterrupted, in a country.

(g) "Short-term employee" shall mean a Contractor employee appointed to serve less than one year in the Cooperating Country.

(h) "Third Country National (TCN) employee" means an individual who meets the citizenship requirements of 48 CFR 702.170–14 and is hired while residing outside the United States for work in a Cooperating Country.

752.203–1 Officials Not to Benefit.

For contracts involving performance overseas the clause prescribed in FAR

3.102–2 may be modified to specify that it refers to United States officials.

752.204–2 Security Requirements.

Pursuant to the Uniform State/AID/USIA Regulations (Volume 5, Foreign Affairs Manual, Chapter 900), AID applies the safeguards applicable to "Confidential" information to administratively controlled information designated as "Limited Official Use". Therefore, when the clause in FAR 52.204–2 is used in AID contracts, pursuant to 704.404, paragraph (a) of the clause is revised as follows:

"(a) This clause applies to the extent that this contract involves access to classified ('Confidential', 'Secret', or 'Top Secret'), or administratively controlled ('Limited Official Use') information."

752.216–70 Post-determined Indirect Cost Rates.

Cost-reimbursement contracts with commercial firms which use *post-determined* overhead rates shall use the following clause (the clause may also be used for an educational institution which uses *post-determined* overhead rates by deleting reference to ". . . Fixed Fee . . ." in paragraph (a) of the clause, and by changing reference to cost principles in paragraph (c) from ". . . Subpart 31.2 (Contracts with Commercial Organizations) . . .", to ". . . Subpart 31.3 (Contracts with Educational Institutions) . . .".

Post-determined Indirect Cost Rates (Apr. 1984)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fee, and Payment", the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the close of each of its fiscal years, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with copies to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 31.2 (Contracts With Commercial Organizations) of the Federal Acquisition Regulations as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a modification of this contract which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the Contract or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively, (1) provisional rates may at the request of either party be revised by mutual agreement and (2) billing rates may be adjusted by the Contracting Officer. Any such revision of negotiated provisional rates specified in the contract shall be set forth in modification to this contract.

(f) Any failure by the parties to agree on any final rate under this clause shall be considered a dispute concerning a question of fact decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

752.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.

The Foreign Assistance Act calls for AID to give small businesses an opportunity to provide supplies and services for foreign assistance projects. To help AID meet this obligation, the following paragraph is to be added to the clause prescribed in FAR 19.708(a):

AID small business provision. To permit AID, in accordance with the small business provisions of the Foreign Assistance Act, to give small business firms an opportunity to participate in supplying equipment supplies and services financed under this contract, the Contractor shall, to the maximum extent possible, provide the following information to the Office of Small and Disadvantaged Business Utilization (PRE/SDB), AID, Washington, D.C. 20523, at least 45 days prior to placing any order in excess of five thousand dollars ($5,000) except where a shorter time is requested of, and granted by PRE/SDB:

(1) Brief general description and quantity of commodities or services;

(2) Closing date for receiving quotations or bids; and

(3) Address where invitations or specifications may be obtained."

752.225–8 Buy American Act—Trade Agreements Act—Balance of Payments Program.

The clause prescribed by FAR 25.407(a)(2) is not generally included in AID contracts when more stringent source requirements are stated in the contract or when inclusion is not appropriate under FAR 25.403, or 725.403 of this Subpart. (See Executive Order No. 11223, dated May 12, 1965, 30 FR 6635.) The clause setting forth AID's source restrictions is shown in 752.7005.

752.228–70 Insurance—Worker's Compensation, Private Automobiles, Marine and Air Cargo.

(a) Because of the volume of projects performed overseas, resulting in contracts which require insurance pursuant to the Defense Base Act (DBA), AID has contracted with an insurance carrier to provide the DBA required insurance for all AID contractors. In addition, AID has found it necessary to prescribe insurance coverage requirements for private automobiles and marine and air cargo. Therefore, the following clauses are to be used in place of the clause prescribed by FAR 28.309(b).

(b) *Alternate 70.* For use in all AID cost-reimbursement contracts involving performance overseas.

Insurance—Worker's Compensation, Private Automobiles, Marine, and Air Cargo (Apr. 1984)

(a) *Worker's compensation insurance.*

(1) The Contractor before commencing performance under this contract shall provide and thereafter maintain such workers' compensation insurance or security as is required by the Defense Base Act (DBA) as amended (42 U.S.C. 1651 et seq.).

(2) The Contractor agrees to procure DBA insurance coverage requirements pursuant to a contract between AID and its insurance carrier unless: The Contractor has a DBA self insurance program approved by the Department of Labor; has an approved retrospective rating plan for DBA; or has entered into a long term agreement for DBA coverage with an underwriter or agent prior to November 14, 1977. However, if it would be economical to cancel the long-term coverage and pay short-term rates, Contractor is required to do so.

(3) If the Contractor secures a waiver of DBA coverage for its employees who are not citizens of the United States, residents of, or hired in the United States, or, AID has secured such a waiver, the Contractor agrees to comply with the conditions of such waiver.

(4) The Contractor further agrees to insert in all subcontracts hereunder to which the DBA is applicable, a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to provide overseas workmen's compensation insurance coverage and obtain DBA coverage under the AID requirements contract.

(b) *Insurance on private automobiles.* If Contractor or any of its employees or their dependents transport or cause to be transported (whether or not at contract expense) privately owned automobiles to the Cooperating Country, or they, or any of them, purchase an automobile within the Cooperating Country, Contractor agrees to make certain that all such automobiles during such ownership within the Cooperating Country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director payable in United States dollars or its equivalent in the currency of the Cooperating Country: injury to persons, $10,000/$20,000; property damage, $5,000. Contractor further agrees to deliver or cause to be delivered to the Mission Director, the insurance policies

required by this clause or satisfactory proof of the existence thereof, before such automobiles are operated within the Cooperating Country. The premium costs for such insurance shall not be a reimbursable cost under this contract.

(c) *Marine and air cargo insurance.* Contractor may obtain cargo insurance on equipment, materials, and supplies procured under this contract only after obtaining the prior written approval of the Contracting Officer.

(c) *Alternate 71.* For fixed-price contracts involving overseas performance, use the clause in *Alternate 70*, deleting paragraph (c), marine and air cargo insurance.

752.229–70 Federal, state and local taxes.

For contracts involving performance overseas the clauses prescribed in FAR 29.401–3 or 29.401–4 may be modified to specify that the taxes referred to are United States taxes.

752.232–70 Letter of Credit Advance Payment.

As required by 732.400.70–4, insert the following clause in contracts being paid by Letter of Credit.

Letter of Credit Advance Payment (Apr. 1984)

(a) Payment under this contract shall be by means of a Letter of Credit (LOC) in accordance with the terms and conditions of the LOC and any instructions issued by the AID Office of Financial Management, Program Accounting Division (M/FM/PAD).

(b) As long as the LOC is in effect, the terms and conditions of the LOC and any instructions issued by M/FM/PAD constitute the payment conditions of this contract, superseding and taking precedence over any other clause of this contract concerning payment.

(c) If the LOC is revoked, payment may be made on a cost-reimbursement basis, in accordance with the other clauses of this contract concerning payment.

(d) Revocation of the LOC is at the discretion of M/FM/PAD after consultation with the contracting officer. Notification to the contractor of revocation must be in writing and must specify the reasons for such action. The contractor may appeal any such revocation to the contracting officer, in accordance with the Disputes clause of this contract. Pending final decision, payments under the contact will be in accordance with paragraph (c) of this clause.

752.245–70 Government Property—AID Reporting Requirements.

In response to a GAO audit recommendation, AID contracts must contain the following preface and reporting requirement as additions to the appropriate Government Property clause prescribed by FAR 45.106.

Preface: to be inserted preceding the text of the FAR clause.

The term "Government furnished property" wherever it may appear in the following clause, shall mean (1) non-expendable personal property owned by or leased to the U.S. Government and furnished to the contractor *and* (2) personal property furnished either prior to or during the performance of this contract by any U.S. Government accountable officer to the contractor for use in connection with performance of this contract and identified by such officer as accountable. The term "government property", wherever it may appear in the following clause, shall mean government-furnished property and non-expendable personal property title to which vests in the U.S. Government under this contract. Non-expendable property, for purposes of this contract, is defined as property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500.

Reporting Requirement: to be inserted following the text of the FAR clause.

Reporting Requirements: The contractor will submit an annual report on all non-expendable property in a form and manner acceptable to AID substantially as follows:

ANNUAL REPORT OF GOVERNMENT PROPERTY IN CONTRACTOR'S CUSTODY

[(Name of contractor) as of (end of contract year), 19xx]

Motor vehicles	Furniture and furnishings—		Other nonexpendable property
	Office	Living quarters	
A. Value of property as of last report			
B. Transactions during this reporting period			
1. Acquisitions (add):			
a. Purchased by contractor [1]			
b. Transferred from AID [2]			
c. Transferred from others, without reimbursement [3]			
2. Disposals (deduct):			
a. Returned to AID			
b. Transferred to AID—contractor purchased			
c. Transferred to other Government agencies [3]			
d. Other disposals [3]			
C. Value of property as of reporting date			
D. Estimated average age of contractor held property			
	Years	Years	Years

[1] Property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500.

[2] Government furnished property listed in this Contract as nonexpendable.

[3] Explain if transactions were not processed through or otherwise authorized by AID.

Property Inventory Verifications

I attest that (1) physical inventories of Government property are taken not less frequently than annually; (2) the accountability records maintained or Government property in our possession are in agreement with such inventories; and (3) the total of the detailed accountability records maintained agrees with the property value shown opposite line C above, and the estimated average age of each category of property is as cited opposite line D above.

Authorized Signature.

752.245–71 Title to and Care of Property.

It is AID policy to vest title with the cooperating country for contractor acquired property used in a cooperating country. The following clause is for use in all AID contracts under which the contractor will acquire property for use overseas under the contract.

Title to and Care of Property (Apr. 1984)

(a) Title to all non-expendable property purchased with contract funds under this contract and used in the Cooperating Country, shall at all times be in the name of the Cooperating Government, or such public or private agency as the Cooperating Government may designate, unless title to specified types or classes of non-expendable property is reserved to AID under provisions set forth in the schedule of this contract; but all such property shall be under the custody and control of Contractor until the owner of title directs otherwise, or completion of work under this contract or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guaranties and warranties obtained from suppliers shall be taken in the name of the title owner. (Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of $500 of more.)

(b) Contractor shall prepare and establish a program, to be approved by the Mission, for the receipt, use, maintenance, protection, custody, and care of non-expendable property for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program.

(c)(1) For non-expendable property to which title is reserved to the U.S. Government under provisions set forth in the schedule of this contract, Contractor shall submit an annual report on all non-expendable property under its custody as required in the clause of this contract entitled "Government Property".

(2) For non-expendable property titled to the Cooperating Government, the Contractor shall, within 90 days after completion of this contract, or at such other date as may be fixed by the Contracting Officer, submit an inventory schedule covering all items of non-expendable property under its custody, which have not been consumed in the performance of this contract. The Contractor shall also indicate what disposition has been made of such property.

Subpart 752.70—Texts of AID Contract Clauses

752.7000 Scope of subpart.

Subpart 752.70 contains the text of AID-specific contract clauses for which there is no FAR equivalent. The clauses in this Subpart do not apply to contracts

for personal services. For personal service contract clauses see AIDAR Appendix D—Direct AID Contracts with U.S. Citizens or U.S. Residents for Personal Services Abroad.

752.7001 Biographical data.

This clause is required in all AID contracts.

Biographical Data (Apr. 1984)

(a) Contractor agrees to furnish to the Contracting Officer, on forms provided for that purpose, biographical information on the following individuals to be employed in the performance of the contract: (1) All individuals to be sent outside of the United States, (2) any employees designated as "key personnel", such as the campus coordinator, etc. Biographical data on the other individuals employed under the contract shall be available for review by AID at the Contractor's headquarters.

(b) Emergency locator information. The Contractor agrees to provide the following information to the Mission Administrative Officer on or before the arrival in the host country of every contract employee or dependent:

(1) The individual's full name, home address, and telephone number.

(2) The name and number of the contract, and whether the individual is an employee or dependent.

(3) The contractor's name, home office address, and telephone number, including any after-hours emergency number(s), and the name of the contractor's home office staff member having administrative responsibility for the contract.

(4) The name, address, and telephone number(s) of each individual's next of kin.

(5) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

752.7002 Travel and transportation.

(a) *Alternate 70.* For use in cost reimbursement contracts in the U.S., *except* contracts with an educational institution, or contracts for participant training.

Travel and Transportation Expenses (Apr. 1984)

(a) *United States Travel.* The Contractor shall be reimbursed for actual transportation costs and travel allowances of travelers in accordance with the established practice of the Contractor for travel within the United States directly referable to the contract and not continuous with travel to and from the Cooperating Country. Such transportation costs shall not be reimbursed in an amount greater than the cost of, and time required for, economy class commercial scheduled air travel by the most expeditious route unless economy air travel or economy air travel space are not available and the Contractor certifies to the facts in the voucher or other documents retained as part of its Contract records to support its claim for post-audit. Such travel allowances shall be in accordance with the established practice of the Contractor for travel within the United States provided that it shall not exceed the rates and basis for computation of such rates as provided in the Federal Travel Regulations, as from time to time amended.

(b) *Actual Expense Basis.* Travel on an actual expense basis may be authorized or approved by the Contractor's Chief Executive Officer, or equivalent official, when it is determined that unusual circumstances of the assignment will require expenditures greatly in excess of the maximum per diem allowance provided herein. Payment on an actual expense basis is limited to specific travel assignments and should be used only in exceptional cases and not merely to cover a small amount of costs in excess of per diem. Normally, the authorization will be limited to cases where the cost of lodging (exclusive of meals) at available hotels absorbs practically all of the per diem allowance. In no event, however, shall the amount authorized exceed the applicable maximum amount allowable under section 7.2 of the Federal Travel Regulations, as from time to time amended. Receipts covering all expenses claimed hereunder shall be filed by the traveler with his/her voucher and shall be retained as a part of the Contractor's records to support the Contractor's claim for reimbursement, or for post-audit.

(b) *Alternate 71.* For contracts for participant training in the U.S.

Travel and Transportation (Apr. 1984)

The Contractor shall be reimbursed for necessary and actual transportation costs and travel allowances of travelers in accordance with the established practice of the Contractor for travel within the United States directly referable to the Contract, provided they shall not exceed the rates and basis for computation of such rates as provided in the Federal Travel Regulations, as from time to time amended. Such transportation costs shall not be reimbursed in an amount greater than the cost of, and time required for, economy class commercial air travel scheduled by the most expeditious route unless economy travel or economy travel space are not available and the Contractor certifies to the facts in the voucher or other documents required to be submitted in accordance with the clause of this contract entitled "Documentation for Payment".

(c) *Alternate 72.* For cost reimbursement contracts with educational institutions, to be performed in the U.S.

Travel Expenses (Apr. 1984)

(a) The Contractor shall be reimbursed for actual travel costs and travel allowances for travel in the United States in accordance with the established on-campus practice of the Contractor. Travel costs shall not be reimbursed in any amount greater than the cost of, and time required for, economy class commercial scheduled air travel by the most expeditious route except as otherwise provided in paragraph (b) of this section, unless economy air travel or economy air travel space are not available and the Contractor supports this in the voucher or other documents retained as part of its contract records.

(b) The Contractor may grant under this contract reasonable delays en route, not circuitous in nature, while in travel status, caused by events beyond the control of such traveler or Contractor. It is understood that if delay is caused by physical incapacitation, personnel shall be eligible for such sick leave as is provided under paragraph (b) of the clause of this contract entitled "Leave and Holidays."

(d) *Alternate 73.* For cost reimbursement contracts performed in whole or in part overseas (use in addition to either *Alternate 70* or *Alternate 72*, as appropriate).

Travel Expenses and Transportation and Storage Expenses (Apr. 1984)

(a) *International Travel.* Prior written approval by the Contracting Officer is required for all international travel directly and identifiably funded by AID under this contract. The Contractor shall therefore present to the Contracting Office an itinerary for each planned international trip, showing the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advance of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. The Contracting Officer's prior written approval may be in the form of letter or telegram or similar device, or may be specifically incorporated into the schedule of the Contract. At least one week prior to commencement of approved international travel, the Contractor shall notify the cognizant Mission, with a copy to the Contracting Officer, of planned travel, identifying the travelers and the dates and times of arrival.

The Contractor shall be reimbursed for actual travel costs and travel allowances of travelers from place of residence in the United States (or other location provided) that the cost of such travel does not exceed the cost of the travel from the employee's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location, provided, that the cost of such travel does not exceed the cost of travel from the post of duty in the Cooperating Country to the employee's residence) upon completion of services by the individual. Such travel costs and travel allowances shall not be reimbursed in an amount greater than economy class commercially scheduled air travel by the most expeditious route, except as otherwise provided in paragraph (g) of this section, and unless economy air travel or economy air travel space are not available and the Contractor certifies to this in the voucher documents retained as part of its Contract records. When travel is by economy class accommodations, the Contractor will be reimbursed for the cost of transporting up to twenty-two (22) pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that

regularly allowed for first class travelers. If the cost of economy class accommodations plus the cost of transporting twenty-two pounds of additional accompanied personal baggage equals or exceeds the cost of first class accommodations, first class accommodations may be used. Travel allowances for travelers shall not be in excess of six dollars ($6) per day for persons eleven (11) years of age, or over, or three dollars ($3) per day for persons under eleven (11) years of age, for not more than the travel time required by scheduled economy class commercial air carrier using the most expeditious route and computed in accordance with the Federal Travel Regulations as from time to time amended. One (1) stopover en route for a period of not to exceed twenty-four hours is allowable when the traveler uses economy class accommodations for a trip of fourteen (14) hours or more scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the established practice of the Contractor but not to exceed the amounts stated in the Federal Travel Regulations, as from time to time amended.

(b) *Local travel.* Reimbursement for local travel shall not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country in connection with duties directly referable to the contract. In the absence of such established rates, the Contractor shall be reimbursed for actual travel costs of travelers in the Cooperating Country, if not provided by the Cooperating Government or the Mission, in connection with duties directly referable to the contract, including travel allowances at rates not in excess of those prescribed by the Federal Travel Regulations as from time to time amended.

(c) *Travel for consultation.* The Contractor shall be reimbursed for the round trip of the Contractor's Chief of Party in the Cooperating Country or other designated Contractor employee or consultant in the Cooperating Country performing services required under this Contract, for travel from the Cooperating Country to the Contractor's office in the United States or to AID/Washington for consultation and return on occasions deemed necessary by the Contractor and approved in advance, in writing, by the Contracting Officer or the Mission Director.

(d) *Special international travel and third country travel.* For special travel which advances the purpose of the contract, which is not otherwise provided by the Cooperating Government, and with the prior written approval of the Contracting Officer or the Mission Director, the Contractor shall be reimbursed for (i) the travel cost of travelers other then between the United States and the Cooperating Country and for local travel within other countries and (ii) travel allowance for travelers while in travel status and while performing services hereunder in such other countries at rates not in excess of those prescribed by the Federal Travel Regulations, as amended.

(e) *Indirect travel for personal convenience.* When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of economy class air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(f) *Limitation on travel by dependents.* Travel costs and allowances will be allowed only for dependents of regular employees and such costs shall be reimbursed for travel from place of abode to assigned station in the Cooperating Country and return, only if dependent remains in the country for at least nine (9) months and one-half of the required tour of duty of the regular employee responsible for such dependent, whichever is greater.

If the dependent is eligible for educational travel pursuant to the General Provision entitled "Differential and Allowances", time spent away from post resulting from educational travel will be counted as time at post.

(g) *Delays en route.* The Contractor may grant to travelers under this contract reasonable delays en route, not circuitous in nature, while in travel status, caused by events beyond the control of such traveler or Contractor. It is understood that if delay is caused by physical incapacitation, personnel shall be eligible for such sick leave as is provided under paragraph (b) of the clause of this contract entitled "Leave and Holidays".

(h) *Travel by privately owned automobile.* The Contractor shall be reimbursed for the cost of travel performed by a regular employee in his/her privately owned automobile at a rate not to exceed fifteen cents (15¢) per mile plus authorized per diem for the employee and for each of the authorized dependents traveling in the automobile if the automobile is being driven to or from the Cooperating Country as authorized under the contract; *Provided,* That the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travellers by (1) surface common carrier or (2) less than first-class air, whichever is the lesser.

(i) *Emergency and irregular travel and transportation.* Actual transportation costs and travel allowances while en route, as provided in this section will also be reimbursed under the following conditions:

(1) The costs of going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location for Contractor employees and dependents and returning to the post of duty, when the Contractor's Chief of Party makes a written determination that such travel is necessary for one of the reasons specified in paragraph (i)(1)(i) and (ii) of this clause. A copy of the written determination shall be furnished to the Contracting Officer.

(i) Need for medical care beyond that available within the area to which the employee is assigned, or serious effect on physical or mental health if residence is continued at assigned post of duty, subject in either case, to the limitations stated in the provision of this contract entitled "Physical Fitness of Employee and Dependents." The Mission Director may authorize a medical attendant to accompany the employee at contract expense if, based on medical opinion, such an attendant is necessary.

(ii) Death, or serious illness or injury of a member of the immediate family of the employee or the immediate family of the employee's spouse. "Serious illness or injury" and "immediate family" are defined in accordance with section 899.5 of the Uniform State/AID/USIA Regulations, as in effect of the date of such travel.

(2) When, for any reason, the Mission Director determines it is necessary to evacuate the Contractor's entire team (i.e., employees and dependents or dependents only), the Contractor will be reimbursed for actual travel and transportation expenses and travel allowance while en route, for the cost of the individuals going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other approved location. The return of such employees and dependents may also be authorized by the Mission Director when, in his/her discretion, he/she determines it is prudent to do so.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations, when in his/her opinion, the circumstances warrant such action. The authorization shall include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and/or household effects, etc. Requests for such emergency travel shall be submitted through the Contractor's Chief of Party.

(4) If a regular employee does not complete one full year at post of duty (except for reasons beyond his/her control), the costs of going to and from the post of duty are not reimbursable hereunder. If the employee serves more than one year but less than the required service in the Cooperating Country (except for reasons beyond his/her control) the costs of going to the post of duty are reimbursable hereunder but the costs of going from post of duty to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location are not reimbursable under this contract.

(j) Home leave travel. TCN and CCN employees are not eligible for home leave unless authorized in advance by the cognizant Mission Director, and consequently are not eligible for home leave travel unless authorized in advance by the cognizant Mission Director. A copy of any such authorization shall be provided to the Contracting Officer. The Contractor shall be reimbursed for the cost of travel performed by regular employees and dependents for purposes of home leave provided that such reimbursement does not exceed that

authorized by the Uniform State/AID/USIA Foreign Service Travel Regulations.

(k) *Rest and recuperation travel.* The Contractor shall be reimbursed for the cost of travel performed by regular employees and dependents for purposes of rest and recuperation: *Provided,* That, such reimbursement does not exceed that authorized Mission employees, e.g., required length of service at the post of assignment unbroken by home leave: *And Provided Further,* That no reimbursement will be made unless approval is given by the Contractor's Chief of Party.

(l) *Transportation of motor vehicles, personal effects and household goods.* Transportation, including packing and crating costs, will be paid for shipping from the point of origin in the United States (or other location as approved by the Contracting Officer) to post of duty in the Cooperating Country and return to point of origin in the United States (or other location as approved by the Contracting Officer):

(1) Of one privately owned vehicle for each regular employee,

(2) Of personal effects of travelers, and

(3) Of household goods of each regular employee not to exceed the following limitations:

	Basic household furniture not supplied (pounds net weight)	Basic household furniture supplied (pounds net weight)
Regular employee with dependents in Cooperating Country	7,500	2,500
Regular employee without dependents in Cooperating Country	4,500	1,500

Note.— For the purpose of this clause "net weight" and "gross weight" are defined and determined in accordance with the provisions of 162.1 of the Uniform State/AID/USIA Foreign Service Travel Regulations.

The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating and transportation by surface. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the Cooperating Country, the cost of boxing or crating is not reimbursable. The transportation of a privately-owned motor vehicle for a regular employee may be authorized by the Contractor, as replacement of the last such motor vehicle shipped under this contract for such employee when the Mission Director or his/her designee determines in advance and so notifies the Contractor in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the regular employee. The determination shall be made under the same rules and regulations that apply to Mission employees.

(m) *Unaccompanied baggage.* The Contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance above for household effects) not to exceed the following:

	Gross weight (pounds)
Employee	250
First dependent travelling	200
Second dependent travelling	150
Each additional dependent travelling	100

This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used. Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival at destination. To permit the arrival of effects to coincide with the arrival of regular employees and dependents, consideration should be given to advance shipments of unaccompanied baggage.

The foregoing provision concerning unaccompanied baggage is also applicable to home leave travel. The foregoing provision concerning unaccompanied baggage is also applicable to short-term employees when these are authorized by the terms of this contract.

(n) *Storage of household effects.* The cost of storage charges (including packing, crating, and drayage costs) in the U.S. of household goods of regular employees will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (a) above: *Provided,* That the total amount of household goods shipped to the Cooperating Country and stored in the U.S. shall not exceed 4,500 pounds net for each regular employee without dependents in the Cooperating Country and 7,500 pounds net for each regular employee with dependents in the Cooperating Country.

(o) International ocean transportation. (1) Flag eligibility requirements for ocean carriage is covered by paragraph (c)(2) of the General Provision entitled "Source and Nationality Requirements" of this contract.

(i) Transportation of things. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Transportation Support Division, Office of Commodity Management, Agency for International Development, Washington, D.C. 20523, or the Mission Director, as appropriate, giving the basis for the request.

(ii) Transportation of persons. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Contracting Officer or the Mission Director, as appropriate.

(2) Transportation of foreign-made vehicles. Reimbursement of the costs of transporting a foreign (non-U.S.) made motor vehicle will be made in accordance with the provisions of the Uniform State/AID/USIA Foreign Service Travel Regulations, as from time to time amended.

(3) Reduced rates on U.S. flag carriers. Reduced rates on United States flag carriers are in effect for shipments of household goods and personal effects of AID contract personnel. These reduced rates are available provided the shipper states on the bill of lading that the cargo is "Personal property-not for resale-payment of freight charges is at U.S. Government (AID) expense and any special or diplomatic discounts accorded this type cargo are applicable." The Contractor will not be reimbursed for shipments of household goods or personal effects in an amount in excess of the reduced rates available in accordance with the foregoing.

(e) *Alternate 74.* For fixed-price technical services contracts requiring international travel.

International Travel Approval and Notification Requirements (Apr. 1984)

Prior written approval by the Contracting Officer is required for all international travel directly and identifiably funded by AID under this contract. The Contractor shall therefore present to the Contracting Officer an itinerary for each planned international trip, showing the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advance of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. The contracting officer's prior written approval may be in the form of a letter or telegram or similar device or may be specifically incorporated into the schedule of the contract. At least one week prior to commencement of approved international travel, the Contractor shall notify the cognizant Mission, with a copy to the Contracting Officer, of planned travel, identifying the travellers and the dates and times of arrival.

752.7003 Payment.

(a) *Alternate 70.* The following clauses are required in *all* AID contracts:

Interest on Overdue Payments (Apr. 1984)

(a) The Prompt Payment Act, Public Law 97–177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract and requires the payment to contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A–125.

Payment Due Dates (Apr. 1984)

(a) Payments under this contract will be due as follows:

(1) When the designated paying office identified in the contract or purchase order is located in the U.S.: 30 calendar days after the date of actual receipt of a proper invoice in the designated paying office or 30 days after a designated AID official or authorized representative accepts the property or services, whichever is later.

(2) When the designated paying office identified in the contract or purchase order is at a foreign location: 45 calendar days after the date of actual receipt of a proper invoice in the designated paying office or 45 days after a designated AID official or authorized representative accepted the property or services, whichever is later.

(b) For definition of the term "proper invoice", see the clause of this contract entitled "Invoice Requirements"

(c) The date of the check issued in payment or the date of by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

Invoice Requirements (Apr. 1984)

Invoices shall be submitted in an original and 3 copies to the Government office designated in this contract or on the delivery order to receive invoices. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

(a) Name of the business concern and invoice date.

(b) Contract number, or other authorization for delivery of property or services.

(c) Description, price, and quantity of property and services actually delivered or rendered.

(d) Shipping and payment terms.

(e) Name and (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(f) Other payment documentation required by the contract.

(b) *Alternate 71.* The following clause, in addition to Alternate 70 clauses, is required in all AID direct cost reimbursement contracts.

Documentation for Payment (Apr. 1984)

(a) Claims for reimbursement under this contract shall be submitted to the Paying Office indicated on the cover page of this contract. The authorized Certifying Officer of the Paying Office is the designated representative of the Contracting Officer, authorized to approve vouchers under this contract. The Contractor shall submit a Voucher Form SF–1034 (original) and SF–1034(a) in three copies. Each voucher shall be identified by the appropriate AID contract number, properly executed, in the amount of dollar expenditures made during the period covered. The voucher forms shall be supported by:

(1) Original and three copies of a certified fiscal report rendered by the Contractor in a form and manner satisfactory to AID substantially as follows:

Total Expenditures

Category	Budget amount	To date	This period (indicate dates)
Salaries and wages:			
Home office	XXX	XXX	XXX
Field office	XXX	XXX	XXX
Indirect costs:			
Home office	XXX	XXX	XXX
Field office	XXX	XXX	XXX
Consultant fees	XXX	XXX	XXX
Allowances	XXX	XXX	XXX
Travel and transportation	XXX	XXX	XXX
Expendable equipment and materials	XXX	XXX	XXX
Non-expendable property	XXX	XXX	XXX
Participant costs	XXX	XXX	XXX
Other direct costs	XXX	XXX	XXX

Total Expenditures—Continued

Category	Budget amount	To date	This period (indicate dates)
Grand total	XXX	XXX	XXX

(2) The fiscal report shall include a certification, signed by an authorized representative of the Contractor, as follows:

The undersigned hereby certifies that (i) the fiscal report and any attachments have been prepared from the books and records of the Contractor in accordance with the terms of this contract, and to the best of my knowledge and belief, that they are correct, that the sum claimed under this Contract is proper and due, that all the costs of contract performance (except as herewith reported in writing) have been paid or will be paid currently by the Contractor when due in the ordinary course of business, that the work reflected by the costs above has been performed, that the quantities and amounts involved are consistent with the requirements of this Contract, that all required Contracting Officer approvals have been obtained, and (ii) appropriate refund to AID will be made promptly upon request in the event of disallowance of costs not reimbursable under the terms of this Contract.

By: _____
Title: _____
Date: _____

(3) Unless otherwise provided in this contract, the Contractor shall submit a vendor's invoice detailing the quantity, description, and price for each individual item purchased, as follows:

(i) Expendable equipment, supplies, or commodities—for transactions totaling more than $2,500.

(ii) Non-expendable property—for every purchase. Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500.

(iii) The bill of lading or airway bill as evidence of shipment by U.S.-flag carrier.

(b) *Local currency payment.* The Contractor is fully responsible for the proper expenditure and control of local currency, if any, provided under this contract. Local currency will be provided to the Contractor in accordance with written instructions provided by the Mission Director. The written instructions will also include accounting, vouchering, and reporting procedures. A copy of the instructions shall be provided to the Contractor's Chief of Party and to the Contracting Officer. The costs of bonding personnel responsible for local currency are reimbursable under this contract.

(c) Upon compliance by the Contractor with all the provisions of this contract, acceptance by the Government of the work and final report, and a satisfactory accounting by the Contractor of all Government-owned property for which the Contractor had custodial responsibility, the Government shall promptly pay to the Contractor any moneys (dollars or local currency) due under the completion voucher. The Government will make suitable reduction for any disallowance or indebtedness by the Contractor by applying the proceeds of the voucher first to such deductions and next to any unliquidated balance of advance remaining under this contract.

(d) The Contractor agrees that all approvals of the Mission Director and the Contracting Officer which are required by the provisions of this contract shall be preserved and made available as part of the Contractor's records which are required to be preserved and made available by the clauses of this contract entitled "Examination of Records by Comptroller General" and "Audit".

752.7004 Source and Nationality Requirements.

The following clause is required in all AID contracts under which the contractor will procure goods or services.

Source and Nationality Requirements for Procurement of Goods and Services (Apr. 1984)

(a) *General.* Except as may be specifically approved or directed in advance by the Contracting Officer, all goods (e.g., equipment, vehicles, materials and supplies), and services which will be financed under this contract with United States dollars shall be procured in and shipped from the United States, or from any other countries within the authorized geographic code or codes specified in the schedule of this contract. Guidance on eligibility of specific goods or services may be obtained from the Contracting Officer. AID policies on source and nationality requirements are contained in Chapters 4 and 5 of AID Handbook 1, Supplement B (Procurement Policies).

(b) *Ocean and air transportation.*

(1) Except as otherwise approved in writing by the Contracting Officer, AID will finance only those ocean transportation costs:

(i) Incurred on vessels under U.S. flag registry, when Geographic Code 000 is authorized for procurement of goods or services;

(ii) Incurred on vessels under U.S., Cooperating Country, or other Countries included in geographic Code 941 flag registry, when Geographic Code 941 is authorized for procurement of goods or services; or

(iii) Incurred on vessels under flag registry of any free world country, if the costs are part of the total cost on a through bill of lading paid to a carrier for initial carriage on a vessel which is authorized in accordance with paragraphs (b)(1)(i) and (ii), above.

(2) Any ocean or air charter, covering full or part cargo, for the transportation of goods purchased under this contract must be approved by the AID Transportation Support Division, Office of Commodity Management, prior to shipment.

(3) When use of non-U.S. flag vessels has been authorized, the following requirements still apply:

(i) At least 50% of the gross tonnage of all goods purchased under this contract and

transported to the Cooperating Country on ocean vessels shall be transported on privately-owned U.S. flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for such vessels; and

(ii) At least 50% of the gross freight revenue generated by shipments of goods purchased under this contract and transported to the Cooperating Country on dry cargo liners shall be paid to or for the benefit of privately-owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates for such vessels.

(4) When U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may request a certificate of nonavailability from the AID Transportation Support Division, Office of Commodity Management, giving the basis for the request. Such a determination of nonavailability will relieve the contractor of the requirement to use U.S. flag vessels for the tonnage of goods included in the determination.

(5) Vouchers submitted for reimbursement which include ocean shipment costs shall contain a certification essentially as follows: "I hereby certify that a copy of each ocean bill of lading concerned has been submitted to the Maritime Administration, Cargo Preference Control Center, Commerce Building, Washington, D.C. 20235 and that such bills of lading state all of the carrier's charges including the basis for calculation such as weight or cubic measurement".

(6) For use of U.S. flag air carriers, see the General Provision entitled "Preference for U.S. Flag Air Carriers".

(c) *Marine insurance.* The eligibility of marine insurance is determined by the country in which it is "placed." Insurance is "placed" in country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is also eligible. Section 604(d) of the Foreign Assistance Act requires that if a recipient country discriminates by statute, decree, rule, or practice with respect to AID-financed procurement against any marine insurance company authorized to do business in any State of the United States, then any AID-financed commodity shipped to that country shall be insured against marine risk and the insurance shall be placed in the U.S. with a company or companies authorized to do a marine insurance business in any State of the U.S.

(d) *Ineligible goods and services.* The following goods or services shall not be procured under this contract:

(1) Military equipment,

(2) Surveillance equipment,

(3) Commodities and services for support of police or other law enforcement activities,

(4) Abortion equipment and services,

(5) Luxury goods and gambling equipment, or

(6) Weather modification equipment.

If AID determines that the Contractor has procured any of these specific ineligible goods and services under this contract and has received payment therefor, the Contractor agrees to refund to AID the entire amount of the purchase.

(e) *Restricted goods.* The Contractor shall not procure any of the following goods or services without the prior written approval of the Contracting Officer:

(1) Agricultural commodities,

(2) Motor vehicles,

(3) Pharmaceuticals,

(4) Pesticides,

(5) Plasticizers,

(6) Used equipment,

(7) U.S. government-owned excess property, or

(8) Fertilizer.

If AID determines that the Contractor has procured any of these specified restricted goods under this contract without the prior written authorization of the Contracting Officer, and has received payment for such purposes, the Contractor agrees to refund to AID the entire amount of the purchase.

(f) *Printed or audio-visual teaching materials.* If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by AID in whole or in part and if other funds, including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources, in order of preference:

(1) Code 000, United States,

(2) Code—, Cooperating Country,

(3) Code 941, Selected Free World,

(4) Code 899, Free World.

(g) *Ineligible suppliers.* Funds provided under this contract shall not be used to procure any commodity or commodity-related services furnished by any supplier whose name appears on the List of Ineligible Suppliers under AID Regulation 8, "Suppliers of Commodities and Commodity-Related Services Ineligible for AID Financing" (22 CFR Part 208).

752.7005 Language, Weights, and Measures.

The following clause shall be used in all AID direct contracts.

Language, Weights, and Measures (Apr. 1984)

The English language shall be used in all written communications between the parties under this contract with respect to services to be rendered and with respect to all documents prepared by the Contractor except as otherwise provided in the contract or as authorized by the Contracting Officer. Wherever weights and measures are required or authorized, all quantities and measures shall be made, computed, and recorded in the metric system, unless specified otherwise in the schedule of the contract.

752.7006 Notices.

The following clause shall be used in all AID contracts.

Notices (Apr. 1984)

Any notice given by any of the parties hereunder shall be sufficient only if in writing and delivered in person or sent by telegraph, cable, or registered or regular mail as follows:

To AID: Administrator, Agency for International Development, Washington, D.C. 20523. Attention: Contracting Officer (the name of the cognizant Contracting Officer with a copy to the appropriate Mission Director).

To Contractor: At Contractor's address shown on the cover page of this contract, or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective when delivered in accordance with this clause or on the effective date of the notice, whichever is later.

752.7007 Personnel Compensation.

The following clause shall be used in all AID cost-reimbursement contracts.

Personnel Compensation (Apr. 1984)

(a) Direct compensation of the Contractor's personnel will be in accordance with the Contractor's established policies, procedures, and practices, and the cost principles applicable to this contract.

(b) Compensation (i.e., the employee's base annual salary plus overseas recruitment incentive, if any) which exceeds the maximum payable annual or daily rate for a Foreign Service Officer Class FS–1 as set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended, will be reimbursed only with the approval of the Contracting Officer.

(c) Contractor employees serving overseas under this contract who do not qualify, request, and receive an exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911) are eligible to receive an overseas recruitment incentive, provided that the average incentive for all such employees does not exceed 10 percent of the initial base annual salary of all employees eligible for the incentive under this contract.

(1) The overseas recruitment incentive is payable under one of the following alternative methods:

(i) As a lump-sum amount after the eligible employee has completed his/her tour of duty in the Cooperating Country under this contract, and has furnished to the Contractor a certification that he/she does not qualify, and will not apply for an exemption from overseas income as provided by 26 U.S.C. 911. (Contractor shall retain such Certifications for post-audit); or

(ii) At the option of the Contractor, the overseas recruitment incentive may be paid in increments during an employee's tour of duty; provided however, that payments made by the Contractor to employees who become eligible for an exemption from overseas income as provided by 26 U.S.C. 911, which payments were reimbursed by AID under this contract, shall be refunded to AID; and provided further, that neither the Contractor's (nor the sub-contractor's) inability to collect refunds from ineligible employees shall be used as a basis to excuse subsequent refunds by the Contractor to AID.

(2) If the overseas recruitment incentive causes the employee's salary to exceed the

maximum payable annual or daily rate for a Foreign Service Officer Class FS–1, as set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended, Contracting Officer approval must be obtained.

(c) The work week for the Contractor's overseas employees should take into consideration local practices and, in collaboration with the Mission Director, shall be established to coincide with the work week for those employees of the AID Mission and/or the Cooperating Country associated with the work of this contract.

752.7008 Use of Government Facilities or Personnel.

The following clause is for use in all AID contracts.

Use of Government Facilities or Personnel (Apr. 1984)

(a) The Contractor and any employee or consultant of the Contractor is prohibited from using U.S. Government facilities (such as office space or equipment) or U.S. Government clerical or technical personnel in the performance of the services specified in the contract, unless the use of Government facilities or personnel is specifically authorized in the contract, or is authorized in advance, in writing, by the Contracting Officer.

(b) If at any time it is determined that the Contractor, or any of its employees or consultants have used U.S. Government facilities or personnel without authorization either in the contract itself, or in advance, in writing, by the Contracting Officer, then the amount payable under the contract shall be reduced by an amount equal to the value of the U.S. Government facilities or personnel used by the Contractor, as determined by the Contracting Officer.

(c) If the parties fail to agree on an adjustment made pursuant to this clause, it shall be considered a dispute, and shall be dealt with under the terms of the clause of this contract entitled "Disputes".

752.7009 Marking.

The following clause is for use in all AID contracts performed in whole or in part overseas.

Marking (Apr. 1984)

(a) It is AID policy that AID-financed commodities and shipping containers, and project construction sites and other project locations be suitably marked with the AID red, white, and blue handclasp emblem. Shipping containers are also to be marked with the last five digits of the AID financing document number. As a general rule, marking is not required for raw materials shipped in bulk (such as coal, grain, etc.), or for semifinished products which are not packaged.

(b) Specific guidance on marking requirements should be obtained prior to procurement of commodities to be shipped, and as early as possible for project construction sites and other project locations. This guidance will be provided through the cognizant technical office indicated on the cover page of this contract, or by the Mission Director in the Cooperating Country to which commodities are being shipped, or in which the project site is located.

(c) Authority to waive marking requirements is vested with the Regional Assistant Administrators, and with Mission Directors.

(d) A copy of any specific marking instructions or waivers from marking requirements is to be sent to the Contracting Officer; the original should be retained by the Contractor.

752.7010 Conversion of U.S. Dollars to Local Currency.

For use in all AID contracts involving performance overseas.

Conversion of U.S. Dollars to Local Currency (Apr. 1984)

Upon arrival in the Cooperation Country, and from time to time as appropriate, the Contractor's Chief of Party shall consult with the Mission Director who shall provide, in writing, the procedure the Contractor and its employees shall follow in the conversion of United States dollars to local currency. This may include, but is not limited to, the conversion of said currency through the cognizant U.S. Disbursing Officer or Mission Controller, as appropriate.

752.7011 Orientation and Language Training.

For use in all AID cost-reimbursement contracts involving performance overseas.

Orientation and Language Training (Apr. 1984)

(a) Regular employees shall receive a maximum of 2 weeks AID sponsored orientation before travel overseas. The dates of orientation shall be selected by the Contractor from the orientation schedule provided by AID.

(b) Participation in AID sponsored orientation in no way relieves the Contractor of its responsibility for assuring that all employees, regular and short-term, are properly oriented. As an addition to or substitution for AID's sponsored orientation for regular employees, the following types of orientation may be authorized taking into consideration specific job requirements, the employee's prior overseas experience, or unusual circumstances.

(1) Modified orientation.

(2) Language training, particularly when significant for operating capabilities.

(3) Orientation and language training for regular employee's dependents.

(4) Contractor-sponsored orientation.

(5) Orientation in all matters related to the administrative, logistical, and technical aspects of the employee's movement to, and tour of duty in, the Cooperating Country.

(c) Authorization for an additional or alternate orientation program, if any, shall be either set forth in the schedule or provided in writing by the Contracting Officer.

(d) Travel expenses not to exceed one round trip from regular employee's residence to place of orientation and return will be reimbursed, pursuant to the cost principles applicable to this contract. Allowable salary costs during the period of orientation are also reimbursable.

752.7012 Protection of the Individual as a Research Subject.

This clause is for use in any AID contract which involves research using human subjects.

Protection of the Individual as a Research Subject (Apr. 1984)

The contractor is required to comply with the procedures in Title 45, Subtitle A, Part 46 of the Code of Federal Regulations.

752.7013 Contractor-Mission Relationships.

(a) *Alternate 70.* For use in all AID contracts involving performance overseas, *except* contracts with an educational institution.

Contractor-Mission Relationships (Apr. 1984)

(a) The Contractor acknowledges that this contract is an important part of the United States Foreign Assistance Program and agrees that its operations and those of its employees in the Cooperating Country will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) The Mission Director is the chief representative of AID in the Cooperating Country. In this capacity, he/she is responsible for the total AID program in the cooperating country including certain administrative responsibilities set forth in this contract and for advising AID regarding the performance of the work under the contract and its effect on the United States Foreign Assistance Program. Although the Contractor will be responsible for all professional, technical, and administrative details of the work called for by the contract, it shall be under the guidance of the Mission Director in matters relating to foreign policy. The Chief of Party shall keep the Mission Director currently informed of the progress of the work under the contract.

(c) In the event the conduct of any Contractor employee is not in accordance with the preceding paragraphs, the contractor's Chief of Party shall consult with the Mission Director and the employee involved and shall recommend to the Contractor a course of action with regard to such employee.

(d) The parties recognize the right of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this contract of any third country national or cooperating country national when, in the discretion of the Ambassador, the interests of the United States so require.

(e) If it is determined that the services of such employee shall be terminated, the Contractor shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

(b) *Alternate 71.* For cost reimbursement contracts with an educational institution which involve performance overseas, use the clause in

Alternate 70, with the following additional paragraph added.

(f) It is understood by the parties that the Contractor's responsibilities shall not be restrictive of academic freedom. Notwithstanding these academic freedoms, the Contractor's employees, while in the Cooperating Country, are expected to show respect for its conventions, customs, and institutions, to abide by applicable laws and regulations, and not to interfere in its internal political affairs.

752.7014 Notice of Changes in Travel Regulations.

The following clause is for use in cost-reimbursement contracts involving work overseas.

Notice of Changes in Travel Regulations (Apr. 1984)

Changes in travel, differential, and allowance regulations shall be effective on either the beginning of the contractor's next pay period following receipt of the notice or the effective date of such notice, whichever is later. Notice of changes shall be sent by the Contracting Officer or Mission Director pursuant to the clause of this contract entitled "Notices".

752.7015 Use of Pouch Facilities.

For use in all AID Contracts involving performance overseas.

Use of Pouch Facilities (Apr. 1984)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID contractors and their employees as a general policy, as detailed in paragraphs (a)(1) through (a)(7) of this clause; however, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities as hereinafter stated, the Contractor and its employees agree to indemnify and hold harmless the Department of State and AID against loss or damage occurring in pouch transmission.

(1) Contractors and their employees are authorized use of the pouch for transmission and receipt of up to a maximum of 2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen employees are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see paragraph (a)(3) of this clause).

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official mail pursuant to paragraph (a)(1) of this section sent by pouch should be addressed as follows: Name of individual or organization (followed by letter symbol "C"), Name of post [USAID/————], Agency for International Development, Washington, D.C. 20523.

(5) Personal mail pursuant to paragraph (a)(2) of this clause should be sent to the address specified in paragraph (a)(4) of this clause, but without the name of the organization.

(6) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(7) AID contractor personnel are not authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch, may, however, accept official mail from Contractors and letter mail from their employees for the pouch, provided of course, adequate postage is affixed.

(b) The Contractor shall be responsible for advising its employees of this authorization and these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

752.7016 Family Planning and Population Assistance Activities.

The following clause is applicable to all contracts involving any aspect of family planning or population activities.

Family Planning and Population Assistance Activities (Apr. 1984)

(a) *Voluntary Participation.* (1) The Contractor agrees to take any steps necessary to ensure that funds made available under this contract will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the Contractor agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(2) The Contractor shall insert the substance of this clause in any subgrants, subcontracts, purchase orders, and other subordinate agreements hereunder whenever appropriate to the goods or services to be provided under such agreements.

(b) *Prohibition on Abortion-related Activities.* (1) No funds made available under this Contract shall be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purposes of inducing abortions as a method of family planning; (ii) special fees or incentives to women to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; (v) any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning (epidemiologic or descriptive research to assess the incidence, extent or consequences of abortion is not precluded); or (vi) lobbying for abortion.

(2) The Contractor shall insert the substance of this clause in any subgrants, subcontracts, purchase orders, and other subordinate agreements hereunder whenever appropriate to the goods or services to be provided under such agreements.

(c) *Voluntary Participation Requirements for Sterilization Programs.* (1) None of the funds made available under this contract shall be used to pay for the performance of involuntary sterilizations or to coerce or provide any financial incentive to any person to practice sterilizations.

(2) The Contractor shall insure that any surgical sterilization procedures supported in whole or in part by funds from the contract are performed only after the individual has voluntarily come to the treatment facility and has given an informed consent to the sterilization procedure. Informed consent means the voluntary knowing assent from the individual given after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the fact that the consent can be withdrawn at any time prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress or other forms of coercion or misrepresentation.

(3) Further, the Contractor shall document the patient's informed consent by: (i) A written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately a written certification signed by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of the oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of the witness who shall be of the same sex and speak the same language as the patient.

(4) Copies of the informed consent forms and certification documents for each voluntary sterilization (VS) procedure must be retained by the performing Contractor or subcontractor for a period of three years after the performance of the sterilization procedure.

(5) The Contractor shall insert the substance of this clause in any subgrants, subcontracts, purchase orders, and other subordinate agreements hereunder whenever appropriate to the goods and services to be provided under such agreements.

752.7017 Local Cost Financing With U.S. Dollars.

For use in any AID contract involving performance overseas, under which

local cost financing has been authorized in accordance with Chapter 18 of AID Handbook 1, Supplement B.

Local Cost Financing With U.S. Dollars (Apr. 1984)

Local cost financing is the use of U.S. dollars to obtain local currency for the procurement of goods and services in the Cooperating Country in furtherance of the purpose of the contract. Local cost financing must be specifically authorized in the schedule of the contract. The amount of U.S. dollars which may be used must be specified in the authorization, together with any special restrictions on their use. Procurement of goods and services under local cost financing is subject to the restrictions governing Ineligible goods and services, and Restricted goods in 48 CFR 752.7004(d) and 752.7004(e). Unless otherwise specifically authorized, the policies in chapter 18 of AID Handbook 1, Supplement B are applicable to all local cost financing.

752.7018 Health and Accident Coverage for AID Participant Trainees.

For use in any AID contract under which AID participants are trained.

Health and Accident Coverage for AID Participant Trainees (Apr. 1984)

(a) The Contractor shall enroll all non-U.S. participants (hereinafter referred to as "participants"), whose training in the U.S. is financed by AID under this contract, in AID's Health and Accident Coverage (HAC) program.

(b) The Contractor shall, prior to the initiation of travel by each participant financed by AID under this contract, fill out and mail to AID the Participant Data Form (form AID 1381–4). The contractor can obtain a supply of these cards and instructions for completing them, from the Office of International Training, AID Washington, D.C. 20523.

(c) The Contractor shall assure that enrollment shall begin immediately upon the participant's departure for the United States for the purpose of participating in a training program financed by AID and that enrollment shall continue in full force and effect until the participant returns to his/her country of origin, or is released from AID's responsibility, whichever is the sooner. The Contractor shall continue enrollment for participants whose departure is delayed due to medical or other compelling reasons, with the written concurrence of the AID Project Manager and subject to the requirements of paragraph (d).

(d) The Contractor shall submit the Participant Data Form to AID, as specified in paragraph (b) of this section, to enable the participant(s), or the provider of medical services, to submit bills for medical costs resulting from illness and accident to the HAC Administrator (the name and address of the HAC Administrator may be obtained from either M/FM/PAD (see paragraph (d)(1) of this clause), or from the Office of International Training (see paragraph (b) of this clause).

The HAC Administrator, not the Contractor, shall be responsible for paying all reasonable and necessary charges, not otherwise covered by student health service or other insurance programs (see paragraphs (e) and (f)), subject to the availability of funds for such purposes, in accordance with the standards of coverage established by AID under the HAC program, and subject to the payment of the fee specified in paragraph (d)(1), of this clause.

(1) Within thirty (30) days after enrollment, the Contractor shall send to: Agency for International Development, Office of Financial Management, Program Accounting Division, Non-Project Assistance, Washington, D.C. 20523, an enrollment fee computed on the basis of the fixed rate per participant per month (information regarding the current rate is available from the AID Office of International Training, or the HAC Administrator). The minimum period for calculation of fee is one month—that is, one participant month, 30 days, not one calendar month. Premiums may not be prorated for fractional periods of less than 30 days. The enrollment fee should cover a minimum period of up to one year or the current training period for which funds are obligated under this contract, whichever is less. As applicable, payments for additional periods of enrollment shall be made 30 days prior to the beginning of each new enrollment period or new period of funding of this contract. All such fee payments shall be made by check, payable to the "Agency for International Development (HAC)." If payments are not made within 30 days, a late payment charge shall apply at a percentage rate based on the current value of funds to the Treasury for each 30 day period; the full charge shall also be applicable to periods of less than 30 days. The percentage rate will be calculated by the Treasury as an average of the current value of funds to the Treasury for a recent three month period and will be transmitted to AID in TFRM Bulletins.The late payment charge shall be applied to any portion of the fees in arrears and be remitted together with the fees as a separately identified item on the covering memorandum.

(2) Whenever possible, fee payments for groups of several participants entering the HAC Program within the thirty-day reporting period shall be consolidated and covered by a single check. Participants covered by the fee payment shall be listed individually in a covering letter, identifying each participant (the name reported must be identical to that on the HAC enrollment card), showing period of enrollment (or period of coverage for which payment is remitted if this is different from the enrollment period), fee amount paid, contract number, and U.S. Government appropriation number (as shown under the "Accounting and Appropriation Data" block of the cover page of the contract).

(e) The Contractor, to the extent that it is an educational institution with a student health service program, shall also enroll all participants in their institution's student health service program. Medical costs which are covered under the institution's student health service shall not be eligible for payment under AID's HAC program. The Contractor shall provide the HAC Administrator with a copy of information showing what medical costs are covered by the institution's student health service program; medical costs that are not covered by the institution's student health service program shall be submitted to the HAC Administrator.

(f) If the Contractor has a mandatory, non-waivable health and accident insurance program for students, the costs of such insurance will be allowable under this contract. Any claims eligible under such insurance will not be payable under AID's HAC plan or under this contract. Even though the participant is covered by the Contractor's mandatory, non-waivable health and accident insurance program, the participant MUST be enrolled in AID's more comprehensive HAC program and HAC payments MUST be made to AID as provided above. In addition, a copy of the mandatory insurance policy must be forwarded to the HAC Administrator.

(g) Any payments for medical costs not covered by the Contractor's student health service program, or mandatory, non-waivable health and accident insurance program, or AID's HAC program shall be reimbursable under this contract only with specific written approval of the Contracting Office and subject to the availability of funds.

752.7019 Participant Training.

(a) *Alternate 70.* For use in any AID contract involving participant training except for cost reimbursement contracts with an educational institution.

Participant Training (Apr. 1984)

(a) *Definitions.*

(1) Participant training is the training of any foreign national outside of his or her home country, using AID funds.

(2) A Participant is any foreign national being trained under this contract outside of his or her home country.

(b) *Applicable regulations.* Participant training is to be conducted according to the policies established in AID Handbook 10-Participant Training, except to the extent that specific exceptions to AID Handbook 10 have been provided in this contract. (Handbook 10 may be obtained by submitting a request to the Office of International Training, at the address specified in paragraph (c) of this section.)

(c) *Reporting requirement.* Once each month the Contractor shall submit three copies of form AID 1381–4, "Participant Data Form" to the Office of International Training, AID, Washington, D.C. 20523.

(b) *Alternate 71.* For use in cost reimbursement contracts with an educational institution.

Participant Training (Apr. 1984)

(a) To the extent foreign country national training is authorized in the schedule of this contract, the contractor shall be reimbursed for the following reasonable and allocable costs incurred in providing training and observation to participants in the United States or other approved location:

(1) Customary tuition and fees of the institution in which the training takes place, as published in catalogs and announcements.

(2) Typing of papers and allowances for required textbooks, the titles of which will be approved by the Contractor.

(3) Travel within the United States or other countries (other than the country of the participant), as approved by the Contractor, including the cost of travel from port of entry into the United States to Contractor's campus and from the Contractor's campus to port of embarkation from the United States.

(4) Subsistence while in the United States or in third countries not to exceed maximum AID rates established in the applicable AID Handbook, furnished to the Contractor, as from time to time amended.

(5) Other direct costs authorized in the operational plan or otherwise determined by the Contracting Officer to be allowable in accordance with the general provisions clause of this contract entitled "Allowable Cost and Payment".

(b)(1) Health and accident coverage for foreign country nationals is governed by the clause of this contract entitled "Health and Accident Coverage for AID Participant Trainees."

(2) The Contractor shall prepare and submit to the Office of International Training three copies of Form AID 1381–4, "Participant Data Form" on the last day of each month.

(c) For participants assigned to the Contractor for whom specifically designed courses not otherwise covered in paragraph (a)(1) of this clause are authorized, the Contractor shall be paid the following in lieu of the costs authorized in paragraph (a)(1) of this clause.

(1) For not exceeding 20 instructional days (days on which such courses are scheduled to meet and are actually conducted):

(i) One participant: $150 for the first day, and $50 per day for each additional day, up to 19 days.

(ii) Groups up to and including 10 participants: for the first day, $150 for the first participant, and $50 for each additional participant. For each additional day, up to 19 days, $50 for each participant.

(2) For more than 20 instructional days, or more than 10 participants: The Contractor shall submit a proposal including supporting costs and pricing data to the Contracting Officer for approval.

(d) The Contractor shall prepare and submit to the Office of International Training a nonobligating Project Implementation Order/Participant, AID Form 1380–1, on all participants training under this contract, either in the United States or third country.

(e) Mandatory use of form IAP 66A, "Certificate for Exchange Visitor (J–1) Status." The Contractor shall insure that any foreign students brought to the United States for training under this contract use from IAP 66A to obtain a visa.

752.7020 Organizational Conflicts of Interest.

For use in all AID contracts.

Organizational Conflicts of Interest (Apr. 1984)

(a) The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest.

(1) The term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including chief executives, directors, proposed consultants or subcontractors) has interests which (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product or, (ii) may result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(2) The term "Contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in FAR 9.403.

(b) The Contractor agrees that, if after award it discovers an organizational conflict of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or proposes to take to avoid, eliminate or neutralize the conflict. The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interests of the Government.

(c) The Contractor agrees further that if the award follows a formally advertised solicitation and a conflict of interest was identified prior to award, it will adequately avoid, eliminate or neutralize the conflict in a manner satisfactory to the Contracting Officer.

(d) In the event that the Contractor was aware of an organizational conflict of interest prior to the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract at no cost to the Government.

752.7021 Changes in Tuition and Fees.

For use in contracts for participant training with an educational institution.

Changes in Tuition and Fees (Apr. 1984)

While educational programs for participants will be established utilizing the Contractor's currently applicable tuition and fee schedule, the parties understand that such standard tuition and fees may be subject to change during the course of the program. If such event results in an increase in the cost of the program, AID agrees to pay such increased standard tuition and fees in the next applicable academic term as a condition for the continuation of the program. If such change results in a decrease in the cost of the program, the Contractor agrees to charge to AID only the amount of such revised standard tuition and fees in the next applicable academic term. The Contractor shall undertake to keep AID currently advised as to changes in its standard tuition and fees. At such time as increases in the amounts of tuition and fees results in there being inadequate funds remaining in this contract to meet the costs of the next academic term, the Contractor will so advise AID. AID may then provide such additional funds as required to complete the program.

752.7022 Conflicts Between Contract and Catalog.

For use in contracts for participant training with an educational institution.

Conflicts Between Contract and Catalog (Apr. 1984)

In the event of any inconsistency between the provisions of this contract and any catalog, or other document incorporated in this contract by reference or otherwise or any of the Contractor's rules and regulations, the provisions of this contract shall govern.

752.7023 Required Visa Form for AID Participants.

For use in any AID direct contract which involves training of AID participants.

Required Visa Form for AID Participants (Apr. 1984)

The Contractor shall insure that any foreign student brought to the United States for training under this contract uses visa form IAP 66A "Certificate for Exchange Visitor (J–1) Status".

752.7024 Withdrawal of Students.

For use in contracts for participant training with an educational institution.

Withdrawal of Students (Apr. 1984)

(a) The Government may, at its option and at any time, withdraw any student.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If such withdrawal occurs prior to the end of a term, the Government shall pay any tuition and fees due for the current term in which the student may be enrolled, and the Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for civilian students in effect on the effective date of such withdrawal.

(d) Withdrawal of students by the Government shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

752.7025 Approvals.

For use in all AID contracts.

Approvals (Apr. 1984)

All approvals required to be given under the contract by the Contracting Officer or the Mission Director shall be in writing and, except when extraordinary circumstances make it impracticable, shall be requested by the Contractor sufficiently in advance of the contemplated action to permit approval, disapproval or other disposition prior to that action. If, because of existing conditions, it is impossible to obtain prior written approval, the approving official may, at his discretion, ratify the action after the fact.

752.7026 Reports.

(a) *Alternate 70.* For use in all AID direct contracts *except* fixed-price contracts for technical services.

Reports (Apr. 1984)

(a) Unless otherwise provided in the schedule of this contract, the Contractor shall prepare and submit to the Contracting Officer three copies, and the Mission four copies, of a semi-annual report, within 45 days following the end of the period being covered, which shall include the following:

(1) A substantive report covering the status of the work under the contract, indicating progress made with respect thereto, setting forth plans for the ensuing period, including recommendations covering the current needs in the fields of activity covered under the terms of this contract.

(2) An administrative report covering expenditures, foreign country national trainees, and personnel employed under the contract.

(b) Contractor shall prepare and submit to the Contracting Officer such other reports as may be specified in the schedule.

(c) Unless otherwise provided in the schedule of this contract, at the conclusion of the work hereunder, the Contractor shall prepare and submit to the Contracting Officer three copies, and to the Mission four copies, of a final report which summarizes the accomplishments of the assignment, methods of work used and recommendations regarding unfinished work and/or program continuation. The final report shall be submitted within 60 days after completion of the work hereunder unless required date of submission is extended by the Contracting Officer.

(d) Contractor shall submit three copies of each report required by paragraphs (a)(1), (b), and (c) of this clause or any other report of a technical nature required by the schedule to the Development Information Utilization Service, Bureau for Program and Policy Coordination (PPC/DIU), Agency for International Development, Washington, D.C. 20523. The title page of all reports forwarded to PPC/DIU pursuant to this paragraph (d) shall include the contract number, project number and project title as set forth in the schedule of this contract.

(b) *Alternate 71.* For use in fixed-price contracts for technical services, use the clause in *Alternate 70*, less paragraph (a)(2).

752.7027 Personnel.

(a) *Alternate 70.* For use in AID fixed-price contracts involving performance overseas.

Personnel (Apr. 1984)

(a) *Cooperating country clearance.* The Contractor shall not send any individual outside the United States to perform work under the contract without first obtaining written notification from the Contracting Officer of country clearance for the employee.

(b) *Individuals engaged or assigned when outside the United States.* No individual shall be engaged or assigned when outside the United States to perform work outside the United States unless authorized in the Schedule or otherwise approved by the Contracting Officer or Mission Director.

(c) *Physical fitness of employees.* Contractor shall exercise reasonable precautions in assigning employees for work under this contract in the Cooperating Country to assure that such employees are physically fit for work and residence in the Cooperating Country. In carrying out this responsibility Contractor shall require all such employees (other than those hired in the Cooperating Country) to be examined by a licensed doctor of medicine. Contractor shall require the doctor to certify that, in the doctor's opinion, the employee is physically qualified to engage in the type of activity for which he/she is employed and the employee is physically qualified to reside in the country to which he is assigned for duty. The employee's medical certification shall be retained by the Contractor and made available to AID if so required.

(d) *Conformity to laws and regulations of Cooperating Country.* Contractor agrees to use its best efforts to assure that its personnel, while in the Cooperating Country, will abide by all applicable laws and regulations of the Cooperating Country and political subdivisions thereof.

(e) *Sale of personal property or automobiles.* To the extent permitted by Cooperating Country laws, the importation and sale of personal property or automobiles by Contractor employees and their dependents in the Cooperating Country shall be subject to the same limitations and prohibitions which apply to U.S. nationals employed by the Mission. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

(f) *Conflict of Interest.* Other than work to be performed under this contract for which an employee or consultant is assigned by the Contractor, no such employee or consultant of the Contractor, shall engage, directly or indirectly, either in his/her own name or in the name or through the agency of another person, in any business, profession or occupation in the Cooperating Country or other foreign countries to which he/she is assigned, nor shall he make loans or investments to or in any business, profession or occupation in the Cooperating Country or other foreign countries in which he/she is assigned. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

(g) *Right to recall.* On the written request of the Contracting Officer or of a cognizant Mission Director, the Contractor will terminate the assignment of any individual to any work under the contract and, as requested, will use its best efforts to cause the return to the United States of the individual from overseas or his/her departure from a foreign country or a particular foreign locale. Termination of each employee and placement of a substitute employee shall be at no cost to AID.

(b) *Alternate 71.* For use in AID cost reimbursement contracts involving performance overseas.

Personnel (Apr. 1984)

(a) *Clearance.*

(1) *Individuals Engaged or Assigned Within the United States.*

The Contractor will obtain written notification from the Contracting Officer of Cooperating Country clearance of any employee sent outside the United States to perform duties under this contract.

(2) *Individuals Engaged or Assigned When Outside the United States.* No individual shall be engaged or assigned when outside the United States to perform work outside the United States under this contract unless authorized in the schedule or otherwise approved by the Contracting Officer or Mission Director. However, when services are performed in the Cooperating Country on a casual or irregular basis or in an emergency, exception to this provision can be made in accordance with instructions or regulations established by the Mission Director.

(b) *Duration of Appointments.*

(1) Regular employees will normally be appointed for a minimum of 2 years which period includes orientation (less language training) in the United States and authorized international travel under the contract except:

(i) An appointment may be made for less than 2 years if the contract has less than 2 years but more than 1 year to run; provided, that if the contract is extended the appointee shall also be extended to the full 2 years. This provision shall be reflected in the employment agreement prior to employment under this contract.

(ii) When a 2-year appointment is not required, appointment may be made for less than 2 years but in no event less than 1 year.

(iii) When the normal tour of duty established for AID personnel at a particular post is less than 2 years, then a normal appointment under this contract may be of the same duration; or

(iv) When the Contractor is unable to make appointments of regular employees for a full 2 years, the Contractor may make appointments of less than 2 but not less than 1 year, provided that such appointment is approved by the Contracting Officer.

(2) Services required for less than 1 year will be considered short-term appointments and the employee will be considered a short-term employee.

(c) *Employment of Dependents.* If any person who is employed for services in the Cooperating Country under this contract is either (1) a dependent of an employee of the Government working in the Cooperating Country, or (2) a dependent of a Contractor employee working under a contract with the Government in the Cooperating Country, such person shall continue to hold the status of a dependent and be entitled and subject to the contract provisions which apply to dependents except as they apply to employees. He or she shall be entitled to salary for the time services are actually performed in the cooperating country, and differential and allowances as established by the Standardized Regulations (Government Civilians, Foreign Areas).

(d) *Physical Fitness of Employees and Dependents.*

(1) *Predeparture.* For all employees (other than those hired in the Cooperating Country) and their authorized dependents, it shall be

certified by a licensed doctor of medicine that in his/her opinion the employee is physically qualified to engage in the type of activity for which he/she is to be employed and that he/she and his/her dependents are physically able to reside in the country to which he/she is assigned. If the Contractor has no such medical certificate on file prior to the departure for the cooperating country of any employee or authorized dependent and such employee is unable to perform the type of activity for which he is employed and complete his tour of duty because of any physical disability (other than physical disability arising from an accident while employed under this contract) or such authorized dependent is unable to reside in the cooperating country for at least 9 months or one-half of the period, whichever is greater, of the related employee's initial tour of duty because of any physical disability (other than physical disability arising from an accident while a dependent under this contract), the contractor shall not be reimbursed for the return transportation of the physically disabled employee or dependent required to return because of such disability.

(2) *End of tour.* The contractor is authorized to provide its regular employees and dependents with physical examinations within 60 days after completion of their regular tours of duty.

(3) The Contractor is encouraged to establish its own policy of pre- and post-tour medical examinations. As a contribution, AID shall reimburse the Contractor for physical examinations authorized in paragraphs (d) (1) and (2) of this clause as follows:

(i) For the employee and dependents 12 years of age and over: Not to exceed $100 for the physical examination plus reimbursement of charges for immunizations.

(ii) For dependents under 12 years of age: Not to exceed $40 for each child plus reimbursement of charges for immunizations.

(e) *Importation, purchase, or sale of personal property or automobiles.* To the extent permitted by the Cooperating Country laws and regulations, the importation, purchase, and sale of personal property or automobiles by Contractor employees and their dependents in the Cooperating Country shall be subject to the same limitations and prohibitions which apply to Mission employees and their dependents.

(f) *Economic and financial activities.* Other than work to be performed under this contract for which an employee is assigned by the contractor, no regular or short-term employee of the Contractor shall engage, directly or indirectly, either in his/or her own name or in the name or through the agency of another person, in any business, profession, or occupation in the Cooperating Country or other foreign countries to which he/she is assigned, nor shall he make loans or investments to or in any business, profession, or occupation in the Cooperating Country or other foreign countries to which he/she is assigned.

752.7028 Differential and Allowances.

The following clause is for use in all AID cost reimbursement contracts performed in whole or in part overseas.

Differentials and Allowances (Apr. 1984)

(This clause does not apply to TCN or CCN employees. TCN and CCN employees are not eligible for differentials and allowances, unless specifically authorized by the cognizant Assistant Administrator or Mission Director. A copy of any such authorization shall be provided to the Contracting Officer.)

(a) *Post differential.* Post differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post differential is paid to AID direct-hire employees, post differential not to exceed the percentage of salary as is provided such AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 500 (except the limitation contained in Section 552, "Ceiling on Payment") Tables-Chapter 900, as from time to time amended, will be reimbursable hereunder for employees in respect to amounts earned during the time such employees actually spend overseas on work under this contract. When such post differential is provided to Contractor employees, it shall be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment en route to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from his/her post of assignment for purposes of home leave. Short-term employees shall be entitled to post differential beginning with the forty-third (43rd) day at post.

(b) *Living quarters allowance.* Living quarters allownce is an allowance granted to reimburse an employee for substantially all of his/her cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to him/her at his/her post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any costs not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging allowance and the living quarters allowance are never both payable to an employee for the same period of time. The Contractor will be reimbursed for payments made to employees for a living quarters allowance for rent and utilities if such facilities are not supplied. Such allowance shall not exceed the amount paid AID employees of equivalent rank in the Cooperating Country, in accordance with either the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 130, as from time to time amended, or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allownce) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this contract. In authorizing such per diem rates, the Mission Director shall consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government, and similar factors.

(c) *Temporary lodging allowance.* Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and his family for a period not in excess of (i) three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and (ii) one (1) month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. The Contractor will be reimbursed for payments made to employees and authorized dependents for temporary lodging allowance, in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

(d) *Post allowance.* Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters cost, is substantially higher than in Washington, D.C. The Contractor will be reimbursed for payments made to employees for post allowance not to exceed those paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 220, as from time to time amended.

(e) *Supplemental post allowance.* Supplemental post allownce is a form of post allowance granted to an employee at his/her post when it is determined that assistance is necessary to defray extraordinary subsistence costs. The Contractor will be reimbursed for payments made to employees for supplemental post allowance not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230, as from time to time amended.

(f) Educational allowance. Educational allowance is an allowance to assist an employee in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of his/her service in a foreign area in providing adequate elementary and secondary education for his/her children. The Contractor will be reimbursed for payments made to regular employees for educational allowances for their dependent children in amounts not to exceed those set forth in the Standardized (Regulations Government

Civilians, Foreign Areas), Chapter 270, as from time to time amended.

(g) *Educational travel.* Educational travel is travel to and from a school in the United States for secondary education (in lieu of an educational allowance) and for college education. The Contractor will be reimbursed for payments made to regular employees for educational travel for their dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280, as from time to time amended. Educational travel shall not be authorized for regular employees whose assignment is less than two years.

(h) *Separate maintenance allowance.* Separate maintenance allowance is an allowance to assist an employee who is compelled, by reason of dangerous, notably unhealthful, or excessively adverse living conditions at his/her post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining his/her dependents elsewhere than at such post. The Contractor will be reimbursed for payments made to regular employees for a separate maintenance allowance not to exceed that made to Aid employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(i) *Payments during evacuation.* The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director the Contractor will be reimbursed for payments made to employees and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended.

752.7029 Post Privileges.

For use in all AID contracts involving performance overseas.

Post Privileges (Apr. 1984)

(a) Health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees are generally available only for U.S. citizen contractor or subcontractor employees and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services do include such medications as may be available; immunizations and preventive health measures; diagnostic examinations and advice; emergency treatment; and home visits as medically indicated.

(b) Privileges such as the use of APO, PX's, commissaries, and officer's clubs are established at posts abroad pursuant to agreements between the U.S. and Cooperating Governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, AID Mission, U.S. Information Service, and the Military. Normally, the agreements do not permit these facilities to be made available to nonofficial Americans.

752.7030 Inspection Trips by Contractor's Officers and Executives.

For use in cost reimbursement contracts with an educational institution involving performance overseas.

Inspection Trips by Contractor's Officers and Executives (Apr. 1984)

Provided it is approved by the Mission Director, the Contractor may send the Campus Coordinator, a professional member of its staff as an alternate to the Campus Coordinator, or such of its senior officials (e.g., president, vice presidents, deans, or department heads) to the Cooperating Country as may be required to review the progress of the work under this contract. Except for the Campus Coordinator or his/her alternate, no direct salary charges will be paid hereunder with respect to any such officials.

752.7031 Leave and Holidays.

(a) *Alternate 70.* For use in AID cost reimbursement contracts performed in the U.S., except for contracts with an educational institution.

Leave and Holidays (Apr. 1984)

(a) Contractor employees shall be entitled to such leave and holidays while serving in the United States as are provided in accordance with the Contractor's established policy and practice, but in no event shall vacation leave be earned at a rate exceeding 26 working days per annum, or sick leave be earned at a rate exceeding 13 working days per annum.

(b) *Alternate 71.* For use in AID cost reimbursement contracts with educational institutions, to be performed in the U.S.

Leave and Holidays (Apr. 1984)

(a) *Vacation Leave.*

(1) The Contractor may grant to his employees working in the United States under this contract vacations of reasonable duration, but not to exceed the Contractor's on-campus policy and practice for its employees.

(2) Reimbursement to the Contractor for vacation leave is limited to the amount earned by the employees while serving under this contract.

(b) *Sick Leave.* The Contractor may grant to Contractor employees working in the United States, sick leave at a rate not exceeding its usual on-campus practice. However, reimbursement for sick leave taken under this Contract is limited to the amount earned by the employee while serving under this Contract.

(c) *Military Leave.* Military leave of not more than 15 calendar days in any calendar year may be granted in accordance with the Contractor's usual on-campus practice to each regular employee who is a reservist of the Armed Forces, provided that such military leave has been approved in advance by the Mission Director or the Contracting Officer.

(d) *Leave Records.* The Contractor shall maintain current leave records for all Contractor employees and make them available, as requested by the Mission Director or the Contracting Officer.

(e) *Holidays.* While serving in the United States, contractor employees shall be entitled to holidays in accordance with the contractor's established on-campus policy and practice.

(c) *Alternate 72.* For use in AID cost reimbursement contracts (*except* contracts with educational institutions) performed in whole or in part overseas (use in addition to *Alternate 70*).

Leave and Holidays (Apr. 1984)

(b) *Vacation leave overseas.*

(1) The Contractor may grant to its employees working overseas under this contract, vacations of reasonable duration in accordance with the Contractor's practice for its employees, but in no event shall such vacation leave be earned at a rate exceeding twenty-six (26) work days per annum. Vacation leave is provided under this contract primarily for purposes of affording necessary rest and recreation to regular employees during their tour of duty in the Cooperating Country. The Contractor's Chief of Party, the employee and the Cooperating Country institution associated with this project shall develop vacation leave schedules early in the employee's tour of duty taking into consideration project requirements, employee preference and other factors.

(2) Leave taken during the concluding weeks of an employee's tour shall be included in the established leave schedule and be limited to that amount of leave which can be earned during a twelve month period unless approved in accordance with paragraph (a)(3) of this clause.

(3) Vacation leave earned but not taken by the end of the employee's tour pursuant to paragraphs (a) (1) and (2) of this clause will be forfeited, unless the requirements of the project precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission, approves one of the following as an alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under (a)(2) of this clause, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve month period.

(c) *Sick Leave.* Sick leave is earned by regular and short-term employees in accordance with the Contractor's usual practice but not to exceed 13 work days per annum or 4 hours every 2 weeks. Additional sick leave after use of accrued vacation leave may be advanced in accordance with Contractor's usual practice. If in the judgment

of the Contractor's Chief of Party it is determined that such additional leave is in the best interest of the project. In no event shall such additional leave exceed 30 days. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the employee's assignment under this contract. Sick leave earned and unused at the end of a regular tour of duty may be carried over to an immediately succeeding tour of duty under this contract. The taking of authorized home leave shall not constitute a break in service for the purpose of sick leave carry-over. Contractor employees will not be compensated for unused sick leave at the completion of their duties under this Contract.

(d) *Home leave.*

(1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A regular employee who is a U.S. citizen or resident and has served at least 2 years overseas, as defined in paragraph (d)(4) of this clause, under this contract and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas: *Provided,* That such regular employees agree to return overseas upon completion of home leave under an additional 2 year appointment, or for such shorter period of not less than 1 year of overseas service under the contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (d)(2), of this clause, that the Contractor's regular employee must have served 2 years overseas under this contract to be eligible for home leave, Contractor may grant advance home leave to such regular employee subject to all of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The regular employee shall have served a minimum of 18 months in the Cooperating Country on his/her current tour of duty under this contract; and

(iii) The regular employee shall have agreed to return to the Cooperating Country to serve out the reminder of his/her current tour of duty and an additional 2 year appointment under this contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (d)(2), or paragraph (d)(3) of this clause, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the United States port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the United States port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The Contractor will be responsible for reimbursing AID for salary payments made during home leave, if in spite of the undertaking of the new appointment, the regular employee, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the Contractor, regular employees in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at home office or at AID/Washington before returning to their post of duty. Consultation at locations other than AID/Washington or home office, as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(7) Except as provided in the schedule or approved by the Mission Director or the Contracting Officer, home leave is not authorized for TCN or CCN employees.

(e) *Holidays.* Holidays for Contractor employees serving overseas should take into consideration local practices and shall be established in collaboration with the Mission Director.

(f) *Military leave.* Military leave of not more than 15 calendar days in any calendar year may be granted in accordance with the Contractor's usual practice to each regular employee whose appointment is not limited to 1 year or less and who is a reservist of the United States Armed Forces, provided that such military leave has been approved in advance by the cognizant Mission Director or Assistant Administrator. A copy of any such approval shall be provided to the Contracting Officer.

(d) *Alternate 73.* For use in AID cost reimbursement contracts with an educational institution, to be performed in whole or in part overseas (use in addition to *Alternate 71*).

Leave and Holidays (Apr. 1984)

(d) *Vacation leave overseas.*

(1) The Contractor may grant to its employees working overseas under this contract, vacations of reasonable duration in accordance with the Contractor's on-campus practice for its employees, but in no event shall such vacation leave be earned at a rate exceeding twenty-six (26) work days per annum. Vacation leave is provided under this contract primarily for purposes of affording necessary rest and recreation to regular employees during their tour of duty in the Cooperating Country. The Contractor's Chief of Party, the employee and the Cooperating Country institution associated with this project shall develop vacation leave schedules early in the employee's tour of duty taking into consideration project requirements, employee preference and other factors.

(2) Leave taken during the concluding weeks of an employee's tour shall be included in the established leave schedule and be limited to that amount of leave which can be earned during a twelve month period unless approved in accordance with paragraph (a)(3) of this clause.

(3) Vacation leave earned but not taken by the end of the employee's tour pursuant to paragraphs (a) (1) and (2) of this clause will be forfeited, unless the requirements of the project precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission, approves one of the following as an alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under (a)(2) of this clause or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve month period.

(e) *Sick leave.* Sick leave is earned by regular and short-term employees in accordance with the Contractor's usual on-campus practice but not to exceed 13 workdays per annum or 4 hours every 2 weeks. Additional sick leave after use of accrued vacation leave may be advanced in accordance with Contractor's usual practice, if in the judgment of the Contractor's Chief of Party it is determined that such additional leave is in the best interest of the project. In no event shall such additional leave exceed 30 days. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the employee's assignment under this contract. Sick leave earned and unused at the end of a regular tour of duty may be carried over to an immediately succeeding tour of duty under this contract. The taking of authorized home leave shall not constitute a break in service for the purpose of sick leave carry-over. Contractor employees will not be compensated for unused sick leave at the completion of their duties under this Contract.

(f) *Home leave.*

(1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A regular employee who is a U.S. citizen or resident and has served at least 2 years overseas, as defined in paragraph (c)(4) of this clause, under this contract, and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas: *Provided,* That such regular employees agree to return overseas upon completion of home leave under an additional 2 year appointment, or for such shorter period of not less than 1 year of overseas service under the contract as the Mission Director may approve in advance. Home leave must be taken in the United

States, the Commonwealth of Puerto Rico, or in the possessions of the United States and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2), of this clause, that the Contractor's regular employee must have served 2 years overseas under this contract to be eligible for home leave, Contractor may grant advance home leave to such regular employee subject to all of the following conditions.

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The regular employee shall have served a minimum of 18 months in the Cooperating Country on his/her current tour of duty under this contract; and

(iii) The regular employee shall have agreed to return to the Cooperating Country to serve out the remainder of his/her current tour of duty and an additional 2 year appointment under this contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) of this clause, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the United States port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the United States port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave in the United States, the Commonwealth of Puerto Rico, of the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The Contractor will be responsible for reimbursing AID for salary payments made during home leave, if in spite of the undertaking of the new appointment, the regular employee, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the Contractor, regular employees in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation on campus or at AID/Washington before returning to their post of duty. Consultation at locations other than AID/Washington or on campus, as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(7) Except as provided in the schedule or approved by the Mission Director or the Contracting Officer, home leave is not authorized for TCN or CCN employees.

(g) Holidays. Holidays for Contractor employees serving overseas should take into consideration local practices and shall be established in collaboration with the Mission Director.

Subpart 752.3–70—AID Clause Matrices—[Reserved]

PART 753—FORMS

Subpart 753.1—General

Sec.

753.107 Obtaining forms.

Subpart 753.270—Prescription of AID Forms

753.270–1 Negotiated Indirect Cost Rate Agreement.
753.270–2 Small/Minority Business Review Form.
753.270–3 Release and Assignment Forms.
753.270–4 Contractor Employee Biographical Data Sheet.

Subpart 753.370—Illustrations of AID Forms

753.370–1 Scope of Subpart.
753.370–2 Form AID 1420–47 (8–80), Negotiated Indirect Cost Rate Agreement.
753.370–3 Form AID 1410–14 (2–81), Small Business/Minority Business Enterprise Procurement Review Form.
753.370–4 Form AID 1420–40 (1–72), Contractor's Release and/or Assignment of Refunds, Rebates, Credits, and Other Amounts.
753.370–5 Form AID 1420–44 (11–72), Assignees's Release and/or Assignment of Refunds, Rebates, Credits, and Other Amounts.
753.370–6 Form AID 1420–17 (3–80), Contractor Employee Biographical Data Sheet.

Authority: Sec. 621, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 753.1—General

753.107 Obtaining forms.

Copies of the Forms prescribed and illustrated in this Part are available from SER/MO/PUM (Room B–926 New State), Department of State, AID, Washington, D.C. 20523.

Subpart 753.270—Prescription of AID Forms

753.270–1 Negotiated Indirect Cost Rate Agreement.

Form AID 1420–47, "Negotiated Indirect Cost Rate Agreement" is for use in establishing indirect cost rates for Agency contracts.

753.270–2 Small Business/Minority Business Enterprise Procurement Review Form.

Form AID 1410–14 (Small Business/Minority Business Enterprise Procurement Review Form) is prescribed for use in accordance with 719.271–6.

753.270–3 Release and Assignment Forms.

(a) The forms set forth below are required for use in complying with the Contractor's release and assignment responsibilities (if any) in accordance with the payment clause of the contract. The forms shall be completed in accordance with the instructions contained thereon and submitted to the contracting officer administering the contract.

(b) Contractor's release and/or assignment of refunds, rebates, credits, and other amounts. Form AID 1420–40 (Contractor's Release and/or Assignment of Refunds, Rebates, Credits, and Other Amounts) is the form for the Contractor's release and assignment required by the clauses cited in paragraph (a), above.

(c) Assignee's release and/or assignment of refunds, rebates, credits, and other amounts. Form AID 1420–44 (Assignee's Release and/or Assignment of Refunds, Rebates, Credits, and Other Amounts) is the form for the assignee's release and assignment, if required by the payment clause of the contract.

753.270–4 Contractor Employee Biographical Data Sheet.

(a) Form AID 1420–17, Contractor Employee Biographical Data Sheet, is the prescribed form for use in submitting the data required by 752.7001.

(b) The form shall be included in each solicitation document when it is intended that the "Biographical Data" clause will be utilized. As required by the terms of either the solicitation or the contract clause entitled "Biographical Data," the offeror, bidder, or contractor shall, upon the contracting officer making such form available, submit the completed Form AID 1420–17 for each employee, in triplicate, to the contracting officer or other AID office designated by the contracting officer.

(c) The contracting officer or other designated AID office evaluates the information submitted and utilizes it as the basis for determining the reasonableness of proposed salaries and/or country clearance. Any required notifications of approval or disapproval to the contractor shall be handled as expeditiously as possible by the cognizant AID office. One copy of each Form AID 1420–17 submitted by the contractor shall be retained in the official contract file.

Subpart 753.370—Illustrations of Forms

753.300 Scope of subpart.

This subpart contains illustrations of all forms prescribed in Subpart 753.270.

BILLING CODE 6116–01–M

753.370-2 Form AID 1420-47 (8-80), Negotiated Indirect Cost Rate Agreement

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

NEGOTIATED INDIRECT COST RATE AGREEMENT

Date _____

SUBJECT: Indirect Cost Rates for Use in Cost Reimbursement Type Agreements With the Agency for International Development (AID)

REFERENCE:

CONTRACTOR:

GRANTEE:

PART I - NEGOTIATED INDIRECT COST RATES (%)

Type	Effective Period From	Through	Base of Application

Acceptance of the rate(s) agreed to herein is predicated upon the conditions: (1) that no costs other than those incurred by the grantee/contractor were included in its indirect cost rate proposal and that such costs are legal obligations of the grantee/contractor; (2) that the same costs that have been treated as indirect costs have not been claimed as direct costs; (3) that similar types of costs have been accorded consistent treatment; and (4) that the information provided by the grantee/contractor which was used as the basis for acceptance of the rate(s) agreed to herein is not subsequently found to be materially incomplete or inaccurate.

AID 1420-47 (8-80) *(See Reverse)*

PART II - ITEMS NORMALLY TREATED AS DIRECT COSTS

PART III - SPECIAL TERMS AND CONDITIONS

Pursuant to § 7-3.705 of the Agency for International Development Procurement Regulations (AIDPR), the negotiated indirect cost rates set forth in Part I of this Agreement are incorporated into AID Agreements shown below. This Agreement shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in the Contracts or Grants listed below or any other Agreement between the parties.

Contract/Grant Number	Amendment Number	Project Number

ACCEPTED:

BY _____

_____
Printed or Typed Name

_____
Title

_____
Date

_____
CONTRACTING OFFICER
Overhead and Special Costs Branch
Services Operations Division
Office of Contract Management
Agency for International Development

DISTRIBUTION:

CM/ROD	CM/COD	CM/SOD	OTHER
AFR	AN	PDC	AAG/W
NE	PE		CM/SD/SUP
LA	OTR		FM/PAD
ASIA			

AID 1420-47 (8-80) back

753.370-3 Form AID 1420-14 (2-81), Small Business/Minority Business Enterprise Procurement Review Form

SMALL BUSINESS/MINORITY BUSINESS ENTERPRISE PROCUREMENT REVIEW FORM

INSTRUCTIONS:
1. Prepare an original and three copies.
2. Forward original and two copies to Small Business Advisor.
3. Reasons for rejections or appeals involving Blocks 11, 12, 13, 14, and 15 are to be set forth in Block 16 and additional sheets of paper as needed.

1. CASE NO.	2.A. PIO NO.	8. PROJECT NO.	3. TOTAL EST. $ VALUE
4. DATE PIO RECD.	5. PROJECT TITLE (Attach one copy of PIO and source list.)		
6. SIC CODE	7. SMALL BUSINESS SIZE STANDARD NO. OF EMPLOYEES _____ $ _____		8. DATE RECD. BY SDB/SB

9. CONTRACTING OFFICER'S RECOMMENDATION (If not set-aside or Section 8(d), complete Block 10.)

NAME OF CONTRACTING OFFICER

SIGNATURE

DATE

YES	NO	
☐	☐	"SECTION 8(a)" PROGRAM APPLICABILITY
☐	☐	SMALL BUSINESS SET-ASIDE (FPR 1-1.706) _____% $_____
☐	☐	SMALL BUSINESS SUBCONTRACTOR PROGRAMS (FPR 1-1.710 AND 1-1.1310)

10. SET-ASIDE/"8(a)" PROGRAM NOT INITIATED BECAUSE:

- ☐ SOLE SOURCE/PROPRIETARY
- ☐ COMPLEXITIES OF AND/OR COST TO MFR. PRECLUDE COMPETITION
- ☐ R&D PROCUREMENT WITH INSUFFICIENT SB COMPETITION TO PROVIDE REASONABLE ASSURANCE OF RECEIVING HIGHEST COMPETENT TECHNICAL PROPOSAL
- ☐ CONTINUING PROGRAM (CONTRACT AMENDMENT)
- ☐ NO REASONABLE EXPECTATION OF RECEIVING A SUFFICIENT NUMBER OF BIDS FROM SB SOURCES TO ASSURE AWARD AT REASONABLE PRICES
- ☐ NOT ECONOMICALLY SEVERABLE (PARTIAL SET-ASIDES)
- ☐ OPL ITEM WITH SUFFICIENT SOURCES (QUALIFIED PRODUCTS LIST)
- ☐ CONSTRUCTION – ANTICIPATED COST IN EXCESS OF [illegible]
- ☐ NO KNOWN "8(a)" SOURCES
- ☐ PUBLIC EXIGENCY EXEMPTION (AIDPR 7-1.704-71(b))
- ☐ "15%" EXEMPTION (AIDPR 7-1.704-71(c))
- ☐ OTHER (Explain)

11. THE SMALL BUSINESS ADVISOR ☐ ACCEPTS, ☐ REJECTS, THE CONTRACTING OFFICER'S RECOMMENDATION	SIGNATURE OF SMALL BUSINESS ADVISOR	DATE

12. SMALL BUSINESS ADVISOR'S COUNTER-RECOMMENDATIONS

YES	NO		YES	NO	
☐	☐	"SECTION 8(a)" PROGRAM APPLICABILITY	☐	☐	SMALL BUSINESS SET-ASIDE (FPR 1-1.706) _____% $_____
☐	☐	ADDITIONAL SOURCES ADDED	☐	☐	SMALL BUSINESS SUBCONTRACTOR PROGRAM (FPR 1-1.710 AND 1-1.1310)

SIGNATURE OF SMALL BUSINESS ADVISOR	DATE

13. THE CONTRACTING OFFICER ☐ ACCEPTS, ☐ REJECTS, THE SMALL BUSINESS ADVISOR'S COUNTER-RECOMMENDATION	SIGNATURE OF CONTRACTING OFFICER	DATE
14. THE SMALL BUSINESS ADVISOR ☐ ACCEPTS, ☐ APPEALS, THE CONTRACTING OFFICER'S REJECTION	SIGNATURE OF SMALL BUSINESS ADVISOR	DATE
15. THE HEAD OF THE PROCURING ACTIVITY ☐ ACCEPTS, ☐ REJECTS, THE SMALL BUSINESS ADVISOR'S APPEAL	SIGNATURE OF HEAD OF THE PROCURING ACTIVITY	DATE

NOTE: ANY CHANGE IN THE PROCUREMENT PLAN DESCRIBED HEREIN WILL REQUIRE RETURN FOR REEVALUATION BY THE SMALL BUSINESS ADVISOR.

16. ADDITIONAL DOCUMENTATION

AID 1410-14 (2-81)

753.370-9 Form AID 1420-40 (1-72), Contractor's Release and/or Assignment of Refunds, Rebates, Credits, and Other Amounts

AGENCY FOR INTERNATIONAL DEVELOPMENT
CONTRACTOR'S RELEASE AND/OR ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS

I. IDENTIFICATION

1. CONTRACTOR'S NAME AND ADDRESS *(hereinafter referred to as the Contractor)*

2. CONTRACT NUMBER *(hereinafter referred to as the Contract)*

3. AMOUNT OF RELEASE *(in dollars)*

4. PURPOSE *(check appropriate box)*
☐ RELEASE ☐ ASSIGNMENT ☐ BOTH

II. CONTRACTOR'S RELEASE

Pursuant to the terms of the Contract and in consideration of the sum set forth in Section I., Block 3., above which has been or is to be paid under the said Contract to the Contractor or its assignees, if any, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said Contract except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as set forth in the space provided on the reverse of this form (Section V.).
2. Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of said Contract; provided that such claims are not known to the Contractor on the date of execution of this release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of this release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.
3. Claims for reimbursement of costs (other than expense of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said Contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth in Section V., that he will comply with all of the provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

III. CONTRACTOR'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS

Pursuant to the terms of the Contract and in consideration of the reimbursement of costs and payment of fee, if any, as provided in the said Contract and any assignment thereunder, the Contractor does hereby:

1. Assign, transfer, set over and release to the UNITED STATES OF AMERICA (hereinafter called the Government), all right, title, and interest to all refunds, rebates, credits, and other amounts (including any interest thereon), arising out of the performance of the said Contract, together with all the rights of action accrued or which may hereafter accrue thereunder.
2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits, and other amounts (including any interest thereon) due or which may become due, and to promptly forward to the A.I.D. Paying Office checks (made payable to the Treasurer of the United States) for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable costs when approved by the Contracting Officer as stated in the said Contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.
3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits, or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney, or other papers in connection therewith; and to permit the Government to represent him at any hearing, trial, or other proceeding, arising out of such claim or suit.

IV. CERTIFICATIONS

1. IN WITNESS WHEREOF, this release and/or assignment has (have) been executed this day.

*WITNESSES

(1) _____

(2) _____

*In the case of a corporation, the signatures of two witnesses are not required, but the certificate below must be completed.

CONTRACTOR

_____

BY

_____

TITLE _____ DATE _____

CORPORATE CERTIFICATE

2. I, _____ certify that I am the _____ (official title) of the corporation named as Contractor in the foregoing release and/or assignment; that _____ who signed said release and/or assignment on behalf of the Contractor was the _____ (official title) of the said corporation; that said release and/or assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL)

_____

AID 1420-40 (1-72)

V. Specified claims applicable to Section II.1. of the Contractor's Release are to be set forth in the space provided below.

INSTRUCTIONS TO CONTRACTOR

1. This form may be used for three purposes:

   a. As a *Contractor's Release.*

   b. As an *Assignment of Refunds, Rebates, Credits, and Other Amounts.*

   c. As both a *Contractor's Release* and an *Assignment of Refunds, Rebates, Credits, and other Amounts.*

2. In completing Section I., the Contractor is to indicate the purpose (see 1. above) for which he is submitting the completed form as follows:

a. Contractor's Release	Check *only* the release box in Section I.4. and if a corporation complete the Certificate in Section IV.2.
b. Assignment of Refunds, Rebates, Credits, and Other Amounts	Check *only* the assignment box in Section I.4. and if a corporation complete the Certificate in Section IV.2.
c. *As both* a Contractor's Release *and* an Assignment of Refunds, Rebates, Credits, and Other Amounts	Check the *both* box in Section I.4. and if a corporation complete the Certificate in Section IV.2.

3. The form is to be completed in triplicate as follows:

a. ORIGINAL AND DUPLICATE	When completed, forward these to the cognizant A.I.D. Contracting Officer.
b. TRIPLICATE	Contractor's retain copy

4. The Contractor is responsible for filling in all the information requested on the form. Use the space provided in Section V. for listing outstanding claims as requested in Section II.1. of the form.

AID 1420-40 (11-72) BACK

753.370-5 Form AID 1420-44 (11-72), Assignee's Release and/or Assignment of Refunds, Rebates, Credits, and Other Amounts

AGENCY FOR INTERNATIONAL DEVELOPMENT
ASSIGNEE'S RELEASE AND/OR ASSIGNMENT OF
REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS

I. IDENTIFICATION

1. ASSIGNEE'S NAME AND ADDRESS *(hereinafter referred to as the Assignee)*

2. CONTRACT NUMBER *(hereinafter referred to as the Contract)*

3. AMOUNT OF RELEASE *(in dollars)*

4. PURPOSE *(check appropriate box)*
☐ RELEASE ☐ ASSIGNMENT ☐ BOTH

5. DOING BUSINESS AS *(check and complete appropriate box)*
☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION, INCORPORATED IN _____

II. ASSIGNEE'S RELEASE

Pursuant to the terms of the Contract and in consideration of the sum set forth in Section I., Block 3., above which has been or is to be paid under the said Contract by the UNITED STATES OF AMERICA (hereinafter called the Government) to the Contractor or his assignees, the assignee upon receipt of that part of the said sum due under his assignment does remise, release and discharge the Government, its officers, agents and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract and assignment, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact ascertainment by the Contractor, as set forth in the space provided on the reverse of this form (Section V.).

2. Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of said Contract; provided that such claims are not known to the Contractor or Assignee on the date of execution of this release; and provided further that the Contractor or Assignee gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of this release or the date of any notice to the Contractor or Assignee that the Government is prepared to make final payment, whichever is earlier.

3. Claims for reimbursement of costs (other than expense of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said Contract relating to patents.

The Assignee agrees, in connection with claims which are not released as set forth in Section V., that final payment under the said contract does not modify the requirements and limitations imposed on the Contractor or Assignee by the contract or the assignment, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

III. ASSIGNEE'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS

Pursuant to the terms of the Contract and in consideration of the reimbursement of costs and payment of fees, as provided in the said contract and assignment thereunder, the Assignee does hereby assign, transfer, set over, and release to the UNITED STATES OF AMERICA, all right, title, and interest to all refunds, rebates, credits, and other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

IV. CERTIFICATIONS

1. IN WITNESS WHEREOF, this release and/or assignment has (have) been executed this day.

WITNESSES

_____

_____

*In the case of a corporation, the signatures of two witnesses are not required, but the certificate below must be completed.

CONTRACTOR

_____

BY

_____

TITLE _____ DATE _____

CORPORATE CERTIFICATE

2. I, _____ certify that I am the _____ (official title) of the corporation named as Assignee in the foregoing release and/or assignment; that _____ who signed said release and/or assignment on behalf of the Assignee was the _____ (official title) of the said corporation; that said release and/or assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL) _____

AID 1420-44 (11-72)

V. Specified claims applicable to Section II, L of the Assignee's Release are to be set forth in the space provided below.

INSTRUCTIONS TO ASSIGNEE

1. This form may be used for three purposes:

   a. As an *Assignee's Release*.

   b. As an *Assignment of Refunds, Rebates, Credits, and Other Amounts.*

   c. As both an *Assignee's Release* and an *Assignment of Refunds, Rebates, Credits, and other Amounts.*

2. In completing Section I., the Assignee is to indicate the purpose (see 1. above) for which he is submitting the completed form as follows:

a. Assignee's Release	Check *only* the release box in Section I.4. and if a corporation complete the Certificate in Section IV.2
b. Assignment of Refunds, Rebates, Credits, and Other Amounts	Check *only* the assignment box in Section I.4. and if a corporation complete the Certificate in Section IV.2.
c. *As both* an Assignee's Release *and* an Assignment of Refunds, Rebates, Credits, and Other Amounts	Check the *both* box in Section I.4. and if a corporation complete the Certificate in Section IV.2.

3. The form is to be completed in triplicate as follows:

a. ORIGINAL AND DUPLICATE	When completed, forward these to the cognizant A.I.D. Contracting Officer.
b. TRIPLICATE	Assignee's retain copy

4. The Assignee is responsible for filling in all the information requested on the form. Use the space provided in Section V. for listing outstanding claims as requested in Section II.1 of the form.

AID 1420-44 (11-72) BACK

753.370-6 Form AID 1420-17 (3-80), Contractor Employee

Biographical Data Sheet

Form Approved
OMB No. 24-R0064

CONTRACTOR EMPLOYEE BIOGRAPHICAL DATA SHEET

(SEE PRIVACY ACT STATEMENT ON REVERSE)

INSTRUCTIONS:
Submit in triplicate to contracting officer.
See reverse for Contractor Certification.

1. Name *(Last, First, Middle)* ☐ Mr. ☐ Mrs. ☐ Miss ☐ Ms.		2. Contractor's Name
3. Address *(include ZIP Code)*	4. Contract No.	5. Position Under Contract
	6. Proposed Salary	7. Country of Assignment / 8. Duration of Assignment
9. Telephone Number *(include area code)*	10. Marital Status ☐ Married ☐ Single ☐ Other *(specify)*	11. Names and Ages of Dependents to Accompany Individual *(if applicable)*
12. Date of Birth	13. Place of Birth	
14. Citizenship *(if non-U.S. citizen, give visa status)*		

15. EDUCATION *(include all secondary, business college or university training)*

NAME AND LOCATION OF INSTITUTION	MAJOR SUBJECTS	Credits Completed: Semester Hours	Credits Completed: Quarter Hours	Type of Degree	Date of Degree

16. EMPLOYMENT HISTORY

1. Give last three (3) years. Continue on reverse to list all employment related to duties of proposed assignment.
2. Salary definition - basic periodic payment for services rendered.
Exclude bonuses, profit-sharing arrangements, commissions, consultant fees, extra or overtime work payments, overseas differential, or quarters, cost of of living or dependent education allowances.

POSITION TITLE	EMPLOYER'S NAME AND ADDRESS	Dates of Employment *(Mo., Yr.)* From	Dates of Employment *(Mo., Yr.)* To	Salary: Dollars	Salary: Per.

17. SPECIFIC CONSULTANT SERVICES *(give last three (3) years)*

SERVICE PERFORMED	EMPLOYER'S NAME AND ADDRESS	Dates of Employment *(Mo., Day, Yr.)* From	Dates of Employment *(Mo., Day, Yr.)* To	DAILY RATE

18. LANGUAGE PROFICIENCY

LANGUAGE	Speaking: Fair	Speaking: Good	Speaking: Excl.	Reading: Fair	Reading: Good	Reading: Excl.	Writing: Fair	Writing: Good	Writing: Excl.	Understanding: Fair	Understanding: Good	Understanding: Excl.

19. Special Qualifications *(honors, professional societies, special licenses, publications, research, special skills, and relevant education not previously mentioned; use reverse side of form, if necessary)*

20. CERTIFICATION: To the best of my knowledge, the above facts as stated are true and correct.

Signature of Employee [redacted] Date

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(Use this space for continuation of Blocks 16 and 19)

CONTRACTOR'S CERTIFICATION *(To be completed by responsible representative of Contractor)*

A. I hereby certify that *('X' appropriate box)*:

☐ The initial salary proposed herein meets the salary standards prescribed in the contract.

☐ The salary increase proposed herein conforms to the customary policy and practice for this organization for periodic salary increases.

B. Justification or Remarks

Signature	Title	Date

PRIVACY ACT STATEMENT

The following statement is required by the Privacy Act of 1974 (Public Law 93-579; 88 Statute 1896).

The information requested on this form is needed by AID to evaluate your suitability for the position for which you have been nominated as a contract employee. It is necessary that you provide the information for AID to consider your nomination. The Foreign Assistance Act of 1961, as amended, constitutes authority for its collection.

Employers and educational institutions you list may be contacted for verification of the information provided. Disclosure may otherwise be made in whole or in part to any (a) foreign government concerned if required by that government in connection with their review of your nomination and (b) pursuant to any other applicable routine use listed under AID's Civil Service Employee Office Personnel Record System, AID-2 in AID's Notice of Systems of Records for implementing the Privacy Act as published in the Federal Register, or (c) when disclosure without the employee's consent is authorized by the Privacy Act and provided for in AID Regulation 15. *(A copy of the Regulation and Notice of System of Records is available from AID Distribution on request.)*

AID 1420-17 (3-80) back

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Appendices to Chapter 7

Appendix A—Respective Roles of Contracting and Other Personnel in the AID Procurement Process.
Appendix B—Notice to Cost-Reimbursement Type Contractors of Changes in Applicable Standardized Government Regulations.
Appendix C—Logistic Support Overseas to AID-Direct Contractors.
Appendix D—Direct AID Contracts With U.S. Citizens or U.S. Residents for Personal Services Abroad.
Appendix E—Contract Closeout Procedure.
Appendix F—Use of Collaborative Assistance Method for AID Direct Contracts for Technical Assistance.
Appendix G—Approval and Reporting Procedure for Contractor Salaries.
Appendix H—Response to Audit Recommendations.
Appendix I—AID's Academic Publication Policy.

Authority: Sec. 621, 75 Stat. 445, (22 U.S.C. 2381) as amended: E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Appendix A—Respective Roles of Contracting and Other Personnel in the AID Procurement Process

1. Basic Policy

Only a contracting officer, designated to enter into contracts and make the determinations and findings related thereto (or an authorized representative of the contracting officer acting within the limits of his/her authority), may bind the United States Government to a contract, or direct or authorize a contractor to proceed with work.

2. Planning, Competition, Negotiation, and Award

(a) Preaward technical discussions with potential contractors should be conducted in such a manner as to preclude the assumption by any potential contractor that a commitment has been made. AID employees are responsible for insuring that no unfair competitive advantage is afforded one contractor over any other contractor in competing for Agency contracts. In this connection, discussions with prospective contractors prior to the final selection of the contractor and commencement of negotiations by the contracting officer must be conducted with the greatest discretion. Under no circumstances should the specific amount of funds which the Agency has available to support a contract be made known to a prospective contractor. No AID employee is authorized to dilute the Agency's negotiation position prior to or during an "arm's length" negotiation conducted between AID and the contractors with whom it does business. The requirement for preservation of the Agency's negotiation position must be scrupulously observed whether the procurement is to be negotiated with a single, non-competitive source or whether it is to be negotiated on the basis of multiple competitive proposals. It is advisable to involve the contracting officer in the project planning cycle as early as possible, and to insure that he/she or his/her representative is either present at any meeting with prospective contractors, or is consulted prior to such a meeting.

(b) Contracting personnel act upon requirements which are formulated by the planning, technical, and research offices of the Agency. Contracting officers obtain the information they need on technical requirements by questions and discussions with the planning, technical, and research offices of the Agency. If a contract is to be tenable, the end result which is desired must be described with completeness and exactitude. The scope of the work must be explicitly stated; otherwise the contracting officer cannot assure terms in a contract by which the desired action can be enforced. If the requiring office cannot provide a point of departure in these terms and deliver to the contracting officer a clear-cut description of the purpose and outline the limits of the scope, results may be disappointing and the possibility of deferring the project until these elements can be given more concrete dimensions should be considered. Finally, the requiring office should insure that the scope of work and funding information are delivered to the contracting officer with sufficient lead time to allow for proper preparation and planning of the procurement.

(c) One of the paramount duties of the contracting officer is to secure competition to the maximum practical extent for any planned procurement. The procedures for formally advertised, or for publicized negotiated, or for limited source procurements differ; the contracting officer must determine the proper method of procurement and contract type, and must determine the extent of competition required. The technical office has a continuing responsibility to assist the contracting officer in this effort to obtain competition and negotiate a contract. Basically, this commences with adequate drafting of the statements of work and specifications. The technical office can frequently assist by identifying additional technically competent sources for the solicitation of proposals.

3. Contract Administration

Meetings to discuss contract matters with contractors should be preceded by sufficient advance notification to all parties, including the contracting officer, to permit advance arrangements for the attendance at such meetings. Technical personnel shall not hold discussions of contract problems with contractors or technical problems with contractual implications without arranging for attendance by contracting personnel. Once a meeting with a contractor has been agreed upon and the issues have been made known to all involved parties, an internal AID meeting should take place between technical and contracting personnel, with the Country Desk representative and such other personnel in attendance as may be necessary, to establish an AID position or line of inquiry to be followed in the meeting with the contractor. If differences of opinion arise among AID personnel in the meeting with the contractor, such differences should never be discussed in the meeting with the contractor. AID personnel shall adjourn to resolve privately any such differences of opinion, and resume discussions with the contractor only when the AID position is consolidated. The AID individual designated to chair meeting with a contractor should be selected prior to the meeting with the contractor. Depending upon the issues to be discussed, whether primarily technical or primarily contractual, the chairman should be designated from either the technical office or the contracting office.

Appendix B—Notice to Cost-Reimbursement Type Contractors of Changes in Applicable Standarized Government Regulations

1. General

This appendix establishes a procedure for providing new cost-reimbursement contractors with applicable Government travel and allowance regulations, and for notifying existing contractors, whose contracts require that they be so notified, of changes in such regulations.

2. Background

(a) AID cost-reimbursement type contracts generally provide (see paragraph 3) for the application of direct-hire AID personnel travel and allowance regulations to similarly situated contractor personnel. The procedures for notifying contractors of changes in such regulations are set out in paragraph 5 of this appendix.

(b) For the purpose of this appendix, the term "Chief of Party" refers to either the head of a field party or such other representative of the contractor in the field designated to communicate on contract matters with the AID Mission.

3. General Provisions for Cost-Reimbursement Contracts

Text of the clause "Notice of Changes in Travel Regulations" is set forth in 752.7014.

4. Notice to Contractor Field Personnel

Notice of changes in Government travel and allowance regulations is sent to the contractor at its address shown on the cover page of the contract. Notice to the contractor's Chief of Party is supplied by:

(a) The contractor, in accordance with its normal field communication procedures; or,

(b) The Mission Executive Officer, by use of his/her normal internal Mission information procedures. (See paragraph 5(d)(2) of this Appendix).

5. Duties and Responsibilities

(a) *Contracting officer.* (1) Upon signing each contract, forwards the contract together with three completed copies of form AID 1420–2, AID Cost-Reimbursement Contract Allowances—Applicability of Standardized Regulations, to the Office of Contract Management, Support Division (Attention: SER/CM/SD/SS, Statistical Section), indicating on the form whether the contractor needs to be supplied with Government travel and allowance regulations.

(2) If the Government travel and allowance regulations do apply, forwards copy No. 4 of Form AID 1420–2 to the appropriate Mission Executive Officer.

(3) Retains copy No. 5 of Form AID 1420–2 for his/her record.

(b) *Statistical section, SER/CM/SD/SS.* (1) Maintains a current file on all cost-reimbursement contractors to which the Government travel and allowance regulations apply, and annually supplies a revised list of such contractors to the Office of Management Operations, Distribution Branch (SER/MO/PUM).

(2) Notifies SER/MO/PUM of all changes to the list using Form AID 1420–2.

(c) Distribution Branch, SER/MO/PUM. (1) Prepares for mailing to each contractor, upon addition of its name to the SER/CM/SD/SS distribution list, a complete set of the Government travel and allowance regulations.

(2) Following any change in the Government travel or allowance regulations, mails to each contractor on the current SER/CM/SD/SS distribution list all revisions to such regulations.

(3) Keeps the distribution list, J–27, updated as instructed by SER/CM/SD/SS.

(d) *Mission Executive Officer.* (1) Maintains a current file of all contracts affected by changes in the Government travel or allowance regulations. (See paragraph 5(a) of this section.)

(2) Promptly notifies each appropriate contractor's Chief of Party in writing of all relevant changes in the Government travel or allowance regulations and their effective date.

Appendix C—Logistic Support Overseas to AID-Direct Contractors

1. General

(a) *Purpose.* In furtherance of AID's objectives to: (1) Increase the utilization of contractors in accordance with section 621 of the Foreign Assistance Act of 1961, as amended, (FAA), (2) reduce the administration burden on the AID establishment in Cooperating Countries, and (3) ensure, in accordance with section 636(h) of the FAA, that to the maximum extent possible local costs are met from Cooperating Country funds or United States (U.S.) Government-owned local currency rather than from U.S. dollars, the following policies govern the financing and provision in kind of logistic support overseas to AID-direct contractors.

(b) *Scope.* "Logistic support overseas" means the financing of or furnishing to a contractor, its employees, and their dependents (in accordance with the provisions of the contract) items such as transportation of personnel, personal goods and commodities; quarters, furnishings, equipment, utilities, and supplies for residence and office; and maintenance and other supporting services, including medical facilities.

2. Policy

(a) *Financing of logistic support.* (1) Local Currency Financing. Consistent with the requirements of AID Handbook 19, Financial Management, local currencies are to be used wherever feasible in lieu of dollars to defray the costs of contractor logistic support, whether such support is arranged for by the contractor, the Cooperating Country, or AID. Such local currencies will be contributed from the following sources in descending order of preference:

(i) The Cooperating Country's own budgetary or private resources;

(ii) Cooperating Country-owned local currency generated through AID or Pub. L. 480 programs; and

(iii) U.S. Government-owned country-use local currency generated through AID or Pub. L. 480 programs.

(2) *Dollar financing.* AID dollars are used to finance logistic support overseas only when no reasonable alternative exists by which such support can be financed with local currency provided in kind.

(b) *Arrangements for logistics support.* Each mission should assess the local logistical support situation and determine which method is best suited for its program or individual projects. While the following three options are listed in descending order of preference, the Mission is encouraged to use the option which is in the best interest of the project:

(1) Arrangements by the contractor itself where feasible and reasonably economical. (It is assumed that this test will be met in the case of virtually all construction contracts and in most of the larger engineering and technical assistance contracts.)

(2) Arrangements by the Cooperating Country where these would be timely, adequate, and feasible in terms of the country's economic and administrative resources.

(3) Arrangements by the Mission alone or jointly with either or both of the other parties, in those cases where the Mission Director determines that adequate and timely logistic support at reasonable cost cannot be assured through the other options. In such cases, and when direct-hire resources are inadequate, the Mission is encouraged wherever feasible, to contract for assistance in providing logistic support. Guidance on logistic support contracts should be obtained from SER/CM and GC.

(c) *Medical facilities.* AID and the Department of State have an agreement whereby the latter furnishes certain medical services, *on an availability basis,* to all eligible U.S. citizen contract personnel performing economic assistance functions abroad under the Foreign Assistance Act, and to their authorized dependents overseas with funding via Shared Administrative Support (SAS) Budgets. These services are provided at post to such personnel to the same extent as for AID direct-hire personnel. They are provided at no cost to the contractor or to the personnel. The medical services to be provided exclude: (1) Evacuation or hospitalization, and (2) entrance, in-service, fitness for duty, and separation medical examinations.

(1) *Eligible personnel.* (i) Eligible contractor personnel are those U.S. citizens serving abroad, and their authorized dependents, who are engaged under a contract between a contractor and AID or who are engaged under a subcontract thereto.

(ii) Employees of other U.S. Government agencies serving under Participating Agency Service Agreement (PASA) with AID are also eligible pursuant to the terms of General Agreements between AID and their parent agencies.

(iii) U.S. citizens serving under Cooperating Country contracts financed from AID loan or grant funds are not "AID contractor employees" and thus not eligible, except with approval of the Ambassador. Third country national employees of AID contractors are not U.S. citizens and thus are not eligible, except with approval of the Ambassador. Americans serving under operational expert (OPEX) type contracts to which AID is not a signatory are also not "AID contractor employees." Most OPEX employees are provided a lump-sum amount to finance their participation in a group health program in lieu of receiving any U.S. Government health services.

(iv) AID or other direct-hire U.S. Government employees working under formal detail to multilateral or other non-U.S. agencies obtain health services on the same basis as their non-U.S. co-workers unless the provisions governing detail of the U.S. employees specifically provide for their access to available U.S. Government facilities.

(v) It is recognized that emergency situations will arise involving OPEX or other Americans who are not "AID contractor personnel" as defined above. Such cases are to be handled by the Medical Officer or other post officials pursuant to their procedures for handling an emergency health problem of any non-official American requesting assistance.

(2) *Services to be provided.* Embassy physician, nurse, and health room services are provided, in countries where and when these are available, including:

(i) Immunizations and preventive health measures;

(ii) Diagnostic examinations and advice;

(iii) Emergency treatment;

(iv) Home visits as medically indicated.

(d) *Other post privileges.* Privileges such as the use of APO, PX's, commissaries, and officer's clubs are established at posts abroad pursuant to agreements between the U.S. and Cooperating Governments. Normally, these facilities *are not* available to contractor employees. However, in those cases where the facilities are open to contractor personnel, they may be used.

(e) *Uniformity.* Every effort should be made by each Mission to foster the development of country-wide standards for comparable classes of contractors. In all instances, logistic support is to be provided at the minimum level necessary to assure efficient, economical, and effective contractor performance.

(f) *Exceptions.* Exceptions from these policies, except as permitted by paragraph 2(b)(3) above, are made in writing by the responsible Assistant Administrator or his/her designee for such purposes.

3. Contract Implementation

Each PIO/T shall indicate on page 3 each type of logistic support which is to be made available, either in cash or in kind, by the Cooperating Country, the Mission, and the contractor itself. The contracting officer shall ensure that the contract reflects the information contained in the PIO/T.

4. Additional Instructions for Medical Support

(a) *Notifications.* (1) The AID contracting officer shall notify the contractor of any

potentially available medical benefits prior to the execution of the contract.

(2) The Mission Executive Officer notifies the contractor's Chief of Party at the post of the locally available medical benefits.

(b) *Identification of eligible persons.* The Mission Executive Officer provides each eligible contractor employee and dependent with appropriate identification for use at Embassy medical facilities.

(c) *Records and insurance.* (1) The Embassy medical unit maintains an appropriate register of visits to the unit. The information recorded includes the name of the contractor employee or dependent treated, the contractor's name and contract number, date of visit, and a brief description of the reason for the visit (e.g., medical consultation, injury, medical briefing, immunization). Periodically a copy of this register is forwarded to the Mission Executive Officer.

(2) If medical service provided to a contractor employee or his/her authorized dependents by the Embassy medical unit is eligible for recovery from an insurance company, the contractor employee shall file an appropriate claim with the insurance company and so notify the Mission Executive Officer in writing. The contractor employee pursues the claim for reimbursement. Amounts recovered are forwarded to the Mission Executive Officer for the account of the medical unit in accordance with AID regulations.

Appendix D—Direct AID Contracts With U.S. Citizens or U.S. Residents for Personal Services Abroad

1. General

(a) *Purpose.* This appendix and attachments set forth the authority, policy, and provisions under which AID may contract with individual U.S. citizens or U.S. residents to provide personal services abroad.

(b) *Definitions.* For the purposes of this appendix:

(1) A personal services contract is one which establishes an employer-employee relationship.

(2) A nonpersonal services contract is one which establishes an independent contractor relationship.

2. Legal Basis

(a) Section 635(b) of the Foreign Assistance Act of 1961, as amended (FAA), provides specific contracting authority for AID.

(b) Section 636(a)(3) of the FAA authorizes the Agency to enter into contracts with individuals for personal services abroad and provides further that such individuals "* * * shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission."

3. Applicability

(a) This appendix applies to AID contracts with U.S. citizens or U.S. residents to provide assistance abroad to Cooperating Countries and regional organizations under contracts which establish an employer-employee relationship. Attachment A is designed to establish that relationship.

(b) This appendix does not apply to:

(1) Contracts with U.S. citizens or U.S. residents which establish independent contractor relationships, which are covered under *AID Handbook 14—Procurement Regulations.*

(2) Contracts with consultants and experts, which are covered under *AID Handbook 25—Employment and Promotion.*

(3) Contracts with individual cooperating country or third-country nationals, which are covered under *AID Handbook 31—Foreign National Personnel.*

4. Policy

(a) *General.* AID may finance the cost of providing personal services to a Cooperating Country or a regional organization as part of the Agency's program of assistance to such country or organization by entering into a direct contract with an individual U.S. citizen or U.S. resident for personal services.

(b) *Limitations on personal services contracts.* A personal services contract with an individual may be used when adequate supervision is available and for nearly any type of work except:

(1) Negotiating on behalf of the United States with AID recipient countries, organizations or entities.

(2) Making planning, budgeting, programming and policy decisions which determine the allocation of resources available to AID, or establish AID policy.

(3) Supervising the execution of functions performed by U.S. Government personnel of AID or other Government agencies.

(4) Performance of internal functions such as personnel selection and administration, agency management, and congressional presentation.

(5) Contracts entered into pursuant to this authority may not exceed 5 years.

5. Executing a Personal Services Contract

Contracting activities, whether AID/W or Mission, may execute personal services contracts, provided that the amount of the contract does not exceed the amount of contracting authority which has been redelegated pursuant to Delegation of Authority No. 99—To the Assistant Administrator for Program and Management Services, et al., Concerning Contracting and Related Functions (38 FR 12834). In executing a contract, the contracting activity insures that:

(a) The following approvals for the proposed contractor have been obtained:

(1) Security clearance, to the extent required by *AID Handbook 6—Security.*

(2) Mission and country clearance, as appropriate.

(3) Medical clearance based on certification by a licensed physician. Medical clearance requirements apply to the contractor and to each dependent who is authorized to travel to the overseas post.

(b) Compensation for personal services provided under each contractor complies with the principles and approvals set forth in AIDAR 731.205–6, entitled "Compensation for Personal Services", in effect at the time the contract is executed (see Appendix I).

(c) The contract is modified by deleting from the general provisions the inapplicable portion of the clauses entitled "Allowances, Travel and Transportation Expenses," and the medical clearance of dependents residing with the contractor at post, when the contractor is a resident of the Cooperating Country.

(d) The block entitled, "Project No.," on the cover page of the contract format is completed by inserting the four-segment project number as prescribed in *AID Handbook 18—Information Services.*

(e) Necessary deviations from the prescribed contract format are properly documented and approved by the head of the contracting activity (see Subpart 701.4). A record of the nature of each such deviation, the justification for it, and the approval are included in the contract file and a copy is forwarded to the Office of Contract Management, Support Division (SER/CM/SD), AID/W, which is responsible for maintaining a central record of all approved deviations.

(f) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 665. The contracting officer assures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor.

(g) The contractor receives and understands Chapter 3, Employee Responsibilities and Conduct, of *AID Handbook 24—General Personnel Policy*, and a copy is attached to each contract, as provided for in paragraph 2(c) of the General Provisions (Attachment B).

(h) Agency conflict of interest requirements are met by the contractor prior to his/her reporting for duty.

6. Post Audit

The Inspector General, or his/her designee, audits the personal services contracts of all contracting activities for the purpose of insuring conformance to approved policy and standards.

7. Contract Provisions

The prescribed Cover Page, Schedule, and General Provisions for a direct AID contract with a U.S. citizen or U.S. resident for personal services abroad are attached as follows:

Attachment 1 to Appendix D— Form AID 1420–36, "Cover Page" and "Schedule";
Attachment 2 to Appendix D— Form AID 1420–37, "General Provisions"; and
Attachment 3 to Appendix D— Form AID 1420–38, "Additional General Provisions".

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Attachment 1 to Appendix D— Form AID 1420–36, "Cover Page" and "Schedule".

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

CONTRACT WITH A U.S. CITIZEN OR U.S. RESIDENT FOR PERSONAL SERVICES ABROAD

Negotiated Pursuant to the Foreign Assistance Act of 1961, as Amended, and Executive Order 11223	Contract Number
Country of Performance	Amount Obligated $
Contract For	Total Estimated Contract Cost $
	Project Number
Contracting Office *(name and address)*	Contractor *(name, street, city, state, zip code)*
Administered By *(if other than Contracting Office)*	Effective Date / Estimated Completion Date
Cognizant Scientific/Technical Office *(name, office symbol, address)*	Accounting and Appropriation Data
This is a Consulting Services Contract *(AIDPR 7-4.804-50)* ☐ YES ☐ NO	PIO/T Number _____
This is a Contract for Studies and/or Reports *(AIDPR 7-4.804-50)* ☐ YES ☐ NO	Appropriation Number _____
Payment Will Be Made By	Budget Plan Code _____
	Social Security Number _____
	Type of Advance *("X" appropriate box)* ☐ INITIAL ☐ NONE AUTHORIZED

The United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

(Fill in appropriate spaces)

This Contract consists of this Cover Page, the Schedule of _____ pages, including the Table of Contents, the General Provisions (form AID 1420-37, dated _____), the Additional General Provisions (form AID 1420-38, dated _____), and the Alterations in Contract Attachments, dated _____ .

	UNITED STATES OF AMERICA AGENCY FOR INTERNATIONAL DEVELOPMENT
Signature of Contractor	By *(signature of Contracting Officer)*
Typed or Printed Name	Typed or Printed Name
Date	Date

AID 1420-36 (10-81)

BILLING CODE 6116-01-C

Privacy Act Statement

This information is provided pursuant to Public Law 93–579 (Privacy Act of 1974), December 31, 1974, for individuals who complete this form.

The Executive Office of the President, Office of Management and Budget has required that all departments and agencies comply with the reporting requirements of Section 6041 of the Internal Revenue Code. Section 6041 states that all departments and agencies making payments totalling $600.00 or more in one year to a recipient for services provided must be reported to the Internal Revenue Service (IRS). The SSN and all financial numbers will be disclosed to Agency for International Development (AID) payroll office personnel and personnel in the Department of the Treasury, Division of Disbursements. AID will use this SSN to complete Form 1099 of the Code on non-employee compensation and other forms of income. Disclosure by the contractor of the SSN is necessary to obtain the services, benefits or processes provided by this contract. Disclosure of the SSN may be made outside AID (a) pursuant to any applicable routine use listed in AID's Notice for implementing the Privacy Act as published in the Federal Register, or (b) when disclosure by virtue of a contract being a public document after signatures are authorized under the Freedom of Information Act.

Contract No. ————————

AID 1420–36 (10–81)

TABLE OF CONTENTS

Schedule

The Schedule on pages 2 through 5 consists of this Table of Contents and the following Articles:
Article I—Statement of Duties
Article II—Period of Service Overseas
Article III—Contractor's Compensation and Reimbursement in U.S. Dollars
Article IV—Costs Reimbursable and Logistic Support
Article V—Precontract Expenses
Article VI—Additional Clauses

General Provisions

The following provisions, numbered as shown below, omitting number(s) ————————, are the General Provisions (GP) of this Contract:
1. Definitions
2. Laws and Regulations Applicable Abroad
3. Physical Fitness
4. Workweek
5. Leave and Holidays
6. Differential and Allowances
7. Social Security and Federal Income Tax
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Payment
12. Conversion of U.S. Dollars to Local Currency
13. Post of Assignment Privileges
14. Security Requirements
15. Contractor-Mission Relationships
16. Termination
17. Disputes
18. Release of Information
19. Officials Not to Benefit
20. Covenant Against Contingent Fees
21. Notices
22. Reports

For a tour of duty of 1 year or more, "Additional General Provisions (AGP)" will be attached and be applicable to this contract. References to individual clauses should specify, for example, "GP 9" (insurance), or "AGP 9" (termination).

Schedule

[Note.—Use of the following Schedule articles are not mandatory. They are intended to serve as guidelines for contracting offices in drafting contract schedules. Article language may be changed to suit the needs of the particular contract.]

Article I—Statement of Duties

[The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Any AID consultation or orientation.]

Article II—Period of Service Overseas

Within————days after written notice from the Contracting Officer that all clearances, including the doctor's certificate required under General Provisions Clause 3, have been received or unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to ————where he/she shall promptly commence performance of the duties specified above. The contractor's period of service overseas shall be approximately————in————. (Specify time of duties in each location as well as authorized stopovers with purpose of each.)

Article III—Contractor's Compensation and Reimbursement in U.S. Dollars

A. Except to the extent reimbursement therefore is payable in the currency of the cooperating country pursuant to Article IV, AID shall pay the contractor compensation after it has accrued and reimburse him/her in U.S. dollars for necessary and reasonable costs actually incurred by him/her in the performance of this contract within the categories listed in paragraph C, below, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately————(days) (weeks) (months) (years) (which is to include (1) vacation, sick, and home leave which may be earned during the contractor's tour of duty (GP Clause No. 5, AGP Clause No. 4), (2)————days for authorized travel (GP Clause 10(b)), and (3)————days for orientation and consultation in the United States.

C. ALLOWABLE COSTS

1. Compensation at the rate of $————per (year) (month) (week) (day). Adjustments in compensation for periods when the contractor is not in compensable pay status shall be calculated as follows: Rate of $———— per (day) (hour).	$——
2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder)	
3. Overseas Differential (Ref. GP Clause No. 6.) Rate	
4. Allowances in Cooperative Country (Ref. GP Clause 6 and AGP Clause 5.)*	
5. Travel and Transportation (Ref. GP Clause 10 and AGP Clause 6.) (Includes the value of GTRs furnished by the Government, not payable to Contractor).*	
a. United States	
b. International	
c. Cooperating and Third Country	
Subtotal Item 5	
6. Subsistence or Per Diem (Ref. GP Clause 10 and AGP Clause 6.)*	
a. United States	
b. International	
c. Cooperating and Third Country	
Subtotal Item 6	
7. Other direct costs	
a. Health and Life Insurance (Ref. GP Clause 9–b)	
b. Precontract Costs, passport, visa, inoculations, etc. (Ref. GP Clause 8)	
c. Physical Examination (Ref. GP Clause 3 and AGP Clause 3.)	
d. Communications, miscellaneous	
Subtotal Item 7	
8. F.I.C.A.—U.S.G. contribution (not payable to contractor)	
Total estimated costs (lines 1 thru 8)	

*Do not include the value of any costs to be paid or reimbursed in local currency.

D. Maximum U.S.-Dollar Obligation

In no event shall the maximum U.S.-dollar obligation under this contract, exceed $————. Contractor shall keep a close account of all obligations he/she incurs and accrues hereunder and promptly notify the Contracting Officer whenever in his/her opinion the said maximum is not sufficient to cover all compensation and costs reimbursable in U.S. dollars which he/she anticipates under the contract.

Article IV—Costs Reimbursable and Logistic Support

A. General

The contractor shall be provided with or reimbursed in local currency (————) for the following:

[Complete]

B. Method of Payment of Local Currency Costs

Those contract costs which are specified as local currency costs in paragraph A. above, if

not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provisions Clause 11. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

C. Cooperating or U.S. Government-Furnished Equipment and Facilities

List any logistical support, equipment, and facilities to be provided by the cooperating government or the U.S. Government at no cost to this contract; e.g., office space, supplies, equipment, secretarial support, etc., and the conditions, if any, for use of such equipment.

Article V—Precontract Expenses

No expense incurred before execution of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

[Additional Schedule clauses may be added, such as the implementation of General Provisions or Additional General Provisions clauses.]

Attachment 2 to Appendix D—Form AID 1420–37, "General Provisions"

GENERAL PROVISIONS

Contract With a U.S. Citizen or U.S. Resident for Personal Services Abroad

To be used on tours of duty of less than 1 year. For tours of duty of 1 year or more these "General Provisions" will be supplemented by "Additional General Provisions."

Index of Clauses

1. Definitions
2. Laws and Regulations Applicable Abroad
3. Physical Fitness
4. Workweek
5. Leave and Holidays
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7. Social Security and Federal Income Tax
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Payment
12. Coversion of U.S. Dollars to Local Currency
13. Post of Assignment Privileges
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15. Contractor-Mission Relationships
16. Termination
17. Disputes
18. Release of Information
19. Officials Not to Benefit
20. Covenant Against Contingent Fees
21. Notices
22. Reports
23. Use of Pouch Facilities

1. Definitions

(a) "Administrator" means the Administrator or the Deputy Administrator of the Agency for International Development.

(b) "AID" means the Agency for International Development.

(c) "Contracting Officer" means the person executing this Contract on behalf of the U.S. Government, or his successor who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(d) "Contractor" means the individual engaged to serve in the cooperating country under this Contract.

(e) "Cooperating country" means the foreign country in or for which services are to be rendered hereunder.

(f) "Cooperating government" means the government of the cooperating country.

(g) "Economy class" air travel (also known as jeteconomy, air coach, tourist-class, etc.) means a class of air travel which is less than first class.

(h) "Government" means the United States Government.

(i) "Local currency" means the currency of the cooperating country.

(j) "Mission" means the United States AID Mission to, or principal AID office in, the cooperating country.

(k) "Mission Director" means the principal officer in the Mission in the cooperating country, or his designated representative.

(l) "Tour of duty" means the Contractor's period of service under this Contract and shall include orientation in the United States (less language training), authorized leave, and international travel.

(m) "Traveler" means the Contractor in authorized travel status.

(n) "Project Officer" means the AID official to whom the Contractor reports, and who is responsible for monitoring the Contractor's performance.

(o) "U.S. Resident", as used in this contract, means an alien immigrant, legally resident in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and having a valid "Alien Registration and Receipt Card" (Immigration and Naturalization Service forms I–151 or I–551).

2. Laws and Regulations Applicable Abroad

(a) *Conformity to Laws and Regulations of the Cooperating Country*

Contractor agrees that, while in the cooperating country, he shall abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) *Purchase of Sale of Personal Property or Automobiles*

To the extent permitted by the cooperating country, the purchase, sale, import or export of personal property or automobiles in the cooperating country by the Contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) *Code of Conduct*

The Contractor shall, during his tour of duty under this Contract, be considered an "employee" (or if his tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions of AID Handbook 24, Chapter 3. The Contractor acknowledges receipt of a copy of said provisions by his acceptance of this Contract.

3. Physical Fitness

The Contractor shall be required to be examined by a licensed doctor of medicine and the Contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the Contractor is physically qualified to engage in the type of activity for which he is to be employed under the Contract and is physically qualified to reside in the cooperating country. A copy of the certificate shall be provided to the Contracting Officer prior to the Contractor's departure for the cooperating country or if this Contract is entered into in the cooperating country, the Contractor shall provide the certificate before he starts work under the Contract. The Contractor shall be reimbursed not to exceed $85 for the cost of the physical examination, plus reimbursement of charges for immunizations.

4. Workweek

The Contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Schedule, and shall coincide with the workweek for those employees of the Mission on the cooperating country agency most closely associated with the work of this Contract. If the Contract is for less than full time (40 hours weekly), the leave earned shall be prorated.

5. Leave and Holidays

(a) *Vacation Leave*

(1) The Contractor shall earn vacation leave at the rate of 13 workdays per annum or 4 hours every 2 weeks. However, no vacation shall be earned if the tour of duty is less than 90 days.

(2) It is understood that vacation leave is provided under this Contract primarily for the purposes of affording necessary rest and recreation during the tour of duty in the cooperating country. All vacation leave earned by the Contractor will be used during the Contractor's tour of duty. Unless approved by the Contracting Officer or Mission Director, the maximum amount of vacation leave which the Contractor may take following the completion of his services overseas shll be limited to vacation leave earned by the Contractor during a 6-month period.

(b) *Sick Leave*

Sick leave is earned at a rate not to exceed 13 workdays per annum or 4 hours every 2 weeks. Unused sick leave may be carried over under an extension of this Contract but the Contractor will not be compensated for unused sick leave at the completion of this Contract.

(c) *Leave Without Pay*

Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(d) *Holidays*

The Contractor, while serving abroad, shall be entitled to all holidays granted to U.S.-

citizen direct-hire employees by the Mission who are on comparable assignments.

6. Differential and Allowances

The following differential and allowances will be granted to the Contractor to the same extent and on the same basis as they are granted to U.S.-citizen direct-hire employees at the Mission by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended, except as noted to the contrary below:

	Applicable reference to standardized regulations
(a) Post differential	Chapter 500 and Tables in Chapter 900.
(b) Living quarters allowance	Section 130
(c) Temporary lodging allowance	Section 120
(d) Post allowance	Section 220
(e) Supplemental post allowance	Section 230
(f) Payments during evacuation	Section 600

The allowances provided in paragraph (b) through (e) above shall be paid to the Contractor in dollars or in the currency of the cooperating country in accordance with the practice prevailing at the Mission, or the Mission Director may direct that the Contractor be paid a per diem in lieu thereof as prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

7. Social Security and Federal Income Tax

F.I.C.A. contributions and U.S. Federal Income Tax withholding shall be deducted in accordance with regulations and rulings of the Social Security Administration and the U.S. Internal Revenue Service, respectively.

8. Advance of Dollar Funds

If requested by the Contractor and authorized in writing by the Contracting Officer, AID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to an AID U.S.-citizen direct-hire employee in accordance with AID Handbook 22, Chapter 4.

9. Insurance

(a) *Workmen's Compensation Benefits*

The Contractor shall be provided workmen's compensation benefits in accordance with the Federal Employees Compensation Act.

(b) *Health and Life Insurance*

The Contractor shall be reimbursed for the cost of personal health and life insurance premiums not to exceed $175 per annum.

(c) *Insurance on Private Automobiles*

If the Contractor or his dependents transport, or cause to be transported, privately owned automobile(s) to the cooperating country, or any of them purchase an automobile within the cooperating country, the Contractor agrees to insure that all such automobile(s) during such ownership within the cooperating country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the cooperating country; injury to persons, $10,000/$20,000; property damage, $5,000. The Contractor further agrees to deliver, or cause to be delivered to the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) is operated within the cooperating country. The premium costs for such insurance shall not be a reimbursable cost under this Contract.

(d) *Claims for Private Personal Property Losses*

The Contractor shall be reimbursed for private personal property losses in accordance with AID Handbook 23, "Overseas Support", Chapter 10.

10. Travel and Transportation Expenses

(a) *General*

AID/Washington Office of Management Operations, or such other office as may be designated by that office, may furnish Transportation Requests (TR's) to the Contractor for transportation originating in the United States authorized by this Contract, and the executive or administrative officer at the Mission may furnish TR's for such authorized transportation which is payable in local currency or is to originate overseas. When transportation is not provided by Government-issued TR, the Contractor shall procure his own transportation, the costs of which will be reimbursed in accordance with the following:

(b) *Travel and Transportation*

(1) *U.S. Travel and Transportation*

The Contractor shall be reimbursed for actual transportation costs and travel allowances in the United States as authorized in the Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercial-scheduled air travel by the most expeditious route except as otherwise provided in paragraph (6) below, unless economy air travel is not available and the Contractor certifies to this in his voucher or other documents submitted for reimbursement.

(2) *International Travel*

(i) The Contractor shall be reimbursed for actual transportation costs and travel allowances from place of residence in the United States (or other location, provided that the cost of such travel does not exceed the cost of travel from the place of residence), to post of duty in the cooperating country and return to place of residence in the United States (or other location, provided that the cost of such travel does not exceed the cost of travel from the post of duty to the place of residence) upon completion of his duties. Such transportation costs shall not be reimbursed in an amount greater than economy-class commercial-scheduled air travel by the most expeditious route, except as otherwise provided in paragraph (b)(6) below and unless economy air travel is not available and the Contractor certifies to the facts in the voucher or other documents he submits for reimbursement. When travel to or from the cooperating country is by economy-class accommodations, the Contractor will be reimbursed for the costs of transporting up to 22 pounds gross weight of accompanied personal baggage in addition to that regularly allowed with the economy ticket, provided that the total number of pounds of baggage does not exceed that regularly allowed for first-class travelers. Travel allowances shall be at the rate of $6 per day for not more than the travel time required by scheduled economy-class commercial air carrier using the most expeditious route and computed in accordance with the Federal Travel Regulations, as from time to time amended. One stopover en route for a period not to exceed 24 hours is allowable when the Contractor uses economy-class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route for the convenience of the Contractor. Per diem during authorized stopover shall be paid in accordance with the Federal Travel Regulations, as from time to time amended.

(ii) *Unaccompanied Baggage*

Except as provided in the Schedule or approved by the Contracting Officer, the Contractor who is on a tour of duty of 90 days or more under the Contract shall be reimbursed for the cost of unaccompanied personal effects not to exceed 250 pounds gross weight via airfreight from place of residence in the United States (or other location, provided that the cost of such shipment does not exceed the cost of shipment from the place of residence) to post of duty in the cooperating country and return to place of residence in the United States (or other location, provided that the cost of such shipment does not exceed the cost of shipment from the post of duty to the place of residence) upon completion of his duties.

(iii) *Local Travel*

The Contractor shall be reimbursed at the rates established by the Mission Director for authorized travel in the cooperating country in connection with duties directly referable to work under this Contract. In the absence of such established rates, the Contractor shall be reimbursed for actual costs of authorized travel in the cooperating country if not provided by the cooperating government or the Mission in connection with duties directly referable to work hereunder, including travel allowances at rates prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

(iv) *Special International Travel and Third-Country Travel*

For special travel which (*1*) advances the purpose of the Contract, (*2*) is not otherwise provided by the cooperating government, and (*3*) has the prior written approval of the Contracting Officer or the Mission Director, the Contractor shall be reimbursed for (i) the costs of international transportation other than between the United States and the cooperating country and for local transportation within other countries, and (ii) travel allowances while in official travel status and while performing services under the Contract in such other countries at rates prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

(v) *Indirect Travel for Personal Convenience*

(*1*) When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of economy class air fare via the direct usually traveled route between the authorized points of departure and destination.

(*2*) If such costs include fares for air or ocean transportation by foreign-flag carriers, approval for indirect travel by such foreign-flag carrier pursuant to paragraph (ix)(*1*) below must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by U.S.-flag carriers will be reimbursable within the above limitation of allowable costs.

(vi) *Delays En Route*

The Contractor may be granted reasonable delays en route while in travel status, not circuitous in nature, which are caused by events beyond the control of the Contractor. It is understood that if the delay is caused by physical incapacitation, the Contractor shall be eligible for such sick leave as is provided under GP Clause No. 5(b) of this Contract.

(vii) *Privately Owned Automobiles (POV)*

(*1*) If travel by POV is authorized in the Schedule or approved by the Contracting Officer, the Contractor shall be reimbursed for the cost of travel in his privately owned automobile at the rate per mile equal to the rate authorized a U.S. Government employee in equivalent circumstances, plus authorized per diem, if the automobile is being driven in connection with (A) authorized orientation, (B) authorized duties under this Contract, or (C) en route to or from the cooperating country provided that the total cost of the mileage and the per diem to the Contractor shall not exceed the total constructive cost of fare and normal per diem by (1) surface common carrier or (2) less than first-class air, whichever is the lesser

(*2*) Cost of the shipment of automobiles for Contract tours of duty of less than 1 year are not reimbursable under this Contract.

(viii) *Emergency and Irregular Travel and Transportation*

Actual transportation costs and travel allowances while en route, as provided in this section, shall be reimbursed under the following conditions:

(*1*) Subject to the prior written approval of the Mission Director, the costs of going from post of duty in the cooperating country to the United States or other approved location for the Contractor when, because of reasons or conditions beyond his control, the Contractor has not completed his required service in the cooperating country. The Mission Director may also authorize the return to the cooperating country of such Contractor.

(*2*) It is agreed that paragraph (viii)(*1*) above includes, but is not necessarily limited to, the following:

1. Need for medical care beyond that available within the areas to which the Contractor is assigned.

2. Serious effect on physical or mental health if residence is continued at assigned post of duty.

3. Serious illness, injury, or death of a member of the Contractor's immediate family. Travel shall be authorized in accordance with emergency visitation travel granted to U.S.-citizen direct-hire employees under Chapter 600 of the Standardized Regulations (Government Civilians, Foreign Areas).

4. Emergency evacuation, when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Allowances at safe haven when authorized by the Mission Director shall be payable in accordance with established Government Regulations.

5. Preparation and return of the remains of a deceased Contractor.

(ix) *Preference for U.S. Flag Air Carriers (Jan. 1977)*

(*1*) Pub. L. 93–623 requires that all Federal agencies and Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditure from appropriated funds for international air transportation on other than a U.S. flag air carrier in the absence of satisfactory proof of the necessity therefor.

(*2*) The contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available.

(*3*) In the event that the contractor selects a carrier other than a U.S. flag air carrier for international air transportation, he will include a certification on vouchers involving such transportation which is essentially as follows:

Certification of Unavailability of U.S. Flag Air Carriers

I hereby certify that transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reasons: (state reasons) *

*Note.—FPR 1–1.323–3, requires that expenditures for service furnished by a noncertificated air carrier generally will be allowed only when service by a certificated air carrier or carriers is "unavailable" as indicated by the June 17, 1975, Comptroller General's memorandum (B–138942) entitled "Guidelines for Implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974"; as amended on October 1980. The criteria contained in the amended memorandum are reproduced below:

(a) Passenger or freight service by a certificated air carrier is considered "available" even though:

(1) Service by a noncertificated air carrier can be paid for in excess foreign currency, or

(2) Service by a noncertificated air carrier is preferred by the agency or traveler needing air transportation, or

(3) Service by a noncertificated air carrier is more convenient for the agency or traveler needing air transportation.

(b) Passenger service by a certificated air carrier will be considered to be "unavailable".

(1) When certificated air carriers offer only first class service, and less than first class service is available from noncertificated air carriers, or

(2) When the traveler, while en route has to wait 6 hours or more to transfer to a certificated air carrier to proceed to the intended destination, or

(3) When any flight by a certificated air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, etc., and no other flight by a certificated air carrier is available during the 6 hour period, or

(4) When by itself or in combination with other certificated or noncertificated air carriers (if certificated air carriers are "unavailable") it takes 12 or more hours longer from the original airport to the destination airport to accomplish the agency's mission then would service by a noncertificated air carrier or carriers.

(5) When the elapsed traveltime on a schedule flight from origin to destination airports by noncertificated air carrier(s) is 3 hours or less and service by certificated air carrier(s) would involve twice such scheduled traveltime.

(*4*) The terms used in this clause have the following meanings:

(A) "International air transportation" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.

(B) "U.S. flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

(C) The term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

(x) The contractor shall include the substance of this clause, including this paragraph (x), in each subcontract or purchase hereunder which may involve international air transportation.

11. Payment

(a) Once each month (or at more frequent intervals, if approved by the paying office indicated on the Cover Page), the Contractor may submit to such office form SF 1034 Public Voucher for Purchases and Services Other Than Personal (original) and SF 1034–A (three copies), each voucher identified by the AID contract number, properly executed in the amount of dollars claimed during the period covered. The voucher forms shall be supported by:

(1) The Contractor's detailed invoice, in original and two copies indicating for each amount claimed, the paragraph of the Contract under which payment is to be made, supported when applicable as follows:

(i) *For compensation*—a statement showing period covered, days worked, and days when Contractor was in authorized travel, leave, or stopover status for which compensation is claimed. All claims for compensation will be accompanied by, or will incorporate, a certification signed by the Project Officer covering days or hours worked, or authorized travel or leave time for which compensation is claimed.

(ii) *For travel and transportation*—a statement of itinerary with attached carrier's receipt and/or passenger's coupons, as appropriate.

(iii) *For reimbursable expenses*—an itemized statement supported by original receipts.

(2) The first voucher submitted shall include a fully executed Form W–4.

Employees Withholding Exemption Certificate, to permit required withholding by AID, such as Federal Income Tax, F.I.C.A. deductions, and, when applicable, state income tax. The first voucher shall also account for, and liquidate the unexpended balance of, any funds theretofore advanced to the Contractor.

(b) A final voucher shall be submitted by the Contractor promptly following completion of the duties under this Contract but in no event later than 120 days (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion. The Contractor's claim, which includes his final settlement of compensation, shall not be paid until after the performance of the duties required under the terms of this Contract has been approved by AID. On receipt and approval of the voucher designated by the Contractor as the "final voucher" submitted on form SF 1034 (original) and SF 1034–A (three copies), together with a refund check for the balance remaining on hand of any funds which may have been advanced to the Contractor, the Government shall pay any amounts due and owing the Contractor.

12. Conversion of U.S. Dollars to Local Currency

Upon arrival in the cooperating country, and from time to time as appropriate, the Contractor shall consult with the Mission Director or his authorized representative who shall provide, in writing, the policy the Contractor shall follow in the conversion of U.S. dollars to local currency. This may include, but not be limited to, the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

13. Post of Assignment Privileges

(a) Health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees are generally available for U.S. citizen contractor or subcontractor employees and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services do include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

(b) Privileges such as the use of APO, PX's, commissaries and officer's clubs are established at posts abroad pursuant to agreements between the U.S. and host governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, AID Mission, U.S. Information Service and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans.

14. Security Requirements

(a) The provisions of the following paragraphs of this clause shall apply to the extent that this Contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The Contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with appropriate instructions furnished by the AID Office of Security, as referenced in paragraph (d) below and shall not supply, disclose, or otherwise permit access to classified information or administratively controlled information to any unauthorized person; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information except with the prior written authorization of the Contracting Officer or Mission Director; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified and/or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall not permit any alien access to classified or administratively controlled information. The Contractor shall not permit any individual to have access to classified information or administratively controlled information without the prior written authorization of the Contracting Officer or Mission Director.

(d) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storing, and destroying official material in accordance with the regulations in the Uniform Security Regulations (Foreign Affairs Manual, Chapter 5), a copy of which will be furnished by the Contracting Officer or Mission Director.

(e) The Contractor agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, appropriately classified, of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(f) The Government agrees that when necessary it shall indicate by security classification or administratively controlled designation, the degree of importance to the national defense of information to be furnished by the Contractor to the Government or by the Government to the Contractor and the Government shall give written notice of such security classification or administratively controlled designation to the Contractor and of any subsequent changes thereof. The Contractor is authorized to rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(g) The Contractor agrees to certify after completion of his assignment under this Contract that he has surrendered or disposed of all classified and/or administratively controlled information in his custody in accordance with applicable security instructions.

15. Contractor-Mission Relationships

(a) The Contractor acknowledges that this Contract is an important part of the U.S. Foreign Assistance Program and agrees that his duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) While in the cooperating country, the Contractor is expected to show respect for the conventions, customs, and institutions of the cooperating country and not interfere in its political affairs.

(c) If the Contractor's conduct is not in accordance with paragraph (b), the Contract may be terminated pursuant to the General Provision of this contract, entitled "Termination." The Contractor recognizes the right of the U.S. Ambassador to direct his/her immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(d) The Mission Director is the chief representative of AID in the cooperating country. In this capacity, he is responsible for the total AID Program in the cooperating country including certain administrative responsibilities set forth in this Contract and for advising AID regarding the performance of the work under the Contract and its effect on the U.S. Foreign Assistance Program. The Contractor will be responsible for performing his duties in accordance with the statement of duties called for by the Contract. However, he shall be under the general policy guidance of the Mission Director and shall keep the Mission Director or his designated representative currently informed of the progress of the work under the Contract.

16. Termination

This Contract may be terminated by the Contracting Officer:

(a) For cause, by giving not less than 10 calendar days advance written notice and a statement of reasons to the Contractor in the event (1) he commits a breach or violation of any of his obligations herein contained, (2) a fraud was committed in obtaining this contract, or (3) he is guilty (as determined by AID) of misconduct in the cooperating country. Upon such a termination, the Contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which he performs services hereunder, whichever is earlier. No costs of any kind incurred by the Contractor after the date such notice is delivered to him shall be rembursed hereunder except cost of return transportation (not including travel allowances), if approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been prepaid by AID, the Contractor shall promptly refund to AID any such prepayment as directed by the Contracting Officer.

(b) For the convenience of AID, by giving not less than 30 calendar days advance written notice to the Contractor. Upon such a termination, Contractor's right to compensation shall cease when the period specified in such notice expires except that the Contractor shall be entitled to return transportation costs and travel allowances and transportation of unaccompanied

baggage costs at the rates specified in the Contract and subject to the limitations which apply to authorized travel status.

(c) For the convenience of AID, when the Contractor is unable to complete performance of his services under the Contract by reason of sickness or physical or emotional incapacity based upon a certification of such circumstances by a duly qualified doctor of medicine approved by the Mission. The Contract shall be deemed terminated upon delivery to the Contractor of a termination notice. Upon such a termination, the Contractor shall not be entitled to compensation except to the extent of any unused vacation or sick leave but shall be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the Contract and subject to the limitations which apply to authorized travel status.

17. Disputes (FPR Temp. Reg. 55) (May 1980)

(a) This Contract is subject to the Contract Disputes Act of 1978 (Pub. L. 95–563).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this clause.

(c)(1) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract.

(2) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim pursuant to the Act.

(3) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for decision. A claim by the Government against the Contractor shall be subject to a decision by the Contracting Officer.

(d) For Contractor claims of more than $50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and the amount requested accurately reflects the Contract adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must render a decision within 60 days. For Contractor claims in excess of $50,000, the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The authority of the Contracting Officer under the Act does not extend to claims or disputes which by statute or regulation other agencies are expressly authorized to decide.

(h) Interest on the amount found due on a Contractor claim shall be paid from the date the claim is received by the Contracting Officer until the date of payment.

(i) Except as the parties may otherwise agree, pending final resolution of a claim by the Contractor arising under the Contract, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Contracting Officer's decision.

18. Release of Information

All rights in data and reports shall become the property of the U.S. Government. All information gathered under the Contract by the Contractor and all reports and recommendations hereunder shall be treated as confidential by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this Contract.

19. Officials Not To Benefit

No member of or delegate to the Congress or resident commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

20. Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, AID shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

21. Notices

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To AID:

Administrator
Agency for International Development
Washington, D.C. 20523
Attention: Contracting Office
(name of the cognizant Contracting Officer with a copy to the appropriate Mission Director)

To Contractor: At his post of duty while in the cooperating country and at the Contractor's address shown on the Cover Page of this Contract or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice, whichever is later.

22. Reports

(a) The Contractor shall submit two copies of each written technical report prepared under the terms of this Contract (e.g., progress reports, final report, ect.) to the AID Reference Center, Agency for International Development, Washington, D.C. 20523. The title page of all reports forwarded to the AID Reference Center shall include the contract number, the project number and the project title which are set forth on the Cover Page of this Contract.

(b) When preparing reports, the Contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Schedule of this Contract. Wherever possible, pages should be printed on both sides using single spaced type.

23. Use of Pouch Facilities (Dec. 1986)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID Contractors as a general policy, as detailed in items (1) through (6) below. However, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities as hereinafter stated, the Contractor agrees to indemnify and hold harmless the Department of State and AID for loss or damage occuring in pouch transmission.

(1) Contractors are authorized use of the pouch for transmission and receipt of up to a maximum of 2 pounds per shipment of correspondence and documents needed in the administration of assistance programs.

(2) U.S. citizen Contractors are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see (a)(3) below). Non U.S. citizen Contractors are not permitted use of the pouch for personal mail except and to the extent that such use may be authorized by the Chief of Mission.

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official and personal mail pursuant to (a) (1) and (2) above, sent by pouch, should be addressed as follows:

Name of individual (followed by letter symbol "C")
Name of post (USAID/)
Agency for International Development
Washington, D.C. 20523

(5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(6) AID contractors are *not* authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch may, however, accept official and personal mail for the pouch provided, of course, adequate postage is affixed when onward transmission (mail to other than

AID/W) through U.S. postal channels is required.

(b) The Contractor shall be responsible for compliance with these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

Attachment 3 to Appendix D—Form AID 1420–32, "Additional General Provisions"

ADDITIONAL GENERAL PROVISIONS

Contract with a U.S. Citizen or U.S. Resident for Personal Services Abroad

(To be used along with the General Provisions for a tour of duty of 1 year or more.)

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1. Definitions (long tour)
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3. Physical Fitness (long tour)
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5. Allowances (long tour)
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7. Orientation and Language Training (long tour)
8. Post of Assignment Privileges (dependents)
9. Termination (long tour)

1. Definitions (Long Tour)

(a) "Dependents" means:

(1) *Spouse.*

(2) *Children* (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

(3) *Parents* (including step and legally adoptive parents) of the employee or of the spouse, when such parents are at least 51 percent dependent on the Contractor for support.

(4) *Sisters and brothers* (including step or adoptive sisters or brothers) of the Contractor, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the Contractor for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support.

(b) "Traveler" also means dependents of the Contractor who are in authorized travel status.

2. Laws and Regulations Applicable Abroad

(a) *Conformity to Laws and Regulations of the Cooperating Country*

While in the cooperating country, the Contractor agrees he will make every effort to assure that his authorized dependents shall abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) *Purchase, Sale, Import, or Export of Personal Property or Automobiles*

To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles by the Contractor's authorized dependents in the cooperating country shall also be subject to the same limitations and prohibitions which apply to U.S.-citizen direct-hire employee dependents.

3. Physical Fitness (Long Tour)

(a) *Predeparture*

The Contractor's authorized dependents shall also be required to be examined by a licensed doctor of medicine. The Contractor shall require the doctor to certify that, in the doctor's opinion, the Contractor's authorized dependents are physically qualified to reside in the cooperating country. A copy of the certificate shall be provided to the Contracting Officer prior to the dependent's departure for the cooperating country.

(b) *End of Tour*

The Contractor and his authorized dependents are authorized physical examinations within 60 days after completion of the Contractor's tour of duty.

(c) *Reimbursement*

The Contractor shall be reimbursed for the physical examinations mentioned in paragraphs (a) and (b) above as follows: (1) not to exceed $85 per examination for the Contractor's dependents of 12 years of age and over and (2) $25 per examination for Contractor's dependents under 12 years of age. The Contractor shall also be reimbursed for the cost of immunizations.

4. Leave and Holidays (Long Tour)

(a) *Vacation Leave*

With the approval of the Mission Director, and if the circumstances warrant, a Contractor may be granted advance vacation leave in excess of that earned but in no case shall a Contractor be granted advance vacation leave in excess of that which he will earn over the life of the Contract. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the Contractor's assignment under the Contract.

(b) *Military Leave*

Military leave of not more than 15 calendar days in any calendar year may be granted to a Contractor who is a reservist of the Armed Forces, provided that such military leave has been approved in advance by the Contracting Officer or the Mission Director.

(c) *Home Leave*

(1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A Contractor who is a U.S. citizen or U.S. resident and has served at least 2 years overseas, as defined in paragraph (c)(4) below, under this Contract, and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas; provided, that the Contractor agrees to return overseas upon completion of home leave under an additional 2 year appointment, or for such shorter period of not less than 1 year of overseas service under the Contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2) above, that the Contractor must have served 2 years overseas under this Contract to be eligible for home leave, Contractor may be granted advance home leave subject to *all* of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this Contract;

(ii) The Contractor shall have served a minimum of 18 months in the cooperating country on his current tour of duty under this Contract; and

(iii) The Contractor shall have agreed to return to the cooperating country to serve out the remainder of his current tour of duty and an additional 2 year appointment under this Contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) above, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the U.S. port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the U.S. port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The Contractor will be responsible for reimbursing AID for payments made during home leave if, in spite of the undertaking of the new appointment, the Contractor, except for reasons beyond his control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this Contract.

(6) To the extent deemed necessary by the Contracting Officer, a Contractor in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation on-campus or at AID/Washington before returning to post of duty. Consultation at locations other than AID/Washington or on-campus, as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(7) Except as provided in the Schedule or approved by the Mission Director or the Contracting Officer, home leave is not authorized for third-country nationals.

5. Allowances (Long Tour)

The following allowances shall also be granted to the Contractor and his authorized dependents to the same extent, and on the

same basis as, they are granted to AID employees and their dependents by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended:

	Applicable reference to standardized regulations
(a) Educational allowance	Chapter 270.
(b) Educational travel	Chapter 280.
(c) Separate maintenance allowances.	Chapter 280.

The allowances provided in paragraphs (a) through (c) above shall be paid to the Contractor in dollars or in the currency of the cooperating country in accordance with the practice prevailing at the Mission.

6. Travel and Transportation Expenses (Long Tour)

(a) *General*

Pursuant to paragraph (a) of Clause 10 of the General Provisions, when transportation is not provided by Government-issued TR for the items listed below, the Contractor shall procure his own transportation, the costs of which will be reimbursed in accordance with the following:

(1) *International Travel*

(i) International travel costs and allowances and stopovers for authorized dependents shall be reimbursed on the same basis as for the Contractor under General Provision Clause No. 10(b)(2)(i) of this Contract except that travel allowances for such dependents shall be at the rate of $6 per day for persons 11 years of age or over and $3 per day for persons under 11 years of age payable for not more than the travel time required by scheduled economy class commercial air carrier using the most expeditious route and computed in accordance with the Federal Travel Regulations, as from time to time amended.

(ii) *1.* All international ocean transportation of things which is to be reimbursed in U.S. dollars as authorized under this Contract shall be by U.S.-flag vessels to the extent they are available. When U.S.-flag vessels are not available, or their use would result in a significant delay, the Contractor may request a release from this requirement from the SER/COM, Transportation Support Division, Agency for International Development, Washington, D.C. 20523, giving the basis for the request.

2. All international air transportation of dependents shall be in accordance with paragraph (b)(9) of Clause 10 of the General Provisions, entitled "Preference for U.S. Flag Air Carriers."

(b) *Limitation on Travel by Dependents*

Travel costs and allowances will be allowed for authorized dependents of the Contractor and such costs shall be reimbursed for travel from place of abode in the United States to assigned station in the cooperating country and return, only if the dependent remains in the cooperating country for at least 9 months or one-half of the required tour of duty of the Contractor, whichever is greater, except as otherwise authorized hereunder for education, medical, or emergency visitation travel.

(c) *Delays En Route*

Dependents may be granted reasonable delays en route, not circuitous in nature, while in travel status, caused by events beyond the control of such dependents.

(d) *Travel by Privately Owned Automobile (POV)*

Notwithstanding the provisions of paragraph (b)(7) of Clause 10 of the General Provisions, if travel by POV is authorized in the Schedule or approved by the Contracting Officer, the Contractor shall be reimbursed for the cost of travel in his privately owned automobile at the rate per mile equal to the rate authorized a U.S. Government employee in equivalent circumstances, plus authorized per diem for the Contractor and for each of the authorized dependents traveling in the automobile if the automobile is being driven in connection with (1) authorized orientation, (2) authorized duties under this Contract, or (3) en route to or from the cooperating country as authorized in the Schedule; provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by (i) surface common carrier or (ii) less-than-first-class air, whichever is the lesser.

(e) *Emergency and Irregular Travel and Transportation*

Notwithstanding the provisions of paragraph (b)(8) of Clause 10 of the General Provisions, actual transportation costs and travel allowances while en route, as provided in this section, will also be reimbursed under the following conditions:

(1) Subject to the prior written approval of the Mission Director, the costs of going from post of duty in the cooperating country to the United States or other approved location for the Contractor and authorized dependents, when because of reasons or conditions beyond his control, the Contractor has not completed his required service in the cooperating country or the dependent must leave the cooperating country. The Mission Director may also authorize the return to the cooperating country of such Contractor and/or his authorized dependents.

(2) It is agreed that paragraph (e)(1) above, includes but is not necessarily limited to the following:

(i) Need for medical care beyond that available within the area to which Contractor is assigned.

(ii) Serious effect on physical or mental health if residence is continued at assigned post of duty.

(iii) Serious illness, injury, or death of a member of a Contractor's immediate family or the immediate family of a dependent. Travel may be authorized in accordance with emergency visitation travel granted to U.S.-citizen direct-hire employees and their dependents under Chapter 600 of the Standardized Regulations (Government Civilians, Foreign Areas).

(iv) Emergency evacuation, when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Transportation and travel allowances at safe haven and the transportation of household effects and automobile or storage thereof when authorized by the Mission Director shall be payable in accordance with established Government regulations.

(v) Preparation and return of the remains of a deceased Contractor of his dependents.

(f) *Transportation of Motor Vehicles, Personal Effects, and Household Goods*

(1) *General*

Transportation, including packing and crating costs, will be paid for shipment from Contractor's residence in the United States or other location (provided that the cost of transportation does not exceed the cost from the Contractor's residence) to post of duty in the cooperating country and return to the Contractor's residence in the United States or other location (provided that the cost of transportation does not exceed the cost to the Contractor's residence), (i) of one privately owned motor vehicle for the Contractor subject to the restrictions contained in paragraph (h) below, (ii) of personal effects of the Contractor, and (iii) of household goods of Contractor not to exceed the following limitations:

	Basic household furniture not supplied (pounds net weight)	Basic household furniture supplied (pounds net weight)
Contractor with dependents in cooperating country	[illegible]	[illegible]
Contractor without dependents in cooperating country	[illegible]	1,500

Note.—For the purpose of this Clause, "net weight" and "gross weight" are defined and determined in accordance with the provisions of Section 162.1 of the Uniform State/AID/USICA Foreign Service Travel Regulations.

The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the cooperating country, the cost of boxing or crating is not reimbursable. The transportation of a privately owned motor vehicle for a Contractor may be authorized as a replacement of the last such motor vehicle shipped under this Contract for such Contractor when the Mission Director determines, in advance, and so notifies the Contractor in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the Contractor. The determination shall be made under the same rules and regulations that apply to authorized Mission U.S.-citizen direct-hire employees.

(2) *Unaccompanied Baggage*

The Contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance above for household effects) not to exceed the following:

	Gross weight
Employee	250 lbs.
First dependent traveling	200 lbs.
Second dependent traveling	150 lbs.
Each additional dependent traveling	100 lbs.

This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used.

Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival at destination.

(3) *Reduced Rates on U.S.-Flag Carriers*

Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of AID Contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of AID. The Contracting Officer will, on request, furnish to the Contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The Contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(g) *Storage of Household Effects*

The cost of storage charges (including packing, crating, and drayage costs) in the United States of household goods of Contractor will be permitted, in lieu of transportation of all or any part of such goods to the cooperating country under paragraph (f) above, provided that (1) the total amount of household goods shipped to the cooperating country and stored in the United States shall not exceed 4,500 pounds net for each Contractor without dependents in the cooperating country and 7,500 pounds net for each Contractor with dependents in the cooperating country, and (2) at least 200 pounds net of household effects will be stored; quantities of less than 200 pounds net stored will not be reimbursed.

(h) *Transportation of Foreign-Made Motor Vehicles*

Reimbursement of the costs of transporting a foreign (non-U.S.) made motor vehicle will be made in accordance with the provisions of the Uniform State/AID/USICA Foreign Service Travel Regulations, as from time to time amended, on the same basis as a U.S. Government employee.

(i) *Home Leave Travel*

The Contractor shall be reimbursed for the cost of travel performed by Contractor and dependents for purposes of home leave, provided that such reimbursement does not exceed that authorized by the Uniform State/AID/USICA Foreign Service Travel Regulations.

(j) *Rest and Recuperation Travel*

If approved in writing by the Mission Director, the Contractor and his dependents shall be allowed rest and recuperation travel on the same basis as authorized U.S.-citizen direct-hire Mission employees and their dependents.

7. Orientation and Language Training

(a) Except as set forth in paragraph (b)(4) below, the Contractor shall receive a maximum of 2 weeks AID orientation before travel overseas. The dates of orientation shall be selected by the Contractor and approved by the Contracting Officer from the orientation schedule provided by AID.

(b) As either set forth in the Contracting Schedule, or provided in writing by the Contracting Officer, the following may be authorized taking into consideration specific job requirements, Contractor's prior overseas experience, or unusual circumstances, in connection with orientation of individual Contractors:

(1) Modified orientation,

(2) Language training,

(3) Orientation for Contractor's dependents at Contract expense,

(4) Waiver of orientation for individual Contractor.

(c) Transportation costs and travel allowances not to exceed one round trip from the Contractor's residence to place of orientation and return will be reimbursed, pursuant to Clause 10 of the General Provisions, entitled "Travel and Transportation Expenses," if the orientation is more than 50 miles from the Contractor's residence. Allowable salary costs during the period of orientation are also reimbursable.

8. Post of Assignment Privileges (Dependents)

(a) Health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees are generally available for U.S. citizen contractor or subcontractor employees and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services do include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

(b) Privileges such as the use of APO, PX's, commissaries and officer's clubs are established at posts abroad pursuant to agreements between the U.S. and host governments. These facilities are intended for and usually are limited to members of the official U.S. establishment including the Embassy, AID Mission, USICA, and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans.

9. Termination

If the Contract is terminated for the convenience of the Government pursuant to Clause 16 of the General Provisions, the Contractor shall also be entitled to return transportation costs and travel allowances for authorized dependents, transportation of motor vehicle, personal effects, and household goods, if any or all of the above are authorized in this Contract, subject to the limitations which apply to such costs.

Appendix E—Contract Closeout Procedures

1. Purpose

This appendix establishes procedures for the orderly and expeditious closeout of completed AID/W and Mission direct contracts.

2. Closeout Procedures

(a) For the purpose of this appendix, the "closeout phase" is defined as the period of time extending from the date the work has been completed by the contractor (including submission of all reports required under the contract) until all remaining administrative actions have been satisfactorily accomplished and the contract file is retired. The closeout procedures are administered by the Support Services Branch, Office of Contract Management (CM/SD/SS).

(b) AID organizational elements accomplish their respective responsibilities during the closeout phase as follows:

(1) *Fixed-price contracts.* Within 4 months after the contractor has completed the work.

(2) *Cost-reimbursement contracts.* Within 21 months after the contractor has completed the work.

(c) Contract records are not officially retired by the contracting office until the closeout phase is completed.

3. Responsibility

(a) *Contracting office.* The contracting officer is responsible for:

(1) Identifying outstanding closeout actions.

(2) Contacting other offices within AID having responsibilites during the closeout phase for status information.

(3) Assuring that all closeout actions have been accomplished as evidenced by the information provided by responsible offices on the checklist form.

(4) Initiation of follow-up measures, as necessary, on administrative actions which have not been completed within a reasonable time.

(5) Submitting any contract file to the Office of the General Counsel for review when he/she feels that: (i) Litigation may be involved, or (ii) there is a legal problem which GC should comment on before the contract is closed out.

(b) *Other AID offices.* Other AID offices (e.g., the technical office, Inspector General, AID/W or Mission Security, AID/W paying office or Mission Controller, and the Mission) are responsible for:

(1) Accomplishing administrative actions on a work-completed contract as expeditiously as possible.

(2) Providing completed checklist forms or other status information as requested by the contracting officer in accordance with the procedures in this appendix.

4. Procedures

(a) As soon as feasible, but not more than 90 days after completion of the work under a contract (including receipt of all reports required thereunder), the contracting officer, or his/her designated representative, reviews the contract records to identify the outstanding closeout actions which must be accomplished prior to retiring the contract.

(b) The contracting officer or his/her designated representative (CM/SD/SS for AID/W) prepares and sends two copies of Form AID 1420-15, Contract Closeout Checklist, to each of the indicated AID action offices as follows:

Part I—AID/W Technical Office (Form AID 1420-15A).

Part II—AID/W Security or Mission Security Office (Form AID 1420-15B).

Part III—AID/W IG Audit (Form AID 1420-15C).

Part IV—AID/W Paying Office or Mission Controller (Form AID 1420-15D).

Part V—Mission (Form AID 1420-15E).

(c) The above checklists are sent concurrently to the action offices indicated. Each action office returns one copy of the completed part of the checklist to the contracting officer by the date indicated on the form. Additional remarks or comments by the action office may be attached to their reply. In closing out a mission contract, it may be necessary to obtain certain information from AID/W offices before completing the checklist. If an office indicates on the checklist that one or more items are still pending, they forward the second and final signed copy of the checklist when all of their outstanding actions have been completed.

(d) The contracting officer, or his/her designated representative, follows up periodically on outstanding administrative actions that have not been accomplished within a reasonable period of time.

(e) The contracting officer shall certify to the security office when the contractor has given notification that all classified information in the contractor's possession has been properly disposed of or retained (see Part VI, item 8 of Form AID 1420–15F).

(f) When the contracting officer has received the completed, certified checklists from the other action offices, he/she completes Part VI, the Contracting Office Checklist (Form AID 1420–15F), assembles all checklist parts in order, signs the certification in paragraph B of Part VI, and places the document in the contract file. The signed checklist and support data then constitute the necessary authority to officially retire the contract file.

5. Availability of Contract Closeout Checklist

The six part contract closeout checklist, Form AID 1420–15, is stocked by the AID Distribution Branch (MO/PUM) and by the Support Division, Office of Contract Management. Mission contracting offices should order their supply through the AID Distribution Branch (MO/PUM); AID/W contracting offices, through the Support Division, Office of Contract Management.

Apendix F—Use of Collaborative Assistance Method for AID Direct Contracts for Technical Assistance

1. Introduction

(a) AID direct contracts for technical assistance are now classified in one of three categories depending on the source selected to perform the services. They are:

(1) Architect/engineer services provided with a technical assistance project;

(2) Services to be performed by an educational/nonprofit institution; and

(3) Services to be performed by commercial contractors, or others, as a result of competitive negotiation.

(b) Procurement policies and procedures for architect/engineer services are contained in the AID Acquisition Regulations (Subpart 736.6). Services to be performed by commercial contractors, or others, as a result of competitive negotiation will now be procured under policies and procedures contained in FAR 15.4.

(c) For the procurement of services to be performed by educational institutions, international research centers, or cooperative development organizations, there are two Subparts to the AIDAR. The first of these, 715.613–70, Educational Institution and International Research Center Selection Procedure will be used whenever it has been determined that required services or relationships necessary for the successful performance of the project are available only from an educational institution or international research center (except contracts negotiated under 715.613–71. Collaborative Assistance Selection Procedure).

(d) The second of these, 715.613–71, Collaborative Assistance, introduces an additional approach for obtaining services from educational institutions, international research centers, or cooperative development organizations, and is the major concern of this appendix.

2. Purpose

This appendix describes an alternative contractual relationship known as the collaborative assistance approach for the following purposes:

(a) Increasing the joint implementation authority and responsibility of the contractor and the LDC;

(b) Encouraging more effective collaboration between all participating parties (AID, host country, and contractor) at important stages, including the design stage, of a technical assistance project.

3. Policy

The collaborative assistance approach represents an alternative method for long-term technical assistance which involves professional collaboration with educational institution, international research center, or cooperative development organization contractors and LDC counterparts for a problem-solving type activity to develop new institutional forms and capabilities, to devise operating systems and policies, and to conduct joint research and development—including training. In such an activity, the difficulty in defining, in advance, precise and objectively verifiable contractor inputs and long-term project content as a basis for payment usually requires a flexible approach to project design, contracting, and project implementation. Such flexibility is also essential to the collaborative style which is responsive to LDC desires in problem areas of great complexity and varying uncertainty. Other types of technical assistance, which are usually shorter in term are amenable to more precise definition in advance, or involve closely defined and relatively standardized services, or are otherwise more analogous to commodity resource transfers, may be suitable for other contracting methods, e.g., certain forms of institution building, on-the-job training, resource surveys, etc. The collaborative assistance method is an approved method for providing technical assistance when used in accordance with the circumstances outlined above, and with the guidelines set forth in paragraph 4, below.

4. Implementation Procedures

(a) *Introduction.* This paragraph 4, provides background information, guidelines and procedures to effect the implementation of the policy set forth in paragraph 3 of this appendix.

(b) *Conditions and practices.* In order for this policy to work effectively even when the proposed activity fits the criteria described under Policy, there must also be:

(1) Acceptance of the notion that the host country, in consultation with the contractor, is in the best position to make tactical, day-to-day decisions on project inputs within agreed-upon limitations and output expectations;

(2) Sufficient trust and respect between the Agency and the contractor to allow this flexible implementation authority;

(3) A direct-hire project monitor with appropriate background to be knowledgeable of progress and to assist in an advisory and facilitative capacity, both during and between periodic reviews. In addition, the following important conditions must be met:

(i) Adequate preproject communication between, and identification of assistance required by, the host government and USAID;

(ii) Full joint planning and improved project design ("Joint" as used herein refers to the primary parties, i.e., the collaborating institutions, as well as the host government and USAID. In some instances, it can also include other donors.);

(iii) Careful contractor selection, i.e., matching of the contractor's technical and managerial capabilities to the anticipated requirements of the overseas activity;

(iv) Establishment of relationships between host country, AID and contractor staff to include host country leadership, flexible implementation authority, and effective management by the contractor;

(v) Improved joint project evaluation, feedback, and replanning; and

(vi) Simplified administrative procedures and greater reliance on in-country logistical support.

(c) *Project Stages and Contractor Involvement.* In the long-term technical assistance projects as described above, there are four discrete but sometimes overlapping decision stages which take place—with the principal contractor usually involved in the last three.

(1) *Problem analysis and project identification.* After the host government has indicated a desire for U.S. collaboration on a particular problem and the AID field mission has determined that the proposed activity is consistent with its program goals and priorities, considerable effort is usually necessary to refine further the project purpose and type of assistance required and provide a basis for contractor selection. This is a crucial step and is focused on results sought—on what the prospective contractor is expected to produce in relation to resources to be used and to project purpose. It should result in a clear understanding of what the LDC wants, and an overall plan which includes agreement on specific objectives or outputs, acceptable types of activities and inputs and an initial budget—resulting in project documentation. At this step, AID makes decisions it cannot delegate on what it will support and at what cost. If needed to supplement its direct-hire expertise, AID can use outside consultants

for analysis and advice but retains the ultimate decision for itself in collaboration with, but independent of, the requesting host government. (Normally, the proposed contractor for project definition and subsequent implementation should not have been involved in the problem analysis and project identification stage as a consultant to either the host country government, host institution, or USAID. If a potential contractor has been so involved, particular care must be taken to prevent actual or apparent organizational conflicts of interest in the procurement that follows. This could require at a minimum, a careful assessment and complete documentation of reasons for selection.)

Normally, there will need to be some mutual interaction between the overall planning stage outlined here and the detailed planning and design work which follows in the next phase. There will usually be some overlap, with preliminary decisions in this stage providing a basis for selection of implementing agents for stage (2) which in turn proceeds through some preliminary planning to guide completion of stage (1) as a basis for long-term contracting.

(2) *Project definition.* At this stage, having selected the implementing agent, the U.S. and LDC organizations which will be collaborating in carrying out the project are encouraged to work out, to their mutual satisfaction, the particulars of what to do and how to do it (i.e., detailed project design) within the context of LDC leadership and responsibility and the general agreements and budget reached in stage (1). The emphasis here is on the technical approach to be utilized and the scheduling and management of project inputs. This may involve a short-term reconnaissance and/or an extensive period of detailed joint planning and feeling out of what is feasible during a preliminary operating phase of the project, possibly lasting as much as a year or more. This stage recognizes the importance, for the problem-solving or ground breaking types of technical assistance, of involving the U.S. and LDC implementing organizations together as soon as the detailed design work begins. AID's role here is to facilitate, not direct, the joint planning, assure consistency with prior agreements or concur in changes, affirm that the implementing parties have agreed on a reasonable project design, and prepare or cause to be prepared the documentation required for stage (3), including any amendments that might be required to the project documentation. If and when a decision is made by the host government and AID to proceed into the operating phase with the same contractor, the U.S. intermediary should be treated as a cooperating partner in the negotiation of the subsequent long-term operating agreement(s) with the host government, host institution and AID.

(3) *Implementation.* The results of the approach outlined in the stage above should include, in addition to a better understanding and more meaningful commitment by all parties, the following specific products:

(i) A jointly developed life-of-project design which reflects the commitment of all parties and includes clear statements of purpose, principal outputs, eligible types of activity and expenditure limits, critical assumptions, and major progress indicators;

(ii) A workplan and input schedule for the first two years or at least as long as the expenditure period for the next obligation of project funds;

(iii) Provisions for any administrative support, special services or other inputs by the host country, contractor, and/or AID; and

(iv) A plan for periodic joint evaluation and review or progress and subsequent workplans, normally annually, with the participation of all parties.

Appropriate elements of these agreements and understandings are now embodied in a contract for project implementation, as described in paragraph (d)(3)(i) of the section on Contracting Implications. This contract allows the U.S. intermediary to apply its judgment, reflecting close collaboration with its LDC colleagues, in adjusting the flow of AID-financed inputs and in making other operational decisions with a minimum of requirements for prior AID approvals or contract amendments as long as the contractor stays within the bounds of the approved overall plan and budget. In this phase, AID will give technical assistance contractors the authority and responsibility for using their specialized expertise to the fullest extent in the scheduling and managing of project inputs.

(4) *Monitoring, joint evaluation and replanning.* With increased flexibility and responsibility for implementation placed with the technical assistance contractor, the host government, and/or institutional collaborator, improved and timely progress reporting and periodic, joint, and structured reviews of results and evolving plans are imperative as a basis for monitoring and evaluating contractor performance, revalidating or adjusting project design, and for determining future funding levels and commitments.

Both the contractor's annual report and the joint review should be structured within the framework of purpose, outputs, performance indicators, etc., originally established in the project indentification phase—as modified by detailed project design—and reflected in the Project Agreement and other pertinent documentation. The field review will normally serve as the occasion for discussing changes in or additions to previously agreed-to workplans as well as proposing changes in purpose, types of activities authorized and budgets which require contract amendment. Obviously, the appropriate host government, host institution, and senior contractor officials should be thoroughly involved in the process, which will have to be adapted to the conditions within specific projects and countries. An important USAID responsibility is to assure that there is appropriate host country participation in developing and improving project plans prior to new obligations of funds. The special requirements and responsibilities of the various parties shall also be reflected in the project agreement and contract terms and in guidelines on the content of annual reports, evaluation procedures, etc.

Standard checking on services actually delivered as a basis for reimbursement will be continued including appropriate audit of expenditures.

(d) *Contracting implications.* The principal elements of change in present contracting practices, as detailed below, are earlier selection and involvement of the prime contractor, contracting by major stages of project design and operations, minimizing the need for precontract negotiations and contract amendments and AID approvals, and providing technical assistance contractors with the authority and responsibility needed to manage implementation within the approved program bounds.

(1) *Selection.* The early involvement of the contractor in the definition stage of a long-term technical assistance project, after AID decides what it wants to undertake in stage (1), does not alter the Agency's responsibility to select its contractors carefully and in full compliance with appropriate contracting regulations and selection procedures. What is required here is that contractor selection be carried out at an earlier stage than has sometimes been the Agency practice in the past or with other types of contracts and in anticipation that the contractor, assuming adequate performance, will participate in all subsequent phases until final completion.

(2) *Contracting stages.* In contracting, the initial design stage should be separated from the longer term implementation stage without any AID commitment to undertake the second until it has exercised its independent judgment based on the product of the first plus any outside expert appraisal it and the host country want to use.

The long-term implementation stage itself may be further subdivided into contract periods which permit time between predetermined events for analysis, determination of new project requirements, and evaluation of performance prior to initiating the next phase by contract amendment/extension. If, for any reason, such an examination does not appear to warrant project continuation, then termination of the project and/or contract would be the next step.

(3) *Flexible implementation authority.* While good project design will eliminate or diminish many operational problems, the very nature of long-term technical assistance requires flexible implementation within agreed purposes, ultimate outputs, types of activity and available financing. With these key variables for AID management control established, contracts should be written so as to minimize the need for amendments and AID approval of changes in input particulars. This can be facilitated, both for the USAID, host country, institution, and the contractor by:

(i) *Retention of operational plan in contract and removal of workplan.* The contract narrative will contain the life-of-the-project Operational Plan, consistent with the project design as developed in stage (2) and reflected in the project documentation (and subsequent amendments thereto). The Operational Plan includes a statement of the purpose to be achieved, the outputs to be produced by the contractor and the types of activities to be undertaken, the more significant indicators of progress, a general description of the type of inputs that are authorized and intended to be

provided during the life of the project, and the overall budget.

In order to allow adjustments at the implementation level without going through the contract amendment process, the detailed but short-term workplan containing specific descriptions and scheduling of all inputs such as numbers and types of staff, participants, commodities, etc., and specific activities, will not be a part of the contract. It is a working document to be modified in the field when the situation demands. The latest version will be available as a supporting document to justify proposed new obligation levels. Normally, the workplan and derived budget will cover a rolling two year period, i.e., each year another yearly increment is added after review and approval.

(ii) *Budget flexibility.* To support this implementation flexibility, contract budget or fiscal controls will be shifted from fixed line items for each input category to program categories, permitting the technical assistance contractor to adjust amounts and timing to achieve previously approved types of activity. This same type of flexibility should apply to any local currency supplied for project operations and/or contractor staff support. While an essential corollary to eliminating the workplan from the contract, this is not a unique procedure under cost reimbursement type contracts when the contractor has demonstrated adequate management capability.

(iii) *Negotiation of advance understandings.* To permit university and international research center contractors to manage their activities in accordance with their own policies and procedures and thereby sharpen their management responsibility while achieving substantial savings in time and reduced documentation, AID may negotiate advance understandings with its technical assistance contractors on dollar costs and administrative procedures that would be included by reference in its subsequent contracts. Upon receipt of a request from the contractor that their policies be reviewed and approved for usage in their contract in lieu of the standard terms and conditions, CM/SOD/OSC, AID/W will initiate negotiations of such policies in an expeditious manner. The approved policies will be used in all relevant relations involving the Agency and respective contractors in lieu of traditional contract standard provisions, whenever this may be appropriate. This does not apply to local currency costs and host government procedures which must be negotiated in each case.

The purpose of the practices listed above is not only to give a qualified contractor the authority to adjust the composition and timing of inputs but to assign to it clear responsibility for managing such resources, as the evolving circumstances require, to achieve the agreed-upon outputs on a cost efficient basis. It should also reduce the delay and paperwork involved in frequent but minor contract amendments, and approvals. For the agency as a whole, both in the Mission and in AID/W, these have involved a large workload and cost.

(e) *Role of AID.* Nothing in this appendix is intended to delegate, diminish or otherwise modify AID's final responsibility for the prudent management of public funds and its own programs. Rather in withdrawing from the day-to-day involvement in and responsibility for the management of adjustment of the flow of inputs during the implementation, the best use of limited agency staff and time can be devoted to protecting the public interest in gaining maximum results from the funds appropriated for technical assistance by:

(1) Seeking optimum identification in terms of LDC priorities and U.S. capabilities;

(2) Mobilizing and selecting the best U.S. professional talent to design and carry out the project;

(3) Monitoring what is happening to assure adequacy of processes, get a feel of results, assure actual delivery of inputs being financed;

(4) Assuring that the attention of AID's implementation agents and LDC colleagues stay well focused on project purpose and results to be achieved (outputs) and the relation to these of what is being done and actual results;

(5) Providing intermediaries adequate authority and responsibility to adjust inputs promptly and sensitively to the evolving project situations.

Attention to these considerations, and to achievements of the preimplementation conditions prescribed above, should greatly increase the chances for successful project completion and impact on a cost effective basis, which is the final measurement of prudent management.

Appendix F—Guidelines for Requests for Expressions of Interest (REI) Under the Collaborative Assistance Method

A. Length and Level of Detail

A request for xpression of Interest (REI) should include more than just a short letter expressing interest, but should not be in the detail of a technical proposal (RFTP). The REI is not the only source of information that can or should be used for selection, but at least a minimum level of information should be contained in each document. A ten page paper that responds to the selection criteria included in every REI should be sufficient for evaluation purposes. The selection criteria should specify the technical inputs required for successful execution of the project and normally require a response in three general areas:

1. A description of the institution's capability to address the problem described in the REI.

2. Any related experience, whether in the country or region or in the problem area.

3. A demonstrable commitment of the institution to support the project.

The responses should address the capability, experience, and commitment to the particular project.

B. Specific Personnel Information

The response should specify within the areas set out in the selection criteria the following planning and personnel factors.

1. The design team plan and the scope of work for each member.

2. A list of candidates for the design team and their credentials.

3. A list of possible candidates for long-term assignment to the project. (Since there has been no project design, the specific technical assistance slots and technical responsibilities are vague. But it is expected that at least half of the personnel needs can be estimated early in the project. The institution should make its best guess for the team and present to the Agency the persons or types of persons with whom they are likely to contract.)

C. Multiple Institution Submissions

Joint effort on the part of several institutions is encouraged when appropriate. A single institution may submit an expression of interest for part of the project without knowledge of other collaborators or it may submit information in response to A and B of this Appendix as part of a suggested collection of institutions. In either case, a proposed plan for cooperation is necessary.

However, such joint efforts must specify the division of responsibilities for the planning and personnel factors indicated in B of this Appendix. Often AID will identify the need for cooperation and suggest such an effort in the REI. Even if AID does not suggest collaboration, joint efforts with a description of the cooperation would be an appropriate way to respond to an REI.

Appendix G—Approval and Reporting Procedures for Contractor Salaries

I. Purpose

This appendix does the following:

(a) Provides guidelines for the use of prudent judgment when considering salaries, especially salaries exceeding the FS–1 maximum salary limitation (5 U.S.C. 5308 and Pub. L. 95–66);

(b) Establishes procedures for justification of salary approvals;

(c) Prescribes procedures for control numbers and submission of copies of salary approvals to SER/CM/SD/SS;

(d) Establishes a seminannual report of salary approvals for the Deputy Administrator.

2. Procedures

(a) *Salary approvals.* In accordance with 731.205–6, 731.311–6. and 731.703, contracting officer approvals of salaries exceeding the FS–1 rate are to be based upon a memorandum from the technical office approved by the Assistant Administrator or Mission Director having program responsibility for the contract. The reasonableness of proposed salaries exceeding the FS–1 level must be evaluated by the appropriate technical office in terms of the technical competence required, scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the individual's customary salary level for similar work. Even thorough approval of salary levels above the FS–1 rate are justified primarily by the Assistant Administrator or Mission Director having program responsibility, it is the contracting officer's responsibility to scrutinize increases as a matter of business acumen whenever AID negotiations deal with any salaries payable under contracts. Increases in the FS–1 statutory salary limitation are not, and shall not be by themselves, a basis for upward

salary revisions of contractor employees. Proposals for such revisions should be considered normally when contracts are renewed, and must be carefully reviewed and negotiated to ensure that increases are not automatically granted without corresponding increases in the quality or quantity of services rendered. Salaries below the FS–1 maximum level should also be fully justified, even though formal approval procedures may not be involved. Personnel compensation negotiated and payable under AID contracts should be at the minimum levels necessary to attract needed technical services in a competitive market. Rates should be determined by the "market place" where the types of services are obtained. Using such criteria, very few salaries can be expected to approach or exceed the FS–1 level.

Actual discussions with contractors concerning salaries should be held only by persons authorized to negotiate and execute contracts. (See AIDPR Appendix A.)

(b) *Justification of Approvals.* There will be cases where the services required are so unique and highly specialized that few persons are available to perform them. In such instances, if justifications for exceptional salaries are needed, particularly where the salary would exceed the FS–1 level, the project officer will be consulted. If no alternative can be found, the project officer will prepare a salary justification to support the negotiator's action. It is the negotiator's responsibility to see to it that such cases are fully justified and that a complete record of the rationale is included in his memorandum for the contract file.

3. Approval Control Numbering and Submission to SER/CM

Copies of all approvals of salaries that exceed that FS–1 level are required to be sent to SER/CM/SD/SS. To assist SER/CM in determining that they are receiving all copies from each approving office, approving officials will have a consecutive control number starting each fiscal year assigned to each approval by their office, the record of which will be maintained separately from other approval documents.

4. Semiannual Report to the Deputy Administrator

Commencing with March 31, 1978, a semiannual report listing all salary approvals that exceed the FS–1 maximum level will be sent to the Deputy Administrator of AID by the Office of Contract Management.

Appendix H—Response to Audit Recommendations

1. Purpose

This appendix establishes consolidated procedures for responding to post-award audit reports. The procedures in this appendix are not applicable to pre-contract audit surveys.[1]

[1] Contracting officers often request audit advice and assistance in evaluating contractor's proposals prior to award. FAR 15806(b) requires the contracting officer to provide a copy of the memorandum of negotiation to the auditor (the cognizant RIG) when a pre-award survey has been performed, to inform the auditor of the disposition and usefulness of the pre-award survey. Provision of a copy of the memorandum of negotiation to the cognizant RIG, pursuant to FAR 15.808(b), constitutes response to a pre-award audit survey.

2. Applicability

The procedures set forth in this appendix apply to all audit recommendations concerning costs questioned under AID-direct contracts whether the recommendation is assigned to SER/CM, or to a Mission or Area Contracting Officer.

3. The Role of the Inspector General

(a) *Legislative and procedural requirements.* Public Law 96–304, July 8, 1980 (Section 305) requires that audits involving questioned costs be resolved within six months. Further, OMB Circular A–73, Audit of Federal Operations and Programs, requires that each agency establish policies and procedures for prompt and proper resolution of audit recommendations, and establish standards for such policies and procedures. The Administrator has approved procedures for audit follow-up and resolution, as recommended by the Inspector General (IG).

(b) *IG responsibilities.* (1) The IG and Regional Inspectors General (RIG) are responsible for tracking and following up on audit recommendations to insure prompt and proper resolutions, and for reporting on monetary recoveries resulting from audit reports. Following receipt of the contracting officer's disposition of the substance of an audit recommendation, the IG and RIG are responsible for determining whether or not to officially close the recommendations.

(2) If the cognizant RIG has not received satisfactory evidence of resolution of an audit recommendation within four months of issuance, the RIG will request a status report from the office assigned action responsibility (see also paragraph 5b(3) of this appendix). If no evidence of satisfactory resolution is received by six month, the IG follows up directly with the cognizant Assistant Administrator. The IG may request the Deputy Administrator to take action on any recommendation open for more than six months.

(3) If the cognizant RIG does not agree to an action office's disposition of an audit recommendation, the RIG will first attempt to resolve the issue with the action office. If this is unsuccessful, the issue will be referred to the IG, who will attempt resolution with the cognizant office head or Assistant Administrator. If the issue cannot be resolved at this level, it can then be referred by IG to the Deputy Administrator for decision. (See also paragraph 4.b., concerning the role of the contracting officer.)

(4) If the cognizant RIG questions a contracting officer's decision not to seek recovery of audit questioned cost, the RIG may submit the issue to the cognizant Regional Legal Advisor, or to the General Counsel's Office. (See also paragraph 4.b., concerning the role of the contracting officer.)

4. The Role of the Contracting Officer

(a) Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601–613), as implemented in FAR Part 33, and as provided in FAR 1.6 and Subpart 701.6 of the AIDAR, contracting officers have the authority to negotiate and enter into settlements with contractors of costs questioned under audit reports. With this authority goes the responsibility for insuring that such settlements are properly justified and documented, and promptly executed.

(b) A negotiated settlement of questioned costs, executed by the contractor and the contracting officer; or a contracting officer's final decision pursuant to the disputes clause (in the event questioned costs are not settled by negotiated agreement), are final, subject only to a contractor's appeal, either under the provisions of the Disputes Act, or to the Courts. Regardless of internal controls, such as IG or RIG's right to maintain a recommendation as open (see paragraph 3.b(3) of this Appendix, or to question a contracting officer's decision regarding questioned costs (see paragraph 3.b(4) of this Appendix), the contracting officer's decision as between the Government and the contractor is final, subject to established methods of contractor appeal. Authority to negotiate settlements, or make final decisions on questioned costs rests with duly delegated contracting officers alone.

5. Procedures

In order to insure that resolutions of audit recommendations are properly justified and documented, the following procedures are established:

(a) *General.* (1) Copies of all correspondence concerning resolution of an audit recommendation must be promptly sent to the cognizant RIG. All correspondence provided to the cognizant RIG should include the contractor's name, the contract number(s), and the audit report and recommendation number(s).

(2) In transmitting post-award audit reports to action offices, the RIG's attached memoranda shall identify each contract by its number and request an initial written response within 30 days. Under the Agency's audit recommendation follow-up system, the RIG's are following up to insure that action offices provide the 30-day responses. The IG is required to provide a copy of the initial response to several Congressional Committees. It is recognized that the initial response to audit reports questioning contract costs takes the form of a notification to the contractor by the contracting officer. The cognizant RIG will accept copies of the contracting officer's notification as the initial response to the audit report if:

—The notification clearly indicates the title and/or number of the audit report.

—The notification covers all the cost issues raised in the audit report. If it does not, the cognizant RIG requires a separate memorandum explaining the contracting officer's position on the remaining cost issues.

(3) Action offices have six months from receipt of an audit recommendation to resolve that recommendation; however, every effort will be made to resolve the recommendation within 120 days of its receipt. The contracting officer is responsible for keeping the cognizant RIG informed regarding the status of open audit recommendations in accordance with the

procedures established in this Appendix. If for any reason a recommendation cannot be resolved within the 120 day period, the contracting officer must so advise the cognizant RIG in writing, giving the reasons. This notification is to be provided as soon as possible, but in any event at least two weeks before expiration of the 120 day period. The contracting officer is also responsible for insuring that RIG's four-month follow-up (see paragraph 3.b(2) of this Appendix is promptly answered. For details on RIG's four and six month follow-up procedures, see paragraph 3.b(2), above.

(4) Responses to audit recommendations must be in writing, properly documented to clearly explain the action taken. When the contracting officer is satisfied that action on a recommendation has been completed, and the file properly documented, he or she should specifically request that the cognizant RIG consider the audit recommendation closed (see paragraph 6 of this Appendix). The cognizant RIG should be requested to notify the contracting officer promptly, in writing, if for any reason they are not prepared to officially close the recommendation, providing the reasons. Such notice should identify the contract number and refer to the contracting officer's last correspondence.

(b) *Audit recommendations questioning costs under AID direct contracts.* (These procedures are mandatory for audit recommendations assigned to SER/CM. It is recommended that they be applied, suitably adapted, to audit recommendations assigned to Missions which have been delegated contracting authority or to an area contracting officer).

(1) *Documentation and control.* (a) All correspondence to and from the cognizant RIG shall specify the contract number, contractor's name, audit report number, and recommendation number, plus the amount of the questioned costs allowed or sustained as disallowed by the contracting officer.

(b) All incoming audits containing recommendations for action by SER/CM are to be immediately submitted to CM/SD/SS. CM/SD/SS will log in the audit report, recording the recommendation numbers and established due dates for all recommendations assigned to SER/CM. CM/SD/SS will then transmit the audit, through the cognizant division chief, to the contracting officer with action responsibility.

(c) CM/SD/SS will establish a tickler file of recommendations assigned to SER/CM, and will provide internal reminders and follow-ups.

(d) The contracting officer will keep CM/SD/SS advised on the current status of open recommendations by providing CM/SD/SS with a copy of official audit-related correspondance between the contracting officer and the RIG. Any necessary follow up by CM/SD/SS to update data for preparation of reports shall be made through the cognizant division chief.

(2) *Notification, negotiation, and settlement.* (a) Within two weeks after receipt of the audit report, the contracting officer shall formally notify the contractor by letter of the costs questioned. This notification shall require the contractor to respond to the contracting officer within 30 calendar days of receiving the letter. If warranted in the circumstances, invite the contractor to participate in negotiations to arrive at a mutually acceptable resolution of such costs. If no response has been received within 30 calendar days following the initial notification to the contractor of the questioned costs, issue a follow-up letter to the contractor requesting a response within 20 calendar days. In this follow-up the contractor should be advised that failure to respond within the specified period will result in the issuance of a final decision, pursuant to the disputes clause of the contract. If no response is received 20 calendar days after the follow-up letter, the contracting officer makes a final decision in accordance with FAR 33.011 regarding the questioned costs and issues, in writing, the appropriate contracting officer's decision as authorized in the Disputes clause of the contract. A copy of each letter, and any decision, shall be sent to the cognizant RIG (and, when the audit recommendation is assigned to SER/CM, to CM/SD/SS).

(b) If the contractor responds to the contracting officer's letter identifying questioned costs, but an acceptable settlement is not achieved with a reasonable period of time (normally, 3 months from the date of initial notification), the contracting officer shall consider negotiations to have reached an impasse. The contracting officer shall then issue the appropriate decision as authorized in the disputes clause of the contract. A copy of this decision must be sent to the cognizant RIG (and, when the audit recommendation is assigned to SER/CM, to CM/SD/SS). See also paragraph 5b(4) of this Appendix regarding notification of the Controller.

(c) Normally, the contractor will respond to notification of questioned costs, and a mutually acceptable settlement can be negotiated. Such negotiated settlements must be documented for the contract file by the contracting officer. The written record must include:

(i) The initial audit findings, in detail, including all questioned costs, item by item.

(ii) The contracting officer's position, as reflected in the notification to the contractor, on each of the audit findings, and questioned costs. If there are any differences between the contracting officer's position and that of the audit, these must be explained, showing exactly what the differences are, why, and how they were arrived at (including discussions, comments, and advise or clearances by other offices).

(iii) A final summary analysis showing the audit finding; the contracting officer's initial position; the contractor's response; subsequent positions of both parties, and final resolution. This must be in sufficient detail to permit any reasonable person to understand what the issues were, how much was involved, what items were adjusted (plus how much and why), what the final resolution was, and why.

A copy of this written record, clearly marked to indicate the audit report and recommendation number(s) must be sent to the cognizant RIG (and, when the audit recommendation is assigned to SER/CM, to CM/SD/SS). See also paragraph 5b(4) of this Appendix, regarding notification of the Controller.

(3) *Collection.* The preferred method of collection is through the issuance of a Bill for Collection, in accordance with Agency policy on cash management. Use of any other collection method must be coordinated in advance with FM/PAD. Bills for Collection are issued by the Controller in accordance with the procedures set forth in paragraph 5b(4) of this Appendix.

(4) *Notification of the controller.* (a) When a settlement has been negotiated, or a final decision has been issued pursuant to the disputes clause, it remains to collect the amount determined due to AID (substained disallowances). The contracting officer is responsible for notifying the Controller to issue a Bill for Collection. A copy of this notification must be sent to the cognizant RIG, and to IG/PPP (and to CM/SD/SS, for audits assigned to SER/CM).

(b) The notification to the Controller must contain the following information:

(i) Identification of the contract/task order/work order, providing the contract number, and the contractor's name and address;

(ii) The most recent accounting and appropriation data (PIO/T number and allotment number, etc.);

(iii) The amount due to AID;

(iv) The applicable audit and recommendation number(s): and

(v) A copy of the contracting officer's negotiated settlement or final decision pursuant to the disputes clause (see paragraph 5b(2) of this Appendix).

(c) The notification must request that a copy of the Bill for Collection be sent to the cognizant RIG, IG/PPP, and the contracting officer. The contracting officer is responsible for following up to insure that the Bill for Collection has been issued, and that a copy is in fact provided to the cognizant RIG and to IG/PPP, and is placed in the contract file.

(d) If the Contractor appeals the final decision pursuant to the disputes clause, the contracting officer must promptly notify the Controller to suspend collection pending resolution of the appeal. Suspension action by the Controller shall be taken in consultation with the Office of the General Counsel, pursuant to Delegation of Authority No. 80. The contracting officer is responsible for notifying the Controller regarding resolution of any appeal.

6. Closing Audit Recommendations

When the contracting officer has completed all action required by an audit recommendation in accordance with the procedures established in this appendix, he/she shall request that the recommendation be considered officially closed. The memorandum to the cognizant RIG shall specifically identify the audit report and recommendation number(s), summarize the actions taken, and explain why the recommendation(s) should be considered closed, providing sufficient evidence to permit the cognizant RIG to make a reasonable decision. For audit recommendations involving questioned costs which result in sustained disallowances, RIG

and IG/PPP will accept a copy of the issued Bill for Collection as evidence to close a recommendation. A copy of the request to close a recommendation shall be sent to IG/PPP (and, for audits assigned to SER/CM, to CM/SD/SS).

7. Clearances

(a) *General.* All proposed post-award audit responses, whether to internal audits prepared by the IG, or to GAO audits, prepared by SER/CM are to be cleared in accordance with M/AAA/SER requirements in effect at the time the response is prepared. Responses prepared by Mission or Area contracting officers will be cleared in accordance with applicable Mission and Bureau procedures.

(b) *Final decisions pursuant to the disputes clause.* If settlement of an audit requires a final decision by the contracting officer in accordance with FAR 33.011, pursuant to the disputes clause, such decisions must be cleared by GC or the cognizant Mission or Regional Legal Advisor.

Appendix I—AID's Academic Publication Policy

1. Statement of Policy

This is a statement of AID policy on publication, or release to parties other than those specifically authorized, of unclassified materials gathered or developed under contracts with academic institutions.

2. Underlying Principles

AID favors and encourages the publication of scholarly research as well as the maximum availability, distribution, and use of knowledge developed in its program.

This policy statement does not deal with material that is classified for security reasons. It does deal with considerations of national interest, not of sufficient gravity to warrant security classification, but serious enough to affect adversely the conduct of U.S. assistance programs. Consequently, in addition to the requirements of courtesy, propriety, and confidence which normally guide scholars in their work, there should also be consideration of the potential repercussions of publication on the successful execution of development and other cooperative programs in which the United States and foreign countries are involved.

3. Operational Definitions

The Agency draws a distinction between two kinds of manuscripts which a scholar may wish to publish:

(a) A report which is prepared and delivered to the Agency under the terms of the contract (a "contract manuscript"); and

(b) An article or book based upon experience and information gained under an AID contract but not prepared or delivered under the contract (a "non-contract manuscript").

There are two kinds of actions, to be specified in the contract, which the Agency can take upon notification of a contractor's desire to publish:

(a) Comment only, under which AID and the foreign government involved may review the manuscript, and have their comments considered seriously by the contractor prior to publication; and

(b) Authorization for release, which AID may withhold if reconciliation between the national interest and the author's interest is impossible.

4. Policy Statements

(a) AID, as a general rule, will not require an academic institution to obtain permission to publish the written work produced under a contract. It will ask for the opportunity to review the manuscript for comment only, prior to publication.

In the case of a contract manuscript, AID reserves the right to disclaim endorsement of the opinions expressed; if it is a noncontract manuscript, AID reserves the right to disassociate itself from sponsorship or publication.

(b) On the other hand, AID may reserve the right of authorization for release in those exceptional cases where conditions exist making it reasonably foreseeable, in light of the contract's scope of work and the manner and place of performance, that the written work to be prepared and delivered under the contract may have adverse repercussions on the relations and programs of the United States. Where this right is reserved, it must be so specified in the contract. In determining where to reserve such right, AID will consider all relevant factors, including:

(1) The extent to which prompt and full performance of the contract will require access, facilitated by reason of the contract, to information not generally available to scholars;

(2) The extent to which the work involves matters of political concern to foreign countries, particularly where any substantial part of the work is to be performed therein;

(3) The extent to which, by reason of AID's close involvement and cooperation in the performance of the contract, the work product may be so identified with AID itself as to prevent effective disclaimer of AID endorsement thereof;

(4) The extent to which the objective of the contract is to provide advice to AID or to a foreign government of immediate operational significance in the conduct of the AID program or the implementation of governmental programs in the host country;

(5) The desires of the host country.

5. Implementation

The successful implementation of this policy on publication rests on a thorough understanding and acceptance of these principles by AID and the prospective contractor. The actual publications provision for a particular contract, then, would be so worded as to reflect the agreement reached in the contract negotations.

AID's concern with noncontract manuscripts is related to the identification of a manuscript with the U.S. Government. This concern will be modified by the passage of time following termination of the contract.

In the normal case of prepublication review for AID comment, the institution will submit a copy of the manuscript not later than the date of submission to the publisher. This gives the Agency time to comment if it is deemed appropriate. However, in the case of review for authorization, timely notification of AID's response will be given, consistent with the size of the manuscript and the number and location of the parties involved.

The Agency will make every effort to expedite this review procedure in accordance with the underlying principle described at the beginning of this policy statement.

[FR Doc. 84-8760 Filed 3-29-84; 9:50 am]

BILLING CODE 8116-01-M

federal register

Tuesday
April 3, 1984

Part III

Department of Energy

Federal Energy Regulatory Commission

NGPA Notices of Determination by Jurisdictional Agencies; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 1090]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: March 28, 1984

Note. By final rule issued by the Commission on February 22, 1984 (Order No. 382, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, *will not by published in the* **Federal Register**. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, D.C. 20426, to inquire about subscribing to these notices. Copies of Order No. 382 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1 New OCS lease
- 102–2: New well (2.5 mile rule)
- 102–3: New well (1,000 ft rule)
- 102–4: New onshore reservior
- 102–5: New res. on old OCS lease

Section 103: New onshore production well

Section 107–DP: 15,000 ft or deeper
- 107–GB: Geopressured brine
- 107–DV: Devonian shale
- 107–CS: Coal seam gas
- 107–PE: Production enhancement
- 107–TF: New tight formation
- 107–RT: Recompletion tight formation

Section 108: Stripper well
- 108–SA: Seasonally affected
- 108–ER: Enhanced recovery
- 108–PB: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED MARCH 28, 1984

VOLUME 1090

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	FEDS	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES									
-AKRON/OIL CORP				RECEIVED: 02/29/84		JA: OH			
8422993		3408924400		103		VOGELMEIER #1A	HANOVER	5.0	
-ARAPAHO VENTURES OF NEW YORK INC				RECEIVED: 02/29/84		JA: OH			
8422994		3412123041		103	107-TF	REED-CARREL #1	WILDCAT	100.0	EAST OHIO GAS CO
-ATLAS ENERGY GROUP INC				RECEIVED: 02/29/84		JA: OH			
8422995		3408520448		103	107-TF	BATES UNIT #1	PERRY	0.0	OHIO STEEL TUBE
-BELDEN & BLAKE & CO #1				RECEIVED: 02/29/84		JA: OH			
8422996		3410323530		103	107-TF	MEADOWS ENTERPRISES #2-341346	GRANGER	36.5	
-BIG INJUN OIL & GAS CO INC				RECEIVED: 02/29/84		JA: OH			
8422997		3408924838		103		JOHN HOOVER #1	HOOVER	2.5	NATIONAL GAS & OI
-C & S ENERGY CORP				RECEIVED: 02/29/84		JA: OH			
8422998		3416923663		103		BLACK DIAMOND #2	CHIPPEWA	11.0	
-CA D' ORA INC				RECEIVED: 02/29/84		JA: OH			
8422999		3416727478		103		NORBERT SCHILLING #1	WATERTOWN	7.0	
-CAMERON BROS				RECEIVED: 02/29/84		JA: OH			
8423000		3411926883		107-TF		MARILYN PATTON #1	PERRY	10.0	
-CITY OF CUYAHOGA FALLS				RECEIVED: 02/29/84		JA: OH			
8423002		3415321492		103	107-TF	KENNEDY PARK #1	STOW	32.0	EAST OHIO GAS CO
8423001		3415321491		103	107-TF	KENNEDY PARK #2	TALLMADGE	37.0	EAST OHIO GAS CO
-CLINTON OIL CO				RECEIVED: 02/29/84		JA: OH			
8423123		3413323179		107-TF		BIRD TOM UNIT #2-827	ROOTSTOWN	10.0	
8423120		3405520675		107-TF		C THRASHER #1-854	HUNTSBURG	10.0	
8423124		3415522356		107-TF		J BOLEK #2-671	BRISTOL	10.0	
8423122		3411926790		107-TF		J M & J BALLANTINE #1-788	HIGHLAND	10.0	
8423125		3415723811		107-TF		MARY CRIM #1-754	MILL	10.0	
8423121		3405520698		107-TF		T RAY UNIT #1-853	HUNTSBURG	10.0	
8423126		3415723889		107-TF		WILLIAM SCOTT #1-748	MILL	10.0	
-CNG DEVELOPMENT CO				RECEIVED: 02/29/84		JA: OH			
8423004		3405520625		103	107-TF	M & T TURKOC #1 CNGD #613	BURTON	5.0	
8423003		3405520616		103	107-TF	M HEIL #1 CNGD #334	MONTVILLE	4.0	
8423005		3408520492		103	107-TF	M WOODWORTH #1 CNGD #363	MADISON	5.0	
-CONCORD ENERGY INC				RECEIVED: 02/29/84		JA: OH			
8423008		3411926929		107-TF		J SHERRICK #3	OTSEGO	45.0	EAST OHIO GAS CO
8423006		3411926927		107-TF		SHERRICK #1	OTSEGO	60.0	EAST OHIO GAS CO
8423007		3411926928		107-TF		SHERRICK #2	OTSEGO	43.0	EAST OHIO GAS CO
-DERBY OIL & GAS CORP				RECEIVED: 02/29/84		JA: OH			
8423010		3416923717		103	107-TF	RICHARD GRAHAM ETAL #1	WAYNE	12.0	RSC ENERGY CORP
8423009		3412726039		103	107-TF	ROBERT MOORHEAD #4	JACKSON	12.0	FORAKER GAS CO IN
-DOME ENERGY 83-2				RECEIVED: 02/29/84		JA: OH			
8423014		3409321242		107-TF		FALOON-STETZ #1	COLUMBIA	15.0	
8423012		3405520649		107-TF		KAY DEVELOPMENT #3	BAINBRIDGE	22.0	POI ENERGY INC
8423011		3405520646		107-TF		KAY DEVELOPMENT #4	BAINBRIDGE	20.0	POI ENERGY INC
-DOME OIL & GAS 83				RECEIVED: 02/29/84		JA: OH			
8423013		3405520695		107-TF		WASHINGTON-POST DEVELOPMENT WPD #1	BAINBRIDGE	30.0	
-DORSET CO INC				RECEIVED: 02/29/84		JA: OH			
8423026		3400721132		108		ADAMS #1		23.0	EAST OHIO GAS CO

BILLING CODE 6717-01-M

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	FEED	PURCHASER
8423027		3400721161		108		ASH SHAHEED #1		20.0	JONES & LAUGHLIN
8423028		3400721171		108		CKC UNIT #1		13.0	EAST OHIO GAS CO
8423021		3400720990		108		HAINES #2		30.0	JONES & LAUGHLIN
8423022		3400721044		108		KING ADAMS #1		20.0	EAST OHIO GAS CO
8423024		3400721129		108		MCCONNELL #4		15.0	DANA CORP
8423025		3400721130		108		MCCONNELL #5		50.0	DANA CORP
8423029		3400721188		108		RIPKA DENMARK #4		37.0	JONES & LAUGHLIN
8423015		3400720662		108		RIPKA WRUDERKER #1		40.0	EAST OHIO GAS CO
8423016		3400720665		108		RIPKA WRUDERKER #2		20.0	EAST OHIO GAS CO
8423017		3400720991		108		RUFFING #1		20.0	EAST OHIO GAS CO
8423023		3400721125		108		RUZGA #1		30.0	JONES & LAUGHLIN
8423019		3400720979		108		RYSKA DENMARK #3		42.0	JONES & LAUGHLIN
8423018		3400720902		108		SCHWAU #1		15.0	EAST OHIO GAS CO
8423020		3400720984		108		WHITE #1		15.0	JONES & LAUGHLIN
-EDCO DRILLING & PRODUCING INC				RECEIVED:	02/29/84	JA: OH			
8423030		3400720588		107-RT		KOLASINSKI 1A	SHEFFIELD	18.0	
8423031		3400722390		107-TF		KRIEG CB-1A	COLEBROOK	18.0	
8423032		3400722392		107-TF		PRINCE/GULITZ UNIT CB-1A	COLEBROOK	18.0	
-ENERGY DEVELOPMENT CORP				RECEIVED:	02/29/84	JA: OH			
8423033		3400722444		103	107-TF	LA CAVERA WELL #1	LENOX	18.0	
8423035		3415520309		107-RT		MILLER WELL #23	MESOPOTAMIA	14.0	COLUMBIA GAS TRAN
8423034		3405520163		107-TF		PECUZOK WELL #2	PARKMAN	15.0	COLUMBIA GAS TRAN
-ENVIROGAS INC				RECEIVED:	02/29/84	JA: OH			
8423037		3400922871		103	107-TF	PEABODY COAL #19D	DOVER	18.2	
8423036		3400922864		103	107-TF	PEABODY COAL #2D	DOVER	27.3	
-EVERFLOW EASTERN INC				RECEIVED:	02/29/84	JA: OH			
8423040		3409921650		103	107-TF	GIRL SCOUTS-SALLAZ #1	ELLSWORTH	0.0	
8423039		3400722509		103	107-TF	KINGS LAKE INC #1	KINGSVILLE	0.0	
8423038		3400722424		103	107-TF	NELSON #1	KINGSVILLE	0.0	
-EXPLORATION MANAGEMENT INC				RECEIVED:	02/29/84	JA: OH			
8423041		3400722339		103	107-TF	COLTMAN #1		85.0	POI ENERGY INC
8423042		3400722340		103	107-TF	COLTMAN #2	WAYNE	50.0	POI ENERGY INC
8423043		3413322800		103	107-TF	CRANE #2	WAYNE	4.0	YANKEE RESOURCES
-GASEARCH INC				RECEIVED:	02/29/84	JA: OH			
8423044		3409921616		103	107-TF	MALONE #2	AUSTINTOWN	20.0	
-GREENLAND PARTNERSHIP 36-4				RECEIVED:	02/29/84	JA: OH			
8422992		3412726114		103		MASTERSON #8	PIKE	15.0	FORAKER GAS CO IN
-HLH DRILLING INC				RECEIVED:	02/29/84	JA: OH			
8423046		3400722456		107-TF		BOGGS #1	ANDOVER	24.0	POI ENERGY INC
8423045		3400722433		107-TF		LAHTI #1	WILLIAMSFIELD	24.0	POI ENERGY INC
-JADOIL INC				RECEIVED:	02/29/84	JA: OH			
8423048		3412725874		103		CRANE-WILSON-BUSSE UNIT #1	HOPEWELL	6.0	NATIONAL GAS & OI
8423047		3408323284		103		WILLIAM J & MARY E COAKLEY #3	JACKSON	5.0	COLUMBIA GAS TRAN
-JAMES R BERNHARDT				RECEIVED:	02/29/84	JA: OH			
8423049		3410323468		103	107-TF	JELEN WELL #3	GRANGER	15.0	COLUMBIA GAS TRAN
-JANCO WELL OPERATIONS				RECEIVED:	02/29/84	JA: OH			
8423050		3410323480		107-TF		DELTA LAND INVESTMENT CO #3	MONTVILLE	18.0	COLUMBIA GAS TRAN
8423051		3410323481		107-TF		DELTA LAND INVESTMENT CO #4	MONTVILLE	20.0	COLUMBIA GAS TRAN
-JANCO WELL OPERATIONS LTD 83-3				RECEIVED:	02/29/84	JA: OH			
8423052		3410323515		107-TF		GEORGE SIEDEL #1	MONTVILLE	30.0	COLUMBIA GAS TRAN
8423053		3410323516		107-TF		GEORGE SIEDEL #2	MONTVILLE	25.0	COLUMBIA GAS TRAN
-JANCO WELL OPERATIONS LTD 83-4				RECEIVED:	02/29/84	JA: OH			
8423054		3410323556		107-TF		GEORGE SIEDEL #3	MONTVILLE	30.0	COLUMBIA GAS TRAN
8423055		3410323557		107-TF		GEORGE SIEDEL #4	MONTVILLE	35.0	COLUMBIA GAS TRAN
-LAKE REGION OIL INC				RECEIVED:	02/29/84	JA: OH			
8423056		3403125219		103	107-TF	JOHN & MAYNARD CONKLE #4	MILL CREEK	10.0	COLUMBIA GAS TRAN
-LOMAK PETROLEUM INC				RECEIVED:	02/29/84	JA: OH			
8423059		3405520571		103	107-TF	H MCNISH #1	HUNTSBURG	24.0	
8423057		3405520366		107-TF		J PAPESCH #1	AUBURN	30.0	
8423058		3405520568		103	107-TF	T RAY UNIT #1	HUNTSBURG	24.0	
-MCCLAIN OIL CO				RECEIVED:	02/29/84	JA: OH			
8423060		3408924833		103		GRAFT #4	HOPEWELL	1.0	NATIONAL GAS & OI
-MILLER WILLIAM P JR				RECEIVED:	02/29/84	JA: OH			
8423134		3411926829		103	107-TF	JOHN F MILLER #1	HOPEWELL	10.0	NATIONAL GAS & OI
-NATIONAL ENERGY EXPLORATIONS INC				RECEIVED:	02/29/84	JA: OH			
8423062		3408924858		103		SMITH-JONES #1 #31-1076927	HANOVER	3.0	NATIONAL GAS & OI
-NOBLE OIL CORP				RECEIVED:	02/29/84	JA: OH			
8423063		3413323163		107-TF		KOTLAR #1	FREEDOM	20.0	PARK OHIO INDUSTR
-NORTH AMERICAN PRODUCTION CO				RECEIVED:	02/29/84	JA: OH			
8423064		3413323102		107-TF		FEJEDELEM #1	MANTUA	20.0	
8423067		3413323109		107-TF		HARPER #1	SHALERSVILLE	16.0	
8423066		3413323105		107-TF		MERK-NOWAK UNIT #1	MANTUA	18.0	
8423065		3413323104		107-TF		MERK-NOWAK UNIT #3	MANTUA	19.0	
-NORTH EASTERN OHIO OIL & GAS EXPLOR				RECEIVED:	02/29/84	JA: OH			
8423068		3400722323		103	107-TF	THOMPSON #2	NEW LYME	20.0	
-ONEAL PETROLEUM INC				RECEIVED:	02/29/84	JA: OH			
8423069		3405922400		[illegible]		F MOSS #1		4.7	COLUMBIA GAS TRAN
-ORION ENERGY CORP				RECEIVED:	02/29/84	JA: OH			
8423070		3416923682		107-TF		WIANDT #4	CHESTER	15.0	COLUMBIA GAS TRAN
-OXFORD OIL CO				RECEIVED:	02/29/84	JA: OH			
8423127		3412726192		103		HARRY WALSER #8	THORN	10.0	
8423128		3411926743		107-TF		RANDY HUMPHREY #1	SPRINGFIELD	10.0	
-P/T DRILLING JOINT VENTURE				RECEIVED:	02/29/84	JA: OH			
8423073		3400722511		107-TF		DOMENIC M MAZZA #1	MORGAN	40.0	
8423071		3400721795		107-TF		GILL UNIT #1	NEW LYME	40.0	
8423072		3400722406		107-TF		SCHROCK #2	MORGAN	40.0	
-PENN-OHIO ENERGY CORP				RECEIVED:	02/29/84	JA: OH			
8423074		3405520545		103		JOAN DETTELBACH #1	CLARIDON TWP	0.0	EAST OHIO GAS CO
-PETRO EVALUATION SERVICES INC				RECEIVED:	02/29/84	JA: OH			
8423076		3408520471		103	107-TF	ANDERSON-BRAINARD #1	PERRY	31.0	
8423077		3408520477		103	107-TF	H A HAWGOOD UNIT #1	MADISON	35.0	
8423075		3408520396		103	107-TF	WM H SAGER #1	PERRY	32.0	
-POI ENERGY INC				RECEIVED:	02/29/84	JA: OH			
8423081		3400722508		103	107-TF	BURKETT #RP-1	RICHMOND	30.0	
8423082		3405520590		103	107-TF	CERVENKA #RM-1	MANDEN	36.0	
8423078		3400722080		103	107-TF	CLAY #RM-1	WAYNE	33.0	
8423080		3400722478		103	107-TF	MARUSZAK #ZRM-1	NEW LYME	25.0	
8423079		3400722447		103	107-TF	MEEK #ZRM-2	NEW LYME	32.0	
-REDMAN OIL CO INC				RECEIVED:	02/29/84	JA: OH			
8423084		3411523294		107-TF		JOHN ST HARPER #1	MANCHESTER	91.0	COSHOCTON PIPE CO
8423085		3411523295		107-TF		PAUL HOPKINS #1	MANCHESTER	130.0	COSHOCTON PIPE CO
8423083		3411523292		107-TF		W D BROCK #1	BRISTOL	18.0	COSHOCTON PIPE CO
-RSC ENERGY CORP				RECEIVED:	02/29/84	JA: OH			
8423088		3411926793		103	107-TF	CONSOLIDATION COAL - CR #70	ADAMS	12.7	REPUBLIC STEEL CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
						VOLUME 1098			
8423089		3411926794		103	107-TF	CONSOLIDATION COAL CO - CR #71	ADAMS	12.7	REPUBLIC STEEL CO
8423087		3411926792		103	107-TF	CONSOLIDATION COAL CO - CR #76	MADISON	11.6	REPUBLIC STEEL CO
8423086		3411926368		103	107-TF	CONSOLIDATION COAL-CR #49	ADAMS	10.9	REPUBLIC STEEL CO
-SHONGUM OIL & GAS INC				RECEIVED:	02/29/84	JA: OH			
8423094		3410323609		107-TF		HAROLD STUART UNIT #1	MONTVILLE	0.0	
8423091		3410323497		107-TF		NOWAK UNIT #2	MONTVILLE	0.0	
8423093		3410323592		107-TF		PHILLIPE BURKHARDT #1	SUGAR CREEK	0.0	
8423090		3410323197		107-TF		VERN REAM ETAL #1	SHARON	0.0	
8423092		3410323509		107-TF		WILLIAM PENROSE #1	MONTVILLE	0.0	
-SMITH FARM OIL & GAS CO				RECEIVED:	02/29/84	JA: OH			
8423095		3411120495		108		H E SMITH #1	WASHINGTON	1.3	RIVER GAS CO
-STARK OILFIELD SERVICES INC				RECEIVED:	02/29/84	JA: OH			
8423096		3400722353		103	107-TF	W FERGUSON #3	MORGAN	30.0	
-STRATA CORP				RECEIVED:	02/29/84	JA: OH			
8423097		3412724632		103		FRIEL #4	PIKE	6.8	TEXAS EASTERN TRA
8423098		3412726153		107-TF		ROGERS-BLOOMFIELD #1	PLEASANT	25.0	TEXAS EASTERN TRA
-THE BENATTY CORPORATION				RECEIVED:	02/29/84	JA: OH			
8423116		3411926021		103	107-TF	A RAYNER #1	MEIGS	40.0	CLINTON AMERICAN
8423100		3411521771		107-TF		C MOORE #1	BLOOM	10.0	TENNESSEE GAS PIP
8423102		3411521980		107-TF		C MOORE #3	BLOOM	10.0	
8423109		3411925019		107-TF		C SILER #1	BLUE ROCK	15.0	TENNESSEE GAS PIP
8423115		3411925459		107-TF		C SILER #4	BLUE ROCK	25.0	TENNESSEE GAS PIP
8423119		3412123109		103	107-TF	CENTRAL OHIO COAL #11-74	JACKSON	35.0	
8423118		3412123062		103	107-TF	D MORRIS #2-104	JACKSON	[illegible].0	
8423101		3411521884		107-TF		D SHUSTER #1	BLOOM	5.0	
8423113		3411925358		103	107-TF	E WILSON #1	BLUE ROCK	25.0	
8423104		3411522247		103	107-TF	F J EARL #3	BLOOM	10.0	
8423117		3412122716		103	107-TF	H BELL #1	JACKSON	15.0	EAST OHIO GAS CO
8423099		3411521765		107-TF		K ROBINSON #1	BLOOM	30.0	TENNESSEE GAS PIP
8423111		3411925111		103	107-TF	M FLEMING #1	BLUE ROCK	20.0	
8423112		3411925113		103	107-TF	M FLEMING #2	BLUE ROCK	0.0	
8423107		3411924280		107-TF		R HUNTER #1	BLUE ROCK	20.0	
8423110		3411925090		103	107-TF	R HUNTER #2	BLUE ROCK	20.0	TENNESSEE GAS PIP
8423114		3411925457		103	107-TF	R HUNTER #5	BLUE ROCK	25.0	
8423105		3411523182		103	107-TF	R PARMITER #1	BLOOM	40.0	
8423108		3411925018		107-TF		S COX #1	BLUE ROCK	[illegible]0.0	
8423106		3411523189		103	107-TF	SPENCER #1	BLOOM	[illegible]0.0	
8423103		3411522038		107-TF		W MCDANIEL #1	BLOOM	10.0	
-THE MUTUAL OIL & GAS COMPANY				RECEIVED:	02/29/84	JA: OH			
8423061		3415723964		103	107-TF	CRUM #5	UNION	0.0	EAST OHIO GAS CO
-UNIVERSAL EXPLORATION				RECEIVED:	02/29/84	JA: OH			
8423129		3415321603		107-TF		HANZEL #2	FRANKLIN	0.0	EAST OHIO GAS CO
-VICTOR MCKENZIE				RECEIVED:	02/29/84	JA: OH			
8423131		3412726180		103		MONT COOPERRIDER #2	THORN	20.0	NATIONAL GAS & OI
8423130		3412726150		103		NANCY MILLER #1	THORN	60.0	COLUMBIA GAS TRAN
-VICTOR MCKENZIE DRILLING CO INC				RECEIVED:	02/29/84	JA: OH			
8423132A		3411926806		103		SEYBOLD UNIT #1	SALT CREEK	25.0	COLUMBIA GAS TRAN
8423132B		3411926806	D	107-TF		SEYBOLD UNIT #1	SALT CREEK	25.0	COLUMBIA GAS TRAN
-WENNER PETROLEUM CORPORATION				RECEIVED:	02/29/84	JA: OH			
8423133		3416923692		107-TF		R GASSER #6	MILTON-WAYNE POOL	11.0	COLUMBIA GAS TRAN
-YANKEE EXPLORATION INC				RECEIVED:	02/29/84	JA: OH			
8423135		3405520584		103	107-TF	B A STEVENSON #1	HAMBDEN	0.0	YANKEE RESOURCES
8423145		3415123718		103	107-TF	BUEHLER UNIT #1	WASHINGTON	0.0	YANKEE RESOURCES
8423141		3412123083		103	107-TF	CHAPMAN UNIT #1	NOBLE	0.0	YANKEE RESOURCES
8423146		3415123908		103	107-TF	DONALD ROHR #7	WASHINGTON	0.0	YANKEE RESOURCES
8423147		3415522293		103	107-TF	HALL-FENSTERMAKER #1	BRISTOL	0.0	YANKEE RESOURCES
8423140		3405923546		103	107-TF	JOHN MORTON #3	ADAMS	0.0	YANKEE RESOURCES
8423139		3405923542		103	107-TF	MARTHA PALMER #1	CAMBRIDGE	0.0	YANKEE RESOURCES
8423138		3405923541		103	107-TF	MARTHA PALMER #2	CAMBRIDGE	0.0	YANKEE RESOURCES
8423142		3412123086		103	107-TF	MURL PICKENPAUGH #3	SHARON	0.0	YANKEE RESOURCES
8423143		3412123087		103	107-TF	MURL PICKENPAUGH #4	SHARON	0.0	YANKEE RESOURCES
8423144		3412123088		103	107-TF	MURL PICKENPAUGH #5	SHARON	0.0	YANKEE RESOURCES
8423136		3405520671		103	107-TF	PARKER UNIT #1	MONTVILLE	0.0	YANKEE RESOURCES
8423149		3415522415		103	107-TF	PETRELLA-AMATO UNIT #3	BRISTOL	0.0	YANKEE RESOURCES
8423150		3415522416		103	107-TF	PETRELLA-AMATO UNIT #4	BRISTOL	0.0	YANKEE RESOURCES
8423148		3415522302		103	107-TF	SUTTON UNIT #3	BRISTOL	0.0	YANKEE RESOURCES
8423137		3405923537		103	107-TF	T & W TIPPLE #1	CAMBRIDGE	0.0	YANKEE RESOURCES
********** WEST VIRGINIA DEPARTMENT OF MINES **********									
-ALLEGHENY & WESTERN ENERGY CORP				RECEIVED:	02/27/84	JA: WV			
8422944		4701100753		107-DV		A LUCAS #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8422941		4701100756		107-DV		BOWEN/HARLESS #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8422945		4701100762		107-DV		BRINIGER/MCCOY #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8422947		4701100758		107-DV		E WALKER #3	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8422946		4701100759		107-DV		HOGSETT/HYSELL #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8422942		4701100755		107-DV		J L BOWEN #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8422939		4701100754		107-DV		J L BOWEN #2	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8422948		4701100757		107-DV		KELLWOOD FARMS #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8422940		4701100750		107-DV		L SARGENT #1	BARBOURSVILLE DISTRIC	36.0	COLUMBIA GAS TRAN
8422943		4701100752		107-DV		R C JOHNSON #1	BARBOURSVILLE DISTRIC	[illegible]6.0	COLUMBIA GAS TRAN
-BASE PETROLEUM				RECEIVED:	02/27/84	JA: WV			
8422952		4704700558		108		NORFOLK & WESTERN RAIL #420+2839.5	(SANDY RIVER DISTRICT	5.0	COLUMBIA GAS TRAN
8422953		4704700559		108		NORFOLK & WESTERN RAIL #420+4789.5	(SANDY RIVER DISTRICT	5.0	COLUMBIA GAS TRAN
-BEREA OIL AND GAS CORPORATION				RECEIVED:	02/27/84	JA: WV			
8422911		4700121868		103		FRI #1	VALLEY DISTRICT	28.7	BROOKLYN UNION GA
8422906		4709300065		103		R BEALL #1	DRY FORK	30.0	BROOKLYN UNION GA
8422910		4700121964		103		T GIBSON #1	VALLEY DISTRICT	16.0	BROOKLYN UNION GA
8422920		4700121964		107-DV		T GIBSON #1	VALLEY DISTRICT	16.0	BROOKLYN UNION GA
-CHESTERFIELD ENERGY CORP				RECEIVED:	02/27/84	JA: WV			
8422961		4700101916		107-DV		CORLEY #1	BELINGTON	10.0	TENNECO OIL CO
8422964		4701703231		107-DV		GIBSON #1	ZINNIA	5.0	COLUMBIA GAS TRAN
8422960		4700101917		107-DV		HILLYARD #1	BELINGTON	10.0	TENNECO OIL CO
8422962		4700101851		107-DV		MCQUAID #1	BELINGTON	10.0	TENNECO OIL CO
8422966		4706103324		107-DV		OSBORN #1	GLENVILLE NORTH	10.0	CARNEGIE NATURAL
8422967		4703302851		103		RILEY WELL #1	CLAY	0.0	PENNZOIL PRODUCIN
8422963		4700101687		107-DV		SHOMO #1	BELINGTON	10.0	TENNECO OIL CO
8422965		4702104021		107-DV		WADE #1	REVEL	10.0	EQUITABLE GAS CO
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	02/27/84	JA: WV			
8422959		4709702566		103		D L M COAL CO 12824	WASHINGTON	81.0	GENERAL SYSTEM PU
-CONTINENTAL PETROLEUM CO				RECEIVED:	02/27/84	JA: WV			
8422970		4702104093		107-DV		SANDY #2	GLENVILLE NORTH	28.0	COLUMBIA GAS TRAN
-DELTA DRILLING CO				RECEIVED:	02/27/84	JA: WV			
8422919		4703501783		107-DV		V M BOGGESS #1	RAVENSWOOD	0.0	KAISER EXPLORATIO

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8422951		4703501783		103		V M BOGGESS #1	RAVENSWOOD	0.0	KAISER EXPLORATIO
-J & J ENTERPRISES INC				RECEIVED:	02/27/84	JA: WV			
8422916		4709702541		103		J-752	UNION	0.0	EASTERN AMERICAN
8422915		4709702542		103		J-753	UNION	0.0	EASTERN AMERICAN
8422918		4700101920		103		J-777	VALLEY	0.0	EASTERN AMERICAN
8422917		4700101905		103		J-798	VALLEY	0.0	EASTERN AMERICAN
-JAMES F SCOTT				RECEIVED:	02/27/84	JA: WV			
8422949		4704706903		107-TF		S-482 DAVID STEELE	SANDY RIVER	42.0	COLUMBIA GAS TRAN
-KAISER ENERGY INC				RECEIVED:	02/27/84	JA: WV			
8422907		4710701267		103		ROBERT K TEBAY JR KEM-360	NEW ENGLAND	36.5	BORG-WARNER CHEMI
8422908		4710701258		103		WILBERT G & CLARA L HOFFMAN KEM-355	NEW ENGLAND	32.0	BORG-WARNER CHEMI
8422909		4710701254		103		WILBUR TENNANT KEM 0369	NEW ENGLAND	29.0	BORG-WARNER CHEMI
-KAISER EXPLORATION & MINING CO				RECEIVED:	02/27/84	JA: WV			
8422927		4703501649		107-DV		DEWEY LUCAS KEM #151	ELK/POCA	[illegible].0	KAISER ALUMINUM &
8422922		4710701209		107-DV		GERALDINE SAME KEM #148	MURRAYSVILLE	[illegible].5	KAISER ALUMINUM &
8422926		4703501787		107-DV		GRANT DONOHEW KEM #291	ELK/POCA	18.3	KAISER ALUMINUM &
8422925		4703501788		107-DV		GRANT DONOHEW KEM #292	ELK/POCA	18.3	KAISER ALUMINUM &
8422924		4703501789		107-DV		GRANT DONOHEW KEM #293	ELK/POCA	18.3	KAISER ALUMINUM &
8422923		4703501791		107-DV		GRANT DONOHEW KEM #294	ELK/POCA	18.3	KAISER ALUMINUM &
8422928		4703501622		107-DV		KENNETH SHAW KEM #126	MURRAYSVILLE	30.0	KAISER ALUMINUM &
8422921		4710701213		107-DV		THOMAS LOUGH KEM #221	MURRAYSVILLE	24.5	KAISER ALUMINUM &
-KEPCO INC				RECEIVED:	02/27/84	JA: WV			
8422930		4703302891		103		B L COFFINDAFFER #3 (WK-250)	UNION DISTRICT	17.5	TEXAS EASTERN TRA
8422929		4701703210		103		J M HINKLE #2 (WK-243)	GREENBRIER DISTRICT	14.5	TEXAS EASTERN TRA
8422931		4701703211		103		J M HINKLE #3 (WK-244)	GREENBRIER DISTRICT	40.0	TEXAS EASTERN TRA
8422932		4701703205		103		W H MCCLAIN #2 (WK-242)	GREENBRIER DISTRICT	15.0	TEXAS EASTERN TRA
8422933		4701703204		103		W MCCLAIN #3 (WK-241)	GREENBRIER DISTRICT	45.0	TEXAS EASTERN TRA
-L & M PETROLEUM INC				RECEIVED:	02/27/84	JA: WV			
8422975		4707301689		103		DELBERT JAMES #1	JEFFERSON	10.0	CONSOLIDATED GAS
-MURVIN OIL CORP				RECEIVED:	02/27/84	JA: WV			
8422950		4708506544		103		R ALLEN #1	GRASS RUN	50.0	CONSOLIDATED GAS
-OHIO L & M CO INC				RECEIVED:	02/27/84	JA: WV			
8422974		4702104086		103		ARBUCKLE #2	CENTER	10.0	CONSOLIDATED GAS
8422973		4708506693		103		STARR #8	FRANT	10.0	CONSOLIDATED GAS
-RARE EARTH ENERGY INC				RECEIVED:	02/27/84	JA: WV			
8422972		4707301539		103		OLDS #1	JEFFERSON DISTRICT	0.0	CONSOLIDATED GAS
8422971		4707301705		103		TAYLOR #2	JEFFERSON DISTRICT	0.0	CONSOLIDATED GAS
-SWIFT ENERGY CO				RECEIVED:	02/27/84	JA: WV			
8422936		4709100343		107-DV		A MATTHEW #1	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8422935		4709100353		107-DV		A MCGUINNESS #1	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8422956		4709100339		102-2		A NEWCOME #1	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8422938		4709100334		107-DV		L NEWCOME #2	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8422958		4709100334		102-2		L NEWCOME #2	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8422955		4709100348		102-2		L THORN #2	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8422934		4709100352		107-DV		R BRYAN #2	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8422954		4709100352		102-2		R BRYAN #2	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8422937		4709100335		107-DV		W WOOD #1	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8422957		4709100335		102-2		W WOOD #1	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
-TIARA INC				RECEIVED:	02/27/84	JA: WV			
8422969		4708506432		103		SETH COX 1-A	UNION	0.0	CARNEGIE NATURAL
8422968		4708506405		103		SETH COX 2-A	UNION DISTRICT	0.0	CARNEGIE NATURAL
-WACO OIL AND GAS CO INC				RECEIVED:	02/27/84	JA: WV			
8422912		4702104009		103		MINNICH #1A	TANNER CREEK	[illegible].0	CONSOLIDATED GAS
8422905		4702104010		103		MINNICH #2A	TANNER CREEK	45.0	CONSOLIDATED GAS
8422914		4702104104		103		POST #1	ROCK CAMP RUN	31.0	CONSOLIDATED GAS
8422913		4702104105		103		POST #2	ROCK CAMP RUN	33.0	CONSOLIDATED GAS
**********									
** DEPT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE, LA									
**********									
-EXXON CORPORATION				RECEIVED:	02/28/84	JA: LA W			
8422984 G3-3918		1772240090		102-5		OCS-G 1619 #A-16	SOUTH PASS	174.0	COLUMBIA GAS TRAN
8422981 G3-3749		1772240088		102-5		OCS-G 1619 #A-8-D	SOUTH PASS	43.0	COLUMBIA GAS TRAN
-GULF OIL CORPORATION				RECEIVED:	02/28/84	JA: LA W			
8422978 G3-3929		1772140273		102-5		OCS-G 2177 A-15 S/P BLK 49 FW	SOUTH PASS	465.0	TEXAS EASTERN TRA
-KERR-MCGEE CORPORATION				RECEIVED:	02/28/84	JA: LA W			
8422982 G3-4040		1771140698		102-5		OCS 0832 #C-11 (ST 1)	SHIP SHOAL	0.0	TRANSCONTINENTAL
-MCMORAN OFFSHORE EXPLORATION CO				RECEIVED:	02/28/84	JA: LA W			
8422976 G3-3932		1770840564		102-5		OCS-G 2887 #A-10	SOUTH MARSH ISLAND	11.0	
8422979 G3-3604		1770840568		102-5		OCS-G 2887 #A-11	SOUTH MARSH ISLAND	149.0	
8422986 G3-3586		1770840555		102-5		OCS-G 2887 #A-3	SOUTH MARSH ISLAND	77.0	
8422987 G3-3577		1770840565		102-5		OCS-G 2888 #A-8	SOUTH MARSH ISLAND	3212.0	
8422989 G3-3616		1770840576		102-5		OCS-G 2889 #A-15	SOUTH MARSH ISLAND	11.0	
-MOBIL OIL EXPLORATION & PROD S E				RECEIVED:	02/28/84	JA: LA W			
8422985 G3-3549		1772540232		102-5		MAIN PASS 72/74 #C-9A	MAIN PASS	700.0	UNITED GAS PIPE L
-ODECO OIL & GAS CO				RECEIVED:	02/28/84	JA: LA W			
8422988 G3-4079		1770940057		102-5		OCS-0228 #12A	EUGENE ISLAND 89	91.0	UNITED GAS PIPE L
-SUPERIOR OIL CO				RECEIVED:	02/28/84	JA: LA W			
8422983 G2-3296		1770040443		102-5		OCS 0245 #F-2	WEST CAMERON	[illegible].0	TEXAS EASTERN TRA
8422977 G2-3302		1770040473		102-5		OCS 0245 H-2	WEST CAMERON	[illegible].0	TEXAS EASTERN TRA
-TEXACO INC				RECEIVED:	02/28/84	JA: LA W			
8422990 G3-4081		1770740442		102-5		OCS-G-0310 S MARSH ISL 236 #A-10	SOUTH MARSH ISLAND	1800.0	NATURAL GAS PIPEL
8422991 G3-3934		1770740727		102-5		SOUTH MARSH ISLAND 236 #A-6	SOUTH MARSH ISLAND	260.0	NATURAL GAS PIPEL
-TEXOMA PRODUCTION CO				RECEIVED:	02/28/84	JA: LA W			
8422980 G3-3927		1772540330		102-5		MAIN PASS 148 #A-7	MAIN PASS	182.0	NATURAL GAS PIPEL

[FR Doc. 84-8635 Filed 4-3-84; 8:45 am]

BILLING CODE 6717-01-C

[Volume 1091]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: March 28, 1984

Note:—By final rule issued by the Commission on February 22, 1984 (Order No. 382, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, *will not be published in the* Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 382 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capital St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New res. on old OCS lease
Section 103: New onshore production well
Section. 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
ISSUED MARCH 28, 1984

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OKLAHOMA CORPORATION COMMISSION									
-AME OIL & GAS CO				RECEIVED: 02/29/84		JA: OK			
8423218	19498	3505300000		108		HOXSEY #1	DEER CREEK	11.0	EL GRANDE PIPELIN
-AMOCO PRODUCTION CO				RECEIVED: 02/29/84		JA: OK			
8423229	26202	3509322653		103		HARMON UNIT #2	WEST CAMPBELL - HUNTO	15.0	
-ANADARKO PRODUCTION COMPANY				RECEIVED: 02/29/84		JA: OK			
8423223	24606	3500722395		102-4		GRIBI TRUST "A" #1	E LORENA	6.0	PANHANDLE EASTERN
-APOLLO PRODUCTION LTD				RECEIVED: 02/29/84		JA: OK			
8423249	24677	3507323816		103		HOEHNER #31-5	SOONER TREND	0.0	PHILLIPS PETROLEU
-B J BROWN				RECEIVED: 02/29/84		JA: OK			
8423247	26725	3510121419		103		ALLEN #1	BALD HILL	73.0	PHILLIPS PETROLEU
8423246	26726	3510121420		103		ALLEN #2	BALD HILL	80.0	PHILLIPS PETROLEU
-CALLAN R C JR				RECEIVED: 02/29/84		JA: OK			
8423256	22411	3502520548		103		PURDY #2-19	KEYES GAS AREA	130.0	PANHANDLE EASTERN
-COLLINS PETROLEUM INC				RECEIVED: 02/29/84		JA: OK			
8423194	24857	3514700000		102-2		GLENN #1	COTTON VALLEY	10.0	COTTON VALLEY GAS
-COMPADRE DRLG & EXPLORATION CORP				RECEIVED: 02/29/84		JA: OK		152.6	LONE STAR GAS CO
8423252	24643	3513723367		102-4	103	BARDSHER #2			
-CONOCO INC				RECEIVED: 02/29/84		JA: OK			
8423163	24591	3514920095		102-2		DUNCAN #1	SENTINEL	925.0	PRODUCERS GAS CO
-CORE OIL & GAS CORP				RECEIVED: 02/29/84		JA: OK			
8423248	24694	3513322298		102-4		SHEPERD #1	S E KEOKUK	0.0	SOUTHWEST PETROGA
-CRYSTAL OIL & LAND [redacted]				RECEIVED: 02/29/84		JA: OK		12.0	CHAMPLIN PETROLEU
8423217	26729	3504721799		108		DALKE #1		7.0	AMINOIL USA INC
8423216	26728	3500320754		108		HAWKINS #1-25A		[redacted].5	PHILLIPS PETROLEU
8423215	26727	3501721139		108		KUNNEMAN #1			
-CUR-RIC PETROLEUM GAS CORP				RECEIVED: 02/29/84		JA: OK			
8423230	26355	3510120524		108		CARTER 1-19	S HASKELL	[redacted].0	PHILLIPS PETROLEU
8423196	26449	3511100000		108		HOWELL #3	TIGER FLATS	13.0	PHILLIPS PETROLEU
8423231	26448	3511100000		108		MARTIN #1	TIGER FLATS	10.0	PHILLIPS PETROLEU
8423198	26451	3511100000		108		MORROW #1	BALD HILL	[redacted].5	PHILLIPS PETROLEU
8423197	[redacted]6450	3510165785		108		ODOM 2-14	S HASKELL	14.0	PHILLIPS PETROLEU
-DAVIS OIL COMPANY				RECEIVED: 02/29/84		JA: OK			
8423272	26811	3501722581		103		REIMERS #1	COTTAGE GROVE	0.0	PHILLIPS PETROLEU
-DELPHI DEVELOPMENT INC				RECEIVED: 02/29/84		JA: OK			
8423188	26525	3507122625		103		EVA CHRISTENSEN #1	DILWORTH	14.4	CHASE EXPLORATION
8423187	26526	3507122626		103		EVA CHRISTENSEN #2	DILWORTH	14.4	CHASE EXPLORATION
-DLB ENERGY CORP				RECEIVED: 02/29/84		JA: OK			
8423255	24630	3507323821		102-2	103	MUEGGENBORG #29-15	SOONER TREND	91.0	PHILLIPS PETROLEU
-DYNE EXPLORATION CO				RECEIVED: 02/29/84		JA: OK			
8423220	23870	3511100000		108		KILE #2	COALTON	15.0	PHILLIPS PETROLEU
8423219	23869	3511123997		108		KILE #3	COALTON	15.0	PHILLIPS PETROLEU
-EAGLE MINERALS INC.				RECEIVED: 02/29/84		JA: OK			
8423195	26370	3503723221		103		QUAPAW #2		0.0	CIRCUS OIL CO
-EARLSBORO OIL AND GAS CO INC				RECEIVED: 02/29/84		JA: OK			
8423251	24657	3506120578		102-4		GOLLON #1-23	ELM CREEK	750.0	
8423250	24658	3506120594		102-4		LEDBETTER #1-25	ELM CREEK	300.0	

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-ENERGY SERVICES INC				RECEIVED:	02/29/84	JA: OK			
8423206	18414	3504321433		102-4		BOND #35-1	WEST CANTON - 81	73.0	DELHI GAS PIPELIN
8423189	22390	3504321456		102-4		LON MCKEE #26-1	WEST CANTON-81	124.0	UNITED GAS PIPE L
8423190	22391	3504321533		102-4		RED MAN #36-3	WEST CANTON-81	175.0	UNITED GAS PIPE L
-ENSERCH EXPLORATION INC				RECEIVED:	02/29/84	JA: OK			
8423177	25277	3504321750		103		IRENE GAMBREL #2-16	M E PUTNAM	292.0	MOBIL OIL CORP
-ESCO EXPLORATION INC				RECEIVED:	02/29/84	JA: OK			
8423267	26790	3512920746		103		MARY SUSAN #17-1	ROLL	183.0	TRANSWESTERN PIPE
8423191	24202	3504321604		102-4		MOOSE #25-1	WEST CANTON - 81	0.0	UNITED GAS PIPE L
-F HOWARD WALSH JR				RECEIVED:	02/29/84	JA: OK			
8423193	24696	3505121444		102-3	103	WALTERS #2		38.0	TRANSOK PIPE LINE
-FUNK EXPLORATION INC				RECEIVED:	02/29/84	JA: OK			
8423208	22258	3500721208		102-4	103	HODGES #1	AMBUSH	328.0	
-GEODYNE RESOURCES INC				RECEIVED:	02/29/84	JA: OK			
8423265	26779	3500321079		103		NELSON #1-28	N CARMEN	42.3	UNION TEXAS PETRO
-GRACE PETROLEUM CORPORATION				RECEIVED:	02/29/84	JA: OK			
8423159	23530	3509300110		108		GAMMON #1	N E AMES	0.0	ARKANSAS LOUISIAN
-H A OIL & GAS CO				RECEIVED:	02/29/84	JA: OK			
8423184	26750	3505900000		108		MCCLUNG #1 H A OIL & GAS CO	LAVERNE - MAY	5.0	MICHIGAN WISCONSI
-JAKE L HAMON				RECEIVED:	02/29/84	JA: OK			
8423245	24730	3503920755		102-2		HAMAR #2-14	WEST CLINTON	365.0	TRANSOK INC
-K ENERGY INC				RECEIVED:	02/29/84	JA: OK			
8423226	24725	3504700000		102-2		EARL #1		4015.0	ARCO OIL & GAS CO
-LOBAR OIL CO INC				RECEIVED:	02/29/84	JA: OK			
8423259	26765	3508320631		103		EDWARD HILL #1		0.0	EASON OIL CO
8423260	26766	3508320726		103		EDWARD HILL #2		0.0	EASON OIL CO
8423258	26764	3508320787		103		FICKEN #1		0.0	EASON OIL CO
8423239	26761	3508320630		103		JEWEL P SIMPSON #1		0.0	EASON OIL CO
8423240	26762	3508320707		103		SIMON #1		0.0	EASON OIL CO
8423257	26763	3508320675		103		SIMPSON #1-C		0.0	EASON OIL CO
8423237	26759	3508320720		103		SIMPSON #2-C		0.0	EASON OIL CO
8423238	26760	3508320734		103		SIMPSON-FRY #1		0.0	EASON OIL CO
-MARCUS EXPLORATION INC				RECEIVED:	02/29/84	JA: OK			
8423203	26741	3510322067		103		BRADEN #1	S W SAMS	43.0	ARCO OIL & GAS CO
8423268	26796	3510322098		103		CARRIER #4	GANSEL	48.0	ARCO OIL & GAS CO
-MARSHALL OIL CORP				RECEIVED:	02/29/84	JA: OK			
8423178	27405	3503920890		107-DP		WINIFRED #1-25		0.0	PRODUCERS GAS CO
-MAURICE L BROWN CO				RECEIVED:	02/29/84	JA: OK			
8423234	26579	3513921387		103		ETTA NILES #6	PURDY ZONE	270.0	PHILLIPS PETROLEU
-MID-AMERICA PETROLEUM INC				RECEIVED:	02/29/84	JA: OK			
8423166	24710	3505321029		102-2		GILE #2-16	N E WAKITA	243.0	MID-AMERICA GAS I
8423165	24709	3505321041		102-2		J CINK #1	N E WAKITA	360.0	MID-AMERICA GAS I
8423164	24708	3505321042		102-2		MCDONALD 22 #2	N E WAKITA	360.0	MID-AMERICA GAS I
-MOBIL OIL CORP				RECEIVED:	02/29/84	JA: OK			
8423210	26686	3504521193		103		BERRYMAN "B" #4	S E ARNETT	0.0	PANHANDLE EASTERN
-MORAN EXPLORATION INC				RECEIVED:	02/29/84	JA: OK			
8423271	26810	3501722143		108		CAROL #1 017-72532	EAST YUKON	9.7	PHILLIPS PETROLEU
8423222	24525	3504521154		102-4		WALTON #1	S W MILDER	0.0	PHILLIPS PETROLEU
-MR CJ OIL CO				RECEIVED:	02/29/84	JA: OK			
8423227	25791	3511900000		103		EBERHART #1-35		0.0	ENTERPRISE DEVELO
-PAN EASTERN EXPLORATION CO				RECEIVED:	02/29/84	JA: OK			
8423213	26717	3513900000		108		BEVAN #2-10	GUYMON HUGOTON	15.0	PANHANDLE EASTERN
8423212	26716	3513900000		108		EASTERWOOD #1-14	GUYMON HUGOTON	9.0	PANHANDLE EASTERN
8423214	26718	3513900000		108		FLETCHER #1-25	GUYMON HUGOTON	15.0	PANHANDLE EASTERN
8423211	26715	3513900000		108		SMITH #1-27	GUYMON HUGOTON	7.0	PANHANDLE EASTERN
-PETRO-LEWIS CORPORATION				RECEIVED:	02/29/84	JA: OK			
8423168	24518	[illegible]		102-4		BECHTOLD #1-27	BEAVER SOUTH	0.0	PHILLIPS PETROLEU
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	02/29/84	JA: OK			
8423207	21286	3513900000		103		FOLDER #2	OKLAHOMA HUGOTON - DO	0.0	PANHANDLE EASTERN
8423270	26798	3513900000		108		TOPAZ #1	OKLAHOMA HUGOTON - DO	0.0	MICHIGAN WISCONSI
8423202	4670	3500700000		108-ER		VERNON A #1		0.0	MICHIGAN WISCONSI
-PROSPECTIVE INVESTMENT & TRADING CO				RECEIVED:	02/29/84	JA: OK			
8423161	24540	3504521160		102-4	103	SAFARI 1-33	33-19N-21W	0.0	PHILLIPS PETROLEU
-PYRO ENERGY CORP				RECEIVED:	02/29/84	JA: OK			
8423233	26597	3509322778		103		CLARK #31-3	W CHEYENNE VALLEY	72.0	
-RAMCO OIL CO				RECEIVED:	02/29/84	JA: OK			
8423182	26754	3511722026		103		GRIESEL #3		16.4	MJD GAS CO
8423181	26755	3511722040		103		GRIESEL #4		14.7	MJD GAS CO
8423180	26756	3511721983		103		OSBORN #1		18.3	COLORADO GAS COMP
8423179	26757	3511722008		103		OSBORN #2		153.5	COLORADO GAS COMP
-RED EAGLE OIL CO				RECEIVED:	02/29/84	JA: OK			
8423200	26732	3509322793		103		R O B #1	N W OKEENE	182.0	PIONEER GAS PRODU
8423235	26733	3509322741		103		SARA #1	N W OKEENE	91.0	PHILLIPS PETROLEU
-ROGERS RESOURCES INC				RECEIVED:	02/29/84	JA: OK			
8423244	24757	3503920819		102-2		STICE #1-19	[illegible]	229.0	
-SAMSON RESOURCES COMPANY				RECEIVED:	02/29/84	JA: OK			
8423225	24718	3506120327		102-2		LILLARD #1		27.4	UNITED GAS PIPE L
-SANTA FE-ANDOVER OIL CO				RECEIVED:	02/29/84	JA: OK			
8423162	24579	3501121864		102-4	103	SCHOOL LANDS #36-2		135.0	OKLAHOMA GAS PIPE
-SANTO RESOURCES INC				RECEIVED:	02/29/84	JA: OK			
8423241	26777	3515100000		108		CLAUDE SEAMAN #1-30	WAYNOKA N E	10.0	NORTHWEST CENTRAL
-SENECA OIL CO				RECEIVED:	02/29/84	JA: OK			
8423192	24655	3512120996		102-2		CABLE #1-19		297.1	ARKANSAS LOUISIAN
-SHELL OIL CO				RECEIVED:	02/29/84	JA: OK			
8423176	25155	3500900000		108		ELK CITY MOXBAR SAND CONGL #1-18-10	ELK CITY	12.7	PANHANDLE EASTERN
8423174	25153	3500900000		108		ELK CITY MOXBAR SAND CONGL #1-23-11	ELK CITY	9.2	PANHANDLE EASTERN
8423175	25154	3500900000		108		ELK CITY MOXBAR SAND CONGL #1-23-7	ELK CITY	12.5	PANHANDLE EASTERN
8423170	25149	3500900000		108		ELK CITY MOXBAR SAND CONGL #1-5-12	ELK CITY	12.7	PANHANDLE EASTERN
8423171	25150	3500900000		108		ELK CITY MOXBAR SAND CONGL #1-5-11	ELK CITY	12.7	PANHANDLE EASTERN
8423172	25151	3500900000		108		ELK CITY MOXBAR SAND CONGL #1-5-14	ELK CITY	12.7	PANHANDLE EASTERN
8423169	25148	3500900000		108		ELK CITY MOXBAR SAND CONGL #1-7-6	ELK CITY	12.7	PANHANDLE EASTERN
8423168	25147	3500900000		108		ELK CITY MOXBAR SAND CONGL #1-7-8	ELK CITY	12.7	PANHANDLE EASTERN
8423167	25146	3500900000		108		ELK CITY MOXBAR SAND CONGL #1-9-1	ELK CITY	12.7	PANHANDLE EASTERN
8423173	25152	3500900000		108		ELK CITY MOXBAR SAND CONGL #2-1-9	ELK CITY	12.1	PANHANDLE EASTERN
8423183	26751	3513900000		108		MAYER #1-16	HOOKER - HARRINGTON	7.4	NATURAL GAS PIPEL
-SIMCOE OIL CO				RECEIVED:	02/29/84	JA: OK			
8423261	26773	3507323874		103		ARBY #1	SOONER TREND	50.0	EASON OIL CO
-STANTON ENERGY INC				RECEIVED:	02/29/84	JA: OK			
8423186	26593	3514322692		103		LUVENA #7		80.0	COLORADO GAS COMP
-STATE OPERATING CO				RECEIVED:	02/29/84	JA: OK			
8423209	26437	3503725283		103		BEGLEY #4		15.0	EMPIRE PIPELINE C
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	02/29/84	JA: OK			
8423232	26589	3512121055		103		CARMAN UNIT #3	S PINE HOLLOW	438.0	ARKLA EXPLORATION
8423228	26141	3500700000		108		COLE-MCGREW #1	MOCANE-LAVERNE	0.1	NORTHERN NATURAL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	VOLUME 1091 FIELD NAME	PROD	PURCHASER
8423204	17017	3512500000		108		SHIPMAN #3	ST LOUIS	4.0	ARCO OIL & GAS CO
-TEXACO INC				RECEIVED:	02/29/84	JA: OK			
8423243	26793	3500700000		108		C K HALL #1	LIGHT POOL	8.4	PANHANDLE EASTERN
8423242	26792	3509300000		108		L L WEAVER #1	RINGWOOD	4.4	RINGWOOD GATHERIN
-TIDEMARK EXPLORATION CO				RECEIVED:	02/29/84	JA: OK			
8423199	26672	3515321438		103		HININGER #1-6	FARGO SOUTHEAST	65.7	PANHANDLE EASTERN
-TRANS-WORLD EXPLORATION CO				RECEIVED:	02/29/84	JA: OK			
8423221	24347	3505321030		102-4		CLARK LAND CO #1	SOUTH MEDFORD	0.8	FARMLAND INDUSTRI
-TRINEHA INC				RECEIVED:	02/29/84	JA: OK			
8423264	26778	3501722621		103		DAVIS 1-1	SOUTHWEST MUSTANG	1.4	PHILLIPS PETROLEU
-TXO PRODUCTION CORP				RECEIVED:	02/29/84	JA: OK		102.0	
8423266	24780	3512121062		102-2	103	A & M RANDEL #2	KINTA	941.0	
8423254	24633	3506120614		102-4	103	HISER #1	E CARPENTER	0.0	DELHI GAS PIPELIN
8423253	24634	3503920905		102-2		MOUSE #1	M E AVARD	0.0	DELHI GAS PIPELIN
8423205	17236	3515120369		108-ER		PIPER #1			
-UNION OIL COMPANY OF CALIF				RECEIVED:	02/29/84	JA: OK	DOYLE	18.0	AMINOIL USA INC
8423185	26736	3513700000		108		HARRELL #1-3	CUMBERLAND	6.0	LONE STAR GAS CO
8423201	26732	3501320051		108		LITTLE 106 #22			
-VAN HORN OIL & GAS INC				RECEIVED:	02/29/84	JA: OK	NORTHEAST MENO	120.0	UNION TEXAS PETRO
8423224	24698	3509322576		103		RUTH 35-1			
-VISTA EXPLORATION INC				RECEIVED:	02/29/84	JA: OK	BIXBY	42.0	PHILLIPS PETROLEU
8423236		3514300000		103		FLEETWOOD #3		331.0	
-WARD PETROLEUM CORP				RECEIVED:	02/29/84	JA: OK		94.0	PHILLIPS PETROLEU
8423269	26797	3505121454		103		CAMILLA #1		73.0	PHILLIPS PETROLEU
8423263	26775	3505121458		103		COX FARMS #1			
8423262	26774	3505121481		103		RUBY COX #1			
WEST VIRGINIA DEPARTMENT OF MINES									
-ASHLAND EXPLORATION INC				RECEIVED:	02/29/84	JA: WV			
8423277		4710900908		103		W M RITTER #224 - 097181	LOGAN-WYOMING	15.0	CONSOLIDATED GAS
8423278		4710900908		107-DV		W M RITTER #224 - 097181	LOGAN-WYOMING	15.0	CONSOLIDATED GAS
-BRAXTON OIL AND GAS CORP				RECEIVED:	02/29/84	JA: WV			
8423300		4708300759		103		MALM #2	ELLAMORE	60.0	COLUMBIA GAS TRAN
8423301		4708300760		103		MALM WELL #3	ELLAMORE 7.5'	60.0	COLUMBIA GAS TRAN
-C & J OIL & GAS				RECEIVED:	02/29/84	JA: WV			
8423297		4707301678		107-DV		LUCAS #1	WILLOW ISLAND CREEK	50.0	PLEASANTS COUNTY
-EASTERN AMERICAN ENERGY CORPORATION				RECEIVED:	02/29/84	JA: WV			
8423302		4704103192		103		COPLEY #2	COURTHOUSE	12.0	COLUMBIA GAS TRAN
8423305		4704103192		107-DV		COPLEY #2	COURTHOUSE	12.0	COLUMBIA GAS TRAN
8423292		4704103216		103		FINSTER #1	COURTHOUSE	10.0	COLUMBIA GAS TRAN
8423304		4704103216		107-DV		FINSTER #1	COURTHOUSE	10.0	COLUMBIA GAS TRAN
8423293		4704103378		103		FUCCY #1	COURTHOUSE	10.0	COLUMBIA GAS TRAN
8423303		4704103378		107-DV		FUCCY #1	COURTHOUSE	10.0	COLUMBIA GAS TRAN
8423291		4709100357		103		STOUT #1	FLEMINGTON DIST	0.0	EASTERN PIPELINE
-J & J ENTERPRISES INC				RECEIVED:	02/29/84	JA: WV			
8423287		4700101809		103		J-700	PHILIPPI	0.0	CONSOLIDATED GAS
8423276		4709702547		103		J-755	UNION	0.0	EASTERN AMERICAN
8423275		4708506401		103		J-780	CLAY	0.0	CONSOLIDATED GAS
8423273		4708506430		103		J-785	CLAY	0.0	CONSOLIDATED GAS
8423274		4708506671		103		J-790	CLAY	0.0	CONSOLIDATED GAS
8423288		4708506672		103		J-791	CLAY	0.0	CONSOLIDATED GAS
-JAMES F SCOTT				RECEIVED:	02/29/84	JA: WV			
8423299		4704700903		103		DAVID STEELE S-482	SANDY RIVER	0.0	COLUMBIA GAS TRAN
8423298		4701703255		107-DV		HAYDEN S-10	WEST UNION	0.0	COLUMBIA GAS TRAN
-NRM PETROLEUM CORPORATION				RECEIVED:	02/29/84	JA: WV			
8423289		4709702046		103		NORVELL #1	ALEXANDER	0.0	COLUMBIA GAS TRAN
8423290		4709702056		103		WOOD #1	ALEXANDER	0.0	COLUMBIA GAS TRAN
-PEAKE OPERATING CO				RECEIVED:	02/29/84	JA: WV			
8423295		4703903980		107-DV		ANNA WOOD #1-A	(JEFFERSON DISTRICT)	5.0	COLUMBIA GAS TRAN
8423296		4703903981		107-DV		ARTHUR BRYAN #1-A	(JEFFERSON DISTRICT)	0.0	COLUMBIA GAS TRAN
8423294		4703903907		107-DV		WISEMAN #2-A	(WASHINGTON DISTRICT)	5.0	COLUMBIA GAS TRAN
-STERLING DRILLING AND PROD CO INC				RECEIVED:	02/29/84	JA: WV			
8423283		4701303612		107-DV		BAILEY #799	LEE DISTRICT	5.4	
8423279		4708703742		107-DV		BENNETT #280-REV	SPENCER DISTRICT	9.3	
8423280		4708703736		107-DV		BENNETT #735	SPENCER DISTRICT	21.9	
8423282		4701303615		107-DV		DAVIS #803	LEE DISTRICT	13.6	
8423286		4700501418		107-DV		DEBORD #773	SCOTT DISTRICT	13.2	
8423281		4703903927		107-DV		MILES #713	JEFFERSON DISTRICT	5.9	
8423285		4701303559		107-DV		ROMINE #782	LEE DISTRICT	9.8	
8423284		4701303607		107-DV		WALKER #329-REV	LEE DISTRICT	3.3	
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM									
-CHAMA PETROLEUM CO				RECEIVED:	02/29/84	JA: NM L			
8423156	NM-045183103	3001524261		103		HUBER FEDERAL #2	CEMETARY MORROW	365.0	EL PASO NATURAL G
8423158	NM-045183102	3001524261		102-4		HUBER FEDERAL #2	CEMETARY MORROW	365.0	EL PASO NATURAL G
-CLARENCE FORISTER				RECEIVED:	02/29/84	JA: NM L			
8423153	RNM 0156-83	3001524001		103		HEWITT FEDERAL #2	WILDCAT	0.0	
-CONOCO INC				RECEIVED:	02/16/84	JA: NM L			
8421490	RNM-0218-83	3002523181		108		MCCALLISTER A #5	NMFU - SCARBOROUGH YA	2.0	EL PASO NATURAL G
-CONOCO INC				RECEIVED:	02/29/84	JA: NM L			
8423157	RNM 0114-83	3002528011		103		LOCKHART B-13A #9	NMFU - WANTZ ABO	22.3	GETTY OIL CO
-EXXON CORPORATION				RECEIVED:	02/29/84	JA: NM L			
8423155	RNM 0113-83	3001524332		103		YATES FEDERAL C #5	AVALON (DELAWARE)	10.0	PHILLIPS PETROLEU
8423151	RNM 0117-83	3001524336		103		YATES FEDERAL C #8	AVALON (DELAWARE)	1.0	PHILLIPS PETROLEU
8423154	RNM 0112-83	3001524337		103		YATES FEDERAL C #9	AVALON (DELAWARE)	40.0	PHILLIPS PETROLEU
-MEWBOURNE OIL COMPANY				RECEIVED:	02/29/84	JA: NM L			
8423152	RNM 0154-83	3002527951		103		FEDERAL "E" #5 ID # N/A	QUERECHO PLAINS - QUE	9.0	PHILLIPS PETROLEU

[FR Doc. 84-8836 Filed 4-2-84; 8:45 am]

BILLING CODE 6717-01-C

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NGPA Notices of Determination by Jurisdictional Agencies

Issued: March 28, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, *will not be published in the* **Federal Register.** Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New res. on old OCS lease
Section 103: New onshore production well
Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED MARCH 28, 1984
VOLUME 1092

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION									
-CITIES SERVICE COMPANY				RECEIVED: 03/02/84		JA: KS			
8423411	K-82-0565	1512920619		102-3		COLLINGWOOD C #3	WINTER MIDDLE MORROW	18.9	COLORADO INTERSTA
LOUISIANA OFFICE OF CONSERVATION									
-AMOCO PRODUCTION CO				RECEIVED: 03/01/84		JA: LA			
8423321	84-0303	1701521700		107-TF		R L HOSIER #1 CV RA SU A	COTERVILLE	365.0	TEXAS EASTERN TRA
-AMOCO PRODUCTION CO				RECEIVED: 03/02/84		JA: LA			
8423398	84-0081	1707720315		107-DP		RAVENSWOOD CO INC #5	MORGANZA	4380.0	COLUMBIA GAS TRAN
-BASS ENTERPRISES PRODUCTION CO				RECEIVED: 03/01/84		JA: LA			
8423327	84-284	1706120344		102-4	103	C H DOSS #1 CV DAVIS RB SUI	MIDDLEFORK	145.0	UNITED GAS PIPE L
8423327	84-284	1706120344		107-TF		C H DOSS #1 CV DAVIS RB SUI	MIDDLEFORK	145.0	UNITED GAS PIPE L
8423310	84-0290	1706120219		107-TF		L G HANNA #1 CV DAVIS RA SUQQ	UNIONVILLE	365.0	UNITED GAS PIPE L
-CRYSTAL OIL & LAND CO				RECEIVED: 03/01/84		JA: LA			
8423329	84-288	1701521754		102-4	107-TF	BARNETT #3-ALT HAY RA SUC	ARKANA	1642.5	ARKANSAS LOUISIAN
8423328	84-0287	1701521507		102-4		INTERNA PAPER CO C #1 CV RB SU 51	ARKANA	14.6	ARKANSAS LOUISIAN
-GETTY OIL COMPANY				RECEIVED: 03/01/84		JA: LA			
8423326	84-0285	1703120484		107-TF		W H NUNLEY #2 CV RA SUA	LOGANSPORT	451.0	TENNESSEE GAS PIP
-HUSKY OIL COMPANY				RECEIVED: 03/02/84		JA: LA			
8423397	83-0645	1703920268		103		THOMAS YOUNG #	BASILE	245.0	LOUISIANA GAS SYS
-JEEMS BAYOU PRODUCTION CORP				RECEIVED: 03/01/84		JA: LA			
8423307	84-0300	1703121948		103		GOLDEN #1	BENSON	73.0	SOUTHERN NATURAL
-MAJESTIC ENERGY CORP				RECEIVED: 03/01/84		JA: LA			
8423320	84-0304	1701521717		107-TF		LOUIS KAUFMAN #1 CV RA SU 23	ELM GROVE	365.0	UNITED GAS PIPELI
-MCGOLDRICK OIL COMPANY				RECEIVED: 03/01/84		JA: LA			
8423330	84-289	1702709950		103	107-TF	SHERRILL #8 CV RA SU K	LEATHERMAN CREEK FIEL	2190.0	LOUISIANA GAS INT
-MCRAE EXPLORATION INC				RECEIVED: 03/01/84		JA: LA			
8423308	84-292	1711121220		102-2	107-TF	COLE #1 CV RA SUG	BAYOU D'ARBONNE LAKE	0.0	LOUISIANA GAS INT
8423309	84-291	1711122206		102-2	107-TF	DYKES #1 CV RA SUI	BAYOU D'ARBONNE LAKE	0.0	LOUISIANA GAS INT
-MID LOUISIANA GAS COMPANY				RECEIVED: 03/02/84		JA: LA			
8423399	83-1659	1711124049		103		MLGC FEE GAS #1235	MONROE GAS FIELD	23.4	MID LOUISIANA GAS
-NELSON OIL & GAS INC				RECEIVED: 03/01/84		JA: LA			
8423325	84-0320	1711920424		103		J M MATTHEWS #1	SIBLEY	0.0	LOUISIANA GAS INT
-POGO PRODUCING COMPANY				RECEIVED: 03/01/84		JA: LA			
8423306	84-0302	1701521559		107-TF		ANTRIM TRUST #1	ANTRIM	108.0	UNITED GAS PIPELI
-SHELL OIL CO				RECEIVED: 03/01/84		JA: LA			
8423323	84-0323	1709921021		103		J L & S CO #98	WEST LAKE VERRET	10.0	UNITED GAS PIPE L
-TEXACO INC				RECEIVED: 03/01/84		JA: LA			
8423324	84-0321	1705722057		103		LL&E LEEVILLE #319	LEEVILLE	211.0	KAISER ALUMINUM &
8423319	84-0318	1705721735		103		LL&E LEEVILLE #321	LEEVILLE	73.0	KAISER ALUMINUM &
8423322	84-0324	1770920269		103		SL 340 RABBIT ISLAND #203	RABBIT ISLAND	1840.0	KAISER ALUMINUM &
-TEXACO INC				RECEIVED: 03/02/84		JA: LA			
8423403	84-0334	1710922624		103		SL 1021 CAILLOU ISLAND #14	CAILLOU ISLAND	949.0	KAISER ALUMINUM &
8423404	84-0336	1770720086		103		SL 340 MOUND POINT #64	MOUND POINT	818.0	KAISER ALUMINUM &
8423491	84-0332	1770720109		103		SL 340 MOUND POINT #88	MOUND POINT	805.0	TEXAS GAS TRANSMI
8423405	84-0330	1770720116		103		SL 340 MOUND POINT #91	MOUND POINT	968.0	NATURAL GAS PIPEL

BILLING CODE 6717-01-M

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8423402	84-0333	1770720112		102-2		SL 340 MOUND POINT #94	MOUND POINT	162.4	KAISER ALUMINUM &
8423400	84-0331	1770720122		103		SL 340 MOUND POINT #95	MOUND POINT	383.3	KAISER ALUMINUM &
8423409	84-0326	1770720113		103		SL 340 MOUND POINT #96	MOUND POINT	158.8	KAISER ALUMINUM &
8423407	84-0329	1770720114		103		SL 340 MOUND POINT #97	MOUND POINT	477.8	KAISER ALUMINUM &
8423408	84-0325	1770720121		103		SL 340 MOUND POINT [illegible]	MOUND POINT	693.5	KAISER ALUMINUM &
8423406	84-0328	1770720110		103		SL 340 MOUND POINT WELL #89-D	MOUND POINT	829.0	TEXAS GAS TRANSMI
8423410	84-0327	1770720106		103		SL 340 MOUNT POINT WELL #86	MOUND POINT	233.6	KAISER ALUMINUM &
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-AMOCO PRODUCTION CO		RECEIVED: 03/02/84 JA: NM							
8423454		3004521147		108-PB		CANDELARIA GAS COM #1	AZTEC	0.0	EL PASO NATURAL G
8423456		3004520953		108-PB		CANEPLE GAS COM B #1	BLANCO	0.0	EL PASO NATURAL G
8423457		3004520953		108-PB		CANEPLE GAS COM B #1	BLANCO	0.0	EL PASO NATURAL G
8423421		3004523162		108		CHAVEZ GAS COM "C" #1R	BASIN - DAKOTA	16.0	EL PASO NATURAL G
8423462		3004523734		108-PB		CHAVEZ GAS COM D #1E	BASIN	0.0	EL PASO NATURAL G
8423463		3004511650		108-PB		GALLEGOS CANYON UNIT #212	BASIN	0.0	EL PASO NATURAL G
8423461		3004511798		108-PB		GALLEGOS CANYON UNIT #255	PINON	0.0	EL PASO NATURAL G
8423464		3004511798		108-PB		GALLEGOS CANYON UNIT #255	PINON	0.0	EL PASO NATURAL G
8423465		3004511854		108-PB		GALLEGOS CANYON UNIT #256	PINON	0.0	EL PASO NATURAL G
8423466		3004511854		108-PB		GALLEGOS CANYON UNIT #256	PINON	0.0	EL PASO NATURAL G
8423458		3004507996		108-PB		GARCIA GAS COM B #1	BASIN	0.0	EL PASO NATURAL G
8423455		3004508552		108-PB		HEATH GAS COM F #1	BLANCO	0.0	EL PASO NATURAL G
8423460		3004508104		108-PB		MARTINEZ GAS COM D #1	AZTEC	[illegible].0	EL PASO NATURAL G
8423467		3004508104		108-PB		MARTINEZ GAS COM D #1	AZTEC	0.0	EL PASO NATURAL G
8423422		3004508387		108		STATE GAS COM "BF" #1	BASIN DAKOTA	14.0	EL PASO NATURAL G
8423459		3004509476		108-PB		STATE GAS COM BE #1	BASIN	0.0	EL PASO NATURAL G
-DUGAN PRODUCTION CORP		RECEIVED: 03/02/84 JA: NM							
8423436		3004525832		103		MY PLACE #1	MEADOWS GALLUP	7.5	INTRASTATE GATHER
-EL PAMCO INC		RECEIVED: 03/02/84 JA: NM							
8423479		3004507901		108-PB		SULLIVAN #6	AZTEC	0.0	EL PASO NATURAL G
-EL PASO NATURAL GAS [illegible]ANY		RECEIVED: 03/02/84 JA: NM							
8423434		3004510360		108		CALLOWAY #1	BLANCO - MESA VERDE	14.0	EL PASO NATURAL G
8423476		3003905573		108-PB		LINDRITH UNIT #49	BLANCO	[illegible].0	EL PASO NATURAL G
8423475		3003906966		108-PB		SAN JUAN 27-4 UNIT #23 MV & PC	TAPACITO & BLANCO	[illegible].0	EL PASO NATURAL G
8423469		3003920046		108-PB		SAN JUAN 27-5 UNIT #108	BASIN	[illegible].0	EL PASO NATURAL G
8423471		3003920486		108-PB		SAN JUAN 27-5 UNIT #134	TAPACITO	[illegible].0	EL PASO NATURAL G
8423474		3003920613		108-PB		SAN JUAN 27-5 UNIT #156	TAPACITO	[illegible].0	EL PASO NATURAL G
8423477		3003906828		108-PB		SAN JUAN 27-5 UNIT #36 PC & MV	TAPACITO & BLANCO	[illegible].0	EL PASO NATURAL G
8423470		3003920890		108-PB		SAN JUAN 28-6 UNIT #188	SOUTH BLANCO	[illegible].0	EL PASO NATURAL G
8423472		3003907480		108-PB		SAN JUAN 29-7 UNIT #32	BLANCO	0.0	EL PASO NATURAL G
8423468		3003907983		108-PB		SAN JUAN 32-5 UNIT [illegible]	BLANCO	0.0	EL PASO NATURAL G
8423473		3004508707		108-PB		SCHULTZ COM C #7	AZTEC	[illegible].0	EL PASO NATURAL G
-ENERGY RESERVES GROUP INC		RECEIVED: 03/02/84 JA: [illegible]							
8423453		3004525822		103		GALLEGOS CANYON UNIT P C #330	W KUTZ PICTURED CLIFF	78.8	EL PASO NATURAL G
8423443		3004525840		103		GALLEGOS CANYON UNIT P C #331	W KUTZ PICTURED CLIFF	48.6	EL PASO NATURAL G
-EXXON CORPORATION		RECEIVED: 03/02/84 JA: NM							
8423439		3001524592		103		NEW MEXICO DI STATE #2	WILDCAT	74.0	
-FOREST OIL CORPORATION		RECEIVED: 03/02/84 JA: NM							
8423437		3002528397		103		B LEE STATE #6	SCHARB (BONE SPRING)	90.0	PHILLIPS PETROLEU
8423440		3002528434		103		B LEE STATE #7	SCHARB (BONE SPRING)	182.5	PHILLIPS PETROLEU
-GETTY OIL COMPANY		RECEIVED: 03/02/84 JA: NM							
8423442		3002509627		[illegible]		COOPER JAL UNIT #152	LANGLIE MATTIX POOL	1.9	EL PASO NATURAL G
8423452		3002509205		108		E F KING #2	LANGLIE MATTIX	1.9	GETTY OIL CO
8423446		3002505849		[illegible]		EAST EUMONT UNIT #118	EUMONT YATES SEVEN RI	1.0	PHILLIPS PETROLEU
8423438		3002500000		103		HIGHTOWER "19" STATE #1	HIGHTOWER UPPER PENN	2.8	WARREN PETROLEUM
8423481		3004506889		108-PB		HOBBS C #1	SOUTH BLANCO	0.0	EL PASO NATURAL G
8423449		3002505899		108		M E LAUGHLIN #1	SAN ANDRES POOL	19.3	WARREN PETROLEUM
8423412		3002511123		108		MEXICO G #2	FOWLER UPPER PADDOCK	3.3	EL PASO NATURAL G
8423451		3002527386		[illegible]		MYERS LANGLIE MATTIX UNIT #162	LANGLIE MATTIX	1.6	EL PASO NATURAL G
8423480		3003906254		108-PB		PAUL WILLIAMS #2	BLANCO	0.0	EL PASO NATURAL G
8423445		3002506653		[illegible]		PERCY HARDY #2	BLINEBRY OIL & GAS PO	20.8	GETTY OIL CO
8423448		3002505737		108		SKELLY E STATE #1	SAN ANDRES POOL	11.0	WARREN PETROLEUM
8423413		3002510655		108		SKELLY PENROSE B UNIT #35	LANGLIE MATTIX POOL	1.0	GETTY OIL CO
8423450		3002503102		108		STATE AM #2	VACUUM ABO REEF	7.4	PHILLIPS PETROLEU
8423444		3002525046		108		WEST JAL B DEEP #1	WEST JAL-ATOKA GAS PO	13.6	EL PASO NATURAL G
-GULF OIL CORPORATION		RECEIVED: 03/02/84 JA: NM							
8423419		3002504640		108		FRONA LECK #1	EUNICE MONUMENT	6.3	PHILLIPS PETROLEU
-HORACE F MCKAY JR		RECEIVED: 03/02/84 JA: [illegible]							
8423478		3004507866		108-PB		SULLIVAN #3	AZTEC	0.0	EL PASO NATURAL G
-LIVELY EXPLORATION COMPANY		RECEIVED: 03/02/84 JA: NM							
8423482		3004500000		108-PB		LIVELY COM #14	BASIN	0.0	EL PASO NATURAL G
-MERRION OIL & GAS CORP		RECEIVED: 03/02/84 JA: NM							
8423447		3003923242		103		CANYON LARGO UNIT #327	DEVILS FORK GALLUP EX	51.1	EL PASO NATURAL G
-MESA PETROLEUM CO		RECEIVED: 03/02/84 JA: NM							
8423484		3004500000		108-PB		STATE COM Q #13	BLANCO	0.0	EL PASO NATURAL G
-NORTHWEST PIPELINE CORPORATION		RECEIVED: 03/02/84 JA: NM							
8423429		3003921277		108-PB		JAN JUAN 30-5 UNIT #58	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8423426		3003906081		108-PB		ROSA 26	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8423427		3003908076		108-PB		SAN JUAN 29-5 UNIT #NP96	BASIN DAKOTA	0.0	EL PASO NATURAL G
8423428		3003907472		108-PB		SAN JUAN 29-5 UNIT #38	BLANCO - MESAVERDE	0.0	NORTHWEST PIPELIN
8423430		3003921277		108-PB		SAN JUAN 30-5 UNIT #58	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8423424		3003922678		108-PB		SAN JUAN 30-5 UNIT 41	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8423425		3004522165		108-PB		SAN JUAN 32-7 UNIT COM 24	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
-PHILLIPS PETROLEUM COMPANY		RECEIVED: 03/02/84 JA: NM							
8423423		3002502821		108		EAST VAC GB/SA U TR 1826 #006	VACUUM GB/SA	1.0	EL PASO NATURAL G
8423417		3002526522		[illegible]		EAST VAC GB/SA U TR 3467 #001	VACUUM GB/SA	2.0	EL PASO NATURAL G
8423441		3002527086		[illegible]		MEXCO-A #4	MALJAMAR GB/SA	2.0	EL PASO NATURAL G
8423415		3002527764		[illegible]		PHILMEX #16	MALJAMAR GB/SA	1.0	EL PASO NATURAL G
8423414		3002503048		[illegible]		VACUUM ABO UNIT TR 13 #08	VACUUM ABO REEF	2.0	EL PASO NATURAL G
8423416		3002503061		[illegible]		VACUUM ABO UNIT 6-59	VACUUM ABO REEF	5.0	EL PASO NATURAL G
-SOUTHLAND ROYALTY CO		RECEIVED: 03/02/84 JA: NM							
8423486		3004511821		108-PB		CULPEPPER MARTIN #16	BASIN	0.0	SOUTHERN UNION GA
8423433		3004524933		[illegible]		GERARD A #1E	BASIN	16.0	EL PASO NATURAL G
8423431		3004525768		103		HUBBARD #8	BLANCO	20.0	SOUTHERN UNION GA
8423432		3004525768		[illegible]		HUBBARD #8	UNDESIGNATED	50.0	SOUTHERN UNION GA
8423485		3004507831		108-PB		MAGNUM #5	BASIN	0.0	SOUTHERN UNION GA
8423487		3004523067		108-PB		PAGE #2A	BLANCO	0.0	SOUTHERN UNION GA
-SUN EXPLORATION & PRODUCTION CO		RECEIVED: 03/02/84 JA: NM							
8423435		3002528322		[illegible]		NEW MEXICO J J STATE #2	BAUM (UPPER PENN)	7.0	WARREN PETROLEUM
-TEXACO CITIES SERVICE P/L CO (TX)		RECEIVED: 03/02/84 JA: NM							
8423483		3004500000		108-PB		NEW MEXICO COM B #1	BLANCO	0.0	EL PASO NATURAL G
-UNICON PRODUCING CO		RECEIVED: 03/02/84 JA: NM							
8423418		3004507850		[illegible]		ARMENTA #1	AZTEC PICTURED CLIFFS	9.5	GAS CO OF NEW MEX

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-WARREN PETR CO A DIV OF GULF OIL CO						RECEIVED: 03/02/84 JA: NM			
8423420		3002505659		108		F W KUTTER (NCT-A) #2	EUNICE MONUMENT	18.3	EL PASO NATURAL G
********** NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION **********									
-BAY ENERGY CO #2						RECEIVED: 03/02/84 JA: NY			
8423317	7168	3102916012		108		TOMAKA #1	HAMBURG	30.0	NATIONAL FUEL GAS
-EMPIRE ENERGIES						RECEIVED: 03/02/84 JA: NY			
8423318	7166	3102918665		103	107-TF	MAMMOSER #3	LAKE SHORE	12.0	NATIONAL FUEL GAS
-LENAPE RESOURCES CORP						RECEIVED: 03/02/84 JA: NY			
8423316	5724	3105117452		102-2	107-TF	E R DOOLITTLE UNIT #2 LRC #200	CALEDONIA	20.0	ELIZABETHTOWN GAS
-RESOURCE EXPLORATION INC						RECEIVED: 03/02/84 JA: NY			
8423312	7106	3101312001		107-RT		HOYT #1	STEBBINS CORNER	20.0	COLUMBIA GAS TRAN
8423311	7102	3101312037		107-RT		SEYMOUR #2	STEBBINS CORNER	20.0	COLUMBIA GAS TRAN
-SENECA RESOURCES CORP						RECEIVED: 03/02/84 JA: NY			
8423315	6002	3100917241		107-TF		ACKLEY #1 X-227	WILDCAT	7.0	COLUMBIA GAS TRAN
8423314	6001	3100917210		107-TF		COUNTRYSIDE GRAVEL X-231	WILDCAT	4.0	COLUMBIA GAS TRAN
-SUBSEA ASSOCIATES #3						RECEIVED: 03/02/84 JA: NY			
8423313	7161	3102918707		103	107-TF	A MUSCATO #1	BRANT	12.0	NATIONAL FUEL GAS
********** PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES **********									
-ADOBE OIL & GAS CORPORATION						RECEIVED: 03/02/84 JA: PA			
8423364	22346	3703321596		103		BERNARD BIRCHALL #1	WESTOVER "G"	22.0	
8423361	22343	3706327435		103		CARL KALUS #2	BURNSIDE "D"	25.0	T W PHILLIPS GAS
8423360	22342	3712922168		103		GERHARD SPRENGLING #1	BLAIRSVILLE "D"	21.0	PEOPLES NATURAL G
8423362	22344	3703321661		103		KATHRYN PARRISH #1	MAHAFFEY "D"	24.0	
8423363	22345	3706327529		103		S M MCHENRY HEIRS #1	STRONGSTOWN "D"	23.0	
-CABOT OIL & GAS CORP						RECEIVED: 03/02/84 JA: PA			
8423378	22422	3712131906		102-2		CHARLES PERRINE #1	FRENCH CREEK	50.0	TENNESSEE GAS PIP
8423379	22423	3712131906		107-TF		CHARLES PERRINE #1	FRENCH CREEK	50.0	TENNESSEE GAS PIP
-CASTLE GAS CO INC						RECEIVED: 03/02/84 JA: PA			
8423356	22326	3706327444		103		D STUMPF #1 (C-775) IND-27444	WASHINGTON TOWNSHIP	55.0	PEOPLES NATURAL G
-CNG DEVELOPMENT CO						RECEIVED: 03/02/84 JA: PA			
8423392	22483	3706522846		103		CHARLES SEITZ #2 CNGD #308	GASKILL	45.0	
8423339	22103	3703321447		102-4		D M SPENCER #1 CNGD #109	PENN TWP	8.0	
8423350	22272	3703321610		103		E M SHAW #1 CNGD #117	PENN	16.0	
8423357	22332	3703321590		103		LEE B MEHRUEIN #2 CNGD #79	BRADY TWP	25.0	
8423358	22333	3706522845		103		MARY R ORR #1 CNGD #307	GASKILL TWP	38.0	
8423376	22378	3703321695		103		PHILOMENA DUMM #2 CNGD #281	BURNSIDE TWP	8.0	
8423351	22273	3703321608		103		R L SPENCER #2 CNGD #111	FERGUSON	32.0	
8423395	22493	3703321608		102-2		R L SPENCER #2 CNGD #111	FERGUSON TWP	32.0	
8423352	22274	3703321609		103		R L SPENCER #3 CNGD #312	FERGUSON	35.0	
8423396	22494	3703321609		102-2		R L SPENCER #3 CNGD #312	FERGUSON TWP	35.0	
8423348	22270	3703321679		102-2		THEODORE GARMAN #1 CNGD #83	BURNSIDE	34.0	
8423349	22271	3703321680		102-2		THEODORE GARMAN #2 CNGD #395	BURNSIDE	37.0	
-DORAN & ASSOCIATES INC						RECEIVED: 03/02/84 JA: PA			
8423347	22268	3706324153		108		A BOWDER #1 KA-9	UPPER DEVIONAN SANDS	20.0	COSOLIDATED GAS S
-E & W DEVELOPMENT CO						RECEIVED: 03/02/84 JA: PA			
8423359	22341	3706327266		103		CLAWSON 1-75	BLAIRSVILLE	30.0	T W PHILLIPS GAS
-ENERGY QUEST INC						RECEIVED: 03/02/84 JA: PA			
8423343	22262	3706325994		108		C L RUFFNER & SONS #1	CLYMER	12.0	COLUMBIA GAS TRAN
8423342	22261	3706325998		108		C L RUFFNER & SONS #2	CLYMER	12.0	COLUMBIA GAS TRAN
8423341	22259	3706300000		108		M C KNUPP #2	CLYMER	11.2	COLUMBIA GAS TRAN
8423346	22265	3706325775		108		MURRAY C KNUPP #3	CLYMER	11.2	COLUMBIA GAS TRAN
8423340	22249	3706325374		108		ROBERT DOUGLASS #1	CLYMER	1.0	COLUMBIA GAS TRAN
8423345	22264	3706325912		108		WILLIAM C HOUSER JR 159 A #4	CLYMER	9.4	COLUMBIA GAS TRAN
8423344	22263	3706325906		108		WILLIAM C HOUSER 159A #5	CLYMER	9.4	COLUMBIA GAS TRAN
-ENVIROGAS INC						RECEIVED: 03/02/84 JA: PA			
8423391	22481	3704920653		108		TUTTLE #1	ERIE DEEP	7.4	NATIONAL FUEL GAS
-J & J ENTERPRISES INC						RECEIVED: 03/02/84 JA: PA			
8423375	22376	3703320671		108		JESSE HUTTON #1 (180A)	BURNSIDE	0.0	CONSOLIDATED GAS
-KRIEBEL GAS CO INC						RECEIVED: 03/02/84 JA: PA			
8423377	22381	3703321686		103		GOULD #3	TROUTVILLE	30.0	
8423354	22324	3703321716		103		KISER #1	WILDCAT	30.0	
8423382	22442	3703321735		103		KNARR #1	TROUTVILLE	28.0	
8423393	22490	3703321736		103		KNARR #2	TROUTVILLE	29.0	
-KRIEBEL WELLS #3						RECEIVED: 03/02/84 JA: PA			
8423394	22491	3703321688		103		GOULD #2	TROUTVILLE	30.0	
8423353	22317	3706522844		103		SMITH #1	CLOE	25.0	
8423380	22441	3706522863		103		TROMBETTA #1	PUNXSUTAWNEY	25.0	
-MITCH-WELL ENERGY INC						RECEIVED: 03/02/84 JA: PA			
8423337	22097	3703922015		107-TF		SHIELDS UNIT #1	ATHENS	0.0	COLUMBIA GAS TRAN
8423338	22098	3703922015		102-2		SHIELDS UNIT #1	ATHENS FIELD	0.0	COLUMBIA GAS TRAN
8423335	22095	3703922009		107-TF		SHIELDS/SEYMOUR #1	ATHENS FIELD	0.0	COLUMBIA GAS TRAN
8423336	22096	3703922009		102-2		SHIELDS/SEYMOUR #1	ATHENS FIELD	0.0	COLUMBIA GAS TRAN
-MITCHELL ENERGY CORPORATION						RECEIVED: 03/02/84 JA: PA			
8423365	22349	3703922026		103		CAMPBELL UNIT #1 22026	LINESVILLE (MEDINA-WH	20.5	COLUMBIA GAS TRAN
8423366	22350	3703922026		107-TF		CAMPBELL UNIT #1 22026	LINESVILLE (MEDINA-WH	20.5	COLUMBIA GAS TRAN
8423371	22355	3703922040		103		GRESH UNIT #1 22040	SPRINGBORO (MEDINA-WH	27.4	COLUMBIA GAS TRAN
8423372	22356	3703922040		107-TF		GRESH UNIT #1 22040	SPRINGBORO (MEDINA/WH	27.4	COLUMBIA GAS TRAN
8423369	22353	3703922034		103		HIGGINS UNIT #1 22034	LINESVILLE (MEDINA-WH	20.5	COLUMBIA GAS TRAN
8423370	22354	3703922034		107-TF		HIGGINS UNIT #1 22034	LINESVILLE (MEDINA-WH	20.5	COLUMBIA GAS TRAN
8423373	22362	3703922032		103		J SCULLEN UNIT #1 CRA-22032	MOSIERTOWN (MEDINA-WH	28.1	COLUMBIA GAS TRAN
8423374	22363	3703922032		107-TF		J SCULLEN UNIT #1 CRA-22032	MOSIERTOWN (MEDINA-WH	28.1	COLUMBIA GAS TRAN
8423367	22351	3703922041		103		SCHLOSSER UNIT #1 22041	MOSIERTOWN (WHIRLPOOL	13.7	COLUMBIA GAS TRAN
8423368	22352	3703922041		107-TF		SCHLOSSER UNIT #1 22041	MOSIERTOWN (WHIRLPOOL	13.7	COLUMBIA GAS TRAN
-NEA CROSS CO						RECEIVED: 03/02/84 JA: PA			
8423385	22448	3704923061		102-2		MARY SEALY #1	LEBOEUF	10.0	COLUMBIA GAS TRAN
8423386	22449	3704923061		107-TF		MARY SEALY #1	LEBOEUF	10.0	COLUMBIA GAS TRAN
8423383	22446	3704922908		102-2		PAUL SKELTON #3	WATERFORD	10.0	NATIONAL FUEL GAS
8423384	22447	3704922908		107-TF		PAUL SKELTON #3	WATERFORD	10.0	NATIONAL FUEL GAS
8423389	22452	3704923325		107-TF		WILLIAM KARMAZON #1	WATERFORD	10.0	NATIONAL FUEL GAS
8423390	22453	3704923325		102-2		WILLIAM KARMAZON #1	WATERFORD	10.0	NATIONAL FUEL GAS
8423387	22450	3704923326		102-2		WILLIAM LYONS #1	WATERFORD	10.0	NATIONAL FUEL GAS
8423388	22451	3704923326		107-TF		WILLIAM LYONS #1	WATERFORD	10.0	NATIONAL FUEL GAS
-REX-HIDE REALTY INC						RECEIVED: 03/02/84 JA: PA			
8423333	19375	3700522676		108		DONALD E MILLER #1	PLUMCREEK	14.0	T W PHILLIPS GAS
-SNYDER BROTHERS INC						RECEIVED: 03/02/84 JA: PA			
8423381	22425	3706522820		103		JOSEPH A HOGACEK JR #1-75AC	BELL	10.0	T W PHILLIPS GAS
8423334	21889	3706522842		103		WM LOWMASTER #1	PUNXSUTAWNEY BORO	10.0	
-VICTORY ENERGY CO						RECEIVED: 03/02/84 JA: PA			
8423355	22325	3702120208		102-2		NAGLE #3 CBA-20208	ELDER	36.0	COLUMBIA GAS TRAN
********** MM DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM **********									
-EXXON CORPORATION						RECEIVED: 03/02/84 JA: NM L			
8423331	RNM 0161-83	3001524376		103		YATES FEDERAL C #10	AVALON (DELAWARE)	12.0	PHILLIPS PETROLEU
-SUPERIOR OIL CO						RECEIVED: 03/02/84 JA: NM L			
8423332	RNM 0159-83	3002527616		103		PADUCA FEDERAL UNIT COM #1	WILDCAT (ATOKA)	449.0	PHILLIPS PETROLEU

[FR Doc. 84-8837 Filed 4-2-84; 8:45 am]

BILLING CODE 6717-01-C

[Volume 1093]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: March 28, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 382, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, *will not be published in the* **Federal Register.** Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 382 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magentic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
- 102–1: New OCS lease
- 102–2: New well (2.5 mile rule)
- 102–3: New well (1000 ft rule)
- 102–4: New onshore reservoir

Section 102–5: New res. on old OCS lease
- 103: New onshore production well

Section 107–DP: 15,000 ft or deeper
- 107–GB: Geopressured brine
- 107–DV: Devonian shale
- 107–CS: Coal seam gas
- 107–PE: Production enhancement
- 107–TF: New tight formation
- 107–RT: Recompletion tight formation

Section 108: Stripper well
- 108–SA: Seasonally affected
- 108–ER: Enhanced recovery
- 108–PB: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED MARCH 28, 1984
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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-AMOCO PRODUCTION CO				RECEIVED:	03/01/84	JA: TX			
8423566	F-08-077607	4200333668		103		MIDLAND FARMS "Y" #3	FASKEN (PENN)	190.0	AMOCO PRODUCTION
-AUSTIN OIL & MINERAL				RECEIVED:	03/01/84	JA: TX			
8423516	F-03-073235	4228700000		102-4		A BLAHA #1	DIME BOX (NAVARRO)	90.0	PHILLIPS PETROLEU
-BARRON KIDD				RECEIVED:	03/01/84	JA: TX			
8423602	F-08-078091	4200333673		103		UNIVERSITY 47 #1	FUHRMAN-MASCHO	0.0	PHILLIPS PETROLEU
8423601	F-08-078090	4200333756		103		UNIVERSITY 47A #2	FURHMAN-MASCHO	0.0	PHILLIPS PETROLEU
-BRAZOS RESOURCES INC				RECEIVED:	03/01/84	JA: TX			
8423544	F-03-076419	4222530453		103		WILSON #1	FT TRINIDAD E (EDWARD	128.0	SOUTH TEXAS GATHE
-CAN-TEX ENERGY CORP				RECEIVED:	03/01/84	JA: TX			
8423698	F-06-078694	4242330593		103		A M HEY #4 1-212-10724-5	ANN MCKNIGHT (PALUXY	0.0	LONE STAR GAS CO
-CASS OIL CO				RECEIVED:	03/01/84	JA: TX			
8423534	E-7C-075634	4243532969		103	107-TF	ALLISON-MIERS 7402	SAWYER (CANYON)	175.0	EL PASO NATURAL G
8423533	F-7C-075633	4243532976		103	107-TF	ALLISON-MIERS 7405	SAWYER (CANYON)	175.0	EL PASO NATURAL G
-CHARLES PITTS CO				RECEIVED:	03/01/84	JA: TX			
8423508	F-7B-072314	4204933582		102-4		PITTS BROS #4 (19448)	GROSVENOR SW (DUFFER)	0.0	EL PASO HYDROCARB
8423507	F-7B-072313	4204933583		102-4		PITTS BROS #5 (19448)	GROSVENOR SW (DUFFER)	0.0	EL PASO HYDROCARB
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	03/01/84	JA: TX			
8423559	F-05-077177	4216130852		103	107-TF	WADLE #3	S W TEAGUE (COTTON VA	2120.0	DELHI GAS PIPE LI
-CMG PRODUCING COMPANY				RECEIVED:	03/01/84	JA: TX			
8423495	F-04-065815	4221531159		107-TF		BOYT INVESTMENT CO #1	TEXAS GARDENS NORTH	3.5	TENNESSEE GAS TRA
-CONOCO INC				RECEIVED:	03/01/84	JA: TX			
8423528	F-04-074643	4247933667		102-4	103	ANGELINA SANCHEZ #2	PICOSO (WILCOX 11300)	26.0	HOUSTON PIPELINE
8423673	F-08-078633	4230100000		108		SARAH A LINK ET AL #1 I D 19342	EAST TUNSTILL	5.9	PHILLIPS PETROLEU
8423689	F-08-078686	4200332215		[illegible]		W H BONER A #27 ID 01663	FUHRMAN MASCHO	0.5	PHILLIPS PETROLEU
8423688	F-08-078684	4200332236		[illegible]		W H BONER A #29	FUHRMAN MASCHO	1.4	PHILLIPS PETROLEU
-DIAMOND SHAMROCK EXPLORATION CO				RECEIVED:	03/01/84	JA: TX			
8423644	F-10-078535	4235700000		[illegible]		C P DICKINSON #1-393	PARNELL AND DUTCHER	0.0	SOUTHWESTERN PUBL
8423639	F-10-078499	4235700000		[illegible]		JAMES E WILSON "C" #2	DUTCHER	2.0	NATURAL GAS PIPEL
8423648	F-10-078500	4229531022		[illegible]		LEROY BECKER #2-636	UNIT	0.0	CORONADO TRANSMIS
8423676	F-10-078638	4235731371		103		MCGARRAUGH-EDWARDS "A" #3-140	LONE BUTTE	0.0	
8423677	F-10-078639	4235731404		103		MCGARRAUGH-EDWARDS "A" #4-140	LONE BUTTE	0.0	
8423511	F-10-072468	4234100000		108-ER		ROBERTSON B #4	WEST PANHANDLE	0.0	NORTHERN NATURAL
8423679	F-10-078645	4229530920		102-4		ZELMA GUY #2	CAMBRIDGE S	0.0	
-DORCHESTER EXPLORATION INC				RECEIVED:	03/01/84	JA: TX			
8423539	F-08-076155	4243131240		103		TERRY 6-5	CONGER (PENN)	67.0	TEXAS UTILITIES F
-EL PASO NATURAL GAS COMPANY				RECEIVED:	03/01/84	JA: TX			
8423645	F-10-078538	4217923702		[illegible]		DARSEY #2	PANHANDLE WEST	21.0	EL PASO NATURAL G
-ENERGY-AGRI PRODUCTS INC				RECEIVED:	03/01/84	JA: TX			
8423663	F-10-078598	4206531518		103		GORES #7 (ID# 05201)	PANHANDLE CARSON	55.0	GETTY OIL CO
-ENSERCH EXPLORATION INC				RECEIVED:	03/01/84	JA: TX			
8423514	F-06-073145	4220331056		103		HENRY ONEY #2	WHELAN	0.0	TEXAS EASTERN TRA
8423671	F-05-078629	4221300000		[illegible]		MAYFIELD CO #2	OPELIKA	0.0	LONE STAR GAS CO
-ENTERPRISE RESOURCES INC				RECEIVED:	03/01/84	JA: TX			
8423635	F-02-078286	4223931285		102-4		E Y ROSE GU #1	EDNA S (6570) (PROPOS	150.0	SOUTH JERSEY EXPL
-EXXON CORPORATION				RECEIVED:	03/01/84	JA: TX			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8423678	F-04-078209	4226130722		103		C M ARMSTRONG 72 (ID PENDING)	CANDELARIA (I-87)	36.0	NATURAL GAS PIPEL
8423567	F-08-077628	4222733029		103		DOUTHIT UNIT #215	HOWARD-GLASSCOCK	1.0	PHILLIPS PETROLEU
8423569	F-08-077630	4222732735		102-4		EUNICE HOMAN #2	MOORE (DEEP FSLM)	22.0	EL PASO NATURAL G
8423568	F-08-077629	4237134518		103		FORT STOCKTON UNIT #514	FORT STOCKTON (YATES	1.0	NUECES CO
8423570	F-08-077632	4210333251		103		J B TUBB A/C 2 #281	SAND HILLS (JUDKINS)	25.0	EL PASO NATURAL G
8423636	F-03-078347	4215731483		103		J H P DAVIS #69	THOMPSON, SOUTH	44.0	ARMCO STEEL CORP
8423680	F-8A-078652	4221933867		103		JAMES I DELOACHE #2	LEVELAND	1.0	
8423655	F-04-078582	4226130825		102-4		JOHN G KENEDY JR "E" 44-D (10363)	SARITA (5-L&M SW)	5.5	NATURAL GAS PIPEL
8423654	F-04-078581	4226130825		102-4		JOHN G KENEDY JR "E" 44-F (10362)	SARITA (5-C SW)	5.5	NATURAL GAS PIPEL
8423665	F-04-078600	4226130576		102-4		K R SAM JOSE DE EA PARRA 32-D108403	CALANDRIA (I-27)	1255.0	ARMCO STEEL CORP
8423564	F-03-077383	4247330389		103		KATY GAS FIELD CONS UNIT #4208-L	KATY (IV)	420.0	UNITED TEXAS TRAN
8423563	F-03-077378	4247330389		103		KATY GAS FIELD CONS UNIT #4208-U	KATY (I-B)	475.0	UNITED TEXAS TRAN
8423562	F-03-077374	4247330398		103		KATY GAS FIELD CONS UNIT #8407	KATY (I-B)	876.0	UNITED TEXAS TRAN
8423664	F-04-078599	4227331782		103		KING RANCH BORREGOS 597 (108405)	BORREGOS (ZONE P-5)	403.0	ARMCO STEEL CORP
8423543	F-04-076368	4227331786		102-4		KING RANCH LAGUNA LARGA 37 (08935)	T-C-B EAST (20-I-3)	37.0	ARMCO STEEL CORP
8423601	F-04-078094	4204731243		103		MCGILL BROS 494 (ID PENDING)	KELSEY DEEP (ZONE 25)	84.0	TRUNKLINE GAS CO
8423561	F-8A-077333	4216532639		103		ROBERTSON CLEARFORK UNIT #7903	ROBERTSON W (CLEAR FO	15.0	PHILLIPS PETROLEU
8423571	F-7C-077633	4239932985		103		SALLIE ODOM E #98	FORT CHADBOURNE (GARD	31.0	
8423572	F-7C-077634	4238332689		102-4		ZULETTE HUGHES #8	RED HOUSE (FUSSELMAN)	65.0	EL PASO NATURAL G
-FAIRCHILD PETROLEUM CORP				RECEIVED:	03/01/84	JA: TX			
8423524	F-7B-074252	4235300000		102-2		BRIDGEFORD #1	GROUP W (STRAWN LIME)	365.0	PALO DURO PIPELIN
8423525	F-7B-074271	4235331444		102-2		BRIDGEFORD "A" #2-A	GROUP W (STRAWN LIME)	365.0	PALO DURO PIPELIN
-FULLER PETROLEUM INC				RECEIVED:	03/01/84	JA: TX			
8423694	F-04-078708	4247933460		102-4		ALONSO LOPEZ #1	LOPEZ (WILCOX)	380.0	REATA INDUSTRIAL
-GENE POWELL INVESTMENTS INC				RECEIVED:	03/01/84	JA: TX			
8423530	F-06-074789	4240131691		102-4		S M LANGILLE ESTATE #1	MINDEN W (TRAVIS PEAK	360.0	TEXAS UTILITIES F
-GHR ENERGY CORP				RECEIVED:	03/01/84	JA: TX			
8423520	F-04-073708	4250531590		102-4		JENNINGS RANCH #2	JENNINGS RANCH (WILCO	480.0	GHR PIPELINE CORP
8423515	F-04-073195	4247933562		102-4	107-TF	LUNDELL #24-C	LUNDELL (LOBO 9200)	350.0	GHR PIPELINE CORP
8423521	F-04-074024	4250531659		102-4	107-TF	MCASKILL #13	MCASKILL (LOBO 11300)	400.0	GHR PIPELINE CORP
8423505	F-04-071763	4247933570		102-4	107-TF	VERGARA #1	VERGARA (LOBO)	250.0	TRANSCONTINENTAL
-GLACIER ENERGY INC				RECEIVED:	03/01/84	JA: TX			
8423546	F-03-076510	4208900000		103		E A WITTER #1	THOMAS	65.7	SEAGULL PIPELINE
-GROTHE BROTHERS				RECEIVED:	03/01/84	JA: TX			
8423526	F-7B-074443	4241735223		103		TOM BROOKS #1	SHACKELFORD COUNTY RE	22.0	LONE STAR GAS CO
-GULF OIL CORPORATION				RECEIVED:	03/01/84	JA: TX			
8423657	F-08-078588	4247530081		103		ESTES E W #265	WARD-ESTES NORTH	17.7	CABOT CORP
8423658	F-08-078589	4247533024		103		ESTES E W #267	WARD-ESTES NORTH	12.4	CABOT CORP
8423656	F-08-078587	4247533026		103		ESTES E W #268	WARD-ESTES NORTH	17.0	CABOT CORP
8423662	F-08-078594	4213534348		103		GOLDSMITH C A #1391	GOLDSMITH (5600)	15.5	PHILLIPS PETROLEU
8423661	F-08-078593	4213534333		103		GOLDSMITH C A #1398	GOLDSMITH (ELLENBURGE	66.4	PHILLIPS PETROLEU
8423659	F-08-078590	4213534332		103		GOLDSMITH C A #1401	GOLDSMITH (CLEARFORK)	20.8	PHILLIPS PETROLEU
8423660	F-08-078591	4213534320		103		GOLDSMITH C A ETAL #1418	GOLDSMITH (5600)	19.8	PHILLIPS PETROLEU
-H G SLEDGE				RECEIVED:	03/01/84	JA: TX			
8423669	F-7B-078689	4213331591		102-4		JAN-SAN "21" #1 (19031)	REB (MARBLE FALLS)	9.0	LONE STAR GAS CO
8423668	F-7B-078608	4213334522		102-4		JAN-SAN "21" #2 (19031)	REB (MARBLE FALLS)	7.0	LONE STAR GAS CO
8423667	F-7B-078607	4213331609		102-4		JAN-SAN "21" #3 (19031)	REB (MARBLE FALLS)	1.0	LONE STAR GAS CO
-HILL INTERNATIONAL PRODUCTION CO				RECEIVED:	03/01/84	JA: TX			
8423492	F-06-056117	4234730691		102-4		MOORE #1	TOOLAN (TRAVIS PEAK)	200.0	LIBERTY NATURAL G
-HURLEY PETROLEUM CORPORATION				RECEIVED:	03/01/84	JA: TX			
8423501	F-06-070751	4236531527		103		ALLIE M HOGG WELL #5 NOT ASSIGNED	BETHANY (PETTIT)	180.0	TENNESSEE GAS PIP
-INDIAN WELLS OIL CO				RECEIVED:	03/01/84	JA: TX			
8423692	F-7C-078700	4223532182		103		BROOKS 13-3	BROOKS (CANYON K)	0.0	NORTHERN NATURAL
8423691	F-7C-078699	4223532180		103		WILLIAMS 13-1	BROOKS (CANYON K)	0.0	NORTHERN NATURAL
-INTERNORTH INC				RECEIVED:	03/01/84	JA: TX			
8423557	F-08-077077	4238900000		107-DP		TXL "19" #1	ARNO (SILURO-DEVONIAN	0.0	VALERO TRANSMISSI
-J B HERRMANN				RECEIVED:	03/01/84	JA: TX			
8423696	F-10-078719	4223331588		103		WHITTENBURG A #2	PANHANDLE - HUTCHINSO	20.0	LIQUID ENERGY COR
8423695	F-10-078718	4223331587		103		WHITTENBURG A #3	PANHANDLE - HUTCHINSO	22.0	LIQUID ENERGY COR
-KAARI OIL CO				RECEIVED:	03/01/84	JA: TX			
8423646	F-10-078541	4206531462		103		CRUMP #2 (ID# 05584)	PANHANDLE CARSON	40.0	KERR-MCGEE CORP
-KATLACO OPERATING CO INC				RECEIVED:	03/01/84	JA: TX			
8423506	F-7B-072222	4213335092		102-4		KATLACO FEE "D" #4 (20565)	ARDINGER (LAKE SAND U	140.0	EL PASO HYDROCARB
8423547	F-7B-076691	4213300000		102-4		KATLACO FEE "D" #9	ARDINGER (LAKE SAND U	0.0	EL PASO HYDROCARB
-KERR-MCGEE CORPORATION				RECEIVED:	03/01/84	JA: TX			
8423612	F-10-078172	4223330832		108		PITTS #109	PANHANDLE (HUTCHINSON	3.1	GETTY OIL CO
8423592	F-10-077943	4223300000		108		PITTS #11	PANHANDLE (HUTCHINSON	3.0	GETTY OIL CO
8423630	F-10-078232	4223330844		108		PITTS #114	PANHANDLE (HUTCHINSON	2.8	GETTY OIL CO
8423629	F-10-078227	4223330837		108		PITTS #115	PANHANDLE (HUTCHINSON	1.3	GETTY OIL CO
8423632	F-10-078239	4223330989		108		PITTS #122	PANHANDLE (HUTCHINSON	1.8	GETTY OIL CO
8423591	F-10-077942	4223300000		108		PITTS #13	PANHANDLE (HUTCHINSON	2.9	GETTY OIL CO
8423584	F-10-077926	4223300000		108		PITTS #14	PANHANDLE (HUTCHINSON	1.9	GETTY OIL CO
8423598	F-10-078050	4223300000		108		PITTS #15	PANHANDLE (HUTCHINSON	3.5	GETTY OIL CO
8423585	F-10-077934	4223300000		108		PITTS #16	PANHANDLE (HUTCHINSON	4.0	GETTY OIL CO
8423587	F-10-077933	4223300000		108		PITTS #19	PANHANDLE (HUTCHINSON	2.0	GETTY OIL CO
8423585	F-10-077927	4223300000		108		PITTS #24	PANHANDLE (HUTCHINSON	5.0	GETTY OIL CO
8423589	F-10-077935	4223300000		108		PITTS #28	PANHANDLE (HUTCHINSON	3.2	GETTY OIL CO
8423593	F-10-077945	4223300000		108		PITTS #29	PANHANDLE (HUTCHINSON	6.0	GETTY OIL CO
8423586	F-10-077932	4223300000		108		PITTS #35	PANHANDLE (HUTCHINSON	2.0	GETTY OIL CO
8423583	F-10-077925	4223300000		108		PITTS #4	PANHANDLE (HUTCHINSON	4.0	GETTY OIL CO
8423614	F-10-078175	4223300000		108		PITTS #44	PANHANDLE (HUTCHINSON	2.0	GETTY OIL CO
8423618	F-10-078166	4223300000		108		PITTS #45	PANHANDLE (HUTCHINSON	0.6	GETTY OIL CO
8423618	F-10-078188	4223300000		108		PITTS #48	PANHANDLE (HUTCHINSON	1.0	GETTY OIL CO
8423611	F-10-078170	4223300000		108		PITTS #49	PANHANDLE (HUTCHINSON	4.0	GETTY OIL CO
8423590	F-10-077940	4223300000		108		PITTS #5	PANHANDLE (HUTCHINSON	3.0	GETTY OIL CO
8423604	F-10-078159	4223300000		108		PITTS #52	PANHANDLE (HUTCHINSON	1.8	GETTY OIL CO
8423605	F-10-078158	4223300000		108		PITTS #54	PANHANDLE (HUTCHINSON	1.8	GETTY OIL CO
8423616	F-10-078182	4223300000		108		PITTS #55	PANHANDLE (HUTCHINSON	7.0	GETTY OIL CO
8423609	F-10-078164	4223300000		108		PITTS #59	PANHANDLE (HUTCHINSON	1.2	GETTY OIL CO
8423596	F-10-077992	4223300000		108		PITTS #6	PANHANDLE (HUTCHINSON	2.6	GETTY OIL CO
8423608	F-10-078162	4223300000		108		PITTS #60	PANHANDLE (HUTCHINSON	2.6	GETTY OIL CO
8423617	F-10-078185	4223300000		108		PITTS #66	PANHANDLE (HUTCHINSON	1.0	GETTY OIL CO
8423613	F-10-078174	4223300000		108		PITTS #68	PANHANDLE (HUTCHINSON	2.0	GETTY OIL CO
8423607	F-10-078168	4223300000		108		PITTS #69	PANHANDLE (HUTCHINSON	1.0	GETTY OIL CO
8423620	F-10-078191	4223300000		108		PITTS #72	PANHANDLE (HUTCHINSON	1.2	GETTY OIL CO
8423595	F-10-077991	4223300000		108		PITTS #8	PANHANDLE (HUTCHINSON	4.7	GETTY OIL CO
8423621	F-10-078196	4223300000		108		PITTS #81	PANHANDLE (HUTCHINSON	1.0	GETTY OIL CO
8423619	F-10-078189	4223330710		108		PITTS #82	PANHANDLE (HUTCHINSON	5.0	GETTY OIL CO
8423615	F-10-078181	4223330762		108		PITTS #90	PANHANDLE (HUTCHINSON	1.3	GETTY OIL CO
8423633	F-10-078240	4223330765		108		PITTS #92	PANHANDLE (HUTCHINSON	1.1	GETTY OIL CO
8423631	F-10-078236	4223330771		108		PITTS #97	PANHANDLE (HUTCHINSON	12.7	GETTY OIL CO
8423634	F-10-078244	4223330767		108		PITTS #99	PANHANDLE (HUTCHINSON	0.2	GETTY OIL CO
8423622	F-10-078197	4223300000		108		PITTS NO 41	PANHANDLE (HUTCHINSON	1.0	GETTY OIL CO
-KIMLECO PETROLEUM INC				RECEIVED:	03/01/84	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8423575	F-09-077728	4223700000		103		MEEKS RRC 023647
-KOTHMANN AWBREY				RECEIVED:	03/01/84	JA: TX
8423531	F-7C-075236	4226700000		102-4		AWBREY KOTHMANN #2 90443
-MARK IV ENERGY				RECEIVED:	03/01/84	JA: TX
8423686	F-01-078680	4249331452		103		BUTLER-RICHTER UNIT RRC ID # 09342
8423687	F-01-078681	4249331190		102-4		V JARZOMBEK #1 RRC ID# 09030
-MAYFIELD ENGINEERING SERVICE				RECEIVED:	03/01/84	JA: TX
8423498	F-09-069132	4223700000		10[illegible]		FLO COOP - EASTER UNIT #1 48284
8423499	F-09-069133	4223700000		103		S B EASTER #1
-MCCORMICK OIL & GAS CO				RECEIVED:	03/01/84	JA: TX
8423503	F-04-071393	4204700000		102-4		CARTER RANCH #5
-MERCURY EXPLORATION CO				RECEIVED:	03/01/84	JA: TX
8423568	F-7B-077193	4205934261		102-4		COOPER-LAVELLE "C" #2
-MITCHELL ENERGY CORPORATION				RECEIVED:	03/01/84	JA: TX
8423540	F-05-076274	4229330693		103	107-TF	C A MILES #3
8423490	F-7C-055715	4245130964		102-4	103	FREYSCHLAG 219 "A" #1-U
8423491	F-7C-055934	4245130964		107-TF		FREYSCHLAG 219 "A" #1-U
8423642	F-09-078531	4223735034		103		R J LAPRADE OU #1 23803
8423565	F-09-077593	4249732486		103		T C W B #41
-MUELLER ENGINEERING CORP				RECEIVED:	03/01/84	JA: TX
8423558	F-02077150	4229700000		102-4		NESTER #1-C
-MURPHY H BAXTER				RECEIVED:	03/01/84	JA: TX
8423643	F-08-078534	4231732776		103		ARICK #2
-PARKER & PARSLEY INC				RECEIVED:	03/01/84	JA: TX
8423522	F-08-074064	4232900000		103		EVANS #1
8423536	F-7C-075805	4238300000		103		UNIVERSITY "B" #1
-PATTERSON PETROLEUM INC				RECEIVED:	03/01/84	JA: TX
8423678	F-03-078643	4214931629		102-2		V H WEIMAN #2
-PENNZOIL PRODUCING COMPANY				RECEIVED:	03/01/84	JA: TX
8423693	F-04-078702	4235531512		1[illegible]		C P TALBERT #21
-PERRYMAN OIL & GAS INC				RECEIVED:	03/01/84	JA: TX
8423545	F-02-076460	4202531931		102-4	103	A G HOLT #1
-PETRO-LEWIS CORPORATION				RECEIVED:	03/01/84	JA: TX
8423623	F-8A-078203	4250131933		102-4		BOWEN ET AL #1
8423624	F-8A-078204	4250132168		102-4		BOWEN ET AL #2
8423626	F-8A-078206	4250132179		102-4		BOWEN ET AL #3
8423627	F-8A-078207	4250100000		102-4		BOWEN ET AL #4
8423625	F-8A-078205	4250132345		102-4		GENTRY #1
8423684	F-8A-078671	4250132247		102-4		HARRISON #1
-PETROLEUM VENTURES OF TEXAS INC				RECEIVED:	03/01/84	JA: TX
8423542	F-03-076359	4232100000		102-4		SUN FEE #2
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	03/01/84	JA: TX
8423682	F-08-078659	4213500373		1[illegible]		(22802) CUMMINS D WELL #3
8423502	F-10-071363	4234131000		103		COLSON #2
8423681	F-08-078658	4200304506		10[illegible]		EMBAR-B #7 (08769)
8423535	F-10-075667	4235731439		102-4		NITSCHKE A #4
8423670	F-10-078620	4217900000		1[illegible]		PHILLIPS - PAMPA UNIT #7-10
8423532	F-10-075306	4234100000		10[illegible]		VINSON #2
-PIONEER PRODUCTION CORPORATION				RECEIVED:	03/01/84	JA: TX
8423538	F-08-076033	4232931158		102-4	103	BRADFORD ESTATE #1-24
-PITTS ENERGY CO				RECEIVED:	03/01/84	JA: TX
8423666	F-08-078603	4231732787		103		WILKINSON #1
-Q E D EXPLORATION INC				RECEIVED:	03/01/84	JA: TX
8423597	F-7C-077995	4223532187		102-2	103	FARMAR-SUGG 21 #3
-RAILHEAD ENERGY CO				RECEIVED:	03/01/84	JA: TX
8423510	F-09-072448	4223700000		102-4	103	CRAFT-JONES #1
8423509	F-09-072333	4223735157		102-4	103	CRAFT-JONES #2
-REATA OIL & GAS CORP				RECEIVED:	03/01/84	JA: TX
8423496	F-03-066816	4231300000		102-4		LUMMIE MORGAN #3
-RICHEY & CO INC				RECEIVED:	03/01/84	JA: TX
8423594	F-7B-077974	4213335489		102-4		KINCAID "A" #1
-ROYAL OIL & GAS CORPORATION				RECEIVED:	03/01/84	JA: TX
8423500	F-01-069478	4231131424		102-4	103	M C ATKINSON #1
-SAMSON RESOURCES COMPANY				RECEIVED:	03/01/84	JA: TX
8423494	F-10-065346	4235730955		107-TF		DODSON #3 - CLEVELAND
-SENECA RESOURCES CORP				RECEIVED:	03/01/84	JA: TX
8423497	F-02-068752	4205731237		102-2	103	STATE TRACT 216 #12
-SPENCER PETROLEUM CO				RECEIVED:	03/01/84	JA: TX
8423527	F-7B-074556	4208333293		103		PAUL M BEAVER #1-A
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	03/01/84	JA: TX
8423551	F-04-076921	4242700000		108		A PENA #1
8423554	F-08-077023	4233532540		103		ANDERSON - MCCABE UNIT #1
8423641	F-10-078527	4217900000		108		COMBS-WORLEY -B- #5
8423579	F-8A-077869	4207900000		108		DELA S WRIGHT -D- #2
8423555	F-10-077024	4221131590		103		FRANK SHALLER #4
8423582	F-8A-077878	4241500000		108		G D BOYLES #7
8423549	F-04-076858	4242731761		102-4		GEORGE M SPEER -C- #6
8423553	F-04-076942	4242700000		108		GEORGE M SPEER STATE -B- #13
8423512	F-01-072723	4228330960		102-4		J FOSTER ESTATE #1
8423556	F-04-077025	4235532099		102-4		LONDON WARD UNIT #1
8423523	F-08-074111	4217331356		103		M B HUTCHISON #7
8423574	F-10-077680	4239300000		108		O R TIPPS #1
8423552	F-7B-076940	4215100000		108		PARDUE CANYON S U #27
8423580	F-04-077871	4224900000		1[illegible]		SEELIGSON UNIT #17-2
8423573	F-08-077678	4230100000		1[illegible]		W D JOHNSON JR -D- #1
8423581	F-8A-077875	4207900000		108		WRIGHT UNIT #21-61
-SUPERIOR OIL CO				RECEIVED:	03/01/84	JA: TX
8423675	F-08-078635	4237134572		102-4	103	UNIVERSITY "19-1" #4-U
-T-SQUARE PETROLEUM				RECEIVED:	03/01/84	JA: TX
8423518	F-7B-073610	4213335117		103		TAFF #5
-TAMARACK PETROLEUM CO INC				RECEIVED:	03/01/84	JA: TX
8423674	F-08-078634	4232931240		103		MATTHEWS "A" #2 (RRC #25871)
-TAUBERT & STEED				RECEIVED:	03/01/84	JA: TX
8423599	F-06-078077	4249931182		102-4		JUDGE DAVIS #1
-TAYLOR OPERATING COMPANY				RECEIVED:	03/01/84	JA: TX
8423672	F-7B-078632	4209300000		103		ARMSTRONG #2 (18923)
-TENNECO OIL COMPANY				RECEIVED:	03/01/84	JA: TX
8423517	F-04-073326	4235532127		103		EAST SIDE BLOCK UNIT #[illegible]
-TEXACO INC				RECEIVED:	03/01/84	JA: TX
8423683	F-08-078660	4213534164		103		ECTOR "C" FEE NCT-1 #12
8423578	F-08-077772	4230100000		1[illegible]		EL MAR DELAWARE UNIT #1331
8423577	F-08-077771	4230100000		108		EL MAR DELAWARE UNIT #1344
8423548	F-04-076713	4235531475		103.		J O CHAPMAN #124
8423650	F-8A-078574	4250100000		10[illegible]		ROBERTS UNIT #1134

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FIELD NAME	PROD	PURCHASER
MORRIS (STRAWN)	14.0	TEXAS UTILITIES F
KOTHMANN RANCH	34.0	CIBOLO GAS INC
SUTIL (BUDA)	25.0	J L DAVIS
CINDY ANN (AUSTIN CHA	17.0	J L DAVIS
SAM EASTER (CONGL)	0.0	SOUTHWESTERN GAS
JACK COUNTY REGULAR	0.0	SOUTHWESTERN GAS
NORTH RUCIAS	850.0	TRANSCONTINENTAL
OPLIN (ELLENBERGER)	20.0	LONE STAR GAS CO
PERSONVILLE NORTH (CO	547.5	TEXAS UTILITIES F
K W B (CANYON)	750.0	ESPERANZA PIPELIN
K W B (CANYON)	75.0	ESPERANZA PIPELIN
CUNDIFF N (ATOKA CONG	11.6	NATURAL GAS PIPEL
MORRIS (CONSL CONGL)	0.0	NATURAL GAS PIPEL
GRANT RANCH	1.0	SOUTHERN GAS PIPE
SPRABERRY (TREND AREA	35.0	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
BLOCK 49 (2450)	15.0	J L DAVIS
GIDDINGS (AUSTIN CHAL	365.0	PHILLIPS PETROLEU
AGUA DULCE (6550')	17.0	UNITED GAS PIPE L
HOCKLEY (4720)	29.0	ESPERANZA TRANSMI
JANICE (WOLFCAMP)	7.0	WARREN PETROLEUM
JANICE (WOLFCAMP)	7.0	WARREN PETROLEUM
JANICE (WOLFCAMP)	7.0	WARREN PETROLEUM
JANICE (WOLFCAMP)	7.0	WARREN PETROLEUM
JANICE (WOLFCAMP)	2.1	WARREN PETROLEUM
JANICE (WOLFCAMP)	0.0	WARREN PETROLEUM
MARKHAM (FRIO-4680)	180.0	FLORIDA GAS TRANS
CUMMINS (DEVONIAN)	1.0	EL PASO NATURAL G
WEST PANHANDLE	0.0	EL PASO NATURAL G
GOLDSMITH (5600)	13.0	EL PASO NATURAL G
ALPAR ST LOUIS	0.0	
PANHANDLE - GRAY	0.0	GETTY OIL CO
PANHANDLE WEST	0.0	EL PASO NATURAL G
BRADFORD RANCH (ATOKA	0.0	TEXACO U S A
SPRABERRY (TREND AREA	25.6	PHILLIPS PETROLEU
LUCKY-MAG (CLEAR FORK	3.7	FARMLAND INDUSTRI
CARY MAG W (CONGLOMER	20.0	LONE STAR GAS CO
CARY MAG (CONGLOMERAT	0.0	LONE STAR GAS CO
MADISONVILLE N E (GEO	0.0	LONE STAR GAS CO
REB	30.0	ENSERCH EXPLORATI
COW CREEK W (6930) FI	91.0	VALERO TRANSMISSI
ELLIS RANCH	146.0	TRANSWESTERN PIPE
GRASS ISLAND (MATAGOR	0.0	DELHI GAS PIPELIN
NAYLOR (JENNINGS SAND	9.0	UNION TEXAS PETRO
STARR COUNTY N E	13.0	TENNESSEE GAS PIP
JAMESON N	10.0	LONE STAR GAS CO
PANHANDLE GRAY CO (GR	2.0	PHILLIPS PETROLEU
LEVELLAND	0.1	CITIES SERVICE OI
CANADIAN S E (DOUGLAS	37.0	WESTAR TRANSMISSI
REVILO-GLORIETTA	[illegible].3	MONSANTO OIL CO
SUN	[illegible].0	FLORIDA GAS TRANS
SUN	21.0	TENNESSEE GAS PIP
SUN TSH	0.0	HOUSTON PIPELINE
DOUGHTY S W (9275)	121.0	HOUSTON PIPE LINE
SPRABERRY (TREND AREA	32.0	PECOS CO
ST CLAIR (GRANITE WAS	20.0	WESTAR TRANSMISSI
PARDUE CANYON	0.3	
SEELIGSON	10.0	TENNESSEE GAS PIP
MOORE HOOPER	4.0	EL PASO NATURAL G
LEVELLAND	0.1	CITIES SERVICE OI
TUNIS CREEK (DEVONIAN	0.0	DELHI GAS PIPELIN
EASTLAND CNTY REG (GA	73.0	SOUTHWESTERN GAS
SPRABERRY (TREND AREA	49.0	PHILLIPS PETROLEU
NEUHOFF (MOORINGSPORT	47.0	UNITED GAS PIPELI
BEATTIE N (MARBLE FAL	31.4	SOUTHWESTERN GAS
AGUA DULCE (7550)	146.0	
MOSSWELL (STRAWN 8720	13.9	
EL MAR (DELAWARE)	0.4	PHILLIPS PETROLEU
EL MAR (DELAWARE)	0.4	PHILLIPS PETROLEU
CHAPMAN RANCH	0.0	TEXAS EASTERN TRA
WASSON	0.3	SHELL OIL CO

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8423651	F-8A-078575	4250100000		108		ROBERTS UNIT #1143
8423652	F-8A-07857	4250100000		108		ROBERTS UNIT #1214
8423649	F-8A-078573	4250100000		108		ROBERTS UNIT #1725
8423653	F-8A-078577	4250100000		108		ROBERTS UNIT #2042
8423637	F-8A-078496	4250100000		108		ROBERTS UNIT #2225
8423638	F-8A-078497	4250100000		108		ROBERTS UNIT #2737
8423648	F-8A-078572	4250100000		108		ROBERTS UNIT #3332
8423647	F-8A-078571	4250100000		108		ROBERTS UNIT #4325
8423529	F-08-074749	4213534073		103		W E CONNELL MCT-2 #163
8423488	F-02-017630	4217502053		108-ER		WILSON DEEP #1
-TEXAS EASTERN EXPLORATION CO				RECEIVED:	03/01/84	JA: TX
8423513	F-02-072806	4217531643		102-4	103	PITTMAN #1
-THE ANSCHUTZ CORPORATION				RECEIVED:	03/01/84	JA: TX
8423604	F-08-078116	4232931167		102-4		NOBLES 1028
-THROCKMORTON GAS SYSTEMS				RECEIVED:	03/01/84	JA: TX
8423489	F-7B-036251	4244700000		102-4		VALDA BROWN WELL #3 (ID#10378)
-TRANSCONTINENTAL OIL CORPORATION				RECEIVED:	03/01/84	JA: TX
8423493	F-06-063073	4236531530		103	107-TF	J D FURRH ET AL #1A
-TRI-MOR PRODUCTION CO				RECEIVED:	03/01/84	JA: TX
8423504	F-7B-071574	4242933477		102-4		PENDLETON "A" #1
-TRINITY RESOURCES INC				RECEIVED:	03/01/84	JA: TX
8423550	F-02-076871	4220995700		102-4		DUGGER-FITCH 1-C
-TXO PRODUCTION CORP				RECEIVED:	03/01/84	JA: TX
8423519	F-02-073679	4223931880		102-4		STAFFORD G U A-4
-UTX EXPLORATION INC				RECEIVED:	03/01/84	JA: TX
8423541	F-02-076297	4202531986		102-4	103	KATHLEEN D ROCHE B 4-C
-WAGNER & BROWN				RECEIVED:	03/01/84	JA: TX
8423600	F-08-07808	4243130932		103		GLASS "C" #5-4
-WILLIAM MOSS PROPERTIES INC				RECEIVED:	03/01/84	JA: TX
8423537	F-08-075924	4231732760		103		R C TOM "4" #2
-WILLIAMS EXPLORATION COMPANY				RECEIVED:	03/01/84	JA: TX
8423576	F-02-077756	4205730962		102-4		P H WELDER "D" #1L
-WOOLF & MAGEE INC				RECEIVED:	03/01/84	JA: TX
8423685	F-06-078678	4245930574		102-4	107-TF	HOLLIE G MCCLAIN GAS UNIT #1

FIELD NAME	PROD	PURCHASER
WASSON	1.0	SHELL OIL CO
WASSON	1.5	SHELL OIL CO
WASSON	8.4	SHELL OIL CO
WASSON	6.3	SHELL OIL CO
WASSON	8.3	SHELL OIL CO
WASSON	1.3	SHELL OIL CO
WASSON	1.0	SHELL OIL CO
WASSON	8.5	SHELL OIL CO
JORDAN (DEVONIAN)	12.1	PHILLIPS PETROLEU
DALLAS HUSKY	8.0	TEXAS EASTERN TRA
OLD BUZZARD	503.0	
MOONLIGHT (ELLENBURGE	1.0	WESTAR TRANSMISSI
BRYLE WEST (CADDO 469	8.0	WARREN PETROLEUM
CARTHAGE (COTTON VALL	800.0	UNITED GAS PIPELI
BRECKENRIDGE SE (DUFF	30.0	WARREN PETROLEUM
PALMETTO BEND W (A-9)	620.0	LONE STAR GAS CO
MORALES	8.0	DELHI GAS PIPELIN
HEARD RANCH (4050) PR	550.0	TRUNKLINE GAS CO
CONGER (PENN)	619.7	TEXAS UTILITIES F
SPRABERRY/TREND AREA	11.0	
KATIE WELDER M-2	48.0	SEAGULL PIPELINE
GILMER (BOSSIER SAND)	550.0	TEXAS UTILITIES F

[FR Doc. 84-8638 Filed 4-2-84; 8:45 am]

BILLING CODE 6717-01-C

[Volume 1094]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: March 28, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 382, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, *will not be published in the* **Federal Register.** Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 382 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New res. on old OCS lease
Section 103: New onshore production well
Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED MARCH 28, 1984

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
LOUISIANA OFFICE OF CONSERVATION									
-MAY PETROLEUM INC				RECEIVED: 03/05/84		JA: LA			
8423697	84-0277	1703121957		103		J S SIMONTON #1 HOSS RA SU10	BETHANY LONGSTREET	547.5	ARKANSAS LOUISIAN
-MCRAE EXPLORATION INC				RECEIVED: 03/05/84		JA: LA			
8423702	84-283	1711121591		102-2	107-TF	ABBIE SMITH #1 CV RA SUC	BAYOU D'ARBONNE LAKE	0.0	LOUISIANA GAS INT
8423699	84-0279	1711121602		102-2	107-TF	REAGAN #1 CV RA SUF	BAYOU D'ARBONNE LAKE	0.0	LOUISIANA GAS INT
8423700	84-280	1711121840		102-2	107-TF	SMITH #2 CV RA SUH	BAYOU D'ARBONNE LAKE	0.0	LOUISIANA GAS INT
8423703	84-282	1711121355		102-2	107-TF	STANSBURY #1 CV RA SUB	BAYOU D'ARBONNE LAKE	0.0	LOUISIANA GAS INT
8423701	84-281	1711122287		102-2	107-TF	STANSBURY #2 CV RA SUA	BAYOU D'ARBONNE LAKE	0.0	LOUISIANA GAS INT
-TEXACO INC				RECEIVED: 03/05/84		JA: LA			
8423705	84-0380	1770720082		103		S L 340 LIGHTHOUSE POINT WELL #21	LIGHTHOUSE POINT	[illegible]8.0	TEXAS GAS TRANSMI
8423704	84-0383	1770720096		103		SL 340 MOUND POINT #62	MOUND POINT	2738.0	KAISER ALUMINUM &
8423708	84-0378	1770720107		103		SL 340 MOUND POINT #79	MOUND POINT	147.2	KAISER ALUMINUM &
8423707	84-0377	1770720111		103		SL 340 MOUND POINT #87	MOUND POINT	1168.0	KAISER ALUMINUM &
8423712	84-0337	1770720109		103		SL 340 MOUND POINT #88	MOUND POINT	1599.0	KAISER ALUMINUM &
8423706	84-0379	1770720084		103		SL 340 MOUND POINT WELL #63	SL 340 MOUND POINT	2130.0	KAISER ALUMINUM &
8423711	84-0375	1770720103		103		SL 340 MOUND POINT WELL #83	MOUND POINT	1095.0	KAISER ALUMINUM &
8423710	84-0374	1710121034		103		WKL #44 BAL SU	BATEMAN LAKE	5475.0	CITY OF MORGAN CI
8423709	84-0373	1710121068		103		WKL #46 BAL SU	BATEMAN LAKE	5147.0	CITY OF MORGAN CI
-TXO PRODUCTION CORP				RECEIVED: 03/05/84		JA: LA			
8423698	84-278	1706120346		103	107-TF	T L JAMES "B" #2 DAVIS RA SU0	CHOUDRANT	511.0	DELHI GAS PIPELIN
MONTANA BOARD OF OIL & GAS CONSERVATION									
-HOEFLE RICHARD C				RECEIVED: 03/05/84		JA: MT			
8423726	1-84-19	2510122108		102-4		OAKLEY & HAYES #1-A COREY	KEVIN SUNBURST	70.0	OIL INTERNATIONAL
8423728	1-84-20	2510122187		102-4		OAKLEY & HAYES #1-B COREY	KEVIN SUNBURST	98.0	OIL INTERNATIONAL
8423727	1-84-21	2510109706		102-4		OAKLEY & HAYES #4 COREY	KEVIN SUNBURST	45.0	OIL INTERNATIONAL
8423729	1-84-22	2510109705		102-4		OAKLEY & HAYES COREY #6	KEVIN SUNBURST	51.0	OIL INTERNATIONAL
NORTH DAKOTA INDUSTRIAL COMMISSION									
-ADOBE OIL & GAS CORPORATION				RECEIVED: 03/05/84		JA: ND			
8423723	903	3300700000		102-2		KESSEL DEEP 41-6	BULLSNAKE BUTTE FRYBU	201.0	NORTHERN GAS PROD
-DIAMOND SHAMROCK EXPLORATION CO				RECEIVED: 03/05/84		JA: ND			
8423724	902	3300700938		102-2		RAINBOW FEE 43-5	ROOSEVELT	0.0	
-TENNECO OIL E & P				RECEIVED: 03/05/84		JA: ND			
8423725	901	3300700936		102-2		AMERADA STATE 2-16	ANDERSON COULEE	91.0	MONTANA DAKOTA UT
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
-NATIONAL FUEL GAS SUPPLY CORP				RECEIVED: 03/05/84		JA: NY			
8423722	5181	3100917982	D	102-2		TROMBLEY-YOUNG #6250 (JO)	WILDCAT	200.0	
OHIO DEPARTMENT OF NATURAL RESOURCES									
-AKRON/OIL CORP				RECEIVED: 03/06/84		JA: OH			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8423783		3412726044		107-TF		WARNER #2	SALT LICK	10.0	
-AMTEX OIL AND GAS INC				RECEIVED:	03/06/84	JA: [redacted]			
8423784		3416922199		[redacted]		HATFIELD WELL #1		11.0	EAST OHIO GAS CO
8423785		3416922200		108		HATFIELD WELL #2		11.0	EAST OHIO GAS CO
-ATWOOD RESOURCES INC				RECEIVED:	03/06/84	JA: OH			
8423786		3403125275		103	107-TF	CHARLES O'BRYON ETAL #4	COSHOCTON	15.0	
-B & K DRILLING CO				RECEIVED:	03/06/84	JA: OH			
8423787		3416727203		107-DV		CLARK #3	SALEM	20.0	COLUMBIA GAS TRAN
-B J INC				RECEIVED:	03/06/84	JA: OH			
8423796		3407524041		103	107-TF	B GIAUQUE #2-A	RICHLAND	[redacted].0	[redacted] GLASS
8423793		3407523982		103	107-TF	B GIAUQUE #3	RICHLAND	18.0	CORNING GLASS
8423792		3407523981		103	107-TF	B GIAUQUE #4	RICHLAND	20.0	[redacted] GLASS
8423791		3407523980		103	107-TF	B GIAUQUE #5	RICHLAND	20.0	[redacted] GLASS
8423795		3407523988		103	107-TF	E GIAUQUE #5	RICHLAND	25.0	CORNING GLASS
8423794		3407523986		103	107-TF	E GIAUQUE #7	RICHLAND	18.0	CORNING GLASS
8423788		3403125032		103	107-TF	FLINTSTONE FARMS #2	CLARK	25.0	[redacted] GLASS
8423789		3403125033		103	107-TF	FLINTSTONE FARMS #4	CLARK	20.0	CORNING GLASS
8423790		3403125042		103	107-TF	LOGSDON #1	TIVERTON	20.0	CORNING GLASS
-BARTLO OIL AND GAS COMPANY				RECEIVED:	03/06/84	JA: OH			
8423798		3415321611		103	107-TF	H JAEGER #1	RICHFIELD	[redacted].0	
8423797		3410323633		103	107-TF	SUTPHIN UNIT #1	GRANGER	12.0	
-BATH OIL & GAS EXPLORATION CO				RECEIVED:	03/06/84	JA: OH			
8423799		3415321503		107-TF		BATH CENTER ESTATES #1	[redacted]ATH	22.0	
-BERRESFORD ENTERPRISES INC				RECEIVED:	03/06/84	JA: OH			
8423800		3416725205		107-TF		PAUL DIETZ #1	WATERFORD	0.0	
-CAMERON BROS				RECEIVED:	03/06/84	JA: OH			
8423801		3411922664		[redacted]		BRADFORD #1		11.0	COLUMBIA GAS TRAN
-CAVENDISH PETROLEUM OF OHIO INC				RECEIVED:	03/06/84	JA: OH			
8423802		3411926757		103	107-TF	OHIO POWER 41-A	MEIGS	108.0	TEXAS EASTERN TRA
8423803		3411926854		103	107-TF	OHIO POWER 44-A	RICH HILL	16.1	TEXAS EASTERN TRA
-CLINTON OIL CO				RECEIVED:	03/06/84	JA: OH			
8423909		3405520587		107-TF		EQUESTRIAN ESTATES #3-822	BURTON	10.0	
8423910		3413323116		107-TF		H MURRAY UNIT #1-825	ROOTSTOWN	10.0	
8423907		3400722420		107-TF		L MERILLA #1-835	SAYBROOK	10.0	
8423908		3400722598		107-TF		R WASSON #1-887	SAYBROOK	10.0	
8423906		3400722264		107-TF		W PETRIC #1-697	SAYBROOK	10.0	
-COLLINS-MCGREGOR OPERATING COMPANY				RECEIVED:	03/06/84	JA: OH			
8423804		3405520535		103	107-TF	BERGER #1	MONTVILLE	20.0	EAST OHIO GAS CO
8423805		3405520597		103	107-TF	ZAFFIRO #1	MONTVILLE	25.0	EAST OHIO GAS CO
-DAVID A WALDRON & ASSOC INC				RECEIVED:	03/06/84	JA: OH			
8423806		3413323143		107-TF		BERNICE SMITH #1	COLUMBIA	18.0	
-DOME ENERGY 83-2				RECEIVED:	03/06/84	JA: OH			
8423807		3409321220		107-TF		DENINGTON #1	COLUMBIA	15.0	
-DORSET CO INC				RECEIVED:	03/06/84	JA: OH			
8423808		3400721157		108		MCCONNELL #3		10.0	DANA CORP
8423809		3400701193		108		RIPKA DENMARK #5		3.0	JONES LAUGHLIN ST
-DOVER OIL CO				RECEIVED:	03/06/84	JA: OH			
8423810		3416727376		107-TF		RALPH TEPE #2	WATERTOWN	3.5	
-EDCO DRILLING & PRODUCING INC				RECEIVED:	03/06/84	JA: OH			
8423811		3400722402		107-TF		CB-1A BLANKENSHIP/ROBERTS UNIT	CHERRY VALLEY	18.0	
-ENTERPRISE ENERGY CORP				RECEIVED:	03/06/84	JA: OH			
8423812		3411926786		103	107-TF	OHIO POWER #2	NEWTON	18.2	TEXAS EASTERN TRA
-FLOYD E KIMBLE DBA RED HILL DEV				RECEIVED:	03/06/84	JA: OH			
8423817		3406720583		[redacted]	107-TF	A BOUSKA #1	FREEPORT	4.0	
8423814		3406720569		103	107-TF	CLEVELAND B S A #1	NOTTINGHAM	12.0	
8423815		3406720571		103	107-TF	CLEVELAND B S A #2	NOTTINGHAM	18.0	
8423813		3406720568		103	107-TF	E F F CORP #1	FRANKLIN	9.0	
8423818		3406720590		103	107-TF	G PASTOR #1	STOCK	26.0	
8423816		3406720577		103	107-TF	W CRAMBLETT #1	NORTH	4.0	
-LAKE REGION OIL INC				RECEIVED:	03/06/84	JA: OH			
8423819		3407524156		103	107-TF	BRUCE SCHANTZ #5	KILLBUCK	10.0	COLUMBIA GAS TRAN
-LANGASCO DRILLING CO				RECEIVED:	03/06/84	JA: OH			
8423820		3402920986		107-TF		DONALD REEDER #1	HANOVER	37.0	YANKEE RESOURCES
-LIBERTY OIL & GAS CORP				RECEIVED:	03/06/84	JA: OH			
8423831		3400922782		107-TF		C W DALEY JR #1	TROY	19.0	COLUMBIA GAS TRAN
8423844		3410521943		107-TF		CLYDE HEADLEY #1	OLIVE	20.0	COLUMBIA GAS TRAN
8423843		3410521865		107-TF		CLYDE MORLAN #2	ORANGE	19.0	COLUMBIA GAS TRAN
8423841		3410521861		107-TF		D E MILLER #1	OLIVE	19.0	COLUMBIA GAS TRAN
8423857		3410522494		107-TF		D E MILLER #2	OLIVE	18.0	COLUMBIA GAS TRAN
8423823		3400922055		107-TF		DONALD DAY #1	CARTHAGE	18.0	COLUMBIA GAS TRAN
8423824		3400922112		107-TF		E SUMMERFIELD #1	CARTHAGE	18.0	COLUMBIA GAS TRAN
8423838		3410521845		107-TF		EDTON A RITCHIE AND JOYCE A RITCHI*	OLIVE	0.0	COLUMBIA GAS TRAN
8423836		3410521836		107-TF		FRANCIS KIBBLE #1	[redacted]RAHOE	19.0	COLUMBIA GAS TRAN
8423852		3410521976		107-TF		FRANK GOEBEL #1	CARTHAGE	17.0	COLUMBIA GAS TRAN
8423828		3400922598		107-TF		FRANK GOEBEL #3	TROY	17.0	COLUMBIA GAS TRAN
8423854		3410522407		107-TF		GARLAND CALDWELL #2	COOLVILLE	18.0	COLUMBIA GAS TRAN
8423845		3410521945		107-TF		GARY RIDDLE #1	OLIVE	18.0	COLUMBIA GAS TRAN
8423855		3410522425		107-TF		GEORGE COLLINS #1	OLIVE	18.0	COLUMBIA GAS TRAN
8423837		3410521837		107-TF		GEORGE V STONE #1	OLIVE	19.0	COLUMBIA GAS TRAN
8423849		3410521959		107-TF		GRANT NEWLAND #1	OLIVE	[redacted].0	COLUMBIA GAS TRAN
8423853		3410522318		107-TF		HARLESS-HAGAR #1	ORANGE	17.0	COLUMBIA GAS TRAN
8423847		3410521957		107-TF		HARLEY E RICE #1	OLIVE	18.0	COLUMBIA GAS TRAN
8423839		3410621849		107-TF		HELEN E BARGELOH #1	OLIVE	[redacted].0	COLUMBIA GAS TRAN
8423829		3400922635		107-TF		J M FERRELL #1	TROY	[redacted].0	COLUMBIA GAS TRAN
8423832		3400922783		107-TF		JAMES DEEM #1	TROY	[redacted].0	COLUMBIA GAS TRAN
8423842		3410521863		107-TF		KENNETH HAGER #2	ORANGE	[redacted].0	COLUMBIA GAS TRAN
8423827		3400922597		107-TF		MOLLOHAN HEIRS #1	TROY	[redacted].0	COLUMBIA GAS TRAN
8423822		3400921975		107-TF		O SWAN #1	CARTHAGE	[redacted].0	COLUMBIA GAS TRAN
8423835		3410521824		107-TF		OLEN & JOSEPHINE YOUNG #1	OLIVE	[redacted].0	COLUMBIA GAS TRAN
8423850		3410521960		107-TF		PAUL E BROOKS #1	OLIVE	[redacted].0	COLUMBIA GAS TRAN
8423851		3410521970		107-TF		PAUL NUTTER #1	ORANGE	17.0	COLUMBIA GAS TRAN
8423821		3400921859		107-TF		RAY WEAVER #2	OLIVE	[redacted].0	COLUMBIA GAS TRAN
8423833		3410521797		107-TF		REBECCA H MEYER #1	ORANGE	[redacted].0	COLUMBIA GAS TRAN
8423848		3410521958		107-TF		RICHARD SPENCER #1	OLIVE	[redacted].0	COLUMBIA GAS TRAN
8423834		3410521820		107-TF		ROBERT MARCINKO #1	ORANGE	19.0	COLUMBIA GAS TRAN
8423825		3400922161		107-TF		ROBINSON #1A	CARTHAGE	18.0	COLUMBIA GAS TRAN
8423840		3410521860		107-TF		SCYOC #1	OLIVE	0.0	COLUMBIA GAS TRAN
8423830		3400922709		107-TF		TAYLOR-MURPHY UNIT #1	TROY	18.0	COLUMBIA GAS TRAN
8423846		3410521948		107-TF		W H CHAPMAN #1	ORANGE	19.0	COLUMBIA GAS TRAN
8423856		3410522426		107-TF		W R MANLEY #1	OLIVE	18.0	COLUMBIA GAS TRAN
8423826		3400922176		107-TF		WALTER BOGGS #2	CARTHAGE	18.0	COLUMBIA GAS TRAN
-LOMAK PETROLEUM INC				RECEIVED:	03/06/84	JA: OH			
8423858		3405520566		103	107-TF	L JUDD #1	HUNTSBURG	30.0	
-MARK RESOURCES CORP				RECEIVED:	03/06/84	JA: OH			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8423859		3400722347		103	107-TF	C M MILLER #2	ASHTABULA	30.0	EAST OHIO GAS CO
-OXFORD OIL CO				RECEIVED: 03/06/84 JA: OH					
8423911		3411926344		107-TF		OXFORD-MCCOY-FEE #1	CLAY	10.0	
-PENN-OHIO ENERGY CORP				RECEIVED: 03/06/84 JA: OH					
8423861		3405520502		103	107-TF	HELLER #1	CLARIDON	0.0	EAST OHIO GAS CO
8423862		3405520579		103	107-TF	HELLER #3	CLARIDON	0.0	EAST OHIO GAS CO
-PETRO EAGLE CO				RECEIVED: 03/06/84 JA: OH					
8423863A		3400921637	D	103		A BROZAK #4	CANAAN	0.0	COLUMBIA GAS TRAN
8423863B		3400921637		107-TF		A BROZAK #4	CANAAN	0.0	COLUMBIA GAS TRAN
-POI ENERGY INC				RECEIVED: 03/06/84 JA: OH					
8423867		3405520588		103	107-TF	BAUMGARTNER #RM-1	HAMBDEN	30.0	
8423866		3400722535		103	107-TF	CLAY #RM-2	WAYNE	23.0	
8423865		3400722505		103	107-TF	JANEZIC #RP-2	ANDOVER	25.0	
8423864		3400722476		103	107-TF	ROSS #RM-1	HARLSGROVE	27.0	
8423868		3405520589		103	107-TF	TAYLOR-ZIMMERMAN #RM-1	HANDEN	36.0	
-POSTON OPERATING CO INC				RECEIVED: 03/06/84 JA: OH					
8423873		3407322406		108		LEON P KIEFFER #2		5.0	COLUMBIA GAS TRAN
8423872		3407322377		108		LEON P KIEFFER #5	BRENHOLTS	36.0	COLUMBIA GAS TRAN
8423874		3407322463		108		RUTHERFORD HEIRS #4	WARD	5.0	COLUMBIA GAS TRAN
8423870		3407321960		108		WILLARD KIEFFER #1	BRENHOLTS	36.5	COLUMBIA GAS TRAN
8423869		3407322195		108		WILLARD KIEFFER #2	BRENHOLTS	36.5	COLUMBIA GAS TRAN
8423871		3407322307		108		WILLARD KIEFFER #4	BRENHOLTS	4.0	COLUMBIA GAS TRAN
-R GENE BRASEL DBA BRASEL & BRASEL				RECEIVED: 03/06/84 JA: OH					
8423875		3405320851		107-TF		BRASEL-HARRIS TARA #3	ADDISON	1.0	COLUMBIA GAS TRAN
-RPJ ENERGY FUND MANAGEMENT INC				RECEIVED: 03/06/84 JA: OH					
8423876		3405923511		107-TF		SECREST #1	LIBERTY	20.0	
-SANTA FE DRILLING CO INC				RECEIVED: 03/06/84 JA: OH					
8423877		3416724960		107-TF		C M AND BERNICE SMITH #1	SALEM	50.0	COLUMBIA GAS TRAN
-SHONGUM OIL & GAS INC				RECEIVED: 03/06/84 JA: OH					
8423878		3410323590		107-TF		KRAMER UNIT #1	SHARON	0.0	
-SPECTRUM PETROLEUM CORP				RECEIVED: 03/06/84 JA: OH					
8423883		3411523216	D	107-TF		ROYAL ENERGY L BRUNS #1	DUN GANNON	12.0	EAST OHIO GAS CO
8423888		3411523221	D	107-TF		ROYAL ENERGY L BRUNS #2	DUN GANNON	12.0	EAST OHIO GAS CO
8423884		3411523217	D	107-TF		ROYAL ENERGY L BRUNS #3	DUN GANNON	1.2	EAST OHIO GAS CO
8423887		3411523220	D	107-TF		ROYAL ENERGY L BRUNS #4	DUN GANNON	12.0	EAST OHIO GAS CO
8423885		3411523218	D	107-TF		ROYAL ENERGY L BRUNS #5	DUN GANNON	12.0	EAST OHIO GAS CO
8423886		3411523219	D	107-TF		ROYAL ENERGY L BRUNS #6	DUN GANNON	12.0	EAST OHIO GAS CO
8423882		3411523176	D	107-TF		ROYAL ENERGY MCMANNIS #3	DUN GANNON	12.0	EAST OHIO GAS CO
8423881		3411523175	D	107-TF		ROYAL ENERGY MCMANNIS #4	DUN GANNON	12.0	EAST OHIO GAS CO
8423880		3411523174	D	107-TF		ROYAL ENERGY MCMANNIS #5	DUN GANNON	12.0	EAST OHIO GAS CO
8423879		3411523173	D	107-TF		ROYAL ENERGY MCMANNIS #6	DUN GANNON	12.0	EAST OHIO GAS CO
-THE BENATTY CORPORATION				RECEIVED: 03/06/84 JA: OH					
8423891		3411522056		107-TF		A STEWART #3	BLOOM	8.0	TENNESSEE GAS PIP
8423895		3411925088		107-TF		C SILER #2	BLUE CREEK	30.0	TENNESSEE GAS PIP
8423902		3411925417		107-TF		C SILER #3	BLUE ROCK	30.0	TENNESSEE GAS PIP
8423903		3411925469		107-TF		C SILER #5	BLUE ROCK	25.0	TENNESSEE GAS PIP
8423897		3411925361		107-TF		D BARKHURST #2	BLUE CREEK	20.0	TENNESSEE GAS PIP
8423899		3411925382		107-TF		D BARKHURST #3	BLUE CREEK	20.0	TENNESSEE GAS PIP
8423898		3411925362		107-TF		E WILSON #2	BLUE CREEK	25.0	TENNESSEE GAS PIP
8423900		3411925383		107-TF		E WILSON #3	BLUE ROCK	18.0	TENNESSEE GAS PIP
8423901		3411925384		107-TF		E WILSON #4	BLUE ROCK	30.0	TENNESSEE GAS PIP
8423892		3411522204		103	107-TF	F J EARL #2	BLOOM	10.0	
8423889		3411521993		107-TF		F MAUTZ #3	BLOOM	10.0	TENNESSEE GAS PIP
8423893		3411522205		107-TF		J HARTLEY 1-A	BLOOM	20.0	TENNESSEE GAS PIP
8423905		3412123108		103	107-TF	LINGER-AUGENSTEIN UNIT #1-108	JACKSON	50.0	
8423894		3411523230		103	107-TF	OHIO POWER #6-29	CENTER	55.0	
8423904		3411925470		107-TF		R HUNTER #3	BLUE ROCK	20.0	TENNESSEE GAS PIP
8423896		3411925112		107-TF		S COX #2	BLUE ROCK	50.0	TENNESSEE GAS PIP
8423890		3411522031		107-TF		SHUSTER MOORE UNIT #1	BLOOM	15.0	TENNESSEE GAS PIP
-THE MUTUAL OIL & GAS COMPANY				RECEIVED: 03/06/84 JA: OH					
8423860		3415723966		103	107-TF	GLASS #8A	GOSHEN	6.5	EAST OHIO GAS CO
-VESCORP INDUSTRIES INC				RECEIVED: 03/06/84 JA: OH					
8423912		3407522032		108		FAIR #1		10.0	COLUMBIA GAS TRAN
-VIKING RESOURCES CORP				RECEIVED: 03/06/84 JA: OH					
8423913		3408520506		103	107-TF	FULLER-ROMANO UNIT #3	MADISON	30.0	
8423914		3408520508		103	107-TF	FULLER-ROMANO UNIT #5	PERRY	30.0	
8423915		3409921667		103	107-TF	TAYLOR UNIT #3	BERLIN	30.0	
-YANKEE EXPLORATION INC				RECEIVED: 03/06/84 JA: OH					
8423917		3415123915		103	107-TF	EARL SCHMUCKER #1	WASHINGTON	0.0	YANKEE RESOURCES
8423918		3415522297		103	107-TF	PETRELLA-AMATO UNIT #1	FARMINGTON	0.0	YANKEE RESOURCES
8423916		3412123075		103	107-TF	RUTH WALTERS #1	SHARON	0.0	YANKEE RESOURCES

DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM

-BROWN JOE E				RECEIVED: 03/05/84 JA: NM L					
8423768	RNM 0373-83	3004100000		108		FARRELL FEDERAL #1	CHAVEROO SAN ANDRES	8.3	NATURAL GAS PIPE
8423746	RNM 0370-83	3004100000		108		FARRELL FEDERAL #4	CHAVEROO SAN ANDRES	0.2	NATURAL GAS PIPE
8423764	RNM 0371-83	3004100000		108		FARRELL FEDERAL #6	CHAVEREO SAN ANDRES	0.7	NATURAL GAS PIPE
8423766	RNM 0372-83	3004100000		108		FARRELL FEDERAL #9	CHAVEROO SAN ANDRES	1.7	NATURAL GAS PIPE
-CAMPBELL & HEDRICK				RECEIVED: 03/05/84 JA: NM L					
8423777	RNM 0108-83	3002525509		103		CAMPBELL & HEDRICK HARDY #6	DRINKARD	30.0	GETTY OIL CO
-CONOCO INC				RECEIVED: 03/05/84 JA: NM L					
8423755	RNM 0028-84	3002512012		108		EAVES A #8	NMFU - SCARBOROUGH YA	1.0	EL PASO NATURAL G
8423756	RNM 0029-84	3002521657		108		EAVES B-1 #11	NMFU - SCARBOROUGH YA	0.8	EL PASO NATURAL G
8423757	RNM 0031-84	3002512085		108		EAVES B-1 #4	NMFU - SCARBOROUGH YA	14.6	EL PASO NATURAL G
8423754	RNM 0027-84	3002527937		108		RUSSELL FEDERAL 17 #13	EAST MASON	11.2	PHILLIPS PETROLEU
8423770	RNM 0356-83	3002504261		108		SANDERSON A #7	NMFU - EUNICE-MONUMEN	7.5	WARREN PETROLEUM
8423759	RNM 0032-84	3002504273		108		SANDERSON B-14 #3	NMFU - EUMONT	12.7	WARREN PETROLEUM
8423780	RNM 0026-84	3002509809		108		SHOLES B-25 #3	NMFU - JALMAT	5.5	EL PASO NATURAL G
8423758	RNM 0030-84	3002509488		108		VAUGHAN B-1 #2	NMFU - LANGLIE MATTIX	2.2	EL PASO NATURAL G
8423765	RNM 0357-83	3002509718		108		WELLS B-1 #1	NMFU - JALMAT	6.9	EL PASO NATURAL G
-DAVID FASKEN				RECEIVED: 03/05/84 JA: NM L					
8423775	RNM 0347-83	3001520006		108		INDIAN HILLS UNIT "COM" "A" WELL #6	INDIAN BASIN (MORROW)	20.0	NATURAL GAS PIPEL
8423776	RNM 0319-83	3001521059		108		YATES "6" FEDERAL #1	EAGLE CREEK (STRAWN)	19.0	NATURAL GAS PIPEL
-EL PASO EXPLORATION CO				RECEIVED: 03/05/84 JA: NM L					
8423750	RNM 0327-83	3001520486		108		ROCKY ARROYO #1	ROCKY ARROYO WOLF	11.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED: 03/05/84 JA: NM L					
8423779	RNM 0318-83	3002500000		108		R S U #13 WDRL	RHODES-YATES SEVEN RI	21.0	EL PASO NATURAL G
-GETTY OIL COMPANY				RECEIVED: 03/05/84 JA: NM L					
8423747	RNM 0010-83	3002511741		108		A B COATES "C" #19	JUSTIS BLINEBRY	20.2	EL PASO NATURAL G
-GULF OIL CORPORATION				RECEIVED: 03/05/84 JA: NM L					
8423774	RNM000108SER	3002522324		108-ER		C E LAMUNYON #20	TEAGUE BLINEBRY	18.0	EL PASO NATURAL G
-HNG OIL COMPANY				RECEIVED: 03/05/84 JA: NM L					
8423752	RNM 0109-83	3002528156		102-2		DIAMOND "5" FEDERAL #1	PITCHFORK RANCH (MORR	750.0	TRANSWESTERN PIPE

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8423753	RNM 0091-83	3002528051		102-2		MADERA "33" FEDERAL COM #1
-PERRY R BASS				RECEIVED:	03/05/84	JA: NM L
8423769	RNM 0119-83	3001524083		102-4		BIG EDDY UNIT #92
8423782	RNM 0116-83	3001524084		102-4		BIG EDDY UNIT #94
-PETROLEUM CORPORATION OF TEXAS				RECEIVED:	03/05/84	JA: NM L
8423748	RNM 0482-83	3002528149		103		FEDERAL Q WELL #3
-SANDERS OIL & GAS INC				RECEIVED:	03/05/84	JA: NM L
8423781	NM-0751-83	3000561608		103		MESA DIABLO FEDERAL #1
-SOUTHLAND ROYALTY CO				RECEIVED:	03/05/84	JA: NM L
8423772	RNM 0197-83	3001523776		102-4		EMPIRE FEDERAL "21-A" #1
8423751	RNM 0024-83	3001523290		102-4		EMPIRE FEDERAL "34" COM #1
8423745	RNM-0023-83	3001523102		102-4		EMPIRE FEDERAL COMM #1
8423773	RNM 0005-84	3001523565		108		EMPIRE FEDERAL 21 COM #1
8423760	RNM 0519-83	3001524115		102-4		HOLLY FEDERAL "5" #1
-STEVENS OPERATING CORP				RECEIVED:	03/05/84	JA: NM L
8423771	RNM-0470-83	3000561814		102-4		HELEN COLLINS FEDERAL #2
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	03/05/84	JA: NM L
8423762	RNM 0520-83	3000561506		107-TF		CHAVES "A" FEDERAL #3U
-WARRIOR INC				RECEIVED:	03/05/84	JA: NM L
8423763	RNM-0008-83	3002504358		108		FEDERAL "D" #11
8423778	RNM-0006-83	3002504342		108		FEDERAL "D" #8
8423761	RNM 0007-83	3002504343		108		FEDERAL "D" #9
-WESTERN DRILLING CO				RECEIVED:	03/05/84	JA: NM L
8423767	RNM-0188-83	3002507064		108		MCDERMOTT FEDERAL #2
-ZIA ENERGY INC				RECEIVED:	03/05/84	JA: NM L
8423749	RNM-0018-83	3002510339		108		FEDERAL #2
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, SALT LAKE CITY, UT						
-BELCO DEVELOPMENT CORP				RECEIVED:	03/05/84	JA: UT P
8423715	102-83	4304731030		108		CHAPITA WELLS UNIT 56-29
8423721	100-83	4304731318		103	107-TF	CWU 231-14
8423718	104-83	4304730613		108		CWU 46-30
8423714	103-83	4304730658		108		STAGECOACH 20-7
-CELSIUS ENERGY CO				RECEIVED:	03/05/84	JA: UT P
8423713	089-83	4303730848		102-2		PATTERSON UNIT WELL #3
-COASTAL OIL & GAS CORP				RECEIVED:	03/05/84	JA: UT P
8423720	107-83	4304730400		108		NBU 37-13B
8423716	101-83	4304730450		108		NBU 46-26B
-MARATHON OIL COMPANY				RECEIVED:	03/05/84	JA: UT P
8423719	105-83	4303730690		102-2		TIN CUP MESA #1-25 (DESERT CREEK)
8423717	106-83	4303730815		102-2		TIN CUP MESA #3-23
** BUREAU OF INDIAN AFFAIRS, OSAGE AGENCY, PAWHUSKA, OK						
-SHORT OIL CO				RECEIVED:	03/05/84	JA: OK Y
8423740		3511300000		103		BARNARD 4
8423741		3511300000		103		BARNARD 5A
8423736		3511300000		103		BARNARD 11
8423737		3511300000		103		BARNARD 12
8423732		3511300000		103		BARNARD 13
8423730		3511300000		103		BARNARD 14
8423733		3511300000		103		BARNARD 15
8423742		3511300000		103		BARNARD 16
8423734		3511300000		103		BARNARD 17
8423738		3511300000		103		BARNARD 18
8423743		3511300000		103		BARNARD 19
8423735		3511300000		103		BARNARD 20
8423731		3511300000		103		BARNARD 21
8423739		3511300000		103		BARNARD 22
8423744		3511300000		103		BARNARD 23

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FIELD NAME	PROD	PURCHASER
PITCHFORK RANCH (MORR	1500.0	TRANSWESTERN PIPE
EDDY UNDESIGNATED	360.0	NATURAL GAS PIPEL
EDDY UNDESIGNATED	182.0	NATURAL GAS PIPEL
QUERECHO PLAINS QA	100.0	PHILLIPS PETROLEU
PENJACK	35.0	TRANSWESTERN PIPE
TURKEY TRACK NORTH	25.0	TRANSWESTERN PIPE
TURKEY TRACK	150.0	NORTHERN NATURAL
TURKEY TRACK	450.0	NORTHERN NATURAL
WILDCAT	12.0	TRANSWESTERN PIPE
UNDESIGNATED	80.0	CONOCO INC
PECOS SLOPE ABO	121.0	TRANSWESTERN PIPE
PECOS SLOPE ABO	55.0	TRANSWESTERN PIPE
EUMONT (Y-7R-Q)	5.9	PHILLIPS PETROLEU
EUMONT (YATES-7 RIVER	5.2	PHILLIPS PETROLEU
EUMONT (YATES-7 RIVER	5.0	PHILLIPS PETROLEU
SAWYER (SAN ANDRES)	9.2	CITIES SERVICE OI
EUNICE SAN ANDRES SOU	10.6	EL PASO NATURAL G
CHAPITA WELLS UNIT.	0.0	MOUNTAIN FUEL SUP
	0.0	MOUNTAIN FUEL SUP
CHAPITA WELLS	0.0	MOUNTAIN FUEL SUP
STAGECOACH	0.0	MOUNTAIN FUEL SUP
UNDESIGNATED	27.4	MOUNTAIN FUEL RES
NATURAL BUTTES UNIT	0.0	COLORADO INTERSTA
NATURAL BUTTES UNIT	0.0	COLORADO INTERSTA
TIN CUP MESA	36.0	MOUNTAIN FUEL RES
TIN CUP	37.0	MOUNTAIN FUEL RES
BARNARD	0.0	PHILLIPS PETROLEU
BARNARD	0.0	PHILLIPS PETROLEU
BARNARD	0.0	PHILLIPS PETROLEU
BARNARD	0.0	PHILLIPS PETROLEU
BARNARD	0.0	PHILLIPS PETROLEU
BARNARD	0.0	PHILLIPS PETROLEU
BARNARD	0.0	PHILLIPS PETROLEU
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BARNARD	0.0	PHILLIPS PETROLEU
BARNARD	0.0	PHILLIPS PETROLEU
BARNARD	0.0	PHILLIPS PETROLEU
BARNARD	0.0	PHILLIPS PETROLEU

[FR Doc. 84-8839 Filed 4-2-84; 8:45 am]

BILLING CODE 6717-01-C

[Volume 1095]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: March 28, 1984.

Note.—By final issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, *will not be published in the* **Federal Register.** Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parites should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New res. on old OCS lease
Section 103: New onshore production well
Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED MARCH 28, 1984

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
ALASKA OIL & GAS CONSERVATION COMMISSION									
-ARCO ALASKA INC		RECEIVED: 03/08/84 JA: AK							
8424181		5002920585		102-4		KUPARUK RIVER UNIT #1C-8	KUPARUK RIVER	0.0	
MISSISSIPPI OIL & GAS BOARD									
-MAXWELL EXPLORATION INC		RECEIVED: 03/06/84 JA: MS							
8423939	5-84-147	2314720145		103	107-DP	THAD LOWE ESTATE 26-1 WELL #1	KNOXO	900.0	
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
-BEREA OIL AND GAS CORPORATION		RECEIVED: 03/09/84 JA: NY							
8424165	5232	3101318219		102-2	107-TF	W BROWN #1	WILDCAT	14.0	COLUMBIA GAS TRAN
-DORAN & ASSOCIATES INC		RECEIVED: 03/09/84 JA: NY							
8424167	5371	3101318349		102-2	107-TF	C PETERSON UNIT #2 KV-48	CARROLL	25.0	COLUMBIA GAS TRAN
-EMPIRE ENERGIES		RECEIVED: 03/09/84 JA: NY							
8424155	7207	3102918796		103	107-TF	ZITTLE #1	CONCORD	0.0	NATIONAL FUEL GAS
-ENVIROGAS INC		RECEIVED: 03/09/84 JA: NY							
8424162	5398	3101318195		107-TF		A LAWSON #1	ELLINGTON - MEDINA	18.0	
8424157	5140	3101318178		107-TF		B HOWE #1	ELLINGTON - MEDINA	18.0	
8424161	5237	3101316355		107-TF		D KEEFE #1	CHAUTAUQUA - MEDINA	18.0	COLUMBIA GAS TRAN
8424159	5139	3101318160		107-TF		E HEATH #1	CLYMER - MEDINA	18.0	
8424160	[illegible]	3101318161		107-TF		E HEATH #1	CLYMER - MEDINA	18.0	
8424163	5397	3101318159		107-TF		H JACOBSON #1	ELLINGTON - MEDINA	18.0	
8424158	5137	3101318018		107-TF		J BRIGGS #6	CLYMER - MEDINA	18.0	
8424164	5396	3101318288		107-TF		L HAVILAND #1	ELLERY - MEDINA	18.0	
-LENAPE RESOURCES CORP		RECEIVED: 03/09/84 JA: NY							
8424156	5627	3112117232		108		TAYLOR FARMS UNIT #3 LRC #119	LEICESTER	19.0	ELIZABETHTOWN GAS
-NRM PETROLEUM CORPORATION		RECEIVED: 03/09/84 JA: NY							
8424170	5163	3100918119		102-2	107-TF	GROVER #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8424169	5165	3100916838		102-2	107-TF	LYLE WAITE #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
-TRAHAN PETROLEUM INC		RECEIVED: 03/09/84 JA: NY							
8424168	5242	3101317809		102-2	107-TF	AUFFINGER #1 31-013-17809	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424166	5269	3101317852		102-2	107-TF	AUFFINGER #4 #31-013-17852	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424153	7190	3101318658		107-TF		BLY #3 #31-013-18658	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424178	7196	3101318419		107-TF		C ANDERSON #4 #31-013-18419	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424180	7192	3101316470		107-TF		FALCONE #3 #31-013-16470	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424172	5244	3101318067		102-2	107-TF	GILBERT #1 31-013-18067	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424176	7204	3101318606		107-TF		HALE #2 #31-013-18606	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424154	7188	3101318659		107-TF		KOFOD #1 #31-013-18659	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424171	5246	3101317983		102-2	107-TF	MADISON #3 31-013-17983	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424179	7194	3101318507		107-TF		NELSON #1 #31-013-18507	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424177	7206	3101318580		107-TF		WERO #1 #31-013-18580	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424174	7198	3101318693		107-TF		RUBLEE #2 #31-013-18693	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424175	7202	3101318648		107-TF		TARR #1 #31-013-18648	ELLINGTON	36.0	COLUMBIA GAS TRAN
8424173	7200	3101318671		107-TF		WRAGG #1 #31-013-18671	ELLINGTON	36.0	COLUMBIA GAS TRAN
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
-ANGERMAN ASSOCIATES INC		RECEIVED: 03/08/84 JA: PA							

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8424103	22479	3706327665		103		KD COLEMAN #10 - IND-27665	W PENNA UPPER DEVONIA	35.0	PEOPLES NATURAL G
8424109		3706327629		103		NICHOLAS L FEDORUK #1 - IND-27629	W PENN - UPPER DEVONI	25.0	PEOPLES NATURAL G
-ASHTOLA PRODUCTION CO				RECEIVED:	03/08/84	JA: PA			
8424058	20378	3712921868		108		CLYDE H LOWE ET UX #1	HAWKEYE POOL	0.0	TEXAS EASTERN TRA
8424046	19940	3712921750		108		THOMAS & MARY LAPOTOVSKY #1	MAYFIELD POOL	0.0	TEXAS EASTERN TRA
-CNG DEVELOPMENT CO				RECEIVED:	03/08/84	JA: PA			
8424104	22482	3706327695		103		A J KING #2 CNGD #276	MONTGOMERY TWP	57.0	
8424094	22377	3706327675		103		E D GOSS #2 CNGD #277	MONTGOMERY	55.0	
-D & P DRILLING CO				RECEIVED:	03/08/84	JA: PA			
8424100	22461	3706327581		103		ST FRANCIS R C CHURCH #1	CANOE	30.0	T W PHILLIPS GAS
-ENERGY GAS & OIL CORP				RECEIVED:	03/08/84	JA: PA			
8424043	19113	3703100000		108		E L PHILLIPS #2 SER NO 94	CURRYSVILLE	1.2	PEOPLES NATURAL G
8424045	19115	3703100000		108		E L PHILLIPS #4 SER NO 107	CURRYSVILLE	1.5	PEOPLES NATURAL G
8424047	19983	3703100000		108		FRAN HEPLER #5 SER NO 15	FROGTOWN	0.6	PEOPLES NATURAL G
8424054	19992	3703100000		108		FRANK HEPLER #1 SER NO 11	FROGTOWN	0.2	PEOPLES NATURAL G
8424052	19988	3703100000		108		FRANK HEPLER #2 SER NO 12	FROGTOWN	0.5	PEOPLES NATURAL G
8424048	19984	3703100000		108		FRANK HEPLER #3 SER NO 13	FROGTOWN	0.6	PEOPLES NATURAL G
8424049	19985	3703100000		108		FRANK HEPLER #6 SER NO 16	FROGTOWN	0.2	PEOPLES NATURAL G
8424044	19114	3703100000		108		JOHN MOGGY #1 SER NO 106	CURRYSVILLE	3.1	PEOPLES NATURAL G
8424051	19987	3703100000		108		MARGARET HEPLER #1 SER NO 9	FROGTOWN	0.3	PEOPLES NATURAL G
8424050	19986	3703100000		108		MARK E STAHLMAN #1 SER NO 100	FROGTOWN	1.1	PEOPLES NATURAL G
8424057	19995	3703100000		108		MARK E STAHLMAN #2 SER NO 101	FROGTOWN	0.9	PEOPLES NATURAL G
8424055	19993	3703100000		108		MARK STALHMAN #1 SER NO 17	FROGTOWN	0.5	PEOPLES NATURAL G
8424056	19994	3703100000		108		ROY D MILLER #1 SER NO 5	FROGTOWN	2.6	PEOPLES NATURAL G
8424042	19991	3703100000		108		ROY D MILLER #2 SER NO 6	FROGTOWN	0.4	PEOPLES NATURAL G
8424041	19990	3703100000		108		ROY D MILLER #4 SER NO 7	FROGTOWN	0.2	PEOPLES NATURAL G
8424053	19989	3703100000		108		ROY D MILLER #5 SER NO 8	FROGTOWN	0.4	PEOPLES NATURAL G
-HANLEY & [illegible]				RECEIVED:	03/08/84	JA: PA			
8424062	22132	3700522861		103		G D RUMBAUGH SHB17 SN1729	DAYTON	6.8	T W PHILLIPS GAS
8424061	22131	3700522895		103		R LONG SHB16 SN1728	DAYTON	9.1	PEOPLES NATURAL G
-KRIEBEL GAS CO INC				RECEIVED:	03/08/84	JA: PA			
8424091	22320	3706327661		103		MCCULLY #4	BLAIRSVILLE	28.0	
8424093	22338	3706327676		103		SHIELDS #1	HUDSON	30.0	
8424098	22443	3706327677		103		SHIELDS #2	JOHNSONBURG	30.0	
-KRIEBEL WELLS 83				RECEIVED:	03/08/84	JA: PA			
8424090	22318	3706327647		103		DUNCAN #5	BLAIRSVILLE	30.0	
8424096	22427	3706327662		103		JOBE #1	NASHVILLE	29.0	
8424092	22321	3706327655		103		MONOSKY #1	JOHNSONBURG	30.0	
-LEBOEUF ENERGY INC				RECEIVED:	03/08/84	JA: PA			
8424082	22228	3704923201		107-TF		KNABLEIN #1 ERI-23201	WATERFORD	0.0	NATIONAL FUEL GAS
8424083	22229	3704923201		102-2		KNABLEIN #1 ERI-23201	WATERFORD	0.0	NATIONAL FUEL GAS
8424081	22227	3704923093		107-TF		MCGAHAN #2 ERI-23093	WATERFORD	0.0	NATIONAL FUEL GAS
8424084	22230	3704923093		102-2		MCGAHAN #2 ERI-23093	WATERFORD	0.0	NATIONAL FUEL GAS
-MAC-MAR INC				RECEIVED:	03/08/84	JA: PA			
8424080	22208	3706327664		103		KUNKLE #1	BLAIRSVILLE	15.0	PEOPLES NATURAL G
-NEA CROSS CO				RECEIVED:	03/08/84	JA: PA			
8424107	22054	3704923400		102-2		GEORGE NICK #1	WATERFORD	10.0	NATIONAL FUEL GAS
8424108	22505	3704923400		107-TF		GEORGE NICK #1	WATERFORD	10.0	NATIONAL FUEL GAS
8424105	22502	3704923347		102-2		GEORGE PULAKOS #1	LEBOEUF	10.0	NATIONAL FUEL GAS
8424106	22503	3704923347		107-TF		GEORGE PULAKOS #1	LEBOEUF	10.0	NATIONAL FUEL GAS
-PEOPLES NATURAL GAS CO				RECEIVED:	03/08/84	JA: PA			
8424085	22278	3706327667		103		J M GEORGE #4 - IND-27667	W PENNA - UPPER DEVON	15.0	PEOPLES NATURAL G
8424089	22284	3706327561		103		J LESLIE FERGUSON #3 - IND-27561	W PENNA - UPPER DEVON	25.0	PEOPLES NATURAL G
8424088	22283	3706327555		103		J LESLIE FERGUSON #4 - IND-27555	W PENNA - UPPER DEVON	23.0	PEOPLES NATURAL G
8424099	22437	3706327492		103		JAMES H MACK #4 - IND-27492	W PENNA - UPPER DEVON	14.0	PEOPLES NATURAL G
8424097	22439	3706327461		103		JOHN M BYERS #3 - IND-27461	W PENNA - UPPER DEVON	56.0	PEOPLES NATURAL G
8424086	22280	3706327541		103		MUSSER FORESTS INC #2 - IND-27541	W PENNA - UPPER DEVON	48.0	PEOPLES NATURAL G
8424087	22281	3706327553		103		MUSSER FORESTS INC #3 - IND-27553	W PENNA - UPPER DEVON	60.0	PEOPLES NATURAL G
-REX-HIDE REALTY INC				RECEIVED:	03/08/84	JA: PA			
8424095	22424	3706327696		103		GEORGE E KING ET AL #2	GRANT	40.0	
-RICHARD M STEWART				RECEIVED:	03/08/84	JA: PA			
8424060	22090	3706327650		103		SHEARWOOD TERRACE DEV IND-27650	W PA UPPER DEVONIAN S	15.0	PEOPLES NATURAL G
-S T JOINT VENTURE 82-C				RECEIVED:	03/08/84	JA: PA			
8424079	22187	3703321522		103		KRESS #2	BLOOM	25.0	CONSOLIDATED GAS
-S T JOINT VENTURE 82-D				RECEIVED:	03/08/84	JA: PA			
8424078	22186	3703321554		102-2		SINCLAIR #2	JORDAN	25.0	COLUMBIA GAS TRAN
-TETRA ENERGY GROUP LTD				RECEIVED:	03/08/84	JA: PA			
8424076	22174	3704923185		107-TF		FRANCIS M SUROVICK #1	ELK CREEK/FRANKLIN	6.3	COLUMBIA GAS TRAN
8424075	22173	3704923206		107-TF		FRANK ROBASKY #1	ELK CREEK/FRANKLIN	8.1	COLUMBIA GAS TRAN
8424063	22161	3704923122		107-TF		GARY K GASTEMIRE #1	ELK CREEK/FRANKLIN	8.5	COLUMBIA GAS TRAN
8424064	22162	3704923123		107-TF		GARY K GASTEMIRE #2	ELK CREEK/FRANKLIN	8.1	COLUMBIA GAS TRAN
8424072	22170	3704923222		107-TF		GARY K GASTEMIRE #3	ELK CREEK/FRANKLIN	7.2	COLUMBIA GAS TRAN
8424073	22171	3704923156		107-TF		JACK G BAKER #1	ELK CREEK/FRANKLIN	11.6	COLUMBIA GAS TRAN
8424077	22175	3704923183		107-TF		JACK G BAKER #2	ELK CREEK/FRANKLIN	13.5	COLUMBIA GAS TRAN
8424065	22163	3704923138		107-TF		L B ZIMMER #1	ELK CREEK/FRANKLIN	15.0	COLUMBIA GAS TRAN
8424068	22166	3704923034		107-TF		LOIS C BACON #1	UNION CITY FIELD EMMO	8.1	COLUMBIA GAS TRAN
8424069	22167	3704923184		107-TF		MARTHA HEADLEY #1	ELK CREEK/FRANKLIN	21.6	COLUMBIA GAS TRAN
8424070	22168	3704923207		103		MARTIN HANAS #1	ELK CREEK/FRANKLIN	11.7	COLUMBIA GAS TRAN
8424071	22169	3704923313		107-TF		NICK ARTELLO #1	ELK CREEK/FRANKLIN	3.6	COLUMBIA GAS TRAN
8424074	22172	3704923208		107-TF		RALPH G SOLTIS #1	ELK CREEK/FRANKLIN	54.0	COLUMBIA GAS TRAN
8424066	22164	3704923124		107-TF		S S ARDILLO #1	ELK CREEK/FRANKLIN	27.0	COLUMBIA GAS TRAN
8424067	22165	3704923221		107-TF		THOMAS MCCAMMEN #1	ELK CREEK/FRANKLIN	18.0	COLUMBIA GAS TRAN
-TURM OIL INC				RECEIVED:	03/08/84	JA: PA			
8424059	21816	3700522874		103		OREN & REBECCA GOOD #1	DAYTON	36.0	PEOPLES NATURAL G
-ZAMA PETROLEUM INC				RECEIVED:	03/08/84	JA: PA			
8424102	22463	3705900000		107-PE		LEMMON #1	NETTLE HILL	1.7	PEOPLES NATURAL G
8424101	22462	3705900000		107-PE		LEMMON #2(3)	NETTLE HILL	1.7	PEOPLES NATURAL G
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VIRGINIA DEPARTMENT OF LABOR & INDUSTRY									
**********									
-ASHLAND EXPLORATION INC				RECEIVED:	03/06/84	JA: VA			
8423937		4502720444		108		LON B ROGERS #24 - 092661	VIRGINIA GAS FIELD	17.0	CONSOLIDATED GAS
-NRM PETROLEUM CORPORATION				RECEIVED:	03/06/84	JA: VA			
8423938		4502720280		108		ISLAND CREEK #14	KEEN MOUNTAIN	4.3	ASHLAND EXPLORATI
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-ALLEGHENY LAND & MINERAL COMPANY				RECEIVED:	03/08/84	JA: WV			
8424121		4709701853		108		A - 766	WASHINGTON	0.0	COLUMBIA GAS TRAN
8424119		4708300302		108		A - 832	MIDDLE FORK	0.0	COLUMBIA GAS TRAN
8424116		4708300285		108		A - 843	MIDDLE FORK	0.0	COLUMBIA GAS TRAN
8424117		4708300286		108		A - 844	ROARING CREEK	0.0	COLUMBIA GAS TRAN
8424122		4709702076		108		A - 864	MEADE	0.0	COLUMBIA GAS TRAN
8424111		4708300232		108		A-761	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8424112		4708300233		108		A-762
8424110		4708300231		108		A-764
8424113		4708300242		[illegible]		A-769
8424118		4708300290		108		A-840
8424114		4708300274		108		A-841
8424115		4708300280		108		A-842
8424120		4708300305		108		A-867
-ASHLAND EXPLORATION INC		RECEIVED: 03/08/84 JA: WV				
8424139		4701900482		103		CHRISTIAN COLLIERY #4 - 094261
8424140		4701900482		107-DV		CHRISTIAN COLLIERY #4 - 094262
8424133		4700501387		103		COURTNEY CO #18 - 094131
8424134		4700501387		107-DV		COURTNEY CO #18 - 094132
8424137		4704700200		[illegible]		ISRAEL FORMAN #1 - 031330
8424135		4703903860		103		KANAWHA VALLEY BANK #5 - 093271
8424136		4703903860		107-DV		KANAWHA VALLEY BANK #5 - 093272
8424138		4701900474		103		LAWSON HAMILTON - 093121
8424143		4704501035		103		PARDEE LAND CO #67 - 095041
8424144		4704501085		107-DV		PARDEE LAND CO #67 - 095042
8424145		4710900891		103		PARDEE LAND CO #71 - 094301
8424146		4710900891		107-DV		PARDEE LAND CO #71 - 094301
8424147		4710900902		103		PARDEE LAND COMPANY #72 - 095151
8424148		4710900902		107-DV		PARDEE LAND COMPANY #72 - 095152
8424141		4701900490		103		RIVERSIDE PARK INC #3 - 094561
8424142		4701900490		107-DV		RIVERSIDE PARK INC #3 -094562
-CABOT OIL & GAS CORP		RECEIVED: 03/08/84 JA: WV				
8424125		4700501340		108		LITTLE COAL LAND C #12
-CLINT HURT & ASSOCIATES INC		RECEIVED: 03/08/84 JA: WV				
8424123		4707301511		107-DV		BUNNER #1
-CONSOLIDATED GAS SUPPLY CORPORATION		RECEIVED: 03/08/84 JA: WV				
8424124		4708300710		102-4		JAMES E WALLACE 12763
-D G HANEY INC		RECEIVED: 03/08/84 JA: WV				
8424132		4704103254		102-3		LIVELY #29
8424131		4704103255		102-3		VILLERS #28
-MAXWELL M SMITH AGENT		RECEIVED: 03/08/84 JA: WV				
8424128		4704103292		[illegible]		W C TAYLOR #2056
8424127		4704100168		108		W C TAYLOR 4089
-RIMROCK PRODUCTION CORP		RECEIVED: 03/08/84 JA: WV				
8424126		4708505718		107-DV		DELTON COX #2
-SUMMERS KENNETH C		RECEIVED: 03/08/84 JA: WV				
8424130		4701700008		[illegible]		EULA RUPPERT #1
8424129		4704100362		[illegible]		PAUL WEST #1
-SHIFT ENERGY CO		RECEIVED: 03/07/84 JA: WV				
8423919		4709100348		107-DV		L THORN #2
WYOMING OIL & GAS CONSERVATION COMMISSION						
-NORTHWEST EXPLORATION COMPANY		RECEIVED: 03/09/84 JA: WY				
8424182 MG 112-83		4902320127		108-ER		RED GAP #1
8424183 MG 185-82		4902320127		108		RED GAP #1
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, DENVER, CO						
-CHEVRON U S A INC		RECEIVED: 03/06/84 JA: CO F				
8423924 CD 0204-84		0510308293		103		L M HAGOOD A 15X
-COORS ENERGY CO		RECEIVED: 03/06/84 JA: CO F				
8423922 CD 0153-83		0504506435		102-2	107-TF	USA 1-1LW
8423921 CD 0124-83		0504506442		102-2	107-TF	USA 1-12LW
-EXXON CORPORATION		RECEIVED: 03/06/84 JA: CO F				
8423925 CD 0208-84		0507708189		102-2		VEGA UNIT #4
-TXO PRODUCTION CORP		RECEIVED: 03/06/84 JA: CO F				
8423923 CD 0193-83		0510309039		103		TEXAS MOUNTAIN FEDERAL #6
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE, NM						
-AMERADA HESS CORPORATION		RECEIVED: 03/07/84 JA: NM K				
8423945 NM-1085-83		3003902292		108		J APACHE "D" #3
-AMOCO PRODUCTION CO		RECEIVED: 03/07/84 JA: NM K				
8423978 NM-1057-83		3003923614		103		JICARILLA APACHE TRIBAL 151 #5E
8423979 NM-1056-83		3003923165		103		JICARILLA APACHE TRIBAL 151 #6E
8423955 NM-1064-83		3004524888		[illegible]		PAN AM FEDERAL "C" #3
-BASIN MINERALS INC		RECEIVED: 03/07/84 JA: NM K				
8423951 NM-1072-83		3004525733		103		FEDERAL #1
-BCO INC		RECEIVED: 03/07/84 JA: NM K				
8423971 NM-1087-83		3004320338		[illegible]		FEDERAL B #2
8423970 NM-1088-83		3004320339		[illegible]		FEDERAL B #3
8423943 NM-1089-83		3004320340		108		FEDERAL B #4
8423944 NM-1090-83		3004320337		[illegible]		FEDERAL B #5
8423973 NM-1091-83		3004320332		108		FEDERAL B #6
8423972 NM-1092-83		3004320334		108		FEDERAL I #1
8423941 NM 1093-83		3004320335		[illegible]		FEDERAL I #2
8423942 NM 1094-83		3004320336		108		FEDERAL I #3
8423965 NM-1095-83		3004320333		[illegible]		FEDERAL I #4
-BILLY J KNOTT		RECEIVED: 03/07/84 JA: NM K				
8424016 NM-2291-83PB		3004509616		108-PB		KELLY #1
-CONOCO INC		RECEIVED: 03/07/84 JA: NM K				
8423961 NM 0964-83		3003920440		[illegible]		AXI APACHE J #18A
8423960 NM 0963-83		3003920414		[illegible]		AXI APACHE J #19
8423985 NM 0962-83		3003920438		[illegible]		AXI APACHE J #22
8423977 NM-1052-83		3003922321		103		NORTHEAST HAYNES #2E
-DAVE M THOMAS JR		RECEIVED: 03/07/84 JA: NM K				
8423957 NM 0019-83		3004320268	D	108-SA		CHACON JICARILLA #9
-DUGAN PRODUCTION CORP		RECEIVED: 03/07/84 JA: NM K				
8423958 NM-1054-83		3003922830		103		DIVIDE #1
8423959 NM-1055-83		3003922830		103		DIVIDE #1
8423948 NM-1883-83		3004522284		[illegible]		HARD DEAL #3
8424015 NM-9-83-ER		3004507237		108-ER		PET INC #1
8424014 NM-6-83-ER		3004523545		108-ER		WESTERN FEDERAL #8Y
-EL PASO NATURAL GAS COMPANY		RECEIVED: 03/07/84 JA: NM K				
8423997 NM 1062-83		3004505839		[illegible]		BALLARD #12
8423967 NM-1079-83		3003920252		[illegible]		CANYON LARGO UNIT #150
8424025 NM-2181-83PB		3004506523		108-PB		FLORANCE D #6
8424031 NM-2485-83PB		3004513257		108-PB		HANCOCK B #3
8424030 NM-2489-83PB		3004511783		108-PB		HEATON #20
8424026 NM-2184-83PB		3003905206		108-PB		LINDRITH UNIT #53
8424037 NM-2475-83PB		3004507054		108-PB		MICHENER A #1

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FIELD NAME	PROD	PURCHASER
MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
ROARING CREEK	0.0	COLUMBIA GAS TRAN
PAINT CREEK	31.0	COLUMBIA GAS TRAN
PAINT CREEK	57.0	
SILER	9.0	COLUMBIA GAS TRAN
SILER	22.0	COLUMBIA GAS TRAN
VIRGINIA	20.0	CONSOLIDATED GAS
PAINT CREEK	29.0	COLUMBIA GAS TRAN
PAINT CREEK	27.0	
PAINT CREEK	112.0	
LOGAN-WYOMING	16.0	CONSOLIDATED GAS
LOGAN-WYOMING	32.0	CONSOLIDATED GAS
LOGAN-WYOMING	49.0	CONSOLIDATED GAS
LOGAN-WYOMING	49.0	CONSOLIDATED GAS
LOGAN-WYOMING	11.0	CONSOLIDATED GAS
LOGAN-WYOMING	82.0	CONSOLIDATED GAS
LOUP CREEK	28.0	
LOUP CREEK	5.0	
WASHINGTON	19.0	TENNESSEE GAS PIP
ST MARYS	360.0	COLUMBIA GAS TRAN
ROARING CREEK	51.0	GENERAL SYSTEM PU
UNION	30.0	CONSOLIDATED GAS
UNION	30.0	CONSOLIDATED GAS
UNION	0.0	EQUITABLE GAS CO
UNION	0.0	EQUITABLE GAS CO
SLAB CREEK	31.0	COLUMBIA GAS TRAN
COVE	3.1	EQUITABLE GAS CO
UNION	3.5	EQUITABLE GAS CO
FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
BIG PINEY FRONTIER	21.7	NORTHWEST PIPELIN
BIG PINEY FRONTIER-MU	21.7	NORTHWEST PIPELIN
RANGELY	17.5	NORTHWEST PIPELIN
LOGAN WASH	241.5	NORTHERN NATURAL
LOGAN WASH	79.2	NORTHERN NATURAL
PICEANCE BASIN	31.0	NORTHERN NATURAL
TEXAS MOUNTAIN	78.0	NORTHWEST PIPELIN
OTERO	[illegible]	EL PASO NATURAL G
BASIN - DAKOTA	30.0	GAS CO OF NEW MEX
BASIN - DAKOTA	30.0	GAS CO OF NEW MEX
FLORA VISTA - FRUITLA	0.0	EL PASO NATURAL G
AZTEC PICTURED CLIFFS	200.0	EL PASO NATURAL G
ALAMITO GALLUP	8.0	EL PASO NATURAL G
ALAMITO GALLUP	8.0	EL PASO NATURAL G
ALAMITO GALLUP	8.0	EL PASO NATURAL G
ALAMITO GALLUP	8.0	EL PASO NATURAL G
ALAMITO GALLUP	8.0	EL PASO NATURAL G
ALAMITO GALLUP	6.0	EL PASO NATURAL G
ALAMITO GALLUP	9.0	EL PASO NATURAL G
ALAMITO GALLUP	9.0	EL PASO NATURAL G
ALAMITO GALLUP	9.0	EL PASO NATURAL G
BLANCO	8.8	EL PASO NATURAL G
AXI APACHE AREA	6.9	GAS CO OF NEW MEX
AXI APACHE AREA	14.8	GAS CO OF NEW MEX
AXI APACHE AREA	16.8	GAS CO OF NEW MEX
OTERO RANCH	13.0	EL PASO NATURAL G
BALLARD PICTURED CLIF	18.2	EL PASO NATURAL G
UNDESIGNATED MANCOS	25.0	
BLANCO MESAVERDE	25.0	
WAW FRUITLAND PICTURE	8.0	EL PASO NATURAL G
DJO	0.0	NORTHWEST PIPELIN
SOUTH GALLEGOS	0.0	EL PASO NATURAL G
BASIN - DAKOTA	14.0	EL PASO NATURAL G
OTERO - CHACRA	14.0	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G
AZTEC	0.0	EL PASO NATURAL G
AZTEC	0.0	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G
SOUTH BLANCO	0.0	EL PASO NATURAL G

VOLUME 1095

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8424035	NM-2482-83PB	3004512070		108-PB		NEUDECKER #4	AZTEC	0.0	EL PASO NATURAL G
8424027	NM-2490-83PB	3004512081		108-PB		NEUDECKER #5	AZTEC	0.0	EL PASO NATURAL G
8424039	NM-2181-83PB	3004507016		108-PB		PHILLIPS #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8424038	NM-2182-83PB	3003906791		108-PB		RINCON UNIT #77	SOUTH BLANCO	0.0	EL PASO NATURAL G
8424028	NM-2487-83PB	3003960085		108-PB		SAN JUAN 27-5 UNIT #12	BLANCO	0.0	EL PASO NATURAL G
8424040	NM-2180-83PB	3003907281		108-PB		SAN JUAN 28-4 UNIT #28	BLANCO	0.0	EL PASO NATURAL G
8424034	NM-2484-83PB	3003920175		108-PB		SAN JUAN 28-4 UNIT #33	BASIN	0.0	EL PASO NATURAL G
8424032	NM-2486-83PB	3003907298		108-PB		SAN JUAN 28-5 UNIT NP #3	BLANCO	0.0	EL PASO NATURAL G
8423996	NM-1061-83	3003920519		108		SAN JUAN 30-6 UNIT #12M	BLANCO - MESA VERDE	17.0	EL PASO NATURAL G
8424033	NM-2483-83PB	3003907793		108-PB		SAN JUAN 30-6 UNIT #11	BLANCO	0.0	EL PASO NATURAL G
8424029	NM-2488-83PB	3003960098		108-PB		SAN JUAN 30-6 UNIT #3	BLANCO	0.0	EL PASO NATURAL G
8424036	NM-2473-83PB	3004500000		108-PB		SCHWERDFEGER A #23	SOUTH BLANCO	0.0	EL PASO NATURAL G
-GETTY OIL COMPANY				RECEIVED:	03/07/84	JA: NM K			
8424006	NM-2478-83PB	3004506679		108-PB		CHARLEY PAH #1	SOUTH BLANCO	0.0	EL PASO NATURAL G
8424002	NM-17-83-ER	3004506714		108-ER		CHARLEY PAH #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8424001	NM-8-83-ER	3004506612		108-ER		CHARLEY PAH #3	SOUTH BLANCO	0.0	EL PASO NATURAL G
8423998	NM-2285-83PB	3004506459		108-PB		G R GENTLE #1	SOUTH BLANCO	0.0	EL PASO NATURAL G
8423956	NM-1063-83	3003905173		108		JICARILLA "D" #2	SOUTH LINDRITH GALLUP	10.0	NORTHWEST PIPELIN
8424000	NM-15-83-ER	3003905837		108-ER		JICARILLA C #18	OTERO	0.0	EL PASO NATURAL G
8423999	NM-13-83-ER	3003905826		108-ER		JICARILLA C #24	OTERO	0.0	EL PASO NATURAL G
8424005	NM-2476-83PB	3004513247		108-PB		NEAH VICTORIA #1	SOUTH BLANCO	0.0	EL PASO NATURAL G
8424007	NM-2292-83PB	3004513247		108-PB		NEAH VICTORIA #1	SOUTH BLANCO	0.0	EL PASO NATURAL G
8424004	NM-2477-83PB	3004506876		108-PB		NEAH VICTORIA #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8424003	NM-11-83-ER	3004506639		108-ER		NELLIE PLATERO #4	SOUTH BLANCO	0.0	EL PASO NATURAL G
-GRACE PETROLEUM CORPORATION				RECEIVED:	03/07/84	JA: NM K			
8423974	NM-1096-83	3003922337		108		CONNIE 29-1	LYBROOK	0.0	EL PASO NATURAL G
8423984	NM 1097-83	3003905301		108		CONNIE 29-3	LYBROOK	0.0	GAS CO OF NEW MEX
8423975	NM 1102-83	3003922365		108		GRACE FEDERAL 6-1			
-JOHN E SCHALK				RECEIVED:	03/07/84	JA: NM K			
8423946	NM-1086-83	3003921618		108		SCHALK 29-4 #6	GOBERNADOR PICTURED C	0.0	NORTHWEST PIPELIN
-KOCH INDUSTRIES INC				RECEIVED:	03/07/84	JA: NM K			
8424017	NM-2299-83PB	3004521830		108-PB		CAIN #2	BLANCO	0.0	EL PASO NATURAL G
8424018	NM-2300-83PB	3004508504		108-PB		WRIGHT #2	AZTEC	0.0	EL PASO NATURAL G
-MARATHON OIL COMPANY				RECEIVED:	03/07/84	JA: NM K			
8423993	NM 1065-83	3004524335		103		OHIO "C" GOVERNMENT #3-E	KUTZ CANYON (GRANEROS	212.0	EL PASO NATURAL G
-MARTIN W B & ASSOCIATES				RECEIVED:	03/07/84	JA: NM K			
8423981	NM-1068-83	3003923096		103		MARTIN FLORANCE #8	SOUTH LINDRITH GALLUP	252.0	NORTHWEST PIPELIN
8423949	NM-1070-83	3003923193		103		MARTIN-FLORANCE #11	SOUTH LINDRITH GALLUP	504.0	NORTHWEST PIPELIN
8423950	NM-1071-83	3003923212		103		MARTIN-FLORANCE #13	SOUTH LINDRITH GALLUP	468.0	NORTHWEST PIPELIN
8423980	NM-1869-83	3003923097		103		MARTIN-FLORANCE #9	S LINDRITH GALLUP-DAK	684.0	NORTHWEST PIPELIN
-MERRION OIL & GAS CORP				RECEIVED:	03/07/84	JA: NM K			
8423983	NM 1098-83	3003923183		103		CANADA MESA COM #4	DEVILS FORK GALLUP	167.9	NORTHWEST PIPELIN
8423994	NM-1066-83	3004320287		108		JICARILLA 428 #6	BALLARD PICTURED CLIF	13.2	NORTHWEST PIPELIN
8423952	NM 1067-83	3004320539		108		PONCA #3	BALLARD PICTURED CLIF	17.4	GAS CO OF NEW MEX
8423964	NM 1101-83	3003923081		103		SALAZAR G 27-1	DEVILS FORK GALLUP	27.4	EL PASO NATURAL G
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	03/07/84	JA: NM K			
8424021	NM-2491-83PB	3003906438		108-PB		JICARILLA D #7	BLANCO & GAVALIN	0.0	NORTHWEST PIPELIN
8424023	NM-2297-83PB	3003906438		108-PB		JICARILLA D #7	BLANCO & GAVALIN PC	0.0	NORTHWEST PIPELIN
8424019	NM-2479-83PB	3003921811		108-PB		JICARILLA E #2A	BLANCO	0.0	NORTHWEST PIPELIN
8424022	NM-2493-83PB	3003920169		108-PB		JICARILLA G #9 PC	GAVALIN	0.0	NORTHWEST PIPELIN
8424020	NM-2492-83PB	3003982347		108-PB		JICARILLA H #9	GAVALIN	0.0	NORTHWEST PIPELIN
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	03/07/84	JA: NM K			
8423947	NM-1078-83	3004523657		108		BLANCO #9A	BLANCO MESAVERDE	171.8	NORTHWEST PIPELIN
8423988	NM 2296-83	3003907944		108-PB		ROSA 1B	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8423989	NM 2295-83	3003907980		108-PB		ROSA 35X	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8423990	NM 2293-83	3003907567		108-PB		SAN JUAN 29-5 UNIT 16	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8423991	NM 2294-83	3003921148		108-PB		SAN JUAN 30-5 UNIT 2R	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
-SOUTHERN UNION EXPLORATION COMPANY				RECEIVED:	03/07/84	JA: NM K			
8423992	NM-2183-83	3003900000		108-SA		JICARILLA "E" #4	TAPACITO PICTURED CLI	8.0	GAS CO OF NEW MEX
8423986	NM-0022-83	3003900000		108-SA		JICARILLA "K" #1	SOUTH BLANCO PICTURED	12.0	GAS CO OF NEW MEX
8423987	NM-0023-83	3003900000		108-SA		JICARILLA "K" #4	SOUTH BLANCO PICTURED	14.0	GAS CO OF NEW MEX
-SOUTHLAND ROYALTY CO				RECEIVED:	03/07/84	JA: NM K			
8423976	NM 1053-83	3004507447		108		CAIN #6	AZTEC	10.0	SOUTHERN UNION GA
8424013	NM-21-83-ER	3004510069		108-ER		HALE #3	BLANCO	0.0	EL PASO NATURAL G
8423954	NM-1058-83	3004506898		108		HANKS #15	BASIN	10.0	SOUTHERN UNION GA
8423953	NM-1059-83	3004511731		108		HANKS #20	BLANCO	12.0	SOUTHERN UNION GA
8423995	NM-1060-83	3004511732		108		HANKS #21	BLANCO	11.0	SOUTHERN UNION GA
8424012	NM-2470-83PB	3004508787		108-PB		HARE #1	AZTEC	0.0	EL PASO NATURAL G
8423969	NM-1082-83	3004507371		108		MCCLANAHAN #13	AZTEC	14.0	SOUTHERN UNION GA
8423948	NM-1081-83	3004500000		108		MCCLANAHAN #4	AZTEC	15.0	SOUTHERN UNION GA
8424011	NM-2469-83PB	3004508945		108-PB		MCGRATH C #1	DAKOTA	0.0	SOUTHERN UNION GA
8424010	NM-2468-83PB	3004513116		108-PB		NYE #10	BASIN	0.0	SOUTHERN UNION GA
8424008	NM-20-83-ER	3004508358		108-ER		REID #2	FULCHER KUTZ	0.0	SOUTHERN UNION GA
8424009	NM-2467-83PB	3004511701		108-PB		THOMPSON #11	BASIN	0.0	SOUTHERN UNION GA
-TENNECO OIL COMPANY				RECEIVED:	03/07/84	JA: NM K			
8423962	NM-1099-83	3004525585		103		FLORANCE 66E	BASIN DAKOTA	32.0	NORTHWEST PIPELIN
8423963	NM-1100-83	3004525604		103		HEATON COM B #1	BASIN DAKOTA	57.0	EL PASO NATURAL G
8423966	NM 1077-83	3003923172		103		REAMES COM 2	BLANCO MESAVERDE	89.0	EL PASO NATURAL G
8423982	NM 1077-83	3003923172		103		REAMES COM 2	BASIN DAKOTA	33.0	NORTHWEST PIPELIN
-TENNECO OIL EXPLORATION AND PRODUCT				RECEIVED:	03/07/84	JA: NM K			
8424024	NM-2460-83PB	3004511659		108-PB		FLORANCE #56	BLANCO	0.0	EL PASO NATURAL G

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** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM

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-CONOCO INC				RECEIVED:	03/06/84	JA: NM L			
8423932	RNM 0354-83	3002521653		108		BRITT PHILLIPS #1	NMFU-WEIR BLINEBRY	1.0	WARREN PETROLEUM
8423934	RNM 0355-83	3002506450		108		HAWK B-10 #9	NMFU-DRINKARD/TUBB	11.4	GETTY OIL CO
-CONVEST ENERGY CORP				RECEIVED:	03/06/84	JA: NM L			
8423928	RNM 0303-83	3002500000		108		ZATTU CUSHING #2	JALMAT YATES-SEVEN RI	19.7	EL PASO NATURAL G
-GULF ENERGY PRODUCING COMPANY				RECEIVED:	03/08/84	JA: NM L			
8424149	RNM 0168-83	3004100000		108		FEDERAL HAYS #1 LSE #14-01-001-6770	ALLISON FARM	20.0	WARREN PETROLEUM
-HILLIARD OIL & GAS INC				RECEIVED:	03/08/84	JA: NM L			
8424150	RNM 0501-83	3000520893		102-4		MCCLELLAN FEDERAL #1	CEDAR POINT (STRAWN)	140.0	CABOT PIPELINE CO
-MCKAY OIL CORP				RECEIVED:	03/08/84	JA: NM L			
8424152	RNM 0104-83	3000561924		102-2		MCKAY-PENNZOIL FEDERAL #1	PECOS SLOPE ABO (GAS)	146.0	PECOS RIVER GAS P
-STEVENS OPERATING CORP				RECEIVED:	03/08/84	JA: NM L			
8424151	RNM 0469-83	3000570633		102-4		NICHOLS DALE FEDERAL #6	PECOS SLOPE ABO	139.0	TRANSWESTERN PIPE
-TRANSWESTERN GAS SUPPLY CO				RECEIVED:	03/06/84	JA: NM L			
8423931	RNM 0122-83	3000561661		102-2		ANTELOPE FEDERAL #1	WILDCAT-ABO	62.0	
8423930	RNM 0123-83	3000561766		102-2		ANTELOPE FEDERAL #2	ABO-WILDCAT	82.0	
8423929	RNM 0124-83	3000561774		102-2		ANTELOPE FEDERAL #3	ABO-WILDCAT	43.0	
-WARRIOR INC				RECEIVED:	03/06/84	JA: NM L			
8423933	RNM-0165-83	3002504352		108		FEDERAL "D" #3	EUMONT (YATES-7 RIVER	6.)	PHILLIPS PETROLEU
-WESTALL-MASK				RECEIVED:	03/06/84	JA: NM L			

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JD NO   JA DKT        API NO      D SEC(1) SEC(2) WELL NAME
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 8423936  RMM-0883-83  3001521763   108            MINKLE "B" FEDERAL 68
-WORLDWIDE ENERGY CORPORATION          RECEIVED:  03/06/84    JA: NM  L
 8423935  RMM 0895-83  3002509504   108            DANIEL VAUGHN B-3 84
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** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, TULSA, OK
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-TXO PRODUCTION CORP                  RECEIVED:  03/07/84    JA: OK  M
 8423940  OK-T-II-84   3504321831   103            BLACK BULL #1
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** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, SALT LAKE CITY, UT
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-NATURAL GAS CORPORATION OF CALIF     RECEIVED:  03/06/84    JA: UT  P
 8423920  108-83       4[illegible]13306   102-2          FEDERAL 21-5-G
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** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROCK SPRINGS, WY
**********************************************************************
-CELERON OIL & GAS CO                 RECEIVED:  03/06/84    JA: WY  S
 8423927  W 102-3      [illegible]   102-4          CASTLE CREEK 21-28
 8423924  W 103-3      4903520731   102-4          CASTLE CREEK 34-28
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[FR Doc. 84-8940 Filed 4-3-84; 8:45 am]

BILLING CODE 6717-01-C

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FIELD NAME	PROD	PURCHASER
SHUGART	0.0	CONTINENTAL OIL C
JALMAT	7.3	EL PASO NATURAL G
NW CANTON	0.0	
PLEASANT VALLEY AREA	54.0	PACIFIC GAS & ELE
CASTLE CREEK FEDERAL	547.5	NORTHWEST PIPELIN
CASTLE CREEK FEDERAL	193.3	NORTHWEST PIPELIN

[Volume 1096]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: March 28, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, *will not be published in the* **Federal Register.** Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204 within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS) For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New res. on old OCS lease
Section 103: New onshore production well
Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
107–PE: Production enhancement
107–TF: New tight formation
107–FT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1096
ISSUED MARCH 28, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
ALASKA OIL & GAS CONSERVATION COMMISSION									
-ARCO ALASKA INC				RECEIVED: 03/13/84		JA: AK			
8424305		5002920585		102-4		KUPARUK RIVER UNIT #1C-8	KUPARUK RIVER OIL POO	302.8	
KANSAS CORPORATION COMMISSION									
-FRONTIER OIL CO				RECEIVED: 03/13/84		JA: KS			
8424186	K-83-0618	1516521060		102-4		PFEIFER "B" #1	REICHEL	189.0	K N ENERGY INC
LOUISIANA OFFICE OF CONSERVATION									
-ARCO OIL AND GAS COMPANY				RECEIVED: 03/13/84		JA: LA			
8424189	84-0073	1700125090		107-PE		D BREAUX #2 STUTES SU T	DUSON FIELD	719.6	LOUISIANA INTRAST
8424190	84-0074	1700120045		107-PE		D BREAUX #3 STUTES SU X	DUSON FIELD	417.2	LOUISIANA INTRAST
-BORDEN INC				RECEIVED: 03/13/84		JA: LA			
8424187	84-0173	1710121143		102-4		J R HEIMEN #1 PLAN RA SUD	BALDWIN	1710.0	LOUISIANA INTRAST
-CALLON PETROLEUM COMPANY				RECEIVED: 03/13/84		JA: LA			
8424193	83-0625	1706320088		102-4		CROWN ZELLERBACH #2 1ST WX RA SUF	LOCKHART CROSSING (WI	47.0	LOUISIANA INTRAST
8424195	83-1145	1706320085		102-4		O M BARNETT #1 1ST WX RA SUD	LOCKHART CROSSING (WI	55.0	SOUTHERN NATURAL
8424194	83-0695	1706320073		102-4		REED ERICKSON ET AL #1 1ST WA RASUI	LOCKHART CROSSING	219.0	SOUTHERN NATURAL
-COTTON PETROLEUM CORPORATION				RECEIVED: 03/13/84		JA: LA			
8424191	84-0051	1700720322		102-4		BLUMENTHAL #1-D	NW OAKLEY	175.0	UNITED GAS PIPE L
-CRYSTAL OIL AND LAND COMPANY				RECEIVED: 03/13/84		JA: LA			
8424192	83-0728	1701521616		102-4		WILLAMETTE "F" #1 CV RB SU33	ARKANA	182.5	ARKANSAS LOUISIAN
-DAVIS OIL COMPANY				RECEIVED: 03/13/84		JA: LA			
8424197	83-0906	1701921448		102-4		ST ROMAIN #1 HACK RA SU B	SOUTH BELL CITY	8.0	DOW INTRASTATE GA
-GALLERIA ENERGY CORP				RECEIVED: 03/13/84		JA: LA			
8424188	84-0174	1711123571		103		J W CASKEY #1	MONROE	13.0	WEST MONROE GAS G
-SAMANTHA PETROLEUM CORP				RECEIVED: 03/13/84		JA: LA			
8424198	82-0392	1708120405		102-2		GUILLOT #1	GAY ISLAND	198.0	UNITED GAS PIPE L
8424199	82-0393	1708120407		102-2		GUILLOT #2	GAY ISLAND	0.0	UNITED GAS PIPE L
8424200	82-0394	1708100000		102-2		GUILLOT #3	GAY ISLAND	0.0	UNITED GAS PIPE L
-TXO PRODUCTION CORP				RECEIVED: 03/13/84		JA: LA			
8424196	83-1316	1706120342		103		WRIGHT "C" #1-D CV D RA SUA	CHOUDRANT	388.7	DELHI GAS PIPELIN
NORTH DAKOTA INDUSTRIAL COMMISSION									
-DEPCO INC				RECEIVED: 03/13/84		JA: ND			
8424184	904	3305300000		102-4		O'CONNER #41-2	GLASE BLUFF	13.0	
-MESA PETROLEUM CO				RECEIVED: 03/13/84		JA: ND			
8424185	905	3302500382		102-2		PELTON 2 #1	BEAR CREEK FIESL	252.0	KOCH INDUSTRIES I
VIRGINIA DEPARTMENT OF LABOR & INDUSTRY									
-EARLY GROVE GAS CO				RECEIVED: 03/13/84		JA: VA			
8424304		4516920635		102-2		RIDGEWAY #3	EARLY GROVE	60.0	EAST TENNESSEE NA
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE, NM									
-AMOCO PRODUCTION CO				RECEIVED: 03/13/84		JA: NM K			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8424280	NM 2525-83PB	3004522931		108-PB		ELLIOTT GAS COM "M" #1
8424279	NM 2498-83PB	3003920568		108-PB		JICARILLA CONTRACT 146 #23
8424202	NM-1119-83	3004525634		103		PIPKIN GAS COM "A"/TRUE #1E
8424281	NM-2526-83PB	3004521715		108-PB		VAN HOOK FEDERAL #1
8424278	NM 2481-83PB	3004520970		108-PB		W D HEATH "B" #5
-BLACKWOOD & NICHOLS CO LTD		RECEIVED: 03/13/84 JA: NM K				
8424294	NM 2541-83PB	3004522528		108-PB		NORTHEAST BLANCO UNIT #65
-CONOCO INC		RECEIVED: 03/13/84 JA: NM K				
8424289	NM 2544-83PB	3003920649		108-PB		CONOCO 29-4 #2
-CONSOLIDATED OIL & GAS INC		RECEIVED: 03/13/84 JA: NM K				
8424222	NM-073683102	3004525574		102-4		CAIN #2
-COTTON PETROLEUM CORPORATION		RECEIVED: 03/13/84 JA: NM K				
8424220	NM-2016-82	3003922217		[illegible]		APACHE #26
-DAVE M THOMAS JR		RECEIVED: 03/13/84 JA: NM K				
8424296	NM 2543-83PB	3004320268		108-PB		CHACON JICARILLA #9
-DEPCO INC		RECEIVED: 03/13/84 JA: NM K				
8424291	NM 2509-83PB	3003900000		108-PB		M K L #6
-DOME PETROLEUM CORP		RECEIVED: 03/13/84 JA: NM K				
8424208	NM-1079-83	3004523808		[illegible]		NAVAJO 13-26-13 #4
-EL PASO NATURAL GAS COMPANY		RECEIVED: 03/13/84 JA: NM K				
8424254	NM 2536-83PB	3003920943		108-PB		CANYON LARGO UNIT #272
8424253	NM 2537-83PB	3004520864		108-PB		DAUM #8
8424235	NM 2501-83PB	3004520812		108-PB		DAY A #12
8424247	NM 2511-83PB	3004520890		108-PB		FIELDS #8
8424243	NM 2504-83PB	3004508917		108-PB		GARTNER #3
8424265	NM 2521-83PB	3004520988		108-PB		HEATON #28
8424239	NM 2500-83PB	3004521453		108-PB		HUBBELL #14
8424241	NM 2506-83PB	3004506069		108-PB		HUERFANITO UNIT #12
8424237	NM 2532-83PB	3003906220		108-PB		JICARILLA 120 C #13
8424267	NM 2528-83PB	3003906291		108-PB		JICARILLA 120 C #4
8424207	NM-1076-83	3004521678		108		LLOYD A #4 CH & PC
8424256	NM 2551-83PB	3004500000		108-PB		MOORE #1
8424266	NM 2524-83PB	3004521028		108-PB		MUDGE #41
8424255	NM 2550-83PB	3004521084		108-PB		MUDGE #42 PC
8424233	NM 2503-83PB	3004509334		108-PB		RIDDLE B #3
8424263	NM 2523-83PB	3004521031		108-PB		ROELOFS #5
8424246	NM 2512-83PB	3004521035		108-PB		ROELOFS #6
8424249	NM 2515-83PB	3004521089		108-PB		ROELOFS #7
8424258	NM 2513-83PB	3004521090		108-PB		ROELOFS A #6
8424234	NM 2502-83PB	3004507093		108-PB		RUSSELL #2
8424250	NM 2534-83PB	3003906819		108-PB		SAN JUAN 27-4 UNIT #10
8424264	NM 2522-83PB	3003921045		108-PB		SAN JUAN 27-4 UNIT #115
8424259	NM 2520-83PB	3003921007		108-PB		SAN JUAN 27-4 UNIT #116
8424217	NM-0833-83	3003922993		[illegible]		SAN JUAN 27-4 UNIT #148
8424252	NM 2539-83PB	3003906937		108-PB		SAN JUAN 27-4 UNIT #21
8424238	NM 2531-83PB	3003906862		108-PB		SAN JUAN 27-4 UNIT #25
8424269	NM 2530-83PB	3003906792		108-PB		SAN JUAN 27-4 UNIT #27
8424244	NM 2508-83PB	3003920416		108-PB		SAN JUAN 27-4 UNIT #56
8424219	NM-0553-83	3003920694		[illegible]		SAN JUAN 27-4 UNIT #68
8424261	NM 2518-83PB	3003920886		108-PB		SAN JUAN 27-4 UNIT #77
8424260	NM 2519-83PB	3003920954		108-PB		SAN JUAN 27-4 UNIT #78
8424218	NM-0505-83	3003920822		[illegible]		SAN JUAN 27-4 UNIT [illegible]
8424245	NM 2507-83PB	3003920901		108-PB		SAN JUAN 27-4 UNIT #85
8424268	NM 2527-83PB	3003907191		108-PB		SAN JUAN 27-5 UNIT #61
8424248	NM 2516-83PB	3003920878		108-PB		SAN JUAN 28-5 UNIT #95
8424240	NM 2499-83PB	3003907302		108-PB		SAN JUAN 28-6 UNIT #4
8424211	NM-0705-83	3003907482		[illegible]		SAN JUAN 29-7 UNIT #96
8424251	NM 2533-83PB	3004507718		108-PB		SAN JUAN 29-9 #1
8424236	NM 2529-83PB	3003900000		108-PB		SAN JUAN 30-6 UNIT NP #35
8424262	NM 2517-83PB	3004521821		108-PB		SCOTT #10
8424242	NM 2505-83PB	3004509709		108-PB		SULLIVAN #1
8424257	NM 2514-83PB	3004521172		108-PB		SUNRAY #5
-GETTY OIL COMPANY		RECEIVED: 03/13/84 JA: NM K				
8424286	NM 2547-83PB	3004506459		108-PB		G R GENTLE #1
8424287	NM 2545-83PB	3003921068		108-PB		JICARILLA "C" #27
8424223	NM-0222-83	3004522930		108		JICARILLA "C" #32
8424288	NM 2548-83PB	3004506480		108-PB		JOHN CHARLES #2
-GRACE PETROLEUM CORPORATION		RECEIVED: 03/13/84 JA: NM K				
8424228	NM-1183-83	3003905302		[illegible]		GOFF 30-5
-HUSKY OIL COMPANY		RECEIVED: 03/13/84 JA: NM K				
8424293	NM 2497-83PB	3004500000		108-PB		BOLACK #2-D
-LADD PETROLEUM CORPORATION		RECEIVED: 03/13/84 JA: NM K				
8424290	NM 2554-83PB	3004599333		108-PB		BUTTE #1
-M J BRANNON		RECEIVED: 03/13/84 JA: NM K				
8424297	NM 2566-83PB	3004505238		108-PB		FEDERAL 28 #1
-MARATHON OIL COMPANY		RECEIVED: 03/13/84 JA: NM K				
8424292	NM 2553-83PB	3003906309		108-PB		JICARILLA APACHE #4
-MOBIL PRDG TEXAS & NEW MEXICO INC		RECEIVED: 03/13/84 JA: NM K				
8424226	NM-1105-83	3003906492		[illegible]		JICARILLA D #2
8424284	NM2563-83PB	3003906438		108-PB		JICARILLA D #7
8424285	NM 2564-83PB	3003921811		108-PB		JICARILLA E #2A
8424282	NM 2494-83PB	3003907044		108-PB		JICARILLA E #3
8424283	NM 2565-83PB	3003907044		108-PB		JICARILLA E #3
8424229	NM 1104-83	3003905379		[illegible]		JICARILLA OTERO FEDERAL #1
-SHERMAN F WAGENSELLER		RECEIVED: 03/13/84 JA: NM K				
8424212	NM-1120-83	3003923300		103		MOBIL APACHE 18 #3
-SOUTHLAND ROYALTY CO		RECEIVED: 03/13/84 JA: NM K				
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8424270	[illegible] 2555-83PB	3004510637		108-PB		EAST #6
8424275	[illegible] 2561-83PB	3004510243		108-PB		EAST #8
8424277	NM 2562-83PB	3004520368		108-PB		GRENIER B #7
8424273	NM 2559-83PB	3004508787		108-PB		HARE #1
8424276	NM 2560-83PB	3004509953		108-PB		HOLDER A #1
8424274	NM 2558-83PB	3004513116		108-PB		NYE #10
8424271	NM 2557-83PB	3004511701		108-PB		THOMPSON #11
-TENNECO OIL COMPANY		RECEIVED: 03/13/84 JA: NM K				
8424230	NM-981-83	3004513035		[illegible]		BERGER A #1
8424209	NM-936-83	3004511721		[illegible]		M JACKSON #6
8424231	NM 1012-83	3004506466		[illegible]		HARGRAVE A #3
8424210	NM-944-83	3004520065		[illegible]		MOORE 7
-THELMA FORD SIMMONS		RECEIVED: 03/13/84 JA: NM K				
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-UNICON PRODUCING CO		RECEIVED: 03/13/84 JA: NM K				
8424205	NM-1107-83	3004525689		103		ALBRIGHT #10

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BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
GONZALES MESA VERDE	0.0	EL PASO NATURAL G
BASIN - DAKOTA	51.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
BLANCO MESAVERDE NE/4	18.0	EL PASO NATURAL G
EAST SAN JUAN	14.0	NORTHWEST PIPELIN
LAPLATA	40.0	SOUTHERN UNION GA
S BLANCO	0.0	NORTHWEST PIPELIN
BALLARD PICTURED CLIF	18.0	EL PASO NATURAL G
SOUTH BLANCO PICTURED	0.0	
WAW FRUITLAND-PICTURE	8.1	EL PASO NATURAL G
BALLARD PICTURED CLIF	0.0	EL PASO NATURAL G
AZTEC PICTURED CLIFFS	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
BLANCO MESA VERDE	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
OTERO CHACRA	0.0	EL PASO NATURAL G
BALLARD PICTURED CLIF	0.0	EL PASO NATURAL G
SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
OTERO-CHACRA & AZTEC-	35.0	EL PASO NATURAL G
BLANCO MESA VERDE	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
BLANCO MESA VERDE	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
BLANCO MESA VERDE	0.0	EL PASO NATURAL G
TAPACITO PICTURED CLI	0.0	EL PASO NATURAL G
TAPACITO PICTURED CLI	0.0	EL PASO NATURAL G
TAPACITO PICTURED CLI	0.0	EL PASO NATURAL G
TAPACITO - PICTURED C	6.4	EL PASO NATURAL G
TAPACITO PC	0.0	EL PASO NATURAL G
BLANCO MESA VERDE	0.0	EL PASO NATURAL G
BLANCO MESA VERDE	0.0	EL PASO NATURAL G
BASIN DAKOTA	0.0	EL PASO NATURAL G
TAPACITO - PICTURED C	15.0	EL PASO NATURAL G
TAPACITO PICTURED CLI	0.0	EL PASO NATURAL G
TAPACITO PICTURED CLI	0.0	EL PASO NATURAL G
TAPACITO - PICTURED C	15.0	EL PASO NATURAL G
TAPACITO PICTURED CLI	0.0	EL PASO NATURAL G
BLANCO MESA VERDE	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
BASIN DAKOTA	0.0	EL PASO NATURAL G
OTERO CHACRA	20.0	EL PASO NATURAL G
SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
ESCRITO FIELD	0.0	GAS CO OF NEW MEX
BASIN DAKOTA	0.0	EL PASO NATURAL G
BASIN DAKOTA	0.0	EL PASO NATURAL G
BASIN DAKOTA	0.0	EL PASO NATURAL G
BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
GAVALIN PICTURED CLIF	9.4	NORTHWEST PIPELIN
BLANCO MESA VERDE	0.0	NORTHWEST PIPELIN
BLANCO MESA VERDE	0.0	NORTHWEST PIPELIN
BLANCO MESA VERDE	0.0	NORTHWEST PIPELIN
BLANCO MESA VERDE	0.0	NORTHWEST PIPELIN
BASIN DAKOTA	12.6	EL PASO NATURAL G
SOUTH BLANCO PC	40.1	EL PASO NATURAL G
BASIN DAKOTA	0.0	SOUTHERN UNION GA
BASIN DAKOTA	0.0	SOUTHERN UNION GA
BASIN DAKOTA	0.0	SOUTHERN UNION GA
AZTEC PICTURED CLIFFS	0.0	SOUTHERN UNION GA
AZTEC PICTURED CLIFFS	0.0	SOUTHERN UNION GA
BASIN DAKOTA	0.0	SOUTHERN UNION GA
BASIN DAKOTA	0.0	SOUTHERN UNION GA
BASIN DAKOTA	0.0	SOUTHERN UNION GA
BASIN DAKOTA	13.0	EL PASO NATURAL G
AZTEC PICTURED CLIFFS	11.0	EL PASO NATURAL G
FULCHER-KUTZ PICTURED	14.0	SOUTHERN UNION GA
BASIN DAKOTA	11.0	EL PASO NATURAL G
AZTEC PICTURED CLIFFS	0.0	
GALLUP	96.0	EL PASO NATURAL G

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8424213	NM-1121-83	3004529720		101		ALBRIGHT #12	GALLUP	75.0	EL PASO NATURAL G
8424216	NM-1107-83	3004525688		101		ALBRIGHT #13	GALLUP	69.0	EL PASO NATURAL G
8424206	NM-1108-83	3004525703		101		ALBRIGHT #9	GALLUP	111.0	EL PASO NATURAL G
8424227	NM-1106-83	3004525699		101		ANGEL PEAK #27	GALLUP	160.0	GAS CO OF NEW MEX
8424201	NM-1122-83	3004525698		101		ANGEL PEAK #29	GALLUP	256.0	GAS CO OF NEW MEX
8424214	NM-1113-83	3004525687		101		ANGEL PEAK "B" #14	GALLUP	78.0	GAS CO OF NEW MEX
8424203	NM-1111-83	3004521649		103		ANGEL PEAK "B" #43	GALLUP	75.0	GAS CO OF NEW MEX
8424204	NM-1112-83	3004525658		101		CONGRESS #14	GALLUP	67.0	GAS CO OF NEW MEX
8424232	NM-0788-83	3004521425		104		NEWSOM 'A' #7	BASIN DAKOTA	33.0	EL PASO NATURAL G
8424221	NM-0129-83	3004525089		108		NEWSOM 'B' 1-R	BALLARD PICTURED CLIF	0.0	GAS CO OF NEW MEX
8424225	NM-1110-83	3004525707		101		SUMMIT #15	GALLUP	44.0	SOUTHERN UNION GA
8424224	NM 0398-83	3004525499		103		ZACHRY 41	ARMENTA GALLUP EXT	89.0	EL PASO NATURAL G
-UNION OIL COMPANY OF CALIF				RECEIVED:	03/13/84	JA: NM K			
8424215	NM-1116-83	3004525759		101		NAVAJO #9-D30	BASIN DAKOTA	75.0	NORTHWEST PIPELIN
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM									
-BROWN JOE E				RECEIVED:	03/13/84	JA: NM L			
8424319	RNM 0369-83	3004100000		108		FARRELL FEDERAL #16	CHAVEROO SAN ANDRES	1.5	NATURAL GAS PIPE
8424328	RNM 0367-83	3004100000		108		FARRELL FEDERAL [illegible]	CHAVEROO SAN ANDRES	0.4	NATURAL GAS PIPE
8424327	RNM 0368-83	3004100000		108		FARRELL FEDERAL #7	CHAVEROO SAN ANDRES	0.4	NATURAL GAS PIPE
8424326	RNM 0366-83	3004100000		108		FARRELL FEDERAL #8	CHAVEROO SAN ANDRES	1.0	NATURAL GAS PIPE
-GETTY OIL COMPANY				RECEIVED:	03/13/84	JA: NM L			
8424320	RNM 0012-84	3002506064		108		EAST EUMONT UNIT #127	EUMONT	4.4	WARREN PETROLEUM
8424321	RNM-000184ER	3002522010		108-ER		WILLIARD BEATY #5	LAZY J PENNSYLVANIAN	0.0	WARREN PETROLEUM
-MESA PETROLEUM CO				RECEIVED:	03/13/84	JA: NM L			
8424331	RNM 0118-83	3000561914		102-2		NACHO FEDERAL #13	WEST PECOS SLOPE ABO	500.0	
-SOUTHLAND ROYALTY CO				RECEIVED:	03/13/84	JA: NM L			
8424324	RNM 0518	3001524243		102-4		HOLLY FEDERAL "4" #1	SAND TANK	50.0	CONOCO INC
-UNION TEXAS PETROLEUM				RECEIVED:	03/13/84	JA: NM L			
8424318	RNM 0239-83	3000520054		108		BAXTER FEDERAL #3	CATO (SAN ANDRES)	[illegible].0	CITIES SERVICE D1
8424317	RNM 0240-83	3000520073		108		BAXTER FEDERAL #4	CATO (SAN ANDRES)	[illegible].0	CITIES SERVICES O
8424323	RNM 0241-83	3000520098		108		BAXTER FEDERAL #5	CATO (SAN ANDRES)	12.0	CITIES SERVICES [illegible]
8424322	RNM 0242-83	3000520073		108		BAXTER FEDERAL #6	CATO (SAN ANDRES)	12.0	CITIES SERVICES [illegible]
8424329	RNM 0237-83	3000520006		108		WINKLER FEDERAL #1	CATO (SAN ANDRES)	4.0	CITIES SERVICES O
8424330	RNM 0238-83	3000520067		108		WINKLER-FEDERAL #2	CATO (SAN ANDRES)	[illegible].0	CITIES SERVICES [illegible]
-WARRIOR INC				RECEIVED:	03/13/84	JA: NM L			
8424325	RNM 0009-83	3002525737		108		FEDERAL "D" #12	EUMONT (Y-7R-Q)	4.2	PHILLIPS PETROLEU
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, CASPER, WY									
-CHAPARRAL RESOURCES INC				RECEIVED:	03/13/84	JA: WY Q			
8424314	W 711-2	4900905323		108		GOVERNMENT 32-1	FLAT TOP	10.0	K N ENERGY INC
-DAVIS OIL COMPANY				RECEIVED:	03/13/84	JA: WY Q			
8424310	W 51-3	4900526787		102-2		AMOS DRAW FEDERAL #3	WILDCAT	232.0	PHILLIPS PETROLEU
8424309	W 52-3	4900526786		102-2		AMOS DRAW FEDERAL #4	WILDCAT	205.2	
-DIAMOND CHEMICALS CO				RECEIVED:	03/13/84	JA: WY Q			
8424308	W 53-3	4900922198		103		MERLE FEDERAL MO 14-29	SCOTT	0.0	MCCULLOCH GAS PRO
-GETTY OIL COMPANY				RECEIVED:	03/13/84	JA: WY Q			
8424311	W 44-3	4900921965		102-2		SCOTT #12-1	SCOTT FIELD	20.0	PHILLIPS PETROLEU
-HPC INC				RECEIVED:	03/13/84	JA: WY Q			
8424312	W 805-2	4900922145		102-2		POWELL USA #1-26	MOYER DRAW	197.0	PHILLIPS PETROLEU
-NORTEX GAS & OIL CO				RECEIVED:	03/13/84	JA: WY Q			
8424306	W 67-3	4900922117		103		FEDERAL 405 #1-26	SPEARHEAD RANCH	0.0	MIGC INC
-PETRO ENERGY INC				RECEIVED:	03/13/84	JA: WY Q			
8424307	W 56-3	4904521813		103		FEDERAL 2-23	LONETREE	78.0	PHILLIPS PETROLEU
-WOODS PETROLEUM CORPORATION				RECEIVED:	03/13/84	JA: WY Q			
8424315	W 662-2	4900526577		102-4		PINE TREE UNIT #19-49	PINE TREE UNIT #19-49	66.0	WESTERN GAS PROCE
8424316	W 696-2	4900526590		102-4		PINE TREE UNIT #32-52	PINE TREE	33.0	WESTERN GAS PROCE
8424313	W 731-2	4900526576		102-4	-	PINE TREE UNIT #4-53	PINE TREE	29.0	WESTERN GAS PROCE
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, RAWLINS, WY									
-ARCO OIL AND GAS COMPANY				RECEIVED:	03/09/84	JA: WY R			
8424302	W804-2	4901321304		103		ARCO TRIBAL #36	RIVERTON DOME	115.0	MONTANA DAKOTA UT
-DIAMOND CHEMICALS CO				RECEIVED:	03/09/84	JA: WY R			
8424303	W811-2	4903721675		107-TF		TIERNEY II #12-28	TIERNEY	0.0	NORTHWEST CENTRAL
-GEORGE DOLEZAL JR				RECEIVED:	03/09/84	JA: WY R			
8424298	W 768-2	4900720836		102-2		FEDERAL 1-8	UN-NAMED	70.0	NORTHERN NATURAL
-HOME PETROLEUM CORPORATION				RECEIVED:	03/09/84	JA: WY R			
8424300	W774-2	4900720700		102-2		CIGE FEDERAL 1C-30-17-93	[illegible]	365.0	COLORADO INTERSTA
-HPC INC				RECEIVED:	03/09/84	JA: WY R			
8424299	W773-2	4903722139		102-2		HAY RESERVOIR UNIT #42	HAY RESERVOIR	800.0	COLORADO INTERSTA
-KENAI OIL AND GAS INC				RECEIVED:	03/09/84	JA: WY R			
8424301	W791-2	4903722035		107-TF		FEDERAL #1-5	WILDCAT	817.0	NORTHWEST PIPELIN

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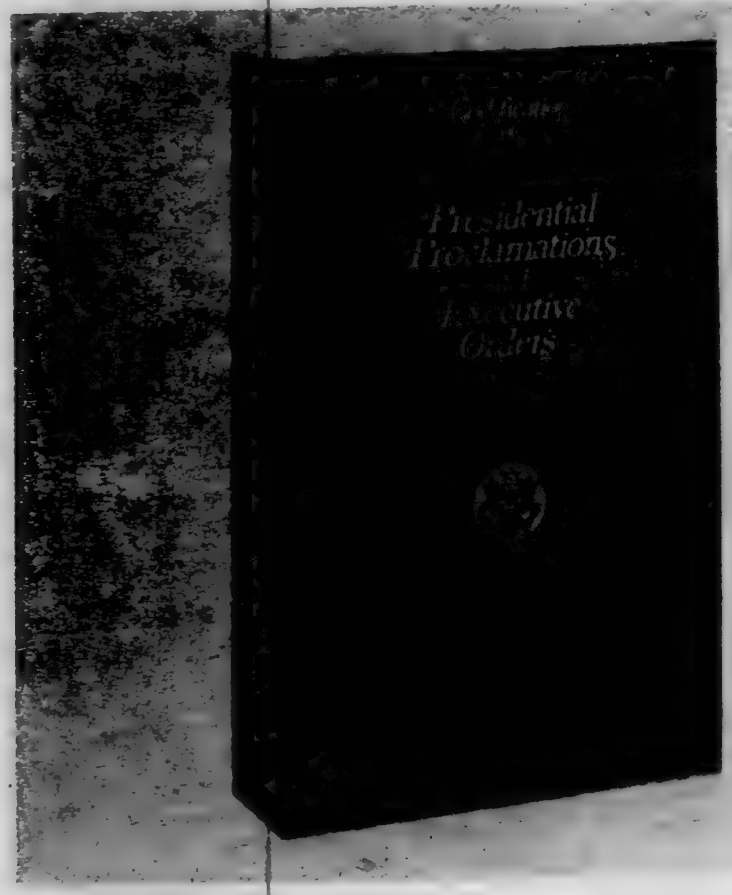

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Vol. 49 No. 66

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Wednesday
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Food and Drug Administration

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Food and Drug Administration

Government Procurement
Postal Service

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWA-31]

Alteration of Marshfield, MA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of the Marshfield, MA, Transition Area to provide airspace protection for aircraft utilizing the nondirectional beacon (NDB) approach to Runway 06 at Marshfield Airport, Marshfield, MA. This action improves air safety by providing controlled airspace for standard instrument approaches to that airport.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8526.

SUPPLEMENTARY INFORMATION:

History

On January 4, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of the Marshfield, MA, Transition Area. The transition area's proposed enlargement is to provide airspace protection for aircraft executing IFR approaches to Runway 06 at Marshfield, MA, Airport (49 FR 419). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

The amendment alters the description of the Marshfield, MA, Transition Area to provide airspace protection for aircraft utilizing the NDB approach to Runway 06 at Marshfield Airport, Marshfield, MA. This action improves air safety by providing controlled airspace for standard instrument approaches to that airport.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), is amended, effective 0901 GMT, May 10, 1984, as follows:

Marshfield, MA—[Amended]

By deleting all the words after "Marshfield, MA;" and substituting the words "and within 5 miles on each side of the 224° bearing from the Marshfield NDB (lat. 42°05'52" N., long. 70°40'33" W.) extending from the NDB to 11.5 miles southwest, excluding the portion within the Boston, MA, and Plymouth, MA, Transition Areas."

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on March 23, 1984.

B. Keith Potts,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-8857 Filed 4-3-84; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASO-3]

Alteration of Transition Area, Jasper, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Jasper, Alabama, transition area by deleting reference to the existing Walker County Airport, which is being closed, and redesignating the transition area based on the new Walker County Airport which recently opened. This action will lower the base of controlled airspace in the vicinity of the new airport from 1,200 to 700 feet above the surface. This controlled airspace is required for the containment of aeronautical operations at the new airport during Instrument Flight Rule conditions. The base of controlled airspace, in the vicinity of the old airport, will be raised from 700 to 1,200 feet above the surface.

EFFECTIVE DATE: 0901 GMT, May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, February 7, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by redesignating the Jasper, Alabama, transition area to provide controlled airspace for aeronautical operations at the new Walker County Airport which recently opened. The present designation is predicated upon an airport which is being closed (49 FR 4503). Interested parties were invited to

participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. In response to the Notice of Proposed Rulemaking, the Walker County Commission advised that the official name of the new airport would be "Walker County Airport-Bevill Field." This name will be reflected in the transition area description. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations redesignates the Jasper, Alabama, transition area based on Walker County Airport-Bevill Field and lowers the base of controlled airspace in the vicinity of the airport from 1,200 to 700 feet above the surface. This action will also raise the floor of controlled airspace, in the vicinity of the old Walker County Airport, from 700 to 1,200 feet above the surface.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Jasper, Alabama, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 GMT, May 10, 1984, as follows:

Jasper, AL—[Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Walker County Airport-Bevill Field (Lat. 33°54'07" N., Long. 87°16'46" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on March 26, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-8856 Filed 4-3-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AWP-14]

Alteration of Control Zone, Modesto, California

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the description of the Control Zone for Modesto City-County Airport, Modesto, California. The Control Zone alteration is necessary to release airspace no longer required for Instrument Flight Rule (IFR) operations.

DATES: Effective April 20 1984.

Comments must be received on or before April 18, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration Airspace and Procedures Branch Post Office Box 92007 Worldway Postal Center Los Angeles, California 90009-2007.

The official docket may be examined in the Western-Pacific Regional Office of Regional Counsel, 15000 Aviation Blvd., Hawthorne, California, Room 6W14.

An informal docket may also be examined during normal business hours at the Western-Pacific Region, Airspace and Procedures Branch, 15000 Aviation Blvd., Hawthorne, California, Room 6E16.

FOR FURTHER INFORMATION CONTACT: Mateo M. Palenzuela, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, Telephone (213) 536-6182.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves the release of controlled airspace no longer required for IFR operations due to cancellation of the approach procedure to Runway 10 at Modesto City-County Airport, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the description of the Modesto, California, Control Zone by deleting the 8-mile extension from the 5-mile radius, northwest of the VOR extension from the 5-mile radius, northwest of the VOR. It will release controlled airspace no longer required for IFR operations due to cancellation of the approach procedure to Runway 10 at Modesto City-County Airport. This action reduces a burden on airspace users and is so minor in nature that the FAA does not anticipate significant public interest. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A on January 3, 1983. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary and that good cause exists for making this amendment effective in less than 30 days after its publication in the **Federal Register.**

List of Subject in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as republished (46 FR 455)), is amended, effective 1500 GMT, March 30, 1984, as follows:

§ 71.171 Modesto, California. [Revised]

Following * * * "(lat. 37°37'35"N., long. 120°57'15"W.);" Delete: "Within 2 miles each side of the Modesto VOR 305° radial, extending from the 5-mile radius zone to 8 miles northwest of the the VOR."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958, (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Los Angeles, California, on March 12, 1984.

Richard L. Devereaux,

Acting Director, Western-Pacific Region.

[FR Doc. 84-8859 Filed 4-3-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 924, 929, 935, 936, 937, and 938

[Docket No. 40328-39]

Information Clearance for Designated National Marine Sanctuaries

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Technical amendment to final rules.

SUMMARY: The permit requirements in the final regulations for the MONITOR, Key Largo, Channel Islands, Point Reyes-Farallon Islands, Looe Key, and Gray's Reef National Marine Sanctuaries are being updated in conformance with the Paperwork Reduction Act of 1980. Appropriate changes will also be made in the regulations for the proposed La Parguera National Marine Sanctuary when they are published as final rules. The proposed regulations were published at 48 FR 9286 (1983).

EFFECTIVE DATE: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: John Epting or Ann Danneberg, (202) 634-4236.

ADDRESS: Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235.

SUPPLEMENTARY INFORMATION: The permit requirements in these regulations are being updated to conform with the information collection requirements of the Paperwork Reduction Act of 1980. The final regulations include the designated MONITOR (15 CFR Part 924), Key Largo (15 CFR Part 929), Channel Islands (15 CFR Part 935), Point Reyes-Farallon Islands (15 CFR Part 936), Looe Key (15 CFR Part 937), and Gray's Reef (15 CFR Part 938) National Marine Sanctuaries.

These regulations allow permits for otherwise prohibited activities if such activity is: (1) Research related to the resources of the Sanctuary; (2) to further the educational value of the Sanctuary; or (3) for salvage or recovery operations. This information collection requires a simple cover letter and a copy of the original research proposal required by the funding institutions. Once a permit has been issued, only a brief letter is necessary to obtain an extension of the approved activity.

This information is used by the Assistant Administrator for Ocean Services and Coastal Zone Management in considering whether to grant a permit. Specific aspects of an application evaluated include: (1) The general professional and financial responsibility of the applicant; (2) the appropriateness of the methods being proposed to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and (4) the end value of the activity. Without this information it would be impossible for the Assistant Administrator to determine whether the proposed activity is in compliance with sanctuary management goals.

List of Subjects in 15 CFR Parts 924, 929, 935, 936, 937, and 938

Administrative practice and procedure, Environmental protection, Marine resources, and Natural resources, Reporting and recordkeeping requirements.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: March 13, 1984.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, 15 CFR Parts 924, 929, 936, 937, and 938 are amended as follows:

Authority: Title III, Pub. L. 95-532, as amended (16 U.S.C. 1431-1434).

PART 924—MONITOR NATIONAL MARINE SANCTUARY REGULATIONS

§ 924.6 [Amended]

1. In § 924.6(a), the following sentence should be added at the end:

This information collection has been approved by the Office of Management and Budget (approval number 0648-0141).

* * * * *

PART 929—KEY LARGO NATIONAL MARINE SANCTUARY REGULATIONS

§ 929.10 [Amended]

2. In § 929.10(b) is amended by revising the Office of Management and Budget control number to read: 0648-0141, and deleting the effective date.

* * * * *

PART 935—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY REGULATIONS

§ 935.9 [Amended]

3. In § 935.9(b), the following sentence should be added at the end:

This information collection has been approved by the Office of Management and Budget (approval number 0648-0141).

* * * * *

PART 936—POINT REYES-FARALLON ISLANDS NATIONAL MARINE SANCTUARY REGULATIONS

§ 936.8 [Amended]

4. In § 936.8(b), the following sentence should be added at the end:

This information collection has been approved by the Office of Management and Budget (approval number 0648-0141).

* * * * *

PART 937—LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS

§ 937.8 [Amended]

5. In § 937.8(b), the following sentence should be added at the end:

This information collection has been approved by the Office of Management and Budget (approval number 0648-0141).

* * * * *

PART 938—GRAY'S REEF NATIONAL MARINE SANCTUARY REGULATIONS

§ 938.8 [Amended]

6. In 938.8(b), the following sentence should be added at the end:

This information collection has been approved by the Office of Management and Budget (approval number 0648–0141).

* * * * *

[FR Doc. 84-8946 Filed 4-3-84; 8:45 am]
BILLING CODE 3510-08-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6520, File No. S7-999]

Confidential Treatment Under the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendment to rule.

SUMMARY: The Commission is adopting an amendment to Rule 406 under the Securities Act of 1933 (the "Securities Act") which will establish a system of confidential treatment under the Securities Act that is similar in scope and procedure to that under the Securities Exchange Act of 1934 (the "Exchange Act"). The revision is a further step in the integration of the disclosure requirements under the two Acts.

EFFECTIVE DATE: May 4, 1984. Persons wishing to comply with the amendment may, however, do so immediately upon publication.

FOR FURTHER INFORMATION CONTACT: Barry Mehlman or Alan L. Dye at (202) 272–2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: As a further step in its continuing effort to integrate the disclosure systems under the Securities Act and Exchange Act, the Commission proposed on November 1, 1983[1] to broaden the information eligible for confidential treatment in documents filed under the Securities Act. That proposal which is being adopted today extends the availability of confidential treatment under the Securities Act to the same type of information that may be granted confidential treatment in an issuer's periodic reports under the Exchange Act.

[1] Release No. 33-6406 (November 1, 1983) (48 FR 51155) November 7, 1983.

Differences in scope of confidential treatment under the Acts are inconsistent with the integration of the disclosure system. With the exception of transaction information, information required to be disclosed in a public offering is generally the same as that required in periodic reports for the trading market.[2] Moreover, the differences can result in inconsistent treatment of Securities Act registrants. The proposal was designed to resolve the inconsistencies with integration and among registrants by establishing a system for confidential treatment under the Securities Act that parallels the Exchange Act.

The amended Rule permits requests for confidential treatment of any document required to be filed under the Securities Act. In addition, the revised Rule conforms the procedure for requesting confidential treatment under the Securities Act to that under the Exchange Act. Amended Rule 406 will condition a grant of confidential treatment on the availability of at least one of the nine Freedom of Information Act ("FOIA")[3] exemptions and a determination by the Commission that, under the facts and circumstances of the particular case, disclosure of the information is not necessary for the protection of investors.

The Commission has determined to adopt, without change, the proposed amendment to Rule 406.

Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a final regulatory flexibility analysis in accordance with 5 U.S.C. 604 regarding the amendment to Rule 406. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing the amendment to Rule 406 at 48 FR 51155. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Barry Mehlman, Division of Corporation Finance, United States Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 at (202) 272–2573.

List of Subjects in 17 CFR Part 230

Forms, Reporting and recordkeeping requirements, Securities.

Text of Amendment

The Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

[2] *See* Release Nos. 33–6231 (September 2, 1980) (45 FR 63630), 33–6331 (August 6, 1981) (46 FR 41902) and 33–6383 (March 3, 1982) (47 FR 11380).

[3] 5 U.S.C. 552.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

By revising § 230.406, Rule 406, to read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

Preliminary Note.—Confidential treatment of supplemental information or other information not required to be filed under the Act should be requested under 17 CFR 200.83 and not under this rule.

(a) Any person submitting any information in a document required to be filed under the Act may make written objection to its public disclosure by following the procedure in paragraph (b) of this section, which shall be the exclusive means of requesting confidential treatment of information included in any document (hereinafter referred to as the "material filed") required to be filed under the Act, *except* that if the material filed is a registration statement on Form S–8 (§ 239.16b of this chapter) or on Form S–3, F–2, or F–3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan, or if the material filed is a registration statement that does not contain a delaying amendment pursuant to Rule 473 (§ 230.473 of this chapter), the person shall comply with the procedure in paragraph (b) *prior* to the filing of a registration statement.

(b) The person shall omit from the material filed the portion thereof which it desires to keep undisclosed (hereinafter called the "confidential portion"). In lieu thereof, the person shall indicate at the appropriate place in the material filed that the confidential portion has been so omitted and filed separately with the Commission. The person shall file with the material filed:

(1) As many copies of the confidential portion, each clearly marked "Confidential Treatment," as there are copies of the material filed with the Commission. Each copy shall contain an appropriate identification of the item or other requirement involved and, notwithstanding that the confidential portion does not constitute the whole of the answer or required disclosure, the entire answer or required disclosure, *except* that in the case where the confidential portion is part of a financial statement or schedule only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the material filed;

(2) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain: (i) An identification of the portion; (ii) a statement of the grounds of the objection referring to and analyzing the applicable exemption(s) from disclosure under § 200.80 of this chapter, the Commission's rule adopted under the Freedom of Information Act (5 U.S.C. 552), and a justification of the period of time for which confidential treatment is sought; (iii) a detailed explanation of why, based on the facts and circumstances of the particular case, disclosure of the information is unnecessary for the protection of investors; (iv) a written consent to the furnishing of the confidential portion to other government agencies, offices, or bodies and to the Congress; and (v) the name, address and telephone number of the person to whom all notices and orders issued under this rule at any time should be directed.

(3) The copies of the confidential portion and the application filed in accordance with this paragraph (b) shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

(c) Pending a determination as to the objection, the material for which confidential treatment has been applied will not be made available to the public.

(d) If it is determined by the Division, acting pursuant to delegated authority, that the application should be granted, an order to that effect will be entered, and a notation to that effect will be made at the appropriate place in the material filed. Such a determination will not preclude reconsideration whenever appropriate, such as upon receipt of any subsequent request under the Freedom of Information Act and, if appropriate, revocation of the confidential status of all or a portion of the information in question.

(e) If the Commission denies the application, or the Division, acting pursuant to delegated authority, denies the application and Commission review is not sought pursuant to § 201.26 of this chapter, confirmed telegraphic notice of the order of denial will be sent to the person named in the application pursuant to paragraph (b)(2)(v) of this section. In such case, if the material filed may be withdrawn pursuant to an applicable statute, rule, or regulation, the registrant shall have the right to withdraw the material filed in accordance with the terms of the applicable statute, rule, or regulation, but without the necessity of stating any grounds for the withdrawal or of obtaining the further assent of the Commission. In the event of such withdrawal, the confidential portion will be returned to the registrant. If the material filed may not be so withdrawn, the confidential portion will be made available for public inspection in the same manner as if confidential treatment had been revoked under paragraph (h) of this section.

(f) If a right of withdrawal pursuant to paragraph (e) of this section is not exercised, the confidential portion will be made available for public inspection as part of the material filed, and the registrant shall amend the material filed to include all information required to be set forth in regard to such confidential portion.

(g) In any case where a prior grant of confidential treatment has been revoked, the person named in the application pursuant to paragraph (b)(2)(v) of this section will be so informed by registered or certified mail. Pursuant to § 201.26 of this chapter, persons making objection to disclosure may petition the Commission for review of a determination by the Division revoking confidential treatment.

(h) Upon revocation of confidential treatment, the confidential portion shall be made available to the public at the time and according to the conditions specified in paragraphs (h) (1)–(2):

(1) Upon the lapse of five days after the dispatch of notice by registered or certified mail of a determination disallowing an objection, if prior to the lapse of such five days the person shall not have communicated to the Secretary of the Commission his intention to seek review by the Commission under § 201.26 of this chapter of the determination made by the Division; or

(2) If such a petition for review shall have been filed under § 201.26 of this chapter, upon final disposition adverse to the petitioner.

(i) If the confidential portion is made available to the public, one copy thereof shall be attached to each copy of the material filed with the Commission.

Authority: The Commission is adopting these amendments to Rule 406 under Sections 7, 10, and 19(a) of the Securities Act.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77g, 77j, 77s(a))

Dated: March 23, 1984.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–8697 Filed 4–3–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76 (Colorado–1); Correction to Order No. 124]

High-Cost Gas Produced From Tight Formations; Final Rule

March 30, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: This correction publishes an appendix to Order No. 124 issued January 23, 1981 (46 FR 9921 (1–30–81)). The order designated the Wattenberg J Sand Formation as a tight formation, making natural gas produced therefrom eligible for an incentive price under the Commission's regulations under the Natural Gas Policy Act. The order also appended a description of areas excluded from the tight formation designation. This appendix was not and is not to be codified in the Commission's regulations and so was not originally published in the **Federal Register**; however, because the appendix will be amended from time to time, it is now being published for easier public reference.

EFFECTIVE DATE: Janaury 23, 1981.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner (202) 357–8307 or Victor Zabel (202) 357–8559.

Lois D. Cashell,

Acting Secretary.

SUPPLEMENTARY INFORMATION: FR Doc. 81–3503, appearing in the **Federal Register** of January 30, 1981 (46 FR 9922), is corrected by adding the following appendix at the end of the document.

Note.—This appendix will not appear in the Code of Federal Regulations.

Appendix—Description of Area Excluded From Designation as a Tight Formation in RM79–76 (Colorado–1)

Weld County

Township 1 North, Range 65 West, 6th P.M.
- Sections 5, 6, 8, 9, 16, 17, 29 and 32: All
- Sections 4 and 36: N½
- Section 30: S½
- Sections 14, 18 and 20: W½

Township 1 North, Range 66 West, 6th P.M.
- Sections 2, 4–8, 14, 18–20, 24 and 28: All
- Sections 10 and 32: N½
- Sections 3, 21 and 27: S½
- Sections 16, 22, 29 and 34: E½
- Section 17: W½

Township 1 North, Range 67 West, 6th P.M.
- Sections 1–15, 17, 19–30 and 32–35: All
- Sections 13, 16 and 31: N½
- Section 36: W½

Township 1 North, Range 68 West, 6th P.M.
Sections 1, 12 and 13: All
Sections 7 and 18: N½
Section 8: S½
Section 24: W½
Township 2 North, Range 64 West, 6th P.M.
Sections 6, 7, 16 and 18: All
Sections 5, 8 and 20: S½
Section 30: W½
Township 2 North, Range 65 West, 6th P.M.
Sections 1–4, 6, 8, 10–16, 18, 20–24, 26–28 and 32–36: All
Section 29: N½
Section 17: S½
Sections 7, 9, 19 and 31: W½
Township 2 North, Range 66 West, 6th P.M.
Sections 2–12, 15–18, 20–22, and 26–34: All
Section 1: S½
Section 14: E½
Section 36: W½
Township 2 North, Range 67 West, 6th P.M.
Sections 1–5, 7, 9, 11, 12, 14–16, 18–20, 22–28, 30, 31 and 33–36: All
Sections 6, 8, 13, 17 and 21: N½
Section 32: E½
Sections 10 and 29: W½
Township 2 North, Range 68 West, 6th P.M.
Sections 2, 3, 10–13; 15, 22 and 36: All
Sections 1, 4 and 27: N½
Sections 16 and 24: S½
Sections 21, 25 and 35: E½
Sections 14 and 23: W½
Township 3 North, Range 64 West, 6th P.M.
Section 16: All
Sections 8 and 30: S½
Section 28: W½
Township 3 North, Range 65 West, 6th P.M.
Sections 12, 16, 18, 24, 26 and 30: All
Section 32: N½
Sections 6, 13, 22, 23, 27, 31, 33 and 34: S½
Sections 8, 19, 20 and 36: W½
Township 3 North, Range 66 West, 6th P.M.
Sections 2, 4, 6, 8, 10, 13–17 and 20–35: All
Sections 5, 7, 9, 11 and 12: S½
Sections 18 and 19: E½
Township 3 North, Range 67 West, 6th P.M.
Sections 12–14, 71–31 and 33–36: All
Section 4: N½
Sections 1 and 7: S½
Sections 2 and 32: E½
Sections 8 and 15: W½
Township 3 North, Range 68 West, 6th P.M.
Sections 22–27 and 34–36: All
Sections 28 and 33: E½
Section 14: W½
Township 4 North, Range 65 West, 6th P.M.
Section 34: All
Section 32: S½
Sections 29 and 36: W½
Township 4 North, Range 66 West, 6th P.M.
Sections 28 and 34: All
Sections 22, 32 and 36: N½
Sections 20, 31 and 33: S½
Section 19: W½
Township 4 North, Range 67 West, 6th P.M.
Sections 27 and 36: All
Section 35: S½
Section 22: E½

Adams County

Township 1 South, Range 67 West, 6th P.M.
Sections 1, 5 and 17: All
Sections 2, 3, 6 and 9: N½
Sections 10 and 16: E½
Sections 4, 13 and 18: W½

[FR Doc. 84-8882 Filed 4-3-84; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 101

[Docket No. 81P-0298]

Exemption From Placement Requirements for Required Label Statements on Soft Drinks in Cans

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is granting manufacturers of soft drinks in cans an exemption from placement requirements for required label statements. The exemption permits the name of the manufacturer, packer, or distributor of soft drinks in cans to be declared on the lid of the can. This action is based on a petition submitted to FDA by the American Can Co.

DATE: Effective April 4, 1984, for all affected products initially introduced or initially delivered for introduction into interstate commerce.

FOR FURTHER INFORMATION CONTACT: Raymond W. Gill, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Novembr 16, 1982 (47 FR 51588), FDA published a proposal to grant manufacturers of soft drinks in cans an exemption from the placement requirements of §§ 1.24(a) and 101.2(b) (21 CFR 1.24(a) and 101.2(b)). The exemption permits the name of the manufacturer, packer, or distributor to be declared on the lid of the can. In addition, the exemption provides to manufacturers of soft drinks in cans the same flexibility as that now possessed by manufacturers of soft drinks in bottles. The proposal was based on a petition submitted to FDA by the American Can Co. Interested persons were given until January 17, 1983, to comment on the proposal.

FDA received one comment on the proposal, from the National Soft Drink Association. This comment stated that the industry supports the exemption as proposed because it would provide a significant benefit to small businesses.

The agency now is issuing a final regulation based on the proposal.

Under § 101.5(a) (21 CFR 101.5(a)), the label of a food in package form or multiunit retail food packages must "specify conspicuously the name and place of business of the manufacturer, packer, or distributor." Section 101.2(b) requires that this information be disclosed on either the information panel or the principal display panel of the food.

This final rule grants an exemption from placement requirements of §§ 101.5(a) and 101.2(b) by permitting manufacturers of soft drinks in cans to declare the name and place of business of the manufacturer, packer, or distributor on the lid of the can. Accordingly, § 1.24(a)(5)(v) is added to provide an exemption for multiunit retail packages for canned soft drinks from the placement requirements of § 101.5 regarding the name and place of business. Also, § 101.2(c)(4)(ii)(*a*) is revised to permit placement of the required information on the can lid.

The exemption provided by this final rule permits can manufacturers either to emboss or to print the name of the soft drink canner on the lid, provided the operation of the closure tab does not remove or obscure the declaration. If the declaration is embossed, the regulation requires that the type size of the embossed letters be at least one-eighth inch in height, twice the type size required for printed matter. If the declaration is printed, the regulation requires that the type size not be less than one-sixteenth inch in height. To enhance legibility, the embossed or printed declaration is allowed to follow the curvature of the lid. The type-size requirements parallel those requirements now in effect for soft drinks in bottles.

The regulation also provides that multiunit retail packages for soft drinks in cans shall be exempt from the declaration regarding name and place of business required by § 101.5 if the package does not obscure the declaration on unit containers or if it bears a statement that the declaration can be found on the unit containers and the declaration on the unit containers complies with § 101.5.

The agency has determined pursuant to 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291, the agency has previously

considered the potential economic effects of the final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the order. FDA has not received any new information or comments that would alter its previous determination.

As a result of this exemption, different canners of the same soft drink will be able to use the same can bodies while individually ordering lids with their specific name and address. It is anticipated that this change will decrease the costs of labeling canned soft drinks, thereby alleviating an unnecessary cost for can manufacturers, soft drink canners, and, ultimately, consumers. Because most soft drink canners are small businesses, this exemption may provide a significant benefit to small businesses. The agency concluded that the information in the petition and this preamble constitute the information required in a final regulatory flexibility analysis as specified by the Regulatory Flexibility Act (Pub. L. 96–354). The apparent alternatives to this exemption, namely no exemption or mandating labeling information on can lids, would be less favorable to small businesses.

List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling

21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 403(e), 701(a), 52 Stat. 1047 as amended, 1055 (21 U.S.C. 343(e), 371(a))) and under 21 CFR 5.11, Chapter I of Title 21 of the Code of Federal Regulations is amended in Parts 1 and 101 as follows:

PART 1—GENERAL REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. Part 1 is amended in § 1.24 by adding new paragraph (a)(5)(v), to read as follows:

§ 1.24 Exemption from required label statements.

* * * * *

(a) * * *

(5) * * *

(v) A multiunit retail package for soft drinks in cans shall be exempt from the declaration regarding name and place of business required by § 101.5 of this chapter if the package does not obscure the declaration on unit containers or if it bears a statement that the declaration can be found on the unit containers and the declaration on the unit containers complies with § 101.5 of this chapter. The declaration required by § 101.5 of this chapter may appear on the top of soft drinks in cans if the statement is conspicuous and easily legible, provided that when the declaration is embossed, it shall appear in type size at least one-eighth inch in height, or if it is printed, the type size shall not be less than one-sixteenth inch in height. The declaration may follow the curvature of the lid of the can and shall not be removed or obscured by the tab which opens the can.

* * * * *

PART 101—FOOD LABELING

2. Part 101 is amended in § 101.2 by revising paragraph (c)(4)(ii)(*a*), to read as follows:

§ 101.2 Information panel of package form food.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(*a*) If the soft drink is packaged in a bottle bearing a paper, plastic foam jacket, or foil label, or is packaged in a nonreusable bottle bearing a label lithographed onto the surface of the bottle or is packaged in metal cans, the product shall not be exempt from any requirement of this section other than the exemptions created by § 1.24(a)(5)(ii) and (v) of this chapter and the label shall bear all required information in the specified minimum type size, except the label will not be required to bear the information required by § 101.5 if this information appears on the bottle closure or on the lid of the can in a type size not less than one-sixteenth inch in height, or if embossed on the lid of the can in a type size not less than one-eighth inch in height.

* * * * *

Effective date. April 4, 1984. All labeling for affected products initially introduced or initially delivered for introduction into interstate commerce on or after April 4, 1984 may comply with §§ 1.24(a)(5)(v) and 101.2(c)(4)(ii)(*a*) and all other applicable regulations.

(Secs. 403(e), 701(a), 52 Stat. 1047 as amended, 1055 (21 U.S.C. 343(e), 371(a)))

Dated: March 6, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc 84-8888 Filed 4-3-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0268]

D&C Orange No. 5

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing D&C Orange No. 5 for use in externally applied drugs and cosmetics. This action responds to a petition filed by the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA).

DATE: Effective May 7, 1984; objections by May 4, 1984.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 6, 1973 (38 FR 21199), FDA announced that the Toilet Goods Association, Inc. (now CTFA, c/o Hazleton Laboratories, Inc., 9200 Leesburg Turnpike, Vienna, VA 22180) had filed a petition (CAP 6C0041) for the permanent listing of D&C Orange No. 5 as a color additive for general use in drugs and cosmetics. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

In the **Federal Register** of November 2, 1982 (47 FR 49632), FDA published a final rule permanently listing D&C Orange No. 5 for use in lipsticks or other lip cosmetics and in drug and cosmetic mouthwashes and dentifrices. This action was a partial response to the petition filed by CTFA. At that time, the agency terminated the provisional listing of D&C Orange No. 5 for use in externally applied drugs and cosmetics because the estimated internal exposure to the color additive from such external uses in combination with the estimated exposure from the uses that the agency was approving would have exceeded the

calculated acceptable daily intake for D&C Orange No. 5. Consequently, on the basis of available data, the agency decided not to list the color additive for ingested drug (except mouthwashes and dentifrices) and external uses and to cancel all certificates for externally applied uses of D&C Orange No. 5.

Background on the Evaluation of the Safety of D&C Orange No. 5

The agency stated in the November 2, 1982 final rule, at 47 FR 49633, that under section 706(b)(4) of the act (21 U.S.C. 376(b)(4)), the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that the substance is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history of the Color Additive Amendments of 1960 makes clear that this word is to have the same meaning for color additives as for food additives. (See H. Rep. No. 1761, "Color Additive Amendments of 1960," Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).) The Senate report on the Food Additives Amendment of 1958 states:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance. This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

S. Rep. No. 2422, "Food Additives Amendment of 1958," Committee on Labor and Public Welfare, 85th Cong., 2d Sess. 6 (1958).

FDA has incorporated this concept of safety into its color additive regulations. Under 21 CFR 70.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Therefore, the general safety clause prohibits approval of a color additive if doubts about the safety of the additive for a particular use are not resolved to an acceptable level in the minds of competent scientists.

In evaluating the safety of D&C Orange No. 5, the agency evaluated the chronic studies in the color additive petition and other appropriate animal studies to identify any potential adverse effects from the use of the color additive and thus to determine the level at which exposure to the color additive can be considered safe. The agency makes the latter determination by first, if possible, establishing a no-adverse-effect level for each animal study, then applying a safety factor to each no-adverse-effect level, and finally selecting the lowest resultant level as the acceptable daily intake. The agency established an acceptable daily intake of 3 milligrams per day (mg/day) for D&C Orange No. 5 (47 FR 49634).

The agency generally considers a color additive to be safe under its intended conditions of use if the estimated daily intake of the additive does not exceed the acceptable daily intake. As explained in the preamble to the November 2, 1982 final rule, at 47 FR 49634, for purposes of determining the estimated daily intake, FDA concentrates on the high users in the total population and on the maximum estimated exposure of this population to known and probable uses of the color additive. For D&C Orange No. 5, the agency estimated the maximum daily intake from lipsticks and lip cosmetics and from mouthwashes and dentifrices, whether drugs or cosmetics, to be 2.7 mg/day. Based on the information available at the time it adopted the final rule, the agency could not be sure that unrestricted use of the color additive in ingested drugs or in externally applied drugs and cosmetics would result in a cumulative daily intake of less than 3 mg/day. Therefore, the regulation that FDA promulgated did not permit use of the color additive in ingested drugs (except mouthwashes and dentifrices) or externally applied drugs and cosmetics.

FDA recognized, however, that actual exposure to D&C Orange No. 5 from externally applied drugs and cosmetics might be less than it had estimated, but the agency found that no data were available to permit it to determine whether its exposure estimates were in fact too conservative. The agency stated in the preamble to the November 2, 1982 final rule (47 FR 49634) that it was not denying the petition for use of D&C Orange No. 5 in ingested drugs and externally applied drugs and cosmetics, but that additional information was necessary to support the permanent listing of the color additive for these uses. Therefore, FDA announced that it would accept and consider new information if the data were received by April 27, 1983, and that the agency would consider that portion of the petition that it had not approved to be withdrawn without prejudice under § 71.4 (21 CFR 71.4) if it did not receive the information by that date. CTFA has provided no further data supporting safe use of the color additive in ingested drugs. Therefore, FDA considers that portion of the petition to be withdrawn without prejudice under 21 CFR 71.4.

CTFA Skin Penetration Study

Before the regulatory action of November 2, 1982, CTFA had communicated to FDA that it was undertaking a skin absorption study with radiolabeled D&C Orange No. 5 to provide a better basis for calculating exposure to the color additive from its uses in externally applied drugs and cosmetics. CTFA, in a letter of October 29, 1982, advised FDA that it expected that the study would be completed in November 1982. On November 3, 1982, CTFA delivered to FDA a final report of an in vitro percutaneous absorption study of D&C Orange No. 5, in which excised human skin was used, and other information regarding short-term exposure to D&C Orange No. 5 from lipstick use. CTFA stated that it believed that this new evidence established that the use of D&C Orange No. 5 in externally applied cosmetics and drugs at levels consistent with current good manufacturing practice is safe, even if these uses are considered in combination with those authorized in the November 2, 1982 final rule.

FDA has evaluated the CTFA skin penetration study and has found deficiencies in the test system. The basic deficiencies include the use of only one skin sample, which does not allow firm conclusions regarding observed absorption values; a partition problem that resulted in CTFA's underestimating the amount of skin penetration; and a method of calculation of penetration that could not be used to estimate properly the absorption of the color additive under simulated use conditions because the amounts used in the test system were far in excess of amounts normally applied in known uses of the color additive. On the basis of these deficiencies, FDA has concluded that the CTFA study is not adequate to establish the safety of the external uses of D&C Orange No. 5.

FDA Skin Penetration Study

Before it published the November 2, 1982 final rule on D&C Orange No. 5, FDA decided to conduct an experiment to determine the degree to which D&C Orange No. 5 penetrates the skin. The FDA study was prompted by the lack of available data regarding the contribution of skin penetration to internal exposure to color additives. Based on its review of various color additive petitions, including that for D&C Orange No. 5, FDA realized that

base-line penetration information would be necessary to assess the safety of certain externally applied color additives.

The results of the FDA skin penetration study show that the permeability of D&C Orange No. 5 can vary, depending upon the vehicle chosen to simulate topical product formulations. In the agency's study, FDA scientists selected three vehicles to represent the classes of vehicles that could contain the color additive in drug and cosmetic products, namely: (1) Lipoidal vehicles, (2) aqueous vehicles, and (3) hand and body lotions (oil-in-water emulsion). Concentrations of D&C Orange No. 5 in these vehicles were representative of expected drug and cosmetic formulations. Data from the study show that slightly less than 0.5 percent of the applied dose of D&C Orange No. 5 penetrated skin in a 24-hour period in the presence of a lipoidal (castor oil) vehicle (0.34 microgram per square centimeter ($\mu g/cm^2$)); approximately 0.06 percent of applied dose penetrated skin in 24 hours in the presence of an aqueous (phosphate buffer, pH 7.2) vehicle (0.036 $\mu g/cm^2$); and approximately 0.15 percent of the applied dose penetrated skin in 24 hours in the presence of a hand or body lotion (oil-in-water emulsion) (0.090 $\mu g/cm^2$). Based on the results of this study, the agency concludes that D&C Orange No. 5 is absorbed from topical products in amounts that will not exceed 0.5 percent of the amount applied to intact skin.

Estimates of Exposure to D&C Orange No. 5

The agency has revised its estimates of short-term internal exposure to D&C Orange No. 5 and its lakes based on the new skin penetration data from the FDA study. FDA had based its previous estimates of skin penetration of D&C Orange No. 5 on the molecular weight and solubility properties of this color additive. FDA scientists used these physical properties to estimate that skin penetration from D&C Orange No. 5 would not exceed 10 percent of the topically applied dose. FDA recognized that this estimate could be exaggerated (47 FR 49634), but because no data were available, the 10 percent penetration factor appeared to be an appropriate estimate of internal exposure from external applications of the color additive.

On the basis of reported maximum use levels in various topical cosmetic products, combined with annual poundage data of certified D&C Orange No. 5, in the November 2, 1982 final rule, FDA estimated that short-term external exposure to this color additive would not likely exceed 20 mg/day, and that short-term internal exposure from externally applied products likely would be less than 2.0 mg/day (because skin penetration was not expected to exceed 10 percent). In view of the data now available, which show a maximum of 0.5 percent skin penetration, the agency concludes that the short-term internal exposure to D&C Orange No. 5 from its use in topical cosmetics is not likely to exceed 0.1 mg/day.

In addition, in response to the November 2, 1982 final rule, the agency received a comment from CTFA about FDA's estimate of short-term ingestion exposure from the use of D&C Orange No. 5 in lipsticks and lip cosmetics. In its letter, which was dated November 3, 1982, CTFA suggested that FDA's short-term exposure calculations inadvertently failed to correct for the fact that 100 percent of the applied lipstick and lip cosmetic products would not be ingested. CTFA requested that FDA recalculate the short-term exposure using the correction factor of 0.75 that the agency has used in its lifetime-averaged exposure calculation.

In the November 2, 1982 final rule, the agency stated that for purposes of estimating maximum short-term exposure, a consumer using lipsticks and lip cosmetics containing 5 percent D&C Orange No. 5 could ingest up to 2.5 mg/day, based on ingestion of all (100 percent) of the applied lipstick (see 47 FR 49634). In making this exposure estimate, the agency did not attempt to refine each variable in its calculation to arrive at an estimate that was necessarily close to actual exposure. The agency made general assumptions that assured that the estimate was not less than actual human exposure.

FDA usually makes its judgment on the safety of color additives on the basis of lifetime animal feeding studies and lifetime exposures. Consequently, the agency typically calculates the acceptable daily intake on the basis of a lifetime study and determines whether the color additive is safe by comparing the exposure estimate to the acceptable daily intake. Because the agency previously had not made its safety judgment on the basis of short-term toxicity tests and short-term exposure estimates, the agency had not refined its method of calculating short-term exposure estimates to the same degree that it had refined its calculation of lifetime exposure estimates. Thus, FDA had not developed a correction factor for the fraction of lipstick that is applied but that is not ingested over a short term. D&C Orange No. 5, however, represents a situation in which the agency must compare a short-term study with short-term exposure to the additive because the study that requires that the agency establish use limitations for the color additive was a short-term study (47 FR 49634). Therefore, the agency has developed a correction factor for short-term ingestion exposure from lipsticks and lip cosmetics.

The agency agrees with the CTFA comment that some portion of applied lipsticks is removed by blotting, wiping on napkins, and transfer to other objects. Thus, the agency finds that short-term exposure should be based on less than complete ingestion. The agency's calculations for lifetime-averaged exposure to color additives have consistently included a factor of 0.75 to recognize that the average fraction ingested from such use would be less than the total applied (see, e.g., supporting material for D&C Red No. 30, Docket No. 82N–0127, document No. 132; D&C Red No. 27 and D&C Red No. 28, Docket No. 82N–0307, document No. 137; D&C Orange No. 5, Docket No. 82N–0268, document No. 121).

Furthermore, the agency notes that the fraction of lipstick ingested will vary from application to application. On some days one is likely to ingest more than 75 percent of the lipstick one applies and on other days less. It is the maximum fraction that is likely to be ingested in the short term that is of importance in evaluating the safety of such exposure.

In recognition of the variability in ingestion, the agency has selected a factor of 0.85 as the maximum fraction of the applied product that is likely to be ingested over a short term rather than the 0.75 factor that it has used for lifetime-averaged exposure. Using the 0.85 factor for the fraction ingested, the agency estimates that short-term exposure to D&C Orange No. 5 from lipstick use is not likely to exceed 2.1 mg/day.

The agency is permanently listing D&C Orange No. 5 for use in externally applied drugs with limitations on the maximum amount of the color additive that can be added to topical drug products. Externally applied drugs are likely to be applied to diseased or damaged skin. Such skin does not function as a barrier to externally applied products as effectively as healthy skin. The degree to which substance will penetrate diseased or damaged skin depends on the individual skin as well as the properties of the substance and vehicle. Although the agency expects D&C Orange No. 5 to penetrate diseased or damaged skin to a greater extent than it penetrates healthy

skin, FDA estimates that the increased penetration rate will not exceed 20 times the rate it penetrates through healthy skin.[1] A twentyfold increase in penetration over the 0.5 percent of D&C Orange No. 5 that penetrates healthy skin would result in 10 percent of the color additive penetrating diseased or damaged skin.

Thus, in the absence of actual penetration data for diseased or damaged skin, the agency estimates that not more than 10 percent of D&C Orange No. 5 in a topically applied drug would penetrate diseased or damaged skin. Because of the potential penetration and resultant internal exposure from external drug use, FDA is establishing a maximum limitation of 5 mg per daily dose of drug product containing D&C Orange No. 5. If 10 percent of a drug preparation that contains 5 mg of the color additive penetrates the skin, the short-term internal exposure to D&C Orange No. 5 will not exceed 0.5 mg per daily dose of the drug product. The agency believes that it is unlikely that individuals would be exposed to more than one drug at a time that contains D&C Orange No. 5 because a review of the available survey data indicated that very few drugs contain this color additive. Therefore, FDA is permanently listing D&C Orange No. 5 with a 5 mg per daily dose limitation on its use in topical drug products.

In summary, the agency has developed the following estimates for maximum short-term internal exposure from the various petitioned uses of D&C Orange No. 5: lipsticks, 2.1 mg/day; mouthwashes and dentifrices, 0.2 mg/day; topical cosmetics, 0.1 mg/day; topical drugs (with 5 mg/daily dose limitation), 0.5 mg/day.

As noted previously, the agency generally considers a color additive to be safe under its intended conditions of use if the estimated daily intake (exposure) of the additive does not exceed its acceptable daily intake. The agency has calculated 3 mg/day for a 60-kilogram (kg) person as the acceptable daily intake for D&C Orange No. 5. The sum of the estimated exposure to D&C Orange No. 5 under the various use categories noted above is 2.9 mg/day. However, this estimate of exposure is exaggerated because it is not likely that even a high user will be exposed to D&C Orange No. 5 at maximum or near maximum levels from each of the broad use categories described above on any given day.

[1] Memorandum for the file, "Effect of Diseased or Damaged Skin on the Percutaneous Absorption of D&C Orange No. 5," Bronaugh, R.L., August 12, 1983.

Based on the estimates discussed above, the agency concludes that exposure to D&C Orange No. 5 under the restricted conditions of use will not exceed the acceptable daily intake of 3 mg/day. Consequently, the agency is amending its regulations to permanently list D&C Orange No. 5 for use in externally applied cosmetics and for use in externally applied drugs in amounts not exceeding 5 mg per daily dose of the drug product.

In the November 2, 1982 final rule (47 FR 49632), FDA cancelled certificates issued for D&C Orange No. 5, its lakes, and all mixtures containing the color additive, as pertained to its use in externally applied drugs and cosmetics, after October 29, 1982. The cancellation of certificates by promulgation of the regulations under § 81.30(q) (21 CFR 81.30(q)) prohibited such uses of the color additive in manufactured products after October 29, 1982. The regulation set forth below will amend § 81.30 by removing paragraph (q) and thus after May 7, 1984 certificates issued for D&C Orange No. 5, its lakes, and all mixtures containing the color additive for use in externally applied drugs and cosmetics will be effective in accordance with the provisions of the regulations.

In addition, in the **Federal Register** of November 2, 1982 (47 FR 49636, 49637), FDA adopted § 81.10(p) (21 CFR 81.10(p)), which explained that the agency had terminated the provisional listing of the use of D&C Orange No. 5 in externally applied drugs and cosmetics because of unresolved questions about the safety of these uses. As explained in this final rule, these questions have now been resolved. Therefore, FDA is removing § 81.10(p) from its regulations.

Conclusion on Safety

The agency concludes that certified D&C Orange No. 5 is safe when used in externally applied drugs and cosmetics under the conditions of use set forth below. The final toxicity study reports, the interim reports, the agency's toxicology evaluations of these studies, and other relevant information are on file at the Dockets Management Branch (address above) where they may be reviewed between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined pursuant to 21 CFR 25.24(d)(5) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 74

Color additives, Color additives subject to certification, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:

a. In § 74.1255 by revising paragraph (c) to read as follows:

§ 74.1255 D&C Orange No. 5.

* * * * *

(c) *Uses and restrictions.* D&C Orange No. 5 may be safely used for coloring mouthwashes and dentifrices that are ingested drugs in amounts consistent with current good manufacturing practice. D&C Orange No. 5 may be safely used in externally applied drugs in amounts not exceeding 5 milligrams per daily dose of the drug.

* * * * *

b. In § 74.2255 by revising paragraph (b) to read as follows:

§ 74.2255 D&C Orange No. 5.

* * * * *

(b) *Uses and restrictions.* D&C Orange No. 5 may be safely used for coloring mouthwashes and dentifrices that are ingested cosmetics in amounts consistent with current good manufacturing practice. D&C Orange No. 5 may be safely used for coloring lipsticks and other cosmetics intended to be applied to the lips in amounts not exceeding 5.0 percent by weight of the finished cosmetic products. D&C Orange No. 5 may be safely used for coloring externally applied cosmetics in amounts consistent with current good manufacturing practice.

* * * * *

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended:

§ 81.10 [Amended]

a. In § 81.10 *Termination of provisional listings of color additives* by removing and reserving paragraph (p).

§ 81.30 [Amended]

b. In § 81.30 *Cancellation of certificates* by removing paragraph (q).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

3. Part 82 is amended by revising § 82.1255 to read as follows:

§ 82.1255 D&C Orange No. 5.

(a) The color additive D&C Orange No. 5 shall conform in identity and specifications to the requirements of § 74.1255(a)(1) and (b) of this chapter. D&C Orange No. 5 is restricted to the used described in this section.

(b) The color additive D&C Orange No. 5. may be safely used for coloring externally applied drugs in amounts not exceeding 5 milligrams per daily dose of the drug. The color additive D&C Orange No. 5 may be safely used for coloring lipsticks and other cosmetics intended to be applied to the lips in amounts not exceeding 5.0 percent by weight of the finished cosmetic products, and for coloring mouthwashes, dentifrices, and externally applied cosmetics in amounts consistent with current good manufacturing practice.

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 4, 1984 file with the Dockets Management Branch (address above) written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objection shall state the issues for the hearing presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulations may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 7, 1984, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the **Federal Register.**

(Sec. 706(b), (c), and (d)), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d)))

Dated: March 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-8868 Filed 4-3-84; 8:45 am]

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21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for Use in Externally Applied Drugs and Cosmetics; Postponement of Closing Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use as color additives in externally applied drugs and cosmetics. The new closing date will be June 4, 1984. This postponement will provide additional time for determining the applicability of the statutory standard for the listing of noningested color additives to the results of the scientific investigations of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37.

DATES: Effective April 4, 1984, the new closing date for D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 will be June 4, 1984.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–330), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of April 4, 1984, for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use in externally applied drugs and cosmetics by a final rule published in the **Federal Register** of February 3, 1984 (49 FR 4201). The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 38814 for D&C Red No. 19 and D&C Red No 37 and 48 FR 44774 for D&C Orange No. 17.

FDA extended the closing date for the provisional listing of these color additives on these occasions to permit the agency to consider the scientific and legal aspects of the submissions by the petitioner, the Cosmetic, Toiletry and Fragrance Association, Inc., in support of the safety of the external uses of these color additives. Although D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 have been shown to be animal carcinogens upon ingestion, the agency believes that somewhat different questions are raised by the request to list these color additives for noningested use. It has taken more time to evaluate the data involved in resolving these questions than the agency anticipated. FDA finds that it still needs additional time to determine the applicability of the statutory standard for the listing of color additives for noningested use to D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37. The regulations set forth below will postpone the April 4, 1984 closing date for the provisionally listed use of these color additives until June 4, 1984. This postponement will also provide additional time for the agency to prepare and to publish **Federal Register** documents setting forth its final decision on the petitions for the permanent listing of these color additives for external use. The continued use of these color additives in externally applied products for the short time needed for the adequate evaluation of the data and for the preparation of **Federal Register** documents that will announce the agency's decision on these color additives will not pose a hazard to the public health.

Because of the short time until the April 4, 1984 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing the postponement as a final rule. This final rule will permit the uninterrupted use of these color additives until June 4, 1984. To prevent any interruption in the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 and in accordance with 5 U.S.C. 553(d) (1) and (3), this final rule is being made effective April 4, 1984.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b) (c), and (d), 52 Stat. 1055–1056 as

amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))] and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)] and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives*, by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," "D&C Red No. 37" in paragraph (b) to read "June 4, 1984."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing*, by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," and "D&C Red No. 37" in paragraph (d) to read "June 4, 1984."

Effective date. April 4, 1984.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: March 13, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

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21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Red No. 3 and of FD&C Yellow No. 5 in Cosmetics and Externally Applied Drugs and of Their Lakes in Food and Ingested Drugs; Provisional Listing of FD&C Yellow No. 6 for Use in Food, Drugs, and Cosmetics; Provisional Listing of D&C Red No. 8, D&C Red No. 9, and D&C Red No. 33 in Drugs and Cosmetics; Postponement of Closing Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing dates for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of these color additives for use in coloring food and ingested drugs; of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and of D&C Red No. 8, D&C Red No. 9, and D&C Red No. 33 for use in drugs and cosmetics. The new closing date for the provisional listing of all of these color additives will be June 4, 1984. This postponement will provide additional time for the agency to determine the applicability of the statutory standard for the listing of color additives to the results of the scientific investigations of FD&C Red No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 33.

DATES: Effective April 4, 1984, the new closing date for FD&C Red No. 3 and its lakes, FD&C Yellow No. 5 and its lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 33 will be June 4, 1984.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of April 4, 1984, for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in cosmetics and in externally applied drugs and for the provisional listing of the use of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 in food and ingested drugs by a rule published in the **Federal Register** of February 3, 1984 (49 FR 4202). Additionally, the agency established the current closing date of April 4, 1984, for the provisional listing of D&C Red No. 8, D&C Red No. 9, and D&C Red No. 33 for use in drugs and cosmetics in that same **Federal Register** document. The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 45237 for FD&C Red No. 3, 48 FR 45760 for FD&C Yellow No. 5, 48 FR 42807 for D&C Red No. 8 and D&C Red No. 9 and 48 FR 44773 for D&C Red No. 33.

FDA established the current closing date of April 30, 1984, for the provisional listing of the use of FD&C Yellow No. 6 in food, drugs, and cosmetics by a rule published in the **Federal Register** of February 28, 1984 (49 FR 7224). Previously, FDA had established the closing date of February 28, 1984, for the provisional listing of the use of this color additive by a rule published in the **Federal Register** of March 27, 1981 (46 FR 18954).

FDA extended the closing dates for the provisional listing of each of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 to permit the agency to consider the scientific and legal aspects of the data concerning the safety of their provisionally listed uses. FDA expected that these closing dates would provide time for the agency to prepare and to publish appropriate regulations in the **Federal Register** regarding the agency's final decision on the petitions for the permanent listing of the aforementioned uses of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5.

FDA's review and evaluation of the data relevant to the provisionally listed use of FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 33 have required more time than anticipated, however. The agency finds that it still needs additional time to determine the applicability of the statutory standard for listing color additives to D&C Red No. 8, D&C Red No. 9, and D&C Red No. 33 as well as to FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes. Because FD&C Yellow No. 6 presents similar issues, FDA also finds that administrative efficiency will be served if the closing date of FD&C Yellow No. 6 is made to coincide with that of the other five color additives. Therefore, the regulations set forth below will postpone the April 4 and April 30, 1984 (for FD&C Yellow No. 6) closing dates for the provisionally listed uses of these color additives until June 4, 1984. This postponement will provide additional time for the agency to prepare and to publish the appropriate **Federal Register** documents setting forth its decision on the petitions for the permanent listing of FD&C Red No. 3 and FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring food and ingested drugs; for the permanent listing of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and for the permanent listing of D&C Red No. 8, D&C Red No. 9, and D&C Red No. 33 for use in coloring drugs and cosmetics. The continued use of these color additives for the short time needed for the adequate evaluation of the data and for the preparation of the **Federal Register** documents will not pose a hazard to the public health.

Because of the short time until the April 4, 1984 and April 30, 1984 closing dates, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing this postponement as a final rule. This final rule will permit the uninterrupted use of D&C Red No. 8,

D&C Red No. 9, D&C Red No. 33, and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes until June 4, 1984. To prevent any interruption in the provisional listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and FD&C Yellow No. 6, as well as FD&C Red. No. 3 and FD&C Yellow No. 5 and their lakes and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on April 4, 1984.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Food, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81–GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," and "FD&C Red No. 3" in paragraph (a) to read "June 4, 1984" and by revising the closing dates for "D&C Red No. 8," "D&C Red No. 9," and "D&C Red No. 33" in paragraph (b) to read "June 4, 1984."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing,* by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," "FD&C Red No. 3," "D&C Red No. 8," "D&C Red No. 9," and "D&C Red No. 33" in paragraph (d) to read "June 4, 1984" and by revising the closing dates for "FD&C Red No. 3" and "D&C Red No. 33" in paragraph (e) to read "June 4, 1984."

Effective date. April 4, 1984.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: March 20, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–8863 Filed 4–3–84; 8:45 am]
BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 83F–0313]

Indirect Food Additives: Adjuvants, Production Aids and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant and/or stabilizer in polycarbonate resins intended for use in contact with food. This action responds to a petition filed by Sandoz Color and Chemicals.

DATES: Effective April 4, 1984, objections by May 4, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 17, 1983 (48 FR 47073), FDA announced that a petition (FAP 3B3748) had been filed by Sandoz Color and Chemicals, Fairlawn Ave. and Third St., Fairlawn, NJ 07410, proposing that the food additive regulations be amended to provide for the safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant and/or stabilizer in polycarbonate resins complying with 21 CFR 177.1580 intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Foods (21 CFR 5.61), Part 178 is amended in § 178.2010(b) by adding a new limitation and the Chemical Abstracts Service Registry number (CAS Reg. No.) for "Di-*tert*-butylphenyl phosphonite condensation product with biphenyl." As revised the entry reads as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Di-*tert*-butylphenyl phosphonite condensation product with biphenyl (CAS Reg. No. 38613–77–3) produced by the condensation of 2,4-di-*tert*-butylphenol with the Friedel-Crafts addition product (phosphorus trichloride and biphenyl) so that the food additive has a minimum phosphorus content of 5.4 percent, an acid value not exceeding 10 mg KOH/gm, and a melting range of 85° C to 110° C (185° F to 230° F).	For use only: 1. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 1.1, 2.1, 2.2, 3.1, or 3.2, and used in contact with food only under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.1 percent by weight of polycarbonate resins complying with § 177.1580 of this chapter.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 4, 1984, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any

particular objection shall consitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. April 4, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: March 13, 1984.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 84-8887 Filed 4-3-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 184

[Docket No. 80G-0412]

Certain Tocopherols; Affirmation of GRAS Status as Direct Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that *d*- and *dl*-α-tocopherols are generally recognized as safe (GRAS) for use as inhibitors of nitrosamine formation in pump-cured bacon. This action responds to a petition filed by Hoffmann-La Roche, Inc., and to comments filed in response to the notice of filing of the petition.

DATES: Effective April 4, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1890 effective on April 4, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Bureau of Foods (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the procedures established in § 170.35 (21 CFR 170.35), Hoffmann-La Roche, Inc., Nutley, NJ 07110, submitted a petition (GRASP OG0285) requesting that *dl*-α-tocopherol be affirmed as GRAS for use as an inhibitor of nitrosamine formation in bacon. FDA published a notice of the filing of this petition in the **Federal Register** of November 7, 1980 (45 FR 74061), and offered interested persons an opportunity to review the petition and to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Four comments were submitted in response to the notice of filing. The issues raised by the comments and the agency's responses are presented later in this preamble.

Tocopherols are a group of chemically related sustances, including some that possess vitamin E activity. Eight *d*-forms of tocopherol occur naturally in many plant and animal tissues. The major sources of tocopherols are vegetable oils, cereals, nuts, and leafy vegetables. Of these, vegetable oils are the most important source.

d-α-Tocopherol is the chemical [2R,4′R,8′R]-2,5,7,8-tetramethyl-2-(4′,8′,12′-trimethyl-tridecyl)-6-chromanol. It is widely distributed in plant and animal tissues. It is produced as a concentrate from the vacuum distillation of edible vegetable oil products. *d*-α-Tocopherol is a red, nearly odorless, clear, viscous oil.

dl-α-Tocopherol is a mixture of steroisomers of 2,5,7,8-tetramethyl-2-(4′,8′,12′-trimethyl-tridecyl)-6-chromanol. It does not occur in nature but can be synthesized by a number of processes that are well documented in the scientific literature. It is a pale yellow viscous oil at room temperature. It is freely soluble in fats and oils and fat solvents such as acetone, alcohol, chloroform, and ether but is practically insoluble in water.

The petitioner has requested GRAS affirmation for the use of *dl*-α-tocopherol as a component of a bacon curing solution that also contains sodium nitrite and sodium ascorbate or sodium erythrobate. This curing solution is injected (pumped) into the pork bellies (pump cured). The final concentration of *d*- or *dl*-α-tocopherols in the bacon is approximately 500 parts per million (ppm) and, according to the U.S. Department of Agriculture, 120 ppm sodium nitrite and 550 ppm sodium ascorbate or sodium erythrobate. Based on the effectiveness studies submitted by the petitioner, the agency has determined that approximately 500 ppm of *d*- or *dl*-α-tocopherol is the maximum effective concentration for inhibiting nitrosamine formation in bacon.

The petitioner has submitted published and unpublished studies demonstrating the effectiveness of *dl*-α-tocopherol in reducing nitrosamine formation in bacon. In these studies, the bacon was cured by conventional processes with or without *dl*-α-tocopherol. Nitrosamine levels were analytically determined after the bacon was fried. Bacon in which *dl*-α-tocopherol was included in the curing process contained significantly lower levels of nitrosamines than bacon in which it was not included. In response to the notice of filing, references to published studies were submitted demonstrating that there is no basis to distinguish between *d*- and *dl*-α-tocopherols in their effectiveness in reducing nitrosamine formation in bacon.

The petitioner has submitted unpublished data showing that α-tocopherols have no effect on sodium nitrite's ability to inhibit *Clostridium botulinum*. The petition also contains unpublished studies showing that 96 percent of the *dl*-α-tocopherol added to bacon as a component of the curing solution remains unchanged when the bacon is heated to frying temperatures. The major reaction products, tocoquinone and orthoquinone (Toco Red), resulting from the *dl*-α-tocopherol and nitrite in bacon that is cooked at frying temperatures have been identified by the petitioner. Because of previous concerns over the potential mutagenicity of reaction products from sorbate-nitrite mixtures, the petition contains mutagenic screening tests for these reaction products in *Salmonella typhimurium* strains TA98 and TA100. These tests indicate no compound-related effects. This fact, and the fact that only very small amounts of these reaction products are created, eliminate any concern by FDA about the safety of these reaction products. In addition, the agency is unaware of any other basis for concern about the toxicity of the low levels of the other reaction products that are formed. FDA has also assessed the reaction products formed from *d*-α-tocopherol and concluded that the products would be no different from those formed from *dl*-α-tocopherol except for the ratio of stereoisomers.

Recently, the agency has become aware of published studies that suggest that *dl*-α-tocopherols may increase the formation of nitrosodimethylamine in dry-cured bacon, even though the overall formation of nitrosamines in dry-cured bacon is reduced significantly by the addition of *dl*-α-tocopherols (Ref. 1). In contrast, studies of the addition of *dl*-α-tocopherols to bacon that is pump-cured (the most frequently used method of curing bacon in the United States) have found that the formation of all nitrosamines is greatly reduced (Refs. 2 and 3). FDA has discussed these data with the U.S. Department of Agriculture

and concludes that the data suggest that more research is needed to delineate the reasons for the differences between pump-cured and dry-cured bacon with regard to the formation of nitrosodimethylamine.

The agency is aware that the immersion process is also used for curing bacon. However, because the agrency has no data on the inhibition of nitrosamine formation by *d*- and and *dl*-α-tocopherols in this process, no assessment of the effectiveness of *d*- and *dl*-α-tocopherols in the immersion cured process can be made.

A summary of the issues raised by the four comments submitted in response to the notice of filing and of the agency's responses follows:

1. One comment was concerned that toxic reaction products might be formed in bacon treated with tocopherols and nitrite when that bacon is heated to frying temperatures. The comment cited the sorbate and nitrite situation, in which a reaction product of sorbate and nitrite was shown to be mutagenic. The comment claimed that a number of chemical reactions between nitrite and *dl*-α-tocopherol could take place, listed some possible products of these reactions, and cautioned the agency against premature action on the petition.

The agency also had concerns that toxic reaction products might be formed when bacon containing nitrite and *dl*-α-tocopherol is heated to frying temperatures. The agency believes, however, that the reaction products suggested by the comment are purely speculative because the postulated compounds have not been shown to exist. The petitioner has provided data showing that under normal frying conditions *dl*-α-tocopherol remains 96 percent unchanged. Moreover, as discussed earlier, there are data in the petition that identify the major reaction products and demonstrate that they are not mutagenic. Further, the agency has no reason to suspect that the low levels of the other reaction products pose any toxicity concerns.

2. One comment from a manufacturer of tocopherols stated that there are no differences among the various forms of α-tocopherols in their ability to inhibit nitrosamine formation in bacon. The comment cited several published references that were not in the petition and requested that the GRAS affirmation regulation include both *d*- and *dl*-α-tocopherols.

The agency has reviewed the information cited in the comment and agrees that both *d*- and *dl*-α-tocopherol are effective in inhibiting the formation of nitrosamines in pump-cured bacon. (The comment did not present information on any other form of α-tocopherol.) The agency concludes that the safety data presented in the petition, which focused on *dl*-α-tocopherol, are relevant to the safety of *d*-α-tocopherol. The petition referenced the safety data from the report of the Select Committee on GRAS Substances (the Select Committee) of the Federation of American Societies for Experimental Biology (FASEB),[1] which contains safety data on both *d- and dl*-α-tocopherols. The Select Committee evaluated the safety of these substances and concluded that they are safe (see the **Federal Register** of October 27, 1978; 43 FR 50193).

3. One comment from a manufacturer of edible oils indicated that a regulation for the proposed use of *dl*-α-tocopherol or any other use of tocopherols is unnecessary. The comment claimed that the current GRAS listing of tocopherols in 21 CFR 182.5890 for use as a nutrient already permits the petitioned use. The comment further stated that because tocopherols have been proposed for GRAS affirmation, there is no need for an industry petition. The comment also stated that if a regulation results from the petition, it will be interpreted to mean that both *d*- and *l*-α-tocopherols are approved for the specified use. Finally, the comment questioned whether FDA is correctly interpreting existing prior sanctions for tocopherols in this case.

The agency disagrees with the assertion that there is provision in the current FDA regulations for the petitioned use of tocopherols in bacon. Although it is true that the current regulations provide for the nutrient use of tocopherols under 21 CFR 182.8890, that use does not encompass the proposed use. The petition does not seek GRAS affirmation of the use of *dl*-α-tocopherol as a nutrient source of vitamin E in bacon. The petition seeks affirmation of the use of the ingredient to inhibit nitrosamine formation in bacon. This function of the ingredient is not included in the definition of "nutrient supplements" that is set forth in 21 CFR 170.3(o)(20). Thus, the proposed use of *dl*-α-tocopherol is a new use and is subject to the petition procedures described in 21 CFR 170.35.

The safety data included in the petition are not relevant to the safety of the use of the isolated *l*-α-tocopherol. The petitioner relied on the Select Committee's evaluation of tocopherols, and *l*-α-tocopherol was not evaluated in the Select Committee's report.[2] No additional safety data on this substance were submitted with the comment. Therefore, the agency is not affirming as GRAS the use of isolated *l*-α-tocopherol isomer to inhibit nitrosamine formation in bacon. FDA has attempted to clarify the regulation to avoid this misinterpretation. However, if sufficient safety data are developed, agency approval of this use of *l*-α-tocopherol may be sought through the petition procedures described in 21 CFR 170.35 and 171.1.

The agency notes that the subject petition contains no reference to prior sanctions. Because the comment did not provide any evidence of or assert a prior sanction for this use of tocopherols in bacon, FDA cannot evaluate the comment's concern about prior sanctions. The agency is also of the opinion that the prior sanction for the use of tocopherols in fats and oils, which was referred to in the October 27, 1978 proposal, does not encompass the petitioned use because it applies only to the antioxidant use of tocopherols in fats and oils and cannot be used to support use of the ingredient to inhibit nitrosamine formation in bacon.

4. One comment from a firm associated with the meat industry indicated its support for the use of *dl*-α-tocopherol in bacon but did not present any new data or information.

FDA published the proposed GRAS affirmation regulations resulting from the general evaluation of the safety of the use of tocopherols in food in the **Federal Register** of October 27, 1978. FDA presently is preparing the final rule based on that proposal. FDA has not received in response to the proposal any comments that raise questions about the safety of tocopherols for the uses described in that document. However, there are complicated legal, policy, and technical issues that must be resolved before the final rule on the general safety evaluation of tocopherols can be issued. Because of the complexity of the issues to be resolved, the agency has decided to issue a separate GRAS affirmation regulation for the petitioned used to avoid unnecessarily delaying the petitioner's use of these ingredients.

The agency has evaluated all the available data on *d*- and *dl*-α-tocopherols and concludes that:

(1) *d*- and *dl*-α-tocopherols have a long history of safe use in food as antioxidants and nutrient supplements. However, the use of these ingredients in bacon to inhibit nitrosamine formation

[1] "Evaluation of the Health Aspects of the Tocopherols as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, p. 19, 1975.

[2] *Id.*

is a new use and is not GRAS based on a history of use before 1985.

(2) The use of *d*- and *dl*-α-tocopherols in bacon is GRAS based on scientific procedures. This conclusion is based on available published safety data that are reviewed in the Select Committee's report and on other information gathered during the general evaluation of the safety of tocopherols (see the **Federal Register** of October 27, 1978; 43 FR 50193), as well as on the unpublished data submitted in the petition.

(3) These ingredients are effective for the proposed use when used in accordance with current good manufacturing practice (CGMP) as described in the petition. Because of the uncertainties about the use of *d*- and *dl*-α-tocopherols in the dry curing and immersion processes, CGMP use of these ingredients is limited to the pump curing process. The agency has determined that establishing maximum CGMP use levels is not necessary because data in the petition show that use of *d*- and *dl*-α-tocopherols to pump-cure bacon results in level of these ingredients in the bacon of approximately 500 ppm. The exposure of *d*- and *dl*-α-tocopherols as a result of this use is insignificant when compared to the exposure to these ingredients from naturally occurring sources such as vegetable oils, cereals, nuts, and leafy vegetables, and there is a large margin of safety between the amounts of these ingredients ingested in the diet from naturally occurring sources and the amounts that show toxic effects in animals. The agency wants to make clear, however, that this GRAS affirmation regulation reflects only the agency's evaluation of the use of *d*- and *dl*-α-tocopherols in pump-cured bacon in accordance with CGMP conditions of use.

Usually, regulations for substances affirmed as GRAS under conditions of CGMP list the technical effects, as defined in § 170.3(o) (21 CFR 170.3(o)), for the ingredient in food and the food categories as defined in § 170.3(n), in which the National Academy of Sciences/National Research Council survey reported that the ingredient is used. However, the petitioned use of *d*- and *dl*-α-tocopherols as an inhibitor of nitrosamine formation in bacon is not well-described by the technical effects and food categories in § 170.3. Consequently, the agency has decided not to refer to § 170.3 in this regulation. It is listing these ingredients as inhibitors of nitrosamine formation in bacon.

Therefore, the agency is amending 21 CFR Part 184 in accordance with 21 CFR 170.30(k) and 184.1(b)(3) to affirm as GRAS the use of *d*- and *dl*-α-tocopherols as inhibitors of nitrosamine formation in bacon. Final action on the October 27, 1978 proposal to affirm other uses of these ingredients as GRAS is still under agency review, awaiting resolution of legal, policy, and technical issues. These ingredients can continue to be used under the provisions of the regulations in 21 CFR 182.3890, 182.5890, and 182.8890 until the agency completes final action.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Reddy, S. K., and J. L. Gray, "Inhibition of *n*-Nitrosopyrrolidine in Dry Cured Bacon by Alpha-Tocopherols-Coated Salt Systems." *Journal of Food Science*, 47:1598–1601, 1982.

2. Gray, J. L., and S. K. Reddy, "Inhibition on *n*-Nitrosamines in Bacon," *Journal of Food Technology*, pp. 39–44, June 1982.

3. Fiddler, W., J. W. Pensabene, et al., "Inhibition of Formation of Volatile Nitrosamines in Fried Bacon by the Use of Cure Solubilized *d* Tocopherols," *Journal of Agricultural and Food Chemistry*, 26:653, 1978.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this rule as defined by the Order. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 184 is amended by adding new § 184.1890, to read as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

§ 184.1890 α-Tocopherols.

(a) The α-tocopherols that are the subject of this GRAS affirmation regulation are limited to the following:

(1) *d*-α-Tocopherol (CAS Reg. No. 59–02–9) is the chemical [2R,4'R,8'R]-2,5,7,8-tetramethyl-2-(4',8',12'-trimethyl-tridecyl)-6-chromanol. It occurs commercially as a concentrate and is a red, nearly odorless, viscous oil. It is obtained by vacuum steam distillation of edible vegetable oil products.

(2) *dl*-α-Tocopherol (CAS Reg. No. 10191–41–0) is a mixture of stereoisomers of 2,5,7,8-tetramethyl-2-(4',8',12'-trimethyl-tridecyl)-6-chromanol. It is chemically synthesized by condensing racemic isophytol with trimethyl hydroquinone. It is a pale yellow viscous oil at room temperature.

(b) The ingredients meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 330–331, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L. St. NW., Washington, DC 20408..

(c) In accordance with § 184.1(b)(3), the affirmation of the ingredients as generally recognized as safe is limited to the following conditions of use while the agency concludes the general evaluation of all food uses of tocopherols:

(1) The ingredients are used as inhibitors of nitrosamine formation.

(2) The ingredients are used in pump-cured bacon at levels not to exceed current good manufacturing practice.

Effective date. April 4, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: March 5, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-8865 Filed 4-3-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Central Soya Co., Inc., providing for manufacturing 40- and 100-gram-per-pound tylosin premixes. The premixes are used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Central Soya Co., Inc., 1300 Fort Wayne Bank Bldg., Fort Wayne, IN 46802, is sponsor of a supplement to NADA 91–582 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of 40- and 100-gram-per-pound premixes subsequently used to make finished feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.1(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625 by revising paragraph (b)(10) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 Tylosin.

* * * * *

(b) * * *

(10) To 012286: 0.4, 0.8, and 1.6 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 40 and 100 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date: April 14, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 16, 1984.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-8660 Filed 4-3-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Extension of Deadline for Satisfaction of Condition of Approval of the Tennessee Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Tennessee to meet a condition of the Secretary's approval of the State's permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The condition relates to State laws which conflict with SMCRA. The Secretary is establishing a new deadline of April 1, 1984, for Tennessee to submit provisions to satisfy the condition. This extension will allow the Tennessee Division of Surface Mining (DSM) sufficient time to obtain an opinion from the State Attorney General concerning the State laws that conflict with SMCRA.

EFFECTIVE DATE: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 400, Knoxville, Tennessee 37902; Telephone: (615) 523–8523).

SUPPLEMENTARY INFORMATION: The Tennessee program was conditionally approved by the Secretary on August 10, 1982 (47 FR 34724–34754). The approval was conditioned on the State's correction of 11 minor deficiencies in its program.

Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the conditions of approval of the Tennessee program can be found in the August 10, 1982 **Federal Register** (47 FR 34724–34754).

On September 30, 1983, the Director, DSM, advised OSM that the State would be unable to submit the materials to satisfy condition (a) of the Secretary's approval of Tennessee's program by the September 30, 1983, deadline. Hence, the State requested an extension of the deadline for the State to meet this condition until December 30, 1983.

Condition (a) stipulates that Tennessee must submit copies of the bonding laws and procedures referred to in Chapter III of the Tennessee program, the Tennessee Safe Dams Act and an opinion from Tennessee's Attorney General that these laws and the Tennessee Uniform Administrative Procedures Act are superseded by SMCRA to the extent they are inconsistent with SMCRA.

DSM indicated that it had not yet been able to obtain the Attorney General's opinion needed to satisfy this condition. In accordance with the State's request, OSM proposed an extension of the deadline for the State to meet condition (a) until December 31, 1983, in order to allow DSM sufficient time to secure the opinion from the State Attorney General (48 FR 51385, November 8, 1983).

Following OSM's issuance of the notice proposing an extension until December 31, 1983, the State requested an additional extension until April 1, 1984, to satisfy condition (a). The State indicated that the additional time was necessary to obtain the needed opinion from the Attorney General. Therefore, OSM published a second notice in the **Federal Register** on February 24, 1984 (49 FR 6923), proposing to establish a new deadline, April 1, 1984, for Tennessee to satisfy condition (a).

Secretary's Determination

In accordance with the State's request, the Secretary has decided to extend the deadline for Tennessee to satisfy condition (a). As noted above, satisfaction of condition (a) requires DSM to obtain an attorney general's opinion regarding State laws that conflict with SMCRA. The extension

should allow DSM the time to secure the needed opinion.

Public Comment

OSM did not receive any public comments on its proposal to extend the deadline for satisfaction of condition (a).

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.).* This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et. seq.).*

Dated: March 26, 1984.

Leons A. Power,

Acting Assistant Secretary for Land and Minerals Management.

PART 942—TENNESSEE

§ 942.11 Conditions of State Regulatory Program Approval.

1. 30 CFR Part 942.11 is amended by modifying paragraph (a) by substituting "April 1, 1984," for "September 30, 1983".

[FR Doc. 84-8711 Filed 4-3-84; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR PART 701

Availability of Department of Navy Records and Publications of the Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy hereby deletes the specific exemption from certain provisions of the Privacy Act for system of records and adopts a general exemption for that system.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: 202/697–6497.

SUPPLEMENTARY INFORMATION: At 49 FR 7134, February 27, 1984, the Navy proposed to delete the specific exemption rule pertaining to system of records NO4385–1, "Investigatory (Fraud) System" and to adopt a general exemption rule for that system, because certain Navy Inspector General activities carry out law enforcement activities which require protection from the access provisions of the Act.

List of Parts in 32 CFR Part 701

Privacy.

In that no comments were received concerning the proposed amendment to Subpart G of 32 CFR Part 701, the rule is adopted as proposed and paragraph (g) to § 701.117 is revised as follows:

Subpart G—Privacy Act Exemptions

* * * * *

§ 701.117 Exemptions for specific Navy records systems.

* * * * *

(g) *Office of the Chief of Naval Operations.* (1) *ID–N04385–1:*

Sysname. Investigatory (Fraud) System.

Exemption. Portions of this system of records are exempt from the following portions of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) and (I), (e)(5), (e)(8), (f) and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reason. Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfer with orderly investigations, the orderly administration of justices, and might enable suspects to avoid detection and apprehension. Disclosures of this information could result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well-being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could result in the invasion of the personal privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records and the reasons therefore, necessitate the exemption of this system of records from the provisions of the other cited sections of the Act.

* * * * *

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 30, 1984.

[FR Doc. 84-8803 Filed 4-3-84; 8:45 am]
BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Delegation of Waiver Authority to VA Regional Offices and Centers Involving Joint Loans Closed Automatically

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is amending its regulations to delegate to VA Regional Office Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers, authority to waive the failure of lenders with automatic loan closing authority to secure prior VA credit underwriting approval for joint loans. A joint loan is a loan to two or more borrowers, other than a veteran and spouse. Some lenders with automatic processing authority inadvertently close joint loans automatically and submit them to the VA for guaranty. When this occurs VA field offices cannot issue guaranty and must submit the loan application and all supporting documents to VA's Central Office for review and consideration of waiving the failure of the lender to secure prior approval of the joint loan. Many of these joint loans are clearly approvable. The purpose of these amendments is to simplify the internal VA waiver process. These amendments will allow Regional Office Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers to waive under most circumstances the failure to secure prior

approval for joint loans which have been closed automatically. The amendments should allow quicker processing of requests for loan guaranties of most joint loans closed inadvertently by lenders on the automatic basis.

EFFECTIVE DATE: March 20, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389–3042.

SUPPLEMENTARY INFORMATION: Section 1802(d), title 38, United States Code provides that housing loans made by banks, savings and loan associations, insurance companies, credit unions, or mortgage companies which are subject to examination and supervision by Federal or State agencies, and other mortgage lenders approved by the Administrator, may be automatically guaranteed. Section 1819(c)(1) authorizes the Administrator to approve an individual lender or an entire class of lenders to close manufactured home loans on the automatic basis. These statutes allow eligible lenders to process and close housing loans without the prior approval of the VA. When a loan is closed in this manner, the documentation is then submitted to the VA for issuance of VA loan guaranty to the lender making that loan.

Under authority granted to the Administrator, the VA has provided by regulation that certain types of loans may not be closed automatically but must be submitted to the VA for prior approval before closing. Joint loans are one type of loan which may not be closed automatically. Sections 36.4210 and 36.4307 provide that a joint loan is a loan for the purchase of a manufactured home or conventionally-built home to two or more borrowers who will acquire an undivided interest in the property and who will be jointly liable for repayment of the loan. A loan to a veteran and spouse is not a joint loan and is not subject to the requirements of §§ 36.4210 or 36.4307. VA requires that joint loans be submitted for prior approval because VA guaranty is limited to the veteran's part of the loan. This requires a special computation of the amount of guaranty to be applied to a portion of the loan. This prior approval requirement assures that lenders do not receive an amount of guaranty which is less than expected and assures the proper use of veterans' benefits.

Lenders with automatic closing authority sometimes submit joint loans which have been inadvertently closed by lender personnel on the automatic basis to VA field offices for guaranty. When this occurs, it would not be fair to the veterans involved or to the lenders to summarily reject VA guaranty. A review of the loan documentation after an unauthorized closing may reveal that the income and credit worthiness of an applicant meets VA income and credit guidelines. The VA, therefore, reviews these cases to determine whether the failure to secure prior approval should be waived.

Sections 36.4220 and 36.4335 provide that the Chief Benefits Director or the Director of Loan Guaranty Service may relieve undue prejudice to a debtor, holder, or other person, which might otherwise result, provided that the interests of the Government are not adversely affected. It is under the authority of these regulations that joint loans closed automatically previously were submitted to VA Central Office for waiver consideration. These amendments are being promulgated so that joint loans closed automatically may be reviewed, and a waiver of the automatic loan closing may be approved under most circumstances in the local field offices without authorization from the Chief Benefits Director or the Director of Loan Guaranty Service. These amendments to the regulations are considered to be of an administrative or procedural (nonsubstantive) nature which will have no adverse effects upon program participants. This procedure will reduce the internal paperwork burden for the local offices and Central Office. It will result in a savings of expended man-hours and will speed up the issuance of loan guaranties to lenders in the affected cases.

Technical amendments have also been made to §§ 36.4220 and 36.4221 of the regulations to change the term "mobile home" to "manufactured home." These changes are made so that the terminology of the regulations will be in conformity with the language of Pub. L. 97–306, 96 Stat. 1429, October 14, 1982. Amendments have also been made to section 36.4216(i) to revise the title "Federal Housing Commissioner" to "Secretary of Housing and Urban Development."

These amendments are exempt from public participation requirements. Publication of proposed regulations for notice and public comment is impracticable and unnecessary. The amendments are entirely an administrative matter dealing with the internal procedures followed to grant waivers to a specific VA regulation. The amendments will have no adverse effects on lenders, veterans or others. For these reasons, the VA finds that the amendments are exempt from public participation under the authority of title 5, United States Code, section 553(b)(3)(A) and (B), and § 1.12 of Title 38 CFR.

Because a proposed regulation notice will not be published, these changes do not come within the definition of the term "rule" (5 U.S.C. 601(2)) subject to the Regulatory Flexibility Act. In any case, the regulations will have no significant economic impact on small private and nonprofit organizations, and small governmental jurisdictions. These amendments will aid lenders in some instances by eliminating delays in receiving VA loan guaranties in the affected cases thereby allowing for quicker sales by lenders of such loans to secondary loan purchasers. There will be no compliance costs or reporting burdens on individuals or organizations.

The regulations have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic markets.

(Catalog of Federal Domestic Assistance Program numbers, 64.114 and 64.119)

These amendments are promulgated under authority granted to the Administrator by sections 210(c), 1803(c)(1) and 1819(g) of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: March 20, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

§ 36.4216 [Amended]

1. Section 36.4216(i) is amended by changing the title "Federal Housing Commissioner" to "Secretary of Housing and Urban Development" in the two

places it appears; and by inserting the word "an" before the word "action."

2. In § 36.4220, paragraph (a) is amended by changing the word "mobile" to "manufactured" and a new paragraph (a)(6) is added to read as follows:

§ 36.4220 Substantive and procedural requirements—waiver.

(a) * * *

(6) The requirement in § 36.4210(a) that a lender obtain the prior approval of the Administrator before closing a joint loan if the lender or class of lenders is approved by the Administrator to close loans on the automatic basis pursuant to 38 U.S.C. 1819(c)(1). (38 U.S.C. 1819(c)(1))

§ 36.4221 [Amended]

3. In § 36.4221, paragraph (a) is amended by changing the word "mobile" to "manufactured."

4. Section § 36.4335 is amended by adding a new paragraph (g) to read as follows:

§ 36.4335 Supplementary administrative action.

* * * * *

(g) The requirement in § 36.4307(a) that a lender obtain in prior approval of the Administrator before closing a joint loan if the lender or class of lenders is eligible or has been approved by the Administrator to close loans on the automatic basis pursuant to 38 U.S.C. 1802(d). (38 U.S.C. 1803(c)(1))

[FR Doc. 84-8821 Filed 4-3-84; 8:45 am]
BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services, Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to Postal Contracting Manual.

SUMMARY: The Postal Service announces that it is amending the Postal Contracting Manual to correct certain errors in the mail transportation contracting section that occurred when transmittal letter 34 was published. In addition, certain new or revised forms are included.

EFFECTIVE DATE: March 15, 1984.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4618.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PCM Circular 84-2, dated March 15, 1984.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

Explanation of Changes

This circular corrects errors to 19-307.1, 19-310.6, 19-312.1(b), 19-312.2(b), 19-410.3(b), and 19-903(a) that occurred in the publication of transmittal letter 34.

Also included are the following new or revised forms:

Form 7445, Inquiry Concerning Renewal of Transportation Services Contract, Jan. 1983
Form 7447, Transportation Services Renewal Contact, Sep. 1976
Form 7460, Transmittal Letter and Instructions for Completing Form 7463, Nov. 1979
Form 7464-A, Negotiated Cost Statement (Short Form)—Highway Transportation Contracts, Oct. 1974
Form 7468-A, Highway Transportation Contract—Bid or Renewal Worksheet, May 1982
Form 7468-B, Short Form—Cost Statement, July 1975.

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,
Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-8803 Filed 4-3-84; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-V-FRL-2556-1]

Designations of Areas for Air Quality Planning Purposes; Attainment Status Designations: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This rulemaking revises the air quality designation under Section 107 of the Clean Air Act (Act) for Allen County, Indiana from nonattainment to attainment for ozone. This revision is based on a request from the State of Indiana to redesignate this area and on the supporting data the State submitted. Under the Act, designations can be changed if sufficient data are available to warrant such change.

EFFECTIVE DATE: This final rulemaking becomes effective on May 4, 1984.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 S. Dearborn Street. Chicago, Illinois 60604
Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner (312) 886-6036

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Act, the Administrator of EPA has promulgated the attainment status of each National Ambient Air Quality Standards (NAAQS) for each area of every state. See 40 CFR Part 81 (1983). These area designations may be revised whenever the data warrant. On March 3, 1978 (43 FR 8962), pursuant to Section 107 of the Act, EPA designated Allen County, Indiana as nonattainment for ozone.

On March 31, 1983, the State of Indiana submitted new information to EPA and requested redesignation of Allen County, Indiana from nonattainment to attainment for ozone. This request was based on ambient ozone monitoring conducted at two sites during the period of 1980 through 1982. No exceedances of the Ozone NAAQS were recorded at the ozone monitor located at 17215 Woodburn Two exceedances of the ozone standard were recorded at the 2022 North Beacon site in 1980 and no exceedances were recorded during 1981 and 1982. Following procedures given in the "Guidelines for Interpretation of the Ozone Air Quality Standards", the number of daily expected exceedances for the North Beacon monitoring site was calculated to be 0.8 for the three year period. These data demonstrate that the ozone NAAQS was not violated in Allen County, Indiana during the period of 1980 through 1982. In addition to this lack of violations, significant VOC emission reductions have occurred in the area during the most recent years as a result of the implementation of the

Federal Motor Vehicle Control Program.

Based on the information submitted by the State, on September 19, 1983 (48 FR 41788), EPA proposed to revise the designation of Allen County, Indiana from nonattainment to attainment for ozone. A more detailed discussion of Indiana's redesignation request and EPA's review of the request can be found in the September 19, 1983, notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

No comments were received by the Agency on this proposal. Therefore, EPA is approving the redesignation of Allen County, Indiana to attainment for ozone because no violations of the ozone NAAQS occurred in Allen County for the three years 1980 through 1982.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 4, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Intergovernmental relations.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: March 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES—INDIANA

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows: 1. Section § 81.315 is amended by revising the designation for Allen County in the Table for Ozone as follows:

§ 81.315 Indiana.

INDIANA—O_3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
• • •	•	•
Allen County		X
• • •	•	•

[FR Doc. 84-8686 Filed 4-3-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

41 CFR Part 14-2

Interior Procurement Regulations; Mistakes in Bids

AGENCY: Office of the Secretary, Interior.

ACTION: Correction of the effective date of the final rule.

SUMMARY: A final rule amending the Interior Procurement Regulations (IPR) to the delegate authority to procurement offices to make administrative determinations regarding mistake in bid allegations under the conditions in Federal Procurement Regulations (FPR) § 1-2.406-3(a)(1) was published in the Federal Register on March 2, 1984, 49 FR 7807). The effective date was erroneously stated as April 2, 1984, thirty days after publication. This correction changes the effective date to the date of publication, March 2, 1984.

EFFECTIVE DATE: March 2, 1984.

FOR FURTHER INFORMATION CONTACT: David C. Metz, Office of Acquisition and Property Management, Division of Acquisition and Grants, Department of the Interior, Washington, D.C. 20240, (202) 343-3345.

SUPPLEMENTARY INFORMATION: This correction is necessary in order to make the final rule effective during the time remaining before the transition from the FPR to the Federal Acquisition Regulation (FAR), which is to be effective on April 1, 1984. The IPR implements the FPR, thus, it will cease to be effective or transactions occurring after April 1, 1984. If the final rule's original effective date of April 2, 1984 were left unchanged, the rule would not be effective until after the IPR was replaced by the Department's FAR supplement, the Department of the Interior Acquisition Regulation (DIAR). Therefore, the usual effective date of thirty days after date of publication is not appropriate in this instance. Instead, the final rule is made effective on its publication, date March 2, 1984.

Accordingly, pursuant to the authority of 5 U.S.C. 301 and 40 U.S.C. 486(c), the amendment to 41 CFR 14-2.4 published at 49 FR 7807 is made effective as of the date of publication, March 2, 1984.

Dated: March 23, 1984.

Joseph E. Doddridge,

Acting Assistant Secretary of the Interior.

[FR Doc. 84-8940 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-10-M

43 CFR Part 4

Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final Rule; Correction.

SUMMARY: On February 2, 1984, a final rule was published (49 FR 4077) to reflect the change of address for the Regional Solicitor, Alaska Region of the Office of the Solicitor, U.S. Department of the Interior. An inadvertent error was made in the change of address, and this document corrects that error.

FOR FURTHER INFORMATION CONTACT: Frances A. Patton, 703-235-3810.

SUPPLEMENTARY INFORMATION: In the Federal Register document appearing at 49 FR 4077 of February 2, 1984, concerning § 4.413 of 43 CFR Part 4, "P.O. Box 34" is corrected to read "Box 34."

Dated: March 26, 1984.

Donald R. Tindal,

Director, Office of Hearings and Appeals.

[FR Doc. 84-8939 Filed 4-3-84; 8:45 am]

Billing Code 4310-10-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Federal Insurance Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 1229, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Marana (town), Pima County (FEMA–6541)	Santa Cruz River	At the intersection of Tangerine Road and Frontage Road.	*2,039
		East Branch Brawley Wash	At the intersection of Sanders Road and Silver Bell Road.	#1
Maps available for inspection at Planning and Zoning Department, 12775 N. Sanders Drive, Marana, Arizona.				
California	Grover City (city), San Luis Obispo County (FEMA–6574).	Meadow Creek	150 feet upstream from the center of North 12th Street.	
		Pacific Ocean	600 feet west from the center of the intersection of Grand Avenue and Le Sage Drive.	*10
Maps available for inspection at the Department of Community Development, 154 South Eighth Street, Grover City, California.				
California	Pismo Beach (city), San Luis Obispo County (FEMA–6574).	Pacific Ocean	At the confluence with Pismo Creek	*10
		Pismo Creek	75 feet upstream from the center of Southern Pacific Railroad.	*32
		Meadow Creek	50 feet upstream from the center of North 4th Street	*25
Maps available for inspection at the Planning Department, 1000 Bello Street, Pismo Beach, California.				
Idaho	Bonner County (unincorporated areas) (FEMA–6568)	Clark Fork	At the intersection of stream and center of Light Duty Road.	*2,076
		Grouse Creek	10 feet upstream from center of Colburn-Culver Road	*2,149
		Lightning Creek	480 feet upstream from center of State Route 200	*2,105
		Pack River	50 feet upstream from center of Pack River Road	*2,175
		Priest River	At the intersection of River and center of State Route 200.	*2,070
			At the confluence of Priest River with East River	*2,240
			100 feet upstream from the center of Peninsula Road	*2,199
		Rapid Lightning Creek	50 feet upstream from the center of Rapid Lightning Creek Road, which is 70 feet downstream of the confluence with Spring Creek.	*2,413
		Sand Creek North	50 feet downstream from center of Samuels Road	*2,129
		Sand Creek	50 feet upstream from the center of Schweitzer Basin Road.	*2,073
		Spring Creek	50 feet upstream from the center of Spring Creek Road.	*2,184
		Lake Cocolalla	100 feet west of the intersection of Cocolalla Creek and Burlington Northern Railroad.	*2,212
		Lake Kelso	Along entire lake shoreline	*2,154
		Lake Pend Oreille	At mouth of Pack River	*2,071
Maps available for inspection at County Clerk's Office, 2155 1st Avenue, Sandpoint, Idaho.				
Illinois	Village of Lomax, Henderson County (Docket No. FEMA–6578).	Mississippi River	Within community	*581
Maps available for inspection at the Lomax Post Office.				
Illinois	City of Markham, Cook County (Docket No. FEMA–6578).	Cal-Union drainage ditch	About 3,100 feet downstream of Wood Street	*606
			About 900 feet upstream of southbound ramp to Interstate 294.	*610
		Southwest Branch Cal-Union drainage ditch.	Mouth at Cal-Union drainage ditch	*609
			Just upstream of Interstate 294	*624
		Dixie Creek	Within corporate limits	*607
		Belair Creek	Mouth at Dixie Creek	*607
			About 3,000 feet upstream of Interstate 294	*606
		I–57 drainage ditch	About 2,150 feet downstream of Kedzie Avenue	*606
			About 3,350 feet upstream of Kedzie Avenue	*612
		Park Creek	Mouth at I–57 drainage ditch	*606
			About 2,700 feet upstream of Kedzie Avenue	*611

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Building Inspector's Office, City Hall, 16313 Kedzie Parkway, Markham, Illinois.				
Illinois	(V) Nebo, Pike County (Docket No. FEMA–6574)	Bay Creek	About 1,400 feet downstream of confluence of Spring Creek.	*479
			About 2,425 feet upstream of Pittsfield Road	*483
		Spring Creek	At confluence with Bay Creek	*461
			About 2,900 feet upstream of Union Street	*465
Maps available for inspection at the Nebo Post Office, Nebo, Illinois.				
Illinois	(C) Sumner, Lawrence County (Docket No. FEMA–6574).	Muddy Creek	About 0.25 mile downstream of confluence of Shirley Creek.	*450
			About 0.36 mile upstream of Cedar Street	*455
		Shirley Creek	Mouth at Muddy Creek	*451
			About 0.22 mile upstream of State Highway 250	*454
Maps available for inspection at City Hall, Sumner, Illinois.				
Illinois	Village of Thebes, Alexander County (Docket No. FEMA–6581).	Mississippi River	About 1.10 miles downstream of Missouri Pacific Railroad.	*34[illegible]
			About 0.55 mile upstream of Missouri Pacific Railroad	*34[illegible]
Maps available for inspection at the Village Hall, Thebes, Illinois.				
Iowa	(C) Coggon, Linn County (Docket No. FEMA–6574	Buffalo Creek	About 2,300 feet downstream of Third Street	*895
			About 5,100 feet upstream of Illinois Central Gulf Railroad.	*91[illegible]
Maps available for inspection at City Hall, Coggon, Iowa.				
Kansas	(C) White Cloud, Doniphan County (Docket No. FEMA–6574).	Missouri River	Within community	*855
Maps available for inspection at the Golden Age Center, Main Street, White Cloud, Kansas.				
Massachusetts	Town of Phillipston, Worcester County (Docket No. FEMA–6557).	Millers River	Approximately 350 feet downstream of downstream corporate limits.	*747
			Upstream Boston and Maine RR	*76[illegible]
			Upstream corporate limits	*770
		Beaver Brook	Downstream corporate limits	*8[illegible]
			Upstream State Route 68	*8[illegible]
			Upstream Fornald School Road	*9[illegible]
			3rd upstream corporate limits	*1,002
			Approximately 1,500 feet upstream of 3rd upstream corporate limits.	*1,006
Maps available for inspection at the Town Hall, Phillipston, Massachusetts.				
Massachusetts	Rutland, town, Worcester County (Docket No. FEMA–6552).	Moulton Pond Brook	Approximately .45 mile downstream of abandoned railroad bridge.	*977
			Approximately 20 feet downstream of Depot Road	*986
			Approximately 80 feet upstream of State Route 56	*1,009
		East Branch Ware River	Downstream corporate limits	*81[illegible]
			Approximately 580 feet upstream of Intervale Road	*8[illegible]
			Upstream of Harris Road	*8[illegible]
			Approximately .41 mile downstream of Harris Road	*837
			Upstream of State Route 68	*868
			At upstream corporate limits	*976
Maps available for inspection at the Planning Board, 250 Main Street, Rutland, Massachusetts.				
Massachusetts	Town of Southwick, Hampden County (FEMA Docket No. 6557).	Great Brook	Downstream State Route 57	*160
			Approximately 5,000 feet upstream of State Route 57	*170
			Approximately 2,000 feet downstream of South Longyard Road.	*180
			Upstream Sheep Pasture Road	*2[illegible]
			Upstream Industrial Drive	*2[illegible]
			Downstream Berkshire Avenue	*2[illegible]
		Tributary to Great Brook	Confluence with Great Brook	*2[illegible]
			Approximately 70 feet upstream of State Route 57	*242
		Munn Brook	Downsteam corporate limits	*208
			Upstream covered bridge	*236
			Approximately 2,020 feet upstream of covered bridge	*251
		Shurtleff Brook	Confluence with Munn Brook	*216
			Approximately 5,060 feet above confluence with Munn Brook.	*245
Maps available for inspection at the Town Hall, Southwick, Massachusetts.				
Missouri	(C) Carterville, Jasper County (Docket No. FEMA–6574).	Mine Branch	About 2,050 feet downstream of Sharon drive	*[illegible]
			About 200 feet upstream of Missouri Pacific Railroad (near U.S. Highway 66).	*[illegible]
		Ben's Branch	About 1,950 feet downstream of U.S. Highway 71 and 56.	*[illegible]
			Just upstream of County Highway AA	*[illegible]
Maps available for inspectionat City Hall, 301 East Main, Carterville, Missouri.				
Nevada	Washoe County (unincorporated areas) (FEMA–6568)	Truckee River	200 feet upstream from center of Clark Gypsum Plant Road	*4,247
			At the intersection of River and Mayberry Drive	*4,614
		Steamboat Creek	At the intersection of Ellis Street and Sinelio Drive	*4,[illegible]
			50 feet upstream from the center of Towne Road	*4,572
		Bailey Canyon Creek	50 feet upstream from center of Toll Road	*4,58[illegible]

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Boynton Slough	200 feet south along South McCarran Boulevard from its intersection with Pembroke Drive.	*4,393
		North Truckee Drain	50 feet upstream from center of East Prater Way	*4,396
		Dry Creek	125 feet upstream from center of Timothy Drive	*4,577
		Galena Creek	At the intersection of U.S. Highway 395 and East Lemmon Road.	#1
		Thomas Creek	At the intersection of Foothill Road and Thomas Creek Road.	#1
		Evans Creek	500 feet south along Lakeside Drive from intersection with Hash Lane.	#1
Maps available at the County Engineering Department, 1201 Mill Street, Reno, Nevada.				
New Jersey	Guttenberg, town, Hudson County (FEMA Docket No. [illegible])	Hudson River	Entire shoreline within community	*10
Maps available for inspection at the Town Hall, 6808 Park Avenue, Guttenberg, New Jersey.				
New York	Amsterdam, City Montgomery Co. (FEMA Docket No. [illegible])	Mohawk River	At downstream corporate limits	*[illegible]
			At confluence with South Chuctonunda Creek	*273
			At upstream corporate limits	*278
		North Chuctanunda Creek	Upstream side of culvert at Conrail crossing	*272
			State Route 67 (downstream side)	*352
			Prospect Street (upstream side)	*384
			Fourth Avenue (upstream side)	*448
			Second Avenue (upstream side)	[illegible]
			Upstream side of upstream Conrail crossing	*525
			Upstream side of Clizbe Avenue	*[illegible]
			Upstream corporate limits	[illegible]
		South Chuctanunda Creek	At confluence with Mohawk River	*273
			Florida Avenue crossing (upstream side) approximately 1,000 feet downstream of State Route 55.	*302
		Bunn Creek	At confluence with North Chuctanunda Creek	*378
			Upstream side of Brookside Avenue	*448
			Footbridge (upstream side)	*487
			Upstream side of dam approximately 750 feet upstream of Brookside Reservoir.	*597
			Upstream corporate limits	*[illegible]
		Dove Creek	Confluence with Mohawk River	*278
			Steadwell Avenue (upstream side)	*305
			Upstream corporate limits	*382
Maps available for inspection at the City Hall, 61 Church Street, Amsterdam, New York.				
New York	Ellicott, town, Chautauqua County (FEMA Docket No. 6574).	Cassadaga Creek	Downstream corporate limits	*1,248
			Approximately 2,985 feet upstream of State Route 17	*1,249
Maps available for inspection at the Town Hall, 215 Work Street, Falconer, New York.				
New York	Fredonia, village, Chautauqua County (FEMA Docket No. [illegible])	Canadaway Creek	Downstream, corporate limits	*641
			Matteson Road (downstream side)	*650
			Approximately .38 mile upstream of Matteson Street	*661
			At Risley Street	*679
			West Main Street (upstream side)	*703
			Approximately 700 feet upstream of Water Street	*715
			Approximately 2,900 feet downstream of Liberty Street	*730
			Liberty Street (upstream side)	*749
			Approximately .45 mile upstream of Liberty Street	*764
			Upstream corporate limits	*777
Maps available for inspection at the Village Hall, Fredonia, New York.				
New York	Larchmont, village, Westchester County (FEMA Docket No. 6568).	Long Island Sound	Entire shoreline within community	*18
Maps available for inspection at the Office of the Village Clerk, Municipal Building, 120 Larchmont Avenue, Larchmont, New York.				
New York	Pawling, village, Dutchess County (FEMA Docket No. 6576).	Swamp River	Upstream corporate limits	*477
			Upstream of access road approximately 960 feet downstream from Allison Drive.	*451
			Upstream of Main Street	*443
			Downstream corporate limits	*434
		East Branch Croton River	Approximately 100 feet upstream State Route 22	*493
			Upstream of Spring Street	*474
			Upstream of East Main Street	*467
			Approximately 160 feet upstream of Conrail	*450
			Downstream corporate limits	*444
Maps available for inspection at the Village Hall, Pawling, New York.				
New York	Schaghticoke, town, Rensselaer County (FEMA Docket No. 6566).	Hudson River	Downstream corporate limits	*36
			Lock No. 1 (upstream side)	*39
			Approximately 2 miles upstream of Lock No. 1	*41
			Lock No. 2 (upstream side)	*60
			Mechanicville Bridge (upstream side)	*63
			Lock No. 3 (upstream side)	*82
			Dam (upstream side)	*92
			Upstream corporate limits	*94
		Hoosic River	Confluence with Hudson River	*82
			Approximately 2 miles upstream of confluence with Hudson River.	*100
			Approximately .85 mile downstream of Concrete Arc bridge.	*120

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Concrete Arc bridge (upstream side)	*138
			Most upstream corporate limits within Village of Schaghticoke.	*277
			Fourth upstream corporate limits upstream of State Route 67.	*715
			County Route 111 (upstream side)	*323
			Dam (upstream side) upstream of County Route 111	[illegible]
			Most upstream corporate limits	*356
		Tomhannock Creek	Confluence with Hoosic River	[illegible]
			Approximately .7 mile upstream of Old Schaghticoke Road.	*113
			Approximately 720 feet downstream of Buttermilk Road.	*128
Maps available for inspection at the Office of the Town Supervisor, Town Hall, Schaghticoke, New York.				
New York	Tivoli, village, Dutchess County (FEMA Docket No. 6574).	Hudson River	Downstream corporate limits	[illegible]
			Upstream corporate limits	[illegible]
		Stony Creek	Downstream corporate limits	*76
			Upstream of dam (near Mill Street)	*107
			Upstream corporate limits	*132
Maps available for inspection at the Village Hall, 48 Broadway, Tivoli, New York.				
New York	Queensbury, town, Warren County (FEMA Docket No. [illegible]).	Hudson River	Most downstream corporate limits	*211
			Downstream of feeder dam	*275
			Upstream of feeder dam	[illegible]
		Halfway Creek	Approximately .6 mile downstream of Ridge Road	[illegible]
			Upstream of Ridge Road	*293
			Upstream of Cronin Road	[illegible]
			Upstream of Bay Road	*315
			Upstream of U.S. Route 9	*332
			[illegible]	[illegible]
Maps available for inspection at the Town Hall, Glens Falls, New York.				
North Carolina	Unincorporated areas of Haywood County (FEMA-6499).	Pigeon River	Just upstream of Interstate Highway 40	[illegible]
			Just upstream of S.R. 1513	*2,512
			Just downstream of River Road	[illegible]
			Approximately 150 feet upstream of S.R. 1669	[illegible]
			At confluence of East Fork Pigeon River, just downstream of State Highway 110.	[illegible]
		Jonathan Creek	Just upstream of Interstate Highway 40	*2,437
			Just downstream of U.S. Highway 276 at downstream crossing.	[illegible]
			Just upstream of S.R. 1318	[illegible]
			Just upstream of S.R. 1309	[illegible]
			Just upstream of S.R. 1302 at downstream crossing	*2,772
			Just downstream of Evans Cove Road	*2,954
			Just downstream of Rich Cove Road	[illegible]
			Just upstream of S.R. 1302 at its crossing upstream of the confluence of Carpenter Branch.	*3,146
			Just upstream of S.R. 1301	[illegible]
		Richland Creek	Just downstream of State Highway 209	*2,524
		Hominy Creek	Just upstream of U.S. Highways 19 and 23 (downstream crossing).	[illegible]
			Just upstream of Highways 19 and 23 at its crossing location upstream of the confluence of North Hominy Creek.	*2,395
		North Hominy Creek	Just upstream of U.S. Highway 19 and 23	*2,394
			Approximately 1,000 feet upstream of S.R. 1601	*2,585
			Just upstream of Newfound Road	[illegible]
		Tributary to North Hominy Creek	Just downstream of S.R. 1608	[illegible]
		Beaverdam Creek	Just downstream of Beaverdam Road	*2,627
			Just downstream of S.R. 1614	[illegible]
		West Fork Pigeon River	Approximately 150 feet downstream of U.S. Highway [illegible]	[illegible]
		East Fork Pigeon River	Just upstream of U.S. Highway 276, at downstream crossing.	[illegible]
			Just upstream of U.S. Highway 276 at its second crossing of the river located approximately 350 feet upstream of the confluence of Lanier Creek.	*2,741
			Just upstream of S.R. 1104 approximately 1,200 feet at downstream of the confluence of Henderson Branch where S.R. 1104 links with U.S. Highway [illegible]	*2,774
			Just upstream of U.S. Highway 276 at its uppermost crossing located approximately 2,600 feet upstream of the confluence of Long Branch.	[illegible]
			Just upstream of Hunger Creek Road	*3,042
Maps available for inspection at County Commissioner's Office, County Courthouse Annex and at the County Planner's Office, County Courthouse, Waynesville, North Caroline [illegible]				
Ohio	(C) Bellefontaine, Logan County (Docket No. FEMA-6574).	[illegible]	Just upstream of Troy Street	*1,177
			Just downstream of Main Street	*1,203
			Just upstream of Main Street	*1,208
			Just downstream of Harding Street	*1,221
			Just upstream of Harding Street	*1,230
			Just downstream of Eastern Avenue	*1,280
		Possum Run	About 950 feet downstream of Niven Avenue	*1,175
			Just downstream of Conrail (about 250 feet downstream of Niven Avenue).	*1,175

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Conrail (About 250 feet downstream of Niven Avenue).	*1,161
			Just downstream of Troy Street	*1,184
			Just upstream of Troy Street	*1,190
			Just downstream of Elm Street	*1,213
		Blue Jacket Creek Tributary 1	Just upstream of Township Road 185	*1,275
			About 110 feet upstream of Township Road 185	*1,277
		Blue Jacket Creek Tributary 2	About 1,000 feet downstream of Heritage Drive	*1,245
			About 700 feet downstream of Heritage Drive	*1,246
		Wiseshicken Creek	About 1,340 feet downstream of Private Drive	*1,176
			Just downstream of Private Drive	*1,189
Maps available for inspection at the Engineer's Department, City Hall, 135 N. Detroit Street, Bellefontaine, Ohio.				
Ohio	(V) Proctorville, Lawrence County (Docket No. FEMA-6574).	Ohio River	Within the community	*555
Maps available for inspection at the Clerk Treasurer, Village Hall, P.O. Box 406, Proctorville, Ohio.				
Ohio	(C) Troy, Miami County (Docket No. FEMA-6574)	Great Miami River	Just upstream of Conrail	*821
			About 0.4 mile upstream of Hobart Arena Road	*832
		Great Miami River Bypass	At confluence with Great Miami River	*824
			At divergence from Great Miami River	*829
		Island No. 3 Tributary	About 0.71 mile downstream of Conrail	*819
			Just upstream of Peters Avenue	*832
			About 0.34 mile upstream of State Route 55	*863
		Staunton Tributary	Just upstream of State Route 55	*830
			About 1,100 feet upstream of Market Street	*837
Maps available for inspection at the Office of Public Service and Safety, City Hall, 100 S. Market Street, Troy, Ohio.				
Oregon	Athena (city), Umatilla County (FEMA-6566)	Waterman Gulch	At the intersection of Garfield Street and 2nd Street	*1,728
Maps available for inspection at City Planner's Office, Umatilla County Courthouse, Pendleton, Oregon.				
Oregon	Coos Bay (city), Coos County (FEMA-6574)	Coos Bay	At the intersection of Newmark Avenue and Mill Street	*8
			At the intersection of Pine Avenue and U.S. Highway 101.	*9
			At the intersection of Coos River Highway and Ross Slough Road.	*9
		Pony Creek	50 feet downstream of center of Ocean Boulevard	*16
Maps available for inspection at the Planning Department, 500 Central, Coos Bay, Oregon.				
Oregon	Lakeside (city) (Coos County) (FEMA-6574)	Tenmile Creek	At the intersection of Creek and Hill Top Drive	*20
		Tenmile Lake	At the intersection of S. 11th Street and Park Avenue	*20
Maps available for inspection at City Hall, 120 N. 9th, Lakeside, Oregon.				
Oregon	Myrtle Point (city), Coos County (FEMA-6568)	South Fork Coquille River	50 feet upstream from center of Spruce Street	*40
Maps available for inspection at City Recorder's Office, 424 5th Street, Myrtle Point, Oregon.				
Oregon	North Bend (city) (Coos County) (FEMA-6574)	Pony Creek	100 feet upstream of center of Newmark Avenue	*5
		Coos Bay	At the intersection of Cape Arago Highway No. 240 and Harbor Avenue.	*8
Maps available for inspection at City Engineer's Office, California and Union Streets, North Bend, Oregon.				
Oregon	Scio (city), Linn County (FEMA-6574)	Thomas Creek	At the center of North Main Street	*313
		Shallow Flooding	At the center of intersection of North Fourth Avenue and North Cherry Street.	#1
		Peters Ditch	At the center of intersection of South Six Avenue and South Alder Street.	*312
Maps available for inspection at City Hall, 38750 NW 1st, Scio, Oregon.				
Pennsylvania	Honey Brook, township, Chester County (FEMA Docket No. 6550).	West Branch Brandywine Creek	Approximately 3,600 feet downstream of South Birdell Road.	*596
			Confluence of Two Log Run	*603
			Just downstream of Horseshoe Pike	*609
		Two Log Run	Confluence with West Branch Brandywine Creek	*603
			Approximately 60 feet upstream of Beaver Dam Road	*606
Maps available for inspection at the Township Building, Suplee Road, Honey Brook, Pennsylvania.				
Pennsylvania	Newlin, township, Chester County (FEMA Docket No. 6550).	West Branch Brandywine Creek	Downstream corporate limits	*203
			Upstream side State Route 162	*227
			Upstream side Youngs Road	*235
			Upstream corporate limits	*251
Maps available for inspection at the Township Building, Strasburg Road, Newlin, Pennsylvania.				
Pennsylvania	Valley, township, Chester County (FEMA Docket No. 6550).	Sucker Run	Downstream corporate limits	*319
			Downstream Grove Avenue	*365
			Approximately 50 feet downstream of Red Road	*413
		Rock Run	Confluence with West Branch Brandywine Creek	*295
			Upstream of U.S. Route 30 Bypass	*378
			Approximately 400 feet downstream of corporate limits	*405
		West Branch Brandywine Creek	Most downstream corporate limits	*306
			Most upstream corporate limits	*345
			Upstream of Glencrest Road	*322

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Valley Township Building, 890 West Lincoln Highway, Coatesville, Pennsylvania.				
Pennsylvania	West Nantmeal, township, Chester County (FEMA Docket No. 6550).	Tributary to East Branch Brandywine Creek	Approximately 800 feet downstream of Creek Road	*466
			Upstream Creek Road	*524
			Approximately 800 feet upstream of Access Road	*544
Maps available for inspection at the Township Building, Route 82, West Nantmeal, Pennsylvania.				
South Carolina	Unincorporated areas of Spartanburg County (FEMA-6574).	Beaverdam Creek	Approximately 130 feet upstream of Secondary Road 68.	*591
		Cherokee Creek	Approximately 140 feet upstream of Clinchfield Railroad.	*691
			Just downstream of Secondary Road 160 (Green River Road).	*739
			Just downstream of U.S. Highway 221	*768
		Chinquapin Creek	Approximately 100 feet downstream of U.S. Highway 221.	*719
		Fairforest Creek	Approximately 250 feet upstream of State Highway 56	*676
			Just downstream of Burke Street	*647
			Approximately 100 feet downstream of Old Greenville Highway.	*680
		Fawn Branch	Just upstream of County Road 348	*700
		Ferguson Creek	Approximately 100 feet downstream of Secondary Road 200.	*650
			Just upstream of Secondary Road 454	*673
		Furrier Creek	Approximately 70 feet downstream of Secondary Road 551.	*593
		Greys Creek	Approximately 140 feet downstream of Secondary Road 317.	*696
			Just upstream of Southern Railway	*736
		Halfway Branch	Approximately 200 feet upstream of Cart Drive	*669
		Holeson Creek	Approximately 150 feet downstream of the northern city of Spartanburg corporate limits.	*695
		Lawson Fork Creek North	Approximately 150 feet downstream of Clinchfield Railroad.	*664
			Approximately 150 feet upstream of Interstate Highway 85 southbound access road.	*723
			Approximately 350 feet upstream of Old Boiling Springs Road.	*728
			Just upstream of Belcher Road	*768
		Lawson Fork Creek South	Approximately 100 feet downstream of Secondary Road 105.	*644
		Little Chinquapin Creek	Approximately 65 feet upstream of Wood Street	*739
			Approximately 80 feet downstrem of Centennial Street	*751
		Maple Creek	Just upstream of Harvey Road	*672
		Middle Tyger River	Approximately 150 feet downstream of Secondary Road 591.	*654
		North Tyger River	Approximately 100 feet downstream of Secondary Road 64.	*625
			Approximately 100 feet upstream of Secondary Road 64.	*630
			Approximately 120 feet upstream of State Highway 296 (Reidville Road).	*662
		Reedy Creek	Just upstream of Secondary Road 590 (Canaan Road)	*687
		Shoally Creek	Approximately 60 feet downstream of County Road 43 (Paris Bridge Road).	*763
			Approximately 80 feet upstream of County Road 775 (Shoally Creek Road).	*784
		South Tyger River (North)	Approximately 500 feet downstream of Interstate Highway 85.	*725
			Approximately 220 feet upstream of Secondary Road 62.	*758
			Approximately 250 feet downstream of State Highway 290.	*748
		South Tyger River (south)	Approximately 160 feet downstream of Interstate 26	*542
			Approximately 320 feet upstream of County Road 230	*547
		Standing Stone Branch	Just downstream of Valley Falls Road	*765
			Just upstream of Secondary Road 79	*790
		Williams Branch	Approximately 100 feet downstream of the city of Spartanburg corporate limits.	*682
Maps available for inspection at Spartanburg County Human Resources Center, Planning and Development Office, 142 South Dean Street, Spartanburg, South Carolina 29304.				
Texas	City of Cut and Shoot, Montgomery County (FEMA-6574).	Crystal Creek	Just upstream of State Highway 105	*179
		Crystal Creek tributary No. 3	Approximately 200 feet downstream of Conroe-By Spot Road.	*184
		West Fork of Crystal Creek	Approximately 300 feet upstream of State Highway 105.	*197
		Caney Creek	Approximately 400 feet upstream of State Highway 105.	*175
Maps available for inspection at the home of Mayor Raymond Rushing, corner of Rolling Hills Road and Old Rt. 105, Cut and Shoot, Texas 77303.				
Texas	Unincorporated areas of Montgomery County (FEMA-6574).	West Fork of San Jacinto River	Approximately 1,100 feet downstream of Missouri Pacific Railroad.	*124
			Approximately 1,120 feet upstream of FM 2854	*148
		Woodsons Gully	Approximately 550 feet upstream of Riley Fussel Road	*155
		White Oak Creek-West	Approximately 120 feet upstream of Piney Point Drive	*117
		White Oak west tributary No. 1	Approximately 550 feet downstream of Long Leaf Drive.	*112

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Crystal Creek	Approximately 330 feet upstream of Exxon Road	*128
			Just upstream of Whipporwill Road	*200
			Just downstream of dam (approximately 3,780 feet downstream of Powell Street).	*321
			Just upstream of dam (approximately 3,780 feet downstream of Powell Street).	*327
		Crystal Creek tributary No. 1	Approximately 120 feet upstream of Humble Road (downstream crossing).	*148
		West Fork of Crystal Creek	Approximately 250 feet upstream of Rocky Road	*156
			Approximately 300 feet upstream of State Highway 105.	*197
		Crystal Creek tributary No. 2	Approximately 300 feet upsteam of dam (approximately 800 feet above mouth).	*173
			Just upstream of Deep Forest Drive	*176
		Crystal Creek tributary No. 3	Just downstream of State Highway 105	*181
		Crystal Creek tributary No. 4	Approximately 250 feet upstream of Oak Leaf Road	*201
		Crystal Creek tributary No. 5	Just upstream of Long Leaf Road	*206
		Carters Slough	Just upstream of White Birch Drive	*123
		Sandy Branch	Approximately 80 feet upstream of Stidham Road	*130
		Gleneagles diversion ditch	Approximately 1,800 feet upstream of Shallow Lane	*117
		Little Caney Creek	Approximately 350 feet upstream of Stidham Road	*126
			Just upstream of Porter Highway (FM 1314)	*151
		Stewarts Creek	Just upstream of Crighton Road	*132
			Just upstream of Avenue F	*175
			Approximately 450 feet downstream of Dam (Approximately 2,800 feet downstream of U.S. Highway 75).	*241
			Just upstream of dam (approximately 2,800 feet downstream of U.S. Highway 75).	[illegible]
		Stewarts Creek tributary No. 1	Approximately 250 feet downstream of Missouri Pacific Railroad.	*211
			Approximately 1,750 feet upstream of Missouri Pacific Railroad.	*222
		Grand lake Creek	Approximately 100 feet upstream of North Rivershire Drive.	*158
		Alligator Creek	Approximately 300 feet downstream of Old Montgomery Road.	*168
		White Oak Creek, North	Approximately 330 feet upstream of State Highway 105.	*158
		Egypt Creek	Approximately 110 feet upstream of Old State Highway 105.	*179
		Sand Branch	Approximately 100 feet upstream of West Creek Drive	*175
		Bebe Creek	Approximately 100 feet downstream of old State Highway 105.	*172
			Approximately 400 feet upstream of dam (approximately 400 feet upstream of old State Highway 105).	*197
		Bebe Branch	Just upstream of Sorter's Road	*94
		Bebe Branch tributary No. 1	Approximately 470 feet upstream of Martin Drive	[illegible]
			Approximately 600 feet upstream of Ford Road	*97
		Caney Creek	Just upstream of FM 1485 (East River Road)	*77
			Just downstream of Atchison Topeka and Santa Fe Railway.	*169
			Just downstream of Royal Bridge Road	*219
		Caney Creek tributary No. 1	Just upstream of FM 1485 (East River Road)	*91
		Dry Creek	Approximately 580 feet upstream of FM 1485	[illegible]
			Just upstream of FM 3083	*154
		Spring Branch	Just upstream of Walker Drive	*118
			Just upstream of old State Highway 105	*172
		West Fork of Spring Branch	Approximately 230 feet upstream of old State Highway 105.	*177
			Just upstream of Weaver Lane	*255
		McRae Creek	Approximately 100 feet upstream of FM 1484	*225
			Approximately 150 feet upstream of Tanyard Road	[illegible]
		Camp Creek	Just upstream of FM 1884	*218
			Just upstream of Zapata Way	*254
			Approximately 300 feet downstream of Missouri Pacific Railroad.	*320
			Approximately 1,000 feet upstream of Missouri Pacific Railroad.	*337
		Caney Creek tributary No. 2	Approximately 130 feet downstream of FM 1484	*212
			Approximately 500 feet upstream of dam (approximately 400 feet upstream of FM 1484).	*225
		Little Caney Creek No. 2	Just downstream of Willis Mt. Zion Road	[illegible]
		Caney Creek tributary No. 3	Just upstream of Mount Zion Road	[illegible]
		Peach Creek	Approximately 200 feet downstream of FM 1485 (East River Road).	*78
			Just upstream of Holly Road	*111
			Approximately 400 feet upstream of Walker Road	*194
			Just upstream of Willis-Coldspring Road	*267
		Peach Creek tributary No. 1	Just upstream of Dale Avenue	*100
		Waterhole Branch	Just upstream of Unnamed Road (approximately 3,150 feet above mouth).	*103
		Gulley Branch	Approximately 200 feet upstream of Lakeshore Drive (downstream crossing).	[illegible]
		Peach Creek tributary No. 2	Just upstream of Morgan Drive	*111
		Hightower Branch	Approximately 300 feet upstream of McShan Road	*126
		Jayhawker Creek	Just upstream of Atchison Topeka and Santa Fe Railway.	*138
		Bee Branch	Approximately 700 feet upstream of Fostoria Road	*144
		Lawrence Creek	Approximately 150 feet upstream of State Highway 105.	*154

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Duck Creek	Approximately 650 feet upstream of Duck Road	*171
		Peach Creek Tributary No. 3	Approximately 950 feet above mouth	[illegible]
			Just upstream of unnamed road (approximately 10,160 feet above mouth).	[illegible]
		Spring Creek	Just upstream of Riley Fussel Road	*96
			Approximately 600 feet upstream of Hufsmith-Conroe Road (FM 2978).	*151
			Approximately 450 feet upstream of Cypress-Rosehill Road.	*176
		Sam Bell gully diversion channel	Approximately 900 feet downstream of Missouri Pacific Railroad.	*114
			Approximately 150 feet upstream of Basswood Drive	*120
		Tributary to Sam Bell gully diversion channel	Just upstream of Robinson Road	*117
		Sam Bell gully	Approximately 150 feet upstream of Maplewood Road	*123
		Panther Branch	Approximately 600 feet upstream of MacDonald Road	*121
			Approximately 100 feet upstream of FM 1486	*167
		Panther Branch Tributary No. 1	Approximately 3,800 feet above mouth	*114
		Bear Branch	Approximately 150 feet upstream of FM 2978	[illegible]
			Just upstream of FM 1486	[illegible]
		Panther Branch Tributary No. 2	Approximately 150 feet downstream of FM 1486	*191
		Dry Creek No. 2	Just downstream of Dry Creek Drive	*142
			Just upstream of Dobbin-Huffsmith Road	*211
		Dry Creek No. 2 Tributary No. 1	Just downstream of Glenda Drive	*211
		Mill Creek	Just upstream of Hardin Store Road	[illegible]
			Approximately 700 feet upstream of FM 149	*161
			Approximately 700 feet upstream of FM 1486	*235
		Decker Branch	Approximately 350 feet upstream of Hardin Store Road.	[illegible]
			Just upstream of Rolling Wood Street	[illegible]
		Brandon Branch	Approximately 2,300 feet upstream from dam (approximately 2,550 feet above mouth).	[illegible]
		Decker Branch Tributary No. 1	Approximately 420 feet upstream of Coe Road	[illegible]
		Mill Creek Tributary No. 1	Approximately 280 feet upstream of Little Thorn Lane	*194
			Approximately 240 feet upstream of Gossamer Lane	*207
		Mill Creek Tributary No. 2	Just upstream of Little Thorn Lane	[illegible]
			Approximately 80 feet upstream of Sunflower Lane	[illegible]
		Mill Creek Tributary No. 3	Just upstream of Cole Valley Drive	*213
		Mill Creek Tributary No. 4	Approximately 1,150 feet above mouth	*197
		Mill Creek Tributary No. 5	Approximately 130 feet upstream of FM 1486	[illegible]
		Walnut Creek	Approximately 150 feet downstream of Hunters Grove Road.	*176
			Approximately 160 feet downstream of Nichols Sawmill Road.	*197
		Sulphur Branch	Just upstream of Green Oak	[illegible]
			Approximately 120 feet downstream of FM 1774	[illegible]
		Walnut Creek Tributary No. 1	Approximately 100 feet upstream of Butera Road	[illegible]
		Mink Branch	Approximately 450 feet downstream of Nichols Sawmill Road.	[illegible]
		Arnold Branch	Approximately 80 feet upstream of Nichols Sawmill Road.	*221
			Approximately 250 feet upstream of FM 1488	[illegible]
		Log Gully	Approximately 200 feet upstream of Alford Road	[illegible]
			Approximately 100 feet downstream of Lake Shore Drive.	*238
			Just upstream of Lake Shore Drive	[illegible]
		Brushy Creek	Approximately 300 feet upstream of Nichols Sawmill Road.	[illegible]
		Threemile Creek	Approximately 1,300 feet above mouth	[illegible]
		Mills Branch	Approximately 1,080 feet downstream of Hamblen Road	*72
		East Fork San Jacinto River	Just upstream of East River Road (FM 1485)	*71
		Church House Gully	Just downstream of McGager Drive	D*79
		Orton Gully	Just downstream of McGinnis Monday Drive	*74
		Live Branch	Approximately 70 feet upstream of State Highway 830	[illegible]
			Just upstream of Anderson Road	[illegible]
		Bell Creek	Approximately 250 feet upstream of State Highway 830.	*211
		Lewis Creek	Approximately 350 feet downstream of Back Toe of Dam.	*212
		Weirs Creek	Just downstream of Calvert Road	[illegible]
			Approximately 150 feet upstream of Interstate Highway 45.	[illegible]
		Chambers Creek	Approximately 1,900 feet above mouth	[illegible]
		Shepard Branch	Approximately 350 feet upstream of Shepard Hill Road	[illegible]
		Weirs Creek Tributary No. 1	Approximately 160 feet upstream of U.S. Highway 75	[illegible]
		Hostetter Creek	Approximately 350 feet upstream of Wruff Wruff Road	[illegible]
		Gum Branch	Approximately 80 feet upstream of Old Fire Trail	[illegible]
		Rush Creek	Just downstream of Dam (approximately 1,300 feet downstream of Comanche Road).	*210
			Just downstream of Comanche Road	[illegible]
		Rush Creek Tributary No. 1	Approximately 100 feet downstream of Tejas Road	*211
		Rush Creek Tributary No. 2	Approximately 160 feet downstream of Dam (approximately 850 feet upstream of Comanche Road).	*216
			Approximately 100 feet downstream of Cheyenne Road	[illegible]
		Martin Creek	Approximately 130 feet downstream of Roman Hill Boulevard.	*225
			Approximately 470 feet upstream of Roman Hill Boulevard.	*237

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Stewart Creek North	Approximately 450 feet upstream of Walden Road	*209
			Just downstream of FM 149	*267
		Atkins Creek	Approximately 200 feet upstream of FM 1097	*236
		Town Creek	Approximately 350 feet upstream of Clepper Road	*224
			Approximately 400 feet upstream of FM 149	*242
		Town Creek Tributary No. 1	Just upstream of Bethel Road	*249
			Just upstream of FM 1097	*273
		Town Creek Tributary No. 2	Approximately 100 feet downstream of State Highway [illegible]	*265
		Carwile Creek	Approximately 1,000 feet above mouth	*252
		Lake Creek	Just upstream of Honea-Egypt Road	*150
			Just upstream of FM 149	*186
			Approximately 600 feet upstream of Dacus Road	*230
		Fish Creek	Approximately 200 feet downstream of Atchison, Topeka and Santa Fe Railway.	*228
			Approximately 500 feet upstream of Dam (Approximately 300 feet upstream of FM 2854).	*239
		Mound Creek	Approximately 350 feet upstream of Honea-Egypt Road.	*180
			Approximately 240 feet upstream of FM 2854 (upstream crossing).	*248
		Deer Lake Branch	Approximately 150 feet downstream of Buckridge Road.	*201
			Just upstream of Buckridge Road	*211
		Mound Creek Tributary No. 1	Just downstream of Dam (Approximately 4,500 feet above mouth).	*230
			Approximately 170 feet downstream of Stinson Lane	*247
		Lake Creek Tributary No. 1	Approximately 140 feet upstream of Pin Oak Road	*164
		Lake Creek Tributary No. 2	Approximately 100 feet upstream of Boars Head Road	*155
		Lake Creek Tributary No. 3	Just downstream of Dam (Approximately 22,200 feet above mouth).	*249
			Just upstream of Dam (Approximately 22,200 feet above mouth).	*255
		Landrum Creek	Approximately 100 feet upstream of Spring Branch Road.	*207
		Spring Branch No. 2	Just upstream of Spring Branch Road	[illegible]
			Approximately 70 feet upstream of FM 149	*283
		Lake Creek Tributary No. 4	Approximately 470 feet upstream of Jackson Road	*202
			Just upstream of FM 1486	*239
		Lake Creek Tributary No. 5	Approximately 140 feet downstream of Tri-Lake Road	*253
			Approximately 250 feet upstream of Tri-Lake Road	*265
		Caney Creek No. 2	Approximately 1,000 feet upstream of FM 1486	*213
			Approximately 600 feet upstream of Old State Highway 105.	*220
		Lake Creek Tributary No. 6	Just upstream of State Highway 105	*228
		Lake Creek Tributary No. 7	Approximately 170 feet upstream of FM 1486	*221
			Approximately 170 feet downstream of Mount Mariah Road.	*240
			Approximately 70 feet upstream of Mount Mariah Road.	*247
		Little Caney Creek No. 3	Approximately 200 feet upstream of FM 1486	*218
		Kidhaw Branch	Approximately 120 feet upstream of FM 149	*313
		Little Lake Creek	Approximately 350 feet upstream of FM 149	*221
		Little Lake Tributary No. 1	Just upstream of Big Oak Drive	*213
		Little Lake Tributary No. 2	Just upstream of Blue Water Road	*220
			Just upstream of Forest Woods Lane	*226
		Little Lake Tributary No. 3	Approximately 1,300 feet above mouth	*215
		Little Lake Tributary No. 4	Approximately 170 feet upstream of FM 149	*234
		Little Lake Tributary No. 5	Approximately 500 feet upstream of Bailey Grove Road.	*231
		Pole Creek	Approximately 1,000 feet above mouth	*240
		Sand Branch No. 2	Approximately 160 feet above Unimproved Road (approximately 4,100 feet above mouth).	*260
		Caney Creek North	Approximately 760 feet above FM 1375	[illegible]
			Approximately 600 feet above FM 1791	*277
		Kelley Branch	Approximately 70 feet upstream of Osborn Road	*251
		[illegible] Branch	Approximately 270 feet upstream of FM 1375	*249
		Caney Creek North Tributary No. 1	Approximately 760 feet above mouth	*240
		Anthony Branch	Approximately 200 feet downstream of FM 149	[illegible]
		Caney Creek North Tributary No. 2	Approximately 230 feet upstream of FM 1791	*301
		Caney Creek North Tributary No. 3	Approximately 1,000 feet above mouth	[illegible]
		Bay Branch	Just upstream of FM 1791	*278
			Approximately 200 feet downstream of FM 149	*315

Maps available for inspection at County Clerk's Office, County Courthouse, Main and Davis Streets, Conroe, Texas 77301.

Texas	City of Oak Ridge North, Montgomery County (FEMA-[illegible])	Sam Bell gully	Just downstream of Ridgewood Road	*130
			Just upstream of Robinson Road	*133

Maps available for inspection at City Secretary's Office, City Hall, 27506 Interstate 45, Oak Ridge North, Texas 77380.

Texas	City of Panorama Village, Montgomery County (FEMA-8574).	Stewarts Creek	Approximately 250 feet downstream of Farm Road [illegible].	*277
		White Oak Creek North	Approximately 200 feet upstream of League Line Road	*254

Maps available for inspection at City Secretary's Office, City Hall, 98 Hwon Drive, Panorama Village, Texas 77304.

Texas	City of Patton Village, Montgomery County (FEMA-8574).	Peach Creek	Just downstream of Southern Pacific Railroad	[illegible]
		Peach Creek Tributary No. 1	Just downstream of Short Street (extended)	[illegible]

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at City Hall, Patton Village, Texas 77372. Send comments to Mayor Wilson Holder or Mr. Glen McDonald, Police Chief, City Hall, P.O. Box 437, Splendora, Texas 77372				
Texas	City of Roman Forest, Montgomery County (FEMA-6574).	Peach Creek	Just upstream of Roman Forest Boulevard	*96
		Peach Creek tributary No. 1	Approximately 400 feet west of the intersection of Michelangelo Drive and Catacombs Drive	*94
		East Fork of San Jacinto River	Approximately 2,250 feet downstream of Roman Forest Boulevard	*85
Maps available for inspection at City Hall, 1603 Roman Forest Boulevard, Roman Forest, Texas 77367.				
Texas	City of Splendora, Montgomery County (FEMA-6574)	Peach Creek	Approximately 900 feet upstream of FM 2090	*107
Maps available for inspection at City Library, City Hall, Splendora, Texas 77372.				
Texas	City of Willis, Montgomery County (FEMA-6574)	Crystal Creek	Approximately 80 feet upstream of Montgomery Street	*358
Maps available for inspection at City Secretary's Office, City Hall, 200 North Bell Street, Willis, Texas 77378.				
Vermont	Castleton town, Rutland County (FEMA Docket No. 6574).	Castleton River	Downstream corporate limits	*371
			Upstream of Blissville Road	[illegible]
			Approximately 200 feet upstream of State Route 30	[illegible]
			Upstream of State Route 4A	[illegible]
			Upstream of North Road	*415
			Confluence of North Breton Brook	*424
			Upstream of Crampton Road	*440
			Upstream of Bridseye Road	*469
			Upstream corporate limits	*470
		North Breton Brook	Confluence with Castleton	[illegible]
			Downstream of East Hubbardton Road, second crossing.	*453
Maps available for inspection at the Town Clerk's Office, Castleton, Vermont.				
Vermont	Marshfield, town, Washington County (FEMA Docket No. 6470).	Winooski River	Downstream corporate limits	*751
			Downstream of Town Road 57	[illegible]
			Upstream of Town Road 48	[illegible]
			Upstream of Town Road 38	[illegible]
			Upstream of Town Road 12	*867
			Upstream corporate limits	*868
Maps available for inspection at the Town Clerk's Office, Marshfield, Vermont.				
Vermont	Marshfield, village, Washington County (FEMA Docket No. 6470).	Winooski River	Downstream corporate limits	*791
			Downstream of Marshfield Dam	[illegible]
			Upstream of U.S. Route 2	[illegible]
Maps available for inspection at the Village Offices, Marshfield, Vermont.				
Virginia	Hampton, city, independent city (FEMA Docket No. [illegible]).	Chesapeake Bay	Shoreline of Southwest Branch Back River at Boeing Road (extended).	*10
			Shoreline of Southwest Branch Back River at Meribeth Road (extended).	11
			Shoreline of Back River 500 feet southwest of Stoney Point.	*12
			Shoreline of Back River at Stony Point	*13
			Entire shoreline of Chesapeake Bay within community	*13
			Shoreline of Hampton River at Victoria Boulevard (extended).	[illegible]
			Shoreline of Hampton Roads at Segar Street (extended).	*11
			Shoreline of Hampton Roads at Congress Avenue (extended).	*12
			Shoreline of Mill Creek at Cumming Avenue (extended).	*11
			Shoreline of Mill Creek at Ambrose Street (extended)	*10
Maps available for inspection at the Planning and Zoning Department, City Hall, Hampton, Virginia.				
Washington	North Bend (city), King County, FEMA-6449	South Fork Snoqualmie River	50 feet downstream from center of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*429
		Middle Fork Snoqualmie River	At the intersection of Ballarat Avenue Northeast and Northeast 8th Street.	#2
Maps available for inspection at City Hall, 211 Main Avenue North, North Bend, Washington.				
West Virginia	Clendenin, town, Kanawha County (FEMA Docket No. [illegible]).	Elk River	Downstream corporate limits	*629
			Confluence of Big Sandy Creek	[illegible]
			Upstream corporate limits	[illegible]
		Big Sandy River	Confluence with Elk River	[illegible]
			Upstream corporate limits	[illegible]
Maps available for inspection at the Mayor's Office, Town Hall, Maywood and 1st Avenues, Clendenin, West Virginia.				

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Appeals of the proposed base flood elevations were received and have been resolved by the Agency.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Montana	Gallatin County (unincorporated areas) (FEMA-6282)	Bozeman Creek	Intersection of creek and center of Nash Road	*5,166
		Bridger Creek	Upstream side of an Irrigation Drop Structure located approximately 150 feet upstream from the center of State Highway 293.	*4,797
		East Gallatin River	Intersection of creek and center of Airport Road	*4,461
		Buster Gulch	100 feet upstream from center of the most downstream crossing of Nelson Road.	*4,478
		West Gallatin River	Intersection of the river and the upstream side of State Highway 347 (Amsterdam Road).	*4,432
			The area along Axtell Gateway Road, approximately 200 feet south of the intersection of McReynolds Road and Axtell Gateway Road.	*4,852
		Baker Creek Area	100 feet upstream from center of drainage line crossing of Linney Road.	*4,430
		Camp Creek	Area just on the upstream (south) side of Interstate Highway 90.	*4,263
		Baker Creek West Overflow	Intersection of overflow and center of Veltkamp Road	*4,435
		Jefferson River	Intersection of Front Road and Sebena Road	*4,060
		Madison River	Intersection of river and center of U.S. Highway 10/ County Route 205.	*4,065
Maps available for inspection at County Surveyor's Office, Gallatin County Courthouse, Bozeman, Montana.				
Washington	Aberdeen (city), Grays Harbor County (FEMA-6286)	Grays Harbor	Intersection of S. Washington Street and W. Heron Street	*10
			Intersection of Bay Avenue and N. Conger Street	*10
		Wilson Creek	Intersection of Fairfield Street and Summit Street	*12
		Wishkah River	Intersection of Thomas Street and Shendan Street	*10
Maps available for inspection at Engineering Department, 200 E. Market Street, 2nd Floor, Aberdeen, Washington.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and E.O. 12127, 44 FR 19367)

Dated: March 7, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-8761 Filed 4-3-84; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

Merchant Marine Training

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its merchant marine training regulations to implement a 10 percent reduction in the number of student incentive payments offered to incoming students at the state maritime academies/colleges, to ease the administration of various program requirements for MARAD and to lessen the burdens imposed on state maritime academies.

EFFECTIVE DATE: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin M. Hackett, Academies Program Officer, Office of Maritime Labor & Training, Maritime Administration—DOT, 400 Seventh Street, SW, Room 7302, Washington, DC 20590, Telephone: (202) 426–5759.

SUPPLEMENTARY INFORMATION: The Maritime Administration provides federal support to six state maritime schools located in California, Maine, Massachusetts, Michigan, New York and Texas. Financial support consists of an annual assistance payment for the maintenance and support of the school, student incentive payments, loan of a government owned training vessel and funds for its maintenance and repair. This rulemaking amends 46 CFR Part 310 to (1) effect a 10 percent reduction in the number of student incentive payments offered to incoming students at the state maritime academies/colleges; (2) delete the restrictive recency of service requirement for state maritime school training ship commanding officers; and (3) effect a number of minor changes in the state maritime academy regulations. The amendments to Subpart A follows:

Section 310.3 Schools and Courses—This section changes the address where Federal Curriculum Standards may be obtained, to reflect the relocation of the Maritime Administration.

Section 310.5 Personnel—This section deletes the restrictive recency of service requirement for training ship commanding officers. The requirement that acceptable candidates for training ship commanding officer must have served at least two years within the immediate last five years, at command or executive officer levels, has been found to be too restrictive insofar as the recency of service portion of this requirement is concerned. The field of qualified applicants has been unnecessarily restricted by this recency of service requirement imposed by Federal regulation. The selection of the commanding officer for a training ship is the ultimate responsibility of the state maritime academy and the respective state. Recency of service is one of a number of factors which are appropriate for evaluation of a commanding officer by state selection officials and is not deemed to be such an overriding factor as to be required by Federal regulation.

Section 310.7 Federal student subsistence allowances and student incentive payments—This provision reduces the annual student incentive payment allocations to each state maritime academy and college by ten percent, after a special adjustment involving a decrease in the allocation for the State University of New York Maritime College. It also changes the reference to "Secretary of Transportation" to "Secretary of Commerce," with respect to the reference to the Department in which the National Oceanic and Atmospheric Administration operates.

The special adjustment for the State University of New York Maritime College stems from an administrative action taken by MARAD in January 1982, with the consent of that school. MARAD reduced the State University of New York Maritime College's allocation by 29 incentive payments for 251 to 222. This administrative action resulted from a MARAD policy decision, in cooperation with each state maritime

academy and college, to extend the deadline from October to February for selecting students to receive the student incentive payment. The state maritime academies requested this deadline extension because students selected to receive the incentive payment in October did not always remain with the educational program after the first grading period in December. Once an individual disenrolled from a school, the incentive payment was lost to the program since substitution of students is not permitted. Extending the selection deadline until February reduced the first year student attrition by approximately 8 percent, which would have increased the dollar outlays for incentive payments. As a result, MARAD decided to reduce its contribution by 29 incentive payments in order to remain within the $2.6 million annual appropriation for such payments. The reduction of 29 student incentive payments was made at the State University of New York Maritime College because they have the highest ratio of incentive payments to students in the entering class. The resulting total number of incentive payments allocated to all schools in 1982 was 644.

As stated above we are amending the provisions of the existing regulations to achieve a 10 percent reduction in the number of student incentive payments offered to incoming students at each of the state maritime schools. This amendment reduces the number of annual student incentive payments from 644 to 580 and changes the allocation of incentive payments to each state school. This reduction in Federal incentive payment support is necessary because it is estimated that there are 37 percent more deck officers and 21 percent more engine officers than are needed to maintain an adequate deck and engine officer workforce for our present active fleet of large ocean going ships through 1986. The state maritime schools presently receive incentive payments for approximately 71 percent of their entering classes which total 907 students. The 10 percent reduction will bring the subsidized student level to 64 percent or 580 students.

E.O. 12291, Statutory Requirements and DOT Procedure

The Maritime Administrator has made a determination that this rulemaking is not a major rule as defined by E.O. 12291. Under DOT regulator policies and procedures (44 FR 11034; February 26, 1979), this rule is considered to be nonsignificant. A savings of $76,800 will be realized by reducing the student incentive payments from 644 to 580 based on a $1,200 payment per student. The economic impact of this proposal will affect 644 incoming students at 6 state academies. The impact of reducing by 10 percent or 64 incentive payments has been found to be so minimal that further regulatory evaluation is unnecessary. Since this rule affects only students at and applicants to the state academies, the Maritime Administrator certifies that the regulation would have no significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). The regulation contains no new or amended reporting requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

The recruiting and interviewing process for the state maritime academy classes, that will begin with the classes entering the state academies in June 1984, is under way. Therefore, each academy must be notified as soon as possible of the number of incentive payments that will be available to it to avoid creating financial hardship for students needing financial assistance. Moreover, the Maritime Administration regularly and periodically issues regulations on merchant marine training as final rules, without opportunity for comment, since it believes it would not receive any substantive or meaningful comments on the subject. Accordingly, pursuant to 5 U.S.C. 553, MARAD finds that notice and public procedure are unnecessary and impracticable. MARAD also believes that good cause exists for making this rule effective upon publication, since it is imperative that these state academies be notified as early as possible of the number of incentive payments that will be available for their incoming students.

List of Subjects in 46 CFR Part 310

Grant programs, Education, Maritime Administration, Schools, Seamen.

Accordingly, 46 CFR Part 310 is amended in Subpart A as follows:

PART 310—MERCHANT MARINE TRAINING

Subpart A—Regulations and Minimum Standards for State Maritime Academies and Colleges.

§ 310.3 [Amended]

1. Section 310.3, *Schools and Courses,* is amended by revising paragraph (c)(3) to read:

* * * * *

(c) * * *

(3) Copies of the Federal Curriculum Standards for Merchant Marine Officers Training Program at the State maritime academies may be obtained from the Maritime Administration, Office of Maritime Labor and Training, 400 Seventh Street, SW, Washington, DC 20590.

§ 310.5 [Amended]

2. Section 310.5, *Personnel,* is amended by revising paragraph (b)(1) to read:

* * * * *

(b) * * *

(1) *Commanding Officer.* The Commanding Officer shall hold a valid Master's Ocean, Unlimited Tonnage license including Radar Observer endorsement issued by the United States Coast Guard and shall have served at least two (2) years as Master, Chief Officer, Commanding Officer, or Executive Officer either (i) on oceangoing vessels under the authority of said Master's Ocean, Unlimited Tonnage license, or (ii) in the case of sea service as a member of the Uniformed Services of the United States, on ships accepted by the United States Coast Guard as equivalent for qualifying service for issue of a Master's Ocean, Unlimited Tonnage license.

§ 310.7 [Amended]

3. Section 310.7, *Federal student subsistence allowances and student incentive payments,* is amended:

a. By amending the second sentence of paragraph (a)(1) to read:

* * * * *

(a) * * *

(1) * * * The freshman subsidy allocations for each school are as follows: California Maritime Academy 99; Maine Maritime Academy 135; Massachusetts Maritime Academy 69; State University of New York Maritime College 200; Great Lakes Maritime Academy 45; and the Texas Maritime College 32.

b. By revising the second sentence of paragraph (b)(9) to read:

* * * * *

(b) * * *

(9) * * * However, the Secretary of the department in which the United States Coast Guard is operating and the Secretary of Commerce, with respect to the National Oceanic and Atmospheric Administration, which has jurisdiction over such service shall approve any deferment of service as a commissioned officer.

Authority: Section 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97–31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

Dated: March 1, 1984.

By Order of the Maritime Administrator.
Murray A. Bloom,
Assistant Secretary.
[FR Doc. 84-8825 Filed 4-3-84; 8:45 am]
BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 78-72; Phase I]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration; Order granting waiver.

SUMMARY: The Federal Communications Commission, by its Common Carrier Bureau, has granted a motion filed by American Telephone and Telegraph Company ("AT&T") in which they requested permission to file a supplemental petition for reconsideration, in addition to AT&T's 25-page emergency petition for reconsideration, of the Commission order on further reconsideration in CC Docket No. 78-72, 49 FR 7810 (March 2, 1984). Absent a waiver, § 1.429(d) of the Commission's Rules precludes the filing of AT&T's supplemental petition. The Bureau found the request to be in the public interest in light of the importance of this proceeding and the unique circumstances under which this request was made. AT&T was granted a waiver allowing it to file a supplemental petition for reconsideration not in excess of 15 pages.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William Kirsch, Common Carrier Bureau, (202) 632-9342.

Order Granting Waiver

In the matter of MTS and WATS Market Structure; CC Docket No. 78-72, Phase I.

Adopted: March 27, 1984.
Released: March 28, 1984.

By the Chief, Common Carrier Bureau.

1. On March 23, 1984, American Telephone and Telegraph Company ("AT&T") filed in the above-captioned proceeding a Conditional Motion to File a Supplemental Petition for Reconsideration in Excess of the Page Limitation of § 1.429(d) of the Commission's Rules. Earlier, on February 27, 1984, AT&T filed an Emergency Petition for Reconsideration which was 25 pages in length. AT&T filed the present motion conditionally because it does not believe that the 25-page limitation contained in Section 1.429(d) constrains if from filing a Supplemental Petition. It asks the Commission to act on this motion only to the extent considered necessary.

2. AT&T states that the Emergency Petition addressed the issue of the potentially confiscatory result caused by the interplay of the Commission's recent Orders in CC Dockets 78-72 and 83-1145.[1] In AT&T's view, the question is whether the 25-page limitation of § 1.429(d) could be construed to prevent any supplement to AT&T's 25-page Emergency Petition. AT&T argues that it would be inappropriate to construe the rule in this manner in view of the fact that the Emergency Petition raised issues not limited solely to this proceeding. AT&T argues that its Emergency Petition raising the single issue of the interplay of the two Orders should not preclude AT&T from raising further issues in each Docket in the normal course.

3. Section 1.429(d) clearly applies to the AT&T Emergency Petition and, absent a waiver, AT&T is precluded from filing a supplementary petition. We recognize, however, the importance of this proceeding and the unique circumstances under which this request has been made. As a result we find that it is in the public interest to allow AT&T to have the opportunity to file a supplementary petition for reconsideration of other issues. Therefore, we will waive the page limitation for AT&T in this instance and permit AT&T to file a supplementary petition not to exceed 15 pages.[2] Other parties will not be prejudiced by our waiver for AT&T because AT&T will still be required to file in a timely manner. In addition, the Emergency Petition has already been available for review for a considerable period of time.

4. For those parties which have already filed an opposition to the AT&T Emergency Petition, we will allow them to file in a timely manner a supplementary opposition subject to the page limitation contained in § 1.429(f) of the Commission's Rules. This page limitation does not include the initial filing in opposition.

5. Accordingly, it is ordered that the Conditional Motion of American Telephone and Telegraph Company to File a Supplemental Petition for Reconsideration in Excess of the Page Limitation of § 1.429(d) of the Commission's Rules is granted.

6. It is further ordered that such filing may not exceed 15 pages in length.

7. This Order is issued under § 0.291 of the Commission's Rules and is effective on its adoption date.

Federal Communications Commission.
Jack D. Smith,
Chief, Common Carrier Bureau.
[FR Doc. 84-8872 Filed 4-3-84; 8:45 am]
BILLING CODE 6712-01-M

[1] Memorandum Opinion and Order, CC Docket No. 78-72, 49 FR 7810 (Mar. 2, 1984); Memorandum Opinion and Order, CC Docket No. 83-1145, 49 FR 9174 (Mar. 12, 1984).

[2] AT&T stated that its supplementary petition will be no more than 15 pages and requested that we permit it to file such a petition with this limitation.

---

47 CFR Part 0

Amendment of the Commission's Rules To Update Regulations Dealing With the Freedom of Information Act and the Privacy Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action updates Part 0 of the Commission's rules dealing with provisions of the Freedom of Information Act and the Privacy Act.

This action is taken by the Commission to incorporate changes to the titles and organizational structure of the Commission's Bureaus and Offices and in the location of Commission offices. Editorial changes were also made to simplify language where possible.

DATE: Effective May 7, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Fagan, Office of Managing Director, (202) 632-6390.

List of Subjects in 47 CFR Part 0:

Freedom of information, Organization and functions (Gov't agencies), Privacy.

Order

In the matter of amendment of Part 0 of the Commission's Rules to Update Regulations dealing with the Freedom of Information Act and the Privacy Act.

Adopted: March 26, 1984.
Released: March 29, 1984.

The Managing Director has reviewed certain sections of Part 0 of the Commission's rules and regulations and has determined that several revisions are required.

Editorial changes were made to incorporate changes in organizational titles, changes in office location and to update outdated information. Some changes in grammar and organization of materials were also made.

Since these changes are procedural in nature and represent no substantive

changes in the Commission's rules, there is no need for public notice and comments thereon (See 5 U.S.C. 553(b)). Authority for this action is contained in Section 4(i) and (303(n) of the Communications Act of 1934, as amended, 147 U.S.C. 154(i) and 202(n) and § 0.23(d) of the Commission's rules and regulations. (47 CFR 0.231(d)).

Accordingly, Part 0 of the Commission's rules and regulations is amended as set forth in the attached Appendix, effective May 7, 1984.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

PART 0—[AMENDED]

In Title 47, Code of Federal Regulations, Part 0 is amended to read as follows:

1. In § 0.461, paragraphs (b)(1), (d) (1) and (2), (e), (f)(4), (g) and (g)(3), (h) (2), (3), and (4), (k), and the undesignated paragraph following (k)(3), are revised to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(a) * * *

(b)(1) Requests shall be captioned "Freedom of Information Act Request," shall be dated, shall list the telephone number (if any) of the person making the request and, for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document.

* * * * *

(d)(1) Requests shall be delivered or mailed to the Managing Director. (For purposes of this section, the custodian of the records is the Chief of the appropriate Bureau or Office.)

(2) If the request is enclosed in an envelope, the envelope shall be marked, "Freedom of Information Act Request."

* * * * *

(e) When the request is received by the Managing Director, it will be assigned to the Freedom of Information Act (FOIA) Control Office, where it will be date-stamped and assigned to the custodian of the records.

(f) * * *

(4) If it is determined that the Commission does have authority to withhold the records from public inspection, the considerations favoring disclosure and non-disclosure will be weighed in light of the facts presented, and the request will be granted, either conditionally or unconditionally, or denied.

* * * * *

(g) The custodian of the records will make every effort to act on the request within 10 working days after it is received by the FOIA Control Office.

(1) * * *

(2) * * *

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Commission. If these circumstances are not present or if it is not possible to locate the records and make the determination within the extended period, the person or persons who made the request will be advised of their rights and asked to consent to an extension or further extension. If the requestor agrees to an extension, the custodian of the records will confirm the agreement in a letter specifying the length of the agreed-upon extension. If he does not agree to an extension, the request will be denied, on the grounds that the custodian has not been able to locate the records and/or to make the determination within the period for a ruling mandated by the Freedom of Information Act, 4 U.S.C. 552. * * *

(h)(1) * * *

(2) If the request for inspection of records submitted to the Commission in confidence under § 0.457(d) or § 0.459 is partially granted and partially denied, the person who submitted the records to the Commission and the person who filed the request for inspection of those records may file an application for review within the 10 working days after the date of the written ruling. The application for review and the envelope containing it (if any) shall be captioned "REVIEW OF FREEDOM OF INFORMATION ACTION." The application for review shall be delivered or mailed to the General Counsel. If either person files an application for review, it shall be served upon the other person.

* * * * *

(3) If the application for review filed by either person is denied, that person will be notified in writing and advised of their rights.

(4) If an application for review filed by the person who submitted the records to the Commission is denied, or if the records are made available on review which were not initially made available, the person who submitted the records to the Commission will be afforded 10 working days from the date of the written ruling in which to move for a judicial stay of the Commission's action. If a motion for stay is not made within this period, the record will be produced for inspection.

* * * * *

(i) * * *

(j) * * *

(k) The Commission will make every effort to act on an application for review of an action on a request for inspection of records within 20 working days after it is filed. See, however, paragraph (h)(2) of this section. If it is not possible to locate the records and to determine whether they should be made available for inspection within 20 working days, the General Counsel may, in the following circumstances and to the extent time has not been extended under paragraphs (g) (1) (2) (3) of this section, extend the time for action up to 10 working days. (The total period of extensions taken under this paragraph and under paragrah (g) of this section without the consent of the person who submitted the request shall not exceed 10 working days.):

(1) * * *

(2) * * *

(3) * * *

If these circumstances are not present or if it is not possible to locate the records and make the determination within the extended period, the person who made the request will be advised of his/her rights and asked to consent to an extension or further extension. If the requester or person who made the request agrees to an extension, the General Counsel will confirm the agreement in a letter specifying the length of the agreed-upon extension. If the requestor or person who made the request does not agree to an extension, the Commission will continue to search for and/or assess the record and will advise the person who made the request of further developments; but that person may file a complaint in an appropriate United States district court.

* * * * *

2. In § 0.463, paragraphs (a) and (b) are revised to read as follows:

§ 0.463 Demand by competent authority for the production of documents or testimony concerning information contained therein.

(a) In the event that a demand (subpoena, order or other demand) is made by a court or other competent authority outside the Commission for the production of records or files or for testimony concerning information contained therein, the Managing Director shall promptly be advised of such demand, the nature of the papers or information sought, and all other relevant facts and circumstances. The Commissioin will thereupon issue such instructions as it may deem advisable.

(b) Unless specifically authorized to produce such records or files or to

testify with respect thereto, any officer or employee of the Commission who is served with a demand for the production of records or files or testimony concerning the same, shall appear in response to the demand and respectfully decline to produce such records or files or to testify concerning them, basing the refusal upon this rule.

3. In § 0.465, paragraph (a), including the note following (a), the address for the current contractor in (b), the last sentence in (c)(2), paragraphs (d) (1) and (3) are revised to read as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) The Commission awards a contract to a commercial duplication firm to make copies of Commission records and offer them for sale to the public. The contract is awarded on the basis of lowest overall cost and best service to the public. In addition to the cost of copying, the contractor may charge a search fee for extracting the requested documents from the Commission's files. The search fee charged by the contractor shall be that price set forth in the latest contract.

Note.—Currently, the Contractor is International Transcription Services, Inc., 4006 University Drive, Fairfax, VA, 22030 (Tel. 703 532–2400). The current contract specifies a search fee of $12.00 per hour. The duplication fee for 8½×11 inch documents is .04¢ cents per page; the coin-operated copying machines are set at 5 cents per page (August 1983). Copies of the FCC Telephone Directory are also available from the Contractor.

(b) * * * Requests for copies of the transcript of current proceedings should be directed to the current contractor, International Transcription Services, Inc., 4006 University Drive, Fairfax, VA 22030 (Tel. 703 352–2400).

* * * * *

(c)(1) * * *

(2) * * * Coin-operated photocopy machines are available for use by the public in various reference rooms for the duplication of records available for inspection at those locations.

(3) * * *

(4) * * *

(d)(1) Copies of computer maintained data bases produced by the Commission may be obtained from the National Technical Information Service (NTIS), Department of Commerce, in the form of computer tapes, or as microfiche. These materials are not available directly from the Commission. Data bases produced by the Commission are listed in two catalogs which may be obtained from NTIS. Extracts from these catalogs pertaining to the Commission are available without charge, from the Commission's Consumer Assistance and Small Business Division. The materials describe the data base, state the estimated fee for providing it, and specify ordering information.

(2) * * *

(3) Copies of computer source programs and associated documentation produced by the Commission may be obtained from the Computer Applications Division, Office of Managing Director. Requests shall be limited to computer source programs and associated documentation in existence when the request is submitted.

* * * * *

4. In § 0.466, paragraph (a), the second paragraph of the note, and paragraph (g) are revised to read as follows:

§ 0.466 Search fee.

(a) Subject to the provisions of this section, an hourly fee may be charged for recovery of the direct costs of searching for records requested under § 0.460(d) or § 0.461. The fee is based on the grade level of the employee(s) who makes the search, as specified in the following schedule:

Grade	Hourly fee
GS–2	5.66
GS–3	6.64
GS–4	7.45
GS–5	8.34
GS–6	9.30
GS–7	10.33
GS–8	11.44
GS–9	12.64
GS–10	13.97
GS–11	15.29
GS–12	15.32
GS–13	21.79
GS–14	25.75
GS–15	30.29

Note.—* * * The above fees were computed at Step 5 of each grade (based on the General Schedule effective January 1984) and include 11.0 percent for personnel benefits.

* * * * *

(g) The fee shall be paid to the Financial Management Division, Office of Managing Director, or as otherwise directed by the Commission.

* * * * *

5. Section 0.475 is revised to read as follows:

§ 0.475 Applications for employment.

Persons who wish to apply for employment should communicate with the Associate Managing Director-Personnel Management.

6. In § 0.551, paragraph (b)(2) is revised to read as follows:

§ 0.551 Purpose and scope; definitions.

(a) * * *

(b) * * *

(2) "Record" means any item, collection or grouping of information about an individual that is maintained by the Commission, including but not limited to, such individual's education, financial transactions, medical history, and criminal or employment history, and that contains such individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

* * * * *

7. In § 0.552, the introductory paragraph is revised to read as follows:

§ 0.552 Notice identifying Commission systems of records.

The Commission publishes in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, including for each system of records.

* * * * *

8. In § 0.554, the first sentence of paragraph (a), paragraph (b)(1), the last sentence of paragraph (b)(2), and paragraph (c) are revised to read as follows:

§ 0.554 Procedures for requests pertaining to individual records in a system of records.

(a) Upon request, the Commission will notify individuals as to whether it maintains information about them in a system of records and, subject to the provisons of § 0.555(b), will disclose the substance of such information to that individual.

* * * * *

(b) * * *

(1) Individuals who choose to register a request for information in person may verify their identity by showing any two of the following: social security card; drivers license; employee identification card; medicare card; birth certificate; bank credit card; or other positive means of identification. Documents incorporating a picture and/or signature of the individual shall be produced if possible. If an individual cannot provide suitable documentation for identification, that individual will be required to sign an identity statement stipulating that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

* * * * *

(2) * * * If the record contains no signatures and if positive identification cannot be made on the basis of other information submitted, the requestor will be required to sign an identity statement and stipulate that knowingly

or willfully seeking or obtaining access to records about another person under false pretense is punishable by a fine of up to $5,000.

(3) * * *

(c) All requests for notification of the existence of record information or for access to such information shall be delivered to the business address of the system manager responsible for the system of records in question, except that requests relating to official personnel records shall be addressed to the Associate Managing Director—Personnel Management. Such addresses can be found in the Federal Register Notice described in § 0.552.

* * * * *

9. In § 0.555, paragraph (a), the last two sentences in paragraph (a)(1), paragraph (a)(3), and the introductory text of (e) are revised to read as follows:

§ 0.555 Disclosure of record information to individuals.

(a) Individuals having been notified that the Commission maintains a record pertaining to them in a system of records may request access to such record in one of three ways: by in person inspection at the system location; by transfer of the record to a nearer location; or by mail.

(1) * * * Verification of identity is required as in § 0.554(b)(1) before access will be granted an individual appearing in person. Individuals may be accompanied by a person of their own choosing when reviewing a record. However, in such cases, a written statement authorizing discussion of their record in the presence of a Commission representative having physical custody of the records.

(2) * * *

(3) Individuals may request that copies of records be sent directly to them. In such cases, individuals must verify their identity as § 0.554(b)(2) and provide an accurate return address. Records shall be sent only to that address.

(b) * * *

(e) In the event that a determination is made denying an individual access to records pertaining to that individual for any reason, such individual may either:

* * * * *

10. In § 0.556, paragraphs (a) and (c), the introductory text of (c)(1), paragraphs (c)(2), (c)(2) (i) and (ii), and the last sentence of (d), are revised to read as follows:

§ 0.556 Request to correct or amend records.

(a) An individual may request the amendment of information contained in their record. Except as otherwise provided in this paragraph, the request to amend should be submitted in writing to the system manager responsible for the records. Requests to amend the official personnel records of active FCC employees should be submitted to the Associate Managing Director—, Personnel Management, Office of Managing Director, 1919 M Street, NW., Washington, D.C. 20554. Requests to amend official personnel records of former FCC employees should be sent to the Assistant Director for Work Force Information, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415. Any request to amend should contain as a minimum:

* * * * *

(c) The responsible system manager, or in the case of official personnel records of active FCC employees, the Associate Managing Director—Personnel Management, shall (normally within 30 days) take one of the following actions regarding a request to amend:

(1) If the system manager agrees that an amendment to the record is warranted, the system manager shall:

* * * * *

(2) If the system manager, after an initial review, does not agree that all or any portion of the record merits amendment, the system manager shall:

(i) Notify the individual in writing of such refusal to amend and the reasons therefore;

(ii) Advise the individual that further administrative review of the initial decision by the full Commission may be sought pursuant to the procedures set forth in § 0.557. (In cases where the request to amend involves official personnel records, review is available exclusively from the Assistant Director for Work Force Information, Compliance and Investigations Group, Office of Personnel Management, Washington, D.C. 20415; and

* * * * *

(d) * * * Moreover, the system manager shall ajudge the merits of any request to delete information based on whether or not the information in controversy is both relevant and necessary to accomplish a statutory purpose required of the Commission by law or executive order of the President.

11. In § 0.557, paragraphs (a), (d) (2) and (4) are revised to read as follows:

§ 0.557 Administrative review of an initial decision not to amend a record.

(a) Individuals have 30 days from the date of the determination not to amend a record consistent with their request to seek further administrative review by the full Commisison. Such a request shall be in writing and should be addressed to either the system manager who made the initial adverse decision, or, in the case of official personnel records of active FCC employees, to the Assistant Director for Work Force Information, Compliance and Investigations Group, Office of Personnel Management, Washington, D.C. 20415. Any request for administrative review must:

* * * * *

(d) * * *

(2) Advise the individual that a concise statement of the reasons for disagreeing with the decision of the Commisison may be filed;

(3) * * *

(4) Advise the individual that judicial review of the Commisison's decision not to amend the record in any district court of the United States is available.

12. In § 0.558, the second paragraph and address are revised to read as follows:

§ 0.558 Advice and assistance.

* * * * *

Individuals who request clarification of the Notice described in § 0.552 or who have questions concerning the characterization of specific systems of records as set forth therein, should write or call the Privacy Liaison Officer at the following address:

Federal Communications Commission,
Records Management Branch, Office of Managing Director, 1200 19th Street, NW. Room BB-325, Washington, D.C. 20554

13. In § 0.561, paragraph (a), the introductory portion of paragraph (b), and paragraphs (c), (d), and (e) are revised to read as follows:

§ 0.561 Exemptions.

* * * * *

(a) *System Name:* Radio Operator Records—FCC/FOB-1. Parts of this system of records are exempt pursuant to Section (k)(2) of the Act because they contain investigatory material compiled solely for law enforcement purposes.

(b) *System Name.* Violators File (records kept on individuals who have been subjects of FCC field enforcement actions)—FCC/FOB-2.

* * * * *

(c) *System Name.* Attorney Misconduct Files—FCC/OGC-2. This system of records is exempt pursuant to Section 3(k)(2) of the Act because it is maintained for law enforcement purposes.

(d) *System Name.* Licensees or Unlicensed Persons Operating Radio Equipment Improperly—FCC. Parts of

this system of records are exempt pursuant to Section 3(k)(2) of the Act because they embody investigatory material compiled solely for law enforcement purposes.

(e) *System Name.* Personnel Investigation Records—FCC/Central–6. Parts of these systems of records are exempt because they emobdy investigatory material pursuant to Sections 3(k)(2) and 3(k)(5) of the Act as applicable.

[FR Doc. 84-8871 Filed 4-3-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-366; RM-4285]

TV Broadcast Station in Santa Barbara, California; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 38 to Santa Barbara, California, at the request of William V. Johnson. The assignment could provide Santa Barbara with its second commercial television facility.

EFFECTIVE DATE: June 4, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Santa Barbara, California); MM Docket No. 83–366, RM–4285.

Adopted: March 21, 1984.
Released: March 27, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 16919, published April 20, 1983, seeking comments on the proposed assignment of UHF Television Channel 38 to Santa Barbara, California, as that community's second commercial television channel. The *Notice* was issued in response to a petition for rule making filed by William V. Johnson ("petitioner"). Comments were filed by petitioner restating his intent to apply for the channel, if assigned. Opposing comments and reply comments were filed by Key Television, Inc. ("Key"), licensee of Station KEYT–TV, Santa Barbara, and late-filed comments and a request for leave to file were submitted by Sunbelt Television, Inc. ("Sunbelt").[1]

2. Santa Barbara (population 74,414),[2] the seat of Santa Barbara County (population 298,694), is located approximately 135 kilometers (85 miles) northwest of Los Angeles.

3. Key based its opposition to the requested assignment on the alleged inadequacy of the petition and inaccuracies in its associated engineering showing as prepared by petitioner's consultant. Key states that the petition failed to show the areas which would be precluded from obtaining television assignments should Channel 38 be assigned to Santa Barbara and that the mileage separation showing, which consisted only of a computer printout, failed to indicate the source of the data offered or any underlying assumptions used in concluding that the assignment could be made as proposed in conformity with the Commission's rules and regulations. Key further calls into question the qualifications of the petitioner's consultant, stating that he may have been misled to believe that the act of filing for a full-service television frequency was simply a means of avoiding the Commission's current freeze on low power television applications. If this were so, it is contended that petitioner may not be fully aware of the extent of regulations which a full-service station must comply with, which are not in existence for low power operators. Key, therefore, calls into question the petitioner's expressed intent to apply for and operate a full-service station at Santa Barbara. As a final matter, Key states that a second full-service operation at Santa Barbara is not economically viable and, in light of the pendency of 30 applicants for low power TV stations on different channels, there is no demonstration of need for an additional full-service facility.

4. The qualifications and competency of petitioner's consultant are not issues which can, or should, be handled in a rule making proceeding. It is incumbent upon a petitioner to ensure that he is fully aware of the Commission mandated responsibility in operating a broadcast facility before he states an intention to submit an application to activate a broadcast frequency.

5. The issue of whether or not a broadcast facility assigned to any particular locality would be economically viable is not one which is generally decided at the rule making stage. Rather, the issue is more properly raised at the application stage. See *e.g., Grand Junction, Colorado,* 26 R.R. 2d 513 (1973).

6. The assignment of Channel 38 at Santa Barbara can be made in conformance with the Commission's minimum distance separation and other technical criteria. The Commission does not require preclusion studies in TV assignment proceedings.

7. The concurrence of the Mexican government has been obtained since Santa Barbara is within 320 kilometers (199 miles) of the U.S.-Mexican border.

8. The Commission believes the public interest would be served by the assignment of a second commercial television allocation to Santa Barbara. Therefore, in accordance with the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b) and 0.263 of the Commission's Rules, it is ordered, That effective June 4, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below:

City	Channel No.
Santa Barbara, California	3–, 14,[1] *20,[1] *32, and 38

[1] Following the decision in Docket No. 18261, channels so indicated will not be available for television use until further action by the Commission.

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-8873 Filed 4-3-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-495; RM-4407]

TV Broadcast Stations in Claremore and Tulsa Oklahoma; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

[1] The late-filed comments of Sunbelt have been accepted for consideration herein as they have only confirmed the staff study showing that the channel could be assigned in compliance with § 73.610 of the Commission's Rules. In addition, Sunbelt has expressed an interest in use of the channel at Santa Barbara. The final disposition of this proceeding was not delayed due to the late filing.

[2] Population figures are taken from the 1980 U.S. Census.

ACTION: Final rule.

SUMMARY: Action taken herein reassigns UHF noncommercial educational television Channel *35 from Tulsa to Claremore, Oklahoma, as that community's first local television outlet, and assigns Channel *63 to Tulsa as a replacement therefor, in response to a petition filed by Rogers State College.

EFFECTIVE DATE: June 4, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Claremore and Tulsa, Oklahoma); MM Docket No. 83–495, RM–4407.

Adopted: March 22, 1984.
Released: March 27, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 27581, published June 16, 1983, issued in response to a petition filed by Rogers State College ("petitioner") proposing the reassignment of UHF noncommercial educational television Channel *35 (vacant and unapplied for) from Tulsa to Claremore, Oklahoma, as that community's first noncommercial educational television broadcast service. In addition, the *Notice* proposed the assignment of noncommercial educational Channel *59 to Tulsa to replace Channel *35. Petitioner filed supporting comments reiterating its intention to apply for Channel *35, if assigned as proposed. An opposition was filed by Tulsa Family Television ("TFT"), applicant for a low power television station on Channel 53 [1] in Tulsa. Additionally, comments were filed by the Association of Maximum Service Telecasters, Inc. ("AMST"). No reply comments were received.

2. Claremore (population 12,085),[2] the seat of Rogers County (population 46,436), is located approximately 40 kilometers (25 miles) northeast of Tulsa. It has no local television service.

3. In supporting comments, petitioner indicates that during the past several years, enrollment at the College has increased to near capacity levels. As a result thereof, petitioner states that many potential students may be prevented from attending on-campus classes. Therefore, it proposes to reach those students at home via the use of a television satellite down-link for the presentation of technical and educational programs and to encourage participation in other proposed programming by the citizenry of Claremore and surrounding communities.

4. In its opposition, TFT alleges that at the present time, there are a multiplicity of full service television stations in Tulsa, and that since the two communities involved herein are in close proximity, the proposed assignment of Channel *35 to Claremore would effectively provide an additional full service television outlet to Tulsa. The instant proceeding, TFT argues, would serve to impede the development of low power television in Tulsa. Therefore, it asserts that the need for such service is questionable since a low power television operation could effectively serve the public interest with programming tailored specifically to meet the local needs and interests.

5. AMST notes that the proposed assignment of Channel *59 to Tulsa would be short spaced by 37.9 miles to the proposed assignment of Channel 44 to Okmulgee, Oklahoma (MM Docket No. 83–609; RM–4433). Therefore, we will substitute Channel *63 at Tulsa for previously proposed Channel *59 since it complies with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

6. TFT's arguments against the proposed assignment are without merit. Primarily, TFT alleges that presently there are a multiplicity of full service television stations in Tulsa, and that since Claremore lies in close proximity thereto, the proposed assignment would effectively provide an additional full service television outlet to Tulsa. Thus, TFT argues, the existence of those other television stations in the community obviates the need for another full service station which it feels would impede its proposed translator operation. However, as the Commission has previously held, the advantages inherent in a full power service, such as proposed herein, far outweigh the limited coverage that could be provided by a low power television station. See, *Rancho Palos Verdes, California*, 48 FR 1492, published January 13, 1983; *recons. den.* Mimeo. No. 5238, released July 13, 1983. Furthermore, TFT should note that, pursuant to the provisions of § 74.703 of the Commission's Rules, a law power television operation is licensed on a secondary basis and is not protected against interference from a regular broadcast station. See, *Albuquerque, New Mexico* (MM Docket No. 83–365). Nevertheless, the decision here to reassign Channel *35 does not affect TFT since its concern has been superseded by the Commission's recent action, as noted *supra*, which assigned Channel 53 to Tulsa. Consequently, TFT will, in any event, be required to specify another frequency for its proposed operation.

7. On the basis of the foregoing, we believe that the proposed reassignment of Channel *35 from Tulsa to Claremore and the substitution of Channel *63 for Channel *35 at Tulsa would serve the public interest by providing a first noncommercial educational television broadcast service to Claremore. Each channel can be assigned consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

8. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules of it is ordered, That effective June 4, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the communities listed below, as follows:

City	Channel No.
Claremore, Oklahoma	*35.
Tulsa, Oklahoma	2+, 6+, 8–, *11–, 23, 41+, 47, 53, and *63.

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–8874 Filed 4–3–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–422; RM–4314]

TV Broadcast Station in Odessa, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 42 to Odessa,

[1] Channel 53 was recently assigned to Tulsa in MM Docket No. 83–241, adopted January 6, 1984 (Mimeo. No. 1820).

[2] Population figures were extracted from the 1980 U.S. Census.

Texas, in response to a petition filed by Stanley G. Emert.

EFFECTIVE DATE: June 4, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Odessa, Texas); MM Docket No. 83–422, RM–4314.

Adopted: March 22, 1984.
Released: March 27, 1984.

By the Chief, Policy and Rules Divisions.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 23870, published May 27, 1983, which invited comments on a proposal to assign UHF Television Channel 42 to Odessa, Texas, in response to a petition filed by Stanley G. Emert ("petitioner"). Petitioner submitted comments in support of the proposal and expressed his interest in applying for the channel, if assigned. Ann C. Farhat filed comments in support of the proposal.

2. Since Odessa, Texas, is located within 320 kilometers (200 miles) of the U.S.-Mexican common border, the proposed assignment requires the concurrence of the Mexican government. This was overlooked in the *Notice*. Mexican concurrence has now been obtained.

3. We believe that the petitioner has adequately demonstrated the need for a fifth television assignment in Odessa and that the public interest would be served by assigning UHF Television Channel 42 to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective June 4, 1984, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Odessa, Texas	7–, 24–, 30, °36+, and 42.

5. It is further ordered, That this proceeding is terminated.

6. For further information contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–8875 Filed 4–3–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

[Docket No. 40320–32]

Guidelines for Fishery Management Plans

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; removal of codified regulations.

SUMMARY: NOAA issues this final rule which removes §§ 602.3, 602.4, 602.5 and 602.6 (reserved) from regulations issued in 1977 under the Fishery Conservation and Management Act of 1976 (renamed the Magnuson Fishery Conservation and Management Act (Magnuson Act)) to provide guidance concerning the content, format, and procedure for developing fishery management plans. This action furthers the Administration's policy of eliminating regulations that are no longer useful by removing codified regulations that have been, or are being, incorporated into other guidelines.

EFFECTIVE DATE: May 4, 1984.

FOR FURTHER INFORMATION CONTACT: Daphne White, Office of Fisheries Management, NMFS, 3300 Whitehaven Street, NW., Washington, D.C. 20235; telephone (202) 634–7218.

SUPPLEMENTARY INFORMATION: The regulations issued in 1977 were designed to provide initial guidance to the Regional Fishery Management Councils in developing fishery management plans. After seven years of operation, NOAA believes that (1) the Councils have gained sufficient experience not to require formal regulatory guidance regarding the contents, format, and procedures involved in developing fishery management plans, (2) such guidance has limited applicability to the general public, and (3) greater utility and flexibility will result from revising and reissuing this guidance as a part of NOAA's recently published "Operational Guidelines—Fishery Management Process." The "Operational Guidelines" were issued in December 1983 to implement Pub. L. 97–453, which amended the Magnuson Act, and to integrate and explain the requirements of eight other statutes and executive orders affecting the fishery management plan process. By updating the material contained in 50 CFR 602.3, 602.4, and 602.5 to conform to recent legislative and policy changes, and publishing it in the "Operational Guidelines," all Council guidance is located in one reference. This updating is expected to be completed and available as an Addendum to the Guidelines by summer 1984. The "Operational Guidelines" are available at the above address. Section 602.6 was reserved for regulations covering compliance with the National Environmental Policy Act, and is likewise no longer necessary since the "Operational Guidelines" and NOAA Directive 02–10 provide such guidance.

Classification

This final rule removes codified text from the Code of Federal Regulations. It imposes no information collection requests under the Paperwork Reduction Act, is not subject to E.O. 12291, the National Environmental Policy Act, or the Regulatory Flexibility Act. Because the regulations being removed are interpretive and concern agency procedure or practice, the Assistant Administrator has determined that to afford opportunity for prior public comment would be unnecessary and contrary to the public interest.

List of Subjects in 50 CFR Part 602

Administrative practice and procedures, Fish, Fisheries, Fishing.

Dated: March 30, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator, for Science and Technology, National Marine Fisheries Service.

PART 602—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 602 is amended as follows:

1. The authority citation for Part 602 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§§ 602.3, 602.4, 602.5 and 602.6 [Reserved]

2. Sections 602.3, 602.4, 602.5, and 602.6 (Reserved) are hereby removed.

[FR Doc. 84–8884 Filed 4–3–84; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 655

[Docket No. 31220-244]

Atlantic Mackerel; Final Determination of Initial Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final determination of initial annual specifications.

SUMMARY: NOAA issues this notice to provide the final determination of initial annual specification for the Atlantic mackerel fishery for fishing year 1984–1985. Regulations governing this fishery require that the Secretary of Commerce publish his final determination of the initial annual specifications for the current fishing year. This action is intended to promote development of the Atlantic mackerel fishery and to maintain existing joint ventures in the new fishing year.

EFFECTIVE DATE: March 30, 1984.

ADDRESS: Copies of the regulatory flexibility analysis are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600. ext. 273.

SUPPLEMENTARY INFORMATION: Final regulations to implement Amendment No. 1 to the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) were published January 4, 1984 (49 FR 402). Proposed preliminary initial specifications for the 1984–1985 fishing year and request for comments were published on February 10, 1984, with a 30-day comment period (49 FR 5139). No comments on the Atlantic mackerel preliminary initial specifications were received. Comments received on squid and butterfish preliminary initial specifications will be responded to when the final initial specifications for these species are published.

The following table lists the final initial annual specifications in metric tons (mt) of the Allowable Catch (AC), Optimum Yield (OY), Domestic Annual Harvest (DAH), Domestic Annual Processing (DAP), Reserve, and Total Allowable Level of Foreign Fishing (TALFF) for Atlantic mackerel. The FMP allows that if U.S. landings during the year, including amounts authorized for joint ventures, increase above the final initial estimates, DAH and OY may be increased by similar amounts up to the point where OY=AC. TALFF would not change from its value at the beginning of a year as a result of such adjustments to DAH and OY.

Final Initial Specifications for Fishing Year 1984–1985

[In metric tons (mt)]

	AC	OY	DAH	DAP	JVP	Reserve	TALFF
Atlantic Mackerel	87,000	[illegible]	[illegible]	7,300	13,400	28,500	[illegible]

[1] These amounts may be increased by 3,500 mt based upon domestic performance; DAH includes 5,800 mt for the recreational mackerel fishery.

The amounts in DAH will provide ample Atlantic mackerel for both the commercial and recreational fishery. The JVP amount will provide Atlantic mackerel for the two existing joint ventures. If needed, additional Atlantic mackerel, up to 28,500 mt from the reserve can be added to the DAP or the JVP to promote the domestic Atlantic mackerel fishery.

Classification

This action is authorized by 50 CFR Part 655, and complies with E.O. 12291. The Council prepared a regulatory flexibility analysis for the rule which authorized this action (See Address for a copy).

(16 U.S.C. 1801 *et seq.*)

Dated: March 29, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-8880 Filed 3-30-84; 2:00 pm]

BILLING CODE 3510-22-M

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50 CFR Part 671

[Docket No. 31230-254]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum harvest level of Tanner crab in certain sections of the Kodiak District in Registration Area J will be achieved on April 1, 1984, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing the Northeast, Westside, Southeast, Southwest, South Mainland and Semidi Island Sections to fishing for Tanner crab by vessels of the United States on that date. The previously scheduled closing date is April 30, 1984, except for the Semidi Island Section for which the previously scheduled closing date is May 15, 1984.

DATE: This notice is effective 12:00 noon, Alaska Standard Time (AST), April 1, 1984. It was filed for public inspection with the Office of the Federal Register on March 30, 1984. Public comments on this notice of closure are invited until April 15, 1984.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Services, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST (or ADT) weekdays) at (1) the NMFS Kodiak Field Office, ADF&G Building, Kashevaroff and Mission Roads, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907–486–4791.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments by field order of season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level in reached. The Kodiak District is further subdivided into eight sections. The Alaska Board of Fisheries has set the desired 1984 harvest level for each section based on pot index surveys conducted by the Alaska Department of Fish and Game (ADF&G) in 1983.

The 1984 fishing season for all sections began on February 10. Approximately 300 vessels participated, declining to 100 vessels by late March. Desired harvest levels in two of the eight sections—Eastside and North Mainland—have been achieved, and these sections were closed on March 17 and 24, respectively. The remaining six sections will be closed on April 1, 1984, for the following reasons:

Northeast Section. About 1.4 million pounds of desired harvest level of 2.14 million pounds was caught by March 22. The catch rate has declined from about 42 to about 15 crabs per pot. This rapid decline indicates that stocks are insufficient to support this fishery through the scheduled closure date of April 30. The desired harvest level is expected to be achieved on April 1.

Westside, Southeast, Southwest, South Mainland, and Semidi Island Sections. The desired harvest levels for these sections were set at 1.8, 4.97, 3.82, 0.15, and 0.91 million pounds, respectively. Stocks are low in abundance in each section, however, and the catch rate is currently 10 or fewer crabs per pot. The total harvests will fall short of those projected in each section. Increasing deadloss is being reported in the Westside, Southeast, and Southwest Sections.

Those crab reported as deadloss had been in a molting condition. The low catch rates in all sections and the increasing deadloss in three of the sections indicate that stocks are insufficient and/or in poor condition to support fisheries through the closure date of April 30 (May 15 for the Semidi Island Section).

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that: (1) The actual condition of Tanner crab stocks in the sections named above is substantially different from the condition anticipated at the beginning of the fishing year; and (2) this difference reasonably supports the need to protect those Tanner crab stocks by closing the remaining six sections of the Kodiak District, as listed above and as described in § 671.26(f)(1)(i). These sections are therefore closed to all fishing for Tanner crab from 12:00 noon, AST, April 1, 1984, until 12:00 noon ADT, April 30, 1984 (May 15, 1984 in the Semidi Island Section), at which time the closure of these areas prescribed in § 671.26(f)(2)(i) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through ADF&G procedures, under § 671.27(a)(2). Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the above-named sections will be subject to damage by overfishing unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment on this order are contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of regulations specified at 50 CFR 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-8980 Filed 3-30-84; 4:56 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 66
Wednesday, April 4, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 36, 47, and 91

[Docket No. 23943; Petition Notice No. PR-84-3]

Petition for Rule Making of the National Organization To Insure a Sound-Controlled Environment and Airport Operators Council International; Noise Certification of Turbojet and Large Transport Category Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of petition for rule making; request for comments.

SUMMARY: This notice publishes for public comment the petition of the National Organization to Insure a Sound-Controlled Environment (N.O.I.S.E) and the Airport Operators Council International (AOCI) dated March 16, 1984, on behalf of its members for amendment of Parts 36, 47, and 91 of the Federal Aviation Regulations (14 CFR Parts 36, 47, and 91). These parts relate to airplane noise certification and operation and prescribe both the noise level limits for aircraft production and the rules by which both foreign and domestically produced aircraft are registered and operated in the United States. The N.O.I.S.E./AOCI petition concerns these rules as they apply to civil turbojet powered transport category airplanes greater than 75,000 pounds that have not had any flight time prior to January 1, 1986. Under the rule proposed in the petition, these aircraft would be prohibited from being registered or operated in the U.S. unless they were type certificated to the Part 36 Stage 3 noise level limits. It should be noted that aircraft already in the fleet before January 1, 1986, would not be affected by the proposed rule.

The petition would involve rulemaking similar to that promulgated by the FAA in 1973 (Amendments 36–2 and 21–39, published in 38 FR 29569, October 26, 1973), wherein further issuance of U.S. certificates of airworthiness were denied after December 31, 1973 to large turbojets powered by all engines except the JT3D and after December 31, 1974 for those powered by that engine. However, the petitioners' proposal would, if enacted, have some additional features. First, it would not inhibit continued production of the older, noisier airplanes by U.S. manufacturers for export purposes. Second, it would prohibit registration in the U.S. of foreign as well as U.S. built aircraft not meeting the requirement. Third, the petition proposes to bar noncomplying aircraft from landing or taking off from any airport in the U.S. This latter proposal would specifically affect foreign operators.

The FAA believes the petition should be published verbatim in order to fully expose it for public comment and to ensure full consideration of the issues raised. The notice sets forth the contents of the petition as received by the FAA without change, and its publication in accordance with FAA procedures governing the processing of petitions for rule making does not represent an FAA position on the merits of the petition or an FAA proposal to amend the current noise rules.

DATES: Comments must be received on or before June 1, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 23943, 800 Independence Avenue, SW, Washington, D.C. 20591

or delivered in duplicate:

Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591

Comments delivered must be marked: Docket No. 23943. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Richard Tedrick, Noise Policy and Regulatory Branch (AEE–110) Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington. D.C. 20591; telephone (202) 755–9027.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition for rule making as they may desire. Communications should identify the docket or petition notice number and be submitted in duplicate to the address for submitting comments indicated above under the "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered by the FAA before taking action on the petition for rule making. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Issues

The N.O.I.S.E./AOCI petition raises issues concerning the stringency of the noise certification requirements applicable to current and future production aircraft, the FAA's role in mitigating noise impacts around local airports, and distribution of the costs of mitigating those impacts. Therefore, rather than publishing a synopsis, it is believed that public comments on the full text of the petition would be helpful.

To assist the FAA in its review of the petition, comments are specifically welcomed on the following matters concerning the petition:

1. Economic reasonableness and technological practicability of the proposal.
2. Appropriateness of excluding jet airplanes under 75,000 pounds from the proposed limitations.
3. Equity of allowing export of noisy airplanes that would not be allowed to operate into the U.S.
4. Date of applicability for the proposed rule and aircraft types to which the rule would be applied.
5. Effect on foreign commerce and particularly on foreign air commerce.
6. Means of identification and enforcement of proposed operating rule on foreign owned and operated airplanes.

List of Subjects

14 CFR Part 36

Noise standards, Aircraft type, Airworthiness certification.

14 CFR Part 47

Aircraft registration.

14 CFR Part 91

Operating noise limits.

The Petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for rule making from the National Organization to Insure a Sound-Controlled Environment and the Airport Operators Council International, dated March 16, 1984.

Issued in Washington on March 29, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petition for Rulemaking Noise Standards, Aircraft Type, Registration, Airworthiness Certification

Requested By: National Organization To Insure a Sound-Controlled Environment (N.O.I.S.E.)

Airport Operators Council International (AOCI)

1.0 *Summary.*

This petition requests amendments to the Federal Aviation Regulations that would effectively end the production of those turbojet-powered transport category airplanes that do not comply with Stage 3 noise standards of FAR Part 36 and are to be operated in or into the United States. These amendments are requested to bring the regulations into conformance with available noise reduction technology and to bring future relief and protection to the public health and welfare from aircraft noise in accordance with Pub. L. 92–574.

Several million residents in communities near airports are suffering unacceptable levels of noise exposure from the operations of the present jet transport fleet, 93 percent of which are airplanes of older noise control technology (Stage 1 and 2 technology). Stage 2 airplanes are the primary source of the noise problem: They are by far the most numerous, they include short-to-medium range airplanes that operate frequently, and they include designs with high noise levels.

Although FAA regulations now in place will end the operation of Stage 1 airplanes by 1988, present regulations permit the continued production of noisy Stage 2 airplanes indefinitely. FAA forecasts indicate that many of the Stage 2 airplanes presently in the fleet will continue operation into the next century. The continued addition of newly produced Stage 2 airplanes to the fleet, exacerbating the noise problem, will prolong the date of relief from the present unacceptable noise levels for an indefinite time into the next century.

As the FAA has earlier recognized,[1] a major precondition of responsive local land-use decisions around airports is Federal action to firmly contain, at predictable and definable levels, the source of aviation noise. Without such Federal activity, local land-use decisions are jeopardized and a firm basis for airline and airport planning is lacking. Moreover, as the FAA earlier recognized, the continued production of older aircraft designs is an economic disincentive to investment in new, quieter types of aircraft.

It is recognized that the production of Stage 2 airplanes should be ended only when a variety of economical, quieter Stage 3 airplanes is available for purchase by the airlines. The point has now been reached where Stage 3 airplanes in a complete spectrum of payload and range capabilities are available. In addition, studies conducted jointly by the FAA and other member groups of the Committee on Aircraft Noise (CAN) of the International Civil Aviation Organization (ICAO) show that large operating cost savings can be realized by an accelerated conversion of purchases to those of Stage 3 airplanes.

This petition therefore requests the adoption of amendments to the Federal Aviation Regulations that would effectively end by January 1, 1986 the production of Stage 2 jet transport airplanes for operation in the United States.

2.0 *Proposed rule language.*

2.1 Add a new paragraph (4) to Part 36, Subpart A, Section 36.1(d) as follows:

(4) The provisions of this Part in effect on (date of NPRM) except that for civil turbojet transport category airplanes with maximum weights greater than 75,000 lbs. that have not had any flight time prior to January 1, 1986 compliance must be shown with Stage 3 noise limits.

2.2 Add a new Section number 47.4 to Part 47, Subpart A as follows:

47.4 In addition to the other requirements, of Part 47, Subparts A and B, for the issuance of a Certificate of Aircraft Registration in effect on (date of NPRM) compliance must be shown with the Stage 3 noise limits and with the noise measurement and evaluation procedures for Stage 3 airplanes in Part 36 in effect on (date of NPRM) for civil subsonic turbojet airplanes with maximum weights of more than 75,000 lbs. that have not had any flight time before January 1, 1986.

2.3 Modify paragraph 9.301(a)(1) of Part 91, Subpart E to read as follows:

(1) Sections 91.302, 91.303, 91.305, 91.306, 91.307 and 91.312 apply to civil subsonic turbojet airplanes with maximum weights of more than 75,000 lbs. and

2.4 Add a new Section to Part 91, Subpart E as follows:

91.312 Airplanes newly produced after January 1, 1986. No person may land or take off an airplane that is covered in Section 91.301(a)(1) and that has not had any flight time before January 1, 1986, unless that airplane has been shown to comply with the Stage 3 noise limits and the noise measurement and evaluation procedures prescribed for Stage 3 airplanes in Part 36 in effect on (date of NPRM).

3.0 *Petitioners' interests.*

The National Organization To Insure a Sound-controlled Environment (N.O.I.S.E.) is a national organization composed of local governments of cities and counties whose residents are involuntary aviation noise consumers. These include, among others, Minneapolis, and St. Paul, MN, near Minneapolis St. Paul International Airport; Aurora, CO, near Denver Stapleton International Airport; Inglewood, CA, near Los Angeles International Airport; College Park and Forest Park near Atlanta's Hartsfield International Airport; Hempstead, N.Y., near John F. Kennedy International Airport. The petition is submitted in response to pressures from the noise impacted residents of our cities and counties who are demanding appropriate technological and regulatory action for relief.

Airport Operators Council International (AOCI) is the association of the governmental bodies which own and operate the principal airports in the United States, as well as in many countries abroad. AOCI members, such as those listed in the attachment, serve metropolitan regions in the United States which encompass the vast majority of citizens which are presently subjected to aircraft noise. Our U.S. member airports annually enplane more than 90 percent of the domestic and virtually all of the U.S. international scheduled airline passenger and cargo traffic. In addition, our local government members operate many reliever and other general aviation facilities which supplement the large airports in their communities and regions.

4.0 *Discussion.*

Pub. L. 90–411, enacted by the Congress in 1968, directs the FAA to prescribe and amend regulations for the control and abatement of aircraft noise, and, in doing so, to consider whether any proposed standard or regulation is economically reasonable, technologically practicable, and

[1] Peramble to Amendment 36–2 of Part 36, October 19, 1973.

appropriate for the particular type of aircraft to which it will apply.

One of the earliest responses of the FAA to this direction was the promulgation in 1969 of the first aircraft noise standards, which became a prerequisite for the issuance of aircraft type certificates. Aircraft of earlier designs, which were not able to meet the new noise standards, are called Stage 1 airplanes, and airplanes that meet the 1969 standards are called Stage 2 airplanes.

While it had been determined that economically reasonable technology was available to support Stage 2 standards for new designs in 1969, it had not been determined, at that time, that it was technologically or economically practicable to restrict the continued production of the earlier Stage 1 designs. However, by 1973, it was determined that the production lines could be economically converted to meet Stage 2 standards. The production of Stage 1 designs was therefore effectively ended by an amendment of Part 36 effective in December 1973.

By 1977, the FAA had determined that further developments in noise reduction technology had become available and could support even more stringent noise standard for airplanes of new design. Accordingly, more stringent standards (Stage 3 standards) were adopted and made applicable to new designs for which applications for type certificates were made after November 1975.

Although Stage 3 airplanes (1) are now available from aircraft manufacturers in a complete spectrum of payload and range capabilities, (2) have demonstrated lower fuel consumption and lower operating costs, and (3) have demonstrated noteworthy reductions in Stage 2 airport community noise exposure, the FAA, in contrast with the action taken in 1973, has not yet acted to end the production or earlier and noisier airplane designs. Regulations that permit the uncontrolled, unlimited production of Stage 2 designs thus fall short of regulations "* * * to provide for the control * * * " of aircraft noise, in accordance with the requirements of Pub. L. 92–574.

Because of their numbers, the frequency of their landings and takeoffs, and their high source noise levels, Stage 2 airplanes are the primary source of annoyance in communities around airports today. These airplanes represent 78 percent of the 1983 fleet of jet transports. Of the total fleet, the short-to-medium range twinjets and trijets of older noise technology are responsible for more than five times as many operations as all other types.

The later model short-to-medium range Stage 2 twinjets and trijets produced during the past 10 years (e.g., DC–9, B727, B737 airplanes) have become especially noisy. Due to increases in operating weights and engine power, these airplanes expose more people to annoying levels than their Stage 2 prototype designs that began operating 18 years ago. Calculations of land areas that are exposed to annoying noise levels and that lie outside typical airport boundaries show that Stage 2 Boeing 727–200 and McDonnell Douglas DC–9–50 airplanes expose 46 percent more area that their lower-powered predecessors. On the other hand, noise levels demonstrated for Stage 3 airplanes, now in production and designed for the short-to-medium range service responsible for the most frequent operations show large reductions relative to the order technology airplanes. FAA Advisory Circular 36–3C indicates reductions ranging from 5 to 17 decibels at takeoff and from 2 to 14 decibels at landing approach. Published airport noise monitor data for short to medium range airplanes designed for comparable service indicate reductions of 11 decibels at takeoff and 7 decibels at landing approach.

Airport neighbors will perceive welcome relief when such noise reductions are experienced. It is commonly recognized that a reduction of 10 decibels is perceived as a 50% reduction in noisiness. This will result in major reductions of noise levels and noise impacted areas around airports. A study by the Los Angeles Department of Airports, for example, shows that the total area of sensitive residential property impacted by operations at Ontario International if using aircraft were all Stage 3 would be reduced to only 11% of that forecast for currently projected operations in 1985.

More important than acoustical expressions such as Ldn or sheer acreage is the personal human impact of the individual noise event. Operational noise that stops conversations inside a home or interrupts normal activities such as using a telephone or listening to a radio or TV is in fact an invasive force that disrupts family life. The reduction of 50% or more in noise represented by even one Stage 3 aircraft replacing a Stage 2 version means that in every operation stress and disruption are significantly reduced in hundreds of thousands of homes.

Until 1980, Stage 3 technology was available only in large capacity airplanes powered by high bypass ratio turbofan engines (e.g., DC–10, L–1011, B747, A300). However, Stage 3 airplanes in a complete spectrum of seating capacity and range are now in production or offered by manufacturers (seating capacities ranging from 90 to 480 and maximum ranges from 700 to 5300 miles). In addition, manufacturers' data show reduction in fuel consumption per seat-mile of up to 37 percent for Stage 3 airplanes of equivalent category.

The FAA recently participated in a study by an ICAO CAN working group on the question of effectively ending the production of Chapter 2 airplanes. ("Chapter" is the ICAO equivalent of "Stage" in FAA nomenclature). Estimates were made of the additional number of Chapter 3/Stage 3 airplanes that would be purchased by airlines if purchases of Chapter 2/Stage 2 airplanes were terminated by regulation. Although the study indicated that a somewhat increased capital outlay by the airline industry would be required, large operating cost savings were indicated due to the substitution of the more efficient Chapter 3/Stage 3 airplanes. For the United States fleet, it was estimated that a 1985 cutoff date could force a requirement for an additional capital investment of $19 billion for the period 1980–2000, but it was estimated that operating cost savings of $19.0 billion would be realized in the same period. The report of the CAN working group noted that the absolute values of these estimates naturally depend on the assumptions made in the study, but it was considered that the relative values would provide a reasonable guide to the financial consequences of any Chapter 2 limitation. Thus, the operating cost savings could repay the added capital requirements in about 2 years. The large magnitude of the estimated surplus of savings relative to capital costs should easily accommodate capital or cost elements that were overestimated, underestimated, or overlooked, and should assure adequate access to the credit markets.

This is more than a theoretical prediction. Three airlines have recently placed mixed orders for Stage 2 and Stage 3 versions of the same medium range jet passenger aircraft. When interviewed and asked why they had placed a mixed order, they all answered: We didn't want any Stage 2's. We wanted all Stage 3's, even if they cost more. But we had to have some new planes fairly soon and the manufacturer couldn't supply the Stage 3 models on time. We had to take Stage 2's as second choice to meet our immediate needs.

It is clearly in the public interest to convert the fleet to all-Stage 3

technology at the earliest practicable time:

(1) Airport neighbors will enjoy welcome relief from excessive noise levels.

(2) Airlines will enjoy lower operating costs which can help reduce air fares paid by the travelling public.

(3) Manufacturer's investments in new technology designs will be compensated.

[FR Doc. 84-8715 Filed 4-3-84; 8:45 am]
BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3, 4 and 140

Commodity Pool Operators and Commodity Trading Advisors; Exemption From Registration and From Subpart B of Part 4 for Certain Otherwise Regulated Persons and Other Regulatory Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules; extension of comment period.

SUMMARY: On February 8, 1984, the **Federal Register** published the Commission's proposed amendments to Parts 3, 4 and 140 of its regulations. 49 FR 4778. Among other things, these proposals would exempt certain otherwise regulated persons from regulation as a commodity pool operator. The comment period on the proposed amendments will expire on April 9, 1984.

The Commission has received several requests for an extension of the comment period. Because the Commission wishes to be certain that all parties have an opportunity to finalize and submit their comments, it is allowing an additional 30 days for comment.

DATES: Accordingly, notice is hereby given that all comments on the Commission's proposed amendments to Part 3, 4 and 140 of its regulations (49 FR 4778, February 8, 1984) must be submitted by May 9, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara R. Stern, Special Counsel for Commodity Pool Operators and Commodity Trading Advisors, (202) 254-8955.

Issued in Washington, D.C. on March 30, 1984.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-8883 Filed 4-3-84; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-227 Colorado-1 Amendment III]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that portions of the J Sand Formation originally excluded by the Commission in Order No. 124 be included in the designated tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on May 16, 1984. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on April 13, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Victor Zabel, (202) 357-8616

SUPPLEMENTARY INFORMATION:

In the matter of High-Cost Gas Produced from Tight Formations; Docket No. RM79-76-227, (Colorado-1 Amendment III).

Issued: March 22, 1984.

I. Background

On February 24, 1984, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that certain lands previously excluded from the J Sand Formation be designated as a tight formation pursuant to § 271.703(d). The J Sand Formation underlies portions of Adams, Boulder and Weld Counties in north central Colorado. The Commission adopted, in part, Colorado's recommendation of July 9, 1980, that the J Sand Formation be designated as a tight formation in Order No. 124, issued January 23, 1981, in Docket No. RM79-76 (Colorado-1). The description of the area as designated appears in § 271.703(d)(11) of the Commission's regulations. In Order No. 124, the Commission excluded certain lands contained in Colorado's recommendation from the designation under § 271.703(c)(i)(D), because it found that these areas had been subject to infill drilling orders, and information in Colorado's recommendation indicated that these areas could be developed absent the incentive price for tight formation gas. A description of the excluded acreage appears in the appendix to Order No. 124, in Docket No. RM79-76 (Colorado-1).

Colorado's recommendation contains economic data detailing current well development costs within the J Sand Formation. Colorado proposes that twelve 320-acre non-contiguous drilling units now be included in the tight formation designation. Eleven of these units were excluded by the Commission in Order No. 124 and the twelfth unit, S ½ of Section 8, Township 2 North, Range 67 West, was not excluded by Order No. 124 but should have been excluded because of infill drilling.

This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether Colorado's recommendation that the J Sand Formation be designated a tight formation should be adopted amending § 271.703(d)(11) to add certain lands to the Wattenberg J Sand tight formation area. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The units which Colorado recommends are located in Township 1 North, Range 66 West, Section 7, S½; Township 1 North, Range 67 West, Section 16, N½; Township 2 North, Range 67 West, W½ of Section 2, S½ of Section 8, W½ of Section 9, N½ of Section 17, N½ of Section 18, E½ of Section 32; Township 3 North, Range 66

West, Section 20, S½ and Section 34, E½; Township 3 North, Range 67 West, Section 35, E½ in Weld County, Colorado.

Colorado, in an August 11, 1983, letter to the Commission provided an amended completion report for the well in the Township 2 North, Range 68 West, Section 13, W½ unit. The amended completion report showed the well as completed for production after the date of Colorado's infill order for the field. By Order No. 271 in Docket No. RM79–76–214 (Colorado–1 Amendment II) issued December 2, 1982, the Commission deleted this unit from the area excluded from tight formation designation. Since this unit currently qualifies for the incentive price, its review in the instant recommendation is considered moot. The average depth to the top of the J Sand Formation in the recommended area is approximately 8,000 feet.

III. Discussion of Recommendation

On August 21, 1979, Colorado issued Infill Drilling Order No. 232–20 covering portions of the J Sand Formation. In Order No. 124, the Commission excluded those portions of the recommended area which were subject to Infill Drilling Order No. 232–20 and in which wells were completed for production prior to August 21, 1979, the date the infill order was issued.

Colorado claims in its February 24, 1984, submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–3, Order No. NG–3–4 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

(4) Economic data indicates that the recommended area cannot be further developed without the incentive price provided for in § 271.703(a).

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Colorado that certain areas of the J Sand Formation as described and delineated in Colorado's recommendation as filed with the Commission, be added to the designated area of the J Sand Formation.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 16, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–227 (Colorado–1 Amendment III), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than April 13, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Colorado's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. The appendix to Order No. 124 Docket No. RM79–76 (Colorado–1) appearing in the Rules section of this issue, is amended by removing the following from the area excluded from the tight formation designation.

Weld County

Township 1 North, Range 66 West, 6th P.M.
Section 7: S½
Township 1 North, Range 67 West, 6th P.M.
Secion 16: N½
Township 2 North, Range 67 West, 6th P.M.
Section 2: W½
Section 9: W½
Section 17: N½
Section 18: N½
Section 32: E½
Township 3 North, Range 66 West, 6th P.M.
Section 20: S½
Section 34: E½
Township 3 North, Range 67 West, 6th P.M.
Section 35: E½

[FR Doc. 84–8187 Filed 4–3–84; 8:45 am]
BILLING CODE 6717–01–M

INTERNATIONAL TRADE COMMISSION

19 CFR Ch. II

Regulatory Flexibility Agenda

AGENCY: International Trade Commission.

ACTION: Semiannual publication of "regulatory flexibility agenda."

SUMMARY: Pursuant to Section 602 of the Regulatory Flexibility Act, the Commission hereby gives notice that (1) it does not expect to propose or promulgate any rule (as defined in 5 U.S.C. 601(1)); and (2) it does not currently have under consideration any such rule.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–3540.

(5 U.S.C. § 602(a))

By order of the Commission.

Issued: March 29, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–8965 Filed 4–3–84; 8:45 am]
BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-041]

Occupational Exposure to 1,3-Butadiene

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: On January 5, 1984, OSHA published a Federal Register notice (49 FR 844) in which interested parties were requested to submit data and comments relevant to the adverse health effects resulting from 1,3-butadiene exposure. The comment period ended March 5, 1984. This notice announces that OSHA is extending the comment period for 1,3-butadiene and will keep the docket open for the submission of further information. This action is being taken in response to a request that the comment period be extended to allow time for the gathering and analysis of additional information on worker exposure, and in order to allow time for the submission of the results of laboratory studies, currently in progress, which may provide pertinent information.

OSHA requests that interest persons submit information concerning the health effects of 1,3-butadiene, its toxicologic properties, estimates of risk presented, current occupational exposure levels, control technologies and costs of reducing exposures and their cost-effectiveness, and health effects research in progress and planned. All written submission as well as other information will be considered by OSHA in its determinations.

DATES: Comments will be accepted until further notice.

ADDRESS: Comments should be sent to the Docket Officer, Docket. H-041, Occupational Safety and Health Administration, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. All written comments submitted in response to this notice will be available for inspection and copying at the Docket Office on weekdays between 8:15 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: James Foster, Occupational Safety and Health Administration, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C., 20210, Telephone (202) 523-8148.

Signed at Washington, D.C., this 30th day of March, 1984.

Thorne G. Auchter,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 84-8857 Filed 4-3-84; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by Illinois as an amendment to the State's permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Illinois regulations concerning the exemption from prime farmland permitting requirements and performance standards. This notice sets forth the times and locations that the Illinois program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., May 4, 1984 will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Illinois regulatory program. A public hearing on the proposed amendment has been scheduled for April 25, 1984. Any person interested in speaking at the hearing should contact Mr. James Fulton at the address or telephone number listed below by April 18, 1984. If no person has contacted Mr. Fulton by that date to express an interest in the hearing, the hearing will not be held. If only one person requests the opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 10:00 a.m. in Room 20, Springfield Office, 600 E. Monroe St., Springfield Field, Illinois 62701.

Written comments and requests for a hearing should be directed to Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining, Room 20, 600 E. Monroe St., Springfield, Illinois 62701; Telephone: (217) 492-4495.

Copies of the Illinois program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Room 5315, 1100 L Street NW., Washington, D.C. 20240

Illinois Department of Mines and Minerals, Land Reclamation Division, 227 South 7th Street, Springfield, Illinois 62706

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining, Room 20, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications, and amendments to the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Illinois program can be found in the June 1, 1982 Federal Register.

II. Submission of Revisions

By letter dated March 16, 1984, Illinois submitted regulatory amendments to revise the exemption from the prime farmland permitting requirements and performance standards.

Specifically, the proposed amendment includes the following revisions to Illinois rule 1785.17 *Prime Farmland:* [new text is shown by arrows and deleted language is in brackets]

Section 1785.17 Prime Farmland

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. Nothing in this [sub]section shall apply to any permit issued prior to the date of enactment of the Act, or to any revisions or renewals thereof, or to any existing surface mining operation which a permit was issued prior to the date of enactment of the Act►as determined by the Department prior to September 29, 1981. For lands for which application for exemption was initially made or pending on or after September 29, 1981, this section does not apply to:◄

(1) ►Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or ◄

(2) ►Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or◄

(3) ►Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:◄

(i) ►Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and◄

(ii) ►The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract or lease but not including an option to buy, lease, or contract; and◄

(iii) ►The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August , 1977.◄

(4) ►For purposes of this section:◄

(i) ►"Renewal" of a permit shall mean a decision by the Department to extend the time by which the permittee may complete mining within the boundaries of the original mining within the boundaries of the original permit and "revision" of the permit shall mean a decision by the Department to allow changes in the method of mining operations within the original permit area, or the decision of the Department to allow amendment pursuant to state law prior to June 1, 1982, or other incidental boundary changes to the original permit;◄

(ii) ►A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;◄

(iii) ►A single continuous surface coal mining operation is presumed to consist only of a single continous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.◄

(5) ►The exceptions granted by Paragraphs (a)(1)–(3) of this section shall apply fully only to lands permitted and exempted by a Departmental decision on applications made prior to August 1, 1982. Persons initially applying for exemption under subparagraphs (a)(1)–(3) after July 31, 1982 may obtain such exemption, but lands subject to such applications shall comply with the prime farmland productivity standards of Section 1823.15. Applications first made after July 31, 1982 shall be further subject to an acreage limitation of 13,000 acres statewide, as set out in subsection (6) below.◄

(6) ►The acreage limitation referred to in subsection (5) shall be implemented as follows:◄

►Applications for lands first made after July 31, 1982 and pending before the Department on the effective date of this rule shall be collectively totalled for acreage. If the acreage applied for is less than 13,000 acres, the applications may be granted (subject to determination of their merits). On a monthly basis thereafter, applications shall be cumulatively totalled. In month that the cumulative total exempted acreage applied for since July 31, 1982 exceeds 13,000 acres, the exemptions shall be granted for that month on a pro-rata basis, so that the cumulative total including that month's total, equals 13,000 acres. Once 13,000 total cumulative acres are grandfathered pursuant to this exemption, the exemption shall become unavailable to future applicants. Any permittee may relinquish exempted acreage to the Department in writing, identifying the acreage released. In the event available exempt acreage shall ever be so relinquished, the availability of the total number of acres shall be announced by the Department to all existing permittees and applicants made within 30 days of the announcement shall be granted on a pro-rata basis to the extent of available acres.◄

(7) ►All applicants for an exemption shall supply the Department with a scale map of the area proposed to be exempted, delineating all prime farmland soils and showing noting the total number of acres proposed for exemption to the nearest acre, and the numbers of acres of each prime farmland soil type in the area proposed to be exempted.◄

Upon request to OSM's Field Office Director, each person may receive, free of charge, one single copy of the proposed program amendment. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Illinois program.

III. Procedural Requirements

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 29, 1984.

Carson W. Culp Jr.,

Acting Director, Office of Surface Mining.

[FR Doc. 84-8889 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 865

Personnel Review Boards; Air Force Board for Correction of Military Records

AGENCY: Department of the Air Force, Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force proposes to revise part 865, Subpart A of Subchapter G, Title 32 of the Code of Federal Regulations. This proposed revision includes changes in procedures for making application, and the consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records. This is intended to provide information necessary for submitting applications for the correction of military records to the Department of the Air Force.

DATE: Comments must be received by May 4, 1984.

ADDRESS: Air Force Board for Correction of Military Records, SAF/MICB, Washington, D.C. 20330.

FOR FURTHER INFORMATION CONTACT: Mr. D'Orazio, Secretary of the Air Force/MICB(S), Washington, D.C. 20303, telephone (202) 692-4726.

SUPPLEMENTARY INFORMATION: The proposed rule provides for the appointment of a vice chairman; expands on format requirements for submission of applications; changes procedures for denial for request for reconsideration when it has been determined that the evidence provided is insufficient to warrant such reconsideration; expands on policy for the conduct of formal hearings; adds provision for consideration of an appeal where a formal hearing has been requested, granted and applicant has indicated that he or she and his or her counsel will not be present; expands and adds to the listing of the categories of appeals where favorable action may be taken by the Board on the basis of a favorable recommendation by the Department of the Air Force; clarifies actions to be taken by the Board scretarait; and enlarges on the requested by the Board for its review. The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291; is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354); and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 865

Administrative practices and procedures, Military personnel, Records.

Note.—This rule is affected by the Privacy Act of 1974. The authorities to collect and maintain the data prescribed in this rule are Title 10, U.S.C. 15-52 and E.O. 9397, 22 November 1943. The prescribed form which is used to collect personnel information contains a Privacy Act Statement.

The revised part 865—Subpart A is proposed to read as follows:

PART 865—PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

Sec.

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865.30 Publication in the **Federal Register**.

Authority: Secs. 1552, 8012, 70A Stat. 116, 488; 10 U.S.C. 1552, 8012.

§ 865.0 Purpose.

This rule will establish procedures for making application, and the consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records (hereinafter referred to as the Board). This rule will apply to all Air Force activities.

§ 865.1 Legal authority.

Section 131 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190g) provides that no private bill or resolution, and no amendment to any bill or resolution, authorizing or directing the correction of military or naval records, shall be received or considered in either the Senate or the House of Representatives. Section 207 of the same Act, as amended, and as reenacted and codified in Title 10, U.S.C., section 1552, provides:

Sec. 1552. Correction of military records: claims incident thereto.

(a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of Transportation may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever, is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compesnation, emoluments, or other precuniary benefits, or for the repayment of a fine or forfeilture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satjsfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, enoluments, and other precuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but not for longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payment relate. without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

§ 865.2 Board establishment and composition.

Pursuant to the foregoing statutory authority, the Air force Board for Correction of Military Records has been established in the Office of the Secretary of the Air Force. The Board consists of civilians of the executive part of the Department of the Air Force in such number, not less than three, as may be appointed by the Secretary of the Air Force. Three members present will constitute a quorum of the Board. The Secretary designates one member as Chairman and one member as Vice Chairman. In the absence or incapacity of the Chairman, the Vice Chairman will act as Chairman for all purposes.

§ 865.3 Function of the board.

The function of the Board is to consider all applications properly before it to determine the existence of an error or an injustice and, when appropriate, to make recommendations to the Secretary of the Air Force.

§ 865.4 Board jurisdiction.

The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

§ 865.5 General requirements.

(a) Submission. The application for correction should be submitted on DD Form 1149, Application for Correction of Military or Naval Records under the Provisions of Title 10, U.S. Code Section 1552, or exact facsimile thereof, and should be addressed to:

USAFMPC-MPCDOA1
Randolph AFB, TX 78150

Note.—Forms and explanatory matter may be obtained from the same activity.

(b) Who Signs Application. Except as provided in § 865.5(c), the application will be signed by the person requesting corrective action with respect to his or her record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim (18 U.S.C. 287,1001).

(c) When Person Is Unable to Submit Application for Self. When the record in question is that of a person who is incapable of making application himself or herself, or whose whereabouts are unknown, or when such person is deceased, for the purpose of bringing the application before the Board, the application may be made by the spouse, parent, heir, or legal representative. Proof of proper interest will be submitted as may be required by the Board.

§ 865.6 Time limit for filing application.

A claimant, heir, or legal representative, must file the application for correction of a record with the Secretary of the Air Force within 3 years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the claimant, heir, or legal representative files an application more than 3 years after he or she discovers the error or injustice, he or she must include in his or her application his or her reasons why the Board should find it is in the interest or justice to excuse his or her failure to file the application within the time prescribed above.

§ 865.7 Other proceedings not stayed.

The application to the Board for correction of a record will not operate as a stay of any proceedings being taken with respect to the person involved.

§ 865.8 Consideration of application.

No application will be considered until the applicant has exhausted all effective administration remedies afforded by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant. Briefs furnished in support of applications submitted according to this part will not exceed 25 double-spaced typewritten pages.

(a) *Review.* Each application and the available military or naval records pertinent to the corrective action requested will be reviewed by a panel of the Board in Executive Session to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for the reason the applicant did not file the application within 3 years after he or she discovered the alleged error or injustice and did not submit any reason why the Board should find it to be in the interest of justice to excuse the failure to file the application within the prescribed 3 years.

(b) *Denial of Application.* The Board may deny an application if it determines that insufficient relevant evidence has been presented to demonstrate the existence of probable material error or injustice, that the applicant has not exhausted other effective administrative or legal remedies available to him or her, that effective relief cannot be granted, or that the applicant did not file his or her application within 3 years after he or she discovered the alleged error or injustice and insufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file within the prescribed 3 years. The Board will not deny an application on the sole ground that the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a board for correction of military or naval records. Denial of an application on the grounds of insufficient relevant evidence to demonstrate probable material error or injustice is without prejudice to further consideration if new relevant evidence is submitted. The applicant will be informed of his or her privilege to submit newly discovered relevant evidence for consideration.

(c) *Reconsideration.* All requests for further consideration will be initially screened by the staff of the Board to determine whether new, relevant evidence, that is, evidence not contained in the previous Record of Proceddings and not reasonably available to the applicant at the time of the previous application, has been submitted. If such evidence has been submitted, the request will be forwarded to the Board for a determination as explained in § 865.8(a). If no such evidence has been submitted, the applicant will be informed that his or her request was not considered by the Board because it did not contain newly discovered, relevant evidence that was not in the record at the time of any previous Board consideration. Denials of reconsideration on these grounds must be approved by the Executive Secretary or the Senior Examiner of the Board.

(d) *Written Proceedings.* When the Board determines that the record should

be corrected or that the application be denied, the detemination of the Board will be made in writing. The writings (proceedings) will include, but not be limited to, all facts of record, and statement of ground(s) upon which the Board's determination is based. Where the Board concludes complete relief should not be granted, written proceedings will address applicant's claim(s) of constitutional, statutory, and/or regulatory violation rejected by the Board and/or reviewing authority. In those cases involving the characterization of an individual's discharge or dismissal from the military service, the factors required by Air Force regulations to be considered for determination of the character of and reason for the discharge or dismissal in question will be included.

§ 865.9 Appearing before the Board.

In each case in which the Board determines that a hearing is warranted the applicant will be entitled to appear before the Board either in person or by counsel of his or her own selection or in person with counsel.

§ 865.10 Notice of hearing.

(a) *To Applicant and Counsel.* In each case in which a hearing is authorized, the Executive Secretary of the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least 30 days before the date of hearing, except that an earlier date may be set where the applicant waives his or her right to such notice in writing.

(b) *To the Board.* Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days before the date set for hearing as to whether he or she will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he or she may intend to call in his or her behalf. Cases in which the applicant notifies the Board that he or she does not desire to be present at the hearing will be considered according to § 865.15(b) below.

§ 865.11 Definition of counsel.

The term "counsel" will be construed to include members in good standing of the bar of any state, accredited representatives of veterans' organizations recognized by the Administrator of Veterans' Affairs under Title 38, United States Code, section 3402, or such other persons, who in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

§ 865.12 Witnesses at hearing.

The applicant will be permitted to present witnesses in his or her behalf at hearings before the Board. It will be the responsibility of the applicant to notify his or her witnesses and to arrange for their appearance at the time and place set for hearing.

§ 865.13 Access to records.

(a) *Official Records.* The applicant will have access to such official records as are deemed necessary to adequately present his or her case. It is the responsibility of the applicant to procure such evidence not contained in official records of the Department of the Air Force as he or she desires to present in support of his or her case.

(b) *Classified or Privileged Matter.* Classified or privileged matter will not be disclosed or made available without express finding of the Executive Secretary of the Board that such disclosure is required in the case and is not detrimental to the public interest. Such disclosure should not be contrary to existing law and departmental regulations concerning privileged or classified material. When appropriate, the applicant may be supplied only with an unclassified summary or extract of classified matter.

(c) *Copies of Records.* This part does not authorize the Board to furnish copies of official records. Requests for copies of official records should be submitted according to regulations governing release of information (for example, AFR 12–30).

§ 865.14 Convening the Board.

The Board will be convened at the call of the Chairman, Vice Chairman or Panel Chairman and will recess or adjourn at his or her order.

§ 865.15 Conduct of hearing.

(a) *By Chairman.* The hearings will be conducted by the Chairman, Vice Chairman, or Panel Chairman, and will be subject to his or her rulings that will be designed, insofar as practicable, to accord the applicant an opportunity to make a full and fair presentation of his or her case. The Board will not be limited by legal rules of evidence, but will maintain reasonable bounds of competency, relevancy, and materiality. Hearings are normally limited to 2 hours. However, additional time may be granted at the discretion of the Chairman, Vice Chairman or Panel Chairman. AFR 11–31 is not applicable to hearings conducted by the Board.

(b) *When Applicant is not Present or Represented at Hearing.* If the applicant, after being duly notified, has indicated to the Board that he or she does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(c) *When Applicant Fails to Appear at Time and Place Set for Hearing.* If the applicant, after being duly notified, has indicated to the Board that he or she will be present or represented by counsel at the hearing, and without good cause and timely notice to the Board, he or she or a representative fails to appear at the time and place set for the hearing, the Board may consider the case as explained in § 865.15(b), or will make such other disposition of the case as is indicated under the circumstances.

(d) *Testimony.* All testimony before the Board will be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

§ 865.16 Continuance of hearing.

The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to ensure a full and fair hearing.

§ 865.17 Deliberations, findings, decisions, and recommendations.

(a) *Deliberations.* Only members of the Board and its staff will be present during the deliberations of the Board.

(b) *Further Information.* During the course of review of the case, when it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(c) *Findings, Decisions, and Recommendations.* Following a hearing, the Board will make written findings, decisions, and recommendations. A majority vote of the members present on any matter before the Board will constitute the action of the Board and will be so recorded.

(d) *Separate Communication.* Where the Board considers it necessary to

submit comments or recommendations to the Secretary of the Air Force as to matters arising from, but not directly related to the issues of any case, such comments and recommendations will be the subject of separate communication.

(e) *Delegation of Authority to Correct Certain Military Records:*

(1) The Air Force Board for Correction of Military Records is hereby authorized to take final action on behalf of the Secretary of the Air Force in approving the correction of military records, provided such action:

(i) Has been recommended by the Air Staff.

(ii) Is unanimously agreed to by the Board.

(iii) Falls into one of the following categories:

(A) Restoration of leave unduly charged to applicants.

(B) Promotion of applicants retroactively, who would have been promoted during regular enlisted promotion cycles but were inadvertently or improperly excluded from consideration during such cycles; and adjustment of their pay accounts accordingly.

(C) Promotion of applicants to grades held immediately before reenlistment who were inadvertently or improperly reenlisted in a lower grade.

(D) Award of basic allowance for subsistence, basic allowance for quarters, family separation allowance, civilian clothing allowance, housing allowance and cost of living allowance to applicants entitled thereto.

(E) Authorizing participation, declination, or modification of an election under the Retired Serviceman's Family Protection Plan, the Survivor Benefit Plan and/or the Reserve Components-Survivor Benefit Plan where failure to elect to participate, decline to participate, or to make an appropriate election was through no fault of the service member.

(F) Placement in a temporary or permanent disability retired status, including appropriate percentage of disability, of applicants who were clearly physically unfit and were inadvertently or improperly separated.

(G) Award of Selective Reenlistment Bonuses, Proficiency Pay, Enlistment and/or Reenlistment Bonuses.

(H) Change of home of record where upon entry on duty applicants erroneously reported an address other than actual home.

(I) Award of reserve participation credit in computation of years of satisfactory service where such service was improperly or erroneously credited.

(J) Award variable incentive pay (VIP).

(K) Award allowance for command sponsorship of dependents.

(L) Authorize reimbursement for shipment of excess baggage, movement of a house trailer, mobile home, and/or storage and shipment of household goods incident to permanent change of station assignment (PCS).

(M) Award of allowance for dependent(s) travel.

(N) Authorize the award of citations and/or decorations.

(O) Award of date of rank (DOR) (commissioned and enlisted).

(P) Change of Active Duty Service Commitment (ADSC).

(Q) Award of flying pay (incentive pay).

(R) Change in oversea tours (accompanied and/or all others).

(S) Authorize permissive temporary duty (TDY).

(T) Award of Air Force specialty code (AFSC).

(U) Change of effective date of retirement.

(V) Change reenlistment eligibility code (RE-Code).

(W) Reinstatement to active reserve status in the Reserve of the Air Force (AFRes and ANGUS), of applicants who were inadvertently or improperly assigned to an inactive reserve status and/or to the retired reserve.

(X) Change grade of enlistment in United States Air Force and/or Reserve of the Air Force (AFRes and ANGUS).

(Y) Set aside disciplinary punishment imposed pursuant to Article 15, UCMJ.

(Z) Authorize the recharacterization of less than honorable discharges to an honorable discharge or general under honorable conditions.

(AA) Corrections, deletions, and/or additions to evaluation reports (Officer and Airman) which are excluded under the provisions of AFR 31–11.

(BB) Change date of enlistment in US Air Force and/or Reserve of the Air Force (AFRes and ANGUS).

(CC) Delete time lost and all references thereto from the record.

(DD) Award of constructive service credit.

(EE) Change date of separation (DOS).

(FF) Change entries on DD Form 214, Certificate of Release or Discharge from Active Duty.

(GG) Change reason and/or authority for discharge.

(HH) Award of operational flying duty credit.

(II) Deletion of correspondence and/or documents from the records which are derogatory and/or unfavorable to applicants.

(2) The Executive Secretary of the Board or his designee, after assuring compliance with the above stated conditions, will announce the final action on applications processed under this subparagraph.

§ 865.18 Minority report.

In the case of a disagreement between members of the Board, a minority report may be submitted, either as to the findings, decision, or the recommendations or to all, including the reasons therefor.

§ 865.19 Record of proceedings.

When the Board has completed its deliberations, a record of proceedings will be prepared. Such record will indicate whether or not a quorum was present and the name and vote of each member present. The record will include the application for relief; briefs and written arguments; advisory opinions; the findings, conclusions, and recommendations of the Board; and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record also will include any transcripts of testimony, and any minority reports. The record so prepared will be certified by the chairman or designee as being true and complete.

§ 865.20 Withdrawal of application.

The Board may permit an applicant to withdraw his or her application without prejudice at any time before its proceedings are sent to the Secretary of the Air Force.

§ 865.21 Action by the Secretary of the Air Force.

All Board recommendations for correction of records, except those finalized by the Board under the authority contained in § 865.17(e) will be forwarded to the Secretary or Assistant Secretary of the Air Force or his or her designee who will direct such action in each case as he or she determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary. Those cases returned for further consideration will be accompanied by a brief statement setting out the reasons for such action and any specified instructions. If the Secretary or Assistant Secretary's decision is to deny relief, such decision will be in writing and will include a brief statement of the ground(s) for denial. All Secretarial decision documents will be furnished to the applicant and counsel.

§ 865.22 Action by the Board Secretariat.

(a) *Returning Case to the Board.* On final action by the Secretary or Assistant Secretary of the Air Force, the

complete record in each case is returned to the Board Secretariat. The Board Secretariat will transmit the Secretary's decision to the Chief of Staff, US Air Force for appropriate action.

(b) *Communicating Decision to Applicant and Counsel.* On receipt of proceedings after final action by the Secretary of the Air Force, his designee, by the Executive Secretary of the Board acting under the authority in § 865.17(e), or when the Board denies an application without a hearing, the Board Secretariat will communicate the decision to the applicant and counsel, if any, by furnishing applicant and counsel a copy of the record of proceedings and all decisional documents. Privileged or classified material may be deleted only if a written unclassified statement of basis for deletion is provided.

(c) *Informing Applicant when Administrative Action has been Completed.* When all necessary administrative action has been completed by the HQ USAF, the applicant will be informed of such action by the HQ USAF office designated by the Chief of Staff, US Air Force.

(d) *Written Notice to Chairman of Board.* Written notice specifying the action taken and the date thereof will be transmitted to the chairman of the Board.

(e) *Filing Records of Decision of the Secretary of the Air Force.* The record of the decision of the Secretary of the Air Force will not be filed in the military records of the applicant where the effect of such action would be to nullify the relief granted, or if those cases in which the application is denied.

(f) *Release of Record of Proceedings to the Public.* After action on the record by the Secretary of the Air Force, his designee, by the Executive Secretary of the Board acting under the authority contained in § 865.17(e), or when the Board denies an application without a hearing, the Board Secretariat will release for public inspection and copying, at a designated reading room within the Washington, DC metropolitan area, a sanitized and indexed copy of the record of proceedings and all decisional documents. To the extent required and to prevent a clearly unwarranted invasion of personal privacy, identifying details of applicant and other persons will be deleted from all documents. Privileged or classified material will be deleted. The statement will not reveal the nature of the withheld material. An index of record of proceedings formulated so as to enable those who represent applicants to isolate from all those decisions that are indexed those cases that may be similar to an applicant's case and which indicates the ground for which the Board and/or the Secretary granted or denied relief. The index will be published quarterly and available for public inspection and sale at the reading room.

§ 865.23 Authority to settle claims.

(a) *Claims Authorized to be Settled and Paid.* The Department of the Air Force is authorized to pay claims according to 10 U.S.C. 1552, which is quoted in § 865.1.

(b) *Claims Not Authorized to be Paid.* The Department of the Air Force is not authorized to pay any claim heretofore compensated by the Congress through enactment of private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

§ 865.24 Application for settlement.

(a) *Filing Claims.* Settlement and payment of claims, will be made only upon a claim of the person whose record has been corrected; or his or her legal representative, heirs at law, or beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(b) *To Whom Payments will be Made if Person is Deceased.* In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due will be made to the decedent's spouse, heir, or beneficiaries, in order of precedence as prescribed in Title 10, United States Code, section 1552.

(c) *Determining Status as Proper Parties to Claim.* Upon request, the applicant or applicants will be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

§ 865.25 Settlement provisions.

(a) *Basis for Settlement.* Settlement of claims will be based on the decision of the Secretary of the Air Force. Computations of amounts due will be made by the Comptroller of the Air Force, HQ USAF, or his representative, according to applicable law and regulations. In no case will the amount found due exceed the amount which would otherwise have been paid or become due had no error or injustice occurred. Earnings received from civilian employment during any period for which active duty pay and allowances are payable may be deducted from the settlement. Amounts found due may be reduced by the amount of any existing indebtedness to the government, arising from military service.

(b) *Nature and Amount of Various Benefits.* Before or at the time of payment, the person to whom payments are to be made will be advised by the Comptroller of the Air Force, HQ USAF, or his representative, as to the nature and amount of the various benefits represented by the total settlement, and will be advised further that acceptance of such settlement may constitute a complete release by the claimants involved of any claim against the United States on account of the correction of records.

§ 865.26 Report of settlement.

In every case where payment is made, the amount of such payment and the name of the payee or payees will be reported to the chairman of the Board.

§ 865.27 Staff assistance.

(a) *Assembling and Transmitting Available Military Records.* At the request of the Board, the appropriate staff office will assemble the original or certified copies of all available military records pertinent to the corrective action requested. Such records, together with the application and all supporting papers, will be transmitted to the Board with a certification from the staff office designated by the Chief of Staff, US Air Force, that the corrective action requested cannot be granted through administrative action by any staff office.

(b) *Facilities of Staff Offices.* The facilities of all staff offices will be made available as required to assist the Board in accomplishing its function. Upon request of the Board, personnel of the Department of the Air Force will be made available for presentation before the Board of matters within their functional areas and which relate to the issues under consideration. The appropriate Department of the Air Force office of primary responsibility (OPR) will also provide the Board with an official evaluation of each application, stating, among other things, its interpretation of the request, its opinion of the applicant's contention(s) and supporting evidence (if any) and a recommendation (to include appropriate rationale) as to whether or not the Board should render a favorable recommendation.

§ 865.28 Paying expenses.

No expense of any nature whatsoever voluntarily incurred by the applicant, his or her counsel, his or her witnesses, or

by any other person in his behalf, will be paid by the government.

§ 865.29 Special category discharges.

The following applies to applicants who received less than honorable administrative discharges before March 2, 1982, g "Category W" in Block 11, DD Form 149. AFMPC/MPCDOA1 will expedite processing these applications to the Board where they will be reviewed by a designated official. If the applicant falls within the class defined above, this official will either recharacterize the discharge to honorable without any additional proceedings or recommend that new proceedings be initiated to deterine whether other proper grounds exist for the issuance of a less than honorable discharge. If new administrative proceedings are initiated, the former service member must be notified of:

(a) The basis for separation other than drug abuse or possession of drugs based upon compelled urinalysis that was specified in the commander's report and upon which the Air Force now seeks to base a less than honorable discharge.

(b) The full complement of procedural protections that are required by current regulations.

(c) Name, address, and telephone number of an Area Defense Counsel with whom the former service member has a right to consult, and

(d) The right to participate in the new proceedings to be conducted at the Air Force base nearest the former service member's current address, or to elect to maintain his or her present character of discharge.

§ 865.30 Publication in the Federal Register.

This part and any amendments will be published in the **Federal Register**.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc 84-8944 Filed 4-3-84, 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 50

National Capital Parks Regulations Vietnam Veterans Memorial; Demonstrations; Sale and Distribution of Printed Matter

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to amend its National Capital Parks Regulations in § 50.19 of 36 Code of Federal Regulations on demonstrations and special events in the National Capital Parks to enlarge the area around the Vietnam Veterans Memorial where demonstrations and special events are prohibited and to place additional restrictions on the use of sound amplification equipment and stages near the memorial. Having administered the Vietnam Veterans Memorial for over a year, the National Park Service has determined that present restrictions on demonstrations and special events are inadequate to maintain an atmosphere of calm, tranquility and reverence at the memorial. In addition, physical changes in the memorial, for example the addition of a flagpole and changes in the walkway system, make the present definition of the memorial inaccurate. Revising the definition of the memorial and adding minor restrictions on sound equipment and stages will meet both of these needs.

The current regulation governing the memorial was issued as an interim regulation on November 12, 1982 (47 FR 51126). After close of the comment period for this proposed regulation, a final rule will be promulgated that will replace the interim rule. However, the interim rule remains in effect until the final rule takes effect.

In addition, the National Park Service proposes to amend its regulations in §§ 50.24 and 50.52 of 36 Code of Federal Regulations to prohibit sales and distribution of literature in the Vietnam Veterans Memorial. The amendment would also revise the prohibited area around the Washington Monument so as to make it consistent with the area in which demonstrations are prohibited. Finally, the proposed rule would eliminate the prohibition on sales and distribution of literature in Constitution Gardens.

DATES: Written comments, suggestions or objections regarding this proposed rule will be accepted until June 4, 1984.

ADDRESSES: Written comments should be sent to Manus J. Fish, Jr., Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242, telephone (202) 426-6700; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor Department of the Interior, Washington, D.C. 20240, telephone (202) 343-4338.

SUPPLEMENTARY INFORMATION: The following persons participated in the writing of this rule: Richard G. Robbins and Patricia S. Bangert, Office of the Solicitor, Department of the Interior.

Background

1. Vietnam Veterans Memorial

The Act of July 1, 1980 (94 Stat. 872) authorized the Vietnam Veterans Memorial Fund, Inc. to establish a memorial in honor and recognition of the men and women of the Armed Forces of the United States who served in the Vietnam War. The legislation specified that the memorial was to be located on National Park System lands in Constitution Gardens, in West Potomac Park in the District of Columbia.

The Vietnam Veterans Memorial was conceived by its sponsors as a vehicle for all Americans, whether or not they supported the national policy in Vietnam, to express their acknowledgment of the sacrifices of those men and women who served there. It was further intended to be a means whereby the healing and reconciliation of a country divided by the Vietnam War could be promoted. Finally, the memorial was intended to further the phychological readjustment of the veterans of the war, who have received little recognition for their honorable service.

The memorial itself was designed to harmonize with and enhance the existing landscape on which it stands. For that reason, the memorial is comprised of the memorial wall, a sculpture, and a flagpole integrated into a garden design. The wall and the flagpole are in place in the memorial. The statue will be placed in the memorial at a later date. The memorial was designed to be an inviting, hospitable but, nevertheless, peaceful and reflective location in which to contemplate the courage and sacrifice of the Americans who served in Vietnam.

On November 12, 1982, the National Park Service issued an interim regulation that added a definition of the Vietnam Veterans Memorial to § 50.19(a) of 36 CFR, as follows:

> The term "Vietnam Veterans Memorial" means the structures and adjacent areas extending to and bounded by the inner edge of the surrounding paved curvilinear paths and the center line of 21st Street, NW., extended, known as the Vietnam Veterans Memorial.

47 FR 51127 amending 36 CFR 50.19(a).

In order to maintain an atmosphere of calm, tranquility and reverence in the area of the memorial, the National Park Service also prohibited demonstrations and special events in the area of the

memorial except for official annual Memorial Day and Veterans Day commemorative ceremonies. 47 FR 51127 amending 36 CFR 50.19(c)(2).

The National Park Service has now had over a year of experience with administering the Vietnam Veterans Memorial and the interim regulation. In addition, various physical changes have been or will be made to the memorial, most notably the addition of a flagpole and statue and the realignment of walkways. On the basis of this experience, and because of the physical changes, the National Park Service now proposes to revise the definition of the Vietnam Veterans Memorial and the restrictions on demonstrations and special events in the area of the memorial.

2. Sale and Distribution of Printed Matter

In addition, the National Park Service proposes to add the Vietnam Veterans Memorial to the list of park areas where sales and distribution of literature are prohibited. Prior to 1970, sales were prohibited in all park areas. However, that prohibition was revised after the United States District Court for the District of Columbia struck down the total ban as applied to the sale of newspapers. *Washington Free Community, Inc.* v. *Wilson*, 334 F. Supp. 77 (1971). The Court did recognize a substantial government interest in maintaining an atmosphere of calm, tranquility and reverence in certain park areas and suggested that a prohibition on sales and distribution of literature in those parks would be upheld if it was necessitated by the character of the individual park area.

In 1976, the National Park Service promulgated a final rule allowing the sale and distribution of printed material without the aid of a structure or stand in all parks except for six enumerated areas. 41 FR 34748 (Aug. 17, 1976); as amended by 44 FR 56934 (Oct. 3, 1979). The National Park Service determined that these six areas could not accommodate sales and distribution of literature because of the atmosphere of calm, tranquility and reverence existing in the parks. For that same reason, the National Park Service now proposes to add the Vietnam Veterans Memorial to that list.

In addition, after reevaluation of the prohibition on sales and distribution of literature around the Washington Monument and Constitution Gardens, the National Park Service proposes to narrow the restricted area around the Monument and eliminate Constitution Gardens entirely as a restricted area.

Proposed Regulatory Changes

1. Vietnam Veterans Memorial

The proposed rule amends 36 CFR 50.19(a)(10) by revising the definition of the Vietnam Veterans Memorial as now contained in the interim regulation. The new definition, which includes the memorial wall, the flagpole and the proposed sculpture, expands the adjacent acreage into which these structures are integrated beyond that indicated in the interim regulation. In the new definition, the memorial extends to and is bounded by the Constitution Avenue service road on the north, the east curb of Henry Bacon Drive on the west, the north Reflecting Pool walkway on the south and a straight line drawn perpendicular to Constitution Avenue two hundred (200) feet from the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building). The diagram which is contained on page 18, if adopted will be published in the Code of Federal Regulations with the final regulation, shows the proposed boundaries of the memorial.

The proposed rule retains the prohibition contained in the interim regulation on demonstrations and special events within this area, as discussed in the preamble to the interim regulation. This prohibition simply adds the Vietnam Veterans Memorial to the list of national memorials where demonstrations and special events are not permitted, for example, the Jefferson and Lincoln Memorials, and the Washington Monument.

The National Park Service believes that there is a substantial governmental interest in protecting legitimate park value concerns. After careful consideration, the National Park Service has determined that included in these interests is the maintenance of an atmosphere of calm, tranquility, and reverence in the vicinity of the major memorials, which now include the Vietnam Veterans Memorial. Maintenance of such an atmosphere will substantially enhance the visitor's park experience and does not place an unreasonable limitation on First Amendment activity, especially in light of the extensive nearby and adjacent park areas available for demonstrations and special events.

The National Park Service believes that these considerations are especially relevant to the Vietnam Veterans Memorial. Designed and conceived as a vehicle for reconciliation after a decade of division resulting from the Vietnam War, the Vietnam Veterans Memorial is especially unsuitable as a location for demonstrations and special events. In addition, the memorial was intended to be a location where the visitor could quietly contemplate and acknowledge the contributions of thousands of Americans who served in Vietnam. Demonstration and special event activity on the memorial grounds would preclude thousands of visitors from utilizing the memorial in an atmosphere of transquility and reverence.

The proposed rule would continue to allow official annual Memorial Day and Veterans Day commemorative ceremonies to be held at the Vietnam Veterans Memorial. The National Park Service believes that these ceremonies are consistent with and promote the intended purposes of the memorial, as outlined above. Further, the proposed rule, like the interim rule, is not intended to prohibit ceremonies dedicating the memorial or its component parts.

The National Park Service is undertaking this revision based upon its experience in administering the memorial and based upon physical changes that have been or will be made to the memorial. For example, the flagpole, which is an integral part of the memorial and which has been constructed since the publication of the interim rulemaking, is outside of that area designated as the memorial in the interim rulemaking. The proposed rulemaking would extend the boundary of the memorial south and westward to encompass the flagpole.

In addition to the physical changes, the experience gained in administering the memorial evidences a need for revision of the proposed regulation. Visitation at the Vietnam Veterans Memorial has been significant. Since its dedication in November of 1982, an average of 10,200 people have visited the memorial each day, bringing total visitation to two million people. The memorial has the highest visitation rate of any national monument in the Washington area except the Lincoln Memorial. The steady stream of visitors to the memorial often includes relatives of persons whose names appear on the memorial wall. For these persons, and especially for those persons who have been unable to retrieve the bodies of loved ones from Vietnam, the memorial has taken on a very real and important meaning. The National Park Service proposes to add additional footage to the definition of the Vietnam Veterans Memorial to provide additional space for visitors to view the memorial and quietly reflect upon its significance.

Finally, the area surrounding the memorial has been a popular site for

demonstrations. A demonstration protesting this country's military involvement in Central America, involving approximately 7,500 persons, was held only one hundred yards from the memorial. A twenty-four hour vigil concerning soldiers missing in action in the Vietnam War has been ongoing at the northeast entrance to the memorial since December of 1982. Recently, another group held a lengthy vigil on the southwest border of the memorial and still a third group held a demonstration across the walkway from them.

It has been the experience of the National Park Service that these activities occurring so close to the memorial substantially interfere with the visitor's ability to contemplate the memorial and its meaning in a quiet, peaceful setting. Officials of the Vietnam Veterans Memorial Fund indicate that they have received numerous complaints from visitors regarding the intrusiveness of demonstrations in close proximity to the memorial. They indicate that visitors are especailly upset because they are forced to pass through demonstrations to enter the memorial from the north since under current regulations demonstrations may be held as close as fifty feet from the memorial wall at the northeast corner of the memorial. Also, the National Park Service has received numerous comments from other visitors and veterans groups regarding these same issues.

In order to provide visitors unimpeded access to and through the memorial and to provide adequate space for visitation, the proposed rule includes within the definition of the Vietnam Veterans Memorial the pathways to and through the memorial and the landscaped areas adjacent to the memorial wall, the flagpole and the planned statue. The landscaped area on the north, south and west of the memorial are heavily treed and for practical purposes unsuited for group activity. The area to the south of the memorial wall is particularly sensitive because any loud sounds in this area are intensified when they reflect off the wall. The area to the east of the memorial wall, while not treed, slopes directly down into the wall, and thus, being part of the "valley" holding the memorial structures, is sensitive also to sound amplification and other activity.

The proposed rulemaking also prohibits staging or sound equipment closer than one hundred feet to the memorial boundaries and requires that sound systems be faced away from the memorial. Sound systems utilized in demonstrations and special events in close proximity to the memorial may substantially intrude upon the visitor's use of the memorial as a place of calm, tranquility and reverence. Over the past year, the National Park Service has, with some success, attempted informally to request that demonstration and special event organizers place their sound systems and stages so as not to interfere with visitor use of the memorial. However, the National Park Service believes that it has an obligation to put such informal policies in regulations so that the public will have adequate notice of requirements for demonstrations and special events close to the memorial.

The distance requirement for staging and sound equipment will not impact adversely on demonstrations and special events near the memorial. Trees to the north and south of the memorial make staging and sound systems in these areas impractical. The one hundred foot distance requirement to the east of the memorial would place stages and sound systems on the crest of a knoll. Stages or sound systems set anywhere within the one hundred feet east of the memorial would sit on the downward incline of that knoll, making it difficult for speakers to be heard or seen. Set upon the knoll, stages have the memorial wall as a visual backdrop.

The one hundred foot requirement to the west of the memorial places stages and sound systems in the flat, grassy area bounded by Constitution Avenue and Bacon Drive. This is the most practical areas for stages west of the memorial. Again, with a stage and sound system placed in this location, the memorial flag and future statue should be in clear view.

The exact location on either side of the memorial where stages and sound systems are allowed is easy to determine. To the east of the memorial, a line drawn from the center door of the Federal Reserve Building to the Reflecting Pool walkway is approximately one hundred feet from the east memorial boundary. The area in which stage and sound restrictions apply to the west of the memorial can be paced off from the east curb of Bacon Drive. These lines are shown on the map of the memorial which will be included in the Code of Federal Regulations.

It is a difficult task to delineate the precise boundaries of a national monument intended to encompass three structures and a landscaped setting. In the proposed rule, the National Park Service has attempted to utilize its past experience with visitation and demonstrations in and around the Vietnam Veterans Memorial to allocate sufficient space to visitors for their full use of the memorial, while still providing ample alternative locations within the sight of the memorial for those wishing to demonstrate or hold special events. The National Park Service looks forward to comments from the public on this effort.

2. Sales and Distribution of Printed Matter

The proposed rulemaking also prohibits sales and distribution of printed materials in the Vietnam Veterans Memorial. For the reasons discussed above, the National Park Service believes that it is especially important to maintain an atmosphere of calm, tranquility and reverence in the memorial. Vendors and other individuals distributing printed materials could substantially interfere with the visitor's use of the memorial as a site for quite contemplation or remembrance. Therefore, like the interiors of the Lincoln and Jefferson Memorials, the Vietnam Veterans Memorial would be designated as a site where sale and distribution of printed matter is not allowed.

In reviewing the sales regulation and reconsidering park areas where sales and distribution of printed material is prohibited, the National Park Service determined that one restricted area could be narrowed and another could be eliminated entirely.

The present regulations prohibit sales and distribution of literature within a circle extending ten feet from the paved area surrounding the base of the Washington Monument. However, demonstrations are prohibited in a smaller area extending only to the inner circle surrounding the Monument's base. The difference in prohibited areas creates the situation where an individual can demonstrate in an area in which he cannot sell or distribute literature. Therefore, the National Park Service proposes to correct this situation by revising the area in which sales and distribution of literature are prohibited around the Washington Monument to conform it to the area in which demonstrations are prohibited.

Finally, the National Park Service proposes to eliminate Constitution Gardens as an area in which sales and distribution of literature are prohibited. Constitution Gardens was under construction when it was designated as a restricted area in the 1976 rulemaking discussed above. Experience in administering the completed areas indicates that it can accommodate sales and distribution of literature without

substantially interfering with visitors' enjoyment of the park.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the address noted at the beginning of the rulemaking.

Impact Analysis

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The National Park Service has also determined that the proposed rule will not have a significant economic impact on a substantial amount of small entities and, therefore, does not require a small entity flexibility analysis under 5 U.S.C. 601. The proposed rule merely defines the term "Vietnam Veterans Memorial", prohibits demonstrations, special events, and the sale and distribution of literature on the memorial grounds, except for official annual Memorial Day and Veterans Day commemorative ceremonies, places minor restrictions on stages and sound systems close to the memorial and eliminates restrictions on the sale and distribution of literature in other areas. It will have no substantial impact on any aspect of the economy.

The National Park Service has further determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 36 CFR Part 50

District of Columbia, National Parks, National Capital Parks.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

PART 50—NATIONAL CAPITAL PARKS REGULATIONS

In consideration of the foregoing, it is proposed that Part 50 of Title 36 of the Code of Federal Regulations be accordingly amended.

1. The authority citation for Part 50 reads as follows:

Authority: Sec. 6 of the Act of July 1, 1898 (30 Stat. 571); Secs. 1–3 of the Act of August 25, 1916 (39 Stat. 535, as amended); Sec. 16 of the Act of March 3, 1925 (43 Stat. 1126, as amended); Act of March 17, 1948 (62 Stat. 81); Act of August 8, 1953 (67 Stat. 495); Act of July 1, 1980 (94 Stat. 872); 16 U.S.C. 1–3; D.C. Code 8–137 (1981); D.C. Code 40–721 (1981).

2. It is proposed that paragraph (a)(10) of § 50.19 be revised to read as follows:

§ 50.19 Demonstrations and special events.

(a) * * *

(10) The term "Vietnam Veterans Memorial" means the structures and adjacent areas extending to and bounded by the north curb of the Constitution Avenue service road on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

* * * * *

3. It is proposed that paragraph (v) of § 50.19(c)(2), which was published as an interim rule on November 12, 1982 (47 FR 51126), be adopted as final without change.

4. It is proposed that § 50.19 be amended by redesignating paragraphs (e) (11) through (13) as (e) (12) through (14) and adding a new paragraph (e)(11) to read as follows:

§ 50.19 Demonstrations and special events.

* * * * *

(e) * * *

(11) Stages and sound amplification shall not be placed closer than one hundred (100) feet from the boundaries of the Vietnam Veterans Memorial and sound systems shall be directed away from the memorial at all times.

* * * * *

5. It is proposed that a new diagram be added to the end of § 50.19 to replace the current diagram of the Vietnam Veterans Memorial to read as follows:

* * * * *

BILLING CODE 4310-70-M

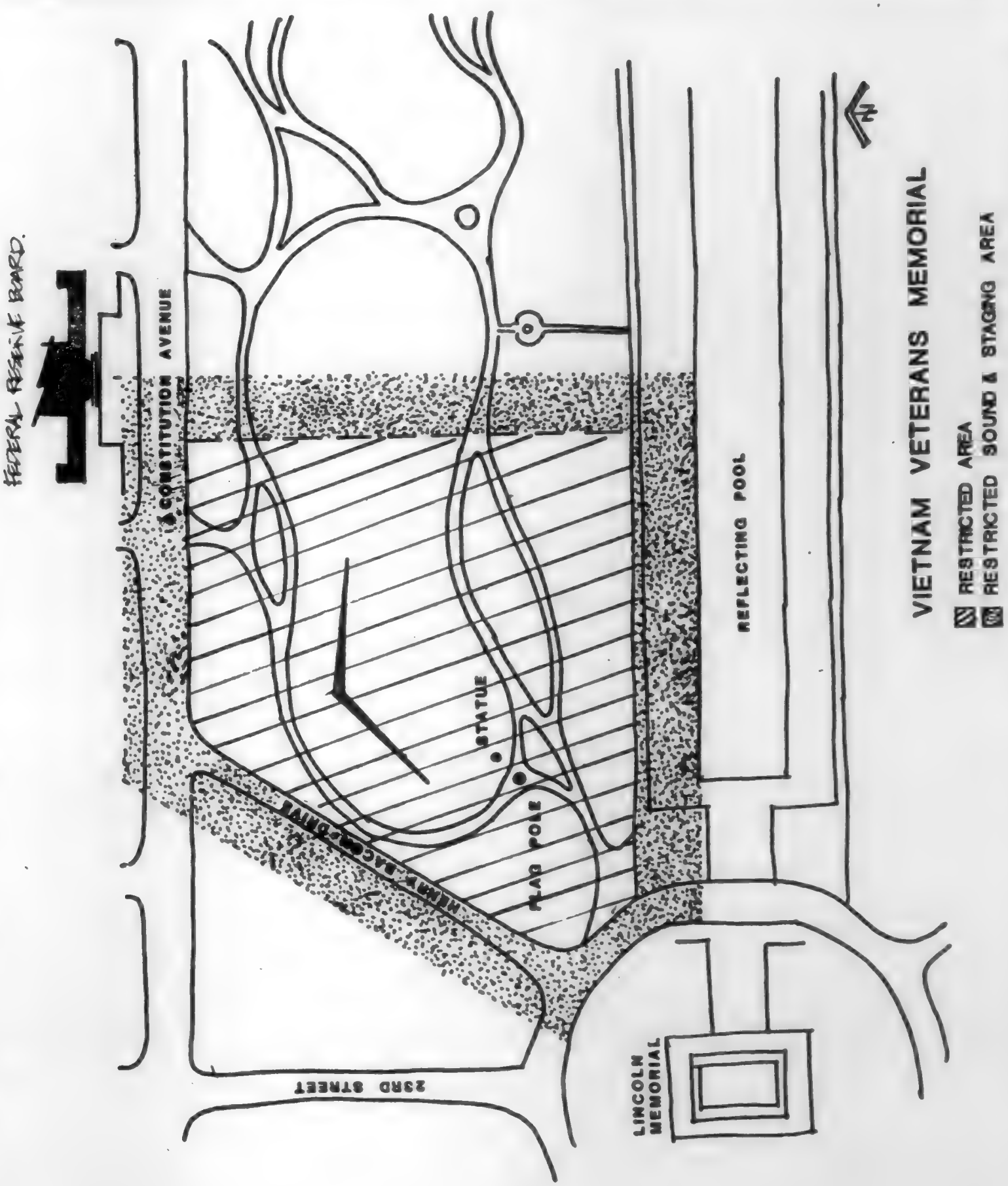
VIETNAM VETERANS MEMORIAL
RESTRICTED AREA
RESTRICTED SOUND & STAGING AREA
REFLECTING POOL
CONSTITUTION AVENUE
FEDERAL RESERVE BOARD
STATUE
FLAG POLE
HENRY BACON DRIVE
23RD STREET
LINCOLN MEMORIAL

6. It is proposed that Section 50.24 be amended by revising paragraph (c)(2)(iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v) and (c)(2)(vi) as (c)(2)(iv) and (c)(2)(v), and adding a new paragraph (c)(2)(vi) as follows:

§ 50.24 Soliciting, advertising, sales.

* * * * *

(c) * * *

(2) * * *

(iii) Washington Mounment area enclosed within the inner circle that surrounds the Mounment's base.

* * * * *

(vi) The Vietnam Veterans Memorail area extending to and bounded by the north curb of the Constitution Avenue service road on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

* * * * *

7. It is proposed that § 50.52 be amended by revising paragraph (a)(3), removing paragraph (a)(4), redesignating paragraphs (a)(5) and (a)(6) as (a)(4) and (a)(5) and adding a new paragraph (a)(6) as follows:

§ 50.52 Sale and distribution of printed matter.

(a) * * *

(3) Washington Mounment area enclosed within the inner circle that surrounds the Mounment's base.

* * * * *

(6) Vietnam Veterans Memorial area extending to and bounded by the north curb of the Constitution Avenue service road on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the last tip of the memorial wall on the east (this is also a line extended from the east of the western concrete border of the steps to the east of the center steps to the Federal Reserve Building extending to the Feflecting Pool walkway).

* * * * *

[FR Doc. 84-8824 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2557-6]

Standards of Performance for New Stationary Sources: Equipment Leaks of VOC and SO_2 Emissions From Onshore Natural Gas Processing Plants; Proposed Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On January 20, 1984, the EPA proposed standards of performance for new stationary sources in the natural gas production industry. These standards would control SO_2 emissions (49 FR 2656) and equipment leaks of VOC (49 FR 2636) from onshore natural gas processing plants. In response to several requests, the period for receiving written comments on each of the proposed standards is being extended.

DATE: Comments must be postmarked on or before June 6, 1984.

ADDRESS: Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Specify the following Docket Numbers.

A-80-20-A SO_2 Emissions.

A-80-20-B Equipment Leaks of VOC.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Wood, Emission Standards and Engineering Division (MD-13), Envorinmental Protection Agency, Research Triangle Park, N.C., 27711, telephone (919) 541-5578.

SUPPLEMENTARY INFORMATION: The Agency has received several letters asking that the public comment period be extended, and several speakers at the March 7, 1984, public hearing for these standards requested a 60-day extension of the public comment period. Several industry representatives stated at the public hearing that they intend to obtain cost estimates for implementing VOC leak detection and repair programs at small plants and cost estimates for flares used to control compressor seal leakage. In addition, a representative of the Gas Processors Association (GPA) stated that the GPA is sponsoring a VOC emissions test program on at least one gas processing plant to evaluate the potential impact of the proposed standards on some of its member companies. The additional 60 days would allow these companies sufficient time to obtain such information and provide it to the EPA. Another industry representative stated that new material had been added to the SO_2 standard since the meeting of the National Air Pollution Control Techniques Advisory Committee, and he thought more time was needed to fully review the new material. Also, in some instances, the same individuals are reviewing both the SO_2 standards and the standards for equipment leaks of VOC, and they, therefore, requested additional time to complete their review.

The Agency believes it would benefit from reviewing the results of the GPA test program and the new cost estimates that will be provided and is therefore extending the public comment period by 60 days until June 6, 1984.

Dated: March 29, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 84-8896 Filed 4-3-84; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 49, No. 66
Wednesday, April 4, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

PRESIDENT'S ADVISORY COUNCIL ON PRIVATE SECTOR INITIATIVES

Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the President's Advisory Council on Private Sector Initiatives which will be held on April 27, 1984 at 11:30 a.m., in the large conference room of the American Red Cross Building, 17th Streets, NW., between D and E Streets, Washington, D.C.

The Council was established on June 27, 1983 by Executive Order No. 12427 to advise the President with respect to the objectives and conduct of private sector initiative policies, including methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; and strengthening the professional resources of the private social services sector.

The purpose and agenda of the meeting is to discuss the Council's successful programs and outline its work for the remainder of the year.

The meeting will be open to the public. It is suggested that any member of the public who would like to file an oral or written statement or desires any further information regarding the meeting or the Council, please contact Mr. Michael Castine, Deputy Director of the White House Office of Private Sector Initiatives at 202/456–6876, or Executive Office Building, Room 134, Washington, D.C. 20500.

Dated: March 22, 1984.

James K. Coyne,

Special Assistant to the President for Private Sector Initiatives.

[FR Doc. 84-8660 Filed 4-3-84; 8:45 am]
BILLING CODE 3195-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

March 30, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250, (202) 447–4414.

Comments on any items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revised

• Office of Personnel
Advisory Committee Membership Background Information
AD—755
Annually
Individuals or Households: 1,200 responses; 300 hours; not applicable under 3504(h)
Carolyn Wright, (202) 447–7654

• Agricultural Marketing Service
7 CFR Part 56, Reporting Requirements Under Regulations for Voluntary Grading of Shell Eggs + U.S. Standards, Grades and Weight Classes for Shell Eggs
PY 100, 157, 206
On Occasion, Monthly, Semi-Annually, Annually
Small Businesses: 22,217 responses; 5,104 hours; not applicable under 3504(h)
Merlin L. Nichols, Jr., (202) 447–3506

• Farmers Home Administration
7 CFR 1980–A, Guaranteed Loan Programs (General)
FmHA 449–14, 449–30, 449–35, 449–36, 1980–19, 1980–41, 1980–43, 1980–44
On Occasion
Businesses: 29,356 responses; 45,127 hours; not applicable under 3504(h)
M. K. Smith, (202) 475–4016

• Farmers Home Administration
7 CFR 1980–B, Guaranteed Farmers Program Loans
FmHA 449–11, FmHA 449–12
On Occasion
Individuals or Households, State and Local Government Farms, Businesses: 12,460 responses; 23,560 hours; not applicable under 3504(h)
M. K. Smith, (202) 425–4016

• Farmers Home Administration
7 CFR 1980–F, Guaranteed Economic Emergency Loans
FmHA 1980–15, 1980–25, 1980–32, 1980–[illegible]
On Occasion
Farms, Businesses: 17,040 responses; 30,134 hours; not applicable under 3504(h)
Roger Witt, (202) 382–1654.

Susan B. Hose,

Acting Department Clearance Officer.

[FR Doc. 84-8659 Filed 4-3-84; 8:45 am]
BILLING CODE 3410-01-M

Human Nutrition Information Service

Joint Nutrition Monitoring Evaluation Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Joint Nutrition Monitoring Evaluation Committee.
Date: April 19 and 20, 1984.

Place: Conference Room 643A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Time: April 19, 8:30 a.m. to 5 p.m.; and April 20, 8:30 a.m. to 12:30 p.m.

Purpose

To evaluate the findings of the Nationwide Food Consumption Survey (NFCS), the National Health and Nutrition Examination Survey (NHANES), and other Federal nutrition monitoring efforts and develop a report on the nutritional status of the U.S. population.

Agenda

The agenda for the third meeting will include the following items: brief review of the previous meeting; discussion of data to be included in the report; final decisions on the content and style of tables and graphs to be included under major topics; preliminary discussion of text of report; division of duties; setting of time table; and plans for future meetings.

The meeting is open to the public. There is a limited amount of space available for public attendance. Written statements or comments of concern to the committee may be submitted to Isabel D. Wolf, Administrator, Human Nutrition Information Service, 6505 Belcrest Road, Room 360, Hyattsville, MD 20782.

Done at Washington, DC this 30th day of March 1984.

Betty B. Peterkin,

Associate Administrator.

[FR Doc. 84-8636 Filed 4-3-84; 8:45 am]

BILLING CODE 3410-KE-M

Soil Conservation Service

Reserve Airport Critical Area Treatment, New Mexico

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Reserve Airport Critical Area Treatment, Catron County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ray T. Margo, Jr., State Conservationist, Soil Conservation Service, 517 Gold Avenue SW, Rm 3301, Albuquerque, NM 87102-3157, Telephone 505/766-2173.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ray T. Margo, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns the establishment of permanent vegetation and placement of minor erosion stabilization structures on thirteen acres.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Edwin Swenson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.094, Resource Conservation and Development. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally-assisted programs and projects is applicable)

Ray T. Margo, Jr.,

State Conservationist.

[FR Doc. 84-8973 Filed 4-3-84; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-40. Applicant: The Regents of the University of California, Riverside, Materiel Management Department, Riverside, CA 92521. Instrument: Mass Spectrometer, Model ZAB-IF HF with Accessories. Manufacturer: The Vacuum Generators Micromass Co., United Kingdom. Intended use: Variety of research purposes including: (1) analytical applications for compound identification; (2) ion structure determination (3) elucidation of fragmentation mechanisms; (4) measurement of kinetic energy release; and (5) component identification of complex mixtures. Experiments to be conducted will involve continuation of the following: (1) Research on antibiotics from marine organisms, (2) dynamics of unimolecular fragmentation, and (3) isolation, structure identification, synthesis and biosynthesis of certain steroids and terpenoids. Application received by Commissioner of Customs: December 12, 1983.

Docket No. 83-224R. Applicant: University of Iowa, Iowa City, IA 52242. Instrument: Tunable CO_2 Laser, Model EMG 102-60 and EMG 102-ES Upgrade Kit. Original notice of this resubmitted application was published in the **Federal Register** of July 7, 1983.

Docket No. 83-78R. Applicant: University of California at Los Angeles, Los Angeles, CA 90024. Instrument: Radiotherapy Simulator. Original notice of this resubmitted application was published in the **Federal Register** of December 17, 1982.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-8811 Filed 4-3-84; 8:45 am]

BILLING CODE 3510-DS-M

Associated Universities; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 82-00382R. Applicant: Associated Universities, Inc., National Radio Astronomy Observatory,

Edgemont Road, Charlottesville, VA 22901. Instrument: Hydrogen Maser Frequency Standard. Original notice of this resubmitted application was published in the Federal Register of November 15, 1982.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (August 30, 1982).

Reasons: This application is a resubmission of Docket Number 82-00382 which was denied without prejudice to resubmission for informational deficiencies. The applicant has shown, and we have confirmed, that the domestic manufacturer would not have been able, given the new status of the company, to provide an instrument comparable to the foreign article within a reasonable length of time (6 to 12 mos.) at the time of order of the foreign article. The National Bureau of Standards (NBS) advises in its memorandum dated February 15, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose. NBS, further, states in its memorandum of February 23, 1984, that if knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Program Staff.

[FR Doc. 84-8805 Filed 4-3-84; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No. 83-00000. Applicant: Columbia University, New York, NY 10027. Instrument: Excimer Laser, EMG 101E. Date of denial without prejudice to resubmission: December 20, 1983.

Docket No. 83-91. Applicant: University of California, Livermore, CA 94550. Instrument: Excimer Laser, Model EMG 101E and Accessories. Date of denial without prejudice to resubmission: December 27, 1983.

Docket No.: 83-145 Applicant: University of Wisconsin-Madison, Madison, WI 53706. Instrument: High Power Pulsed Gas Halide Excimer Laser. Modet TE-861M-3. Date of denial without prejudice to resubmission: December 27, 1983.

Docket No.: 83-178 Applicant: Michael Rees Hospital & Medical Center, Chicago, IL 60616. Instrument: Therac 20/Saturne Linear Accelerator, Model G2900C with Accessories. Date of denial without prejudice to resubmission: January 5, 1984.

Docket No.: 84-9 Applicant: National Institutes of Health, Bethesda, MD 20205. Instrument: 8 each Regulated Power Supply. Date of denial without prejudice to resubmission: January 4, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-8806 Filed 4-3-84; 8:45 am]

BILLING CODE 3510-DS-M

St. Joseph's Hospital and Medical Center; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83-267R. Applicant: St. Joseph's Hospital and Medical Center, 703 Main Street, Paterson, NJ 07503. Instrument: Osseous Implant Kit. Original notice of this resubmitted application was published in the Federal Register of August 26, 1983.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is a complete system of tools and fixtures of titanium for anchoring bridges to jaw bone. The National Institutes of Health advises in its memorandum dated February 9, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-8807 Filed 4-3-84; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-24. Applicant: V.A. Medical Center (90), New Orleans, LA 70146. Instrument: Electron Microscope, EM 410LS. Manufacturer: Nederlandse (Philips) Bedri/ven, The Netherlands. Intended use: See notice at 49 FR 5364. Instrument ordered: September 28, 1983.

Docket No. 84-27. Applicant: University of Southern California, Los Angeles, CA 90089. Instrument: Electron Microscope, Model JEM 100CXII with Accessories. Manufacturer: JOEL Ltd., Japan. Intended use: See notice at 49 FR 922. Instrument ordered: August 23, 1983.

Docket No. 84–31. Applicant: Baylor College of Medicine, Houston, TX 77030. Instrument: Electron Microscope, Model EM 410LS and Accessories. Manufacturer: Nederlandse (Philips) Bedri/ven, The Netherlands. Intended use: See notice at 49 FR 1782. Application received by Commissioner of Customs: December 7, 1983.

Docket No. 84–32. Applicant: University of South Carolina, Columbia, SC 29208. Instrument: Electron Microscope, Model JEM–1200CX with Accessories. Manufacturer: JOEL Japan. Intended use: See notice at 49 FR 1782. Instrument ordered: October 19, 1983.

Docket No. 84–41. Applicant: Sandia National Laboratories, Albuquerque, NM 87185. Instrument: Electron Microscope, Model JEM–200EX and Accessories. Manufacturer: JOEL Ltd., Japan. Intended use: See notice at 49 FR 3236. Instrument ordered: June 23, 1983.

Docket No. 84–43. Applicant: The Toledo Hospital, Toledo, OH 43606. Instrument: Electron Microscope, Model H–600–2 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: See notice at 49 FR 3236. Instrument ordered: April 20, 1983.

Docket No. 84–45. Applicant: Naval Air Development Center, Warminster, PA 18974. Instrument: Electron Microscope, Model JEM–100CXII with Accessories. Manufacturer: JOEL Ltd., Japan. Intended use: See notice at 49 FR 3236. Instrument ordered: September 26, 1983.

Docket No. 84–46. Applicant: University of Southern California, Los Angeles, CA 90089–1147. Instrument: Electron Microscope, Model JEM–1200EX with Accessories. Manufacturer: JOEL Ltd., Japan. Intended use: See notice at 49 FR 3236. Instrument ordered: September 6, 1983.

Docket No. 84–48. Applicant: Harvard Medical School, Boston, MA 02115. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JOEL Co., Japan. Intended use: See notice at 49 FR 3502. Application received by Commissioner of Customs: December 15, 1983.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–8908 Filed 4–3–84; 8:45 am]

BILLING CODE 3510–DS–M

Regents of the University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materals Importation Act of 1966 (Pub. L 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83–233. Applicant: Regents of the University of California, Berkeley, CA 94720. Instrument: Scanning Electron Microscope, Model DS–130 with Accessories. Manufacture: International Scientific Instruments, Japan. Intended use; See notice at 48 FR 31278.

Comments: We have considered comments received from AMRAY, Inc., for factual information contained therein.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides two specimen states (top stage of specimens up to 8 mm diameter x 5 mm and second stage for specimens up to 152 mm x 102 mm x 76 mm in size), with a guaranteed resolution of 2 nanometers (nm) in the top stage and 5 nm in the second stage, an accelerating voltage variable from 1 kilovolt (kv) to 40 kv in 1 kv steps, and a magnification range of 10 × to 300,000 × with either stage. The National Institutes of Health advises in its memorandum dated September 15, 1983 that (1) the capability of foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument of apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or appraratus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–8909 Filed 4–3–84; 8:45 am]

BILLING CODE 3510–DS–M

University of California Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–36. Applicant: University of California, Livermore, CA 94550. Instrument: Streak Camera. Manufacturer: John Hadland, Ltd., United Kingdom. Intended use: See notice at 49 FR 3235.

Comments: None received.

Decision: Approved. No Instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides time-resolved spectral and/or imaging data from ultra short-lived plasmas with a spectral sensitivity between 100 eV and 10000 eV. The National Bureau of Standards advises in its memorandum dated February 17, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value of the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–8910 Filed 4–3–84; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on the Correlation of the Textile and Apparel Category System into the Harmonized Commodity Description and Coding System

March 30, 1984.

On June 30, 1983, the U. S. International Trade Commission transmitted to the President of the United States a report on the conversion of the Tariff Schedules of the United States, Annotated into the structure of the Harmonized Commodity Description and Coding System (Harmonized System). This report is currently under review for submission to Congress, possibly as early as spring 1985. If Congress approves, the United States could implement the Harmonized System on January 1987.

The Office of Textiles and Apparel, U.S. Department of Commerce, has drafted a Correlation of the textile and apparel categories with the Harmonized System. Copies of this draft Correlation are available from the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

Anyone wishing to comment or provide information on the Correlation is invited to submit such comments or information in three copies to Mr. Walter C. Lenahan, Deputy Assistant Secretary for Textiles and Apparel, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Comments should be submitted at the earliest possible date, but not later than June 1, 1984.

Comments or information submitted in response to the notice will be available for public inspection in the Office of Textiles and Apparel, Room 3110, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, and may be obtained upon written request.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-8955 Filed 4-3-84; 8:45 am]

BILLING CODE 3510-DR-M

Changes to the Textile Category System

March 30, 1984.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Changes to the Textile Category System.

SUMMARY: The CORRELATION, Textile and Apparel Categories with the Tariff Schedules of the United States, Annotated, provides for placement of Tariff Schedules of the United States, Annotated (T.S.U.S.A.) numbers in the Textile Category System. Amendments to the T.S.U.S.A., reflecting certain administrative changes, require changes to the CORRELATION. These changes are cited in the list which follows this notice.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Claire McDermott, International Agreements and Monitoring Division, Office of Textiles and Apparel, :U.S. Department of Commerce, Washington, D.C. 20230 (202–377–4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

APRIL 1, 1984 CHANGES TO THE CORRELATION

Category	New T.S.U.S.A. numbers effective Apr. 1, 1984
335	Change 383.0857 to 383.0878.
	Change 383.5078 to 383.5081.
336	Change 383.5088 to 383.5091.
340	Change 383.0856 to 383.0882.
	Change 383.5084 to 383.5087.
341	Change 383.0856 to 383.0874.
	Change 383.5082 to 383.5085
345	Add 379.3505.
	Add 379.6607.
	Add 379.8607.
348	Change 383.0859 to 383.0886.
	Change 383.5086 to 383.5089.
350	Change 383.5080 to 383.5083.
359	Change 379.0490 to 379.0485.
	Change 379.0840 to 379.0880.
	Change 379.3510 to 379.3515.
	Change 379.4140 to 379.4185.
	Change 379.6470 to 379.6480
	Change 379.6605 to 379.6609.
	Change 379.9605 to 379.9609.
	Change 383.0390 to 383.0395.
	Change 383.0860 to 383.0890.
	Change 383.3090 to 383.3095.
	Change 383.5090 to 383.5095.
444	Change 383.1335 to 383.1325.
445	Add 379.2525.
	Add 379.6617.
	Add 379.8617.
459	Change 379.1530 to 379.1550.
	Change 379.2020 to 379.2085
	Change 379.3520 to 379.3535
	Change 379.6615 to 379.6619
	Change 379.7650 to 379.7680
	Change 379.8420 to 379.8460
	Change 379.8615 to 379.8619.
	Change 383.1340 to 383.1380.
	Change 383.5845 to 383.5850.
	Change 383.6395 to 383.6396.
634	Change 379.3332 to 379.3339.
	Change 379.9637 to 379.9655.
635	Change 383.2354 to 383.2378.
	Change 383.8667 to 383.8675.
639	Change 383.8663 to 383.8668.
645	Change 379.3334 to 379.3342
	Change 379.3336 to 379.3344.
	Change 383.9639 to 383.9660.
	Change 379.9641 to 379.9663.
841	Change 383.2352 to 383.2375.
645	Add 379.3545.
	Add 379.6527.
	Add 379.8527.
646	Change 383.2358 to 383.2384.
	Change 383.8665 to 383.8673.
647	Change 379.3338 to 379.3346.
	Change 379.9643 to 379.9665.
648	Change 383.2356 to 383.2381.
	Change 383.8669 to 383.8677.
659	Change 379.2540 to 379.2565.

APRIL 1, 1984 CHANGES TO THE CORRELATION—Continued

Category	New T.S.U.S.A. numbers effective Apr. 1, 1984
	Change 379.3350 to 379.3380.
	Change 379.3530 to 379.3550.
	Change 379.6625 to 379.6629.
	Change 379.8625 to 379.8629.
	Change 379.9250 to 379.9240.
	Change 379.9650 to 379.9680.
	Change 383.2050 to 383.2042.
	Change 383.2060 to 383.2080.
	Change 383.2385 to 383.2390.
	Change 383.8670 to 383.8690.
	Change 383.9291 to 383.9295.

[FR Doc. 84-8956 Filed 4-3-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Appendage to Department of Defense Transportation Security Agreement

The Defense Investigative Service (DIS) is responsible for administering the Industrial Security Program on behalf of DoD Components and other federal "user" agencies.

Form 1150 is completed by the home office of a commercial carrier firm who has entered into a contractual obligation with the DoD as established by execution of Form 1149, Transportation Security Agreement. Form 1149 is used to identify all terminals of that particular commercial carrier which will be used for transportation of classified shipments. These identified terminals are thereby additionally obligated to adhere to all security requirement

outlined in the Transportation Security Agreement.

Respondents: Forward comments to Edward Springer, OMB Desk, Room 3235, NEOB, Washington, DC 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Fred Schonert, DIS, HQ Administrative Services Divisions, 1900 Half Street, SW, Washington, DC 20324, telephone (202) 693–0881.

M. S. Healy,

OSD Federal Register Liaison Officer Department of Defense.

March 29, 1984.

[FR Doc. 84-8801 Filed 4-3-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

The Department of the Navy has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Navy Advertising Effectiveness Study (NAES)

0703–0032

Survey measures recruiting advertising effectiveness and provides data strategies to be used in advertising. Target market is male youth 16–21 years old.

Individuals, 2,000, 1,000.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Dan Vitiello, DOD Clearance Officer, OASD(C), IRMS, IRAD, Room 1C514, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Sara Motley, Navy Recruiting Command, Ballston Towers #3, 4015 Wilson Blvd., Arlington, VA 22203, telephone 202 696–5140.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 30, 1984.

[FR Doc. 84-8802 Filed 4-3-84; 8:45 am]

BILLING CODE 3810-01-M

Performance of Commercial Activities; Announcement of Program Cost Studies

Department of the Navy intends to conduct OMB Circular A–76 (48 FR 37110, August 16, 1983) cost studies of various functions at listed activities commencing 4 May 1984. Cost study process is rigorous, time-consuming procedure and, depending upon size of functions involved, can take several months to several years to complete. Since studies not yet begun, specifications not yet prepared. When bids/proposals desired, appropriate advertisements will be placed. No consolidated bidders' list being maintained since solicitations will be processed by various contracting offices throughout U.S.

Naval Weapons Station, Concord, CA
- Air Conditioning and Refrigeration Plants
- Family Housing Maintenance
- Surfaced Areas Maintenance

Naval Shipyard, Long Beach, CA
- Supply Operations
- Data Processing Services
- Hazardous Waste Disposal
- Storage and Warehousing
- Central Library
- Central Messenger Service and Central Mail and Files
- ADP Report Distribution

Naval Shipyard, Mare Island, CA
- Utilities Maintenance
- Supply Inventory Count
- Central Mail/File Services and Communications
- Central Reference Library
- Technical Publication Preparation
- Supply Technical Library
- ADP Reports Distribution
- Pile Driving/Fender Systems Maintenance

Pacific Missile Test Center, Point Mugu, CA
- Messenger Services
- Reference Libraries and Recreational Library Services
- Office Equipment

Shore Intermediate Maintenance Activity, San Diego, CA
- Administrative Support Services-Word Processing
- Buildings and Structures-Electrical Repair
- Buildings and Structures-Plumbing
- Audiovisual Services-Graphic Art

Naval Sea Support Center Detachment Pacific, San Diego, CA
- Motor Vehicle Operation
- Reference Library
- Systems Design, Development and Programming Services

Navy Public Works Center, San Diego, CA
- Pest Control Services

Naval Weapons Station, Seal Beach, CA
- Audiovisual Services (Still Photography)
- Audiovisual Services (Training Aids and Devices)
- Reference Libraries

Naval Air Station, Key West, FL
- Recreational Library Services
- Dining Facility Equipment
- Printing and Reproduction
- Data Processing (Other Than Data Transcribing)
- Design, Development, and Programming

Navy Experimental Diving Unit, Panama City, FL
- Reference Library

Pearl Harbor Naval Shipyard, Pearl Harbor, HI
- Calibration Repair
- Motor Pool Operations
- Storage and Warehousing
- Supply Material Identification

Naval Station, Pearl Harbor, HI
- Recreational Library Services
- Supply Operations
- Film Control-NMPX
- Administrative Support Services
- Grounds Maintenance

Naval Reserve Personnel Center, New Orleans, LA
- Storage and Warehousing
- Audiovisual Services
- Administrative Support Services
- Data Processing Services
- System Design Development and Programming Services

Naval Air Station, Brunswick, ME
- Heating Plants and Systems

Naval Ordnance Station, Indian Head, MD
- Data Processing Services
- Systems Design, Development, Programming Services

NAVSEA Automated Data Systems Activity, Indian Head, MD
- ADP Operations
- Technical Support Services

Naval Air Test Center, Patuxent River, MD

Communications Centers
Buildings and Structures (Other Than Family Housing) (Industrial Shop Stores)

Portsmouth Naval Shipyard, Portsmouth, NH
Central Mail, Files and Records
Utilities Maintenance
Supply Material Identification and Supply Material List Screening

Naval Reserve Center, Clifton, NJ
Custodial Services

Naval Reserve Center, Elizabeth, NJ
Custodial Services

Philadelphia Naval Shipyard, Philadelphia, PA
Servmart
Central Reference Library
Central Mail/Files Service

Naval Ship Systems Engineering Station, Philadelphia, PA
Reproduction and Printing

U.S. Naval Station, Roosevelt Roads, PR
Ocean Terminal Operations
Acceptance Testing
Operation of Bulk Liquid Storage
Recreational Library Services
Operation of ADP Equipment
Systems Design and Programming Services

Naval Hospital, Newport, RI
Laundry Services

Charleston Naval Shipyard, Charleston, SC
Public Works Utilities Maintenance Administrative Department-Central Files

Naval Air Station, Memphis, TN
Administrative Support (Postal Director, Yard Mail and Central Duplicating)
Base Library

Norfolk Naval Shipyard, Portsmouth, VA
Utilities Maintenance
Gas Distribution Services
Hazardous Waste
Supply Receiving
Local Supply Delivery
Public Works Shop Stores
Central Library
Central Mail/File Services
Liquid Gas/Chemical Products

Naval Weapons Station, Yorktown, VA
Systems Design, Development and Programming Services

Puget Sound Naval Shipyard, Bremerton, WA
Utilities Maintenance
Hazardous Waste
Storage and Warehousing
Supply Inventory Count
Central Reference Library (Engineering Library)
Central Reference Library (Technical Library)
ADP Tape Library
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Dated: March 19,1984.

B. W. Cook,

Captain, SC, USN, Head, Commercial Retail/Activities Branch.

[FR Doc. 84-8029 Filed 4-3-84; 8:45 am]

BILLING CODE 3810-AE-M

Privacy Act of 1974; Amended Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amended system of records.

SUMMARY: The Department of the Navy proposes to amend two system of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed actions will be effective without further notice on May 4, 1984, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the systems managers identified in the systems notices.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: 202/697-6497.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93-579 were published in the **Federal Register** as follows:

FR Doc. 83-109 (48 FR 26029) June 6, 1983
FR Doc. 84-2616 (49 FR 3901) January 31, 1984
FR Doc. 84-2828 (49 FR 4124) February 24, 1984
FR Doc. 84-4908 (47 FR 6967) February 24, 1984

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o) which require the submission of an altered system report.

M. S. Healy,

OSD Federal Register Liasion Officer, Department of Defense.

March 30 1984.

N07430-1

System name:

Accounts Receivable System (48 FR 26142) June 6, 1983.

Changes

In *authority for maintenance of the system,* add the following phrase at the end of the entry: "* * * and Debt Collection Act of 1982 (Pub. L. 97-365)."

In *purpose(s),* add the following new paragraph: "By officials and employees of the Department of the Navy or the Department of Defense in the performance of their official duties relating to maintaining an automated tracking and accounting system for individuals indebted to the Department of the Navy."

In *routine uses of records maintained in the system, including categories of users and the purposes of such uses,* delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

In addition, if any account is delinquent and circumstances warrant, records may be released to the General Accounting Office and the Department of Justice for collection action. Data on individuals with delinquent accounts may be given to credit reporting agencies for the purpose of either adding to a credit history file or obtaining a credit history file; to asset reporting agencies for obtaining an asset report; and, to commercial collection agencies for collection action, in accordance with Debt Collection Act of 1982 (Pub. L. 97-365)."

N05880-1

SYSTEM NAME:

Automated Claims Information System (ACIS) (48 FR 26118) June 6, 1983

Changes

In *Purpose(s),* add the following new paragraph: "By officials of the Department of the Navy and the Department of Defense in the performance of their duties related to the management and processing of claims both for and against the Department of the Navy. The system will be used to report contingent liability to the GAO to satisfy requirements of the GAO Policy and Procedures Manual."

In *routine uses of records maintained in the system, including categories of users and the purposes of such uses,* add the following new paragraph at the beginning of the entry: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

Delete the first sentence in its entirety (lines 1 through 5). Delete the third sentence in its entirety (lines 12 through 16).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

In *Retrievability;* delete the word: "* * * indexed * * **" in line 3 and substitute with the word: "* * * retrieved * * *."

In *Safeguards;* delete the phrase: "* * * building is * * *" in line 1, and substitute with the phrase: "* * * buildings are * * * "

The amended portions of Systems N05890–1 and N07430–1 read as follows:

N05890–1

SYSTEM NAME:

Automated Claims Information System (ACIS).

* * * * *

PURPOSE(S):

By officials of the Department of the Navy and the Department of Defense in the performance of their duties related to the management and processing of claims both for and against the Department of the Navy. The system will be used to report contingent liability to the GAO to satisfy requirements of the GAO Policy and Procedures Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

The officials and employees of the Military Traffic Management Command in the performance of their official duties related to the management of the Department of Defense personal property movement and storage program. The cognizant U.S. Attorney and/or officials and employees of the Department of Justice who are charged with responsibility for either initiating civil actions or defending civil actions arising under the aforementioned claims statutes, and for prosecuting civil or criminal cases under the False Claims Act (31 U.S.C. 231).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

ACIS users obtain information by means of either a query or a request for a standard report. Data may be retrieved by any data item although the primary search keys are the name or social security number.

SAFEGUARDS:

Access to buildings are protected by uniformed guards requiring positive identification for admission after hours. The system is protected by the following software features; user account number and password sign-on, data base authority, set and item authority for list, add, delete and update.

* * * * *

N07430–1

SYSTEM NAME:

Accounts Receivable System.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

80 Stat 308 and 88 Stat 393, Federal Claims Collection Act of 1966 (Pub. L. 89–508) and Debt Collection Act of 1982 (Pub. L. 97–365).

PURPOSE(S)

By officials and employees of the Department of the Navy or the Department of Defense in the performance of their official duties relating to maintaining an automated tracking and accounting system for individuals indebted to the Department of the Navy.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

In addition, if any account is delinquent and circumstances warrant, records may be released to the General Accounting Office and the Department of Justice for collection action. Data on individuals with delinquent accounts may be given to credit reporting agencies for the purpose of either adding to a credit history file or obtaining a credit history file; to asset reporting agencies for obtaining an asset report; and, to commercial collection agencies for collection action, in accordance with Debt Collection Act of 1982 (Pub. L. 97–365).

* * * * *

[FR Doc. 84-8901 Filed 4-3-84; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of Fiscal Year 1984 Noncompeting Applications.

SUMMARY: Noncompeting applications are invited from grantees currently receiving funds under Part B, Title VII of the Rehabilitation Act of 1973, as amended: the Centers for Independent Living Program.

Authority for this program is contained in Section 711 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 796e)

The purpose of this program is to establish and operate Centers for Independent Living which offer a combination of independent living services for severely handicapped individuals so that they may live more independently in family and community, or secure and maintain employment, with the maximum degree of self-direction.

Closing date for transmittal of applications. To be assured of consideration for funding, applications for noncompeting awards under this announcement must be mailed or hand delivered by May 7, 1984.

Applications delivered by mail. An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.132, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand. An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m.

(Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information. This program provides discretionary grants to establish and operate Centers for Independent Living. State vocational rehabilitation agencies are the primary applicants for grants under this program; however, the statute does permit the award of grants to local public agencies and private nonprofit organizations in States where the State rehabilitation agency does not apply.

Section 711(f) of the Rehabilitation Act of 1973, as amended by Public Law 98–211, the Rehabilitation Amendments of 1984, requires the continued funding of current grantees through September 30, 1986, unless the Commissioner of the Rehabilitation Services Administration determines that there is a substantial failure to comply with the provisions of the grantee's approved application.

The Rehabilitation Amendments of 1984 also amended Section 711(c) of the Rehabilitation Act of 1973 to require that applications contain a description of an evaluation plan which must reflect certain specific factors. Each applicant must submit this description before the Commissioner will continue its grant. This new requirement is contained in Section 711(c)(3) and a copy of it will be included with the application forms and information packages sent to all eligible applicants.

All applicants are reminded that Section 711(c)(1) of the Act continues to require that handicapped individuals be substantially involved in policy direction and management of each center, and be employed by the center.

Intergovernmental Review. On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States which have established a process, designated a single point of contact, and have selected this program for review:

State	
Arizona	New Hampshire
Arkansas	New Jersey
California	New Mexico
Colorado	New York
Connecticut	North Carolina
District of Columbia	Ohio
Delaware	Oklahoma
Florida	Oregon
Georgia	Pennsylvania
Hawaii	Rhode Island
Illinois	South Carolina
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Kentucky	Utah
Louisiana	Vermont
Maryland	Virginia
Massachusetts	Washington
Michigan	West Virginia
Mississippi	Wisconsin
Minnesota	Wyoming
Missouri	Virgin Islands
Montana	Puerto Rico
Nebraska	Northern Mariana Islands
Nevada	

Immediately upon receipt of this notice, applicants that are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by June 6, 1984, to the following address: The Secretary, U.S. Department of Education, Room 4161, CFDA No. 84.132, 400 Maryland Ave., S.W., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Available funds. The total amount of funds appropriated under this grant program for Fiscal Year 1983 was $19,400,000. The total amount of funds appropriated in Fiscal Year 1984 for this program is $19,400,000. This entire amount will be needed to continue existing projects as mandated by Section 711(f) of the Act. Accordingly, there will not be a competition for new awards in Fiscal Year 1984.

Application Forms. Application forms and program information packages will automatically be mailed to each eligible applicant.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information package is intended to aid applicants in applying for assistance under this announcement. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing this program.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(OMB Approval 1820-0018, Expiration date 11/84)

Applicable Regulations. Regulations applicable to this program include the following:

(a) Regulations governing the Centers for Independent Living Program (34 CFR Part 366); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

For Further Information Contact: For further information, contact Robert E. Jones, Independent Living Projects Branch, Division of Special Projects, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education (Room 3330, Mary E. Switzer Building), 400 Maryland Ave., S.W., Washington, D.C. 20202. Telephone: (202) 732–1345.

(29 U.S.C. 796e)

(Catalog of Federal Domestic Assistance No. 84.132, Centers for Independent Living)

Dated: March 30, 1984

Madeleine Will,

Assistant Secretary, Special Education and Rehabilitative Services.

[FR Doc. 84-8628 Filed 4-3-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Endowment Grant Program; Closing Date for Transmittal of Requests for Designation as an Eligible Institution for Fiscal Year 1984

Institutions of higher education that wish to apply for a grant under the Endowment Grant Program are invited to apply for designation as an "eligible institution" by submitting a "Request for Designation as an Eligible Institution" form (ED Form 1049–6).

The Endowment Grant Program is authorized under Section 333 of Title III of the Higher Education Act of 1965, as amended. (20 U.S.C. 1051–1065a).

Under the Endowment Grant Program, the Secretary is authorized to make grants to eligible institutions of higher education for the purpose of establishing endowment funds at those institutions. The Federal grant funds must be matched on a dollar-for-dollar basis by the grantee.

To apply for a grant under the Endowment Grant Program, an institution, must first be designated as an eligible institution for the Endowment Grant Program. Current recipients of Institutional Aid Program grants who apply for a grant under the Endowment Grant Program in Fiscal Year 1984 must still establish eligibility using a base year of 1981–1982.

Closing Date for Transmittal of Requests. A "Request for Designation as an Eligible Institution" form must be mailed or hand-delivered by May 7, 1984.

Requests Delivered by Mail. A request sent by mail must be addressed to the Evaluation Section, Division of Institutional Development, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20026.

Proof of mailing must consist of one of the following:

1. A legibly dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If a request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing. (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its request for designation as an eligible institution will not be considered for the FY 1984 funding cycle.

Requests Delivered by Hand. A request that is hand-delivered must be taken to the Evaluation Section, Division of Institutional Development, Room 3045, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. Hand-delivered requests must be received by the staff of the Evaluation Section.

The staff of the Evaluation Section will accept and receipt hand-delivered requests between 9:00 a.m. and 4:30 p.m. (Eastern Time) daily, except Saturdays, Sundays and Federal holidays.

A request that is hand-delivered will not be accepted after 4:30 p.m. on May 7, 1984.

Request Forms. Eligibility request forms (Ed Form 1049–6; OMB Approval 1840–0103) are expected to be ready for mailing by April 10, 1984. Any institution wishing to obtain a request form must write to the Evaluation Section, Division of Institutional Development, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20026.

Program Information. The Endowment Grant Program is one of four institutional aid programs authorized by Title III of the Higher Education Act of 1965 as amended (HEA). The other three programs are the Strengthening, Special Needs, and Challenge Grant Programs. Under Section 333(b)(4) of the HEA, and institution is eligible to receive a grant under the Endowment Grant Program if it, in effect, qualifies as an eligible institution under the Challenge Grant Program. An institution in turn, qualifies as an eligible institution under the Challenge Grant Program if it qualifies (1) as an eligible institution under 34 CFR 627.2 (b) or (d) of the Challenge Grant Program regulations, (2) as an eligible institution for the Strengthening Program under 34 CFR 625.2 and 625.3 of Strengthening Program regulations or (3) as an eligible institution for the Special Needs Program under 34 CFR 626.2 and 626.3 of the Special Needs Programs regulations.

Under each of the above programs regulations, the Secretary determines an institution's eligibility based in part upon an institution's education and general (E&G) expenditures and the amount of Title IV HEA student financial assistance students attending that institution receive for a particular award year.

The Secretary will use award year 1981–82 (July 1, 1981–June 30, 1982) as the base year for calculating an institution's eligibility under § 625.2(a)(2), (3), and (4) of the Strengthening Program, § 626.2(a) (2), (3), and (4) of the Special Needs Program, and under § 627.2(d)(2) of the Challenge Grant Program.

Institutions must submit E&G expenditure data for the same 12-month period covered in the "Higher Education General Information Survey (HEGIS XVII), Financial Statistics of Institutions of Higher Education for Fiscal Year Ending 1982."

The Secretary will use Pell Grant data currently on file in the Department in making determinations under the financial aid eligibility criteria in 34 CFR 625.2 and 626.2. The Secretary will use the data corrected and updated by the Office of Student Financial Assistance as of May 21, 1984. However, the Request for Designation Form and any corrections other than Pell Grant data submitted by institutions to the Evaluation Section must be postmarked by May 7, 1984.

Conversion tables, which explain how the Secretary assigns points to institutions applying for eligibility designation, are published as an appendix to this Notice.

Institutions that are current recipients of grants under the Strengthening, Special Needs or Challenge Grant Program are not precluded from receiving a grant under the Endowment Grant Program. However, those institutions must submit a Request for Designation Form and be redesignated as an eligible institution under this notice in order to be eligible to apply for and receive an endowment grant.

Institutions are urged to submit the Requests Form titled "Request for Designation as an Eligible Institution—ED Form 1049–6" (Request for Designation Form) well in advance of the May 7, 1984 closing date. Request for Designation Forms will be processed in the other they are received and all institutions will be notified about their eligibility status as soon as possible. The Secretary permits no new information or adjustments to the

information submitted or the Request for Designation Form after the May 7, 1984 closing date. However, amendments to Request for Designation Form will be accepted if those amendments are submitted before that date.

An institution that does not submit a complete eligibility form by May 7, 1984 will not be eligible to apply for the Endowment Grant Program in the FY 1984 Title III grant competition.

Applicable Regulations. Regulations applicable to the eligibility process include 34 CFR 624.2, 624.3 and 624.20 of the Institutional Aid Programs General Provisions Regulations; 34 CFR 625.2 and 625.3 of the Strengthening Program Regulations; 34 CFR 626.2 and 626.3 of the Special Needs Program Regulations; 34 CFR 627.2 of the Challenge Grant Program Regulations; and the regulations as proposed in 34 CFR 628 for the Endowment Grant Program. The proposed regulations for the Endowment Grant Program were published in the **Federal Register** of March 5, 1984, 49 FR 8184–8190.

Further Information: For further information, contract the Evaluation Section, Division of Institutional Development, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20026. Telephone (202) 245–2338. (20 U.S.C. 1051–1069c).

(Catalog of Federal Domestic Assistance Number: 84.031 Institutional Aid Programs)

Dated: March 28, 1984.

T. H. Bell,

U.S. Secretary for Education.

FISCAL YEAR 1984 COMPETITION ENDOWMENT GRANT PROGRAM.—NATIONAL STANDARDS FOR DETERMINING INSTITUTIONAL ELIGIBILITY FOR THE TITLE III INSTITUTIONAL AID PROGRAMS

Threshold chart

Categories of potentially eligible institutions	Minimum thresholds			
	Strengthening program		Special needs program	
	Overall threshold	Waiver threshold	Overall threshold	Waiver threshold
Two-year public institutions	146	97	89	59
Two-year nonprofit private institutions	142	[illegible]	89	59
Four-year public institutions	186	124	109	73
Four-year nonprofit private institutions	196	131	125	[illegible]
Graduate public institutions [1]				[illegible]
Graduate nonprofit private institutions [1]				[illegible]

[1] Institutions that do not award bachelor's degrees but do award graduate, postgraduate or professional degrees may request designation for the Endowment Grant Program under the eligibility criteria for the Special Needs Program.

BILLING CODE 4001-01-M

POINT TABLES

The Secretary of Education uses the following tables to determine Title III Institutional Eligibility for the Endowment Grant Program for FY 1984 (based on 1981-1982 data):

PART-A : STRENGTHENING

2 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0519	0.01 - 376.51	12826.90*
2	0.0520 - 0.0798	376.52 - 416.03	12826.89 - 9957.15
3	0.0799 - 0.0931	416.04 - 437.76	9957.14 - 8861.19
4	0.0932 - 0.1040	437.77 - 445.26	8861.18 - 7606.61
5	0.1041 - 0.1106	445.27 - 455.15	7606.60 - 7321.91
6	0.1107 - 0.1192	455.16 - 466.56	7321.89 - 7153.44
7	0.1193 - 0.1258	466.57 - 471.47	7153.43 - 6755.29
8	0.1259 - 0.1323	471.48 - 476.36	6755.28 - 6382.41
9	0.1324 - 0.1382	476.37 - 481.66	6382.39 - 6238.02
10	0.1383 - 0.1483	481.67 - 487.42	6238.01 - 6060.24
11	0.1484 - 0.1581	487.43 - 491.39	6060.23 - 5839.29
12	0.1582 - 0.1639	491.40 - 499.25	5839.28 - 5776.19
13	0.1640 - 0.1704	499.26 - 502.46	5776.18 - 5619.09
14	0.1705 - 0.1767	502.47 - 505.94	5619.08 - 5523.21
15	0.1768 - 0.1799	505.95 - 508.17	5523.20 - 5364.95
16	0.1800 - 0.1856	508.18 - 513.14	5364.94 - 5260.52
17	0.1857 - 0.1910	513.15 - 515.05	5260.51 - 5219.23
18	0.1911 - 0.1969	515.06 - 517.65	5219.21 - 5037.82
19	0.1970 - 0.2024	517.66 - 522.19	5037.80 - 4989.19
20	0.2025 - 0.2070	522.20 - 525.43	4989.18 - 4930.01
21	0.2071 - 0.2143	525.44 - 528.62	4930.00 - 4898.99
22	0.2144 - 0.2236	528.63 - 532.35	4898.98 - 4831.60
23	0.2237 - 0.2358	532.36 - 534.52	4831.59 - 4766.30
24	0.2359 - 0.2405	534.53 - 537.49	4766.29 - 4684.75
25	0.2406 - 0.2449	537.50 - 543.38	4684.74 - 4615.10
26	0.2450 - 0.2511	543.39 - 545.93	4615.09 - 4575.68
27	0.2512 - 0.2533	545.94 - 550.12	4575.67 - 4534.21
28	0.2534 - 0.2589	550.13 - 552.65	4534.20 - 4495.18
29	0.2590 - 0.2640	552.66 - 556.93	4495.17 - 4446.84
30	0.2641 - 0.2681	556.94 - 561.92	4446.83 - 4422.42
31	0.2682 - 0.2705	561.93 - 563.92	4422.41 - 4366.07
32	0.2706 - 0.2753	563.93 - 565.38	4366.05 - 4319.84
33	0.2754 - 0.2793	565.39 - 567.31	4319.83 - 4278.71
34	0.2794 - 0.2856	567.32 - 573.08	4278.70 - 4180.03
35	0.2857 - 0.2918	573.09 - 574.41	4180.02 - 4159.46
36	0.2919 - 0.2982	574.42 - 576.45	4159.45 - 4136.29
37	0.2983 - 0.3020	576.46 - 578.17	4136.28 - 4077.81
38	0.3021 - 0.3062	578.18 - 581.08	4077.80 - 3997.95
39	0.3063 - 0.3093	581.09 - 583.45	3997.94 - 3972.35
40	0.3094 - 0.3145	583.46 - 586.90	3972.34 - 3946.92
41	0.3146 - 0.3174	586.91 - 589.25	3946.91 - 3905.53
42	0.3175 - 0.3223	589.26 - 592.72	3905.52 - 3855.61
43	0.3224 - 0.3246	592.73 - 595.65	3855.60 - 3824.00
44	0.3247 - 0.3284	595.66 - 597.53	3823.99 - 3799.70
45	0.3285 - 0.3301	597.54 - 599.88	3799.69 - 3769.37
46	0.3302 - 0.3325	599.89 - 601.07	3769.36 - 3759.32
47	0.3326 - 0.3394	601.08 - 603.34	3759.31 - 3732.35
48	0.3395 - 0.3449	603.35 - 605.90	3732.34 - 3708.53
49	0.3450 - 0.3516	605.91 - 607.19	3708.52 - 3687.74
50	0.3517 - 0.3558	607.20 - 609.47	3687.73 - 3631.23

PART-A : CONTINUE

2 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3559 - 0.3618	609.48 - 614.09	3631.22 - 3590.61
52	0.3619 - 0.3671	614.10 - 615.89	3590.60 - 3570.10
53	0.3672 - 0.3703	615.90 - 618.23	3570.09 - 3538.79
54	0.3704 - 0.3759	618.24 - 619.77	3538.78 - 3509.44
55	0.3760 - 0.3814	619.78 - 623.04	3509.43 - 3480.62
56	0.3815 - 0.3854	623.05 - 624.54	3480.61 - 3456.04
57	0.3855 - 0.3884	624.55 - 627.19	3456.03 - 3411.51
58	0.3885 - 0.3919	627.20 - 628.79	3411.50 - 3402.27
59	0.3920 - 0.3990	628.80 - 630.48	3402.26 - 3371.53
60	0.3991 - 0.4023	630.49 - 633.64	3371.52 - 3333.83
61	0.4024 - 0.4056	633.65 - 637.27	3333.82 - 3291.50
62	0.4057 - 0.4092	637.28 - 639.00	3291.49 - 3264.84
63	0.4093 - 0.4147	639.01 - 643.77	3264.83 - 3248.06
64	0.4148 - 0.4188	643.78 - 645.55	3248.05 - 3213.04
65	0.4189 - 0.4267	645.56 - 648.70	3213.03 - 3187.52
66	0.4268 - 0.4308	648.71 - 652.36	3187.51 - 3153.83
67	0.4309 - 0.4359	652.37 - 654.29	3153.82 - 3138.24
68	0.4360 - 0.4419	654.30 - 658.28	3138.23 - 3125.11
69	0.4420 - 0.4471	658.29 - 660.75	3125.10 - 3097.86
70	0.4472 - 0.4529	660.76 - 663.75	3097.85 - 3070.46
71	0.4530 - 0.4602	663.76 - 666.85	3070.45 - 3018.07
72	0.4603 - 0.4654	666.86 - 670.41	3019.06 - 3005.78
73	0.4655 - 0.4734	670.42 - 674.85	3005.77 - 2991.19
74	0.4735 - 0.4812	674.86 - 678.40	2991.18 - 2945.30
75	0.4813 - 0.4864	678.41 - 681.59	2945.29 - 2902.00
76	0.4865 - 0.4949	681.60 - 684.90	2901.99 - 2879.28
77	0.4950 - 0.5008	684.91 - 688.78	2879.27 - 2864.57
78	0.5009 - 0.5099	688.79 - 691.10	2864.56 - 2820.64
79	0.5100 - 0.5171	691.11 - 694.41	2820.63 - 2787.36
80	0.5172 - 0.5238	694.42 - 699.73	2787.35 - 2760.85
81	0.5239 - 0.5462	699.74 - 703.52	2760.84 - 2737.90
82	0.5463 - 0.5539	703.53 - 706.72	2737.89 - 2723.34
83	0.5540 - 0.5666	706.73 - 712.55	2723.33 - 2683.10
84	0.5667 - 0.5729	712.56 - 718.77	2683.09 - 2661.99
85	0.5730 - 0.5861	718.78 - 724.74	2661.98 - 2640.26
86	0.5862 - 0.6024	724.75 - 730.54	2640.25 - 2625.91
87	0.6025 - 0.6160	730.55 - 735.66	2625.90 - 2576.94
88	0.6161 - 0.6284	735.67 - 741.62	2576.93 - 2547.06
89	0.6285 - 0.6504	741.63 - 745.49	2547.05 - 2523.46
90	0.6505 - 0.6701	745.50 - 749.19	2523.45 - 2499.34
91	0.6702 - 0.7017	749.20 - 757.76	2499.33 - 2432.26
92	0.7018 - 0.7243	757.77 - 765.08	2432.25 - 2390.07
93	0.7244 - 0.7576	765.09 - 772.17	2390.06 - 2345.09
94	0.7577 - 0.8164	772.18 - 777.11	2345.08 - 2292.83
95	0.8165 - 0.8751	777.12 - 787.48	2292.82 - 2271.01
96	0.8752 - 0.8897	787.49 - 798.40	2271.00 - 2224.39
97	0.8898 - 0.9329	798.41 - 810.77	2224.38 - 2098.02
98	0.9330 - 0.9926	810.78 - 841.61	2098.01 - 2041.67
99	0.9927 - 1.3138	841.62 - 861.41	2041.66 - 1900.13
100	1.3139*	861.42*	1900.12 - 1.00

PART-H : SPECIAL NEEDS

2 YR PUBLIC

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0498	0.01 - 423.43	9957.15+
2	0.0499 - 0.0666	423.44 - 468.68	9957.14 - 7606.61
3	0.0667 - 0.0745	468.69 - 490.83	7606.60 - 7153.44
4	0.0746 - 0.0807	490.84 - 508.31	7153.43 - 6382.41
5	0.0808 - 0.0924	508.32 - 525.48	6382.39 - 6060.24
6	0.0925 - 0.1019	525.49 - 535.74	6060.23 - 5776.19
7	0.1020 - 0.1098	535.75 - 542.30	5776.18 - 5523.21
8	0.1099 - 0.1155	542.31 - 550.10	5523.20 - 5260.52
9	0.1156 - 0.1258	550.11 - 557.79	5260.51 - 5037.82
10	0.1259 - 0.1351	557.80 - 563.96	5037.80 - 4930.01
11	0.1352 - 0.1433	563.97 - 572.12	4930.00 - 4831.60
12	0.1434 - 0.1484	572.13 - 578.11	4831.59 - 4684.75
13	0.1485 - 0.1529	578.12 - 589.32	4684.74 - 4575.68
14	0.1530 - 0.1621	589.33 - 594.19	4575.67 - 4495.18
15	0.1622 - 0.1654	594.20 - 599.85	4495.17 - 4422.42
16	0.1655 - 0.1703	599.86 - 603.81	4422.41 - 4319.84
17	0.1704 - 0.1768	603.82 - 609.38	4319.83 - 4180.03
18	0.1769 - 0.1837	609.39 - 614.09	4180.02 - 4136.29
19	0.1838 - 0.1887	614.10 - 620.19	4136.28 - 3997.95
20	0.1888 - 0.1948	620.20 - 624.14	3997.94 - 3946.92
21	0.1949 - 0.1998	624.15 - 630.91	3946.91 - 3855.61
22	0.1999 - 0.2042	630.92 - 636.46	3855.60 - 3799.70
23	0.2043 - 0.2095	636.47 - 639.60	3799.69 - 3759.32
24	0.2096 - 0.2172	639.61 - 644.09	3759.31 - 3708.53
25	0.2173 - 0.2207	644.10 - 647.70	3708.52 - 3631.23
26	0.2208 - 0.2262	647.71 - 653.01	3631.22 - 3570.10
27	0.2263 - 0.2312	653.02 - 655.89	3570.09 - 3509.44
28	0.2313 - 0.2355	655.90 - 662.19	3509.43 - 3456.04
29	0.2356 - 0.2388	662.20 - 666.61	3456.03 - 3402.27
30	0.2389 - 0.2435	666.62 - 673.64	3402.26 - 3333.83
31	0.2436 - 0.2502	673.65 - 684.05	3333.82 - 3264.84
32	0.2503 - 0.2558	684.06 - 688.36	3264.83 - 3213.04
33	0.2559 - 0.2651	688.37 - 693.45	3213.03 - 3153.83
34	0.2652 - 0.2755	693.46 - 698.34	3153.82 - 3125.11
35	0.2756 - 0.2877	698.35 - 702.76	3125.10 - 3070.46
36	0.2878 - 0.2992	702.77 - 710.88	3070.45 - 3005.78
37	0.2993 - 0.3100	710.89 - 718.94	3005.77 - 2945.30
38	0.3101 - 0.3198	718.95 - 724.68	2945.29 - 2879.28
39	0.3199 - 0.3314	724.69 - 736.53	2879.27 - 2820.64
40	0.3315 - 0.3444	736.54 - 742.66	2820.63 - 2760.85
41	0.3445 - 0.3616	742.67 - 750.34	2760.84 - 2723.34
42	0.3617 - 0.3794	750.35 - 760.73	2723.33 - 2661.99
43	0.3795 - 0.3945	760.74 - 767.49	2661.98 - 2625.91
44	0.3946 - 0.4142	767.50 - 777.37	2625.90 - 2547.06
45	0.4143 - 0.4358	777.38 - 794.49	2547.05 - 2499.34
46	0.4359 - 0.4750	794.50 - 808.90	2499.33 - 2390.07
47	0.4751 - 0.5239	808.91 - 834.79	2390.06 - 2292.83
48	0.5240 - 0.5742	834.80 - 865.31	2292.82 - 2224.39
49	0.5743 - 0.6972	865.32 - 932.64	2224.38 - 2041.67
50	0.6973+	932.65+	2041.66 - 1.00

PART-A : STRENGTHENING

2 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.1287	0.01 - 548.58	17341.83+
2	0.1288 - 0.1582	548.59 - 611.65	17341.82 -13746.41
3	0.1583 - 0.1814	611.66 - 618.41	13746.39 -11153.14
4	0.1815 - 0.1944	618.42 - 637.94	11153.13 - 9234.77
5	0.1945 - 0.2055	637.95 - 663.12	9234.76 - 8704.02
6	0.2056 - 0.2076	663.13 - 682.02	8704.01 - 8278.00
7	0.2077 - 0.2165	682.03 - 722.01	8277.99 - 8071.04
8	0.2166 - 0.2212	722.02 - 737.61	8071.03 - 7695.64
9	0.2213 - 0.2380	737.62 - 758.99	7695.63 - 7450.39
10	0.2381 - 0.2513	759.00 - 791.00	7450.38 - 7008.08
11	0.2514 - 0.2692	791.01 - 793.38	7008.07 - 6785.36
12	0.2693 - 0.2765	793.39 - 798.57	6785.35 - 6478.50
13	0.2766 - 0.2839	798.58 - 803.24	6478.49 - 6220.84
14	0.2840 - 0.2921	803.25 - 820.37	6220.83 - 6124.86
15	0.2922 - 0.2952	820.38 - 824.94	6124.85 - 5993.69
16	0.2953 - 0.3011	824.95 - 837.48	5993.68 - 5844.61
17	0.3012 - 0.3076	837.49 - 845.03	5844.60 - 5763.92
18	0.3077 - 0.3094	845.04 - 847.52	5763.91 - 5571.25
19	0.3095 - 0.3157	847.53 - 854.84	5571.24 - 5367.02
20	0.3158 - 0.3208	854.85 - 859.87	5367.01 - 5201.81
21	0.3209 - 0.3232	859.88 - 862.61	5201.80 - 5193.42
22	0.3233 - 0.3270	862.62 - 868.64	5193.41 - 5111.98
23	0.3271 - 0.3332	868.65 - 871.24	5111.96 - 5063.18
24	0.3333 - 0.3362	871.25 - 876.80	5063.17 - 4982.96
25	0.3363 - 0.3450	876.81 - 880.60	4982.95 - 4943.19
26	0.3451 - 0.3490	880.61 - 884.05	4943.18 - 4923.05
27	0.3491 - 0.3536	884.06 - 887.45	4923.04 - 4854.48
28	0.3537 - 0.3575	887.46 - 890.92	4854.46 - 4704.70
29	0.3576 - 0.3651	890.93 - 895.38	4704.69 - 4657.46
30	0.3652 - 0.3775	895.39 - 900.82	4657.45 - 4642.30
31	0.3776 - 0.3794	900.83 - 903.44	4642.29 - 4476.99
32	0.3795 - 0.3825	903.45 - 908.18	4476.98 - 4384.00
33	0.3826 - 0.3845	908.19 - 908.79	4383.99 - 4361.21
34	0.3846 - 0.3895	908.80 - 910.16	4361.20 - 4335.62
35	0.3896 - 0.3922	910.17 - 911.92	4335.61 - 4314.17
36	0.3923 - 0.3999	911.93 - 914.95	4314.16 - 4267.52
37	0.4000 - 0.4063	914.96 - 916.22	4267.51 - 4226.27
38	0.4064 - 0.4249	916.23 - 923.23	4226.26 - 4177.36
39	0.4250 - 0.4269	923.24 - 925.47	4177.35 - 4146.02
40	0.4270 - 0.4382	925.48 - 936.69	4146.01 - 4094.33
41	0.4383 - 0.4475	936.70 - 940.61	4094.32 - 4049.68
42	0.4476 - 0.4547	940.62 - 943.02	4049.67 - 3988.36
43	0.4548 - 0.4602	943.03 - 946.70	3988.35 - 3945.39
44	0.4603 - 0.4685	946.71 - 951.44	3945.38 - 3849.56
45	0.4686 - 0.4732	951.45 - 952.55	3849.55 - 3767.77
46	0.4733 - 0.4798	952.56 - 954.43	3767.76 - 3704.59
47	0.4799 - 0.4902	954.44 - 958.14	3704.58 - 3646.20
48	0.4903 - 0.5032	958.15 - 962.61	3646.19 - 3535.52
49	0.5033 - 0.5056	962.62 - 971.06	3535.51 - 3456.81
50	0.5057 - 0.5079	971.07 - 973.05	3456.80 - 3381.28

PART-A : CONTINUE

2 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.5080 - 0.5127	973.06 - 974.30	3381.27 - 3322.68
52	0.5128 - 0.5176	974.31 - 975.73	3322.67 - 3306.27
53	0.5177 - 0.5395	975.74 - 977.14	3306.26 - 3267.62
54	0.5396 - 0.5418	977.15 - 978.06	3267.61 - 3249.38
55	0.5419 - 0.5496	978.07 - 982.62	3249.37 - 3229.70
56	0.5497 - 0.5529	982.63 - 984.69	3229.69 - 3206.58
57	0.5530 - 0.5621	984.70 - 986.68	3206.57 - 3158.74
58	0.5622 - 0.5678	986.69 - 990.81	3158.73 - 3112.96
59	0.5679 - 0.5757	990.82 - 996.22	3112.95 - 3015.97
60	0.5758 - 0.5895	996.23 -1000.79	3015.96 - 2974.39
61	0.5896 - 0.5978	1000.80 -1002.03	2974.38 - 2917.90
62	0.5979 - 0.6005	1002.04 -1003.81	2917.89 - 2879.08
63	0.6006 - 0.6062	1003.82 -1007.62	2879.07 - 2824.46
64	0.6063 - 0.6118	1007.63 -1012.40	2824.45 - 2800.12
65	0.6119 - 0.6403	1012.41 -1015.37	2800.11 - 2776.17
66	0.6404 - 0.6480	1015.38 -1018.83	2776.16 - 2750.58
67	0.6481 - 0.6543	1018.84 -1020.22	2750.57 - 2680.88
68	0.6544 - 0.6661	1020.23 -1022.28	2680.87 - 2643.99
69	0.6662 - 0.6852	1022.29 -1026.40	2643.98 - 2628.94
70	0.6853 - 0.7058	1026.41 -1034.77	2628.93 - 2567.53
71	0.7059 - 0.7153	1034.78 -1036.61	2567.52 - 2532.26
72	0.7154 - 0.7450	1036.62 -1038.98	2532.25 - 2468.16
73	0.7451 - 0.7631	1038.99 -1042.02	2468.15 - 2453.42
74	0.7632 - 0.7672	1042.03 -1045.66	2453.41 - 2434.62
75	0.7673 - 0.7908	1045.67 -1061.77	2434.61 - 2405.29
76	0.7909 - 0.8120	1061.78 -1065.29	2405.28 - 2323.39
77	0.8121 - 0.8180	1065.30 -1069.99	2323.38 - 2282.39
78	0.8181 - 0.8257	1070.00 -1083.24	2282.38 - 2248.46
79	0.8258 - 0.8438	1083.25 -1091.09	2248.45 - 2187.04
80	0.8439 - 0.8461	1091.10 -1095.28	2187.03 - 2159.33
81	0.8462 - 0.8697	1095.29 -1103.83	2159.32 - 2132.53
82	0.8698 - 0.9006	1103.84 -1111.61	2132.52 - 2090.43
83	0.9007 - 0.9097	1111.62 -1113.79	2090.42 - 2037.04
84	0.9098 - 0.9443	1113.80 -1119.64	2037.03 - 2031.69
85	0.9444 - 0.9770	1119.65 -1126.39	2031.68 - 1987.21
86	0.9771 - 0.9967	1126.40 -1130.44	1987.20 - 1949.24
87	0.9968 - 1.0090	1130.45 -1135.44	1949.23 - 1914.40
88	1.0091 - 1.0202	1135.45 -1136.27	1914.39 - 1889.79
89	1.0203 - 1.0624	1136.28 -1146.54	1889.78 - 1791.28
90	1.0625 - 1.1039	1146.55 -1154.79	1791.27 - 1733.02
91	1.1040 - 1.1488	1154.80 -1165.02	1733.01 - 1664.15
92	1.1489 - 1.1952	1165.03 -1173.12	1664.14 - 1629.05
93	1.1953 - 1.2289	1173.13 -1189.16	1629.04 - 1505.72
94	1.2290 - 1.2650	1189.17 -1192.82	1505.71 - 1361.07
95	1.2651 - 1.4241	1192.83 -1220.42	1361.06 - 1169.11
96	1.4242 - 1.6499	1220.43 -1238.18	1169.10 - 1133.29
97	1.6500 - 1.6500	1238.19 -1308.46	1133.28 - 1046.43
98	1.6500 - 1.6500	1308.47 -1316.84	1046.42 - 980.95
99	1.6500 - 1.6500	1316.85 -1328.90	980.94 - 799.16
100	1.6500+	1328.91+	799.15 - 1.00

PART-B : SPECIAL NEEDS

PART-B : SPECIAL NEEDS

2 YR PRIVATE

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0975	0.01 - 548.58	13746.41+
2	0.0976 - 0.1106	548.59 - 597.01	13746.39 - 9234.77
3	0.1107 - 0.1440	597.02 - 637.94	9234.76 - 8278.00
4	0.1441 - 0.1534	637.95 - 661.70	8277.99 - 7695.64
5	0.1535 - 0.1586	661.71 - 696.05	7695.63 - 7008.08
6	0.1587 - 0.1744	696.06 - 719.95	7008.07 - 6478.50
7	0.1745 - 0.1792	719.96 - 726.28	6478.49 - 6124.86
8	0.1793 - 0.1949	726.29 - 736.25	6124.85 - 5844.61
9	0.1950 - 0.2117	736.26 - 744.35	5844.60 - 5571.25
10	0.2118 - 0.2197	744.36 - 759.94	5571.24 - 5201.81
11	0.2198 - 0.2257	759.95 - 770.73	5201.80 - 5111.98
12	0.2258 - 0.2332	770.74 - 783.31	5111.96 - 4982.96
13	0.2333 - 0.2435	783.32 - 792.44	4982.95 - 4923.05
14	0.2436 - 0.2499	792.45 - 800.13	4923.04 - 4704.70
15	0.2500 - 0.2653	800.14 - 815.45	4704.69 - 4642.30
16	0.2654 - 0.2796	815.46 - 829.21	4642.29 - 4384.00
17	0.2797 - 0.2878	829.22 - 850.63	4383.99 - 4335.62
18	0.2879 - 0.2984	850.64 - 859.04	4335.61 - 4267.52
19	0.2985 - 0.3085	859.05 - 870.68	4267.51 - 4177.36
20	0.3086 - 0.3137	870.69 - 873.54	4177.35 - 4094.33
21	0.3138 - 0.3218	873.55 - 885.21	4094.32 - 3988.36
22	0.3219 - 0.3270	885.22 - 893.50	3988.35 - 3849.56
23	0.3271 - 0.3327	893.51 - 900.54	3849.55 - 3704.59
24	0.3328 - 0.3416	900.55 - 904.99	3704.58 - 3535.52
25	0.3417 - 0.3528	905.00 - 910.44	3535.51 - 3381.28
26	0.3529 - 0.3668	910.45 - 918.46	3381.27 - 3306.27
27	0.3669 - 0.3880	918.47 - 928.84	3306.26 - 3249.38
28	0.3881 - 0.4024	928.85 - 938.32	3249.37 - 3206.58
29	0.4025 - 0.4153	938.33 - 946.19	3206.57 - 3112.96
30	0.4154 - 0.4348	946.20 - 956.11	3112.95 - 2974.39
31	0.4349 - 0.4423	956.12 - 962.09	2974.38 - 2879.08
32	0.4424 - 0.4574	962.10 - 971.06	2879.07 - 2800.12
33	0.4575 - 0.4732	971.07 - 975.73	2800.11 - 2750.58
34	0.4731 - 0.4833	975.74 - 985.39	2750.57 - 2643.99
35	0.4834 - 0.5042	985.40 - 995.15	2643.98 - 2567.53
36	0.5043 - 0.5186	995.16 -1003.79	2567.52 - 2468.16
37	0.5187 - 0.5368	1003.80 -1022.60	2468.15 - 2434.62
38	0.5369 - 0.5600	1022.61 -1034.68	2434.61 - 2323.39
39	0.5601 - 0.5881	1034.69 -1043.57	2323.38 - 2248.46
40	0.5882 - 0.6037	1043.58 -1060.51	2248.45 - 2159.33
41	0.6038 - 0.6344	1060.52 -1081.08	2159.32 - 2090.43
42	0.6345 - 0.6941	1081.09 -1101.59	2090.42 - 2031.69
43	0.6942 - 0.7341	1101.60 -1115.21	2031.68 - 1949.24
44	0.7342 - 0.7863	1115.22 -1131.94	1949.23 - 1889.79
45	0.7864 - 0.9062	1131.95 -1165.95	1889.78 - 1733.02
46	0.9063 - 0.9738	1165.96 -1179.51	1733.01 - 1629.05
47	0.9739 - 1.0378	1179.52 -1210.50	1629.04 - 1361.07
48	1.0379 - 1.2834	1210.51 -1290.42	1361.06 - 1133.29
49	1.2835 - 1.6499	1290.43 -1380.99	1133.28 - 980.95
50	1.6500+	1381.00+	980.94 - 1.00

PART-A : CONTINUE

4 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3223 - 0.3283	834.05 - 836.83	4338.85 - 4317.64
52	0.3284 - 0.3326	836.84 - 838.62	4317.63 - 4304.37
53	0.3327 - 0.3359	838.63 - 840.02	4304.36 - 4273.67
54	0.3360 - 0.3395	840.03 - 842.48	4273.66 - 4241.81
55	0.3396 - 0.3439	842.49 - 843.62	4241.80 - 4202.61
56	0.3440 - 0.3450	843.63 - 844.74	4202.60 - 4164.98
57	0.3451 - 0.3496	844.75 - 846.07	4164.96 - 4022.91
58	0.3497 - 0.3535	846.08 - 849.10	4022.90 - 3985.47
59	0.3536 - 0.3567	849.11 - 852.20	3985.46 - 3969.92
60	0.3568 - 0.3584	852.21 - 854.41	3969.91 - 3930.61
61	0.3585 - 0.3603	854.42 - 856.84	3930.60 - 3875.61
62	0.3604 - 0.3650	856.85 - 859.03	3875.60 - 3838.91
63	0.3651 - 0.3699	859.04 - 865.66	3838.90 - 3808.48
64	0.3700 - 0.3727	865.67 - 870.10	3808.47 - 3775.92
65	0.3728 - 0.3754	870.11 - 872.20	3775.91 - 3756.35
66	0.3755 - 0.3867	872.21 - 874.43	3756.34 - 3738.02
67	0.3868 - 0.3937	874.44 - 877.52	3738.01 - 3726.95
68	0.3938 - 0.3965	877.53 - 882.56	3726.94 - 3714.73
69	0.3966 - 0.4000	882.57 - 884.30	3714.72 - 3679.20
70	0.4001 - 0.4042	884.31 - 885.54	3679.19 - 3649.10
71	0.4043 - 0.4095	885.55 - 888.42	3649.09 - 3618.91
72	0.4096 - 0.4183	888.43 - 891.04	3618.90 - 3601.65
73	0.4184 - 0.4245	891.05 - 891.66	3601.64 - 3577.04
74	0.4246 - 0.4294	891.67 - 892.29	3577.03 - 3526.79
75	0.4295 - 0.4386	892.30 - 895.91	3526.78 - 3472.81
76	0.4387 - 0.4463	895.92 - 898.82	3472.80 - 3411.82
77	0.4464 - 0.4512	898.83 - 901.89	3411.81 - 3394.44
78	0.4513 - 0.4567	901.90 - 906.70	3394.43 - 3378.48
79	0.4568 - 0.4689	906.71 - 907.65	3378.47 - 3340.15
80	0.4690 - 0.4761	907.66 - 914.66	3340.14 - 3296.89
81	0.4762 - 0.4870	914.67 - 919.65	3296.88 - 3254.01
82	0.4871 - 0.4955	919.66 - 921.54	3254.00 - 3209.33
83	0.4956 - 0.5147	921.55 - 924.76	3209.32 - 3179.35
84	0.5148 - 0.5218	924.77 - 928.11	3179.34 - 3094.70
85	0.5219 - 0.5504	928.12 - 936.13	3094.69 - 3013.87
86	0.5505 - 0.5654	936.14 - 944.22	3013.86 - 2975.51
87	0.5655 - 0.5948	944.23 - 956.61	2975.50 - 2901.89
88	0.5949 - 0.6062	956.62 - 959.35	2901.88 - 2850.12
89	0.6063 - 0.6322	959.36 - 961.62	2850.11 - 2829.72
90	0.6323 - 0.6694	961.63 - 980.04	2829.71 - 2742.87
91	0.6695 - 0.6949	980.05 - 985.74	2742.86 - 2709.33
92	0.6950 - 0.7283	985.75 - 994.02	2709.32 - 2668.29
93	0.7284 - 0.7519	994.03 -1002.00	2668.28 - 2625.96
94	0.7520 - 0.7923	1002.01 -1007.47	2625.95 - 2573.02
95	0.7924 - 0.8062	1007.48 -1030.99	2573.01 - 2557.19
96	0.8063 - 0.8567	1031.00 -1049.40	2557.18 - 2500.10
97	0.8568 - 0.8685	1049.41 -1069.65	2500.09 - 2444.41
98	0.8686 - 0.8802	1069.66 -1098.74	2444.40 - 2377.48
99	0.8803 - 1.0777	1098.75 -1160.81	2377.47 - 2135.41
100	1.0778+	1160.82+	2135.40 - 1.00

PART-A : STRENGTHENING

4 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.1008	0.01 - 573.37	28103.33+
2	0.1009 - 0.1281	573.38 - 617.90	26103.32 -20855.06
3	0.1282 - 0.1501	617.91 - 631.11	20855.05 -17768.36
4	0.1502 - 0.1535	631.12 - 637.69	17768.35 -13151.79
5	0.1536 - 0.1679	637.70 - 646.57	13151.78 -11143.16
6	0.1680 - 0.1704	646.58 - 650.00	11143.14 -10509.04
7	0.1705 - 0.1747	650.01 - 669.49	10509.03 -10326.04
8	0.1748 - 0.1829	669.50 - 674.46	10326.03 - 8674.21
9	0.1830 - 0.1911	674.47 - 686.52	8674.20 - 8464.98
10	0.1912 - 0.1951	686.53 - 692.34	8464.96 - 8325.39
11	0.1952 - 0.2004	692.35 - 698.98	8325.38 - 8074.47
12	0.2005 - 0.2042	698.99 - 704.63	8074.46 - 7710.76
13	0.2043 - 0.2095	704.64 - 710.37	7710.75 - 7411.33
14	0.2096 - 0.2133	710.38 - 718.09	7411.32 - 7141.99
15	0.2134 - 0.2170	718.10 - 720.38	7141.98 - 7039.90
16	0.2171 - 0.2237	720.39 - 721.91	7039.89 - 6835.25
17	0.2238 - 0.2250	721.92 - 731.70	6835.24 - 6747.85
18	0.2251 - 0.2289	731.71 - 733.71	6747.84 - 6594.07
19	0.2290 - 0.2309	733.72 - 739.58	6594.05 - 6500.36
20	0.2310 - 0.2331	739.59 - 743.15	6500.35 - 6349.40
21	0.2332 - 0.2364	743.16 - 746.02	6349.39 - 6273.22
22	0.2365 - 0.2384	746.03 - 749.52	6273.21 - 6174.54
23	0.2385 - 0.2412	749.53 - 756.88	6174.53 - 6025.75
24	0.2413 - 0.2472	756.89 - 759.11	6025.74 - 5910.54
25	0.2473 - 0.2488	759.12 - 767.07	5910.53 - 5841.65
26	0.2489 - 0.2505	767.08 - 770.18	5841.64 - 5619.45
27	0.2506 - 0.2524	770.19 - 772.13	5619.44 - 5580.54
28	0.2525 - 0.2556	772.14 - 775.56	5580.53 - 5475.40
29	0.2557 - 0.2573	775.57 - 782.39	5475.39 - 5382.95
30	0.2574 - 0.2599	782.40 - 784.59	5382.94 - 5350.45
31	0.2600 - 0.2668	784.60 - 791.16	5350.44 - 5307.20
32	0.2669 - 0.2719	791.17 - 792.69	5307.19 - 5272.98
33	0.2720 - 0.2735	792.70 - 793.98	5272.96 - 5143.76
34	0.2736 - 0.2823	793.99 - 797.60	5143.75 - 5052.06
35	0.2824 - 0.2843	797.61 - 800.81	5052.05 - 4984.24
36	0.2844 - 0.2855	800.82 - 802.12	4984.23 - 4970.58
37	0.2856 - 0.2865	802.13 - 803.30	4970.57 - 4907.09
38	0.2866 - 0.2890	803.31 - 805.52	4907.08 - 4828.87
39	0.2891 - 0.2925	805.53 - 806.66	4828.86 - 4800.98
40	0.2926 - 0.2952	806.67 - 811.11	4800.96 - 4759.69
41	0.2953 - 0.2968	811.12 - 814.35	4759.68 - 4673.50
42	0.2969 - 0.3005	814.36 - 815.99	4673.49 - 4652.00
43	0.3006 - 0.3024	816.00 - 816.79	4651.99 - 4612.52
44	0.3025 - 0.3087	816.80 - 821.19	4612.51 - 4561.15
45	0.3088 - 0.3115	821.20 - 823.58	4561.14 - 4520.18
46	0.3116 - 0.3144	823.59 - 826.25	4520.17 - 4490.61
47	0.3145 - 0.3162	826.26 - 828.34	4490.60 - 4453.80
48	0.3163 - 0.3173	828.35 - 830.86	4453.79 - 4403.72
49	0.3174 - 0.3212	830.87 - 831.73	4403.71 - 4383.87
50	0.3213 - 0.3222	831.74 - 834.04	4383.86 - 4338.86

PART-H : SPECIAL NEEDS

4 YR PUBLIC

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0920	0.01 - 680.07	20855.06+
2	0.0921 - 0.1157	680.08 - 695.62	20855.05 -13151.79
3	0.1158 - 0.1273	695.63 - 732.59	13151.78 -10509.04
4	0.1274 - 0.1296	732.60 - 744.65	10509.03 - 8674.21
5	0.1297 - 0.1347	744.66 - 762.39	8674.20 - 8325.39
6	0.1348 - 0.1429	762.40 - 767.70	8325.38 - 7710.76
7	0.1430 - 0.1507	767.71 - 772.62	7710.75 - 7141.99
8	0.1508 - 0.1572	772.63 - 783.39	7141.98 - 6835.25
9	0.1573 - 0.1648	783.40 - 791.03	6835.24 - 6594.07
10	0.1649 - 0.1734	791.04 - 799.90	6594.05 - 6349.40
11	0.1735 - 0.1793	799.91 - 806.93	6349.39 - 6174.54
12	0.1794 - 0.1835	806.94 - 813.41	6174.53 - 5910.54
13	0.1836 - 0.1860	813.42 - 817.01	5910.53 - 5619.45
14	0.1861 - 0.1886	817.02 - 825.77	5619.44 - 5475.40
15	0.1887 - 0.1950	825.78 - 829.93	5475.39 - 5350.45
16	0.1951 - 0.1979	829.94 - 837.56	5350.44 - 5272.98
17	0.1980 - 0.2026	837.57 - 843.70	5272.96 - 5052.06
18	0.2027 - 0.2051	843.71 - 848.60	5052.05 - 4970.58
19	0.2052 - 0.2092	848.61 - 856.08	4970.57 - 4828.87
20	0.2093 - 0.2119	856.09 - 861.20	4828.86 - 4759.69
21	0.2120 - 0.2161	861.21 - 864.23	4759.68 - 4652.00
22	0.2162 - 0.2235	864.24 - 872.30	4651.99 - 4561.15
23	0.2236 - 0.2262	872.31 - 878.91	4561.14 - 4490.61
24	0.2263 - 0.2321	878.92 - 882.54	4490.60 - 4403.72
25	0.2322 - 0.2384	882.55 - 886.56	4403.71 - 4338.86
26	0.2385 - 0.2435	886.57 - 893.62	4338.85 - 4304.37
27	0.2436 - 0.2488	893.63 - 902.41	4304.36 - 4241.81
28	0.2489 - 0.2543	902.42 - 909.33	4241.80 - 4164.98
29	0.2544 - 0.2603	909.34 - 917.16	4164.96 - 3985.47
30	0.2604 - 0.2635	917.17 - 925.09	3985.46 - 3930.61
31	0.2636 - 0.2696	925.10 - 933.26	3930.60 - 3838.91
32	0.2697 - 0.2732	933.27 - 938.06	3838.90 - 3775.92
33	0.2733 - 0.2803	938.07 - 948.00	3775.91 - 3738.02
34	0.2804 - 0.2910	948.01 - 960.63	3738.01 - 3714.73
35	0.2911 - 0.3074	960.64 - 968.48	3714.72 - 3649.10
36	0.3075 - 0.3168	968.49 - 974.37	3649.09 - 3601.65
37	0.3169 - 0.3249	974.38 - 980.07	3601.64 - 3526.79
38	0.3250 - 0.3353	980.08 - 992.73	3526.78 - 3411.82
39	0.3354 - 0.3498	992.74 -1000.60	3411.81 - 3378.48
40	0.3499 - 0.3668	1000.61 -1019.37	3378.47 - 3296.89
41	0.3669 - 0.3778	1019.38 -1033.19	3296.88 - 3209.33
42	0.3779 - 0.4117	1033.20 -1042.29	3209.32 - 3094.70
43	0.4118 - 0.4385	1042.30 -1048.89	3094.69 - 2975.51
44	0.4386 - 0.4656	1048.90 -1062.42	2975.50 - 2850.12
45	0.4657 - 0.4963	1062.43 -1080.19	2850.11 - 2742.87
46	0.4964 - 0.6036	1080.20 -1094.76	2742.86 - 2668.29
47	0.6037 - 0.6461	1094.77 -1120.87	2668.28 - 2573.02
48	0.6462 - 0.6852	1120.88 -1155.29	2573.01 - 2500.10
49	0.6853 - 0.7744	1155.30 -1248.54	2500.09 - 2377.48
50	0.7745+	1248.55+	2377.47 - 1.00

PART-A : STRENGTHENING

4 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0460	0.01 - 695.61	21357.16+
2	0.0461 - 0.0940	695.62 - 788.83	21357.14 -15616.21
3	0.0941 - 0.1110	788.84 - 821.18	15616.20 -13682.86
4	0.1111 - 0.1218	821.19 - 850.27	13682.85 -12225.04
5	0.1219 - 0.1441	850.28 - 859.74	12225.03 -11400.00
6	0.1442 - 0.1553	859.75 - 870.94	11399.99 -10752.24
7	0.1554 - 0.1623	870.95 - 882.18	10752.23 -10369.57
8	0.1624 - 0.1719	882.19 - 886.64	10369.55 -10245.84
9	0.1720 - 0.1794	886.65 - 895.71	10245.83 - 9902.22
10	0.1795 - 0.1828	895.72 - 901.25	9902.21 - 9490.85
11	0.1829 - 0.1870	901.26 - 907.26	9490.84 - 9226.32
12	0.1871 - 0.1974	907.27 - 912.15	9226.30 - 8900.94
13	0.1975 - 0.2010	912.16 - 918.95	8900.93 - 8736.57
14	0.2011 - 0.2042	918.96 - 923.30	8736.55 - 8364.88
15	0.2043 - 0.2126	923.31 - 925.67	8364.87 - 8207.30
16	0.2127 - 0.2178	925.68 - 929.16	8207.29 - 8089.48
17	0.2179 - 0.2260	929.17 - 932.56	8089.46 - 7957.34
18	0.2261 - 0.2292	932.57 - 935.49	7957.33 - 7784.82
19	0.2293 - 0.2340	935.50 - 940.29	7784.80 - 7664.03
20	0.2341 - 0.2379	940.30 - 942.27	7664.02 - 7542.89
21	0.2380 - 0.2441	942.28 - 946.78	7542.88 - 7424.05
22	0.2442 - 0.2487	946.79 - 949.77	7424.04 - 7303.98
23	0.2488 - 0.2520	949.78 - 953.19	7303.96 - 7192.75
24	0.2521 - 0.2583	953.20 - 958.67	7192.74 - 7072.36
25	0.2584 - 0.2623	958.68 - 963.49	7072.35 - 7019.83
26	0.2624 - 0.2672	963.50 - 967.59	7019.82 - 6912.99
27	0.2673 - 0.2723	967.60 - 970.74	6912.98 - 6830.51
28	0.2724 - 0.2766	970.75 - 971.78	6830.50 - 6715.55
29	0.2767 - 0.2809	971.79 - 974.88	6715.54 - 6619.20
30	0.2810 - 0.2867	974.89 - 977.58	6619.19 - 6514.74
31	0.2868 - 0.2936	977.59 - 980.07	6514.73 - 6449.23
32	0.2937 - 0.2987	980.08 - 982.63	6449.21 - 6373.97
33	0.2988 - 0.3017	982.64 - 985.39	6373.96 - 6300.93
34	0.3018 - 0.3059	985.40 - 987.70	6300.92 - 6224.60
35	0.3060 - 0.3108	987.71 - 990.80	6224.59 - 6166.61
36	0.3109 - 0.3161	990.81 - 993.09	6166.60 - 6118.06
37	0.3162 - 0.3192	993.10 - 996.11	6118.05 - 6019.20
38	0.3193 - 0.3249	996.12 - 998.58	6019.19 - 5936.09
39	0.3250 - 0.3279	998.59 -1001.06	5936.08 - 5881.90
40	0.3280 - 0.3317	1001.07 -1002.89	5881.89 - 5817.52
41	0.3318 - 0.3369	1002.90 -1005.28	5817.51 - 5765.51
42	0.3370 - 0.3397	1005.29 -1007.79	5765.50 - 5715.52
43	0.3398 - 0.3447	1007.80 -1010.36	5715.51 - 5636.68
44	0.3448 - 0.3517	1010.37 -1013.46	5636.67 - 5587.76
45	0.3518 - 0.3570	1013.47 -1017.59	5587.75 - 5509.07
46	0.3571 - 0.3605	1017.60 -1019.96	5509.05 - 5437.41
47	0.3606 - 0.3660	1019.97 -1022.39	5437.39 - 5370.89
48	0.3661 - 0.3696	1022.40 -1025.15	5370.88 - 5327.98
49	0.3697 - 0.3749	1025.16 -1026.53	5327.96 - 5289.19
50	0.3750 - 0.3788	1026.54 -1029.60	5289.18 - 5235.43

PART-A : CONTINUE

4 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3789 - 0.3834	1029.61 -1033.42	5235.42 - 5185.*0
52	0.3835 - 0.3877	1033.43 -1035.64	5185.89 - 5137.48
53	0.3878 - 0.3891	1035.65 -1038.11	5137.46 - 5093.57
54	0.3892 - 0.3934	1038.12 -1039.93	5093.55 - 5034.90
55	0.3935 - 0.3966	1039.94 -1043.57	5034.89 - 4998.78
56	0.3967 - 0.4010	1043.58 -1047.51	4998.77 - 4948.31
57	0.4011 - 0.4084	1047.52 -1049.19	4948.30 - 4894.30
58	0.4085 - 0.4166	1049.20 -1051.73	4894.29 - 4867.49
59	0.4167 - 0.4226	1051.74 -1055.05	4867.48 - 4828.80
60	0.4227 - 0.4284	1055.06 -1057.30	4828.79 - 4794.37
61	0.4285 - 0.4322	1057.31 -1059.47	4794.36 - 4735.10
62	0.4323 - 0.4385	1059.48 -1063.27	4735.09 - 4682.08
63	0.4386 - 0.4431	1063.28 -1065.66	4682.07 - 4616.48
64	0.4432 - 0.4527	1065.67 -1067.37	4616.46 - 4575.84
65	0.4528 - 0.4576	1067.38 -1070.98	4575.83 - 4527.66
66	0.4577 - 0.4621	1070.99 -1074.11	4527.64 - 4493.67
67	0.4622 - 0.4650	1074.12 -1081.39	4493.66 - 4420.79
68	0.4651 - 0.4716	1081.40 -1084.41	4420.78 - 4351.75
69	0.4717 - 0.4770	1084.42 -1089.12	4351.74 - 4294.55
70	0.4771 - 0.4819	1089.13 -1092.84	4294.54 - 4224.07
71	0.4820 - 0.4868	1092.85 -1099.24	4224.05 - 4180.43
72	0.4869 - 0.4957	1099.25 -1101.81	4180.42 - 4128.56
73	0.4958 - 0.5031	1101.82 -1103.55	4128.55 - 4090.74
74	0.5032 - 0.5117	1103.56 -1109.19	4090.73 - 4039.03
75	0.5118 - 0.5221	1109.20 -1112.08	4039.02 - 3994.84
76	0.5222 - 0.5302	1112.09 -1117.01	3994.83 - 3928.07
77	0.5303 - 0.5425	1117.02 -1120.36	3928.06 - 3877.44
78	0.5426 - 0.5513	1120.37 -1123.94	3877.43 - 3816.00
79	0.5514 - 0.5621	1123.95 -1129.15	3815.99 - 3755.86
80	0.5622 - 0.5704	1129.16 -1133.26	3755.85 - 3707.78
81	0.5705 - 0.5761	1133.27 -1140.39	3707.77 - 3632.25
82	0.5762 - 0.5847	1140.40 -1145.38	3632.24 - 3591.82
83	0.5848 - 0.5997	1145.39 -1153.17	3591.81 - 3515.38
84	0.5998 - 0.6166	1153.18 -1164.00	3515.37 - 3463.64
85	0.6167 - 0.6420	1164.01 -1168.42	3463.63 - 3389.95
86	0.6421 - 0.6538	1168.43 -1184.29	3389.94 - 3319.64
87	0.6539 - 0.6666	1184.30 -1190.31	3319.63 - 3220.70
88	0.6667 - 0.6805	1190.32 -1204.91	3220.69 - 3159.41
89	0.6806 - 0.7000	1204.92 -1226.55	3159.40 - 3076.10
90	0.7001 - 0.7221	1226.56 -1251.96	3076.09 - 3002.93
91	0.7222 - 0.7544	1251.97 -1275.11	3002.92 - 2888.42
92	0.7545 - 0.7813	1275.12 -1300.68	2888.41 - 2755.17
93	0.7814 - 0.8105	1300.69 -1319.54	2755.16 - 2651.32
94	0.8106 - 0.8607	1319.55 -1350.08	2651.31 - 2487.46
95	0.8608 - 0.9090	1350.09 -1366.75	2487.45 - 2362.56
96	0.9091 - 0.9503	1366.76 -1403.63	2362.55 - 2175.58
97	0.9504 - 1.0243	1403.64 -1441.09	2175.57 - 1928.46
98	1.0244 - 1.1507	1441.10 -1534.54	1928.45 - 1671.86
99	1.1508 - 1.3822	1534.55 -1645.29	1671.85 - 1435.75
100	1.3823+	1645.30+	1435.74 - 1.00

PART-B : SPECIAL NEEDS

4 YR PRIVATE

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0760	0.01 - 724.99	15616.21+
2	0.0761 - 0.1173	725.00 - 770.76	15616.20 -12225.04
3	0.1174 - 0.1372	770.77 - 817.09	12225.03 -10752.24
4	0.1373 - 0.1517	817.10 - 843.84	10752.23 -10245.84
5	0.1518 - 0.1663	843.85 - 860.24	10245.83 - 9490.85
6	0.1664 - 0.1829	860.25 - 886.64	9490.84 - 8900.94
7	0.1830 - 0.1938	886.65 - 898.87	8900.93 - 8364.88
8	0.1939 - 0.2031	898.88 - 912.58	8364.87 - 8089.48
9	0.2032 - 0.2136	912.59 - 925.30	8089.46 - 7784.82
10	0.2137 - 0.2222	925.31 - 941.42	7784.80 - 7542.89
11	0.2223 - 0.2334	941.43 - 952.05	7542.88 - 7303.98
12	0.2335 - 0.2406	952.06 - 963.67	7303.96 - 7072.36
13	0.2407 - 0.2465	963.68 - 976.06	7072.35 - 6912.99
14	0.2466 - 0.2544	976.07 - 989.15	6912.98 - 6715.55
15	0.2545 - 0.2609	989.16 - 998.42	6715.54 - 6514.74
16	0.2610 - 0.2669	998.43 -1008.68	6514.73 - 6373.97
17	0.2670 - 0.2725	1008.69 -1017.67	6371.96 - 6224.60
18	0.2727 - 0.2799	1017.68 -1024.89	6224.59 - 6118.06
19	0.2800 - 0.2865	1024.90 -1034.69	6118.05 - 5936.09
20	0.2866 - 0.2943	1034.70 -1044.20	5936.08 - 5817.52
21	0.2944 - 0.3023	1044.21 -1053.76	5817.51 - 5715.52
22	0.3024 - 0.3119	1053.77 -1066.64	5715.51 - 5587.76
23	0.3120 - 0.3204	1066.65 -1074.99	5587.75 - 5437.41
24	0.3205 - 0.3284	1075.00 -1086.50	5437.39 - 5327.98
25	0.3285 - 0.3371	1086.51 -1099.17	5327.96 - 5235.43
26	0.3372 - 0.3435	1099.18 -1108.33	5235.42 - 5137.48
27	0.3436 - 0.3532	1108.34 -1116.69	5137.46 - 5034.90
28	0.3533 - 0.3628	1116.70 -1121.89	5034.89 - 4948.31
29	0.3629 - 0.3686	1121.90 -1135.89	4948.30 - 4867.49
30	0.3687 - 0.3799	1135.90 -1147.84	4867.48 - 4794.37
31	0.3800 - 0.3853	1147.85 -1156.87	4794.36 - 4682.08
32	0.3854 - 0.3933	1156.88 -1168.49	4682.07 - 4575.84
33	0.3934 - 0.4049	1168.50 -1178.72	4575.83 - 4493.67
34	0.4050 - 0.4131	1178.73 -1191.93	4493.66 - 4351.75
35	0.4132 - 0.4238	1191.94 -1205.17	4351.74 - 4224.07
36	0.4239 - 0.4365	1205.18 -1223.43	4224.05 - 4128.56
37	0.4366 - 0.4468	1223.44 -1235.91	4128.55 - 4039.03
38	0.4469 - 0.4602	1235.92 -1254.56	4039.02 - 3928.07
39	0.4603 - 0.4704	1254.57 -1266.96	3928.06 - 3816.00
40	0.4705 - 0.4856	1266.97 -1293.16	3815.99 - 3707.78
41	0.4857 - 0.4972	1293.17 -1315.43	3707.77 - 3591.82
42	0.4973 - 0.5115	1315.44 -1344.43	3591.81 - 3463.64
43	0.5116 - 0.5349	1344.44 -1368.95	3463.63 - 3319.64
44	0.5350 - 0.5587	1368.96 -1385.09	3319.63 - 3159.41
45	0.5588 - 0.6044	1385.10 -1424.23	3159.40 - 3002.93
46	0.6045 - 0.6509	1424.24 -1456.80	3002.92 - 2755.17
47	0.6510 - 0.7342	1456.81 -1530.40	2755.16 - 2487.46
48	0.7343 - 0.8220	1530.41 -1607.57	2487.45 - 2175.58
49	0.8221 - 0.9299	1607.58 -1777.45	2175.57 - 1671.86
50	0.9300+	1777.46+	1671.85 - 1.00

[FR Doc. 84-8929 Filed 4-3-84; 8:45 am]
BILLING CODE 4000-01-C

PART - B: SPECIAL NEEDS

GRADUATE PUBLIC

POINT	NEED PERCENT	NEED DOLLARS
1	0.0001 - 0.0942	0.01 - 645.59
7	0.0943 - 0.1869	645.60 - 1380.94
19	0.1870 - 0.3619	1380.95 - 1408.23
32	0.3620 - 0.3785	1408.24 - 1675.49
50	0.3786+	1675.50+

PART - B: SPECIAL NEEDS

GRADUATE PRIVATE

POINT	NEED PERCENT	NEED DOLLAR
1	0.0001 - 0.0176	0.01 - 449.62
2	0.0177 - 0.0248	449.63 - 577.12
3	0.0249 - 0.0315	577.13 - 595.20
4	0.0316 - 0.0401	595.21 - 618.31
5	0.0402 - 0.0567	618.32 - 669.46
6	0.0568 - 0.0618	669.47 - 728.18
7	0.0619 - 0.0635	728.19 - 783.84
8	0.0636 - 0.0650	783.85 - 813.56
9	0.0651 - 0.0863	813.57 - 848.67
10	0.0864 - 0.0994	848.68 - 873.85
11	0.0995 - 0.1018	873.86 - 881.80
12	0.1019 - 0.1028	881.81 - 897.93
13	0.1029 - 0.1113	897.94 - 949.89
14	0.1114 - 0.1170	949.90 - 968.59
15	0.1171 - 0.1299	968.60 - 969.71
16	0.1300 - 0.1419	969.72 -1011.31
17	0.1420 - 0.1461	1011.32 -1018.04
18	0.1462 - 0.1478	1018.05 -1024.48
19	0.1479 - 0.1605	1024.49 -1030.75
20	0.1606 - 0.1629	1030.76 -1071.02
21	0.1630 - 0.1737	1071.03 -1100.22
22	0.1738 - 0.1777	1100.23 -1112.27
23	0.1778 - 0.1785	1112.28 -1127.49
24	0.1786 - 0.1816	1127.50 -1301.17
25	0.1817 - 0.1855	1301.18 -1360.01
26	0.1856 - 0.1913	1360.02 -1369.27
27	0.1914 - 0.1977	1369.28 -1415.09
28	0.1978 - 0.2021	1415.10 -1444.43
29	0.2022 - 0.2044	1444.44 -1448.95
30	0.2045 - 0.2062	1448.96 -1512.23
31	0.2063 - 0.2098	1512.24 -1517.85
32	0.2099 - 0.2130	1517.86 -1543.44
33	0.2131 - 0.2307	1543.45 -1584.03
34	0.2308 - 0.2367	1584.04 -1589.99
35	0.2368 - 0.2400	1590.00 -1604.72
36	0.2401 - 0.2618	1604.73 -1635.81
37	0.2619 - 0.2625	1635.82 -1643.40
38	0.2626 - 0.2736	1643.41 -1664.07
39	0.2737 - 0.2833	1664.08 -1766.45
40	0.2834 - 0.2858	1766.46 -1802.77
41	0.2859 - 0.2954	1802.78 -1945.64
42	0.2955 - 0.3064	1945.65 -1955.76
43	0.3065 - 0.3174	1955.77 -2028.77
44	0.3175 - 0.3203	2028.78 -2258.91
45	0.3204 - 0.3520	2258.92 -2275.66
46	0.3521 - 0.3717	2275.67 -2580.90
47	0.3718 - 0.4514	2580.91 -2772.57
48	0.4515 - 0.5237	2772.58 -3400.06
49	0.5238 - 0.6939	3400.07 -3563.35
50	0.6940+	3563.36+

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Uranium Hexafluoride; Separative Work Charges and Base Charges for Natural Uranium

AGENCY: Office of Uranium Enrichment, Department of Energy.

ACTION: The Department of Energy (DOE) hereby announces revisions to the Notice entitled "Uranium Hexafluoride: Separative Work Charges, and Base Charges for Natural Uranium" published in the **Federal Register** on September 29, 1977 (42 FR 51636), as amended by 43 FR 49831 on October 25, 1978, 44 FR 51297 on August 31, 1979, 45 FR 50928 on July 31, 1980, 46 FR 25338 on May 6, 1981, and 47 FR 7483 on February 19, 1982, hereinafter referred to as the Notice.

SUMMARY: Paragraph 1 of the Notice is deleted and the following is inserted in lieu thereof:

1. The current charges for uranium enrichment services are $138.65 per separative work unit (SWU) under Long-term Fixed-Commitment (LTFC) and Adjustable Fixed-Commitment (AFC) contracts and $149.85 per SWU under Requirements contracts.

2. Section 161v of the Atomic Energy Act of 1954, as amended, requires recovery of enrichment costs over a reasonable period of time. The Department of Energy (DOE) has established a 10-year pricing period as a reasonable period of time. We have reviewed our costs based on the FY 1985 operating enrichment strategy and have determined that the cost recovery formula price changes are necessary.

3. For purposes of developing prices, a conservative demand level and Operating Plan were used to arrive at a cost recovery price. The major assumptions are:

—The demand projection used assumed 75 percent of existing customers convert to the new contract and all those who do convert elect to purchase 70 percent of their requirements from DOE
—A 4-building Gas Centrifuge Enrichment Plant using Set V centrifuge machines except Set III machines are used in approximately one-half of the first process building
—No relief from capacity charges for power not taken
—All costs are in 1985 dollars

The resulting price is $135 per SWU.

4. DOE has since 1972 experienced slippages in sales estimates in excess of those used in developing operating plans and base prices. These slippages result in increasing unit costs for separative work since there are less units of sales to recover the fixed costs of production. Because the slippages have varied between contract type, a risk surcharge has been included in pricing to assure an equitable distribution of costs. The principle of recognizing risk differential between contract types has been consistently applied. The Requirements contract price has had a risk factor since 1972 when the first new contract type, the Fixed-Commitment contract, was introduced. The risk factor is based on a percentage slippage in sales. This percentage is then applied to fixed cost of production to arrive at a risk surcharge.

5. Previously there was no risk factor associated with the Fixed-Commitment contract. However, the most recent annual forecast of sales shows for the first time a significant slippage in sales under Fixed-Commitment contracts. The principle of recognizing risk differential between contract types needs to recognize the increase in unit cost of production that results from Fixed-Commitment contract slippages. Accordingly, a risk surcharge is now required for Fixed-Commitment contract purchases.

6. In arriving at a percentage loss in sales, we have continued the practice, used since 1972, of comparing our most recent projection of sales by contract type to the forecast made 1 year earlier. Under this year's calculation, Requirements contracts had slipped by about 50 percent and Fixed-Commitment by about 30 percent. Applying these percentages to the fixed cost of production, risk factors of 19 and 16 percent, respectively, were obtained.

7. The resulting prices are $157 per SWU for Requirement contracts and $153 per SWU for Fixed-Commitment contracts. A provision in the Requirements contracts limits the amount to be charged under the contract to the calculated charge or a ceiling charge, whichever is lower. The ceiling charge is expected to be lower than the calculated charge at the time this charge would be effective. The Requirements contract price of $157 per SWU on the ceiling charge will become effective on October 1, 1984. The $153 per SWU charge for Fixed-Commitment contracts will become effective on October 1, 1984.

8. At this time there is no basis for assigning a risk factor to the Utility Services (US) contract which is a new contract type. The charge for SWU furnished pursuant to the US contract is $135.

9. The charge per SWU furnished under other than Requirements or Fixed-Commitment contracts will be $135.

EFFECTIVE DATE: This notice is effective April 4, 1984.

Date: March 31, 1984.

Shelby T. Brewer,

Assistant Secretary for Nuclear Energy.

[FR Doc. 84-8132 Filed 4-3-84; 8:45 am]
BILLING CODE 6450-01-M

Uranium Hexafluoride; Separative Work Charges, and Base Charges for Natural Uranium

AGENCY: Office of Uranium Enrichment, Department of Energy.

ACTION: The Department of Energy (DOE) hereby announces changes in the base charges for uranium in the form of uranium hexafluoride (UF_6). Accordingly, the notice entitled, "Uranium Hexafluoride: Separative Work Charges, and Base Charges for Natural Uranium," as published in the **Federal Register** on September 29, 1977 (42 FR 51636), as amended most recently by notice published on December 7, 1983 (48 FR 54862), is further amended by deleting paragraph 2 and inserting the following paragraph in lieu thereof:

2. Base Charges for Natural Uranium

(a) The base charge for DOE uranium provided on a "split tails" basis, is $26.00 per kg of contained uranium in the form of UF_6.

(b) The base charge for customers having a long-term agreement with DOE is $38.38 per pound of contained U_3O_8 in the form of concentrate and $105.95 per kg of contained uranium in the form of UF_6.

(c) The base charge for all other customers for enriched uranium is $39.43 per pound of contained U_3O_8 in the form of concentrate and $108.55 per kg of contained uranium in the form of UF_6.

EFFECTIVE DATE: This notice is effective April 4, 1984.

Dated: March 31, 1984.

Shelby T. Brewer,

Assistant Secretary for Nuclear Energy.

[FR Doc. 84-8133 Filed 4-3-84; 8:45 am]
BILLING CODE 6450-01-M

Uranium Supply Policy

AGENCY: Office of Uranium Enrichment, Department of Energy.

ACTION: The Department of Energy (DOE) hereby announces a revision to its policy for supplying natural uranium and enriched uranium. Accordingly, the notice entitled "Uranium Supply Policy" as published in the **Federal Register** on September 29, 1977 (42 FR 51636), is amended by deleting paragraph 7 and

inserting the following new paragraph 7 in lieu thereof: 7. DOE has determined that the base charge for uranium will be determined as follows:

(a) The base charge for DOE uranium provided on a "split tails" basis will be set at DOE's average historical costs for natural uranium.

(b) The base charge for customers having a long-term agreement with DOE for the sale or lease of enriched uranium will be the weighted average price of all firm price and market price commercial natural uranium purchases during the previous year.

(c) The base charge for all other customers for enriched uranium will be the weighted average of prices paid during the previous year for natural uranium purchased under commercial contracts requiring payment of "market price at the time of delivery."

EFFECTIVE DATE: This notice is effective April 4, 1984.

Date: March 31, 1984.

Shelby T. Brewer,

Assistant Secretary for Nuclear Energy.

[FR Doc. 84-9134 Filed 4-3-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240042, PH-FRL 2556-8]

Special Local Need Registrations; Voluntary Cancellations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of section 24(c) registrations of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. The section 24(c) registration of these products has already been cancelled by the issuing State. Distribution or sale of these products by the registrant, using the section 24(c) label, after the effective date of cancellation will be considered a violation of the FIFRA.

EFFECTIVE DATE: May 4, 1984.

ADDRESS: By mail, submit comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

Lela Sykes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 718C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2126).

SUPPLEMENTARY INFORMATION: The following companies (registrants) have requested that EPA voluntarily cancel section 24(c) registrations:

Registrants:

1. Abbott Laboratories, North Chicago, IL 60084.
2. AgBioChem, Inc., 3 Fleetwood Court, Orinda, CA 94563.
3. American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540.
4. BASF Wyandotte Corp., 100 Cherry Hill Rd., P.O. Box 18, Parsnippany, NJ 07054.
5. Burroughs Welcome Co., Welcome Animal Health Div., 2000 South 11th St., Kansas City, KS 66103.
6. Cargill Research Department, Box 9300, Minneapolis, MN 55440.
7. Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640.
8. Drexel Chemical Co., 2487 Pennsylvania St., P.O. 9306, Memphis, TN 38109.
9. Elanco Products Co., A Division of Eli Lily & Co., 740 South Alabama St., Indianapolis, IN 46285.
10. Fairmont Chemical Co., Inc., 117 Blanchard St., Newark, NJ 07015.
11. Hess & Clark, Inc., 7th and Orange Sts., Ashland OH 44805.
12. JMS Flower Farms, Inc., 1105 25th Ave., Vero Beach FL 32960.
13. Koppers Co., Inc., Occupational Health and Product Safety, Pittsburgh, PA 15219.
14. Landia Chemical Co., P.O. Drawer AO, Landia, FL 33802.
15. Mallinckrodt, Inc., Mallinckrodt and Second Sts., P.O. Box 5439, St. Louis, MO 63147.
16. Micro Chemical Co., P.O. Box 711, Winnsboro, LA.
17. Moorman Manufacturing Co., 1000 North 30th St., Quincy, IL 62301.
18. Nitragin Co., 3101 W. Custer Ave., Milwaukee, WI 53209.
19. PBI/Gordon Corp., 1217 West 12th St., P.O. Box 4090, Kansas City, MO.
20. PPG Industries, Inc., P.O. Box 31, Barberton, OH 44203.
21. Prentiss Drug and Chemical Co., Inc., C.B. 2000, Floral Park, NY 11011.
22. Ralston Purina Co., Checkerboard Sq., St. Louis, MO 63164.
23. Residex Corp., 225 Terminal Ave., Clark, NJ 07066.
24. S & A Chemical, Inc., P.O. Box 8012, Boise, ID 83707.
25. Soils Chemical Corp., 1150 Red Gum, Anaheim CA 92803.
26. Stauffer Chemical Co., 1200 South 47th St., Richmond, CA 94804.
27. Stephenson Chemical Co., Inc., P.O. Box 87188, College Park GA 30337.
28. Uniroyal Chemical, Division of Uniroyal, Inc., 74 Amity Rd., Bethany CT 06525.
29. Upjohn Co., Kalamazoo, MI 49001.
30. Weyerhaeuser Co., Tacoma, WA 98477.

The following registrations have been voluntarily cancelled:

Special local need register No.	Product name	Registrant	Date registered
Connecticut			
CT 77 0007	Devrinol 50-WP	Stauffer Chemical Co	10/14/77
CT 77 0009	Devrinol 10-G	do	12/1/77
Florida			
FL 77 0013	Stephenson Chemicals 20% Lindane E.C	Stephenson Chemical Co	5/17/77
FL 77 0028	Chlordane 5 Granular	Landia Chemical Co	9/26/77
FL 77 0029	Lanco Chlordane 10 G	do	9/26/77
FL 77 0030	Chlordane 245 Granular	do	9/26/77
Idaho			
ID 76 0011	Dursban M	Dow Chemical USA	8/26/76
ID 77 0002	Stauffer Magnetic 6 Flowable Sulfur	Stauffer Chemical Co	3/1/77
ID 77 0015	Dyfonate 4E Emulsifiable Liquid	do	5/3/77
ID 77 0016	Dyfonate 10G	do	5/24/77
ID 77 0022	Du Ter Fungicide	Uniroyal Chemical	6/10/77
ID 77 0023	Dow General Weed Killer	Dow Chemical USA	9/12/77
ID 78 0005	Vernam 6.7E	Stauffer Chemical Co	4/4/78
ID 78 0006	Evershield RTU 1050 Seed Protectant	Cargill Research Dept	4/20/78
ID 79 0008	Echol Micronized Wettable Sulphur	S & A Chemical, Inc	3/5/79
ID 79 0009	Echol 6 Flowable Sulphur	do	3/5/79
Illinois			
IL 76 0001	Premerge 3 Dinitro Amine Herbicide	Dow Chemical USA	1/16/76
IL 76 0002	Lorsban 4E	do	2/7/76
IL 76 0004	Dow General Weed Killer	do	4/17/76

Special local need register No.	Product name	Registrant	Date registered
IL 81 0007	Insectrin WP	Hess & Clark, Inc	8/13/81
IL 82 0008	Basagran Herbicide	BASF Wyandotte Corp	8/11/82
	Iowa		
IA 78 0002	Lorsban 4E	Dow Chemical USA	2/22/78
IA 81 0012	Lorsban 15G	do	8/2/81
IA 81 0014	Atroban Insecticide Ear Tag	Burroughs Welcome Co	10/1/81
	Louisiana		
LA 77 0003	Stephenson Chemicals 20% Lindane E.C	Stephenson Chemical Co	1/27/77
LA 77 0010	Oxy Lesfex-3 Chlorate Desiccant and Defoliant	Uniroyal Chemical	7/22/77
LA 78 0004	Dursban 4E	Dow Chemical USA	2/28/78
LA 78 0005	Basagran Herbicide	BASF Wyandotte Corp	3/6/78
LA 78 0012	Surflan 75W	Elanco Products Co	4/24/78
LA 78 0013	do	do	5/1/78
LA 78 0014	Dipel WP	Abbott Labs	5/1/78
LA 78 0016	Lorsban 4E	Dow Chemical USA	5/17/78
LA 78 0025	Defol	Drexel Chemical Co	9/4/78
LA 78 0026	De-Pester Lindane E-1	Uniroyal Chemical	10/2/78
LA 79 0014	Ded-Weed 40 Amino Salt	do	3/21/79
LA 80 0005	Pro-Treat L	Nitragin Co	3/7/80
LA 81 0018	Basagran Herbicide + Blazer Herbicide	BASF Wyandotte Corp	4/6/81
LA 81 0019	Prowl® Herbicide	American Cyanamid Co	5/4/81
LA 81 0025	Triple Kill 5 "L"	Micro Chemical Co	6/23/81
LA 81 0026	Triple Kill B6	do	6/23/81
LA 81 0034	Lorsban 4E	Dow Chemical USA	7/10/81
LA 82 0001	Dowfume W-100	do	2/2/82
LA 82 0002	Dowfume W-90	do	2/2/82
LA 82 0003	Dowfume W-85	do	2/2/82
LA 82 0006	Cythion® Insecticide/Malathion ULV	American Cyanamid Co	5/19/82
LA 82 0021	Freestyle Calcium Hypochlorite 65%	Uniroyal Chemical	8/15/82
LA 82 0022	Metham	Helena Chemical Co	6/28/82
LA 82 0024	Micro Blend 24	Micro Chemical Co	8/30/82
LA 82 0025	do	do	8/30/82
LA 83 0017	Treflan M.T.F	Elanco Products Co	4/13/83
	Maryland		
MD 77 0002	Stephenson Chemicals 20% Lindane E.C	Stephenson Chemical Co	2/25/77
MD 77 0003	Residex Lindane 20% Emulsifiable	Ridex Corp	5/4/77
	Massachusetts		
MA 78 0006	Devrinol; 10G Selective Herbicide Granules	Stauffer Chemical Co	9/15/78
	Missouri		
MO 77 0008	Premerge 3 Dinitro Amine Herbicide and Premerge Dinitro Weed Killer.	Dow Chemical USA	9/20/77
MO 78 0006	Lorsban 4E	do	8/23/77
MO 78 0007	Dursban 4E Emulsifiable	do	4/14/78
MO 78 0015	Hinder	Uniroyal Chemical	8/3/78
MO 78 0021	Drexel Defol	do	11/8/78
MO 79 0002	Galltrol-A	AgBiochem, Inc	3/6/79
MO 79 0006	Leafex-3	Uniroyal Chemical	9/25/79
MO 80 0005	Pro-Treat L	Nitragin Co	3/18/80
MO 80 0010	Atroban WP	Burroughs Welcome Co	5/1/80
MO 80 0020	Moorman's Insectaban E.C	Moorman Mfg. Co	9/16/80
MO 80 0021	Moorman's Insectaban WP	do	9/16/80
MO 80 0022	Atroban WP	do	9/16/80
MO 80 0004	Atroban Insecticide Ear TAg	do	3/12/81
MO 81 0005	Atroban Insecticide Ear Tag	Burroughs Welcome Co	3/12/81
MO 81 0006	Purina Hard Hitter E.C	Ralston Purina Co	3/12/81
MO 81 0007	Purina Hard Hitter W.P	do	3/12/81
MO 81 0014	Insectrin E. C	Hess & Clark, Inc	4/3/81
MO 81 0015	Insectrin W.P	do	4/3/81
MO 81 0023	Prowl® Herbicide	American Cyanamid Co	5/1/81
MO 82 0004	Ethylene Dibromide	Dow Chemical USA	2/10/82
MO 82 0005	Dowfume W-90	do	2/10/82
MO 82 0006	Dowfume W-85	do	2/10/82
	New Jersey		
NJ 76 0003	Stauffer Captan Fungicide 50-W	Stauffer Chemical Co	5/26/76
NJ 79 0006	Devrinol 50WP	do	3/19/79
NJ 81 0019	Stephenson Chemicals 20% Lindane E.C	Stephenson Chemical Co	7/1/81
NJ 82 0007	Lorsban 15G	Dow Chemical Co	4/16/82
NJ 82 0019	Devrinol 10-G	Stauffer Chemical Co	11/12/82
	New York		
NY 77 0001	Dyfonate Thiram 5-10 G	Stauffer Chemical Co	1/13/77
NY 77 0008	Residex Lindane 20% Emulsifiable	Residex Corp	11/29/77
NY 78 0025	Dow General Weed Killer	Dow Chemical USA	9/7/78
NY 79 0012	Stephenson Chemicals 20% Lindane E.C	Stephenson Chemical Co	7/25/79
NY 81 0001	Galltrol-A	AgBioChem, Inc	1/7/81
NY 81 0016	Prentox Malathion W-25	Prentiss Drug & Chemical Co	7/30/81
NY 82 0002	Atroban Insecticide Ear Tag	Burroughs Welcome Co	3/22/82
NY 82 0008	Lorsban 4E	Dow Chemical USA	4/16/82
NY 82 0007	Lorsban 15G	do	4/16/82

Special local need register No.	Product name	Registrant	Date registered
	North Carolina		
NC 76 0001	Premerge Dinitro Weed Killer	Dow Chemical USA	8/9/76
NC 76 0002	Premerge 3 Dinitro Amine Herbicide	do	8/9/76
NC 77 0001	Stephenson Cdhemicals 20% Lindane E.C	Stephenson Chemical Co	1/5/77
NC 78 0004	Vernam Atrazine 10-5.6, Devrinol 50-WP, Tillam 5-E Selective Herb.	Stauffer Chemical Co	2/7/78
NC 78 0033	Mold Control Concentrate 50	Koppers Co., Inc	9/12/78
NC 78 0034	FST-7	Fairmont Chemical Co	11/21/78
NC 79 0004	Prowl Herbicide	American Cyanamid Co	2/15/79
NC 79 0011	Vernam 7-E	Stauffer Chemical Co	3/30/79
NC 79 0014	Lorsban 4E	Dow Chemical USA	4/5/79
NC 79 0015	Lorsban 15G	do	4/5/79
NC 79 0016	Devrinol 50-WP	Stauffer Chemical Co	4/6/79
NC 79 0027	Premerge 3	Dow Chemical USA	7/30/79
NC 80 0007	Security Brand Di-Chlor-Mulsion	Woolfolk Chemical Works	2/29/80
NC 81 0002	Lorsban 4E	Dow Chemical USA	1/20/81
NC 81 0003	Lorsban 15G	do	1/20/81
	North Dakota		
ND 76 0002	Treflan E.C	Elanco Products Co	4/29/76
ND 78 0004	Treflan E.C	do	4/18/78
ND 80 0004	Treflan M.T.F	do	3/31/80
ND 82 0009	Amine 400 2,4-D Weed Killer	PBI/Gordon Corp	5/3/82
	Ohio		
OH 77 0002	Basagran Herbicide	BASF Wyandotte Corp	3/16/77
OH 79 0011	Hinder	Uniroyal Chemical	7/26/79
OH 80 0005	Treflan E.C	Elanco Products Co	5/1/80
OH 81 0001	Atroben Insecticide Ear Tag	Burroughs Welcome Co	2/11/81
	Oklahoma		
OK 76 0013	Dipel WP	Abott Labs	6/14/76
OK 76 0014	Dipel LC-Biological Insecticide Liquid Concentrate.	do	6/14/76
OK 76 0020	De-Fend E-267	Uniroyal Chemical Co	8/29/76
OK 76 0021	Du-Ter Fungicide	do	8/29/76
OK 76 0023	Evershield RTU 1050 Seed Protectant	Cargill Research Dept	12/31/76
OK 79 0006	Hinder	Uniroyal Chemical Co	4/24/79
OK 79 0013	Atroben W.P	Burroughs Welcome Co	8/2/79
OK 79 0020	Drop-Leaf Harvest Aid	Uniroyal Chemical Co	9/25/79
OK 80 0001	Treflan E.C	Elanco Products Co	1/28/80
OK 80 0016	Du-Ter Flowable 30	Uniroyal Chemical Co	10/15/80
OK 81 0001	Lorsban 4E	Dow Chemical USA	1/16/81
OK 81 0002	Lorsban 15G	do	1/16/81
OK 81 0003	Atroben Insecticide Ear Tag	Burroughs Welcome Co	2/4/81
	Oregon		
OR 76 0015	Devrinol 50-WP	Stauffer Chemical Co	6/1/76
OR 76 0026	Carbamate	Weyerhaeuser Co	5/9/76
OR 76 0031	Dow Tordon 155 Mixture Brush Killer	Dow Chemical USA	8/9/76
OR 77 0018	Dyfonate 10G and Dyfonate 4E Emulsifiable Liquid.	Stauffer Chemical Co	3/23/77
OR 77 0021	Stauffer Magnetic 6 Flowable Sulphur	do	4/12/77
OR 77 0022	Echol 6 Flowable Sulphur	S & A Chemical, Inc	4/19/77
OR 77 0023	Micronized Wettable Powder	S & A Chemical, Inc	4/19/77
OR 77 0027	Bravo 6F	Weyerhaeuser Co	6/7/77
OR 77 0028	Daconil 2787 Flowable Fungicide	do	6/7/77
OR 77 0035	Orthene Forest Spray	do	6/8/77
OR 77 0046	Devrinol 50-WP	Stauffer Chemical Co	6/23/77
OR 77 0048	Gallet	AgBioChem, Inc	6/29/77
OR 77 0052	Devrinol 50-WP	Stauffer Chemical Co	7/6/77
OR 77 0056	Dow General Weed Killer	Dow Chemical USA	9/9/77
OR 77 0065	Vernam 6.7E	Stauffer Chemical Co	10/17/77
OR 78 0016	Truben Brand Fungicide 30% Wettable Powder	Weyerhaeuser Co	5/26/78
OR 78 0032	Lorsban 4E	Dow Chemical USA	6/26/78
OR 79 0001	Basagran Herbicide	BASF Wyandotte Corp	1/3/79
OR 79 0017	Evershield RTU 1050 Seed Protectant	Cargill Research Dept	4/5/79
OR 79 0031	Botran 75W Fungicide	Upjohn Co	4/23/79
OR 79 0032	Thuricide HP Potency Aqueous Concentrate	Uniroyal Chemical	4/27/79
OR 79 0033	Thuricide HP Spray Concentrate	do	4/27/79
OR 79 0050	Thuricide HP Potency Aqueous Concentrate	do	7/26/79
OR 79 0051	Thuricide HP Spray Concentrate	do	7/26/79
OR 80 0032	Lorsban 4E	Dow Chemical USA	4/4/80
OR 80 0033	Lorsban 15G	do	4/4/80
OR 80 0056	Surpass 6.7E Selective Herbicide	Stauffer Chemical Co	8/2/80
OR 81 0002	That Big 8 Flowable Sulfur	Stoller Chemical Co	1/7/81
	Pennsylvania		
PA 79 0007	Kocide 30	Mallinckrodt, Inc	4/11/79
	Rhode Island		
RI 76 0001	Stephenson Chemicals 20% Lindane E.C	Stephenson Chemical Co	12/6/76

Special local need register No.	Product name	Registrant	Date registered
South Carolina			
SC 76 0001	Stephenson Chemicals 20% Lindane E.C	Stephenson Chemical Co	8/25/76
SC 77 0007	Surflan 75w	Elanco Products Co	5/25/77
SC 79 0009	Prowl® Herbicide	American Cyanamid Co	8/20/79
SC 79 0015	Lorsban 15G	Dow Chemical USA	4/20/79
SC 79 0016	Lorsban 4E	do	4/24/79
SC 79 0017	FST-7	Fairmont Chemical Co	4/30/79
SC 79 0019	Cythion® Insecticide	American Cyanamid Co	5/3/79
SC 79 0020	Malathion ULV Concentrate	do	5/3/79
SC 79 0021	Vernam 7-E	Stauffer Chemical Co	5/14/79
SC 79 0022	JMS Stylet Oil	JMS Flower Farms, Inc	5/16/79
SC 79 0024	Surflan 75 W	Elanco Products Co	5/22/79
SC 80 0004	Treflan E.C		3/18/80
SC 80 0005	Vernam Atrazine 5-10 G	Stauffer Chemical Co	8/7/80
SC 81 0003	Lorsban 4E	Dow Chemical USA	3/23/81
SC 82 0018	Bud Nip	PPG Industries, Inc	8/15/82
South Dakota			
SD 77 0002	Treflan E.C	Elanco Products Co	4/6/77
SD 79 0002	Counter® 15G Systemic Insecticide-Nematicide	American Cyanamid Co	4/16/79
SD 79 0003	Avenge® 15G Wild Oat Herbicide		5/30/79
SD 79 0007	De-Fend E-267 Dimethoate	Uniroyal Chemical	6/26/79
SD 81 0019	Atroban Insecticide Ear Tag	Burroughs Welcome	5/18/81
UTAH			
UT 77 0007	Gallex	AgBioChem, Inc	4/18/77
UT 78 0004	Tordon 22K Weed Killer	Dow Chemicals USA	5/15/78
UT 79 0005	Dursban 44		2/5/79
UT 81 0014	That Big 6 Flowable Sulfur	Stoller Chemical Co	6/2/81
UT 81 0015	Chem Hoe 135-F13	PPG Industries, Inc	8/22/81
VIRGINIA			
VA 76 0009	Premerge Dinitro Weed Killer	Dow Chemical USA	5/27/76
VA 76 0010	Premerge 3 Dinitro Amine Herbicide		5/28/76
VA 77 0010	Stephenson Chemicals 20% E.C	Stephenson Chemical Co	5/5/77
VA 78 0001	Devrinol 10-G Ornamental	Stauffer Chemical Co	1/18/78
VA 78 0002	Devrinol 50 WP		1/18/78
VA 79 0007	Devrinol 50 WP and Tillam 6-E Selective Herbicide.		4/6/79
Washington			
WA 76 0011	Lorsban 4E	Dow Chemical USA	5/7/76
WA 76 0016	Tordon 22K Weed Killer		5/21/76
WA 76 0029	Dursban M		10/4/76
WA 77 0010	Stauffer Magnetic 6 Flowable Sulphur	Stauffer Chemical Co	4/4/77
WA 77 0027	Gallex	AgBioChem, Inc	6/21/77
WA 77 0037	Devrinol 50-WP	Stauffer Chemical Co	7/7/77
WA 77 0046	Devrinol 50-WP		10/11/77
WA 77 0049	Du-Ter Fungicide	Uniroyal Chemical	9/1/77
WA 77 0051	Dow General Weed Killer	Dow Chemical USA	9/13/77
WA 78 0026	Pyramin Herbicide	BASF Wyandotte Corp	5/2/78
WA 78 0031	Dyfonate 10G and Dyfonate 4E Emulsifiable Liquid.	Stauffer Chemical Co.	5/31/78
West Virginia			
WV 77 0002	Residex Lindane 20% Emulsifiable	Residex Corp	6/7/77
WV 78 0050	Stephenson Chemicals 20% Lindane E.C	Stephenson Chemicals Co	5/26/78
WV 80 0005	FST-7	Fairmont Chemical Co	6/16/80
Wisconsin			
WI 76 0002	Du-Ter	Uniroyal Chemical	6/14/76
WI 79 0001	Eradicane 6.7E	Stauffer Chemical Co	1/23/79
Wyoming			
WY 80 0002	Dowcil A-40 Antimicrobial	Dow Chemical USA	2/27/80
WY 81 0013	Atroban Cattle Ear Tag	Burroughs Welcome Co	10/22/81

Cancellation of these section 24(c) registrations shall be effective May 4, 1984. Any sale or distribution by the registrant of the product bearing the section 24(c) label after this date will violate FIFRA section 12(a)(2)(K). Sale or distribution by distributors other than the registrant of existing stocks of any of these cancelled products bearing the section 24(c) label will not be considered a violation of FIFRA. It should be noted, however, that such sale or distribution may not be permitted by applicable State law.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP 240042]" and the specific section 24(c) registration number. Any comments filed regarding this notice will be available for pubic inspection in Rm. 236, CM #2, at the address above, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA, as amended, 86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136)

Dated: March 23, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84-8914 Filed 4-3-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100009; PH-FRL 2555-6]

Laboratory for Information Science in Agriculture; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under section 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to the Laboratory for Information Science in Agriculture, 419 Canyon Avenue, Suite 320, Fort Collins, Colorado 80521, under Cooperative Agreement No. CR 8109680-10. This contractor will be using samples of various registrant-submitted documents, studies, and related information in connection with the analyses and design of information/decision support systems for the Office of Pesticide Programs. No registrant-submitted data will be used by the contractor in connection with making actual decisions under the regulatory authorities granted by FIFRA. Some of the information that will be made available to this contractor has been claimed to be confidential business information (CBI). The Laboratory for Information Science in Agriculture has met all the requirements of 40 CFR 2.301(h)(2) and consequently the data will be transferred for performance of the contract. The action will enable the Laboratory for Information Science in Agriculture to fulfill the obligations of the agreement, and this notice serves to notify affected persons.

DATE: The Laboratory for Information Science in Agriculture will be given access to these documents no sooner than April 9, 1984.

FOR FURTHER INFORMATION CONTACT: By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Proteaction Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis

Highway, Arlington, Virginia, (703–557–2613).

SUPPLEMENTARY INFORMATION: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 10(e) provides that confidential business information (CBI), or business information which is alleged to be confidential, may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such CBI as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA section 7. Contractors are authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning the agreement with the Laboratory for Information Science in Agriculture, of Fort Collins, Colorado.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential information, whether such disclosure is made by an EPA employee or an EPA contractor.

The agreement with the Laboratory for Information Science in Agriculture specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and personnel of this contractor will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: March 21, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84-8880 Filed 4-3-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30238 PH-FRL 2526-1]

ICI Americas Inc.; Application To Register a Pesticide Product Containing a New Active Ingredient

Correction

In FR Doc. 84–3824 appearing on page 5828 in the issue of Wednesday, February 15, 1984, make the following correction.

In the second column, under the heading **SUPPLEMENTARY INFORMATION**, line nine should read "dimethyl-2 1, 2, 4-triazol-1-yl-pentan-3-".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Public Notice]

Radio Advisory Committee; Meeting

March 27, 1984.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled for 9:30 a.m., Thursday, April 12, 1984, in Room 330, 1200 19th Street, N.W. Washington, D.C.

The Committee will consider recommendations to the FCC concerning:

—Implementation of the new bilateral agreement between the United States and Canada on AM broadcasting which adapts to particular U.S. and Canadian needs the Final Acts of the 1981 Rio de Janeiro Conference on AM broadcasting in Region 2 and supersedes the North American Regional Broadcasting Agreement (NARBA), insofar as the United States and Canada are concerned.

—The development of similar revisions to the U.S. Mexican AM Radio Broadcasting Agreement; and

—Other business.

The meetings of the Committee are pubic, and are open for participation by all interested persons. The meeting scheduled for April, 1984, may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please contact the Committee Chairman, Louis C. Stephens, or Jonathan David, at FCC Headquarters (202) 632–7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8877 Filed 4-3-84; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1452]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

March 27, 1984.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision and update of Part 22 of the Rules (Public) Mobile Radio Services. (CC Docket No. 80–57.)

Filed by: Louis Schwartz, Malcolm G. Stevenson & Michael L. Volkov for Schwartz, Woods & Miller, on behalf of its radio common carrier clients on 2–27–84.

Subject: Amendment of Rules Concerning Medical Services Operations in the 450–470 MHz Band in the Special Emergency Radio Service. (PR Docket No. 81–416, RM–3500)

Filed By: Roy Nickels, MPH Director & S. Robert Miller, Communications Consultant for Office of Emergency Services Department of Health, State of New Jersey on 3–6–84; John D. Lane & Lisa Sullivan Gallant, Attorneys for Associated Public-Safety Communications Officers, Inc., on 3–8–84; Richard Neat, Director of Communications for The Maryland Institute for Emergency Medical Services Systems on 3–8–84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-8878 Filed 4-3-84; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 83–1145; Phase I; CC Docket No. 78–72; Phase I]

Investigation of Access and Divestiture Related Tariffs; MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order.

SUMMARY: This Order provides for continuation of status quo on interim intercarrier revenue-division arrangements and interconnections for Other Common Carriers during review of exchange access tariffs. This decision also orders the reexamination of rates of return for American Telephone and Telegraph Co. and exchange carriers. This action is necessary to ensure that carriers charge reasonable rates.

DATES: Tariffs for interconnections for Other Common Carriers should be refiled by April 9, 1984. Comments on Special Access are due April 16, with replies due April 30, 1984. Comments on other provisions of exchange access tariffs are due April 9, with replies due April 24, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Warren Lavey, Common Carrier Bureau, (202) 632–6910.

Memorandum Opinion and Order

In the matter of Investigation Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I; and MTS and WATS Market Structure CC Docket No. 78–72, Phase I.

Adopted March 28, 1984.
Released March 28, 1984.

By the Commission: Commissioner Patrick not participating.

I. Introduction

1. In the order released February 17, 1984 (FCC 84–51) (*ECA Tariff Order*), we directed carriers in the National Exchange Carrier Association (ECA) to file revised access service tariffs conforming to that order later than March 15 to be effective April 3, 1984 (para. 90). The ECA filed revised tariffs on March 15. In the order released March 7, 1984 (Mimeo No. 2802), the Common Carrier Bureau directed exchange carriers that had filed separate access service tariffs (non-ECA tariffs) to file revised tariffs conforming to that order no later than March 19 to be effective April 3, 1984 (para. 13). These exchange carriers filed revised tariffs on March 19. These orders provided authority for the tariffs to go into effect on less than the statutory notice period of ninety days, pursuant to 47 U.S.C. 203(b) and 47 CFR 61.58.

2. About two dozen parties urged us to reconsider and/or stay our schedule for the filing and review of the revised tariffs.[1] They claimed that a longer notice period was necessary for interested parties to analyze those tariffs to determine whether some provisions were unlawful. We also received an emergency petition filed by American Telephone and Telegraph Co. (AT&T) (February 27) for partial reconsideration of portions of the Commission's decision released February 15, 1984 in Docket CC 78–72, Phase I (MTS and WATS Market Structure, FCC 84–36) (*Further Reconsideration Order*) and the February 17, 1984, decision in Docket CC 83–1145, "which impose upon AT&T the exchange companies' revenue loss caused by the requirement that OCCs pay 55 percent less than AT&T for their access."[2] In their comments and reply comments on AT&T's emergency petition, the National Telecommunications and Information Administration (NTIA) and International Communications Association (ICA) urge us to reexamine and decrease promptly the current interstate authorized rate of return on rate base of 12.75%, which we established in 1981. In their reply comments, various exchange carriers oppose any effort to order a new interim prescription for rate of return or to lower the currently authorized rate of return.

3. In view of the considerations discussed in our order of March 20, 1984, and this order, we found that the public interest would be harmed by allowing the interstate access service tariffs to become effective on April 3. Initial analysis of these tariffs and the other materials submitted has shown that several of the major concerns identified in our orders of February 17 and March 7 and in the information request of February 24 have not been satisfied. Pursuant to our discretion and authority under Section 203(b) of the Communications Act of 1934, as amended, we decided on March 20, 1984, to modify the notice period for all the provisions of the ECA and non-ECA tariffs, extending the effective dates for the tariffs from April 3 to June 13, 1984. This extension gives ninety-days notice on the ECA tariff and 86-days notice on non-ECA tariffs. This action gives parties greater opportunity to comment on the revised tariffs. We hope that access tariffs can go into effect, in whole or part, prior to June 13, and the March 20 order established an expedited comment schedule to facilitate achievement of that goal.

II. Modified Notice Period

4. The interstate access service tariffs under investigation in Docket CC 83–1145 were filed by the ECA and 74 other exchange carriers on October 3, 1983, and were to become effective on ninety days notice on January 1, 1984. Under this schedule, the effective date of the access tariffs would have coincided with the AT&T divestiture; the tariffs would have implemented the access charge environment anticipated by both the Commission's *Access Charge Orders*[3] and by the *Modification of Final Judgment*.[4] Our initial review of the tariffs, however, revealed substantial issues of lawfulness requiring investigation. Accordingly, on October 19, 1983 (FCC 83–70), we suspended all of the access and divestiture related tariffs, set a new effective date of April 3, 1984, and began an investigation.

5. Over 50 interested parties filed comments on the rates, rate structures and terms contained in the interstate access service tariffs. The Commission's review of the tariffs, together with analysis of the comments and reply comments, culminated in the issuance of two orders, each more than 400 pages, which found the tariffs filed on October 3 to be unlawful, gave the carriers

[1] Petitions requesting an extended notice period were filed by the Ad Hoc Telecommunications Users Committee (Ad Hoc) and the Western Union Telegraph Co. (Western Union). Additional petitions and comments in support of the Ad Hoc and Western Union petitions were subsequently filed by Aeronautical Radio, Inc. (ARINC), the American Broadcasting Companies (ABC), CBS, Inc. (CBS) and the National Broadcasting Company (NBC), the Association of Data Processing Service Organizations (ADAPSO), the Association of Long Distance Telephone Companies (ALTEL), the Associated Press and Commodity News Services, Hughes Television Network, International Communications Association, ITT Communications Services, J.C. Penny Co., MCI Telecommunications, the National Association of Broadcasters, RCA Communications, Reuters Limited, Satellite Business Systems (SBS), Telesphere Network (TNI), TRT Telecommunications, the Utilities Telecommunications Council, U.S. Telephone, Inc. (USTEL) and Westinghouse Broadcasting and Cable, Inc. (Group W). AT&T has also filed comments in favor of deferring the effective date of the access service tariffs, but not for as long as has been requested by Ad Hoc and Western Union. Petitions and comments in opposition to the AD Hoc and Western Union petitions were filed by The Ameritech Operating Companies (Illinois Bell Telephone Co., Indiana Bell Telephone Co., Michigan Bell Telephone Co., The Ohio Bell Telephone Co. and Wisconsin Bell), Bell Communications Research, Inc., The NYNEX Companies (New York Telephone and New England Telephone & Telegraph Co.) and the United Telephone System, Inc. Reply comments were filed on March 16.

[2] AT&T contends that the interactive effect of these orders unlawfully discriminates against AT&T and results in an unlawful confiscation of its property. AT&T's petition includes an attachment presenting AT&T's projections of interstate revenues, expenses, and rate base for 1984. As a remedy, AT&T seeks a reduction in the OCC discount and an order barring exchange carriers from collecting from AT&T any revenue shortfall occasioned by that discount. On February 28, the Commission issued a public notice which requested comments on the AT&T petition by March 9, with reply comments by March 16. On March 2, the Chief, Common Carrier Bureau directed AT&T to respond to detailed questions about its forecasting methodologies and underlying data. More than 250 comments and reply comments were filed, most of which oppose the relief AT&T seeks. Many commenters question or oppose virtually every aspect of the AT&T petition and its supporting materials. A central issue addressed in many comments is whether AT&T's projections of revenues and expenses for 1984 are likely to prove accurate, particularly when compared with the projections contained in AT&T's 1983 tariff filings. With respect to particular major expense elements, some commenters challenge AT&T's estimates that maintenance expenses will increase by $327 million over 1983 estimates while AT&T's estimate of net plant in service dropped by 10%. Other commenters question the reasonableness of projections showing substantial increases in access charges ($1.878 billion), general ($.194 billions), and other expense elements. With respect to forecasts of revenues, AT&T's econometric models project a sharp reduction in domestic MTS revenues ($1.350 billion). Commenters sharply criticize the forecasting model's variable specification and design, stability, inclusion and non-inclusion of data, and the probative value which should be accorded to any estimates derived from AT&T's models. Commenters also question AT&T's contention that it cannot increase rates and revenues for tariffed services and argue that the price elasticity data AT&T filed do not support its petition.

[3] MTS/WATS Market Structure (CC Docket No. 78–72, Phase I), 93 FCC 2d 241 (1983), *modified on reconsideration*, FCC 83–356 (released August 22, 1983), *modified on further reconsideration*, FCC 84–30 (released February 15, 1984) *(Further Reconsideration Order)*.

[4] United States v. American Telephone and Telegraph Co., 552 F. Supp 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 103 S.Ct. 1240 (1983).

specific directions for revising the tariffs so as to comply with our rules, and set an effective date for revised tariffs—to be filed on March 15 and 19—of April 3.[5]

6. The emergency Petitions for Reconsideration and Petitions for Stay filed by Ad Hoc, Western Union and otehr parties [6] are essentially limited to the issue of whether the interval between March 5, and April 3 is sufficient to allow thorough review of the refiled tariffs. Ad Hoc, for example, argued that this notice period was insufficient to permit Meaningful Commission review of the tariffs and would deprive interexchange carriers and their customers of their right to be heard as to the lawfulness of the refiled tariffs. Specifically, Ad Hoc argued that, as a result of the Commission's *Further Reconsideration Order* and *ECA Tariff Order*, the refiled tariffs will be substantially different from those originally filed in 1980. Therefore, in its view, the refiled tariffs will amount to a new tariff filing, requiring a full ninety-day notice period under Section 203 of the Communications Act.[7]

7. Western Union's petition presented a similar argument specifically directed at the special access portions of the tariffs. It argued that the refiled tariffs will be completely changed after the Commisison's finding in the *ECA Tariff Order* that the original special access rate structure was unlawful. The refiled tariffs, it claims, will be at least as complex as the original filings, not fine-tuned versions of those already investigated.[8]

8. Parties filing in opposition to Ad Hoc's and Western Union's petitions argued that the interexchange carriers and other members of the public have had ample opportunity to comment in detail on the access tariffs since the initial filings. They claimed that, given the Commission's close scrutiny of the traiffs and the precise directions imposed by the *ECA Tariff Order*, and given the importance of implementing the new tariff structure, there was no reason to postpone, again, the date of effectiveness. According to these parties, the refiled tariffs would not trigger a ninety-day notice period under Section 203(b)(1) of the Communications Act because that section applies only to new tariffs. The refiled tariffs, in their view, are not new, but are instead merely compliance filings. Moreover, they claimed that even if the ninety-day notice period does apply to these tariffs, the Commission has authority under Section 203(b)(2) of the Act to modify the statutory notice requirement as a matter of discretion, for good cause shown. 47 U.S.C. 203(b)(2).

9. *Discussion.* In the *ECA Tariff Order*, we concluded that the filed access tariffs were functional vehicles for implementing the Access Charge Plan, but changes were required in many specific provisions and the structure proposed for Special Access was unreasonable and unlawful. Further information was also needed on the cost and rate developments to enable us to evaluate the reasonableness and accuracy of this process and of the rates themselves. In particular, it was impossible on the basis of the filed support information to assess the 1984 Budget and Company Views, which were ostensibly based on actual 1982 data adjusted to reflect divestiture, growth, and other factors. Because these views were the basis of all the BOC costs, revenues, and rates, it was indispensable that their development be fully explained and documented. The ECA and BOCs were requested to provide the necessary additional support information by letter from the Common Carrier Bureau dated February 24, 1984.

10. Although we recognized that the needed revisions would entail substantial changes in the filed tariffs, and that the further support information would require careful analysis, we hoped to be able to make an initial review of the revised tariffs and the support information during the period after the March 15 and 19 filing dates to determine if the tariffs might be allowed to become effective April 3. We have begun this initial review. The ECA has in very substantial part made the revisions we found necessary and complied conscientiously with the *ECA Tariff Order*. The additional support information also provides a much better picture of the rate development, although certain gaps remain. For example, the claimed effects of divestiture and subsequent projected growth were shown for only thirty-three of fifty-one study areas, comprising approximately two-thirds of all BOC Plant in Service.

11. Nevertheless, there are significant problems. Some additional tariff provisions are proposed but not explained or justified, for example a provision relating to the offering of presubscription. Some revised provisions are complicated and unclear. More importantly, the additional data contains obvious errors and inaccuracies. It is not clear whether some of these were reflected in rate calculations.[9] Some of the calculations, however, seem clearly to overtstate the BOC revenue requirements. For example, agregate BOC Plant in Service (excluding CPE) increased by only 11.0 percent in the year and a half from midyear 1982 to yearend 1983 according to actual figures reported to the FCC. The BOC Budget Views, however, are based upon projected growth from midyear 1982 to midyear 1984 (*i.e.*, an additional six months) of 18.0 percent. To achieve 18.0 percent two year growth would reequired an annualized growth rate of 13.0 percent in the remaining six months for which actual figures are not yet available. This projected growth rate is higher than any Plant in Service growth rate for at least the last seventeen years and much higher than the growth rates of 8.1 and 6.8 percent experienced by all BOCs in 1982 and 1983. If the actual growth trend of 11.0 percent for one and a half years were extended to June of 1984, the two year projected growth rate would be 15.0 percent. The 3.0 percent difference between this estimate and that of the BOCs used in the Budget View represents approximately $3.642 billion. In addition, the BOCs have in general projected increases in the percentage of

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[5] *See* para. 1 *supra*.

[6] *See* n.1 *supra*.

[7] Section 203(b)(1) of the Communications Act states: Nó change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after ninety days notice ot the Commission and to the public, which shall be published in such form and contain such information as the Commission may be regulations prescribe.

47 U.S.C. 203(b)(1).

[8] Western Union also claims that, under the Docket 20099 Settlement Agreement, it is entitled to a six-month notice period before filed rates become effective. *See* AT&T, 47 FCC 2d 660 (1974), 52 FCC 2d 727 (1975), *aff'd sub nom.* Carpenter v. FCC, 539 F.2d 242 (D.C. Cir. 1976). We considered, and rejected, this argument in the *ECA Tariff Order* at para. 50. Although we continue to believe that the OCCs have been afforded the notice contemplated in the Docket 20099 Agreement, some parties, including Western Union, dispute this position. Out of an abundance of caution, interested parties should address whether the Agreement continues to be in the public interest, accepting *arguendo* Western Union's legal analysis. Changes in the telecommunications industry, regulation, and the history and importance of these tariffs may weigh against viewing this Agreement as in the public interest. Commenters may wish to address whether continuing the six-month notice requirement would impose excessive burdens on other ratepayers and impair competition. *See* FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956); United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956). Comments on this issue are due April 16, with reply comments due April 30, 1984.

[9] For example, because of apparent clerical erors, Mountain States Telephone reports a post-divestiture *increase* in its Total Plant in Service in New Mexico from $837 million to $3.411 billion. The BOCs also inconsistently reported their pre-divestiture Customer Premise Equipment figures, rendering aggregate 1982 totals and separations factors incorrect. Aggregate 1983 Total Plant in Service is also misstated.

plant allocated as interstate since the 1982 post-divestiture views. These allocations would further increase interstate plant and revenue requirements without clear justification. Although wer are continuing to examine the cost support and the additional information (which also provides the first adequate opportunity for public scrutiny of the rate development), this initial review already indicates that the costs, revenue requirements, and hence the rates may be overstated.

12. If there is overstatement in this area, adjustment could alleviate the grevious impact projected by AT&T, Western Union and others. Based on its preliminary analysis of the revised Special Access sections of the ECA tariff, Western Union asserts that charges imposed on it would be even higher than under the earlier, unlawful provisions. Its total annual charges under the October 3, 1983, filing would have been $118 million, an increase of 371 percent over its present charges of $25 million. Western Union calculates that its annual charges would be $156 million under the March 15 ECA tariff. This would be a 525 percent increase over the present charges. (Reply of the Western Union Telegraph Company, Docket CC 83–1145, Phase I, March 16, 1984, attachment.) This substantial further increase is at a minimum puzzling because AT&T has also stated that charges imposed on it would increase. Yet the filing itself purportedly only restructures Special Access without increasing the revenues targeted by the October 3 rates. Moreover, as we noted in the *ECA Tariff Order*, para. 50, individual customers reported dramatic increases in Special Access rate levels under the October 3 tariffs. These increases ranged up to 11,000 percent. Included among the users expressing concern over the huge increases were Dow Jones, Musak, American Library Association, universities, press associates, and radio and television networks. Concerns that private line increases may drive these entities out of business, or at least make telecommunications so unaffordable as to alter their primary business, require this Commission to be diligent in reviewing the cost information submitted in justifying any rate increase. These concerns have not abated with the filing of new tariffs.

13. *Special Access.* In the February 17 and March 7 orders, we identified special access as an area of primary concern. We pointed to aspects of the special access provisions which were unreasonable, discriminatory, and violative of Commission decisions and policies. We ordered the carriers to replace those provisions and gave guidance for the development of lawful provisions. In addition, we noted that further information and, most likely, further investigation would be needed to probe the development and justification for these rates. By letter for the Chief, Common Carrier Bureau (February 24, 1984), we requested the exchange carriers to provide by March 15, *inter alia*, specific information necessary to meet their burden of proving that the proposed special access rate increases are reasonable.

14. A number of petitioning and commenting parties argue that they must be given an adequate opportunity to review and file comments on the special access provisions before the tariffs become effective. Extension of the effective date for the special access provisions beyond April 3 will allow them to review those provisions carefully and to file helpful, accurate comments. Our preliminary review shows that the special access provisions filed on March 15 and 19 are substantially different from those filed in 1983, and there may be some areas in which the special access provisions do not comply with our orders. In addition, it appears that the revised tariffs provide for large increases from the rates some customers pay under currently-effective tariffs. These customers should be given an adequate opportunity to analyze and comment on the revised tariffs. The extended notice period for parties to file new comments on the revised special access provisions will help ensure that these provisions are generally reasonable and workable before they are allowed to take effect.

15. We seek to avoid unnecessary delay in reviewing the revised special access provisions, recognizing that currently-effective tariffs and interim intercarrier revenue-division arrangements may be at tension with the approach of the *Modification of Final Judgment*,[10] and that the revised special access provisions are necessary to implement some features of the *Further Reconsideration Order* as well as the *MFJ*. Therefore, we are striving to have new tariffs take effect as soon as possible to replace the interim intercarrier arrangements, implement our access charge rules, and promote the public interest in other ways. Our decisions in Docket CC 83–1145 have attempted to speed the effective date for new, lawful tariffs by providing specific guidance and a short time for refiling tariffs. Yet, as we explained in our order in this proceeding that was released on December 29, 1983 (FCC 83–568), allowing questionable special access provisions to go into effect with an accounting order is not a viable alternative to delaying their effective date. See also para. 12 *supra*. Comments should be filed expeditiously so that we can decide whether to allow all or parts of the special access provisions to go into effect on or before June 13, to reject all or parts, or to prescribe. 47 U.S.C. §§ 204–205. Our March 20 order established that comments are due on the special access provisions on April 16, 1984, which is 32 days after the ECA tariffs were filed and 28 days after the non-ECA tariffs were filed. While this is less time than we allowed for comments on the 1983 tariffs, review of those tariffs and the orders in this proceeding will, we believe, permit interested parties to analyze and file comments more quickly on the revised tariffs. Reply comments are due April 30, fourteen days after the comments.

16. *Other Tariff Provisions.* The orders of February 17 and March 7 also directed the exchange carriers to revise provisions of the access tariffs other than those specifically for special access. these include provisions dealing specifically with switched access service, as well as general provisions applying to both switched and special access services. If the exchange carriers followed the guidance in the orders, it is likely that the definitions, rate structures, and most terms for switched access in the revised tariffs will be just and reasonable. But, our preliminary review of the revised tariffs has revealed some departures from the orders in these provisions. We recognize that delay of the switched access provisions will delay implementation of end-user charges for multiline business customers and the revised discount for Other Common Carriers ordered in the *Further Reconsideration Order*, and require some interim arrangements for switched as well as special access. Nevertheless, a notice period extending beyond April 3 appears necessary for interested parties to analyze and prepare comments on these provisions and on the cost justification for the proposed rates in light of the data filed in response to our information request.

[10] *See* United States v. Western Electric Co. and American Telephone and Telegraph Co., Civ. Action No. 82–0192, Misc. No. 82–0025 (PI) (filed Dec. 1, 1983). We fully acknowledge Judge Greene's concern that the access tariffs be implemented expeditiously. At the same time, we are certain that the Court would share the concern that we have in fulfilling our regulatory responsibility that the tariffs be generally reasonable and workable before they take effect. For example, the Court has made clear on several occasions its concern that access tariffs be reasonable and work no undue hardship on the telecommunications using public.

Also, the extended period will allow the Commission to direct the exchange carriers to change any provisions which fail to comply with our orders or otherwise are unlawful. We intend to complete our review of these other provisions expeditiously, and if possible, permit them to become effective prior to June 13. Pursuant to our March 20 order, interested parties may file comments on the provisions of the ECA and non-ECA tariffs other than those specifically dealing with special access on April 9, with reply comments due on April 24. This reply period may be shortened or eliminated by subsequent order after initial review of the tariffs and the April 9 comments. We hope that, with the cooperation of the exchange carriers in changing any provisions which appear unlawful, we can allow the provisions other than those specifically dealing with special access to go into effect within the next several weeks.

17. *Interim Arrangements.* Interim arrangements appear necessary to accommodate the extended notice period. We find that currently-effective interim intercarrier revenue-division arangements for all interstate services should continue in the interim period until the Commission allows revised tariffs to go into effect, orders some change in the arrangements, or the participating carriers reach other interim agreements. Judge Greene has approved a waiver of the *MFJ* for these arrangements only through April 3. Extension of these arrangements may require the parties to the antitrust agreement to seek further waiver of the *MFJ* as they believe appropriate. It will also delay any change in revenues that exchange carriers could realize through new tariffs. These considerations and others reinforce our commitment to rapid tariff review and short interim intercarrier arrangements. At the onset of the Docket CC 83–1145 investigation, the Commission gave notice that it would prescribe tariff arrangements if that action became necessary. The March 20 decision to extend the notice period established a new interim period extending 72 days or less beyond April 3. From the tenor of the debate concerning AT&T's Emergency Petition, it is clear that AT&T and the exchange carriers are unlikely to reach negotiated agreements for interim arrangements by April 3. Any possible interruption of service or drop in efficiency caused by the failure to extend existing arrangements or reach reasonable new agreements would be against the public interest, 47 U.S.C. 151, 214. Accordingly, it is necessary for us to impose interim arrangements to prevent any lapse in service. *See Lincoln Tel. & Tel. Co. v. FCC*, 659 F.2d 1092 (D.C. Cir. 1981).

18. Pursuant to 47 U.S.C. 154(i), 201(a), and 205(a), the Commission is authorized to establish divisions of charges for service provided by through routes. Also, we have the authority to declare unlawful and prescribe any practice in intercarrier contracts, 47 U.S.C. 205(a), 211(a). We can indicate to carriers practices which appear reasonable. *Trans Alaska Pipeline Rate Cases*, 436 U.S. 631 (1978). Of course, if we had suspended these tariffs, we could still allow "part" of them to take effect. 47 U.S.C. 204 (a), (b).[11] The fact that the tariff lapse is caused by the notice requirement of Section 203(b)—instead of a Section 204 suspension (which we hope we will not have to invoke)—does not mean we are powerless to require service to continue to be rendered and to impose charges therefor. The Commission has ample authority under Section 4(i) to "issue such orders, not inconsistent with [the Communications] Act, as may be necessary in the execution of its functions." *See Lincoln Tel., supra; Trans Alaska, supra.*

19. In view of the exigencies caused by the postponement of the effective date of the exchange carriers' tariffs, we find that the public interest requires us to maintain the status quo as constituted in the existing intercarrier revenue-division arrangements, unless there are carrier agreements for extension or replacement of the present arrangements. These arrangements were mutually agreed upon by the participating carriers under circumstances substantially similar to the present situation. While it is apparent from the debate concerning AT&T's Emergency Petition that some exchange carriers feel they might fare better under different arrangements, experience of three months with these arrangements appears to show that each participating carrier is earning at least as much as it did in 1983; no participating carrier can claim that the existing arrangements are insufficient to cover its costs or confiscatory. Moreover, on the basis of our investigation so far in Docket CC 83–1145, we are confident that the existing arrangements fall within the requirements of reasonableness established in the Act. *See Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968). At this time, we simply do not have enough certainty about the numbers filed by the parties to find that arrangements departing from the status quo would be just and reasonable. Therefore, on the basis of the pleadings received from the participating carriers and the comments thereon received from other interested parties in this docket, we prescribe that—unless there is some new agreement among the participating carriers regarding replacements before April 3, 1984—the carriers participating in currently-effective interim intercarrier revenue-division arrangements must extend those arrangements until the Commission allows the revised tariffs to take effect, orders some change in the arrangements, or the carriers reach other interim agreements which are acceptable to the Commission.

20. A second interim arrangement may be necessary because of the expiration of tariffs and contracts reflecting the ENFIA agreement (e.g., BSOC Tariff FCC No. 8) or agreements for similar interconnections. *Exchange Network Facilities*, 71 FCC 2d 440 (1979), *ENFIA Extension Orders*, 90 FCC 2d 6, 90 FCC 2d 202, 91 FCC 2d 1079 (1982), 93 FCC 2d 739 (1983); *MCI Telecommunications Corp. v. FCC*, 712 F.2d 517 (D.C. Cir. 1983). Under these tariffs and contracts, exchange carriers provide interconnections for origination and termination of interstate MTS and WATS-like traffic carried by Other Common Carriers (OCCs). Resulting from an agreement among the carriers, BSOC–8 and possibly some other of these tariffs and contracts were filed with an expiration date of April 15, 1984. Because these interconnections must continue, exchange carriers are entitled to reasonable compensation for their services, *Lincoln Tel., supra*, 659 F.2d at 1108. It is beyond dispute that continuation of these interconnections for OCCs' services is in the public interest, as expressly required in several appellate court decisions. *MCI, supra; Lincoln Tel., supra; MCI Telecommunications Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978) (*Execunet I*); *MCI Telecommunications Corp. v. FCC*, 580 F.2d 590 (D.C. Cir.), *cert. denied*, 439 U.S. 980 (1978) (*Execunet II*). The *Further Reconsideration Order* ordered exchange carriers to provide non-premium switched access to OCCs for a 55% discount off their charges to AT&T for premium switched access. The tariffs

[11] Under Section 204(a), the Commission has the power to suspend a charge "in whole or in part." Section 204(b) was added to the Act in 1976, evidently to expand the Commission's latitude by authorizing us to allow part of a suspended charge to take effect (perhaps "on a temporary basis pending further order of the Commission") based upon a written showing by the carriers affected that "such partial authorization is just, fair, and reasonable." 47 U.S.C. 204(b).

filed on March 15 and 19 would raise the charges for OCC interconnections from about $235 per line per month under currently-effective ENFIA tariffs to about $362 per line per month. We are examining the exchange carriers' cost justification for these rates in light of the data filed in response to our February 24 request. Pursuant to 47 U.S.C. 154(i), 201(a), and 2095(a), the Commission is authorized to establish charges for carrier interconnections. Also, we can indicate to carriers what rates appear reasonable before they file tariffs that might otherwise be subject to unexpected suspensions. 47 U.S.C. 204(a); *Trans Alaska, supra.* For purposes of an interim arrangement until switched access provisions go into effect, we will allow exchange carriers participating in the ENFIA and similar tariffs to refile these tariffs at the existing rates.[12] Refiling these tariffs with the existing rates will be consistent with our efforts to maintain the status quo during our tariff review.

21. As another interim arrangement, AT&T must continue its current financial support and arrangements with the National Exchange Carrier Association until such time as this association receives revenues in connection with the application of access charges.

22. *Authorized Rate of Return.* As stated in the February 17 and March 7 orders and in the February 24 letter, the support material filed with the October 3 tariffs did not contain adequate information to judge whether the claimed revenue requirements and specific rates were rasonable. A critical element in assessing the reasonableness of the rates for both switched and special access services is the rate of return on rate base used. The exchange carriers claim that their rates are set to earn 12.75% on interstate rate base in compliance with the Commission's prescription in May 1981. *AT&T: Modification of Prescribed Rate of Retun,* 86 FCC 2d 221 (1981), *aff'd sub nom. United States v. FCC,* 707 F.2d 610 (D.C. Cir. 1983). The weighted average rate of return of 12.75% was derived from AT&T's capital structure at that time, a 17.4% cost of common and convertible preferred stock, an 8.8% embedded cost of debt (short, intermediate, and long term), a 7.8% cost of non-convertible preferred stock, and a zero cost of other financing sources. Through AT&T's interstate tariffs, division of revenues procedures within the pre-divestiture Bell System, and settlements procedures with independent telephone companies, this interstate prescription was applied to AT&T and most exchange carriers. AT&T's petition urges us to examine the level of charges it will pay under the exchange access tariffs, which is influenced by the rate of return those tariffs are targeted to earn. We are examining AT&T's arguments and figures, and the arguments and figures of commenting parties. Regardless of the accuracy of any set of figures on AT&T's costs and revenues, NTIA and ICA have pointed to evidence of lower interest rates and inflation that, they claim, justify a rate of return lower than the one prescribed in 1981.

23. The legal framework for this discussion can be briefly stated. The Commission can prescribe a rate of return for a carrier's interstate services for purposes of determining whether the carrier's rates are just and reasonable.[13] To remain financially healthy, a carrier should target its rates to earn enough to cover its costs of operation and its financing expenses (cost of capital). The return to investors must "be commensurate with returns on investments in other enterprises having corresponding risks" and "be sufficient to assure confidence in the financial integrity of the enterprises, as to maintain its credit and to attract capital."[14] But, to protect the interests of ratepayers, the Commission should authorize "the lowest possible return consistent with overall responsibility to provide modern, efficient service at reasonable rates."[15] When economic conditions change, so should rate-of-return prescriptions in order to avoid unreasonable rates for ratepayers or hardship for the carrier and its investors.[16] The Commission does not have to employ a specific methodology in its rate-of-return prescriptions as long as the result falls within the "zone of reasonableness" and "upon consideration of the entire record, the agency's rationale reasonably may be perceived."[17] Pragmatic adjustments based on particular circumstances may lawfully be made to achieve a rate within the zone of reasonableness.[18]

24. We believe that the 12.75% authorized rate of return for the exchange carriers and AT&T should be reexamined. That rate of return may lead to unjust and unreasonable rates charged by these carriers. The *Further Reconsideration Order* stated (para. 29):

> We recognize that our 12.75% prescription may be outdated in view of the significant changes in economic conditions and changes in the structure of the telephone industry that have occurred since the spring of 1981 * * *. Exchange carriers and AT&T are facing rapidly changing economic circumstances, including, possibly, different interest rates, equity structures, pressures from competition and risk factors. We shall allow the overall 12.75 to stand while we develop data on these changed circumstances. In the meantime, AT&T and the exchange carriers may continue to file tariffs targeted to earn less than 12.75 percent, but not more than 12.75 percent.

The 1981 prescription pertained to a single firm (the pre-divestiture AT&T) that filed almost all interstate tariffs for the "partnership" services provided by the Bell System and independent telephone companies, and accounted for almost all interstate toll transmission plant and about eighty percent of the exchange plant of the "partnership." The AT&T divestiture and access charge rules adopted in Docket CC 78–72, Phase I require dissolution of the Bell System and the "partnership." We received 75 sets of interstate access service tariffs, including one from the ECA covering 1328 exchange carriers. In addition, AT&T filed new interstate tariffs in 1983, and several exchange carriers filed "copycat" tariffs for their interstate services other than exchange access. It appears that these carriers differ greatly in their financial structures and costs of financing. Even if it appeared that the average authorized rate of return should remain unchanged, the public interest would be served by examining whether

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[12] We would waive the data requirements of 47 CFR 61.38 for these tariffs. Also, we would allow them to go into effect on shortened notice by special permission pursuant to 47 CFR 61.58. These tariffs should be filed by April 9, 1984.

[13] 47 U.S.C. §§ 202, 205; Nader v. FCC, 520 F.2d 182, 204 (D.C. Cir. 1975); United States v. FCC, 707 F.2d 610, 612 (D.C. Cir. 1983); AT&T: Manual and Procedures for the Allocation of Costs, 84 FCC 2d 384, *reconsid.*, 86 FCC 2d 667 (1981), *aff'd sub nom.* MCI Telecommunications Corp. v. FCC, 675 F.2d 408 (D.C. Cir. 1982); AT&T: Equalization Filing, 89 FCC 2d 1000 (1982). The Commission may choose to enter an interim rate-of-return prescription. AT&T and the Bell System Operating Companies, 78 FCC 2d 661 (1980); AT&T: Charges for Interstate Telephone Service, 51 FCC 2d 619, 627 (1975).

[14] FPC v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944). *See also* FPC v. Conway Corp., 426 U.S. 271, 278 (1976); FPC v. Memphis Light, Gas & Water Division, 411 U.S. 458, 466 (1973); Permian Basin Area Rate Cases, 390 U.S. 747, 791–92 (1968); United Gas Pipe Line Co. v. Memphis Light, Gas & Water Division, 358 U.S. 103, 113–14 (1958).

[15] AT&T (Docket No. 19129), 38 FCC 2d 213, 226 (1972), *aff'd sub nom. Nader, supra.*

[16] "[W]e recognize as a general proposition that such a prescription cannot remain binding indefinitely without agency reevaluation, especially during periods of rapidly changing conditions." *Nader, surpa,* 520 F.2d at 205. *See also United Gas, supra,* 358 U.S. at 113.

[17] *Permian Basin, supra,* 390 U.S. at 767; *Hope, supra,* 320 U.S. at 602; United States v. FCC, *supra,* 707 F.2d at 618; *Nader, supra,* 520 F.2d at 193; Aeronautical Radio v. FCC, 642 F. 2d 1221, 1228 (D.C. Cir. 1980), *cert. denied,* 451 U.S. 920 (1981).

[18] *Permian Basin, supra,* 390 U.S. at 800; United States v. FCC, *supra,* 707 F.2d at 618.

some carriers should have higher or lower authorized interstate rates of return than others.

25. In addition, it appears that the average costs of financing for AT&T, the Bell Operating Companies, and the independent telephone companies may have shifted since the May 1981 rate-of-return prescription. Interest rates on a variety of financial instruments and the rate of inflation changed during this period.[19] According to reports filed with the Commission, AT&T and most exchange carriers earned on their interstate services 10.92% in 1981, 9.55% in 1982, and 10.10% in 1983—all substantially below 12.75%. Yet, we are not aware that any of these carriers was unable to attract capital at a cost consistent with these actual earnings during this period. Also, with the AT&T divestiture and the growth of competition, the riskiness of investing in many or all of these carriers currently may differ from the riskiness in May 1981. We cannot at this time state with confidence what our examination will reveal about a reasonable authorized rate of return for any one carrier or the average carrier currently. Close analysis is necessary to determine the relative costs of capital for these carriers currently as compared to May 1981. Yet, the public interest requires reexamination of authorized rates of return in the face of changing economic conditions. *Nader, supra,* 520 F.2d at 205.

26. In light of this information, we conclude that the changed industry structure and changing economic conditions warrant reexamining the 1981 rate-of-return prescription. Analysis of a carrier's rate of return is an integral part of an investigation of a carrier's rates and charges, and the Commission has the responsibility to determine what rate of return is just and reasonable. *Nader, supra,* 520 F.2d at 192. Of course, before reaching a new prescription, we will have to look closely at financial information and assess factors such as the effects of the AT&T divestiture on the riskiness of investments in AT&T and exchange carriers. We do not hereby vacate the 12.75% authorized rate of return for these carriers. Rather, we intend to institute a proceeding shortly to examine just and reasonable rates of return for AT&T and the exchange carriers. If the record in this proceeding shows that a new prescription is in the public interest, we shall prescribe a new rate or rates, and require AT&T and the exchange carriers to target their tariffs accordingly. We may choose to enter an interim prescription based on the available record and analysis before we complete this investigation, as we did in 1980 and 1975.[20] These carriers may choose to target their tariffs at less than 12.75% before we reach an interim or final prescription, as we stated in the *Further Reconsideration Order.*

27. *Other Access and Divestiture Related Tariffs.* Our order of October 19, in Docket CC 83–1145 also suspended AT&T's interstate tariffs and certain interstate tariffs of exchange carriers ("copycat tariffs") filed on or before October 3, 1983. AT&T's tariffs proposed substantial increases in private line rates, completely restructured private line services, modified rates and rate relationships for MTS, OutWATS, and 800 Service, and had other provisions which warranted investigation. We have decided to extend the suspension of AT&T's tariffs to June 1, 1984, five months past their initial effective date.[21] 47 U.S.C. 204(a). Our goal is to achieve generally reasonable and workable tariffs before they are allowed to take effect. Similarly, the copycat tariffs of the BOCs and certain other exchange carriers purportedly copied some of AT&T's existing tariffs as interim offerings, but contained changes and errors and raised other issues of lawfulness. Our analysis of the "copycat tariffs" is continuing and requires suspension of them to June 1, 1984.[22]

III. Ordering Clause

28. Pursuant to our authority under 47 U.S.C. 154(i), 201(a), 203(b), 204, 205, and 211, it is so ordered.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 84–8869 Filed 4–3–84; 8:45 am]
BILLING CODE 6712–01–M

[19] *See, e.g.,* Economic Report of the President 197, 283, 299 (1984); Standard & Poor's Bond Guide 3 (March 1984); Moody's Investors Service, Moody's Public Utility 1977 (March 20, 1984); AT&T 1983 Annual Report, financial section at 5.

[20] *See* note 13 *supra.*

[21] AT&T has not modified its proposed tariffs to take into account changes in the access tariffs resulting from the *Further Reconsideration Order* and the ECA and Non-ECA tariff orders. It is evident, moreover, that AT&T's rate proposals will be affected by the outcome of its Emergency Petition. Since some of the original rationale and justification for its October 3, 1983, filing has been impaired by subsequent events, we are continuing our suspension in the hope that resolution of lingering uncertainties will enable AT&T to finalize its changes and permit us to evaluate fully the results.

[22] Separate filings made to cancel existing tariffs concurrent with the effectiveness of the October 3, 1983, tariffs should be revised to reflect this suspension.

FEDERAL HOME LOAN BANK BOARD

[No. AC–353]

Metropolitan Federal Savings and Loan Association, Hialeah, Florida; Final Action, Approval of Conversion Application

Dated: March 30, 1984.

Notice is hereby given that on February 14, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Metropolitan Federal Savings and Loan Association, Hialeah, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georiga 30343.

By the Federal Home Loan Bank Board.
J. J. Finn,
Secretary.

[FR Doc. 84–8858 Filed 4–3–84; 8:45 am]
BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Filing and Approval of Agreement

The Federal Maritime Commission hereby gives notice that on March 22, 1984, the following agreement was filed with the Commission pursuant to section 15 of the Shipping Act, 1916, as amended by section 4 of the Maritime Labor Agreements Act of 1980, Pub L. 96–325, 94 Stat. 1021, and was deemed approved that date, to the extent it constitutes an assessment agreement as described in the fifth paragraph of section 15, Shipping Act, 1916.

Agreement No. LM–89.

Title: South Atlantic Employers Negotiating Committee and the International Longshoremen's Association.

Parties: South Atlantic Employers Negotiating Committee International Longshoremen's Association.

Synopsis: Agreement No. LM–89 is an agreement between the South Atlantic Employers Negotiating Committee and the International Longshoremen's Association. The agreement contains tonnage assessment formula for funding fringe benefit obligations for guaranteed annual income, vacation and holiday,

and administrative support for these benefits.

Filing party: Thomas W. Gleason, 90-Broad Street, Suite 600, New York, New York 10004.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

Dated: March 30, 1984.

[FR Doc. 84-8918 Filed 4-3-84; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 10402]

Section 15 Agreements, Bank Line, Ltd., and Shaw Savill & Albion Co., Ltd.; Cancellation

Title: The Bank and Savill Line Limited Service Agreement.

Parties:

The Bank Line, Ltd.

The Shaw Savill & Albion Co., Ltd.

Synopsis: By notice received at the Commission on March 21, 1984, the parties to the agreement announced its cancellation effective May 30, 1984.

Filing Party: Elmer C. Maddy, Esq., Kirlin, Campbell, & Keating, 120 Broadway, New York, New York 10271.

By order of the Federal Maritime Commission.

Dated: March 30, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8917 Filed 4-3-84; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. T-2650]

Termination of Agreement; Matson Terminals, Inc. and Showa Line, Ltd.

Title: Matson Terminals, Inc. and Showa Line, Ltd.

Parties:

Matson Terminals, Inc.

Showa Line, Ltd.

Synopsis: The aboved referenced agreement has been terminated by Agreement No. T-4167 which became effective on March 26, 1984.

Filing Party: David F. Anderson, Matson Navigation Company, 333 Market Street, Post Office Box 7452, San Francisco, California 94120.

By order of the Federal Maritime Commission.

Dated: March 30, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8916 Filed 4-3-84; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. §814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No. T-3968-1.

Title: The Port of Seattle/American President Lines, Amended Lease Agreement.

Parties:

The Port of Seattle (Port)

American President Lines (APL)

Synopsis: Agreement No. T-3968-1 amends the basic agreement between the parties which provides for the lease by the Port to APL of terminal 46, Seattle. The amendment provides for the amortization by APL of an additional $195,000 worth of improvements at the leased premises.

Filing Party: Beryl J. Barker, Senior Property Manager, Port of Seattle, Post Office Box 1209, Seattle, Washington 98111.

Agreement No. T-4172.

Title: Mississippi State Port Authority at Gulfport and Sealand Terminal Corporation, Lease Agreement.

Parties:

Mississippi State Port Authority at Gulfport (Authority).

Sealand Terminal Corporation (STC).

Synopsis: Agreement No. T-4172 provides that the Authority will lease to STC certain premises at the port of Gulfport for the handling of water-borne domestic and foreign commerce through the port. The term of the agreement is for 5-years with two renewal periods of 5-years each. The Agreement will become effective upon approval by the Commission.

Filing Party: J. W Clark, Executive Director, Mississippi Port Authority of Gulfport, Post Office Box 40, Gulfport, Mississippi 39501.

Agreement No. T-4173.

Title: The Indiana Port Commission and Merchants Grain Transportation, Inc., Lease Agreement.

Parties:

The Indiana Port Commission (IPC).

Merchants Grain Transportation, Inc. (MGTI).

Synopsis: Agreement No. T-4173 provides that IPC will lease to MGTI, 12½ acres at Clark Maritime Centre on the Ohio River near Jeffersonville, Indiana. MGTI will occupy the premises for the purposes of installation, operation, manufacturing, packaging and distribution facility for various bulk and/or bagged commodities. The premises will be used in connection with common carriers by water.

Filing Party: Garth L. Whipple, Acting Executive Director, Indiana Port Commission, 6600 U.S. Highway 12, Portage, Indiana 46368.

Agreement No. 17-48.

Title: Far East Conference.

Parties:

Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A. P. Moller Maersk Line
Nippon Yusen Kaisha, Ltd.
United States Lines, Inc.
Yamashita Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would allow the parties to select an individual to fulfill the functions of the conference chairman, but to use a designation other than chairman as the job title.

Filing Party: Harlan P. Breed, Chairman, Executive Committee, Far East Conference, c/o United States Lines, Inc., 27 Commerce Drive, Cranford, New Jersey 07016.

Agreement No. 57-132.

Title: Pacific Westbound Conference.

Parties:

American President Lines, Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
Mitsui O.S.K. Lines, Ltd.
A. P. Moller Maersk Line
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would prohibit members who had given notice of withdrawal from voting on any conference matter which would become effective, or remain in effect after the member's withdrawal without the unanimous consent of all members.

Filing Party: Charles L. Coleman, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No. 57–133.
Title: Pacific Westbound Conference.
Parties:
American President Lines, Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
Mitsui O.S.K. Lines, Ltd.
A. P. Moller Maersk Line
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would exclude the reference in Article 5 to the obsolete position of Vice-Chairman and substitute the term "the Chairman's designate".

Filing Party: Charles L. Coleman, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No. 57–134.
Title: Pacific Westbound Conference.
Parties:
American President Lines, Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
Mitsui O.S.K. Lines, Ltd.
A. P. Moller Maersk Line
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would transfer administrative control of the Pacific Cargo Inspection Bureau from the Chairman and Executive Committee of the Conference to the conference Owner's Management Committee.

Filing Party: Charles L. Coleman, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No. 57–135.
Title: Pacific Westbound Conference.
Parties:
American President Lines, Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller Maersk Line
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would require that independent action be taken only over the name of a senior executive of a member line, or his designated alternatives.

Filing Party: Charles L. Coleman, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No. 5850–40.
Title: North Atlantic Westbound Freight Association.
Parties:
Atlantic Container Line (G.I.E.).
Compagnie Generale Maritime.
Dart-ML Ltd.
Hapag-Lloyd AG.
Intercontinental Transport (ICT) B.V.
Sea-Land Service Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would add "wheeled agricultural tractors without attachments" to the types of wheeled vehicles which Atlantic Container Lines is presently authorized by the Agreement to carry under a space chartering agreement with Wallenius Line.

Filing Party: Howard A. Levy, Esquire, 17 Battery Place, Suite 727, New York, New York 10004.

Agreement No. 8210–48.
Title: Continental North Atlantic Westbound Freight Conference.
Parties:
Atlantic Container Line (G.I.E.).
Dart-ML Ltd.
Hapag-Lloyd AG.
Sea-Land Service Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would add "wheeled agricultural tractors without attachments" to the types of wheeled vehicles which Atlantic Container Lines is presently authorized by the Agreement to carry under a space chartering agreement with Wallenius Line.

Filing Party: Howard A. Levy, Esquire, 17 Battery Place, Suite 727, New York, New York 10004.

Agreement No. 9982–19.
Title: Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference.
Parties:
Atlantic Container Line (G.I.E.).
Dart-ML Ltd.
Hapag-Lloyd AG.
Sea-Land Service Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would add "wheeled agricultural tractors without attachments" to the types of wheeled vehicles which Atlantic Container Lines is presently authorized by the Agreement to carry under a space chartering agreement with Wallenius Line.

Filing Party: Howard A. Levy, Esquire, 17 Battery Place, Suite 727, New York, New York 10004.

Dated: March 30, 1984.
By Order of the Federal Maritime Commission.

Francis C. Hurney,
Secretary.

[FR Doc. 84–8972 Filed 4–3–84; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

CB & T Bancshares, Inc., et al.; Applications To Engage De Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CB & T Bancshares, Inc.*, Columbus, Georgia; *Bank South Corporation*, Atlanta, Georgia; *Citizens and Southern Georgia Corporation*, Atlanta, Georgia; *First Atlanta Corporation*, Atlanta, Georgia; *First City Bancorp, Inc.*, Marietta, Georgia; *First Railroad & Banking Company of Georgia*, Augusta, Georgia; *Heritage Bancshares, Inc.*, Snellville, Georgia; and *Trust Company of Georgia*, Atlanta, Georgia: to engage *de novo* through their subsidiary, Georgia Interchange Network, Inc., Atlanta, Georgia, in a joint venture in data processing activities pursuant to § 225.25(b)(7) of Regulation Y, serving the State of Georgia.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Security Corporation*, Salt Lake City, Utah; to engage *de novo* through its subsidiary, First Security Investment Services, Salt Lake City, Utah, in the activities of discount securities brokerage, consisting principally of buying and selling securities solely upon the order and for the account of customers, and of extending margin credit in conformity with Regulation T.

Board of Governors of the Federal Reserve System, March 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8855 Filed 4-3-84; 8:45 am]

BILLING CODE 6210-01-M

First Michigan Bank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be present at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 27, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation*, Zeeland, Michigan; to acquire 100 percent of the voting shares of The Oceana County Savings Bank, Hart, Michigan.

2. *Peshtigo National Bancorporation, Inc.*, Peshtigo, Wisconsin; to become a bank holding company by acquiring 83.4 percent of the voting shares of The Peshtigo National Bank, Peshtigo, Wisconsin.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Laverne Bancshares, Inc.*, Laverne, Oklahoma; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Laverne, Laverne, Oklahoma.

2. *Montbello Bankcorp, Inc.*, Denver, Colorado; to acquire at least 85 percent of the Mission State Bank, Lakewood, Colorado.

c. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Forum Park Bancorp*, Inglewood, California; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Inglewood, Inglewood, California (in organization).

Board of Governors of the Federal Reserve System, March 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8856 Filed 4-3-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974; Report of Altered System of Records

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Personnel Administration, HHS.

ACTION: Report of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of Personnel Systems Integrity (OPSI) is publishing this notice altering the system of records entitled, "Management Information System Efficiency Report (MISER), HHS/OS/ASPER/OPSI, 09-90-0095." The altered system contains the records and statistical data of investigative materials that are compiled for personnel, legal, and regulatory enforcement purposes. Records and statistical data are maintained to assist OPSI managers and other responsible officials in locating problem areas for personnel management evaluations, and recommending policy changes regarding investigation and processing of complaints.

In connection with these alterations, we are updating the routine uses, category of records, purposes, and record source categories. We are modifying the notification, access and contesting record procedure sections. At the same time, we are adding EEO-case-tracking data of other HHS components participating in the current system.

We invite public comments on the proposed alterations, on or before May 4, 1984.

DATES: We submitted an altered system report to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget (OMB) on March 16, 1984. These proposed alterations will become effective without further notice, 60 days after the filing date, unless we receive comments that would result in a contrary determination.

ADDRESS: Comments should be submitted to—Department of Health and Human Services Office of the Secretary,

OASPER Director, Office of Personnel Systems Integrity Room 2064, Switzer Building 330 Independence Avenue, SW Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Betty Colton, Director, Division of Personnel Systems Improvement, on (202) 475–0027.

SUPPLEMENTARY INFORMATION: This system of records as currently constituted and described in a system notice published in the Federal Register (System Number 09–90–0095, 47 FR 45771) contains records and statistical data on all types of complaints, appeals, and allegations, that are investigated, or adjudicated, or examined by the Office of Personnel System Integrity and the Division of Complaints Adjudication and Management (i.e., EEO complaints, HHS merit system investigations, grievances, and grievance reconsiderations). Some of these records will contain information supplied by confidential sources.

We are adding a routine use which permits disclosures to the Office of Personnel Management to carry out personnel management evaluations.

We are updating the statement of categories of records in the system. The updated statement now reads as follows:

The automated and manual systems consist of a variety of records pertaining to EEO complaints, HHS grievances, grievance reconsiderations, investigations of merit systems violations and prohibited personnel practices. In addition to employee's name as a personal identifier, this system includes information such as—position title, grade, and series; organizational location; race; sex; type of case; issue; basis; action on case; dates filed and received; processing events; names of staff involved in case processing; and weekly, monthly, and yearly production data. These records also include documentary and physical evidence; transcripts; correspondence; information from personnel files; affidavits; investigative reports; analytical papers; computer discs; and hardcopy reports. The system includes EEO case-tracking data of other components.

We are also updating the statement of record source categories and removing extraneous wording. The updated statement now reads as follows:

Information is either provided by the individual to whom EEO complaint, grievance, grievance reconsideration, merit system and prohibited personnel practice complaints apply; derived from information supplied by others; or is supplied by documents related to the investigation. Record sources may include confidential sources.

We issued a Notice of Proposed Rule Making (see Federal Register, Vol. 49, No. 30, dated February 13, 1984, pages 5361–5362) to exempt this system of records under the provisions of 5 U.S.C. 552a(k)(2). Records in this system would be exempt from the requirements of 5 U.S.C. 552a(c)(3), (d)(1)–(4), (e)(4)(G) and (H), and (f) as investigatory material compiled for law enforcement purposes. The insertion of the word "exempt" in the notification and contesting record procedure sections concern that portion of this system relating to investigations of merit systems violations and prohibited personnel practices.

The adding of EEO-case-tracking data of other HHS components participating in the existing system concerns the Office of Civil Rights and Equal Employment Opportunity, Social Security Administration; the Office of Equal Employment Opportunity, Public Health Service; the Office of Equal Employment Opportunity, Health Care Financing Administration; and the Office of Equal Employment Opportunity, Office of Human Development Services; but does not relate to investigatory materials compiled for personnel, legal, and regulatory enforcement purposes.

All of the physical protections, manual and automated access safeguards, and personnel restrictions set forth in the existing system notice will continue under this alteration.

We have prepared this system alteration in accordance with the principles and requirements of the Privacy Act. Therefore, we anticipate no adverse effect on the privacy or other personal or propety rights of individuals as a consequence of the maintenance of this records system.

We are publishing the MISER records system notice in its entirety to reflect the proposed alterations.

Dated: March 16, 1984.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

09–90–0095

SYSTEM NAME:

Management Information System Efficiency Report (MISER) HHS/OS/ASPER.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Personnel Systems Integrity (OPSI), Room 2946 Switzer Building, 330 Independence Avenue, SW, Washington, DC 20201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment and current or former employees, who have a formal grievance, grievance reconsideration, merit system/prohibited personnel practice complaint, or EEO complaint against the agency or agency official investigators, examiners, contractors, and/or clerical support personnel, who are involved in case processing.

CATEGORIES OF RECORDS IN THE SYSTEM:

The automated and manual system consists of a variety of records pertaining to EEO complaints, HHS grievances, grievance reconsiderations, investigations of merit systems violations and prohibited personnel practices. In addition to the employees name as a personal identifier, this sytem includes information such as—position title, grade, and series; organizational location; race; sex; type of case; issue; basis; action on case; dates filed and received; processing events; names of staff involved in case processing; and weekly, monthly, and yearly production data. These records also include documentary and physical evidence, correspondence, information from personnel files, affidavits, investigative reports, analytical papers, computer discs, tapes, and hard copy reports. The system includes EEO-case-tracking data of other components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11478, 42 U.S.C. 200e 29 U.S.C. 633a, 5 U.S.C. 1302, 3301, 3302, Executive Order 10577, Executive Order 11787.

PURPOSE(S):

Information in this system of records is used in locating problem areas for personnel management evaluation, analyzing causes of lowered moral among Department employees, recommending policy regarding investigation and processing of compliants, case management and control, human resources planning, and to document investigations of merit systems and prohibited personnel practices complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Disclosures may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. To the Department of Justice for the purpose of obtaining its advice, when desirable or necessary, to determine whether particular records are required to be disclosed under the Freedom of Information Act.

3. In the event of litigation where the defendant is (a) the Department of Health and Human Services (HHS), any component of HHS or any employee of HHS in his or her official capacity; (b) the United States where HHS determines that the claim, is successful, is likely to directly affect the operations of HHS or any of its components; or (c) any HHS employee in his or her individual capacity where the Justice Department has agreed to represent such employee. HHS may disclose such record as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

4. To Equal Employment Opportunity Commission to refine the complaints processing procedure and to provide technical assistance to Federal agencies the Departments as it relates to the efficiency and effectiveness of their complaints systems.

5. To the Office of Management and Budget to make a detailed and accurate assessment of the complaint program's cost effectiveness.

6. To the Merit Systems Protection Board (including its Office of the Special Counsel) to investigate alleged violations of merit system principles.

7. To the Office of Personnel Management (OPM) to carry out personnel management evaluations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, disks, cassette tapes, bound notebooks, paper forms, and index cards in locked file cabinets.

RETRIEVABILITY:

Information is retrieved by names, docket numbers, or other data elements (e.g., type of case, organizational unit, dates).

SAFEGUARDS:

Safeguards are established in accordance with Part 6, ADP Systems Manual. Access to and use of these records is limited to those persons whose official duties require such access. Records are kept in locked files or a locked room. Data stored in the automated system is accessed through the use of passwords known only to authorized personnel.

RETENTION AND DISPOSAL:

Manual and automated records are destroyed by shredding or erasing after periods varying from one to five years after resolution or final disposition of the complaint or grievance.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Personnel Systems Integrity, Room 2046, 330 Independence Avenue, SW, Switzer Building, Washington, DC 20201.

NOTIFICATION PROCEDURES:

Exempt. However, consideration will be given to requests addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record being sought.

CONTESTING RECORD PROCEDURES:

Exempt. However, consideration will be given to a request written to the system manager. Request should specify the information to be contested, and state the corrective action sought and the justification for the correction.

RECORD SOURCE CATEGORIES:

Information is either provided by the individual to whom EEO complaint, grievance, grievance reconsideration, merit system and prohibited personnel practice complaints apply; derived from information supplied by others; or is supplied by documents related to the investigation. Record sources may include a confidential source.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records in this system of records will be exempt from the provisions of the Privacy Act concerning: Making the accounting of certain disclosures available; providing notification access and amendment; and the corresponding provisions of the Department's Privacy Act regulation (45 CFR Part 5b). This exemption is based on 5 U.S.C. 552a(k)(2).

[FR Doc. 84-8886 Filed 4-3-84; 8:45 am]
BILLING CODE 4150-04-M

Low Wage Labor Market Studies; Applications for Grants

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (here after the Assistant Secretary) is seeking applications from researchers affiliated with non-profit organizations for grants for research in the area of low wage labor markets.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research and analysis relating to the promotion of economic self-sufficiency among the transfer income population. The following paragraphs describe the general area of interest in greater detail. Applications should be for projects that will address the issues discussed below; other closely related issues may also be included if they are clearly demonstrated to be relevant to the general area of interest.

Our concept of transfer programs and their role in the economy has been undergoing revision in recent years. Changes in these programs reflect an emphasis on reducing the public burden of these programs by increasing the employment of current and potential transfer income recipients. At the same time, there is a search for new policies, management techniques and other ideas that will contribute to an expansion of the recipients' labor market opportunities.

This grant announcement seeks research to inform analysts about job opportunities for transfer income recipients from the prospectives of the labor markets in which they will seek employment. Past research has contributed extensively to our knowledge of the labor force behavior of subgroups of the population including the participants in demonstration and experimental transfer income programs as well as those in current programs. In order to understand employment experiences of these participant populations from a different perspective, research is desired to examine labor markets. Aspects of labor markets that might be analyzed include the growth of employment opportunities in some sectors of the economy or for some demographic groups. *The emphasis is therefore on fresh views on where and why job opportunities exist in different labor markets for the particular demographic groups at risk of poverty.*

As background information, please note that last year a grant competition included three priority research areas: (a) Characteristics of low wage markets, (b) trends in low wage labor markets, and (c) firm employment decisions. We now propose a second competition for area (b), because no projects were funded in this area last year. The orientation of the second grant announcement emphasizes analysis of how these adjustments occurred as well as identifying what changes have occurred. In other words, we would like to be able to understand the parameters of employee and employer behavior that create employment prospects for part-time, or inner-city, or other similar workers, as well as identifying past trends.

The operation of labor markets in the recent past appears to offer ample evidence of how market opportunities for different kinds of workers can change. In particular, over the last two decades, market opportunities for female heads of families with dependent children may have changed as women of all ages, including women with children, have entered the labor force. Similarly, labor market opportunities for the aged may have changed as companies have altered mandatory retirement ages or people have sought part-time work after retiring from full-time jobs.

The operation of labor markets can be analyzed with evidence on changes in labor markets in recent years. Questions that may be addressed include: How do employers respond to changes in the availability of different kinds of workers (such as changing the mix of wage and non-wage (fringe) compensations). What has been the effect of increases in supply of part-time workers, on the wages paid to them or on their employment rates? Other questions that may be worth addressing include: Which sectors have changed most to accommodate recent labor market entrants? What factors influence the demand for different kinds of labor? Can a model of these factors be estimated with formal labor demand models? How are the new employment opportunities for all workers affected by tax credits for hiring particular kinds of worker? Can differences in employer responses to these tax credits be traced to differences in industries, product demand or management techniques?

Responses to these questions will most likely come from analyses of *trends* in labor markets over time. The decennial Censuses, now available as microdata covering the period from 1940 through 1980, are an obvious data source for measuring many of the changes in labor markets in recent decades. (Researchers should note, however, the problems inherent in comparing data across years from different questionnaires.) Since the emphasis in this grant announcement is on both descriptive information and the measurement of basic behavioral parameters other data may also provide measures of the parameters and changes listed above. Other sources include: the Bureau of Labor Statistics, the Panel Study of Income Dynamics, or the National Longitudinal Surveys or data derived from experimental or demonstration programs. However, applicants are invited to propose research with data, especially data on employers' behavior that are not listed in this grant announcement.

Methods appropriate for project application are empirical investigations that are well-grounded in economic theory.

1. *Potential Users.*—Potential users of the research include employers, federal government policy makers, state and local sponsors of employment programs, non-profit agencies assisting low-skilled workers with employment problems, and future researchers.

2. *Types of projects excluded.*—In consideration of the intent of this announcement applications concentrating primarily on the concerns of a local service delivery organization will not be considered for funding.

3. *Content and organization of application.*—The application must begin with a cover sheet, followed by the required application forms and an abstract of the application. Failure to include the abstract may result in delays in processing the application. The abstract should summarize the proposal in not more than two pages. Each application should carefully describe the issues to be examined, hypotheses to be tested, methodology proposed for testing the hypotheses, data sources to be used, and anticipated products of the research, as well as relating the expected products to policy issues. Resumes of staff should be included, as should a full budget for the proposed project.

B. Applicable Regulations

1. "Grant Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), which was published in the *Code of Federal Regulations* on October 1, 1980.

2. "Administration of Grants" (45 CFR Part 74), which was published in the *Code of Federal Regulations* on June 9, 1981.

C. Effective Date and Duration

1. The grant awarded pursuant to this announcement is expected to be made on or about June 30, 1984.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Sections F and G below.

3. Applicants should present a work plan and budget covering a one-year period.

D. Statement of Funds Availability

1. A total of $250,000 has been set aside for one or more grants to be awarded as a result of this announcement. The government estimates that the cost of a project in this area is $100,000 to $125,000 but recognizes that meritorious project may cost more or less than this amount. Organizations are therefore encouraged to submit applications that are higher or lower than this estimate.

2. Nothing in this application should be construed as committing the Assistant Secretary to dividing available funds among all qualified applicants or to make any award.

E. Applications Processing

1. Applications will be initially screened for relevance to the needs defined in section A (as well as additional areas of interest persuasively shown to be relevant by the grantee). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing of it, but applicants will not be penalized if these seven (7) copies are not included.

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in item 5.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applications should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the information requirements of the reviewers. Applications should be limited to 30 double-spaced typed pages, exclusive of forms, abstract, resumes, and the proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. The potential usefulness of the objectives and anitipated results of the proposed project for providing individuals and organizations concerned with the issues discussed in Section A above with improved bases for making decisions about these issues. (20 points.)

b. The potential usefulness of the proposed project for the advancement of scientific knowledge. (30 points.)

c. The clarity of statement of objectives, methods, and anticipated results. (5 points.)

d. The appropriateness and soundness of methodology, including research design, statistical techniques, modeling strategies, choice of data, and other procedures. (25 points.)

e. The qualifications and experience of personnel. (20 points)

F. Applications Sent by Mail

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application was sent by first class, registered or certified mail not later than May 18, 1984, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service. Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than May 18, 1984 as evidence by a receipt from the commercial carrier.

G. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this announcement. Hand-delivered applications will be accepted daily between 9:00 a.m. and 4:30 p.m., Washington, D.C., time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on Friday, May 18, 1984.

H. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed in block 4 of the application to notify the applicant of the approved application.

I. Application Instructions and Forms

Copies of applications submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue S.W., Room 457F, Hubert H. Humphrey Building, Washington, D.C. 20201, Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after May 1.

J. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

Dated: March 29, 1984.

Robert J. Rubin,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 84-8975 Filed 4-3-84; 8:45 am]

BILLING CODE 4150-04-M

Centers For Disease Control

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 49 FR 6025, February 16, 1984) is amended to (1) change the name of the Office of Administrative Management to the Office of Program Support, and revise the functional statement to delete the introductory statement: "Under the direction of the Executive Officer"; and (2) update the list of officials in the Order of Sucession.

Section HC–B, *Organization and Functions,* is hereby amended as follows:

1. After the heading and statement for *Office of the Director (HCA),* change the name of the *Office of Administrative Management (HCA5)* to *Office of Program Support (HCA5)* and delete the introductory statement: "Under the direction of the Executive Officer:"

Section HC–C, *Order of Succession.* After the first sentence, delete the officials listed in (1) through (5) and substitute the following: (1) Deputy Director, (2) Assistant Director for International Health, (3) Assistant Director/Washington, (4) Assistant Director for Public Health Practice, (5) Assistant Director for Science, (6) Assistant Director for Management, (7) Director, Office of Program Support.

Dated: March 27, 1984.

Edward N. Brandt, Jr.

Assistant Secretary for Health.

[FR Doc. 84-8974 Filed 4-3-84; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Duck Valley Indian Irrigation Project; Nevada—Idaho

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

SUMMARY: The purpose of this public notice is to change the annual per acre assessment rates for the operation and maintenance of the irrigation facilities on the Duck Valley Indian Irrigation Project to properly reflect the actual cost of labor, materials, equipment, and services. The change is from $6.40 to $22.73 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians, and from $3.40 for subjudated lands and $1.00 for native hay lands to $5.30 per irrigable acre for all Indian owned land farmed and operated by Indians.

EFFECTIVE DATE: This notice shall become effective on April 4, 1984 and remain in effect until changed by public notice.

FOR FURTHER INFORMATION CONTACT: Thomas W. Neumann, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 7007, Phoenix, AZ 85011, telephone (602) 241–2285 COM, 261–2285 FTS.

SUPPLEMENTARY INFORMATION: The current operation and maintenance charges were established in July 1978. The cost of laber, materials, power, equipment, and services have continued to increase each year until costs now exceed revenue from current charges. A notice of intent to increase the operation and maintenance rate was posted February 13, 1984, in four public buildings on the Duck Valley Reservation. Public meetings were held with the water users on February 16 and March 1, 1984 and with water users and a majority of the Duck Valley Business Council on March 14, 1984. Comments received at these public meetings were carefully considered in arriving at the new rate.

The principal author of this document is Thomas W. Neumann, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 7007, Phoenix, AZ 85011, telephone (602) 241–2285 COM, 261–2285 FTS.

Pursuant to § 171.1e of Part 171, Chapter I, of Title 25 of the Code of Federal Regulations, this public notice is issued under authority delegated to the Assistant Secretary for Indian Affairs by

the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3.

Notice shall read as follows:

Duck Valley Indian Irrigation Project, Nevada-Idaho, Annual Operation and Maintenance Charges

Charges. The annual basic operation and maintenance assessment rates for land to which water can be delivered under the Duck Valley Indian Irrigation Project, Nevada-Idaho for operation and maintenance of the project are hereby fixed at $22.73 per acre for non-Indian owned lands and Indian owned lands leased to non-Indians and $5.30 per irrigable acre for Indian owned lands farmed and operated by Indians. The payment of the assessment rate shall entitle water users to their prorated share of water.

Payments. Annual charges shall become due when billed for 1984 and on April 1 of each year thereafter and payable on or before that date, and any unpaid charges shall stand as a first lien against the land without penalty until paid.

Delivery. Delivery of water shall be refused to all tracts of land for which the charges have not been paid, except where the lands are in Indian ownership, not under lease to non-Indians, and the Indian owners are financially unable to pay the assessment when due. In such instances, water may be delivered under the following conditions:

1. The Indian owner shall make necessary arrangements with the Superintendent to pay the assessment from proceeds derived for labor performed on the project works as authorized by the Superintendent or from proceeds of crops grown on the land when harvested nd marketed within that calendar year.

2. In any instances where the Superintendent is convinced that an Indian landowner, whose land is not under lease to a non-Indian is financially unable to pay his assessment from proceeds for labor performed on the project works or from the proceeds of crops grown on the land or from any other source, water may be delivered following certificaiton by the Superintendent to the official in charge of the irrigation project that such Indian is financially unable to pay the assesament.

Water Users Responsibility for Water After Delivery. The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in a suitable condition for delivery of irrigation water.

Distribution and Apportionment. All water of the project is deemed a common water supply in which all irrigable lands of the project are entitled to share equally and such water will be distributed to the lands of the project as equitably as physical conditions will permit.

Walter R. Mills,
Acting Area Director.

[FR Doc. 84-8636 Filed 4-3-84; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[C-07761, C-28561]

Colorado; Notice of Proposed Continuation

March 28, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy proposes that the withdrawals made by the Atomic Energy Commission for their domestic uranium program be modified and continued for a period of ten years. The land will continue to be withdrawn from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws.

DATE: Comments or requests for hearing should be received on or before July 3, 1984.

ADDRESS: Comments should be sent to the undesigned at 1037 20th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, 303-837-2535.

The Department of Energy proposes that the land withdrawals listed below be continued for a period of ten years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

1. Public Land Order 1495, as amended by Public Land Orders 1533 and 3772, which withdrew public lands subject to valid existing rights, is proposed to be continued as to the lands described below:

C-07761

New Mexico Principal Meridian

T. 43 N., R. 18 W.,
Sec. 4, lots 1, 2, 3, and 4, and S½N½.
T. 44 N., R. 18 W.,
Sec. 32, lots 2, 3, and 5;
Sec. 33, lots 3 and 8.

The area described aggregates approximately 539 acres of public lands in Montrose County, Colorado.

2. Public Land Order 494, as amended by Public Land Orders 698, 939, 1223, and 1398, which withdrew public lands and those patented lands containing public minerals, subject to valid claims, and other valid rights in the states of Colorado and Utah is proposed for continuation as it affects the lands in the state of Colorado. Any tract or tracts of land to which valid claims have attached under the public land laws prior to the date of the order are excluded from the reservation, provided that upon abandonment or extinguishment of such claims for any cause, the reservation shall immediately become effective as to such tract or tracts and the minerals therein. The following lands in the state of Colorado are currently proposed for withdrawal continuation:

C-28561

New Mexico Principal Meridian

T. 50 N., R. 17 W.,
Sec. 7, lots 3 and 4, and E½SW¼;
Sec. 17, SW¼;
Sec. 18, lots 1, 2, 3, and 4, E½W½, and E½.
T. 43 N., R.18 W.,
Sec. 5, lots 1 thru 14, S½NE¼, NE¼SE¼, and S½SE¼;[1]
Sec. 6, lots 1, 2, 6, 7, and 10, SW¼NE¼, and W½SE¼.[1]
T. 44 N., R. 18 W.,
Sec. 19, SW¼;[1]
Sec. 29, SW¼;
Sec. 30, NW¼,[1] and NE¼SE¼;
Sec. 31, S½SW¼NE¼;
Sec. 32, NW¼.
T. 50 N., R. 18 W.,
Secs. 2, 3, and 4, inclusive; [2]
Secs. 9, thru 12, inclusive; [2]
Sec. 13, NE¼;
Sec. 14, lots 1, 2, and 3, SE¼NW¼, and all of those portions of unpatented M.S. 20177 occupying the former NW¼ of said section.
T. 43 N., R. 19 W.,
Sec. 19, lots 1 thru 4, and E½W½.
T. 44 N., R. 19 W.,
Sec. 24, SE¼;[1]
Sec. 25, NE¼NE¼.[1]
T. 43 N., R. 20 W.,
Sec. 23, SE¼;
Sec. 24, NE¼, SE¼NW¼, and S½;
Sec. 25, NW¼;
Sec. 26, NE¼.

The area described aggregates approximately 9,132 acres in Mesa and San Miguel Counties. Lands which contain valid unpatented mining claims are included in the continuation of the withdrawal until such time as vested rights attach.

The Department of Energy proposes continuation of these withdrawals for ten years to stimulate mining and development of uranium ore for purchase by the Federal Government through a leasing program.

The Bureau of Land Management (BLM) manages the surface resources of these withdrawals through an interagency agreement with the Department of Energy. The subsurface minerals remain under direct Department of Energy supervision. The custody of the property is vested in the Department of Energy. The withdrawals closed the lands to all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws. No change in

[1] Exclusive of patented M.S. 20643, and 20639.
[2] Inclusive of unpatented M.S. 20174A, 20174B, 20175A, 20175B, 20176A, 20176B, and 20177.

the segregative effect or use of the land would be affected by the continuations.

Notice is hereby given that a public hearing may be afforded in connection with the proposed withdrawal continuations. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned within 90 days of the publication of this notice. Upon a determination by the State Director, BLM, that a public hearing should be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. Public hearings will be scheduled and conducted in accordance with BLM Manual 2351.16B. Additionally all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the State Director within 90 days of the date of publication of this notice.

The authorized officer of the BLM will undertake such investigations as are necessary and prepare a report for consideration by the Secretary of the Interior, the President, and Congress. The final determination on the Continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Evelyn W. Axelson,

Acting Chief Branch of Lands & Minerals Operations.

[FR Doc. 84-8941 Filed 4-3-84; 8:45 am]
BILLING CODE 4310-JB-M

[C-28260]

Colorado; Proposed Continuation of Withdrawal

March 28, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 80.57 acre withdrawal for the San Luis Valley Project continue for an additional five years. The lands remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received on or before July 3, 1984.

ADDRESS: Comments and meeting request should be sent to: State Director, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–837–2592.

The Bureau of Reclamation proposes that the existing land withdrawal made by Secretarial Order of April 10, 1935, as amended by Secretarial Order of July 28, 1954, be continued for a period of five years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 42 N., R. 10 E.,
Sec. 18, lot 2, and SE¼ NW¼.

The area described aggregates approximately 80.57 acres in Saguache County, Colorado.

The purpose of the withdrawal is for protection of land for pipelines, roads, electrical distribution lines, and water salvage well sites to service the Closed Basin Division, San Luis Valley Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the State Director, in the Colorado State Office.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal continuation. All interested persons who desire a public meeting for the purpose of being heard must submit a written request to the State Director, within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Robert D. Dinsmore

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 84-8942 Filed 4-3-84; 8:45 am]
BILLING CODE 4310-JB-M

[C-28261]

Colorado Proposed Continuation of Withdrawal

March 28, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that approximately 2400 acres withdrawn for the Platoro Dam and Reservoir-San Luis Valley Project continue for an additional 40 years. The lands, all within the Rio Grande National Forest, remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received on or before July 3, 1984.

ADDRESS: Comments and meeting request should be sent to: State Director, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–837–2592.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by Secretarial Order of June 18, 1941, be continued for a period of 40 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, as to the following described lands:

New Mexico Principal Meridian

T. 35 N., R. 3E.,
Sec. 1, E½NE¼.
T. 35 N., R. 4 E.,
Sec. 6, NW¼NE¼, and NW¼.
T. 36 N., R. 4 E.,
Sec. 20, SE¼SE¼;
Sec. 21, SE¼NE¼, S½SW¼, and SE¼;
Sec. 22, SW¼NW¼, and W½SW¼;
Sec. 28, NE¼NE¼, W½NE¼,NW¼, and NW¼SW¼;
Sec. 29, E½, E½W½, SW¼NW¼, and W½SW¼;
Sec. 30, SE¼SE¼;
Sec. 31, E½, E½W½, SW¼NW¼, and W½SW¼;
Sec. 32, W½NW¼, and NW¼SW¼.

The area described aggregates approximately 2,400 acres in Conejos County, Colorado.

The above legal description is based upon original plats of survey of the listed townships, now superceded by Bureau of Land Management Protraction Diagram No. 29, accepted May 6, 1965. The public land order effecting the continuation, if issued, will conform the above legal description as nearly as practicable to the protraction diagram. The record file for the withdrawal action is on file with the Bureau of Land Management, Colorado State Office and available for review.

The purpose of the withdrawal is for protection of land for the existing Platoro Dam and Reservoir, used to store floodwaters of the Conejos River and to provide supplemental irrigation water to approximately 73,890 acres of irrigable land. The reservoir is a part of the Bureau of Reclamation's San Luis Valley Project. The withdrawal segreggates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the State Director, in the Colorado State Office.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal continuation. All interested persons who desire a public meeting for the purpose of being heard must submit a written request to the State Director, within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Robert D. Dinsmore,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 84-8863 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-JB-M

[NM 15843]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, Thomas J. Jeffrey petitioned for reinstatement of oil and gas lease NM 15843 covering the following described lands located in McKinley County, New Mexico:

T. 17 N., R. 9 W., NMPM,
Sec. 34: All.
Containing 640.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, September 1, 1982.

Dated: March 27, 1984.

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-8848 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM 25452]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, Hixon Development Company petitioned for reinstatement of oil and gas lease NM 25452 covering the following described lands located in San Juan County, New Mexico:

T. 25 N., R. 12 W., NMPM,
Sec. 29: NE¼NE¼, W½NE¼, NW¼.
Containing 280.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre, or fraction thereof, per year and the royalty rate to 16⅔ percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, July 1, 1980.

Dated: March 27, 1984.

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-8849 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM 25447]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, Hixon Development Company petitioned for reinstatement of oil and gas lease NM 25447 covering the following described lands located in San Juan County, New Mexico:

T. 25 N., R. 12 W., NMPM,
Sec. 19: Lots 1, 2, NE¼, E½NW¼.
Containing 319.15 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre, or fraction thereof, per year and the royalty rate to 16⅔ percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, July 1, 1980.

Dated: March 27, 1984,

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-8850 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM 45240–(Okla.)]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, Mayco Exploration Company petitioned for reinstatement of oil and gas lease NM 45240–(Okla.) covering the following described lands located in Woods County, Oklahoma:

T. 29 N., R. 17 W., I. M.,
Sec. 32: SW¼ SE¼.

Containing 40.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre, or fraction thereof, per year and the royalty rate to 16⅔ percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, August 1, 1983.

Dated: March 27, 1984.

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-8951 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM 14310]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, Texas Oil & Gas Corporation petitioned for reinstatement of oil and gas lease NM 14310 covering the following described lands located in Chaves County, New Mexico:

T. 6 S., R. 29 E., NMPM,
Sec. 1: Lots 3, 4.
Sec. 10: NE¼SE¼.
Sec. 11: NE¼, S½.
Sec. 12: W½NW¼.
Sec. 14: N½.
Sec. 15: NE¼NE¼, S½NE¼, SE¼.

Containing 1,447.78 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, September 1, 1981.

Dated: March 27, 1984.

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-8952 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-FB-M

[OR 17295 (Wash.)]

Washingon; Termination of Proposed Disposal Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates a proposed classification decision and will also open 5,853.50 acres of public land to surface entry and mining. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: May 14, 1984.

ADDRESS: Inquiries concerning the lands should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

SUPPLEMENTARY INFORMATION: 1. By order of the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on May 2, 1977 (42 FR 22205), pursuant to the provisions of 43 CFR 2400 the following described lands were proposed to be classified for disposal by exchange under the Act of October 21, 1976 (90 Stat. 2743, 2756; 43 U.S.C. 1716).

Willamette Meridian

T. 12 N., R. 20 E.,
Sec. 12, E½E½.
T. 12 N., R. 21 E.,
Sec. 2, SW¼NW¼ and NW¼SW¼;
Sec. 4, Fractional N½N½, S½N½, E½ SW¼, and SW¼;
Sec. 8, NW¼NE¼ and NE¼NW¼;
Sec. 10;
Sec. 14, SW¼.
T 13 N., R. 21 E.,
Sec. 32, N½Nw¼ and E½SE¼;
Sec. 34, W½.
T. 12 N., R. 22 E.,
Sec. 12, NW¼ and S½;
Sec. 18, Lots 1, 2, 3, and 4, E½W½, and E½.
T. 12 N., R. 23 E.,
Sec. 2, Lots 1, 2, 3, and 4, S½N½, and S½;
Sec. 10, NE¼ and NE¼NW¼;
Sec. 12, NE¼, N½NW¼, and E½SE¼.
T. 11 N., R. 24 E.,
Sec. 4, Lots 1, 2, 3, and 4, S½N½, and S½;
Sec. 6, SE¼SW¼ and S½SE¼.
T. 12 N., R. 24 E.,
Sec. 4, N½SW¼;
Sec. 6, Lots 3, 4, 5, 6, and 7, SE¼NW¼, and E½SE¼;
Sec. 22, SW¼.
T. 13 N., R. 24 E.,
Sec. 20, E½SE¼;
Sec. 22, W½SW¼ and SE¼SW¼.

The areas described aggregate 5,853.50 acres in Benton and Yakima Counties, Washington.

2. Pursuant to 43 CFR 2461.5(b)(2), the proposed classification is terminated upon publication of this notice in the **Federal Register.**

3. At 8:30 a.m., on May 14, 1984, the lands described in paragraph 1 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on May 14, 1984, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on May 14, 1984, the lands described in paragraph 1 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. The land has been and remains open to applications and offers under the mineral leasing laws.

Dated: March 27, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-8935 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-33-M

[Int. FEIS 84-10]

Final Medford Grazing Management Environmental Impact Statement; FEIS Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: Pursuant to section 202(f) of the Federal Land Policy and Management Act (FLPMA) and section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Final Environmental Impact Statement for the Medford EIS area. The proposal involves implementing a livestock grazing program on public lands within the Medford EIS area of the Medford District in southwestern Oregon.

Public reading copies will be available for review at the following locations:
Klamath County Library, Klamath Falls, Oregon
Josephine County Library, Grants Pass, Oregon
Coos County Library, Coquille, Oregon
Curry County Library, Gold Beach, Oregon
Douglas County Library, Roseburg, Oregon
Jackson County Library, Medford, Oregon
Rogue Community College Library, Grants Pass, Oregon
Library, Southern Oregon State College, Ashland, Oregon
Library, Oregon Institute of Technology, Klamath Falls, Oregon
Bureau of Land Management, Office of Public Affairs, 825 N.E. Multnomah Street, Portland, Oregon
Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504
Library, University of Oregon, Eugene, Oregon
Library, Portland State University, 727 S.W. Harrison, Portland, Oregon
Library, Oregon State University, Corvallis, Oregon

A limited number of copies are available upon request to the BLM Medford District Office. The final EIS is published in an abbreviated format and is designed to be used with the Draft EIS published in September, 1983. Portions of the draft that did not require changes are included in the final document by reference. Changes and additions to the draft resulting from public comments have been incorporated into the final document.

Written comments on the final EIS should be sent by the end of April, 1984 to: District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Joseph Ross, Medford District Office, Telephone: (503) 776–4604.

SUPPLEMENTARY INFORMATION: The proposed Josephine and Jackson-Klamath plan amendments for grazing shall be approved by the Oregon State Director no earlier than thirty days after publication in the **Federal Register** of the Evironmental Protection Agency's notice of filing. The approval of the plan amendments will be documented in a record of decision, which will be available for public review. Approval will be withheld on any portion of the plan amendments protested until final action has been completed on such protest. Protests must conform to the requirements of 43 CFR 1610.5–2 and be filed with the Director of the Bureau of Land Management within thirty days of publication of the notice of filing.

Dated: March 27, 1984.

Stanley D. Butzer,

Deputy State Director for Lands and Renewable Resources.

[FR Doc. 84–8900 Filed 4–3–84; 8:45 am]

BILLING CODE 4310–33–M

[AA–6680–B and AA–6680–C]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611) (ANCSA), will be issued to Paug-Vik Incorporated, Limited, for approximately 2,302 acres. The lands involved are within the Seward Meridan, Alaska:

T. 17 S., R. 44 W.
T. 17 S., R. 45 W.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision of the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 4, 1984 to file an appeal.

Any party know or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

U.S. Department of the Army, Alaska District Corps of Engineers, P.O. Box 7002, Anchorage, Alaska 99510
State of Alaska, Department of Natural Resources, Division of Technical Services Title Administration, Pouch 10–7035, Anchorage, Alaska 99510–7035
Paug-Vik Incorporated, Limited, P.O. Box 61, Naknek, Alaska 99633
Bristol Bay Native Corporation, P.O. Box 198, Dillingham, Alaska 99576

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84–8880 Filed 4–3–84; 8:45 am]

BILLING CODE 4310–JA–M

Minerals Management Service

Receipt of Proposed Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Cities Service Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4548, Block 685, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on March 5, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Managment Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Hossein Hekmatdoost, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0873.

SUPPLMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 27, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–8854 Filed 4–3–84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Availability Draft Land Protection Plan; Buffalo National River, Arkansas

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Part 516 of the Departmental Manual, Chapter 1 of Title 36 of the Code of Federal Regulations, and the policy statement for Preparation of Land Protection Plans printed in the Federal Register on May 11, 1983 (48 FR 21121), the National Park Service has prepared a Draft Land Protection Plan for Buffalo National River, Searcy, Newton, Baxter and Marion Counties, Arkansas.

The Draft Land Protection Plan addresses the protection of 3,584.57 acres within the established boundaries that have not been acquired. It considers alternate means of protection, establishes priorities, provides for public use and safety and identifies what land or interest in land needs to be in Federal ownership in order to achieve management purposes consistent with the intent of Congress in authorizing the park.

Copies of the Draft Land Protection Plan are available from Buffalo National River, Post Office Box 1173, Harrison, Arkansas 72601; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to comment on the Draft Land Protection Plan should provide them to the Superintendent, Buffalo National River, at the address provided above, within 30 days from the publication date of this notice.

Dated: March 23, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84–8922 Filed 4–3–84; 8:45 am]

BILLING CODE 4310-70-M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, May 19, 1984, at 1:00 p.m. in the War Memorial Building, 2nd floor (also known as the Men's Club) on the corner of King and German Street, Shepherdstown, West Virginia.

The Commission was established by Pub. L. 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington, D.C.
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr. Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Ms. Bonnie Troxell, Cumberland, Maryland
Mr. John D. Millar, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry Passett, Washington, D.C.
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia
Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's Report
3. Committee Reports, Plans and Projects Committee, Recreation Policies and Issues Committee, and Resource Protection Committee
4. Public Comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: March 28, 1984.

Robert Stanton,

Acting Regional Director, National Capital Region.

[FR Doc. 84–8923 Filed 4–3–84; 8:45 am]

BILLING CODE 4310-70-M

Proposed Land Exchange, Cape Krusenstern National Monument; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting and availability of draft decision documents.

SUMMARY: The Department of the Interior and the NANA Regional Corporation are proposing a land exchange at the Cape Krusenstern National Monument. A public meeting is scheduled to explain the proposed exchange and to provide an opportunity for public comment. Copies of draft final administrative decision documents will be available in advance of the meeting for review.

DATES: Public meeting—Tuesday, May 1, 1984, 7:30 p.m. Written comments will be accepted through May 21, 1984.

ADDRESSES: Public Meeting—

National Park Service, Alaska Regional Office, Room 110, 2525 Gambell Street, Anchorage, Alaska

Regional Director, National Park Service, Alaska Regional Office, Room 107, 2525 Gambell Street, Anchorage, Alaska 99503–2892

FOR FURTHER INFORMATION CONTACT: Michael Finley, Associate Regional Director, Operations, National Park Service, Alaska Regional Office, Anchorage, Alaska (907) 271–4196.

SUPPLEMENTARY INFORMATION: The purpose of this public meeting is to review the proposed land exchange and receive public comment regarding the proposal. For those persons who cannot attend this public meeting, the National Park Service will accept and consider written comments received through May 21, 1984.

In cooperation with the State of Alaska and in the interest of better serving the public, comments will also be heard and accepted at the meeting by the State Office of Management and Budget, Division of Governmental Coordination, regarding the consistency of the proposed land exchange with the Alaska coastal management program.

Several administrative decision documents are in preparation. Four of these will be available in final draft form for public review on April 10, 1984. These documents are: (1) Agreement between NANA Regional Corporation, Inc., and the United States of America; (2) Resource Evaluation; (3) Public Interest Determination; and (4) An Evaluation of the Effects on Subsistence of a Proposed Land Trade in Cape Krusenstern National Monument. The documents may be reviewed or obtained in person at the following National Park Service Offices:

Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska
Office of the Superintendent, Northwest Areas, Kotzebue, Alaska
Room 3219, Alaska Programs, Department of the Interior Bldg., 18th and C Sts., NW., Washington, D.C.

Public comment, either oral or written, should preferably be based on the content of these documents. Appendix A of this notice provides further background and the basis for further negotiation of the exchange.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

Appendix A

The Secretary of the Interior
Washington
March 12, 1984.

Mr. John Schaeffer,
President, NANA Regional Corporation, P.O. Box 49, Kotzebue, Alaska 99750

Dear Mr. Schaeffer: For the past several weeks, representatives of my staff and the NANA Regional Corporation have been engaged in discussions and negotiations concerning a proposed land exchange pursuant to section 1302(h) of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3192(h) and 22(f) of ANCSA, 43 C.F.R. 1621(f), involving lands within the NANA Region and the Cape Krusenstern National Monument. This letter will set forth our mutual understanding of what we are considering, and will serve as the basis for further negotiations. It should be recognized, however, that various administrative findings are required before a formal exchange may be effectuated.

Prior to execution of an agreement, the following administrative work, as a matter of law, policy or comity, must be satisfactorily completed:

1. Compliance with section 7 of the Endangered Species Act.
2. Compliance with section 106 of the National Historic Preservation Act.
3. Compliance with OMB Circular A–95.
4. Compliance with section 307 of the Coastal Zone Management Act.
5. Completion of a resource evaluation.
6. A determination that the exchange is for equal value or that it is in the public interest.
7. Coordination with the Alaska Land Use Council.
8. A subsistence evaluation and determination under section 810 of ANILCA.

Completion of these administrative tasks, and the resulting conclusions from these reviews, must support the exhange. Furthermore, the appraisals must demonstrate that the United States is receiving a reasonable value, the exchange must not undermine the essential integrity of Cape Krusenstern National Monument, and it must provide a net benefit for the National Park System.

Although this Department has made, and I can make, no binding commitment to an exchange at this time, it is my intent to pursue an exchange within the parameters negotiated so far as outlined in this letter. I will proceed with a good faith effort to negotiate a final agreement consistent with this outline unless the administrative work listed causes me to reach the conclusion that the exchange is not in the public interest.

The outline of the potential exchange would be as follows:

A. Obligations of United States

(1) The United States would convey approximately 62,723 acres to NANA, within the Cape Krusenstern National Monument, more particularly described as follows:

Kateel River Meridian

T. 25 N., R. 23 W., Secs. 5 NW¼, and 6;
T. 26 N., R. 22 W., Secs. 4–8, 17 and 18;
T. 26 N., R. 23 W., Secs. 1–23, 24 N½ and SW¼, 25 W½, and 28–32;
T. 27 N., R. 22 W., Secs. 1–10, 15–21, 22 W½, and 28–33;
T. 27 N., R. 23 W., All;

Aggregating 62,723 acres more or less.

(2) In addition, I would convey to NANA approximately 32,300 acres within the monument from prior selections, and NANA would have the lands so conveyed charged against its land entitlements under sections 12(b) and 12(c) of the Alaska Native Claims Settlement Act (ANCSA) as appropriate, said lands particularly described as follows:

Kateel River Meridian

T.25 N., R.24 W., Secs. 1–2 and 11–14;
T.26 N., R.24 W., Secs. 1–16, 21–28, and 34–36;
T.27 N., R.24 W., Secs. 11–15, 22–29, and 32–36;

Aggregating 32,300 acres more or less.

(3) I would agree to grant to NANA any necessary winter trail easement or easements for travel related to subsistence across monument lands exchanged or relinquished by NANA pursuant to paragraph B(1) of this letter.

(4) The exchange agreement would recognize that title to all lands relinquished by NANA pursuant to paragraph B(1) of this letter would remain in the United States and therefore would continue to be "public lands" as that term is defined in section 102(3) of ANILCA for the purposes of title VIII of ANILCA.

B. Obligations of NANA

(1) NANA would relinquish all village and regional selections of approximately 101,005 acres within the Monument, made pursuant to sections 12(a), 12(b), 12(c), 14(h)(1) or 14(h)(8), of the Alaska Native Claims Settlement Act, said lands more particularly being located in:

Kateel River Meridian

T.23 N., R.21 W.. All;
T.24 N., R.21 W.;
T.25 N., R.21 W.;
T.26 N., R.20 W.;
T.26 N., R.21 W.;
T.27 N., R.20 W.;
T.27 N., R.21 W.

Those lands selected by NANA within the area described in this paragraph B(1) and which lie outside the Monument boundary may be retained. The acreage selected by NANA pursuant to section 12(c) of ANCSA within the area described in this paragraph B(1) and which lies within the Moument would be retained by the United States and 64,894 acres, more or less, would be charged against NANA's 12(c) entitlement.

(2) NANA would convey to the United States easements or equitable servitudes on the following described lands, or agree to convenants running with the lands, as appropriate, which would provide for all aspects of cultural resources protection and research related thereto by the National Park Service, as well as National Park Service participation in planning related to any development on the described lands. These lands are composed of approximately 10,942 acres within the Moument, and are more particularly described as:

Kateel River Meridian

T. 19 N., R 19 W. (partial towship), all, excluding any valid Alaska Native Allotments; Aggregating 10,942 acres more or less.

(3) NANA would release its interests to approximately 2,010 acres within the Monument to the United States, said lands more particularly described as:

Kateel River Meridian

T. 25 N., R. 24 W., Sections 23 S½, 24, 25, 26 and 36, aggregating 2,010 acres more or less.

Those lands already conveyed to NANA would be reconveyed to the United States, and the charge for such acreage against NANA's entitlement would be reduced accordingly. NANA would be entitled to select an equal acreage from land validly selected by NANA in the section 11(a)(1) withdrawal area for the village of Kivalina; the land would be adjacent to lands owned or to be owned by a Native Corporation, would be in one compact tract and would be specifically identified in the final exchange agreement. Those areas selected but not yet conveyed would be relinquished, and there wold be no charge for such acreage against NANA's entitlement.

(4) NANA would agree to allow the United States to include in the conveyance of the lands to NANA by the Secretary pursuant to paragraph A(1) of this letter, covenants running with the land, easements, and equitable servitudes, as appropriate, providing for:

(a) Reasonable access to and procedures for survey and examination of archeological sites known or discovered within the land, and procedures agreed to by the parties for the protection, collection and disposal of archeological specimens, such procedures to be part of the final exchange agreement.

(b) Reasonable right of access by National Park Service employees and contractors to undertake research related to Monument resources.

(c) Protection of wildlife and habitat, in particular caribou and musk oxen, and mitigation of any significantly adverse impacts during construction of any future roads or other developments, and control of vehicular traffic on any roads for the purpose of avoiding significant disturbance to the caribou.

(d) Protection of active peregrine falcon nests known or discovered, consistent with existing policies of the U.S. Fish and Wildlife Service.

(e) Protection for anadromous or other fish passage, consistent with the policies and procedures of the State of Alaska under Title 16 of the Alaska Statutes.

(f) National Park Service participation in planning related to the development of material sites, including the mitigation of adverse visual impacts.

(g) Reclamation of gravel extraction sites.

(5) NANA would execute a sufficient interest in land for a 5-acre administrative site, including a ranger station, a visitor facility, and a camp site and related facilities, for the National Park Service at a location to be mutually agreeable to the parties within the Onion Portage Historic District, Kobuk Valley National Park. The interest in land would be for as long as the National Park Service would utilize the site for said administrative purposes, at no cost to the United States. Other terms and conditions of the interest in land are subject to negotiation. The terms and conditions would not unreasonably or significantly interfere with the use of the site by the National Park Service.

(6) Without either admitting or denying the legal position of the Department of the Interior, NANA would not challenge the use by the United States of sand and gravel under any easement reserved pursuant to section 17(b)(1) of the Alaska Native Claims Settlement Act if the sand and gravel is used for purposes of either developing or maintaining the easement under which the sand and gravel lies.

C. General

NANA and the Department of the Interior agree to further negotiate a provision in the formal agreement concerning an option or options for NANA to rescind the agreement. Both parties agree to negotiate such provision in good faith, recognizing that the Department of the Interior must receive adequate consideration for such option or options.

We will proceed with the various steps that could lead to a formal exchange agreement, with the clear understanding that I have made no binding commitment to the exchange, nor can I at this time. By your acceptance of this letter of intent, you agree that your corporation, subject to the conditions set forth above, will pursue negotiation of an exchange as outlined previously, and will continue to act in good faith. I acknowledge, also, that the terms of any agreement must be approved by the NANA Board.

Accepted: This 14th day of March, 1984.

Sincerely,

William Clark

NANA Regional Corporation.

By John Schaeffer.

[FR Doc. 84-8920 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-70-M

General Management Planning; Harry S Truman National Historic Site, Missouri; Public Meetings

Notice is hereby given that meetings will be conducted to inform the public about the initiation of a General Management Plan for Harry S Truman National Historic Site. These meetings will be conducted as open houses at the following locations.

April 4, 1984, 1:00–4:00 p.m. and 6:00–9:00 p.m., Arthur Mag Center, 425 Volker Boulevard, Kansas City, Missouri

April 5, 1984 1:00–4:00 p.m. and 6:00–9:00 p.m., Blue Room, Roger T. Sermon Community Center, 201 North Dodgion, Independence, Missouri

A document describing a range of management alternatives for the site and including a mail-in response form will be distributed at these meetings. Copies of this document may also be obtained from the Superintendent, Harry S Truman National Historic Site, c/o Harry S. Truman Library, Independence, Missouri 64050. The Superintendent and other members of the planning team will be available at the meetings to respond to questions about the planning effort.

Dated: March 23, 1984.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 84-8880 Filed 4-3-84; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Colorado River Water Quality Improvement Program Uinta Basin Salinity Control Unit, Utah; Intent To Prepare a Draft Environmental Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement integrated with a planning report for the Uinta Basin Unit, Utah, of the Colorado River Water Quality Improvement Program. The purpose of the unit is to control salt picked up by surface and ground water within the Uinta Basin by preventing the salt from entering the Colorado River where it causes economic problems for municipal, industrial, and agricultural water users downstream. Approximately 450,000 tons of salt annually enter the Colorado River from the Uinta Basin Unit area.

Alternatives being evaluated include: lining irrigation canals and laterals to reduce seepage losses and thus reduce the salt load carried to the Colorado River; collecting saline water and disposing of it through deep well injection, evaporation ponds, or a desalting plant; using saline water for energy development, for transportation of coal through a coal-slurry pipeline, or for cooling purposes at a local powerplant; and the retirement from irrigation of high salt contributing lands.

The present investigation has been underway since November 1976. During this time, interested agencies and individuals have been informed of the study's progress and have contributed much information. Future scoping meetings will be held in the project area to solicit information from the public to assist in determining the scope of the planning report/draft environmental statement and to identify significant environmental issues that should be studied. The draft should be available for review and comment in the summer of 1985.

In addition to addressing the impacts of construction and operation of the project, the process will insure compliance with Executive Orders relating to Floodplain Management (11988) and Protection of Wetlands (11990).

For further information or to provide input, please contact Mr. Jay Franson at the Utah Projects Office, Bureau of Reclamation, P.O. Box 1338, Provo, Utah 84603; or call him at (801) 379–1155.

Dated: March 29, 1984.

James Furse, Jr.,

Acting Commissioner.

[FR Doc. 84–8881 Filed 4–3–84; 8:45 am]

BILLING CODE 4310–05–M

Office of Surface Mining Reclamation and Enforcement

Postponement of Public Hearing for the National Wildlife Federation/ Wyoming Wildlife Federation's Petition To Designate the Red Rim Area, Carbon and Sweetwater Counties, Wyoming, as Unsuitable for Surface Coal Mining Operations; Extension of Comment Period for the Petition and Draft Combined Petition Evaluation Document/Environmental Impact Statement

AGENCY: Office of Suface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of date changes for public hearing and close of public comments on petition and draft petition evaluation document/environmental impact statement (PED/EIS).

SUMMARY: The public hearing on the Red Rim Unsuitability Petition, scheduled to held on April 9, 1984, has been postponed indefinitely by the Wyoming Enviromental Quality Council (EQC). In the interest of maintaining joint administrative proceedings with the State of Wyoming, OSM has concurred in the hearing postponement. The comment period on the petition and the draft PED/EIS is extended until further notice. Notice of the hearing date and close of the comment period will be made in the **Federal Register**.

DATES: The date of the public hearing will be announced. Public comments on the petition and draft PED/EIS will be accepted until further notice.

ADDRESSES: The administrative record of the Red Rim petition process is located at, and written comments may be submitted to, the following two locations:

Office of Surface Mining, 2d Floor, Brooks Towers, 1020 15th Street, Denver, Colorado 80202

Wyoming Department of Environmental Quality, Equality State Bank Building, 401 West 19th Street, Cheyenne, Wyoming 82002.

The administrative record is also located at the following locations:

Bureau of Land Management, District Office, 1300 North 3d Street, Rawlins, Wyoming 82301

Office of the County Clerk, Carbon County Courthouse, Fifth and Spruce Street, Rawlins, Wyoming 823091.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, OSM, Western Technical Center (telephone (303) 837–5421; FTS 327–5421), or Rick Lawton, Wyoming Department of Environmental Quality (DEQ) (telephone (307) 777–7756), at the addresses listed above.

SUPPLEMENTARY INFORMATION: On March 5, 1984 (49 FR 8092), OSM and the Wyoming EQC rescheduled the public hearing to receive comment on the National Wildlife Federation/Wyoming Wildlife Federation's petition to designate the Red Rim area as unsuitable for surface coal mining operations. The hearing was set for April 9, 1984, in Rawlins, Wyoming. On March 29, 1984, the Wyoming EQC granted an indefinite postponement of that hearing. In the interest of maintaining joint administrative proceedings with the State of Wyoming, OSM has concurred in the postponement of the hearing. OSM will attempt to reschedule the hearing at a future date that will minimize the inconvenience to persons wishing to present oral testimony. In addition, the public comment period on the petition and the draft PED/EIS which was scheduled to close on April 20, 1984, will remain open until further notice. Notice of the hearing date, time, and place, and of the date for the close of comments on the petition and the draft PED/EIS will be published in the **Federal Register** at a later date.

For further information on previously scheduled public hearings and comment periods for the Red Rim petition see the October 20, 1983, **Federal Register** notice (48 FR 48724) on the availability of the draft PED/EIS and notice of public hearing; the January 4, 1984, **Federal Register** notice (49 FR 521) on continuance of the hearing and extension of the comment period; and the March 5, 1984, notice (49 FR 8092) on rescheduling of the hearing and extension of comment period.

Dated: April 2, 1984.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 84–8117 Filed 4–3–84; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–148 (Final)]

Fresh Cut Roses From Colombia

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigation and scheduling of a public hearing to be held in connection with the investigation.

EFFECTIVE DATE: March 14, 1984.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that imports of fresh cut roses from Colombia, provided for in item 192.18 of the Tariff Schedules of the United States are being or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–148 (final) under section 735(b) of the act (19 U.S.C. 167 3d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Colombia of such merchandise. The Department of Commerce is scheduled to make its final determination in the case on or before June 27, 1984, and the Commission will make its final injury determination by August 13, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Burket (202–724–0088), Office of Industries, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1983, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of fresh cut roses from Colombia, which were alleged to be sold at less than fair value in the United States. The preliminary investigation was instituted in response to a petition filed on

September 30, 1983, by counsel for Roses, Inc., an association of rose growers.

Participation in the Investigation

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c)).

Staff Report

A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on June 18, 1984, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with the investigation beginning at 10:00 a.m., on June 28, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 20, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m., on June 22, 1984, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 22, 1984.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR § 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 9, 1984.

Written Submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who had not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 9, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subpart A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 207.20 of the Commission's rule (19 CFR 207.20).

By order of the Commission.

Issued: March 28, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8881 Filed 4-3-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-161]]

Certain Trolley Wheel Assemblies; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination (I.D.) to terminate this investigation as to respondent Tri-II, Inc., on the basis of a settlement agreement and consent order.

Authority: 19 U.S.C. 1337, 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983 (to be codified at 19 CFR 210.53(c) and (h)).

SUPPLEMENTARY INFORMATION: Notice of the I.D. was published in the **Federal Register** of March 7, 1984, 49 FR 8504. No petitions for review or agency or public comments were received.

FOR FURTHER INFORMATION CONTACT: Sheila Landers, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0359.

By order of the Commission.

Issued: March 26, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8882 Filed 4-3-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-188]

Certain Fluidized Supporting Apparatus and Components Thereof; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge James P. Timony as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: March 23, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84-8883 Filed 4-3-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-212 and 731-TA-169 through 182 (Preliminary)]

Certain Carbon Steel Products From Argentina, Australia, Finland, South Africa, and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Australia of galvanized carbon steel sheet, provided for in items 608.07 and 608.13 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Government of Australia (investigation No. 701-TA-212 (Preliminary)). The Commission also determines, pursuant to section 733(a) of the act (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the following products which are alleged to be sold in the United States at less than fair value (LTFV):

Carbon steel plate not in coils, provided for in item 607.66 of the TSUS, from—
- Finland (investigation No. 731-TA-169 (Preliminary));
- South Africa (investigation No. 731-TA-170 (Preliminary)); [3] and
- Spain (investigation No. 731-TA-171 (Preliminary)); [4]

Carbon steel plate in coils, provided for in item 607.66 of the TSUS, from—
- South Africa (investigation No. 731-TA-172 (Preliminary)); [5] and
- Spain (investigation No. 731-TA-173 (Preliminary)); [6]

Hot-rolled carbon steel sheet, provided for in items 607.67 and 607.83 of the TSUS, from South Africa (investigation No. 731-TA-174 (Preliminary));

Cold-rolled carbon steel sheet, provided for in item 607.83 of the TSUS, from—
- Argentina (investigation No. 731-TA-175 (Preliminary));
- South Africa (investigation No. 731-TA-176 (Preliminary)); and
- Spain (investigation No. 731-TA-177 (Preliminary)); [7]

Galvanized carbon steel sheet, provided for in items 608.07 and 608.13 of the TSUS, from—
- Australia (investigation No. 731-TA-178 (Preliminary));
- South Africa (investigation No. 731-TA-179 (Preliminary)); and
- Spain (investigation No. 731-TA-180 (Preliminary)); and

Carbon steel angles, shapes, and sections having a maximum cross-sectional dimension of 3 inches or more, provided for in item 609.80 of the TSUS, from—
- South Africa (investigation No. 731-TA-181 (Preliminary)); and
- Spain (investigation No. 731-TA-182 (Preliminary)).

Background

On February 10, 1984, United States Steel Corp., Pittsburgh, Pa., filed petitions with the Commission and the Department of Commerce alleging that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Finland, South Africa, and Spain of certain carbon steel products which are being subsidized by the foreign Government and/or sold in the United States at LTFV. Accordingly, effective that date, the Commission instituted preliminary countervailing duty and antidumping investigations under sections 703(a) and 733(a), respectively, of the act 19 U.S.C. 1671b(a) and 1673b(a)).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on February 23, 1984 (49 FR 6808). The Commission's conference was held in Washington, D.C. on March 7, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on these investigations to the Secretary of Commerce on March 26, 1984. A public version of the Commission's report, Certain Carbon Steel Products from Argentina, Australia, Finland, South Africa, and Spain (investigations Nos. 701-TA-212 and 731-TA-169 through 182 (preliminary)), USITC Publication 1510, March 1984) contains the views of the Commission and information developed during the investigations.

By order of the Commission.

Issued: March 26, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8804 Filed 4-3-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-152]

Certain Plastic Food Storage Containers; Commission Determination Not To Review Initial Determination of Default Against Certain Respondents and Imposing Sanctions

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) to default certain respondents and to impose sanctions.

Authority: 19 U.S.C. 1337; 19 CFR 210.53(c) and (h).

SUPPLEMENTARY INFORMATION: On December 9, 1983, complainant Dart Industries Inc. filed a motion (Motion No. 152-14) for default and remedies for respondents' failure to make discovery. On January 13, 1984, complainant filed a supplemental motion for default and sanctions against respondents Lemarle B.V. and International Porcelain, Inc., who had not been included in the original motion. On February 6, 1984, the presiding officer (ALJ) issued Order No. 22, requiring the two respondents to show cause why they should not be held in default and why sanctions should not be imposed. Neither respondent responded. On March 5, 1984, the ALJ issued an ID (Order No. 23) granting the motion and imposing the same sanctions previously ordered against the other respondents.

The Commission received neither a petition for review of the ID nor comments from other Government agencies.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, 202-523-0493.

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Stern dissenting.

[3] Commissioners Stern and Haggart made a single affirmative determination concerning imports from South Africa of carbon steel plate not in coils and carbon steel plate in coils (invs. Nos. 731-TA-170 and 172 (Preliminary)).

[4] Commissioners Stern and Haggart made a single affirmative determination concerning imports from Spain of carbon steel plate not in coils and carbon steel plate in coils (invs. Nos. 731-TA-171 and 173 (Preliminary)).

[5] Commissioners Stern and Haggart made a single affirmative determination concerning imports from South Africa of carbon steel plate not in coils and carbon steel plate in coils ((invs. Nos. 731-TA-170 and 172 (Preliminary)).

[6] Commissioners Stern and Haggart made a single affirmative determination concerning imports from Spain of carbon steel plate not in coils and carbon steel plate in coils ((invs. Nos. 731-TA-171 and 173 [Preliminary]).

[7] Commissioner Stern dissenting.

By order of the Commission.
Issued: March 28, 1984.
Kenneth R. Mason,
Secretary.
[FR Doc. 84-8999 Filed 4-3-84; 8:45 am]
BILLING CODE 7035-02-M

INTERSTATE COMMERCE COMMISSION

[Sec. 5a Application No. 60; Amdt. No. 5]

Rocky Mountain Motor Tariff Bureau, Inc. Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Rocky Mountain Motor Tariff Bureau, Inc., has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980, an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Because several modifications are required before the agreement receives final approval, and because of the new and complex questions involved in determining whether the agreement is consistent with the 1980 Act and the decision implementing it, the Commission has decided to solicit public comment on its interpretation and application of specific rate bureau provisions. Copies of applicant's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., N.W., Washington, DC 20423, and from applicant's representatives:

Arthur J. Cerra, Stinson, Mag & Fizzell, P.O. Box 19251, Kansas City, MO 64141
Z. L. Pearson, Jr., Rocky Mountain Motor Tariff Bureau, Inc., P.O. Box 5746, Denver, CO 80217

Copies of the complete Commission decision are available for inspection and copying at the Interstate Commerce Commission, or may be purchased from TS Infosystems, Inc., Room 2227, Interstate Commerce Commission Building, 12th St. and Constitution Ave., N.W., Washington, DC, 20423; or call toll free (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

DATES: Comments from interested persons are due by May 4, 1984. Replies are due by May 21, 1984.

ADDRESS: An original and fifteen copies, if possible, of comments should be sent to: Section 5a Application No. 60, Room 1312, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Robert G. Rothstein, (202) 275-7912
or
Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION: Rocky Mountain Motor Tariff Bureau, Inc. (RMB) has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980, Pub. L. 96-296 (1980). Since filing its application, RMB has been obligated to observe the requirements of the Act and the standards set forth in our decision implementing Section 14, found in Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus—Implementation of Pub. L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981), in order to enjoy antitrust immunity for certain activities.

We have provisionally approved RMB's agreement as consistent with 49 U.S.C. 10706(b) and Ex Parte No. 297 (Sub-No. 5), supra, subject to certain modifications including the following subject areas: identification and description of member-carriers; right of independent action; employee docketing; open meetings; final disposition of cases; general standards for member-carrier voting and discussion of collectively established rates; single-line rates; general increases and decreases in tariff structure; Section 10721 rates and zone of rate freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. RMB has been directed to file a revised agreement conforming to the imposed conditions within 60 days of service of the decision provisionally approving the agreement.

In light of the complex interpretation involved in determining whether the agreement is consistent with the Act and Ex Parte No. 297 (Sub-No. 5), *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria generally, and their application to RMB's agreement in particular.

A copy of any comments filed with the Commission shall also be served on RMB, which shall have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that RMB must submit to the Commission as a condition precedent to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: March 23, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Vice Chairman Andre and Commissioner Gradison concurred with separate expressions. Chairman Taylor commented with a separate expression.

Commissioner Gradison, concurring:

Parties should also comment on the propriety and legality of RMB's collection of license fees, and RMB's ability to retain non-profit status while collecting those fees.

James H. Bayne,
Acting Secretary.
[FR Doc. 84-8971 Filed 4-3-84; 8:45 am]
BILLING CODE 7035-01-M

MERIT SYSTEMS PROTECTION BOARD

Political Activity and the Federal Employee et al.; Deadline for Ordering

AGENCY: Office of the Special Counsel; Merit Systems Protection Board.

ACTION: Notice of deadline for ordering "Political Activity and the Federal Employee" and "Political Activity and the State and Local Employee"; ordering procedures.

SUMMARY: This notice extends the deadline published in the **Federal Register** on Thursday, March 15, 1984, page 9784, to May 21, 1984. For ordering publication "Political Activity and the Federal Employee" reference MSPB requisition number 4-00118, and for ordering publication "Political Activity and the State and Local Employee reference MSPB requisition number 4-00119.

Agencies should submit their requirements to their headquarters printing procurement office. Printing procurement offices should submit consolidated requirements on Standard Form 1 to the Government Printing Office, Requisitions Section, Room 836, Washington, D.C. 20401, no later than May 21, 1984. These publications are 12 pages long, saddled stitched, book 60# stock, with the cover printed on 110# buff index stock. Agencies may estimate cost by using the current Government Printing Office price list of printing services.

FOR FURTHER INFORMATION CONTACT:
H. Alma Hepner, Director of Congressional and Public Relations, Office of the Special Counsel, Merit Systems Protection Board, Suite 1137,

1120 Vermont Avenue, NW., Washington, D.C. 20419, (202) 653–7984.

For the Special Counsel.

H. Alma Hepner,

Director of Congressional and Public Relations.

[FR Doc. 84-8867 Filed 4-3-84; 8:45 am]

BILLING CODE 7400-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Note 84-32]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Advisory Subcommittee on Space Power and Electric Propulsion.

DATE: Date and Time: May 15–17, 1984, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, California. The meeting will be held in the Conference Room in Building 167 on May 15, and in Room 90, Building 180, on May 16 and May 17.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome P. Mullin, National Aeronautics and Space Administration, Code RSE, Washington, D.C. 20546 (202/453–2860).

SUPPLEMENTARY INFORMATION: The informal Advisory Subcommittee on Space Power and Electric Propulsion was established to provide guidance and direction to the Space Energy Systems research and technology programs of NASA's Office of Aeronautics and Space Technology. The Subcommittee, chaired by Mr. Jerome H. Molitor, is comprised of eleven members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons, including the Subcommittee members and participants).

Type of Meeting: Open.

Agenda

May 15, 1984

9:00 a.m.—Welcome and Chairperson's Opening Remarks.

9:30 a.m.—Executive Secretary's Report on Space Energy Systems Program Status.

10:00 a.m.—Space Energy Systems Long Range Plan.

11:00 a.m—Subcommittee Discussion on Long Range Plan.

1:00 p.m.—New Initiatives—Space Craft Bus, Solar Thermal.

2:00 p.m.—Subcommittee Discussion on New Initiatives.

3:00 p.m.—High Performance Solar Array Research and Technology Program Briefing.

4:00 p.m.—Subcommittee Comments/Discussion.

5:00 p.m.—Adjourn.

May 16, 1984

9:00 a.m.—Space Nuclear Reactor Power System Technology (SP–100) Program Briefing.

10:00 a.m.—Subcommittee Comment/Discussion.

10:30 a.m.—Electro-Chemistry Program Briefing.

11:30 a.m.—Subcommittee Comments/Discussion.

1:00 p.m.—Jet Propulsion Laboratory's (JPL) Role in Space Energy Systems Research and Technology.

2:00 p.m.—Subcommittee Comments/Discussion.

3:00 p.m.—Tour of JPL Space Energy Systems Facilities.

5:00 p.m.—Adjourn.

May 17, 1984

9:00 a.m.—Subcommittee Review Session.

1:00 p.m.—Subcommittee Recommendations.

5:00 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division Office of Management.

March 28, 1984.

[FR Doc. 84-8864 Filed 4-3-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATIONS ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater Challenge Section) to the National Council on the Arts will be held on April 19, 1984, from 9:00 a.m.—5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue N.W., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion on information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b ot Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director Office of Council and Panel Operations National Endowment for the Arts.

March 28, 1984.

[FR Doc. 84-8863 Filed 4-3-84; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel History and Philosophy of Science; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for History and Philosophy of Science.

Date and Time: April 19, 20, 21, 1984: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G Street, N.W. Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Ronald J. Overmann, Program Director, History and Philosophy of Science Program, Room 312, National Science Foundation, Washington, D.C. 20550, telephone (202) 357–9677.

Purpose of Advisory Panel: To provide advise and recommendation concerning support for research in History and Philosophy of Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority to Close: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make

such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

March 30, 1984.

[FR Doc. 84-8865 Filed 4-3-84; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20796; SR-MSRB-83-15]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

March 28, 1984.

The Municipal Securities Rulemaking Board ("MSRB") 1120 Connecticut Avenue, NW., Washington, D.C. 20036, on October 4, 1983, filed with the Securities and Exchange Commission a proposed rule change (MSRB-83-15) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The MSRB also filed amendments to that rule change on January 4, 1984.

The proposed rule change would amend MSRB Rule G-12(e)(ii)(B) to permit persons who receive the delivery of new issue municipal securities imprinted with incorrect CUSIP numbers to reject the delivery. In addition, the proposed rule change would permit rejection of delivery of new issue municipal securities without CUSIP numbers when the underwriter is required under Rule G-34 to obtain a CUSIP number for the security, which occurs whenever the security is CUSIP-eligible. MSRB Rule G-34 requires an underwriter to arrange for the correct CUSIP number to be affixed to a new issue municipal security where the security is eligible for CUSIP number assignment. The MSRB believes that underwriters should not be permitted to deliver new issues bearing either incorrect CUSIP numbers or no CUSIP numbers when those securities are eligible for CUSIP number assignment. The proposed rule change also deletes the former effective date in MSRB Rule G-12(e).

Notice of the proposed rule change was given in Securities Exchange Act Release No. 20660 (February 15, 1984), published in the **Federal Register** (48 FR 6816, February 23, 1984). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8866 Filed 4-3-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 902]

Office of the Director General of the Foreign Service and Director of Personnel; Notification of Policy Change Regarding Affirmative Action

AGENCY: Department of State.

ACTION: Notification of Policy Change Regarding Affirmative Action Mid-Level Hiring Program for the Foreign Service.

SUMMARY: In 1975, the Secretary of State established a special Mid-Level Affirmative Action Hiring Program for Women and Minorities, which permitted qualified candidates to enter the Foreign Service at the middle classes rather than as junior officers. The program was set up as a temporary 5-year supplement to the Department's Affirmative Action program for junior officers and had an overall hiring goal of 100 Mid-Level officer candidates, that is, 20 candidates a year for 5 years. However, the program has been continued, and as of December 31, 1983, 156 officer candidates have entered the Foreign Service through this Mid-Level program, 141 of whom remain on duty. These entries have been an important reason why the number of women and minorities at the mid-level of the Foreign Service have risen from 8.0 percent and 5.0 percent, respectively, in 1975, to 16.0 percent and 11.4 percent as of December 31, 1983.

Following a review of the Mid-Level Affirmative Action Program for Women and Minorities conducted in 1983, the Department of State intends to phase out the program over a 3-year period, beginning in 1984. The reasons for the proposal to phase out this Mid-Level program included the fact that the Department had already significantly exceeded its original hiring goal, the marked increase in the numbers of women and minorities at the middle classes, the proven ability of women and minorities recruited as junior officers to compete effectively for promotions into the middle ranks, and the success that the Department of State's junior officer programs have had in recruiting women and minorities for Foreign Service careers. At the end of 1983, 22.5 percent of junior Foreign Service Officers were minorities and 28.4 percent were women.

Under the terms of the phaseout, 18 Mid-Level Affirmative Action officer candidates will be appointed into the Foreign Service in 1984, 12 will be hired in 1985, and 6 in 1986. After January 1, 1987, all Mid-Level candidates, including minorities and women, will require separate certifications of need before the Board of Examiners may process their applications, in accordance with 22 CFR 11.11(b)(4) (48 FR 19702, dated May 2, 1983), inasmuch as separate annual hiring goals will no longer be established for the Mid-Level Affirmative Action Program.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Frontis B. Wiggins, Executive Director, Board of Examiners for the Foreign Service, P.O. Box 12226, Rosslyn Station, Arlington, Virginia 22209, (703-235-9232).

Dated: March 29, 1984.

Clint A. Lauderdale,

Deputy Assistant Secretary for Personnel.

[FR Doc. 84-8864 Filed 4-3-84; 8:45 am]

BILLING CODE 4710-15-M

Advisory Committe on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Working Group on Accounting Standards of the Advisory Committee on International Investment, Technology and Development on Monday, April 16, 1984 from 10:00 a.m. to noon, in Room 3524, Department of State, 2201 C Street, NW., Washington, D.C. 20520.

The purpose of the meeting is to discuss: the outcome of the March 1984 session of the UN Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting and possible next steps; upcoming issues at the April 1984 meeting of the Working Group on Accounting Standards of the OECD's Committee on International Investment and Multinational Enterprises.

Members of the public wishing to attend the meeting must contact the Office of Investment Affairs ((202) 632-2728) in order to arrange admittance to

[1] 17 CFR 200.30-3(a) 12.

the State Department. Please use the C street entrance.

The Chairman of the Working Group will, as time permits, entertain oral comments from members of the public at the meeting.

Dated: March 20, 1984.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 84-8915 Filed 4-3-84; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Santa Clara County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent revision.

SUMMARY: The FHWA is issuing this notice revision to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Santa Clara County, California. The original notice, published Thursday, April 14, 1983, on page 16159 of Vol. 48, No. 73 of the **Federal Register** specified the limits of the Route 85 project as Route 87 in San Jose to Stevens Creek Boulevard in Cupertino. This Revision extends the limits approximately 4 miles eastward to include that section of Route 85 between Route 87 and the Route 101 freeway currently under construction.

FOR FURTHER INFORMATION CONTACT: D. L. Eyres, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, telephone (916) 440–3541, or Richard H. Green, Study Manager, State of California, Department of Transportation, P.O. Box 7310, San Francisco, California, 94120, telephone (415) 557–9150.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare a draft environmental impact statement covering alternative transportation development proposals in the corridor of adopted State Highway Route 85 in Santa Clara County between Route 101 in San Jose and Stevens Creek Boulevard in Cupertino, a length of 18 miles. Transportation improvement is needed in this area to relieve existing and anticipated traffic congestion on highways and streets in the corridor.

Alternatives to be considered, in addition to doing nothing, include construction of a freeway, expressway, bus and carpool facility, light rail transit, and combinations thereof. Use of a parallel branch rail line for passenger service will be considered.

The Urban Mass Transit Administration has been requested to participate in this study as a co-lead or responsible agency, but has made no decision regarding its participation at this time.

Two public information meetings were held in April of 1983. Additional meetings will be scheduled with interested agencies and parties who are not already participating in this study are urged to advise the contact persons listed above of their interest.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction)

Issued on: March 28, 1984.

D. L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 84-8907 Filed 4-3-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on May 1 and May 2, 1984, of the following debt management advisory committee:

Public Securities Association U.S. Government and Federal Agencies Securities Committee

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on May 1 and the preparation of a writen report to the Secretary of the Treasury on May 2, 1984.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matter which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee hearings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: March 29, 1984

Thomas J. Healey,

Assistant Secretary (Domestic Finance).

[FR Doc. 84-8913 Filed 4-3-84; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds, Assumption of Assets, Name Change; First Insurance Company of Hawaii, Ltd.

First Insurance Company of Hawaii, Ltd., Honolulu, Hawaii, which holds a certificate of authority as an acceptable surety on Federal bonds, transferred substantially all its assets to one of its subsidiaries, Continental Insurance of Hawaii, Inc., effective January 1, 1983. Confirmation of this action has been received and filed with the Treasury. Accordingly, the certificate of authority issued to First Insurance Company of Hawaii, effective July 1, 1982 (47 FR 8875, July 1, 1982) is hereby terminated

retroactive to the January 1, 1983 transference and assumption date.

Continental Insurance of Hawaii, Inc., having assumed all the business of its parent, First Insurance Company of Hawaii, Ltd., changed its name to First Insurance Company of Hawaii, Ltd., effective January 1, 1983. Documents evidencing the assumption of business and name change have been filed with Treasury.

A certificate of authority as an acceptable surety on Federal bonds is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to the new First Insurance Company of Hawaii, Ltd., Honolulu, Hawaii, effective today. An underwriting limitation of $1,921,000 has been established for the company. The principal address is 1100 Ward Avenue, Honolulu, Hawaii 96814 and the state of incorporation is Hawaii.

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30533 to reflect this change. Copies of the circular, when issued, may be obtained from the Operations Staff (Surety), Banking and Cash Management, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: March 26, 1984.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 84-8915 Filed 4-3-84; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 66
Wednesday, April 4, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday April 9, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Habib American Bank, a proposed new bank to be located at 19 Rector Street, New York (Manhattan), New York.

Application for Federal deposit insurance and for consent to merge:

Valley Interim Bank, Parkersburg, West Virginia, a proposed new bank in organization, for Federal deposit insurance and for consent to merge with Valley Bank, Parkersburg, West Virginia, a noninsured commercial bank resulting from the proposed conversion of the charter of Valley Savings and Loan Company, Parkersburg, West Virginia, a noninsured industrial loan company.

Applications for Federal deposit insurance and for consent to purchase assets and assume liabilities:

Bank of the Valley, a proposed new bank to be located in Bellwood, Nebraska, for Federal deposit insurance and for consent to purchase the assets of and assume the liability to pay deposits made in Bellwood Cooperative Credit Association, Bellwood, Nebraska, an operating noninsured institution.

Application for consent to purchase assets and assume liabilities and establish one branch:

Cones State Bank, Pierce, Nebraska, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Foster Cooperative Credit Association, Foster, Nebraska, an operating noninsured institution, and for consent to establish the sole office of Foster Cooperative Credit Association as a branch of Cones State Bank.

Applications for consent to establish a branch:

Centennial State Bank of Colorado, Englewood, Colorado, for consent to establish a branch at 5353 South Federal Boulevard, Littleton, Colorado.

The Village Bank of Hialeah, Hialeah, Florida, for consent to establish a branch at 7220 Northwest 72nd Avenue, Miami, Florida.

Bank of Leadwood, Leadwood, Missouri, for consent to establish a branch at 43 St. Joe, Rivermines, Missouri.

Lincoln Bank of North Carolina, Lincolnton, North Carolina, for consent to establish a branch in the Lowe's Shopping Center at the intersection of State Highways 16 and 150, Unincorporated Catawba County (P.O. Denver), North Carolina.

The Bank of Iredell, Statesville, North Carolina, for consent to establish a branch at 107 North Main Street, Mooresville, North Carolina.

Applications for consent to establish a limited service branch:

The Bank of Northern California, San Jose, California, for consent to establish a limited service branch (courier service) in San Mateo County, California.

Nevada Banking Company, Stateline, Nevada, for consent to establish a limited service branch (night depository) at 215 Elks Point Road, Zephyr Cove, Nevada.

Memorandum re: Amendments to the Corporation's General Travel Regulations (GTR's).

Reports of committee and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings, approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re: Community Bank, Hartford, South Dakota—AP-352 (dated February 24, 1984)

Audit Report re: Western National Bank of Lovell, Lovell, Wyoming—NR-432 (dated March 6, 1984)

Audit Report re: Audit of Teleprocessing System Security (dated March 9, 1984)

Report of the Deputy General Counsel, Closed Bank Litigation and Liquidation Section, Legal Division:

Memorandum re: The Mission State Bank & Trust Company Mission, Kansas—Status Report

Discussion Agenda: No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: April 2, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 84-9119 Filed 4-2-84; 3:30 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, April 9, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Notice of acquisition of control:

Name and location of bank and names of acquiring persons authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of

the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Application for capital assistance pursuant to section 13(i) of the Federal Deposit Insurance Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Advest Bank, a proposed new bank to be located at 31–33 Lewis Street, Hartford, Connecticut.

Request for modification of a previous order granting Federal deposit insurance:

Universal Trust Company, San Juan, Puerto Rico, an operating noninsured bank.

Application for consent to merge and establish a branch:

Ruston State Bank & Trust Company, Ruston, Louisiana, an insured State nonmember bank, for consent to merge, under its charter and title, with Dubach State Bank, Dubach, Louisiana, and for consent to establish the sole office of Dubach State Bank as a branch of the resultant bank.

Application for consent to establish a branch:

The Philadelphia Saving Fund Society, Horsham Township (P.O. Horsham), Pennsylvania, for consent to establish a branch at 8254 Old York Road, Cheltenham Township, Pennsylvania.

Application for consent to establish a branch (mortgage facility):

The Philadelphia Saving Fund Society, Horsham Township (P.O. Horsham), Pennsylvania, for consent to establish a branch (mortgage facility) at 1440 Old York Road, Abington Township, Pennsylvania.

Application for consent to establish a remote service facility:

Michigan Bank—Mid South, Litchfield, Michigan, for consent to establish a remote service facility at 100 East Michigan Avenue, Albion, Michigan.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,990–NR—Penn Square Bank, National Association, Oklahoma City, Oklahoma

Memorandum and Resolution re: American City Bank, Los Angeles, California

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street NW., Washington, D.C.

Requests for further information concering the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: April 2, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–8120 Filed 4–3–84; 3:03 pm]

BILLING CODE 6714–01–M

3

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 29, 1984, 49 FR 12357.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., April 4, 1984.

CHANGES IN THE MEETING: The time of the Commission meeting of April 4, 1984 is changed from 9:00 a.m. to 10:00 a.m.

Addition of the following item to the closed session:

2. Baton Rouge Marine Contractors, Inc. v. Board of Commissioners of the Port of New Orleans and Ceres Gulf, Inc. (Civil District Court for the Parish of Orleans, State of Louisiana, Division "A", Docket V, No. 84–3462)—Possible Participation by Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–8033 Filed 3–30–84; 4:14 pm]

BILLING CODE 6730–01–M

4

FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 49, March 20, 1984, Page No. 10405.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., April 11, 1984.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the time of its previously announced open meeting of April 11, 1984, from 2:00 p.m. to 10:00 a.m.

Emily H. Rock,

Secretary.

[FR Doc. 84–8083 Filed 4–3–84; 2:01 pm]

BILLING CODE 6750–01–M

5

PAROLE COMMISSION

[4P0401]

Pursuant To The Government In The Sunshine Act Pub. L. 94–409 (5 U.S.C. Section 552b)

TIME AND DATE: Tuesday, April 10, 1984—9:00 a.m. to 1:00 p.m.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 22 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Date April 2, 1984.

Joseph A. Barry,

General Counsel, Parole Commission.

[Fr Doc 84–8081 Filed 4–3–84; 2:01 pm]

BILLING CODE 4410–01–M

6

PAROLE COMMISSION

[4P0401]

Pursuant To The Government In The Sunshine Act Pub. L 94–409 (5 U.S.C. Section 552b)

DATE AND TIME

Tuesday, April 10 1984—2:00 p.m. to 5:30 p.m.

Wednesday, April 11 1984—9:00 a.m. to 5:30 p.m.
Thursday, April 12, 1984—9:00 a.m. to 5:30 p.m.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of open meeting of January 17 and 18, 1984.
2. Reports from the Chairman, Vice Chairman, Commissioners, General Counsel, Director of Research, Chief of Case Operations, and the Administrative Section.
3. Presentation by Dennis Curtis, University of Southern California Law School.
4. Experimental Community Services Program.
5. Ten-Year Reconsideration Hearings.
6. Procedures under the Victim and Witness Protection Act.
7. Dispositional Revocation Hearings (28 CFR 2.47)
8. Disclosure of Notices of Action
9. Driving While Intoxicated—procedures concerning possible parole revocation and guidelines.

Consent Agenda

The following Consent Agenda Items shall be deemed adopted by consent and will not be discussed at the meeting unless a request to discuss a particular item has been received by April 6, 1984.

10. Rules and Procedures Memorandum 84/2
11. Temporary Seizure of Passports.

CONTACT PERSON FOR MORE INFORMATION: Peter B. Hoffman, Director of Research, United States Parole Commission, (301) 492–5980.

Date April 2, 1984.

Joseph A. Barry,
General Counsel Parole Commission.

[FR Doc. 84–9081 Filed 4–2–84; 2:01 pm]
BILLING CODE 4410–01–M

federal register

Wednesday
April 4, 1984

Part II

Department of Education

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training

AGENCY: Department of Education.

ACTION: Notice of Proposed Annual Funding Priority.

SUMMARY: The Secretary proposes a fiscal year 1984 annual funding priority for new awards under the Educational Media Research, Production, Distribution, and Training program. To ensure that educational media and technology is available, is of good quality, and is used effectively, and to foster mutual growth among entities involved in the educational advancement of handicapped persons, the Secretary proposes to establish an annual priority related to research, dissemination, and training conducted by consortia of such entities.

DATE: Comments must be received on or before May 4, 1984.

ADDRESS: Comments should be addressed to James S. Johnson, Technology and Marketing Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3076), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: James S. Johnson. Telephone: (202) 245-8913.

SUPPLEMENTARY INFORMATION: Awards under the Educational Media Research, Production, Distribution, and Training program are authorized under Sections 651(a)(2) and 652(b)(5) of Part F of the Education of the Handicapped Act. The purpose of this program is to promote the educational advancement of handicapped persons by providing assistance for projects which:

(a) Undertake research on the use of new or improved implementation of advances in educational media and technology for handicapped persons;

(b) Disseminate information about practices found effective in the use of educational media and technology; and

(c) Train persons in the use of educational media and technology for the advancement of handicapped persons.

An application notice for fiscal year 1984, indicating the closing date for submitting those applications, is published in this issue of the **Federal Register**.

Eligible applicants: Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for awards under this program.

Priority: In accordance with 34 CFR 75.105(b)(2) and 75.105(c)(3)(i), the Secretary proposes to give an absolute preference to each application which provides satisfactory assurance that the recipient will use funds made available under this program to conduct authorized activities as follows:

1. *Eligible Applicants.* Funds will be used to support cost-sharing projects under consortium arrangements entered into by a combination of eligible entities. A consortium arrangement is expected to foster mutual growth among parties who have interests in and complementary expertise in implementing educational media and technology innovations for the educational advancement of handicapped persons. A consortium is also desirable since only a combination of eligible entities would have the requisite resources to accomplish the scope of the project. For guidance regarding group applications, the applicant is referred to the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.127–75.129.

Each recipient of a grant under this part must provide a share of the entire cost of the program or project. It is expected that the consortium will share the cost of the project through such means as partial funding and/or contributions and uncompensated services of individuals and organizations. A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the cost to be borne by the grantee is determined by the Secretary at the time of the grant award, and generally will be not less than 10 percent of the total project cost. Each application will be reviewed on its own merits and the adequacy of each proposed cost-sharing arrangement will be judged on the resources available to the applicant and the scope of the proposed project activities. The purpose of such cost-sharing arrangements is to encourage continuation of project activities beyond the grant period by providing for grantee investment of fiscal resources or personnel.

2. *Activities.* Funds will be used to support projects which: (i) Undertake research in the use of new or improved advances in educational media and technology that would contribute to the advancement and education of handicapped persons; (ii) disseminate information about practices found effective in the use of educational media and technology; and (iii) train persons in the use of educational media and technology for the educational advancement of handicapped persons. This statement of proposed priority differs slightly from the language use in 34 CFR 332.10 (a)(4), (d), and (e). This change is designed to ensure a broad scope of innovative proposals for activities in both educational media and technology.

Within this priority, the Secretary particularly invites two-year cost-sharing projects that will provide for:

a. Collaborative research between institutions of higher education, profit or nonprofit agencies and organizations and State and local educational agencies on the implementation of technological advances for the purpose of improving the education of handicapped children;

b. Development of practicum sites in local educational agencies for use by institutions of higher education to train teachers in the use of educational media and technology and to strengthen faculty capacity to improve the training programs related to the use of educational media and technology in special education; and

c. Mechanisms for participating agencies and entities to synergistically integrate research, training, and dissemination activities related to the use of educational media and technology for educating handicapped persons.

Applications that meet the three invitational priorities will not, however, receive a competitive or absolute preference over other applications that describe projects consistent with the absolute preference for projects fulfilling the three objectives described in (i) through (iii) above.

It is anticipated that one or more of the following will occur as a result of this program: increased delivery of services to handicapped individuals; increased practical application of technology in special education programs; the development of model sites; and improved integration of research, training, and dissemination of applications of technology.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to comment: Interested persons are invited to submit comments and recommendations regarding the proposed priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before [the 30th day after publication of this document] will be considered before the Secretary issues any final priority. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3076, Switzer Building 330 C Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.026, Handicapped Media and Captioned Films)

(20 U.S.C. 1451(a)(2), 1452(a)(2), 1452(b)(5))

Dated: March 30, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-8826 Filed 4-3-84; 8:45 am]

BILLING CODE 4000-01-M

Educational Media Research, Production, Distribution, and Training

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of New Grant Applications—Educational Media Research, Production, Distribution, and Training.

Applications are invited for new awards under the Educational Media, Research, Production, Distribution, and Training program.

Authorization for this program is contained in Sections 651(a)(2) and 652(b)(5) of Part F of the Education of the Handicapped Act, Public Law 91-230, as amended.

(20 U.S.C. 1451, 1452)

Funds will be used to support cost-sharing projects under consortium arrangements which: (1) Undertake research in the use of new or improved advances in educational media and technology that would contribute to the advancement and education of handicapped persons; (ii) disseminate information about practices found effective in the use of educational media and technology; and (iii) train persons in the use of educational media and technology for the educational advancement of handicapped persons.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by June 4, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.026, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark; or

(2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Regional Office Building 3, Room 5673, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. An application for a new grant that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program information: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(b)(2) and 75.105(c)(3)(i) the Secretary proposes to give an absolute preference to each application for a cost-sharing project entered into by a combination of eligible entities that will use funds made available under this program to do each of the following: (i) undertake research in the use of new or improved advances in technology that would contribute to the advancement and education of handicapped persons, (ii) disseminate information about practices found effective in the effective use of educational media and technology, and (iii) train persons in the use of educational media and technology for the educational advancement of handicapped persons. Further information on this priority area is contained in this issue of the **Federal Register** under a Notice of Proposed Annual Funding Priority.

Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372, entitled "Intergovernmental Review of Federal Programs." The regulations took effect on September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accomodated; and
- revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geograhic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States which have established a process, designated a single point of contact, and have selected this program for review:

Arizona	Michigan
Arkansas	Missouri
California	Montana
Connecticut	Nebraska
Delaware	Nevada
Florida	New Jersey
Indiana	New Mexico
Kentucky	New York
Louisiana	Pennsylvania

Oklahoma
Oregon
South Carolina
Tennessee
Utah
Vermont
Virginia
Wisconsin
Wyoming
Puerto Rico
The Northern Mariana Islands

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about and to comply with the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 20, 1984 to the following address:

The Secretary, U.S. Department of Education, Room 4181, CFDA 84.026, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone Number (202) 245–7913. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Available funds: It is expected that approximately $1,500,000 will be available to support 20 new educational media and technology projects under this program for fiscal year 1984. This estimate of funding level does not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations. Grant approval is expected to be for up to a two year period subject to an annual review of progress and availability of funds.

Application forms: Application forms and program information packages will be available on April 11, 1984, and may be obtained by writing to the Technology and Marketing Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3076), Washington, D.C. 20202–3511

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 40 double-spaced or 20 single-spaced pages in length. The Secretary further urges that applicants submit only the information that is requested. (OMB 1820–0028—Expires 2/28/84)

Applicable regulations. Regulations applicable to this program include the following:

(a) Regulations governing the Educational Media, Research, Production, Distribution, and Training program (34 CFR Part 332).

(b) Any final annual priority adopted by the Secretary. A notice of a proposed annual priority is published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed priority. If there are any substantive changes made in these proposed provisions when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

(c) Education Department General Administrative Regulations EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

FOR FURTHER INFORMATION CONTACT: Jane Hauser, Technology and Marketing Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3076), Washington, D.C. 20202–3511 Telephone: (202) 732–1126.

(Catalog of Federal Domestic Assistance No. 84.026, Handicapped Media and Captioned Films)

(20 U.S.C. 1451 (a)(2), 1452(b)(5))

Dated: March 30, 1984.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 84–8927 Filed 4–3–84; 8:45 am]

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federal register

Wednesday
April 4, 1984

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 5
Revision of Foreign Filing License Procedure; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 5

[Docket No. 40227-18]

Revision of Foreign Filing License Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in patent cases, Parts 1 and 5 of 37 CFR, to establish a streamlined procedure for granting licenses for foreign filing. The changes simplify the obtaining of licenses for filing foreign patent applications and for filing amendments, modifications, and supplements in foreign patent applications. Under the revised rules (1) the export, but not actual filing, of technical data to a foreign country for purposes related to the filing and prosecution of a patent application may be done either under appropriate export agencies' rules or by a license issued by the Commissioner of Patents and Trademarks, (2) certain licenses issued by the Commissioner for filing foreign patent applications include a license to file amendments, modifications, and supplements, containing additional matter in foreign applications, (3) specific contents of a petition for retroactive license are established and (4) fees are set for expedited handling of requests for foreign filing licenses and for certain petitions. These changes will result in reduced work for both patent applicants and the Patent and Trademark Office and at the same time strengthen national security protections.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Cage by telephone at (703) 557-2877 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This rule change is designed primarily to simplify and expedite the granting of licenses under 35 U.S.C. 184. It contains a number of changes in practice designed to benefit both the Patent and Trademark Office in its handling of its mission and the public the Office serves. Notice of proposed rulemaking was published May 23, 1983, at 48 FR 23144 and corrected June 7, 1983, at 48 FR 26319.

Discussion of Specific Rules

Section 5.11(a) has been substantially restructured and modified from the proposal. Under § 5.11(a), a license from the Commissioner of Patents and Trademarks is always needed for the act of filing a patent application in a foreign patent office unless the six-month period has passed or the invention was not made in the United States.

Amended § 5.11 (b) and (c) would clarify in the regulations that the export of technical data to a foreign country may be done under appropriate export agencies' rules controlling the export of technical data—Department of State (22 CFR Parts 121–130); Department of Commerce, International Trade Administration Office (15 CFR Part 379); or the Department of Energy (10 CFR Part 810)—or by license from the Commissioner. Compliance with the appropriate export agencies' rules or the license from the Commissioner is required before *exporting* technical data in the form of a patent application or data in any form if related to preparing, filing, and prosecuting a patent application in a foreign country, if the United States application has not been on file for six months at the time of export, or no application has been filed in the United States. It is optional from whom approval for export is obtained. In fact, for certain technical data being exported to certain countries, a specific request for a license or approval from any of the export agencies would not be necessary. However, a single license from the Commissioner would cover both export and filing and avoid any question whether a specific license or approval is required from any of the export agencies. Approval from the appropriate export agencies for export would require a separate additional license from the Commissioner for the filing of the foreign patent application. The rule changes will make the rules more closely conform with the regulations of other agencies which deal with the export of technical data to a foreign country.

The definition of export in these regulations will be controlled by the definition of export in the appropriate regulations of the export agencies having jurisdiction over the export of technical data related to the patent application. (15 CFR 379.1, 22 CFR 125.03 and 10 CFR 810.7).

The requirement of complying with the rules of the export agencies or the Commissioner before exporting an application to a foreign country is not intended to change long-standing Patent and Trademark Office interpretation of 35 U.S.C. 184 or in any way interpret the language in 35 U.S.C. 184 "file or cause or authorize to be filed" as requiring a license before technical data related to the filing or prosecution of an application is exported to a foreign country, such as to a foreign attorney or agent or corporation for review or revision for later filing. It does, however, reflect the delegations the Commissioner has received from other agencies and which are referenced in §§ 5.18, 5.19 and new § 5.20 and clarifies that a patent applicant must be licensed for export of technical data abroad for purposes related to the preparation, filing or possible filing and prosecution of a foreign patent application either by appropriate export agencies or by the Commission. The language "related to the preparation, filing or possible filing and prosecution of a foreign patent application" in § 5.11(b) is used rather than "support a patent application" as used in § 5.18 or "foreign filing" as used in § 5.19 to make clearer that the latter two phrases include the export of technical data in the form of explanations or possible claim language or the like sent to a foreign agent or other person in relation to a foreign patent application. However, a license from the Commissioner would not substitute for approvals required by appropriate export agencies if technical data is exported for purposes not related to the filing or possible filing and prosecution of a foreign patent application. For example, a license from the Commissioner would not cover export of technical data in a U.S. patent application to a foreign research laboratory to support a research project.

Further, the rule is intended to reflect that every exportation of technical data related to filing or possible filing or prosecution within six months of a United States filing without a license from the Commissioner is prohibited unless the applicant complies with the rules of the appropriate export agencies. For example, where an application has been exported to a foreign agent with an authorization to file a foreign patent application, the export of the application may be under a general license from the International Trade Administration of the Department of Commerce. A license from the Commissioner is always necessary for the actual filing of the foreign patent application. In another example, where a validated license is needed under 15 CFR Part 379 to export technical data in the form of a patent application, applicants will need to obtain an International Trade Administration license or obtain a Commissioner's license prior to the act

of export. Under either example, a license from the Commissioner is required before the application is filed in a foreign patent office. In the latter example, a single license from the Commissioner will permit both export and filing of the application.

This rule is promulgated under the authority of 35 U.S.C. 6 and delegations to the Commissioner by regulation (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7) or otherwise under the Export Administration Act of 1979, as amended, the Arms Export Control Act, as amended, the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978. Authority for this rule also exists under 35 U.S.C. 188.

The amended rule assures adequate protection of sensitive material under Title 35, United States Code and provides regulatory consistency with the Arms Export Control Act, as amended, the Export Administration Act, as amended, the Atomic Energy Act of 1954, as amended, the Nuclear Non-Proliferation Act of 1978, and their implementing regulations. The sanctions which apply for failure to obtain a license from either the Commissioner or the appropriate export agencies prior to export are the sanctions specified in the export acts. The sanctions which apply for failure to obtain a license from the Commissioner prior to the filing of a foreign application are the sanctions specified in Title 35, United States Code.

Section 5.11(d), proposed as § 5.11(b), states that applications under secrecy order under § 5.2 cannot be exported to an international agency or filed in a foreign country except in accordance with § 5.5.

Section 5.11(e), proposed as § 5.11(c), states that a license pursuant to paragraph (a) is not required where the invention was not made in the United States, or the United States application was on file for six months without a secrecy order being issued.

Section 5.11(f), proposed as § 5.11(d), states that a license for foreign filing may be revoked at any time upon written notice. Similarly, an authorization for foreign filing resulting from the passage of six months from the filing of a United States patent application may be revoked by the imposition of a secrecy order. The revocation is effective as of the date of the notice and is not intended to be applicable to any prior acts by applicants relying in good faith on the grant of a license.

The language of §§ 5.12(b), 5.13, and 5.14 have been clarified from the proposal to reflect that the § 1.17(h) requirement for a fee is for the expedited handling of a license. No fee is required for a routine, non-expedited request for a foreign filing license.

Section 5.15 has been changed from the form proposed. Amended § 5.15 defines licenses for foreign export and filing of two different scopes. The § 5.15(a) scope license, the grant of which is indicated on the filing receipt in accordance with § 5.12(a) published at 48 FR 2696 (January 20, 1983) and 1027 OG 9 (February 1, 1983), permits the subsequent export and filing of technical data for purposes related to the preparation, filing or possible filing and prosecution of the foreign application and of any amendments or modifications to the application in a foreign country, even if "additional subject matter" were introduced; provided the additional subject matter does not change the general nature of the subject matter disclosed and does not pertain to certain categories of potentially sensitive material which are set forth in § 5.15(a)(4).

The phrase "change the general nature of the subject matter disclosed" is intended to cover situations where the additional subject matter so alters the character of the disclosure that national security review is appropriate. This phrase is intended to permit a broad range of amendments, modifications and supplements, including additional subject matter. The following examples are intended to further clarify the meaning of the language "general nature of the subject matter disclosed" in § 5.15(a):

Example 1—The physical data on a named compound. If a licensed disclosure gives the name and structure of a compound, the general nature of the subject matter disclosed includes physical data such as boiling point, melting point or specific gravity of the compound. If a name of a compound is disclosed, the structure of the compound is also within the general nature. If the licensed disclosure deals with the hardness of a claimed alloy, the disclosure of tensile strength is within the general nature.

Example 2—A known specie of a known genus. If the genus "lower alkyl" is disclosed, the inclusion of the species "methyl" is within the general nature, as would be homologs and isomers of that genus.

Example 3—Comparison data of the disclosed compound to data on prior art compounds. If the licensed disclosure contains a disclosure of the compounds of a pesticide invention, and pesticidal activities, the comparison of pesticidal data of a known compound representing the closest prior art is within the general nature.

Example 4—A specific optimum temperature within a specified temperature range. If a licensed disclosure has a range of 0° C to 120° C, the disclosure of an optimum temperature of 100° C is within the general nature.

Example 5—*Activity data on compounds of the invention.* If activity data on 30 of 50 named compounds is disclosed, the disclosure of activity data on other named compounds of the invention is within the general nature.

Example 6—Additional subject matter and utilities. If a licensed disclosure describes a chemical herbicide for weed control, the disclosure of chemical warfare uses or human toxic properties (other than to demonstrate safety or absence of such toxicity) *is not* within the general nature. If a licensed disclosure describes an analog computer for microwave telephone transmission, the addition of a cryptographic encoding or decoding device and utility *is not* within the general nature. If a licensed disclosure describes a battery power source for a satellite, the addition or substitution of a nuclear isotopic power source *is* within the general nature, but would be within the control of § 5.15(a)(4)(ii).

A § 5.15(b) scope license is limited to the original subject matter disclosed at the time the license was granted and does not cover "additional subject matter" as the phrase is currently interpreted (*In re Gaertner*, 202 USPQ 714 (CCPA 1979)).

Under § 5.15(c), a license with the scope of § 5.15(a) could also be granted pursuant to a § 5.13 or § 5.14 petition. If granted, the § 5.15(a) scope of license will be indicated on the license grant. For instance, under § 5.15(c) an applicant who filed a United States patent application before February 27, 1983, when the filing receipt license practice became effective could request a § 5.15(a) scope license which, if granted, will cover the subsequent filing of amendments, modifications or supplements, including additional matter in a corresponding foreign patent application. The licenses under §§ 5.12(b), 5.13, and 5.14 are normally limited in scope to the original subject matter disclosed at the time the license was granted unless a license of the § 5.15(a) scope is indicated on the license grant. If a petition for a license under § 5.12(b) is granted prior to the grant of the § 5.12(a) filing receipt license, the former would merge into the latter and would be considered a § 5.12(a) license for the purpose of § 5.15.

A new § 5.20, not included in the proposal, sets forth the specific authority of the Commissioner to license foreign filing, possible filing or prosecution of a patent application in a foreign country under 35 U.S.C. 184 regarding unclassified activities in foreign atomic energy programs. This change only reflects the existing relationship between 37 CFR 5.11 and 10 CFR § 810.7 and alerts patent applicants in this technology to the Commissioner's authority. The term "sensitive nuclear technology" used in paragraph (b) of § 5.20 is defined in 10 CFR § 810.3(q).

A new § 5.25, proposed initially as § 5.20 and modified, sets forth in the regulations the requirements to be met for the granting of a retroactive license. The requirements include (1) a list of the foreign countries in which the patent application material was filed; (2) the date(s) of filing of the foreign application(s); (3) an oath or declaration which (i) states that the subject matter filed is not subject to a secrecy order under 35 U.S.C. 181, (ii) makes a showing of diligence in attempting to obtain the license upon discovery of the error, and (iii) makes a showing of facts which support a conclusion of inadvertence; and (4) includes the required fee. The section also provides in paragraph (b) for review from a denial of a petition for a retroactive license. The section further provides in paragraph (c) that the granting of a retroactive license pursuant to § 5.25 does not excuse any violation of regulations of the export agencies which may have occurred because of the failure to obtain an appropriate license prior to export.

Sections 5.21, 5.22 and 5.23 have been redesignated to become §§ 5.31, 5.32 and 5.33, respectively.

Significant Differences Between Proposed and Final Rules

Section 1.17

Section 1.17(h) is amended to include a specific reference to § 5.25 petitions for retroactive licenses for which the petition fee is charged, rather than having the present retroactive license fee under § 1.182 petitions. The fee for § 5.12(b) licenses is new and applies only where expedited handling of these license requests is sought. This fee for expedited handling is also referred to in §§ 5.13 and 5.14. Section 5.15(c) provides for a fee for changing the scope of a license.

Section 5.1

The proposed amendment to § 5.1 is not being adopted and is withdrawn.

Section 5.11

Section 5.11 is amended to control the *export* of technical data in the form of an application or data in any form if related to preparing, filing, or prosecuting a patent application in a foreign country, if the United States application has not been on file for at least six months prior to the date of transmittal, or if no application has been filed in the United States. Export approvals, if required, may be provided by appropriate export agencies—Department of State; Department of Commerce, International Trade Administration or Department of Energy—or by the Commissoner. This will enable the Patent and Trademark Office and the export agencies to better reflect and exercise the export control functions set forth in the Arms Export Control Act, as amended, the Export Administration Act of 1979, as amended, the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, respectively.

Under these Acts, the export of technical data is the activity to be controlled. The final rule differs from the proposed rule in that the Patent and Trademark Office will not be the sole export control authority over technical data in the form of an application, or data in any form, if related to preparing, filing, or prosecuting a patent application. Applications will have the option to obtain necessary export approvals either (1) from appropriate export agencies or (2) from the Commissioner. The Commissioner will continue to be the sole licensing authority for the act of filing an application in a foreign patent office.

Paragraphs (a), (b), and (c) of § 5.11 control export activity by requiring either an export agency approval or a Commissioner's license for export of technical data in connection with foreign filing of an application and to that extent implement the Arms Export Control Act, the Export Administration Act, the Atomic Energy Act and the Nuclear Non-Proliferation Act. If a license is obtained from the Commissioner under § 5.12, § 5.13 or § 5.14, no separate approval for the export of technical data to a foreign country in connection with a patent application is required from the export agencies.

It is emphasized that the scope of the Commissioner's license is limited to exporting and filing technical data in the form of an application, or in any form, if related to preparing, filing and prosecuting a patent application or for consideration of the filing of a patent application in a foreign country. A Commissioner's license does not authorize selling or using technical data in a foreign country or exporting data for other purposes. These latter acts continue to require separate approvals from the appropriate export agencies.

Also, the export of technical data in any form to a foreign country for purposes other than related to filing or supporting the filing of a patent application is not controlled by Title 35, U.S.C. or the regulations in Part 5. The exportation of data to a foreign country in such cases would be subject only to other laws and regulations such as the export and arms control regulations. Approval for the export of such technical data for purposes related to filing, possible filing, or supporting the filing of a patent application will be available from the appropriate export agencies or the Commissioner. On the other hand, the Commissioner will be the sole licensing authority for the act of filing the application in a foreign patent office.

Section 5.11(d), proposed as § 5.11(b), states that an application cannot be exported to a foreign country when the corresponding United States application is under secrecy order except under § 5.5

Section 5.11(e), proposed as § 5.11(c), states that no license is required if the invention was not made in the United States, or the application was on file in the United States at least six months and is not under a secrecy order issued under § 5.2

Section 5.11(f), proposed as § 5.11(d), states that any license for foreign filing may be revoked at any time by written notification. It has been amended to further clarify that revocation also applies to authorizations resulting from the passage of six months from the filing date of a United States patent application when a secrecy order is imposed.

Section 5.12

Section 5.12(b) is clarified from the proposal to specify that the fee is for expedited handling of a petition under § 1.17(h).

Section 5.13

Section 5.13 is clarified from the proposal to specify that the fee is for expedited handling of a petition under § 1.17(h).

Section 5.14

Section 5.14(a) is clarified from the proposal to specify that the fee is for expedited handling of a petition under § 1.17(h).

The other changes in § 5.14 make grammatical corrections and do not alter the intent of the section.

Section 5.15

Section 5.15(a) broadens the scope of licenses granted under § 5.12(a). Section 5.15(a), as proposed, is changed to clarify the scope of a § 5.15(a) license and delete certain of the exclusions originally proposed. This license permits exporting technical data to and filing corresponding subject matter in an application in any foreign country. The license also permits amendments, modifications, and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the application, to be exported and filed in any foreign country. This license includes additional matter which does not change the general nature of subject matter disclosed and does not pertain to certain prohibited subjects or areas listed on various export restriction lists established by the Department of State and the Department of Energy.

These changes also permit an applicant to take action in the prosecution of the foreign or international application and submit supporting data such as affidavits, test data or the like as long as it directly relates to the filing, possible filing or prosecution of the application and does not pertain to the prohibited subjects or areas enumerated in § 5.15(a)(4). The changes in § 5.15(a) obviate the problems in *In re Gaertner*, supra, by providing a license scope which covers the type of activity involved in that case.

Amended paragraph (b) of § 5.15 is the same as proposed paragraph (b) except for changes for consistency.

Amended paragraph (c) of § 5.15 differs from § 5.15(c) as proposed by including a reference to § 5.14 and specifically permitting an applicant to petition for a change of the scope of a license.

New paragraph (d) of § 5.15 is similar to proposed paragraph (d) with only changes for consistency.

New paragraph (e) of § 5.15 is similar to proposed paragraph (e) with only changes for consistency.

Paragraph (f) of § 5.15 is similar to proposed paragraph (f) with only changes for consistency.

Paragraph (g) is adopted essentially as proposed.

Section 5.17

Section 5.17 is similar to proposed § 5.17 with only consistency changes.

Section 5.20

Section 5.20, not included in the proposal, is new and clarifies the existing authority of the Commissioner under the unclassified activities in foreign atomic energy programs. Under 10 CFR 810.7, the license of the Commissioner under 37 CFR 5.11 pursuant to 35 U.S.C. 184 constitutes information available to the the public and is a generally authorized activity.

Section 5.25

Section 5.25, proposed initially as § 5.20, is new and sets forth the requirements for petitioning for a retroactive license.

Section 5.31 and 5.32

Sections 5.21 and 5.22 are redesignated as §§ 5.31 and 5.32, respectively.

Section 5.33

Section 5.23 is redesignated as § 5.33 and adopted as proposed.

Responses to Comments on the Rules

Specific comments were received on a number of the sections. All of the comments, including the written comments and the oral testimony were considered.

Twenty-one letters presenting written comments were received and nine persons testified at the public hearing on July 20, 1983. Comments appear below along with the responses.

Comment: One comment objected to the amendment of § 5.1 to include "transmittal for" filing.

Reply: This comment has been adopted by deleting the phrase from the final rule.

Comment: Three comments requested an explanation of the conditions when a license may be revoked under § 5.11(d) be clearly set forth and asked whether, if revocation occurs, past acts are valid and whether there will be compensation for damages.

Reply: The section has been revised to further clarify the conditions under which a license may be revoked. The power to revoke licenses has been expressly included in all issued licenses for a number of years. Section 5.11(d) as proposed, merely recognizes in the rule the fact that licenses can be revoked. With the advent of the filing of a U.S. application becoming a request for a foreign filing license under § 5.12(a), a regulatory procedure clarifying the revocation practice was appropriate. Revocation will be effective only as of the date of revocation and prior acts predicated on the license would be in compliance with 37 CFR Part 5. The rule as proposed has been clarified to indicate that revocation may apply either to a license specifically granted by the Commissioner or to an authorization to file a foreign application resulting from the passage of six months from the filing of a United States patent application. No compensation is available for revocation of a license.

Comment: Eighteen comments requested the amendment of § 5.11 to eliminate the license requirement for "transmittal for filing" and substitute the requirement for "filing" only.

Reply: The proposal has been adopted by eliminating the requirement for a license from the Commissioner prior to transmitting or exporting an application abroad. The regulations have been clarified to emphasize the requirements for the export of technical data in the form of an application. An applicant has a choice of exporting such applications under authority of either (1) the appropriate export agencies controlling the export of technical data—Department of State; Department of Commerce, International Trade Administration; or Department of Energy or (2) a license from the Commissioner. While a license from the Commissioner is required only for filing an application abroad, the provisions of §§ 5.18, 5.19 and 5.20 reflect the Commissioner's authority to license the export of technical data in the form of an application for purposes related to filing in addition to the foreign filing of the application in a foreign country.

Comment: Six person objected to the transmittal license requirement and argued that the Patent and Trademark Office lacks authority under 35 U.S.C. 184 to require pre-filing (transmitting) licenses. It was also argued that foreign filing licensing is not the conduct of proceedings under 35 U.S.C. 6.

Reply: The final rules do not require a license from the Commissioner for export (or transmittal). The export provisions of § 5.11 are issued under 35 U.S.C. 6 and pursuant to delegations under the regulations of the export agencies.

Comment: One comment argued that the constitutional right of freedom of speech would be impaired by requiring a license for published material.

Reply: A constitutional argument of prior restraint by export licensing of the International Traffic in Arms Regulations was reviewed by the Ninth Circuit in the case of *United States* v. *Edler*, 579 F. 2d 516 (9th Cir. 1978) cert. denied 449 U.S. 1084 (1981). No prior restraint within first amendment protection was found by the Court.

Comment: One comment stated that the $120 petition license fee under § 5.12(b) is too high, and a $60 fee would be more reasonable.

Reply: The license fee under § 5.12(b), § 5.13 and § 5.14 is not applicable to routine licensing requests. It is only applicable to expedited processing of license requests which require special efforts by the Patent and Trademark Office. The $120 petition fee better reflects the costs to the Patent and Trademark Office for providing expedited handling.

Comment: One comment proposed the deletion of the last sentence of paragraph § 5.14(a) since under § 5.12(a) only those cases having interest from a security standpoint are refused a license.

Reply: This suggestion has not been adopted because the provision may apply to petitions filed prior to receipt of a filing receipt license where expedited handling is requested.

Comment: One comment stated that § 5.15(d) appears to be redundant since it applies only to cases on file for six months and on which no secrecy order has been imposed.

Reply: Under § 5.15(d), a license is not needed for cases in this category if no additional subject matter is added. This section complements § 5.15(b) where a license of narrow scope is granted.

Comment: One comment raised the question whether § 5.15(a) as to amendments, supplements, and modifications includes continuation-in-part applications.

Reply: Continuation-in-part applications are included within the term "amendments, supplements, and modifications." *Beckman Instruments, Inc.* v. *Coleman Instruments,* 143 USPQ 278 (7th Cir. 1964).

Comment: Two comments requested that the express language in § 5.15(a)(3) be amended to state that "Technical Data" relating to articles, materials and supplies be limited to the validated license requirements of §§ 379.4(c) and 379.4(d) of the Export Administration Regulations and no other sections, or alternatively, that paragraph (a)(3) be deleted in its entirety.

Reply: The final rules do not include § 5.15(a)(3) as proposed.

Comment: Two comments proposed that the two-tier licensing structure of § 5.15(a) and § 5.15(b) be amended to reflect a broad one-tier system based on § 5.15(a).

Reply: The two-tier system reflects different treatment for applications within the inspection scope of 35 U.S.C. 181 and those outside of its inspection scope. Security review occurs on all applications with inspection cases having a narrow license grant, and non-inspection cases having a broad license grant. This inspection case treatment is necessary for the Patent and Trademark Office to meet its responsibilities under 35 U.S.C. 184 and particularly 37 CFR 5.18, 5.19, and 5.20 where the State, Commerce and Energy Departments accept the Commissioner's licenses in lieu of their own export approval.

Comment: One comment indicated that proposed § 5.15(a)(3) was of such wide scope that licenses will always be needed. The example cited was that this section would require licenses for all amendments filed in North Korea and Cuba.

Reply: The comment is correct and the provisions of § 5.15(a)(3) have been deleted. The country of destination restrictions did not provide a workable mechanism for technology review under the provisions of 35 U.S.C. 181.

Comment: Three comments recommended making a § 5.15(a) scope license available pursuant to a § 5.14 petition where an application was filed prior to February 27, 1983, or where an initial automatic § 5.12(a) petition was not granted after February 27, 1983 or where the general nature of the invention changed but is still outside of the provisions of § 5.15(a)(4).

Reply: This provision has been adopted to allow the Commissioner to issue broadened licenses upon a § 5.14 petition in the above circumstances. New § 5.15(c) allows the Commissioner to convert the scope of a license from a § 5.15(b) to a § 5.15(a) license.

Comment: Two comments proposed the extension of a § 5.15(a) license upon petition after one or more years after the United States filing date or after grant of a § 515(b) license.

Reply: This suggestion has been adopted in § 5.15(c) which will provide the mechanism by petition at any time to convert the scope of a license. This is promulgated since errors may occur in the denial of a § 5.15(a) license. Also, the initial determination of the sensitive nature of technology may be altered by changes in the security classification guidelines. Procedurally, such petitions will be referred to the appropriate defense agencies for their review of the technology prior to the grant of any license.

Comment: One comment requested clarification on how and under what circumstances a § 5.12(b) license granted under § 5.15(c) has the same scope as a license granted under § 5.12(a).

Reply: Licenses granted under § 5.12(a) will have the § 5.15(a) scope because the applications are not within the inspection scope of 35 U.S.C. 181 referred to the defense agencies for security review. Under § 5.15(c), applications which are not referred to defense agencies pursuant to petitions under §§ 5.12, 5.13 and 5.14 will have a license of the scope of § 5.15(a).

Comment: Three comments suggested an amendment to proposed § 5.20(4) to delete the "inadvertence" standard and substitute "through error without deceptive intent."

Reply: Inadvertence is a statutory standard which cannot be altered by rulemaking. Further, judge-made law has determined the metes and bounds of this term which further proscribes the rulemaking authority of the Commissioner. In *Barr Rubber Products Co.* v. *Sun Rubber Co.,* 149 USPQ 204, 209 (S.D.N.Y, 1966) inadvertence was defined as "lack of care or attentiveness: inattention" or "an effect of inattention: a result of carelessness; an oversight, mistake, or fault from negligence."

Inadvertence signifies want of attention, and an action which is deliberately taken with full knowledge of the law and facts is not inadvertent. *In re Application of November 22, 1952,* 153 USPQ 410, 411 (Asst. Commr. 1967).

Implementation of Patent Procedure Revisions

The various sections will be implemented by the Commissioner on the effective date of the rules by the acceptance of petitions under the various sections. The broadened license scope of § 5.15(a) will apply as of the effective date of these rules to all cases having filing receipt licenses under § 5.12(a) which became effective on February 27, 1983. The provisions of this broad license do not apply to acts of export or filing which occurred prior to the effective date of these rules. No other action will be required by an applicant to receive the benefits of this change.

Other Considerations

Environmental, energy, and other considerations: The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The Acting General Counsel of the Department of Commerce certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) for several reasons. Under this rulemaking, small entities would be able to obtain licenses without filing separate requests therefor. In general, the rule

change will also expedite proceedings before the Patent and Trademark Office, simplifying existing procedures where possible.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increases in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act. The collection of information requirement of this rule change is included in a PTO request for approval pending before the OMB. Upon assignment of a control number by OMB, we will publish an appropriate amendment of the affected rules.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Lawyers, Small businesses.

37 CFR Part 5

Classified information, Foreign relations, Inventions and patents.

Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, 41 and 181–188 and by delegations to the Commissioner by regulation (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7) or otherwise under the Export Administration Act of 1979, as amended, the Arms Export Control Act, as amended, the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, the Patent and Trademark Office is amending Parts 1 and 5 of Title 37 of the Code of Federal Regulations as set forth below:

PART 1—[AMENDED]

1. Section 1.17 is amended by revising paragraph (h) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) For filing a petition to the Commissioner under a section of Part 1 or 5 listed below which refers to this paragraph.....$120.00

—§ 1.47—for filing by other than all the inventors or a person not the inventor
—§ 1.48—for correction of inventorship
—§ 1.182—for decision on questions not specifically provided for
—§ 1.183—to suspend the rules
—§ 1.266—for late filing of interference settlement agreement
—§§ 5.12, 5.13 & 5.14—for expedited handling of foreign filing license
—§ 5.15—for changing the scope of a license
—§ 5.25—for retroactive license

2. The table of contents and heading for Part 5 are revised to read as follows:

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

Secrecy Orders

Sec.
5.1 Defense inspection of certain applications.
5.2 Secrecy order.
5.3 Prosecution of application under secrecy orders; withholding patent.
5.4 Petition for rescission of secrecy order.
5.5 Permit to disclose or modification of secrecy order.
5.6 General and group permits.
5.7 Compensation.
5.8 Appeal to Secretary.

Licenses for Foreign Exporting and Filing

5.11 License for filing in a foreign country an application on an invention made in the United States or for transmitting international application.
5.12 Petition for license.
5.13 Petition for license; no corresponding application.
5.14 Petition for license; corresponding U.S. application.
5.15 Scope of license.
5.16 Effect of secrecy order.
5.17 Who may use license.
5.18 Arms, ammunition, and implements of war.
5.19 Export of technical data.
5.20 Export of technical data relating to sensitive nuclear technology.
5.25 Petition for retroactive license.

General

5.31 Effect of modification, rescission or license.
5.32 Papers in English language.
5.33 Correspondence.

Authority: 35 U.S.C. 6, 41, 181–188 and the Export Administration Act of 1979, as amended, the Arms Export Control Act, as amended, the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, and the delegations in the regulations under these acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

3. The center heading preceding § 5.11 and the text of § 5.11 are revised to read as follows:

Licenses for Foreign Exporting and Filing

§ 5.11 License for filing in a foreign country an application on an invention made in the United States or for transmitting an international application.

(a) A license from the Commissioner of Patents and Trademarks under 35 U.S.C. 184 is required before filing any application for patent or for the registration of a utility model, industrial design, or model, in a foreign patent office or any foreign patent agency or any international agency other than the United States Receiving Office, if:

(1) An application on the invention has been on file in the United States less than six months prior to the date on which the application is to be filed, or

(2) No application on the invention has been filed in the United States.

(b) The license from the Commissioner of Patents and Trademarks referred to in paragraph (a) would also authorize the export of technical data abroad for purposes related to the preparation, filing or possible filing and prosecution of a foreign patent application without separately complying with the regulations contained in 22 CFR Parts 121–130 (International Traffic in Arms Regulations of the Department of State), 15 CFR Part 379 (Regulations of the Office of Export Administration, International Trade Administration, Department of Commerce) and 10 CFR Part 810 (Foreign Atomic Energy Programs of the Department of Energy).

(c) Where technical data in the form of a patent application, or in any form, is being exported for purposes related to the preparation, filing or possible filing and prosecution of a foreign patent application, without the license from the Commissioner of Patents and Trademarks referred to in paragraphs (a) or (b) of this section, or on an invention not made in the United States, the export regulations contained in 22 CFR Parts 121–130 (International Traffic in Arms Regulations of the Department of State), 15 CFR Part 379 (Regulations of Office of Export Administration, International Trade Administration, Department of Commerce) and 10 CFR Part 810 (Foreign Atomic Energy Programs of the Department of Energy) must be complied with unless a license is not required because a United States application was on file at the time of export for at least six months without a secrecy order under § 5.2 being placed thereon. The term "exported" means export as it is defined in 22 CFR Parts 121–130, 15 CFR Part 379 and 10 CFR Part 810.

(d) If a secrecy order has been issued under § 5.2, an application cannot be exported to, or filed in, a foreign country (including an international agency in a foreign country), except in accordance with § 5.5.

(e) No license pursuant to paragraph (a) of this section is required if:

(1) The invention was not made in the United States, or

(2) The United States application is not subject to a secrecy order under § 5.2, and was filed at least six months prior to the date on which the application is filed in a foreign country.

(f) A license pursuant to paragraph (a) of this section can be revoked at any time upon written notification by the Patent and Trademark Office. An authorization to file a foreign patent application resulting from the passage of six months from the date of filing of a United States patent application may be revoked by the imposition of a secrecy order.

4. Section 5.12 is amended by revising paragraph (b) to read as follows:

§ 5.12 Petition for license.

* * * * *

(b) Petitions for license should be presented in letter form and must include the required fee (§ 1.17(h)), if expedited handling of the petition is also sought, the petitioner's address, and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner.

5. Section 5.13 is revised to read as follows:

§ 5.13 Petition for license; no corresponding application.

If no corresponding national or international application has been filed in the United States, the petition for license under § 5.12(b) must be accompanied by the required fee (§ 1.17(h)), if expedited handling of the petition is also sought, and a legible copy of the material upon which a license is desired. This copy will be retained as a measure of the license granted. For assistance in the identification of the subject matter of each license so issued, it is suggested that the petition be submitted in duplicate and provide a title and other description of the material. The duplicate copy of the petition will be returned with the license or other action on the petition.

6. Section 5.14 is amended by revising paragraphs (a) and (c) to read as follows:

§ 5.14 Petition for license; corresponding U.S. application.

(a) When there is a corresponding United States application on file, a petition for license under § 5.12(b) must include the required fee (§ 1.17(h)), if expedited handling of the petition is also sought, and must identify this application by serial number, filing date, inventor, and title, but a copy of the material upon which the license is desired is not required. The subject matter licensed will be measured by the disclosure of the United States application. Where the title is not descriptive, and the subject matter is clearly of no interest from a security standpoint, time may be saved by a short statement in the petition as to the nature of the invention.

* * * * *

(c) When the application to be filed or exported abroad contains matter not disclosed in the United States application or applications, including the case where the combining of two or more United States applications introduces subject matter not disclosed in any of them, a copy of the application as it is to be filed in the foreign country or international application which is to be transmitted to a foreign international or national agency for filing in the Receiving Office, must be furnished with the petition. If however, all new matter in the foreign or international application to be filed is readily identifiable, the new matter may be submitted in detail and the remainder by reference to the pertinent United States application or applications.

7. Section 5.15 is revised to read as follows:

§ 5.15 Scope of license.

(a) Grant of a license under § 5.12(a) authorizes the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency or international patent agency when the subject matter of the foreign or international application corresponds to that of the domestic application. This license includes authority

(1) To export and file all duplicate and formal papers to the foreign country or international agencies;

(2) To make amendments, modifications and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the application;

(3) To take any action in the prosecution of the foreign or international application; and

(4) To add subject matter or take any action under paragraphs (a) (1)–(3) of this section which does not change the general nature of the subject matter disclosed at the time of filing, unless the subject matter added involves technical data pertaining to:

(i) Defense services or articles designated in the United States Munitions List applicable at the time of foreign filing, the unlicensed exportation of which is prohibited pursuant to the Arms Export Control Act, as amended, and 22 CFR Parts 121–130; or

(ii) Restricted Data, sensitive nuclear technology or technology useful in the production or utilization of special nuclear material or atomic energy, the dissemination of which is subject to restrictions of the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as implemented by the regulations for Unclassified Activities in Foreign Atomic Energy Programs, 10 CFR Part 810, in effect at the time of foreign filing.

(b) Grant of a license under § 5.12(b) authorizes the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency or international patent agency. Further, this license includes authority to forward all duplicate and formal papers to the foreign patent agency or international patent agency and to make amendments, modifications or supplements to and take any action in the prosecution of the foreign or international application, provided subject matter additional to that covered by the license is not involved.

(c) A license granted under § 5.12(b) pursuant to § 5.13 or § 5.14 shall have the scope indicated in paragraph (a) of this section, if it is so specified in the license. A petition, accompanied by the required fee (§ 1.17(h)), may also be filed to change a license having the scope indicated in paragraph (b) of this section to a license having the scope indicated in paragraph (a) of this section. The change in the scope of a license will be as of the date of the grant of the change in scope.

(d) In those cases in which no license is required to file the foreign application or transmit the international application, no license is required to file papers in connection with the prosecution of the foreign or international application not involving the disclosure of additional subject matter.

(e) Any paper filed abroad or transmitted to an international patent agency following the filing of a foreign or international application which changes the general nature of the subject matter disclosed at the time of filing or which involves the disclosure of subject matter listed in paragraphs (a)(4) (i) or (ii) of this section must be separately licensed in the same manner

as a foreign or international application. Further, if no license has been granted under § 5.12(a) on filing the corresponding United States application, any paper filed abroad or with an international patent agency which involves the disclosure of additional subject matter must be licensed in the same manner as a foreign or international application.

(f) Licenses separately granted in connection with two or more United States applications may be exercised by combining or dividing the disclosures, as desired, provided:

(1) Subject matter which changes the general nature of the subject matter disclosed at the time of filing or which involves subject matter listed in paragraphs (a)(4) (i) or (ii) of this section is not introduced and,

(2) In the case where at least one of the licenses was obtained under § 5.12(b), additional subject matter is not introduced.

(g) A license does not apply to acts done before the license was granted. See § 5.25 for petitions for retroactive licenses.

8. Section 5.17 is revised to read as follows:

§ 5.17 Who may use license.

Licenses may be used by anyone interested in the export, foreign filing, or international transmittal for or on behalf of the inventor or the inventor's assigns.

9. A new § 5.20 is added to read as follows:

§ 5.20 Export of technical data relating to sensitive nuclear technology.

(a) Under regulations (10 CFR 810.7) established by the United States Department of Energy, an application filed in accordance with the regulations (37 CFR 5.11–5.33) of the United States Patent and Trademark Office and eligible for foreign filing under 35 U.S.C. 184, is considered to be information available to the public in published form and a generally authorized activity for the purposes of the Department of Energy regulations.

(b) Inquiries concerning the export of sensitive nuclear technology other than related to the filing or prosecution of a foreign patent application should be made to the Attention: Secretary, United States Department of Energy, Office of International Security Affairs, Washington, D.C. 20858.

§ 5.21 [Redesignated as § 5.31]

10. Section 5.21 is redesignated as § 5.31.

§ 5.22 [Redesignated as § 5.32]

11. Section 5.22 is redesignated as § 5.32.

12. A new § 5.25 is added to read as follows:

§ 5.25 Petition for retroactive license.

(a) A petition of retroactive license under 35 U.S.C. 184 shall be presented in accordance with § 5.13 or § 5.14, and shall include:

(1) A listing of the foreign countries in which the patent application material was filed,

(2) The dates on which the material was filed,

(3) A verified statement containing:

(i) An averment that the subject matter in question was not under a secrecy order at the time it was filed abroad, and that it is not currently under a secrecy order,

(ii) A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and

(iii) An explanation of why the material was inadvertently filed abroad without the required license under § 5.11 first having been obtained, and

(4) The required fee (§ 1.17(h)).

The above explanation must include a showing of facts rather than a mere allegation of inadvertence. The showing of facts should include statements by those persons having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute inadvertence should cover the period from the time of filing until actual filing of the petition under this section.

(b) If a petition for a retroactive license is denied, a time period of not less than thirty days shall be set, during which the petition may be renewed. Failure to renew the petition within the set time period will result in a final denial of the petition. A final denial of a petition stands unless a petition is filed under § 1.181 within two months of the date of the denial. If the petition for a retroactive license is denied with respect to the invention of a pending application and no petition under § 1.181 has been filed, a final rejection of the application under 35 U.S.C. § 185 will be made.

(c) The granting of a retroactive license does not excuse any violation of the export regulations contained in 22 CFR Parts 121–130 (International Traffic in Arms Regulations of the Department of State), 15 CFR Part 379 (Regulations of Office of Export Administration, International Trade Administration, Department of Commerce) and 10 CFR Part 810 (Foreign Atomic Energy Programs of the Department of Energy) which may have occurred because of the failure to obtain an appropriate license prior to export.

13. Section 5.23 is redesignated as § 5.33 and revised to read as follows:

§ 5.33 Correspondence.

All correspondence in connection with this part, including petitions, should be addressed to "Commissioner of Patents and Trademarks (Attention Licensing and Review), Washington, D.C. 20231."

Dated: February 24, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84-8884 Filed 4-3-84; 8:45 am]

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H.J. Res. 493/Pub. L. 98–248

Making an urgent supplemental appropriation for the Department of Health and Human Services for the fiscal year ending September 30, 1984. (Mar. 30, 1984; 98 Stat. 115) Price: $1.50

S. 2507/Pub. L. 98–249

To continue the transition provisions of the Bankruptcy Act until May 1, 1984, and for other purposes. (Mar. 31, 1984; 98 Stat. 116) Price: $1.50

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federal register

Thursday
April 5, 1984

Selected Subjects

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Agricultural Stabilization and Conservation Service

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Antibiotics
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

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Endangered and Threatened Species
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Customs Service

Freedom of Information
Agricultural Research Service

Hazardous Wastes
Environmental Protection Agency

Loan Programs—Veterans
Veterans Administration

Marine Safety
Coast Guard

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5171 of April 2, 1984

Pan American Day and Pan American Week, 1984

By the President of the United States of America

A Proclamation

The nations of the Western Hemisphere have been blessed with a common heritage that has bound them together in the pursuit of peace and harmony within the framework of democratic institutions. The annual proclamation of Pan American Day and Pan American Week has for 53 years stressed our unity of purpose and drawn the attention of the world to the significant achievements of the Inter-American system and the Organization of American States.

Through the OAS, the nations of the Americas have worked to fulfill their shared aspirations for peace, prosperity, and freedom. These goals form the cornerstone of the OAS and find eloquent expression in the OAS Charter. While other areas of the world have been fraught with strife, the OAS has been instrumental in maintaining the peace in this hemisphere. The peacekeeping mechanisms available to OAS member nations have proved responsive in a multitude of tests in the past, including those posed by the subversion and indirect aggression of Cuba and its partners. The continued strength and resilience of these peacekeeping mechanisms should be of primary importance to all the nations of the Americas as we deal with the current challenges to peace, prosperity and freedom, especially in Central America.

Because in this century our hemisphere has been spared the violence other regions have had to endure, we have been fortunate to be able to dedicate our energies to the important tasks of economic, social, scientific, educational, and cultural development of our nations. In this effort to better the lives of our people, the OAS, through its technical councils and specialized Inter-American agencies, has served as a model for others.

Consistent with the spirit of the Inter-American system as expressed in the OAS Charter, the peoples of this hemisphere are turning more and more to democratic institutions as a means of solving the difficult problems we face. This is a vote of confidence in democracy as an effective means of governing—a practical problem-solving mechanism—not just an abstract political ideal. The trend reinforces the bonds which unite us and strengthens our capacity for cooperation.

During the bicentennial year of the birth of the great Liberator, Simon Bolivar, it is appropriate that we rededicate ourselves to the spirit of hemispheric solidarity that he symbolized. His example serves as an inspiration for all Americans to face the difficult challenges of our time. Bolivar believed that diversity does not preclude unity. The kind of cooperation the Pan American nations enjoy today is based on mutual respect for the individual characteristics that distinguish us, as well as the long-standing ties that unite us. Pan American Day is a welcome opportunity to recognize this cooperation and the impressive progress we have made together.

On this Pan American Day of 1984, the people of the United States extend warm greetings to all of their neighbors in the Americas, and reaffirm their active support for the Organization of American States and the principles for which it stands.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Saturday, April 14, 1984, as Pan American Day, and the week beginning April 8, 1984, as Pan American Week. I urge the Governors of the fifty States, and the Governor of the Commonwealth of Puerto Rico, and officials of the other areas under the flag of the United States of America to honor these observances with appropriate activities and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-9173
Filed 4-3-84; 10:37 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5172 of April 3, 1984

National Child Abuse Prevention Month, 1984

By the President of the United States of America

A Proclamation

Abuse of children occurs in all segments of our society, in rural, suburban, and urban areas and among all racial, ethnic, and income groups. The time has come for Americans to unite in an all-out effort to eradicate child abuse, both physical and sexual, from the Nation.

Child abuse is a national concern, but it is a community and family problem first, and the answers must be found at the community level. Most physical and emotional violence takes place within the family. All Americans aware of the problem of child abuse must work for an end of this tragedy.

There is a place for everyone in this effort. By being a good neighbor to the family next door who may be under stress, Americans can be an enormous help. Our schools have an important role to play by educating children about parental roles and responsibilities, values, and appropriate behavior in the family setting. We must do what we can to reverse the trend of abused children becoming abusive parents. In addition, voluntary community self-help groups such as Parents Anonymous are taking positive steps to break this cycle.

In recognition of the need to find ways to prevent the agony of child abuse from continuing in future generations, the Congress, by Senate Joint Resolution 161, has designated the month of April 1984 as "National Child Abuse Prevention Month" and has authorized and requested the President to issue a proclamation in observance of this period.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of April 1984, as National Child Abuse Prevention Month. We must find a way to leave our future generations a priceless legacy—the confidence and trust resulting from a secure childhood.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-9283
Filed 4-3-84; 4:45 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5173 of April 3, 1984

Mother's Day, 1984

By the President of the United States of America

A Proclamation

By tradition, the second Sunday in May is designated as Mother's Day, a day on which we honor and think about our mothers.

Almost every woman in our Nation looks forward to the rewards and joys of motherhood without overlooking the long-term effort that raising children demands. We are grateful to mothers for their willingness to give of themselves for their children's well-being, for their wholehearted belief in their offspring, for their love, for being wellsprings of hope, and for all the support they lend to us throughout life.

Motherhood is both a great responsibility and one of the most unique, rewarding, and pleasurable experiences life has to offer. Just as the family is the basis of a strong nation, so dedicated mothers are frequently the key to strong families. The quality and scope of their activities, as well as their overriding concern for the well-being of their families and the future of our country, inspire and strengthen us as individuals and as a Nation.

In recognition of the contributions of all mothers to their families and to the Nation, the Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), designated the second Sunday in May each year as Mother's Day and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby request that Sunday, May 13, 1984, be observed as Mother's Day. I direct Government officials to display the flag of the United States on all Federal government buildings, and I urge all citizens to display the flag at their homes and other suitable places on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-9294
Filed 4-3-84; 4:48 pm]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12472 of April 3, 1984

Assignment of National Security and Emergency Preparedness Telecommunications Functions

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Communications Act of 1934, as amended (47 U.S.C. 151), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251), the Disaster Relief Act of 1974 (42 U.S.C. 5121), Section 5 of Reorganization Plan No. 1 of 1977 (3 C.F.R. 197, 1978 Comp.), and Section 203 of Reorganization Plan No. 3 of 1978 (3 C.F.R. 389, 1978 Comp.), and in order to provide for the consolidation of assignment and responsibility for improved execution of national security and emergency preparedness telecommunications functions, it is hereby ordered as follows:

Section 1. *The National Communications System.* (a) There is hereby established the National Communications System (NCS). The NCS shall consist of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager. The NCS Committee of Principals shall consist of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security or emergency preparedness telecommunications capabilities.

(b) The mission of the NCS shall be to assist the President, the National Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget in:

(1) the exercise of the telecommunications functions and responsibilities set forth in Section 2 of this Order; and

(2) the coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution.

(c) The NCS shall seek to ensure that a national telecommunications infrastructure is developed which:

(1) Is responsive to the national security and emergency preparedness needs of the President and the Federal departments, agencies and other entities, including telecommunications in support of national security leadership and continuity of government;

(2) Is capable of satisfying priority telecommunications requirements under all circumstances through use of commercial, government and privately owned telecommunications resources;

(3) Incorporates the necessary combination of hardness, redundancy, mobility, connectivity, interoperability, restorability and security to obtain, to the maximum extent practicable, the survivability of national security and emergency

preparedness telecommunications in all circumstances, including conditions of crisis or emergency; and

(4) Is consistent, to the maximum extent practicable, with other national telecommunications policies.

(d) To assist in accomplishing its mission, the NCS shall:

(1) serve as a focal point for joint industry-government national security and emergency preparedness telecommunications planning; and

(2) establish a joint industry-government National Coordinating Center which is capable of assisting in the initiation, coordination, restoration and reconstitution of national security or emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(e) The Secretary of Defense is designated as the Executive Agent for the NCS. The Executive Agent shall:

(1) Designate the Manager of the NCS;

(2) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness telecommunications needs of the Federal government;

(3) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Federal Emergency Management Agency;

(4) Recommend, in consultation with the NCS Committee of Principals, to the National Security Council, the Director of the Office of Science and Technology Policy, or the Director of the Office of Management and Budget, as appropriate:

a. The assignment of implementation or other responsibilities to NCS member entities;

b. New initiatives to assist in the exercise of the functions specified in Section 2; and

c. Changes in the composition or structure of the NCS;

(5) Oversee the activities of and provide personnel and administrative support to the Manager of the NCS;

(6) Provide staff support and technical assistance to the National Security Telecommunications Advisory Committee established by Executive Order No. 12382, as amended; and

(7) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(f) The NCS Committee of Principals shall:

(1) Serve as the forum in which each member of the Committee may review, evaluate, and present views, information and recommendations concerning ongoing or prospective national security or emergency preparedness telecommunications programs or activities of the NCS and the entities represented on the Committee;

(2) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security or emergency preparedness telecommunications objectives;

(3) Provide comments or recommendations, as appropriate, to the National Security Council, the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS; and

(4) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(g) The Manager of the NCS shall:

(1) Develop for consideration by the NCS Committee of Principals and the Executive Agent:

a. A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements;

b. Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency;

c. Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially-provided telecommunications systems;

d. Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security or emergency preparedness telecommunications requirements; and

e. Alternative mechanisms for funding, through the budget review process, national security or emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submittted to the Director of the Office of Management and Budget.

(2) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of communications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation;

(3) Chair the NCS Committee of Principals and provide staff support and technical assistance thereto;

(4) Serve as a focal point for joint industry-government planning, including the dissemination of technical information, concerning the national security or emergency perparedness telecommunications requirements of the Federal government;

(5) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security or emergency preparedness telecommunications objectives;

(6) Pursuant to the Federal Standardization Program of the General Services Administration, and in consultation with other appropriate entities of the Federal government including the NCS Committee of Principals, manage the Federal Telecommunications Standards Program, ensuring wherever feasible that existing or evolving industry, national, and international standards are used as the basis for Federal telecommunications standards; and

(7) Provide such reports and perform such other duties as are from time to time assigned by the President or his authorized designee, the Executive Agent, or the NCS Committee of Principals. Any such assignments of responsibility to, or reports made by, the Manager shall be transmitted through the Executive Agent.

Sec. 2. *Executive Office Responsibilities.* (a) *Wartime Emergency Functions.* (1) The National Security Council shall provide policy direction for the exercise of the war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President

issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under Section 606 (a), (c)–(e), of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) *Non-Wartime Emergency Functions.* (1) The National Security Council shall:

a. Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal government for the identification, allocation, and use of the Nation's telecommunications resources by the Federal government, and by State and local governments, private industry and volunteer organizations upon request, to the extent practicable and otherwise consistent with law, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law; and

b. Provide policy direction for the exercise of the President's non-wartime emergency telecommunications functions, should the President so instruct.

(2) The Director of the Office of Science and Technology Policy shall provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law;

(3) The Director of the Office of Science and Technology Policy shall establish a Joint Telecommunications Resources Board (JTRB) to assist him in the exercise of the functions specified in this subsection. The Director of the Office of Science and Technology Policy shall serve as chairman of the JTRB; select those Federal departments, agencies, or entities which shall be members of the JTRB; and specify the functions it shall perform.

(c) *Planning and Oversight Responsibilities.* (1) The National Security Council shall advise and assist the President in:

a. Coordinating the development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources, in order to meet national security or emergency preparedness requirements;

b. Providing policy oversight and direction of the activities of the NCS; and

c. Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by this Order.

(2) The Director of the Office of Science and Technology Policy shall make recommendations to the President with respect to the test, exercise and evaluation of the capability of existing and planned communications systems, networks or facilities to meet national security or emergency preparedness requirements and report the results of any such tests or evaluations and any recommended remedial actions to the President and to the National Security Council;

(3) The Director of the Office of Science and Technology Policy or his designee shall advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security or emergency preparedness functions. The Director also shall certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities, under all conditions of crisis or emergency; and

(4) The National Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(d) *Consultation with Federal Departments and Agencies.* In performing the functions assigned under this Order, the National Security Council and the Director of the Office of Science and Technology Policy, in consultation with each other, shall:

(1) Consult, as appropriate, with the Director of the Office of Management and Budget; the Director of the Federal Emergency Management Agency with respect to the emergency management responsibilities assigned pursuant to Executive Order No. 12148, as amended; the Secretary of Commerce, with respect to responsibilities assigned pursuant to Executive Order No. 12046; the Secretary of Defense, with respect to communications security responsibilities assigned pursuant to Executive Order No. 12333; and the Chairman of the Federal Communications Commission or his authorized designee; and

(2) Establish arrangements for consultation among all interested Federal departments, agencies or entities to ensure that the national security and emergency preparedness communications needs of all Federal government entities are identified; that mechanisms to address such needs are incorporated into pertinent plans and procedures; and that such needs are met in a manner consistent, to the maximum extent practicable, with other national telecommunications policies.

(e) *Budgetary Guidelines.* The Director of the Office of Management and Budget, in consultation with the National Security Council and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies. These guidelines and procedures may provide for mechanisms for funding, through the budget review process, national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities.

Sec. 3. *Assignment of Responsibilities to Other Departments and Agencies.* In order to support and enhance the capability to satisfy the national security and emergency preparedness telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances including those of crisis or emergency, the Federal departments and agencies shall perform the following functions:

(a) *Department of Commerce.* The Secretary of Commerce shall, for all conditions of crisis or emergency: (1) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(2) Develop, maintain and publish policy, plans, and procedures for the control and allocation of frequency assignments, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum assigned to the Federal government.

(b) *Federal Emergency Management Agency.* The Director of the Federal Emergency Management Agency shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities;

(2) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their national security or emergency preparedness telecommunications requirements;

(3) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local

governments and volunteer organizations is mutually supportive and consistent with the planning of the Federal government; and

(4) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by and agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Broadcast System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(c) *Department of State.* The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications System, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security or emergency preparedness responsibilities.

(d) *Department of Defense.* In addition to the other responsibilities assigned by this Order, the Secretary of Defense shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute the responsibilities assigned by Executive Order No. 12333; and

(2) Ensure that the Director of the National Security Agency provides the technical support necessary to develop and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(e) *Department of Justice.* The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the antitrust laws, all policies, plans or procedures developed pursuant to responsibilities assigned by this Order.

(f) *Central Intelligence Agency.* The Director of Central Intelligence shall plan for and provide, operate, and maintain telecommunications services adequate to support its assigned responsibilities, including the dissemination of intelligence within the Federal government.

(g) *General Services Administration.* Except as otherwise assigned by this Order, the Administrator of General Services, consistent with policy guidance provided by the Director of the Office of Management and Budget, shall ensure that Federally owned or managed domestic communications facilities and services meet the national security and emergency preparedness requirements of the Federal civilian departments, agencies and entities.

(h) *Federal Communications Commission.* The Federal Communications Commission shall, consistent with Section 4(c) of this Order:

(1) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security or emergency preparedness communications services, in order to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity;

(2) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of apppropriate enforcement actions;

(3) Develop policy, plans and procedures adequate to execute the responsibilities assigned in this Order under all conditions or crisis or emergency; and

(4) Consult as appropriate with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of their respective national security and emergency preparedness activities.

(i) All Federal departments and agencies, to the extent consistent with law (including those authorities and responsibilities set forth in Section 4(c) of this Order), shall:

(1) Determine their national security and emergency preparedness telecommunications requirements, and provide information regarding such requirements to the Manager of the NCS;

(2) Prepare policies, plans and procedures concerning telecommunications facilities, services or equipment under their management or operational control to maximize their capability of responding to the national security or emergency preparedness needs of the Federal government;

(3) Provide, after consultation with the Director of the Office of Management and Budget, resources to support their respective requirements for national security and emergency preparedness telecommunications; and provide personnel and staff support to the Manager of the NCS as required by the President;

(4) Make information available to, and consult with, the Manager of the NCS regarding agency telecommunications activities in support of national security or emergency preparedness;

(5) Consult, consistent with the provisions of Executive Order No. 12046, as amended, and in conjunction with the Manager of the NCS, with the Federal Communications Commission regarding execution of responsibilities assigned by this Order;

(6) Submit reports annually, or as otherwise requested, to the Manager of the NCS, regarding agency national security or emergency preparedness telecommunications activities; and

(7) Cooperate with and assist the Executive Agent for the NCS, the NCS Committee of Principals, the Manager of the NCS, and other departments and agencies in the execution of the functions set forth in this Order, furnishing them such information, support and assistance as may be required.

(j) Each Federal department or agency shall execute the responsibilities assigned by this Order in conjunction with the emergency management activities of the Federal Emergency Management Agency, and in regular consultation with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of NCS and individual agency telecommunications activities.

Sec. 4. *General Provisions.* (a) All Executive departments and agencies may issue such rules and regulations as may be necessary to carry out the functions assigned under this Order.

(b) In order to reflect the assignments of responsibility provided by this Order,

(1) Sections 2–414, 4–102, 4–103, 4–202, 4–302, 5–3, and 6–101 of Executive Order No. 12046, as amended, are revoked;

(2) The Presidential Memorandum of August 21, 1963, as amended, entitled "Establishment of the National Communications System", is hereby superseded; and

(3) Section 2–411 of Executive Order No. 12046, as amended, is further amended by deleting the period and inserting ", except as otherwise provided by Executive Order No. " and inserting the number assigned to this Order.

(c) Nothing in this Order shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended; or

under any other law; or any function vested by law in the Federal Communications Commission.

Sec. 5. This Order shall be effective upon publication in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
April 3, 1984.

[FR Doc. 84-8985
Filed 4-3-84; 4:07 p.m]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 67
Thursday, April 5, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 713

Feed Grain, Rice, Upland Cotton, and Wheat Programs for Crop Years 1982–1985

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: An interim rule regarding feed grain, rice, upland cotton, and wheat programs published at 48 FR 1679 is adopted as a final rule with certain technical amendments. These amendments add and revise certain provisions of the regulation for clarification purposes and to give producers more flexibility in complying with program requirements. Other limited amendments have been made to improve the effectiveness of the program.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: William Harshaw, ASCS, (202) 382–9878.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance program to which this final rule applies are: Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Rice Production Stabilization, 10.065; and Wheat Production Stabilization, 10.058; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Discussion of Comments

An interim rule was published at 48 FR 1679, Jan. 14, 1983 which set forth the regulations governing the wheat, feed grain, upland cotton and rice programs and requested comments from interested persons. Only one written comment was received with respect to that interim rule. The commenter believed that the provisions of § 713.113 pertaining to assignments were also applicable to assignments under the special Payment-in-Kind Program. This is incorrect. The regulations governing the assignments of commodities to be received as payment-in-kind compensation are found at 7 CFR Part 770. Part 770 provides that commodities to be received as payment-in-kind compensation may be assigned only if the assignment is made on Form CCC–478, Assignment of Payment-In-Kind, is executed by the assignor and assignee and is filed with the county ASC committee.

Amendments to the Interim Rule

It has been determined after further review that certain technical revisions and clarifications should be made with respect to the provisions of the interim rule which were published at 48 FR 1679. It is not believed that these changes are of such significance that requesting further public comment would be necessary. The following is an explanation of the changes which have been made to the interim rule:

(a) Section 713.3 includes a definition of "considered planted acreage." Producers who participate in production adjustment programs and reduce their planted acreage of a crop are credited with having that acreage considered as planted to that crop for the purpose of determining production history in order to establish acreage bases for farms. This definition omitted acreage which is diverted from the production of crops under the PIK Program which is provided for in 7 CFR Part 770. If the acreage diverted from the production of crops under the PIK Program were not included in the definition of "considered planted acreage" for history purposes in the determination of acreage bases, producers would be discouraged from participation in any such program which is announced. Accordingly, the definition is expanded to include this acreage.

(b) Section 713.4 provides that mixtures of crops shall be considered to be the predominant crop for the purpose of determining the acreage of program crops (i.e., wheat, feed grains, upland cotton and rice). Popcorn and sweet corn are excluded from the definition of "corn" but may be harvested for silage in the same manner as field corn. Under the provisions of the interim rule, for example, producers could plant 60 percent popcorn and 40 percent field corn and have the entire acreage considered as devoted to popcorn and, therefore, not charged against the permitted acreage of corn. Such a producer would be in compliance with the acreage reduction program but would not have made a full reduction in the production of field corn. This would defeat the primary purpose of a production adjustment program. A similar situation exists with respect to the mixture of grain sorghum and sweet sorghum. Therefore, the treatment of mixtures of crops in § 713.4 has been revised to provide that a mixture of corn or grain sorghum with another crop will be considered to be a crop of corn or grain sorghum.

(c) Under the whole base phase of the 1983 PIK Program, the acreage of upland cotton planted on participating farms will be reduced to zero. In cases where no cotton was harvested on a farm in a crop year, § 713.6 of the interim rule provides that a yield, not in excess of the county weighted average yield, would be assigned to that farm for such year. Limiting the assigned farm yields to the county weighted average yield would be unfair to producers on those farms where the yields are above

average and where the producers have participated in the whole base phase of the 1983 PIK Program and reduced their planted acreage of upland cotton to zero. The limitation would mean that the yield for such farms for future years would be reduced below that for comparable farms where the producers did not participate in the program. In order to prevent this inequity, the limitation with respect to assigning yields has been deleted.

(d) Section 713.7 of the interim rule permitted adjustments in the rice acreage base for a farm if the farm was subject to red rice problems and no other land suitable for the production of red rice is available on the farm. This section has been revised to provide that any adjustments in the rice acreage base for a farm subject to red rice problems must be necessary to control red rice and such adjustments are applicable to the 1983 crop only.

(e) Paragraph (a)(2) of § 713.61 has been revised to delete the words "based crop rotation" which were included by error in the interim rule.

(f) Paragraph (b)(2) of § 713.61 permits the designation of existing hay ground as conservation use acreage provided an equivalent hay seeding is established on eligible acreage. This provision was stated in general terms in the interim rule. The paragraph has been expanded to specify the time the new seeding must be made, what must be seeded, and what constitutes an equivalent hay crop.

(g) In some crop rotations in areas which are prone to the erosion of soil by wind and water, small grains and row crops are grown on a given acreage for only 1 year during the rotation. Under the provisions of the interim rule, such acreage would not be eligible for designation as conservation use acreage. In order to avoid inequities, a new paragraph (d) has been added to § 713.61 to permit acreages which have only been cropped to small grains and row crops in 1 of the last 3 years to be designated as conservation use acreage.

(h) Paragraph (a)(2) of § 713.62 of the interim rule permits small grains to be an approved cover on conservation use acreage if the grain was disposed of before a specific deadline. However, important benefits can be derived by permitting small grains to mature. The mature grain can be utilized as feed for wildlife and can result in a volunteer crop which will provide protection for the acreage through the winter. Delaying disposition of small grain on conservation use acreages also permits producers more flexibility in their farming operations. Accordingly, this paragraph has been revised to permit the deadline for the disposal of small grains on conservation use acreage to be extended if the producer requests the extension and pays the cost of a farm visit to verify that the grain was disposed of rather than harvested.

(i) Paragraph (c) of § 713.62 of the interim rule permits any crop to be used as a cover crop on conservation use acreage under certain conditions. This paragraph has been revised to prohibit the growing of any program crop, as well as soybeans, popcorn, sweet corn, and perennial or biennial vegetables, on conservation use acreage. It is recognized that closely sown corn or soybeans may be an adequate cover and have other benefits. However, permitting such crops to be grown on conservation use acreage encourages producers to delay a decision to comply with the program requirement until the final date for reporting crop acreages thus undermining the effectiveness of the program. Accordingly, the listed crops are prohibited from use as a cover crop on conservation use acreage. In addition, the use of vegetables as a cover crop is prohibited because of potentially expanded vegetable production and the resultant adverse economic impact on producers who currently rely on vegetable production for their income. The only exceptions to this rule are set forth in §§ 713.70 and 713.71.

(j) Section 713.65 of the interim rule permits orchards or vineyards to be established on conservation use acreage. This section has been revised to permit the State ASC committee to disapprove the designation of newly established orchards and vineyards as conservation use acreage when it is determined that establishing new orchards and vineyards on conservation use acreage would have an adverse economic impact on other growers.

(k) Sections 713.66–713.68 have been added which provide clarification of certain conservation use requirements and greater flexibility to producers in complying with program requirements. They include:

(1) Procedure for determining whether land which goes into nonagricultural uses during the current year would be eligible for designation as conservation use acreage,

(2) Authority for permitting the conservation use acreage to be hayed or grazed in emergency conditions, and

(3) Provisions for accepting as conservation use acreage land on which crops are grown for use as wildlife food or wildlife habitat.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0092, 0560–0650, 0560–0091, 0560–0030, and 0560–0071 have been assigned.

List of Subjects in 7 CFR Part 713

Acreage allotments, Cotton, Feed Grains, Price support programs, Wheat and rice.

Accordingly the interim rule published at 48 FR 1678, Jan. 14, 1983 is hereby adopted as a final rule, with the following changes:

1. The table of contents is amended by adding §§ 713.66–713.68, and 713.116 to read as follows:

Sec.

* * * * *

713.66 Land going out of agricultural production.
713.67 Emergency grazing or harvesting.
713.68 Wildlife food or habitat.

* * * * *

713.116 Paperwork Reduction Act assigned numbers.

2. Section 713.3 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 713.3 Definitions.

* * * * *

(b) * * *
(2) * * *

(i) Any acreage required to be devoted to conservation uses under a set-aside, acreage reduction, or diversion program as prescribed in this Part or under a payment-in-kind diversion program as prescribed in Part 770 of this Chapter.

* * * * *

3. Section 713.4 is amended by revising paragraph (c) to read as follows:

§ 713.4 Determining crop acreages.

* * * * *

(c) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except as follows:

(1) When a crop of barley, oats, or wheat is the first seeded crop in a mixture of small grains seeded or volunteered at different times, the mixture is considered to be the crop of barley, oats, or wheat which is first seeded.

(2) When corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

4. Section 713.6 is amended by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

§ 713.6 Farm yields.

* * * * *

(b) * * *

If no acreage of the crop was grown on the farm for a year, a yield for the crop may be assigned for the farm for such year based upon the actual yields for similar farms in the county or surrounding area.

* * * * *

(4) The Deputy Administrator may prescribe a limitation on the amount by which an upland cotton yield may be reduced from one year to the next year.

* * * * *

5. Section 713.7 is amended by revising paragraph (f) to read as follows:

§ 713.7 Crop acreage bases.

* * * * *

(f) For 1983, adjustments will be permitted in the rice acreage base established for a farm in accordance with instructions to be issued by the Deputy Administrator if the farm is subject to red rice problems and an adjustment is necessary to prevent or control such red rice problems.

6. Section 713.61 is amended by revising paragraphs (a)(2) and (b)(2) and adding paragraph (d) to read as follows:

§ 713.61 Eligible land.

Conservation use acreage:

(a) For 1982, must be cropland that was:

* * * * *

(2) Devoted to a small grain or row crop before the previous 2 years as part of an established crop rotation practice which is used by the county committee to establish the acreage base for the farm; or

* * * * *

(b) * * *

(2) Devoted to grasses or legumes for hay, seed, or pasture in 2 of the last 3 years in rotation with small grains or row crops if an equal replacement acreage is seeded to a cover of grasses, legumes, or a mixture of these in the spring or summer of the current year or the fall of the preceding year. Hay includes hay, green chop, silage, and processed hay, such as alfalfa pellets. The replacement acreage:

(i) Must be seeded on cropland that would have been eligible for designation as conservation use acreage under paragraph (a), (b), or (d) of this section.

(ii) May be seeded with a nurse crop, which may be harvested for grain.

(iii) Must be seeded to a perennial grass or legume crop if the old acreage was in a perennial grass or legume in 2 of the last 3 years.

(iv) May not also be designated as conservation use acreage.

* * * * *

(d) May be cropland that does not meet the requirements of paragraph (b) of this section if the conservation use acreage requirement exceeds the total of all of the cropland, including the cropland planted in the current year which is eligible to be designated according to paragraph (b) of this section. In these cases, the cropland must be designated in the following order:

(1) All cropland eligible under paragraph (b) of this section even though the acreage may already have been planted in the current year.

(2) All cropland that was devoted to small grains or row crops in 1 of the last 3 years.

(3) All cropland that was not devoted to small grains or row crops in the last 3 years.

7. Section 713.62 is amended by revising paragraph (a)(2) and (c) introductory text to read as follows:

§ 713.62 Approved cover and practices.

(a) * * *

(2) Small grains and rice, including volunteer stands other than weeds that meet the criteria set forth by the State committee, except that such grain (i) must have been planted too late to form grain, or (ii) must be disposed of before the disposal deadline, unless the producer requests an extension of the deadline and pays the cost of a farm visit to verify the later disposition of the grain; and

* * * * *

(c) Any nonprogram crop, except soybeans, popcorn, sweet corn and perennial or biennial vegetables, may be planted as a cover on conservation use acreage provided that the following conditions are met:

* * * * *

8. Section 713.65 is revised to read as follows:

§ 713.65 Orchards, vineyards, and nursery stock.

Unless the State committee determines otherwise, the entire area of an orchard, vineyard, or nursery meeting the minimum size requirements in Part 718 of this Chapter is eligible to be designated as conservation use acreage if the trees or vines were planted in the current year or the fall of the previous year and such land meets the eligibility requirements of § 713.61.

9. Sections 713.66 through 713.68 are added to read as follows:

§ 713.66 Land going out of agricultural production.

If the county committee determines that the designated conservation use acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

§ 713.67 Emergency grazing or harvesting.

Conservation use acreage may be hayed or grazed in emergency conditions in accordance with guidelines issued by the Deputy Administrator.

§ 713.68 Wildlife food or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State ASC committee, in consultation with wildlife agencies, is eligible to be designated as conservation use acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, the requirements of § 713.61 must also be met.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as conservation use acreage.

10. Section 713.116 is added to read as follows:

§ 713.116 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 713) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Numbers 0560–0092, 0560–0650, 0560–0091, 0560–0030, and 0560–0071.

(7 U.S.C. 1441, 1444, 1444d, 1445b–1, 1445b–2, 1445b, 1445h, 1421 note, 1501 note)

Signed at Washington, D.C. on March 23, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-8088 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 600]

Navel Oranges Grown in Arizona and Designated part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period April 6–12, 1984. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the oranges industry.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on September 27, 1983. The committee met again publicly on March 27, 1984, at Ventura, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared policy of the Act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. Section 907.900 is added as follows:

§ 907.900 Navel Orange Regulation 600.

The quantities of navel oranges grown in California and Arizona which may be handled during the period April 6, 1984 through April 12, 1984, are established as follows:

(a) *District 1:* 1,800,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 30, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-8983 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final official staff interpretation.

SUMMARY: The Board is publishing in final form changes to the official staff commentary to Regulation Z (Truth in Lending), 12 CFR Part 226. The commentary applies and interprets the requirements of Regulation Z with regard to consumer credit transactions and is a substitute for individual staff interpretations of the regulation. The commentary revisions address a variety of questions that have arisen about the regulation, such as the proper treatment of certain mortgage guarantee insurance premiums and certain types of variable-rate transactions, and the disclosure of the "total of payments" in closed-end credit transactions. Final action is being delayed on the proposal regarding the disclosure of fees in interchange or shared systems.

EFFECTIVE DATE: April 1, 1984, but reliance optional until October 1, 1984.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–2412 or (202) 452–3867:

Subpart A—Ruth Amberg, Steven Zeisel
Subpart B—Richard Garabedian, Lynn Goldfaden
Subpart C—Clarence Cain, Susan Werthan
Subpart D—Rugenia Silver

SUPPLEMENTARY INFORMATION:

I. General

Effective October 13, 1981, an official staff commentary was published to interpret Regulation Z (12 CFR Part 226). The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise. This is the third update to the commentary; the first was in September 1982 (47 FR 41338) and the second was in April 1983 (48 FR 14882). The changes are effective on April 1, 1984. Although creditors are free to rely on the provisions as of that date and are protected if they do so, they need not follow the revisions until October 1, 1984, the uniform effective date provided for in Section 105(d) of the revised Truth in Lending Act.

II. Commentary revisions

Following is a brief description of the revisions to the commentary and how they differ, if at all, from those proposed.

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a)(17) "Creditor". The last sentence of comment 2(a)(17)(i)–7 is deleted because it contains a cross-reference to the commentary discussing "arranger of credit," which was deleted in April 1983 (48 FR 14882). The sentence should have been deleted at that time.

Section 226.4—Finance Charge

4(b) Examples of Finance Charges

Paragraph 4(b)(2). No final action on proposed comment 4(b)(2)–2 is being taken at this time. The proposal excepts from the finance charge certain fees imposed on cardholders for accessing credit through electronic terminals in interchange or shared systems. Final action on this proposal is being postponed in order to consider the issues more fully and to further investigate operational concerns, as well as to consider any additional issues that might be raised in response to proposed

questions 7–15.5 and 9–31.5 of the update to the Regulation E commentary (49 FR 2204). Final action is also delayed on the proposed addition to comment 6(b)–1, which provides that certain disclosure requirements would be retained for fees excepted from the finance charge.

4(c) Charges Excluded From the Finance Charge

Paragraph 4(c)(5). Comment 4(c)(5)–2 is added to explain the correct treatment of mortgage insurance premiums and other charges when they are paid at or before settlement by the noncreditor seller. This is most likely to arise in the case of FHA mortgage insurance premiums, which the Department of Housing and Urban Development now collects in a lump sum rather than periodically. The creditor should treat the amount of the payment made by the seller as seller's points and exclude it from the finance charge.

The final comment has been revised from the proposal to eliminate some of the restrictions on the payments to which it applies and to explain the use of estimates when disclosures must be made before the creditor knows who will pay the fee.

Subpart B—Open-end Credit

Section 226.6—Initial Disclosure Statement

6(a) Finance Charge. Comment 6(a)(2)–10 is added to address the disclosure of discounted variable-rate plans on the initial disclosure statement. The comment has been expanded from the proposal to provide examples of the types of plans covered by the interpretation, to give additional guidance on the required disclosures, and to make clear that the creditor may use the disclosure options set forth in comment 6(a)(2)–3 in disclosing the current "Indexed" rate.

The staff is aware that, in the absence of any additional interpretive material, creditors could reasonably have applied the variable-rate provisions of the commentary in different ways to discounted variable-rate plans, and that, therefore, creditors may have given different disclosures for these plans. Because of possible confusion in this area, comment 6(a)(2)–10 has been added to explain creditors' initial disclosure statement responsibilities with regard to these plans.

6(b) Other Charges. No final action is being taken at this time on the proposed addition to comment 6(b)–1. The proposal provides that certain interchange fees excepted from the finance charge under proposed comment 4(b)(2)–2 must still be disclosed as "other charges" under §§ 226.6(b) and 226.7(h). Final action is being delayed for the reasons set forth in the discussion of proposed comment 4(b)(2)–2.

Section 226.12—Special Credit Card Provisions

12(b)(3) Notification to Card Issuer. Comment 12(b)(3)–3 is added to point out that, under the regulation, the liability protections of § 226.12 are not dependent upon whether the consumer follows the error resolution procedures of § 226.13. Editorial changes were made to the proposal to clarify the relationship between §§ 226.12 and 226.13.

Section 226.13—Billing-Error Resolution

13(d)(1) Consumer's Right to Withhold Disputed Amount; Collection Action Prohibited. Language is added to comment 13(d)(1)–3 to clarify that finance or other charges cannot be imposed on undisputed balances, even in subsequent billing cycles, merely because the consumer withholds payment of a disputed amount. A sentence has been added to the proposal to further clarify this issue.

Paragraph 13(g)(1). Comment 13(g)(1)–1 is revised to make clear that, when the creditor notifies the consumer of amounts still owed from the resolution period, the creditor may not include finance or other charges imposed on the undisputed amounts solely because the consumer withheld payment of a disputed amount.

Section 226.14—Determination of Annual Percentage Rate

14(a) General Rule. Comment 14(a)–5 is added to clarify the circumstances under which creditors may utilize footnote 31a, regarding faulty calculation tools. The comment has been expanded from the proposal to provide further guidance on the types of errors that may be subject to the footnote.

Section 226.16—Advertising

A new comment 16–2 has been added to permit open-end credit advertisers to use readily understandable abbreviations, such as "APR", as an expression of the annual percentage rate.

16(b) Advertisement of Terms That Require Additional Disclosures. Comment 16(b)–4 is modified to describe several ways of satisfying the required disclosure of the annual percentage rate in an advertisement for a variable-rate plan. Language has been added to clarify that disclosure of both the current rate and the fact that the rate may vary is required in advertisements for variable-rate open-end credit plans.

Comment 16(b)–5 is added to explain how discounted variable-rate plans may be advertised. The comment has been expanded from the proposal 1) to clarify that an advertisement for a discounted variable-rate will be in effect; 2) to reflect that, as with any advertised variable rate, the current indexed rate must be accompanied by a disclosure that the rate may vary; and 3) to indicate that the options listed in comment 16(b)–4 for use in disclosing the annual percentage rate in an advertisement for a variable-rate plan are equally available in disclosing the current indexed rate in a discounted variable-rate plan.

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(b) Time of Disclosures. Comment 17(b)–2 is revised to clarify the time of disclosure when an open-end credit account is converted to a closed-end transaction. Under some state laws, consummation of the closed-end transaction is deemed to occur at the same time as the opening of the open-end credit plan, even though the conversion may occur several years later. In these cases, the closed-end credit disclosures may be given at the time of the conversion.

Section 226.18—Content of Disclosures

18(f) Variable Rate. Comment 18(f)–8 is added to address the disclosure of discounted variable-rate transactions. The comment has been expanded from the proposal to provide examples and to respond to questions raised by the comments. The examples illustrate the use of a composite annual percentage rate and its effect on other calculations. As requested by commenters, the effect of a rate cap also has been shown in the example.

The staff is aware that, in the absence of any additional interpretive material, creditors could reasonably have applied the variable-rate provisions of the commentary in different ways to discounted variable-rate plans, and that, in fact, creditors have given different disclosures for these transactions. Because of confusion in this area, comment 18(f)–8 has been added to explain creditors' disclosure responsibilities with regard to these transactions.

18(g) Payment Schedule. Comment 18(g)–3 is added to make clear that creditors are not required to disclose the total number of payments in a

transaction involving several payment levels.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate. Comment 22(a)(1)–5 is added to clarify the circumstances under which creditors may utilize footnote 45a, regarding faulty calculation tools. The comment has been expanded from the proposal to provide further guidance on the types of errors that may be subject to the footnote.

Section 226.24—Advertising

A comment has been added to the commentary to § 226.16 to permit the use of an abbreviation for "annual percentage rate" when that term is used in advertising open-end credit. Because of a difference in regulatory language between §§ 226.16 and 226.24, a companion provision to that comment has not been adopted for advertisements of closed-end credit. The issue will be considered for inclusion in any future regulatory revision.

24(b) Advertisement of Rate Finance Charge. Comment 24(b)–5 is added to explain how discounted variable-rate transactions may be advertised. In response to questions, the comment has been expanded from the proposal to describe more specifically the special rules for advertising these transactions, and to provide examples. Although a composite annual percentage rate must be shown, the discounted rate and payment amounts may be shown in conjunction with the higher rate and payments without triggering other terms under § 226.24(c). A sentence also has been added to the proposal stating that limits or caps on rates or payments need not be shown.

24(c) Advertisement of Terms that Require Additional Disclosure. The proposed revision to comment 24(c)(1)–1, which would have deleted the sentence limiting application of § 226.24(c)(1) to credit sales, has not been adopted. After consideration of the comments received, the staff believes that the proposed revision is not necessary or appropriate.

Subpart D—Miscellaneous

Section 226.28—Effect on State Laws

28(a) Inconsistent Disclosure Requirements. Comments 28(a)–11 and 28(a)–12 are added to reflect Board determinations on the effect of the Truth in Lending Act on the consumer credit laws of Mississippi and South Carolina.

List of Subjects in CFR Part 226

Advertising; Banks, banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Truth in lending.

III. Text of Revisions

The revisions to the commentary (Supplement I to Part 226) read as follows:

Supplement I—Official Staff Commentary—TIL–1

Subpart A—General

* * * * *

1. The commentary to section 226.2 is amended by removing the last sentence of comment 2(a)(17)(i)–7.

* * * * *

2. The commentary to section 226.4 is amended by adding comment 4(c)(5)–2, to read as follows:

Section 226.4—Finance Charge

* * * * *

4(c) Charges excluded from the finance charge.

* * * * *

Paragraph 4(c)(5).

* * * * *

2. *Other seller-paid amounts.* Mortgage insurance premiums and other charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. In such cases, the creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available, as called for by the estimate provisions of the regulation.

* * * * *

Subpart B—Open-End Credit

* * * * *

3. The commentary to section 226.6 is amended by adding comment 6(a)(2)–10, to read as follows:

Section 226.6—Initial Disclosure Statement

* * * * *

Paragraph 6(a)(2).

* * * * *

10. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

• For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

• When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the initial disclosure statement should reflect: (1) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long it will remain in effect; (2) the current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and (3) the other variable-rate information required by footnote 12 to § 226.6(a)(2).

• In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(2)–3.

* * * * *

4. The commentary to section 226.12 is amended by adding comment 12(b)(3)–3, to read as follows:

Section 226.12—Special Credit Card Provisions

* * * * *

12(b) Liability of cardholder for unauthorized use.

* * * * *

12(b)(3) Notification to card issuer.

* * * * *

3. *Relationship to § 226.13.* The liability protections afforded to cardholders in § 226.12 do not depend upon the cardholder's following the error resolution procedures in § 226.13. For example, the written notification and time limit requirements of § 226.13 do not affect the section 226.12 protections.

* * * * *

5. The commentary to section 226.13 is amended by revising comments 13(d)(1)–3 and 13(g)(1)–1, to read as follows:

Section 226.13—Billing-Error Resolution

* * * * *

13(d) Rules pending resolution

* * * * *

13(d)(1) Consumer's right to withhold disputed amount; collection action prohibited.

* * * * *

3. *Imposition of additional charges on undisputed amounts.* The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a free-ride period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the free-ride period, the consumer would not lose the free-ride as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them.

Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.

* * * * *

13(g) Creditor's rights and duties after resolution.

Paragraph 13(g)(1).

1. *Amounts owed by consumer.* Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in the commentary to § 226.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.

* * * * *

6. The commentary to section 226.14 is amended by adding comment 14(a)–5, to read as follows:

Section 226.14—Determination of Annual Percentage Rate

14(a) General rule.

* * * * *

5. *Good faith reliance on faulty calculation tools.* Footnote 31a absolves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the footnote is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

* * * * *

7. The commentary to section 226.16 is amended by adding comment 16–2, revising comment 16(b)–4, adding new comment 16(b)–5, and redesignating existing comments 16(b)–5 and 6 as 16(b)–6 and 7, to read as follows:

Section 226.16—Advertising

* * * * *

2. *Expressing the annual percentage rate in abbreviated form.* Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as "APR".

* * * * *

16(b) Advertisement of terms that require additional disclosures.

* * * * *

4. *Variable-rate plans.* In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by § 226.16(b)(2), the creditor may use an insert showing the current rate; may give the rate as of a specified recent date; or may disclose an estimated rate under § 226.5(c). The additional requirement in § 226.16(b)(2) to disclose the variable-rate feature may be satisfied by disclosing that "the annual percentage rate may vary" or a similar statement, but the advertisement need not include the information required by footnote 12 to § 226.6(a)(2).

5. *Discounted variable-rate plans—disclosure of the annual percentage rates.* The advertised annual percentage rates for discounted variable-rate plans must, in accordance with comment 6(a)(2)–10, include both the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary). The options listed in comment 16(b)–4 may be used in disclosing the current indexed rate.

* * * * *

Subpart C—Closed-End Credit

8. The commentary to section 226.17 is amended by revising comment 17(b)–2, to read as follows:

Section 226.17—General Disclosure Requirements

* * * * *

17(b) Time of disclosures.

* * * * *

2. *Converting open-end to closed-end credit.* If an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction. If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion. (See the commentary to § 226.5 regarding conversion of closed-end to open-end credit.)

* * * * *

9. The commentary to section 226.18 is amended by adding comments 18(f)–6 and 18(g)–3, to read as follows:

Section 226.18—Content of Disclosures

* * * * *

18(f) Variable rate.

* * * * *

6. *Discounted variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

• When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation.

• The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

• If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

• Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with § 226.22(a)(3) of the regulation.

• Examples of discounted variable-rate transactions include:

—A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $266,463.32 and the total of payments $366,463.32.

—Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76, and the total of payments $365,234.76.

* * * * *

18(g) Payment schedule.

* * * * *

3. *Total number of payments.* In disclosing the number of payments for transactions with more than one payment level, creditors may but need not disclose as a single figure the total number of payments for all levels. For example, in a transaction calling for 108 payments of $350, 240 payments of $335, and 12 payments of $330, the creditor need not state that there will be a total of 360 payments.

* * * * *

10. The commentary to section 226.22 is amended by adding comment 22(a)(1)–5, to read as follows:

Section 226.22—Determination of the Annual Percentage Rate 22(a) Accuracy of the annual percentage rate.

Paragraph 22(a)(1).

* * * * *

5. *Good faith reliance on faulty calculation tools.* Footnote 45a absolves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the footnote is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

* * * * *

11. The commentary to section 226.24 is amended by adding comment 24(b)–5, to read as follows:

Section 226.24—Advertising

* * * * *

24(b) Advertisement of rate of finance charge.

* * * * *

5. *Discounted variable-rate transactions.* The advertised annual percentage rate for discounted variable-rate transactions must be determined in accordance with comment 18(f)–6 regarding the basis of transactional disclosures for such financing. A creditor or seller may promote the availability of the initial rate reduction in such transactions by advertising the reduced initial rate, provided the advertisement shows the limited term to which the reduced rate applies.

• Limits or caps on periodic rate or payment adjustments need not be stated. To illustrate using the second example in comment 18(f)–6, the fact that the rate is presumed to be 11 percent in the second year and 12 percent for the remaining 28 years need not be included in the advertisement.

• The advertisement may also show the effect of the discount on the payment schedule for the discount period without triggering the additional disclosures under § 226.24(c). For example, the advertisement may state that "with this discount, your monthly payments for the first year of the mortgage term will be only $577" or "this discount will reduce your monthly payments for the first year of the mortgage term by $223."

* * * * *

Subpart D—Miscellaneous

* * * * *

12. The commentary to section 226.28 is amended by adding comments 28(a)–11 and 12, to read as follows:

Section 226.28—Effect on State Laws

28(a) Inconsistent disclosure requirements.

* * * * *

11. *Preemption determination—Mississippi.* Effective October 1, 1984, the Board has determined that the following provision in the state law of Mississippi is preempted by the federal law:

• Section 63–19–31(2)(g)—Disclosure of finance charge. This disclosure is preempted in those cases in which the term "finance charge" would be used under state law to describe a different amount than the finance charge disclosed under federal law.

12. *Preemption determination—South Carolina.* Effective October 1, 1984, the Board has determined that the following provision in the state law of South Carolina is preempted by the federal law.

• Section 37–10–102(c)—Disclosure of due-on-sale clause. This provision is preempted, but only to the extent that the creditor is required to include the disclosure with the segregated federal disclosures, the state law is not preempted.

* * * * *

Board of Governors of the Federal Reserve System, March 30, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-8888 Filed 4-4-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-6-AD; Amendment 39-4839]

Airworthiness Directives; Parachute Harnesses Manufactured Under TSO-C23b

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to parachute harnesses manufactured under Technical Standard Order (TSO) C23b by certain United States parachute manufacturers. It requires pull testing of all 3-Ring Inc. Part Number RW–1–82 or RW–1–83 Large Rings installed on these harnesses and removal of those which are elongated beyond acceptable limits. Some rings shipped by the ring supplier without receiving proper heat treatment may be elongated by unusually large parachute opening loads and prevent proper operation of the main canopy emergency disconnect. The required action will assure immediate release of the main parachute under emergency conditions.

DATES: Effective Date: April 9, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The 3-Ring Incorporated Safety Bulletin No. 3 dated February 15, 1984, applicable to this AD may be obtained from 3-Ring, Inc., 1725 North Lexington Avenue, Deland, Florida 32720; Telephone (904) 736–8721, or its authorized dealers. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jerry Boutwell, Aerospace Engineer, Aircraft Certification Office, FAA, Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7407.

SUPPLEMENTARY INFORMATION: There have been reports that some of the large rings (Part Number RW–1–82 or RW–1–83) of the 3-Ring Inc. emergency release system have elongated under the opening load imposed by the main parachute. This condition may prevent the proper operation of the 3-Ring Inc. release system during an emergency by restricting or preventing passage of the second ring through the large ring. This is required for proper release of the main parachute to occur. If it is necessary to use the reserve parachute, and the main parachute cannot be released, it is highly possible that the reserve parachute will tangle with the main parachute and render both ineffective.

Investigations following such an incident disclosed that the fabrication process of the large ring was changed in the early part of 1982. After annealing of the large rings, in order to bend them, the heat treating step was unintentionally bypassed. Approximately 20% of 20,000 parts are believed to have been in the annealed state when shipped to the United States parachute harness manufacturers listed below:

Adventure Loft, Inc., Aerotech Inc., Altitude Shop, The Annex, Bill Coe, Bureau of Land Management, Rec Whse, The Chute Shop, Embury Sky Systems, Flying High, G.Q. Security Parachutes, Inc., LLB Enterprise, McLaughlin Para Center, National Parachute Supply, Inc., North American Aerodynamics, Nytech Inc., Parachute Associates, Inc., Para Flite, Inc., Para Gear Equipment Co., Para Phernalia, Para Wing SA, Pioneer Parachute Co., Inc., Ray Hara C/O Cazer Para Loft, Reitny Parachute Service, Relative Workshop, Inc., Rogersport, Sky Supplies, SSK Industries Inc., Strong Enterprises, Inc., Thomas Sports Equipment LTD, Weckbecker, Westgaard Parachute Enterprise, Westway Parachuting Enterprise.

Should these rings be elongated by an unusually large opening shock, and this condition not noted, an emergency

necessitating release of the main parachute could result in a jumper fatality. Since this condition is likely to exist on all FAA TSO C23b parachute harnesses using the 3-Ring Inc. release system, an AD is being issued applicable to the harnesses produced by the aforementioned parachute manufacturers, which requires the testing and replacement as necessary of all 3-Ring Inc. Part Numbers RW–1–82 or RW–1–83 large rings.

Because an emergency condition exists that requires the immediate adoption of the regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Parachutes

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

PARACHUTE HARNESSES MANUFACTURED UNDER TSO–C23B

Applies to all of the following manufacturer's parachute harnesses using the 3-Ring Inc. release system:

Adventure Loft, Inc., Aerotech Inc., Altitude Shop, The Annex, Bill Coe, Bureau of Land Management, Rec Whse, The Chute Shop, Embury Sky Systems, Flying High, G.Q. Security Parachutes, Inc., LLB Enterprise, McLaughlin Para Center, National Parachute Supply, Inc., North American Aerodynamics, Nytech Inc., Parachute Associates, Inc., Para Flite, Inc., Para Gear Equipment Co., Para Phernalia, Para Wing SA, Pioneer Parachute Co., Inc., Ray Hara C/O Cazer Para Loft, Reitny Parachute Service, Relative Workshop, Inc., Rogersport, Sky Supplies, SSK Industries Inc., Strong Enterprise, Inc., Thomas Sports Equipment LTD, Weckbecker, Westgaard Parachute Enterprise, Westway Parachuting Enterprise

Compliance: Required prior to next jump, unless already accomplished. To prevent possible fouling of a reserve parachute canopy by a main canopy which cannot be separated from the harness, accomplish the following:

(a) Visually inspect the harness to determine whether or not it incorporates a 3-Ring Inc. release system, and if incorporated, whether or not the large ring of this assembly is identified by either Part Number RW–1–82 or RW–1–83.

(b) If either finding of the inspection in paragraph (a) is negative, no further action is required.

(c) If both findings of the inspection in paragraph (a) are positive, replace or test the large rings in accordance with 3-Ring Safety Bulletin No. 3 dated February 15, 1984.

(1) Replace defective rings or identify acceptable rings in accordance with the instructions in this bulletin.

(d) Replacement and testing of the large rings must be accomplished by an FAA certified Parachute Rigger, an FAA certificated Parachute Loft or the manufacturer of the parachute harness involved.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

This amendment becomes effective on April 9, 1984.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); § 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in parachutes. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on March 23, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-8894 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83–ANE–29; Amdt. 39–4840]

Airworthiness Directives; Garrett Turbine Engine Company Model TPE331 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal from service of certain high pressure fuel pump output drive shafts on Garrett Turbine Engine Company TPE331 series engines. The AD is prompted by reports of high pressure fuel pump output drive shaft failure which could result in engine failure.

DATES: Effective April 18, 1984.

Compliance schedule—As prescribed in body of AD.

Incorporation of Reference—The Director of the Federal Register approved the incorporation of reference of the manufacturer's service bulletin (SB) referred in this AD on April 18, 1984.

ADDRESSES: The applicable SB may be obtained from Garrett Turbine Engine Company, 111 South 34th St., P.O. Box 5217, Phoenix, Arizona 85010; telephone (602) 231–1000.

A copy of the SB is contained in the FAA Rules Docket, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Bob Liddiard, Aerospace Engineer, ANM–174W, Western Aircraft Certification Office, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009; telephone (213) 536–6380.

SUPPLEMENTARY INFORMATION: There have been 12 reports of high pressure fuel pump output drive shaft failure. This shaft drives the fuel control unit engine underspeed and overspeed governors. The high pressure fuel pump drive shaft, which is a grease packed blind assembly, can be inadvertently assembled with entrapped air. This produces high internal loads, particularly on the pump stationary bushing and increases resistance to rotation. Engineering tests have demonstrated that the shaft failure can occur as a result of this increased load on the stationary bushing. The AD requires an inspection of the fuel control/pump assembly running torque to establish whether or not the unit may be continued in service until its mandatory replacement during a routine maintenance activity. The inspection is required earlier on newer installations because improperly assembled shafts would tend to fail early in service. An unsafe condition can result from failure of the fuel pump drive shaft which provides speed signal inputs to both the fuel control overspeed and underspeed governors. The underspeed governor, upon sensing an underspeed condition (reduced or zero engine rotational speed), attempts to set fuel flow at the maximum scheduled flow rate. The disabled overspeed governor is unable to decrease this fuel flow. During takeoff or during flight, the unscheduled power can create an unsafe asymetrical power

condition for the aircraft. When the propeller is on the start locks during engine starting, the engine can accelerate to a destructive overspeed.

The Garrett Turbine Engine Company (GTEC) has issued Operating Information OI 331–10 dated September 1, 1983, to emphasize the condition and describe the effects of a shaft failure. GTEC SB TPE331–73–0121, Revision 1 dated Jan. 3, 1984, contains instructions related to this AD.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires removal of certain high pressure fuel pump drive shafts from service on GTEC model TPE331 series engines.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Garrett Turbine Engine Company (GTEC, formerly AiResearch Manufacturing Company of Arizona)

Applicable to all series of engine models TPE331–25, –43, –47, –55, –61, –1, –2, –3, –5, –6, –10, and –11 with high pressure fuel pump drive shaft Garrett Part Number (P/N) 897195–1 installed.

Compliance is required as indicated unless already accomplished.

To prevent possible engine failure, accomplish the following:

(a) Inspect low-time engine fuel control/pump assembly to determine drive shaft running torque as specified in section 2.A.(2), "Accomplishment Instructions," of GTEC SB TPE331–73–0121, Revision 1 dated Jan. 3, 1984, equivalent approved by the Manager, Western Aircraft Certification Office, in accordance with the schedule below:

Control/pump assembly total time in service-hours	Inspect within the next
Less than 200	100 hours.
200 or more and less than 1,000	200 hours.

Remove from further service fuel control/pump assemblies having unsatisfactory inspection results.

Fuel control/pump assemblies having satisfactory inspection results may be continued in service until removed per Paragraph (b) below.

(b) Remove from service P/N 897195–1 high pressure fuel pump drive shaft at next hot section inspection, gearbox inspection, fuel pump overhaul, or engine overhaul, whichever occurs first. Replace with GTEC high pressure fuel pump drive shaft, P/N 897601–1, or equivalent approved by the Manager, Western Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulation FAR 21.197 and FAR 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

(d) Alternative means of compliance providing an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

(e) Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Aircraft Certification Division, FAA, New England Region, may adjust the compliance schedule specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the adjustment for that operator.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Garrett Turbine Engine Company, 111 South 34th St., P.O. Box 5217, Phoenix, Arizona 85010; telephone (602) 231–1000. This document also may be examined at FAA Rules Docket 83–ANE–29, New England Region Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective April 18, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.)

NOTE.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Burlington, Massachusetts, on March 23, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84–8606 Filed 4–4–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 83–CE–12–AD; Amdt. 39–4830]

Airworthiness Directives; SIAI-Marchetti Models F260, F260B, and F260C (including SF260) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 83–06–05, Amendment 39–4591 applicable to SIAI-Marchetti Models F260, F260B and F260C (including SF260) airplanes by deleting the repetitive dye-penetrant inspection for cracks of the nose-gear barrel joint weld at the attachment plate after these units are replaced by improved parts. Subsequent to issuance of AD 83–06–05 the manufacturer has made available a nose gear barrel which does not require inspection. This revision now makes the AD consistent with current parts availability and airworthiness requirements.

EFFECTIVE DATE: April 12, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: A copy of SIAI-Marchetti Service Bulletin (SB) No. 260E34A, dated October 14, 1983, applicable to this AD may be obtained from SIAI-Marchetti S.P.A., V–12070 via Indipendenza, 2, 21018 Sesto Calende, Italy. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. A. Astorga, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. Paul Cormaci, FAA, ACE–108, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–5932.

SUPPLEMENTARY INFORMATION: AD 83–04–05, Amendment 39–4591 (48 FR 12343, 12344), applicable to SIAI-Marchetti Models F260, F260B and F260C airplanes requires initial and repetitive dye-penetrant inspections of the nose-gear barrels. If a crack is found, the part must

be replaced prior to further flight. Subsequent to the issuance of this AD, SIAI-Marchetti has made available improved replacement parts.

As a result SIAI-Marchetti has issued SB No. 260B34A which deletes the requirement for repetitive inspections after the new replacement parts as listed in Table "A" of the SB are installed. The Registro Aeronautico Italiano (RAI) who has responsibility and authority to maintain the continuing airworthiness of these airplanes has issued RAI AD 83-173/F260-26 Revision 1 incorporating this same information. On airplanes operated under Italian registration, this action is comparable to revision of an AD by the FAA. The FAA relies upon the findings and actions of the RAI together with FAA review of pertinent information in updating, correcting or modifying action to maintain the continued airworthiness of airplanes operated in the United States. Also, the FAA has determined that confusion may occur on certain F260 series airplanes registered in the U.S. because they may be identified and referred to by the model designation SF260 used in the country of manufacture. Therefore, the FAA is revising AD 83-06-05 by changing paragraph (a)(1) to reflect the current SIAI-Marchetti service bulletin revision; inserting a new paragraph (c) which deletes the requirement for repetitive inspections after new replacement parts, as listed in Table "A" of the SB, have been installed; reidentifying the remaining paragraphs; and including parenthetical reference to the SF260 in the applicability statements.

This amendment updates the AD and makes it consistent with presently acceptable corrective action by deleting the requirement for periodic inspections when the new replacement parts are installed. It imposes no additional burden on any person and reduces the burden on those persons installing the improved part. It also incorporates an option which provides an equal or greater level of safety that may be selected by the operator at reduced cost depending upon the usage of the airplane. Therefore, notice and public procedure hereon are unnecessary, contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, AD 83-06-05, Amendment 39-4591, § 39.13 of the Federal Aviation Regulations (14 CFR Section 39.13), is revised and reissued in its entirety as follows:

SIAI-Marchetti: Applies to Models F260, F260B and F260C (including SF260), (Serial Numbers up to 774 inclusive) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To preclude failure of the nose-gear barrel joint weld, accomplish the following:

(a) Within the next 100 hours time-in-service on those barrels having 400 or more hours time-in-service on the effective date of this AD or prior to the accumulation of 500 hours time-in-service on those barrels having less than 400 hours time-in-service on the effective date of this AD and thereafter at intervals not exceeding 100 hours time-in-service accomplish the following:

(1) Using a dye-penetrant method, inspect the nose-gear barrel joint weld at the attachment plate for cracks. Perform the inspection in accordance with the "Instructions" section of SIAI-Marchetti SB No. 260B34A, dated October 1, 1983, or an FAA approved equivalent.

(i) If a crack is found, prior to further flight replace the nose-gear barrel in accordance with the applicable paragraph of SB No. 260B34A.

(b) Operators who have not kept records of hours time-in-service for the nose-gear barrel must substitute airplane hours time-in-service.

(c) Replacement of the barrels in accordance with Table "A" of the SIAI-Marchetti SB No. 260B34A eliminates the requirement for the periodic inspections in paragraph (a).

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(f) An equivalent method of compliance with this AD may be used if approved by Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment revises AD 83-06-05, Amendment 39-4591, in its entirety.

This amendment becomes effective April 12, 1984.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this document involves an amendment that increases the level of safety in the operation of the affected aircraft by updating the AD in accordance with the latest information available to the FAA and imposes no additional burden on any person. Therefore, (1) it is not a major rule under Executive Order 12291 because no additional cost is imposed by this action, and (2) it is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because it's anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. Since this rule does not change the economic impact of the basic AD, and because it involves few, if any, small entities, I certify it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on March 27, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-8880 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASO-11]

Alteration of Transition Area, Statesboro, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Statesboro, Georgia, transition area by revising the geographical coordinates of the Statesboro Municipal Airport and revoking two transition area arrival extensions. The coordinates of the airport are improperly listed and this action will correct the deficiency. The arrival extensions were previously designated to provide controlled airspace for aircraft executing instrument approach procedures to the airport. However, as the non-Federal radio beacon upon which the procedures were predicated has been relocated to an off-airport site, the arrival extensions are no longer required.

DATE: *Effective Date:* 0901 G.m.t., July 5, 1984.

Comments must be received on or before June 5, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box

20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves revising the geographical coordinates of the airport and revoking two transition area arrival extensions, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to revise the coordinates of the Statesboro Municipal Airport and to raise the floor of controlled airspace from 700 to 1,200 feet above the surface in an area of approximately 12 square miles northwest and southeast of the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to properly list the coordinates of the airport and raise the floor of controlled airspace in the vicinity of the airport. The changes relieve a restriction and are so minor I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, the Statesboro, Georgia, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., July 5, 1984, as follows:

Statesboro, GA—[Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Statesboro Municipal Airport (Lat. 32°29'00" N., Long. 81°44'16" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97–449, January 12, 1983))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on March 26, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-8901 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 18

[T.D. 84-77]

Customs Regulations Amendments Relating to the Entry of Explosives for Transportation and Exportation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to permit explosives, for which an intransit license or permit has been issued by the Department of State or the Bureau of Alcohol, Tobacco, and Firearms, to be shipped through the United States under a Transportation and Exportation entry. This action is being taken to allow importers of explosives and other prohibited merchandise that have obtained written authority to do so, to transport the articles through the United States and export them.

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

SUPPLEMENTARY INFORMATION:

Background

Section 18.21(b), Customs Regulations (19 CFR 18.21(b)), provides that narcotics and other prohibited articles may be entered into the commerce of the United States for transportation and exportation only upon written authority from the proper governmental agency and/or compliance with the regulations of such agency. However, section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553), provides, in part, that *"Any merchandise, other than explosives and merchandise the importation of which is prohibited,* shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe * * *" (Emphasis supplied.) Thus, it would appear that 19 U.S.C. 1553 prohibits the in-bond transportation of explosives, even though a license or permit is issued by the proper governmental agency authorizing the movement.

Further, 22 U.S.C. 2778, relating to the control of exports and imports of defense articles and services, provides in paragraph (a) that the President is authorized to designate those items which shall be considered as defense articles and services. The items so designated constitute the U.S. Munitions List. Paragraph (b) of 22 U.S.C. 2778 provides that with certain specified exemptions, no defense articles or services on the U.S. Munitions List may be exported or imported without a license issued in accordance with the statute or regulations issued under the statute.

The Department of State regulations set forth in 22 CFR 121.20, 123.02, and 123.03, provide that items on the U.S. Munitions List temporarily entering the United States in transit to another country, shall constitute a temporary import for which a Department of State Intransit License shall be required.

Under a well-recognized principle of legislative construction, when two provisions of statutory law appear to be in conflict, but can be interpreted to be in conformity, they should be so interpreted. Section 553, Tariff Act of 1930, predates 22 U.S.C. 2778 and its predecessor statute, 22 U.S.C. 1934, and when enacted, Congress did not contemplate the licensing procedures

implemented by the State Department with regard to the transportation and exportation of defense articles such as explosives.

While 19 U.S.C. 1553 clearly prohibits the shipment of explosives under a Transportation and Exportation (T&E) entry, § 18.21(b), Customs Regulations, allows the transportation and exportation of prohibited merchandise upon written authority from the proper governmental agency and/or compliance with the regulations of such agency.

Accordingly, by ruling #715801 M, dated October 28, 1981, Customs ruled that explosives, for which an intransit license has been issued by the Department of State, Office of Munitions Control, may be transported under a T&E entry (Customs Form 7512). The ruling involved a request by a Canadian manufacturer for permission to transport through the United States explosives manufactured in his plant in Canada and destined for exportation outside the United States. Most of the shipments were for North American Treaty Organization purposes. In effect, such transportation and exportation movement is made under the authority of the laws and regulations governing the agency which, in these circumstances, Customs believes overrides the prohibition set forth in 19 U.S.C. 1553. In the absence of such authorization from the governmental agency, the transportation and exportation movement would, of course, be denied.

Customs believes that the principles enunciated in that ruling should apply also to shipments of explosives authorized by the Bureau of Alcohol, Tobacco and Firearms (BATF) (see 27 CFR Part 47.). Thus, the issuance of the appropriate license by the Department of State or BATF would be their authorization of the requested movement of explosives under a T&E entry. Without the change to § 18.21, Customs Regulations, the public would be precluded from using the T&E procedures to ship explosives through the United States, and thus the license or permit issued by these agencies would be meaningless.

Therefore, to clarify the apparent statutory conflict, by notice published in the **Federal Register** on January 18, 1983 (48 FR 2134), Customs proposed to amend § 18.21 by adding a new paragraph (d) to permit explosives to be entered under a T&E entry.

Also, it was proposed to amend § 18.25, Customs Regulations (19 CFR 18.25), by removing paragraph (e) which relates only to the limited situation whereby explosives are entered on arrival from a foreign port for immediate exportation under bond by sea and are transferred directly from the importing to the exporting vessel for exportation.

Two comments were received in response to the notice. One suggested that the regulations be amended to define "explosives" because the information available is either vague or non-existent.

The issue before Customs is whether the merchandise is prohibited from entry and/or transportation in the United States. As was pointed out in ruling #715801, explosives are not *per se* prohibited from entry and/or transportation in the United States by 19 U.S.C. 1553. Customs does not believe it is necessary to define explosives in its regulations; and to do so could conflict with definitions of the term used by other agencies.

The other commenter requested that the proposal be clarified to ensure that all explosives appearing on the BATF list of explosive materials contained in 27 CFR 47.21, and other explosive materials meeting the definitions in sections 841 (C), (D), (E), and (F), title 18, U.S.C., be allowed T&E entry privileges. The same commenter also requested that the regulation provide a Department of Transportation waiver to allow T&E entries for all truck and rail shipments of explosives from Canada.

Customs believes that both of these requests are more properly addressed to the agencies having jurisdiction over explosives. For this reason, § 18.21 is revised so that the importer is directed to obtain a license or permit from the proper governmental agency. This will obviate the necessity of amending the regulations in the future if statutory or regulatory schemes are changed, or if additional agencies acquire jurisdiction over the articles.

After consideration of the comments and further review of the matter, it has been determined to adopt the proposal with the change noted above. In addition, because situations may arise in which the procedure set forth in paragraph (e) to § 18.25 may be used, it has been determined not to delete the paragraph.

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this rule because the amendment is not expected to have significant secondary or incidental effects on a substantial number of small entities or impose or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendment will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 18

Customs duties and inspection, Explosives, Imports, Importers.

Amendments to the Regulations

Part 18, Customs Regulations (19 CFR Part 18), is amended as set forth below

Dated: March 16, 1984.

William von Raab,

Commissioner of Customs.

Approved: March 16, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Section 18.21 is amended by adding a new paragraph (d) to read as follows:

§ 18.21 Restricted and prohibited merchandise.

. . . . . .

(d) Explosives shall not be entered for transportation and/or exportation under a transportation and exportation entry, or an immediate transportation entry unless the importer has first obtained a license or permit from the proper governmental agency.

(R.S. 251, as amended (19 U.S.C. 66), sections 502, 624, 46 Stat. 731, as amended, 759 (19 U.S.C. 1502, 1624), 77A Stat. 14 (19 U.S.C. 1202))

[FR Doc. 84-8710 Filed 4-4-84; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 162

[T.D. 84-78]

Customs Regulations Amendment Concerning Disposition of Proceeds of Sale of Property Seized and Forfeited Other Than Under 19 U.S.C. 1952

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations concerning the disposition of the proceeds of the sale of property seized and forfeited under laws other than 19 U.S.C. 1592, when no application for remission and restoration is filed, or the application is denied. The amendment eliminates language which precludes the recovery of expenses incurred for Government labor and storage on Government-owned or Government-leased property. This change is necessary inasmuch as the prohibition of the current regulation has hindered Government enforcement efforts.

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Robert J. Pisani, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8317).

SUPPLEMENTARY INFORMATION:

Background

Section 162.51(a)(2)(iv), Customs Regulations (19 CFR 162.51(a)(2)(iv)), which was amended by T.D. 79-160, published in the **Federal Register** on June 4, 1979 (44 FR 31950), provides that the Government may not recover expenses incurred for Government labor and storage on Government-owned or Government-leased property from the proceeds of the sale of property seized and forfeited under laws enforced or administered by Customs other than under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), when no application for remission and restoration is filed or the application is denied. Prior to T.D. 79-160, section 162.51 had stated that if the forfeited property is cleared for sale, the Customs appropriation shall be reimbursed from the proceeds of the sale for *all* expenses paid from such appropriation in connection with the seizure and forfeiture of such property.

The restriction of present § 162.51(a)(2)(iv) is not contained in section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), which provides for the payment of all proper expenses of the proceedings and sale, including expenses of maintaining custody of the property.

The inability to recover expenses incurred for Government labor and storage on Government-owned or Government-leased property has hindered Government enforcement efforts, inasmuch as those expenses must be paid with funds appropriated for other purposes such as enforcement efforts. The total cost of storing and maintaining conveyances in the Southeast Customs Region (Miami) alone has exceeded $2,000,000 per year.

Accordingly, by notice published in the **Federal Register** on September 9, 1983 (48 FR 40740), it was proposed to amend § 162.51(a)(2)(iv) to eliminate the language which precludes the recovery of such expenses. Interested parties were given until November 8, 1983, to submit comments with respect to the proposed change. No comments were received in response to the notice. The amendment, therefore, is adopted as proposed.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to initial and final regulatory flexibility analyses (5 U.S.C. 603, 604) are not applicable to this change because the rule will not have a significant economic impact on a substantial number of small entities. The amendment is not expected to have significant secondary or incidental effects on a substantial number of small entities or to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Susan S. Terranova, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 162

Customs duties and inspection, Imports, Seizures and forfeitures.

Amendment to the Regulations

Part 162, Customs Regulations (19 CFR Part 162), is amended as set forth below.

Approved: March 16, 1984.

William von Raab,
Commissioner of Customs.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

Section 162.51(a)(2)(iv) is revised to read as follows:

§ 162.51 Disposition of proceeds of sale of property seized and forfeited other than under 19 U.S.C. 1592.

(a) * * *
(2) * * *

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[FR Doc. 84-9113 Filed 4-4-84; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 84N-0064]

Antibiotic Drugs; Cephalothin Sodium Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for two new strengths of cephalothin sodium injection and two new diluents for this drug product. The manufacturer has supplied sufficient data and information to establish the drug's safety and efficacy.

DATES: Effective April 5, 1984; comments, notice of participation, and request for hearing by May 7, 1984; data, information, and analyses to justify a hearing by June 4, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and

Biologics (formerly National Center for Drugs and Biologics) (HFN–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of two new strengths (20 milligrams and 40 milligrams per milliliter) of cephalothin sodium injection and two new diluents (dextrose solution and sodium chloride solution) for this drug product. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 442 (21 CFR Part 442) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 442

Antibiotics, Cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 442.225b is amended by revising paragraph (a)(1) to read as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

§ 442.225b Cephalothin sodium injection.

(a) * * *

(1) *Standards of identity, strength, quality, and purity.* Cephalothin sodium injection is a frozen aqueous solution of cephalothin sodium with one or more suitable and harmless buffer substances. It may contain sodium chloride or dextrose. Each milliliter contains cephalothin sodium equivalent to 20 milligrams, 40 milligrams, or 100 milligrams of cephalothin. Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of cephalothin that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. Its pH is not less than 6.0 and not more than 8.5. The cephalothin sodium used conforms to the standards prescribed by § 442.25a(a)(1).

* * * * *

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective April 5, 1984. Interested persons may, however, on or before May 7, 1984, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before May 7, 1984, a written notice of participation and request for hearing, and (2) on or before June 4, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective April 5, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: March 28, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84-8945 Filed 4-4-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 529

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for enflurane from Pitman-Moore, Inc., to Ohio Medical Anesthetics, Division of BOC, Inc.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Ohio Medical Anesthetics, Division of BOC, Inc., 100 Mountain Ave., Murray Hill, New Providence, NJ 07974, has informed FDA of a change in sponsor for new animal drug application (NADA) 121–291 from Pitman-Moore, Inc. Pitman-Moore, Inc., has confirmed the change of sponsor. The NADA covers use of enflurane as an inhalation anesthetic for horses.

This is an administrative change that does not in any other way affect the approval of the firm's NADA. The agency is amending the regulations to reflect the change. In addition, Ohio Medical Anesthetics, Division of BOC, Inc., has not been previously added to 21 CFR 510.600(c). Part 510 is amended to add the new sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 529

Animal drugs, Miscellaneous use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. Part 510 is amended in § 510.600 in paragraph (c)(1) by adding a new entry alphabetically and in paragraph (c)(2) by adding a new entry numerically to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *
(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Ohio Medical Anesthetics, Division of BOC, Inc., 100 Mountain Ave., Murray Hill, New Providence, NJ 07974	010019
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
010019	Ohio Medical Anesthetics, Division of BOC, Inc., 100 Mountain Ave., Murray Hill, New Providence, NJ 07974.
* * * * *	

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 529.810 [Amended]

2. Part 529 is amended in § 529.810 *Enflurane* in paragraph (b) by removing "011716" and inserting in its place "010019".

Effective date. April 5, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 29, 1984.

William B. Bixler,

Associate Director for Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 84-8040 Filed 4-4-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for I.M.S., Inc., providing for safe and effective use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are subsequently used to make complete swine feeds.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: I.M.S. Inc., 13619 Industrial Rd., Omaha, NE 68137, is sponsor of NADA 136–601 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are used in making complete swine feeds used for aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; for aid in prevention of establishment, removal, and control of nodular worm (*Oesophagostomum* spp.) infections; and for removal and control of large roundworm (*Ascaris suum*) infections.

The NADA is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.485 is amended by adding new paragraph (a)(20) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.485 Pyrantel tartrate.

(a) * * *

(20) To 050639: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3) of this section.

* * * * *

Effective date. April 5, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 28, 1984.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 84-8044 Filed 4-4-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing a decision by the Secretary of the Interior pursuant to the Remand Order in *Illinois South Project, et al.* v. *Watt* litigation.

On July 29, 1982, the Illinois South Project, Inc. and nine other Illinois organizations challenged the June 1, 1982 decision of the Secretary of the Interior approving the Illinois permanent regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or "the Act"). On November 30, 1983, the United States District Court for the Central District of Illinois, at the request of the Secretary, remanded the case to the Secretary to review the issues raised by the plaintiffs in light of the legal development since June 1, 1982. OSM published a notice in the Federal

Register on December 14, 1983, requesting public comment on the substantive issues contained in the litigation.

After carefully considering the public comments and conducting a thorough review of the issues, the Secretary has made his decision on the issues. As a result of the review, the Secretary has determined that the Illinois program is not fully consistent with the current Federal permanent regulatory program. Accordingly, the Director of OSM has informed the State of Illinois, pursuant to 30 CFR 732.17, of required program amendments. Illinois must, pursuant to 30 CFR 732.17(f), respond to this notification within 60 days.

The Federal rules at 30 CFR Part 913 which codify decisions concerning the Illinois program are being amended to implement this decision.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: James Fulton, Field Office Director, Springfield Field Office, Office of Surface Mining, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background of the Illinois Program

On March 3, 1980, OSM received a proposed regulatory program from the State of Illinois. On October 31, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior approved in part and disapproved in part the proposed program (45 FR 72468).

On December 19, 1980, the State of Illinois sued OSM and the Department of Interior, alleging that the Secretary's initial decision was procedurally incomplete in that it failed, among other things, to specify those parts of the Illinois submittal which were specifically approved, to consider alternatives submitted, and to include sufficient detail to enable the State to prepare properly a resubmittal. The Secretary determined that his action was procedurally incomplete, as alledged, and a Stipulation for Consent Decree was approved and entered by Judge J. Waldo Ackerman in the U.S. District Court for the Central District of Illinois on August 14, 1981. Under the Consent decree, the parties agreed to a number of items, including the following:

1. That in the October 31, 1980 initial decision, the Secretary failed to indicate those postions of the Illinois program that were approved he did not cosider as "state windows" the alternatives to the Secretary's regulations submitted by Illinois, and he did not take into account the regulations submitted to OSM on July 30, 1980.

2. The Illinois program submittal should be completely reexamined.

3. In order to provide for the resubmission of Illinois' program, the parties would initiate a series of meetings and discussions to reexamine the program to identify approved portions and review and identify those revised provisions which appear approvable, subject to any public comments or new information brought to OSM's attention during the formal review of Illinois' resubmission.

4. Illinois would resubmit its proposed program to the Secretary a soon as the injunction is lifted.

5. Meetings pursuant to the Consent Decree would be conducted in accordance with the Secretary's guidelines for contacts with Interior Department employees and officials during consideration of State permanent regulatory programs (44 FR 54444–54445, September 19, 1979).

In accordance with the procedures set forth in 30 CFR 732.13(f), the State of Illinois originally had 60 days from the date of publication of the Secretary's partial approval decision on October 31, 1980, to resubmit a revised program for consideration. On December 11, 1980, the Seventh Judicial Circuit Court of Sangamon County, Illinois enjoined the Illinois Department of Mines and Minerals (IDMM) from submitting or resubmitting to OSM the Illinois program until June 11, 1981. The injunction was late extended for an additional six months, to December 11, 1981. Under the general statement of policy issued by OSM on August 26, 1981 (46 FR 43041–43043), the State had sixty days from the date the injunction was lifted within which to resubmit its program. The State submitted its revised program for consideration on December 22, 1981.

After providing notice and opportunity to comment, including a public hearing, the Secretary approved the Illinois program subject to the correction of five minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the June 1, 1982 **Federal Register** (47 FR 23858). Since that approval, three of the conditions have been removed (48 FR 23412, May 25, 1983 and 48 FR 51619, November 10, 1983) and two amendments have been approved (47 FR 52698, November 23, 1982, and 48 FR 46258, October 13, 1983). Conditions (b) and (c) are due June 1, 1984.

II. Litigation

On July 29, 1982, the Illinois South Project, Inc. (Illinois South) and nine other Illinois organizations filed suit in the United States District Court for the Central District of Illinois challenging the Secretary's decision. *Illinois South Project* v. *Watt* (C.D. Illinois, Civil Action No. 82–2229). The plaintiffs alleged numerous substantive and procedural deficiencies in the Secretary's decision. On June 24, 1983, a hearing on the case was held in Danville, Illinois, at which time the parties agreed to a schedule for filing motions for summary judgment and supporting memoranda. Subsequently, the Federal defendants filed a motion requesting that the issues in the case be remanded for further consideration in light of legal developments that have occurred since June 1, 1982. The request was made because after the Secretary's approval of the Illinois program, revised Federal rules were issued and many of the revised rules have a bearing on the substantive issues contained in the Illinois South litigation. On November 30, 1983, the District Court ordered the case remanded to the Secretary to review the issues raised by the plaintiffs in their complaint and motion for summary judgment in light of the revised Federal rules. The order of remand stated that within two weeks the Secretary would publish a notice in the **Federal Register** requesting comment on the substantive issues in the case. In order to assist in identifying the issues in the case, the District Court ordered that the **Federal Register** notice contain the Table of Contents to plaintiffs' memorandum in support of their motion for summary judgment. On December 14, 1983 (48 FR 55580) OSM published notice requesting comments on the substantive issues. The public comment period closed on January 13, 1984. A public meeting was held on January 13, 1984, in Springfield, Illinois, attended by representatives from IDMM and members of the public. Minutes of the meeting were placed in the Administrative Record (ILL–0614). On March 9, 1984, an executive session meeting was held in Springfield, Illinois, between representatives from IDMM and the Department of the Interior. The purpose of the meeting was to discuss OSM's review of the substantive issues. The State of Illinois did not provide any new or additional materials concerning the issues on remand. The meeting was conducted in accordance with the Secretary's guidelines for contacts with Interior Department employees and officials during consideration of State

permanent regulatory programs (44 FR 54444, September 19, 1979). In keeping with those guidelines, a summary of the executive session was placed in the Administrative Record (ILL–0813), and because no new information was submitted, the Department determined that an additional comment period was not necessary to ensure public participation.

III. Secretary's Findings and Response to Comments

General Findings and Procedural Issues

Pursuant to the Remand Order of November 30, 1983, the Secretary must "review the issues raised by the plaintiffs in their complaint and motion for summary judgment in light of the administrative record and legal developments since June 1, 1982." The Secretary had requested the Remand because of the extensive revisions, starting in 1981, and completed on September 30, 1983, to the Federal regulations implementing SMCRA. The Remand Order also states that the "Secretary will issue his decision on remand not later than 120 days from the date of (the) order * * *." This notice announces that decision.

Amax Coal Company (AMAX) (ILL–0811), the Illinois Coal Association (ICA) (ILL–0809), the Illinois Department of Mines and Minerals (IDMM) (ILL–0808) and the Illinois South Project, et al. (ISP) (ILL–0810) submitted to the Secretary comments on the substantive issues in the lawsuit. ISP incorporated by reference its memorandum in support of its motion for summary judgment (ISP brief). All of the commenters incorporated by reference portions of the administrative record, and IDMM, ICA, and ISP incorporated by reference other material, including court briefs and OSM reports. The Secretary has also considered these materials, and responded to them where appropriate and relevant. The Secretary has also considered the entire administrative record for his 1982 decision.

ISP commented throughout its comments that they "stand by the positions taken in [their August 30, 1983] brief." They also assert that the "Secretary must respond to each of the arguments set forth in the brief * * *." The Secretary has responded to the arguments raised in the ISP brief, with the exception of comments based on Federal rules which have been revised or otherwise modified since the June 1, 1982, decision. Those ISP comments which compare the Illinois program to superseded Federal requirements are not relevant to the Secretary's consideration on remand of the issues in litigation in light of legal developments since June 1, 1982.

ISP also requested that the Secretary address, during this remand of the issues in litigation, the Annual Evaluation Report (AER) compiled by the OSM field office in 1983. The AER, a report on the functions of the Illinois regulatory authority, presents a narrative summary for use in the Secretary's oversight responsibilities. It has limited relevance to the issues at hand during this remand. To address the AER outside the normal course of the Secretary's oversight responsibilities would render the Secretary's Federal role on oversight in Illinois different from his role in any other of the coal-producing States with program primacy. It would also place in this litigation questions of fact and application of the Illinois program provisions that are not appropriate for the record review of the Secretary's approval process. ISP alleges that the AER is a "legal development" occurring since June 1, 1982. On the contrary, it is a summary of factual developments reported to the Secretary for his use in Federal oversight. To include it as a legal development to be addressed during this remand would place issues of possibly contested facts before the court. As such, the complexity and scope of review of this case would increase significantly. The reasonable and appropriate approach to the AER places it in the record for the Secretary's oversight role, not in the record of issues for comparing whether the Illinois program provisions under the Remand Order are appropriate in light of the Secretary's present regulations. The Secretary here is deciding program approval, not program oversight, matters.

ISP also requested in their comments that the Secretary withhold his decision on a number of issues until after the U.S. District Court for the District of Columbia renders its decision in *In Re: Permanent Surface Mining Regulations Litigation II*, Civil No. 79–1144 (D.D.C.) (Under Remand and Consolidated). ISP did not explain why it requested postponement of decision only for some of the issues and not other issues similarly situated where the underlying Federal rule has been challenged in the D.C. Circuit. To grant this request for some of the issues and make a decision for others would appear contrary to the Remand Order. It would need approval from the U.S. District Court for the Central District of Illinois. Moreover, the Secretary takes the position that the final Federal rules, although challenged in the D.C. Circuit, are the current standard for State program review until such time as any of them are held invalid by a court or modified by future rulemaking.

The Secretary notes at the outset that several of the Illinois program provisions not challenged in this litigation and not subject to the Remand Order do not mirror the new Federal provisions for the regulation of surface coal mining and reclamation operations. Those provisions will be reviewed by OSM to determine their consistency with the revised Federal rules in the normal course of reviewing all State programs under 30 CFR 732.17 to determine what changes may be necessary as the result of OSM's regulatory reform.

Standard for Review

IDMM, ICA, and ISP commented extensively on the standard for review and approval of State programs. Under Section 503(a) of SMCRA, a State program must include, among other things, a State law which is *in accordance with* the requirements of SMCRA, and rules and regulations *consistent with* regulations issued by the Secretary. Sections 518(i) and 521(d) of SMCRA require a State program to incorporate penalties and sanctions no less stringent than those in the Act, and to contain the same or similar procedural requirements. The Federal rules implementing Section 503(a), at 30 CFR 730.5, as revised on October 28, 1981 (46 FR 53376), define "in accordance with" and "consistent with" to mean:

> (a) With regard to the Act, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act, and
>
> (b) With regard to the Secretary's regulations, the State laws and regulations are *no less effective than* the Secretary's regulations in meeting the requirements of the Act. [emphasis added]

The revised Federal rules substituted an "effectiveness" standard for the previous "stringency" standard. Thus, the State program need not mirror the Federal regulations, as long as it meets the Act's requirements and its approach is no less effective than the Federal regulations. The only exception to this "effectiveness" standard is that the enforcement provisions of a State program must incorporate sanctions and penalties no less stringent than the Act and contain the same or similar procedural requirements.

Departure From Previous Decision

The ISP brief points out that the October 31, 1980 decision by the Secretary of the interior differs from the June 1, 1982 decision by the Secretary. ISP requested that the Secretary explain his departures from the previous decision, and asserted that this is required of an agency which is reversing a prior decision. However, as discussed above, the standard for comparing State provisions to Federal provisions changed between the October 1980 decision and the June 1982 decision. In addition, under the court Consent Decree, the Secretary agreed to completely reexamine the Illinois program, which was resubmitted with additional explanation, supporting documentation, and promulgated regulations on December 22, 1981. Not only did the standard for reviewing State programs change, but also the record before the Secretary changed, (see, e.g. Illinois Legal Opinion, submitted December 22, 1981, Vol. R5; ISP letter of March 15, 1982, reference to "massive resubmittal"). Implicit in the ISP request that the Secretary "must explain (his) departure from numerous aspects of (his October 31, 1980) decision" (cover letter of January 13, 1984, p. 2) are assumptions that the October 31, 1980, proposed rulemaking decision was a final rulemaking and continues to constitute the sole basis for the Secretary's decision, despite a changed record and a new standard for program approval. Neither assumption is correct.

The October 31, 1980, Federal Register notice, entitled "Proposed rulemaking" set forth initial findings concerning an incomplete Illinois submission. As such, its requested status as a benchmark for reviewing and judging the present Illinois program in light of the Secretary's regulations after 1980 is not relevant. ISP's request for specific explanations of the Secretary's alleged departure from 79 findings in the October 31, 1980, review is not appropriate. No rules were promulgated and no final decisions were made on October 31, 1980. The Stipulation for Consent Degree entered by the U.S. District Court for the Central District of Illinois effectively moots this issue.

Response to All Comments

ISP stated in its brief that the Secretary did not respond adequately to the comments ISP submitted during the initial comment period on the resubmission, and did not respond at all to ISP's supplemental comments filed during the second comment period. ISP stated that in the June 1, 1982, decision, the Secretary made repeated references to ISP's initial comments (ILL-0412), but never referred to ISP's supplemental comments (ISP-0467). Although the Secretary did not distinguish between ISP's initial and supplemental comments, the Secretary referenced all of ISP's comments by using the administrative record number for ISP's initial comments (ILL-0412) as a matter of editorial convenience. However, all of ISP's comments were entered in the Administrative Record and considered by the Secretary in reaching his decision. ISP alleged several specific instances where they think that the Secretary did not respond adequately, or at all, to their comments. For those specific instances at issue in this litigation, the Secretary has addressed all of ISP's substantive comments. For the alleged instances of no responses to comments on Illinois program provisions not at issue in this litigation, the Secretary does not believe that any further response is either necessary or appropriate.

ISP also stated that the Secretary did not respond to other allegations raised in the cover letter to their initial comments (ILL-0412). These allegations were: (1) That the Illinois program was resubmitted in bad faith; (2) OSM failed to afford public participation in accordance with the Act; (3) OSM prejudged the adequacy of the Illinois program prior to conducting its substantive review or considering public comments; and (4) OSM unreasonably restricted the opportunity for public comment given its failure to assure a timely decision on the resubmitted program.

These allegations do not take into account the Consent Decree entered by the District Court, under which the Secretary and the State of Illinois agreed to a number of items, including a complete reexamination of the Illinois program and a series of meetings to identify approved portions of the program and those portions of the program which appeared approvable subject to public comment. Moreover, Illinois agreed to resubmit its program as soon as the injuction was lifted. The injuction was lifted on December 11, 1981, and the program was resubmitted December 22, 1981, even though under OSM's statement of policy the State would have had 60 days from the date the injuction was lifted within which to resubmit its program.

As to the fourth allegation, OSM provided an initial 30-day comment period from December 24, 1981, to January 25, 1982, although under 30 CFR 732.13(f), the period for public review and comment need not exceed 15 days. OSM provided an additional 15-day comment period from April 14 through April 29, 1982.

Agreement to Meet Conditions

In its brief, ISP alleged that Illinois failed to agree in writing to meet the five conditions of approval as required by 30 CFR 732.13(j). The May 11, 1982, letter from IDMM indicated that Illinois agreed to conditions (a) and (d), but objected to conditions (b), (c), and (e). However, IDMM also stated that because of the obvious importance to Illinois of approval of the permanent regulatory program, IDMM cannot refuse the offer of conditional approval. In fact, Illinois has removed conditions (a), (d), and (e) and are actively enforcing conditions (b) and (c) due June 1, 1984, because the State must comply with the terms of the conditions until such time as the conditions are satisfied.

SUBSTANTIVE ISSUES

Issue IV.A.1.

Definition of "Affected Area"

The issue is whether the definition of "affected area" in Illinois Rule (IR) 1701.5 renders the Illinois program no less effective than the definition of "affected area" in the Federal rules in meeting the requirements of the Federal Act. For the reasons explained below, the Secretary finds the definition no less effective than the Federal definition in meeting the Act's requirements.

In their January 1984 comments, ISP asserts that the Illinois definition of the term "affected area" is inconsistent with the Federal regulations because (1) the Illinois statutory definition of "affected land" excludes water and thus conflicts with the Illinois regulatory definition of the term "affected area;" and (2) the definitions of the Illinois term "affected land" and "affected area" exclude land above the underground workings. These comments are unpersuasive.

The Illinois statute (IS) sets forth a definition of "affected land" which differs from the definition of "affected area" in the Illinois regulations (IR). Merely because the terms differ is not cause for the Secretary to find conflict. The scope of the Illinois provisions when read together apparently includes water bodies. The Illinois term "natural land surface" in IS 1.03 (a)(24)(B) and (a)(1)(B) when implemented by regulation to encompass water on the surface does not differ from the Federal term "natural land surface" in Section 701(28) of the Federal Act as implemented by the Federal regulations.

ISP correctly notes that the Illinois definition of "affected area" does not include areas overlying underground mine workings. Specifically, the Illinois definition states that affected area "means, with respect to surface mining activities, any land or water upon or in which these activities are conducted or located. With respect to underground mining activities, affected area means: "Any water or surface lands upon which those activities are conducted or located." On the other hand, the Federal definition of "affected area" promulgated April 5, 1983 (48 FR 14821), includes land and water areas overlying underground mine workings. Specifically, the Federal definition of "affected area" states at 30 CFR 701.5, 48 FR 13921–22, April 5, 1983, that it means: "Any lands or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; and the area located above underground workings * * *."

Whether the Illinois definition of affected area is less effective than the Federal definition of that term depends upon the purpose of the Federal definition. Under the Secretary's revised rules, the Federal definition of "affected area" is used to delimit the scope of the "two-acre" exemption specified in Section 528(2) of the Federal Act and implemented at 30 CFR 700.11(b) (46 FR 33423, 33432, August 2, 1982). Under that rule, operations with an affected area of two acres or less are exempt from the requirements of the Federal Act. Although the Federal definition of the term "permit area," previously encompassed the entire "affected area," the April 5, 1983, definition of the term "permit area" does not include the "affected area."

The Illinois program does not contain any exemption for operations of two acres or less in size. Thus, the Illinois "affected area" definition is no less effective than the Federal definition of that term.

A number of the commenters addressed the relationship of the Illinois "affected area" definition to the permitting and bonding requirements for underground mines. The Secretary is currently examining the Illinois permitting and bonding requirements for underground mines in light of the revisions to the Federal definitions of the terms "permit area" and "adjacent area," set forth at 30 CFR 701.5 (48 FR 14814, April 5, 1983), and the revision to the Federal bonding rules in 30 CFR Part 800 (48 FR 32932, July 19, 1983). This examination, which is part of the secretary's evaluation of all State programs following his comprehensive regulatory changes, involves a number of Illinois provisions that relate to requirements for underground mines in addition to the definition of "affected area." Thus, the Secretary, in the normal course of State program review, will inform Illinois of any needed program amendments.

Issue IV.A.2.

Definition of "Intermittent Stream"

At issue is whether, due to the Illinois definition of the term "intermittent stream," the Illinois rules employing this term are rendered less effective than the Federal rules in meeting the requirements of the Act. Affected rules are IR 1816.57: Stream Buffer Zones; IR 1816.44: Stream Channel Diversions; and the similar requirements at IR 1817.57 and IR 1817.44.

The sole difference between the Federal and Illinois versions of the definition is the criterion for the minimum drainage area. The Federal definition includes all streams whose drainage area exceeds one square mile whereas Illinois limits the definition to streams with a drainage area greater than three square miles. It is thus clear that many streams which would otherwise be subject to the Federal rules governing impacts to intermittent streams would not be regulated the same under the Illinois rules.

At the time of conditional approval the Secretary found that the Illinois definition was acceptable and was not inconsistent with the Federal rules (Comment 20, 47 FR 23869). However, subsequent rulemakings (June 30, 1983, 48 FR 30312 and September 26, 1983, 48 FR 43992) reconsidered the definition of the term "intermittent stream" and its impact on the final Federal rules.

IDMM, ICA, and AMAX submitted comments which advanced arguments disputing the technical merit of the Federal definition at 30 CFR 701.5 and favoring the three-square mile criterion. OSM has previously rejected the same or similar comments in the preamble to the revised rules, 48 FR 30313, June 30, 1983, and has not changed its definition. OSM has retained its definition to avoid problems of interpretation among the various States. OSM believes that the flexibility provided by new final rule 30 CFR 816.57 will allow the regulatory authority to determine which streams merit protection without categorically denying such protection to streams which would otherwise not receive it (48 FR 30313). Thus, OSM has not accepted comments aimed at the technical merit of the Federal protection.

ISP commented that they stand by the position put forward in their brief and asserted that, due to the Illinois definition, streams whose drainage areas do not meet the Illinois limit are ignored by the Illinois Rules. This is not the case. *All* streams are regulated by both the State and Federal rules but all are not subject to the same design and performance standards.

The final Federal rules at 30 CFR 816.43 and 817.43 make several important distinctions between perennial and intermittent streams, and lesser streams described as "miscellaneous flows." Before authorizing diversion of intermittent streams the regulatory authority must make the finding required by 30 CFR 816.57 [30 CFR 816.43(b)(1)]. Designs for permanent and temporary diversions of intermittent streams must meet more stringent performance standards to provide protection against flooding and resultant damage to life and property [30 CFR 816.43(b)(3)]. Diversion designs for intermittent streams must also be certified by a registered professional engineer as meeting required design and performance standards. In promulgating these final rules, OSM determined that the peak flows of intermittent streams as defined by it at 30 CFR 701.5 are of such magnitude and potential hazard to the public and the environment as to merit more stringent performance standards. Use of a definition which excludes a significant member of these streams from application of the revised Federal rules would not be consistent with their intent.

AMAX argued in favor of the three square mile criterion, asserting that regional differences in topography and climate permit the application of differing criteria since these factors significantly impact peak flows from precipitation events. While it is undeniably true that peak flows will not be the same in areas of different topography and climate, it is inappropriate to conclude that uniform application of a drainage area criterion is unjustified. Factors impacting peak flows from precipitation events should be considered in the design of diversion structures. The Federal rules allow wide latitude in the design of diversion structures as long as performance standards are met.

ICA's comments interpreted the Federal rules to allow regulatory authorities to "lawfully deviate from the

strict application of the one square mile rule * * *"

The definition of intermittent stream triggers a number of performance standards which, while perhaps not resulting in preservation of the original stream channel, may not be ignored by either the permittee or the regulatory authority.

In summary, in its rulemakings subsequent to the conditional approval of the Illinois program, OSM has determined that streams draining areas of a size meeting its definition of intermittent stream should be subject to more stringent performance standards in order to minimize impacts on the hydrologic balance, to prevent damage to the environment, and to minimize hazards to the public. Use of the Illinois definition could result in a lower level of protection and is thus less effective than the Federal rules in implementing the requirements of the Act.

Issue IV.A.3.

Definition of "Valid Existing Rights"

The issue is whether the Illinois definition of "valid existing rights" is no less effective than the Federal definition in meeting the Act's requirements. Section 522(e) of SMCRA provides that no surface coal mining operations shall be permitted on certain private, Federal and other public lands after August 3, 1977, except those which existed on August 3, 1977, and subject to valid existing rights. The intent of the "valid existing rights" exemption was to avoid a legislative taking of property for which compensation would have to be paid under the Fifth and Fourteenth Amendments of the U.S. Constitution. The term "valid existing rights" is not defined in the Act. The Federal rules at 30 CFR 761.5 originally defined "valid existing rights" (VER) as those property rights in existence on August 3, 1977, the owners of which either had obtained all necessary mining permits on or before August 3, 1977, or could demonstrate that the coal for which the exemption was sought was both needed for and immediately adjacent to a mining operation in existence prior to August 3, 1977. (44 FR 15341, March 13, 1979) As a result of judicial review, the VER definition was later modified to require only a good faith effort to obtain all permits (August 4, 1980, 45 FR 51548).

After proposing a number of options, OSM, further amended the VER definition of September 14, 1983 (48 FR 41312). The revised definition does not attempt to identify all the classes of circumstances which would result in a finding of VER. Rather, the definition provides that a person possess VER for in area protected under section 522(e) of SMCRA on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on the date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution. The definition thus allows VER determinations to be made on a case-by-case basis, considering the particular facts of each case. In addition, the revise definition allows VER to be created after August 3, 1977. Paragraph (d) of the definition provides that where an area comes under the protection of section 522(e) after August 3, 1977, VER shall be found if (1) on the date the protection comes into existence, a validly authorized surface coal mining operation exists on the area, or (2) the section 522(e) prohibition, if applied to the property interest that exists on that date, would effect a taking under the Constitution. The VER definition contained in the Illinois program at rule 1701.5 is similar to OSM's original definition as modified on August 4, 1980. The Illinois definition contains two differences not found in OSM's original definition. The Illinois rule, at paragraph (a)(3), allows VER to attach after August 3, 1977, if the person proposing to conduct surface coal mining operations can demonstrate that the operation was under construction or operating (in effect, "exists") at the time a protected activity came into existence. The Illinois rule also provides, at paragraph (e), that notwithstanding the specific circumstances identified in paragraphs (a) through (d), VER will include those private property rights for which, in effect, a judicial finding of a taking of property would be made, and a payment of just compensation would be ordered pursuant to the Illinois Constitution if surface coal mining operations were prohibited. The rule provides further that in the case of a final judicial order, to which the IDMM is a party, that the prohibition of mining by the IDMM constitutes under the Illinois Constitution an unconstitutional "taking or damaging" of property shall be deemed to establish VER and to eliminate the prohibition.

Both the Illinois and Federal definitions allow VER to be created after August 3, 1977, if a surface coal mining operation existed or if property rights existed that would be taken at the time protected activity begins.

The Federal definition uses a "taking" test to determine if VER attaches. The Illinois rule specifies certain circumstances under which VER will always attach, and adds a general proviso to cover other types of circumstances in which application of the section 522(e) prohibitions would result in takings. The difference in the Illinois rule is that paragraph (e) would allow a VER determination where a judicial finding of a "taking *or damaging*" of property would be made under the Illinois Constitution. The Federal definition and U.S. Constitution limit payment of compensation to takings.

When the Secretary originally approved the Illinois program on June 1, 1982, he explained in Finding 30.2 that Illinois had provided a policy statement (ILL–0451) to explain this difference. In the policy statement, Illinois explained that its VER definition is based on Article I, Section 15 of the Illinois Constitution, which requires payment of just compensation when property is "taken or damaged." The provision requiring compensation when property is damaged was added in 1870, because prior to that time recovery for a "taking" was not allowed unless there had been a *physical* injury or possession, even though the property interest had been destroyed. Without the addition of a "damaging" criterion, there could be no recovery for deprivation of a property right, absent a physical invasion of the property, including the application of the prohibitions of section 522(e). The Illinois case law indicates that no "damaging" occurs by an exercise of the police power in setting environmental standards. For instance, in Illinois the prevention of drilling and recovering oil and gas under Illinois law is *not* a taking or damage. *City of West Frankfort* v. *Fullop,* 6 Ill.2d 609, 129 N.E.2d 682 (1955). Moreover, the "taking or damage" clause of the Illinois Constitution is made subject to exercise of the police power. The Illinois Court of Appeals has held that, under Illinois law, when the State or other governmental entity is exercising police powers of the State pursuant to Article XI, § 1 of the Illinois Constitution, rights guaranteed by Article I, § 15 are subordinated to the interest of public welfare as expressed through the exercise of the police power. *Corbin* v. *Pollution Control Board,* 16 Ill. App. 3d 958, 307 N.E. 2d 191, 199 (1974).

The Illinois criteria of "taking or damaging" are thus equivalent to the Federal concept of "taking." The Secretary therefore finds that the Illinois definition of VER is no less effective than the Federal definition in meeting the purposes of section 522(e) of SMCRA.

ISP stated that they stand by the position in their brief and made a number of comments on the Illinois VER

definition as it related to the previous Federal definition (March 13, 1979, as modified on August 4, 1980). To the extent that those comments are not relevant to consideration of the Illinois definition in light of the revised Federal definition (September 14, 1983), the Secretary is not responding to them.

ISP objected that the Illinois definition allows an administrative determination of a "taking" to substitute for the VER criteria set out in the Federal regulations, and states that there is no basis in the Federal law or regulations for allowing the regulatory authority board discretion to predict the outcome of a judicial proceeding, and render a decision based on that prediction. ISP also charged that the process violates the concept of separation of powers and places the regulatory authority in the position of making legal determinations in an area with which the courts have wrestled with great difficulty for years. As discussed above, the Federal definition has been amended to eliminate the specific criteria and substitutes a taking test to make VER determinations. The Federal rules clearly envision that the regulatory authority will make that determination based on the facts in a particular situation. The preamble to the revised Federal rules (48 FR 41314, September 14, 1983) states that any person who proposes to conduct surface coal mining operations in an area where such mining would be prohibited or limited by section 522(e) except for valid existing rights first must seek a determination of VER from the regulatory authority. The person seeking a VER determination is responsible for compiling and submitting to the decisionmaker all information necessary to make a finding. OSM (in the case of Federal lands) or the regulatory authority will review the information submitted for each claim to determine whether the application of the prohibition in section 522(e) would result in a taking under the Fifth and Fourteenth Amendments to the U.S. Constitution. The Illinois provision therfore is no less effective than the Federal definition in meeting the purposes of SMCRA.

ISP also commented that the Illinois Constitution appears to permit a determination that a taking has occurred for circumstances beyond that which is allowed under the U.S. Constitution because the Illinois Constitution requires compensation for a taking *or damaging* of property while the Federal Constitution limits compensation to the *taking* of property. ISP notes that in the Illinois policy statement relied upon by the Secretary in his previous finding, in its discussion of Illinois case law on taking or damaging, Illinois cited two cases to show that "setting environmental standards on use of private property is not a taking or damaging in Illinois." ISP states that if the limited prohibitions on mining near homes and parks are not deemed compensable under Illinois law, this is all the more reason that the State agency should not have independent authority to render judicial findings that these prohibitions are a taking or damaging. The Secretary has found that the Illinois criterion of "taking or damaging" is functionally equivalent to the Federal concept of "taking." The case law cited by Illinois supports the proposition that the Illinois Constitution does not allow determinations that a taking has occurred for circumstances beyond those permitted under the U.S. Constitution. Moreover, as ISP itself notes, the Illinois case law may well be more restrictive as to what constitutes a taking or damaging than is the Federal case law. Therefore, the Secretary does not agree that the Illinois definition is any less effective than the Federal regulations.

ISP commented that the Illinois definition is less effective than the new Federal rules because the Illinois definition is open-ended. That is, the definition states that VER means, *but is not limited to*, the existence of the following facts or circumstances, whereas the new Federal rules provide and describe limited situations where VER applies. The Secretary disagrees. First, the new Federal rule does not provide limited situations where VER applies. Rather, it provides that VER shall be determined in a case-by-case manner, based on the facts of a particular situation. Second, the Illinois rule was adopted prior to the new Federal rule and patterned after the then-existing Federal rule. Illinois modified that Federal definition to clarify that while certain specific circumstances (which are listed in the Illinois rule) would invariably result in VER, there could be other sets of circumstances which would also result in VER. The dilemma was recognized by OSM when it promulgated its revised definition and rather than describe specific criteria, the Federal definition relies on a finding that a taking would occur. Therefore, the Illinois rule is no less effective than the Federal definition. The Secretary notes that the Illinois provisions contain the "permits" test of the earlier Federal rules. The relative effectiveness of that test is currently under review during the regulatory reform analysis of all State programs.

ICA stated that section 522(e) of SMCRA comtemplates that mining will not be permitted if all three of the following criteria come into play: (1) The surface coal mining operation in question did not exist on August 3, 1977, (2) no valid existing rights exist, and (3) the land on which surface coal mining operations are to be conducted is referenced in one of subsections (1)–(5) to section 522(e).

ICA commented that by providing that all three of the criteria must attach before mining operations will be prohibited Congress clearly contemplated that VER can attach after the date of enactment of the Federal Act. Otherwise, if VER could only arise for operations which existed on or before August 3, 1977, such a requirement would be superfluous to the requirement that the surface coal mining operations must not be in existence on the date of the Act. Therefore, ICA contends that VER is a dynamic concept which OSM has in fact recognized and adopted in the new Federal definition. ICA commented that the Illinois rule made three changes to the original Federal rule: (1) Deleted the requirement that property rights be in existence on August 3, 1977, (2) added, as VER, operations under construction or in operation at the time of an unsuitability designation; and (3) added a provision allowing VER to be created by a judicial finding of a taking or damaging of property under the Illinois Constitution. ICA notes that all these concepts were adopted by the new Federal definition. ICA pointed out that the regulatory authority's VER determination occurs during the permit process, which is subject to public participation, and any interested person aggrieved by the decision may file for judicial review. ICA also stated that administrative agencies, in adjudicatory matters, are frequently called upon to interpret the law. Finally, ICA commented that the two concepts—that of "taking" under the Fifth Amendment and that of "taking or damaging" under Section 15, Article I of the Illinois Constitution are functionally equivalent.

ICA stated that an examination of Federal and Illinois case law demonstrates that there is no difference between the two, and in fact, Federal case law may require compensation in instances where Illinois does not. In general, the Secretary agrees with ICA's comments.

AMAX commented that the new Federal rule provided for "continually created" VER, which is the only interpretation consistent with the intent of the Act—to avoid a taking of property

for which the Constitution requires just compensation. AMAX stated that the Illinois rule also provides for continually created VER and therefore is as effective as the Federal rule in protecting such rights. The Secretary agrees with the comment. AMAX also stated that the Illinois rule is more stringent in its protection of valid existing rights because the Illinois Constitution requires compensation for both taking and damaging. The Secretary does not agree that the Illinois provision is more stringent. Rather, the Secretary has found that the Ilinois critieria of "taking or damaging" are equivalent to the Federal concept of "taking."

Issue IV.B.1.

Deferral of Unsuitability Petitions

Issue B.1. presents the question of whether the Illinois program provisions on the consideration of petitions to designate lands unsuitable for mining are no less effective than the Federal rules in meeting the Act's requirements for consideration of the petitions. The Federal rules, at 30 CFR 764.15, promulgated on September 14, 1983, 48 FR 41312, allow suspension of consideration of petitions to declare lands unsuitable for surface coal mining. The Illinois rules at IR 1764.15 also allow suspension of consideration of the petitions. The new Federal rules provide that the regulatory authority may suspend petitions when it finds that "no real or foreseeable potential for surface coal mining operations to occur" exists. The purpose of Section 522(c) is to provide a means to protect areas of fragile or historic lands or areas where mining could result in a significant damage to important historic, cultural, scientific and esthetic values and natural systems. To delay processing of petitions until mining is shown likely maintains the protection of those interests which Congress intended to protect by the petitioning process. Similarly, the Illinois provisions protect areas covered by deferred petitions in IS 2.08(b)(4) and IR 1764.15(e)(1) by prohibiting any permit to issue for any mining of land within an area petitioned. For the regulatory authority to defer action on a petition without harm to the petitioner or the petitioned area until evidence that there may be harm to the petitioner's interest appears a proper, reasonable, and efficient management practice. It is neither inconsistent with the Act nor outside the scope of administrative discretion. Petitioners are not harmed as long as mining cannot be approved and mining will not be approved during the deferral period. The Illinois petitioning process provides the same result as the Federal rules. Thus, the Illinois provisions for deferral of designation petitions are no less effective than the Secretary's regulations in meeting the requirements of the Act.

ISP commented that they maintain their brief's position and that the Federal Act requires a decision in one year. Further, they stated that the Illinois provisions allowing deferral of petitions are inconsistent with and less effective than the Federal rules because Illinois places the burden on petitioners to show that mining or leasing may occur and that they may be harmed by such potential mining. ISP also comments that the Illinois rules do not have certain alleged safeguards contained in the Federal rules such as a definition of real or foreseeable potential for surface coal mining operations, a guarantee that requests for reconsideration of deferrals will be acted on, and a definition of "frivolous."

The Secretary recognizes that the Illinois program provisions are not a mirror image of the Federal rules. The Act's 12-month deadline is not violated by a deferral which places the petitioned area "under study" for designation. Effectively, an administrative action has been taken which prevents mining from occurring during the deferral period. The burden of showing an interest and a possible harm to petitioners is contained in 30 CFR 764.13(a) of the Federal rules. The Illinois rules require no more. In fact, under IR 1764.13(b)(5) only an allegation of adversely affected interests is needed to protect the lands from mining during the petition processing or deferred rather than the Federal requirement that the petitioner must demonstrate an "injury in fact" test. As for safeguards, the Illinois rules provide the maximum amount of protection—no mining—during petition deferral. Rather than establishing definitions of "real or foreseeable potential for mining" or "frivolous," the Illinois rules require from the regulatory authority a written explanation and the categories of information needed to make the petition complete. Furthermore, the Illinois rules provide for reconsideration of deferral decisions. *See* IR 1764.15(e), 1764.19(d).

ICA, AMAX, and IDMM each commented that the Illinois rules for deferral of designation petitions were no less effective than the Federal rules in meeting the Act's requirements. The Secretary has considered these comments, agrees with them, and has found the Illinois rules approvable.

Issue IV.B.2.

Designation Hearing

The issue is whether the Illinois regulations at IR 1764.17(a)(1) and the Illinois Statute at IS 7.03(c) and IS 8.09 on procedures for designation hearings are no less effective than the Federal rules on hearings found at 30 CFR 764.17 (48 FR 41337), promulgated September 14, 1983, in meeting the Act's requirements.

The initial Federal rule provided for designation hearings to be legislative in nature and did not provide for cross-examination of witnesses. The rule was challenged as contrary to the Act in the first *In Re: Permanent Surface Mining Regulation Litigation* C.A. 79–1144 (D.D.C. 1979). Illinois contended that the Act requires adjudicatory hearings for designation hearings. Among other things, the Secretary took the position that the 1979 Federal rule providing legislative hearings did not preclude a State regulatory authority from providing additional procedural safeguards for designation hearings. The District Court for the District of Columbia ruled that Section 522(c) did not require adjudicatory hearings and that legislative hearings did not conflict with the Act. *In Re: supra*, 14 ERC 1083, 1092, 1093 (D.D.C. Feb. 26, 1980).

Section 522(c) of the Act provides the authority for public hearings on designation petitions and includes terms such as "allegations of facts with supporting evidence" and "a written decision regarding the petition." It does not specify what type of public hearing the regulatory authority must hold.

State regulatory authorities that wanted to provide additional procedural safeguards could and did. The States of Illinois and Virginia submitted program provisions to the Secretary which provided for adjudicatory hearings and cross-examination of witnesses in designation hearings. Upon judicial review of the Secretary's approval of the Virginia program provision, the court upheld the Secretary's action and noted that the availability of cross-examination is of significant utility in accurate fact finding *Virginia Citizens for Better Reclamation, Inc.* v. *Watt*, 19 ERC 1382, 1386 (E.D. Va. 1983). In *Utah International* v. *Department of the Interior*, 19 ERC 1305 (1982), the court upheld the Secretary's legislative type hearing, but indicated that adjudicatory hearings could provide more due process procedural safeguards. *Id.* at 1310–1311.

Section 522 of the Act presents a balancing of two important competing interests: (1) Environmental interests in

preserving the lands that are unsuitable for mining, and (2) property interests in mining coal. Congress could have stated specifically that the public hearing would be "of record;" but it did not. Nor did it state in Section 522 that the hearing should be "informal" in nature. Instead, Congress chose to be silent on the exact requirements of the public hearing. The Federal rules on designation hearings allow States to perform a similar balancing. It was not the Secretary's intent to preclude cross-examination in such hearings in special or unusual circumstances.

In approving the Illinois provisions on designation hearings, the Secretary noted in Finding No. 22.5, 47 FR 23865 (June 1, 1982) that:

> The Secretary may approve State programs providing quasi-adjudicatory hearings provided they contain adequate safeguards to protect witnesses from intimidation and to insure that the State procedure is as effective as the Federal. * * * The parties may elect to use such techniques specified in the Federal Rule, so long as use of these techniques does not chill the petition process.

On September 14, 1983, the Federal rules were amended to change the Federal and State designation petition process. The Federal rules provide quasi-adjudicatory proceedings, issuance of subpoenas, and "cross examination of expert witnesses only." 30 CFR 764.17(a), 48 FR 41312. The Federal rules for these proceedings do not preclude States from choosing different, but appropriate proceedings. The preamble to the revised Federal rules states:

> Although an informal legislative type hearing meets the requirements of the Act, some of the techniques of formal hearings can be useful in clarifying factual issues. The inclusion of only some of these techniques in these final rules is based, in part, upon Congressional intent to encourage broad citizen participation and to ensure that decisions are based on all relevant information available. * * * OSM is adopting a hearing "of record" according to applicable State law. * * * Comments were distinctly divided on the cross-examination options. * * * OSM is adopting a provision allowing for cross-examination of expert witnesses only. OSM believes this provision will allow the States adequate opportunity to clarify relevant facts while encouraging broad citizen participation. *Id.* at 41337.

Illinois has chosen to allow cross-examination of all witnesses in a manner consistent with its State court proceedings. It also allows for "evidence not admissible under [circuit court] rules of evidence, including, without limitation, citizen opinion on whether lands fall within the criteria for unsuitability and should be designated * * * [to] be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." Thus, Illinois rules are no less effective than the Federal rules in allowing the opportunity for clarification of relevant facts while encouraging broad citizen participation. If, as the Secretary noted in 1982, the actual application of Illinois rules in designation hearings does have the effect of intimidating witnesses, the Secretary, in his oversight role, will act to prevent it.

Moreover, the procedures have worked in practice. Recently IDMM has conducted a designation process for the Rice Lake petition filed by the Save Rice Lake Association. Considerable public participation occurred. Citizens came forward to testify, and no apparent chilling effect on public participation was evident from the Rice Lake process. The Secretary will, however, continue to monitor the designation procedures in Illinois.

The Secretary finds that the Illinois program provisions on designation hearings which provide for quasi-adjudicatory proceedings differ from the Federal rules in meeting the Act's requirements, but are no less effective in meeting those requirements.

Comments received from ICA, IDMM and AMAX emphasized the importance of balancing vital property and financial interests against the protection of the environment during the petition process. They urged that the Secretary allow Illinois to require the most effective means of fact finding available, namely the adoption of the formal adjudicatory hearing format used in all courts of the United States, which includes the right to cross-examine all witnesses.

ISP commented that they stand by the position in their brief and stated that the Illinois rule allowing adjudicatory hearings exceeds the intent of the Federal rule, which allows only a few formal hearing techniques for the purposes of clarifying factual issues. ISP stated that the Illinois rule therefore intimidates citizens and hence does not and cannot meet the congressional intent of encouraging broad citizen participation.

The Secretary disagrees. Unquestionably, cross-examination is one of the most effective methods of determining facts. Allowing cross-examination of non-expert witnesses will not necessarily discourage their participation. The mere assertion to the contrary is unpersuasive. Although the Secretary has decided to allow cross-examination of expert witnesses only in Federal designation petition hearings, his choice was based on an administratively convenient way to gather the facts which would also encourage citizen participation. The new specification in the Federal rules serves to emphasize that expert witnesses may be cross-examined routinely. It was not meant to imply that cross-examination of all witnesses cannot be used as effectively in State proceedings.

For the reasons explained above, the Secretary's position is that the Illinois rules providing for cross-examination of all witnesses at a hearing on a petition to designated lands unsuitable for mining is within the State agency's discretion, subject to Federal oversight, and is no less effective than the Federal rule.

Issue IV.C.1.a.

Definition of Complete Application

The issue is whether the Illinois provisions on complete permit applications are no less effective than the Federal counterpart in meeting the Act's requirements. Illinois rule 1771.11(a) defines a complete application as one on which the applicant has made an apparent good-faith effort to address adequately the portions of the application pertaining to the operation to be permitted. The definition is used in IR 1771.23(a) which requires all permanent program permit applications that are filed to be complete. This requirement applies both to applications submitted by operators with interim permits who wish to continue mining and persons who wish to initiate new operations after implementation of the permanent program. The concept of "completeness" is important in two respects: it triggers the processing and public review requirements, and a complete application is necessary in order for the regulatory authority to make a final decision.

The Federal rules employ the concept of "completeness" in two phases—initial processing and final decisionmaking. The Federal rules at 30 CFR 773.13, 48 FR 44344, promulgated September 28, 1983, provide that application processing and public participation commence "(U)pon submission of an administratively complete application * * *." The Federal rules at 30 CFR 773.15(c)(1) provide that the regulatory authority shall not approve an application unless it finds in writing that the application is complete and accurate.

The terms "administratively complete application" and "complete and accurate application" are defined at 30 CFR 701.5, 48 FR 44344, September 28, 1983. An "administratively complete

application" is defined as an application which the regulatory authority determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review. A "complete and accurate application" is defined as an application which the regulatory authority determines to contain all information required under the Act, the subchapter, and the regulatory program that is necessary to make a decision on permit issuance.

The Secretary is thus presented with the issue of whether the Illinois definition of a "complete application" is no less effective than the Secretary's definitions of "administratively complete application" and "complete and accurate application" as used in the Federal rules. For the purposes of the first phase—initial processing—the Federal standard is "administratively complete." Both the Illinois and Federal definitions include the requirement to address the pertinent application requirements and Illinois adds a requirement that they be "adequately" addressed. Illinois has also added the phrase "apparent good-faith effort" to modify the requirement. The Secretary believes that a good-faith effort means one where the applicant has made a diligent, substantial effort and that a good-faith effort would not be present where the application failed to address all necessary information requirements. The Secretary further believes that the use of the qualifier "apparent" means that the applicant's good-faith effort must be obvious; that is, it must be plainly evident from the application itself.

For the purposes of the second phase—final decisionmaking—the Federal standard is a "complete and accurate application." Both Illinois rule 1786.19 and Federal rule 773.15 provide that no application may be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, that the application is complete and accurate.

The Secretary believes that in order for the application to affirmatively demonstrate that it is complete, it must of necessity contain all the required information to make a decision. Thus, the Illinois standard for making a permit decision is functionally equivalent to the Secretary's definition. Therefore, the Secretary finds that the Illinois definition of complete application is no less effective than the Secretary's corresponding definitions in meeting the requirements of the Act.

ISP again referenced the position in their brief and commented that the Illinois definition is inconsistent with the Federal rules because under the Illinois program an operator need not submit a complete application. ISP argued that "an apparent good-faith effort" to address requirements provides no assurances that the application will contain adequate information to ensure that the public has sufficient information to comment. The Secretary disagrees and, as stated above, has found that the Illinois definition is no less effective than the Federal rules.

IDM and ICA commented that IR 1171.11(a)(1) and 30 CFR 770.5 have always been functionally equivalent and that the promulgation of the new Federal definition of a "administratively complete application" means that the application need not be complete and accurate in every regard for initial review and therefore the Illinois rule is no less effective than the Federal regulations. The Secretary agrees as discussed above.

Issue IV.C.1.b.

Revision of a Pending Permit Application

This issue presents the question of whether the Illinois program provisions for permit application revisions are no less effective than the Federal rules in meeting the Act's requirements for permit revisions. Illinois rule 1786.11(a) provides that an applicant for a permit shall place an advertisement in a local newspaper to run once a week for four consecutive weeks at the same time that the complete permit application is filed with the IDMM. The advertisement must contain a statement that the application is subject to revision by the applicant until 20 days after the last newspaper publication of the advertisement, and that comments or objections may be filed until 30 days after the last newspaper notice.

The Federal rule at 30 CFR 773.13(a)(1), (48 FR 44344, promulgated September 28, 1983) requires that upon submission of an administratively complete application, an applicant for a permit shall place an advertisement in a local newspaper at least once a week for four consecutive weeks. The Federal rule at 773.13(a)(2) also requires the applicant to file any changes to the application with the public office where the permit application is filed at the same time the change is submitted to the regulatory authority.

The Federal rule further provides that written objections may be submitted to the regulatory authority within 30 days after the last newspaper notice. There is no requirement in the Federal rules that the applicant give notice to the public in the newspaper advertisement, or by any other means, that changes to the application may be or have been made. The Secretary finds that the Illinois provision is no less effective than the Federal rule in providing for public notice and participation in permit processing.

ISP again referenced their brief's position and commented that while the Federal rules contemplate revisions to permits, they also require that the original application upon which the revisions are proposed be complete. ISP contends that while a revision under the Federal rules is essentially an alteration of a portion of the mining plan, under the Illinois rules, because of its definition of a complete application, a revision can be new material submitted to address a significant omission from the initial application. Because the Illinois definition of complete application requires such applications to address all of the important informational requirements and thus is no less effective than the Federal regulations (see Issue IV.C.1.a. above), no significant omissions should exist. Therefore, revision to a pending permit application under either the Federal or Illinois rules may encompass alterations or changes to all or a portion of the permit application but would in no case constitute material intended to address significant omissions without further opportunity for public comment.

ISP also stated that under the Federal rules, any significant revision to a permit must be treated as a new permit application, and that Section 511(a)(2) of the Act requires that any revisions that propose significant alterations in the reclamation plan shall be subject to notice and hearing requirements. This comment is not on point. The Federal rules in 30 CFR 774.13 (48 FR 44396, September 28, 1983), and Section 511 of the Act referred to by ISP apply to revisions of *already-issued* permits, not to revisions of pending permit applications.

IDMM and ICA commented that the Illinois provision is no less effective than the Federal regulations and in fact provides greater opportunity for public participation than the Federal rules require since revisions must be made available to the public for at least ten days, whereas under the Federal rule no such requirement exists. As discussed above, the Secretary has found that the

Illinois rule is no less effective than the Federal rule.

Issue IV.C.2.

Substituting Public Hearing for the Informal Conference

The issue raised is whether the Illinois rule which provides for the cancellation of the informal conference for permit applications if a subsequent request for a public hearing is filed and approved is no less effective than the Federal rules in meeting the Act's requirements for public participation in permit processing. The Federal rules at 30 CFR 773.13(c) provide for an informal conference. However, they do not provide for a public hearing for permit applications, significant revisions to a permit, or renewal of a permit. The Federal rules provide that the informal conference be held to allow any persons with an interest to offer oral or written statements and other relevant information on the above documents. Both the informal conference and the public hearing as provided by Illinois rules 1786.14 and 1786.16 allow interested persons the opportunity for presenting their views consistent with the Federal rule. The Secretary also notes the functional efficiency and consistency between IR 1786.16(i) and 30 CFR 773.13(c)(4).

The Federal rules further provide that the regulatory authority *may* arrange for interested parties requesting an informal conference to have access to the proposed mining area. The State rules explicitly provide this opportunity for parties to the informal conference but not for parties to the public hearing. Given the optional language of the Federal rules, the Secretary finds the Illinois rule consistent with the Federal rules on this issue.

ISP commented that they stand by the positions in their brief and that the Illinois rule concerning informal conference is restrictive, in addition to the cancellation process, because of the quasi-adjudicatory nature of the public hearing held in lieu of the informal conference and because of the ability of the parties requesting the hearing to cancel the hearing. Illinois Rule 1786.16(f) concerning the conduct of such hearings specifically states that the hearing shall be informal. Illinois rules further provide for procedures to allow for representation by counsel, questioning of witnesses, and exclusion of incompetent, immaterial, irrelevant, or unduly repetitious statements or data. The Federal rules do not preclude such procedures and such techniques in the informal setting required by the Illinois rules. IR 1786.16(g) specifically directs that strict rules of presentation shall not apply and the evidence of a type commonly relied on by reasonably prudent men in the conduct of their affairs may be admitted. This would not hamper the public participation process or place an unfair burden on any party. ISP expressed the concern that the hearing could be cancelled by the operator-applicant as the requestor of the hearing and thus thwart the opportunity for public comment by those initially requesting the informal conference. The Secretary and Illinois read IR 1786.16(h) which refers to all parties requesting a hearing as those who must withdraw the request for the hearing, to include the original parties to the informal conference. Thus, ISP's concern lacks a basis.

ICA noted the functional identity of the informal conference and public hearing in the Illinois program and supported the informal and legislative format to ensure an orderly and productive public forum for permit review.

Issue IV.C.3.

Identification of Other Licenses and Permits

This issue presents the question of whether the Illinois program provisions to avoid duplication and coordinate the review and issuance of permits is no less effective than the Federal rules in meeting the Act's requirements. At the time the Illinois program was conditionally approved on June 1, 1983, the Federal regulations at 30 CFR 778.19 and 782.19 required a permit applicant to identify in the application all other licenses and permits needed to conduct the proposed operation. The purpose of the Federal rule was to implement Section 503(a)(6) of SMCRA which requires that State programs, to avoid duplication, establish processes for coordinating the review and issuance of permits with any other Federal or State permit process applicable to the operation. In approving the Illinois program the Secretary found that while the Illinois program omitted a specific requirement comparable to 30 CFR 778.19 and 782.19, it nonetheless was no less effective than the Secretary's regulations in meeting the purposes of Section 503(a)(6) of SMCRA. The Secretary noted that Illinois had established an adequate process for coordinating the review of other permits and licenses.

The Secretary referred to several elements of the Illinois program, including Rule 1770.12 which requires that all permit applications be reviewed by the Interagency Committee and requires the IDMM to assure that the comments and recommendations by the Interagency Committee will address compliance with any other Federal or State permit process applicable to the operations. In addition, the State's legal opinion, Volume R5 (ILL–0384), explains that the members of the Interagency Committee, representing various State agencies, are aware of what permits are needed within their areas of expertise.

Since the Illinois program was approved, the Federal rules have been revised to remove 30 CFR 778.19 and 782.19. (48 FR 44344, September 28, 1983) OSM determined that this information is not specifically required by the permitting sections of SMCRA. Rather, OSM explained that under Section 503(a)(6) regulatory authorities must establish a procedure for coordinating the review and issuance of permits. The regulatory authorities can use this mechanism to obtain information on other licenses and permits. The Secretary, therefore, finds that Illinois has established a process for coordinating the review and issuance of permits with other Federal and State permit processes which meets the requirements of section 503(a)(6) of SMCRA and is no less effective than the Federal rules.

ISP commented that although the new Federal rules do not explicitly direct regulatory authorities to require operators to identify other licenses and permits, ISP continues to believe such information necessary and stands by the position in their brief. As discussed above, the new Federal rules explicitly removed this requirement and the Secretary cannot require any State to include such a specific provision in its program.

ISP also stated that under section 503(a) of the Act, regulatory authorities must establish a procedure for coordinating the review and issuance of permits with any other Federal or State permit process which is applicable to the proposed surface mining and reclamation operation. ISP contends that Illinois has no such procedure and that the mere existence of an interagency committee is no substitute for the mandated procedure. In addition, ISP commented that the Committee's knowledge is limited to needed Federal permits. Illinois does not merely substitute the existence of an interagency committee for this requirement. Rather, Rule 1770.12 requires the Interagency Committee to be actively involved in the permit review process and requires the IDMM to assure that the Committee's comments and recommendations will

address compliance with Illinois laws and regulations and any other Federal *or State* permit process, including at a minimum, permits required under a number of specifically enumerated Federal statutes. The Secretary finds that these requirements constitute the process required by Section 503(a) of SMCRA.

ICA commented that IR 1770.12 is a near-verbatim restatement of Section 503(a)(6) of SMCRA and that the Illinois regulation is equally effective in meeting the requirements of the Act as were Federal rules 778.19 and 782.19 as they existed on June 1, 1982. ICA also took issue with ISP's contention that the Interagency Committee's knowledge is limited to Federal permits; the Secretary agrees. Finally, ICA noted that the relevant Federal regulations have been removed since the Illinois program was approved; the Secretary agrees as discussed above.

Issue IV.C.4.

Permit Application Blasting Plan

The issue is whether Illinois regulation 1780.13 prescribing permit application requirements for an operation's blasting plan is no less effective than Federal rule 30 CFR 780.13 in meeting the Act's requirements.

Federal rule 30 CFR 780.13(a) requires that each application shall contain a blasting plan for the proposed permit area explaining how the applicant will comply with the requirements of 816.61–.66 (performance standards). The Federal plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling adverse effects of blasting operations.

Under IR 1780.13, each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of Section 1816.61–.68 (performance standards).

The State blasting plan also requires information on notification to the public of blasting schedules and the availability of pre-blast surveys, a copy of the blasting log form, the anticipated minimum square root distance to the nearest structure, a description of the supervisory duties of persons responsible for blast preparation, and a description of unavoidable hazardous conditions for which deviation from the blasting schedule will be needed. Both the Federal and Illinois rules list required information which supplements the information on compliance with the performance standards. The technical requirements for meeting the performance standards are contained in both. Therefore, the Secretary finds the State rule requires sufficient information in the blasting plan for IDMM to determine that the operator will meet the performance standards contained in the Illinois regulations. The State provisions are no less effective than the Federal provisions in meeting the Act's requirements.

ICA and AMAX commented that the Illinois regulation at 1780.13 required adequate information pertaining to the blasting plan to assure that the performance standards would be carried out. ISP referenced their brief and commented that the Illinois application regulations for a blasting plan were not the same as Federal rules in effect on June 1, 1982, and that the Illinois rules are less effective than the Federal rules. The Secretary disagrees as explained above.

ISP also stated that the blast design plans required by 30 CFR 816.61(d) are not required by the Illinois program and that this renders the Illinois provisions less effective than the Federal rules. The Secretary notes that 30 CFR 816.61(d), 48 FR 9788, promulgated March 8, 1983, is a new paragraph in the Federal rules which requires submission of an anticipated blast design for proposed blasting operations in the vicinity of certain buildings or underground mines. The proposed design is not required by the Federal rules to be presented at the time of a permit application but may be submitted at a later date. The Illinois program does not require this information in a permit application. The Secretary will inform the State that such a requirement appears to be necessary during his review of the regulatory reform issues. However, as indicated above, the State's regulations for permit applications regarding blasting are no less effective than the applicable Federal rules.

Issue IV.C.5.

Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities

Illinois Rule 1780.38 has no Federal counterpart. At issue is whether the rule is no less effective than the Federal rules in meeting the Act's requirements and whether it allows unauthorized alteration of structures for which detailed design plans are required by rules governing permit applications.

Many of the rules in Illinois Part 1780 require the submission and approval of detailed designs and plans for the structures specified during and after mining. The applicant may request that some of these structures be allowed to remain to facilitate or create a postmining land use. Illinois has recognized that differences in function may require changes in design. Thus, by its rule Illinois has required the applicant during the initial permit process to submit a *second* plan, a "rehabilitation plan," for each structure which will not be completely reclaimed. The plan must detail the specific design changes or maintenance tasks necessary to render the structure suitable for its post-mining role which alter the designs submitted for the structure's active mining use. The plan must be submitted as part of the permit application and is therefore subject to public review. The rule does not authorize any deviation from any plan or design approved elsewhere in the permit application, nor does it provide any flexibility in the implementation or enforcement of those plans.

IR 1780.38 appears to enhance the regulatory authority's ability to ensure that structures which may affect the hydrologic balance after mining and reclamation meet the intent of the postmining land use plan. Therefore, IR 1780.38 is no less effective than the Federal rules in carrying out the purpose of the Act, nor does it render any other portion of the Illinois program any less effective by virtue of its existence.

ICA commented that the Illinios rule requires permit application review by the public and the regulatory authority. ICA also stated that the realities of construction work and reclamation often require minor alteration of initial use design and that the Illinois rule provides flexibility and public review of any subsequent changes in the postmining land use design of the structures. The Secretary agrees as stated above. ISP referenced their brief and commented that the Illinois rule sanctions departures from detailed design plans that were the basis for a permit, without following permit revision procedures. As mentioned above, any proposed postmining change in a hydrology structure must be included in a permit application; thus the Secretary disagrees with this comment.

Issue IV.C.6.

Ground Water Information

The issue is whether the provisions of the Illinois program requiring underground mining applications to contain ground water information are no less effective than the Federal rules in meeting the Act's requirements.

The Illinois rules at IR 1783.15 and 1784.14 require general ground water

information and a reclamation plan. Rule 1783.15 requires that the application contain a description of the ground water hyrology for the proposed permit and adjacent area, including information on the depth, lithology, thickness, and use of the water in aquifers. Rule 1783.15(c) also states "where the applicant claims that no significant aquifer occurs, the applicant shall state the basis for this determination."

The revised Federal rule at 1784.14(b)(1) (48 FR 43956, September 26, 1983) requires certain baseline ground water information, including the location and description of all ground water resources in the permit and adjacent areas.

Both the Illinois rules at 1784.14 and the Federal rules at 784.14(h) require submission of a ground water monitoring plan. The Federal rule further provides at 30 CFR 784.14(h)(2) that "If an applicant can demonstrate by the use of the probable hydrologic consequences (PHC) determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the regulatory authority."

Under both rules, the applicant must identify and describe all aquifers, but both the Federal and Illinois rules envision that monitoring is not required for insignificant aquifers.

The Secretary therefore finds State regulation 1783.15(c) no less effective than 30 CFR 784.14(h)(2).

ISP referenced its brief which stated that 1783.15(c) would exempt the applicant from submitting information required under 1783.15 (a) and (b) for anything except significant aquifers. The Secretary does not agree. The information required by paragraphs (a) and (b) is required for all aquifers. Paragraph (c) requires the applicant to state the basis for any claim that no significant aquifer exists. If the applicant can demonstrate to the satisfaction of the regulatory authority that no significant aquifer exists, the regulatory authority can exempt the applicant from certain monitoring requirements under 1784.14 and 1817.52(a). ISP also stated that the very information needed to determine whether an aquifer is significant would not be included in the permit application and available for public scrutiny. However, the applicant's claim and the basis for the claim are a required part of the application and will be subject to comment to the same extent as any other information.

ICA commented that it is important to recognize the relationship between the groundwater information required in the permit application and the groundwater monitoring performance standard. ICA stated that the Federal performance standard requires monitoring when the underground mining activities may affect aquifers which significantly ensure the hydrologic balance. Thus, if the aquifer is not significant, monitoring is not required. ICA noted that the Illinois rules incorporate this rationale in IR 1783.15(c), which places the burden of proof on the permit applicant to demonstrate that no significant aquifer exists, and that the information required by 1783.15 (a) and (b) must be provided. ICA further noted that the applicant's submission of data demonstrating that no significant aquifer exists is part of the permit application and subject to public comment. Therefore, ICA stated that IR 1783.15(c) clearly conforms to the revised Federal rules. The Secretary agrees. AMAX and IDMM noted that IR 1783.15(c) is no less effective than and consistent with 30 CFR 784.14(h)(2). The Secretary agrees as discussed above.

Issue IV.C.7.

Alternative Water Supply Information

The issue is whether the provisions of the Illinois program for underground mining application requirements concerning groundwater are no less effective than the Federal rules in meeting the Act's requirements.

At the time the Illinois program was approved on June 1, 1982, Federal rule 30 CFR 817.54, upon which 30 CFR 783.17 requiring alternative water supply information for underground mines, was based, had been suspended by the District Court for the District of Columbia. In his approval of the Illinois program, the Secretary, therefore, found that the omission of a counterpart to 30 CFR 783.17 did not make the State program inconsistent with the Federal rule. Since approval of the Illinois program, the requirement contained in original 30 CFR 783.17 has been deleted. However, 30 CFR 780.21 does include provisions requiring information on groundwater replacement, but only for surface mining activities. Illinois rules in Part 1779 include these requirements. Therefore, the Secretary finds the provisons of the Illinois program for underground mining application requirements concerning groundwater to be no less effective than the Federal rules.

ICA and IDMM commented that since 30 CFR 817.54 and 30 CFR 783.17 had been deleted, there was no requirement that the State program have a similar provision. ISP stated that the information required by old 30 CFR 783.17 is still required pursuant to Sections 507(b)(11) and 508(a)(13) of SMCRA. The Secretary disagrees with ISP and finds the omission of a counterpart to the deleted 30 CFR 783.17 is consistent with the Federal rules in meeting the Act's requirements.

Issue IV.C.8.

Experimental Practices

This issue presents the question of whether the criteria of the Illinois program provisions for experimental practices are no less effective than the criteria of the Federal rules in meeting the Act's requirements. The Federal rules, at 30 CFR 785.13, promulgated on March 4, 1983, 48 FR 9478, require certain specified criteria to be met before an experimental practice can be approved. The Illinois rule contains the same criteria with one exception: it adds the word "agricultural" to the list of allowed postmining land uses to justify the granting of an experimental practice. The Federal rules do not contain agricultural postmining land use as one of the possible criteria for approval. However, both the Federal and Illinois rules require approval by the Director of OSM before any experimental practice may be undertaken.

Section 711 of the Act allows experimental practices for either of two purposes: (1) To encourage advances in mining and reclamation practices, or (2) to allow postmining land use for industrial, commercial, residential or public use (including recreational facilities). Congress used the broader inclusive "or" rather than the narrower exclusive "and" to connect the two purposes. It is likely that any agricultural end-use experimental practice could be commercial or would encourage advances in mining and reclamation practices. That is, it is possible that any such experimental practice could qualify under either or both of the Federal criteria. In addition, if it did not, the Secretary would preclude its use. For any possible circumstance where the sole justification for an experimental practice is a non-commercial agricultural postmining land use, the Secretary (through the Director of OSM) would not be able to approve it under 30 CFR 785.13, and thus, the Illinois provision provides, in effect, no circumstance under which an experimental practice may be approved inconsistently with the Federal rules.

Thus, the fact that the Illinois rule contains the word "agricultural" in the second clause does not render it less effective than the Federal counterpart. Therefore, the Secretary finds that the criteria of the Illinois program for experimental practices are no less effective than the Federal rules in meeting the Act's requirements.

ISP referenced their brief and commented that the insertion of the word "agricultural" makes the Illinois rules less effective than and inconsistent with the Federal rules for the reasons stated in their brief and because the Secretary had rejected such an insertion in the criteria for approximate original contour (AOC) variances. ISP's brief asserts that the Illinois provision is inconsistent with the Federal standard and must be automatically disapproved by the Secretary as required by Section 503(a)(1). As explained in the analysis above, the Secretary disagrees, because the Illinois provisions accomplish the same result as the Federal provisions. ISP also asserts that operators may be misled by the use of the word "agricultural" if a non-commercial agricultural use is proposed and ultimately rejected by the Director of OSM. This concern is also shared by the Secretary. However, the Secretary will inform Illinois of this concern and assumes IDMM will notify operators not to request experimental practices which cannot be approved.

ISP also stated that Section 711 prohibits all agricultural uses and pointed to other sections in the Act that restrict exemptions with nearly identical phrasing. The exemptions in other sections are much more narrowly drawn than those in Section 711. As explained above, the dual layer of review under the experimental practices rules will preclude approval of any experimental practice justified solely as allowing a non-commercial agricultural postmining land use.

ICA commented that the Illinois program provisions were no less effective than the Federal rules. The Secretary agree as explained above.

Issue IV.C.9.

Prime Farmland Grandfather Provision and Its Relation to the Permitting Process

The issue is whether the Illinois program which bifurcates the prime farmland grandfathering decision from the permit process is no less effective than the Federal rules in meeting the Act's requirements.

No Federal rule or requirement in the Act exists setting any standard on the timing of the grandfather exemption decision-making process. The requirements for prime farmland and the grandfather exemption went into effect during the interim program. Illinois established a procedure at that time to receive and review requests to grant exemption from the prime farmland standards under the grandfather provisions. Through this procedure certain specific lands have been exempted. The State issued opinions describing each decision and these opinions are on file in the Department. Permit applications now being processed under the permanent program often contain acreage previously grandfathered. The entire permit application is subject to review by the public, and public comment regarding the grandfather exemption decision may be submitted. As the Secretary noted in his June 1, 1982 decision, in response to comment No. 69, the applicant's claim that the operation is grandfathered will be subject to public comment during the permit application review period.

Because no requirement exists in the Act or Federal rules governing the timing of the grandfather decision, the Secretary finds the Illinois procedure no less effective than the Secretary's rules in meeting the requirements of the Act.

ICA and IDMM commented with explanations that nothing in the Act or Federal rules govern the timing of the grandfather decision. The Secretary agrees. ISP referenced their brief and stated the grandfather decision must be made only during the permit decision in order that it be subject to all of the requirements for public participation with respect to the permit decision. ISP further commented that Illinois deprived the interested public of the opportunity to comment and otherwise participate in one of the most critical aspects of a permit decision for prime farmlands. Because the Federal rules are silent with respect to timing of the grandfather decision and because the applicant's claim that certain lands have been properly grandfathered will be subject to public comment during the permit application review period, the Secretary finds this procedure acceptable and no less effective than the Federal rules in meeting the Act's requirements.

Issue IV.C.10.

Prime Farmland Grandfather Clause

The issue is whether the Illinois program establishing the grandfather standards to exempt lands from the prime farmland standards is no less effective than the Federal rule at 30 CFR 785.17(a) in meeting the Act's requirements.

At the time the Secretary approved the Illinois program he stated that because of extensive litigation over the prime farmland grandfathering criteria, the State could not have anticipated the adoption of the final Federal rule establishing standards for prime farmland exemptions. The Secretary added that Illinois would be afforded an opportunity to amend its regulations as appropriate, if necessary to make its program consistent with the September 29, 1981 rule. As of March 29, 1984, Illinois has not adopted the provisions of 30 CFR 785.1 establishing the legal right to mine as an additional criterion for the grandfather exemption. The Secretary finds the Illinois provisions at 1785.17(a) do not meet the no less effective than test and will require that Illinois adopt the additional criterion. The Secretary notes that Illinois proposed a regulation on May 20, 1983, that includes the necessary criterion. That regulation has not been finalized but was submitted as an amendment to the State regulatory program on March 16, 1984.

ICA and IDMM commented that the Illinois regulations contain the same criteria as the Federal Act at section 510(d)(2). Both ICA and IDMM pointed out that Illinois has been, in fact, enforcing the Federal criteria contained in 30 CFR 785.17(a). Both commenters also explained the reasons for the "once grandfathered always grandfathered" approach to prime farmland grandfather decisions and pointed to prior court decisions. ISP objected to the Illinois provisions and to the "once grandfathered always grandfathered approach" stating that the Federal rules require all past grandfather decisions to be remade under revised rules. The Secretary however cannot find support for the ISP statement in the Federal rules and finds this aspect of the Illinois program subject to his oversight responsibilities.

Issue IV.C.11.

Prime Farmland Permit Application Requirements

The issue is whether Illinois application requirements for permits involving prime farmland are no less effective than the Federal rules in meeting the Act's requirements.

Under Federal rule 30 CFR 785.17(a) any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland must address the application requirements for prime farmland contained in 30 CFR 785.17(b). Illinois' counterpart regulation at 1785.17(a)

extends the application requirements for prime farmland only to surface coal mining and reclamation. The State thus exempts all surface effects of underground mining operations from prime farmland application requirements whereas under the Federal rules some unspecified surface effects of underground mining operations are covered. The Federal rule at 30 CFR 823.11, 48 FR 21446, promulgated May 12, 1983, exempts preparation plants, support facilities and roads for both surface and underground mines which are used over extended periods of time and involve minimal amounts of land from the prime farmland performance standards. Because the State rule exempts all possible surface effects of underground mining operation from the prime farmland application requirements, the Secretary finds the Illinois provisions to be less effective than the Federal rules in meeting the Act's requirements. The Secretary will require appropriate State program amendments for the permit application requirements for underground mining operations and the corresponding performance standards under 30 CFR Part 823, which relate to issues IV.E.13.a. and IV.E.14. *Infra.*

ICA commented that because of initial litigation which suspended 30 CFR Part 823, applicability of the prime farmland standards to underground mining, the Illinois program did not conflict with the initial Federal rules. However, ICA also stated that Illinois would no doubt have to make its rules consistent with the new Federal rules on underground mining and prime farmland.

AMAX commented extensively on the Act, its terms and definitions and its intent to encourage underground mining. AMAX also pointed out that IR 1823.15 requires that all surface coal mining and reclamation operations in Illinois must meet stringent prime farmland revegetation standards whether or not the land has been drilled, blasted, or mined. Finally AMAX stated that the surface facilities of surface and underground mines in Illinois "fall almost entirely within the exemption * * * provided by the Federal rules for facilities * * *." The Secretary agrees except that, as stated above, Illinois provides for a broader exemption to the prime farmland standards than the Federal rules.

ISP stated that the term "surface coal mining and reclamation operations" limited the applicability of State rule 1785.17(a) from the applicability of the Federal rule. As noted above, the Secretary finds the State rule inconsistent with the Federal permanent program rules.

Issue IV.C.12.

Prime Farmland Exemptions for Underground Mining

The issue is whether Illinois rule 1785.17(e) which exempts certain surface facilities for underground mines from the prime farmland requirements is no less effective than Federal rules in meeting the Act's requirements.

IR 1785.17(e) states that when the reserve area of an underground mine contains so much prime farmland that it is impractical for the applicant to locate surface facilities on areas other than prime farmland, the applicant may be exempted by the Department from certain portions of the prime farmland requirements. No Federal counterpart exists to the State's exemption. Federal rule 30 CFR 823.11 promulgated May 12, 1983, 48 FR 21446, does however exempt preparation plants, support facilities and roads for both surface and underground mines which are used over extended periods of time and involve minimal amounts of land from prime farmland performance standards. However, the State's exemption is much more extensive than the Federal rules. The Secretary finds it inconsistent with the Federal rules and will require an appropriate State program amendment.

ISP commented that they stand by the position in their brief and that there was no Federal counterpart to the exemption found at 1785.17(e) of the Illinois regulations and the exemption should therefore be deleted.

ICA and IDMM explained that because of the judicial suspension of Part 823, the Illinois provisions allowed the exemptions. They also noted that the Secretary's rules had changed. IDMM noted that the new Federal rules which apply prime farmland standards to certain aspects of underground mining were under challenge in Federal court in the District of Columbia. AMAX commented that underground mines were exempt from the standards. As explained above, the Secretary finds the Illinois exemption much more extensive than the Federal rules.

Issue IV.C.13.

Permit Revisions

The issue raised is whether the Illinois rule for permit revisions is no less effective than the Federal rule in meeting the Act's requirements. The Federal rule, 30 CFR 774.13(b)(1) promulgated September 28, 1983, 48 FR 44344, which describes the requirements for a permit revision, states that the regulatory authority shall establish guidelines for the scope or extent of revisions for which all permit application information requirements and procedures (including notice, public participation and notice of decision) shall apply. The Federal rule further states that these procedures shall apply, at a minimum, to all significant permit revisions. Thus the Federal rules make a distinction between significant and insignificant permit revisions and require that the regulatory authority establish guidelines on how to make that determination. The only guidance as to what constitutes a significant revision is found in Section 511(a)(2) of the Act where it states that any revision which proposes a significant alteration in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements. The Illinois rule which establishes the guidelines for the scope of significant revisions is found at 1788.12 and provides that the following revisions are considered significant and are subject, at a minimum, to the requirements of IR Sections 1786 and 1787:

1. Changes in surface coal mining or reclamation operations when such changes constitute a significant departure from the method of conduct of mining or reclamation operations.

2. When required by an order issued pursuant to the Department's review of outstanding permits.

3. In order to continue operation after cancellation or material reduction of the liability policy, self insurance, performance bond or other permit guarantees.

4. As otherwise required under the regulatory program.

The same Illinois rule further describes six general areas of changes which are not considered significant revisions. The review of these exceptions indicates that as described herein, these categories of possible insignificant revisions are no less effective than those envisioned by the Federal rules.

IR 1788.12(a)(1)(i) exempts "changes of direction of mining. * * * within the permit area," from being a significant permit revision.

The Secretary agrees that to the extent that the location of the mining is not change, a change in the direction of mining may be classified as insignificant. IR 1788.12(a)(1)(iii) exempts "for underground mines, any change in direction or location of mining within the permit area, in response to unanticipated events" from ever being a significant permit revision. Because Illinois does not currently require the underground mine workings to be

included within the permit area of an underground mine, changes of location or direction of mining within the permit area may be classified as insignificant. However, as discussed earlier in this preamble in connection with the definition of the term "affected area" the Secretary is examining Illinois' permitting requirements for underground mines. In this context, the Secretary will also reexamine his findings concerning IR 1788.12(a)(iii), if necessary.

For the other exceptions which could possibly be significant, IR 1788.12 requires notice to the State and approval on a case-by-case basis. For changes which alter reclamation plans, IR 1788.12(b)(6) requires the Department to always make a determination on a case-by-case basis as to what constitutes a significant departure. Thus the Secretary finds that the Illinois rule on permit revisions is no less effective than the Federal rules.

ISP commented that they stand by the position put forward in their brief and raised several concerns with the scope and extent of permit changes allowed by the Illinois rule. ISP stated that the change of direction or location of underground mining would allow mining in areas distinct from areas approved in the permit. Because IR 1788.12(a)(iii) is limited to changes of location within the permit area, the extent of such changes is not expected to be significant. If the Secretary concludes that areas above the underground workings could, in certain circumstances, have to be permitted under the Illinois program, this finding will be reviewed.

ISP objected that rule 1788.12(a)(v), exempting any alteration in reclamation plan or reclamation operations which does not involve significant delay or any change in land use on a case-by-case basis, exceeds the intent of the Federal law and rules. This assertion is an indictment of State action and motivation before it occurs. ISP further believes that IR 1788.12(a)(1)(iv) is a catchall for excusing operators on a case-by-case basis. The Secretary disagrees. The language in the IR 1788.12(a)(iv) which states "after determining that the described change will have no significant potential adverse impact on the achievement of final reclamation plans or upon surrounding area" is consistent with the language of the Act which describes significant revisions as those which significantly alter the reclamation plan. Through oversight, the Secretary will assure that IR 1788.12(a) (iv) and (v) are implemented in a manner consistent with the Federal provisions.

Generally, any change to a permit requires a request for an approval of a revision. Except as noted, Section 1788.12 of the Illinois rules requires that a determination be made as to which changes are significant and which are insignificant, and describes the procedures for each.

The ICA commented that there are changes in the reclamation plan which are considered insignificant and need not be submitted through the revision process. All revisions to the permit, either significant or insignificant must, under 30 CFR 774.13, be submitted to the regulatory authority. IR 1788.12(b)(6) requires written request to the State regulatory authority for all permit changes.

AMAX also noted the importance of delineating between significant and insignificant revisions to ensure both that the environment is protected and that the efficiency and profitability of the mining operation is maintained. It commented that the six categories that Illinois provides to exempt permit revisions from the permit revision process ensure protection of the permit area and final reclamation plans while allowing for operational changes that are needed to be made. The Secretary's views are discussed above.

Issues IV.D.1. and D.2.

Incremental Bonding—Forfeiture and Liability

Section 6.07(d) of the Illinois statute provides that the amount of bond forfeiture shall be based on the actual cost to remedy the violation, except that the amount shall not exceed the amount of the bond or deposit for the area in which the violation occurred. Illinois rule 1808.12(c) provides that the IDMM may forfeit any or all bond deposited for an entire permit area or any increment thereof, and that liability under any bond covering any increment of the permit area may extend to the entire permit area.

The Federal rules at 30 CFR 800.50(c), 48 FR 32964, promulgated July 19, 1983, provide that upon default, the regulatory authority may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Further, the rule states that unless specifically limited, as provided in 30 CFR 800.11(d)(3), bond liability shall extend to the entire permit area under conditions of forfeiture. Section 800.11(d) provides that the applicant shall file a bond or bonds under one of three schemes. Subparagraph (3) of that rule requires, for an incremental bonding scheme, the filing of an incremental bond schedule and the bond required for the first increment. The preamble to these Federal rules (48 FR 32936, July 19, 1983) explains that incremental bonding recognizes a permit area can be divided into discrete portions, each separate from and independent of another insofar as the liability of sureties to bond reclamation work is concerned. Thus, bonding of an increment necessarily implies that if there is a default in reclamation responsibility on one increment within the permit area, the regulatory authority cannot forfeit the bond or bonds specifically posted for any other increment and apply those proceeds to the increment on which default has occurred. The Illinois statute and regulation provide that under an incremental bonding system, the IDMM may forfeit any or all bond deposited for an increment and that liability under that bond may extend to the entire permit area. The Secretary finds, therefore, that the Illinois program is no less effective than the corresponding Federal regulations in meeting the Act's requirements.

ISP referenced their brief and commented that the Illinois statute at 6.07(d) is inconsistent with Federal statutory requirements and that the revised Federal rules do not affect this issue. In his initial decision on the Illinois program (October 31, 1980, 45 FR 72475), the Secretary found the Illinois statute to be inconsistent with 30 CFR 808.12(c), which provided that the regulatory authority may forfeit any or all bonds deposited for an entire permit area regardless of the area in which the violation occurred. However, since that decision, a number of changes have occurred with respect to incremental bonding requirements, including suspension of 30 CFR 808.12(c) on August 19, 1981, and promulgation of revised Federal bonding rules on July 19, 1983. As discussed in the preamble to the revised Federal regulations (48 FR 32937–8), OSM concluded that its previous position on 30 CFR 808.12(c) was not warranted. It is OSM's view that Section 509(a) of SMCRA authorizes separate bonds covering separate increments of the permit area which can be released separately. Regardless of the amount of the bond for a particular increment, an operator is liable for the entire cost of reclamation. Based on the foregoing, the Secretary has found that the Illinois program is no less effective than 30 CFR 800.50(c) and 800.11(d)(3).

ISP also stated that to the extent Illinois rule 1808.12(c) is inconsistent with Section 6.07(d) of the Illinois statute, it is not enforceable. The Secretary disagrees and has found the Illinois program to be no less effective than the Federal regulations.

ICA commented that the revised Federal bonding regulations clearly allow for incremental bonding in which the liability under the bond is limited to the incremental area. ICA also noted that even at the time the Illinois program was approved, Federal rule 808.12(c) had been suspended in its entirety. For these reasons, ICA contends that the Illinois program was and continues to be no less effective than the Federal regulations. The Secretary agrees and has so found.

AMAX commented that the new Federal rules, specifically 30 CFR 800.11 (b) and (c) and 800.50 (b)(2) and (c), clearly allow a State regulatory authority to adopt rules which limit bond liability to discrete portions of the permit area (called "increments"). The Secretary agrees with the comment as discussed above.

Issue IV.E.1.

Diversion of Overland Flow

The issue is whether the Illinois provision for diversion designs to allow out-of-bank flows under certain circumstances is no less effective than the Federal rules in meeting the requirements of the Act.

The Federal rule at 816.43(a) promulgated September 28, 1983, 48 FR 43956, requires that "all diversions shall be designed to minimize adverse impacts to the hydrological balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public."

Illinois regulation 1816.43(a)–(f) establishes design criteria and standards for temporary and permanent diversions. IR 1816.43(h) provides that if the terrain is such that out-of-bank flows can accommodate the design precipitation event without endangering health of the environment, the need for diversion ditches may be modified by taking into account channels, banks and floodplains.

The State rule allows out-of-bank flows only where the terrain can accommodate the design precipitation and without endangering health or the environment. Because of these limitations on out-of-bank flows the Secretary finds the Illinois provision no less effective than the Federal provision governing design of diversions.

ICA supported the conclusion that the Illinois provision is acceptable. ISP commented that the Director of OSM stated in a letter dated October 30, 1980 that the exemption was inconsistent with Federal standards in effect at that time. The Federal standards have now been revised as noted above.

ISP stated that Illinois incorporates the required Federal standards into its rule but then adds an exemption from these standards, not found in the Federal rules where "the terrain is such that out-of-flow banks can accommodate the design precipitation event without endangering health or the environment." The dissenting commenter also stated that the Director of OSM informed Illinois in a letter dated October 30, 1980, that this exemption was inconsistent with Federal standards in effect at that time.

The Secretary notes that 30 CFR 816.43(a) provides all diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. The Illinois regulations only allow out-of-bank flows where the provisions of Federal rule 30 CFR 816.43(a) can essentially be met. The Federal regulations to which the Illinois provisions are compared have been revised from those in effect at the time of OSM's October 30, 1980 letter. Because of the above noted limitations on out-of-bank flows, the Secretary finds the Illinois provisions consistent with the Federal rules in meeting the Act's requirements.

Issue IV.E.2.

Sediment Pond Design Criteria

The issue is whether the sediment pond design and performance criteria in IR 1816.46 are no less effective than the Federal rules regarding design and performance standards for siltation structures in meeting the Act's requirements.

At the time of the Illinois program approval, most of the OSM rules on design criteria and performance standards for sediment ponds had been suspended. In effect there were no Federal rules with which the State requirements could be compared. As a result of OSM's regulatory reform effort, the Federal rules on hydrologic balance have been extensively reorganized and rewritten. Final rules on design and performance standards for siltation structures 30 CFR 816.46 were adopted by OSM on September 28, 1983 (48 FR 44032).

In the absence of Federal criteria, Illinois adopted State rule 1816.46(b) which provides: "Sediment pond design criteria shall be published as technical guidelines by the Department, shall be subject to the Administrative Procedures Act, and shall be no less stringent than current criteria of the U.S. Environmental Protection Agency and Office of Surface Mining." Illinois has not, to date, published any technical guidelines pursuant to its rules.

ISP referenced their brief and in its comments, charged that any guidelines, published or not, would be unenforceable because 1816.46(b) does not require compliance with the guidelines, and that the guidelines would not have the force of rules. ICA commented extensively on how the referenced criteria of the Federal rules provide consistent Illinois provisions on sediment pond design and performance standards. ICA explained why the Illinois provision failed to include the detailed design criteria consistent with the earlier Federal rule. ICA also commented on the comparison between IR 1816.46 and the new 30 CFR 816.46 and stated the similarities between the provisions. The Secretary agrees that the Illinois provisions are quite similar, that they reference the Federal rules, and that performance standards are mainly the new criteria. However, as recently adopted, the Federal rules contain many design and performance criteria not found in IR 1816.46. In addition, 30 CFR 816.46(b)(4) requires that all structures impounding water meet all the criteria of 30 CFR 816.49, on impoundments. The State program has no similar requirement.

The final Federal rules are not incorporated by the State Rule nor are the minimum performance standards adopted in the Federal rules found elsewhere in the State program. State rule 1816.46(b) is therefore less effective than the Federal rules in implementing the Act.

Issue IV.E.3.

Angle of Repose Perimeter Slopes

The issue raised is whether the Illinois rule, which allows the perimeter slopes of permanent impoundments to be as steep as the angle of repose if they are stable and are consistent with the intended postmining use of the impoundment, is no less effective than the Federal rule in meeting the Act's requirements.

The Federal rules at 816.49(b)(1) and 816.49(b)(4) promulgated September 28, 1983, 48 FR 43994, provide that the configuration of the impoundment will be adequate for its intended purpose and that final grading will provide for adequate safety and access for proposed water users. Illinois rules 1816.49(a)(3), 1816.49(a)(7) and 1816.49(c) require that permanent impoundments provide adequate safety and access for water users, suitability for the approved postmining land use, and that perimeter

slopes be stable and consistent with the intended use. In addition, IR 1816.49(a)(5) requires that permanent impoundments are prohibited unless they achieve the minimum design requirements set forth in the U.S. Soil Conservation Service technical release and practice standard referenced by the rule. These publications set forth minimum safety factors upon which the Federal rules were based. Federal rules 816.49(a)(3), 816.49(a)(6), 816.49(a)(2) and 816.49(b)(2) impose requirements concerning slope stability, slope protection, erosion control and water quality. These requirements are specified through minimum static safety factors, vegetation and other slope protection procedures, and a water quality standard. Illinois rules 1816.49(a)(1), (3), (4) and (5), and 1816.49(d) impose, in effect, the same requirements for slope stability and protection, erosion control, and water quality. The Secretary thus finds that the Illinois rules concerning perimeter slopes on permanent impoundments are no less effective than the Federal rules in meeting the Act's requirements. Although the new Federal rules on topsoil do not provide for angle of repose slopes, as long as the stability of the slope can be demonstrated by the Illinois permittee, nothing in the Federal rules precludes stable angle of repose slopes.

ISP commented that the stability requirements of Federal rule 816.49(a)(3), which provide for a minimum static safety factor, cannot be met by the Illinois rule. The commenter has overlooked the requirements of IR 1816.49(a) (3) and (5) which require, in effect the same stability as the Federal rule. For the most part, the ISP comment concerns the practice of last cut lakes which it contends is not authorized under the Act. That is not the issue involved in consideration of the State regulation governing impoundment slopes. The Illinois rule allowing up to the angle of repose as long as stability is assured applies only to excavated slopes and not to embankments. If the angle of repose slope is not stable or if it does not provide adequate safety and access, it cannot be allowed under the Illinois provisions. AMAX noted that the Federal rule at 30 CFR 816.102(a)(3) concerning backfilling and grading would allow angle of repose slopes. Other commenters stated that the finding of slope stability is a requirement of both the Illinois and Federal rules. The Secretary agrees as discussed above..

Issue IV.E.4.

Topsoil on Perimeter Slopes

At issue is the Illinois rule 1816.49(c) which allows topsoil substitute materials approved pursuant to 1816.22(e) to be placed on permanent impoundment side slopes. The Federal rule, 30 CFR 816.22(d)(3), provides that the regulatory authority may choose not to require the redistribution of topsoil or topsoil substitutes on approved postmining embankments of permanent impoundments after making certain determinations. The Illinois rule requires the placement of a topsoil substitute which must be found to be equal or more suitable than topsoil. Because the Illinois rule requires topsoil substitute material to be placed on impoundment perimeter slopes and the Federal rules allow the regulatory authority to choose not to require topsoil or topsoil substitutes, the Secretary finds the Illinois rule consistent with the Federal rule.

ISP commented that the Illinois rule is contrary to the topsoil and revegetation requirements of the Act. ISP referenced the brief filed by National Wildlife Federation, et al. in *In Re: Permanent Surface Mining Regulations Litigation II, supra,* round 2. The Secretary has considered that brief and disagrees with its arguments. If topsoil substitutes on stable slopes can be accomplished by Illinois operators, the Federal rules on backfilling and grading and revegetation allow such practice. ISP has apparently overlooked Federal rule 30 CFR 816.22(d)(3) which specifically allows the regulatory authority to choose not to require the redistribution of topsoil *or* topsoil substitutes on impoundments slopes. ICA and AMAX noted the consistency of the Illinois and Federal rules on this issue. The Secretary agrees as discussed above.

Issue IV.E.5.

Written Request for Pre-Blast Survey

This issue presents the question of whether the Illinois provisions on preblast survey requests are no less effective than the Federal rules in meeting the Act's requirements. Illinois rules 1816.62(a) and 1817.62(a) provide that upon written request to the IDMM and the person who conducts the mining activities, the person who conducts mining activities shall promptly conduct a pre-blasting survey or a condition survey of the dwelling or structure and promptly submit a report of the survey to the IDMM and the person requesting the survey. The Federal rules at 30 CFR 816.62(b) and 817.62(b) promulgated March 8, 1983, 48 FR 9788, provide that a request for a pre-blasting survey shall be made in writing, directly to the operator or to the regulatory authority, who shall promptly notify the operator. The operator shall promptly conduct the survey and promptly prepare a written report.

The Secretary finds that Illinois rules 1816.62(a) and 1817.62(a) contain requirements essentially identical to those in 30 CFR 816.62(b) and 817.62(b) and are therefore no less effective than the Federal rules in meeting the Act's requirements.

ICA and AMAX commented that the revised Federal rules at 30 CFR 816.62(b) and 817.62(b) (48 FR 9788, March 8, 1983) specifically require that requests for pre-blasting surveys must be in writing, and therefore the Illinois rule is consistent with the Federal requirements. The Secretary agrees as discussed above.

Issue IV.E.6.

Distribution of the Blasting Schedule

This issue presents the question of whether the Illinois program provisions on distribution of the blasting schedule are no less effective than the Federal rules in meeting the Act's requirements. Illinois rule 1816.64(b) requires that copies of the blasting schedule be distributed by mail to local governments and public utilities and mailed or delivered to each residence within one-half mile of the proposed blasting area and to every other person within or outside such area to whom the IDMM requires it to be mailed. The Federal rules at 30 CFR 816.64(b)(2) provide that copies of the blasting schedules shall be distributed to local governments and public utilities and to each local residence within one-half mile of the proposed blasting site described in the schedule. The two provisions are virtually identical except that Illinois uses the term "blasting area" and the Federal rule uses "blasting site". The words "area" and "site" are essentially synonyms for the place where blasting operations are to be conducted. Therefore, the Secretary finds that the Illinois rule is no less effective than the Federal rule in meeting the Act's requirements to provide notice to residents of the proposed blasting schedule.

ICA and AMAX commented that the Illinois rule is no less effective than the Federal rule at 30 CFR 816.64(b)(2). AMAX noted that the Illinois rule requires that the same group of persons will receive the blasting schedule as under the Federal rule. The Secretary agrees with the comments, as discussed above.

ISP stated that they stand by the positions in their brief and commented that the new Federal rule at 30 CFR 816.62(a) (March 8, 1983, 48 FR 9788) still requires that notification of the right to request a pre-blasting survey be sent to all persons within one-half mile of the permit area. ISP states that because Illinois limits distribution of the blasting schedule containing notification of the right to request a preblasting survey to those persons residing with one-half mile of the blasting area, Illinois rule 1816.64(a) fails to ensure that all residents within one-half mile of the permit area receive this notice, as required by 30 CFR 816.62(a).

The previous Federal rule at 30 CFR 816.64(a) required distribution of the blasting schedule to all residences within one-half mile of the permit area, including information on how to request a preblasting survey. When 30 CFR 816.64(a) was amended to change the distribution of the schedule to residences within one-half mile of the blasting site, the requirement to notify residents within one-half mile of the permit area how to request a preblasting survey was moved to 30 CFR 816.62(a).

The Secretary agrees that the Illinois rule does not require written notification on how to request a preblasting survey for all residents within one-half mile of the permit area. The Secretary, through OSM, will require Illinois to amend this provision.

Issue IV.E.7.

Blasting Between Sunset and Sunrise

Illinois rule 1816.65(a) provides that blasting shall be conducted from sunrise to sunset, and at times announced in the blasting schedule, unless special permission is obtained from an authorized representative of the department where operator or public safety require unscheduled detonation. A complete written report of such specially permitted night blasting must be filed with the IDMM by the person conducting the surface mining activities not later than 3 days after the night blasting. The Federal rule at 816.64(a)(2) promulgated March 8, 1983, 48 FR 9788, provides that all blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the regulatory authority based upon a showing be the operator that the public will be protected from adverse noise and other impacts.

Both rules provide that nighttime blasting must be approved by the regulatory authority. The Illinois rule further requires that blasting must be conducted at times announced in the blasting schedule unless operator or public safety require unscheduled detonation. The Illinois rule does not permit scheduled or routine nighttime blasting, as the Federal rule does. Essentially, the Illinois rule restricts nighttime blasting to emergency situations.

The Federal rule at 816.64(a)(3) provides that unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. The rule further requires that where an operator conducts an unscheduled blast, the operator, using audible signals, shall notify residents within one-half mile of the blasting site and document the reason for the unscheduled blast. The Illinois rule also provides that a written report must be filed within three days after the night blasting, and that audible warning and all-clear signals shall be given and audible within one-half mile from the point of the blast (rule 1816.65(b)).

The Secretary therefore finds that Illinois rule 1816.65 is no less effective than the Federal rules in providing restrictions on nighttime blasting and notice to the public.

ISP again referenced their brief and commented that Illinois lacks a counterpart to Federal rule 816.65(a)(2)(ii) requiring prior oral notice of nighttime blasting. The Federal rule, 30 CFR 816.64(a), as amended on March 8, 1983, requires notification by audible signals. The preamble to the final rule (48 FR 9794) explains that audible notification allows for more efficient notification and such notification can be provided more quickly. ISP also commented that under the new Federal blasting rules, unscheduled blasting, such as blasting after sunset, cannot occur unless public and operator safety so require and for emergency blasting situations. ISP contends that the Illinois rules fail to require that unscheduled blasts be limited to emergency situations.

The Secretary has found that the Illinois rule allows unscheduled (including nighttime) blasting only where operator or public safety requires it, which is essentially an emergency situation.

ICA and AMAX commented that the oral notice requirement previously contained in the Federal rules was removed on March 8, 1983, and therefore the Illinois rule is no less effective than the Federal rule as it provides for audible signal notification of unscheduled blasting. ICA also commented that the Illinois rule requires that all blasting must take place during daylight hours *and* that it must be announced in the blasting schedule. Therefore, nighttime blasting is expressly prohibited unless, unlike the Federal program, prior agency approval is obtained. In addition, ICA points out that IDMM is free to impose whatever additional conditions it deems appropriate under the circumstances, including oral notice to residents if necessary. The Secretary agrees with the comments as discussed above.

Issue IV.E.8.

Flyrock Protection

The issue is whether IR 1816.65(c) is no less effective than the Federal rule in meeting the requirements of the Act.

The Illinois rule provides that flyrock, including blasted material traveling along the ground, shall not be cast beyond the permit boundaries or beyond the area of regulated access. The Federal rule at 30 CFR 816.67(c) provides that flyrock traveling in the air or along the ground shall not be cast from the blasting site: (1) More than one-half the distance to the nearest dwelling or other occupied structure, (2) beyond the area of control, or (3) beyond the permit boundary.

The two provisions are similar, except that the Federal rule contains an additional prohibition against casting flyrock more than one-half the distance to the nearest dwelling or other occupied structure, (2) beyond the area of control, or (3) beyond the permit boundary.

The two provisions are similar, except that the Federal rule contains an additional prohibition against casting flyrock more than one-half the distance to the nearest dwelling or other occupied structure. OSM explained in the preamble to its final rule that this requirement places the burden on operators to provide appropriate design restraints when mining close to such dwellings or structures, such as additional stemming, burdens, or mats to prevent flyrock. Because the Illinois rule does not contain this protection, the Secretary finds that it is less effective than the Federal regulations in meeting the requirements of Section 515(b)(15).

ISP contended that, because the Illinois rule does not contain the provision limiting the casting of flyrock to one-half the distance to the nearest dwelling or occupied structure, it is less effective than the Federal rule. The Secretary agrees, as discussed above.

ICA and AMAX, in their comments, asserted two reasons why the lack of the one-half distance requirement does not render the Illinois rule less effective. They stated that other rules adopted by Illinois (each analogous to other Federal

rules) provide adequate protection from flyrock. The also argued that this requirement is virtually unenforceable and therefore its absence could not render the Illinois rule less effective.

The Secretary does not agree that the one-half distance requirement is either superfluous or unenforceable. OSM rejected comments suggesting deletion of this requirement when adopting final 30 CFR 816.67(c)(1), March 8, 1983 (48 FR 9797). The rule places the burden on operators to employ appropriate design restraints when blasting to control airblast and ground vibration within acceptable limits.

The commenters also claimed the requirement is unenforceable, asserting that pieces of flyrock from different blasts could not be distinguished nor could the blast hole where the flyrock originated be identified. The Secretary does not agree. Flyrock, although a hazard inherent in blasting which cannot be ignored, is not and should not be a routine occurrence. A properly designed and constructed blasting pattern can achieve the objectives of the blast in most cases with little or no flyrock. Flyrock results most often when blast holes are improperly loaded, overloaded, or when mats, or other restrictive coverings are not used as necessary. Adequate training and supervision are normally sufficient to alleviate a flyrock problem. OSM has also employed the term "blasting site" in the rule. The preamble to the Federal rule makes it clear that OSM considers the blasting site to be the area contained within the perimeter formed by the exterior charged holes in the pattern. The origin of the flyrock within the blasting site is irrelevant. An inspector need only measure the distance between the flyrock and the occupied structure and the distance to the perimeter of the blasting site to determine compliance with the rules. The location of the blasting site should also be available from the blasting records. The Secretary foresees little or no difficulty in adequately training inspectors to enforce this rule.

Issue IV.E.9.

Peak Particle Velocity

The issue is whether the Illinois rule on ground vibration which restricts the maximum peaked particle velocity to the largest of its three components or the resultant particle velocity is no less effective than the Federal regulation at 30 CFR 816.67(d) in meeting the Act's requirements. The Federal rule provides that the maximum ground vibration for protected structures shall be established in accordance with either the maximum peak particle velocity limits of paragaph (d)(2), the scaled-distance equation of paragraph (d)(3), or the blasting-level chart of paragraph (d)(4). The preamble to the Federal rule setting the ground vibration limits at 30 CFR 816.67(d)(1)(i), states, "The Bureau of Mines has concluded that component velocity is the best indicator of damage potential and thus recommmends limits and readings be in component format. The values listed for acceptable vector sum limits are identical for component limits, ensuring conservative results when using a vector-sum instrument." The preamble also states that "OSM has allowed, but does not require, the use of vector-sum units." The Secretary therefore finds the State rule which allows the option for the resultant (vector-sum) peak particle velocity is no less effective than the Federal rule.

ISP commented that the resultant peak particle velocity was inconsistent but did not provide technical data to substantiate this position. As stated in the preamble to the Federal rule, current research indicates the resultant peak particle velocity to be a satisfactory method of measurement. ISP also asserted that the Illinois provisions do not contain one of the new Federal performance standards. The Secretary recognizes that the one new performance standard on peak particle velocity is not contained in the Illinois program and will inform the State of this during the regular course of regulatory reform review of all State programs. ICA pointed out that the resultant peak particle velocity will always be larger and therefore more conservative than the largest of the three components. The Secretary agrees.

Issue IV.E.10.a. and E.10.b.

Approximate Original Contour and Treatment of Box Cut Spoil

The issue is whether the provisions of the Illinois program allowing permanent water impoundments and initial box cut spoil to be treated as excess spoil is no less effective than the Federal regulations in meeting the Act's requirements.

The State provisions allowing permanent impoundments or "last-cut lakes" are found at Sections 3.04(d) and 3.08(b) of the Illinois Statute. Impoundments are only allowed after numerous findings are made by the regulatory authority. The State provision allowing box cut spoil to be treated as excess spoil is found at Illinois regulation 1816.71(g)(2).

Section 515(b)(8) of SMCRA allows the creation, if authorized in the approved mining and reclamation plan and permit, of permanent impoundments of water on mining sites as part of reclamation. The Secretary finds Section 3.04(d) of the Illinois Statute in accordance with Section 515(b)(8) of SMCRA allowing permanent impoundments.

Under 30 CFR 816.102(d), spoil may be placed on the area outside the mined out area in non-steep slope areas to restore approximate original contour (AOC) by blending the spoil into the surrounding terrain. The preamble to 30 CFR 816.102(d) (May 24, 1983, 48 FR 23360) states, "spoil from the first cut or any other cut may be treated as excess spoil if it is not needed to achieve AOC." Thus IR 1816.71(g)(2) allowing box cut spoil to be treated as excess spoil is consistent with the Federal rules.

ICA commented extensively on how the Illinois program provisions are consistent with and no less effective than the Federal provisions in meeting the Act's requirements. AMAX supported the retention of Illinois provisions allowing last cut lakes and allowing initial box cut spoil to be treated as excess spoil. ISP referenced their brief and stated that provisions allowing permanent impoundments or last cut lakes in the Illinois program created a variance from the requirements of AOC and that box cut spoils must not be treated as excess spoil. The Secretary does not agree for the reasons stated above. ISP also quoted a portion of the preamble to the new Federal definition of excess spoil. The revised Federal rules do not preclude the use of the spoil to achieve AOC.

Issue IV.E.11.

Covering or Treating Coal and Acid- and Toxic-forming Materials

The issue is whether the Illinois rule as modified by the Secretary's condition on the Illinois program at 30 CFR 913.11(b), is no less effective than the Federal regulation at 30 CFR 816.102(f) (48 FR 23369) in meeting the Act's requirements to minimize disturbances to the prevailing hydrologic balance.

In his conditional approval of the Illinois program, the Secretary found Illinois rule 1816.103(a)(1), which allowed the highest coal seam and the pit floor to be covered with a minimum of four feet of water, to be inconsistent with then-existing Federal rule 816.103(a)(1), but found that the concept of covering coal seams with water did have some technical merit. Thus, after reviewing the literature on this subject, the Secretary allowed the covering of coal seams and pit floors with water

provided that the depth of water exceeded ten meters (33 feet). (47 FR 23861). The Federal rule at 30 CFR 816.103(a)(1) has been revised and promulgated as new 30 CFR 816.102(f) (48 FR 23369). As part of its revision, OSM removed the requirement for a specific depth of cover material, replacing it with a requirement that materials listed in the rule be "adequately" covered. In the present case the Secretary believes and maintains that a minimum of ten meters of water meets the test of "adequate" in the new rule, based on current literature. Therefore, the Illinois rule as modified by the Secretary's condition on the Illinois program is no less effective than the rule of 30 CFR 816.102(f).

ICA and AMAX supported the use of water for covering pit floors and coal seams as environmentally and technically sound and cited numerous studies and examples which demonstrate this. ISP referenced their brief and argued that, technical considerations notwithstanding, the Act prohibits the contact of water with coal seams and pit floors. Section 510(b)(10)(a) requires that disturbances to the prevailing hydrologic balance be minimized by avoiding acid or other toxic mine drainage. ISP also stated that the Secretary had ignored previous comments on this issue. On the contrary, the Secretary considered the comments and reached a reasonable conclusion based on all the evidence presented in the earlier record. Where a given technique demonstrably prevents the formation of acid mine drainage, the Secretary is justified in permitting its use to accomplish the intent of this provision of the Act. The Secretary's condition is therefore reasonable and consistent with the Act and the Federal rules.

Issue IV.E.12.a.

Premining Land Use Standards

The first issue raised is whether the Illinois rule for determining premining land uses is no less effective than the Federal rules in meeting the Act's requirements. Section 515(b)(2) of the Act requires operators to restore the land to a condition capable of supporting the uses it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood. The Federal rules at 30 CFR 816.133(b) (48 FR 39882, September 1, 1983) contain the standards for determining the premining uses of the land to which postmining land use is to be compared. The Federal rules provide that the premining uses shall be those uses which the land previously supported, if the land has not be previously mined and has been properly managed. The Federal rules further state that for land that has been previously mined and not reclaimed, the postmining land use shall be judged on the basis of the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require disturbance of areas previously unaffected by mining.

The Illinois rule at 1816.133(b) provides that the premining capability of land to which the postmining land capability is compared shall be the capability that the land would have supported if it had not been previously mined and had been properly managed. Both the Federal rules and Illinois rules determine premining land uses from the uses the land was capable of supporting prior to mining. Therefore, the Illinois rules are no less effective than the Federal rules in establishing premining land use standards.

The second issue raised is whether the Illinois rule is no less effective than the Federal rule at 30 CFR 816.133(b) requiring that postmining land use for land that cannot be returned to a premining land use because of its previously mined condition shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining. The Illinois rule at 1816.133(a) establishes that affected lands shall be restored to either (1) uses they were capable of supporting prior to any mining, or (2) higher or better uses of which there is a reasonable likelihood of restoration. The Illinois rules do not make any exception for previously mined areas as do the Federal rules. By implication, however, if the lands cannot be restored to the uses they were capable of supporting prior to any mining, the Illinois rule requires, for previously mined areas, that the land be restored to higher or better uses of which there is reasonable likelihood of restoration. The Secretary does not believe this to be any less effective for such lands than the Federal rules which require the highest and best use that can be achieved. The Secretary therefore finds the Illinois rules concerning the establishment of premining land uses and the postmining land use requirement for previously mined lands consistent with Federal rules. ISP commented that the new Federal rules preclude approval of the Illinois provisions. The Secretary disagrees as discussed above.

ICA noted the changes in the Federal rules and commented that both the Federal rules and Illinois rules require lands to be returned to premining capabilities but that Illinois utilizes the word "capability" in place of "land use" as in the Federal rules. As both rules require that capability be the final test, the difference in the use of terms does not make the Illinois rules any less effective than the Federal rules in meeting the Act's requirements.

Issue IV.E.12.b.

Postmining Land Use Criteria

The issue is whether Illinois rules provide criteria no less effective than the Federal criteria for approving alternative postmining land uses in meeting the Act's requirements. The Federal rules at 30 CFR 816.133(c) establish the criteria for alternative land uses and require consultation with the land owner or land management agency and that the following criteria be met:

(1) There is a reasonable likelihood for achievement of the use.

(2) The use does not present any hazard to public health or safety, or threat of water diminution or pollution.

(3) The use will not—

(i) Be impractical or unreasonable;

(ii) Be inconsistent with applicable land use policies or plans;

(iii) Involve unreasonable delay in implementation; or

(iv) Cause or contribute to violation of Federal, State, or local law.

The Illinois rule, 1816.133(a)(2) contains the same language with three minor differences. The required consultation with the landowners or land management agency is accomplished through Illinois rules 1780.23(a)(4) and 1780.23(b) which require the operator to submit in his reclamation plan the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs and a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation. The Secretary finds the State procedure to consult through required permit application documents satisfactory.

Another difference between the State and Federal rules is the inclusion of

language in the Illinois rule which states that the determination of inconsistent land use shall be made by the Department. The Illinois rule merely makes it clear that the regulatory authority makes the determination that the proposed land use meets the required criteria for consistency with land use policies or plans as it does for each of the other criteria.

The final difference between the State and Federal rules is a language change in which the Illinois rule states that no proposed land use shall be violative of other applicable law whereas the Federal rule states the land use will not cause or contribute to violation of Federal, State or local law. In this latter case, the Illinois rule reflects the intent of the Act and makes it clear that the proposed land use must comply fully with other laws. The Secretary finds that the Illinois rule is consistent with the Federal rules for alternative land use criteria.

ISP comments dealt with the three exceptions discussed above. The Secretary disagrees as addressed above.

The ICA commented that the Illinois rule does not include specific criteria under IR 1816.133(c) because these requirements are covered elsewhere in the Illinois program. ICA also noted that compliance with alternative land use criteria in Illinois is as effective as the Federal rules. The Secretary agrees as discussed above.

Issue IV.E.13.a.

Prime Farmland Standards for Undergound Mines

See the discussion and findings under Issues IV.C.11 and C.12 above.

Issue IV.E.13.b.

Revegetation—Use of Introduced Species

The issue is whether, in allowing the use of "introduced species" for revegetation and reclamation (rather than "native species" as set forth in the Federal rules at 48 FR 40140) the Illinois regulations at IR 1817.111, IR 1817.112 and IR 1823.1 are no less effective than the Federal rules in meeting the requirements of the Act.

The Federal regulations at 30 CFR 817.111 require that the permittee establish a vegetative cover on regraded areas that is in accordance with the approved permit and reclamation plan and that is diverse, effective and permanent and comprised of "species native" to the area or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulating authority.

The Illinois regulations at IR 1817.111 provide that each person who conducts underground mining activities shall establish in all areas disturbed by surface operations and facilities diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area.

The Illinois regulations at IR 1817.112 further provide that introduced species may be used for reclamation and revegetation under specific conditions requiring that the introduced species be able to establish a diverse and permanent cover capable of achieving the approved postmining land use; or that the species be necessary to achieve a quick temporary and stabilizing cover that aids in controlling erosion; and that measures to establish permanent vegetation are included in the approved plan; that the species are compatible with the plant and animal species of the region; and that the species meet the requirements of the applicable State and Federal seed or introduced species statutes and are not poisonous. This same Illinois regulation further requires special regulatory approval for introduced species.

The Illinois rules are no less effective than the Federal rules in achieving the purposes of the Act. By setting forth in IR 817.112 the specific conditions under which introduced species may be utilized where desirable and necessary to achieve the approved postmining land use and where approved by the regulatory authority, Illinois provides for appropriate vegetative cover in its rules.

In their comments, ICA and AMAX stated that the Illinois provisions are no less effective than the Federal regulations in achieving the purposes of the Act. The Secretary agrees ISP commented that ISP stands by the position in their brief that Illinois' refusal to require revegetation with native species is less effective than and inconsistent with the new Federal regulations and quoted a comment of an unidentified State regulatory authority stating that the use of native, locally adapted plant species is vital to successful revegetation, particularly under arid and semi-arid conditions and that therefore the "native species" language should be required to be included. It is the position of the Secretary that IR 1817.111 utilizing the term "introduced species," when read in conjunction with IR 1817.112, which requires special regulatory approval to use "introduced species" in reclamation and revegetation is no less effective than the Federal rules which have the same provisions regarding regulatory approval and the same factors to be considered when an introduced species is proposed to be utilized.

Issue IV.E.14.

Prime Farmland Standards for Underground Mines

See the discussion and findings under Issues IV.C.11 and C.12 above.

Issue IV.E.15.

Revegetation Standards for Tree and Shrub Stocking

The issue is whether the State's regulation establishing revegetation standards for tree and shrub stocking for forest land is no less effective in meeting the requirements of the Act than the Federal rule at 30 CFR 816.116(a)(3).

The State's regulation at 1816.117 sets forth forest resource conservation standards for reforestation operations to ensure that a cover of tree species, shrubs or half shrubs, sufficient for adequate use of the available growing space, is established after surface mining activities. In 1816.117 (a), (b) and (c) the State establishes the minimum acceptable stocking rates for trees and shrubs. IR 1816.117(d) provides a sampling procedures for herbaceous vegetation. Federal regulations governing standards for vegetation success for areas developed for fish and wildlife habitat, recreation, shelter belts, or forest products are found at 30 CFR 816.116(b)(3). The Federal standard is based on tree and shrub stocking and vegetative cover. The State's standard for stocking rates and its sampling procedure for herbaceous vegetation is no less effective than the Secretary's regulations.

ICA and AMAX commented that the State's regulations governing standards for trees and shrubs and its technique for measuring ground cover on forest type lands are consistent with the Federal regulations. ISP referenced their brief and stated that Illinois rule establishing an herbaceous vegetation sampling procedure for forest areas was unnecessary in the section intended to deal solely with woody plants. The commenter stated that the provision would be inconsistent with Federal standards if it were used as a substitute for the revegetation standards of 30 CFR 816.116. The commenter misunderstands the meaning of 1816.117(d). The provision is not intended to be a substitute for the standards of 1816.116. It is directed at measuring ground cover of herbaceous species within forest land and does not alter the requirements of 1816.117 (a), (b), and (c) pertaining to the stocking of trees and woody plants.

Issue IV.F.1.

Monitoring and Reporting Requirements

Illinois rule 1840.2 provides that whenever the IDMM deems it reasonable and necessary to the development, administration or enforcement of the Illinois statute or regulations, or to the administration or enforcement of any permit or to the determination of whether any person is in violation of any requirement of the State Act, regulations or program, or any requirement of the Federal Act, the IDMM may by written notice impose a number of requirements on a permittee. The permittee may be required to: (a) Establish and maintain records; (b) install, use and maintain necessary monitoring equipment; (c) make monthly or more frequent reports; (d) provide evaluations of results of monitoring and reports; or (e) provide other information as the IDMM finds reasonable and necessary to the performance of its duties.

Section 517(b) of SMCRA contains virtually identical language providing that "the regulatory authority shall require any permittee to: (A) Establish and maintain appropriate records, (B) make monthly reports to the regulatory authority, (C) install, use and maintain any necessary monitoring equipment or methods, (D) evaluate results in accordance with such methods, at such locations, intervals, and in such a manner as a regulatory authority shall prescribe, and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary; * * *"

The Federal rules implement this statutory provision through specific regulations in various subject areas, such as hydrology, permitting, and subsidence. For example, Federal rule 784.20(d)(3) requires monitoring to determine the commencement and degree of subsidence so that measures can be taken to prevent or reduce material damage. Federal rules 816.41 (c) and (e) require ground and surface water minitoring to proceed through mining and continue during reclamation until bond release. The Illinois rules contain numerous similar requirements throughout corresponding sections of its regulations, which the Secretary has previously found to contain provisions no less effective than the Federal rules. Moreover, the Illinois regulations also contain the general requirement at IR 1840.2 which may be applied in addition to the specific requirements at the discretion of the IDMM. Therefore, the Secretary finds that the Illinois regulations are no less effective than the Federal regulations in meeting the purposes of Section 517(b) of the Act.

ISP commented that they stand by the position in their brief and that the Illinois rules undermine the Federal statutory requirements because the operator must supply the information set forth in the statute only where the IDMM deems it reasonable and necessary, and after written notice to the operator. The Secretary does not agree that the Illinois rule undermines the purpose of SMCRA. As noted above, IR 1840.2 is in addition to the many specific monitoring and reporting requirements imposed in other parts of the regulatons. As such, it provides authority to require information over and above that required in specific regulations.

ICA commented that Illinois rule 1840.2 is not the regulation which governs various specific recordkeeping and reporting requirements and noted that many Federal and Illinois requirements indicate a precise similarity. ICA pointed to Illinois rule 1816.52(b) and former 30 CFR 816.52(b) (now 816.41) which both require a quarterly report of the analytical results of monitoring samples of surface water. ICA also pointed out that Illinois rule 1816.68 and Federal rule 816.68 require a record of each blast including a seismograph report to be kept for three years and made available for inspection by the regulatory authority. The Secretary agrees that the Illinois monitoring, reporting and recordkeeping requirements are no less effective than the Federal regulations.

Issue IV.F.2.a.

Enforcement at all Inspections

This issue presented is whether the provisions of the Illinois rule at IR 1814.12(a)(1) and IR 1814.12(a)(2) on notices of violation are no less stringent than and provide the same or similar procedures as the Federal rules at 30 CFR 843.12 (a)(1) and (a)(2) in meeting the Act's requirements.

The Federal rule at 30 CFR 843.12 (a)(1) requires an authorized representative of the Secretary to issue a notice of violation if on the basis of a Federal inspection carried out during the enforcement of a Federal program on Federal lands or during Federal enforcement of a State program under Sections 504(b) and 521(b) of the Act and 30 CFR Part 733, he or she finds a violation of the Act, 30 CFR 843.12, the applicable program, or any condition of a permit or an exploration approval imposed under such program, the Act, or 30 CFR 843.1 which does not create an imminent danger or harm for which a cessation order must be issued under 30 CFR 843.11.

The Federal rule at 30 CFR 843.12(a)(2) provides for further notification of such a violation to enable appropriate enforcement action by the State. In the event the State fails to take action to cause the violation to be corrected within 10 days after such notification, the authorized representative may reinspect and issue a notice of violation or cessation order if the violation still exists.

The Illinois regulation at IR 1843.12(a)(1) states that an authorized representative of the Department shall issue a notice of violation, if, on the basis of a State inspection carried out during the enforcement of a State program, he or she finds a violation of the Act, the State Act or Illinois regulations, which does not create an imminent danger or harm for which a cessation order must be issued under IR 1843.11. The Illinois statute at IS 8.03 provides that each inspector, on detection of each violation of any requirement of this Act or a permit, shall forthwith, inform the operator in writing, and shall report in writing any such violation to the Department.

The Illinois regulation at IR 1843.12(a)(2) in tracking the Federal regulation language, provides for written notice by an authorized representative of the State to the person responsible for any violation found on the basis of any State inspection other than the one described in paragraph (a)(1). This regulation relates only to Federal inspections pursuant to FA 521(a)(1) where the Secretary is mandated to report violations to the State initially so as to allow the State to enforce violations and logically can have no State counterpart. The record at ILL-0451, p. 15, reveals that 30 CFR 843.12(a)(2) has nothing to do with State programs, wherein OSM and IDMM agreed that IR 1843.13(a)(2) was meaningless and Illinois agreed to delete this provision. It should also be noted that nowhere within the Illinois program is an inspection for any purpose other than the program's enforcement authorized or even suggested.

The Illinois Statute at IS 8.101 (a) and (b) and IS 8.03 and the Rules at IR 1843.12(a)(2) and IR 1843.11 and Guidelines Vol. R2, Tab E, p. 240 are therefore no less stringent than and contain the same or similar procedural requirements as the Federal rules in ensuring enforcement at all inspections.

In commenting, ICA, AMAX and IDMM, all stated that Illinois statutory and regulatory provisions were

consistent with the Federal Act and Regulations.

ISP referenced their brief, emphasized the OSM Annual Evaluation, and commented that the limitation on the state's authority to "inspections carried out during the enforcement of the state program" could unlawfully be construed to allow state inspectors to visit a mine site, find a violation and refuse to cite the operator on the grounds that the inspection was being conducted for purposes other than the enforcement of a state program. The question of whether an inspector may visit a site, observe a violation and then so refuse to cite the operator was recently considered by OSM in terms of the "compliance conference" now authorized under federal enforcement rules, which permit an operator to request an on-site compliance conference with an inspector to obtain advice as to whether a condition or practice may become a violation. In adopting the provisions of the Federal regulations at 47 FR 35626 (1982), OSM made it clear that the compliance conference should only address prospective activities, and that any violation observed must be cited. Neither, then, may Illinois refuse to take enforcement actions against operators on the grounds that an inspection was not carried out during the enforcement of the state program. Because the State regulations are silent regarding the provisions of 47 FR 35626 (1982) the Illinois regulations are not so different as to be put at odds with the Federal rule. ISP's additional comments were addressed to what ISP perceives as statistical inequities in the past issuance of notices of violations to permitees due to the different educational backgrounds and perspectives of various types of inspectors. The Secretary considers this is an oversight issue not addressed by this litigation and, hence, the Secretary agrees with comments of ICA, AMAX and IDMM and finds the previously cited Illinois regulations to be no less stringent than and to contain the same or similar procedural requirements regarding citing all violations as the previously cited federal regulations.

Issue V.F.2.b.

Enforcement of All Violations

This issue presents the question of whether the provisions of the Illinois Regulations at IR 1711.19, IR 1814.12(a)(1) and IR 1814.12(a)(2) and of the Illinois Statutes at IS 5.06, IS 8.02, IS 8.04 and IS 8.06 concerning the enforcement of all violations are no less stringent than and contain the same or similar procedural requirements as the Federal Rules at 30 CFR 843.12 (a)(1) and (a)(2) in meeting the Act's requirements.

The provisions of 30 CFR 843.12(a) (1) and (2) and of IR 1814.12(1) and (2) are previously set forth in detail in Issue IV. F.2.a. Additionally, IS 8.03 and IS 8.06, in specifically referring to the Act or exploration or a permit condition, state plainly that a violation of the act or regulations necessarily encompasses a violation of a permit condition or exploration approval. Furthermore, IS 5.06 provides:

> Any person who conducts any coal exploration activities which substantially distrub the natural land surface in violation of this Article shall be subject to the provisions of Section 8.04 (Civil and Criminal Penalties).

The difference in language of IR 1843.12(a) (1) and (2) is therefore of little, if any, importance, as explained by the Secretary in comment No. 133, 47 FR 23879, to his June 1, 1982 decision, as IR 1771.19 requires that "all persons shall conduct surface mining operations under permits issued pursuant to Section 1770–1778 of these regulations and shall comply with the terms and conditions of the permit." Therefore, any permit violation of IR 1771.19, would require issuance of a notice of violation pursuant to IR 1843.12(a)(1).

For the reasons previously set forth, the Illinois Statutes and Regulations are no less stringent than and contain the same or similar procedural requirements as the Federal rules in meeting the purposes of the Act.

ICA in its comments, stated that the provisions of the Illinois Regulations and Statutes are no less effective than the Federal Act and Regulations. ISP's comments were identical to the comments as to Issue F.2.a. above, with which the Secretary disagrees.

Issue IV.G.1.

Criteria for Awards of Costs and Expenses

This issue is whether the Illinois statute at IS 8.05(c) and IS 8.07(f) setting forth criteria for awards of costs and expenses (including attorney fees) are consistent with the Federal counterparts in meeting the Act's requirements.

The Act at Section 520(d) provides that in issuing any final order in any action brought pursuant to Section 520(a), the court may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. Section 525(e) provides that, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as shall have been determined by the Secretary to have been reasonably incurred by such person for, or in connection with his participation in such proceedings, including any judicial review of agency actions, as the court, resulting from judicial review or the Secretary, resulting from administrative proceedings deems proper, whenever an order is issued under section 525 or as a result of any administrative proceeding under the Act. The Federal rules at 43 CFR 4.1294 (a) and (b) provide for awards of costs and expenses, including attorney fees, to a person who initiates a proceeding, upon a finding that the person made an "substantial contribution to a full and fair determination of the issues."

The Illinois statute at IS 8.05(c) and 8.07(f) authorizes awards of costs and expenses in administrative and judicial proceedings "on the basis of the importance of the proceedings and the participation of the parties to the efficient and effective enforcement of the Act," rather than on the basis of the Act's standard of "whenever the court deems appropriate." The Illinois regulation at IR 1843.22(e)(i) is the State's verbatim counterpart of the Federal rules at 43 CFR 4.1294(a).

Illinois' usage of the phrase "on the basis of the importance of the proceeding and the participation of the parties to the efficient and effective enforcement of this Act" provides the standard with which to determine the amount of an award for attorney fees and costs. The Illinois regulations at IR 1843.22 state when such "appropriate costs and expenses including attorneys' fees may be awarded". The issue then is what constitutes appropriate costs and expenses. The two standards set forth in the Illinois statute and regulations may be construed in such a manner as to encompass the factors with which the Federal judiciary normally determines "appropriateness" in awarding attorney fees. (See *Ruckelshaus* v. *Sierra Club*, 103 S.Ct. 3274 (1983); *Hensley* v. *Eckerhardt*, 103 S.Ct. 1933 (1983)).

"Appropriate" in the Illinois regulations should be construed consistently with "proper" in Section 525(e) of the Act, inasmuch as the Secretary expressly found in Comment No. 157 to his June 1, 1982 decision (47 FR 23879 and 23880) that the Illinois regulation at IR 1843.22 "provides for award of costs in accordance with (the Federal Act) and the Federal regulations", and that IR 1843.22 was consistent with the Federal rules. The Secretary thus finds that the Illinois statute and regulations are consistent

with the Federal rules in meeting the requirements of the Act.

ICA and IDMM commented that the above referenced Illinois program provisions concerning award of costs and expenses are consistent and contain the same or similar procedural requirements as the above referenced provisions of the Federal program.

ISP referenced their brief and addressed the citation by the Secretary in his Motion for Remand of *Ruckelshaus* v. *Sierra Club*, 103 S.Ct. 3274 (1983) and *Hensley* v. *Eckerhardt* 103 S.Ct. 1933 (1983), and stated that these cases deal with the questions of whether and to what extent a party is entitled to an award of fees if they do not prevail in the proceedings for which they seek an award and in no way authorize Illinois' limitations on the awards of costs based on "the importance of the proceeding and the participation of the parties to the efficient and effective enforcement of Illinois' Act". ISP's contention that 43 CFR 4.1294 requires awards to be based only on the effectiveness of a party's contribution to the resolution of the winner is contrary to Sections 525(e) and 520(a) of the Act. In *Ruckelshaus* v. *Sierra Club, supra*, the Supreme Court construed similar terms in a suit involving Section 307(f) of the Clean Air Act, 42 U.S.C. 7607, which allowed the award of costs and attorney fees whenever the Court determines that such an award is appropriate. "Appropriate" was construed as being a precedent determination to deciding whether fees would be awarded under Section 307(f) and what the award should be "especially suitable," "fit" or "proper" for. After looking at the histories of the Clean Air Act and common law on the subjects of costs and attorney fees, the Court decided that absent some success on the merits, a permittee may not recover costs, expenses and attorney fees. *Ruckelshaus* v. *Sierra Club, supra*, then controls the construction of "appropriate" as to Section 525(e) of the Act, and mandates that there must be some success on the merits before a non-permittee may be awarded attorney fees.

Issue IV.G.2.

Award of Costs Against the State

This issue is whether the provisions of the Illinois statute at IS 8.07(a) and the Illinois regulations at IR 1843.22(e) on awards for costs and attorney fees are consistent with the Federal rules in meeting the Act's requirements.

The Federal regulations at 43 CFR 4.1294(b) provide for awards to any person other than a permittee or his representative from OSM, if the person initiates or participates in any proceeding under the Act, upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

The Illinois statute at IS 1843.22(e) provides for an award of costs and expenses to "any person" from the permittee under the same circumstances as does 43 CFR 4.1294(b). 43 CFR 4.1294(b) was promulgated pursuant to the authority of Section 525(e) of the Act, the authority under the Act for regulation covering administrative proceedings (Section 525(e) of the Act is discussed fully in Issue IV.G.1.). Hence 43 CFR 4.1294(b) relates to notices or orders issued to a permittee pursuant to section 525(d) of the Act and to judicial review actions under subsections (a)(1), (2), (b), (c) and (d) of such orders or notices to permittees. Therefore, the permittee should always be available to pay attorney fees, if the non-permittee is entitled under Section 525(e).

Neither Section 520(d) of the Act, which is silent as to who may be found liable for such awards "where appropriate" (see *Ruckelshaus* v. *Sierra Club, supra*), nor Section 525(e) of the Act, which applies only to alleged violations of a permittee arising out of Federal inspections or Federal programs, expressly provides for awards of attorney fees against a State regulatory agency nor do Illinois' counterparts, IS 8.05 and IS 8.07, which are verbatim replications of the Act. The lack of a provision in the Illinois regulations for attorney fees to be assessed against a State would not control in actions brought pursuant to IS 8.05, covering civil actions. IS 8.05(c) provides for the award of attorney fees against the State to the extent required as a matter of Federal law, i.e., a court would have the inherent power to issue an award of attorney fees against any party, including the State. In cases, however, where awarding attorney fees is discretionary, consistent with *Ruckelshaus* v. *Sierra Club, supra*, the permittee will be potentially liable for those fees, thereby obviating the need for a mandate that the State be liable for the same fees. The Illinois regulation at IR 1843.22(e)(i), and the Illinois statute at IS 8.07(a) are consistent with the Federal rules at 43 CFR 4.1294 and in accordance with Sections 520(d) and 525(e) of the Act.

ICA and IDMM commented that the above-referenced provisions of the Illinois program are consistent with the Federal rules in meeting the Act's requirements. ISP contended that Illinois' program limits persons other than permittees from obtaining awards against the State. The Secretary disagrees as addressed above.

Issue IV.G.3.

Awards for the Costs of Seeking an Award

This issue is whether the Illinois regulations at IR 1843.22 are consistent with the Federal rules in meeting the Act's requirements.

The Federal rules at 43 CFR 4.1295(b) provide that an award may include the costs incurred in seeking an award. However, neither Section 520(d) nor Section 525(e) of the Act speaks of awards for the costs of seeking an award.

The Illinois regulations at IR 1843.22(f) provide that an award may include costs and expenses, including attorney fees reasonably incurred as a result of initiation or participation in a proceeding under the State Act. Fees incurred in seeking an award would be included in a proceeding under the State Act.

The Illinois regulation at IR 1843.22(f) is thus consistent with the Federal rules in meeting the Act's requirements.

ICA stated that the Illinois provisions are consistent with the Federal rules.

ISP commented that 30 CFR 840.15 (August 16, 1982) provided no exemption for State programs from being consistent with the requirements of 43 CFR 4.1295(b). Given all the reasons and the content of IR 1843.22(f) previously set forth, fees incurred in seeking an award under IR 1843.22(f) would be those incurred in a "proceeding under the State Act" and are therefore encompassed within the Illinois regulations.

Issue IV.H.1.

Administrative Hearings

Issue H.1 presents the question of whether the Illinois program provides for administrative hearings consistent with and similar to the Federal permanent program. More specifically, does the Illinois program provide impartial hearings on permit, enforcement, and bond release decisions as required by Sections 514(c), 519(f), and 525(a)(1) of SMCRA?

The Act provides, in pertinent part, that: "If the Secretary is the regulatory authority, the hearing shall be of record and governed by 5 U.S.C. 554. *Where the regulatory authority is the State, such hearing shall be of record, adjudicatory in nature, and no person who presided at a conference under section 513(b) shall either preside at the hearing or*

participate in this decision thereon or in any administrative appeal therefrom." (Emphasis added.) Section 514(c). Any person who presided over an informal conference may not preside or participate in the decision at the formal hearing under this section of the Act.

Section 525(a)(2) of the Federal statute concerns *Secretarial Review*, and specifically says, "Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code." Section 554 of the APA applies to the Secretary and the Federal Government, but does not strictly apply to the States. SMCRA sets forth specific due process safeguards for the State in Section 514 and does not statutorily impose the Federal APA on the States.

The hearing provisions of the Illinois statute provide in Section 2.11(c) that, "Such hearing shall be of record and adjudicatory in nature. No person who presided at a hearing under Section 2.04 shall either preside at the hearing or participate in the decision thereon." The administrative review section of that Act provides that, "The presiding officer of such hearing may not: (1) Consult a person or party on a fact in issue unless on notice and opportunity for all parties to participate, or (2) be responsible to or subject to the supervision or direction of any person engaged in the performance of investigative or prosecuting functions for the Department." Section 8.07(b). This Illinois hearing provision tracks almost exactly the safeguards SMCRA imposes if the RA is the State.

The Illinois program provides due process at its administrative hearings which is similar to that provided by the Federal Government, and in some instances, exceeds the Federal due process provisions. SMCRA only applies section 554 of the APA to the Federal Government; it does not impose the APA on Illinois. The fact that the Illinois State program does not provide for exactly the same separation of its management, investigative, and adjudicatory functions as the Federal APA does not violate due process rights. The Secretary finds that Illinois adequately explained its numerous procedural safeguards in volume R2 of the administrative record, Tab O. pp. 414–415.

The Illinois program does not allow anyone who presided at a permit hearing to preside or otherwise participate in the review of that decision. Similarly, the enforcement and bonding hearings are safeguarded against any such partiality. Illinois statute, Section 8.07(b), *Supra*. This meets both the requirements of SMCRA and due process. Because of these safeguards, the Secretary finds this Illinois program provision consistent with the Federal rules in meeting the Act's requirements.

ISP referenced their brief and commented that Illinois does not provide impartial hearings on permit, enforcement, and bond release decisions. ISP stated that the hearings the Illinois program provides do not assure impartiality because the State regulatory authority is the Land Reclamation Division headed by a manager who has authority over the Hearing and Enforcement Branch. ISP asserted that the Illinois program merges investigative and prosecutorial functions with the administrative hearing function because the attorneys in the Hearing and Enforcement Branch render legal advice to the regulatory authority.

The Secretary disagrees. Nothing in the Illinois program provisions and the Summary Table of Permanent State Programs Staff, Vol. R1, Tab E, indicated a lack of separation of the review and prosecutorial roles. Indeed, just the opposite is clear. As for application of the APA to the State procedures, nothing in the Act requires such application. ISP also alleged that the OSM Annual Evaluation did not thoroughly resolve whether the functions were adequately independent. The Annual Evaluation, as a factual document concerning the oversight role of the Secretary, lies outside the scope of the remand review.

Issue IV.H. 2.

Civil Penalties

This issue is whether the Illinois statute at IS 2.11 and IS 8.07 and the Illinois regulations at IR 1845.13 and IR 1845.14 and the Illinois Program contained at ILL–0384, Volume R–2, Tab G on civil penalties are no less stringent than and contain the same or similar procedural requirements than the Federal counterparts.

Section 518(a) of the Act permits assessment of a civil penalty of up to $5000 for each violation. Each day of a continuing violation may be a separate violation for assessment purposes. The Act further provides that civil penalties are to be based on the following criteria: (1) History of previous violations; (2) seriousness of the violation; (3) negligence; and (4) good faith in abating the violation. However, if violations lead to the issuance of a cessation order under Section 521, a civil penalty is required to be assessed.

The Illinois statute at IS 8.04(a) recites Section 518(a) of the Act verbatim. The Illinois regulations at IR 1845.13 and IR 1845.14 also provide a $5000 ceiling on civil penalty assessments for each violation. The tables proposed to be used for the calculation of civil penalties at Record, ILL–0384, Volume R2, Tab G, set forth an example of the calculations for a hypothetical penalty. There are no provisions within the Illinois program which require IDMM to use the hypothetical calculations. In fact, the far right hand column of the table sets forth $5,000 as the maximum penalty for each separate (or day of) violation.

The Illinois statute at IS 2.11 and IS 8.07, the Illinois regulations at IR 1845.13 and IR 1845.14 and the proposed method for calculation of civil penalties in the Illinois program contained at ILL–0384, Volume R2, Tab G contain exactly the same provisions as the Federal Act at Section 518(a) and are therefore no less stringent than the Federal Act and regulations.

ICA stated that the Illinois statute, regulations and program as cited above, are no less effective than the purposes of the Act. IDMM and AMAX did not comment on this issue. ISP referenced their brief and limited their comments to oversight issues in the OSM Annual Evaluation.

Issue IV.H.3.a

Responsible Land Management Practices

The issue is whether the Illinois statute which includes reference to "responsible land management practices" in establishing the criteria for successful revegetation allows either an exception from the five-year period of revegetation responsibility or if such practices are outside the "selective husbandry practices" allowed under 30 CFR 816.116(c)(4) of the Federal rules. The language in the State Statute 3.15(b) does not provide any exception to the five-year period of responsibility and therefore is consistent with the Federal provisions. The remaining issue is whether allowing an operator to utilize "responsible land management practices" during his liability period is consistent with the Federal rules. The Federal rule allowing selective husbandry practices defines the practice as normal conservation practices within the region including such practices as disease, pest, and vermin control and any pruning, reseeding and transplanting specifically necessitated by such actions. It is the Secretary's determination the Illinois term, "responsible land management practices" can be equated to "normal conservation practices" as used in the Federal rules and is therefore consistent with the Federal selective husbandry practices used in 30 CFR 816.116(c)(4).

Therefore, the Secretary finds the Illinois program no less effective than the Federal regulations.

ISP referenced their brief and commented on the possible exception allowed by the responsible land management practices and asked that the Secretary require Illinois to define the term to be consistent with selective husbandry practices. As stated above, the Illinois language is not an exception to the liability period and the Secretary finds the terms consistent.

The ICA commented that both the Federal and State terms discussed above are intended to define what is "not" augmented and explained why the Illinois provisions are no less effective than the Federal provisions.

Issue IV.H.3.b

Revegetation Responsibility—High Capability Lands

The issue is whether Illinois regulation 1825.11(c), which provides that the five-year period of responsibility for revegetation of high capability lands shall commence at the date of initial planting of the crop being grown, is no less effective than the Secretary's rules in meeting the requirements of the Act.

The Federal rule at 30 CFR 800.13(c), promulated on July 19, 1983, 48 FR 32960, provides that if the regulatory authority approves a long-term intensive agricultural postmining land use, in accordance with 30 CFR 816.133 or 817.133, the applicable 5 or 10 year period of liability shall commence at the date of the initial planting for such long-term agricultural use.

The Secretary finds the Illinois provision requiring the five-year periods to begin at the date of initial planting for agricultural purposes to be no less effective than the Federal rules.

ICA commented that the Illinois provision is no less effective than the Federal rules.

ISP referenced their brief and objected to the State's requirement the five-year period begin at the date of initial planting. The Federal rule at 30 CFR 800.13(c) contains the identical provision.

Issue IV.H.4.

Injunctive Relief

Issue H.4. raises the question of whether the Illinois program unlawfully grants an operator the right to immediate injunctive relief in State courts.

Under Section 526(b) of the Act, courts reviewing enforcement actions are to do so "solely on the record made before the Secretary." The Illinois statute at Sections 8.06 (b) and (c) provides for enforcement actions and adds that "[t]he operator or permittee may seek immediate injunctive relief from any order issued under this subsection." However, Section 1843.17 of the State rules provides that "[t]he applicant [for temporary administrative relief] shall not apply to the courts for temporary injunctive relief until a written order or decision granting or denying such relief is issued by the department." Illinois' legal opinion states that the rule is valid, Vol. R5, p. 163–4, because "Illinois courts will ordinarily defer to this provision since it provides a remedy at law, and an injunction is thus not properly issuable (Citations omitted)." This opinion is signed by the chief legal officer of IDMM. Where a State rule is acceptable on its face and the chief legal officer of the regulatory authority states that it is legally valid, the Secretary may reasonably rely upon it as meeting the Federal requirements.

The Illinois statute states at both IS 8.06 (b) and (d): "The operator or permittee may seek immediate injunctive relief from any order issued under this subsection." This provision does not say that such relief is a grant of jurisdiction to State courts. Rather, in IS 8.07(d) the forum for such relief is with the regulatory authority:

> If the applicant requests relief from an order for cessation of mining and reclamation operations issued pursuant to subsections (b) or (c) of Section 8.06, the order or decision on such a request shall be issued within five days after its receipt. The department may grant such relief, under such conditions as it may prescribe, if (1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard; (2) the applicant shows that there is substantial likelihood that the findings of the Department will be favorable to him; and (3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources. IS 8.07(d).

When Sections 8.06 (b) and (c) are read in light of Section 8.07, the relief referred to in subsections (b) and (c) is administrative relief, not judicial relief. Thus, the Secretary finds that the Illinois provisions for injunctive relief are consistent with the Federal provisions.

ISP referenced its brief and commented that the statute and regulations differ, and the statute must take precedence. The Secretary disagrees, as explained above. ICA commented that the Illinois provisions are consistent with the Federal requirements. The Secretary agrees as indicated above.

Issue IV.H.5.

Enforcement Authority for Water Quality Violations

The issue is whether the IDMM has a sufficient number of reclamation specialists with enforcement authority to conduct inspection and enforcement activities required pursuant to the approved State program.

At the present time the State has 20 reclamation specialists who conduct required inspections and have authority to take necessary enforcement action pursuant to the inspection activity. The Secretary finds this number of reclamation specialist sufficient to carry out the required number of inspections.

ICA and AMAX commented that the present number of inspectors was sufficient.

ISP expressed concern that staff from the Illinois Environmental Protection Agency (IEPA) made site visits in the conduct of the program but did not have enforcement authority. ISP stated that the practice was not consistent with the Federal requirement for immediate issuance of cessation orders in imminent danger situations. ISP also stated that the Illinois program is deficient in water quality inspections since the IEPA staff have no enforcement authority.

Under the Illinois program IEPA has a role on the interagency committee. Its function includes review of permit applications for specific water quality and other areas. In this role, IEPA staff conduct field investigations and reviews. The staff does not perform inspections under the approved program. Reclamation Specialists on the IDMM staff conduct all required complete and partial inspections. All water quality inspections are conducted by reclamation specialists. The Secretary finds this arrangement meets the requirement of the Federal program for sufficient staff.

IV. Secretary's Decision

As indicated above under "Secretary's Findings," there are a number of areas in the Illinois program in which program amendments will be required. By separate letter, the Director of OSM has notified Illinois pursuant to 30 CFR 732.17, that certain required program amendments will be necessary. The State must reply within 60 days after notification by submitting either a proposed written amendment or a description of an amendment to be proposed and a timetable for enactment which is consistent with established administrative or legislative procedures in the State.

Therefore, based on the findings, the Secretary has determined that the remanded issues of the Illinois program are consistent with SMCRA and the Federal regulations, with the exception of those issues discussed above. The Federal rules at 30 CFR Part 913 are being amended to implement this decision. Upon receipt of the State's response to the Director's notification, Part 913 will be further amended to establish the dates by which Illinois will submit the required program amendments.

V. Additional Determinations

1. *Compliance with the National' Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 913 is amended as set forth herein.

Dated: March 29, 1984.

Leona A. Power,

Acting Assistant Secretary for Land and Minerals Management.

PART 913—ILLINOIS

Part 913 is amended by adding a new § 913.18 as follows:

§ 913.18 Required program amendments.

Pursuant to 30 CFR 732.17, Illinois is required to make the following program amendments:

(a) Amend the definition of "intermittent stream" in rule 1701.5 to make it no less effective than the Federal definition of "intermittent stream" at 30 CFR 701.5.

(b) Amend rule 1785.17(a) to add the criteria contained in 30 CFR 785.17 for making determinations of exemptions from the prime farmland permitting requirements and performance standards.

(c) Amend rule 1785.17 and 1823 to be no less effective than the Federal rules at 30 CFR 785.17 and 823 which set forth the applicability of the prime farmland permitting requirements and performance standards.

(d) Amend rule 1816.46 to provide sediment pond design and performance standards no less effective than 30 CFR 816.46.

(e) Amend rule 1816.64 to provide written notification on how to request a preblasting survey to all residents within one-half mile of the permit area, consistent with 30 CFR 816.62.

(f) Amend rule 1816.65 to prohibit casting of flyrock more than one-half the distance to the nearest dwelling or other occupied structure, consistent with 30 CFR 816.67.

Authority: Pub. L. 95–89, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 84-8904 Filed 4-4-84; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 840

Releasing Information for litigation and appearance of witnesses before civilian courts and other tribunals

AGENCY: Department of the Air Force, Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 840—Releasing Information for litigation and appearance of witnesses before civilian courts and other tribunals, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 110–5, has been determined to be for internal guidance only and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations having general applicability and legal effect are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Major Lee, HQ USAF/JACL, Washington, D.C. 20330, telephone (202) 694–5749.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 840

Courts, Foreign relations, Lawyers, Military law, Military personnel.

PART 840—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 840.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8971 Filed 4-4-84; 8:45 am]
BILLING CODE 3910-01-M

32 CFR Part 888

Enlistment in the U.S. Air Force

AGENCY: Department of the Air Force, Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 888—Enlistment in the U.S. Air Force, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 33–3, has been determined to be for only internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Capt. Phillips, HQ AFMPC/MPCMAE, MPC–D2WV, Randolph AFB, TX 78150, Telephone (512) 652–5954.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 888

Armed Forces Reserves, Military personnel.

PART 888—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 888.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8968 Filed 4-4-84; 8:45 am]
BILLING CODE 3910-01-M

32 CFR Part 889

Desertion and Unauthorized Absence

AGENCY: Department of the Air Force, Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 889—Desertion and unauthorized absence, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 35–73, has been determined to be for only internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Lopez, HQ AFMPC/MPCAKP, Randolph AFB, TX 78150, Telephone (512) 652–2148.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 889

Law enforcement officers, Military law, Military personnel, National security information.

PART 889—[AMENDED]

Accordingly, 32 CFR is amended by removing Part 889.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8979 Filed 4-4-84; 8:45 am]
BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 84–17]

Special Local Regulations; Sunshine Marina Boat Drags

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Sunshine Marina Boat Drags on the Colorado River. This event will be held on 7 and 8 April 1984, at Riviera Marina, Riviera, Arizona. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 7 April 1984 and terminate on 8 April 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Commander (bb), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822, (213) 590–2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. The application to hold the event was not received until 6 March 1984, and there was not sufficient time to publish proposed rules to advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Chief, Boating Affairs Branch, Eleventh Coast Guard District, Project Officer, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

Sunshine Events Inc. "Sunshine Marina Boat Drags" will be conducted beginning April 7, 1984, on the Colorado River starting from the entrance of Riviera Marina, Riviera, Arizona. Race boats will compete in heats moving 1,200 feet north, 1,000 additional feet will be allowed for slow down and turn around. Then they will idle southerly along the natural flow of the river back to the starting point. This event will have 60 high speed boats, 18 feet in length, that could pose a hazard to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Final Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding the following section:

§ 100.35–11–84–17 Colorado River, Sunshine Marina Boat Drags

(a) *Regulated Area.* That portion of the Colorado River, starting from the entrance of Riviera Marina, Riviera, Arizona to approximately 2,200 feet north.

(b) *Effective Date.* The regulated area will be closed intermittently to all vessel traffic from 8:00 a.m. to 5:00 p.m. on 7 and 8 April 1984.

(c) *Special Local Regulations.* (1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter the regulated area during the above hours, unless cleared for such entry by or through a patrolling law enforcement vessel, or an event committee boat.

(2) When hailed by Coast Guard or Coast Guard Auxiliary vessels patrolling the event area, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Coast Guard Regatta Patrol.

(3) These regulations are tempoary in nature and shall cease to be in effect at the end of the period set forth.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: March 27, 1984.

F. P. Schubert,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 84-8124 Filed 4-4-84; 8:45 am]
BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–007; A–4–FRL 2559–3]

Approval and Promulgation of Implementation Plans; Tennessee, 1982 Revision of Metropolitan Nashville-Davidson County Carbon Monoxide Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 3, 1983 (48 FR 5038), EPA proposed to disapprove Tennessee's 1982 revision to its Carbon Monoxide (CO) State Implementation Plan (SIP) for the Metropolitan Nashville-Davidson County area. The plan submitted by the State/local agency failed to provide an acceptable Inspection and Maintenance (I/M) program. Although some portions of an I/M program plan have been submitted, the information submitted to date falls far short of meeting the requirements for approval by EPA (See Supplementary Information). Therefore, EPA today is disapproving the 1982 revisions to the Tennessee SIP for the Metropolitan Nashville-Davidson County CO nonattainment area.

Disapproval of the CO Portion of the SIP invokes the ban on construction of major new or modified stationary sources of carbon monoxide in the Nashville-Davidson County nonattainment area as required by

Section 110(a)(2)(I) of the Act (42 U.S.C. 7410(a)(2)(I)).

On August 3, 1983 (48 FR 35324), EPA also proposed a finding that Tennessee has failed to implement the I/M portion of its 1979 SIP in Nashville. The 1979 SIP called for implementation of a program by December 31, 1982, but this date was not met. EPA indicated that no action would be taken on this finding so long as a good faith effort was being made to establish a program. Although EPA initially believed that a good faith effort was being made by the local government to implement an I/M program, the recent failure of the city government to approve a contract for operation of the program leads EPA to conclude that such efforts are no longer being made. Because of the original failure to implement a program in 1982 and the more recent failure to take concrete action on its current I/M schedule, EPA finds that Tennessee's 1979 CO SIP for Nashville-Davidson County is not being implemented.

This finding imposes a moratorium on construction of major new or modified sources of CO in the nonattainment area under Section 173(4) for the Act. Restriction on EPA grant funds under Section 176(b) of the Act was also proposed in the August 3 notice. Today's finding also triggers that restriction. However, because the issue of the appropriate formula for applying these restrictions has not been resolved, and because no further funding for the Nashville area will be available until the 1985 fiscal year, EPA's finding will not impact any grants at this time. When the issue noted above is resolved, EPA will announce its decision on the appropriate formula for applying Section 176(b) restrictions. Future grants will be restricted using that formula.

DATE: These actions are effective April 5, 1984.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

EPA, Region IV, Air Management Branch, 345 Courtland Street, Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, 150 9th North Ave., Terra Building, Nashville, Tennessee 37203

Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Waymond Blackmon, EPA Region IV, Air Management Branch at 404/881-2864 (FTS: 257-2864).

SUPPLEMENTARY INFORMATION: The 1977 Amendments added a new Part D to Title I of the Clean Air Act. Under this Part, the States were required to revise their SIP's for all nonattainment areas and submit the revisions to EPA by January 1, 1979 (Sections 171-178 of the Act; Section 129(c) (uncodified) of Pub. L. 95-95). The revised plans were to provide for attainment by December 31, 1982, unless the State demonstrated that they could not attain either the ozone or carbon monoxide (CO) standard by that date despite the implementation of all reasonably available control measures (Section 172(a)(2)), and requested an extension. If EPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987. States receiving such extensions were to submit a second SIP revision that provided for attainment by the approved attainment date and complied with all of the Part D requirements (Section 172(c)). These second SIP revisions had to be submitted by July 1, 1982 (Section 129(c) (uncodified), Pub. L. 95-95).

As detailed in the February 3, 1983, **Federal Register**, the State of Tennessee submitted its initial SIP revision for the Metropolitan Nashville-Davidson County carbon monoxide nonattainment area on February 13, 1979. The State requested that EPA extend the attainment date for the carbon monoxide standard in this area to December 31, 1987. EPA granted this request and conditionally approved the initial plan revision on August 13, 1980 (45 FR 53809). Tennessee submitted its 1982 carbon monoxide SIP revision on June 30, 1982. A full discussion of this SIP revision and of EPA's evaluation was contained in the February 3, 1983 (48 FR 5058), proposal notice and will not be repeated in detail here.

However, a brief discussion follows which presents the rationale for disapproving the plan revision. Comments were submitted by Metropolitan Government of Nashville and Davidson County Health Department in which they addressed our proposed disapproval. The Transportation Control Measures (TCMs) have been revised to satisfy EPA requirements. The implementation of the signal optimization program is under way and the return to the 1980 level of service for transit has been replaced with the two-cent gas tax equivalent and the ridesharing program measures from the contingency package. EPA has concurred with these revisions.

The second comment addressed the I/M program and the milestones that Nashville had achieved to show a good faith effort toward implementing the program. They provided a listing of the actions up to that time, which included the adoption of regulations, start-up of the fleet inspection, and hiring of inspectors for the fleet program. However, where a significant commitment of resources for the mandatory I/M program has been required, no action has been taken.

On April 30, 1982, EPA notified Governor Lamar Alexander of its intent to propose a finding in the **Federal Register** that Nashville was no longer meeting its commitments to implement an I/M program. Further, if this finding were affirmed, EPA would be required to impose restrictions in Tennessee under the mandates of the Clean Air Act. The Governor responded by stating that attainment of the CO standard would be achieved by December 31, 1987, without I/M and by 1985 with I/M. Because of the projected attainment by December 1987, the cost involved in starting the program, and the possibility that Congress might revise the requirements for I/M, Governor Alexander asked EPA to take no further action on I/M until Congress completed its revision of the Act.

On May 21, 1982, EPA wrote Governor Alexander again, reminding him of the 1977 Amendments of the Clean Air Act requiring states to submit a 1982 SIP revision for cities that were granted an extension to attain the CO and O_3 standards. This letter stated that the 1982 SIP revision must comply with the requirements of Section 172 (b) and (c) of the Act, which include implementation of an I/M program.

Since that time Nashville has reconsidered and submitted a new schedule for implementing the I/M program and revised the TCM portion of the SIP. Substituting measures from the contingency plan for those measures not implemented in the plan satisfies EPA's TCM requirements.

A small-scale inspection program for fleet vehicles was begun July 1, 1983, with full-scale I/M testing scheduled to start July 1, 1984. Initially, the program was still to be centralized and run by the local agency. In October, however, the City Council decided to investigate whether the program could be run better or less expensively by new car dealers in the Nashville area. After considering this proposal, the dealers' association decided not to participate in such a set-up. The City issued a request for proposals to contract out the start-up and operation of the program. The Request For Proposal (RFP) was issued on November 23, 1983, with a bid

opening date of December 12. The start-up date for the program is still scheduled to be June 1, 1984. A contractor was selected and a contract was negotiated in early January. EPA believed at that time that a good faith effort was being made to submit an approvable program plan and implement the program on schedule.

In its August 3, 1983, **Federal Register** notice on I/M areas which had failed to implement a program by December 31, 1982, EPA proposed imposition of the Clean Air Act sanctions on such areas. EPA indicated it would withhold action to impose the sanctions so long as a good faith effort was being made to implement a program. Generally, it was anticipated that most programs would be started up by January 1, 1984, but EPA did agree to Nashville's schedule, so long as concrete progress was being made. Throughout several meetings held with EPA, Nashville assured the Agency that their I/M program would start by June 1, 1984. EPA was also given commitments that a draft contract would be submitted by January 31, 1984, with a public hearing scheduled for February 8, 1984. Adoption by the Board of Health was scheduled for February 15, 1984, with approval by the City Council on February 21, 1984. The contract was expected to be finalized and submitted to EPA by February 23, 1984. However, the City Council failed to approve the contract in its February 21 meeting. Furthermore, based on information we received from the proposed contractor, a major problem appears to exist in the enforcement of the program. The County Clerk has indicated he would not require an I/M certificate of compliance in order to obtain a Metropolitan wheel tax sticker, thus negating the established enforcement mechanism. In brief, EPA no longer feels that Nashville is proceeding to implement an effective I/M program. In a February 13, 1984, letter to Mayor Fulton of Nashville, EPA requested by February 23, 1984, assurance that the program would be enforced and that other submittals would be made according to the most recent schedule. If these submittals were not received, EPA stated it would disapprove the Nashville SIP and impose the appropriate sanctions under the Clean Air Act.

No assurance of receiving this documentation has been forthcoming.

Based on the failure of the local government to develop and submit a complete and approvable I/M program plan, EPA must disapprove the CO portion of the 1982 SIP as was proposed on February 3, 1983.

In addition, because of the failure of the local government to implement I/M in accordance with its 1979 SIP schedule and its more recent failure to approve the contract for operation of the I/M program, EPA concludes that a good faith effort to implement an I/M program is no longer being made. Therefore, as proposed in the August 3, 1983, **Federal Register**, EPA finds that Tennessee's 1979 SIP for the Nashville-Davidson County CO nonattainment area is not being implemented.

Disapproval of the 1982 SIP revision imposes a moratorium on construction of major new or modified sources of CO in the nonattainment area under Section 110(2)(I) of the Act. This moratorium prohibits the issuance of permits for which a complete application has not been submitted as of this date. (See 40 CFR 52.24(a).)

The finding that the 1979 SIP is not being implemented imposes a similar construction moratorium under Section 173(4) of the Act. However, under EPA regulations (40 CFR 52.24(b)), this moratorium prohibits issuance of any new permits to affected sources, even if an application has already been submitted.

The finding of non-implementation of the 1979 SIP also imposes restrictions on EPA grant funds to State or local agencies which are responsible for not implementing the SIP. In its August 3, 1983, notice EPA provided the opportunity for interested parties to request a public hearing on the proposed finding, during the 45-day public comment period. No such requests were received.

In its August 3, 1983, notice, EPA, also proposed two different formulas for deciding the amount of grant funds to be withheld from the State and local agencies. A decision has not yet been made as to which formula will be applied. However, EPA does not anticipate that it will have additional funds that could be awarded to the Nashville area until fiscal year 1985. Therefore, EPA's finding will not impact any grant awards at this time. EPA will announce the decision on the funding formula in the **Federal Register** and will reduce future grants using that formula.

EPA did receive other public comments in response to both the February 3, 1983, and August 3, 1983, **Federal Register** proposal notices. These comments and EPA's response to them are addressed in a separate technical support document which is available for inspection at the EPA addresses listed above.

These actions are being made immediately effective because EPA's intention to do so was previously announced publicly, and because immediate imposition of the construction restrictions is necessary to avoid further degradation of air quality and otherwise carry out the purposes of the Act.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 4, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(6), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Final action on the finding of nonimplementation imposes a moratorium on construction and modification of major stationary sources of the pollutant for which an attainment extension was granted. A major stationary source for this purpose is any source which emits, or has the potential to emit, 100 tons per year or more of the relevant pollutant. See 40 CFR 52.24(f)(5) (1981). The moratorium also prohibits major modifications, which are any physical changes in the operation of a source that would result in a significant net increase of a pollutant. See 40 CFR 52.24(f)(6) (1981). Thus, some small entities might be affected by this action.

EPA has in the past made efforts to quantify the impacts of Clean Air Act rules on the construction and modification of sources but has been unable to do so. EPA's lack of success is due in part to the need to obtain information on future plans for business growth. This information is difficult to obtain, as businesses are understandably reluctant to make their plans public. Consequently, EPA is making no quantified assessment of the potential economic impact on small entities from today's action.

This action also may result in withholding of portions of Section 105 funds from the Nashville area. However, since today's action does not affect any areas with populations of less than 50,000, the governmental entities affected by any funding limitations do not fall within the definition of "small entities."

Additionally, although EPA believes that this action might have some impact on small entities, this impact cannot affect the Agency's actions. Under the Clean Air Act, the imposition of the construction moratorium and the section 176(b) funding restrictions are automatic and mandatory whenever the Agency determines that an approved or promulgated SIP is not being implemented in a nonattainment area.

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a "Regulatory Impact Analysis." This regulation is not major since it will not have an economic impact exceeding $100 million per year. The section 105 funds potentially affected by this action do not exceed $100 million, and EPA expects that only a portion of the total funds will be affected as a result of this action. EPA is unable to quantify the impact of the construction ban, but it does not anticipate that it would exceed $100 million annually.

This notice has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any responses are available for public inspection at the EPA Region IV office (see address above).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxide, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110, 172, 173(4), 176(b) of the Clean Air Act (42 U.S.C. 7410, 7502, 7503(4) and 7506(b)))

Dated: March 29, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

Section 52.2225 is amended by removing the introductory text and adding paragraph (a) to read as follows:

§ 52.2225 Control strategy: Carbon monoxide and ozone.

(a) Part D disapproval. (1) The 1982 revision of the part D plan for the Nashville CO nonattainment area is disapproved for failure to assure implementation of a vehicle inspection and maintenance program. No major new or modified sources of carbon monoxide can be built in the area by virtue of the provisions of Section 110(a)(2)(I) of the Clean Air Act.

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[FR Doc. 84-9118 Filed 4-4-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 145

[WH-FRL-2550-5]

Delaware Department of Natural Resources and Environmental Control Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Delaware has submitted an application under section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for all classes of injection wells meets the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval is effective May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Jeffery J. Burke, (3WM42), Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. PH: (215) 597-9000.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Delaware was listed as needed a UIC program on March 19, 1980 (45 FR 17632). The State submitted an application under Section 1422 on September 27, 1983, for a UIC program to be administered by the Delaware Department of Natural Resources and Environmental Control (DNREC). On October 28, 1983, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the DNREC (48 FR 49875). Neither requests for public hearing nor requests to offer testimony at such hearings were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest. After careful review of the application, I have determined that the Delaware UIC program for Classes I, II, III, IV, and V injection wells submitted by the DNREC meets the requirements established by the Federal regulations pursuant to section 1422 of the SDWA and, hereby, approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of Delaware. The requirements of this program include State statutes and regulations set forth at: 7 Delaware Code Chapter 60; and Delaware UIC Regulations, Parts 122, 124, and 146.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 145, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water Supply.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Delaware Department of Natural

Resources and Environmental Control will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

(42 U.S.C. 300)

Dated: March 28, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-8080 Filed 4-4-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-4-FRL 2558-7]

Tennessee; Hazardous Waste Management Program; Request for Extension of Phase I Interim Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of phase I interim authorization period.

SUMMARY: The State of Tennessee recently requested a further extension beyond the April 1, 1984, deadline previously granted for continued approval of their Phase I interim authorization under the Resource Conservation and Recovery Act (RCRA), as amended (48 FR 33870, July 26, 1983). EPA is granting the requested extension. A delay in adopting amendments to the State Hazardous Waste Statute necessary for Tennessee's Final authorization has resulted in the State missing the April 1, 1984, deadline for submitting its application for Final authorization. The delay was caused by a two-month special session of the Tennessee General Assembly which only considered special items and did not include the needed hazardous waste legislation. The regular session has now begun; however, the Legislature has not had sufficient time to act upon the proposed changes to the Hazardous Waste Management Act.

This extension allows Tennessee to retain Phase I interim authorization pending submission of a complete application for Final authorization.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Allan E. Antley, Chief, Waste Planning Section, Residuals Management Branch, Air & Waste Management Division, Region IV, 345 Courtland Street, Atlanta, Georgia 30365, (404) 881-3016.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) (formerly § 123.122(c)(4): (47 FR 32377, July 26, 1982) requires that States which have received any but not all Phases/Components of interim authorization amend their original submissions by July 26, 1983, to include all Components of Phase II 40 CFR 271.137(a) (formerly § 123.137(a)); (47 FR 32376, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the federal program in those States. However, the Regional Administrator may extend, for good cause, the July 26, 1983, deadline for termination of the approval of the State program to allow Tennessee time to make statutory, regulatory, and administrative changes necessary to qualify for either Final authorization or Phase II, interim authorization. The most significant issues include: The Tennessee Hazardous Waste Management Act T.C.A. Sec. 68-46-103 (1) and (2) allows exemptions for air emissions and water discharges; T.C.A. Sec. 68-46-106(a)(3) does not subject owners of treatment, storage, and disposal facilities to utilization of the manifest system; Sec. 68-46-108(b) limits the transporter requirements to the reporting of information; and the State of Tennessee does not provide for citizen intervention in State civil enforcement actions as a matter of right.

Note.—40 CFR Part 123, including the July 26, 1982, amendments (47 FR 32373), was recodified on April 1, 1983, as 40 CFR Part 271 (48 FR 14246).

Anticipating enactment of the necessary legislation and promulgation of regulations, Tennessee has committed to the following schedule for applying for Final authorization:

May 1, 1984—Submit a draft application for Final authorization which contains the following:

1. A signed Attorney General's Statement.

2. Legislation that is lawfully adopted, fully effective, and signed by the Governor of Tennessee.

3. Regulations that are fully effective and not subject to change (except for regulations based on legislation passed in the 1984 General Assembly).

4. Proposed regulations that are based on the new legislation passed during the 1984 General Assembly.

5. Draft Program Description and Memorandum of Agreement.

July 31, 1984—Submit a complete application for Final authorization as required in 40 CFR Part 271.

Decision

Considering the above schedule, immediate reversion of Phase I due to failure to meet the previous deadline was not in the best interest of the State, this Agency, the regulated community, or the citizens of Tennessee. I found there was good cause to grant the State's request for a further extension beyond the April 1, 1984, deadline previously granted for applying for Final authorization. Therefore, Tennessee must officially submit a draft application for Final authorization on or before May 1, 1984, and a complete application for Final authorization on or before July 31, 1984. If the State fails to submit draft and complete applications by the above respective dates, approval of the State program will terminate and administration of the hazardous waste management program will revert to EPA.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 Executive Order 12291.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

(Authority: This notice is issued under the authority of Sections 3002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C 6912(a), 6926 and 6974(b).

Dated: March 30, 1984.

George L. Harlow,

Acting Regional Administrator.

[FR Doc. 84-8079 Filed 4-4-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

Medicaid Program; State Residency Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising Medicaid regulations to clarify State residency requirements for Medicaid eligibility. The rule will assist States in making determinations of residency for individuals receiving out-of-State care, and will establish more uniform requirements pertaining to the medical documentation needed to establish that an individual is incapable of indicating intent to reside.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (301) 594–9050.

SUPPLEMENTARY INFORMATION:

I. Background

The current regulations concerning residency became effective October 15, 1979 (for the various States, the District of Columbia and the Northern Mariana Islands, see 42 CFR 435.403; and for Guam, Puerto Rico, and the Virgin Islands, see 42 CFR 436.403). The regulations were intended to achieve uniform application of rules on residency, thereby insuring that no eligible individual is denied Medicaid because a State fails to recognize him or her as a resident. They were also designed to protect those States with superior medical facilities against the costs of caring for an influx of individuals from States that provide less adequate institutional care.

However, despite these regulations, States have informed us that problems are still encountered involving determination of residency in situations where an eligible resident receives out-of-State care. These problems are particularly notable with respect to institutionalized individuals because of the relatively higher cost of care involved. Members of Congress and recipient representatives, as well as States, have requested that we further clarify the current regulations to allow States to utilize interstate agreements for cases of disputed residency, and for other administrative purposes.

II. Provisions of the Proposed Rule

On September 30, 1982, we published in the **Federal Register** a proposed rule which would amend current Medicaid regulations that govern State residency requirements for Medicaid eligibility (47 FR 43095). The rule proposed amending regulations at 42 CFR 435.403 and 436.403 to clarify what constitutes State placement of an individual in a medical institution and the policy pertaining to medical documentation for an individual incapable of indicating intent to reside.

Specifically, the proposed rule included:

- A requirement that a State agency must furnish Medicaid services to State residents who are absent from the State.
- A definition of the term "institution" for State residency purposes.
- A requirement that medical documentation would be acceptable to serve as evidence that an individual is incapable of acknowledging intent to reside only if it is provided by a physician, psychologist, or other person licensed by the State in the field of mental retardation.
- A definition of State placement and identification of certain agencies as acting for the State in making placements.
- A provision that allows the State of residence for institutionalized individuals under age 21 or those who became incompetent before age 21 to be based on: (1) Their actual location; (2) the parents'/guardians' State of residence at the time of placement; (3) the parents'/guardians' current State of residence if it is the State in which the individual is institutionalized.
- A provision that classifies emancipated individuals under age 21 as residents of the State in which they are institutionalized.
- A provision that allows States broad use of interstate agreements.

III. Summary and Discussion of Public Comments

We received 19 letters in response to the proposed rule. The comments were from State agencies, a law center representing a beneficiaries' group, a training school for retarded children and an association for retarded citizens.

In addition to the specific comments on the provisions, comments were also received on the organization of the proposed rule. The commenters suggested that the rule would be clarified if it were organized in terms of the age of the individual, rather than their institutional or non-institutional status. We agree and have adopted this suggestion in this final rule. We are also making whatever other minor editorial revisions that are necessary to conform the rule to the new format. A summary of the additional specific comments received and our responses follows:

1. General

Comment: One commenter suggested that we clarify that the residence of military personnel and their families is the State where the member of the military is stationed.

Response: We do not agree that special residency requirements for military personnel are necessary, since military personnel and their families are subject to the same residency requirements and protections as all other persons applying for Medicaid benefits. Moreover, section 153 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 amended section 406(a)(1) of the Social Security Act (the Act) and altered the effect on absence due to military service on Aid to Families with Dependent Children (AFDC). AFDC is no longer available to families if the parent is absent from the home solely by reason of the performance of active duty in the uniformed services of the United States.

Comment: Another commenter requested we clarify whether the regulations at § 435.403(g) regarding the residence of institutionalized persons take precedence over the regulations at § 435.118 regarding title IV–E (Adoption Assistance) payments by States for Medicaid when the child and his or her family move to another State.

Response: We are accepting this comment and are clarifying the regulations at §§ 435.403(g) and 436.403(f) to specify that the State making the title IV–E payment must provide Medicaid even when the individual and his or her family move to another State. This clarification conforms the regulations with § 435.118. Also, we are further clarifying in the regulations at §§ 435.403(k) and 436.403(j) that States may use interstate agreements for purposes other than disputed residency to facilitate the placement and adoption of title IV–E individuals, where States have enacted interstate agreements as provided for in Section 101(a)(4)(B) of Pub. L. 96–272 or other State statutes to provide for reciprocal provision of medical assistance for title IV–E children as allowed under that program.

Comment: Two commenters suggested that we include in the regulation a discussion of the parent's State of residence versus the legal guardian's. One commenter suggested that the residence of the parents should take precedence over that of the guardian, absent a termination of parental rights. The commenter indicated that there are a variety of guardian situations that exist including: (a) General guardian of property; (b) guardian *ad litem* appointed for a specific and limited purpose; and (c) probate guardian, usually the Commissioner of Public Welfare. These types of guardian situations do not evolve from the fact of residence. The second commenter believed that the residence of a child under age 21 or an individual over age 21 who became incapable of indicating

intent before age 21 be restricted to the parents' State of residence, not the legal guardian's.

Response: While we agree that there are a variety of guardian situations, we are adding a statement at the end of the paragraphs at §§ 435.403 (h)(4)(ii) and (i)(2)(iii) and 436.403 (g)(4)(ii) and (h)(2)(iii) to specify if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of that of the parent's. In some instances, the courts will appoint a legal guardian for a child who has been abandoned by the parents. However, it is also possible that a legal guardian may not be appointed. Therefore, we are adding new paragraphs at §§ 435.403 (h)(4)(iii) and (i)(2)(iv) and 436.403 (g)(4)(iii) and (h)(2)(iv) to specify that the State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have legal guardian and is institutionalized in that State.

2. Definition of Institution

Comment: One commenter suggested that the reference to a foster care home in the regulations should specify that the foster care home must be licensed in the State in which it is located.

Response: We agree with the comment and are adding language to the regulations at §§ 435.403(b) and 436.403(b) to specify that a foster care home must be licensed as set forth in the regulations at 45 CFR 1355.20 (48 FR 23114, May 23, 1983).

3. Medical Documentation for Incompetency

Comment: Several commenters objected to the proposed regulations at §§ 435.403(c) and 436.403(c) on various grounds: One commenter expressed concern that States will be forced to add many out-of-State residents to their Medicaid roles. The commenter noted that its residents often bring their aged relatives who have never been diagnosed as being incompetent into the State. However, the commenter added that it would not have to accept these out-of-State residents given the regulation's requirement that such individual's State of residence is where they were located at the time they became incapable of indicating intent. Another commenter believed the proposed rules do not provide adequate guidance for dealing with conflicting medical opinions regarding competency. This commenter suggests that the regulation focus on the types of acceptable evidence as well as the source. A third commenter objected to any specific documentation requirements.

Response: We do no agree with any of these comments. As stated in the preamble to the proposed rule, we wish to reduce the wide variation in approaches taken by States to document whether an individual is capable of indicating intent to reside. We believe the requirement as written will adequately decrease the number of disagreements between States that otherwise would arise from the use of lay opinions or statements.

Since a finding of incompetency is a controlling factor in determining the State of residence, especially for the institutionalized, we believe the regulations as proposed will decrease disagreements about acceptable documentation because they allow only documentation from a physician, psychologist or other person licensed by the State in the field of mental retardation to serve as evidence that an individual is incapable of acknowledging intent to reside in a State.

Furthermore, we believe that any attempt to identify specific types of acceptable evidence and their relative priority would unnecessarily hinder State flexibility in the vast majority of decisions where the findings are not challenged. In the event that the State agencies disagree over the conclusion based on medical documentation, and additional acceptable documentation does not resolve conflicting opinions, our regulations provided that the State of residence is where the individual is physically located.

Comment: One commenter wrote to confirm his belief that the use of specific documentation requirements is limited to persons who are under age 21 or who became incapable of indicating intent before age 21.

Response: The commenter is wrong in his understanding. There was nothing in the proposed regulations that specified that the application of the documentation requirements is limited only to persons under age 21. The documentation requirements for incompetency apply regardless of the individual's age.

4. Placement by States in an Out-of-State Institution

Comment: The regulations provide that a State arranging or actually making a placement is considered as the individual's State of residence. Three commenters suggested that we identify in the regulations the specific actions that would constitute proof that a State arranged or made a placement in an out-of-State institution. For example, in some cases, States are requested by family members to relocate an incapacitated individual to the State in which the family resides. In other cases, a capable individual might independently decide to move to another State and merely requests assistance from the current State of residence in locating an institution in another State. Finally, if an individual placed by a State decides to move to another facility in a different State would this relieve the State that made the initial placement of future responsibility? If so, the individual's State of residence for Medicaid purposes should become the State where the independently chosen facility is located.

Response: We agree that these cases raise doubts as to the level of State involvement in making placements. Therefore, we have revised the regulations at §§ 435.403(e) and 436.403(e) to provide more specificity on State placement. The regulations will state a general rule and specify those actions which do not constitute a State placement. In general, only actions that go beyond merely providing information would constitute a State placement. When placement is made by States because they lack appropriate facilities, the State arranging or making the placement is the individual's State of residence. Similarly, a State which provides reimbursement for transportation to the other State would be considered as having placed the individual and would be responsible for the individual's care. As a result of this comment, we are also adding a statement that an independent move by a competent individual following an initial State placement will result in residency being determined based on where the individual is physically located.

Comment: One commenter was concerned that the regulation does not resolve the problems encountered when placements are made by both private agencies, and agencies of the State and Federal governments. The commenter proposed that the definition of State agencies be extended to any agency making placements within the State, whether or not under contract to the State, and with or without specific authorization from the Medicaid State agency.

Response: The regulation will specify at §§ 435.403(e)(1) and 436.403(e)(1) that any agency of the State, including an entity recognized under State law as being under contract with the State for such purposes (including private agencies and agencies of the Federal

government), that arranges for an individual to be placed in an institution or located in another State is recognized as acting on behalf of the State in making a placement.

Comment: One commenter recommended that the regulations be revised to indicate that a competent individual should always have the right to make a choice and receive assistance in locating an institution in another State from any State without mandating that the State assume financial responsibility for the cost of care.

Response: We agree and have revised the regulations to clarify that State assistance in locating an institution in another State does not necessarily require State assumption of financial responsibility for the cost of care, if a competent individual asks for such service.

Comment: One commenter suggested that the definition of institution be broadened for purposes of State placement to include adult care facilities, family type homes for adults, shelters for adults and intermediate care facilities. This commenter believed when an individual is placed by another State in one of the above facilities, the financial burden upon the receiving State can be quite significant.

Response: We agree and have clarified the regulations at §§ 435.403(e)(4) and 436.403(e)(4) to provide that if the State making a placement provides for Medicaid coverage for individuals in the above referenced living arrangements, and the State lacks facilities to provide services to its residents, that State would be financially responsible unless an interstate agreement between the two States provide otherwise.

5. Institutionalized and Non-institutionalized Individuals

Comment: One commenter wanted to know the rationale for considering blindness or disability (redesignated in these final regulations at §§ 435.403(h)(2) and 436.403(g)(2)) in determining the State of residence of a child under age 21 without regard to whether the individual is institutionalized or not.

Response: Under the SSI program and in most States, there are no age limitations imposed for persons to be considered blind or disabled. This particular provision concerns persons under age 21 who seek to establish Medicaid eligibility on the basis of either blindness or disability. As stated previously, the State of residence for non-institutionalized persons is determined by physical presence. The provision for SSI eligible individuals is identified specifically in this section to contrast it with non-blind or disabled children who qualify for Medicaid as ADFC eligible and therefore are covered by AFDC rules.

Comment: One commenter asked whether an individual under age 21 is always a child for purposes of 45 CFR 233.40 or whether an individual loses his or her status as a child for purposes of this section.

Response: The intent of these regulations is to adopt the criteria in 45 CFR 233.40 for determining residency, not to follow AFDC's definition of child. Therefore, for any non-institutionalized person under age 21, whether or not that person is considered a child by AFDC, the criteria in 45 CFR 233.40 govern the determination of residency for Medicaid purposes.

Comment: One commenter expresed concern that prior protection that was afforded to those States with higher quality facilities in the October, 1979, regulations was removed in the NPRM. The commenter also felt it would be an unfair burden on those States that have the higher quality facilities to be required to provide assistance for out-of-State individuals because bed availability is better in that State than the individual's own State.

Response: It was not the intent of this regulation to impose an unfair burden on any State. We have sought to achieve a more equitable balance between the interests of the individual and the State by adopting a more flexible policy for determining residency of institutionalized individuals. As mentioned previously, we have revised the regulations to state that where placement is made by States because they lack appropriate facilities, the State arranging or making the placement is the individual's State of residence. The regulations also provide more flexibility for the States to deal with these kinds of situations through use of interstate agreements, if they choose.

Comment: One commenter requested clarification of the rules used to determine the parents' or legal guardian's State of residence, where they live in different States.

Response: We are clarifying the regulation following §§ 435.403(h)(4)(ii) and 436.403(g)(4)(ii) by adding that absent a legal termination of the parents' right, the State of residence of the parent making application is used instead of the legal guardian's State of residence.

Comment: One commenter expressed concern that the proposed rule does not contain any provision which would encourage removal of disincentives on the part of States to develop their own long term care resources, thereby reducing the influx of recipients from States with lesser quality resources to those with higher quality resources.

Response: We recognize that this is a problem. However, the primary intent of this regulation is to set forth requirements for determining an individual's State of residency. The balance between patient needs and State resources is primarily a matter for the States to determine. The regulation allows States to deal with this issue through use of interstate agreements, if States find such agreements would be helpful.

6. Emancipated and Married Individuals Under Age 21

Comment: One commenter noted a conflict between § 435.403 (h)(3) and (h)(4) of the proposed rule. Both paragraphs applied to an individual under age 21 but § 435.403(h)(4) also applied to those married or otherwise emancipated. It is not clear whether the parents' or legal guardian's State of residence should be considered for married or emancipated individuals under age 21.

Response: We agree with this comment and are providing further clarification in the regulations at §§ 435.403(h)(1) and 436.403(g)(1).

Comment: Another commenter questioned whether it is correct to assume that emancipation for the purpose of this regulation, is as defined by State law.

Response: Yes. Unless otherwise indicated in these regulations, definition of terms and other related policies are matters of State discretion.

Comment: One commenter supported the proposals regarding emancipated individuals but was concerned that the concept of placement seems to be disregarded. This commenter suggested that emancipated individuals be treated as adults and thereby remove emancipated minors from the under age 21 category.

Response: We believe that the clarification in the proposed regulation adequately addresses this concern.

Comment: One commenter proposed that the regulation consider only the standards for emancipation in the parents' State of residence for individuals under age 18 instead of a uniform national standard.

Response: We disagree, since parental responsibility for the purpose of establishing residence extends to age 21 in some States. Where a person is emancipated at age 18, the regulation takes this into account by not linking residency to parents or guardians.

Comment: Another commenter requested clarification regarding which State law determines whether a person is married or emancipated, the State in which the individual is institutionalized or the State where the individual's legal parent or guardian lives.

Response: In the case where the person is not married, the State law where the individual, not the parent or legal guardian, physically resides would determine emancipation. If an individual is legally married then the individual is emancipated for purposes of this regulation regardless of the State in which the individual resides.

7. Temporary Absence

Comment: One commenter recommended that the provision of proposed § 435.403(j)(3) and 436.403(i)(3) apply only to persons whose residence is based on their intent, i.e., the persons covered under § 435.403(h) and 436.403 (g)(2), (g)(3), and (h)(4).

Response: We disagree with the recommendation. Sections 435.403(j)(3) and 436.403(i)(3) of this final regulation require that an agency may not deny or terminate an individual's Medicaid eligibility because that individual is temporarily absent from the State if the individual intends to return when the reason for the absence has been accomplished. The commenter's recommendation does not take into account that there may be many situations which could involve incapacitated individuals being temporarily absent from the State. We believe it would be unfair to limit this regulation as the commenter suggests.

Comment: One State requested further clarification for proposed §§ 435.403(i)(3) and 436.403(h)(3) regarding temporary absence from a State. The commenter proposed that the regulation be more specific and require a two month absence as the length of time an individual can be out-of-State and remain eligible for Medicaid coverage.

Response: This suggestion would, in effect impose a durational residency requirement. A State may not deny or terminate Medicaid due to temporary absences from the State if the individual intends to return to the State when the purpose of the absence has been accomplished. The regulations were written in this manner so as not to limit the right of an individual to move freely from one State to another.

Additionally, the AFDC, SSI and non-cash assistance individuals, the State may not arbitrarily terminate Medicaid benefits without contacting, or attempting to contact, the individuals. Where the individual's whereabouts are unknown, States must follow the provisions of 42 CFR 431.213, 431.231, and 435.916.

8. Interstate Agreements

Comment: One commenter proposed that a mechanism be established for the resolution of interstate disputes, e.g., use of a regional staff attorney with disputed matters to be submitted in writing.

Response: We agree that the regulation should be clarified, but do not feel that a federal administrative review mechanism should be established, since the reasons for disputes vary and there are no clear cut guidelines that any arbiter can use to resolve the issues. Instead, the regulation will be revised to state that where two or more States cannot resolve which State is the State of residence, the State where the individual is physically located is the State of residence.

Comment: One commenter recommended that the interstate agreement requirements as they pertain to placement and disputed residency be eliminated.

Response: We do not want to eliminate interstate agreements. There may be instances when interstate agreements are necessary to resolve disputed residency situations that may not have been an issue in the past.

9. Grandfather Clause Provision

Comment: One commenter suggested that a permanent grandfather clause provision be added to the regulations. The commenter was concerned that without a permanent provision, many individuals may be displaced or lose effective use of the benefits to which they are entitled.

Response: We do not agree because we do not want to create a permanent special classification of Medicaid individuals who would not be subject to the rules otherwise applicable in the program. A temporary exemption was necessary to ease already institutionalized individuals into the changes necessitated by the new regulations and to ensure that all eligible institutionalized individuals are determined to be residents of some State for Medicaid purposes. The regulation required States to continue to provide Medicaid to an institutionalized individual who, as a result of the changes in the residency regulations that were published in October 1979, would be considered a resident of a different State. This grandfather clause initially expired October 13, 1981 and was formally extended to June 23, 1983 by a notice published in the Federal Register on June 23, 1982 (47 FR 27078). We are again extending this provision to allow States additional time to conclude establishing residency for their institutionalized population and arranging for either placement in the resident State or reimbursement by the resident State. The extension is effective from June 24, 1983 to 90 days after date of publication of this regulation.

IV. Provisions of the Final Regulations

We are revising regulations located at 42 CFR 435.403 and 436.403 to clarify what constitutes State placement of an individual in a medical institution and the policy pertaining to medical documentation for incapability of indicating intent. Technical changes to update cross references and other information also are being made.

The current regulations (§§ 435.403(a) and 436.403(a)) state that the agency must provide Medicaid to "otherwise eligible" residents of the State. The phrase was intended to apply to resident individuals who are absent from the State. Therefore, we are amending the regulations to clearly state that the agency must furnish Medicaid to financially and categorically eligible State residents who are absent from the State. We have added a cross reference to the regulation that sets forth the conditions under which States are responsible for paying for out-of-State care.

We are adding a new paragraph to define the term "institution" for State residency purposes. The term will have the same meaning as that provided in 42 CFR 435.1009 for purposes of determining the conditions under which Federal financial participation (FFP) is available for persons in public institutions. In addition, we are adding a requirement that a foster care home must be licensed as set forth in 45 CFR 1355.20.

We are revising the current regulations to allow only medical documentation from a physician, psychologist, or other person licensed by the State in the field of mental retardation to serve as evidence that an individual is incapable of acknowledging intent to reside. This revision should decrease instances of disagreements between States concerning acceptable documentation and will help resolve cases of disputed residency since it will eliminate the possibility of documentation by a nonprofessional that may not be valid. Where disputes still occur and cannot be resolved, the State where an individual is physically present shall be the State of residence.

We are also clarifying the regulation to define those actions that do not constitute a State placement, and to specify that any entity recognized under State law as acting for the State is an agency of the State for placement purposes. (The proposed regulation only recognized entities under contract with the State.) We believe that Medicaid recipients and their families will also benefit from this revision because they will be assisted by States in obtaining placements.

We are clarifying the regulations at §§ 435.403(e) and 436.403(e) to specify that if a competent individual leaves the facility in which he or she was placed by a State, that individual's State of residence for Medicaid will be the State where the individual is physically located.

We also are revising the regulations to make the State of residence for an institutionalized individual who is under 21, or became incompetent before age 21, the State in which the parent or legal guardian making application lived at the time of placement or the parent's or legal guardian's current State of residence, if the individual is institutionalized in that State. Some States have objected to being responsible for reimbursement for services provided to individuals in institutions in other States. The revision (§§ 435.403(h)(4), 436.403(g)(4)) is intended to alleviate problems by adopting a flexible policy under which residency would not always be based on the parents' or guardian's current State of residence. This revision is expected to ease the administrative burden on States because the State does not have to make a new residency determination as required under current regulations when a parent moves to another State.

Sections 435.403(h)(1) and 436.403(g)(1) are being revised and redesignated to state that individuals under age 21 who are married or who have been emancipated from parental control under State law are also residents of the State in which they reside with the intent to remain.

We are revising the regulations at §§ 435.403(k) and 436.403(j) to allow States the option to use interstate agreements for administrative purposes in other than cases of disputed residency. Some States have entered into reciprocal agreements whereby each State agrees to treat the other State's residents as its residents. To facilitate administration of the program and to provide maximum State flexibility, we are making a technical change to the regulations to allow States the option of using interstate agreements for purposes of facilitating administration of the program in addition to resolving residency disputes. States also are allowed to use interstate agreements for purposes other than disputed residency to facilitate the adoption and placement of title IV–E individuals. A State making a title IV–E payment must provide Medicaid even when the individual and his or her family move to another State. However, States which enter into interstate compacts as provided for under Pub. L. 96–272 may establish reciprocal agreements for providing medical assistance for individuals receiving adoption assistance payments.

We are extending the grandfather provision in §§ 435.403(j) and 436.403(i). The extension is effective from June 24, 1983 until 90 days after date of publication of this regulation.

IV. Impact Analyses

A. Executive Order 12291

The Secretary has determined that the regulations do not meet the criteria for a "major rule" as defined by section 1(b) of Executive Order 12291. That is, these regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or
- Have significant adverse effects on competition; employment, investment, productivity, innovation; or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

Since we are primarily clarifying procedures already in effect, this rule will result in little economic impact. We believe there will be negligible changes in the current Medicaid expenditures with respect to affected individuals.

B. Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed regulations will not have a significant economic impact on a substantial number of small businesses, non-profit entities or small local governments.

As defined by the Regulatory Flexibility Act, the term "small entities" includes "small governmental jurisdictions". The latter term is defined as local governments (cities, counties, towns, townships, villages, school districts, or other special districts) with a population of less than fifty thousand persons. State governments are not included in this definition.

These regulations will clarify the definitions of "State resident" and "incompetency", and will make technical changes to requirements for State placement. Although we are uncertain of the number of institutions or beneficiaries that might be affected by these regulations, we do not believe that the number will be substantial nor the effect economically significant. We intend that these revisions benefit State agencies by clarifying administrative requirements.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Aliens, Contracts (Agreements), Eligibility, Grant-in-Aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

42 CFR Parts 435 and 436 are amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

1. Section 435.403 is revised to read as follows:

§ 435.403 State residence.

(a) *Requirement.* The agency must provide Medicaid to eligible residents of the State, including residents who are absent from the State. The conditions under which payment for services is provided to out-of-State residents are set forth in § 431.52 of this chapter.

(b) *Definition.* For purposes of this section—"Institution" has the same meaning as "Institution" and "Medical institution", as defined in § 435.1009 of this chapter. For purposes of State placement, the term also includes "foster care homes", licensed as set forth in 45 CFR 1355.20, and providing food, shelter and supportive services to one or more persons unrelated to the proprietor.

(c) *Incapability of indicating intent.* For purposes of this section, an individual is considered incapable of indicating intent if the individual—

(1) Has an I.Q. of 49 or less or has a mental age of 7 or less, based on tests acceptable to the mental retardation agency in the State:

(2) Is judged legally incompetent; or

(3) Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the State in the field of mental retardation.

(d) *Who is a State resident.* A resident of a State is any individual who:

(1) Meets the conditions in paragraphs (e) through (i) of this section; or

(2) Meets the criteria specified in an interstate agreement under paragraph (k) of this section.

(e) *Placement by a State in an out-of-State institution.* (1) *General rule*—Any agency of the State, including an entity recognized under State law as being under contract with the State for such purposes, that arranges for an individual to be placed in an institution located in another State, is recognized as acting on behalf of the State in making a placement. The State arranging or actually making the placement is considered as the individual's State of residence.

(2) Any action beyond providing information to the individual and the individual's family would constitute arranging or making a State placement. However, the following actions do not constitute State placement:

(i) Providing basic information to individuals about another State's Medicaid program, and information about the availability of health care services and facilities in another State.

(ii) Assisting an individual in locating an institution in another State, provided the individual is capable of indicating intent and independently decides to move.

(3) When a competent individual leaves the facility in which the individual is placed by a State, that individual's State of residence for Medicaid purposes is the State where the individual is physically located.

(4) Where a placement is initiated by a State because the State lacks a sufficient number of appropriate facilities to provide services to its residents, the State making the placement is the individual's State of residence for Medicaid purposes.

(f) *Individuals receiving a State supplementary payment (SSP).* For individuals of any age who are receiving an SSP, the State of residence is the State paying the SSP.

(g) *Individuals receiving Title IV–E payments.* For individuals of any age who are receiving Federal payments for foster care and adoption assistance under title IV–E of the Social Security Act, the State of residence is the State making the payment.

(h) *Individuals Under Age 21.* (1) For any individual who is emancipated from his or her parents or who is married and capable of indicating intent, the State of residence is the State where the individual is living with the intention to remain there permanently or for an indefinite period.

(2) For any individual not residing in an institution as defined in paragraph (b) whose Medicaid eligibility is based on blindness or disability, the State of residence is the State in which the individual is living.

(3) For any other non-institutionalized individual not subject to paragraph (h)(1) or (h)(2) of this section, the State of residence is determined in accordance with 45 CFR 233.40, the rules governing residence under the AFDC program.

(4) For any institutionalized individual who is neither married nor emancipated, the State of residence is—

(i) The parent's or legal guardian's State of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's); or

(ii) The current State of residence of the parent or legal guardian who files the application if the individual is institutionalized in that State (if a legal guardian has been appointed and parental rights are terminated, the State or residence of the guardian is used instead of the parent's).

(iii) The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.

(i) *Individuals Age 21 and Over.* (1) For any individual not residing in an institution as defined in paragraph (b), the State of residence is the State where the individual is—

(i) Living with the intention to remain there permanently or for an indefinite period (or if incapable of stating intent, where the individual is living); or

(ii) Living and which the individual entered with a job commitment or seeking employment (whether or not currently employed).

(2) For any institutionalized individual who became incapable of indicating intent before age 21, the State of residence is—

(i) That of the parent applying for Medicaid on the individual's behalf, if the parents reside in separate States (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's);

(ii) The parent's or legal guardian's State of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's); or

(iii) The current State of residence of the parent or legal guardian who files the application if the individual is institutionalized in that State (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's).

(iv) The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.

(3) For any institutionalized individual who became incapable of indicating intent at or after age 21, the State of residence is the State in which the individual is physically present, except where another State makes a placement.

(4) For any other institutionalized individual, the State of residence is the State where the individual is living with the intention to remain there permanently or for an indefinite period.

(j) *Specific prohibitions.* (1) The agency may not deny Medicaid eligibility because an individual has not resided in the State for a specified period.

(2) The agency may not deny Medicaid eligibility to an individual in an institution, who satisfies the residency rules set forth in this section, on the grounds that the individual did not establish residence in the State before entering the institution.

(3) The agency may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

(k) *Interstate agreements.* A State may have a written agreement with another State setting forth rules and procedures resolving cases of disputed residency. These agreements may establish criteria other than those specified in paragraphs (c) through (i) of this section, but must not include

criteria that result in loss of residency in both States or that are prohibited by paragraph (j) of this section. The agreements must contain a procedure for providing Medicaid to individuals pending resolution of the case. States may use interstate agreements for purposes other than cases of disputed residency to facilitate administration of the program, and to facilitate the placement and adoption of title IV–E individuals when the child and his or her adoptive parent(s) move into another State.

(l) *Continued Medicaid for institutionalized recipients.* If an agency is providing Medicaid to an institutionalized recipient who, as a result of this section, would be considered a resident of a different State—

(1) The agency must continue to provide Medicaid to that recipient from June 24, 1983 until July 5, 1984, unless it makes arrangements with another State of residence to provide Medicaid at an earlier date: and

(2) Those arrangements must not include provisions prohibited by paragraph (h) of this section.

(m) *Cases of disputed residency.* Where two or more States cannot resolve which State is the State of residence, the State where the individual is physically located is the State of residence.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 436.403 is revised to read as follows:

§ 436.403 State residence.

(a) *Requirement.* The agency must provide Medicaid to eligible residents of the State, including residents who are absent from the State. The conditions under which payment for service is provided to out-of-State residents are set forth in § 431.52 of this chapter.

(b) *Definition.* For purposes of this section—"Institution" has the same meaning as "Institution" and "Medical institution", as defined in § 435.1009 of this chapter. For purposes of State placement, the term also includes "foster care homes", licensed as set forth in 45 CFR 1355.20, and providing food, shelter and supportive services to one or more persons unrelated to the proprietor.

(c) *Incapability of indicating intent.* For purposes of this section, an individual is considered incapable of indicating intent if the individual—

(1) Has an I.Q. of 49 or less or has a mental age of 7 or less, based on tests acceptable to the mental retardation agency in the State;

(2) Is judged legally incompetent; or

(3) Is found incapable of indicating intent based on medical documentation obtained from a physican, psychologist, or other person licensed by the State in the field of mental retardation.

(d) *Who is a State resident.* A resident of a State is any individual who:

(1) Meets the conditions in paragraphs (e) through (h) of this section; or

(2) Meets the criteria specified in an interstate agreement under paragraph (j) of this section.

(e) *Placement by a State in an out-of-State institution.* (1) *General rule*—Any agency of the State, including an entity recognized under State law as being under contract with the State for such purposes, that arranges for an individual to be placed in an institution located in another State, is recognized as acting on behalf of the State in making a placement. The State arranging or actually making the placement is considered as the individual's State of residence.

(2) Any action beyond providing information to the individual and the individual's family would constitute arranging or making a State placement. However, the following actions do not constitute State placement:

(i) Providing basic information to individuals about another State's Medicaid program, and information about the availability of health care services and facilities in another State.

(ii) Assisting an individual in locating an institution in another State provided the individual is capable of indicating intent and independently decides to move.

(3) When a competent individual leaves the facility in which the individual is placed by a State, that individual's State of residency for Medicaid purposes is the State where the individual is physically located.

(4) Where placement is initiated by a State because the State lacks a sufficient number of appropriate facilities to provide services to its residents, the State making the placement is the individual's State of residence for Medicaid purposes.

(f) *Individuals receiving title IV–E payments.* For individuals of any age who are receiving Federal payment for foster care and adoption assistance under title IV–E of the Social Security Act, the State of residence is the State making the payment.

(g) *Individuals Under Age 21:* (1) For any individual who is emancipated from his or her parents or who is married and capable of indicating intent, the State of residence is the State where the individual is living with the intention to remain there permanently or for an indefinite period.

(2) For any individual not residing in an institution as defined in paragraph (b) whose Medicaid eligibility is based on blindness or disability, the State of residence is the State in which the individual is living.

(3) For any other non-institutionalized individual not subject to paragraph (h)(1) or (h)(2) of this section, the State of residence is determined in accordance with 45 CFR 233.40, the rules governing residence under the AFDC program.

(4) For any institutionalized individual who is neither married nor emancipated, the State of residence is—

(i) The parents' or legal guardian's current State of residence at the time of placement; or

(ii) The current State of residence of the parent or legal guardian who files the application, if the individual is institutionalized in that State. If a legal guardian has been appointed and the parental rights are terminated, the State of residence of the guardian is used instead of the parent's.

(iii) The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.

(h) *Individuals Age 21 and Over.* (1) For any individual not residing in an institution as defined in paragraph (b), the State of residence is the State where the individual is—

(i) Living with the intention to remain there permanently or for an indefinite period (or if incapable of stating intent, where the individual is living); or

(ii) Living and which the individual entered with a job commitment or seeking employment (whether or not currently employed).

(2) For any institutionalized individual who became incapable of indicating intent before age 21, the State of residence is—

(i) That of the parents applying for Medicaid on the individual's behalf, if the parents reside in separate States;

(ii) The parent's or legal guardian's State of residence at the time of placement; or

(iii) The current State of residence of the parent or legal guardian who files

the application, if the individual is institutionalized in that State. If a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the legal parent's.

(iv) The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.

(3) For any institutionalized individual who became incapable of indicating intent at or after age 21, the State of residence is the State in which the individual is physically present, except where another State makes a placement.

(4) For any other institutionalized individual, the State of residence is the State where the individual is living with the intention to remain there permanently or for an indefinite period.

(i) *Specific prohibitions.* (1) The agency may not deny Medicaid eligibility because an individual has not resided in the State for a specified period.

(2) The agency may not deny Medicaid eligibility to an individual in an institution, who satisfies the residency rules set forth in this section, on the grounds that the individual did not establish residence in the State before entering the institution.

(3) The agency may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

(j) *Interstate agreements.* A State may have a written agreement with another State setting forth rules and procedures resolving cases of disputed residency. These agreements may establish criteria other than those specified in paragraphs (c) through (h) of this section, but must not include criteria that result in loss of residency in both States or that are prohibited by paragraph (i) of this section. The agreements must contain a procedure for providing Medicaid to individuals pending resolution of the case.

States may use interstate agreements for purposes other than cases of disputed residency to facilitate administration of the program, and to facilitate the placement and adoption of title IV–E individuals when the child and his or her adoptive parent(s) move into another State.

(k) *Continued Medicaid for institutionalized recipients.* An agency is providing Medicaid to an institutionalized recipient who, as a result of this section, would be considered a resident of a different State—

(1) The agency must continue to provide Medicaid to that recipient from June 24, 1983 until July 5, 1984 unless it makes arrangements with another State of residence to provide Medicaid at an earlier date; and

(2) Those arrangements must not include provisions prohibited by paragraph (g) of this section.

(l) *Cases of disputed residency.* Where two or more States cannot resolve which State is the State of residence, the State where the individual is physically located is the State of residence.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: December 8, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: March 12, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-8989 Filed 4-4-84; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 21136; FCC 84-105]

Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations

AGENCY: Federal Communications Commission.

ACTION: Policy amendment.

SUMMARY: On reconsideration, the Commission amends its policy governing underwriting and donor acknowledgments aired by public broadcast stations to permit the use of brand and trade names as well as product or service listings. This action will enhance the ability of public stations to generate more of their own financial support and thereby maintain and improve the quality of their service in the face of declining governmental funding. Prior Commission limitations in this regard were based upon the legislative history of the Public Broadcasting Amendments Act of 1981, which indicated that enhanced donor acknowledgments should only be allowed after further study of alternative funding sources was undertaken. That study has now been completed by submission of the final report of the Congressionally created Temporary Commission on Alternative Financing for Public Telecommunications. Additionally, the language of the *Memorandum Opinion and Order* in Docket No. 21136, 90 FCC 2d 895 (1982) (August 19, 1982; 47 FR 36171), is modified to clarify that public broadcasters are generally prohibited from engaging in fundraising activities that suspend or alter regular programming on behalf of any entity other than the station itself. Finally, it is clarified that both donor acknowledgments and underwriting credits are subject to the same restrictions regarding their scheduling and the information that they may include.

EFFECTIVE DATE: March 28, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lane Howard Moten, Mass Media Bureau (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

In the matter of Commission policy concerning the noncommercial nature of educational broadcasting stations; Docket No. 21136, FCC 84–105.

Adopted: March 28, 1984.
Released: March 29, 1984.

By the Commission.

Background

1. The *Second Report and Order* in Docket No. 21136 ("*Second Report*") [1] concluded a two year proceeding designed to evaluate the financial needs of public broadcasters and examine alternative methods of fundraising within the framework of providing a noncommercial service. The Commission liberalized prior restrictions upon public broadcasters' fundraising activities by amending 47 CFR 73.503 and 47 CFR 73.621. Subsequently, Congress enacted the Public Broadcasting Amendments Act of 1981 ("1981 Amendments") [2] to ensure that the public telecommunications media remained financially viable in the wake of substantial reductions in Federal funding by expanding public broadcasters' ability to generate increased private financial support.[3] The legislation contained in Section 399A [4]

[1] 90 FCC 2d 141 (1981).

[2] Section 1231 of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, 97th Cong., 1st Session (1981), amended the Communications Act of 1934.

[3] Section 399A provides:

(a) For purposes of this section, the term "business or institutional logogram" means any

Continued

and Section 399B [4] of the 1981 Amendments (47 U.S.C. 399A and 399B) closely paralleled the Commission's *Second Report*.[5] However, the Commission noted that the subsequently enacted legislation differed from the *Second Report* in several respects, and thus modified and clarified its rules and policies to conform to the Congressional mandate. *Memorandum Opinion and Order* in Docket No. 21136 ("*1982 Order*"), released July 30, 1982.[6] Among other things, the *1982 Order* reiterated Commission policy that donor acknowledgements could include informational—but not promotional—messages, and further clarified that policy to prohibit the specific mentioning, listing or promoting of a donor's product lines or services, thereby reconciling an apparent inconsistency between the *Second Report* and Section 399A. The Commission also construed the 1981 Amendments as not permitting the use of brand or trade names in underwriting acknowledgements aired by public broadcasters.[7]

2. Several petitions for reconsideration have been filed with the Commission regarding its clarification of the above policy. Additionally, an informal request for interpretation of the general impact and effect of the *1982 Order* has been filed. In the interest of expediting consideration of the issues raised, we will address both the petitions for reconsideration and the request for interpretation.

Petitions for Reconsideration

3. *Arguments.* The petitioners [8] requested that the Commission reconsider the *1982 Order* and permit the inclusion of brand or trade names of products or services in donor acknowledgements. It is argued that a specific reference to a donor's product or service does not compromise or jeopardize the noncommercial nature of public broadcasting, nor is it necessarily promotional in the absence of comparative or qualitative language. Rather, the inclusion of such references in donor acknowledgements is useful, and often necessary, where a brand or trade name has recognition value and a corporate underwriter's name does not.[9] NPR, PBS and NAPTS also represented that public broadcasters interpreted the *Second Report* to allow the nonpromotional identification of a specific product and/or service in donor acknowledgements, and revised their underwriting rules accordingly. They contended that this change resulted in a dramatic increase in donations and underwriting.[10] The elimination of specific references to products and/or services in donor acknowledgements, they stated, will hinder public broadcasters in their efforts to generate additional financial support from the private sector that is vital to their continued survival. Finally, most of the parties considered the Commission's posture in the *1982 Order* and its interpretation of the recent legislation to be unnecessarily restrictive, particularly in light of: (1) The broad statutory language of Section 399A which delineates the information that may be included in donor acknowledgements; and (2) the explicit grant of authority to the Commission to further regulate in this area.[11] They contended that the legislation marks a starting point from which the Commission could and should explore and expand public broadcasters' opportunities to broaden their financial base of support by attracting new, diverse sponsors and donors. In this respect, it should be noted that NPR differs from the other petitioners in that it construed Section 399A(c) as proscribing the Commission's power to regulate the content of donor announcements, confining our authority to the "manner" (*i.e.*, timing and frequency) of donor announcements. Finally, all the petitioners urged that a more liberalized approach to donor acknowledgements would serve the spirit and intent of the Public Broadcasting Amendments Act of 1981 by enhancing public recognition of donors as well as contributions from the business community.

4. In a related context, PBS, NAPTS and Schwartz sought reconsideration of that aspect of the *1982 Order* concerning logograms. They believe that it is

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aural or visual letters or words, or any symbol or sign, which is used for the exclusive purpose of identifying any corporation, company, or other organization, which is not used for the purpose of promoting the products, services, or facilities of such corporation, company or other organization.

(b) Each public television station and each public radio station shall be authorized to broadcast announcements which include the use of any business or institutional logogram and which includes a reference to the location of the corporation, company, or other organization involved, except that such announcements may not interrupt regular programming.

(c) The provisions of this section shall not be construed to limit the authority of the Commission to prescribe regulations relating to the manner in which logograms may be used to identify corporations, companies or other organizations.

[4] Section 399B provides, in pertinent part:

(a) For purposes of this section, the term 'advertisement' means any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended—

(1) To promote any service, facility or product offered by any person who is engaged in such offering for profit;

(2) To express the views of any person with respect to any matter of public importance or interest; or

(3) To support or oppose any candidate for political office.

(b)(1) Except as provided in paragraph (2), each public broadcast station shall be authorized to engage in the offering of services, facilities or products in exchange for remuneration.

(2) No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement.

* * * * *

[5] Essentially, the *Second Report*: (1) Eliminated the "name only" requirement for donor and sponsor acknowledgements and provided for the inclusion of informational, but not promotional, messages; and (2) permitted the broadcast of promotional announcements deemed in the public interest for which no consideration was received. Similarly, Section 399A permitted informational, but not promotional, messages in donor and sponsor acknowledgements and Section 399B prohibited the broadcast of promotional announcements for remuneration.

[6] 90 FCC 2d 895 (1982).

[7] Additionally, the Commission revised its rules to: (1) Restrict the scheduling of donor acknowledgements so that regular programming is not interrupted, consistent with section 399A; and (2) allow promotional announcements *sponsored* by nonprofit entities, consistent with Section 399B. The Commission also further clarified its policy to permit aural, as well as visual logograms in donor acknowledgements.

[8] Petitions for reconsideration were filed by National Public Radio (NPR); the National Association of Public Television Stations (NAPTS) and the Public Broadcasting Service (PBS); the Corporation for Public Broadcasting (CPB) and the law firm of Schwartz, Woods & Miller (Schwartz) on behalf of several public broadcast licensees.

[9] As NPR stated, "[T]here are many situations where attempted identification of a contributor without reference to its product by trade name is practically meaningless. For instance, the Great Water Company of France, Inc., is unknown to most people. But to say it is the bottler of 'Perrier' mineral water clearly identifies the company to many."

[10] In this regard, NPR stated:

Total revenues for NPR member stations from program underwriting grants for the year ending June 30, 1981, are estimated to have been about $4.2 million. This figure increased dramatically to about $7 million for the year ending June 30, 1982, due largely to the new more relaxed policies concerning acknowledgements, of which the use of trade names was a key factor. By being able to identify donors more clearly and explicitly radio licensees were able to increase support from the business community by nearly 75% in just one year. [They] project that there currently exist program underwriting agreements with public radio stations with a total value of over $1 million which specifically involve mentioning the program underwriter's product or service by trade name. Further, at the time of the release of the [1982] Order, public radio stations were involved in negotiations with prospective program underwriters on agreements with a total value of $2.5 million specifically contemplating the use of trade names in the acknowledgement announcements and which, in the judgment of the stations, are likely not to be consumated in view of the *[1982] Order* restricting the use of trade names.

[11] Section 399A, as proposed in H.R. 3238, was fully adopted by the Conference Committee. However, the Conference Committee also added the provision contained in Section 399A(c) empowering the Commission to further regulate in this area. *See* n.3, *supra*.

unnecessary and inappropriate to distinguish logograms that promote (as unacceptable) from those that merely identify (as acceptable), and that such distinctions only create confusion and uncertainty. Schwartz noted:

> [L]ogograms serve a critical identifying function which transcends whatever slight promotional element may inhere in them. The only rational approach in this area is to view all *bona fide* logograms as proper devices which serve the fundamental purpose of generic identification.

Moreover, according to NAPTS and PBS, corporations mainly contribute funds to public broadcasting to improve their image by association with quality programming, and that their logograms not only identify corporations but project their image by representing their "face[s] to the world." They concluded that inclusion of all logograms, as with brand and trade names, would encourage and facilitate greater contributions to public broadcasting and would more fully identify corporate donors.

5. As an alternative to further liberalizing Commission rules to permit the inclusion of a brand or trade name and all logograms in donor announcements, NPR, CPB and Schwartz offered various suggestions. NPR also believed that the *1982 Order* cast a heavier burden upon public radio than public television since it did "not appear to limit the use of pictorial designs or symbols which may also be trademarks of donors in the acknowledgement announcements broadcast by public television stations, "yet public radio stations, which cannot make use of such visual symbols or signs, were granted no equivalent flexibility. NPR, thus, recommends that the Commission afford public radio stations greater opportunities to attract financial support by allowing them to broadcast "trade names in acknowledgement announcements in lieu of the visual trademark which television stations are still able to use."

6. Unlike the other petitioners, CPB viewed a general rule permitting a brand or trade name in every announcement as unnecessarily broad and contrary to the "identification vs. promotion" test established by the *Second Report* and ratified by Congress in Section 399A. CPB proposed a more limited standard, whereby a brand or trade name would be allowed if the underwriter does not offer products or services under its corporate name. CPB declared that "this standard provides an objective test of whether an underwriter will be recognized under its corporate name, and, therefore, whether use of the trade name is necessary for the purpose of identifying the underwriter to the public."

7. Finally, Schwartz suggested that if the Commission determines not to modify its underwriting rules, a transitional period for the implementation of the *1982 Order* is warranted. Since public broadcasters had construed the *Second Report* as sanctioning the inclusion of a brand or a trade name in donor announcements, they had changed their underwriting rules and, "produced programs, or made commitments to produce programs, which include such credits." Schwartz stressed that "it would be unfair to require that substitute credits be produced for this programming, because of the cost involved and because of the problems which might be created with respect to some underwriters which expected credit in the form normally provided by the licensees as of the date of their donation commitments."

8. *Discussion.* Essentially the issues raised by the petitions involve statutory construction. At the outset, we note that, contrary to NPR's assertion, we do not believe that Section 399A(c) undercuts our authority to regulate commercial speech on public broadcasting stations. 47 U.S.C. 303 (a) and (b) generally empowers the Commission to classify radio stations and to determine and prescribe the nature of the service rendered by each designated class of licensed stations. Pursuant to that power, the Commission's authority to "establish categories of communications services, confine their use to particular frequencies and determine the kinds and types of communications which fall within the authorized categories"[12] is well recognized and long established.[13] Rather than constraining this authority, we construe Section 399A(c) as explicit recognition of the Commission's general regulatory function, specifically directing us to further exercise our rule making authority in a manner consistent with the 1981 Amendments.

9. Section 399A ratified and codified the "identification vs. promotion" standard for donor acknowledgements enunciated in the *Second Report.* In delineating the information which these acknowledgements may incorporate, section 399A provided for the nonpromotional use of visual or aural logograms (*i.e.*, any "letters or words, or any symbol or sign, which is used for the exclusive purpose of identifying" the donor and "which is not used for the purpose of promoting the [donor's] products, services or facilities" and permitted identification of the donor's location. But, as we observed in the *1982 Order*, Section 399A did not address the permissibility of including information regarding the donor's specific product lines or services.[14] Since the statute was silent, we reviewed the associated legislative history carefully. Because the Senate and the Conference Committee accepted the House provisions without issuance of explanatory reports, the *House Report* became the source for our analysis. The *House Report* declared that "logograms [and slogans should] be value neutral, and solely for the purpose of generic identification . . ." and that "products or services [or the listing of products or services should not be] included as part of such announcements at this time."[15] The subsequent examples given of permissible and impermissible donor acknowledgements under this standard clearly indicated that the use of brand or trade names was not allowed.[16]

10. Given this explicit language, we determined in our *1982 Order* that it was inappropriate at that time to allow the use of trade names, or product and service listings. It is important to note, however, that the concerns expressed in the *House Report* were not based on a finding that expanded donor acknowledgements were incompatible with public broadcasting service or that this mechanism would prove ineffective as a means of enhancing self-generated financial support for public stations. To the contrary, after describing the Commission's *Second Report*, in which we initially sanctioned enhanced underwriting acknowledgements, the *House Report* stated:

> The Committee endorses this effort, particularly in light of declining Federal funds, and supports the Commission's belief that these changes will not change the nature of the noncommercial service that stations have been licensed to serve."

Rather, the restrictions imposed by the *House Report* on such enhanced donor acknowledgement techniques as product or service listings were founded on a perception that the *Second Report* "went too far *in a single step*" (emphasis added). This sensitivity to the timing,

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[12] *First Report and Order* in Docket No. 21136, 66 FCC 2d 200, 204 (1978).

[13] *See, e.g., Gross v. FCC*, 460 F. 2d 1258 (2d Cir. 1973) (FCC has the power to prohibit commercial messages on amateur radio station facilities); and *Lafayette Radio Electronics Corp. v. U.S.*, 345 F. 2d 278 (2d Cir. 1965) (FCC has the power to limit the uses of Citizens Radio stations).

[14] *1982 Order* at 952.

[15] *House Report, supra* at 26.

[16] "[A] logogram * * * could not contain: 'XXYZ Oil Corporation, of New York, manufacturers of Super 94 unleaded gasoline.'" *House Report, supra* at 23.

[17] *House Report, supra* at 23.

rather than the substance, of permitting more expansive underwriting acknowledgements was repeatedly underscored elsewhere in the *House Report*. It stated, for example, that:

> In limiting the Commission's decision to allow listings of products and services, the Committee intends that no such listings be allowed *until* the changes made in the legislation are more fully evaluated. The Committee intends to review this area more fully as part of its consideration of the Commission (TCAF) study required by the bill (emphasis added).[19]

11. Almost three years have passed since the enactment of the 1981 Amendments. There are now substantial indications that expanded underwriting acknowledgements can significantly benefit public broadcasters.[19] Moreover, the Temporary Commission on Alternative Financing for Public Telecommunications (TCAF), established by the 1981 Amendments, has completed its study and has submitted its final report to Congress.[20] TCAF exhaustively studied and evaluated funding sources that would augment the dwindling Federal support available for public broadcasting. Part of their statutory charge was to make recommendations for new funding sources that would enhance public broadcasting's income from private sources while still preserving the independence and quality of public broadcasting programs.[21] After concluding its comprehensive review of not only alternative funding sources but also the public broadcasting industry and the public it serves, TCAF found that broadened guidelines for program underwriting would indeed help to provide much needed revenues for public broadcasting services. The *TCAF Report* specifically recommended that Congress:

> Direct the Federal Communications Commission to modify its policies concerning underwriting acknowledgements to permit public broadcasters to identify supporters by using brand names, trade names, slogans, brief institutional type messages and public service announcements.[22]

12. In view of these developments, we believe that the conditions set forth in the *House Report* as the basis for its limitations on the use of enhanced donor acknowledgements by public broadcasters have now been met and that the restraints imposed by our *1982 Order* in response to the *House Report* are ripe for reexamination. In this regard, we again note that the statutory language of Sections 399A and 399B does not itself restrict enhanced underwriting acknowledgements as herein described and that the provisions of Section 399A(c) support our belief that we are not constrained statutorily from exercising our general rule making power in this area.

13. After reviewing the restrictions embodied in our *1982 Report*, the arguments presented by the parties to this proceeding, and the specific findings and recommendations of the TCAF, we are persuaded that it is now advisable as a matter of policy and permissible as a matter of statutory authority to authorize public broadcast stations to expand the scope of their underwriting announcements. As we recognized in the *Second Report*, and as both the *House Report* and the *TCAF Report* indicated, this mechanism offers significant potential benefits to public broadcasters in terms of improving the financial self-sufficiency of the service, yet, properly limited, does not threaten its underlying noncommercial nature. Accordingly, we are granting the petitions for reconsideration to the extent that henceforth public broadcast stations will be permitted to use trade and brand names, as well as product and service listings, in their donor acknowledgements. We emphasize, however, that such announcements may not include qualitative or comparative language and that this action is not to be construed as allowing advertisements, as defined in Section 399B, to be carried by public broadcasting stations. To summarize, donor acknowledgements utilized by public broadcasters may include (1) logograms or slogans which identify and do *not* promote, (2) location, (3) value neutral descriptions of a product line or service, (4) brand and trade names and product or service listings.

Request for Interpretation or Clarification

14. The State of Wisconsin-Educational Communications Board and Ohio State University, licensees of noncommercial stations ("licensees"), filed an informal request for interpretation of the *1982 Order*, in which they posed the following questions for our consideration:

(1) How often may underwriting announcements be broadcast and in what manner with respect to program format?

(2) In the context of announcement schedules, what constitutes regular programming?

(3) Are public broadcasting licensees now permitted to interrupt regular programming to raise funds for non-station purposes?

The licensees expressed concern that public broadcasters "may be unnecessarily inconvenienced" if these questions remain unresolved. In the interest of avoiding possible confusion and inconvenience, we will address the licensee's concerns and discuss each question separately.

15. First, the licensees claimed that public broadcasters should be allowed to schedule underwriting announcements, as opposed to donor acknowledgements, at their discretion—unhampered by the limitation that such announcements shall not interrupt programming. They suggested that public broadcasters should be permitted to schedule underwriting announcements "at places in the sponsored program and with such frequency as full disclosure and identification of the sponor may warrant." In this regard, they noted that underwriting announcements are mandatory under 47 U.S.C. 317 and 47 CFR 73.1212 if consideration (in the form of programming, material, money, services or other valuable consideration) is provided as an inducement for the broadcast of specific programming, whereas announcements acknowledging general monetary or other in-kind contributions are discretionary. Given the mandatory nature of underwriting sponsorship indentification announcements and the importance of informing the public by whom they are being persuaded [23], they declared that such announcements should be accorded different treatment.

16. The *Second Report* eliminated all timing and frequency restrictions for the broadcast of underwriting and donor acknowledgements since audience resistance was viewed as a sufficient deterrent to the excessive scheduling of acknowledgements. However, the subsequently enacted legislation, contained in Section 399A, not only delineated that information which may be included in credit acknowledgements, but further contained a caveat: the scheduling of such acknowledgements may not

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[18] *House Report, supra* at 24.

[19] *See* n. 10, *supra*.

[20] *Temporary Commission on Alternative Financing for Public Telecommunications*, Report to Congress (October 1, 1983). Hereafter *TCAF Report*.

[21] Omnibus Budget Reconciliation Act of 1981, *supra* n.2 at § 1232(a)(3).

[22] *TCAF Report, supra* at 45. Moreover, we note that in a joint letter to the Commission dated March 8, 1984, both the Chairman of the Senate Subcommittee on Communications and the Chairman of the House Subcommittee on Telecommunications, Consumer Protection and Finance concluded that it would be appropriate at this time for the Commission to review its policy concerning underwriting acknowledgements aired by public broadcast stations.

[23] Applicability of Sponsorship Identification, 40 FCC 2d 141 (1983).

interrupt regular programming. Section 399A did not distinguish between underwriting and donor acknowledgements, rather, both types of acknowledgements are treated alike. As previously stated in our *1982 Order*, we changed our rules to conform to the legislation, and accordingly imposed the same restriction upon the scheduling of underwriting and donor aknowledgements. Therefore, irrespective of the different nature and underlying purpose of underwriting acknowledgements, as opposed to donor acknowledgements, all such acknowledgements are subject to the same restrictions regarding: (1) Information that may be included; (2) scheduling.

17. Second, the licensees asserted that the limitation upon the scheduling of acknowledgements (*i.e.*, underwriting and donor acknowledgements) may inhibit station fundraising activities which include—but are not limited to—auctions, marathons, and pledge weeks. They stated that the scheduling limitations on acknowledgements should not apply to fundraising activities, since such activities are not considered part of the station's regular programming.

18. In the *1982 Order*, "regular programming" was refered to and discussed in terms of its conventional meaning. Clearly, regular programming encompasses those programs which the public broadcaster ordinarily carries, but does not encompass those fundraising activities that suspend or alter their normal programming fare. Thus, during periods in which such fundraising activities are being conducted the restriction that acknowledgements shall not be scheduled so as to interrupt regular programming would neither be applicable nor appropriate, and the public broadcasters are free to broadcast acknowledgements as often and for as long as they choose, so long as the content of the acknowledgements is consistent with the governing legislative and regulatory rules.

19. Third, the licensees stated that in the *1982 Order* we instituted a substantive change, without any discussion, of our prior policy regarding the prohibition against on-the-air suspended fundraising activities on behalf of other organizations. They cited the *1982 Order* as providing that "* * * public broadcasters are generally prohibited from engaging in fundraising on behalf of any entity *other than the licensee* where such activities substantially alter or suspend regular programming" *(emphasis added)* [34] and compared that language to that of the *Second Report* which provided that "* * * station fundraising activities which significantly alter a station's normal programming, including auctions, marathons, membership drives, etc. should be carried on for the benefit of the *station only*, and not for other organizations *(emphasis added)*." [35] They contended that the substitution of the term "licensee" for that of "station" extends the permissible area of suspended programming beyond those activities designed to raise support for the station's operations to include activities designed to benefit the licensee's other non-station institutional business or state operations. Consequently, they feared that "stations licensed to such entities may be increasingly importuned to conduct fundraising appeals for other departments of agencies of the licensees."

20. The licensees' point is well taken. In the *1982 Order* the terms noncommercial or public broadcasting stations or licensees were used interchangeably. However, in the context of suspended fundraising activities the substitution of "licensees" for "station" had the unintended effect of expanding potential beneficiaries beyond that of the station, itself. Therefore, we will henceforth interpret and limit the language of the *1982 Order* as applying to *station operations* only. In the absence of a waiver, noncommercial stations are prohibited from conducting any fundraising activity which substantially *alters* or *suspends* regular programming and are designed to raise support for any entity other than the station itself. [36]

Conclusion

21. In accordance with the Public Broadcasting Amendments Act of 1981, we are granting the Petitions for Reconsideration to allow the broadcast of specific brand or trade names and product or service listings. Therefore, donor acknowledgements may include: (1) A logogram or slogan that identifies but does not promote; (2) locations; and (3) value neutral descriptions of a product line or service; (4) trade names, product or service listings that aid in identifying the donor. Additionally, the language of the *1982 Order* [37] is modified, to clarify that public broadcasters are generally prohibited from engaging in fundraising activities which suspend or alter regular programming on behalf of any entity other than the station itself.

Accordingly, it is ordered that, the "Petitions for Reconsideration" are granted, to the extent indicated above.

It is further ordered that, the "Request for Interpretation or Clarification" is granted, to the extent indicated above.

It is further ordered that, the Secretary shall cause this *Memorandum Opinion and Order* to be printed in the FCC Reports.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

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BILLING CODE 6712-01-M

[34] *1982 Order*, *supra* at 907.

[35] *Second Report*, *supra* at 158.

[36] It should also be noted that the licensees urged that 47 CFR 73.503 and 73.621 be revised. The pertinent language as changed by the *Second Report*, is as follows: "Moreover, acknowledgements of contributions can be made" (emphasis added). They recommended that "may" be substituted for "can," since the sentence acknowledges the permission for such announcements, not their ability to be broadcast." We agree that the suggested change is grammatically correct. However, we do not believe that amendment of the rules to incorporate this change is warranted. It is evident that our rules are not intended as mere observations concerning the physical capacity of public stations to transmit these announcements, but instead are intended to address the permissibility of airing them. In any event, both of the subject rule sections contain note references to the *Second Report* and the *1982 Order*, should further clarification of this point be required.

[37] *1982 Order* at 907.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Giant Panda and Indian Snakes Added to Appendices of Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of amendments to appendices; final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain wild animal and plant species. Appendices I, II, and III to this treaty contain lists of species for which trade is controlled.

The Republic of India recently added seven species of snakes to Appendix III, for which the listing takes effect on February 12, 1984: the olive keelback water snake, dog-faced water snake, checkered keelback water snake, Indian rat snake, Indian cobra, king cobra, and Russell's viper. Also, the People's

Republic of China proposed transferring the giant panda from Appendix III to Appendix I. This amendment takes effect on March 14, 1984.

The Service issues the present notice to inform the public about these changes in the appendices and to incorporate the amendments into regulations implementing CITES.

DATE: This rule is effective April 5, 1984.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received on the amendments are available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of the Scientific Authority, room 537, 1717 H Street NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species at ports of entry. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs cooperation of other Parties in controlling trade.

Snakes

In accordance with the provisions of Article XVI (1) of CITES, the Republic of India submitted to the CITES Secretariat the following species for inclusion in Appendix III:

Class Reptilia

Order Squamata
Family Colubridae—
Atretium schistosum (olive keelback water snake)
Cerberus rhynchops (dog-faced water snake)
Natrix piscator (checkered keelback water snake)
Ptyas mucosus (Indian rat snake)
Family Elapidae—
Naja naja (Indian cobra)
Ophiophagus hannah (king cobra)
Family Viperidae—
Vipera russellii (Russel's viper)

The trade in specimens of species included in Appendix III requires export permits from the nation that has included the species in the appendix, and from other nations it requires prior presentation of certificates of origin or, in the case of re-export, a foreign re-export certificate must be obtained prior to importation. Any specimen of these species, whether alive or dead, is covered by the provisions of CITES. India has specified that any readily recognizable part or derivative of these species also should be covered by those provisions.

As a Party to CITES, the United States has an opportunity to reserve on amendments to the appendices. Article XVI of CITES enables any Party to exempt itself from implementing CITES for a particular species in Appendix III if it makes a reservation with respect to that species. It must do so during the period of 90 days after the Secretariat notifies the Parties of an amendment.

The Service received only three comments on the question of a reservation in response to a **Federal Register** notice on the listing of snakes by India (49 FR 2128; January 18, 1984). Mr. Armand S. Bennett of Columbia Impex Corporation wrote in favor of a reservation, but later indicated that he supported the listing (pers. comm. with Dr. R. L. Jachowski on January 24, 1984). Dr. Donald Bruning submitted a statement in favor of the listing on behalf of the New York Zoological Society. Dr. Linda McMahan of TRAFFIC (U.S.A.) provided data on international trade in *Ptyas mucosus* and requested the Service to support the listing of snakes by India.

In the absence of strong reasons for entering a reservation, the Service did not seek to do so. The listing of the seven species of snakes on Appendix III entered into effect for the United States and all other nonreserving Party nations on February 12, 1984.

Giant Panda

In accordance with the provisions of Article XV(2) of CITES, the People's Republic of China submitted to the CITES Secretariat a proposal to transfer the giant panda (*Ailuropoda melanoleuca*) from Appendix III to Appendix I. The Service received one comment in response to its notice about this proposal (48 FR 49867; October 27, 1983). Dr. Wilbur B. Amand of the Zoological Society of Philadelphia wrote to encourage the Service to support this proposal. The Service has determined that the proposal is appropriate and has not sought a reservation.

The CITES Secretariat reported that it received no objection from any Party to this proposal, and that the transfer to Appendix I would take effect for all non-reserving Parties on March 14, 1984. The listing of the giant panda in Appendix I establishes CITES permit requirements for international trade in any specimen of this species, whether alive or dead, and any readily recognizable part or derivative thereof.

This notice was prepared by Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service.

Note.—The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This rule implements changes that have occurred in the list of species in the CITES appendices, and to which the United States is bound according to the terms of CITES. The period of time during which the United States could have entered a reservation on any of these amendments has ended. Earlier **Federal Register** notices informed the public about these amendments and allowed an opportunity for comment on them. Therefore, the Department has determined that good cause exists for making this rule effective upon publication (5 U.S.C. 553(d)).

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Regulation Promulgation

For reasons given in the preamble of this notice, Part 23 of Title 50, Code of Federal Regulations, is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 reads as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-43.

2. Amend paragraph (d) of § 23.23 by adding to the list the following species of animals in alphabetical order under the appropriate taxonomic categories:

§ 23.23 [Amended]

* * * * *

Species	Common name	Appendix	Date listed (month/day/year)
Class Mammalia:	Mammals:		
•	•	•	•
Order Carnivora	Carnivores: Cats, Bears, etc.:		
•	•	•	•
Alurpoda melanoleuca.	Giant panda	I	3/14/84
•	•	•	•
Class Reptilia:	Reptiles:		
•	•	•	•
Order Squamata:	Lizards, Snakes:		
•	•	•	•
Abaetulla scheloeuca.	Olive keelback water snake.	III (India)	2/12/84
•	•	•	•
Cerberus rhynchops.	Dog-faced water snake.	III (India)	2/12/84
•	•	•	•
Natrix piscator.	Checkered keelback water snake.	III (India)	2/12/84
•	•	•	•
Ptyas mucosus.	Indian rat snake, whipersnake.	III (India)	2/12/84
•	•	•	•
Naja naja	Indie cobra	III (India)	2/12/84
•	•	•	•
Ophiophagus hannah.	King cobra	III (India)	2/12/84
•	•	•	•
Vipera russelli	Russell's viper	III (India)	2/12/84

Dated: March 19, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-8857 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-67-M

Proposed Rules

Federal Register
Vol. 49, No. 67
Thursday, April 5, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1004, 1033, 1036, 1049, 1062, 1064, and 1065

[Docket No. AO-160-A63 et al.]

Milk in the Middle Atlantic and Certain Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO-160-A63.
1033	Ohio Valley	AO-166-A62-RO1.
1036	Eastern Ohio-Western Pennsylvania	AO-179-A47.
1049	Indiana	AO-319-A32.
1062	St. Louis-Ozarks	AO-10-A55.
1064	Greater Kansas City	AO-23-A54.
1065	Nebraska-Western Iowa	AO-86-A41.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by cooperative associations to amend six Federal milk marketing orders that contain Advertising and Promotion Programs. Also, the Ohio Valley hearing will be reopened for the limited purpose of receiving additional evidence with respect to a proposal to establish an Advertising and Promotion Program.

The proposals would establish a uniform 10-cent per hundredweight assessment on all milk marketed by producers in the six marketing areas to fund the Federal Order Advertising and Promotion Programs. In some orders the funds would be withheld by the individuals who pay producers and remitted to the market administrators who then would disperse the monies to the Advertising and Promotion Agencies. Any refunds requested by producers would be submitted either to the National program or to a designated qualified State or regional program. Such provisions would be in effect for the duration of the recently promulgated National Dairy Promotion Program.

The proponents consider this action necessary in order to insure an alignment of the Federal Order Advertising and Promotion Programs with the National Advertising and Promotion Program. The proponents have urged that the hearing be held and the orders amended on an expedited basis.

DATE: The hearing will convene at 10:00 a.m., local time, on April 18, 1984.

ADDRESS: The hearing will be held at the Ramada Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia 22314, (703) 683-6000.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia, beginning at 10:00 a.m., local time on April 18, 1984, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Middle Atlantic; Ohio Valley; Eastern Ohio-Western Pennsylvania; Indiana; St. Louis-Ozarks; Greater Kansas City; and Nebraska-Western Iowa marketing areas.

In view of the request for expedited action, the Department has concluded that shorter than usual notice of the hearing is warranted in this proceeding.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions in each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1004, 1033, 1036, 1049, 1062, 1064, and 1065

Milk marketing orders, milk, Dairy products, Promotion and advertising.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Mid-America Dairymen, Inc.

Amend the Advertising and Promotion provisions of the St. Louis-Ozarks, Greater Kansas City, and Nebraska-Western Iowa orders as follows:

1. Provide for a withholding rate of 10 cents per hundredweight as long as the National Milk Promotion Program is in effect.

2. Provide that producers who desire not to participate in the Order Advertising and Promotion Program shall have their funds sent to the National Milk Promotion Program.

3. Provide that handlers paying producers shall remit 10 cents per hundredweight to the Market Administrator for the volume of their producer payrolls instead of the Market Administrator making the deduction from the uniform price.

Proposed by Inter-State Milk Producers' Cooperative, Maryland and Virginia Milk Producers Association, Inc., Dairymen, Inc.—Middle Atlantic Division, Capitol Milk Producers Cooperative, Inc., and The Valley of Virginia Cooperative Milk Producers Association

Amend the Advertising and Promotion provisions of the Middle Atlantic order as follows:

4. Add to § 1004.120(d) the following language * * * provided that such payments are payments to a qualified advertising and promotion program with such status to be determined by the Secretary of Agriculture and by the National Promotion and Research Order established under Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, and further provided that producers receive credit for such payments against their individual obligations under the National Promotion and Research Order.

5. Provide a new section, § 1004.120(e), to read as follows: In requesting a refund pursuant to § 1004.120(a), (b), or (c) above, a producer may further request that such refund be paid to a qualified advertising and promotion program with such status to be determined as provided in § 1004.120(d) above, and further provided that producers receive credit for such payments against their individual obligations under the National Promotion and Research Order, provided, further, that if a producer does not designate a qualified advertising and promotion program to receive such refund, that such refund will be paid to the National Promotion and Research Order Board established under Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983.

6. Amend §1004.120(c) to read as follow: Upon first acquiring producer status under this part, a dairy farmer shall, upon application filed with the market administrator pursuant to paragraph (a) of this section by the end of the month immediately following the month in which producer status is acquired, be eligible *to apply* for refund on all marketings against which an assessment is withheld during the current calendar year and if producer status was first acquired in December such producer shall be eligible *to apply* for a refund on all marketings during December and the following calendar year. (Changed language underlined.)

7. Provide a new section § 1004.120(f); to read as follows: In no instance, except as provided in § 1004.121(b)(2), shall refunds be paid to the producer requesting refunds pursuant to § 1004.120(a), (b) or (c).

8. Add to § 1004.121(b)(2) the following language: * * * provided that such advertising and promotion programs are qualified advertising an promotion programs with such status to be determined by the Secretary of Agriculture and the National Promotion and Research Order established under Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, and further provided that producers receive credit for such payments against their individual obligations under the National Promotion and Research Order, as above.

9. Amend § 1004.121(b)(4) to read as follows: After the end of each month, make a payment to the qualified agency designated by the producer requesting a refund pursuant to § 1004.120(a), (b), and (c), or to the National Promotion and Research Order Board if no qualified promotion agency is designated. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made on behalf of the producer pursuant to paragraph (b)(2) and (3) of this section.

10. Add to § 1004.121(e) the following language: Provided further that for the effective duration of National Promotion and Research Order provisions, the rate of withholding shall be 10 cents per hundredweight.

11. Add a new section, § 1004.123 "Obligation of Persons Paying Producers" to read as follows: Persons making payment to producers under this section will be responsible for remitting to the National Promotion and Research Order Board 5 cents per hundredweight of such producer milk.

Proposed by Milk Marketing Inc.

Amend the Advertising and Promotion provisions of all federal milk orders having such provisions as follows:

12. All Advertising and Promotion programs under federal orders should have a standard 10-cent deduction for the duration of the national program.

13. The minimum uniform price to producers should be announced before the Advertising and Promotion deduction is made.

14. Producers who do not wish to have their withholdings spent by the local agency should be allowed to have their withholdings sent to the national agency.

15. Make any other conforming changes that will allow for the most efficient administration of federal order programs in coordination with the national program, including the proper designation of the "responsible person" to make deductions and assignment of refunds.

Proposed by the Dairy Division, Agricultural Marketing Service: Proposal No. 16

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of each of the aforesaid specified marketing areas, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator of each of the orders for the aforesaid specified marketing areas.

Procedual matters are not subject to the above prohibition and may be discussed at any time.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on April 3, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-8170 Filed 4-4-84; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of April through September 1984 the requirement in the Southern Michigan Federal milk order that a cooperative association deliver to pool distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order. On the basis of a previous request, this requirement was suspended during December 1983 through March 1984. Continuation of the suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The association claims that the action is needed to avoid inefficient handling of milk and to ensure that dairy farmers historically associated with the Southern Michigan market will continue to share in the market's fluid milk sales.

DATE: Comments are due April 12, 1984.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accure from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Michigan marketing area is being considered for April through September 1984:

1. In § 1040.7(b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), paragraphs (i) and (ii).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include April 1984 in the suspension period if this is found necessary.

The comments that are received will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for the months of April through September 1984 the provisions requiring a cooperative association to deliver at least 50 percent of its members' producer milk to pool distributing plants, either through its supply plants or directly from farms, in order to qualify the supply plants as pool plants.

Michigan Milk Producers Association (MMPA), which represents a majority of the producers supplying the market, requested the suspension.

MMPA expressed concern that the market is in an unsettled state for several reasons, which makes it unlikely that it will be able to meet the 50 percent requirement. The following items were cited as reasons why a suspension is requested:

—Milk production pooled under the Southern Michigan order in 1983 was up 4.5 percent from 1982.

—Participation in the paid diversion program designed to reduce milk output was less than had been hoped for and may not achieve the four percent production reduction that earlier had been projected for Michigan.

—Although Class I milk sales have shown increases in recent months in the Michigan area, the increasing trend was reversed abruptly when the Kroger Company closed its plant at Livonia, Michigan, in mid-February. During March, MMPA said, nearly 20 million pounds of milk sales will be lost to the cooperative because the Michigan sales now are being supplied by two plants located outside Michigan.

—In March, the percent of MMPA's producer milk receipts delivered to distributing plants from supplies included in its unit are projected to reach only 48 percent. Lesser amounts are projected for the months ahead.

Accordingly, MMPA requests that the suspension of the aforesaid provisions, which has been in effect since December 1983, be extended to also cover the months of April through September 1984.

MMPA also expressed the view that granting the proposed suspension would not result in any shifts of producer milk from adjacent areas to the Southern Michigan market.

The association said that the suspension is needed to avoid the inefficient handling of milk merely to assure pooling of supply plants and to ensure that dairy farmers who have been historically associated with the Southern Michigan market will continue to share in the fluid milk sales of the market.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, D.C., on: April 2, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-0000 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-ASW-31]

Airworthiness Directives; Sikorsky S-61 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would supersede AD 83-17-04 (Amendment 39-4706), which currently requires, for the Sikorsky S-61 helicopter, a 10-hour repetitive inspection of the main gearbox chip detector and oil system scavenge screen for steel particles and, if necessary, replacement of the gearbox. The proposed AD retains the schedule for

repetitive inspections and possible gearbox replacement, adds clarifying criteria for determining the need for gearbox replacement and, as a closing action, requires replacement of the spur gears with improved strength spur gears in conjunction with gearshaft realignment procedures. This proposed AD is needed to intercept impending spur gear failures which could result in sequential damage to the main gearbox and compel the crew to execute an emergency landing.

DATE: Comments must be received on or before May 18, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101. Comments must be marked: Docket No. 83-ASW-31.

The manufacturer's overhaul and maintenance instructions pertaining to the gearshaft alignment procedures referenced in this AD may be obtained from Sikorsky Aircraft, North Main Street, Stratford, Connecticut 06602. A copy of this document is contained in the Rules Docket in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Building 3B, Room 158, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT:
Wayne E. Gaulzett, ANE-153, FAA, New England Region, Boston Aircraft Certification Branch, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone No. (617) 273-7332.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 83-ASW-31." The postcard will be date/time stamped and returned to the commenter.

Reports of failures of the spur gear, P/N S6135-20608-1, in the main gearbox of Sikorsky S-61 helicopters and subsequent investigations which revealed possible misalignment of the spur gearshaft prompted the FAA to issue AD 83-17-04. That AD prescribed a repetitive inspection of oil screens and chip detectors to intercept impending failure of this spur gear. Subsequently, a more selective method for evaluating the results of the inspections required by AD 83-17-04 was developed, a gearbox inspection and reboring operation to alleviate gearshaft misalignment was developed, and an improved strength spur gear became available. Therefore, the FAA proposes to supersede AD 83-17-04 and issue a new AD which prescribes improved oil screen and chip detector inspection criteria, a requirement for inspecting and correcting gearshaft misalignment by reboring the gearboxes, and a requirement to install the improved strength spur gear.

Approximately 10 Sikorsky S-61 helicopters (of U.S. registry) could be affected by this proposal with only negligible costs to the operator.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Sikorsky Aircraft Division: Applies to all Sikorsky Model S-61 series helicopters, certificated in all categories, equipped with P/N S6135-20608-1 main transmission power input spur gears.

Compliance is required as indicated (unless already accomplished).

To intercept pending failure of either spur gear, P/N S6135-20608-1, in the main gearbox, accomplish the following:

(a) On all helicopters equipped with a functioning cockpit main gearbox chip detecting system, visually inspect the main gearbox oil scavenge screen for steel particles within the next 10 hours; time in service after the effective date of this AD and thereafter at intervals not to exceed 10 hours' time in service from the last inspection.

(b) On all helicopters not equipped with a cockpit main gearbox chip detecting system, visually inspect both the main gearbox chip detector and the oil scavenge screen for steel particles within the next 10 hours' time in service after the effective date of this AD and thereafter at intervals not to exceed 10 hours' time in service from the last inspection.

(c) Any magnetic steel particles found by inspecting either the chip detector or the scavenge screen will require replacement of the main gearbox before further flight unless the particles are (1) fine hairline particles, or (2) confirmed as originating from components other than the spur gear.

(d) If the inspections of paragraph (c) are inconclusive, the gearbox must be replaced or, at the option of the operator, the following maintenance tests may be conducted to evaluate the condition of the spur gear.

(1) Drain and refill the gearbox with an approved lubricant.

(2) Operate the helicopter at a safe height (below 5 feet), at a gross weight not less than 16,000 pounds, with a nominal neutral center of gravity, at 100 percent main rotor speed for one-half hour with one engine at 100 percent torque and the remaining engine at a torque level required to sustain safe hover. Repeat the procedure for one-half hour with the other engine at 100 percent torque and the remaining engine at a torque level required to sustain safe hover.

(3) Inspect the gearbox scavenge screen and the magnetic chip detector and apply the inspection criteria of paragraph (c), and if appropriate, reconduct the maintenance tests of paragraph (d) one time. Apply the inspection criteria of paragraph (c).

Note.—This procedure is not intended to authorize continued operation of the helicopter if any questionable safety condition is exposed by debris found when conducting these checks.

(e) Replace spur gear P/N S6135-20608-1 with spur gear P/N S6135-20608-3 and comply with Sikorsky Overhaul and Repair Instruction 6135-342, Revision A, or later revision, or FAA approved equivalent before further flight after June 30, 1985. The inspections of paragraphs (a), (b), and (c) may be discontinued for helicopters modified as required by this paragraph.

(f) Upon request, with substantiating data submitted through an FAA maintenance inspector, equivalent methods of compliance, adjustment in the inspection intervals, and adjustment in the replacement date may be approved by the Manager, Boston Aircraft Certification Branch, FAA, New England Region.

This amendment supersedes AD 83-17-04, Amendment 39-4706.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.85)

Note.— The FAA has determined that this proposed regulation provides clarification of the inspection criteria of a previously issued AD and eventually, replacement of the spur gears and possible modification of the gearbox of this helicopter. Replacement of the spur gears and modification of the gearbox is being accomplished by the manufacturer at no cost to the operator and adequate time has been allowed to conduct

these activities in conjunction with other major maintenance activities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation because the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, Texas, on March 19, 1984.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84-8868 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-ASW-78]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214ST Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) by changing a repetitive inspection interval from 25 hours to 250 hours. AD 82-26-07 requires modification of the upper left-hand longeron fitting installation and repetitive 25-hour visual inspections. Since adoption of the AD, service experience shows that no cracks have been found in modified longeron installations. Because of the critical nature of the part, the inspection requirement is being retained. However, service experience has confirmed that an increase in the number of hours' time in service between repetitive inspections is appropriate.

DATES: Comments must be received on or before May 11, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Counsel, Attention: Docket No. 82-ASW-78, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; or delivered in duplicate to: Office of the Regional Counsel, Southwest Region, Room 100, Building 3B, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Comments delivered must be marked: Docket No. 82-ASW-78.

Comments may be inspected at Room 100, Building 3B, between 8 a.m. and 4:30 p.m., Monday through Friday.

A copy of the service information is contained in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 100, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: H. A. Armstrong, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2079.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 100, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 82-ASW-78." The postcard will be date/time stamped and returned to the commenter.

This proposed rule, if adopted, would amend Amendment 39-4512 (47 FR 57258), AD 82-26-07, which currently requires modification of longeron P/N 214-031-431-101 and inspection at repetitive intervals not to exceed 25 hours' time in service. Since issuing Amendment 29-4512, the FAA has reviewed Bell Model 21ST service experience. Approximately 360 inspections have been performed on fifteen aircraft; no cracks have been found. The longeron modification required b Amendment 39-4512 has provided significant improvement in longeron strength. Therefore, the FAA proposes to amend Amendment 39-4512 by increasing the repetitive inspection interval from 25 hours to 250 hours for those Bell Model 214ST aircraft that have been modified as required by Amendment 39-4512.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by amending Amendment 39-4512 (45 FR 57258), AD 82-25-07, by revising paragraph (e) of the amendment to read as follows:

* * * * *

"(e) After installation of the longeron modification, conduct the following inspection at intervals not to exceed 250 hours' time in service:"

* * * * *

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.85)

Note.—The FAA has has determined that this proposed regulation only involves six U.S. registered aircraft. None of these aircraft is owned or operated by small entities. This proposed regulation reduces the man-hours required to perform the required repetitive inspections by 90 percent. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 10, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, Texas on March 21, 1984.

C. R. Melugin Jr.,

Director, Southwest Region.

[FR Doc. 84-8869 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-4]

Proposed Alteration of VOR Federal Airways, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign several VOR Federal Airways in

the vicinity of Huguenot, NY, to facilitate handling of low altitude arrivals to airports in the New York metropolitan area and to eliminate a conflict point at ELLAN Intersection.

DATES: Comments must be received on or before May 21, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 84–AWA–4, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Peppard, Airspace and Air Traffic Rules Branch (AAT–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AWA–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specific closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V–93, V–106, V–162, V–205 and V–489; and to amend V–167 by deleting that portion of V–167 that starts from Hancock, NY, and goes to Kingston, NY. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6 dated January 3, 1984.

List of Subjects of 14 CFR Part 7

VOR Federal Airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–93—[Amended]

By deleting the words "Pawling, NY;" and substituting the words "INT Lake Henry 056°T(066°M) and Pawling, NY, 274°T(286°M) radials; Pawling;"

V–106—[Amended]

By deleting the words "Pawling, NY;" and substituting the words "INT Lake Henry 056°T(066°M) and Pawling, NY, 274°T(286°M) radials; Pawling;"

V–162—[Amended]

By deleting the words "INT Huguenot 032° and Pawling, NY, 250° radials to Pawling." and substituting the words "INT Huguenot 032°T(043°M) and Pawling, NY, 274°T(286°M) radials to Pawling."

V–167—[Amended]

By deleting the words "From Hancock, NY; INT Hancock 120° and Kingston, NY, 274° radials; Kingston;" and substituting the words "From Kingston, NY;"

V–205—[Amended]

By deleting the words "INT Sparta 023° and Pawling, NY, 238° radials; Pawling;" and substituting the words "INT Sparta 023°T(034°M) and Kingston, NY, 256°T(268°M) radials; Kingston; Pawling, NY;"

V–489—[Amended]

By deleting the words "INT Sparta 023° and Kingston 238° radials; Kingston, NY;" and substituting the words "INT Sparta 023°T(034°M) and Kingston, NY, 256°T(268°M) radials; Kingston;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and (14 CFR 11.65)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on March 30, 1984.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-8885 Filed 4-4-84 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Reopening of Public Comment Period on Proposed Modifications of the Tennessee Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the reopening of the public comment period on the adequacy of proposed amendments to the Tennessee permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On September 30,

1983, Tennessee submitted for OSM's approval: (a) Modifications intended to satisfy condition (k) of the Secretary's approval of the Tennessee program concerning procedures for hearings and appeals and (b) amendments to the State regulations pertaining to blaster training and certification and performance standards for coal tipples, preparation plants and support facilities.

On November 8, 1983, OSM scheduled a 30 day public comment period and a public hearing on these amendments. On January 30, 1984, and February 10, 1984, Tennessee submitted to OSM additional materials related to these proposed amendments. The Director is scheduling a 15 day comment period to allow the public an opportunity to review and comment on the additional materials submitted by the State on January 30, and February 10, 1984.

DATE: Written comments must be received on or before 4:00 p.m. on April 20, 1984, to be considered in the Secretary's decision to approve or disapprove the proposed amendments.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 400, Knoxville, Tennessee.

Copies of the materials submitted by Tennessee on January 30, and February 10, 1984, and all written comments received in response to this notice will be available for review at the OSM Headquarters Office, the OSM Knoxville Field Office and the Office of the State Regulatory Authority, all listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 L Street NW., Washington, D.C. 20420

Office of Surface Mining Reclamation and Enforcement, Knoxville Field Office, 530 Gay Street SW., Suite 400, Knoxville, Tennessee

Tennessee Department of Public Health and Environment, Division of Surface Mining and Reclamation, 305 W. Springdale Avenue, Knoxville, Tennessee 37917.

FOR FURTHER INFORMATION CONTACT: Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 400, Knoxville, Tennessee.

SUPPLEMENTARY INFORMATION: The Tennessee program was conditionally approved the by the Secretary on August 10, 1982 (47 FR 34724–34754). The approval was conditional on the State's correction of 11 minor deficiencies in its program.

Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the conditions of approval of the Tennessee program can be found in the August 10, 1982 Federal Register (47 FR 34724–34754).

Proposed amendments

On September 30, 1983, Tennessee submitted for OSM's approval a program amendment intended to satisfy condition (k) of the Secretary's approval of the State programi as well as two program amendments not related to conditions of approval.

Following is a description of the amendments submitted by the State:

(1) In satisfaction of condition (k) of the Secretary's approval of the State program, Tennessee submitted a policy statement to clarify that the Tennessee program includes provisions which are consistent with the Federal standards at 43 CFR 4.1103, 4.1122, 4.1154, 4.1163, 4.1166, 4.1280, and 4.1281.

Condition (k) stipulates that Tennessee must submit promulgated regulations, a policy statement, an Attorney General opinion or other proof that the State program is no less effective than the Federal standards cited above.

(2) Tennessee also submitted for the Director's approval proposed regulations which establish requirements for the training and certification of blasters working in coal mines in Tennessee. The new requirements are set forth under proposed Chapter 0400–1–23 of Tennessee's program regulations.

(3) A third amendment submitted by the State sets forth proposed special performance standards for coal tipples at or near the minesite and preparation plants and support facilities not within the permit area for a mine. The proposed standards, if adopted, would replace the existing requirements under Rule 0400–1–21 of Tennessee's approved program. Also submitted by the State for OSM's approval were proposed definitions for "coal preparation plant", "coal preparation waste" and "coal tipples" to replace the existing definitions for those terms at Rule 0400–1–1–.03 subparagraphs (m), (n) and (o). Tennessee submitted proposed new defintions for "support facilities" and "transfer station" under Rule 0400–1–1–.03 subparagraphs (ssss) and (tttt). Copies of these amendments are contained in the OSM Administrative Record under No. TN–734.

On November 8, 1983, OSM announced receipt of the proposed amendments and scheduled a hearing and comment period on the adequacy of the amendments in satisfying condition k of program approval and in meeting the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17 (48 FR 51385).

The hearing was cancelled as no one requested an opportunity to present testimony. The comment period closed December 8, 1983. On December 23, 1983, OSM informed Tennessee in writing of its preliminary findings on the provisions and encouraged the State to submit additional materials to address deficiencies identified by OSM (Administrative Record No. TN–799).

On January 30, 1984, and February 10, 1984, Tennesee submitted additional materials to OSM for consideration in conjunction with the amendments submitted on September 30, 1983. These additional materials are available for public review at the OSM Administrative Record (Nos. TN–839 and TN–836).

OSM is seeking comment on the adequacy of these provisions, together with the provisions submitted on September 30, 1983, to satisfy condition k and meet the criteria for approval of State program amendments listed at 30 CFR 732.15 and 732.17.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and rgulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection

requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 30, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84-0139 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments To Implementing Regulations for the Currency and Foreign Transactions Reporting Act

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: These proposed procedural regulations would establish a mechanism through which the Secretary of the Treasury, exercising the authority conferred on him by 31 U.S.C. 5314, could issue substantive regulations requiring financial institutions in the United States to submit reports of financial transactions with foreign financial agencies. When the Secretary later actually issues substantive regulations, he would at that time specify what types, sizes, and classes of transactions and institutions would be covered. due to the significant growth of international financial transactions related to drug trafficking and other illegal activity, the Treasury Department plans to implement this new regulatory technique to deter such financial activity. It is proposed to make these amendments effective upon publication of the final rule.

DATE: Comments must be received on or before June 4, 1984.

ADDRESS: Address written comments to Robert J. Stankey, Jr., Financial Crimes & Frauds Advisor, Office of the Assistant Secretary (Enforcement & Operations), Department of the Treasury, Room 1458, 1500 Pennsylvania Ave., NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Robert J. Stankey, Jr., at the address previously specified. (202/566–8022).

SUPPLEMENTARY INFORMATION:

Background

The Currency and Foreign Transactions Reporting Act (Pub. L. No. 91–508, codified in 31 U.S.C. 5311 et seq.), contained in the Bank Secrecy Act, empowers the Secretary of the Treasury to require financial institutions to keep certain records and file certain reports. The reporting requirements are described in general terms in the statute. Title 31, United States Code, section 5313 authorizes the Secretary to require reports of monetary instrument or domestic currency transactions. Section 5314 authorizes the Secretary to require reporting of accounts in and transactions with foreign financial agencies. Finally, section 5316 authorizes the Secretary to require reports on exporting or importing of monetary instruments exceeding $5,000.

Since implementing regulations first became effective in 1972, reporting of currency transactions under section 5313 has been limited to filing by domestic financial institutions of reports on transactions equaling or exceeding $10,000. 31 CFR 103.22. The only reporting requirement imposed under section 5314 has been the disclosure of foreign financial *accounts*. 31 CFR 103.24. The section 5316 report on exported or imported monetary instruments exceeding $5,000 requires the disclosure of only limited information. 31 CFR 103.23.

In the twelve years since these reporting requirements were drafted, there has been a significant growth in international business dealings including, unfortunately, an enormous increase in the amounts of narcotics and other controlled substances being smuggled into the United States. The government's responsibility for intelligently and effectively thwarting such activity demands the development of new regulatory techniques—techniques that provide necessary information without unduly burdening commerce. One such technique that appears to offer great potential benefits involves the review, on a selective basis, of financial transactions related to international business dealings.

The Treasury Department has authority under the Currency and Foreign Transactions Reporting Act to employ an as yet unused regulatory technique which would facilitate review of international financial transactions, and help deter and combat transnational crime and fraud. The Secretary is authorized by 31 U.S.C. 5314(a) to requre reports not only on *accounts* but also on *transactions* with foreign financial agencies. The Secretary, however, is directed to structure such reports "* * * to avoid impeding or controlling the export or import of monetary instruments and * * * to avoid burdening unreasonably a person making a transaction with a foreign financial agency * * *." to this end, subsection 5314(b) authorizes the Secretary to prescribe:

(1) A reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section;

(2) A foreign country to which a requirement or a regulation under this section applies if the Secretary decides applying the requirement or regulation to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a requirement or a regulation under this section;

(4) The kind of transaction subject to or exempt from a requirement or a regulation under this section; and

(5) Other matters the Secretary considers necessary to carry out this section or a regulation under this section.

Given the Department's experience with evolving electronic payment systems and banking patterns, exercising the authority to require reporting of at least some foreign transactions seems overdue. This new reporting procedure is expressly authorized under section 5314, and reaches the international flow of funds not already covered by the reporting requirements imposed under sections 5313 and 5316.

The Act and its legislative history authorize the Secretary to require the reporting of *all* such movements. However, in order to lessen the regulatory burden associated with reporting all transactions with certain foreign countries, the reporting requirements will be implemented only with respect to certain financial institutions in certain circumstances. In those instances all transactions associated with one or more institutions may be required to be reported. This information will provide a composite picture of the movements of money from those institutions which, in turn, will be used to identify potential illegal activity as contemplated under the statute.

Section 5314(a) authorizes the Secretary to require such reports to contain, to the extent he deems necessary:

(1) The identity and address of participants in a transaction or relationship.

(2) The legal capacity in which a participant is acting.

(3) The identity of real parties in interest.

(4) A description of the transaction.

Based upon this authority, each substantive regulation will articulate what particular information is to be reported. While section 5314 authorizes the Secretary to require a broad range of information, it is not anticipated that any given regulation will require the reporting of more than a few types of transactions. The Secretary has specified in the following proposed regulatory amendment the items of information that may be made the subject of a reporting requirement.

The new reporting procedures is not designed or intended to obtain information for an existing investigation focused on a particular individual or organization. In such cases, there are established information collection procedures that strike a more appropriate balance between the rights due an individual who is involved in a dispute with the government and the legitimate demands of society that its laws be enforced. Examples include search warrants, judicial subpoenas, administrative subpoenas and summons, and the formal written request created by the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.). Accordingly, the proposed procedure will explicitly prohibit use of the reporting requirements in such circumstances. However, information reported under the new procedure will be treated the same as any other information collected under the Bank Secrecy Act, and may serve as the basis for initiating an investigation.

The Treasury Department anticipates that actual notice of a reporting requirement promulgated under this new procedure may be provided directly to the effected financial institutions. Publication and the opportunity to comment on such reporting requirements may be dispensed with where the need for flexibility and speed in identifying and reacting to unusual money-flow and banking patterns provides "good cause", as contemplated by the Administrative Procedures Act (5 U.S.C. 553), for overcoming the time delays inherent in informal rulemaking. However, because of the importance of striking an appropriate balance between the individual's right to privacy and society's need for effective law enforcement, the Treasury Department through this notice of proposed rulemaking is explaining the procedure by which such regulations will be issued. The Department invites public comment on how best to strike that accommodation within this proposed procedure for promulgating reporting requirements.

Proposed Amendment Description

This proposed regulation would add a new § 103.25 to title 31, Code of Federal Regulations. That section establishes a new procedure under which the Secretary may issue reporting requirements limited to given classes of financial transactions conducted by a given class of financial institutions as authorized by 31 U.S.C. 5314. Notice of such limited reporting requirements would either be published in the **Federal Register** or served upon the members of the given class of financial institutions in such a manner as to provide actual notice sufficient for the purposes of 5 U.S.C. 553.

This proposed regulatory amendment will not, in itself, require any financial institution to file any new reports. Rather, it defines the issuing procedure for future regulations which will require reporting, and the possible reporting requirements such future regulations could contain. These future regulations will be issued in response to money-flow and banking patterns of criminal, tax or regulatory interest to the Treasury.

Proposed 31 CFR 103.25(a) provides for the promulgation of reporting requirements. Proposed subsection (b) lists the types of information which the Secretary has determined can be subject to reporting requirements. Proposed subsection (c) describes the types of financial institutions and the types of financial transactions which can be covered by reporting requirements. Proposed subsection (d) dictates the limitations placed on the purposes of, and time periods covered by, the reports sought.

Regulatory Impact Analysis

This regulatory amendment is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Consequently, a Regulatory Impact Analysis will not be prepared.

Regulatory Flexibility Analysis

It is hereby certified that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. Almost all of the information which could be the subject of a reporting requirement is already being maintained in response to existing recordkeeping regulations. Given the focused nature of the contemplated reports, the clerical costs incurred by the specified group of finanical institutions in filing the reports is anticipated to be relatively small. Consequently, a Regulatory Flexibility Analysis will not be prepared.

Paperwork Reduction Act

The collection of information requirements contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on these requirements should be directed to Robert J. Stankey, Jr., at the address previously specified, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, attention: Desk Officer for the Office of the Secretary, Department of the Treasury.

Comments

Before adopting this amendment, consideration will be given to any written comments received by [insert 60 days from date of publication]. Comments received after the closing date will be treated as possible suggestions for future action. The Treasury Department will not recognize any material or comments, including the name of any person submitting comments, as confidential. Any material which the respondent does not want disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during regular business hours at the Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

Drafting Information

The principal author of this document was Terry V. Thiele, Office of the General Counsel, Department of the Treasury. However, personnel from other Treasury offices participated in its development.

Authority

The Treasury Department issues this Notice of Proposed Rulemaking under the authority of the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91-508, Oct. 26, 1970, 84 Stat. 1118, 31 U.S.C. 5314.

List of Subjects in 31 CFR Part 103

Banks and banking, Electronic funds transfers, Foreign banking, Currency, Investigations, Law enforcement, Drug traffic control, Reporting requirements, Taxes.

PART 103—[AMENDED]

Proposed Amendments

It is proposed to amend 31 CFR Part 103 as set forth below:

1. It is proposed to renumber § 103.25 as § 103.26, with subsequent sections being renumbered accordingly.

2. It is proposed to add a new § 103.25 as follows:

§ 103.25 Additional reports to be made.

(a) *Promulgation of reporting requirements.* The Secretary of the Treasury, when he deems appropriate, may promulgate regulations requiring specified persons to file reports on certain transactions with specified financial institutions which are acting as foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with such notice and comment in accordance with 5 U.S.C 553(b) will be included in the regulation. If any such regulation is not published in the **Federal Register**, then any person subject to a reporting requirement contained therein will be named in the regulation and personally served or otherwise given actual notice of the reporting requirement in accordance with 5 U.S.C. 553(b).

(b) *Information subject to reporting requirements.* The Secretary of the Treasury may stipulate in any regulation promulgated under paragraph (a), of this section, what of the following information shall be reported:

(1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial institution, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial institution, drawn by a foreign financial institution on respondent financial institution—including the following information:

(i) Name of maker or drawer;

(ii) Name of drawee or drawee financial institution;

(iii) Name of payee;

(iv) Date and amount of instrument;

(v) Names of all endorsers.

(2) Wire or electronic fund transfers received by respondent financial institution from a foreign financial institution or sent by respondent financial institution to a foreign financial institution—including the following information:

(i) Name of financial institution initiating transfer;

(ii) Name, address and account number of account being credited or debited;

(iii) Name of financial institution where account is carried;

(iv) Names of all financial institutions used to make transfer;

(v) Date and amount of each transfer;

(vi) Any other information normally appearing on respondent financial institution's internal wire or electronic fund transfer entries.

(3) Credit card charges received or shipped by respondent financial institution—including the following information:

(i) Name, address and card number of card holder;

(ii) Name of signer;

(iii) Name and address of merchant submitting charge;

(iv) Date and amount of charge;

(v) Name of card company;

(vi) Name and address of paying financial institution.

(4) Loans made by respondent financial institution—including the following information:

(i) Name of borrower;

(ii) Name of person acting for borrower;

(iii) Date and amount of loan;

(iv) Terms of repayment;

(v) Name of guarantor;

(vi) Rate of interest;

(vii) Method of disbursing proceeds;

(viii) Collateral for loan.

(5) Commercial paper received or shipped by respondent financial institution—including the following information:

(i) Name of maker;

(ii) Date and amount of paper;

(iii) Due date;

(iv) Certificate number;

(v) Amount of transaction.

(6) Stocks received or shipped by respondent financial institution—including the following information:

(i) Name of corporation;

(ii) Type of stock;

(iii) Certificate number;

(iv) Number of shares;

(v) Date of certificate;

(vi) Name of registered holder;

(vii) Name of transfer agent;

(viii) Amount of transaction.

(7) Bonds received or shipped by respondent financial institution—including the following information:

(i) Name of issuer;

(ii) Bond number;

(iii) Type of bond series;

(iv) Date issued;

(v) Due date;

(vi) Rate of interest;

(vii) Amount of transaction;

(viii) Name of registered holder;

(ix) Name and address of trustee.

(8) Certificates of deposit received or shipped by respondent financial institution—including the following information:

(i) Name and address of issuer;

(ii) Date issued;

(iii) Dollar amount;

(iv) Name of registered holder;

(v) Due date;

(vi) Rate of interest;

(vii) Certificate number;

(viii) Name and address of issuing agent.

(c) *Persons and transactions subject to reporting requirements.* The Secretary may prescribe:

(1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement under paragraph (a) of this section;

(2) A foreign country to which a reporting requirement under paragraph (a) of this section applies if the Secretary decides applying the requirement to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a reporting requirement under paragraph (a) of this section;

(4) The kind of transaction subject to or exempt from a reporting requirement under paragraph (a) of this section;

(5) Other matters the Secretary considers necessary to carry out this section.

(d) *Limitations.* (1) The Secretary shall not promulgate a reporting requirement under paragraph (a) of this section for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act, where that customer is already the subject of an investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is known by the Secretary to be the subject of an investigation for possible violation of any other Federal law.

(2) No financial institution that has been required to file reports under paragraph (a) of this section shall be required to report transactions that were both completed and reflected in its records prior to the date it received notice of the reporting requirement."

Dated: January 24, 1984.
John M. Walker, Jr.,
Assistant Secretary (Enforcement and Operations).
[FR Doc. 84-9074 Filed 4-4-84; 8:45 am]
BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations, Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Proposed rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and its counterpart agency, The St. Lawrence Seaway Authority of Canada, publish joint Seaway Regulations. As a result of discussions with The St. Lawrence Seaway Authority, it has been determined that a number of the existing regulations need revision. Therefore the Seaway Corporation proposes to amend 33 CFR Part 401—Subpart A.

DATES: Comments received by May 21, 1984 will be considered.

ADDRESS: Interested parties may submit written comments to the Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662 (Attn: General Counsel). Persons who want the receipt of their comments acknowledged in writing may submit a stamped self-addressed postcard for this purpose.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, General Counsel, (315) 764–3245.

SUPPLEMENTARY INFORMATION: As a result of discussions with its counterpart agency, the Saint Lawrence Seaway Development Corporation proposes to amend the joint Seaway Regulations for the reasons set forth in the summary.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

In § 401.7(a)(2), a new paragraph (iii) will be added. This regulation provides that a vessel shall be equipped with fenders if any structural part of the vessel protrudes so as to endanger Seaway installations. This new paragraph will require that where the fenders are not permanently attached, they must be raised at all times when the vessel passes a lock gate in Snell or Eisenhower Locks. This will reduce the possibility of damage to lock gates by fenders which are not permanently attached.

In § 401.13(b), the diameter of hand held lines will be changed from "a minimum diameter of between 12.7 mm and a minimum length of 30 m" to "a diameter between 12 mm and 20 mm and a minimum length of 30 m" to improve manageability and safety.

§ 401.18 is rewritten to indicate that every vessel must be equipped with a steering light located on the centerline at or near the stem of the vessel and clearly visible from the helm, or two steering lights located at equal distances either side of the centerline at the forepart of the vessel and clearly visible from the bridge along a line parallel to the keel. Because of the installation of cranes and other cargo handling equipment on vessels, it had become impossible to see a steering light located on the bow. Therefore, the revision to this regulation will eliminate that problem.

In § 401.19(b)(2), line 1, the comma will be removed after "leakproof" because it is unnecessary.

In § 401.24, a notation will be added that Office of Management and Budget approval, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), has been received for application for preclearance forms.

In § 401.31, paragraph (a) will be revised to indicate that the meeting and passing of vessels will now be governed by the Collision Regulations of Canada and the Navigation Rules International-Inland of the United States because the Rules of the Road for the Great Lakes have been revoked and have been replaced as set forth above by the respective countries.

In paragraph (b) of § 401.31, the reference to "limit of approach signs" is deleted because these signs no longer exist. Paragraph (b) will be revised so that no vessel shall meet another vessel within the caution signs at bridges or within any area that is designated as a "no meeting area" by signs erected by the Authority or the Corporation in that area.

In § 401.31(c)(2), the word "or" will be added at the end of the phrase for clarification.

A new regulation, "§ 401.35 Navigation Underway," will be added. This new regulation provides that every vessel transiting between C.I.P. 2 and Tibbetts Point in the St. Lawrence River, and between C.I.P. 15 and 16 in the Welland Canal must man the propulsion machinery of the vessel including the main engine control station, and operate the propulsion machinery so that it can respond immediately through its full operating range. This regulation is the result of a number of vessel incidents involving vessel personnel not manning propulsion machinery, thereby adversely affecting the vessel's ability to maneuver.

In §§ 401.38, 401.43 and 401.48, wherever the term "guard gate" was previously used, the term will be redesignated "guard gate cut". Since the guard gate has been removed, a new designation was therefore necessary for that particular area because there still remains a requirement to comply with these regulations.

In § 401.51(b), the distances between signs will be changed from "between 670 m and 1500 m upstream and downstream from movable bridges at sites other than lock sites" to "between 550 m and 2990 m upstream and downstream from movable bridges at sites other than lock sites". This regulation requires that unless a vessel's approach has been recognized by a flashing signal, the master shall signal the vessel's approach to the bridgemaster by VHF radio when it comes abreast of any of the bridge whistle signs. This change in distance between the signs results from a relocation of these signs.

In §§ 401.68 and 401.74, a notation will be added that Office of Management and Budget approval, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), has been received for application for explosives permit and for transit declaration forms.

In SCHEDULE I, paragraph (g), a sentence will be added which provides that vessels of 10,000 gross tons or more must have a second main radar system that operates independently of the first. The addition of a second radar system will substantially improve the ability of vessels over 10,000 gross tons to navigate the Saint Lawrence Seaway.

In SCHEDULE II—Table of Speeds, the speed limits in Column III for Eisenhower Lock to Richards Point Lt. 55, for Morrisburg Buoy 84 to Ogden Island Buoy 99, and for Blind Bay ⅛ mile east of Buoy 162 to Deer Island Lt. 186, will be revised from 11 knots to 11.5 knots in order to conform to the procedures used in the conversion of other speed limits contained in the SCHEDULE.

In APPENDIX I, the reference to 76 feet will be deleted to correct an oversight in that English measurements are no longer used in the Seaway Regulations. The sentence will now read that "The limits in the block diagram are based on vessels with a maximum allowable beam of 23.16 m."

This proposed regulation involves a foreign affairs function of the United States; therefore Executive Order 12291 does not apply to this rulemaking. The Saint Lawrence Seaway Development Corporation certifies that for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), since the impact of this proposal is expected to be minimal, it will not have a significant economic impact on a substantial number of small entities. The Seaway Regulations relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators, and therefore any resulting costs will be borne primarily by foreign vessels. Furthermore, the Corporation has determined that this rulemaking is not a major Federal action affecting the quality of the human environment under the National Environmental Policy Act, and therefore, an environmental impact statement is not required. Finally, the Seaway Regulations contain certain information collection requirements which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as follows: § 401.24 OMB Control No. 2135–0002, § 401.68 OMB Control No. 2135–0004, and § 401.74 OMB Control No. 2135–0003.

PART 401—[AMENDED]

For the stated reasons, it is proposed to amend the Seaway Regulations as follows:

1. Section 401.7(a)(2) is amended by adding paragraph (iii) to read as follows:

§ 401.7 Fenders.

* * * * *

(2) * * *

(iii) And raised at all times when the vessel passes a lock gate in Snell or Eisenhower Locks.

* * * * *

2. In § 401.13, paragraph (b) is revised to read as follows:

§ 401.13 Hand lines.

* * * * *

(b) Have a diameter between 12 mm and 20 mm and a minimum length of 30 m.

3. Section 401.18 is revised to read as follows:

§ 401.18 Steering lights.

Every vessel shall be equipped with

(a) A steering light located on the centerline at or near the stem of the vessel and clearly visible from the helm; or

(b) Two steering lights located at equal distances either side of the centerline at the forepart of the vessel and clearly visible from the bridge along a line parallel to the keel.

4. In § 401.19, paragraph (b)(2) is revised to read as follows:

§ 401.19 Disposal and discharge systems.

* * * * *

(b) * * *

(2) Retained on board in covered, leakproof containers, until such time as it can lawfully be disposed of.

* * * * *

5. Section 401.24 is amended by adding a reference to the OMB Control No. as follows:

§ 401.24 Application for preclearance.

* * * * *

(Approved by the Office of Management and Budget under control number 2135–0002).

6. In § 401.31, paragraphs (a), (b) and (c)(2) are revised to read as follows:

§ 401.31 Meeting and passing.

(a) The meeting and passing of vessels shall be governed by the Collision Regulations of Canada and the Navigation Rules International-Inland of the United States.

(b) No vessel shall meet another vessel within the caution signs at bridges or within any area that is designated as a "no meeting area" by signs erected by the Corporation or the Authority at the area.

(c) * * *

(2) Within 60 m of a canal or lock entrance; or

* * * * *

7. Section 401.35, which was formerly reserved, is added to read as follows:

§ 401.35 Navigation Underway.

Every vessel transiting between C.I.P. 2 and Tibbetts Point and between C.I.P. 15 and 16 shall—

(a) Man the propulsion machinery of the vessel, including the main engine control station; and

(b) Operate the propulsion machinery so that it can respond immediately through its full operating range.

8. Section 401.38 is revised to read as follows:

§ 401.38 Limit of approach to a lock.

A vessel approaching a lock or the guard gate cut shall comply with directions indicated by the signal light system associated with the lock or the guard gate cut, and in no case shall its stem pass the designated limit of approach sign while a red light or no light is displayed.

9. In the Table in § 401.43, the heading under *Welland Canal* which presently reads "*Guard Gate*" will be revised to read "*Guard Gate Cut*" as follows:

§ 401.43 Mooring table.

* * * * *

WELLAND CANAL

Locks	1	2	3	4	5	6	7	Guard Gate Cut	8

* * * * *

10. In the Table in § 401.48, 2. (b) will be revised to read as follows:

§ 401.48 Turning basins.

* * * * *

2. * * *

(b) Turning Basin No. 2—Between Lock 7 and the Guard Gate Cut for vessels up to 180 m in overall length.

* * * * *

11. In § 401.51, paragraph (b) will be revised to read as follows:

§ 401.51 Signalling approach to a bridge.

(b) The signs referred to in paragraph (a) of this section shall be placed at distances varying between 550 m and 2990 m upstream and downsteam from moveable bridges at sites other than lock sites.

12. Section 401.68 is amended by adding a reference to the OMB Control Nos. as follows:

§ 401.68 Explosives permit.

* * * * *

(Approved by the Office of Management and budget under control number 2135–0004).

13. Section 401.74 is amended by adding a reference to the OMB Control No. as follows:

§ 401.74 Transit declaration.

* * * * *

(Approved by the Office of Management and Budget under control number 2135–0003).

14. In SCHEDULE I, paragraph (g) will be revised to read as follows:

SCHEDULE I

Vessels Transiting U.S. Waters.

* * * * *

(g) Marine radar system for surface navigation. Additionally, vessels of 10,000 gross tons or more must have a second main radar system that operates independently of the first.

* * * * *

15. In Schedule II, Col. III of Items 6., 8., and 10. will be revised to read as follows:

SCHEDULE II.—TABLE OF SPEEDS*

From	To	Maximum speed over the bottom, knots	
		Col. III	Col. IV
6. Eisenhower Lock	Richards Point Lt. 88	11.5	10.5
8. Maritzburg Buoy 84	Ogden Island Buoy 99	11.5	10.5
10. Blind Bay ½ east of Buoy 102	Deer Island Lt. 106	11.5	10.5

10. In Appendix I, the second paragraph under (b) will be revised to read as follows:

Appendix I

Vessel Dimensions

* * * * *

The limits in the block diagram are based on vessels with a maximum allowable beam of 23.16 m. For vessels that have a beam width less than this and that have dimensions exceeding the limits of the block diagram (measured with the vessel alongside the lock wall), a special permission to transit must be obtained. (Accurate measurements may be required before such permission is granted).

* * * * *

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended and sections 4, 5, 6, 7, 8, 12 and 13 of SEC. 2 of Pub. L. 95–474, 92 Stat. 1471)

Issued at Washington, D.C. on March 29, 1984.

Saint Lawrence Seaway Development Corporation.

James L. Emery,

Administrator.

[FR Doc. 84-8948 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-61-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Redefinition of the Term "Lender"

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA (Veterans Administration) is proposing to amend its regulations to redefine the definition of "lender". The revised definition would include individual owners, company and corporate officers, and certain employees of the firms engaged in any phase of mortgage lending with the assistance of VA guaranty and insurance programs. The proposal provides for the suspension of any participating lender employing a suspended, owner, company or corporate officer, or other person as a loan solicitor, loan servicer, loan processor, office manager, or an employee in any other position with responsibility in the decisionmaking process.

The purpose of the proposed regulations is to give the VA more flexibility in applying sanctions to individuals who are working as employees of lenders and are found to have committed fraud or were responsible for material misrepresentations in the soliciting, processing, servicing, or approval of loan applications submitted to the VA for guaranty or insurance.

The authority to impose individual suspensions on lender employees will also be a major deterrent to suspended persons moving their employment from one organization to another where they may continue to practice fradulent or irregular activities in the soliciting, processing, or servicing of VA loans or loan applications.

DATES: Comments must be received on or before May 4, 1984. The VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 18, 1984.

FOR FURTHER INFORMATION CONTACT: George Moerman (202) 389–3042.

SUPPLEMENTARY INFORMATION: The governing statutes and regulations currently provide that the Administrator may, subject to notice and the opportunity for a hearing, suspend a lender or holder from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance of any loans made or purchased after the date of its suspension. These sanctions may be imposed on a finding by the VA that a lender has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgement, or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government.

The Administrator has authority to make rules and regulations necessary or appropriate to carry out the laws administered by the VA. Under that authority certain words and phrases contained in the law are defined. The term "lender" is currently defined in § 36.4202(g) as "the payee or assignee or transferee of an obligation at the time it is guaranteed". The term is similarly defined in § 36.4301 but includes "guaranteed or insured" loans. Under these definitions, when fraud or other serious irregularities are found in loan applications which are guaranteed or insured by the VA, the lending institution may be suspended under authority of the statute. The statute does not specifically provide for the suspension of individual owners, officers, or employees of the lender. However, under previous legal precedents and opinions, the suspension of a lender may also apply to certain employees and officers of a lender who were personally involved in the irregular practices or who have a major responsibility in the decisionmaking process.

This proposal will define the term "lender" in the regulations to include principals, officers, and employees. The proposal provides specific regulatory authority for sanctioning an individual who is directly responsible for material misrepresentations or fraud in the origination or servicing of a loan. It also includes an individual who is in a supervisory or managerial position and who either willfully or negligently encourages or overlooks irregular practices by employees under their supervision or otherwise does not exercise supervisory controls of employees taking actions which are detrimental to veterans or the Government.

The proposal will make it possible for the VA to suspend specific lender employees who are responsible for fraud or material misrepresentation in processing or servicing VA loans without the necessity of first suspending the lender for whom that employee is working. Some large lenders operate regionally or nationwide. It is not always possible to monitor and to fully supervise the processing and servicing of loans in the many different office locations. In some cases the lender is

unaware of the irregular conduct of the employee and cannot detect the fraud or other irregularity from a review of the completed loan application package. It would be inequitable and counterproductive in some circumstances to suspend an entire regional or national lender because of the improper conduct of one or more employees of that firm located in one of its branch offices. It would, however, be appropriate for the VA to suspend the errant employee or employees in that office from further participation in soliciting, processing, or servicing VA loans. This situation demonstrates the need for a revision of the suspension regulations so that for suspension purposes the definition of a lender shall include officers, principals, and employes who make or conspire with others to use false, fictitious or fraudulent statements, representations, or documents in any loan application or other document submitted to the VA for the purpose of securing VA guaranty or insurance of a loan.

Under present procedure a notice of suspension to a lender is effective as to agents, representatives, and correspondents when acting for or on behalf of the person or entity suspended. When these individuals, including employees of the suspended lender, are not specifically named and included in a lender suspension, they may then be employed by a different lender with impunity. Individual employee suspensions would be an effective method of preventing these employees from being hired by a different lending organization where they might continue fraudulent or irregular practices in the soliciting, processing, or servicing of VA loans or loan applications.

These proposed amendments will, in addition to the revision of the definition of a lender, provide a means for the VA to suspend a lender who employs a suspended person as a loan processor, loan solicitor, or in a managerial capacity with responsibility in the decisionmaking process. Any secondarily suspended lender would have a right to notice and an opportunity for a hearing in the same manner as any program participant that has been sanctioned by the VA. Termination of the employment of the suspended lender or employee by the secondary employer would automatically terminate the suspension.

Technical amendments have also been made to the appropriate sections of the regulations to change the term "mobile home" to "manufactured home." These changes are made so that the terminology of the regulations will be in conformity with the language of Pub. L. 97-306, 96 Stat. 1429, enacted October 14, 1982.

The Administrator hereby certifies that these proposed regulation changes will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that these proposed changes will not directly affect any small entity except to the extent that it may be precluded from employing a small number of suspended individuals. Small entities which are private and nonprofit organizations and small government jurisdictions will not be affected. Present regulations already permit suspensions of responsible officials of a lender. In the case of lenders which are small entities, as distinguished from large corporate lenders, the VA's authority to suspend such officials will not change significantly because of the positions which they generally hold in the small business. That is, individual positions covered under these proposed regulations will in most instances be occupied, in the case of small lenders, by individuals holding positions already subject to suspension under the existing regulations.

These regulations will not impact on the public or private sections as "major rules" as that term is defined in Executive Order 12291. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Numbers 64.114 and 64.119.)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan Programs—housing and community development, Manufactured Homes, Veterans.

These amendments are proposed under the authority granted the Administrator by sections 210(c), 1803, 1804, and 1819 of title 38, United States Code.

Approved: March 20, 1984.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

38 CFR Part 36, LOAN GUARANTY, is amended as follows:

1. In the center heading proceeding § 36.4201, the word "MOBILE" is changed to "MANUFACTURED".

2. In § 36.4202, paragraph (g) is revised to read as set forth following; and paragraphs (j), (k), (m), (n), and (o) are amended by replacing the word "mobile" with "manufactured" wherever it appears and by adding the cite "(sec. 406, Pub. L. 97-306)" at the end of those paragraphs.

§ 36.4202 Definitions

* * * * *

(g) *Lender.* The payee or assignee or transferee of an obligation at the time it is guaranteed. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers, and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed by the VA. (38 U.S.C. 1804(d); 1819(g))

* * * * *

3. Section 36.4216 is amended by changing the work "chairman" to "chairperson" in paragraph (e) and by revising paragraph (a) to read as follows:

§ 36.4216 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty of loans or from the right to the guaranty in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4221(b) finds that the lender of holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed manufactured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise deterimental to the interests of veterans of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected

only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and: (1) An indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. 1819, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension may be effected. A lender may also be suspended under this section if it is owned by, or employs as an officer, loan solicitor, loan processor, loan servicer, loan supervisor, office manager, or in any other position, a person who engages in or is responsible for the processing or servicing of VA guaranteed or insured loans if that person has been previously suspended by the VA under this section. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned. (38 U.S.C. 1804(d); 1819(g))

* * * * *

4. Section 36.4301 is amended by revising the definition of "Lender" to read as follows:

§ 36.4301 Definitions. * * *

* * * * *

Lender. The payee or assignee or transferee of an obligation at the time it is guaranteed or insured. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed or insured by the VA. (38 U.S.C. 1804(d); 1819(g))

* * * * *

5. Section 36.4331 is amended by revising paragraph (a) to read as follows:

§ 36.4331 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4342(b) finds that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed or insured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and (1) an indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. ch. 37, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension may be effected. A lender may also be suspended under this section if it is owned by, or employs as an officer, loan solicitor, loan processor, loan servicer, loan supervisor, office manager, or in any other position, a person who engages in or is responsible for the processing or servicing of VA guaranteed or insured loans if that person has been previously suspended by the VA under this section. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned. (38 U.S.C. 1804(d); 1819(g))

* * * * *

[FR Doc. 84-8887 Filed 4-4-84; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 394

[BMCS Docket No. MC-109; Notice No. 84-2]

Notification and Reporting of Accidents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued a notice of proposed rulemaking (BMCS Docket No. MC-109; Notice No. 84-1, 49 FR 1912, January 16, 1984) which proposed to revise the truck and bus accident forms and raise the property damage reporting criterion from $2,000 to $4,000. All comments to the docket were to be received on or before March 16, 1984. The comment period is being extended to June 1, 1984. This extension is in response to a petition from the American Trucking Associations, Inc. (ATA). The petitioner states that additional time is needed to throughly consider the nature of the data sought in the proposed basic accident report.

DATE: Comments must be received on or before June 1, 1984.

ADDRESS: All comments should refer to the docket number and notice number that appear at the top of this document and should be submitted, preferably in triplicate, to Room 3404, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Snow, Bureau of Motor Carrier Safety, (202) 426-1700, or Mr. Edward J. Mullaney, Office of the Chief Counsel [202] 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA has received, from the ATA, a petition requesting a 90-day extension of the deadline for the filing of comments in response to BMCS Docket No. MC-109; Notice No. 84-1, Notification and Reporting of Accidents. Comments were to be received on or before March 16, 1984.

The ATA stated that the proposed changes may have a major impact on the nature and quality of the truck accident data gathered by the Department of Transportation. For this reason, all of the implications in the proposal, particularly the nature of the data to be sought in the proposed basic accident report, must be considered more thoroughly than can be achieved by March 16, 1984.

The ATA is also in the process of working with the Steering Committee of the ATA Council of Safety Supervisors, and the ATA affiliated State councils and conferences on an industry position. Therefore, additional time is needed to carry out this process.

The request has merit. Therefore, the comment period is extended to June 1, 1984.

List of Subjects in 49 CFR 394

Motor Carriers, Reporting requirements.

(49 U.S.C. 3102; 49 CFR 1.48)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.)

Issued on: March 29, 1984.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 84-9047 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Experimental Population Status for an Introduced Population of Delmarva Fox Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to introduce Delmarva Peninsula fox squirrels (*Sciurus niger cinereus*) into Sussex County, Delaware and to determine these populations to be "nonessential experimental" populations according to Section 10(j) of the Endangered Species Act of 1973 as amended. Section 10(j) of that Act authorizes "experimental" populations of endangered species to be treated as if they were threatened for purposes of Section 9 and proposed under certain conditions for purposes of Section 7. The Service has much more discretion in devising a management program for threatened species than for endangered species, especially on matters regarding incidental or regulated taking. Accordingly, a special rule to allow take in accordance with State law is proposed for these nonessential experimental populations. In the past, this species was more widespread, being found throughout the Delmarva Peninsula. This action is being taken in an effort to reestablish the Delmarva fox squirrel within its historic range.

DATES: Comments from the State of Delaware and the public must be received by May 7, 1984.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Regional Director, U.S. Fish and Wildlife Service, Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158. Comments and materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the Service's Regional Office in Newton Corner, Massachusetts.

FOR FURTHER INFORMATION CONTACT: For further information on the proposal, contact Mr. Steve Parry, Assistant Regional Director, U.S. Fish and Wildlife Service, Newton Corner, Massachusetts 02158 (617/965-5100 or FTS 829-9316) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act Amendments of 1982, Public Law No. 97-304, became effective on October 13, 1982. Among the significant changes made by the 1982 Amendments was the creation of a new Section 10(j) which established procedures for the designation of specific populations of listed species as "experimental populations." Under authorities in the Endangered Species Act previous to the 1982 Amendments, the Service was permitted to translocate populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to translocation efforts, however, severely handicapped the effectiveness of translocation as a management tool. This opposition stemmed from concerns regarding the restrictions and prohibitions on private and Federal activities affecting endangered species under Sections 7 and 9 of the Act. Under Section 10(j) of the 1982 Amendments, past and future translocated populations established outside the current range, but within the species' historic range, may now be designated at the discretion of the Service as "experimental." Such a designation will increase the Service's flexibility to manage these translocated populations because the Amendments provide that such experimental populations of species which are otherwise listed as endangered may be treated as threatened. The Service has much more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding incidental or regulated takings. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question would be treated as if they were only proposed for listing and therefore would not be afforded protection under Section 7(a)(2) of the Act, which requires Federal agencies to refrain from activities that are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. The individual organisms comprising the designated experimental population will be removed from an existing source or donor population only after it has been determined that their removal itself will not violate Section 7(a)(2) of the ESA and complies with the permit requirements in Section 10 (a)(1)(A) and (d). The species included in this proposal is the Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*) which is currently listed as endangered.

The Delmarva fox squirrel was found in southeastern Pennsylvania, Delaware, south-central New Jersey, eastern Maryland, and the Virginia portion of the Delmarva Peninsula. It is believed that the fox squirrel was never as abundant as the gray squirrel. Although little is known about its former distribution, it is likely that it was scattered and discontinuous throughout its range with more specific habitat requirements than those of the gray squirrel.

The fox squirrel was confined to savannah or park-like areas, forests bordering rivers and streams, and small open woodlots with little or no understory. As the forests were cut for agricultural purposes and forest products, they became unsuitable for fox squirrels. As the forest regrew, dense undergrowth developed, at least during the pole and early saw timber stages. Before second-growth forests were old enough to develop the open park-like conditions of mature forests, they were cut again. Thus, environments suitable to Delmarva fox squirrels were not recreated in the cutting cycle, and Delmarva fox squirrels declined and disappeared in many areas. By the turn of the century this animal had disappeared from southern New Jersey, Pennsylvania, and Virginia, but it is thought that it remained in Delaware until possibly the 1930's. It is currently found in eastern Maryland and was reintroduced into eastern Virginia in the 1970's.

Throughout their range, fox squirrels are currently adapted to these park-like conditions. They are often found in savannah areas, oak openings, and in narrow belts of trees along streams and rivers.

Good fox squirrel habitat contains mature trees that produce a dependable annual mast crop with a variety of tree

species providing insurance against a food shortage brought about by failure of one or more of the species present. Good habitat for this species is currently located in Sussex County, Delaware. The establishment of an experimental population in this area will greatly enhance the recovery potential of this species by reestablishing a population in its former range. It is proposed that 6–18 fox squirrels taken from viable populations located in Dorchester and Talbot Counties, Maryland, will be introduced into the Sussex County site. The Dorchester and Talbot County populations have been monitored by the State of Maryland for the past 10 years. These are healthy populations that are naturally expanding their current range. The removal of 6–18 animals over a period of 18 months is not likely to jeoparize the continued existence and viability of these populations and release of these experimental populations as proposed will further the conservation of the species throughout its range.

Status of Reintroduced Populations

The reintroduced population of Delmarva Pensinsula fox squirrels is proposed as an experimental population that is "nonessential" to the continued existence of the species according to the provisions of the 1982 Amendments to the Endangered Species Act. Nonessential experimental population status for the introduced fox squirrels would mean that they would be subject only to provisions of Sections 7(a)(1) and except for Section 7(a)(1), they would be treated as if they were proposed for listing under Section 4 for Section 7 purposes. Thus, Section 7(a)(1), which authorizes Federal agencies to establish programs furthering conservation of the species and Section 7(a)(4), which requires Federal agencies to confer informally with the Secretary regarding actions that are likely to jeopardize the continued existence of the species, would apply to the fox squirrels in the experimental population. The restrictions on Federal agency activity in Section 7(a)(2), which pertain to listed species would not apply.

Justification for the "nonessential" status for the proposed introduced experimental population is as follows: By the early 1970's, the Delmarva fox squirrel was found in portions of four eastern shore counties of Maryland, and one location in Virginia. In Kent County, Maryland, this species was known from the Eastern Neck National Wildlife Refuge (NWR) and in Accomac County, Virginia, from the Chincoteague NWR (a translocated population established in the early 1970's).

Population status has changed since the early 1970's, principally due to translocation efforts by the State of Maryland to restore this species. Additional translocated and reproducing populations now exist within historic range in the Maryland counties of Cecil, Kent (outside of Eastern Neck NWR), Somerset, Worcester, Dorchester, and Talbot, and a summer 1982 translocation to Northampton County, Virginia has been accomplished.

Techniques for trapping and relocating this species are in place. Relocation efforts have been successful in Maryland for the past 10 years and techniques are continually being improved and refined. Monitoring of 6 release sites in Maryland has shown reproduction in 5 of the 6 sites within one year of release and the Chincoteague site now serves as a donor population for other reintroductions. This suggests that no new procedures need to be developed to proceed with this reintroduction.

The removal of individuals from extant populations in Talbot and Dorchester Counties is not expected to affect adversely the viability of those populations; therefore, the loss of the reintroduced populations would not reduce the likelihood of the survival of the species in the wild. In fact the anticipated success of this reintroduction will enhance the recovery potential of this species by extending its current range and occupying currently unutilized habitat.

Location of Reintroduced Populations

The site proposed for reintroduction of Delmarva Peninsula fox squirrels is totally isolated from existing populations of this species. The fox squirrels will be released into the Assawoman Wildlife Area in Sussex County, Delaware, in the extreme southeast corner of the State between Miller and Dirikson Creeks. This is approximately 50 miles from the nearest extant population located at the Chincoteague NWR.

Previous releases of this species have shown that individuals are not likely to travel more than 2 to 3 miles from the point of release. This assures that the Delaware population will remain geographically isolated and easily identifiable from other extant populations.

Management

This translocation project will be a joint cooperative effort between the Delaware Department of National Resources and Environmental Control, the Maryland Department of Natural Resources, and the Fish and Wildlife Service. Present plans call for the release of 6 animals (4 females, 2 males) in the spring of the year, followed 6 months later with a fall release of 6 additional animals (4 females, 2 males). A third release of 6 animals the following spring will result in a total reintroduction of 18 animals. If the initial spring release is delayed until fall, the second and third releases will occur in the following spring and fall.

Released animals will be checked periodically to determine movement, reproductive success, and general health. This proposed nonessential experimental population would be treated as a threatened species under all provisions of the Act other than Section 7(a)(2). All of the prohibitions referred to in 50 CFR 17.31 would apply to this population. Moreover, permits would be available to take members of this population for the purposes set forth in 50 CFR 17032. In addition, members of this experimental population could be incidentally taken in accordance with applicable State law. Thus, if a squirrel hunter accidentally took a member of this experimental population based upon a misidentification of the species, there would be no violation of Federal law.

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

Final promulgation of a rule to implement this proposed action will take into consideration any comments or additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft Environmental Assessment under NEPA has been prepared and is available to the public at the Office of Endangered Species, U.S. Fish and Wildlife Service, at the address listed above. This assessment will form the basis for a decision, to be made prior to the publication of a final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy

Act of 1969 (implemented at 40 CFR Parts 1500–1508).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291; that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). The introduction site occurs within several miles of Atlantic Ocean resorts in a region that can be considered as high use for vacationers and wildlife enthusiasts. However, this site is not in the vicinity of a high concentration of year-round inhabitants. The Assawoman Wildlife Area has been set aside by the State of Delaware for wildlife use. The introduction of a nonessential experimental population into this area is compatible with current utilization of the site and is expected to have no impact on public use days. No private entities will be affected by this action. The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Author

The principal author of this proposal is Peter G. Poulos, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1513 *et seq.*).

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order (following the existing entry for this species) to the list of endangered and threatened mammals:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
Delmarva Peninsula fox squirrel.	*Sciurus niger cinereus.*	.....	U.S.A. (Sussex County, Delaware).	XN.....	.....	.....	17.84(b).
•	•	•	•	•	•		•

§ 17.84 [Amended]

3. It is proposed that Title 50 CFR 17.84 be amended by adding new paragraph (b) as follows:

• • • • •

(b) Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*).

(1) The delmarva Peninsula fox squirrel population identified in paragraph (b)(4) of this section is a nonessential experimental population.

(2) All prohibitions and exceptions listed in §§ 17.31 and 17.32 apply to this population identified in paragraph (b)(4) of this section, except that it may also be incidentally taken in accordance with applicable State laws and regulations.

(3) any violation of State law regulating the take of this specaes from (b)(4) of this section will also be a violation of the Endangered Species Act.

(4) The site for reintroduction of Delmarva Peninsula fox squirrel is totally isolated from existing populations of this species. The nearest extant population is in the Chincoteague National Wildlife Refuge approximately 50 miles from the reintroduction site. The reintroduction site is within the historic range of this species and is located at the Assawoman Wildlife Area, Sussex County, Delaware. Observation of previous releases have shown that fox squirrels have not traveled more than 2 or 3 miles from release sites, therefore, the possibility of this population contacting extant wild populations in unlikely.

(5) The reintroduced population will be checked periodically to determine its condition. Of special concern will be the establishment of breeding pairs and the reproductive success of the population. The movement patterns of the released individuals and the overall health of the population will also be observed.

Dated: March 9, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-8355 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Flattened Musk Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice on petition finding.

SUMMARY: The Service reports the initial finding on the substantiality of information to list the flattened musk turtle, in accordance with the Endangered Species Act of 1973, as amended. This species occurs only in central Alabama.

DATE: Comments may be submitted until further notice.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this notice are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240; (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires that the Service make a finding whether a petition to list, reclassify, or delist a species presents substantial scientific or commercial information that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. Similarly, section 4(b)(3)(D)(i) of the Act requires a finding within 90 days on a petition to revise critical habitat, with prompt publication of the finding. When a positive finding is

made on a petition to list, reclassify, or delist a species, the Service is required to promptly commence a review of the status of the species.

The petition to list the flattened musk turtle, *Sternotherus minor depressus*, dated November 30, 1983, was received by the Service on December 1, 1983. It was submitted by Michael Bean and Bruce Manheim on behalf of the Environmental Defense Fund, and requested the Service to list the turtle as threatened without critical habitat. The Service finds that this petition does contain substantial biological information to indicate that a listing action may be warranted under provisions of the Act. The administrative record for this finding was completed February 16, 1984; the criteria in 50 CFR 424.14 were used to define and evaluate this petition.

The required status review for this species, known only from central Alabama, began with the December 30, 1982, vertebrate notice of review (47 FR 58454–58460). The Service hereby solicits data concerning this species now under review for listing. Especially sought is information regarding taxonomy, distribution, any recommended critical habitat for the species, and threats. Comments received will be considered in any future listing actions for this turtle.

If a petition is found to present substantial information indicating that an action may be warranted, the Service must decide within 12 months of its receipt whether the requested action is warranted in accordance with sections 4(b)(3)(B) and 4(b)(3)(D)(ii) of the Act, as amended.

This notice was prepared by Dr. C. Kenneth Dodd, Jr. of the Service's Office of Endangered Species in Washington (703/235–1975), with evaluations by appropriate staff biologists in the Endangered Species Program of the Service's regional offices and field stations.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

(Endangered Species Act of 1973, as amended; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*))

Dated: March 30, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-9131 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-07-M

Notices

Federal Register
Vol. 49, No. 67
Thursday, April 5, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Sugar Import Quotas; Amendment of Import Quotas on Sugar for Quota Year 1984

AGENCY: Office of the Secretary, Agriculture.

ACTION: Notice.

SUMMARY: This notice increases the total base quota amount of sugar imported during the period September 26, 1983 through September 30, 1984 from 2,950,000 short tons, raw value, to 3,050,000 short tons, raw value. By a separate notice the U.S. Trade Representative is modifying the allocation provisions for the quota to provide for this increase.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250, Telephone 202–447–2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941, dated May 5, 1982 (47 FR 19661), amended headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS) to modify the import quotas on sugars and to establish a country-by-country allocation system for these imports. Under the terms of headnote 3, the Secretary of Agriculture established an annual (quota year) sugar import quota period of September 26, 1983–September 30, 1984 and on September 20, 1983 set the total amount permitted to be imported for purposes of paragraph (c)(i) of headnote 3 (the total base quota amount) during the 1984 quota year at 2,950,000 short tons, raw value (48 FR 42843).

Headnote 3 authorizes the Secretary of Agriculture to amend the quantative limitations established by paragraph (c) if he determines that such amendments are appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Notice is herby give that, in accordance with the requirements of headnote 3 of subpart A, part 10, Schedule 1 of the TSUS and, after consultation with the Office of the United States Trade Representative and the Department of State, I have increased the total base quota amount for sugar imported during the period September 26, 1983 through September 30, 1984 by 100,000 short tons, raw value, resulting in a total of 3,050,000 short tons, raw value. I have determined that this increase gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. In conformity with the above, paragraph (a) of headnote 3 is modified to read as follows:

3. (a) The total amount of sugars, sirups and molasses described in items 155.20 and 155.30, the products of all foreign countries entered, or withdrawn from warehouse for consumption, between September 26, 1983 and September 30, 1984, inclusive, shall not exceed in the aggregate 3,052,000 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 3,050,000 short tons, raw value, and the remaining 2,000 short tons, raw value, may only be used for the importation of "specialty sugars", as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this headnote.

Signed at Washington, D.C. on March 30, 1984.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84-8114 Filed 4-4-84; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Rocky Mountain Region; Conveyance of Certain Small Tracts

AGENCY: Forest Service, USDA.

ACTION: Delegation of authority to: Forest Supervisors, Rocky Mountain Region.

SUMMARY: Pursuant to the delegations of authority to the Regional Forester, Rocky Mountain Region, at 49 FR 1259 (January 10, 1984), the following authority is hereby delegated to the Forest Supervisors of the Black Hills National Forest; Grand Mesa, Uncompahgre, and Gunnison National Forests; Medicine Bow National Forest; Nebraska National Forest; Arapaho and Roosevelt National Forests; Pike and San Isabel National Forests; and White River National Forest:

To execute and approve all documents for acquisition and conveyance of lands pursuant to the Act of January 12, 1983 (96 Stat. 2535) commonly known as the Small Tracts Act, and in accordance with regulations at 36 CFR 254 Subpart C. This authority may not be further delegated by the Forest Supervisors, and is subject to the following qualifications:

(1) Land appraisals must be recommended for approval to the Forest Supervisor by a qualified review appraiser.

(2) Survey plats must be recommended for approval to the Forest Supervisor by a licensed Forest Service land surveyor.

(3) Cultural resource inventories and surveys must be recommended for approval to the Forest Supervisor by a professional cultural resources specialist.

(4) The authority for waiver of proponent costs [36 CFR 254.40(c)] is reserved to the Regional Forester, Rocky Mountain Region.

B. H. Hanks,

Deputy Regional Forester.

[FR Doc. 84-8102 Filed 4-4-84; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Shenandoah Agricultural Pollution Control RC&D Measure Plan, West Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and Soil Conservation Service Guidelines, (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Shenandoah Agricultural Pollution Control RC&D Measure, Jefferson County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505; telephone 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns soil and water management for agriculture-related pollutant control. The proposed project will be completed over a three-year period. Nine waste storage structures, one membrane lined waste storage pond, and one system of sump, pump, and pipeline will be constructed. Animal waste management plans including field practices to better control and utilize the manure will be developed for each system.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contracting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: March 16, 1984.

Rollin N. Swank,

State Conservationist.

[FR Doc. 84-8101 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 42034]

Air America, Inc. Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on April 12, 1984, at 10:00 a.m. (local time) in Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. before the undersigned Administrative Law Judge.

Dated at Washington, D.C. on March 29, 1984.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84-8122 Filed 4-4-84; 8:45 am]

BILLING CODE 6320-01-M

Application of Challenge Air Transport, Inc. For Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (84–3–127).

SUMMARY: The Board is proposing to find Challenge Air Transport, Inc. fit, willing, and able and to issue it a certificate of public convenience and necessity under section 401 of the Federal Aviation Act authorizing it to provide interstate and overseas scheduled air transportation of persons, property, and mail.

Responses: All interested persons wishing to respond to the Board's tentative fitness findings and proposed certificate award shall file their responses in Docket 41904. Responses should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in Attachment B to the order. Responses shall be filed no later than April 18, 1984.

FOR FURTHER INFORMATION CONTACT: John F. Brennan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–3–127 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–3–127 to that address.

By the Civil Aeronautics Board: March 30, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-8121 Filed 4-4-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41998]

Puerto Rico—Venezuela Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to commence on May 23, 1984, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Ave., NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., April 2, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-8123 Filed 4-4-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Idaho Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 5:00 p.m., on May 11, 1984, at the Federal Building, Room 429, 550 West Fort Street, Boise, Idaho, 83724. The purpose of the meeting is to discuss program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Mr. Rudy M. Pena, at (208) 334–3993 or the Northwestern Regional Office at (206) 442–1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 2, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-8075 Filed 4-4-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of the American Statistical Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice that the Census Advisory Committee of the American Statistical Association will convene on April 26 and 27, 1984. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Statistical Association advises the Director, Bureau of the Census, on the Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Bureau requests for opinions concerning its operations.

The Committee is composed of 15 memberes appointed by the President of the American Statistical Association.

The agenda for the April 26 meeting, which will begin at 1 p.m. and adjourn at 4:45 p.m., is: (1) Introductory remarks by the director of the Bureau of the Census, including (a) staff changes and Bureau organization, (b) major budget and program developments, and (c) other topics of current interest; (2) Committee and Census Bureau staff discussion, including (a) Bureau responses to previous Committee recommendations, (b) status of specific Bureau activities, and (c) Bureau activities described at earlier Committee meetings; (3) obtaining expert advice; and (4) 1990 census activities, including (a) update on planning, (b) geographic planning and nationwide block numbering, and (c) testing progress and plans.

The agenda for the April 27 meeting, that will begin at 9 a.m. and adjourn at 4:30 p.m., is: (1) Update on the Survey of Income and Program Participation; (2) the 5-year research plan; (3) disclosure analysis; (4) Committee meeting to develop recommendations; (5) valuation of noncash income; (6) Committee discussion of recommendations; (7) additional Committee and Bureau staff discussion, and (8) recommendations, plans, and suggested agenda items for the next meeting.

The meeting is open to the public, and a brief period is set aside on April 27 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Committee Control Officer at least 3 days before the meeting.

Persons wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Dr. David W. Chapman, Bureau of the Census, Room 3540, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763–1292.

Dated: March 30, 1984.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 84-8977 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 245]

Resolution and Order Approving the Application of the Metropolitan Nashville-Davidson County Port Authority for Two Foreign-Trade Subzones for the Tennessee Valley Authority in Tennessee

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Metropolitan Nashville-Davidson County Port Authority, grantee of Foreign-Trade Zone 78, Nashville, filed with the Foreign-Trade Zones Borad (the Board) on February 23, 1984, requesting special-purpose subzone status for certain storage facilities at the Tennessee Valley Authority's Phipps Bend and Hartsville Nuclear Plant Sites, in Hawkins County, and Trousdale and Smith Counties, Tennessee, respectively, the Board finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application for a five-year period.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish Two Foreign-Trade Subzones in Trousdale and Smith Counties, and in Hawkins County, Tennessee

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Metropolitan Nashville-Davidson County Port Authority, grantee of Foreign-Trade Zone No. 78, Nashville, has made application (filed February 23, 1984, Docket No. 5–84, 49 FR 7422) in due and proper form to the Board for special-purpose subzone status for storage facilities at Tennessee Valley Authority's (TVA) Hartsville Nuclear Plant Site in Trousdale and Smith Counties, Tennessee, adjacent to the Nashville Customs port of entry, and at TVA's Phipps Bend Nuclear Plant Site in Hawkins County, adjacent to the Knoxville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed February 23, 1984, the Board hereby authorizes the establishment of a subzone at TVA's Hartsville Nuclear Plant Site, designated on the records of the Board as Foreign-Trade Subzone No. 78C, and a subzone at TVA's Phipps Bend Nuclear Plant Site, designated on the records of the Board as Foreign-Trade Subzone No. 78D, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

This grant shall be in effect for a period of five years.

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free, and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the Unites States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 30th day of March 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-8139 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-013]

Certain Steel Valves and Certain Parts Thereof From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain steel valves and certain parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries on the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

Those firms that are subject to suspension of liquidation are indicated in the "Suspension of Liquidation" section.

If this investigation proceeds normally, we will make a final determination by June 13, 1984.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain steel valves and certain parts thereof (valves) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The firms concerned are indicated in the "Suspension of Liquidation" section of this notice.

We have found that the foreign market value of valves exceeded the United States price on 13.2 percent of the sales we compared. These margins ranged from .002 percent to 141.5 percent. The overall weighted-average margin on all valve sales compared is 2.05 percent. The weighted-average margins for individual companies investigated are presented in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by June 13, 1984.

Case History

On September 22, 1983, we received a petition filed by counsel for Condec Flow Control Group of the Lunkenheimer Company; Cooper Value Company; Crane Company, Mark Control Corporation; the Wm. Powell Company, Rockwell International Corporation, Flow Control Division; Smith Valve Corporation, Henry Vogt Machine Company; and Walworth Company as individual petitioners and collectively as the Valve Manufacturers Association Fair Trade Council.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioners alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 11, 1983 (48 FR 48267). The ITC found, on November 7, 1983, that there is a reasonable indication that imports of valves are materially injuring, or are threatening to materially injure, a United States industry.

The petitioners alleged that at least 13 Japanese companies produce valves for export to the United States. However, we identified 3 producers and exporters which account for approximately 85 percent of the subject valves sold for export to the United States. We presented questionnaires in Japan to these producers and exporters on October 28, 1983.

On November 10 and 21, 1983, we received letters from counsel from the Japanese valve producers and exporters requesting additional time in which to respond because of the complicated nature of the products involved. Extensions were granted and we received responses on December 16 and 19, 1983. We received responses from the following companies: Hitachi Metals, Ltd. (Hitachi), Kitz Corporation (Kitz) and Takamisawa Koki Mfg., Ltd. (TKM).

On February 9, 1984, at the request of the petitioners, we postponed the preliminary determination for 30 days (49 FR 7843).

Scope of Investigation

The merchandise covered by this investigation consists of "wedge gate," "swing check," and "globe," valves, and certain parts of the foregoing, of steel, currently provided for under item number 680.17 of the Tariff Schedules of United States. "Certain parts" include machined valve bodies and partially completed valves consisting of machined valve bodies imported with one or more of the following parts: bonnet, stem, wedge, handle or seat rings. Pursuant to a letter from counsel for the petitioners, dated October 25, 1983, the product description as stated in the Notice of Initiation is hereby amended by excluding bellows seal valves and non-machined valve bodies.

Since the respondents produced and sold approximately 85 percent of the valves for export from Japan to the United States during the period of investigation, we limited our investigation to them.

We investigated sales made by these respondents during the period from April 1 to September 30, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for the majority of sales by the Japanese producers, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b. foreign port, f.o.b. delivered to various customer designated locations, or ex-dock, packed price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, foreign brokerage and handling charges, ocean freight, marine insurance, U.S. brokerage and handing charges, U.S. customes duties and U.S. inland freight. We used exporter's sales price to represent the United States price of a portion of the merchandise sold by Hitachi because the merchandise was sold to unrelated purchasers after importation into the United States. For these sales, we made additional deductions, where appropriate, for credit costs and other selling expenses incurred in the United States.

Foreign Market Value

In accordance with section 773(a) of the Act, with the exception of some sales by TKM, we calculated foreign market value based on home market sales. For purposes of determining similar merchandise under section 771(16) of the Act, we made comparisons based on valves of the same type (wedge gate, globe or swing check), body materials (carbon, alloy, or stainless steel), pressure classification, size and whether forged or cast. In the case of TKM, there were no sales in the home market to use as a basis for foreign market value for some categories of valves. As required in section 773(a)(1)(B) of the Act, we selected sales for export to a country other than the United States (a "third country") as the basis for foreign market value or, if TKM had no third country sales for those categories, we determined foreign market value on the basis of constructed value in accordance with section 773(a) of the Act.

A portion of the Hitachi and Kitz home market sales failed in the comparison of one or more of the characteristics noted above. However, we calculated the foreign market value for these valves using home market sales on the basis of comparisons made by the companies as the best information available for this preliminary determination. We will seek information for the final determination which will allow us to make comparisons to third country sales or to constructed value, as appropriate.

Where we used home market prices as the basis for foreign market value, we calculated the home market prices for each type of valve on the basis of delivered packed prices to unrelated purchasers. From these prices, we deducted, where appropriate, foreign inland freight and foreign inland insurance. We made adjustments, where appropriate, for credit expenses, advertising expenses and warranty and servicing expenses in accordance with section 353.15 of our regulations. When there were commissions on sales in the home market and none on sales to the United States, we made adjustments for the differences between commissions in the home market and indirect selling expenses on sales to the United States used as an offset to the home market commissions in accordance with section 353.15(c) of our regulations. We also made adjustments for the cost of materials, labor and direct factory overhead associated with differences in the merchandise in accordance with section 353.16 of the Commerce regulations. We also deducted the home market packing cost, where appropriate, and added the packing cost incurred on sales to the United States.

We disallowed the following claims in calculating foreign market value. Kitz requested adjustments for quality control and technical service expenses. However, we did not make the adjustments because the claims appear to include both allowable and non-allowable expenses, and we do not have sufficient information to allocate those expenses that are directly attributable to sales of the merchandise. We will seek further information for purposes of our final determination.

Kitz also requested a deduction of indirect selling expenses in the home market to offset U.S. commissions. We disallowed their claim for such an adjustment because Kitz provided no information relating to the amount of the U.S. commission against which such an offset could be made. In addition, Kitz also claims an adjustment for commissions on sales in the home market. If the amount of the U.S. commission were known, an adjustment for differences in the commissions in the two markets would be made in accordance with § 353.15 (a) and (b) rather than allowing an offset under § 353.15(c). We will seek further information for purposes of our final determination.

In the case of TKM, where we used sales to a third country as the basis for foreign market value, we calculated the third country prices on the basis of the ex-works of f.o.b. Japanese port, unpacked price to unrelated purchasers in four separate countries. We did this because there were no sales to a single country that provided an adequate sample for determining the foreign market value for all categories of valves not sold in the home market. We made deductions, where appropriate, for Japanese brokerage and handling charges and inland freight. We made adjustments, where appropriate, for credit expenses in accordance with section 353.15 of our regulations. Since there were no commissions on sales to the United States, we made adjustments, where appropriate, for the difference between commissions in the third country sales and indirect selling expenses on sales in the United States used as an offset to the third country commissions in accordance with § 353.15(c) of our regulations. We also made adjustments for the cost of materials, labor and direct factory overhead associated with differences in merchandise in accordance with § 353.16 of our regulations. We added the packing cost incurred on sales to the United States.

Where we used constructed value as the basis for foreign market value, we calculated the cost of materials, fabrication, general expenses, profit, and the cost of packing. The amount added for general expenses was the amount of such expenses which was higher than the statutory minimum of 10 percent of the sum of material and fabrication costs. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses.

Where we used exporter's sales price, we deducted home market indirect selling expenses to offset U.S. selling expenses.

Verification

In Accordance with 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

ITC Notification

In Accordance with section 773(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of the subject values from Japan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. Where sales by trading companies cannot be identified by manufacturer, the Customs Service shall require a cash desposit or the posting of a bond equal to the highest estimated weighted-average margin of 6.51 percent. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer	Weighted-average margin percentage
Kitz Corporation	6.51
Hitachi Metals, Ltd.	0.99
Takamatsune Kohi Mfg., Ltd.	1.19
All other companies	2.05

Public Comment

In accordance with section 353.47 of our regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on May 15, 1984, at the U.S. Department of Commerce, Room B841, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of the publication of this notice.

Requests should contain (1) The party's name, address, and telephone number; (2) the number of participants (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 8, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: March 30, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-8105 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-25-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATE: Comments on these applications must be submitted on or before April 16, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00012."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This corrects the Notice of Application for Northwest Fruit Exporters, Application #84-0012, which was published March 27, 1984, 49 FR 11697, column 2, FR Doc. 84-8159, as follows:

1. Date by which comments must be submitted is changed from April 11, 1984 to April 16, 1984.

2. The last seven lines of the second paragraph of summary of the application at 49 FR 11698 should read as follows: Establishing and operating fumigation facilities; allocating export quotas among growing regions and members; providing market entry and development assistance, including related administrative and promotional services; and arranging transportation services for export.

Dated: March 30, 1984.

Irving P. Margulies,

Acting General Counsel.

[FR Doc. 84-8112 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-DR-M

[A-428-062]

Animal Glue and Inedible Gelatin From West Germany; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On January 30, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on animal glue and inedible gelatin from West Germany. The review covers the eight known manufacturers and/or exporters and one third-country reseller of this merchandise to the United States and the period December 1, 1981 through November 30, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke in part. We received no comments. Based on our analysis, the final results of our review are the same as the preliminary results.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wright or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 3677–3679) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on animal glue and inedible gelatin from West Germany (42 FR 64116, December 22, 1977). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of animal glue and inedible gelatin of which there are two principal types, hide glue and bone glue. Animal glue is an organic colloid of protein derivation. There is no significant difference between animal glue and inedible gelatin. Animal glues are odorless, dry, hard, hornlike materials. They are used as general purpose adhesives in industries producing abrasives, paper containers, book and magazine bindings, and leather goods. They are also used as sizing agents and as colloids in emulsions and cleaning compounds. Animal glue and inedible gelatin are currently classifiable under items 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated.

The review covers the eight known manufacturers and/or exporters and one third-country reseller of West German animal glue and inedible gelatin to the United States and the period December 1, 1981 through November 30, 1982.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of review are the same as the preliminary results, and we determine that the following margins exist:

Manufacturer/exporter	Margin (percent)
Chemische Dungerstatelek Rendsburg	[1] 159.00
G. Conradt & Sohn	[1] 67.00
Johannes Marten K–G	[1] 0
Ph. Carl Weise	[1] 16.34
Nienburger Gelatin GmbH	[1] 159.00
Fritz Hacker & Sohn GmbH	0
Deutsche Gelatin-Fabriken Stoess & Co./Gould-Metall	[1] 159.00
Marcuse, Dorme & Company Limited (U.K.)	[1] 16.34

[1] No shipments during the period.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of West German animal glue and inedible gelatin from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any future shipments from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 30, 1982, and who is unrelated to any covered firm, no cash deposit shall be required. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department will examine exports of this merchandise manufactured and exported by Fritz Hacker & Sohn GmbH during the period December 1, 1982 through January 30, 1984, the date of our tentative determination to revoke with regard to this firm, in our next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 27, 1984.

[FR Doc. 84-8728 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–035]

Cadmium From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on cadmium from Japan. The review covers the seven known exporters of this merchandise to the United States and the period August 1, 1982 through July 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined not to require cash deposits of estimated antidumping duties on future entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 40759) the final results of its last administrative review of the antidumping finding on cadmium from Japan (37 FR 15760, August 4, 1972) and announced its intent to begin immediately the next administrative review. As required by section 751 of the Tariff Act 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of cadmium, currently classifiable under items 632.1420 and 632.1440 of the Tariff Schedules of the United States Annotated.

The review covers the seven known exporters of Japanese cadmium to the United States and the period August 1, 1982 through July 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that we will not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce regulations, on any shipments of Japanese cadmium entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the

first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

March 28, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9108 Filed 4-4-84; 8:45 am]
BILLING CODE 3510-DS-M

[A-122-005]

Carbon Steel Bars and Structural Shapes From Canada; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On February 1, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on carbon steel bars and structural shapes from Canada. The review covers carbon steel bars and structural shapes manufactured by Western Canada Steel Ltd., its subsidiary, Vancouver Rolling Mills Ltd., the six other known exporters of this merchandise to the United States and the period September 1, 1981 through August 31, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert Marenick, Office of Compliance, International Trade Administration, U.S Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 4025) the preliminary results of its administrative review of the antidumping finding on carbon steel bars and structural shapes from Canada (29 FR 13319, September 25, 1964). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of carbon steel bars, bars-shapes under 3 inches, and structural shapes 3 inches and over, currently classifiable under items 606.8300 and 609.8000 of the Tariff Schedules of the United States Annotated, manufactured by Western Canada Steel Limited and/or its subsidiary, the Vancouver Rolling Mills Limited of Vancouver, Canada.

The review covers Western Canada Steel Limited, its subsidiary, Vancouver Rolling Mills Limited, the six other known exporters of this merchandise to the United States, and the period September 1, 1981 through August 31, 1982.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of the review, and we determine that the following margins exist for the period September 1, 1981 through August 31, 1982:

Manufacturer/exporter	Margin (percent)
Western Canada Steel Ltd.	40.64
Western Canada/A.J. Forsyth Co., Ltd.	[1] 0.01
Western Canada/Mitsubishi Canada Ltd.	[1] 0.01
Western Canada/Mitsui & Co. (Canada) Ltd.	[1] 0.01
Western Canada/Tudor Sales Ltd.	[1] 0.01
Western Canada/Cam Chain Co., Ltd.	3.20
Western Canada/Chatham Steel Ltd.	3.20

[1] No shipments during the period.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the above margins shall be required for those firms. The Department shall waive the cash deposit requirement for A.J. Forsyth Co., Ltd., Mitsubishi Canada Ltd., Mitsui & Co. (Canada) Ltd., and Tudor Sales Ltd., since the margins for these firms are less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes. For any shipments from a new exporter of carbon steel bars and structural shapes manufactured by Western Canada Steel, Ltd., or its subsidiary, Vancouver Rolling Mills Ltd., not covered in this or prior reviews, whose first shipments occurred after August 31, 1982 and who is unrelated to any coverd firm, a cash deposit of 3.20 percent shall be required on future entries. These deposit requirements and waivers are effective for all shipments of Canadian carbon steel bars and structural shapes manufactured by Western Canada Steel Ltd. or its subsidiary, Vancouver Rolling Mills Ltd., entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

The Department encourages interested parties ot review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review, The Department intends to begin immediately the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (91 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

March 29, 1984.

Alan F. Holmer,

Deputy Assistant Secretary For Import Administration.

[FR Doc. 84-9107 Filed 4-4-84; 8:45 am]
BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant; Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bend Research, Inc., having a place of business in Bend, Oregon an exclusive right to manufacture, use, and sell products embodied on the invention entitled, "Extraction of Metal Ions from Aqueous Solution," U.S. Patent No. 4,437,994. The patent rights of this invention are being assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing, Office of Government Inventions and Patents, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84-8080 Filed 4-4-84; 8:45 am]

BILLING CODE 3510-4-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Airlift Cross-Matrix Panel Meeting

March 27, 1984.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel will meet 30 May at 8:00 a.m. to 12:00 p.m. at Scott AFB IL and at Hurlburt AFB FL 31 May at 8:00 a.m. to 5:00 p.m.; and 1 June at 8:00 a.m. to 12:00 pm.

The purpose of the meeting will be to discuss Military Airlift Command Special Operations Forces. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically, subparagraphs (1) and (4) thereof and is closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-8109 Filed 4-4-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army; Corps of Engineers

Categorical Exclusions

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The nationwide permit in 33 CFR 330.5(a)(23), published by the Corps of Engineers in its interim final rules on July 22, 1982, provided for categorically excluding certain Federal activities from environmental documentation provided certain conditions were met. The Department of the Interior, Bureau of Reclamation, has requested the Corp's concurrence in that agency's categorical exclusions which were previously published in the **Federal Register**. The Corps of Engineers is soliciting comments on this proposal which will be used in making final decisions on this matter.

DATE: Written comments must be received on or before May 21, 1984.

ADDRESS: HQDA, DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Pierce or Sam Collinson at (202) 272-0199.

Dated: February 2, 1984.

Approved:

Michael Volpe,

Colonel, Corps of Engineers, Executive Director of Civil Works.

The U.S. Department of the Interior, Bureau of Reclamation, has requested that the Office of the Chief of Engineers concur in their categorical exclusion determination in order that they may utilize the nationwide permit published at 33 CFR 330.5(a)(23). That permit reads:

Activities, work, and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment and th Office of the Chief of engineers (ATTN: DAEN-CWO-N) has been furnished notice of the agency or department's application for the categorical exclusion and concurs with that determination.

The permit is subject to conditions listed at 33 CFR 330.5(b) and the management practices listed at 33 CFR 330.6.

Upon concurrence by the Office of the Chief of Engineers, activities categorically excluded by the Bureau of Reclamation will be authorized by nationwide permit and would require an individual permit review only at the discretion of a division engineer.

The Bureau of Reclamation's categorical exclusions were published on April 21, 1983 (48 FR 17151). Those which may be subject to Department of the Army permit authority are listed below. In addition, a copy of the checklist utilized by the Bureau to evaluate an action for categorical exclusion is appended. If all answers on list are checked "no" then the actions meets the criteria for categorical exclusion. If any one answer is checked "yes", then an ennvironmental assessment will be prepared unless there is no doubt that an environmental impact statement is required.

Comments are invited on the appropriateness of authorizing the Bureau of Reclamation's categorically excluded activities under the subject nationwide permit and, if necessary, any conditions that should be imposed to ensure that activities comply with provisions of the Clean Water Act.

List of Those Bureau of Reclamation Categorical Exclusions Which May Be Subject to Department of Army Permit Authority

516 DM 6, Appendix 9
Bureau of Reclamation
9.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Bureau also performs, the following Bureau actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. General Activities

2. Training activities of enrollees assigned to the various youth programs. Such training may include minor construction activities for other entities.

3. Research activities, such as nondestructive data collection and analysis, monitoring, modeling, laboratory testing, calibration, and testing of instruments or procedures and nonmanipulative field studies.

B. Planning Activities

3. Data collection studies that involve test excavations for cultural resources investigations or test pitting, drilling, or seismic investigations for geologic exploration purposes where the impacts will be localized.

C. Project Implementation Activities

3. Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities.

4. Approval of land management plans where implementation will only result in minor construction activities and resultant increased operation and maintenance activities.

D. Operation and Maintenance Activities

1. Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location and/or operation.

9. Issuance of permits for removal of gravel or sand by an established process from existing quarries.

11. Implementation of improved appearance and soil and moisture conservation programs where the impacts are localized.

12. Conduct of programs of demonstration, educational, and technical assistance to water user organizations for improvement of project and on-farm irrigation water use and management.

17. Minor safety of dams construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.

E. Grant and Loan Activities

1. Rehabilitation and Betterment Act loans and contracts which involve repair, replacement, or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities.

2. Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.

3. Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.

Categorical Exclusion Checklist

Projects: _____
Date: _____
Nature of Action:
Exclusion category:

Evaluation of criteria for Categorical Exclusion

1. This action or group of actions would have a significant effect on the quality of human environment.	No——	Uncertain——	Yes——
2. This action or group of actions would involve unresolved conflicts concerning alternative uses of available resources.	No——	Uncertain——	Yes——

Evaluation of exceptions to actions within Categorical Exclusion

1. This action would have significant adverse effects on public health or safety.	No——	Uncertain——	Yes——
2. This action would affect unique geographical features as: wetlands, wild or scenic rivers, refuges, floodplains, etc.	No——	Uncertain——	Yes——
3. This action will have highly controversial environmental effects.	No——	Uncertain——	Yes——
4. The action will have highly uncertain environmental effects or involve unique or unknown environmental risk.	No——	Uncertain——	Yes——
5. This action will establish a precedent for future actions.	No——	Uncertain——	Yes——
6. This action is related to other actions with individually insignificant but cumulatively effects.	No——	Uncertain——	Yes——
7. This action will affect properties listed or eligible for listing in the National Register of Historic Places.	No——	Uncertain——	Yes——
8. This action will affect a species listed or proposed to be listed as Endangered or Threatened.	No——	Uncertain——	Yes——
9. This action threatens to violate Federal, State, local or tribal law or requirements imposed for protection of the environment.	No——	Uncertain——	Yes——

NEPA Action-Categorical Exclusion _____
EA _____
EIS _____
Explanation and/or remarks:
Preparers Name and Title:
Regional Archeologist concurrence with item 7 _____
Concur: _____
Signature of Division/Office Chief
Date: _____
Concur: _____
Signature Environmental Affairs Officer
Date: _____

[FR Doc. 84-8838 Filed 4-4-84; 8:45 am]
BILLING CODE 3710-92-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) For a Small Flood Control Project on the Salmon River, Lemhi County, Idaho

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The project is to reduce ice jam related flood damages along the Salmon River in the vicinity of Salmon, Idaho. The river in this area has a history of ice jamming and associated flooding which occasionally has caused major damages. Most recent floods were in 1981 when damages exceeded $1 million and this winter when damages exceeded $2 million.

2. Alternatives to be investigated include:

a. Dump Creek fan excavation.
b. City of Salmon levee system.
c. Ice barrier upstream of Salmon.
d. Modify structures in flood plain.
e. Levee in combination with Dump Creek fan removal or upstream barrier.
f. No action.

3. The Forest Service, USDA will be a cooperating agency in preparation of the DEIS. Other affected Federal, State and local agencies, affected Indian tribes, and other interested organizations and parties are invited to participate in scoping for the DEIS. A formal scoping meeting is not planned; however, comments should be directed to the address given below. Comments concerning the DEIS scope are requested by 15 May 1984. An information packet, which further describes the alternatives to be investigated and issues of concern identified at this time, is available from the address below.

4. The Salmon River at Dump Creek is a component of the Wild and Scenic Rivers System and the reach above North Fork is a study segment in the Nationwide Rivers Inventory. Significant issues to be addressed in the DEIS include effects of the alternatives on the wild and scenic classification and inventory reach, impacts on a large wetland in the Deadwater area, and impacts on wildlife, fisheries, endangered species, cultural resources, and socioeconomics. The project will be reviewed under all applicable Federal, state, and local statutes.

5. The draft reconnaissance report and DEIS should be available on or about 1 October 1984.

ADDRESS: Comments concerning the project and DEIS should be addressed to L.V. Armacost, Chief, Planning Division, Walla Walla District, Corps of Engineers, Building 602, City-County Airport, Walla Walla, WA 99362. Comments or questions can be telephoned to Witt Anderson, 509–522–6626 or FTS 434–6626.

Dated: March 28, 1984.

Robert B. Williams,
Colonel, CE, Commanding.

[FR Doc. 84-8839 Filed 4-4-84; 8:45 am]
BILLING CODE 3710-GC-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday, 23 April 1984 and Tuesday, 24 April 1984 if an extra day is needed for the deliberations of the subgroup.

Times: 0630–1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Bilogical Warfare Intelligence will kick off this study effort with classified briefings and discussions addressing the following terms of reference: a review of current Army CBW intelligence efforts; identification of user needs and priorities; and, recommendation of specific tasks which the Army can and should accomplish regarding chemical warfare. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Maria P. Winters,

Acting Administrative Officer.

[FR Doc. 84-9139 Filed 4-4-84; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Meeting Change

The following changes have occurred for the meeting of the Manning a Ready Force Subpanel of the Army Science Board 1984 Summer Study on Leading and Manning Army 21, which was originally announced in the **Federal Register** issue of Monday, March 26, 1984 (49 FR 11233), FR Doc. 84–8047:

Meeting Date: Monday, 16 April 1984 (instead of Monday & Tuesday, 16&17 April 1984).

Meeting Location: The Pentagon, Washington, DC and BDM Corporation, McLean, Virginia (instead of just at the Pentagon).

Sally A. Warner,

Administrative Officer.

[FR Doc. 84-9140 Filed 4-4-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

State Educational Agency/Federal Evaluation Studies Program

AGENCY: Department of Education.

ACTION: Application notice establishing the closing date for transmittal of fiscal year 1984 new grant applications.

Applications are invited for new evaluation studies under the State Educational Agency/Federal Evaluation Studies program under the Education of the Handicapped Act.

Authorization for this program is contained in section 618(d) of Part B of the Education of the Handicapped Act, as amended by the Education of the Handicapped Act Amendments of 1983. According to section 618(d)(1), the purpose of this program is to carry out studies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act.

(20 U.S.C. 1418(d))

Applications may be submitted by State educational agencies to enter into cooperative agreements with the Secretary to conduct evaluation studies.

Closing Date for Transmittal of Applications: Applications for new awards must be mailed or hand delivered by June 5, 1984.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.159, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5073, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:40 p.m. on the closing date.

Program Information: On December 2, 1983, the Education of the Handicapped Act Amendments of 1983 (Pub. L. 98–199) was enacted. As amended by Pub. L. 98–199, section 618(d) of the Act authorizes the Secretary to enter into cooperative agreements with State educational agencies to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*). The legislative history of Pub. L. 98–199 includes the statement from the Senate Committee on Labor and Human Resources that: "The Committee believes that local educational agencies, State educational agencies, and the Federal special education agency working together could produce comprehensive and useful information on the impact and effectiveness of programs assisted under the Act which could lead to program improvements at the Federal, State, and local levels." S.REP. No. 98–191, 98th Cong., 1st Sess. 12 (1983).

In accordance with section 618(d)(2)(B) of the Act, projects supported under this program must be developed in consultation with the State Advisory Panel established under the Act, local educational agencies, and others involved in or concerned with the education of handicapped children and youth.

The Secretary invites applications for evaluation studies that will—

(1) Describe the type and quantity of related services provided to handicapped children by State and local educational agencies as well as other agencies, combined with information regarding the cost of these services. These studies could include information regarding the relationship of related services to educational progress; or

(2) Examine options for serving learning disabled students within the regular education program and the effectiveness of these options.

Applications that meet these invitational priorities, however, will not receive a competitive or absolute preference over other applications that describe evaluation projects.

Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372, entitled

"Intergovernmental Review of Federal Programs." The regulations took effect on September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order–

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated;
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsiblities of a State or local government within that geographic area.

The following is the current list of States which have established a process, designated a single point of contact, and have selected this program for review:

Arkansas	Oklahoma
Connecticut	South Dakota
Delaware	Vermont
Florida	Virginia
Indiana	Washington
Maine	Wisconsin
Michigan	Wyoming
Nebraska	American Samoa
New Jersey	Guam
New Mexico	Virgin Islands
New York	Northern Mariana Islands
North Dakota	

Immediately upon receipt of this notice, applicants which are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 20, 1984 to the following address:

The Secretary, U.S. Department of Education, Room 4161 (CFDA Number: 84.159), 400 Maryland Avenue SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available Funds: It is estimated that approximately $1,400,000 will be available for support of 14 cooperative agreements to carry out new evaluation studies under this program in Fiscal Year 1984. This estimate of funding level does not bind the U.S. Department of Education to a specific number of awards or to the amount of any award, unless that amount is otherwise specified by statute or regulations. Awards under this program will be issued for a period of up to 18 months. In accordance with Section 618(d)(2)(A) of the Act, each State educational agency must provide at least 40 percent of the total cost of the study.

Application Forms: Application forms and program information packages are expected to be ready for mailing by April 6, 1984. These materials may be obtained by writing to the Research Projects Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portions of the application not exceed 40 double-spaced pages in length. The Secretary further urges that applicants submit only the information that is requested.

Applicable Regulations: Regulations applicable to this program include the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

Prospective applicants should note that, because of the newness of this program, program regulations have not been issued. The Secretary will therefore select projects for awards under this program on the basis of the criteria under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.210, *Selection criteria for a discretionary grant program that does not have regulations.* In accordance with 34 CFR 75.210 (b) and (c), the selection criteria are weighted as follows, for a maximum score of 100 points.

(1) *Meeting the purposes of the authorizing statute.* (30 points)

(i) The Secretary reviews each application for information that shows how well the project will meet the purposes of the statute that authorizes the program.

(ii) In conducting this review, the Secretary looks for information that describes—

(A) The objectives of the project; and

(B) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points)

(i) The Secretary reviews each application for information that shows the project meets specific needs recognized in the statute that authorized the program.

(ii) In conducting this review, the Secretary looks for information that—

(A) Describes the needs addressed by the project;

(B) Describes how the applicant identified those needs;

(C) Describes how those needs will be met by the project; and

(D) Describes the benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points)

The Secretary evaluates each application on the basis of the criterion in § 75.202.

(4) *Quality of key personnel.* (17 points)

The Secretary evaluates each applications on the basis of the criterion in § 75.203.

(5) *Budget and cost effectiveness.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 75.204.

(6) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 75.205.

(7) *Adequacy of resources.* (3 points)

The Secretary evaluates each application on the basis of the criterion in § 75.206.

FOR FURTHER INFORMATION CONTACT: Gary Burfoot, Research Projects Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511), Washington, D.C. 20202. Telephone: (202) 732-1115.

(20 U.S.C. 1416(d))

(Catalog of Federal Domestic Assistance Number—84.159, State Educational Agency/ Federal Evaluation Studies)

Dated: March 30, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-8119 Filed 4-4-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Indian Education; Closed Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the National Advisory Council on Indian Education. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 25-27, 1984, 8:30 A.M. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, D.C. 20202, 202/245-8020.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, Pennsylvania Building, Suit 326, 425 13th Street, NW., Washington, D.C. 20004, (202)/376-8882.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under Section 441(a) of the Indian Education Act (Title IV of Pub. L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to programs benefiting Indian children and adults.

On April 25-27, 1984, from 8:30 A.M. until conclusion of business each day, the Council will be reviewing Title IV, Parts A, B, and C proposals. The reviewing of proposals must be held in the highest confidence until the announcement is released by the proper authorities as to which projects will be funded. Financial, privileged, and confidential information in and related to these proposals will be discussed at the review session, and will touch upon matters that would disclose information of a personal nature where disclosures would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (4) and (6) of Section 552b(c) of Title 5 U.S.C.

The proposed agenda includes:

(1) Reviewing of Title IV, Parts A, B, and C proposals based on provisions of the Indian Education Act, Title IV, Pub. L. 92-318, Section 442(b)(2), and make recommendations to the Secretary of Education with respect to their approval.

Records shall be kept of the activities of the closed meeting which would be informative to the public consistent with the policy of Section 552b(c) of Title 5 U.S.C., and will be available to the public within 14 days of the meeting at the Council's Office, 425 13th Street, NW., Suite 326, Washington, D.C. 20004.

Dated: March 20, 1984.

Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 84-8127 Filed 4-4-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Withdrawal of Proposed Contract Suspension and Debarment; Gerald Luckow

AGENCY: Department of Energy.

ACTION: Withdrawal of notice of proposed debarment.

SUMMARY: The purpose of this notice is to announce that due to mitigating circumstances, the Department of Energy has withdrawn its notice of proposed debarment concerning Mr. Gerald Luckow, Mail America, Mail America, Inc., FED SERV Industries, Inc., and any other organization with which Mr. Luckow is affiliated.

A notice of proposed debarment was sent to Mr. Luckow on August 2, 1983, and published in the **Federal Register** on August 8, 1983 (48 FR 35990). The basis for the proposed debarment was a demonstrated lack of business integrity in the handling of a payment of $114,187, which was sent in error by the Department of Energy to Mail America, a company owned by Mr. Luckow. Although he had previously assigned the payment to a financial institution pursuant to the Assignment of Claims Act, 31 U.S.C. 3727 and 41 U.S.C. 15, Mr. Luckow failed to forward the money to the assignee or to return it to the Department of Energy, which was forced to issue a second check to the assignee. The Department proposed to debar Mr. Luckow following his failure to respond to any of three demands for payment, including a contracting officer's decision under the Contract Disputes Act of 1978 (Pub. L. 95-563, 41 U.S.C. 601 *et seq.*).

Since the notice of proposed debarment, however, Mr. Luckow has made a bona fide offer of repayment and, on December 27, 1983, executed a Repayment Agreement with the Department of Energy. Under that agreement, he will repay the full sum of $114,187, plus interest, within three years. The initial payment of $10,000 and the first two monthly payments of $4,400 each have been made. These positive actions have been determined to be a mitigating factor sufficient to warrant withdrawal of the notice of proposed debarment.

FOR FURTHER INFORMATION CONTACT: Harold Johnson, Procurement and Assistance Management Directorate, Room 1I-018, Forrestal Building, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, telephone 202/ 252-8288.

Issued in Washington, D.C., March 28, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 84-8128 Filed 4-4-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER83-369-004]

Alabama Power Co.; Refund Report

April 2, 1984.

Take notice that on March 26, 1984, Alabama Power Company (the Company) submitted for filing its Refund Report pursuant to an uncontested Settlement Agreement filed by the Company and the cooperatives on December 1, 1983 and approved by the Commission in a letter order dated February 16, 1984.

The compliance report shows the refund calculation for each delivery point (including interest). Refunds to

each of the distribution cooperatives were made by means of Company checks. Interest on these refund amounts was calculated through March 15, 1984.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 29426, on or before April 12, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9012 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-332-000]

Arizona Public Service Co.; Filing

April 2, 1984.

The filing Company submit the following.

Take notice that on March 19, 1984, Arizona Public Service Company (APS) tendered for filing a Letter Agreement Supplement (Letter Agreement) to the "Supplemental Agreement for Early Termination" (Supplemental Agreement) of the Wholesale Power Agreement (WPA) between AP and Plains Electric Generation and Transmission Cooperative, Inc. (Plains), dated January 18, 1984, and executed on February 13, 1984.

APS states that this Letter Agreement proposes to allow the Termination Charge, provided for in the Supplemental Agreement of the WPA, to be recalculated, taking into account various relevant factors resulting from a recent proposed sale of certain electrical facilities by APS to the Navopache Electric Cooperative, Inc., and an Amendment No. 3 to the APS-Plains Power Coordination Agreement.

APS requests an effective date of December 30, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon Plains and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9013 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-331-000]

Arkansas Power & Light Co.; Filing

March 30, 1984.

The filing Company submits the following:

Take notice that on March 19, 1984, Arkansas Power & Light Company (APL) tendered for filing the Ninth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between APL and Arkansas Electric Cooperative Corporation (AECC). The amendment provides for the transfer and increase in capacity of one delivery point and the increase in capacity at two additional delivery points.

APL requests an effective date of June 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9014 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-334-000]

Boston Edison Co; Filing

April 2, 1984.

The filing Company submits the following:

Take notice that on March 20, 1984, Boston Edison Company (Boston) tendered for filing an agreement for the exchange of power between itself and New England Power Company of Westboro, Massachusetts (NEP).

Boston states that under the agreement, the parties could negotiate daily power exchanges involving Edison fossil fired units and NEP Fossil fired facilities. The parties state that the purpose of the power exchanges is to attain greater efficiencies of operation.

Boston requests an effective date of September 14, 1983.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 if the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9015 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-333-000]

Carolina Power & Light Co.; Filing

April 2, 1984.

The filing Company submits the following:

Take notice that on March 19, 1984, Carolina Power & Light Company (CP&L) tendered for filing changes outlined below in its agreement with Carteret-Craven EMC and Wake EMC.

1. *Carteret-Craven EMC*—The termination and cancellation of the Maysville 12 KV Point of Delivery.

2. *Wake EMC*—The revision of the Exhibit A to reflect the installation of additional special metering facilities for the Wake Forest 115 KV Point of Delivery.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 16,

1984. Protests will be considered by the Commission in determining the appropriate action to taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8018 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84-332-000]

Cities Service Oil, et al.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity

March 30, 1984.

Take notice that on March 15, 1984, Cities Service Oil and Gas Corporation, Cities Offshore Production Company, and Oxy Petroleum, Inc. (Applicants), of 110 West 7th Street, Tulsa, Oklahoma 74102, filed an application for a Blanket Limited-Term Certificate of Public Convenience and Necessity authorizing Applicants to conduct a short-term spot sales marketing program called the Consumer-Oriented Gas Sales (COGS) Program.

The certificate would: (1) Authorize the sale of natural gas by Applicants for resale in interstate commerce; (2) permit temporary partial abandonment of certain natural gas sales; (3) confer pregranted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the COGS Program; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. This authority is necessary for implementing a short-term experimental spot sales marketing program called the Consumer-Oriented Gas Sales (COGS) Program. Under the COGS Program, Applicants propose to sell on a spot basis contractually committed natural gas qualifying for the section 102, 103, or 107 rate under the Natural Gas Policy Act of 1978. Applicants will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be absolved of take-or-pay liability for any volumes of gas released and sold under the COGS Program.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 381.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8017 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-335-000]

Cleveland Electric Illuminating Co.; Filing

April 2, 1984.

The filing Company submits the following:

Take notice that on March 20, 1984, the Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 5 MW of power from the 345 kv interconnection point on CEI's Juniper—Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of February 29, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8018 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-14-000]

Connecticut Light & Power Co.; Refund Report

March 30, 1984.

Take notice that on March 19, 1984, the Connecticut Light & Power Company submitted for filing its Refund Report pursuant to Commission's order issued February 3, 1984.

The Connecticut Light & Power Company states that it has made a refund to the Connecticut Municipal Electric Energy Cooperative (CMEEC) for the difference between the company's present rates and the settlement rates. Per the settlement agreement, no interest payments were included in the refund amount.

The Connecticut Light & Power Company states that copies of the filing have been sent to all parties on the Commission's service list and to the Connecticut Department of Public Utility Control.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 5, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8019 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-290-000]

Colorado Interstate Gas Co.; Application

March 30, 1984.

Take notice that on March 8, 1984, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP84-290-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities necessary to allow CIG to redeliver gas to Northwest Pipeline Corporation (Northwest) near Green

River, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest sells gas to CIG at an existing interconnection between Northwest and CIG located near Green River pursuant to Northwest's Rate Schedule PL–1, it is stated. CIG and Northwest are parties to numerous certificated transportation and exchange agreements, it is further stated. Pursuant to the terms of three of these agreements, CIG avers that it is responsible for transportation and redelivering Northwest's gas at the Green River interconnection. It is further averred that the redelivery has been accomplished by displacement (i.e., the reduction of the actual volume of gas redelivered to CIG under Rate Schedule PL–1 by the equivalent of CIG's redelivery requirements to Northwest under the various transportation and exchange agreements).

Specifically, CIG proposes to construct and operate facilities, including an 8-inch meter run and associated measuring equipment, which would be located at the Green River interconnection and would allow for the physical redelivery of gas to Northwest. It is stated that the proposed facilities would be designed to handle volumes of gas ranging from 1,500 Mcf per day to 45,000 Mcf per day at pressures ranging from 575 p.s.i.a. to 600 p.s.i.a. It is explained that maximum redelivery pressures would not exceed Northwest's maximum allowable operating pressure of 809 p.s.i.a. CIG estimates that the total cost of the proposed facilities would be $166,300, which cost would be financed with funds on hand, funds from operations, short term borrowings, or long-term financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8930 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-22-001]

Commonwealth Edison Co.; Application for Exemption

March 30, 1984.

Take notice that Commonwealth Edison Company (COEC) filed an application on March 14, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specifed in Subparts, B, C, D, and E or Part 290.

In its application for exemption COEC states, in part, that is should not be required to file the specified data for the following reasons:

The data produced and submitted in compliance with Part 290 are for an unadjusted historical period and therefore unlikely to be useful in retail rate proceedings before the Illinois Commerce Commission (ICC) which requires numerous adjustments to historical test periods and authorizes use of both current and future test periods.

The ICC currently requires that COEC, as part of the record in each COEC retail rate proceeding, file various cost of service studies including marginal cost studies. COEC also files embedded/accounting cost of service studies in each retail proceeding. The formats of these studies may differ from those specified in Part 290.

The applicant's current program of class load studies is more extensive than the load studies required by Part 290. The results of COEC's ongoing research in class loads are provided to the ICC.

The ICC allows its staff and retail intervenors wide latitude to serve data requests upon COEC for data and information that have not been provided in the intitial rate case filings. These data requests are tailored to the specific issues of the rate case, and are not satisfied by the scope of Part 290 information. COEC is not aware of any instance where Part 290 data has reduced the number and scope of such data requests.

COEC's costs to comply with Part 290 requirements for the 1982 filing were approximately $220,000. Since Part 290 information has not been utilized to any significant extent by either the ICC or intervenors in any past COEC rate proceeding, COEC submits that any incurrence of costs in connection with future Part 290 filings would be unjustified and that the requirements imposed by Part 290 constitute an unwarranted burden on COEC.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility published a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. John C. Bukovski, Director of Rates, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8931 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-295-000]

Consolidated Gas Supply Corp. and Columbia Gas Transmission Corp.; Application

March 30, 1984.

Take notice that on March 12, 1984, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, and Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-295-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas and facilities constructed to effect the exchange, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Consolidated was delivering gas from the Van Etten Pool in Chemung County, New York, and Columbia was redelivering equivalent quantities pursuant to an exchange agreement dated October 1, 1982. It is asserted that the Van Etten Pool gas supply has been depleted since 1971 and no deliveries have been made since that time. It is further asserted that the facilities constructed to implement those deliveries and now proposed for abandonment consist of 2.7 miles of 4½-inch pipeline and measuring and regulating facilities. Applicants state that the production of gas from the Van Etten Pool is no longer feasible and that no customers would be adversely affected by the proposed abandonment of the exchange and facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8822 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-295-000]

Florida Gas Transmission Co.; Request Under Blanket Authorization

March 30, 1984.

Take notice that on March 12, 1984, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP84-295-000 a request pursuant to Section 157.205 of the Commission's regulations under the Natural Gas Act (18 C.F.R. 157.205) that Applicant proposes to abandon in place a service line and the service rendered thereby to the W.R. Grace & Company (W. R. Grace) phosphate chemical complex in Bartow, Polk County, Florida, under the authorization issued in Docket No. CP83-553-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that the 1 mile of 3½-inch service line, located on W. R. Grace property, one of three service lines serving the complex, is no longer necessary because modifications within the complex allows W. R. Grace to receive gas through another service line. Applicant also states that the service line has been disconnected from both W. R. Grace's facilities and Applicant's meter station. Applicant further asserts that W.R. Grace intends to construct additional phosphate facilities on the service line easement which would not be compatible with the operation and maintenance of a gas pipeline.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8823 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-328-000]

Idaho Power Co.; Filing

March 30, 1984.

The filing company submits the following:

Take notice that on March 19, 1984, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1976, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during January, 1984, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 27
Sierra Pacific Power Company—Supplement 25
Portland General Electric Company—Supplement 20
Southern California Edison Company—Supplement 18
San Diego Gas & Electric Company—Supplement 15
Washington Water Power Company—Supplement 16
Montana Power Company—Supplement 24
Pacific Power & Light Company—Supplement 12
Puget Sound Power & Light Company—Supplement 6

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8839 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE84-4-000]

Indianapolis Power & Light Co., Application for Exemption

March 30, 1984.

Take notice that Indianapolis Power & Light Company (IPL) filed an application on March 14, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58667, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption IPL states, in part, that it should not be required to file the specified data for the following reason:

The data filed previously was not used and the cost of collecting and filing the data was excessive relative to the derived benefits.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Mr. H. K. Keller, Vice President, Indianapolis Power & Light Company, 25 Monument Circle, P.O. Box 1595B, Indianapolis, Indiana 46206.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8883 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-53-012]

K N Energy, Inc.; Proposed Revisions in FERC Gas Tariff

March 30, 1984.

Take notice that on March 23, 1984, K N Energy, Inc. (K N) submitted for filing the following revisions to its FERC Gas Tariff:

Twentieth Revised Sheet No. 4 Superseding Substitute Nineteenth Revised Sheet No. 4
Original Sheet No. 4B
Second Revised Schedule 1, page 1 of 1
Second Revised Schedule 2, page 1 of 5
First Revised Sheet No. 6 Superseding First Replacement Sheet No. 6
First Revised Sheet No. 11 Superseding First Replacement Sheet No. 11
Third Revised Sheet No. 14 Superseding Second Revised Sheet No.14

These revisions are to be deemed in compliance with the February 23, 1984, Commission order in TA84-1-53-000, *et al.*

K N requests any necessary waivers to allow for an effective date of March 1, 1984.

K N states that copies of its filing have been sent to purchasers and public bodies on its service list.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 10, 1984. Protests will be considered by the Commission in determining the appropriate action to taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8880 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-385-000]

Louisiana Power & Light Co.; Filing

March 30, 1984.

The filing Company submits the following:

Take notice that on March 19, 1984, Louisiana Power & Light Company (LP&L) tendered for filing a Letter Agreement dated February 28, 1984 between LP&L and Gulf States Utilities Company (GSU).

LP&L states that this Letter Agreement provides for the transmission of power and energy by LP&L to GSU.

LP&L requests an effective date of March 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon GSU and the Louisiana Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8887 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER83-194-000]

Mississippi Power Co.; Refund Report

March 30, 1984.

Take notice that on March 5, 1984, Mississippi Power Company submitted for filing its Refund Report pursuant to Letter Order dated February 3, 1984.

The Mississippi Power Company has made refunds to the Electric Power Associations of all amounts collected for the billing months of August, September, October and November 1983.

The settlement rate has been applied since November 15, 1983, as an interim rate in accordance with Commission's order issued November 25, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory

Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 10, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8888 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-336-000]

Niagara Mohawk Power Corp.; Filing

April 2, 1984.

The filing company submits the following:

Take notice that on March 21, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing as a rate schedule, an agreement between Niagara and Rochester Gas and Electric Corporation (Rochester) dated May 17, 1983.

Niagara presently has on file an agreement with Rochester dated December 26, 1968. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 58. This new agreement is being transmitted as a supplement to the existing agreement, and supersedes Supplement No. 3.

Niagara states that the December 26, 1968 agreement is for the use of Niagara's transmission facilities by Rochester for the purpose of connecting Rochester's Ginna Nuclear Plant into the New York Cross-State transmission system. The May 17, 1983 agreement revises the rate to be paid by Rochester for the use of Niagara's facilities.

Niagara requests an effective date of October 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Rochester Gas and Electric Corporation and Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8889 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-257-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

March 30, 1984.

Take notice that on February 27, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-257-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Phillips Petroleum Company (Phillips) and the transportation of natural gas on behalf of Phillips to the West Texas Utilities Power Plant (West Texas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it was authorized in Docket No. CP68-75 to exchange natural gas with Phillips and that as of April 30, 1983, there was an accumulated imbalance of 19,026,076 million Btu of natural gas owed to Applicant. It is asserted that Applicant has agreed to sell and Phillips has agreed to purchase a portion of the exchange imbalance volumes. Applicant proposes to sell 12,388,544 million Btu of natural gas to Phillips which it claims are surplus to the needs of Applicant's existing customers. The price for the gas would be $3.367 per million Btu. It is claimed that this price exceeds the cost of gas delivered to Phillips and exceeds Applicant's average system cost of purchased gas, currently said to be approximately $2.66.

Applicant indicates that the total amount due from Phillips for the proposed sale is approximately $41,543,877.65. It is asserted that the following payment schedule would be implemented:

Thirty-five percent of the total amount due would be paid in 12 equal monthly installments of $1,211,896.43 beginning with the first full billing month (defined as the 27th of one month to the 26th of the following month) in 1984, after the issuance of authorization from the Commission, ending with the December 1984 billing month. These payments would resume with the billing month beginning December 27, 1985. The remaining 65 percent of the total would be paid in nine monthly installments beginning December 27, 1984. The first eight of these payments would each be for $2,250,293.37 and the ninth would be for $2,001,174.49.

It is asserted that these revenues would be credited to Applicant's Account 191 and flowed through to Applicant's customers in purchased gas adjustment filings.

Applicant states that the sale would be contingent upon Applicant's assistance to Phillips in meeting Phillips contractual obligations to West Texas. It is indicated that Applicant and Phillips are parties to a gas purchase contract under which Phillips has reserved 6 billion Btu of gas on a firm basis for redelivery to West Texas, and the remainder is dedicated to Applicant. Applicant proposes to accelerate the reservation gas on a firm basis by increasing the volume from 6 billion Btu per day to 26 billion Btu per day until either the delivery of the additional 20 billion Btu per day has equaled a cumulative delivery of 17,250,000 million Btu or until October 26, 1986, whichever occurs first. It is further proposed that if the 17,250,000 reservation volume has not been reached by October 26, 1986, the reservation delivery obligation revert to 6 billion Btu on a firm basis and 20 billion Btu on a best-efforts basis until the 17,250,000 total has been reached. At such time, it is stated, the reservation would revert to 6 billion Btu per day on a firm basis until December 26, 1988, at which time the reservation of Phillips would expire.

It is claimed that the increase in reservation gas would result in additional short-term gas purchase costs to Applicant's customers of approximately $8,322,000. Applicant alleges that when this cost is compared to the $41,543,876 of sales revenues, there is a net benefit to Applicant's customers of $33,221,876.

It is also indicated that Phillips intends to utilize the increased reservation gas to meet contractual obligations to West Texas in its electric generation operations, but does not have the capacity to transport an additional 20 billion Btu per day to West Texas. Applicant therefore proposes to transport 20 billion Btu per day for Phillips to West Texas all within Pecos County, Texas. This transportation is said to be on a firm basis until October 26, 1986, and on an best-efforts basis commencing October 27, 1986, with a total contract limitation of 17,250,000 million Btu. Applicant also proposes to transport overun volumes in excess of 20 billion Btu per day.

Applicant states that upon commencement of the transportation

and until the termination of firm service on October 26, 1986, or when actual delivery of gas has totaled a cumulative volume of 17,250,000 million Btu, whichever occurs first, Phillips would pay Applicant a monthly demand charge of $12,714.47 for firm volumes transported plus an additional commodity charge of 2.09 cents per Mcf for any best-efforts overrun volumes transported in excess of 20 billion Btu per day. It is further stated that if the cumulative total of deliveries is less than 17,250,000 million Btu by October 26, 1986, commencing October 27, 1986, Phillips would pay a commodity charge of 2.09 cents per Mcf for all gas transported on a best-efforts basis. Applicant asserts that the rates for this service are based upon its system-wide average cost of service and allocation factor. In addition, Applicant claims it would charge the Gas Research Institute Funding Unit of 1.25 cents per Mcf and that as compensation for fuel and lost and unaccounted for gas it would retain 1.3 percent of the gas delivered by Phillips. It is said that the transportation would terminate on December 26, 1988, or when a total cumulative volume of 17,250,000 million Btu had been transported, whichever occurred first.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulation under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

For further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9000 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST80-61-003, et al.]

Northwest Pipeline Corp., et al.; Extension Reports

April 2, 1984

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before April 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

Docket No. and Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST80-61-003 Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110.	Pacific Gas and Electric Co	02-29-84	B	06-01-84
ST80-241-002 ONG Western, Inc., 624 S. Boston Ave., Tulsa, OK 74119.	Natural Gas Pipeline Co. of America	03-07-84	C	06-20-84
ST80-296-003 Mississippi Fuel Co., 1100 First National Center East, Oklahoma City, OK 73102.	Transcontinental Gas Pipe Line Corp	03-15-84	C	06-15-84
ST82-323-001 TRANSOK, Inc., P.O. Box 3008, Tulsa, OK 74101	Panhandle Eastern Pipe Line Co	03-02-84	C	06-06-84
ST82-343-001 Mountain Fuel Supply Co., 180 East First South St., Salt Lake City, UT 84139.	United Gas Pipe Line Co	03-15-84	G	06-15-84
ST82-348-001 Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251.	do	03-06-84	G	06-06-84
ST82-351-001 Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Lone Star Gas Co	03-01-84	B	06-03-84
ST82-375-001 Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251.	Columbia Gas Transmission Corp	03-13-84	G	06-11-84
ST82-404-001 Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	Kansas Power and Light Co	03-08-84	B	07-26-84

Docket No. and Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST82-455-001 Florida Gas Transmission Co., P.O. Box 44, Winter Park, FL 32792.	Louisiana Intrastate Gas Corp	03-05-84	B	06-03-84
ST83-571-001* Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201.	Bridgeline Gas Distribution Co	03-08-84	D	06-02-84

*These extension reports were filed after the date specified by the Commission's Regulations, and shall be the subject of a further Commission order.
Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-9002 Filed 4-4-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RE81-56-000]

Oglethorpe Power Corp., et al; Filing

March 30, 1984.

In the matter of Oglethorpe Power Corporation; Altamaha EMC; Amicalola EMC; Canoochee EMC; Carroll EMC; Central Georgia EMC; Coastal EMC; Cobb EMC; Colquitt EMC; Coweta-Fayette EMC; Douglas County EMC; Excelsior EMC; Flint EMC; Grady County EMC; Habersham EMC; Hart County EMC; Irwin County EMC; Jackson EMC; Jefferson EMC; Lamar EMC; Little Ocmulgee EMC; Middle Georgia EMC; Mitchell EMC; Ocmulgee EMC; Oconee EMC; Okefenoke Rural EMC; Pataula EMC; Planters EMC; Rayle EMC; Satilla Rural EMC; Sawnee EMC; Slash Pine EMC; Snapping Shoals EMC; Sumter EMC; Three Notch EMC; Tri-County EMC; Troup County EMC; Upson County EMC; Walton EMC; and Washington EMC.

Take notice that on January 19, 1981, Oglethorpe Power Corporation (Oglethorpe) and all Electric Membership Corporations located and serving in the State of Georgia other than Blue Ridge Mountain EMC, North Georgia EMC and Tri-State EMC filed a petition with the Secretary of FERC seeking:

(1) On behalf of the above-described electric membership corporations, each of which is a member of Oglethorpe, a waiver of their obligations under FERC Rule 292.303(a) to purchase electric energy and capacity from qualifying facilities; and

(2) A waiver of Oglethorpe's obligations under FERC Rule 292.303(b) to sell electric energy and capacity to qualifying facilities.

On March 26, 1984, Oglethorpe filed an amendment to its Petition for Waiver.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed within 30 days of the publication of this notice. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 84-9002 Filed 4-4-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-329-000]

Public Service Company of Indiana, Inc.; Filing

March 30, 1984.

The filing submits the following:

Take notice that on March 19, 1984, the Public Service Company of Indiana (PSI) tendered for filing an Interim Power Agreement, dated December 1, 1983, between PSI and American Municipal Power—Ohio, Inc. (AMPO).

PSI states that the agreement provides for Interim Power by PSI to AMPO for not less than 100 MW level for not less than 13 consecutive weeks at a minimum load factor of 75% on a daily basis, with a minimum hourly schedule of 50% of the maximum hourly schedule for the day or such other load factor minimum schedule combination that the parties mutually agree. AMPO is to arrange with other utilities interconnected with PSI for receipt of such power for its transmission and distribution to only the delivery points located in the State of Ohio serving the patrons of Ohio.

PSI requests an effective date of April 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon AMPO, the Public Utility Commission of Ohio and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385-211, 385-214). All such motions or protests should be filed on or before April 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 84-9003 Filed 4-4-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-4100-000, et al.]

Samson Resources Co. (Successor in Interest To Placid Oil Company); Application of Succession in Interest From Placid Oil Company to Samson Resources Company

March 30, 1984.

Take notice that Samson Resources Company (Samson) of 2700 First National Tower, Tulsa, Oklahoma 74103, filed applications for certificates of public convenience and necessity authorizing Samson to continue to render service previously authorized by the Commission under certificates of public convenience and necessity heretofore issued to Placid Oil Company, predecessor in interest to Partnership Properties Co., in the docket numbers and rate schedules as listed in the attached Appendix.

Partnership Properties Co. acquired through purchase as of January 1, 1982 all of the working interest of Placid Oil Company in the subject properties. Samson Resources Company subsequently acquired through purchase as of January 1, 1982 all of the working interest of Partnership Properties Co. in the subject properties.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

385.211, 383.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parites to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX

Date filed	Docket No.	Placid Oil Company rate schedule No.
10-25-82	G-4100-000	1
9-27-82	G-4137-000	5
10-29-82	G-4426-000	3
10-29-82	G-4652-000	4
9-27-82	G-10156-000	11
2-10-83	G-83-1150-000	35
10-25-82	C80-221-001	36

[FR Doc. 84-8904 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-281-000]

Southern Natural Gas Co.; Application

March 30, 1984.

Take notice that on March 5, 1984, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP84281-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Amoco Production Company (Amoco) and the construction and operation of a metering station and appurtenant facilities necessary to implement the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to the terms of a gas transportation agreement dated August 31, 1983, it would transport on an interruptible basis up to 800 million Btu of natural gas per day or such greater quantity as it may accept, which Amoco has reserved pursuant to a gas sale and purchase agreement between Amoco and Applicant dated June 22, 1967, for the development of Amoco's oil and gas leases in the West Delta 73 field, offshore Louisiana. It is further stated that Amoco would deliver the natural gas to Applicant at a point of interconnection of the facilities of Amoco and Applicant on the West Delta Block 75 #4 Platform. Applicant would transport Amoco's gas by displacement, and redeliver thermally equivalent volumes, less Amoco's *pro rata* share of any gas lost, vented or unaccounted for, to Amoco at the outlet of measurement facilities Applicant proposes to construct on the West Delta 89 Platform, it is stated.

Applicant proposes to charge Amoco 15.9 cents per million Btu of natural gas delivered on the West Delta 89 Platform. Applicant asserts that Amoco has agreed to reimburse Applicant for all costs including overheads, incurred by Applicant in connection with the facilities Applicant proposes to construct. The estimated cost of the proposed facilities is $85,678.

The proposal would enable Amoco to conduct gas lift operations and produce the remaining recoverable oil reserves from the West Delta Block 89, it is explained.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8905 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE84-8-000]

Southwestern Electric Power Co.; Application for Exemption

March 30, 1984.

Take notice that Southwestern Electric Power Co. (SWEPCO) filed an application on March 13, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the cost of providing electric service as specified in Subparts B, C, D, and E or Part 290.

In its application for exemption SWEPCO states, in part, that it should not be required to file the specified data for the following reasons:

The purpose of Section 133 of PURPA, to require electric utilities to gather and file data necessary to determine the costs associated with providing electric service, is met by data filed by SWEPCO with state commissions having jurisdiction over SWEPCO's retail rates.

The data produced and submitted in compliance with Part 290 are similar to the data required by the Public Utility Commission of Texas (PUCT), the Louisiana Public Service Commission (LPSC) and the Arkansas Public Service Commission (APSC) but sufficiently different to be of little value in rate proceedings.

The test periods used in SWEPCO's rate proceedings before the PUCT, APSC and LPSC are at variance with the Part 290 reporting period and, as a consequence, the value of Part 290 cost of service data is minimal in this respect.

The applicant believes that its load data research program should not be mandated by the Federal Energy Regulatory Commission but should be left to the discretion of the state commissions which are in a better position to specify the customer classes for which load research studies shall be performed.

The PUCT, APSC and LPSC allow their staffs and retail intervenors wide latitude to serve data requests upon SWEPCO for data and information that have not been provided in the initial rate case filings. These data requests are tailored to the specific issues of the rate case, and are not satified by the scope of Part 290 information. SWEPCO is

not aware of any instance where Part 290 data reduced the number and scope of such data requests.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Andrew O. Rambin, Jr., Manager, Rate Department, Southwestern Electric Power Company, P.O. Box 21106, Shreveport, Louisiana 71156.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9000 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE84-5-000]

Texas-New Mexico Power Co.; Application for Exemption

March 30, 1984.

Take notice that Texas-New Mexico Power Company (TNP) filed an application on March 12, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58667, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290. In addition, TNP requests a waiver of the requirement that an application for exemption shall be filed "no less than 18 months prior to the time the information would otherwise be required "(Section 290.501[a]].

It its application for exemption TNP states, in part, that it should not be required to file the specified data for the following reasons:

The Public Utilities Commission of Texas and the New Mexico Public Service Commission which are the state commissions for the two jurisdictions in which TNP sells electric power and energy, have already considered the rate standards of Title I of PURPA and, thus, the major reason for the compilation and reporting of Section 133 data has been obviated.

State commission requirements provide sufficient data for retail rate making purposes and further Section 133 data reporting would serve little or no purpose.

The cost of acquiring and reporting the Section 133 data outweighs any benefits likely to result from that effort.

Copies of the application for exemption are of file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: James W. Jordan, Assistant Vice President, Contracts and Regulation, Texas-New Mexico Power Company, 501 West Sixth Street, Forth Worth, Texas 76102.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9007 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-57-000]

United Gas Pipe Line Co. et al.; Complaint

March 30, 1984.

Take notice that on March 15, 1984, United Gas Pipe Line Company (United) tendered for filing a Complaint against Stingray Pipeline Company (Stingray) and Natural Gas Pipeline Company of America (Natural). This complaint requests a declaratory order to remove uncertainty by requiring Stingray, effective April 1, 1984, to make the necessary notifications to reduce the maximum daily quantity of natural gas to be transported for United by Stingray pursuant to its Rates Schedule T-2, and requiring Natural to track such reduction under its Rate Schedule No. X-48.

United explains in its Complaint that Natural receives gas transported by Stingray for United at Holly Beach, Louisiana, and redelivers it to United under its Rate Schedule No. X-48. United wishes to reduce its maximum daily quantity transported by Stingray from the current level of 200,000 Mcf per day to 90,000 Mcf per day, and asserts that it has a contractual right to do so and that the Natural Gas Act (NGA) requires such a reduction. United's petition requests the Commission's recognition of their contractual right and of the statutory requirements for this reduction, and for an order compelling Stingray to file appropriate notification if such reduction.

United's Complaint cites Article II, Section 3 of the Contract entered into between United and Stingray on September 12, 1973, as providing their contractual right to reduce its transportation quantity. According to United, it has complied with this term by requesting a reduction within the proper contractual year and giving the proper notice of twelve months. United states that it gave notice on March 31, 1983 to reduce the transportation quantity to 90,000 Mcf per day effective April 1, 1984, but that Stingray has not responded to its properly instituted request.

Since Natural's Rate Schedule X-48 automatically tracks changes in the Stingray Rate Schedule as to maximum transportation quantities, United further requests an equivalent reduction under Rate Schedule X-48 to coincide with its requested reduction under Stingray's Rate Schedule T-2.

United states that if the reduction is not allowed, it will incur $6.5 million in additional costs.

United further states that in the event that Stingray presents an interpretation of the Contract that is contrary to United, the matter should be set for briefing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8888 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-26-000]

Department of the Interior Bureau of Land Management [1] Section 108 NGPA Determination Getty Oil Company J. Q. Marshall #1 Well BLM Docket No. NM-0461-83-PB FERC J. D. No. 83-47497; Petiton To Reopen and Vacate Final Well Category Determination and Request To Withdraw

March 30, 1984.

On November 21, 1983, the Department of the Interior's Bureau of Land Management (BLM) filed with the Federal Energy Regulatory Commission (Commission) a request to withdraw its determination that natural gas from the J. Q. Marshall #1 Well the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (1982). An affirmative determination had been made by BLM on the application of Getty Oil Company (Getty or applicant), and had become final on September 15, 1983, under NGPA section 503(d) and 18 C.F.R. § 275.202(a) (1983).[2] Getty petitioned BLM to reopen the determination and permit withdrawal of its application by letter dated October 28, 1983. (*See* n.2 below for the circumstances leading up to Getty's October 28 request.)

The Commission hereby gives notice that the question of whether refunds plus interest, as computed under 18 CFR 154.102(c) (1983) will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the Federal Register, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. 18 CFR 385.214 or 385.211 (1983). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8889 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

[1] Formerly Minerals Management Service.

[2] By letter dated March 28, 1983, Getty notified BLM that production for the 90-day period from November 1982 to January 1983 exceed 60 Mcf per day and petitioned BLM for continued qualifaction under section 108 on the basis that the production rate increase resulted from a temporary pressure buildup due to the well's having been shut-in. *See* 18 C.F.R. §§ 271.804(e) and 271.806 (1983). By letter dated September 1, 1983, Commission Staff requested BLM to determine whether the increased production days occurred prior to, or subsequent to, the well's being shut-in. If the disqualifying production occurred prior to the shut-in days then, according to Staff, "the increases in the average rates of production to above 60 Mcf per production day during the 90-day production periods would not have been the result of pressure buildup when the wells were temporarily shut-in." By letter dated October 28, 1983, Getty advised BLM that the applicant had "erroneously assumed that the increase to over 60 Mcf per production day had been caused by a pressure buildup while the well was shut-in. However, the increase came prior to the shut-in rather than after the shut-in as had been assumed." On November 21, 1983, BLM filed Getty's October 28, letter with the Commission, and requested withdrawal of several determinations (for differing 90-day production periods) for the J. Q. Marshall #1 Well on the basis that the well "ceased to qualify as a stripper well at the end of November 1982. As a result, the pressure buildup petitions of subsequent 90-day periods are null and viod." Those determinations which had not become final were withdrawn. By letter dated January 18, 1984, Staff advised BLM that since the determination in BLM Docket No. NM-0461-83-PB (FERC J.D. No. 83-47497) was final, Staff would treat Getty's letter of October 28, 1983 as a petition to reopen the determination and permit withdrawal of the application. Authority: 15 U.S.C. §§ 3411(a) and 3413(d) (1982).

[Docket No. G-4875-000, et al.]

Union Texas Products Corp.; et al.; Redesignation

March 30, 1984

Take notice that on January 18, 1984, Union Texas Productions Corporation (Union) of One Riverway, P.O. Box 2120, Houston, Texas 77001, filed an application to amend certain certificates currently held by Union Texas Petroleum Corporation to show Union as certificate holder and to redesignate the related rate schedules listed in the attached Appendix.

Effective December 31, 1982, Union Texas Petroleum Corporation, a wholly owned subsidiary of Allied Corporation, transferred certain of its assets relating to the business of processing, distributing and marketing hydrocarbons to Union Texas Products Corporation, an affiliate of Union Texas Petroleum Corporation. Union requests that the Commision substitute Union Texas Products Corporation for Union Texas Petroluem Corporation in all Certificates of Public Convenience and Necessity issued in the dockets listed in the attached Appendix.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX

R.S. No.	Purchaser	Certificate docket
10	Lone Star Gas Co	G-4875.
12	El Paso Natural Gas Co	G-8147.
84	do	G-13643.
93	Panhandle Eastern Pipe Line Co.	CI7-85-27.
101	do	CI-70-851.

[FR Doc. 84-8910 Filed 4-4-84 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-58-000]

West Texas Gathering Co.; Proposed Changes in FERC Gas Tariff

March 30, 1984

Take notice that on March 19, 1984, West Texas Gathering Company (West Texas) tendered for filing the following revisions to its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Sheet Nos. 51-A, 51-B, 51-C, and 51-D.

West Texas also submitted financial statements for the year ending December 31, 1983, computations of cost of service for 1983, federal income tax data, and a Statement N-O showing estimated cost of volume for the year 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 9, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8011 Filed 4-4-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 6 Through February 10, 1984

During the week of February 6 through February 10, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 28, 1984.

Appeal

The Knoxville Journal, 2/8/84, HFA-0205

The Knoxville Journal and Randall S. Beck, a reporter for the Journal, filed an Appeal from a denial by the Authorizing Official of the Oak Ridge Operations Office of a Request for Information which Beck had submitted under the Freedom of Information Act (the FOIA). Beck requested names and other personal data regarding individuals employed at the Oak Ridge weapons parts plant. In considering the Appeal, the DOE found that the Authorizing Official's justification for withholding information pursuant to Exemption 6 of the FOIA, which protects data whose release would result in an unwarranted invasion of privacy, was inadequate. In reaching this determination, the DOE suggested that under most circumstances the release of names of individuals would not cause embarrassment, but that disclosure of other personal information, such as addresses, ages and terms of employment could constitute an invasion of privacy that did not advance any public interest. The DOE found that the Authorizing Official should have specifically addressed how release of the requested information would have harmed the privacy of the employees involved. Accordingly, the Appeal was granted and the matter remanded to the Authorizing Official for further consideration.

Request for Exception

UCO Oil Company, Simmons Oil Corporation, Kern County Refinery, 2/8/84, DEE-2487; DMR-0049; DMR-0048; DMR-0047

The DOE issued a Proposed Decision and Order which tentatively denied UCO Oil Company's Application for Exception requesting that it be assigned lower-priced suppliers of motor gasoline. However, the DOE did not require restitution to the firms which supplied motor gasoline to UCO pursuant to a Temporary Stay Order. Mobil Oil Corporation filed an objection to the Proposed Order, arguing that UCO should be required to restore the motor gasoline which it erroneously received pursuant to that Temporary Stay decision. In the final Decision and Order, the DOE rejected Mobil's request for restitution on the grounds that the firm failed to show any injury or other equitable concern which would warrant granting the firm's request. The DOE also dismissed the Applications for Modification and Rescission of the temporary stay filed by UCO, Simmons Oil Corporation, and Kern County Refinery. The DOE rejected UCO's claim that the relief granted in the temporary stay should be increased and determined that no exception relief was warranted. The DOE also rejected the claim of Simmons, a UCO purchaser, that it would experience a hardship if it were unable to purchase competitively priced gasoline from UCO. Finally, the DOE found that Kern had not shown that it should be relieved of its obligation to supply UCO under the temporary stay.

Motions for Discovery

Getty Oil Company, 2/8/84, HRD-0175; HRH-0175

Getty Oil Company filed Motions for Evidentiary Hearing and Discovery in connection with enforcement proceedings remanded to the Office of Hearings and Appeals by a United States District Court. Many of the issues raised in the motions were foreclosed by the decision of that court. The Motion for Evidentiary Hearing was therefore denied in its entirety. Although the most of Getty's discovery requests were also denied, the firm was granted some discovery, and allowed to reformulate an interrogatory and a request for production of documents.

Tesoro Petroleum Corporation, 2/9/84, HRD-0136

Tesoro Petroleum Corporation (Tesoro) filed a motion for Discovery in connection with a Proposed Remedial Order issued to the firm. In its Motion, the firm requested information regarding the possibility of improper ex parte contacts in the Tesoro enforcement proceeding and regarding whether the DOE may have prejudged the facts in that proceeding. The DOE found that the firm had failed to submit any evidence of irregularity in the enforcement proceeding and therefore denied this aspect of the firm's discovery request. However, the DOE determined that Tesoro was entitled to a thorough explanation of the rates and methodology employed to compute interest on the overcharges alleged in the PRO, to a complete copy of one of the two transcripts of depositions cited as evidence in the PRO, and to a 1978 memorandum originating in the Office of Hearings and Appeals. Accordingly, Tesoro's Motion for Discovery was granted in part.

Request for Stay

Oasis Petroleum Corporation, 2/8/84, HES-0010

Oasis Petroleum Corporation requested that the DOE's consideration of a Petition for Special Redress filed by Lucky Stores, Inc. be stayed pending a determination by the Temporary Emergency Court of Appeals (TECA) regarding certain constitutional issues certified to it in *Dorchester Gas Producing Co. v. DOE*, 3 Fed. Energy Guidelines ¶ 26,464 (N.D. Tex. 1983). Oasis argued that the issue before TECA was whether the Emergency Petroleum Allocation Act and the Energy Policy and Conservation Act contained unconstitutional legislative veto provisions and therefore are invalid under *Immigration and Naturalization Service v. Chada*, 103 S. Ct. 2764 (1983), and that Lucky's Petition would be moot if TECA were to hold these statutes invalid. The DOE held that it is not in the public interest to stay DOE matters pending resolution of court proceedings, and that Oasis had not demonstrated a likelihood that TECA would declare the statutes unconstitutional or satisfied any other criteria applicable to stay requests. The stay request therefore was denied.

Interim Order

Department of the Interior, 2/8/84, HEN-0063

The Department of Interior (DOI) filed a Motion for Interim Decision in which it requested that the OHA implement, on an interim basis, proposed retroactive exception relief previously granted to DOI. In the underlying exception application, DOI requested that it be retroactively relieved of the obligation to comply with certain DOE regulations in connection with its sales of royalty crude oil to Plateau, Inc. In considering the request for interim relief, the DOE did not find that there was a high probability that the proposed exception relief would ultimately be granted to DOI. Moreover, the DOE was not convinced that DOI would be harmed in the absence of interim exception relief. The DOE also concluded that the public interest was best advanced in this proceeding by giving full and fair consideration to the arguments raised by the parties in the objection phase of the pending exception proceeding.

Refund Applications

Standard Oil Company (Indiana)/Bird Oil Company, Inc., et al., 2/8/84, RF21-5101, et al.

The DOE issued a Decision and Order concerning 3 Applications for Refund filed by wholesalers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulas outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 3 applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $5,636.

Standard Oil Company (Indiana)/Bird Oil Company, Inc., et al., 2/9/84, RF21–5102, et al.

The DOE issued a Decision and Order concerning 4 Applications for Refund filed by resellers of Amoco middle distillates. All of these firms elected to apply for a refund based upon the presumption of injury and the formulas outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 4 applicants should receive a refund based upon the total volume of its Amoco middle distillate purchases. The refunds granted in this proceeding total $1,178.

Standard Oil Co. (Indiana)/Calverton Amoco Servicenter, et al., 1/8/84, RF21–6172, et al.

The DOE issued a Decision and Order concerning 26 Applications for Refund filed by retailers of Amoco motor gasoline. All of these firms contended that they were injured by more than the presumptive levels of injury adopted in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). In considering these applications, the DOE rejected the firms' argument that their inability to sell gasoline at their maximum lawful selling prices established that they incurred injury greater than the presumptive levels. The DOE also rejected the firms' contention that refund monies remaining after the payment of refunds to first-stage claimants (*i.e.* purchasers of Amoco products who filed successful refund applications) should be allocated to first-stage claimants on a pro rata basis. The DOE determined that such a distribution would be inconsistent with the objectives of the Amoco refund proceeding, and would be inequitable and injurious to Amoco customers who for various reasons did not or could not file successful refund applications. Finally, the DOE rejected the argument advanced by 18 of the applicants that retailers directly supplied by Amoco should be presumed to have incurred greater injury and to merit a greater presumptive refund than retailers supplied by wholesalers. Accordingly, the applicants' request for refunds greater than those produced by the presumption method was rejected. The DOE determined that the applicants should be granted refunds based on the presumption method. The refunds granted in this proceeding total $33,181.

Standard Oil Co. (Indiana)/Ray's Standard Service, et al., 2/8/84, RF21–01666, et al.

The DOE issued a Decision and Order concerning 41 Applications for Refund filed by retailers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulas outlined in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). In considering these applications, the DOE concluded that each of the 41 applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $38,748.

Protective Order

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Name	Case No.
Ashland Oil, Inc., Texaco, Inc	HEJ-0046

[FR Doc. 84-9068 Filed 4-4-84; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 27 through March 2, 1984

During the week of February 27 through March 2, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 26, 1984.

Appeal

The Tulsa Tribune, 2/29/84, HFA–0207

The Tulsa Tribune filed an appeal from a partial denial by the Inspector General (IG) of the Department of Energy of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the IG had correctly withheld documents pertaining to the IG's investigation of allegations of theft and substitution of crude oil at the Strategic Petroleum Reserve pursuant to FOIA Exemptions 5, 7(A) and 7(C). The DOE found, however, that certain portions of documents initially withheld pursuant to exemption 7(A) contain segregable factual information and therefore should be released to the public. Accordingly, the Appeal was granted in part.

Request for Modification and/or Rescission

San Joaquin Oil Company and San Joaquin Refining Co., Inc., 2/29/84, HRR–0079

San Joaquin Oil Company and San Joaquin Refining Co., Inc., (San Joaquin) filed a Motion for Reconsideration of a Decision and Order issued by the Office of Hearing and Appeals on December 20, 1983. *San Joaquin Oil Co.*, 11 DOE ¶ 84,043 (1983). In that determination the OHA denied a Motion for Discovery filed by San Joaquin in connection with its Statement of Objectives to a Proposed Remedial Order issued to the firm on June 4, 1982, by the Economic Regulatory Administration. The Motion for Reconsideration was denied because the firm had not shown any prejudicial error in the original determination.

Interlocutory Order

Office of Special Counsel, 2/28/84, HRZ–0166

The Office of Special Counsel sought discovery from Texas Inc. in connection with Texaco's objections to a May 1979 Proposed Remedial Order. In ruling on the motion, the Office of Hearings and Appeals noted that this was a "second wave" discovery motion by OSC and that it would therefore apply the standards applicable to motions of that nature. OHA denied several OSC discovery requests because it found them untimely, but directed Texaco to produce to OSC certain information concerning the firm's accounting treatment of production entities, which relate to its claimed consistent and historic treatment of those entities.

Refund Applications

Standard Oil Company (Indiana)/Leaseway Transportation Corp., 3/2/84, RF21–12007 et al.

The DOE issued a Decision and Order concerning an Application for Refund filed by Leaseway Transportation Corp., a consumer and a retailer of Amoco motor gasoline and middle distillates. Leaseway elected to apply for a refund based upon the presumptions of injury and the formulas outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the application, the DOE concluded that the firm should receive a refund based upon the total volume of its eligible Amoco motor gasoline and middle distillate purchases. The refunds granted in this proceeding total $4,703.

Standard Oil Company (Indiana)/*Norman Mogren, 2/29/84, RF21–11160*

The DOE issued a Decision and Order concerning an Application for Refund filed by Mr. Norman Mogren, the owner of an Amoco retail motor gasoline outlet. Mr. Mogren filed a refund claim under the terms of the Amoco special refund procedures outlined in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). In his application, Mr. Mogren sought a refund based on the amount of rent he received from Amoco for the lease of his retail location. After analyzing the arguments presented by Mr. Mogren, the DOE concluded that there

was no basis on which to approve a refund. Accordingly, the application was denied.

Remedial Order

Zephyr Oil & Trading Company, 2/29/84, HRO-0115

Zephyr Oil & Trading Company objected to a Proposed Remedial Order which the Philadelphia Office of the Economic Regulatory Administration (ERA) issued to the firm on December 21, 1982. In the Proposed Remedial Order, the ERA found Zephyr Oil & Trading Company sold motor gasoline at prices that exceeded those permitted pursuant to 10 CFR 212.111(b)(3) and 212.93. As a result of these violations, the Proposed Remedial Order determined that the firm should refund $618,827 plus interest. After considering the firm's objections, the DOE concluded that the Proposed Remedial Order should be issued as a final Order of the Department of Energy. The important issues discussed in the Decision and Order include (i) the procedural and substantive validity of the new item rule, 10 CFR 212.111, (ii) the ERA's choice of a "nearest comparable outlet," and (iii) the rate at which interest on the overcharge amount should be assessed.

Dismissals

The following submissions were dismissed:

Name	Case No.
Associated Press	HFA-0226.
Oil City Petroleum Co., Inc.	HEE-0061.
Placid Oil Company	HRO-0147.
Ronald W. Naylor	RF21-12280.

The following Amoco Refund Application was dismissed on the grounds that the applicant had already received a refund directly from Amoco:

Ryder System Inc., RF21-10130.

[FR Doc. 84-8089 Filed 4-4-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 5 Through March 9, 1984

During the week of March 5 through March 9, 1984, the decisions and orders summarized below were issued with respect to applications for refunds filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a listing of a submission which was dismissed by the Office of Hearings and Appeals.

Refund Applications

Standard Oil Company (Indiana)/Illinois Service Station Operators Ass'n. 3/8/84, RR 21-1; RF 21-12221

On December 9, 1983, the Illinois Service Station Operators Association (ISSOA) filed an Application for Modification or Rescission of an August 22, 1983 Decision and Order concerning 24 retailers which it represents. *See Standard Oil Co. (Indiana)/John Coconato*, 11 DOE ¶ 85,121 (1983) (hereinafter cited as *Coconato*). In *Coconato*, the Office of Hearings and Appeals examined and rejected a theory advanced by the ISSOA that its members should be paid a refund of $0.033 per gallon from the Amoco settlement fund and directed that the firms should instead receive a refund of $0.0009748 per gallon of Amoco motor gasoline purchased. If the ISSOA's Application for Modification or Rescission were granted, the OHA would approve an additional per-gallon refund of $0.0025200 to each of the dealers which the ISSOA represents. In addition, the ISSOA filed a refund application on behalf of Mike's Standard Service (Mike's) and asked that the OHA's consideration of this claim be consolidated with its reconsideration of the *Coconato* Decision.

In support of its renewed claim of overcharges the ISSOA submitted copies of the purchase invoices of one of its members for the entire consent order period and reiterated that the average annual prices reflected on these invoices were consistently at least $0.003 higher than the average annual prices listed in Amoco's annual report to its shareholders. The OHA found that the figures set forth in Amoco's annual report included prices at all levels of distribution so that the national average price paid for a gallon of Amoco motor gasoline was not comparable to the price paid by ISSOA members. The OHA therefore concluded that the ISSOA had failed to demonstrate that its members were injured in an amount greater than that which had already been apportioned them by the presumptions set forth in the *Amoco* decision. Consequently, no additional refund was granted to the ISSOA members whose refund applications had already been approved, and Mike's application was analyzed using the presumption method, resulting in a refund for Mike's of $364.

Standard Oil Company (Indiana)/United States Fleet Leasing, Inc., 3/7/84, RF21-8551

The DOE issued a Decision and Order concerning an Application for Refund filed by United States Fleet Leasing, Inc. (US Fleet), a vehicle leasing firm which applied as a retailer of Amoco motor gasoline. US Fleet elected to apply for a refund based upon the presumptions of injury and the formulas outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (the *Amoco* Decision). In considering the application, the DOE concluded that US Fleet should receive a refund based upon the total volume of its eligible Amoco motor gasoline purchases. The refund granted in this proceeding is $2,104.

Dismissal

The following submission was dismissed:

Company Name	Case No.
Sierra Petroleum Co., Inc.	HEF-0438

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-8087 Filed 4-4-84; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

Application for Conversion From a State-Chartered Association to a Federally Chartered Association

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection request, "Application for Conversion From a State-Chartered Association to a Federally Chartered Association", to the Office of Management and Budget for approval pursuant to 5 CFR 1320.12 pertaining to clearance of information collection requests.

Comments on the information collection request are welcome and should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters also sending copies of their comments to the Board.

Requests for information including copies of the proposed information collection request and supporting documentation are obtainable from the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Kathleen Nagle, Office of District Banks, Federal Home Loan Bank Board, phone 202-377-6709.

By the Federal Home Loan Bank Board.
Dated: April 2, 1984.

J. J. Finn,

Secretary.

[FR Doc. 84-8120 Filed 4-4-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Banterra Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 1984.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Banterra Corp.*, Norris City, Illinois; to engage *de novo* in providing data processing and transmission services for its subsidiary banks and other financial institutions in the State of Illinois. Service will be limited to the processing or furnishing of financial, banking or economic data.

Board of Governors of the Federal Reserve System, March 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8080 Filed 4-4-84; 8:45 am]

BILLING CODE 6210-01-M

Florence Bancorp Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 27, 1984.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Florence Bancorp Services, Inc.*, Florence, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Florence Deposit Bank, Florence, Kentucky.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Farmers & Merchants Bancshares, Inc.*, Lafayette, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Farmers & Merchants Bank, Lafayette, Alabama.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South La Salle Street, Chicago, Illinois 60690:

1. *Erie Financial Corp.*, Detroit, Michigan; to become a bank holding company by acquiring 80 percent of the voting shares of Erie State Bank.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Guardian Bancorp, Inc.*, Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Guardian Bank, Phoenix, Arizona.

2. *Sunstate Bancshares, Inc.*, Phoenix, Arizona; to become a bank holding company by acquiring Bank of Casa Grande Valley, Casa Grande, Arizona.

Board of Governors of the Federal Reserve System, March 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8080 Filed 4-4-84; 8:45 am]

BILLING CODE 6210-01-M

Worthen Bank & Trust Company, N.A.; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Boards approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), to be known as Worthen Bank International, Little Rock, Arkansas, and to establish a branch of the Edge Corporation in Los Angeles, California. Worthen Bank International would operate as subsidiary of Worthen Bank & Trust Company, N.A.; Little Rock, Arkansas. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than April 27, 1984. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8081 Filed 4-4-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Service Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve three existing information collections.

Comment date: Submit comments on these information collections before April 23, 1984.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Office, Room 3235, NEOB, Washington, DC 20503, and to Kathleen M. Lannon, Acting GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Acquisition Policy, 202–523–4790.

SUPPLEMENTARY INFORMATION:

1. *Advance payments.* a. *Purpose.* The requirement is necessary to determine if advance payment should be provided to the contractor.

b. *Annual reporting burden.* This is estimated as follows: Respondents, responses and hours, 500.

2. *Contract cost principles and procedures.* a. *Purpose.* The documentation provided by Federal contractors under this clause is used by contracting officers to determine if certain cost elements will be allowed.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 38, hours 19.

3. *Progress payments.* a. *Purpose.* This clause requires firms performing under Federal contracts calling for progress payments to provide financial information which is used to determine proper amount of payment.

b. *Annual reporting burden.* This is estimated as follows: Respondents 2,100; responses 25,920; hours 14,256.

Obtaining copies of proposals. Requestors may obtain copies from the Directives and Reports Management Branch (ATRAI), Room 3004, GS Building, Washington, DC 20405, telephone 202–566–0666.

Dated: March 28, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84-8628 Filed 4-4-84; 8:45 am]

BILLING CODE 6820-34-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB): GSAR, Part 509, Certification (Crimes, Debarments, Suspensions, Defaults)

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve an existing collection.

Comment date: Submit comments on this information collection before April 27, 1984.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Kathleen M. Lannon, Acting GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of Acquisition Policy, 202–523–4754.

SUPPLEMENTARY INFORMATION:

1. *Certification clause.* a. *Purpose.* This clause requires contractors for contracts over $25,000 to certify whether firms, officers or principal employees were indicted, convicted, suspended, debarred or had a contract terminated. This is necessary to determine offerors' responsibilities.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 90,945; hours 15,157.

2. *Obtaining copies of proposal.* Requestors may obtain copies of the proposal from the Directives and Reports Management Branch (ATRAI), Room 3004, GSA Building, Washington, DC 20405, telephone (202–566–0666).

Dated: March 29, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84-8627 Filed 4-4-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81N-0085]

Availability of Chest X-Ray Referral Criteria Panel Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report, "The Selection of Patients for X-Ray Examinations: Chest X-Ray Screening Examinations." The report, developed by a panel of physicians with expertise in chest radiology, discussing the utility of selected chest x-ray screening examinations.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857; a copy of the report is available for public review at the Dockets Management Branch. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Jay A. Rachlin, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4600.

SUPPLEMENTARY INFORMATION: Through the Center for Devices and Radiological Health (CDRH), FDA conducts and supports research and training to minimize unproductive radiation exposure from diagnostic radiological examinations (including nuclear medicine procedures). One possible source of unproductive radiation exposure is radiological examinations that are not likely to affect patient management. To reduce the use of ineffective examinations, referring physicians need current information about when a given radiological study is likely to provide needed diagnostic data. This information can take the form of decision guidelines based on patient signs, symptoms, or history, sometimes known as "referral criteria."

To assist in making this type of information available, FDA has established a program to facilitate the development, testing, and use of referral criteria for diagnostic radiological procedures. A panel of physicians developed and endorsed the criteria

statements as part of a voluntary cooperative effort between CDRH and the medical community to develop referral criteria for specific radiological procedures. The agency believes that such information about the utility of radiological procedures can assist physicians in using limited health care and diagnostic radiological resources more effectively and will also help minimize unnecessary radiation exposure to the population.

Chest X-Ray Referral Criteria Panel Report

In its role as a facilitator, FDA provided logistical support to the Chest X-Ray Referral Criteria Panel, a panel of physicians expert in chest radiography, to review the uses of chest x-ray examinations and to develop recommendations to help minimize unnecessary radiation exposure associated with chest x-ray screening examinations.

In the **Federal Register** of June 9, 1981 (46 FR 30568), FDA announced the availability of and asked for written comments on a draft report prepared by the panel. The draft report presented draft referral criteria statements for five different screening applications of the chest x-ray examination: mandated routine screening examinations, routine prenatal examinations, routine hospital admission examinations, examinations for tuberculosis detection and control, and routine examinations in occupational medicine. The draft report also included a general preamble to referral criteria for chest x-ray examinations, a list of the panel members, and an FDA annotated bibliography of the medical literature which formed the scientific basis for the draft referral criteria statements.

More than 800 copies of the draft report were furnished to individual requestors. Additionally, the statements were reviewed by 19 medical specialty associations. Many of these organizations, including the American College of Radiology, the American Thoracic Society, and the American Occupational Medical Association, endorsed the draft statements and adopted them as their organization policy. FDA received 16 comments on the draft report and referred them to the panel for consideration in developing the final report.

The Chest X-Ray Referral Criteria Panel now has prepared its final report entitled, "The Selection of Patients for X-Ray Examinations: Chest X-Ray Screening Examinations." The report contains five referral criteria statements, which encourage physicians to limit voluntarily their routine use of chest x-rays because of the insufficient yield of the chest x-ray examination as a screening tool for asymptomatic disease. The panel's statements include recommendations against mandated routine chest x-ray screening examinations, routine prenatal chest x-ray examinations, routine hospital admission chest x-ray examinations, chest x-ray examinations for tuberculosis detection and control, and routine chest x-ray examinations for occupational medicine.

In the June 9, 1981 notice, FDA also announced that interested persons would be given further opportunity to comment on any final panel report at such time as a report was developed and made available through an announcement in the **Federal Register**.

Thus, FDA advises that the final report may be purchased from the Superintendent of Documents, U.S. Government Printing Office (address above), for $4.50 per copy. Orders for copies should include the GPO stock number 017-0105-00210-1.

A single copy of the report is on file under Docket Number 81N-0068 in the Dockets Management Branch (address above) and is available for public review between 9 a.m. and 4 p.m., Monday through Friday. Interested persons may at any time submit written comments, data, or information regarding this final report to the Dockets Management Branch. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this notice. FDA will transmit any such comments to the panel for consideration in determining the need for future revisions of its recommendations. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 30, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9042 Filed 4-4-84; 8:45 am]

BILLING CODE 4160-01-M

[FDA-225-84-8000]

Memorandum of Understanding With the United States Patent and Trademark Office

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed an agreement with the United States Patent and Trademark Office (PTO). The purpose of the agreement is to establish a continuing procedure whereby the PTO determines whether a U.S. Patent may be issued for certain orphan products under the provisions to make special of the Manual of Patent Examining Procedure and provides that decision to the patent applicant for transmittal to FDA.

DATE: This agreement became effective March 22, 1984.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the United States Patent and Trademark Office and the Food and Drug Administration

I. Purpose

To establish a continuing procedure whereby the United States Patent and Trademark Office determines whether a U.S. Patent may be issued for certain orphan products for certain uses under the provisions to make special of the Manual of Patent Examining Procedure and provides that decision to the patent applicant for transmittal to the Food and Drug Administration.

II. Background

On January 4, 1983, Pub. L. 97-414, The Orphan Drug Act (the Act) became law. 21 U.S.C. 525 *et seq.* The Act establishes financial and other incentives to encourage potential sponsors of drugs for rare diseases or conditions (orphan drugs) to conduct research and to pursue marketing for these drugs.

One of the most important incentives of the Act provides that drugs that are designated as orphan drugs under Section 525 of the Act and for which a U.S. patent may not be issued are entitled to an exclusive marketing status. 21 U.S.C. 527. For a period of seven years after the Food and Drug Administration (FDA) approves a new drug application for an officially designated orphan drug for which a U.S. patent may not be issued, FDA cannot approve a new drug application for the same drug for the same use. FDA may approve the same drug for the same use for another sponsor only if the Agency finds that the holder of the first approved new drug application cannot assure the availability of sufficient quantities of the drug to meet the needs of patients or if the holder consents to

the approval of other new drug applications. (See Attachment A for text of pertinent sections of the Act.)

There are, in addition, a limited number of orphan products not covered by the Orphan Drug Act for which accelerated patent review may be appropriate. These products, while not officially designated as orphan drugs under the Act, nevertheless, are orphan products vital to an afflicted patient group in need of the product. FDA may decide that an accelerated decision on the patentability for such a product would be an important inducement to the orphan product's development and availability.

This agreement between the U.S. Patent and Trademark Office (PTO) and the United States Food and Drug Administration has been developed to provide for an accelerated determination of the patentability of an orphan drug for a particular use before a grant of exclusive marketing is made under the Orphan Drug Act. In addition, this agreement provides for accelerated review of the patentability of certain other orphan products for a particular use upon request by FDA. No additional showing by the patent applicant concerning the need for expedited review is necessary for orphan products falling within the scope of this Memorandum of Understanding.

III. Substance of Agreements

A. Drugs Designated As Orphan Under Section 526 of the Orphan Drug Act.

1. Upon receipt of a petition from a patent applicant including as an attachment a letter from FDA stating that a drug for a particular use has received orphan designation pursuant to Section 526 of the Federal Food, Drug, and Cosmetic Act, the PTO will grant accelerated review to a patent application for the drug under the "petition to make special" provisions of the Manual of Patent Examining Procedure, Section 708.02.

2. The PTO will notify the patent applicant of the action to grant accelerated patent review as well as of any problems requiring resolution.

3. The PTO will notify the patent applicant of the results of the examination and either issue a patent or declare the application abandoned after the conclusion of the PTO's examination.

4. The PTO will provide to the patent applicant, at applicant's request and expense, a certified copy of the patent application or patented file for transmittal to the FDA as evidence of whether a U.S. Patent may issue for the orphan drug.

B. Orphan Product Not Covered by Provisions of the Orphan Drug Act.

Orphan products identified by FDA but which do not fall within Section 526 of the Act will be granted accelerated review upon petition by the patent applicant accompanied by a request by FDA.

When FDA identifies such an orphan product not covered by the Act a procedure similar to that described in part III–A of this memorandum will be followed. In response to a written request from FDA for accelerated review for a particular orphan product, which is filed as an attachment to a petition to make a patent application special, the PTO will accord accelerated review to the patent application for the product under the "petition to make special" provisions in the Manual of Patent Examining Procedure, Section 708.2.

IV. Name and Address of Participating Parties

A. U.S. Patent and Trademark Office, Washington, DC 20231.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

V. Liaison Officers

A. For the U.S. Patent and Trademark Office, Charles Van Horn, Director, Examining Group 120, U.S. Patent and Trademark Office, Washington DC 20231.

B. For the Food and Drug Administration: Emery J. Sturniolo, Assistant to Director, Office of Orphan Product Development, HF-35, 5600 Fishers Lane, Rockville, MD 20857.

VI. Period of Agreement

This agreement, when accepted by both parties will be effective indefinitely. It may be modified by mutual written consent or terminated by either party upon a thirty day advance written notice to the other party.

Approved and accepted for the United States Patent and Trademark office.

Donald J. Quigg,

Deputy Commissioner of Patents and Trademarks.

Dated: January 12, 1984.

Approved and accepted for the Food and Drug Administration.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Dated: March 22, 1984.

Effective date. This agreement became effective March 22, 1984.

Dated: March 28, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

ATTACHMENT A

"PROTECTION FOR UNPATENTED DRUGS FOR RARE DISEASES OR CONDITIONS

21 USC 360ee.

"SEC. 527. (a) Except as provided in subsection (b), if the Secretary—

"(1) approves an application filed pursuant to section 505(b), or

"(2) issues a license under section 351 of the Public Health Service Act

for a drug designated under section 526 for a rare disease or condition and for which a United States Letter of Patent may not be issued, the Secretary may not approve another application under section 505(b) or issue another license under section 351 of the Public Health Service Act for such drug for such disease or condition for a person who is not the holder of such approved application or of such license until the expiration of seven years from the date of the approval of the approved application or the issuance of the license. Section 505(c)(2) does not apply to the refusal to approve an application under the preceding sentence.

Ante, p. 2050.

21 USC 355. 42 USC 262.

"(b) If an application filed pursuant to section 505(b) is approved for a drug designated under section 526 for a rare disease or condition or a license is issued under section 351 of the Public Health Service Act for such a drug and if a United States Letter of Patent may not be issued for the drug, the Secretary may, during the seven-year period beginning on the date of the application approval or of the issuance of the license, approve another application under section 505(b), or, if the drug is a biological product, issue a license under section 351 of the Public Health Service Act, for such drug for such disease or condition for a person who is not the holder of such approved application or of such license if—

"(1) The Secretary finds, after providing the holder notice and opportunity for the submission of views, that in such period the holder of the approved application or of the license cannot assure the availability of sufficient quantities of the drug to meet the needs of persons with the disease or condition for which the drug was designated; or

"(2) such holder provides the Secretary in writing the consent of such holder for the approval of other applications or the issuance of other licenses before the expiration of such seven-year period.

[FR Doc. 84-8941 Filed 4-4-84; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 84F-0054]

American Cyanamid Co.; Filing of Food Additive Petition

Correction

In FR Doc. 84-7359, beginning on page 10364, in the issue of Tuesday, March 20, 1984, on page 10365, in the first column, lines four and five should be removed.

BILLING CODE 1505-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee sponsored by the National Heart, Lung, and Blood Institute, on May 4, 1984, from 9 a.m. to 4 p.m., at the Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. The entire meeting will be open to the public.

The coordinating committee is meeting to define the priorities, activities, and needs of the groups participating in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary contact: Dr. Edward J. Roccella, Coordinator, Health Education Branch, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, Maryland 20205, 301-496-1051.

Dated: March 29, 1984.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 84-8037 Filed 4-4-84; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Food and Drug Administration; Center for Drugs and Biologics; Statement of Organization, Function, and Delegations of Authority

Correction

In FR Doc. 84-7233 beginning on page 10168 in the issue of Monday, March 19, 1984, make the following corrections.

1. On page 10170, second column, fifth line from the top, "addition" should read "addiction".

2. On page 10172, first column, second paragraph from the bottom, "(n-4-9v)" should read "(n-4-iv)"; third column, fifth complete paragraph from the top, first line, "consucts" should read "conducts"; and in the seventh paragraph, fourth line, insert the following after "field": "staff and from other Federal agencies to obtain drug analysis data".

3. On page 10173, first column, fifth complete paragraph from the top, fifth line, "licensees" should read "licenses".

4. On page 10174, second column, fifth paragraph, third line, "anti-effective" should read "anti-infective", and in the fifth paragraph from the bottom, first line, insert "and" after "administrative".

BILLING CODE 1505-01-M

Food and Drug Administration; Center for Veterinary Medicine; Statement of Organization, Functions, and Delegations of Authority

Correction

In FR Doc. 84-7234 beginning on page 10175 in the issue of Monday, March 19, 1984, make the following correction.

On page 10176, third column, eighth paragraph from the top, third line, "of" should read "or".

BILLING CODE 1505-01-M

Food and Drug Administration; Center for Food Safety and Applied Nutrition; Statement of Organization, Functions, and Delegations of Authority

Correction

In FR Doc. 84-7235 beginning on page 10179 in the issue of Monday, March 19, 1984, make the following corrections.

On page 10180, first column, fourth line from the bottom of the page, "appication" should read "application"; third column, third paragraph from the bottom, first line, "organizatinal" should read "organizational".

On page 10181, first column, eighth paragraph from the top, third line, "imformation" should read "information".

On page 10182, third column, fourth paragraph from the bottom, second line, "toxicologial" should read "toxicological".

On page 10183, first column, second paragraph from the top, second line, "toxicolgical" should read "toxicological".

On page 10184, first column, first paragraph, fifth line, remove the comma after "analyses".

BILLING CODE 1505-01-M

Social Security Administration

Transitional Employment Training Demonstration Program: Announcement of the Availability of Grant Funds

Correction

In FR Doc. 84-8516 beginning on page 12312 in the issue of Thursday, March 29, 1984, make the following correction:

On page 12313, third column, second paragraph, third and fourth lines, "(insert date 60 days following the date of this notice)" should have read "May 29, 1984".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D-84-739; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Birmingham Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Birmingham Office. This revision is necessary because HUD's reorganization of its regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: November 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Birmingham Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.

2. Chief Counsel.
3. Director, Community Planning and Development Division.
4. Director, Housing Management Division.
5. Director, Housing Development Division.

This designation supersedes the designation effective December 15, 1980 (46 FR 16330, March 12, 1981).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of November 13, 1983.

Richard W. Compton,

Manager, Birmingham Office.

Clifton G. Brown,

Regional Administrator, Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8880 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-33-M

[Docket No. R-84-736; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Columbia Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Columbia Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: November 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303, 404/221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Columbia Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: provided, that no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position.

1. Deputy Manager.
2. Director, Housing Management Division.
3. Director, Community Planning and Development Division.
4. Director, Housing Development Division.
5. Chief Counsel.
6. Director, Fair Housing and Equal Opportunity Division.

This designation supersedes the designation effective June 18, 1978 (43 FR 39858, September 7, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of November 13, 1983.

Franklin H. Corley, Jr.,

Manager, Columbia Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8883 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-33-M

[Docket No. D-84-737; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Coral Gables Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Coral Gables Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Coral Gables Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Chief, Valuation Branch.
2. Chief, Mortgage Credit Branch.
3. Chief, Loan Management Branch.
4. Chief, Property Disposition Branch.

This designation supersedes the designation effective September 7, 1978 (43 FR 39860, June 18, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of January 3, 1984.

Edwin I. Gardner,

Acting Manager, Coral Gables Office.

Clifton G. Brown,

Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8882 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-33-M

[Docket No. R-84-743; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Jackson Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Jackson Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, GA 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Jackson Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.
2. Director, Community Planning and Development Division.
3. Director, Housing Development Division.
4. Director, Housing Management Division.

This designation supersedes the designation effective March 31, 1982, (47 FR 28799, July 1, 1982).

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 3380, February 23, 1971))

This designation shall be effective as of January 1, 1984.

James S. Roland,

Manager, Jackson Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8879 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-740; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Jacksonville Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Jacksonville Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: December 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404–221–5199. (This is not a toll-free number.)

Designation of Acting Manager for Jacksonville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.
2. Director, Housing Management Division.
3. Director, Community Planning & Development Division.
4. Chief Counsel.
5. Director, Housing Development Division.

This delegation supersedes the designation effective September 7, 1978, (43 FR 39859, September 7, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 3380, February 23, 1971))

This designation shall be effective as of December 13, 1983.

Harry I. Sharrott,

Manager, Jacksonville Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8878 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-734; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Knoxville Office

AGENCY: Department of Housing and Urban Development.

ACTION.T1
esignation.Q03

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Knoxville Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: December 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404–221–5199. (This is not a toll-free number.)

Designation of Acting Manager for Knoxville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.
2. Director, Housing Development Division.
3. Director, Community Planning and Development Division.
4. Director, Housing Management Division.
5. Director, Administration Division.
6. Chief Counsel.

This designation supersedes the designation effective January 20, 1980 (45 FR 24923, April 11, 1980).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3380, February 23, 1971))

This designation shall be effective as of December 13, 1983.

Fred O. DeBruhl, Sr.,

Manager, Knoxville Office.

Clifton G. Brown,

Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8880 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-741; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Louisville Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Louisville Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: November 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404–221–5199. (This is not a toll-free number.)

Designation of Acting Manager for Louisville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Manager.
2. Chief Counsel.
3. Director, Community Planning and Development Division.
4. Director, Housing Management Division.
5. Director, Housing Development Division.
6. Director, Administration Division.

This designation supersedes the designation effective June 18, 1978 (43 FR 39860, September 7, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970) (36 FR 3389, February 23, 1979))

This designation shall be effective as of November 13, 1983.

Fred H. Porterfield,

Manager, Louisville Office.

Clifton G. Brown,

Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8678 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-33-M

[Docket No. D-84-742; FR-1956]

Region IV (Atlanta), Designation for Acting Manager, Memphis Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Memphis Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of the field offices and the titles of various positions in those offices.

EFFECTIVE DATE: November 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number).

Designation of Acting Manager for Memphis Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reasons of absence or vacancy in the position:

1. Chief, Housing Development Branch.
2. Chief, Loan Management and Property Disposition Branch.

This designation supersedes the designation effective December 15, 1980 (46 FR 16330, March 12, 1981).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)

This designation shall be effective as of November 13, 1983.

Joseph P. Garaffa,

Manager, Memphis Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8677 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-33-M

[Docket No. D84-738; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Orlando Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Orlando Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the title of various positions in those offices.

EFFECTIVE DATE: December 12, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number).

Designation of Acting Manager for Orlando Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Chief, Valuation Branch.
2. Chief, Mortgage Credit Branch.

This designation supersedes the designation effective June 18, 1978, (43 FR 39857, September 7, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 3389,) February 23, 1971)

This designation shall be effective as of December 12, 1983.

M. Jeanette Porter,

Manager, Orlando Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8681 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-33-M

[Docket No. D-84-735; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Tampa Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Tampa Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: January 5, 1984.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Uban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Tampa Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Chief, Valuation Branch.
2. Chief, Property Disposition Branch.
3. Chief, Loan Management Branch.
4. Chief, Mortgage Credit Branch.

This designation supersedes the designation effective September 7, 1978, (43 FR 39858, June 18, 1978).

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 339, February 23, 1971)

This designation shall be effective as of January 5, 1984.

George A. Milburn, Jr.,

Acting Manager, Tampa Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8997 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-733; FR-1955]

Region IV (Atlanta), Designation for Acting Manager, Nashville Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Nashville Office. This revision is necessary because HUD's reorganization of its Regional and field offices in September 1983 changed the names of field offices and the titles of various positions in those offices.

EFFECTIVE DATE: December 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ellis M. Brossett, Acting Director, Management and Budget Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 658, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303, 404-221-5199. (This is not a toll-free number.)

Designation of Acting Manager for Nashville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Director, Housing Management Division.
2. Director, Housing Development Division.
3. Chief, Mortgage Credit Branch.

This designation supersedes the designation effective February 1, 1983.

(Delegation of Authority by the Secretary effective October 1, 1970, (36 FR 3369), February 23, 1971))

This designation shall be effective as of December 13, 1983.

Joseph G. Hart,

Manager, Nashville Office.

Clifton G. Brown,

Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 84-8995 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-84-744; FR-1963]

Region III Philadelphia, Office of the Manager, Washington, D.C. Office, Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Order of Succession.

SUMMARY: The Office Manager is designating officials who may serve as Acting Office Manager during the absence, disability, or vacancy in the position of the Office Manager.

EFFECTIVE DATE: This designation is effective: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Office of Counsel, Philadelphia Regional Office, Department of Housing & Urban Development, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, phone 215-597-2655. (This is not a toll free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Office Manager during the absence, disability, or vacancy in the position of the Office Manager, with all the powers, functions, and duties redelegated or assigned to the Office Manager: Provided, that no official is authorized to serve as Acting Office Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager.
2. Chief Counsel.
3. Director, Housing Development Division.

This designation supersedes the designation effective May 1, 1981.

Authority: Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3369, February 23, 1971.

Dated: February 23, 1984.

Kenneth J. Finlayson,

Regional Administrator—Regional Housing Commissioner, Region III.

Dated: February 8, 1984.

I. Margaret White,

Manager,

Washington Field Office.

[FR Doc. 84-8996 Filed 4-4-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Canon City District Advisory Council Meeting.

SUMMARY: The Canon City District Advisory Council will meet on Thursday and Friday, May 17 and 18, 1984.

The Council will meet from 1:00 pm to 5:00 pm on May 17th at the 1st National Bank Building, 9th Street and Royal Gorge, Canon City, Colorado. On May 18th from 8:00 am to 1:00 pm a field trip to view the DeWeese recreation area and other resource uses in the area is planned.

Agenda of this meeting will include; (1) Election of officers, (2) Cooperative Management Agreements, (3) Comment on the draft Northeast Resource Area RMP/EIS, (4) Public presentations to the council.

The meeting is open to the public, transportation for the field trip is the responsibility of the individual. Persons interested may make oral presentations to the council between 1:30 pm and 2:30 pm on Thursday, or they may file written statements for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make a presentation to the council orally or in writing should notify the District Manager, Bureau of Land Management, 3080 East Main (P.O. Box 311), Canon City, Colorado 81212 by May 16 1984.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Glenn Wallace, Staff Chief, Bureau of Land Management, 3080 East Main

Street, Canon City, Colorado 81212, (303) 275–0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 84-8035 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-JB-M

[M 60257]

Montana; Invitation Coal Exploration License Application

Members of the public are hereby invited to participate with Peabody Development Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Rosebud County, Montana:

T. 1 S., R. 42 E., P.M.M.
Sec. 10: All;
Sec. 14: N½NE¼, SW¼NE¼, NW¼, S½;
Sec. 20: N½NE¼, SE¼NE¼, NE¼NW¼, S½NW¼, SW¼, N½SE¼, SW¼SE¼;
Sec. 22: NE¼, N½NW¼, SE¼NW¼, S½;
Sec. 24: All;
Sec. 26: NE¼, NW¼NW¼, S½NW¼, S½;
Sec. 28: All;
Sec. 30: Lots 1,2,3,4, E½, E½W½;
Sec. 32: All;
Sec. 34: All.
T. 2 S., R. 42 E., P.M.M.
Sec. 2: Lots 1,2,3,4, S½N½, N½S½;
Sec. 4: Lots 1,2,3,4, S½N½, S½;
Sec. 6: Lots 1,2,3,4,5,6,7, S½NE¼, SE¼ NW¼, E½SW¼, SE¼.
T. 1 S., R. 43 E., P.M.M.
Sec. 22: NE¼, S½;
Sec. 24: All;
Sec. 26: All;
Sec. 28: All;
Sec. 32: All;
Sec. 34: NE¼, NE¼NW¼, S½NW¼, S½.
T. 2 S., R. 43 E., P.M.M.
Sec. 2: Lots 1,2,3,4, S½N½, S½;
Sec. 4: Lots 1,2,3,4, S½N½, N½, N½SW¼, SE¼SW¼, SE¼.
T. 1 S., R. 44 E., P.M.M.
Sec. 30: Lots 1,2, NE¼, E½NW¼, N½SE¼.
15,138.81 acres.

Any party electing to participate in this exploration program should be aware of an agreement entered into on October 30, 1980, by Peabody Development Company, The Northern Cheyenne Tribe and the Secretary of the Interior wherein the Secretary agrees to issue to Peabody noncompetitive Federal coal leases on lands included in this application under certain conditions. This agreement is available for public information.

Any party electing to participate in this exploration program shall notify, *in writing* both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and Peabody Development Company, 10375 East Harvard Avenue, Suite 400, Denver, Colorado 80231. Such written notice must refer to serial number M 60267 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Forsyth Independent, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at this address.

Dated: March 27, 1984.

George Mowat,

Acting Chief, Branch of Solid Minerals.

[FR Doc. 84-8036 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-DH-M

[M-59731]

Montana; Realty Action—Exchange

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-59731—Exchange of public and private lands, in Phillips and Blaine Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana
T. 37 N., R. 27 E.,
Sec. 1, S½;
Sec. 12.
T. 37 N., R. 28 E.,
Sec. 4, lots 10–12, inclusive;
Sec. 6, lots 6, 7, 12, 13, E½ SW¼.
The area described aggregates 1,278.41 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana
T. 37 N., R. 24 E.,
Sec. 10, SE¼;
Sec. 11, NW¼;
Sec. 14, W½;
Sec. 15, E½;
Sec. 22, S½ NE¼.
The area described aggregates 1,040 acres.

The purpose of this exchange is to acquire ephemeral pothole habitat near woody island coulee which is northwest of Turner, Montana. This exchange will also acquire private land within an existing allotment management plan.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publiscation of this notice segregates pulbic lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange.

Dated: March 29, 1984.

David E. Little,

Acting District Manager.

[FR Doc. 84-8034 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-DH-M

[A-18418-A]

Navajo Relocation Exchange, Apache, Navajo, Maricopa, and Yavapai Counties, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Selection of Public Lands by Private Landowners to be

Exchanged for Private Lands for the Navajo Tribe for Relocation Purposes.

SUMMARY: Under the provisions of Sections 4 and 28 of the Navajo and Hopi Indian Relocation Amendment Act, 1980, 25 U.S.C. 640d–10 and 25 U.S.C 640d–28, the Navajo Tribe filed a selection application on June 30, 1983, for private lands to be obtained by exchange for public lands. Interest has been expressed by private landowners to select the following public lands:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 24 E.
Sec. 4: Lots 1 thru 4, S½N½, S½;
Sec. 6: Lots 1 thru 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 28: W½W½, NW¼NE¼, NE¼NW¼, SE¼SW¼, SE¼SE¼.
T. 12 N., R. 24 E.
Sec. 24: S½S½, N½SW¼, SW¼NW¼;
Sec. 26: All;
Sec. 28: All;
Sec. 34: All.
T. 10 N., R. 25 E.
Sec. 18: Lots 1 & 6, W½NE¼NW¼, NW¼SE¼NW¼;

Comprising 3,863.30 acres, more or less located in Apache County.

T. 13 N., R. 21 E.
Sec. 12: All.
T. 14 N., R. 21 E.
Sec. 14: W½;
Sec. 26: All.
T. 11 N., R. 22 E.
Sec. 6: Lot 7;
Sec. 12: NE¼, N½SE¼.
T. 12 N., R. 22 E.
Sec. 10: All;
Sec. 24: S½S½, N½SW¼;
Sec. 26: All.
T. 13 N., R. 22 E.
Sec. 18: Lots 1 & 2, E½NW¼, NE¼;
Sec. 20: All;
Sec. 28: All;
Sec. 34: All.
T. 11 N., R. 23 E.
Sec. 28: NE¼, W½.
T. 12 N., R. 23 E.
Sec. 20: All;
Sec. 28: All;
Sec. 30: Lots 1 thru 4 E½, E½W½;
Sec. 34: all.

Comprising 8,723.27 acres, more or less located in Navajo County.

T. 6 N., R. 1 W.
Sec. 1: Lots 1 thru 7, SW¼NE¼, S½NW¼, SW¼, W½SW¼;
Sec. 2: Lots 1 & 2, S½NE¼, S½;
Sec. 11: All;
Sec. 12: All;
Sec. 13: All;
Sec. 14: All;
Sec. 22 S½;
Sec. 23 S½;
Sec. 24: All;
Sec. 25: All;
Sec. 26: All.

Comprising 6,216.07 acres, more or less located in Maricopa County.

T. 7 N., R. 1 W.
Sec. 23: S½;
Sec. 25: W½;
Sec. 26: N½;
Sec. 35: All.

Comprising 1,600.00 acres, more or less located in Yavapai County.

Publication of this Notice will segregate the public lands, as described in this Notice, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above described lands shall terminate upon issuance of a document of conveyance to such lands to the private landowners or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

Inquiries concerning the segregation of the lands referenced above should be addressed to the Indian Project Manager, Indian Project Office, 2708 N. 4th St., Suite B–5, Flagstaff, Arizona 86001.

Dated: March 29, 1984.

Tom Allen,

Acting State Director.

[FR Doc. 84-8883 Filed 4-4-84; 8:45 am]
BILLING CODE 4310-84-M

[F-82319]

Amended Withdrawal Proposal, Withdrawal Application, and Public Meetings, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service has filed an application for withdrawal of approximately 325,000 acres of public land for addition to the Arctic National Wildlife Refuge. This notice continues segregation of the land and gives dates, times and locations for four public meetings.

DATE: Comment should be received by July 5, 1984.

ADDRESS: Comments should be sent to: Mike Green, Yukon Resource Area Manager, Bureau of Land Management, Fairbanks District Office, North Post, Ft. Wainwright, Box 1150, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271–5080.

On October 6, 1983, a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw approximately 1,300,000 acres of public land surrounded by the Arctic National Wildlife Refuge (ANWR) for possible addition to the Refuge, and a Notice of Proposed Withdrawal was published in FR Doc. 83–27678, published on pages 46451 and 46452 in the issue of Wednesday, October 12, 1983. Most of the lands included in the withdrawal proposal had been selected by the State of Alaska pursuant to section 6(b) of the Alaska Statehood Act and on September 29, 1983, the State proposed to donate this acreage to the Fish and Wildlife Service as an addition to the ANWR pursuant to Subsection 1302(i) of the Alaska National interest Lands Conservation Act (94 Stat. 2371 at 2475). The Secretary of the Interior determined that, of the approximately 1,300,000 acres proposed for donation, approximately 325,000 acres had not been validly selected by the State. The land which had been validly selected by the State was accepted as a donation and proclaimed a part of the ANWR in an instrument of acquisition dated October 20, 1983.

On March 23, 1984, the U.S. Fish and Wildlife Service filed an application to withdraw the remaining 325,000 acres for an indefinite period of time for the purpose of adding these lands to the ANWR. Subject to valid existing rights, this notice continues the segregation begun October 12, 1983, of the following described lands from settlement, sale, location, or entry under the general public land laws, including the mining laws, and from selection under the Alaska Statehood Act, pending possible addition to the ANWR.

Fairbanks Meridian

T. 37 N., R. 17 E., partial,
T. 36 N., R. 18 E.,
Secs. 1 to 18, inclusive.
T. 37 N., R. 18 E., partial,
T. 36 N., R. 19 E.,
T. 37 N., R. 19 E., partial, those lands lying outside of the Arctic National Wildlife Refuge,
T. 36 N., R. 20 E.,
Those lands lying outside of ANWR.
T. 36 N., Rs. 21 to 24 E.
T. 35 N., Rs. 25 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 25 E.,
T. 35 N., R. 26 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 26 E.,
T. 35 N., R. 27 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 27 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 28 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 28 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 29 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 29 E.,
Secs. 19 to 36, inclusive.

T. 35 N., R. 30 E.,
Secs. 6, 7, and 18.
T. 36 N., R. 30 E.,
Secs. 19, 30, and 31.

Umiat Meridian

T. 14 S., R. 36 E.,
Those lands lying outside of ANWR.
T. 15 S., R. 36 E.,
Those lands lying outside of ANWR.
T. 16 S., R. 36 E.,
Those lands lying outside of ANWR.
T. 17 S., R. 36 E., partial,
T. 16 S., R. 37 E.,
Those lands lying outside of ANWR.
T. 17 S., R. 37 E., partial,
Those lands lying outside of ANWR.
T. 17 S., R. 38 E., partial,
Those lands lying outside of ANWR.

The areas described aggregate approximately 325,000 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with this proposed withdrawal may present their views in writing to Mike Green, Yukon Resource Area Manager.

Notice is hereby given that four public meetings will be held in connection with the proposed withdrawal. The dates, times and locations are as follows:

1. Tuesday, May 8, 1984, 2:30 p.m.
Ft. Yukon Community Center, Ft. Yukon, Alaska
2. Wednesday, May 9, 1984, 7:00 p.m.
Arctic Village Community Center, Arctic Village, Alaska
3. Thursday, May 10, 1984, 7:00 p.m.
Federal Building and Courthouse, 101 12th Street, Room 236, Fairbanks, Alaska
4. Monday, May 14, 1984, 7:30 p.m.
Fish and Wildlife Service, Alaska Regional Office, 1011 East Tudor Road, Room 1110, Anchorage, Alaska.

The application and the case file pertaining to it are available for public inspection at the Fairbanks District Office of the Bureau of Land Management, North Post Ft. Wainwright, Fairbanks, Alaska.

The application will be processed in accordance with the regulations set forth in 43 CFR, Part 2300.

For a period of 2 years from the publication of the October 12, 1983, Notice of Proposed Withdrawal in the **Federal Register**, the lands will remain segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to October 12, 1985. Rights-of-way, mineral exploration, and other nondisposal type uses will be allowed during the period of segregation consistent with existing authorities.

The Temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect addministrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of lands by the U.S. Fish and Wildlife Service.

Mary Jane Clawson,
Chief, Branch of Lands.

[FR Doc. 84-8001 Filed 4-4-84; 8:45 am]
BILLING CODE 4310-JA-M

[OR 36769 (WA), OR 36776(WA)]

Washington; Filing of Public Lands for Indemnity Selection

The State of Washington has filed two selection applications to acquire the lands described below, under the provisions of the Act of February 22, 1889 (25 Stat. 676), as amended, in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. The applications have been assigned the serial numbers OR 36769 (WA) and OR 36776 (WA).

The lands included in the selection applications are described as follows:

OR 36769 (WA)

Willamette Meridian, Washington

T. 21 N., R. 7 E.,
Sec. 14, SW¼SW¼.
T. 9 N., R. 27E.,
Sec. 20, S½NE¼, SE¼NE¼NE¼, S½SW¼NE¼NE¼, S½N½SW¼NE¼NE¼, S½SE¼NW¼NE¼, and S½SE¼SW¼NW¼NE¼.
T. 31 N., R. 36 E.,
Sec. 12, lots 1, 2, 3 and 4, NW¼NE¼ and NW¼SE¼.
T. 37 N., R. 39 E.,
Sec. 34, SE¼SE¼;
Sec. 25, NW¼NW¼, NW¼SW¼, NW¼SE¼ and S½SE¼.

Aggregating 633.73 acres.

OR 36776 (WA)

Willamette Meridian, Washington

T. 28 N., R. 14 W.,
Sec. 15, lots 4 and 5.
T. 36 N., R. 7 E.,
Sec. 10, SW¼NE¼.
T. 3 N., R. 11 E.,
Sec. 27, SW¼NW¼.
T. 5 N., R. 11 E.,
Sec. 18, NE¼SW¼.
T. 29 N., R. 26 E.,
Sec. 31, NW¼NE¼.

Aggregating 206.75 acres.

The filing of the selection applications segregates the lands described above from settlement, sale location, or entry under the public land laws, including the mining laws, but not the mineral leasing laws or the Geothermal Steam Act. The segregative effect on the public lands shall terminate upon issuance of a document of conveyance to such lands, or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of filing of the selection applications, whichever occurs first.

Dated: March 29, 1984.

Harold A. Berends,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-8100 Filed 4-4-84; 8:45 am]
BILLING CODE 4310-33-M

Idaho; Conveyance of Public Lands

March 30, 1984.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), patents were issued to the following:

Niceview Investors N.V., Beverly Hills, California for the following-described public land:

Owyhee County, Serial No. I-20871

Boise Meridian, Idaho

T. 5 S., R. 3 E.,
Sec. 34, NE¼NE¼SE¼.
Containing 10.00 acres.

Boyd F. Whitworth and Beth A. Whitworth, Blackfoot, Idaho for the following described public land:

Caribou County, Serial No. I-18531A

Boise Meridian, Idaho

T. 10 S., R. 41 E.,
Sec. 28, NW¼NW¼.
Containing 40.00 acres.

Parrish Realty & Insurance Inc., Pocatello, Idaho for the following-described public land:

Butte County, Serial No. I-19721B

Boise Meridian, Idaho

T. 4 N., R. 24 E.,
Sec. 17, NE¼SE¼.
Containing 40.00 acres.

Bear Lake County, Serial No. I-19761B

Boise Meridian, Idaho

T. 16 S., R. 45 E.,
Sec. 10, NW¼NW¼.
Containing 40.00 acres.

Gregory G. and Teresa L. Daniels, Arco, Idaho for the following-described public land:

Butte County, Serial No. I-19721C

Boise Meridian, Idaho

T. 4 N., R. 24 E.,
Sec. 20, SW¼NE¼.

Containing 40 acres.

Jack W. Hall,

Acting Deputy State Director for Operations.

[FR Doc. 84-9097 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-GG-M

[OR 23918]

Realty Action; Exchange of Public and State Lands in Klamath County Oregon

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Public Lands, Willamette Meridian, Klamath County, Oregon

T. 28 S., R. 7 E.,
Sec. 34: W½NE¼, S½SE¼NE¼, N½NW¼SE¼, NE¼SE¼
T. 29 S., R. 7 E.,
Sec. 3: Lots 1, 2, 3, 4, S½N½, S½ (All)
T. 39 S., R. 6 E.,
Sec. 18: E½SE¼
Total acres: 881.92

In exchange for these lands the federal government will acquire the following state-owned lands from the Oregon State Department of Forestry:

State Lands, Willamette Meridian, Klamath County, Oregon

T. 40 S., R. 7 E.,
Sec. 23: E½E½
Sec. 24: S½N½, S½
Sec. 25: NE¼NE¼
T. 40 S., R. 6 E.,
Sec. 19: Unnumbered lot in NW¼NW¼, NE¼NW¼
Sec. 30: Unnumbered lots in the W½NW¼, SE¼NW¼
Total acres: 576.46

The written proposal (OR 23918) for this land exchange was filed on May 12 1980, by the Oregon State Department of Forestry. The purpose of the land exchange is to acquire the state lands for inclusion into the Bear Valley National Wildlife Refuge. Upon consummation of the exchange, administration of the acquired state lands will transfer to the U.S. Fish and Wildlife Service. The exchange proposal is consistent with the Bureau's planning system and is the public interest. The value of the lands to be exchanged are approximately equal and the acreage will be adjusted and/or money will be used to equalize the values, if necessary, upon completion of the final appraisal. This notice segregates the public lands to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of this notice on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination notice, or 2 years from the date of this publication, whichever occurs first. The terms, conditions, covenants, and reservations applicable to the land exchange are: 1. The exchange will be made subject to all valid existing rights. 2. The full fee estates, where in federal and state ownership, will be exchanged, unless, as a result of the final appraisal, it becomes necessary to make a partial mineral reservation to equalize values. 3. Bureau of Land Management Road No. 39–6E–20, located in the E½SE¼ of Section 18, T. 39 S., R. 6 E., W.M., Klamath County, Oregon shall be reserved to the United States. 4. A reservation to the United States for the construction and use of a logging skid trail and landing located in the NE¼NE¼SE¼ of section 18, T. 39 S., R. 6 E., W.M., Klamath County, Oregon.

Detailed information concerning the land exchange, including the environmental analysis, land report, and other pertinent information, is available for review at the Lakeview District Office, 1000 South 9th Street (P.O. Box 151), Lakeview, Oregon 97630. For a period of 45 days interested parties may submit comments to the District Manager at the above address.

Dated: March 26, 1984.

Jerry Asher,

District Manager.

[FR Doc. 84-9098 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-33-M

Vale District Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Vale District Grazing Advisory Board will be held May 10, 1984.

The meeting will begin at 9:00 a.m. in the conference room of the Vale District Office, 100 East Oregon Street, Vale, Oregon 97918.

The advisory board will be briefed on issues that include the May 24 Taylor Grazing Anniversary Celebration, grazing allocations in wilderness study areas and the revised grazing regulations. The board is expected to take action on proposed cooperative agreements and allotment management plans.

The meeting is open to the public. Interested persons may make oral statements to the board or may file written statements for the board's consideration. Anyone wishing to make oral statements may do so at 3:00 p.m. the day of the meeting.

Summary of the board meeting will be maintained in the district office and be available during regular business hours for public inspection, for the cost of duplication, within 30 days following the meeting.

Dated: March 28, 1984.

Pearl M. Parker,

Vale District Manager.

[FR Doc. 84-9094 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-33-M

Vale District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Vale District Advisory Council will be held May 11, 1984.

The meeting will begin at 9:00 a.m. in the conference room of the Vale District Office, 100 East Oregon Street, Vale, Oregon 97918.

The advisory council will be briefed on each of the District's resource management programs, including wild horse, minerals, range and recreation management. The council will also be briefed on a proposed rifle range in the district's Northern Resource Area, and is expected to take action on proposed cooperative management agreements.

The meeting is open to the public. Interested persons may make oral statements to the board or may file written statement for the board's consideration. Anyone wishing to make oral statements may do so at 3:00 p.m. the day of the meeting.

Summary of the board meeting will be maintained in the district office and be available during regular business hours for public inspection, for the cost of duplication, within 30 days following the meeting.

Dated: March 28, 1984.

Pearl M. Parker,

Vale District Manager.

[FR Doc. 84-9095 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-33-M

Salt Lake District; District Grazing Advisory Board Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Grazing Advisory Board Meeting and Tour.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Salt Lake District Grazing Advisory Board will be held on May 22 and May 23, 1984. The tour will begin at 10 a.m. at Molley's Cafe in Snowville, Utah. The purpose of the tour and meeting will be to give advice and recommendation on the Box Elder Land-Use Plan. The meeting is open to the

public. Interested persons may make oral statements at 7:30 p.m. on May 22, 1984 at the Bureau of Land Management Field Station at Rosebud, Utah, or file written statements for the board's consideration. Anyone wishing to make oral statements must notify the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119 by May 14, 1984. The District Manager may establish a time limit for each person.

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 84-8288 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-84-M

[Group 661]

California; Filing of Plat of Survey

March 27, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Kern County

T. 30 S., R. 33 E.

2. These plats in three (3) sheets, representing the dependent resurvey of a portion of the subdivisional lines, and certain boundries of mineral surveys, and the survey of the subdivision of sections 19, 21, 22, 28, and 29, T. 30 S., R. 33 E., Mount Diablo Meridian, under Group No. 661, California, were accepted March 12, 1984.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84-8286 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-40-M

Cancellation of the Powder River Regional Coal Team Meeting, and Extension of Comment Period for Draft EIS

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The meeting of the Powder River Regional Coal Team (RCT) scheduled for April 10, 1984, in Sheridan, Wyoming (49 FR 9030), has been postponed indefinitely pending departmental review of the Federal Coal Management Program. As a result of the RCT meeting delay, the comment period for the Draft Powder River Environmental Impact Statement (EIS) is extended through April 30, 1984.

DATES: Comments on the draft Powder River EIS by April 30, 1984.

ADDRESSES: Comments on the draft EIS should be sent to Mr. Charles Wilkie, EIS Team Leader, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: William G. Leavell, Regional Coal Team Chairperson, 503-231-6251, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208, or J. Stan McKee, Project Manager, 307-772-2569, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

Paul D. Leonard,

Associate State Director.

[FR Doc. 84-8282 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Reclamation

Colorado River Water Quality Improvement Program Price-San Rafael Rivers Unit, Utah; Intent To Prepare a Draft Environmental Impact Statement and Hold Public Scoping Meetings

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement integrated with a planning report for the Price-San Rafael Rivers Unit, Utah, of the Colorado River Water Quality Improvement Program. The purpose of the unit is to prevent salt picked up by the surface and ground water within the Price and San Rafael Rivers Basins from entering the Colorado River where it causes economic problems for municipal, industrial, and agricultural water users downstream. Approximately 430,000 tons of salt annually enter the Colorado River from the Price and San Rafael rivers via the Green River. The Price and San Rafael Rivers are located in east-central Utah, 120 miles southeast of Salt Lake City, encompassing Carbon and Emery Counties.

The investigation has been underway since September 1981. During the intervening time, interested agencies and individuals have been involved in the study and have contributed much information. Several public meetings have been held to discuss possible means of reducing the salinity contributions in the unit area.

Alternative plans, which will be evaluated in the proposed draft statement, include: irrigation systems improvements, using drainwater for powerplant cooling, evaporating or desalting drainwater, using drainwater for processing tar sands and transporting coal, selective withdrawal of saline water, treatment by evaporation ponds or desalting, and retirement of farm lands.

From among these alternatives, the irrigation systems improvement alternative appears to be the most promising. This plan consists of two components: lining canals and lining stock water ponds. It would include lining approximately 1.3 miles of canals and approximately 159 stockwatering ponds in the Price River Basin, and lining approximately 5.9 miles of canals and approximately 50 stockwatering ponds in the San Rafael River Basin. The plan would reduce the salt loading to the Colorado River by 30,000 tons annually and reduce the salinity concentration in the Colorado River at Imperial Dam by an estimated 3.0 mg/l.

The primary effect on the environment would be the loss of a few hundred acres of riparian and wetland vegetation. A mitigation plan will be developed in conjunction with State and Federal fish and wildlife agencies to compensate for the habitat loss.

Public scoping meetings will be held to identify significant environmental concerns. The meetings will take place on April 24, 1984, at 10 a.m. in the U.S. Agricultural Service Center at 90 South First East, Castle Dale, Utah, and 2:30 p.m. in the U.S. Agricultural Service Center at 350 North 400 East, Price, Utah. Interested public entities and individuals are encouraged to attend these meetings to provide input to the planning report/draft environmental statement, which should be available for review and comment in the fall of 1984.

To obtain further information or provide input, please contact Mr. Jay Franson at the Utah Projects Office, Bureau of Reclamation, P.O. Box 9338, Provo, Utah 84603, or call him at (801) 379-1155.

Dated: March 30, 1984.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 84-8275 Filed 4-4-84; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Mineral's Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6145, Block 68, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on March 26, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 25, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-8851 Filed 4-4-84; 8:45 am]
BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5174, Block A–16, Brazos Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on March 27, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plan Unit; Phone (504) 838–0874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised section 250.34 of Title 30 of the CFR.

Dated: March 27, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-8852 Filed 4-4-84; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

Boston National Historical Park Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice set forth the schedule and proposed agenda of the forthcoming meeting of the Boston National Historical Park Advisory Commission. The matters to be discussed at this meeting include:

1. Report from Site Liaison Subcommittee
2. Report from Education Subcommittee
3. Commandant's House Preservation and Use
4. Report from Budgeting and Priorities Subcommittee
5. Plans to provide for bus, boat, private automobile, and pedestrian access to the Navy Yard during 1984
6. Plans to improve handicapped access to Faneuil Hall
7. Plans for 1984 visitor season
8. Review and discussion of park administration

DATE: April 12, 1984, 11:00 a.m. to 3:00 p.m.

ADDRESS: Boston National Historical Park, Building #5, Charlestown Navy Yard.

FOR FURTHER INFORMATION CONTACT: Hugh D. Gurney, Superintendent, Boston National Historical Park, 15 State Street, Boston, Massachusetts 02109 (617–242–5644).

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92–463. The Commission was established by Pub. L. 93–431 to advise the Secretary of the Interior on matters relating to the development of the Boston National Historical Park. If handicapped accessibility is required, please notify the Superintendent at least five working days prior to the meeting.

Dated: March 25, 1984.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 84-8132 Filed 4-4-84; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

National Environmental Policy Act Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: This Notice is to inform the public that the United States Section has determined that an environmental

impact statement is not required for the construction of a new gaging station in the United States and Mexico on the Rio Grande in the El Paso-Juarez area to establish a single international measurement point of 1906 Convention water deliveries to Mexico and hereby supplies notice of a finding of no significant impact.

ADDRESS: United States Section, International Boundary & Water Commission, 4110 Rio Bravo, El Paso, Texas 79902.

FOR FURTHER INFORMATION CONTACT: Mr. George R. Baumli, Principal Engineer, Investigations and Planning Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4110 Rio Bravo, El Paso, Texas 79902. Telephone: (915) 541-7304, FTS 572-7304.

Dated: March 27, 1984.

Frank P. Fullerton,

Legal Advisor.

Proposed Action

The proposed action is for the U.S. Section and the Mexican Section of the International Boundary and Water Commission to jointly establish a new gaging station on the Rio Grande approximately 1,885 feet (0.36 miles) upstream of Mexico's diversion structure (International Dam) to establish a single international point of measurement of water deliveries to Mexico under the 1906 Convention to replace two separate measurement points; one operated by Mexico and one operated by the United States. The gaging station would consist of an overflow weir, a water surface elevation recorder well upstream from the overflow weir, rock riprap downstream and upstream of the overflow weir, and rock riprap extending into adjacent river banks.

The gaging station is located one-half in Mexico and one-half in the United States and would be constructed in a generally dry channel during the non-irrigation season. Any drainage flows in the river would be diverted around the construction site. Site preparations would consist of excavating in the dry river bed for the downstream rock riprap. There would be excavation into the river banks for placement of some rock riprap and the water surface elevation recorder well. Sheet piling for the overflow weir would be placed using a pile driver. The construction site would cover an area of less than 10,000 square feet.

Environmental Impact

Based on the environmental assessment (EA), the U.S. Section has determined that the proposed action is not a major Federal action that would significantly affect the quality of the human environment. A brief discussion of the environment and the effects of the proposed action follows:

At the constuction site, there are some grasses and forbs, on the floodplain but no mature brush or trees. A sparse growth of salt cedar, 6 to 10 feet high, is present. Emergent vegetation, mostly bulrush, is present on the channel bank at the proposed site, and cattail is growing along the U.S. channel bank upstream. The construction site occupies less than one quarter of an acre in an urban setting, is frequented by people, and essentially no wildlife has been observed at the site. No known historical or archeological sites are located in the construction site.

During construction there would be some localized dust and noise caused by the construction equipment. However, these effects would be temporary and of short duration. Construction, which is expected to take about two weeks, would be done when the channel is dry and no aquatic species would be affected. The river flows would be essentially the same after construction as before and there should be no adverse effects on aquatic life. No wildlife in the area is expected to be harmed as a result of construction.

The proposed action would be in compliance with the U.S. Section's published procedures for implementation of Executive Orders Nos. 11988 (Flood Plain Management) and No. 11990 (Protection of Wetlands).

The proposed action will not require action under Executive Order No. 12114 (Environmental Effects Aboard of Major Federal Action) because it is not a major Federal action, significantly affecting the environment of a foreign nation.

The U.S. Fish and Wildlife Service has indicated that they do not believe significant impacts to terrestrial or aquatic resources will occur as a result of the proposed action.

On the basis of the foregoing, the U.S. Section has determined that an environmental impact statement is not required for the proposed action and hereby supplies notice of a finding of no significant impact.

[FR Doc. 84-8981 Filed 4-4-84; 8:45 am]

BILLING CODE 4710-03-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-181]

Certain Meat Deboning Machines; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey L. Gertler, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Linda Moy, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: March 29, 1984.

Respectfully submitted,

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 84-9111 Filed 4-4-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-178]

Certain Vinyl-Covered Foam Blocks; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Harold Brandt, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Wilhelm Zeitler, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: March 29, 1984.

Respectfully submitted,

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 84-9110 Filed 4-4-84; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on March 23, 1984, a proposed Consent Decree in *United States* v. *Bayou Steel*, Civil Action No. 83-4809, was lodged with the United States District Court for the Eastern District of Louisiana. The complaint, brought under the Clean Air Act, alleged violations by Bayou Steel's steel manufacturing and forming facility in La Place, Louisiana of the New Source Performance Standards for Electric Arc Furnances. The proposed Consent Decree requires Bayou Steel to take all actions necessary to achieve and thereafter maintain compliance with the New

Source Performance Standards. Specifically, Bayou Steel is required to make modifications to its secondary control system in accordance with a schedule set forth in the Decree. Bayou Steel is also required to pay a civil penalty of $35,000.00 for past violations

The Department of Justice will receive for a period of thirty (30) days from the date of the publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Bayou Steel*, D.J. Ref. No. 90-5-2-1-599.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 500 Camp Street, Hale Boggs Federal Bldg., New Orleans, Louisana 70130, the Region VI Office of the Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270 and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case, D.J. Reference number and consent decree.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-8906 Filed 4-4-84; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. The LTV Corporation, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *The LTV Corporation, et al.*, Civil Action No. 84–0884. The Complaint filed by the Department of Justice in this case alleges that the proposed acquisition of Republic Steel Corporation ("Republic") by The LTV Corporation ("LTV") would violate Section 7 of the Clayton Act, 15 U.S.C. Section 18, because it might substantially lessen competition in the production and sale in the United States of carbon and alloy hot rolled sheet and strip steel, carbon and alloy cold rolled sheet and strip steel, and stainless cold rolled sheet and strip steel. In addition to LTV and Republic, the Complaint also names as defendants Jones & Laughlin Steel Incorporated and J&L Specialty Steels, Inc.

The proposed Final Judgment would permit LTV to proceed with its acquisition of Republic but would require the merged company to divest, within six months following entry of the final judgment but not later than December 1, 1984, the steel mill and coke batteries owned by Republic located in Gadsden, Alabama ("Gadsden") and the stainless steel cold rolling and finishing facilities of Republic at Massillon, Ohio ("Massillon"). Unless both plants have been sold within the specified time period, the Court will appoint a trustee to effect the divestiture. Under other provisions of the Final Judgment, the defendants are required to maintain and preserve Gadsden and Massillon as they currently exist until divestiture of the two plants has been completed, and to establish a separate and independent marketing organization for the sale of cold rolled stainless sheet steel from Massillon. The defendants would be required to offer a long-term contract to supply the purchaser of Massillon with stainless steel hot bands to enable the buyer to compete in the manufacture and sale of cold rolled stainless steel sheet and strip.

The judgment also would restrain the defendants for a period of ten years from providing to the American Iron and Steel Institute for dissemination to any other steel company, without the consent of the Department of Justice, certain data concerning their operations. The defendants would further be enjoined for a period of ten years from acquiring, without the consent of the Department of Justice, one percent (1%) or more of the voting securities of any person engaged in the manufacture of carbon and alloy hot and cold rolled sheet steel or stainless hot and cold rolled sheet steel with assets valued at over $15 million and from acquiring assets relating to such products in an amount in excess of $15 million.

Comments regarding the proposed decree are invited from the public. The statutory comment period is sixty days from the date of this publication in the **Federal Register**. Such comments and responses thereto will be filed with the Court and published in the **Federal Register**. Comments should be directed to John W. Clark, Chief, Special Trial Section, Antitrust Division, U.S. Department of Justice, 10th and Pennsylvania Ave., NW., Washington, D.C. 20530.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc.; and Republic Steel Corporation*, Defendants.

Civil Action No. 84–0884.

Filed: March 22, 1984.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: March 21, 1984.

J. Paul McGrath,

Assistant Attorney General

Eric F. Kaplan,

Helmut F. Furth,

J. Robert Kramer II,

Mark Leddy,

Thomas C. Black,

John W. Clark,

Katherine R. Curtis,

Attorney, Department of Justice, Antitrust Division, Washington, D.C. 20530 Telephone: 202/724–6347

Frank N. Bentkover,

Attorneys, Department of Justice

For the Defendants the LTV Corporation, Jones & Laughlin Steel Incorporated, and J&L Specialty Steels, Inc.: Kaye, Scholer, Fierman, Hays & Handler, By: Stanley D. Robinson, *A Member of the Firm, 425 Park Avenue, New York, N.Y. 10022, 212/407–8000.*

For the Defendant Republic Steel Corporation: Jones, Day, Reavis & Pogue, By: Richard W. Pogue, *A Member of the Firm, 1735 Eye Street, N.W., Washington, D.C. 20006, 202/861–3939.*

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc.; and Republic Steel Corporation*, Defendants.

Civil Action No. 84-0884.

Filed: March 22, 1984.

FINAL JUDGMENT

Whereas, plaintiff, United States of America, having filed its Complaint herein on March —, 1984, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestiture is the essence of this agreement and the defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "LTV" means the defendant The LTV Corporation, including each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. "J&L" means the defendant Jones & Laughlin Steel Incorporated, including each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "J&L Stainless" means the defendant J&L Specialty Steels, Inc., including each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of them.

D. "Republic" means the defendant Republic Steel Corporation, including each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of them.

E. "Defendants" means LTV, J&L, J&L Stainless and Republic.

F. "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity.

G. "Steel mill" means the manufacturing plant, real property, capital equipment, and any other interests, tangible assets or improvements associated with a facility for making steel products, but shall not include cash, cash equivalents, pre-paid expenses or accounts receivable.

H. "Gadsden" means the steel mill and coke batteries owned by Republic (as of March 21, 1984) located in Gadsden, Alabama; provided, however, that any purchaser of Gadsden may elect not to purchase that portion of the mill related to coke and steel production.

I. "Massillon" means the stainless sheet cold rolling and finishing facilities owned by Republic (as of March 21, 1984) located in Massillon, Ohio.

III

A. The provisions of this Final Judgment shall apply to the defendants, their successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets involved in the production of carbon and alloy hot and cold rolled sheet steel and stainless hot and cold rolled sheet steel, that the acquiring party agrees to be bound by the provisions of this Final Judgment.

IV

A. Within six (6) months of the date of entry of this Final Judgment, but in no event later than December 1, 1984, defendants are hereby ordered and directed to divest to a purchaser or purchasers all of their direct and indirect ownership in and control over Gadsden and Massillon.

B. Divestiture of Gadsden shall be accomplished in such a way as to ensure that, as of the time of divestiture, it can reasonably be anticipated that Gadsden can and will be operated by the purchaser or purchasers as a viable, ongoing business engaged in the manufacture and sale of carbon and alloy hot and cold rolled sheet steel made from slabs produced at Gadsden or elsewhere. Divestiture shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, if plaintiff objects, to the Court that: (i) The purchase is for the purpose of competing effectively in the manufacture and sale of carbon and alloy hot and cold rolled sheet steel, and (ii) the purchaser or purchasers have the managerial, operational and financial capability to compete effectively in the manufacture and sale of carbon and alloy hot and cold rolled sheet steel.

C. Divestiture of Massillon shall be accomplished in such a way as to ensure that, as of the time of divestiture, it can reasonably be anticipated that Massillon can and will be operated by the purchaser or purchasers as a viable, ongoing business engaged in the manufacture and sale of stainless cold rolled sheet steel. Divestiture shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, if plaintiff objects, to the Courts that: (i) The purchase is for the purpose of competing effectively in the manufacture and sale of stainless cold rolled sheet steel, and (ii) the purchaser or purchasers have the managerial, operational and financial capability to compete effectively in the manufacture and sale of stainless cold rolled sheet steel.

D. In connection with the divestiture of Massillon, defendants shall offer to the purchaser of Massillon (herein and in the Appendix annexed hereto referred to as "Buyer") a long-term contract to supply Buyer with stainless steel hot bands on such terms and conditions as are reasonably designed to enable Buyer effectively to compete with defendants in the manufacture and sale of cold rolled stainless steel sheet and strip. Unless plaintiff agrees otherwise, the contract to be offered to Buyer by defendants shall include in substance the terms set out in the Appendix annexed hereto. Unless the context otherwise requires, all references in this Final Judgment to the divestiture of Massillon shall mean and include the long-term contract referred to herein, and the procedures of Sections VI and VII of this Final Judgment, including but not limited to approval by the plaintiff, shall be equally applicable to the long-term contract.

E. In accomplishing the divestiture ordered by this Final Judgment, the defendants shall make known in the United States and in other major noncommunist steel producing countries, by usual and customary means, the availability of Gadsden and Massillon for sale as ongoing businesses. The defendants shall notify any person making an inquiry regarding the possible purchase of Gadsden or Massillon that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. The defendants shall also furnish to all bona fide prospective purchasers who so request all pertinent information regarding Gadsden and Massillon and shall permit them to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of either or both facilities.

F. Defendants agree to take all reasonable steps to accomplish said divestiture, including the sale of assets only. Except to the extent otherwise approved by the plaintiff, Gadsden and Massillon shall be divested free and clear of: (i) All mortgages, encumbrances and liens, (ii) any contractual commitments or obligations (such as "take or pay" fuel and ore supply contracts) existing as of the date of divesture, unless the purchaser of purchasers of the divested plant voluntarily assume the future performance of any such existing contracts, (iii) any pension rights of present or former employees accrued as of the date of divestiture, and (iv) any termination payment rights of former employees accrued as of the date of divestiture, all of which shall continue to be the obligation of defendants. In the event that as a matter of law the plants cannot be sold free and clear of any such mortgages, encumbrances, liens, commitments or

obligations, defendants shall hold the purchaser or purchasers harmless with respect to the same. In order to enable the purchaser of Gadsden to continue to operate the steel mill without undue interruption following divestiture, defendants agree that, at the request of the purchaser, they will continue, for a period not exceeding six months (unless extended by the Court) from and after the date of divestiture, to sell for use at Gadsden necessary raw materials, including iron ore, coal, limestone and coke, to the extent that such items are currently being supplied by defendants to Gadsden, and on substantially the same financial and other terms and conditions.

V

A. If the defendants have not divested all of their ownership interest in Gadsden and Massillon within the time period specified in Section IV(A) of this Final Judgment, the Court shall, on application of the plaintiff, appoint a trustee to effect the divetisture. Such appointment shall become effective not more than 45 days following the filing of the petition. The trustee shall dispose of Gadsden and Massillon at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. The trustee shall have the power to require the defendants to divest assets only, retaining and assuming all liabilities of Gadsden and Massillon upon their divestiture. Defendants shall not object to a sale by the trustee on any grounds other than malfeasance, provided, however, that if the buyer chooses to purchase any inventory of semi-finished or finished steel mill product, coke or raw materials, defendants shall have a right to object unless the aggregate sale price shall include a price (payable on reasonable terms), in the case of steel or coke inventory, at least equal to the current production cost of that inventory and, in the case of raw materials, at least equal to the cost thereof, as reflected in either case on the books and records of defendants.

B. As to Gadsden, the trustee shall have the power to require defendants to sell necessary raw materials for use at Gadsden in accordance with the provisions of Section IV(F). As to Massillon, the trustee shall have the power to cause defendants to execute a long-term supply contract in accordance with the provisions of Section IV(D) and the Appendix.

C. If defendants have not divested all of their ownership interest in both Gadsden and Massillon within five (5) months of the date of entry of this Final Judgment, but in no event later than November 1, 1984, the plaintiff and the defendants (acting jointly) shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify this Court of the person upon whom the parties agreed and this Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish this Court, the names of each party's nominees. This Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

D. The trustee shall serve at the cost and expense of the defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of Gadsden and Massillon and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to the defendants and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records and facilities of the businesses to be devested, and defendants shall develop such financial or other information relevant to the assets to be divested as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth: (i) The trustee's efforts to accomplish the required divestiture, (ii) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (iii) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VI

At least thirty (30) days prior to the scheduled closing date of any proposed divestiture pursuant to Section IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify the defendants. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in Gadsden or Massillon together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, the plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. The defendants shall furnish the additional information within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the plaintiff shall notify in writing the defendants and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the periods specified, or if the plaintiff notifies in writing the defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under the proviso in Section V(A). Upon objection by the plaintiff or by the defendants under the proviso in Section V(A), the proposed divestiture shall not be accomplished unless approved by the Court. The defendants shall have no right to object to any divestiture of Gadsden or Massillon proposed by the trustee except under the proviso to Section V(A).

VII

Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, the defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment. Each such affidavit shall include the name, address and telephone number of each person who, during the preceding thirty (30) days, made an offer, expressed an interest or desire to acquire, or entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest, in either Gadsden or Massillon, and shall describe in detail each contact with any such person during that period. The defendants shall maintain full records of all efforts made to divest Gadsden and Massillion.

VIII

Until the divestiture required by this Final Judgment has been accomplished, the defendants shall:

A. Maintain normal repair and maintenance schedules at Gadsden and Massillon and preserve those facilities as they currently exist, except for the deterioration of the blast furnace and coke ovens normally associated with continuing usage;

B. Refrain from altering or selling any assets of Gadsden or Massillon, other than in the ordinary course of business, or from taking any action that will have the effect of reducing the scope of Gadsden's or Massillon's manufacturing or sales operations or its product line from that existing at the time of the filing of the Complaint in this action, without the prior approval of the plaintiff;

C. Refrain from taking any action that would jeopardize the sale of Gadsden as a viable competitor in the manufacture and sale of carbon and alloy hot and cold rolled sheet steel and of Massillon as a viable competitor in the manufacture and sale of stainless cold rolled sheet steel; and

D. Until divestiture of Massillon is accomplished, establish a marketing organization for the sale of cold rolled stainless sheet steel from Massillon which shall be maintained separate and apart from J&L Stainless' marketing organization in the same manner and to the same extent as if J&L Stainless and Republic remained competitors, and there shall be no understanding, agreement, consultation or other communication between the two organizations or its members with regard to prices or terms of sale to customers of stainless sheet steel or as to the allocation or division of trade or customers. LTV and Republic shall forthwith advise in writing all managerial employees of J&L Stainless or Republic having any responsibilities with regard to the marketing of stainless sheet steel of the provisions of this paragraph.

IX

For the sole purpose of enforcing the limited right to Court review of contract disputes provided in paragraph 12 of the Appendix to this Final Judgment, the purchaser of Massillon, and its successors and assigns, may make application to the Court for such relief as may be appropriate to carry out the intent of Section IV(D) of this Final Judgment.

X

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure", then ten days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI

Defendants are hereby enjoined and restrained for a period of ten (10) years from providing to the American Iron and Steel Institute for transmittal to any other steel company, or receiving from the American Iron and Steel Institute, without the consent of plaintiff, operating, output and/or efficiency data for individual operating units including, but not limited to, coke ovens, sinter plants, blast furnaces, electric furnaces, basic oxygen furnaces, primary mills, continuous casters, base mills, plate mills, structural mills, hot strip mills and sheet finishing mills.

XII

Defendants are hereby enjoined and restrained for a period of ten (10) years from acquiring one percent (1%) or more of the voting securities of any person engaged in the manufacture or sale of carbon and alloy hot and cold rolled sheet steel or stainless hot and cold rolled sheet steel, the assets of which are recorded on the books of such company (net of related valuation reserves recorded on such books) in an amount in excess of $15 million, or from acquiring from any such person, except pursuant to supply arrangements or otherwise in the ordinary course of business, assets relating to such products (except raw materials) in an amount in excess of $15 million without first obtaining the consent of plaintiff or, if plaintiff objects, the approval of this Court upon defendants' establishing, by a preponderance of the evidence, that the acquisition will not lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV

This Final Judgment will expire on the tenth anniversary of the date of its entry, except that as to the supply contract referred to in Section IV(D), on the termination thereof.

XV

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Appendix—Terms of the Long-Term Supply Contract

(1) The term of the contract shall be not less than ten years, with a right of renewal in Buyer for not less than two additional years in the event Buyer cannot by a reasonable effort secure an adequate alternative source of stainless steel hot bands upon expiration of the original term of the contract and that defendants then have substantially as much stainless steel hot band capacity as they have today.

(2) Stainless steel hot bands supplied to Buyer shall be as specified by the Buyer and at least equal in quality to hot bands used by defendants to manufacture cold rolled stainless steel sheet and strip for sale by defendants to their own customers.

(3) Defendants agree to supply up to 100 percent of the Massillon requirements of stainless steel hot bands for further finishing into cold rolled sheet and strip at Massillon and sale of such sheet and strip by Buyer, up to a maximum of 30,000 tons per quarter, and not to exceed 10,000 tons in any given month, with a right in Buyer to increase the maximum to 36,000 tons per quarter (and not to exceed 12,000 tons in any given month) in the event that the capacity of Massillon is increased to accommodate such larger supply.

(4) Lead times for Buyer's placing orders with defendants, submitting change orders, and cancelling orders shall be on terms and conditions not less favorable to Buyer on a proportionate basis than the practice normally followed by defendants in connection with orders submitted by defendants' own marketing organization. All orders placed by Buyer shall be filled in accordance with its specifications, unless modified with Buyer's consent.

(5) Stainless steel hot bands furnished to Buyer shall be melted at J&L's Midland plant and rolled at J&L's Cleveland plant, except that ingots for 60" wide hot bands and other specialty products for Massillon now produced at Republic's Canton plant and which Midland is not now capable of producing shall continue to be furnished from Canton. In the event that any of these plants should for any reason become inoperative or unavailable, defendants shall supply Buyer from such other plant or plants as it may then operate, on like terms as herein provided for with respect to the Canton, Midland and J&L Cleveland plants.

(6) In case of shortage, interruption of supply or other force majeure events, Buyer shall be accorded relatively equal status in all respects with defendants' own manufacturing and marketing organizations and customers, and defendants shall not give preferential treatment to their own organizations and customers.

(7) Buyer shall be permitted at its option to place orders for stainless steel hot bands

with other suppliers either in addition to or in lieu of placing orders with defendants.

(8) The purchase price for the stainless steel hot bands shall be based upon: (i) Defendants' actual average monthly manufacturing costs by grade, plus (ii) overhead expenses accumulated on a monthly basis and allocated based on the ratio of defendants' hot band shipments to Buyer to defendants' total hot band production, together with (iii) a markup equal to ten percent of manufacturing and overhead expenses.

(9) Payment shall be made by Buyer for stainless steel hot bands purchased from defendants at the end of each month following the month of delivery.

(10) Defendants will submit to Buyer monthly proof of all cost data used to calculate price, subject to right of audit by Buyer. Defendant shall grant Buyer reasonable access for inspection to its manufacturing facilities used to supply product to Buyer, and to all financial and other records pertinent to the contract or the parties' obligations thereunder.

(11) Subject to plaintiff's prior approval, Buyer shall have the right to assign the contract to any successor of Buyer's interest in Massillon.

(12) An appropriate method shall be provided for the speedy resolution of disputes under the contract. In the event of a dispute, and following reasonable efforts to resolve the dispute through the mechanism provided in the contract (unless the Court agrees to a waiver of this requirement by reason of emergency), Buyer shall have the right to petition this Court, in accordance with Section IX of this Final Judgment, for such relief under the contract as may be appropriate, based on a clear and convincing showing by Buyer that without such relief Buyer will be unable effectively to compete with defendants in the sale of cold rolled stainless steel sheet or strip in accordance with the intent of Section IV(D) of this Final Judgment.

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc.; and Republic Steel Corporation*, Defendants.

Civil Action No. 84-0664 (Judge Pratt).

Filed: March 22, 1984.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA") 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On March 21, 1984, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, challenging the acquisition of Republic Steel Corporation ("Republic") by the LTV Corporation ("LTV") as a violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Also named in the Complaint were Jones & Laughlin Steel Incorporated ("J&L") and J&L Specialty Steels, Inc. ("J&L Stainless"), wholly owned subsidiaries of LTV. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the United States in three product markets: (1) Carbon and alloy hot rolled sheet and strip steel; (2) carbon and alloy cold rolled sheet and strip steel; and (3) stainless cold rolled sheet and strip steel. The Complaint seeks a permanent injunction preventing defendants from consummating the proposed acquisition or any similar plan whereby LTV, J&L or J&L Stainless would acquire any securities or assets of Republic.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify and enforce the proposed Final Judgment.

II

Events Giving Rise to the Alleged Violation

On September 28, 1983, LTV and Republic announced an agreement to merge Republic into LTV. After a lengthy investigation, J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, announced on February 15, 1984, that the United States would seek to enjoin consummation of the acquisition if the companies attempted to complete it. The companies and the Department then entered into negotiations during which LTV and Republic sought to modify the transaction to avoid the antitrust issues raised by their initial proposal. This statement and the accompanying consent decree contain the terms and conditions of the agreement by which the Department's objections to LTV's acquisition of Republic have been resolved.

Carbon and alloy hot rolled sheet and strip are produced at large, integrated steel mills, where iron is produced in blast furnaces from iron ore, coal and limestone, refined into steel in basic oxygen furnaces, continuously cast or rolled into slabs, and rolled into sheet or strip on a hot strip mill. Carbon and alloy hot rolled sheet and strip have many end-uses including automotive and truck underbodies, electrical equipment, appliances, industrial equipment, agricultural machinery, compressed gas cylinders, plumbing equipment and fabricated products.

Carbon and alloy cold rolled sheet and strip are made by further finishing hot rolled sheet and strip in cold finishing shops. Cold rolled carbon and alloy sheet and strip are used where surface properties and close tolerances are important, such as exposed portions of automobile bodies and household appliances.

Stainless steel is an alloy steel containing at least 50 percent iron and at least 10 percent chromium. the chromium provides stainless steel its ability to resist corrosion. Stainless steel is produced in separate facilities from carbon and alloy steel. Electric arc furnaces and argon-oxygen-decarburization vessels are used in the production process. Stainless steel is processed into slabs and then rolled on a hot strip mill to produce stainless hot rolled sheet or strip.

Stainless cold rolled sheet and strip constitute the principal end uses for stainless hot rolled sheet and strip. Most stainless sheet and strip is cold rolled to provide high dimensional accuracy and a superior finish. These products are used in tubing for dairy equipment and chemical plants, beer barrels, automotive wheel covers, exhaust systems, knives, sinks and hospital and restaurant equipment.

J&L is the second largest U.S. producer of carbon and alloy hot rolled sheet and strip, with 12.6 percent of 1983 domestic production. Republic is the sixth largest U.S. producer with 8.2 percent of 1983 domestic production. J&L is the second largest U.S. producer of carbon and alloy cold rolled sheet and strip with 13.5 percent of 1983 domestic shipments, and Republic is the seventh largest U.S. producer with 8.4 percent of 1983 domestic shipments. The combination of the two firms would be the largest U.S. producer of carbon and alloy hot and cold rolled sheet and strip.

J&L is the largest U.S. producer of stainless cold rolled sheet and strip, with approximately 37.5 percent of 1983 domestic capacity. Republic is the fourth largest U.S. producer, with approximately 9.9 percent of 1983 domestic capacity. The combination of the two firms would be the largest U.S. producer of stainless cold rolled sheet and strip.

While imports can have an important competitive effect in these markets, trade restrictions limit such import competition, particularly that from the European Economic Community, which is subject to a percentage quota agreement on steel products, and from Japan, which voluntarily limits its steel exports to this country. Also, many users of these sheet products have a strong preference for doing business with domestic producers as distinct from foreign producers, for reasons of product quality, availability and service.

The effect of the proposed merger of LTV and Republic on market concentration was calculated by including all relevant domestic shipments or capacity and all imports of the relevent products except those from the EEC and Japan, which are subject to the above-mentioned restrictions. The merger would raise the Herfindahl-Hirschman Index (HHI)* in hot rolled carbon and alloy sheet and strip from 871 to 1047; in cold rolled carbon and alloy sheet and strip from 953 to 1145; and in stainless cold rolled sheet and strip from 2190 to 2805.

III

Explanation of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determnation by the

*The HHI is the sum of the squares of the market shares of each competitor.

Court that the proposed Final Judgment is in the public interest.

A. *Divestiture*

The proposed Final Judgment requires LTV to divest its entire interest in Republic's Gadsden, Alabama, steel mill ("Gadsden") and in Republic's Massillon, Ohio, steel mill ("Massillon"), absolutely and unconditionally, by its own efforts within 6 months of the entry of the Final Judgment, but in no event later than December 1, 1984. If LTV cannot accomplish the required divestiture within the above time period, the proposed Final Judgment provides that, upon application by the plaintiff, the Court shall appoint a trustee who shall sell these two steel mills at such price and terms as are then obtainable.

Gadsden must be divested to a purchaser who can and will operate it as a viable, ongoing business that can compete effectively in carbon and alloy hot and cold rolled sheet markets, using slabs produced at Gadsden or elsewhere. Massillon must be divested to a purchaser who can and will operate it as a viable, ongoing business that can compete effectively in the stainless cold rolled sheet and strip market. The defendants will take all reasonable steps necessary to accomplish divestiture, including the sale of assets only, divesting Massillon and Gadsden free and clear of all liabilities, advertising the availability of such mills in the United States and in major noncommunist steel producing countries, and cooperating with bona fide prospective purchasers and the trustee. Additionally, defendants are obligated for a period of at least ten years to enter into a contract to supply Massillon with stainless hot rolled sheet and strip. The contract will place the purchaser of Massillon on equal footing with LTV's own stainless cold rolled sheet and strip operations and will establish a price no greater than actual costs plus a ten percent markup.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. If after six months from the date of the trustee's appointment the required divestiture has not been accomplished, the trustee and the parties shall make recommendations to the Court and the Court shall enter such orders as it deems appropriate to effect divestiture.

Until the required divestiture has been accomplished, the defendants must generally maintain normal repair and maintenance schedules at Gadsden and Massillon and cannot take any action that would reduce the scope of their manufacturing or sales operations or product lines or would jeopardize the sale of Gadsden and Massillon as viable operations. Also, the stainless cold rolled sheet and strip marketing organizations of J&L Stainless and Republic must be kept separate until divestiture of Massillon is accomplished.

B. *Other Provisions*

The proposed Final Judgment enjoins the defendants for ten years from acquiring voting securities or assets of persons involved in the manufacture or sale of carbon and alloy hot and cold rolled sheet steel or stainless hot and cold rolled sheet steel without first obtaining plaintiff's approval, when such steel assets are valued at more than $15 million. If plaintiff objects, the defendants can seek the Court's approval, but must bear the burden of proof that the acquisition will not lessen competition or tend to create a monopoly. The proposed Final Judgment also enjoins the defendants from participating in exchanges of firm and mill-specific operating, output and efficiency data with other steel companies through the American Iron and Steel Institute (AISI). Finally, there are a number of provisions that allow plaintiff to determine and secure compliance with this Final Judgment.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person wishing to comment upon the Final Judgment may within the statutory 60-day comment period submit written comments to John W. Clark, Chief, Special Trial Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. These comments and the Department's responses will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department, which remains free to withdraw its consent to the Judgment at any time prior to entry. The Judgment provides that the Court retains jurisdiction over this action, and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

Alternatives to the Proposed Final Judgment

The United States considered the alternative to the proposed Final Judgment of proceeding to seek preliminary and permanent injunctions against consummation of the merger. While the Government was confident of its ability to succeed ultimately after a trial on the merits, the litigation would have involved novel and difficult issues of law and fact, and a favorable outcome was not certain. Also, it is likely that after a successful trial on the merits a court would have ordered divestitures substantially the same as the parties have now agreed to.

The Government also considered requiring divestitures of plants other than Gadsden and Massillon. While Gadsden is not one of the largest carbon and alloy sheet facilities operated by these companies, divestiture of this mill will reduce the increase in the relevant HHIs by almost one-third. At that lower level, other considerations, such as the financial condition of the firms and possible efficiencies resulting from the merger, led the Government to conclude that the restructured merger would not be anticompetitive.

The effect of the divestiture of Massillon will be to eliminate entirely the increase in concentration in cold rolled stainless sheet and strip caused by the merger, since all of Republic's production is located at Massillon. The hot rolled sheet that is cold finished at Massillon is produced at other Republic facilities; to assure the viability of the divested plant, the Final Judgment also requires that defendants enter into a long term contract with the purchaser of Massillon to supply stainless hot rolled sheet on favorable terms. In this way it is possible to achieve effective divestiture in cold rolled stainless sheet and strip without requiring divestiture of Republic melting and rolling facilities, which are integrated with other operations of the company. A large part of the stainless hot rolled sheet to be supplied to Massillon will be made at LTV's Midland, Pennsylvania, plant and will be of higher quality and lower cost than that previously produced by Republic.

The Government considered the divestiture of the Midland works of LTV, which is a fully integrated stainless steel mill in lieu of a divestiture of Massillon. It was concluded, however, that divestiture of Massillon together with a long term supply commitment from LTV would be sufficient to avoid undue market concentration in the stainless cold rolled sheet and strip market.

The Final Judgment contains two other injunctive provisions that will ameliorate the increase in concentration in hot and cold rolled carbon and alloy sheet and strip resulting from the merger. The domestic steel industry has long been characterized by comprehensive exchanges of sensitive plant-specific operating and output information among its competitors. Such information exchanges can inhibit competition in a moderately concentrated industry such as the steel industry. The Final Judgment prohibits defendants from participating in such exchanges through the AISI for a period of ten years. Its effect will be to prevent defendants from continuing to participate in the preparation and the exchange among competitors of the AISI Technical Committee reports, which are currently circulated among the members of AISI on a regular basis. The defendants will not be barred from furnishing relevant information in connection with specific bona fide business transactions, such as the purchase or sale of a particular facility. Also, the Final Judgment prohibits additional acquisitions by defendants of sheet steelmaking facilities having a value in excess of $15 million without the approval of the Government or the Court.

The United States considered requiring the defendants to complete the divestitures, or at least to reach binding agreements of sale, prior to the consummation of the merger, in

accordance with the Government's stated policy to that effect. The Government did not require pre-merger divestiture in view of the substantial delays that have already occurred since LTV and Republic announced their agreement to merge and of the deleterious effect that further significant delays could have on both firms. Accordingly, acting on assurances by defendants that the divestitures can and will be made promptly and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions, the Government agreed to permit the divestitures to occur after consummation of the merger, subject to stringent provisions designed to assure the divestitures, described in Section III above.

Thus, the United States believes that entry of the proposed Final Judgment is in the public interest.

VII

Determinative Materials and Documents

There are no materials or documents that the United States considered determinative in formulating this proposal Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: March 22, 1984.

Respectfully submitted,

Eric F. Kaplan,

J. Robert Kramer II,

Thomas C. Black,

Katherine R. Curtis,

Attorneys, Department of Justice, Antitrust Division, Washington, D.C. 20530, Telephone: (202) 633-6347.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing competitive Impact Statement upon the following counsel by causing copies thereof to be deposited in the United States mail, postage prepaid, on March 22, 1984:

Richard W. Pogue, Jones, Day, Reavis and Pogue, 1735 Eye Street, NW., Washington, D.C. 20006

Stanley A. Robinson, Kaye, Scholer, Fierman, Hays and Handler, 425 Park Avenue, New York, New York 10022

Eric F. Kaplan,

Attorney, Department of Justice.

[FR Doc. 84-9133 Filed 4-4-84; 8:45 am]

BILLING CODE 4410-01-M

Proposed Termination of Final Judgment

Owens-Illinois, Inc. ("O–I") has filed with the United States District Court for the Northern District of California a motion to terminate the Final Judgment in *United States* v. *Owens-Illinois, Inc.*, Civil Action No. 25861–G; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case, which was filed in 1946, alleged that O–I had monopolized and attempted to monopolize trade and commerce in glass containers and closures by leasing vacuum closing machinery on the condition that the lessees not use or deal in glass containers or closures of competitors of O–I. The Final Judgment enjoins O–I from leasing or selling vacuum closing machinery on the condition that the lessee or purchaser not purchase or use glass containers or closures of a competitor; and from removing vacuum closing machinery from the premises of a lessee because the lessee uses glass containers or closures manufactured by a competitor of O–I. The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the Judgment would serve the public interest. Copies of the Complaint and final Judgment, O–I's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Northern District of California, Room 16425, United States Courthouse, San Francisco, California 94102. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations. Interested persons may submit comments regarding the proposed termination of the judgment to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to John W. Clark, Chief, Special Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone: 202–724–6335).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 84-9130 Filed 4-4-84; 8:45 am]

BILLING CODE 4410-01-M

United States v. National Broadcasting Company, Inc.; Proposed Modification of Final Judgment

Notice is hereby given that National Broadcasting Company Inc. has asked the United States District Court for the Central District of California to modify the Final Judgment in *United States* v. *National Broadcasting Company, Inc.*, Civil Action No. 72–619–RJK (C.D. Cal.). The United States has tentatively consented to the modification. The Complaint in this case and in two companion cases, *United States* v. *American Broadcasting Companies, Inc.*, Civil Action No. 74–3600–RJK (C.D. Cal.). and *United States* v. *CBS, Inc.*, Civil Action No. 74–3599–RJK (C.D. Cal.). were filed in 1974. Each complaint alleged that the defendant network had violated Sections 1 and 2 of the Sherman Act by combining with the television stations it owned and with its affiliated stations to monopolize and restrain trade in television entertainment programs exhibited on its television network during prime time hours. It also alleged that each network had violated Section 2 of the Sherman Act by monopolizing television entertainment programs exhibited on its network during prime time hours.

In 1977 NBC and the Government agreed to a settlement of the NBC case and a Final Judgment was entered. The Final Judgment: (1) Limits the amount of programming that NBC may produce internally; (2) prohibits NBC from acquiring the right to engage in non-network distribution of independently produced progams or to share in profits from such distribution; and (3) regulates the terms and conditions of NBC program purchases from independent producers. In addition, Section IX of the Final Judgment provides that if a final judgment is entered in the cases against ABC or CBS and that judgment contains provisions different from the provisions in the NBC Final Judgment, then NBC may apply to the Court and shall be granted a modification of the NBC Judgment as may be necessary to prevent NBC from being placed at a competitive disadvantage with respect to CBS or ABC.

In 1980, ABC and CBS settled their cases with the United States. While the ABC and CBS Final Judgment contain many of the same prohibitions as the NBC Judgment, there are some differences. The proposed modification, which is submitted under Section IX of the NBC Final Judgment, would conform the injunctive provisions running against NBC to those entered against ABC. NBC would be allowed to increase its in-house production of prime time entertainment programs at the same time those increases become effective for ABC. Furthermore, NBC would be allowed to renegotiate series options at any time during an option period. The modification would also impose two additional injunctions against NBC. NBC would be limited in its use of exclusive agreements with essential talent

employed in pilots and in prime time entertainment program series.

The United States has filed a memorandum with the Court setting forth the reasons it has tentatively consented to the modification. Copies of the complaint, proposed Modified Final Judgment, motion papers, all comments submitted and all further papers filed with the Court will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7416, United States Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. (telephone: 202/633–2481), and at the Office of the Clerk of the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the fee set by the Department of Justice regulations. Interested persons may submit comments concerning this matter by sending them within sixty days to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Post Office Box 50125, Washington, D.C. 20004 (telephone: 202/724–6893).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 84-9134 Filed 4-4-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment of business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and Training Administration, 601 D Street, NW., Room 8000, Patrick Henry Building, Washington, D.C. 20213.

Signed at Washington, D.C. this 2nd day of April 1984.

Joseph Seiler,

Director, Office of Program Operations.

APPLICATIONS RECEIVED DURING THE WEEK ENDING APRIL 7, 1984

Name of applicant and location of enterprise	Principal product or activity
B. B. Walker Company, Asheboro, North Carolina.	Manufacture of Men's shoes and metal furniture.

[FR Doc. 84-9151 Filed 4-4-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel (AFI Review Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (AFI Review Section) to the National Council on the Arts will be held on April 16, 1984, from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: March 29, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-9068 Filed 4-4-84; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Atmospheric Sciences

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).
Date: April 25–27, 1984.
Time: 9:00 a.m.–5:00 p.m.
Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.
Type of Meeting: Open.
Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, D.C., 20550, telephone: (202) 357–9874.
Purpose of Committee: The Advisory Committee for Atmospheric Sciences provides advice, recommendations, and oversight concerning support for research and research-related activities in the atmospheric sciences area.

Agenda

April 25, 1984—8:00 a.m. to 5:30 p.m., and April 26, 1984 9:00 a.m. to 12:00 Noon, Room 543
—Review of Center and Facilities Section, Division of Atmospheric Sciences (ATM)
April 26, 1984, Room 543—1:00–5:00 p.m.
—Remarks by Chairman, ACAS, and Division Director, ATM
—Remarks by Director, NSF
—Remarks by Acting Assistant Director, AAEO
—Presentation of ACAS Review Report of Centers and Facilities Section, ATM
—Budgetary Information on NSF and Other Agencies; Long Range Planning Process
—Update on NSF Supercomputer Initiative
April 27, 1984, Room 543, 8:30 a.m.–5:00 p.m.
—Discussion of UCAR-Related and NCAR-Related Issues
—Subcommittee on Upper Atmosphere Facilities (SUAF) Activities
—Incoherent Scatter Radar User Workshop
—Continuation of Budgetary and Long Range Planning Discussion
—Future ATM Participation in Small Business Innovation Program

Dated: April 2, 1984.

M. Rebecca Winkler,
Committee Management Coordinator.

[FR Doc. 84-8636 Filed 4-4-84; 8:45 am]
BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.
Date and Time: April 23 & 24, 1984—8:30 a.m. to 5:00 p.m. each day.
Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.
Type of Meeting: Closed.
Contact Person: Dr. Lloyd Knutson, Program Director, Systematic Biology (202) 357–9568, Room 1140, National Science Foundation, Washington, D.C. 20550.
Purpose of Panel: To provide advice and recommendations concerning support for research in systematic biology.
Agenda: Review and evaluation of research proposals and projects as part of the selection biology.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,
Committee Management Coordinator.
April 2, 1984.
[FR Doc. 84-8637 Filed 4-4-84; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-2061-ML; ASLBP No. 84-485-01 ML]

Proposed Decommissioning of Kerr-McGee Chemical Corp. Rare Earths Facility, West Chicago, DuPage County, Illinois; Hearing

March 30, 1984.

In the Matter of Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility); Docket No. 40–2061–IML, and ASLBP No. 84–485–01 ML.

On June 7, 1983, the NRC Staff published in the **Federal Register** a notice entitled "Kerr-McGee Chemical Corp., Opportunity for a Hearing; Availability of Final Environmental Statement for the Rare Earths Facility, West Chicago, DuPage County, Illinois." (See 48 FR 26381.) That notice indicated that Kerr-McGee had proposed decommissioning of the Rare Earths Facility. Kerr-McGee's proposal is to demolish the existing buildings, remove the building rubble and contaminated soil to an adjacent disposal site, and stabilize the rubble, soil, ore residues and ore tailings on that adjacent site. The notice further indicated that NRC Staff's alternative of choice is stabilization and storage as proposed by Kerr-McGee for disposal, with future evaluation of the alternatives of permanent onsite disposal or removal to another site. This notice recited the availability of the Staff's Final Enviornmental Statement with respect to the proposal. The notice provided that licensee (Kerr-McGee) or any person whose interest may be affected might file a request for a hearing by July 11, 1983.

Timely hearing requests were filed by the Attorney General of Illinois on behalf of the People of the State of Illinois and by the Chamber of Commerce of West Chicago, Illinois. On November 3, 1983, the Commission issued an order referring these requests to the Atomic Safety and Licensing Board Panel for the appointment of a presiding board to rule on the hearing requests and conduct any necessary proceedings under 10 CFR Part 2, Subpart G. On November 9, 1983, the Chief Administrative Judge of the Panel appointed its Board pursuant to the Commission's Order.

At a prehearing conference conducted by this Board in Chicago, Illinois, on February 2, 1984, the Attorney General orally amended (and on February 29 filed a formal revision of) its statement of interest to reflect the fact that his petition was filed at the request of the Illinois Department of Nuclear Safety, as well as on behalf of the People of Illinois. Following that conference, the Board admitted the attorney General to the proceeding and accepted a number of his contentions, and the Chamber of Commerce withdrew its request for a hearing in favor of a limited appearance statement. Consequently, an adjudicatory proceeding pursuant to Subpart G of 10 CFR Part 2 to consider Kerr-McGee's proposed decommissioning plan and Staff's alternative of choice is hereby commenced.

For the Atomic Safety and Licensing Board, Bethesda, Maryland.

John H. Frye III,
Chairman, Administrative Judge.

[FR Doc. 84-8748 Filed 4-4-84; 8:45 am]
BILLING CODE 7555-01-M

[Docket No. 50-322-OL; ASLBP No. 77-347-01C OL]

Long Island Lighting Co.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR

28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, and pursuant to the Statement of Policy Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), and the advice from the present Atomic Safety and Licensing Board in this operating license proceeding with jurisdiction over non-emergency planning matters that two of its members are heavily committed to work on another operating license proceeding, a separate Atomic Safety and Licensing Board is being established to hear and decide Long Island Lighting Company's March 20, 1984 "Supplemental Motion for Low Power Operating License."

Long Island Lighting Company

Shoreham Nuclear Power Station, Unit 1 (Low Power), Construction Permit No. CPPR-95.

This Board is being established pursuant to a notice published by the Commission on March 18, 1976 in the **Federal Register** entitled, "Receipt of Application for Facility Operating License, Availability of Applicant's Environmental Report; Consideration of Issuance of Facility Operating License; Opportunity for Hearing." 41 FR 11387-88 (1976).

The Board is comprised of the following Administrative Judges:

Marshall E. Miller, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Elizabeth B. Johnson, Oak Ridge National Laboratory, P.O. Box X, Building 3500, Oak Ridge, Tennessee 37830.

Issued at Bethesda, Maryland, this 30th day of March 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-8147 Filed 4-4-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees) for operating of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3, located in York County, Pennsylvania.

The amendments would revise the provisions in the Technical Specifications relating to the deletion of all limiting conditions for operation, surveillance requirements, calibration frequency requirements and bases for the Drywell Air Monitoring Systems, in accordance with the licensees' application for amendments dated May 4, 1983, as amended by letter dated November 10, 1983.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 4, 1984, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) day prior to the first prehearing conference scheduled in the proceeding, a petitoner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator shoud be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication data and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006, attorney for Philadelphia Electric Company.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent to determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 3, 1983, as amended November 10, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Street, Harrisburg, Pennsylvania.

Dated at Bethesda, Maryland, this 28th day of March 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4 Division of Licensing.

[FR Doc. 84-8148 Filed 4-4-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445-OL and 50-446-OL; ASLBP No. 79-430-06A OL]

Texas Utilities Generating Co., et al.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, Published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, and pursuant to the Statement of Policy on Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), and the request of the Atomic Safety and Licensing Board already established to preside in this operating license proceeding, a separate Atomic Safety and Licensing Board is being established to preside over the proceeding on all allegations of intimidation and harassment.

Texas Utilities Generating Company, et al.

Comanche Peak Steam Electric Station, Units 1 and 2, Construction Permit Nos. CPPR-126 and CPPR-127

This Board is being established pursuant to a notice published by the Commission on February 5, 1979, in the **Federal Register** (44 FR 6995ff) entitled, "Availability of Applicant's Environmental Report, Consideration of Issuance of Facility Operating Licenses, and Opportunity for hearing."

The Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission Washington, D.C. 20555

Herbert Grossman, Alternate Chairman, Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Walter H. Jordan, 881 W. Outer Drive, Oak Ridge, Tennessee 37830

Issued at Bethesda, Maryland, this 30th day of March, 1984

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-8149 Filed 4-4-84; 8:45 am]

BILLING CODE 7590-01-M

Draft Supplement to the Programmatic Environmental Impact Statement Related to TMI-2 Cleanup; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplement to the programmatic environmental impact statement on TMI–2 cleanup; extension of comment period.

SUMMARY: On January 13, 1984, a Notice of Availability of Draft Supplement to the Programmatic Environmental Impact Statement on TMI–2 Cleanup was published in the **Federal Register** (49 FR 1788) that indicated that comments must be received before February 29, 1984, subsequently extended to April 2, 1984. To provide sufficient time for the Advisory Panel on TMI-Cleanup to submit its comments, the NRC is extending the due date of the public comment period.

DATE: New comment period expires April 20, 1984. Comments should be forwarded to Dr. Bernard J. Snyder, Director, TMI Program Office, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT:

Dr. Ronnie Lo, TMI Program Office, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–8535.

Dated at Bethesda, Maryland this 2nd day of April 1984.

For the Nuclear Regulatory Commission.

John Philips,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration.

[FR Doc. 84-8145 Filed 4-4-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13852; 812-5768]

Minnesota Mutual Life Insurance Co., et al.; Application for an Order of Exemption

March 29, 1984.

Notice is hereby given that Minnesota Mutual Life Insurance Company, 400 North Robert Street, St. Paul, Minnesota 55105 ("MMLIC") and Minnesota Mutual Variable Fund D, registered under the Investment Company Act of 1940 ("Act") as an open-end management investment company and established as a separate account by MMLIC in connection with the proposed issuance of certain variable annuity contracts ("Account") (collectively, "Applicants"), filed an application on February 7, 1984, and an amendment thereto on March 22, 1984, for an order pursuant to Section 6(c) of the Act granting exemptions from the provisions of Section 27(c)(2) of the Act to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein in support of the requested relief, which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants request exemption from Section 27(c)(2) to the extent necessary: (i) To deduct any premium taxes imposed on the contracts; (ii) to impose a guaranteed administrative charge of $30 for flexible payment contracts, $20 for single payment contracts, on each contract anniversary and on surrender of a contract. Applicants represent that this charge is reasonable in that MMLIC does not expect to recover from the charge any amount in excess of its accumulated expenses of administering the contracts; (iii) to deduct a fee at an annual rate of 0.265% of the value of the assets of the Account to compensate MMLIC for providing investment

advisory services. Applicants represent that the advisory contract between MMLIC and the Account will be implemented in accordance with section 15 of the Act; and (iv) to deduct a mortality and expense risk charge from the Account at an effective annual rate of 0.79% of the value of the assets of the Account and represent that this charge is reasonable in amount and that its level is within the range of charges being assessed by other insurance companies for comparable products, and that the basis for this representation is reflected in documents on file with MMLIC. Applicants will impose in some cases a sales load upon partial and total contract surrenders. Applicants acknowledge that this charge may be insufficient to cover all costs of distributing the contracts and that any shortfall would be absorbed by the general account of MMLIC, which may include profits derived from the mortality and expense risk charge. In this regard MMLIC represents that it has concluded that here is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and contractowners, and the Account represents that any plan adopted by it under Rule 12b-1 to finance distribution expenses will be approved by a management committee having a majority of members who are not interested persons of MMLIC.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-8887 Filed 4-4-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-20795; File No. SR-NSCC-84-5]

Self-Regulator Corporation; Filing and Accelerated Effectiveness on a Temporary Basis of a Proposed Rule Change by National Securities Clearing Corporation

March 28, 1984.

The National Securities Clearing Corporation ("NSCC") on March 19, 1984, submitted a proposed rule change to the Commission pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1) that enables NSCC to adopt Phase IV of its Municipal Bond System. [1]

I. Introduction

Under Phase IV, NSCC Settling Members, [2] including municipal securities brokers and dealers, can compare municipal securities trades and settle those trades either on a trade-for-trade basis or through NSCC's Continuous Net Settlement System ("CNS"). Municipal securities brokers and dealers that choose not to be Settling Members can become Municipal Bond Comparison Only ("MCO") members for the purpose of using NSCC's Municipal Bond Comparison Only ("MBCO") System. Phase IV will replace NSCC's interim procedures [3] that treated all municipal securities trades as Special Trades. [4] Those interim procedures were adopted as an initial step to ease municipal securities brokers and dealers into using the automated facilities of registered clearing agencies. [5]

II. Description of Proposed Rule Change

Under NSCC's proposal, NSCC will offer a new membership class, MCO membership, to municipal securities brokers and dealers who solely want to use NSCC's Comparison System. [6] Any municipal securities broker or dealer can become an MCO Member. NSCC, however, would only accept such a broker or dealer as an MCO Member if the broker or dealer agrees in writing to comply with applicable NSCC Rules.

All compared trades between MCO Members will be processed on a trade-for-trade basis. That is, NSCC will produce bond receive and deliver orders for such trades between the submitting parties at the original contract price. Such compared trades will not enter into any NSCC trade accounting system, *e.g.*, DBO or CNS, and MBC Members would not be entitled to use any NSCC system other than its municipal comparison services. As a result, MBC Members will settle their respective receive and deliver orders outside NSCC's facilities. The MSRB's Rules, including its close-out and delivery requirements, will control settlement of these orders.

Comparison of MBCO trades would not expose NSCC to financial risk. Because NSCC does not guarantee those deliver or receive obligations, NSCC would not be at risk if a party defaulted or became insolvent. Accordingly, MBC Members would not be required to make clearing fund deposits, to meet NSCC's general membership standards, or to satisfy other NSCC financial and operational requirements.

In Phase IV, NSCC would enable Settling Members, including municipal securities brokers and dealers choosing the full service option, to give NSCC standing instructions to compare their municipal securities transactions on a trade-for-trade basis or to clear such trades through NSCC's CNS System. [7]

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[1] NSCC's proposal is the foundation of its soon-to-be implemented National Municipal Securities Comparison System, which will be structured much like its National Over-The-Counter Comparison System.

[2] Settling Members are the NSCC Members subject to all of NSCC's Rules and entitled to use all of NSCC's systems.

[3] On December 13, 1983, the Commission approved an NSCC rule providing that all municipal securities trades submitted by NSCC's Members for comparison would be treated as Special Trades. Such trades would settle on a trade-for-trade basis and would be subject to MSRB's rules regarding close-out and delivery. NSCC also waived its requirement that members using NSCC's facilities to compare municipal securities transactions also participate in a qualified securities depository. Because these trades would be cleared and settled through NSCC's systems and thus would expose NSCC and its participants to financial loss, NSCC applied its comprehensive financial responsibility and operational standards to members engaging in this activity. Securities Exchange Act Release No. 20474 (December 13, 1983), 48 FR 56280 (December 20, 1983) ("Interim Procedures Release").

[4] Special Trades are not included in CNS and not netted in NSCC's Daily Balance Order System ("DBO"). While Special Trades are settled on a trade-for-trade basis, they also generally are subject to the same Rules and Procedures as balance orders. *See, e.g.*, NSCC Procedures Part V.

[5] On November 11, 1983, the Commission approved an amendment to Rule G-12 of the Municipal Securities Rulemaking Board ("MSRB"). As of August 1, 1984, this rule will require, among other things, that municipal securities brokers and dealers use the automated facilities of a registered clearing agency for the comparison of their inter-dealer trades if they, or their agents, participate in a registered clearing agency that provides comparison services. As of February 1, 1985, these same persons will be required to settle by book-entry movement all inter-dealer transactions in depository-eligible municipal securities issues if these transactions have been compared successfully through a registered clearing agency. Securities Exchange Act Release No. 20385 (November 14, 1983), 48 FR 52221 (November 18, 1983) ("MSRB Order").

[6] NSCC's automated municipal comparison system will provide MCO members with all the advanced initial and supplemental trade comparison mechanisms currently available in NSCC's over-the-counter comparison system, e.g., Advisories and Demand As Of's.

[7] Only depository-eligible municipal securities could be processed through NSCC's CNS System.

Settling Members could override a CNS standing instruction and have a trade compared on a trade-for-trade basis by specifically designating the trade as a "Special Trade." In addition, a Settling Member's Municipal securities trades automatically would be processed on a trade-for-trade basis,[6] if the *contra* side is (1) a MCO Member or (2) a Settling Member that has given NSCC trade-for-trade standing instructions.

Finally, the proposal provides that NSCC would use special procedures for recording and executing "buy-ins" in connection with municipal trades processed through CNS. A Settling Member who has submitted a buy-in notice under Section VI, K of NSCC's Procedures and who has not received the buy-in position shown on his Notice of Intention to Buy-in by the end of the evening cycle on the second day after notice date would be able to instruct NSCC to exit the remaining position. NSCC then would produce special close-out receive and deliver orders, which would be subject to MSRB's Rules.

III. NSCC'S Rationale

NSCC believes it important to make its enhanced municipal securities systems operational a few months before the initial MSRB requirements become effective on August 1, 1984. Early implementation should help to ease municipal securities brokers and dealers into the automated National Clearance and Settlement System. In addition, NSCC's proposal provides municipal securities brokers and dealers with the opportunity either to (1) become MBC Members and enjoy NSCC's efficient automated comparison mechanisms or (2) to become or remain full service NSCC Settling Members. Thus, the proposal is compatible with current municipal securities industry practices. Yet, because municipal brokers and dealers can choose to become Settling Members under the proposal, NSCC's highly automated safe and efficient clearance and settlement services would be available. NSCC believes that its proposal removes impediments to, and perfects the mechanisms for, a national clearance and settlement system for municial securities.

IV. Discussion

The Commission believes that NSCC's proposal should be approved for the following reasons. First, it facilitates the automated comparison of municipal securities transactions through a registered clearing agency. Accordingly, the proposal helps to achieve the goals of the MSRB Order. By making its revised municipal securities procedures available now, municipal securities brokers and dealers will be better able to meet the requirements of MSRB Rule G–12 on August 1, 1984.

Second, NSCC'S MBCO System enables municipal securities brokers and dealers to enjoy the benefits of automated trade comparison consistent with traditional municipal securities industry practices. For instance, municipal securities trades of MCO Members will continue to be cleared and settled on a trade-for-trade basis that should be consistent with MSRB Rules. In addition, NSCC's reliance on the MSRB's close-out and other rules avoids unnecessary immediate changes for the municipal securities industry.

Third, the Commission believes that the proposal is tailored to minimize potential financial exposure to NSCC and its participants. MCO Members cannot use NSCC's facilities to clear and settle MBCO trades. Thus, the Commission agrees that MCO Members need not contribute to NSCC's clearing fund or meet other NSCC financial standards.

Finally, the Commission notes with interest that the proposal indeed makes available to municipal securities brokers and dealers a full service option. That option will enable municipal securities brokers and dealers to clear and settle their municipal securities trades through NSCC's efficient automated clearance and settlement systems. Use of these systems, however, will expose NSCC and its participants to financial risk. (For example, NSCC will guarantee municipal securities CNS trades.) To meet that exposure, the proposal provides that municipal securities brokers and dealers, which are Settling Members, will be subject to all of NSCC's financial and operational controls and protection. The opportunity to become full service users at NSCC is consistent with the Commission's hope that many municipal securities brokers and dealers ultimately will become active users of clearing agency services.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly Section 17A, and the rules and regulations thersunder applicable to registered clearing agencies.

The Commission finds good cause for approving the proposed rule change on a temporary basis prior to the thirtieth day after the date of publication of notice of filing. Immediate implementation of the proposal will enable municipal securities brokers and dealers to gain immediate experience with automated comparison and clearance facilities. The Commission is approving the proposed rule change for a period that will extend 45 days beyond publication of this Order in the **Federal Register**—to enable NSCC's immediate implementation and also to provide a realistic opportunity for the Commission to receive and to consider any public comment. At the end of the 45 day period, the Commission will decide whether to approve the proposed rule change on a permanent basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved for a period, expiring 45 days after publication of this Order in the **Federal Register**.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9080 Filed 4-4-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 20802 SR-PSE-83-17]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 29, 1984.

The Pacific Stock Exchange, Inc., 301 Pine Street, San Francisco, California 94104 ("PSE") submitted on November 4, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to amend PSE Rule I, Section 5(f).[1] The amendment expands the current prohibition against trading by clerks contained in Rule I, Section 5(f) to include all non-member. The effect of the amendment will be to allow only members to consummate transactions on the floor of the Exchange.

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[6] A Settling Member or MBC Member can inform NSCC if it uses a clearing agent for the book-entry or physical delivery of municipal bonds. NSCC would include the data on those Members receive and deliver orders. Members, however, can override the agent designation by entering transactions as Special Trades.

[1] The PSE is amending Rule I, Section 5(f) as follows (brackets indicate deletions, italics indicate new language):

Section 5(f) [Clerks] *Non-members* shall not [participate in any controversies or] consummate transactions *on the trading floor* [for his or any other member firm].

On February 2, 1984, the PSE filed Amendment No. 1 to the proposed rule change stating the statutory basis of the proposed rule change.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20062, February 16, 1984) and by publication in the **Federal Register** (49 FR 6817, February 23, 1984). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegation authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8989 Filed 4-4-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

March 29, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(2)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Time Incorporated (DE)
Common Stock, $1 Par Value (File No. 7-7400)
Ranchers Exploration and Development Corporation
Common Stock, $.50 Par Value (File No. 7-7401)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 19, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8988 Filed 4-4-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20804; File No. SR-MSRB-84-6]

Self-Regulatory Organizations; Proposed Rule Changes By Municipal Securities Rulemaking Board; Relating to Uniform Practice; Confirmation, Clearance and Settlement of Transactions With Customers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1984, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission of the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

(a) The Municipal Securities Rulemaking Board ("Board") is filing herewith amendments to rules G-12 on uniform practice and G-15 on confirmation, clearance and settlement of transactions with customers. The text of the proposed rule changes appears below.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) Rules G-12(f) and G-15(d) will require, when effective, that certain inter-dealer transactions and customer delivery/receipt vs. payment transactions be confirmed or compared (in the case of transactions involving a security assigned a CUSIP number) and settled via book-entry (in the case of transactions involving securities eligible for such settlement) through the facilities of a registered clearing agency or interfaced or otherwise linked registered clearing agencies.[1] These provisions are applicable to transactions involving municipal securities brokers and dealers and customers who are deemed, for purposes of the rules, to be participants in or members of a registered clearing agency. Both rules specify that municipal securities brokers and dealers and customers who clear transactions through an agent who is a participant in or member of a registered clearing agency will be considered to be participants of that registered clearing agency for purposes of the rules' requirements; these persons are generally referred to as "indirect participants" of a registered clearing agency.

Since the Commission's approval of these rules in November 1983 [2] the Board has received several inquires concerning the extent to which non-participants who occasionally use the services of a participant agent will be considered to be participants of a registered clearing agency and therefore subject to the rules' requirements. In particular, certain industry members have noted that many dealers use agents to clear certain transactions in money center cities, but may use other agents to clear other transactions, or clear those other transactions themselves. Similarly, certain customers may use a participant clearing agent with respect to certain transactions, and a non-participant agent with respect to other transactions. These industry members have inquired whether the use by such a person of an agent who is a participant of a registered clearing agency to clear certain transactions is sufficient to make that person an indirect participant of the registered clearing agency, and therefore potentially subject to the requirements of rules G-12(f) and/or G-15(d), with respect to all of its transactions (including transactions which might not otherwise be cleared through the participant agent).

Upon consideration the Board has concluded that it would be desirable to limit the application of the requirements of rules G-12(f) and G-15(d) in the case of these indirect participants at the time these requirements first become effective. The Board believes that the

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[1] The provisions relating to the automated comparison or confirmation of transactions are scheduled to become effective on August 1, 1984; the provisions relating to the book-entry settlement of transactions are scheduled to become effective on February 1, 1985.

[2] *See* Exchange Act Release No. 20385 (November 14, 1983).

requirements of rules G–12(f) and G–15(d) should apply to such persons only in the case of transactions otherwise subject to the rules which are cleared through the participant agent, and, accordingly, has adopted the proposed rule changes to clarify this point in the rules. In the case of transactions cleared through a participant agent, therefore, indirect participant dealers would generally be required, as of August 1, 1984, to submit data concerning any transaction with another participant organization involving a municipal security assigned a CUSIP number to a registered clearing agency (presumably through the facilities of the participant agent) for automated comparison or confirmation of such transaction; indirect participant customers would be required to affirm any delivery/receipt vs. payment transaction so confirmed. As of February 1, 1985, these indirect participants would also be required to settle such transactions via book-entry, if the securities involved in the transaction are eligible for book-entry settlement. Under the proposed rule changes, however, these persons would not be considered to be indirect participants with respect to transactions not cleared through the participant agent (e.g., transactions which they clear themselves) and, consequently, would not be subject to the requirements of rules G–12(f) and/or G–15(d) with respect to such transactions.

The Board believes that this approach is appropriate during the initial implementation of the rules over the next year. The Board continues to believe, however, that the use of automated clearance systems with respect to municipal securities transactions will provide significant benefits to the municipal securities industry generally. Accordingly, the Board intends to monitor the effects of the proposed rule changes closely during the implementation of the requirements of rules G–12(f) and G–15(d). The Board further intends to consider and adopt amendments, subsequent to the effective dates of the existing provisions, which would at minimum require those dealers who are indirect participants only by virtue of their occasional use of a participant agent to clear certain transactions to use the automated confirmation or comparison systems with respect to all transactions other wise subject to these rules.

(b) The proposed rule changes are adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules designed * * * to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

The proposed rule changes are also consistent with the objectives of Section 17A of the Act.

The Board believes that the proposed rule changes will facilitate the orderly implementation of the requirements under rules G–12(f) and G–15(d) for the use of automated comparison or confirmation and book-entry settlement systems with respect to municipal securities transactions.

The proposed rule changes will thereby further the objectives of those requirements and of the Act in promoting efficiency in the settlement and clearance process for municipal securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule changes will impose any burden on competition, since they merely limit the scope of the application of the requirements of rules G–12(f) and G–15(d) in a manner intended to facilitate the implementation of such requirements in an orderly fashion.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Changes Received from Members, Participants, or Others

The Board did not solicit or receive comments on the proposed rule changes from members of the municipal securities industry or others.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.
March 30, 1984.

Texts of Proposed Rule Changes[1]

Rule G–12. Uniform Practice

(a) through (e) No change.

(f) Use of Automated Comparison, Clearance, and Settlement Systems.

(i) and (ii) No change.

(iii) For purposes of this section (f) a municipal securities broker or municipal securities dealer who clears *a* transaction[s] through an agent who is a member of a registered clearing agency or a registered securities depository shall be deemed to be a member of such registered clearing agency or registered securities depository *with respect to such transaction.*

(g) through (l) No change.

Rule G–15. Confirmation, Clearance and Settlement of Transactions with Customers

(a) through (c) No change.

(d) Delivery/Receipt vs. Payment Transactions.

(i) No change.

(ii) No broker, dealer or municipal securities dealer who is, or whose clearing agent *with respect to such transaction* is, a participant in a clearing agency registered with the Securities and Exchange Commission shall effect a transaction in any municipal security to which a CUSIP number has been

[1] Italics indicate additions.

assigned on a delivery vs. payment or receipt vs. payment basis for the account of a customer who is, or whose agent *with respect to such transaction* is, a participant in such clearing agency (or in a clearing agency interfaced or otherwise linked with such clearing agency) unless the facilities of such clearing agency (or the facilities of a clearing agency interfaced or otherwise linked with such clearing agency, as necessary) are used for the confirmation and acknowledgement of such transaction. The provisions of this paragraph (ii) shall apply to transactions effected on or after August 1, 1984.

(iii) No broker, dealer or municipal securities dealer who is, or whose clearing agent *with respect to such transaction* is, a participant in a clearing agency registered with the Securities and Exchange Commission shall effect a transaction in any municipal security which is eligible for book-entry settlement through the facilities of such clearing agency on a delivery vs. payment or receipt vs. payment basis for the amount of a customer who is, or whose agent *with respect to such transaction* is, a participant in such clearing agency (or in a clearing agency interfaced or otherwise linked with such clearing agency) unless the facilities of such clearing agency (or the facilities of a clearing agency interfaced or otherwise linked with such clearing agency, as necessary) are used for the book-entry settlement of such transaction. The provisions of this paragraph (iii) shall apply to transactions effected on or after February 1, 1985.

[FR Doc. 84-8153 Filed 4-4-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 13853 812-5755]

BMC Fund, Inc.; Application for an Order

March 29, 1984.

Notice is hereby given that BMC Fund, Inc., Broyhill Park, N.C. Highway 321, Lenoir, North Caroline 28633 ("Applicant"), registered under the Investment Company Act of 1940 ("Act"), as a closed-end internally managed investment company, filed an application on January 23, 1984, and amendments thereto on March 12 and March 15, 1984, for an order pursuant to Section 23(c)(3) of the Act permitting Applicant to repurchase certain of its shares from the estate of a deceased director of Applicant. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of those provisions from which exemption is being sought.

According to the application, W. E. Stevens, Jr., a director and "interested person" of the Applicant, died on June 30, 1983. Applicant states that Mr. Stevens' will included five bequests to his wife which, to the extent such a bequest is disclaimed by Mrs. Stevens, would pass to a designated child of Mr. Stevens. Applicant further states that the five bequests total $1,602,703, and that Mr. Stevens' estate consists of $1,600,000 in cash and other liquid assets, 147,928 shares of Applicant's stock and approximately $400,000 in other non-liquid assets. Applicant states that since the tax and expense obligations of the estate total $1,600,000, the estate lacks sufficient liquid assets to satisfy both the tax and expense obligations and the bequests. Accordingly, Applicant states that the executrix for the estate, Mrs. Stevens, must sell a sufficient number of Applicant's shares to receive $1,600,000.

According to the application, there is no established market for Applicant's shares. Applicant states that it believes no prospective investor would be interested in purchasing a $1,600,000 block of its stock and that, even if the block were to be divided up, the absence of liquidity of the stock would be a major obstacle to locating a willing investor. Applicant proposes, therefore, that it purchase from the estate its own stock having a fair market value of $1,600,000. The number of shares involved would represent approximately 1.2% of Applicant's total outstanding shares. In addition, Applicant states that under Section 303 of the Internal Revenue Code ("Code"), the estate could treat a sale of shares to the Applicant as a sale or exchange (on which gain is taxed as capital gain) rather than as a dividend (the full amount of which would be taxed as ordinary income), but only to the extent necessary to pay the estate's taxes and its funeral and administrative expenses. Applicant represents that an appraisal of the fair market value of the stock will be conducted by an independent appraiser to be agreed upon by the Applicant and the executrix for Mr. Stevens' estate, and that the choice of an appraiser will be approved by a majority of Applicant's directors who are not interested persons of Applicant. Applicant further represents that the date of the appraisal will be as of a date as close as reasonably possible to the date of the proposed purchase and that the estate will bear the cost of the appraisal, unless the executrix chooses to defer the transaction until the time of Applicant's regular annual appraisal, in which event the estate will bear only that portion of the appraisal cost attributable to the proposed purchase. Applicant states that it anticipates, based on its most recent appraisal, that the proposed purchase of its shares will be at a price which reflects a discount from the net asset value of the shares. Applicant argues, therefore, that it benefits from the proposed purchase because the price will not dilute the interests of other shareholders, but will, instead, enhance their equity by the amount of the discount.

Applicant states that the proposed purchase has been approved by Applicant's directors, including a majority of the directors who are not interested persons of the Applicant. Applicant acknowledges that an indiscriminate selection of securities to be liquidated to pay the purchase price for the shares could result in the disposition of a security that the directors, in the exercise of good business judgment, should have maintained in Applicant's portfolio, or could generate capital gains that would be taxed directly to Applicant's shareholders without their receiving any of the benefit of those gains. Accordingly, Applicant states that its board of directors, in making its determination that the proposed purchase will have no adverse effect on the Applicant or its shareholders, directed the president of the Applicant to select for liquidation only those securities the disposition of which would be consistent with good business judgment and to liquidate such securities in a manner that would permit matching of gains and losses so that no amount of tax liability will result. Applicant further states that its board of directors unanimously found that the president's choice of securities could be liquidated in accordance with good business judgment and would not adversely affect the Applicant or its shareholders. In addition, Applicant states that the executrix has undertaken to pay Applicant's expenses in connection with the liquidation of its securities, as well as its expenses in connection with the preparation and filing of the application and amendments. Applicant undertakes to comply with subsections (2), (5), (6), (10) and (11) of Rule 23c-1(a) in connection with the proposed purchase. Applicant asserts that subsections (1), (3), (7) and (8) are inapplicable.

Applicant submits that the proposed purchase price does not unfairly discriminate against any holders of

Applicant's stock. Applicant further submits that the liquidity to be afforded to Mr. Stevens' estate by the proposed purchase will not unfairly discriminate against other shareholders of Applicant, particularly in view of the purpose of the transaction. Applicant states that its board of directors has adopted an amendment to Applicant's bylaws which, if approved by a majority of its stockholders who are not interested persons of the Applicant, will afford shareholders the same liquidity, to the extent permitted by Section 303 of the Code, as proposed to be afforded to the estate. A copy of the bylaw provision is attached as an exhibit to the application. Applicant states that the bylaw amendment may be amended or repealed only be a vote of the majority of the shares of Applicant's stock held by persons who are not interested persons of the Applicant. Applicant further states that three of its shareholders are not eligible for a Section 303 redemption. Accordingly, the proposed bylaw provision requires the Applicant to consider requests by these shareholders, a corporation, a non-profit foundation, and a church, and by other similar entities on an individual basis. Applicant asserts that the liquidity feature of the bylaw amendment should address certain estate planning concerns of shareholders who fear that their investment in Applicant is completely illiquid.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8888 Filed 4-4-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/726]

Secretary of State's Advisory Committee Private International Law; Meeting

There will be a meeting of the subject Advisory Committee at 10:00 a.m. on Friday, April 27, 1984, in Room 2722C of the Department of State. Members of the general public may attend up to the capacity of the meeting room and participate in the dissucssion subject to instructions of the chairman.

The meeting agenda will include discussion of U.S. participation in on-going activities of the Hague Conference on Private International Law, the UN Commission on International Trade Law (UNCITRAL), and the International Institute for the Unification of Private Law (UNIDROIT), as well as the work of the Third Inter-American Specialized Conference of Private International Law.

Entry to the Department of State building in controlled and members of the general public should use the 21st Street entrance near Virginia Avenue. As entry will be facilitated by advance arrangements, members of the general public planning to attend should, prior to April 27, notify the Office of the Assistant Legal Advisor for Private International Law, Department of State, Washington, D.C., 20520 (telephone: (202) 632-8134) of their name, affiliation, address and telephone number.

Dated: March 30, 1984.

Peter H. Pfund,

Assistant Legal Advisor for Private International Law and Vice Chairman, Advisory Committee on Private International Law.

[FR Doc. 84-8889 Filed 4-4-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/728]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Safety of Navigation; Meeting

The Working Group on Safety of Navigation of the Sub-committe on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Thursday, May 31, 1984, in Room 6319 of the U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of the meeting will be to prepare the U.S. position relating to the below listed agenda items to be considered at the 29th Session of the Sub-committee on Safety of Navigation of the International Maritime Organization (IMO) to be held in London, June 18-22, 1984.

—Routing of Ships
—1972 Collision Regulations
—Standard Marine Navigational Vocabulary
—Search and Rescue
—Ship reporting systems
—Navigational aids and related equipment
—Navigating bridge visibility

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. E. J. LaRue, Jr., U.S. Coast Guard Headquarters (G-WWM), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426-4958.

Dated: March 20, 1984.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 84-8891 Filed 4-4-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/727]

Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 9 a.m. on May 4, 1984 in the Ramsey Room of the Ramada Inn, Old Town, 901 North Fairfax Street, Alexandria, Virginia.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting will be to discuss the status of document preparation for the Final meeting of international Study Group 6 scheduled for the Fall of 1985.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520; telephone (202) 632-2592.

Dated: March 15, 1984.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 84-8890 Filed 4-4-84; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Modifying Sugar Import Allocation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice modifies for the remainder of the 1984 quota year the allocation provisions which are presently applicable to sugar import quotas.

EFFECTIVE DATE: April 4, 1984.

FURTHER INFORMATION: Rollinde Prager, (202) 395–3077.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 4941 of May 5, 1982 (47 FR 19661), modified the quotas on the importation into the United States of sugars, sirups and molasses provided for in items 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS) and allocated the quotas on a country-by-country basis. Under this system, sugar from an individual country enters the United States and is counted against that country's quota on a first-come-first-served basis. If the quota allocation is filled for that quota period, the sugar may be entered into warehouse under bond and later withdrawn from warehouse for consumption in a subsequent quota period. The quota periods are established on an annual basis.

Proclamation 4941 also authorizes the U.S. Trade Representative or his designee and the Secretary of Agriculture, after appropriate consultations, to make certain modifications in the sugar import quota systems if such modifications are appropriate to carry out U.S. obligations under the International Sugar Agreement, 1977 (ISA), and if such modifications give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the Genral Agreement on Tariffs and Trade. The Secretary of Agriculture has by Notice of this date increased the total base quota amount by 100,000 short tons raw value (STRV) of the 1984 quota year. After appropriate consultations between the Office of the United States Trade Representative and the Departments of State and Agriculture, the Deputy United States Trade Representative has determined that certain modifications in the import quota system are appropriate to give due consideration to these interests. Accordingly, the country-by-country quota allocations are modified as follows:

Of the increase of 100,000 STRV for the quota year 1984:

—8000 STRV shall be allocated to Malawi in order to remedy an original miscalculation of quota percentage over th life of the quota program;

—92,000 STRV shall be allocated as follows:

Country	Percent	STRV
1. Canada	1.1	1,012
2. Guatemala	4.8	4,416
3. Belize	1.1	1,012
4. El Salvador	2.6	2,392
5. Honduras	1.0	920
6. Costa Rica	1.5	1,380
7. Panama	2.2	2,024
8. Jamaica	1.1	1,012
9. Dominican Republic	17.6	16,192
10. Columbia	2.4	2,208
11. Guyana	1.2	1,104
12. Peru	4.1	3,772
13. Brazil	14.5	13,340
14. Argentina	4.3	3,956
15. Thailand	1.4	1,288
16. Philippines	13.5	12,420
17. Taiwan	1.2	1,104
18. Australia	8.3	7,636
19. Mauritius	1.1	1,012
20. Mozambique	1.3	1,196
21. Republic of South Africa	2.3	2,116
22. Swaziland	1.6	1,472
23. Barbados	.7	644
24. Bolivia	.8	736
25. India	.8	736
26. Fiji	.7	644
27. Malawi	.7	644
28. Zimbabwe	1.2	1,104
29. Ecuador	1.1	1,012
30. Trinidad-Tobago	.7	644
31. Other specified countries and areas	2.4	2,208

Note.—The category "other specified countries and areas" shall consist of the following: Mexico, Haiti, Paraguay, Saint Christopher-Nevis, Republic of Madagascar, the Ivory Coast, Uruguay and the Congo. Each is entitled to 276 STRV subject to 7 CFR 8.20–8.25.

This notice is effective the day following the date of filing. The allocations made herein are in addition to the 1984 quota year allocation for these countries. Reallocated sugar must be entered or withdrawn from warehouse for consumption on or before September 30, 1984.

I have determined that the above allocations are appropriate to carry out the obligations of the United States under the International Sugar Agreement, 1977, and that the above allocations give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Peter O. Murphy,

Deputy United States Trade Representative.

[FR Doc. 84-9115 Filed 4-3-84; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-755]

Equity Carriers I, Inc., et al.; Application for Permission To Carry Dry Bulk Preference Cargoes With Subsidy

Notice is hereby given that by application dated March 20, 1984, Equity Carriers I, Inc., Asco-Falcon II Shipping Company and Equity Carriers III, Inc. (collectively Equity) requested an amendment to their Operating-Differential Subsidy Agreement (ODSA), Contract No. MA/MSB–439 in order to allow their vessels to carry dry bulk preference cargoes with ODS and at fair and reasonable rates. Equity stated that it is making this request in light of the Maritime Subsidy Board's Final Opinion and Order in Docket A–132 dated December 22, 1983, allowing the subsidized Berger Group vessels to carry preference cargo with ODS.

Equity Carriers, Inc. (the Original Contractor) entered into the above-referenced ODSA with the Maritime Subsidy Board (Board) on October 6, 1978. Subsequently the contract was assigned by the Original Contractor to Equity Carriers I, Inc. with respect to the PRIDE OF TEXAS, to Asco-Falco II Shipping Company with respect to the STAR OF TEXAS and Equity Carriers III, Inc. with respect to the SPIRIT OF TEXAS.

Article I–2(a) of the ODSA provides that the vessels shall carry exclusively commercial dry bulk cargoes not subject to cargo preference statutes of the United States. By letter dated August 3, 1979, the Original Contractor proposed to amend Article I–2(a) of the Agreement to permit its vessels to transport dry bulk preference cargoes at fair and reasonable rates while continuing to receive ODS. According to Equity, in response to this letter proposal, the Board informally advised the Original Contractor that the Board wished to defer action on the proposal until the Board had resolved certain litigation and uncertainties surrounding Docket No. A–132, in which the Board had approved similar ODS contract amendments for companies in the Berger Group.

Equity states that it has challenged the Final Opinion and Order in Docket No. A–132 in the Federal courts as contrary to applicable law and policy. Nevertheless, so long as this Final Opinion and Order remains in effect for the Berger Group, Equity avers that it should be entitled to similar treatment.

and requests that the Board now move expeditiously to process the Original Contractor's August 1979 proposal as modified by its letter of March 20, 1984.

Equity proposes to amend Article I–2(a) of its ODSA to permit its vessels to transport dry bulk cargo subject to the cargo preference statutes of the United States, including but not limited to 10 U.S.C. 2631, 46 U.S.C. 1241 and 15 U.S.C. 616a, at fair and reasonable rates while continuing to receive ODS in a manner similar to that granted to the Berger Group in Docket No. A–132, provided that such permission would not extend to the transportation of cargo in loads of less than 20,000 tons. Specifically, Equity proposes that Article I–2(a) of the ODSA be revised to read in its entirety as follows:

(a) During the period of this Agreement, the Operator shall operate the Vessels described in Article I–3 hereof in worldwide carriage of dry bulk cargoes in the foreign ocean borne commerce of the United States and in the carriage of such cargoes between foreign ports. It is intended that the Operator may participate in the carriage, in loads of not less than 20,000 tons, of cargoes subject to the cargo preference statutes of the United States including, but not limited to, 10 U.S.C. 2631, 46 U.S.C. 1241 and 15 U.S.C. 616a, utilizing U.S. flag subsidized vessels, and lifting the cargoes at fair and reasonable rates under the cargo preference laws of the United States, subject to the following conditions:

(i) The fair and reasonable rates shall be based on net costs to the Operator and a return on equity after taking into consideration the payment of operating-differential subsidy.

(ii) Should any subsidized Vessel derive more that 50% of its total freight revenue for any fiscal year from the carriage of preference cargo, operating-differential subsidy shall be reduced using the following formula:

	Percentage of ODS reduction
Percent of annual gross freight from carriage of competitive cargo per vessel.	
40 to 49.9	20
30 to 39.9	40
20 to 29.9	80
10 to 19.9	80
0 to 9.9	100

(iii) Any bids submitted for the Vessels for the carriage of dry bulk preference cargoes shall be subject to the bid evaluation procedures set forth in 46 CFR 381.8, as the same shall hereafter be amended, modified or replaced.

Equity believes that the above provisions reflect the current Docket A–132 approach used for Berger Group vessels. To the extent of any variance, Equity will be willing to amend the above to achieve uniformity of treatment.

In conclusion, Equity states that the PRIDE OF TEXAS has been engaged continuously and exclusively in the carriage of dry bulk preference cargoes under the Snyder Amendment since September 1981. The STAR OF TEXAS and SPIRIT OF TEXAS have similarly been engaged continuously and exclusively in carrying dry bulk preference cargoes under the Snyder Amendment since their commencement of service in January 1982 and December 1982, respectively. Accordingly, the Vessels are presently providing an existing service in the U.S. dry bulk preference trades within the meaning of section 605(c) of the Merchant Marine Act, 1936, as amended.

Any person, firm or corporation having any interest in such application and desiring to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Room 7300A, 400 Seventh Street, SW., Washington, D.C. 20590 by 5:00 P.M. on April 19, 1984. The Maritime Subsidy Board will consider these views and comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies [ODS])

By Order of the Maritime Subsidy Board.

Dated: March 30, 1984.

Georgia P. Stamas,

Secretary.

[FR Doc. 84-8130 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-81-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement on Alternative Transit Improvements in the Milwaukee, Wisconsin Area

AGENCY: Urban Mass Transportation Administration, Transportation.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the Southeastern Wisconsin Regional Planning Commission, in cooperation with Milwaukee County and the Wisconsin Department of Transportation, are undertaking the preparation of an Environmental Impact Statement (EIS) for alternative transit improvements in the northwest corridor of the Milwaukee area. The EIS is being prepared in conformance with 40 CFR Part 1500, "Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969" as amended; and 49 CFR Part 622, "Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures."

FOR FURTHER INFORMATION CONTACT:

Mr. Harold L. Crane, UMTA Region 5, 300 S. Wacker Drive, Suite 1740, Chicago, Illinois 60606, telephone: (312) 353–2820.

SUPPLEMENTARY INFORMATION:

Scoping Meetings

There will be two scoping meetings held to assist in establishing the purpose, scope, framework, and approach for the transit alternatives analysis. One meeting will be held on May 1, 1984, at 7:30 p.m. in the Assembly Room, Third Floor, of the Milwaukee County Courthouse Annex (907 N. 10th Street, Milwaukee, Wisconsin 53233). Another meeting will be held on May 2, 1984, at 7:30 p.m. in the Northwest Senior Center (7717 W. Good Hope Road, Milwaukee, Wisconsin 53223). At the scoping meetings, staff will present a description of the proposed scope of the study, using maps and other visual aids, as well as a plan for an active citizen involvement program, a projected work schedule, and an estimated budget. Members of the public and interested federal, state, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and the evaluation criteria to be used to arrive at a decision. Comments may be made either orally at the meeting or in writing.

Corridor Description

The Milwaukee northwest corridor is a major travel corridor which is located principally within the northwest side of Milwaukee County. The corridor extends from the Milwaukee central business district (CBD) to the Granville area in northwest Milwaukee County, and generally encompasses both densely developed and rapidly developing urban areas. The boundaries of the corridor are approximately the Menomonee River Valley to the south; N. 60th Street, W. Appleton Avenue and the Waukesha County line to the west; the Ozaukee County line to the north; and N. Teutonia Avenue, E. Juneau Avenue, and Lake Michigan to the east. The northwest corridor has a total population of about 298,000 persons and a total employment of about 222,000 jobs.

The northwest corridor has a highly developed system of both transit services and street and highway facilities. Public transit service within the corridor is, for the most part, provided by buses operating over a grid system of local routes, sharing arterial streets with automobile and truck traffic. A small amount of additional transit service is provided by two peak period weekday-only express bus routes which operate within the corridor, and three 'freeway flyer' bus routes that operate nonstop during weekday peak periods to park-ride lots located on the margins of the corridor. Within the northwest side of Milwaukee County, which includes the corridor, it is estimated that there are about 72,000 weekday trips made by public transit. This accounts for about 40 percent of all weekday trips on the Milwaukee County Transit System.

The existing street and highway system within the northwest corridor is a well-developed grid network of arterial streets with a limited number of key arterial streets situated on radial alignments. The originally planned freeway in this corridor has recently been deleted from the long-range regional transportation system plan. Traffic demands which were to have been accommodated on this freeway are now proposed to be accommodated within the corridor on the existing arterial street system through a combination of improved traffic management measures and improved public transit facilities.

Alternatives

Transit alternatives proposed for consideration in the corridor are the following:

1. An existing-system option, under which existing and already committed bus and transportation services would continue to operate;

2. An express bus transit option that would incorporate new express bus service on arterial streets under one of two possible alternatives, complemented by transportation system management (TSM) actions including reserved transit lanes and parking restrictions along certain arterial streets, as well as bus-on operationally controlled freeway routes to downtown Milwaukee from outlying park-ride lots.

3. A light rail transit option that would be largely at-grade, and which would operate under one of six possible alternatives which would include outlying park-ride lots and preferential treatment for transit vehicles at intersections.

Comments at the scoping meetings should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

Impacts proposed for analysis include changes in the natural environment, changes in the social environment, and changes in the transportation system. Impacts will be identified both for the construction period and for the long-term operation of alternatives. Irreversible or irretrievable impacts will also be identified.

It is envisioned that the principal impacts attributable to the alternatives to be examined will be with respect to the transportation system. These include transit system level of service and ridership, traffic congestion, and freight railroad facilities. With respect to financial and economic concerns, impacts to be examined will include capital costs, operating and maintenance costs, development potential, financial feasibility, and the economy of the area. With respect to land use, impacts will include right-of-way requirements and displacements. With respect to social and community issues, impacts will include neighborhood quality, local street pattern changes, service to various population groups, aesthetics, safety, and historic and cultural resources. With respect to natural resources, impacts to be examined will include air quality, noise, vibration, water quality, soils, geology, floodlands, vegetation, wildlife, and parklands. With respect to energy use, impacts will include consumption, supply, and dependency.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current federal (National Enviromental Policy Act) and state environmental laws and current Council on Environmental Quality and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Comments at the scoping meetings should focus on the completeness of the proposed sets of impacts and evaluation criteria. Other impacts or criteria judged relevant to local decision-making should be identified.

Scoping Report

A draft version of a technical report which describes the scope of work proposed to be undertaken during this detailed planning study has been prepared and will be used as a basis for discussion at the scoping meetings. The draft scoping report describes the need for, purpose of, and action toward transit improvements in the Milwaukee northwest corridor; identifies a preliminary list of possible alternatives to be examined; and sets forth the scope and content of the detailed corridor planning study.

Single copies of the draft scoping report are available at no charge for review and comment by elected and appointed public officials at all levels of government who may be affected by any of the alternatives; public agencies, offices, and units of government whose jurisdiction is located within the northwest corridor; businesses, industries, and citizens residing within the corridor; and organized community and public interest groups.

Brochures summarizing the contents of the draft scoping report will be available to the general public prior to, and at, the scoping meetings. Copies of the complete draft scoping report are available at cost to suppliers and vendors of transit equipment and facilities. Requests for this report should be directed to the Southeastern Wisconsin Regional Planning Commission, P.O. Box 769, Waukesha, Wisconsin 53187, telephone (414) 547-6721. Copies of the scoping report will be available for inspection and review by interested private individuals at public libraries located within the northwest corridor, at the Milwaukee County Department of Transportation offices in the Milwaukee County Courthouse Annex, and at the Southeastern Wisconsin Regional Planning Commission.

Following the conduct of the scoping meetings, a final version of the scoping report will be prepared which will include any modifications brought about as a result of the scoping process.

Issued on April 2, 1984.

Joel P. Ettinger,

Regional Administrator, Urban Mass Transportation Administration, Region 5.

[FR Doc. 84-8765 Filed 4-4-84; 8:45 am]

BILLING CODE 4910-57-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57000, December

27, 1982), I hereby determine that the below listed objects in the exhibit, "Ancestors: Four Million Years of Humanity," imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. The objects covered by this determination are:

Object	Lender
(a) Hominid fossil, Sangiran—2 skull cap. Hominid fossil, Sangiran—4 pelvis.	Natur-Museum, Senckenberg, with approval of the owner, Werner Reimers Foundation, Frankfort, Federal Republic of Germany. Same.
(b) RM/91—L Trinil 2, skull cap. RM/91—L Trinil 3, femur.	Rijksmuseum van Natuurlijke Historie, Leiden, Netherlands. Same.

These objects are imported pursuant to a loan agreement between the American Museum of Natural History and foreign lenders. I also determine that the temporary exhibition of display of the listed exhibit objects at the American Museum of Natural History, beginning on or about April 13, 1984, to on or about September 9, 1984, is in the national interest. Public notice of this determination is ordered to be published in the Federal Register.

Dated: April 3, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-8300 Filed 4-4-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains proposed revised forms and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-6880.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 30, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revisions

1. Department of Veterans Benefits.
2. Annual Income Reporting (Questionnaire).
3. VA Forms 21-4179, 21-8913, 21-8914, 21-8915, 21-8916, 21-8917, 21-8918, 21-8919, and 21-8920.
4. Annually.
5. Individuals or households.
6. 1,600,000 responses.
7. 400,000 hours.
8. Not applicable.

[FR Doc. 84-8304 Filed 4-4-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 67
Thursday, April 5, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, April 10, 1984, 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, April 12, 1984, 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion #1984-10—James F. Fitzpatrick & John M. Quinn, on behalf of Arnold & Porter
Invitation Policy
Finance Committee report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–523–4065.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 84-8332 Filed 4-3-84; 3:31 pm]
BILLING CODE 6715-01-M

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FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on March 30, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Monday, April 9, 1984.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Consideration of a request from a Federal Reserve Bank concerning participation in a communications system.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 3, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-8334 Filed 4-3-84; 3:42 pm]
BILLING CODE 6210-01-M

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FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 49, March 20, 1984, Page No. 10405.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., March 27, 1984.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the date of its previously announced oral argument meeting from March 27, 1984, to April 12, 1984, 2:00 p.m.

Emily H. Rock,
Secretary.

[FR Doc. 84-8329 Filed 4-3-84; 2:14 pm]
BILLING CODE 6750-01-M

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NUCLEAR REGULATORY COMMISSION

DATE: Week of April 2, 1984 (Revised) and Week of April 9, 1984.

PLACE: Commissions' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Monday, April 2

2 p.m.
Briefing on COBALT-60 Contamination of Mexican Steel (Public Meeting) (Moved from April 3)

Tuesday, April 3

10 a.m.
Briefing by Executive Branch (closed—Ex. 1) (Postponed from March 27)

2:30 p.m.
Briefing on PROVs in CE Plants (Public Meeting) (Moved from April 4)

Wednesday, April 4

10 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (As Announced)

1:30 p.m.
Discussion and Possible Vote on QA Report to Congress and Status of QA Initiatives (Public Meeting) (Moved from April 3)

Thursday, April 5

10 a.m.
Briefing on Integrated Safety Assessment Program (ISAP) (Public Meeting) (As Announced)

2 p.m.
Briefing on Status of Utility and NRC Compliance with TMI Action Plan (Public Meeting) (Postponed from March 27 and replaces Meeting with Advisory Committee on Reactor Safeguards)

3:30 p.m.
Affirmation/ Discussion and Vote (Public Meeting) (New Item) a license Fees

Week of April 9

Monday, April 9

10 a.m.
Briefing on Criminal vs. Civil Investigations (Public Meeting)

2 p.m.
Briefing by the Industry on Industry Initiatives in Non-Hardware Areas (Public Meeting)

Tuesday, April 10

10 a.m.
Briefing on Status of Salem (Public Meeting)

2 p.m.
Discussion of Indian Point Adjudicatory Proceeding (Open/Closed to be determined)

Friday, April 13

10 a.m.
Discussion/Possible Vote on Diablo Canyon Criticality and Low Power Operation (Public Meeting)

2 p.m.
Discussion of Completed TMI Investigations (Public Meeting)

2 p.m.
Discussion of Completed TMI Investigations (Public Meeting)

3 p.m.
Discussion and Possible Vote on QA Report to Congress and Status of QA Initiatives (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of Delegation of Part 70 Authority in Limerick Proceeding was held on March 31.

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

[FR Doc. 84-9144 Filed 4-3-84; 4:08 pm]

BILLING CODE 7590-01-M

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PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

AGENCY HOLDING THE MEETING: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council)

ACTION: Postponement of Agenda Item.

DATE: April 12, 1984.

PLACE: Red Lion Motor Inn/Riverside, 29th and Chinden Blvd., Boise, Idaho.

MATTER TO BE CONSIDERED: At its March 14 and 15 meeting in Eugene, Oregon, the Council postponed its discussion of the agenda item entitled "Staff Presentation on Northwest Power Planning Council Power Planning Division Workplan" until its next Council meeting. Council business required this postponement and no earlier announcement of the change was possible. The Council announced the postponement at the March 15 meeting. This notice is issued to comply with 5 U.S.C. 552b(e)(2) and (3) of the Government in the Sunshine Act. Those provisions require notice of carry-overs of agenda items for agency meetings. Recent notice in the **Federal Register** announced the April 11–12 Council meeting and its agenda, including discussion of the postponed item.

CONTACT PERSON FOR MORE INFORMATION: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-9182 Filed 4-3-84; 10:35 am]

BILLING CODE 0000-00-M

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SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (49 FR 10772 March 22, 1984)

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 16, 1984.

CHANGE IN THE MEETING: Additional items/meeting.

The following additional item was considered at a closed meeting scheduled for Thursday, March 29, 1984, following the 10 a.m. open meeting.

Litigation matter.

The following item was considered at a closed meeting scheduled on Friday, March 30, 1984, at 10 a.m.

Institution of injuctive action.

Chairman Shad and Commissioners Treadway and Cox determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272–3195.

George A Fitzsimmons,

Secretary.

[FR Doc. 84-9183 Filed 4-3-84; 4:20 pm]

BILLING CODE 8010-01-M

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UNITED STATES RAILWAY ASSOCIATION

DATE AND TIME: April 13, 1984; 1:30 p.m.

PLACE: Board Room, Suite 7200, Seventh Floor, 955 L'Enfant Plaza North, SW., Washington, D.C.

STATUS: The first portion of the meeting will be closed to the public; the second portion will be open.

MATTERS TO BE CONSIDERED BY THE USRA BOARD OF DIRECTORS AND ADVISORY BOARD AT MEETING:

Portion Closed to the Public (1:30 p.m.):

1. Litigation Report
2. Review of Conrail Confidential and Proprietary Financial Information

Portion Open to the Public (2 p.m.):

3. Approval of Minutes of January 20, 1984 Board Meeting
4. Election of Conrail Board Members
5. Conrail Request for Waiver of Financing Agreement
6. Contract Action
7. Conrail Monitoring Indicators

CONTACT PERSON FOR MOVE INFORMATION: Alex Bilanow, (202) 488–8777.

Peter J. Gallagher,

Secretary.

[FR Doc. 84-9174 Filed 4-3-84; 10:44 am]

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federal register

Thursday
April 5, 1984

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Synthetic Fiber Production Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2484-8]

Standards of Performance for New Stationary Sources; Synthetic Fiber Production Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for synthetic fiber production facilities were proposed in the **Federal Register** on November 23, 1982 (47 FR 52932). This action promulgates standards of performance for synthetic fiber production facilities. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that synthetic fiber production facilities cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new and reconstructed synthetic fiber production facilities to control emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

EFFECTIVE DATE: April 5, 1984. Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Synthetic Fiber Production Facilities—Background Information for Promulgated Standards" (EPA-450/3-82-011b). The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement which summarizes the impacts of the standards.

Docket. A docket, number A-80-7, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section LE-131, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Ajax, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> • • • application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology," or "BDT."

The standards limit emissions of volatile organic compounds (VOC) from new and reconstructed synthetic fiber production facilities that utilize an organic solvent in manufacturing the formed fiber. This includes the production of such fiber types as acrylic, modacrylic, cellulose acetate, and spandex. The standards do not apply to modified facilities.

The affected facility to which the standards apply is each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year. The standards require that VOC emissions from each affected facility that produces acrylic fibers or both acrylic and nonacrylic fibers be limited to 10 kilograms (kg) per megagram (Mg) solvent fed to the spinning solution preparation area or precipitation bath.* The standards also limit VOC emissions from each affected facility producing only fiber types other than acrylic to 17 kg per Mg solvent fed to the spinning solution preparation area or precipitation bath.

To determine compliance with the standards, the owner or operator of an affected facility is required to measure the amount of makeup solvent introduced to the affected facility and to determine the amount of total solvent used within the affected facility by direct measure or through use of plant process records. Records must be maintained in a form suitable for inspection for at least 2 years. In addition, the owner or operator of the affected facility must submit semiannual reports of instances in which the VOC emissions exceed the standards.

BDT for this industry is broadly described as a system of improved solvent recovery that results in reduced solvent VOC emissions. For most segments of the industry, this system involves the use of hoods and enclosures around the process steps that typically emit the largest portion of solvent emissions. For other segments of the industry, the system identified as BDT involves the use of air management, in which a portion of room air is withdrawn to a control device and solvent vapor collected. To achieve emission reductions beyond baseline control conditions and to meet the NSPS limits, however, specific equipment is not mandated. The emission reduction techniques noted above are not exclusive, and an affected facility may determine that another technique would be more feasible for emission reductions for a given fiber type or production process.

Summary of Environmental, Energy, and Economic Impacts

Environmental Impacts

The standards will reduce projected 1987 nationwide VOC emissions from new and reconstructed solvent-spun synthetic fiber production facilities by as much as 8.5 gigagrams (Gg) (9.4 thousand tons) per year. Nationwide emissions will be reduced by as much as 63 percent of the amount that would occur in the absence of this regulation. Emission reductions will range from about 1.1 Gg (1,200 tons) per year for a dry-spinning acrylic fiber plant to about

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* In the proposed standards (47 FR 52963), § 60.802(a) contained a typographical error that may have created some question as to the proposed standard for affected facilities that produce both acrylic and nonacrylic fiber types. However, the preamble to the proposed standards (see 47 FR 52960, cols. II and III) should have made clear that the proposed standard for these facilities was identical to the proposed standard for affected facilities producing only acrylic fibers—10 kg VOC per megagram solvent feed. (EPA received no comment suggesting any confusion on this point.) As stated in the text above, the numerical standard promulgated today for affected facilities that produce both acrylic and nonacrylic fibers remains 10 kg VOC per megagram solvent feed.

1.7 Gg (1,900 tons) per year for an acetate filtration tow plant.

The fifth-year water pollution and solid waste impacts of the standards each represent less than a 1 percent increase over the impacts that would result in the absence of standards of performance.

Energy Impacts

The incremental energy increase necessary to operate the additional control equipment required to meet the standards will range from 2 to 3 percent of the total energy required to operate the types of fiber production plants covered by the standards. The total nationwide energy impact of the standards is estimated to be as much as 430 terajoules (403 billion Btu) per year in 1987.

Economic Impacts

The cumulative industry-wide capital costs will be as much as $27.8 million by 1987, an 8 percent increase in costs for new facilities. Capital costs for implementing the standards at individual plants will range from $4.2 to $5.5 million. Economic analysis indicated that the annualized costs to individual solvent-spun fiber plants will range from about $1.2 million to $1.3 million. However, there will also be a credit for recovered solvent in the range of $1.0 to $1.1 million. Net annualized costs, therefore, will be about $0.2 million for an individual plant. The annualized cost to the entire industry by 1987 will be as much as $7.4 million; however, a corresponding $6.2 million credit for additional solvent recovery will nearly offset these costs, resulting in net annualized cost to the industry of $1.2 million by 1987. Analysis indicates the cost of emission control required by the standards is not expected to prevent or hinder expansion or continued production by the solvent-spun synthetic fibers industry. These costs (savings) do not include lost opportunity costs (i.e., the profit or return on investment which could be derived by investing in other than air pollution control equipment).

The environmental, energy, and economic impacts are discussed in detail in the background information document for the proposed standards, "Synthetic Fiber Production Facilities—Background Information for Proposed Standards" (EPA–450/3–82–011a).

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (46 FR 42910, August 25, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the synthetic fiber production facilities standards recommended for proposal. This meeting was held on September 22, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed in the **Federal Register** on November 23, 1982 (47 FR 52932). The preamble to the proposed standards discussed the availability of the background information document (BID), EPA–450/3–82–011a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was scheduled for January 11, 1983, at Research Triangle Park, North Carolina, but was not held because no one requested that a hearing be conducted. The public comment period was from November 23, 1982, to February 11, 1983.

Six comment letters were received concerning issues relative to the proposed standards of performance for synthetic fiber production facilities. The comments have been carefully considered, and, where determined to be appropriate by the Administrator, changes have been made to the standards.

Significant Comments and Changes to the Standards

Comments on the proposed standards were received from industry and trade association representatives, and one State air pollution control agency. Most of the comment letters contained multiple comments. A detailed discussion of all the comments and responses can be found in the background information document (BID), which is referred to in the **ADDRESSES** section of this preamble. A discussion of the three major issues raised by the commenters is contained in the following paragraphs.

One of the major issues concerned the expected growth within the synthetic fiber industry, and whether or not EPA should establish an NSPS for this industry, given the differing EPA and industry growth forecasts. The second major issue raised by several industry representatives concerned the capture efficiency of enclosures on which the emission limits are based. Several commenters questioned whether this efficiency (90 percent) is achievable and suggested that lower values would be more realistic. The third major issue raised by the commenters was whether the enclosures as envisioned by EPA for use at synthetic fiber plants would create unsafe operating conditions, primarily from an explosive potential.

Growth Within the Synthetic Fibers Industry

Several commenters questioned the need for an NSPS for the synthetic fibers industry. They claimed that there will be no new or reconstructed facilities in the next 5 years and that EPA has therefore overestimated the growth rate. The reasons they gave for no growth were that (1) existing production supplying the export market could be used to satisfy any increase in domestic demand for acrylic fibers, (2) existing cellulose acetate filament yarn facilities could be converted to produce cigarette filter tow if the demand necessitates more tow capacity, and (3) new filter tow facilities would cost too much to build and would result in an increase in fiber prices that would not be competitive with fiber produced in other countries.

EPA has evaluated the commenters' claim that there will be no capacity additions in the next 5 years and does not reach the same conclusion as the commenters regarding the need for the NSPS. The 5-year period referred to by the commenters has no special significance in the decisions as to whether or not to develop an NSPS for a given source category. It is often a reasonable indicator of growth, but such factors as cyclic growth, current economic conditions, etc., can result in situations where projected growth during the next 5-year period is not necessarily indicative of long-term trends. Since an NSPS is intended to achieve long-term benefits, it is important to project and consider potential benefits that would occur beyond the 5-year period. Even if growth is not certain, however, it is still not unreasonable to promulgate the NSPS. Early promulgation of these standards would enhance the ability of facility owners to plan for whatever future growth will be necessary. Consequently, EPA believes the NSPS will be beneficial in limiting VOC emissions from new or reconstructed synthetic fiber production facilities when they are built, regardless of whether it is within 5 years or beyond.

As mentioned above, one commenter claimed that the domestic market for acrylic fibers is more attractive to producers than the export market; therefore any new domestic demand would be met at the expense of the export share, rather than with new production capacity. EPA performed an

analysis using data on domestic and export acrylic shipments to determine whether the export market is a residual market, as the commenter contended. This analysis showed that the domestic and export shipments tend to move in the same direction, increasing and decreasing together. These facts suggest that the export market is not simply a residual market for the acrylic producers that will be curtailed when domestic consumption increases.

The commenters' claim that filter tow capacity growth can be accommodated by converting filament yarn facilities is not supported by industry production and capacity utilization data. Data for the 1975–1979 period indicated a stabilization in production of filament yarn after dramatic production declines in the 1970–1975 period. By 1980, most of the excess capacity had been eliminated, resulting in capacity utilization of over 92 percent. EPA, therefore, concludes that excess filament yarn capacity will not be available in the future to augment the current filter tow capacity. Consequently, any substantial increase in the demand for production of cigarette filter tow would necessitate new plant construction.

The third reason for no growth given by the commenters was that filter tow facilities would be too expensive to build (even in the absence of an NSPS) and would not be able to compete on the international market because of the resulting high implicit price of the domestic filter tow. (Implicit price refers to the product price that reflects costs of production.) Acetate filter tow manufacturers have a legitimate concern about the international competitiveness of new facilities since foreign exports make up about 40 percent of their markets. However, to the extent that foreign producers share the conditions that have resulted in such an increase in the cost of filter tow from a new facility, the export market for domestic producers will probably remain strong.

EPA's position that price increases for cigarette filter tow will have little effect on the export market derives in part from an assumption that the price elasticity of export demand is similar to the price elasticity of domestic demand. The estimate of the price elasticity of domestic demand for cigarette filter tow was derived from the price elasticity for cigarettes themselves. Cigarette demand is generally found to be highly price inelastic, and the demand for cigarette filter tow is estimated to be even more inelastic because it is only a small part of a cigarette cost. Accordingly, an increase in cigarette filter tow price is not expected to have a major impact on domestic growth in acetate filter tow consumption.

It is recognized that the U.S. position in the world filter tow market is not what it once was. However, the bulk of the decline in U.S. market share occurred some years ago. Throughout the 1970's the United States was responsible for 54 percent of the world filter tow production. According to the most recently available data, the U.S. share appears to have been sufficiently stable over the last decade to justify an assumption of continued maintenance of its world market share.

EPA believes that the possibility of substitution in cigarette filter production has limited potential. It is believed that cigarette manufacturers experiment with alternate filter materials principally for long-term purposes, especially for incorporation in new brands. Since filter design affects the taste, and therefore, the desirability of a cigarette, manufacturers are extremely hesitant to substitute filter materials in existing brands.

On the basis of the reasons discussed above and in the BID, EPA believes that synthetic fiber production facilities subject to the NSPS will be constructed or reconstructed in the future and that the NSPS will significantly reduce VOC emissions at these facilities.

Use of Enclosures and Their Capture Efficiency

Two commenters claimed that enclosures do not meet the requirements for best demonstrated technology for the cigarette filter tow industry because they have not been demonstrated for domestic facilities. One commenter stated that enclosure technology has not been demonstrated for many acrylic fiber production areas and is not representative of technology employed by this category.

The commenter's use of the term "best demonstrated technology" is a reference to Section 111(a)(1)(C) of the Clean Air Act, which specifies that a standard of performance "* * * reflects the degree of emission reduction achievable through the application of the best system of continuous emisson reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for the category of sources." EPA normally refers to this system of continuous emission reduction as "best demonstrated technology" or BDT.

The commenters have interpreted the Section 111 requirement that the system be adequately demonstrated as meaning that it be in actual use at each type of existing facility in the category of sources being regulated and that it be achieving the level of the NSPS for which it is the basis. EPA interprets the requirement more broadly. Control technology can be considered BDT if it can be shown to be the best system demonstrated for the category of sources, not necessarily on the category of sources. This means that a system used in an entirely different industry using a different process than the one being regulated can be BDT if its performance would not be affected by the differences in the sources. Similarly, a system used in some segments of the industry being regulated, or in some parts of the process, but not others, can be considered BDT for all segments or all parts of the process if it is possible to design, install, and operate it so that it achieves emission control under all the conditions in which it would applied.

EPA believes that enclosure technology as a means of capturing VOC emissions from acrylic fiber and cellulose acetate filter tow manufacturing facilities meets these criteria. EPA is unaware of any process-related or other reason that would prevent application of this technology to these types of synthetic fiber production facilities. Furthermore, enclosures are being used at one domestic acrylic fiber manufacturing plant and at a foreign cellulose acetate filter tow manufacturing plant. For these reasons, EPA believes that enclosure technology represents BDT for acrylic fiber and cellulose acetate filter tow manufacturing plants.

Two commenters stated that the 90 percent capture efficiency for enclosures that is part of the basis for the NSPS is not supported by adequate documentation or data. They also contended that since enclosures must be opened frequently to allow worker access to equipment, the 90 percent capture efficiency is not supportable. One commenter estimated that enclosures could capture no more than 88 percent of VOC emissions. He estimated that the enclosures would be open, thus reducing effectiveness, for 8 to 19 percent of the time.

As indicated in the preamble to the proposed NSPS (47 FR 52936), the 90 percent capture efficiency used by EPA to calculate achievable emission reductions was based on solvent use and emission data collected from fiber production facilities of several companies. Emission tests were

conducted and solvent mass balance data collected at acrylic fiber plants that use enclosures. Although these data indicated that the tested plants were achieving about 95 percent capture with their enclosures, EPA selected 90 percent to account for the more frequent opening of enclosures to allow worker access that is necessary at filter tow facilities (estimated at 14 percent based on information provided to EPA before proposal by one company representative).

To respond to the commenter's concern that the capture efficiency would be reduced to less than 90 percent if the enclosure doors were open up to 19 percent of the time, EPA calculated the efficiency using this worst-case assumption. The detailed calculation may be found in Appendix A of the BID. It indicates that under these worst-case conditions, the lowest capture efficiency would be greater than 91 percent, not the 86 percent claimed by the commenter. Therefore, EPA continues to believe that enclosures on fiber processing facilities can consistently achieve greater than 90 percent capture.

Safety of Enclosures

Two commenters claimed that the use of enclosure technology on filter tow facilities would create a safety hazard because acetone concentrations within the enclosures could build up to explosive levels within a relatively short period (as short as 30 seconds). They acknowledged that a foreign producer uses enclosures in filter tow facilities but believed that the fundamental differences (spinning line speeds) in the foreign and domestic operations make transfer of this technology to domestic operations inappropriate. They expressed concern that the manual activation of safety systems used by the foreign producer would not be fast enough to reply on to prevent an explosion within the 30 seconds it would take for a potential explosion to occur.

As discussed in Chapter 4 of the proposal BID, EPA is aware that domestic producers would not rely solely on manual activation of safety features to avoid explosions within enclosures. The system envisioned by EPA would be designed such that the exhaust fans would be interlocked mechanically, electrically, or otherwise with the spin cell extrusion pumps. Should the exhaust fans fail, fiber would no longer be produced, additional solvent would not be released into the enclosure, and the enclosure doors would open automatically. This would allow dilution and diffusion of the solvent vapor into the room air.

EPA does believe that manually opening the enclosure doors is a reasonable and dependable backup or failsafe method of preventing the buildup of explosive vapor concentration. It should be noted that workers currently must observe the machines constantly to respond immediately to spinning machine malfunctions and "roll breaks" or "feed wheel wraps." (These terms, used by two different fiber producers, both refer to the malfunction in which fiber exiting the spin cell is wrapped around the godet roll. The wrap will become larger as more fiber is wound, and will cause more serious problems if not cut and removed quickly.) Thus, workers are always available to open the enclosure doors should the automatic opening system fail to operate when needed.

EPA believes that due to the automatic safety features that would be designed into an enclosure system, the occurrence of an exhaust fan shutdown with the simultaneous continued release of solvent into a closed enclosure is very unlikely. Should such a situation occur, however, EPA agrees with the commenters that workers would need enough time to respond to avoid an explosion. The commenters suggest that the workers may have no more than 30 seconds to manually open the enclosure doors, but do not provide any supporting data.

To evaluate this claim, EPA calculated the amount of time required for solvent concentrations to reach the lower explosive limit (LEL) within an enclosure under worst case conditions. Two situations were evaluated: one is a pilot enclosure system designed by one company and the other is a system for a hypothetical 50 million pound per year plant. For both situations, it was assumed that fiber spinning continues after the exhaust fan stops suddenly and the enclosure doors remain closed. EPA's calculations indicated that it would take 2.4 minutes to reach the LEL at the pilot system and 5.1 minutes to reach the LEL at the hypothetical plant. There would be an adquate amount of time in either situation for a worker tending the machines to manually open the enclosure doors if the automatic door opener failed. Thus, EPA believes that the enclosure systems that represent BDT for the proposed NSPS do not pose any risk of explosion that cannot be alleviated by proper design and operation.

One commenter claimed that the use of enclosures on spinning machines would negate current fire protection measures. He claimed that "enclosure systems connected to a control device would have unlimited oxygen supply and ready ignition sources." Another commenter noted that the spinning cabinets in use at domestic filter tow plants are isolated from each other, and cabinet fires are prevented from flashing over to other cabinets. He claimed the tow line enclosure would provide a connection between all the cabinets along a spinning line, so that a fire in one cabinet along a spinning line could ignite all the cabinets. This commenter also noted the danger of an "unlimited supply of oxygen," where enclosures are used.

The comments that an enclosure system would create an unlimited oxygen supply, ready ignition sources, and a convenient route for fire to spread from one to several or all the spinning cabinets on a line reflect an incorrect appraisal of a properly designed and fail-safe enclosure system.

Before responding, it is first important to make clear that fire can potentially propogate in two ways in a situation such as this. In one, the flame would propogate along the surface of the fiber, the potential for which would be the same with and without enclosures. In the other, the flame would propogate through the vapor space, a phenomenon described here as flashover.

The commenters in this case appear to be referring to flashover. This can only occur when there is a limited supply of oxygen, which causes vapor concentrations to be in the "explosive range." When there is too little oxygen, the vapor concentration exceeds the upper explosive limit (UEL). When there is an excess of oxygen, the vapor concentration is below the lower explosive limit (LEL). In neither case is fire or explosion of the vapor possible.

The comments about an unlimited oxygen supply apparently refer to the continuous flow of air drawn into the enclosure by its exhaust system. The volume of air drawn into the enclosure, however, is established by the design of the enclosure and exhaust system so that the solvent vapor concentration is maintained well below the LEL during normal spinning operation. In other words, the vapor in the enclosure could neither ignite nor support a flame, and, as a consequence, a fire in one cabinet could not spread via the enclosure to other cabinets. The reference to an unlimited oxygen supply being a hazard or safety concern is, therefore, inappropriate.

The only upset condition germane to the discussion of oxygen supply or the flashover of fire from one to other spinning cabinets is the malfunction of the enclosure's primary exhaust system

concurrent with continued spinning. In this situation, the air (oxygen) supply is no longer continuous nor unlimited but is fixed by the volume of the enclosure. If no other safety features alleviate the malfunction, the solvent vapor concentration might approach explosive limits. (See the response to Comment 2.2.6 and Appendix B of the BID for a determination of the time required.) However, the enclosure should be designed and equipped with secondary exhaust systems, alarms, automatically opening doors, and line shutdown interlocks with the spinning pumps. In addition to these mechanical features, operators are always standing by to correct this and other malfunctions. At worst, then, the malfunction would cause the safety mechanisms to create conditions identical to current operating conditions without an enclosure, i.e., the spun yarn and solvent would be exposed to the spinning room atmosphere.

With respect to the commenter's claim concerning an increased number of ignition sources, no further information was provided. No system designs considered to reflect BDT would affect the type or number of ignition sources already available. Note, however, that with the enclosure doors closed, worker access is prevented, and the solvent vapor is physically separated from the workers, from sparks or flames caused by tool malfunctions, and from any other ignitions sources.

EPA concludes that enclosures can be designed and installed to create an effective solvent vapor capture system while maintaining operating conditions that pose no greater risk for fires or explosions than current operating conditions without enclosures.

Information Requirements Impacts

Two types of reports are required by the General Provisions of 40 CFR Part 60. First, there are notification requirements that enable the Agency to keep abreast of facilities subject to the standards. Second, there would be reporting of the results of the initial performance test that would be conducted to determine compliance with the standards. In addition, the standards require the owner or operator of an affected facility to record the results of each performance test and to submit semiannual reports to the Agency of instances in which the VOC emissions exceed the standards. This requirement is waived for affected facilities in States where the program has been delegated if EPA, in the course of delegation, approves reporting requirements or an alternative means of source surveillance adopted by the State. Such sources would be required to comply with the requirements adopted by the State.

Information collection requirements associated with this rule (40 CFR 60.7, 60.8, 60.15, 60.693, and 60.694) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 U.S.C. 3501 et seq. and have been assigned OMB control number 2060-0059.

The resources needed by the industry to maintain records and to collect, prepare, and use the reports for the first 2 years would be about 0.1 person-year per year. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 2 years would be about 0.1 person-year per year.

Regulatory Flexibility Analysis

During the development of the background information document for these standards, it was determined that there were no significant impacts on small businesses, therefore no regulatory flexibility analysis was required for this source category.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughtout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial reiew except as noted in (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is April 5, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or reconstruction of which was commenced after the date of proposal (November 23, 1982).

As prescribed by Section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to insure that cost was carefully considered in determining BDT. The economic impact assessment is included in the background information document for the proposed standards.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not "major" because: (1) The national annualized compliance costs, including capital charges resulting from the standards, total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards no not cause a significant adverse effect on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernment relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Synthetic fibers.

Dated: March 30, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended by adding a new subpart as follows:

Subpart HHH—Standards of Performance for Synthetic Fiber Production Facilities

Sec.

60.600 Applicability and designation of affected facility.
60.601 Definitions.
60.602 Standard for volatile organic compounds.
60.603 Performance test and compliance provisions.
60.604 Reporting requirements.

Authority: Sec. 111 and 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart HHH—Standards of Performance for Synthetic Fiber Production Facilities

§ 60.600 Applicability and designation of affected facility.

(a) Except as provided in paragraph (b) of this section, the affected facility to which the provisions of this subpart apply is each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year.

(b) The provisions of this subpart do not apply to any facility that uses the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber.

(c) The provisions of this subpart apply to each facility as identified in paragraph (a) of this section and that commences construction or reconstruction after November 23, 1982. The provisions of this subpart do not apply to facilities that commence modification but not reconstruction after November 23, 1982.

§ 60.601 Definitions.

(a) All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in Subpart A of this part.

"Acrylic fiber" means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 85 percent by weight of acrylonitrile units.

"Makeup solvent" means the solvent introduced into the affected facility that compensates for solvent lost from the affected facility during the manufacturing process.

"Nongaseous losses" means the solvent that is not volatilized during fiber production, and that escapes the process and is unavailable for recovery, or is in a form or concentration unsuitable for economical recovery.

"Polymer" means any of the natural or synthetic compounds of usually high molecular weight that consist of many repeated links, each link being a relatively light and simple molecule.

"Precipitation bath" means the water, solvent, or other chemical bath into which the polymer or prepolymer (partially reacted material) solution is extruded, and that causes physical or chemical changes to occur in the extruded solution to result in a semihardened polymeric fiber.

"Rayon fiber" means a manufactured fiber composed of regenerated cellulose, as well as manufactured fibers composed of regenerated cellulose in which substituents have replaced not more than 15 percent of the hydrogens of the hydroxyl groups.

"Reaction spinning process" means the fiber-forming process where a prepolymer is extruded into a fluid medium and solidification takes place by chemical reaction to form the final polymeric material.

"Recovered solvent" means the solvent captured from liquid and gaseous process streams that is concentrated in a control device and that may be purified for reuse.

"Solvent feed" means the solvent introduced into the spinning solution precipitation system or precipitation bath. This feed stream includes the combination of recovered solvent and makeup solvent.

"Solvent inventory variation" means the normal changes in the total amount of solvent contained in the affected facility.

"Solvent recovery system" means the equipment associated with capture, transportation, collection, concentration, and purification of organic solvents. It may include enclosures, hoods, ducting, piping, scrubbers, condensers, carbon adsorbers, distillation equipment, and associated storage vessels.

"Solvent-spun synthetic fiber" means any synthetic fiber produced by a process that uses an organic solvent in the spinning solution, the precipitation bath, or processing of the sun fiber.

"Solvent-spun synthetic fiber process" means the total of all equipment having a common spinning solution preparation system or a common solvent recovery system, and that is used in the manufacture of solvent-spun synthetic fiber. It includes spinning solution preparation, spinning, fiber processing and solvent recovery, but does not include the polymer production equipment.

"Spandex fiber" means a manufactured fiber in which the fiber-forming substance is a long chain synthetic polymer comprised of at least 85 percent of a segmented polyurethane.

"Spinning solution" means the mixture of polymer, prepolymer, or copolymer and additives dissolved in solvent. The solution is prepared at a viscosity and solvent-to-polymer ratio that is suitable for extrusion into fibers.

"Spinning solution preparation system" means the equipment used to prepare spinning solutions; the system includes equipment for mixing, filtering, blending, and storage of the spinning solutions.

"Synthetic fiber" means any fiber composed partially or entirely of materials made by chemical synthesis, or made partially or entirely from chemically-modified naturally-occurring materials.

"Viscose process" means the fiber forming process where cellulose and concentrated caustic soda are reacted to form soda or alkali cellulose. This reacts with carbon disulfide to form sodium cellulose xanthate, which is then dissolved in a solution of caustic soda. After ripening, the solution is spun into an acid coagulating bath. This precipitates the cellulose in the form of a regenerated cellulose filament.

§ 60.602 Standard for volatile organic compounds.

(a) On and after the date on which the initial performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause the discharge into the atmosphere from any affected facility that produces acrylic fibers, VOC emissions that exceed 10 kilograms (kg) VOC per megagram (Mg) solvent feed to the spinning solution preparation system or precipitation bath. VOC emissions from affected facilities that produce both acrylic and nonacrylic fiber types shall not exceed 10 kg VOC per Mg solvent feed. VOC emissions from affected facilities that produce only nonacrylic fiber types shall not exceed 17 kg VOC per Mg solvent feed. Compliance with the emission limitations is determined on a 6-month rolling average basis as described in § 60.603.

§ 60.603 Performance test and compliance provisions.

(a) Section 60.8(f) does not apply to the performance test procedures required by this subpart

(b) Each owner or operator of an affected facility shall determine compliance with the applicable standard

in § 60.602(a) by determining and recording monthly the VOC emissions per Mg solvent feed from each affected facility for the current and preceding 5 consecutive calendar months and using these values to calculate the 6-month average emissions. Each calculation is considered a performance test. The owner or operator of an affected facility shall use the following procedure to determine VOC emissions for each calendar month:

(1) Install, calibrate, maintain, and operate monitoring devices that continuously measure and permanently record for each calendar month the amount of makeup solvent and solvent feed. These values shall be used in calculating VOC emissions according to paragraph (b)(2) of this section. All monitoring devices, meters, and peripheral equipment shall be calibrated and any error recorded. Total compounded error of the flow measuring and recording devices shall not exceed 1 percent accuracy over the operating range. As an alternative to measuring solvent feed, the owner or operator may:

(i) Measure the amount of recovered solvent returned to the solvent feed storage tanks, and use the following equation to determine the amount of solvent feed:

Solvent Feed = Makeup Solvent + Recovered Solvent + Change in the Amount of Solvent Contained in the Solvent Feed Holding Tank.

(ii) Measure and record the amount of polymer introduced into the affected facility and the solvent-to-polymer ratio of the spinning solutions, and use the following equation to determine the amount of solvent feed:

$$\text{Solvent Feed} = \sum_{i=1}^{n} (\text{Polymer Used})_i \times (\text{Solvent-to-Polymer Ratio})_i$$

where subscript "i" denotes each particular spinning solution used during the test period; values of "i" vary from one to the total number of spinning solutions, "n," used during the calendar month.

(2) VOC emissions shall be determined each calendar month by use of the following equations:

$$E = \frac{M_w}{S_w} - N - I \quad \text{and} \quad M_w = M_v S_v D$$

$$S_w = \frac{S_v S_v D}{1000} \quad I = \frac{I_E - I_B}{S_w}$$

where all values are for the calendar month only and where

E = Emissions in kg per mg solvent feed;
S_v = Measured or calculated volume of solvent feed in liters;
S_w = Weight of solvent feed in mg;
M_v = Measured volume of makeup solvent in liters;
M_w = Weight of makeup in kg;
N = Allowance for nongaseous losses per mg solvent feed; (13 kg/mg);
S_v = Fraction of measured volume that is actual solvent (excludes water);
D = Density of the solvent in kg/liter;
I = Allowance for solvent inventory variation or changes in the amount of solvent contained in the affected facility per mg solvent feed (may be positive or negative);
I_B = Amount in kg of solvent contained in the affected facility at the beginning of test period, as determined by owner or operator;
I_E = Amount in kg of solvent contained in the affected facility at the close of test period, as determined by owner or operator.

(i) N, as used in the equation in paragraph (b)(2) of this section, equals 13 kg per mg solvent feed to the spinning solution preparation system and precipitation bath. This value shall be used in all cases unless an owner or operator demonstrates to the satisfaction of the Administrator that greater nongaseous losses occur at the affected facility. In this case, the greater value may be substituted in the equation.

(Approved by the Office of Management and Budget under Control Number 2060-0059.)
(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

§ 60.604 Reporting requirements.

(a) The owner or operator of an affected facility shall submit a written report to the Administrator of the following:

(1) The results of the initial performance test; and

(2) The results of subsequent performance tests that indicate that VOC emissions exceed the standards in § 60.602. These reports shall be submitted semiannually, at six month intervals after the initial performance test.

(b) Solvent-spun synthetic fiber producing facilities exempted from these standards in § 60.600(a) (those producing less than 500 megagrams annually) shall report to the Administrator within 30 days whenever extruded fiber for the preceding 12 calendar months exceeds 500 megagrams.

(c) The requirements of this section remain in force until and unless EPA, in delegating enforcement authority to a State under Section 111(c) of the Act, approves reporting requirements or an alternate means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with this section, provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under Control Number 2060-0059.)

Note.—This regulation does not involve a "collection of information" as defined under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Therefore, the provisions of the Paperwork Reduction Act applicable to collections of information do not apply to this regulation.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

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federal register

Thursday
April 5, 1984

Part III

Environmental Protection Agency

40 CFR Part 60

Review of Standards of Performance for New Stationary Sources; Nitric Acid Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2536-1]

Review of Standards of Performance for New Stationary Sources; Nitric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: The EPA proposes to leave unchanged the regulations established in 1971 for the control of nitrogen oxides emissions from new, modified, or reconstructed nitric acid plants. The Agency is required to review standards for these plants every four years by the 1977 amendments to the Clean Air Act. Although one problem with the performance testing procedures was discovered, this problem, which is generic to testing of several stationary sources, is being addressed by a separate action to be proposed in the near future.

DATES: *Comments.* Comments must be received on or before June 4, 1984.

ADDRESSES: *Comments.* Send comments (in duplicate if possible) to the Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A-83-34.

Docket. Docket No. A-83-34, containing supporting information used in developing the conclusions, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Durkee, Industrial Studies Branch, Emission Standards and Engineering Division, MD-13, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541-5396.

SUPPLEMENTARY INFORMATION:

Background

New source performance standards (NSPS) for nitric acid plants were promulgated by the EPA on December 23, 1971 (40 CFR 60.70, Subpart G). The standards limit emissions of nitrogen oxides from new or modified nitric acid production units that have been constructed, modified, or reconstructed after August 17, 1971. These nitrogen oxides emission limits are: 1.5 kilograms per metric ton of acid produced (3 pounds per ton, maximum 2-hour average, expressed as NO_2; and 10 percent opacity. Nitric acid production units affected by these standards are any facility producing weak nitric acid (30 to 70 percent in strength) by either the pressure or atmospheric pressure process. The NSPS does not apply to the various processes used to produce strong acid by extraction or evaporation of weak acid, or by the direct strong acid process. The rationale for excluding strong acid plants from the NSPS at the time it was developed was that emissions from these strong acid plants are small, about the level of the NSPS, and only one strong acid process was in operation.

The standard also requires that nitrogen oxides be monitored continuously, and a record of these measurements must be maintained. The standard requires that during the performance tests the acid produced, expressed in metric tons per hour of 100 percent nitric acid, shall be determined during each 2-hour testing period by suitable methods and shall be confirmed by a material balance over the production system.

The Clean Air Act Amendments of 1977 require that the Administrator of the EPA review and, if appropriate, revise established standards of performance for new stationary sources at least every 4 years [Section 111(b)(B)]. A review of the nitric acid plant standard was previously conducted in 1979 (44 FR 35285), however, no revisions to the NSPS were made as a result of the 1979 review. A second review has been conducted by contracting EPA regional offices, States agencies, companies with nitric acid plants subject to the NSPS, and control equipment vendors. Information was collected on the number and location of facilities subject to the NSPS which have started operation since the 1979 review, on control equipment performance and costs, and on emission measurements and continuous stack gas monitoring. From these sources, a background document was prepared covering the current status of control technology, compliance test data, monitoring systems employed, cost, and cost effectiveness for representative control systems on different sizes of nitric acid plants. This notice announces that the EPA has completed the review and invites comments on its results.

Findings

Industry Growth Rate

In 1972, there were approximately 125 weak nitric acid units in existence, exclusive of government-owned units at ordnance plants. About 75 percent of these units had capacities of 270 megagrams per day (Mg/D) [300 tons per day (TPD)] or less. As of March 1983, 29 weak nitric acid units are subject to the NSPS with capacities ranging from 50 to 910 Mg/D (53 to 1,000 TPD) and averaging 423 Mg/D (466 TPD). U.S. production of weak nitric acid has increased at an average annual rate of 1.7 percent between 1981 and 1982. The actual average rate of startup between 1971 and 1982 has been between two and three units per year. One strong nitric acid plant was in operation in 1971 and only two new strong acid units have been constructed since then.

Control Technology

A typical uncontrolled nitric acid plant converts approximately 98 percent of input NO_x to nitric acid; however, the remaining 2 percent results in NO_x emissions of about 1,000 parts per million by volume (ppmv). For example, a typical uncontrolled nitric acid plant of 454 Mg/D (500 TPD) would emit about 3.4 megagrams (3.75 tons) of nitrogen oxides per day.

The control methods used by nitric acid units subject to the NSPS are extended absorption, catalytic reduction, and chilled absorption with caustic scrubbing. Catalytic reduction was used as the basis for the NSPS since, at the time of the NSPS development, no other NO_x control methods has been demonstrated to achieve the NSPS. In catalytic reduction, natural gas is added to the tail gas and burned in a catalytic unit to reduce the NO_x concentration to nitrogen. Since promulgation of the NSPS, natural gas costs have risen, and the catalytic reduction process has been largely supplanted by the more economical extended absorption process as the control method of choice for achieving the NSPS. As a direct result of higher natural gas costs, none of the nitric acid plants built since 1977 are designed with catalytic reduction emission control systems. In the extended absorption process, the increased absorption capacity is achieved by increasing the size of the normal process absorber used to produce nitric acid or by adding a second absorption tower in series with the process absorber. the NO_x is removed from the process gas by water introduced into the absorber to form nitric acid. A smaller absorption system

is required when the use of mechanical refrigeration for chilling part of the cooling water is employed. Chilled water increases the efficiency of the process of absorbing the NO_x into the water. All but one of the nitric acid units that started operation since 1977 feature extended absorption as the NO_x control mechanism. It is expected that natural gas prices will continue to make extended absorption the preferred method for NO_x control in the future. At one plant a caustic scrubber was combined with an extended absorber to comply with the NSPS.

The review did not find any other demonstrated technologies for controlling emissions than the technologies described here. Therefore, the EPA concluded that there are now three control technologies capable of achieving the NSPS (catalytic reduction, extended absorption and caustic scrubbers), but due to cost considerations the extended absorption process will remain the NO_x control technology of choice for attaining emission standards.

Levels Achievable With Demonstrated Control Technology

Compliance test results for the ten facilities subject to the NSPS which have started operation since the 1979 review indicate that all have achieved the NSPS with the exception of one extended absorption unit which is owned by the U.S. Army. This unit has never been operated except for a 2-day start-up period during which time the unit was compliance tested and shutdown. There are no plans to restart the unit since it was installed as a standby unit for ammunition production during wartime. Modifications will be made to bring this unit into compliance prior to any future startup.

Continuous monitoring data were also obtained on six nitric acid units controlled by extended absorption, one unit controlled by chilled absorption with caustic scrubbing, and one unit controlled by catalytic reduction. Four of the six extended absorption units reported emissions below the standard 95 percent of the time or greater over a 2-year period. Periods of excess emissions were due mainly to startups, shut downs, or malfunctions, which are periods exempt from the NSPS and, therefore, excluding these periods, emissions were below the standard more than 99 percent of the time. The two other extended absorption units experienced difficulties in continuously achieving the NSPS because of malfunctions (leaks in the tail gas heat exchanger results in a small amount of gas by-passing the absorber directly to the atmosphere). One of these units maintained emissions below the NSPS greater than 97 percent of the time when the leak was corrected. The other unit also operated with emissions below the NSPS after the leak was repaired but, with the arrival of hot weather, excess emissions occurred because the system design pressure was not being achieved. Modifications were made to correct design deficiencies, but the unit was shut down before it could be tested for compliance. The vendor indicated that, upon restart, they would continue to work with the company to achieve compliance. Monitoring data obtained on the one catalytic reduction unit and the unit controlled by chilled absorption with caustic scrubbing indicate that these units were operated with emissions below the NSPS more than 99.7 percent of the time over a 2-year period.

Because the current performance levels (0.57 to 1.40 kg/Mg) of these technologies are essentially the same as for those (0.18 to 1.15 kg/Mg) on which the 1971 standards were based, the EPA concludes that retaining the current NSPS emission level is appropriate. A more stringent standard was considered but was rejected due to limitations of the extended absorption process in further increasing its efficiency.

Testing Requirements

The standard currently requires that compliance be determined by using Method 7 for the concentration of NO_x. The review found that Method 7 is considered by the industry to be difficult and imprecise. The EPA has proposed Method 7A (47 FR 44354) and is in the process of proposing Methods 7B, 7C, and 7D as alternatives to Method 7. These alternatives allow for a choice of analytical procedures and should mitigate concerns over the difficulty of the analytical steps in Method 7. Because Methods 7A and 7B rely on laboratory instrumentation, they are less subject to human error and, therefore, are more precise than Method 7, in practice.

The standard also requires that the acid production rate, expressed in metric tons per hour of 100 percent nitric acid, shall be determined during each testing period by suitable methods and shall be confirmed by a material balance over the production system. This requirement of suitable methods was revision (39 FR 20790) made in 1974 to the NSPS promulgated (36 FR 24876) in 1971 which had required that the acid production be determined by suitable flowmeters. This requirement for using "suitable flowmeters" was deleted in order to allow other suitable methods, in addition to flowmeters. No problems in enforcing the NSPS were reported due to this lack of specifying a specific measurement technique for acid production. Therefore, the EPA concludes that no revision to the standard is appropriate at this time.

Cost Effectiveness of the NSPS

The cost effectiveness of achieving the NSPS was estimated for the two most prevalent control systems, extended absorption and catalytic reduction, on nitric acid plant sizes of 181, 454, and 907 Mg/D (200, 500, and 1,000 TPD). NSPS facilities constructed since 1971 have averaged 423 Mg/D (466 TPD).

For the extended absorption process, the cost effectiveness of achieving the NSPS ranges from a cost savings of $46 per megagram for a 970 Mg/D plant ($42 per ton for a 1,000 TPD plant) to a cost of $258 per megagram for a 181 Mg/D plant ($235 per ton for a 200 TPD plant). In fact, plants with capacities greater than 650 Mg/D (716 TPD) benefit financially by using extended absorption because the acid credits exceed the control costs. Compared with catalytic reduction, these costs are lower and EPA expects that virtually all new nitric acid plants will use the extended absorption control method.

EPA does not expect facilities to choose to meet the standard by using catalytic reduction. However, the cost effectiveness of catalytic reduction is estimated for comparison and was found to be $838 per Mg for a 907 Mg/D plant ($760/ton for a 1,000 TPD plant) and $1,158 per Mg for a 181 Mg/D plant (1050/ton for a 200 TPD plant).

Conclusions

Based on the above findings, the EPA concludes that the level of control required by the NSPS for nitric acid plants reflects best demonstrated control technology considering economic, energy, and non air environmental impacts. A review of the cost effectiveness of the NSPS found that the costs relative to the emissions controlled were reasonable for the extended absorption or the catalytic reduction control methods. Therefore, it is proposed that the level of the standard for weak nitric acid plants not be changed. The EPA is in the process of proposing alternatives to Method 7, which should alleviate reported difficulties with the method. This review has found two strong acid units which have started operation since 1971, but the reported NO_x emissions from these strong acid plants are below the level of the NSPS. Therefore, the EPA concludes

that emissions from strong acid plants should continue to be regulated by States on a case-by-case basis because the applicable control technology should be determined individually for each of these specialized strong acid production facilities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

Dated: March 30, 1984.

William D. Ruckelshaus,

Administrator.

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federal register

Thursday
April 5, 1984

Part IV

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Amendments to Asbestos Standard; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL 2515-8]

National Emission Standards for Hazardous Air Pollutants; Amendments to Asbestos Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Amendments to the national emission standard for asbestos were proposed in the **Federal Register** on July 13, 1983 (48 FR 32126). This action promulgates the amendments under Section 112 of the Clean Air Act as amended in 1977. The intended effect of the amendments is to reinstate work practice and equipment provisions of the standard that were held not to be emission standards by the U.S. Supreme Court in 1978. They also reword and rearrange the standard for clarity.

EFFECTIVE DATE: April 5, 1984. Under Section 307(b)(1) of the Clean Air Act, judicial review of these amendments is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A–83–02, containing information considered by EPA in development of the promulgated amendments, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Ajax, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

SUPPLEMENTARY INFORMATION:

The Amendments

The amendments reinstate portions of the asbestos NESHAP that were equipment or work practice requirements. The Supreme Court held in *Adamo Wrecking Company* v. *United States*, 434 U.S. 275 (1978) that work practice requirements of the NESHAP were not authorized by the 1970 Amendments to the Clean Air Act under which they were originally promulgated. The 1977 Amendments to the Act specifically authorize such requirements. On June 19, 1978 (43 FR 26372), EPA repromulgated many of the requirements under authority of the 1977 Amendments, and today's action repromulgates the following remaining requirements in a new Subpart M of 40 CFR Part 61.

1. Section 61.143 reinstates a prohibition of surfacing roadways with asbestos tailings or asbestos containing waste.

2. Sections 61.145(c) and 61.147(g) reinstate a partial exemption for demolition operations for structurally unsound buildings.

3. Section 61.147(e) reinstates the requirement that asbestos removed during demolition or renovation be kept wet until it is collected for disposal. It also requires that the asbestos not be dropped or thrown to the ground or a lower floor and that asbestos removed more than 50 feet above ground level be transported to the ground in dust-tight chutes or containers (unless it is removed in units or sections).

4. Section 61.147(f) reinstates alternative work practices that may be used for removal of asbestos prior to demolition when there are freezing temperature conditions at the point where the asbestos is being wetted.

5. Section 61.150 reinstates the prohibition of installation of certain molded or wet-applied insulating materials that contain commercial asbestos.

6. Sections 61.151(a) and 61.152(a) simply refer to the requirements of Section 61.156.

7. Sections 61.151 (b) and (c); 61.152(b) (1), (2), and (3); 61.153(a) (2), (3), and (4); 61.154; and 61.156 (c) and (d) reinstate alternative work practices or equipment that may be used in lieu of complying with a no visible emission limit.

8. Sections 61.153(b) and 61.156(b) reinstate the requirement for warning signs and fencing around asbestos waste disposal sites if (1) the owner or operator chooses to comply with a no visible emission limit rather than follow specified work practices, and (2) there is no natural barrier to deter access by the general public.

In addition to these requirements, today's action clarifies the asbestos NESHAP by rewording and rearranging it into a new Subpart M of 40 CFR Part 61.

Public Participation

The amendments were proposed in the **Federal Register** on July 13, 1983 (48 FR 32126). To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed amendments, a public hearing was held on August 9, 1983, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed amendments. The public comment period was from July 13, 1983, to September 9, 1983.

Fifteen comment letters were received and two interested parties testified at the public hearing concerning issues relative to the proposed amendments. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made to the proposed amendments.

Summary of Comments and Changes to the Proposed Amendments

Comments on the proposed amendments were received from industry, Federal agencies, State and local air pollution control agencies, and private citizens. The following summary of comments and responses serves as the basis for the revisions that have been made to the proposed amendments. Most of the letters contained multiple comments, some of which were outside the scope of this rulemaking. Those comments have been summarized in Item No. IV–B–1 of Docket No. A–83–02. They are being evaluated in conjunction with the comprehensive review of the asbestos NESHAP that is currently underway.

Most of the remaining comments pertain to the effect that rewording and rearranging the proposed amendments had on the original meaning and intent of the asbestos NESHAP. Some of them also pertain to the reasonableness of those requirements being repromulgated (see list in the section entitled "The Amendments"). The comments are discussed below and are organized according to the sections of the proposed amendments to which they pertain.

Section 61.141

One commenter noted that the proposed definition of "demolition" deletes the previous reference to "any related removing or stripping of friable asbestos materials" and recommended restoring the definition to the old wording. The commenter believes that the new wording may be interpreted to not include removing and stripping.

EPA intended that the proposed definition of "demolition" describe the activities that occur when a facility is demolished as distinguished from "renovation," as the terms are used in the regulation. The primary distinguishing activity is that load-supporting structural members are wrecked or taken out in a demolition operation but not in a renovation. Asbestos stripping or removal may occur in either but should not be used to define the primary activity of demolition or renovation. Section 61.145 clearly states that when demolition or renovation operations meet certain specified criteria regarding asbestos materials in the facility, they are subject to the regulation. Also, § 61.147 clearly specifies that stripping or removal of asbestos materials during demolition or renovation must be carried out in accordance with the standard. It is not necessary to repeat these provisions in the definition of "demolition."

One commenter noted that the proposed definition of renovation would apply only to removal of asbestos and not to stripping and recommended that the new definition be as comprehensive as the old one.

EPA did not intend to omit the word "stripping" from the definition of "renovation" at the time of proposal. However, EPA has reevaluated the definition to determine the wording that would be the most useful and informative for the regulation. As discussed in the response to the previous comment about the definition of "demolition," the terms should be defined to describe the type of activity that is being carried out at a facility, regardless of the presence or absence of asbestos material, and the definition of "renovation" has been revised accordingly.

One commenter recommended restoring the phrase "based on operating experience" to the definition of "planned renovation" to clarify the basis for predicting future renovations involving asbestos removal. The phrase was in the old definition. The commenter's recommendation has been incorporated into the amendments.

One commenter requested clarification of the definition of "emergency renovation operation." He asked whether it would include malfunctions, such as leaking valves, that require the removal of asbestos-containing insulation. Although these malfunctions are expected to occur, they are not planned or scheduled.

EPA considers the type of occurrence described by the commenter to be part of a planned renovation operation and not an emergency renovation operation. The commenter indicated that although the situations are not planned or scheduled, they are expected to occur. They would, therefore, fit the definition of "planned renovation operation" in § 61.141 that says, "Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time."

Section 61.145

One commenter noted that the word "or" between "operators" and "demolition" in § 61.145(e) should be changed to "of." He indicated that the proper wording would show what he believed to be the Agency's intent to limit applicability of the regulations to only "wreckers and renovators" and not to include facility owners and operators.

The commenter is correct that the word "or" should be changed to "of," and this correction has been made. However, the commenter's interpretation that the regulations apply to only "wreckers and renovators" and not to facility owners and operators is incorrect. The general provisions of 40 CFR Part 61 define "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source (40 CFR 61.02(1)). The stationary source in this case is the demolition or renovation operation. The demolition or renovation contractor would clearly be considered an owner or operator by "operating" the stationary source. The facility owner or operator, by purchasing the services of the demolition or renovation contractor, acquires ownership and control of the operation and would, therefore, be the "owner" for purposes of this standard. Therefore, the standard applies to both the contractor and the facility owner or operator.

Sections 61.146 and 61.147

One commenter believes that the wording in §§ 61.146 and 61.147 is vague with respect to identifying who is subject to the requirements, unlike the wording in §§ 61.142, 61.143, 61.144, 61.148, and 61.149, which is restrictive in describing the regulated party.

EPA believes that the applicability of §§ 61.146 and 61.147 as described in § 61.145 adequately identifies those subject to the requirements of the demolition and renovation standard.

One commenter questioned the intent of § 61.147(e)(1). The regulation requires that asbestos materials be adequately wetted to ensure that they remain wet during all remaining stages of demolition or renovation and related handling operations. The commenter asked whether this requirement should be interpreted to mean that the asbestos has to stay wet even after it is properly bagged and sealed.

The intent of the requirement to keep friable asbestos materials wet during all remaining stages of demolition was to ensure that the asbestos materials that have been removed or stripped but not yet disposed of are not allowed to dry out so that asbestos fibers become airborne. If they are properly sealed in leak-tight containers or bags while wet, they should not dry out before they can be transferred to an acceptable disposal site. In any case, after they are bagged, the waste disposal requirements in § 61.152 (and not § 61.147) would apply to the handling of the asbestos materials. To clarify the meaning of this portion of the standard, the wording of § 61.147(e)(1) has been revised to indicate that the asbestos materials must be kept wet until they are collected for disposal in accordance with § 61.152. They would be considered "collected" when they are properly bagged.

Section 61.150

One commenter asked for clarification of the intent of § 61.150, which prohibits the installation of certain asbestos-containing insulating materials. It was not clear to him whether the prohibition affects manufacturing operations that use parts containing asbestos such as grommets, gaskets, string, etc. in their products.

The preamble of the **Federal Register** notice that contained the original standard for insulating materials (39 FR 38064; October 25, 1974) discusses the intended applicability of the prohibition. It is clear fom that discussion that the prohibition was intended to apply to field installation of such insulating products as molded, asbestos-reinforced blocks, sheets, and semicircular sections for pipe insulation; and powdered asbestos cement products mixed into a slurry and used to insulate irregular shapes. These installations would have been associated with construction activities on buildings and other facilities. Therefore, the prohibition would not affect manufacturing operations that use asbestos-containing parts in their products. The regulation has been reworded to reflect EPA's intended effect of the prohibition.

Section 61.154

One commenter pointed out that the units in § 61.154(a)(1)(iii) do not properly relate square meters to square yards, resulting in a lowering of the weight of the filter by about 20 percent from the old requirement; i.e., 14 oz./sq. yd. is not equal to 14 oz./sq. meter. In addition, he

pointed out that the use of ⅛ inch is not in keeping with EPA's metric program. The errors noted by the commenter have been corrected in the final rule.

Section 61.155

One commenter requested clarification of the Agency's intent in § 61.155, which requires that existing sources covered by the asbestos NESHAP provide to the Agency within 90 days information regarding their asbestos emission control methods. The commenter asked if renotification and resubmission would be required if they had already complied with these same requirements in the old designation § 61.24.

EPA does not intend that existing sources of asbestos emissions resubmit notifications that were originally required by the standard promulgated in 1973. The wording of § 61.155 has been revised to accurately reflect EPA's intent.

Miscellaneous

One commenter expressed the opinion that the proposed amendments do not sufficiently correct the weakness of the NESHAP regulations and that they represent a "crude slap in the face to asbestos victims and will create health hazards of such proportions that new generations of asbestos victims will be guaranteed." He supported his opinion with the following arguments:

1. The no visible emission limit is not adequate for regulating airborne asbestos because it does not take into account the substantial asbestos disease risk when emissions that are not visible are present.

2. The proposed reinstatement of the exemption from certain wetting requirements during demolition operations in freezing temperatures should not be allowed. Weather conditions that do not allow wetting should also not allow asbestos to be removed. Wetting requirements are important because they can reduce dust levels by a power of 10.

3. Allowing exceptions when local entities pronounce buildings structurally unsound is tantamount to opening a way for widespread violation of health practices.

4. Under no circumstances should visible emissions be allowed.

5. All references to the economic impact should be dropped. EPA should concern itself with the economic impact on society, which ends up paying for disease victims produced by inadequate work regulations.

The first four of the commenter's statements concern issues that are currently being investigated in the review of the asbestos NESHAP: the no visible emission limit, the exemption from wetting requirements during freezing weather, and the exemption for structurally unsound buildings. EPA will evaluate the effect of these provisions and determine whether they need to be revised. That evaluation is beyond the scope of today's rulemaking, however. The amendments are intended to reinstate the provisions of the original NESHAP and not to include new provisions or delete any of the original ones. Therefore, no changes are being made to these portions of the proposed amendments.

In response to the commenter's suggestion to drop all references to the economic impact of the proposed amendments, the Agency believes that economic impact on the regulated entities is one of many factors that should be considered when setting standards under Section 112 of the Clean Air Act. Any adverse economic impact on society resulting from inadequate regulations for a hazardous air pollutant would be of concern to EPA as it would be a consequence of adverse public health effects. The current review of the NESHAP will include an evaluation of this aspect of regulating asbestos to determine if more stringent requirements are needed.

One commenter said that the requirement in § 61.146(c)(3) to explain the techniques of estimation of the amount of asbestos for certain demolition jobs seems to be a new requirement because he could not locate it in the old regulation. The requirement was in § 61.22(d)(1)(ii) of the old regulation.

One commenter said that States that are enforcing the asbestos NESHAP sometimes have a different interpretation of regulations than EPA and suggested that EPA provide clarification of intent for the States.

Under the Clean Air Act, States are free to require more stringent asbestos emission control measures than those in the asbestos NESHAP. EPA does, however, provide EPA enforcement determinations to States that have been delegated authority to enforce the NESHAP. These determinations include EPA's interpretations of portions of the regulation as questions arise concerning them, and they are very useful in ensuring consistency of enforcement among the States and EPA Regional Offices.

One commenter said that there is a statement in the proposal preamble that is not true. It says, "Demolition and renovation contractors typically transport the asbestos they remove from a facility to a waste disposal site on a daily basis." The commenter stated that the economics of doing this would be astronomical. For example, the cost of hauling a small number of bags to a disposal site 40 miles away would be very high, and the contractor would wait until a full load had accumulated.

The Agency has carefully considered this comment and concluded that no changes to the regulation are needed since it refers to a discussion in the preamble to the proposed amendments. There are no requirements in the NESHAP that asbestos waste be transported to a disposal site daily.

Three commenters said that the amendments improve the clarity and readability of the asbestos NESHAP and two indicated that the required work practices are currently being used by their companies. Two commenters noted typographical errors, which have been corrected in the final rule. Other minor changes were made in the final rule to ensure that the new wording accurately reflects the intent of the original regulation and to further clarify the requirements.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify readily and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review materials (§ 307(d)(7)(A)).

Miscellaneous

A review of this regulation has begun. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and reporting requirements.

Under E.O. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it does not meet any of the criteria specified in the Executive Order regarding the annual effect on the economy; increase in cost or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign enterprises.

Information collection requirements associated with this rule (40 CFR 61.07,

61.09, 61.10, 61.146, 61.148, and 61.155) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2000–0264.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on any small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: March 30, 1984.

William D. Ruckelshaus,

Administrator.

PART 61—[AMENDED]

40 CFR Part 61 is amended by redesignating Subpart B (§§ 61.20–61.25) as Subpart M and revising the new Subpart M to read as follows:

Subpart M—National Emission Standard for Asbestos

Sec.

61.140 Applicability.
61.141 Definitions.
61.142 Standard for asbestos mills.
61.143 Standard for roadways.
61.144 Standard for manufacturing.
61.145 Standard for demolition and renovation: Applicability.
61.146 Standard for demolition and renovation: Notification requirements.
61.147 Standard for demolition and renovation: Procedures for asbestos emission control.
61.148 Standard for spraying.
61.149 Standard for fabricating.
61.150 Standard for insulating materials.
61.151 Standard for waste disposal for asbestos mills.
61.152 Standard for waste disposal for manufacturing, demolition, renovation, spraying, and fabricating operations.
61.153 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.
61.154 Air-cleaning.
61.155 Reporting.
61.156 Active waste disposal sites.

Authority: Secs. 112 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7412, 7601(a)), and additional authority as noted below.

Subpart M—National Emission Standard for Asbestos

§ 61.140 Applicability.

The provisions of this subpart are applicable to those sources specified in §§ 61.142 through 61.153.

§ 61.141 Definitions.

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in Subpart A of this part.

Active waste disposal site means any disposal site other than an inactive site.

Adequately wetted means sufficiently mixed or coated with water or an aqueous solution to prevent dust emissions.

Asbestos means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

Asbestos-containing waste materials means any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes asbestos mill tailings, asbestos waste from control devices, friable asbestos waste material, and bags or containers that previously contained commercial asbestos. However, as applied to demolition and renovation operations, this term includes only friable asbestos waste and asbestos waste from control devices.

Asbestos material means asbestos or any material containing asbestos.

Asbestos mill means any facility engaged in converting, or in any intermediate step in converting, asbestos ore into commercial asbestos. Outside storage of asbestos material is not considered a part of the asbestos mill.

Asbestos tailings means any solid waste that contains asbestos and is a product of asbestos mining or milling operations.

Asbestos waste from control devices means any waste material that contains asbestos and is collected in a pollution control device.

Commercial asbestos means any asbestos that is extracted from asbestos ore.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.

Emergency renovation operations means a renovation operation that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failures of equipment.

Fabricating means any processing of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites for the construction or restoration of facilities.

Facility means any institutional, commercial, or industrial structure, installation, or building (excluding apartment buildings having no more than four dwelling units).

Facility component means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a facility; or any structural member of a facility.

Friable asbestos material means any material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry.

Inactive waste disposal site means any disposal site or portion of it where additional asbestos-containing waste material will not be deposited and where the surface is not disturbed by vehicular traffic.

Manufacturing means the combining of commercial asbestos—or, in the case of woven friction products, the combining of textiles containing commercial asbestos—with any other material(s), including commercial asbestos, and the processing of this combination into a product.

Outside air means the air outside buildings and structures.

Particulate asbestos material means finely divided particles of asbestos material.

Planned renovation operations means a renovation operation, or a number of such operations, in which the amount of friable asbestos material that will be removed or stripped within a given period of time can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

Remove means to take out friable asbestos materials from any facility.

Renovation means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

Roadways means surfaces on which motor vehicles travel. This term includes highways, roads, streets, parking areas, and driveways.

Strip means to take off friable asbestos materials from any part of facility.

Structural member means any load-supporting member of a facility, such as beams and loan supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

Visible emissions means any emissions containing particulate asbestos material that are visually detectable without the aid of instruments. This does not include condensed uncombined water vapor.

§ 61.142 Standard for asbestos mills.

Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

§ 61.143 Standard for roadways.

No owner or operator of a roadway may deposit asbestos tailings or asbestos-containing waste material on that roadway, unless it is a temporary roadway on an area of asbestos ore deposits.

§ 61.144 Standard for manufacturing.

(a) *Applicability:* This section applies to the following manufacturing operations using commercial asbestos.

(1) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.

(2) The manufacture of cement products.

(3) The manufacture of fireproofing and insulating materials.

(4) The manufacture of friction products.

(5) The manufacture of paper, millboard, and felt.

(6) The manufacture of floor tile.

(7) The manufacture of paints, coatings, caulks, adhesives, and sealants.

(8) The manufacture of plastics and rubber materials.

(9) The manufacture of chlorine.

(10) The manufacture of shotgun shell wads.

(11) The manufacture of asphalt concrete.

(b) *Standard:* Each owner or operator of any of the manufacturing operations to which this section applies shall either:

(1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted; or

(2) Use the methods specified by § 61.154 to clean emissions from these operations containing particulate asbestos material before they escape to, or are vented to, the outside air.

§ 61.145 Standard for demolition and renovation: Applicability.

The requirements of §§ 61.146 and 61.147 apply to each owner or operator of a demolition or renovation operation as follows:

(a) If the amount of friable asbestos materials in a facility being demolished is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, all the requirements of §§ 61.146 and 61.147 apply, except as provided in paragraph (c) of this section.

(b) If the amount of friable asbestos materials in a facility being demolished is less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, only the notification requirements of paragraphs (a), (b), and (c) (1), (2), (3), (4), and (5) of § 61.146 apply.

(c) If the facility is being demolished under an order of a State or local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements in § 61.146 and in paragraphs (d), (e), (f), and (g) of § 61.147 apply.

(d) If at least 80 linear meters (260 linear feet) of friable asbestos materials on pipes or at least 15 square meters (160 square feet) of friable asbestos materials on other facility components are stripped or removed at a facility being renovated, all the requirements of §§ 61.146 and 61.147 apply.

(1) To determine whether paragraph (d) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the additive amount of friable asbestos materials to be removed or stripped over the maximum period of time a prediction can be made, not to exceed 1 year.

(2) To determine whether paragraph (d) of this section applies to emergency renovation operations, estimate the amount of friable asbestos materials to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(e) Owners or operators of demolition and renovation operations are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

§ 61.146 Standard for demolition and renovation: Notification requirements.

Each owner or operator to which this section applies shall:

(a) Provide the Administrator with written notice of intention to demolish or renovate.

(b) Postmark or deliver the notice as follows:

(1) At least 10 days before demolition begins if the operation is described in § 61.145(a);

(2) At least 20 days before demolition begins if the operation is described in § 61.145(b);

(3) As early as possible before demolition begins if the operation is described in § 61.145(c);

(4) As early as possible before renovation begins.

(c) Include the following information in the notice:

(1) Name and address of owner or operator.

(2) Description of the facility being demolished or renovated, including the size, age, and prior use of the facility.

(3) Estimate of the approximate amount of friable asbestos material present in the facility. For facilities described in § 61.145(b), explain techniques of estimation.

(4) Location of the facility being demolished or renovated.

(5) Scheduled starting and completion dates of demolition or renovation.

(6) Nature of planned demolition or renovation and method(s) to be used.

(7) Procedures to be used to comply with the requirements of this Subpart.

(8) Name and location of the waste disposal site where the friable asbestos waste material will be deposited.

(9) For facilities described in § 61.145(c), the name, title, and authority of the State or local governmental representative who has ordered the demolition.

(Approved by the Office of Management and Budget under control number 2060–0264)

§ 61.147 Standard for demolition and renovation: Procedures for asbestos emission control.

Each owner or operator to whom this section applies shall comply with the following procedures to prevent emissions of particulate asbestos material to the outside air:

(a) Remove friable asbestos materials from a facility being demolished or renovated before any wrecking or dismantling that would break up the materials or preclude access to the materials for subsequent removal. However, friable asbestos materials need not be removed before demolition if:

(1) They are on a facility component that is encased in concrete or other similar material; and

(2) These materials are adequately wetted whenever exposed during demolition.

(b) When a facility component covered or coated with friable asbestos materials is being taken out of the facility as units or in sections:

(1) Adequately wet any friable asbestos materials exposed during cutting or disjointing operations; and

(2) Carefully lower the units or sections to ground level, not dropping them or throwing them.

(c) Adequately wet friable asbestos materials when they are being stripped from facility components before the members are removed from the facility.

In renovation operations, wetting that would unavoidably damage equipment is not required if the owner or operator:

(1) Asks the Administrator to determine whether wetting to comply with this paragraph would unavoidably damage equipment, and, before beginning to strip, supplies the Administrator with adequate information to make this determination; and

(2) When the Administrator does determine that equipment damage would be unavoidable, uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the friable asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.154.

(d) After a facility component has been taken out of the facility as units or in sections, either:

(1) Adequately wet friable asbestos materials during stripping; or

(2) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.154.

(e) For friable asbestos materials that have been removed or stripped:

(1) Adequately wet the materials to ensure that they remain wet until they are collected for disposal in accordance with § 61.152; and

(2) Carefully lower the materials to the ground or a lower floor, not dropping or throwing them; and

(3) Transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped more than 50 feet above ground level and were not removed as units or in sections.

(f) When the temperature at the point of wetting is below 0°C (32°F):

(1) Comply with the requirements of paragraphs (d) and (e) of this section. The owner or operator need not comply with the other wetting requirements in this section; and

(2) Remove facility components coated or covered with friable asbestos materials as units or in sections to the maximum extent possible.

(g) For facilities described in § 61.145(c), adequately wet the portion of the facility that contains friable asbestos materials during the wrecking operation.

§ 61.148 Standard for spraying.

The owner or operator of an operation in which asbestos-containing materials are spray applied shall comply with the following requirements:

(a) Use materials that contain 1 percent asbestos or less on a dry weight basis for spray-on application on buildings, structures, pipes, and conduits, except as provided in paragraph (c) of this section.

(b) For spray-on application of materials that contain more than 1 percent asbestos on a dry weight basis on equipment and machinery, except as provided in paragraph (c) of this section:

(1) Notify the Administrator at least 20 days before beginning the spraying operation. Include the following information in the notice:

(i) Name and address of owner or operator.

(ii) Location of spraying operation.

(iii) Procedures to be followed to meet the requirements of this paragraph.

(2) Discharge no visible emissions to the outside air from the spray-on application of the asbestos-containing material or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(c) The requirements of paragraphs (a) and (b) of this section do not apply to the spray-on application of materials where the asbestos fibers in the materials are encapsulated with a bituminous or resinous binder during spraying and the materials are not friable after drying.

(d) Owners and operators of sources subject to this section are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

(Approved by the Office of Management and Budget under control number 2060–0264)

§ 61.149 Standard for fabricating.

(a) *Applicability.* This section applies to the following fabricating operations using commercial asbestos:

(1) The fabrication of cement building products.

(2) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

(3) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture, bulkheads, partitions, and ceilings for marine construction; and flow control devices for the molten metal industry.

(b) *Standard.* Each owner or operator of any of the fabricating operations to which this section applies shall either:

(1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted; or

(2) Use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

§ 61.150 Standard for insulating materials.

After the effective date of this regulation, no owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this paragraph do not apply to spray-applied insulating materials regulated under § 61.148.

§ 61.151 Standard for waste disposal for asbestos mills.

Each owner or operator of any source covered under the provisions of § 61.142 shall:

(a) Deposit all asbestos-containing waste material at waste disposal sites operated in accordance with the provisions of § 61.156; and

(b) Discharge no visible emissions to the outside air from the transfer of asbestos waste from control devices to the tailings conveyor, or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with § 61.152(b) or paragraph (c) of this section; and

(c) Discharge no visible emissions to the outside air during the collection, processing, packaging, transporting, or deposition of any asbestos-containing waste material, or use one of the disposal methods specified in paragraphs (c) (1) or (2) of this section, as follows:

(1) Use a wetting agent as follows:

(i) Adequately mix all asbestos-containing waste material with a wetting agent recommended by the manufacturer of the agent to effectively wet dust and tailings, before depositing the material at a waste disposal site. Use the agent as recommended for the particular dust by the manufacturer of the agent.

(ii) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material

before they escape to, or are vented to, the outside air.

(iii) Wetting may be suspended when the ambient temperature at the waste disposal site is less than −9.5°C (15°F). Determine the ambient air temperature by an appropriate measurement method with an accuracy of ±1°C(±2°F), and record it at least hourly while the wetting operation is suspended. Keep the records for at least 2 years in a form suitable for inspection.

(2) Use an alternative disposal method that has received prior approval by the Administrator.

§ 61.152 Standard for waste disposal for manufacturing demolition, renovation, spraying, and fabricating operations.

Each owner or operator of any source covered under the provisions of §§ 61.144–61.149 shall:

(a) Deposit all asbestos-containing waste material at waste disposal sites operated in accordance with the provisions of § 61.156; and

(b) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material generated by the source, or use one of the disposal methods specified in paragraphs (b)(1), (2), or (3) of this section, as follows:

(1) Treat asbestos-containing waste material with water:

(i) Mix asbestos waste from control devices with water to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, and wetting operations, or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; and

(iv) Label the containers specified in paragraph (b)(1)(iii) as follows:

CAUTION
Contains Asbestos
Avoid Opening or
Breaking Container
Breathing Asbestos is hazardous
to Your Health

Alternatively, use warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(g)(2)(ii).

(2) Process asbestos-containing waste material into nonfriable forms:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes; and

(ii) Discharge no visible emissions to the outside air from collection and processing operations, or use the methods specified by § 61.154 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Use an alternative disposal method that has received prior approval by the Administrator.

§ 61.153 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

Each owner or operator of any inactive waste disposal site that was operated by sources covered under §§ 61.142, 61.144, or 61.149 and received deposits of asbestos-containing waste material generated by the sources, shall

(a) Comply with one of the following:

(1) Either discharge no visible emissions to the outside air from an inactive waste disposal site subject to this paragraph; or

(2) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material; or

(3) Cover the asbestos-containing waste material with at least 60 centimeters (2 feet) of compacted nonasbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste; or

(4) For inactive waste disposal sites for asbestos tailings, apply a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Use the agent as recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent. Obtain prior approval of the Administrator to use other equally effective dust suppression agents. For purposes of this paragraph, waste crankcase oil is not considered a dust suppression agent.

(b) Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with paragraph (a)(2) or (a)(3) of this section.

(1) Display warning signs at all entrances and at intervals of 100 m (330 feet) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs must:

(i) Be posted in such a manner and location that a person can easily read the legend; and

(ii) Conform to the requirements for 51 cm×36 cm (20"×14") upright format signs specified in 29 CFR 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Site	2.5 cm (1 inch) Sans Serif, Gothic or Block
Do Not Create Dust	1.9 cm (¾ inch) Sans Serif, Gothic or Block
Breathing Asbestos is Hazardous to Your Health.	14 Point Gothic.

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(2) Fence the perimeter of the site in a manner adequate to deter access by the general public.

(3) Upon request and supply of appropriate information, the Administrator will determine whether a fence or a natural barrier adequately deters access by the general public.

(c) The owner or operator may use an alternative control method that has received prior approval of the Administrator rather than comply with the requirements of paragraph (a) or (b) of this section.

§ 61.154 Air-cleaning.

(a) The owner or operator who elects to use air-cleaning, as permitted by §§ 61.142, 61.144, 61.147(c)(2), 61.147(d)(2), 61.148(b)(2), 61.149(b), 61.152(b)(1)(ii), and 61.152(b)(2) shall:

(1) Use fabric filter collection devices, except as noted in paragraph (b) of this section, doing all of the following:

(i) Operating the fabric filter collection devices at a pressure drop of no more than 4 inches water gage, as measured across the filter fabric; and

(ii) Ensuring that the airflow permeability, as determined by ASTM Method D737–75, does not exceed 9 m^3/min/m^2 (30 ft^3/min/ft^2) for woven fabrics or 11 m^3/min/m^2(35 ft^3/min/ft^2) for felted fabrics, except that 12 m^3/min/m^2 (40 ft^3min/ft^2) for woven and 14 m^3/min/m^2 (45 ft^3min/ft^2) for felted fabrics is allowed for filtering air from asbestos ore dryers; and

(iii) Ensuring that felted fabric weighs at least 475 grams per square meter (14 ounces per square yard) and is at least 1.6 millimeters (one-sixteenth inch) thick throughout; and

(iv) Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.

(2) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this section. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the particulate asbestos material.

(b) There are the following exceptions to paragraph (a)(1):

(1) If the use of fabric creates a fire or explosion hazard, the Administrator may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(2) The Administrator may authorize the use of filtering equipment other than that described in paragraphs (a)(1) and (b)(1) of this section if the owner or operator demonstrates to the Administrator's satisfaction that it is equivalent to the described equipment in filtering particulate asbestos material.

§ 61.155 Reporting.

(a) Within 90 days after the effective date of this subpart, each owner or operator of any existing source to which this subpart applies shall provide the following information to the Administrator, except that any owner or operator who provided this information prior to April 5, 1984 in order to comply with § 61.24 (which this section replaces) is not required to resubmit it.

(1) A description of the emission control equipment used for each process; and

(2) If a fabric filter device is used to control emissions, the pressure drop across the fabric filter in inches water gage; and

(i) If the fabric device uses a woven fabric, the airflow permeability in $m^3/min/m^2$ and; if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(ii) If the fabric filter device uses a felted fabric, the density in g/m^3, the minimum thickness in inches, and the airflow permeability in $m^3/min/m^2$.

(3) For sources subject to §§ 61.151 and 61.152:

(i) A brief description of each process that generates asbestos-containing waste material; and

(ii) The average weight of asbestos-containing waste material disposed of, measured in kg/day; and

(iii) The emission control methods used in all stages of water disposal; and

(iv) The type of disposal site or incineration site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

(4) For sources subject to § 61.153:

(i) A brief description of the site; and

(ii) The method or methods used to comply with the standard, or alternative procedures to be used.

(b) The information required by paragraph (a) of this section must accompany the information required by § 61.10. The information described in this section must be reported using the format of Appendix A of this part.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414)).

(Approved by this Office of Management and Budget under control number 2000-0264)

§ 61.156 Active waste disposal sites.

To be an acceptable site for disposal of asbestos-containing waste material under §§ 61.151 and 61.152, an active waste disposal site must meet the requirements of this section.

(a) Either there must be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of paragraph (c) or (d) of this section must be met.

(b) Unless a natural barrier adequately deters access by the general public, either warning signs and fencing must be installed and maintained as follows, or the requirements of paragraph (c)(1) of this section must be met.

(1) Warning signs must be displayed at all entrances and at intervals of 100 m (330 ft) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs must:

(i) Be posted in such a manner and location that a person can easily read the legend; and

(ii) Conform to the requirements of 51 cm × 36 cm (20" × 14") upright format signs specified in 29 CFR 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Site.	2.5 cm (1 inch) Sans Serif, Gothic or Block.
Do Not Create Dust	1.9 cm (¾ inch) Sans Serif, Gothic or Block.
Breathing Asbestos is Hazardous to Your Health.	14 Point Gothic.

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(2) The perimeter of the disposal site must be fenced in a manner adequate to deter access by the general public.

(3) Upon request and supply of appropriate information, the Administrator will determine whether a fence or a natural barrier adequately deters access by the general public.

(c) Rather than meet the no visible emission requirement of paragraph (a) of this section, an active waste disposal site would be an acceptable site if at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material which was deposited at the site during the operating day or previous 24-hour period is covered with either.

(1) At least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(2) A resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. This agent must be used as recommended for the particular dust by the manufacturer of the dust suppression agent. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of this paragraph, waste crankcase oil is not considered a dust suppression agent.

(d) Rather than meet the no visible emission requirement of paragraph (a) of this section, an active waste disposal site would be an acceptable site if an alternative control method for emissions that has received prior approval by the Administrator is used.

(Secs. 112 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7412, 7601(a))

[FR Doc. 84-8960 Filed 4-4-84; 8:45 am]
BILLING CODE 6560-50-M

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federal register

Thursday
April 5, 1984

Part V

Department of Agriculture

7 CFR Part 510

Availability of Information in Accordance With the Freedom of Information Act; Final Rule and Notices of Guidance to the Public

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 510

Availability of Information; Freedom of Information Act

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document promulgates regulations of the Agricultural Research Service (ARS), regarding the availability of information to the public in accordance with the Freedom of Information Act.

EFFECTIVE DATE: April 5, 1984.

FOR FURTHER INFORMATION CONTACT: Rosemary T. Wolfe, National FOIA Coordinator, Agricultural Research Service, Room 324, Beltsville Agricultural Research Center, Beltsville, Maryland 20705; (301)–344–4032.

SUPPLEMENTARY INFORMATION: Prior to 1978, this Part contained the regulations of ARS relating to the availability of information to the public. Due to a reorganization, ARS became part of the Science and Education Administration (SEA). Accordingly, this Part was amended to reflect that change in name. Due to a reorganization that occurred in September, 1981, SEA was abolished and ARS again created. Therefore, this Part is revised to again promulgate regulations of ARS relating to the availability of information to the public.

List of Subjects in 7 CFR Part 510

Freedom of Information.

Accordingly, 7 CFR Part 510 is revised to read as follows:

PART 510—PUBLIC INFORMATION

Sec.

510.1 General statement.
510.2 Public inspection and copying.
510.3 Indexes.
510.4 Requests for records.
510.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

§ 510.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1 through 1.16 of this title, including Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this Part, govern the availability of records of ARS to the public.

§ 510.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by ARS at the following office: ARS Information Staff, Rm. 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705. Office hours: 8:00 a.m. to 4:30 p.m.

§ 510.3 Indexes.

In compliance with 5 U.S.C. (a)(2), contact the location cited in § 510.2 for any available ARS index.

§ 510.4 Requests for records.

Requests for records of ARS under 5 U.S.C. 552(a)(3) shall be made in accordance with section 1.3(a) of this title and addressed to the national FOIA coordinator, Room 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705. The national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.4(c) of this Title.

§ 510.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.3(e) of this title and addressed to the Administrator, Agricultural Research Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., this 20th day of March, 1984.

T. B. Kinney, Jr.,

Administrator, Agricultural Research Service.

[FR Doc. 84-8130 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-03-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Cooperative State Research Service; Availability of Information

Notice is hereby given for the guidance of the public as to the availability of information for the Cooperative State Research Service (CSRS), implementing the Freedom of Information Act. Since the Agricultural Research Service (ARS) provides this support service to the CSRS, the ARS national FOIA coordinator is delegated authority to make initial determinations on requests for records of CSRS.

Sec. 1. *General.* This notice is issued in accordance with the regulations of the Secretary of Agriculture in 7 CFR 1.1 through 1.16, including Appendix A thereto, implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations as implemented by this notice govern the availability of records of CSRS to the public.

Sec. 2. *Public Inspection and Copying.* 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. CSRS does not maintain material within the scope of this requirement.

Sec. 3. *Requests for Records.* Requests for records of CSRS under 5 U.S.C. 552(a)(2) shall be made in accordance with 7 CFR 1.3(a) and addressed to the ARS national FOIA coordinator, Room 324, Building 005, Beltsville Agricultural Research Center-West, Beltsville, Maryland 20705; (301) 344–4032. The ARS national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Sec. 4. *Appeals.* Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Cooperative State Research Service, U.S. Department of Agriculture, Washington, D.C. 20250.

This Notice supersedes Part II of the Notice of Organization, Functions, and Availability of Information of the Cooperative State Research Service published July 23, 1975, 40 FR 30855.

Done at Washington, D.C., this 26th day of March, 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84-9130 Filed 4-4-84; 8:45 am]
BILLING CODE 3410-22-M

Extension Service; Availability of Information

Notice is hereby given for the guidance of the public as to the availability of information for the Extension Service (ES), implementing the Freedom of Information Act. Since the Agricultural Research Service (ARS), provides this support service to the ES, material of Extension Service that is available for public inspection may be requested from ARS. In addition, the ARS national FOIA coordinator is delegated authority to make initial determinations on requests for records of ES.

Sec. 1. *General.* This notice is issued in accordance with the regulations of the Secretary of Agriculture in 7 CFR 1.1 through 1.16, including Appendix A thereto, implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations as implemented by this notice govern the availability of records of ES to the public.

Sec. 2. *Public Inspection and Copying.* 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by Extension Service at the following office: ARS Information Staff, Room 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705; (301) 344–4032. Office hours: 8:00 a.m. to 4:30 p.m.

Sec. 3. *Indexes.* In compliance with 5 U.S.C. 552(a)(2), contact the location cited in Sec. 2 for any available Extension Service index.

Sec. 4. *Requests for Records.* Requests for records of ES under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to the ARS national FOIA coordinator, Rm. 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705. The ARS national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Sec. 5. *Appeals.* Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Extension Service, U.S. Department of Agriculture, Washington, D.C. 20250.

This Notice supersedes paragraph C of the Notice of Organization, Functions, and Availability of Information of the Extension Service published July 4, 1967, 32 FR 9725.

Done at Washington, D.C., this 23d day of March, 1984.

Mary Nell Greenwood,

Administrator, Extension Service.

[FR Doc. 84-9140 Filed 4-4-84; 8:45 am]
BILLING CODE 3410-22-M

National Agricultural Library; Availability of Information

Notice is hereby given for the guidance of the public as to the availability of information for the National Agricultural Library (NAL), implementing the Freedom of Information Act. Since the Agricultural Research Service (ARS), provides this support service to the NAL, material of the NAL that is available for public inspection may be requested from ARS. In addition, the ARS national FOIA coordinator is delegated authority to make initial determinations on requests for records of NAL.

Sec. 1. *General.* This notice is issued in accordance with the regulations of the Secretary of Agriculture in 7 CFR 1.1 through 1.16, including Appendix A thereto, implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations as implemented by this notice govern the availability of records of NAL to the public.

Sec. 2. *Public Inspection and Copying.* 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by NAL at the following office: ARS Information Staff, Room 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705; (301) 344–4032. Office hours: 8:00 a.m. to 4:30 p.m.

Sec. 3. *Indexes.* In compliance with 5 U.S.C. 552(a)(2), contact the location cited in Sec. 2 for any available NAL index.

Sec. 4. *Requests for Records.* Requests for records of NAL under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to the ARS national FOIA coordinator, Rm. 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705. The ARS National FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Sec. 5. *Appeals.* Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with 7 CFR 1.3(e) and addressed to the Director, National Agricultural Library, U.S. Department of Agriculture, Beltsville, MD 20705.

This Notice supersedes paragraph D of the Notice of Organization, Functions,

and Availability of Information of the National Agricultural Library published July 4, 1967, 32 FR 9721.

Done at Beltsville, Maryland, this 23 day of March, 1984.

Joseph H. Howard,

Director, National Agricultural Library.

[FR Doc. 84-0141 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-03-M

Office of Grants and Programs Systems; Availability of Information

Notice is hereby given for the guidance of the public as to the availability of information for the Office of Grants and Programs Systems (OGPS), implementing the Freedom of Information Act. Since the Agricultural Research Service (ARS), provides this support service to the OGPS, the ARS national FOIA coordinator is delegated authority to make initial determinations on requests for records of OGPS.

Sec. 1. *General.* This notice is issued in accordance with the regulations of the Secretary of Agriculture in 7 CFR 1.1 through 1.16, including Appendix A thereto, implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations as implemented by this notice govern the availability of records of OGPS to the public.

Sec. 2. *Public Inspection and Copying.* 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying, and that a current index of these materials be published quarterly or otherwise made available. OGPS does not maintain any material within the scope of this requirement.

Sec. 3. *Requests for Records.* Requests for records of OGPS under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to the ARS national FOIA coordinator, Rm. 324, Bldg. 005, BARC-West, Beltsville, Maryland 20705; (301) 344-4032). The ARS national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Sec. 4. *Appeals.* Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Office of Grants and Program Systems, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., this 26th day of March, 1984.

E. L. Kendrick,

Administrator, Office of Grants and Program Systems.

[FR Doc. 84-0142 Filed 4-4-84; 8:45 am]

BILLING CODE 3410-BT-M

Reader Aids

Federal Register

Vol. 49, No. 67

Thursday, April 5, 1984

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Correction

The public law listed as Pub. L. 98–241 on page iv in the Reader Aids Section in the issue of Wednesday, March 28, 1984, was printed incorrectly. It should read as follows:

S. 684/Pub. L. 98–242

Passed over veto—Mar. 22, 1984 (Vetoed—message dated Feb. 21, 1984, Vol. 20, No. 8 WCPD) Water Resources Research Act of 1984 (Mar. 22, 1984; 98 Stat. 97) price $1.75

Pub. L. 98–241 was printed correctly in the issue of March 27, 1984.

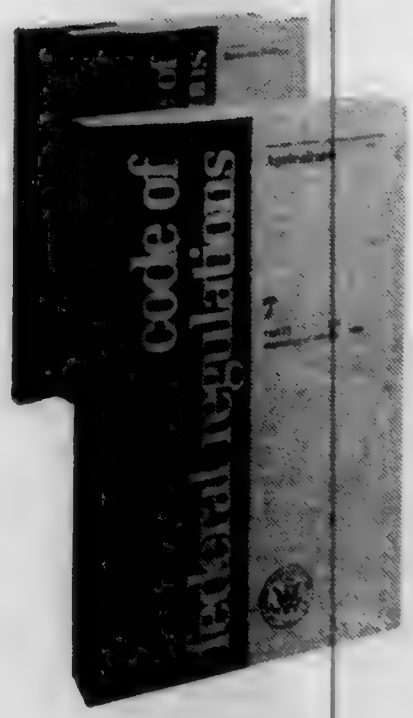

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federal register

Friday
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Old-Age, Survivors and Disability Insurance
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 440

Texas Citrus Tree Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith issues a new Part 440 in Title 7 of the Code of Federal Regulations to be known as the Texas Citrus Tree Insurance Regulations (7 CFR Part 440). The intended effect of this rule is to issue regulations for the purpose of prescribing procedures for insuring citrus trees, effective with the 1984 crop year, under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulations No. 1512–1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that: (1) This action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

Background

Under the authority of Section 508 of the Federal Crop Insurance Act, as amended (7 U.S.C. 1508), the Federal Crop Insurance Corporation intends to offer citrus tree insurance in selected counties in South Texas on an experimental basis in response to growers requests for such insurance. The causes of loss insured against are: freeze, excess moisture, hail, fire, hurricane or tornado which damage or destroy citrus trees. The insurance will be applicable on insurable citrus trees of the following types: Type I, Early and Midseason Oranges; Type II, Late Oranges, including Temples; Type III, Grapefruit Trees, except Star Ruby Trees; and, Type IV, Star Ruby Grapefruit Trees.

On Wednesday, April 13, 1983, a notice of proposed rulemaking was published in the **Federal Register** at 48 FR 15923. The public was given an opportunity to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, with the exception of minor and non-substantive changes in language, and the addition of a new subsection in these regulations in compliance with the regulations of the Office of Management and Budget (OMB), to contain the control numbers assigned by OMB to information collection requirements of these regulations, the proposed rule as published is herewith issued as a final rule to be effective with the 1984 crop year.

List of Subjects in 7 CFR Part 440

Crop insurance, Texas citrus trees.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby issues a new Part 440 in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 440—Texas Citrus Tree Insurance Regulations, effective for the 1984 and succeeding crop years, to read as follows:

PART 440—TEXAS CITRUS TREE INSURANCE REGULATIONS

Subpart—Regulations for the 1984 and Succeeding Crop Years

Sec.

440.1 Availability of Texas citrus tree insurance.
440.2 Premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed.
440.3 OMB control numbers.
440.4 Creditors.
440.5 Good faith reliance on misrepresentation.
440.6 The contract.
440.7 The application and policy.
Appendix A, Counties designated for Texas Citrus Tree Insurance.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1984 and Succeeding Crop Years

§ 440.1 Availability of Texas citrus tree insurance.

Insurance shall be offered under the provisions of this subpart on citrus trees in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which citrus tree insurance will be offered.

§ 440.2 Premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed for citrus trees which will be included in the actuarial table on file in the applicable service offices and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level, amount of insurance, and price at which indemnities will be computed from among those contained in the actuarial table for the crop year.

§ 440.3 OMB control numbers.

The information collection requirements of these regulations (7 CFR Part 440) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 440.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer, or similar interest shall not entitle the holder of the interest to any benefits under the contract except as provided by the policy.

§ 440.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Texas Citrus Tree Insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 440.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the citrus trees as provided in the policy. The contract shall consist of the application, the policy, the appendix, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service office.

§ 440.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the citrus trees as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the applicable service offices, and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1984 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a citrus tree insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37; 400.38), first published at 48 FR 1023, January 10, 1983, and may be amended from time to time for subsequent crop years. The provisions of the Texas Citrus Tree Insurance Policy for the 1984 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Texas Citrus Tree—Insurance Policy

(This is a continuous contract. Refer to Section 15)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable damage to citrus trees resulting from the following causes occurring within the insurance period: (1) Freeze; (2) excess moisture; (3) hail; (4) fire; (5) hurricane; or (6) tornado unless those causes are excepted, excluded, or limited by the actuarial table or section 9g.

b. We do not insure against any cause of loss or damage, to the citrus trees due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree prunings have not been removed from the grove;

(2) The neglect, mismanagement or wrong doing of you, any member of your household, your tenants or employees;

(3) The failure to follow recognized good grove management practices; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured shall be any of the following insurable citrus tree types (hereafter called trees) you elect:

Type I, Early and midseason orange trees;

Type II, Late orange (including Temples) trees;

Type III, Grapefruit trees except Star Ruby trees;

Type IV, Star Ruby grapefruit trees;

which are set out for the purpose of harvesting citrus as fresh fruit and/or juice, which are located on insured acreage, and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be trees located on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we will elect.

c. The insured share shall be your share as landlord or owner-operator in the insured citrus trees at the time insurance attaches.

d. We do not insure any acreage:

(1) For the crop year the application for insurance is filed unless the acreage has been inspected and considered acceptable by us;

(2) Where the grove management practices carried out are not in accordance with those

practices for which premium rates have been established;

(3) Maintained or set out for experimental purposes;

(4) In any established grove which does not have the potential to produce at least 70% of the area average yield for the type and age, unless we agree in writing to insure that acreage: or

(5) Which is not irrigated.

e. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

f. We may:

(1) Exclude from insurance; or

(2) Limit the amount of insurance on;

any acreage which was not insured by us the previous crop year.

3. Report of acreage, share, number, type, age of trees, and practice.

You shall report on our form:

a. All the acreage of trees in the county in which you have a share;

b. The practice;

c. Your share at the time insurance attaches; and

d. The type, number of trees, and

(1) Date of original set out; or

(2) Date of replacement and/or dehorning, if more than 10 percent of the trees on any unit have been replaced or dehorned in the previous five years; and

e. Within 72 hours of the completion of set out; the acreage, type, number of trees, and the date set out is completed for any insurable acreage of trees set out after June 1 of the crop year, if you elect to insure such acreage during that crop year.

You will designate separately any acreage that is not insurable. You will report if you do not have a share in any trees located in the county: This report shall be submitted annually on or before July 1. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by July 1 we may determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. You may change the coverage level and amount of insurance on or before the closing date for submitting applications for the crop year as established by the actuarial table.

c. The amount of insurance shall be reduced for any acreage which has not reached the fourth growing season after being set out or fifth year following dehorning. The amount of insurance will be the product obtained by multiplying the amount of insurance selected from the actuarial table by:

(1) 25 percent the year of set out or the year following dehorning;

(2) 40 percent the first growing season after being set out or the second year following dehorning;

(3) 60 percent the second growing season after being set out or the third year following dehorning;

(4) 75 percent the third growing season after being set out or the fourth year following dehorning.

d. The amount of insurance shall be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time insurance attaches.

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches on insured acreage on June 1 for each crop year except that for the first crop year and notwithstanding section 2d(1):

(1) If the application is accepted by us after June 1, the insurance against hurricane and freeze shall attach the tenth day after the application is signed and submitted by you; and

(2) If any insurable acreage is set out after June 1, insurance shall attach on the date set out is completed for the unit if the acreage is reported within 72 hours after the date of completion; except insurance against hurricane and freeze will attach the tenth day after you report such acreage.

b. The insurance period ends at the earlier of:

(1) May 31 following the beginning of the crop year; or

(2) Total destruction of the insured trees.

8. Notice of damage or loss.

a. In case of damage or probable loss, you must give us written notice of:

(1) The date(s) of damage; and

(2) The cause(s) of damage.

b. If you are going to claim an indemnity on any unit, we shall have the right to inspect all insured acreage and damaged trees before pruning, dehorning or removal.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the trees on the unit; or

(2) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Furnish records concerning all trees on the unit;

(2) Show that any damage to the trees has been directly caused by one or more of the insured causes during the insurance period; and

(3) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the amount(s) of insurance;

(2) Multiplying this result by the applicable percent of loss determined by subtracting from the actual percent of damage determined in accordance with section 9e, the following applicable amount:

(a) 25 percent (for Coverage Level 3) and dividing the result by 75 percent;

(b) 35 percent (for Coverage Level 2) and dividing the result by 65 percent; or

(c) 50 percent (for Coverage Level 1) and dividing the result by 50 percent; and

(3) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. The total amount of indemnity shall include both tree damage and/or trees destroyed due to an insurable cause.

(1) The actual percent of damage to count shall be:

(a) The percent of damage determined by dividing the number of scaffold limbs (scaffold limbs are limbs directly attached to the trunk) damaged in an area from the trunk to a length equal to one-fourth (¼) the height of the tree, by the total number of scaffold limbs before damage occurred. Any trees with over 80 percent actual damage shall be counted as 100 percent damaged; or

(b) The percent of damage resulting from insurable causes occurring during the crop year of set out as follows:

(i) 100 percent if the trees are killed back to the root stock; or

(ii) 90 percent if the trees have less than 12 inches of live wood above the bud union. However, no damage shall be considered if more than 12 inches of wood above the bud union is alive.

(2) Any damage caused by uninsured causes shall not be included in the actual percent of damage.

f. The amount of indemnity shall be determined at the earlier of:

(1) Total destruction of the trees; or

(2) The calendar date for the end of the insurance period.

g. When you have elected to exclude hail and fire as insured causes of loss and the citrus trees are damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

h. You shall not abandon any acreage to us.

i. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection

with any claim for indemnity, whether we approve or disapprove such claim.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the trees on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under by the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and access to grove.

You shall keep, for two years after the time of loss, records of the trees destroyed and/or damaged on each unit including separate records showing the same information for any uninsured acreage. Any person designated by us shall have access to such records and the grove for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract and/or insurance on any type of citrus trees may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity shall be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are May 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table shall provide the amount of insurance which you shall be deemed to have elected. All contract changes shall be available at your service office by February 28 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of Texas citrus tree crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding citrus tree insurance in the county.

b. "Contiguous land" means land which is touching at any point, except land which is separated by only a public or private right-of-way shall be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown in the actuarial table.

d. "Crop year" means the period beginning June 1 and extending through May 31 of the following year and shall be designated by the calendar year in which the insurance period ends.

e. "Dehorning" means the cutting back of each scaffold limb to a length that is no longer than ¼ the height of the tree.

f. "Destroyed" means trees which are damaged to the extent that removal is required.

g. "Insurable acreage" means the land classified as insurable by us and shown as such in the actuarial table.

h. "Insured" means the person (owner or owners) who submitted the application accepted by us.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Set out" means transplanting the citrus tree from the nursery to the grove.

l. "Total destruction" means the occurrence of damage to all trees on the unit in excess of 80 percent to each tree.

m. "Unit" means all insurable acreage in the county of any one of the tree types referred to in section 2, located on contiguous land on the date insurance attaches for the crop year:

(1) in which you have a 100 percent share, or

(2) on which you are a joint-owner.

Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units as herein defined will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy shall be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Appendix A.—Counties Designated for Texas Citrus Tree Insurance

The following counties are designated for Texas Citrus Tree Insurance under the provisions of 7 CFR 440.1.

State: Texas

Cameron
Hidalgo
Willacy

Done in Washington, D.C., on March 5, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 30, 1984.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 84-6204 Filed 4-5-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 458]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 260,000 cartons during the period April 8–14, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: April 8, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on April 3, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

Section 910.758 is added as follows:

§ 910.758 Lemon Regulation 458.

The quantity of lemons grown in California and Arizona which may be handled during the period April 8, 1984, through April 14, 1984, is established at 260,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 4, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-6384 Filed 4-5-84; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Revision

AGENCY: Small Business Administration.

ACTION: Final rule; corrections.

SUMMARY: This document corrects a final rule revising Small Business Size Standards published on February 9, 1984 (49 FR 5024). This action is necessary to correct inadvertent and typographical errors.

FOR FURTHER INFORMATION CONTACT: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, Telephone (202) 653–6373.

Accordingly, the corrections in FR Vol. 49, No. 28; Thursday, February 9, 1984, are as follows:

Page 5025, Table 1, last 2 lines. "Percent with position in favor of proposal". Should be indented directly under the word "Vague".

Page 5027, center column, under heading "Personnel Supply Services, N.E.C." Line 3 which reads "in Footnote 13 of the final rule table" Should read "in Footnotes 13 and 17 of the final rule table"

Page 5028, Table 2. Words "Mining, Construction, Manufacturing, Transportation, Wholesale Retail, Finance, and Services" should not be indented, but should appear under the word "Agriculture".

Page 5029, 1st column, Table 3. Row heading words, "Mining, Construction, Manufacturing, Transportation, Wholesale, Retail, Finance, and Services" should not be indended, but rather should be aligned under the word "Agriculture".

Page 5030, last column, Division B, Mining, SIC 1061. "Ferroalloy Ores, Except VA nadium." Should read "Ferroalloy Ores, Except Vanadium."

Page 5031, center column, below SIC 1799. Reads "xl .... Base House Maintenance [13] $7.0". Should read "—— Based Housing Maintenance [13] $7.0" (Note: This is not part of SIC 1799, but is a special definition pertaining to the entire group 17).

Page 5031, last column, 5th entry from bottom. Reads "2271 .... Woven Carpets and Rugs .... 50." Should read "2271 .... Woven Carpets and Rugs .... 750". This is no change from the prior or proposed rule. This is to correct a typesetting error.

Page 5032, center column, SIC 2611. Reads "2611 .... Pulp mills .... 750" Should read "2611 .... Pulp Mills 750"

Page 5036, center column, below SIC 6515. Reads "Leasing of Building Space to .... $10.0" Should read "—— Leasing of Building Space to .... $10.0" (Note: This is not part of SIC 6515, but is a special definition for the leasing of real estate to the Government. The two dashes should appear in the SIC column).

Page 5037, first column, SIC 8061. Reads "Oupatient Care Facilities."

Should read "Outpatient Care Facilities."

Page 5039, first column, line 4 reads "the franchisee, the retraints imposed on". Should read "the franchisee, the restraints imposed on".

Page 5039, last column, ¶ 121.4 (h)(1), line 4 reads "fiscal years does not exceed $5 million." Should read "fiscal years does not exceed $3.5 million." As explained on page 5028 column 1, top, the size standard for surety bonds for construction is $3.5 million. This corrects the error on page 5039.

Page 5042, first column, § 121.6(c)(3), line 2 reads "salvage timber reserved for or involving". Should read "special salvage timber reserved for or involving"

Page 5042, last column, § 121.7(c), lines 2 and 3 read "(Policy Directive No. 65–01; 47 FR 52966, November 24, 1982)" Should read "(Policy Directive No. 65–01.1; 48 FR 38794, August 26, 1983)" This indicates the current policy directive.

Page 5042, last column, § 121.7(c), line 7 reads "Program. Under SBIR Program, the term". Should read "Program. Under the SBIR Program, the term"

Page 5042, § 121.8(a) last column, last line reads "question is loca ed, except that for lease". Should read "question is located, except that for lease".

Page 5044, first column, 22 lines from bottom, § 121.9(b) line 27, reads "SBA Form 355 within the billing period". Should read "SBA Form 355 within the filing period"

Page 5045, first column, § 121.11 (c)(1) last line reads "to § 121.4 of this part;" Should read "to § 121.8 of this part;"

Dated: March 30, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-8830 Filed 4-5-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 22471]

High Density Traffic

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT)

ACTION: Clarification of effective date.

SUMMARY: This document clarifies the effective date for the interim final rule issued on March 1, 1984 (Amendment No. 93–46) concerning the high density airport rule.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Deputy Chief Counsel, AGC–2, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, Telephone: (202) 426–3773.

SUPPLEMENTARY INFORMATION: On March 1, 1984, the FAA issued Amendment No. 93–46 which revised the high density airport rule insofar as it applies to O'Hare International, Kennedy International, and LaGuardia Airports. The amendment increased the hours in which limitations at O'Hare are applicable and increased the number of operations permitted at the airport. The amendment also slightly increased the number of operations allowed at LaGuardia and Kennedy Airports. While increasing the number of hourly operations permitted at LaGuardia and O'Hare Airports, the agency also issued maximum limitations for 30 minute periods at both airports.

Amendment No. 93–46 contained an April 1, 1984, effective date. A number of commenters, both in writing and at public hearing held on March 13, 1984, requested that the effective date of the rule be postponed. The Air Transportation Association requested that the rule become effective on June 1, 1984. The Regional Airline Association also asked that the effective date be extended until June 1, 1984, stating that there is no functioning scheduling committee for the covered high density rule airports and that they need additional time to establish allocation procedures. United Airlines in its comments asked that the agency delay bringing in additional capacity until June 1, 1984.

The concern of most commenters as to the effective date is related to the adjustment of schedules to make them consistent with the amended rule. There is particular concern with the new 30-minute limitations. The 30-minute limitations were added to the rule as a means of increasing available capacity. By inserting those limitations the agency was able to increase the hourly maximum operations applicable at LaGuardia and O'Hare. If this additional capacity is not allocated for any period of time, it is not necessary for the 30-minute limitations to be in effect. Therefore, rather than extending the effective date until June 1, 1984 (this date, of course, is only an estimate as to when scheduling agreements may be reached), the agency instead will not apply the 30-minute and 60-minute limitations contained in Amendment No. 93–46, as they apply to air carriers and commuters at LaGuardia and O'Hare Airports, unless the appropriate scheduling committee (either air carrier or commuter) advises the agency that it has allocated additional capacity at those airports. Thus, if for example the air carrier O'Hare scheduling committee advises the agency that effective May 15, 1984, the additional capacity allowed by the rule has been allocated, then on May 15 the 30-minute and 60-minute limitations of Amendment 93–46 at O'Hare will apply to all air carrier operations. The date of agreement at each airport may be different and, thus, the rule would be applied on different dates but in each case the rule would be applied at the earliest possible date, which is the date that the scheduling committees agree on a schedule for the particular airport. However, if a scheduling committee deadlocks, the rule would be applied when the Department allocates the slots under a deadlock breaking mechanism.

In accordance with comments submitted during the written comment period and at the public hearing, the agency is currently reviewing the issue of a scheduling committee deadlock breaking mechanism. The agency hopes to respond to that issue as well as others raised by the commenters within the next several weeks. As stated in the interim final rule issued on March 1, 1984, the high density rule will be reviewed again in six to nine months, with all unwarranted restrictions being eliminated, effective January 1, 1985.

Issued in Washington, D.C., on April 3, 1984.

Michael J. Fenello,

Acting Administrator.

[FR Doc. 84-8830 Filed 4-4-84; 10:39 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9164]

Schlumberger, Ltd., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal Order.

SUMMARY: On Feb. 17, 1984, the Federal Trade Commission issued an order dismissing the complaint against Schlumberger, Ltd., citing "changed circumstances since the issuance of the Commission's complaint."

DATES: Complaint issued Jan. 28, 1983. Dismissal Order issued Feb. 17, 1984.*

* Copies of the Complaint filed with the original document.

FOR FURTHER INFORMATION CONTACT: FTC/C, Timothy J. Muris, Washington, D.C. 20580 (202) 523–3601.

SUPPLEMENTARY INFORMATION: In the Matter of Schlumberger, Ltd., a corporation, Fairchild Camera and Instrument, a corporation, and Accutest Corporation, a corporation.

List of Subjects in 16 CFR Part 13

Computer controlled test systems, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended: 15 U.S.C. 45, 18)

Before Federal Trade Commission

[Docket No. 9164]

Order

In the Matter of Schlumberger, Ltd., a corporation; Fairchild Camera and Instrument, a corporation; and Accutest Corporation, a corporation.

The respondents in this matter have moved to dismiss the complaint on the grounds of changed circumstances since the issuance of the Commission's complaint. Complaint counsel do not oppose the motion. The motion is granted and the complaint in this matter is dismissed.

It is so ordered.

By the Commission. Commissioner Pertschuk dissented.

Issued: February 17, 1984.

Emily H. Rock,

Secretary.

Dissenting Statement of Commissioner Pertschuk in the Matter of Schlumberger, Ltd., et al.

[Docket No. 9164]

February 17, 1984.

I agree that Schlumberger's divestiture of Accutest adequately resolves the immediate antitrust problem involved in this proceeding. However, I cannot support the Commission's decision to dismiss the complaint because it leaves unresolved the important question of the need for a prospective order subjecting future acquisitions by Schlumberger to the prior approval of the Commission.

The administrative law judge, the parties, and the Commission have decided that in light of the Accutest divestiture further litigation over the sole issue of prospective relief would be an unjustified expenditure of resources. As I understand the law, this is not the correct test for deciding whether an order is justified. That test is whether, regardless of abandonment of the alleged unlawful conduct during the course of litigation, there is a "congnizable danger of recurrence" of similarly unlawful behavior by the respondent in the future. *United States* v. *W. T. Grant, Co.*, 345 U.S. 629 (1953). Moreover, in deciding whether further litigation here is necessary, we must consider the value of the Commission's well-established policy favoring fencing-in orders in merger cases. In merger cases specifically, the Commission has reconginzed that "prophylactic relief, not merely the after-the-fact remedy of divestiture, is essential if the Congressional policy expressed in Secton 7 of the Clayton Act is to be effectively carried out * * *." *Beatric Foods Co.*, 66 F.T.C. 1003, 1066 (1965). Such relief deters illegal behavior not only by the respondent in the case at hand but other firms as well, thus serving broad law enforcement objectives. Until and unless the Commission can reasonably conclude on the basis of the record in this proceeding that Schlumberger is unlikely to make any similarly suspect acquisitions in the future, this case is not moot and should be continued in the public interest.

Though agreeing to Schlumberger's motion to dismiss, complaint counsel actually have made a powerful case for coutinuing this litigation to consider the necessity for a prospective remedy. They have argued that:

A ten year ban is particularly appropriate in this case for three reasons. First, Schlumberger/Fairchild have a proclivity for expanding their presence in the ATE industry through acquisition, having made six acquisitions in the overall industry and four in the particular markets alleged in the Compliant. Second, in reporting the acquisition of Accutest pursuant to the Hart-Scott-Rodino Act's Premerger Notificiation Form, Schlumberger reported its sales of semiconductor test equipment under a standard industrial classification code number not found in Bureau of Census Publications. A ten year prior approval requirement would reduce the likelihood that any future acquisitions would be consummated prior to full Commission review. Finally, even if the requirements of the H-S-R Act are adhered to, because of the extremely high technology involved in these markets, acquisitions not reportable under the Hart-Scott-Rodino Premerger Act may be competitively quite significant if they involve small firms that are technological innovators. Complaint Counsel's assent to Respondents' Motions to Dismiss, Sept. 13, 1983, at 3.

After chronicling these cogent reasons favoring litigation over the issue of "prior approval," complaint counsel lamely recommend dismissal of the complaint because "litigation of this matter will require the expenditure of significant resources . . . ." not warranted "solely to achieve a ten year merger ban." This conclusion, adopted by the Commission, is difficult to understand. If a prior approval requirement seems "particularly appropriate" at this juncture of the case to protect the public against possible anticompetitive acquisitions by Schlumberger in the future, then the Commission is duty-bound to pursue it, even if that means more litigation.

The majority's decision to dismiss the complaint, particularly in circumstances where a prospective order may well be appropriate, is flatly inconsistent with the Commission's policy of insisting on prior approval provisions where necessary in merger cases. The policy recognizes that prior approval provisions serve both as an efficient fencing-in measure against repetitions of unlawful conduct by the same firm and as a deterrent against possibly illegal mergers by other firms. Until this case at least, prior approval has remained an important remedial tool in merger law enforcement. Indeed, past Commission merger orders have invariably had prior approval provisions. Moreover, just last year the Commission turned down a respondent's request for the complete elimination of a prior approval provision from an outstanding order. *Damon Corp.*, C–2916 (March 29, 1983).

It is sometimes argued that the Hart-Scott-Rodino Act reporting requirements obviate the need for prior approval provisions in Commission orders. But the Hart-Scott-Rodino Act is just that, a reporting act, not an approval requirement. The Act's reporting requirements neither reach nor prevent all anticompetitive acquisitions. The reporting party can consummate the acquisition unless the Commission takes *affirmative* legal action to prevent it, and if the acquisition does go forward, expensive litigation is necessary to "unscramble" it. Further, as the H-S-R misreporting episode in this very case showed, the Act does not guarantee that the Commission will automatically uncover all anticompetitive overlaps even when an acquisition is reported. Until today, the Commission's consistent policy of including prior approval clauses in merger orders has been a clear indication that the Commission has not felt that Hart-Scott-Rodino offers perfect or even sufficient protection.

The message that today's decision sends to aggressive firms is that they can gamble fairly painlessly in entering into mergers and acquisitions of dubious legality under the Clayton and FTC Acts. If sued by the Commission—itself a rather remote prospect in the current administration—they can extricate themselves from a sticky legal situation through simple divestiture and move on, scot-free, to their next legally risky acquisition. Moreover, it would not be surprising if this decision precipitated an avalanche of petitions for relief from prior approval provisions from companies presently under FTC merger orders. The time and resources consumed by these appeals—not to mention the cost to the public—will, I suspect, end up being far greater than the relatively small expense of continuing this litigation over the question of whether to impose a prior approval requirement on Schlumberger.

[FR Doc. 84–9205 Filed 4–5–84; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 436

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petitions for exemption.

SUMMARY: On November 22, 1982 (47 FR 52410), the Commission published a request for public comment on petitions for exemption from the requirements of the Franchise Rule that had been filed by several automobile companies. After reviewing the public comments, the Commission has determined that the

provisions of Part 436 shall not apply to the advertising, offering, licensing, contracting, sales or other promotion of dealerships for the sale of motor vehicles by the following companies: Volkswagen of America, Inc.; Volkswagen Mid-America, Inc.; Gulf States Toyota, Inc.; Southeast Toyota Distributors, Inc.; Mid-Atlantic Toyota Distributors, Inc.; Subaru of New England, Inc.; Distributors, Inc.; Subaru Distributors Corp.; Subaru Northwest, Inc.; Subaru Mid-America, Inc.; Subaru South, Inc.; Penn Jersey Subaru, Inc.; and Southwest Star Corp.

EFFECTIVE DATE: April 6, 1984.

ADDRESS: Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PC-B-800-9, Neil J. Blickman, Federal Trade Commission, 600 E Street, NW., (8th Floor), Washington, DC 20580 ((202) 376-2805).

SUPPLEMENTARY INFORMATION:

Before Federal Trade Commission

Order Granting Exemption

In the Matter of Petitions for Exemption from Trade Regulation Rule Entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" filed by Volkswagen of America, Inc. and Twelve Independent Distributors of Subaru, Toyota and Volkswagen Motor Vehicles.

On November 22, 1982, the Commission published a notice in the Federal Register soliciting comments on petitions filed by Volkswagen of America, Inc. and by eleven unrelated and independently owned and operated corporations engaged in the regional distribution of Subaru and Toyota motor vehicles. During the exemption proceeding, a petition from Volkswagen Mid-America, Inc. also was received and fully considered by the Commission. These petitions sought an exemption, pursuant to Section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures." In accordance with Section 18(g), the Commission conducted an exemption proceeding under Section 553 of the Administrative Procedure Act, 5 U.S.C. 553. The original 60-day public comment period was extended upon request of a proposed commenter and concluded on February 28, 1983. The Commission has reviewed the petitions and the comments received in response to the notice and concludes that the Petitioners' requests for an exemption should be granted.

The statutory standard for exemption requires a determination of whether or not the application of the Trade Regulation Rule to any person or class of persons is "necessary to prevent the unfair or deceptive act or practice to which the rule relates." The Commission's Statement of Basis and Purpose for the Franchise Rule concluded that deceptive acts or practices in the marketing of franchises or business opportunities had a greater chance of occurring in instances where there was:

(1) A relative lack of business sophistication of the proposed franchisee,

(2) A lack of adequate time for franchisees to review complex franchise agreements prior to establishment of the franchise relationship, and

(3) A serious informational imbalance between the franchisor and the franchisee such that the franchisee often was unaware of relevant and essential facts germane to the proposed investment.

The Commission's Franchise Rule employs a regulatory scheme of pre-sale disclosure of material information in an effort to neutralize the potential for deceptive acts and practices where the above-described conditions are present. However, if these conditions are not present, then a regulatory remedy designed to eliminate them is likely to be unnecessary.

Our review of the record in this proceeding indicates that an exemption is warranted. Petitioners have convincingly demonstrated the absence of the major conditions which actively contribute to the existence of unfair or deceptive acts or practices in the sale of franchises.

The petitions show that prospective motor vehicle dealers make extraordinarily large investments. As a practical matter, investments of this size and scope involve knowledgeable, experienced investors, the use of independent business advisors, and an extended period of negotiation. The record is consistent with the conclusion that the transactions negotiated by such knowledgeable investors over time and with the aid of business advisors produce the pre-sale information disclosure necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits of the proposed investment. Indeed, the Commission once before reviewed the potential for unfair or deceptive acts or practices in connection with the sale of automobile dealerships and found an absence of significant abuse by automobile company franchisors. By Order dated July 17, 1980, the Commission granted the exemption petitions filed by the Automobile Importers of America, Inc. on behalf of its Members and Subscribing Members and by the American Motors Corporation.

It thus appears that Petitioners' present sales transactions are accomplishing, now, what the Rule was intended to achieve through the required dissemination of a variety of disclosures. Because (i) the conditions most likely to lead to consumer abuses are absent from Petitioners' sale of dealerships for the sale of motor vehicles and (ii) such sales transactions include sufficient disclosure to ensure that the prospective investor is in the position to make an informed decision, the Commission finds that the application of the Franchise Rule to Petitioners' sale of dealerships for the sale of motor vehicles is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

The record does not provide an adequate basis for exemption of all motor vehicle manufacturers, distributors and dealerships as a class. The Commission will continue to review exemption petitions on a case-by-case basis in light of the statutory standard for exemption pursuant to Section 18(g) of the Federal Trade Commission Act.

List of Subjects in 16 CFR Part 436

Trade practices and franchising.

Accordingly, the Commission has determined that the provisions of Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of dealerships for the sale of motor vehicles by the following companies or their subsidiaries:

Volkswagen of America, Inc.
Volkswagen Mid-America, Inc.
Gulf States Toyota, Inc.
Southeast Toyota Distributors, Inc.
Mid-Atlantic Toyota Distributors, Inc.
Subaru of New England, Inc.
Distributors, Inc.
Subaru Distributors Corp.
Subaru Northwest, Inc.
Subaru Mid-America, Inc.
Subaru South, Inc.
Penn Jersey Subaru, Inc.
Southwest Star Corp.

The Commission also lifts a temporary stay of the Franchise Rule previously granted to the automobile company Petitioners (47 FR 52410) pending the Commission's final decision on the exemption requests.

It is so ordered.

By the Commission.

Issued: October 28, 1983.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84-9230 Filed 4-5-84; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6521A; 34-20788A; 35-23260A; 39-896A; IC-13841A; IA-904A]

Organization and Address Changes; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an address of a regional office that appeared in final regulations published March 30, 1984 (49 FR 12684).

FOR FURTHER INFORMATION CONTACT: George G. Kundahl, Executive Director, SEC, 450 Fifth Street, NW., Washington, D.C. 20549-6004 (202) 272-2700.

SUPPLEMENTARY INFORMATION: The following corrections are made at FR

Doc. 84-8472 appearing on page 12684 in the issue of March 30, 1984.

§ 200.11 [Corrected]

1. On page 12684, column 3, 17 CFR 200.11(b) under Region 6 remove the words "Two Park Central" in the address for the Regional Administrator.

§ 200.80 [Corrected]

2. On page 12686, column 2, 17 CFR 200.80(c)(1)(iii), in the address of the Denver Regional Office, remove the words "Two Park Central."

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-9135 Filed 4-5-84; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 77N-0404]

Food Labeling; Protein Products; Warning Labeling

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing label warning requirements for certain protein products that may be used to reduce weight. FDA is establishing these requirements because of evidence that very low calorie diets consisting primarily of protein may cause serious medical problems or death. The warning requirements will alert consumers of potential hazards of consuming these products in diets of 400 Calories or less.

DATE: Effective August 6, 1984 for all affected protein products initially introduced or initially delivered for introduction into interstate commerce.

FOR FURTHER INFORMATION CONTACT: Victor P. Frattali, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-261), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. 202-245-1064.

SUPPLEMENTARY INFORMATION:

I. General Background

In the **Federal Register** of December 2, 1977 (42 FR 61285), FDA proposed to require warnings on the labels and labeling of protein products that may be used for weight reduction. The proposal was issued upon receipt by FDA and the Centers for Disease Control (CDC) of numerous reports of illness and death associated with the use of such products in very low calorie diets for rapid weight loss. FDA published a tentative final rule in the **Federal Register** of December 29, 1978 (43 FR 60683). Because the tentative final rule differed substantially from the proposal, an additional 60-day period was provided to allow interested parties to comment. Since that time, a significant evidence has accumulated supporting the hypothesis that prolonged use of these protein products for rapid weight loss is related to the sudden onset of cardiac arrhythmias and death in otherwise healthy individuals.

In the **Federal Register** of April 4, 1980 (45 FR 22904), FDA published a final rule requiring three different warnings for protein products deriving more than 50 percent of their total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these ingredients and promoted for use to reduce weight or as food supplements. The first warning applied to protein products promoted for weight reduction and required a warning statement cautioning consumers about the potential consequences of serious illness or death. A second, less severe, warning was required for protein products promoted for weight loss when accompanied with a diet plan providing 800 or more Calories per day, and a third less severe warning for protein products intended for use as supplements to normal diets.

On May 5, 1980, the Council for Responsible Nutrition, a trade association whose membership includes manufacturers of dry, whole protein products, filed suit in the District Court for the District of Columbia seeking declaratory and injunctive relief to invalidate the protein products warning label regulation.

On August 1, 1980, Judge Joyce Hens Green issued a decision in which she held that FDA has legal authority and adequate evidence to impose a label warning requirement on dry, whole protein products to denote the health risks that might arise from such products while dieting. *Council For Responsible Nutrition* v. *Goyan*, No. 80-1124 (D.D.C. August 1, 1980). Specifically, the court upheld the overall labeling scheme adopted by the agency in which the severity of the warning lessened as the likelihood for misuse of the product lessened. In upholding the second and third warnings, the court stated that "there is no basis for invalidating the defendants' efforts to impose the second and third warnings on dry, whole protein products promoted for use in nutritionally balanced diets of 800 or more [C]alories and on dry, whole protein products promoted as food supplements." (*Id.* at 20-21.) The court further held that the first warning was valid as it applied to dry, whole protein products promoted in diets of less than 400 Calories per day. (*Id.* at 18-19.)

The court did find, however, that there was insufficient evidence to support FDA's finding that diets between 400 and 800 Calories per day may cause serious illness or death and therefore invalidated the regulation to the extent that it required warnings informing consumers that diets between 400 and 800 Calories per day may cause serious illness or death. The court remanded this portion of the regulation to FDA "for further study and the formulation of sufficient evidence to support its rule as presently drawn or to enable it to create any new warning or warnings that may be required." (*Id.* at 21.) Because of the court's view that it would be inequitable and unwise to place the second and third warnings into effect while remanding the first, the court's remand encompassed the entire regulation. FDA withdrew the regulation in the **Federal Register** of October 10, 1980 (45 FR 67319).

On June 26, 1980, a second legal action was filed in the District Court for the Southern District of New York by the National Nutritional Foods Association, a trade association representing manufacturers of liquid as well as powdered protein products. This case is now being held in abeyance as a result of FDA's decision to reopen the rulemaking proceeding and the proposal to revise the regulation described in the next paragraph.

After reexamining the record of the rulemaking proceeding, and following the remand instructions of Judge Green, FDA, in the **Federal Register** of June 11, 1982 (47 FR 25379), proposed a revised rule for requiring label warnings on protein products.

The proposal stated that the label and labeling of any food product in liquid, powdered, tablet, capsule, or similar form that derives 50 percent of its total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these, and that is represented on the label or in labeling or is otherwise promoted for use to reduce weight shall bear the following warning:

> **Warning**—Very low calorie protein diets (below 400 Calories per day) may cause serious illness or death. Do Not Use for Weight Reduction Without Medical Supervision. Not for use by infants, children, or pregnant or nursing women.

(This statement hereafter is referred to as the "first warning.")

The proposal stated that products required to bear the first warning would be exempt from the requirement if the products are promoted as part of a nutritionally balanced diet plan providing 400 or more Calories (kilocalories) per day and the label or labeling of the product specifies the diet plan in detail or provides a brief description of that plan and adequate information describing where the detailed diet plan may be obtained and the label and labeling bear the following statement:

Notice—Use only as directed in the diet plan described herewith (the name and specific location in labeling of the diet plan may be included in this statement in place of "diet plan described herewith"). Do not use as the sole or primary source of calories for weight reduction.

(This statement hereafter is referred to as the "second warning.")

The proposal further stated that the label and labeling of food products promoted or intended for dietary (food) supplementation that derive more than 50 percent of their total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these, and that are promoted specifically for purposes other than weight reduction shall bear the following statement:

Notice—Use this product as a food supplement only. Do not use for weight reduction.

(This statement hereafter is referred to as the "third warning.")

Finally, other proposed provisions stated that all label or labeling statements would be separate from and in addition to any labeling requirements promulgated by the Federal Trade Commission for protein supplements, and that the warning and notice statements were required to appear prominently and conspicuously on the principal display panel of the package label and in any other labeling.

II. Summary of Differences Between the Proposed Rule and the Final Rule

Comments received in response to the June 11, 1982 proposed rule prompted the revisions that have been incorporated into this final rule. The final rule differs from the proposal in the following respects:

1. Section 101.17(d)(1) (21 CFR 101.17(d)(1)) has been modified to make clear that medical supervision is recommended only for the use of protein products in weight reduction plans involving extremely low calorie diets and to provide for the labeling flexibility needed for products which are promoted or may be used for several uses.

2. Section 101.17(d)(2) has been modified to make clear that the warning focuses on preventing misuse of protein products in diets of less than 400 Calories per day and to provide for the labeling flexibility needed for products which are promoted or may be used for several uses.

3. Section 101.17(d)(3) has been modified to provide for the labeling flexibility needed for products which are promoted or may be used for several uses.

4. Proposed § 101.17(d)(4) has been deleted because it is no longer necessary as a result of the modifications to § 101.17(d) (2) and (3).

5. Section 101.17(d) (1), (2), and (3) has been modified by substituting the term "represented" for "promoted" to define more clearly the scope of the first, second, and third warnings.

III. Summary of Comments and Agency Responses

Forty-seven comments were received in response to the June 11, 1982 proposed rule. The comments ranged from those advocating that the rule be expanded to include diet products other than protein products to those contending that the rule is unnecessary because the problem has subsided. Comments from the scientific community almost unanimously supported the rule; most favored expanding it to include all food products promoted in diets providing 400 Calories or less per day, and some stated that any diet providing 800 Calories or less per day should not be undertaken without medical supervision. Industry comments, on the other hand, were generally opposed to any label warning requirement on the ground that it is unnecessary because there have not been any reported deaths or serious illnesses associated with the use of the protein products subject to the rule since April 1980.

In deciding to promulgate this final rule, the agency has taken a fresh look at the entire issue of risks associated with very low calorie diets. The agency emphasizes that in reevaluating the need for a regulation the agency did not consider itself limited to the minimum requirements of Judge Green's remand and has reevaluated the regulation as a whole.

Dieting continues to be a very common and popular activity among Americans of all ages. Protein products subject to the warning regulation continue to be recommended for use and used in very low calorie diets. Moreover, very low calorie diet products that are not subject to the warning regulation have also become very popular. One of these diet products is promoted with a diet plan that is said to provide only 330 Calories per day. (Several comments addressed this diet and the agency's response to these comments is set forth below under comment 1.) There have been reports of serious illnesses and deaths in persons who either were on or had recently completed this diet. Although FDA has not completed its evaluation of the information relating to this diet and is not prepared at this time to propose any action with respect to the diet, the agency is concerned about the continuing popularity of very low calorie diets in general and the possibility that very low calorie protein diets could again become popular. More important, no substantive scientific evidence was submitted in response to the proposal that in any way alters the agency's conclusion that there is an association between very low calorie protein diets and sudden and unexpected death due to cardiac arrhythmias. The seriousness of this risk in a situation in which the average consumer might be unaware of the risk necessitates a labeling warning about the potential harm associated with the use of protein products in very low calorie diets. The agency has the responsibility to prevent harm, and it is the agency's judgment that the best means to ensure that such harm does not recur is to issue the protein products label warning regulation.

A summary of the comments received and FDA's responses to them are set forth below. FDA also incorporates by reference in this document the evidence and discussion contained in FDA's initial protein products proposal (December 28, 1977; 42 FR 61285), the tentative final rule (December 29, 1978; 43 FR 60883), and the final rule (April 4, 1980; 45 FR 22904).

A. Scientific Issues

1. A substantial number of comments recommended that all very low calorie diets or all diet products promoted for use in diets below 400 Calories be included within the scope of the proposed rule. A number of these comments specifically referred to the Cambridge Diet and its associated products. The Cambridge Diet Plan promotes the use of Cambridge Diet products in amounts that provide approximately 330 Calories per day to achieve rapid weight loss. Because these products derive less than 50 percent of their total caloric value from protein ingredients, they fall outside the scope of the proposed label warning rule.

FDA has decided not to expand the scope of this final rule beyond that which was proposed. Hence, the rule does not apply to products used with such diets as the Cambridge Diet. This decision should not be interpreted as a final decision on whether all very low calorie diet products should bear label warnings. The agency may yet propose to expand the scope of the protein products rule or to promulgate a separate rule for other products. To date, however, only the protein products subject to this rule have been determined to present a risk sufficient to require label warnings. Accordingly, the promulgation of a broader rule at this time is not appropriate.

Through its field offices, FDA has been monitoring reports of adverse health effects claimed to be associated with or attributed by consumers to the Cambride Diet and other diet plans or weight reduction products. By late 1982, more than 130 reports of adverse reactions and effects had been received. Most of these complaints and reports involved nausea, vomiting, and headaches, although some were more serious, including reports of six deaths and four hospitalizations for conditions such as hypotension (low blood pressure), hypokalemia (low blood potassium), and cardiac irregularities, which may have been associated with use of these products.

These complaints and reports are difficult to assess for a number of reasons including the following: Adherence to the diet was not strict or was of relatively short duration; the decedent had a medical history of a serious condition such as diabetes; or the family of the decedent refused to release needed medical records. Similarly, the information on the few cases involving hospitalization is difficult to assess because of complicating circumstances. For example, the hospitalized individual may have been dieting while using prescribed medications without having obtained the advice of a health practitioner.

The agency is still evaluating the information described above and has yet to reach any final conclusions. Accordingly, FDA has decided to issue a final rule of basically the same scope as was proposed and not to expand the rule to include products other than those for which coverage was proposed. Nevertheless, FDA intends to continue monitoring closely all reports of adverse health effects associated with any product promoted for use in an extreme weight loss diet, and will initiate whatever action is deemed necessary to safeguard the public health if the agency concludes that such action is warranted. The agency also will take appropriate action on any petition based on scientific, medical, or other evidence demonstrating that a product or products not within the scope of the rule should be included.

2. One comment argued that there is no evidence in the record that either whole protein powders not promoted for weight reduction or whole protein powders promoted for moderate weight reduction are likely to be used in diets providing less than 400 Calories per day. The comment argued that the information cited by the agency, such as the reports of deaths or injuries associated with very low calorie whole protein diets and a telephone survey conducted by FDA in 1977, do not support the agency's position that such whole protein powders should be required to bear label warnings.

The issue of whether whole protein powders not promoted for weight reduction or promoted for moderate weight reduction should be subject to the proposed label warning regulation has been the subject of considerable dispute and extensive and painstaking consideration by the agency both during the course of each phase of this rulemaking proceeding and during judicial review of the previous rule. The agency has concluded that label warnings are necessary on products composed of whole protein powders and recommended for use as food supplements or for moderate weight loss.

The agency believes that the most important consideration is whether whole protein powders present a risk of serious injury or death when used in diets of less than 400 Calories per day. During the period between August 1977 and April 1980, FDA received more than 60 reports of deaths associated with very low calorie protein diet products. FDA established strict criteria for determining whether these deaths could be attributed to the use of protein products in very low calorie diets. The primary criterion was whether the death was a sudden cardiac-related death in an individual with no significant underlying heart disease who either was on a low calorie diet or had recently discontinued such a diet. Seventeen of the reported deaths met this criterion. These deaths involved both liquid and powdered whole protein products. CDC reached the following conclusion about these 17 reports:

> Use of the liquid protein diet and its variations for prolonged periods was associated with a significantly increased risk of dying suddenly from a cardiac arrhythmia resulting from myocardial damage. The clinical, electrocardiographic, and pathologic pattern of these deaths was highly suggestive of death by starvation. The exact mechanism of such deaths remains in question, but does not appear to be related to the quality of the protein consumed, the daily dosage of potassium, or the types of medical care received.

CDC Report at 11. (This report has been filed with FDA's Dockets Management Branch as Ref. 055.)

Of the 17 death reports, 3 involved the use in whole or in part of high quality protein, and in 2 of these cases the protein was in powdered form. One of these cases (Case No. 56) involved the exclusive use of a product containing high quality protein ingredients (milk and egg protein), carbohydrate, fat, and essential minerals and electrolytes. While on a 7-month diet, the decedent also consumed a multivitamin preparation and supplemental potassium. A second case (Case No. 37) involved the use of a high quality powdered protein product which contributed about 200 Calories per day for approximately the last half of a weight reduction diet. The remaining 180 Calories per day came from carbohydrate and a second gelatin-derived protein product. During the first half of the 24-week diet, a typical gelatin-derived "predigested liquid protein" product was consumed in an amount sufficient to provide approximately 360 Calories per day. In a third case from among the 17 "cardiac" deaths without antecedent disease, the individual had followed for the major part of her dieting period a weight loss regimen which consisted of a daily intake of 4 cooked egg whites as a source of protein. These three cases support the conclusion that the biological quality of the protein used in the diets in question is not a major factor relative to causation of death.

In support of its argument that dry, whole protein products are safer than liquid protein products, the comment also argues that the protein efficiency ratio (PER) of dry, whole protein is higher than that of liquid protein. A protein's PER is determined by measuring the amount of protein consumed and the weight gained by young rats fed a marginal protein diet adequate in all other nutrients. The PER is expressed in terms of the ratio of weight gained to the weight of protein consumed. The PER of dry, whole protein usually ranges from 2.0 to 2.5 while the PER of both collagen and hydrolyzed collagen is often negative,

meaning that young rats fed this type of protein lose weight.

The agency does not agree that these data demonstrate the safety of dry, whole protein in humans when used in very low calorie diets. The composition of the diet for the PER test and a weight reduction diet deriving most of its calories from protein are quite different. The PER diet consists of a marginal amount of protein and adequate amounts of carbohydrate, fat, and other nutrients. A weight reduction diet of less than 400 Calories and deriving more than 50 percent of its caloric value from protein would not provide adequate amounts of carbohydrate, fat, and possibly other nutrients. Thus, the results in the PER rat studies cannot be extrapolated to humans.

A recent study conducted at the University of California at Los Angeles (UCLA) examined the difference between whole protein and liquid protein when used by humans in a very low calorie diet. The study involved 10 obese male subjects divided equally between two test groups: one fed a low calorie, low quality protein diet, and the other fed a high quality soy protein diet. The average and the range for daily caloric intake for the low and high biological quality protein diet groups were 372 (302 to 455) Calories per day and 416 (361 to 476) Calories per day, respectively. The study was intended to determine whether there was any significant difference in mean nitrogen balance between the two groups. Nitrogen balance is a measure of the body's ability to maintain lean body mass which is a critical consideration in the safety of a diet. Mean nitrogen balance values for the low and high quality protein groups were calculated to be −4.41 and −3.57 gram per day. The difference between the two groups was not found to be statistically significant. Accordingly, although the PER test in rats shows that the PER of high quality protein is different from the PER of liquid collagen-derived protein, the lack of a statistically significant difference in mean nitrogen balance in humans fed low and high quality protein supports the conclusion that the results of the PER test in rats are not applicable to humans with regard to extreme weight reduction diets.

The comment also argues that the cardiac deaths found to be associated with the consumption of low quality protein were due to those individuals receiving insufficient usable protein.

As the agency has previously noted, although there are several plausible explanations for the causation of these 17 deaths, there is insufficient information to say conclusively what caused them (44 FR 22913; see 43 FR 60891). Until a conclusive mechanism for causation is established, the agency cannot assume that the deaths were caused by the lack of sufficient usable protein. More important, even if the cause of these 17 deaths could be attributed to the absence of enough usable protein, it does not follow that dry, whole protein when used in a diet of less than 400 Calories per day would provide enough usable protein. As discussed above, both high and low quality protein products, when used by humans in a diet of less than 400 Calories per day, have been shown to be an insufficient source of nutrition to maintain a positive nitrogen balance and, therefore, both types of protein would appear not to provide enough usable protein when used in diets of less than 400 Calories per day.

It is important to note that there is other evidence besides the 17 death reports that support including dry, whole protein products within the scope of the label warning regulation. In addition to the death reports, there were numerous reports of injuries and illnesses associated with the use of protein products in very low calorie diets. Although the details in the reports were not sufficient either to affirm or to reject the existence of a cause-and-effect relationship between specific products and the reported complaints and reactions, upon reexamination of the reports the agency has again concluded that there were sufficient details among the adverse reactions to warrant concern. The most noteworthy were reports of electrolyte imbalance, i.e., hypokalemia (low blood potassium levels) and hyperkalemia (high blood potassium levels), which can lead to irregularities of heart rhythm and function. There were numerous reports of injuries and illnesses in persons consuming dry, whole protein products including at least one report of a person who suffered a heart attack. The frequency of the adverse reaction reports is sufficient to suggest that, in addition to precipitous cardiac arrythmias and death, use of protein products for weight reduction purposes may be associated with a wide variety of symptoms and adverse signs in some individuals. The agency further notes that FDA's reexamination of the telephone survey conducted in 1977 revealed that 14 of the persons surveyed who reported using a high quality powdered protein product for a period of a day or longer also reported that they discontinued use of the product because they became ill. These reports lend further support to the conclusion that dry, whole protein products should be subject to the label warning regulation.

The agency has not only concluded that dry, whole protein products present a risk of serious injury or death when used in diets of less than 400 Calories per day, but also that there is a reasonable likelihood that these products will be used in such diets whether or not they are specifically promoted for such use. Dry, whole protein powders have been used and still are used in diets of less than 400 Calories per day. The two cardiac deaths discussed above involved the use of dry, whole protein powders in diets of less than 400 Calories per day. The dry, whole protein product involved in Case No. 56 its still on the market today and is recommended for use in diets of less than 400 Calories per day. Moreover, dry, whole protein products are or have been recommended for use with noncaloric beverages such as water. This information makes clear that such products can be used in diets of less than 400 Calories per day.

Because dry, whole protein products can be used and continue to be promoted for use in diets of less than 400 Calories per day, the agency continues to believe that there is a reasonable likelihood that consumers will, if unwarned, misuse whole protein powders in diets of less than 400 Calories per day, even if they are recommended for use in food supplementation or for moderate weight loss. This likelihood of misuse would be even greater should very low calorie protein diets again become popular. This conclusion is supported by the telephone survey of the use of protein products among American women conducted by FDA and CDC in 1977. The survey demonstrated that high quality powdered protein products have been used and misused in very low calorie diets. The survey demonstrated that 1.3 percent of the women surveyed had used a protein product as the sole or primary source of calories for at least some period of time. The survey further showed that 0.1 percent of the women surveyed reported having consumed a powdered protein product as the principal or sole source of calories for 1 month or more. Of this group of women reporting usage of a powdered protein product as the sole or primary source of calories, at least 79 percent (and possibly more) were using a high quality protein product not specifically promoted for use in diets below 400 Calories per day. Moreover, further examination of the results of the telephone survey revealed that significant numbers of people used high

quality protein products for extended periods of time, in some cases for more than 2 months.

The comment criticized the telephone survey on the grounds that those surveyed were not asked whether the protein powders were consumed with milk or fruit juice and that a person consuming a dry, whole protein product with three glasses of milk or juice would receive in excess of 400 Calories per day.

The agency disagrees with this criticism. The survey question was designed to exclude those who consume milk or juice on a regular basis. The specific question asked was: "Was there any period of time when you used the powdered protein *alone* on a daily basis without taking any other food—with the possible exception of the occasional use of milk, juice, tea with lemon, black coffee or diet soft drink?" (Emphasis in original.) The "occasional use" of milk or juice cannot reasonably be interpreted as consuming milk or juice three times a day. Thus, the question was adequately designed to exclude those persons consuming milk or juice on a regular basis.

Even if those surveyed were consuming two glasses of skim milk, a day, they would most likely still be receiving less than 400 Calories per day. The average powdered protein user surveyed would have consumed approximately 215 Calories daily. Thus, a person consuming powdered protein and two glasses of skim milk per day (which is probably greater than "occasional use") still would have been consuming less than 400 Calories per day.

Although all survey questions can be expected to have some margin of error, the agency believes that this question was adequately designed to elicit affirmative responses from those persons consuming less than 400 Calories per day and was unlikely to have elicited an affirmative response from a person consuming powdered protein and three glasses of milk or juice a day on a regular basis.

Most of the dry, whole protein products identified by persons answering affirmatively to this question were products promoted for use in diets of more than 400 Calories per day and at least one of the products is promoted for food supplementation. The survey thus demonstrates that persons are likely to use and misuse powdered protein products (including powdered protein products not specifically promoted for use in very low calorie diets) in diets of less than 400 Calories.

The telephone survey also provides a basis for comparison of the usage of liquid and powdered protein products. If the usage patterns of powdered protein products were significantly different from the usage patterns of liquid protein products, one would expect a different response to the question quoted above concerning usage of a protein product as the sole or principal source of calories. (The question quoted above was asked of all persons who stated that they had consumed a liquid or powdered protein product for dieting.) However, the responses to this question demonstrated that the usage of powdered protein products as the sole or principal source of calories for periods of: (1) Less than a month, (2) 1 or more months, and (3) 2 months or more was almost identical to the same type of usage of liquid protein products for the same periods of time. Because liquid protein products were used almost exclusively in diets of less than 400 Calories per day when the survey was conducted, these data support the conclusion that powdered protein products were used and misused in diets of less than 400 Calories per day.

Another criticism of the telephone survey is that it does not provide sufficient information about how long dieters used protein products as their principal or sole source of calories. One comment contends that the response rate for persons who indicated consumption of powdered protein product for more than a month was too small to permit an extrapolation.

FDA does not agree with this comment. FDA was able to make an extrapolation based on these results and included that extrapolation in the preamble to the proposed rule (47 FR 25379). The extrapolation demonstrated that during 1977 between 17,000 and 78,000 women between 25 and 44 years of age consumed powdered protein products as the sole or principal source of calories for a month or more and between 5,000 and 51,000 women in this category consumed such products for 2 months or more. Considering that at least 79 percent of those who reported using a powdered protein product as the principal or sole source of calories for a day or longer were using a high quality protein product, these projections show that a significant number of people used high quantity powdered protein products as the sole or principal source of calories for periods of 1 month or longer and 2 months or longer.

3. One comment argued that the telephone survey showed that those powdered protein product users surveyed consumed the product with milk or juice (and therefore consumed more than 400 Calories per day) because the survey showed that powdered protein product users lost less weight than liquid protein product users.

The agency disagrees with this comment. There are other factors that this difference could be attributed to. For example, because the powdered protein product users tended to be less overweight than the liquid protein product users and, if the final weights achieved after weight reduction were comparable for both groups, then it would be expected that the average weight lost by powdered protein product users would be less than that lost by liquid protein product users.

4. One comment argued that because the telephone survey was conducted in 1977, it does not indicate the likelihood that dry, whole protein powders either are being used or will be used for fasting in the foreseeable future.

As discussed above, the agency is concerned not only that these products are now being used in very low calorie diets, but, more important, that a diet involving the use of a product deriving more than 50 percent of its caloric value from protein will again become popular. In light of the continuing popularity of dieting in general and, specifically, fasting-type diets that provide less than 400 Calories per day, FDA believes that there is a reasonable likelihood that high interest in such a high protein diet will recur.

5. One comment stated that the evidence does not support the suggestion that low calorie protein diets should never be used by infants, children, or pregnant or nursing women.

FDA disagrees with the comment. There is a basis in the record to support the conclusion that a low calorie protein diet should not be used by infants, children, or pregnant or nursing women. The agency believes that this conclusion is scientifically appropriate in view of the data demonstrating serious illness and deaths associated with the use of very low calorie protein diets. Infants, children, and pregnant or nursing women have particularly demanding metabolic needs. The medical and scientific community accepts this fact as common knowledge. It is reasonable that the agency take a prudent position regarding these highly sensitive and susceptible groups of individuals.

6. One comment criticized FDA's reliance in the preamble to the proposed regulation on a study conducted at the University of Rochester. The study demonstrated that a liquid protein diet of 300 Calories per day is frequently associated with potentially life-threatening arrhythmias that are not detected by routine electrocardiography. (Lantigua, R. A., et al., "Cardiac

Arrhythmias Associated with a Liquid Protein Diet for the Treatment of Obesity," *New England Journal of Medicine*, 303:735–738, 1980.) The comment criticized the study because the control period before the diet was only 8 days and also claimed that there was no consistency as to when the 24-hour readings were taken among the six persons in the study. The comment argued that because the earliest arrhythmia occurred with a patient on the diet at the period of 10 days, the 8-day control is inadequate. The comment also stated that studies cited by FDA (presumably in the June 11, 1982 proposed rule), which postdate the University of Rochester study, criticize it and fail to confirm any of its findings. The comment concluded that these criticisms totally discredit the study.

The agency disagrees with this comment. The agency notes that this article was published in a reputable scientific journal and thus would have been subject to peer review. Peer review is a critical review of the study by scientist who were not involved in the conduct of the study. It is intended to assure that the study is scientifically valid. Whether or not it would have been preferable to have longer control period before the diet is subject to scientific debate. However, the agency does not believe that the absence of such an extended control period discredits the study.

Besides the University of Rochester study, three other published studies were referred to in the June 11, 1982 proposed rule (47 FR 25379). One of the three, which was performed at Yale University, predated the University of Rochester study. Another of the three studies, which was performed at Columbia University, contains neither discussion nor criticism of the University of Rochester study. The third of the three cited studies, which was performed at UCLA, is the only one that refers to the University of Rochester study. The UCLA authors noted that 8 of 10 subjects in their study (5 in a low-calorie low-quality protein diet group and 5 in a low-calorie high-quality protein diet group) had preexisting electrocardiographic abnormalities when examined in the prediet phase of the study. The UCLA authors also reported that these abnormalities remained unaltered in the eight subjects during the dieting phase, with no *de novo* arrhythmias, ectopic beats, or conduction disturbances being noted during periodic electrocardiographic monitoring. The UCLA authors briefly discussed the difference between their observations and those in the University of Rochester study. The UCLA authors stated that it was possible that their electrocardiographic monitoring periods were too short and too few, so that cardiac arrhythmias may have been missed. The agency does not consider this statement to criticize or to discredit the University of Rochester study.

7. Another comment made reference to the University of Rochester study mentioned above and the UCLA study (*American Journal of Clinical Nutrition*, 35:471–486, 1981) that was cited in the proposed rule. It was stated that the diet tested in the University of Rochester study was not only devoid of high quality protein but was also deficient in several essential minerals. The comment questioned whether the soy protein product tested in the UCLA study was of sufficiently high biological value and whether or not adequate mineral supplementation was provided. The comment stated that more recent studies using a product manufactured by the firm submitting the comment (a product containing milk and egg protein, some carbohydrate, and a number of vitamins and minerals) in low calorie diets demonstrate a decrease in the incidence of cardiac abnormalities in obese test subjects and result in the achievement of positive nitrogen balance. In support of these statements, four abstracts of presentations made at scientific meetings were submitted. Two of the abstracts were prepared by clinicians at the University of Rochester Medical Center and the other two were from the University of California at Irvine. The comment objected to the proposed warning statements, contending that the nutrient composition and protein quality of a product are important considerations that preclude the assumption that all low calorie diets are the same.

One of the University of Rochester abstracts described a study of life-threatening cardiac arrhythmias in a group of patients placed on a low calorie diet. The 500 Calorie per day diet consisted of the high-quality protein product mentioned by the comment and was supplemented with carbohydrate, essential fatty acids, potassium, phosphorus, calcium, magnesium, and other trace minerals. The study design was similar, apparently, to the one that documented the incidence of cardiac arrhythmias associated with a 300 Calorie per day low-quality protein diet (*New England Journal of Medicine*, 303: 735–738, 1980). In the abstract, the authors reported no increase in cardiac arrhythmias when compared to data obtained in the pre-and postdiet periods. Although sodium and nitrogen balance results that were completed on four of six subjects were reported to be positive, the authors noted that potassium and phosphorus balance results were negative.

In another abstract, clinicians from the University of California at Irvine reported their electrocardiographic observations among 100 morbidly obese patients before, during, and after rapid weight loss on a low calorie diet. Of the 100 patients selected for the study, 67 demonstrated prolonged QT intervals. The QT interval is a specific time interval in the rhythmic activity of the heart that is measured by electrocardiographic techniques. Prolongation of the QT interval was one observation associated with sudden death among individuals on extended low calorie weight loss regimens (*American Journal of Clinical Nutrition*, 34:453–461, 1981). The University of California at Irvine researchers noted that, after 12 weeks on the low-calorie high-quality protein diet, 12 of 16 patients with prolonged QT intervals developed normal patterns. On the other hand, 5 of 84 patients with normal QT intervals developed abnormal patterns after dieting.

The agency encourages research to address the unresolved scientific issues associated with the use of very low calorie diets in the management of obesity. As noted in a previous Federal Register notice (April 4, 1980; 45 FR 22904), FDA contracted for a scientific review of current research on the management of obesity by dietary means. The notice announced the availability of the contract report, entitled "Research Needs in Management of Obesity by Severe Caloric Restriction."

Although the information contained in the submitted abstracts is of interest, questions remain about the metabolic and physiologic responses of some of the test subjects. Furthermore, the agency does not believe that there is any inconsistency between its requirement for label statements on protein products promoted for weight reduction and the information contained in the two studies described above. The University of Rochester abstract described a study involving a caloric intake of 500 Calories per day and thus does not rebut the evidence of serious illness and deaths associated with diets of less than 400 Calories per day. The University of California at Irvine study did find prolonged QT intervals, which is an observation that has been associated with sudden death among individuals on extended low-calorie weight loss regimens. These findings are

consistent with the agency's conclusions about the risks presented by the use of protein products in diets of less than 400 Calories per day.

B. Need for Regulation

8. Several comments argued that the proposed labeling warnings are unnecessary because there are currently no protein diets, such as the "liquid protein" diet, in use. One of these comments argued that FDA must demonstrate a need for these regulations at the present time if it is to issue a final rule.

The record contains considerable evidence concerning the risks associated with very low calorie protein diets. FDA has clear authority to require label warnings to avert the recurrence of the type of use and misuse of protein products which resulted in the serious public health problem that occurred in 1977. FDA is not required to wait until additional deaths are reported before it may implement a label warning regulation. FDA has authority to regulate both existing risks and known potential risks. The purpose of the Federal Food, Drug, and Cosmetic Act (the act) is to prevent exposing the public to unnecessary health risks associated with adulterated or misbranded foods, drugs, cosmetics, and medical devices. Knowing the seriousness of the risk associated with very low calorie protein diets, FDA would not be serving the public interest if the agency failed to take action to guard against the occurrence of additional deaths.

FDA does not believe that the absence of recent reports of illnesses or deaths means that consumers are now fully informed about the risk of very low calorie protein diets. The absence of such reports is more likely attributable to the lack of promotion of very low calorie protein diets. The agency further notes that although there have not been any recent popular protein diets, other very low calorie diets have become popular. According to one of the comments received, sales of one diet product recommended for use in a diet of less than 400 Calories per day may have reached over $40 million per month. The agency is concerned that if it abandons its label warning proposal very low calorie protein diets will again gain similar popularity without adequate warnings of the risks.

9. One comment argued that any label warning regulation the agency promulgates can be easily circumvented and therefore the agency should use public education rather than label warnings to address this problem. The comment argued that FDA's experience with the liquid protein diet in 1977 demonstrates that an education campaign can effectively deal with this problem.

FDA disagrees with this comment. The agency believes that FDA's experience with the liquid protein diet illustrates the shortcomings of the public education approach. By the time FDA was able to mobilize its educational campaign numerous deaths and serious illnesses and injuries had already been associated with the use of protein products in very low calorie diets. The agency believes that without label warnings a similar incidence of deaths and illnesses could recur before FDA could adequately reeducate consumers about the risk.

C. Scope of Regulation

10. One comment argued that the proposed rule may endanger dieters by leading them to believe that very low calorie diets are safe so long as they are not based on the consumption of protein. This and other comments proposed dropping the word "protein" from the first warning.

The agency does not agree that the label warning will lead consumers to assume automatically that very low calorie diets that are not based on the consumption of protein are safe. The first warning contains no statement that would imply that products for very low calorie diets that are not defined by this rule are safe. Although the agency is concerned about the safety of all diets providing 400 Calories or less per day and continues to be concerned about diets providing between 400 and 800 Calories, the agency has specific concern about the sudden and unexpected deaths due to cardiac arrhythmias that have been demonstrated to be associated with very low calorie protein diets. To date, protein is the only food that has been shown to be associated with this risk and this evidence provides the basis for distinguishing between very low calorie protein diets and other diets. For this reason, the agency believes that it is important to retain the word "protein" in the first warning.

11. One comment suggested that the warning requirement apply only to "any formulated meal replacement product promoted or intended for use in a diet providing less than 400 Calories per day." This "intended for use" category would include all products promoted for use in diets of less than 400 Calories per day or generally so used. The comment stated that adoption of this category would eliminate the need for the second and third warnings. Another comment objected to the requirement that the first warning appear on protein products "otherwise promoted for use" in reducing weight.

As proposed, the first warning applies to any product that is "represented on the label or in the labeling or [is] otherwise promoted for use to reduce weight." The term "otherwise promoted for use" has created some confusion. The agency does not believe, however, that the term "intended for use" as proposed by the comment remedies this problem. The latter term is just as vague as "promoted for use" and equally subject to differing interpretations. Courts have, however, held that FDA may consider representations of all kinds in determining a product's intended use. Because section 201(n) of the act (21 U.S.C. 321(n)) provides that, in determining whether labeling is misbranded, the agency may consider "representations made or suggested by statement, word, design, device, or any combination thereof," the agency believes that the words "on the label, in labeling, or otherwise promoted" are unnecessary. Substituting the term "represented" for "promoted" eliminates the uncertainty concerning the scope of the first warning because the term "represented" is well defined in the statute and the case law. The agency has therefore changed the statement to read "represented for use in reducing weight" and has made conforming amendments to other paragraphs of § 101.17(d) by substituting the word "represented" for the word "promoted."

The agency notes that, contrary to the suggestions of one comment, adoption of the "intended for use" criterion would not eliminate the need for the second and third warnings. As interpreted by the comment, the "intended for use" criterion would apply only to products specifically promoted or generally used in diets of 400 Calories or less per day. This interpretation would exclude a broad range of products that the agency believes need to carry a label statement advising consumers about the safe conditions of use of the product, including protein products promoted as food supplements or for moderate weight loss. For the reasons discussed above, FDA believes that such products are subject to misuse in very low calorie diets and therefore should be subject to the label warning requirements.

12. Several comments urged that the proposed label warnings not apply to weight reduction products dispensed by physicians or used under medical supervision.

Similar comments have been made on earlier proposals and responses have been provided by the agency (see 45 FR

22904 and 43 FR 60863). To recapitulate, FDA does not believe that medical supervision would adequately guard against the health risks associated with the use of protein products in weight reduction diets. One important reason for having a label statement is to reinforce consumer awareness of the seriousness of these health risks. FDA anticipates that the label statements will encourage candid and effective patient-physician dialogue about the risks along with benefits to be derived from a weight loss regimen.

13. Four comments addressed the second warning, which applies to protein products promoted as part of a diet plan providing 400 or more Calories per day. One of these comments expressed concern that restriction of the first warning statement to products used in diets of less than 400 Calories per day creates an illusion that products that provide 401 Calories per day are somehow safer to use. Other comments recommended that the calorie limit be raised to 800 or to 600 to 800 Calories per day. Another comment recommended that the regulation be directed toward specific caloric ranges as follows: ultra low calorie diet, below 400 Calories; very low calorie diet, 400 to 800 Calories; and low calorie diet, 800 to 1,200 Calories.

This comment appears to misinterpret the proposal. As a point of clarification, the first warning applies to all protein products that are represented for any type of weight reduction, but which do not provide information about a nutritionally balanced diet plan. Admittedly, however, a product promoted with a nutritionally balanced diet plan at or slightly above a dietary intake of 400 Calories per day and bearing the second label statement may create the impression that such a product is safer than one bearing the first label statement. The agency did attempt to establish a dietary caloric limit for protein weight reduction products at 800 Calories per day based on the substantial documentation of deaths and serious illnesses that occurred with use of products at a caloric intake of approximately 400 Calories per day (45 FR 22904). This position was not, however, upheld on judicial review. The court determined that the evidence was insufficient to support the first warning for diets between 400 to 800 Calories per day.

FDA remains concerned about all low or extremely low calorie diets, including diets that provide 800 or fewer Calories per day, and urges that individuals with weight problems seek the advice and care of health practitioners knowledgeable in the treatment of obesity. There is, however, a scarcity of clinical or other evidence to guide the development of additional label statements that would apply to protein products promoted in diets of 400 to 800 Calories per day. The agency has therefore decided not to propose a specific warning for such diets. The agency emphasizes, however, that there is no scientific basis for believing that weight reduction regimens of slightly more than 400 Calories per day are safer than those of below 400 Calories per day. A number of medical, dietetic, and other professional organizations have issued statements cautioning consumers about weight reduction diets below the range of 800 to 1,200 Calories per day in the absence of appropriate medical care. FDA agrees with these positions and encourages truthful and effective efforts to communicate to consumers information on the safety of weight reduction diets.

14. Several comments stated that the rule should apply to all diets below 400 Calories rather than to protein products in liquid, powdered, tablet, capsule, or similar form deriving more than 50 percent of their caloric value from protein. Another comment argued that limiting the first warning to protein products in liquid, powdered, tablet, capsule, or similar forms discriminates against foods in these supplemental forms in favor of traditional foods.

The agency disagrees with these comments. The rule was limited to protein products in liquid, powdered, tablet, or capsule form because essentially all of the protein products found to be used in very low calorie diets were in these forms. The agency chose the "50 percent caloric value from protein" criterion because virtually all of the products used in very low calorie diets, and particularly those associated with the 17 cardiac deaths described above, met this criterion. Further, FDA does not believe that protein foods in traditional forms present a significant degree of public health concern compared to products in supplemental forms (liquid, powdered, tablet, capsule, or similar forms) because there is no significant evidence of the use of traditional foods in very low calorie diets nor is there information that any traditional foods have been promoted for use in such diets.

15. One comment contended that the third warning statement is totally unsupportable because, if a product is promoted specifically for purposes other than weight reduction, it should not be required to bear a notice stating that it should not be used for weight reduction.

The agency disagrees with the comment because the promotion of a product for a particular use does not adequately assure that the product will not be misused for another purpose. As discussed above, the telephone survey FDA conducted in 1977 indicated that persons were using protein products promoted as food supplements in very low calorie diets. FDA bases its authority to require complete label information on section 201(n) of the act, which states that the agency, in determining whether a product is misbranded, must consider material facts that the manufacturer fails to reveal as well as those representations that are affirmatively made. If a product is promoted as a food supplement or, for that matter, as a product to assist in gaining weight, consumers may not realize that there is any hazard associated with its use in weight reduction. In FDA's opinion, the risk associated with such a consumer misunderstanding is significant and the third warning statement is therefore necessary.

Limiting the warning to protein products promoted for weight reduction presents an additional problem in that it would allow manufacturers to circumvent the label warning requirement by representing the product as a food supplement when in fact they intend that the product be used for weight reduction. The agency is also concerned about the fact that some of the protein products that were associated with the 17 cardiac deaths described above were promoted as "supplements." For example, Case No. 56, which is discussed above, involved the use of a whole protein powdered product labeled as a "fasting supplement." Similarly, another product with good quality whole protein ingredients used in Case No. 37, which is also described above, contains the following label statement: "(Product Name) Dietary Supplement Non-Insulinizing Dietary Outpatient Fast * * * How to prepare—As a dietary supplement. Mix or blend well with coffee, tea, water, or low calorie soft drink." Case Nos. 56 and 37 support the conclusion that consumers could conclude that protein products labeled solely as food supplements are safe for use in diets of less than 400 Calories per day.

D. Legal Issues

16. Two comments suggested that products within the scope of the proposal be regulated as prescription or over-the-counter drugs.

The agency believes that section 403(a) of the act (21 U.S.C. 343(a)) provides ample authority to require label warnings on foods such as the protein products subject to this label warning regulation. Because label warnings are the most effective means of warning the public of the risks associated with the use of protein products in very low calorie diets, the agency believes that it is preferable to regulate protein products as foods rather than as drugs.

17. One comment contended that the first warning must be modified in order not to impinge upon constitutionally protected rights of free speech. The comment argued that the First Amendment allows a manufacturer to represent its product for use in a very low calorie diet without disclosure of the information required by the first warning. The comment stated that the word "warning" and the reference to "death" in the first warning violated the First Amendment.

The agency does not agree with this comment. The protection of commercial speech under the First Amendment is not intended to safeguard the seller from the consequences of providing truthful information. Rather, it is intended to prohibit the limitation of information available to the public. See *First National Bank of Boston* v. *Bellotti*, 435 U.S. 75 (1978). Disclosure of the information required by the label warning regulation will enable consumers to make an informed decision on whether to purchase the protein product for use in connection with a diet of less than 400 Calories per day. The First Amendment prohibits the government from abridging free speech, not from requiring the disclosure of truthful information. The seller may, through additional advertising or labeling, convey to the buyer any further information to supplement the minimum required by this warning statement as long as the additional information is truthful and not misleading. The terms "warning" and "death" in the first warning statement are appropriate because they accurately convey the potential consequences of using the product in extremely low calorie diets. The agency does not believe that the term "warning" is too severe. Rather, it is necessary to ensure that consumers are alerted to the important message that follows. Moreover, because one of the possible consequences of the use of a protein product in a diet of less than 400 Calories per day is death, the agency believes that any other term, such as "illness" or "injury," would be misleading in that it would understate the risk.

E. Text of Warning

18. One comment stated that the first warning is grammatically incorrect because the subject of the first sentence (very low calorie protein diets) is not the same as that in the second sentence of the warning.

The proposed language is not grammatically incorrect. There is no grammatical rule requiring that the subject of the first and second sentences be identical. There is no ambiguity in the imperative command form of the second sentence. In such sentences, the reader is the subject. Therefore, the first warning has not been modified in this respect.

19. One comment stated that the first warning was superfluous because currently there is no product on the market that meets the definition in the regulation that is promoted for use in a diet of less than 400 Calories per day.

The agency disagrees with this comment. The agency is aware of one product currently on the market that meets the definition of the rule that is promoted in diets of 400 Calories or less, and there may be others. Moreover, as discussed above, FDA is concerned that such products will again become popular if FDA abandons its rulemaking efforts. It should also be noted that the first warning is not required solely for protein products promoted for use in a diet of less than 400 Calories per day. The warning is required for any protein product promoted for use to reduce weight (unless it is promoted as part of a nutritionally balanced diet plan providing 400 or more Calories per day and the label specifies the diet plan). The agency believes that some consumers may use weight reduction products in diets providing less than 400 Calories per day regardless of whether they are specifically promoted for use in such very low calorie diets.

20. One comment asserted that the second warning is unworkable because it contains no definition of the term "nutritionally balanced diet plan."

A nutritionally balanced diet plan is one which experts qualified by scientific training and experience in the area of human nutrition would consider to have an adequate basis in fact and to provide a rational scheme for the maintenance of general good health. The agency believes that such a definition provides a workable guideline.

21. One comment argued that the notice requirement in the second warning is inherently illogical. The comment stated that if the product is promoted for use as part of a diet plan providing more than 400 Calories per day, the required label admonition (to use the product only as directed) is superfluous.

The cautionary statement to use the product only as directed in the plan is prudent advice that will help prevent use of the product in diets providing less than 400 Calories per day. FDA believes that the availability of a diet plan does not assure that the consumer will use the product in accordance with the diet plan.

22. One comment suggested that the second and third statements should be revised to focus on preventing misuse of protein products in diets of less than 400 Calories. The comment contended that the second warning would unnecessarily restrict the potential market for protein products to weight reduction uses, more specifically, to weight reduction uses only in accordance with the plan accompanying the product. The comment expressed the concern that consumers would interpret the third warning as a prohibition against using the product for uses other than food supplementation. Potential uses of these products for which there are no safety concerns, e.g., as snack foods or convenience foods, may not be perceived by consumers to be supplement uses, according to the comment, and thus will be avoided.

The agency agrees with this comment to the extent that it recommends that the second warning focus on weight reduction diets of 400 Calories or less. The agency has revised the last sentence of the second warning to declare: "Do not use in diets supplying less than 400 Calories per day without medical supervision." The agency has, however, retained the second warning's requirement that a diet plan accompany the product. The agency believes that a specific diet plan is necessary to ensure that consumers do not mistakenly use protein products in diets of less than 400 Calories per day. Moreover, the second warning should not unnecessarily restrict the potential market for protein products for weight reduction uses because there is no limit to the variety of weight reduction plans that may accompany such a product.

The agency disagrees with the comment's contention that the third warning should focus on diets of 400 Calories or less. To require a warning focusing on weight reduction for products that are represented or intended for food supplementation would indirectly promote the use of such products for weight reduction. The statement proposed by the comment, "Do not use in diets of less than 400

Calories per day without medical supervision," implies that the product may be used for weight reduction in diets of more than 400 Calories per day. Such an implication could result in the use of the product for weight reduction without adequate information about its safety. Moreover, a manufacturer who promotes a protein product solely as a food supplement should not be required to suggest that the product could be used for weight reduction.

A manufacturer who believes that the third warning, by restricting the potential market to food supplement uses only, would cut unjustifiably into possible unpromoted uses such as use in responsible weight reduction diets providing an adequate number of Calories per day, may represent the product as a food supplement and use the first or the second warning.

The comment further contended that consumers could construe the third notice as a prohibition of snack food and convenience food uses.

The agency disagrees with this argument. The agency considers all known nonweight reduction uses of the products within the scope of this regulation to be food supplement uses. Moreover, the agency does not agree that consumers would interpret the phrase "use only as a food supplement" to preclude what consumers might also consider to be snack food or convenience food uses. Therefore, the concern that the third notice would restrict these markets is unjustified. Furthermore, manufacturers are free to promote their products for any safe use they desire.

23. One comment suggested that § 101.17(d)(4) of the proposed regulation be modified to provide full flexibility for all possible combinations of uses of protein products.

As proposed, paragraph (d)(4) applied only to products promoted in accordance with a diet plan of 400 Calories or more per day and represented as a food supplement. Such products would contain the following statement: "Use only as directed in the accompanying diet plan or as a food supplement." The agency agrees, however, that the full spectrum of multiple uses is not adequately described by the language required in proposed § 101.17(d)(4). Under the proposal, a product represented both for use in a diet plan providing less than 400 Calories per day and also for use in a diet plan providing more than 400 Calories per day would have been required to bear a warning inconsistent with some of its potential uses. The proposed rule also did not deal adequately with a product represented for use in a diet of less than 400 Calories per day that is also represented as a food supplement. Nor was it clear how the proposal would apply to a product that is represented for all three uses simultaneously: in diets providing more than 400 Calories per day, in diets providing less than 400 Calories per day, and for use as a food supplement.

To cover all combinations of uses, and to provide warnings that are consistent and complementary, the agency has deleted proposed paragraph (d)(4) and is amending the 1982 proposed rule as follows:

a. The § 101.17(d)(1) warning is revised to read:

> **Warning**—Very low calorie protein diets (below 400 Calories per day) may cause serious illness or death. Do Not Use for Weight Reduction in Such Diets Without Medical Supervision. Not for use by infants, children, or pregnant or nursing women.

By adding the phrase "in such diets" to the first warning, the implication that the product cannot be used in a diet of more than 400 Calories per day is eliminated. Thus, if a product bearing the first warning is also represented in accordance with a diet plan of 400 Calories or more per day, it will be clear that use of the product in such a diet is not precluded. Moreover, there is nothing in the first warning that is inconsistent with representing the product for use in food supplementation.

b. The § 101.17(d)(2) warning is revised to read:

> **Notice**—For weight reduction, use only as directed in the accompanying diet plan * * *.

By adding the phrase "For weight reduction" to the second warning, the implication that the product cannot also be used for food supplementation is eliminated.

c. The § 101.17(d)(3) paragraph is revised to read:

> (3) The label and labeling of food products represented or intended for dietary (food) supplementation that derive more than 50 percent of their total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these, that are represented specifically for purposes other than weight reduction; and that are not covered by the requirements of paragraph (d)(1) and (2) of this section; shall bear the following statement:
>
> **Notice**—Use this product as a food supplement only. Do not use for weight reduction.

This revision of § 101.17(d)(3) makes clear that the third warning applies only to products represented solely as food supplements. Any product represented as a food supplement and for weight reduction would be governed by § 101.17(d) (1) or (2) which, as revised, permits such promotion.

The agency believes that these modifications are sufficient to cover all combinations of promotions. Protein products subject to the warning requirements of this regulation will be used either for weight reduction purposes or for food supplementation. All known uses of protein products covered by this regulation are considered to be food supplement uses unless they are used in diets to reduce body weight.

F. Miscellaneous Comments

24. Several comments contended that the requirement that the second and third warnings be placed on the principal display panel (§ 101.17(d)(6)) unnecessarily alarms consumers and is unwarranted. The comment argued that there is no evidence to indicate that the notices would not be read if they are placed on the information panel rather than on the principal display panel. The comments further asserted that any potential harm resulting from the misuse of these products occurs only after they have been repeatedly used for weeks or months at a time, giving the user substantial opportunity to detect and read the notices.

The agency disagrees with these comments. The warnings required by this regulation do not declare that these foods are uniquely dangerous or that they should be avoided. It is therefore unlikely that the warnings will alarm consumers. Instead, they will inform consumers that there are risks associated with certain dietary regimens. Those risks are significant enough to warrant warning statements that are sufficiently conspicuous to command attention. The conspicuous placement of these warnings is especially important because life-threatening effects associated with very low calorie protein diets have been demonstrated to occur in a relatively short period of time. A study conducted at the University of Rochester (discussed above) demonstrated that a liquid protein diet of 300 Calories per day is frequently associated with potentially life-threatening arrhythmias, some of which occurred as little as 10 days after the beginning of the diet. (Lantigua, R. A., et al., "Cardiac Arrhythmias Associated With a Liquid Protein Diet for the Treatment of Obesity," *New England Journal of Medicine*, 303: 735–738, 1980.)

The agency believes that the seriousness and the nature of the risk associated with the use of protein products in very low calorie diets are

sufficient to support the requirement for placement of the warning on the principal display panel. Such placement will ensure that the warning will be read and understood by the ordinary individual under customary conditions of purchase or use. This conclusion necessarily involves a judgment about what the average consumer will perceive. The agency has exercised this judgment based upon its extensive experience in developing and regulating label warnings for food and drug products.

25. Two comments suggested that § 101.17(d)(5) should be deleted or amended because labeling rules for these products should not be subject to requirements promulgated by the Federal Trade Commission (FTC) that are inconsistent with FDA's requirements. One of these comments contended further that FTC does not have jurisdiction over food labels.

The final notice of the FTC proposed trade regulation concerning the advertising and labeling of protein supplements was published in the Federal Register of March 10, 1976 (41 FR 10232). FDA and FTC have worked together to assure that their rulemaking proceedings do not result in inconsistent and unduly burdensome requirements for the protein supplement industry. The two agencies will continue this cooperation. FDA disagrees with the assertion that FTC has no jurisdiction in the area of food labeling. See *FTC* v. *Winsted Hosiery Co.*, 258 U.S. 483, 493–494 (1922); *Kober Hats, Inc.* v. *FTC*, 311 F.2d 358, 361 (1st Cir. 1962); *Mary Muffet, Inc.* v. *FTC*, 194 F.2d 504, 505 (2d Cir. 1952) (per curiam).

26. One comment stated that the agency should not make the warning label requirements effective until the next uniform effective date for compliance with all final food labeling regulations. Additionally, the comment stated that, in any case, these warning requirements should not become effective sooner than 1 year after the publication of a final rule. The comment requested a longer lead time to formulate nutritionally balanced diet plans, to produce new labels and packaging, and to exhaust existing stocks of labels. This additional time would, according to the comment, ultimately save consumers and producers money. Furthermore, the comment asserts that there is no imminent threat to public health by allowing such a delay.

FDA recognizes the need for adequate lead times for implementing changes and the benefits of consolidating the effective date of such changes. The agency believes, however, that the 4-month lead time provided before this final rule becomes effective is adequate for manufacturers to comply with the regulation. Additional time is inappropriate in this case because the public health concerns identified in this notice outweigh the advantages of delaying the further implementation of the label warning requirement. The agency has proceeded actively, in response to a significant public health problem, to develop regulations that impose such a requirement. Any delays that have hindered the implementation of this regulation were not due to lack of public health concern by FDA. The agency believes it is essential that this regulation become effective as soon as practicable, to ensure that consumers are warned of the possible adverse effects of using protein products in very restricted diets. FDA is, therefore, making this regulation effective for all affected protein products initially introduced or initially delivered for introduction into interstate commerce after August 6, 1984.

27. One comment, from a trade association representing a segment of the protein products industry, argued that the economic costs of the rule outweigh its benefits. The comment contended that the label warning requirement will create economic hardship for whole protein product manufacturers because consumers will discontinue using dry, whole protein products. The comment further contended that FDA is required to perform a cost benefit analysis under Executive Order 12291.

The agency disagrees with this comment's legal and factual contentions. First, neither the act, the Executive Order, nor any other law requires that the agency perform a cost-benefit analysis of this rule. The regulatory analysis requirements of Executive Order 12291 apply only to rules having an economic impact that exceeds $100 million or that meet other stated criteria. The agency has conducted a threshold assessment that shows that this rule would not have such an impact.

Even if a cost-benefit analysis were required, the agency does not agree that the costs of the rule outweigh its benefits. As part of its threshold assessment under the Regulatory Flexibility Act, the agency considered the economic impact of the rule and concluded that the primary cost would be the cost of labeling changes, which would amount to approximately $500 for each product that is subject to the label warning regulation. The total cost of relabeling all products subject to the final rule would be between $225,000 and $300,000.

Because the members of the trade association filing this comment do not manufacture products that are promoted in diets of 400 Calories or less, they would be subject only to the second and third warning requirements. These warnings require a "notice" advising consumers to use protein products represented for weight reduction in accordance with a diet plan providing 400 or more Calories per day, or if the product is represented as a food supplement, to use the product only as directed and not for weight reduction. The agency does not believe that these relatively innocuous label statements will dissuade consumers from using such protein products.

The environmental impact analysis report prepared in conjunction with the regulation proposed December 2, 1977, has been reviewed and was determined to be valid for this final rule. A copy of the environmental impact analysis report has been filed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FDA, in accordance with the Regulatory Flexibility Act, considered the effect that the June 11, 1982 proposed rule would have on small entities including small businesses and determined that the proposal would require label changes involving minimal cost expenditures. Therefore, FDA certified in accordance with section 505(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities would derive from the action. The agency also determined at that time that the proposed rule was not a major rule as defined in Executive Order 12291.

No comments have been received nor changes made in this final rule which would alter the conclusions in the proposed rule regarding the analysis required by the Regulatory Flexibility Act or Executive Order 12291. A copy of the threshold assessment supporting these determinations is on file with the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 101

Food labeling; Misbranding; Nutrition labeling; Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403(a), 701(a), 52 Stat. 1041 as amended, 1047 as amended, 1055 (21 U.S.C. 321(n), 343(a), 371(a))) and under 21 CFR 5.11, Part 101 is amended in § 101.17 by revising the section heading and by adding new paragraph (d), to read as follows:

PART 101—FOOD LABELING

§ 101.17 Food labeling warning and notice statements.

* * * * *

(d) *Protein products.* (1) The label and labeling of any food product in liquid, powdered, tablet, capsule, or similar forms that derives more than 50 percent of its total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these, and that is represented for use in reducing weight shall bear the following warning:

Warning—Very low calorie protein diets (below 400 Calories per day) may cause serious illness or death. Do Not Use for Weight Reduction in Such Diets Without Medical Supervision. Not for use by infants, children, or pregnant or nursing women.

(2) Products described in paragraph (d)(1) of this section are exempt from the labeling requirements of that paragraph if the protein products are represented as part of a nutritionally balanced diet plan providing 400 or more Calories (kilocalories) per day and the label or labeling of the product specifies the diet plan in detail or provides a brief description of that diet plan and adequate information describing where the detailed diet plan may be obtained and the label or labeling bear the following statement:

Notice—For weight reduction, use only as directed in the accompanying diet plan (the name and specific location in labeling of the diet plan may be included in this statement in place of "accompanying diet plan"). Do not use in diets supplying less than 400 Calories per day without medical supervision.

(3) The label and labeling of food products represented or intended for dietery (food) supplementation that derive more than 50 percent of their total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these, that are represented specifically for purposes other than weight reduction; and that are not covered by the requirements of paragraph (d) (1) and (2) of this section; shall bear the following statement:

Notice—Use this product as a food supplement only. Do not use for weight reduction.

(4) The provisions of this paragraph are separate from and in addition to any labeling requirements promulgated by the Federal Trade Commission for protein supplements.

(5) Protein products shipped in bulk form for use solely in the manufacture of other foods and not for distribution to consumers in such container are exempt from the labeling requirements of this paragraph.

(6) The warning and notice statements required by paragraph (d) (1), (2), and (3) of this section shall appear prominently and conspicuously on the principal display panel of the package label and any other labeling.

Effective date. All affected protein products initially introduced or initially delivered for introduction into interstate commerce on or after August 6, 1984 shall bear appropriate warning statements as prescribed in this final rule.

(Secs. 201(n), 403(a), 701(a), 52 Stat. 1041 as amended, 1047 as amended, 1055 (21 U.S.C. 321(n), 343(a), 371(a)).)

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: March 6, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-9168 Filed 4-5-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 136

[Docket No. 75P-0361]

Standards of Identity for Bakery Products; Termination of Stay and Affirmation and Amendment of Final Decision

AGENCY: Food and Drug Administration.

ACTION: Final rule; final order terminating stay and affirming and amending the Final Decision.

SUMMARY: The Commissioner of Food and Drugs is amending the Final Decision, with respect to the issue of artificial coloring in butter and margarine, to prohibit the addition to bakery products of coloring except that which may be present in butter or margarine, artificially colored up to the "medium high" intensity. Following the issuance of a Final Decision on this matter, published in the **Federal Register** of November 9, 1983 (48 FR 51448), and the granting of petitions to reconsider the Final Decision and the granting of a stay of that Final Decision, published in the **Federal Register** of January 17, 1984 (49 FR 1982), the Commissioner is also terminating that stay and is affirming the Final Decision with respect to three of the four issues dealt within the Decision.

DATES: This Order is effective April 6, 1984. The removal of paragraphs a, b, and c of the stay note at the end of § 136.110 (21 CFR 136.110) and the amendments to § 136.110(c) (16) and (17) are effective June 5, 1984. The removal of the introductory text and paragraph d of the stay note at the end of § 136.110 and the removal of the stay notes at the end of §§ 136.115 and 136.160 are effectively July 1, 1985.

ADDRESS: The transcript of the hearing, evidence submitted, petitions for reconsideration, comments on those petitions, and all other documents cited in this Order and in the Final Decision published on November 9, 1983, may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 9, 1983 (48 FR 51448), the Commissioner of Food and Drugs issued the Final Decision following a formal evidentiary public hearing concerning four amendments to the standards of identity regulations for bakery products. Following the receipt of three petitions for reconsideration, the Commissioner granted the petitions and stayed the Final Decision and all amendments to the Decision (notice of which was published in the **Federal Register** of January 17, 1984 (49 FR 1982)).

I have carefully considered the three petitions, filed by the Bureau of Foods (the Bureau), Food and Drug Administration; the Tennessee Department of Agriculture, Division of Chemistry (Tennessee); and the Florida Department of Agriculture and Consumer Services (Florida). I have also carefully considered the responses and comments filed by the American Bakers Association (ABA) dated December 22, 1983, January 11, 1984, January 16, 1984, February 10, 1984, and February 22, 1984. Finally, I have considered the response submitted by the National Association of Margarine Manufacturers, seeking affirmation of the Commissioner's decision to permit colored butter and margarine in standardized bakery products.

The ABA argued, among other things, that the petitions from the Florida and Tennessee State agencies should not have been accepted for filing because those agencies were not participants in the rulemaking proceeding. Although 21 CFR 12.139 refers to petitions for reconsideration by a "participant," 21 CFR 10.33 authorizes reconsideration on the Commissioner's own initiative or on the petition of an "interested person." I find it unnecessary to rule on this objection by the ABA, because I have

decided to consider the Florida and Tennessee petitions and, as discussed below, find them unpersuasive.[1]

Issues

Issue No. 1: Use of Lecithin

The Final Decision of November 9, 1983, affirmed the holding of the Initial Decision that lecithin should be permitted as an optional ingredient in egg bread as well as in other bakery products and thus denied the proposal to revise 21 CFR 136.110(c)(5)(i) so as to prohibit the use of lecithin in egg bread. Florida and Tennessee objected that the use of lecithin in egg bread is unnecessary, being used to impart characteristics such as texture and softness, and that its use in egg bread prevents the confirmation of the presence of eggs. The Bureau did not seek reconsideration of this issue.

The petitions by Florida and Tennessee do not present any arguments not previously addressed in the Initial Decision (pp. 5 through 9) and in the Final Decision (48 FR 51449–50). I have carefully considered the petitions and, for the reasons set forth in the Initial Decision and in the Final Decision, I affirm my holding that lecithin should be permitted as an optional ingredient in egg bread as well as in other bakery products.

Issue No. 2: Restrictions on the Use of Spices

The Final Decision revised a stayed provision in the regulation, 21 CFR 136.110(c)(16), that would have been permitted as an optional ingredient in egg bread only those spices that do not impart to the finished product a color simulating that of egg, and thus allowed unlimited use of spices in bakery products (48 FR 51450).

In its petition for reconsideration, which I have carefully considered, the Bureau argues that spices that impart an egg-like color should not be allowed in bakery products or, at the very least, that the allowance of such spices should be limited to bread labeled as egg bread. The Bureau criticizes the Commissioner's reliance on a 1978 survey which found that of all consumers surveyed (as opposed to the subgroup of egg bread users), about 12.9 percent said that yellow breads are better than white breads, 12.6 percent said yellow breads are not as good, and 36 percent said they were about the same. The Bureau contends that the Commissioner should have sought to protect the 12.9 percent of consumers who are susceptible to being fooled. I disagree. When viewed in toto, the survey fails to show any evidence of consumer deception. As the ABA observes, there is no indication from the survey that any of those consumers actually purchased yellow breads, that any of the consumers who did purchase yellow bread did so because of the yellow coloring, or that those consumers who purchased yellow bread because of the coloring did so in the mistaken belief that the breads contained egg when, in fact, they did not. (ABA response to the Bureau's petition for reconsideration at pp. 2 and 3.) All that is shown by the survey is that there were as many consumers who said that yellow breads are not as good as white breads as there were consumers who said that yellow breads are better. This would seem to undermine the Bureau's contention that some bakeries use spices to give bread a yellow color. The Bureau's assertion that spices used in bread contribute to color, but not to flavor, also lacks support. The Bureau's own evidence established that at least some spices contribute flavor. (Ex. G–4 at 4.) Finally, as the Bureau acknowledges, the potential for deception from the use of spices is limited by technical, cost, and taste factors. (Pet. at 6; Declaration of Taylor M. Quinn at 2.)

For the foregoing reasons, I see no reason to prohibit the use in bakery products of spices which impart an egg-like color. The Bureau's alternative proposal—that such spices be prohibited in standardized bakery products not labeled as "egg bread"—is likewise unpersuasive. Concededly, the purchaser of such bread would lack the protection of a label declaration of egg content. However, the consumer would still be protected by 21 U.S.C. 341 and 342(g), requiring the declaration of all optional ingredients; 21 U.S.C. 342(b)(4), prohibiting the addition to food of substances which make it appear better or of greater value than it is; and by 21 CFR 136.110 (b) and (c)(18), requiring that all optional ingredients be safe and suitable and not change the basic identity of, or adversely affect the physical and nutritional characteristics of, the food.

I have also carefully considered the Florida and Tennessee petitions, and find no substantive arguments presented therein which were not raised by the Bureau and addressed in this Order.

Accordingly, for the foregoing reasons, as well as for the reasons articulated in the Final Decision (48 FR 41450), I affirm my holding that spices should be allowed, without limitation, in bakery products. Thus, the permitted use of spices in bakery products is now identical to the unlimited use which was permitted by regulation (21 CFR 17.1(a)(14)) prior to the institution of this proceeding.

Issue No. 3: Artificial Coloring in Butter and Margarine

The Final Decision deleted a provision in the regulation that would place certain restrictions on the addition to bakery products of coloring as such or as part of another ingredient. (48 FR 51450–51.) Previously, there had been no regulation regarding the use of artificial coloring in bakery products. The proposed regulation, 21 CFR 136.110(c)(17), would prohibit the use of artificial coloring except for that contained in added butter. The prohibition on coloring went into effect while the exception for butter was stayed. (41 FR 45540; October 15, 1976.) The Bureau had supported the regulation, while the ABA, the National Association of Margarine Manufacturers, and Hoffmann-LaRoche, Inc., opposed the proposal as discriminatory and urged that both artificially colored butter and margarine be accorded the same treatment.

The Bureau has petitioned for reconsideration of the Final Decision on this issue, contending that the addition of coloring should be prohibited, except for the imparting of color by butter and margarine. Tennessee seeks the same outcome in its petition. Florida's petition, while somewhat unclear, broadly seeks the prohibition of the addition of artificial colors.

I have carefully considered all the petitions, and I amend my holding in the Final Decision and conclude that artificial coloring should be prohibited except for coloring from added butter and margarine.[2] Accordingly, 21 CFR 136.110(c)(17) should be retained and revised to reflect that conclusion.

My reasons are threefold: (1) As the Bureau observes, the use of coloring from spices, butter, and margarine was an issue in the hearing, while the use of coloring from other sources was not. In the absence of evidence on the use of coloring from such other sources, the prohibition in 21 CFR 136.110(c)(17) should not be amended.

(2) Perhaps more importantly, as the Bureau states, and as previously noted, the opportunity to create deceptive-appearing breads from the use of butter, margarine, and spices is limited by

[1] By letter dated January 10, 1984, the Michigan Department of Agriculture filed comments, but did not petition for reconsideration. Those comments do not present any issues not raised in the petitions for reconsideration.

[2] Because of my holding in Issue No. 2, coloring from the addition of spices is also permitted.

technical, cost, and taste factors. (Bureau Pet. at 6; Declaration of Taylor M. Quinn at 2.) The ABA restated and did not dispute that statement. (ABA response at 3.) By contrast, there is virtually unlimited opportunity to use artificial coloring from other sources. This "self-limiting" nature of certain ingredients has been previously recognized. (39 FR 32755; September 11, 1974.)

(3) The addition of artificial coloring to bakery products has been prohibited except, pending resolution of this issue at hearing, for such coloring which may be present in butter and margarine. (41 FR 45541–43; October 15, 1976.) No evidence has been presented in support of the proposition that such artificial coloring should now be permitted, probably because the parties did not perceive the addition of coloring from other sources to be at issue.

For the foregoing reasons, I am retaining the system now in place, by keeping in effect the general prohibition on artificial coloring. However, the evidence clearly established that there was no sound basis for distinguishing between coloring from butter and coloring from margarine. Indeed, the Bureau no longer advocates such a distinction. Therefore, I conclude that coloring from both added butter and margarine, up to the prescribed level, is excepted from the general prohibition.

Issue No. 4: Minimum Content in Egg Bread

The Final Decision of November 9, 1983, approved a provision in the regulation requiring a minimum content of 2.56 percent by weight of whole egg solids (equivalent to one medium-sized egg per pound loaf) in any product labeled "egg bread," thereby reversing the recommendation in the Initial Decision that a minimum content of the yolks of two medium-sized eggs per pound be required. The Bureau and Florida did not petition for reconsideration of this issue, although Florida disagreed with the reliance, in part, on concern for cholesterol content as a basis for requiring one rather than two medium-sized eggs per pound loaf.

Tennessee did petition for reconsideration, arguing that the requirement of two eggs per pound of bread is not excessive. This petition does not present any arguments not previously addressed in the Initial Decision (pp. 18–22) and in the Final Decision (48 FR 51451–52). I have carefully considered the petition and, for the reasons set forth in the Final Decision, I affirm my holding.

List of Subjects in 21 CFR Part 136

Bakery products; Bread; Food standards.

Final Order

Therefore, for the reasons stated above and in the Final Decision of November 9, 1983 (48 FR 51448) and under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10); *It is ordered,* That the stay announced in the Federal Register of January 17, 1984 (49 FR 1982), be terminated and that Part 136 be amended as follows:

PART 136—BAKERY PRODUCTS

1. In § 136.110, by removing the introductory text and paragraphs a, b, c, and d of the stay note at the end of the section and by revising paragraphs (c)(16) and (17) to read as follows:

§ 136.110 Bread, rolls, and buns.

* * * * *

(c) * * *

(16) Spices, spice oil, and spice extract.

(17) Coloring may not be added as such or as part of another ingredient except as permitted by paragraph (c)(16) of this section and except that coloring which may be present in butter or margarine if the intensity of the butter or margarine color does not exceed "medium high" (MH) when viewed under diffused light (7400 Kelvin) against the Munsell Butter Color Comparator. The MH designation corresponds to the Munsell renotation of 3.8Y7.9/7.6.

* * * * *

§ 136.115 [Amended]

2. In § 136.115 *Enriched bread, rolls and buns,* by removing the stay note at the end of the section.

§ 136.160 [Amended]

3. In § 136.160 *Raisin bread, rolls, and buns,* by removing the stay note at the end of the section.

Effective dates. This Order is effective April 6, 1984. The removal of papragraphs a, b, and c of the stay note at the end of § 136.110 and the amendments to § 136.110(c) (16) and (17) are effective June 5, 1984. The removal of the introductory text and paragraph d of the stay note at the end of § 136.110 and the removal of the stay notes at the end of §§ 136.115 and 136.160 are effective July 1, 1985.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: March 26, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-8043 Filed 4-5-84; 8:45 am]

BILLING CODE 4160-01-M

PEACE CORPS

22 CFR Part 301

Rules Pertaining to Declassification

AGENCY: Peace Corps.

ACTION: Final rule.

SUMMARY: Notice is hereby given that the Peace Corps is adopting the proposed rule Part 301 of Title 22, Code of Federal Regulations, that was published in the Federal Register on December 12, 1983 beginning at page 55298, to comply with Executive Order 12356, relating to the declassification and downgrading of national security information. This rule outlines the procedures to be followed by members of the public desiring mandatory declassification reviews of information originally classified by the Peace Corps.

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Martin, Associate General Counsel, Peace Corps, Washington, D.C. 20526, Telephone number (202) 254–3114.

SUPPLEMENTARY INFORMATION: Executive Order 12356, National Security Information, requires that agencies that originate or handle classified information promulgate regulations implementing the Executive Order, and publish in the Federal Register unclassified regulations establishing agency security policy to the extent the regulations affect members of the public. No comments were received in response to the public notice.

List of Subjects in 22 CFR Part 301

Classified information.

Accordingly, Chapter III of Title 22 of the Code of Federal Regulations is amended by revising Part 301 to read as follows:

PART 301—PUBLIC ACCESS TO CLASSIFIED MATERIAL

Sec.

301.1 Introduction.
301.2 Requests for mandatory declassification review.
301.3 Action on requests for declassification review.

Authority: Executive Order 12356, 43 FR 14874 dated April 2, 1982.

§ 301.1 Introduction.

The following regulations implement Executive Order 12356 and provide guidance for members of the public desiring a review for declassification of a document of the Peace Corps.

§ 301.2 Requests for mandatory declassification review

(a) All information originally classified by the Peace Corps shall be subject to review for declassification.

(b) Requests for review of such information for declassification shall be in writing, addressed to the Peace Corps Director of Security, Peace Corps, Washington, D.C. 20526, and reasonably describe the information sought with sufficient specificity to enable its location with a reasonable amount of effort. Only requests made by a United States citizen or a permanent resident alien, a Federal agency or a State or local government will be considered.

(c) Requests relating to information, either derivatively classified by the Peace Corps or originally classified by another agency but in the possession of the Peace Corps, shall be forwarded, together with a copy of the record, to the originating agency. The transmittal may contain in Peace Corps recommendation for action.

§ 301.3 Action on requests for declassification review.

(a) The Director of Security shall present each request for declassification to the Peace Corps Classification Review Committee, which shall consist of the Associate Director for International Operations, the Associate Director for Management and the General Counsel, or their designees, together with his or her recommendation for action.

(b) Every effort will be made to complete action on each request within 60 days of receipt thereof.

(c) Information shall be declassified or downgraded as soon as national security considerations permit. If the Classification Review Committee determines that the material for which review is requested no longer requires this protection, it shall be declassified and made available to the requester unless withholding is otherwise authorized by law.

(d) If the Peace Corps Classification Review Committee determines that requested information must remain classified, the requester shall be given prompt notice of the decision and, if possible, a brief explanation of why the information cannot be declassified.

(e) The Peace Corps may refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classified under E.O. 12356.

(f) A requester may appeal a refusal to declassify information to the Director of the Peace Corps, or the Director's designee. Appeals shall be in writing, addressed to the Director of the Peace Corps, Washington, D.C. 20526, and shall briefly state the reasons why the requester believes that the Peace Corps Classification Review Committee decision is in error. Appeals must be submitted within 30 days after receipt of notice of the Classification Review Committee decision. The decision of the Peace Corps Director, or designee, will be based on the entire record, and will be rendered in writing within 60 days after receipt of an appeal. The decision of the Director or Director's designee is the final Peace Corps action on a request.

Dated: March 29, 1984.

Loret M. Ruppe,

Director.

[FR Doc. 84-8812 Filed 4-5-84; 8:45 am]

BILLING CODE 6051-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

Worldwide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: The United States Information Agency is modifying 22 CFR Part 502. Section 502.3(h) is modified by deleting the 2 week requirement for Agency action and inserting a provision for timely processing of certification requests. Section 502.4(a) is modified by providing for consultation with specialists outside the Government whenever the examination of materials for export or import authentication indicates the desirability of substantive expertise in making a fair evaluation. Additionally, the current address of the Chief Attestation Officer is substituted for the previous address, countries which have recently been reported to recognize Agency educational audiovisual export certificates, or countries not previously published from which the Agency has received these certificates have been added to the list. Other minor correction are made. This regulation is modified for the purpose of updating names, dates, and places, and to improve the decision-making process.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Attorney-Advisor, Office of the General Counsel, United States Information Agency, 400 C Street SW., Room 700, Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency is modifying the regulation found at 22 CFR 502.4(a) to allow consultation with experts outside the Government. By Executive Order 11311 of October 14, 1966, the United States Information Agency was designated as the agency to carry out the provisions and related protocol of the "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character" made at Beirut in 1948 and is required to make any determination and to prescribe any regulations required by headnote 1 to Schedule 8, Part 6 of the Tariff Schedules of the United States.

The treaty facilitates the free flow of educational audio visual materials between nations by eliminating import duties, import licenses, special taxes, quantitative restrictions and costs, by shipment under an international certificate. A certificate is issued by the United States Information Agency upon determination that the article is visual or auditory material of an educational, scientific, or cultural character within the meaning of the Agreement.

The regulations require that the Chief Attestation Officer and his or her staff consult regularly with experts throughout the Agency and the Government. It appears that the ability to consult with private sector organizations would be helpful when the Agency is considering materials which have social implications and which may be biased. The Agency believes that consultation with appropriate specialists in the private sector for advisory opinions would facilitate the decision making process, especially in difficult cases. In these cases, the Chief Attestation Officer will make a formal determination that private sector consultants are necessary.

The United States Information Agency is also modifying the regulation found at 22 CFR 502.3(h) by deleting the two week requirement for Agency action and inserting a provision for timely processing of certification requests. Because applications are received in a cyclical manner it is not realistic to suggest that applications can be

uniformly processed in such a short time frame. The new regulation specifies that certification requests are processed in chronological order, except in unusual circumstances. The regulation also provides for notification to the applicant if the delay will exceed three weeks.

Additionally, the current address of the Chief Attestation Officer is substituted for the previous addresses, countries which have recently been reported to recognize Agency educational audiovisual export certificates, or countries not previously published from which the Agency has received these certificates have been added. Other minor corrections are made.

USIA has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, the following modifications proposed to Chapter V, Part 502 are adopted.

List of Subjects in 22 CFR Part 502

Education, Imports, Trade agreements.

§ 502.1 [Amended]

1. In § 502.1 *Summary; general:* Paragraph (a) the address of the Chief Attestation Officer is revised to read as follows: Chief Attestation Officer of the United States, Television and Film Service, Room 3000, Patrick Henry Building, United States Information Agency, Washington, D.C. 20547; telephone (202) 376-7203.

§ 502.2 [Amended]

2. In § 502.2 *Implementing statute and Executive Order*—Paragraph (a)(1) the word "exempted" is incorrectly spelled and is revised to read as follows: exempted

§ 502.3 [Amended]

3. In § 502.3 *Procedures:* Paragraphs (c) and (g) the address of the Chief Attestation Officer is revised to read as follows: Chief Attestation Officer of the United States, Television and Film Service, Room 3000, Patrick Henry Building, United States Information Agency, Washington, D.C. 20547; telephone (202) 376-7203.

4. Remove § 502.3(h) and insert the following in its place:

* * * * *

(h) Certification requests are processed in chronological order, except in unusual circumstances. If processing delays occur exceeding three working weeks resulting from receipt of unusual numbers of applications, or other circumstances, the Agency will send the Applicant an interim acknowledgment indicating the action time estimated.

* * * * *

5. In § 502.3, Paragraph (i) an applicant is now provided an original and one copy. The first sentence of this item now reads:

* * * * *

(i) Upon certification, the Applicant will receive the original Certificate and one signed copy. * * *

* * * * *

§ 502.4 [Amended]

6. In § 502.4—Paragraph (b) The name of the Environmental Services Administration is changed to the National Oceanic and Atmospheric Administration and the Federal Emergency Management Agency is added. The paragraph reads as follows:

* * * * *

(b) The Committee is composed of members representing the United States Information Agency, Department of Agriculture, Department of Commerce (including the National Oceanic and Atmospheric Administration and the National Bureau of Standards), Department of Defense (including Department of the Air Force, Department of the Army, Department of the Navy and the Marine Corps), Defense Audiovisual Agency, Department of Education, Department of Energy, Federal Emergency Management Agency, General Services Administration (including National Archives and Records Service), Department of Health and Human Services (including the National Institutes of Health), Department of the Interior (including the Bureau of Mines), Library of Congress, National Aeronautics and Space Administration, National Gallery of Art, National Science Foundation, U.S. Postal Service, Department of State, Department of Transportation (including Federal Aviation Administration, Federal Highway Administration, and the Coast Guard), Department of the Treasury, and the Veterans Administration.

* * * * *

7. In § 502.4(a) insert in the second sentence after "Government" the following: "and upon a formal determination that it is necessary, with specialists in the private sector".

The new § 502.4(a) will read as follows:

(a) The Chief Attestation Officer of the United States Information Agency and the Attestation Officers under his or her supervision will routinely and continuously receive Agency policy and legal guidance, and protests of Applicants will be reviewed by the Review Board and the Agency's Director as provided below. The Chief Attestation Officer and his or her staff will regularly consult experts throughout the Agency and throughout the Government and, upon a formal determination that it is necessary, with specialists in the private sector, whenever the examination of materials (for export certification or import authentication) indicates the desirability of substantive expertise in making a fair evaluation.

§ 502.5 [Amended]

* * * * *

8. In § 502.5 *Review and appeal*—Paragraph (b) The address of the Review Board reads as follows: Review Board for the International Audiovisual Program, Television and Film Service (B/TVF/R), United States Information Agency, Washington, D.C. 20547.

9. In § 502.6 *Substantive criteria*—Paragraph (b)(6) is revised, for the purpose of clarification, to read as follows:

(b) * * *

* * * * *

(6) The Agency does not certify or authenticate any materials which have not in fact already been produced at the time of application. However, special exception has been made to this requirement when (a) the qualified materials under consideration are issued serially, (b) future titles and release dates are known at the time of application, and (c) when the Applicant is prepared to affirm that future released material will conform to the substantive criteria for certification, and is prepared to provide the Agency copies of the items themselves or descriptive material for post-audit review.

* * * * *

10. In § 502.7 *History and background*—Paragraph (d) is revised in order to update the statistical data contained therein and reads as follows:

§ 502.7 [Amended]

* * * * *

(d) On August 1, 1953, with the creation of the United States Information Agency (USIA), this attestation program was transferred to

USIA, where it has continued without interruption. As of December 31, 1982, the U.S. Government had issued over 63,000 certificates covering an estimated 900,000 items of visual and auditory materials (a number of the certificates cover a series of items), and over 4,000 different Applicants had submitted materials for export certification.

* * * * *

11. In § 502.7(e)(2) the word "imports" is italicized. The closing text of this paragraph is removed, the following is substituted:

Additionally, the U.S. Government has recognized foreign certificates on exports received from the following countries:

Australia	Italy
Bulgaria	Japan
China, Peoples Republic of	Korea
Czechoslovakia	Poland
Germany	Puerto Rico
Hungary	Romania
Israel	Republic of South Africa
	United Arab Republic

Authority: 5 U.S.C. 301, 19 U.S.C. 2051, 2052, 22 U.S.C. 1431 et seq., E.O. 11311, 31 FR 13413, 3 CFR 1966–1970 Comp., page 593.

Dated: March 27, 1984.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 84-9053 Filed 4-5-84; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP, NOLA, Regulation No. 84-01]

Safety Zone Regulations; Lower Mississippi River, Vicinity of New Orleans.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard Captain of the Port (COTP), New Orleans, is proposing to establish a Safety Zone on the Mississippi River between LMR mile 81, AHOP, and LMR mile 115, AHOP. This Safety Zone is considered necessary to counteract problems anticipated with vessel traffic congestion on the Mississippi River that is expected to occur as increasing numbers of vessels visit and operate in and around New Orleans, specifically in conjunction with the activities of the 1984 Louisiana World Exposition (World's Fair), which will be open from 12 May 1984 until 11 November 1984. The establishment of a Safety Zone and the imposition of restrictions on vessels operating within it will allow the COTP to control vessel operations so that safe, reasonable access to the World's Fair and its activities can be accommodated without causing undue disruption to normal commerical shipping on the Mississippi River, or unduly exposing the visiting vessels to the inherent dangers in operating in close proximity with the industrial-commercial complexes located along the river. This Safety Zone would be established on 1 May 1984 and terminated on 30 November 1984.

EFFECTIVE DATE: May 1, 1984, and terminates November 30, 1984.

FOR FURTHER INFORMATION CONTACT: LCDR Richard E. Ford at (504) 589–7117, or ENS Peyton Coleman at (504) 589–7108.

SUPPLEMENTARY INFORMATION: On February 6, 1984, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (49 FR 4388). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this notice are LCDR Richard E. Ford, Project Officer, COTP, New Orleans, and LCDR R. W. Bruce, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Comments

None received.

Economic Assessment and Certification

This regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be positive and result in considerable savings to the commercial and industrial interests on the Mississippi River. Based upon this assessment it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amending by adding section 165.T810 to read as follows:

§ 165.T810 Lower Mississippi River, vicinity of New Orleans.

(a) The area from LMR mile 81, AHOP, to LMR mile 115, AHOP, is a Safety Zone. This Safety Zone is effective beginning 1 May 1984 and will terminate 30 November 1984.

(b) *Regulations.* (1) Vessel transit through the Safety Zone is normally permitted. However, unless specifically permitted by the COTP, New Orleans, no vessel within the Safety Zone may:

(i) Loiter;

(ii) Moor along the river banks (battures), unless adequate, fixed mooring devices are utilized (mooring to trees or other vegetation is specifically prohibited);

(iii) Moor in a barge fleeting facility;

(iv) Anchor in an established anchorage (anchoring outside of established anchorages on the Mississippi River below Baton Rouge is specifically prohibited by 33 CFR 110.195(c)(1)); or

(v) Transfer flammable materials while moored at the site of the World's Fair (Poydras St., Julia St. and Erato St. Wharfs) between the hours of 2100 and 2300 daily.

(2) The following categories of vessels, when within the Safety Zone, are hereby granted a general permit to engage in the activities enumerated in (b)(1)(iii) and (b)(1)(iv) of this section, when and where not prohibited by other law or regulation:

(i) All freight and cargo vessels carrying freight and cargo, or intending to engage in such carriage;

(ii) All documented towboats and tugboats;

(iii) All tank barges, hopper barges, and deck barges;

(iv) All industrial vessels, such as dredges, derrick barges, etc.; and

(v) All public and naval vessels.

(3) All ocean-going passenger vessels carrying passengers for hire, or intending to engage in such carriage, are hereby granted a general permit to anchor in established anchorages within the Safety Zone.

(4) In an emergency, a vessel may depart from any of the regulations in paragraph (b)(1) to the extent necessary to avoid immediate danger to persons, property, or the environment.

(5) Vessels seeking a permit to engage in the activities prohibited in paragraph (b)(1) must submit a written request, at least 5 days in advance of the desired effective date of the permit, to:

COTP, New Orleans, Attn: Waterways Safety Office, 4640 Urquhart Street, New Orleans, LA 70117

(6) The general permits granted above may be immediately revoked by the COTP by notifying any such vessel in this Safety Zone.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46, and 33 CFR 165.3)

Dated: March 23, 1984.

M. H. Dennis,

Commander, U.S. Coast Guard, Captain of the Port, Acting.

[FR Doc. 84-9126 Filed 4-5-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP, NOLA, Regulation No. 84-02]

Security Zone Regulations; 1984 Louisiana World Exposition in New Orleans

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard Captain of the Port (COTP), New Orleans, is proposing to establish a Security Zone on the Mississippi River in New Orleans between the up river end of the Canal St. Ferry Landing (approximately LMR mile 94.8, AHOP, LDB) and the down river edge of the new, Greater New Orleans Mississippi River Bridge (approximately LMR mile 95.7, AHOP, LDB) and extending 200 ft. channelward between these points from the New Orleans, or Left Descending Bank (LDB), side of the river. This Security Zone is intended to discourage civil disturbances and acts of terrorism that might be stimulated by the 1984 Louisiana World Exposition (World's Fair) in New Orleans. It would allow the COTP to strictly control access to the Fair's site from the Mississippi River, thus minimizing the possibility that persons intent on inciting such disturbances or acts could disrupt the Fair, or endanger the lives and property of its participants. This Security Zone would be established on 1 May 1984 and terminated on 30 November 1984.

EFFECTIVE DATE: May 1, 1984, and terminates November 30, 1984.

FOR FURTHER INFORMATION CONTACT: LCDR Richard E. Ford or ENS Peyton Coleman (504) 589-7117.

SUPPLEMENTARY INFORMATION: On February 6, 1984, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this Regulation (49 FR 4387). Interested persons were requested to submit comments and no comments were received.

Drafting Information:

The drafters of this notice are LCDR Richard E. Ford, Project Officer, COTP, New Orleans, and LCDR R. W. Bruce, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Comments:

None received.

Economic Assessment and Certification:

This regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since only non-ecomomic activities are being affected. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulations and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Security measures, Vessels, Waterways.

Final Regulation:

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding section 165.T811 to read as follows:

§ 165.T811 1984 Louisiana World Exposition in New Orleans.

(a) That area of the Mississippi River in New Orleans between the up river end of the Canal St. Ferry Landing (Approximately LMR mile 94.8, AHOP, LDB) and the down river edge of the new, Greater New Orleans Mississippi River Bridge (approximately LMR mile 95.7, AHOP, LDB), and extending 200 ft. channelward between these points from the New Orleans, or Left Descending Bank (LDB), side of the river is a Security Zone. This Security Zone is established 1 May 1984 and will terminate on 30 November 1984.

(b) *Regulations.* (1) No vessel may enter this Security Zone without the specific written permission of the Captain of the Port, New Orleans. A request for permission to enter this Security Zone must be submitted, in writing, at least 5 days in advance of the intended time and date of entry, to: Captain of the Port, Attn: Waterways Safety Office, 4640 Urquhart Street, New Orleans, LA 70117

Such request must include the:

(i) Name, address, telephone number, and business affiliation of the individual making such request;

(ii) Name of the vessel(s) involved.

(iii) Official Number or State Number of the vessel(s) involved; and its (their) flag and call sign;

(iv) Approximate number of personnel on board the vessel(s);

(v) Time and date of entry, and duration of intended stay;

(vi) Exact location of the vessel if it intends to remain within the Security Zone;

(vii) A brief statement of purpose for entering the Security Zone including, where appropriate, the nature of the cargo to be handled.

(2) All U. S. Naval and Coast Guard Vessels intending to enter this Security Zone are hereby granted a general exemption to the prior entry, written notification requirements of paragraph (b)(1) of this section, but must verbally notify the Captain of the Port at least 4 hours in advance of their entry with the information required by paragraph (b)(1) of this section. This notice may be called in by telephone to 589-7101, or by radio on channel 16 VHF-FM (156.8 MHZ), calling Group New Orleans, or on channel 11 VHF-FM (156.550 MHZ), calling VTS New Orleans.

(3) Vessels intending to enter this Security Zone for the purpose of conducting fuel oil or cargo transfer operations are hereby granted a general exemption to the prior entry, written notification requirements of paragraph (b)(1) of this section, but must verbally notify the Captain of the Port at least 4 hours in advance of their entry with the information required by paragraph (b)(1) of this section. This notice may be called in by telephone to 589-7101, or by radio on channel 16 VHF-FM (156.8 MHZ), calling Group New Orleans, or on channel 11 VHF-FM (156.550 MHZ), calling VTS New Orleans.

(4) At his discretion, the COTP may waive the requirements of paragraphs (b) (1), (2), and (3) of this section. Request for waivers must be made, in writing, to the COTP, using the address given in paragraph (b)(1) of this section.

(50 U.S.C. 191; E.O. 10173; and 33 CFR 6.04-6)

Dated: March 23, 1984.

M. H. Dennis,

Commander, U.S. Coast Guard. Captain of the Port, Acting.

[FR Doc. 84-9127 Filed 4-5-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-2-FRL 2559-2]

Hazardous Waste Management Program, New Jersey; Application for Interim Authorization, Phase II, Components A and B

AGENCY: Region II, Environmental Protection Agency (EPA).

ACTION: Granting of Phase II Interim Authorization, Components A and B, to State Hazardous Waste Program.

SUMMARY: The State of New Jersey has applied for Interim Authorization, Phase II, Components A (permitting of hazardous waste tanks and containers) and B (permitting of hazardous waste incinerators). EPA has reviewed New Jersey's application and has determined that New Jersey's hazardous waste program is substantially equivalent to the Federal program covered in Phase II, Components A and B. The State of New Jersey is hereby granted Interim Authorization for Phase II, Components A and B, to operate a hazardous waste program in lieu of the Federal hazardous waste program in the State of New Jersey.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Deborah A. Craig, New Jersey State Coordinator, Solid Waste Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 905, New York, New York 10278. Telephone (212) 264-0504.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, to protect human health and the environment from the improper handling and disposal of hazardard waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program took effect.

The State of New Jersey received interim authorization for Phase I on February 2, 1983. Under Phase I, the State is responsible for identifying and listing hazardous wastes and enforcing standards for generators, transporters and interim status facilities.

In the January 26, 1981 **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of Interim Authorization. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting storage and treatment in containers, tanks, surface impoundments and waste piles. Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

Component C, published in the **Federal Register** July 26, 1982 (47 FR 32274), contains technical facility standards which apply to groundwater protection, surface impoundments, waste piles, land treatment and landfills. The State of New Jersey intends to apply for permitting authority for land disposal facilities when it applies for final authorization.

Since the State of New Jersey's application for Phase II, Components A and B, Interim Authorization was submitted after the January 26, 1983 deadline for inclusion of certain waste piles and surface impoundments in Component A, the State's application includes only responsibility for storage and treatment in tanks, containers and incinerators. (See 47 FR 32379, July 26, 1982.) It does not include responsibility for treatment, storage or disposal in surface impoundments, waste piles, land treatment facilities or landfills.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 271, Subpart B.

Draft Application

The State of New Jersey submitted a draft application for Phase II, Components A and B, Interim Authorization on May 13, 1983. After detailed review, EPA transmitted comments to the State on August 25, 1983, for consideration. Major issues were identified for resolution before the State could be authorized. These issues involved the substantial equivalence of the State's regulations. On January 3, 1984, the New Jersey Department of Environmental Protection adopted regulations which resolved these issues.

Complete Application

On December 15, 1983, New Jersey submitted to EPA a complete application for Phase II, Components A and B, interim authorization. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of New Jersey's hazardous waste management program. No major issues were raised as a result of this review process. At a February 1, 1984 meeting with the New Jersey Department of Environmental Protection, EPA Region II identified two minor issues for the State to address in its application. These issues concerned the need for the Memorandum of Agreement to 1) reflect the latest report formats and reporting frequencies required by EPA for State authorized program activities and 2) clarify that for draft permits developed by the State after authorization, EPA will provide comments on said permits during the State's public comment period. On February 27, 1984, the State submitted a revised Memorandum of Agreement which addressed all of the issues raised by EPA.

Public Hearing and Comment Period

In the **Federal Register** notice of December 29, 1983 (48 FR 57343) EPA gave the public opportunity to review and comment on the State of New Jersey's application for Phase II, Components A and B, Interim Authorization Hazardous Waste Management Program under the Resource Conservation and Recovery Act (RCRA). The comment period closed on February 21, 1984. EPA also conducted a public hearing on the application on February 14, 1984, in Trenton, New Jersey. Two members of the public attended the hearing. No oral or written comments were received by EPA at the hearing. During the comment period, EPA received and considered by EPA in reaching a decision on New Jersey's application for Phase II, Components A and B, Interim Authorization. One commenter supported the delegation of the Phase II, Components A and B, permit program to New Jersey. The other comment received and EPA's response are summarized below:

Comment—The New Jersey Department of Environmental Protection should amend its hazardous waste regulations so as to remove the exemption for discharge of mixtures of domestic sewage and other wastes that are discharged into a sewer system to a domestic treatment works. This exemption precludes hazardous wastes that are discharged to a sewer system from being subject to State manifest system requirements and other hazardous waste regulatory controls.

EPA Response—In part, in order to qualify for interim authorization, States must have in place regulations that are substantially equivalent to the Federal hazardous waste regulations (see 40

CFR Part 271, Subpart B). Since the State's exemption is substantially equivalent to and consistent with the Federal exemption provided for under 40 CFR Part 261.4(a)(1)(i) and (ii), New Jersey need not amend its regulatory exemption for authorization. Note, however, that if the resulting sewage sludge from the plant's treatment process exhibits any of the characteristics of hazardous waste, the sludge is not exempt from being managed as a hazardous waste under New Jersey's or EPA's hazardous waste regulations (see N.J.A.C. 7:26–8.1 and 40 CFR Part 261.3). Further, plant discharges are regulated under the New Jersey Water Pollution Control Act and the EPA Clean Water Act.

Decision

EPA has reviewed New Jersey's complete application for Phase II, Components A and B, Interim Authorization, and has determined that the State program is substantially equivalent to Phase II, Components A and B, of the Federal program as defined in 40 CFR Part 271, Subpart B, as amended at 47 FR 32373 (July 26, 1982). In accordance with Section 3006(c) of RCRA, the State of New Jersey is hereby granted Interim Authorization to operate its hazardous waste program in lieu of Phase II, Components A and B, of the Federal program in New Jersey.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: March 12, 1984.

Jacqueline E. Schafer,

Regional Administrator, Region II.

[FR Doc. 84-9213 Filed 4-5-84; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 420

Medicare Program; Access to Books, Documents and Records of Subcontractors

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to the comments we received on a final rule that we published December 30, 1982, that set forth criteria and procedures concerning the Department's access to books, documents and records of a contractor of a Medicare provider. In addition, we have made a few procedural revisions and technical corrections to the final rule.

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Harrison, (301) 594–8522.

SUPPLEMENTARY INFORMATION:

Background

Under the Medicare program, the amount paid at this time to a provider of services generally has depended on the reasonable cost of items and services furnished to beneficiaries. (As of October 1, 1983, we began to pay hospitals for most inpatient services on a prospective basis under Pub. L. 98–21, enacted on April 20, 1983.) While section 1815(a) of the Social Security Act requires a provider to make available to its intermediary financial and other books and records so that the reasonable cost of services it has provided may be determined, we did not have the same access to the records of a provider's subcontractors until December 6, 1980.

Section 952 of the Omnibus Budget Reconciliation Act of 1980 (Pub. L. 96–499), enacted December 5, 1980, amended section 1861(v)(1) of the Social Security Act by adding a new subparagraph (I). That provision requires that, in order for the costs of services furnished under a contract between a provider and subcontractor to be included as reasonable costs for Medicare reimbursement purposes, the contract (if its cost or value over a 12-month period is $10,000 or more) must contain a clause allowing the Secretary and the Comptroller General to have access, upon request, to the contract, and to the books, documents, and records of the subcontractor that are necessary to verify the nature and extent of costs of services furnished under the contract. The contract must provide for the access until the expiration of four years after the services are furnished under the contract. In addition, the contract must allow access to contracts of a similar nature, cost or value, between subcontractors and related organizations of the subcontractor, and to their books, documents, and records. The statute requires that the Secretary's request for books, documents, and records must be in writing and that the Secretary must specify in regulations the criteria and procedures the Secretary will use in obtaining that access. This section became effective on December 6, 1980.

The statute contains no requirement for the Comptroller General to publish regulations in order to gain access to the subcontractor's contract, books, documents, and records and those of its related organizations. Therefore, the regulations addressed only that part of the provision for which the Secretary is responsible, except that they required the access clauses to provide also for access by the Comptroller General and his or her authorized representatives.

Provisions of the Regulations

On October 12, 1982, we published a notice of proposed rulemaking (NPRM) to set forth the procedures we proposed to use to implement the statute. On December 30, 1982, we published a final rule (47 FR 58260). The regulations added a new Subpart D, Access to Books, Documents, and Records of Subcontractors, to 42 CFR Part 420, Program Integrity. The preamble to the final rule addressed major comments that we received in response to the NPRM, stated that we were considering additional requests for clarification and technical changes, and allowed for submission of additional comments on the final rule.

In summary, the regulations we adopted:

(a) Defined various terms, such as "contract for services", "provider", and "subcontractor";

(b) Specified which contracts are subject to the regulations;

(c) Gave the criteria we will use to determine whether to request access to books, documents, and records;

(d) Described the procedures we will use to gain access to books, documents, and records;

(e) Described the procedures for subcontractors to use when responding to requests; and

(f) Described procedures concerning.

(1) A subcontractor's refusal to permit access to requested books, documents and records; and

(2) A contract's lack of an access clause.

Under headings separate from "Provisions of the Regulations", we also dealt with provider concerns about a subcontractor's refusal to insert an access clause and about confidentiality of records.

Analysis and Response to Comments

In response to the final rule we received comments from eight commenters consisting of three law firms, a subcontractor, two management associations, a Medicare carrier and an individual. In addition, we are responding to several commenters' requests for minor clarification or technical changes that were submitted in response to the NPRM and that were considered but not included in the Analysis and Response to Comments section (47 FR 58263) of the final rule due to the limited time between the end of the comment period (December 13, 1982) and the publication date (December 30, 1982).

Below we discuss these comments and furnish our responses to all of these comments.

A. Definitions

1. Books, documents and records. One commenter continued to have difficulty with our definition of books, documents, and records. He believed that access should be limited to "books, documents, and records necessary to verify the nature and extent of the costs of subcontractor services *included in a provider's cost report"* to clarify that the inquiry relates to the nature and extent of the cost to the provider, not the costs of the subcontractor (emphasis added). Another commenter wanted us to exclude copies of individuals' income tax returns, since we might have to disclose them under the Freedom of Information Act, even though other statutes prohibit releasing income tax information.

Response: We do not believe that it is necessary to make the language of the regulations more restrictive. The legislation and the regulations are specifically directed toward Medicare costs and further amplification of this intent seems unnecessary.

With respect to individuals' income tax returns, if the returns constitute the only way to verify expenses (admittedly a rare situation), it will be necessary for us to examine them. However, the FOIA allows us to exempt from mandatory disclosure matters that are exempted from disclosure by statute (see 5 U.S.C. 552(b)(3)). Tax returns and return information are not disclosed except as authorized by the Internal Revenue Code (see 42 CFR 401.126(b)(3)).

2. *Contract for services.* Several commenters believed that our definition of contract for services is too vague. Other commenters believed that we should add language to the definition at 42 CFR 420.301 that would specifically exclude contracts for certain services from the definition of contract. Other commenters asked whether contracts for specified services are covered by the regulation.

The contracts for services that the commenters wanted specifically excluded in the regulation text are contracts for:

(a) Services included in the construction of buildings;

(b) Services incidental to the purchase of goods;

(c) Services to carry out a warrant of goods;

(d) Services furnished by entities subject to regulations by regulatory commissions such as the Federal Reserve Board of a State Banking Commission; and

(e) Services furnished at a price based on an established commercial catalog or market price.

One commenter wanted to know if insurance is considered a service, and if so, whether claims files are "appropriate books and records". He strongly objected if claims files are to be made available.

Two commenters wanted to know whether hospital councils and associations providing services to hospitals are subject to the regulations.

Response: With respect to the requests for specific exclusions for (a) services included in the construction of a building, (b) services incidental to the purchase of goods, or (c) services to carry out a warranty, we do not believe it is appropriate to insert specific exclusions for these services in the regulations since the treatment of incidental services will be determined on a case-by-case basis by the intermediary. For example if these services are normally included in the manufacturer's selling price of the goods (which may also include distributor mark-ups, salespersons' commissions, etc.), then the contract for purchase of the goods and related services need not contain an access clause. However, if a firm unrelated to the manufacturer supplies incidental services (e.g., a group purchasing service providing "purchasing advice" to a provider), then an access clause must be included in the contract if all other criteria are met.

With respect to (d), services of regulated entities, we do not believe that the mere presence of other regulatory authorities eliminates the possible necessity for an access to records; therefore, these entities are considered subcontractors and their contracts with providers are subject to the access regulation.

In response to (e), services furnished at catalog or market price, we agree that, as a general rule, evidence of commerciality eliminates the need to gain access to the records of subcontractors to establish the nature and extent of the costs of contracted services. However, we cannot exclude these subcontractors from the access requirements as there may be circumstances that warrant requesting and gaining access to records that are needed to:

(i) Describe the services required to be performed under the contract;

(ii) Demonstrate that the services required to be performed under the contract have actually been performed; and

(iii) Ensure that charges billed to the provider correspond to the terms of the contract.

In response to the comment on insurance, we have taken the position that insurance is a service; therefore, we have a legitimate interest in any records kept by insurance companies that are necessary to certify the nature and extent of the costs claimed by a provider for that service. However, we do not believe that in most instances it will be necessary to examine records such as claims files to verify costs.

In response to the comment on the applicability of the access provisions to hospital councils and associations, we have determined that the services furnished by such organizations represent costs to providers that are included in the latter's claim for reimbursement. Therefore, contracts with these organizations are subject to the regulations.

3. *Definition of subcontractor.* There were four comments concerning the definition of "subcontractor". Three of the comments were concerned with defining employees or persons such as

independent therapists as subcontractors. The fourth comment pointed out that what we are calling a "subcontractor" is actually a "contractor", since the primary contract is between the provider and a contractor, not a subcontractor.

Response: The definition of "subcontractor", for purposes of applying the access provisions, does not include employees of the provider. However, independent contractors who are either self-employed, or who work for an organization that is not related to the provider are considered to be subcontractors for purposes of the regulations and must include the access clause in their contract with the provider.

To illustrate the difference, a physical therapist who is paid directly by a hospital on a salaried basis, whose reimbursement includes fringe benefits normally associated with employment (i.e., the hospital provides medical insurance, pays social security, etc.), would not be subject to the access requirements. On the other hand, a physical therapist who has a contract with the provider to establish and run a physical therapy department on a negotiated fee or remuneration arrangement would be considered a subcontractor and the contract would be subject to the access provisions.

We recognize that what we refer to in regulations as a subcontractor is, in normal usage, referred to as a prime contractor to the provider; however, in preparing the regulation, we have reflected the language contained in the statute, which specifically refers to these entities as subcontractors. We feel it important to reflect the statutory language and feel it appropriate to continue the present terminology.

B. Requirement for Access Clause in Contracts

1. *Applicability.* (a) One commenter wanted to know if the regulations apply to carriers.

Response: The statute and regulations apply only to Medicare providers, as defined by section 1861(u) of the Act.

(b) One commenter stated that when there is a contract starting before December 6, 1980 the regulations should apply only to services furnished after December 5, 1980.

Response: The regulations apply only to contracts *entered into or renewed* after December 5, 1980, the effective date of the statute. They do not apply to services furnished as a result of contracts entered into on or before that date.

(c) A number of commenters have asked whether they are required to attempt to amend contracts that, although entered into after December 5, 1980, have already been fully executed and are thus no longer in force. They stated that it would be extremely difficult, if not impossible, to amend these contracts.

Response: We did not intend to require providers to amend those contracts entered into after December 5, 1980 that are no longer open. It must, however, be recognized that this does not preclude us in a given situation (e.g., an intermediary in settling a cost report) from requesting a subcontractor's records.

(d) Two commenters requested a clarification of whether the 12-month period referred to in the statute and regulations is a cumulative or consecutive 12-month period.

Response: The 12-month period referred to is a period of 12 consecutive months (i.e., a period of one year). It is not our intent to include in this provision a series of short-term contracts over a series of years that might ultimately equal $10,000 during a nonconsecutive 12-month period.

(e) A commenter asked whether we would "annualize" the amount of any single contract for less than $10,000 to determine whether the total amount of the contract projected on an annual basis would total $10,000 or more.

Response: It is not our intent to project or "annualize" any contract for under $10,000 to determine whether the total amount projected over a 12-month period would equal $10,000 or more and thus be subject to the access requirement. In situations, however, where a provider has entered into a number of small contracts (less than $10,000) with the same subcontractor that, although not originally anticipated, do amount to $10,000 over a 12-month period, we will require the contracts to be amended to include the access clause from the date of the earliest contract.

As we discussed in the Analyses and Response to Comments section of the Final Rule, any series of contracts that add up to $10,000 or more over a 12-month period must contain the access clause. For example, two contracts for six months each that are valued at $6,000 each or 12 contracts for one month each valued at $1,000 each must contain the access clause.

In addition, the contracts need not be for the same service; they need only be between the provider and the same subcontractor. For example, a provider has one contract with a subcontractor to maintain a piece of laboratory equipment for $6,000 a year; in addition, they have a contract for maintenance of microfilm readers in the library for $6,000 with the same subcontractor. Even though different services and personnel are involved, since the two contracts are for services provided to the provider by the same subcontractor, they total more than $10,000 over a single year, and the contracts must contain an access clause.

2. *Clause requirements.* Two commenters requested that suggested language for the clause that meets all our requirements be put into regulations, so that parties to a contract need not work their way through regulations each time a contract is drawn up. Two commenters requested that regulations allow a blanket approval by a subcontractor for all services furnished a provider, rather than including the access clause on each purchase order or contract.

Response: We agree that a sample clause may be helpful to providers and subcontractors in drawing up a contract but do not feel it appropriate to place model language, which might not be suitable for all contracts, in the Code of Federal Regulations. For those interested in a sample clause that complies with final regulations, we suggest the following language:

"Until the expiration of four years after the furnishing of the services provided under this contract, (*Subcontractor*) will make available to the Secretary, U.S. Department of Health and Human Services, the U.S. Comptroller General, and their representatives, this contract and all books, documents, and records necessary to certify the nature and extent of the costs of those services. If (*Subcontractor*) carries out the duties of the contract through a subcontract worth $10,000 or more over a 12-month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representatives to the related organization's books and records."

Because of the need to accommodate so many variations in contracts, this language should be viewed only as a guide.

During the initial stages of implementation we believe it is acceptable for subcontractors to provide a blanket acceptance of the access provisions. However, as contracts are renegotiated, the access language should be included in each renegotiated contract.

Three commenters objected to having the intermediary obtain access to books, documents, and records. One of the commenters believed that intermediaries lack necessary expertise;

the others were concerned with lack of uniformity in the treatment of providers, confidentiality of data, and the effect on subcontractor/provider relationships.

Response: The intermediaries act as agents of the Secretary carrying out their Medicare functions. Their overall responsibilities include the auditing of provider cost reports and the verification of the appropriateness of claimed costs, activities closely related to those included in these regulations. The commenters did not submit any information that would establish that it is inappropriate for intermediaries to gain access to subcontractor records.

3. *Prohibition against reimbursement.* One commenter believed that we should go back to the policy included in the NPRM that gave providers a 60-day grace period to amend contracts once it was recognized that there was no access clause, rather than requiring all pertinent contracts to be amended by July 28, 1983. In the opinion of the commenter, such a change would avoid penalizing a provider when the clause is inadvertently omitted. It would also help the provider to advise the subcontractor in cases when there is a contract between the subcontractor and a related organization because the six month period is inadequate to check all subcontracts.

Response: We do not agree with the suggestion that providers be automatically given a grace period in which to amend contracts that do not have an access clause. We allowed all providers 180 days from the effective date of the regulations to review their contracts and to amend those that do not conform to the requirements of the regulations. (We note that the regulations at § 420.302(c) incorrectly listed that date as July 28, 1983. Counting prospectively from the effective date of the regulations, January 31, 1983, the correct date is July 30, 1983. We are making the correction.) Nevertheless, we recognize that situations may develop where a provider, after applying the criteria of the regulations to a contract, erroneously decides that the contract does not require an access clause. In such unusual situations, if the provider can demonstrate to our satisfaction that it acted in good faith and that its failure to include an access clause was reasonable, and if the provider and subcontractor amend their contract to include an access clause, we will treat the contract as meeting the requirements of the regulations. Any such amendment, however, must make clear that the access clause applies to the contract, books, documents and records for the full term of the contract (rather than just the period following the date of the amendment).

D. Procedures for Obtaining Access

1. One commenter believed that the request for access should be in the form of a certified letter. Another commenter believed that HCFA should obtain a court order to ensure that there is reasonable cause to request access.

Response: We believe that the use of a certified letter would not benefit the provider, the subcontractor, or the intermediary and, instead, would add an additional procedure and expense that could delay notification. Similarly, the requirement for a court order, which is not provided for by the statute, would result in inordinate delay and considerable expense. It is clear from the statute that the access requirements are administrative measures and were not intended to be adversary, court-mediated discovery actions.

2. Three commenters requested that the subcontractors have 30 days to respond from the date of receipt of a request.

Response: We believe that 30 days from the date of the request will provide ample time in most instances for a subcontractor's response. In extenuating circumstances, the regulation permits the subcontractor to request an extension of the 30-day period for good cause.

3. One commenter wanted us to state (in the request for access) the rationale for the request. Four commenters believed that we should document in the request why we cannot obtain the information we seek from any other source. One commenter wanted our assurance that we would not request any information that has already been filed with another governmental agency.

Response: Section 420.304(a)(3) of the final rule already requires requests for access to state the reason that the appropriateness of the costs or value of the services of the subcontractor cannot be adequately or efficiently determined without access to the subcontractor's books and records.

Also, in the preamble to the final rule we stated that we will consider, before requesting a subcontactor's documents, books or records, whether there is any other more efficient, more practical, or more economical method of obtaining the necessary information or if there are any other books, records or documents available that could be used for judging costs under the subcontract. If so, we will ordinarily attempt to obtain the information by those means before seeking to gain access to the records of the subcontractor.

E. Refusal by Subcontractor To Include Clause

Several commenters objected to the policy and procedures pertaining to a subcontractor's refusal to include the access clause in a contract.

1. One of these commenters requested that we place in regulations the instructions about contacting the HCFA regional office when there is a problem with getting the subcontractor to put the access clause in a contract.

Response: Our instruction that the provider contact the HCFA Regional Administrator is an advisory instruction. Contacting the Regional Administrator alerts the Regional Administrator to the potential problem with the subcontractor and affords the Regional Administrator an opportunity to intervene and help reach a possible resolution of the problem. It is not, however, a procedure necessary for the implementation or clarification of the statute and as such is not included in regulations.

2. Another commenter objected that there are no appeal rights in the regulations for a subcontractor that does not agree that we should have access to its records.

Response: Providing for a process of immediate administrative review of requests for access would lead to substantial delays and increased costs. If disputed costs are disallowed, the provider can obtain review of the questioned costs by the intermediary, and, if appropriate, by the Provider Reimbursement Review Board and the courts.

3. One commenter believed that taking legal action against a subcontractor that refuses us access, rather than disallowing the cost to the provider, will lead to a substantial cost increase.

Response: We agree that instituting legal action against a subcontractor will increase administrative costs. However, if a provider has complied with the law by obtaining the required access clause from the subcontrator, and the subcontractor, after agreeing to allow access, fails to abide by the access clause, we may have no recourse except to take action against the subcontractor in order to uphold the law.

4. One commenter requested clarification of whether HCFA requires "preapproval" by the intermediary for the provider to deal with a higher-priced subcontractor when the lowest-priced subcontractor refuses the access clause.

Response: We recommended contact with the intermediary before entering into a more expensive contract merely

to provide the information to the intermediary and aid in the cost report settlement process. Contact with the intermediary is not required and is not to be considered as a preapproval of the contract.

5. A commenter requested that we clarify what, if any, action we would take against the provider if a subcontractor refused to grant a request for access in accordance with the provision of the contract.

Response: The provider's responsibility under this provision is to assure that the required record access clause is included in all appropriate contracts for services with subcontractors. A subsequent refusal by a subcontractor to comply with a proper request for records may not, in itself, result in a loss of Medicare reimbursement due to the provider. However, the decision as to what is due to the provider in such case can only be determined after a careful review of all of the circumstances.

F. Freedom of Information Act Requests

There were ten comments regarding the availability of subcontractor records to the public under the Freedom of Information Act (FOIA).

1. Several commenters were concerned that trade secrets, other confidential commercial information, and personal information would be disclosed. They wanted the regulations text itself to state that certain materials are exempt from disclosure.

Response: We cannot comply with this comment. The FOIA allows us to exempt from mandatory disclosure certain classes of records, such as trade secrets, confidential commercial or financial information and personnel and medical files (see 5 U.S.C. 552(b)). However, except for material required to be withheld by statute, these exceptions are permissive rather than mandatory. A decision on whether to withhold material that is exempt from mandatory disclosure must be made on a case-by-case basis (see 45 CFR Part 5, Subpart F).

2. One of the commenters suggested that we place in regulations a paragraph requiring us to return to subcontractors any copies of records within 180 days of access, and to notify a subcontractor of a request for information under the FOIA.

Response: We cannot guarantee the return of copies of records within 180 days of access. In some cases copies of the records may have to be retained as part of the background material verifying a provider's cost. Retention of copies may also be necessary in the case of provider appeals. As stated in the preamble to the final regulation, if HCFA examines records without taking possession of the records or of copies of them, then the records are not subject to the FOIA's requirements. We will do everything that we can to accommodate subcontractor's concerns if we find it necessary to request and retain records.

In response to the comment suggesting we notify a subcontractor when and if we find it necessary to release copies of its records under the FOIA, we agree that we will notify a subcontractor if we receive a request for its records under the FOIA and we will send it a copy of any documents we release to the public under the FOIA.

G. Miscellaneous

1. One commenter wondered whether our note in the preamble that defined "we" and "HHS" was correct. He presumed that "we" and "HHS" included the Comptroller General, rather than the Inspector General as we stated.

Response: References to "we" and "HHS" do not include the Comptroller General. The Office of the Inspector General to which we referred is part of HHS, but the Comptroller General is not.

2. One commenter suggested that in the first and second paragraphs under the heading "B. Application 1. Contract Provisions" under Provisions of the Regulations, which is contained in the regulations preamble, the language concerning who has access should be exactly the same. He stated that we did not include "duly authorized individuals" in the first paragraph, which might imply that only the Comptroller General and the Secretary have access to contracts, books, documents and records between providers and subcontractors, whereas their duly authorized representative as well as the Secretary and Comptroller General may obtain access to contracts, books, documents and records of a subcontractor's subcontractor.

Response: The material contained in the preamble to the regulation is provided as clarifying instructions to the regulations. It in no way amends or supersedes the actual language of the statute or regulation. Section 420.302(a) clearly states that the Secretary of HHS, the Comptroller General, and their duly authorized representatives must be permitted access to contracts, books, documents, and records of both the subcontractor and organizations related to the subcontractor.

3. One commenter believed that, where there are contracts subject to access requirements between a provider and physicians, records should be sought from the provider, since all necessary information may be obtained in that way.

Response: As previously stated, information will be sought from subcontractor's records only when it is unavailable from other public sources or from the provider.

4. Two commenters protested that our refusal to recognize the costs of renegotiating contracts in order to include the access provision is erroneous and inconsistent, and that such costs should be treated as any other provider costs.

Response: A re-examination of our position persuades us that we should allow providers to recover a proportionate share of any renegotiation costs (to the extent they are reasonable) by including them in the Administrative and General cost center. We are including the necessary procedures in operational instructions.

We have also received several telephone inquiries as to how we propose to deal with costs associated with leasing of buildings and equipment. Since the ownership of the leased item remains with the lessor, we are assuming that the leasing costs do not represent payments for goods, but are instead payments for the services associated with the lease; e.g., maintenance, billing, refurbishment, etc. Thus, contracts for leasing of buildings and equipment will be considered as service contracts and as such will be subject to the access regulation.

Technical Changes

1. We are revising in § 420.301, Definitions, the definition of "provider" to include "hospice" to conform to recent changes to section 1861(u) of the Act (Section 122 of Pub. L. 97–248).

2. In § 420.302(c), the date is changed from July 28, 1983 to July 30, 1983. The July 30, 1983 date is 180 days counting prospectively from the effective date of the regulation, January 31, 1983. The date July 28, 1983 as shown in the **Federal Register** is incorrect.

3. In § 420.302(c), the reference to paragraph (d) should be to paragraph (b).

Impact Analyses

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this final rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any

geographic regions or otherwise meet the thresholds of the Executive Order.

Except to correct three very minor technical errors, the purpose of this document is to respond to comments received on a proposed rule and a final rule on the same subject. These technical corrections will not result in any economic impact. Therefore, these final regulations will not meet any threshold criteria of the Executive Order.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these final regulations will not have a significant economic impact on a substantial number of small entities. As stated above, the document effects only three very minor technical changes, which should have no impact on any entities; the remainder of the document responds to comments. The responses have no economic effect on affected small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects in 42 CFR Part 420

Abuse, Administrative practice and procedure, Contracts (Agreements), Conviction, Convicted, Courts, Exclusion, Fraud, Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Information (disclosure), Lawyers, Medicaid, Medicare, Penalties, Professional Standards Review Organizations (PSRO), Reporting and recordkeeping, Requirements, Supervision.

PART 420—PROGRAM INTEGRITY

42 CFR Part 420, Subpart D is amended as follows:

1. The authority citation for Part 420, Subpart D is revised as follows:

Authority: Secs. 1102, 1861(u), 1881(v), 1862(d), 1862(e), 1866(b), 1871, 1902(a) and 1903(i) of the Social Security Act (42 U.S.C. 1302, 1395x(u), 1395x(v), 1395y(d), 1395y(e), 1395cc(b), 1395hh, 1396a(a), and 1396b(i)).

2. Section 420.301 is amended by revising the definition of "provider" as follows:

§ 420.301 Definition.

* * * * *

"Provider" means a hospital, skilled nursing facility, home health agency, hospice or comprehensive outpatient rehabilitation facility, or a related organization (as defined in § 405.427 of this chapter) of any of these providers.

* * * * *

3. Section 402.302 is amended by revising paragraph (c) as follows:

§ 420.302 Requirement for access clause in contracts.

* * * * *

(c) *Prohibition against Medicare reimbursement.* If a contract subject to the requirements of this subpart does not contain the clause required by paragraph (b) of this section, HCFA will not reimburse the provider for the cost of the services furnished under the contract and will recoup any payments previously made for services under the contract. However, in order to avoid nonreimbursement or recoupment, providers will have until July 30, 1983, to amend those contracts entered into or renewed after December 5, 1980, and before January 31, 1983, that do not conform to the requirements of paragraph (b) of this section.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: December 18, 1983.

Carolyne K. Davis,
Administrator, Health Care Financing Administration.

Approved: March 12, 1984.

Margaret M. Heckler,
Secretary.

[FR Doc. 84–9183 Filed 4–5–84; 8:45 am]
BILLING CODE 4120–03–M

Proposed Rules

Federal Register
Vol. 49, No. 68
Friday, April 6, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Barrow and Gilt Carcasses and Standards for Grades of Slaughter Barrows and Gilts

AGENCY: Agriculture Marketing Service (AMS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the official U.S. standards for grades of barrow and gilt carcasses and the associated standards for grades of slaughter barrows and gilts. The present grades are based on the average of three backfat thickness measurements, carcass length, and muscling. The primary goals of the proposed revisions are: (1) to simplify the application of standards, (2) to provide grades which more accurately reflect actual yields of lean cuts, and (3) to more evenly distribute carcasses among several grades. These goals would be achieved by basing the grade on the backfat thickness over the last rib, with an adjustment up or down for superior or inferior muscling, respectively. The proposed grades would more nearly reflect current industry practices, and would make market reports, based on the official grades, more meaningful to producers.

DATE: Comments must be received on or before July 5, 1984.

ADDRESSES: Written comments to: Standardization and Review Brach, Livestock Division, AMS, 2–M Annex, U.S. Department of Agriculture, Washington, D.C. 20250. Comments must be signed and include the address of the sender and should bear reference to the date and page number of this issue of the **Federal Register**. Since the comments will be considered in the resolution of this proposal, they should include definitive information which explains and supports the sender's views. All written submissions will be made available for public inspection at the Standardization and Review Brach, Livestock Division, AMS, 2–M Annex, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch, Livestock Division, Argicultural Marketing Service, Washington, D.C. 20250, (202) 447–4486.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This proposed action has been reviewed USDA procedures established to implement Executive Order 12291 and has been classified as a non-major rule pursuant to sections 1(b)(1), (2), and (3) of that order because: (1) It will not have an annual effect on the economy of $100 million or more; (2) it will not result in a major increase in costs of prices for consumers, individual industries, Federal State, or local government Agencies, or geographic regions; and (3) it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.)*, which deals with the impact of regulations on small entities, have also been satisfied, in that W. T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed rule would not have a significant impact on a substanial number of small entities, because: (i) The proposed standards would more nearly reflect current industry practices, and would make market reports, based on the official standards, more meaningful to producers, (ii) the standards are applied equally by employees of or persons authorized by the Department to all size entities, and (iii) the use of the standards is voluntary.

Background

The grading of hogs and pork carcasses (barrows, gilts, and sows) is a voluntary service, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), which is designed to facilitate the marketing of livestock and meat. Official grade standards for slaughter barrows and gilts (7 CFR Part 53) and for barrow and gilt carcasses (7 CFR Part 54) were adopted in 1952, and changes were made in 1955 and 1968 to reflect improvements in hogs through the years.

The official grade standards have been used sparingly as a means of identifying pork carcasses for value. This is because the grades are primarily measures of yields of lean cuts and, since most pork carcasses are processed in the plant where the hogs are slaughtered, most of the variation in yield is removed before the meat is marketed. However, the grades are used more extensively in the trading of live hogs, and are oftern the basis for sorting systems used by packing plants for grade and yield buying and their own selling systems. Federal maket news reports, which are widely used by produces to establish their marketing plans, are based exclusively on the official live hog grades. Also, in some states the grades are used to sort hogs in officially graded sales of slaughter hogs.

Need for Changes

Changes were made in the pork grade standards in 1955 and 1968 to reflect improvements in the hogs being produced. When the revised standards became effective in 1968, it was estimated that the grade distribution was; U.S. No. 1, 8 percent; U.S. No. 2, 42 percent; U.S. No. 3, 38 percent; U.S. No. 4, 12 percent; and U.S. Utility, 2 percent. Since 1968, it is evident that continued improvements have been made in hog production, particularly in reducing the amount of fat on pork carcasses. A 1980 survey of over 36,000 pork carcasses found the following grade distribution: U.S. No. 1, 71.7 percent; U.S. No. 2, 24.2 percent; U.S. No. 3, 3.7 percent; U.S. No. 4, 0.3 percent; and U.S. Utility, 0.1 percent. These data indicate that tremendous changes have taken place in the past 15 years and that realignment of the grade lines is necessary if the grades are to be useful tools to sort hogs and pork carcasses by yield of lean cuts and value.

As adopted in 1968 (33 FR 5081) the expected yield of four lean cuts for each grade was: U.S. No. 1, 53 percent and over; U.S. No. 2, 50 to 52.9 percent; U.S. No. 3, 47 to 49.9 percent; and U.S. No. 4, less than 47 percent. Since that time a number of research studies, including studies at Texas A&M University in 1972 and at the U.S. Meat Animal Research Center in 1981, have shown higher yields for each grade than those indicated in the official standards, due in part to

improvements in the hogs produced. The best evidence indicates that, based on the present standards, the actual yields for each grade are about 3 percent higher than shown above. This situation is further evidence of a need for changes in the official grade standards.

A final indication of the need for changes in the pork grade standards is the complexity of the present standards and the difficulty of applying them rapidly. The primary reason that pork carcasses are seldom officially graded is that they are usually processed in the plant where the hogs are slaughtered, removing much of the variation which the grades predict. However, even when pork carcasses are graded by packing plant employees for the plant's own purposes, the official standards are not used. This is because to use the official standards (7 CFR Part 54) (based on the average of three backfat thickness measurements, carcass length, and muscling) would be too time consuming for high speed operations which may slaugther and process over 7000 pork carcasses each day. A simpler system, using fewer measurements and evaluations, is needed before the grades can be used in modern operations.

Options for Revising the Standards

In reviewing the possibilities for changing the pork carcass grade standards, four options were identified. They were: (1) Maintain the present standards and current grade lines; (2) Maintain the present basic grading system, but shift the grade lines to distribute the carcasses more uniformly through several grades; (3) Develop an updated grading system along lines similar to the present standards; and (4) Develop a simplied system of grading. Each of these options has some arguments for and against it and will be discussed in the succeeding paragraphs.

Maintain the Present Standards

The survey that found 71.7 percent of the carcasses were in the U.S. No. 1, grade is a very strong justification for some type of grade changes. If 70 to 80 percent of the carcasses were in the U.S. No. 2, or No. 3 grade, the need for a change would be much less. Those grades are limited in variation, and such a situation would be indicative of limited cutability (yield of trimmed 4 lean cuts) variation in the pork carcass population. However, since the U.S. No. 1 grade is open ended, having over 70 percent of the carcasses in this grade indicates that a large variation in cutability is not being explained by the grades. Also, scientific research reports published by a number of universities and reviewed by USDA indicate that the present standards underestimate the lean cut yield of pork carcasses in all grades, especially the U.S. No. 1 grade.

Shift Grade Lines

Under the present standards (7 CFR Part 54) the maximum average backfat thickness for a 30-inch, thick muscled carcass to be a U.S. No. 1 is 1.40 inches. If the maximum fat thickness for such a carcass to be a U.S. No. 1 was changed to 1.00 inch (a downward shift of 0.4 inches of fat for each grade), a significant shift would occur in the pork carcass grade distribution. Under the present standards (7 CFR Part 54) average hogs are U.S. No. 1's. If the grade lines were shifted, only superior hogs would be U.S. No. 1's. A corresponding shift could be made for the expected lean cut yield for each grade. Such changes would result in the grades being more meaningful for explaining price differentials in market news reports and as measures of cutability. However, such a change would only be a patchwork solution when more basic changes may be needed to improve grading speed and accuracy and explain price differentials.

Updated System Similar to Present Standards

The 1972 Texas A&M University study and other research studies have shown that the two best measures of pork carcass cutability are loin eye area and fact thickness over the loin eye. However, because the loin eye is not normally exposed in a pork carcass, these factors are not available for pork carcass grading purposes. Lacking these factors, a system using the current grade factors (average backfat thickness, carcass length, and muscling) (7 CFR Part 54) is probably the most accurate for predicting cutability. If accuracy in predicting cutability were the only consideration, an updated system very similar to the current grading system would have to be selected. However, this solution would not address the need for a simpler system which could be rapidly applied. Since the present standards are very difficult to apply under industry conditions, this has to be a major consideration if the grades are to gain acceptance and use in the industry.

Simplified Grading System

In 1982, after several years of study, the National Pork Producers Council (NPPC) published its "Lean Guide to Pork Value," an index system using last rib backfat thickness, muscling, and carcass weight, as a suggested measure of pork carcass value. USDA was urged to adopt this or a similar system for pork carcass grading. The advantage of this, or any other, simplified system is that it could be rapidly applied and might result in increased usage and acceptance of the official grade standards. A simplified system might also be more adaptable to the future development of a grading system which would incorporate use of various electronic or mechanical devices. The biggest disadvantage of such a system is that, by its very nature, it would be less accurate for predicting cutability than more comprehensive grading systems.

Option Selected

After considering all the advantages and disadvantages of each of these options, we believe that a simplified grading system, which could be rapidly applied and which is as accurate as possible while at the same time being acceptable for program purposes, should be developed. Since the average of three backfat thickness measurements cannot be determined rapidly, it appears that a single fat thickness measurement should be used. In addition, it was initially decided to consider using carcass weight as a replacement for carcass length as a grade factor, but for the reasons discussed below, neither carcass weight nor length are being proposed as grade factors. It was further decided to propose the use of fewer muscling scores. Also, the grading system would continue to have four numerical grades based on the percentage yield of trimmed four lean cuts (ham, loin, picnic shoulder, and Boston butt) from the carcass. From these basic decisions proposed changes in the grade standards were developed.

Development of Proposed Standards

In 1972, USDA contracted with Texas A&M University to conduct a study of pork carcass cutability for possible use in revising the pork grade standards. That study was conducted and reported in 1975 (Journal of Animal Science 41:1318) by Dr. H. Russell Cross. However, although certain grade changes were indicated by the results of that study, there was little industry support for revising the grades. In 1980, as interest was renewed in updating the pork grade standards, USDA initiated the most recent survey of pork carcass grades (consist study) and cooperated with Iowa State University, the University of Wisconsin, the University of Nebraska, and the NPPC in a study of pork production and cutability. When the results of these studies became available, it was decided that revisions of the pork grade standards were necessary, since they showed that over

71 percent of the pork carcasses were in the top grade and the yield of trimmed four lean cuts was underestimated in all grades.

Since the NPPC study was not specifically designed to evaluate the grade standards, it was lacking in low yielding pork carcasses and, therefore, it was not deemed acceptable as the sole basis for revising the pork grade standards. After considering all the possibilities, it was decided to use the Texas A&M data after weighting the data based on the backfat thickness variation found in the 1980 grade survey.

From the weighted Texas A&M data, a number of regression equations were developed as measures of yields of four lean cuts using various fat thickness measurements, carcass length, carcass weight, and several muscling score combinations. After all factors were evaluated, an equation using last rib backfat thickness (LRBF) and muscling (three levels) was selected. Carcass length and carcass weight were both considered as grade factors but were rejected because neither of them increased the accuracy of the equation enough to justify their use. Last rib backfat thickness was selected because the first rib measurement alone resulted in less accurate regression equations, and industry practices in splitting carcasses frequently make it impossible to obtain the last lumbar measurement.

The regression equation selected to predict percent of four lean cuts (%4LC), based on last rib backfat thickness (LRBF) and muscling (MUS). Is as follows:

$$\%4LC = 66.55 - (12.214 \times LRBF) + (3.006 \times MUS).$$

This equation was converted into a grading system in a process requiring several steps.

The first step in the process of converting the cutability equation into a grading system was to determine the desired width of each grade in terms of some factor. The width of the present grades (7 CFR Part 54) is 3.0 percent of four lean cuts and 0.30 inches of backfat thickness. This width in terms of yield was still considered acceptable, but there was some academic and industry interest in reducing the width in terms of fat thickness. Therefore, several fat thickness widths were tried to ascertain what impact they would have on percent of four lean cuts. To accomplish this, the beta value for fat thickness in the cutability equation (12.214) was multiplied by 0.20, 0.25, and 0.30 inches and resulted in yield widths of 2.44, 3.05, and 3.66 percent, respectively. It is proposed to use 0.25 inches backfat thickness as the width of the grade because it gives a yield width which rounds to the same width as the current grades (3.0 percent), and because fractions of this width could be easily used in a simplified (shortcut) grading method. Also, the value for yield width (3.05%) was very close to the beta value for muscling (3.006) in the cutability equation, promising a simple method of using muscling in the shortcut grading method. The width of the grade in terms of muscling (1.016) was then calculated based on this relationship.

After the grade width was determined, an equation to calculate grade (rather than yield) was developed by dividing the grade width for that factor into one. Thus, one divided by 0.25 (LRBF width) resulted in a beta value of 4.0 for LRBF in the equation, and one divided by 1.016 (muscling width) a value of 0.98. The beta value for muscling was rounded to 1.0 for use in the equation. The resulting equation is: Carcass grade = X + (4.0 × LRBF) − (1.0 × MUS), with X being the intercept value (constant) which is determined by where the grade lines are drawn. In this equation, muscling is coding as thin or inferior (current slightly thin or less) = 1, average (current moderately thick and thick) = 2, and thick or superior (current very thick) = 3.

Under the present grade standards the average pork carcass is graded U.S. No. 1. It is proposed that an average carcass (average muscling and average LRBF) be graded U.S. No. 2. At this point, with a tentative grade system developed, a field test of the proposed standards was undertaken. Over a period of three months, data were collected on 1499 pork carcasses slaughtered at six different locations around the country. There 1499 carasses had an average last rib backfat thickness of 1.14 inches. The muscling distribution was: Thick/Superior, 14.1 percent; Average, 76.7 percent; and Thin/Inferior, 9.1 percent. Compared to the 1980 grade survey there were fewer superior muscled and more inferior muscled carcasses in this test, but the differences were not great. In the 1980 study only average backfat thickness was recorded but, based on that data and the Texas A&M Study, the average last rib backfat thickness was estimated to be between 1.10 and 1.20 inches. The 1.14 inches found during the field testing was within that range.

With 1.14 inches as the average last rib backfat thickness, it was tentatively decided to use 1.00–1.24 inches as the width of the U.S. No. 2 grade. Therefore, the U.S. No. 1 grade would be less than 1.00 inch, the U.S. No. 3 grade would be 1.25–1.49 inches, and the U.S. No. 4 grade would be 1.50 inches and over in last rib backfat thickness. Using these last rib backfat ranges and adjusting for muscling the grade distribution of the 1499 carcasses measured was: U.S. No. 1, 27.6 percent; U.S. No. 2, 38.9 percent; U.S. No. 3, 23.5 percent; and U.S. No. 4, 10.0 percent. The appropriate intercept value (X) in the grade equation was then determined to be zero (0).

The field testing of these proposed standards (including live animal and carcass evaluations) indicates that the changes are feasible and would improve the usefulness of the pork grades.

As referenced in § 53.152 the grades of slaughter barrows and gilts are intended to be directly related to the grades of the carcasses they produce. Accordingly, the proposed changes to the grades for carcasses in Part 54 will necessitate conforming changes to Part 53, as appropriate.

In summary, the changes involved in these proposed amendments to the standards for grades of barrow and gilt carcasses and the standards for grades of slaughter barrows and gilts would provide for the following:

(1) Revised grades would be based on last rib backfat thickness and muscling (7 CFR 54.13(e), proposed).

(2) Only three levels of muscling (thick, average, and thin) would be recognized (7 CFR 54.134(h), proposed).

(3) The width of the grades would still be 3.0 percent of four lean cuts, but the expected yield from each proposed grade would be 7.4 percent higher than for the present grades (7 CFR 54.134(d), proposed).

(4) The lines between Grades 1 and 2, 2 and 3, and 3 and 4 would be set at 1.0, 1.25, and 1.50 inches of last rib backfat thickness, respectively (7 CFR 54.135(a) proposed).

List Of Subjects

7 CFR PART 53

Livestock, barrows and gilts, grading and certification, standards.

7 CFR Part 54

Pork carcasses, meat and meat products, grading and certification, standards.

For the reasons set out in the preamble, it is proposed that the official U.S. standards for grades of barrow and gilt carcasses in 7 CFR Part 54 and for grades of slaughter barrows and gilts in 7 CFR Part 53 be revised as set forth below.

Note.—In this document, new or revised text is enclosed by arrows (► ◄).

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 is as follows:

Authority: Sec. 203, 60 Stat. 1087, as amended; Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1622 and 1624).

2. A new § 54.131 would be added to Subpart B, and §§ 54.132–54.135, would be revised to read as follows:

Subpart B—Standards

Pork Carcasses

► **§ 54.131 Scope.**

These standards for grades of pork are written primarily in terms of carcasses. However, they also are applicable to the grading of sides. To simplify the phrasing of the standards, the words "carcass" and "carcasses" are used also to mean "side" or "sides."◄

§ 54.132 Bases for pork carcass standards.

The ►official standards for pork carcass grades◄ provide for segregation according to (a) class, as determined by the apparent sex condition of the animal at the time of slaughter, and (b) grade, which reflects quality and the expected yield of lean cuts in the carcass.

§ 54.133 Pork carcass classes.

The five classes of pork carcasses, comparable to the same five classes of slaughter hogs, are barrow, gilt, sow, stag, and boar, carcasses. ►The official standards provide for the grading of barrow, gilt, and sow carcasses. Grades are not provided for stag and boar carcasses.◄

§ 54.134 Application of standards for grades of barrow and gilt carcasses.

►(a) Grades for barrow and gilt carcasses are based on two general considerations: (1) Quality—which includes characteristics of the lean and fat, and (2) the expected yield of the four lean cuts (ham, loin, picnic shoulder, and Boston butt).

(b) Two general levels of quality are recognized: acceptable and unacceptable. The quality of the lean is best evaluated by a direct observation of its characteristics in a cut surface, and when a cut surface of a major muscle is available, this shall be used as the basis for the quality determination. Quality of the lean is described in terms of characteristics of the loin eye muscle at the 10th rib. When this surface is not available, other exposed major muscle surfaces can be used for quality determinations based on the normal development of the characteristics in relation to those described for the loin eye muscle at the 10th rib. When a major muscle cut surface is not available, the quality of the lean shall be evaluated indirectly based on the quality-indicating characteristics that are evident in the carcass. These include firmness of type fat and lean, amount of feathering between the ribs, and color of the lean. The degree of external fatness, as such, is not considered in evaluating the quality of the lean. However, a pork carcass must have a belly with sufficient thickness to be suitable for bacon production to be considered acceptable in quality. Belly thickness is determined by an overall evaluation of its thickness, with primary consideration being given to the thickness along the navel edge and the thickness of the belly (flank) pocket.

(c) For barrow and gilt carcasses with the minimum acceptable lean quality, the cut surface of the loin eye muscle at the 10th rib will be slightly firm, have a slight amount of marbling, and be grayish pink to moderately dark red in color. For intact carcasses, minimum acceptable quality of lean is indicated by a slight amount of feathering, fat that is slightly firm, and lean that is slightly firm and grayish pink to moderately dark red in color. The belly is at least slightly thick with a minimum of 0.6 inch of thickness at any point. Barrow and gilt carcasses which meet or exceed these minimum quality requirements are eligible for one of the four numerical grades which reflect expected yields of four lean cuts. Barrow and gilt carcasses with unacceptable quality are graded U.S. Utility. Also graded U.S. Utility—regardless of their development of other quality-indicating characteristic—are carcasses which are soft and/or oily, or are pale, soft, and exudative (PSE).

(d) Barrow and gilt carcasses which have indications of acceptable lean quality and acceptable belly thickness are placed in one of four grades, denoted by numbers 1 through 4. These grades are based entirely on the expected carcass yields of the four lean cuts, and no consideration is given to a development of quality superior to that described as minimum for these grades. The expected yields of the four lean cuts for each of these four grades are shown in Table 1.

TABLE 1.—EXPECTED YIELDS OF THE FOUR LEAN CUTS, BY GRADE, BASED ON CHILLED CARCASS WEIGHT [1]

Grade	Yield
U.S. No. 1	60.4 percent and over.
U.S. No. 2	57.4 to 60.3 percent.

TABLE 1.—EXPECTED YIELDS OF THE FOUR LEAN CUTS, BY GRADE, BASED ON CHILLED CARCASS WEIGHT [1]—Continued

Grade	Yield
U.S. No. 3	54.4 to 57.3 percent.
U.S. No. 4	Less than 54.4 percent.

[1] These yields will be approximately 1 percent lower if based on hot carcass weight.

The yields shown in Table 1 are based on cutting and trimming methods used by the U.S. Department of Agriculture in developing the standards. (These cutting and trimming methods may be obtained from the Livestock Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.) Other cutting and trimming methods may result in different yields. For example, if more fat is left on the four lean cuts than prescribed in the USDA methods, the yield of each grade will be higher than indicated. However, such a method of trimming, if applied uniformly, should result in similar differences in yields between grades.

(e) The grade of a barrow or gilt carcass is determined by considering two characteristics: (1) The backfat thickness over the last rib and (2) the degree of muscling (thickness of muscling in relation to skeletal size).

(f) The amount of external fat on a barrow or gilt carcass is the major factor affecting the yield of lean cuts. As the amount of external fat increases the yield of lean cuts decreases. An accurate evaluation of the amount of external fat may be made by measuring the backfat thickness at one or more points on the carcass. In grading barrow and gilt carcasses, the amount of external fat is considered by measuring the backfat thickness (including skin) over the last rib, perpendicular to the skin surface. The actual measurement, without adjustment is used for the grade determination. Pork carcasses with average fatness will usually have 1.1 to 1.2 inches of backfat over the last rib. For carcasses that have been skinned, one-tenth inch is added to the measurement to compensate for the loss of the skin, if the skin has been smoothly and evenly removed. The yield of four cuts from skinned carcasses will be higher than indicated in Table 1. Carcasses which have had the skin removed in a rough, uneven manner, or which have had more than a slight amount of trimming to remove bruised or otherwise damaged parts, are ineligible for grading. Each one-tenth inch change in backfat thickness over the last rib changes the grade by 40 percent of a grade.

(g) The second factor considered in barrow and gilt carcass grading is the degree of muscling. The degree of muscling is determined by a subjective evaluation of the thickness of muscling in relation to skeletal size. Since the total thickness of a carcass is affected by both the amount of fat and the amount of muscle in relation to skeletal size, the fatness must also be considered when degree of muscling is evaluated. To best evaluate muscling, primary consideration is given to those parts least affected by fatness, such as the ham. In evaluating the ham for degree of muscling, consideration should be given to both the stifle and back views. The size of the lumbar lean area and the relative width through the back or loin and through the center of the ham are also good indications of muscling.

(h) In barrow and gilt carcass grading, three degrees of muscling—thick (superior), average, and thin (inferior)—are considered. In previous standards (33 FR 5081) six degrees of muscling (very thick, thick, moderately thick, slightly thin, thin, and very thin) were recognized. The current thick (superior) muscling includes only those carcasses previously classed as very thick. Current average muscling includes the previous thick and moderately thick degrees, and the current thin (inferior) muscling includes the previous slightly thin, thin, and very thin degrees. Carcasses with thick muscling and a low degree of fatness will be much thicker through the hams than through the loins and the loins will appear full and well-rounded. Thick muscled carcasses with a high degree of fatness will be slightly thicker through the hams than through the loins, will be nearly flat over the loins, and will have a slight break into the sides. Thick muscled carcasses will usually have a large lumbar lean area and greater than average depth of chine. Average muscled carcasses with a low degree of fatness will be thicker through the hams through the loins, and the loins will appear slightly full and rounded. Carcasses with average muscling and a high degree of fatness will have about equal thickness through the hams and loins. Carcasses with thin muscling and a low degree of fatness usually are slightly thicker through the shoulders and the center of the hams the through the back and the loins will appear sloping and flat. Thin muscled carcasses with a high degree of fatness will be wider through the loins than through the hams and will have a distinct break from over the loins into the sides. Thin muscled carcasses will usually have a small lumbar lean area and less than average depth of chine.

(i) Barrow and gilt carcasses with average muscling will be graded according to their backfat thickness over the last rib. Carcasses with thin muscling will be graded on grade lower than indicated by the backfat thickness over the last rib. Carcasses with thick muscling will be graded one grade higher than indicated by their backfat thickness over the last rib except that carcasses with 1.75 inches of greater backfat thickness over the last rib must remain in the U.S. No. 4 grade.

(j) The official barrow and gilt carcass grade standards contain a mathematical equation for calculating the grade and a table for determining a preliminary grade based on the backfat thickness over the last rib. Also, the individual grade specifications describe the various combinations of muscling and backfat thickness over the last rib which qualify for that grade.◄

§ 54.135 Specifications for official United States standards for grades of barrow and gilt carcasses.

►(a) The grade of a barrow or gilt carcass is determined on the basis of the following equation:

Carcass grade—(4.0 × backfat thickness over the last rib, inches)-(1.0 × muscling score). To apply this equation, muscling should be scored as follows: thin muscling=1, average muscling=2, and thick muscling=3. Carcasses with thin muscling cannot grade U.S. No. 1. The grade may also be determined by calculating a preliminary grade according to the schedule shown in Table 2, and adjusting up or down one grade for thick or thin muscling, respectively.

TABLE 2.—PRELIMINARY CARCASS GRADE BASED ON BACKFAT THICKNESS OVER THE LAST RIB

Preliminary grade	Backfat thickness range
U.S. No. 1	Less than 1.00 inch.
U.S. No. 2	1.00 to 1.24 inches.
U.S. No. 3	1.25 to 1.49 inches.
U.S. No. 4	1.50 inches and over.[1]

[1] Carcasses with last rib backfat thickness of 1.75 inches or over cannot be graded U.S. No. 3, even with thick muscling.

(b) The following descriptions provide a guide to the characteristics of barrow and gilt carcasses in each grade.◄

(1) *U.S. No. 1.*►(i) Barrow and gilt carcasses in this grade have an acceptable quality of lean and belly thickness and a high expected yield (60.4 percent and over) of four lean cuts. U.S. No. 1 barrow and gilt carcasses must have less than average backfat thickness over the last rib with average muscling, or average backfat thickness over the last rib coupled with thick muscling.

(ii) Barrow and gilt carcasses with average muscling may be graded U.S. No 1. if their backfat thickness over the last rib is less than 1.00 inch. Carcasses with thick muscling may be graded U.S. No. 1 if their backfat thickness over the last rib is less than 1.25 inches. Carcasses with thin muscling may not be graded U.S. No. 1.◄

(2) *U.S. No. 2.*►(i) Barrow and gilt carcasses in this grade have an acceptable quality of lean and belly thickness and an average expected yield (57.4 to 60.3 percent) of four lean cuts. Carcasses with average backfat thickness over the last rib and average muscling, less than average backfat thickness over the last rib and thin muscling, and greater than average backfat thickness over the last rib and thick muscling will qualify for this grade.

(ii) Pork carcasses with average muscling may be graded U.S. No 2. if their backfat thickness over the last rib is 1.00 to 1.24 inches. Carcasses with thick muscling may be graded U.S. No. 2 if their backfat thickness over the last rib is 1.25 to 1.49 inches. Carcasses with thin muscling must have less than 1.00 inch of backfat thickness over the last rib to be graded U.S. No. 2.◄

(3) *U.S. No. 3.*►(i) Barrow and gilt carcasses in this grade have an acceptable quality of lean and belly thickness and a slightly low expected yield (54.4 to 57.3 percent) of four lean cuts. Carcasses with average muscling and more than average backfat thickness over the last rib, thin muscling and average backfat thickness over the last rib, and thick muscling and much greater than average backfat thickness over the last rib will qualify for this grade.

(ii) Barrow and gilt carcases with average muscling will be graded U.S. No 3 if their backfat thickness over the last rib is 1.25 to 1.49 inches. Carcasses with thick muscling will be graded U.S. No. 3 if their backfat thickness over the last rib is 1.50 to 1.74 inches. Carcasses with 1.75 inches or greater backfat thickness over the last rib cannot grade U.S. No. 3. Carcasses with thin muscling will be graded U.S. No. 3 if their backfat thickness over the last rib is 1.00 to 1.24 inches.◄

(4) *U.S. No. 4.*►(i) Barrow and gilt carcasses in this grade have an acceptable quality of lean and belly thickness and low yield expected (less than 54.4 percent) of four lean cuts. Carcasses in U.S. No. 4 grade always have more than average backfat thickness over the last rib, and thick, average, or thin muscling, depending on the degree to which the backfat

thickness over the last rib exceeds the average.

(ii) Barrow and gilt carcasses with average muscling will be graded U.S. No 4 if their backfat thickness over the last rib of 1.50 inches or greater. Carcasses with thick muscling will be graded U.S. No. 4 with backfat thickness over the last rib of 1.75 inches or greater, and those with thin muscling will be graded U.S. NO. 4 with 1.25 inches or greater backfat thickness over the last rib.◄

(5) *U.S. Utility.*► All carcasses with unacceptable quality of lean and belly thickness will be graded U.S. Utility, regardless of their degree of muscling or backfat thickness over the last rib. Also, all carcasses which are soft and/or oily, or are pale, soft, and exudative (PSE) will be graded U.S. Utility.

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS).

1. The authority citation for Part 53 is as follows:

Authority: Sec. 203, 60 Stat. 1087, as amended; Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1622 and 1624); 19 FR 74, as amended.

2. Sections 53.152 and 53.153 would be revised to read as follows:

Subpart B—Standards

Swine

§ 53.152 Application of standards for grades of slaughter barrows and gilts.

(a) Grades of slaughter barrows and gilts are intended to be directly related to the grades of the carcasses they produce. To accomplish this, the slaughter barrow and gilt grades are predicated on the same two general considerations that provide the basis for the grades of barrow and gilt carcasses: (1) Quality—►which includes characteristics of the lean and firmness of fat, and (2) characteristics related to the combined carcass yields of the four lean cuts (ham, loin, picnic shoulder, and Boston butt).

(b) With respect to quality, two general levels are considered, one for barrows and gilts with characteristics which indicate that the carcass will have acceptable belly thickness and lean quality, and acceptable firmness of fat, and one for barrows and gilts with characteristics which indicate that the carcass will have unacceptable belly thickness, lean quality, and/or firmness of fat. The bellies of carcasses with acceptable quality are at least slightly thick overall and not less than 0.6 inches thick at any point. Since carcass indices of lean quality are not directly evident in slaughter barrows and gilts, some other factors in which differences can be noted must be used to evaluate quality. Therefore, the amount and distribution of external finish and indications of firmness of fat and muscle are used as quality-indicating factors.

(c) Slaughter barrows and gilts with characteristics which indicate they will not have an acceptable belly thickness or quality of lean are graded U.S. Utility. Also graded U.S. Utility—regardless of their development of other quality indicating charcteristics—are slaughter barrows and gilts with indications that they will produce carcasses which (1) have pale, soft, and exudative (PSE) lean, and/or (2) have less than slightly firm fat.

(d) Four grades—U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 are provided for slaughter barrows and gilts with characteristics which indicate that their carcasses will have an acceptable level of lean quality and acceptable firmness of fat. These grades are based entirely on the combination of factors that predict the expected combined carcass yields of the four lean cuts—hams, loins, picnic shoulders, and Boston butts.

(e) The official grade for slughter barrows and gilts having acceptable quality is determined by considering two characteristics: the estimated backfat thickness over the last rib, and the muscling score. Values for these factors are then used in a mathematical equation to arrive at the final grade.

(f) In evaluating barrows and gilts for fatness and muscling, variations in the degree of fatness have a greater effect on the yield of the lean cuts than do variations in muscling. The fatness and muscling evaluations can best be made simultaneously. This is accomplished by considering the development of the various parts based on an understanding of how the appearance of each part is affected by variations in muscling and fatness. While the muscling of most barrows and gilts develops uniformly, the fat is normally deposited at a considerably faster rate on some parts than on others. Therefore, muscling can be appraised best by giving primary consideration to the parts least affected by fatness, such as the hams. Differences in thickness and fullness of the hams—with appropriate adjustments for the effects of variations in fatness—are the best indicators of the overall degree of muscling. Conversely, the overall fatness can be determined best by observing those parts on which fat is deposited at a faster than average rate. These include backfat, the edge of the loin, the rear flank, the shoulder, the jowl, and the belly. As barows and gilts increase in fatness, these parts appear progressively fuller, thicker, and more distended in relation to the thickness and fullness of the other parts, especially the thickness through the hams.

(g) When grading live animals it is usually necessary to consider indications of fatness on all parts of the animal in order to most accurately estimate the backfat thickness over the last rib. As slaughter barrows and gilts increase in fatness, they also become deeper bodied because of deposits of fat in the flanks and along the underline. The fullness of the flanks, best observed when the animal walks, and the thickness and fullness of the jowl are other indications of fatness.

(h) In slaughter barrow and gilt grading three degrees of muscling—thick (superior), average, and thin (inferior)—are considered. In previous standards (33 FR 9249) six degrees of muscling (very thick, thick, moderately thick, slightly thin, thin, and very thin) were recognized. The current thick (superior) muscling includes only the previous very thick degree of muscling. Current average muscling includes the previous thick and moderately thick degrees, and the current thin (inferior) muscling includes the previous slightly thin, thin, and very thin degrees. Slaughter barrows and gilts with thick muscling and a low degree of fatness will be much thicker through the hams than through the loins and the loins will appear full and well-rounded. Thick muscled animals with a high degree of fatness will be slightly thicker through the hams than through the loins, will be nearly flat over the back, and will have a slight break into the sides. Animals with average muscling and a low degree of fatness will be thicker through the hams than through the loins, and the loins will appear slightly full and rounded. Animals with average muscling and a high degree of fatness will have about equal thickness through the hams and loins. Animals with thin muscling and a low degree of fatness usually are slightly thicker through the shoulders and the center of the hams than through the back and the loins will appear sloping and flat. Thin muscled animals with a high degree of fatness will be wider through the loins than through the hams and will have a distinct break from over the loins into the sides. Slaughter barrows and gilts with average muscling will be graded according to their estimated backfat thickness over the last rib. Animals with the thin muscling will be graded one grade lower than indicated by the estimated backfat thickness over the last rib. Animals with thick muscling will be graded one grade higher than indicated by their estimated backfat thickness over the last rib, except that

animals with an estimated 1.75 inches or greater last rib backfat thickness must remain in the U.S. No. 4 grade.

(i) The official grade standards contain a mathematical equation for calculating the grade and a table for determining a preliminary grade based on the estimated backfat thickness at the last rib. Also, the individual grade specifications describe the various combinations of muscling and last rib backfat thickness which qualify for that grade.◄

§ 53.153 Specifications for official United States standards for grades of slaughter barrows and gilts.

►(a) The grade of a slaughter barrow or gilt is determined on the basis of the foillowing equation: Grade = (4.0 × last rib backfat thickness, inches) − (1.0 × muscling score). To apply this equation, muscling should be scored as follows: thin (inferior) = 1, average = 2, and thick (superior) = 3. Animals with thin muscling cannot grade U.S. No. 1. The grade may also be determined by calculating a preliminary grade according to the schedule shown in Table 1 and adjusting up or down one grade for superior or inferior muscling, respectively.

TABLE 1.—PRELIMINARY GRADE BASED ON BACKFAT THICKNESS OVER THE LAST RIB

Preliminary Grade	Backfat thickness range
U.S. No. 1	Less than 1.00 inch.
U.S. No. 2	1.00 to 1.24 inches.
U.S. No. 3	1.25 to 1.49 inches.
U.S. No. 4	1.50 inches and over.[1]

[1] Animals with an estimated last rib backfat thickness of 1.75 inches or over cannot be graded U.S. No. 3, even with thick muscling.

(b) The following descriptions provide a guide to the characteristics of slaughter barrows and gilts in each grade.◄

(1) *U.S. No. 1.* ►(i) Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and a high expected yield (60.4 percent and over) of four lean cuts. U.S. No. 1 barrows and gilts must have less than average backfat thickness with average muscling, or average backfat coupled with thick muscling.

(ii) Barrows and gilts with average muscling may be graded U.S. No. 1 if their estimated backfat thickness at the last rib is less than 1.00 inch. Animals with thick muscling may be graded U.S. No. 1 if their estimated backfat thickness at the last rib is less than 1.25 inches. Barrows and gilts with thin muscling may not be graded U.S. No. 1.◄

(2) *U.S. No. 2.* ►(i) Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and an average expected yield (57.4 to 60.3 percent) of four lean cuts. Animals with average estimated backfat thickness over the last rib and average muscling, less than average estimated backfat thickness over the last rib and thin muscling, and greater than average estimated backfat thickness over the last rib and thick muscling will qualify for this grade.

(ii) Barrows and gilts with average muscling will be graded U.S. No. 2 if their estimated backfat thickness at the last rib is 1.00 to 1.24 inches. Barrows and gilts with thick muscling will be graded U.S. No. 2 if their estimated backfat thickness over the last rib is 1.25 to 1.49 inches. Barrows and gilts with thin muscling must have less than 1.00 inch of estimated backfat over the last rib to be graded U.S. No. 2.◄

(3) *U.S. No. 3.* ►(i) Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and a slightly low expected yield (54.4 to 57.3 percent) of four lean cuts. Barrows and gilts with average muscling and more than average estimated last rib backfat thickness, thin muscling and average estimated backfat thickness over the last rib, and thick muscling and much greater than average estimated backfat thickness over the last rib will qualify for this grade.

(ii) Barrows and gilts with average muscling will be graded U.S. No. 3 if their estimated backfat thickness over the last rib is 1.25 to 1.49 inches. Barrows and gilts with thick muscling will be graded U.S. No. 3 if their estimated backfat thickness over the last rib is 1.50 to 1.74 inches. Barrows and gilts with 1.75 inches or more of estimated backfat thickness over the last rib cannot grade U.S. No. 3. Barrows and gilts with thin muscling will be graded U.S. No. 3 if their estimated backfat thickness over the last rib is 1.00 to 1.24 inches.◄

(4) *U.S. No. 4.* ►(i) Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and a low expected yield (less than 54.4 percent) of four lean cuts. Barrows and gilts in U.S. No. 4 grade always have more than average estimated backfat over the last rib and thick, average, or thin muscling, depending on the degree to which the estimated backfat thickness exceeds the average.

(ii) Barrows and gilts with average muscling will be granted U.S. No. 4 if their estimated backfat thickness at the last rib is 1.50 inches or greater. Barrows and gilts with thick muscling will be graded U.S. No. 4 with estimated backfat thickness over the last rib of 1.75 inches or greater, and those with thin muscling will be graded U.S. No. 4 with 1.25 inches or greater estimated backfat over the last rib.◄

(5) *U.S. Utility.* ►All barrows and gilts with probable unacceptable quality of lean or belly thickness will be graded U.S. Utility, regardless of their muscling or estimated backfat thickness over the last rib. Also, all barrows and gilts which may produce soft and/or oily fat, or pale, soft, and exducative (PSE) lean will be graded U.S. Utility.◄

Done at Washington, D.C. on March 30, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-9084 Filed 4-5-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Coverage of Employees of Private Nonprofit Organizations; Coverage of Work Outside the United States by Certain Employees of American Employers and their Affiliates; Treatment of Foreign Earned Income; Fully Insured Status Requirements for Certain Employees of Private Nonprofit Organizations; Coverage Under Totalization Agreements

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed rules implement sections 102, 321, 322 and 323 of Pub. L. 98–21 (the Social Security Amendments of 1983). Generally, these provisions: (1) Mandatorily cover for Social Security purposes employees of private nonprofit organizations; (2) Provide additional Social Security coverage for certain work performed outside the United States (U.S.); (3) Provide coverage under the Social Security program for certain foreign earned income; (4) Provide special Social Security insured status requirements for certain nonprofit organization employees covered as a result of these amendments; and (5) Provide Social Security coverage for employment and self-employment that is identified as "covered" for purposes of title II of the Social Security Act (the Act) by the provisions of a totalization agreement between the U.S. and another country.

DATE: Your comments will be considered if we receive them no later than June 5, 1984.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Dave Smith, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7460.

SUPPLEMENTARY INFORMATION:

Coverage of Employees of Private Nonprofit Organizations

Beginning January 1, 1984, employees of private nonprofit organizations are mandatorily covered by Social Security. Any remuneration paid to such employees may be subject to the Social Security tax. Under prior law employees of such organizations were exempt from Social Security coverage (and taxes) but an organization could voluntarily waive the exemption to provide coverage for its employees. Termination of a waiver was possible under prior law but on or after March 31, 1983, termination is prohibited. Special requirements for fully insured status are provided for certain employees covered solely as a result of this provision.

Coverage of Employees of Foreign Affiliates of American Employers

The proposed regulations implement section 321 of Pub. L. 98–21. Under this provision any American employer (corporation, sole proprietorship or partnership) may provide Social Security coverage for U.S. citizens and U.S. residents working outside the U.S. for a foreign affiliate when the American employer has not less than 10 percent direct or indirect interest in the affiliate. In order to provide Social Security coverage, the American employer must enter into an agreement with the Secretary of the Treasury. Prior law required that for social security coverage purposes both the American employer and its affiliate be corporations.

Coverage Under Totalization Agreements

The proposed regulations implement section 322 of Pub. L. 98–21 which provides Social Security coverage under sections 210 and 211 of the Act for services identified as covered employment or self-employment under title II of the Act by an agreement between the U.S. and another country pursuant to section 233 of the Act. The Internal Revenue Code of 1954 (the Code) was also amended to provide for Social Security taxes on wages and self-employment income derived from such services. These provisions were inadvertently omitted in Pub. L. 95–216 which added section 233 to the Act.

Treatment of Certain Services Performed Outside the U.S.

The proposed regulations implement section 323 of Pub. L. 98–21 by eliminating the foreign earned income exclusion with regard to net earnings from self-employment, derived by U.S. citizens and residents who reside in foreign countries, for taxable years beginning after December 31, 1983. For Social Security purposes, provision is made for crediting earned income as net earnings for self-employment for taxable years beginning after December 31, 1981 and before January 1, 1984. Prior law provided that earned income derived by U.S. citizens and residents who are "present in a foreign country" was subject to Social Security tax but there was no provision for crediting it for other Social Security purposes. Section 323 also provides Social Security coverage for U.S. residents who work outside the U.S. for American employers.

We made a minor change in § 404.1091 by changing the description of section 911 of the Code because of recent amendments to section 911.

Regulatory Procedures

Executive Order 12291—These proposed rules merely conform the existing rules to the changes legislated by Pub. L. 98–21. Any economic impact is solely the result of legislation which is effective regardless of regulatory action on our part. Therefore, these regulations do not "result in" an annual effect on the economy of $100 million or more or otherwise trigger the criteria for a "major rule" established in Executive Order 12291.

Paperwork Reduction Act—The proposed regulations impose no reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act—We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because any impact would be solely the result of legislation rather than these regulations. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

The proposed amendments are to be issued under the authority contained in sections 205, 210, 211, and 1102 of the Social Security Act, as amended; Secs. 102, 321, 322, and 323 of Pub. L. 98–21; 53 Stat. 1362, as amended; 64 Stat. 494, as amended; 64 Stat. 502, as amended; 49 Stat. 647, as amended; 42 U.S.C. 405, 410, 411, and 1302.

(Catalog of Federal Domestic Assistance Program Nos. 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivors Insurance)

Dated: February 6, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: March 13, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

For the reasons set out in the preamble, Part 404 of Chapter III of Title 20, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for Subpart B reads as follows:

Subpart B—Insured Status and Quarters of Coverage

Authority: Secs. 205, 212, 213, 214, 216, 217, 223, and 1102 of the Social Security Act; 53 Stat. 1368, 64 Stat. 504 and 505, 68 Stat. 1080; 64 Stat. 512, 70 Stat. 815, and 49 Stat. 647; sec. 5 of Reorganization Plan No. 1 of 1953; 67 Stat. 631; 42 U.S.C. 405, 412, 413, 414, 416, 417, 423, and 1302; 5 U.S.C. Appendix.

2. In § 404.110, paragraph (a) is revised to read as follows:

§ 404.110 How we determine fully insured status.

(a) *General.* We describe how we determine the number of quarters of coverage (QCs) you need to be fully insured in paragraphs (b), (c), and (d) of this section. the table in § 404.115 may be used to determine the number of QCs you need to be fully insured under paragraph (b) of this section. We

consider certain World War II veterans to have died fully insured (see § 404.111). We also consider certain employees of private nonprofit organizations to be fully insured if they meet special requiements (see § 404.112).

* * * * *

3. A new § 404.112 is added to read as follows:

§ 404.112 When we consider certain employees of private nonprofit organizations to be fully insured.

If you are age 55 or over on January 1, 1984, and are on that date an employee of an organization described in § 404.1026(a) which does not have in effect a waiver certificate under section 3121(k) of the Code on that date and whose employees are mandatorily covered as a result of section 102 of Pub. L. 98–21, we consider you to be fully insured if you meet the following requirements:

Your age on January 1, 1984 is—	QC's acquired after Dec. 31, 1983
60 or over	6
59 or over but less than age 60	8
58 or over but less than age 59	12
57 or over but less than age 58	16
55 or over but less than age 57	20

4. The authority citation for Subpart K reads as follows:

Subpart K—Employment, Wages, Self-Employment, and Self-Employment Income

Authority: Secs. 205, 209, 210, 211, 229, 230, 231, and 1102 of the Social Security Act; 53 Stat. 1368, 49 Stat. 625, 64 Stat. 492, 81 Stat. 833, 86 Stat. 1367, 49 Stat. 647; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 405, 409, 410, 411, 429, 430, 431, and 1302; 5 U.S.C. appendix.

5. Section 404.1004 is amended by revising paragraphs (a)(2), adding paragraph (a)(4), revising paragraph (b)(5), removing the present text of paragraph (b)(6) and redesignating paragraphs (b)(7), (b)(8), (b)(9) and (b)(10) as (b)(6), (b)(7), (b)(8) and (b)(9), respectively, to read as follows:

§ 404.1004 What work is covered as employment.

(a) * * *

(2) You perform the work outside the United States and you are a citizen or resident of the United States working for—

(i) An American employer; or

(ii) A foreign affiliate of an American employer that has in effect an agreement covering your work under section 3121 (l) of the Code.

* * * * *

(4) Your work is designated as employment or recognized as equivalent to employment under a totalization agreement. (See § 404.1913. An agreement may exempt work from coverage as well as extend coverage to work.)

(b) * * *

(5) "Foreign affiliate" refers to a foreign affiliate as defined in section 3121 (l)(8) of the Code.

(6) "On and in connection with" refers to the performance of work on a vessel or aircraft which concerns the vessel or aircraft. Examples of this kind of work are the services performed on a vessel by employees as officers or crew members, or as employees of concessionaires, of the vessel.

(7) "On or in connection with" refers to work performed on the vessel or aircraft and to work which concerns the vessel or aircraft but not actually perfomed on it. For example, shore services in connection with repairing, loading, unloading, or provisioning a vessel performed by employees as officers or crew members, or as employees of concessionaires, of the vessel are included, since this work concerns the vessel though not performed on it.

(8) "State" refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

(9) "United States" when used in a geographical sense means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

6. Section 404.1026 is revised to read as follows:

§ 404.1026 Work for religious, charitable, educational, or certain other organizations exempt from income tax.

(a) *After 1983.* Work done after 1983 by an employee in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Code which is exempt from income tax under section 501(a) of the Code is covered as employment. (See § 404.1059(b) for special wage rule.)

(b) *Before 1984.* Work described in paragraph (a) of this section which was done before 1984 is excluded from employment. However, the exclusion does not apply to work done during the period for which a form SS–15, Certificate Waiving Exemption From Taxes Under the Federal Insurance Contributions Act, was filed (or was deemed to have been filed) with the Internal Revenue Service.

7. Section 101.1065 is revised to read as follows:

§ 404.1065 Self-employment coverage.

For an individual to have self-employment coverage under Social Security, the individual must be engaged in a trade or business and have net earnings from self-employment that can be counted as self-employment income for Social Security purposes. The rules explaining whether you are engaged in a trade or business are in §§ 404.1066–404.1077. What are net earnings from self-employment is discussed in §§ 404.1080–1095. Section 404.1096 describes the net earnings from self-employment that are counted as self-employment income for Social Security purposes. See § 404.1913 for the effect of a totalization agreement on self-employment coverage. An agreement may exempt an activity from coverage as well as extend coverage to an activity.

8. In § 404.1081, paragraph (a)(4)(iii) is revised to read as follows:

§ 404.1081 General rules for figuring net earnings from self-employment.

(a) * * *

(4) * * *

(iii) You are a United States citizen or resident engaged in a trade or business outside the United States (see § 404.1092); or

* * * * *

9. In § 404.1091, paragraph (c) is revised to read as follows:

§ 404.1091 Figuring net earnings for ministers and members of religious orders.

* * * * *

(c) *Services outside the United States.* If you are a citizen or resident of the United States performing services outside the United States which are in the exercise of your ministry or in the exercise of duties required by your order, your net earnings from self-employment from the performance of these services are figured as described in paragraph (b) of this section. However, they are figured without regard to the exclusions from gross income provided in sections 911 and 931 of the Code relating to earned income from services performed outside the United States and from sources within possessions of the United States.

10. Section 404.1092 is revised to read as follows:

§ 404.1092 Figuring net earnings for U.S. citizens or residents living outside the United States.

(a) *Taxable years beginning after December 31, 1983.* If you are a citizen or resident of the United States and are engaged in a trade or business outside the United States, your net earnings from self-employment are figured without regard to the exclusion from gross income provided by section 911 (a)(1) of the Code.

(b) *Taxable years beginning after December 31, 1981, and before January 1, 1984.* If you are a citizen of the United States and were engaged in a trade or business outside the United States, your net earnings from self-employment are figured without regard to the exclusion from gross income provided by section 911(a)(1) of the Code unless you are a resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year.

11. In § 404.1096, paragraph (d) is revised to read as follows:

§ 404.1096 Self-employment income.

* * * * *

(d) *Nonresident aliens.* A nonresident alien has self-employment income only if coverage is provided under a totalization agreement (see § 404.1913). We do not consider an individual who is a resident of the Commonwealth of Puerto Rico, The Virgin Islands, Guam or American Samoa to be a nonresident alien.

12. The authority citation for Subpart T reads as follows:

Subpart T—Totalization Agreements

Authority: Secs. 205, 233, and 1102 of the Social Security Act; 53 Stat. 1368, 91 Stat. 1538, and 49 Stat. 647, as amended; 42 U.S.C. 405, 433, and 1302.

13. In § 404.1913, paragraph (b)(1) is revised to read as follows:

§ 404.1913 Precluding dual coverage.

* * * * *

(b) *Principles for precluding dual coverage.* (1) agreement precludes dual coverage by assigning responsibility for coverage to the U.S. or a foreign country. An agreement may modify the coverage provisions of title II of the Act to accomplish this purpose. Where an agreement assigns coverage to the foreign country, it may exempt from coverage services otherwise covered by the Act. Where an agreement assigns coverage to the U.S., it may extend coverage to services not otherwise covered by the Act but only for taxable years beginning on or after April 20, 1983.

* * * * *

[FR Doc. 84-9236 Filed 4-5-84; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 131

[Docket No. 83N-0386]

Cream for Direct Consumption; Termination of Consideration of the Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of amending the U.S. standards of identity for certain cream products and of establishing a new standard of identity for "double cream" based on the "Recommended International Standard for Cream for Direct Consumption" (Codex Standard No. A–9) because there is neither sufficient interest nor need to warrant proposing amendment of the U.S. standards for cream products or establishment of a new standard.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0101.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 19, 1983 (48 FR 56072), FDA published an advance notice of proposed rulemaking which offered interested persons an opportunity to review the Codex standard and to comment on the desirability of and need for amending the U.S. standards of identity for certain cream products (heavy cream (21 CFR 131.150), light cream (21 CFR 131.155), light whipping cream (21 CFR 131.157), and half-and-half (21 CFR 131.180)), and for establishing a new standard of identity for "double cream." The Codex standards was submitted to the United States for consideration of acceptance by the Food and Agriculture Organization/World Health Organization's Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, a subsidiary body of the Codex Alimentarius Commission. In that notice the agency commented that amendment of the standards of identity or establishment of the new standard of identity would not be proposed if the comments received did not support these actions.

Six letters of comment were received in response to the advance notice of proposed rulemaking. Each opposed amendment of the existing standards of identity for cream products and one stated that establishment of a standard of identity for "double cream" is unnecessary.

Having considered the merits of the proposed standard and the comments received, FDA has conclued that, at this time, there is neither sufficient interest nor need to warrant proposing amendment of the U.S. standards of identity for the cream products or establishment of the new standard of identity for "double cream" under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

List of Subjects in 21 CFR Part 131

Cream, Food standards, Milk, Yogurt.

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of amending the U.S. standards of identity for certain cream products and of establishing a new standard of identity for "double cream" based on the Codex standard. This section is without prejudice to further consideration of amending the U.S. standards of identity for cream products and/or establishing a new standard of identity for "double cream" upon appropriate justification.

FDA will inform the Technical Secretary for the Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products that an imported food which complies with the requirements of the Codex standard may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: March 27, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9170 Filed 4-5-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1928

[Docket No. H-308]

Field Sanitation; Public Hearing; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of public hearing; extension of comment period.

SUMMARY: OSHA is scheduling informal public hearings on its proposed field sanitation standard (49 FR 7589 *et seq.*). These hearings will allow interested persons to present information and evidence on all the issues raised by the proposed standard. In addition, OSHA is extending the comment period in order to allow the public to adequately respond to the proposed rulemaking.

DATES: The period for comment on the proposal is extended to April 27, 1984. Notice of intention to appear at the informal public hearings must be received by April 27, 1984. All testimony and evidence that will be introduced into the hearing record must be received by May 7, 1984. For the hearing dates, see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Comments on the proposal must be submitted to the Docket Officer, Docket No. H-308, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room S-6212, Washington, D.C. 20210, (202) 523-7894.

Notices of intention to appear at the informal hearings, statements and documentary evidence to be presented at the hearing must be submitted in four copies to Mr. Thomas Hall, Division of Consumer Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3662, Washington, D.C. 20210, (202) 523-8024.

The record of this proceeding will be available for inspection and copying in the Docket Office, Room S-6212, at the above address.

For the hearing locations, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N-3662, Washington, D.C. 20210, (202) 523-8024;

Proposal: Mr. James F. Foster, Office of Public Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N-3637, Washington, D.C. 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION: On March 1, 1984 the Occupational Safety and Health Administration (OSHA) proposed an amendment to 29 CFR Part 1928, Standards for Agriculture, by adding a new § 1928.110, Field Sanitation (49 FR 7589 *et seq.*). The proposed standard would require agricultural employers to provide toilets, potable water, and handwashing facilities for farm employees engaged in hand-labor in the field. Adverse health effects are commonly associated with the absence of these sanitation facilities. At issue is whether an OSHA standard is reasonably necessary or appropriate to deal with these health effects in the context of agricultural field labor. Farming operations that do not have temporary labor camps and employ 10 or fewer such employees, of that require hand-labor or short duration (less than 3 hours per day), or that involve hand-labor operations conducted inside permanent structures would be excluded from coverage under the standard.

The Notice of Proposed Rulemaking announced a 45-day comment period, ending on April 16, 1984. That period is hereby extended to April 27, 1984.

In accordance with a court-approved settlement agreement (D.D.C. Civ. Action 2142-73) and pursuant to section 6(b)(3) of the Act. OSHA has scheduled informal public hearings to receive testimony on all issues involved in the proposed field sanitation standard. Persons interested in participating in the hearing should refer to the notice of proposed rulemaking on field sanitation (49 FR 7589 *et seq.*, March 1, 1984) for the text of the proposal and a more thorough discussion of issues related to this proceeding.

Hearings will be convened at each site for two days, or three days if necessary. Night hearings may be arranged for locations outside of Washington, D.C., if requested and necessary.

The hearings will begin at 9:30 at each of the following sites.

Dates for hearings	locations
May 23-24, 1984	Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210.
June 5-6, 1984	Auditorium, Maitland Civic Center, 641 South Maitland Ave., Maitland, Florida 32751 (near Orlando, Florida).
June 12-13, 1984	Room 107, Lubbock Memorial Civic Center, 1501 6th Street, Lubbock, Texas 79401.
June 19-20, 1984	Student Center Auditorium, University of Toledo, Scott Park Campus, Nebraska Ave At Parkside Blvd., Toledo, Ohio 43606.
June 26-27, 1984	Polynesian Center, Holiday Inn Fresno Airport, 5090 East Clinton, Fresno, California 93727.

Public Participation in Hearing

Notice of Intention to Appear: Persons desiring to participate fully at the hearing, including the right to question witnesses, must file a notice of intention to appear by April 27, 1984. The notice of intention to appear must contain the following:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The hearing site where the appearance will be made;
5. The specific issues that will be addressed;
6. A statement of the position that will be taken with respect to each issue addressed; and
7. A statement as to whether the party intends to submit documentary evidence, and if so, a summary of the evidence.

OSHA anticipates that some participants in the hearing may need to testify in languages other than English. Requests for interpreters must be submitted with the notice of intention to appear and must specify and language needing interpretation. Where substantial need is established, OSHA will attempt to reasonably accommodate such requests by providing interpreters.

In addition, to the extent time permits, persons who did not file notices of intention to appear may be allowed to make brief oral statements not to exceed 10 minutes, but will not be allowed to ask questions.

Filing of Testimony and Evidence Before the Hearing: Any party who has filed a Notice of Intention to Appear and requests more than 10 minutes for presentation at the hearing or intends to submit documentary evidence must provide OSHA with four copies of the complete text of the testimony and of all documentary evidence to be presented at the hearing. All such submissions must be in English and must be provided to the OSHA Division of Consumer Affairs by May 7, 1984.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a

more appropriate amount of time will be allocated and the participant will be notified of the fact. Any party who has not substantially complied with the requirement for filing testimony and documents before the hearing may be limited to a 10-minute presentation and may be requested to return to testify at a later time.

Notice of intention to appear, testimony and evidence, will be available for inspection and copying at the Docket Office, Docket H–308, U.S. Department of Labor Occupational Safety and Health Administration, Room S6212, 200 Constitution Avenue NW., Washington, D.C. 20210 (202) 523–7894.

In order to encourage full development of the record, OSHA reminds interested persons that participation in the hearing is an activity that is protected under section 11(c) of the OSH Act. That section reads:

> No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

Any procedural matters relating to these hearings will be addressed and resolved at each site at the beginning of the hearing. The hearings will be conducted in accordance with the procedures in 29 CFR 1911, and will be presided over by an Administrative Law Judge. Hearing guidelines established by the Administrative Law Judge will be distributed to hearing participants in advance of the hearing. The Judge will have the powers necessary and appropriate to conduct full and fair informal hearings, as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearings by appropriate means; and
5. To keep the record open for a reasonable stated time, in the Judge's discretion, to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health.

The proposal will be reviewed in light of all testimony and written submissions received as part of the record. Based on the entire record of the proceeding, the proposed standard will be modified, as necessary, and published in a final standard, or a determination will be made not to issue a final standard and that determination, with the reasons for it, will be published in the **Federal Register**.

Authority: This document was prepared under the direction of Patrick R. Tyson, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. (Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, D.C. this day of April 3rd, 1984.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

[FR Doc. 84-9194 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 84–16]

Regatta; Sunshine Marina Boat Drags

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule will establish Special Local Regulations for a series of high speed drag boat races, at Riviera Marina, Riviera, Arizona (on the Colorado River). These events will be publicized as the "Sunshine Marina Boat Drags", the first event of this series was already held on 3 and 4 March 1984; and, regulations were published in the **Federal Register** on February 27, 1984. The sponsor plans to continue this event as a series, during the continuing year. These regulations are needed to provide for the safety of life and property on navigable waters during the periods set forth.

DATES: Comments must be received on or before May 21, 1984.

ADDRESSES: Comments should be mailed or can be hand-delivered to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Blvd., Union Bank Bldg.—Suite 901, Long Beach, CA 90822. The comments will be available for inspection and copying during normal office hours (7:30 a.m. to 3:30 p.m., Monday through Friday, except holidays).

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Commander (bb), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Commenters should include their name and addresses, identify this notice CGD 11–84–16, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this regulation are LTJG Jorge Arroyo, Chief, Boating Affairs Branch, Eleventh Coast Guard District, Project Officer, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation: Sunshine Marina & D. J. Propeller "SUNSHINE MARINA BOAT DRAGS" were first conducted on March 3, 1984 at Riviera, Arizona, on the Colorado River. Race boats completed in heats starting from the entrance of Riviera Marina; thence 1200 feet north, 1000 additional feet were allowed for slow down and turn around. Then they idled southerly along the natural flow of the river back to the starting point. Sixty high speed boats, 18 feet in length participated; the event was such a success that the sponsor desires to run this same event as a series. The previous regulations, which appeared in the **Federal Register** on February 27, 1984, have terminated; therefore, this proposed rule will reestablish similar special local regulations for the entire series. These races could pose a hazard to navigation, therefore, vessels desiring to transit the regulated area may do so only with clearance from patrolling law enforcement vessel or an event committee boat.

There have been no consultations with interested member of the public to date and no consultations are planned at this time.

Economic Assessment and Certification: This proposed regulation is considered to be nonsignificant in

accordance with DOT Policies and Procedures for Simplification, Analysis and Review (DOT Order 2100.5). Its economic impact is expected to be minimal since the regulated area will be open periodically for the passage of commercial and recreational vessels. Based upon this assessment it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also this regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35–11–84–18 Colorado River, Sunshine Marina Boat Drags

(a) *Regulated Area.* That portion of the Colorado River, starting from the entrance of Riviera Marina, Riviera, Arizona to 2200 feet north.

(b) *Effective Date.* The regulated area will be closed intermittently to all vessel traffic from 8:00 AM to 5:00 PM on the following dates:

2–3 June 1984.

25–26 August 1984.

20–21 October 1984.

(c) *Special Local Regulations.* (1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter the regulated area during the above hours, unless cleared for such entry by or through patrolling law enforcement vessel, or an event committee boat.

(2) When hailed by Coast Guard or Coast Guard Auxiliary vessels patrolling the event area, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Coast Guard Regatta Patrol.

(3) These regulations are temporary in nature and shall cease to be in effect at the end of each such period set forth.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.,35)

Dated: March 27, 1984.

F. P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 84-9125 Filed 4-5-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-2-FRL 2559-3]

Montana; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of State of Montana for Final Authorization, Public Hearing and Public Comment Period.

SUMMARY: Montana has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Montana's application and found it to not currently include all the information necessary for final authorization. Montana has agreed to address the EPA concerns, as identified in this notice, to EPA's satisfaction prior to public hearing on the application. Thus, EPA tentatively intends to grant final authorization to Montana to operate its hazardous waste program in lieu of the federal program.

Montana's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the tentative decision. In making its final decision, EPA will consider all public comments on the tentative decision and the measures taken by the State to address the EPA concerns.

DATES: A public hearing is scheduled for May 15, 1984. Montana will participate in the public hearing held by EPA on this subject. All comments on Montana's final authorization application must be received by the close of business on May 15, 1984.

ADDRESSES: Copies of Montana's final authorization application are available during regular business hours at the following addresses for inspection:

Montana Solid Waste Management Bureau, Cogswell Building, Room B201, Helena, Montana 59620, (406) 444–2821, Roger Thorvilson

U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, D.C. 20460, (202) 382–5926

U.S. EPA Region VIII Library, 1860 Lincoln Street, Suite 103, Denver, Colorado 80295, (303) 837–2560, Dolores Eddy

U.S. EPA Montana Office, 301 South Park, Room 292, Helena, Montana 59626, (406) 449–5414, James C. Harris

Written comments should be sent to: James C. Harris, Environmental Protection Agency, 301 South Park, Drawer 10096, Helena, Montana 59626.

EPA will hold the public hearing on May 15, 1984, in Room 289, of the Federal Building and Courthouse, 301 South Park, Helena, Montana, at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: James C. Harris, Environmental Protection Agency, 301 South Park, Drawer 10096, Helena, Montana 59626, (406) 449–5414.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization", is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase 11A covers general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase 11B covers incinerator facilities, and Phase 11C addresses landfills and land treatment facilities. By statute, all interim authorizations expire on January 26, 1985. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for

adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CR 271.1–271–23.

B. Montana

The State of Montana received limited Phase I interim authorization on February 26, 1981. Complete Phase I interim authorization was granted on February 17, 1982, following changes to the State hazardous waste management statute.

Montana submitted a draft application for final authorization to EPA on July 28, 1983. Following its public hearing to solicit comments on December 19, 1983, Montana submitted its official application for final authorization of the State hazardous waste management program on January 23, 1984.

After reviewing the State's application, EPA is requesting the State to provide additional information as follows:

1. A strategy for permitting all facilities in the State;
2. A more detailed description of Montana enforcement authority;
3. A more detailed description of their compliance monitoring tracking system, including a priority system for scheduling inspections to followup on citizen complaints; and
4. Certification that the State can regulate certain types of radioactive wastes when they are also hazardous.

Montana has indicated that it will satisfy all of EPA's concerns by providing written assurances prior to the May 15, 1984 public hearing. These concerns are discussed more fully in the letter from John Wardell, Director, Montana Operations Office, to Dr. John Drynan, Director, Montana Department of Health and Environmental Sciences, which is in the public record.

Thus, EPA tentatively intends to grant final authorization to Montana to operate its program in lieu of the federal program.

In accordance with Section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on May 15, 1984 at 9:30 a.m. in Room 289 of the Federal Building and Courthouse, 301 South Park, Helena, Montana 59626. The public may also submit written comments on EPA's tentative determination until May 15, 1984. Copies of Montana's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

In making its final decision, EPA will consider all public comments on the tentative determination and the measures taken by the State to address these EPA concerns. EPA expects to make a final decision on whether or not to approve Montana's program by June 26, 1984.

However, this schedule will change if amendments made to Montana's application are substantial. 40 CFR 271.20(b) requires the State to provide for additional public comment if the proposed State program is substantially modified after the State comment period ends. 40 CFR 271.5(c) further provides that if the State's application materially changes during EPA's review period, the statutory review period begins again upon receipt of the revised submission. The State and EPA may also extend the review period by agreement (see 40 CFR 271.5(d)). EPA will give notice of its final decision or of a change in schedule in the **Federal Register** by June 27, 1984. That notice will include a summary of the reasons for the final decision, if made at that time, and a response to all major comments received during the public comment period.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, and, Confidential business information.

Authority This notice is issued under the authority of Sections 2002(a), and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegations 7.

Dated: March 16, 1984.

John G. Welles,

Regional Administrator.

[FR Doc. 84-8212 Filed 4-5-84; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 175

[Docket No. HM-182]

Quantity Limitations Aboard Aircraft

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) solicits public comments relative to any future action it should take concerning the provisions of § 175.75(a)(2) of the Department's Hazardous Materials Regulations (HMR). This section imposes a limitation of fifty pounds net weight on the quantity of hazardous materials, permitted to be carried aboard passenger aircraft, that may be carried in an inaccessible manner aboard an aircraft. This advance notice of proposed rulemaking is being published in response to a petition for rulemaking submitted by Japan Air Lines Company, LTD. on April 15, 1983, which requested that § 175.75(a)(2) be removed from the HMR.

DATE: Comments must be received by September 1, 1984.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Telephone: (202) 426–0656.

SUPPLEMENTARY INFORMATION: The provisions of 49 CFR 175.75(a)(2) impose a limitation of fifty pounds net weight on the quantity of hazardous materials, permitted to be carried aboard a passenger aircraft, that may be carried

in an inaccessible manner aboard an aircraft. Historically, the intent of this provision was to preclude large quantities of hazardous materials being aggregated in any one stowage location aboard an aircraft, thereby reducing the possibility of an uncontrollable event should an incident occur.

On December 6, 1982, the MTB published a notice of proposed rulemaking in the **Federal Register** under Docket No. HM–184 (47 FR 33295) which requested public comment on the need to amend the HMR in order to take account of the International Civil Aviation Organization's (ICAO's) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), which were to become effective on January 1, 1983. Although this notice did not propose an amendment to § 175.75(a)(2), five commenters proposed the deletion of this paragraph on the basis that no corresponding provision existed in the ICAO Technical Instructions. Because no change was proposed to this paragraph in the notice, the MTB considered the deletion of this paragraph to be outside of the scope of that rulemaking and the paragraph was, therefore, retained. Nevertheless, the MTB indicated that there may be merit in considering the deletion or amendment of this limitation provided evidence supporting such action is submitted and that there would be full public participation in a rulemaking proceeding. Consequently, petitions to delete or amend § 175.75(a)(2), with full supporting information, were invited for consideration in a separate rulemaking action.

On April 15, 1983, Japan Air Lines Company, LTD. (JAL) submitted a petition for rulemaking which requested the deletion of § 175.75(a)(2) contending that the quantity limitation was arbitrary, unjustifiable and inconsistent with other provisions of Part 175 as well as inconsistent with the ICAO Technical Instructions. In order to afford the public ample opportunity to consider the merits of such action, the MTB is providing in this publication the following reproduction of the salient points of the JAL petition:

"5. The 50 pound restriction prescribed in 14 CFR 175.75(a)(2) (sic) is arbitrary inasmuch as no justification has ever been articulated in support of this limitation. Significantly, no such "per aircraft" weight limitation has ever been imposed with respect to "Other Regulated Material" (ORM) as defined in 49 CFR 173.500, including consumer commodities containing hazardous materials otherwise subject to regulation, which are classed as ORM–D items. It seems patently inconsistent and unsupportable to dictate that an aircraft may carry no more than 50 pounds of a given material packaged and prepared for transportation in accordance with the strict requirements of Part 175 while permitting the same aircraft to carry an *unlimited* quantity of that same material contained in "consumer commodities" and probably not packaged as securely as the non-ORM items. Moreover, no reasoning is given in support of the determination to permit no more than 50 pounds of hazardous materials (and 150 pounds of non-flammable compressed gas) in an inaccessible cargo compartment, while an unlimited quantity of hazardous material may be carried in accessible cargo compartments.

6. Another inconsistency results from the fact that the quantity limitation applies only to passenger-carrying aircraft. Shipments of hazardous material that are acceptable for carriage on passenger aircraft would be subject, even without these per-aircraft overall weight limitations, to much more stringent individual quantity and packaging requirements than those applicable to hazardous materials transported on cargo-only aircraft. It seems rather inconsistent, therefore, to impose these per-aircraft limitations on materials already packaged in accordance with the rigid MTB standards for passenger-carrying aircraft, while not applying any such per-aircraft limitations to goods carried on cargo-only aircraft which need not be packaged in accordance with the more stringent standards.

7. Futhermore, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air, which has received virtually worldwide acceptance and application, contains no such per aircraft limitation, and to our knowledge there has never been any incident attributable to the transportation in a single aircraft of quantities of hazardous materials in excess of the limitation prescribed in 49 CFR 175.75(a)(2). Although the U.S. is not obliged to replicate the ICAO Standards in its own regulations, the benefits of worldwide uniformity were recognized, and indeed, the ICAO Technical instructions were in large measure adopted, in the final rule issued in Docket HM–184, 47 FR 54817, of 6 December 1982. In keeping with the philosophy of worldwide uniformity and consistency, JAL submits that it is appropriate for the U.S. regulations to be brought into conformity with the ICAO technical instruction in this regard. Indeed, the current lack of uniformity may increase the risks incident to the through transportation of hazardous commodities. Since aircraft operating between countries that adhere to the ICAO technical instructions may well carry quantities of hazardous materials in excess of the MTB limitations, it becomes necessary to off-load such excess materials at an enroute station before the aircraft departs for the United States. Aside from the dangers incident to the additional handling of the hazardous materials in the off-loading and re-loading process, backlogs of hazardous materials are frequently caused to accumulate, which can greatly increase the risk of a catastrophic accident occurring, particularly in the many parts of the world where the climate is exceptionally hot and/or humid, and the warehouse facilities are rather poor. If U.S. regulations were brought into conformity with the ICAO technical instructions in this regard, the necessity of off-loading and storing excess harzardous cargo at these intermediate points, and the unnecessary additional safety risks attendant to these procedures, could be avoided.

8. In summary, the per-aircraft quantity limitations presently set forth in 49 CFR 175.75(a)(2) are arbitrary, inconsistent, and may actually serve to undermine the overall objective of the MTB scheme of regulations, which is to ensure maximum safety in the transport of hazardous goods by air. The promulgation of any such standards should be done only on the basis of a comprehensive analysis of the justification for, and broader ramifications of, such action, and can most effectively be undertaken through close coordination with ICAO."

Although the MTB does not necessarily agree with the statements made in the JAL petition, the substance of the petition is, without question, of broad and general applicability and consequently of interest to many parties. For this reason, comments are solicited on the amendments requested in the JAL petition, on the evidence offered in support of that petition and on the following questions:

1. What has been the transportation experience in areas outside of the United States where no corresponding aircraft quantity limitations are imposed?

2. What would be the safety implications, if any, if the JAL petition were granted?

3. What would be the economic benefits and consequences associated with adoption of the amendment proposed by JAL?

4. If instead of removing § 175.75(a)(2), certain classes (e.g., Poison B, liquids or solids) or sub-classes (e.g., Flammable liquids with a flashpoint above 73°F and no subsidiary risks) of hazardous materials were to be excepted from these quantity limitations, what hazard classes or sub-classes could be safely excepted and why?

5. If instead of removing 175.75(a)(2), the 50 pound limitation were replaced by a higher quantity limit, what quantity limit would be practicable and why?

Commenters are requested to provide detailed evidence in support of their comments in order to provide the MTB with sufficient information on which to base a decision regarding any future action that may be taken under this docket. Commenters are not limited to responding to the questions raised above and may submit any facts and views consistent with the intent of this notice. In addition, commenters are encouraged to provide comments on "major rule" considerations under terms

of Executive Order 12291, "significant rule" consideration under DOT regulatory procedures (44 FR 11034), potential environmental impacts subject to the Environmental Policy Act, information collection burdens which must be reviewed under the Paperwork Reduction Act, and economic impact on small entities subject to the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 175

Hazardous materials transportation, Air carriers.

(49 U.S.C. 1803, 1804, 1806; 49 CFR 1.53, Appendix A to Part 1 and paragraph (a)(3) of Appendix A to part 106)

Issued in Washington, D.C. on April 2, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-9203 Filed 4-5-84; 8:45 am]

BILLING CODE 4910-60-M

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

49 CFR Ch. VII

Freedom of Information Act Regulations

AGENCY: National Railroad Passenger Corporation (Amtrak).

ACTION: Notice of proposed rulemaking; with request for comments.

SUMMARY: On April 26, 1982, the National Railroad Passenger Corporation (AMTRAK) published regulations at 49 CFR Part 700 establishing the procedures governing requests for records under 5 U.S.C 552(a)(3). 47 FR 17822. Amtrak is required to comply with the Freedom of Information Act by virtue of a specific provision to that effect at 45 U.S.C. 546(g). Amtrak's regulations were effective upon publication, and have not since been changed. Description of matters set out in 5 U.S.C. 552(a)(1) and (2) was not published at that time. The purpose of the present proposal is to satisfy, in Part 700 of 49 CFR, the requirements of 5 U.S.C. 552(a) (1) and (2); and to renumber as Part 701 the regulations currently appearing under Part 700.

DATES: Comments must be submitted on or before June 5, 1984.

ADDRESSES: Comments may be mailed or delivered to the Law Department, Amtrak, 400 North Capitol Street NW., Washington, D.C. 20001. Comments received by the Corporation will be available to the public.

FOR FURTHER INFORMATION CONTACT: Michelle Lore (Legal Assistant), (202) 383-2812.

SUPPLEMENTARY INFORMATION:

Classification

The General Counsel of Amtrak has determined that these proposed regulations do not constitute a "major" rule for the purposes of E.O. 12291 since they will have no detectable effect on the condition of any industry or the national economy, and will not impose significant burdens on the economy or on individuals. Moreover, Amtrak is not an agency or establishment of the United States Government. As a result of those circumstances no Regulatory Impact Analysis need be undertaken.

List of Subjects in 49 CFR Part 700

Freedom of information.

Under the authority of 45 U.S.C. 546(g), Title 49 of the Code of Federal Regulations is amended by the establishment in Chapter VII of a new Part 700, and by the renumbering as Part 701 of what currently appears as Part 700. Any internal references to Part 700 should be changed to Part 701. New Part 700 is added as follows:

PART 700—ORGANIZATION, FUNCTIONING AND AVAILABLE INFORMATION

Sec.

700.1 Purpose.
700.2 Organization and functioning of Amtrak.
700.3 Availability of documents, assistance, and information.

Authority: 5 U.S.C. 552(a) (1), (2).

§ 700.1 Purpose.

This part describes the organization and functioning of Amtrak and the availability to the public of documents and information concerning its policies, procedures and activities.

§ 700.2 Organization and functioning of Amtrak.

The creation of the National Railroad Passenger Corporation ("Amtrak") was authorized by the Rail Passenger Service Act, as amended, 84 Stat. 1327, 45 U.S.C. 541 *et seq.* ("the Act"). The Act requires that Amtrak be operated and managed as a for-profit corporation, that it be incorporated under the District of Columbia Business Corporation Act, and subject to the provisions of that statute to the extent not inconsistent with the Act, and that it provide a balanced transportation system by developing, operating, and improving intercity rail passenger service. The Act also states that Amtrak will not be an agency or establishment of the United States Government. Amtrak thus is a corporation created by Congress to compete for the Transportation business of the intercity traveller, to the end that the travelling public will have a choice of travel modes. The address of its headquarters is 400 North Capitol Street NW., Washington, D.C. 20001. Telephone: (202) 383-3000.

(a) *Board of Directors.* Amtrak's major policies are established by its board of directors. The nine members of the board are selected as follows: The Secretary of Transportation serves as an ex-officio member and Amtrak's President, ex-officio, is Chairman of the Board; three members are appointed by the President of the United States and confirmed by the Senate (representing labor, State Governors, and business); two represent commuter authorities and are selected by the President from lists drawn up by those authorities; and two are selected by the Corporation's preferred stockholders, the Department of Transportation.

(b) *Officers and Central Management.* Amtrak is managed by a President and a Management Committee consisting of four Executive Vice Presidents. Reporting to the Executive Vice Presidents are eleven vice presidents representing, sales, transportation marketing, planning and development, computer services, labor relations, fiance and treasurer, personnel, passenger and operating services, government affairs, operations and maintenance, engineering, and the General Counsel. Areas handled as special matters within the authority of vice presidents, such as corporate communications, safety, real estate, procurement, materials management, police and security, contract administration, and internal audit are supervised by assistant vice presidents and directors.

(c) *Regional and Field Structure.* The need for decentralization of functions in the areas of passenger services and transportation operations has led to the creation of Amtrak's regional and field structure. Field offices are located in major cities such as Baltimore, Philadelphia, New York, Albany, Boston, Chicago, Seattle and Los Angeles. Pursuant to overall policies established at headquarters in Washington, D.C., these offices handle matters like the assignment and scheduling of employees who work on board moving trains; purchase, stowage and preparation of food for dining service; maintenance and rehabilitation of rolling stock; and daily operating arrangements such as the make-up of

trains or the cleaning and repairing of cars on trains.

(d) *Route System.*

Amtrak's basic route system has been established pursuant to statutory guidelines, and in some cases by specific statutory directive. Out of a route system covering about 23,000 route-miles, Amtrak owns a right-of-way of about 2,600 track miles in the Northeast Corridor (Washington-New York-Boston; New Haven-Springfield; and Philadelphia-Harrisburg) and small segments of track near Albany, New York, and Kalamazoo, Michigan. In the Northeast Corridor Amtrak trains are run by operating crews consisting of Amtrak employees. On other routes, Amtrak operates trains on the tracks of about twenty different privately owned railroads and compensates the railroads for the use of their facilities and for the services of their employees, including engineers, conductors, and maintenace personnel. Those private railroads are responsible for the condition of the roadbed and for coordinating the flow of traffic over their lines.

(e) *Operations.* Amtrak provides about 250 trains daily, serving about 500 stations in over forty states. Amtrak owns most of its cars and locomotives, some of its stations, and most of its repair facilities. Its capital improvements and almost half of its operating losses are supported principally through Federal financing, with some State, regional and local financial support for some trains and stations. Congress requires Amtrak, to earn revenues equivalent to at least fifty percent of its operating costs, and it currently does so.

(f) *Revenue Production.* The sale of tickets for transportation and accommodations, Amtrak's principal source of revenue, is accomplished through Amtrak ticket agents at stations, travel agencies, and five central reservations offices which service a nationwide telephone network. National Timetables contain basic information about routes, stations, and services.

§ 700.3 Availability of documents, assistance, and information.

(a) A member of the public having need for assistance or information concerning any of the matters described in § 700.2 should address his or her concerns in a letter or other written communication directed to the appropriate vice president or to the Director of Corporate Communications. Amtrak will bring such communications to the attention of the appropriate official if they are misdirected in the first instance. Formal requests for "records" under 5 U.S.C. 552(a)(3) of the Freedom of Information Act are to be made in accordance with the provisions of 49 CFR 701.4.

(b) The National Train Timetables described in § 700.2(f) are widely distributed in the continental United States and are available in major cities in Europe, Canada and Mexico. When they are updated (usually in April and October each year) each printing involves about 1,000,000 copies. They are ordinarily available at staffed Amtrak stations and copies are usually kept on hand in the offices of about 9800 travel agents who are authorized to sell Amtrak tickets. A person unable to obtain a copy locally should request one from the Director of Corporate Communications at the Washington, D.C. headquarters. The timetable depicts the major Amtrak train routes on a map of the United States, and most of the remainder of the booklet shows the schedules for specific trains. Several pages are used to offer travel information dealing with the availability of assistance to handicapped travellers, red cap service, purchase of tickets on board, use of credit cards and personal checks, handling of baggage, refunds for unused tickets and similar matters.

(c) Also available to members of the public at most staffed Amtrak stations, and usually maintained in the offices of travel agencies authorized to sell Amtrak tickets, is a copy of the Reservations and Ticketing Manual (RTM) which constitutes a compendium of information governing Amtrak employees in furnishing transportaiton to the travelling public. It contains substantial segments dedicated to the following topics: Amtrak's computer system and its communication codes; interline service agreements; passenger and baggage services; customer relations functions; reservations policy and procedures; acceptance of checks and credit cards; refunds; missed connection policies; ticketing; accommodations; employee pass travel; location maps for Amtrak stations; and intermodal state maps.

(d) A full statement of Amtrak's tariffs containing the fares for point-to-point travel, regional plan travel and all relevant travel conditions, such as excursions, discounts, family plans, accommodations, etc., is contained in the privately published *Official Railway Guide,* which is available by subscription from its publisher at 424 West 33rd Street, New York, New York 10001. A copy of the Guide can usually be found at each staffed Amtrak station, and at the offices of travel agents authorized to sell Amtrak tickets. Tariff changes which occur between issues of the Guide are published and widely distributed by Amtrak pending their publication in the next issue of the Guide.

(e) Each of the documents described in paragraph (b) through (d) of this section is available to the public for inspection during regular business hours at the office of Amtrak's Freedom of Information Officer at its headquarters at 400 North Capitol Street NW., Washington, D.C. 2001, and at the office of the Division Manager, Human Resources, in New Haven, Philadelphia, Baltimore, New York, Los Angeles and Chicago. Each document has its own index. Since each index is useful only in connection with the document to which it pertains, and since requests for indices are uncommon, Amtrak hs determined that publication of its indices as described in 5 U.S.C 552(a)(2) would be unnecessary and impracticable.

Paul F. Mickey, Jr.,

Executive Vice President, Law and Public Affairs, National Railroad Passenger Corporation.

[FR Doc. 84-9172 Filed 4-5-84; 8:45 am]
BILLING CODE 0000-00-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Comment Period on Proposed Endangered Status and Critical Habitat for the Key Largo Woodrat and Cotton Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of comment period.

SUMMARY: The Service gives notice that a public hearing will be held on the proposed determination of endangered status and critical habitat for the Key Largo woodrat and cotton mouse, and that the comment period on the proposal will be extended.

DATES: The public hearing will be held on April 24, 1984, from 7:30 p.m. to 10:00 p.m. Comments on the proposal must now be received by April 27, 1984.

ADDRESSES: The public hearing will be held at the Plantation Key Courthouse, 88820 Overseas Highway, Plantation Key, Monroe County, Florida. Written comments and materials should be sent to the Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife

Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection during normal business hours, by appointment, at this address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley at the above Field Station address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Key Largo woodrat (*Neotoma floridana smalli*) and Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) are small mammals endemic to Key Largo, Monroe County, Florida. Both species are jeopardized through the destruction of their upland tropical forest habitat by commercial, residential, and recreational development. In the **Federal Register** of September 21, 1983 (48 FR 43040–43043), the Service issued an emergency determination of endangered status for the two mammals. In the **Federal Register** of February 9, 1984 (49 FR 4951–4956), the Service issued a proposed determination of permanent endangered status and critical habitat for the two mammals. The period for submission of public comments on the proposal was originally scheduled to last until April 9, 1984.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On March 12, 1984, the Service received a letter from Mr. James S. Mattson of Key Largo, Florida, requesting a hearing on the proposal to determine endangered status and critical habitat for the Key Largo woodrat and cotton mouse. The Service has scheduled this hearing for April 24, 1984, from 7:30 p.m. to 10:00 p.m., at the Plantation Key Courthouse, 88820 Overseas Highway, Plantation Key, Monroe County, Florida. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing.

In order to accommodate the hearing, the Service also extends the public comment period on the proposal. Written comments may now be submitted until April 27, 1984, to the Field Station address given above.

Author

The primary author of this notice is Dr. Michael M. Bentzien of the Field Station address given above.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: April 3, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-9284 Filed 4-5-84; 8:45 am]

BILLING CODE 4310-07-M

Notices

Federal Register
Vol. 49, No. 68
Friday, April 6, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL RIGHTS COMMISSION

California Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 1:00 p.m., on April 28, 1984, at the Monterey Fairgrounds Travelodge, Restaurant Meeting Room, 2030 Fremont Boulevard, Monterey, California 93940. The purpose of the meetintg is to discuss followup to the Committee's reapportionment report and plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Maurice B. Mitchell, at (303) 444–3541 or the Western Regional Office at (213) 688–3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 3, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-9279 Filed 4-5-84; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m., on April 25, 1984, at the Hyatt Regency, 1 River Front Center West, Flint, Michigan 48502. The purpose of the meeting is to discuss the status of civil rights in Michigan.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Dr. M. H. Rienstra, at (616) 456–3859 or the Midwestern Regional Office at (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 3, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-9279 Filed 4-5-84; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 3:00 p.m., on May 19, 1984, at the Terrace Hilton, 15 West 16th Street, Cincinnati, Ohio 45201. The purpose of the meeting is to discuss the status of the Hispanic education project and plans for new projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Marian A. Spencer, at (513) 352–3000 or the Midwestern Regional Office at (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 3, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-9280 Filed 4-5-84; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 6:30 p.m. and will end at 9:00 p.m., on May 4, 1984, at the Sheraton Inn, Skyline East, Creek Room, 633 East Skelly Drive, Tulsa, Oklahoma 74135. The purpose of the meeting is to discuss program planning for fiscal year 1984.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Dr. Earl D. Mitchell, at (405) 624–6212 or the Southwestern Regional Office at (512) 229–5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 2, 1984

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-9159 Filed 4-5-84; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 3:30 p.m. on April 30, 1984, at the West Virginia Human Rights Commission, 215 Professional Building, 1036 Quarrier Street, Charleston, West Virginia 25301. The purpose of the meeting is to discuss plans for program activities for the remainder of 1984.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Mr. Donald L. Pitts, at (304) 252–5309 or the Mid-Atlantic Regional Office at (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 3, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-9281 Filed 4-5-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Economic Advisory Board; Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1979), notice is hereby given that the meeting of the Department of Commerce Economic Advisory Board will be held on Thursday, May 3, 1984, from 9:30 a.m. to 4:00 p.m. in Room 5859, Herbert C. Hoover Building, 14th Street

and Constitution Avenue, NW., Washington, D.C. 20230.

The Board was established by the Secretary of Commerce on January 13, 1967. The purpose of the Board is to advise the Secretary of Commerce on economic policy issues. The intended agenda for this meeting is as follows:

- A review of the economic outlook by major sector.
- A discussion of the outlook for prices and employment and of strategies for sustaining noninflationary economic growth.

A limited number of seats will be available to the public on a first-come, first-served basis. Public participation will be limited to requests for clarification of items under discussion. Additional statements or inquiries may be submitted to the chair before or after the meeting. Copies of the minutes will be available on request 30 days after the meeting.

Additional information concerning this meeting may be obtained by contacting Ms. Virginia R. Marketti, Office of the Under Secretary for Economic Affairs, Room 4836, Department of Commerce, Washington, D.C. 20230 (202) 337–3523.

Dated: April 3, 1984.

Sidney L. Jones,

Under Secretary for Economic Affairs.

[FR Doc. 84-9186 Filed 4-5-84; 8:45 am]

BILLING CODE 3510-18-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to SOR, Inc. ("SOR". This notice summarizes the conduct for which certification has been granted.

ADDRESSES: The Department requests public comments on this certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 83–00027."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377–0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595–604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant; and
3. Not consitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–40 (April 13, 1983).

Description of Certified Conduct

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from SOR on October 14, 1983. The application was deemed submitted on October 20, 1983. A summary of the application was published in the **Federal Register** on November 2, 1983 (48 FR 50594). Based on analysis of the information contained in the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by SOR meet the four standards of the Act:

Export Trade

Products

Pressure, vacuum, differential pressure and temperatures switches, and hand calibration pumps, and components and accesories thereof, typically used in the power and process industries.

Services

All services related to the sales and maintenance of its products, including marketing of products and providing technical assistance to end-users or representatives.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

SOR may enter into and terminate the following types of agreements:

a. Exclusive and nonexclusive agreements with individual buyers in the Export Markets to act as a purchasing agent;

b. Exclusive and nonexclusive agreements with individual suppliers to act as a sales representative, distributor or broker in the Export Markets; and

c. Exclusive and nonexclusive marketing agreements with export intermediaries (including distributors, sales representatives, and sales and marketing agents).

The agreements described in (b) and (c) above may contain territorial, customer, price and/or quantity restrictions for the Export Markets.

SOR may also respond to invitations to bid or sales opportunities in the Export Markets by: (1) Contacting suppliers of Products and Services in Export Trade; (2) distributing bid information to suppliers; (3) soliciting and receiving independent quotations for Products and Services from

individual suppliers; and (4) entering into agreements with individual suppliers whereby SOR will submit a response to the bid invitation or request for quotation.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom Of Information Officer, at the above address or by calling (202) 377–3031.

Dated: April 2, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84–9175 Filed 4–5–84; 8:45 am]

BILLING CODE 3510–DR–M

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Publication of annual list of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Susan E. Silver, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our January 1, 1984 annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: March 31, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

County and program(s)	Gross subsidy (cents per pound) [1]	Net subsidy (cents per pound) [2]
Belgium: European Community (EC) restitution payments	2.5	2.5
Canada:		
Export assistance on Swiss cheese	25.0	25.0
Export assistance on aged cheddar N/Ov. 2.27 Kg/pkg	25.0	25.0
Export assistance on NSPF cheese	25.0	25.0
Denmark: EC restitution payments	0.2	0.2
Finland:		
Export subsidy	39.5	39.5
Indirect subsidies	16.0	16.0
	55.5	55.5
France: EC restitution payments	.2	.2
Ireland: EC restitution payments	0	0
Italy: EC restitution payments	17.3	17.3
Luxembourg: EC restitution payments	2.5	2.5
Netherlands: EC restitution payments	0	0
Norway:		
Indirect (milk) subsidy	15.6	15.6
Consumer subsidy	34.6	34.6
	50.2	50.2
Switzerland: Deficiency payments	66.9	66.9
United Kingdom: EC restitution payments	0	0
W. Germany: EC restitution payments	0	0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 84–9186 Filed 4–5–84; 8:45 am]

BILLING CODE 3510–DS–M

Certain Fasteners From India; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Final results of administrative review of countervailing duty order.

SUMMARY: On October 17, 1983, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain industrial fasteners from India. The review covers the period January 1, 1981, through December 31, 1981.

We afforded interested parties the opportunity to comment on the preliminary results. After considering all comments received, the final results of our review are the same as our preliminary results.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Joseph A. Black, Import Administration, Office of Compliance, U.S. Department of Commerce, Washington, D.C., telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 47038) the preliminary results of its administrative review of the

countervailing duty order on certain industrial fasteners from India (45 FR 48607, July 21, 1980). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain Indian industrial fasteners. Such merchandise is currently classifiable under items 646.4920, 646.4940, 646.5400, 646.5600, 646.5800, 646.6020, 646.6040, 646.6320 and 646.6340 of the Tariff Schedules of the United States Annotated ("TSUSA"). The review covers the period January 1, 1981 through December 31, 1981, and four programs: (1) A rebate upon export of indirect taxes under the Cash Compensatory Support program ("CCS"); (2) pre-shipment export loans; (3) a tax deduction under the Export Market Development Allowance; and (4) grants through the Market Development Assistance program.

On October 6, 1982 (47 FR 44129) the Department revoked this order with respect to fasteners from India entering under TSUSA items 646.5400 and 646.5600. This revocation was effective for shipments entered, or withdrawn from warehouse, for consumption on or after January 6, 1982, and therefore does not affect this review.

Analysis of Comments Received

We provided interested parties an opportunity to comment on our preliminary results. At the request of the Industrial Fasteners Group of the American Association of Exporters and Importers ("the importers"), we held a public hearing on December 22, 1983.

Comment 1: The importers state that, in accord with our current preliminary results, we erred in 1980 by mischaracterizing the Steel Development Levy ("SDL") as not being an indirect tax. The importers further argue that the Department based its 1980 determination that the CCS payments were not "linked" to the tax incidence on our earlier misconception of the SDL. They contend that, based on our current preliminary results that the SDL is an indirect tax, we should reconsider our determination on the question of linkage for the years 1980 and 1981.

Department's Position: The status of the SDL was not the keystone of our 1980 determination that the CCS payments on fasteners were not linked. Rather, that decision was based on the failure of the program to meet all of the criteria stipulated in our three-pronged test for evaluation of linkage. In addition to the question of the indirect taxes levied on the merchandise, the Department questioned the manner used by the Indian government to gather information, and how, or if, the Indian government used that information in establishing the rates of the CCS payments on fasteners. The fact that we have now found the SDL to be an indirect tax does not, therefore, change our position with regard to the question of the existence of linkage in either 1980 or 1981.

Comment 2: The importers argue that a 1981 study of indirect taxes and a January 8, 1982 statement from the Embassy of India, that its government had concluded from the study that the CCS rate should remain unchanged, must be considered in the current review as supporting the existence of linkage earlier than October 1982.

Department's Position: The Indian government provided no information as to how or why it reached such a conclusion in January 1982. Further, the study is dated December 8, 1981, and the Indian government could have made no determination on the basis of that study prior to that date. Therefore, this study could not possibly have had any effect on the CCS payments which were made in 1981 exports of fasteners.

Comment 3: The importers argue that we should request a remand from the Court of International Trade of the first annual review so that we may investigate the level of indirect taxes on Indian fasteners for the period covered by that review (July 21, 1980 through December 31, 1980). Further, we have a duty to verify the linkage between the CCS rate (17.5%) and the incidence of indirect taxes during that period.

Department's Position: We do not believe that this administrative review is the proper forum for discussion of the wisdom of a remand in a pending court action.

Comment 4: The importers assert that our notice of intent to conduct an administrative review, published in the final results of our first review (47 FR 2391, January 15, 1981), was inadequate and that importers did not know the current review was underway until publication of our notice of preliminary results. The importers claim that because of this lack of adequate notice, they had only about two weeks to consider this review. Citing *Hide-Away Creations* v. *United States*, 6 CIT, Slip Op. 83–135 (December 21, 1983) in support of the contention of inadequate notice, the importers request that the Department give more time in which to submit information for this review.

Department's Position: The importers have had adequate time in which to submit any information, documentation, or arguments they wished. Unlike the plaintiff in *Hide-Away*, the importers have been active participants in this case. We published the notice of intent to complete this administrative review on January 15, 1982, and mailed a copy to counsel for the importers. We sent the countervailing duty questionnaire to the Indian government on February 19, 1982, only five weeks later. The importers have had complete access to the public files during the entire course of the review. Even if the importers did not know, the Indian government knew of the beginning of the review and was aware of the actions and information necessary for a finding of linkage for 1981. Such information could only be derived from the government.

Comment 5: The importers assert that the Department did not verify the indirect tax incidence for the year 1981 and based its determination of no linkage for that year on the fact that the Court of Appeals for the Federal Circuit ("the CAFC") "held" that linkage did not exist in 1980. (*See Industrial Fasteners Group, American Importers Association* v. *United States*, 710 F.2d 1576 (1983).) Since that decision was issued on June 30, 1983, four months after the verifiers returned from India, and months after the annual review had begun, it could hardly serve as a rationale for not having reviewed information presented to it long before that date.

Department's Position: The court decision did not serve as such a rationale. Rather, our determination of no linkage for 1981 was based on the fact that the Indian government after our 1980 finding had neither demonstrated nor tried to demonstrate the actions necessary to support a finding of linkage for 1981. We note that, while the CAFC did not rule until June 30, 1983, the U.S. Court of International Trade on April 19, 1982 supported our 1980 finding.

Comment 6: The importers assert that the Department should grant them access to documentary information regarding the incidence of indirect taxation on Indian fasteners in 1981. Because we have denied them access, under administrative protective order, to basic verification documents despite the Indian government's not objecting to their release, the importers are unable to determine if the information available to us is sufficient to prove their point.

Department's Position: We have no reason to believe that linkage existed before October 1982. Without linkage, we countervail the full value of the CCS payment. The exact amount of tax incidence in such circumstances is irrelevant. The existence of a rate of indirect taxation which, perhaps by mere coincidence, parallels the rate of

an export subsidy does not demonstrate an existence of linkage between the two. With regard to the information which we did not release to counsel for the importers, although the Government of India did not voice any objections to the release of verification exhibits, the majority of these documents were provided not by the Indian government, but by Indian manufacturers who believed that the documents would be afforded protection by the Department. Although the Department did not release verification documents to counsel, there is adequate documentation in the public file and in counsel's possession to indicate the information denied.

Comment 7: The importers state that the Department has refused to accept information germane to the case, both at the time of the original investigation and during the review. They contend that during the original investigation American importers were told that the Department would accept no information on indirect tax incidence on fasteners in India "* * * unless it was officially authorized by the Government of India."

Department's Position: The Department has no record of the refusal of any information, either during the investigation or during this review. The Department also has no record of any threatened refusal during the investigation. The only instances in which the Department rejects or returns information are those in which the material submitted does not comport with our regulatory requirements, *e.g.*, confidential information which is not accompanied by an adequate non-confidential summary.

Comment 8: The importers submit that the Department should give serious consideration to the revocation of the order because the CCS no longer confers a subsidy.

More importantly, there is no statutory basis for the imposition of countervailing duties on fasteners from India after September 25, 1981, since no injury investigation has ever been carried out and the application of section 303 of the Tariff Act no longer applies to India. At the time of the publication of the countervailing duty order India was already a signatory to the Subsidies Code, but had not been recognized by the United States as a "country under the Agreement." Since the United States officially recognized India as a "country under the Agreement" on September 25, 1981, no countervailing duties may be assessed after that date on Indian merchandise absent an affirmative injury determination by the International Trade Commission.

Department's Position: The Department's regulations require that ordinarily the merchandise under consideration be without benefit of a net subsidy for a minimum of two years before we consider revocation. In this review we have found that in 1981 there were three subsidy programs which conferred benefits on fasteners. Therefore, the proper basis for revocation of this order does not exist.

With regard to the lack of an injury test, the Department disagrees with the importers' contention that we do not have the authority to impose countervailing duties on exports of this merchandise after September 25, 1981. We agree that the provisions of section 303 of the Tariff Act do not apply to countervailing duty investigations involving India which either were in progress on September 25, 1981, or were commenced on or after September 25, 1981.

However, the investigation on fasteners was completed under section 303 of the Tariff Act. Section 303 does not require an injury determination on dutiable merchandise from a non-signatory country. The International Trade Commission has taken the position that it does not have the statutory authority to conduct an injury investigation under these circumstances, and, absent a negative injury determination, the Department is without the necessary authority to revoke the order.

Final Results of the Review

After considering all of the comments received, we have determined that the aggregate net subsidy on Indian fasteners for the period January 1, 1981, through December 31, 1981, was 19.68 percent *ad valorem*. Accordingly, the Department will instruct the Customs Service to assess countervailing duties of 19.68 percent of the f.o.b. invoice price on all shipments of Indian fasteners exported on or after January 1, 1981, and on or before December 31, 1981. These instructions do not apply to fasteners entering under TSUSA items 646.5400 and 646.5600 and entered, or withdrawn from warehouse, for consumption on or after January 6, 1982, even if exported prior to January 1, 1982.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 2.18 percent of the entered value on any shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit rquirement shall remain in effect until publication of the final results of the next administrative review. The Department is beginning immediately the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 31, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-0187 Filed 4-5-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-021]

Certain Carbon Steel Products From Brazil; Preliminary Affirmative Determinations of Critical Circumstances

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that "critical circumstances" do exist in the countervailing duty investigations of certain carbon steel products from Brazil. Therefore, we are amending the suspension of liquidation ordered in the Preliminary Affirmative Countervailing Duty Determinations published on February 10, 1984 to apply to all unliquidated entries of the subject merchandise which were entered, or withdrawn from warehouse, for consumption on or after November 12, 1983, which is 90 days before the date on which the suspension of liquidation was first ordered. We have also notified the U.S. International Trade Commission (ITC) of these determinations.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Alain Letort, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-2438 or 5050.

SUPPLEMENTARY INFORMATION: We preliminarily determine that "critical circumstances" exist in the countervailing duty investigations of certain carbon steel products from Brazil, as provided in section 703(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1671b(e) (the Act)).

Case History

On November 10, 1983, we received petitions from the United States Steel Corporation (U.S. Steel) on behalf of the

domestic industries producing hot-rolled carbon steel sheet, cold-rolled carbon steel sheet and carbon steel plate in coil. In accordance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petitions alleged that manufacturers, producers, or exporters in Brazil of hot-rolled carbon steel sheet, cold-rolled carbon steel sheet, and carbon steel plate in coil receive, directly or indirectly, benefits that constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring, or threatening to materially injure, a United States industry.

After reviewing the petitions, we determined that they contained sufficient grounds to initiate countervailing duty investigations. We notified the ITC of our action and initiated the investigations on November 30, 1983 (48 FR 55012). We stated that we expected to issue preliminary determinations by February 3, 1984.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, we notified the ITC of our initiations. On December 27, 1983, the ITC determined that there is a reasonable indication that these imports are materially injuring, or threatening to materially injure, a U.S. industry (49 FR 670).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C., on December 16, 1983. On January 16, 1984, we received responses to the questionnaire.

Our preliminary determinations were published on February 10, 1984 (49 FR 5157).

On February 28, 1984, U.S. Steel amended its November 10, 1983 petitions to allege that "critical circumstances" exist in the countervailing duty investigations of hot-rolled carbon steel sheet, cold-rolled carbon steel sheet, and carbon steel plate in coil, pursuant to section 703(e) of the Act.

Scope of Investigations

The products covered by these investigations ("certain carbon steel products") are hot-rolled carbon steel sheet, cold-rolled carbon steel sheet, and carbon steel plate in coil. The products are described more fully in Appendix I of the notice of "Certain Carbon Steel Products from Mexico: Preliminary Affirmative Countervailing Determinations" which was published in the **Federal Register** on February 10, 1984 (49 FR 5142).

Preliminary Affirmative Determinations of Critical Circumstances

U.S Steel alleged that imports of certain carbon steel products from Brazil present "critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"); and there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In our preliminary determinations we found that the government of Brazil confers both domestic and export subsidies on the manufacture, production or exportation of certain carbon steel products.

Although Article 9 of the Subsidies Code provides a general prohibition on the use of export subsidies on non-primary products, Article 14 provides an exception under which export subsidies maintained by a developing country are not *automatically* considered to be a violation of Article 9. Article 14 is applicable to Brazil as a developing country.

However, Article 14 does set limits on the exception otherwise provided in that article. The paragraph which sets out these limitations reads as follows:

> Developing country signatories agree that export subsidies on their industrial products shall not be used in a manner which causes *serious prejudice* to the trade or production of another signatory.

The Department must determine whether there is sufficient positive evidence on the record that provides a reasonable basis to believe or suspect that in this case, export subsidies maintained by the Government of Brazil cause serious prejudice to the trade or production in the United States within the meaning of Article 14:3 and, hence, are inconsistent with the Agreement. Evidence on the record in this case includes import volume, information on material injury included in the petition, and more importantly, the preliminary determination by the ITC (49 FR 670), that there is a reasonable indication that the U.S. domestic industry is being materially injured by reason of subsidized imports.

On the basis of this information, we preliminarily determine that there is a reasonable basis to believe or suspect that these subsidized imports have caused serious prejudice to the production of certain carbon steel products in the United States.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: recent import penetration levels; changes in import penetration since the date of the ITC's preliminary affirmative determination of injury; whether imports have surged recently; whether recent imports are significantly above the average calculated over several years (1980–1982); and whether the pattern of imports over that three-year period may be explained by seasonal swings. Based upon our analysis of the information, we preliminarily determine that imports of the products covered by these investigations do appear massive over a relatively short period.

For the reasons described above, we preliminarily determine that "critical circumstances" do exist with respect to certain carbon steel products from Brazil.

Suspension of Liquidation

In accordance with section 703(e)(2) of the Act, we are amending the suspension of liquidation ordered in the Preliminary Affirmative Countervailing Duty Determinations published February 10, 1984, (49 FR 5157) to apply to all unliquidated entries of the subject merchandise which were entered, or withdrawn from warehouse, for consumption, on or after November 12, 1983, which is 90 days before the date on which the suspension of liquidation was first ordered.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under the administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Dated: March 31, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-8237 Filed 4-5-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-007]

Preliminary Determination of Sales at Less Than Fair Value: Barium Chloride From the People's Republic of China

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminary determined that barium chloride from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value. Therefore, we have notified the United States International Trade Commission (ITC) of our determination, and we have directed the United States Customs Service to suspend liquidation of all entries of the subject merchandise. We have directed the U.S. Customs Service to require a cash deposit or the posting of a bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We found that "critical circumstances" do not exist with respect to imports of barium chloride from the PRC. If this investigation proceeds normally, we will make our final determination by June 18, 1984.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-2613.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that there is a reasonable basis to believe or suspect that barium chloride from the PRC is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act).

For barium chloride sold by China National Chemicals Import and Export Corporation (SINOCHEM), the only known exporter of the subject merchandise, we have found that the foreign market value exceeded the United States price on 100 percent of sales compared. The margin of dumping ranged from 11.9 percent to 33.4 percent. The weighted-average margin was 20.2 percent.

Case History

On October 25, 1983, we received a petition in proper form from Chemical Products Corporation of Cartersville, Georgia, on behalf of the barium chloride industry in the United States. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673)(the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry. The petitioner also alleged that critical circumstances exist with respect to imports of barium chloride from the PRC.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation on barium chloride. We notified the ITC of our action and initiated the investigation on November 18, 1983 (48 FR 52494). On December 21, 1983, the ITC found that there is a reasonable indication that imports of barium chloride are materially injuring a United States industry (48 FR 56449).

As discussed under the "Foreign Market Value" section, we determined that the PRC is a state-controlled-economy country for the purposes of this investigation.

Scope of Investigation

The merchandise covered by this investigation is barium chloride, a chemiclal compound having the formula BaC12 or BaC12–2H20. Barium chloride is currently classified under item 417.7000 of the *Tariff Schedules of the United States Annotated* (TSUSA).

This investigation covers the period from October 1, 1982, to September 30, 1983. SINOCHEM is the only known PRC exporter of barium chloride to the United States. We examined 100 percent of SINOCHEM'S sales to the United States made during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the CIF price to unrelated purchasers. We made deductions for ocean freight, marine insurance, and inland freight in the PRC.

Foreign Market Value

The petitioner alleged that the economy of the PRC is state controlled to the extent that sales of the subject merchandise from that country do not permit a determination of foreign market value under 19 U.S.C. 1677b(a). After analyzing the PRC's economy, we concluded that the PRC is a state-controlled-economy country for purposes of this investigation. Among the factors we considered were that output quotas for purchase by the state are set and that prices are administered at least up to the quota level.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries which produce barium chloride, we determined that India would be the most appropriate surrogate selection. However, the Indian government declined to participate in the investigation. When we determined that there was no other country which manufactures barium chloride and which is at a comparable economic level as the PRC, we inquired whether there is a product which is such or similar (as defined in section 771(16) of the Act) to the PRC barium chloride. Based on available information, we did not find any product that could be considered such or similar merchandise within the meaning of the Act. Therefore, pursuant to section 773 of the Act, and section 353.8(c) of the Commerce Regulations, we proceeded to construct a value based on specific components or factors of production in the PRC, valued on the basis of prices and costs in a non-state-controlled economy country "reasonably comparable" in economic development to the PRC. After analyzing those non-state-controlled economies most similar to the PRC, we concluded that Thailand was a comparable economy for valuation of the PRC factors of production. Valuation of the PRC raw materials, labor and energy was based on public available pricing and cost information in Thailand. Valuation of certain costs included in factor

overhead was based on the factory experience of a chemical industry company in Thailand. To these values we added an amount for general expenses and profit as required by section 773(e)(1)(B) of the Act, and the cost of all containers and coverings and other expenses, as required by section 773(e)(1)(C) of the Act.

Negative Determination of Critical Circumstances

Counsel for petitioner alleged that imports of barium chloride from the PRC present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1)(a) There is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value; and (2) there have been massive imports of the merchandise under investigation over a relatively short period.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: Recent trends in import penetration levels; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last several years (1981–1983), and whether the patterns of imports over the three-year period may be explained by seasonable swings. Based upon our analysis of the information, we preliminarily determine that imports of the products covered by this investigation do not appear massive over a relatively short period.

For the reasons described above, we preliminarily determine that critical circumstances do not exist with respect to barium chloride from the PRC.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of barium chloride from the People's Republic of China which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margin applicable to all shipments of barium chloride from the PRC to the United States is 20.2 percent of the FOB Chinese port price.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on April 30, 1984, at the United States Department of Commerce, Room 6802, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number, (2) the number of participants; (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 23,1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This determination is being published pursuant to section 733(f) of the Act (19 U.S.C. 1673(b)).

Dated: April 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9235 Filed 4-5-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-006]

Preliminary Determination of Sales at Not Less Than Fair Value: Barium Carbonate From The People's Republic of China

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that barium carbonate from the People's Republic of China (PRC) is not being sold, nor is likely to be sold, in the United States at less than fair value. If this investigation proceeds normally, we will make our final determination by June 18, 1984.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–2613.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that there is no reasonable basis to believe or suspect that barium carbonate from the PRC is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). In making our fair value comparisons, we found no sales at less than fair value.

Case History

On October 25, 1983, we received a petition in proper form from Chemical Products Corporation of Cartersville, Georgia, on behalf of the barium carbonate industry in the United States. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or are threatening to materially injure, a

United States industry. The petitioner also alleged that critical circumstances exist with respect to imports of barium carbonate from the PRC.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation on barium carbonate. We notified the ITC of our action and initiated the investigation on November 18, 1983 (48 FR 52495). On December 21, 1983, the ITC found that there is a reasonable indication that imports of barium carbonate are materially injuring a United States industry (48 FR 56449).

As discussed under the "Foreign Market Value" section, we determined that the PRC is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The merchandise covered by this investigation is barium carbonate, a chemical compound having the formula BaC03. Barium carbonate is currently classified under item 472.0600 of the *Tariff Schedules of the United States Annotated* (TSUSA).

This investigation covers the period from October 1, 1982, to September 30, 1983. SINOCHEM is the only known PRC exporter of barium carbonate to the United States. We examined 100 percent of SINOCHEM's sales to the United States made during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the CIF price to unrelated purchasers. We made deductions for ocean freight, marine insurance, and inland freight in the PRC.

Foreign Market Value

The petitioner alleged that the economy of the PRC is state controlled to the extent that sales of the subject merchandise from that country do not permit a determination of foreign market value under 19 U.S.C. 1677b(a). After analyzing the PRC's economy, we concluded that the PRC is a state-controlled-economy country for purposes of this investigation. Among the factors we considered were that output quotas for purchase by the state are set and that prices are administrated at least up to the quota level.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries which produce barium carbonate we determined that India would be the most appropriate surrogate selection. However, the Indian government declined to participate in the investigation. When we determined that there was no other country which manufactures barium carbonate and which is at a comparable economic level as the PRC, we inquired whether there is a product which is such or similar (as defined in section 771(16) of the Act) to the PRC barium barbonate.

Based on available information, we did not find any product that could be considered such or similar merchandise within the meaning of the Act. Therefore, pursuant to section 773 of the Act, and section 353.8(c) of the Commerce Regulations, we proceeded to construct a value based on specific components or factors of production in the PRC, valued on the basis of prices and costs in a non-state-controlled economy "reasonably comparable" in economic development to the PRC. After analyzing those non-state controlled economies most similar to the PRC, we concluded that Thailand was a comparable economy for valuation of the PRC factors of production. Valuation of the PRC raw materials, labor and energy was based on publicly available pricing and cost information in Thailand. Valuation of certain costs included in factory overhead were based on the factory experience of a chemcial industry company in Thailand. To these values we added an amount for general expenses and profit as required by section 773(e)(1)(B) of the Act, and the cost of all containers and covering and other expenses, as required by section 775(e)(1)(C) of the Act.

Critical Circumstances

Counsel for petitioner alleged that imports of barium carbonate from the PRC present "critical circumstances." Since this is a negative determination, the allegation is moot.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

ITC Notification

In accordance with section 733(f) if the Act, we will notify the ITC of our determination.

Public Comment

In accordance with section 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on April 30, 1984, at the United States Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistance Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 23, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordnce with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This determination is being published pursuant to section 733(f) of the Act (19 U.S.C. 1673(b)).

Dated: April 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9236 Filed 4-5-84; 8:45 am]

BILLING CODE 3510-DS-M

Cotton Sheeting and Sateen From Peru; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an

administrative review of the countervailing duty order on cotton sheeting and sateen from Peru. The review covers the period January 1, 1982 through December 31, 1982.

As a result of the review the Department has preliminarily determined the bounty or grant for the period of review to be 25.99 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 4501) countervailing duty order on cotton sheeting and sateen from Peru and announced its intent to conduct an administrative review of the order. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has not conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of: (1) plain-woven cotton fabric sheeting, not fancy or figured and not napped, made of singles yarn, with an average yarn number between 3 and 26, imported in Textile and Apparel Category 313, currently classifiable under items 320.—36, 320.—38, 320.—40, 320.—44 of the Tariff Schedules of the United States Annotated ("TSUSA"); and (2) 100% carded cotton sateen fabrics woven with a satin weave and not napped, imported in Textile and Apparel Category 317, and currently classifiable under TSUSA items 320.—54 and 321.—54. The review covers the period January 1, 1982 through December 31, 1982 and three programs: (1) Certificate of Tax Rebate; (2) Nontraditional Export Fund; and (3) Articles 8, 9, 12, 14, and 16 of the Law for the Promotion of Exports of Nontraditional Goods ("the Export Law").

Analysis of Programs

(1) Certificate of Tax Rebate ("CERTEX")

Under this program the Government of Peru issues a tax certificate to exporters in an amount equal to a percentage of the f.o.b. invoice price of export shipments. Exporters can use the certificate to pay taxes owed to the Peruvian government.

We calculated the benefit under this program by dividing the total amount of issued CERTEX tax certificates by total exports to all markets for the firms that exported cotton sheeting and sateen to the United States during the period of review. We then averaged those rates, weighted by the amount of each firm's exports to the United States. We preliminarily determine the benefit conferred by the program to be 16.89 percent *ad valorem*.

(2) Non-traditional Export Fund ("FENT")

Under this program the Government of Peru makes short-term financing available to exporters of goods not traditionally exported. There are two types of short-term financing: local currency loans and "foreign currency" loans. Exporters of cotton sheeting and sateen qualified for these loans during the period of review.

For the soles loans, exporters of cotton sheeting and sateen received loans for a maximum of 90 days at interest rates that ranged from 43.5 to 48.5 percent during the review period. The actual loans usually were for the full 90 days.

The loans are drawn from a fund established by the Banco Central De Reserva Del Peru ("BCRP"), and passed through the Banco Industrial del Peru and a commercial disbursing bank. To calculate the benefit provided by the loans, we found the average interest differential between the interest charged on the sole loans and the monthly rate charged by commercial banks on promissory notes compounded for three months. We multiplied each firm's total principal on the soles loans during the review period by this average differential to find the subsidy amount for each firm.

For the foreign currency loans, a company receives a loan in soles for a maximum of 180 days at 1 percent annual interest, a concessional rate. The loans were usually held for less than the full 180 days. An exporter may apply for such a loan each time it exports; the amount of the loan cannot exceed 90 percent of the export value of the shipment. At the same time that the firm receives the disbursement in soles, the company must borrow in foreign currency, usually dollars, an amount equal to 80 percent of the value of the soles loan, and deposit the full amount of the foreign currency loan in the BCRP. The cost to the firm of the foreign currency borrowing exceeds the return it earns on the deposit with the BCRP. The foreign currency loans have the same duration as the soles loans. To calculate the subsidy, we first determined the interest differential for the 1 percent soles loans by taking the difference between the 1 percent rate and the monthly rate charged by commercial banks on promissory notes compounded for the average loan duration, for each company. We multiplied this differential by the total soles principal during the review period to reach a gross benefit. We then calculated the cost to the firm in foreign currency of the foreign currency borrowings and deposits. We multiplied the total foreign currency loan principal reported for each company during the review period by the appropriate borrowing and deposit interest rates, using the loan durations mentioned above to estimate net interest paid in foreign currency. For this preliminary results notice, we converted foreign currency amounts to soles using an average exchange rate for the year. We subtracted the net cost of the foreign currency transactions from the gross benefits of the 1 percent soles loans to find the net benefit for each company. Weight-averaging the individual company amounts for both soles and foreign currency loans, we preliminarily find an *ad valorem* benefit on exports to the United States of 5.96 percent.

(3) Articles 8, 9, 12, and 16 of the Export Law

Decree Law 18350, the General Law of Industries, permits industries to invest or reinvest a certain percentage of net income free of income tax. An industry is assigned one of four priorities, representing increasing percentages of eligible net income. Articles 8 and 9 of the Export Law permit exporters to upgrade their priority by one level. Exporters of cotton sheeting and sateen took advantage of this program during the period of review. We divided any additional tax credits received through upgrading by total exports to all markets for the firms that shipped to the United States during the review period. We preliminarily determine the benefit from articles 8 and 9 to be 0.30 percent *ad valorem*.

Under article 12, exporters are allowed to increase by 50 percent the normal depreciation rates on fixed assets. We calculated the benefit by dividing the amount of additional depreciation claimed by total exports to all markets for the firms that shipped to the United States in the period of review. We preliminarily determine that benefit from article 12 to be 1.10 percent *ad valorem*.

Article 14 provides an income tax saving to exporters for increasing the

number of permanent jobs in Peru. The program was not used by exporters of cotton sheeting or sateen during the review period.

Under article 16 exporters may defer payment of import duties on machinery used to manufacture merchandise if the exporters meet specified export targets set in the export law. We determined these deferrals to be equivalent to interest free loans. We multiplied the amount of duties deferred by the effective annual interest rate for short-term commercial loans, *i.e.* overdrafts. We divided the resulting saving by the total exports to all markets for the firms that exported to the United States during the review period. We preliminarily find the benefit from article 16 to be 1.74 percent *ad valorem*.

Preliminary Results of the Review

As a result of the review, we preliminary determine the total bounty or grant to be 25.99 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 25.99 percent of the f.o.b. invoice price of any shipments of Peruvian cotton sheeting and sateen entered, or withdrawn from warehouse, for consumption on or after November 19, 1982, the date of suspension of liquidation, and exported on or before December 31, 1982.

The Government of Peru eliminated FENT dollar loans on exports of this merchandise to the United States after September 13, 1983 and FENT soles loans on export after November 4, 1983. In addition, the Peruvian government made exports of cotton sheeting and sateen to the United States ineligible for CERTEX benefits after September 15, 1983. Therefore, we have not included any potential benefits from those programs in calculating the rate for estimated countervailing duty deposit purposes.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 3.14 percent of the entered value on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-9219 Filed 4-5-84; 8:45 am]

BILLING CODE 3510-DS-M

Cotton Yarn From Peru; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty on cotton yarn from Peru. The review covers the period January 1, 1982 through December 31, 1982.

As a result of the review the Department has preliminarily determined the bounty or grant for the period of review to be 34.99 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 4501) a countervailing duty order on cotton yarn from Peru and announced its intent to conduct an administrative review of the order. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of various cotton yarns currently classifiable under the following Tariff Schedules of the United States item numbers:

300.60	302.01 through 302.60
301.01 through 301.60	302.70
301.70	302.80
301.80	302.82
301.82	302.84
301.84	302.86
301.86	302.88
301.88	302.92
301.92	302.94
301.94	302.96
301.96	302.98
301.98	

The review covers the period January 1, 1982 through December 31, 1982 and three programs: (1) Certificate of Tax Rebate; (2) Nontraditional Export Fund; and (3) Articles 8, 9, 12, 14, and 16 of the Law for the Promotion of Exports of Nontraditional Goods ("the Export Law").

Analysis of Programs

(1) Certificate of Tax Rebate ("CERTEX")

Under this program the Government of Peru issues a tax certificate to exporters in an amount equal to a percentage of the f.o.b. invoice price of export shipments. Exporters can use the certificate to pay taxes owed to the Peruvian government.

We calculated the benefit under this program by dividing the total amount of issued CERTEX tax certificates by total exports to all markets for the firms that exported cotton yarn to the United States during the period of review. We then averaged these rates, weighted by the amount of each firm's exports to the United States. We preliminarily determine the benefit conferred by the program to be 16.36 percent *ad valorem*.

(2) Non-traditional Export Fund ("FENT")

Under this program the Government of Peru makes short-term financing availble to exporters of goods not traditionally exported. There are two types of short-term financing: local currency loans and "foreign currency" loans. Exporters of cotton yarn qualified for these loans during the period of review.

For the soles loans, exporters of cotton yarn received loans for a maximum of 90 days at interest rates that ranged from 42.5 to 48.5 percent during the review period. The actual loans usually were for the full 90 days.

The loans are drawn from a fund established by the Banco Central De Reserva Del Peru ("BCRP"), and passed through the Banco Industrial del Peru and a commercial disbursing bank. To calculate the benefit provided by the loans, we found the average interest differential between the interest charged on the soles loans and the monthly rate charged by commercial banks on promissory notes compounded for three months. We multiplied each firm's total principal on the soles loans during the review period by this average differential to find the subsidy amount for each firm.

For the foreign currency loans, a company receives a loan in soles for a maximum of 180 days at 1 percent annual interest, a concessional rate. The loans were usually held for less than the full 180 days. An exporter may apply for such a loan each time it exports; the amount of the loan cannot exceed 90 percent of the export value of the shipment. At the same time that the firm receives the disbursement in soles, the company must borrow in foreign currency, usually dollars, an amount equal to 80 percent of the value of the soles loan, and deposit the full amount of the foreign currency loan in the BCRP. The cost to the firm of the foreign currency borrowing exceeds the return it earns on the deposit with the BCRP. The foreign currency loans have the same duration as the soles loans. To calculate the subsidy, we first determined the interest differential for the 1 percent soles loans by taking the difference between the 1 percent rate and the monthly rate charged by commercial banks on promissory notes compounded for the average loan duration, for each company. We multiplied this differential by the total soles principal during the review period to reach a gross benefit. We then calculated the cost to the firm in foreign currency of the foreign currency borrowings and deposits. We multiplied the total foreign currency loan principal reported for each company during the review period by the appropriate borrowing and deposit interest rates, using the loan durations mentioned above to estimate net interest paid in foreign currency. For this preliminary results notice, we converted foreign currency amounts to soles using an average exchange rate for the year. We subtracted the net cost of the foreign currency transactions from the gross benefits of the 1 percent soles loans to find the net benefit for each company. Weight-averaging the individual company amounts for both soles and foreign currency loans, we preliminarily find an *ad valorem* benefit on exports to the United States of 7.54 percent.

(3) Articles 8, 9, 12, and 16 of the Export Law

Decree Law 18350, the General Law of Industries, permits industries to invest or reinvest a certain percentage of net income free of income tax. An industry is assigned one of four priorities, representing increasing percentages of eligible net income. Articles 8 and 9 of the Export Law permit exporters to upgrade their priority by one level. Exporters of cotton yarn took advantage of this program during the period of review. We divided any additional tax credits received through upgrading by total exports to all markets for the firms that shipped to the United States during the review period. We preliminarily determine the benefit from articles 8 and 9 to be 0.17 percent *ad valorem*.

Under article 12, exporters are allowed to increase by 50 percent the normal depreciation rates on fixed assets. We calculated the benefit by dividing the amount of additional depreciation claimed by total exports to all markets for the firms that shipped to the United States in the period of review. we preliminarily determine the benefit from article 12 to be 0.00 percent *ad valorem*.

Article 14 provides an income tax saving to exporters for increasing the number of permanent jobs in Peru. The program was not used by exporters of cotton yarn during the review period.

Under article 16 exporters may defer payment of import duties on machinery used to manufacture merchandise if the exporters meet specified export targets set in the export law. We determined these deferrals to be equivalent to interest free loans. We multiplied the amount of duties deferred by the effective annual interest rate for short-term commercial loans, *i.e.* overdrafts. We divided the resulting saving by the total exports to all markets for the firms that exported to the United States during the review period. We preliminarily find the benefit from article 16 to be 10.92 percent *ad valorem*.

Preliminary Results of the Review

As a result of the review, we preliminarily determine the total bounty or grant to be 34.99 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess contervailing duties of 34.99 percent of the f.o.b. invoice price of any shipments of Peruvian cotton yarn entered, or withdrawn from warehouse, for consumption on or after November 19, 1982, the date of suspension of liquidation, and exported on or before December 31, 1982.

The Government of Peru eliminated FENT dollar loans on exports of this merchandise to the United States after September 13, 1983 and FENT soles loans on exports after November 4, 1983. In addition, the Peruvian government made exports of cotton yarn to the United States ineligible for CERTEX benefits after September 15, 1983. Therefore, we have not included any potential benefits from those programs in calculating the rate for estimated countervailing duty deposit purposes.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 11.09 percent of the entered value on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

[FR Doc. 84-8218 Filed 4-5-84; 8:45 am]

BILLING CODE 3510-DS-M

University of California, et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of

whether instruments of equivalent scientific value, for the purposes for which the instrument shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84–109. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. Instrument: Scanning Electron Microscope, Model JSM–35CF with Accessories. Manufacturer: Jeol Ltd., Japan. Intended use: Examination or autopsies of materials subjected to various physical tests or subjected to physical and/or chemical processes designed to alter the material's properties. These autopsies are performed to explain either an adverse behavior or to explain some unique behavior that the material may exhibit during testing. Application received by Commissioner of Customs: February 29, 1984.

Docket No. 84–110. Applicant: U.S. Department of Agriculture, Agricultural Research Service, 1102 S. Goodwin, S–215 Turner Hall, Urbana, IL 61801. Instrument: Oxygen Electrode Unit. Manufacturer: Hansatech Limited, United Kingdom. Intended use: Measurement of oxygen exchange and fluorescence of chloroplasts, leaf protoplasts and algae. The objective of the investigations is to understand photosynthesis and to increase the efficiency of this process. Application received by Commissioner of Customs: February 29, 1984.

Docket No. 84–111. Applicant: Medical College of Wisconsin, 8701 Watertown Plank Road, Milwaukee, WI 53226. Instrument: Mass Spectrometer System, Model MS–80. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended use: Identification of the presence of prescription, over-the-counter medications, and street drugs used by patients admitted to the hospitals and clinics throughout southeastern Wisconsin. Biomedical research projects including: (a) Formation of Dicarboxylic acid induced by Phthalate ester. Determination of how compounds that stimulate the microsomal fatty acid omega-hydroxylation system will affect the formation of short, medium, long-chain dicarboxylic acids, which represent abnormal urinary and serum metabolites in patients afflicted with Reye's Syndrome, (b) define the microbiology and pathogenesis of bacterial vaginosis (BV), (c) comprehensive study to the effects of anesthesia on cardiovascular reflexes and studies of animal models and biochemical pathways in Reye's Syndrome. Application received by Commissioner of Customs: February 29, 1984.

Docket No. 84–112. Applicant: Brigham and Women's Hospital, 75 Francis Street, Boston, MA 02115. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: Jeol Ltd., Japan. Intended use: Research in human disease involving evaluations of the following specimens:

Tumors—to determine cell origin of human malignancies, their degree of differentiation at the ultrastructural level, and the effects of therapy.

Renal Biopsies—to classify renal disease and identify pathogenic mechanisms.

Myocardial Biopsies—as to their efficacy in diagnosing primary myocardial disease.

Neuropathology—to attempt to find degenerative diseases. The results of the electron microscopic examinations will be used in teaching conferences for medical students, residents and senior physicians. The instrument will also be used to train residents in ultramicroscopic technique. Application received by Commissioner of Customs: February 29, 1984.

Docket No. 84–113. Applicant: University of California, Purchasing Department, Santa Barbara, CA 93106. Instrument: 500 Quad Hybrid Microstrip Preamplifiers, Model MSD2. Manufacturer: Laben, Italy. Intended use: Experimental study in the field of high energy particle physics, specifically, the study of charm photoproduction. Instrument will be part of a precision vertex detector which will identify charm states by their characteristic decay length. Application received by Commissioner of Customs: February 29, 1984.

Docket No. 84–114. Applicant: Yale University, Department of Biology, 219 Prospect Street, P.O. Box 6666, New Haven CT 06511. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies covering a wide variety of topics including cell biology, neurobiology, and eucaryotic cell genetics. Educational purposes—Training of various new people in the laboratories as well as other students throughout the Depatments of Biology and Molecular Biochemistry and Biophysics. Application received by Commissioner of Customs: February 29, 1984.

Docket No. 84–115. Applicant: Geophysical Institute, University of Alaska, Fairbanks, AK 99701. Instrument: Ultrasensitive Color TV Camera, Model HL 51–S with Accessories. Manufacturer: Pavic, Japan. Intended use: Instrument will be used with a stereo television system and a television spectrograph to identify type B red lower borders while simultaneously measuring the altitude and spectral charcateristics—all with 1/30 second temporal resolution. It will also be used with the stereo TV system to assist in deriving approximate electron energy sistributions from height-luminosity profiles of temporally varying auroral forms. In addition, the camera will be used to make crucial measurements of the first twenty seconds of chemical-release experiments from sounding rockets. Application received by Commissioner of Customs: February 29, 1984.

Docket No. 84–117. Applicant: Regents of the unversity of California, Department of Pathology, HSW–501, San Francisco, CA 94143. Instrument: Electron Microscope with SEGZ Side Entry Goniometer, Model JEM–100CX and Accessories. Manufacturer: Jeol Ltd., Japan. Intended use: Study of the structure of biological cells and tissues, specifically, sperm and egg cells. The research project will furnish a sound theoretical basis for innovative approaches to the control of fertility in man. Application received by Commissioner of Customs: February 29, 1984.

Docket No. 84–118. Applicant: The Pennsylvania State University, Department of Mechanical Engineering, 312 Mechanical Engineering Building, University Park, PA 16802. Instrument: Leser-Interference-Velocimeter, System ISL. Manufacturer: DIEHL GmbH and Company, West Germany. Intended use: Gun tube, muzzle and rocket motor flow field measurements. Velocity profiles of chemically reacting flows at high pressure and temperature conditions in guns and rocket motors will be investigated.

1. Flame spreading and combustion of long sticks of solid propellants used in large caliber guns.

2. Nozzle flows in rocket motors.

3. Ignition of propellants in high pressure vessels. Application received by Commissioner of Customs: March 1, 1984.

Docket No. 84–119. Applicant: Davidson College, Department of Chemistry, Davidson, NC 28036.

Instrument: Time-Correlated Single Photon Counting Spectrometer. Manufacturer: Photochemical Research Associates, Canada. Intended use: Studies of luminescence decay kinetics on the nanosecond time scale. Most of the luminescence will be fluorescence, but in some cases phosphorescence will also be studied. The materials will be aromatic hydrocarbons and their derivatives, aldehydes and ketones, and other chemical and biological samples. Most of the studies will be carried out on samples in solution, although some work will be done with samples in the gas phase or absorbed onto particulate matter in aerosols. Experiments are conducted to determine the decay characteristics of electronically excited molecules that might be used for the chemical conversion and storage of solar energy or that might be involved in the initiation of photochemical smog formation. Application received by the Commissioner of Customs: March 1, 1984.

Docket No. 84–120. Applicant: Harvard University, Purchasing Department, 1350 Massachusetts Avenue, Cambridge, MA 02138. Instrument: Microforge for Patch Clamp Pipettes, Model MF–83. Manufacturer: Narashige Scientific Instruments, Japan. Intended use: Cultures of nerve cells will be used for investigating the biophysical actions of several neuroactive chemicals. The experiments involve an electrophysiological technique called "patch clamping." The objectives of the experiments are to understand better the ways in which these compounds, which are found naturally in the brain, exert their powerful effects on the behavior of nerve and muscle cells. Application received by the Commissioner of Customs: March 8, 1984.

Docket No. 84–121. Applicant: Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, NY 10461. Instrument: Electron Microscope, Model JEM–1200EX with SEG and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: Studies of biological specimens of interest to the biomedical community including: tissue from human biopsies, isolated tissues from experimental animals, nucleic acid/protein interactions, cellular organelles and viruses and bacteria. In general the objectives of the research will be to elucidate the morphological component associated with the investigations of the above. Educational purposes—Training investigators in electron microscopic techniques. Application received by the Commissioner of Customs: March 8, 1984.

Docket No. 84–123. Applicant: Research Foundation of the State of New York, SUNY at Stony Brook, Physics Department, Stony Brook, NY 11794. Instrument: Scintillating Crystals (10 each). Manufacturer: Crismatec, France. Intended use: Studies of decay products from the decay of bound Upsilon states to improve the measurements with emphasis on better resolution and increased sensitivity to partial decay rates. Application received by the Commissioner of Customs: March 8, 1984.

Docket No. 84–124. Applicant: Overlook Hospital, 193 Morris Avenue, Summit, NJ 07901. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Educational purposes—Training technicians in diagnostic and therapeutic x-ray methods in a radiology technology course, and training technicians for positions in clincal laboratories in a medical technology program. Application received by the Commissioner of Customs: March 8, 1984.

Docket No. 84–125. Applicant: University of Rochester, Biochemistry Department, School of Medicine & Dentistry, 601 Elmwood Avenue, P.O. Box 607, Rochester, NY 14642. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: Investigation of DNA and RNA, the genetic materials of life, to understand the organization, expression, and regulation of genes from a great number of different organisms ranging from bacteria and cancer viruses to man. Educational purposes: Teaching course in "Electron Microscopy of Nucleic Acids." Application received by the Commissioner of Customs: March 8, 1984.

Docket No. 84–126. Applicant: Beth Israel Medical Center, 10 Nathan D. Perlman Place, New York, NY 10003. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Research and clincal objectives. Ongoing research projects include:

(1) Gallstones—treatment and effects of this treatment on an ultrastructural level to the liver.

(2) Effects of high pressure on blood brain barrier of rabbits.

(3) Search for any Ultrastructural Markers in Acquired Immune Deficiency.

Clinical work involves kidney biopsies, liver biopsies, and undifferentiated tumors. The intrument will also serve as a teaching microscope in the resident's training program. Application received by the Commissioner of Customs: March 8, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Material)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-8217 Filed 4-5-84; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program; National Laboratory Accreditation Advisory Committee; Open Meeting

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP) National Laboratory Accreditation Advisory Committee (NLAAC) was established on August 3, 1982, to advise and make recommendations to the Director of the National Bureau of Standards (NBS) on various issues to improve and simplify the operating procedures of NVLAP and to assess the impact of international accreditation activities on the program.

Time and Place: The NLAAC will hold a meeting on Thursday, April 26, 1984, from 10 a.m. to 5 p.m. at the National Bureau of Standards, Technology Building (225), Room B155, which will be open to the public.

Agenda: Issues to be discussed at the meeting include:

1. Proposed revisions to NVLAP Procedures and Criteria;

2. Technical developments in current Laboratory Accreditation Programs (LAPs);

3. International cooperation;

4. Future activities; and

5. Other items.

Public Participation: The meeting will be open to public participation with time allowed for oral comments or questions.

FOR FURTHER INFORMATION CONTACT: Harvey Berger, Committee Control Officer, or John Locke, Manager, Laboratory Accreditation, Office of Product Standards Policy, NBS, TECH B141, Washington, D.C. 20234, phone: (301) 921–3431.

Dated: April 3, 1984.
Ernest Ambler,
Director, National Bureau of Standards.
[FR Doc. 84-9185 Filed 4-5-84; 8:45 am]
BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Exported From the People's Republic of China

April 3, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 29, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377–4212.

Background

On January 6, 1984 a notice was published in the **Federal Register** (49 FR 927) which established import restraint limits for cotton twill and sateen in Category 317, women's, girls' and infants' coats in Category 435, knit shirts and blouses in Category 438 and other manufactures of man-made fibers in Category 669, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on December 30, 1983 and extends through March 28, 1984. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, if no mutually satisfactory solution is reached on levels for this category during consultations, to limit its exports during the twelve-month period following the ninety-day consultation period to the following:

Category and Twelve-Month Restraint Level [1]

317: 6,706,249 square yards
435: 13,893 dozen
438: 12,074 dozen
669: 1,270,611 pounds

Consultations were held concerning these categories March 27–30, 1984, but no solution was reached on mutually satisfactory limits. The United States Government has decided, pending further consultations, to control imports of cotton, wool and man-made fiber textile products in Categories 317, 435, 438, and 669, exported during the twelve-month period at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in further consultations with the Government of the People's Republic of China, notice will be published in the **Federal Register**.

In the event the limits established for the ninety-day period have been exceeded, such excess amounts, if allowed to enter, will be charged to the levels established for the twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.
April 3, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 9, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 317, 435, 438, and 669, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on March 29, 1984 and extending through March 28, 1985, in excess of the following limits:

Category and Twelve-Month Restraint Limit [1]

317: 6,706,249 square yards
435: 13,893 dozen
438: 12,074 dozen
669: 1,270,611 pounds

Textile products in Categories 317, 435, 438 and 669 which have been exported to the United States during the ninety-day period which began on December 30, 1983 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to imports of cotton, wool and man-made fiber textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9185 Filed 4-5-84; 8:45 am]
BILLING CODE 3510-DR-M

Increasing the Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 3, 1984. For further information contact Ross Arnold, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated June 16, 1983 (See 48 FR 28311) established restraint limits for specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the thirteen-month period which began on May 1, 1983. In the CITA directive published below the limits for Categories 334, 335, 340, 341, 347, 348, 631, 640 and 641 are being increased by the application of carryover and carryforward provided under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka. To the extent used, the carryforward will be deducted from the applicable category limits during the agreement year which begins on June 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as

[1] March 29, 1984–March 28, 1985.

[1] The levels have not been adjusted to account for any imports exported after March 28, 1984.

amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

April 3, 1984.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 16, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka.

Effective on April 3, 1984, you are directed to increase the restraint limits established for the following categories in the directive of June 16, 1983 to the limits indicated according to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka.[1]

Category	Amended 12/Mo. Limit [1] (dozen)
334	201,054
335	140,678
340	530,046
341	505,432
347	397,348
348	255,883
631	[2] 296,567
640	103,393
641	522,672

[1] The limits have not been adjusted to account for any imports exported after April 30, 1983.
[2] Dozen pairs.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9221 Filed 4-5-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that (1) within the aggregate and group limits, specific limits may be exceeded by designated percentages; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1984 a commodity to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: April 6, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On December 9, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (48 FR 55157) of proposed addition to Procurement List 1984, October 18, 1983 (48 FR 48415).

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractor for the commodity listed.

c. The action will result in authorizing small entities to produce a commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1984:

Class 4610

Bag, Drinking Water Storage: 4610–00–268–8890.

C. W. Fletcher,

Executive Director.

[FR Doc. 84-9231 Filed 4-5-84; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Atmospheric Obscuration; Meeting

The Defense Science Board Task Force on Atmospheric Obscuration will meet in open session on May 14–15, 1984, at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on May 14–15, 1984, the Task Force will conduct a review of recent relevant scientific work and develop a framework within which the Task Force will meet its responsibility to provide expert advise to the Under Secretary of Defense for Research and Engineering in this subject area.

Persons interested in attending should contact Captain D. M. Alderson, Task Force Executive Secretary, Telephone: (202) 697–3060. Space will be awarded on a first come first served basis.

April 2, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-9199 Filed 4-5-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Monday-Wednesday, April 30, thru May 2, 1984.

Times: 0830–1700 hours, each day (Open)—exact times in each location on May 1 to be determined.

Place: April 30, & May 1, 1984 at Fort Bliss, Texas and May 1 & 2, 1984 at Fort Hood, Texas.

Agenda: The Leadership Subpanel of the Army Science Board 1984 Summer Study on Leading and Manning Army 21 will meet for briefings and discussions as follows: (1) At the Sergeants Major Academy in Fort Bliss, on leadership development issues; (2) at Fort Hood, on unit leadership initiatives in view of the Army's leadership goal. This meeting is

open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84-9191 Filed 4-5-84; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday & Friday, April 26 & 27, 1984.

Times: 0830–1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on Nondevelopmental C³I Items will hold its initial meeting to establish the parameters of this study effort in regard to the terms of reference and to receive information from principals in the Army and other Services. Briefings and discussions will be classified. The purpose of the study is to effect an increase in the purchase of "off the shelf" equipment for the Army when feasible. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Maria P. Winters,

Acting Administrative Officer.

[FR Doc. 84-9192 Filed 4-5-84; 8:45 am]

BILLING CODE 3710-08-M

Intent To Prepare an Environmental Impact Statement; Proposed Stationing of Seventeenth Active Component Division

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: 1. Proposed Action—Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Army intends to prepare an Environmental Impact Statement on the proposed activation and stationing of a seventeenth active component (AC) division. The proposed seventeenth AC division will be designed as a Light Infantry Division consisting of three (3) Infantry Brigades, one (1) Artillery Brigade, one (1) Combat Aviation Brigade, and associated support units. Total troop strength of the Light Infantry Division will be approximately 10,000 military personnel. This new division will be built incrementally, as spaces become available from other Army force structure actions. The Environmental Impact Statement will address environmental considerations of the various alternatives for stationing the seventeenth AC division. The document will display direct and indirect environmental impacts, both beneficial and detrimental. Environmental impact will include those affecting air, land, water, and biological systems. Social and economic impacts will also be considered and will include discussion of sociological and economic data, cultural resources, and strain on community services and financial resources. Other factors influencing the stationing decision include strategic positioning, training areas, available facilities, and affordability. Activation of a seventeenth AC division is part of the reexamination of the Army force structure with design and structure changes to produce a total force with greater strategic utility and better force balance across the spectrum of conflict. By activating a seventeenth AC division, the conventional land force, deterrent will be strengthened. This affordable force structure (accomplished within current resources) will provide greater tactical and strategic flexibility to counter likely contingencies foreseen in the future.

2. Alternatives—various alternatives are being developed for consideration in stationing a seventeenth AC division. The Environmental Impact Statement will include an evaluation of the environmental and socioeconomic impacts on those military bases and neighboring communities under consideration to possibly receive the new division. The following constitutes a tentative list of those alternatives to be considered in the draft EIS:

a. No Action.

b. Stationing of division or a component thereof at one or a combination of the following installations: Fort Benning, GA; Fort Campbell, KY; Fort Drum, NY; Fort Greely, AK; Fort Lewis, WA; Fort Ord, CA; Fort Richardson, AK; and Fort Wainwright, AK.

3. Scoping Process.

a. The scoping process, as outlined by the Council on Environmental Quality regulations (40 CFR 1500–1508) implementing NEPA, will be utilized to involve federal, state, and local agencies and other interested persons. Identification of significant matters to be addressed in the Environmental Impact Statement will be determined through the scoping process. Concerned agencies and individuals' views will be obtained through personal, telephone, and mail contacts. A schedule of public scoping meetings to be held in the vicinity of those stationing alternatives determined to warrant detailed investigation and analysis, will be announced locally at a later date.

b. To initiate the formal scoping process, interested individuals, governmental agencies, and private organizations are invited to submit information and comments on this proposed action for consideration by the Army and possible incorporation into the Environmental Impact Statement. Particularly solicited is information that would assist the Army in analyzing the potential environmental consequences of the proposed action. This includes information on other environmental studies planned or completed in the area of each stationing alternative; issues and alternatives which the Environmental Impact Statement should consider; recommended mitigating measures; and major impacts associated with the proposed action.

c. In order that comments regarding this proposal are considered in a timely manner, all correspondence should be received at the address below on or before April 25, 1984. Comments or questions on issues to be addressed in the Environmental Impact Statement should be directed to: Mr. James B. Hildreth, Mobil District, Corps of Engineers, U.S. Army, ATTN: SAMPD–EE, P.O. Box 2288, Mobile, AL 36628, Telephone (205) 694–4141.

4. Draft Environmental Impact Statement preparation—It is estimated that the Draft Environmental Impact Statement will be available to the public in May 1984. When the Draft Environmental Impact Statement is completed, a public notice of its availability for review will be announced in order that interested persons may comment on the document.

That notice will also provide a schedule of public hearings to be held at convenient locations near those stationing alternatives determined to warrant detailed investigation and analysis, to solicit public response to the proposed action. Comments received

will be considered in preparation of the Final Environmental Impact Statement pursuant to Council on Environmental Quality and Army regulations.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health.

[FR Doc. 84-9293 Filed 4-4-84; 8:58 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Terrorism Task Force; Cancellation of Meeting

This notice is given to advise of the cancellation of the closed meeting of the Chief of Naval Operations Executive Panel Advisory Committee Terrorism Task Force that was originally scheduled for April 16, 1984, a notice of which was published in the issue of March 23, 1984 (49 FR 10978).

Dated: April 3, 1984.

William F. Ross, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 84-9225 Filed 4-5-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Future Training Space will meet as indicated below. The Future Training Space Panel has been split into two subgroups; the first half is being referred to as Team A and the second half is being referred to as Team B.

Team A—

April 23, 1984—Fleet Air Control and Surveillance Facility, Naval Air Station, North Island, San Diego, California

April 24, 1984—Cubic Corporation, 9333 Balboa Avenue, San Diego, California; and General Dynamics, Electronics Division, 8611 Balboa Avenue, San Diego, California

Team B—

April 24, 1984—Naval Air Station, Whidbey Island, Washington

Combined Panel—

April 26, 1984—Headquarters, Commander Third Fleet, Pearl Harbor, Hawaii

April 27, 1984—Headquarters, Fleet Marine Force Pacific, Camp H. M. Smith, Hawaii.

Sessions of the meeting for Team A will commerce at 1:30 p.m. and terminate as 3:00 p.m. on April 23, 1984; and commence at 8:30 a.m. and terminate at 4:30 p.m. on April 24, 1984. Sessions of the meeting for Team B will commence at 8:30 a.m. terminate at 5:30 p.m. on April 24, 1984. April 25, 1984 will be a travel day for each team. Sessions of the meeting for the full Panel will commence at 8:45 a.m. and terminate at 5:30 p.m. on April 26, 1984; and commence at 8:30 a.m. and terminate at 5:30 p.m. on April 27, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to receive various briefings relating to the current air combat and electronic warfare training space problems, and predicted training requirements and space in the mid-1980s and beyond. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

For futher information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100 N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: April 3, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR. Doc. 84-9224 Filed 4-5-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Hearing

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice of Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing of the National Advisory Council on Bilingual Education. Notice of this hearing is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: April 24, 1984—Public Hearing—9:00 a.m.–4:30 p.m., Public Hearing will be held at the: Downtown Sheraton Hotel, 500 Canal Street, New Orleans, Louisiana 70140.

FOR FURTHER INFORMATION CONTACT: Ramon Ruiz, Designated Federal Official, Room 421, Reporter's Building, 400 Maryland Avenue SW., Washington, D.C. 20202 (202–245–2600).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations.

January 11, 1984, in consonance with the Council's mission to advise in the preparation of regulations under the Bilingual Education Act, testimony will be heard on the following topics which impact on the bilingual community:

(1) Use of High Technology in Bilingual Education.

(2) Needs of Special Populations.

(3) Research.

(4) 1988 Reauthorization.

Witnesses should notify Mr. Tino Ghini at (504) 866–1108 of their intention of testifying in New Orleans, Louisiana.

The following procedures shall be observed during the public hearings:

(1) Witnesses shall be heard on a first come basis.

(2) Witnesses shall limit their testimony to twenty minutes.

(3) All testimony shall be tape recorded.

(4) Exceptions to the aforementioned procedures shall be at the discretion of the Chairperson.

Records are kept of all Council proceedings, and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Room 421, Reporters Building, 400 Maryland Avenue SW., Washington, D.C. 20202 from the hours of 8:00 a.m.–4:30 p.m.

Dated: March 29, 1984.

Jesse M. Soriano,

Director of Bilingual Education and Minority Languages Affairs.

[FR Doc. 84-9222 Filed 4-84; 8:45 am]

BILLING CODE [illegible]

National Advisory Council on Bilingual Education; Hearing

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice of hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing of the National Advisory Council on Bilingual Education. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 5, 1984—Public Hearing—9:00 a.m.–4:30 p.m., Public Hearing will be held in the St. Paul Sheraton Midway Hotel's Auditorium, 400 W. Hamline Avenue, St. Paul, Minnesota 55104.

FOR FURTHER INFORMATION CONTACT: Ramon Ruiz, Designated Federal Official, Room 421, Reporter's Building, 400 Maryland Avenue SW., Washington, D.C. 20202 (202–245–2600).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations.

January 11, 1984, in consonance with the Council's mission to advise in the preparation of regulations under the Bilingual Education Act, testimony will be heard on the following topics which impact on the bilingual community:

(1) Use of High Technology in Bilingual Education.

(2) Needs of Special Populations.

(3) Research.

(4) 1988 Reauthorization.

Witnesses should notify Ms. Mary Diaz (612) 296–1060 of their intention of testifying in St. Paul, Minnesota.

The following procedures shall be observed during the public hearings:

(1) Witnesses shall be heard on a first come basis.

(2) Witnesses shall limit their testimony to twenty minutes.

(3) All testimony shall be tape recorded.

(4) Exceptions to the aforementioned procedures shall be at the discretion of the Chairperson.

Records are kept of all Council proceedings, and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Room 421, Reporters Building, 400 Maryland Avenue SW., Washington, D.C. 20202 from the hours of 8:00 a.m.–4:30 p.m.

Dated: March 29, 1984.

Jesse M. Soriano,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 84-8223 Filed 4-5-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB).

Date and Time: May 3–4, 1984 from 9 a.m. to 5 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 8E–089, Washington, DC 20585.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research (ER–6), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/252–5444.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

- Presentation of DOE budget
- Presentation of National Energy Policy Plan
- Energy Forecasts Overview
- Scientific Advice in DOE
- International Energy R&D Cooperation and Collaboration
- Energy and Agriculture
- Clean Coal Utilization
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 3, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-8486 Filed 4-5-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $268,885.14 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Wisconsin Industrial Fuel Oil, Inc., a reseller-retailer of residual fuel oils located in Oak Creek, Wisconsin.

DATE AND ADDRESS: Comments must be filed on or before May 7, 1984 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0199.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Wisconsin Industrial Fuel Oil, Inc., which settled allegations of possible pricing violations in the firm's sales of residual oils to jobber customers during the August 19, 1973 through May 31, 1976 audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Wisconsin Industrial Fuel Oil pursuant to the consent order. Under these procedures, the firm's customers, *i.e.*, jobbers who purchased residual fuel oils from Wisconsin Industrial Fuel Oil during the audit period, would be able to

file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: March 26, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 26, 1984.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Wisconsin Industrial Fuel Oil, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0199.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. The Subpart V process is intended to be used in situations where the DOE is unable readily to ascertain the persons who may be eligible to receive refunds as a result of enforcement proceedings or the amounts that such persons should receive. *See Office of Enforcement*, 9 DOE ¶82,553 (1982).

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Center Fuel Company through its wholly-owned subsidiary Wisconsin Industrial Fuel Oil, Inc. (Industrial Oil). Industrial Oil is a "reseller-retailer;" of residual fuel oils as that term was defined in 10 CFR § 212.31, and is located in Oak Creek, Wisconsin. A DOE audit of the firm's records revealed possible pricing violations in the firm's sales of Nos. 4, 5, and 6 oil to its customers during the period August 19, 1973 through May 31, 1976 (the audit period). On March 20, 1980, Industrial Oil and the DOE entered into a consent order in which the firm agreed to pay $400,000 in order to settle all claims and disputes between Industrial Oil and the DOE regarding the firm's sales of these residual fuel oils during the audit period. According to the consent order, the alleged overcharges affected two classes of customers. Two separate processes were established in the consent order for refunding these monies to the firms that were allegedly injured. First, $131,114.86 is being refunded directly by Industrial Oil through cash payments or credit memoranda to industrial and institutional customers. The remaining $262,885.14, which represents alleged overcharges to the jobber class of purchaser, will be deposited into a DOE escrow account by Industrial Oil. Under the consent order, Industrial Oil must make monthly payments of $4,481.42 over a five year period, ending March 20, 1985. To date, more than $200,000 has been received from Industrial Oil. This Decision concerns the distribution of the entire escrow fund.

During the audit of Industrial Oil, eight first purchasers were identified by the DOE as having been allegedly overcharged. The DOE audit file does not provide conclusive evidence as to the identity of refund recipients or the amount of money they should receive in a Subpart V proceeding. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶85,050 (1983) at 88,259. As the discussion in the *Armstrong* case indicates, material in DOE audit files represent a only preliminary determinations, and does not necessarily reflect actual overcharges. However, it is reasonable to use the information contained in the audit file for guidance, especially in this type of case where the audit was apparently focused on a limited group of injured customers. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified in the audit. *see, e.g., Bob's Oil Co.*, No. HEF–0039 (December 12, 1983) (Proposed Decision), 48 FR. 56,433 (December 21, 1983). These customers, together with the portion of the escrow account the consent order attributed to each are set forth in the table below.

Customer	Portion of escrow account
Asphalt & Petroleum, 6111 E. Skelly Drive, Tulsa, OK 74133	$21,365.19
Control Energy Corporation, 9933 Lawler, Skokie, IL 60076	94,867.50
Moore Oil Company, 4033 W. Custer, Milwaukee, WI 53209	1,399.07
Tauber Oil Co., 1610 Melrose Bldg., Houston, TX 77002	1,121.25
Tripp Oil Company, 3065 Hiway 13, Eagan, MN 55121	22,981.80
Conoco, Inc., 10890 Benson Rd., Overland Park, KS 66210	81,910.22
E. J. Brick (address unknown)	10,409.20
Oils, Inc., 300 W. Washington St., Chicago, IL 60604	21,500.00
Total	256,885.14

On the basis of the information in the record at this time, we are inclined to distribute the money in the Industrial Oil escrow account to the customers indicated above in the amounts specified. In view of the relatively small amount of money involved in this proceeding, and since the record indicates that these firms are the parties most likely to have been injured by Industrial Oil's pricing practices, we have tentatively decided that this would be the most equitable and efficient method of accomplishing restitution. We recognize, however, that other parties not identified by the DOE audit may be entitled to a portion of the consent order fund. If additional meritorious claims are filed, the appropriate amount of refund to each firm will be determined after analyzing those claims.

In order to obtain a refund, each of the firms will be required to file a refund application in which it certifies to the Office of Hearings and Appeals the amount of its purchases from Industrial Oil during the audit period and that there has been no change in ownership of the refund applicant since that time. If there has been a change in ownership, we will determine which owner is entitled to the refund. In addition, a firm that requests a refund of $25,000 or less will be relieved of the requirement to demonstrate that it did not pass through the effects of the alleged overcharges to its customers.* *See, e.g., Enterprise*

*In previous decisions concerning special refund proceedings, we have generally required a party claiming a portion of a consent order fund who is not a consumer to demonstrate that it did not pass through the effects of the overcharges to its customers. However, we have also stated in our prior decisions that a party that purchased a relatively small amount of product need not make such a showing. *See Office of Special Counsel (Tenneco)*, 9 DOE ¶ 82,538 at 85,202–05 (1982); *Office of Enforcement (Lyon County Cooperative)*, 10 DOE ¶ 85,016 (1982). This is based on our finding that small businesses with a relatively low level of sales may well not have maintained a sophisticated record keeping system and would otherwise be unable to apply for a refund. Also, in many cases

Continued

Products Company, 10 DOE ¶ 85,017 (1982); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

In the event that money remains after all claims are disposed of, undistributed funds could be distributed in various ways. For example, they could be deposited into the miscellaneous receipts account of the United States Treasury or be distributed to the state or the county where the Industrial Oil sales were apparently made, provided the state or county files a plan with this Office to use these funds for an energy related project which meets with our approval. *See Worldwide Energy Corp.*, 11 DOE ¶ 85,023 (1983). However, it is premature to decide this issue now, since we do not know how much, if any, money will remain unclaimed. We therefore reserve judgment on this issue.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Wisconsin Industrial Fuel Oil, Inc. pursuant to the Consent Order executed on March 20, 1980 will be distributed in accordance with the foregoing determination.

[FR Doc. 84-8939 Filed 4-5-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 19 Through March 23, 1984

During the week of March 19 through March 23, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Ginsburg, Feldman & Bress, 3/23/84, HFA–0208

Ginsburg, Feldman & Bress filed an Appeal from a denial by the Office of Special Counsel of the Economic Regulatory Administration of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the requested document was properly withheld by the Denying Official. The document at issue was recently sought through the civil discovery process in a United States District Court and found to be covered by the deliberative process, attorney-client, work product and investigative privileges encompassed by Exemptions 5 and 7(A) of the FOIA. The Court's determination was based on examination of an index almost identical to the index on which the Denying Official relied in his initial determination, and an *in camera* review of the document. In view of the fact that the standard applied by the federal court in the discovery context to determine whether to release a document that falls within the privileges encompassed by the above FOIA exemptions is more lenient than the standard applied in the FOIA context, the OHA concluded that the requested document was properly withheld. The Appeal was therefore denied.

Remedial Orders

Atlantic Richfield Company, 3/22/83, DRO–0193, HRZ–0132, HRZ–0139.

Atlantic Richfield Company (ARCO) objected to a Proposed Remedial Order (PRO) that the Office of Special Counsel for Compliance (OSC) issued to the firm on May 1, 1979. In the PRO, OSC alleged that Arco charged prices in first sales of crude oil which exceeded those permitted by the applicable regulations at 10 C.F.R. Part 212, Subpart D. After considering Arco's objections, the OHA concluded that the PRO, with certain modifications, should be issued as a final Remedial Order of the Department of Energy. In the decision, the OHA additionally denied two OSC motions to stride material in Arco's Statement of Legal Objections.

Major determinations made in the decision include: (1) That the Office of Hearings and Appeals has the authority to adjudicate enforcement proceedings; (2) that the PRO issued to Arco was sufficiently specified to satisfy the requirements of both the applicable procedural regulations and due process; (3) that production units within a single lease recognized by the Louisiana Office of Conservation ("LOC single lease units") may not be treated as separate "properties" pursuant to the original property definition at 10 CFR 212.72; (4) that separate reservoirs within a single lease may not be treated as separate properties pursuant to the original property definition; (5) that LOC single lease units may, under certain circumstances, be treated as separate properties pursuant to the severance tax exception to the property definition articulated in FEA Ruling 1977–1, 42 FR 3628 (1977), and FEA Ruling 1977–2, 42 FR 4400 (1977); (6) that the royalty owner accountability exception to the property defination articulated in Rulings 1977–1 and 1977–2 does not require the base lease to set forth explicitly the obligation to account separately to royalty owners holding interests in identified portions of the premises and does not require the base lease to delinate each portion of the premises subject to separate royalty accounting; (7) that Ruling 1977–2 is valid insofar as it does not permit multiple lease production units created before February 1, 1976, to qualify for the stripper well exemption immediately upon formation; (8) that OSC property relied upon official production reports Arco filed with state agencies to determine the number of producting wells on two premises Arco treated as stripper well leases; (9) that Arco used improper posted prices on twelve leases; (10) that Arco was, for each of three leases, entitled to offset undercharges determined by OSC in its audit against the overcharges for that lease to determine its liability; and (11) that all refunds Arco would make would be distributed pursuant to special refund proceedings to be convened under 10 CFR Part 205, Subpart V.

Kelly Trading Corporation, 3/23/84, HRO–0117

Kelly Trading Corporation, a crude oil reseller, filed a Notice of Objection to a Proposed Remedial Order that the Economic Regulatory Administration issued to its on January 6, 1983. In the PRO, the ERA alleged that during the period January through December 1980, Kelly resold crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart L. Because the firm failed to file a Statement of Objections as required by 10 CFR 205.196, the OHA dismissed the Notice of Objection and issued the PRO, as modified, as a final Remedial Order of the Department of Energy. The modification to the PRO specified that the ERA should file a Petition for Implementation of Special Refund Procedures under 10 CFR Part 205, Subpart V, for the distribution of the Kelly overcharges of $360,988 plus interest.

Walter J. Scott/& Benjamin J. Agajanian, Oil Producers, William J. Scott, Walter J. Scott d/b/a/ Scott Oil Co., 3/21/84, HRO–0065, HRO–0066, HRO–0067

Scott/Agajanian, William J. Scott and Scott Oil Company objected to Proposed Remedial Orders which the Los Angeles office of the DOE's Economic Regulatory Administration issued to them on June 4, 1982. In the Proposed Remedial Orders, the ERA found that the firms had improperly combined production from several leases in certifying that specific leases qualified for the stripper well exemption. In analyzing the firms' objections, the OHA rejected the argument that documents which transferred multiple leases to the firms created single "properties" and that these "properties" qualified as stripper well properties. The method of transferring title to an oil and gas lease was not determinative in defining a property for purposes of the crude oil pricing regulations. The DOE therefore concluded that the Proposed Remedial Orders should be issued as final Orders.

Motions for discovery

Department of Interior, Plateau, Inc., 3/20/84, HED–0192, HEH–0192, HED–0190, HEH–0190

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the cost of compiling the information could exceed the potential refund amount. Therefore, in order to advance the restitutionary objectives of the Subpart V process, we have adopted a threshold below which applicants do not have to submit any further evidence of injury. *See Office of Special Counsel (The Charter Co.)*, 10 DOE ¶ 85,039 at 88,166–67. A number of factors are taken into consideration in setting the threshold amount, including purchase volumes and the size of the refund. *See Office of Special Counsel (Tenneco)*, 9 DOE ¶ 82,538 at 85,208–05 (1982); *Office of Enforcement (Vickers)*, 8 DOE ¶ 82,597 at 85,396 (1918). In this case, because the information contained in the DOE audit files did not reveal volume figures, we have established a threshold level based on the claimant's potential refund amount. This amount was determined by consideration of the same type of factors considered in setting purchase volume thresholds. *See Office of Enforcement (Sid Richardson)*, 10 DOE ¶ 85,055 at 88,275–76 (1983).

The Department of Interior and Plateau, Inc. filed Motions for Evidentiary Proceedings in connection with an Application for Exception submitted by the DOE which requested retroactive exception relief from certain provisions of the DOE crude oil pricing regulations pertaining to DOE's sales of federal royalty crude oil to Plateau. On January 18, 1984, the OHA convened a conference and requested that the parties enter into stipulations resolving as many outstanding discovery requests as possible. The parties entered into a stipulation and on March 5, 1984, the OHA held oral argument on remaining disputed discovery items and ruled on both parties' motions. The Decision and Order sets forth the rulings of the Presiding Officer.

Vessels Gas Processing Company/Vessels Gas Processing, Ltd.; Halliburton Company, 3/22/84, HRD-0135, HRH-0135, HRH-0163

Vessels Gas Processing Company/Vessels Gas Processing, Ltd. (Vessels) filed a Motion for Discovery on May 25, 1983. Vessels and Halliburton Company (Halliburton) filed Motions for Evidentiary Hearing on May 25, 1983 and on September 12, 1983. These motions were filed in connection with Vessels' and Halliburton's respective Statements of Objections to an amended Proposed Remedial Order that was issued jointly to the firms on June 24, 1983 by the Economic Regulatory Administration. In considering Vessels' discovery motion, the DOE determined that Vessels had not laid a proper basis for the admissions, contemporaneous construction discovery, administrative record discovery, and audit-related discovery sought by the firm. With respect to the motions for evidentiary hearing, the DOE determined that there were no genuine disputed issues of fact for which an evidentiary hearing should be convened. The Motion for Discovery and Motions for Evidentiary Hearing were therefore denied.

Refund Applications

Aluminum Company of America/Tenneco Oil Co.; Aluminum Company of America/Controller of the State of California, 3/27/84, RF4-1, RF4-2

Tenneco Oil Co. filed an application for refund seeking the monies that Aluminum Co. of America (Alcoa) paid into an escrow account pursuant to a consent order with the DOE to settle alleged price violations in Alcoa's sales of natural gas liquids during the period September 1973 through December 1978. Tenneco claimed a refund equal to the entire amount of the escrow account funds on the grounds that the firm was the only direct purchaser of the NGLs sold by Alcoa during the consent order period, and that it has banked costs in excess of the consent order funds. In this Decision, the DOE found that for a major portion of the NGLs, Alcoa's prices exceed market average prices. As a result, Tenneco incurred excess costs in its purchases of NGLs from Alcoa which were far greater than the amount of the consent order funds. The DOE concluded that Tenneco was competitively injured, and granted the firm's claim to the entire amount of the Alcoa escrow account.

The State of California applied for a portion of the refund monies on behalf of California end-users and consumers of NGL products. Since Tenneco demonstrated that it should receive the full amount of the consent order funds available, California's request was denied.

Belridge Oil Company/Nebraska, Virginia, 3/21/84, RQ8-34, RQ8-49

The Office of Hearings and Appeals granted refunds to the States of Nebraska and Virginia after approving proposed plans for the utilization of a portion of the funds remitted to the DOE pursuant to a consent order with Belridge Oil Company. Nebraska plans to use its share of the consent order funds to create an audiovisual presentation addressing statewide energy consumption patterns since 1960. Virginia will devote its share of the refund to its Used Oil Recycling Project.

Belridge Oil Company/Tennessee, Palo Pinto Oil & Gas/Tennessee, Standard Oil Company (Indiana)/Tennessee, Belridge Oil Company/West Virginia, Standard Oil Company (Indiana)/West Virginia, 12/20/83, RQ8-37, RQ5-38, RQ21-39, RQ8-41, RQ21-36

The States of Tennessee and West Virginia submitted proposed refund utilization plans in response to three determinations establishing second-stage procedures and permitting states to apply for disbursement of funds remitted to DOE escrow accounts pursuant to consent orders entered into with Belridge Oil Company, *Belridge Oil Co.*, 11 DOE ¶ 85,197 (1983), Palo Pinto Oil & Gas, *Palo Pinto Oil & Gas*, 11 DOE ¶ 85,034 (1983) and Standard Oil Company (Indiana) (Amoco), *Standard Oil Co. (Indiana)*, 11 DOE ¶ 85,185 (1983). Tennessee proposed creation of an Energy Management Investment Loan Program (EMILP) that would be a revolving fund to provide loans for conservation measures to new industries with announced plans to locate in Tennessee and existing industries in the state. The plan submitted by West Virginia provided that the money be spent to convert the heating units at a long-term care facility from using natural gas to using coal. The DOE determined that both states' plans should be disapproved because they would provide only attenuated benefits to the groups of beneficiaries who were intended to be recompensed by the Amoco and Belridge refund proceedings, *i.e.* consumers of motor gasoline and middle distillates. Consequently, the states' second-stage refund applications were dismissed without prejudice to submission of new proposed restitutionary plans for use of these funds.

Standard Oil Company (Indiana)/Asher Oil & Gas Co., Heilig Oil Co., 3/20/84, RF21-12287, RF21-12288

The DOE issued a Decision and Order concerning two Applications for Refund filed by wholesalers of Amoco motor gasoline. Both of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the two applicants should receive a refund based upon the total volume of their Amoco motor gasoline purchases. The refunds granted in this proceeding total $2,420.

Standard Oil Company (Indiana)/Georgia, Belridge Oil Company/Georgia, Standard Oil Company (Indiana)/Michigan, 3/21/84, RQ21-43, RQ8-44, RQ21-47

The States of Georgia and Michigan filed proposed refund utilization plans with the Office of Hearings and Appeals in response to two determinations establishing second-stage procedures and permitting states to apply for the disbursement of funds remitted to DOE escrow accounts pursuant to consent orders entered into with Belridge Oil Company, *Belridge Oil Co.*, 11 DOE ¶ 85,197 (1983), and Standard Oil Company (Indiana) (Amoco), *Standard Oil Co. (Indiana)*, 11 DOE ¶ 85,185 (1983). Georgia proposed to use its share of the Amoco and Belridge funds to purchase octane-testing machines, expand existing state programs providing grants non-profit agencies that operate rural transportation services, provide technical assistance to the state's Solar Energy and Energy Conservation Bank, purchase devices that measure alcohol content in the breath of suspected drunk drivers, and purchase automated blood/alcohol content gas chromatographs. Michigan planned to use its Amoco funds for programs to time traffic signals throughout the state to improve traffic flow, establish speed monitoring stations at strategic points along Michigan's trunklines where the speed limit is 55 miles per hour, develop a state-wide ridesharing promotional program and fund six to ten additional local ridesharing offices, provide assistance to small vehicle fleet operators to reduce their energy use through better fleet management, provide a program for local governments to train trainers who will then conduct classes on conservative driving on a regular basis for the general public, update and revamp Michigan's data sytems for monitoring gasoline supplies and its contingency plans for a gasoline shortage, engage in media promotion designed to inform state fuel oil furnace users of the advantages of improvements in fuel oil furnace efficiency, train fuel oil dealers and furnace service companies to perform tune-ups, safety checks, and retrofits and provide low- or no-cost tune-ups and safety checks to improve furnace efficiency. The DOE determined that both states' plans should be approved because the programs to be funded would benefit the targeted groups, *e.g.*, motor gasoline and middle distillate consumers. In addition, each state's proposal effects an equitable split between programs benefitting motor gasoline and middle distillate consumers. Consequently, refunds of $627,348 and $2,084,536 were approved for Georgia and Michigan, respectively.

Standard Oil Company (Indiana), Knutsen Oil Company, Harms Oil Company, Rollin Oil Company, Gregson Oil Company, 3/20/84, RF21-12274, RF21-12275, RF21-12276, RF21-12277

The DOE issued a Decision and Order concerning four resellers of Amoco aviation

gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and formulae outlined in *Standard Oil Company (Indiana)/Bismark Airport*, 11 DOE ¶ 85,201 (1983). In considering these applications, the DOE concluded that each of the four applicants should receive a refund based upon the total volume of their Amoco aviation gasoline purchases. The refunds granted in this proceeding total $723.

Vickers Energy Corporation, Zephyr, Inc., 3/19/84, RR1–4

Zephyr, Inc., a motor gasoline reseller and retailer, filed a petition for reconsideration of a Decision and Order that granted the firm a partial refund based on its purchases of Vickers motor gasoline during the period 1976 through 1979. That refund was limited to the small claims threshold figure of 50,000 gallons per month. *Vickers Energy Corporation/Zephyr, Inc.*, 10 DOE ¶ 85,102 (1983). In its petition for reconsideration, Zephyr provided sufficient data regarding its purchases of motor gasoline from Vickers and other suppliers to permit a thorough analysis of the extent to which the firm was injured by alleged overcharges by Vickers. After considering the firm's submission, the DOE granted Zephyr an additional refund for eligible Vickers gasoline purchases in excess of the small claims threshold refund that was previously granted to the firm.

Dismissals

The following submission was dismissed:

Wellen Oil, Inc. & T. W. Oil, Inc., HRH–0011

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 30, 1984.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 84-8625 Filed 4-5-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

([OPTS–59152] TSH–FRL #2558–5)

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6)) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: April 23, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–59152]" and the specific TME number should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW, Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 84–42

Close of Review Period. May 6, 1984.

Manufacturer. Texaco Chemical Company.

Chemical. (S) Propoxylated polyoxypropylenediamine.

Use/Production. (S) A component in making flexible polyurethane foam. Prod. range: 60,000 lbs/18 months.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture, processing and distribution: a total of 150 workers.

Environmental Release/Disposal. Disposal by incineration or a licensed chemical waste disposal company.

TME 84–43

Close of Review Period. May 11, 1984.

Manufacturer. Confidential.

Chemical. (G) Unsaturated amino ester salt.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: 4/2/84

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 84-9092 Filed 4-5-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–51513; TSH–FRL 2558–6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). this notice announces receipt of sixteen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84–525, 84–526, 84–527 and 84–528—June 20, 1984.

PMN 84–529, 84–530 and 84–531—June 23, 1984.

PMN 84–532, 84–533 and 84–534—June 24, 1984.

PMN 84–535, 84–536 and 84–537—June 25, 1984.

PMN 84–538, 84–539 and 84–540—June 26, 1984.

Written comments by:

PMN 84–525, 84–526, 84–527 and 84–528—May 21, 1984.

PMN 84–529, 84–530 and 84–531—May 24, 1984.

PMN 84–532, 84–533 and 84–534—May 25, 1984.

PMN 84–535, 84–536 and 84–537—May 26, 1984.

PMN 84–538, 84–539 and 84–540—May 27, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–51513]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, DC 20460 (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington, DC 20460 (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

PMN 84–525

Importer. Confidential.
1Chemical. (G) Sulfo substituted phenyl azonaphthyl dye.
Use/Import. (S) Industrial colorant for paper. Import range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Processing: dermal, a total of 3 persons/plant.
Environmental Release/Disposal. Disposal by waste water treatment facility.

PMN 84–526

Importer. Confidential.
Chemical. (G) Sulfophenyl azo naphthyl dye.
Use/Import. (S) Industrial colorant for paper. Import range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Processing: dermal, a total of 3 persons/plant.
Environmental Release/Disposal. Disposal by waste water treatment facility.

PMN 84–527

Manufacturer. Confidential.
Chemical. (G) Unsaturated amino alkyl ester salt.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–528

Manufacturer. Confidential.
Chemical. (G) Polyamino ester salt.
Use/Production. (G) Water treating chemical. Prod. range: Confidential.
Toxicity Data. BOD as COD, BOD_5: 21%, BOD_{10}: 22%, BOD_{14}: 27%, BOD_{20}: 30%; COD of 100 parts per million: 135 mg/L, LC_{50} 96 hr (fathead minnow): 0.80 mg/L; LC_{50} 96 hr (fathead minnow in the presence of suspended solids): 20.5 mg/L.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–529

Manufacturer. The Southland Corporation.
Chemical. (G) Mixed mono and di-amides of an organic acid.
Use/Production. (G) Lube additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 10 workers, up to 2 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. 15 to 40 kg/batch released to water. Disposal by publicly owned treatment works (POTW) and approved landfill.

PMN 84–530

Manufacturer. Confidential.
Chemical. (G) Polyester polymer derived from glycols and cyclic and alkyl dicarboxylic acids.
Use/Production. (G) Raw material for coatings. Prod. range: Confidential.
Toxicity Data. No date submitted.
Exposure. Manufacture: dermal, a total of 48 workers, up to 23 hrs/da, up to 52 da/yr.
Environmental Release/Disposal. 2—3 kg/yr released.

PMN 84–531

Importer. Huels Corporation.
Chemical. (G) Cyanoethylated isophoronediamine.
Use/Import. (S) Hardener for epoxy type coatings on metals and concrete. Prod. range: 4,000—20,000 kg/yr.
Toxicity Data. Acute oral: 2,600 mg/kg; Irritation: Skin—Moderate, Eye-Extreme; Ames Test: Non-mutagenic.
Exposure. Processing: dermal.
Environmental Release/Disposal. No data submitted.

PMN 84–532

Manufacturer. Confidential.
Chemical. (G) Polyesterimide resin.
Use/Production. (G) Intermediate for electrical insulation coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–533

Manufacturer. Confidential.
Chemical. (G) Acrylated urethane—polyester/polyether backbone.
Use/Production. (S) Industrial printing plates and electronics coating. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: 2.0 g/kg; Irritation: Skin—Minimal, Eye—Minimal; Inhalation: Negative.
Exposure. Manufacture: dermal, a total of 3 workers, up to 1 hr/da, up to 150 da/yr.
Environmental Release/Disposal. No release.

PMN 84–534

Manufacturer. Confidential.
Chemical. (G) Polyaminoamide.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–535

Manufacturer. Confidential.
Chemical. (G) Alkali metal polycarboxylate.
Use/Production. (G) Component of industrial and consumer products. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Inhalation: Negative; Ames Test: Non-mutagenic; Skin sensitization: Non-sensitizer; LC_{50} 48 hr (Daphnia magna): 360 mg/L; EC_{50} 48 hr (Daphnia magna): 216 mg/L.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–536

Manufacturer. Confidential.
Chemical. (G) Short oil coconut alkyd resin based on phthalic anhydride and mixed polyols.
Use/Production. (G) Polymeric binder for industrial baking finishes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 5 workers.
Environmental Release/Disposal. Confidential.

PMN 84–537

Manufacturer. Confidential.
Chemical. (G) Unsaturated amino ester salt.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–538

Manufacturer. Confidential.
Chemical. (G) Disubstitutedsulfamoylcarbomonocycle azo substitute naphthalene sulfonic acid.

Use/Production. (G) Contained and open, nondispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 33 workers.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 84-538

Manufacturer. Confidential.

Chemical. (G) Pentacoordinate siliconate.

Use/Production. (G) Curative for adhesives. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-540

Importer. Confidential.

Chemical. (G) Siloxanes and silicones, dimethyl, methylfluoroalkyl.

Use/Import. (G) Paint additive, open, non-dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: > 20 ml/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 5 workers.

Environmental Release/Disposal. No release. Disposal by approved waste disposal facility.

Dated: April 2, 1984.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 84-9083 Filed 4-4-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51512; TSH-FRL 2565-7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-nine PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-496, 84-497, 84-498, 84-499 and 84-500—June 13, 1984.

PMN 84-501, 84-502 and 84-503—June 16, 1984.

PMN 84-504, 84-505 and 84-506—June 17, 1984.

PMN 84-507, 84-508, 84-509, 84-510, 84-511, 84-512 and 84-513—June 18, 1984.

PMN 84-514, 84-515, 84-516, 84-517, 84-518, 84-519, 84-520, 84-521, 84-522, 84-523 and 84-524—June 19, 1984.

Written comments by:

PMN 84-496, 84-497, 84-498, 84-499 and 48-500—May 14, 1984.

PMN 84-501, 84-502 and 84-503—May 17, 1984.

PMN 84-504, 84-505 and 84-506—May 18, 1984.

PMN 84-507, 84-508, 84-509, 84-510, 84-511, 84-512 and 84-513—May 19, 1984.

PMN 84-514, 84-515, 84-516, 84-517, 84-518, 84-519, 84-520, 84-521, 84-522, 84-523 and 84-524—May 20, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51512]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-496

Manufacturer. Confidential.

Chemical. (S) 2-amino-6-nitrobenzothiazole, sulfate salt.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal.

Environmental Release/Disposal. Release to water. Disposal by biological treatment system.

PMN 84-497

Manufacturer. Confidential.

Chemical. (S) Polymer of: adipic acid, azelaic acid, 1,4 butanediol, Desmodur W.

Use/Production. (G) Open use. Prod. range: 7,000-65,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 3 workers up to 2 hrs/da.

Environmental Release/Disposal. Minimal release to air. Disposal by approved landfill.

PMN 84-498

Manufacturer. Ethox Chemicals, Inc.

Chemical. (G) Fatty alcohol, ethoxylated, propoxylated, fatty acid ester.

Use/Production. (S) Industrial fiber lubricant for use on synthetic fibers. Prod. Range: 50,000-150,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 20 kg released to water. Disposal by publicly owned treatment works (POTW).

PMN 84-499

Manufacturer. QO Chemicals, Inc. (Subsidiary of the Quaker Oats Company).

Chemical. (G) Alkyl furan.

Use/Production. (S) Site-limited intermediate. Prod. range: 5,000-25,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 0.01 to 0.8 kg/batch released to water and 0.5 kg/batch to land. Disposal by POTW.

PMN 84-500

Manufacturer. QO Chemicals, Inc. (Subsidiary of the Quaker Oats Company).

Chemical. (G) Alkyl tetrahydrofuran.

Use/Production. (G) Destructive use. Prod. range: 5,000-25,000 kg/yr.

Toxicity Data. Acute oral: Male—6.33 g/kg, Female—3.22 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Negative; Micronucleus test: Negative.

Exposure. Manufacture: dermal, a total of 4 workers, up to 2 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 0.1 kg/batch released to water. Disposal by POTW.

PMN 84-501

Importer. The Goodyear Tire and Rubber Company.

Chemical. (S) Polymer of: Benzene, 1-ethenyl-4-methyl-benzene, 1-ethenyl-3-

methyl-, 2-propenoic acid, 2-ethylhexyl ester.

Use/Import. (S) Industrial and commercial synthetic resin for masonry paint. Import range: 264,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 84–502

Manufacturer. Confidential.

Chemical. (G) Modified epoxy based resin.

Use/Production. (G) Binder for an industrial coating having an open use. Prod. range: 50,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 33 workers, up to 8 hrs/da, up to 135/yr.

Environmental Release/Disposal. 10–100 kg/batch released to land. Disposal by incineration and landfill.

PMN 84–503

Manufacturer. Confidential.

Chemical. (G) Modified styrene/acrylic polymer.

Use/Production. (G) One of the principal components of a coating having a dispersive industrial use. Prod. range: 180,000–670,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 37 workers, up to 8 hrs/da, up to 112 da/yr.

Environmental Release/Disposal. 10 to 80 kg/batch released to land. Disposal by incineration and landfill.

PMN 84–504

Manufacturer. Confidential.

Chemical. (G) Substituted phenylenediimino-bis (chlorotriazinyl imino-substituted phenylene azo-naphthalenetrisulfonic acid, mixed sodium-lithium salt.

Use/Production. (S) Dye. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 84–505

Manufacturer. King Industries, Inc.

Chemical. (G) Alkyl aromatic sulfonic acid, compound with amine.

Use/Production. (S) Industrial catalyst for thermosetting coating for metal surfaces. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Mild, Eye—Extreme; Inhalation: >33.61 mg/L/hr.

Exposure. Manufacture: Dermal, a total of 3 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. ½ kg/batch released to land. Disposal by incineration.

PMN 84–506

Importer. Confidential.

Chemical. (G) Quinoline isoindole derivative.

Use/Import. (S) Industrial colorant for plastics vinyl siding and window profiles. Import range: 3,000–20,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Non-mutagenic.

Exposure. Processing: inhalation, a total of 1 worker, up to 1 hr/da.

Environmental Release/Disposal. No data submitted.

PMN 84–507

Manufacturer. Cordova Chemical Company of Michigan.

Chemical. (S) Polymer of: dodecane, 1-amine (laurylamine), ethylenimine, hydrochloric acid.

Use/Production. (S) Industrial pigment dispersing agent for resin based paper coatings. Prod. range: Confidential.

Toxicity Data. Acute oral: Male—867 mg/kg, Femal—713 mg/kg; Irritation: Skin—Slight; Ames Test: Non-mutagenic.

Exposure. Manufacture: dermal, a total of 13 workers, up to 6 hrs/batch, up to 6 times/yr.

Environmental Release/Disposal. 0.015 to 4 kg/batch released to water with 2 kg/batch to land. Disposal by POTW and approved landfill.

PMN 84–508

Manufacturer. Confidential.

Chemical. (G) Polyesterimide resin.

Use/Production. (G) Intermediate for electrical insulation. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–509

Manufacturer. Spencer Kellog Division of Textron Inc.

Chemical. (G) Polyurethane elastomer.

Use/Production. (g) A component of a coating to be used in an open, non-dispersive manner. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

PMN 84–510

Manufacturer. Confidential.

Chemical. (G) Halogenated aromatic ester.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 1,600 mg/kg; Acute dermal: >.1 g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Low potential.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Release to air. Disposal by incineration.

PMN 84–511

Manufacture. Bofors Nobel Inc.

Chemical. (G) Bis-butyl quaternary ammonium bromide salt.

Use/Production. (S) Industrial phase transfer catalyst used in organic reaction. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Less than 0.04 kg/day released to air with less than 1 kg/day to water. Disposal by POTW and on site biological carbon treatment.

PMN 84–512

Importer. Confidential.

Chemical. (G) Heterocyclic butanesulfonate.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. Actute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–513

Importer. Confidential.

Chemical. (G) Aminoalkyldisulfide.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: 629 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Corrosive; Ames Test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–514

Manufacturer. Confidential.

Chemical. (G) Polyquaternaryammonium chloride.

Use/Production. (G) Water treatment chemical. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–515

Manufacturer. Confidential.
Chemical. (G) Vinylic copolymer.
Use/Production. (G) Isolated intermediate, contained use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–516

Manufacturer. Confidential.
Chemical. (G) Sulfonated vinylic (co)polymer.
Use/Production. (G) Dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–517

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate amine salt.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–518

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate amine salt.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–519

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate amine salt.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–520

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate amine salt.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–521

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate amine salt.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–522

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate amine salt.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–523

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate amine salt.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–524

Importer. Confidential.
Chemical. (G) Substituted, sulfonated naphthalene salt.
Use/Import. (S) Industrial direct dye for paper. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 1 person/shift, ¼ hr/da.
Environmental Release/Disposal. Disposal by on-site biological waste treatment.

Dated: March 23, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–8882 Filed 4–5–84; 8:45 am]
BILLING CODE 6560–50–M

[ER–FRL–2559–8]

Availability of Environmental Impact Statements Filed March 26 Through March 30, 1984, Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

EIS No. 840132, Draft, FHW, OR, Murray Boulevard widening. Sunset Highway/US 26 to Jenkins Road, Washington Co., Due: May 21, 1984

EIS No. 840133, Draft, COE, MA, Hodges Village Flood Control Dam/Reservoir, Low Flow Augmentation Project, Worcester County, Due: May 29, 1984

EIS No. 840134, Final, FHW, NY, Long Island Expressway Improvements, Maurice Avenue to Grand Central Parkway, Queens County, Due: May 7, 1984

EIS No. 840135, DSuppl, COE, MS, Tombigbee River, East Fork, Continued Operation/Maintenance, Itawamba County, Due: May 25, 1984

EIS No. 840136, Draft, FHW, PA, Bainbridge Street Bridge, Replacement, Susquehanna River, Northumberland and Snyder Cos., Due: May 25, 1984

EIS No. 840137, Draft, COE, AK, Cube Cove Log Transfer Facility C/O, Permit, Admiralty Island, Due: May 21, 1984

EIS No. 840138, Final, FHW, IN, Western-Grand Avenue Improvement, IN-44/Third Street and Grand Avenue to 13th St.-Western Avenue, Fayette County, Due: May 7, 1984

EIS No. 840139, Final, BLM, OR, Medford Livestock Grazing Management Program, Due: May 7, 1984.

Amended Notices:

EIS No. 840100, Draft USAF, NM, Melrose Air Force Bombing Range Expansion, Curry and Roosevelt Counties, Due; May 14, 1984. Published FR 3–16–84 Review extended

EIS No. 840068, Final, FHW, AL, I–210 Connector Construction, I–10 to I–65, Mobile County, Due: 5–7–84. Published FR 4–6–84, Filing Date Reestablished Due to Noncompletion of Distribution

EIS No. 790110, DSuppl, NPS, HI, Haleakala National Park, Boundary Expansion, Maui County, Published FR 2–13–79, FR 2–13–79, Officially Withdrawn

EIS No. 790817, DSuppl, IBR, CA, San Luis Unit, Water Supply, Central Valley Project, Published FR 8–10–79, Officially Withdrawn

EIS No. 791247, Draft, IBR, ID WY, Salmon Falls Division, Upper Snake River Project, Published FR 12–21–79, Officially Withdrawn.

Dated: April 2, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84–8829 Filed 4–5–84; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

American Savings & Loan Association, Biloxi, Miss., Notice of Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing

Act, 12 U.S.C. § 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for American Savings and Loan Association, Biloxi, Mississippi, on April 3, 1984.

Dated: April 3, 1984.

J. J. Finn,
Secretary.

[FR Doc. 84-9287 Filed 4-5-84; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 10064-5]

Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement No. 10064-5 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

The Agreement is between Lykes Bros. Steamship Co. (Lykes), Flota Mercante Grandcolombia S.A. (Flota) and Coordinated Caribbean Transport (CCT). Amendment No. 4 will permit CCT to become a party to the Agreement and, as Lykes, become an associate of Flota under the Columbia Government's cargo preference laws in the trade between U.S. Gulf ports and Columbia ports.

This Finding of No Significant Impact (FONSI) will become final within 20 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR. 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,
Secretary.

[FR Doc. 84-9166 Filed 4-5-84; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 84-13]

In the Matter of the Authority of the Malaysia-Pacific Rate Agreement To Serve Alaska; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by the Malaysia-Pacific Rate Agreement, a Commission-approved rate agreement (No. 9836) operating in the trades from Malaysia, Singapore, and Brunei to the U.S. West Coast, seeking that the Commission determine that Alaska is within the scope of destinations that may be served by this rate agreement. An alleged uncertainty exists as to whether the term "West Coast of the United States" includes Alaska.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 11101. Participation in this proceeding by persons not named in the petition will be permitted only upon grant of intervention pursuant to Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72).

Petitions to intervene shall be accompanied by intervenors' complete reply in the matter. Such petitions and any replies to the petition for declaratory order shall be filed with the Secretary on or before May 3, 1984. An original and fifteen copies shall be submitted and a copy served on the filing party, Robert B. Yoshitomi, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition for declaratory order.

Francis C. Hurney,
Secretary.

[FR Doc. 84-9215 Filed 4-5-84; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Etowah Bancorp, et al.; Formations of Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 27, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Etowah Bancorp, Inc.*, Glencoe, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Citizens Bank of Etowah, Glencoe, Alabama.

2. *Gulfside Holding Company, Inc.*, Gulf Breeze, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Gulfside National Bank, Gulf Breeze, Florida.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Illinois Bancorp, Inc.*, Manchester, Missouri; to acquire 80 percent of the voting shares of University Bank of Carbondale, Carbondale, Illinois.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Beardsley Bancshares, Inc.*, Beardsley, Minnesota; to acquire 90.5 percent of the voting shares of Buffalo Ridge State Bank of Ruthton, Inc., Ruthton, Minnesota. Comments on this application must be received not later than April 30, 1984.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Commercial National Bancorp*, Beverly Hills, California; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial National Bank, Los Angeles, California (in organization). Comments on this application must be received not later than April 30, 1984.

Board of Governors of the Federal Reserve System, April 2, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9164 Filed 4-5-84; 8:45 am]

BILLING CODE 6210-01-M

Findlay Bankshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Findlay Bankshares, Inc.*, Findlay, Illinois; to continue to engage in general insurance sold in a community that has a population not exceeding 5,000 in Shelby County and its adjoining and nearby counties including Moultrie, Coles, Effingham, Fayette, Pratt, Macon, and Christian, all in the State of Illinois.

2. *Findlay Bankshares, Inc.*, Findlay, Illinois; to continue to engage in discount brokerage activities regarding securities and commodities in Shelby County and its adjoining and nearby counties including Moultrie, Coles, Effingham, Fayette, Pratt, Macon, and Christian, all in the State of Illinois.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Gilmanton Company, Inc.*, Foley, Minnesota; to engage *de novo* in making or acquiring loans and other extensions of credit secured by a borrower's inventory, accounts receivable, or other assets, serving the State of Minnesota.

2. *Nimrod Enterprises, Inc.*, Foley, Minnesota; to engage in making or acquiring loans and other extensions of credit secured by a borrower's inventory, accounts receivable, or other assets, serving the State of Minnesota.

Board of Governors of the Federal Reserve System, April 2, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9165 Filed 4-5-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 30.

Public Health Service

Office of the Assistant Secretary for Health

Subject: Linked Telephone Survey Study—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Application for Commission (0910-0010)—Extension/No Change
Respondents: State and local governments
Subject: (Petition For) Administrative Stay of Action—Existing Collection
Respondents: Business firms, individuals, state and local governments
Subject: Reporting Requirements Applicable to Shipment of Hepatitis Reactive Products (0910-0136)—Revision
Respondents: Businesses, blood banks, blood donor collection centers
OMB Desk Officer: Bruce Artim

Office of the Assistant Secretary for Health

Subject: Site Visits to State Agencies for an Evaluation of the National Master Facility Inventory (NMFI)—New
Respondents: State and local governments

National Institutes of Health

Subject: Identification of Qualified Biomedical Scientists for Public Advisory Committee Membership (0925-0035)—Reinstatement
Respondents: Individuals

Centers for Disease Control

Subject: Coal Mine Dust Personal Sampler Unit Certification Program—Existing Collection
Respondents: Businesses
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Supplemental Security Income (SSI)—Quality Review Case Analysis (0960-0133)—Revision
Respondents: Sample of SSI beneficiaries
Subject: Claimant's Medications (0960-0289)—Revision
Respondents: Claimants requesting hearings
Subject: Request for Review of Hearing Decision/Order (0960-0277)—Revision
Respondents: Social Security claimants
Subject: Parent Locator Request (Parental Kidnapping) (0960-0258)—Reinstatement
Respondents: State child support enforcement agencies
Subject: Waiver of Right to Oral Hearing (0960-0284)—Extension/No Change
Respondents: Individuals requesting hearings
OMB Desk Officer: Milo Sunderhauf

Health Care Financing Administration

Subject: Evaluation of the Medicare and Medicaid Alcoholism Services Demonstration (0938-0286)—Revision
Respondents: Participants in the Alcoholism Services Demonstration project
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer)

Dated: March 30, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–9150 Filed 4–4–84; 8:45 am]

BILLING CODE 4150–04–M

Statement of Organization, Functions, and Delegations of Authority

Part A, Chapter AMS (Office of Facilities and Management Services), Chapter AH (Office of the Assistant Secretary for Personnel Administration), and AHP (Office of Personnel) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services are amended. Chapter AMS (Office of Facilities and Management Services as last amended at 48 FR 35024, August 2, 1983) is amended to transfer the Division of OS Personnel from this Office. Chapter AH (Office of the Assistant Secretary for Personnel Administration, as last amended at 46 FR 60507, December 10, 1981) and Chapter AHP (Office of Personnel, as last amended at 48 FR 54538, December 5, 1983) are amended to reflect the transfer of the Division of OS Personnel to this Office and a change in title of the Division. The changes are as follows:

1. Chapter AMS, Section AMS.10 Organization, is amended by deleting "Division of OS Personnel."

2. Chapter AMS, Section AMS.20 Functions, is amended by deleting paragraph "C Division of OS Personnel" in its entirety and paragraphs D, E, F and G are relettered C, D, E and F.

3. Chapter AH, Section AH.20 Functions, paragraph C is amended by adding the following new sentence at the end of the paragraph:

"Provides personnel services for OS headquarters."

4. Chapter AHP, Section AHP.10 Organization, is amended by adding at the end of the section the following:

"OS Personnel Office."

5. Chapter AHP, Section AHP.20 Functions, is amended by adding a new paragraph F, OS Personnel Office, to read as follows:

F. OS Personnel Office. Assists and advises in the formulation and development of personnel policies and implements established policy for the Office of the Secretary. The Office provides services for OS in the areas of recruitment and placement, position management and classification, employee relations, employee development, labor management relations and other personnel services.

Dated: March 29, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84–9182 Filed 4–5–84; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committees; Meetings

Correction

In FR Doc. 84–7688 beginning on page 9620 in the issue of Wednesday, March 14, 1984, make the following corrections:

1. On page 9620, third column, eleventh line, "Material" should have read "Maternal".

2. On page 9621 second column, in the file line, "84–7688" should have read "84–6788."

BILLING CODE 1505–01–M

[Docket No. 84M–0019]

BIOTRONIK Sales, Inc.; Premarket Approval of Diplos-03™ Pulse Generator and Model EPR–400 Programmer

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Diplos-03™ Pulse Generator and Model EPR–400 Programmer sponsored by BIOTRONIK Sales, Inc., Lake Oswego, OR. After reviewing the recommendation of the Circulatory Systems Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by May 7, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On May 4, 1983, BIOTRONIK Sales, Inc., Lake Oswego, OR 97034, submitted to FDA an application for premarket approval of the Diplos-03™ Pulse Generator and Model EPR–400 Programmer. The application was reviewed by the Circulatory Systems Devices Panel, and FDA advisory committee, which recommended approval of the application for the use of this device as a cardiac pacing system. On February 15, 1984, FDA approved the application by a letter to the sponsor from the Acting Director, Office of Device Evaluation, Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and

shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 7, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 2, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9187 Filed 4-5-84; 8:45 am]

BILLING CODE 4160-01-M

Fertility and Maternal Health Drugs Advisory Committee; Notice of Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Fertility and Maternal Health Drugs Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on March 23, 1986, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: April 2, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9188 Filed 4-5-84; 8:45 am]

BILLING CODE 4160-01-M

Keflodin™ Injectable, Keflex® Capsules, Keflex® for Oral Suspension; Withdrawal of Approval of Nada's

Correction

In FR Doc. 84-6785 beginning on page 9621 in the issue of Wednesday, March 14, 1984, make the following correction:

On page 9622, first column, second to the last complete paragraph, second line from the bottom, "March 24" should have read "March 26, 1984.

BILLING CODE 1505-01-M

[Docket No. 75N-0184; DESI 3265]

Trocinate Tablets; Denial of Hearing; Withdrawal of Approval of New Drug Application

Correction

In FR Doc. 84-5678 beginning on page 7875 in the issue of Friday, March 2, 1984, make the following correction:

On page 7875 third column, last paragraph, sixth line from the bottom, "in" should have read "no".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review

March 28, 1984.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Interior Desk Officer, at (202) 395-7313.

Title: 25 CFR, Subchapter H—Land and Water.

Abstract: Indian Irrigation Projects provide electric power and water service to the general public, i.e., individuals, households, farms, small businesses and organizations. The information collections involve names, dates, and signatures, which are necessary to bind the parties to a legal contract or agreement.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Electric power and irrigation water consumers.

Annual Responses: 17,318.

Annual Burden Hours: 1297.

Bureau Clearance Office: Orville Hood (202) 343-3574.

Kenneth Smith,

Assistant Secretary-Indian Affairs.

[FR Doc. 84-9209 Filed 4-5-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Disposal of Public Lands in Bernalillo County New Mexico; Realty Action

March 29, 1984.

AGENCY: Bureau of Land Management Albuquerque District Office.

ACTION: Notice of Realty on proposed land disposal.

SUMMARY: This notice is to advise the public that the Albuquerque District of the Bureau of Land Management (BLM) is proposing to dispose of approximately 0.06 acres of pubic land in the South Valley of Albuquerque Bernalillo County, New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the 0.06 acres of public land described below is suitable for disposal under the public sale authority of the Federal Land Management and Policy Act of 1976 (FLPMA) (43 U.S.C. 1701, 1713) and will be used as appropriate for authorizing the disposal.

T. 9N., R. 2E., NMPM,
Sec. 12, lot 6.
Containing 0.06 acres.

Disposal of these lands is consistent with: (1) The approved Land Use Recommendations of the BLM's 1979 Rio Grande, Management Framework Plan. (2) Their location as well as the physical characteristics and the private ownership of adjoining lands, make them difficult and uneconomical to manage as public lands. Consequently, disposal would best serve the public interest. (3) Various public meetings were held throughout the area during the land use planning process. (4) This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional delegation and the relevent congressional committees by BLM.

The specific parcel of public land will be disposed of using the following "Tract Disposal Criteria":

Non-Competitive (Direct) Sale. Public lands within the disposal block will be

sold without competition at Fair Market Value to the Bernalillo County who has occupied the parcel before June 11, 1979 (the date land use plans were approved) but who do not qualify for title under one of the Color-of-title Acts.

Additional information pertaining to this disposal including the environmental documents are available for review in the Rio Puerco Resource Area Office, 3550 Pan American Freeway, NE, Albuquerque, New Mexico 87107 or telephone 505–766–3114. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Rio Puerco Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Michael F. Reitz,

Acting District Manager.

[FR Doc. 84-9178 Filed 4-5-84; 8:45 am]

BILLING CODE 4310-84-M

[A-18412]

Conveyance of Public Land; Reconveyed Land Opened to Entry; Arizona

Correction

In FR Doc. 84–6104, appearing on page 8499 in the issue of Wednesday, March 7, 1984, the second and fifth lines of the land description immediately following the heading "Gila and Salt River Meridian, Arizona" should have read "Sec. 4, Lots 1, 2, 3, 4, S½N½,S½;" and "Sec. 12, W½SW¼," respectively.

BILLING CODE 1505-01-M

[OR 11158]

Oregon; Partial Termination of Proposed Withdrawal and Reservation of Lands

Correction

In FR Doc. 83–4828 appearing on page 8143 in the issue of Friday, February 25, 1983, the thirty-eighth line of column two should have read, "SW¼SW¼, N½SE¼SW¼, and".

BILLING CODE 1505-01-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5201, Block 134, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on March 29, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr., Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 29, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-9163 Filed 4-5-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–15, 701–TA–213, and 731–TA–184 through 187 (Preliminary)]

Potassium Chloride From East Germany, Israel, Spain, and The U.S.S.R.

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping and countervailing duty investigations and scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: March 30, 1984.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of a preliminary countervailing duty investigation, 303–TA–15 (Preliminary), under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Israel of potassium chloride, provided for in item 480.50 of the TSUS, upon which bounties or grants are alleged to be paid.

The Commission also gives notice of the institution of a preliminary countervailing duty investigation 701–TA–213 (Preliminary), under section 701 of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from Spain of potassium chloride, provided for in item 480.50 of the TSUS, upon which bounties or grants are alleged to be paid.

The Commission also gives notice of the institution of preliminary antidumping investigations under 731–TA–184 through 187 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from East Germany, Israel, Spain, and the U.S.S.R. of potassium chloride, provided for in item 480.50 of the Tariff Schedules of the United States

(TSUS), which are alleged to be sold at less than fair value.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0289.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on March 30, 1984, by counsel for AMAX Chemical, Inc., and Kerr-McGee Chemical Corp., U.S. producers of potassium chloride. The Commission must make its determination in these investigations within 45 days after the date of the filing of the petitions, or by May 14, 1984 (19 CFR 207.17).

Participation

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this ntoice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in these investigations. Any party submitting a document in connection with the investigations shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in section 201.16(b) of the rules (19 CFR 201.16(b)), as amended by 47 FR 33682, Aug. 4, 1982).

Written submissions

Any person may submit to the Commission on or before April 26, 1984, a written statement of information pertinent to the subject matter of these investigations (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on April 24, 1984, at the U.S. International Trade Commission Building, 701 E Street, NW, Washignton, D.C. Parties wishing to participate in the conference should contact Abigail Eltzroth (202–523–0289), not later than 3:00 p.m., April 20, 1984, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public Inspection

A copy of the petitions and all written submissions, except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR 207, as amended by 47 FR 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207–12).

Issued: April 3, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-8208 Filed 4-5-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1), that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: The Charter Company, One Charter Plaza, Jacksonville, FL 32202.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) New England Petroleum Corporation, State of Incorporation: New York.

(ii) Riffe Petroleum Company, State of Incorporation: Illiinois.

(iii) Charter Oil Company, State of Incorporation: Florida.

(iv) Charter International Oil Company, State of Incorporation: Texas.

(v) NEPCO INC., State of Incorporation: New York.

1. Dana Corporation, 4500 Dorr Street, Toledo, Ohio 43615 is the parent corporation.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation are as follows:

i. Wix Corporation, a Delaware corporation;

ii. Boston Industrial Products, Inc., a Delaware corporation;

iii. Dana Distribution, Inc., a Delaware corporation;

iv. DTF Trucking, Inc., a Delaware corporation;

v. Gard Corporation, a North Carolina corporation;

vi. Air Refiner, Inc., a Delaware corporation.;

vii. Winnsboro Filters, Inc., a Texas corporation. ;

viii. WGB Oil Clarifier, Inc., a New York corporation;

ix. Flo-Line Filters, Inc., a Texas corporation.

1. Parent corporation and address of principal office: Mott's Inc. of Mississippi, Post Office Box 708, Water Valley, MS 38965.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Alabama Live Poultry, Inc., Alabama, state incorporated;

(ii) Georgia Live Poultry, Inc. Georgia, state incorporated;

(iii) Talmo Foods—Division of Mott's Inc. of Ms;

(iv) Glasgow Foods, Inc., Kentucky, state incorporated;

(v) Bestovall Foods, Inc., Georgia, state incorporated;

(vi) Tex-Hens, Inc., Texas, state incorporated;

(vii) Jackson Poultry, Division of Mott's Inc. of Ms.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8227 Filed 4-5-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-104)]

Seaboard System Railroad, Inc.—Abandonment—In Sequatchie and Bledsoe Counties, TN; Notice of Findings

The Commission has issued a certificate authorizing the Seaboard System Railroad, Inc. to abandon its 18.1 mile rail line between milepost B-39.9 near Brush Creek and milepost B-58.0 near Pikeville in Sequatchie and Bledsoe counties, TN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Acting Secretary.

[FR Doc. 84-9228 Filed 4-5-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 7-84]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify a system of records maintained by the Office of the Deputy Attorney General.

The United States Judge and Department of Justice Presidential Appointee Records, JUSTICE/DAG-010, is a system of records for which public notice was published in the Federal Register on July 29, 1983 (48 FR 34541) consistent with provisions of 5 U.S.C. 522a(e)(4).

The system notice is being reprinted below to clarify that the Department maintains certain data only as authorized by subsection (e)(7) of the Privacy Act. That is, the section of the notice entitled "Categories of Records in the System" has been revised to reflect that the information on politics and religion is maintained only where it is provided voluntarily by the individual.

Dated: March 29, 1984.

Kevin D. Rooney,
Assistant Attorney General for Administration.

JUSTICE/DAG-010

SYSTEM NAME:

United States Judge and Department of Justice Presidential Appointee Records.

SYSTEM LOCATION:

Office of the Deputy Attorney General; United States Department of Justice; 10th and Constitution Avenue, N.W.; Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system encompasses all United States Judges and all Department of Justice Presidential Appointees.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. 1. Card index relating to United States Judges which includes name; salary, Congress of appointment, state of birth, political party (if voluntarily provided), religion (if voluntarily provided), and American Bar Association rating.

2. Information on the above mentioned card index, except religion, is also maintained on word processing equipment.

B. Cross index of judges' names and districts.

C. Roster of districts showing the dates of duty of district court judges and Department of Justice Presidential Appointees, indexed alphabetically by name.

D. Book of commissions of United States Judges and Department of Justice Presidential Appointees in order by date of appointment and indexed alphabetically by name.

E. Nomination book showing the name of the nominated Judge or Department of Justice Presidential Appointee, the date the proposed nomination was sent to the White House, the date the nomination was made to the Senate, the date of confirmation, the date of appointment, and the date of entrance on duty. This book is in chronological order, and is indexed alphabetically by name of the nominee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are maintained to make responses to public inquiries regarding these individuals noted in Categories of individuals (the political party and religion of an appointee is not released), and for Department internal purposes.

Release of information to the new media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from system of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are kept on cards, in folders, in books, or on diskettes.

RETRIEVABILITY:

Information is retrieved by those data elements identified in the "Categories of Records in the System" section of this notice.

SAFEGUARDS:

Biological sketches and diskettes are kept in a locked safe. All other information is kept in cabinets or card files.

RETENTION AND DISPOSAL:

This information is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Deputy Attorney General, Office of the Deputy Attorney General, United States Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

A request of access to these records should be directed orally or in writing to the System Manager. When requests are in writing the envelope and letter should clearly be marked "Privacy Access Request."

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the individuals who are the subjects of the records and from other Department of Justice records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-8881 Filed 4-5-84; 8:45 am]

BILLING CODE 4410-01-M

Attorney General

Voting Rights Act; Certification of the Attorney General; Dallas County, Texas

In accordance with Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Dallas County, Texas. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on September 18, 1975, under Section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on September 23, 1975 (40 FR 43746).

Dated: April 3, 1984.

William French Smith,

Attorney General of the United States.

[FR Doc. 84-8879 Filed 4-4-84; 3:19 pm]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 18, 1984, Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw Opium (9600)	II.
Opium Plant Form (9650)	II.
Concentrate of Poppy Straw (9670)	II.

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than May 7, 1984.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator to the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a) and 21 CFR 1311.42 (a), (b), (d), (e), and (f) are satisfied.

Dated: March 30, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-9206 Filed 4-5-84; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 24, 1984, Ganes Chemicals, Inc., Lessee of Siegfried Chemical, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II.
Pentobarbital (2270)	II.
Secobarbital (2315)	II.
Dextropropoxyphene (9273)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than May 7, 1984.

Dated: March 30, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-9207 Filed 4-5-84; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 12, 1983, Johnson Matthey, Inc., 1401 King Road, West Chester, Pennsylvania

19380, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Fentanyl (9801).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than May 7, 1984.

Dated: March 30, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-9209 Filed 4-5-84; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 18, 1984, Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II.
Codeine (9050)	II.
Diprenorphine (9058)	II.
Etorphine Hydrochloride (9059)	II.
Dihydrocodeine (9120)	II.
Oxycodone (9143)	II.
Hydromorphone (9150)	II.
Diphenoxylate (9170)	II.
Hydrocodone (9193)	II.
Levorphanol (9220)	II.
Methadone (9250)	II.
Methadone-Intermediate (9254)	II.
Metopon (9260)	II.
Dextropropoxyphene (9273)	II.
Morphine (9300)	II.
Thebaine (9333)	II.
Opium Extracts (9610)	II.
Opium Fluid Extracts (9620)	II.
Tincture of Opium (9630)	II.
Powdered Opium (9639)	II.
Granulated Opium (9640)	II.
Oxymorphone (9652)	II.
Noroxymorphone (9668)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than May 7, 1984.

Dated: March 30, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-9210 Filed 4-5-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration

Guidelines for the State Employment Security Agency Program Budget Plan for the Unemployment Insurance Program

1205-0123; ET Handbook 336

Annually

State or local governments

53 responses; 2776 hours.

The Program Budget Plan provides the basis for an application for funds for State Unemployment Insurance operations for the coming year. In the PBP, States certify content to comply with assurances. The affected public are the 53 State Employment Security Agencies.

Reinstatement

Occupational Safety and Health Administration

Abestos

1218-0010; OSHA-246

On occasion

76,442 respondents; 1,235,390 hours

Businesses and other for profit small businesses or organizations.

The information collection requirements are necessary to protect and monitor the health of employees who work in establishments where exposure to asbestos may occur.

Reinstatement

Occupational Safety and Health Administration
Ionizing Radiation
OSHA 253
On occasion
210,000 respondents; 1,422,511 hours
Businesses and other for profit small businesses or organizations.

The information to be collected by employers is needed to monitor employee exposure to ionizing radiation and to protect the health of employees exposed to ionizing radiation in the workplace.

Signed at Washington, D.C. this 29th day of March 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-8239 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-26-M

Mine Safety and Health Administration

[Docket No. M-83-29-M]

Aquarius Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Aquarius Mining Company, P.O. Box 957, Boulder, Colorado 80306 has filed a petition to modify the application of 30 CFR 57.4-43 (buildings within 100 feet of mine openings; fire protection requirements) to its Comstock Mine Project (I.D. No. 05-01580) located in Boulder County, Colorado. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that buildings which are within 100 feet of mine openings used for intake air and mine openings that are designated escapeways in exhaust air be constructed of fire resistant materials.

2. The work at the mine is presently limited to exploration and development. The inside of an existing 40 by 100 foot steel building had been sprayed with a ½ to 1 inch thick layer of polyurethane foam to serve as an insulation and to seal against the high winds that prevail at the building's 10,000 foot elevation. A diesel-powered dump truck will be used to transport the materials hoisted during exploration.

3. As an alternate method, petitioner proposes to:

a. Remove the fire retardant polyurethane foam from the entire wall of the building near where the diesel truck will be parked, in lieu of covering that wall with gypsum board or gunnite;

b. Provide a secondary escapeway, commencing at the 45 foot underground tunnel level and coming to the surface at a point far removed from the building. No miner will have to exit through the building if a problem develops;

c. Open the roof of the building over the shaft for added ventilation;

d. Place fire extinguishers on the truck and at the headframe;

e. Provide an attendant with the truck at all times;

f. Apply a covering of noncombustible material to the shaft collar;

g. Keep the building free of all combustibles except for that which is in transit;

h. Install ventilation air ducting to the outside of the building. In the event of a fire in the building, the ventilation fan for the mine will be drawing fresh air from outside. The fan discharges into metal tubing extending from the surface down to the 420 foot level, which puts the shaft on exhaust air; and

i. Build a refuge chamber at the 420 foot level, equipped with a door and water. Compressed air will be piped in.

4. Once production begins, all remaining urethane foam will be removed from the walls and ceiling of the building and a protective coating of noncombustible material will be applied to the steel posts and guides.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8240 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-3-M]

ASARCO, Inc.; Petition for Modification of Application of Mandatory Safety Standard

ASARCO, Inc., Box 440, Wallace, Idaho 83873 has filed a petition to modify the application of 30 CFR 57.11-37 (ladderways) to its Galena Mine (I.D. No. 10-00082) located in Shoshone County, Idaho. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that ladderways have a minimum unobstructed cross-sectional opening of 24 by 24 inches measured from the face of the ladder.

2. Petitioner seeks a modification of the standard to permit the cross-sectional opening to be 18 by 20 inches measured from the face of the ladder.

3. In support of this request, petitioner states that:

(a) The present practice of driving timbered raises on steeply dipping veins results in a manway compartment 31 inches wide. This width is maintained through the raise except at the ladder offsets which are required by 30 CFR 57.11-41 to be every 30 feet. To ensure a safe and adequate landing at these intervals, the landing must be as wide as the ladder rungs. This results in a manway opening of approximately 18 inches wide. To increase the width of the opening would require a narrower landing. To make the landing narrower than the ladder rung would create a potential safety hazard for the person climbing down the ladder;

(b) Driving larger raises to provide a larger manway compartment would present a hazard to all miners because the raises are driven in highly stressed quarzitic rock. Elimination of ground control problems is dependent upon driving a raise with as small of a cross-sectional area as possible;

(c) As stope mining progresses upward through the ore block, stress conditions increase around the raise openings. This increased stress necessitates continual repair work to the raise timber. To maintain a 24 by 24 inch opening at this state of the mining cycle would expose the miners to hazardous conditions; and

(d) To create a 24 by 24 inch opening by reducing the size of the landing increases the possibility of an object or person falling through the larger manway opening.

4. Petitioner states that the proposed alternate method will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8249 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-64-C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, 1912 Chestnut Avenue, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.1100-3 (condition and examination of firefighting equipment) to its Lancashire No. 24D Mine (I.D. No. 36-00835) located in Indiana County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all firefighting equipment be maintained in a usable and operative condition.

2. Petitioner states that due to the extremely cold weather experienced during the winter months, the waterline used for fire protection along the slope belt freezes and is inoperative.

3. As an alternate method, petitioner proposes to install a dry waterline along the slope belt for fire protection. This dry waterline system will be pressurized by a signal from the fire sensors to an automatic actuator valve installed in the waterline and connected to the automatic fire sensors which are installed and maintained in accordance with applicable standards. When activated, the sensors will send a signal to the actuator valve to open, allowing the waterline to be pressurized with water. A manual bypass value will also be installed in the system to allow the waterline to be pressurized if desired. All persons in the vicinity of the slope will be taught the operation of the dry pipe system. Sufficient water will be available for the dry pipe system at all times.

4. Petitioner states that the proposed alternate method will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8252 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-53-C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, 1912 Chestnut Avenue, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.1100-3 (condition and examination of firefighting equipment) to its Lancashire No. 20 Mine (I.D. No. 36-00836) located in Cambria County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all firefighting equipment be maintained in a usable and operative condition.

2. Petitioner states that due to the extremely cold weather experienced during the winter months, the waterline used for fire protection along the slope belt freezes and is inoperative.

3. As an alternate method, petitioner proposes to install a dry waterline along the slope belt for fire protection. This dry waterline system will be pressurized by a signal from the fire sensors to an automatic actuator valve installed in the waterline and connected to the automatic fire sensors which are installed and maintained in accordance with applicable standards. When activated, the sensors will send a signal to the actuator valve to open, allowing the waterline to be pressurized with water. A manual bypass valve will also be installed in the system to allow the waterline to be pressurized if desired. All persons in the vicinity of the slope will be taught the operation of the dry pipe system. Sufficient water will be available for the dry pipe system at all times.

4. Petitioner states that the proposed alternate method will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8253 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-55-C]

Bethlehem Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Bethlehem Mines Corporation, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Mine No. 131 (I.D. No. 46-01268) and Mine No. 132 (I.D. No. 46-04789), both located in Boone County, West Virginia; its No. 108 Mine (I.D. No. 46-03887) located in Upshur County, West Virginia; and its Mine No. 81 (I.D. No. 46-04130) located in Nicholas County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8283 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-93-C]

Bethlehem Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Bethlehem Mines Corporation, 7012 MacCorkle Avenue, SE, Charleston, West Virginia 25304 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 131 (I.D. No. 46-01288) located in Boone County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be examined in their entirety on a weekly basis.

2. The return airway from the 12 Right Longwall Section, despite the installation of maximum roof supports, is still unsafe to travel because of deteriorating roof conditions.

3. As an alternate method to traveling the affected airway, petitioner proposes that:

a. The primary (intake) and secondary (track and/or belt) escapeways located in the headgate entry will be reviewed with all personnel working on the longwall. Each person will be familiarized with the location and procedures for escape from such section;

b. Six CSE Model AU-911 self-contained self-rescuers will be stored at the tailgate and six will be stored at the midpoint of the longwall face;

c. The longwall tailgate will be examined to that point that is impassable from both ends on each pre-shift examination;

d. While the longwall is operating, only those persons necessary to pre-shift examine the longwall tailgate from the tailgate of the longwall face to that point outby where the tailgate is impassable will be permitted in that area. The pre-shift examination will be recorded in the fireboss book.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 28, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8281 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-61-C]

Big Fork Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Big Fork Coal Co., Inc., P.O. Box 147, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 15 Mine (I.D. No. 46-04457) located in Nicholas County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used only by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon inserting of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying the conditions of use for the unit and will

install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9259 Filed 4-5-84; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-84-79-C]

C & T Development Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

C & T Development Co., Inc., P.O. Box 27, Seawick, West Virginia 26202 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Fisher Run Mine (I.D. No. 46-06708) located in Webster County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying the conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9252 Filed 4-5-84; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-83-174-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Loveridge No. 22 Mine (I.D. No. 46-01433) located in Marion County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that the belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use the air in the belt entry to ventilate active working places in the 1 West Section and planned longwall panels. In support of this request, petitioner states that:

a. The 1 West Section was developed to use belt haulage from the face directly to the rotary dump, eliminating a considerable amount of track haulage. An intake escapeway was constructed in these old entries. Due to the limitations of the original development entries, the use of belt air will fully utilize the available mine entries to provide positive ventilation to the working section;

b. The air used to ventilate the belt presently is reversed from face toward drive. This system requires about 40,000 cfm of air when the belt length increases to plus 6,000 feet. The limited availability of ventilating air will not permit this system to continue as soon as additional sections are added in this area of the mine;

c. The use of belt air provides a safer, more effective system to ventilate the working sections. Tests have shown that by using the belt entries as an intake and restricting the air flow in the intake escapeway, the pressure reversed on the intake escapeway stoppings. The present system of restricting air flow in the belt entry creates positive pressure from the belt to the track and in some cases from the track to the intake escapeway. This creates the situation where a fire and resultant smoke on the belt immediately causes smoke on the track entry and a migration to the intake escapeway, negating smoke free escapeways from the section.

3. In further support of the proposed alternate method, petitioner proposes to install a fire detection system as follows:

a. Low-level carbon monoxide (CO) monitoring devices will be installed in all belt entries used as intake aircourses; the devices will be located so that the air is monitored at each belt drive, tailpiece, at intervals not to exceed 3,000 feet along the belt conveyor, and at other locations as may be required by the District Manager;

b. The CO monitoring devices will be capable of giving both visual and audible alarm signals automatically when the level of CO at any location

exceeds 5 ppm above the ambient level for the mine;

c. The monitoring system will be capable of identifying any activated sensor within the belt haulage entry. This system will also have a map or schematic which will identify all monitor and flight locations;

d. The monitoring devices will initiate fire alarm signals at a manned location on the surface where personnel on duty have two-way communication with all persons who may be endangered. Such signals will be activated when the level of CO exceeds 10 ppm above the ambient level of the mine;

e. The person at the manned location on the surface will be trained in the operation of the CO monitoring system and emergency procedures;

f. At any time the CO monitor has been deenergized, for reasons such as power outages or routine maintenance, petitioner proposes that the belt conveyor may continue to operate as long as it is patrolled and physically monitored by a qualified person with CO detector tubes or equivalent means until the monitor returns to normal operations;

g. The CO monitor and sensor will be visually examined at least once every 24 hours when coal is being produced to ensure proper functioning, inspected by a qualified person at least every seven days to ensure proper operation and proper maintenance, and calibrated with known quantities of CO in air mixtures at least every 30 calendar days. An inspection record will be maintained on the surface and made available to interested persons;

h. Details of the fire detection system will be included as a part of the Ventilation System and Methane and Dust Control Plan submitted to the District Manager; and

i. The velocity of air current in the belt entry will not exceed 300 feet per minute, and the concentration of respirable dust in the intake air passing over the belt conveyor will meet applicable requirements.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9245 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-3-C]

D & F Deep Mine; Petition for Modification of Application of Mandatory Safety Standard

D & F Deep Mine, P.O. Box 298, Minersville, Pennsylvania 17954 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its Buck Drift (I.D. No. 36-07456) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open cross-cut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

8. Petitioner states that the alternate method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9242 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-48-C]

Deep Mine Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Deep Mine Coal Co., Inc., R.D. No. 2, Box 201, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 2 Slope (I.D. No. 36-05738) located in Northumberland County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if a "makeshift" safety device were installed it would activate on knuckles and curves, when no emergency existed, and cause a tumbling effect on the conveyance which would increase rather than decrease the hazard to the miners.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, which have a factor of safety in excess

of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will at all times provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9285 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-60-C]

E. C. Coal Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

E. C. Coal Mining Co., Inc., Box 2005, Beckley, West Virginia 25802 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 2 Mine (I.D. No. 46-06660) located in Raleigh County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9258 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-34-C]

Eastern Associated Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Federal No. 1 Mine (I.D. No. 46-01429) located in Marion County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety by a certified person on a weekly basis.

2. The 6 Right Mains area is maintained as haulageway entries for inby areas. Parallel to these main haulageway entries on both sides are multiple main return airways. Portions of these main return airways are abandoned areas, which are unsafe for travel due to flooding or massive falls caused by deterioration of the draw slate top. As a result of previous flooding and weight from longwall mining, the walls and ribs are so deteriorated that installation of additional roof supports is not possible. Although portions of these airways are unsafe for travel, sufficient air passes through to ventilate the affected areas of the mine. However, rehabilitation of the return airways would expose miners to the hazards from the fall of roof or rib.

3. As an alternate method, petitioner proposes to establish and maintain five special ventilation checkpoints at specified locations. Daily air quantity and methane readings will be made by a qualified person at each checkpoint, and the results recorded on a date board at each location.

4. Petition states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9260 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-127-C]

Gorenty Tunneling Co.; Petition for Modification of Application of Mandatory Safety Standard

Gorenty Tunneling Company, Walnut Street, Middleport, Pennsylvania 17953 has filed a petition to modify the

application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Gorenty Slope (I.D. No. 36-07367) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. The mine is wet and virtually dust free. The upper area of the mine was deep and strip mined, leaving ventilation to the surface by means of abandoned slopes, cracks, fissures and strip pits. This creates a natural draft that would sweep noxious fumes to the surface away from the miners.

3. Petitioner states that the mine geology, undulation, thin coal and varying pitches make it impossible to wear the device while working. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. In addition, the wet conditions of the mine make it difficult to locate a suitable dry storage location for the self-rescuers.

4. Petitioner proposes to continue using the present filter-type self-rescuers as an alternative to providing self-contained self-rescuers, and states that this will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8257 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-111-C]

Hard Times Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Hard Times Coal Company, 825B Shamokin Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its R.B. Slope (I.D. No. 36-05446) located in Northumberland County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The distance from the mine portal to the actual working face is less than 2,000 feet; the mine can be evacuated in less than 15 minutes.

3. The mine is always damp to wet and there is only one piece of electrical equipment, which is a small pump located at the foot of the slope; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape out the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 28, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8260 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-1-C]

Inland Steel Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Inland Steel Coal Company, P.O. Box 566, Sesser, Illinois 62884 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 1 Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of keyed locks inserted through brackets to secure the battery nips on the mine's scoops.

2. Petitioner states that these locks have proven hard to keep on the scoops.

3. As an alternate method, petitioner proposes to put a bracket on the battery with a set screw-type arrangement to lock it down.

4. Petitioner states the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8243 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-41-C]

Kintzel Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Kintzel Coal Company, R.D. No. 2, Box 592, Pine Green, Pennsylvania 17963 has filed a petition to modify the

application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Lykens No. 6 Mine (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. Petitioner proposes to continue using the present filter-type self-rescuers as an alternative to providing self-contained self-rescuers, and states that this will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84–8258 Filed 4–5–84; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–84–65–C]

Lady Jane Collieries, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lady Jane Collieries, Inc., P.O. Box 306, Penfield, Pennsylvania 15849 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Stott No. 1 (I.D. No. 36–00880) located in Clearfield County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84–8254 Filed 4–5–84; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–84–42–C]

Lee Ann Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Lee Ann Coal Company, 155 Fifth Avenue West, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Rex Mine (I.D. No. 46–05427) located in Logan County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will

install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8256 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-167-C]

Long Branch Energy; Petition for Modification of Application of Mandatory Safety Standard

Long Branch Energy, Route 1, Box 278, Danville, West Virginia 25053 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 3 (I.D. No. 46-03883) located in Boone County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seam in the roadway from section to surface in several locations is 42 inches or less in height.

3. Petitioner states that the installation of a canopy on the mine's scoop would result in a diminution of safety for the miners affected because the canopy can strike and dislodge the roof bolts and roof supports, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8249 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-62-C]

National Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

National Mines Corporation, P.O. Drawer 295, Wayland, Kentucky 41666 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Stinson No. 1 Mine (I.D. No. 15-02613), Stinson No. 2 Mine (I.D. No. 15-02614) Stinson No. 3 Mine (I.D. No. 15-02615), and its Stinson No. 7 Mine (I.D. No. 15-13135), all located in Knott County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying the conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8250 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-5-C]

R & S Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

R & S Coal Company, General Delivery, Regina, Kentucky 41559 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 4 Mine (I.D. No. 15-12278) located in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seam ranges from 40 to 48 inches in height with consistently ascending and descending grades, creating dips in the coal bed.

3. Petitioner states that the installation

of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies can strike and dislodge roof support as well as severely limit the equipment operator's visibility, increasing the chances of an accident. The canopies also restrict and hamper the operator's seating position, increasing operator fatigue and the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9241 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-49-C]

Sewell Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Sewell Coal Company, Route 3, Box 125, Nettie, West Virginia 26681 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its Sewell No. 1–A Mine (I.D. No. 46–03859) located in Nicholas County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that devices be installed on all belts which will give a warning automatically when a fire occurs on or near a belt.

2. As an alternate method, petitioner proposes to use a carbon monoxide monitoring system in lieu of automatic fire warning devices, as follows:

a. An automatic fire detection system will be installed on the underground belt conveyors. The sensors installed will give early warning automatically when a fire occurs in the belt entry. These sensors will provide both audible and visual signals that permit rapid location of the fire to a manned location on the surface where personnel have an assigned post of duty and have telephone or equivalent communication with all persons who may be endangered. The detector located at or near the section loading point will activate when carbon monoxide is detected and give a warning signal that may be heard in the working section. All persons, except those required to investigate and take appropriate action in the event of a fire in the belt entry, will be immediately withdrawn from this endangered area to a safe area;

b. The system will be calibrated to activate the warning signals should the carbon monoxide concentration reach 10 p.p.m. above ambient;

c. The location of the sensors for the automatic fire detection system will be approved by the District Manager in the mine's Ventilation System and Methane and Dust Control Plan;

d. Each carbon monoxide monitor and sensor will be visually examined at least once each 24 hours to ensure proper functioning. The units will be checked weekly for proper operation of the built-in safety features and will perform other checks recommended by the manufacturer. At least every 30 days, the monitors will be checked for operating accuracy with a known concentration of carbon monoxide gas and will be calibrated as necessary, and a record of the tests kept and made available to interested persons.

3. In addition, petitioner proposes that should the automatic fire detection system be affected by a power interruption or other malfunction, the belt conveyor can continue to operate if a person qualified to make tests is stationed at the malfunctioning sensor or the area affected to continuously monitor for carbon monoxide with a suitable instrument.

4. Petitioner states that the proposed alternate method will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9284 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-177-C]

Sharples Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Sharples Coal Corporation, P.O. Box D, Sharples, West Virginia 25183, on behalf of Zapata Coal Corporation, has filed a petition to modify the application of 30 CFR 75.1403–8(c) (clearance requirements on track haulage roads) to its Buffalo Creek No. 4 Mine (I.D. No. 46–03749) located in Logan County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage roads have a clearance on the "tight" side of at least 12 inches from the farthest projection of normal traffic.

2. Petition seeks a modification of the standard in order to reroute the supply track around a roof fall. The area affected is approximately 200 feet long. The mine has no more than two pieces of equipment moving on the track at any given time.

3. As an alternate method, petitioner proposes to provide safety precautions to help alleviate any hazards that may be caused by the lack of clearance, as follows:

a. Start and stop switches will be placed on the number 6 belt conveyor at each side of the affected area;

b. Caution signs, warning of close clearance, will be placed conspicuously in the track entry on both sides of the affected area; and

c. A safety meeting will be held with all underground employees to make them aware of the change and of the precautions that must be taken in this area.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May

7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8240 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-178-C]

Sharples Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Sharples Coal Corporation, P.O. Box D, Sharples, West Virginia 25183, on behalf of Zapata Coal Corporation, has filed a petition to modify the application of 30 CFR 75.1403-8(b) (clearance requirements on track haulage roads) to its Buffalo Creek No. 4 Mine (I.D. No. 46-03749) located in Logan County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage roads have a continuous clearance on one side of at least 24 inches from the farthest projection of normal traffic.

2. Petitioner seeks a modification of the standard in order to reroute the supply track around a roof fall. The area affected is approximately 200 feet long. The mine has no more than two pieces of equipment moving on the track at any given time.

3. As an alternate method, petitioner proposes to provide safety precautions to help alleviate any hazards that may be caused by the lack of clearance, as follows:

a. Start and stop switches will be placed on the number 6 belt conveyor at each side of the affected area;

b. Caution signs, warning of close clearance, will be placed conspiciously in the track entry on both sides of the affected area; and

c. A safety meeting will be held with all underground employees to make them aware of the change and of the precautions that must be taken in this area.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8244 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-159-C]

Sharples Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Sharples Coal Corporation, P.O. Box D, Sharples, West Virginia 25183, on behalf of Zapata Coal Corporation, has filed a petition to modify the application of 30 CFR 75.1403-5(g) (travelway requirements for belt conveyors) to its Buffalo Creek No. 4 Mine (I.D. No. 46-03749) located in Logan County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a clear travelway at least 24 inches wide be provided on both sides of all belt conveyors.

2. Petitioner seeks a modification of the standard in order to reroute the supply track around a roof fall. The area affected is approximately 200 feet long. The mine has no more than two pieces of equipment moving on the track at any given time.

3. As an alternate method, petitioner proposes to provide safety precautions to help alleviate any hazards that may be caused by the lack of clearance, as follows:

a. Start and stop switches will be placed on the number 6 belt conveyor at each side of the affected area;

b. Caution signs, warning of close clearance, will be placed conspiciously in the track entry on both sides of the affected area; and

c. A safety meeting will be held with all underground employees to make them aware of the change and of the precautions that must be taken in this area.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8247 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-6-C]

United States Steel Corp.; Petition for Modification of Application of Mandatory Safety Standard

United States Steel Corporation, 600 Grant Street, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Cumberland Mine (I.D. No. 36-05018) located in Greene County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. The large majority of oil and gas wells passing through the Pittsburgh seam were drilled and many were also abandoned between 1890 and 1920, during which period no standards for drilling and plugging existed. Oil and gas sands are now nearly depleted, and no appreciable volume of gas comes from petroleum reservoirs.

3. Petitioner states that if barriers were established and maintained around these oil and gas wells, the roof control plan of the mine would be adversely affected, and the mine ventilation plan would be complicated.

4. As an alternate method, petitioner proposes to seal and mine through an oil or gas well as follows:

(a) Prior to mining through a well, the well will be cleaned out to its original diameter and vertical profile to the maximum practicable extent;

(b) The well will be cleaned to its original depth, or to a point at least 200 feet below the Pittsburgh coal seam;

(c) The cleanout will include the removal of all casing where this can be reasonably accomplished. If the casing cannot be removed, the casing will be ripped, perforated, cut, or otherwise interrupted to ensure that plugging media fills the annulus between all remaining casing and the surrounding strata;

(d) The hole will be logged after cleaning, but prior to any ripping or perforating operations. Logging will include, as a minimum, a caliper survey and a directional deviation survey;

(e) Grout tubing of suitable diameter will be run into the well to a point approximately 10 feet above the bottom of the open hole. The hole will be filled to the surface with a weighted gel of approximately 14.5 pounds per gallon. The gel will be pumped into the well through the grout tubing, and the total volume will be determined;

(f) A slurry of expanding cement will be pumped into the well through the tubing, displacing the weighted gel, in accordance with accepted oil well cementing procedures. The cement slurry will be of sufficient volume to ensure complete filling of the hole by cement. Grout tubing will be removed from the hole as grouting operations are completed;

(g) Steel turnings or other small magnetic fragments will be imbedded in the top of the cement column to provide a permanent magnetic monument for the future relocation of the well site;

(h) Where the plugged well is to be used as a gob ventilation borehole after removal of the protective coal barrier, the well will be cleaned and prepared for cementing in the manner prescribed in subparagraphs (a) through (e) above, except that the casing may be left intact from a point thirty feet above the Pittsburgh coal seam to the surface;

(i) After the hole has been filled to the surface with weighted gel, a slurry of expanding cement will be pumped into the well through the tubing to displace the weighted gel. The volume of cement slurry will be calculated to completely fill the hole to a point at least 30 feet above the top of the Pittsburgh coal seam;

(j) When sufficient time has elapsed to permit the cement to set, the remaining weighted gel will be removed from the hole.

(k) The true elevation of the top of the cement will be determined. If the top of the cement is less than 30 feet above the top of the coal seam, additional cement slurry will be introduced until the required elevation is reached. If the top of cement is significantly higher than 30 feet above the coal seam, excess cement may be removed down to the required elevation;

(l) After the cement has cured, the hole will be prepared for use as a gob ventilation borehole;

(m) If all casing has been removed from the borehole zone, a new casing string will be installed consisting of slotted casing and solid casing separated by a suitable packer. The solid casing will be fully grouted to the surrounding strata from the packer to the surface;

(n) If the original casing has been left in place in the borehole zone, such casing will be cut off immediately above the top of the cement and will be perforated or slotted as appropriate for gob ventilation;

(o) Upon completion, the borehole will be equipped with appropriate headgear and operated in accordance with an approved gob ventilation borehole plan;

(p) The Mine Safety and Health Administration will be notified prior to mining through a well bore;

(q) All mine personnel in the affected area will be notified and instructed to proceed with caution when mining into and through the well bore;

(r) The well bore will be mined through and removed between the mine floor and roof during the normal mining cycle; and

(s) Mine management will examine the affected working place for methane gas immediately before, during, and immediately after the interception of well bore.

5. Petitioner states that the proposed alternate method outlined above will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8800 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-39-C]

W-P Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

W-P Coal Company, General Delivery, Omar, West Virginia 25638 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 21 Mine (I.D. No. 46-05801) located in Logan County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long;.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alaternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All

comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8251 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-32-C]

West Elk Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

West Elk Coal Company, Inc., P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.400 (accumulation of combustible materials) to its Mt. Gunnison No. 1 Mine (I.D. No. 05-03672) located in Gunnison County, Colorado. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that coal dust, including float coal dust deposited on rockdusted surfaces, loose coal, and other combustible materials be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein.

2. Petitioner seeks a modification of the standard to temporarily place gob material in the mine and establish a safer method for gob transport out of the mine.

3. A low quality material (gob) is produced in-seam, above and/or below the saleable coal. The gob material lacked sufficient structural integrity to form a good quality roof beam and failed between the roof supports. This resulted in loose roof which required additional support. This condition was best eliminated by removing the material prior to installing permanent roof support. A secondary rubber tire haulage system is used to maintain segregation of the two qualities of coal and remove the gob from the mine. This haulage system has caused accidents and near-misses. Measured respirable dust concentrations have increased during the sampling of the mechanized mining unit, particularly when gob haulage takes place. This makes compliance within the allowable dust concentration levels questionable if the present gob haulage system is maintained.

4. As an alternate method, petitioner proposes that:

(a) Gob material will be hauled to and temporarily placed in a designated area in the return aircourse;

(b) Gob material will be placed in designated areas which are remote from active work areas that will not restrict or reduce ventilation in the active working area. The gob will be placed so that designated escapeways are not blocked or passage inhibited, and to allow clearance on one side of placed gob for inspection;

(c) A carbon monoxide monitor and/or hand-held carbon monoxide detector will be used at the temporary placement area to monitor conditions. The area will be inspected during all preshift and on-shift examinations by a certified person. In addition, qualified persons will inspect conditions of gob placement prior to dumping gob material;

(d) Surface areas of freshly placed gob material will be rock dusted on the working shift on which it was deposited in the temporary placement areas. Additional rock dust will be applied when determined necessary;

(e) Signs will be installed to show the designated, temporary gob placement area and production section maps will be marked, indicating these areas;

(f) Gob material will be removed from the mine before the belt tail piece is advanced or when the capacity of designated placements areas is reached, but in any case no more infrequently than every 10 production days.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1984. Copies of the petition are available for inspection at that address.

Dated: March 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-8257 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Cancellation of Meeting

Notice is hereby given that the meeting of the Federal Advisory Council on Occupational Safety and Health, scheduled for April 11, 1984, is cancelled until a later date.

All communications regarding this Advisory Council should be addressed to Mr. John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Constitution Avenue NW., Room N3613, Washington, D.C. 20210, telephone (202) 523-9329.

Signed at Washington, D.C. this 3rd day of April 1984.

Patrick R. Tyson,

Deputy Assistant Secretary.

[FR Doc. 84-8227 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84-25; Exemption Application No. D-3706 et al.]

Grant of Individual Exemptions; Pacific Coast Roofers Pension Plan et al

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have

represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

This notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pacific Coast Roofers Pension Plan (the Plan) Located in San Jose, California

[Prohibited Transaction Exemption 84–25; Exemption Application No. D–3706]

Preamble

In granting this exemption, the Department notes that it is not making any determination regarding the merits of the proposed transactions as investments for the Plan.

Exemption

The restrictions of section 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) of the Code, shall not apply to the proposed use of Plan assets for the benefit of contributing employers to the Plan, pursuant to a reroofing loan program to be entered into between the Plan and Union Bank.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 23, 1983 at 48 FR 43426.

For further information contact: Richard Small of the Department, telephone (202) 523–7222. (This is not a toll-free number.)

Edward Goldfarb, M.D., S.C. Profit Sharing Plan and Trust (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption 84–26; Exemption Application No. D–4180]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan, for $25,000, of a limited partnership interest (the Limited Partnership Interest) to Dr. Edward Goldfarb (Dr. Goldfarb), provided the amount paid is not less than the fair market value of the Limited Partnership Interest on the date of sale. Since Dr. Goldfarb is the sole shareholder of Edward Goldfarb, M.D., S.C. and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1984 at 49 FR 7311.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Gamble, Inc. Employees' Stock Bonus Plan (the Plan) Located in Portland, Oregon

[Prohibited Transaction Exemption 84–27; Exemption Application No. D–4396]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective February 4, 1983, to (1) the sale by the Plan of 220,007 shares of common stock of Gamble, Inc., the prior sponsor of the Plan to Timberline Beverage Corporation (Timberline); (2) the guarantee of the obligations of Timberline by its parent, MEI Corporation (MEI); and (3) other transactions described in the purchase agreement executed between the Plan, Timberline, and MEI; provided that the terms of the transactions are no less favorable to the Plan than those obtainable in arm's-length transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 28, 1983 at 48 FR 57177.

Effective Date: This exemption is effective February 4, 1983. Written Comments and Hearing Requests: The Department received a letter submitted by the applicant in which the applicant stated it was unable to comply with the notice to interested persons requirements as set forth in the application.

Pursuant to conversations with the Department, the applicant notified all interested persons that the period to submit comments and hearing requests was to be extended until 30 days from the date they received a copy of the notice of pendency. The applicants confirmed to the Department that interested persons were mailed copies of the notice of pendency along with a statement informing them of their right to comment on or request a hearing on February 17, 1984.

The Department received no comments or requests for a public hearing from any interested persons.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Robert Sterman, an Accountancy Corporation Defined Benefit Pension Plan (the Plan) Located in Santa Ana, California

[Prohibited Transaction Exemption 84–28; Exemption Application No. D–4306]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a parcel of real property (the Property), located at 22395 Salmeron, Mission Viego, California, by the Plan to Mr. Robert Sterman (Mr. Sterman), a disqualified person with respect to the Plan, provided the price paid is no less than the fair market value of the Property on the date of sale. Since Mr. Sterman is the sole stockholder of Robert Sterman, an Accountcy Corporation and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1984 at 49 FR 7314.

For Further Information Contact: Ms. Jan D. Broady of the Department,

telephone (202) 523–8971. (This is not a toll-free number.)

Martin Bergmann, M.D. Inc. Pension Plan and the Martin Bergmann, M.D. Inc. Defined Benefit Pension Plan (the Plans) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 84–29; Exemption Application Nos. D–4661 and D–4662]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale to the Plans of a promissory note by Dr. Martin Bergmann, provided that the terms of the transaction are not less favorable to the Plans than those obtainable in an arm's length transaction with an unrelated party.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1984 at 49 FR 7316.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 3rd day of April 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs; U.S. Department of Labor.

[FR Doc. 84-8277 Filed 4-5-84; 8:45 am]

BILLING CODE 4510-29-M

[1] Since Dr. Bergmann is the sole stockholder of Martin Bergmann, M.D. Inc. (the Employer) and the only participant in the Plans, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-34]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC), Space Station Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee, Space Station Task Force.

DATE AND TIME: April 25, 1984, 8:30 a.m. to 5:30 p.m.; and April 26, 1984, 8:30 a.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth J. Frost, Code 684.0, NASA/Goddard Space Flight Center, Greenbelt, MD 20771 (301/344–8811).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee, Space Station Task Force, consults with and advises the Space and Earth Science Advisory Committee, the Council, and NASA on plans for, and work in progress on, the scientific utilization of the new capabilities which will be afforded by the Space Station, including the relationship of these plans to the existing space science program. This advice includes periodic updates of scientific requirements on Space Station hardware and operations, and interaction with contractors during the definition phase of Space Station development. The Task Force is chaired by Dr. Peter Banks and is composed of 8 other members of standing committees of the Council, who will meet with about 10 other invited participants and certain NASA personnel.

The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons, including Task Force members and invited meeting participants). Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda

April 25, 1984

8:30 a.m.—Introductory remarks.
9 a.m.—Overview of Headquarters Space Station Activities.
11:30 a.m.—Group Discussion.
1 p.m.—Relationship of Task Force to Internal NASA Space Station Task Force.
3:30 p.m.—Role of NASA Field Centers in Space Station Development.
5:30 p.m.—Adjourn.

April 26, 1984

8:30 a.m.—Budgets for Space Shuttle, Space Station, and New Science and Applications Activities.
10 a.m.—Internal NASA Space Station Working Group Report.
1 p.m.—Space Science Board Views on Space Station Concept.
2:30 p.m.—Meeting Summary, Discussion of Future Activities.
5:00 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-8178 Filed 4-5-84; 8:45 am]

BILLING CODE 7510-01-M

[Notice (84-33)]

National Environmental Policy Act; Finding of No Significant Impact

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of finding of no significant impact.

SUMMARY: The eleventh flight of the Space Shuttle (STS–41–C), with a crew of five astronauts, is currently scheduled for early April 1984 from Kennedy Space Center (KSC), Florida. The objectives of this flight are to: (1) Successfully deploy the Long Duration Exposure Facility (LDEF); retrieve, repair, and redeploy the Solar Maximum Mission (SMM); (3) perform the functions of the IMAX and

Cinema 360 Cameras; (4) conduct research using the properties of space (student experiment in the crew compartment); and (5) check out, test, monitor, and evaluate the Shuttle vehicle systems and supporting equipment (Radiation Monitorting Equipment, Manned Maneuvering Unit, and other development and testing activities).

These payload missions represent an effort to further develop and enhance research capabilities and knowledge of the space environment and demonstrate the on-orbit servicing capability of the Shuttle. None of the payloads utilize significant quantities of hazardous materials or involve high risk operations.

Two major alternatives to the Proposed Action were considered as reasonable approaches to achieving the payload mission objectives. These included the use of Expendable Launch Vehicles (ELV Alternative) and terrestrial systems (No-Action Alternative). Because of technical and operational constraints, most of the proposed mission experiments on STS–41–C could not be achieved under the two alternatives.

The results of this assessment indicate that the launch vehicle impacts would essentially eclipse those associated with the payloads. Previous environmental studies addressing launch vehicle operational impacts (i.e., the Space Shuttle and ELV's) have been incorporated into this assessment and are summarized briefly here.

During the launch phase of the Shuttle from KSC, hydrogen chloride (HCL) will be introduced into the stratosphere causing a small decrease in ozone. Temporary perturbations to the ionosphere will occur from the orbital maneuvering system firings and propellant dumps as well as during entry. As the orbiter descends, a low magnitude sonic boom will be produced along the groundtrack with the maximum overpressure occurring near the landing site at KSC. The sonic boom will effect approximately 500,000 people in a 60 kilometer × 120 kilometer area. The maximum overpressure will be 101 newtons/square meter over a 161 square kilometer area. The boom will expand the entire width of the state and will be audible as far north as Orlando and as far south as Sarasota. The overpressures are temporary and, in most cases, in the range of nuisance or annoyance. Effects of sonic booms on humans, animals, and marine life are expected to be limited to startle responses. Non-primary structures or buildings may sustain minor damage at overpressure ranging from 48 to 144 newtons/square meter.

The alternate landing site is Edwards Air Force Base. Based on orbiter landings at this latter site on earlier missions, there have been no significant environmental impacts associated with the orbiter reentry. The maximum population affected by a sonic boom is about 50,000 in a sparsely populated region northwest of Los Angeles, California. Experiments on the effects of sonic booms indicate that wildlife reactions up to 300 newtons/square meter do not involve frantic or panic reaction. Several species-specific studies on the effect of impulse noise (similar to that produced by the Shuttle) indicate little effect on physiology, reproduction, or nesting behavior.

From the perspective of payload, ground, and flight operations, no significant long-term, adverse impacts are anticipated under the Proposed Action. Specific findings of this analysis with respect to the payloads include:

Socioeconomics. Employment levels associated with payload manufacture, support, and servicing would be relatively small and geographically dispersed in comparison with launch vehicle systems. Of greater significance are the potential social (e.g., education, technology spinoffs) and customer (e.g., cost savings, research knowledge gains) benefits anticipated under the Proposed Action. LDEF experiments, for instance, will determine what happens to samples (materials, coatings, solar cells, electronic parts, and biological specimens) over a long period of space exposure, information important to the design of future spacecraft and onboard equipment. The SMM will be the Shuttle's first demonstration of retrievability. Retrievability will allow an extension of a satellite's working lifetime and savings in replacement costs—either by repairing it on-orbit or returning it to Earth for refurbishment. Finally, orbital servicing provides a new measure of design latitude for spacecraft designers. With the use of alternative launch vehicles or ground-based systems, many of these benefits would be markedly reduced or eliminated.

Space Quality. The present and future orbital debris population in Low Earth Orbital (LEO) was analyzed to determine the collision probability of orbital debris with operational payloads on STS–41–C. For the Proposed Action, there would be no contributions to the debris population.

Air, Land, and Water Quality. The payload environmental effects on air, land, and water quality from payload manufacture through post-flight processing are expected to be negligible. Sources of these effects include payload manufacture (waste products from primary production and assembly operations); launch site processing and testing; and post-flight reprocessing (e.g., venting, purging, and cleaning operations). Adherence to regulatory and safety practices and procedures would limit the impact to air, land, and water quality from the storage, release, or use of materials and/or wastes.

Noise. Noise effects from payloads are expected to occur in association with payload manufacture and launch site preprocessing or postprocessing activities. Relative to other noise sources and levels, these sources should not cause a disturbance or annoyance to the general public. Occupational type noise, together with road traffic noise, are the two major noise sources that affect people. Occupational safety and health regulations limit worker exposure over a period of 8 hours to a sound level or less than 90 dB_A. Engineering controls and safe practices serve to protect worker health. No adverse noise impacts are anticipated from payload manufacture or launch site operations.

Ecological Resources. Based on the results of the analyses performed relative to the potential for waste steam generation from the LDEF and SMM activities, no long term or cumulative effects are predicted on flora or fauna. Most of these effects are traceable to the manufacturing process and, on a per-payload basis, are negligible. Direct impacts on endangered or threatened species and critical habitat are not anticipated because of the small quantities of waste or low risk associated with the payload manufacturing and operational cycle.

Health. Public and occupational health effects for the LDEF and SMM are not anticipated to be significant. Payload ground and flight operations which involve hazardous emissions or operations are controlled through stringent design and operational procedures to minimize the threat of life or safety of crew or employees during normal operations.

Resource Use. Natural and cultural resource commitments are insignificant when compared to national data bases. Shuttle-related energy and material demands are significantly larger than payload commitments. Generic estimating techniques indicate that total energy commitments will require about 750×10^9 kJ for a Shuttle launch. Relative to the total U.S. energy consumption of 84×10^{15} kJ, this demand is insignificant. Material commitments also are negligible on a national scale and primarily involve steel, aluminum, composites, titanium, and solid and liquid propellants.

Accidents. Under worst-case scenarios, some payloads and payload operations could result in damage to the Space Transportation System equipment or personnel. The probability and severity of these events, however, are reduced or eliminated with appropriate hazard controls.

Differences between the Proposed and Alternative Actions' environmental effects are not significant. The most noteworthy differences involve the reduced benefits to society and STS customers because of the more limited capabilities and services offered by alternative launch systems or ground-based systems. Reductions in environmental effects also would be commensurate with the number of missions that would have to be abandoned.

SUPPLEMENTARY INFORMATION: The environmental assessment for this proposed project was completed by the National Aeronautics and Space Administration in March 1984..

Conclusion. The Shuttle launch of the STS-41-C payloads will not result in any significant adverse environmental impacts. No environmental impact statement is required for this launch.

EFFECTIVE DATE: April 6, 1984.

ADDRESS: National Aeronautics and Space Administration, Code MCP, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Don Turner (202)453-2400.

April 2, 1984.

John W. Boyd,

Associate Administrator for Management.

[FR Doc. 84-9177 Filed 4-5-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Alan T. Waterman Award Committee; Renewal

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, it is hereby determined that the renewal of the Alan T. Waterman Award Committee is necessary and is in the public interest in connection with the performance of duties imposed upon the National Science Foundation by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, as required by the Federal Advisory Committee Act and other applicable regulations.

Authority for the Alan T. Waterman Award Committee shall expire on April 11, 1986, unless the Director of the National Science Foundation formally determines that continuance is in the public interest.

Dated: April 3, 1984.

Edward A. Knapp,

Director.

[FR Doc. 84-9270 Filed 4-5-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Diablo Canyon Nuclear Power Plant Units 1 and 2; Meeting

The ACRS Subcommittee on Diablo Canyon Nuclear Power Plant Units 1 and 2 will hold a meeting on April 19, 1984, Room 1046, 1717 H Street NW., Washington, D.C. The Subcommittee will continue to review the small and large bore piping adequacy and quality assurance documentation issues discussed during the 288th ACRS meeting.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, April 19, 1984—8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Pacific Gas and Electric Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. John C. McKinley (telephone 202/634-1413), between 8:15 a.m. and 5:00 p.m., est.

Dated: April 3, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-9270 Filed 4-5-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Indian Point Units 1 and 2 and Reliability and Probabilistic Assessment; Meeting

The Combined ACRS Subcommittee on Indian Point Units 1 and 2 and Reliability and Probabilistic Assessment will hold a meeting on April 26, 1984, Room 1167, at 1717 H Street, NW, Washington, D.C. The Subcommittee will discuss the Indian Point PRA, the issues addressed in the recent ASLB hearing on Indian Point, and severe accident issues associated with Indian Point. Notice of this meeting was published March 26, 1984 (49 FR 11268).

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, April 26, 1984—8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff,

their consultants, and other interested persons regarding the topics to be discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: April 3, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-9271 Filed 4-5-84; 8:45 am]

BILLING CODE 7590-01-M

NRC Meeting To Discuss the Use of the Terms "Important to Safety" and "Safety-Related"

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Meeting.

SUMMARY: The NRC staff is planning to hold a public meeting to discuss whether further guidance is needed regarding the terms "important to safety" and "safety-related."

DATE: Date and Location: April 30, 1984, Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20018.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen M. Goldberg, Division of Quality Assurance, Safeguards, and Inspection Programs, Office of Inspection and Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555 (Phone: 301/492–9667).

SUPPLEMENTARY INFORMATION: NRC has recently received letters from several interested parties concerning whether further guidance is needed regarding the terms "important to safety" and "safety-related" as discussed in Generic Letter 84–01, January 6, 1984. The NRC staff is interested in the public's comments and views concerning this issue. Certain interested parties, who have frequently communicated to the NRC concerning this issue, have been prescheduled to speak at this meeting. Others who would like to speak should inform the NRC by no later than April 25, 1984 in order to appear on the program. Written comments will also be considered concerning this matter. All written comments should be received at the NRC by no later than June 1, 1984.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 2nd day of April 1984.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-9272 Filed 4-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–261]

Carolina Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR–23, issued to Carolina Power and Light Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant Unit No. 2 located in Darlington County, South Carolina.

The amendment would provide a temporary revision to license condition 3.F., Physical Protection, to Operating License DPR–23. The licensee, by application for amendment dated October 25, 1983, as supplemented by letter dated March 5, 1984, proposes to devitalize all areas except the fuel building while the plant is under construction for replacing major sections of the steam generator. During the construction program, the plant will be in cold shutdown, the reactor defueled, and all fuel secured in the fuel building.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) invove a significant reduction in a margin of safety.

This is a safeguards action, therefore, does not specifically fit guidance concerning the application of the standards in 10 CFR 50.92 by the examples provided by 48 FR 14870. The applicant has requested a temporary revision in their Physical Protection pursuant to 10 CFR 73.55. The plant will be in cold shutdown and the reactor fuel secured in the fuel building while the construction program is underway. The licensee will maintain an adequate level of security and implement measures necessary to protection against radiological sabotage or theft of special nuclear reactor material. On the basis Commission proposes to determine that the request for the amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By May 7, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular references to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union operator at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Branch Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request; that determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Bethesda, Maryland, this 3rd day of April 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1 Division of Licensing.

[FR Doc. 84-8273 Filed 4-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454-OL and 50-455-OL]

Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members:

Alan S. Rosenthal, Chairman
Dr. Reginald L. Gotchy
Howard A. Wilber

Dated: April 2, 1984.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 84-8274 Filed 4-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 75 to Facility Operating License No. DPR-36, issued to the Maine Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Maine Yankee Atomic Power Station (the facility) located in Lincoln County, Maine. The amendment was effective as of the date of its issuance.

The amendment authorizes the licensee to rerack the spent fuel pool to store 1476 standard fuel assemblies and to consolidate the fuel pins of no more than 20 standard fuel assemblies for storage. It also authorized the licensee to store up to 121 standard fuel assemblies in the emergency rack in the cask laydown area.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. The amendment completes the proposed action encompassed within the scope of the Notices of Proposed Issuance of Amendment to Operating License which were published in the Federal Register on October 24, 1979 (44 FR 61273) and January 28, 1981 (46 FR 9315). As a result of the filing of appropriate petitions and contentions, a hearing was noticed and Sensible Maine Power and the State of Maine were admitted as intervenors and full parties to the proceeding. Subsequently, the licensee, the NRC staff, and the intervenors reached agreement among themselves, and offered this settlement to the Atomic Safety and Licensing Board (ASLB) on February 16, 1984. On March 9, 1984 the ASLB issued an Order Granting Motion to Withdraw Contentions, Granting Motioni to Withdraw a Portion of Application, and Authorizing Issuance of Amendment to Operating License which completes this portion of the adjudicatory process.

The Commission has issued an Environmental Impact Appraisal dated June 16, 1982 for this action and has concluded that an Environmental Impact Statement for this action is not warranted because the action will not significantly affect the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated September 18, 1979 as supplemented by letters dated October 18, 1979, September 29, 1980, July 28, September 29, October 5, and October 26, 1981 and February 10, May 7, July 21 and September 7, 1982; (2) the Commission's related Safety Evaluation and Environmental Impact Appraisal dated June 16, 1982 and Supplemental Safety Evaluation dated October 22, 1982; (3) Amendment No. 75 to DPR–36, (4) the Commission's letter dated April 2, 1984; and (5) the ASLB's Order dated March 9, 1984. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Wiscasset Public Library Association, High Street, Wiscasset, Maine.

A copy of items (2), (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 2nd day of April, 1984.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3 Division of Licensing.

[FR Doc. 84-8275 Filed 4-5-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of OMB Circular No. A–45, "Policy Governing Charges for Rental Quarters and Related Facilities"

AGENCY: Office of Management and Budget.

ACTION: Final Issuance of OMB Circular No. A–45, "Policy Governing Charges for Rental Quarters and Related Facilities."

SUMMARY: This OMB Circular provides policy and administrative guidance to Federal agencies in establishing and administering rental rates for Government-furnished quarters, as required by 5 U.S.C. 5911. Implementation of the Circular is expected to facilitate the establishment of rental rates that are uniform and equitable.

EFFECTIVE DATE: This Circular, which supersedes OMB Circular No. A–45, dated October 31, 1964, as amended, is effective upon publication.

FOR FURTHER INFORMATION CONTACT: David F. Baker, Office of Management and Budget, Washington, D.C. 20503 (202) 395–7207.

SUPPLEMENTARY INFORMATION: On August 8, 1983, the Office of Management and Budget published a draft revision of OMB Circular No. A–45 for a 60-day period of public and agency comments. (The revision reflected the efforts of an interagency task group, under OMB's leadership, to simplify, clarify and update Circular No. A–45, as recommended by the Assistant Secretaries for Management under the auspices of the Administration's Reform '88 program.) Comments were received from 50 individuals and organizations, including Federal agencies and employee unions and associations.

A summary follows of the major comments grouped by subject and a response to each—including a brief description of changes made as a result of the comments. Many other changes of a less significant character were made to increase clarity, simplicity and readability.

A. Required Occupancy

Comment: Several commenters suggested that, because some Federal employees are required to occupy Government quarters (to protect life and property and for other reasons), a deduction in rental rates should be provided to reflect those additional services.

Response: We disagree. While it is true that some employees are required to occupy specific Government-furnished quarters, such a requirement is a known condition of employment and a factor in establishing the grade and salary of the position. To provide a rent reduction in such instances would be to duplicate this factor and, thus, provide an employee subsidy. Moreover, in enacting 5 U.S.C. 5911, the Congress was clearly aware that some employees were required to occupy quarters, since 5 U.S.C. 5911 provides a definition of such occupancy. Yet, the Congress did not provide for a separate deduction to reflect this factor.

B. Reasonable Value to the Employee

Comment: Many commenters noted that in summarizing the policy established in 5 U.S.C. 5911, the draft Circular had omitted the phrase "to the employee" when discussing the reasonable value of Government-furnished quarters. Those commenters recommended that the phrase be incorporated in the policy statement.

Response: We agree. Paragraph 5 has been revised to include the phrase "to the employee." We would note, however, that inclusion of this wording does not alter the substantive definition of reasonable value—since it is still to be based upon a determination of equivalency with comparable housing in the private sector.

C. Rental Ceiling Based on Employee Income

Comment: Some commenters suggested that a rental rate ceiling based on a set percentage of employee salary (e.g., 20 percent) should be included in the Circular. They noted that such a provision had been included in the Circular previously as it related to housing of excessive size or quality, and suggested that it be made applicable to all Government-furnished quarters.

Response: We disagree for several reasons. First, the refinements made in the revised Circular—particularly the new isolation formula, the amenity deductions and the elimination of the restriction on institutional atmosphere in establishing rental rates—should eliminate any excessive rates and, thus, the need for a ceiling. Secondly, the burdens associated with administering a rental rate program based on ever-changing levels of income or salary and the questions of equity raised by such

an approach (e.g., multiple household incomes versus single household income) argue against such an approach. Lastly, the Circular does contain a provision (Para. 7.e.(5)) which would permit agencies to seek an exception from OMB on a case-by-case basis in those very unusual circumstances when the provisions of the Circular would result in unreasonable or excessive rental rates.

D. Preferred Methods of Determining Equivalency

Comment: Some commenters suggested that the Circular should provide guidance to agencies on selecting the appropriate method for determining housing equivalency (i.e., appraisals or regional surveys).

Response: We agree. A statement has been incorporated in paragraph 7a of the Circular which indicates that regional surveys—due to lesser cost and administrative burdens—should be utilized by agencies whenever possible.

E. Interagency Coordination

Comment: Three commenters suggested that, in the interest of more uniform rates and reduced administrative costs, the Circular should explicitly encourage agencies to combine their efforts in establishing rates.

Response: We agree. Provisions to this effect have been included in paragraphs 5 and 7a(2). In addition, language encouraging the establishment of interagency committees was included in paragraph 8b.

F. Limits on Rental Deductions

Comment: Some commenters suggested that, in lieu of providing a flat limit on rental deductions (based on 40 percent of the base rate), the Circular should retain the existing dual approach. They suggested that there should be one limitation for the total of all adjustments (i.e., not more than 50 percent of the base rental rate) except when the isolation factor is applicable whereupon another limitation would go into effect (i.e., 40 percent of the base rental rate). The commenters suggested that, otherwise, deductions could become excessive.

Response: We agree. Language reflecting this approach has been included in paragraph 7c.

G. Established Community

Comment: The definition of "established community" was the focus of several comments. Some commenters suggested that in lieu of simple population and accessibility factors serving as the basis for the definition, the Circular should reflect some or all of the specific services cited in the previous Circular as necessarily being present for a community to be considered as established.

Response: We agree, in part. While we continue to believe that the simplest and most effective definition is one based on population and accessibility, we have included a secondary qualification that minimum essential medical facilities, available to housing occupants, be present. (We have also included a separate population minimum for Alaska due to unique characteristics of that State.) To go beyond these factors and define an established community in terms of specific services, as was done previously, would (1) be contrary to our principal purpose of simplifying the Circular, and (2) provide a basis for continuing and inconclusive debate on the nature and appropriateness of the specific services.

H. Per Diem Considerations

Comment: It was suggested by two commenters that the Circular should distinguish between housing provided under the terms of 5 U.S.C. 5911 and temporary housing provided to Federal employees who are in a per diem status.

Response: We agree. A new section addressing this point has been added (Para. 7.e.(4)).

I. Employee Committees

Comment: One commenter suggested that employee committees be reinstituted as one of three methods (along with regional surveys and appraisals) for determining rental rates.

Response: We disagree for three reasons. First, there is a clear potential for conflict of interest arising out of situations wherein Federal employees who live in Government-provided housing determine the rent for that housing. Secondly, we believe that fair and equitable rental rates are more likely to result from surveys or appraisals made by persons with skill and experience in real estate valuation. Third, we know of no instance in recent years where an employee committee was utilized for this purpose and, therefore, we question the need for this third alternative.

J. Agency Review of Proposed Rates

Comment: One commenter suggested that survey and appraisal results not be implemented until agencies had the opportunity to examine them to ensure fair and impartial rental rates.

Response: We agree. Language to this effect has been incorporated in paragraph 7.a.

K. Detailed Guidance

Comment: One commenter suggested that the Circular should provide more detailed guidance to agencies on how rental rates are to be established. He suggests, for example, that the Circular should identify the specific "statistical techniques" to be employed in conducting regional surveys.

Response: OMB Circulars are intended to provide broad policy guidance to agencies—leaving to those agencies sufficient flexibility to implement the given policy as effectively as possible in a wide variety of differing situations. To provide more detail in this Circular would run counter to that fundamental objective and, in the long run, it would be self-defeating since it would be impossible to anticipate all possible eventualities in as complex an area as the development of rental rates.

L. Isolation from Established Communities

Comments: One commenter suggested that the isolation factor should be applied to the distance from the location of comparable private housing, not necessarily the nearest established community. The commenter argues that the nearest established community may be devoid of normal amenities and, consequently, inadequate as a basis for determining isolation.

Response: We disagree. First, we believe the formulas for determining rental rates, on the one hand, and isolation adjustments, on the other, are separable and should not be combined, which would be the result of accepting this suggestion. Moreover, we have found no instances where an established community of 1,500 persons (5,000 in Alaska) is lacking in normal amenities. Should such a situation arise, however, the Circular provides a basis in paragraph 7.e.(5) for an exception to this as well as other provisions of the Circular which, in unusual circumstances, could result in unreasonable rental rates.

M. Excessive Heating and Cooling Costs

Comment: One commenter suggested that a reduction in base rental rates should be granted when heating or cooling costs, due to poor design or other factors, exceeded average heating or cooling costs for comparable housing by 10 percent—in lieu of the 25 percent factor cited in the Circular. He also suggested that the location of "comparable housing" should be restricted to that housing within a reasonable distance.

Response: We agree, in part. Wording has been added to paragraph 7.c.(6) that

limits "comparable housing" to housing located in the same area and climate zone. We continue to believe, however, that 25 percent is the more appropriate triggering percentage for applying the adjustment. Not only is it more in line with the static figure of $50 cited in the existing Circular, but it is more indicative of design or other structural deficiencies. A lesser percentage could result simply from variations in life style.

Candice C. Bryant,

Deputy Associate Director for Administration.

March 28, 1984.

[Circular No. A–45 Revised]

To the Heads of Executive Departments and Establishments

Subject: Policy Governing Charges for Rental Quarters and Related Facilities.

1. *Purpose.* This Circular sets forth policies and administrative guidance to be used by executive agencies in establishing and administering rental rates and other charges for Government-furnished or leased rental quarters and related facilities.

2. *Rescissions.* This rescinds OMB Circular No. A–45, dated October 31, 1964, as amended.

3. *Authority.* This Circular is issued by virtue of the authority vested in the President by 5 U.S.C. 5911(f), and delegated to the Director of the Office of Management and Budget by Section 9 of Executive Order 11609 of July 22, 1971.

4. *Coverage.* The provisions of this Circular apply to all Government rental quarters located within the fifty States, the District of Columbia, and the territories and possessions of the United States.

5. *Policy.* It is the policy of the Federal Government that:

a. Rental rates and charges for Government quarters and other facilities will be based upon their "* * * reasonable value * * * to the employee * * * in the circumstances under which the quarters and facilities are provided, occupied or made available" (5 U.S.C. 5911). As intended by the Congress, reasonable value to the employee or other occupant is determined by the rule of equivalence; namely, that charges for rent and related facilities should be set at levels equal to those prevailing for comparable private housing located in the same area, when practicable; and

b. Federal employees whose pay and allowances are fixed by statute or regulation may not receive additional pay and allowances for any service or duty unless specifically authorized by law (5 U.S.C 5536). Consequently, rents and other charges may not be set so as to provide a housing subsidy, serve as an inducement in the recruitment or retention of employees, or encourage occupancy of existing Government housing.

When properly determined in accordance with the provisions of this Circular, rental rates will be fair to both the Government and the employee (or other authorized occupant), be set so as to maintain fairness between the employee in Government quarters and the employee who lives in private-sector leased housing, and not serve as an obstacle in recruiting or retaining employees. Such rental rates, moreover, should reflect a consistent local pattern for all Federal quarters in a given location.

6. *Definitions.*

a. *Base rental rate.* The base rental rate is the rental value of the quarters, established in accordance with the provisions of this Circular, before applying any administrative adjustments or charges for related facilities.

b. *Comparable housing.* Comparable housing is housing in the private sector which is generally equivalent in size to the rental quarters, with the same number of bedrooms, and with generally equivalent amenities and related facilities. Such housing is housing available on a landlord-tenant basis, with rental rates reflecting the fair market value of the accommodations. This is distinguished from housing rented on an "employer-employee" basis or between friends and relations, for which other considerations may have influenced the rental rates. In addition, such housing as other Government-furnished housing (Federal, State or local) and housing provided by churches or religious societies are excluded from this definition of private housing.

c. *Established community.* An established community is ordinarily the nearest population center (Metropolitan Statistical Area or an incorporated or unincorporated city or town) having a year-round population of 1,500 or more (5,000 or more in Alaska), provided that it has minimum essential medical facilities (i.e., at least one physician and one dentist) available to occupants of Government quarters. Population determinations will be based upon the most recently published decennial census of the United States.

d. *Reasonable value.* Reasonable value for rental quarters is to be measured by the test of equivalence (i.e., what the employee would pay for comparable housing in the open market). Rental rates, including charges for related facilities when appropriate, will be based upon prevailing rates for comparable private housing located in the same general area, after taking into account those factors which reduce or increase the value of the housing to the tenant.

e. *Related facilities.* Related facilities are equipment, supplies and services made available in connecton with the occupancy of quarters including, but not limited to, household furniture and equipment, garage space, utilities, subsistence, and trash and laundry services.

f. *Rental quarters.* Except as specifically excluded herein or by statute, the term "rental quarters," includes all furnished and unfurnished quarters supplied under specific Government authority to Government employees, contractors, contractor employees, and all other persons to whom housing is provided as an incidental service in support of Government programs. It includes, but is not limited to, Government-owned or leased single family dwellings, apartments, bunkhouses, dormitories, trailer pads, cabins, guard stations and lookouts, mobile homes, house trailers, permanent and semi-permanent tents, and housekeeping as well as nonhousekeeping units. The term excludes "public quarters" designated for occupancy by members of the uniformed services with loss of allowances, but it includes quarters occupied by such personnel on a rental basis under 37 U.S.C. 403(e), 42 U.S.C. 1594a(f) and 1594b, and other authorities.

7. *Procedures.*

a. *Charges for quarters.* The determination of reasonable value of Government-furnished quarters will be based upon an impartial study of comparable private rental housing. There are two methods which may be employed to determine the base rental rate. The first, an appraisal, involves direct comparison with individual private rental housing units. The second, the regional survey, creates a series of economic models based upon a survey of comparable private rental properties throughout the region. While both methods are accurate, agencies are encouraged to utilize the survey method, whenever possible, due to the costs and administrative burdens associated with conducting individual appraisals. Regardless of the method used, results of surveys and appraisals will be reviewed by the agency prior to implementation to assure that they are fair and reasonable, and that they were developed in accordance with the provisions of the Circular. Both methods

are subject to the conditions and limitations set forth below.

(1) *Appraisals.*

(a) *Urban and suburban locations.* If Government quarters are located in or within five miles of an established community, in an urban or suburban location, the base rental rate may be determined by either a staff or contract appraiser, applying recognized real estate valuation principles.

None of the administrative adjustments provided in paragraph 7c will be made for isolation, site amenities, space devoted to official use, or excessive heating or cooling costs when an appraisal is made in an urban or suburban location. These factors, if appropriate, will already have been considered by the appraiser in the appraisal process.

(b) *Rural areas.* When the appraisal method is used to determine the reasonable value of quarters which are not located in or within five miles of an established community, it will be subject to the following limitation: To ensure a uniform approach to valuation when conducting an appraisal in such areas, the staff or contract appraiser will be limited to comparing the Government-furnished quarters with housing in the nearest established community. If there is no adequate rental market in the nearest established community which is not unduly affected by severe economic conditions, the appraiser may select comparable rental units from the next closest established community having a rental market. Such comparison will be limited to adjustments for the physical differences in the housing. The appraiser in such instances will not make adjustments for isolation or those site amenties listed in paragraph 7c(2). These adjustments will be made administratively in the same manner as authorized for regional surveys.

(2) *Regional surveys.* Regional surveys may be used in all locations where Government quarters are located. If the regional survey method is used, the base rental rates will be set by means of a series of economic models that utilizes typical rental rates for comparable private rental housing in the general area in which the Government quarters are located. (The actual analysis of rental data for the establishment of base rental rates may be accomplished using appropriate statistical techniques, such as step-wise multiple regression.)

To avoid duplication and inconsistent rates, all agencies with quarters in a given location should coordinate their survey plans and conduct a single survey applicable to all. The area selected for survey should be large enough to permit an adequate sampling of comparable rental properties in several established communities and may encompass one or more States. Ideally, the survey would establish the rental rates for a large number of Government quarters, thereby providing an economy to the Government. The methods of analysis must be capable of recognizing both the physical characteristics and the differences in economic conditions, and reflecting such differences in the base rental rates. Private rental housing samples reflecting extremely high or low rental rates should be excluded from the data base subjected to final analysis. In those communities where the rental rates are extremely high or low, the rental housing market should be reviewed periodically between surveys to determine whether changes in the private rental market warrant revision of the base rental rates for the quarters located near those communities. Appropriate adjustments may be made to the base rental rates established for quarters in accordance with the provisions of section 7c.

b. *Charges for related facilities.*

(1) *Utilities.* It is Government policy to minimize energy consumption. Consumption has been found to decrease when occupants of Government-furnished quarters are required to pay for the actual cost of utilities used (such as electricity, oil, natural gas, propane, telephone, cable television, water and sewer). Utilities should be furnished by a private company and billed directly to the occupant, whenever possible.

When Government-furnished utilities are provided, they should be metered or measured (e.g., a ton of coal), where practicable. The rate for utilities furnished by the Government will be the same as the residential rate for these utilities in the established community of survey area used in determining the base rental rate. The consumed amount of Government-furnished utilities that are indivudually metered or measured will be determined by actual readings.

When Government-furnished utilities are not individually metered or measured, consumption will be determined on the basis of an analysis of the average amounts of utilities used in comparable private sector housing in the established community or survey area. (Such estimates are usually available from local utility companies.) Normally, utility charges will be clearly shown and separated from rent charges. Utility charges may be combined, however, in one charge for nonhousekeeping rooms.

(2) *Furnishings.* If there is an inadequate market of comparable furnished housing for purposes of comparison with furnished quarters, the rents on otherwise comparable unfurnished private units may be used as the base and adjusted by a reasonable charge for furnishings (i.e., household furniture and equipment). This adjustment should be based on actual replacement costs allocated over the useful life of the furnishings.

(3) *Other services.* Charges for other services provided by the Government including, but not limited to, laundry, trash and garbage removal, lawn care and snow removal will be based upon prevailing rates for such services in the established community or suvey area.

(c) *Administrative adjustments.* Application of the preceding guidelines might result in some instances in rental rates that are either higher or lower than "the reasonable value of the quarters." In such instances, adjustments in the form of additions to, or deductions from, the base rental rate are appropriate in the specific situations described below. The total amount deducted for all reasons must not be excessive, resulting in a rental rate to the occupant that is less than the reasonable value of the quarters, since this would constitute a supplement of salary in contravention of law. The rental rate, after all adjustments and the additon of charges for furnishings, must not be less than 50 percent of the base rental rate, unless an adjustment for isolation has been made. In such instances, the rental rate may be set at not less than 40 percent of the base rental rate.

(1) *Isolated locations.* In some cases, the Government supplies quarters in locations where minimal community services are available but only at some distance from the quarters. In addition, travel conditions or mode of transportation may serve to further isolate some employees from minimal community services. In such situations, the head of an agency shall grant a reasonable adjustment to ameliorate the direct economic effects of the isolation, utilizing the procedure described below and in Appendix A.

The nearest established community will be used as the community for calculating the deduction, even though that community may not serve as the location of the comparable private housing used in establishing the base rental rates. The mileage used in computing the adjustment will be the shortest route usually traveled from the rental quarters to the nearest established community. If that route is closed seasonally, a weighted average

adjustment will be used for the entire year, based upon the number of months each route would ordinarily be used.

The adjustment is designed to recognize different categories of highways and modes of transportation. Because of the range of possible travel conditions and modes of transportation, point values have been assigned to each category of transportation. These point values represent differences in time, cost, or both associated with each mile of each category of transportation from the quarters to the nearest established community.

The point values are multiplied by the number of one-way miles from the quarters to the nearest established community, to produce one-way points. When travel from the quarters to the nearest established community involves more than one category of transportation, the one-way miles are distributed accordingly. The one-way points in each category are then added to produce total one-way points, which must exceed 30, or there is no adjustment. Finally, the total one-way points for all modes of transport are multiplied by an Isolation Adjustment Factor (based on the automobile mileage allowance determined by the General Services Administration) to produce the monthly dollar adjustment.

(2) *Site amenities.* Living conditions at the locations of some Government housing are not always the same as those found in or immediately adjacent to the survey or appraisal communities. In such communities, the amenities listed below are generally, but not always, present and their contributory value included in the base rent. The lack of availability of any of these items at the quarters location represents a generally less desirable condition which should be reflected as a negative percentage adjustment to the base rental rate, as shown below. Similarly, an upwards percentage adjustment should be made in the base rental rate for quarters possessing site amenities which are not present in the survey or appraisal communities used to establish the base rent.

(a) *Reliability and adequancy of water supply.* The system should provide potable water (free of significant discoloration or odor) at adequate pressure at usual outlets. (+ or −3 percent)

(b) *Reliability and adequacy of electric service.* Service must equal or exceed a 100 ampere power system capable of providing 24-hour service under normal conditions. (Occasional temporary outages are considered normal.) If an adequate backup generator is available, the amenity will be rated as present regardless of the reliability of the primary power source. (+ or −3 percent)

(c) *Reliability and adequacy of fuel for heating, cooling and cooking.* There should be sufficient fuel storage capacity to meet prevailing weather conditions and cooking needs. Where electricity is used to heat, cool or cook, this adjustment is to be made only when the deduction in (b), above, applies. (+ or −3 percent)

(d) *Reliability and adequacy of police protection.* Law enforcement personnel, including Government employees with law enforcement authority, should be available on a 24-hour basis. Availability is defined as the ability to respond to emergencies as quickly as if located in, or adjacent to, an establish community. (+ or −3 percent)

(e) *Reliability and adequacy of fire protection.* Fire insurance should be available with the premium charge based upon a rating equal to the rating available to comparable housing located in or adjacent to the nearest established community, or adequate equipment and trained personnel available on a 24-hour basis to meet foreseeable emergencies. (+ or −3 percent)

(f) *Reliability and adequacy of sanitation service.* An adequately functioning sewage disposal system and a solid waste disposal system, whether community or individually provided, should be available. Individual sewage disposal systems (septic, cesspool or other) will be considered adequate even though they may require periodic maintenance, as long as they are usable during periods of occupancy. (+ or −3 percent)

(g) *Reliability and adequacy of telephone service.* 24-hour accessibility to commercial facilities with private lines should be available. (+ or −1 percent). The service interruption level should not substantially exceed that normally occurring in the nearest established community. (+ or −1 percent)

(h) *Noise and odors.* There should be an absence of significant, frequent disturbing noises or offensive odors. (+ or −3 percent)

(i) *Miscellaneous improvements.* There should be one or more of the following improvements: paved roads, sidewalks, or street lights. (No more than a + or −1 percent adjustment can be made for this category)

(3) *Impositions on privacy or living space.* Administrative adjustments in the base rental rate are allowed if the living space or privacy of the occupant is restricted. In each such case, the agency will make a special determination of the specific conditions making certain that the conditions have not already been reflected in establishing the base rental rate.

(a) *Loss of privacy.* If occupants are subject to loss of privacy during nonduty hours by virtue of repeated public visits (i.e., occurring several times daily) or inhibited from enjoying the full range of activities normally associated with rental occupanices due to restrictions imposed by Federal agencies, a deduction not to exceed 10 percent of the base rental rate is allowable. Proportional deductions will be made in situations of less frequency or seriousness in their impact upon privacy or usage or to reflect seasonable variations.

(b) *Space devoted to official use.* When the head of the agency determines that the use of a portion of the quarters is required for official business (i.e., office, storage, etc.), loss of living space should be reflected by an adjustment to the base rental rate, based on the square footage occupied.

(4) *Transient and temporary use of quarters for other than temporary duty assignments.*

(a) *Transient quarters.* Charges for quarters occupied on a transient basis, that is, normally for 90 days or less, will be assessed at rates equivalent to private transient housing of comparable type and quality. These rates may be set on a nightly or weekly basis, or both. If comparable private transient housing does not exist in the area, the rental may be established by determining the reasonable monthly rental rate for the quarters through application of the other provisions of this Circular, and adding to the monthly rate an additional charge of at least 20 percent to cover necessary additional administrative and service charges. The total will be divided by 30 days for the nightly rate or 4⅓ weeks for the weekly rate.

(b) *Temporary quarters.* This adjustment will apply when an employee occupies quarters for the convenience of the government on a temporary basis (normally more than 60 days) and does not receive per diem. Under these circumstances, if the employee maintains two households, the head of the agency is authorized to adjust the rental rate on the quarters unit so that the combined rent or rent and mortgage payment paid during the period of occupancy is not excessively burdensome. The adjustment may not exceed 20 percent of the base rental rate of the quarters unit unless the head of the agency determines that the circumstances fully justify a greater deduction.

(5) *Quarters of excessive or inadequate size of quality.* If there is a lack of housing of appropriate size or quality, an employee may be provided Government quarters of a size or quality either excessive or inadequate to that which the prudent employee would have selected in the private community. In these exceptional circumstances, the base rental rate will be reduced by up to 10 percent in direct proportion to the degree of the excess or deficiency. This reduction will not continue beyond one month after the availability of either appropriate rental quarters of private housing, except when the head of the agency determines that the reassignment of quarters will not serve to benefit the Government. The determination of the availability of alternate housing will comply with the rules of availability of housing for rent, for sale, or recently rented or sold and those concerning commuting distances contained in OMB Circular No. A–18.

(6) *Excessive heating and cooling costs.* A deduction from the base rental rate is permissable if quarters require an unreasonable additional expense to the employee for heating or cooling because of poor design, the lack of all-weather construction or other related factors. The amount of the deduction will be determined as follows: If the rental quarters in question require expenses to the occupant in excess of 25 percent for the heating or cooling season over the average of heating or cooling for comparable housing in the same area and climate zone as determined by a suitable survey or appraisal, the head of the agency may determine that the excessive costs (i.e., those in excess of 25 percent over the average) may be deducted from the annual rental rates.

(7) *Changes in administrative adjustments.* For specific quarter rental rates, agencies should implement new administrative adjustments to reflect changes in any of the factors contained in section 7c as soon as possible after learning of those changes, normally within 30 days.

d. *Cyclical and annual adjustments.* Charges for rental quarters and related facilities shall be adjusted periodically in accordance with the following:

(1) *Adjustments based on surveys or appraisals.* Base rental rates established for rental quarters shall be affirmed or adjusted by a survey or appraisal of the private rental market, as follows:

(a) At least every fifth year or when the base rental rate for the quarters has been increased by 40 percent through application of the rent series of the U.S. City Average-Regional Consumer Price Index (CPI Rent Series), whichever occurs first, or

(b) Any year when changes in the private rental market in the nearby established community indicate a need to adjust base rental rates on the basis of a survey or appraisal of the rental market.

(2) *Adjustments based on changes in the CPI.* Annual adjustments in the base rental rate shall be made by applying the percent change in the CPI Rent Series from the month and year that the last regional survey or reappraisal of the private rental market was conducted. The new rates shall be effective at the beginning of the first pay period which starts on or after February 1 of each year. Though effective in February, the adjustment shall be based on the preceding September CPI data to provide the required lead time.

(3) *Annual adjustments for isolation.* The Isolation Adjustment Factor (currently 1.6) will be recomputed by the individual agencies each October. The recomputation will reflect the Government mileage allowance for automobiles published by the General Services Administration as of the last day of September each year. The new isolation adjustment factor will be used to compute the monthly isolation adjustment applicable to rents being charged starting with the first full pay period in February of each year. This is done to coincide with the implementation of rental rates adjusted by the CPI Rent Series each year, as required in paragraph 7d(2) of this Circular.

(4) *Annual adjustments of utilities.* To ensure that rates for Government-furnished utilities keep pace with current costs, they shall be adjusted annually. The rate will be the average residental rate for the utility in the established community or survey area as of the last day of September. The new utility rate will be charged in the first full pay period in the following February to coincide with the CPI Rent Series adjustment to rental rates.

(5) *Periodic/cycle year adjustment.* The cycle year (and survey or appraisal month within the cycle year) occurs at different times for different employee quarters within a department or agency. Therefore, since annual CPI adjustments effective in February are based on the preceding September CPI data, cycle year adjustment for any particular quarters or facility shall be made as follows:

(a) When the private rental market survey or appraisal is made during the months of August through January, no CPI adjustment will be made on the upcoming February 1, but will be deferred until the start of the first pay period which begins after February 1 of the following year. Rental adjustments based on the survey or appraisal will be put into effect in the usual manner. Example: If the survey month is September 1984, no CPI adjustment will be made in February 1985, but will be deferred until February 1986. Such CPI adjustments will be based on the changes in the CPI from the actual date of the survey through September 1985.

(b) When the private rental market survey or appraisal is made during the months of February through July, no CPI adjustments will be made in February of that year, but will be deferred until the start of the first pay period which begins after February 1 of the following year. Rental adjustments based on the survey will be put into effect in the usual manner. Example: If the survey month is March 1984, no CPI adjustment will be made in February 1984, but will be deferred until February 1, 1985. Such CPI adjustment will be based on the changes in the CPI from the actual date of the survey through September 1984.

(6) *Newly acquired quarters.* Rates for newly acquired quarters shall be the same as those prevailing for similar Government quarters in the area. If there are no established rates, an initial survey or appraisal to establish valid and realistic comparability with private rental facilities shall be made upon acceptance of newly acquired quarters, and the corresponding rental rates shall be made effective upon occupancy. The initial CPI adjustment in rental rates shall be made as follows:

(a) When the initial survey or appraisal of the private rental market is made during the months of February through July, the initial CPI adjustment will be made at the start of the first pay period which begins after the upcoming February 1.

(b) When the initial survey or appraisal of the private rental market is made during the months of August through January, the initial CPI adjustment will be made in accordance with the procedure set forth in subparagraph (5)(a) above.

(7) *Incremental adjustments.* If new appraisals, surveys or CPI adjustments result in substantial increases in rental rates (i.e., 50 percent or more above the current rental rates), such increases may be imposed incrementally over a period not to exceed one year, on the condition that they be applied in equal increments on at least a quarterly basis.

e. *Qualifications and extensions:* The principle of comparability with private rental practice may be modified under the conditions described below:

(1) *Extension of comparability.* For lack of available alternative quarters,

employees must sometimes occupy space for use as quarters which is generally unsuitable for that purpose. Such space may be unsuitable, for example, because it was originally built for seasonal occupancy only, or because it was not originally built for use as quarters. In other instances, quarters may be suitable only for particular types of occupancy, such as rooming houses, bunkhouses, bachelor quarters, residence hotel-type structures, barracks-type structures, or guard stations and lookouts.

In all such cases, if no comparable rental data can be obtained or professional appraisals are not made, rental rates will be determined by the square footage occupied, at a rate equivalent to one-half the base rental rate per square foot charged for the nearest adquate rental quarters of the same or any other Federal agency. This rate will apply only to the shelter rental, with additions thereto for all other related facilities at rates comparable to those in the area. Rental and other charges will be based upon designed capacity and, when so determined, will remain in effect for each occupant, without regard to fluctuations in the number of occupants from time to time either above or below designed capacity.

In buildings where space is assigned for occupancy of several persons or families, common-use space in the building will be distributed to all occupants in proportion to the space assigned for the sole occupancy of each, to determine the number of square feet chargeable to each. Common-use space includes, for example, washrooms, stairs, hallways, storage, lobby, and lounge areas.

(2) *Quarters for uniformed service personnel.* Rental rates and other charges incident to the occupancy of quarters on a rental basis by members of the uniformed services will be established in accordance with the provisions of this Circular.

Those quarters which have been designated inadequate public quarters or substandard pursuant to law and regulations of the Surgeon General of the Public Health Service and the Secretaries of Defense and Transportation require special treatment in one respect. The total of the rental rate, plus charges for furniture and utilities (except telephone), will be adjusted, if required, so as not to exceed 75 percent of the member's basic allowance for quarters. The rental rate, as used in the preceding sentence, is the base rental rate after the additions or deductions required or authorized elsewhere in this Circular have been given effect, including that requirement contained in paragraph 7c, that the rental rate, after adjustments, will not be less than 50 percent of the base rental rate.

(3) *Instances of hardship.* In certain hardship cases where continued occupancy of public quarters by former uniformed service members and dependents or by dependents of deceased service members is permitted, an amount equivalent to the member's full basic allowance for quarters and other housing allowances (i.e., Variable Housing Allowance, etc.) may be charged for such periods of time as may be properly allowed in each particular case Occupancy of quarters in such instances will normally not exceed 60 days.

Similarly, former Federal employees (or other occupants) and dependents or dependents of deceased Federal employees (or other occupants) may continue to occupy Federally-furnished quarters for a period normally not to exceed 60 days. Such occupants will continue to pay the established rental rate for those quarters.

(4) *Alternative requirements.* The provisions of this Circular will not apply in the following instances:

(a) When the employees attend training programs at Federal or private facilities and the cost of housing is factored into the program cost to the agency or through other means, the valuation rules of this Circular need not be applied, so long as the per diem rate (or actual per diem expense rate) paid the employee is set to reflect the fact that the housing is provided at no cost to the employee. In other than training situations when employees are receiving per diem (or actual per diem expense rates) and occupying Government housing, the per diem paid the employees is set to reflect the fact that the housing is provided at no cost to the employee.

(b) When employees are receiving a remote worksite commuting allowance, in accordance with 5 U.S.C. 5942, and housing is provided at no cost to the employees, the allowance paid will consist of factors other than the housing cost portion of the allowance.

(5) *Exceptions.* Efforts have been made in the preparation of this Circular to allow for unusual circumstances that may exist with respect to rental quarters. Exceptions to the requirements included in this Circular will be prescribed, therefore, only upon written request in those very unusual circumstances when it is demonstrated to the Office of Management and Budget that the application of the provisions of this Circular will not result in a rental rate equivalent to the reasonable value of the quarters to the occupant. If an exception is granted by the Director of the Office of Management and Budget, the agency concerned will be notified in writing.

(6) *Agency regulations.* The following guidelines should be observed in developing agency regulations and procedures implementing this Circular:

a. To avoid potential conflicts of interest, agencies will not assign employee occupants of quarters or their subordinates to perform appraisals or serve as members of regional survey teams used to recommened rents and other charges.

b. Where several different Federal agencies provide rental quarters in the same area, those agencies will take necessary steps to ensure a consistent local pattern in rents and utility rates. In particular, such agencies are urged to establish interagency committees to coordinate and oversee the establishment of consistent and uniform rental rates.

c. A full record of the findings and recommendations of the appraiser or survey team, as well as documentation to justify administrative adjustments, will be kept by the agency concerned.

d. Sufficient information will be maintained centrally by the agency to allow agency management to be informed of, and to monitor, the status of administration of the requirements of this Circular.

e. A system or procedure for reconsideration for rental determinations and other charges will be provided.

f. Employees on leave will continue to be charge for quarters and related facilities, unless the quarters are vacated and made available for reassignment.

g. In keeping with the principle of comparability, the agencies assume the customary responsibilities of the landlord; those who occupy rental quarters assume the responsibilities of tenants.

h. Agency regulations will specify the conditions under which the agency head will require occupancy of Government-furnished quarters, in accordance with the limitations cited in 5 U.S.C. 5911(e).

i. Agency heads will ensure that Government-furnished quarters are safe and sanitary. Although adjustments to the basic rental rate are permitted for such circumstances as excessive heating and cooling costs, poor condition, and lack of potable water, such conditions should not be permitted to continue any longer than absolutely necessary.

9. *Policy review.* The policies and procedures contained in this Circular shall be reviewed within three years of the date of issuance.

10. *Inquiries.* For information concerning this Circular, contact the Office of Management and Budget, telephone 202/395–7207.

David A. Stockman,
Director.

Appendix A—Isolation Adjustment Computation

The monthly adjustment for isolation, as described in paragraph 7c(1), is computed, as follows:

- *Step 1.* Determine the one-way distance in miles (from the quarters to the nearest established community) for each affected category of transportation listed in Figure I. Enter mileage(s) in the appropriate block(s) under Column B.
- *Step 2.* Multiply mileage figures entered in Column B by point values listed in Column A for each affected category of transportation to produce one-way points for each category. Add 29 points to the category 4 subtotal and 27 points to the category 5 subtotal to reflect relative differences in cost or time by use of these modes of travel.
- *Step 3.* Add all categories of one-way points in Column C to produce total one-way points. (The total must exceed 30 points or there is no adjustment for isolation.)

FIGURE I

Category of travel	Column A point value		Column B one-way miles		Column C one-way points
(1) Paved road or rail	1.0	×	—	=	—
(2) Unpaved but improved road (or hazardous conditions at least 4 months per year)	1.5	×	—	=	—
(3) Unimproved road (or hazardous conditions at least 4 months per year)	2.0	×	—	=	—
(4) Water, snowmobile, pack animal, foot or other special purpose conveyance	[illegible]	×	—	=	—+29=—
(5) Air	[illegible]	×	—	=	—+27=—
Total one-way points	=	—	—	—	—

- *Step 4.* Calculate the Isolation Adjustment Factor (IAF) using the following formula: 2 (to reflect round trip points) times 4 (to reflect number of trips per month) times $x.xxx (GSA's current automobile mileage allowance). For example, the GSA mileage allowance, as of the date of this Circular, is $0.205, resulting in A IAF of 1.6 (rounded to the nearest tenth).
- *Step 5.* Multiply total one-way points (sum of Column C) by the Isolation Adjustment Factor to produce the monthly adjustment for isolation (and round to the nearest whole dollar).

[FR Doc. 84-9214 Filed 4-5-84; 8:45 am]
BILLING CODE 3110-01-M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From Bond/Escrow Requirement Relating To Sale of Assets by an Employer That Contributes to a Multiemployer Plan: Peabody Coal Company et al.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Pendency of Request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a joint request from Peabody Coal Company, Armco, Inc. and Big Mountain Coals, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 as amended. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years beginning after the sale. The PBGC is authorized to grant exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATES: Comments must be submitted on or before May 21, 1984.

ADDRESSES: All written comments (at least three copies) should be addressed to: Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. The request for exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254–4860. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) the purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above will be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Under ERISA section 4204(b)(2), the amount of the bond or escrow is doubled if the plan is in reorganization in the plan year in which the sale of assets occurs.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) and the contract-provision requirement of section 4204(a)(1)(C). The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal

business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1) (B) or (C) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on procedures for variances for sales of assets (29 CFR § 2643.3(a)), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act;

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a joint request from Peabody Coal Company ("Peabody"), Armco, Inc. ("Armco"), and Big Mountain Coals, Inc. ("Big Mountain") to waive the bond/escrow requirement of ERISA section 4204(a)(1)(B). In the request, the parties represent, among other things, that:

1. Pursuant to an asset purchase agreement signed on January 20, 1984, Peabody purchased certain assets of Armco and all of Big Mountain's coal production properties for a purchase price of $257 million. Big Mountain is a wholly owned subsidiary of Armco.

2. In connection with this sale, Peabody has assumed the responsibilities of Armco and Big Mountain under a collective bargaining agreement, known as the National Bituminous Coal Wage Agreement of 1981, with the United Mine Workers of America, with respect to the purchased operations.

3. The following chart lists the two miltiemployer plans with respect to which an exemption is requested, the estimated amount of Armco's and Big Mountain's withdrawal liability, and the estimated amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) with respect to each plan:

Plan	Estimate of withdrawal liability	Amount bond/ escrow [1]
1950 UMW pension plan ("1950 plan")		
Armco	$16,579,725	$3,496,284
Big Mountain	3,386,674	881,504
Total	19,966,399	4,377,788
1974 UMW pension plan ("1974 plan")		
Armco	14,210,774	3,429,888
Big Mountain	2,899,760	403,053
Total	17,110,534	3,832,749
Total	36,975,933	8,210,537

[1] All of the bond amounts are based upon the average annual contributions required to be made by Armco and Big Mountain to the plans for the three plan years preceding the plan year in which the sale occurred.

4. In accordance with the PBGC's regulation (29 CFR 2643.2(d)(7)), copies of Peabody's audited consolidated statements for its fiscal years 1981 and 1982 and its unaudited statement for fiscal year 1983 were submitted as part of the application. (The audited statement for its fiscal year ended December 31, 1983 is not available.) However, the application asserted that the financial information is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)) and the PBGC is regulation (29 CFR 2603.18). The application does state that "Peabody's average net income after taxes for the fiscal years 1981–1983, reduced by the interest expense incurred with respect to the sale which is payable in the fiscal year following the sale, totals over $100 million."

5. The parties have sent a copy of this request to the plans and the collective bargaining representatives of Armco's and Big Mountain's former employees by certified mail, return receipt requested.

Under ERISA section 4211(d)(2) the sale of assets provisions of section 4204 do not apply to either the 1950 Plan or the 1974 Plan, unless the plan is amended to so provide. Both of the plans have adopted amendments to include the text of section 4204 (a) and (b). Further, as indicated in a prior exemption decision, the PBGC has taken the position that section 4204 (c) and (d) apply as a matter of law. *U.S. Steel Mining Co., Inc.*, 49 FR 9037, 9038 (Mar. 9, 1984). Therefore, the PBGC will consider this request pursuant to its authority under section 4204(c).

Comments

All interested persons are invited to submit written comments on the pending exemption to the above address, by May 21, 1984. All comments will be made a part of the record. Comments received, as well as the applications for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 3rd day of April 1984.

R. J. O'Neill,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-8880 Filed 4-5-84; 8:45 am]

BILLING CODE 7708-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting

The Small Business Administration, Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting at 12:00 noon, on Wednesday, April 18, 1984, at the Tarantion's 177 Atwells Avenue, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call James H. Hague, District Director, U.S. Small Business Administration, 380 Westminster Mall, Providence, Rhode Island 02903. Telephone number (401) 528–4562.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 2, 1984.

[FR Doc. 84-8880 Filed 4-5-84; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council Meeting

The Small Business Administration, Region II Advisory Council, located in the geographical area of Hato Rey, Puerto Rico, will hold a public meeting at 9:00 a.m., on Friday, April 13, 1984, at room G–59, Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Wilfred Benitez Robles, District Director, U.S. Small Business Administration, Federico Degetau Federal Building, room 691, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918, (809) 753–4003.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-8880 Filed 4-5-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-5109]

SC Opportunities, Inc.; Notice of Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that SC Opportunities, Inc. (SCO), 1112 7th Avenue, Monroe, Wisconsin 53566, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to Section 107.903(b) of Revision 6 of the SBA Regulations [48 FR 45014 (September 30, 1983)] for an exemption from the provisions of the Regulation.

The exemption, if granted, will permit SCO to provide financing in the amount of $75,000 to Mr. James Wayman, a Vietnam veteran, d/b/a Gourmet Concepts, Inc., 329 Fashion Valley, San Diego, California 92108, for the purchase of equipment, leasehold improvements and inventory from SC San Diego, Inc.

Pursuant to paragraph (f) of the definition of "Associate of a Licensee" in § 107.3 of the SBA Regulations, SC San Diego, Inc. is an Associate of SCO. As such, the transaction will require an exemption from the provisions of § 107.903(b)(5) of the Regulations.

Notice is hereby given that any interested persons may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Monroe, Wisconsin and San Diego, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment companies)

Dated: March 27, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-9200 Filed 4-5-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area # 815100; Amdt. 1]

Texas; Designation of Disaster Loan Area

The above named Declaration (49 FR 11902), is amended by adding Leon County in the State of Texas as a result of a freeze which occurred during December 1983. All other information remains the same, i.e., the termination date for filing applications for economic injury is until the close of business on December 24, 1984.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: March 30, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-9201 Filed 4-5-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular Public Debt Series—No. 9-84]

March 29, 1984.

Series E-1991 Notes; Interest Rate

The Secretary announced on March 28, 1984, that the interest rate on the notes designated Series E-1991, described in Department Circular—Public Debt Series—No. 9-84, dated March 21, 1984, will be 12⅝ percent. Interest on the notes will be payable at the rate of 12⅝ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-9160 Filed 4-5-84; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular Public Debt Series—No. 10-84]

March 30, 1984.

Bonds of 2004; Interest Rate

The Secretary announced on March 29, 1984, that the interest rate on the bonds designated Bonds of 2004, described in Department Circular—Public Debt Series—No. 10-84, dated March 21, 1984, will be 12⅝ percent. Interest on the bonds will be payable at the rate of 12⅝ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-9161 Filed 4-5-84; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 17]

Heritage Insurance Company of America; Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to Heritage Insurance Company of America, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective today. The company was last listed as an acceptable surety on Federal bonds at 48 FR 30534, July 1, 1983.

With respect to any bonds currently in force with Heritage Insurance Company of America, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Operations Staff (Surety), Banking and Cash Management, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226, telephone (202) 634-5745.

Dated: March 30, 1984.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 84-9128 Filed 4-5-84; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the Authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects in the exhibit, "The Stone of Perfection: 4,000 Years of Chinese Jade" (included in the list [1] filed as a part of this determination) imported from abroad for the temorary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Fresno Metropolitan Museum and the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Fresno Metropolitan Museum, Fresno, California, beginning on or about April 8, 1984, to on or about August 26, 1984, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Dated: April 2, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-9197 Filed 4-5-84; 8:45 am]

BILLING CODE 8230-01-M

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of limited grant support for non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment and activity.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Speakers' Forum on American Traditions

USIA is interested in supporting a series of ten bi-weekly lecture presentations in Washington D.C. by leading American scholars on the historical development of America's intellectual, cultural, social, economic and political traditions. The lecture series is specifically intended for temporary foreign residents of the nation's capital who would be invited to participate. (Tentative activity dates: September–December 1984)

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the Speakers' Forum project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Furthermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming; and with organizations that have substantial potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information.

This is not a solicitation for a grant proposal. Following the receipt of your letter, and an internal review, USIA may invite your organization to examine and further develop USIA's initiative program concept summarized above. USIA would then consider your fully developed proposal for limited financial assistance. To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 days of the date of this notice.

Replies should be addressed as follows: Dr. Mark Blitz, Dirctor, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547.

Dated: April 3, 1984.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84-9198 Filed 4-5-84; 8:45 am]

BILLING CODE 8230-01-M

President's International Youth Exchange Initiative, Phase II; Request for Proposals

The United States Information Agency (USIA) announces a grant competition for programs in support of the President's International Youth Exchange Initiative with the following countries: Austria, India, Thailand, Indonesia, Botswana, Cameroon, ivory Coast, Togo, Costa Rica, the Dominican Republic, and Jamaica. No proposals for programs in other countries will be considered at this time.

The primary goal of the competition is to expand exchanges of young people, aged 15–25, between the United States and the 11 countries named above. This is a limited solicitation for proposals. In this competition, only those organizations which have experience working in one or more of the 11 countries will be considered for grant funding. The total amount of funds available is approximately $750,000.

Program Proposal Content

The following categories for the program have been established for this competition:

A. Academic Exchanges

1. Participant type—Students aged 15–19.

2. Program length—Academic year (9–12–months), semester (3–6–months), classroom-to-classroom exchanges of not less than 4 weeks.

3. Program type—High school-level study or work/study programs.

4. Type of support—Partial scholarship support to cover international and domestic travel, orientation/language training expenses, and per diem in transit (or partial program fees); in-country (not U.S.) volunteer development and administrative expenses, not to exceed one third of the program budget.

5. Accommodations: Homestays for the full period of residency.

B. Non-Academic Exchanges

1. participant type—Students, youth leaders, young workers, farm youth and young professionals, aged 15–25.

2. Program length—Optimal length is 6–12 weeks; a 4-week minimum is eligible, but longer term exchanges are preferred.

3. Program type—Programs focusing on one theme from those listed below which include "hands-on" activities (internships, work camps, community service and public works); orientation, including language training as necessary; interaction with Americans.

4. Type of support—Same as for Academic Exchanges.

5. Accommodations: Homestays for all or part of the experience; campstays where appropriate.

6. Thematic Categories:

a. Agriculture, rural development.

b. Archeology, historical preservation, restoration.

c. Volunteer community service.

d. Leadership development.

e. Scouting.

f. Journalism.

g. Conservation, environmental protection.

Criteria for Judging Proposals

The following criteria will be used to judge proposals:

—The proposed activity should contribute to the sustained, long-term development of youth exchanges.

—Reciprocity: two-way exchange, involving outbound US and inbound foreign participants in roughly equal numbers are desirable.

—Quality of the exchange visitors' experience.

—Extent of interaction with Americans, including homestays.

—Extent of experience of the organization in the chosen country.

—Demonstrated ability to manage the exchange (adequate field personnel, administrative support mechanisms, etc.).

—Reasonable per capita costs, as viewed in comparison with other proposals and with standards for the field.

—Cost-sharing (portion of other government or private sector support).

Grants are generally awarded for one year. USIA cannot make commitments of funding for more than one fiscal year.

Proposals may be for single-country or multi-country projects.

Grant funds will not be used to support:

—Research studies.
—Study for post-secondary academic credit or degree programs.
—Campus-to-campus exchanges of university students or professors.
—Travel/observation tours.
—"Traveling seminars".
—Conferences.
—New country development (starting up programs in countries where the organization has not had experience).
—Exchange activities which are already being carried out.
—Any project which is designed to lobby elected officials or promote politically partisan views.
—Projects whose aim is to promote religious activities.
—School tuitions.

Eligibility

Academic, cultural and not-for-profit exchange-of-persons and youth-serving organizations are eligible to submit proposals. Organizations must demonstrate experience working in a specific country. This program is not intended to be a university exchange or linkage program.

Not-for-profit organizations which are the offspring of for-profit firms engaged in similar activities will not be eligible for consideration under this program.

Priority will be given to organizations with national or regional volunteers. Organizations must be capable of meeting the "Criteria for Teenager Exchange Visitors Programs" or "Criteria for Practical Trainees", which may be obtained by calling or writing to the Youth Exchange Staff of USIA (address and phone number given below).

Congressionally approved Agency guidelines require that an organization have not less than four years experience in exchanges to qualify for a grant of more than $60,000.

Review Process

Proposals should be received in USIA no later than May 15, 1984. Proposals will be reviewed for eligibility and completeness and submitted to an advisory Agency Grant Panel for review in terms of the criteria listed above. Proposals for similar activities in the same country will be judged in competition with each other. The review is expected to be completed by July 1, with final decisions conveyed to the proposing organizations by August 1. An organization should anticipate that, if its project is approved, funding will not be available before September 1.

Guidelines for proposal submissions may be obtained by writing to the following address or by calling (202) 485–7299: Youth Exchange Staff, United States Information Agency, Washington, D.C. 20547.

Dated: April 3, 1984.

Charles N. Canestro,

Management Analyst Federal Register Liaison.

[FR Doc. 84-9199 Filed 4-5-84; 8:45 am]
BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 68
Friday, April 6, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (Eastern Time), Tuesday, April 10, 1984.

PLACE: Commission Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Proposed ADEA Apprenticeship Rule

Closes

1. Litigation Authorization; General Counsel Recommendations
2. Proposed Predecision Settlement Agreement
3. Consideration of Certain ORAs

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides recorded announcements a full week in advance on future Commission sessions.

Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634–6748.

This Notice Issued April 3, 1984.

Dated: April 3, 1984.

Treva McCall,

Executive Secretary to the Commission.

[FR Doc. 84-8882 Filed 4-3-84; 4:37 pm]

BILLING CODE 6750-06-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—April 11, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agreement No. 57–122: Modification of the Pacific Westbound Conference Agreement to provide for uniform practices with respect to container operations not affiliated with member lines.

2. Agreement No. 57–130: Modification of the Pacific Westbound Conference Agreement to revise rules relating to exercise of independent action.

Portion Closed to the public:

1. Docket No. 83–53: U.S. Atlantic & Gulf/Australia-New Zealand Conference (Agreement No. 6200–24—Application for U.S. Intermodal Authority)—Referral of motion to amend Order of Investigation.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-8298 Filed 4-4-84; 10:15 am]

BILLING CODE 6730-01-M

3

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: 10:00 a.m., Wednesday, April 11, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 4, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-8302 Filed 4-4-84; 10:33 am]

BILLING CODE 6210-01-M

4

NATIONAL CREDIT UNION ADMINISTRATION

NOTICE OF PREVIOUSLY HELD EMERGENCY MEETING

TIME AND DATE: 4:53 p.m., Thursday, March 29, 1984.

PLACE: 1776 G Street, NW., Washington, D.C., 6th Floor.

STATUS: Closed.

MATTER CONSIDERED: 1. Conservatorship.

The Board unanimously voted that the Agency business required that a meeting be held with less than the seven days advance notice.

The Board voted to close the meeting under exemptions (8), (9)(A)(ii) and (9)(B). The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone: (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84-8332 Filed 4-4-84; 12:44 pm]

BILLING CODE 7535-01-M

5

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 9, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Wednesday, April 11, 1984, at 10:00 a.m. An open meeting will be held on Thursday, April 12, 1984, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway and Cox voted to consider

the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, April 11, 1984, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Litigation matters.
Dismiss injunctive action.
Institution of injunctive action.
Institution of administrative proceeding of an enforcement nature.
Close investigation.
Chapter 11 proceedings.

The subject matter of the open meeting scheduled for Thursday, April 12, 1984, at 10:00 a.m., will be:

1. Consideration of whether to issue two releases on: (a) Whether to extend the comment period and solicit additional comments on proposed rule changes submitted by the National Association of Securities Dealers, Inc., and five securities exchanges to trade options on over-the-counter ("OTC") securities, and (b) whether to propose for comment amendments to Rule 12a–6 under the Securities Exchange Act of 1934 to permit exchange trading of options on OTC securities. For further information, please contact Alden Adkins at (202) 272–2413.

2. Consideration of whether to recommend to Congress enactment of a legislative proposal to amend Section 14(b) of the Securities Exchange Act of 1934 to authorize the Commission to regulate the proxy processing activities of banks, associations and other entities that exercise fiduciary powers. For further information, please contact Eric E. Miller at (202) 272–2589.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Marianne Keler at (202) 272–2014.

George A. Fitzsimmons,
Secretary.
April 3, 1984.
[FR Doc. 84-8375 Filed 4-4-84; 2:23 pm]
BILLING CODE 8010-01-M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (49 FR 12357 March 29, 1984)

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 23, 1984.

CHANGE IN THE MEETING: Additional items/meeting canceled.

The following items will be considered at a closed meeting scheduled for Wednesday, April 4, 1984, at 9:30 a.m.:

Consideration of amicus participation.
Settlement of injunctive action.
An open meeting scheduled for Wednesday, April 4, 1984, at 2:30 p.m. has been canceled.

The following item will be considered at a closed meeting scheduled for Friday, April 6, 1984, at 10:00 a.m.

Institution of injunctive action.

Chairman Shad and Commissioners Treadway and Cox determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Wescoe at (202) 272–2092.

George A. Fitzsimmons,
Secretary.
April 3, 1984.
[FR Doc. 84-8376 Filed 4-4-84; 2:23 pm]
BILLING CODE 8010-01-M

federal register

Friday
April 6, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determinations Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA84–5001	Mar. 30, 1984.
Connecticut: CT83–3021	June 3, 1983.
Florida: FL82–1066	Dec. 3, 1982.
Illinois: IL83–2064	Aug. 12, 1983.
Iowa: IA84–4018	Mar. 23, 1984.
[illegible]	
KS83–4066	Sept. 9, 1983.
KS83–4064	Sept. 2, 1983.
KS83–4065	Sept. 2, 1983.
[illegible]: MN83–2024	May 6, 1983.
New Jersey:	
NJ83–3016	June 17, 1983.
NJ83–3015	June 17, 1983.
NJ83–3026	July 29, 1983.
Texas:	
TX83–4061	Aug. 26, 1983.
TX83–4077	Oct. 21, 1983.
TX83–4078	Oct. 21, 1983.
TX83–4080	Oct. 21, 1983.
TX83–4082	Oct. 21, 1983.
TX84–4001	Jan. 20, 1984.
TX84–4002	Jan. 27, 1984.
West Virginia:	
WV83–2022	Nov. 18, 1983.
WV83–3023	Nov. 25, 1983.
Missouri: MO84–4009	Feb. 10, 1984.

Supersedeas Decisions To General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

District of Columbia, Maryland and Virginia: DC82–3031 (DC84–3009).	Nov. 12, 1982.
Massachusetts:	
MA83–3045 (MA84–3007)	Aug. 26, 1983.
MA83–3046 (MA84–3010)	Sept. 23, 1983.
Wyoming: WY82–5126 (WY84–5009)	Nov. 5, 1982.

Signed at Washington, D.C.

This 30th day of March 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION #CA84-5001 MOD#1
(49 FR March 30, 1984)
Alameda, Alpine, Amador, Butte, Calaveras.... Counties, California

CHANGE:

Carpenters:
Area 4 description, to read:
"Monterey and Santa Cruz Counties"

(B.H.R. and Fringe Benefits to remain the same.)

	Basic Hourly Rates	Fringe Benefits

DECISION NO. CT83-3021 - MOD. #14
(48 FR 25090 - June 3, 1983
STATEWIDE, CONNECTICUT

CHANGE:

BRICKLAYERS; CEMENT MASONS; CEMENT FINISHERS; MARBLE MASONS; PLASTERERS; STONE MASONS; TERRAZZO WORKERS; TILE SETTERS:

	Basic Hourly Rates	Fringe Benefits
BUILDING CONSTRUCTION:		
Area 1	16.38	4.45
Area 2	17.95	2.68
Area 3	17.83	2.55
GLAZIERS		
Area 1	18.55	6.10
PAINTERS:		
Areas 1, 2, & 3:		
Brush	14.45	1.74
Tapers	14.95	1.74
Sprayers	16.45	1.74
Area 4:		
Brush, tapers, sandblasters	15.25	1.96+k
Rollers, paperhangers, swing stage	15.75	1.96+k
Structural steel	16.25	1.96+k
Epoxy, polyester	17.25	1.96+k
Spray	19.00	1.96+k
STEAMFITTERS		
Area 1	18.68	4.51

DECISION NO. FL82-1086-MOD. #1
(47 FR 54743-December 3, 1982)
BROWARD COUNTY, FLORIDA

CHANGE:

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
GROUP I	$13.20	2.22
GROUP II	13.05	2.22
GROUP III	12.55	2.22
GROUP IV	12.40	2.22
GROUP V	12.25	2.22
GROUP VI	12.15	2.22
GROUP VII	12.05	2.22
GROUP VIII	11.95	2.22
GROUP IX	11.30	2.22

DECISION NO. IL83-2064 - Mod#2
(48 FR 36778 - Aug. 12, 1983)
Macon County, Illinois

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Residential not to exceed 3 levels or 12 family units	$11.47	8.35% + $1.05

DECISION #IA84-4018-MOD#1
(49 FR 11063-March 23, 1984)
Statewide (except Black Hawk, Cerro Gordo, Scott & Webster Counties) Iowa

Change location to read:
Statewide (excluding Black Hawk & Scott Counties)

ADD:
Cerro Gordo & Webster to Zone 8 Zone Definitions

DECISION #KS83-4066-MOD#4
(48 FR 40838-September 9, 1983)
Douglas, Jefferson, Leavenworth, Miami, & Shawnee Counties, Kansas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Truck Drivers: Zone 1 (Leavenworth & Miami Counties)		
Group 1	$13.16	$4.00
Group 2	13.36	4.00
Group 3	13.67	4.00
Group 4	13.82	4.00
Group 5	12.94	4.00
Cement Masons: Zone 1 (Leavenworth & Miami Cos.)		
Cement Masons	15.17	2.33
Power Equipment Operators Zone 1: Leavenworth Co.		
Group 1	14.60	4.07
Group 2	14.35	4.07
Group 3	13.65	4.07
Group 4:		
a	9.63	4.07
b	12.65	4.07

DECISION #KS83-4064-MOD#3
(48 FR 40087-September 2, 1983)
Sedgewick County, Kansas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Carpenters:		
Carpenters	11.00	1.08
Millwrights & Pile-drivermen	11.30	1.08

DECISION #KS83-4065-MOD#2
(48 FR 40089-September 2, 1983)
Leavenworth County, Kansas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Cement Masons	15.775	1.95

DECISION NO. MN83-2038 - MOD. #5
(48 FR 20594 - May 6, 1983)
Aitkin, Becker,...Wright & Yellow Medicine Counties, Minnesota

Change:

	Basic Hourly Rates	Fringe Benefits
Pipefitters; Plumbers; & Steamfitters:		
Area 5	$14.26	$2.40
Sheet Metal Workers:		
Area 7:		
Over $250,000.00 H.V.A.C. Contract	13.45	2.91+d
Under $250,000.00 H.V.A.C. Contract	12.01	2.91+d
Area 9:		
Over $250,000.00 H.V.A.C. Contract	14.57	2.45+d
$250,000.00 H.V.A.C. or less	12.34	2.45+d

DECISION NO. NJ83-3026 - MOD. #7
(48 FR 34624 - July 29, 1983)
Bergen, Essex, Hudson, and Passaic Counties, New Jersey

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS AND CABLE SPLICERS:		
Other Residential Construction:		
Essex County	18.10	26.25%
GLAZIERS:		
Bergen & Passaic Cos.	11.055	5.13
Essex & Hudson Cos.	17.95	5.55

MODIFICATIONS P. 3

DECISION NO. NJ83-3016- MOD. #13 (48 FR 28003 - June 17, 1983) Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, Salem Counties, New Jersey	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS, MILLWRIGHTS AND INSULATORS:		
Zone 3:		
Carpenters & Insulators	17.25	20.1%
Millwrights	17.50	20.1%
ELECTRICIANS & CABLE SPLICERS:		
Zone 2	19.68	16.75% +1.00
Zone 3	18.58	10%+ 1.80
GLAZIERS:		
Zone 6	16.90	6.60
SHEET METAL WORKERS:		
Zone 1	18.06	4.47
Zone 2	16.40	5.83
Zone 3	17.70	4.58
TRUCK DRIVERS:		
Zone 3:		
Group 1	13.97	2.00+ h+i+j
Group 2	14.20	2.00+ h+i+j
Group 3	14.25	2.00+ h+i+j
Group 4	14.35	2.00+ h+i+j
Group 5	14.45	2.00+ h+i+j
GLAZIER ZONE DESCRIPTIONS		
Zone 1: Mercer, Monmouth and Ocean Counties		
Zone 4: Burlington (That portion North of a line that begins at Florence Roebling and extends in a Southeasterly Direction that includes Fort Dix to the Ocean County Line).		

DECISION NO. NJ83-3015- MOD. #12 (48 FR 27991 - June 17, 1983) Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Cos., New Jersey	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS AND CABLE SPLICERS:		
Zone 1	18.10	26.25%
Zone 5	19.96	26.5%
RAILROAD CONSTRUCTION:		
Bergen & Hudson Cos.	19.96	26.5%
COMERCIAL TELEPHONE INSTALLATION:		
Bergen & Hudson	19.96	26.5%
GLAZIERS:		
Zone 1	16.14	7.33
Zone 2	16.90	6.60
SHEET METAL WORKERS:		
Zone 1	16.40	5.83
Zone 6	17.70	4.58
TRUCK DRIVERS:		
Zone 2:		
Group 1	13.97	2.00+ h+i+j
Group 2	14.20	2.00+ h+i+j
Group 3	14.25	2.00+ h+i+j
Group 4	14.35	2.00+ h+i+j
Group 5	14.45	2.00+ h+i+j
SHEET METAL WORKERS ZONE DESCRIPTIONS:		
Zone 1: Middlesex & Somerset Counties		
Zone 5: Morris, Sussex and Union Counties		

MODIFICATIONS P. 4

DECISION NO. TX83-4061 - MOD. #3 (48 FR 38966 - 8/26/83) El Paso County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Sheet metal workers	$13.80	2.07+3%

DECISION NO. TX83-4077 - MOD. #6 (48 FR 48908 - 10/21/83) Galveston & Harris Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Elevator constructors:		
Mechanics	16.85	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	

DECISION NO. TX83-4078 - MOD. #3 (48 FR 48909 - 10/21/83) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.60	2.37
Sheet metal workers	15.20	2.00+3%

DECISION NO. TX83-4080 - MOD. #3 (48 FR 48911 - 10/21/83) Brazos County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Elevator constructors:		
Mechanics	16.85	3.00+a
Helpers	70%JR	3.00+a
Helpers(Prob.)	50%JR	

DECISION NO. TX83-4082- MOD. #5 (48 FR 48913-10/21/83) Jefferson & Orange Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Elevator constructors:		
Mechanics	$16.85	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	

DECISION NO. TX84-4001- MOD. #3 (49 FR 2604-1/20/84) Bexar County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Line construction:		
Lineman	17.30	.80+ 3½%
Cable splicer	17.55	"
Groundman	9.52	"

DECISION NO. TX84-4002- MOD. #1 (49 FR 3575-1/27/84) Lubbock County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.60	2.37
Sheet metal workers	15.20	2.00+3%

MODIFICATIONS P. 5

DECISION NO. TX84-4003- MOD. #1 (49 FR 3576-1/27/84) Nueces County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.60	2.37
Sheet metal workers	15.20	2.00+3%

DECISION NO. TX84-4004- MOD. #1 (49 FR 3577-1/27/84) Potter & Randall Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.60	2.37
Sheet metal workers	15.20	2.00+3%

DECISION NO. TX84-4005- MOD. #1 (49 FR 3578-1/27/84) Smith County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.60	2.37
Sheet metal workers	15.20	2.00+3%

DECISION NO. TX84-4006- MOD. #1 (49 FR 3579-1/27/84) Taylor County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.60	2.37
Sheet metal workers	15.20	2.00+3%

MODIFICATIONS P. 6

DECISION NO. TX84-4007- MOD. #1 (49 FR 3580-1/27/84) Tarrant County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.60	2.37
Sheet metal workers	15.20	2.00+3%

DECISION NO. TX84-4008- MOD. #1 (49 FR 3581-1/27/84) Victoria County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.60	2.37
Sheet metal workers	15.20	2.00+3%

DECISION NO. TX84-4009- MOD. #1 (49 FR 3582-1/27/84) Wichita County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.60	2.37
Sheet metal workers	15.20	2.00+3%

DECISION NO. WVH3-3022 - MOD #5 (48 FR 52547 - November 18, 1983) Statewide West Virginia, excluding the Counties of Berkley, Jefferson & Morgan	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Hardy & Pendleton Cos.		
Contracts under $70,000 (excluding industrial plants) Wiremen	9.00	.75+4%
Contracts $70.000 or more (plus all contracts for industrial plants) Wiremen	13.95	.75+4%

DECISION NO. WV83-3023 MOD. #3 (48 FR 53273 November 25, 1983) Heavy & Highway Construction Statewide West Virginia	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Area 17		
Contracts including labor & materials under $70.000 - Wiremen rate shall be	9.00	.75+4%
Contracts including labor & materials over $70.000 - Wiremen	13.95	.75+4%
Area 17- includes Hardy, Jefferson and Pendleton Counties.		

DECISION NO. MO84-4009 - MOD. #2 (49 FR 5289 - February 10, 1984) Cass, Clay, Jackson, Platte, Ray, Henry, Johnson and Lafayette Counties, Missouri; Johnson and Wyandotte Counties, Kansas	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters:		
Zone 1 - Cass, Clay, Jackson, Lafayette, Platte & Ray Cos., Mo.; Johnson & Wyandotte Cos., Kansas: Carpenters, Lathers, Millwrights & Pile-drivermen	$16.05	2.67
Cement Masons (Heavy & Highway Construction): Johnson & Wyandotte Cos., Kansas	15.17	2.33
Laborers:		
Site preparation & grading, Heavy & Highway Construction:		
Zone 4 - Johnson & Wyandotte Cos., Kansas:		
Group 1	12.52	3.45
Group 2	13.32	3.45
Power Equipment Operators:		
Site preparation & grading, Heavy & Highway Construction:		
Zone 1 - Johnson & Wyandotte Cos., Kansas:		
Group I	14.65	4.07
Group II	14.35	4.07
Group III	13.65	4.07
Group IV:		
(a)	9.83	4.07
(b)	12.45	4.07
Group V	14.45	4.07
Ironworkers:		
Zone 2 - Johnson & Wyandotte Cos., Kansas	16.25	4.28
Truck Drivers:		
Site preparation & grading, Heavy & Highway Construction:		
Zone 1 - Johnson & Wyandotte Cos., Kansas:		
Group I	13.16	4.00
Group II	13.36	4.00
Group III	13.67	4.00
Group IV	13.82	4.00
Group V	12.94	4.00

SUPERSEDEAS DECISION

STATES: MARYLAND, VIRGINIA, AND DISTRICT OF COLUMBIA
AREA: DISTRICT OF COLUMBIA; MARYLAND - MONTGOMERY AND PRINCE GEORGES COUNTIES, AND THE D.C. TRAINING SCHOOL; VIRGINIA - INDEPENDENT CITY OF ALEXANDRIA, ARLINGTON AND FAIRFAX COUNTIES.
DECISION NUMBER: DC84-3009 DATE: DATE OF PUBLICATION
Supersedes Decision Number DC82-3031, dated November 12, 1982, in 47 FR 51304.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including four (4) stories), EXCLUDING INDEPENDENT CITY OF ALEXANDRIA; HEAVY CONSTRUCTION PROJECTS (does not include Sewer and Water Lines Construction Projects); HIGHWAY CONSTRUCTION PROJECTS in DISTRICT OF COLUMBIA ONLY; SEWER AND WATER LINES CONSTRUCTION PROJECTS IN DISTRICT OF COLUMBIA AND MONTGOMERY COUNTY, MARYLAND ONLY.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Journeyman	15.87	3.88
Helper - loading, unloading, distribution & stockpiling of materials & equipment; loading & unloading of tools; tool repair, cleaning & pickup activity; job clean-up activity; removal of insulation under the direction of a journeyman; service contractor equipment; netting up & tearing down of scaffold; sealing duct insulation & applying stic-clips; perimeter wall & ceiling insulation.	4.50	1.11
BOILERMAKERS	19.50	3.09
BRICKLAYERS:		
Apartment buildings over 4-stories	11.18	.85
Light commercial - New buildings and additions limited to 50,000 sq. ft. in floor space and not to exceed 4-stories in height above ground; schools, churches, warehouses, chain food stores; shopping malls (excluding all stores over 50,000 sq. ft. in floor space)	13.00	3.81
All other work	16.05	2.91
CARPENTERS	14.92	1.56
CARPET LAYERS	9.98	.50
CEMENT MASONS:		
Paving and Incidental Grading (Washington, D.C. only);		
Cement masons	9.34	.86
Form Setters	9.34	.86
Concrete saw operators	9.04	.86
All Other Construction	14.00	2.625
DIVERS	23.20	1.56
DIVERS' TENDERS	16.53	1.56
ELECTRICIANS	15.65	2.75+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	15.725	3.80+ a+b
Helpers	11.81	3.80+ a+b
Probationary helpers	7.86	
GLAZIERS	12.73	1.56

DECISION NO. DC84-3009

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Structural, Ornamental, & Chain link fence	15.11	2.835
Reinforcing	14.61	3.01
LABORERS:		
Brick Masonry Work - Apartment Buildings over Four (4) stories:		
Common Laborers	6.25	.98
Scaffold builders, mortar man, jackhammer, & mason tenders	6.45	.98
Light Commercial Brick Masonry Work - New Buildings and additions limited to 50,000 sq. ft. in floor space and not to exceed four stories in height above ground. Warehouses, schools, churches, chain food stores, and shopping malls (excluding all stores over 50,000 sq. ft. in floor space):	*	
Mason tenders	9.00	1.73
Scaffold builders, mortarmen, and small equipment operators	9.50	1.73
All Other Brick Masonry Work:		
Arlington & Fairfax Counties, and the Independent City of Alexandria:		
Mason tenders	9.50	1.73
Scaffold builders, mortarmen, and small equipment operators	10.50	1.73
Remaining Areas:		
Mason tenders	10.42	1.73
Scaffold builders, mortarmen, and small equipment operators	11.00	1.73
Paving and Incidental Grading (District of Columbia only);		
Laborers	8.75	.80
Asphalt shoveler	8.80	.80
Asphalt tamer, hand burner operator, concrete shoveler	8.92	.80
Jackhammer	8.99	.80
Asphalt raker, concrete saw operator	9.04	.80
Burner planer operator	9.28	.80
Sand setter, form setter	9.34	.80
Sewer & Water Lines Construction (Washington, D.C. & Montgomery County, Maryland Only):		
Laborers, jackhammer, rammer and spader:		
District of Columbia	7.00	.56
Montgomery County, Md.	6.50	.56
Pipelayers and air track operators		
District of Columbia	9.00	.56
Montgomery County, Md	8.50	.56
All remaining laborers classifications:		
District of Columbia	8.15	.56
Montgomery County Md.	7.65	.56
Tunnels, Raise & Shaft laborers (Free Air) for Sewer & Water Lines Construction only:		
Group 1 - Brakeman, bull gang, dumper, trackman, concrete man	9.50	.56
Group 2 - Chuck tender, powderman in prime house, form setters & movers, nippers, cableman, hoseman, grout man, bell or signal man, top or bottom, vibrator op., caulkers' helper	10.00	.56
Group 3 - Miners, rodman, re-bar underground, concrete or gunnite nozzleman, powderman, timber man & re-timber man, wood, steel including liner pate or any other support material, motorman, caulkers, diamond drill ops., riggers, cement finisher - underground, welders & burners, shield driver	11.00	.56

DECISION NO. DC84-3005	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D)		
Heavy Construction:		
Group I	11.63	1.73
Group II	11.82	1.73
Group III	11.90	1.73
Group IV	11.97	1.73
Group V	12.24	1.73
Group VI	12.52	1.73
Group VII	12.685	1.73
Group VIII	13.235	1.73
Tunnel, Raise, & Shaft Laborers (Free Air) for Heavy Construction Only:		
Group I	12.005	1.73
Group II	12.385	1.73
Group III	13.305	1.73
Group IV	13.655	1.73
Compressed Air Laborers for Heavy Construction:.		
Guage Pressure Pounds — Work Periods Hours		
1-14 — 7	15.69	1.73
14-18 — 6	16.27	1.73
18-22 — 5½	16.83	1.73
22-26 — 5	17.42	1.73
26-32 — 4	17.99	1.73
32-38 — 3	18.56	1.73
38-44 — 2½	19.14	1.73
Building Construction (Excluding the City of Alexandria, VA.) Highway Construction (Washington, D.C. only):		
Truck checkers:		
Arlington & Fairfax Counties, Virginia.	7.80	1.73
Remaining Areas	8.50	1.73
Material handlers, clean-up (including concrete clean-up), sweepers, water person, stake jumper, landscape laborer, carpet layer tender:		
Arlington & Fairfax Counties, Virginia	8.50	1.73
Remaining Areas	9.25	1.73
Carpenter tender, cement mason tender, water spraying concrete (curing), tool room clerk, & all laborers not otherwise classified:		
Arlington & Fairfax Counties, Virginia	9.50	1.73
Remaining Areas	10.42	1.73
Fotman, power tool operator, small machine operator, concrete laborer, signalman, laserbeam operator, waterproofer, open caisson, test pit, underpinning, pier hole & ditch, lagger & overhead stripper, hand derrick operator, vibrator operator, pipe layer, tile layer, operators of jackhammer, paving breaker, spader or any machine that does the same general type of work, scaffold builder, operators of tow master, scootcrete, buggymobile and other machines of similar character, operators of tamper, rammer and other machines that do the same general type of work (whether powered by air, electric or gasolene), builders of trestle scaffold over 1 tier high, sandblaster, power and chain saw operators used in clearing, installer of wellpoints, wagon drill operator, acetylene burner, & licensed powdermen:		
Arlington & Fairfax Counties, Virginia	10.50	1.73
Remaining Areas	11.53	1.73

DECISION NO. DC84-3009	Basic Hourly Rates	Fringe Benefits
LABORERS (Continued)		
Plumbers's laborers	11.60	1.73
Plasterers' tenders	11.04	1.73
Operators of scootcretes, buggy mobiles, and mixer operators (not in conjunction with plastering machine on plastering work) (All Areas)	11.35	1.73
Mixer operators in conjunction with plastering machine	11.66	1.73
Demolition Laborers:		
Bobcat	8.00	1.73
Burners' work	7.50	1.73
Power tool operators	7.15	1.73
Other demolition work	7.00	1.73
LATHERS	14.92	1.56
LINE CONSTRUCTION:		
Street Lights, Traffic Signal, & Traffic Signal Controls:		
Linemen	10.90	.85+8%
Equipment Operator	8.50	.85+8%
Truck driver	7.34	.85+8%
Groundman	5.48	.85+8%
All Other Work:		
Lineman, cable splicers, equipment operators	16.82	.85+8%
Truck with winch, truck-pole or steel handling	8.90	.85+8%
Groundman	8.63	.85+8%
MARBLE, TILE, & TERRAZZO FINISHERS	12.225	2.72
MARBLE & STONE MASONS	15.50	2.585
MOSAIC, TERRAZZO, & TILE WORKERS	14.96	3.01
MILLWRIGHTS	15.61	1.55
MOTOR REPAIRMEN (Removal and reinstalling of electrical motors)	11.68	2.10+ 30+c
PAINTERS:		
Fairfax County, Virginia	7.11	
Remaining Areas:		
Brush, spray, paper hangers, & tapers	16.61	2.49
Steel, sandblasting, swing state, power brushing	17.11	2.49
PILE DRIVERMEN	15.25	1.55
PLASTERERS	14.89	1.46
PLUMBERS:		
Washington, D.C.:		
Apartment Buildings over 4 stories:		
Journeyman	18.20	1.37
Mechanical helper - loading, unloading, distribution and stockpiling of materials and equipment; loading and unloading of tools; tool repair, cleaning and pick-up activity; job clean-up activity; cleaning of fixtures and equipment; cutting, patching and grouting under the direction of a journeyman; service contractor equipment; coring; setting up and tearing down scaffold.	9.10	1.37
All Other Work	13.64	3.14
Remaining Areas:		
Apartment building over 4 stories, schools, colleges, speculative office buildings, strip shopping centers, churches, water coilers, room air conditioning units, appliances, packaged ice machines, and light commercial and/or air conditioning systems serving a single business in a single story building and not to exceed 5 h.p. or tons (self-contained package unit up to and including 5 h.p. or tons)		

DECISION NO. DC84-3009 PLUMBERS (Continued)	Basic Hourly Rates	Fringe Benefits
Journeyman	10.28	1.37
Mechanical helper (same duties as Washington D.C.'s)	9.15	1.37
All Other Work	15.68	3.14
POWER EQUIPMENT OPERATORS:		
Paving and Incidental Grading (Washington D.C. Only);		
C-1,000 gradall operator (over 1½ cu. yds.)	10.71	.86
Gradall operator (1½ cu. yds or less), motor grader, loader-track (over 2½ cu. yds.)	10.41	.86
Shovel operator	9.64	.86
Crane operator, concrete paving operator	9.52	.86
Asphalt spreader, asphalt plant engineer, asphalt roller operator, hydraulic backhoe (½ cu. yd. or less), concrete breaker machine	9.34	.86
Rubber-tired loader (over 1½ cu. yds.), loader operator-tracks (2½ cu. yds. or less), bulldozer, mechanic or welder	9.28	.86
Concrete spreader, finishing machine, roller (rough), compressor, rubber-tired loader (1½ cu. yds or less), asphalt plant mixer	9.04	.86
Power broom operator	8.92	.86
Sewer and Water Lines Construction (Washington, D.C. and Montgomery County, Maryland only):		
Backhoe, cableway, crane, derrick, dragline, power shovel, tunnel shovel, tunnel mucking machine 1 cu. yd. and over	10.39	1.45
Backhoe, cableway, crane, derrick, dragline, power shovel, tunnel shovel, tunnel mucking machine up to 1 cu. yd.,; boom cat, elevating grader, hoist, paving mixer, pile driving engineer, batch plant, concrete pump	10.14	1.45
Backhoe (hydraulic, under ½ yd.)	10.02	1.45
Trenching machine (above 8'3")	9.94	1.45
Trenching machine (up to 8'3"); boiler-skelton, well drilling machine	9.84	1.45
Air compressor (tunnel)	9.81	1.45
Front end loader (high lift), bulldozer	9.79	1.45
Concret mixer, power wheel scoop & scraper, motor grader, tunnel mechanic, tunnel motormen	9.69	1.45
Mechanic	10.02	1.45
Bulldozer, hydraulic tamper, hne pack operator	9.59	1.45
Roller	9.49	1.45
Air compressor, pump. welding machine, well point	9.415	1.45
Building Construction (Excluding City of Alexandria), Heavy Construction (All Areas), & Highway Construction (Washington, D. C. Only):		
Group I	15.83	2.12+f
Group II	15.49	2.12+f
Group III	14.93	2.12+f
Group IV	13.72	2.12+f
Group V	9.76	2.12+f
Group VI	16.91	2.12+f
RESILIENT FLOOR LAYERS:		
Fairfax County, Virginia	6.81	
Remaining Areas	14.92	1.56
ROOFERS:		
Composition roofer (Kettlemen, Damp & Waterproof workers);	14.72	1.69
Mopman (Waterproofer, sprayer, Spandrel ironite, precast concrete slab, slate, tile);	15.44	1.69
Material handler (only to supply material and to prepare decks for new roof or repair; does not operate any machines)	9.92	1.69

DECISION NO. DC84-3009	Basic Hourly Rates	Fringe Benefits
SHEETMETAL WORKERS	15.53	3.57+d
SPRINKLER FITTERS:		
Montgomery and Price Georges Counties, Maryland	16.17	2.83
Remaining Areas	16.67	2.83
STEAMFITTERS, REFRIGERATION & AIR CONDITIONING MECHANICS:		
Light commercial refrigeration and/or air conditioning systems serving a single business - air conditioning systems shall not total more than 7½ tons and the refrigeration system shall not total more than 7½ tons; apartment buildings over 4 stories with individual units not to exceed 5 tons; heat pumps (package units) not to exceed 5 tons (excluding split units).	9.48	3.06
All Other Work	15.48	3.31
Mechanical Helper - loading, unloading, distribution and stock piling of materials and equipment; loading and unloading tools; tool cleaning and pick-up activity; job clean up activity; cleaning of equipment; cutting, patching and grouting under the direction of a journeyman; service contractor's equipment; setting up and tearing down scaffolding:		
Washington, D.C. - apartment buildings over 4 stories;	8.00	1.19
Remaining Areas - apartment buildings over 4 stories, schools, colleges, speculative office buildings, churches, and strip shopping centers	8.00	1.19
TRUCK DRIVERS:		
Paving and Incidental Grading (Washington, D.C. Only):		
Trunk drivers (standard job)	8.75	.80
Tandem	8.88	.80
Tractor trailer (capable of moving heavy equipment)	9.34	.80
Sewer and Water Lines Construction (Washington, D.C. and Montgomery County, MD.):		
Dump trucks	6.10	.415+e
Dump trucks over 8 wheels, flat trucks	6.20	.415+e
Trailers	6.45	.415+e
Euclids	6.60	.415+e
Building Construction (Excluding City of Alexandria, VA.), Heavy Construction (all Areas), and Highway Construction (Washington, D.C. Only):		
Boom trucks	11.31	1.72+g
Small dump, water sprinkler, grease & oil	11.02	1.72+g
Flat, pick-up hauling materials, small euclids, dump over 8 wheels	11.14	1.72+g
Trailer, low-Boy, tractor-pulls	11.38	1.72+g
Helper	10.84	1.72+g
Carryalls, large euclids, euclid water sprinkler, tunnel work underground & pay hauler	11.50	1.72+g
Mechanics	11.20	1.72+g
Greaser, fireman, runner	10.27	1.72+g
WELDERS & RIGGERS: Receive rate prescribed for craft performing operation to which welding or rigging is incidental.		

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DECISION NO. DC84-3009

FOOTNOTES:

a. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day.

b. Employer contributes 8% of basic hourly rate for employees with 5 years or more of service and 6% of the basic hourly rate for employees with 6 months to 5 years of service.

c. 2½ days paid vacation or equivalent to employees with 6 months to 3 years of service; 2 weeks paid vacation or equivalent to employees with 3 years to 10 years of service; 3 weeks paid vacation or equivalent to employees with 10 years or more of service.

d. Employer contributes additional 12¢ outside of the District of Columbia.

e. $10.00 per week when employee has worked 90 days and has worked 3 days in any work week.

f. Paid Holidays: New Years Day; Inaugural Day; Decoration Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day.

g. Paid Holidays: New Year's Day; Labor Day; Thanksgiving Day; Christmas Day provided the employee works the scheduled workday before and after the holiday.

DECISION NO. DC84-3009

LABORERS CLASSIFICATIONS HEAVY CONSTRUCTION

Group I - Carloader, choker setter, concrete crewman, crushed feeder, demolition laborer (including salvaging all material, loading and cleaning up, wrecking), driller tenders, dumpman, fence erector and installer (including installation and erection of fence, guard rails, median rails, reference posts, guide posts and right-of-way markers), form stripper, general laborers, railroad track laborer, riprap man, scale man, stake jumper, structure mover (includes foundation, separation, preparation, cribbing, shoring, jacking and unloading of structures), water nozzleman, timber bucker and faller, truck loader, water boys;

Group II - Combined air and water nozzleman, cement handler, dope pot fireman (nonmechanical), form cleaning machine, mechanical railroad, equipment (includes spiker, puller, tie cleaner, tamper pipe wrapper, power driven wheelbarrow, operators of hand derricks, towmasters, scootcretes, buggymobiles and similar equipment), tamper or rammer operator, trestle scaffold builders over one tier high, power tool operator (gas, electric or pneumatic), sandblast or gunnite tailhose man, scaffold erector (steel or wood), vibrator operator (up to 4 feet) asphalt cutter, mortar men, shorer and lagger, creosote material handler, corrosice enamel or equal, paving breaker and jackhammer operators;

Group III - Multi-section pipe layer, non-mentallic clay and concrete pipe layer (including caulker, collarman, jointer, rigger and jacker) thermite welder and corrugated metal culvert pipe layer;

Group IV - Asphalt block pneumatic cutter, asphalt roller, walking chainsaw with attachment, concrete saw (walking), high scalers, jackhammer (using over 6' of steel), vibrator (6 feet and over), well point installers, air-trac operator;

Group V - Asphalt screeder, big drills, cut of the hole drills (1¼" piston or larger), down the hold drills (3¼" piston or larger), gunnite or sandblaster nozzleman, asphalt raker, asphalt tamper, form setter, demolition torch operator, shotcrete nozzlemen and potman;

Group VI Powderman, master form setters;

Group VII - Brick paver (asphalt block paver, asphalt block sawman, asphalt block grinder; hastings block or similar type);

Group VIII - Powdermen.

DECISION NO. DC84-3009

LABORERS CLASSIFICATIONS
Tunnel, Raise, & Shaft Laborers (Free Air)
for Heavy Construction

Group I - Brakeman, bull gang, dumper, trackman, concrete man;

Group II - Chuck tender, powdermen in prime house, form setters and movers, nippers, cableman, hosemen, groutman, bell or signalman, top or bottom vibrator operator, caulkers' tenders;

Group III - Miners, re-bar underground, concrete or gunnite nozzlemen, powderman, timberman and re-timberman, wood steel including liner plate or any other support, material, motorman, caulkers, diamond drill operators, riggers, cement finishers - underground, welders and burners, shield driver, air trac operator, shotcrete nozzleman and potman;

Group IV - Mucking machine operator (air).

POWER EQUIPMENT OPERATORS CLASSIFICATIONS
(BUILDING, HEAVY, & HIGHWAY CONSTRUCTION)

Group I - 35 ton cranes & above, tower & climbing cranes, derricks, concrete boom pump, drill rigs (equivalent to L & Double L), mole;

Group II - Backhoe, cableways, cranes, cherry pickers, elevating graders, hoists, paving mixers, power shovels, tunnel shovels, batch plants, shields, tunnel mining machines, gradalls, front end loader (3½ cu. yds. and above), power driven wheel scoops and scrapers (50 cu. yd. struck capacity or above), rail tamper, draglines, boomcat, mucking machines, graders in tunnels, pile driving engines;

Group III - Front end loaders below 3½ cu. yds., boom trucks, hydraulic backhoe (½ yd. capacity or below rubber or track mounted), tug boats, power driven wheel scoops and scrapers, blade graders, motor graders, bulldozers, trenching machines, concrete mixer, speed swing pettibone, ballast regulator, concrete pump, mechanic, welder, shotcrete machine, Moe-ram, locomotive (standard, narrow guage), tuggers;

Group IV - High lifts above 10 feet, boilers (skelton), asphalt spreaders, bullfloat finishing machines, concrete finishing machines, concrete spreaders, fine graders, air compressors, welding machines, pumps, generators, well points deep wells, hydraulic pumps, elevators, freeze units, tunnel motorman or dinky operator, roller, conveyors, well drilling machines, grout pump, fireman;

Group V - Fork lifts, ditch witch, bobcat 1/3 cu. yd. and below, space heaters, mechanic helpers, sweepers, assistant engineers, oilers;

Group VI - Master mechanic.

SUPERSEDEAS DECISION

STATE: MASSACHUSETTS — COUNTIES: BERKSHIRE, FRANKLIN, HAMPDEN AND HAMPSHIRE

DECISION NO.: MA84-3007 — DATE: DATE OF PUBLICATION

Supersedes Decision No. MA83-3045, dated August 26, 1983 in 48 FR 38959

DESCRIPTION OF WORK: Building, Heavy, Highway and Residential Construction

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.78	3.98
BOILERMAKERS	10.16	9.441
BRICKLAYERS; CEMENT MASONS; PLASTERERS; STONE MASONS; MARBLE, TILE & TERRAZZO WORKERS; POINTERS; CLEANERS; CAULKERS:		
Area 1	14.05	4.24
Area 2	17.18	
Area 3	14.95	2.13
CARPENTERS; SOFT FLOOR LAYERS; DRYWALL CARPENTERS; LATHERS:		
Area 1	13.79	2.89
Area 2	15.81	3.52
Area 3	15.25	2.87
Area 4	15.40	2.22
ELECTRICIANS:		
Area 1	15.54	1.96+ 3%
Area 2:		
Electrical Contracts $125,000 and over	15.21	3.62+ 3%
Electrical Contracts under $125,000	13.21	3.67+ 3%
Residential Single Family housing	12.00	2.22+ 3%
Area 3:	15.83	3.78+ 3%
ELEVATOR CONSTRUCTORS	16.19	3.00+ a+b
ELEVATOR CONSTRUCTORS HELPERS	11.33	3.00+ a+b
ELEVATORS CONSTRUCTORS' PROBATIONARY HELPERS	8.095	
GLAZIERS	14.12	3.32
IRONWORKERS:		
Area 1	15.50	5.07
Area 2:		
Building, Heavy and Highway	13.90	3.99
Residential (4 stories or less)	10.425	3.99
LABORERS (BUILDING):		
Group 1	12.70	2.80
Group 2	12.95	2.80
Group 3	13.20	2.80
Group 4	13.45	2.80
Group 5	13.70	2.80
HEAVY & HIGHWAY		
Area 1		
Class I	12.70	2.80
Class II	12.95	2.80
Class III	13.45	2.80
Class IV	13.70	2.80
Area 2:		
Class I	13.20	2.80
Class II	13.45	2.80
Class III	13.95	2.80
Class IV	14.20	2.80
LINE CONSTRUCTION		
Area 1		
Lineman, cable splicer dynamite man	15.55	2.30+ 4.75%
Heavy equipment operator	14.00	2.30+ 4.75%
Equipment operator, tractor trailer dirver, field mechanic	13.22	2.30+ 4.75%
Driver groundman	11.66	2.30+ 4.75%
Groundman	8.55	2.30+ 4.75%
Area 2:		
Lineman, cable splicer dynamite man	16.30	2.30+ 4.75%
Heavy equipment operator	14.67	2.30+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	13.86	2.30+ 4.75%

DECISION NO. MA84-3807	Basic Hourly Rates	Fringe Benefits
Driver Groundman	12.23	2.30+ 4.75%
Groundman	8.97	2.30+ 4.74%
Area 3:		
Lineman, cable splicer, dynamite man	17.00	2.30+ 4.75%
Heavy equipment operator	15.30	2.30+ 4.75%
Equipment operator, tractor, trailer, driver field mechanic	14.45	2.30+ 4.75%
Driver groundman	12.75	2.30+ 4.75%
Groundman	9.35	2.30+ 4.75%
Areas 1, 2 & 3:		
Traffic Control, Illumination & Maintenance:		
Linemen, technicians & cable splicers	16.56	2.30+ 4.75%
Equipment operator	14.08	2.30+ 4.75%
Driver groundman	12.42	2.30+ 4.75%
Groundman	11.59	2.30+ 4.75%
Railroad Construction (including electrical distribution, transmission lines, substation and signal construction:		
Linemen, cable splicers & dynamite man	17.34	2.30+ 4.75%
Heavy equipment operator	15.61	2.30+ 4.75%
Equipment operator, tractor trailer driver, & field mechanic	14.74	2.30+ 4.75%
Driver groundman	13.01	2.30+ 4.75%
Groundman	9.54	2.30+ 4.76%
MARBLE, TILE & TERRAZZO FINISHERS	11.45	
MILLWRIGHTS	16.90	4.25
PAINTERS:		
Brush and Taper	13.56	2.89
Spray and Sandblashing	17.43	2.89
Swing stage and steel riding under 40'	13.75	2.89
Swing stage and steel riding over 40'	14.06	2.89
Sign Painters	13.00	1.84
PILEDRIVERMEN	16.90	3.20
PLUMBERS & STEAMFITTERS:		
Area 1	18.28	1.85+ 4%
Area 2	18.10	3.50
Area 3	16.82	3.96 +c
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION		
Class I	15.53	2.40+d
Class II	15.33	2.40+d
Class III	15.13	2.40+d
Class IIIA	14.76	2.40+d
Class IV	13.23	2.40+d
Class V	12.53	2.40+d
Class VI	11.38	2.40+d
Class VII	16.28	2.40+d
Class VIII	12.55	2.40+d
Class IX	16.11	2.40+d
Class X	16.03	2.40+d
Class XI	16.53	2.40+d
POWER EQUIPMENT OPERATORS HEAVY AND HIGHWAY CONSTRUCTION:		
Class I	15.63	2.40+e
Class II	15.43	2.40+e
Class III	15.23	2.40+e
Class IIIA	14.86	2.40+e
Class IV	13.33	2.40+e
Class V	12.63	2.40+e
Class VI	11.48	2.40+e
Class VII	16.38	2.40+e
Class VIII	12.655	2.40+e
Class IX	16.21	2.40+e
Class X	16.13	2.40+e
Class XI	16.63	2.40+e
ROOFERS:		
Composition, Damp Waterproof	10.565	3.13
Slate, Tile, Precast Concrete	11.065	3.13
SHEET METAL WORKERS	15.66	4.79
SPRINKLER FITTERS	18.95	4.23

DECISION NO. MA84-3007	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS		
Class I	12.88	3.00+ f+g
Class II	13.03	3.00+ f+g
Class III	13.10	3.00+ f+g
Class IV	13.23	3.00+ f+g
Class V	13.33	3.00+ f+g
Class VI	13.61	3.00+ f+g
Class VII	13.90	3.00+ f+g

AREA DESCRIPTIONS

Bricklayers; Cement Masons; Plasterers; Stonemasons; Marble; Tile & Terrazzo Workers; Painters; Cleaners & Caulkers:

Area 1: HAMPDEN: HAMPSHIRE; FRANKLIN; BERKSHIRE (Becket, Otis, Standisfield)

Area 2: BERKSHIRE (Adams, North Adams, Cheshire, Florida, Savoy, Clarksbury, Williamstown)

Area 3: BERKSHIRE (Remainder of County)

Carpenters; Soft Floor Layers; Drywall Carpenters:

Area 1: BERKSHIRE; FRANKLIN (Monroe, Monroe Bridge)

Area 2: FRANKLIN (Erving, Warwick, Orange, North Orange)

Area 3: HAMPDEN; HAMPSHIRE (South Hadley, Granby, Belchertown, Amherst, Pelham) FRANKLIN (Leverett, Shutesbury, Sunderland)

Area 4: HAMPSHIRE (Remainder of County); FRANKLIN (Remainder of County)

Electricians & Line Construction:

Area 1: BERKSHIRE; FRANKLIN (Hawley, Monroe, Rowe); HAMPSHIRE; (Middlefield, Cummington, Plainfield)

Area 2: FRANKLIN (Remainder of County); HAMPSHIRE (Remainder of County); HAMPDEN (Chester, Holyoke and North Portion of Chicopee)

Area 3: HAMPDEN (Remainder of County); HAMPSHIRE (Belchertown, Ware)

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AREA DESCRIPTIONS CONTINUED

Ironworkers:

Area 1: HAMPSHIRE; HAMPDEN; FRANKLIN; BERKSHIRE Becket, Washington, Lee, Sandisfield, New Marlboro, Hinsdale, Peru, Savoy, Monterey, Sheffield, Windsor, Otis, N. & E. Otis

Area 2: BERKSHIRE (Remainder of County);

Laborers: Heavy & Highway:

Area 1: Except Twps. of Warrick and Orange in FRANKLIN

Area 2: FRANKLIN (Orange, Warrick);

Line Construction: (See Electricians & Line Construction)

Plumbers & Steam fitters:

Area 1: FRANKLIN (Orange)

Area 2: BERKSHIRE (Except Otis, Becket, Sandisfield); FRANKLIN (Monroe, Towe, and Western part of Charlemont)

Area 3: HAMPDEN; HAMPSHIRE; BERKSHIRE (Otis, Becket, Sandisfield; FRANKLIN (Remainder of County)

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Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

Paid Holidays: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. 6 paid holidays: A through F providing employee has worked 5 consecutive days before and the working day after the holiday.

c. 2 paid holidays: C & D, provided the employee has been employed seven days prior to the holiday by the same employer.

d. 8 paid holidays: A through F, Washington's Birthday and Veterans Day.

e. 9 paid holidays: A through F, Washington's Birthday, Columbus Day and Veterans Day.

f. 10 paid holidays: A through F, Washington's Birthday, Patriot's Day, Columbus Day, and Veterans Day.

g. Paid Vacation: 4 months to 1 year - ½ day's pay per month; 1-5 years - 1 week; 5-10 years - 2 weeks; 10 years or more - 3 weeks. Employee must have received pay for 120 days during last year of employment.

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CLASSIFICATIONS

LABORERS BUILDING

GROUP 1 - Laborers, carpenter tenders and wrecking laborers

GROUP 2 - Asphalt Rakers, Carbide Core Driller Operators, Chain Saw Operators, Pipelayers, Jackhammer and Paving Breaker Operators, Barco-type Jumping Tampers, Laser Beam Operators, Concrete Pump Operators, Mason-Tenders, Mortar Mixers, Ride-on Motorized Buggy Operators and Wagon Drill Operators

GROUP 3 - Pre-cast Floor and Roof Plank Erectors and Asbestos Removers

GROUP 4 - Air Track Operators, Block Pavers, Rammers and Curb Setters

GROUP 5 - Powdermen and Blasters

LABORERS HEAVY & HIGHWAY

CLASS I - Carpenter Tenders, Cement Finisher Tenders, Laborers, Wrecking Laborers

CLASS II - Asphalt Rakers, Fence and Guard Rail Erectors, Laser Beam Op., Mason Tender, Pipelayer, Pneumatic Drill Op., Pneumatic Tool Op., Wagon Drill Op.

CLASS III - Air Track Op., Block Pavers, Rammers, Curb Setters

CLASS IV - Blasterers, Powdermen

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POWER EQUIPMENT OPERATORS: BUILDING

CLASS I - Shovels, Cranes (including all tower, climbing and bridge cranes, as used in Building Construction as defined in Scope of Employment), Hydraulic Cranes--10 ton capacity or over, Draglines, Derricks, Elevators with Chicago Boom, Backhoes, Gradalls, Elevating Graders, Pile Driving Rigs, Concrete Road Pavers, all three Drum Hoisting and Trenching Machines, Belt-type Loaders, Foreman Mechanics, Front End Loaders--5¼ yards or over, Dual Drum Paver, Automatic Grader (i.e. C.M.I.), Combination Backhoe-Loader--3/4 yard or over, Jet Engine Dryer, Tree Shredder, Post Hole Digger, Post Hole Hammer, Post Extractor, Truck Mounted Concrete Pump with boom, Roto-Mill.

CLASS II - Rotary Drill (with mounted compressor), Compressor House (3 to 6 compressors), rock and earth boring machines (excluding McCarthy and similar drills), Graders, Front End Loaders-4 yards to 5¼ yards, two Drum Hoists, High Fork Lifts with capacity of 15 ft. and over, Scraper--21 yards and over (struck load), Sonic Hammer Console, Road Planer, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers.

CLASS III - Combination Backhoe-Loader--up to 3/4 yard hoe, Bulldozers, Push Cats, Scrapers--up to 21 yards (struck load) selfpropelled or tractor drawn, Fireman, Front End Loaders--up to 4 yards, Asphalt Paver, Well Drillers, Mechanics, Welders, Pumpcrete Machines, Concrete pumps, and similar type pumps, Engineer or Fireman on High Pressure Boiler (on job), Self-Loading Batch Plant, Well Point Operators (including installing), Electric pumps used in Well Point System, Pumps--12 inches and over (total discharge), Compressor (one or two 900 cu. ft. and over, Engineers in charge of Powered Grease Truck, all automatic elevators (permanent or temporary) operated manually or remote control (not to be confused with elevators operating from conventional hoist--1, 2 or 3 Drum), Grout pumps, Boom Truck, Hydraulic Cranes--under 10 ton.

CLASS IIIA - Asphalt Rollers, Self-powered Rollers and Compactors, Tractor without blade drawing sheepsfoot roller, rubber tire roller, vibratory roller, or other type of compactors including machines for pulverizing and aerating soil.

CLASS IV - Single Drum Hoist, Power Pavement Breakers, Concrete Pavement Finishing Machines, Two Bag Mixers with Skip, McCarthy and similar drills, Batch Plants (not self-loading), Bulk Cement Plants, Self-propelled material spreaders, A-Frame Trucks, Fork Lifts--up to 15 ft., 3 or more 10KW Light Plants, 30 KW or more Generators.

CLASS V - Compressors (one or two) 315 cu. ft. to 900 cu. ft., Pumps--4 inches to 12 inches (total discharge).

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POWER EQUIPMENT OPERATORS: BUILDING CONT'D

CLASS VI - Compressors (up to 315 cu. ft.), small mixers, pumps (up to 4 inches), power heaters, welding mahines, (when 3 or more heaters or welding machines are used on one job, classification 4 rate will be paid), Conveyors, Oiler, helpers on grease trucks with hand greasing equipment.

CLASS VII - Truck Crane Crews

CLASS VIII - Oiler

CLASS IX - Master Mechanic

CLASS X - Boom lengths over 184 feet (including jib)

CLASS XI - Boom lengths over 225 feet (including jib)

POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY

CLASS I - Shovels, Crawler and Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Belt-type Loaders, Gradalls, Pile Drivers, Concrete Pavers, on site Processing Plant (Engineer in charge), Dragline, Clam Shell, Cableways, Shaft Hoists, Mucking Machines, Front End Loader--5½ yards and over Tower Cranes, Self-propelled Hydraulic Cranes--10 tons and over, Dual Pavers, Automatic Grader--Excavator (C.M.I. or equal), Scrapers towing pan or wagon, Tandem Dozers or Push Cats (2 units in tandem), Welder using semi-automatic Welding Machine, Shotcrete Machine, Tunnel Boring Machine, Combination Back Hoe-Loader--3/4 yard boe or over, Jet Engine Dryer, Tree Shredder, Post Hole Digger, Post Hole Hammer, Post Extractor, Truck Mounted Concrete Pumps with boom, Roto-Mill.

CLASS II - Rotary Drill (with mounted Compressor), Compressor House (3 to 6 Compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Grader, Front End Loaders-- 4 yards to 5½ yards, Scraper--21 yards and over (struck load), Forklifts--7 ft. lift and over or 3 ton capacity and over, Sonic Hammer Concole, Road Planer, Cal Tracks, Ballast Regulators, Rail Anchor Machines, Switch Tampers.

CLASS III - Bulldozer, Push Cats, Scrapers--up to 21 yards (struck load) self-propelled or Tractor Drawn, Self-powered Asphalt Paver, Front End Loaders--up to 4 yards, Mechanics, Welders, Well Driller, Pumpcrete Machine, Engineer or Fireman on High Pressure Boiler (on job), Self-loading Batch Plant(on job), Well Point Operators, Electric Pumps used in Well point system, Tireman, Pumps--16 inches or over total discharge, Compressors (1 or 2) 900 cu. ft. and over, Powered Grease Truck, Tunnel Locomotives and Dinkeys, Grout pumps, Hydraulic Jacks (jacking pipe, slip forms, etc.), Boom Truck, self-propelled Hydraulic Cranes--up to 10 ton, Combination Back Hoe-Loader--up to 3/4 yard hoe.

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POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY CONT'D

CLASS IIIA - Asphalt Rollers, Self-Powered Rollers and Compactors, Tractor without blade drawing sheeps foot roller, Rubber tire roller, Vibratory roller, or other type of compactors including machines for pulverizing and aerating soil.

CLASS IV - Hoists, Conveyors, Power Pavement Breaker, Self-propelled Material Spreader, Self-powered Concrete Finishing Machine, Two Bag Mixer with skip, MCarthy and similar Drills, Batch Plant (not self-loading), Bulk Cement Plant, 3 or more 10KW Light Plants, 30 KW or more Generators.

CLASS V - Compressor (315 cu. ft. to 900 cu. dt., 1 or 2), Pumps-4" to 16" total discharge.

CLASS VI - Compressor (up to 315 cu. ft.), Small Mixers with skip, Oiler, Pumps up to 4", Grease Truck, Helper on powered Grease Trucks, Power Heaters, Welding Machines (when 3 or more welding machines are used, Classification 4 rate shall be paid), A-Frame Trucks, Forklifts--up to 7 ft. lift and up to 3 ton capacity, Hydro Boom, Power Safety Boat.

CLASS VII - Truck Crane Crews

CLASS VIII - Oiler

CLASS IX - Master Mechanic

CLASS X - Boom lengths over 184 feet (including jib)

CLASS XI - Boom lengths over 225 feet (including jib)

TRUCK DRIVERS

CLASS I - Station Wagons, Panel Trucks and Pickup Trucks

CLASS II - Two axle Equipment; Helpers on Low Bed When Assigned at the Discretion of the Employer, Warehousemen, Forklift Operators

CLASS III _ Three Axle Equipment and Tiremen

CLASS IV - Four and Five Axle Equipment

CLASS V - Specialized Earth Moving Equipment under 35 tons other than Convential type trucks, Low Bed, Vachual, Mechanics, Paving Restoration Equipment, Mechanic

CLASS VI - Specialized Earth Moving Equipment over 35 Tons

CLASS II - Trailers for Earth Moving Equipment (Double Hookup)

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SUPERSEDEAS DECISION

SUPERSEDEAS DECISION

STATE: MASSACHUSETTS

COUNTIES: ESSEX, SUFFOLK, MIDDLESEX, NORFOLK, BRISTOL, PLYMOUTH, BARNSTABLE, DUKES, NANTUCKET

DECISION NUMBER: MA84-3010

DATE: DATE OF PUBLICATION

Supersedes Decision No. MA83-3046 dated September 23, 1983, in 48 FR 43524.

DESCRIPTION OF WORK: Building Projects (including Residential), Heavy and Highway Project, and Marine Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS		
Area 1	18.06	3.82
Area 2	17.63	4.13
BOILERMAKERS	18.16	3.441
BRICKLAYERS; CEMENT MASONS (except in areas 2,3,4,5,7&8); PLASTERERS; STONE MASONS; POINTERS; CAULKERS and CLEANERS:		
Areas 1, 2, &3	17.86	3.87
Area 4		
Except Plasterers	17.76	3.47
Plasterers	17.35	4.05
Area 5, 6, 7	17.86	3.37
Area 8 & 9	18.71	2.52
Area 10	16.81	4.42
Area 11	17.15	4.05
Area 12	16.81	4.42
Area 13	17.76	3.47
Area 14	17.01	4.22
CARPENTERS		
Area 1	14.85	2.63
Area 2	16.01	4.00
Area 3	15.86	3.85
Area 4	17.11	3.67
Area 5	15.33	2.72
Area 5A	15.03	2.72
CEMENT MASONS:		
Areas 1, 6, 9, 10, 11, 12, 13, 14, 15, & 16 - See BRICKLAYERS		
Area 2	11.69	1.45
Areas 3, 4 & 5	18.60	2.85
Areas 7 & 8:		
Projects $1 million and over	16.55	2.77
Projects $250,000 to $1 million	14.90	2.77
Projects less than $250,000	13.24	2.77
Residential	13.24	2.77
ELECTRICIANS:		
Area 1:	19.95	3.15+ 3%
Residential (Single Family Housing)	11.55	1.15+ 3%
Area 2	16.77	3.70+ 3%
Area 3	16.00	4.48+ 3%
Residential (Single Family Housing)	12.00	2.45+ 3%
Area 4	18.85	2.12+ 3%
Residential (Single Family Housing)	11.75	2.27+ 3%
Area 5	16.00	1.81+ 11%
Residential (Single Family Housing)	12.00	1.81+ 3%
Area 6	19.28	4.43+ 3%
Residential (Single Family Housing)	10.50	2.68+ 10%
Area 7	16.85	.04+28%
Area 8	16.00	3.00+ 3½%
Residential	11.00	3.75+ 3½%
Area 9	15.75	2.00+ 16.5%
Residential	10.00	1.00+ 10%
Area 10	15.38	28%+ .10
Residential	8.85	21%
Area 11	17.98	17.5%
Residential (Single Family Housing)	10.50	2.60+ 3%
ELEVATOR CONSTRUCTORS	19.31	3.00+ a+b
ELEVATOR CONSTRUCTORS HELPERS	13.92	3.50+ a+5
ELEVATOR CONSTRUCTORS' PROBATIONARY HELPERS	9.65	
GLAZIERS:		
Area 1	17.10	3.45
Area 2	15.80	2.53

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	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Area 1	15.39	5.51
Area 2	17.75	4.25
Area 3	17.35	4.25
Area 4	15.28	4.45
LABORERS (BUILDING):		
Class I	13.20	2.80
Class II	13.45	2.80
Class III	13.70	2.80
Class IV	13.95	2.80
Class V	14.20	2.80
LABORERS (WRECKING):		
Class I	9.95	2.80
Class II	13.05	2.80
Class II	13.15	2.80
Class IV	13.30	2.80
Class V	13.55	2.80
Class VI	13.80	2.80
LABORERS (HEAVY & HIGHWAY):		
Class I	13.20	2.80
Class II	13.45	2.80
Class III	13.95	2.80
Class IV	14.20	2.80
Tunnels, caisson and Cylinder Work in Compressed Air:		
Class V-A	18.70	2.80
Class V-B	20.20	2.80
Class V-C	20.35	2.80
Class V-D	20.43	2.80
Class V-E	20.93	2.80
Free Air Operation: Shield driven and liner plate in free air:		
Class VI-A	14.80	2.80
Class VI-B	13.65	2.80
Cleaning concrete and caulking tunnel (both new and existing);		
Class VI-C	13.65	2.80
Class VI-D	13.975	2.80
Rock shaft, concrete lining of same and tunnel in free air:		
Class VI-E	13.40	2.80
Class VI-F	13.55	2.80
Class VI-G	13.65	2.80
Class VI-H	14.50	2.80

	Basic Hourly Rates	Fringe Benefits
LABORERS (OPEN AIR CAISSONS, UNDERPINNING AND TEST BORING INDUSTRIES):		
Open Air Caisson, Underpinning Work and Boring Crew:		
Class I-A	13.20	2.80
Class I-B	13.95	2.80
Test Boring:		
Class II-A	13.20	2.80
Class II-B	14.07	2.80
LATHERS	11.90	1.58
LINE CONSTRUCTION:		
Lineman	17.50	2.10+c +4.375%
Equipment Operators & Cableman	14.88	2.10+c +4.375%
Driver Groundman	14.00	2.10+c +4.375%
Groundman	9.63	1.20+c +4.375%
MARBLE, TILE & TERRAZZO WORKERS	16.50	3.45
MILLWRIGHTS	16.90	4.25
PAINTERS:		
Sign Painters (Statewide)	13.00	1.84
Area 1:		
New Construction:		
Brush; Taper	16.65	4.07
Spray; Sandblast	17.65	4.07
Steel	19.56	4.07
Repaint:		
Brush; Taper	15.00	4.07
Spray; Sandblast	16.00	4.07
Steel	19.56	4.07
Area 2:		
Brush; Taper; Paperhanging	16.51	3.58
Sandblasting; swing stage	17.81	3.58
Spray; Steel	18.81	3.58
Repaint up to 3 stories (including basements and sub-basements) and new housing 2 stories and less:		
Brush; Taper; Paperhanging	14.03	3.58
Sandblasting; Swing stage	14.88	3.58
Spray; Sandblast Steel	15.31	3.58

DECISION NO. MA84-3010	Basic Hourly Rates	Fringe Benefits
Area 3:		
Brush	16.08	3.15
Wall Coverings	16.33	3.15
Spray; Sandblast	17.08	3.15
Steel	18.10	3.15
Repaint	13.47	3.15
Residential	12.06	3.15
Area 4:		
New Construction:		
Brush	14.30	2.68
Spray; Sandblasting	15.30	2.68
Steel	15.75	2.68
Repaint & Residential:		
Brush	13.75	2.68
Spray; Sandblasting	14.75	2.68
Steel	15.00	2.68
Area 5:		
Brush; Roller	13.13	2.38
Taping	13.23	2.38
Paperhangers; Vinyl installers	13.63	2.38
Spray	14.63	2.38
Sandblast; chipping; hammer; power brush	14.88	2.38
Steel	16.38	2.38
Steel spray	17.88	2.38
Steel: sandblast; chipping; hammers; power tools	18.13	2.38
Interior repaint (except power plants):		
Brush; Roller	11.82	2.38
Sprayers	13.32	2.38
Sandblasters; chipping; hammers; power tools	13.57	2.38
PILEDRIVERMEN	18.98	3.78
PLASTERERS-SEE BRICKLAYERS ETC.		
PLASTERERS TENDERS	13.45	2.40
PLUMBERS, PIPEFITTERS & STEAMFITTERS:		
Area 1:		
Plumbers	18.48	4.68
Repairs: Replacing defective fixtures, appliances and defective piping, valves or fittings serving same (which means the fixtures and appliances in a single family house, one apartment, or not more than one group of fixtures in same building that tie into the same soil or waste stack. Replacing of piping limited to piping in the same immediate area of items served by the piping.)	17.50	4.60
Pipefitters	18.30	4.50
Area 2	17.05	2.72
Area 3	17.72	3.15
Area 4		
Plumbers & pipefitters	19.37	2.34
Area 5		
Plumbers & Pipefitters	12.91	1.85+ 4%
Area 6		
Plumbers & pipefitters	15.50	5.88
Area 7		
Plumbers & pipefitters	17.96	2.79
Area 8:		
Plumbers & steamfitters	18.64	3.38
Nursing homes and rest homes that do not exceed 4 stories; Repair or renovation in an existing building without change in exterior dimension by way of addition thereto;	12.83	3.13
Residential	12.83	3.13
POWER EQUIPMENT OPERATORS (BUILDING, HEAVY & HIGHWAY, & MARINE CONSTRUCTION)		
Class I	18.11	3.43+e
Hourly premium for boom lengths including jib:		
Over 150 ft. + .64		
Over 185 ft. + 1.14		
Over 210 ft. + 1.59		
Over 250 ft. + 2.41		
Over 295 ft. + 3.35		
Class II	17.99	3.43+e
Class III	15.16	3.43+e
Class IV	16.53	3.43+e
Class V	13.43	3.43+e
Class VI	14.26	3.43+e
ROOFERS:		
Area 1:		
Roofers	16.76	4.25
Slaters	17.01	4.25
Hot pitch	17.76	4.25
Area 2	12.10	2.35

DECISION NO. MA84-3010	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS		
Area 1	20.10	5.29
Residential	14.07	3.79
Area 2	14.38	3.64+ 3%
SPRINKLER FITTERS		
Area 1	18.30	2.41
Area 2	16.37	3.15
TILE & MARBLE FINISHERS	15.04	2.85
TERRAZZO FINISHERS	17.85	1.50
TRUCK DRIVERS (BUILDING, HEAVY & HIGHWAY CONSTRUCTION):		
Class I	12.86	3.00+ d+e
Class II	13.03	3.00+ d+e
Class III	13.10	3.00+ d+e
Class IV	13.22	3.00+ d+e
Class V	13.32	3.00+ d+e
Class VI	13.61	3.00+ d+e
Class VII	13.90	3.00+ d+e

WELDERS - Receive rate prescribed for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)).

DECISION NO. MA84-3010

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day F-Christmas Day.

a. Paid holidays: A through F and the day after Thanksgiving Day.

b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

c. Paid Holidays: A through F and Bunker Hill Day, provided the employee has been employed 5 working days prior to any one of the listed holidays.

d. Paid holidays: A through F, Washington's Birthday, Patriots Day, Columbus Day and Veterans Day.

e. Paid Vacation: 4 months to 1 year - ½ day's pay per month; 1-5 years - 1 week; 5-10 years - 2 weeks; 10 years or more - 3 weeks. Employee must have received pay for 120 days during last year of employment.

AREA DESCRIPTIONS

ASBESTOS WORKERS:

AREA 1: ESSEX; SUFFOLK; MIDDLESEX; BARNSTABLE (except Barnstable, Borne, Falmouth, Mashpee, Sandwich).

AREA 2: NORFOLK (Bellingham, Franklin, Plainville, Wrenham); BRISTOL (except Easton); PLYMOUTH (Lakeville, Mattapoisett, Middleboro, Rochester, Wareham); BARNSTABLE (Barnstable, Borno, Falmouth, Mashpee, Sandwich); DUKES: NATUCKET.

BRICKLAYERS; CEMENT MASONS; PLASTERERS; STONE MASONS; POINTER, CAULKERS AND CLEANERS:

AREA 1: ESSEX (Beverly, Manchester, Gloucester, Rockport, Wenham, Hamilton, Essex, Ipswich, Rowley, Newbury, Newburyport, Lynn, Lynnfield, Wakefield, Saugus, Swampscott, Nahant, Marblehead, Salem, Peabody, Danvers, Middleton, Topsfield).

AREA 2: ESSEX (Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, North Andover, Salisbury, West Newbury); MIDDLESEX (Reading, North Reading).

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BRICKLAYERS; CEMENT MASONS; PLASTERERS; STONE MASONS; POINTERS, CAULKERS AND CLEANERS: (CONTINUED)

AREA 3: MIDDLESEX (Wakefield).

AREA 4: SUFFOLK; MIDDLESEX (Arlington, Cambridge, Everett, Malden, Medford, Melrose, Somerville); NORFOLK (Brookline, Milton).

AREA 5: MIDDLESEX (Stoneham, Winchester, Woburn).

AREA 6: MIDDLESEX (Belmont, Concord, Lexington, Lincoln, sudbury, Waltham, Watertown, Wayland, Weston).

AREA 7: MIDDLESEX (Burlington).

AREA 8: MIDDLESEX (Acton, Bedford, Billerica, Carlisle, Chemsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington).

AREA 9: MIDDLESEX (Ashby, Ayer, Boxboro, Ft. Devens, Groton, North Acton, Pepperell, South Acton, Townsend, Shirley, West Acton).

AREA 10: MIDDLESEX (Ashland, Framingham, Holliston, Hopkinton, Hudson, Maynard, Natick, Sherborn, Stow); NORFOLK (Medfield, Medway, Millis).

AREA 11: MIDDLESEX (Newton only); NORFOLK (Dover, Needham, Wellesley).

AREA 12 NORFOLK (Bellingham, Canton, Dedham, Foxboro, Franklin, Norfolk Norwood, Plainville, Sharon, Walpole, Westwood, Wrentham); PLYMOUTH (Lakeville only); BRISTOL (Attleboro, North Attleboro, Mansfield, Raynham, Taunton, Berkley, Norton, Dighton, Rehoboth, Seekonk).

AREA 13: NORFOLK (Avon, Braintree, Cohasset, Holbrook, Quincy, Randolph, Soughton, Weymouth); PLYMOUTH (Abington, Bridgewater, Brockton, Carver, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull Kingston, Marshfield, Middleboro, Norwell, Pembroke, Plymouth, Rockland, Scituate, West Bridgewater, Whitman).

AREA 14: BRISTOL (Acushnet, Darmouth, Fairhaven, Fall River, Freetown, New Bedford, Somerset, Swansea, Wesport); PLYMOUTH (Marion, Mattapoiserr, Rochester, Wareham); BARNSTABLE, DUKES, NANTUCKET.

DECISION NO. MA84-3010

CARPENTERS:

AREA 1: Ipswich, Essex, Gloucester, Rockport, Topsfield, Hamilton, Wendham, Middleton, Danvers, Beverly, Manchester, Peabody, Salem, Marblehead).

AREA 2: ESSEX (Amesbury, Boxford, Georgetown, Groveland, Haverhill, Merrimack, Newbury, Newburyport, Rowley, Salisbury, West Newbury, Andover, Lawrence, Methuen, North Andover, West Andover); MIDDLESEX (Acton, Billerica, Boxboro, Carlisle, Chlemsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford).

AREA 3: ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscoot); MIDDLESEX (Remainder of County); NORFOLK (except Brookline, Deham, Milton, Avon, Randolph, Holbrook, Staughton); PLYMOUTH (Duxbury, Hanover, Hingham, Hull, Marsfield, Norwell, Pembroke, Rockwell, Scituate); BRISTOL (Attleborough, North Attleborough).

AREA 4: SUFFOLK; MIDDLESEX (Belmont, Cambridge, Everett, Malden, Medford, Somerville); NORFOLK (Brookline, Deham, Miston).

AREA 5: NORFOLK (Avon Holbrook, Randolph, Stoughton); BRISTOL (Easton, North Easton, South Easton); PLYMOUTH (Remainder of County) BARNSTABLE.

AREA 5A: PLYMOUTH (Lakeville, Marion, Mattapoisett, Middleboro, Rochester); BRISTOL (Remainder of County) DUKES & NANTUCKET.

ELECTRICIANS:

AREA 1: ESSEX (Salem, Marblehead, Peabody, Danvers, Beverly, Hamilton, Wenham, Topsfield, Ipswich, Essex, Manchester, Gloucester, Rockport).

AREA 2: ESSEX (Andover, Lawrence, Methuen, North Andover, Salisbury, West Newbury, Amesbury, Boxford, Georgetown, Groveland, Haverhill, Merrimac, Newbury, Newburyport, Rowley).

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ELECTRICIANS: CONT'D

AREA 3: MIDDLESEX (Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington).

AREA 4: MIDDLESEX (Ashy, Ayer, Ft. Devens, Groton, Pepperell, Shirley, Townsend).

AREA 5: MIDDLESEX (Ashland, Hopkinton, Hudson, Marlboro, Stow).

AREA 6: ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott); SUFFOLK; MIDDLESEX (Remainder of County); NORFOLK (except Avon, Holbrook, Randolph, Stoughton, Plainville); PLYMOUTH (Hingham, Hull).

AREA 7: NORFOLK (Plainville); BRISTOL (Attleboro, North Attleboro, Seekonk).

AREA 8: BRISTOL (Mansfield, Norton, Taunton, Raynham, Rehoboth, Dighton, Berkley); PLYMOUTH (Lakeville, Middleboro).

AREA 9: BRISTOL (Fall River, Freetown, Somerset, Swansea, Westport).

AREA 10: BRISTOL (Acushnet, Dartmouth, Fairhaven, New Bedford, North Dartmouth, South Dartmouth); PLYMOUTH (Mattapoisett, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

AREA 11: NORFOLK (Avon, Holbrook, Randolph, Stoughton); BRISTOL (Easton); PLYMOUTH (Remainder of County).

GLAZIERS:

AREA 1: ESSEX; SUFFOLK; MIDDLESEX; NORFOLK; PLYMOUTH (except Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester, Wareham); DUKES; NANTUCKET.

AREA 2: BRISTOL; PLYMOUTH (Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester, Wareham); BARNSTABLE.

IRONWORKERS:

AREA 1: ESSEX (Lawrence, Methuen, North Andover, Andover, Haverhill, Boxford, Danvers, Georgetown, West Newbury, Merrimac, Rowley, Topsfield, Gloucester, Newburyport, Salisbury, Amesbury, Hamilton, Ipswich, Newbury, Wenham, Essex, Rockport); MIDDLESEX (Groveland, Lowell, Tewksbuty, Dracut, Billerica, Chlemsford, Dunstable, Tyngsboro, North Reading, Wilmington, Middleton, Acton, Groton, Pepperell, Carlisle, Littleton, Townsend, Westford).

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IRONWORKERS: CONT'D

AREA 2: ESSEX (Beverly, Swampscott, Lynn, Lynnfield, Manchester, Marblehead, Nahant, Salem, Saugus, Swampscott); SUFFOLK; MIDDLESEX (Arlington, Bedford, Belmont, Burlington, Cambridge, Concord, Everett, Framingham, Lexington, Lincoln, Malden, Maynard, Medford, Melrose, Natick, Newton, Reading, Sherborn, Somerville, Stoneham, Sudbury, Wakefield, Waltham, Watertown, Wayland, Weston, Winchester, Woburn); NORFOLK (Avon, Braintree, Brookline, Canton, Cohassett, Dedham, Dover, Foxboro, Holbrook, Medfield, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth); BRISTOL (Easton); PLYMOUTH (Abington, Bridgewater, Brockton, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull, Kingston, Marshfield, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate, West Bridgewater, Whitman).

AREA 3: MIDDLESEX (Ashby, Shirley, Ayer, Boxboro, Stow, Hudson, Marlborough, Ashland, Hopkinton, Holliston, Medway).

AREA 4: NORFOLK (Billingham, Franklin, Plainville, Wrentham); BRISTOL (Acushnet, Attleboro, Berkley, Dartmouth, Dighton, Fairhaven, Fall River, Freetown, Mansfield, New Bedford, North Attleboro, Norton, Raynham, Rehoboth, Seekonk, Somerset, Swansea, Taunton, Westport); PLYMOUTH (Lakeville, Marion, Mattapoisett, Middleboro, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

LABORERS (WRECKING):

AREA 1: ESSEX; SUSSEX; MIDDLESEX; NORFOLK; PLYMOUTH.

AREA 2: BRISTOL; BARNSTABLE; DUKES; NANTUCKET.

PAINTERS:

AREA 1: ESSEX: SUFFOLK; MIDDLESEX (Arlington, Belmont, Cambridge, Everett, Malden, Medford, Melrose, North Reading, Reading, Somerville, Stoneham, Wakefield, Winchester, Woburn); NORFOLK (Except Dover, Medfield, Medway, Millis, Needham, Wellesley); BRISTOL (except Acushnet, Dartmouth, Fairhaven, New Bedford); PLYMOUTH (except Marion, Mattapoisett, Rochester, Wareham).

AREA 2: MIDDLESEX (Bedford, Billerica, Burlington, Carlisle, Chlemsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington).

AREA 3: MIDDLESEX (Ashby, Townsend, Pepperell, Groton, Shirley, Ayer).

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PAINTERS: CONT'D

AREA 4: MIDDLESEX (Boxboro, Acton, Concord, Stow, Manyard, Lincoln, Lexington, Hudson, Sudbury, Wayland, Weston, Waltham, Watertown, Newton, Marlboro, Framingham, Natick, Ashland, Sherborn, Hopkinton, Holliston); NORFOLK (Dover, Medfield, Medway, Millis, Needham, Wellesley).

AREA 5: BRISTOL (Acushnet, Dartmouth, Fairhaven, New Bedford); PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

PLUMBERS, PIPEFITTERS & STEAMFITTERS:

AREA 1: ESSEX (Lynn, Lynnfield, Nanhant, Saugus, Swampscott); SUFFOLK; MIDDLESEX (Arlington, Cambridge, Everett, Malden, Medford, Melrose, Newton, North Reading, Reading, Somerville, Stoneham, Wakefield, Watertown, Winchester, Woburn); NORFOLK (Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Foxboro, Franklin, Millis, Milton, Needham, Norfolk, Norwood, Plainville, Quincy, Sharon, Walpole, Westwood, Weymouth, Wrenthram); PLYMOUTH (Hingham, Hull, Scituate).

AREA 2: ESSEX (Methuen, Lawrence, Groveland, Georgetown, Andover, North Andover).

AREA 3: ESSEX (Remainder of County).

AREA 4: MIDDLESEX (Acton, Ayer - except West of Greenville branch of the Boston and Maine Railroad, Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Pepperell, Tewksbury, Tyngsboro, Westford, Wilmington).

AREA 5: MIDDLESEX (Ashby, Townsend, Groton, Shirley, Ft. Devens, Ayer - West of Greenville branch of the Boston and Maine Railroad).

AREA 6: MIDDLESEX (Ashland, Belmont, Concord, Framington, Holliston, Hopkington, Lexington, Lincoln, Marlboro, Maynard, Natick, Sherborn, Sudbury, Stow, Waltham, Wayland, Weston, Hudson); NORFOLK (Medway, Medfield, Dover, Wellesley).

AREA 7: NORFOLK (Avon, Holbrook, Randolph, Stoughton); BRISTOL (Attleboro, Berkley, Dighton, Easton, Mansfield, North Attleboro, Norton, Raynham, Rehoboth, Taunton; PLYMOUTH (except Marion, Mattapoisett, Rochester, Wareham).

AREA 8: BRISTOL (Acushnet, Dartmouth, Fairhaven, Fall River, Freetown, New Bedford, Somerset, Swansea, Westport, Seekonk); PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

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ROOFERS:

AREA 1: ESSEX; SUFFOLK; MIDDLESEX; NORFOLK; BRISTOL (Attleboro, North Attleboro, Mansfield, Easton, Norton, Taunton, Raynham); PLYMOUTH (Abington, Brockton, Bridgewater, East Bridgewater, Halifax, Hanover, Hanson, Marshfield, Norwell, Pembroke, Plymouth, Scituate, Rockland, West Bridgewater).

AREA 2: BRISTOL (Seekonk, Rehoboth, Dighton, Berkley, Swansea, Somerset, Fall River, Freetown, Westport, Dartmouth, New Bedford, Acushnet, Fairham); PLYMOUTH (Carver, Lakeville, Marion, Mattapoisett, Middleboro, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

SHEET METAL WORKERS:

AREA 1: ESSEX; SUFFOLK; MIDDLESEX; NORFOLK; BRISTOL (Attleboro, North Attleboro, Mansfield, Easton, Norton, Taunton, Raynham Berkley); PLYMOUTH (except Marion, Mattapoisett, Rochester, Wareham).

AREA 2: BRISTOL (Acushnet, Dartmouth, Dighton, Fairhaven, Fall River, Freetown, Rehoboth, Seekonk, Somerset, Swansea, Westport, New Bedford); PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BARNSTABLE; DUKES; NANTUCKET.

SPRINKLER FITTERS:

AREA 1: ESSEX; SUFFOLK; MIDDLESEX (except Ashby, Townsend, and portions of Pepperell and Shirley beyond 35 mile radius from Boston City Hall); NORFOLK; BRISTOL (portion within 35 mile radius of Boston City Hall); PLYMOUTH (portion within 35 mile radius of Boston City Hall).

AREA 2: MIDDLESEX (Ashby, Townsend, portions of Pepperell and Shirley beyond 35 mile radius of Boston City Hall); NORFOLK (beyond 35 mile radius of Boston City Hall); PLYMOUTH (beyond 35 mile radius of Boston City Hall); BARNSTABLE; DUKES; NANTUCKET.

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LABORERS (BUILDING):

CLASS I: Laborers, carpenters tenders.
CLASS II: Jackhammer operator, pavement breakers, asphalt rakers, carbide core drilling machine, chain saw operator, pipelayer, barco type jumping tampers, laser beam, concrete pump, mason tenders, motorized mixers, ride-on motorized buggy, fence and beam rail erectors.
CLASS III: Air track, block pavers, rammers, curb setter.
CLASS IV: Blasters, powdermen.
CLASS V: Pre-cast floor and roof plank erectors.

LABORERS (WRECKING - AREA 1):

CLASS I: Yardmen laborers.
CLASS II: Yardmen burners, sawyers.
CLASS III: Wrecking laborers.
CLASS IV: Adzeman.
CLASS V: Burners, Jackhammers.
CLASS VI: Asbestos removers, small front loaders on tracks and bobcat operators.

LABORERS (HEAVY & HIGHWAY):

CLASS I: Laborers, carpenter tenders, cement finisher tenders.
CLASS II: Asphalt rakers, fence and guard rail erector, laser beam operator, mason tender, pipelayer, pneumatic drill operator, pneumatic drill operator, pneumatic tool operator, wagon drill operator.
CLASS III: Air track operator, block pavers, rammer, curb setters.
CLASS IV: Blasters, powdermen.

Tunnels, Caisson and Cylinder Work in Compressed Air:

CLASS V-A: Powder watchmen, top men on iron bolt, change house attendant.
CLASS V-B: Brakeman, trackman, groutman, laborerer, outside lock tender, lock tender, guage tenders.
CLASS V-C: Motormen.
CLASS V-D: Blaster.
CLASS V-E: Mucking machine operator.

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LABORERS (HEAVY & HIGHWAY):

Free Air Operation:

Shield driven and liner plate tunnel in free air:
CLASS VI-A: Miners, miner welder, conveyor operator, motormen, mucking machine operator, nozzle men, grout men, shaft and tunnel steel and rodmen, shield and erector arm operators.
CLASS VI-B: Brakemen, trackmen.
Cleaning concrete and caulking tunnel (both new and existing):
CLASS VI-C: Concrete workers, strippers and form movers (wood & steel).
Rock shaft, concrete lining of same and tunnel in free air:
CLASS VI-E: Change house attendants.
CLASS VI-F: Laborers, topside.
CLASS VI-G: Brakeman, trackman, tunnel laborers, shaft laborers.
CLASS VI-H: Miner, cage tender, bellman.

LABORERS (OPEN AIR CAISSONS, UNDERPINNING AND TEST BORING INDUSTRIES)
Includes installation and performance of caissons of all types, underpinning, soil test borings, core borings, diamond drill soundings, wash borings, auger borings, shot drilling, grouting (cement, chemical, etc.), installation of earth and rock anchors, tiebacks, ground water observation wells and monitoring wells, installation of instrumentation, drilling and installation of horizontal drains, lagging (carrying of bands and settling bands in place), installation and extraction of grout pipes, pit work, hand excavation and labor required in pile driving and related work, welding of caissons not driven by pile driving equipment, pouring of concrete piles and caissons of all types, cutting-off concrete piles and clean-up:

Open Air Caisson, Underpinning Work and Boring Crew:

CLASS I-A: Laborers, top man.
CLASS I-B: Bottom man.

Test Boring:

CLASS II-A: Laborer.
CLASS II-B: Driller.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):

CLASS I: Cranes, shovels, truck cranes, cherry pickers, draglines, trench hoes, backhoes, three drum machines, derricks, pile drivers, elevator towers, hoists, gradalls, shovel dozers, front end loaders, fork lifts, augers, bar-

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POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION): CONT'D

CLASS I: (CONT'D) ing machines, rotary drills, post hole hammers, post hole diggers, pumpcrete machines, asphalt plant (on site), concrete batching and/or mixing plant (on site), crusher plant (on site), paving concrete mixers, timber jacks.
CLASS II: Sonic or vibratory hammers, graders, tandem scrapers, concrete pumps, bulldozers, tractors, york rakes, mulching machines, portable steam boiler, portable steam generators, rollers, spreaders, tampers (self propelled or tractor drawn), asphalt pavers, mechanics maintenance, paving screed machines, stationary steam boilers, paving concrete finishing machines, cal trucks, ballast regulators, switch tampers, rail anchor machinery, tire trucks (when operated by the employer on the job site).
CLASS III: Pumps (1-3 grouped), compressors, welding machines (1-3 grouped), generators, concrete vibrators, lighting plants, heaters (power driven 1-5), well-point systems (operating and installing), syphons-pullsometers, concrete mixers, values controlling permanent plant air or steam, conveyors, Jackson type tampers, single diaphragm pump, lighting plants.
CLASS IV: Assistant engineers (firemen).
CLASS V: Assistant engineers (other than truck cranes and gradalls).
CLASS VI: Assistant engineers (on truck cranes and gradalls).

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION):

CLASS I: Power shovels, cranes, truck cranes, derricks, pile drivers, trenching machines, mechanical hoist pavement breakers, cement concrete pavers, draglines, hoisting engines, three drum machines, pumpcrete machines, uke loaders, shovel dozers, front end loaders, mucking machines, shaft hoists, steam engines, backhoe, gradalls, cable ways fork lifts, cherry pickers, boring machines, rotary drills, post hole hammers, port hole diggers, asphalt plant on job site, concrete batching and/or mixing plant on job site, crusher plant on job site, paving concrete mixers, timber jacks.
CLASS II: Sonic or vibratory hammers, graders; scrapers; tandem scrapers, bulldozer, tractors, mechanic maintenance, York rakes, mulching machines paving screed machines, stationary steam boilers, paving concrete finishing machines, grout pumps, potable steam boilers, portable steam generators, rollers, spreaders, asphalt pavers, locomotives or machines used in place thereof, tampers, self propelled or tractor drawn, cal tracks, ballast regulators, rail anchor machines, switch tampers.
CLASS III: Pump (1-3 grouped), compressors; welding machine (1-3 grouped), generators, lighting plants, heaters (power driven) (1-5), syphons-plulsometers, concrete mixers, valves controlling permanent plant air steam, conveyors, wellpoint system (operating and installing).

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POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION): CONT'D

CLASS IV: Assistant engineers (firemen).
CLASS V: Assistant engineers (other than truck cranes and gradalls).
CLASS VI: Assistant engineers (on truck cranes and gradalls).

POWER EQUIPMENT OPERATOR (MARINE CONSTRUCTION):

CLASS I: Shovels, Cranes, Truck Cranes, Cherry Pickers, Derricks, Pile Drivers two or more Drum Machines, Lighterns, Derrick Boats, Trenching, Mechanic Hoists Pavement Breakers, Cement Concrete Pavers, Draglines, Hoisting Engines, Pumpcrete Machines, Elevating Graders, Shovels, Dozers, Frontend Loaders, Backhoe, Gradalls, Cable Way, Boring Machines, Rotary Drills, Post Hole Hammer, Post Hole Diggers, Fork Lifts, Timber Jacks, Asphalt Plant (on site), Concrete Batching &/or Mixing Plant (on site), Crusher Plant, (on site), Paving Concrete Mixers.
CLASS II: Portable Steam Boilers, Portable Steam Generators, Sonic or Vibratory Hammer, Graders, Scrapers, Tandem Scrapers, Concrete Pumps, Bulldozers, Tractors, York Rakes, Mulching Machines, Rollers, Spreader, Tamper self-propelled or Tractor Drawn, Asphalt Pavers, Concrete Mixers with side Loaders, Mechanics - Maintenance, Cal Truck, Ballast, Regulator, Switch Tampers, Rail Anchor Machines, Tire Trucks.
CLASS III: Pumps, Compressors, Welding Machines, Heaters (Power Driven), Valves controlling Permanent Plan Air or Steam, Well Point Systems, Augers - Powered by Independence Engines & Attached to Pile Drivers, Hydraulic Saws, Generators, Lighting Plants, Syphons-Pulsometers, Concrete Mixers, Conveyors.
CLASS IV: Assistant engineers (firemen).
CLASS V: Assistant engineers (other than truck cranes and gradalls).
CLASS VI: Assistant engineers (on truck cranes and gradalls).

TRUCK DRIVERS (HEAVY & HIGHWAY CONSTRUCTION):

CLASS I: Station wagons, panel trucks and pickup trucks.
CLASS II: Two axle equipment; helpers on low bed when assigned at the discretion of the employer, warehousemen, forklift operators.
CLASS III: Three axle equipment and firemen.
CLASS IV: Four and five axle equipment.
CLASS V: Specialized earth moving equipment under 35 tons other than conventional type trucks, low bed, vachual, mechanics, paving restuaration equipment, mechanics.
CLASS VI: Specialized earth moving equipment over 35 tons.
CLASS VII: Trailers for earth moving equipment (double bookup).

SUPERSEDEAS DECISION

STATE: Wyoming
DECISION NUMBER: WY84-5009
COUNTIES: Statewide
DATE: Date of Publication
Supersedes Decision No. WY82-5126 dated November 5, 1982, in 47 FR 50432
DESCRIPTION WORK: Heavy and Highway Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, supension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$11.51	
CEMENT MASONS	11.60	
IRONWORKERS:		
Structural	13.00	
Reinforcing	13.00	
LABORERS:		
Group 1	8.10	
Group 2	8.20	
Group 3	8.35	
Group 4	8.62	
Group 5:		
(a)	8.58	
(b)	8.42	
(c)	8.85	
(d)	8.69	
PAINTERS:		
Brush and Spray	10.95	
LINE CONSTRUCTION:		
All work over 34.5 KV all work on steel towers and/or multiple wood structures, all cross country underground communications work, and all motor traffic controlling, streets and highway lighting:		
Cable Splicer	16.00	$1.50+ 3%
Linemen	16.00	1.50+ 3%
Equipment Operators	14.39	1.50+ 3%
Groundmen	10.60	1.50+ 3%
All work 34.5 KV and under:		
Lineman	16.00	1.50+ 3%
Line Equipment Operator	13.74	1.50+ 3%
Groundman	10.60	1.50+ 3%

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group 1	$10.61	
Group 2	10.66	
Group 3	10.71	
Group 4	10.75	
Group 5	10.78	
Group 6	10.83	
Group 7	10.87	
Group 8	10.89	
Group 9	11.00	
Group 10	11.06	
Group 11	11.08	
Group 12	11.26	
Group 13	11.30	
Group 14	11.37	
Group 15	11.43	
Group 16	11.60	
Group 17	11.94	
TRUCK DRIVERS:		
Pick-up Truck Drivers (when used for hauling)	9.08	
Dump Truck Drivers (water level capacity box): 7 cu. yds. and less	9.13	
Over 7 cu. yds. to and including 10 cu. yds.	9.28	
Over 10 cu. yds. to and including 13 cu. yds.	9.38	
Over 13 cu. yds. to and including 20 cu. yds.	9.88	
Over 20 cu. yds. to and including 25 cu. yds.	9.88	
Over 25 cu. yds. to and including 30 cu. yds..	9.98	
Over 30 cu. yds. to and including 35 cu. yds.	10.03	
Over 35 cu. yds. to and including 40 cu. yds.	10.08	
Over 40 cu. yds. to and including 45 cu. yds.	10.13	
Over 45 cu. yds. (to be negotiated prior to use		

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS: (Cont'd)		
Snow Plow Truck Drivers (the cu. yd. rate of the truck driver classification):		
Pilot Car Drivers	$ 9.08	
Gravel Spreader	9.13	
Flat Rack Material Truck Drivers:		
Less than 2 tons	9.13	
2 tons to 5 tons	9.28	
Over 5 tons	9.38	
Low Boy and Tandem Axle Float Drivers	9.88	
Gang Truck Drivers	9.13	
Stringing Truck Drivers:		
Single Axle Type Truck	9.13	
Multiple Axle Type Truck, Semi	9.88	
Winch Trailer Truck Drivers:		
(Cable and Hoist)	9.38	
Utility Winch Truck Drivers	9.38	
"A" Frame Truck Drivers	9.38	
Transit Mix or Wet Mix Truck Drivers:		
Less than 5 cu. yds.; Single Axle	9.38	
Over 5 cu. yds. to and including 10 cu. yds.; Tandem Axle	9.48	
Over 10 cu. yds.	9.58	
POWER BROOM DRIVERS AND/OR OPERATOR	9.28	
WATER TRUCK DRIVERS:		
2500 gallons or less (straight truck)	9.13	
2500 gallons or less (semi truck)	9.28	
Over 2500 gallons to and including 3600 gallons	9.38	
Over 3600 gallons (straight truck)	9.48	
Over 3600 gallons (semi truck)	9.58	
HEAVY DUTY (Euclids, electric or similar type)	9.88	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

LABORERS

Group 1: Axeman and Hand Faller; Concrete Worker (wet or dry); Concrete Worker (curing and drying); Dumpman; Erector and Installer (includes the installation and erection of fences, snow fences, guard rails, median rails, median posts, signs and right-of way marker); Form Stripper; General Labor; Heater Tender; Material Handler (lumber, rods, cement, concrete); Nozzleman, air and water; Pre-watering, pre-wetting and pre-irrigation (all work); Riprap Man; Sandblaster Post Tender; Signal Men; Grade Concrete, etc.; Scissor Man or Hopper Man; Stake Jumper for equipment; Tar and Asphalt Pot Tender; Wrecking and demolition crews

Group 2: Asphalt Raker and Tamper; Bin Wall Installer; Bituminous Curb Builder; Cement Mason or Finisher and Tender; Chuck Tender; Form Setter; (paving); Hand operated Vibratory Roller; Landscaper; Mortar Man on Stone Riprap; Operator of pneumatic, electric, gas tamper and similar mechanical tools; Pipe Setter (corrugated culvert pipe sectional, multiplate and similar type); Pipe Setter; Pipelayer (non-metallic); Pipe Wrapper, Power type concrete buggy (push or ride); Power Saw Operator (clearing); Vibrator - concrete

Group 3: Concrete Saw; Gunite Nozzleman; High Scaler (using air tools from Bos'n Chair, Swing Stage, Lift Belt or Block and Tackle, shall receive $.20 per hour more than the classified rate); Jackhammer and Pavement Breaker; Sandblaster Nozzleman; Sewer Pipe Installer (non-metallic), clay, concrete, etc. (Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker)

Group 4: Powderman and Blaster; Wagon Drill, Air-trac, Diamond and other drills for blasting powder or grouting

Group 5: Tunnel and Underground work:

(a) Brakeman;Swamper, Vibrator Man
(b) Bull Gang; Dumpman; Mucker; Trackman
(c) Miners (Drillers); Machine Men; Timbermen; Steelmen; Drill Doctor Form Setter and Mover; Spader; Tuggers Spilling and/or Caisson Workers; Powderman; Jackhammermen Finishers
(d) Nipper; Chucktender; Topman; Toploader

POWER EQUIPMENT OPERATORS

Group 1: Auger Machine Operator (post holes, etc.); Batch Bin Weighman, Scissorman or Hopperman; Brakeman; Crusher Oiler; Oiler Utility; Screed Operator; Tractor Operators (farm, crawler or wheel type, 60 HSP - drawbar) or less with or without use of power attachments, except for use of Backhoe or Bucket)

Group 2: Broom Operators, self-propelled; Cableway Signalman (Bellboy); Concrete Saw (self-propelled); Fireman, Power Loader, belt and bucket type

Group 3: Air Compressor over 315 cu. ft. capacity; Chip Spreader Operator; Form Grader Operator; Joint Machine Operator; Longitudinal Float Operator; Mixer Operator Concrete (under one yard); Roller Operators, self-propelled) pneumatic, rubber fired, sheep foot vibratory or combination type; Tire Repairman

Group 4: Pump Operator (all others)

Group 5: Conveyor Belt Operator; Fork Lift and Lumber Stacker; Screening Plant Operator

Group 6: A-Frame Truck; Tractor Operators (farm, crawler or wheel type, over 60 HSP - drawbar) without use of power attachments

Group 7: Oiler, Lead Utility

Group 8: Gunnite and Grout Machine Operator; Mulching Machine Operator; Oil Distributor

Group 9: Front End Loader (up to and including 1¼ cu. yds.); Pavement Breakers, Hydro-tamper and similar type machines; Pumps, well points

Group 10: Hoist Operator (one drum)

Group 11: Haulage Motorman and Industrial type Motorman; Motor Patrol Operator (all others); Pump Operator (in tunnels, shafts, raises); Hydro type Cranes (up to 15 tons)

POWER EQUIPMENT OPERATORS

Group 12: Air Compressor, two or more machines or tunnels, shafts, raises or Plant Operator; Asphalt Plant Operator; Bituminous Laydown Machine Operator; CMI Machine or similar; Concrete Batch Plant; Concrete Finish Machine Operator; Concrete Multi Blade Span Saw (Hunt process or similar); Concrete Spreader and Paver Operator; Crusher Operator; Drilling Machine, integrated (Core, Rotary, Caisson, Diamond); Elevating Grader; Front End Loader (over 1¼ cu. yds.); Jumbo Form Operator; Mixer Operator, base course pug mill type; Mixer Bituminous Operator (travel plant); Mixer Operator Concrete (over one yard); Motor Patrol Operator (finish); Mucking Mixer Machine Operator (all types); Pneumatic Guns; Pumpcrete Operator; Roller Operator (Tandem steel wheel, three axle or three wheel); Scraper Equipment (all types; Shovels, Draglines, Cranes, Piledrivers, all truck mounted cranes (manufacturers' rating) up to 3¼yds., all attachments; Hydro type cranes (15 ton and over); Shuttle Car Operator; Subgrade Machine Operator (power); Tractor Operator, all with use of power attachments and including Pushcat, Dozer, Tournadozer, etc. (The use of power attachment shall not include disking, pulling or rollers, and similar unskilled actions); Trenching Machine Operator; Wash Plant Operator

Group 13: Welder, Machine Doctor

Group 14: Hoist Operator (two or more drums on shafts or raises); Repairman; Mechanics; Machine Doctors, Welders, Heavy Duty Mechanic, Machine Doctor

Group 15: Cableway Operators; Mixer Dual Drum; Cranes, (Whirley, Gantry, Stiffleg, Overhead traveling)

Group 16: Shovels, Draglines, Cranes, Piledrivers, all truck mounted cranes manufacturer's rating) 3¼ yds. to 7 cu. yds; all attachments; Wheel Excavator Operator

Group 17: Shovels, Draglines, Cranes, Piledrivers, all trunk mounted Cranes, (manufacturer's rating) 7 cu. yds. and over, all attachments

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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April 6, 1984

Part III

Consumer Product Safety Commission

16 CFR Part 1115

Statement of Enforcement Policy on Substantial Product Hazard Reports; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Statement of Enforcement Policy on Substantial Product Hazard Reports

AGENCY: Consumer Product Safety Commission.

ACTION: Statement of enforcement policy and republication of certain sections of existing regulations.

SUMMARY: In this document the Consumer Product Safety Commission: (1) Expresses its serious concern about the level of compliance with the reporting requirements of Section 15(b) of the Consumer Product Safety Act; and (2) provides additional clarification to help firms meet these requirements. Section 15(b) requires every manufacturer, distributor, and retailer of a consumer product who obtains information which reasonably supports the conclusion that the product either fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard immediately to inform the Commission, unless the manufacturer, distributor, or retailer has actual knowledge that the Commission is adequately informed.

Having considered the number of Section 15(b) reports received, as well as the nature of the reports received, the Commission believes that there is an extensive amount of underreporting, especially of the more significant hazards. The Commission will augment its efforts to discover unreported potential product hazards, along with related reporting violations. Where appropriate, the Commission will seek civil penalties as provided in the Consumer Product Safety Act.

In this document the Commission also provides additional clarification to help firms meet the reporting requirements and has reprinted relevant sections from its statement of interpretation on the reporting requirements.

In summary, the guidelines advise firms as follows: (1) Know the legal requirements set out at Section 15 of the CPSA, as interpreted by the Commission's regulations; (2) Seek informal guidance from the CPSC as to the need to report; (3) Report if at all in doubt; (4) The term "defect", as used in the reporting requirements, has a broad meaning and includes design defects, manufacturing and production errors, as well as defects in warnings or instructions; (5) The test for reporting is based on a reasonableness standard and does not require certainty that a defect or hazard exists; (6) Report immediately, not weeks or months later; (7) Report even if an insurance carrier is handling the matter; (8) Report any death or grievous injury that may have been caused by a product defect or noncompliance; (9) Don't wait for incidents, complaints, and lawsuits to accumulate before reporting; (10) Remember that Section 15 reporting is a high CPSC priority.

The Commission believes that these measures will help to improve compliance with the reporting requirements, and should lead to an increase in the number of reports filed, as well as an increase in the reporting of serious hazards.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Philip E. Bechtel, Director, Division of Administrative Litigation (301) 492–6626, or David W. Thome, Director, Division of Corrective Actions (301) 492–6608, Consumer Product Safety Commission, Washington, D.C. 20207.

SUPPLEMENTARY INFORMATION: Over the last several years, Section 15 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2064) has become of vital importance in protecting consumers who may be exposed to hazardous consumer products. This section authorizes the Consumer Product Safety Commission to initiate administrative proceedings to obtain corrective actions, by way of public notice and/or repair, replacement, or refund, from manufacturers, distributors, or retailers of consumer products that present substantial product hazards. The numbers of recall actions initiated, products affected, and products corrected, have increased sharply over the last several years. In FY 1981, there were 99 recall actions initiated, involving 2,475,455 products, with 635,375 products corrected. In FY 1983, these figures had increased to 113; 23,253,383; and 1,253,382, respectively.

Section 15(b) of the CPSA requires every manufacturer (including an importer), distributor, or retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that the product either fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard immediately to inform the Commission, unless the firm has actual knowledge that the Commission has been adequately informed. The Commission has issued a detailed statement of interpretation, policy, and procedure concerning the reporting requirements at 16 CFR Part 1115 (43 FR 34988, August 7, 1978).

The Commission wishes to emphasize that *retailers* and *distributors*, as well as manufacturers of consumer products, have an obligation to report under Section 15(b) of the statute. The existing interpretative regulations at Section 1115.13(b) set out in detail procedures to enable retailers and distributors to meet their reporting obligations. These regulations make it very easy for retailers and distributors to report. In summary, a retailer or distributor with reportable information can meet its reporting obligations by: (1) Telephoning or writing the Division of Corrective Actions in the Directorate for Compliance and Administrative Litigation, CPSC, Washington, D.C. 20207 (301) 492–6608; (2) sending a letter describing the situation to the manufacturer or importer of the product and sending a copy of the letter to the Division of Corrective Actions, or (3) forwarding to the Division of Corrective Actions reportable information received from another firm. A retailer or distributor that receives reportable information from a manufacturer or importer must report this information to the Commission unless the manufacturer or importer informs the distributor or retailer that a report has been made to the Commission.

The Section 15 reporting requirements are critical to the Commission in administering its statutory responsibilities. Section 15 reports enable the Commission to obtain information at an early stage from knowledgeable sources (the product's manufacturer, distributor and/or retailer). These reports provide a key basis for evaluating a potential hazard and the need, if any, for corrective action in the form of public notice and/or recall, repair or replacement of the product under Sections 15(c) and (d) of the CPSA (15 U.S.C. 2064(c), (d)), or the possible need for rulemaking or voluntary standards efforts. Of the 113 recall actions initiated in FY 1983, 67 were initiated as a result of Section 15 reports. Of course, not every report results in a determination that a substantial hazard exists and that corrective action is necessary. However, once a company reports, the firm is far better able to intelligently evaluate the hazard potential with the Commission's expert assistance.

Where firms do not report, the Commission must rely on other sources of information, such as consumer complaints, product liability lawsuits, media accounts of incidents, fire investigation reports, coroner's and

medical examiner's reports, or its own independent investigations to find out about potential problems. It is generally far more time consuming and resource intensive for the Commission to proceed in this manner, since without a report the Commission staff must conduct an investigation from the very beginning, instead of proceeding with the benefit of the information in the firm's Section 15(b) report.

Early Commission involvement through Section 15(b) reports can lead to a more rapid implementation of corrective action, which can result in fewer additional deaths or injuries. In cases where different brand name products share a common defective part or design flaw, early Commission involvement can help reduce the likelihood that other manufacturers will use the same defective part or design. Also, if the Commission is involved early in a matter requiring corrective action, the scope of the recall can often be limited, saving the firm considerable expense. Firms can also benefit from early Commission involvement in planning corrective action by drawing upon the Commission staff's extensive experience in designing the most effective (and often the most cost efficient) corrective action.

The Commission is concerned about the current level of reporting by firms under Section 15(b). The Commission believes that there is both a substantial amount of underreporting of the most serious hazards as well as undue delay in filing reports. Although the number of Section 15 reports received by the Commission in FY 1983 rose to 131 from the 96 reports received in FY 1982, the Commission believes that this number is small, given the many thousands of different types of consumer products in the marketplace and the number of hazards the Commission has uncovered on its own initiative that were never reported as required by Section 15. The small number of reports received annually by the Commission suggest the improbable conclusion that all manufacturers, distributors, and retailers of consumer products throughout the United States receive reportable information only two or three times per week. The Commission is particularly disturbed by the fact that, of the 25 most serious hazard files opened by the Commission staff in FY 1983, only 5 resulted from Section 15 reports by firms. The others arose from investigations conducted by the Commission's own headquarters or field staff. Of the 6 most serious hazard files opened by the staff in FY 1983 (categorized by the staff as "Class A" files) not a single one originated as a result of a Section 15 report from a firm. Instead, all of these file openings were the result of the agency's own investigation.

In addition to the failure of many firms to report, a further concern of the Commission is the delay in reporting. The statute and the regulations require a firm to file a report immediately (that is, within 24 hours, as interpreted by the regulations at 16 CFR 1115.14(e)) after the firm obtains reportable information. While the regulations provide that a firm may conduct an investigation, the investigation must be reasonably expeditious, and ordinarily should not exceed 10 days in the case of a death or grievous bodily injury (Section 1115.14 (d), (e)). In a number of investigations conducted recently, the staff has discovered firms that have waited weeks, or even months, to report information that the staff believes should have been reported much earlier. Some firms have waited until literally dozens of claims and complaints concerning related problems have arisen before filing a report. Other firms have referred product safety-related information to their insurance carriers to be investigated in the due course of processing a claim or preparing for product liability litigation without making a decision to report. By the time the insurance carrier completes its investigation and the firm decides to report, weeks or months may have gone by without the Commission having been informed of a potential problem.

Although it is not possible to determine the precise reasons or motivations for not reporting, the Commission believes that the following factors may have a role:

(1) *Reluctance To Undertake Corrective Action*—The Commission does not automatically request corrective action from all firms that report nor does it request corrective action that is unreasonable or disproportionate to the level of the safety hazard. Corrective action is sought only when the staff believes that a substantial product hazard exists. The level of corrective action sought by the Commission reflects the severity and likelihood of injury. The staff is willing to discuss its preliminary determination with a firm and consider the firm's point of view. In cases where corrective action is needed, early Commission involvement can improve the effectiveness and timeliness of the program and may help minimize any financial impact on the firm.

In the past some firms may not have reported because they were reluctant to undertake corrective action, or because they believed that the Commission was likely to insist on unreasonable corrective action if they did report. The Commission and firms have been able to successfully negotiate the vast majority of corrective action plans. Litigation is rarely needed to resolve these matters.

(2) *Impact of a Report or Decision to Undertake Corrective Action on Product Liability Matters*—Some firms may not report because they fear an adverse effect on pending or future product liability litigation. Firms should bear in mind, however, that the regulations specifically provide that the term "defect" as discussed in the regulations and by the Commission and staff pertains only to interpreting and enforcing the Consumer Product Safety Act and is not intended to apply to any other area of the law (Section 1115.4). Also, the regulations specifically state that reports can be filed with a disclaimer, as provided by Section 1115.12(a).

The failure to file a report can have an adverse effect on companies that are defendants in product liability matters, as indicated in several recent product liability decisions. In *Butcher* v. *Robertshaw Controls Company*, 550 F. Supp. 692 (D. Md. 1981), the court held that failing to report to the Commission under Section 15 could sustain a private cause of action for damages under Section 23 of the CPSA (15 U.S.C. 2072). In *Butcher* the court also found that an agency relationship exists, created by statute, between the CPSC and members of the public. The court held that this relationship allows consumers injured by fraud and deceit practiced by a firm on the Commission to file an action against the firm for fraud and deceit. A different federal district court in *Young* v. *Robertshaw Controls Co.*, 560 F.Supp. 288 (N.D.N.Y. 1983) held, similarly, that Section 23 of the CPSA provides a private cause of action for injuries sustained because of a manufacturer's alleged failure to disclose Section 15(b) information to the Commission. In a related state court action in *Young* v. *Robertshaw Controls Company*, —— N.Y.S. 2d —— (Sup. Ct., Sept. 6, 1983), the court allowed the plaintiff to bring a private action in fraud against Robertshaw based on the firm's alleged failure to disclose product information and alleged misrepresentation to the CPSC. The state court in *Young* also held that the plaintiff could seek punitive damages based on allegations that the firm had coldly compared the cost of injury and loss of life with the cost of efficiently correcting the product problem by disclosing certain

information to CPSC. This decision is currently on appeal. (See also *Payne* v. *A.O. Smith Corporation, Emerson Electric Company,* Dist. Ct. No. C–3–81–0049 (D. Ohio)—Decision on motion for leave to file amended complaint, in which the District Court allowed plaintiffs to amend their complaint to include a cause of action under Section 23, Petition to Appeal pending.)

(3) *Belief That The Failure To Report Will Not be Discovered*—Some firms may not report based on a belief that the failure to report will not be discovered by the Commission through its own investigations or through third party complaints or reports. The Commission has expanded its investigation efforts, however, and intends to further augment these efforts through the increased use of third party sources, including better monitoring of trade complaints, product liability court filings, settlements, and litigation, and contacts with state and local enforcement authorities. The Commission is confident that its staff will eventually uncover serious problems through this concentrated effort.

(4) *Adverse Publicity Or Adverse Effects On Marketing Or Competitive Position*—Some firms may not file a report based on a belief that a report, or any corrective action arising from it, may result in adverse publicity or may have an adverse effect on the firm's marketing or competitive position. The Commission is not aware of evidence showing these effects to be true. To the contrary, there are indications that corrective action voluntarily undertaken by a firm has the beneficial effect of showing that the firm is responsible and concerned about high standards of product quality. Effective corrective action plans can also clearly define the scope of a problem, so that consumers and customers are not confused.

In making a Section 15(b) report to the Commission, firms should be aware that the Consumer Product Safety Act provides substantial protections against the public disclosure, by the CPSC, of information that may be adverse to the firm. Section 6(a) of the CPSA (15 U.S.C. 2055(a)) provides significant protections against the disclosure of information containing or relating to a trade secret. The Commission must give firms an opportunity to claim confidentiality for information the Commission has that identifies the firm. In the event the Commission disagrees with the claim of confidentiality, the Commission is required to give the firm advance notice of any disclosure, so that the firm can seek a court order preventing the release of the information. In addition, Section 6(b)(5) of the CPSA (15 U.S.C. 2055(b)(5)) provides express protection against public disclosure of information submitted under Section 15(b). This section prohibits such disclosure unless: (1) The Commission has issued a complaint alleging that the product presents a substantial product hazard; (2) in lieu of proceeding against the product, the Commission has accepted in writing a remedial settlement agreement; (3) the person who submitted the information under Section 15(b) agrees to its public disclosure; (4) the Commission has brought a Section 12 imminent hazard action concerning the product; (5) the Commission has reasonable cause to believe a product is in violation of a prohibited act section of an act administered by the Commission; or (6) the information is in the course of or concerning a judicial proceeding. Also, the provisions of Section 6(b)(1) (15 U.S.C. 2055(b)(1)) concerning advance notice of the public disclosure by the CPSC of information identifying a manufacturer or private labeler apply to information disclosed in connection with Section 15 matters, except as provided in Section 6(b)(4). The Commission has recently issued an interpretative regulation concerning the disclosure of information under Section 6(b) of the CPSA (48 FR 57406, Dec. 29, 1983).

Whatever the reasons for not reporting, the result is that the safety of the American public can be jeopardized to the extent that large numbers of persons using or possessing the same product remain unaware of the potential risk and are unable to benefit from corrective action that would have been sought by the Commission. Because of the importance of Section 15 to the administration of the Commission's statutory responsibilities, the Commission has reexamined its existing interpretative regulations for Section 15 reporting published at 16 CFR 1115. Since these regulations were first published in August 1978 (43 FR 34988) the Commission has acquired a significant amount of experience in the area of Section 15 reporting.

While the Commission does not think it necessary to amend or revise the existing regulations, the Commission has decided to restate, in simplified form below, several major considerations embodied in the regulations that should be kept in mind by firms. This guidance is intended to further clarify the existing regulations and to provide an updated view of the Commission's policy toward Section 15 reporting. The Commission has also included several examples to assist firms in meeting their reporting obligations under Section 15 of the Act. This guidance is intended for the convenience of firms, and does not amend or replace the detailed statement of interpretation, policy and procedure at 16 CFR Part 1115. For convenience, Sections 1115.1–4, 1115.10–14, and 1115.22 of the existing Section 15 reporting regulations at 16 CFR Part 1115 are reprinted in this document. (The sections republished here will not be recodified in the Code of Federal Regulations.) (The Commission's Product Defect Correction Division, referred to in the regulations, is now the Division of Corrective Actions in the Directorate for Compliance and Administrative Litigation. The telephone number and address remain the same: (301) 492–6608, CPSC, Washington, D.C. 20207.)

Guidance to Industry on Reporting Under Section 15 CPSA

(1) *Know the Legal Requirements*—The reporting requirements are set out at Section 15 of the CPSA (15 U.S.C. 1064), as interpreted by 16 CFR 1115. Substantial penalties exist for non-compliance with these requirements.

(2) *Seek Informal Guidance*—Firms can seek informal guidance from the Compliance staff as to the need to report.

(3) *Report if in Doubt—When in doubt, firms should report.* Firms should clearly err on the side of over-reporting, rather than under-reporting. The obligation to report is created when the firm *first* receives information reasonably supporting the conclusion that the product is non-complying or contains a defect that could create a substantial product hazard. Firms should not wait to determine to a certainty whether these conditions exist. Instead, when a firm first receives information reasonably supporting these conclusions, the firm should report. The firm and the Commission will then be in a position to evaluate this information, even if it is of a preliminary or tentative nature, as well as any additional relevant information that is discovered later. With the Commission staff's expertise in these matters, the firm will be helped in reaching a more expeditious assessment of the nature and severity of the matter and the need, if any, for corrective action. The regulations provide that firms can report without admitting, and can specifically deny, that the information indicates a substantial product hazard (Section 1115.12(a)).

(4) *Broad Meaning of "Defect"*—The term "defect" includes design problems,

labeling, instruction, and warning problems; as well as unintended faults, flaws, irregularities, and manufacturing and production problems (Section 1115.4).

(5) *Reasonableness is the Test—Not Certainty*—The test for reporting is based on a reasonableness standard and does not require certainty that a defect or hazard exists. Instead, a firm must report if available information *reasonably* supports the conclusion that the product either contains a defect which *could* create a substantial product hazard, or fails to comply with an applicable consumer product safety rule (Section 15(a)(2) of the CPSA; Section 1115.12).

(6) *Need To Report Immediately*—Time is of the essence in filing reports under Section 15. The statute specifies that firms must "immediately" inform the Commission (Section 15(b)). The regulations provide that the report must be filed within 24 hours after the firm obtains reportable information. While a firm can elect to conduct an expeditious investigation to determine reportability, the regulations provide that this investigation and evaluation should not ordinarily exceed 10 days. If at the end of 10 days, a firm is unable to determine that the matter is not reportable, the Commission expects the firm to immediately file a report (Section 1115.14). Firms that have delayed reporting and have reportable information should not withhold it, even if they realize that the Commission is likely to consider the report to be late. The Commission will seek to invoke the most significant penalties where it discovers a firm that does not file a report. Firms that file a late report can generally anticipate a less serious penalty than those firms that do not report.

(7) *Must Report Even if Insurance Carrier is Handling*—Given the requirement to immediately inform the Commission, a firm can not avoid or delay the reporting requirement by turning claims and complaints over to its insurance carrier for follow-up investigation and handling (Section 1115.14).

(8) *Must Report Death or Grievous Injury*—A death or grievous bodily injury that *may* have been caused by a product defect or non-compliance must be reported unless the firm has investigated and is certain that it is not reportable (Section 1115.12(c)).

(9) *Don't Wait for Complaints and Lawsuits to Accumulate*—Firms should not wait for consumer complaints, claims, and product liability lawsuits to accumulate before deciding whether to report. Firms should develop and implement internal controls to ensure that the information is expeditiously routed to a responsible person and dealt with promptly. If information reasonably supports the conclusion that a defect, or noncompliance is present, firms should immediately report (Section 1115.12).

(10) *Remember That Section 15 Reporting is a High CPSC Priority*—Section 15 reporting is among the highest priority matters for CPSC enforcement. Section 15 reports are critical to the rapid, resource efficient evaluation, by the firm involved and the Commission staff, of the potential hazard and the need to take corrective action for a particular product. The failure of a firm to report, or undue delay in reporting, seriously hinders the Commission's efforts to protect and inform the public with respect to substantial product hazards in a timely and efficient manner. The Commission intends to vigorously pursue civil penalties against firms that violate the reporting requirements of Section 15.

In order to help firms apply this guidance on when to file a Section 15(b) report, the Commission offers the following examples of situations where there is a question of the need to file a report. In each case, the particular factual circumstances are described, along with the Commission's view of the need to file a Section 15(b) report. Although the facts used in each example are hypothetical, in the Commission's opinion they are illustrative of situations that can confront firms in trying to meet their responsibilities under Section 15(b):

(A) A large consumer product manufacturer receives one product liability claim of a death associated with one of its products. The claim alleges that a product defect(s) caused the death. The report is forwarded to the person in the company who has been designated to coordinate product liability claims. This person is unsure if there have been any similar incidents or claims in the past involving the product. The matter would normally be referred to the company's insurer for investigation and dispostion, and would not be the subject of a separate investigation by the manufacturer. Should the manufacturer report and, if so, when?

Yes. The matter should immediately be reported to the Commission. The company should not wait for the insurance carrier to complete its investigation before reporting, unless the insurance carrier is able to conduct an expeditious investigation (generally not longer than 10 days, as suggested by the existing Section 15 regulations). Because the matter involves a death or grievous bodily injury that may have been caused by a product, the firm should immediately file a report under Section 15. The report should be filed even if the company has no records of any similar incidents involving its product. In filing the Section 15(b) report, the firm may file an explanation that the report is a preliminary one, based largely on plaintiff's allegations, and that the firm will provide the Commission with additional relevant information as it becomes available.

(B) A manufacturer has been successfully marketing a consumer product for the last several years. Several hundred thousand units of the product have been sold and the firm has, until the last month, received only a few complaints about the product, none of which appears to involve a related problem and none of which involves a serious injury. In the last two months, the company has received six consumer complaints involving the same design aspect of the product, although none of the complaints involves a serious injury. The company has decided to re-examine this design aspect of the product, by testing, and investigate the consumer complaints. The investigation and testing are likely to take two months to complete. Should the company file a Section 15(b) report? If so, when?

Yes. The firm should file a Section 15 report immediately after it learns of the consumer complaints relating to the same design aspect. The firm should not wait to complete its investigation before reporting. Instead, the firm should file a Section 15(b) report explaining what it knows (and doesn't know) about the matter and should keep the Commission informed of any additional information it discovers, including the results of the firm's investigation.

(C) A manufacturer has developed a new consumer product that uses highly sophisticated, state-of-the-art technology. The manufacturer has only recently begun to distribute the product, and has not received any consumer complaints or claims related to safety. However, in examining the final pre-production test reports and final specifications, the manufacturer's key design engineer notices a design irregularity that could lead to a potential safety hazard. Additional testing will be necessary to confirm if there is a safety related problem, and the engineer initiates this testing. Should the manufacturer file a Section 15(b) report with the Commission? If so, when?

Yes. The manufacturer should file the Section 15(b) report immediately after the key engineer notes the potential problem. The report should be filed even

though the firm has not received any complaints from distributors or consumers, and even though the testing necessary to confirm the problem has not been completed. In filing the Section 15(b) report, the manufacturer can explain that the information forming the basis of the report is preliminary, and that additional testing is needed before a final decision can be made on the nature and scope of the potential problem, and the need, if any, for corrective action.

(D) A manufacturer of a consumer product has been distributing a successful product for a number of years. The manufacturer offers the product in several different models. In periodically reviewing consumer complaint and claims files, the manufacturer notices that for all but one of the models, there have been only several consumer complaints about minor injuries and that none of these complaints appears to be related to the product's design or production. For one of the models, however, there have been dozens of complaints involving property damage and minor injuries. At this time, it is unclear to the manufacturer whether these claims are related to any particular aspect of the product's design or production. Should the manufacturer file a Section 15(b) report? If so, when?

Yes. The manufacturer should file a Section 15(b) report on the model with the numerous complaints. The report should be filed at this time, even though the firm is not certain of the cause of the complaints or the reason for the disparity in the consumer complaint figures for the various models.

Conclusion

Section 15 is of vital importance to the Commission in fulfilling its statutory mandate to protect the public from hazardous consumer products. For the Commission to be able to carry out its responsibilities effectively and efficiently, firms must meet their obligations to inform the Commission of possible substantial product hazards.

The Commission believes that this document will be useful as a clear statement of the seriousness with which it regards the reporting obligations under Section 15(b), and will be of assistance to firms in complying with their obligations to file timely reports of potential substantial product hazards under this section.

Dated: April 2, 1984.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

The following §§ 1115.1–1115.4, 1115.10–1115.14, and 1115.22 of 16 CFR Part 1115 are republished for the convenience of the reader. The republication will not appear in the Code of Federal Regulations.

PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS

§ 1115.1 Purpose.

The purpose of this Part 1115 is to set forth the Consumer Product Safety Commission's (Commission's) interpretation of the reporting requirements imposed on manufacturers (including importers), distributors, and retailers by Section 15(b) of the Consumer Product Safety Act, as amended (CPSA) (15 U.S.C. 2064(b)) and to indicate the actions and sanctions which the Commission may require or impose to protect the public from substantial product hazards, as that term is defined in section 15(a) of the CPSA.

§ 1115.2 Scope and finding.

(a) Section 15(a) of the CPSA (15 U.S.C. 2064(a)) defines "substantial product hazard" as either (1) a failure to comply with an applicable consumer product safety rule, which failure creates a substantial risk of injury to the public, or (2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Section 15(b) of the CPSA requires every manufacturer (including an importer), distributor, or retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that the product either fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard immediately to inform the Commission, unless the manufacturer (including an importer), distributor, or retailer has actual knowledge that the Commission has been adequately informed. This provision indicates that a broad spectrum of safety-related information should be reported under section 15(b) of the CPSA.

(c) Sections 15(c) and 15(d) of the CPSA (15 U.S.C. 2064 (c) and (d)) empower the Commission to order a manufacturer (including an importer), distributor, or retailer of a consumer product distributed in commerce that presents a substantial product hazard to give various forms of notice to the public of the defect or the failure to comply and/or to order the subject firm to elect either to repair, to replace, or to refund the purchase price of such product. However, information which should be reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard since what must be reported are failures to comply with consumer product safety rules and defects that could create a substantial product hazard. (See § 1115.12.)

(d) The provisions of this Part 1115 deal with all consumer products (including imports) subject to regulation under the Consumer Product Safety Act, as amended (15 U.S.C. 2051–2081) (CPSA), and the Refrigerator Safety Act (15 U.S.C. 1211–1214) (RSA). In addition, the Commission has found that risks of injury to the public from consumer products subject to regulation under the Flammable Fabrics Act (15 U.S.C. 1191–1204) (FFA), the Federal Hazardous Substances Act (15 U.S.C. 1261–1274) (FHSA), and the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–1476) (PPPA) cannot be eliminated or reduced to a sufficient extent in a timely fashion under those acts. Therefore, pursuant to section 30(d) of the CPSA (15 U.S.C. 2079(d)), manufacturers (including importers), distributors, and retailers of consumer products which are subject to regulation under provisions of the FFA, FHSA, and PPPA must comply with the reporting requirements of section 15(b).

§ 1115.3 Definitions.

In addition to the definitions given in section 3 of the CPSA (15 U.S.C. 2052), the following definitions apply:

(a) "Adequately informed" under section 15(b) of the CPSA means that the Commission staff has received the information requested under §§ 1115.12 and/or 1115.13 of this part insofar as it is reasonably available and applicable or that the staff has informed the subject firm that the staff is adequately informed.

(b) "Commission meeting" means the joint deliberations of at least a majority of the Commission where such deliberations determine or result in the conduct or disposition of official Commission business. This term is synonymous with "Commission meeting" as defined in the Commission's regulation issued under the Government in the Sunshine Act, 16 CFR 1012.

(c) "Noncompliance" means the failure of a consumer product to comply with an applicable consumer product safety rule issued under the CPSA.

(d) A "person" means a corporation, company, association, firm, partnership, society, joint stock company, or individual.

(e) "Staff" means the staff of the Consumer Product Safety Commission unless otherwise stated.

(f) "Subject firm" means any manufacturer (including an importer), distributor, or retailer of a consumer product.

§ 1115.4 Defect.

Section 15(b)(2) of the CPSA requires every manufacturer (including an importer), distributor, and retailer of a consumer product who obtains information which reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard to inform the Commission of such defect. Thus, whether the information available reasonably suggests a defect is the first determination which a subject firm must make in deciding whether it has obtained information which must be reported to the Commission. In determining whether it has obtained information which reasonably supports the conclusion that its consumer product contains a defect, a subject firm may be guided by the criteria the Commission and staff use in determining whether a defect exists. At a minimum, defect includes the dictionary or commonly accepted meaning of the word. Thus, a defect is a fault, flaw, or irregularity that causes weakness, failure, or inadequacy in form or function. A defect, for example, may be the result of a manufacturing or production error; this is, the consumer product as manufactured is not in the form intended by, or fails to perform in accordance with, its design. In addition, the design of and the materials used in a consumer product may also result in a defect. Thus, a product may contain a defect even if the product is manufactured exactly in accordance with it design and specifications, if the design presents a risk of injury to the public. A design defect may also be present if the risk of injury occurs as a result of the operation or use of the product or the failure of the product to operate as intended. A defect can also occur in a product's contents, construction, finish, packaging, warnings, and/or instructions. With respect to instructions, a consumer product may contain a defect if the instructions for assembly or use could allow the product, otherwise safely designed and manufactured, to present a risk of injury. To assist subject firms in understanding the concept of defect as used in the CPSA, the following examples are offered:

(a) An electric appliance presents a shock hazard because, through a manufacturing error, its casing can be electrically charged by full-line voltage. This product contains a defect as a result of manufacturing or production error.

(b) Shoes labeled and marketed for long-distance running are so designed that they might cause or contribute to the causing of muscle or tendon injury if used for long-distance running. The shoes are defective due to the labeling and marketing.

(c) A kite made of electrically conductive material presents a risk of electrocution if it is long enough to become entangled in power lines and be within reach from the ground. The electrically conductive material contributes both to the beauty of the kite and the hazard it presents. The kite contains a design defect.

(d) A power tool is not accompanied by adequate instructions and safety warnings. Reasonably foreseeable consumer use or misuse, based in part on the lack of adequate instructions and safety warnings, could result in injury. Although there are no reports of injury, the product contains a defect because of the inadequate warnings and instructions.

(e) An exhaust fan for home garages is advertised as activating when carbon monoxide fumes reach a dangerous level but does not exhaust when fumes have reached the dangerous level. Although the cause of the failure to exhaust is not known, the exhaust fan is defective because users rely on the fan to remove the fumes and the fan does not do so.

However, not all products which present a risk of injury are defective. For example, a knife has a sharp blade and is capable of seriously injuring someone. This very sharpness, however, is necessary if the knife is to function adequately. The knife does not contain a defect insofar as the sharpness of its blade is concerned, despite its potential for causing injury, because the risk of injury is outweighed by the usefulness of the product which is made possible by the same aspect which presents the risk of injury. In determining whether the risk of injury associated with a product is the type of risk which will render the product defective, the Commission and staff will consider, as appropriate: The utility of the product involved; the nature of the risk of injury which the product presents; the necessity for the product; the population exposed to the product and its risk of injury; the Commission's own experience and expertise; the case law interpreting Federal and State public health and safety statutes; the case law in the area of products liability; and other factors relevant to the determination. If the information available to a subject firm does not reasonably support the conclusion that a defect exists, the subject firm need not report. However, if the information does reasonably support the conclusion that a defect exists, the subject firm must then consider whether that defect could create a substantial product hazard. (See § 1115.12(f) for factors to be assessed in determining whether a substantial product hazard could exist.) If the subject firm determines that the defect could create a substantial product hazard, the subject firm must report to the Commission. Most defects could present a substantial product hazard if the public is exposed to significant numbers of defective products or if the possible injury is serious or is likely to occur. Since the extent of public exposure and/or the likelihood or seriousness of injury are ordinarily not known at the time a defect first manifests itself, subject firms are urged to report if in doubt as to whether a defect could present a substantial product hazard. On a case-by-case basis the Commission and the staff will determine whether a defect within the meaning of section 15 of the CPSA does, in fact, exist and whether that defect presents a substantial product hazard. Since a consumer product may be defective even if it is designed, manufactured, and marketed exactly as intended by a subject firm, subject firms should report if in doubt as to whether a defect exists. Defect, as discussed in this section and as used by the Commission and staff, pertains only to interpreting and enforcing the Consumer Product Safety Act. The criteria and discussion in this section are not intended to apply to any other area of the law.

§ 1115.10 Persons who must report and where to report.

(a) Every manufacturers (including importer), distributor, or retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product contains a defect which could create a substantial risk of injury to the public shall immediately notify the Product Defect Correction Division, Consumer Product Safety Commission, Washington, D.C. 20207 (telephone: 301–492–6608), or such other persons as may be designated. Manufacturers (including importers), distributors, and retailers of consumer products subject to regulation by the Commission under provisions of the FFA, FHSA, PPPA, as well as consumer products subject to regulation

under the CPSA and RSA, must comply with this requirement.

(b) Every manufacturer (including importer), distributor, or retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product fails to comply with an applicable consumer product safety standard or ban issued under the CPSA shall immediately notify the Commission's Product Defect Correction Division or such other persons as may be designated. A subject firm needs not report a failure to comply with a standard or regulation issued under the provisions of the RSA, FFA, FHSA, or PPPA unless it can be reasonably concluded that the failure to comply results in a defect which could create a substantial product hazard. (See paragraph (a) of this section.)

(c) A distributor or retailer of a consumer product (who is neither a manufacturer nor an importer of that product) is subject to the reporting requirements of section 15(b) of the CPSA but may satisfy them by following the procedure detailed in § 1115.13(b).

(d) A manufacturer (including an importer), distributor, or retailer need not inform the Commission under section 15(b) of the CPSA if that person has actual knowledge that the Commission has been adequately informed of the defect or failure to comply. (See section 15(b) of the CPSA.)

§ 1115.11 Imputed knowledge.

(a) In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected to be capable of appreciating the significance of the information. (See § 1115.14(b).)

(b) In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to know what a reasonable person acting in the circumstances in which the firm finds itself would know. Thus, the subject firm shall be deemed to know what it would have known if it had exercised due care to ascertain the truth of complaints or other representations. This includes the knowledge a firm would have if it conducted a reasonably expeditious investigation in order to evaluate the reportability of a death or grievous bodily injury or other information. (See § 1115.14.)

§ 1115.12 Information which should be reported: evaluating substantial product hazard.

(a) *General.* Subject firms should not delay reporting in order to determine to a certainty the existence of a noncompliance or a defect and the substantiality of a possible hazard. The obligation to report arises upon receipt of information from which one could reasonably conclude the existence of a noncompliance or a defect which could create a substantial product hazard. Thus an obligation to report may arise when a subject firm receives the first information regarding a potential hazard or noncompliance. (See § 1115.14(c).) A subject firm in its report to the Commission need not admit or may specifically deny that the information it submits reasonably supports the conclusion that its consumer product is noncomplying or contains a defect which could create a substantial product hazard within the meaning of section 15(b) of the CPSA. After receiving the report, the staff will preliminarily determine whether the noncompliance or defect presents a substantial product hazard. This determination can be based on information supplied by a subject firm or from any other source. If the matter is adjudicated, the Commission will ultimately make the decision as to substantial product hazard or will seek to have a court make the decision as to imminent product hazard.

(b) *Failure to comply.* Information indicating that a consumer product fails to comply with an applicable consumer product safety standard or ban issued under the CPSA must be reported.

(c) *Death or grievous bodily injury.* Information indicating that a noncompliance or a defect in a consumer product has caused, may have caused, or contributed to the causing, or could cause or contribute to the causing of a death or grievous bodily injury (e.g., mutilation, amputation/dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorders, severe burns, severe electrical shocks, and injuries likely to require extended hospitalization) must be reported, unless the subject firm has investigated and determined that the information is not reportable.

(d) *Other informaton indicating a defect of noncompliance.* Even if there are no reports of a potential for or an actual death or grievous bodily injury, other information may indicate a reportable defect or noncompliance. In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to know what a reasonable and prudent manufacturer (including an importer), distributor, or retailer would know. (See § 1115.11.)

(e) *Information which should be studied and evaluated.* The following are examples of information which a subject firm should study and evaluate in order to determine whether it is obligated to report under section 15(b) of the CPSA:

(1) Information about engineering, quality control, or production data suggesting the existence of a noncompliance or of a defect which could create a substantial product hazard.

(2) Information about safety-related production or design change(s) suggesting the existence of a noncompliance or of a defect which could create a substantial product hazard.

(3) Product liability suit(s) suggesting the existence of a noncompliance or of a defect which could create a substantial product hazard.

(4) Information from an independent testing laboratory suggesting the existence of a noncompliance or of a defect which could create a substantial product hazard.

(5) Complaint(s) from a consumer or consumer group indicating the existence of a noncompliance or of a defect which could create a substantial product hazard.

(6) Information received from the Commission or another governmental agency indicating the existence of a noncompliance or of a defect which could create a substantial product hazard.

(7) Information received from other firms, including requests to return a product or for replacement or credit, indicating the existence of a noncompliance or of a defect which could create a substantial product hazard. This includes both requests made by distributors and retailers to the manufacturer and requests from the manufacturer that products be returned.

(f) *Evaluating substantial risk of injury.* Information which should be or has been reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard. On a case-by-case basis the Commission and the staff will determine whether a defect or noncompliance exists and whether it results in a substantial risk of injury to the public. In deciding whether to report, subject firms may be guided by the following criteria the staff and the Commission use in determining whether a substantial product hazard exists:

(1) *Hazard created by defect.* Section 15(a)(2) of the CPSA lists factors to be considered in determining whether a defect creates a substantial risk of injury. These factors are set forth in the disjunctive. Therefore, the existence of any one of the factors could create a substantial product hazard. The Commission and the staff will consider some or all of the following factors, as appropriate, in determining the substantiality of a hazard created by a product defect:

(i) *Pattern of defect.* The Commission and the staff will consider whether the defect arises from the design, composition, contents, construction, finish, packaging, warnings, or instructions of the product or from some other cause and will consider the conditions under which the defect manifests itself.

(ii) *Number of defective products distributed in commerce.* Even one defective product can present a substantial risk of injury and provide a basis for a substantial product hazard determination under section 15 of the CPSA if the injury which might occur is serious and/or if the injury is likely to occur. However, a few defective products with no potential for causing serious injury and little likelihood of injuring even in a minor way will not ordinarily provide a proper basis for a substantial product hazard determination.

(iii) *Severity of the risk.* A risk is severe if the injury which might occur is serious and/or if the injury is likely to occur. In considering the likelihood of any injury the Commission and the staff will consider the number of injuries reported to have occurred, the intended or reasonably foreseeable use or misuse of the product, and the population group exposed to the product (e.g., children, elderly, handicapped).

(iv) *Other considerations.* The Commission and the staff will consider all other relevant factors.

(2) *Hazard presented by noncompliance.* Section 15(a)(1) of the CPSA states that a substantial product hazard exists when a failure to comply with an applicable consumer product safety rule creates a substantial risk of injury to the public. Therefore, the Commission and staff will consider whether the noncompliance is likely to result in injury when determining whether the noncompliance creates a substantial product hazard. As appropriate, the Commission and staff may consider some or all of the factors set forth in paragraph (f)(1) of this section in reaching the substantial product hazard determination.

§ 1115.13 Content and form of reports; delegations of authority.

(a) *Written reports.* The chief executive officer of the subject firm should sign any written reports to the Commission under section 15(b) of the CPSA unless this responsibility has been delegated by filing a written delegation of authority with the Commission's Product Defect Correction Division. Delegations of authority filed with the Commission under § 1115.9 of the previous regulations interpreting section 15 of the CPSA will remain in effect until revoked by the chief executive officer of the subject firm. The delegation may be in the following form:

Delegation of Authority

(Name of company) _____.

I _____ hereby certify that I am Chief Executive Officer of the above-named company and that as such I am authorized to sign documents and to certify on behalf of said company the accuracy and completeness of information in such documents.

Pursuant to the power vested in me, I hereby delegate all or, to the extent indicated below, a portion of that authority to the person listed below.

This delegation is effective until revoked in writing. Authority delegated to:

(Name) _____
(Address) _____
(Title) _____
Extent of authority: _____

_____

_____

Signed:
(Name) _____
(Address) _____
(Title) _____

(b) *Distributors and retailers.* A distributor or retailer of a possibly defective or noncomplying consumer product (who is neither a manufacturer nor an importer of that product) satisfies the initial reporting requirements either by telephoning or writing the Product Defect Correction Division, Consumer Product Safety Commission, Washington, D.C. 20207; by sending a letter describing the defective or noncomplying product to the manufacturer (or importer) of the product and sending a copy of the letter to the Commission's Product Defect Correction Division; or by forwarding to the Commission's Product Defect Correction Division reportable information received from another firm. A distributor or retailer who receives reportable information from a manufacturer (or importer) shall report to the Commission unless the manufacturer (or importer) informs the distributor or retailer that a report has been made to the Commission. A report under this subsection should contain the information detailed in paragraph (c) of this section insofar as it is known to the distributor or retailer. Unless further information is requested by the staff, this action will constitute a sufficient report insofar as the distributor or retailer is concerned.

(c) *Initial report.* Immediately after a subject firm has obtained information which reasonably supports the conclusion that a product fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial risk of injury to the public, the subject firm should provide the Product Defect Correction Division, Consumer Product Safety Commission, Washington, D.C. 20207 (telephone: 301–492–6608), with an initial report containing the information listed below. This initial report may be made by any means; but if it is not in writing, it should be confirmed in writing within 48 hours of the initial report. (See § 1115.14 for time computations.) The initial report should contain, insofar as is reasonably available and/or applicable:

(1) An identification and description of the product.

(2) The name and address of the manufacturer (or importer) or, if the manufacturer or importer is not known, the names and addresses of all known distributors and retailers of the product.

(3) The nature and extent of the possible defect or the failure to comply with an applicable consumer product safety rule.

(4) The nature and extent of the injury or risk of injury associated with the product.

(5) The name and address of the person informing the Commission.

(6) To the extent such information is then reasonably available, the data specified in § 1115.13(d).

(d) *Full report.* Subject firms which file initial reports are required to file full reports in accordance with this subsection. Retailers and distributors may satisfy their reporting obligations in accordance with § 1115.13(b). At any time after an initial report, the staff may modify the requirements detailed in this section with respect to any subject firm. If the staff preliminarily determines that there is no substantial product hazard, it may inform the firm that its reporting obligation has been fulfilled. However, a subject firm would be required to report if it later became aware of new information indicating a reportable defect or noncompliance, whether the new information related to the same or another consumer product. Unless modified by staff action, the following information, to the extent that it is

reasonably available and/or applicable, constitutes a "full report," must be submitted to the staff, and must be supplemented or corrected as new or different information becomes known:

(1) The name, address, and title of the person submitting the "full report" to the Commission.

(2) The name and address of the manufacturer (or importer) of the product and the addresses of the manufacturing plants for that product.

(3) An identification and description of the product(s). Give retail prices model numbers, serial numbers, and date codes. Describe any identifying marks and their location on the product. Provide a picture or a sample of the product.

(4) A description of the nature of the defect or failure to comply with an applicable consumer product safety rule. If technical drawings, test results, schematics, diagrams, blueprints, or other graphic depictions are available, attach copies.

(5) The nature of the injury or the possible injury associated with the product defect or failure to comply with an applicable consumer product safety rule.

(6) The manner in which and the date when the information about the defect or noncompliance (e.g., complaints, reported injuries, quality control testing) was obtained. If any complaints related to the safety of the product or any allegations or reports of injuries associated with the product have been received, copies of such complaints or reports (or a summary thereof) shall be attached. Give a chronological account of facts or events leading to the report under section 15(b) of the CPSA, beginning with receipt of the first information which ultimately led to the report. Also included may be an analysis of these facts or events.

(7) The total number of products and units involved.

(8) The dates when products and units were manufactured, imported, distributed, and sold at retail.

(9) The number of products and units in each of the following: in the possession of the manufacturer or importer, in the possession of private labelers, in the possession of distributors, in the possession of retailers, and in the possession of consumers.

(10) An explanation of any changes (e.g., designs, adjustments, additional parts, quality control, testing) that have been or will be effected to correct the defect or failure to comply and of the steps that have been or will be taken to prevent similar occurrences in the future together with the timetable for implementing such changes and steps.

(11) Information that has been or will be given to purchasers, including consumers, about the defect or non-compliance with a description of how this information has been or will be communicated. This shall include copies or drafts of any letters, press releases, warning labels, or other written information that has been or will be given to purchasers, including consumers.

(12) The details of and schedule for any contemplated refund, replacement, or repair actions, including plans for disposing of returned products (e.g., repair, destroy, return to foreign manufacturer).

(13) A detailed explanation and description of the marketing and distribution of the product from the manufacturer (including importer) to the consumer (e.g., use of sales representatives, independent contractors, and/or jobbers; installation of the product, if any, and by whom).

(14) Upon request, the names and addresses of all distributors, retailers, and purchasers, including consumers.

(15) Such further information necessary or appropriate to the functions of the Commission as is requested by the staff.

§ 1115.14 Time computations.

(a) *General.* Weekends and holidays are excluded from the computation of the time periods in this part.

(b) *Imputing knowledge.* In evaluating whether or when a firm should have reported, the Commission shall impute to the subject firm knowledge of product safety related information received by an official or employee of a subject firm capable of appreciating the significance of the information. Under ordinary circumstances, 5 days should be the maximum reasonable time for information to reach the Chief Executive Officer or the official or employee responsible for complying with the reporting requirements of section 15(b) of the CPSA. The Commission will impute knowledge possessed by the Chief Executive Officer or by the official or employee responsible for complying with the reporting requirements of section 15(b) of the CPSA simultaneously to the subject firm.

(c) *Time when obligation to report arises.* The obligation to report under section 15(b) of CPSA may arise upon receipt by a subject firm of the first information regarding a noncompliance or a potential hazard presented by a product defect. Information giving rise to a reporting obligation may include, but is not limited to, complaints, injury reports, quality control and engineering data. A subject firm should not await complete or accurate risk estimates before reporting under section 15(b) of CPSA. However, if information is not clearly reportable, a subject firm may spend a reasonable time for investigation and evaluation. (See § 1115.14(d).)

(d) *Time for investigation and evaluation.* A subject firm may conduct a reasonably expeditious investigation in order to evaluate the reportability of a death or grievous bodily injury or other information. This investigation and evaluation should not exceed 10 days unless a firm can demonstrate that a longer period is reasonable. The Commission will deem that, at the end of 10 days, a subject firm has received and considered all information which would have been available to it had a reasonable, expeditious, and diligent investigation been undertaken.

(e) *Time to report.* Immediately, that is, within 24 hours, after a subject firm has obtained information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial risk of injury to the public, the firm should report. (See § 1115.13.) If a firm elects to conduct an investigation in order to evaluate the existence of reportable information, the 24-hour period begins when the subject firm has information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard. Thus, a firm could report to the Commission before the conclusion of a reasonably expeditious investigation and evaluation if the reportable information becomes known during the course of the investigation. In lieu of conducting an investigation, the firm may report the information immediately.

§ 1115.22 Prohibited acts and sanctions.

(a) *Statements generally.* Whoever knowingly and willfully falsifies, or conceals a material fact in a report under the CPSA and rules thereunder, is subject to criminal penalties under 18 U.S.C. 1001.

(b) *Timeliness and adequacy of reporting.* A failure to inform the Commission immediately and adequately, as required by section 15(b) of the CPSA, is a prohibited act within section 19(a)(4) of the CPSA (15 U.S.C. 2068(a)(4)).

(c) *Failure to make reports.* The failure or refusal to make reports or

provide information as required under the CPSA is a prohibited act within the meaning of section 19(a)(3) of the CPSA (15 U.S.C. 2068(a)(3)).

(d) *Noncomplying products.* The manufacture for sale, offering for sale, distribution in commerce, and/or importation into the United States of a consumer product which is not in conformity with an applicable consumer product safety rule under CPSA is a prohibited act within the meaning of sections 19 (a)(1) and (a)(2) of the CPSA (15 U.S.C. 2068 (a)(1) and (a)(2)).

(e) *Orders issued under section 15 (c) and/or (d).* The failure to comply with an order issued under section 15 (c) and/or (d) of the CPSA is a prohibited act within the meaning of section 19(a)(5) of the CPSA (15 U.S.C. 2068(a)(5)).

(f) *Consequences of engaging in prohibited acts.* A knowing violation of section 19(a) of the CPSA subjects the violator to a civil penalty in accordance with section 20 of the CPSA (15 U.S.C. 2069). "Knowing," as defined in section 20(c) of the CPSA (15 U.S.C. 2069(c)), means the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. A knowing and willful violation of section 19(a), after the violator has received notice of noncompliance, subjects the violator to criminal penalties in accordance with section 21 of the CPSA (15 U.S.C. 2070).

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Friday
April 6, 1984

Part IV

Environmental Protection Agency

40 CFR Part 600

Fuel Economy of Motor Vehicles; Revisions To Improve Fuel Economy Labeling and the Fuel Economy Data Base; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS-FRL 2503-3, Docket No. A-80-32]

Fuel Economy of Motor Vehicles; Revisions To Improve Fuel Economy Labeling and the Fuel Economy Data Base

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule will amend the motor vehicle fuel economy regulations for fuel economy labeling beginning with the 1985 model year. The amendments will require the adjustment of fuel economy label estimates downward to more reasonably predict average in-use experience and the listing of both a city and highway mileage estimate on the label. A number of more minor changes to improve the accuracy of fuel economy labels and to reduce reporting requirements are also incorporated. However, most of these are not effective until the 1986 model year.

DATE: This final rule is effective May 7, 1984.

ADDRESS: Copies of material relevant to this rulemaking are contained in Public Docket No. A-80-32 at the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Clifford D. Tyree, Certification Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4310.

SUPPLEMENTARY INFORMATION: OMB Control No. 2000-0390.

I. Background

In recent years, EPA, other government agencies, the Congress, and consumers have been concerned about apparent differences between the EPA fuel economy estimates and the actual fuel economy performance of vehicles in use. In general, these discrepancies arise from differences in travel environment, owner travel and driving habits, and vehicle maintenance. These discrepancies in fuel economy performance have caused considerable consumer dissatisfaction and lack of confidence in EPA's fuel economy estimates. The intent of this action is to increase the credibility and usefulness of EPA's fuel economy information to prospective new-car buyers by narrowing the difference between fuel economy label values and actual performance and by improving the accuracy and reliability of the EPA fuel economy estimates.

For a comprehensive description of the background relating to this rulemaking please refer to the preamble of the Notice of Proposed Rulemaking (NPRM) published on June 9, 1983 (48 FR 26698). EPA has also published a report entitled: "History and Description of the EPA Motor Vehicle Fuel Economy Program." This report is available in the docket to this rulemaking, Docket No. A-80-32. In addition, a comprehensive discussion of issues pertaining to the thirteen proposed amendments is contained in the Summary and Analysis of Comments. This document can also be obtained from the docket.

II. General Description of the Final Rule

This final rule will amend the motor vehicle fuel economy regulations for fuel economy labeling beginning with the 1985 model year. The NPRM proposed thirteen amendments, all to be effective beginning in the 1985 model year. Today, EPA is adopting eleven of these proposals (with minor revisions). One proposed amendment, interior volume measurement revisions, will not be adopted. Final action on the thirteenth, a proposal to update label calculations at midyear, is being indefinitely postponed for further study.

Two of the amendments adopted today will have the most significant effect on accomplishing the primary purpose of the rulemaking. These two amendments will require manufacturers to: (1) Adjust fuel economy label estimates downward to more reasonably predict average in-use experience; and (2) list both city and highway fuel economy estimates on the labels to reflect consumer preference and manufacturers' advertising practices. These amendments are being adopted effective with the 1985 model year. EPA has concluded that these provisions can be implemented beginning in the 1985 model year and that they are of such importance to improving consumer information that they should be implemented as soon as possible. EPA is also implementing three additional amendments (a reduction in reporting requirements, a requirement for separate labels for front- and rear-wheel drive vehicles, and allowance of unique labels) beginning in the 1985 model year because there is sufficient leadtime to implement them and because they were generally supported by public comments.

EPA is adopting six additional amendments. However, because of practical leadtime considerations (discussed in more detail in Section III.A of this preamble), these six amendments will not be effective until the 1986 model year. These six amendments are: (1) New minimum data requirements for labels; (2) requirements for relabeling due to design changes; (3) the elimination of prior EPA approval of label values; (4) establishment of a standard label format; (5) the elimination of the preliminary Corporate Average Fuel Economy (CAFE) calculation; and (6) a requirement for high odometer test vehicle data adjustment.

III. Discussion of Comments and Resolution of Issues

The following is an abbreviated discussion of the issues raised for each of the proposed amendments:

A. Practical and Legal Leadtime Concerns

In the NPRM and during the public hearing, EPA asked manufacturers to address the potential leadtime problems of implementing the proposed changes beginning in the 1985 model year. EPA also asked how much leadtime would be necessary to implement each of the changes.

In general, most comments addressing the practical leadtime aspects were not very specific. Most commenters simply stated that the proposed changes were too substantive to be implemented beginning in the 1985 model year. GM stated that it would need at least 12 months leadtime, American Motors stated it would need 18 months, and Chrysler said a final rule must be issued by January 1984 in order to implement the changes for 1985. Most of the estimates were not substantiated by any detailed factual information.

Moreover, no manufacturer suggested that adoption of in-use adjustments and inclusion of both city and highway values on the label would be unreasonably costly given sufficient leadtime to allow a smooth transition. Ford was the only company which identified an additional cost associated with implementation of these changes in the 1985 model year instead of waiting until 1986. This anticipated cost was associated with the need to make inconvenient adjustments to an already existing internal plan to revise Ford's computer system so as to coordinate the two changes simultaneously. Aside from Ford's claimed costs, overall industry costs for implementing these changes for 1985 do not appear to be any different

than they would be for implementation in the 1986 model year.

EPA believes that implementation of the in-use adjustment provision in 1985 will not cause any significant leadtime problem. That provision, as discussed below, merely requires a simple mathematical adjustment of fuel economy estimates to more accurately reflect actual fuel economy benefits.

Similarly, no significant leadtime difficulties or costs are expected due to incorporating a highway fuel economy estimate on the label. Manufacturers' concerns about leadtime needed to implement this provision should be minimized by EPA's decision, discussed below, not to require use of new standard label format until the 1986 model year. In order to minimize leadtime problems involved in changing labels to a city/highway format from the current one-number label for the 1985 model year, EPA will allow manufacturers to incorporate the city and highway values using alternative formats of the manufacturer's design subject to EPA advance approval (as is currently done). Alternatively, manufacturers will be allowed to use the final 1986 model year format during the 1985 model year without prior EPA approval. Moreover, this flexibility for the 1985 model year should alleviate some for Ford's coordination concerns (discussed above) and, hence, should minimize its anticipated cost of implementing the requirements for adjusted city and highway values in 1985.

As indicated above, some manufacturers indicated that the standardization of the label format would require a certain amount of advance notice in order to finalize print orders and incorporate a completely new label format into their systems. (Volkswagen of America stated that it would need at least six months leadtime to implement a new required label format.) Others indicated that changes in the minimum data requirements for label calculation could cause some leadtime burden since manufacturers might have to change plans as to which test vehicles to build. Similarly, some manufacturers were unsure of the leadtime required to put in place the proposal for midyear calculation of label values and updating of labels as necessary to account for major design changes. Ford suggested that eliminating the preliminary CAFE calculation provision of the current regulations could affect its CAFE test requirements, especially for trucks, a burden which could be reduced with added leadtime.

Collectively, the administrative burden of assimilating these changes in time for the 1985 model year program could prove unnecessarily difficult or costly for some manufacturers. Accordingly, the requirements for in-use adjustments and for city/highway label values will be effective in 1985, but other changes, which might require additional leadtime, will not become mandatory until 1986.

In view of the above leadtime issues, EPA is splitting this rulemaking action into two parts: the two major and three minor amendments, as described above, effective for the 1985 model year; and the six additional amendments effective for the 1986 model year. Since some manufacturers may prefer to implement some of the 1986 model year changes in the 1985 model year, EPA will allow voluntary implementation of a number of these changes for the 1985 model year. (Certain restrictions apply to the optional implementation of some of these changes, as discussed below.)

The following is a list of each of the proposals with the model year applicability as required in this final rule.

Proposal	Applicability
1. In-use adjustments for labels.	Require beginning in 1985 MY.
2. City/highway label values	Require beginning in 1985 MY.
3. Minimum data requirements for labeling.	Optional for 1985 MY. Require beginning in 1986 MY.
4. Label updating due to design changes.	Optional for 1985 MY. Require beginning in 1986 MY.
5. Midyear label updating	Final action postponed.
6. Elimination of prior EPA approval of label values.	Optional for 1985 MY. Require beginning in 1986 MY.
7. Unique labels	Optional (as proposed). Beginning in 1985 MY.
8. Standard format	Optional for 1985 MY. Require beginning in 1986 MY.
9. Elimination of preliminary CAFE; revised CAFE data requirements.	Optional for 1985 MY. Require beginning in 1986 MY.
10. Test value adjustments for high odometer vehicles.	Require beginning in 1986 MY. Not optional for 1985 MY.
11. Drivetrain separation	Require beginning in 1985 MY.
12. Interior volume measure revisions.	Not being adopted.
13. Reduced reporting requirements.	Implement beginning in 1985 MY.

In addition to practical leadtime issues, manufacturers raised three legal issues related to leadtime: the constraints of the Energy Policy and Conservation Act (EPCA), the requirements of the Energy Tax Act, and the constraints of the Administrative Procedure Act.

In the preamble to the NPRM, EPA stated that the proposed labeling program changes are not affected by the EPCA leadtime requirements, which pertain only to CAFE testing and calculation procedures. EPA further explained that the proposed amendments involving the CAFE data base would not come under the EPCA leadtime requirement. Manufacturers commented that the 12-month leadtime requirement was applicable to the proposed changes to existing CAFE data base requirements. However, since the amendments affecting the CAFE data base are not being implemented until the 1986 model year, the possible EPCA leadtime constraints are no longer an issue.

Manufacturers also commented that the similar 12-month leadtime requirement under the Energy Tax Act is applicable to the proposals for relabeling and new minimum data requirements for labels because these could affect Gas Guzzler Tax determinations under that act. As with the EPCA issue, the Energy Tax Act leadtime requirements are no longer an issue since these amendments will not be implemented until the 1986 model year.

Some manufacturers claimed, without any additional details, that EPA had not adhered to the Administrative Procedure Act. EPA has, in fact, followed the applicable provisions of the Administrative Procedure Act in this rulemaking. EPA finds no basis for comments asserting that implementation of any of the proposed changes for the 1985 model year is in violation of the Administrative Procedure Act.

B. In-Use Adjustments for Label Values

In order to account for differences between EPA laboratory results and actual in-use experience, EPA proposed to calculate fuel economy values according to current procedures and then discount the label values by specified adjustment factors. Specifically, EPA proposed that the adjustments be made by multiplying the city model-type fuel economy value by 0.90 and the highway model-type fuel economy by 0.78.

Commenters addressed two basic areas of concern about this proposal. These areas of concern are the need for adjustments and the data base/data analysis issues.

1. *Comments Addressing the Need for Adjustment Factors.* Most commenters acknowledged the existence of a fuel economy "shortfall." (Shortfall is the term for the discrepancy resulting when EPA estimates exceed average in-use experience.) Several commenters, most clearly Ford and Chrysler, supported the adjustment of label values. However, there was not universal agreement as to the source of the shortfall, and some commenters questioned whether simple adjustments would significantly improve

the situation. For example, GM contended that the adjustments are not needed, stating that its data shows consumers attaining the current EPA estimates on average.

GM's contention that consumers, on average, achieve the current EPA estimate is approximately correct at the current time. However, GM is comparing overall in-use driving (city and highway) with an EPA estimate based only on the city cycle. EPA believes that most consumers view the current EPA estimate as a city estimate, rather than an overall estimate, especially since it is typically combined with a highway estimate in manufacturer advertising. Despite its contention that the current EPA estimate is sufficient to represent overall driving, GM continues to advertise a separate highway estimate, and has stated that it would continue to do so even recognizing that there is a significant shortfall for the highway estimate. Since manufacturers are required to include EPA estimates in any of their fuel economy advertising, EPA's label proposal to include adjusted highway values on labels would substantially correct this problem in advertised highway fuel economy estimates.

Volkswagen of America (VWoA) contended that adjustments to fuel economy results for its vehicles would be unfair because its vehicles incorporate the types of technologies that minimize the shortfall effect. EPA acknowledges that it is possible that any one manufacturer could have a different shortfall than the average of all the others, due to differences in the mix of technology used or to differences in company policies in exploiting some of the flexibilities that exist within the data acquisition and label calculation system. However, EPA rejects the idea of specific manufacturer correction factors because it would be nearly impossible to acquire and maintain the necessary data base to sort out such factors. Also, there could be no means to assure a given company would continue with a consistent internal policy and not change in the future to take advantage of a favorable historical shortfall record.

EPA also acknowledged in the preamble to the NPRM that technology-specific adjustment factors could, at least in theory, be technically more correct than uniform adjustment factors. However, there is insufficient data to derive technology-specific factors with sufficient confidence. Further, given the difficulty, cost, and leadtime required to develop and implement technology-specific adjustment factors it is possible that such factors could become outdated so fast as to provide no better (and in some cases, worse) estimates of expected in-use fuel economy. In the NPRM, EPA specifically requested comments on its technology-specific analysis and on how EPA should pursue the development of technology-specific factors in the future. No commenters questioned EPA's existing analysis or supplied any additional data or analyses supporting technology-specific factors. Nor did any commenters provide suggestions or additional information which could improve EPA's ability to pursue technology-specific factors in the future. Most manufacturers supported EPA's position that uniform shortfall adjustment factors are most appropriate at this time.

Some commenters questioned the need for shortfall adjustments, citing a Government Accounting Office report[1] that said complaints of shortfall have been significantly reduced since EPA went to the one-number label. However, with fuel prices stabilized and with consumers "growing accustomed to" the lack of representativeness in the EPA numbers that has existed for so many years, one would expect complaints to decrease. As referenced in the NPRM, other evidence continues to support the need for shortfall adjustment.

2. *Comments Addressing the Fuel Economy Data Base and Analysis Techniques Used in Developing Adjustment Factors.* Some commenters criticized the data base used in developing the adjustment factors, suggesting that it was too heavily weighted by old technology, did not include some technologies (particularly the new designs which might particularly affect the factors) and under-represented true fuel economy performance. Consequently, they contended the adjustment factors calculated from this data base were unrepresentative, especially for the fleet mix of future model years. These criticisms reflect data base shortcomings that result from practical tradeoffs between the time and cost required for data collection and the need for additional data. EPA does not contend that the data base is perfect for every conceivable analytical use, such as determining separate shortfall adjustment factors for every technology. However, it is adequate to quantify overall average shortfall.

Concerning the specific issue of future model year fleet mix, EPA weighted the data to reflect sales projections of the various technologies expected to be available. No manufacturer suggested that this technique or the specific sales projections used were inappropriate. EPA continues to independently collect data and encourages the continued help of the manufacturers and others in expanding this data base and our knowledge of in-use shortfall.

DOE and GM had the strongest criticisms of the analysis used to arrive at the proposed in-use adjustment factors. DOE had two main concerns with EPA's analysis. First, EPA assumed no improvement in mileage per gallon ("mpg") within a given technology class between 1981 and 1985. Secondly, EPA used a 1985 fleet mix, while DOE perferred a 1987 fleet mix. DOE maintained that in addition to projecting the changing sales mixes of different technology vehicles, EPA should have also projected mpg changes within each technology group. EPA did not do that because projecting the future mpg of different types of vehicles is very speculative, and the additional uncertainty introduced by such mpg projections was judged unacceptable. Similarly projecting 1987 sales (fleet mix) is subject to the same uncertainties, could lead to inappropriate adjustment factors and is unwarranted for this rulemaking.

Regarding the adjustment factors themselves, Chrysler and Ford supported the numbers by indicating they were reasonable. DOE suggested that EPA use a city factor of 0.87 and a highway factor of 0.76. DOE's factors differ from EPA's due to its use of a projected 1987 fleet mix. While EPA does not subscribe to the technique of forecasting the 1987 fleet mix, it is important to note that DOE's independent analysis resulted in factors within 3 percent of EPA's proposed factors. In addition, Renault cited data derived from an AMOCO survey of 34 1982 model year vehicles (as compared to EPA's over 40,000 data points). This limited survey agreed with EPA's suggested adjustment factors in magnitude and direction.

In summary, all data supplied indicate that there is general agreement in the technical community on the direction and magnitude of the shortfall for recent model year vehicles. Moreover, the data and comments received indicate that the proposed factors of 0.9 for city and 0.78 for highway are reasonable.

As a result of the above considerations, EPA has chosen to adopt single city and highway adjustment factors that will apply uniformly to all technologies and all manufacturers.

[1] "Consumers Need More Reliable Automobile Fuel Economy Data," GAO Report CED-81-133, July 28, 1981.

C. Inclusion of City and Highway Information

EPA proposed, in conjunction with the in-use shortfall adjustments, to require the display of both city and highway fuel economy estimates on each fuel economy label. The fuel economy label currently contains a single fuel economy value referred to as the EPA estimated fuel economy. The EPA estimated fuel economy is based on a test procedure which simulates the relatively low speed stop-and-go driving typical in a city or urban environment. Since the current label fuel economy value is based on a city-type test, it does not reflect highway fuel economy performance. This lack of label information about highway fuel economy is significant due to the many improved designs available today (such as overdrive transmission gearing) that mainly affect highway fuel economy, not city fuel economy. In addition, highway estimates are used and emphasized by manufacturers in their advertising even though they do not appear on the label.

EPA had previously included highway fuel economy estimates on labels during the 1975 through 1978 model years. The highway estimate was subsequently dropped from the labels and the former "city" estimate simply retermed as the "EPA estimate." This was done as an interim measure until a solution to the in-use fuel economy shortfall problem could be implemented. With the previously described shortfall adjustments to label values, the separate city and highway estimates will become more valid and useful.

Several commenters favored the retention of a one-number system based on the city cycle test results. The major reason presented for this position was that the current EPA estimate appears to be a good predictor of average overall in-use fuel economy performance. EPA analysis of previous model year data indicates that average in-use fuel economy under combined city and highway driving has coincidentally agreed fairly closely with the industry average EPA city driving estimate. However, changes in typical driving patterns or changes in vehicle design which, for example, disproportionately affect highway fuel economy, as in the case of overdrive transmissions, should make the EPA city estimate less comparable to average in-use fuel economy. Further, manufacturers continue to advertise the highway cycle estimates in conjunction with the EPA estimate. The fact that highway fuel economy performance is a major feature of manufacturer advertising suggests that manfacturers share EPA's belief that consumers are specifically interested in highway fuel economy performance. However, the current highway values used by manufacturers in advertising generally overstate actual non-urban fuel economy by an average of over 20 percent. If the current EPA estimate is additionally interpreted as a city estimate (as EPA believes it is, given current advertising practices and EPA's prior use of city and highway label values), it too will have a shortfall since consumers no longer use this single EPA estimate as an overall (both city and highway driving) estimate of expected fuel economy.

Therefore, since a dual (city/highway) estimate system essentially exists in manufacturer advertising and since consumers have likely become oriented to city/highway estimates by this advertising, EPA concludes that both city and highway estimates should be included on a label and in the *Gas Mileage Guide* for consistency. Furthermore, since a shortfall has been substantiated for each of these modes, adjustment factors must be applied to eliminate the shortfall. This final rule requires manufacturers to use adjusted city and highway estimates on labels beginning in the 1985 model year. EPA is working with FTC on reviewing advertising guidelines to make sure they are consistent with the new label values.

As part of their review of this rulemaking document, the Office of Management and Budget (OMB) expressed a concern that the single city and highway estimates do not inform the consumer of the likely in-use variability about these estimates. OMB recommended that EPA require a statement on the label that would provide an estimate of the typical range of fuel economy performance that is expected for the vehicle due to variations in driving conditions, driving habits, etc. OMB requested that EPA determine a fuel economy range for each label value (city and highway) which would encompass the fuel economy experience of approximately 75 percent of the drivers.

As a result of OMB's concerns, EPA has modified the final rule to require the following statement on each label: "Actual mileage will vary with options, driving conditions, driving habits and vehicle's condition. Results reported to EPA indicate that the majority of vehicles with these estimates will achieve between —— and —— mpg in the city, and between —— and —— mpg on the highway."

The values to be inserted in the above statement will be estimates, determined by EPA, of the ranges of city and highway performance that include approximately 75 percent of drivers' experience. To establish these ranges, EPA has analyzed the in-use variability of model-type data contained in the same data base that was used to establish the in-use adjustment factors. The results of this analysis are contained in a memorandum to the public docket, entitled, "Additional Analyses in Support of the Fuel Economy Rulemaking." EPA determined from the analysis that a 75 percent inclusion range is approximately within 15 percent of a given fuel economy estimate. Therefore, the range values to be inserted into the label statement will be values approximately 15 percent below and above the applicable estimate on the label. (The lower range numbers will be rounded to the next lower integer value, and the upper range numbers will be rounded to the next higher integer value.)

D. Minimum Data Requirements for Labeling

The fuel economy value that appears on the label reflects a sales-weighted average of the many vehicle configurations that can exist within a model type. In order to establish a label value, the current (1984 and earlier model years) minimum data requirement is one test per base level. The current minimum data requirement could be satisfied if the manufacturer tested only an exhaust emission-data vehicle within that base level. Because of the criteria for selection of an exhaust emission-data vehicle, the vehicle selected could be a vehicle configuration with very low sales and with fuel economy unrepresentative of other designs within the base level. Thus, in the current program a vehicle configuration with low sales could have a disproportionate influence on the label value. The new minimum data requirement requires data from the highest selling subconfiguration within the highest selling configuration for each base level. Including data on the high sales designs will improve the representativeness of the label values.

The majority of those commenting on the proposed amendment agreed that the data requirements were reasonable. Toyota stated that this amendment could cause an increase in the number of test vehicles that would have to be processed by both EPA and the manufacturers. However, in Toyota's case, EPA's analysis indicates this amendment would have only required one additional test vehicle for its entire 1983 model year fuel economy program. (This is in line with the projected impact

of this amendment as discussed in the NPRM.) Considering the potential improvement in accuracy for some labels and the general support of this proposal by other manufacturers, EPA finds that such a small potential testing increase is reasonable. As a result, EPA is finalizing the proposed amendment without modification for the 1986 model year and encourages manufacturers to adopt these data requirements voluntarily for the 1985 model year.

E. Label Updating

Currently, label values are not changed after the initial model type label is issued, even though design changes and sales shifts occur during the model year which may make the label value different than the expected fuel economy of the then-current production. EPA proposed two separate label updating mechanisms in the NPRM. A continuous updating mechanism was proposed to reflect certain, very significant design changes made after initial labels have been issued. A midyear update was proposed to account for the fuel economy impact of other design changes and sales shifts which might occur during the first several months of production. In either case, a new label value would have to be determined, but relabeling would only be required if either the city or highway label value decreased by 1.0 mpg or more. Additionally, a manufacturer could relabel optionally if the recalculated label value showed an increase of 1.0 mpg or more.

As proposed, the midyear relabeling mechanism would require a manufacturer to update the sales projections as of December 31, recalculate all label values, and relabel those that decreased by 1.0 mpg or more starting with vehicles produced on or after the following February 1.

In addition, EPA proposed a continuous design change relabeling mechanism that would require a manufacturer to recalculate the affected labels any time one or more of three specific design changes were made to a vehicle within the model type. The design changes (known as running changes) would occur during the production year and after the original model type fuel economy value had been calculated. The three specific design changes were: (1) An axle ratio is added which is numerically 10 percent larger than the largest axle ratio tested. (2) a higher equivalent test weight is added, and (3) the road-load horsepower is increased by 10 percent or more (either cumulative or a single change). If the resultant recalculated city or highway label value decreased by 1.0 mpg or more, a manufacturer would have to relabel the affected model types. These updated labels would have to be installed on the affected model types at the time the running change was implemented.

Many manufacturers generally objected to any form of label updating, and all manufacturers objected to the specific midyear label update. However, some manufacturers supported the continuous design change updating and the Department of Energy and consumer advocates supported both of the proposals. Stated objections to label updating suggested potential consumer confusion due to label changes, lack of need to update label values, and cost increases due to additional testing, administrative processing and advertising changes.

Potential consumer confusion does not seem significant or a major drawback to the proposals. Some consumers might question why a particular model decreased in fuel economy during the year but awareness of such decreases in fuel economy is the primary goal of the label updating proposals. Furthermore, EPA (as stated in the NPRM) does not expect a significant number of labels to change, based upon analyses of previous model years. Supporting this contention, both GM and Ford stated that only about five percent of their labels would likely be affected.

Concerning the need to update labels, Chrysler commented that a 1.0 mpg change in a label value would not influence consumer purchases. GM seemed to support Chrysler's position as it questioned the necessity of decreasing a label value by as little as 1.0 mpg. Neither manufacturer provided any information suggesting that potential buyers are insensitive to such decreases in expected fuel economy performance. EPA continues to view fuel economy decreases of 1.0 mpg or greater as significant and warranting updated label information.

The objections citing additional testing costs were targeted primarily at the midyear label update proposal. Most commenters agreed with EPA's projection that few additional tests would be required to implement the design change label updating proposal. However, many manufacturers indicated that the midyear update would require much additional testing at significant cost. Apparently this extra testing would result from the need to include data on the highest sales configuration within a model type when the label value is recalcualted. Additional testing would be required if the highest selling configuration changed after the initial model type calculation due either to sales shifts or running changes which added a new high sales configuration. As suggested in the NPRM, EPA believes that most of the data required for midyear label value recalculations would be supplied by the manufacturer anyway for its CAFE calculation. Manufacturers did not supply information to substantiate that this would not be the case. Some manufacturers also seemed to suggest that label updating would trigger additional testing to supply voluntary data. EPA does not agree that such additional voluntary tests are necessary results of label updating. In general, comments lacked sufficient information and detail to adequately support the contention by manufacturers that midyear label updating would result in significant additional test burden.

Also concerning the midyear label updating proposal, some manufacturers stated that insufficient time was allowed for updating sales projections, building and testing new vehicles, calculating new label values, getting updated labels into the production stream, and revising advertisements and sales literature to reflect the updated label values. Apparently, these manufacturers believed that this work would be substantial and that all of it would have to be completed between approximately December 31 (the date at which sales projections are to be up-to-date) and the following February 1 (the date revised labels are to be in use). On the contrary, EPA anticipated that much of the work could be accomplished ahead of time, for example, through anticipating the need for additional data and performing the tests prior to December 31. EPA viewed the time between December 31 and February 1 as time allotted for recalculating labels (an insignificant time cost due to the use of computers) and getting updated labels in place for the relatively few cases where the label value decreased by 1.0 mpg or more.

Manufacturers also suggested that the cost of updating advertising and sales literature to reflect revised label values could be high. In preparing the label updating proposals, EPA did not predict the cost of revised advertising or sales literature. EPA did not expect that many labels would have to be updated as a result of either the design change or midyear recalculations. Also, EPA believed that the vast majority of such label updates would be under the control of the manufacturers. To the extent that the cost of updating advertising and sales literature would be a major factor, manufacturers could choose not to implement design changes

which decrease fuel economy or could be less optimistic in their sales projections for the initial label calculation. In the NPRM, EPA specifically requested additional information on the cost of updating advertising and sales literature. However, the only information supplied were examples of costs if major changes were necessary. In some cases, these were apparently worst-case examples of potential costs and actual necessary costs could be much lower. No estimates of expected actual costs were received. Consequently, EPA is still unable to quantify the cost impact of revising advertising and sales literature due to updated label values.

Some manufacturers suggested that the need for the midyear label updating provision was greatly diminished due to the other proposals to improve the continued accuracy of the label values. First, the other label updating proposal would correct for major design changes which occurred throughout the year. Second, the proposal to require, in each label calculation, data on the vehicle configuration with largest projected sales would improve the sales representativeness of labels. This should lessen the chance that sales shifts occurring by midyear would significantly affect the label value calculations. EPA concurs with these observations but, like the manufacturers, is unable to quantify their impact on the need to update labels at midyear.

EPA is not convinced by the manufacturers' arguments that midyear label updating is necessarily a high cost program. However, we are also uncertain of the unique benefits of the midyear label updating given the other improvements to the label program. The benefits are minimized to the extent that manufacturers used improved sales projections when calculating the initial label values and use restraint in implementing design changes (other than those considered in the design change label updating provision) which decrease fuel ecomony. Further, EPA recognizes that some administrative costs to manufacturers in implementing the midyear label updating are fixed regardless of the benefits of that program. Consequently, EPA is choosing not to take final action on the midyear label updating proposal at this time. Rather, EPA will continue to study the impact of the proposal in an attempt to better quantify the total implementation cost and its unique benefits. EPA may choose to finalize the midyear label updating proposal at a later date.

Most of the potential problems associated with the midyear label updating proposal do not apply to the specific design change updating amendment. Changes in axle ratio, road-load horsepower, and test weight are very predictable by the manufacturer. These items are typically within the manufacturer's control and are usually included as part of its longer term product plans. Consequently, the manufacturer can fully consider the testing and advertising burdens prior to implementing these specific design changes. Some manufacturers also supported this design change updating proposal as reasonable and appropriate. Under this provision, manufacturers may also relabel vehicles due to fuel economy *increases*. EPA received no objections to this part of the proposal.

In summary, EPA sees a continued benefit to updating labels to account for significant changes in expected fuel economy. Specifically, the design change updating provision is an effective, low cost mechanism supported by at least some manufacturers. Since these changes typically decrease fuel economy performance significantly, it is most important that consumers be informed of these design changes via updated labels. EPA finds that the design change label updating mechanism proposed in the NPRM will provide more accurate consumer information with a minimum of confusion and cost. Therefore, EPA is finalizing this proposal for implementation beginning in the 1986 model year. A manufacturer may voluntarily implement design updating during the 1985 model year, but must agree to relabel for decreases in fuel economy performance if it is choosing to relabel for improvements in fuel economy performance.

F. Elimination of Prior Approvals for Label Values

EPA proposed to eliminate the current requirement that EPA approve each label value before the manufacturer is allowed to use it. Manufacturers would be responsible for calculating label values and could apply them at their discretion provided they had submitted the label values and supporting calculations to EPA. EPA would retain the function of auditing label calculations at its discretion. EPA believes that in giving manufacturers full responsibility to calculate labels correctly, manufacturers must also be responsible for correcting miscalculated labels.

Those manufacturers commenting on this issue supported the proposed amendment. One non-manufacturer, the Environmental Policy Institute, opposed the amendment on the ground that it would not include "sufficient" penalty for incorrectly labeled vehicles to prevent manufacturers from routinely calculating label values which are incorrectly high. EPA believes that sufficient penalty exists in that EPA will closely review a manufacturer's label calculations and require the manufacturer to relabel all vehicles if the label values had not initially been correctly calculated. This includes correcting the labels on vehicles not delivered to the ultimate purchaser. The total cost of correcting existing labels is an appropriate incentive for manufacturers to provide adequate quality control in their calculations. Further, the label test requirements and calculation procedures are documented and fully understood by the manufacturers. Therefore, manufacturers should have no difficulty in routinely calculating correct label values. As a result, EPA is finalizing the proposed amendment for the 1986 and later model years. Manufacturers may voluntarily use this flexibility in the 1985 model year if they comply with the prerequisites for exercising this responsibility and obtain EPA's concurrence that they may do so.

G. Unique Labels for Fuel Efficient Vehicles

The label value represents a sales-weighted fuel economy value for a model type. Within a model type, a manufacturer may produce a vehicle that is significantly more or less fuel efficient than others in the model type. However, there has been no straightforward mechanism by which a manufacturer can highlight the fuel efficiency of a particular vehicle design within a model type classification. EPA proposed to allow a manufacturer to separate a specific vehicle subconfiguration (or subconfigurations) from a model type classification for the purpose of obtaining a separate label value. These separate subconfigurations must be designated by a car line name that is unique from the model type name, and this name must appear on the label and on each vehicle bearing the label. Further, each subconfiguration within the new classification must be represented by test data and no subconfiguration may be represented in more than one basic engine classification. The resultant separate label values would be individually subject to the Gas Guzzler Tax liability as separate model types currently are.

All commenters supported the intent of this proposal, but one objected to the

requirement to provide fuel economy data representing each included subconfiguration to obtain a unique label. Another manufacturer objected to the requirement for a unique nameplate. EPA finds that the test requirements as proposed are necessary to support the added flexibility of unique, "high visibility," label values. Further, a unique nameplate is necessary for consumer identification of the specific vehicle. Since use of this option is voluntary on the part of the manufacturer, there is no need to delay its implementation due to leadtime considerations. Therefore, EPA is finalizing the amendment as proposed for implementation beginning in the 1985 model year.

H. California and 49-State Labels

Under the current regulations, EPA has the option to require separate label calculations for vehicles sold in the State of California and vehicles sold elsewhere if EPA expects their fuel economies to be significantly different. EPA currently exercises this option. However, EPA has considered whether this practice should continue since recent years' fuel economies for light-duty vehicles and light trucks were not very different between California designs and designs sold in the other states. This specific issue was not a part of the June 9, 1983, NPRM since no change in the regulation is required. However, EPA requested at the July 26, 1983 hearings that manufacturers submit written comments regarding whether or not separate California labels should be retained.

Commenters supported the elimination of separate California labels for automobiles since there is no significant difference in expected fuel economy and since elimination would reduce testing and administrative costs. However, some manufacturers indicated that since the future emission standards for California trucks are expected to be much more stringent than for other trucks, significant fuel economy differences might arise. EPA agrees in principle with these assessments. Therefore, beginning with the 1986 model year, EPA will exercise its discretion not to calculate separate label values for light-duty vehicles designed for use in California. However, EPA will further consider whether to continue requiring separate label values for light trucks designed for use in California. EPA will retain authority under the rules to calculate separate values for California vehicles in the future if significant differences do arise.

I. Clarification and Standardization of the Label Format

EPA proposed to standardize the label format to provide consumers with more readable and eyecatching labels and to eliminate the current need for EPA's review and approval for each manufacturer's label format. EPA offered two possible label formats. One proposed label format would have required exact language and the physical size could be varied only by proportional enlargement or reduction. The other proposed label format emphasized flexibility for both the language contained on the label and the physical size of the label. EPA indicated in the NPRM preamble that the format adopted would be based on the comments received to the NPRM.

Comments indicated that the flexible label format was preferred by most manufacturers because of its practical value as they adjust it to meet their individual specific needs. However, in terms of clarity and visual appeal, the label proposed as a more fixed format was clearly favored. Some manufacturers also offered suggestions as to the sizing requirements to make either proposal more compatible with existing printing equipment.

As a result of the comments, EPA is finalizing a label format that incorporates the qualities of both proposed formats. Much of the presentation quality of the fixed format proposal is being retained but additional flexibility is being allowed the manufacturer to add information relating to the vehicle and its expected fuel economy performance. A sample is depicted in Appendix VIII of the regulations that follow. This new standard format will not be required until the 1986 model year in response to those manufacturers whose comments indicated possible leadtime problems with 1985 model year implementation. However, since city and highway label values will be required (along with associated statements described in Section III C. and O of this preamble) beginning in the 1985 model year, manufacturers will have to amend their current label formats. The specific formats that manufacturers develop under the 1985 model year rules would continue to require prior EPA approval. Alternatively, manufacturers may use the 1986 model year format during the 1985 model year without prior EPA approval.

To ease implementation, EPA will provide "camera ready" copies of acceptable 1986 label formats. These will be available from the Certification Division at EPA's Ann Arbor, Michigan Facility.

J. Elimination of the Preliminary CAFE Calculation Procedure; Revision of CAFE Data Coverage Requirements

EPA proposed to eliminate the preliminary CAFE calculation requirement. In its place, the regulation would require the final CAFE to be calculated using data representing at least 90 percent of sales. (This calculation is used to determine compliance with CAFE standards under EPCA and is not affected by the specific labeling changes discussed above.)

EPA's primary intent in proposing to eliminate the preliminary CAFE was to reduce the administrative burden on both EPA and manufacturers. EPA originally incorporated the preliminary CAFE at the request of manufacturers so that they could have a better idea of how their final CAFE data base might look. Since that time, manufacturers have become familar with the CAFE program and the procedures EPA follows in establishing the CAFE data base. Manufacturers now can (and routinely do) calculate their own preliminary CAFE's for internal planning purposes. In recent years, many manufacturers have agreed that the EPA-required preliminary CAFE calculation is not necessary. In fact, EPA has routinely granted manufacturer requests to delay the required preliminary CAFE submission until final CAFE time as a cost savings measure for the manufacturer. Of course, this delay eliminates the sole intended value of the preliminary CAFE—the early assessment of expected final CAFE.

Most commenter support elimination of the preliminary CAFE and adoption of a 90 percent CAFE coverage as less costly and administratively more flexible. However, Ford indicated in its comments that elimination of the preliminary CAFE would increase its test burden in the light-duty truck category. Because of a large number of truck configurations with relatively small sales volumes, Ford concluded that sales shifts occurring late in the model year could require significant additional testing to reach the 90 percent sales coverage proposed for the final CAFE. EPA anticipated that this final CAFE proposal would, in fact, reduce the costs to the manufacturers since the manufacturer would have much more flexibility in choosing which designs to test.

As supported by our analysis of other manufacturers that are marketing diverse and complete truck product lines similar to Ford's, the total number of

CAFE tests should not change dramatically. Ford may experience some testing increase because in recent years its light-duty truck final CAFE sales coverages have been less than 90 percent. Adoption of the proposal would bring Ford's CAFE sales coverage in line with other manufacturers.

EPA considered retaining the preliminary CAFE provision for optional use by the manufacturers. However, we have concluded that the greater simplicity of the regulations and the cost savings to EPA of eliminating the preliminary CAFE calculation and approval provisions and having only one simple system in place outweigh the potential benefits to one manufacturer of retaining the preliminary CAFE mechanism.

One of the features of the preliminary CAFE calculation procedure was the provision to permit the exemption from supplying supplemental fuel economy data for running changes submitted after the preliminary CAFE was calculated. GM was concerned that the loss of running change exemption [2] benefits would also increase the administrative burden. In fact, a running change exemption is not necessary under the proposed alternative since all manufacturers have similar flexibility to choose which designs should be tested and included in the CAFE data base to meet the 90 percent sales coverage criterion. Thus, a separate running change exemption provision is redundant and unnecessary.

Based upon the potential resource savings for both EPA and manufacturers, and based upon the general support of NPRM commenters, EPA is eliminating the preliminary CAFE beginning with the 1986 model year. Manufacturers may, however, optionally eliminate the preliminary CAFE beginning with the 1985 MY along with complying with the 1986 MY CAFE data requirements.

K. Fuel Economy Adjustments for Test Vehicles With High-Mileage Accumulation

EPA proposed to apply an adjustment factor to test data (for labeling purposes only) from vehicles which exceed 6,200 miles at the test point. For any tests conducted on vehicles at more than 6,200 miles, the fuel economy test results would be adjusted downward to simulate a 4,000-mile test. This change was proposed to eliminate the higher fuel economy bias caused by testing vehicles at mileages significantly higher than the 4,000-mile baseline. This bias is caused by extra vehicle "break-in" at higher mileage accumulations.

None of the commenters specifically addressed the appropriateness of adjusting fuel economy data for this purpose, but some objected to the adjustment equation itself. The Motor Vehicles Manufacturers Association contended that EPA selected the worst case of the three equations under consideration. However, as stated in the support report,[3] EPA selected the simplest representation of the data since none of the representations appeared as the "best fit." This selected linear relationship is in fact the least severe (least change in fuel economy) of the three at 6,200 miles; it is the most severe only at much higher mileages.

Some manufacturers indicated that they would elect to build new test vehicles and incur a resulting substantial cost rather than use the mileage adjustment equation because it was too severe. However, these same manufacturers stated that few vehicles are tested at over 6,200 miles. The EPA data base shows that for the 1982 model year, 14 percent of all vehicles were tested at over 6,200 miles. This seems to indicate that there has not been a general need or desire to exceed a 6,200-mile limit. Therefore, those manufacturers who elect to build new test vehicles rather than exceed 6,200 miles should not incur significantly increased vehicle build costs.

Some manufacturers commented that the adjustment runs counter to the certifications streamlining changes made in 1981 and 1982. EPA finds no basis for these statements. Those rules liberalized the emission-data vehicle mileage accumulation requirements and allowed more vehicle reconfiguration for certification. However, the mileage accumulation liberalizations were adopted primarily to allow manufacturers to test *earlier* than 4,000 miles, thereby saving money in service accumulation. The change allows service accumulation greater than 4,000 miles to accommodate reconfiguration, but EPA adopted the same adjustment equation at that time for emission-data vehicles tested at greater than 6,200 miles as was proposed here for other vehicles used to calculate fuel economy labels. This proposal makes treatment of other fuel economy test results consistent with the rules already adopted for emission-data vehicles.

General Motors suggested that EPA allow the upper mileage accumulation limit to go from 10,000 miles to 15,000 miles, with a suitable adjustment factor. However, such a change was not considered in the NPRM and is beyond the scope of this final rulemaking. EPA would consider a future regulation change to extend the upper mileage limit if manufacturers show specific benefits would be derived. EPA does not see such a general need at this time based upon EPA's analysis of the comments for this proposal.

EPA published a Notice of Proposed Rulemaking on December 21, 1983 (48 FR 56526) which also contains a similar mileage adjustment equation. In that notice, EPA is proposing not only that data used for labeling be adjusted but also that the data for CAFE purposes be adjusted. The amendment being adopted today is appropriate for the fuel economy label program alone. However, in finalizing the December 21, 1983 NPRM, EPA will consider if further changes are warranted to the labeling program mileage adjustment provision.

For the reasons cited above, EPA is adopting the mileage adjustment provisions as proposed beginning in the 1986 model year.

L. Drivetrain Separation

The current definition of "transmission class" does not expicitly distinguish between front- and rear-wheel drive vehicles, automatic transmissions with and without "lockup" torque converters, or transmissions with "overdirve" gear ratios. Each of these features can affect the fuel efficiency of a vehicle. By adding these features to the definition of transmission class, as proposed, separate label value would be determined for those vehicles with similar fuel economy characteristics. This would allow the consumers to consider the fuel economy impact of these design differences.

Although the current definition of "transmission class" does not explicitly separate front- and rear-wheel drive vehicles, EPA has separated these beginning with the 1981 model year, under the provisions of 40 CFR § 600.002–79(a)(22) which provide such discretion. This final rule change makes this policy explicit in the regulations.

Ford included in its comments a suggested change in the language of the definition to provide EPA additional flexibility. The suggested language would allow any of the features in the definition to be judged, by the Administrator, equivalent for fuel economy testing and labeling purposes.

[2] If a manufacturer's preliminary CAFE exceeds the CAFE standard for that model year by 1.0 mpg, the manufacturer is excused from submitting supplementary fuel economy data for running changes. The elimination of the preliminary CAFE also eliminates this exemption.

[3] EPA Report No. EPA/AA/CPSB/81-03, "Effect of Vehicle Mileage on Tested Fuel Economy," February 1981.

The current regulations already allow administrative flexibility to determine distinct designs as equivalent for the purpose of fuel economy testing and labeling. This flexibiltiy and EPA implementation policy are further described in OMS Advisory Circular No. 83, paragraph X. There is no need to broaden the degree of flexibility already provided in the regulations, as now revised.

General Motors expressed a concern that EPA would include locking speeds within the definition of "transmission class." EPA does not plan to incorporate locking speeds within the definition of transmission class at this time. However, if the locking speeds do become sufficiently broad so as to cause a significant difference in fuel economy characteristics, the revised definition would allow EPA to separate vehicles on the basis of locking speeds. This flexibility is both technically and administratively appropriate.

EPA is finalizing this amendment for the 1985 model year as proposed because it will not affect the administrative burden and, for the most part, is already being adhered to in the current program.

M. Interior Volume Changes

EPA proposed three changes to the current method for measuring vehicles to account for (1) the cargo volume of hatchbacks and station wagons, (2) the total front seat leg room, and (3) adding interior volume measurements to the two-seater vehicle classification. These changes would result in new interior volumes for all vehicles and in some cases the vehicles would be in new interior volume classifications.

Only DOE supported the proposed amendments while the six manufacturers who commented on this proposal opposed it. In general, the manufacturers stated that the benefits derived do not justify the effort involved in making the changes. EPA agrees with comments that the internal volume measurement is best used as a comparative tool when considering similar cars; in that regard, interior volume measurement is a competitive issue. Clearly, if a manufacutrer was significantly disadvantaged due to the methodology used in determining interior volume, it would be in that manufacturer's interest to improve the methodology. The comments suggest that, in general, the industry is comfortable with how vehicles' interior volumes are compared. EPA cannot support the proposed changes independent of the manufacturers' views. Therefore, this amendment is not adopted in this rulemaking.

N. Reduced Reporting Requirements

EPA proposed to reduce the manufacturers' requirements for reporting certain information to EPA and to require instead that such information be retained by the manufacturer. This information concerns test vehicle calibrations and maintenance records, and also includes certain interior volume calculation information. Since EPA does not routinely use this information, it no longer needs to be submitted. However, the manufacturer must make these records available to EPA upon request.

Because of the unanimous support for this proposal and because the adoption of this amendment will relieve the manufacturers of some of their existing administrative burden, EPA finalizes this amendment for the 1985 and later model years.

O. Implementation Transition

EPA requested in the NPRM information on how best to introduce adjusted city and highway fuel economy estimates to consumers during the transitional first model year. Manufacturers expressed concern about the possible incorrect impression that actual in-use fuel economy performance has decreased for the same model between the 1984 and 1985 model years.

EPA considered how best to inform the public of the relative differences in fuel economy ratings for the same models during the first year of shortfall adjustments. EPA concluded that one effective method would be to allow the individual manufacturer the option of including an additional explanation on the label, including a comparison to the single fuel economy estimated determined according to the 1984 model year procedures. In their review of this rulemaking, OMB recommended making the inclusion of a specific explanation mandatory and to have this explanation appear for two model years. As a result, the 1985 and 1986 model year labels will be required to contain the following statement: "Under EPA's previous fuel economy rating method which was used prior to the 1985 model year this vehicle would have received a single estimate of —— mpg." The fuel economy value that will appear in the blank will be the unadjusted city value.

To further facilitate explanation of the changes of the system to the public, EPA and DOE are considering including further clarifying information in the *Gas Mileage Guide*. Finally, this issue has been coordinated with the Federal Trade Commission to be assured that if it issues new advertising guidelines for fuel economy information, such guidelines will not preclude reasonable and accurate information to permit relative comparison with previous model year fuel economy values or to explain the changes that have been made to the labeling system. However, EPA considers it to be misleading information to use unadjusted city or highway numbers in advertising in any way which implies such numbers are official government or official EPA fuel economy estimates or which implies such numbers represent expected in-use fuel economy estimates.

Another transition issue involves the early introduction of 1985 model year vehicles before the traditional model year introduction time and before these regulations become effective. Several 1985 model year vehicles have been certified already. In some instances, label values for the affected model types were also calculated using previously applicable rules followed for the 1984 model year (i.e., single number unadjusted label values). EPA's position on this issue is that, in such situations, manufacturers must comply with the rules in this notice for all vehicles produced subsequent to the effective date of these regulations. Delay of the entire regulation for another full model year because of a few early introductions is not warranted.

In order to minimize the administrative burden of the transition to the new labels, however, vehicles already produced prior to the effective date of these rules, even if not sold, will not be required to be relabeled. Further, EPA will allow manufacturers to begin to comply optionally with the new rules during the 30-day period after these rules are published but before they are required to be followed. The mechanisms provided to explain the differences from the 1984 to the 1985 model year labeling systems are also adequate to minimize the confusion associated with the few early 1985 models that are subject to changed labels. The changes, while needing some explanation, will not be inconsistent. Some early 1985 models will simply have an estimate for overall driving while the remaining ones will have two estimates—one for city driving and one for highway driving.

P. Technical Amendment

This final rule also contains a technical amendment to regulatory language addressing the inclusion of electric vehicle data in the CAFE data base (July 24, 1980; 45 FR 49256). The preamble to that rule (45 FR 49257) states that the rule would provide an exemption from complying with the

provision pertaining to electric vehicles for manufacturers of gasoline-fueled and/or diesel-powered vehicles with worldwide sales less than 10,000 units. The regulation language, however, did not provide this exemption. This oversight is corrected in this rulemaking.

IV. Public Participation

A public hearing was held on July 26, 1983, in Ann Arbor, Michigan. No private citizens or special interest groups chose to participate. Five manufacturers from the regulated industry participated.

The comment period was to have closed on September 1, 1983, but, at the request of the manufacturers, was extended to September 16, 1983. A transcript of the hearing is contained in the docket for this rulemaking.

V. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will result in an annual effect on the economy of less than $100 million. Also, this regulation should not result in increased costs or prices for consumers, industries, or others, nor should it have adverse effects on competition, employment, investment, or productivity.

This action was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection in the docket for this rulemaking; Docket No. A–80–32. The EPA's Central Docket Section (A–130) is located at 401 M Street, SW., Washington, D.C. 20460.

VI. Reporting and Recordkeeping Requirements

Information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2000–0390.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory flexibility analysis. The revision of the fuel economy regulations established by this rulemaking should not significantly increase and may reduce the burden, including costs of compliance with fuel economy requirements, for the industry as a whole, as well as for small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Administrative practice and procedure, Fuel economy.

Dated: March 30, 1984.

William D. Ruckelshaus,

Administrator.

PART 600—[AMENDED]

For the reasons set forth in the preamble, 40 CFR Part 600 is amended as follows:

1. The authority for Part 600 reads as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3206.

2. A new § 600.001–81 is added to read as follows:

§ 600.001–81 General applicability.

(a) The provisions of this subpart are applicable to 1981 and later model year gasoline-fueled and diesel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this Subpart.

3. A new § 600.301–81 is added to read as follows:

§ 600.301–81 General applicability.

(a) The provisions of this subpart are applicable to 1981 and later model year gasoline-fueled and diesel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this Subpart.

4. A new § 600.501–81 is added to read as follows:

§ 600.501–81 General applicability.

(a) The provisions of this subpart are applicable to 1981 and later model year gasoline-fueled and diesel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of the subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this Subpart.

5. A new § 600.001–85 is added to read as follows:

§ 600.001–85 General applicability.

(a) Except as provided in paragraph (c) of this section, the provisions of this subpart are applicable to 1985 and later model year gasoline-fueled and diesel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this Subpart.

(c) Subject to prior approval by the Administrator, manufacturers may optionally implement, for 1985 model year vehicles provisions of this subpart that are applicable to 1986 and later model year vehicles.

6. A new § 600.002–85, which is identical to § 600.002–81 except for revised paragraphs (a) (4), (8), (15), (22), (24), and (27), and added paragraphs (a) (50) and (51), is added to read as follows:

§ 600.002–85 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act:

(1) "Act" means Part I of Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.).

(2) "Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

(3) "Secretary" means the Secretary of Transportation or his authorized representative.

(4) "Automobile" means:

(i) Any four-wheel vehicle propelled by a combustion engine using onboard fuel or by an electric motor drawing current from rechargeable storage batteries or other portable energy storage devices (rechargeable using energy from a source off the vehicle such as residential electric service),

(ii) Which is manufactured primarily for use on public streets, roads, or highways (except any vehicle operated on a rail or rails),

(iii) Which is rated at not more than 8,500 pounds gross vehicle weight, which has a curb weight of not more than 6,000 pounds, and which has a basic vehicle frontal area of not more than 45 square feet, or

(iv) Is a type of vehicle which the Secretary determines is substantially used for the same purposes.

(5) "Passenger Automobile" means any automobile which the Secretary determines is manufactured primarily for use in the transportation of no more than 10 individuals.

(6) "Model Year" means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(7) "Federal Emission Test Procedure" refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in Part 86 for the respective model year, which are used to derive city fuel economy data for gasoline-fueled or diesel vehicles.

(8) "Federal Highway Fuel Economy Test Procedure" refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in Subpart B of this part and which are used to derive highway fuel economy data for gasoline-fueled or diesel vehicles.

(9) "Fuel" means (i) gasoline and diesel fuel for gasoline- or diesel-powered automobiles or (ii) electrical energy for electrically powered automobiles.

(10) "Fuel Economy" means (i) the average number of miles traveled by an automobile or group of automobiles per gallon of gasoline or diesel fuel consumed as computed in § 600.113 or § 600.207 or (ii) the equivalent petroleum-based fuel economy for an electrically powered automobile as determined by the Secretary of Energy.

(11) "City Fuel Economy" means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal emission test procedure.

(12) "Highway Fuel Economy" means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal highway fuel economy test procedure.

(13) "Combined Fuel Economy" means the fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.35 and 0.45 respectively, for gasoline-fueled and diesel vehicles. For electric vehicles, the term means the equivalent petroleum-based fuel economy value as determined by the calculation procedure promulgated by the Secretary of Energy.

(14) "Average Fuel Economy" means the unique fuel economy value as computed under § 600.510 for a specific class of automobiles produced by a manufacturer that is subject to average fuel economy standards.

(15) "Certification Vehicle" means a vehicle which is selected under § 86.084–24(b)(1) and used to determine compliance under § 86.084–30 for issuance of an original certificate of conformity.

(16) "Fuel Economy Data Vehicle" means a vehicle used for the purpose of determining fuel economy which is not a certification vehicle.

(17) "Label" means a sticker that contains fuel economy information and is affixed to new automobiles in accordance with subpart D of this part.

(18) "Dealer" means a person who resides or is located in the United States, any territory of the United States, or the District of Columbia and who is engaged in the sale or distribution of new automobiles to the ultimate purchaser.

(19) "Model Type" means a unique combination of car line, basic engine, and transmission class.

(20) "Car Line" means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats, or windows, except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

(21) "Basic Engine" means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator. For electric vehicles, basic engine means a unique combination of manufacturer and electric traction motor, motor controller, battery configuration, electrical charging system, energy storage device, and other components as specified by the Administrator.

(22) "Transmission Class" means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic); number of forward gears used in fuel economy testing (e.g., manual four-speed, three-speed automatic, two-speed semi-automatic); drive system (e.g., front wheel drive, rear wheel drive; four wheel drive), type of overdrive, if applicable (e.g., final gear ratio less than 1.00, separate overdrive unit); torque converter type, if applicable (e.g., non-lockup, lockup, variable ratio); and other transmission characteristics that may be determined to be significant by the Administrator.

(23) "Base Level" means a unique combination of basic engine inertia weight class and transmission class.

(24) "Vehicle Configuration" means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio within a base level.

(25) "Engine Code" means, for gasoline-fueled and diesel vehicles, a unique combination, within an engine-system combination (as defined in Part 86 of this chapter), of displacement, carburetor (or fuel injection) calibration, distributor calibration, choke calibration, auxiliary emission control devices, and other engine and emission control system components specified by the Administrator. For electric vehicles, engine code means a unique combination of manufacturer, electric traction motor, motor configuration, motor controller, and energy storage device.

(26) "Inertia Weight Class" means the class, which is a group of test weights, into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions or Part 86.

(27) "Transmission Configuration" means the Administrator may further subdivide within a transmission class if the Administrator determines that sufficient fuel economy differences exist. Features such as gear ratios, torque converter multiplication ratio, stall speed, shift calibration, or shift speed may be used to further distinquish characteristics within a transmission class.

(28) "Axle Ratio" means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

(29) "Auxiliary Emission Control Device (AECD)" means an element of design as defined in Part 86.

(30) "Rounded" means a number shortened to the specific number of decimal places in accordance with the "Round Off Method" specified in ASTM E 29–67.

(31) "Calibration" means the set of specifications, including tolerances, unique to a particular design, version of application of a component, or component assembly capable of functionally describing its operation over its working range.

(32) "Production Volume" means, for a domestic manufacturer, the number of vehicle units domestically produced in a particular model year but not exported, and for a foreign manufacturer, means the number of vehicle units of a particular model imported into the United States.

(33) "Body Style" means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e., front, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations. Station wagons and light trucks are identified as car lines.

(34) "Hatchback" means a passenger automobile where the conventional luggage compartment, i.e., trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window.

(35) "Pickup Truck" means a nonpassenger automobile which has a passenger compartment and an open cargo bed.

(36) "Station Wagon" means a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate, and one or more rear seats readily removed or folded to facilitate cargo carrying.

(37) "Gross Vehicle Weight Rating" means the manufacturer's gross weight rating for the individual vehicle.

(38) "Ultimate Consumer" means the first person who purchases an automobile for purposes other than resale or leases an automobile.

(39) "Van" means any light truck having an integral enclosure fully enclosing the driver compartment and load-carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

(40) "Base Vehicle" means the lowest priced version of each body style that makes up a car line.

(41) "Nonpassenger Automobile" means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5.

(42) "Four-Wheel-Drive General Utility Vehicle" means a four-wheel-drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a body shape similar to a 1977 Jeep CJ–5 or CJ–7, or the 1977 Toyota Land Cruiser, as defined by the Secretary of Transportation at 49 CFR 553.4.

(43) "Test Weight" means the weight within an inertia weight class which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of Part 86.

(44) "Secretary of Energy" means the Secretary of Energy or his authorized representative.

(45) "Electric Traction Motor" means an electrically powered motor which provides tractive energy to the wheels of a vehicle.

(46) "Energy Storage Device" means a rechargeable means of storing tractive energy on board a vehicle such as storage batteries or a flywheel.

(47) "Motor Controller" means an electronic or electro-mechanical device to convert energy stored in an energy storage device into a form suitable to power the traction motor.

(48) "Electrical Charging System" means a device to convert 60Hz alternating electric current, as commonly available in residential electric service in the United States, to a proper form for recharging the energy storage device.

(49) "Battery Configuration" means the electrochemical type, voltage, capacity (in Watt-hours at the c/3 rate), and physical characteristics of the battery used as the tractive energy storage device.

(50) "Drive System" is determined by the number and location of drive axles (e.g., front wheel drive, rear wheel drive, four wheel drive) and any other feature of the drive system if the Administrator determines that such other features may result in a fuel economy difference.

(51) "Subconfiguration" means a unique combination, within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristics or parameters which the Administrator determines may significantly affect fuel economy within a vehicle configuration.

7. A new § 600.006–85 is added to read as follows:

§ 600.006–85 Data and information Requirements for Fuel Economy Vehicles.

(a) For certification vehicles with less than 10,000 miles, the requirements of this section are considered to have been met except as noted in paragraph (c) of this section.

(b)(1) The manufacturer shall submit the following information for each fuel economy data vehicle:

(i) A description of the vehicle, exhaust emission test results, applicable deterioration factors, and adjusted exhaust emission levels.

(ii) A statement of the origin of the vehicle including total mileage accumulation, and modifications (if any) from the vehicle configuration in which the mileage was accumulated. (For modifications requiring advance approval by the Administrator, the name of the Administrator's representative approving the modification and date of approval are required.) If the vehicle was previously used for testing for compliance with Part 86 of this chapter or previously accepted by the Administrator as a fuel economy data vehicle in a different configuration, the requirements of this paragraph may be satisfied by reference to the vehicle number and previous configuration.

(iii) A statement that the fuel economy data vehicle, with respect to which data are submitted:

(A) Has been tested in accordance with applicable test procedures,

(B) Is, to the best of the manufacturer's knowledge, representative of the vehicle configuration listed, and

(C) Is in compliance with applicable exhaust emission standards.

(2) The manufacturer shall retain the following information for each fuel economy data vehicle, and make it available to the Administrator upon request:

(i) A description of all maintenance to engine, emission control system, or fuel system components performed within 2,000 miles prior to fuel economy testing.

(ii) In the case of electric vehicles, the manufacturer shall retain:

(A) A copy of calibrations for engine, fuel system, and emission control devices, showing the calibration of the actual components on the test vehicle as well as the design tolerances, and

(B) A description of all maintenance to electric motor, motor controller, battery configuration, or other components performed within 2,000 miles prior to fuel economy testing.

(iii) If calibrations for components in paragraph (b) of this section were submitted previously as part of the description of another vehicle or configuration, the original submittal may be referenced.

(c) The manufacturer shall submit the following fuel economy data:

(1) For vehicles tested to meet the requirements of Part 86 (other than those chosen in accordance with § 86.084–24 (c) and (h)), the city and highway fuel economy results from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

(2) For each fuel economy data vehicle, all individual test results (excluding results of invalid and zero mile tests) and, if the data are used in fuel economy label calculations, the test results adjusted in accordance with paragraph (g) of this section.

(d) The manufacturer shall submit an indication of the intended purpose of the data (e.g., data required by the general labeling program or voluntarily submitted for specific labeling).

(e) In lieu of submitting actual data from a test vehicle, a manufacturer may provide fuel economy values derived from an analytical expression, e.g., regression analysis. In order for fuel economy values derived from analytical methods to be accepted, the expression (form and coefficients) must have been approved by the Administrator.

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in § 86.084–21, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

(g) (1) For test data generated by certification vehicles selected under 40 CFR 86.082–24(b) with engine/system combinations at more than 6,200 miles (10,000 kilometers) accumulation, the manufacturer shall adjust the test data using either of the following equations:

Equation A

$$FE_{4,000\,mi} = FE_T[0.989 + 0.842 \times 10^{-4}(mi)]^{-1}$$

Equation B

$$FE_{6,400\,km} = FE_T\,[0.989 + 0.523 \times 10^{-4}\,(km)]^{-1}$$

Where:

$FE_{4,000\,mi}$ = Fuel economy data adjusted to 4,000-mile test point

$FE_{6,400\,km}$ = Fuel economy data adjusted to 6,400-kilometer test point

FE_T = Tested fuel economy value

mi = Miles accumulation at test point

km = Kilometer accumulation at test point

(2) For vehicles with 6,200 miles (10,000 kilometers) or less accumulated, the manufacturer is not required to adjust the data.

(Approved by the Office of Management and Budget under control number 2000–0390)

8. A new § 600.009–85, which is identical to § 600.009–77 except for revised paragraph (a), is added to read as follows:

§ 200.009–85 Hearings on acceptance of test data.

(a)(1) If the Administrator rejects the following:

(i) The use of a manufacturer's fuel economy data vehicle, in accordance with § 600.008 (e) or (g), or

(ii) The use of fuel economy data, in accordance with § 600.008 (c), or (f), or

(iii) The determination of a vehicle configuration, in accordance with § 600.206(a), or

(iv) The identification of a car line, in accordance with § 600.002(a)(20), or

(v) The fuel economy label values determined by the manufacturer under § 600.312(a), then

(2)(i) The manufacturer may, within 30 days following receipt of notification of rejection, request a hearing on the Administrator's decision.

(ii) The request must be in writing, signed by an authorized representative of the manufacturer, and include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objection.

(iii) If, after the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue(s), the Administrator shall provide the manufacturer with an opportunity to request a hearing in accordance with the provisions of this section with respect to such issue(s).

(b)(1) After granting a request for a hearing under paragraph (a) of this section the Administrator will designate a Presiding Officer for the hearing.

(2) The General Counsel will represent the Environmental Protection Agency in any hearing under this section.

(3) If a time and place for the hearing has not been fixed by the Administrator under paragraph (a) of this section the hearing will be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(c)(1) Upon his appointment pursuant to paragraph (a) of this section, the Presiding Officer shall establish a hearing file. The file consists of the notice issued by the Administrator under paragraph (a) of this section together with any accompanying material, the request for a hearing and the supporting data submitted therewith and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(d) A manufacturer may appear in person, or may be represented by counsel or by any other duly authorized representative.

(e)(1) The Presiding Officer upon the request of any party, or in his discretion, may arrange for a prehearing conference at a time and place specified by the Presiding Officer to consider the following:

(i) Simplification and clarification of the issue;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(f)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 19 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations, or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witnesses may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a showing satisfactory to the Presiding Officer of their authority, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and will be reported as part of the record unless otherwise ordered.

(g)(1) The Presiding Officer will make an initial decision which shall include written findings and conclusions and the reasons or basis therefore on all material issues of fact, law or discretion presented on the record. The findings, conclusions, and written decisions shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision the Administrator will have all the powers which he would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administration will include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law or discretion presented on the appeal or considered in the review.

(h) A manufacturer's use of any fuel economy data which the manufacturer challenges pursuant to this section shall not constitute final acceptance by the manufacturer nor prejudice the manufacturer in the exercise of any appeal pursuant to this section challenging such fuel economy data.

9. A new § 600.101–85 is added to read as follows:

§ 600.101–85 General applicability.

(a) Except as provided in paragraph (b) of this section, the provisions of this subpart are applicable to 1985 and later model year gasoline-fueled and diesel automobiles.

(b) Subject to prior approval by the Administrator, manufacturers may optionally implement, for 1985 model year vehicles, provisions of this subpart that are applicable to 1986 and later model year vehicles.

10. A new § 600.201–85 is added to read as follows:

§ 600.201–85 General applicability.

(a) Except as provided in paragraph (b) of this section, the provisions of this subpart are applicable to 1985 and later model year gasoline-fueled and diesel automobiles.

(b) Subject to prior approval by the Administrator, manufacturers may optionally implement, for 1985 model year vehicles, provisions of this subpart that are applicable to 1986 and later model year vehicles.

11. A new § 600.209–85 is added to read as follows:

§ 600.209–85 Calculation of fuel economy values for labeling.

(a) For the purposes of calculating the EPA fuel economy estimates for labeling, the manufacturer shall multiply the city model type fuel economy value determined in § 600.207(b), by 0.90, rounding the product to the nearest whole mpg, and

(b) Multiply the highway model type fuel economy value determined in § 600.207(b) by 0.78, rounding to the nearest whole mpg.

(c) If the resulting city value determined in paragraph (a) of this section exceeds the resulting highway value determined in paragraph (b) of this section, the city value will be set equal to the highway value.

(d) The combined fuel economy for a model type, to be used in determining annual fuel costs under § 600.308(c), is determined by harmonically averaging the unrounded city and highway values, determined in § 600.209 (a) and (b), weighted 0.55 and 0.45 respectively, and rounded to the nearest whole mpg. (An example of this calculation procedure appears in Appendix II of this Part).

12. A new § 600.301–85 is added to read as follows:

§ 600.301–85 General applicability.

(a) Except as provided in paragraph (c) of this section, the provisions of this subpart are applicable to 1985 and later model year gasoline-fueled and diesel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this Subpart.

(c) Subject to prior approval by the Administrator, manufacturers may optionally implement, for 1985 model year vehicles, provisions of this subpart that are applicable to 1986 and later model year vehicles.

13. A new § 600.306–85, which is identical to § 600.306–81 except for revised paragraphs (a)(4)(i), (a)(4)(ii), (b), (b)(1), and (b)(2), is added to read as follows:

§ 600.306–85 Labeling requirements.

(a) Prior to being offered for sale, each manufacturer shall affix or cause to be affixed and each dealer shall maintain or cause to be maintained on each automobile:

(1) A general fuel economy label as described in § 600.308 or;

(2) A specific label, as described in § 600.309, for those low altitude automobiles manufactured or imported before the date that occurs 15 days after general labels are approved for the manufacturer.

(i) If the manufacturer elects to use a specific label within a model type (as defined in § 600.002(a)(19)), he shall also have approved specific labels affixed on all automobiles within this model type, except on those automobiles manufactured or imported before the date that labels are required to bear range values as required by paragraph (b) of this section, or determined by the Administrator, or as permitted under § 600.310.

(ii) If a manufacturer elects to change from general to specific labels or vice versa within a model type, the manufacturer shall, within five calendar days, initiate or discontinue as applicable, the use of specific labels on all vehicles within a model type at all facilities where labels are affixed.

(3) For any vehicle for which a specific label is requested which has a fuel economy value at or below the minimum tax-free value, the following statement must appear on the specific label:

[Manufacturer's name] may have to pay IRS a Gas Guzzler Tax on this vehicle because of its low fuel economy unless the combination of mpg data from similar vehicles exceeds the minimum tax-free mpg.

(4)(i) At the time the general fuel economy values are determined for a model type, a manufacturer shall, except as provided in paragraph (a)(4)(ii) of this section, relabel, or cause to be relabeled, vehicles which:

(A) Have not been delivered to the ultimate purchaser, and

(B) Have a combined model type fuel economy value, as determined in § 600.207, of 0.1 mpg or more below the lowest fuel economy value at which a Gas Guzzler Tax of $0 is to be assessed.

(ii) The manufacturer has the option of relabeling vehicles during the first five working days after the general label values are known.

(iii) For those vehicle model types which have been issued a specific label and are subsequently found to have tax liability, the manufacturer is responsible for the tax liability regardless of whether the vehicle has been sold or not or whether the vehicle has been relabeled or not.

(b) The manufacturer shall include the current ranges of fuel economy values of comparable automobiles (as described in § 600.314) in the label of each vehicle manufactured more than fifteen calendar days after the current ranges are made available by the Administrator.

(1) Automobiles manufactured before a date sixteen calendar days after the initial label ranges are made available under § 600.314(d)(1) may be labeled without the ranges of fuel economy values of comparable automobiles. In place of the ranges of fuel economy of comparable automobiles, the label must contain a statement indicating that, as of the date or production or importation of this automobile, the ranges of fuel economy values of comparable automobiles were not available.

(2) Automobiles manufactured more than fifteen calendar days after the initial or updated label ranges are made available under § 600.314(d) (1) or (2) will be labeled with the current ranges of fuel economy of comparable automobiles as approved for that general or specific label.

(c) The fuel economy label must be readily visible from the exterior of the automobile and remain affixed until the time the automobile is delivered to the actual custody and possession of the ultimate consumer.

(1) The fuel economy label must be located on the windshield, or on a side window. If the window is not large enough to contain both the Automobile Information Disclosure Act label and the fuel economy label, the manufacturer shall have the fuel economy label affixed on another window and as close as possible to the Automobile Information Disclosure Act label.

(2) The fuel economy label information may be included with the Automobile Information Disclosure Act label if the prominence and legibility of the fuel economy label is maintained. For this purpose, all fuel economy label information must be placed on a separate section of the label and may not be intermixed with the Automobile Information Disclosure Act label information.

(3) The manufacturer shall have the fuel economy label affixed in a manner so that appearance and legibility are maintained until after the vehicle is delivered to the ultimate consumer.

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14. A new § 600.307–85 is added to read as follows:

§ 600.307–85 Format and contents of labels.

(a) Fuel economy labels must be rectangular in shape, contain the EPA and DOE logos and the title "Fuel Economy Rating," be printed in a color which contrasts with the paper color and in a type size that is easily readable and be large enough to allow inclusion of all required information.

(b) Fuel economy labels must contain the following information:

(1) The word "Model" or "Vehicle," as appropriate, for general and specific fuel economy labels, respectively, followed by the description of the labeled vehicle as described in the manner and degree of detail specified in §600.308(a) or § 600.309(a), as applicable.

(2) A statement: "The estimated mileage for this vehicle is to be used for comparison. Your own mileage may vary depending upon options, driving conditions, your own driving habits, and the vehicle's operating condition."

(3) A statement: "The range of estimated fuel economy values of other (vehicle class as determined by the Administrator pursuant to § 600.315) cars (vehicles or trucks)) was from —— to —— mpg in the city and from —— to —— mpg on the highway as of (date). Consult the *Gas Mileage Guide* for further information."

(i) The fuel economy ranges required by this paragraph are calculated and supplied to the manufacturer by the Administrator in accordance with § 600.311.

(ii) If the fuel economy ranges for other models has not been supplied by the manufacturer to the Administrator at the time a vehicle is to be labeled or within the time constraints permitted by § 600.306(b), the statement required by paragraph (b)(3) of this section shall be replaced by the statement: "A range of MPG numbers for other models of similar size was not available when this car (vehicle or truck) was labeled."

(4) The phrase "annual fuel cost:" followed by the annual fuel cost and the phrase "based on —— mpg, miles per year, —— cents (dollars)/gallon."

(i) The annual fuel cost, average miles driven per year, and cost of fuel will be calculated and supplied by the Administrator in accordance with § 600.308(c) for general labels or § 600.309(c), for specific labels, as applicable.

(ii) The mpg used in determining annual fuel cost is that given in § 600.209(d).

(5) The paragraph "Ask the dealer for the FREE 1985 GAS MILEAGE GUIDE to compare the Estimated MPG of other cars (trucks or vehicles). It will tell you how to use these numbers."

(6) For general labels for passenger automobile model types requiring a tax statement under § 600.513, the phrase "A Gas Guzzler Tax: of $ has been imposed on this vehicle. The tax is administered by the Internal Revenue Service. See the *Gas Mileage Guide* for details."

(i) The tax value required by this paragraph shall be that inducated in § 600.513 and shall be based on the combined fuel economy value for the model type calculated in accordance with § 600.207 and rounded to the nearest 0.1 mpg.

(7) (i) A statement: "Results reported to EPA indicate that the majority of vehicles with these estimates will achieve between —— and —— mpg in the city, and between —— and —— mpg on the highway."

(ii) The range values for this statement are to be calculated in accordance with the following:

(A) The lower range values shall be determined by multiplying the city and highway estimates by 0.85, than rounding to the next lower integer value.

(B) The upper range values shall be determined by multiplying the city and highway estimates by 1.15 and rounding to the next higher integer value.

(8) The statement: "Under EPA's previous fuel economy program, used prior to the 1985 model year, this vehicle would have received a single estimate of [insert unadjusted city value, rounded to the nearest whole mpg, as determined in § 600.207(b)] mpg."

(C) The fuel economy estimate required by paragraph (b)(2) of this section shall be highlighted by being in type no less than four times the size of the next largest print on the label (excluding the title and logos) or by such other means as may be approved by the Administrator.

(d) The applicable statements described in § 600.307–86 may be substituted for the statements required in this section.

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15. A new § 600.308–85, which is identical to § 600.308–79 except for revisions to paragraphs (b), (c), and (c)(iii), is added to read as follows:

§ 600.308–85 General Label contents.

(a) The vehicle description to be used on general labels shall include the following:

(1) Model year;

(2) Vehicle car line;

(3) Engine displacement, in cubic inches, cubic centimeters, or liters

whichever is consistent with the customary description of that engine;

(4) Number of engine cylinders;

(5) Transmission class;

(6) Catalyst usage, if necessary to distinguish otherwise identical model type;

(7) Fuel metering system, including number of carburetor barrels, if applicable; and

(8) California emission control system usage, if applicable and if the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states.

(b) The fuel economy estimates to be used on general labels shall be the city and highway values, labeled accordingly, calculated in § 600.209.

(c) The annual fuel cost estimate for operating an automobile included in a model type shall be computed by using values for the fuel cost per gallon and average annual mileage, predetermined by the Administrator, and the fuel economy determined in § 600.209(d).

(1) The annual fuel cost estimate for a model type is computed by multiplying:

(i) Fuel cost per gallon expressed in dollars to the nearest 0.05 dollar, by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by

(iii) The inverse, rounded to the nearest 0.0001 gallons per mile of the fuel economy value determined in § 600.209(d) for a model type.

(2) The product computed in (c)(1) and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on general labels for the model type.

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16. A new § 600.309–85, which is identical to § 600.309–79 except for the revisions to paragraphs (b), (c), and (c)(1)(iii), is added to read as follows:

§ 600.309–85 Specific label contents.

(a) The vehicle description to be used on specific labels shall include the following:

(1) Model year;

(2) Vehicle car line;

(3) Engine displacement, in cubic centimeters, or liters, whichever is consistent with the customary description of that engine;

(4) Number of engine cylinders;

(5) Transmission class;

(6) Catalyst usage, if so equipped;

(7) Fuel metering system, including number of carburetor barrels, if applicable;

(8) Inertia weight class;

(9) Axle ratio;

(10) Other engine or vehicle parameters; and

(11) California emission control system usage, where applicable and if the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states.

(b) The fuel economy estimates to be used on specific labels shall be the city and highway values, labeled accordingly, calculated in § 600.209.

(c) The annual fuel cost estimate for operating an automobile included in a vehicle configuration will be computed by using values for the fuel cost per gallon and average annual mileage and the fuel economy determined in paragraph (c)(1)(iii) of this section.

(1) The annual fuel cost estimate for a vehicle configuration is computed by multiplying:

(i) Fuel cost per gallon expressed in dollars to the nearest 0.05 dollar, by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by

(iii) The inverse, rounded to the nearest 0.0001 gallons per mile, of the fuel economy value determined in § 600.206(a)(2)(iii) for a vehicle configuration (city and highway values will be adjusted by the factors in § 600.209 (a) and (b) and combined according to § 600.209(d) before the calculation).

(2) The product computed in (c)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on specific labels for that vehicle configuration.

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17. A new § 600.311–85, which is identical to § 600.311–79 except for the revisions to paragraphs (a), (a)(1), (a)(4), and (b), is added to read as follows:

§ 600.311–85 Range of fuel economy for comparable automobiles.

(a) The Administrator will determine the city and highway ranges of fuel economy values for each class of comparable automobiles.

(1) The range of fuel economy values within a class is the maximum and the minimum values of the respective city and the highway values for all general labels as determined in § 600.308(b) regardless of manufacturer.

(2) If the Administrator determines that automobiles intended for sale in California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will compute separate ranges of fuel economy values for each class of automobiles for California and for the other states.

(3) For high altitude vehicles determined under § 600.310, both general and specific labels will contain the range of comparable fuel economy computed in this paragraph.

(4) The ranges of comparable fuel economy values for a class of automobiles is derived from the latest available data approved by the Administrator for that class of automobiles.

(b) The manufacturer shall include the ranges of fuel economy values determined by the Administrator in paragraph (a) of this section, on each label affixed to an automobile within that class except as provided in § 600.306.

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18. A new § 600.501–85 is added to read as follows:

§ 600.501–85 General applicability.

(a) Except as provided in paragraph (c) of this section, the provisions of this subpart are applicable to 1985 and later model year gasoline-fueled and diesel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this Subpart.

(c) Subject to prior approval by the Administrator, manufacturers may optionally implement, for 1985 model year vehicles, provisions of this subpart that are applicable to 1986 and later model year vehicles.

19. A new § 600.001–86, which is identical to § 600.001–85 except that paragraph (a) has been revised and paragraph (c) has been deleted, is added to read as follows:

§ 600.001–86 General applicability.

(a) The provisions of this subpart are applicable to 1986 and later model year gasoline-fueled and diesel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those

sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this Subpart.

20. A new § 600.006–86, which is identical to § 600.006–85 except that paragraph (g) has been revised, is added to read as follows:

§ 600.006–86 Data and information requirements for fuel economy vehicles.

(a) For certification vehicles with less than 10,000 miles, the requirements of this section are considered to have been met except as noted in paragraph (c) of this section.

(b)(1) The manufacturer shall submit the following information for each fuel economy data vehicle:

(i) A description of the vehicle, exhaust emission test results, applicable deterioration factors, and adjusted exhaust emission levels.

(ii) A statement of the origin of the vehicle including total mileage accumulation, and modifications (if any) from the vehicle configuration in which the mileage was accumulated. (For modifications requiring advance approval by the Administrator, the name of the Administrator's representative approving the modification and date of approval are required.) If the vehicle was previously used for testing for compliance with part 86 of this chapter or previously accepted by the Administrator as a fuel economy data vehicle in a different configuration, the requirements of this paragraph may be satisfied by reference to the vehicle number and previous configuration.

(iii) A statement that the fuel economy data vehicle, with respect to which data are submitted:

(A) Has been tested in accordance with applicable test procedures,

(B) Is, to the best of the manufacturer's knowledge, representative of the vehicle configuration listed, and

(C) Is in compliance with the applicable exhaust emission standards.

(2) The manufacturer shall retain the following information for each fuel economy data vehicle, and make it available to the Administrator upon request:

(i) A description of all maintenance to engine, emission control system, or fuel system components performed within 2,000 miles prior to fuel economy testing.

(ii) In the case of electric vehicles, the manufacturer should provide a description of all maintenance to electric motor, motor controller, battery configuration, or other components performed within 2,000 miles prior to fuel economy testing.

(iii) A copy of calibrations for engine, fuel system, and emission control devices, showing the calibration of the actual components on the test vehicle as well as the design tolerances.

(iv) In the case of electric vehicles, the manufacturer should provide a copy of calibrations for the electric motor, motor controller, battery configuration, or other components on the test vehicle as well as the design tolerances.

(v) If calibrations for components in paragraph (b) of this section were submitted previously as part of the description of another vehicle or configuration, the original submittal may be referenced.

(c) The manufacturer shall submit the following fuel economy data:

(1) For vehicles tested to meet the requirements of Part 86 (other than those chosen in accordance with § 86.084–24 (c) and (h)), the city and highway fuel economy results from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

(2) For each fuel economy data vehicle, all individual test results (excluding results of invalid and zero mile tests) and, if the data are used in fuel economy label calculations, the test results adjusted in accordance with paragraph (g) of this section.

(d) The manufacturer shall submit an indication of the intended purpose of the data (e.g., data required by the general labeling program or voluntarily submitted for specific labeling).

(e) In lieu of submitting actual data from a test vehicle, a manufacturer may provide fuel economy values derived from an analytical expression, e.g., regression analysis. In order for fuel economy values derived from analytical methods to be accepted, the expression (form and coefficients) must have been approved by the Administrator.

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in § 86.084–21, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

(g)(1) The manufacturer shall adjust all test data used for fuel economy label calculations generated by vehicles with engine-system combinations with more than 6,200 miles (10,000 kilometers) using either of the following equations:

Equation A

$$FE_{4,000\ mi} = FE_T\,[0.969 + 0.842 \times 10^{-4}(m)]^{-1}$$

Equation B

$$FE_{6,400km} = FE_T[0.969 = 0.523 \times 10^{-4}(km)]^{-1}$$

Where:

$FE_{4,000_{mi}}$ = Fuel economy data adjusted to 4,000-mile test point

$FE_{6,400_{km}}$ = Fuel economy data adjusted to 6,400-kilometer test point

FE_T = Tested fuel economy value

km = Kilometer accumulation at test point

mi = Miles accumulation at test point

(2) For vehicles with 6,200 miles (10,000 kilometers) or less accumulated, the manufacturer is not required to adjust the data.

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21. A new § 600.010–86, which is identical to § 600.010–77 except for revised paragraph (a) and new paragraphs (c) and (d), is added to read as follows:

§ 600.010–86 Vehicle test requirements and minimum data requirements.

(a) For each certification vehicle defined in this part, and for each vehicle tested according to the emission test procedures in Part 86 for addition of a model after certification § 86.079–32 or, approval of a running change (§§ 86.079–33 and 86.082–34):

(1) The manufacturer shall generate city fuel economy data by testing according to the applicable procedures.

(2) The manufacturer shall generate highway fuel economy data by:

(i) Testing according to applicable procedures, or

(ii) Using an analytical technique, as described in § 600.006(e).

(3) The data generated in paragraphs (a) (1) and (2) of this section, shall be submitted to the Administrator in combination with other data for the vehicle required to be submitted in Part 00.

(b) For each fuel economy data vehicle:

(1) The manufacturer shall generate city fuel economy data and highway fuel economy data by:

(i) Testing according to applicable procedures, or

(ii) Use of an analytical technique as described in § 600.006(e), in addition to testing (e.g., city fuel economy data by testing, highway fuel economy data by analytical technique).

(2) The data generated shall be submitted to the Administrator according to the procedures in § 600.006.

(c) *Minimum data requirements for labeling:* (1) In order to establish fuel economy label values under § 600.306, the manufacturer shall use only test data accepted in accordance with

§ 600.008 (b) and (f) and meeting the minimum coverage of:

(i) Data required for emission certification under §§ 86.084–24, 86.079–32, 86.079–33, and 86.082–34,

(ii) Data from the highest projected model year sales subconfiguration within the highest projected model year sales configuration for each base level, and

(iii) For additional model types established under §600.207(a)(2), data from each subconfiguration included within the model type.

(2) For the purpose of recalculating fuel economy label values as required under §600.314(b), the manufacturer shall submit data required under § 600.507.

(d) *Minimum data requirements for the manufacturer's average fuel economy:* For the purpose of calculating the manufacturer's average fuel economy under § 600.510, the manufacturer shall submit data representing at least 90 percent of the manufacturer's actual model year production, by configuration, for each category identified for calculation under § 600.510(a).

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22. A new § 600.101–86, which is identical to § 600.101–85 except that paragraph (a) has been revised and paragraph (b) has been deleted, is added to read as follows:

§ 600.101–86 General applicability.

(a) The provisions of this subpart are applicable to 1986 and later model year gasoline-fueled and diesel automobiles.

23. A new § 600.201–86, which is identical to § 600.201–85 except that paragraph (a) has been revised and paragraph (b) has been deleted, is added to read as follows:

§ 600.201–86 General applicability.

(a) The provisions of this subpart are applicable to 1986 and later model year gasoline-fueled and diesel automobiles.

24. A new § 600.206–86, which is identical to § 600.206–81 except for revised paragraphs (a)(1), (a)(2)(i), (a)(2)(ii), and (a) (2)(iii), is added to read as follows:

§ 600.206–86 Calculation and use of fuel economy values for gasoline-fueled, diesel, and electric vehicle configurations.

(a) Fuel economy values determined for each vehicle, and as approved in § 600.008 (b) or (f), are used to determine city, highway, and combined fuel economy values for each vehicle configuration (as determined by the Administrator) for which data are available.

(1) If only one set of city and highway fuel economy values is accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration.

(2) If more than one city or highway fuel economy value is accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.207(a)(3).

(ii) Within each group of data, all values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine city and highway fuel economy values for each subconfiguration at which the vehicle configuration was tested.

(iii) All city fuel economy values and all highway fuel economy values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the city and highway fuel economy values for the vehicle configuration.

(3) The combined fuel economy value for a vehicle configuration is calculated by harmonically averaging the city and highway fuel economy values, as determined in § 600.206(a) (1) or (2), weighted 0.55 and 0.45 respectively, and rounded to the nearest 0.0001 mile per gallon. A sample of this calculation appears in Appendix II to this part.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will comprise the petroleum-based fuel economy for that configuration.

(c) If more than one equivalent petroleum-based fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

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25. A new § 600.207–86, which is identical to § 600.207–80 except for revised and renumbered paragraphs (a)(2) through (a)(6) is added to read as follows:

§ 600.207–86 Calculation of fuel economy values for a model type.

(a) Fuel economy values for a base level are calculated from vehicle configuration fuel economy values as determined in § 600.206(a) for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each base level for vehicles intended for sale in California and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label,

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (i.e., they are not included in the calculation of the original base level fuel economy values), and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010(c)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The requirements of this paragraph may be satisfied by providing an amended application for certification, as described in § 86.084–21.

(4) Vehicle configuration fuel economy values, as determined in § 600.206(a), are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy value from that vehicle configuration constitutes the fuel economy for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(5) The procedure specified in § 600.207(a) will be repeated for each base level, thus establishing city, highway, and combined fuel economy values for each base level.

(6) For the purposes of calculating a base level fuel economy value, if the only vehicle configuration(s) within the base level are vehicle configuration(s) which are intended for sale at high altitude, the Administrator may use fuel economy data from tests conducted on these vehicle configuration(s) at high altitude to calculate the fuel economy for the base level.

(b) For each model type, as determined by the Administrator, a city, highway, and combined fuel economy value will be calculated by using the projected sales and fuel economy values for each base level within the model type.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sales of the base level within the model type by the projected sales of the model type and rounding the quotient to the nearest 0.0001.

(3) The city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(i) The sales fraction of a base level, by

(ii) The city fuel economy value for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy values for the model type.

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28. A new § 600.301-86, which is identical to § 600.301-85 except that paragraph (a) has been revised and paragraph (c) has been deleted, is added to read as follows:

§ 600.301-86 General applicability.

(a) The provisions of this subpart are applicable to 1986 and later model year gasoline-fueled and diesel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this Subpart.

27. A new § 600.306-86, which is identical to § 600.306-85 except for revised paragraphs (a)(1), (a)(2), (b)(1), (b)(2), (c), (c)(2), is added to read as follows:

§ 600.306-86 Labeling requirements.

(a) Prior to being offered for sale, each manufacturer shall affix or cause to be affixed and each dealer shall maintain or cause to be maintained on each automobile:

(1) A general fuel economy label (initial, or updated as required in § 600.314) as described in § 600.307(b)(3) or;

(2) A specific label, as described in § 600.307(b)(4), for those automobiles manufactured or imported before the date that occurs 15 days after general labels have been determined by the manufacturer.

(i) If the manufacturer elects to use a specific label within a model type (as defined in § 600.002(a)(19)), he shall also affix specific labels on all automobiles within this model type, except on those automobiles manufactured or imported before the date that labels are required to bear range values as required by paragraph (b) of this section, or determined by the Administrator, or as permitted under § 600.310.

(ii) If a manufacturer elects to change from general to specific labels or vice versa within a model type, the manufacturer shall, within five calendar days, initiate or discontinue as applicable, the use of specific labels on all vehicles within a model type at all facilities where labels are affixed.

(3) For any vehicle for which a specific label is requested which has a fuel economy value at or below the minimum tax-free value, the following statement must appear on the specific label:

[Manufacturer's name] may have to pay IRS a Gas Guzzler Tax on this vehicle because of its low fuel economy unless the combination of mpg data from similar vehicles exceeds the minimum tax-free mpg.

(4)(i) At the time a general fuel economy value is determined for a model type, a manufacturer shall, except as provided in paragraph (a)(4)(ii) of this section, relabel, or cause to be relabeled, vehicles which:

(A) Have not been delivered to the ultimate purchaser, and

(B) Have a combined model type fuel economy value of 0.1 mpg or more below the lowest fuel economy value at which a Gas Guzzler Tax of $0 is to be assessed.

(ii) The manufacturer has the option of relabeling vehicles during the first five working days after the general label value is known.

(iii) For those vehicle model types which have been issued a specific label and are subsequently found to have tax liability, the manufacturer is responsible for the tax liability regardless of whether the vehicle has been sold or not or whether the vehicle has been relabeled or not.

(b) The manufacturer shall include the current range of fuel economy of comparable automobiles (as described in §§ 600.311 and 600.314) in the label of each vehicle manufactured or imported more than 15 calendar days after the current range is made available by the Administrator.

(1) Automobiles manufactured before a date 16 or more calendar days after the initial label range is made available under § 600.311(c) may be labeled without a range of fuel economy of comparable automobiles. In place of the range of fuel economy of comparable automobiles, the label must contain a statement indicating that, as of the date of production or importation of this automobile, no range of fuel economy of comparable automobiles was available.

(2) Automobiles manufactured more than 15 calendar days after the initial or updated label range is made available under § 600.311 (c) or (d) will be labeled with the current range of fuel economy of comparable automobiles as approved for that label.

(c) The fuel economy label must be readily visible from the exterior of the automobile and remain affixed until the

time the automobile is delivered to the ultimate consumer.

(1) The fuel economy label must be located on a side window. If the window is not large enough to contain both the Automobile Information Disclosure Act label and the fuel economy label, the manufacturer shall have the fuel economy label affixed on another window and as close as possible to the Automobile Information Disclosure Act label.

(2) The fuel economy label information may be included with the Automobile Information Disclosure Act label if the prominence and legibility of the fuel economy label is maintained. For this purpose, all fuel economy label information must be placed on a separate section in the lower or right hand portion of the label and may not be intermixed with the Automobile Information Disclosure Act label information, except for vehicle descriptions as noted in § 600.307(b)(5).

(3) The manufacturer shall have the fuel economy label affixed in such a manner that appearance and legibility are maintained until after the vehicle is delivered to the ultimate consumer.

(Approved by the Office of Management and Budget under control number 2000–0390)

28. A new § 600.307–86 is added to read as follows:

§ 600.307–86 Fuel economy label format requirements.

(a)(1) Fuel economy labels must be:

(i) Rectangular in shape with a minimum height of 4.5 inches (114 mm) and a minimum length of 7.0 inches (178 mm) as depicted in Appendix VIII.

(ii) Printed in a color which contrasts with the paper color.

(iii) The label shall have a contrasting border at least 0.25 inches (6.4 mm) wide.

(2) The top 50 percent of the total fuel economy label area shall contain only the following information and in the same format depicted in the label format in Appendix VIII:

(i) The titles "CITY MPG" and "HIGHWAY MPG", centered over the applicable fuel economy estimates, in bold caps 10 points in size,

(ii) The city and highway fuel economy estimates calculated in accordance with § 600.209 (a) and (b),

(iii) The fuel pump logo, and

(iv) The phrase "Compare this [vehicle/truck] to others in the FREE GAS MILEAGE GUIDE available at the dealer," shall be "dropped-out" of the top border as depicted in the sample label format in Appendix VIII. The phrase shall be in lower case in a medium condensed type except for the words "FREE GAS MILEAGE GUIDE" which shall be capitalized in a bold condensed type and no smaller than 12 points in size.

(3) The bottom 50 percent of the label shall contain the following information:

(i) The [vehicle/truck] description, as described in paragraph (c) or (d) of this section, when applicable.

(ii)(A) A statement: "Actual mileage will vary with options, driving conditions, driving habits and [vehicle's/truck's] condition. Results reported to EPA indicate that the majority of [vehicle/truck] with these estimates will achieve between —— and —— mpg in the city, and between —— and —— mpg on the highway."

(B) The range values for this statement are to be calculated in accordance with the following:

(*1*) The lower range values shall be determined by multiplying the city and highway estimates by 0.85, then rounding to the next lower integer value.

(*2*) The upper range values shall be determined by multiplying the city and highway estimates by 1.15 and rounding to the next higher integer value.

(iii)(A) A statement: "For comparison shopping, all [vehicles/trucks] classified as [insert category as determined in § 600.511] have been issued mileage estimates ranging from —— to —— city and —— to —— mpg highway." (The range values are those determined in accordance with § 600.311.) Or, when applicable,

(B) A statement: "A range of fuel economy values for other [insert category as determined in § 600.511] was not available when this [vehicle/truck] was labeled."

(iv)(A) The statement: "Estimated Annual Fuel Cost:" followed by the appropriate value calculated in accordance with paragraph (g) or (h) of this section.

(B) At the manufacturers option, it may include the fuel cost and the annual mileage interval used to determine the annual fuel cost.

(v) For the 1986 model year only, the statement: "Under EPA's previous fuel economy program, used prior to the 1985 model, year this [vehicle/truck] would have received a single estimate of [insert unadjusted city value, rounded to the nearest whole mpg, as determined in § 600.207(b)] mpg."

(vi)(A) The Gas Guzzler statement, when applicable (see paragraph (f) of this section), must be centered on a separate line between the bottom border and the Estimated Annual Fuel Cost statements. The words "Gas Guzzler" shall be highlighted.

(B) The type size will be the largest type size in the bottom 50 percent of the label.

(4) The maximum type size for the statements located in the lower 50 percent of the label shall not exceed 10 points in size.

(b)(1) The city mpg number shall be displayed on the left and the highway mpg number displayed on the right.

(2) Each mpg digit shall measure at least 0.35 inches by 0.6 inches (9 x 15 mm) in width and height respectively.

(3) The strike width of each mpg digit shall be at least 0.075 inches (1.9 mm).

(4)(i) MPG digits not printed as a single character shall be made of a matrix of smaller characters. This matrix shall be at least four characters wide by five characters high (with the exception of three characters wide for the numerical character denoting "one".)

(ii) The small characters shall be made of successive overstrikes to form a reasonably dark and continuous line that approximates a single large character.

(5)(i) If manufacturer chooses to enlarge the label from that depicted in Appendix VIII the logo and the fuel economy label values, including the titles "CITY MPG" and "HIGHWAY MPG", must be increased in the same proportion.

(ii) The area bounded by the bottom of the fuel pump logo to the top of the border must continue to represent at least 50 percent of the available label area.

(c) The vehicle description on general labels will be as follows:

(1) Model year;

(2) Vehicle car line;

(3) Engine displacement, in cubic inches, cubic centi-meters, or liters whichever is consistent with the customary description of that engine;

(4) Number of engine cylinders or rotors;

(5) Additional engine description, if necessary to distinguish otherwise identical model types, as approved by the Administrator;

(6) Fuel metering system, including number of carburetor barrels, if applicable;

(7) Transmission class;

(8) Catalyst usage, if necessary to distinguish otherwise identical model types; and

(9) California emission control system usage, if applicable and if the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states.

(d) The vehicle description on specific labels will be as follows:

(1) The descriptions of paragraph (b) of this section;

(2) Interia weight class;

(3) Axle ratio; and

(4) Other engine or vehicle parameters, if approved by the Administrator.

(e) Where the fuel economy label is incorporated with the pricing information sticker, the applicable vehicle description, as set forth in paragraph (c) or (d) of this section, does not have to be repeated if the information is readily found on the Motor Vehicle Information and Cost Savings Act label.

(f)(1) For fuel economy labels of passenger automobile model types requiring a tax statement under § 600.513, the phrase "* * * Gas Guzzler Tax: $——— * * *".

(2) The tax value required by this paragraph shall be based on the combined fuel economy value for the model type calculated in accordance with § 600.207 and rounded to the nearest 0.1 mpg. Adjustments in accordance with § 600.209 will not be used to determine the tax liability.

(g) General Labels: The annual fuel cost estimate for operating an automobile included in a model type shall be computed by using values for the fuel cost per gallon and average annual mileage, predetermined by the Administrator, and the fuel economy determined in § 600.209(d).

(1) The annual fuel cost estimate for a model type is computed by multiplying:

(i) Fuel cost per gallon expressed in dollars to the nearest 0.05 dollar, by

(ii) Average annual mileage, expressed in miles per year to the nearest, 1,000 miles per year, by

(iii) The average, rounded to the nearest 0.0001 gallons per mile of the fuel economy value determined in § 600.209(d) for a model type.

(2) The product computed in (g)(1) and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on general labels for the model type.

(h) Specific Labels: The annual fuel cost estimate for operating an automobile included in a vehicle configuration will be computed by using values for the fuel cost per gallon and average annual mileage and the fuel economy determined in paragraph (h)(1)(iii) of this section.

(1) The annual fuel cost estimate for vehicle configuration is computed by multiplying:

(i) Fuel cost per gallon expressed in dollars to the nearest 0.05 dollar, by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by

(iii) The inverse, rounded to the nearest 0.0001 gallons per mile, of the fuel economy value determined in § 600.208(a)(2)(iii) for a vehicle configuration (city and highway values will be adjusted by the factors in § 600.209 (a) and (b) and combined according to § 600.209(d) before the calculation).

(2) The product computed in (h)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on specific labels for that vehicle configuration.

(Approved by the Office of Management and Budget under control number 2000-0390)

§ 600.308-86 [Reserved]

29. Section 600.308-86 is reserved.

§ 600.309-86 [Reserved]

30. Section 600.309-86 is reserved.

31. A new § 600.310-86 is added to read as follows:

§ 600.310-86 Labeling of high altitude vehicles.

(a) The Administrator may approve, at the request of the manufacturer, specific labels for high altitude vehicles according to § 600.306.

(b) A high altitude vehicle may be labeled with a general or specific label by a manufacturer without regard to the type of label (general or specific) used at low altitude for that model type or vehicle configuration.

32. A new § 600.311-86 is added to read as follows:

§ 600.311-86 Range of fuel economy for comparable automobiles.

(a) The Administrator will determine the range of city and the range of highway fuel economy values for each class of comparable automobiles.

(b) The range of city fuel economy values within a class is the maximum city and the minimum city fuel economy value for all general labels as determined in § 600.307(b)(3) regardless of manufacturer. The range of highway values is determined in the same manner.

(c) The initial range will be made available on a date specified by the Administrator that closely coincides to the date of the general model introduction for the industry.

(d) The ranges of comparable fuel economy values for a class of automobiles will be updated periodically and will be derived from the latest available label values reported to the Administrator for that class of automobiles.

(e) If the Administrator determines that automobiles intended for sale in California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will compute separate ranges of fuel economy values for each class of automobiles for California and for the other states.

(f) For high altitude vehicles determined under § 600.310, both general and specific labels will contain the range of comparable fuel economy computed in this section.

(g) The manufacturer shall include the appropriate range of fuel economy determined by the Administrator in paragraph (c) or (d) of this section, on each label affixed to an automobile within that class except as provided in § 600.306(b)(7)(ii).

(Approved by the Office of Management and Budget under control number 2000-0390)

33. A new § 600.312-86 is added to read as follows:

§ 600.312-86 Labeling, reporting, and recordkeeping; Administrator reviews.

(a)(1) The manufacturer shall determine label values (general and specific) using the procedures specified in Subparts C and D of this part and submit the label values, and the data sufficient to calculate the label values, to the Administrator according to the timetable specified in § 600.313.

(2) Except under paragraph (a)(4) of this section, the manufacturer is not required to obtain Administrator approval of label values prior to the introduction of vehicles for sale.

(3) The label values that the manufacturer calculates and submits under paragraph (a)(1) of this section shall constitute the EPA fuel economy estimates unless the Administrator determines that they are not calculated according to the procedures specified in Subpart C and D of this part.

(4) If required by the Administrator, the manufacturer shall obtain Administrator approval of label values prior to affixing labels to vehicles.

(5)(i) If at any time during the model year, any label values are determined not to be calculated according to the procedures specified in Subparts C and D of this part, the Administrator shall notify the manufacturer in writing.

(ii) If the Administrator has sufficient information to enable calculation of the correct label values, this notification shall specify the correct label values which constitute the EPA Fuel Economy Estimates.

(iii) If additional information is required, the Administrator shall request

such additional information and a recalculation of the label value by the manufacturer.

(6) If the Administrator determines revised label values under paragraph (a)(5) of this section are lower than the label values calculated by the manufacturer, the manufacturer shall affix the revised labels to all affected new vehicles which are unsold beginning no later than 15 calendar days after the date of notification by the Administrator.

(b)(1) The manufacturer is responsible for affixing vehicle labels that meet the format and content requirements of this subpart.

(2) The manufacturer shall retain for examination, at the Administrator's discretion, typical label formats representing all information required on the manufacturer's fuel economy labels. The information shall include the text of all required and voluntary information as well as the size and color of print and paper, spacing, and location of all printed information. Where the fuel economy label is incorporated with the Automobile Information Disclosure Act label, the above requirements pertain to those sections of the label concerning fuel economy labeling information.

(3) If the Administrator determines upon examination of record that the label format or content do not meet the requirements of this subpart, the Administrator may:

(i) Require the manufacturer to make specific changes in subsequent labels, and

(ii) Require such changes to be implemented on a reasonable timetable, but no sooner than 15 days from the date of notification to the manufacturer.

(Approved by the Office of Management and Budget under control number 2000–0390)

34. A new § 600.313–86 is added to read as follows:

§ 600.313–86 Timetable for data and information submittal and review.

(a) A manufacturer shall submit to the Administrator fuel economy label values and sufficient information to determine fuel economy label values within the following time constraints (except for manufacturers designated under § 600.312(a)(4) who shall submit the information no later than thirty calendar days prior to the date the model type [vehicle] is initially offered for sale.

(1) For initial general label values, no later than five working days before the date that the model type is initially offered for sale;

(2) For specific label values, no later than five working days before any vehicles are offered for sale.

(3) For model types having label values updated because of running changes (as required under § 600.314(b)), the submission must be made at least five working days before the date of implementation of the running change.

(b) A manufacturer may not proceed with any label calculation until the data from each vehicle used in such calculation satisfies the requirements of § 600.008.

(c) If the Administrator has waived any testing in paragraph (b) of this section and subsequently finds that the decision to waive testing was based on an incorrect data submission or that a fuel economy offset exists (based on subsequent testing of that manufacturer's product line), the Administrator may require confirmation of the data generated by any such waived vehicle.

(Approved by the Office of Management and Budget under control number 2000–0390)

35. A new § 600.314–86 is added to read as follows:

§ 600.314–86 Updating label values, annual fuel cost, Gas Guzzler Tax, and range of fuel economies for comparable automobiles.

(a) The label values established in § 600.312 shall remain in effect for the model year unless updated in accordance with paragraph (b) of this section.

(b)(1) The manufacturer shall recalculate the model type fuel economy values for any model type containing base levels affected by running changes specified in §600.507(a).

(2) For separate model types created in § 600.207(a)(2), the manufacturer shall recalculate the model type values for any additions or deletions of subconfigurations to the model type. Minimum data requirements specified in §600.010(c)(1)(ii) shall be met prior to recalculation.

(3) Label value recalculations shall be performed as follows:

(i) The manufacturer shall use updated total model year projected sales for label value recalculations.

(ii) All model year data approved by the Administrator at the time of the recalculation for that model type shall be included in the recalculation.

(iii) Using the additional data under paragraph (b) of this section, the manufacturer shall calculate new model type city and highway values in accordance with §§ 600.207 and 600.209 except that the values shall be rounded to the nearest 0.1 mpg.

(iv) The existing label values, calculated in accordance with §§ 600.207 and 600.209, shall be rounded to the nearest 0.1 mpg.

(4)(i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg's) to all new vehicles of that model type beginning on the day of implementation of the running change.

(ii) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is higher than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, then the manufacturer has the option to use the recalculated values for labeling the entire model type beginning on the day of implementation of the running change.

(c) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (b) of this section, the manufacturer shall concurrently update all other label information (e.g., the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax if required by Department of Treasury regulations).

(d) The Administrator shall periodically update the range of fuel economies of comparable automobiles based upon all label data supplied to the Administrator.

(Approved by the Office of Management and Budget under control number 2000–0390)

36. A new § 600.501–86, which is identical to § 600.501–85 except that paragraph (a) has been revised and paragraph (c) has been deleted, is added to read as follows:

§ 600.501–86 General applicability.

(a) The provisions of this subpart are applicable to 1986 and later model year gasoline-fueled and diesel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this Subpart.

§ 600.506–86 [Reserved]

37. Section 600.506–86 is reserved.

38. A new § 600.507–86 is added to read as follows:

§ 600.507–86 Running change data requirements.

(a) Except as specified in paragraph (d) of this section, the manufacturer shall submit additional running change fuel economy data as specified in paragraph (b) of this section for any running change approved or implemented under §§ 86.079–32, 86.079–33, or 86.082–34 which:

(1) Creates a new base level or,

(2) Affects an existing base level by:

(i) Adding an axle ratio which is 10 percent (or more) larger than the largest axle ratio tested.

(ii) Increasing the road-load horsepower for a subconfiguration by 10 percent or more for the individual running change or, when considered cumulative, since original certification (for each cumulative 10 percent increase using the originally certified road-load horsepower as a base).

(iii) Adding a new subconfiguration by increasing the equivalent test weight for any previously tested subconfiguration in the base level.

(b)(1) The additional running change fuel economy data requirement in paragraph (a) of this section will be determined based on the sales of the vehicle configurations in the created or affected base level(s) as updated at the time of running change approval.

(2) Within each newly created base level as specified in paragraph (a)(1) of this section, the manufacturer shall submit data from the highest projected total model year sales subconfiguration within the highest projected total model year sales configuration in the base level.

(3) Within each base level affected by a running change as specified in paragraph (a)(2) of this section, fuel economy data shall be submitted for the vehicle configuration created or affected by the running change which has the highest total model year sales. The test vehicle shall be of the subconfiguration created by the running change which has the highest projected total model year sales within the applicable vehicle configuration.

(c) The manufacturer shall submit the fuel economy data required by this section to the Administrator in accordance with § 600.313(a)(2).

(d) For those model types created under § 600.207(a)(2), the manufacturer shall submit data for each subconfiguration added by a running change.

(Approved by the Office of Management and Budget under control number 2000–0390)

§ 600.508–86 [Reserved]

39. Section 600.508–86 is reserved.

40. A new § 600.509–86, is added to read as follows:

§ 600.509–86 Voluntary submission of additional data.

(a) The manufacturer may, at his option, submit data in addition to the data required by the Administrator.

(b) Additional fuel economy data may be submitted by the manufacturer for any vehicle configuration which is to be tested as required in § 600.507 or for which fuel economy data were previously submitted under paragraph (c) of this section.

(c) Within a base level, additional fuel economy data may be submitted by manufacturing for any vehicle configuration which is not required to be tested by § 600.507.

(Approved by the Office of Management and Budget under control number 2000–0390)

41. A new § 600.510–86, which is identical to § 600.510–80 except for revised paragraphs (b), (b)(1), and (b)(2), and deleted paragraphs (a)(7) and (b)(2)(vi), is added to read as follows:

§ 600.510–86 Calculation of average fuel economy.

(a) Average fuel economy will be calculated to the nearest 0.1 mpg for the classes of automobiles identified herein, and the results of such calculations will be reported to the Secretary of Transportation for use in determining compliance with the applicable fuel economy standards.

(1) An average fuel economy calculation will be made for the category of passenger automobiles that is domestically manufactured as defined in § 600.511(d)(1).

(2) An average fuel economy calculation will be made for the category of passenger automobiles that is not domestically manufactured as defined in § 600.511(d)(2).

(3) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(1) and has two-wheel drive.

(4) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(1) and has four-wheel drive.

(5) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(2) and has two-wheel drive.

(6) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(2) and has four-wheel drive.

(b) For the purpose of calculating average fuel economy under paragraph (c), of this section:

(1) All fuel economy data submitted in accordance with § 600.006(e) or § 600.512(c) shall be used.

(2) The combined city/highway fuel economy will be calculated for each model type in accordance with § 600.207 of this section except that:

(i) Separate fuel economy values will be calculated for model types and base levels associated with car lines that are:

(A) Domestically produced, and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart, will be used instead of sales projections;

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline;

(iv) The fuel economy value will be rounded to the nearest 0.1 mpg;

(v) At the manufacturer's option, those vehicle configurations that are selfcompensating to altitude changes may be separated by sales into high-altitude sales categories and low-altitude sales categories. These separate sales categories may then be treated (only for the purpose of this section) as separate configurations in accordance with the procedure of paragraph § 600.207(a)(4)(ii), and

(3) The fuel economy value for each vehicle configuration is the combined fuel economy calculated according to § 600.206 except that:

(i) Separate fuel economy values will be calculated for vehicle configurations associated with car lines that are:

(A) Domestically produced, and

(B) Nondomestically produced and imported:

(ii) Total model year production data, as required by this subpart will be used instead of sales projections; and

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline.

(c) Except as permitted in paragraph (d) of this section, the average fuel economy will be calculated individually for each category identified in § 600.510(a) as follows:

(1) Divide the total production volume of that category of automobiles by

(2) A sum of terms, each of which corresponds to a model type within that category of automobiles and is a fraction determined by dividing

(i) The number of automobiles of that model type produced by the manufacturer in the model year by

(ii) The fuel economy calculated for that model type in accordance with paragraph (b)(2) of this section.

(d) The Administrator may approve alternative calculation methods if they are part of an approved credit plan under the provisions of Section 503(b) of U.S.C. 2003(b).

(Approved by the Office of Management and Budget under control number 2000–0390)

42. A new § 600.512–86, which is identical to § 600.512–80 except for revised paragraphs (b)(1), (b)(2), (c)(1), and (c)(2), is added to read as follows:

§ 600.512–86 Model year report.

(a) For each model year, the manufacturer shall submit to the Administrator a report, known as the model year report, containing all information necessary for the calculation of the manufacturer's average fuel economy.

(b)(1) The model year report shall be in writing, signed by the authorized representative of the manufacturer and shall be submitted no later than 60 days after the report required in § 86.082–37 for the final production quarter.

(2) The Administrator may waive the requirement that the model year report be submitted within 60 days after the final quarterly production report. Based upon a request by the manufacturer, if the Administrator determines that 60 days is insufficient time for the manufacturer to provide all additional data required as determined in § 600.507, the Administrator shall establish a date by which the model year report must be submitted.

(3) Separate reports shall be submitted for passenger automobiles and light trucks (as identified in § 600.510).

(c) The model year report must include the following information:

(1) All fuel economy data used in the labeling calculations and subsequently required by the Administrator in accordance with § 600.507.

(2) All fuel economy data for certification vehicles and for vehicles tested for running changes approved under §§ 86.079–32, 86.079–33, and 86.082–34.

(3) Any additional fuel economy data submitted by the manufacturer under § 600.509.

(4) A fuel economy value for each model type of the manufacturer's product line calculated according to § 600.510(b)(2).

(5) The manufacturer's average fuel economy value calculated according to § 600.510(c).

(6) A listing of both domestically and nondomestically produced car lines as determined in § 600.511 and the cost information upon which the determination was made.

(7) The authenticity and accuracy of production data must be attested to by the corporation, and shall bear the signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the required attestation.

(Approved by the Office of Management and Budget under control number 2000–0390)

43. Appendix VIII is added as follows:

Appendix VIII

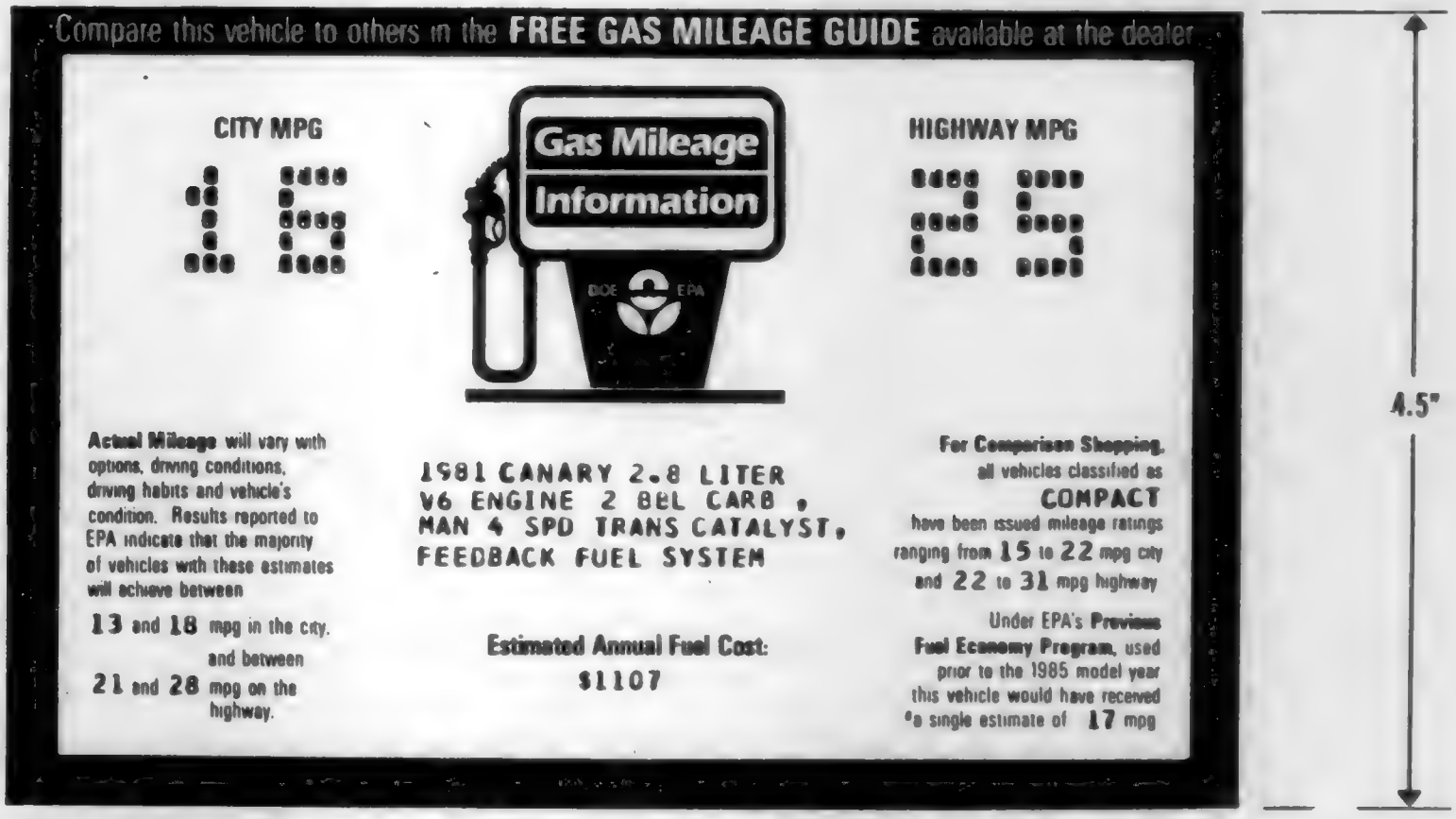

[FR Doc. 84–9004 Filed 4–5–84; 8:45 am]
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federal register

Friday
April 6, 1984

Part V

Department of Energy
Nuclear Regulatory Commission

Compliance With Section 223 of the Nuclear Waste Policy Act of 1982

DEPARTMENT OF ENERGY

NUCLEAR REGULATORY COMMISSION

Compliance With Section 223 of the Nuclear Waste Policy Act of 1982

AGENCIES: Department of Energy and Nuclear Regulatory Commission.

ACTION: Update of the previously published notice of offer to cooperate with and provide technical assistance to nonnuclear weapons states in the field of spent nuclear fuel storage and disposal.

SUMMARY: The Department of Energy and the Nuclear Regulatory Commission, in accordance with Section 223 of the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425), January 7, 1983 (the Act), published in the **Federal Register** on March 30, 1983 (48 FR 13253, corrected on April 30, 1983 by notice 48 FR 16960) an offer to cooperate with and provide technical assistance to nonnuclear weapon states for alleviating problems that may develop from accumulation of spent nuclear fuel. This notice updates and again tenders this offer as provided by the Act. Available resources, scope, criteria, and modes of cooperation are described in this offer, which will be further updated and reissued annually for the next 4 years.

Background

Section 223 of the Act provides that "it shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal."

Section 223(b)(1) of the Act required that within 90 days of enactment of the Act the Department of Energy and the Nuclear Regulatory Commission would:

> * * * publish a joint notice in the **Federal Register** stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) Data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

It is the intention of the Department of Energy and the Nuclear Regulatory Commission to offer to provide cooperation and technical assistance to other nations to improve spent fuel storage conditions as deemed necessary. It is not the intention of this offer to include transfer to the United States of spent fuel from foreign nuclear power reactors.

Section 223(c) of the Act specifies:

> Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

Responses to Initial Offer

This notice was first published in the **Federal Register** on March 30, 1983. To date, five countries have accepted this offer.

Discussion and Description of Proposed Cooperative Activities and Programs

For several years the United States has been cooperating with other nations as well as international organizations in areas related to spent fuel handling, storage, and disposition. The Department of Energy and the Nuclear Regulatory Commission have adhered to policies of sharing the results of their studies and programs in these areas with other nations and they have sought to establish a framework to permit U.S. private organizations working in these fields to cooperate with their counterparts in the other nations. To the extent feasible, it is the intention of the Department of Energy and the Nuclear Regulatory Commission to augment their international cooperative ties in these areas. Any arrangements relative to funding of joint research and development projects will be developed on a case by case basis subject to program demands and the authorization and appropriation of funds by Congress.

In the course of developing the proposed new arrangements with other governments or foreign institutions, both the Department of Energy and the Nuclear Regulatory Commission will be guided by a number of factors and criteria, including the following:

—Whether the proposed program of cooperation will be useful in assisting a nonnuclear weapon state in overcoming significant and timely spend fuel storage or handling problems;
—Whether the arrangements will serve to advance knowledge in the field;
—Whether the arrangements will help solve common spent fuel handling problems; and
—Whether the arrangements will contribute to more predictability in fuel cycle operations.

While it is anticipated that in the near future most nations will be able to solve their spent fuel storage problems on a national basis, this is an area that could benefit from enhanced international cooperation. As noted by the Final Report of the International Atomic Energy Agency's Expert Group on International Spent Fuel Management (IAEA–ISFM/EG/26, Rev. 1, page 4, July 1982), prior to 1990 there is reasonably good assurance that adequate provision for dealing with spent fuel will exist. During the 1990s, however, the Report states that greater reliance must be placed on spent fuel management options which are now mainly in the planning stage, and further states that "By the year 2000 additional capacity remains to be identified and eventually provided. As greater reliance is placed upon planned facilities, some international cooperation could provide greater assurances that adequate means to deal with the spent fuel arisings would be provided."

Some new storage technologies now under development hold promise for achieving further economies in storage arrangements. Also, there are incentives for developing common standards and guidelines between nations relating to the conditions for shipping spent fuel, nations can benefit from comparing information on the applicable regulatory practices, and in some cases it may be productive for nations sharing common spent fuel storage problems to explore new institutional mechanisms designed to facilitate joint action.

The following paragraphs in this notice briefly summarize the nature of the activities of the Department of Energy and the Nuclear Regulatory Commission in these areas as well as the major cooperative activities that these agencies would propose to explore or engage in, as circumstances warrant.

The U.S. Department of Energy

The Department of Energy is now working with industry and utilities to assure that sufficient spent fuel storage capacity will be available for meeting

U.S. domestic needs. U.S. utilities operating power reactors are presently storing spent fuel in water-filled pools at their reactor sites. In the next few years additional capacity will be needed at some sites and the gravity of this problem could increase rapidly unless additional storage capacities are made available on a timely basis. Accordingly, the Department of Energy, industry, and utilities are now actively developing alternative methods for consolidating, transporting, and storing spent light water reactor fuel in order to increase storage capacity.

The emphasis of this domestic program is to work jointly with industry for developing and licensing alternative storage technologies. Within this context, the Department of Energy is now in the process of working with industry and utilities in developing and demonstrating spent fuel rod consolidation and dry storage equipment and technology in support of utility license applications and is participating in efforts to assure the licensability of the entire system for handling, packaging, transportation, and storage. In addition, the conceptual alternatives of monitored retrievable storage systems have been studied.

With these considerations in mind, and considering the criteria cited above, the Department of Energy is prepared to engage in the following kinds of cooperative activities with nonnuclear weapon states and international organizations:

—To provide information, in the form of exchanges of documents and reports, on Department of Enery funded research and development projects in the specific areas of spent fuel handling and storage; pool storage; spent fuel packaging for storage or disposal; dry storage in metal casks, drywells, vaults and concrete silos; and on the technology of away-from-reactor and monitored retrievable storage;

—To arrange, on an appropriate basis, visits and briefing between foreign representatives and Department of Energy and contractor personnel in those areas and to facilitate, within the terms of applicable U.S. laws, regulations and policies, contacts with private U.S. business entities and organizations with specialized capabilities in these fields;

—To arrange consultations between foreign representatives and expert Department of Energy and contractor personnel to review and comment on, as appropriate, other nations' proposed development program plans and facility designs;

—To furnish, under mutually agreed terms, information on certain U.S. standards and verified computer codes that may be used for equipment, component and facility design; and

—To cooperate, as appropriate, with international organizations to disseminate information to nonnuclear weapon states.

As U.S. program demands and the authorization and appropriation of funds by Congress permit, the Department of Energy also is prepared to participate in jointly funded development and demonstration activities such as:

—The demonstration of concepts for disassembling spent fuel assemblies and for consolidating fuel rods in operating reactor pools;

—The development and demonstration of technology for packaging spent fuel for storage and disposal;

—Activities related to assessing the feasibility of away-from-reactor storage, including foreign participation in or observation of U.S. tests and demonstrations of equipment and technology for dry storage of spent fuels; and

—The conduct of joint studies to evaluate monitored retrievable spent fuel storage.

In addition to the management of spent fuel in retrievable modes, the Department of Energy also is conducting extensive research and development on the geologic disposal of nuclear waste, including the spent fuel option. Where there is mutual interest, information in these areas can be exchanged through:

—The transmittal of published information;

—Arrangement of visits and consultations with the Department of Energy and contractor experts on spent fuel disposal methodology;

—Program planning; and

—Systems analyses.

The research and development activities conducted under the Department of Energy geologic isolation program include:

—The detailed characterization of spent fuel:

—Research and systems studies on spent fuel disposal packages and containers, and their materials;

—Safety analysis; and

—Disposal repository designs, including their performance evaluations in various host rock media.

As part of these activities, the U.S. Geological Survey is also available through the Department of Energy for discussions on the earth science characteristics of disposal sites.

Under the cooperative activities that have been described above, the information to be provided could possibly include exchanges of documents and reports, visits between specialists, short- or long-term assignments, the undertaking of joint seminars and meetings, and jointly supported research and development projects.

The Nuclear Regulatory Commission

In regard to the issue at hand, the Nuclear Regulatory Commission is responsible for safety and environmental reviews, licensing, inspection and enforcement, and the conduct of research on the safety and environmental regulation of reactor waste in the United States, including the handling, storage, treatment, and disposal of spent reactor fuel. These responsibilities include licensing dry and wet at-reactor and away-from-reactor storage, monitored retrievable storage, and spent fuel and waste disposal (including geological disposal) at permanent repositories.

The Nuclear Regulatory Commission is prepared to cooperate with, and provide technical assistance to, nonnuclear weapon states in the areas of the health, safety, and environmental regulation of spent fuel management and disposal activities. Cooperation could include the following:

—Making available data from past and ongoing research and regulatory efforts: These data consist of evaluated and documented experimental results, validated and fully documented computer codes, and research results for which documentation and evaluation are complete. These data are primarily documented as written reports, which the Nuclear Regulatory Commission can provide in specific technical subject areas, as agreed. State-of-the-art information on ongoing safety research programs can be acquired through attendance by representatives from participating countries at the annual Water Reactor Safety Research Information Meeting and other occasional topical meetings. Additional data more directly related to regulatory activities, such as regulations, standards, and guides, can also be provided as appropriate in specific subject areas as requested;

—Consulting with expert Nuclear Regulatory Commission personnel and Nuclear Regulatory Commission contractor staff. As arranged by specific agreement with the Nuclear Regulatory Commission, expert technical consultation can be provided by Nuclear Regulatory Commission personnel and, as

needed, by contractor employees in the regulatory areas within the Commission's purview;

—Helping (to the extent permitted by U.S. laws, regulations, and policies) foreign governments to establish initial contacts with private U.S. entities that conduct business in the applicable waste management activities;

—Cooperating, as appropriate, with international organizations to disseminate information to nonnuclear weapon states; and

—Participating in joint research programs. The Nuclear Regulatory Commission is ready to negotiate and engage in jointly funded research programs with appropriate foreign entities, subject to the authorization and appropriation of funds by the Congress.

Relationships With Multinational Organizations and International Scientific Bodies

In addition to the foregoing activities, and within the framework of such foreign policy guidance as may be provided by the U.S. Department of State, it is expected that the Nuclear Regulatory Commission and Department of Energy will continue to participate in activities related to spent fuel handling that are undertaken by international organizations, if appropriate. These organizations have sponsored a range of activities relevant to this subject, and it is recognized that some nonnuclear weapon states may wish to avail themselves of the services of these bodies as well as the cooperative programs that are available bilaterally. The Nuclear Energy Agency of the Organization for Economic Cooperation and Development, for example, has been actively involved in studies related to the disposal of nuclear wastes. Also, as mentioned above, through the efforts of an Expert Group on International Spent Fuel Management, the International Atomic Energy Agency in 1982 completed a study on the potential for international cooperation in the management of spent fuel, giving emphasis to technical, economic, institutional, and legal considerations. Several of the recommendations of this International Atomic Energy Agency Expert Group could serve as a stimulus for further cooperative initiatives. Areas that may merit further study include the establishment of nuclear safety standards recommended by the International Atomic Energy Agency for spent fuel storage and transport, and possible further studies, as the interests of the international community dictate, such as multinational or regional approaches to spent fuel management and disposal.

Storage and Disposition of Research Reactor Spent Fuels

The cooperative programs described in this announcement are addressed to the problems associated with the storage and handling of power reactor spent fuel that originates primarily in light water reactors. As such, they do not address any issues associated with the accumulation of foreign research reactor fuels.

Solicitation of Expressions of Interest From Nonnuclear Weapon States

As the next step is developing this offer of cooperation and technical assistance, nonnuclear weapon states will again be contacted through diplomatic channels to acquaint them with this proposal and to solicit expressions of interest. The Department of State will transmit any such expressions of interest to the Department of Energy and the Nuclear Regulatory Commission.

Requests for Information

Inquiries about this notice may be sent to the following:

Michael J. Lawrence, Acting Director, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, Washington, D.C. 20585 (Tel. No. 202/252–6850)

Joseph D. Lafleur, Jr., Deputy Director, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Tel. No. 301/492–7131)

Dated: April 2, 1984.

Approval:

Donald Paul Hodel,

Secretary of Energy, Department of Energy.

Dated: April 2, 1984.

Nunzio J. Palladino,

Chairman, Nuclear Regulatory Commission.

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S. 1530 / Pub. L. 98–250

To make technical amendments to the Indian Self-Determination and Education Assistance Act and other Acts. (Apr. 3, 1984; 98 Stat. 118) Price: $1.50

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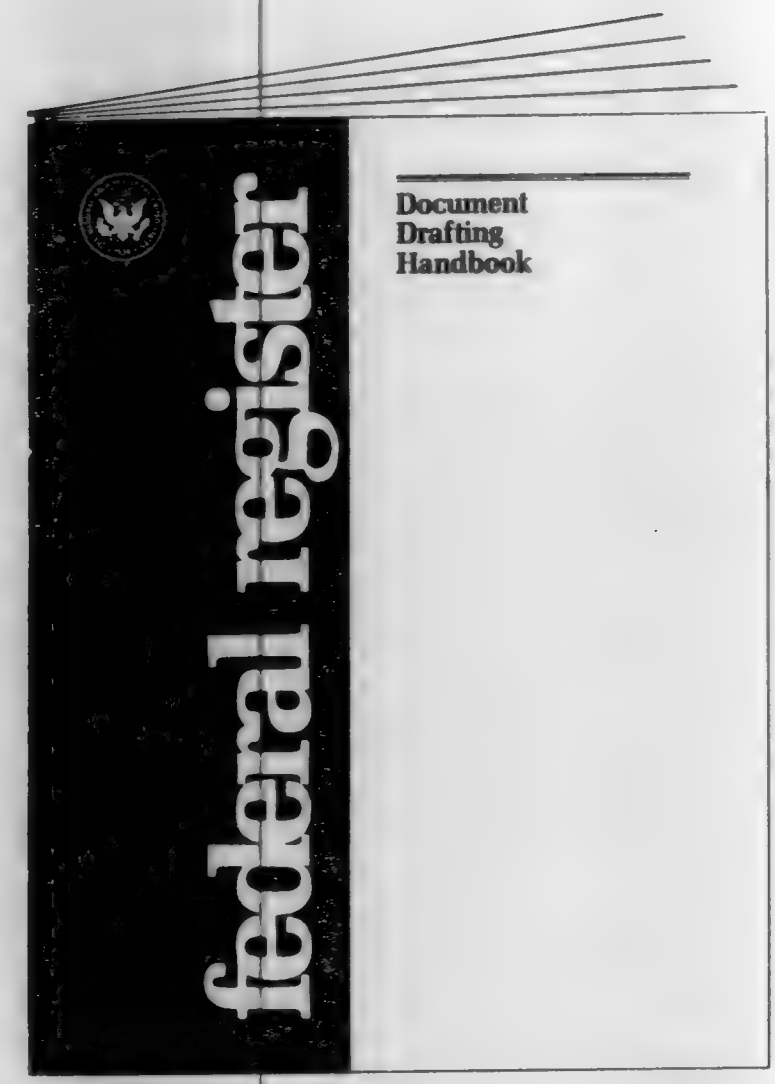

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Rules and Regulations

Federal Register
Vol. 49, No. 69
Monday, April 9, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Middling Light Gray Cotton Grade Standard; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The purpose of this document is to set forth the correct text of the Middling Light Gray cotton grade standard for American upland cotton. This action is necessary to correct typographical and printing errors which have appeared in editions of the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Harvin R. Smith, Chief, Standards and Testing Branch, Cotton Division, AMS, USDA, Washington, D.C. 20250, (202) 447–2167.

SUPPLEMENTARY INFORMATION: This document sets forth the correct text of § 28.462 of Title 7 of the Code of Federal Regulations (CFR). This section contains the definition of the Official Cotton Standard of the United States for the grade of Middling Light Gray American upland cotton. The definition was printed correctly in the **Federal Register** when the standard was first promulgated at 24 FR 5171 and as such remains unchanged. However, the text of this standard has inadvertently been printed incorrectly in the Code of Federal Regulations. This action is necessary to correct the typographical and printing errors in the CFR.

PART 28—[AMENDED]

In consideration of the foregoing, the Agricultural Marketing Service sets forth the correct text of 7 CFR 28.462 by revising it to read as follows:

§ 28.462 Middling Light Gray.

Middling Light Gray is American upland cotton which in color is Low Middling and which in leaf and preparation is Middling.

Dated: April 3, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-9367 Filed 4-6-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

Lemons Grown in California and Arizona; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment to the rules and regulations of the marketing order increases from 100 cartons to 150 cartons per week, the amount of organic lemons handlers may ship without regard to volume and size regulations issued under the order. The amendment recognizes the additional opportunity to market organic lemons to organic or health food wholesalers or retailers and is consistent with the special purpose shipment provisions of the marketing order.

DATES: Effective April 4, 1984 through July 31, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been certified a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under marketing order 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This final rule is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this final rule will tend to effectuate the declared policy of the Act.

Section 910.180(d)(3) of the rules and regulations established under the order prescribes procedures governing the exemption from volume and size requirements issued under the order of organic lemons handled in minimum quantities. This amendment increases to 150 cartons the amount of organic lemons handlers may ship each week to organic or health food wholesalers and retailers. Previously handlers could ship only 100 cartons of such lemons weekly. This action is designed to facilitate the marketing of organic lemons and would be in effect for the remainder of the 1983–84 fiscal year, which ends July 31, 1984.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the time intervening between the date when information upon which this final rule is based became available and the time when this final rule must become effective in order to effectuate the declared policy of the Act is insufficient. Interested persons were given an opportunity to submit information and views on this action at an open meeting, at which the committee recommended the action. It is necessary to effectuate the declared purposes of the Act to make this final rule effective as specified. This final rule relieves restrictions on the handling of lemons and handlers have been apprised of such provisions.

List of Subjects in 7 CFR Part 910

Marketing agreement and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Therefore, § 910.180 is amended by revising the first sentence of paragraph (3) of paragraph (d) to read as follows (this final rule expires July 31, 1984, and will not be published in the annual Code of Federal Regulations):

§ 910.180 Lemons not subject to regulation.

* * * * *

(d) Minimum quantities and types of shipments.

* * * * *

(3) During the period April 4, 1984, through July 31, 1984, any person may be granted an exemption of up to 150 cartons per week, or an equivalent amount thereof, to market or distribute organic lemons to organic or health food wholesalers or retailers. * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 4, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-9388 Filed 4-6-84; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1942

Income Determination for Community Programs Applicants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends an administrative provision referencing a specific Bureau of Census publication from which the median family income for Community Programs applicants is obtained. This action is needed because the Bureau of the Census has redesignated their publication numbers for the 1980 census, but FmHA regulations reference a publication from the 1970 census. The intended effect is to clearly establish that when using census data to determine median family income, the most recent census data will be used, and to clarify the procedures used to update income data.

EFFECTIVE DATE: April 9, 1984.

FOR FURTHER INFORMATION CONTACT: Yoonie MacDonald, Loan Officer, Water and Waste Disposal Division, FmHA, 14th Street and Independence Avenue, S.W., Room 6338, Washington, DC 20250. Telephone (202) 382–9586.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management affecting the internal decisionmaking and signature authority of the Agency. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since the purpose of this change involves only internal Agency management and publication for comment is unnecessary.

Intergovernmental Consultation

The FmHA programs and projects which are affected by this regulation are subject to intergovernmental review in the manner delineated in Subpart H of Part 1901 of this Chapter.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that the action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Programs Affected

The catalogue of Federal Domestic Assistance (CFDA) numbers and titles are 10.423, Community Facilities Loans; and 10.418, Water and Waste Disposal Systems for Rural Communities.

Background

FmHA must determine the median family income of the service area for Community Programs applicants. Determinations of interest rate, grant eligibility, and grant amount are made based upon the median family income in the applicant's service area. FmHA has generally relied upon data provided by the Bureau of the Census to determine median family income. Current FmHA regulations make reference to a Bureau of Census publication, Publication PC(1)–C series, which was the source of income data from the 1970 census. Bureau of the Census has redesignated their 1980 census publication numbers in order to avoid any confusion with publications from the 1970 census. Therefore, FmHA is deleting this specific Bureau of Census publication reference and substituting wording to clarify the use of census data to determine median family income. In addition, the procedure for updating income data is clarified.

The change involves only internal Agency management. FmHA, in practice, has always been using the most recent and reliable census data available for median family income determination and updating income data when appropriate. Therefore, this change will result in no practical effects.

In addition, § 1942.50 is added to show the OMB control number.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

PART 1942—ASSOCIATIONS

Accordingly, 7 CFR Part 1942 is amended as follows:

Subpart A—Community Facility Loans

§ 1942.17 [Amended]

1. In § 1942.17, paragraph (f)(6) is amended in the third sentence after the words "will be determined from" by removing the words "the U.S. Department of Commerce, Bureau of Census, Publication PC (1)—C Series, or from unpublished Bureau of Census data for individual enumeration districts" and by inserting in their place the words "income data from the most recent decennial census of the U.S. This data will normally be published or unpublished Bureau of the Census data and may be updated on a national basis by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources." In addition, the last sentance of this paragraph has been deleted and replaced by the following:

"The nonmetropolitan median family income of the State may be updated on a national basis by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources. Updating income data for the median family income of the service area and the nonmetropolitan median family income of the State should be done concurrently, using data from the same year."

2. Section 1942.50 is added to read as follows:

§ 1942.50 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0015.

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

§ 1942.356 [Amended]

3. In § 1942.356, paragraph (b)(7) is amended in the third sentence after the words "will be determined from" by removing the words "the U.S. Department of Commerce, Bureau of Census, Publication PC (1)—C Series, or from unpublished Bureau of Census data for individual enumeration districts" and by inserting in their place the words "income data from the most recent decennial census of the U.S. This data will normally be published or unpublished Bureau of the Census data and may be updated by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources." In addition, the last sentence of this paragraph has been removed and replaced by the following:

"The nonmetropolitan median family income of the State may be updated on a national basis by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources. Updating income data for the median family income of the service area and the nonmetropolitan median family income of the State should be done concurrently, using data from the same year."

Authorities: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Michael E. Brunner,

Associate Administrator, Farmers Home Administration.

[FR Doc. 84-9317 Filed 4-6-84; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 84-032]

Lethal Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Lethal Avian Influenza interim rule by deleting from the list of quarantined areas the area in Maryland that was designated as a quarantined area. This action is necessary because it has been determined that lethal avian influenza no longer exists in Maryland. The effect of this action is to delete unnecessary prohibitions and restrictions on the interstate movement of live poultry and certain other items from the previously quarantined area in Maryland.

DATES: Effective date is April 5, 1984. Written comments must be received on or before June 8, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William W. Buisch, Chief, National Emergency Field Operations Staff, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION:

Background

This document amends the Lethal Avian Influenza interim rule by deleting from the list of quarantined areas the area in Maryland that was designated as a quarantined area. The Lethal Avian Influenza interim rule is set forth in 9 CFR Part 81 (48 FR 51422-51423, 51798, 52420, 52427, 52885-52887, 53586, 53678-53679, 53679-53681, 53997, 54574-54575, 55402-55405, 55722, 57474-57475, 49 FR 368-369, 2742-2744, 3446-3448, 3494, 3839-3845, 5723-5724, 7978-7979, 8582-8583, 8412-8415, 8582-8583).

Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania.

Quarantined Areas

With certain exceptions, the interim rule provides that the following articles designated as prohibited articles are prohibited from being moved interstate from a quarantined area:

(1) Live poultry,

(2) Manure from poultry, and

(3) Litter that has been used by poultry.

The interim rule also provides, with certain exceptions, that the following articles designated as restricted articles are allowed to be moved interstate from a quarantined area only in accordance with certain conditions:

(1) Poultry carcasses or parts thereof,

(2) Eggs from poultry, and

(3) Coops, containers, troughs or other accessories that have been used in the handling of poultry or poultry eggs.

Prior to the effective date of this document, the areas quarantined because of lethal avian influenza included portions of Maryland, Pennsylvania, and Virginia. Lethal avian influenza had been found to occur in Maryland only on one premises in Cecil County, and the previously quarantined area in Maryland was solely within Cecil County. The poultry on that premises in Cecil County have been depopulated. Also, extensive surveys have been conducted on commercial and noncommercial poultry premises in the previously quarantined area in Maryland. These surveys indicate that there are no lethal avian influenza virus or antibodies in poultry within the previously quarantined area and that lethal avian influenza no longer exists in Maryland.

Under these circumstances there is no longer a basis for imposing prohibitions or restrictions on the movement of live poultry or other items from any area in Maryland because of lethal avian influenza.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the movement of live poultry and certain other items from Maryland, and to benefit Maryland by declaring that lethal avian influenza no longer exists in that State.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 with respect to this interim rule. Immediate action is warranted in order to delete unnecessary restrictions on the movement of live poultry and certain other items from the previously quarantined area in Maryland, and to benefit Maryland by declaring that lethal avian influenza no longer exists in Maryland.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of the Regulatory Flexibility Act.

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—LETHAL AVIAN INFLUENZA

§ 81.4 [Amended]

Under the circumstances referred to above, § 81.4 of 9 CFR Part 81 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b), respectively.

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4–6, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41 Stat. 699; sec. 2, 65 Stat. 693; secs. 2–3, 5–6, and 11, 76 Stat. 129–132; 76 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a–1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C. this 5th day of April, 1984.

D. F. Schwindaman,

Acting Deputy Administrator, Veterinary Service.

[FR Doc. 84-9012 Filed 4-6-84; 2:17 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[Revision 6]

Small Business Investment Companies; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: This corrects the final rules governing the operation of Small Business Investment Companies (Revision 6) published in the **Federal Register** on September 30, 1983 (48 FR 45014–45032.

DATE: Effective April 9, 1984.

FOR FURTHER INFORMATION CONTACT: Robert G. Lineberry, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, 202–653–6848.

In FR Doc. 83–26294 in the issue for Friday, September 30, 1983, the following corrections should be made.

At page 45014:

1. Under Supplementary Information, third column, nineteenth line from bottom, "percent proposed" should read "percent as proposed."

At page 45015:

2. First column, fifth line from bottom, "to" should read "of".

3. First column, second line from bottom, "those" should read "that".

4. Under Review for Executive Order 12291 and the Regulatory Flexibility Act, third column, 2, Definition of Cost of Money, § 107.3, seventh line, "Dept" should read "Debt".

At page 45017:

Under Definitions § 107.3 Definition of Terms:

5. *Associate of a Licensee,* (a)(3), third line, "which in terms" should read "which terms".

6. *Associate of a Licensee,* (a)(3), seventh line, "on" should read "or".

7. *Associate of a Licensee,* (c), third line, "(b) or this" should read" (b) of this".

At page 45018:

8. *Associate of a Licensee,* last line of (g), "Licensee" should read "Licensee's".

9. *Cost of Money,* starting at line eleven, "fees for commitment fees persuant to § 107.501, bona fide" should read "fees for management services pursuant to § 107.501, bona fide".

10. *Debt Securities,* first line, "Debt Securities means" should read "*Debt Securities.* "Debt Securities" means".

11. *Equity Securities,* first line, ""Equity Security"" should read ""Equity Securities"".

12. *Financing,* starting with fourth line, ". . .through (a) loans, (b) guarantees, (c) equity investment, (d) commitments or (e) purchases. . ." should read ". . .through (a) Loans, (b) guaranties, (c) Debt Securities, (d) Equity Securities (e) commitments or (f) purchases. . . ".

13. *Lending Institution,* first line, ""Lending Institution" means. . ." should read "*Lending Institution.* "Lending Institution" means. . .".

14. *Private Capital,* seventh line, "the Permanent Partnership Capital." should read "the partnership capital."

At page 45019:

15. Between the definitions "Private Capital" and "SBA" insert the following definition: *Real Estate Investment.* "Real Estate Investment" means a Licensee's Financing of a Small Concern which is classified as a real estate concern under Industry Numbers 6531, 6541 and 6552 of the SIC Manual. For restrictions governing Real Estate Investments, see §§ 107.101(c) and 107.901(c).

16. Footnote, first line, "this proposed Revision" should read "this Revision".

Under Operational Requirements:

17. § 107.101—Operational Requirements, (c)(ii), second line, "engage" should read "engaged".

At page 45020:

18. Under License, § 107.102, License application and fees, (a), fourth line, "or" should read "of".

19. § 107.103, Public notice, eleventh line, "area of the operations," should read "area of operation,".

20. § 107.103, Public notice, seventeenth line, "of, persons" should read "of, or persons".

21. § 107.201, Funds to Licensee, (b)(1), second line, "guarantee" should read "guaranty".

22. § 107.201, Funds to Licensee, Footnote, third line, "guarantee" should read "guaranty".

At page 45021:

23. § 107.201, Funds to Licensee, (b)(2), twentieth line, "requirement" should read "requirements".

24. § 107.202, Leverage in excess of three hundred percent, (d), first line, "ration" should read "ratio".

At page 45022:

25. § 107.203, SBA purchase, sale, or guaranty of securities evidencing Leverage: events of default.—(d) *Capital Impairment* sixth line "[publication date]" should read "September 30, 1983."

At page 45023:

26. In the heading "Under Financing of Small Concerns (Loan and Debt; Securities; Equity Capital Financing; Guarantees and Commitments)", "Debt; Securities;" should read "Debt Financing;" and "Guarantees" should read "Guaranties".

At page 45024:

27. § 107.303, Overline limitation, (b)(5), fifth line, "to" should read "of".

At page 45025:

Under Guaranties and Commitments:

28. § 107.401, SBIC guaranty of loans, (a), third line, "guarantee" should read "guaranty".

29. § 107.401, SBIC guaranty of loans, (a)(1), third line, "to the State" should read "to State".

30. § 107.403, Other permissible Financing, (b)(3), second from last line, "of Equity Securities" should read "of securities".

31. Under Management Services, § 107.501, Management Services, (b)(2), sixth from last line, "for Small Concern" should read "for a Small Concern".

At page 45026:

Under Control of Licensee:

32. § 107.601, Changes in ownership or control of Licensee, (d)(1), fourth line, "Permanent Partnership Capital" should read "partnership capital".

At page 45027:

33. § 107.602, Common Control, (b), third from last line, "Permanent Partnership Capital" should read "partnership capital".

At page 45028:

34. § 107.710, Assets in liquidation, (b), fourth line, "or" should read "of".

At page 45029:

35. § 107.901, Prohibited uses of Funds, (g), thirteenth line, "those" should read "that".

At page 45031:

36. § 107.1002, Records and reports, (b)(4), third line, "micro-production" should read "micro-reproduction".

37. § 107.1002, Records and reports, (e), fourth line, "for fiscal" should read "for the fiscal".

Dated: March 27, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-9295 Filed 4-6-84; 8:45 am]

BILLING CODE 8025-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 33-6523; 34-20805; 35-23268; 39-898; IC-13855; IA-905; PA-8]

Delegation to General Counsel of Authority To Consider Appeals Under Privacy Act of 1974

AGENCY: Securities and Exchange Commission.

ACTION: Final Rule Amendment.

SUMMARY: The Commission is amending its rules governing delegation of authority and its rules governing requests for access to and amendments of records, to delegate authority to the General Counsel to consider appeals from initial decisions under the Privacy Act of 1974.

EFFECTIVE DATE: May 1, 1984.

FOR FURTHER INFORMATION CONTACT: Alan Rosenblat, Assistant General Counsel, Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2428.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a) (the "Act") provides that any person who requests to correct or amend a record pertaining to him or her shall have the right to appeal an adverse initial determination of his or her request to "the head of the agency or an officer designated by the head of the agency." 5 U.S.C. 552a(d)(2)(B)(ii). The Commission's rules governing procedures under the Act, Subpart H of 17 CFR Part 200, provide that the Commission shall decide appeals of initial decisions denying requested changes in or amendments to records, and, in addition, provide for Commission review upon appeal of initial adverse determinations of access to records, and for Commission disposition of statements of disagreement with records which the Commission has declined to correct or amend. 17 CFR 200.308.

Initial determinations of requests for access to records, or of requests for amendments or correction to records, are made by the Commission's Privacy Act Officer, except that such decisions may be made by the Director of a Division of the Commission or Office head whose zone of responsibility relates to the record requested. 17 CFR 200.304, 200.307. If on appeal the Commission upholds the initial determination against amendment or correction, or against access to, a record, it is required to notify the requester of the reasons for its decision and of the provisions in the Act for judicial review of its order, as well as the requester's right to file a statement of disagreement concerning the contents of the record with the Commission, in the case of denial of amendment or correction. 17 CFR 200.308(a)(8)-(9). These rules are consistent with the authority granted by the Act to an agency to "establish procedures * * * for an appeal within the agency of an initial adverse agency determination and for whatever additional means may be necessary for each individual to be able to exercise fully his rights" under the Act. 5 U.S.C. 552a(f)(4). In this regard, the Act specifically provides for an internal appeal procedure for agency refusals to amend or correct records, with authority to delegate appeal determination to agency officials. The Act does not, however, require such a procedure for agency review of denials of access. The Commission has voluntarily provided such a procedure and now delegates the determinations of appeals from staff denials of access, as well as refusals to amend or correct records, to the General Counsel.

Under current procedures, when a Privacy Act appeal or matter is pending before the Commission, the Office of the General Counsel reviews the matter and presents its recommendation to the Commission as to whether the initial determination should be followed. These appeals, though small in number, generally do not justify the time spent by the Commission considering them, as they are generally routine. The Commission now finds that it is in the interest of the public and of the Commission to delegate the authority to decide Privacy Act appeals (and to administer related matters, including the filing of statements of disagreement) to the General Counsel. Nevertheless, in appropriate cases involving difficult or important issues, the General Counsel would be expected to bring the matter to the Commission for decision; and the amended rules provided for such a procedure.

As mentioned above, the Act contemplates the delegation of the authority to determine refusals to amend or correct records to "an officer designated by the head of the agency." The Commission, moreover, believes that the process of administrative review could be carried out more expeditiously if it is delegated to the General Counsel. For example, the process of scheduling appeals for consideration by the Commission, including publication of notice in fulfillment of the requirements of the Government in the Sunshine Act (5 U.S.C. 552b), can make it difficult to meet the thirty-day limit that the Act and the rules thereunder set for consideration of appeals. If appeals were considered pursuant to delegated authority, administrative review could be carried out more swiftly.

The Commission believes it appropriate to delegate its Privacy Act review function to the General Counsel. The amended regulations divest the General Counsel of his powers, under the current rules, to make initial decisions under the Act with respect to Privacy Act requests for records within his zone of responsibility. Thus, under the amended regulations the General Counsel will not review initial determinations made by him. In addition, the General Counsel defends the Commission in suits brought under the Privacy Act, and may be expected to decide appeals and other matters arising under the Act in a thorough and impartial manner.

Accordingly, the Commission hereby amends Sections 200.21 (a)(17 CFR 200.21(a)) and 200.30-14 (17 CFR 200.30-14) of the Commission's rules relating to general organization to delegate to the General Counsel the authority to make determinations with respect to appeals from initial decisions by duly authorized officers of the Commission under the Privacy Act.

The Commission also amends Subpart H of 17 CFR, Part 200, Sections 200.304 (a) and (c); 200.307 (a) and (b); 200.308 (a)(4)–(10); 200.308(b)(1)–(4); and 200.309(e) (1) and (2) of its regulations pertaining to administrative procedures under the Privacy Act, to set forth the procedure by which the General Counsel will consider and act on appeals of initial decisions under the Act concerning access to, or amendment or correction of, records, as well as related matters, including the filing of statements of disagreement.

Statutory authority: In amending § 200.21(a) (17 CFR 200.21(a)) and 200.30–14 (17 CFR 200.30–14) with respect to delegated authority, the Commission is acting pursuant to the Act of August 20, 1962, Pub. L. No. 87–592, 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2), as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 163 (June 4, 1975); and 5 U.S.C. 552a(d)(2)(B)(ii). The Commission's regulation concerning the privacy of individuals and records relating thereto, Subpart H of 17 CFR Part 200, which is hereby amended, is issued under the Privacy Act of 1974, 5 U.S.C. 552a(f). It is also issued pursuant to Section 19 of the Securities Act of 1933, 48 Stat. 85, as amended; Section 23 of the Securities Exchange Act of 1934, 48 Stat. 901, as amended; Section 20 of the Public Utility Holding Company Act of 1935, 49 Stat. 833; Section 319 of the Trust Indenture Act of 1939, 53 Stat. 1173; Section 38 of the Investment Company Act of 1940, 54 Stat. 841; and Section 211 of the Investment Advisers Act of 1940, 54 Stat. 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11).

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)A), that the foregoing regulation relates solely to agency organization, procedure, or practice and that notice and public procedure are not necessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

Text of Amendments

17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. By revising the tenth sentence of paragraph (a) of § 200.21 as follows:

§ 200.21 The General Counsel.

(a) * * * In addition, he or she is responsible for appropriate disposition of all Freedom of Information Act and Privacy Act appeals pursuant to the authority delegated in § 200.30–14, and is the Commission's advisor with respect to legal problems arising under the Freedom of Information Act, the Privacy Act, the Federal Reports Act, the Federal Advisory Committee Act, the Civil Service laws and regulations, the statutes and rules applicable to the Commission's procurement, contracting, fiscal and related administrative activities, and other statutes and regulations of a similar nature applicable to a number of Government agencies.

* * * * *

2. By revising the introductory paragraph and adding paragraph (d) to § 200.30–14 as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

Pursuant to the provisions of Pub. L. 94–29, 89 Stat. 163, Pub. L. 87–592, 76 Stat. 395, 15 U.S.C. 78d–1, 78d–2, and 5 U.S.C. 552a(d)(2)(B)(ii), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the General Counsel of the Commission, to be performed by him or her or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

* * * * *

(d) Determine the appropriate disposition of all Privacy Act appeals and related matters in accordance with §§ 200.304 (a) and (c); 200.307 (a) and (b); 200.308(a)(4)–(10); 200.308(b)(1)–(4); and 200.309(e) (1) and (2).

3. By revising paragraphs (a) and (c) of § 200.304 as follows:

§ 200.304 Disclosure of requested records.

(a) *Initial review.* Requests by individuals for access to records pertaining to them will be referred to the Commission's Privacy Act Officer who initially will determine whether access will be granted, *Provided, however,* That a Director of a staff Division of the Commission or Office head, other than the General Counsel, whose zone of responsibility relates to the record requested (see 17 CFR 200.13 et seq.), may make a determination that access is not lawfully required to be granted and should not be granted, in which case he, and not the Privacy Act Officer, shall make the required notification to the individual making the request.

* * * * *

(c) *Denial of request for access.* If it is determined that access will not be granted, the individual making the request will be notified of that fact and given the reasons why access is being denied. The individual also will be advised (1) of his right to seek review by the General Counsel of the intital decision to deny access, in accordance with the procedures set forth in § 200.308 of this Subpart; and (2) of his right ultimately to obtain judicial review pursuant to 5 U.S.C. 552a(g)(1)(A) of a final denial of access by the General Counsel.

* * * * *

4. By revising paragraph (a) of § 200.307 as follows:

§ 200.307 Review of requests for amendment or correction.

(a) *Initial review.* As in the case of requests for access, requests by individuals for amendment or correction to records pertaining to them will be referred to the Commission's Privacy Act Officer for an initial determination, except that such requests may be considered by a Division Director or Office Head (other than the General Counsel) as set forth in § 200.304(a) of this subpart.

* * * * *

5. By revising the introductory text of paragraph (a), (a)(4) through (a)(9), adding paragraph (a)(10) and revising paragraph (b) of § 200.308 as follows:

§ 200.308 Appeal of initial adverse agency determination as to access or as to amendment or correction.

(a) *Administrative review.* Any person who has been notified pursuant to § 200.304(c) that his request for access to records pertaining to him has been denied, or pursuant to Section 307(e) of this subpart that his request for amendment or correction has been denied in whole or in part, or who has received no response to a request for access or to amend within 30 days (excluding Saturdays, Sundays and legal holidays) after his request was received by the Commission's staff (or within such extended period as may be permitted in accordance with § 200.304(d) and § 200.307(c) of this subpart), may appeal the adverse determination or failure to respond by applying for an order of the General Counsel determining and directing that access to the record be granted or that the record be amended or corrected in accordance with his request.

* * * * *

(4) The General Counsel will make a determination with respect to any appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays and legal holidays), unless for good cause shown, the General Counsel

shall extend that period. If such an extension is made, the individual who is appealing shall be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) In considering an appeal from a denial of a request to amend or correct a record, the General Counsel shall apply the same standards as set forth in § 200.307(b).

(6) If the General Counsel shall conclude that access should be granted, he or she shall issue an order granting access and instructing the Privacy Act Officer to comply with § 200.304(b).

(7) If the General Counsel shall conclude that the request to amend or correct the record should be granted in whole or in part, he or she shall issue an order granting the requested amendment or correction in whole or in part and instructing the Privacy Act Officer to comply with the requirements of § 200.307(d) of this subpart, to the extent applicable.

(8) If the General Counsel affirms the initial decision denying access, he or she shall issue an order denying access and advising the individual seeking access of (i) The order; (ii) the reasons for denying access; and (iii) the individual's right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B).

(9) If the General Counsel determines that the decision of the Privacy Act Officer denying a request to amend or correct a record should be upheld, he or she shall issue an order denying the request and the individual shall be advised of (i) The order refusing to amend or correct the record and the reasons therefor; (ii) his right to file a concise statement setting forth his disagreement with the General Counsel's decision not to amend or correct the record; (iii) the procedures for filing such a statement of disagreement with the General Counsel; (iv) the fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the General Counsel deems it appropriate, a brief statement setting forth the General Counsel's reasons for refusing to amend or correct; (v) the fact that prior recipients of the record in issue will be provided with the statement of disagreement and the General Counsel's statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and (vi) the individual's right to seek judicial review of the General Counsel's refusal to amend or correct, pursuant to 5 U.S.C. 552a(g)(1)(A).

(10) In appropriate cases the General Counsel may, in his or her sole and unfettered discretion, refer matters requiring administrative review of initial decisions to the Commission for determination and the issuance, where indicated, of orders.

(b) *Statement of disagreement.* As noted in paragraph (a)(9)(ii) of this section, an individual may file with the General Counsel a statement setting forth his disagreement with the General Counsel's denial of his request to amend or correct a record.

(1) Such statement of disagreement shall be delivered to the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street NW., Room 1024, Washington, D.C. 20549, or mailed to the Privacy Act Officer, Securities and Exchange Commission, Washington, D.C. 20549, within 30 days after receipt by the individual of the General Counsel's order denying the amendment or correction. For good cause shown this period can be extended for a reasonable time.

(2) Such statement of disagreement shall concisely state the basis for the individual's agreement. Generally a statement should be no more than two pages in length, except an individual may submit a slightly longer statement if it is necessary to set forth his disagreement effectively. Unduly lengthy or irrelevant materials will be returned to the individual by the General Counsel for appropriate revisions before they become a permanent part of the individual's record.

(3) The record about which a statement of disagreement has been filed will clearly note which part of the record is disputed and the General Counsel will provide copies of the statement of disagreement and, if the General Counsel deems it appropriate, provide a concise statement of his or her reasons for refusing to amend or correct the record, to persons or other agencies to whom the record has been or will be disclosed.

(4) In appropriate cases, the General Counsel may, in his or her sole and unfettered discretion, refer matters concerning statements of disagreement to the Commission for disposition.

6. By revising paragraphs (e)(1) and (e)(2) of § 200.309 as follows:

§ 200.309. General Provisions.

* * * * *

(e) *Oral requests; misdirected written requests. (1) Telephone and other oral requests.* Before responding to any request by an individual for information concerning whether records maintained by the Commission in a system of records pertain to him or to any request for access to records by an individual, such request must be in writing and signed by the individual making the request. The General Counsel will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested information or access to records pertaining to him that he believes to have been improperly denied to him should resubmit his request in appropriate written form in order to obtain proper consideration and, if need be, administrative review.

(2) *Misdirected written requests.* The Commission cannot assure that a timely or satisfactory response will be given to written requests for information, access or amendment by an individual with respect to records pertaining to him that are directed to the Commission other than in a manner prescribed in §§ 200.303(a), 200.306(a), 200.308(a)(2), and 200.310 of this subpart. Any staff member who receives a written request for information, access or amendment should promptly forward the request to the Privacy Act Officer. Misdirected requests for records will be considered to have been received by the Commission only when they have been actually received by the Privacy Act Officer in cases under § 200.308(a)(2). The General Counsel will not entertain any appeal from an alleged denial or failure to comply with a misdirected request, unless it is clearly shown that the request was in fact received by the Privacy Act Officer.

By the Commission.

George A. Fitzsimmons,

Secretary.

April 2, 1984.

[FR Doc. 84-9198 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 240

[Release No. 34-20799—File No. S7-903]

Short Tendering Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rulemaking.

SUMMARY: The Commission has determined to adopt certain amendments to Rule 10b–4 under the Securities Exchange Act of 1934, the short tendering rule. These amendments will impose additional ownership requirements for persons tendering securities in response to tender offers for those securities, clarify the provisions of the rule, and limit the types of offers to which the rule applies. The Commission has decided not to deregulate short tendering entirely.

EFFECTIVE DATE: May 9, 1984.

FOR FURTHER INFORMATION CONTACT: M. Blair Corkran, Esq. (202–272–2853) or Kevin A. Corcoran, Esq. (202–272–2828), Division of market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting amendments to Rule 10b–4 [§ 240.10b–4] under Section 10(b) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78j(b). Rule 10b–4 (the "Rule") was adopted by the Commission in 1968 [1] for the purpose of prohibiting "short tendering," *i.e.*, tendering more shares than a person owns in order to avoid or reduce the risk of *pro rata* acceptance in tender offers for less than all the outstanding securities of a class or series. The amendments being adopted are substantially the same as those proposed for comment on August 21, 1981.[2] Among other things, the amendments prohibit the practice of hedged tendering, *i.e.*, tendering and then selling a portion of the tendered shares in the market.

I. Background

In making a tender offer for securities of the corporation that is the subject of the offer, the bidder usually offers as consideration either cash, its own securities, or a combination of both. Tender offers can be for all the outstanding securities of the subject company or for a lesser amount.

Offers for less than all of the outstanding shares involve a risk to the securityholder of the subject company that not all of the securities that the securityholder tenders will be accepted.[3] Before the adoption of Rule 10b–4, certain securityholders tendered more securities than they owned in order to diminish this risk. By tendering a greater number of securities than they owned, and by guaranteeing their own tenders, market professionals were able to secure acceptance of a disproportionately larger number of the securities owned and tendered by them than could be secured by other persons who tendered only securities that they owned.[4] Accordingly, the Commission adopted Rule 10b–4 in May 1968 [5] for the specific purpose of prohibiting short tendering. Rule 10b–4 makes it a "manipulative or deceptive device or contrivance," as used in Section 10(b) of the Act for any person, in response to an offer or invitation for tenders of any security, to tender securities that he does not own. Ownership is defined in paragraph (b) of the Rule. The Rule applies to all tender offers whether made by a third party or by the issuer of the securities sought.[6]

II. Need for the Amendments

By prohibiting short tendering, Rule 10b–4 was designed to promote equality of opportunity and risk for all tendering security holders. In the years since the Rule's adoption, it has become apparent that simply requiring a tendering person to tender from a long position does not reach certain conduct that has the same purpose and effect as short tendering. Under the Rule, arbitrageurs are able to tender an offer involving prorationing or selection by lot and then sell into a market that reflects the offer the portion of shares they estimate will be returned unaccepted by the bidder. The shares sold may, in turn, be bought and tendered by another arbitrageur who may also hedge his tender by selling a portion of the shares. As a result, the same shares are effectively tendered by two (or more) shareholders and those shareholders who tender and do not engage in any hedging continue to experience the same dilution of their *pro rata* acceptance that occurred before the Rule was adopted.[7]

To address this concern, the Commission on August 21, 1981, published for comment a proposal to amend Rule 10b–4 to require that a tendering person own the tendered securities not only when they are tendered, but also at the end of the proration period.[8] Since consistent treatment of short tendering and hedged tendering could also be achieved by deregulation and because it has been argued that deregulation might result in broader economic benefits, the Commission also requested comment on the effects, costs and benefits that would result from a deregulation of short tendering.

More recently, the Commission formed an Advisory Committee on Tender Offers ("Advisory Committee"). The Advisory Committee considered a wide range of matters relating to the regulation of tender offers, including the appropriate regulatory treatment of short and hedged tendering. The Advisory Committee recommended that both short and hedged tendering should be prohibited.[9]

The Commission has considered the Comments received in response to the Proposing Release [10] and the recommendations of the Advisory Committee. For the reasons set forth in this release, the Commission is adopting the amendments to Rule 10b–4 as proposed. The Commission has also determined not to deregulate short tendering, for the reasons set forth in Section IV, below.

A majority of the commentators believed that hedged tendering should be proscribed. A substantial minority of commentators argued that hedged tendering should not be curtailed. They asserted that hedged tendering enables arbitrageurs to minimize prorationing risks and therefore to bid higher for securities during a tender offer. This, in turn, benefits those securityholders who

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[1] Securities Exchange Act Release No. 8321 (May 28, 1968), 33 FR 8209 (1968).

[2] Securities Exchange Act Release No. 18050 (August 21, 1981), 46 FR 43456 (1981) ("Proposing Release").

[3] When tendered securities are accepted on a *pro rata* basis, the offeror accepts only a percentage of the securities tendered by each securityholder. The percentage is calculated from a fraction whose numerator represents the total number of securities accepted and whose denominator represents the total number of securities tendered.

[4] *See* Testimony of Chairman Manuel F. Cohen in Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. 198–99 (1967).

[5] *See* note 1 *supra*. Rule 10b–4 was adopted on May 28, 1968, two months before the passage of the Williams Act on July 29, 1968.

[6] Although tender offers by an issuer are exempt from the provisions of Section 14(d), they are subject to the antifraud provisions of Section 14(e) of the Act. In addition, issuer tender offers are subject to Rule 13e–4, which was adopted in 1979. Securities Exchange Act Release No. 16112 (August 19, 1979), 44 FR 49408 (1979).

[7] For example, assume there is a tender offer for less than all the outstanding securities of the target and that A and B each owns 200 shares of the subject security and expects that the offeror will accept on a *pro rata* basis 60% of the securities tendered. If A tenders has 200 shares, and then sells 80 shares, he will (assuming the 60% expectation proves correct) have 120 shares accepted by the offeror, or 100% of the securities that he owns at the time the proration period ends. In contrast, if B simple tenders his 200 shares and does not engage in any hedging (possibly because he cannot borrow the subject security), he will have only 120 of his shares accepted and 80 shares will be returned unaccepted to him.

It seems anomalous that A, who would have engaged in a prohibited short tender if he had sold the 80 shares immediately before tendering 200 shares, can accomplish precisely the same result under the current Rule by waiting to sell the 80 shares until a moment after tendering. Furthermore, the 80 shares A tendered and then sold may be bought by an arbitrageur or other purchaser who will tender the same shares to the bidder and thereby increase the likelihood or degree of prorationing. If that occured, it would reduce the number of tendered securities that would be accepted from other security holders.

[8] *See* note 2 *supra*. The Commission also withdrew an earlier proposal to amend Rule 10b–4. *See* Securities Exchange Act Release No. 14157 (November 9, 1977), 42 FR 59280 (1977).

[9] *See* Report of Recommendations of the Advisory Committee on Tender Offers ("Advisory Committee Report") at 47.

[10] Pursuant to the Commission's request for comment, 14 letters of comment were submitted, as follows: Law firms and associations (4); industry associations (1); self-regulatory organizations (1); broker-dealers (3); Congressional (1); individuals (4). The comment letters are available for public inspection and copying at the Commission's Public Reference Room (*see* File No. S7–903).

wish to avoid proration risk by selling all of their shares in the market at a known price.

The benefits to such securityholders, however, come at the expense of those shareholders who tender without hedging and thereby suffer from the expansion of the proration pool.[11] The Commission believes that the impact of hedged tendering is unfair because, as a practical matter, hedged tendering is not available to most shareholders. Of the eight commentators who addressed the question posed in the Release as to the availability of hedged tendering to the public, only one suggested that hedged tendering was available to all shareholders, and that commentator conceded that small investors would have difficulty borrowing stock during a tender offer if demand were tight.[12]

The Commission recognizes that hedged tendering and short tendering may be distinguished, largely because the hedged tenderor owns the tendered securities at the moment of tender. The Commission believes, however, that the two practices are closely analogous in terms of their purpose, availability, and effect on other shareholders who tender, and that hedged tendering should therefore be proscribed for essentially the same reasons that support the prohibition of short tendering.

III. Summary of Amended Rule

The amended Rule is designed to prohibit hedged tendering by the additional requirement that all tendering securityholders be "net long" the amount of securities tendered at the end of the proration period, or on the last day securities may be tendered in order to be accepted by lot where that method of acceptance is used. In addition, the Rule has been amended to clarify certain of its provisions and to limit its application to partial offers.[13] The provisions of the rule are discussed below.

Paragraph (a)(1) sets forth the definition of ownership, which is essentially unchanged from current Rule 10b–4(2)(b), except for a revision to reflect the use of "equivalent security" as a defined term in paragraph (a)(2). The ownership definition has been refined to provide that a person who might otherwise tender securities will be deemed not to own the securities, and thus will be prohibited from tendering them, if he has entered into any arrangement or agreement (other than stock loans or the writing of exchange-traded call options) whereby another person can tender those securities under the Rule. Thus, for example, a person who has title to subject securities would not be permitted to tender them if he has (i) entered into an unconditional contract to sell them or (ii) written an over-the-counter call option on them and caused the holder to have the reasonable belief set forth in paragraph (a)(2) of the Rule.

Paragraph (a)(2) defines equivalent security to include (1) options, warrants, and rights issued by the person whose securities are the subject of the offer and (2) any other option to acquire the subject security, but only if the holder reasonably believes that the maker or writer of the option has title to and possession of the subject security and upon exercise will promptly deliver the subject security. This language tracks in all significant respects the proviso in existing Rule 10b–4(a)(1). An option traded on a national securities exchange would not be included within the definition of equivalent security since the holder of such an option cannot know that the maker or writer of the option has "title to and possession of" the underlying security within the meaning of the Rule. Since an unlimited number of options can be written on an uncovered basis, Rule 10b–4 does not permit listed options holders to tender unless they have exercised those options. The exclusion of options that are traded on a national securities exchange from the definition of equivalent securities represents a codification of prior staff interpretations of Rule 10b–4.

The term "tender" is defined in paragraph (a)(4) to encompass all methods by which a person can affirmatively respond to a request or invitation for tenders. Current Rule 10b–(4)(a)(1) refers to tendering for a person's own account; paragraph (a)(2) refers to tenders or guarantees on behalf of others. It has thus been possible to read Rule 10b–4 as prohibiting guarantees of delivery for a person's own account, although it is the Commission's understanding that market professionals routinely have employed so-called "self-guarantees" as a method of tendering securities purchased but not yet received. The definition of "tender" in paragraph (a)(4) specifically includes "guarantee" and thus eliminates any implication in the current Rule that self-guarantees are improper.[14]

Paragraph (b) of the Rule limits the substantive provisions to partial offers. In addition, new paragraph (c) would expressly exclude any partial offer where acceptance of tenders is not primarily by lot or on a *pro rata* basis for a specified period.[15]

Paragraph (b) of the amended Rule contains the substantive provisions of the Rule and covers acts by "any person acting alone or in concert with others, directly or indirectly." The phrase "directly or indirectly," together with the "in concert" language, is intended to make it clear that persons may not do indirectly what they may not do directly, and thereby to emphasize that indirect forms of short tendering are prohibited. This does not, however, effect a substantive change in the Rule, in view of the provisions of Section 20(b) of the Act.[16]

Paragraph (b)(1) incorporates the ownership provisions of current Rule 10b–4(a)(1), considerably abbreviated through the use of defined terms. In addition, paragraph (b)(1) makes it unlawful for any person to tender any security unless he owns the securities tendered both at the time of tender and at the end of the proration acceptance period. This provision assures that the *pro rata* determination more fairly and accurately reflects actual ownership of tendered securities at that time. Securityholders who tender and do not thereafter sell the securities are unaffected by this amendment. A securityholder who tenders the subject

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[11] *See* note 7 *supra*.

[12] If a tenderor has physically tendered his shares, other shares must be borrowed to complete any subsequent short sale. If the tender is by guarantee, the tenderor may be able to sell and deliver the shares that he owns (subject to any restriction imposed by the guarantor), but would need to borrow shares to fulfill the guarantee, at least in those offers where the bidder requires that all shares tendered by guarantee be submitted.

[13] A partial offer is generally an offer for less than the total number of outstanding securities of a particular class or series or one where the bidder makes a bid for all the outstanding securities of a particular class or series but offers different consideration for a specified number of the outstanding securities than it offers for the remaining outstanding securities of that class or series.

[14] If broker-dealers were unable to utilize self-guarantees, they could not tender securities purchased "regular-way" in the last five days of a partial offer, unless they secured the guarantee of another broker-dealer. There would not appear to be any regulatory rational for imposing such a requirement.

[15] Incidential prorationing would not bring an offer within the coverage of the Rule. such incidental prorationing might occur, for example, when some, but not all, securities at the highest acceptable price were accepted in an offer conducted on a "lowest price first" basis. Thus, Rule 10b–4, as amended, does not apply to most tender offers for municipal and corporate debt securities. Each of the commentators addressing the issue favored limiting the application of Rule 10b–4 to partial offers.

[16] Section 20(b) of the Act [15 U.S.C. 78t(b)] makes it unlawful for "any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of [the Act] or any rule or regulation thereunder through or by means of any other person."

security, and thereafter during the proration period sells all or a portion of the subject securities that constituted his net long position is required by this provision either to repurchase sufficient shares, or to withdraw shares from his tender, in order to comply with the net long proviso at the end of the proration period. The "end of the proration period" is the time after which securities would not be accepted by the bidder on a *pro rata* basis. Sales of subject securities occurring after the proration period are not prohibited since they do not affect the *pro rata* calculation.

In the case of a tender based upon ownership of an equivalent security, the Rule, as amended, clarifies the intent of the current Rule that equivalent securities need be converted, exchanged or exercised only to the extent required by the bidder's terms of acceptance.

Paragraph (b)(2), which covers guarantees of tender, is largely comparable to current Rule (10b–4(a)(2), again simplified through the use of defined terms. The current standard of inquiry imposed upon guarantors by Rule 10b–4 remains unchanged. A guarantor must have "a reasonable belief that, upon information furnished by the person on whose behalf the tender is made," the person could tender in accordance with the provisions of the Rule.

Paragraph (b)(3) prohibits a tendering securityholder from tendering the same securities to more than one partial offer at the same time, *i.e.*, multiple tendering. Some commentators believed that allowing multiple tendering would allow investors to have greater flexibility in choosing the best offer. The Advisory Committee, however, specifically recommended that multiple tendering be prohibited.[17] The Commission agrees with the Advisory Committee and with the majority of commentators that prohibiting multiple tendering will prevent the confusion and possible deception to the market and to bidders that could otherwise arise, as well as the potential unfairness to certain securityholders for whom this practice may not be available.

Paragraph (d) provides a mechanism for obtaining exemptive relief to the extent that there may be factual situations that would justify the granting of an exemption upon a proper application.

IV. Withdrawal of Deregulatory Alternative

In view of the possibility that Rule 10B–4 might impose burdens that exceed its benefits, the Commission in the Proposing Release solicited public comment on whether short tendering is an appropriate subject for complete or partial deregulation. Virtually all of the commentators who addressed this issue were opposed to the deregulation of short tendering.

The commentators asserted two very different reasons for retaining the prohibition of short tendering. Several commentators, as well as the Advisory Committee, emphasized the continued validity of the original purpose of Rule 10b–4, *i.e.*, the unfairness of allowing market professionals, by guaranteeing delivery of securities they do not own, to gain acceptance of a disproportionate number of shares owned by them at the expense of non-professionals who cannot engage in this practice.

Other commentators suggested that short tendering would exacerbate the confusion that can exist in the market for target stock, particularly in the context of competing offers. These commentators argued that absent the requirement that a tenderor own the shares tendered, there would be no limit upon the amount of shares that could be tendered.

Considering this nearly unanimous adverse comment, and mindful of the need to fulfill the important investor protection goals of the Williams Act, the Commission has decided not to rescind Rule 10b–4.

V. Regulatory Flexibility Act Status

The Chairman of the Commission certified that the amendments to Rule 10b–4 will not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments concerning the Chairman's certification.

VI. Competition

Pursuant to Section 23(a)(2) of the Act, the Commission has considered the impact that the amended rule will have on competition. For the reasons stated above, the Commission finds that compliance with the rule will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

VII. Statutory Basis

The amendments to Rule 10b–4 are promulgated under the Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 3(b), 10(a), 10(b), 14(e), 15(b), and 23(a) of the Act (15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78o(b), and 78w(a)).

List of Subjects in Part 240

Reporting and recordkeeping requirements, Securities.

VIII. Text of Rule

On the basis of the above discussion and analysis, the Commission is amending Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by revising § 240.10b–4 to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.10b–4 Short tendering of securities.

(a) *Definitions.* For purposes of this section:

(1) A person shall be deemed to own a subject security or an equivalent security if neither he nor his agent has entered into an arrangement or agreement (other than one for the lending of securities or the writing of a call option that is traded on a national securities exchange) whereby any other person may tender that security or be deemed to own it and: (i) He or his agent has title to it, or (ii) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it, or (iii) he has an option that is traded on a national securities exchange to purchase it and has exercised that option, or (iv) in the case of a subject security, he has converted, exchanged, or exercised an equivalent security that he owned (within the meaning of (i) or (ii) above). For the purpose of determining ownership as of the end of the proration period, securities that have been tendered and not withdrawn are deemed to be owned as of the end of the proration period. *Provided, however,* that a person shall be deemed to own a security for purposes of this rule only to the extent that he has a net long position in such security.

(2) The term "equivalent security" means: (i) Any security (including any option, warrant, or other right to purchase the subject security), issued by the person whose securities are the subject of the offer, that is immediately convertible into, or exchangeable or exercisable for, a subject security, or (ii) any other right or option (other than an option that is traded on a national securities exchange) that entitles the holder thereof to acquire a subject security, but only if the holder thereof reasonably believes that the maker or writer of the right or option has title to and possession of the subject security and upon exercise will promptly deliver the subject security.

(3) The term "subject security" means a security that is the subject of any tender offer or request or invitation for tenders.

[17] Advisory Committee Report at 49.

(4) For purposes of this rule, a person shall be deemed to "tender" a security if he: (i) Delivers a subject security pursuant to an offer, (ii) causes such delivery to be made, (iii) guarantees delivery of a subject security pursuant to a tender offer, (iv) causes a guarantee of such delivery to be given by another person, or (v) uses any other method by which acceptance of a tender offer may be made.

(b) It shall constitute a "manipulative or deceptive device or contrivance" and a "fraudulent, deceptive, or manipulative act or practice" as those terms are used in sections 10(b) and 14(e) of the Act, respectively, for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial offer:

(1) For his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he owns: (i) The subject security and will deliver or cause to be delivered such security for the purpose of tender to the person making the offer within the period specified in the offer, or (ii) an equivalent security and, upon the acceptance of his tender, will acquire the subject security by conversion, exchange, or exercise of such equivalent security to the extent of such acceptance and, within the period specified in the offer, will deliver or cause to be delivered the subject security so acquired for the purpose of tender to the person making the offer; or

(2) For the account of another person unless the person making the tender: (i) Possesses the subject security or an equivalent security, or (ii) has a reasonable belief that, upon information furnished by the person on whose behalf the tender is made, such person owns the subject security or an equivalent security and will promptly deliver the subject security or such equivalent security for the purpose of tender to the person making the tender.

(3) If the same security has been tendered in response to any other partial offer, unless such other tender has been withdrawn.

(c) This rule shall not apply to a partial offer where tenders are not accepted either by lot or a *pro rata* basis for a specified period.

(d) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms and conditions, as not constituting a manipulative or deceptive device or contrivance or fraudulent, deceptive, or manipulative act or practice comprehended within the purpose of this rule.

By the Commission.

Dated: March 29, 1984.

George A. Fitzsimmons,

Secretary.

Dissent of Commissioner Cox

I respectfully dissent. From the standpoint of investor protection, I cannot agree to prohibit hedged tendering. My analysis leads me to conclude that a prohibition of hedged tendering arbitrarily favors one group of investors over another.

The Division of Market Regulation's ("Division") action memorandum recognizes the argument that the practice of hedged tendering benefits target shareholders who sell their shares rather than tender them during the interim period between announcement and execution of a tender offer. Unfortunately, the Division's analysis of that argument does not go far enough. Taken to its logical conclusion the analysis shows that hedged tendering merely transfers wealth between two groups of target shareholders. The Commission has no good reason, on the basis of investor protection, to say that one of these groups of target shareholders is more deserving than the other.

As it stands, the Division's analysis concludes that the benefits from hedged tendering accuring to target shareholders who sell into the market are at the expense of target shareholders who tender shares to the bidder without hedging those tenders. This is because hedged tendering expands the proration pool and thereby decreases the fraction of the tendered shares accepted. Let us briefly consider this redistribution of wealth from tenderors to sellers.

It is useful to divide target shareholders into three groups: (1) those who tender shares to the bidder but do not hedge the tenders, (2) those who sell shares into the market where the shares may be purchased and tendered by a market professional, a risk arbitrageur, who finds it worthwhile to hedge his tender, and (3) those who neither tender nor sell, that is, a group that does nothing. To understand the effect of hedged tendering, consider first the case of an oversubscribed partial tender offer when there is no hedged tendering. In this case, the larger is the group that does nothing, the better off are the shareholders who tender because a larger fraction of their shares is accepted by the bidder. This is to say that the inaction of those who do not tender benefits those who do tender.

Next, add the practice of hedged tendering to the market. This means adding a group of risk arbitrageurs who buy shares in the market, tender those shares, and then sell short the fraction of shares they estimate will be returned under prorationing. Note that the arbitrageurs buy these shares from target shareholders who prefer to sell at the interim price rather than go through the process of tendering the shares. The demand for shares by arbitrageurs who engage in hedged tendering bids up the market price, the price becomes closer to the tender premium offered by the bidder, and this benefits the target shareholders who sell into the market.

In order to accomplish hedged tendering, the arbitrageurs have to borrow shares to cover their short sales. Who will lend shares to these arbitrageurs without charging a premium, since the shares used to pay back the lender will be worth less than the shares lent? The answer is that target shareholders who neither tender nor sell their shares and who hold the shares in street name or a similar type of account "lend" the shares to the arbitrageurs. Arbitrageurs can borrow shares from these accounts as long as they stand ready to replace the shares immediately if the beneficial owner decides to tender or sell his shares.

Besides bidding up the interim price of shares, hedged tendering enlarges the proration pool and thereby decreases the fraction of shares accepted from target shareholders who tender. Now, however, the ultimate source of the wealth transfer is clear. When there is no hedged tendering, inaction by target shareholders who neither tender nor sell transfers wealth to target shareholders who tender their shares. This is to say, there is a redistribution of wealth from inactive target shareholders to those who tender. With hedged tendering, some of that wealth is redistributed away from the target shareholders who tender to the target shareholders who sell into the market. Put another way, target shareholders who tendered

without hedged tendering gained greater benefits at the "expense" of those target shareholders who neither tendered nor sold. Hedged tendering allows target shareholders who sell to avail themselves of some of the gains otherwise enjoyed by the target shareholders who tendered.

The fact that some shareholders choose neither to tender nor to sell their shares creates a potential gain for target shareholders who tender or sell. There is no objective basis on which to judge that the group of shareholders that tenders is more worthy of the gains than the group of shareholders that sells into the market. To me, shareholder protection implies that both groups of target shareholders are equally worthy and the precise division of the tender premium is best left to market processes.

A helpful analogy is the sale of used cars. Is there any basis for deciding that people who choose to sell used cars to ultimate buyers by using such methods as newspaper advertisements (analogous to target shareholders who tender) are more deserving than people who choose to sell used cars to used car dealers (analogous to target shareholders who sell into the market)? I think not.

What about the risk arbitrageurs, the market professionals who have the ability to engage in hedged tendering? They supply a service to target shareholders who decide to sell at the interim price rather than bear the risk and go through the process of tendering. The professionals bear risk and provide other services to target shareholders who sell. In a competitive market they are compensated at a competitive rate. This is to say, they benefit the target shareholders who sell and they are compensated for it. There is neither reason to think nor evidence to show that they are compensated at a supracompetitive rate.

In summary, hedged tendering is a market practice that developed in response to a demand by target shareholders who do not want to bear the burdens of tendering shares. There is no basis for the Commission to judge these target shareholders less worthy of a share of the tender premium than target shareholders who choose to tender their shares. Prohibiting hedged tendering benefits target shareholders who tender and harms target shareholders who sell. Overall investor protection is not increased by this change.

[FR Doc. 84-9345 Filed 4-6-84; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Project To Improve the Hearing Process Through the Involvement of SSA Representatives

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Continuance of the SSA Representation Project.

SUMMARY: This document provides notice of continuance, for a period of at least one year, of the SSA Representation Project under which SSA is evaluating the effects of SSA participation in the disability hearing process. Due to the limited duration of the project to date, the normal start-up problems in implementing such a change in the usual hearing process, and the limited Appeals Council and court experience to date, we believe that a continuance of the project is needed to evaluate fully the potential nationwide effects of SSA representation.

EFFECTIVE DATE: April 9, 1984.

FOR FURTHER INFORMATION CONTACT: Gary Flenner, Director, SSA Representation Project, Office of Hearings and Appeals, Room 202, Braedon Building, 3833 N. Fairfax Drive, Arlington, Virginia 22203; (703) 235-3524.

SUPPLEMENTARY INFORMATION: The rules for the SSA Representation Project were published on August 19, 1982 (47 FR 36117). The project commenced in five selected hearing offices for cases in which the request for hearing was filed on or after October 12, 1982. We estimated that the project would have a duration of at least one year.

The rules at 20 CFR 404.965(c)(1) and 416.1465(c)(1) contain the following explanation of our purposes in undertaking the project:

The purpose of the project is to determine whether the participation of the SSA representatives in the hearing process will—

(i) Help to improve the overall disability adjudicatory process;
(ii) Reduce delays in conducting hearings and issuing hearing decisions;
(iii) Improve the quality of hearing decisions;
(iv) Increase the productivity of administrative law judges;
(v) Achieve more uniformity and consistency in hearing decisions; and
(vi) Reduce hearing costs.

The rules further provide that "[t]he results of the project will be evaluated to determine whether to propose the implementation of SSA representation on a larger scale." 20 CFR 404.965(c)(2) and 416.1465(c)(2).

Our initial experience with SSA representation has been generally favorable in terms of the purposes set out above. However, due to the limited duration of the project to date, the normal start-up problems in implementing such a change in the usual hearing process, and the limited Appeals Council and court experience to date, we believe that a continuance of the project is needed to evaluate fully the potential nationwide effects of SSA representation. For this reason, we are publishing this notice to announce to the public our intention to continue the project for at least one year.

Dated: March 29, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 84-8216 Filed 4-6-84; 8:45 am]
BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Tolerances for Residues of New Animal Drugs in Food; Progesterone and Estradiol Benzoate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Syntex Agribusiness, Inc., providing for safe and effective use in suckling beef calves of an implant containing 100 milligrams (mg) of progesterone and 10 mg of estradiol benzoate. FDA is also establishing residue tolerances for each drug in certain edible tissues derived from treated animals.

EFFECTIVE DATE: April 9, 1984.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed a supplement to NADA 9-576 providing for use of an implant containing 100 mg of progesterone and 10 mg of estradiol benzoate to be used in suckling beef calves (at least 45 days of age) up to 400

pounds body weight for growth promotion. The supplement is approved. The regulations are amended to reflect this approval and to establish residue tolerances for each drug in certain edible tissues derived from treated animals. The basis for approval of this supplement is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(iv)) may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs, injectable.

21 CFR Part 556

Animal drugs; Foods; Residues.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. In Part 522, § 522.1940 is amended by revising paragraphs (b) and (d)(1) to read as follows:

§ 522.1940 Progesterone and estradiol benzoate in combination.

* * * * *

(b) *Sponsor.* See No. 000033 for use as provided for in paragraph (d) (1) and (2) of this section; see No. 021641 for use as provided for in paragraph (d)(2) of this section.

* * * * *

(d) * * *

(1) *Suckling beef calves*—(i) *Amount.* 100 milligrams of progesterone and 10 milligrams of estradiol benzoate per dose.

(ii) *Indications for use.* Growth promotion.

(iii) *Limitations.* For use in suckling beef calves (at least 45 days of age) up to 400 pounds of body weight; do not use in veal calves or calves intended for reproduction; for subcutaneous ear implantation, one dose per animal.

* * * * *

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

2. Part 556 is amended:

a. By revising § 556.240 to read as follows:

§ 556.240 Estradiol benzoate.

No residues of estradiol, resulting from the use of estradiol benzoate, are permitted in excess of the following increments above the concentrations of estradiol naturally present in untreated animals:

(a) In uncooked edible tissues of heifers, steers, and calves:

(1) 120 parts per trillion for muscle.

(2) 480 parts per trillion for fat.

(3) 360 parts per trillion for kidney.

(4) 240 parts per trillion for liver.

(b) In uncooked edible tissues of lambs:

(1) 120 parts per trillion for muscle.

(2) 600 parts per trillion for fat, kidney, and liver.

b. By revising § 556.540 to read as follows:

§ 556.540 Progesterone.

No residues of progesterone are permitted in excess of the following increments above the concentrations of progesterone naturally present in untreated animals:

(a) In uncooked edible tissues of steers and calves:

(1) 3 parts per billion for muscle.

(2) 12 parts per billion for fat.

(3) 9 parts per billion for kidney.

(4) 6 parts per billion for liver.

(b) In uncooked edible tissues of lambs:

(1) 3 parts per billion for muscle.

(2) 15 parts per billion for fat, kidney, and liver.

Effective date. April 9, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 30, 1984.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-9300 Filed 4-6-84; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations; Charge Processing Procedures

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission has recently approved modification to its charge processing procedures. The modifications seek to make charge processing similar under all three statutes which the Commission administers, and to concentrate on the law enforcement aspect of the investigative process. Four changes to the Title VII procedural regulations are needed to conform to the modifications made by the Commission.

DATES: This Final Rule is effective April 9, 1984.

FOR FURTHER INFORMATION CONTACT: The Office of Legal Counsel, Legal Services, Nicholas M. Inzeo (634–6592), Assistant Legal Counsel.

SUPPLEMENTARY INFORMATION: Section 1601.14, concerning service of charge or notice of charge, is changed to provide, in the last sentence of paragraph (a), that where the charge is not served, the notice of the charge will contain the date, place and circumstances of the charge. The regulatory requirement that the identity of the person filing the charge be included in the notice is deleted. While the identity of the person filing the charge will normally be provided by service of the charge or of the notice, including the identity of the person filing the charge, the requirement is being deleted because the Commission will not disclose the identity of the charging party until after the person has been interviewed by Commission staff. Section 706 of Title VII, 42 U.S.C. 2000e–5, requires that only the date, place and circumstances of the charge be provided to the respondent. This regulatory change is consistent with the statutory requirement.

Section 1601.20(a), concerning negotiated settlements, is changed to delete the fourth sentence and to reword the third sentence to indicate that the

Commission's agreement to discontinue processing the charge is in consideration for the agreement reached by the parties.

Section 1601.24, concerning conciliation agreements, is changed to provide that, for charges filed on behalf of aggrieved persons, either the person filing the charge or the aggrieved person can sign the conciliation agreement. This procedure will permit the aggrieved person's identity to remain confidential.

Section 1601.28, concerning notices of right to sue, is changed to provide that, for charges filed on behalf of aggrieved persons, the notice of right to sue would contain the name of the person filing the charge. Again, this procedure will preserve the confidentiality of the person on whose behalf a charge is filed.

Signed at Washington, D.C. this 3rd day of April, 1984.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Civil rights, Equal employment opportunity.

PART 1601—[AMENDED]

Part 1601, Procedural Regulations, is amended as follows:

§ 1601.14 [Amended]

1. Section 1601.14 is amended in paragraph (a) by ending the second sentence before the parenthetical, removing the parenthetical in the second sentence and inserting the following new sentences at the end of paragraph (a): "The notice shall include the date, place and circumstances of the alleged unlawful employment practice. Where appropriate, the notice may include the identity of the person or organization filing the charge."

§ 1601.20 [Amended]

2. Section 1601.20 is amended by removing the fourth sentence of paragraph (a) and by revising the third sentence of paragraph (e) to read as follows: "When the Commission agrees in any negotiated settlement not to process that charge further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement.

§ 1601.24 [Amended]

3. Section 1601.24 is amended in paragraph (a) by removing "who are signatories thereto" at the end of the paragraph and adding the following sentence: "Where a charge has been filed on behalf of a person claiming to be aggrieved, the conciliation agreement may be signed by the person filing the charge or by the person on whose behalf the charge was filed."

§ 1601.28 [Amended]

4. Section 1601.28 is amended by adding the following sentence at the end of paragraph (c): "Where a charge has been filed on behalf of a person claiming to be aggrieved, the notice of right to sue shall be issued in the name of the person or organization who filed the charge."

(Sec. 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–12(a))

[FR Doc. 84-8379 Filed 4-6-84; 8:45 am]
BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-9-FRL 2562-1]

Delegation of New Source Performance Standards (NSPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the California Air Resources Board (CARB) on behalf of the San Diego County Air Pollution Control District (SDCAPCD). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: January 23, 1984.

ADDRESS: San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8236, FTS 454–8236.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of one NSPS category on behalf of the SDCACPD. Delegation of authority was granted by a letter dated December 22, 1983 and is reproduced in its entirety as follows:

Mr. James D. Boyd,

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of October 27, 1983, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) Category in 40 CFR Part 60: Subpart QQ—Graphic Arts Industry: Publication Rotogravure Printing on behalf of the San Diego County Air Pollution Control District (SDCAPCD). We have reviewed your request for delegation and have found the SDCAPCD programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60 including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: San Diego County APCD

With respect to the areas under the jurisdiction of the SDCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source category should be directed to the SDCAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.).*

Dated: March 29, 1984.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 84-8381 Filed 4-6-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 60

[A-9-FRL 2562-4]

Delegation of New Source Performance Standards (NSPS); State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the Washoe County District Health Department (WCDHD), State of Nevada. This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: January 31, 1984.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8236, FTS 454–8236.

SUPPLEMENTARY INFORMATION: The WCDHD has requested authority for delegation of one NSPS category. Delegation of authority was granted by a letter dated January 13, 1984 and is reproduced in its entirety as follows:

Mr. David J. Minedew,
Director, Environmental Health Services, Washoe County District Health Department, Wells Avenue at Ninth Street, P.O. Box 11130, Reno, NV

Dear Mr. Minedew: In response to your request of January 3, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard category in 40 CFR Part 60: Subpart QQ: Standards of Performance for Graphic Arts Industry: Publication Rotogravure printing. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the WCDHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source category should be directed to the WCDHD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 29, 1984.

Judith E. Ayres,
Regional Administrator.

[FR Doc. 84-8358 Filed 4-6-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 60

[A-9-FRL 2562-2]

Delegation of New Source Performance Standards (NSPS); State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the Nevada Department of Conservation and Natural Resources (NDCNR). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: January 23, 1984.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8236, FTS 454–8236.

SUPPLEMENTARY INFORMATION: The NDCNR has requested authority for delegation of certain NSPS categories. Delegation of authority was granted by a letter dated December 19, 1983 and is reproduced in its entirety as follows:

Mr. Richard Serdoz,
Air Quality Office, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources, Capitol Complex, Carson City, NV

Dear Mr. Serdoz: In response to your request of November 15, 1983, I am pleased to inform you that we are delegating to your agency authority to implement and enforce two New Source Performance Standard (NSPS) categories in 40 CFR Part 60: Subpart RR—Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations and Subpart VV—Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the NDCNR, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the NDCNR at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 29, 1984.

Judith E. Ayres,
Regional Administrator.

[FR Doc. 84-8360 Filed 4-6-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[A-9-FRL 2562-3]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the Pima County Health Department (PCHD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary

program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8236, FTS 454–8236.

SUPPLEMENTARY INFORMATION: The PCHD has requested authority for delegation of certain NSPS and NESHAPS categories. Delegation of authority was granted by a letter dated March 16, 1984 and is reproduced in its entirety as follows:

Patricia A. Nolan, M.D.,
Director, Pima County Health Department, 151 West Congress Street, Tucson, AZ

Dear Dr. Nolan: In response to your request of February 24, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) promulgated as of June 8, 1983 listed below. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable. This delegation includes authority for the following new source categories:

NSPS	40 CFR part 60, subpart
General Provisions	A.
Glass Manufacturing Plants	CC.
Surface Coating of Metal Furniture	EE.
Lead-Acid Battery Manufacturing Plants	KK.
Automobile & Light-Duty Truck Surface Coating Operations	MM.
Phosphate Rock Plants	NN.
Ammonium Sulfate	PP.
Graphic Arts Industry: Publication Rotogravure Printing.	QQ.
Industrial Surface Coating: Large Appliances	SS.
Metal Coil Surface Coating	TT.
Asphalt Processing and Asphalt Roofing Manufacturers.	UU.

NESHAPS	40 CFR part 61, subpart
General Provisions	A.
Beryllium Rocket Motor Firing	D.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA 's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,
Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the PCHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the PCHD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.).*

Dated: March 29, 1984.

Judith E. Ayres,
Regional Administrator.

[FR Doc. 84-9359 Filed 4-6-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL 2561-5]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the San Joaquin County Air Pollution Control District (SJCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: January 23, 1984.

ADDRESS: San Joaquin County Air Pollution Control District, 1601 E. Hazelton Avenue, Stockton, CA 95210.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8236, FTS 454–8236.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the SJCAPCD. Delegation of authority was granted by a letter dated December 22, 1983 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources, Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of December 5, 1983, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) on behalf of the San Joaquin County Air Pollution Control District (SJCAPCD). We have reviewed your request for delegation and have found the SJCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following sources categories:

NSPS	40 CFR, part 60, subpart
Surface Coating of Metal Furniture	EE.
Lead-Acid Battery Manufacturing Plants	KK.
Phosphate Rock Plants	NN.
Graphic Arts Industry: Publication Rotogravure Printing.	QQ.
Pressure Sensitive Tape and Label Surface Coating.	RR.
Industrial Surface Coating: Large Appliances	SS.
Metal Coil Surface Coating	TT.
Asphalt Roofing and Asphalt Roofing Manufacture	UU.

In addition, we are redelegating the following NSPS and National Emission Standards for Hazardous Air Pollutants (NESHAPS) categories since the SJCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR, part 60, subpart
General Provisions	A.
Fossil-Fuel Fired Steam Generators	D.
Electric Utility Steam Generators	Da.
Incinerators	E.
Portland Cement Plants	F.
Nitric Acid Plants	G.
Sulfuric Acid Plants	H.
Asphalt Concrete Plants	I.
Petroleum Refineries	J.
Storage Vessels for Petroleum Liquids	K.
Petroleum Storage Vessels	Ka.
Secondary Lead Smelters	L.
Secondary Brass & Bronze Ingot Production Plants.	M.
Iron and Steel Plants (BOPF)	N.
Sewage Treatment Plants	O.
Primary Copper Smelters	P.
Primary Zinc Smelters	Q.
Primary Lead Smelters	R.
Primary Aluminum Reduction Plants	S.
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T.
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U.
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V.
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W.
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X.

NSPS	40 CFR, part 60, subpart
Coal Preparation Plants	Y.
Ferroalloy Production Facilities	Z.
Iron and Steel Plants (Electric Arc Furnaces)	AA.
Kraft Pulp Mills	BB.
Glass Manufacturing Plants	CC.
Grain Elevators	DD.
Stationary Gas Turbines	GG.
Lime Manufacturing Plants	HH.
Automobile & Light-Duty Truck Surface Coating Operations	MM.
Ammonium Sulfate	PP.

NESHAPS	40 CFR, part 61, subpart
General Provisions	A.
Asbestos	B.
Beryllium	C.
Beryllium Rocket Motor Firing	D.
Mercury	E.
Vinyl Chloride	F.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: San Joaquin County Air Polution Control District

With respect to the areas under the jurisdiction of the SJCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the SJCAPCD at the address shown in the **ADDRESS** section of the notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 29, 1984.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 84-8362 Filed 4-6-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL 2561-4]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf or the North Coast Unified Air Quality Management District. This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: January 23, 1984.

ADDRESS: North Coast Unified Air Quality Management District, 5630 South Broadway, Eureka, CA 95501.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8236, FTS 454-8236.

SUPPLEMENTARY INFORMATION: On November 1, 1982, the Del Norte County and the Trinity County Air Pollution Control Districts merged with the Humboldt County Air Pollution Control District to be known as the North Coast Unified Air Quality Management District (NCUAQMD). These address changes are corrected in 40 CFR 60.4 and 61.4.

The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the NCUAQMD. Delegation of authority was granted by a letter dated December 22, 1983 and is reproduced in its entirety as follows:

Mr. James D. Boyd,

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of December 5, 1983, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the North Coast Unified Air Quality Management District (NCUAQMD). We have reviewed your request for delegation and have found the NCUAQMD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR, Part 60, Subpart
General Provisions	A.
Fossil-Fuel Fired Steam Generators	D.
Electric Utility Steam Generators	Da.
Incinerators	E.
Portland Cement Plants	F.
Nitric Acid Plants	G.
Sulfuric Acid Plants	H.
Asphalt Concrete Plants	I.
Petroleum Refineries	J.
Storage Vessels for Petroleum Liquids	K.
Petroleum Storage Vessels	Ka.
Secondary Lead Smelters	L.
Secondary Brass & Bronze Ingot Production Plants	M.
Iron and Steel Plants (BOPF)	N.
Sewage Treatment Plants	O.
Primary Copper Smelters	P.
Primary Zinc Smelters	Q.
Primary Lead Smelters	R.
Primary Aluminum Reduction Plants	S.
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	T.
Phosphate Fertilizer Industry: Superphosphoric Acid Plants	U.
Phosphate Fertilizer Industry: Diammonium Phosphate Plants	V.
Phosphate Fertilizer Industry: Triple Superphosphate Plants	W.
Phosphate Fertilizer Industry: Granular Triple Superphosphate	X.
Coal Preparation Plants	Y.
Ferroalloy Production Facilities	Z.
Iron and Steel Plants (Electric Arc Furnaces)	AA.
Kraft Pulp Mills	BB.
Glass Manufacturing Plants	CC.
Grain Elevators	DD.
Surface Coating of Metal Furniture	EE.
Stationary Gas Turbines	GG.
Lime Manufacturing Plants	HH.
Lead-Acid Battery Manufacturing Plants	KK.
Automobile & Light-Duty Truck Surface Coating Operations	MM.
Phosphate Rock Plants	NN.
Ammonium Sulfate	PP.
Graphic Arts Industry: Publication Rotogravure Printing	QQ.
Industrial Surface Coating: Large Appliances	SS.
Metal Coil Surface Coating Operations	TT.
Asphalt Processing and Asphalt Roofing Manufacture	UU.
Beverage Can Surface Coating	WW.
Bulk Gasoline Terminals	XX.

NESHAPS	40 CFR, Part 61, Subpart
General Provisions	A.
Asbestos	B.
Beryllium	C.
Beryllium Rocket Motor Firing	D.
Mercury	E.
Vinyl Chloride	F.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,
Judith E. Ayers,
Regional Administrator.

cc: North Coast Unified Air Quality Management District

With respect to the areas under the jurisdiction of the NCUAQMD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the NCUAQMD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 29, 1984.
Judith E. Ayres,
Regional Administrator.

PARTS 60 AND 61—[AMENDED]

Subpart A of Parts 60 and 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart A—General Provisions

§§ 60.4 and 61.04 [Amended]

Sections 60.4(b)(F) and 61.04(b)(F) are both amended by removing the addresses of the Del Norte County Air Pollution Control District, Humboldt County Air Pollution Control District, and the Trinity County Air Pollution Control District and adding the address for the North Coast Unified Air Quality Management District to read as follows:

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(b) * * *

(F) * * *

North Coast Unified Air Quality Management District, 5630 South Broadway, Eureka, CA 95501

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[FR Doc. 84-8363 Filed 4-6-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[A-9-FRL 2561-3]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Kern County Air Pollution Control District (KCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: February 22, 1984.

ADDRESS: Kern County Air Pollution Control District, 1601 H Street, Suite 250, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8236, FTS 454-8236.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the KCAPCD. Delegation of authority was granted by a letter dated February 9, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of January 24, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) on behalf of the Kern County Air Pollution Control District (KCAPCD). We have reviewed your request for delegation and have found the KCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories.

NSPS	40 CFR, part 60, subpart
Beverage Can Surface Coating Industry	WW.
Bulk Gasoline Terminals	XX.

In addition, we are redelegating the following NSPS and National Emission Standards for Hazardous Air Pollutants (NESHAPS) categories since the KCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR, part 60, subpart
General Provisions	A.
Fossil-Fuel Fired Steam Generators	D.
Electric Utility Steam Generators	Da.
Incinerators	E.
Portland Cement Plants	F.
Nitric Acid Plants	G.
Sulfuric Acid Plants	H.
Asphalt Concrete Plants	I.
Petroleum Refineries	J.
Storage Vessels for Petroleum Liquids	K.
Petroleum Storage Vessels	Ka.
Secondary Lead Smelters	L.
Secondary Brass & Bronze Ingot Production Plants.	M.
Iron and Steel Plants (BOPF)	N.
Sewage Treatment Plants	O.
Primary Copper Smelters	P.
Primary Zinc Smelters	Q.
Primary Lead Smelters	R.
Primary Aluminum Reduction Plants	S.
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T.
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U.
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V.
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W.
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X.
Coal Preparation Plants	Y.
Ferroalloy Production Facilities	Z.
Iron and Steel Plants (Electric Arc Furnaces)	AA.
Kraft Pulp Mills	BB.
Glass Manufacturing Plants	CC.
Grain Elevators	DD.
Surface Coating of Metal Furniture	EE.
Stationary Gas Turbines	GG.
Lime Manufacturing Plants	HH.
Lead-Acid Battery Manufacturing Plants	KK.
Automobile & Light-Duty Truck Surface Coating Operations.	MM.
Phosphate Rock Plants	NN.
Ammonium Sulfate	PP.
Graphic Arts Industry: Publication Rotogravure Printing.	QQ.
Industrial Surface Coating: Large Appliances	SS.
Metal Coil Surface Coating	TT.
Asphalt Processing and Asphalt Roofing Manufacture.	UU.

NESHAPS	40 CFR, part 61, subpart
General Provisions	A.
Asbestos	B.
Beryllium	C.
Beryllium Rocket Motor Firing	D.
Mercury	E.
Vinyl Chloride	F.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,
Judith E. Ayres,
Regional Administrator.

cc: Kern County Air Pollution Control District

With respect to the areas under the jurisdiction of the KCAPCD, all reports, applications, submittals, and other communications pertaining to the above

listed NSPS and NESHAPS source categories should be directed to the KCAPCD at the address shown in the address section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 29, 1984.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 84-8364 Filed 4-6-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 461

[WH-FRL 2516-2]

Battery Manufacturing Point Source Category, Effluent Limitations Guidelines, Pretreatment Standards, And New Source Performance Standards

Correction

In FR Doc. 84-6236 beginning on page 9108 in the issue of Friday, March 9, 1984, make the following corrections:

1. On page 9108, column 1, in the Dates paragraphs, line 6, "April 18, 1984" should read "April 23, 1984".
2. On page 9108, column 2, line 22, "May 9, 1984" should read "May 14, 1984".
3. On page 9113, column 1, line 22, "(153,437) pounds" should read "(153,437 pounds)".
4. On page 9118, column 2, line 26, "Lechlanche" should read "Leclanche".
5. On page 9119, column 3, third line from the bottom of the page, "ananlysis" should read "analysis".
6. On page 9120, column 2, line 18, "may be in" should read "may be an".
7. On page 9120, column 3, line 21, "discharges" should read "dischargers".
8. On page 9123, column 1, second line from the bottom of the page, "For these employees" should read "For those employees".
9. On page 9127, column 3, line 16, "carinogenicity"should read "carcinogenicity".
10. On page 9129, column 3, Appendix C, item 033, should read "033 1, 2-dichloropropyle (1,3-dichloropropene)".
11. On page 9130, column 3, item 017 should read "017 Bis(chloromethyl) ether".
12. On page 9130, column 3, item 018 should read "018 Bis (2-chloroethyl) ether".
13. On page 9131, column 1, item 052 should read "052 Hexachlorobutadien".
14. On page 9132, column 3, item 053 should read "053 Hexachlorocyclopentadiene".
15. On page 9133, column 3, Appendix F, item 014 should read "014 1,1,2-trichloroethane".
16. On page 9137, column 2, in § 461.13(a)(1), in the first table, the last entry, "(2) Subpart A—Impregnated Anodes—NSPS." should be removed and inserted as the heading at the top of the second table in the paragraph.
17. On page 9140, column 1, in § 461.31(a), line 2, "125.30-32," should read "125.30-125.32,".
18. On page 9141, column 1, § 461.32(a), line 2, "125.30-32," should read "125.30-125.32,".
19. On page 9145, column 3, in § 461.63(a)(5), in the table, "BAT Effluent Limitations" should be deleted.
20. In § 461.70(a)(11), on page 9147, column 3, in the table, "Metric units—mg/kg of silver peroxide produced" should read "Metric units—mg/kg of silver in silver peroxide produced".
21. In § 461.72(a)(4), on page 9148, column 2, in the table, "Metric units—mg/kg of Zinc deposited" should read "Metric units—mg/kg of zinc deposited".
22. In § 461.72(a)(11), on page 9148, column 3, in the table, "Metric units—mg/kg of silver peroxide produced" should read "Metric units—mg/kg of silver in silver peroxide produced".
23. In § 461.75(a)(9), on page 9151, column 3, in the table, "Metric units—mg/kg of silver peroxide produced" should read "Metric unit mg/kg of silver in silver peroxide produced."

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6594]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certian flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 287-0222, 500 C Street, SW., FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies

that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Missouri: Holt	Unincorporated areas	290157A	Mar. 1, 1984, emergency	Jan. 18, 1984.
Nebraska: Dawson	do	310058A	Mar. 8, 1984, emergency	Oct. 18, 1977.
Minnesota: Aitkin	Palisade, city of	270004B	Mar. 8 1984, emergency, Mar. 8 1984, regular	Aug. 2, 1974 June 11, 1976, and Mar. 1, 1984.
Idaho: Franklin	Preston, city of	160186	Mar. 14, 1984, emergency	Aug. 29, 1975.
Nevada: Eureka	Unincorporated areas	320028	Mar. 9, 1984, emergency	Dec. 21, 1982.
California: San Mateo	East Palo Alto, city of	060708	Mar. 19 1984, emergency	
Pennsylvania: Bedford	Bloomfield, township of	421332A	do	Jan. 31, 1975 and Sept. 12, 1980.
Indiana: Crawford	Alton, town of	180031B	Mar. 19, 1984, emergency, Mar. 19, 1984, regular.	Jan. 23, 1974, July 2, 1976, and Aug. 1, 1983.
Idaho: Jerome	Unincorporated areas	160228A	Mar. 20, 1984, emergency	Oct. 25, 1977.
Utah: Kane	Kanab, city of	490085	do	Oct. 29, 1976.
Pennsylvania: Bedford	Colerain, township of	421334	do	Jan. 3, 1975 and Sept. 12, 1980.
Colorado: Logan	Iliff, town of	080007A	do	Dec. 27, 1974 and Sept. 12, 1978.
Nebraska: Harlan	Orleans, city of	310394	do	July 9, 1976.
Pennsylvania: York	Lewisberry, borough of	420298	Jan. 27, 1976, emergency, Nov. 17, 1982, regular, Nov. 17, 1982, suspended, Mar. 20, 1984, reinstated.	Aug. 2, 1974 and Mar. 5, 1976.
Idaho: Franklin	Unincorporated areas	160060A	Mar. 28, 1984, emergency	
Oklahoma: Pottawatomie	do	400496A	do	May 25, 1982.
Alabama: Cherokee	Cedar Bluff, town of	015010 New	Mar. 28, 1984, emergency	
Tennessee: McMinn	Englewood, town of	470271A	do	May 17, 1974.
Region I				
Connecticut: Fairfield	Bridgeport, city of	090002D	Mar. 1, 1984, suspension withdrawn	Sept. 13, 1974, Feb. 11, 1977, Oct. 15, 1980, and Oct. 1, 1983.
Region II				
New Jersey:				
Monmouth	Belmar, borough of	345283D	do	May 13, 1972, July 1, 1974, and Feb. 27, 1976.
Hunterdon	Clinton, township of	340505A	do	Jan 31, 1975.
Monmouth	Neptune, township of	340317C	do	July 13, 1973, Sept. 3, 1976, and Feb. 16, 1977.
Hudson	Jersey City, city of	340223B	do	July 25, 1975 and Aug. 13, 1976.
New York:				
Dutchess	Beacon, city of	360217B	do	July 26, 1974, Aug. 13, 1976, and Jan. 30, 1976.
Saratoga	Halfmoon, town of	360719C	do	June 21, 1974, June 18, 1976, and Feb. 4, 1977.
Saratoga	Corinth, town of	360715C	do	Aug. 2, 1974 and July 9, 1976.
Saratoga	Corinth, village of	360714B	do	Aug. 7, 1974 and May 28, 1976.
Saratoga	Malta, town of	360720B	do	Oct. 18, 1974 and Oct. 17, 1975.
Oneida	Vienna, town of	360562B	do	Sept. 13, 1974 and June 25, 1976.
Region III				
Pennsylvania: Chester	Warick, township of	421494B	do	Sept. 13, 1974 and July 9, 1976.
Region IV				
Alabama: Fayette	Fayette, city of	010084	do	Dec. 19, 1975.
Mississippi: Jackson	Ocean Springs, city of	285259C	do	Sept. 9, 1970, July 1, 1974, and May 14, 1976.
South Carolina:				
Georgetown	Unincorporated areas	450085C	do	Jan. 3, 1975, Apr. 7, 1977, and Oct. 1, 1983.
Georgetown	Georgetown, city of	450087C	do	June 7, 1974, Mar. 28, 1975 and Sept. 29, 1976.
Region V				
Illinois: Whiteside	Lyndon, village of	170917A	do	Oct. 8, 1976.
Wisconsin:				
Waukesha	Big Bend, village of	550477B	do	Nov. 30, 1973 and Apr. 16, 1976.
Portage	Plover, village of	550340B	do	July 11, 1975 and June 11, 1976.
Region VI				
Louisiana: St. Tammany Parish	Unincorporated areas	225205B	do	Apr. 23, 1971, July 1, 1974, and Sept. 17, 1976.
Texas:				
Jim Wells	Alice, city of	480394C	do	Dec. 28, 1973, June 25, 1976, and Dec. 6, 1977.
Harris	Seabrook, city of	485507B	do	May 28, 1970 and July 1, 1974.
Region VII				
Iowa: Polk	Unincorporated areas	190901B	do	Aug. 23, 1977.
Region VIII				
Colorado: Montrose	Montrose, city of	080125B	do	Feb. 15, 1974 and Apr. 30, 1976.
North Dakota: Dunn	Unincorporated areas	380004A	do	Mar. 1, 1984.
Region IX				
Arizona: Greenlee	Clifton, town of	040035B	do	June 7, 1974 and Mar. 25, 1977.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Region I				
Connecticut: Fairfield	Stratford, town of	090016C	Mar. 15, 1984, suspension withdrawn	Feb. 28, 1975, June 1, 1978, and Aug. 1, 1978.
Rhode Island: Newport	Tiverton, town of	440012C	do	May 24, 1974 and May 2, 1977.
Region II				
New Jersey:				
Sussex	Franklin, borough of	340446B	do	May 17, 1974 and June 11, 1976.
Sussex	Hamburg, borough of	340450B	do	June 14, 1974 and Feb. 6, 1976.
New York:				
Putnam	Cold Spring, village of	360064B	do	Mar. 8, 1974 and June 4, 1976.
Dutchess	Fishkill, village of	360218B	do	June 21, 1974 and June 18, 1976.
Oneida	Floyd, town of	360528B	do	Aug. 9, 1974 and June 18, 1976.
Schoharie	Middleburgh, town of	360744B	do	Aug. 30, 1974 and June 25, 1976.
Schoharie	Middleburgh, village of	361245D	do	May 31, 1974, Sept. 12, 1975, Sept. 10, 1976, and Jan. 13, 1978.
Region IV				
Florida: Manatee	Unincorporated areas	120153B	do	June 28, 1971, July 1, 1974, and July 20, 1976.
Mississippi:				
Harrison	Biloxi, city of	285252C	do	June 27, 1970, Sept. 11, 1970, Apr. 16, 1976, and Aug. 8, 1980.
Jackson	Unincorporated areas	285256C	do	Sept. 18, 1970, Apr. 3, 1978, and Oct. 1, 1980.
Jackson	Pascagoula, city of	285260	do	May 14, 1976.
South Carolina: Charleston	Charleston, city of	455412C	do	Apr. 9, 1971, Apr. 27, 1971, May 25, 1973, July 1, 1974, Sept. 3, 1976, and Nov. 12, 1976.
Region V				
Michigan: Saginaw	Bridgeport, charter township of	260186B	do	Feb. 8, 1974 and Oct. 24, 1975.
Wisconsin:				
La. Crosse	Unincorporated areas	550217A	do	Mar. 15, 1984.
Pierce and St. Croix	Spring Valley, village of	550331C	do	June 14, 1974, July 18, 1975, and Mar. 12, 1980.
Dunn	Wheeler, village of	550124B	do	Aug. 2, 1974 and Apr 23, 1976.
Region VIII				
Colorado: Delta	Unincorporated areas	080041B	do	May 10, 1977.
Region X				
Washington: Snohomish	do	535534	do	Dec. 23, 1971 and Dec. 13, 1977.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-9316 Filed 4-6-84; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

[Federal Acquisition Circular 84-1]

Federal Acquisition Regulation

Correction

In FR Doc. 84-8751, beginning on page 12972, in the issue of Friday, March 30, 1984, on page 12974, in the third column, in paragraph 15, "TABLE OF CONTENTS" should be removed and replaced with "Part 27—Patents, Data, and Copyrights".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1310

[No. 36135]

Rules Governing Publication of Exceptions Ratings Higher Than Classification Ratings

AGENCY: Interstate Commerce Commission.

ACTION: Removal of rules.

SUMMARY: The Commission has repealed 49 CFR 1310.7(r). This paragraph codified the principle that classification ratings and rules, together with the class rates, generally provide the highest rates and charges for the transportation of an article. The Commission found that, without a basic unity in classification ratings throughout the country, it would be virtually impossible to maintain a just and reasonable relationship between competing commodities. The Commission concluded that neither the Commission's nor shippers' resources should be expended to monitor and challenge tariff provisions that produce charges higher than class rates when such provisions could not be justified. Therefore, 49 CFR 1310.7(r) requires that carriers submit justification statements with any tariff provision that would result in charges higher than the class rates.

EFFECTIVE DATE: This decision will be effective on May 9, 1984.

FOR FURTHER INFORMATION CONTACT: Wendy Tillis (202) 275-6445

or

Louis E. Gitomer, (202) 275-7245

SUPPLEMENTARY INFORMATION: Notice of proposed rules in the proceeding appeared at 46 FR 56629, November 18, 1981. Additional information is

contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

Environmental and Energy Considerations

We adopt our preliminary finding in our notice of proposed rules that this action will not significantly affect the quality of the human environment or the conservation energy resources. No comments have been submitted on any matter indicating that a contrary position is warranted.

Regulatory Flexibility Analysis

We also reaffirm our preliminary finding that this proceeding will not have a significant economic impact on a substantial number of small entities. Repeal of § 1310.7(r) does not affect the substantive right of shippers to reasonable rates or ratings. In addition, repeal of the section may have a small, albeit beneficial, impact upon an unascertainable number of small, carrier entities by reducing the amount of reporting and paperwork required of them.

List of Subjects in 49 CFR Part 1310

Exports, Freight, Imports, Intermodal Transportation, Maritime carriers, Motor carriers.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: April 2, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1310—FREIGHT RATE TARIFFS AND CLASSIFICATION OF MOTOR COMMON CARRIERS

§1310.7 [Amended]

Paragraph (r) of § 1310.7 is removed and reserved for future use.

[FR Doc. 84–9371 Filed 4–6–84; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 49, No. 69
Monday, April 9, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Proposed Changes in Operating Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule makes a number of changes in the administrative rules and regulations. Some of the proposed changes are needed to recognize recent order changes. One such change involves Raisin Administrative Committee representation and nomination procedures. Other proposed changes update provisions to bring them into agreement with current operating procedures. These changes include a revision in the definition of Natural (sun-dried) Seedless raisins to reflect a new drying process, and in the rates of payment the Committee makes to raisin handlers for receiving, storing, fumigating, and handling of reserve tonnage raisins during and beyond the crop year of acquisition. The proposed changes are based on a unanimous recommendation by the Raisin Administrative Committee, which works with USDA in administering the marketing order program.

DATES: Comments must be received by April 19, 1984.

ADDRESS: Comments should be sent to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material should be submitted, and they shall be made available for public inspection at the Office of the Hearing Clerk, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classfied a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Frank M. Grasberger, has determined that an emergency situation exists which warrants publication of this proposal with less than a 30-day public comment period. This proposal prescribes, among other things, Raisin Administrative Committee districting, representation, and nomination provisions. These provisions should be made effective as soon as possible so the nomination and selection of the Committee can be completed for the term of office beginning May 1, 1984. Other proposed changes recognize current industry operating practices, provide handlers with more flexibility in meeting requirements, and will generally benefit the industry through more flexible regulation. Also, costs of services provided by handlers for the Committee in maintaining reserve pools, such as labor, employee benefits, plant, and administrative overhead and equipment, have increased substantially since the current rates of compensation were established. The proposed rates prescribed herein should be established promptly so that handlers can be paid at the increased rates as soon as possible. For all of the above reasons, a comment period of less than 30-days is necessary.

This proposal amends Subpart—Administrative Rules and Regulations (7 CFR 989.102–989.176) and Subpart—Schedule of Payments (7 CFR 989.401). These subparts are operative pursuant to the marketing agreement and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California (hereinafter referred to collectively as the "order"). (7 CFR Part 989; 48 FR 32973). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

In § 989.110, clarifications are made in the definitions of certain seedless raisin varietal types and to recognize the recent use of MP–11 (a fungicide) by producers in the production of sun-dried seedless raisins. California raisins are classed into varietal types under the order for the purpose of applying quality and volume controls. MP–11 raisins are similar to raisins in the Natural (sun-dried) Seedless category, and a change in the current definition of that category is necessary for MP–11 raisins to be included in that category.

Other changes are proposed in the definitions of the Dipped Seedless and Oleate and Related Seedless varietal types to recognize current industry practices in classifying raisins into these varietal types. Seedless raisins which are dipped in or sprayed with water to expedite the artificial drying process are now being classed as Dipped Seedless raisins, and the proposed definition is limited to raisins produced in that manner. Under the proposal, when chemicals are introduced to expedite the drying process, such raisins would fall into the Oleate and Related Seedless varietal type, whether they are sun-dried or artificially dried. The exclusions specified in the definitions of these two varietal types are proposed to be deleted because they are no longer needed under current industry classifying procedures. A change also is proposed in the definition of Golden Seedless raisins to make the color ranges more specific and to emphasize the "golden yellow" color in the range.

Section 989.166(b) would be revised to specify indentification, delivery, and transfer requirements for Natural (sun-dried) Seedless raisins. Although, the industry is in agreement that MP–11 raisins should be considered as Natural (sun-dried) Seedless raisins for volume and quality control regulation, some handlers have indicated that they will not pack MP–11 raisins, and have informed their growers accordingly.

To recognize this when a physical transfer of raisins from one handler to another may be necessary, the Committee has proposed identification, delivery, and transfer requirements for Natural (sun-dried) Seedless raisins. Handlers who receive such raisins would be required to identify them by having the Inspection Service attach a Committee pallet control card which shall remain attached until such raisins are processed or disposed of in natural condition. A packer may set aside such

raisins to satisfy the reserve obligation for Natural (sun-dried) Seedless raisins. However, if the handler chooses to deliver such raisins to the Committee or to another handler, such delivery only will be accepted if the receiving handler or the Committee approves of the receipt of such raisins.

The July 20, 1983, order amendment changed Committee composition and nomination procedures so that representation is given each industry segment in accordance wth its share of raisin production. The first category of producers established by the order amendment represents major cooperative marketing organizations. The order requires that representatives of this category be members of the cooperative marketing association(s) engaged in the handling of raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year. The second category of producers is for cooperative bargaining association(s). The order requires that these representatives be members of the cooperative bargaining association(s). The third and final category of producers established by the recent order amendment contains the balance of the 35 producer members on the Committee. This category includes all independent producers and producers who are members of cooperative marketing associations which acquired less than 10 percent of the total raisin acquisitions during the preceding crop year.

Currently, the producer membership of 35 is chosen from nineteen districts necessitating many meetings. In order to effect an industry-wide savings in time, effort, and expense involved in holding nomination meetings, the associations within Categories 1 and 2 would nominate persons from their membership to serve on the Committee. Three districts are proposed to provide equitable representation for Category 3. Each of the three districts would be able to nominate at least one representative, and nomination meetings would be held in each of the three producer districts.

The ten handler members on the Committee are required to be divided into two groups—those representing major marketing association(s) and all others. The representation for each of these two groups is determined according to the ratio obtained by comparing raisin acquisitions of each group to the total acquisitions by all handlers during the preceding crop year.

The first handler group includes cooperative marketing association(s), each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year. The second group includes all other handlers, including all independent handlers and any small cooperative marketing association(s) which acquired less than 10 percent of the total raisin acquisitions during the preceding crop year.

The first handler group will nominate persons from their respective organizations to serve on the Committee. Handlers nominated from the second group are required to be nominated by all handlers in that group in a manner determined by the Committee and approved by the Secretary.

In accordance with the recommendation of the Committee, membership for the second handler group is proposed to be apportioned into three subgroups. The first subparagraph established in § 989.126(b)(1) consists of two members to be chosen from the four handlers, other than major cooperative marketing associated handler(s), who acquired the largest percentages of the total raisin acquisitions during the preceding crop year. The second subgroup described in § 989.126(b)(2) consists of two members to be selected from the six handlers, other than major cooperative marketing association handlers, who acquired the next largest percentages of the total raisin acquisitions during the preceding crop year. The third and final group of handlers described in § 989.126(b)(3) consists of all the remaining and independent handlers, including small cooperative marketing association handlers and processors. In 1984, the third handler subgroup will have two handler members. Handler nominations will be obtained by mail ballot.

The order amendment also abolished the Executive Operations Committee and transferred its compliance responsibility to the Raisin Administrative Committee. The elimination of the Executive Operations Committee requires the deletion of §§ 989.142 and 989.143. These sections prescribe districting and representation procedures applicable to the Executive Operation Committee and are no longer needed. Similarly, the reference to the Executive Operations Committee in § 989.139 should be eliminated because it is not needed.

A change is proposed to be made in § 989.158(a)(1)(iii) to give handlers greater flexibility in reporting the weight of their raisin acquisitions. Currently, the weights must be substantiated by an official "State Certificate of Weights and Measures" issued by a public weightmaster. Under the change, the Committee can authorize the reporting of weights on any document which accurately reflects the weight of each lot tendered. This would enable handlers to submit computer lists of lots, instead of individual weight certificates to the Committee. This proposed change requires a conforming change in § 989.173.

Section 989.159(g)(2)(i)(*e*), in part, requires that any shipment or transfer of off-grade raisins, other failing raisins, or raisin residual material be made only to firms with an agreement with the Committee. Under that agreement, the firms agree to use such raisins and raisin residual material only in eligible non-normal outlets such as livestock feed and wineries, and if not so used, to pay the Committee liquidated damages. Currently, the amount of liquidated damages prescribed in § 989.159(g)(2)(iii) is $400 for each ton shipped or disposed of in unauthorized outlets. Rather than specify a specific dollar figure, the Committee has proposed that the amount of liquidated damages be the applicable free tonnage price. In recent years, the free tonnage price has been more than three times the amount of liquidated damages. The proposed change in § 989.159(g)(2)(iii) provides greather flexibility in the computation of liquidated damages and a more accurate measurement of the value of such raisins.

Another change in the order altered the method used to establish seasonal marketing policy and volume regulations. Formerly, the Committee recommended preliminary percentages on or before October 5 of each crop year for approval of the Secretary. Under the new procedures, the Committee computes and announces initial free and reserve percentages for a crop year. The proposed change in the provisions on time limits for setting aside reserve raisins in § 989.166(c)(1) is necessary to bring these provisions into conformity with order provisions requiring the establishment of reserve pools after the Committee computes and announces preliminary percentages. Formerly, the pools were established after the preliminary percentages were designated by the Secretary through informal rulemaking.

Finally, an increase in handler payment rates is proposed for: (1) Receiving, storing, fumigating, and handling reserve tonnage raisins during the crop year of acquisition from $36 to $38.75 per ton; (2) holding reserve tonnage raisins beyond the crop of acquisition from $1.80 to $1.94 per ton for each month of the three-month period ending November 30 and from 93 cents to $1.00 per ton per month for each

of the next nine months; and (3) boxes and bins containing reserve raisins held beyond the crop year of acquisition. The total payment for boxes is proposed to be increased from 75 cents to $1.00 per box per year, and for bins, the total payment is proposed to be increased from $6.00 to $10.00 per bin per year.

Funds to pay these costs are deducted from proceeds from the sale of reserve tonnage raisins held by handlers for the account of the Committee. Net proceeds from such sales are distributed to equity holders in the reserve pool.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Raisins and grapes.

PART 989—[AMENDED]

Therefore, Subpart—Administrative Rules and Regulations (7 CFR 989.102–989.176), and Subpart—Schedule of Payments (7 CFR 989.401) are proposed to be amended as follows:

Subpart—Administrative Rules and Regulations

1. Section 989.102 is revised to read as follows:

§ 989.102 Inspection Service.

"Inspection Service" means the Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service of the United States Department of Agriculture.

2. Section 989.110 is revised to read as follows:

§ 989.110 Varietal types.

Pursuant to § 989.10, specific definitions for each varietal type of raisins contained in that section are as follows:

(a) Natural (sun-dried) Seedless includes all sun-dried seedless raisins that possess characteristics similar to Natural Thompson Seedless raisins which, for the purpose of expediting drying, have not been dipped in or sprayed with water, with or without soda, oil or other chemicals prior to or during the drying process.

(b) Dipped Seedless includes all raisins produced by artificial dehydration of seedless grapes which, in order to expedite drying, have been dipped in or sprayed with water only after such grapes have been removed from the vine.

(c) Oleate and Related Seedless includes all raisins produced by sun-drying or artificial dehydration of seedless grapes which, in order to expedite drying, are dipped in or sprayed with water with soda, oil, Ethyl Oleate, Methyl Oleate or any other chemicals either while such grapes are on the vine or after they have been removed from the vine.

(d) Golden Seedless includes all seedless raisins whose color generally varies from golden yellow to dark amber.

(e) Muscats (including other raisins with seeds) include all raisins which usually contain seeds and possess characteristics similar to Muscat raisins.

(f) Sultana includes all raisins which usually contain an undeveloped (vestigial) seed and possess characteristics similar to Sultana raisins.

(g) Zante Currant includes all raisins that possess characteristics similar to those produced from Black Corinth or White Corinth grapes.

(h) Monukka includes all raisins that possess characteristics similar to those produced from Monukka and Black Imperial grapes.

3. A new § 989.111 is added to read as follows:

§ 989.111 Independent producer and small cooperative producer.

(a) "Independent producer" means any producer who is not a member of a cooperative bargaining association or a cooperative marketing association, nor has sold for cash to a cooperative marketing association.

(b) "Small cooperative producer" means any producer who is a member of a cooperative marketing association which acquired less than 10 percent of the total raisin acquisitions during the crop year preceding the year in which nominations are held.

4. A new § 989.115 is added to read as follows:

§ 989.115 Independent handler, major cooperative marketing association handler, and small cooperative marketing association handler.

(a) "Independent handler" means any handler who is not a cooperative marketing association of producers.

(b) "Major cooperative marketing association handler" means any handler who is a cooperative marketing association of producers which acquired not less than 10 percent of the total raisins acquisitions during the crop year preceding nominations.

(c) "Small cooperative marketing association handler" means any handler who is a cooperative marketing association of producers which acquired less than 10 percent of the total raisin acquisitions during the crop year preceding nominations.

5. Section 989.122 is revised to read as follows:

§ 989.122 Districts for independent and small cooperative producer representation on the Committee.

For the purposes of § 989.26(c) and commencing with the term of office beginning May 1, 1984, independent and small cooperative producer districts are as follows:

(a) District No. 1—All of the counties north of Fresno County.

(b) District No. 2—All of the counties south of Fresno County.

(c) District No. 3—All of Fresno County.

6. Section 989.126 is revised to read as follows:

§ 989.126 Representation on the Committee.

(a) To provide independent and small cooperative producers equitable representation throughout the production area commencing with the term of office beginning May 1, 1984, representation shall be apportioned among the three districts specified in § 989.122. Districts 1 and 2 shall each have one producer member, and District 3 shall have the remaining producer members to which independent and small cooperative producers are entitled pursuant to § 989.26(c).

(b) Pursuant to § 989.26(d) and commencing with the term of office beginning May 1, 1984, apportionment of the independent and small cooperative marketing association handlers shall be:

(1) Two members selected from and representing the four handlers other than major cooperative marketing association handlers who acquired the largest percentage of the total raisin acquisitions during the preceding crop year;

(2) Two members selected from and representing the six handlers other than major cooperative marketing association handler(s) who acquired the next largest percentage of the total raisin acquisitions during the preceding crop year; and

(3) The remaining members(s) selected from and representing all other handlers, including small cooperative marketing association handler(s) and all processors.

§ 989.139 [Amended]

7. Section 989.139 is amended by removing the words "or Executive Operations Committee" from the first sentence.

§§ 989.142 and 989.143 [Removed]

8. Sections 989.142 and 989.143 are removed.

9. Section 989.158(a)(1)(iii) is revised to read as follows:

§ 989.158 Natural condition raisins.

(a) * * *

(1) * * *

(iii) The weight of each lot of raisins tendered for receiving, storage, reconditioning, acquisition, or disposition shall be substantiated by an official "State Certificate of Weights and Measures" issued by a public weighmaster, whether located at the inspection point or otherwise, or such other document approved by the Committee which accurately reflects the weight of each lot tendered. The net weight of such raisins for the purposes of this part, shall be determined by deducting the sand tare and box tare from the gross weight of the raisins. The sand tare shall be the weight of the sand and other foreign material removed from the raisins by passing the raisins over a screen (of a type commonly used by the industry for such purpose) having 36 square openings to the square inch, with each opening being one-eight of an inch square.

* * * * *

10. Section 989.159(g)(2)(iii) is revised to read as follows:

§ 989.159 Regulation of the handling of raisins subsequent to their acquisition.

* * * * *

(g) * * *

(2) * * *

(iii) Each such application shall also include a provision for liquidated damages wherein the handler, in consideration of the Committee approving his application, agrees that in the event any raisins or raisin residual material covered by the approved application should be shipped to points outside of the continental United States or to Alaska, or disposed of in other than elibible non-normal outlets, by any person, it will cause serious and substantial damage to the Committee, to producers, and to handlers of raisins and will be difficult, if not impossible, to prove the extent of such damage. Therefore, the handler shall pay to the Committee a sum equal to the established field price as liquidated damages for each ton so shipped or disposed of, such sum being a fair measure of damages and not a penalty.

* * * * *

11. Section 989.166 (b)(1) and (c)(1) are revised to read as follows:

§ 989.166 Reserve tonnage generally.

* * * * *

(b) *Setaside obligations.*—(1) *Natural (sun-dried) Seedless.* A handler who acquires any lot of natural condition Natural (sun-dried) Seedless raisins which have been dipped in or sprayed with water, with or without chemicals prior to or during the drying process, for purposes other than to expedite drying, may set aside such raisins to satisfy his reserve pool obligation: *Provided,* That such raisins shall be identified by the Inspection Service affixing to one container on each pallet or to each bin in each lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed until the raisins are processed or disposed of as natural condition raisins: *And Provided Further,* That such raisins shall not be delivered to the Committee or transferred to another handler without approval of the Committee or the receiving handler.

(2) *Mixed varietal types.* A handler who acquired any lot of natural condition raisins of mixed varietal types (commingled within their containers) shall meet the reserve tonnage setaside obligations for each varietal type contained in the mixed lot by setting aside raisins of each such varietal type which have not been mixed or commingled with raisins of any other varietal type. The obligation as to each varietal type shall be computed according to the reserve percentage established by the Secretary, and the percentage of the varietal type contained in the mixed lot as shown by the incoming inspection certificate applicable thereto.

(c) *Storage of reserve tonnage raisins.* (1) *Time limits for setting aside pool tonnage.* Handles shall be allowed 3 calendar days (exclusive of Saturdays, Sundays, and holidays), after the preliminary or interim percentages have been computed and announced by the Committee, and after the publication in the **Federal Register** of the applicable final reserve percentage established for the crop year, or after any reserve tonnage raisins are acquired subsequent to the percentages being announced or established, to segregate and properly stack each varietal type of reserve tonnage raisins.

* * * * *

12. Section 989.173 (b)(1)(ii) is revised to read as follows:

§ 989.173 Reports.

* * * * *

(b) * * *

(1) * * *

(ii) For each report required to be submitted pursuant to this paragraph, the required information shall be shown separately for each varietal type. With each report, other than that specified in paragraph (b)(4) of this section, the handler shall submit a copy of the door receipt, weight certificate or such other document approved by the Committee that accurately reflects the weight of each lot tendered, for each lot of raisins received or acquired by him during the reporting period and for each lot of raisins stored on memorandum or warehouse receipt which was returned to the tenderer during such period, which shall show the information to be contained on such receipts or weight certificates as specified in § 989.158(a)(3). At the time he submits the reports specified in paragraphs (b)(2) and (3) of this section to the Committee, each handler shall submit a copy of each such report to the Inspection Service.

13. Section 989.401 (a), (b) and (c) are revised to read as follows:

Subpart—Schedule of Payments

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall, beginning August 1, 1983, be compensated at the rate of $30.75 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by him for the account of the Raisin Adminstrative Committee during all or any part of the same crop year, and released after February 13, 1984.

(2) *Insurance.* Each handler shall be reimbursed by the Committee for inspection costs applicable to the reserve tonnage raisins, as determined by the final reserve tonnage percentage, received and held by him for the account of the Committee. Such payment shall be made at the currently applicable rate per ton paid by such handler to the Inspection Service and on the quantity reported by the handler. the Committee shall pay the cost of any inspection required by it of such reserve tonnage raisins while they are being held for its account: *Provided,* That the cost of inspection of any raisins substituted, pursuant to § 980.66(b)(3), by a handler for such reserve tonnage raisins, or which he received by transfer from another handler by purchasing, as permitted pursuant to § 989.166, a portion or all of such other handler's share of an offer, shall be borne by the handler and shall not be reimbursed to him by Committee.

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for

the account of the Committee on August 15 and the following September 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of $1.94 per ton per month, or any part thereof, for each month of the three-month period ending November 30, and $1.00 per ton per month, or any part thereof, for each month of the next nine months. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition.* Payment of rental on boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 15 and the following September 1 shall be compensated for the use of such boxes and bins. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of $1 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins twenty cents per day per bin, not to exceed a total of $10 per bin per year. For purposes of this paragraph, "box" means any container with a capacity of less than 1,000 pounds and "bin" means any container with a capacity of 1,000 pounds, or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes on the succeeding September 1.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 3, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-9316 Filed 4-6-84; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Part 1124

Milk in the Oregon-Washington Marketing Area; Termination of Proceeding on Proposed Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates a proceeding on a proposal to terminate the base-excess plan used in distributing returns to producers whose milk is priced under the Oregon-Washington Federal milk order. Termination of the base-excess plan was requested by a cooperative association. The request was supported by a second cooperative association.

Two cooperative associations representing a substantial number of producers on the market, several individual producers, two milk handlers regulated under the order, an association of Oregon dairymen, and the Oregon State Department of Agriculture submitted comments opposing the proposed termination. Because of the conflicting viewpoints expressed by interested parties and the large number of producers opposed to the proposed termination, it is concluded that the requested termination should not be implemented on the basis of this proceeding.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed Termination of Certain Provisions of the Order: Issued January 27, 1984; published February 1, 1984 (49 FR 4005).

Extension of Time for Filing Comments on Proposed Termination: Issued February 16, 1984; published February 22, 1984 (49 FR 6499).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

Notice of proposed rulemaking was published in the **Federal Register** (49 FR 4005) concerning a proposed termination of certain provisions of the Oregon-Washington milk order. Interested persons were afforded opportunity to file written data, views, and arguments thereon by February 16, 1984. The comment period was later extended until March 2, 1984 (49 FR 6499).

Statement of Consideration

The proposed termination would have terminated the base-excess payment plan effective February 1, 1984. The base-excess plan is a method of apportioning the total value of milk in the market among producers on the basis of their marketings of milk during a representative period.

Under the plan, which applies to milk delivered during the 12-month period beginning with February 1 of each year, producers are paid according to the amount of "base" they earn through deliveries during the market's four lowest months of production of the preceding calendar year. Deliveries of producers in excess of their "base" are paid for at a lower price than for base milk.

In the absence of the base-excess plan, a single uniform price would be paid directly to producers or, in the case of producers participating in the Oregon State base plan, to the Director of the Milk Stabilization Division, Oregon State Department of Agriculture, for subsequent payment to the participating producers.

Termination of the base-excess plan was requested by Northwest Dairymen's Association (NDA). Tillamook County Creamery Association submitted views in support of NDA's request. These two cooperative associations represent nearly half of the producers on the market. The basis for the proposed action was that the base-excess provisions of the Oregon-Washington milk order would not result in equitable apportionment of returns among producers due to the recently enacted milk diversion program. NDA expressed concern that the milk diversion program, which is designed to encourage dairy farmers to reduce milk production in order to alleviate the dairy surplus problem, would provide an incentive for dairy farmers to reduce production in a manner not contemplated when the base-excess plan was adopted under the order. The cooperatives were also concerned that continuation of the base-excess plan would result in inequities between producers participating in the diversion program and producers who did not contract to reduce production.

Comments opposing the proposed termination were filed by seven individual dairy farmers, two proprietary milk handlers, two cooperative associations (Farmers Cooperative Creamery and Oregon Jersey Cooperative) that represent a substantial number of producers on the market, the Oregon Dairymen's Association, and the Oregon State Department of Agriculture. The parties opposing termination contended that no statistical evidence was presented to justify such action. They also disputed proponent's claim that inequities would result between producers participating in the diversion program and producers who did not contract to reduce production. Opponents cited the low rate of participation in the diversion program as their basis for concluding

that any inequities which might exist would not be substantive.

A further point made by several commentors was that termination of the base-excess payment plan at this time would not influence producer participation in the diversion program since participating producers had to sign such contracts by January 31, 1984.

In view of the conflicting viewpoints expressed by interested parties and the large number of producers opposed to the proposed termination, it is concluded that the requested termination should not be implemented on the basis of this proceeding. Accordingly, the proceeding begun in this matter on January 27, 1984, is hereby terminated.

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C. on: April 3, 1984.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-9319 Filed 4-6-84; 8:45 am]

BILLING CODE 3410-02-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging; Proposed Exemption of Oral Contraceptives From Child-Resistant Packaging Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed exemption.

SUMMARY: The Commission is proposing to exempt certain oral contraceptives from the child-resistant packaging requirements of the Poison Prevention Packaging Act of 1970. The exemption would apply to mnemonic (memory-aid) dispenser packages of cyclically administered oral contraceptives containing estrogens and progestogens. The packaging requirements have been suspended with respect to these oral contraceptives since 1974, and a final exemption would therefore not affect their marketing.

DATE: Public comments are due no later than June 8, 1984. The exemption is proposed to become effective immediately upon its publication in final form.

ADDRESSES: Comments should be submitted, preferably with four copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Submitted comments may be seen during normal working hours on the 8th floor of 1111 18th Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Marozzi, Division of Safety Packaging and Scientific Coordination, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6477.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Framework

The Poison Prevention Packaging Act of 1970 (PPPA, 15 U.S.C. 1471–1476) authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging is often referred to as "child-resistant packaging"and is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, there are effectiveness standards for special packaging (16 CFR 1700.15), as well as a procedure for evaluating effectiveness (16 CFR 1700.20). Regulations have been issued requiring special packaging for a number of household products (16 CFR 1700.14).

2. 1974 Proposed Exemption

In April 1973 the Food and Drug Administration (FDA), which then administered the PPPA, issued a regulation requiring child-resistant packaging for human prescription drugs in oral dosage forms (38 FR 9431; April 16, 1973). That regulation became effective in April 1974.

In February 1974 the Consumer Product Safety Commission (SPSC), which had taken over responsibility for administering the PPPA in May 1973, proposed an exemption from the regulation for mnemonic (memory-aid) dispenser packages as cyclically administered oral contraceptives that contain no more than specified amounts of certain hormones (39 FR 51907; Feb. 11, 1974) [1].[1] The Commission cited "* * * a low toxicity for oral contraceptives, considerable human experience data showing no related serious personal injury or serious illness in young children, and the importance of the present form of mnemonic (memory-aid) packaging to successful hormone therapy." 39 FR 5198.

In proposing the exemption, the Commission also suspended the April 1974 effective date for the oral contraceptives covered by the proposal [1]. That suspension has remained in effect since then, so child-resistant packaging has never been required for the oral contraceptives. The suspension will remain in effect until this proceeding has been concluded.

3. Follow-Up to 1974 Proposal

The Commission received 15 comments from the public on the proposed exemption [2–16]. In addition, members of the Commission's Technical Advisory Committee (TAC) commented on the proposal [17]. The major comments address the potential adverse health effects—both acute and chronic—of oral contraceptives. This issue is discussed in detail in section B below. Some other issues raised by public and TAC commenters have been considered by the Commission staff and have resulted in changes and clarifications incorporated into the exemption that is proposed below.

B. Data on Health Effects

A number of commenters have stated that oral contraceptives could pose serious health risks to young children who ingest them [2, 3, 6, 12]. However, the Commission has carefully considered this issue and disagrees.

Over 20 years of human experience data are available on oral contraceptives, and the pharmacological, physiological, and toxicological effects of these drugs, including those from long-term therapeutic dosage, are well established [20]. The Commission believes that these data provide no evidence of either acute or chronic health effects associated with accidental ingestion of oral contraceptives by young children.

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[1] The numbers in brackets refer to the reference documents listed at the end of this notice.

This Commission position is supported by the Food and Drug Administration [21, 22, 23]. In discussing the question with Commission staff, FDA officials have observed that ample time has elapsed since the introduction of oral contraceptives into the market for any long-term health effects associated with accidental childhood ingestions to have manifested themselves. Such problems, were they to have occurred, would not have gone undetected by the medical profession. The FDA officials have emphasized the fact that current oral contraceptive products contain only a fraction of the hormone doses which were used in the early years of oral contraception. If problems were to be seen, they would have occurred with the former, higher dosage strengths.

The FDA officials have further indicated that, in spite of a high frequency of ingestion of oral contraceptives, frequency of either acute or long-term injury is one of the lowest of any class of drugs. Fewer than three percent of oral contraceptive cases reported by poison control centers in 1980 were associated with signs and symptoms, usually mild gastrointestinal effects, compared with 27 percent of all drug ingestion cases. No reports of serious acute toxic effects have been reported in the literature in more than 20 years of clinical experience. Long-term toxic effects following acute overdose are unknown and highly unlikely.

Finally, the FDA officials have made these additional observations:

1. Health effects which have been associated with long-term oral contraceptive therapy are not related to effects likely to be seen following accidental ingestions in children.

2. Chronic toxicity data, either for animals or humans, cannot be extrapolated to an acute overdose situation occurring with the oral contraceptives.

3. Oral contraceptives could probably be classified as akin to non-toxic. It would be virtually impossible for a child to ingest anywhere near what might be considered a median lethal dose. Children would become physically ill long before reaching a dose which would be considered injurious or lethal.

4. There is no reason to expect thrombotic effects to occur following acute ingestions, even of relatively high doses.

The Commission has also considered some specific comments concerning the potential health risks posed by oral contraceptives to young children. These comments, and the Commission's responses, are:

1. Commenters who concede that one-time ingestions of the oral contraceptives may not seriously harm children nevertheless assert that such ingestions may produce nausea and/or vomiting [13].

The Commission recognizes that oral contraceptives, like many products found in the home, can produce nausea and vomiting in young children who ingest them. However, in most cases of accidental ingestion, vomiting is regarded as a beneficial reflex since it helps to remove the substance from the body and thus reduces the risk of serious toxic effects [18].

Although unpleasant for both the child and adult involved, nausea and vomiting resulting from the accidental ingestion of oral contraceptives are generally not severe. Nausea and vomiting are undoubtedly among the most frequently observed symptoms associated with the accidental ingestion of products by young children. Such symptoms rarely involve serious consequences requiring professional medical attention [18].

2. Commenters have pointed out that warnings in package inserts for two oral contraceptives include the statement: "A small fraction of the hormonal agents in oral contraceptives have been identified in the milk of mothers receiving these drugs. The long-term effects to the nursing infant cannot be determined at this time" [2, 6, 12].

The Commission believes that, in the case of nursing mothers who take oral contraceptives, any danger to the infant would arise from the daily ingestion of the medication via the milk supply for a period of several weeks to several months and would be related to long-term hormonal effects [18]. Therefore, it is inappropriate to relate the possible dangers involved in this situation to one in which the single ingestion takes place.

3. Commenters have also pointed out that there has been an association of cancer of the vagina and cervix of young women whose mothers were treated with diethylstilbestrol (DES) during pregnancy [2,3,6]. DES is an estrogen compound used during the 1960's to treat threatened or habitual miscarriages. It was later shown that female children of mothers who had taken DES during their pregnancy had an increased risk of developing a rare form of cervical or vaginal cancer when they reached adulthood.

The Commission believes it inappropriate to relate the effects observed in the case of DES, which resulted from the *chronic* exposure of a chemically distinct estrogen to a developing fetus *in utero*, to the possible effects of a single *acute ingestion* by a young child of the estrogens contained in oral contraceptives. [18].

4. Commenters have asserted that sufficient data are not available to evalutate the effects of oral contraceptives in male and female children, and data are not available to predict the effects of ingesting these drugs in combination with other drugs or household substances [17].

The Commission responds that over 20 years of human experience data are available on oral contraceptives, and that the effects of these drugs are well established. Ingestion data, reflecting incidents in both sexes, indicate that the drugs are frequently ingested but few, if any, serious effects have been reported in children. [20]. In addition, there is no evidence of oral contraceptives interacting with other drugs or household products to produce untoward reactions [20].

5. Commenters have suggested that no exemption should be provided unless the industry provides studies of single dose effects (at excessive levels) on long-term animal health [17].

The FDA does not require such studies in order to prove the safety of a drug [20]. Therefore, if the Commission adopted this suggestion, it would be requiring studies to support a special packaging exemption that are not required to market the drug in the first place.

C. Injury Data

The Commission's Children and Poisoning (CAP) data base for the years 1978 through March 1983 contains 105 reports of accidental ingestions of oral contraceptives by children under age five [24]. This projects to a national estimate of 4305 similar cases. Of the 105 reports, 101 children were treated and released; two were transferred and treated; two were hospitalized.

For the years 1969 through 1978, 5027 cases of accidental ingestion of oral contraceptives by children under age five were reported to the National Clearinghouse for Poison Control Centers [25]. Of these 5027 cases, 139 reported symptoms, most frequently lethargy and nausea/vomiting/diarrhea. Thirty-four children were hospitalized, generally for one or two days.

D. Market Information

Since oral contraceptives were introduced in 1960, they have become the most popular reversible method of contraception worldwide. Within their first five years on the market, purchases or oral contraceptives by pharmacies had reached 65 million cycles per year (a cycle is a one-month supply

contained in an individual packet) [27]. Industry sources estimate that, since 1978, the number of women using oral contraceptives in the United States has remained stable at roughly 10 million [26,27]. Each year, pharmacies dispense an estimated 60 to 70 million cycles to these women. [27]

Six domestic pharmaceutical manufacturers share the U.S. market for oral contraceptives, with three firms predominating [26,27]. These six firms currently have annual retail sales in excess of $400 million [26, 27].

E. Reproposal of Exemption

The exemption proposed by the Commission in February 1974 applied to cyclically administered oral contraceptives in manufacturers' mnemonic (memory-aid) dispenser packages that (1) relied solely upon the activity of one or more named progestogen and estrogen substances and (2) contained no more than specific amount per package (39 FR 5198) [1]. The substances and amounts were: 150.0 mg. of dimethisterone, 2.2 mg. of ethinyl estradiol, 21.0 mg. of ethynodiol diacetate, 6.0 mg. of mestranol, 200.0 mg. of norethindrone, 105.0 mg. of norethynodrel, and 10.5 mg. of norgestrel.

The Commission has decided to repropose the exemption because ten years have passed since the original proposal. Before issuing any final exemption, the Commission wants to give all interested parties an opportunity to comment on it and on all the currently-available data that relate to it. A reproposal accomplishes that purpose.

The reproposed exemption has a broader scope than the exemption proposed in 1974. The Commission now believes that particular estrogens and progestogens and particular amounts do not need to be specified. Therefore, the reporposal applies to all cyclically administered oral contraceptives in mnemonic packaging that rely on the activity of any estrogen or progestogen substance in any amount.

The Commission believes that there is little or no risk to children from accidental ingestion of any estrogen or progestogen in any amount that would be approved by FDA for use in oral contraceptives. The same data on health effects that apply to the substances and amounts specified in 1974 (see section B above) apply to the broadened exemption proposed below [31].

The purpose of broadening the proposal is to avoid any need for future amendments to the exemption (assuming it is issued in final form). If drug manufacturers changed to different estrogen or progestogen hormones or to greater amounts of the previously-named hormones, they should be covered by an existing exemption, as long as no greater risk is presented by the modified oral contraceptives. (In fact, two commenters on the 1974 proposals did suggest that the named substances and amount were partially outdated.)

The Commission is particularly soliciting public comments from any party who believes that the issuance of a broadened exemption might place children at risk. Any such comments submitted should, to the greatest extent possible, be specific as to estrogen or progestogen substances and amounts. The Commission is additionally interested in comments from manufacturers on the existing hormone content of oral contraceptive and on any content changes that can be anticipated.

F. Regulatory Flexibility Act Certification

The Commission staff has concluded that no firm would be required to institute any changes to its present practices as a result of the exemption proposed below. Therefore, using the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601(3), the Commission certifies that the exemption will not, if issued, have a significant economic impact on a substantial number of small entities.

G. Environmental Considerations

Rules requiring poison prevention packaging of products and exemptions from such rules normally have little or no potential for affecting the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. *See* 16 CFR 1021.5(c)(3). From the facts presently available, the Commission concludes that the exemption proposed below, if issued, will have no significant effects on the environment.

H. Effective Date

The PPPA provides that, except for good cause, no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued. A lead time of six months to a year provides firms with time to "gear up" to child-resistant packaging.

However, an exemption from a PPPA packaging requirement does not fall within the prescribed time limits on the effective date, and no lead time is necessary where child-resistant packaging is not being required. In the case of the oral contraceptive, the packaging is not now required and no marketplace changes will be necessary. Therefore, the Commission is proposing that the exemption become effective immediately upon its publication in final form in the **Federal Register**. An immediate effective date complies with the Administrative procedure Act, 5 U.S.C. 553(d)(1) as well as the PPPA.

I. Conclusion

After considering all relevant and available information, the Commission finds preliminarily that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting the oral contraceptives described below. Based on ths preliminary finding, the Commission concludes that a special packaging exemption for them should be proposed.[1]

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

PART 1700—[AMENDED]

Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91–601; secs. 2(4), 3, 5; 84 Stat. 1670–1672; 15 U.S.C. 1471(4), 1472, 1474) and under the authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573; sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes to amend § 1700.14 of Subchapter E of Chapter II of Title 16 by adding paragraph, (a)(10)(iv) as follows (although unchanged, the introductory text of subsection (10) is included below for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(iv) Cyclically administered oral contraceptives in manufacturers' mnemonic (memory-aid) dispenser packages that rely solely upon the activity of one or more progestogen or estrogen substances.

* * * * *

[1] The proposal was approved by a 4–0 vote of the Commission.

Authority: Pub. L. 91–601, secs. 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472, 1474; Pub. L. 92–573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a).

Dated: April 3, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of References

1. **Federal Register** document proposing an exemption from special packaging for oral contraceptives (39 FR 5197–98, February 11, 1974).
2. Public comment from Dr. Robert Scherz of American Academy of Pediatrics; February 19, 1974.
3. Public comment from Creighton University; February 22, 1974.
4. Public comment from Sunbeam Plastics; February 25, 1974.
5. Public comment from Cooper Laboratories; February 25, 1974.
6. Follow-up public comment from Dr. Robert Scherz of American Academy of Pediatrics; February 26, 1974.
7. Public comment from Searle Laboratories; March 4, 1974.
8. Public comment from American Pharmaceutical Association; March 8, 1974.
9. Public comment from Mead Johnson Research Center; March 8, 1974.
10. Public comment from University of Alabama (Birmingham) Medical Center; February 26, 1974.
11. Public comment from Abbott Laboratories; March 8, 1974.
12. Public comment from Patricia van Betten; March 9, 1974.
13. Public comment from Parke, Davis & Company; March 11, 1974.
14. Public comment from Dr. Sumner Yaffe of American Academy of Pediatrics; March 13, 1974.
15. Public comment from The Upjohn Company; March 12, 1974.
16. Public comments from Ortho Pharmaceutical Corp.; April 22, 1974, August 27, 1974, and September 27, 1974.
17. Thirteen comments from different members of the Technical Advisory Committee; January through April 27, 1980.
18. Memo from Fred Marozzi and Denise Orzech on oral contraceptives petitions; October 12, 1979.
19. Memo from Fred Marozzi on the packaging of cyclically administered oral contraceptives; March 27, 1979.
20. Memo from Fred Marozzi analyzing TAC comments on oral contraceptive exemption petition; May 30, 1980.
21. Memo from Fred Marozzi summarizing FDA's position on acute and long-term effects of oral contraceptives following accidental ingestion by children; April 8, 1983.
22. Record of December 14, 1982 meeting between CPSC and FDA staff on oral contraceptive exemption from PPPA packaging; December 20, 1982.
23. Letter from Joseph Hile, FDA Associate Commissioner for Regulatory Affairs; March 7, 1983.
24. Memo from Dorothy Drago on ingestions of oral contraceptives; May 10, 1983.
25. Memo from Denise Orzech on injury data update on oral contraceptives; March 20, 1981.
26. Memo from Elliot Foutes on update of market information on oral contraceptives; July 16, 1983.
27. Memo from Elliot Foutes on market information on oral contraceptives; January 8, 1980 (RESTRICTED).
28. Briefing memo from Virginia White on proposed regulation to exempt oral contraceptives from special packaging requirements; September 28, 1983.
29. Memo from Alan Shakin on proposed exemption of oral contraceptives from special packaging requirements; September 29, 1983 (RESTRICTED).
30. Vote sheets on proposed exemption of oral contraceptives from special packaging requirements; September 29, 1983.
31. Memo from Fred Marozzi on expansion of exemption to all estrogen and progestogen substances; March 9, 1984.

[FR Doc. 84–9432 Filed 4–6–84; 8:45 am]

BILLING CODE 4355–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed program amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment submitted by the State on March 19, 1984, consists of modification to the Indiana regulations pertaining to the hearing on a lands unsuitable petition, various provisions on the blasting plan and use of explosives, administrative and judicial review of decisions on permit applications, requirements for signs and markers, and protection of underground mining.

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indiana's proposed modification of its programs not received on or before 4:00 p.m., on May 9, 1984, will not necessarily be considered in the Director's decision to approve or disapprove the proposed program modifications.

If requested, a public hearing will be held on May 4, 1984. Beginning at 10:00 a.m. at the location shown below under **ADDRESSES.**

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. McNabb, Director, Indianapolis field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

If a public hearing is held, its location will be at: OSM Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana. Telephone: (317) 269–2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time

indicated under **DATES** or at locations other than Indianapolis, Indiana, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business April 30, 1984. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32071–32108).

On March 20, 1984, the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment to the Indiana regulations would amend various provisions of the approved Indiana program. Briefly, the proposed modifications and regulation cites are:

1. Indiana proposed changes to regulations concerning hearing requirements for lands unsuitable determinations. 310 IAC 12–2–8.

2. Indiana would change some requirements for information in the blasting plan required for permit applications. 310 IAC 12–3–43.

3. A change is proposed concerning administrative review of decisions by the commission on permit applications. 310 IAC 12–3–118.

4. Changes are proposed in the requirements for signs and markers. 310 IAC 12–5–6 and 310 IAC 12–5–73.

5. Changes are proposed in the use of explosives provisions for preblasting survey, public notice of blasting schedule, surface blasting requirements, and records of blasting operations. 310 IAC 12–5–34, 12–5–35, 12–5–36, 12–5–38, and 310 IAC 12–5–100, 12–5–101, 12–5–103.

6. A change is proposed in protection of underground mining requirements. 310 IAC 12–5–40.

7. A new section would be added for underground mining use of explosives detailing requirements for public notice of a blasting schedule. 310 IAC 12–5–100.5.

Therefore, pursuant to 30 CFR 732.17 and 732.15, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1202 *es seq.*).

Dated: April 4, 1984.

Carson W. Culp,

Acting Director, Office of Surface Mining.

[FR Doc. 84-9385 Filed 4-6-84; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Post-Vietnam Era Veterans' Educational Assistance Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed regulation.

SUMMARY: This proposed regulation, issued jointly by the VA (Veterans Administration) and the Department of Defense, states that all of the provisions of 38 CFR 21.4234 apply to veterans who are receiving educational assistance under VEAP (the Post-Vietnam Era Veterans' Educational Assistance Program) and who wish to change their program of education. This should eliminate confusion which has arisen in this area.

DATES: Comments must be received before May 9, 1984. It is proposed to make this regulation effective on the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420.

All written comments received will be available for public inspection at this address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until May 21, 1984. Anyone visiting VA Central Office in Washington, DC for the purpose of

inspecting any of these comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420 (202–389–2092).

SUPPLEMENTARY INFORMATION: Section 21.5232, Title 38, Code of Federal Regulations is amended to state that all of the paragraphs of 38 CFR 21.4234 apply when a VEAP participant wishes to change his or her program of education.

The VA and the Department of Defense have determined that this proposed regulation is not a major rule as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. The proposal will not result in any major increases in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs and the Secretary of Defense hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this proposed regulation contains a technical change which does not affect basic VA policy. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 24, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Approved: March 19, 1984.

E. A. Chavarrie,

Deputy Assistant Secretary of Defense.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

It is proposed to amend 38 CFR Part 21 as set forth below:

Section 21.5232 is revised as follows:

§ 21.5232 Change of program.

In the administration of benefits payable under chapter 32, title 38, United States Code, the Veterans Administration will apply § 21.4234 in the same manner as it is applied in the administration of chapters 34 and 36. (38 U.S.C. 1641)

[FR Doc. 84-9370 Filed 4-6-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2561-1]

Approval and Promulgation of Nonattainment Plans for Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes rulemaking and solicits public comment on rules for issuance of construction permits to new or modified air pollution sources affecting nonattainment areas in Illinois. These regulations were submitted by the State of Illinois to satisfy Part D of the Clean Air Act (Act). They are intended to require new sources to comply with the Lowest Achievable Emission Rate (LAER), and to accommodate emissions growth in nonattainment areas through the use of offsets and the provision of a limited growth margin.

DATE: Comments on this revision and on the proposed USEPA action are due on or before May 9, 1984.

ADDRESSES: Copies of the SIP revisions, USEPA's evaluation and public comments received are available for inspection at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706

Comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: Part D of the Act, as amended in 1977, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as not attaining the National Ambient Air Quality Standards (NAAQS).

The requirements for an approvable SIP are described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371). September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182). In order to be approvable, each Part D New Source Review (NSR) SIP must require permits for the construction and operation of new or modified major stationary sources in nonattainment areas. The permits must be issued in conformance with the statutory requirements of Sections 172 and 173 of the Act and the regulatory requirements of 40 CFR 51.18.

On April 3, 1979, the Illinois Environmental Protection Agency (IEPA) submitted rules adopted by IEPA which were conditionally approved by USEPA on February 21, 1980 (45 FR 11472). On May 26, 1981, the Court of Appeals for the Seventh Circuit (Case No. 80–1531) ruled that the IEPA adopted NSR Rules were not properly submitted because IEPA lacked promulgation authority and, therefore, the Court invalidated USEPA's approval.

Meanwhile the State of Illinois had adopted Public Act 81–1444 which required the Illinois Pollution Control Board (IPCB) to promulgate nonattainment area NSR Rules. This Illinois Act gave IEPA authority to promulgate NSR Rules as interim rules, to be effective until the IPCB adopted permanent NSR Rules implementing Section 173 of the Act.

On February 3, 1982, USEPA proposed approval of a State submittal consisting of an IPCB interim adoption be reference, expiring October 1, 1982, of an IEPA adopted rule. USEPA was unable to take final action on the submittal because it contained a "plant-wide" definition of source, and USEPA had committed to the D.C. Circuit Court of Appeals in *NRDC* v. *Gorsuch* (No. 81–2208) not to approve NSR Rules containing a "plant wide" definition.

On July 14, 1983, the IPCB promulgated Rule 203 entitled "Major Stationary Source Construction and Modification" for the State of Illinois. These rules were submitted to USEPA on August 26, 1983, in the form of a July 14, 1983, "Opinion and Order of the Board" (R81–16 Docket B). Additionally, on September 16, 1983, the State submitted draft IEPA Rule 252 entitled "Rules Governing Public Participation in the Air Pollution Permit Program for Major Sources in Nonattainment Areas". These public comment procedures have not been adopted in final form. However, since the submitted draft is not expected to change significantly during the completion of the approval process, USEPA is basing today's proposed action on this draft, pending submission of finally adopted procedures. USEPA is today proposing to approve these two submittals as meeting the requirements of 40 CFR 51.18, with a few exceptions cited below.

The essential elements of a NSR program are provisions which assure that (1) the appropriate new sources and modifications are subject to preconstruction review, (2) exemptions are in accordance with federal requirements, (3) reasonable further progress (RFP) toward the State's attainment demonstration is maintained, (4) subject sources must comply with LAER, (5) existing sources under common ownership with new sources are in compliance, and (6) the public has an opportunity to comment on the permitting agency's analysis.

Nonattainment Source Review

IPCB Rules 101 and 203, except for a potential deficiency in the definition of source, have sufficient provisions to assure that the appropriate sources and modifications are reviewed. The dual definition of source used by USEPA includes for NSR purposes either an entire building, structure, or facility, or an individual piece of process equipment. The dual source concept is proposed by the State to be implemented by the definition of "emission source" contained in Rule 101, which refers to any equipment or facility. The term "equipment" is adequately defined to cover a narrow definition of dual source. However, the term "facility" is not sufficiently explained in the Illinois Rule to assure that it covers the broader definition of source. The Illinois Rule does not specify that all pollutant-emitting activities which belong to the same industrial grouping, on contiguous or adjacent properties and under the control of the same person are subject to review. USEPA proposes to approve the definition of source if a demonstration can be made by the State that the term "facility" includes the above cited concepts. Without a demonstration by the State that the submitted NSR Rule covers the appropriate sources, USEPA will be constrained to disapprove the entire submittal.

Section 203.207(g) of the Illinois rule exempts increased emission of organic material due to temporary seasonal shutdown of control equipment from the definition of "major modification." This exemption is not consistent with the requirements of 40 CFR 51.18(j)(1)(v), (vi) and (x). However, USEPA's seasonal afterburner policy encourages the temporary seasonal shutdown of certain control equipment during non-ozone formation months. USEPA is presently reviewing the NSR regulations and the afterburner policy to determine how these conflicting approaches might best be resolved. USEPA, therefore, is deferring action on the exemption in § 203.207(g). Once USEPA has resolved this overall policy issue and made any appropriate regulatory amendments, USEPA will be in a position to propose to either approve or disapprove the exemption.

The federal requirements provide that emission reductions used for netting and offsets must be federally enforceable. Although the term "federally" does not appear in the State Rules, such emission reductions are included in the State operating permits. These permits are considered to be federally enforceable by the Seventh Circuit Court of Appeals in *CBE vs. USEPA* (No. 80–1531). Furthermore, emission reduction may be included in construction permits which are federally enforceable according to 40 CFR 52.02(d). In other places where federal enforceability would be required in the State Rule, federal enforceability is assured by having the State Rules approved as part of the SIP. Therefore, USEPA proposes to approve Illinois' approach to the federal enforceability issue.

The State Rule requires a reasonable estimate of emissions from malfunctions, start-ups, and break-downs to be included into the definition of allowable emissions. This is an environmentally beneficial provision when offsets are required to equal or exceed new allowable emissions. However, when an existing source is providing offsets from an allowable emissions baseline, non-complying emissions could be used as offsets. This is inconsistent with the federal requirements. USEPA is, therefore, not taking rulemaking action on § 203.107(c) of the Illinois NSR Rule.

USEPA is proposing to approve § 203.304(a) of the Illinois submittal which addresses the situation which occurs when offsets are not "reasonably available." The State Rule requires sources that cannot obtain offsets to commit in a permit to obtain appropriate offsets as soon possible. In such cases, untill the offsets are obtained, the State will allow consumption of the available growth margin. However, once the growth margin is consumed (this is determined by reference to the federally approved attainment demonstration), no more permits without offsets can be issued; otherwise, RFP would not be protected. With this understanding, USEPA proposes to approve this section of the Rule.

The State Rule contains provisions which exempt certain sources from the offset requirement. Section 203.304(b) exempts temporary sources of less than 2 years duration, and § 203.304(e) exempts new total suspended particulates (TSP) sources where agricultural fugitive emissions predominate, and the area is classified as secondary nonattainment for TSP. Because neither of these exemptions requires that a demonstration be made that RFP will be maintained, USEPA proposes to disapprove both of these sections. However, if the State can show prior to final action on this rulemaking that RFP will be maintained, USEPA will approve these sections.

Section 203.304(c) provides an exemption from the offsetting requirements of § 203.302, if the area in which the proposed new major source or major modification is proposing to locate is being considered by USEPA for redesignation to attainment. The State argues that an area that is a candidate for redesignation can be assumed to be in attainment and, therefore, no RFP is needed. The State claims that no offsets should be required for such a new source provided that air quality modeling projects no ambient standard violation. However, it would be possible under § 203.304(c) to allow a source to construct without offsets or a RFP demonstration in an area under consideration for redesignation and later have USEPA disapprove the redesignation. The new source would then be in violation of the construction ban provisions of the NSR Rule. To avoid this situation, USEPA is proposing

to disapprove this section.

USEPA wishes to solicit comment specifically on the relations between offsetting emissions and the attainment plan to insure RFP and, what the relationship should be between the federally approved RFP plan and offsets required in section 173 of the Act. Section 171 of the Act requires all areas designated as nonattainment under Section 107 of the Act to develop an RFP plan which outlines a yearly schedule of emissions reductions to ensure the area will meet the NAAQS by the statutory deadline. The Act also requires in section 173(1)(A) that "by the time the source is to commence operation, total allowable emissions from existing sources * * * and from the proposed source will be sufficiently less than total emissions from existing sources * * * so as to represent * * * reasonable further progress * * *". USEPA Part D New Source Regulations cite section 172(b)(6) and 173.

The Illinois rule does not require each and every offset transaction to be consistent with actual progress under their federally approved RFP plan. In place of this requirement, the Illinois regulations give the source several options to determine if a particular emission reduction is "sufficient" to offset the proposed source's emissions increase. These options include a ratio of 1.25 to 1, an air quality improvement at every impact location, and/or an improvement of air quality with equal or greater offsets. Since these provisions give new sources a "pro forma" declaration of how much offset is enough regardless of whether the State is meeting their RFP commitment, if the State has not achieved sufficient emissions reductions for the RFP schedule, the State will be forced to put additional requirements on existing sources to make up the shortfall.

Because USEPA is currently developing policy on RFP plans in general and on the offsets/growth allowance issue in particular, the USEPA is soliciting comment to assist in this policy development. Although USEPA is proposing to approve and may promulgate approval of the Illinois offset provision, the State is advised that if the final USEPA policy requires a direct link between offsets and actual progress under RFP plans, then the State will have to revise the Illinois SIP to meet the new policy.

USEPA also recognizes that new major sources and major modifications are required to demonstrate that RFP will be met. This demonstration must be done with actual offsetting emission reductions or reductions which make an actual improvement in air quality. USEPA is basing its approvability determination on the assumption that a modelled air quality improvement will be detected in the environment and not based on a "paper" improvement resulting from modelling reductions. This notice solicits comment from the State on the procedures to be used to ensure that offsets will not be allowed based on adjustments of modelling data, rather than actual emission reductions. If during the public comment period the State satisfies this concern, USEPA will approve this Section, otherwise USEPA will finally disapprove this Section.

USEPA is proposing to approve § 203.301 which requires LAER at new major sources and major modifications. USEPA is also proposing to approve the provisions in § 203.305 which require existing sources owned by an applicant to be in compliance before a construction-permit may be issued to a new major source or major modification. Both of these sections meet the federal requirements.

USEPA is proposing to approve the severability provisions in § 203.155. This section requires that the current NSR Rule be stayed or declared invalid if a court of competent jurisdiction stays or declares invalid any section of the rule. The effect of this provision at the State level would be to re-institute a prior version of the NSR Rule which has not been approved by USEPA. USEPA proposes approval of this Section with the caution that if the current NSR Rule is invalidated, the construction moratorium required by section 110(a)(2)(i) of the Act will take immediate effect without any action by USEPA.

The Act in section 172(b)(11)(A) requires new sources in areas which receive attainment extensions beyond December 31, 1982, to do alternative site, size, production process and control analysis. Section 203.306 of the State Rule requires such an analysis of new major sources and major modifications and, therefore, USEPA is proposing to approve this provision as part of the SIP.

Today, USEPA is proposing to disapprove the specific sections referring to temporary source (§ 203.304(b)), and secondary nonattainment areas with agricultural TSP emissions (§ 203.304(e)), and offset exemptions in areas being redesignated to attainment (§ 203.304(c)).

Additionally, USEPA is not taking action on § 203.107(c) which includes start-up, malfunction, and breakdown emissions as part of allowable emissions. Disapproval or no action on these provisions in no way prompts any action related to a construction moratorium pursuant to Act, section 110(a)(2)(I). Rather, disapproval of these sections is necessary to maintain the integrity of IPCB Rule 203 with respect to the requirement of 40 CFR 51.18. USEPA is, therefore, proposing to approve the remaining provisions of Rule 203 pending the submittal of the appropriate demonstrations as referenced in this notice.

Public Comment Procedures

In accordance with IPCB rule § 203.150—Public Participation, IEPA has developed procedures for the public to comment on proposed actions on NSR permits. These procedures meet the requirements of 40 CFR 51.18(h) for major sources and major modifications in nonattainment areas, and USEPA is proposing to approve the procedures as part of the Part D SIP. This proposal is based on the assumption that the Federal requirement to make the IEPA's analysis of the project's projected impact on air quality available for public comment is met by the State draft requirement in § 252.203 (2) and (3), where IEPA's findings and summary are required to be available for public comment. IEPA's comment on this assumption is requested.

All interested parties are invited to comment on these proposed revisions and on USEPA's proposed actions. Public comments received on or before May 9, 1984 will be considered in USEPA's final rulemaking on the SIP. USEPA specifically solicits comment on the relationship between offsetting emissions and the attainment plan to ensure reasonable further progress toward attainment.

Under 5 U.S.C. 605(b) the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V Office listed above.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

This proposed rulemaking is issued under the authority of Sections of 110, 172, and 173 of the CAA as amended.

Dated: November 22, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-9338 Filed 4-6-84; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 49, No. 69
Monday, April 9, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: April 25, 1984.

Place: U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 2096 South Building, Washington, D.C. 20250.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 (the Act) and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) financial matters; (2) recordkeeping; (3) additives to grain; (4) subcommittee report on appeal and reinspection study; (5) status of wheat, sunflower seed, and other standards; (6) the international monitoring program; and (7) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Dr. Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–[illegible].

Dated: April 3, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84-9315 Filed 4-6-84; 8:45 am]

BILLING CODE 3410-EH-M

Forest Service

Toiyabe National Forest Grazing Advisory Board; Meeting

The Toiyabe National Forest Grazing Advisory Board will meet at 10 a.m. April 17, 1984, in the Austin Courthouse, Austin, Nevada. The purpose of this meeting is to discuss:

1. Allotment Management Planning
2. Utilization of Range Betterment Fund

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431, telephone (702) 784–5331. Written statements may be filed with the committee before or after the meeting.

James A. Lawrence,

Acting Forest Supervisor.

February 28, 1984.

[FR Doc. 84-9538 Filed 4-6-84; 11:50 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

Applications For Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Permits filed under Subpart Q of the Board's Procedural Regulations; week ended March 30, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Mar. 26, 1984	42064	Flirite, Inc., c/o Marilyn Buker, P.O. Box 297, Kodiak, Alaska 99615. Application of Flirite, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of persons, property and mail between the terminal point Kodiak and the terminal point Old Harbor, Alaska. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 23, 1984.
Mar. 30, 1984	[illegible]	For West Airlines, Inc., c/o Richard Nair, 255 California Street Ninth Floor, San Francisco, California. Application of Far West Airlines, Inc. pursuant to Section 401 of the Act and Subpart q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity to provide scheduled air transportation of persons, property, and mail for the central California Valley cities of Bakersfield, Fresno, and Modesto with service to the San Francisco and Los Angeles Metropolitan areas and other cities in the Far West. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 27, 1984.

Date filed	Docket No.	Description
Mar. 30, 1984	42081	Martinair Holland, N.V., c/o Robert C. Lester, 1621 Connecticut Ave., N.W., Suite 350, Washington, D.C. 20009.
		Application of Martinair Holland, N.V., pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations applies for modification of its foreign air carrier permit, as issued pursuant to Order 78-3-30, dated February 1, 1978. The purpose of this application is to have Martinair's permit redrawn in conformance with rights and privileges afforded pursuant to Martinair's designation by the Netherlands Government to exercise the rights specified in Article 4 of the Protocol Relating to U.S.-Netherlands Air Transport Agreement of 1957, entered into March 31, 1978.
		Answers may be filed by April 27, 1984.
Mar. 26, 1984	41968	Indian International Air Lines, Inc., c/o Harry A. Bowen, Bowen and Atkin, Suite 350, 2020 K Street, N.W., Washington, D.C. 20006.
		Corrected Application of Indian International Air Lines, Inc. in response to Order 84-2-60, requesting a certificate of public convenience and necessity under Section 401 of the Act for interstate and overseas scheduled air transportation of persons, property and mail.
		Answers may be filed by April 23, 1984.
Mar. 27, 1984	41457	Empresa Ecuatoriana de Aviacion (Ecuatoriana), c/o John A. Hodges, McDermott, Will & Emery, 1850 K Street, N.W., Washington, D.C. 20006.
		Amendment No. 1 to the application of Ecuatoriana pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations for renewal of its foreign air carriers permit with respect to the routes to be covered by the permit.
		Answers may be filed by April 24, 1984.
Mar. 28, 1984	41[illegible]	Cook Inlet Aviation, Inc., c/o Robert W. Gruber, P.O. Box 175, Homer, Alaska 99603.
		Application of Cook Inlet Aviation, Inc. pursuant to Order 84-2-114.
		Answers may be filed by April 25, 1984.
Mar. 27, 1984	41937	Seagreen Air Transport, Limited, c/o David B. Ortman, 304 Capital Gallery East, 600 Maryland Avenue, S.W. Washington, D.C. 20024.
		Amendment No. 1 to the Application of Seagreen Air Transport, Limited, for renewal and Amendment of its Foreign Air Carrier Permits.
Mar. 27, 1984	41[illegible]	Bering Air, Inc. c/o James D. Rowe, P.O. Box 1650, Nome, Alaska 99762.
		Application of Bering Air, Inc. provides additional information as requested by Order 84-2-50.
		Answers may be filed by April 27, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-9389 Filed 4-6-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41696]

Hawaiian Pacific Airlines Fitness Investigation; Notice of Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to commence on June 12, 1984, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Ave., NW., Washington, D.C., before the undersigned Administrative Law Judge.

Dated at Washington, D.C., April 3, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-9390 Filed 4-6-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Issuance of Permit To Take Endangered Marine Mammals

On February 22, 1984, Notice was published in the **Federal Register** (49 FR 6526) that an application had been filed with the National Marine Fisheries Service by the Department of the Interior—Minerals Management Service, Alaska OCS Region, 800 A Street, Anchorage, Alaska 99501, for a Scientific Research and Scientific Purposes Permit to take bowhead and gray whales by harassment.

Notice is hereby given that on March 29, 1984, the National Marine Fisheries Service issued a Scientific Research and Scientific Purposes Permit as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), to the Department of the Interior—Minerals Management Service, subject to certain conditions set forth therein.

Issuance of this Permit as required by Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, 709 West Ninth Street, Juneau, Alaska.

March 29, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-9433 Filed 4-6-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of

the information proposal may be obtained.

Extension

The Defense Investigative Service (DIS) is responsible for administration of the Industrial Security Program. In carrying out these responsibilities, DIS must determine what facilities are eligible to receive and safeguard classified information. DD Form 374 is used to record information obtained during the initial survey of a contractor facility and is part of the documentation used to determine and establish eligibility. The information is a prerequisite to participation in this program.

Forward comments to Edward Springer, OMB Desk, Room 3235, NEOB, Washington, DC 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Fred Schonert, DIS, HQ Administrative Services Division, 1900 Half Street SW., Washington, DC 20324, telephone (202) 693–0681.

Dated: April 4, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-9350 Filed 4-6-84; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded, (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Department of Defense Transportation Service (DIS) is responsible for administering the Industrial Security Program on behalf of DoD Components and other federal "user" agencies.

The Transportation Security Agreement (DIS Form 1149) is one of the factors used by DIS to determine eligibility of a commercial carrier to participate in the Industrial Security Program.

DIS Form 1149 is a legally binding contractual document between government and obligates the contractor (commercial carrier) to adhere to all security requirements outlined in same.

Forward comments to Edward Springer, OMB Desk, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 697–0187.

A copy of the information collection proposal may be obtained from Fred Schonert, DIS HQ Administrative Service Division, 1900 Half Street SW., Washington, DC 20324, telephone (202) 693–0681.

Dated: April 4, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-9357 Filed 4-6-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows: Thursday, 10 May 1984, INCA Program Office, McLean, VA.

The entire meeting, commencing at 0900 hours, is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the United States Code and therefore will be closed to the public. Subject matter will be used in a special study on Intelligence Communications Architecture.

Dated: April 4, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-9320 Filed 4-6-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows: Wednesday, 9 May; Wednesday, 23 May; and Wednesday, 6 June 1984, Plaza West, Rosslyn, VA.

The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the United States Code and therefore will be closed to the public. Subject matter will be used in a special study on Special Actions.

Dated: April 3, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-9321 Filed 4-6-84; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session on May 10, 1984 at Naval Post Graduate School, Ingersoll Hall, Room 325, Monterey, CA 93940.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. 1 section 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: April 4, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-9322 Filed 4-6-84; 8:45 am]
BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on May 17, 1984 at Palisades Institute for Research Service, Inc., 1925 North Lynn Street, Arlington, Virginia 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. 1 section 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. section 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: April 4, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-9323 Filed 4-6-84; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent To Repay to the West Virginia State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Notice is given that, under Section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay under a grantback arrangement to the West Virginia State Department of Education (SEA) an amount equal to 75 percent of the funds recovered to date by the U.S. Department of Education (Department) as a result of a final audit determination issued on July 29, 1981 by the Assistant Secretary for Elementary and Secondary Education. This notice describes the SEA's plan, submitted on behalf of the Wyoming County School District (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before May 9, 1984.

ADDRESS: All written comments should be submitted to Dr. A. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3616, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. A. Bruce Gaarder. Telephone: (202) 245-9846.

SUPPLEMENTARY INFORMATION:

A. Background

On July 29, 1981, the Assistant Secretary for Elementary and Secondary Education issued a final audit determination against the SEA, finding that the LEA had improperly spent $109,201 in funds provided under Title I of the Elementary and Secondary Education Act of 1965 (Title I). This final audit determination was based on an audit of the Title I program in the SEA for the period July 1, 1976 through June 30, 1979 conducted by the Inspector General Audit Agency. The audit report disclosed that the LEA submitted erroneously compiled comparability reports to the SEA and expended Title I funds which met the general needs of schools rather than the identified special needs of educationally deprived children.

The Assistant Secretary concluded in his final audit determination that an amount of $78,146 was expended by the LEA in non-comparable schools in violation of the comparability requirements in 20 U.S.C. 241e(a)(3)(C) (1976) and 45 CFR 116a.26 (1976). The SEA did not detect and take required action to correct errors in comparability data compiled and reported by the LEA. As a result, Title I funds were spent in four project schools that did not receive comparable State and local services in school years 1977-78 and 1978-79.

It was further concluded by the Assistant Secretary that the LEA expended $31,055 to meet the general needs of schools during fiscal years 1977 through 1979. This was a violation of 20 U.S.C. 241e(a)(1)(A) (1976) and Section 116a.22 of the Title I regulations which required that Title I funds must be used solely to ". . . meet the special educational needs of educationally deprived children. . . ." Title I funds were expended by the LEA for general purpose textbooks, general program personnel, and for general program travel.

The SEA challenged $75,111 of the Assistant Secretary's $109,201 determination in an application for review filed with the Education Appeal Board (EAB) on August 28, 1981 and amended on October 2, 1981, under the authority in Section 452(b) of GEPA (20 U.S.C. 1234a(b)). In the meantime, on July 29, 1983, the LEA submitted a check in the amount of $35,562.68 to the Department, including $34,090 for the undisputed amount of the final audit determination and $1,472.68 in interest.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determinations have been corrected, and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program, and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

On December 5, 1983, the SEA formally requested in writing repayment of $25,567 (75 percent of the $34,090 returned to the Department on behalf of the final audit determination) under a grantback arrangement. With its request, the SEA provided assurances that the practices and procedures of the LEA that resulted in the final audit determination have been corrected and that the LEA is in all other respects in compliance with the requirements of the program. Also included with the SEA's request was a detailed budget prepared by the LEA for the expenditure of the funds to be awarded under the grantback arrangement.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with Section 456(a)(2) of GEPA, the SEA, in its December 5, 1983 request (amended January 17, 1984 and February 3, 1984), submitted a plan on behalf of the LEA outlining the LEA's intent to use the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (Chapter 1). The final audit determination against the LEA resulted from improper expenditures of Title I funds. However, since Chapter 1 supersedes Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The plan demonstrates that the LEA conducted a needs assessment of the children and determined that there was a special need for improvement in reading and math skills. Thirteen teachers and eighteen aides will be hired in school year 1984–85 to provide remedial instruction in reading and math. Because the funds requested under this grantback arrangement must be expended by September 30, 1984 in accordance with Section 456(c) of GEPA, the LEA will use these funds to pay the salaries of ten teachers and ten aides in the Chapter 1 program during the month of September. The Chapter 1 funds that otherwise would have been spent for these salaries will be used to expand and enrich the Chapter 1 reading and math components through the use of computer-assisted instruction. To the extent possible, children in these schools who were affected by the audit violations will benefit from these funds.

No children in private schools are eligible to participate in the Chapter 1 program.

E. The Secretary's Determinations.

Based upon a thorough review of the SEA's request for the repayment of funds under Section 456 of GEPA, including the LEA's partial discharge of its payment obligations to the Department in July 1983, the SEA's assurances described in part C of this notice, and the SEA's plan and budget, the Secretary makes the following determinations:

(1) The LEA has corrected the practices and procedures that resulted in the final audit determination, and the LEA is in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted a plan on behalf of the LEA for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the Chapter 1 program and, to the extent possible, benefits the Chapter 1 children who were affected by the misexpenditures that resulted in the audit exceptions; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least thirty days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an amount of $25,567, which is 75 percent of the funds the Department has recovered to date as a result of the Assistant Secretary's final audit determination. The Secretary bases his intention to enter into a grantback arrangement under Section 456 of GEPA on his determinations outlined in part E of this notice, and payment by the SEA of a portion of the funds owed to the Department as a result of the final audit determination.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved by the Secretary.

(2) In accordance with Section 456(c) of GEPA and the SEA's plan, all funds received under the grantback arrangement will be expended by September 30, 1984.

(3) The SEA, on behalf of the LEA, must, not later than January 1, 1985, submit a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the SEA's proposed plan and approved budget.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation To Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the West Virginia SEA on behalf of Wyoming County School District. Interested persons may send written comments to Dr. A. Bruce Gaarder at the address at the beginning of this notice. All comments must be received on or before May 9, 1984.

(Catalog of Federal Domestic Assistance No. 84.010—Educationally Deprived Children—Local Educational Agencies)

Dated: April 3, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-9306 Filed 4-6-84; 8:45 am]

BILLING CODE 4000-01-M

Rural Education and Rural Family Education Policy for the 80's

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the Rural Education and Rural Family Education Policy for the Department of Education.

FOR FURTHER INFORMATION CONTACT: Duane Nielsen, Deputy Director, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, Regional Office Building–3, Room 5044, 7th and D Street, SW., Washington, D.C., 20202, Telephone: (202) 245–2278.

SUPPLEMENTARY INFORMATION:

Rural Education and Rural Family Education Policy for the 80's

The Department of Education recognizes the unique and valuable contributions rural America has made to both the social and economic development of our country. In recent decades, however, the changing dynamics of our urban centers have forced public policy decisions which tend to emphasize solutions to urban concerns rather than rural concerns; this despite the fact that over one-fourth of all Americans still live—and are educated—in areas described as "rural." * While the Department of Education remains committed to programs that help urban youth and adults, it is appropriate that we strengthen our efforts to provide programs that address the educational needs of rural and small town youth and adults. Those educated in rural areas must be provided with the basic educational tools necessary to enter an increasingly complex workforce. Rural educators ask no more than "equity" in their attempts to work within the Federal and State education structures to assure rural and small town youth and adults equal educational opportunities. To meet this goal, the Department of Education adopts the following policy—Rural education shall receive an equitable share of the information, services, assistance, and funds available from and through the Department of Education and its programs.

To the extent that resources are available and appropriate statutory authorities permit, the Department of Education is prepared to take the following initiatives in this regard—

(a) The Department will assist educators and administrators on all levels interested in developing outreach and volunteer programs with the active support and interaction of parents, teachers, civic groups, and the business community to improve the delivery of educational services to rural communities.

(b) The Department will work to expand the data base on the condition of education in rural areas, and will provide the necessary technologies to disseminate information relevant to curriculum, organization, personnel and support services needed for educational institutions serving rural communities. Data collection will focus on information relating to regional designation; goals of rural education and rural family education; surveys of rural curricula; test score comparison; tax base/student ratios; and descriptions of intermediate service agency delivery systems. To disseminate information to educational institutions and programs serving rural communities, including rural school districts, the Department will utilize State Departments of Education; Educational Resources Information Center/Clearinghouse on Rural Education and Small Schools; the Rural Education Association; other professional and service organizations; national advisory councils; youth organizations; intermediate units; American Education Magazine; and, county and local agencies.

(c) The Department, with appropriate control staff, will closely monitor education program regulations, eligibility and evaluation criteria, and administrative policy to insure equity for all LEAs regardless of size, location or condition. Monitoring will focus on reducing complexity of criteria for funding; reducing complexity of application and reporting procedures and forms; and reducing unrealistic requirements in general while insuring competent and enlightened staff monitoring.

(d) The Department will assist in identifying and developing special programs available for handicapped individuals located in rural areas.

(e) The Department will provide personnel to coordinate the consolidation of available research on shortages and additional needs for analysis by the Secretary's Rural Education Committee. Research will focus on effective practices and characteristics of effective rural programs and projects.

(f) The Department will include rural institutions in demonstration and pilot projects, and will involve cross sections of rural communities in educational technology planning.

(g) The Department will provide consultative and technical assistance to rural educational entities as a means to improve the quality of education in rural areas. To facilitate communications, the Department will support initiatives such as an annual national forum; a monthly newsletter; and utilization of extension services and existing organizations for dissemination of information.

(h) The Department will assist in improving public sector/private sector collaboration by coordinating networks at local, regional, State and Federal levels.

(i) The Department will assist rural education in improving the achievement of black students, American Indian students, children of migrant workers and other minorities. To this end, the Department will focus on data concerning rates of graduation from high school and college, including secondary and postsecondary vocational institutions and programs; gains in functional literacy, changes in college enrollment and achievements in adult education.

(j) The Department will assist individuals and families living in rural areas with family education programs and services through vocational home economics education, an established delivery system, as a means of improving quality of rural family education.

Dated: April 3, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-9396 Filed 4-6-84; 8:45 am]

BILLING CODE 4000-01-M

* As defined in the 1960 census, the rural population comprises all persons living outside urbanized areas in the open country or in communities with less than 2500 inhabitants. It also includes those living in areas of extended cities with a population density of less than 100 inhabitants per square mile.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP84–301–000]

ANR Pipeline Co.; Request Under Blanket Authorization

March 30, 1984.

Take notice that on March 14, 1984, as supplemented on March 27, 1984, ANR Pipeline Company (ANR), 500

Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-301-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that ANR proposes to transport natural gas on behalf of Westvaco Corporation (Westvaco) under the authorization issued in Docket No. CP82-480-000 pursuant to Section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

ANR indicates that Westvaco has entered into a gas purchase contract dated January 16, 1984, as amended, with Delhi Pipeline Corporation (Delhi) to acquire gas which would be used by Westvaco for boiler fuel at its Beryl, West Virginia (also referred to as Luke, Maryland), and Covington, Virginia, plants. It is further indicated that ANR would transport 4,500 dt equivalent of gas on a peak and average day, and 1,642,500 dt equivalent per year for a term not to extend beyond June 30, 1985. ANR explains that the gas to be purchased by Westvaco from Delhi is not released gas. ANR explains that its transportation service is incident to transportation arrangements Westvaco has made with Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), Columbia Gulf Transmission Company (Columbia Gulf), Columbia Gas Transmission Corporation (Columbia), and two distributors.

ANR states that pursuant to a January 18, 1984, transportation agreement between ANR and Westvaco, Westvaco would cause Northern to direct ANR to divert volumes of gas formerly deliverable to United Gas Pipe Line Company (United) to Columbia Gulf for Westvaco's account. It is further stated that ANR's system is interconnected with the pipeline systems of United and Columbia Gulf in St. Mary Parish, Louisiana. ANR states that Columbia Gulf, Columbia, Columbia Gas of West Virginia, Inc., and Columbia Gas of Virginia, Inc., would provide transportation services for Westvaco incidental to the service which would be provided by ANR for Westvaco. For its service, ANR proposes to charge Westaco two cents per dt equivalent for all gas which Northern would direct ANR to divert from United and deliver to Columbia Gulf for Westvaco's account. ANR states that this rate is based upon Rate Schedule EUT-1 of ANR's Tariff. ANR further states that no Added Incentive Charge would be charged.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9416 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2712-004, et al.

Cities Service Oil and Gas Co., et al; Applications to Amend Certificates to Establish Entitlement to Section 109 Price [1]

April 3, 1984.

Take notice that each of the Applicants listed herein has either filed a petition to amend certificate pursuant to Section 7 of the Natural Gas Act or a notice of change in rate which is being treated as a petition to amend cerificate to establish Applicant's right to collect the section 109 price consistent with the court order issued in *Tenneco Exploration Ltd. v. FERC, 649 F.2d.376, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.*

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 17, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
G-2712-004, Mar. 23, 1984	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	Arkansas Louisiana Gas Company, Carthage Field, Panola County, Texas.	(1)	
CI75-733-001, Mar. 8, 1984	Highland Resources, Inc., 800 San Jacinto Building, Houston, Texas 77002.	Trunkline Gas Company, South Marsh Island, Offshore Louisiana.	(1)	
CI78-613-002, Feb. 13, 1984	Hondo Oil & Gas Company, P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company, Millman Area, Eddy County, New Mexico.	(1)	
CI78-1062-001, Mar. 23, 1984	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Transco Gas Supply Company, West Cameron Block 222, Offshore Louisiana.	(1)	
CI81-432-001, Mar. 23, 1984	do	Tennessee Gas Pipeline Company, West Delta Block 63 Field, Offshore Louisiana.	(1)	
CI81-437-003, Mar. 5, 1984	Sonat Exploration Company, P.O. Box 1513, Houston, Texas 77251-1513.	Southern Natural Gas Company, Eugene Island Block 341, Offshore Louisiana.	(1)	
CI82-173-001, Mar. 28, 1984	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Arkansas Louisiana Gas Company, Mississippi Canyon Block 148, Offshore Louisiana.	(1)	

[1] Application proposes to amend certificate to establish Applicant's entitlement to collect Section 109 price consistent with court order in *Tenneco Exploration, Ltd.* v. *FERC* 649 F2d 376.
Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9418 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-335-000]

Cleveland Electric Illuminating Co.; Notice of Filing

April 3, 1984.

The filing Company submits the following:

Take notice that on March 21, 1984, Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 40 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of March 7, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 17, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9419 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-337-000]

Niagara Mohawk Power Corp.; Notice of Filing

April 3, 1984.

The filing Company submits the following:

Take notice that on March 21, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing as a rate schedule, an agreement between Niagara and the Rochester Gas and Electric Corporation (Rochester) dated May 12, 1983.

Niagara presently has on file an agreement with Rochester dated April 12, 1973 as amended on July 20, 1982. This agreement is designated as Niagara Mohawk Corporation Rate Schedule FERC No. 76. This new agreement is being transmitted as a supplement to the existing agreement.

Niagara states that the original April 12, 1973 agreement states that Niagara will provide for the transmission of power and energy to and from the Power Authority of the State of New York at the Blenheim-Gilboa Pumped Storage Plant for Rochester. This supplement revises the rate to be paid by Rochester for the use of Niagara's facilities. The monthly charge will be updated on October 1 of each succeeding year using Niagara's most recent annual fixed charges.

Niagara requests an effective date of October 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this were served upon Rochester and the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 17, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9421 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-338-000]

Niagara Mohawk Power Corp.; Notice of Filing

April 3, 1984.

The filing Company submits the following:

Take notice that on March 21, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing a rate schedule, an agreement between Niagara and Rochester Gas and Electric Corporation (Rochester) dated May 17, 1983.

Niagara presently has on file an agreement with Rochester dated February 14, 1975. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 92. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the transmission rate for transmitting FitzPatrick power and energy from the Power Authority of the State of New York to Rochester as provided for in terms of the original agreement.

Niagara requests an effective date of September 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Rochester and the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20406, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 17, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9422 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-341-000]

Niagara Mohawk Power Corp.; Notice of Filing

April 3, 1984.

The filing Company submits the following:

Take notice that on March 22, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing a rate schedule, an agreement between Niagara and Rochester Gas and Electric Corporation (Rochester) dated May 12, 1983.

Niagara presently has on file an agreement with Rochester dated July 3, 1980 and last amended August 23, 1982. This agreement is for the transmission of Rochester's share of the Oswego #6

generation unit over Niagara's transmission system to Rochester.

The May 12, 1983 agreement contained in this filing revises the transmission rate for transmitting Oswego Unit #6 power and energy from the Oswego Unit #6 generating station to Rochester as provided for in the terms of the original agreement.

Niagara requests an effective date of July 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Rochester and the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 17, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9423 Filed 4-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-342-000]

Niagara Mohawk Power Corp.; Notice of Filing

April 3, 1984.

The filing Company submits the following:

Take notice that on March 22, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing as a rate schedule, an agreement between Niagara and Rochester Gas and Electric Corporation (RG&E) dated May 17, 1983.

Niagara presently has on file an agreement with RG&E dated April 1, 1979. The Original Agreement is to provide transmission service for the delivery of diversity power and energy from the Power Authority of the State of New York (PASNY) and RG&E. The diversity power and energy is in turn exchanged by PASNY with Hydro Quebec. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. 114. This agreement is being transmitted as a supplement to the existing agreement and supersedes Supplement No. 4.

The April 27, 1982 agreement, which is a supplement to the original agreement, revises the transmission rates.

Niagara requests an effective date of April 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon RG&E and the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 17, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9424 Filed 4-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-309-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

April 2, 1984.

Take notice that on March 20, 1984, as supplemented on March 27, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-309-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to transport natural gas on behalf of Westvaco Corporation (Westvaco) under the authorization issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

Northern indicates that Westvaco has entered into a gas purchase contract dated January 16, 1984, as amended, with Delhi Pipeline Corporation (Delhi) to acquire gas which would be used by Westvaco for boiler fuel at its Beryl, West Virginia (also referred to as Luke, Maryland), plant. It is further indicated that Northern would transport 4.5 billion Btu on a peak and average day and 1,642,500 MMBtu per year for a term not to extend beyond June 30, 1985, or the termination date of the gas purchase contract between Delhi and Westvaco, whichever occurs first. Northern explains that the gas to be purchased by Westvaco for Delhi is not released gas.

Northern states that Westvaco would deliver gas or cause gas to be delivered to Northern at an existing interconnection between Northern and Delhi in Beaver County, Oklahoma, pursuant to the terms of a January 19, 1984, gas transportation agreement. Northern proposes to back-haul the gas to a common point on its system in Pecos County, Texas. It is explained that Northern would then cause the delivery of thermally-equivalent gas to ANR Pipeline Company (ANR), by displacement, for the account of Westvaco at ANR's existing facilities near Centerville, St. Mary Parish, Louisiana, for further transportation. For this service, Northern proposes to charge Westvaco 10.90 cents per Mcf. It is stated that this rate is derived from Rate Schedule EUT-1 of Northern's Tariff which provides for 4.65 cents per Mcf per 100 miles of forward-haul plus one cent per Mcf for general and administrative expenses. Northern states that initially it would charge Westvaco an Added Incentive Charge (AIC) of 2.5 cents per Mcf of gas transported; it is averred that its rate per Mcf for the AIC is derived from Rate Schedule AIC-1 of Northern's Tariff. Further, Northern states that it would undertake certain filing requirements to implement its agreement with Westvaco as to sources of gas and Northern receipt points; any changes in sources of gas and/or receipt points would be on behalf of Westvaco at the same end-use location and would be within the maximum daily and annual volumes authorized. Northern avers that such transportation service would be rendered under the same terms and conditions authorized for basic service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9425 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-244-000]

Texas Eastern Transmission Corp.; Producer-Suppliers; Notice of Application

March 30, 1984

Take notice that on February 15, 1984, Texas Eastern Transmission Corporation (Texas Eastern), One Houston Center, Houston, Texas 77010, filed in Docket No. CP84-244-000 an application pursuant to Section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity and limited permission and approval to abandon to enable Applicant to implement an Experimental Marketing Program (TEEMARK) crafted to increase the flow of natural gas from the industry's producing sector to the consumer at the marketplace, to provide competitive prices and to reduce Texas Eastern's take-or-pay exposure to its producer suppliers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that granting of the requested authorizations would enable Texas Eastern to implement TEEMARK. Under TEEMARK, Texas Eastern states it would act as program coordinator and as agent to arrange purchases of natural gas. It is explained that each month Texas Eastern would post a price for TEEMARK purchases which is competitive with other energy supplies and the eligible purchasers would then certify to Texas Eastern the volumes of gas that they are willing to purchase for the next succeeding month at the posted price for that month. Texas Eastern states that it would then solicit offers from producers to sell natural gas to the purchasers at the posted price, or if an eligible purchaser certifies that a lower price is necessary to compete with energy supplies in its market area, Texas Eastern would attempt to match that purchaser with a producer willing to sell the volume of gas at the lower price.

Texas Eastern states that it would release from the natural gas volumes dedicated to its general system supply the quantities of gas which a producer is willing to make available for sale under TEEMARK in exchange for that producer's agreement to grant Texas Eastern take-or-pay relief. It is asserted that the volumes tendered for sale under TEEMARK would not result in a reduction in Texas Eastern's level of takes from a producer below what they would otherwise be under existing Texas Eastern's purchasing practices and that all sales made under TEEMARK would thus be additions to Texas Eastern's normal takes from the producer. Texas Eastern proposes to transport any TEEMARK volumes delivered into its system on behalf of the eligible purchasers, subject to available pipeline capacity, pursuant to a proposed new Rate Schedule TM and to make arrangements for the transportation and delivery of TEEMARK volumes by third parties on behalf of eligible purchasers.

Texas Eastern states that any purchaser who is connected to Texas Eastern's system or who can receive deliveries of TEEMARK volumes is an eligible purchaser under the TEEMARK program. However, Texas Eastern explains that in the event that supplies tendered for sale under the program are insufficient to meet the demand of all the eligible purchasers or in the event there is insufficient pipeline capacity for whatever reasons to deliver certain of the TEEMARK volumes the supplies which can be delivered within such capacity limitations would be allocated to the eligible purchasers in accordance with the following priority of purchaser categories (listed in descending order of priority):

(1) Priority 1—existing customers of Texas Eastern under firm sales contracts.

(2) Priority 2—distribution companies and end users who purchase gas from existing customers of Texas Eastern directly and indirectly.

(3) Priority 3—interstate pipelines, intrastate pipelines, Hinshaw pipelines and local distribution companies who are not included in Priority 1 or Priority 2 above.

(4) Priority 4—end users who are not included in the priorities above.

Texas Eastern states that each month it would establish a posted price for TEEMARK purchases (TEEMARK Posted Price) giving consideration to the price level which Texas Eastern believes to be required to make the volumes available for purchase under the TEEMARK program competitive with other energy supplies recognizing that the eligible purchasers would be incurring transportation charges and applicable shrinkage. If an eligible purchaser certifies that a price lower than the price posted by the Applicant is necessary to compete with other energy supplies in its market area, Texas Eastern states that it would attempt to match that purchaser with a producer or producers willing to sell the certified volumes of gas at the lower certified price. Texas Eastern states that if it is able to match a producer or producers with that purchaser the lower certified price would then be considered the TEEMARK Posted Price for that purchaser and the sale so arranged would continue on an interruptible basis for the term of the contract between the TEEMARK purchaser and seller or for the term of the TEEMARK program, whichever expires first.

Texas Eastern states that producers are eligible to sell natural gas under the TEEMARK program as specified below. In the event the supplies tendered for purchase exceed the demand for TEEMARK volumes or in the event there is insufficient capacity to receive deliveries of certain of the tendered volumes in order to maximize the reduction in Texas Eastern's take-or-pay exposure to its producer-suppliers, it is indicated that supplies would be purchased from producers in accordance with the following priority of categories (listed in descending order of priority):

(1) Priority 1—gas from wells under contract to Texas Eastern which is priced at or above the Natural Gas Policy Act (NGPA) Section 109 level under said contract.

(2) Priority 2—all other gas not under contract to Texas Eastern.

Texas Eastern states that the purchase price for TEEMARK volumes would be the applicable TEEMARK Posted Price or any applicable lower certified price and that this purchase price includes all adjustments for taxes, royalties, production-related costs and delivery into Texas Eastern's facilities. It is explained that for gas under contract to Texas Eastern, only wells which are priced to Texas Eastern at or above NGPA Section 109 levels would be eligible for release and sale under TEEMARK. Further, it is stated that no gas released for sale may be sold unless the weighted average cost of all Texas Eastern's released gas prior to release is equal to or exceeds Texas Eastern's weighted average cost of gas. Texas Eastern states that all gas sold and transported under TEEMARK would be sold and transported in the same proportion of pricing categories under which it was released regardless of the actual sale price charged to the buyer.

Applicant submits that it would transport TEEMARK quantities to eligible purchasers pursuant to the proposed new Rate Schedule TM.

Applicant states that applicable shrinkage would be retained for use in providing the transportation service. The presently effective shrinkage rate is 1.5 percent per zone involved for the period April 16 through November 15 and 2 percent for the period November 16 through April 15.

Texas Eastern states that in order to facilitate this form of transportation service, limited-term blanket transportation authority is essential. Therefore, Texas Eastern requests a blanket limited-term certificate of public convenience and necessity authorizing interstate pipelines (other than Texas Eastern) to transport TEEMARK volumes on behalf of end users and others on a self-implementing basis in accordance with the terms and conditions of Order Nos. 234–B and 319 which are not inconsistent with this application.

Texas Eastern further states that in order to facilitate any incidental transportation of TEEMARK volumes by intrastate pipelines, Hinshaw pipelines, local distribution companies, or any other entity, Texas Eastern requests that the Commission authorized: (1) Intrastate pipelines to transport, on a self-implementing basis, TEEMARK volumes purchased by an end user and others and transported by an interstate pipeline in accordance with the terms and conditions of Subpart C of Part 284 of the Commission's Regulations which are not inconsistent with this application; (2) local distribution companies and Hinshaw pipelines to transport TEEMARK volumes purchased by end users and others and transported by interstate pipelines on the same terms and conditions as intrastate pipelines; and (3) any other blanket transportation authorizations which may be necessary to implement this program on a self-executing basis.

Texas Eastern also requests a waiver of the reporting requirements of §§ 157.207, 157.209(g), 284.106, 284.126, and 284.222(e) of the Commission's Regulations with respect to TEEMARK transportation services. It is asserted that the requested waiver is appropriate because the information required by those regulations would be included in a more organized manner in the monthly reports contemplated to be filed, or caused to be filed, by Texas Eastern.

Applicant states that the monthly delivered price to the eligible purchaser would contain three elements: (1) The TEEMARK Posted Price in effect for such month, or any applicable lower certified price; (2) the transportation charges by Texas Eastern, and (3) any applicable transportation charges by third party transporters for transportation and delivery of TEEMARK volumes from facilities owned by Texas Eastern to the eligible purchasers.

Texas Eastern states that under the requested blanket limited-term certificate of public convenience and necessity, the producer would be authorized to make an interstate sale of the abandoned volumes to an eligible TEEMARK purchaser for the limited period of the TEEMARK sales transaction, and that the producer would not be required to obtain Section 7(b) abandonment authorization upon expiration of the authorized TEEMARK sale.

Texas Eastern states that such monthly reports required would also contain the information required to be submitted by producers under §§ 157.24, 157.25 and 157.30 of the Commission's Regulations. Applicant therefore requests, on behalf of producer-suppliers currently selling natural gas to Texas Eastern, a waiver of the reporting requirements of §§ 157.24, 157.25 and 157.30 of the Regulations.

Texas Eastern states that to assist the Commission in its review of TEEMARK, Texas Eastern would file or cause to be filed with the Commission within 15 days after the end of each month monthly reports containing the following information and such other information as the Commission may require in its final order approving this application:

(1) A report from any supplier of TEEMARK gas setting forth the following information: the total volumes of gas sold under the program; the total volumes of gas sold from each field; and the total volumes of each NGPA category sold.

(2) A report from Texas Eastern setting forth the following information: its system weighted average cost of gas; the volumes of gas released; identification of the field(s) from which the gas is released; the volumes by NGPA category of gas released; the price paid (and the contract price if the two prices are not the same) by Texas Eastern during the most recent month in which purchases were made by Texas Eastern; the duration of the release; and the volums that each supplier was willing to release or nominate for sale under this program, itemized by NPGA category from each producer, volumes of available alternative supplies, and, if the alternative fuel is gas, the name of the supplier.

(3) A report from any other transporting pipeline setting forth the following information: The TEEMARK volumes taken for delivery to each purchaser; the volume delivered to each purchaser; the charge for the transportation; and the disposition of the revenues.

Texas Eastern states that it would retain all transportation revenues attributable to the the transportation of TEEMARK volumes in accordance with the express provisions of the settlement in Docket No. RP83–35–000, *et al.*

Specially, Texas Eastern states that the following authorizations are necessary to implement the TEEMARK program:

(1) A blanket limited-term certificate of public convenience and necessity authorizing Texas Eastern to render TEEMARK transportation services in accordance with the terms, provisions and conditions of the application and the proposed new Rate Schedule TM for the limited period extending from the date on which the certificate of public convenience and necessity is granted through November 15, 1984, or such shorter period during which TEEMARK remains in effect;

(2) A blanket limited-term certificate of public convenience and necessity with limited permission and approval to abandon authorizing interstate pipeline (other than Texas Eastern) to render TEEMARK transportation services on behalf of end users and others for the limited period extending from the date on which an order granting the limited authorization requested is issued through November 15, 1984, or such shorter period during which TEEMARK remains in effect, in accordance with:

(a) The terms, provisions and conditions of the application; and

(b) The terms, provisions, and conditions of Subpart C and Part 284 of the Commission's Regulations which are not inconsistent with the application.

(4) Waiver of the reporting requirements of §§ 157.207, 157.209(g), 284.4(b), 284.106, 284.126 and 284.222(e) of the Commission's Regulations with respect to TEEMARK transportation volumes;

(5) On behalf of producer-suppliers currently selling natural gas to Texas Eastern, blanket authority for limited-term partial abandoment of certificated sales to Texas Eastern consistent with the purposes and duration of TEEMARK sales as described in the subject application;

(6) On behalf of producer-suppliers currently selling natural gas to Texas Eastern, a blanket limited-term certificate of public convenience and necessity with limited permission and approval to abandon authorizing the sale in interstate commerce of such partially abandoned volumes consistent with the purposes and duration of

TEEMARK sales as described in the application;

(7) On behalf of producer-suppliers currently selling natural gas to Texas Eastern, waiver of the requirements, of §§ 157.24, 157.25 and 157.30 of the Commission's Regulations; and

(8) Any additional or general waivers of the requirements of the Natural Gas Act, the Natural Gas Policy Act of 1978 and the Commission's Regulations as may be necessary to permit the successful implementation of TEEMARK as described in the application.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 13, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice notice that, pursuant to the authority contained in and subject to the jurisidiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9417 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-298-000]

Western Power, Division of Centel Corp.; Notice of Refund Report

April 3, 1984.

Take notice that on March 26, 1984, the Western Power Division of Centel Corporation submitted for filing its Refund Report pursuant to the Settlement Agreement with Kansas State Corporation Commission.

Western Power states that a compliance report showing monthly billing determinants, revenue receipt dates, and revenues under the prior, present and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period has been furnished to the affected wholesale customers and to the Kansas State Corporation Commission.

Western Power further states that this Refund Report will complete the final filing requirements.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before April 11, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9420 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-27-000]

State of Wyoming; Section 108 NGPA Determination; Conoco, Inc.; South Elk Basin No. 7 Well, JD No. 84-19813; Notice of Protest

Issued: April 3, 1984.

On March 20, 1984, Conoco, Inc. (Conoco) filed a protest of a negative determination made by the Bureau of Land Management (BLM) at Worland, Wyoming. Conoco requests that the Commission issue a preliminary finding and subsequently a final order determining that the South Elk Basin No. 7 Well qualifies as a stripper well subject to a recognized enhanced recovery technique.

Conoco states that the well received section 108 stripper well gas status on August 5, 1979. After reworking the well, Conoco filed a petition for continued stripper gas well qualification as a result of the application of enhanced recovery techniques. However, BLM issued a final negative determination on December 23, 1983, because "the actions taken were on an interval that had not previously produced natural gas."

Conoco believes it qualifies for continued stripper gas well qualification. Conoco states that the work performed on the well was a recognized enhanced recovery technique and that the increased gas production resulted solely from the work performed on the well. Conoco insists that the reason cited by BLM for disqualification is not "sufficient to preclude the qualification of the subject well as a stripper well subject to an enhanced recovery technique."

On March 23, 1984, the Commission requested additional information from BLM to determine if BLM believe that production had occurred from separate reservoirs. Pursuant to § 275.202(b), the 45-day Commission review period will not begin until BLM replies to this request.

Within 30 days of publication in the **Federal Register**, any person may file a protest to Conoco's petition or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. If you wish to become a party to this proceeding, you must file a petition to intervene. *See* Rules 214 or 211.[1]

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9420 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-297-000]

Alabama Gas Corp.; Application

April 4, 1984.

Take notice that on March 12, 1984, Alabama Gas Corporation (Applicant), 1918 First Avenue North, Birmingham, Alabama 35295, filed in Docket No. CP84-297-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a blanket certificate of public convenience and necessity for authorization to transport, sell and assign volumes of natural gas in interstate commerce as if Applicant were an intrastate pipeline as defined in Subparts C, D and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it received during the 12-month period ending

[1] 18 CFR 385.214 or 385.211 (1983).

December 31, 1983, 78,361,577 Mcf of natural gas from all sources, all of which was received within or at the state boundary, and was exempt from the Commission's jurisdiction under the Natural Gas Act by reason of Section 1(c) of the Natural Gas Act in Docket No. G–2575.

Applicant asserts that it would charge its rates on file with the Alabama Public Service Commission for intrastate transportation service in those situations where the interstate service provided under the requested certificate is comparable, and otherwise to apply for Commission approval of its transportation charges pursuant to 18 CFR 284.123(b)(2).

Applicant indicates it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 25, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing on this application will be held without further notice before the Commission or its designee if no petition to intervene if filed within the time required herein, and such certificate will be granted if the Commission on its own review of the matter finds that a grant of such certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the meeting.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–9402 Filed 4–6–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4944–001]

City of Ukiah, California; Surrender of Preliminary Permit

April 4, 1984.

Take notice that City of Ukiah, California, Permittee for the proposed Mendenhall Creek Hydroelectric Project, has requested that its preliminary permit be terminated. The preliminary permit was issued on March 21, 1983, and would have expired September 30, 1984. The Project would have been located on Mendenhall Creek in Mendocino County, California.

The Permittee filed its request on February 13, 1984, and the surrender to the preliminary permit for Project No. 4944 is deemed accepted as of February 13, 1984, and effective 30 days after the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–9404 Filed 4–6–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–354–000]

Commonwealth Edison Co.; Filing

April 4, 1984.

The filing Company submits the following:

Take notice that on March 27, 1984, Commonwealth Edison Company (Commonwealth) tendered for filing proposed changes in its FERC Electric Tariff. The proposed changes revise the Electric service Contract between Commonwealth and the City of Batavia, Illinois, to provide for changes in the system of electric supply to the City by the Company.

Commonwealth requests an effective date on May 7, 1984, and therefore requests waiver of the Commission's notice requirements.

A copy of the filing has been served upon the City of Batavia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 19, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–9405 Filed 4–6–84; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 6911–001, et al.]

Hydroelectric Applications (Village of Tupper Lake, New York, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Minor License.

b. Project No: 6911–001.

c. Date Filed: July 28, 1983.

d. Applicant: Village of Tupper Lake, New York.

e. Name of Project: Bog River Project.

f. Location: On the Bog River in St. Lawrence, Franklin and Hamilton Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Donald T. Trudeau, Superintendent, Electric Department, Village of Tupper Lake, 53 Park Street, Tupper Lake, New York 12986.

i. Comment Date: May 7, 1984.

j. Competing Application: Project No. 7428–000; Date Filed: 7–6–83 for a Preliminary Permit.

k. Description of Project: The proposed project would consist of two developments:

The Upper Development would include: (1) The Upper Lows Dam, an existing concrete gravity structure approximately 18 feet high and 150 feet long; (2) Lows Lake with a surface area of 4,600 acres and a maximum storage capacity of 19,500 acre-feet at spillway crest elevation 1,743 feet m.s.l.; (3) a reconstructed powerhouse containing a generating unit with an installed capacity of 150 kW; (4) a 13.2-kV transmission line approximately 3.75 miles long; and (5) appurtenant facilities.

The Lower Development would include: (1) The Lower Lows Dam, an existing concrete buttress structure approximately 23 feet high and 239 feet long; (2) Hitchins Pond with a surface area 367 acres and a maximum storage

capacity of 1,745 acre-feet at spillway crest elevation 1,723 feet m.s.l.; (3) a rehabilitated powerhouse containing an installed generating capacity of 255kW; (4) a 13.2-kV transmission line approximately 7 miles long; (5) a 7.5-foot-diameter, 150-foot-long penstock; and (6) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 2,010 MWh.

The dams and surrounding lands are presently owned by the Boy Scouts of America.

2a. Type of Application: Transfer of License.

b. Project No: 2814–003.

c. Date Filed: February 13, 1984.

d. Applicant: Paterson Municipal Utilities Authority and Great Falls Hydroelectric Company.

e. Name of Project: Great Falls.

f. Location: Passaic River, City of Paterson, Passaic County, New Jersey.

g. Filed Pursuant to: 16 U.S.C. 791(a)—825(r).

h. Contact Person: John Topalian, Project Director, Paterson Municipal Utilities Authority, 72 McBride Avenue, Paterson, New Jersey 07510.

i. Comment Date: May 7, 1984.

j. Description of Project: The proposed Transfer: The Applicants propose to transfer the license from Paterson Municipal Utilities Authority (Licensee) to Paterson Municipal Utilities Authority and Great Falls Hydroelectric Company (Transferee) in order to raise sufficient capital to finance the project. Attempts to raise the necessary capital by the Licensee through the sale of municipal bonds have been unsuccessful. Great Falls Hydroelectric Company is a limited partnership organized under the laws of the State of Maryland. The Great Falls Project consists of an existing dam, reservoir and powerhouse to be restored to operating condition. Transferee has proposed to construct, operate and maintain the project in accordance withe the license.

k. This notice also consists of the following standard paragraph: B.

l. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. Purpose of Project: Project output will be delivered into the electrical distribution system owned and operated by the Village of Tupper Lake to provide a portion of the energy requirements of the Village's electric customers.

l. This notice also consists of the following standard paragraphs: A2, B and C.

3a. Type of application: Preliminary Permit.

b. Project No: 8065–000.

c. Date Filed: February 7, 1984.

d. Applicant: City of Goshen, Indiana.

e. Name of Project: Goshen Dam Hydro Project.

f. Location: on the Elkhart River near Goshen, Elkhart County, Indiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Contract Person: Max R. Chiddister, Mayor, City of Goshen, 111 E. Jefferson Street, Goshen, Indiana 46526.

i. Comment Date: May 7, 1984.

j. Competing Application: Project No. 7678–000. Date filed: October 3, 1983. Due date: January 16, 1984.

k. Description of Project: The proposed project would consist of: (1) an existing 14-foot-high and 200-foot-long dam; (2) a small reservoir with a maximum surface elevation of 793 feet above mean sea level and storage capacity of 3,100 acre-feet; (3) an existing powerhouse with a total installed capacity of 800 kW; (4) transmission lines; and (5) appurtenant facilities. The proposed Goshen Dam Hydro Project utilizes facilities owned by the City of Goshen, Indiana. Applicant estimates the average annual generation for the project to be 4.5 GWh. All power generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

4a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7630–000.

c. Date filed: September 10, 1983.

d. Applicant: Commonwealth Hydroelectric, Inc.

e. Name of Project: Whittles Mill Dam.

f. Location: Maherrin River, Mecklenburg County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. John K. Pollock, President, Commonwealth Hydroelectric, Inc., Route 1, Box 413, Afton, Virginia 22920.

i. Comment Date: May 10, 1984.

j. Description of Project: The Whittles Mill Dam Project would consist of: (1) The existing Whittles Mill Dam, which is of pinned stone construction with a concrete cap and a gunite face, and about 130 feet long and 16 feet high; (2) an existing concrete powerhouse structure located at the right dam abutment; (3) two proposed generating units of total capacity of 280 kW to be installed in the existing powerhouse: (4) an 800-foot-long transmission line to connect with the existinig local distribution grid; and (5) appurtenant facilities. The estimated average annual generation for the project is 1,225,000 kWh.

k. Purpose of Exemption: An exemption, if issued, gives the exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit of license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

5a. Type of Application: Small Conduit Exemption.

b. Project No: 7392–001.

c. Date Filed: September 23, 1983.

d. Applicant: L. F. Bush.

e. Name of Project: Bush Ranch Hydrpelectric.

f. Location: Shoer Creek, Elko County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § 791(a)—825(r).

h. Contact Person: Mr. Gerald L. Martens, Edwards, Howard and Martens, Inc., 1139 Falls Avenue E., Suite B, Twin Falls, Idaho 83301.

i. Comment Date: May 10, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing small diversion structure, (2) an existing 18-inch-diameter steel irrigation

pipeline, approximately 6,560 feet long: (3) a proposed powerplant consisting of a single generating unit of 163 kW capacity; and (4) appurtenant facilities.

k. Purpose of Project: The estimated annual generation of 855,000 kWh would be sold to Wells Rural Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission or or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would be compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notice of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application must be filed in response to and in compliance with the public notice of the initial permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a

competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to invervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 4, 1984.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9015 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4123–001]

Kern County Water Agency; Surrender of Preliminary Permit

April 4, 1984.

Take notice that Kern County Water Agency, Permittee for the proposed Hobo Power Project No. 4123, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 20, 1981, and would

have expired May 30, 1985. The project would have been located on the Kern River in Kern County, California.

The Permittee filed its request on March 6, 1984, and the surrender of the preliminary permit for Project No. 4123 is deemed accepted as of March 6, 1984, and effective 30 days after the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9406 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-308-000]

Lone Star Gas Co., a Division of ENSERCH Corp.; Request Under Blanket Authorization

April 4, 1984.

Take notice that on March 20, 1984, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP84-308-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Lone Star proposes to construct and operate a sales tap and appurtenant facilities under the blanket authorization issued in Docket No. CP83-59-000, as amended in Docket No. CP83-59-002, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Lone Star proposes to sell up to 100 Mcf of natural gas on an annual basis to Masonic Lodge 301 located in McCurtain County, Oklahoma. This service would be provided through constructing a new sales tap and metering facility on Line E32-2-1 at Station 2+45. Lone Star states that Masonic Lodge 301 would purchase natural gas at the applicable commercial rate approved by the Oklahoma Corporation Commission.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9407 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-344-000]

Maine Yankee Atomic Power Co.; Filing

April 4, 1984.

The filing Company submits the following:

Take notice that on March 23, 1984, Maine Yankee Power Company (Maine Yankee) tendered for filing proposed changes in its FPC Electric Rate Schedule No. 1 (the Power Contract). The proposed changes would increase revenues from jurisdictional sales and service by $26,088,420, based on the 12-month period ending December 31, 1982. Maine Yankee proposes to make the changes effective May 22, 1984.

Maine Yankee states that the changes include two amendments to the Power Contract between Maine Yankee and its ten owner-sponsors. Power Contract Amendment No. 1 would ensure Maine Yankee's ability to recover its estimated costs of decommissioning its nuclear generating facility during the term of the Power Contract. Power Contract Amendment No. 2 would authorize an increase in the return on common equity and would authorize imposition of a late payment charge on overdue bills.

Maine Yankee further states that it is proposing to increase its return on common equity from 10.0% to 17.5%. Maine Yankee also is proposing to increase its equal collection for estimated decommissioning costs from $1.826 million to $17.9 million (of which $8.238 million is for potential Federal income tax liability and eventually may be eliminated). Finally, Maine Yankee proposes to change its accounting and billing practices to expense and bill currently the carrying costs associated with (1) all projects other than those specifically undertaken to increase the potential output of its nuclear generating facility and (2) maintaining nuclear fuel in process and in inventory.

Maine Yankee proposes an effective date of May 22, 1984.

Copies of this filing were served upon Maine Yankee's jurisdictional customers and the secondary purchasers of its power, as well as the utility regulatory authorities in each State having jurisdiction over such customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9408 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2099-000]

Mark W. Putney; Application

April 4, 1984

The filing individual submits the following:

Take notice that on March 29, 1984, Mark W. Putney filed an application pursuant to Section 205(b) of the Federal Power Act to hold the following positions:

Chairman and Director—Iowa Power and Light Company

Chairman, President and Director—Iowa Gas Company

Director—AID Insurance Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825, North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 19, 1984. Protests will be considered by the Commission in determining the appropriate action be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-9400 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6960-001]

Midvale Irrigation District; Surrender of Preliminary Permit

April 4, 1984.

Take notice that Midvale Irrigation District, Permittee for the proposed Pilot Canal Chute Hydroelectric Power Development Project No. 6960, has requested that its preliminary permit be terminated. The permit was issued on December 21, 1983, and would have expired on May 31, 1985. The project would have been located at the Pilot Canal Chute in Fremont County, Wyoming.

The Permittee filed its request on March 6, 1984, and the surrender of the preliminary permit for Project No. 6960 is deemed accepted 30 days after issuance of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9610 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-M

[ST84-466-000, et al.]

National Fuel Gas Supply Corp., et al.; Self-Implementing Transactions

April 4, 1984.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and Section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Lois D. Cashell,

Acting Secretary.

Docket No.[1] and Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (c/MMBtu)
ST84-466 National Fuel Gas Supply Corp	Tricot Products Corp	02-01-84	F(157)		
ST84-467 Transcontinental Gas Pipe Line Corp	Laurel Fuel Co	02-02-84	B		
ST84-468 Transcontinental Gas Pipe Line Corp	Texas Eastern Transmission Corp	02-02-84	G		
ST84-469 Transcontinental Gas Pipe Line Corp	Florida Gas Transmission Co	02-02-84	G		
ST84-470 Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	02-02-84	B		
ST84-471 Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	02-02-84	B		
ST84-472 Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	02-02-84	B		
ST84-473 Columbia Gas Transmission Corp	Ashland Oil, Inc	02-02-84	F(157)		
ST84-474 Columbia Gas Transmission Corp	W. R. Grace & Co	02-02-84	F(157)		
ST84-475 Columbia Gas Transmission Corp	Harbison-Walker Refractories	02-02-84	F(157)		
ST84-476 Columbia Gas Transmission Corp	Howmet Aluminum Corp	02-02-84	F(157)		
ST84-477 Columbia Gas Transmission Corp	Jones and Laughlin Steel Corp	02-02-84	F(157)		
ST84-478 Columbia Gas Transmission Corp	Jones and Laughlin Steel Corp	02-02-84	F(157)		
ST84-479 Columbia Gas Transmission Corp	Quaker State Oil Refining Corp	02-02-84	F(157)		
ST84-480 Northern Natural Gas Co	Davison Chemical	02-02-84	F(157)		
ST84-481 Tennessee Gas Pipeline Co	Creole Gas Pipeline Corp	02-03-84	B		
ST84-482 Tennessee Gas Pipeline Co	Louisiana Industrial Gas Supply	02-03-84	B		
ST84-483 Tennessee Gas Pipeline Co	N. Carolina Natural Gas Corp.; et al	02-03-84	B		
ST84-484 Tennessee Gas Pipeline Co	Creole Gas Pipeline Corp	02-03-84	B		
ST84-485 Tennessee Gas Pipeline Co	Piedmont Natural Gas Co	02-03-84	B		
ST84-486 Tennessee Gas Pipeline Co	Louisiana Industrial Gas Supply	02-03-84	B		
ST84-487 Channel Industries Gas Co	Tennessee Gas Pipeline Co	02-03-84	C		
ST84-488 Channel Industries Gas Co	Tennessee Gas Pipeline Co	02-03-84	C		
ST84-489 Texas Gas Transmission Corp	Stone Container Corp	02-03-84	F(157)		
ST84-490 Texas Eastern Transmission Corp	New Jersey Natural Gas Co	02-06-84	B		
ST84-491 Panhandle Eastern Pipe Line Co	Kansas Power & Light Co	02-06-84	B		
ST84-492 Trunkline Gas Co	Mid Louisiana Gas Co	02-06-84	G		
ST84-493 Texas Gas Transmission Corp	Memphis Light, Gas and Water Div	02-07-84	B		
ST84-494 Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	02-07-84	B		
ST84-495 Tennessee Gas Pipeline Co	N. Carolina Natural Gas Corp., et al	02-07-84	B		
ST84-496 Tennessee Gas Pipeline Co	Delhi Gas Pipeline Corp	02-07-84	B		
ST84-497 Trunkline Gas Co	Sugar Bowl Gas Corp	02-07-84	B		
ST84-498 Natural Gas Pipeline Co. of America	Stauffer Chemical Co	02-09-84	F(157)		
ST84-499 Houston Pipe Line Co	Industrial Natural Gas Co	02-09-84	C		
ST84-500 Oasis Pipe Line Co	Industrial Natural Gas Co	02-09-84	C		
ST84-501 ANR Pipeline Co	La. Industrial Gas Supply Corp	02-09-84	B		
ST84-502 ANR Pipeline Co	Acadian Pipeline Gas Corp	02-09-84	B		
ST84-503 ANR Pipeline Co	La. Industrial Gas Supply Corp	02-09-84	B		

Docket No.[1] and Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (c/MMBtu)
ST84-504 ANR Pipeline Co	Southern Natural Gas Co	02-09-84	G		
ST84-505 ANR Pipeline Co	Producer's Gas Co	02-09-84	B		
ST84-506 Columbia Gulf Transmission Co	Texas Eastern Transmission Corp	02-09-84	G		
ST84-507 East Tennessee Natural Gas Co	Chattanooga Gas Co	02-09-84	B		
ST84-508 Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp., et al	02-09-84	G		
ST84-509 Southern Natural Gas Co	United Cities Gas Co	02-10-84	B		
ST84-510 Transcontinental Gas Pipe Line Corp	Consolidated Gas Supply Corp	02-13-84	G		
ST84-511 Transcontinental Gas Pipe Line Corp	Mid Louisiana Gas Co	02-13-84	G		
ST84-512 Transcontinental Gas Pipe Line Corp	Houston Pipe Line Co	02-13-84	B		
ST84-513 Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	02-13-84	B		
ST84-514 Transcontinental Gas Pipe Line Corp	Acadiana Natural Gas Co	02-13-84	B		
ST84-515 Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	02-13-84	G		
ST84-516 Delhi Gas Pipeline Corp	La. Industrial Gas Supply Corp	02-13-84	D		
ST84-517 Locust Ridge Gas Co	Southern Natural Gas Co	02-13-84	G		
ST84-518 Michigan Gas Storage Co	Consumers Power Co	02-13-84	B		
ST84-519 ANR Pipeline Co	Middletown Paperboard Co	02-14-84	F(157)		
ST84-520 ANR Pipeline Co	Davison Chemical Division	02-14-84	F(157)		
ST84-521 Northern Natural Gas Co	Transcontinental Gas Pipe Line Corp	02-15-84	G		
ST84-522 Northern Natural Gas Co	Allied Chemical Corp	02-15-84	F(157)		
ST84-523 Northern Natural Gas Co	Westvaco Corp	02-15-84	F(157)		
ST84-524 Producer's Gas Co	Northwest Pipeline Corp	02-15-84	C	07-14-84	37.50
ST84-525 ANR Pipeline Co	Producer's Gas Co	02-15-84	B		
ST84-526 ANR Pipeline Co	Michigan Consolidated Gas Co	02-15-84	B		
ST84-527 ANR Pipeline Co	3M Corp	02-Corp	02-15-84	F(157)	F(157)
ST84-528 ANR Pipeline Co	RCA Corp	02-15-84	15	F(157)	
ST84-529 ANR Pipeline Co	Stone Container Corp	02-15-84	15	F(157)	
ST84-530 ANR Pipeline Co	Watertown Municipal Utilities	02-15-84	15	F(157)	
ST84-531 Oklahoma Natural Gas Co	Michigan Wisconsin Pipe Line Co	02-15-84	C	07-14-84	10.00
ST84-532 Oklahoma Natural Gas Co	Michigan Wisconsin Pipe Line Co	02-15-84	C		
ST84-533 Texas Eastern Transmission Corp	Tennessee Gas Pipeline Co	02-16-84	G		
ST84-534 Texas Eastern Transmission Corp	New Jersey Natural Gas Co	02-16-84	B		
ST84-535 Natural Gas Pipeline Co. of America	Western Gas Corp	02-16-84	B		
ST84-537 Oklahoma Natural Gas Co	Michigan Wisconsin Pipe Line Co	02-16-84	C	07-15-84	10.00
ST84-538 Tennessee Gas Pipeline Co	Louisiana State Gas Corp	02-16-84	B		
ST84-539 Texas Gas Transmission Corp	Texas Eastern Transmission Corp	02-17-84	G		
ST84-540 Texas Eastern Transmission Corp	Public Service Electric and Gas Co	02-17-84	B		
ST84-541 Texas Eastern Transmission Corp	Philadelphia Electric Co	02-17-84	B		
ST84-542 Trunkline Gas Co	Intrastate Gathering Corp	02-17-84	B		
ST84-543 Panhandle Eastern Pipe Line Co	Peoples Natural Gas Co	02-17-84	B		
ST84-544 Michigan Consolidated Gas Co	Panhandle Eastern Pipe Line Co	02-17-84	G(HT)		
ST84-545 Tennessee Gas Pipeline Co	N. Carolina Natural Gas Corp., et al	02-17-84	B		
ST84-546 Louisiana Resources Co	Faustina Pipe Line Co	02-21-84	C	07-20-84	16.44
ST84-547 Columbia Gas Transmission Corp	Ashland Oil, Inc	02-17-84	F		
ST84-548 Columbia Gas Transmission Corp	Harbison Walker Refractories, Inc	02-17-84	F		
ST84-549 Columbia Gas Transmission Corp	Empire Detroit Steel	02-17-84	F		
ST84-550 Columbia Gas Transmission Corp	U.S. Steel Corp	02-17-84	F		
ST84-551 Columbia Gas Transmission Corp	Armco, Inc	02-17-84	F(157)		
ST84-552 Columbia Gas Transmission Corp	Armstrong World Industries, Inc	02-17-84	F(157)		
ST84-553 Columbia Gas Transmission Corp	Calgon Carbon Corp	02-17-84	F(157)		
ST84-554 Columbia Gas Transmission Corp	Dana Corp	02-17-84	F(157)		
ST84-555 Columbia Gas Transmission Corp	Empire Detroit Steel	02-17-84	F(157)		
ST84-556 Columbia Gas Transmission Corp	W. R. Grace and Co	02-17-84	F(157)		
ST84-557 Columbia Gas Transmission Corp	W. R. Grace and Co	02-17-84	F(157)		
ST84-558 Columbia Gas Transmission Corp	Lancaster Colony Corp	02-17-84	F(157)		
ST84-559 Columbia Gas Transmission Corp	OSCO Industries, Inc	02-17-84	F(157)		
ST84-560 Columbia Gas Transmission Corp	Stratoflex, Inc	02-17-84	F(157)		
ST84-561 Columbia Gas Transmission Corp	Westvaco, Inc	02-17-84	F(157)		
ST84-562 Columbia Gas Transmission Corp	Westvaco, Inc	02-17-84	F(157)		
ST84-563 ANR Pipeline Co	Colgate-Palmolive Co	02-15-84	F(157)		
ST84-564 ANR Pipeline Co	Cummins Engine Co	02-15-84	F(157)		
ST84-565 ANR Pipeline Co	Gohmann Asphalt Co	02-15-84	F(157)		
ST84-566 Tennessee Gas Pipeline Co	Houston Pipe Line Co	02-21-84	B		
ST84-567 Tennessee Gas Pipeline Co	Florida Gas Transmission Co	02-21-84	G		
ST84-568 ANR Pipeline Co	Westvaco Corp	02-21-84	F(157)		
ST84-569 ANR Pipeline Co	Georgia-Pacific Corp	02-21-84	F(157)		
ST84-570 Northern Natural Gas Co	Lukens Steel Co	02-21-84	F(157)		
ST84-571 Consolidated Gas Supply Corp	Anchor Hocking Corp	02-21-84	F(157)		
ST84-572 Montana-Dakota Utilities Co	Bridgeline Gas Distribution Co	02-22-84	B		
ST84-573 Panhandle Eastern Pipe Line Co	Quincy Soybean Co	02-22-84	F(157)		
ST84-574 Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	02-22-84	G		
ST84-575 ANR Pipeline Co	Bridgeline Gas Distribution Co	02-23-84	B		
ST84-576 ANR Pipeline Co	Bridgeline Gas Distribution Co	02-23-84	B		
ST84-577 Columbia Gas Transmission Corp	W. R. Grace and Co	02-24-84	F(157)		
ST84-578 Columbia Gas Transmission Corp	Inland Products, Inc	02-24-84	F(157)		
ST84-579 Columbia Gas Transmission Corp	ITT Grinnell Corp	02-24-84	F(157)		
ST84-580 Columbia Gas Transmission Corp	Yorktowne Paper Mills, Inc	02-24-84	F(157)		
ST84-581 National Fuel Gas Supply Corp	Columbia Gas Transmission Corp	02-24-84	G		
ST84-582 Delta Natural Gas Co., Inc	Columbia Gas Transmission Corp	02-24-84	G(HT)		
ST84-583 ANR Pipeline Co	Citizens Gas and Coke Utility	02-24-84	B		
ST84-584 ANR Pipeline Co	Texas Eastern Transmission Corp	02-24-84	G		
ST84-585 Trunkline Gas Co	Panhandle Eastern Pipe Line Co	02-27-84	G		
ST84-586 ANR Pipeline Co	Allied Chemical Co	02-27-84	F(157)		
ST84-587 ANR Pipeline Co	Terra Chemical International, Inc	02-27-84	F(157)		
ST84-588 United Gas Pipe Line Co	Transwestern Pipeline Co	02-27-84	G		
ST84-589 United Gas Pipe Line Co	LGC Intrastate, Inc	02-27-84	B		
ST84-590 United Gas Pipe Line Co	Louisiana State Gas Corp	02-27-84	B		
ST84-591 Columbia Gulf Transmission Co	Transcontinental Gas Pipe Line Corp	02-28-84	G		
ST84-592 Columbia Gulf Transmission Co	Natural Gas Pipeline Co. of America	02-28-84	G		
ST84-593 Columbia Gulf Transmission Co	United Gas Pipe Line Co	02-28-84	G		
ST84-594 Columbia Gulf Transmission Co	Southern Natural Gas Co	02-28-84	G		
ST84-595 The Peoples Natural Gas Co	Consolidated Gas Supply Corp	02-24-84	G(HT)		
ST84-596 Dow Pipeline Co	Northern Natural Gas Co	02-29-84	C		

Docket No.[1] and Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (c/MMBtu)
ST84-65 Superior Offshore Pipeline Co.[3]	Louisiana Gas Systems Inc	10-21-83	B		
ST84-66 Superior Offshore Pipeline Co.[3]	Louisiana Gas Systems Inc	10-31-83	B		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.
[3] These filings were originally made on October 31, 1983, and were noticed by the Commission on December 2, 1983. Louisiana Intrastate Gas Corp. was designated as recipient of the transportation service in both filings. By a subsequent report filed by Superior Offshore Pipeline Co. on March 27, 1984, the recipient in both transactions was amended to Louisiana Gas Systems, Inc.

[FR Doc. 84-9411 Filed 4-6-84; 8:45 am]
BILLING CODE 6718-1-M

[Project No. 6690-001]

Oconto Electric Power and Light Coop.; Surrender of Preliminary Permit

April 4, 1984.

Take notice that Oconto Electric Power and Light Cooperative, Permittee for the proposed Chute Pond Dam Project No. 6690, has requested that its preliminary permit be terminated. The permit was issued on March 3, 1983, and would have expired August 31, 1984. The project would have been located on the North Branch of Oconto River, Oconto County, Wisconsin.

The Permittee filed its request on March 12, 1984, and the surrender of the preliminary permit for Project No. 6690 is deemed accepted 30 days from the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9412 Filed 4-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-343-000]

Pennsylvania Power & Light Co.; Filing

April 4, 1984.

The filing Company submits the following:

Take notice that on March 23, 1984, Pennsylvania Power & Light Company (PP&L) tendered for filing a Capacity & Energy Sales Agreement dated March 9, 1984 between PP&L and Jersey Central Power & Light Co. (JC) for the sale of a portion of PP&L entitlements to the net capacity and energy of certain electric station units owned by PP&L.

Copies of this filing were served upon the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9413 Filed 4-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-340-000]

Public Service Company of Colorado; Filing

April 4, 1984.

The filing Company submits the following:

Take notice that on March 22, 1984, the Public Service Company of Colorado (Public Service) tendered for filing a proposed change in its FERC Electric Service Tariff. Public Service states that the proposed change is a Supplement to Public Service's Transmission Interconnection and License Agreement with Southern Colorado Power, an operating unit of Centel Corporation (Centel), under FERC Rate Schedule No. 13.

Public Service indicates that the proposed change is to extend the license granted to Centel by Public Service to include certain additional facilities to be installed at Public Service's Boone Substation.

Public Service requests an effective date of October 21, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the parties to the Agreement and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 18, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9414 Filed 4-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5247-001]

State of California Department of Water Resources; Surrender of Exemption From Licensing

April 4, 1984.

Take notice that the State of California, Department of Water Resources, Exemptee for the Castaic Output Powerplant, FERC Project No. 5247, has requested that its exemption from licensing be terminated. The exemption from licensing for Project No. 5247 was issued on February 5, 1982. The project would have been located on Castaic Creek in Los Angeles County, California.

The Exemptee filed its request on March 6, 1984, and the surrender of its exemption from licensing for Project No. 5247 is deemed accepted as of March 6, 1984, and effective as of 30 days after the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9403 Filed 4-6-84; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 2559-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The Following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers, Office of Standards and Regulations; Information Management Section (PM–223); U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Water Permits Programs

• Title: Certification for Exemption from Monitoring and Notification of Process Changes in Effluent Guidelines (EPA #1014).

Abstract: Effluent guidelines for several industrial categories require monitoring for specific pollutants. Certain facilities may obtain monitoring exemptions by demonstrating to the permit or control authority (EPA, State agency or publicly owned treatment works) that the pollutant is not present in their discharges. Canmaking facilities are required to notify EPA of certain process changes.

(Note.—This submittal amends a previously approved collection [OMB #2040–0033] by adding aluminum forming, pharmaceutical manufacturing and coil coating [canmaking] industrial categories.)

Respondents: Businesses.

Agency PRA Clearance Requests Completed by OMB

EPA #0370, Underground Injection Control Permit Application and Permittee Reporting (Revision), was approved 16 March 1984 (OMB #2040–0042).

EPA #0799, RCRA Interim Status Inspection Checklist, was approved 22 February 1984 (OMB #2000–0356).

EPA #0995, Land Disposal Permitting Standards, was approved 19 March 1984 (OMB #2050–0007).

EPA #1159, Solid Waste Management at Primary Smelters/Refineries, was approved 22 February 1984 (OMB #2050–0027).

EPA #1162, Diesel Odor Survey, was approved 15 March 1984 (OMB #2010–0008).

Comments on all parts of this notice should be sent to:

David Bowers (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, S.W., Washington, D.C. 20460

and

Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, N.W., Washington, D.C. 20503

Dated: March 30, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information, Management Division.

[FR Doc. 84–9211 Filed 4–6–84; 8:45 am]

BILLING CODE [illegible]

[FRL–2560–5]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting—April 26–27, 1984

Under Public Law 92–463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board. The meeting will be held April 26–27 starting at 9:00 am on April 26 at the Main Auditorium, Environmental Research Center, Environmental Protection Agency, Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

The purpose of the meeting is to allow the Committee to review and provide its advice to EPA on the October 1983 first external review draft of EPA's revised air quality criteria document for lead. For this review the Committee has been divided into two subcommittees, one of which will review health effects related information and the other to review welfare effects related information. The two subcommittees will jointly consider air quality measurements and related issues before breaking to consider health and welfare effects in separate concurrent sessions.

Copies of the October 1983 draft criteria document may be obtained by writing or calling the Office of Research and Development Publications Center, CERI–FRN, U.S. EPA, 21 West St. Clair Street, Cincinnati, Ohio, 45268 (513) 684–7562. Please ask for EPA document 600–8–83–028A, Vols. I–IV, October 1983.

The meeting is open to the public. Any member of the public wishing to obtain information or participate in the meeting should contact Mr. A. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101), U.S. EPA, 401 M Street SW, Washington, D.C. 20460 (202) 382–2552, by close of business April 19, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

April 2, 1984.

[FR Doc. 84–9337 Filed 4–6–84; 8:45 am]

BILLING CODE [illegible]

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Office of Administration, Executive Office of the President.

The Office of Administration, Executive Office of the President has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The entry contains the following information: (1) Type of Submissions; (2) Legal authority for information collection; (3) Abstract Statement of the need for, use of, and public affected by the collection; (4) Burden estimates; (5) Frequency of reporting; and (6) the point of contact from whom a copy of the information proposal may be obtained.

Information collection from the public in support of the OA/EOP acquisition process is necessary to allow the Government to support contractual actions for supplies, services and equipment subject to the procedures required by the Federal Procurement Regulations, and, after March 31, 1984, by the Federal Acquisition Regulation in conformance with the requirements of the Federal Property and Administrative Services Act, Title 41 U.S.C.

Contractor Actions: 1050 annual responses; 25,200 annual hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235 NEOB, Washington, D.C. 20503, telephone 202/694–0187.

A copy of this information collection proposal may be obtained from Ms. Kathy Gibbs, Office of Administration, Room 498 OEOB, Washington, D.C. 20500, telephone 202/395–3314.

S. D. Valakis,

Procurement Executive, Executive Office of the President.

[FR Doc. 84–9299 Filed 4–6–84; 8:45 am]

BILLING CODE 3115–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-698-DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA-698-DR), dated March 29, 1984, and related determinations.

DATED: March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

Notice

Notice is hereby given that, in a letter of March 29, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage resulting from severe freezing temperatures in certain areas of the State of Florida beginning on December 24, 1983, are of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Thomas P. Credle of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster: For Individual Assistance: Lake, Orange, Pasco, Polk and Seminole Counties.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-9309 Filed 4-6-84; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-699-DR]

North Carolina; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of North Carolina (FEMA-699-DR), dated March 30, 1984, and related determinations.

DATED: April 2, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

The notice of a major disaster for the State of North Carolina dated March 30, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 30, 1984: Cumberland and Sampson Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.156, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-9311 Filed 4-6-84; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-700-DR]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA-700-DR), dated March 30, 1984, and related determinations.

DATED: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

Notice is hereby given that, in a letter of March 30, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage resulting from severe storms and tornadoes in certain areas of the State of South Carolina beginning on or about March 28, 1984, are of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Roland Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Carolina to have been affected adversely by this declared major disaster:

For Individual Assistance and Public Assistance: Abbeville, Fairfield, Marlboro and Newberry Counties.

For Individual Assistance Only: Kershaw and Laurens Counties.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-8310 Filed 4-6-84; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-699-DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA-699-DR), dated March 30, 1984, and related determinations.

DATED: March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

Notice

Notice is hereby given that, in a letter of March 30, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage resulting from severe storms and tornadoes in certain areas of the State of North Carolina beginning on or about March 28, 1984, are of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period of not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Paul E. Hall of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

For Individual Assistance and Public Assistance: Bertie Duplin, Hertford, Pitt, Robeson, Scotland and Wayne Counties.

For Individual Assisance Only: Greene County.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-8308 Filed 4-6-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 13]

Military Household Goods Rates of Vessel Operating Common Carriers; Order of Non-Adjudicatory Investigation

It has come to the attention of the Commission that certain vessel operating carriers are engaging in the practice of publishing two rates applying to the transportation of household goods, one for the carriage of such goods on account of the Department of Defense or other U.S. Government agencies and a different rate for non-government shippers which rate is sometimes unrestricted against military household goods.*

It would appear that in the transportation between points in the United States and points in foreign countries, privately owned household goods of military personnel and of civilian employees of the Department of Defense move under contracts between the Military Traffic Management Command of the Department of Defense and certain freight forwarders who may also be acting as non-vessel operating common carriers (NVOCCs) when utilizing the services of vessel operating ocean carriers. It would further appear that the costs of providing the services contemplated in that contract are to be borne by the forwarders. It is unclear under these circumstances whether the terms and conditions of the contract between MTMC and the freight forwarders it employs in any manner affect the type and cost of the service provided by the ocean carrier. This, in turn, raises the question of whether the ocean carriers' "military" household goods rates are based on recognized transportation and rate-making factors rather than on the identity of the shipper and, consequently, of the propriety of the maintenance of different rates for what would appear to be one commodity, *i.e.*, privately owned household goods. Also to be considered here is the effect of the Cargo Preference Act, 10 U.S.C 2631, which mandates that the charges for ocean transportation not be higher for military cargo than those assessed for the transportation of like goods for private persons.

Because the resolution of those issues is of general public interest, the Commission has determined to institute, pursuant to Subpart R of its Rules of Practice and Procedure (46 CFR 502.281 *et seq.*), a nonadjudicatory investigation into the economic, statutory and regulatory basis for the practice of vessel operating common carriers by water in the publishing of separate tariffs and rates for the transportation of household goods for the account of the Department of Defense and other United States Government agencies.

Therefore, it is ordered, that pursuant to sections 21, 22 and 27 of the Shipping Act, 1916 (46 U.S.C. 820, 821 and 826) and section 214(a) of the Merchant Marine Act of 1936 (46 U.S.C. 1124(a)), a nonadjudicatory investigation is hereby instituted into the practices of vessel operating common carriers subject to the Commission's jurisdiction of publishing separate tariffs and rates for the transportation of household goods for the account of the Department of Defense and other United States Government agencies; said investigation to be conducted pursuant to the Commission's Rules of Practice and Procedure (46 CFR 502.281-291).

It is further ordered, that the Investigative Officer shall be Aaron W. Reese of the Commission. Mr. Reese shall direct the investigation and shall be assisted by such staff members as he may designate.

The Investigative Officer shall have the full authority of the Commission to hold public or nonpublic sessions, to resort to all compulsory processes authorized by law (including the issuance of subpoenas), to administer oaths and to perform such other duties as may be necessary in accordance with

* Docket No. 83-20, *AABCO, Inc.—Petition for Declaratory Order (Applicability of "Commercial" Tariffs of Vessel Operating Common Carriers to Military Household Goods Traffic).* The Petition was denied by Order of the Commission served March 14, 1984.

the laws of the United States and the regulations of the Commission;

It is further ordered, that any persons having an interest and desiring to participate in this proceeding, shall file a statement with the Investigative Officer, describing their interest on or before April 30, 1984;

It is further ordered, that the Investigative Officer shall issue to the Managing Director interim progress reports every three months and a final report of findings and recommendations no later than one year after publication of this Order in the **Federal Register**, all such reports to remain confidential unless and until the Commission rules otherwise; and

It is further ordered, that notice of this order be published in the **Federal Register**.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-9299 Filed 4-6-84; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2669]

Alireza International, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Alireza International, Inc. was cancelled effective March 29, 1984.

Our letter, advising Alireza International, Inc. That Independent Ocean Freight Forwarder License No. 2669 would be automatically revoked unless a valid surety bond was filed with the Commission, was returned by the postal authorities marked refused.

Alireza International, Inc. has failed to furnish a valid bond.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(f) dated September 27, 1983.

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2669 be and is hereby revoked effective March 29, 1984.

It is ordered, that Independent Ocean Freight Forwarder License No. 2669 issued to Alireza International, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Alireza International, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-9301 Filed 4-6-84; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License, Pacific Western Shipping Co. et al.; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Pacific Western Shipping Company, 1221 3rd Street, Oakland, CA 94607
Officers: Timothy H. Bailey, President/Secretary, John Joseph Kopshever, Vice President-Export Manager.

Lawrence Export Services, Inc., 5633 Old Clinton Drive, Houston, TX 77020
Officers: James D. Lawrence, President/Director, Lonnie D. Brown, Executive Vice President, James D. Harvey, Vice President, William D. Sutton, Vice President/Secretary

Pacific Rim Shipping, Inc., 1205 Seattle Tower, 1228 3rd Avenue, Seattle, WA 98101
Officers: Richard H. Beuthel, President/Director, Ronald J. Cowan, Vice President/Treasurer, Bernard B. Pelly, Jr., Vice President/Secretary, E. Wood Peabody, Jr., Vice President/Director

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-9300 Filed 4-6-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 Federal Register 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 2, 1984.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Community Bancorp, Inc.*, Hudson, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of The Hudson National Bank, Hudson, Massachusetts.

2. *Westbank Corporation*, West Springfield, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Park West Bank and Trust Company, West Springfield, Massachusetts.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Arkansas Bankstock Corporation*, Little Rock, Arkansas; to acquire 98.2 percent of the voting shares of The First National Bank in Harrison, Harrison, Arkansas, and thereby indirectly acquire Conway Bancshares, Inc., Conway, Arkansas; First State Bank and Trust Company, Conway, Arkansas; National Bancshares Corporation, Pine Bluff, Arkansas; and National Bank of Commerce of Pine Bluff, Pine Bluff, Arkansas. Comments on this application must be received not later than April 30, 1984.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First West Concord Bancorporation, Inc.*, West Concord, Minnesota; to become a bank holding company by acquiring 80.82 percent of the voting shares of First National Bank

in West Concord, West Concord, Minnesota. Comments on this application must be received not later than April 30, 1984.

2. *U-Banc, Incorporated,* Red Lodge, Montana; to become a bank holding company by acquiring 82.6 percent of the voting shares of United Bank of Absarokee, N.A., Absarokee, Montana. Comments on this application must be received not later than April 30, 1984.

Board of Governors of the Federal Reserve System, April 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8304 Filed 4-6-84; 8:45 am]

BILLING CODE 6210-01-M

Bay Bancshares, Inc.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 1984.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Bay Bancshares, Inc.,* La Porte, Texas; to engage *de novo* through its subsidiary Bay Harbor Life Insurance Company, La Porte, Texas, in the underwriting of credit life insurance and credit accident and health insurance which is directly related to extensions of credit by applicant's financial subsidiaries. The activities would be performed at the applicant's subsidiary offices in the United States.

Board of Governors of the Federal Reserve System, April 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-8305 Filed 4-6-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 10]

Federal Travel Regulations

AGENCY: Office of Federal Supply and Services, General Services Administration (GSA).

ACTION: Notice of Changes to Federal Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 10, transmitting changed pages to amend FPMR 101-7, Federal Travel Regulations (FTR) by implementing certain changes to the Federal employee relocation allowance levels for household goods, temporary quarters subsistence expenses, and maximum reimbursement for the purchase of a new residence; by including certain Presidential appointees as being eligible for certain relocation allowances; and by requiring a reasonable advance notice of reassignment or transfer. These revisions result from amendments to subchapter II, of chapter 57, title 5, United States Code, made by Pub. L. 98-151, November 14, 1983.

EFFECTIVE DATE: The revised provisions of chapter 2 are effective for employees and certain new appointees whose effective date of transfer or appointment is on or after November 14, 1983. For purposes of these regulations, the effective date of transfer or appointment is the date the employee or new appointee reports for duty at the new or first official station.

FOR FURTHER INFORMATION CONTACT: Staff members, Travel and Transportation Regulations Division, (703) 557-1253 or 557-1256.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule, has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Effect of changes on payment of relocation allowance claims. The relocation allowances contained in the FTR were changed substantially effective October 1, 1982, and again with the changed pages transmitted by this supplement. Because of these changes and the extended eligibility period for certain allowances (potential 3 years), payment of relocation allowance claims may require application of different allowance levels for different employees. Agencies are reminded that provisions of the regulations in effect on the employee's or new appointee's effective date of transfer or appointment must be used for payment purposes.

Explanation of changes. This supplement amends the FTR as follows:

a. Paragraph 2-1.2a is amended by adding a new subparagraph (6) to add certain new Presidential appointees to the list of persons covered by the FTR. New appointees to the Senior Executive Service (SES) have been deleted from previous subparagraph (3) and are now included in new subparagraph (6). The word "conterminous" is deleted from subparagraph (3) to be consistent with subparagraph 2-1.3a(3).

b. Paragraph 2-1.2b(1) is revised to update the reference to the Foreign Service Act.

c. Paragraph 2-1.3 is retitled, reformatted for ease of use, and revised to add:

(1) New provisions of 5 U.S.C. 5724(j) regarding reasonable advance notice of transfer or reassignment in new subparagraph b;

(2) A specific requirement in new subparagraph c for written travel authorizations (TA) prior to transfer and issuance of the TA in accordance with guidelines contained in 1-1.5; and

(3) Advice to agencies in new subparagraph d of varying allowance levels in effect depending on the employee's or new appointee's effective date of transfer or appointment.

d. Paragraph 2–1.4 is amended to add subparagraph a–1 to define the term United States as used in these regulations.

e. Paragraph 2–1.5f is revised to add:

(1) "Certain Presidential appointees" to the paragraph title;

(2) An introductory statement in subparagraph (1);

(3) New subparagraph (1)(d) which is a redesignation of subparagraph (1)(a–1); and

(4) New subparagraph (1)(e) to include certain new Presidential appointees as being eligible for payment of certain travel and transportation expenses to their first duty station.

f. Paragraph 2–5.1 is revised to add a statement at the end of the paragraph to require that the determination on the need for occupancy of temporary quarters and the length of time for occupancy be made on an individual-case basis.

g. Paragraph 2–5.2 is amended to rearrange and retitle some of the subparagraphs and to include the following regulatory revisions:

(1) Subparagraph a(1) allows a maximum of 60 days for occupancy of temporary quarters for all transferred employees whose new official station is located in the United States and non-foreign areas;

(2) Subparagraph a(2) allows an additional period not to exceed 60 days in temporary quarters when the agency head determines that there are compelling reasons (examples are provided) for continued occupancy;

(3) Subparagraph d requires that the temporary quarters be located within the proximity of the old or new official station unless a different location is justified under unique or special circumstances and approved by the agency head; and

(4) Subparagraph f deletes the former reference to the 30- or 60-day limitations in computing the length of time allowed for temporary quarters.

h. Paragraph 2–5.4 is revised as follows:

(1) Subparagraphs a and b are revised by deleting the last sentence of b related to local transportation expenses and adding the sentence to the end of subparagraph a; and

(2) Subparagraph c is revised to delete the required reduction of reimbursement in 10-day increments; clarify that the applicable locality per diem rate for the conterminous United States is $50 (the law limits per diem to $50 per day in the conterminous United States); provide new rules for computing the maximum reimbursement for each 30-day period; require a reduced per diem for family members for the first 30-day period; and require a reduction of all rates after the first 30-day period.

i. Paragraph 2–5.5 is revised to authorize an initial advance of funds for temporary quarters subsistence expenses not to exceed the maximum reimbursement for the first 30-day period and subsequent advances in 30-day increments.

Note.—Since substantial changes are being made to Part 5 of the Federal Travel Regulations, the entire part is published in this **Federal Register** for clarity. The changed paragraphs are as stated above.

2. Paragraph –6.2g(2) is revised to increase the dollar maximum for reimbursement of allowable expenses incurred for the purchase of a new residence at the new official duty station from $5,000 to $7,500.

k. Paragraph 2–8.2a is revised to increase the maximum net weight for shipment and storage of the employee's household goods and personal effects from 11,000 pounds to 18,000 pounds.

l. Appendix 2–A is being added to the Federal Travel Regulations as a reference to reflect the various allowance levels currently in effect for payment purposes, (i.e., prior to October 1, 1982, on or after October 1, 1982; and on or after November 14, 1983). The new appendix is not published in this **Federal Register.**

m. Other minor and/or editorial changes have been made which are not published in this notice but will be included in the FTR. Accordingly, the Federal Travel Regulations, are amended as follows:

CHAPTER 2. RELOCATION ALLOWANCES

Part 1—Applicability and General Rules

1. Authority: (Sec. 205(c), 63 Stat. 390; 40 U.S.S. 486(c)); Executive Order No. 11609, July 22, 1971; 5 U.S.C. 5707)

2. Paragraphs 2–1.2a(3) and 2–1.2b(1) are revised and new subparagraph 2–1.2a(6) is added to read as follows:

2–1.2. *Applicability.*

* * * * *

a. * * *

(1) * * *

(2) * * *

(3) New appointees to any positions outside the conterminous United States; and new appointees to positions within the United States for which the Office of Personnel Management has determined that a personnel shortage exists.

(4) * * *

(5) * * *

(6) New appointees to the Senior Executive Service; and certain Presidential appointees.

b. * * *

(1) Officers and employees transferred in accordance with the provisions of the Foreign Service Act of 1980, as amended.

* * * * *

3. Paragraph 2–1.3 is revised in its entirety to read as follows:

2–1.3. *General Provisions.*

a. *Travel covered.* When change of official station or other action described below is authorized or approved by such official or officials as the head of the agency may designate, travel and transportation expenses and applicable allowances as provided herein (see applicability and exclusions in pertinent sections) are payable in the case of:

(1) An employee transferring from one official station to another for permanent duty, *Provided that:* the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his/her request; the transfer is to a new official station which is at least 10 miles distant from the old official station; and, in the case of a relatively short distance relocation, a determination of eligibility is made under the provisions of 2–1.5b(1);

(2) New appointees relocating from their places of actual residence at the time of appointment for permanent duty to official stations outside the conterminous United States;

(3) New appointees, as provided in 2–1.5f, relocating from their places of actual residence at the time of appointment for permanent duty to official stations within the United States;

(4) Eligible employees outside the conterminous United States traveling in connection with overseas tour renewal agreement travel; and

(5) Eligible employees returning from posts of duty outside the conterminous United States to places of actual residence for separation as provided in 2–1.5g.

b. *Reasonable advance notice of reassignment or transfer.* As provided in 5 U.S.C. 5724(j) (Pub. L. 98–151, November 14, 1983), "* * * the reassignment or transfer of any employee, for permanent duty, from one official station or agency to another which is outside the employee's commuting area shall take effect only after the employee has been given advance notice for a reasonable period. Emergency circumstances shall be taken into account in determining whether the

period of advance notice is reasonable." Agencies shall give as much advance notice as possible to enable the employee to begin the arrangements necessary when relocating family and residence. However, see 2–1.5b governing payment of travel and transportation expenses and applicable allowances when short distances are involved. A reasonable period of advance notice should not be less than 30 days except when: (1) The employee and both the losing and gaining agencies agree on a lesser period; (2) other statutory authority and implementing regulations stipulate a lesser period (see Office of Personnel Management regulations for specified timeframes); or (3) emergency circumstances prevail.

c. *Travel authorization.* When it is determined that a relocation will be authorized at Government expense, a written travel authorization shall be issued to the employee prior to the employee's relocation to the new official station. The agency should advise the employee, or individual selected for appointment, not to incur relocation expenses in anticipation of a relocation until he/she has received written notification. The travel authorization shall indicate the specific allowances which are authorized as provided in these regulations. The guidelines in 1–1.5 on issuance of travel authorizations shall be followed.

d. *applicable provisions for reimbursement purposes.* Because of successive changes to the provisions of these regulations governing relocation allowances and the extended period of time that employees retain eligibility for certain allowances (see 2–1.5a(2) and 2–6.1e), the reimbursement maximums or limitations applicable to certain allowances will not be the same for all employees even though claims may be filed within the same timeframe. The provisions of these regulations in effect on the employee's or new appointee's effective date of transfer or appointment (see 2–1.4j) shall be used for payment or reimbursement purposes. A summary of the allowance levels in effect on specific dates is provided in appendix 2–A for reference purposes.

4. Paragraph 2–1.4 is amended by adding subparagraph 2–1.4a–1 to read as follows:

2–1.4. *Definitions.*

* * * * *

a–1. *United States.* The 50 States and the District of Columbia. The term "United States" and "the 50 States and the District of Columbia" are used interchangeably throughout chapter 2 of the Federal Travel Regulations (FTR).

* * * * *

5. Paragraph 2–1.5f is revised by amending the paragraph title; adding an introductory statement to 2–1.5f(1); and adding new paragraphs 2–1.5f(1) d and e to read as follows:

2–1.5. *Eligibility and Conditions.*

* * * * *

f. *Shortage-category appointees, students trainees, Senior Executive Service appointees, and certain Presidential appointees.*

(1) *Coverage.* New appointees listed below are eligible for only those travel and transportation expenses as specified in (3) and (4), below.

(a) * * *

(b) * * *

(c) * * *

(d) *Senior Executive Service (SES) appointees.* New appointees to positions in the Senior Executive Service are eligible for travel and transportation to their first official stations at Government expense.

(e) *Presidential appointees.* Any person appointed by the President, by and with the advice and consent of the Senate, to a position for which the rate of pay is equal to or higher than the minimum rate of pay prescribed for GS–16 is eligible for travel and transportation to his/her first official station at Government expenes.

* * * * *

Part 5—Subsistence While Occupying Temporary Quarters

6. Part 5 is revised to read as follows:

2–5.1. *Policy.* Heads of agencies shall prescribe procedures for administering these provisions reasonably and equitably so that the necessity for allowing subsistence expenses and the amount of time an employee and members of his/her immediate family use temporary quarters is justified in connection with the employee's transfer to a new official station. As a general policy, the period for temporary quarters shall be reduced or avoided if a round-trip to seek permanent residence quarters has been made or if, as a result of extended temporary duty at the new official station or other circumstances (for example, if the family does not move until some time after the employee's transfer), the employee has had adequate opportunity to complete arrangements for permanent quarters. The administrative determination as to whether the occupancy of temporary quarters is necessary and the length of time for occupancy shall be made on an individual-case basis.

2–5.2. *Conditions and limitations for eligibility.*

a. *Length of time allowed and location of new official station.*

(1) *Initial period of temporary quarters.* An employee for whom a permanent change of station is authorized or approved shall be allowed subsistence expenses for himself/herself and for each member of his/her immediate family (defined in 2–1.4d) for a period of not more than 60 consecutive days when occupancy of temporary quarters is determined to be necessary and the new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, and the areas and installations in the Republic of Panama made available to the United States under the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979), provided a written agreement as required in 2–1.5a(1) is signed in connection with the transfer. The period of consecutive days may be interrupted for the time that is allowed for travel between the old and new official stations, or for circumstances attributable to official necessity as, for example, an intervening temporary duty assignment.

(2) *Additional time in certain cases.* Subsistence expenses as provided in (1) above, may be allowed for an additional period of time not to exceed 60 consecutive days provided the head of the agency, or his/her designee, determines that there are compelling reasons for the continued occupancy of temporary quarters. The total period of time in temporary quarters shall not exceed 120 days under any circumstances. The same considerations as expressed in 2–5.1 are applicable in allowing any part of the additional 60 days. Authorizations to extend the temporary quarters period and the number of days authorized shall be held to a minimum. Extensions of the temporary quarters may be authorized only in situations where there is a demonstrated need for additional time in temporary quarters due to circumstances which have occurred during the initial 60-day period of temporary quarters occupancy and which are determined to be beyond the employee's control and acceptable to the agency. Examples of compelling reasons which could be considered as beyond the employee's control for purposes of granting this extension may include but are not limited to the following situations:

(a) Shipment and/or delivery of household goods to new residence is

delayed due to extended transit time incident to ocean transportation, strikes, customs' clearance, hazardous weather, fires or floods, or other acts of God; etc.

(b) New permanent residence cannot be occupied because of unanticipated problems (i.e., delays in settlement on new residence, short term delay in construction of a new residence, etc.).

(c) Inability to locate permanent residence which is adequate for family needs because of housing conditions at the new official station.

(d) Sudden illness, injury, or death of employee or immediate family member.

(3) *Authorizing less than maximum time.* The specified time limits are maximum periods, and the normal length of necessary occupancy of temporary quarters is expected to average much less. Temporary quarters should be regarded as an expedient to be used only if, or for as long as, necessary until the employee concerned can move into permanent residence quarters.

b. *Transfer to foreign area.* When the new official station is located in a foreign area, the employee is not eligible for temporary quarters allowances under these regulations. When temporary lodgings are obtained in a foreign area, or in the United States prior to transferring to a foreign area, the employee may be eligible for an allowance under the Standardized Regulations (Government Civilians, Foreign Areas) prescribed by the Department of State.

c. *What constitutes temporary quarters.* Generally, the term "temporary quarters" refers to lodging obtained from private or commercial sources for the purpose of temporary occupany after vacating the residence occupied when the transfer was authorized. However, occupancy of temporary quarters that eventually becomes the employee's permanent residence shall not prevent payment of the temporary quarters allowance if, in the agency's judgment, the employee shows satisfactorily that the quarters occupied were intended initially to be only temporary. In making this determination the agency should consider factors such as: the duration of the lease, movement of household effects into the quarters, type of quarters expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters.

d. *Temporary quarters located at other than official station.* As a general rule the location of the temporary quarters must be within reasonable proximity of the old and/or new official station. Payment of subsistence expenses for occupancy of temporary quarters in other locations shall not be allowed unless justified by circumstances unique to the individual employee or the employee's family that are reasonably related and incident to the transfer. Payment for such expenses must be authorized or approved by the head of the employing agency, or his/her designee, provided the designee is at a level high enough to ensure adequate review of the circumstances involved and to determine that payment of the temporary quarters allowance is justified. Occupancy of temporary quarters shall not be approved for vacation purposes or other reasons unrelated to the transfer.

e. *Beginning of eligibility period.* The use of temporary quarters for subsistence expense purposes under these provisions may begin as soon as the employee's transfer has been authorized, and the written agreement required in 2–1.5a(1) has been signed. In order to be eligible for the temporary quarters allowance, the period of use of such quarters for which a claim for reimbursement is made must begin not later than 30 days from the date the employee reported for duty at his/her new official station, or if not begun during this period, not later than 30 days from the date the family vacates the residence at the old official station, but not beyong the maximum time for beginning allowable travel and transportation. (See 2–1.5a(2).)

f. *Computation of eligibility period and termination.* When computing the length of time allowed for temporary quarters at Government expense, the time period will begin for the employee and all members of the immediate family when either the employee or any member of the immediate family begins the period of use of such quarters for which a claim for reimbursement is made. The time period shall run concurrently for the employee and all members of the immediate family. The employee may occupy temporary quarters at one location while members of the immediate family occupy quarters at another location. However, see limitations in d, above. The period of eligibility shall terminate when the employee or any member of the immediate family occupies permanent residence quarters or when the authorized period of time expires, whichever occurs first.

g. *Effect of partial days.*

(1) The following guidelines shall be used for determining the eligibility period for temporary quarters subsistence expense reimbursement and in computing maximum reimbursement when occupancy of temporary quarters for reimbursement purposes occurs the same day that en route travel per diem ends:

(a) For en route travel of more than 24 hours, reimbursement for temporary quarters subsistence expenses shall start at the beginning of the calendar day quarter immediately following termination of the en route travel per diem. This will be considered the first full day of the entitlement period for the purpose of computing maximum reimbursement.

(b) For en route travel of 24 hours or less, reimbursement for temporary quarters subsistence expenses shall start at the beginning of the same calendar day quarter in which en route travel per diem ends upon arrival at destination. This will be considered the first full day of the entitlement period for the purpose of computing maximum reimbursement.

(2) In all other cases, the temporary quarters period shall start with the first quarter of the calendar day in which temporary quarters subsistence expense reimbursement is claimed, provided that temporary quarters are occupied during that calendar day.

(3) The temporary quarters period shall terminate at midnight of the last day of eligibility.

h. *Allowance when short distance transfer is involved.* An employee or members of his/her immediate family shall not be eligible for temporary quarters expenses when the distance between the new official station and old residence is not more than 40 miles greater than the distance between the old residence and the old official station, except that the expenses of temporary quarters are allowable for the period during which the employee is awaiting the arrival of his/her household goods shipped from the old to the new residence, provided that use of such quarters is begun not later than the maximum time for beginning allowable travel and transportation. All measurements shall be made according to map distance along a usually traveled route.

i. Duplication of other allowances. In no case shall subsistence expenses under these provisions be allowed which duplicate, in whole or in part, payments received under other laws or regulations covering similar costs. (A cost-of-living allowance payable under 5 U.S.C. 5941 is not a duplication of subsistence expenses.)

2–5.3. *Exclusions.* The provisions of 2–5 do not apply to new appointees, including those appointees covered in 2–1.5f, employees assigned under the Government Employees Training Act (see 5 U.S.C. 4109), or employees

returning for overseas assignments for the purpose of separation.

2–5.4. *Allowable amount.*

a. *Actual expenses allowed.* Reimbursement shall be only for actual subsistence expenses incurred provided these are incident to occupancy of temporary quarters and are reasonable as to amount. Allowable subsistence expenses include only charges for meals (including groceries consumed during occupancy of temporary quarters), lodging fees and tips incident to meals and lodging, laundry, and cleaning and pressing of clothing. Expenses of local transportation incurred for any purpose during occupancy of temporary quarters shall not be allowed.

b. *Itemization and receipts.* The actual expenses shall be itemized in a manner prescribed by the head of the agency which will permit at least a review of the amount spent daily for (1) lodging, (2) meals and (3) other allowable items of subsistence expenses (see a, above). Receipts shall be required at least for lodging and laundry and cleaning expenses (except when coin-operated facilities are used).

c. *Maximum reimbursement.* The amount which may be reimbursed for temporary quarters subsistence expenses shall be the actual amount of allowable expenses incurred for each 30-day period not to exceed a maximum amount based on the applicable daily rate prescribed under (2) through (4) below, multiplied by 30. The daily actual subsistence expenses required to be itemized under a and b, above, will be totaled for each 30-day period to permit a comparison with the maximum allowable amount for the particular period. If less than a 30-day period is authorized, or used, the maximum allowable amount will be based on the number of days authorized, or used, multiplied by the applicable daily rate.

(1) *Applicable maximum per diem rates.* The maximum per diem rate to be used for computations under (2) through (4), below, shall be the maximum per diem rate prescribed for the locality in which the temporary quarters are located, as follows:

(a) For temporary quarters located in the coterminous United States, the applicable maximum per diem rate is $50.

(b) For temporary quarters in applicable locations outside the conterminous United States, the maximum per diem rate is the rate prescribed for the locality by the Secretary of Defense or by the Secretary of State as provided in 1–7.2b or c.

(2) *For the first 30 days.* Reimbursement for the first 30 days will be limited as follows:

(a) For the employee, or for the unaccompanied spouse (i.e., the spouse necessarily occupies temporary quarters in a location separate from the employee), the daily rate shall not exceed the maximum per diem rate prescribed in (1), above.*

(b) For the spouse when accompanied by the employee, the daily rate shall not exceed two-thirds of the employee's daily rate established in (a), above.*

(c) For each other member of the employee's immediate family who is 12 years of age or older, the daily rate shall not exceed two-thirds of the daily rate established in (a), above, for the employee or the unaccompanied spouse, as appropriate.*

(d) For each member of the employee's immediate family who is under 12 years of age, the daily rate shall not exceed one-half of the daily rate established in (a), above, for the employee or the unaccompanied spouse, as appropriate.*

*Note.— If the temporary quarters occupied are in the conterminous United States, the maximum daily rates prescribed under (a), (b), (c), and (d), above, are $50, $33.33, $33.33, and $25, respectively.

(3) *For the second 30 days.* The daily rates for the second 30-day period for the employee and each member of the immediate family shall be three-fourths of the daily rates prescribed under (2), above. For example, if the temporary quarters occupied are located in the conterminous United States the following limitations will apply:

(a) For an employee, or unaccompanied spouse, the daily rate shall not exceed $37.50;

(b) For an accompanying spouse, the daily rate shall not exceed $25;

(c) For each other family member 12 years of age or older, the daily rate shall not exceed $25; and

(d) For each family member under 12 years of age, the daily rate shall not exceed $18.75.

(4) *Additional 60 days.* When the agency authorizes an extension of time for occupancy of temporary quarters beyond the first 60 days (not to exceed an additional 60 days) due to compelling reasons as provided in 2–5a(2), the additional days shall be computed at the same rates allowed for the second 30-day period in (3), above, for the employee and each member of the immediate family.

2–5.5 Advance of funds. Advance of funds may be made in 30-day increments in connection with subsistence expenses covered by 2–5 under policies and procedures prescribed in 2–1.6a. The initial advance of funds for temporary quarters subsistence expenses shall not exceed the maximum amount allowable under 2–5.4c(2) for the first 30-day period (or other authorized period if less than 30 days). Thereafter, funds may be advanced for subsequent 30-day periods as authorized by the agency. Agencies should advise employees that when an advance of funds is needed for the second and subsequently authorized 30-day periods, the request for advance should be submitted in sufficient time to allow for processing, approval, and issuance of the advance of funds.

Part 6—Allowance for Expenses Incurred in Connection With Residence Transactions

7. Paragraph 2–6.2g(2) is revised to read as follows: 2–6.2. *Reimbursable and nonreimbursable expenses.*

* * * * *

g. *Overall limitations.*

(1) * * *

(2) In connection with the purchase of a residence at the new official station, reimbursement shall not exceed 5 percent of the purchase price or $7,500, whichever is the lesser amount.

* * * * *

Part 8—Transportation and Temporary Storage of Household Goods and Professional Books, Papers, and Equipment

8. Paragraph 2–8.2a is revised to read as follows: 2–8.2. *General Limitations.*

a. *Maximum weight allowance.* The maximum weight of household goods that may be transported or stored in connection therewith at Government expense is limited to 18,000 pounds net weight for all employees. The total weight of household goods stored under 2–9.2 plus the weight of household goods transported under this Part 8 shall not exceed the above maximum weight allowance.

* * * * *

Dated: March 13, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–9324 Filed 4–6–84; 8:45 am]
BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the Subcommittee on Uniform Minimum Health Data Sets of the

National Committee on Vital and Health Statistics, pursuant to functions established by section 306(k)(2) of the Public Health Service Act, as amended (42 U.S.C. 242k), will convene on Monday, April 30 and Tuesday, May 1, at 10:30 a.m. in Room 729G, of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

The Subcommittee will hold its first meeting to review and discuss the Long-Term Care Minimum Data Set.

Further information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting William F. Stewart, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: April 2, 1984.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 84-9331 Filed 4-6-84; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Adminstration

[Docket No. 83N-0424]

Revisions of Certain Food Chemicals Codex, 3d Ed., Monographs; Opportunity for Public Comment; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is extending the time for filing comments on pending changes to certain Food Chemicals Codex, 3d Ed., monographs and specification information on proposed new monographs. For certain substances used as food ingredients, revised materials, consisting of new monographs, and additions, changes, and corrections in several current monographs are being prepared by the National Academy of Sciences/National Research Council (NAS/NRC) Committee on Food Chemicals Codex. These revised materials will be published in the second supplement to the Food Chemicals Codex, 3d Ed. The Infact Formula Council (IFC) requested a 60-day extension of the comment period.

DATE: Comments by May 25, 1984.

ADDRESS: Written comments to the NAS/NRC Committee on Food Chemicals Codex, National Academy of Sciences (NAS 341), 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT:

Robert A. Mathews, Committee on Food Chemicals Codex, Food and Nutrition Board, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580;

or

John W. Gordon, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 26, 1984 (49 FR 3271), FDA published a notice providing the public an opportunity to comment on revisions of certain food chemicals codex, 3d Ed., and certain proposed new monographs that NAS/NRC prepares for the Food Chemicals Codex, a compilation of specifications for substances used as food ingredients. FDA provides research contracts to the NAS/NRC to support preparation of the Food Chemicals Codex. The notice announced that written comments could be submitted until March 26, 1984.

In a letter dated March 20, 1984, the Infant Formula Council requested a 60-day extension of the comment period, until May 25, 1984, to allow it time to comment on the proposed new monographs and proposed revisions to existing monographs, because the drafts only became available for review by interested parties on March 2, 1984.

After carefully evaluating and discussing the request with the Chairman of the NAS/NRC Committee on Food Chemicals Codex, FDA has concluded that an extension is appropriate to allow adequate time to provide comments and information on proposed new monographs and proposed revisions to certain existing monographs. FDA recognizes the significance of the issues involved in this matter and wishes to ensure that all interested parties have a fair amount of time for comment. Therefore, FDA has concluded that the comment period should be extended an additional 60 days.

Interested persons may, on or before May 25, 1984, submit written comments to the National Academy of Sciences at the address listed above. The National Academy of Sciences will forward copies of each comment to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, to be placed under Docket No. 83N–0424 for public review between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 4, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9301 Filed 4-6-84; 8:45 am]

BILLING CODE 4160-21-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently in pertinent part at 48 FR 54539, December 5, 1983) is amended to reflect the following changes within the National Institute of Dental Research (NIDR): (1) Republish without change the functional statements for program-level and above components; (2) abolish the National Caries Program (HN–P3); and (3) establish the Epidemiology and Oral Disease Prevention Program (HN–P5). These changes will show the correct Standard Administrative Codes (SACs) for the Institute and its programs, and reflect the accomplishment of a more effective alignment of functions and personnel by broadening the research capacity to perform high quality epidemiological and biometrical investigations of dental caries and other oral diseases and conditions.

Sec. HN–B, Organization and Functions, is amended as follows: Under the heading *National Institute of Dental Research (HN–P) (formerly (8P)),* delete the functional statements for the Institute and its programs in their entirety, and republish those functional statements to read as follows:

National Institute of Dental Research (HN–P). Conducts, fosters, and supports research and research training in the causes, diagnosis, prevention, and cure of oral diseases and disorders through: (1) Laboratory, clinical, and field research; (2) grants for research projects and dental research institutes and individual and institutional research training awards; (3) collaborative and developmental research programs aimed at specific dental problems where major advance seems clearly possible; and (4) collection and dissemination of research findings and related information.

Intramural Research Program (HN–P2). (1) Plans and conducts the Institute's laboratory and clinical research program, which encompasses

research efforts directed toward improvements in the diagnosis, prevention, and treatment of caries, periodontal and oral soft tissue diseases, oral tumors, congential abnormalities and diseases, orafacial pain, and diabetes; (2) provides dental care for selected inpatients and ambulatory patients of Institutes conducting clinical research in the Warren Grant Magnuson Clinical Center; (3) provides data processing facilities and services for the Institute's research and clinical programs; (4) evaluates research efforts and establishes program priorities; (5) allocates funds, space, and personnel ceilings to ensure maximum utilization of available resources in the attainment of Institute objectives and integrates new research activities into the program structure; (6) collaborates with other NIH Institutes and external research institutions and maintains an awareness of natural research efforts in program areas; (7) provides advice on intramural research and science in general to the Institute Director.

Extramural Program (HN–P4). (1) Plans and directs the Institute's programs which support research and research training through grants and contracts in caries and restorative materials, periodontal and soft tissues diseases, craniofacial anomalies, pain control, and behavioral studies to ensure maximum utilization of available resources in attainment of Institute objectives; (2) assesses need for research and research training in program areas; (3) determines program priorities and recommends funding levels; (4) collaborates with Institutes and NIH intramural and collaborative activities and maintains awareness of national research efforts in program areas; (5) prepares reports and analyses to assist Institute staff and advisory groups in carrying out their responsibilities; (6) establishes and maintains effective relationships with dental schools, professional dental organizations, and other institutions concerned with extramural programs; (7) consults with voluntary health organizations and professinal associations in identifying research needs and developing programs to meet them; and (8) provides advice on extramural research and science in general to the Institute Director.

Epidemiology and Oral Disease Prevention Program (HN–P5). (1) Plans, develops, directs, and applies epidemiological methodologies in the investigation of oral diseases and disorders;l (2) assures maximum utilization of available resources to obtain Institute objectives in this area; (3) determines program priorities and allocates funds for epidemiological and biometrical research, field trials, demonstrations, and related clinical and laboratory research; (4) provides epidemiological assistance to the intramural and extramural programs of the Institute; (5) prepares analyses and reports to assist Institute staff and advisory groups in carrying out their responsibilities; (6) consults with health organizations and professional associations in identifying research needs and developing programs to meet them; (7) plans and conducts field and related studies in the area of dental diseases; and (8) provides advice on the program and science in general to the Institute Director.

Dated: April 2, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 84-9439 Filed 4-6-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Under Secretary

[Docket No. N–84–1362]

Advisory Committee on Contract Document Reform; Meeting

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of meeting of the Advisory Committee on Contract Document Reform.

SUMMARY: The fifth meeting of the Advisory Committee on Contract Document Reform will be held on Tuesday, April 24, 1984 at 9:30 a.m. in the Under Secretary's Conference Room (10106) at the Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

The purpose of the meeting is to discuss and analyze suggested amendments to contract document clauses.

This meeting is open to the public. Any interested persons may attend, appear before, or file statements with the Committee. Oral statements may be made at the meeting at the time and in the manner permitted by the Committee.

FOR FURTHER INFORMATION CONTACT: Joseph Lupica, Special Assistant to the Secretary, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Telephone: (202) 755–5713. [This is not a toll-free number.]

Dated: March 28, 1984.

Philip Abrams,

Under Secretary, Department of Housing and Urban Development.

[FR Doc. 84-9292 Filed 4-6-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

National Park Service

Mormon Pioneer National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Mormon Pioneer National Historic Trail Advisory Council will be held beginning at 1:00 p.m. on May 3, and concluding at 12:00 noon, on May 4, 1984, at the Casper Hilton Inn, Conference Room, 800 Union Blvd., Casper, Wyoming 82602. The advisory council was established by the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1244, as amended by the National Parks and Recreation Act of 1978, 92 Stat. 3514, 16 U.S.C. 1244(d) to consult with the Secretary of the Interior through the National Park Service on matters concerning the trail, including selection of rights-of-way, markers and administration. The members of the advisory council are as follows:

Mr. Booth Wallentine (Chairman), Mr. David S. Monson, Mrs. Jane Scherle, Mr. Lloyd Taggart, Mr. Douglas Bywater, Mr. Steven R. Bailey, Ms. Donna Knight, Mr. Steven Shipley, Mr. Wayne Erickson, Mr. Arthur J. Carroll, Mrs. Norma R. Green, Mr. Emerick Huber, Mr. Don Nelson, Dr. Leroy Kimball, Dr. Stanley Kimball, Mr. John J. Nielsen, Mr. Glen M. Leonard, Dr. Melvin T. Smith, Mr. Gene Bertagnoli, Mr. Warren Johnson, Mr. Jack Barnhart, Mr. Jerome Jacobs.

The meeting will be held for the purpose of providing management direction, implementation efforts and trail strategies, for management and administration of the trail.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first come, first served basis. Any member of the public may file with the council a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who will wish to submit written statements, may contact Michael Beaudry, Trail

Manager, Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225, telephone (303) 234–4942.

Minutes of the meeting will be available for inspection at the above address 4 weeks after the meeting.

Dated: March 30, 1984.

James D. Harpster,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 84-8372 Filed 4-6-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperatives; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: April 4, 1984.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BPO 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Farmers Union Central Exchange, Inc. (CENEX)
(2) P.O. Box 43089, St. Paul, MN 55164
(3) 5500 CENEX Drive, Inver Grove Heights, MN 55075
(4) Clarence N. Anderson, P.O. Box 43089, St. Paul, MN 55164

(1) Dawn Transport, Inc.
(2) 117 W. San Ysidro Blvd., C.F.P. No. 13, San Ysidro, CA 92073
(3) 1590 Reforma Ave., Mexicali, Baja, CA
(4) H. Jackson c/o Dawn Transport, Inc., 117 W. San Ysidro Blvd., C.F.P. No. 13, San Ysidro, CA 92073.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8312 Filed 4-6-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-190 (Sub-1)]

Carbon County Railway Co.—Abandonment—In Carbon and Emery Counties, UT; Findings

The Commission has issued a certificate authorizing Carbon County Railway Company to abandon its entire line extending from milepost 0.00 near Columbia Junction to milepost 10.00 near Horse Canyon, a distance of 10 miles in Carbon and Emery Counties, UT. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8313 Filed 4-6-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30415]

Seaboard System Railroad, Inc.—Abandonment Exemption—In Perry County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the abandonment by Seaboard System Railroad, Inc. of approximately 4,728 feet of rail line between Valuation Stations 215+33 and 262+61 in Perry County, KY, subject to conditions for protection of employees. Tariff changes may be made effective on not less than 10 days notice.

DATES: This exemption is effective on April 9, 1984. Petitions to reopen must be filed by April 30, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30415 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Charles M. Rosenberger, Seaboard System Railroad, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided:

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8314 Filed 4-6-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30441]

Cadiz Railroad Company-Lease and Operation Exemption Between Princeton and Gracey, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 11343, *et seq.* a lease (pursuant to assignment) and operation by Cadiz Railroad Company of a line of railroad between milepost 99.82 at Princeton, KY and milepost 120.52 at Gracey, KY, a distance of 20.7 miles, which line is presently leased by Illinois Central Gulf Railroad Company.

DATES: This decision shall be effective on April 6, 1984. Petitions to reopen must be filed by April 26, 1984.

ADDRESSES: Send petitions referring to Finance Docket No. 30441 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Mr. H. S. White, Cadiz Railroad Company, Cadiz, KY 42211.

FOR FURTHER INFORMATION CONTACT:
Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC, 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: April 2, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-8513 Filed 4-6-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 83-17]

Drug Mart, Inc.; Revocation of Registrations

On May 20, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed to Drug Mart Inc. of Lake Wales (Respondent), located in Lake Wales, Florida, an Order to Show Cause proposing to revoke Respondent's DEA Certificates of Registration, AD1734169 and AD8070702. By letter dated June 13, 1983, Gerald Gettel, President of Respondent corporation, requested a hearing.

The hearing in this matter was held in Washington, D.C. on September 13, 1983. Administrative Law Judge Francis L. Young presided. On January 18, 1984, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. In compliance with 21 CFR 1316.65(b), as amended, copies of the Administrative Law Judge's opinion were served on the Respondent and on Government counsel. No exceptions were filed and on February 21, 1984, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in December 1981, the Polk County, Florida, Sheriff's Department was informed that one Robert Cleveland had information concerning a pharmacist who would dispense drugs without a valid prescription. The pharmacist in question was Gerald Gettel, the sole owner, President and one of two pharmacists of Respondent pharmacy. Mr. Cleveland stated Gettel would sell Cleveland sealed pharmaceutical bottles of 100 Dilaudid tablets, a Schedule II controlled substance, for $1,000 per bottle.

Mr. Cleveland further stated that to cover these sales of Dilaudid, Gettel would place in the files of Respondent pharmacy prescriptions purporting to be written for one Paul Sage and showing a Dr. Verner as prescribing physician. Upon further investigation, twenty-eight prescriptions each for 100 Dilaudid 4 mg. or 2 mg., were found in Respondent pharmacy. Each prescription was purportedly written for Paul Sage and apparently signed by one John Verner, M.D. The investigators later showed the prescriptions to Dr. Verner. The doctor stated that he did not have a patient named Paul Sage, that the prescriptions were not in his handwriting and that he would not prescribe that amount of Dilaudid to anyone. The investigators also discovered that the prescriptions themselves had been written out by Cleveland on blanks provided by Gettel and that Gettel had instructed Cleveland on how to write out the prescriptions. The prescription blanks had been printed by a local printer per Mr. Gettle's order.

On or about May 26, 1982, Gerald Gettel was charged with 28 counts of unlawful delivery of a controlled substance, Dilaudid. Each of the 28 counts related to one of the prescriptions for Dilaudid forged by Cleveland and filled by Gettel. Following a jury trial, Gettel was found guilty and convicted on each of the 28 counts. These were felony convictions related to controlled substances.

DEA has consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer or key employee or who had some responsibility for the operation of the registrant's business, has been convicted of a felony offense relating to controlled substances. See: *Leonard S. Cohen, t/a Senate Drug Store*, Docket No. 72–5, 38 FR 9522 (1973); *River Forest Pharmacy*, Docket No. 73–8, 38 FR 27417 (1973); *Norman Bridge Drug Co. Inc.*, Docket No. 74–22, 41 FR 3108 (1976); *AG Pharmacy, Inc., d/b/a Berson Pharmacy*, Docket No. 79–12, 45 FR 6868 (1980). Therefore, there is a lawful basis for revocation of Respondent's DEA Certificate of Registration under 21 U.S.C. 824(a)(2).

The Administrative Law Judge concluded that the record in this proceeding provides little, if any, basis for confidence in Mr. Gettel's future actions. In 1982, Drug Mart Inc.'s net profit was $117,000. Judge Young noted that there was certainly no dire financial need for himself or his family which might have weakened Mr. Gettel's resolve and been an inducing factor leading him to sell controlled substances unlawfully.

The Administrative Law Judge has recommended that Respondent's registrations be revoked. The Administrator agrees with this recommendation. Mr. Gettel has disregarded his professional duty as a pharmacist to protect the public health and safety. He illegally diverted controlled substances for his own financial benefit. The Administrator will not tolerate such behavior. Therefore, the Administrator adopts the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. The registrations must be revoked.

Having concluded that there is a lawful basis for the revocation of the Respondent's registrations and having further concluded that under the facts and circumstances presented in this case the registrations should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration, AD1734169 and AD8070702, previously issued to Drug Mart Inc., be, and they hereby are revoked.

Dated: April 3, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-9373 Filed 4-6-84; 8:45 am]

BILLING CODE 4410-09-M

Henry A. Polk, D.O.; Revocation of Registration, Denial of Application

On December 22, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Henry A. Polk, D.O., 1001 West Washington Avenue, Alpena, Michigan 49707 (Respondent) seeking to revoke DEA Certificate of Registration AP6430033 previously issued to Respondent and to deny Respondent's application executed on March 8, 1983 for reregistration under 21 U.S.C. 823(f). The statutory predicate under 21 U.S.C. 824(a)(2) for the Order to Show Cause was Respondent's conviction on March 9, 1983 in the Circuit court of Alpena

County, Michigan of unlawful delivery of a controlled substance by a practitioner, a felony conviction relating to controlled substances.

On January 26, 1984, Respondent, through counsel, submitted his position on the matters of fact and law involved under 21 CFR 1301.54(c), specifically waiving his opportunity for a hearing. The Administrator enters this final order on the record as it appears, taking into consideration Respondent's submission. 21 CFR 1301.54 (d) and (e).

The Administrator finds that from April 21, 1981 through July 16, 1981 an undercover investigation of Respondent was conducted by a drug investigator for the Michigan Department of Licensing and Regulation and a Detective Sergeant of the Michigan State Police. The undercover investigators went to Respondent's office on six separate occasions. Under the pretense of needing drugs for weight loss and sleep, the investigators received 13 prescriptions from Respondent of 436 dosage units of Schedules II, III, and IV controlled substances such as Tenuate Dospan, Valium and Dalmane.

During these visits, Respondent took the pulse rate of one of the investigators and also recorded her weight. Otherwise, Dr. Polk failed to conduct any form of physical examination, obtain any medical history, perform any diagnostic tests or other medical procedures or diagnose any ailment, illness or injury, prior to prescribing the controlled substances.

On March 9, 1983 Respondent pleaded guilty to delivery of Dalmane in the Alpena County Circuit Court. Subsequently, a conviction was entered. Therefore, there is a lawful basis for revoking Respondent's registration and denying his application for reregistration under 21 U.S.C. 824(a)(2).

Respondent alleges that even though the court accepted his guilty plea, it did so conditionally. Respondent was not sentenced nor will he be sentenced until April 12, 1984. Therefore, Respondent contends that he was not really "convicted" within the meaning of 21 U.S.C. 824(a)(2). DEA has consistently held that a conviction is final even though the trial court suspends execution of sentence. A registrant is convicted of a controlled substance related felony if there is a judgment of guilt, plea of guilty or *nolo contendere* or some other indication that he has been found guilty of a controlled substance related felony. See *Faunce Drug Store*, Docket No. 82-3, 47 FR 30122 (1982) and cases cited therein.

Respondent abused the public trust residing in his DEA registration by prescribing controlled substances without a showing of a legitimate medical need. This kind of practice by a physician has led the Administrator to revoke a DEA registration or deny a pending application. *Arthur J. Grahl, M.D.*, Docket No. 83-25, 49 FR 949 (1984); *Herbert Webster Voorhies, M.D.*, Docket No. 80-37, 46 FR 34859 (1981); *Ivan Czornyj, M.D.*, Docket No. 79-22. 45 FR 67477 (1980). The Administrator concludes that the continued registration of Dr. Polk is not in the best interest of the public at this time. However, the Administrator notes that the State of Michigan Board of Osteopathic Medicine and Surgery placed Respondent on close supervision for two years ending November 30, 1984 and Respondent is apparently abiding by the terms of this supervision. Accordingly, DEA will again consider an application for DEA registration submitted by Respondent after the expiration of his supervision by the Michigan Board and, provided that no new or independent grounds for denial then exist, such application will be approved.

The Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP6430033, previously issued to Henry A. Polk, D.O., be, and it hereby is, revoked. Any pending applications for registration or reregistration are hereby denied, revocation and denial effective May 9, 1984.

Dated: April 3, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-9374 Filed 4-6-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determination which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and Training Administration, 601 D Street, N.W.,

Room 8000, Patrick Henry Building, Washington, D.C. 20219.

Signed at Washington, D.C. this 3rd day of April 1984.

Joseph Seiler,

Director, Office of Program Operations.

APPLICATIONS RECEIVED DURING THE WEEK ENDING APRIL 7, 1984

Name of applicant and location of enterprise	Principal product or activity
L & G Truck Stop, Inc. Porter, Indiana.	Gasoline station, truck & car wash, restaurant, and gift shop.
Norland Corporation, Fort Atkinson, Wisconsin.	Manufacture of vehicle radar safety devices.

[FR Doc. 84-8328 Filed 4-6-84; 8:45 am]

BILLING CODE 4810-35-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences.

Date: April 26 and 27, 1984.

Time: 8:30 AM-5 PM, April 26, 8:30 AM-3:30 PM, April 27.

Place: Room 540, National Science Foundation.

Type of Meeting: Open.

Contact person: Dr. Morris L. Aizenman, Acting Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 Telephone: 202 357-9488.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research in astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning long range plans in astronomy.

April 26, 1984

Agenda: 8:30 AM-5 PM—Introductory Remarks, FY 1985 Budget Discussion, Report of Astronomy Research Section Oversight Subcommittee, Astronomy Centers Priorities and Long Range Plan.

April 27, 1984

8:30 AM-3:30 PM—Astronomy Research Section Priorities and Long Range Plan, National Optical Astronomy Observatories Organization and Structure, Continuation of presentations and discussions of previous day.

April 4, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-8329 Filed 4-6-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Developmental Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Neuroscience.

Date and time: April 26-27, 1984; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G. St., NW., Washington, DC 20550.

Type of meeting: Part Open—Closed 4/26—9:00 a.m. to 12:00 p.m. Open 4/26—12:00 p.m. to 2:00 p.m. Closed 4/26—2:00 p.m. to 5:00 p.m. Closed 4/27—9:00 a.m. to 5:00 p.m.

Contact person: Dr. Alan I. Leshner, Deputy Director, Division of Behavioral and Neural Sciences, Room 320, National Science Foundation, Washington, DC 20550, telephone (202) 357-7564.

Summary minutes: May be obtained from the Contract Person at the above stated address.

Purpose of meeting: To provide advice and recommendations concerning support for research in developmental neuroscience.

Agenda: Open—General discussion of the current status and future plans of the Developmental Neurosciences Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

Dated: April 4, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-8330 Filed 4-6-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Psychobiology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L., 92-463, the National Science Foundation announces the following meetings:

Name: Advisory Panel for Psychobiology.

Date and time: April 26-28, 1984, 8:30 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 523, Washington, D.C.

Type of meeting: Open—April 26, 8:30-11:00 a.m. Closed—4/26 12:00 noon—5:00 p.m. & 4/27-4/28.

Contact person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, D.C. 20050, Telephone (202) 357-7949.

Summary minutes: May be obtained from the Contact Person, Dr. Fred Stollnitz, at the above.

Purpose of panel: To provide advice and recommendations concerning support for research in Psychobiology.

Agenda: Open—Research trends and opportunities in Psychobiology.

Closed—Review of proposals.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

April 4, 1984.

[FR Doc. 84-8400 Filed 4-6-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Air Systems; Meeting

The ACRS Subcommittee on Air Systems will hold a meeting on April 26, 1984, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will review general design for chilled water systems, the NRC Staff's prioritization of Generic Safety Issue regarding contamination of instrument air lines, and other related topics. Notice of this meeting was published March 26, 1984 (49 FR 11268).

In accordance with the procedures outlined in the Federal Register on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being

kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, April 26, 1984—8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Ms. R. C. Tang (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., E.S.T.

Dated: April 4, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84–9392 Filed 4–6–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–454, STN 50–455]

Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2); Notice of Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of April 3, 1984, oral argument on the applicant's appeal from the Licensing Board's January 13, 1984 initial decision in this operating license proceeding will be held at 9:00 a.m. on Thursday, April 19, 1984, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For the Appeal Board.

Dated: April 3, 1984.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 84–9393 Filed 4–6–84; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting and Record Keeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

A. 1. Type of submission, new, revision or extension: New.

2. The title of the information collection: 10 CFR 81.20 Non-exclusive licenses for NRC inventions.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Annually, unless license specifies a different period.

5. Who will be required or asked to report: Holders of non-exclusive patent licenses.

6. An estimate of the number of responses annually: Three.

7. An estimate of the total number of hours needed to complete the requirement or request: Six.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: Patent counsel uses information on the licensee's efforts to bring the invention to a point of practical application and licensee's progress in making the benefits of the invention reasonably accessible to the public to ensure the licensee's continuing qualification for the non-exclusive license.

B. 1. Type of submission, new, revision or extension: New.

2. The title of the information collection: 10 CFR 81.32 Exclusive licenses for NRC inventions.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Annually, unless license specifies a different period, and on the occurrence of specified events.

5. Who will be required or asked to report: Holders of exclusive patent licenses.

6. An estimate of the number of responses annually: One.

7. An estimate of the total number of hours needed to complete the requirement or request: Nine.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: Patent counsel uses information on market entry and return on investment to determine whether the license period should be extended. Transfer notices are used to keep track of who may exercise rights under the license. Patent counsel uses information on the licensee's efforts to bring the invention to a point of practical application and licensee's progress in making the benefits of the invention reasonably accessible to the public to ensure the licensee's continuing qualification for the exclusive license. Court papers are reviewed to determine whether the government should join in litigation to protect its interest in a licensed patent.

C. 1. Type of submission, new, revision or extension: New.

2. The title of the information collection: 10 CFR 81.40 Contents of a License Application for an NRC Invention.

3. The form number if applicable: Not applicable.

4. How often the collection is required: When seeking the benefit of an NRC patent license.

5. Who will be required or asked to report: Applicants for a NRC patent license.

6. An estimate of the number of responses annually: Three.

7. An estimate of the total number of hours needed to complete the requirement or request: Eighteen.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC uses information on the invention; patent number; applicant's identity and citizenship; business; purpose; field of use; geographic area; and ability to develop the invention to determine whether it should issue an exclusive or non-exclusive patent license to the applicant.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 3rd day of April, 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84-9304 Filed 4-6-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Proposed New Routine Use for Existing Systems of Records

AGENCY: Office of Personnel Management.

ACTION: Notice of a proposed new routine use for an existing system of records.

SUMMARY: The purpose of this document is to propose a new routine use for the Office of Personnel Management's Civil Service Retirement and Insurance Record System (OPM/CENTRAL–1). The routine use, once in effect, will permit the disclosure of information from this system of records to state taxing agencies. The information received by the requesting states will be used only for state tax administrative purposes.

DATES: Any interested party may submit written comments regarding this proposal. To be considered, comments must be received by May 9, 1984. Unless a notice to the contrary is published, this routine use will become effective 45 days after the publication date.

ADDRESS: Address comments to: Jerome D. Julius, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, Post Office Box 57, Washington, D.C. 20044 or deliver them to 1900 E Street, NW., Room 4351. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford, (202) 632–4684.

SUPPLEMENTARY INFORMATION: A study conducted by the General Accounting Office relating to the exchange of tax information between the Internal Revenue Service (IRS) and state tax agencies indicates that OPM's disclosure of certain data in the Civil Service Retirement (CSR) files to the states would be of significant benefit to them in the administration of their respective programs. State authorities have indicated concern that some Federal civil service retirees may have underreported or failed to report their CSR annuity income to the state tax administration agencies. As a result of these findings, the states have demonstrated an interest in having OPM add a new "routine use" to its system of records comprising the civil service retirement and insurance files (OPM/CENTRAL–1).

The existence of such a "routine use" would permit OPM to disclose information to the state tax administration agencies which would assist in identifying those Federal retirees who fail to comply fully with state tax laws. Such disclosure would be compatible with the purposes for which the records were collected. One reason that the Federal Government keeps records of its disbursements is to ensure that the recipients comply with the applicable laws regarding those disbursements: this includes State tax laws.

States that have an income tax generally have statutory provisions which require a payor to provide information to the State concerning the taxable amounts paid to residents. While the United States is immune from such legislation, civil service annuities are subject to State taxation. Recent legislation (Pub. L. 97–35, August 13, 1981) has required OPM to enter into agreements for the withholding of State taxes from annuities. In that civil service annuity is both taxable and subject to tax withholding, the disclosure of annuity payment information to the States is necessary and reasonable, and thus compatible with the purpose for which it was collected.

The data elements to be furnished from the CSR records include: name, address, social security account number, date of birth, sex, retirement date, retirement code (type of retirement), and annuity rate. The receipt of these data elements by a state tax administration agency will enable that organization to compare the information with that in its data bank or other internal records system. The result of the match will constitute an affirmation of the correctness of the tax information filed by the taxpayer or indicate a discrepancy between the source material and the information submitted on the state tax form. The use of the OPM data will alert the state tax authorities to any apparent improprieties in the information submitted by the taxpayer and also will reveal instances of the failure of certain individuals to file returns in cases in which it is legally required.

Office of Personnel Management.

Donald J. Devine,

Director.

The following "routine use" will be added to OPM's system of records designated as OPM/CENTRAL–1. The current notice of this system is published at 48 FR 37120 *et seq.*, August 16, 1983.

OPM/CENTRAL–1

SYSTEM NAME

Civil Service Retirement and Insurance Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

* * * * *

ii. To disclose information contained in the Retirement Annuity Master File, upon written request, to state tax administration agencies, for the express purpose of ensuring compliance with state tax obligations by persons receiving benefits under the Civil Service Retirement System, and to prevent fraud and abuse, but only the following date elements: name, correspondence address, date of birth, sex, social security account number, annuity rate commencing date of benefits, and retirement code (type of retirement).

* * * * *

[FR Doc. 84-9307 Filed 4-6-84; 8:45 am]

BILLING CODE 8525-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20611; SR-CBOE-84-12]

Chicago Board Options Exchange, Inc.; Filing and Order

April 2, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), Chicago Board Options Exchange, Inc., LaSalle at Van Buren, Chicago, IL 60604, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 27, 1984, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The CBOE proposes to allow its member firms to use CBOE's Order Support System ("OSS") to route electronically to CBOE's limit order book any public customer limit orders for Standard and Poor's ("S&P") Telecommunications Index options. Currently, limit orders for an option may be electronically routed to CBOE's limit order book (thus bypassing the floor brokers) only if they are at a limit price

that is above or below the current bid or ask by specified amounts ("parameters"). CBOE proposes to eliminate these parameters for S&P Telecommunications Index options on an experimental basis until April 20, 1984. CBOE states that the statutory basis for this proposed rule change is section 6(b)(5) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Reference should be made to File No. SR–CBOE–84–12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the CBOE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the proposed rule change would simply expand, on an experimental basis and for a limited time, the potential use of CBOE's existing system for the automatic entry into CBOE's limit order book of public customer limit orders in one index option class.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–9347 Filed 4–6–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–20810; File No. SR–CBOE–84–10]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Integrated Billing System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 12, 1984, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The following rule is proposed to be added to Chapter Three, which chapter is titled "Membership."

Integrated Billing System

Rule 3.23. Every member must designate a clearing member for the payment of his Exchange invoices by means of the Exchange's integrated billing system ("IBS"). The designated clearing member shall pay to the Exchange on a timely basis any amount that is not disputed pursuant to IBS procedures by the member who is directly involved. Such payments shall be drafted by the Exchange against the designated clearing member's account at the Clearing Corporation; the Clearing Corporation shall have no liability in connection with its forwarding to the Exchange each month a check representing the total amount that the Exchange advises the Clearing Corporation is owed to the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), (C), and (D) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to enable the drafting of member dues, fees or other charges through clearing firms' accounts at The Options Clearing Corporation by requiring every member to designate a clearing firm for this purpose. The statutory basis for the proposed change is section 6(b)(4) of the Securities Exchange Act of 1934 (the Act), in that it will enable the Exchange to more efficiently collect monies owed the Exchange by members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

(D) Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 2, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9351 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13861; 812-5341]

Drexel Bond-Debenture Trading Fund; Application

April 2, 1984.

Notice is hereby given that Drexel Bond-Debenture Trading Fund ("Applicant"), 1500 Walnut Street, Philadelphia, Pennsylvania 19102, a closed-end investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on October 12, 1982, and amendments thereto on October 26, 1983, and March 30, 1984, for an order of the Commission, pursuant to Sections 6(c) and 17(f) of the Act, exempting Applicant from the provisions of Section 17(f) of the Act to permit Applicant: (1) To maintain initial margin payments with its custodian in a segregated account that may be in the name of a commodity broker; (2) to deliver to commodity brokers variation margin payable to the broker in connection with interest rate futures contracts; and (3) to maintain with commodity brokers variation margin payable to Applicant in connection with interest rate future contracts so long as such margin does not exceed $50,000. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and are referred to the Act and rules thereunder for further information as to the provisions to which the exemption applies.

According to the application, Applicant's investment objective is to seek a high rate of return primarily from interest income on, and the short term trading of, high quality debt securities. Applicant maintains a portfolio consisting principally of nonconvertible debt securities. In 1978 Applicant's shareholders approved new fundamental investment policies permitting it to acquire positions in interest rate futures contracts, primarily to permit Applicant to hedge its existing portfolio positions in debt securities against changes in value resulting from interest rate fluctuations. In a letter to the Commodities Futures Trading Commission ("CFTC") requesting confirmation that it was not a "commodity pool operator," Applicant stated that it "desires to use the futures market in a very limited way for the sole purpose of protecting itself against fluctuations in interest rates and then only when an appropriate opportunity presents itself." Applicant's fundamental policies provide that it will not acquire any futures contract to deliver or acquire any security if, immediately thereafter, the face value of the securities required to be delivered or acquired pursuant to all futures contracts held by Applicant (not the lesser value of the contracts themselves) exceeds 20 percent of Applicant's total assets. Applicant's board of directors passed a resolution, as a condition to obtaining an opinion from the CFTC that Applicant's proposed activities were sufficiently limited so as not to require it to register as a "commodity pool operator," declaring that Applicant may not engage in interest rate futures transactions (other than to offset existing positions) if, immediately thereafter, all initial and variation margin deposits would exceed 5 percent of the market value of Applicant's total assets.

Applicant states that an interest rate futures contract requires one party to deliver a contractually established cash purchase price and the other party to deliver a standard face amount of an eligible debt security that fulfills the contract requirement. The acquisition of an obligation to deliver securities and a concomitant right to receive cash is referred to as a "sale" of an interest rate futures contract, and the acquisition of an obligation to deliver cash and a concomitant right to receive securities is referred to as a "purchase" of an interest rate futures contract. While delivery of a specified security is a term of each interest rate futures contract, delivery rarely occurs because the purpose ordinarily is not to acquire or deliver the securities but to protect or create values in the portfolio at a future time. Thus, open positions are usually closed by off-setting transactions.

Interest rate futures contracts are traded on organized commodity exchanges, each of which has established a clearing house which acts, in effect, as the other party to each contract. Thus, one who holds a position in a futures contract is not exposed to the credit of the contracting party; the clearing corporation assures that role. The CFTC, pursuant to the Commodity Exchange Act, regulates interest rate futures contracts and the commodity exchanges on which they are traded. Each member of the exchange (a "commodity broker") is required to maintain with the clearing house an amount equal to the net amount of the initial margin and variation margin applicable to all open contracts which it holds for customers. "Initial margin" in futures transactions differs from margin in a securities transaction because it does not involve the borrowing of funds by the purchaser. Instead, Applicant characterizes initial margin as a deposit of a set minimum amount for each contract which is used as a security deposit or performance bond intended to secure performance of the obligation on the contract by enabling the contract to be closed out using the initial margin. Similarly, variation margin once paid does not represent borrowing but is the amount required to be paid to bring the net equity in the broker's account with the exchange, after it has been reduced by net realized and unrealized losses to a pre-established minimum value, to the required level of initial margin.

The margin mechanism, in effect, marks futures contracts to market as to unrealized losses and gains. It causes the customer to make payment of net unrealized losses on a current basis and permits the customer, if it has a net gain, to withdraw its gain. As long as a contract remains open, the commodity account, and the customer's balance sheet, will reflect the customer's net equity in the account. "Equity" consists of amounts paid by the customer as initial and variation margin, reduced by the amount of net unrealized loss on, or increased by the amount of net unrealized gain on, the contracts in the account. The contingency that a substantial change in values could make performance financially difficult is corrected daily, and a broker has the means to close out a position, using the remaining initial margin, whenever variation margin is not paid on a timely basis. Applicant's exposure to large commitments to deliver or pay is monitored daily and can be limited by the ability to offset and close out contractual obligations. Applicant's exposure to a commitment to pay, while limited by the ability to offset, is not eliminated altogether because

Applicant's ability to offset may be impaired by limit moves and a closed futures market. Exposure to losses, however, may be offset in the cash market, if the futures market is closed.

Applicant intends to place initial margin amounts payable to its commodity broker in a segregated account with the custodian of its other assets. The account may be in the name of the broker with whom Applicant has entered into an agreement pursuant to which the broker has agreed that the assets in the account will at all times remain with the custodian unless released to Applicant, or sold or disposed of at the direction of the broker who has a right to payment in accordance with the rules of the CFTC and applicable commodity exchanges (this might occur if Applicant was unable to satisfy its obligations under the agreement to pay variation margin).

Applicant will pay, directly to the broker, the variation margin which the broker requests from Applicant on any day on which Applicant's net equity has been reduced below the pre-established minimum. Because this payment represents a settlement of the amount due to the broker under the agreement between Applicant and the broker, monies paid as variation margin are no longer Applicant's assets. As for variation margin payable to Applicant, Applicant represents that it will promptly demand payment of any excess variation margin greater than $50,000 or more upon notification by the broker that such amount is payable. Payments received by Applicant will be held by its custodian together with its other assets. While Applicant has a right to demand excess variation margin payments in any amount on any day that a net positive change in equity above the required initial margin exists, Applicant submits that it would both be unnecessarily costly and unduly burdensome for both Applicant and its brokers to require Applicant to demand *de minimis* amounts of variation margin. To demand an insubstantial portion of its assets, Applicant would have to incur transaction fees and additional operating expenses. Accordingly, Applicant requests exemption from section 17(f) of the Act to permit it to maintain excess variation margin with its broker so long as the amount of such margin does not exceed $50,000 (approximately ⅛ of 1% of net current assets). Applicant's board of directors will, from time to time, review Applicant's practice in leaving variation margin with its commodity broker and will decrease the amount that may be left with such brokers in those situations where it finds it appropriate to do so. Applicant believes the ability to leave excess margin with its broker to this extent would save Applicant, its shareholders, and its commodity brokers the expense of processing payments for small amounts without increasing in any meaningful degree any risk to the security of its assets.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 27, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9342 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13857; 812-5765]

Gulledge Realty Investors II, et al.; Application

March 30, 1984.

Notice is hereby given that Gulledge Realty Investors II ("Partnership") 5203 Leesburg Pike, Suite 701, Falls Church, Virginia, 22041, and its General Partners, the Gulledge Corporation, a Delaware corporation ("Managing General Partner"), Eugene A. Gulledge and Keith A. Gulledge, Virginia residents (together with the Partnership and the Managing General Partner collectively referred to hereinafter as "Applicants"), filed an application on February 8, 1984, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting the Partnership from all provisions of the Act and rules thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicants state that the Partnership was formed under the Virginia Uniform Partnership Act on December 1, 1983, and is designed to provide investors with a means of acquiring equity interests on government-assisted rental housing in accordance with the policies of Title IX of the Housing and Urban Development Act of 1968.

Applicants state that the Partnership will operate as a "two-tier" partnership: that is, the Partnership will invest as a limited partner in other limited partnerships (the "Project Partnerships") which will own, acquire or develop, and operate Projects that are financed and/or operated under federal or state housing assistance programs. Applicants state that the Partnership may also invest a limited portion of the funds available for investment in certain Project Partnerships which own, or will develop or acquire, and operate conventional Projects if such investments are in the best interests of investors under the circumstances. Applicant further states that the Partnership has negotiated the right to acquire an interest in one Project Partnership at this time. According to the application the Project to be acquired is a 240-unit apartment complex for rental to low and moderate income persons, receiving assistance from the Department of Housing and Urban Development under the section 236 program.

The application states that the Partnership will make $1,683,375 of capital contributions to this Project Partnership and receive a 99% limited partnership interest and that the Gulledge Investment Company, an affiliate of the Managing General Partner, and Eugene A. Gulledge, a General Partner, will serve as general partners of the Project Partnership.

Applicants assert that the Partnership is organized as a limited partnership because a limited partnership is the only form of organization that provides investors with both (a) the ability to claim on their individual tax returns the tax benefits arising from the Partnership's investment in the Project Partnerships and (b) liability limited to their capital investment. The investment in the Projects is organized as a "two-tier" investment to facilitate a public offering involving numerous investors and acquisitions of interests in numerous Projects.

Applicants represent that the Partnership has requested a private ruling from the Internal Revenue Service that the Partnership will be classified as a "partnership" for federal income tax purposes. In addition, Applicants state

that their counsel is rendering an opinion on this issue and certain other aspects of the offering.

Applicants state that on January 31, 1984, the Partnership filed a registration statement under the Securities Act of 1933, pursuant to which the Partnership intends to offer publicly 10,000 Units of limited partnership interest (the "Units") at $1,000 per Unit, with a minimum investment of $5,000 per investor. Applicants represent that the Partnership will have between a minimum of $2,125,000 and a maximum of $22,250,000 available for investment, after the payment of selling commissions and offering expenses, from the proceeds of its public offering. Applicants represent that from the amount available for investment, the Partnership will pay acquisition expenses and fees to the General Partners and their affiliates, and establish a reserve for working capital. The remainder of the amount available for investment will be invested in Project Partnerships.

Applicants state that subscriptions for Units in the Partnership must be approved by the Managing General Partner of the Partnership, which approval will be conditioned upon representations as to suitability of the investment for the subscriber. The application states that in order to become a limited partner of the Partnership each investor must represent that either (a) he has a net worth (exclusive of homes, home furnishings and automobiles) of at least $50,000 and anticipates that he will have (after taking into account any losses which may result from investment in the Partnership) annual taxable income in each year from 1984 through 1986 in excess of $41,500 ($60,000 for married subscribers who file joint federal income tax returns) or (b) he has a net worth (subject to the above exclusions) of at least $150,000.

Applicants further state that Units will be sold in certain states only to persons who meet more restrictive standards, which will be set forth in the subscription agreement and that the transfer of Units will be permitted only if the transferee meets the same suitability standards.

Applicants state that the net proceeds of the offering will be utilized by the Partnership only if at least 2,500 Units are sold not later than six months after the date of the Prospectus, unless extended by the Managing General Partner of the Partnership to one year after the date of the Prospectus. If 2,500 Units in the Partnership are not sold by the later of such dates, the proceeds of the offering will be returned by the Partnership to the Limited Partners without reduction, plus a pro rata share of any interest remaining after the payment of escrow expenses.

Applicants further represent that at the discretion of the Partnership, subscription proceeds in escrow may be temporarily invested in savings bank and commercial bank time deposits or certificates of deposit, government securities issued and fully insured by the United States, commercial paper rated P–1 by Moody's Investors Service, Inc. and insured money market funds.

Applicants assert that any of the net proceeds of the offering which the Partnership has not invested or committed to investment in Project Partnerships within 24 months from the date of the Prospectus, except for amounts utilized to pay operating expenses and amounts set aside for reserves, will be returned by the Partnership to the Limited Partners without reduction for fees payable to the General Partners or their affiliates which would have been payable if such funds had been invested in Project Partnerships. The application states that any funds with respect to the investment of which the Partnership has executed a binding agreement in or which the Partnership has set aside as a reserve for contingent payments as of 24 months after the date of the Prospectus will be deemed committed to investment on that date and will not subsequently be returned to the Limited Partners, even if the investment of such funds is not consumed, the contingent payments are not made or the invested funds are returned to the Partnership upon a repurchase of the Partnership's interest in a Project Partnership. In any such event Applicants state that funds remaining after the payment of expenses will be maintained and used by the Partnership in accordance with its business purposes.

Applicants state that after the Partnership has made an initial capital contribution to a Project Partnership, other funds allocated for subsequent investment in that Project Partnership will be temporarily invested by the Partnership in tax-exempt investments, so that cash available for distribution derived from such investments should not be taxable. Applicants represent that these tax-exempt investments will all be rated MIG–1 (the highest possible rating) by Moody's Investors Services, Inc. with maturities which do not exceed one year. Applicants state that the determination of whether to distribute earnings from such tax-exempt investments or to utilize such earnings for other Partnership purposes will be made by the Managing General Partner.

Applicants state that the Partnership will be controlled by The Gulledge Corporation as the Managing General Partner, and that the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the Partnership's business. However, it is further stated that a majority in interest of the Limited Partners will have certain limited rights, including the right to amend the Partnership Agreement, dissolve the Partnership, remove any General Partners and elect a replacement and continue the Partnership upon the death, insanity, retirement or bankruptcy of a General Partner that is the sole General Partner, provided that counsel opines or a court competent jurisdiction determines that such rights will not adversely affect the tax or limited liability status of the Limited Partners. Applicants also state that under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership during reasonable business hours. Further, Applicants state that copies of the list of the names and addresses of the Limited Partners, including the number of Units owned by each of them, will be available to the Limited Partners.

Applicants represent that all such compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Further, Applicants represent that such compensation meets all applicable guidelines necessary to permit its respective Units to be offered and sold in the various states which prescribe such guidelines, including, without limitation, that statement of policy adopted by the North American Securities Administrators Association, Inc. in respect of real estate programs. Applicants state that fees will be payable to the General Partners or any of their affiliates if 2,500 Units are not sold. Applicants represent that where the Partnership has made an initial capital contribution but does not make further capital contributions because of the inability of the Project Partnership to comply with the provisions of the Project Partnership Agreement, make appropriate representations and warranties to the Partnership, or otherwise, no portion of the fees paid to the Managing General Partner or its affiliates will be returned to the Partnership. However, the application states that funds not invested in that Project Partnership will be available for investment in other Project Partnerships, and neither the General Partners nor any affiliate will receive a fee in

connection with the acquisition of such other Project Partnerships. Moreover, Applicant states that no fees will be payable to the General Partners or their affiliates in respect of any of the net proceeds not invested or committed to investment in Project Partnerships within 24 months from the date of the Prospectus.

Applicants recognize that under the Virginia Uniform Limited Partnership Act, and under the terms of the Partnership Agreement, a general partner is a fiduciary with respect to his partnership and the limited partners. However, the Partnership Agreement provides that no General Partner will be liable, responsible or accountable in damages or otherwise to any of the Partners for any act or omission performed or omitted in good faith and in a manner reasonably believed by it to be within the scope of the authority granted to it by the Partnership Agreement and in the best interests of the Partnership. Moreover, the application states that each General Partner will be indemnified and held harmless by the Partnership against any loss, liability or damage incurred by it as a result of or in connection with the Partnership's activities if such General Partner acted in good faith and was not guilty of fraud, negligence or misconduct. The application states that the General Partners are aware, and the Prospectus discloses, that it is the opinion of the Commission that insofar as indemnification for liabilities arising under the Securities Act may be provided to directors, officers and controlling persons pursuant to the foregoing, or otherwise, such indemnification is contrary to public policy and is, therefore, unenforceable. Applicants assert that a General Partner will, however, be liable, responsible or accountable for negligence, misconduct or breach of fiduciary duty.

Applicants submit that the Partnership is not an investment company as defined in the Act, but further request that, in any event, the Partnership be exempted from all provisions of the Act pursuant to 6(c).

Applicants contend that the exemption of the Partnership from the provisions of the Act is both necessary and appropriate in the public interest. It is asserted that the limited partnership form of organization which is necessary to limit the liability of private investors in government-assisted housing programs, is incompatible with the regulatory framework of the Act. Thus, Applicants submit that to discourage the use of the two-tier partnership vehicle would eliminate the primary means of attracting equity capital into government-assisted housing and would frustrate the national policy declared by Congress in Title IX, which is "to encourage the widest possible participation by private enterprise in the provisions of housing for low and moderate income persons."

Applicants further state that the requested exemption would be consistent with the protection of investors and the purposes and policies of the Act. Applicants note that sales of the Units will be restricted to sophisticated investors, who will be apprised on a continuing basis of the Partnership's business and operations through the detailed reports which the Partnership will distribute to Limited Partners, and file with the Commission. It is further stated that with the exceptions of funds which the Partnership may hold in money market instruments and other interim investments, all of the proceeds of the sale of the Units will be invested in the Project Partnerships, which are specifically indentified and described in the Partnership's prospectus. Thus, Applicants assert, the General Partners' discretion to invest Partnership funds is cicrumscribed by the investment objectives set forth in the Partnership's prospectus. Finally, Applicants represent that all potential conflicts of interest relating to the Partnership have been disclosed to investors in the Partnership' prospectus, and that the Partnership Agreement contains numbers provisions designed to prevent overreaching by the General Partners and to ensure fair dealing by them with Limited Partners.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own moton.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9049 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23256; 70-6957]

Indiana & Michigan Electric Co.; Proposed Increase in Unsecured Debt Limit and Order Authorizing Solicitation of Proxies

March 22, 1984.

Indiana & Michigan Electric Company ("I&MECo") One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 promulgated thereunder.

I&MECo intends to obtain the approval of the holders of its outstanding cumulative preferred stock for a proposed five-year extension of the current authorization by such shareholders under the company's Amended Articles of Acceptance ("Charter") which authorization permits the company to issue or assume, subject to requisite regulatory approvals, and to have outstanding, unsecured debt securities in an aggregate principal amount exceeding 10 percent, but which, together with outstanding long-term unsecured debt securities, may not exceed 20 percent, of the company's total capitalization at any time. I&MECo proposes to solicit proxies for a special meeting of shareholders which I&MECo proposes to call for the purpose of permitting shareholders of the company to consider and take action on the proposed five-year extension.

I&MECo states that in addition to the Charter limitation noted above, the company's ability to incur short-term debt also is restricted by the Agreement dated as of June 1, 1961, between the company and United States Trust Company of New York, as Trustee, as amended and supplemented ("Debenture Agreement"), pursuant to which two series of sinking fund debentures of I&MECo were issued. The Debenture Agreement provides that, while such debentures are outstanding, the company shall not issue, incur or be obligated to pay any Current Indebtedness (defined as the principal of any indebtedness of the company for borrowed money (excluding certain

deposit accounts) maturing by its terms on demand or one year or less after the date on which the company issued, incurred, or became obligated to pay it) either directly or by guarantee, unless, after giving effect to such Current Indebtedness and the application of the proceeds thereof, the aggregate of all Current Indebtedness of the company does not exceed (i) 10 percent of the Capitalization of the company as defined or (ii) such larger percentage of the Capitalization of the company as shall be authorized or approved, upon application by the company, by this Commission. I&MECo requests that it be authorized pursuant to the Debenture Agreement to issue, incur, and become obligated to pay Current Indebtedness (as defined) in excess of 10 percent, but not exceeding 20 percent, of the Capitalization of the Company (as defined) through December 31, 1990, subject to the proviso that the aggregate principal amount of Current Indebtedness (as defined) outstanding on December 31, 1990, in excess of 10 percent of the Capitalization of the Company (as defined) shall mature by its terms no later than June 30, 1991.

No state or federal Commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to incurred in connection with the proposed transactions are estimated at $42,500.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as amended or as it may be further amended, may be permitted to become effective.

It appearing to the Commission that I&MECo's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rules 62 and 65:

It is ordered that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rules 62 and 65 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9352 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20803; File No. 4-256]

Institutional Networks Corp. and National Association of Securities Dealers, Inc.; Order Extending Temporary Stay

March 30, 1984.

The Commission is extending until April 30, 1984, the temporary stay granted to the Institutional Networks Corporation ("Instinet") on August 16, 1983,[1] and extended on November 30, 1983, until March 31, 1984.[2]

Background

On July 15, 1983, Instinet filed a petition with the Commission pursuant to section 11A(b)(5) of the Securities Exchange Act of 1934 ("Act") seeking review of proposed fees of the National Association of Securities Dealers, Inc. ("NASD") for quotation information in National Market System ("NMS") Securities.[3] Instinet stated its belief that such fees were a denial of access to services provided by the NASD as an exclusive processor of securities information.

On August 16, 1983, the Commission issued an order holding that the proposed fees constituted a prohibition or limitation on access to services and instituted a proceeding to determine whether the prohibition or limitation on access to services was inconsistent with the provisions of the Act ("Instinet Proceeding").[4] In addition, using its authority under Section 11A(b)(5)(A) of the Act, the Commission granted Instinet conditional interim relief until December 31, 1983 so that Instinet could begin receiving quotations in NMS Securities during the pendency of the Commission's review of the Instinet Proceeding. Pursuant to the terms of interim relief, Instinet has been paying into escrow an amount equal to the NASD's proposed fees.[5] Recognizing that the proceeding would not be concluded by December 31, 1983, the Commission issued a subsequent order extending interim relief to Instinet on the same terms until March 31, 1984.[6]

Discussion

The Commission notes that the temporary stay will expire on March 31, 1984. Because the Commission anticipates that the Instinet Proceeding will not be concluded by that date, and because the Commission continues to believe that it is appropriate for Instinet to receive interim relief during the pendency of the Proceeding, the Commission has determined to extend the temporary stay from March 31, 1984 until April 30, 1984. The interim relief provided during the extension of the stay shall be governed by the terms delineated in the Commission's original order granting the stay, and all money paid into escrow as of March 31, 1984, shall remain in escrow until the Commission orders otherwise or until the parties agree otherwise.

Order

Accordingly, the Commission hereby issues an order, pursuant to its authority under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94-29 (June 4, 1975)] and particularly Sections 2, 3, 11, 11A, 15, 15A, 19, 22 and 23 thereof [15 U.S.C. 78b, 78c, 78k, 78k-1, 78*o*, 78*o*-1, 78s, 78v, 78w] as follows:

It is hereby ordered that the Commission's order, dated August 16, 1983 (Securities Exchange Release No. 20088, 48 FR 38124) granting a temporary stay, as extended on November 30, 1983 (Securities Exchange Act Release No. 20425, 48 FR 54733), is amended to extend the stay from March 31, 1984 until April 30, 1984. The terms and conditions of the stay remain unchanged.[7]

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9341 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* Securities Exchange Act Release No. 20088 (August 16, 1983), 48 FR 38124 ("order instituting the proceeding").

[2] *See* Securities Exchange Act Release No. 20425 (November 30, 1983), 48 FR 54733 ("extension order").

[3] *See* SR-NASD-83-13. Securities Exchange Act Release No. 19884 (June 17, 1983), 48 FR 20986.

[4] *See generally* order instituting the proceeding, *supra* note 1.

[5] For further information concerning the issues relating to the Instinet Proceeding and the terms of the interim relief *see* the order instituting the proceedings, *id.* note 1.

[6] *See* extension order, *supra* note 2.

[7] One term of the stay allows Instinet to decline to accept the stay as conditioned by the Commission. If Instinet determines not to continue to accept the quotation information before the termination of this proceeding, Instinet shall pay to escrow all money then due, and the entire escrow account shall not be paid to either party until ordered by the Commission or until the parties agree otherwise.

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

April 3, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Damson Oil Corporation
Common Stock, $.40 Par Value (File No. 7–7407)
American General Corporation
$2.64 Cumulative Convertible Preferred Stock (File No. 7–7408)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 24, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–9343 Filed 4–6–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23269; 70–6966]

National Fuel Gas Co.; Proposal To Invest in a Non-Utility Joint Venture

April 2, 1984.

National Fuel Gas Company, ("National") 30 Rockfeller Plaza, New York, New York, 10112, a registered holding company, has filed with this Commission, an application pursuant to section 9(c)(3) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 23, 24, 40(a)(5) and 100 promulgated thereunder.

National proposed to invest $25,000 cash in Erie Venture Capital, Inc. ("EVC"). As of February 26, 1984, several other large corporations based in Erie, Pennsylvania, or with major operations there have committed to invest a total of $450,000 in EVC as well. If EVC can find additional investors, it will purchase a number of shares of newly-issued common stock of Jetstream International Airlines, Inc. ("Jetstream"), giving EVC a substantial minority interest.

Jetstream is an air passenger carrier which has its hub as the Erie, Pennsylvania Airport and from there provides direct flights to and from a number of cities, with plans to expand the number of such cities. Jetstream has only one competitor in serving Erie and this competitor provides direct service only to and from Pittsburgh, Pennsylvania.

National is interested in bolstering the capitalization of Jetstream through investing in EVC since Erie is the second largest metropolitan area National serves and is the Pennsylvania headquarters for the operations of National's subsidiaries. Erie-based employees frequently need to travel by air to other cities and with Jetstream's commencement of service, air travel into and out of Erie has become less inconvenient. National believes that investing indirectly in Jetstream will assist Jetstream in maintaining and exapanding air service to and from Erie. National also wishes to make this investment because it believes that strong air service will ultimately buttress and enhance the industrial and commercial competitveness of Erie and Erie businesses. By bolstering the Erie economy, National hopes to maintain, and perhaps enlarge, the market for its primary product, natural gas.

At current levels, commitments of other companies to invest in EVC indicates that National will become an "affiliate" of EVC, as the Act defines that term, if it does make the proposed investment. National expects that circumstances will change such that National will be able to make the proposed investment without becoming an affiliate of EVC. Only under such circumstances will National make the proposed investment.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 26, 1984, to the Secretary, Securities and Exchange Commissions, Washington, D.C. 20549, and service a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted and permitted to become effectvie.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–9348 Filed 4–6–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 20812; SR–NYSE–84–1]

New York Stock Exchange, Inc.; Order

April 2, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 11 Wall Street, New York, NY, 10005, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, the New York Stock Exchange, Inc. ("NYSE") submitted on February 8, 1984, a proposed rule change to amend NYSE Rule 703 to provide for the listing of NYSE stock index options series with up to six expiration dates open simultaneously. The rule change requires that four of the authorized series shall expire in the four nearest-term months. The Commission solicited comment on this NYSE proposal by publication of a Commission release.[1] No comments were received. The Commission has previously approved somewhat similar proposed rule changes submitted by the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Incorporated ("CBOE") providing for consecutive month expiration dates for broad and narrow-based index options, respectively.[2]

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[1] Notice and the terms of substance of the proposed rule change were published in Securities Exchange Act Release No. 20674 (February 17, 1984), 49 FR 7175 (February 27, 1984).

[2] The Commission first approved proposed rule changes submitted by Amex and CBOE, respectively, providing for monthly expiration dates for broad-based index options alone. *See* File No. Amex–83–18 Securities Exchange Act Release No. 20201 (September 20, 1983), 48 FR 43747 (September 28, 1983) and File No. SR–CBOE–83–29, Securities Exchange Act Release No. 20284 (October 14, 1983), 48 FR 48730 (October 20, 1983). Those proposals permitted the exchanges to list series in up to four consecutive months. Thereafter, proposed rule changes filed by Amex and CBOE, respectively, to expand their monthly expiration rules to include narrow-based index options were also approved by the Commission. The Amex proposal also permitted concurrent listing of both quarterly expiration and

Continued

Currently, the NYSE authorizes for trading options series with five different expiration months, at any given time. Three series are nine-month options that expire on the designated quarterly cycle ("cycle month series"). Two are three-month options that expire in the off-cycle months ("consecutive month series"). As a result, the NYSE has series listed that expire in the fourth of the four nearest months for only four months during the year. However, pursuant to their rules, both Amex and CBOE always have series listed that expire in the fourth of the four nearest months.

The proposed rule change amends NYSE Rule 703, with respect to all classes of stock index options, to require that there will always be a listed series in the fourth of the four nearest expiration months, thereby assuring that there will always be listed series in all four of the nearest-term expiration months. In addition, the proposal permits the Exchange to have series expiring in up to six months at any given time. Under the proposal, however, the NYSE has reserved the right to elect not to list series expiring in a fifth or sixth month should industry practice or the "Peculiarities of the particular class" dictate that such a course is appropriate. In this connection, the NYSE may examine, monthly, the circumstances surrounding a particular options class to determine whether a fifth and/or sixth expiration month series is appropriate.[3]

The Commission's primary concern in considering previous exchange proposals to increase the number of options series outstanding is that this could serve to fragment trading interest and impact adersely the liquidity of the options. As the NYSE notes, other exchanges currently trade options on both broad and narrow-based indices with econcomic characteristics substantially similar to those traded by NYSE. Those exchanges' rules currently provide for consecutive months series up to four months out, and hence contemplate the trading of options series in the expiration month the NYSE proposes to add. As a result, the NYSE proposal does not appear to have the potential to expand materially the number of available options series and thus should not have significant adverse consequences on the quality of the market for index options.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public, since it promotes uniformity among the exchanges that trade stock index options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8349 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-1616]

The New York and Harlem Railroad Co.; 3½% Gold Mortgage Bonds (Due 2000) 4% Series B Mortgage Bonds (due 2043); Application To Withdraw From Listing and Registration

April 3, 1984.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12(d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The New York and Harlem Railroad Company ("Company") has requested to withdraw its bonds from listing and registration on the NYSE because trading in the bonds has been low. For example, there has been no trading in the 3½% bonds since 1979. With respect to the 4% bonds, trading has been nominal since 1982 and there has been no trading since late January 1984. In addition, the bonds are held by a small number of holders and there is a small amount outstanding. Consequently, the Company has determined that the expense of continued listing is no longer justified. The NYSE has indicated that it has no objection in this matter.

Any interested person may, on or before April 24, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washingtin, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-8350 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

Pacific Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

March 30, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Delmed, Inc.
Common Stock, $.10 Par Value (File No. 7-7402)

Dome Petroleum Limited
Common Stock, No Par Value (File No. 7-7403)

Kirby Exploration Company
Common Stock, $.10 Par Value (File No. 7-7404)

Ozark Airlines, Inc.
Common Stock, $.50 Par Value (File No. 7-7405)

Ultimate Corporation
Common Stock, No Par Value (File No. 7-7406)

These securities are listed and registered on one or more other national securities exchange and are reported in

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consecutive month series. *See* File No. SR-Amex-83-24, Securities Exchange Act Release No. 20414 (November 25, 1983), 48 FR 56308 (December 1, 1983) (the "Amex Release") and File No. SR-CBOE-83-30, Securities Exchange Act Release No. 20433 (December 12, 1983), 48 FR 55228 (December 9, 1983). The Commission has also approved a rule filing by the Philadelphia Stock Exchange, Inc. to permit its narrow-based stock index options to have monthly expiration dates. *See* File No. SR-Phlx-83-21, Securities Exchange Act Release No. 20455 (December 6, 1983) 48 FR 55083 (December 14, 1983).

[3] The rule proposal also states that because the possible listing of consecutive monthly expirations in the five nearest-term months may present a problem for certain member organizations, the Exchange has retained the right to defer the listing of a consecutive month series for one month. The NYSE rule proposal indicates that if this were to occur the Exchange would list both the deferred month and a replacement cycle month in the next month.

the consolidated transaction reporting system.

Interested person are invited to submit on or before April 20, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9340 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

April 3, 1984.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)[B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Sante Fe Southern Pacific Corp.

Common Stock, $1 Par Value (File No. 7-7409)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 24, 1984 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9344 Filed 4-6-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB March 10–March 26, 1984

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and rcordkeeping requirements, transmitted by the Department of Transportation, during the period March. 10-March 26, 1984, to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Windsor, John Chandler, or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, DC. 20590, (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 328, Washington, D.C. 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for approval under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements.

As needed, the Department of Transportation will publish in the **Federal Register** a list of those forms, reporting and recordkeeping requirements that it has submitted to OMB for review and approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The published list also will include the following information for each item submitted to OMB:

(1) A DOT control number.

(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.

(3) The name of the DOT Operating Administration or Secretarial Office involved.

(4) The title of the information collection request.

(5) The form numbers used, if any.

(6) The frequency of required responses.

(7) The persons required to respond.

(8) A brief statement of the need for, and uses to be made of, the information collection.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 5 days from the date of publication is needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from March 10–March 26, 1984:

DOT No.: 2398
OMB No.: 2132-0501
By: Urban Mass Transportation Administration
Title: Statement of Revenues and Expenses
Forms: None
Frequency: On occasion
Respondents: State and local governments
Need/Use: The information on eligible expenses, non-Federal income sources applied to eligible expenses, and the amounts to which Federal funds may be matched is used by UMTA Regional Offices to determine the total amount of Federal assistance eligibility of the applicant

DOT No: 2399

OMB No: 21–32–0510
By: Urban Mass Transportation Administration
Title: Authorizing Resolution
Forms: None
Frequency: On Occasion
Respondents: State and Local Governments

Need/Use: UMTA Regional Offices need an Authorizing Resolution to ensure that UMTA is dealing with the Financial Comptroller or other bona fide representative of the prospective grantee.

DOT No: 2400
OMB No: 2127–0001
By: National Highway Traffic Safety Administration
Title: National Driver Register File Check/Reporting of License Withdrawal Denial
Forms: HS–Forms 1046 and 1047
Frequency: On Occasion
Respondents: State/Federal agencies

Need/Use: Data is necessary in order that the National Driver Register be able to conduct file searches to locate or verify revocations of drivers licenses for States upon request. If the revocations and suspension data were not supplied by the States the NDR could not perform its statutory mandate to assist the States in identifying and controlling dangerous drivers.

DOT No: 2401
OMB No: 2120–0039
By: Federal Aviation Administration
Title: Air Carrier/Commercial Operators—FAR 135
Forms: FAA Form 8000–6, Application for Air Carrier/Commercial Operator certificate Under FAR 135
Frequency: As required
Respondents: Air carriers with small aircraft

Need/Use: FAR 135 prescribes requirements for Air Carrier Operators with small aircraft. The information collected is needed to ensure compliance with safety requirements and applicant eligibility for air carrier operations.

DOT No: 2402
OMB No: 2120–0018
By: Federal Aviation Administration
Title: certification Procedures for Products and Parts FAR 21
Forms: FAA 8110–12; 8130–1; 8130–6 and 8130–9 8130–12
Frequency: As required
Respondents: Aircraft and Parts Designers, Manufacturers and Owners.

Need/Use: FAR 21 prescribes certification procedures for products and parts. The information collected is used to determine compliance and eligibility with FAR 21. The licensing procedure is to ensure safety of flight.

DOT No: 2403
OMB No: 2120–0069
By: Federal Aviation Administration
Title: Medical Exemption Petition (Operational Questionnaire)
Forms: FAA Form 8500–20
Frequency: On occasion
Respondents: Individuals requesting aviation medical waivers

Need/Use: To assist in determining if applicant's physical fitness is adequate to perform specific aviation duties.

DOT No: 2404
OMB No: 2120–0040
By: Federal Aviation Administration
Title: Aviation Maintenance technician Schools—FAR 147
Forms: FAA Form 8310–6 Aviation Maintenance Technician School Certificate and Ratings Application
Frequency: On Occasion
Respondents: Aviation Maintenance Technician Schools

Need/Use: FAA Act of 1958, Section 607 (49 U.S.C. 1427) authorizes certification of civilian aviation mechanic school. 14 CFR 147 prescribes requirements for certification and operation of aviation mechanic schools. Information collected is used to determine applicant eligibility and compliance.

DOT No: 2405
OMB No: 2137–0051
By: Research and Special Programs Administration
Title: Requirements for Service of Process on Non-Residents of the U.S.
Forms: None
Frequency: On occasion
Respondents: Non-residents of U.S. applying for an exemption

Need/Use: Non-resident applicants for an exemption from hazardous materials regulations of the U.S. must designate an agent who is a permanent resident of the U.S. who will be responsible for any violations by the applicant. The U.S. agent for non-residents is the Department's point of contact for service of process for non-residents applying for and holding an exemption. The need for this process is to eliminate the possibility of foreign shippers evading safety rules without legal consequences.

DOT No: 2406
OMB No: 2137–0500
By: Research and Special Programs Administration
Title: Material of Construction for Portable Tanks
Forms: None
Frequency: Each new portable (high pressure and/or hazardous material) tank
Respondents: Manufacturers of portable tanks for hazardous materials

Need/Use: Used by manufacturers, purchasers, and the Materials Transportation Bureau to verify that steel used in construction of IM 101 and 102 portable tanks meets requirements set forth in the Department's regulations for their construction.

DOT No: 2407
OMB No: 2137–0522
By: Research and Special Programs Administration
Title: Incident Report and Annual reports for Gas Pipelines (4 combined)
Forms: RSPA 7100.1; RSPA 7100.2; RSPA 7100.1–1; RSPA 7100.2–1
Frequency: On occasion and annually
Respondents: Gas pipeline operators

Need/Use: Telephone notices and other reporting of gas pipeline incidents enables the Materials Transportation Bureau to send investigative personnel to the scene of the incident, alert the National Transportation Safety Board for a disaster investigation, prepare a fact sheet on the incident for queries from the Congress, and supply information for the Federal Energy Regulatory Commission.

Issued in Washington, D.C. on March 30, 1984.

Jon H. Seymour,
Deputy Assistant Secretary.

[FR Doc. 84–9435 Filed 4–6–84; 8:45 am]
BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

[Docket No. EX83–3; Notice 2]

Jaguar Cars, Inc.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Standard No. 108

This notice grants the petition of Jaguar Cars, Inc. of Leonia, N.J., for a temporary exemption of its XJ–S model from the headlighting requirements of Federal Motor Vehicle Safety Standard No. 108, subject to certain specified conditions. Jaguar had petitioned on the basis that the exemption would facilitate the "field evaluation of a styled, aerodynamic headlamp fitted with an externally mounted wash and wipe system."

Notice of receipt of petition was published on September 1, 1983 and an opportunity afforded for comment (48 FR 39714).

Under 49 CFR 555.6(b), a motor vehicle manufacturer may petition for an exemption from a Federal motor vehicle safety standard for a period up to two years, covering no more than

2500 vehicles for any 12-month period the exemption is in existence, on the basis that the exemption would facilitate the development or field evaluation of a new motor vehicle safety feature which provides a level of safety which is equivalent to or exceeds the level of safety established in the standard from which an exemption is sought. Jaguar sought a two-year exemption from the headlighting requirements of 49 CFR 571.108, *Lamps, Reflective Devices, and Associated Equipment*, for its XJ–S model, approximately 1000 of which (accounting for about 50% of total production) were sold in the United States in 1982.

Jaguar intends to fit the exempted models with styled, aerodynamic headlamps equipped with an externally mounted wash and wipe system. The headlamps are identical to those non-sealed beam headlamps used on the XJ–S model destined for markets other than the United States. The headlamp and wash/wipe system will be fitted as standard equipment on 1984 model XJ–S cars intended for the Canadian market. According to the petitioner, the system enables the headlamps to function without a deterioration under a wide variety of extreme operating conditions, such as exist in North America and nowhere else in the world: temperatures ranging from −30 degrees Celsius to +50 degrees Celsius, high and low humidity, high and low altitude, sea spray, dust, sand and road salt. Jaguar believes that its ordinary mileage-accumulation fleets are too small to provide "the field evaluation we envision for the wipe/wash system." The company announced its intention to survey owners of cars with wash/wipe systems, and to provide spare bulbs with each car.

According to Jaguar, the headlamps do not comply with current requirements of Standard No. 108 for all headlamps principally in that they are not mechanically aimable, possess a maximum design wattage that slightly exceeds that specified for upper and lower beams of Type 2B1 headlamps (the U.S. headlamp to which it is most similar in size), and when installed have an object in front of the lens, i.e., a wiper blade. However, Jaguar argued that the "driving beam" is "only minimally affected by the presence of the wipe blade." The status of compliance of these non-sealed headlamps with respect to the recently adopted environmental test procedures for semi-sealed replaceable bulb headlamp systems (48 FR 24690, June 2, 1983) was not addressed, but the petition included a Leyland Engineering Standard requiring testing of the headlamps to a variety of environmental conditions similar to the U.S. Federal requirement.

Jaguar argued that an exemption would be in the public interest because of the unique cleaning feature of the wipe/wash system, and the contribution of aerodynamic headlamps to fuel economy.

Two timely comments were received on the petition, both of which supported it. Subsequent to the comment period, Ford Motor Company opposed the petition, anticipating many of the agency's concerns. Jaguar, in turn, submitted a restatement of its position and arguments.

In order to grant the Jaguar petition, findings must be made that the exemption would facilitate the field evaluation of a new motor vehicle safety feature which provides a level of safety equivalent to or exceeding the level of safety established by Standard No. 108, and that the exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

The agency first examined the nature of the safety feature, noting that Jaguar's parent company, BL PLC., offers a washing system without wipers on the Rover automobile. This system features a jet of water under high pressure applied to wash dust and dirt from the headlamp lens. Jaguar did not explain whether addition of a wipe feature to its washer meant that its system is superior to that of the Rover which provides a wash only. Nevertheless, given the fact that headlamp cleaning systems are generally not offered on vehicles sold in the United States, the Jaguar system appears to qualify as a "new motor vehicle safety feature" within the statutory meaning of the term, and one that would provide a level of safety equvalent to or exceeding the level of safety established by Standard No. 108.

However, the agency further considered the effect upon level of safety established by Standard No. 108 were Jaguar to be provided a total exemption from the headlighting requirements. Standard No. 108 establishes a maximum of 150,000 candela for passenger car lighting systems while up to twice that amount is permissible under European standards. The reason for the limitation in the United States is that NHTSA research has shown that candlepower in excess of this maximum provides only a limited extension of seeing distance while increasing greatly the possibility of glare. Therefore the agency believes that Jaguar's headlamps should be subject to the candlepower limitations of Standard No. 108.

A further distinction between the Jaguar headlamps and all U.S. ones is that the latter are capable of mechanical aim. Because many of the States with motor vehicle inspection programs use mechanical aimers, there is a real possibility that a State would refuse to inspect a Jaguar because its headlighting system is incapable of mechanical aim. Failure to periodically verify aim could create a glare problem. Nothing in the Jaguar petition indicated an awareness of the inspection problem, or that any State inspection officials had been approached for views on the matter. NHTSA believes that Jaguar can mark its existing lens with aiming points and will voluntarily provide aimer adapters with each car, in order to address this concern.

The agency also believes that it is in the interest of safety that the Jaguar headlamp provide performance equivalent to that of the semi-sealed replaceable bulb headlamp permissible under Standard No. 108. Although an appendix to Jaguar's petition set forth the Leyland Engineering Standard, in incorporated many "BLS" procedures whose relationship to the NHTSA environmental test procedures for replaceable bulb headlamps was not explained. Some equivalence of corrosion resistance of the reflector should have been submitted, addressing one of the agency's long-standing concerns about unsealed headlamps. Further, questions of availability of replacement bulbs are avoided if the Jaguar headlamp contains a standard U.S. bulb. Therefore, the agency believes that its concerns are best addressed by requiring that the Jaguar headlamp contain Standard No. 108's replaceable bulb as its light source, and that the headlamp meet the requirements for U.S replaceable bulb headlighting systems.

Finally, the agency is concerned about possible wiper maladjustment which could leave the blade parked in the center of the lens. Interruption of the beam by the blade would seem to offset such lighting advantage as might be obtained from headlamps cleaned by the wiper/washer system. Therefore, the agency has decided that Jaguar's headlamps should be subject to the same prohibitions as other headlamps, that no ornamentation, styling or other feature shall be in front of the lens when the headlamp is in use.

Because of the potential of the wipe/wash system for headlamp beam maintenance under adverse environmental conditions, and the

positive effect on safety, an exemption from the balance of Standard No. 108 is found to be consistent with the objectives of the Act. Petitioner will be exempted from the maximum wattage limitations on headlamps which it slightly exceeds. Although the potential effect of excess wattage is to increase light output, petitioner has not been exempted from the maximum candlepower limitations for headlamp systems, and the wattage exemption should therefore have no effect upon safety. Petitioner will also be exempted from the requirement that the aiming pads of its lamps comply with those of Figure 4 of the standard. The aiming points that it will provide will differ in detail from those specified by the standard. Finally, it will be exempted from the certification requirements because the headlamps will not comply in all respects with Standard No. 108. Any fuel economy improvement attributable to aerodynamic headlamps in a vehicle whose current rating is 14 mpg may be considered to be in the public interest. Accordingly, in consideration of the foregoing, NHTSA Exemption No 83–3, expiring April 1, 1986, is hereby provided Jaguar Cars, Ltd. from the following requirements of 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment:* maximum design wattage of S4.1.1.36(a)(1), the provisions of S4.1.1.36(a)(2) that the three aiming pads meet the requirements of Figure 4; the specifications for maximum design wattage of S4.1.1.38(b)(1), and S4.1.1.40.

(Sec. 3 Pub. L. 92–548, 86 Stat. 1159 (15 U.S.C. 1410); delegation of authority at 49 CFR 1.50)

Issued on April 3, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-9330 Filed 4-6-84; 8:45 am]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

Exemption From Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of granted waiver.

SUMMARY: Section 165 of the Surface Transportation Assistance Act of 1982 provides that Federal funds may not be obligated for the purchase of mass transportation vehicles unless the cost of components of the vehicles which are produced in the United States is more than 50 percent of the cost of all components and final assembly of the vehicles takes place in the United States. Section 165 further provides that any of its provisions may be waived if their application would be inconsistent with the public interest. The Chrysler Corporation, along with several States, petitioned the Urban Mass Transportation Administration (UMTA) to grant such a waiver for Chrysler's 15-passenger vans which are assembled in Canada. The requested waiver was granted on February 27, 1984.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426–4063.

SUPPLEMENTARY INFORMATION: On February 1, 1984, UMTA published a Notice (49 FR 4062) that Chrysler had requested a waiver to the "Buy America" requirements for its 15-passenger vans. In the Notice, UMTA requested that interested parties submit comments on the Chrysler request by February 15, 1984.

Eighteen States had originally supported the Chrysler request. As a result of the February 1st Notice, an additional eleven States informed UMTA of their support of Chrysler's request. UMTA also received indications of support from numerous providers or rural mass transportation and providers of transportation services to the elderly and handicapped.

Section 165(b)(3) of the Surface Transportation Assistance Act of 1982 provides that in the case of the procurement of buses and other rolling stock, the cost of components which are produced in the United States must exceed 50 percent of the cost of all components, and final assembly must take place in the United States. Chrysler requested a waiver for its 15-passenger vans since the final assembly of these vans takes place in Canada. Seventy-four percent of the components of these vans, by cost, are produced in the United States.

Chrysler's request for a public interest waiver was based on the fact that the public interest would be best served by having competition in the market. Information was presented to UMTA which indicated that 15-passenger vans are only produced by the Ford Motor Company and Chrysler. The waiver request asserted that if Chrysler were not granted the waiver, UMTA grantees would not be able to purchase 15-passenger vans from Chrysler using Federal funds and would, because of the lack of competition, be in the position of only purchasing the vans from one company.

After reviewing all of the information and materials available to UMTA and after consultation with the Office of the United States Trade Representative, UMTA determined that it is in the public interest to grant Chrysler the requested waiver and did so effective February 27, 1984.

Under the terms of the waiver, Chrysler is only relieved from the requirement that the final assembly of the 15-passenger vans take place in the United States. Chrysler is still required to meet the requirement that the cost of the vans' components which are produced in the United States exceed 50 percent of the cost of all components.

Dated: March 28, 1984.

Ralph L. Stanley,

Administrator.

[FR Doc. 84-9353 Filed 4-6-84; 8:45 am]

BILLING CODE 4910-57-M

Section 15 Reporting System Advisory Committee

AGENCY: Urban Mass Transportation, DOT.

ACTION: Notice of section 15 Reporting System Advisory Committee meeting.

SUMMARY: In this Notice, the Urban Mass Transportation Administration (UMTA) announces a meeting of the Section 15 Reporting System Advisory Committee. The Committee will provide advice concerning the quality and usefulness of the Section 15 Reporting System.

DATE: May 2–4, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald J. Fisher, Office of Information Services, Room 6419, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426–9157.

SUPPLEMENTARY INFORMATION:

Background

Section 15 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611), requires the development of a national reporting system for public mass transportation financial and operating data. On August 27, 1981, UMTA issued a Notice in the **Federal Register** (46 FR 43352) announcing the establishment of the Section 15 Reporting System Advisory Committee. The Committee investigates the quality and usefulness of the Section 15 Reporting System with respect to its performance in providing meaningful information for the analysis of the transit industry.

All Committee meetings are open to the public. With the Chairman's

approval, members of the public may speak at meetings in accordance with procedures established by the Committee. A written statement may be filed with the Committee at any time.

Location

Dates: Wednesday, May 2, 1984.
Time: 2:00 p.m.–5:00 p.m., Thursday, May 3, 1984–Friday, May 4, 1984, 9:00 a.m.–5:00 p.m.
Place: Metropolitan Transportation Commission's Conference Room, Metrocenter, 101 Eighth Street, Oakland, California 94607.

Issued on: April 2, 1984.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 84–9354 Filed 4–6–84; 8:45 am]
BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535–6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Request for Certificate of Non-attachment of Lien

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Bond to Stay Collection of Jeopardy Assessment

OMB Number: 1545–0633
Form Number: Notice 437, 438 and 466
Type of Review: Extension
Title: Notice of Intention to Disclose
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Trade Name Recordation ICB Form #133
OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: April 3, 1984.

Gary Kowalczyk,

Departmental Reports, Management Office.

[FR Doc. 84–9439 Filed 4–6–84; 8:45 am]
BILLING CODE 4810–25–M

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen, Arab Republic, Yemen, Peoples Democratic Republic of

John Elhafos,

Assistant Secretary for Tax Policy.

[FR Doc. 84–9436 Filed 4–6–84; 8:45 am]
BILLING CODE 4810–25–M

[Number: 101–3]

Delegation of Procurement Authority to Office of Procurement and Treasury Bureaus

March 19, 1984.

By virtue of the authority vested in me as Assistant Secretary (Administration) by Department of the Treasury Order No. 101–30, the following appointments and delegations are made:

1. Procurement Executive

The Director, Office of Procurement, Office of the Secretary, is appointed as Procurement Executive, in accordance with the provisions of Executive Order 12352, of March 17, 1982. The Director, Office of Procurement is responsible for the development and oversight of Department-wide procurement systems and is authorized to:

a. Prescribe and publish Treasury-wide procurement policies, regulations and procedures;

b. Enter into, make determinations and decisions and take other actions, consistent with appropriate laws, policies, regulations and procedures with respect to purchases, contracts, leases, and other contractual procurement transactions, except those required by law or regulation to be made by other authority;

c. Designate persons qualified in procurement matters as contracting officers and representatives thereof in accordance with the requirements and procedures established in Treasury Directive 70–06, "Treasury Acquisition/Procurement Regulation," Subpart 1001.6;

d. Establish clear lines of contracting authority;

e. If appropriate, exercise priorities authority on behalf of the Department of the Treasury, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.), Department of Defense Delegation of Priorities Authority, dated October 1, 1958, and applicable policies and regulations;

f. Evaluate and monitor the Department of the Treasury's procurement system performance;

g. In coordination with the Director of Personnel, Office of the Secretary, manage and enhance career development of the procurement work force throughout the Department;

h. Examine, in coordination with the Office of Federal Procurement Policy, the procurement system to determine specific areas where Government-wide performance standards should be established and applied, and participate in the development of Government-wide procurement policies, regulations and standards;

i. Determine areas for Treasury unique standards and develop unique Department-wide standards;

j. Be the Department of the Treasury's advocate for competition in procurement;

k. Certify to the Assistant Secretary (Administration) that the Department of the Treasury's procurement system meets approved standards; and,

l. Serve as "chief officer responsible for procurement" within the meaning of

41 U.S.C. 257(b) for Office of the Secretary procurement transactions.

2. Bureau Head Procurement Authority

a. The following officials of the Department of the Treasury are delegated authority to perform the functions described above in paragraphs 1.b, 1.c and 1.d with respect to procurement transactions and operations of their bureaus:

Director, Bureau of Alcohol, Tobacco and Firearms
Comptroller of the Currency
Commissioner of Customs
Director, Bureau of Engraving and Printing
Director, Federal Law Enforcement Training Center
Commissioner, Bureau of Government Financial Operations
Commissioner of Internal Revenue
Director, United States Mint
Commissioner of the Public Debt
National Director, U.S. Savings Bonds Division
Director, U.S. Secret Service

b. Each of the officials named in paragraph 2.a is deemed "chief officer responsible for procurement" within the meaning of 41 U.S.C. 257(b).

3. Redelegation of Authority

a. The authorities delegated in paragraphs 1.b, 1.c and 1.d may be redelegated by the Director, Office of Procurement and each of the officials named in paragraph 2.a in accordance with procedures established in Subpart 1001.6 of Treasury Directive 70–06, "Treasury Acquisition/Procurement Regulation," to any subordinate officer or employee of his/her respective organization, except that the authority of paragraph 1.b may be delegated only to personnel qualified to serve as Contracting Officer for the United States for the type and complexity of procurement actions specified.

b. The authorities delegated in paragraphs 1.e, 1.g, 1.h and 1.j may be redelegated by the Director, Office of Procurement through Treasury Directives or, on a case-by-case basis, by program memorandums.

4. Limitations

All authorities delegated above shall be exercised in accordance with the applicable limitations and requirements of the Federal Property and Administrative Services Act of 1949; policies and regulations issued by the Office of Federal Procurement Policy in the Office of Management and Budget; the Federal Acquisition Regulation, 48 CFR Chapter 1; the applicable portions of the Federal Property Management Regulations, 41 CFR Chapter 101; as well as regulations issued by the Department of the Treasury which implement and supplement the Federal Acquisition Regulation and the Federal Property Management Regulations, including but not limited to 48 CFR Chapter 10 and Treasury Directives Manual Chapter 70–06, "Treasury Acquisition/Procurement Regulation," and other numbered directives in the TD 70–06 series.

5. Effective Date

This Order becomes effective on April 1, 1984, at which time Department of the Treasury Order No. 101–3, dated September 7, 1982, will be superseded.

David E. Pickford,

Acting Assistant Secretary (Administration).

[FR Doc. 84-9437 Filed 4-6-84; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

[(Delegation Order No. 4 (Rev. 15))]

Delegation of Athority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The delegation order is revised to delegate authority to aides of Revenue Officers, GS–5 and above, to serve any summons issued by a Revenue Officer GS–9 and above. The text of the delegation order appears below.

EFFECTIVE DATE: March 15, 1984.

FOR FURTHER INFORMATION CONTACT: Bill Kline, OP:C:O, 1111 Constitution Avenue, N.W., Room 7539, Washington, D.C. 20224, 202–566–4604 (Not a toll-free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Dennis D. Reaves,

Acting Director, Office of Field Operations.

Order No. 4 (Rev. 15)

Effective date: March 15, 1984

Authority to Issue Summonses, To Administer Oaths and Certify, and to Perform Other Functions

1(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602–1(b), 301.7603–1, 301.7604–1 and 301.7605–1(a) and the authorities contained in Section 7609 of the Internal Revenue Code of 1954 and vested in the Commissioner of internal Revenue Service by Treasury Department Order No. 150–37 to issue summonses; to set the time and place for appearance; to serve summonses; to take testimony under oath of the person summoned; to receive and examine books, papers, records or other data produced in compliance with the summons; to enforce summonses; to apply for court orders approving the service of John Doe Summonses issued under Section 7609(f) of the Internal Revenue Code; and to apply for court orders suspending the notice requirements in the case of summonses issued under Section 7609(g) of the Internal Revenue Code, are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 1(b), 1(c), and 1(d) of this Order and subject to the limitations stated in paragraphs 1(b), 1(d), 1(c), and 6 of this Order.

(b) The authorities to issue summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order are delegated to all District Directors and the following officers and employees, provided that the authority to issue a summons in which the proper name or names of the taxpayer or taxpayers is not identified because unknown or unidentifiable (hereinafter called a "John Doe" summons) may be exercised only by said officers and employees.

(1) Inspection: Assistant Commissioner and Director. Internal Security Division.

(2) District Criminal Investigation: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(3) District Collection Activity: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(4) District Examination: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(5) District Employee Plans and Exempt Organizations: Chief of Division.

(c) The authorities to issue summonses except "John Doe" summonses, and to perform other functions related thereto specified in paragraph 1(a) of this Order, are delegated to the following officers and employees:

(1) Inspection: Regional Inspectors and Assistant Regional Inspectors (Internal Security) and Chief, Investigations Branch.

(2) District Criminal Investigation: Assistant Chief of Division; Chiefs of Branches; and Group Managers.

(3) District Collection Activity: Assistant Chief of Division; Chiefs of Collection Section; Chiefs of Field Branches and Office Branches; Chiefs, Special Procedures Staffs; Chiefs Technical and Office Compliance

Branches and Groups and Group Managers.

(4) District Examination: Chiefs of Branches, Case Managers, Group Managers and, in streamlined districts Chiefs, Examination Section.

(5) District Employee Plans and Exempt Organizations: Group Managers.

(d) The authority to issue summonses except "John Doe" summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order is delegated to the following officers and employees except that in the instance of a summons to a third party witness, the issuing officer's case manager, group manager, or any supervisory official above that level, has in advance personally authorized the issuance of the summons. Such authorization shall be manifested by the signature of the authorizing officer on the fact of the original and all copies of the summons or by a statement on the face of the original and all copies of the summons, signed by the issuing officer, that he/she had prior authorization to issue said summons and stating the name and title of the authorizing official and the date of authorization.

(1) Foreign Operations District: Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Special Agents; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers, GS–9 and above.

(2) District Criminal Investigation: Special Agents.

(3) District Collection Revenue Officers, GS–9 and above.

(4) District Examination Internal Revenue Agents, Tax Auditors, Attorneys, Estate Tax, and Estate Tax Examiners.

(5) District Employee Plans and Exempt Organizations: Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(e) Each of the officers and employees referred to in paragraphs 1(b), 1(c), and 1(d) of this Order may serve a summons whether it is issued by him/her or another official.

(f) Revenue Representatives, GS–5 and above, aides of Revenue Officers, GS–5 and above, and Revenue Officers, who are assigned to the District Collection Activity may serve any summons issued by the officers and employees referred to in paragraphs 1(b), 1(c) and 1(d) of this Order.

2. Each of the officers and employees referred to in paragraphs 1(b), 1(c) and 1(d) of this Order authorized to issue summonses, is delegated the authority under 26 CFR 301, 7602–1(b) to designate any other officer or employee of the Internal Revenue Service referred to in paragraph 4(b) of this Order, as the individual before whom a person summoned pursuant to Section 7602 of the Internal Revenue Code shall appear. Any such other officer or employee of the Internal Revenue Service when so designated in a summons is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records or other data produced in compliance with the summons.

3. Internal Security Inspectors are delegated the authority under 26 CFR 301.7603–1 to serve summonses issued in accordance with this Order by any of the officers and employees of the Inspection Service referred to in paragraphs 1(b)(1) and 1(c)(1) of this Order even though Internal Security Inspectors do not have the authority to issue summonses.

4(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602–1(a), and 301.7605–1(a) to examine books, papers, records or other data, to take testimony under oath and to set the time and place of examination are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 4(b), and 4(c) of this Order and subject to the limitations stated in paragraphs 4(c) and 6 of this Order.

(b) General Designations.

(1) Inspection: Assistant Commissioner; Director, Internal Security Division; Director, Internal Audit Division; Regional Inspectors, Internal Auditors; and Internal Security Inspectors; Investigators (Internal Security); and Internal Security Assistants.

(2) District Criminal Investigation: Chief and Assistant Chief of Division; Chiefs of Branches; Group Managers, and Special Agents.

(3) Foreign Operations District: Director, Assistant Director; Chief of Divisions and Branches; Special Agents; Case Managers; Group Managers, Internal Revenue Agents: Attorneys, Estate Tax; Estate Tax Examiners; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers.

(4) District Collection Activity: Chiefs and Assistant Chiefs of Division; Chiefs of Field Branches and Office Branches; Chiefs, Special Procedures Staffs; Chiefs. Technical and Office Compliance Branches; Chiefs, Collection Section; Chiefs, Technical and Office Compliance Branches and Groups; Group Managers; Revenue Officers; Revenue Representatives and Office Collection Representatives.

(5) District Examination: Chiefs of Division; Chiefs of Examination Sections; Chiefs of Examination Branches; Case Managers; Group Managers; Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(6) District Employee Plans and Exempt Organization: Chief of Division; Chief, Examination Branch; Chief, Technical Staff; Group Managers; Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(7) Service Center: Chief, Compliance Division; Chief, Examination Branch; Chief, Collection Branch; Chief, Criminal Investigation Branch; Revenue Agents; Tax Auditors; Tax Examiners in the correspondence examination function; and Special Agents.

(c) District Directors, Service Center Directors, Regional Inspectors, and the Chief of Investigation Branch may redelegate the authority under 4(a) of this Order to Law Clerks (Estate Tax), aides or trainees, respectively, for the positions of Revenue Agent, Tax Auditor, Tax Examiner in the Service Center Correspondence and Processing function, Tax Law Specialists, Revenue Officer, Internal Auditor, Internal Security Inspector, Investigator (Internal Security), Internal Security Assistant, Attorney (Estate Tax) and Special Agent, provided that each such Law Clerk (Estate Tax), aide or trainee shall exercise said authority only under the direct supervision, respectively, as applicable of a Revenue Agent. Tax Auditor, Tax Examiner in the Service Center Correspondence and Processing function, Tax Law Specialist Revenue Officer, Special Agent, Internal Auditor or Internal Security Inspector or Attorney (Estate Tax).

5. Under the authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7622–1, the officers and employees of the Internal Revenue Service referred to in paragraphs 1(b), 1(c), 1(d), and 4(b) and 4(c) of this Order are designated to administer oaths and affirmations and to certify to such papers as may be necessary under the internal revenue laws and regulations except that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive. Revenue Representatives and Office Collection Representatives referred to in paragraph 4(b)(4) of this Order are not designated to administer oaths or to perform the other functions mentioned in this paragraph, except that Revenue Representatives, GS–5 and above, are authorized to certify the method and manner of service, and the method and manner of giving notice, when performing the functions and

duties contained in paragraph 1(f) of this order.

6. The authority delegated herein may not be redelegated except as provided in paragraph 4(c).

7. Delegation Order No. 4 (Rev. 14), effective July 14, 1983, is superseded.

James I. Owens,

Deputy Commissioner.

[FR Doc. 84-9094 Filed 4-6-84; 8:45 am]

BILLING CODE 4810-01-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 18]

Surety Insurance Company of California; Surety Companies Acceptable on Federal Bonds; Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to Surety Insurance Company of California, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective today. The company was last listed as an acceptable surety on Federal bonds at 48 FR 30540, July 1, 1983.

With respect to any bonds currently in force with Surety Insurance Company of California, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Operations Staff (Surety), Banking and Cash Management, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–5745.

Dated: April 3, 1984.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 84-9303 Filed 4-6-84; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Medical and Regional Office Center, Wichita, Kansas, New Regional Office; Finding of No Significant Impact

It is the intent of the Veterans Administration (VA) to construct a new regional office building at the Veterans Administration Medical and Regional Office Center (VAM&ROC) in Wichita, Kansas. The new regional office building, consisting of approximately 38,866 net square feet, will be developed as a two-story structure with a connecting corridor. Associated parking will consist of approximately 50–75 additional spaces for vehicles.

The preferred agency alternative is a concept locating the new building directly north of the existing Building No. 26. This alternative is the proposed action to be taken. Two other alternative plans have been considered utilizing two different site locations at the VA Medical Center. In addition, the "No Action" alternative was evaluated. However, this plan would maintain the Regional Office in an offsite location in leased space. Many economic and operational concerns would not be addressed by implementing this alternative. No offsite construction alternative was considered because available site area for development exists at the VAM&ROC.

The development of the proposed project will have minimal impacts on the human and natural environment as it affects topography and aesthetics. Long-term open space and visual impacts will result from the building construction. However, neither attribute is of adverse significance.

The Witchita VAM&ROC is a property which contains architecturally significant structures and is recognized by both State and Federal authorities in its significance. Consequently, the proposed action will be reviewed by the State Historic Preservation Officer (SHPO) pursuant to the Advisory Council's Regulations, "Protection of Historic and Cultural Properties", 36 CFR, Part 800.

Findings conclude the proposed action wil not cause a significant effect on the physical and human environment.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (008C), Room 423, Veterans Administration, 811 Vermont Avenue NW., Washington, D.C. 20420, (202) 389–3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: April 2, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Sunshine Act Meetings

Federal Register
Vol. 49, No. 69
Monday, April 9, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-403 4/3/84]

TIME AND DATE: 10:00 a.m., April 10, 1984.

PLACE: Room 1027 (Open) Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. Proposed rulemaking to amend certificated air carrier financial and statistical reporting requirements in preparation for sunset. (OC, OGC, BCAA, BIA, BDA, OEA, OCCCA)
3. Docket 40269, *Visit USA Fare/Export Inland Contract Rate Investigation:* Memorandum of Issues. (OGC)
4. Docket EAS-794 Essential air service eligibility for Aberdeen/Hoquiam, Washington. (BDA, OCCCA, OGC, OC)
5. Dockets EAS-549, 550, 551, 553, and Docket 41521; Review of essential air service determinations for Enid, Lawton/Ft. Sill, McAlester, Ponca City and stillwater, Oklahoma and Notice of Metro Airlines to suspend service at Paris, Texas, and McAlester, Oklahoma. (BDA, OCCCA)
6. Essential air service at Sidney, Alliance and Chadron, Nebraska. (Memo 2286, BDA, OCCCA)
7. Dockets EAS-452 and———, Essential air service for Jackson, Michigan. (BDA, OCCCA)
8. Dockets 41616 and 41731, Notices of Piedmont Aviation and Sunbird Airlines to suspend service at Winston-Salem, North Carolina. (Memo 2075-B, BDA, OCCCA, OC)
9. Docket 41869, Application of Sand Point Air Service, Inc. under Subpart Q for a certificate authorizing scheduled interstate and overseas air transportation of persons, property and mail. (Memo 2288, BDA)
10. Name similarity issue raised by Empire Airlines in the commuter fitness review of Clearwater Flying Service, Inc. d/b/a Empire Airways. (Memo 2042-C, BDA, OGC)
11. Docket 38623, Agreement C.A.B. 29218, IATA agreement proposing a new Kagoshima-Guam GIT fare. (Memo 2295, BIA)
12. Docket 38623, Agreement C.A.B. 29208, IATA agreement establishing a U.S.—Israel fare structure through March, 1985. (Memo 2283, BIA)
13. Dockets 41617 and 41618, Applications of Lusair International, Inc. for foreign, interstate and overseas charter authority, (Memo 2284, BIA, OGC, BALJ)
14. Undocketed, Petition of The Flying Tiger Line Inc. for review of staff action granting a statement of authorization to Lineas Aereas Costarricenses, S.A. (Memo 2290, BIA, OGC)
15. Docket 40174, Application of Funjet Express International Airways for an initial foreign air carrier permit to transport persons, property and mail between St. Kitts and Miami via various intermediate points. (Memo 2289, BIA, OGC, BALJ)
16. Report on Korea. (BIA)
17. Report on Japan. (BIA)
18. Egypt—Upcoming Negotiations. (BIA)
19. Greece—Upcoming Negotiations. (BIA)
20. Report on Canada. (BIA)
21. Report on Brazil. (BIA)
22. Argentina—Upcoming Negotiations. (BIA)
23. Discussion on Peru. (BIA)

STATUS: 1–15 Open, 16–23 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-9401 Filed 4-5-84; 9:50 am]
BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 6, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

Jane K. Stuckey,
Secretary of the Commission.

[FR Doc. 84-9441 Filed 4-5-84; 9:33 am]
BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Monday, April 9, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

Jane K. Stuckey,
Secretary of the Commission.

[FR Doc. 84-9442 Filed 4-5-84; 9:33 am]
BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 13, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

Jane K. Stuckey,
Secretary of the Commission.

[FR Doc. 84-9443 Filed 4-5-84; 9:33 am]
BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 17, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: National Futures Association Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

Jane K. Stuckey,
Secretary of the Commission.

[FR Doc. 84-9444 Filed 4-5-84; 9:33 am]
BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, April 17, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Audit and Financial Review.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-9445 Filed 4-5-84; 9:33 am]

BILLING CODE 6351-01-M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 20, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-9446 Filed 4-5-84; 9:33 am]

BILLING CODE 6351-01-M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, April 27, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Third Quarter Budget Plans, Programs, and Priorities.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-9447 Filed 4-5-84; 9:33 am]

BILLING CODE 6351-01-M

9

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 27, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-9448 Filed 4-5-84; 9:33 am]

BILLING CODE 6351-01-M

10

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, April 11, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Squeeze Toys: Options

The Commission will consider options to address the choking hazards associated with squeeze toys and similar infant products.

2. Toy Age Labeling: Status

The staff will brief the Commission on the status of staff and industry activities on age labeling for children's products.

Closed to the Public

2 p.m.

3. Compliance Status Report

The staff will brief the Commission on a Compliance Status Report.

4. Enforcement Matter OS #4131: Status Report

The staff will brief the Commission on the status of Enforcement Matter OS #4131.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSONS FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207, 301–492–6800.

Dated: April 4, 1984.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-9430 Filed 4-4-84; 5:04 pm]

BILLING CODE 6355-01-M

11

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, April 12, 10:00 a.m.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: *Mid Year Review*

The Commission and staff will review and discuss the status of CPSC's Fiscal Year 1984 Operating Plan.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Md. 20207, 301–492–6800.

Dated: April 4, 1984.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-9431 Filed 4-4-84; 5:04 pm]

BILLING CODE 6355-01-M

12

FEDERAL COMMUNICATIONS COMMISSION

April 4, 1984.

FCC to Hold Open Commission Meeting, Wednesday, April 11, 1984

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, April 11, 1984, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—Title: Inquiry into § 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees. Summary: The Commission will consider whether to institute a notice of inquiry concerning the general fairness doctrine obligations applicable to broadcast licensees

Private Radio—1—Title: Notice of Proposed Rule Making in the matter of amendment of Part 90 of the Commission's Rules concerning the sharing of two Police Radio Service frequency pairs with eligibles in the Fire and Special Emergency Radio Services. Summary: The Commission will consider adoption of a Notice of Proposed Rule Making proposing to eliminate the on-invoice restriction on the two frequency pairs 460.525/465.525 and 460.550/465.550 MHz and allow persons eligible in the Fire and Special Emergency Radio Services to use these frequencies and a co-equal, share basis with eligibles in the Police Radio Service.

Common Carrier—1—Title: Memorandum Opinion and Order on reconsideration re American Telephone & Telegraph Co., Approval of Plan for Capitalization of ATT Cellular Co. Summary: The Commission will consider whether to require that preoperational expenditures be recorded on the books of ATT Cellular Co. or its successors in the provisions of cellular communications services.

Common Carrier—2—Title: Inquiry into the revisions of Part 42 Preservation of Records of Communication Common Carriers. Summary: The Commission will consider soliciting comments on aspects of its record retention requirements found to be most burdensom by the carriers.

Common Carrier—3—Title: Order on Reconsideration re Access to Telecommunications Equipment by the Hearing Impaired and Other Disabled Persons, CC Docket No. 83–427. Summary:

The Commission will consider petitions by manufacturers of telephone equipment that it modify the effective date of its requirements for labelling telephone packaging to indicate whether telephones are hearing aid-compatible.

Common Carrier—4—Title: First Report and Order in CC Docket No. 81-216. Summary: The Commission will consider the matter of the installation of business and residential one and two-line (non-system) premises telephone wiring under Part 68. It will also consider a definition of "demarcation point" for purposes of Part 68 and other Commission decisions.

Common Carrier—5—Title: Petitions for Reconsideration of *Interconnection Order* (*Third Notice of Proposed Rulemaking*), CC Docket 81-216, 94 FCC 2d 5 (1983) filed by the Bell Operating Companies. Summary: In the *Interconnection Order* the Commission determined that network channel terminating equipment used in connection with digital transmission services would be treated as CPE under *Computer II*. The Commission will consider whether this decision should be reconsidered based on arguments offered by the Bell Operating Companies.

Common Carrier—6—Title: Special Construction of Lines and Special Service Arrangements Provided by Common Carriers. Summary: Notice of Proposed Rulemaking proposing to treat these special activities as not common carrier offerings.

Common Carrier—7—Title: Private Line Rate Structure and Volume Discount Practices CC Docket No. 79-246. Summary: Report and Order adopting guidelines and findings for private line rate structures and volume discount practices.

Common Carrier—8—Title: Third Report and Order in Nationwide Network Paging, CC Docket No. 80-183. Summary: The Commission will consider Whether to adopt the Third Report and Order in this proceeding, resolving questions of network access and tariff requirements.

Common Carrier—9—Title: Application for review filed by MRTS-Poe of Miami, Inc., and Petition for Reconsideration filed by Cell-Tel Network (Tampa) seeking reversal of Common Carrier Bureau action denying applicants' request for a minority preference in celluar comparative proceeding. Summary: The Commission will consider whether the Bureau acted properly in refusing to grant a minority preference to applicants for cellular radio service in the Miami and Tampa SMSAs.

Common Carrier—10—Title: Cellular Lottery Rulemaking Summary: The Commission will consider whether to adopt rules to implement a system of lotteries for cellular licenses for markets beyond the top-30, and modify several cellular rules and procedures for applications for markets below the top-90.

Common Carrier—11—Title: In the Matter of Proposed Modifications of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporation. Summary: The Commission will consider further actions in response to the order of the U.S. Court of Appeals for the D.C. Circuit vacating and remanding the Commission's August 19, 1982, Report and Order in this proceeding.

Audio—1—Title: Application for Review filed by Big River Broadcasting Corporation. Summary: The Commission will consider a staff action awarding the relinquished WEZI call letters.

Audio—2—Title: Request by 1984 Political Convention Frequency Coordinating Committee for designation as auxiliary broadcast frequency coordinator for broadcast coverage of the 1984 national political conventions, suspension of Section 74.24 of the Commission's Rules from June 1 to September 8, 1984, in San Francisco, California, and Dallas, Texas, and use of non-broadcast frequencies for broadcast use in convention coverage. Summary: The Commission will consider whether to designate the Committee as frequency coordinator, suspend Section 74.24 during the convention period, and advise the Committee of the procedure for requesting Special Temporary Authorization to use non-broadcast frequencies for broadcast convention coverage.

Audio—3—Title: Application for voluntary assignment of license of radio station WXXR (formerly WKUL), Cullman, Alabama, from Cullman Broadcasting, Co. Inc., to Piney Hills Broadcasting, Inc., under the Commission's distress sale policy without either having the WXXR license designated for revocation hearing or designating its license renewal application for hearing. Summary: The Commission considers the application for voluntary assignment of license of radio station WXXR (formerly WKUL), Cullman, Alabama, under the Commission's distress sale policy before designating the co-pending license renewal application for hearing.

Audio—4—Title: License Renewal Application of Station KTTL (FM), Dodge City, Kansas, licensed to Mr. & Mrs. Charles Babbs, d/b/a Cattle Country Broadcasting. Summary: The Commission considers petitions to deny KTTL's renewal application filed by the Dodge City Citizens for Better Broadcasting and the National Black Media Coalition; informal objections to KTTL's renewal application filed by the Attorney General of the State of Kansas, Robert T. Stephan, on behalf of the State of Kansas, the Anti-Defamation League of B'nai B'rith, the Jewish Community Relations Bureau of Kansas City, Missouri, and the Jewish War Veterans of the U.S.A.; a timely-filed application from Community Service Broadcasting, Inc., seeking a construction permit for a new FM broadcasting station in Dodge City, Kansas, which is mutually exclusive with the renewal application of KTTL; and an application for assignment of license from the licensee to Mr. Van Smith.

Policy—1—Title: Applications for Review of an action allotting FM channels to various communities in South Caroline. Summary: The Commission will consider an Application for Review filed by Santee-Cooper Broadcasting Company of the Bureau decision denying the allottment of an FM channel to Elloree, and to Mt. Pleasant, South Carolina.

Policy—2—Title: Application for review filed by C.P. Broadcasters, Inc. seeking review of an FM rule making action at Auburn and Lagrange, Indiana. Summary: The Commission will consider an Application for Review of a request to reopen the action which allotted channel 288A to Lagrange, Indiana, and substituted Class A channels at Auburn, Indiana, and which denied a stay of that action.

Policy—3—Title: In the Matter of Repeal of the "Regional Concentration of Control" Provisions of the Commission's Multiple Ownership Rules. Summary: The Commission will consider whether to repeal or modify the three-station regional concentration of control rule.

Policy—4—Title: Amendment of § 73.99 of the Commission's Rules. Summary: The Commission adopted a *Report and Order* in BC Docket No. 82-538 that for the first time authorized post-sunset operation by daytime-only stations. A petition for reconsideration of this decision has been filed by the Daytime Broadcasters Association. The Commission will consider this petition and other relevant issues from the proceeding. Title: Amendment of § 73.1725(d) of the Commission's Rules. Summary: The Commission also will consider the appropriate disposition of Docket No. 18421, a rule making proceeding concerning § 73.1725(d) (formerly § 73.81) of the Rules relating to the settlement of disputes concerning nighttime resumption of operations by limited-time stations.

Policy—5—Title: Amendment of Part 74, Subpart L of the Commission's Rules Pertaining to FM Radio Broadcast Translator Stations. Amendment of Subparts F and L of Part 74 to permit use of alternative input sources for FM broadcast translator stations and to permit uniform 10 watt FM translator power. Summary: The Commission will consider the issues involved in extending the permitted sources of programs rebroadcast or transmitted by FM translator stations and proposed restrictions on FM station licensee involvement in operating FM translators at distant locations.

Policy—6—Title: Amendments of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorization. Summary: The Commission will consider Petitions for Reconsideration of the *First Report and Order* in BC Docket No. 82-536, FM subchannels.

Enforcement—1—Title: Renewal Application of KDEN Broadcasting Company for Station KDEN, Denver, Colorado. Summary: The Commission considers a petition to deny filed by the National Black Media Coalition and the Urban League of Metropolitan Denver alleging that the licensee has not complied with the Commission's EEO rule.

Enforcement—2—Title: License Renewal Application of Alainde, Inc. for Station WYDE, Birmingham, Alabama. Summary: The Commission considers a infomal objection filed by the National Black Media

Coalition alleging that the licensee has not complied with the Commission's EEO rule.

Enforcement—3—Title: Applications for License and for Consent to Transfer Control of Station WEVV–TV, Evansville, IN. Summary: The Commission will consider whether to grant these applications.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtain from Sally Lawrence, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9471 Filed 4-5-84; 12:15 pm]

BILLING CODE 6712-01-M

13

FEDERAL COMMUNICATIONS COMMISSION

April 4, 1984.

FCC To Hold a Closed Commission Meeting Wednesday April 11, 1984.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Wednesday, April 11, 1984 following the Open Meeting, which is scheduled to commence at 9:30 A.M. in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Two Applications for Review of a Final Review Board Decision in the St. Simons Island, Georgia comparative FM proceeding (Docket Nos. 81–306, 81–307, and 81–309).

This item is closed to the Public because it concerns Adjudicatory Matters (See 47 CFR 0.603(j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and member of his staff
Chief, Office of Public Affairs and members of his staff.

Action by the Commission April 3, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sally Lawrence, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9472 Filed 4-5-84; 12:15 pm]

BILLING CODE 6712-01-M

14

FEDERAL ENERGY REGULATORY COMMISSION

April 4, 1984.

TIME AND DATE: 10:00 a.m., April 11, 1984.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone: (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda

789th Meeting—April 11, 1984; Regular Meeting (10:00 a.m.)

CAP–1: Project No. 7442–001, Douglas Water Power Company
CAP–2: Project No. 4806–002, City of Auburn, New York
CAP–3:
Project No. 5275–000, Hydro Resource Company
Project No. 5325–000, Capital Development Company
Project No. 6014–002, Public Utility District No. 1 of Lewis County, Washington
Project No. 6600–000, Eagle Power Company
CAP–4: Project No. 5695–003, Paradise Irrigation District
CAP–5: Project No. 67–010, Southern California Edison Company
CAP–6:
Project No. 4684–001, Long Lake Energy Corporation
Project No. 5511–001, New York State Energy Research and Development Authority
Project No. 2934–004, New York State Electric and Gas Corporation
CAP–7: Project No. 7659–001, WP, Inc.
CAP–8:
Project No. 6839–001, Piedmont Camp Fire Council and Lake Vera Mutual Water Company
Project No. 6076–001, Fairview Orchards Associates
CAP–9: Project No. 7616–000, WP, Inc.
CAP–10: Project No. 2890–003, Kings River Conservation District
CAP–11: Project No. 4786–001, Public Utility District No. 1 of Snohomish County, Washington
CAP–12: Project No. EF82–5031–001, Western Area Power Administration (Pick-Sloan Project)
CAP–13: Docket No. QF84–147–000, Alcon (Puerto Rico), Inc.
CAP–14: Docket No. QF84–135–000, Union Camp Corporation
CAP–15: Docket No. ER83–729–000, New England Power Company.
CAP–16: Docket No. ER84–91–000, Delmarva Power and Light Company.
CAP–17: Docket No. EL84–5–000, Sierra Pacific Power Company

Consent Miscellaneous Agenda

CAM–1: Docket No. RM8–14–000, Fees Relating to Freedom of Information Act Requests and to Other Public Information Requests
CAM–2: Docket No. RM79–76–213 (Texas-2 Addition II), High-Cost Gas Produced From Tight Formations
CAM–3: Docket No. SA83–15–001, Shar-Alan Oil Company

Consent Gas Agenda

CAG–1: Docket No. TA84–1–26–004, Natural Gas Pipeline Company of America
CAG–2:
Docket Nos. RP83–35–012 and 013, RP81–109–000, R82–37–000 and RP74–41–016, Texas Eastern Transmission Corporation
Docket Nos. TA83–1–17–011 and 012, T82–2–17–006 and 007, Texas Eastern Transmission Corporation
Docket Nos. R74–41, (Remand) and RP74–41–021, et seq., Texas Eastern Transmission Corporation
CAG–3: Docket No. TA84–1–13–002, Gas Gathering Corporation
CAG–4: Docket No. TA84–2–37–002, Northwest Pipeline Corporation
CAG–5: Docket No. RP84–27–000, Northwest Central Pipeline Corporation
CAG–6: Docket No. RP83–64–000, Columbia Gas Transmission Corporation
CAG–7: Docket No. RP84–20–000, Panhandle Eastern Pipe Line Company
CAG–8: Docket No. RP83–1–000, Michigan Wisconsin Pipe Line Company
CAG–9: Docket No. RP83–71–001, Granite State Gas Transmission, Inc.
CAG–10: Docket No. RP81–137–000, Pacific Gas Transmission Company
CAG–11: Docket No. RP81–81–000, United Gas Pipeline Company
CAG–12:
Docket No. RP83–73–000, State of North Dakota v. Northern Natural Gas Company, Division of Internorth, Inc. and Midwestern Gas Transmission Company
Docket Nos. G–18313, et al., CP70–24–000 and CP82–74–000, Midwestern Gas Transmission Company
Docket No. CP82–62–000, Northern States Power Company
Docket No. CP82–105–000, Tennessee Gas Pipe Line
Docket Nos. CP81–143–000 and CP81–143–001, Northern Natural Gas Company, Division of Internorth, Inc.
CAG–13: Docket No. ST80–124–002, Rael Gas Company

CAG—14:
Docket No. CI84–160–001, Exxon Corporation
Docket No. CI84–178–001, Marathon Oil Company
Docket No. CI84–189–001, Getty Oil Company
CAG—15: Docket No. CI83–285–001, Texas Producing Inc., et al.
CAG—16: Docket No. RI77–32–003, Disputed Zone Offshore Louisiana
CAG—17: Docket Nos. RI74–188–029, and RI75–21–024, Independent Oil & Gas Association of West Virginia
CAG—18: Docket No. CP84–173–000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG—19: Docket No. CP83–322–002, Northwest Pipeline Corporation
CAG—20: Docket No. CP81–330–003, United Gas Pipe Line Company, Columbia Gulf Transmission Company and Southern Natural Gas Company
CAG—21: Docket No. CP84–83–000, Northwest Central Pipeline Corporation
CAG—22: Docket Nos. CP84–31–000, and CP84–31–001, Texas Gas Transmission Corporation and Texas gas Exploration Corporation
CAG—23:
Docket No. CP84–61–000, Carnegie Natural Gas Company
Docket No. CP84–210–000, Texas Eastern Transmission Corporation
Docket No. CP84–217–000, Columbia Gas Transmission Corporation
CAG—24: Docket No. CP82–538–002, Canyon Creek Compression Company
CAG—25: Docket No. CP72–236–000, Northern Natural Gas Company, Division of Internorth, Inc.
CAG—26: Docket No. CP83–348–002, Algonquin Gas Transmission Company
CAG—27: Docket No. TA84–1–27–001, North Penn Gas Company
CAG—28: Omitted
CAG—29: Docket Nos. RP82–57–014 and RP83–52–008, United Gas Pipe Line Company

Power Agenda

I. Licensed Project Matters

P–1: Project No. 6233–002, Big Bear Area Regional Waste Water Agency
P–2: Project No. 6840–000, Olympus Energy Corporation

II. Electric Rate Matters

ER–1: Docket No. ER83–78–001, Central Illinois Public Service Company
ER–2: Docket No. ER84–279–000, Pacific Power & Light Company
ER–3: Docket No. ER84–286–000, Centel Corporation, Western Power Division
ER–4: Docket No. ER84–236–000, El Paso Electric Company
ER–5: Docket No. ER84–155–001, Public Service Company of New Mexico, et al.
ER–6: Docket No. EF84–1021–000, United States Secretary of Energy Alaska Power Administration—Snettisham Project
ER–7: Docket No. QF84–121–000, Ultrapower 3
ER–8: Docket No. EL83–11–001, Virginia Electric & Power Company

Miscellaneous agenda

M–1: Reserved
M–2: Reserved
M–3: Docket No. RM83–52–000, Revisions to the Filing Requirements for Changes in a Tariff, Executed Service Agreement or Part Thereof, Contained in Title 18 of the Cope of Federal Regulations
M–4: Docket Nos. RM80–21–000, 002, 003, 004, 005, 006, 007 and 008, Regulations Under Section 110, 105 and 106(b) of the Natural Gas Policy Act
M–5:
(A) Docket Nos. RM82–25–000, 001 and 002, Fees Applicable to Producer Matters Under the Natural Gas Act
(B) Docket Nos. RM83–2–000, 001, 002 and 003, Fees Applicable to Natural Gas Pipeline Rate Matters

Gas Agenda

I. Pipeline Rate Matters

RP–1: Omitted
RP–2: Docket Nos. TA84–1–16, 001 (PGA84–1) and GP84–17–001, National Fuel Gas Supply Corporation
RP–3: Omitted
RP–4: Docket No. RP80–136–000, Southern Natural Gas Company
RP–5: Omitted
RP–6:
Docket No. RP84–43–000, Southwest Gas Corporation v. Northwest Pipeline Corporation
4Docket Nos. RP82–56–000, ST83–700–000, ST83–701–000, ST83–702–000, ST83–703–000, ST83–704–000 and ST83–705–000, Northwest Pipeline Corporation
RP–7: Docket No. CP80–22–006, Northern Natural Gas Company

II. Producer Matters

CI–1: Docket No. CI78–704–001, Mitchell Energy Corporation
CI–2: Docket No. CI83–163–001, Texaco, Inc.

III. Pipeline Certificate Matters

CP–1: Docket Nos. CP83–438–001, and 002, East Tennessee Natural Gas Company
CP–2:
Docket No. CP79–80–030, Trailblazer Pipeline Company, et al.
Docket No. CP79–80–031, Wyoming Interstate Company, Ltd., et al.
Docket No. CP82–450–001, Colorado Interstate Gas Company
CP–3: Docket Nos. CI83–188–003, and CI84–173–000, anr Production Company

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–9450 Filed 4–5–84; 10:10 am]
BILLING CODE 6717–01–M

15

POSTAL SERVICE (BOARD OF GOVERNORS)

Notice of Vote to Close Meeting

At its meeting on April 2, 1984, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting, scheduled for May 7, 1984, in Washington, D.C. The meeting will involve:

(1) A discussion of possible strategies in anticipated collective bargaining negotiations, pursuant to chapter 12 of title 39 United States Code, involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which are scheduled to expire in July 1984; and
(2) Consideration of the February 24, 1984, Recommended Decision of the Postal Rate Commission on E–COM rate and classification changes in Docket No. R83–1.

The meeting is expected to be attended by the following persons: Governors Babcock, Camp, McKean, Peters, Ryan, Sullivan, Voss and Waldman; Postmaster General Bolger; Deputy Postmaster General Finch; Secretary of the Board Harris; Acting General Counsel Hughes; Senior Assistant Postmasters General Coughlin and Morris; and Counsel to the Governors Califano.

As to the first of these agenda items, the Board is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of

Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

As to the second agenda item, the Board is of the opinion that public access to the discussion would be likely to disclose information that could become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board has determined further, that pursuant to section 552b(c)(10) of title 5, United States Code, and § 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c) (3), (9)(B) and (10) of title 5 and sections 410(c) (3) and (4) of title 39, United States Code, and § 7.3 (c), (i) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84-9509 Filed 4-5-84; 1:25 pm]

BILLING CODE 7710-12-M

15

LEGAL SERVICES CORPORATION

Appropriations and Audit Committee Meeting

TIME AND DATE: The meeting will commence at 2:00 p.m. and continue until all official business is completed. Monday, April 16, 1984.

PLACE: Office of Personnel Management, Auditorium, 1900 "E" Street, NW., Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —January 27, 1984
3. Report from the Office of Comptroller
   —First Quarter Budget Review
   —Report on Status of Retaining an Auditor
4. Report from the Director of the Audit Division
5. Report from the Office of General Counsel
6. Report from the President
7. Report from the Office of Government Relations

CONTRACT PERSON FOR MORE INFORMATION: LeaAnne Berstein, Office of the President, (202) 272-4040.

DATED ISSUED: April 5, 1984.

Donald P. Bogard,

President.

[FR Doc. 84-9459 Filed 4-5-84; 11:36 am]

BILLING CODE 6820-35-M

federal register

Monday
April 9, 1984

Part II

Department of Health and Human Services

Office of the Secretary

48 CFR Ch. 3
Acquisition Regulation; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Ch. 3

Acquisition Regulation

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule with request for comments.

SUMMARY: This rule establishes the Department of Health and Human Services Acquisition Regulation (HHSAR) as Chapter 3 of Title 48, Code of Federal Regulations. The HHSAR implements and supplements the Federal Acquisition Regulation (FAR), Title 48 CFR Chapter 1.

The FAR was jointly promulgated on September 19, 1983 (48 FR 42102) by the Department of Defense, General Services Administration, and National Aeronautics and Space Administration as the uniform, simplified, government-wide acquisition regulation required by Executive Order 12352, Federal Procurement Reforms. The FAR supersedes the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation on April 1, 1984.

As a result of the promulgation of the FAR, all civilian agency implementations of the Federal Procurement Regulations, including the HHS Procurement Regulations, become obsolete on the effective date. For this reason, the Department of Health and Human Services is establishing the HHSAR to effect policies and procedures governing the acquisition processes which were formerly found in the HHS Procurement Regulations, Chapter 3 of Title 41, Code of Federal Regulations.

DATES: This final rule is effective April 1, 1984. Comment due date is May 15, 1984.

ADDRESS: Any person or organization wishing to submit comments pertaining to the HHSAR may do so by mailing them to the Division of Procurement Policy, Room 539–H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. Comments received after May 15, 1984 will not be considered. Oral comments will not be taken.

FOR FURTHER INFORMATION CONTACT: E. S. Lanham, Procurement Analyst, Division of Procurement Policy, telephone (202) 245–6791.

SUPPLEMENTARY INFORMATION: The HHSAR implements the FAR where required or considered necessary and supplements the FAR in areas where there is no FAR coverage or the coverage is considered inadequate. The HHSAR is the result of reformatting the existing HHS Procurement Regulations, removing portions of the HHS Procurement Regulations which would duplicate FAR coverage of subject matter not contained in the Federal Procurement Regulations, and inserting needed internal procedural guidance in areas where the FAR requires implementation.

The Department highlights the following parts of the HHSAR: Part 307—Acquisition Planning; Part 309—Contractor Qualifications; Part 315—Contracting by Negotiation; Part 337—Service Contracting; Part 342—Contract Administration; and Part 352—Solicitation Provisions and Contract Clauses.

The HHSAR, 48 CFR Chapter 3, supersedes the HHS Procurement Regulations, 41 CFR Chapter 3, as of April 1, 1984. However, the HHS Procurement Regulations remain in effect for those contracts awarded, or based upon solicitations issued, before the effective date.

Executive Order 12291. In accordance with the memorandum of October 4, 1982 from the Director, Office of Management and Budget, this final rule is exempt from the provisions of Executive Order 12291.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, Pub. L. 96–354, requires the preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. Since this rule reformats existing procurement policies and procedures and does not promulgate any new policies or procedures which would impact the public, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities, and, thus, a regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act. HHSAR Parts 315, 323, 324, 332, 342, 352, and 370 contain information collection or reporting requirements. As required by the Paperwork Reduction Act of 1980, the Department has submitted a copy of this final rule to the Office of Management and Budget for its review of these information requirements. Individuals and organizations desiring to submit comments on the information requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building—Room 3208, Washington, D.C. 20503, Attention: Desk Officer for HHS.

Administrative Procedure Act. The Administrative Procedure Act (APA) exempts rules relating to contracts from the prior notice and comment procedures normally required for formal rulemaking (5 U.S.C. 553(a)). This Department, however, as a matter of policy, utilizes the public participation procedures of the APA for rules relating to contracts except when, as authorized by the APA, "the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." (36 FR 2532; 5 U.S.C. 553(b)(B)).

The Department has determined that this rule falls within the authorized exceptions to the APA. Because this rule merely reformats the Department's existing procurement regulations to conform them to FAR, and inserts needed internal procedural guidance in areas where the FAR requires implementation, prior public comment is deemed unnecessary. Further, since the Department's current procurement regulations will become obsolete on April 1, 1984, it is impracticable to provide for prior public comment on this rule. Lastly, it would be contrary to the public interest to utilize a prior public comment procedure, since that procedure would result in the Department not having any acquisition regulations in effect on April 1, 1984.

OFPP Policy Letter No. 83–2. The Office of Federal Procurement Policy, in Policy Letter No. 83–2, requires that an agency must provide an opportunity for public comment before adopting procurement (acquisition) regulations if the regulations represent a "significant" change to existing regulations. A change to existing regulations "is generally considered to be significant if it has an effect beyond the internal procedures of the issuing agency, or a cost or administrative impact on contractors."

The Department has determined that this rule does not represent a significant change. As indicated earlier in the preamble, the changes made to the Department's procurement (acquisition) regulations are in the areas of format and internal procedures. Accordingly, the Department has concluded that the requirements of the Policy Letter do not apply.

For these reasons, the Department is issuing the HHS Acquisition Regulation as a final rule. However, the Department will accept comments on the regulation until May 15, 1984, and will review all comments for possible revisions to the regulation.

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Ch. 3

Government procurement, HHS acquisition regulation.

Accordingly, the Department amends Title 48, Code of Federal Regulations by establishing a new Chapter 3 as set forth below.

Dated: March 28, 1984.

Henry G. Kirschenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

CHAPTER 3—HEALTH AND HUMAN SERVICES

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SUBCHAPTER A—GENERAL

PART 301—HHS ACQUISITION REGULATION SYSTEM

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Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 301.1—Purpose, Authority, Issuance

301.101 Purpose.

(a) The Department of Health and Human Services Acquisition Regulation (HHSAR) is issued to establish uniform acquisition policies and procedures for the Department of Health and Human Services (HHS) which conform to the Federal Acquisition Regulation (FAR) System.

(b) The HHSAR implements and supplements the FAR. (Implementing material expands upon or indicates the manner of compliance with related FAR material. Supplementing material is new material which has no counterpart in the FAR.)

(c) The HHSAR contains all formal departmental policies and procedures that govern the acquisition process or otherwise control contracting relationships between the Department's contracting offices and contractors.

301.102 Authority.

The HHSAR is prescribed by the Assistant Secretary for Management and Budget under the authority of 5 U.S.C. 301 and Section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary. The Assistant Secretary for Management and Budget has redelegated the authority to establish all departmental acquisition policy and publish all acquisition regulations to the Deputy Assistant Secretary for Procurement, Assistance and Logistics. This authority is not redelegable.

301.103 Applicability.

The FAR and HHSAR apply to all HHS acquisitions as stated in FAR 1.103. Unless specified otherwise, these regulations apply to acquisitions within and outside the United States.

301.104 Issuance.

301.104-1 Publication and code arrangement.

(a) The HHSAR is also published in the same forms as indicated in FAR 1.104-1(a).

(b) The HHSAR is issued in the Code of Federal Regulations (CFR) as Chapter 3 of Title 48, Department of Health and Human Services Acquisition Regulation. It may be referenced as "48 CFR Chapter 3."

301.104-2 Arrangement of regulations.

(a) *General.* The HHSAR conforms to the FAR with respect to divisional arrangements; i.e., subchapters, parts,

subparts, sections, subsections, and paragraphs.

(b) *Numbering.* The FAR System of numbering permits the keying of the same or similar subject matter throughout Chapters 1 (FAR) and 3 (HHSAR). However, unlike the FAR numbering scheme, our scheme varies somewhat in the numbering to the left of the decimal point. Whereas the FAR only identifies the part number to the left of the decimal point, our corresponding reference identifies the chapter as well. For example, this corresponding paragraph in the FAR is numbered 1.104–2(b) where "1" is the part number (may be one or two digits and is followed by a decimal point), "1" (to the right of the decimal point) is the subpart number, "04" (always two digits) is the section number, "2" is the subsection number (always hyphenated), and "(b)" is the paragraph reference. The corresponding HHSAR reference is 301.104–2(b) where the "3" or first digit is the chapter number assigned to the particular department or agency (may be two digits) and the "01" represents the part number (part numbers will always be two digits for agencies implementing the FAR). The remaining numbers are identical to and represent the same divisions as the FAR example.

(c) *References and citations.* (1) Unless otherwise stated, references, indicate parts, subparts, sections, subsections, etc. of this regulation, the HHSAR.

(2) This regulation shall be referred to as the Department of Health and Human Services Acquisition Regulation (HHSAR). Any reference may be cited as "HHSAR" followed by the appropriate number. Within the HHSAR, the number alone will be used.

(3) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by "FAR".

301.104–3 Copies.

Copies of the HHSAR in **Federal Register** and CFR form may be purchased by the public from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402. Lose-leaf copies of the HHSAR may be obtained by departmental personnel having a need for the document by placing an order with a Directives Distribution Coordinator in accordance with General Administration Manual Chapter 1–00, HHS Staff Manual System.

301.105 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this regulation:

HHSAR segment	OMB control no.
315.4	0990-0138
323.70	0990-0137
324.70	0990-0130
332.406	0990-0134
348.7103	0990-0131
352.215-71	0990-0139
352.216-70	0990-0138
352.223-70	0990-0137
352.224-70	0990-0136
352.226-70	0990-0135
352.232-70	0990-0134
352.232-71	0990-0134
352.232-73	0990-0134
352.233-70	0990-0133
352.237-71	0990-0132
352.242-70	0990-0131
352.270-1	0990-0129
352.270-2	0990-0129
352.270-3	0990-0129
352.270-5	0990-0130
352.270-6	0990-0130
370.1	0990-0129
370.2	0990-0129

Subpart 301.2—Administration

301.201 Maintenance of the HHSAR.

(a) The HHSAR is prepared and issued under the authority of the Deputy Assistant Secretary for Procurement, Assistance and Logistics. Acquisition policies and procedures which are necessary to implement, supplement, or deviate from the FAR will be issued in the HHSAR by the Deputy Assistant Secretary for Procurement, Assistance and Logistics when necessary to accomplish Department-wide acquisition objectives.

(b) The HHSAR is maintained by the Division of Procurement Policy, Office of Procurement and Assistance Policy, Office of Procurement, Assistance and Logistics. The Director, Division of Procurement Policy is responsible for developing and preparing for issuance all acquisition regulatory material to be included in the HHSAR.

301.270 Executive Committee for Acquisition.

(a) The Deputy Assistant Secretary for Procurement, Assistance and Logistics has established the Executive Committee for Acquisition (ECA) to assist and facilitate the planning and development of departmental acquisition policies and procedures and to assist in responding to other agencies and organizations concerning policies and procedures impacting the Federal acquisition process.

(b) The ECA consists of members and alternates from the Office of Procurement, Assistance and Logistics, Office of Management Services—OS, Office of Human Development Services, Health Care Financing Administration, Social Security Administration, Public Health Service, and, collectively, the regional offices. The ECA is chaired by the Director, Division of Procurement Policy. All meetings will be held at the call of the Chairman, and all activities will be carried out under the direction of the Chairman.

(c) The ECA, to facilitate the planning, development, and coordination of government-wide and department-wide acquisition policies and procedures, is to:

(1) Advise and assist the Chairman concerning major acquisition policy matters;

(2) Review and appraise, at appropriate intervals, the overall effectiveness of existing policies and procedures; and

(3) Review and appraise the impact of new major acquisition policies, procedures, regulations, and developments on current acquisition policies and procedures.

(d) The Chairman will periodically issue a list of current members and alternates specifying the name, title, organization, address, and telephone number of each. The member organizations are responsible for apprising the Chairman whenever a new member or alternate is to be appointed to the ECA.

301.271 Timing of HHSAR revisions.

HHSAR revisions will be issued throughout the year as the need arises. HHSAR material shall become effective on the date cited in the **Federal Register** issuance or on the date of the transmittal notice which distributes it to HHSAR Staff Manual holders, unless otherwise indicated.

Subpart 301.3—Agency Acquisition Regulations

301.301 Policy.

The FAR and HHSAR are intended to provide all necessary regulatory guidance for the conduct of the acquisition process within the Department. However, there may be some rare instances where regulations are necessary to implement and/or supplement the FAR and/or HHSAR at the Operating Division (OPDIV) level or lower. The Department discourages the proliferation of OPDIV and lower level issuances, but will allow lower level issuances when deemed pertinent.

301.302 Limitations.

The same limitations applicable to the FAR also apply to the HHSAR.

301.303 Codification and public participation.

The HHSAR shall be codified in Chapter 3 of Title 48, Code of Federal Regulations. Any OPDIV or lower implementation or supplementation of the HHSAR or FAR shall also be codified as part of Chapter 3. Implementing material is that which expands upon or indicates the manner of compliance with related higher level material. Supplementing material is that for which there is no counterpart. Where material in the FAR requires no implementation, there will be no corresponding number in the HHSAR. Thus, there are gaps in the HHSAR sequence of numbers where the FAR, as written, is deemed adequate. Supplementary material shall be numbered as specified in FAR 1.303.

301.304 Agency control and compliance procedures.

(a) Whenever an OPDIV or lower level organization determines a need for an acquisition regulation not covered by the FAR or HHSAR or wishes to implement or supplement the coverage in either, the organization shall prepare a memorandum that explains the need, background, justification, and significant aspects of the proposed regulation and send it, together with an outline, to the Director, Division of Procurement Policy. The Director will analyze the request to determine if it has applicability to the HHSAR or FAR; if not, the Director will either approve or disapprove the request for incorporation into the organization's acquisition regulation. If the request is approved, the organization must prepare the proposed regulation in **Federal Register** format, obtain all necessary concurrences, including Office of General Counsel—Business and Administrative Law Division, and send it to the Director, Division of Procurement Policy for review and approval. The regulation must be prepared for signature by the Deputy Assistant Secretary for Procurement, Assistance and Logistics. All regulations will be required to be processed through the public rulemaking process in the **Federal Register**.

(b) Only the organizations listed in paragraph (d) are authorized to established acquisition regulations. As of the date of issuance of the HHSAR, no acquisition regulations below the HHSAR level exist, and the procedures detailed in paragraph (a) must be followed to initiate the establishment of an OPDIV or lower level regulation.

(c) Under no circumstances shall any organization's implementation or supplementation of the FAR or HHSAR conflict with, supersede, or repeat, paraphrase, or otherwise restate policies or procedures prescribed by these regulatory issuances. OPDIV or lower level material shall follow the numbering system, format, and arrangement of the FAR and HHSAR and will be applicable only within the organization issuing it. One copy of all OPDIV or lower level material issued in loose-leaf format shall be furnished the Director, Division of Procurement Policy at the time of issuance.

(d) Material issued by OPDIV or lower level organizations to implement and supplement the HHSAR and FAR shall be identified by prefixes to the digit 3 (indicating Chapter 3–HHSAR) as follows, and shall use the same numbering system as the HHSAR:

Organization	Prefix
Office of the Secretary	OS
Health Care Financing Administration	HCFA
Office of Human Development Services	OHDS
Public Health Service	PHS
Alcohol, Drug Abuse, and Mental Health Administration	ADAMHA
Centers for Disease Control	CDC
Food and Drug Administration	FDA
Health Resources and Services Administration	HRSA
National Institutes of Health	NIH
Social Security Administration	SSA

Subpart 301.4—Deviations From the FAR

301.403 Individual deviations.

Requests for individual deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Director, Division of Procurement Policy for review and approval.

301.404 Class deviations.

Requests for class deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Director, Division of Procurement Policy for review and approval.

301.470 Procedure.

(a) When a contracting activity or contracting office determines that a deviation is needed, it shall prepare a deviation request in memorandum form and forward it through administrative channels to the Director, Division of Procurement Policy as stated in 301.403 or 301.404. In an exigency situation, the contracting activity or contracting office may request a deviation verbally, but is required to confirm the request in writing as soon as possible.

(b) A deviation request shall clearly and precisely set forth the:

(1) Nature of the needed deviation;

(2) Identification of the FAR or HHSAR from which the deviation is needed;

(3) Circumstances under which the deviation would be used;

(4) Intended effect of the deviation;

(5) Time-frame; and

(6) Reasons which will contribute to complete understanding and support of the requested deviation. A copy of pertinent background papers such as a form or contractor's request should accompany the deviation request.

Subpart 301.5—Agency and Public Participation

301.501 Solicitation of agency and public views.

(a) [Reserved].

(b) Public opportunity for comment on proposed changes or additions to the HHSAR or lower level acquisition regulations will be offered whenever the proposed regulation will have a direct impact on the public and/or contractors. This will be accomplished by publishing a notice of proposed rulemaking in the **Federal Register** which will include the proposed language and the background and rationale for the proposed regulation. Comments will not be solicited directly from professional or industry associations or other interested parties; they will be expected to respond based upon the **Federal Register** notification. Normally, the public will be given 45 days to comment. Proposed changes or additions to the HHSAR or FAR shall be staffed to the Executive Committee for Acquisition in accordance with 301.270.

(c) and (d) [Reserved].

(e) In addition to the two instances stated in FAR 1.501(e), comments will not be solicited from the public when the change or addition to the HHSAR or lower level acquisition regulation is deemed procedural in nature and concerns internal administrative directions aimed at departmental personnel.

301.502 Public meetings.

Public meetings will not normally be used to solicit comments or views on HHSAR or lower level acquisition regulations. However, when the topic is so controversial that the Department or OPDIV believes a public meeting would be beneficial, public meetings will be convened.

Subpart 301.6—Contracting Authority and Responsibilities

301.601 General.

No contract shall be entered into, modified, or terminated unless all

required reviews, clearances, or approvals have been obtained, and all applicable requirements of law, the FAR, the HHSAR, and other applicable regulations have been met. In addition, refer to FAR 14.103–2 concerning limitations with respect to contracting by formal advertising and FAR 15.104 concerning authorization and approval with respect to contracting by negotiation.

301.603 Selection, appointment, and termination of appointment.

301.603–1 General.

The selection, appointment, and termination of contracting officers shall be made in accordance with OPDIV procedures, which shall conform to the requirements of FAR Subpart 1.6 and this subpart.

301.603–3 Appointment.

The Certificate of Appointment is not to be issued to employees where delegation of authority is restricted to ordering from mandatory sources of supply (FSS, GSA, Perry Point, Md., DOD, etc.).

301.670 Head of the contracting activity.

301.670–1 Responsibility.

The head of the contracting activity (HCA) is responsible for the conduct of an effective and efficient acquisition program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted and evaluated by qualified personnel, preferably assigned to positions other than in the contracting office being reviewed, to determine the extent of adherence to prescribed policies and regulations, and to detect a need for guidance and/or training.

301.670–2 Designation.

Each OPDIV head has been designated as HCA along with the following officials:

(a) Deputy Assistant Secretary for Procurement, Assistance and Logistics;

(b) Director, Office of Management Services, OS; and

(c) Each Regional Director.

301.670–3 Redelegation.

(a) The heads of contracting activities may redelegate their HCA authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the Federal Acquisition Regulation, by the HHS Acquisition Regulation, or by other regulations. To ensure proper control of redelegated acquisition authorities, HCA's shall maintain a file containing successive delegations of HCA authority through and including the contracting officer level.

(b) Personnel delegated responsibility for acquisition functions must possess a level of experience, training, and ability commensurate with the complexity and magnitude of the acquisition actions involved.

PART 302—DEFINITIONS OF WORDS AND TERMS

Subpart 302.1—Definitions

302.100 Definitions of terms.

"Head of the agency" or "agency head" means the head of the Operating Division (OPDIV) for HCFA, OHDS, PHS, and SSA, or the Assistant Secretary for Management and Budget (ASMB) for the Office of the Secretary (OS).

"Head of the contracting activity" (HCA)—see 301.670–2.

"Principal official responsible for acquisition" (PORA) is defined in terms of certain organizational positions within the Office of Management Services (OMS–OS), Health Care Financing Administration (HCFA), Office of Human Development Services (OHDS), Office of the Assistant Secretary for Health (OASH), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Centers for Disease Control (CDC), Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), National Institutes of Health (NIH), Social Security Administration (SSA), and the Regional Offices (RO's), as follows:

OMS–OS—Director, Division of Contract and Grant Operations, OMS–OASMB
HCFA—Director, Division of Procurement Services, Office of Management and Budget
OHDS—Chief, Contracts Branch, Division of Grants, and Contracts Management, Office of Management Services
OASH—Director, Division of Materiel Management, Administrative Services Center, Office of Management
ADAMHA—Director, Division of Grants and Contracts Management, Office of the Administrator
CDC—Director, Procurement and Grants Office, Office of the Center Director
FDA—Director, Division of Contracts and Grants Management, Office of the Associate Commissioner for Management and Operations
HRSA—Director, Division of Grants and Procurement Management, Office of Management
NIH—Director, Division of Contracts and Grants, Office of Administration (For acquisitions assigned to the Division of Contracts and Grants)
NIH—Director, Division of Administrative Services, Office of Research Services (For acquisitions assigned to the Division of Administrative Services)
SSA—Director, Division of Contracts and Grants Management, Office of Material Resources Management, Office of Management, Budget and Personnel
RO's—Director, Regional Administrative Support Center

The PORA is subordinate to the head of the contracting activity and is the official in charge of the major contracting operation activity within the OPDIV, agency, staff office, or regional office.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 303.1—Safeguards

Sec.
303.101 Standards of conduct.
303.101–3 Agency regulations.

Subpart 303.2—Contract Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

Subpart 303.3—Reports of Identical Bids and Suspected Antitrust Violations

303.302 Reporting identical bids.
303.302–2 Reporting requirements.
303.303 Reporting suspected antitrust violations.

Subpart 303.4—Contingent Fees

303.408 Evaluation of the SF 119.
303.408–1 Responsibilities.
303.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 303.5—Other Improper Business Practices

303.502 Subcontractor kickbacks.

Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

303.602 Exceptions.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 303.1—Safeguards

303.101 Standards of conduct.

303.101–3 Agency regulations.

The Department of Health and Human Services' Standards of Conduct are prescribed in Part 73 of Title 45.

Subpart 303.2—Contractor Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

Departmental personnel shall report suspected violations of the Gratuities clause in accordance with Subpart M, Reporting Violations, of the

Department's Standards of Conduct (45 CFR Part 73) and General Administration Manual Chapter 5–10, rather than as specified in FAR 3.203. Refer to Subpart E, Gifts, Entertainment, and Favors, of 45 CFR Part 73 for an explanation regarding what is prohibited and what is permitted.

Subpart 303.3—Reports of Identical Bids and Suspected Antitrust Violations

303.302 Reporting identical bids.

303.302-2 Reporting requirements.

Executive Order 12430, dated July 6, 1983 (48 FR 31371), revoked Executive Order 10936, dated April 26, 1961, which required executive agencies to submit a report to the Attorney General when identical bids were received in connection with a formally advertised acquisition greater than $10,000. As a result, the reporting procedures specified in FAR 3.302–2 are superseded and are to be ignored.

303.303 Reporting suspected antitrust violations.

A copy of each report of suspected antitrust violations submitted to the Attorney General shall also be submitted to the Deputy Assistant Secretary for Procurement, Assistance and Logistics.

Subpart 303.4—Contingent Fees

303.408 Evaluation of the SF 119.

303.408-1 Responsibilities.

(a) [Reserved]

(b) The chief of the contracting office shall perform the review required by FAR 3.408–1(b) and should consult with the Office of General Counsel, Business and Administrative Law Division, when deemed necessary.

303.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Reports shall be made promptly to the contracting officer.

(b)(1)–(3) [Reserved]

(4) Suspected fraudulent or criminal matters to be reported to the Department of Justice shall be prepared in letter format and forwarded through acquisition channels to the head of the contracting activity for signature. The letter must contain all pertinent facts and background information considered by the contracting officer and chief of the contracting office that led to the decision that fraudulent or criminal matters may be present. A copy of the signed letter shall be sent to the Deputy Assistant Secretary for Procurement, Assistance and Logistics.

Subpart 303.5—Other Improper Business Practices

303.502 Subcontractor kickbacks.

(a) [Reserved]

(b) Any known or suspected violations of the Anti-Kickback Act (41 U.S.C. 51–54) shall be reported to the contracting officer who shall investigate the matter, document the findings, and report the results to the chief of the contracting office. If the results substantiate the known or suspected violation, the chief of the contracting office shall notify the Office of General Counsel, Business and Administrative Law Division and report the matter, through acquisition channels, to the head of the contracting activity. The head of the contracting activity shall take appropriate action is consonance with the Act, and notify the Deputy Assistant Secretary for Procurement, Assistance and Logistics of the case and its disposition.

Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

303.602 Exceptions.

Approval of an exception to the policy stated in FAR 3.601 shall be made by the head of the OPDIV (Assistant Secretary for Management and Budget in OS cases) or the Regional Director.

PART 304—ADMINISTRATIVE MATTERS

Subpart 304.1—Contract Execution

Sec.
304.101 Contracting officer's signature.
304.170 Ratification of unauthorized contract awards.

Subpart 304.2—Contract Distribution

304.201 Procedures.

Subpart 304.6—Contract Reporting

304.601 Federal Procurement Data System.

Subpart 304.8—Contract Files

304.801 General.
304.804 Closeout of contract files.
304.804-1 Closeout by the office administering the contract.
304.870 Closing review.

Subpart 304.70—Acquisition Instrument Identification Numbering System

304.7000 Scope of subpart.
304.7001 Numbering contracts.
304.7002 Numbering solicitation documents.
304.7003 Numbering purchase and delivery orders.
304.7004 Numbering basic agreements.
304.7005 Numbering basic ordering agreements.

Subpart 304.71—Review and Approval of Proposed Contract Awards

Sec.
304.7100 Scope of subpart.
304.7101 Contracts requiring review and approval.
304.7102 Conduct of the review.
304.7103 Approvals.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 304.1—Contract Execution

304.101 Contracting officer's signature.

An original of each bilateral contract or modification shall be executed by the contractor and contracting officer. An original of each unilateral contract or modification shall be executed by the contracting officer. The contracting officer need only sign the original when carbon paper is used in sets of forms such as Standard Form 44 or Optional Form 347 or 348. A legible carbon impression of the contracting officer's signature shall carry the same force and effect as a pen and ink signature for unilateral contracts.

304.170 Ratification of unauthorized contract awards.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the HHSAR, and good acquisition practice; e.g., certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met; i.e., certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, negotiation of appropriate contract clauses, etc.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. To be effective, the ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by the head of the contracting activity, provided the head of the contracting activity could have granted authority to enter into the commitment at the time it was made and still has the power to do so. Contracting officers shall not ratify contractual commitments made by other personnel of the Department without the prior approval of the head of the contracting activity. (This approval

authority may be redelegated to a designee not lower than the principal official responsible for acquisition.)

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to: a statement as to why the contracting office was not used, a statement as to why the proposed contractor was selected, a list of other sources considered, a description of work to be performed or products to be furnished, the estimated or agreed contract price, a citation of the appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the file and forward it to the head of the contracting activity with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the head of the contracting activity will coordinate the request for ratification with the Office of General Counsel, Business and Administrative Law Division.

(3) If ratification is authorized by the head of the contracting activity, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate, along with the ratification document.

(4) Heads of contracting activities or their designees will report the number and dollar value of requests for ratifications received and ratifications authorized each calendar quarter. Reports shall be submitted in an original and one copy to the Deputy Assistant Secretary for Procurement, Assistance and Logistics to arrive no later than 30 calendar days after the close of each calendar quarter.

Subpart 304.2—Contract Distribution

304.201 Procedures.

(a) Distribution of bilateral contracts and modifications shall follow these guidelines rather than those in FAR 4.201. The signed original shall be placed in the contract file, and duplicate originals shall be furnished the contractor, the appropriate accounting point, and the project officer, and for other special requirements, if applicable.

(b) Purchase orders, delivery orders, and other unilateral contracts and modifications shall be distributed the same as bilateral contracts except the original shall be furnished the contractor or seller. Copies with carbon impressioned signatures may be used but must be stamped "DUPLICATE ORIGINAL" (see 304.101).

Subpart 304.6—Contract Reporting

304.601 Federal Procurement Data System.

The Department-wide Contract Information System (DCIS) represents the Department's implementation of the FPDS. All departmental contracting activities are required to participate in the DCIS and follow the procedures stated in the Contract Information System Manual and amendments to it. The principal official responsible for acquisition shall ensure that all required contract information is collected, submitted, and received into the DCIS on or before the 15th of each month for all appropriate contract and contract modification awards of the prior month.

Subpart 304.8—Contract Files

304.801 General.

OPDIVs shall prescribe the contents of contract files and establish filing procedures consistent with the nature of the contracting actions and in accordance with FAR 4.801, 4.802, and 4.803. Contract files should contain an index of the contents to facilitate review and should be separated into logical categories (see FAR 4.803).

304.804 Closeout of contract files.

304.804-1 Closeout by the office administering the contract.

(a) (1) and (2) [Reserved]

(3) Files for all cost-reimbursement type contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion (see FAR 4.804-4). The contracting officer responsible for contract closeout may negotiate settlement of indirect costs for a specific contract, in advance of the determination of final indirect cost rates in accordance with FAR 42.708.

304.870 Closing review.

(a) Contracting officers shall assure the applicable items in FAR 4.804-5, other than a field audit, have been accomplished prior to closing any physically completed contract. Cost-reimbursement type contracts will be subject to the additional requirements set forth below before they may be closed.

(b) Contracting officers shall use the instructions in the October 5, 1982 memorandum from the Deputy Assistant Secretary for Procurement, Assistance and Logistics to closeout cost-reimbursement type contracts physically completed prior to fiscal year 1977 and cost-reimbursement type contracts completed subsequent to that date for which field audit information is available.

(c) Contracting officers shall closeout all other cost-reimbursement type contracts physically completed after September 30, 1977 in accordance with the following procedures:

(1) Field audits will be conducted for contracts in excess of $250,000 awarded to commercial organizations and non-profit organizations other than colleges and universities, hospitals and State and local units of government for which an agency other than HHS has audit cognizance. Field audits will also be conducted each year on approximately 25 of the same type contractors for which HHS has audit cognizance. These contracts may be closed after receipt of the field audit report.

(2) Contracts of any dollar value with non-proprietary colleges and universities, hospitals and State and local units of government and contracts not in excess of $250,000 with other institutions/organizations shall be closed out on the basis of a desk audit. The desk audit should include (i) a confirmation from the project officer that labor, material, travel, and other types of direct costs are commensurate with contract requirements, (ii) a review of available audit reports to determine if any adjustments were made that may be applicable to the contract under review, and (iii) discussions with the cognizant government auditor when considered appropriate. These contracts shall be closed with the condition that they are subject to adjustment should an on-site audit be conducted at a later date and should unallowable costs be identified as a result of that audit. The release executed by the contractor shall contain the following:

> The Contractor agrees, pursuant to the clause in this contract entitled Allowable Cost (for cost-reimbursement contracts) or Allowable Cost and Fixed Fee (for CPFF contracts), that the amount of any sustained audit exceptions resulting from any audit made after final payment will be refunded to the Government.

(3) The contracting officer may request a field audit of any contract when, in his/her judgment, the risk attendant with the contract warrants it. The contracting officer, however, shall exercise discretion in requesting such audits on creditable evidence such as unsatisfactory dealings with the contractor during the period of contract performance, prior audit reports

containing serious findings against the contractor, the known experience of other government officials in dealing with the contractor when the contracting officer is personally knowledgeable about the circumstances, formal third party complaints or allegations which bear upon the contractor's integrity or the propriety of costs charged to the Government, and other comparable allegations or advice of a derogatory nature about the contractor made by responsible individuals which in the contracting officer's judgment should be investigated. Except where a contracting officer suspects misrepresentation or fraud, audits should not be requested if their cost of performance is likely to exceed their potential cost recovery.

(4) When an audit is warranted prior to closing out a contract, the contracting officer should request the audit directly from the Department of Health and Human Services Office of the Inspector General, Office of Audits (HHSOA). The request should cite the reasons the contracting officer believes an audit is warranted. A copy of the request should be forwarded to the Office of Procurement, Assistance and Logistics (OPAL), ASMB. In the event the Office of the Inspector General cannot honor the request in a reasonable period of time, it will consult with OPAL and the contracting officer. The final decision on the need and scope of an audit will be made on the basis of the value of the contract, the nature of the contracting officer's concerns, and the availability of HHSOA or other existing resources in the Department to perform a review to satisfy the contracting officer's concerns.

(5) Closeout procedures are to be followed in conjunction with the regular procedures now followed in administering contracts. These procedures are not meant or to be interpreted as imposing any requirement or responsibility on contracting officers or necessitating any reviews on the part of the contracting officials not currently required by the FAR. With some rare exceptions, Standard Form 1035, Public Voucher for Purchases and Services Other than Personal, or Form HHS 646, Financial Report of Individual Project/Contract, will contain sufficient information to allow a contracting officer to satisfy requirements for desk audits. Accordingly, these closeout procedures shall not cause contracting officers to engage in extraordinary oversight or review and shall not be used by contracting officers as the basis for requiring contractors to submit extraordinary documentation such as payroll listing, labor billings, travel details, etc.

Subpart 304.70—Acquisition Instrument Identification Numbering System

304.7000 Scope of subpart.

This subpart prescribes policy and procedures for assigning identifying numbers to contracts and related instruments, including solicitation documents, purchase orders, and delivery orders.

304.7001 Numbering contracts.

(a) *Contracts which require numbering.* The following contracts shall be numbered in accordance with the system prescribed in paragraph (b) of this section:

(1) All contracts, including letter contracts and task orders under basic ordering agreements, which involve the payment of $2,500 or more for the acquisition of personal property or nonpersonal services.

(2) All contracts which involve the payment of $2,000 or more for construction (including renovation or alteration).

(3) All contracts which involve more than one payment regardless of amount. (The number assigned to a letter contract shall be assigned to the superseding definitized contract.)

(b) *Numbering system.* All contracts which require numbering shall be assigned a number consisting of the following:

(1) The three digit code assigned to the contracting office by the Division of Management Information Systems Services, OMAS, OS;

(2) A two digit fiscal year designation; and

(3) A four digit serial number. While it is required that a different series of four digit serial numbers be used for each fiscal year, serial numbers assigned need not be sequential.

(c) *Illustration of contract numbers.* The initial contract executed by the Division of Contract and Grant Operations, Office of Management Services, Office of the Secretary, for fiscal year 1983 should be numbered 100–83–0001, the second contract 100–83–0002. Alternatively, if it is desirable for internal identification purposes to establish separate series of numbers for formally advertised and negotiated contracts, this procedure is permissible. In this instance, the initial formally advertised contract might be numbered 100–83–0001 and the initial negotiated contract numbered 100–83–0500.

(d) *Assignment of identification codes.* Each contracting office of the Department shall be assigned a three digit identification code by the Division of Management Information Systems Services. Requests for the assignment of such codes for newly established contracting offices shall be submitted by the headquarters acquisition staff office of the contracting activity to the Director, Division of Management Information Systems Services. Conversely, in the event that a contracting office is to be disestablished, the Director, Division of Management Information Systems Services shall be notified. A listing of the contracting office identification codes currently in use is contained in the Department-wide Contract Information System Manual (DCIS).

304.7002 Numbering solicitation documents.

Requests for proposals and invitations for bids shall be numbered in accordance with procedures prescribed by the headquarters staff office of the contracting activity.

304.7003 Numbering purchase and delivery orders.

Contracting offices shall establish procedures for numbering purchase orders as required for effective identification and control.

304.7004 Numbering basic agreements.

Basic agreements shall be numbered in accordance with procedures prescribed by the headquarters staff office of the cognizant contracting activity. However, individual contracts entered into pursuant to the terms and conditions of a basic agreement shall be numbered in accordance with 304.7001(b).

304.7005 Numbering basic ordering agreements.

Basic ordering agreements shall be numbered in accordance with procedures prescribed by the headquarters staff office of the contracting activity. However, task orders placed under an agreement shall be numbered in accordance with 304.7001(b) if the dollar amount of the order is $2,500 or more.

Subpart 304.71—Review and Approval of Proposed Contract Awards

304.7100 Scope of subpart.

This subpart prescribes review and approval procedures for contract actions to ensure that:

(a) Contract awards are in conformance with law, established policies and procedures, and sound business practices;

(b) Contractual documents properly reflect the mutual understanding of the parties; and

(c) The contracting officer is informed of deficiencies and items of questionable acceptability and corrective action is taken.

304.7101 Contracts requiring review and approval.

(a) *General.* All contractual documents, regardless of dollar value, are to be reviewed by the contracting officer prior to award, even if the review and approval procedures prescribed in this section are applicable. However, under no circumstances may the individual who signs a contract instrument as contracting officer perform final review and approval of that contract action if it, or any modification to it, is expected to exceed the levels set forth in (b) (1), (2), or (3) below.

(b) *Required reviews and approvals.* (1) Officials responsible for the acquisition function in the Office of the Secretary, OPDIVs (except the Public Health Service), and regional offices (except the Regional Operations for Facilities Engineering and Construction) are to assure that advertised or negotiated contracts, and/or modifications to them, expected to exceed $300,000, are reviewed and approved prior to award. In order to assure the propriety of smaller dollar acquisitions, a statistically significant sample of contract actions not expected to exceed $300,000 are to be reviewed and approved prior to award.

(2) Contract actions of the Public Health Service are to be reviewed and approved prior to award in accordance with the dollar thresholds stated in PHS Subpart 304.71. In order to assure the propriety of smaller dollar acquisitions, a statistically significant sample of contract actions not expected to exceed those dollar thresholds referenced in PHS Subpart 304.71 are to be reviewed and approved prior to award.

(3) Contract awards and modifications to be made by Directors, Regional Operations for Facilities Engineering and Construction for proposed architect-engineer contracts expected to exceed $50,000 and construction contracts expected to exceed $500,000 are to be submitted prior to award to the Director, Division of Contract and Grant Operations, OS for review and approval. In addition, to assure the propriety of smaller dollar acquisitions, statistically significant samples of proposed awards are to be scheduled by, and submitted to, the Director, Division of Contract and Grant Operations, OS for review and approval.

(c) *Reviewing officials.* Officials assigned responsibility for review and approval of contract actions must possess qualifications in the field of acquisition commensurate with the level of review performed, and, as a minimum, possess those acquisition skills expected of a contracting officer. The following officials are responsible for preaward contract review and approval:

Office of the Secretary and ROFECs—Director, Division of Contract and Grant Operations, Office of Management Services
Office of Human Development Services—Chief, Contracts Branch, Division of Grants and Contracts Management
Social Security Administration—Director, Division of Contracts and Grants Management
Health Care Financing Administration—Director, Division of Procurement Services
Public Health Service—The reviewing official is designated in PHS Subpart 304.71, as approved by the Director, Division of Procurement Policy, OPAL.

However, if any of the officials are to serve as the contracting officer and sign the contractual document, the review and approval function shall be performed by an appropriate official at least one level above.

(d) *Regional offices.* The Director, Regional Administrative Support Center (RASC) is responsible for review and approval of contracts, or modifications to them, expected to exceed $300,000 and executed by the regional office's contracting staff. The RASC may obtain the advice of the Regional Attorney in the review of proposed contract awards.

304.7102 Conduct of the review.

(a) *General.* Reviewing officials may solicit the participation of specialists in various technical and administrative disciplines to aid in the review. The method of the review is not prescribed here in order to permit discretionary judgment in determining the depth to which significant areas are to be examined.

(b) *Contract file.* The reviewer is to: (1) Determine that the contract file constitutes an independent record, documented to provide a complete chronology of actions related to all aspects of the acquisition, and that the documentation is consistent with the requirements of FAR 4.803;

(2) Determine that each contract file contains documentation or other data (i.e., technical and business management evaluation, cost advisory and audit reports, negotiation memorandum, etc.) sufficient to explain and support the rationales, judgments, and authorities upon which all decisions and actions were predicated; and

(3) Ascertain:

(i) If the proposed acquisition action is to be awarded on a noncompetitive basis, that the documentation and approvals supporting the noncompetitive decision are present in the contract file;

(ii) That proper publicizing of the proposed acquisition was made pursuant to FAR Part 5 and Part 305;

(iii) That approval was obtained for any deviation from prescribed contract clauses;

(iv) That sufficient competition was obtained, the competitive range was appropriately determined, and oral or written discussions were conducted with all firms in the competitive range;

(v) That all the rules set forth in FAR Part 14 were complied with when the proposed award is a result of an IFB; and

(vi) That appropriate determinations and findings which justify the cited negotiation authority, method of contracting, and advance payments are a part of the contract file.

304.7103 Approvals.

(a) Awards are not to be made until approval is granted by the reviewing official identified in 304.7101. All approvals are to be in writing, except that when time is of the essence approval may be given orally and subsequently confirmed in writing.

(b) The reviewing official shall not approve a proposed contract award if a substantive issue (or issues) remains to be resolved. However, in appropriate circumstances, the reviewing official may use discretion and grant approval on a conditional basis and require the contracting officer to submit follow-up written documentation that the substantive issue has been resolved. This provides the reviewing official the option to require the contracting officer to resolve the substantive issue and submit documenting evidence before award approval is given, or to grant conditional approval providing the substantive issue is resolved before the contract is awarded and require the contracting officer to submit documenting evidence either before or after the award. The reviewing official also has the option to determine the extent of documentation evidence to be submitted by the contracting officer. This may range from complete resubmission of the contract file to submission of a memorandum stating the contracting officer's actions in resolving the substantive issue.

PART 305—PUBLICIZING CONTRACT ACTIONS

Subpart 305.1—Dissemination of Information

Sec.
305.102 Availability of solicitations.

Subpart 305.2—Synopses of Proposed Contracts

305.203 Time of synopsizing.
305.205 Special situations.

Subpart 305.5—Paid Advertisements

305.502 Authority.
305.503 Procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 305.1—Dissemination of Information

305.102 Availability of solicitations.

Potential offerors or bidders must be allowed a reasonable period of time in which to request and receive a solicitation and prepare and submit a response to that solicitation. As a result, the Department has established thirty (30) calendar days as the minimum time period between the date of distribution of a solicitation and the date set for receipt of proposals (opening of bids). The minimum 30 calendar day period is applicable to all formally advertised and negotiated acquisitions and for small purchases over $5,000. Adequate quantities of the solicitation must be maintained to fulfill all anticipated requests during the 30 calendar day period. If a solicitation response period greater than 30 calendar days is used, or, in an urgent situation, a response period less than 30 calendar days is used, the contracting officer must ensure that adequate quantities of the solicitation are available to fulfill all anticipated requests. (A solicitation response period of less than 30 calendar days may be used when the contracting officer determines that the urgency for the supplies or services does not permit delay. This decision must be documented in the contract file.)

Subpart 305.2—Synopses of Proposed Contracts

305.203 Time of synopsizing.

It is the Department's policy that proposed acquisitions be publicized in the Commerce Business Daily at least ten (10) calendar days before issuance of the solicitation. The only time it is permissible to deviate from the 10 calendar day publicizing period is when the contracting officer has determined that an urgent delivery or performance requirement exists and that the 10 calendar day period between notification of the availability and issuance of the solicitation would be detrimental to the successful completion of the acquisition. In this instance, the contracting officer must ensure that the synopsis is forwarded to the Commerce Business Daily to arrive not later than the date of issuance of the solicitation, and must honor telephone requests for copies of the solicitation and include a statement to this effect in the synopsis to be forwarded for publication in the Commerce Business Daily.

305.205 Special situations.

(a) *Research and development (R + D) advance notices.* The introductory information specified in FAR 5.205(a) shall be followed by a paragraph similar to the following:

Firms having research and development capabilities in the field of [Be specific] ———, and whose facilities and personnel include [Describe in substantial detail minimum facilities and personnel required] ———, are invited to submit complete information to the contracting office listed above. Information furnished should include the total number of employees and professional qualifications of scientists, engineers, and technical personnel; a description of general and special facilities; an outline of previous projects, a statement regarding industrial security clearance, if previously granted; and other available descriptive literature. This is not a request for a proposal.

Subpart 305.5—Paid Advertisements

305.502 Authority.

The contracting officer is authorized to publish advertisements, notices, and contract proposals in newspapers and periodicals in accordance with the requirements and conditions referenced in FAR Subpart 5.5.

305.503 Procedures.

Requests for acquisition of advertising shall be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information. Paid advertisements shall be limited to the publication of essential details of grant announcements, invitations for bids, and requests for proposals, including those for the sale of personal property, and for the recruitment of employees.

SUBCHAPTER B—ACQUISITION PLANNING

PART 307—ACQUISITION PLANNING

Subpart 307.1—Acquisition Plans

Sec.
307.104 General procedures.
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Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 307.1—Acquisition Plans

307.104 General procedures.

The acquisition planning document is an administrative tool designed to enable the contracting officer and project officer to plan effectively for the accomplishment of an acquisition during a specified time frame. The acquisition planning document serves as an outline of the method by which the contracting officer expects to accomplish the acquisition task.

307.104–1 Requirement for acquisition planning.

(a) The acquisition planning document is required for all new negotiated acquisitions which are expected to exceed $100,000, except the following:

(1) Acquisition of architect-engineer services;

(2) Acquisitions of utility services where the services are available from only one source; and

(3) Acquisitions made from or through other Government agencies.

(b) An acquisition planning document is also required for all two-step formally advertised acquisitions expected to exceed $100,000.

(c) The principal official responsible for acquisition shall prescribe acquisition planning procedures for:

(1) Negotiated acquisitions which are not expected to exceed $100,000;

(2) Two-step formally advertised acquisitions which are not expected to exceed $100,000; and

(3) All other advertised acquisitions regardless of dollar amount.

(d) An acquisition planning document is not required for a contract modification which either exercises an option or adds funds to an incrementally funded contract, provided there is an approved acquisition planning document in accordance with 307.105 and there is no significant deviation from that plan.

307.104–2 Responsibilities for acquisition planning.

(a) *Planning by program and staff activities.* Whenever execution of a program or project requires the acquisition of property or services by contract, the program or project plan shall delineate all elements to be acquired by contract. The program or project plans must include a plan and time-frame for completion action.

(b) *Planning for acquisition actions.* Action should commence as early as possible to effect an orderly and balanced acquisition workload throughout a fiscal year. Project officers who expect to initiate acquisitions are required to discuss their requirements with the contracting officials who will be responsible for these acquisitions to compare current staff capabilities with anticipated requirements to achieve an even distribution of fiscal year workload consistent with program needs. These discussions should result in understandings on:

(1) The details of the acquisition plan;

(2) Schedule for the completion of the acquisition plan;

(3) Preliminary discussions on the work statement/specifications and appropriate evaluation criteria; and

(4) Preliminary discussions on the content and timing of the request for contract (RFC).

(c) *Planning by contracting activities.* Contracting activities are required to coordinate with program and staff offices to ensure:

(1) Timely and comprehensive planning for acquisitions;

(2) Timely initiation of requests for contracts; and

(3) Instruction of program and staff offices in proper acquisition practices and methods.

307.104–3 Preparation of acquisition plan.

(a) The acquisition planning document serves as an advance agreement between program and contracting personnel by outlining the methods of how and when the acquisition is to be accomplished. It serves to resolve problems early in the acquisition cycle thereby precluding delays in contract placement. It is developed prior to the preparation and submission of the formal request for contract to the contracting activity. (For detailed information concerning the request for contract, see Subpart 315.70.)

(b) The acquisition planning document shall be prepared jointly by the project officer and the contract negotiator or in accordance with procedures prescribed by the principal official responsible for acquisition.

307.105 Contents of written acquisition plans.

307.105–1 Format and content.

The Department does not prescribe a standard format for the acquisition planning document, but recommends the use of a format similar to what is provided in this section. The subject areas addressed in paragraphs (a) through (e) must be included in every acquisition planning document. An OPDIV, agency, or regional office contracting activity may prescribe a standard format for the acquisition planning document and may include additional subject areas that are pertinent to that activity's needs.

(a) *Identification information.* The contracting activity shall prescribe the information necessary for readily identifying a planned acquisition. The information may include items such as acquisition planning document number, request for contract number, public law, program or project officer, etc.

(b) *Programmatic considerations.* (1) *Description of the project/supplies/services.* Include a brief description of the proposed project/supplies/services. Discuss all anticipated future requirements related to the acquisition. Discuss any past, present or future interrelated projects.

(2) *Project funding.* Include the summary of funds expected to be obligated for the entire project by fiscal years and phases. Include expenditures for previous years. Discuss the probability of obtaining future years funding and/or what specific managerial action can be taken to insure future funding (if applicable).

(3) *Background and acquisition history.* Provide a brief factual summary of the technical and contractual history of the supplies/services being acquired.

(4) *Related projects, efforts undertaken to avoid duplication of effort.* Discuss efforts made to determine if existing projects, supplies or materials will satisfy the requirement. Include any related in-house efforts, searches, and clearinghouse reviews made to avoid duplication of effort.

(5) *Need for project/supplies/services.* Discuss rationale for deciding on the need for the project/supplies/services.

(6) *Special program clearances or approvals.* Review 307.105–2 to determine which special program clearances or approvals are required. Specify clearances or approvals applicable to this acquisition.

(7) *Phasing.* Briefly describe discrete tasks or stages of accomplishment which could be susceptible to phasing. Describe criteria for evaluation of performance of each phase before proceeding to the next. (See 307.105–3(c)(3) for a discussion on phasing.)

(8) *Government furnished material/facilities.* Indicate material and facilities that will be furnished to the contractor and any associated problems which may be encountered. Discuss possible inequities which may arise in furnishing the materials or facilities. Discuss screening efforts for availability through GSA excess property schedules.

(9) *Discussion of project risk.* Provide a discussion of major areas of project risk including technical, cost, and schedule risk. Describe what efforts are planned to reduce risk. If a planned noncompetitive acquisition represents a significant portion of a proposed contractor's business, discuss the impact on technical capability, realism of schedule, changes in contractor workload and related cost impact.

(10) *Reporting/delivery requirements.* Describe the basis for establishing the delivery/reporting requirements and include the anticipated deliverables and time(s) for delivery.

(11) *Replication, dissemination, or use of the results.* Discuss anticipated replication, dissemination, or use of the results. Describe user audience and their expected use. Include a description of the delivery system.

(12) *Data, data rights, patents, copyrights.* Discuss data to be developed. Specify data to be delivered and data to remain in the contractor's possession. Discuss how the data is to be used, maintained, disclosed and disposed of by the contractor. Discuss data subject to the Privacy Act or Confidentiality of Information clause. Discuss data to be delivered with limited rights, data where title would not vest in the Government, and anticipated copyrights or patents. Discuss whether or not the data will

permit any follow-on acquisitions to be competitive.

(13) *Post-award administration and monitoring.* Detail milestones that require periodic evaluation of the contractor's progress. Discuss any formal management systems to be used to monitor the contractor. Discuss plans for post-award conference and site visits. Delineate the timing of the periodic status reports.

(14) *Technical evaluation plans.* Discuss the plans for technical evaluation of the proposal. Discuss whether non-Federal technical evaluators will review the proposals. Discuss potential conflict of interest situations.

(c) *Acquisition approach.* (1) *Proposed sources.* Include sources or categories of sources (if apparent). If a noncompetitive acquisition is to be recommended, discuss why competition is not feasible.

(2) *Contract type.* Provide the rationale for recommendation of contract type.

(3) *Negotiation authority recommended.* Discuss the basis for recommendation of the negotiation authority.

(4) *Socioeconomic programs.* Discuss preliminary liaison with the Small and Disadvantaged Business Utilization Specialist for review to determine requirements susceptible for the various socioeconomic acquisition programs; i.e., small business, disadvantaged business, or labor surplus area set-asides.

(5) *Other considerations, as applicable.* Discuss special contract clauses and proposed HHSAR deviations, if required. Discuss circumstances such as the effect of a protest on a previous acquisition to this acquisition, special public law or regulatory requirements which place restrictions on this acquisition, and use of a special type of synopsis. Address planned preproposal conference, preaward survey and preaward site visits.

(d) *Planning for the acquisition cycle.* (1) *Scheduling considerations.* The project officer and the contract negotiator shall establish realistic planned dates which meet the program needs for award to assure timely delivery or completion of the project. The following factors should be considered in planning realistic dates:

(i) Individual project officer and contract negotiator workloads;

(ii) Planned, extended absences from the office; and

(iii) Schedules are in consonance with established office goals for overall orderly and balanced workloads.

(2) *Acquisition planning schedule.* The following acquisition planning schedule should be included in all plans to the extent the items are significant or appropriate to the acquisition. Additional items may be added as appropriate.

Acquisition Planning Schedule

Actions and Date
Advance or sources sought synopsis released
Advance or sources sought synopsis closed
Synopsis evaluation received
Request for contract received
Special program approvals received
Synopsis publicizing proposed acquisition released
Request for proposal released
Preproposal conference conducted
Proposals received
Technical evaluation received
Cost advisory or audit report received
Equal opportunity clearance obtained
Prenegotiation conference conducted
Negotiation completed
Contract document prepared
Contract approval completed
Contract released
Award

(e) *Approvals.* All acquisition planning documents shall be signed by the project officer and the contract negotiator. Acquisition planning documents for acquisitions estimated to be between $100,000 and $1,000,000 shall be approved by the contracting officer. Acquisition planning documents for acquisitions estimated to be in excess of $1 million shall be approved by the principal official responsible for acquisition or his/her designee. The designated official shall be in a position no lower than the level above the contracting officer. One copy of all acquisition planning documents shall be filed with the principal official responsible for acquisition or the designated official for planning purposes. The original acquisition planning document shall be retained in the contract file.

307.105–2 Special program clearances or approvals.

The following special program clearances or approvals should be reviewed for applicability to each planned acquisition. The ones which are applicable should be addressed in the acquisition planning document and immediate programmatic action should be initiated to obtain the necessary clearances or approvals.

(a) *Clearances or approvals required to be completed and submitted with the request for contract (RFC).*—(1) *Automatic data processing.* All proposed acquisitions of automatic data processing hardware, software packages, and services, as well as telecommunications equipment, which exceed the dollar thresholds stated in Chapter 4–10 of the HHS ADP Systems Manual must be reviewed and approved by the Office of Management Analysis and Systems (OMAS), OASMB–0S. (See HHS ADP Systems Manual, Chapter 4–10; Title 41 CFR Chapter 150; and Subpart 339.70.)

(2) *ADP systems security.* All ADP systems regardless of dollar amount are required to have a Certification of ADP Systems Security Adequacy signed by the ADP system manager and the cognizant ADP systems security officer. (See ADP Systems Manual, Part 6—ADP Systems Security; OMB Circular No. A–71, Transmittal Memorandum No. 1; and Subpart 339.70.)

(3) *Consultant services.* The Assistant Secretary for Management and Budget is responsible for review and approval of all nonevaluation consultant service contracts of $100,000 or more. (See General Administration Manual Chapter 8–15.)

(4) *Evaluation contracts.* All evaluation projects except evaluability assessments under $100,000 will be reviewed and approved by the Assistant Secretary for Planning and Evaluation (ASPE). Evaluability assessments under $100,000 will be approved by the heads of the OPDIVs or the regional directors. Evaluability assessment is defined in the annual guidance for Evaluation, Research, and Statistical Activities issued by ASPE.

(5) *Commercial or industrial products or services.* (OMB Circular No. A–76.) A contract vs. in-house performance review and determination shall be made in accordance with the General Administration Manual (GAM) Chapter 18–10 on all proposed acquisitions except for:

(i) Contracts with an annual cost of less than $100,000;

(ii) Contracts under an acquisition set-aside for small business or labor surplus area concerns; and

(iii) Contracts made pursuant to Section 8(a) of the Small Business Act.

A request for contract (RFC) over $100,000 must contain a statement as to whether the proposed contract is or is not subject to review under GAM Chapter 18–10 requirements. (See GAM Chapter 18–10; FAR Subpart 7.3, Subpart 307.3; OMB Circular No. A–76.)

(6) *Paid advertising.* Paid advertisements, notices or contract proposals to be published in newspapers and periodicals may be authorized by the contracting officer. (See FAR Subpart 5.5, Subpart 305.5; Title 7, Chapter 5–25.2, and the General Accounting Office Policy and

Procedures Manual for Guidance of Federal Agencies.)

(7) *Printing.* The acquisition of printing by contract is prohibited unless it is authorized by the Joint Committee on Printing of the U.S. Congress. Procedures to be followed are contained in the "Government Printing and Binding Regulations" and the HHS Printing Management Manual and FAR Subpart 8.8.

(8) *Fraud, abuse and waste.* All proposed acquisitions that involve fraud, abuse and waste must be reviewed and approved by the Inspector General or Deputy Inspector General, and written approval from either must be included in the request for contract.

(9) *Paperwork Reduction Act.* Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511), a Federal agency shall not collect information or sponsor the collection of information from ten or more persons other than Federal employees unless, in advance, the agency has submitted Standard Form 83, Clearance Request and Notice of Action, to the Director of the Office of Management and Budget, and the Director has approved the proposed collection of information. Procedures for obtaining approval are contained in Title 5 CFR Part 1320 and General Administration Manual Chapter 10–20.

(10) *Safety and health.* Subpart 323.70 sets forth the procedures for coordination between initiators of requests for contract and safety officers to assure that adequate safety requirements are established whenever a proposed contract will involve hazardous materials or operations.

(11) *Contracts with federal employees.* Contracts between the Government and Government employees or between the Government and organizations which are substantially owned or controlled by Government employees may not knowingly be entered into, except for the most compelling reasons (see FAR Subpart 3.6). Authority to enter into a contract with a Government employee or an organization substantially owned or controlled by a Government employee must be approved prior to award of the contract by either the Assistant Secretary for Management and Budget, the head of the OPDIV, or the regional director, or their designees. (See 45 CFR Part 73 and HHS Standards of Conduct.)

(12) *Classified contracts.* Projects involving national security information must be coordinated with the Division of Security and Protection, Office of Investigation for guidance and approval as required by the HHS Security Manual.

(13) *Publications.* All projects which will result in contracts in excess of $2,500 and which include publications require review and approval by the Office of the Assistant Secretary for Public Affairs (OASPA). Form HHS–615, Publication Planning and Clearance Request, should be forwarded to OASPA through the OPDIV public affairs officer. Publications are defined in the chapter on publications in the Public Affairs Management Manual.

(14) *Public affairs services.* Projects for the acquisition of public affairs services in excess of $5,000 shall be submitted to the Office of the Assistant Secretary for Public Affairs (OASPA) for review and approval on Form HHS–524B, Request for Public Affairs Service Contract.

(15) *Audiovisual (videotape and motion picture production).* Any proposed acquisition of an audiovisual product requires the submission of a Standard Form 282, Mandatory Title Check, to the National Audiovisual Center (NAC). When the results of this title check have been reviewed by the project office and if a determination is made that existing materials are not adequate to fulfill the requirement, a statement to that effect shall be prepared by the project office. For acquisitions in excess of $5,000, a copy of that statement, together with a Standard Form 202, Federal Audiovisual Production Report, and Form HHS–524A, Request for Audiovisual Material, shall be submitted through the OPDIV public affairs officer to the Office of the Assistant Secretary for Public Affairs (OASPA) for review and approval. Following approval by OASPA, the SF 202 and the statement explaining why existing materials are insufficient will be forwarded to NAC by OASPA. An approved copy of the Form HHS–524A will be returned to the OPDIV for transmission to the contract negotiator. All audiovisuals are required to be acquired under the Government-wide Contracting System for Motion Picture and Videotape Productions, unless they are included in the exceptions to the mandatory use of the uniform system. (See the Executive Agent for Government-Wide Contracting System for Audiovisual Productions' March 21, 1980, memorandum on Implementation of OFPP Policy Letter No. 79–4, November 28, 1979, Contracting for Motion Picture and Videotape Productions; HHS General Administration Manual Chapter 1–121.)

(16) *Privacy Act (Pub. L. 93–579.)* Whenever the Department contracts for the design, development, operation, or maintenance of a system of records on individuals on behalf of the Department in order to accomplish a departmental function, the Privacy Act is applicable. The program official, after consultation with the activity's Privacy Act Coordinator and the Office of General Counsel as necessary shall include a statement in the request for contract as to the applicability of the Act. Whenever an acquisition is subject to the Act, the program official prepares a "system notice" and has it published in the **Federal Register.** (See HHS Privacy Act regulation, 45 CFR 5b; FAR Subpart 24.1 and Subpart 324.1.)

(b) *Clearances or approvals required to be completed prior to contract award.* All foreign research contract projects to be conducted in a foreign country and financed by HHS funds (U.S. dollars) must have clearance by the Department of State with respect to consistency with foreign policy objectives. This clearance should be obtained prior to negotiation. Procedures for obtaining this clearance are set forth in the HHS General Administration Manual, Chapter 20–60.

307.105–3 Specification, purchase description and statement of work.

One of the most important parts of a contract is the description of the work to be done. The description of that work may be in the form of a specification, purchase description or statement of work. A brief reference to specifications and purchase descriptions is provided, although the nature of the work performed in this Department usually results in the development of work statements. The development of the acquisition planning document should result in sufficient information to readily develop the description of work, usually in the form of a statement of work.

(a) *Specification.* Specification is defined in FAR 10.001. Use of the specification is primarily limited to supply or service contracts where the material end item or service to be delivered is well defined by the Government.

(b) *Purchase description.* FAR 10.001 also contains the definition of purchase description.

(c) *Statement of work.—(1) General.* A statement of work differs from a specification and purchase description primarily in that it describes work or services to be performed in reaching an end result rather than a detailed, well defined description or specification of the end product. The statement of work may enumerate or describe the methods (statistical, clinical, laboratory, etc.) that will be used. However, it is preferable for the offeror to propose the method of performing the work. The statement of work should specify the desired results,

functions, or end items without telling the offeror what has to be done to accomplish those results unless the method of performance is critical or required for the successful performance of the contract. The statement of work should be clear and concise and must completely define the responsibilities of the Government and the contractor. The statement of work should be worded so as to make more than one interpretation virtually impossible because it has to be read and interpreted by persons of varied backgrounds, such as attorneys, contracting personnel, cost estimators, accountants, scientists, sociologists, educators, functional specialists, etc. If the statement of work does not state exactly what is wanted, or does not state it precisely, it will generate many contract management problems for both the project officer and the contracting officer. Ambiguous statements of work can create unsatisfactory performance, delays, and disputes, and can result in higher costs.

(2) *Term (level of effort) vs. completion work statement.* Careful distinctions must be drawn between term (level of effort) statements of work, which essentially require the furnishing of technical effort and a report thereof, and completion type work statements, which often require development of tangible end items designed to meet specific performance characteristics.

(i) *Term or level of effort.* A term or level of effort type statement of work is appropriate to research where one seeks to discover the feasibility of later development, or to gather general information. A term or level of effort type statement of work may only specify that some number of labor-hours be expended on a particular course of research, or that a certain number of tests be run, without reference to any intended conclusion.

(ii) *Completion.* A completion type statement of work is appropriate to development work where the feasibility of producing an end item is already known. A completion type statement of work may describe what is to be achieved through the contracted effort, such as the development of new methods, new end items, or other tangible results.

(3) *Phasing.* Individual research, development, or demonstration projects frequently lie well beyond the present state of the art and entail procedures and techniques of great complexity and difficulty. Under these circumstances, a contractor, no matter how carefully selected, may be unable to deliver the desired result. Moreover, the job of evaluating the contractor's progress is often difficult. Such a contract is frequently phased and often divided into stages of accomplishment, each of which must be completed and approved before the contractor may proceed to the next. Phasing makes it necessary to develop methods and controls, including reporting requirements for each phase of the contract and criteria for evaluation of the reports submitted, that will provide, at the earliest possible time, appropriate data for making decisions relative to all phases. A phased contract may include stages of accomplishment such as research, development, and demonstration. Within each phase, there may be a number of tasks which should be included in the statement of work. When phases of work can be identified, the statement of work will provide for phasing and the request for proposals will require the submission of proposed costs by phases. The resultant contract will reflect costs by phases, require the contractor to identify incurred costs by phases, establish delivery schedules by phases, and require the written acceptance of each phase. The provisions of the Limitation of Cost clause shall apply to the estimated cost of each phase. Contractors shall not be allowed to incur costs for phases which are dependent upon successful completion of earlier phases until written acceptance of the prior work is obtained from the contracting officer.

(4) *Elements of the statement of work.* The elements of the statement of work will vary with the objective, complexity, size, and nature of the acquisition. In general, it should cover the following matters as appropriate.

(i) *A general description of the required objectives and desired results.* Initially, a broad, nontechnical statement of the nature of the work to be performed. This should summarize the actions to be performed by the contractor and the results that the Government expects.

(ii) *Background information helpful to a clear understanding of the requirements and how they evolved.* Include a brief historical summary as appropriate. Include pertinent legislative history, related contracts or grants, and the relationship to overall program objectives.

(iii) *A detailed description of the technical requirements.* A comprehensive description of the work to be performed to provide whatever details are necessary for prospective offerors to submit meaningful proposals.

(iv) *Subordinate tasks or types of work.* A listing of the various tasks or types of work (it may be desirable in some cases to indicate that this is not all-inclusive). The degree of task breakout is directly dependent on the size and complexity of the work to be performed and the logical groupings. A single cohesive task should not be broken out merely to conform to a format. Indicate whether the tasks are sequential or concurrent for offeror planning purposes.

(v) *Phasing.* When phasing is applicable, describe in detail the work or effort required in each phase and the criteria for determining whether the next phase will take place. If one or more phases contain subordinate tasks or types of work, the preceding information in paragraph (c)(4) (iv) may be incorporated into the part.

(vi) *Reference material.* All reference material to be used in the conduct of the project, such as technical publications, reports, specifications, architect or engineering drawings, etc., that tell how the work is to be carried out must be identified. Applicability should be explained, and a statement made as to where the material can be obtained.

(vii) *Level of effort.* When a level of effort is required, the number and type of personnel required should be stated. If known, the type and degree of expertise should be specified.

(viii) *Special requirements* (as applicable). An unusual or special contractual requirement, which would impact on contract performance, should be included as a separate section. Such items could include required place(s) of performance or unusual travel requirements. Clearance requirements, such as forms clearance, should be addressed.

(ix) *Deliverables reporting requirements.* All deliverables and/or reports must be clearly and completely described. For example, in a Final Study Report it is important to indicate what areas the report should cover and the criteria for use in accepting the final report to determine if the contract objectives have been satisfied. It is important to require the preparation and submission of progress reports (administrative, technical and financial) to reflect contractor certification of satisfactory progress. If possible, the reports should be coordinated in such a manner as to provide a correlation between costs incurred and the state of completion. All delivery and reporting requirements shall include the quantities, the place of delivery, and time of delivery.

307.170 Program training requirements.

(a) Chapter 8–95 of the General Administration Manual (GAM) addresses the general parameters for acquisition planning as stated in 307.104. In conjunction with the principles of

proper acquisition planning, the Department has established training courses for program officials to promote expedient program management in the planning and other pertinent aspects of the acquisition process. Chapter 8–96 of the GAM sets forth specific training requirements for program officials as follows:

(1) All program personnel selected to serve as project officer for an HHS contract shall have successfully completed either the Department's basic or advanced "Program Officials Guide to Contracting" training course, or an equivalent course (see paragraph (b), below).

(2) At least fifty percent of the HHS program personnel performing the function of technical proposal evaluator on a technical evaluation team or panel for any competitively solicited HHS contract shall have successfully completed the basic "Program Officials Guide to Contracting" training course, or an equivalent course (see paragraph (b), below). This requirement applies to the initial technical proposal evaluation and any subsequent technical evaluations that may be required.

(b) Determination of course equivalency shall be made by the principal official responsible for acquisition. The contracting officer is responsible for ensuring that the project officer and technical proposal evaluators have successfully completed the required training discussed in 307.170–2.

307.170–1 Policy exceptions.

(a) *Small contracting activities.* (1) Program personnel designated to serve as project officers and technical proposal evaluators for contracts which originate in offices having a mission which only incidentally and infrequently involves the generation of contract requirements (i.e., normally less than three contract requirements per fiscal year and in an amount not exceeding $100,000 per contract) are not required to have completed the prerequisite training course, although it is recommended.

(2) As a substitute for the training, contracting officers servicing these program offices are required to ensure, as a minimum, that program personnel designated to serve as project officers and technical proposal evaluators have read and studied the HHS publication, "The Negotiated Contracting Process—A Guide for Project Officers," and fully understand their responsibilities. The contracting officer shall require these program personnel to furnish written certification that they have fulfilled this requirement prior to discharging the duties of project officer or technical proposal evaluator.

(b) *Urgent requirements.* In the event there is an urgent requirement for a specific individual to serve as a project officer and that individual has not successfully completed the prerequisite training course, the principal official responsible for acquisition may waive the training requirement and authorize the individual to perform the project duties, provided that:

(1) The individual first meets with the cognizant contracting officer to review the HHS publication, "The Negotiated Contracting Process—A Guide for Project Officers," and to discuss the important aspects of the contracting—program office relationship as appropriate to the circumstances; and

(2) The individual attends the next scheduled basic or advanced training course, as appropriate.

307.170–2 Training course prerequisites.

(a) *Project officers.* (1) Newly appointed project officers, and project officers with less than three years experience and no previous related training, are required to take the basic training course, "Program Officials Guide to Contracting." (The grade level for project officers attending the course should be GS–7 and above).

(2) Project officers with more than three years experience, and project officers with less than three years experience who have successfully completed the basic course, are qualified to take the advanced "Program Officials Guide to Contracting" training course.

(B) *Technical proposal evaluators.* Technical proposal evaluators, regardless of experience, are required to take the basic course. Upon successful completion of the basic course, it is recommended that they take the advance course.

Subpart 307.3—Contractor Versus Government Performance

307.302 General.

(a) GAM Chapter 18–10, Commercial-Industrial Activities of the Department of Health and Human Services Providing Products or Services for Government Use, assigns responsibilities for making method-of-performance decisions (contract vs. in-house performance) to various management levels within the Department depending on the dollar amount of capital investment or annual operating costs. It also requires that each operating division (OPDIV), staff division (STAFFDIV) and regional office (RO) designate a "Commercial-Industrial Control Officer" (CICO) to be responsible for ensuring compliance with the requirements of the Chapter.

(d) Besides contracts with annual operating costs under $100,000, contracts under an authorized acquisition set-aside for small business or labor surplus area concerns and contracts made pursuant to section 8(a) of the Small Business Act are exempted from the requirements of FAR Subpart 7.3, GAM Chapter 18–10, and OMB Circular No. A–76.

307.303 Determining availability of private commercial sources.

In accordance with the provisions of GAM Chapter 18–10, OPDIVs, STAFFDIVs, and ROs and must prepare and maintain a complete inventory of all individual commercial or industrial activities, including those conducted under contracts in excess of $100,000 annually. They must also conduct periodic reviews of each activity and contract in the inventory to determine if the existing performance, in-house or by contract, continues to be in accordance with the policy guidelines of GAM Chapter 18–10.

307.304 Procedures.

Contracting officers shall ensure that no acquisition action involving a commercial-industrial activity is initiated unless it is in compliance with the requirements of GAM Chapter 18–10. The contracting officer must check each request for contract expected to result in a contract in excess of $100,000 to ensure that it contains a statement as to whether the proposed contract is or is not subject to review under GAM Chapter 18–10 requirements. If the contracting officer has any questions regarding the determination of applicability or nonapplicability, or if the required statement is missing, the program office submitting the request for contract should be contacted and the situation rectified. If the issue cannot be resolved with the program office, the contracting officer shall refer the matter to the CICO for a final determination. The principal official responsible for acquisition is responsible for ensuring that contracting activities are in full compliance with FAR Subpart 7.3.

307.307 Appeals.

The review and appeals procedures discussed in FAR 7.307 are addressed in GAM Chapter 18–10.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.

This subpart provides guidance on the appropriate selection of award

instruments consistent with the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224) and the OMB implementation of the Act as published in the **Federal Register** on August 18, 1978 (41 FR 36860). This subpart addresses acquisition relationships where the award instrument is the contract, and assistance relationships where the award instrument is either a grant or cooperative agreement.

307.7001 Applicability.

This subpart applies to the choice of award instrument—contract, grant, or cooperative agreement—for all program and individual transactions, except where specifically prohibited by law.

307.7002 Purpose.

This subpart provides guidance to assist in the determination of whether to use the acquisition or assistance process to fulfill program needs. The distinction between, and use of, grants and cooperative agreements is not discussed in detail. Detailed guidance may be found in Chapter 1–02 of the Grants Administration Manual.

307.7003 Distinction between acquisition and assistance.

(a) The Federal Grant and Cooperative Agreement Act of 1977 requires the use of contracts to acquire property or services for the direct benefit or use of the Government and grants or cooperative agreements to transfer money, property, services, or anything of value to recipients to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) A contract is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever:

(1) The principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or

(2) The Department determines in a specific instance that the use of a type of contract is appropriate. That is, it is determined in a certain situation that specific needs can be satisfied best by using the acquisition process. However, this authority does not permit circumventing the criteria for use of acquisition or assistance instruments. Use of this authority is restricted to extraordinary circumstances and only with the prior approval of the Deputy Assistant Secretary for Procurement, Assistance and Logistics.

(c) A grant or cooperative agreement is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

(1) A grant is the legal instrument to be used when no substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(2) A cooperative agreement is the legal instrument to be used when substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(d) As a general rule, contracts are to be used for the following purposes:

(1) Evaluation (including research of an evaluative nature) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.

(2) Technical assistance rendered to the Government, or on behalf of the Government, to any third party, including those receiving grants or cooperative agreements.

(3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.

(4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(5) Training projects where the Government selects the individuals or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards).

(6) Planning for Government use.

(7) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(8) Design or development of items for Government use or pursuant to agency definition or specifications.

(9) Conferences conducted on behalf of the Government.

(10) Generation of management information or other data for Government use.

(e) As a general rule, grants or cooperative agreements are to be used for the following purposes:

(1) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing the assistance.

(2) Financial assistance (stimulation or support) to a specific program activity eligible for assistance under specific legislation authorizing the assistance.

307.7004 Procedures.

(a) OPDIV, agency, and regional office program officials should use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. It is the responsibility of these program officials to meet with the principal official responsible for acquisition and the principal grants management official, or their designees, to distinguish the relationships and determine whether award is to be made through the acquisition process or assistance process. This determination should be made prior to the time when the annual acquisition plan is reviewed and approved so that the plan will reflect all known proposed contract actions. The cognizant contracting officer will confirm the appropriateness of the use of the contract instrument when reviewing the request for contract.

(b) Shifts from one award instrument to another must be fully documented in the appropriate files to show a fundamental change in program purpose that unequivocably justifies the rationale for the shift.

(c) OPDIVs, agencies, and regional offices must ensure that the choice of instrument is determined in accordance with the Federal Grant and Cooperative Agreement Act of 1977 and applicable departmental policies. If, however, there are major individual transactions or programs which contain elements of both acquisition and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other, guidance should be obtained from the Deputy Assistant Secretary for Procurement, Assistance and Logistics, through normal channels, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals must indicate whether the intended relationship will be one of acquisition or assistance and specify the award instrument to be used.

Subpart 307.71—Phase II Advance Acquisition Planning (Scheduling)

307.7101 Background.

(a) Failure to properly plan individual acquisitions and failure to schedule the overall acquisition workload of an office, agency, or OPDIV tends to result in an inordinate percentage of contract awards being made in the closing weeks and even days of the fiscal year. This phenomenon, variously identified as

"The September Rush", "Hurry-up Spending", "End-of-Year Purchasing", and "Year-End Spending Abuses", in turn fosters rushed, noncompetitive, inadequately documented, and potentially wasteful acquisitions. Excessive year-end spending also invites increased intervention and/or scrutiny from Congress, the Office of Management and Budget, and the media. The end of the fiscal year, however, is usually too late to take corrective actions that are effective without being unduly damaging to necessary programs. The key is to begin advance acquisition planning far earlier.

(b) To avoid the historic pattern of wasteful and unnecessary year-end spending, the Department introduced the Acquisition Planning Initiative by Under Secretarial memorandum of February 19, 1980, Subject: New Procedures to Improve Planning and Scheduling of Contract Awards and Curb Last-Minute Year-End Procurement Spending. Phase II of this initiative, beginning with Fiscal Year 1981, established the present acquisition planning mechanism. Basic guidance on the Phase II mechanism is contained in the ASMB memorandum of March 28, 1980, Subject: Phase II of (Fiscal Year 1981) Procurement Planning Initiative—Guidelines for Program Funding Milestones. For the Public Health Service, the above guidance is supplemented by the ASMB memorandum of April 21, 1982, Subject: Phase II Annual Procurement Planning.

307.7102 Accountability and responsibility.

Phase II is a Department-wide monitoring and accountability system that requires early planning of acquisition requirements down to the individual project level. The Phase II mechanism includes the following:

(a) Accountability lies with the OPDIV and STAFFDIV heads who are required to coordinate overall schedules which plot the planned distribution of RFC deliveries and contract awards over an eighteen-month timeline extending to fiscal year-end.

(b) Each OPDIV and STAFFDIV retains the flexibility to schedule individual RFC deliveries and contract awards as desired, so long as the overall schedule presents a relatively even distribution of contract awards and workload across the fiscal year.

(c) The schedules are updated quarterly to compare actual versus planned progress and, when necessary, to revise the schedules for the remainder of the fiscal year.

(d) Project officers are responsible for initiating the project planning by coordinating with contracting activities prior to RFC preparation, and taking the lead in developing acquisition plans that establish the date(s) for delivering complete RFC packages to the contracting activity, and that establish the planned award dates for individual projects.

(e) The Office of Evaluation and Compliance in the Office of Procurement, Assistance and Logistics monitors the OPDIV and STAFFDIV Phase II plans throughout the year to assure that an even distribution of awards, dollar obligations, and workload is maintained.

307.7103 Purpose.

The Phase II Advance Acquisition Planning mechanism serves to avoid excessive year-end spending and distributes the contract workload as evenly as possible over the fiscal year, and provides a mechanism for planning at the program/acquisition operational level and a management tool for monitoring at the program, OPDIV, and departmental levels.

307.7104 Contracting activity actions.

The contracting activity shall take the following actions:

(a) Advise program and staff personnel of their responsibilities to ensure that:

(1) Year-end acquisitions of unplanned items are not entered into to use available balances of expiring appropriations (which would otherwise revert to the Treasury);

(2) Orders for supplies, materials, and equipment are kept to the minimum needed to carry on approved programs;

(3) Inventories are held to normal levels; and

(4) New contracts for future services and payments to contractors are made only in accordance with established plans.

(b) Determine closing dates for purchases to be made from appropriations ending on September 30.

(c) Expedite the preparation and processing of determinations and findings which require the approval of the Assistant Secretary for Management and Budget or the OPDIV head.

PART 309—CONTRACTOR QUALIFICATIONS

Subpart 309.1—Responsible Prospective Contractors

Sec.
309.104 Standards.
309.104–1 General standards.
309.105 Procedures.
309.105–1 Obtaining information.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 309.1—Responsible Prospective Contractors

309.104 Standards.

309.104–1 General standards.

(a) In determining the adequacy of a prospective contractor's financial resources for the performance of the proposed contract, particular attention shall be given to the ability of the contractor to discharge its full financial responsibility for charges and losses of Government-furnished material, when the contractor has responsibility for such material.

(b)–(d) [Reserved]

(e) The prospective contractor must have an established system of accounting and financial controls which are determined by the contracting officer to be adequate to permit the effective administration of the type of contract proposed, particularly if under its terms the costs incurred are a factor in determining the amount payable under the contract, or if advance or progress payments are requested.

309.105 Procedures.

309.105–1 Obtaining information.

(a) [Reserved]

(b) (1) [Reserved]

(2) (i) [Reserved]

(ii) To ensure that a prospective contractor has the necessary accounting and operational controls (see 309.104–1(e)), a written determination must be made by the contracting officer that the prospective contractor has an adequate accounting system for determining costs applicable to the contract and a billing system that satisfies the contractual payment provisions. The determination must explain the basis for this judgment.

(A) When dealing with high risk organizations, i.e., new organizations, those with known problems, and those with accounting system deficiencies, the contracting officer shall use every reasonable means available to protect the Government from the improper expenditure of Federal funds. Actions should include at least one of the following: preaward and postaward audits; direct identification of cost with deliverables; billing by contract phases or tasks; fidelity bonding or other guarantees by the parent company or principals of the organization; increased scrutiny of vouchers and financial reports; and frequent site visits to verify the incurrence of specific costs and the relationship of technical progress with the amount billed.

(B) If a prospective contractor's accounting or billing system (or both) is determined to be inadequate, corrective

action must be taken before that organization is awarded a contract. When corrective action cannot be completed until after the award and the contracting officer determines that the award must be made, the contracting officer shall consult with the cognizant cost advisor and take the appropriate actions set forth in FAR 16.104 to ensure that the Government's interests will be protected and the contract will be adequately costed and administered. Awards made under the preceding condition must be approved in writing by the principal official responsible for acquisition.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 313—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 313.1—General

Sec.
313.101 Definitions.
313.104 Procedures.
313.106 Competition and price reasonableness.
313.107 Solicitation and evaluation of quotations.

Subpart 313.2—Blanket Purchase Agreements

313.201 General.
313.204 Purchases under Blanket Purchase Agreements.

Subpart 313.4—Imprest Fund

313.403 Agency responsibilities.
313.404 Conditions for use.

Subpart 313.5—Purchase Orders

313.505 Purchase order and related forms.
313.505–3 Standard Form 44, Purchase Order—Invoice—Voucher.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 313.1—General

313.101 Definitions.

"Small purchase procedures"

(a)–(c) [Reserved]

(d) Acquisition of architect-engineer professional services of any dollar amount.

313.104 Procedures.

(a) Negotiated contracts or purchases aggregating $25,000 or less shall be made under the authority of 41 U.S.C. 252(c)(3) and FAR 15.203 rather than under any of the other sections in FAR Subpart 15.2.

(b)–(f) [Reserved]

(g) Small purchase methods are designed to acquire defined, off-the-shelf, standard supplies, equipment, or services which may be awarded on the basis of a fixed price quotation. Small purchase methods should not be used to acquire R & D, complex studies, services, and the like (which require judgmental technical evaluations and involve negotiations) where the award cannot be confidently made on the low price. Where requirements are not suitable for accomplishment using small purchase methods, more formal negotiation methods or formal advertising should be used.

(h) Small purchases accomplished in accordance with this Part may not be awarded on a cost-reimbursement basis.

(i) Small purchase methods should be used with great prudence for the acquisition of consultants to avoid the increased possibility of using consultants in an improper personal services capacity.

313.106 Competition and price reasonableness.

(a) *Purchases not over $1,000.* Purchases not over $1,000 are exempt from Subpart 315.71 which requires a written justification for a noncompetitive acquisition. However, purchases not over $1,000 shall not be made repetitively from one source except for reasons which clearly and convincingly justify a noncompetitive acquisition (see Subpart 315.71).

(b) [Reserved]

(c) *Data to support small purchases over $1,000.*

(1) [Reserved]

(2) Purchases in excess of $1,000 up to $25,000 which are made noncompetitively require justification as to why competition was not obtained. The justification, which may be in the form of a statement in the request for contract or requisition, must address the considerations in Subpart 315.71. The contracting officer may approve or disapprove the justification. Award of the contract or purchase order up to $10,000 by the contracting officer shall constitute approval of the justification.

313.107 Solicitation and evaluation of quotations.

(a)–(c) [Reserved]

(d) *Amendments.* (1) If after the issuance of a request for quotations but before the closing date of their receipt, it becomes necessary (i) to make significant changes in the quantity, specifications, or delivery schedule, (ii) to make any change in the closing date, or (iii) to correct a defect or ambiguity, the change shall be accomplished by issuance of an amendment to the request. Requests for quotations using the Standard Form 18 may be amended by letter. Oral requests for quotations may be amended orally.

(2) When it is considered necessary to issue an amendment to a request for quotations, the period of time remaining before closing and the need for extending this period by postponing the time set for closing must be considered. Where only a short time remains before the time set for closing, extension of time may be made by telegram or telephone. This notification should be confirmed in the amendment.

(3) Any information given to one potential quoter concerning a request for quotations shall be furnished promptly to all other potential quoters in an amendment to the request, if the information is necessary to potential quoters in submitting quotations, or if the lack of the information would be prejudicial to uninformed potential quoters.

(e) *Late quotations.* The policy in FAR 15.412 is applicable to written small purchase quotations received after the time set for receipt at the contracting activity. Any oral quotation received at the contracting activity after the time set for receipt shall not be accepted. Because late written quotations shall not be considered except as provided for in FAR 15.412, it is important to allow potential quoters sufficient time to submit their quotations.

Subpart 313.2—Blanket Purchase Agreements

313.201 General.

(a)–(d) [Reserved]

(e) Each blanket purchase arrangement (BPA) shall be documented by issuance of a contractual instrument which is appropriately numbered.

313.204 Purchases under Blanket Purchase Agreements.

(a)–(d) [Reserved]

(e) Delivery tickets signed by the Government employee receiving the item or service will be forwarded to the fiscal office or other paying office as designated by the OPDIV. Payment will be made on the basis of the signed delivery tickets and properly itemized invoice. Contracting activities will ensure that established procedures allowing for availability of funds are in effect prior to placement of orders.

Subpart 313.4—Imprest Fund

313.403 Agency responsibilities.

(a) The amount of each imprest fund shall be established on the basis of the estimated monthly payment and the need for replenishment. A review shall be made by the responsible official at least quarterly to insure that the fund is not in excess of needs; and appropriate adjustments are made accordingly.

(b) [Reserved]

(c) Requests to establish imprest funds shall be made to the responsible fiscal office. At larger activities where the cashier may not be conveniently located near the purchasing office, a Class C Cashier may be installed in the purchasing office. Documentation of cash purchases shall be in accordance with instructions contained in the HHS Voucher Audit Manual Part 1, Chapter 1–10.

313.404 Conditions for use.

(a) Small purchases made pursuant to imprest fund procedures may not exceed $300 for any one transaction ($500 under emergency conditions). This sentence supersedes the first sentence in FAR 13.404(a). The dollar limitations stated here have been approved by the Department of the Treasury and coordinated with the General Services Administration.

Subpart 313.5—Purchase Orders

313.505 Purchase order and related forms.

313.505–3 Standard Form 44, Purchase Order—Invoice—Voucher.

(d) Since the Standard Form 44 is an accountable form, a record shall be maintained of serial numbers of the form, to whom issued, and date issued. SF–44's shall be kept under adequate lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of the SF–44.

PART 314—FORMAL ADVERTISING

Subpart 314.4—Opening of Bids and Award of Contract

Sec.
314.406 Mistakes in bids.
314.406–3 Other mistakes disclosed before award.
314.406–4 Mistakes after award.
314.407 Award.
314.407–8 Protests against award.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 314.4—Opening of Bids and Award of Contract

314.406 Mistakes in bids.

314.406–3 Other mistakes disclosed before award.

(a)–(d) [Reserved]

(e) Authority has been delegated to the Protest Control Officer, Office of Evaluation and Compliance, OPAL–ASMB to make administrative determinations in connection with mistakes in bid alleged after opening and before award. This authority may not be redelegated.

(f) Each proposed determination shall have the concurrence of the Chief, Business Law Branch, Business and Administrative Law Division, Office of General Counsel.

(g) (1) and (2) [Reserved]

(g)(3) The data required by FAR 14.406–3(g)(3) shall be marked "IMMEDIATE ACTION—MISTAKE IN BID" and submitted through acquisition channels to the Protest Control Officer, Office of Evaluation and Compliance, OPAL–ASMB. The file shall be assembled in an orderly manner and shall include an index of enclosures. A single copy of the file is sufficient.

(4) Since examination of evidence is necessary to determine the proper course of action to be taken, no action will be taken on cases referred by telephone or telegraph.

(5) Where the evidence submitted by the bidder is incomplete or in need of clarification, the contracting officer shall document the file to indicate the effort made to obtain clear and convincing evidence to support the alleged mistake. Since the burden of providing such evidence lies with the bidder-claimant, repeated efforts to obtain such information are neither necessary nor desirable.

(h) [Reserved]

(i) Doubtful cases shall *not* be submitted by the contracting officer directly to the Comptroller General, but shall be submitted as indicated in 314.406–3(g)(3).

314.406–4 Mistakes after award.

(a)–(b) [Reserved]

(c) Authority has been delegated to the Protest Control Officer, Office of Evaluation and Compliance, OPAL–ASMB to make administrative determinations in connection with mistakes in bid alleged after award. This authority may not be redelegated.

(d) Each proposed determination shall have the concurrence of the Chief, Business Law Branch, Business and Administrative Law Division, Office of General Counsel.

(1) [Reserved]

(2) The data required by FAR 14.406–4(e)(2) shall be marked "IMMEDIATE ACTION—MISTAKE IN BID" and submitted as prescribed in 314.406–3(g)(3).

314.407 Award.

314.407–8 Protests against award.

(a) *General.* (1) Contracting officers shall consider all protests or objections regarding the award of a contract, whether submitted before or after award, provided the protests are filed in a timely manner and are submitted by interested parties. An interested party is one which has a substantial financial interest in the outcome of the acquisition. As used in this subsection, the term "filed" means receipt in the contracting office, the Office of the Secretary, or the General Accounting Office, as the case may be. In order to be considered timely, protests based on alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, alleged improprieties which do not exist in initial solicitations, but which are subsequently incorporated by amendment, must be protested not later than the next closing date for receipt of proposals following the incorporation. In other cases, protests shall be filed not later than ten (10) Federal Government working days after the basis for protest is known or should have been known, whichever is earlier. If a protest has been filed initially with the contracting officer, any subsequent protest to the Secretary, Department of Health and Human Services or the General Accounting Office filed within ten (10) Federal Government working days of notification of adverse action will be considered provided the initial protest to the contracting officer was timely. Written confirmation of all oral protests shall be requested from protestants and must be timely filed.

(2) Reports concerning protests, whether before or after award, shall include the following documentation:

(i) A statement by the contracting activity's headquarters acquisition staff office, containing its recommendation, with supporting reasons, as to the merits of the protest.

(ii) The contracting officer's statement of facts and circumstances including a discussion of the merits.

(iii) The contracting officer's conclusions and recommendations including documentary evidence on which they are based.

(iv) A copy of the IFB or RFP.

(v) A copy of the abstract of bids or proposals.

(vi) A copy of the bid or proposal of the successful offeror to whom award has been made or is proposed to be made.

(vii) A copy of the bid or proposal of the protestant, if any.

(viii) The current status of award. When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.

(ix) A copy of any mutual agreement to suspend work on a no-cost basis, when appropriate (see FAR 14.407–8(c)).

(x) Copies of the notice of protest given offerors and other parties when the notice is appropriate (see FAR 14.407–8(a)(3)).

(xi) A copy of the technical evaluation report required by 315.608(i), when applicable, and a copy of each evaluator's rating for all proposals.

(xii) A copy of the negotiation memorandum when applicable (see 315.672).

(xiii) The name and telephone number of the person in the contracting office who may be contacted for information relevant to the protest.

The file shall be assembled in an orderly manner and shall include an index of enclosures.

(3) Copies of the views of interested parties submitted pursuant to FAR 14.407–8(a)(3) shall be furnished to the Departmental Protest Control Officer, Office of Evaluation and Compliance, OPAL, ASMB, whenever the protest is reviewed by the Departmental Protest Control Officer (including protests lodged with GAO).

(4) Whenever the contracting officer deems it desirable to obtain the views of higher authority or when submission is required by paragraph (b)(2) of this section, the file shall be forwarded, in duplicate, through acquisition channels to the contracting activity's cognizant protest control officer (see paragraph (a)(6), below) and then to the Departmental Protest Control Officer, by the most expeditious means. The file shall be marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD".

(5) The Office of Evaluation and Compliance, OPAL–ASMB has been designated as the headquarters office which GAO should contact concerning protests. All reports on protests lodged with GAO shall be submitted to that office.

(6) Each contracting activity shall designate a protest control officer to serve as an advisor to the contracting officer and to monitor protests from the time of initial notification until the protest has been resolved. The protest control officer should be a senior acquisition specialist in the headquarters acquisition staff office. In addition, contracting activities should designate similar officials within their principal components to the extent practicable and feasible. A copy of each appointment and termination of appointment of protest control officers shall be forwarded to the Director, Office of Evaluation and Compliance. OPAL–ASMB.

(b) *Protests before award.* (1) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with paragraph (a)(1) of this section.

(2) In the following cases, written protests received by the contracting officer shall be forwarded, through acquisition channels, to the Departmental Protest Control Officer. Files concerning these protests shall be submitted, in duplicate, by the most expeditious means and shall be marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD":

(i) The protestant requests referral to the Secretary of Health and Human Services;

(ii) The protest is known to have been lodged with the Comptroller General or the Secretary; or

(iii) The contracting officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by the Secretary or the Comptroller General.

Otherwise, submissions of protests to the Departmental Protest Control Officer may be dispensed with by the contracting officer if he/she is satisfied that the protest is without any reasonable degree of foundation. Except as modified in FAR 14.407–8(b)(3) and paragraph (b)(3) of this section, the contracting officer, with the concurrence of the contracting activity's protest control officer, and either the Office of General Counsel, Business and Administrative Law Division, or cognizant Regional Attorney, may disallow the protest.

(3) When it is known that a protest against the making of an award has been lodged directly with GAO, a determination to make award under FAR 14.407–8(b)(4) must be approved by the Director, Office of Evaluation and Compliance, OPAL–ASMB.

(4) [Reserved]

(5) If award is made pursuant to FAR 14.407–8(b)(4), the contracting officer shall document the file to explain the need for immediate award and shall notify the protestant and, as appropriate, others concerned, except GAO; Notice will be given to GAO by the Office of Evaluation and Complaince, OPAL–ASMB.

(c) *Protests after award.* (1) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with paragraph (a)(1) of this section.

(2) Protests which have been lodged with the Secretary or the Comptroller General shall be forwarded, through acquisition channels, to the Departmental Protest Control Officer and shall be documented in accordance with paragraph (a)(2) of this section. The file shall be submitted, (in duplicate when GAO is involved) by the most expeditious means and shall be marked "Immediate Action—Protest After Award."

(3) Protests lodged with the contracting officer shall be handled in the manner described in 314.407–8(b)(2)(iii).

PART 315—CONTRACTING BY NEGOTIATION

Subpart 315.1—General Requirements for Negotiation

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315.105 Competition.

Subpart 315.2—Negotiation Authorities

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315.202 Public exigency.
315.205 Services of educational institutions.
315.210 Impractical to secure competition by formal advertising.
315.211 Experimental, developmental, or research work.
315.212 Purchases not to be publicly disclosed.
315.215 Otherwise authorized by law.

Subpart 315.3—Determinations and Findings To Justify Negotiation

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Subpart 315.71—Noncompetitive Acquisitions

315.7100 Scope of subpart.
315.7101 Policy.
315.7102 Exceptions.
315.7103 Criteria.
315.7104 Procedures.
315.7105 Format for the Justification for Noncompetitive Acquisition.
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315.7107 Noncompetitive Review Board.
315.7108 Whole project buys.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 315.–General Requirements for Negotiation

315.105 Competition.

(a) [Reserved]

(b) For detailed information concerning policies and procedures on noncompetitive acquisitions, see Subpart 315.71.

(c) For detailed information concerning policies and procedures on noncompetitive acquisitions, see Subpart 315.71.

Subpart 315.2—Negotiation Authorities

315.201 National emergency.

(a) and (b) [Reserved]

(c) *Limitations.* The applicable authority may be used by the contracting officer only for assistance to labor surplus areas or small business concerns. The applicable authority shall not be used for administration of the Balance of Payments program, or other programs, without the prior written approval of the principal official responsible for acquisition (not delegable).

315.202 Public exigency.

(a) and (b) [Reserved]

(c) *Limitations.* The contracting officer shall provide a copy of the D&F to the principal official responsible for acquisition.

315.205 Services of educational institutions.

(a) and (b) [Reserved]

(c) *Limitations.* (1) The applicable authority shall be used only for the acquisition of specialized noncommercial services which are customarily performed by educational institutions. Use of this authority for any service other than those listed in FAR 15.205(b) shall require a written determination with supporting facts by the contracting officer that the particular type of service is available only from educational institutions.

(2) Proposals shall be solicited from as many educational institutions as are known to possess the required capability. Solicitation of a single educational institution shall require a written "Justification for Noncompetitive Acquisition" in accordance with the requirements of Subpart 315.71.

(3) Where the circumstances of both (c) (1) and (2) above pertain in the same case, the required determination shall be combined and made by the official designated in 315.7106.

315.210 Impractical to secure competition by formal advertising.

(a) [Reserved]

(b) *Application.* Negotiation under the applicable authority shall be conducted on a competitive basis to the maximum practicable extent, except when negotiation is justified under the circumstances specified in FAR 15.210 (b) (1) or (16).

(1) The illustration specified in FAR 15.210(b)(3) shall apply only if the negotiation is for the identical requirements specified in the unresponsive bid. If specification deviations are authorized, or if delivery, quantity, or other requirements are changed, the revised requirements shall be readvertised or, if appropriate, negotiated under one of the other authorities prescribed in FAR Subpart 15.2.

(2) Cases of doubt in applying the illustration specified in FAR 15.210(b)(13) shall be resolved in favor of formal advertising.

315.211 Experimental, developmental, or research work.

(a) and (b) [Reserved]

(c) *Limitations.* Whenever more than single unit quantities of equipment or supplies are to be acquired under this authority, the quantity shall be justified as reasonable and essential by the program authority submitting the acquisition request (see FAR 15.211(c)(2)(iii)).

315.212 Purchases not to be publicly disclosed.

(a) and (b) [Reserved]

(c) *Limitations.* The applicable authority shall be used in preference to any other authority when competition is to be limited because of the need for nondisclosure (also see FAR 5.202(a)).

315.215 Otherwise authorized by law.

(a) [Reserved]

(b) *Application.* When other statutory authority is the basis for negotiation, the proper citation for the contract is 41 U.S.C. 252(c)(15) plus the section number, title of the Act, and the Public Law number (or U.S. Code citation) of the statute which permits negotiation.

Subpart 315.3—Determinations and Findings To Justify Negotiation

315.303 Class D & F's.

(a) Class D & F's shall be justified on the basis of need to avoid processing multiple determinations and findings when more than one contract must be negotiated under the same negotiation authority for the same program or project. The multiple acquisitions must be for items or services which are to be negotiated at or near the same time and so related as to constitute a logical and distinct class.

(b) [Reserved]

(c) All class D & F's shall be limited to a period of one (1) year or less, except that those determinations and findings required by FAR 15.211 may be authorized for three (3) years.

315.304 Content.

See 315.370 for guidance and formats regarding specific D & F's.

315.307 Signatory authority.

The following is a summarization of the officials authorized to sign D & F's as indicated in Table 15–1 of the FAR. It also designates officials authorized to sign D & F's for the agency head, as permitted.

(a) *Contracting officer.* Individual D & F's addressed in FAR 15.202, 15.207, 15.208, and 15.210 shall be signed by the contracting officer.

(b) *Principal official responsible for acquisition (PORA).* The PORA shall sign all class D & F's made under the negotiation authorities addressed in FAR 15.202, 15.207, 15.208, and 15.210. The PORA is authorized to sign individual D & F's addressed in FAR 15.211 when neither the contract nor any single modification will be over $25,000 (see FAR Table 15.1). The PORA is also authorized to sign both individual and class D & F's addressed in FAR 15.214.

(c) *Agency head.* The agency head shall sign individual D & F's made under the negotiation authority addressed in FAR 15.211 when more than $25,000 will be obligated, and all class D & F's made under the same authority. The agency head shall sign both individual and class D & F's made under the negotiation authorities addressed in FAR 15.212 and 15.213.

315.370 Sample D and F formats.

Principal officials responsible for acquisition shall prescribe formats for determinations and findings made under FAR 15.202, 15.207, and 15.208. The following formats shall be used for determinations and findings made under FAR 15.210 through 15.214.

(a) FAR 15.210 (Individual contract).

Department of Health and Human Services—Determination and Findings

Authority To Negotiate an Individual Contract Under 41 U.S.C. 252(c)(10)

I hereby find that:

(1) The (agency title) proposes to acquire (describe the work, service, or product and identify the program or project).

(2) It is impracticable to secure competition by formal advertising for the contract contemplated because:

(Set forth facts and circumstances which support a judgment that competition by formal advertising is impracticable. Facts and circumstances presented must conform to the FAR 15.210 subparagraph selected as justification for negotiation.)

I hereby determine that:

On the basis of the above findings, the proposed acquisition is for (work, services, or products *) for which it is impracticable to secure competition by formal advertising and that negotiation of a contract for such (work, services, or products *) is authorized pursuant to 41 U.S.C. 252(c)(10), as contemplated by FAR 15.210(b) **, provided, the required (work service, or product *) has been authorized by law.

Date ———

Signature ———

(b) FAR 15.211 (Individual contract).

Department of Health and Human Services—Determination and Findings

Authority To Negotiate an Individual Contract Under 41 U.S.C. 252(c)(11)

I hereby find that:

(1) The (agency title) proposes to acquire (describe work to be performed or product to be delivered, identify the program or project, and state the estimated contract price).

(2) The proposed acquisition is for (experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test *). (Set forth facts and circumstances which support a judgment that the work to be performed is in fact experimental, developmental, or research.)

(3) It is impracticable to secure competition by formal advertising for the contract contemplated because:

(Set forth reasons why the acquisition contemplated cannot be formally advertised; e.g., only ultimate objectives and general scope of work can be outlined, work cannot be described by definite drawings and specifications, etc.)

I hereby determine that:

On the basis of the above findings, the proposed acquisition is for (experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test *) and that negotiation of a contract for such (work or property *) is authorized pursuant to 41 U.S.C. 252(c)(11); provided, the (work or property *) has been authorized by law.

Date ———

Signature ———

(c) FAR 15.211 (Class of contracts).

Department of Health and Human Services—Determination and Findings

Authority To Negotiate a Class of Contracts Under 41 U.S.C. 252(c)(11)

I hereby find that:

(1) The (agency title) proposes to negotiate approximately (number) contracts in support of (identify the program or project, and state the anticipated funding level).

(2) The proposed acquisitions are for (experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test *).

(Set forth facts and circumstances which support a judgment that the work to be performed is in fact experimental, developmental or research).

(3) It is impracticable to secure competition by formal advertising for the contracts contemplated because:

(Set forth reasons why the acquisitions contemplated cannot be formally advertised; e.g., only ultimate objectives and general scope of work can be outlined, work cannot be described by definite drawings and specifications, etc.)

I hereby determine that:

On the basis of the above findings, the proposed acquisitions are for (experimental, developmental, or research work, for the manufacture or furnishing of property for experimentation, development, research, or test *) and that negotiation of contracts for such (work or property *) is authorized pursuant to 41 U.S.C. 252(c)(11); provided the required (work or property *) has been authorized by law.

This class determination shall remain in effect until (state terminal date (limit effective period not to exceed three (3) years)).

Date ———

Signature ———

(d) FAR 15.212 (Individual contract).

Department of Health and Human Services—Determination and Findings

Authority To Negotiate an Individual Contract Under 41 U.S.C. 252(c)(12)

I hereby find that:

(1) The (agency title) proposes to acquire (describe the work, service, or product and identify the program or project).

(2) This acquisition cannot be publicly disclosed because (explain either the basis for classification of the contract or the other considerations which the agency head should know in order to determine that the property or services should not be publicly disclosed).

(3) (Set forth reasons why the acquisition cannot be formally advertised).

I hereby determine that:

On the basis of the above findings, acquisition of the (property or services *) should not be publicly disclosed and the negotiation of a contract for such (property or services *) is authorized pursuant to 41 U.S.C. 252(c)(12); provided, the required (property or service *) has been authorized by law.

Date ———

Signature ———

(e) FAR 15.213 (Individual contract).

The following is an example of a D and F illustrative of the type and amount of information which may be considered sufficient to justify negotiation under FAR 15.213. Contracting activities are to develop the necessary D & F based upon the sample.

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* Use applicable word, words, or statement.

** Insert appropriate FAR 15.210(b) subparagraph number.

Department of the Interior—Findings and Determination Under Section 302(c)(13) of the Federal Property and Administrative Services Act of 1949

Findings

In accordance with the requirements of sections 302(c)(13) and 307 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, I make the following findings:

(1) The Alaska Road Commission has stated that it has a requirement for 25 ————(make and type) trucks as set forth in (letter) or (requisition) dated ———, and has submitted, by letter dated ———; signed by ————(name and title), information in justification for such purchase under section 302(c)(13), as described or included in the findings set forth below.

(2) The trucks in question are required for use at ———— (district or area), Alaska. This location is accessible only by ———— (indicate: i.e. "boat" or "boat and air" etc.) and for several months each year is accessible only by ————.

The Government's operations which consist of ———— (general description only), require the use of trucks of this type. The location presently has ——— of these trucks with stocks of spare parts determined necessary from experience to maintain these trucks in proper operational efficiency. There are also ——— trucks of other manufacture with required stocks of spare parts which will gradually be eliminated by standardization. No commercial supply or service centers are maintained at this remote location or within approximately ——— miles thereof.

(3) It is impractical to provide service and repair facilities for numerous makes of vehicles and to maintain stocks of parts necessary to keep the various makes in operating condition. Each make of vehicle usually requires additional special equipment for proper servicing and repair. This results in added cost, housing, and related administrative expense. Similarly each additional make requires the maintenance of separate stocks of spare service and repair parts which require additional bins, storage, and clerical and administrative expenses. The annual savings in cost estimated to result from the maintenance of reduced stocks of parts made possible by standardizing on these trucks is ———.

(4) (State other factors and details as applicable.)

(5) Under these circumstances the Alaska Road Commission regards the standardization and interchangeability as necessary in the public interest.

Determination

(1) Based upon the foregoing findings, I hereby determine, within the meaning of section 302(c) (13) of the Federal Property and Administrative Services Act of 1949, that:

(A) The equipment described is technical equipment;

(B) Negotiation is necessary, in the situation and in the locality described, in order to assure standardization of the equipment and interchangeability of parts; and

(C) Such standardization and interchangeability is necessary in the public interest.

(2) Upon the basis of these findings and determinations, I hereby authorize the negotiation of a contract (or contracts) for acquisition of the equipment described in these findings pursuant to section 302(c)(13) of the Federal Property and Administrative Services Act of 1949.

————(Secretary of the Interior.)

(f) FAR 15.214 (Individual contact).

Department of Health and Human Services—Determination and Findings

Authority To Negotiate an Individual Contract Under 41 U.S.C. 252(c)(14)

I hereby find that:

(1) The (agency title) proposes to acquire (described work, service or product and identify the program or project).

(2) The proposed acquisition was solicited by formal advertising under IFB (No. and date). The lowest responsive bid offered a (unit or aggregate*) price of $ ——— which is considered excessive in relation to the prices ($———) estimated as reasonable by the (agency title).

(Note.—If applicable, use the following statement: "The prices of bids received were not independently arrived at in open competition." Set forth facts and circumstances to support this statement.)

I hereby determine that:

On the basis of the above findings, bid prices received under IFB (No. and date) (are unreasonable; have not been independently arrived at an open competition*) and that negotiation of a contract for (describe work, service or product) is authorized pursuant to 41 U.S.C. 252(c)(14); provided, the required (property or service*) has been authorized by law and the limitations under FAR 15.214 are complied with.

Date ———

Signature ———

Subpart 315.4—Solicitation and Receipt of Proposals and Quotations

315.404 Presolicitation notices and conferences.

(a) and (b) [Reserved]

(c) *Presolicitation conferences.* (1) The presolicitation conference may only be used when approved by the chief of the contracting office.

315.405 Solicitations for information or planning purposes.

315.405–1 General.

The determination approval required by FAR 15.405–1 that a solicitation for information or planning purposes is appropriate shall be made by the chief of the contracting office.

*Use applicable word, words, or statement.

315.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

(a) The contracting officer is responsible for preparing the RFP with the assistance of the project officer. The purpose of the RFP is to convey information that prospective offerors need to prepare a proposal. The RFP includes the statement of work and the terms, conditions and provisions that will form the basis for the final definitive contract. It specifies all the information that prospective offerors must furnish to permit a meaningful and equitable evaluation of their offers. The RFP must be clear, complete, accurate, and consistent with the requirements of the acquisition so that it provides all who receive it with the same understanding of the requirements. Much of the information in the RFP is either derived directly from the request for contract or is otherwise furnished by the project officer. Therefore, it is important that the project officer develop a meaningful request for contract and supporting documentation during the initial presolicitation phase which will fully satisfy program needs and objectives when included in the RFP (see Subpart 315.70).

(b) Careful drafting of the RFP is vital to the proper working of the competitive process. The success of the acquisition depends, in large measure, on how well the work to be performed and the basic ground rules under which the competition will be conducted are described in the RFP. Particular effort must be made to develop a comprehensive and accurate statement of work (see 307.105–3 and FAR 35.007) to prevent ambiguities and to avoid misunderstandings which might otherwise surface at later stages of the acquisition.

(c) Care should be taken to avoid conflicting statements in the RFP. Clear distinctions must be made as to the contents and purpose of the statement of work, the instructions to offerors, and the evaluation criteria. Briefly:

(1) The statement of work must clearly specify the work to be done by the resultant contractor (or, if it is an R & D acquisition, present a clear statement of the requirements, see FAR Part 35);

(2) The general, technical, and business instructions must delineate all the essential information prospective offerors need to know in preparing their proposals (see 315.406–5(b)); and

(3) The evaluation criteria must clearly indicate the technical, management, personnel, and cost or pricing factors which are to be the major

considerations in selecting the successful offeror (see 315.406–5(c)).

(d) The RFP must require that proposals be submitted in two parts—a "Technical Proposal" and a "Business Proposal." Each part is to be separate and complete in itself so that evaluation of one may be accomplished independently of the other.

(e) The technical and business proposal instructions of the RFP must provide all the information deemed essential for proper evaluation of the proposals so that all prospective offerors are aware of all requirements, and so that differences in proposals will reflect each offeror's individual approach to the clear and unambiguous requirements and criteria stated in the RFP.

(f) The RFP must inform prospective offerors of all evaluation criteria and of the relative importance or weight attached to each criterion. Evaluation criteria must be described sufficiently enough in the RFP to inform prospective offerors of the significant matters which should be addressed in the proposals. Only the evaluation criteria set forth in the RFP shall be used in the evaluation of proposals, and the criteria can only be modified by a formal amendment to the RFP.

(g) Generally, the RFP will provide that the technical proposal not contain any reference to cost. However, resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included in the technical proposal so that the offeror's understanding of the scope of work may be evaluated.

(h) The project officer should be offered the opportunity to review the finalized RFP before it is printed and released.

315.406–1 Uniform contract format.

The uniform contract format specified in FAR 15.406–1 and Table 15–2 shall be used by all contracting activities of the Department.

315.406–2 Part I—The Schedule.

(a) *Section A, Solicitation/contract form.*

(1) and (2) [Reserved]

(3) Contracting activities are encouraged to use SF 33 for RFPs. In those instances where a contracting activity believes the SF 33 is not appropriate, a transmittal letter may be used. However, it is essential that the transmittal letter contain the pertinent information that must be brought to the attention of prospective offerors, so the information contained in FAR 15.406–2(a)(3) shall be included in it. (In item (viii), the Employer's Identification Number (EIN) may be requested in place of the offeror's DUNS number.) The transmittal letter should also contain reference to the solicitation provision "Late Submissions, Modifications, and Withdrawals of Proposals or Quotations" and stress the importance of timeliness. The last paragraph of the transmittal letter should provide the name and complete telephone number of a contract specialist who can provide information concerning the solicitation.

315.406–3 Part II—Contract clauses.

Section I, Contract clauses.

This section should contain all the pertinent contract clauses applicable to the acquisition, to include those contained in the general provisions, any additions or modifications to the general provisions, and special contract clauses (see Part 352—Solicitation Provisions and Contract Clauses).

315.406–5 Part IV—Representations and instructions.

(a) *Section K, Representations, certifications, and other statements of offerors or quoters.*

(1) This section shall begin with the following statements and continue with the applicable representations and certifications:

To Be Completed by the Offeror: (The Representations and Certifications must be executed by an individual authorized to bind the offeror.)

The offeror makes the following Representations and Certifications as part of its proposal (check or complete all appropriate boxes or blanks on the following pages).

Name of offeror ————

RFP No. ———

Signature of authorized individual ————

Date ———

Type name of authorized individual ————

Note.—The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(2) The contracting officer shall insert in all solicitations the representations and certifications at—

(i) FAR 52.203–2, Certificate of Independent Price Determination;

(ii) FAR 52.203–4, Contingent Fee Representation and Agreement;

(iii) FAR 52.215–6, Type of Business Organization;

(iv) FAR 52.215–20, Place of Performance;

(v) FAR 52.219–1, Small Business Concern Representation;

(vi) FAR 52.219–2, Small Disadvantaged Business Concern Representation;

(vii) FAR 52.219–3, Women-Owned Small Business Representation;

(viii) FAR 52.222–19, Walsh-Healy Public Contracts Act Representation;

(ix) FAR 52.222–21, Certification of Nonsegregated Facilities;

(x) FAR 52.222–22, Previous Contracts and Compliance Reports;

(xi) FAR 52.222–25, Affirmative Action Compliance;

(xii) FAR 52.223–1, Clean Air and Water Certification;

(xiii) FAR 52.225–1, Buy American Certification;

(xiv) FAR 52.230–2, Cost Accounting Standards Notices and Certification (Nondefense);

(xv) FAR 15.804–4, Certificate of Current Cost or Pricing Data.

Note.—The following paragraph shall be inserted between the title and text of this certificate:

(When a certificate of cost or pricing data is required to be submitted in accordance with Federal Acquisition Regulation (FAR) 15.804–4, the Contracting Officer will request that the offeror complete, execute, and submit to the Contracting Officer a certification in the format shown in the following Certificate of Current Cost or Pricing Data. The certification shall be submitted only at the time negotiations are concluded. Offerors should complete the certificate set forth below and return it when requested by the Contracting Officer.)

(xvi) 352.215–70, Duplication of Cost Certification;

(xvii) 352.215–71, Employer's Identification Number; and

(xviii) 352.225–12, Country of Manufacturer Representation.

(b) *Section L, Instructions, conditions, and notices to offerors and quoters.* This section shall be comprised of the general instructions, technical proposal instructions, and business proposal instructions, as well as pertinent solicitation provisions (see FAR 15.407).

(1) *General instructions.*

(i) The general instructions provide basic guidance to prospective offerors that informs them of what is required in the preparation and submission of proposals. The general instructions must include the following statements and any instructions pertinent to the individual acquisition and applicable requirements of the OPDIV, agency, or regional office.

General Instructions

The following instructions establish the acceptable minimum requirements for the format and content of proposals:

Your special attention is directed to the requirements for technical and business proposals to be submitted in accordance with these instructions.

Any resultant contract shall include the general provisions applicable to the selected offeror's organization and type of contract awarded. Copies of general provisions may

be obtained by contacting the contracting officer. Any additional clauses required by public law, executive order, or acquisition regulations, in effect at the time of execution of the proposed contract, will be included.

The proposal must be prepared in two parts: a "Technical Proposal" and a "Business Proposal." Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently of evaluation of the other. The technical proposal must not contain reference to cost; however, resource information, such as data concerning labor hours and categories, materials, subcontracts, etc., must be contained in the technical proposal so that your understanding of the scope of the work may be evaluated. It must disclose your technical approach in sufficient detail to provide a clear and concise presentation that includes, but is not limited to, the requirements of the technical proposal instructions.

The proposal must be signed by an official authorized to bind your organization. (Number) copies of your technical proposal and (number) copies of your business proposal must be submitted to: (Insert complete address indicating where the proposal is to be sent and how it is to be marked. Provide similar information for hand-delivered proposals.)

You may, at your discretion, submit alternate proposals, or proposals which deviate from the requirements; *provided,* that you also submit a proposal for performance of the work as specified in the statement of work. These proposals may be considered if overall performance would be improved or not compromised, and if they are in the best interest of the Government. Alternate proposals, or deviations from any requirements of this RFP, must be clearly identified.

The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this request for proposals.

It is understood that your proposal will become part of the official contract file.

The RFP does not commit the Government to pay any cost for the preparation and submission of a proposal. In addition, the Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with this proposed acquisition.

(ii) Include either of the following in the General Instructions if prospective offerors are to be informed of the Government's estimate of the level of effort necessary to accomplish the requirement:

The Government considers the level of effort to perform the resultant contract should take the following staff-hours: (insert a breakdown of the Government's staff-hour estimates by categories). These estimates are furnished for the offeror's information only and are not to be considered restrictive for proposal purposes; or

To assist you in the preparation of your proposal, the Government considers the effort to perform this contract to be approximately (insert the total number) staff-hours. This number is furnished for the offeror's information only and is not considered restrictive for proposal purposes.

(Note.—The first paragraph should only be used for term (e.g. level of effort task order), rather than completion type, contracts.)

(iii) If the proposed contract will involve performance or services on a Government installation, insert the following in the General Instructions:

Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will failure to inspect the site constitute grounds for claims by the contractor after the award of a contract.

(iv) If reference material is to be provided for use in preparation of proposals, insert either of the following:

To assist offerors in preparing their proposals, reference material consisting of (insert title or description of publications, specifications, drawings, reports, or other documentation being made available as reference material) will be available for inspection at (insert name and address of building and room number).

Offerors are expected to examine all reference material prior to preparation and submission of their proposals. Failure to do so will be at the offeror's risk; or

To assist offerors in preparing their proposals, reference material consisting of (insert title or description of publications, specifications, drawings, reports, or other documentation being furnished as reference material) is enclosed. Offerors are expected to examine all reference material prior to preparation and submission of their proposal. Failure to do so will be at the offeror's risk.

(v) If the reference material being provided is to be returned to the Government, include the following statement:

All reference material furnished hereunder shall be returned within (insert number) days after the submission of proposals to (insert name and address of building and room number).

(vi) If an incentive type contract is being considered, a notice to the offeror of the Government's desire as to use of incentives considered applicable, objectives of the incentive performance goals, schedules, milestones, critical delivery parameters, and similar information must be included.

(2) *Technical proposal instructions.*

(i) The technical proposal instructions should clearly and concisely describe the information prospective offerors must provide in their technical proposals. The instructions should address the need for submission of a detailed work plan indicating how each aspect of the statement of work is to be accomplished, a discussion of how the work is to be organized, staffed, and managed, and statements of the qualifications and experience of the prospective offeror and its key personnel.

(ii) The technical proposal instructions must be specific enough to convey the information the program office will require from offerors to allow the technical proposal evaluators to determine whether a proposal is acceptable. Therefore, it is essential that the instructions are written to elicit the information necessary to fully address all the elements of the work plan with particular emphasis on the evaluation criteria, so that evaluators may readily evaluate each offer in the pertinent areas. The instructions should not require the submission of excessive information since this will complicate the evaluation process and could cause unnecessary proposal preparation costs for offerors.

(iii) The technical proposal instructions should require that technical proposals be prepared in a specified format to facilitate evaluation. A uniform format will minimize evaluators' efforts and should minimize the amount of extraneous and voluminous material sometimes included in proposals.

(iv) Since specific instructions must be developed to suit the needs of the individual acquisition, detailed guidance concerning the contents of the technical proposal instructions is not presented here. However, the following represents a sampling of general statements which may be helpful in the preparation of the instructions:

Technical Proposal Instructions

Proposals which merely offer to conduct a program in accordance with the requirements of the Government's scope of work will not be eligible for award. You must submit an explanation of the proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

A detailed work plan must be submitted indicating how each aspect of the statement of work is to be accomplished. Your technical approach should be in as much detail as you consider necessary to fully explain your proposed technical approach or method. The technical proposal should reflect a clear understanding of the nature of the work being undertaken.

The technical proposal must include information on how the project is to be organized, staffed, and managed. Information should be provided which will demonstrate your understanding and management of important events or tasks. You must explain how the management and coordination of consultant and/or subcontractor efforts will be accomplished.

The technical proposal must include a list of names and proposed duties of the

professional personnel, consultants, and key subcontractor employees assigned to the project. Their résumés should be included and should contain information on education, background, recent experience, and specific scientific or technical accomplishments. The approximate percentage of time each individual will be available for this project must be included. The proposed staff hours for each of the above individuals should be allocated against each task or subtask for the project.

The technical proposal must provide the general background, experience, and qualifications of the organization. Similar or related contracts, subcontracts, or grants should be included and contain the name of the customer, contract or grant number, dollar amount, time of performance, and the names and telephone numbers of the project officer and contracting/grants officer.

The technical proposal must contain a discussion of present or proposed facilities and equipment which will be used in the performance of the contract.

The technical proposal must be prepared and submitted in the following format:

(Provide the required format.)

(3) *Business proposal instructions.* Business proposal instructions consist of cost and pricing data and administrative and management data.

(i) *Cost and pricing data.* Prospective offerors must be informed in the business proposal instruction that they are required to submit cost or pricing information in sufficient detail to allow a complete cost analysis. (See FAR 15.804 for requirements on cost or pricing data.) Categories and amounts of labor, materials, travel, computer time, overhead and other costs should be requested. Prospective offerors are to be provided Standard Form 1411, Contract Pricing Proposal Cover Sheet, for use in preparing the cost of pricing data, and are to be told to submit, as a minimum, cost proposals fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amount. Prospective offerors are to comply with the instruction on the SF 1411 and fill in or check the appropriate boxes. In addition, they should be informed to itemize the cost for individual elements, each as analytical studies, reports, etc., and the estimated cost of each phase or segment of the offered performance.

(ii) *Administrative and management data.*

(A) The business proposal instructions must be written so that the contracting officer receives adequate information to evaluate each offeror's management capability and to determine whether each offeror is responsible. Therefore, under this section, information should be requested to allow the contracting officer to assess the following factors as they apply to the instant acquisition:

(1) The offeror's financial capability;

(2) The offeror's capability to meet delivery or performance schedules;

(3) The offeror's record of past performance;

(4) The offeror's record of business integrity;

(5) The offerors's possession of necessary organization, experience, and technical skills, or the ability to obtain them;

(6) The offeror's possession of required facilities; and

(7) Any other special consideration involved in the instant acquisition.

In some cases, these factors may duplicate evaluation criteria and may be adequately addressed in the technical proposal instructions. However, the contracting officer must ensure that they are covered in both the business proposal instructions and the technical proposal instructions.

(B) The contracting officer may determine that other administrative data in the form of additional business or cost information is necessary. Some examples of additional information include:

(1) A copy of the current agreement on indirect cost rates;

(2) A copy of the most recent financial statements;

(3) A discussion on the extent of proposed subcontracting with small and disadvantaged business enterprises;

(4) A request for pricing or cost breakdown tailored to the instant acquisition to provide information for a more thorough and complete cost analysis; and

(5) A request for explicit instructions on pricing of options and indivudal line items.

However, care should be taken to request additional information only when necessary to prevent excessive proposal preparation costs for offerors.

(c) The following are required statements which must be included in the RFP.

Your proposal must stipulate that it is predicated upon all the terms and conditions of this RFP. In addition, it must contain a statement to the effect that it is firm for a period of at least (insert number) days from the date of receipt by the Government.

It is HHS policy that contracters provide all equipment and facilities necessary for performance of contracts; however, in some instances, an exception may be granted to furnish Government-owned property or to authorize purchase with contract funds. If additional equipment must be acquired, you must include in your proposal the description and estimated cost of each item, and whether you propose to furnish the item with your own funds.

You must identify all Government-owned property in your possession and all property acquired from Federal funds, to which you have title, that is proposed to be used in the performance of the prospective contract.

The management and control of Government property must be in accordance with HHS Publication (OS) 74-115 entitled, "Control of Property in Possession of Contractors," a copy of which will be provided upon request.

(c) *Section M, Evaluation factors for award.—(1) General.* (i) The evaluation criteria must be developed by the project officer and submitted to the contracting officer in the request for contract (RFC) for inclusion in the RFP. Development of these criteria and the assignment of the relative importance or weight to each criterion require the exercise of judgment on a case-by-case basis because they must be tailored to the requirements of the individual acquisition. Since the criteria will serve as a standard against which all proposals will be evaluated, it is imperative that they be chosen carefully to emphasize those factors considered to be critical in the selection of a contractor.

(ii) The finalized evaluation criteria and indications of their relative importance or weights, as included in the RFP, cannot be changed except by a formal amendment to the RFP issued by the contracting officer. No factors other than those set forth in the RFP shall be used in the evaluation of proposals.

(2) *Review of evaluation criteria.*

(i) The evaluation criteria should be reviewed by the contracting officer in terms of the work statement. This review is not intended to dictate to the program office or project officer, but rather to ensure that the evaluation criteria are clear, concise, and fair so that all potential offerors are fully aware of the bases for proposal evaluation and are given an equal opportunity to compete.

(ii) The project officer and the contracting officer should then review the evaluation criteria together to ascertain the following:

(A) The criteria are described in sufficient detail to provide the offerors (and evaluators) with a total understanding of the factors to be involved in the evaluation process;

(B) The criteria address the key programmatic concerns which the offerors must be aware of in preparing proposals;

(C) The criteria are specifically applicable to the instant acquisition and are not merely restatements of criteria from previous acquisitions which are not relevant to this acquisition; and

(D) The criteria are selected to represent only the significant areas of importance which must be emphasized rather than a multitude of factors. (All criteria tend to lose importance if too many are included. Using too many criteria will prove as detrimental as using too few.)

(3) *Examples of topics that form a basis for evaluation criteria.* Typical examples of topics that form a basis for the development of evaluation criteria are listed in the following paragraphs. These examples are intended to assist in the development of actual evaluation criteria for a specific acquisition and should only be used if they are applicable to that acquisition. They are not to be construed as actual examples of evaluation criteria to be included in the RFP.

(i) Understanding of the problem and statement of work;

(ii) Method of accomplishing the objectives and intent of the statement of work;

(iii) Soundness of the scientific or technical approach for executing the requirements of the statement of work (to include, when applicable, preliminary layouts, sketches, diagrams, other graphic representations, calculations, curves, and other data necessary for presentation, substantiation, justification, or understanding of the approach);

(iv) Special technical factors, such as experience or pertinent novel ideas in the specific branch of science or technology involved;

(v) Feasibility and/or practicality of successfully accomplishing the requirements (to include a statement and discussion of anticipated major difficulties and problem areas and recommended approaches for their resolution);

(vi) Availability of required special research, test, and other equipment or facilities;

(vii) Managerial capability (ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources, and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidenced by the management plan and demonstrated by previouis experience).

(viii) Availability, qualifications, experience, education, and competence of professional, technical, and other personnel, to include proposed subcontractors and consultants (as evidenced by resumes, endorsements, and explanations of previous efforts); and

(ix) Soundness of the proposed staff time or labor hours, propriety of personnel classifications (professional, technical, others), necessity for type and quantity of material and facilities proposed, validity of proposed subcontracting, and necessity of proposed travel.

(4) *Relative importance or weight.*

(i) A statement or indication of the relative importance or weight must be assigned to each evaluation criterion to inform prospective offerors (and evaluators) of the specific significance of each criterion in comparsion to the other criteria. Similarly, if a criterion is subdivided into parts, each of the parts must be assigned a statement or indication of the relative importance or weight.

(ii) The two principal methods used to indicate the relative importance or weight are the numerical score and adjective description. The Department does not prescribe a single method for determining the relative importance or weight, but recommends the use of the numerical score method because it is more precise and informative. However, it is recognized that in some instances the use of the adjective description method be more appropriate and, hence, may be used when that determination is made.

(iii) Cost or price is not generally included as one of the evaluation criteria and is not assigned an indication of relative importance or weight. However, a statement must be included in the RFP to reflect the relationship of cost or price in comparison to the other criteria. The contracting officer must ensure that this statement accurately reflects the appropriate balance between cost or price and the technical factors. The contracting officer and project officer should work together in arriving at the final determination regarding the relationship. The following are examples of statements that may be used to reflect this relationship. However, since these examples represent only the two extremes and the middle position, another statement may be developed to reflect the relationship which applies to the instant acquisition.

(A) You are advised that paramount consideration shall be given to the evaluation of technical proposals rather then cost or price.

(B) You are advised that paramount consideration shall be given to cost or price rather than the evaluation of technical proposals.

(C) You are advised that the evaluation of technical proposals and cost or price are of approximately equal value.

315.407 Solicitation provisions.

(a) and (b) [Reserved]

(c)(1) [Reserved]

(2) The referenced provision (FAR 52.215–6, Type of Business Organization) is a representation, has been included under Section K (see 315.406–5(a)(2)(iii)), and need not be restated again.

(3)–(7) [Reserved]

(8) The provision at 352.215–12 shall be used in place of that specified at FAR 52.215–12.

(d)–(g) [Reserved]

(h) The referenced provision (FAR 52.215–20, Place of Performance) is to be considered a certification and is included under Section K (see 315.406–5(a)(2)(iv)); it need not be restated again.

315.408 Issuing solicitations.

The minimum proposal preparation or response time between the date of distribution of a RFP and the date set for receipt of proposals shall not be less than 30 calendar days. In urgent situations, the 30 calendar day requirement may be waived by the contracting officer.

315.409 Pre-proposal conferences.

If a pre-proposal conference is to be held, the provision at 352.215–72 shall be included in the solicitation.

315.410 Amendment of solicitations before closing date.

For additional information on amendments to solicitations, see FAR 15.606.

315.413 Disclosure and use of information before award.

315.413–1 Alternate I.

The Department shall not use Alternate I procedures.

315.413–2 Alternate II.

The Department shall use the Alternate II procedures as modified in this subsection and shall use the provision at 315.215–12, Restriction on Disclosure and Use of Data, rather than the similar provision at FAR 15.215–12 (see 315.407(c)(8)). Any reference in the FAR to the provision at FAR 15.215–12 shall apply to the provision at 315.215–12.

(a) [Reserved]

(b) The term "data," as used in this section and in 352.215–12, refers to trade secrets, business data, and technical data. Trade secrets, within the meaning of 18 U.S.C. 1905, include, for example, processes, formulas, and chemical compositions. Business data includes, for example, commercial information, financial information, and cost and pricing data. Technical data includes,

for example, plans, designs, suggestions, improvements and concepts.

The Department recognizes that requests for proposals may require the offeror, including its prospective subcontractor(s), if any, to submit data which the offeror does not want used or disclosed for any purpose other than for evaluation of the proposal. Each proposal containing data which the offeror desires to restrict must be marked on the cover sheet by the offeror with the legend set forth at 352.215–12. Proposals, or portions of proposals, so marked shall be handled in accordance with the provisions of the legend.

(c) Contracting officers receiving proposals which contain restrictive statements or legends not conforming to the referenced provision at 352.215–12 must carefully evaluate the form and substance of the restriction before making a determination to reject the proposal. Deviations in form which do not compromise the Government's rights may be accepted if approved by the activity's FOI official and the Office of General Counsel, Business and Administrative Law Division.

(d) [Reserved]

(e) The Government notice shown in FAR 15.413–2(e) shall be used by this Department and is to be placed on the cover sheet of each proposal or quotation upon its receipt. The Government notice shall be completed by adding the following to the end of the last sentence: "HHSAR paragraph 315.608(e)."

(f) The Department sometimes finds it necessary (and in some instances is required by law) to seek evaluation of proposals outside the Department (see 315.608(d)(6)). All conditions required by FAR 15.413–2(f) have been met and are covered in 315.608(e), Procedures for handling and disclosing proposals. In regard to item (f)(1) of FAR 15.413–2, the Department has found that the procedure stated in the first sentence of paragraph 315.608(e)(2) is best and considers it in compliance with the FAR requirement.

(g) See Subpart 324.2 for detailed procedures concerning FOIA requests.

315.470 Review of RFP.

The principal official responsible for acquisition shall establish procedures to ensure that an independent review of the RFP is made prior to releasing the synopsis to the Commerce Business Daily announcing the availability of the RFP. The individual selected to conduct the review must possess the acquisition knowledge necessary to readily ascertain whether the RFP contains the required information to be in conformance with all laws, regulations, and internal procedures and instructions. The individual selected to conduct the review must be a person other than the preparer of the RFP.

Subpart 315.5—Unsolicited Proposals

315.505 Content of unsolicited proposals.

(a)–(c) [Reserved]

(d) Certification by offeror—To ensure against contacts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in FAR 15.504 resulting in an unfair advantage to an offeror, the principal official responsible for acquisition (or designee) shall ensure that the following certification is furnished to the prospective offeror and the executed certification is included as part of the resultant unsolicited proposal:

Unsolicited Proposal Certification by Offeror

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

315.506 Agency procedures.

(a) The principal official responsible for acquisition is responsible for establishing procedures to comply with FAR 15.506(a).

(b) The principal official responsible for acquisition or his/her designee shall be the point of contact for coordinating the receipt and handling of unsolicited proposals. Contacts made outside the contracting activity shall be promptly coordinated with the principal official responsible for acquisition or the designee.

315.506–1 Receipt and initial review.

(a)–(c) [Reserved]

(d) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the ground that they lack scientific merit.

315.507 Contracting methods.

(a)–(c) [Reserved]

(d) The program office shall prepare a "Justification for Acceptance of Unsolicited Proposal" which addresses the items in FAR 15.507(b). The "Justification for Acceptance of Unsolicited Proposal" shall be submitted to the contracting officer, together with, but as a separate document from, the request for contract, and shall be signed by the same official of the program office who signs the request for contract. Approval of the "Justification" shall be made at the same level as prescribed in 315.7106 for approval of a justification for noncompetitive acquisition.

315.509 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in FAR 15.509(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be furnished to all prospective offerors of unsolicited proposals whenever the legend is provided in accordance with FAR 15.504(b)(7):

The Government will attempt to comply with the "Use and Disclosure of Data" legend. However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

Subpart 315.6—Source Selection

315.602 Applicability.

(a) [Reserved]

(b) This subpart does not apply to contracts for architect-engineer services or contracts awarded to the Small Business Administration under section 8(a) of the Small Business Act.

315.604 Responsibilities.

(a)–(c) [Reserved]

(d) Personnel participating in the evaluation process must not discuss or reveal information concerning the evaluations except to an individual participating in the same evaluation

proceedings, and then only to the extent that the information is required in connection with the proceedings. Divulging information during the evaluation, selection, and negotiation phases of the acquisition to offerors or to personnel not having a need to know could jeopardize the resultant award. Therefore, the contracting officer must instruct personnel participating in the evaluations to observe these restrictions and insure that all personnel understand that unauthorized disclosure of information, no matter how innocent, could compromise the acquisition process and is prohibited.

(e) Only the contracting officer or his/her authorized representative within the contracting office shall conduct discussions with offerors relative to any aspect of the acquisition.

315.605 Evaluation factors.

(a)–(d) [Reserved]

(e) The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated. Prospective offerors rely upon the evaluation criteria in the solicitation in developing proposals, and they must be assured that the evaluation is conducted in accordance with those criteria. All personnel involved in the evaluation process must make sure that the evaluation criteria contained in the solicitation are the *only* criteria used in conducting the evaluation. See FAR 15.406–5(c) and 315.406–5(c) for detailed guidance on evaluation criteria.

315.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that offerors' clarifications are in writing.

(b) [Reserved]

(c) (1) and (2) [Reserved]

(3) The chief of the contracting office is authorized to make the written determination permitting a correction of a mistake in a proposal.

315.608 Proposal evaluation.

(a) *Cost or price evaluation.* (See paragraph (j) below.)

(b) *Technical evaluation.* (See paragraphs (h) and (i) below.)

(c) *Technical evaluation plan.*

(1) A technical evaluation plan may be required by the contracting officer, at his/her discretion, when an acquisition is sufficiently complex as to warrant a formal plan.

(2) The technical evaluation plan should include at least the following:

(i) A list of technical evaluation panel members, their organizations as well as a list of their major consulting clients (if applicable), their qualifications, and curricula vitae (if available);

(ii) A justification for using non-Government technical evaluation panel members. (Justification is not required if non-Government evaluators will be used in accordance with standard contracting activity procedure or policies);

(iii) A statement that there is no apparent or actual conflict of interest regarding any panel member;

(iv) A copy of each rating sheet, approved by the contracting officer, to be used to assure consistency with the evaluation criteria; and

(v) A brief description of the general evaluation approach.

(3) The technical evaluation plan must be signed by an official within the program office in a position at least one level above the project officer or in accordance with contracting activity procedures.

(4) The technical evaluation plan should be submitted to the contracting officer for review and approval before the solicitation is issued. The contracting officer shall make sure that the principal factors relating to the evaluation are reflected in the evaluation criteria when conducting the review of the plan.

(d) *Technical evaluation panel.*

(1) General.

(i) A technical evaluation panel is required for all acquisitions applicable to this subpart which are expected to exceed $250,000. The contracting officer, at his/her discretion, may require a technical evaluation panel for acquisitions not exceeding $250,000 based on the complexity of the acquisition.

(ii) The technical evaluation process requires careful and deliberate consideration as to the size, composition, expertise, and function of the technical evaluation panel. The efforts of the panel can result in the success or failure of the acquisition.

(2) Role of the project officer.

(i) The project officer is the contracting officer's technical representative for the acquisition action. The project officer may be a voting member of the technical evaluation panel and may also serve as the chairperson of the panel unless he/she is prohibited by law or contracting activity procedures from serving on the panel.

(ii) The project officer is responsible for recommending panel members who are knowledgeable of the technical aspects of the acquisition and who are competent to identify strengths and weaknesses of the various proposals. The program training requirements specified in 307.170 must be adhered to when selecting prospective panel members.

(iii) The project officer should ensure that persons possessing expertise and experience in addressing issues relative to sex, race, national origin, and handicapped discrimination be included as panel members in acquisitions which address those issues. The intent is to balance the composition of the panel so that qualified and concerned individuals may provide insight to other panel members regarding ideas and approaches to be taken in the evaluation of proposals.

(iv) The project officer is to submit the recommended list of panel members to an official within the program office in a position at least one level above the project officer or in accordance with contracting activity procedures. This official will review the recommendations, appoint the panel members, and select the chairperson.

(v) It is the responsibility of the project officer to arrange for adequate and secure working space for the panel.

(3) Role of the contracting officer.

(i) The contracting officer is the Department's official representative having delegated acquisition authority to enter into and administer contracts. The term "contracting officer," as used in this subpart, may be the contracting officer or his/her designated representative within the contracting office.

(ii) The contracting officer shall not serve as a member of the technical evaluation panel but should be available to:

(A) Address the initial meeting of the technical evaluation panel (see paragraph (g)(3) below);

(B) Provide assistance to the evaluators as required; and

(C) Ensure that the scores adequately reflect the written technical evaluation report comments (see paragraph (i) below);

(4) Conflicts of interest.

(i) If a panel member has an apparent or real conflict of interest related to a proposal under evaluation, he/she shall not serve on the technical evaluation panel and shall be replaced with another evaluator. If a suitable replacement is not available, the panel shall perform the review with one less evaluator.

(ii) For the purposes of this subpart, conflicts of interest are defined in the Department's Standards of Conduct set forth in 45 CFR Part 73 which incorporates 5 CFR Part 737, Post Employment Conflict of Interest. The Standards of Conduct shall be applicable to both in-house personnel

and outside evaluators serving on the technical evaluation panel.

(5) Continuity of evaluation process.

(i) The technical evaluation panel is responsible for evaluating the original proposals, making recommendations to the chairperson regarding clarifications and deficiencies of proposals, and, if required by the contracting officer, assisting the contracting officer during discussions and negotiations, and reviewing supplemental, revised and/or "best and final" offers. To the extent possible, the same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals. However, the following are some examples of circumstances when it would not be necessary for the technical evaluation panel to evaluate any revised proposals submitted during the acquisition:

(A) The answers to the questions do not have a substantial impact on the proposal (see 315.609(i));

(B) The "best and final" offers are not materially different from the original proposals; or

(C) The rankings of the offerors are not affected because the revisions to the proposals are relatively minor.

(ii) The chairperson, with the concurrence of the contracting officer, may decide not to have the panel evaluate the revised proposals. Whenever this decision is made, it must be fully documented by the chairperson and approved by the contracting officer.

(iii) When technical evaluation panel meetings are considered necessary by the contracting officer, the attendance of evaluators is mandatory. When the chairperson determines that an evaluator's failure to attend the meetings is prejudicial to the evaluation, the chairperson may replace the individual after discussing the situation with the contracting officer and obtaining his/her concurrence and the approval of the program official responsible for appointing the panel members (see 315.608(d)(2)(iv)).

(iv) Whenever continuity of the evaluation process is not possible, and either new evaluators are selected or a reduced panel is decided upon, each proposal which is being reviewed at any stage of the acquisition should be reviewed at that stage by all members of the revised panel unless it is impractical to do so because of the receipt of an unusually large number of proposals.

(6) Use of outside evaluators.

(i) The technical evaluation panel shall be composed of Government employees except that outside evaluators may be used when expertise is required which is not available within the Government, or as required by law.

(ii) The National Institutes of Health (NIH) and the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) are required to have a peer review of research and development contracts in accordance with Public Law (P.L.) 93–352 as amended by Pub. L. 94–63; 42 U.S.C. 289 1–4. This legislation requires peer review of projects and proposals, and not more than one-fourth of the members of a peer review group may be officers or employees of the United States. NIH and ADAMHA are therefore exempt from the provisions of 315.608(d) to the extent that 42 U.S.C. 289 1–4 applies.

(e) *Procedures for handling and disclosing proposals.*

(1) The procedures and notice specified in FAR 15.413–2 and 315.413–2 shall be used in handling solicited proposals and for disclosing proposals outside the Government for evaluation purposes. (For unsolicited proposals, see FAR 15.509 and 315.509.)

(2) Decisions to disclose proposals outside the Government for evaluation purposes shall be made by the chief official having programmatic responsibility for the acquisition, after consultation with the contracting officer and in accordance with operating division procedures. The decision to disclose either a solicited or unsolicited proposal outside the Government for the purpose of obtaining an evaluation shall take into consideration the avoidance of organizational conflicts of interest and any competitive relationship between the submitter of the proposal and the prospective evaluator(s).

(3) When it is determined to disclose a solicited proposal outside the Government for evaluation purposes, the following conditions, or similar appropriate conditions, shall be included in the written agreement with the evaluator(s) prior to disclosure (see FAR 15.413–2(f) and 315.413–2(f)). Also, a review must be made to ensure that the notice required by FAR 15.413–2(e) is affixed to the proposal before it is disclosed to the evaluator(s).

Conditions for Evaluating Proposals

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal only for evaluation purposes.

This requirement does not apply to data obtained from another source without restriction.

Any notice or legend placed on the proposal by either the Department or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return the Government furnished copy of the proposal or abstract, and all copies thereof, to the Departmental office which initially furnished the proposal for evaluation.

Unless authorized by the Department's initiating office, the evaluator shall not contact the submitter of the proposal concerning any aspects of its contents.

The evaluator will be obligated to obtain commitments from its employees and subcontractors, if any, in order to effect the purposes of these conditions.

(f) *Receipt of proposals.*

(1) After the closing date set by the solicitation for the receipt of proposals, the contracting officer will use a transmittal memorandum to forward the technical proposals to the project officer or chairperson for evaluation. The business proposals will be retained by the contracting officer for evaluation (see 315.608(j)).

(2) The transmittal memorandum to the chairperson should include at least the following:

(i) A list, by name, of the organizations submitting proposals;

(ii) A reference to 315.604(d) on the need to preserve the integrity of the source selection process;

(iii) A requirement for a technical evaluation report in accordance with 315.608(i); and

(iv) The establishment of a date for receipt of the technical evaluation report.

(g) *Convening the technical evaluation panel.*

(1) Normally the technical evaluation panel will convene to evaluate the proposals. However, there may be situations when the contracting officer determines it is not feasible or practicable for the panel to convene. Whenever this decision is made, care must be taken to assure that the technical review is closely monitored to produce acceptable results.

(2) When a panel is convened, the chairperson is responsible for the control of the technical proposals provided to him/her by the contracting officer for use during the evaluation process. The chairperson will generally distribute the technical proposals at the initial panel meeting and will establish procedures for securing the proposals whenever they are not being evaluated to insure the confidentiality of the proposals. After the evaluation is complete, all proposals must be accounted for by returning them to the contracting officer, destroying them, or filing them in an appropriate manner to maintain the confidential nature of the data.

(3) The contracting officer should address the initial meeting of the panel

and state the basic groundrules for conducting the evaluation. The contracting officer shall provide written guidance to the panel if he/she is unable to attend the initial panel meeting. The guidance should include:

(i) Explanation of conflicts of interest (see 315.608(d)(4));

(ii) The necessity to reread and understand the solicitation, especially the statement of work and evaluation criteria, prior to reading the proposals;

(iii) The need for evaluators to restrict the review to only the solicitation and the contents of the technical proposals;

(iv) The need for each evaluator to review all the proposals;

(v) The need to watch for ambiguities, inconsistencies, errors, and deficiencies which should be surfaced during the evaluation process;

(vi) An explanation of the evaluation process and what will be expected of the evaluators throughout the process;

(vii) The need for the evaluators to be aware of the requirement to have complete written documentation of the individual strengths and weaknesses which affect the scoring of the proposals; and

(viii) An instruction directing the evaluators that, until the award is made, information concerning the acquisition must not be disclosed to any person not directly involved in the evaluation process.

(h) *Rating and ranking of proposals.* The evaluators will individually read each proposal, describe tentative strengths and weaknesses, and develop preliminary scores in relation to each evaluation criterion set forth in the solicitation. The evaluators will use the rating sheets either in the technical evaluation plan or approved by the contracting officer when a technical evaluation plan is not required (see 315.608(c)). After this has been accomplished, the evaluators should discuss in detail the individual strengths and weaknesses described by each evaluator and, if possible, arrive at a common understanding of the major strengths and weaknesses and the potential for correcting each offeror's weakness(es). Each evaluator will individually rate (score) each proposal, and then the technical evaluation panel will collectively rank the proposals. Generally, but depending on the rating plan employed, ranking will be accomplished by totaling the numerical scores assigned by each evaluator to the evaluation criteria and developing an average rating for each offeror. The evaluators should then identify each proposal as either acceptable or unacceptable. Predetermined cutoff scores shall not be employed.

(i) *Technical evaluation report.* A technical evaluation report shall be prepared and furnished to the contracting officer by the chairperson and maintained as a permanent record in the contract file. The report must reflect the ranking of the proposals and identify each proposal as acceptable or unacceptable in accordance with 315.608(h). The report must also include a narrative evaluation specifying the strengths and weaknesses of each proposal, a copy of each rating sheet, and any reservations, qualifications, or areas to be addressed that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal must be included. The report should also include specific points and questions which are to be raised in discussions or negotiations.

(j) *Evaluation of business proposals.*

(1) Concurrently with the evaluation of the technical proposals, the contracting officer shall begin the evaluation of the business proposals. The contracting officer must adhere to the requirements for cost or price analysis included in FAR 15.805–1 for each business proposal in the competitive range. An audit report may be required in accordance with FAR 15.805–5 and 315.805–5. The contracting officer must exercise judgment in determining the extent of analysis in each case depending on the amount of the proposal, the technical complexity and related cost or price, and cost realism. The contracting officer should request the project officer to analyze such items as: the number of labor hours proposed for various labor categories; the mix of labor hours and categories of labor in relation to the technical requirements of the project; the kinds and quantities of material, equipment, and supplies; types numbers, and hours/days of proposed consultants; logic of proposed subcontracting; analysis of the travel proposed including number of trips, locations, purpose, and travelers; and kinds and quantities of data processing. The project officer shall provide his/her opinion as to whether these elements are necessary and reasonable for efficient contract performance. Exceptions to proposed elements shall be supported by adequate rationale to allow for effective negotiations. The contracting officer should also request the assistance of a cost/price analyst when considered necessary. In all cases, the negotiation memorandum (see 315.672) must include the rationale used in determining that the price or cost is fair and reasonable.

(2) The contracting officer must appraise the management capability of the offeror to perform the required work in a timely manner. In making this appraisal, the contracting officer should consider factors such as the offeror's management organization, past performance, reputation for reliability, availability of the required facilities, and cost controls. This information is to be used by the contracting officer to determine the offeror's responsibility.

315.809 Competitive range.

(a) A proposal must be included in the competitive range unless there is no real possibility that it can be improved to the point where it becomes the *most* acceptable.

(b)–(d) [Reserved]

(e) In certain circumstances, when deciding which proposals should be included in the competitive range, the contracting officer may request that the technical evaluation panel review the cost or price data. Typical situations which may necessitate this review include a suspected "buy-in," large differences in cost or price among the proposals, proposals receiving high technical ratings which have relatively high costs, and proposals receiving low technical ratings which have relatively low costs. The resultant comparison of cost or price to technical factors and the determination of cost or price realism should assist the contracting officer in deciding which proposals are to be included in the competitive range.

(f) All determinations regarding the inclusion or exclusion of proposals in the competitive range must be completely documented, including the salient reasons for the determinations, and set forth in the negotiation memorandum.

(g) Some of the factors which the contracting officer should consider in determining the competitive range are:

(i) The relative importance of cost or price as compared to technical factors in accordance with the solicitation provisions required in 315.406–5(c);

(2) The susceptibility of significantly reducing a proposal with an unreasonable high price or cost without undermining the technical merit if the offeror otherwise has a reasonable chance to receive an award; and

(3) The likelihood of reducing cost or price of a proposal which exceeds the Government's requirements.

(h) The contacting officer shall conduct a thorough review of the technical evaluation report to be assured that:

(1) All determinations of unacceptability are supported by

concrete and comprehensive statements that are factual and convincing and are consistent with the evaluation criteria set forth in the solicitation. Every statement should be reviewed carefully to eliminate any doubts as to the unacceptability of a proposal;

(2) All recommendations to exclude proposals from the competitive range are supported by persuasive rationale and sufficient facts to substantiate a judgment that meaningful discussions are not possible or there is no reasonable chance of the proposal being selected for award;

(3) Those cases where only one organization is found to be technically acceptable are fully scrutinized; and

(4) Unacceptable proposals contain "information" deficiencies which are so material as to preclude any possibility of upgrading the proposal to a competitive level except through major revisions and additions which would be tantamount to the submission of another proposal.

(i) The contracting officer and project officer should discuss the uncertainties and/or deficiencies that are included in the technical evaluation report for each proposal in the competitive range. Technical questions should be developed by the project officer and/or the technical evaluation panel and should be included in the technical evaluation report. The management and cost or price questions should be prepared by the contracting officer with assistance from the project officer and/or panel as required. The method of requesting offerors in the competitive range to submit the additional information will vary depending on the complexity of the questions, the extent of additional information requested, the time needed to analyze the responses, and the time frame for making the award. However, to the extent practicable, all questions and answers should be in writing. Each offeror in the competitive range shall be given an equitable period of time for preparation of responses to questions to the extent practicable. The questions should be developed so as to disclose the ambiguities, uncertainties, and deficiencies of the offeror (see FAR 15.610(c)).

315.610 Written or oral discussions.

(a) [Reserved]

(b) The contracting officer, with the support of personnel who evaluated the technical proposals, and, if necessary, cost analysts, attorneys, etc., must conduct written or oral discussions with all responsible offerors within the competitive range.

(c) [Reserved]

(d) Careful judgment must be exercised in determining the extent of discussions. In some cases, more than one round of discussions with all the offerors within the competitive range may be required. The time available, the expense and administrative limitations, and the complexity, size, and significance of the acquisition should all be considered in deciding on the type, duration, and depth of the discussions.

315.611 Best and final offers.

(a) [Reserved]

(b) (1) through (4) [Reserved].

(5) Notice that confirmation of a prior offer should be specifically stated as a final offer; and

(6) Notice that all revisions to former offers should be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, and should be fully documented.

(c) "Best and final" offers are subject to a final evaluation of price or cost and other salient factors by the contracting officer and project officer with assistance from a cost/price analyst, and an evaluation of technical factors by the technical evaluation panel, as necessary. Proposals may be technically rescored and reranked by the technical evaluation panel and a technical evaluation report prepared. To the extent practicable, the evaluation shall be performed by the same evaluators who reviewed the original proposals (see 315.670—).

(d) [Reserved]

(e) Of particular importance in the award of research or development contracts, including those with educational institutions, is the competence of key personnel in the specific field of science or technology involved, as reflected in the proposal. However, awards should not be made for research and development capabilities that exceed those needed for the successful performance of the particular project.

351.670 Negotiation with the selected source.

(a) After selection of the successful proposal, a limited negotiation with the selected offeror may be conducted if deemed necessary. However, no factor which could have any effect on the selection process may be introduced into the negotiation after the common cutoff date for receipt of best and final offers. The negotiation shall not in any way prejudice the competitive interests or right of the unsuccessful offerors. Negotiations with the selected offeror shall be restricted to definitizing the final agreement on terms and conditions; e.g., assuming none of these factors were involved in the selection process, negotiation could include such topics as payment provisions, patent rights, rights in data, property provisions, labor rates, indirect cost rates, and fees. Prior to conducting the limited negotiation, the contracting officer shall approve a written determination citing both the specific issues to be discussed and the rationale showing that the negotiations shall not have any effect on the selection process.

(b) Caution must be exercised by the contracting officer to insure that the negotiation is not used to change the requirement contained in the solicitation, nor to make any other changes which would impact on the source selection decision. Whenever a material change occurs in the requirements as a result of the negotiation, the competition must be reopened and all offerors submitting "best and final" offers must be given an opportunity to resubmit proposals based on the revised requirements. Whenever there is a question as to whether a change is material, the contracting officer should obtain the advice of technical personnel and legal counsel before reopening the competition. Significant changes in the offeror's cost proposal may also necessitate a reopening of competition if such changes alter the factors involved in the original selection process.

(c) Should negotiations beyond those specified in (a) above be required for any reason, discussions must be reopened with all offerors submitting "best and final" offers.

(d) Upon completion of the negotiation, the contracting officer should obtain a confirmation letter from the successful offeror which includes any revisions to the technical proposal, the agreed to price or cost, and, as applicable, a certificate of current cost or pricing data.

315.671 Post negotiation contract preparation and award.

(a) The contracting officer must perform the following actions after negotiations have been completed:

(1) Prepare the negotiation memorandum in accordance with 315.672;

(2) Prepare the contract containing all agreed to terms and conditions and clauses required by law or regulation;

(3) Include in the contract file the pertinent documents referenced in FAR 4.803; and

(4) Obtain the appropriate approval of proposed contract awards in accordance with Subpart 304.71 and contracting activity procedures.

(b) After receiving the required approvals, the contract should be transmitted to the prospective contractor for signature. The prospective contractor must be informed that the contract is not effective until accepted by the contracting officer.

(c) The contract shall not be issued until the finance office certifies that the funds are available for obligation.

315.672 Preparation of negotiation memorandum.

The negotiation memorandum or summary of negotiations is a complete record of all actions leading to award of a contract and is prepared by the contract negotiator. It should be in sufficient detail to explain and support the rationale judgments, and authorities upon which all actions were predicated. The memorandum will document the negotiation process and reflect the negotiator's actions, skills, and judgments in concluding a satisfactory agreement for the Government. Negotiation memorandums shall contain discussion of the following or a statement of nonapplicability; however, information already contained in the contract file need not be reiterated. A reference to the document which contains the required information is satisfactory.

(a) *Description of articles and services and period of performance.* A description of articles and services, quantity, unit price, total contract amount, and period of contract performance should be set forth (if Supplemental Agreement—show previous contract amount as revised, as well as information with respect to the period of performance).

(b) *Negotiation authority.* Cite the particular paragraph of 41 U.S.C. 252 permitting the negotiations, and an indication of the date of approval of the required D & F authorizing the negotiation. If a class D & F is cited, indicate the expiration date.

(c) *Acquisition planning.* Summarize any acquisition planning activities that have taken place. Include items such as meetings with program and staff personnel and the development of acquisition planning schedules.

(d) *Synopsis of proposed acquisition.* A statement as to whether the acquisition has or has not been publicized in accordance with FAR Subpart 5.2. A brief statement of explanation should be included with reference to the specific basis for exemption under the FAR, if applicable.

(e) *Contract type.* Provide sufficient detail to support the type of contractural instrument recommended for the acquisition and cite any required D & F. If the contract is a cost-sharing type, explain the essential cost-sharing features.

(f) *Extent of competition.* The extent to which competition was solicited and obtained must be discussed. The discussion shall include the date of solicitation, sources solicited, and solicitation results. If a late proposal was received, discuss whether or not the late proposal was evaluated and the rationale for the decision. If the acquisition is to be awarded on a noncompetitive basis, discuss the rationale for the decision. The "Justification for Noncompetitive Acquisition" must be prepared and approved in accordance with Subpart 315.71.

(g) *Technical evaluation.* Summarize the results presented in the technical evaluation report and delineate the basis of acceptability or unacceptability of the proposals from a technical standpoint. Discussion should be in nontechnical terms.

(h) *Business evaluation.* Summarize the results presented in the business report and delineate the basis for the determination of acceptability or unacceptability of the buimsess proposals.

(i) *Competitive range.* If the acquisition is competitive, describe how the zone of consideration or competitive range was determined and state the offerors who were included in the competitive range and the ones who were not. Explain why any offeror who submitted a technically acceptable proposal was not included in further discussions. Comment on any changes made in the offeror's proposal as a result of the discussions.

(j) *Cost breakdown and analysis.* Include a complete cost breakdown together with the negotiator's analysis of the estimated cost by individual cost elements. The negotiator's analysis should contain such information as:

(1) A comparison of cost factors proposed in the instant case with actual cost factors used in earlier contracts, using the same cost centers of the same supplier or cost centers or other sources having recent contracts for the same or similar item.

(2) Any pertinent Government-conducted audit of the proposed contractor's records of any pertinent cost advisory report (see FAR 15.805).

(3) Any pertinent technical evaluation inputs as to necessity, allocability and reasonableness of labor, material and other direct expenses.

(4) Any other pertinent information to fully support the basis for and rationale of the cost analysis.

(5) If the contract is an incentive type, discuss the rationale for the following:

(i) Cost-plus-award-fee.

(A) Base fee.

(B) Maximum fee.

(C) Award fee.

(ii) Cost-plus-incentive-fee.

(A) Minimum fee.

(B) Target fee.

(C) Maximum fee.

(D) Incentives relative to performance and/or delivery.

(E) Sharing ratios.

(iii) Fixed-price incentives.

(A) Target profit.

(B) Target price.

(C) Ceiling price.

(D) Sharing rations.

(E) Incentives relative to performance and/or delivery.

(6) A justification of the reasonableness of the proposed contractor's estimated profit or fixed fee, considering such factors as any competitive elements, established efficiency or performance, extent of the risk assumed by the proposed contractor, character of the proposed contractor's normal business, the extent of subcontracting in the instant case and the reasons, capital employed, and other factors as are appropriate, including type of organization.

(k) *Government-furnished property and Government-provided facilities.* With respect to Government-furnished material or Government-provided facilities, equipment, tooling, or other property, include the following: (A separate D & F is required for facilities construction.)

(1) Where no property is to be provided, a statement to that effect.

(2) Where property is to be provided, a full description, the estimated dollar value, the basis of price comparison with competitors, and the basis of rental charge, if rental is involved.

(3) Where the furnishing of any property or the extent has not been determined and is left open for future resolution, a detailed explanation.

(l) *Negotiations.* Include a statement as to the date and place negotiations were conducted, and identify members of both the Government and contractor negotiating teams by area of responsibility. Include negotiation details relative to the statement of work, terms and conditions, and special provisions. The results of cost or price negotiations must include the information required by FAR 31.109 and 15.808. In addition, if cost or pricing data was required to be submitted and certified, the negotiation record must also contain the extent to which the contracting officer relied upon the

factual cost or pricing data submitted and used in negotiating the cost or price.

(m) *Other considerations.* Include coverage of areas such as:

(1) Financial data with respect to a contractor's capacity and stability.

(2) Determination of contractor responsibility.

(3) Details as to why the method of payment, such as progress payment, advance payment, etc., is necessary. Also cite any required D & F's.

(4) Information with respect to obtaining of a certificate of current cost or pricing data.

(5) Other required special approvals, such as those referenced in 307.105–2.

(6) If the contract represents an extension of previous work, the status of funds and performance under the prior contract(s) should be reflected. Also, a determination should be made that the Government has obtained enough actual or potential value from the work previously performed to warrant continuation with the same contractor. (Project officer should furnish the necessary information.)

(7) If the contract was awarded on a competitive basis, state where the unsuccessful offerors' proposals are filed.

(8) State that equal opportunity provisions of the proposed contract have been explained to the contractor, and it is aware of its responsibilities. Also state whether or not a clearance is required.

(9) If the contract is for services, a statement must be made, in accordance with FAR 37.103 and 337.103, that the services to be acquired are nonpersonal in nature.

(n) *Terms and conditions.* Identify the general provisions and any special clauses and conditions that are contained in the contract, such as option arrangements, incremental funding, anticipatory costs, deviations from the standard clauses, etc. The basis and rationale for inclusion of any special terms and conditions must be stated and, where applicable, the document which granted approval for its use identified.

(o) *Recommendation.* A brief statement setting forth the recommendations for award.

(p) *Signature.* The memorandum must be signed by the contract negotiator who prepared the memorandum.

Subpart 315.8—Price Negotiation

315.805 Proposal analysis.

315.805–5 Field pricing support.

(a)(1) [Reserved]

(2) When some or all information sufficient to determine the reasonableness of the proposed cost or price is already available or can be obtained by phone from the cognizant audit agency, contracting officers may request less-than-complete field pricing support (specifying in the request the information needed) or may waive in writing the requirement for audit and field pricing support by documenting the file to indicate what information is to be used instead of the audit report and the field pricing report.

(b) [Reserved]

(c)(1) When initiating audit and field pricing support, the contracting officer shall do so by sending a request to the cognizant administrative contracting officer (ACO), with an information copy to the cognizant audit office. When field pricing support is not available, the contracting officer shall initiate an audit by sending, in accordance with agency procedures, two (2) copies of the request to the OIG Office of Audits' Regional Audit Director. In both cases, the contracting officer shall, in the request:

(i) Prescribe the extent of the support needed;

(ii) State the specific areas for which input is required;

(iii) Include the information necessary to perform the review (such as the offeror's proposal and the applicable portions of the solicitations, particularly those describing requirements and delivery schedules);

(iv) Provide the complete address of the location of the offeror's financial records that support the proposal;

(v) Identify the office having audit responsibility if other than an HHS Regional Audit Office; and

(vi) Specify a due date for receipt of a verbal report to be followed by a written audit report. (If the time available is not adequate to permit satisfactory coverage of the proposal, the auditor shall so advise the contracting officer and indicate the additional time needed.) Normally, the Office of Audits will need 30 days after receipt of the proposal for submission of oral results. However, the Office of Audits' ability to conduct reviews by the due date will be influenced by the OPDIV's ability to properly plan its acquisitions. If the Office of Audits requires additional time to conduct the review, the contracting officer has the option, at the time the auditor acknowledges receipt of the request, to accept the revised due date or cancel the request and use cost advisory services within the agency to satisfy the requirement. In such cases, the contracting officer shall immediately advise the OIG/OA/Regional Audit Director and the OIG/OA/Division of Audit Coordination (OIG/OA/DAC) of the revised due date or cancellation of the request.

(2) and (3) [Reserved].

(4) One copy of the audit request letter that was submitted to the Regional Audit Director and a complete copy of the contract price proposal shall be submitted to OIG/OA/DAC.

(5) Whenever, an audit review has been conducted by the Office of Audits, two (2) copies of the memorandum of negotiation shall be forwarded to OIG/OA/DAC by the contracting officer (see FAR 15.808(b)).

Subpart 315.9—Profit

315.900 Scope of subpart.

This subpart—

(a) and (b) [Reserved].

(c) Prescribes a structured approach for establishing the profit or fee portion of the Government prenegotiation objective in all contracts requiring cost analysis except as stated in 315.905–70(b). The profit analysis factors set forth at FAR 15.905 shall be used in all excepted contracts requiring cost analysis.

315.905–70 Structured approach.

(a) *General.* (1) The structured approach for determining profit or fee (hereafter referred to as profit) provides contracting officers with a technique that will ensure consideration of the relative value of the appropriate profit factors described in 315.905–71 in the establishment of a profit objective for the conduct of negotiations. The contracting officer's analysis of these profit factors is based on information available to him/her prior to negotiations. Such information is furnished in proposals, audit data, assessment reports, preaward surveys and the like. The structured approach also provides a basis for documentation of this objective, including an explanation of any significant departure from this objective in reaching an agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed acquisition.

(2) The negotiation process does not require agreement on either estimated cost elements or profit elements. The profit objective is a part of an overall negotiation objective which, as a going-in objective, bears a distinct relationship to the cost objective and any proposed sharing arrangement. Since profit is merely one of several interrelated variables, the Government negotiator generally should not complete the profit negotiation without simultaneously agreeing on the other variables. Specific

agreement on the exact weights or values of the individual profit factors is not required and should not be attempted.

(b) *Exceptions.* (1) The profit-analysis factors set forth at FAR 15.905 shall be used for establishing profit objectives under the following listed circumstances. Generally, it is expected that this method will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of the profit objective); however, factors within FAR 15.905 considered inapplicable to the acquisition will be excluded from the profit objective.

(i) Contracts not expected to exceed $100,000;

(ii) Architect-engineer contracts;

(iii) Management contracts for operation and/or maintenance of Government facilities;

(iv) Construction contracts;

(v) Contracts primarily requiring delivery of material supplies by subcontractors;

(vi) Termination settlements; and

(vii) Cost-plus-award-fee contracts (However, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement).

(2) Other exceptions may be made in the negotiation of contracts having unusual pricing situations. Such exceptions shall be justified in writing by the contracting officer in situations where the structured approach is determined to be unsuitable.

(c) *Limitation.* The maximum profit objective shall be the percentage allowed pursuant to statute or regulation (see FAR 15.903(d)).

(d) *Profit objective.* (1) A profit objective is that part of the estimated contract price objective or value which, in the judgment of the contracting officer, constitutes an appropriate amount of profit for the acquisition being considered. This objective should realistically reflect the total overall task to be performed and the requirements placed on the contractor.

(2) Development of a profit objective should not begin until the following actions have been accomplished:

(i) A thorough review of proposed contract work;

(ii) A review of all available knowledge regarding the contractor pursuant to FAR Subpart 9.1, including audit data, preaward survey reports and financial statements, as appropriate; and

(iii) An analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost.

315.905–71 Profit factors.

(a) The following factors shall be considered in all cases in which profit is to be negotiated. The weight ranges listed after each factor shall be used in all instances where the structured approach is used.

Profit factors	Weight ranges (percent)
Contractor effort:	
Material acquisition	1 to 5
Direct labor	4 to 15
Overhead	4 to 9
General management (G&A)	4 to 8
Other costs	1 to 5
Other factors:	
Cost risk	0 to 7
Investment	−2 to +2
Performance	−1 to +1
Socioeconomic programs	−.5 to +.5
Special situations	

(b) Under the structured approach, the contracting officer shall first measure "Contractor Effort" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the contracting officer. The amount calculated for the cost of money for facilities capital is not to be included for the computation of profit as part of the cost base. A complete discussion of how this cost is determined and how it will be applied and administered is set forth at Subpart 330.70.

(c) The suggested categories under "Contractor Effort" are for reference purposes only. Often individual proposals will be in a different format, but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(d) After computing a total dollar profit for "Contractor Effort," the contracting officer shall then calculate the specific profit dollars assigned for cost risk, investment, performance, socioeconomic programs, and special situations. This is accomplished by multiplying the total Government Cost Objective, exclusive of any cost of money for facilities capital, by the specific weight assigned to the elements within the "Other Factors" category. Form HHS–674, Structured Approach Profit/Fee Objective, should be used, as appropriate, to facilitate the calculation of this profit objective. Form HHS–674 is illustrated in 353.301–674.

(e) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as set forth in 315.905–72 and 315.905–73.

(f) The structured approach was designed for arriving at profit objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the structured approach can be used as a basis for arriving at profit objectives for nonprofit organizations. Therefore, the structured approach, as modified in paragraph (f)(2) below, shall be used to establish profit objectives for nonprofit organizations.

(1) For purposes of this section, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where profit is involved, an adjustment of up to 3 percentage points will be subtracted from the total profit objective percentage. In developing this adjustment, it will be necessary to consider the following factors:

(i) Tax position benefits;

(ii) Granting of financing through advance payments; and

(iii) Other pertinent factors which may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

315.905–72 Contractor effort.

(a) *General.* Contractor effort is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirement in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and material into the final service or product called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. A major consideration, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed, and the unusual demands of the contract, such as whether the project involves a new approach unrelated to existing technology and/or equipment or only refinements to these items. The

evaluation of this factor requires an anaylsis of the cost content of the proposed contract as follows:

(1) *Material acquisition.* (Subcontracted items, purchased parts, and other material.) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required subcontracted items, purchased parts, material or services. The contracting officer shall determine whether the contractor will obtain the items or services by routine order from readily available sources or by detailed subcontracts for which the prime contractor will be required to develop complex specifications. Consideration shall also be given to the managerial and technical efforts necessary for the prime contractor to select subcontractors and to perform subcontract administration functions. In application of this criterion, it should be recognized that the contribution of the prime contractor to its purchasing program may be substantial. Normally, the lowest unadjusted weight for direct material is 2 percent. A weighting of less than 2 percent would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor.

(2) *Direct Labor* (Professional, service, manufacturing and other labor). Analysis of the various labor categories of the cost content of the contract should include evaluation of the comparative quality and quantity of professional and semiprofessional talents, manufacturing and service skills, and experience to be employed. In evaluating professional and semiprofessional labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce talent needed in contrast to nonprofessional effort. The assessment should consider the contribution this talent will provide toward the achievement of contract objectives. Since nonprofessional labor is relatively plentiful and rather easily obtained by the contractor and is less critical to the successful performance of contract objectives, it cannot be weighted nearly as high as professional or semiprofessional labor. Service contract labor should be evaluated in a like manner by assigning higher weights to engineering or professional type skills and lower weights to semiprofessional or other type skills required for contract performance. Similarly, the variety of manufacturing and other categories of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, categories of labor (i.e., quality control, receiving and inspection, etc.) which do not fall within the definition for professional, service or manufacturing labor may be categorized as appropriate. However, the same evaluation considerations as outlined above will be applied.

(3) *Overhead and general management* (G&A). (i) Analysis of these overhead items of cost should include the evaluation of the makeup of these expenses and how much they contribute to contract performance. To the extent practicable, analysis should include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit considerations that they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses, such as utilities and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to these overhead expenses differs from the method used in assigning values of the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(ii) It is not necessary that the contractor's accounting system break down overhead expenses within the classifications of research overhead, other overhead pools, and general administrative expenses, unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system reflects only one overhead rate on all direct labor need not change its system (if CAS exempt) to correspond with the above classifications. The contracting officer, in an evaluation of such a contractor's overhead rate, could break out the applicable sections of the composite rate which could be classified as research overhead, other overhead pools, and general and administrative expenses, and follow the appropriate evaluation technique.

(iii) Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a contract for a new program for research or an item which is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward because many of the problems should have been solved. In any event, an evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses in connection with each acquisition action for substantially the same project with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, that weight assigned may be used for future acquisitions with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or the factors discussed in (iii) above are involved.

(b) *Other costs.* Analysis of this factor should include all other direct costs associated with contractor performance (e.g., travel and relocation, direct support, and consultants). Analysis of these items of cost should include:

(1) The significance of the cost of contract performance;

(2) Nature of the cost; and

(3) How much they contribute to contract performance. Normally, travel costs require minimal administrative effort by the contractor and, therefore, usually receive a weight no greater than 1 percent. Also, the contractor may designate individuals as "consultants" but in reality these individuals may be obtained by the contractor to supplement its workforce in the performance of routine duties required by contract. These costs would normally receive a minimum weight. However, there will be instances when the contractor may be required to locate and obtain the services of consultants having expertise in such fields as medicine or human services. In these instances, the contractor will be required to expend greater managerial and technical effort to obtain such services and, consequently, such costs should receive a much greater weight.

315.905–73 Other factors.

(a) *Contract cost risk.* The contract type employed basically determines the degree of cost risk assumed by the

contractor. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit should be less than where the contractor assumes all the risk. In developing the prenegotiation profit objective, the contracting officer will need to consider the type of contract anticipated to be negotiated and the contractor risk associated therewith when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This factor should be one of the most important in arriving at prenegotiation profit objectives.

(1) Evaluation of this risk requires a determination of:

(i) The degree of cost responsibility the contractor assumes;

(ii) The reliability of the cost estimates in relation to the task assumed; and

(iii) The complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, such risks on the part of the contractor as reputation, losing a commercial market, risk of losing potential profits in other fields, or any risk which falls on the contracting office such as the risk of not acquiring a satisfactory report, are not within the scope of this factor.

(2) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-a-fixed-fee contract requiring the contractor to use its best efforts to perform a task and a firm fixed-price contract for a service or a complex item. A cost-plus-a-fixed-fee contract would reflect a minimum assumption of cost responsibility, whereas a firm fixed-price contract would reflect a complete assumption of cost responsibility. Where proper contract selection has been made, the regard for risk by contract type would usually fall into the following percentage ranges:

Percent

Cost-reimbursement type contracts—0–3
Fixed-price type contracts—2–7

(3) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior experience assists the contractor in preparing reliable cost estimates on new acquisitions for similar related efforts. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(4) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(5) Contractors are likely to assume greater cost risk only if contracting officers objectively analyze the risk incident to proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed fee contract will not justify a reward for risk in excess of 0.5 percent, nor will a firm fixed-price contract justify a reward of less than the minimum in the structured approach. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges:

(i) Type of contract and percentage ranges for profit objectives developed by using the structured approach for research and development and manufacturing contracts:

Percent

Cost-plus-fixed fee—0 to 0.5
Cost-plus-incentive fee:
  With cost incentive only—1 to 2
  With multiple incentives—1.5 to 3
Fixed-price-incentive:
  With cost incentive only—2 to 4
  With multiple incentives—3 to 5
Prospective price redetermination—3 to 5
Firm fixed-price—5 to 7

(ii) Type of contract and percentage ranges for profit objectives developed by using the structured approach for service contracts:

Percent

Cost-plus-fixed fee—0 to 0.5
Cost-plus-incentive fee—1 to 2
Fixed-price incentive—2 to 3
Firm fixed-price—3 to 4

(6) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed-price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract cost responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive contract. In such a pricing environment, the contracting officer may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(7) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It could cause risk to increase or decrease in terms of both cost and performance. This consideration should be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation may, as a result, be below the range which would otherwise apply for the contract type being proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of contractor's risk.

(8) In making a contract cost risk evaluation in an acquisition action that involves definitization of a letter contract, unpriced change orders, and unpriced orders under BOA's, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances—not just the portion of costs incurred or percentage of work completed prior to definitization.

(9) Time and material and labor hour contracts will be considered to be cost-plus-a-fixed-fee contracts for the purpose of establishing profit weights unless otherwise exempt under 315.905–70(b) in the evaluation of the contractor's assumption of contract cost risk.

(b) *Investment.* HHS encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the

Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. The evaluation of this factor should include an analysis of the following:

(1) *Facilities* (Including equipment). To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities which significantly contribute to lower total contract costs should be provided with additional profit. On the other hand, contractors who rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit. Cases between the above examples should be evaluated on their merits with either positive or negative adjustments, as appropriate, in profit being made. However, where a highly facilitized contractor is to perform a contract which does not benefit from this facilitization or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted. When applicable, the prospective contractor's computation of facilities capital cost of money for pricing purposes under CAS 414 (see Subpart 330.70) can help the contracting officer identify the level of facilities investment to be employed in contract performance.

(2) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for advance payments and payments more frequent than monthly with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for a capital turn-over-rate on the contract which is less than the contractor's or the industry's normal capital turn-over rate.

(c) *Performance.* (Cost-control and other past accomplishments.) The contractor's past performance should be evaluated in such areas as quality of service or product, meeting performance schedules, efficiency in cost control (including need for and reasonableness of cost incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions, and management of subcontract programs. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit. Conversely a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit.

(d) *Federal socioeconomic programs.* This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of a contractor's successful participation in the Government sponsored programs such as small business, small disadvantaged business, labor surplus area, and energy conservation efforts. The contractor's policies and procedures which energetically support Government socioeconomic programs and achieve successful results should be given positive considerations. Conversely, failure or unwillingness on the part of the contractor to support Government socioeconomic programs should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(e) *Special situations.* (1) *Inventive and developmental contributions.* The extent and nature of contractor-initiated and financed independent development should be considered in developing the profit objective, provided that the contracting officer has made a determination that such effort will benefit the contract. The importance of the development in furthering health and human services purposes, the demonstrable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources should be weighed.

(2) *Unusual pricing agreements.* Occasionally, unusual contract pricing arrangements are made with the contractor wherein it agrees to cost ceilings, e.g., a ceiling on overhead rates for conditions other than those discussed at FAR 42.707. In such circumstances, the contractor should receive favorable consideration in developing the profit objective.

(3) *Negative factors.* Special situations need not be limited to those which only increase profit levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract (e.g., products or services with commercial application).

315.905–74 Facilities capital cost of money.

When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with the Facilities Capital Cost-of-Money Cost Principal. If the contractor does not propose this cost, a provision must be inserted in the contract that facilities capital cost of money is not an allowable cost (see Subpart 330.70).

Subpart 315.10—Preaward and Postaward Notifications, Protests, and Mistakes

315.1001 Notifications to offerors.

Once a contract action has progressed through the evaluation process, and even after the selection of a contractor, all queries as to the relative merits of the submitted proposals shall be courteously but firmly directed to the contracting officer. All other personnel will avoid any exchange of comments with offerors.

315.1002 Debriefing of unsuccessful offerors.

(a) Any HHS employee who receives either a written or oral request for a debriefing from an unsuccessful offeror shall immediately refer the request to the contracting officer. If the request is made orally, the contracting officer shall require that the request be made in writing. The contracting officer or his/her designee shall be present at all debriefings and shall review written debriefings prior to release.

(b) A debriefing is intended to: (1) Tell an unsuccessful offeror which areas of its proposal were judged to be weak and deficient and whether the weaknesses or deficiencies were factors in its not having been selected; and

(2) Identify the factors which were the basis for selection of the successful contractor. If the quality of the successful offeror's proposal to satisfy the mission requirement was the basis, the unsuccessful offeror should be so informed, and given a general comparison of significant areas, but not a point-by-point comparison of all the elements considered in the evaluation criteria. If the successful offeror was selected on the basis of cost, the unsuccessful offeror should be told that

was the case. If selection was based on other factors, they should be specified.

(c) [Reserved]

(d) If an unsuccessful offeror feels that its failure to obtain the award was not justified, it will rely, at least in part, on the information given in the debriefing to determine whether it should seek recourse. Accordingly, it is essential that a debriefing be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the unsuccessful offeror be absolutely factual and consistent with the findings of the contracting officer and the basis on which the award was made.

(e) In some cases, it may be necessary to arrange informal debriefings for an unsuccessful offeror's personnel by departmental technical evaluators. This determination will be made by, and meeting arrangements will be the responsibility of, the contracting officer.

(f) It is very important that all departmental personnel engaged in the evaluation and selection processes be aware of the policies and procedures in FAR Subpart 15.10 and this Subpart 315.10. Detailed and complete records of the acquisition will be maintained by key technical and contracting personnel in a manner which will facilitate either a written or an oral debriefing of any unsuccessful offeror.

315.1003 Protests against award.

See 314.407–8.

315.1004 Discovery of mistakes.

See 314.406 and 315.607.

Subpart 315.70—Requests for Contract

315.7000 Scope of subpart.

This subpart prescribes the format and contents of the request for contract and provides procedures for the preparation and submission of the request for contract document.

315.7001 General.

The program office's preparation of the request for contract (RFC) and submission to the contracting activity finalizes the presolicitation phase of the acquisition planning process and commences the solicitation phase. The RFC is the formal document which initiates the preparation of the request for proposals by the contracting activity and sets the acquisition process in motion. It represents the results of planning by the project officer and contract negotiator and contains much of the pertinent information necessary for the development of a sound, comprehensive RFP.

315.7002 Procedures.

(a) Requests for contract are required to be prepared by the program office for all proposed negotiated acquisitions estimated to exceed $10,000.

(b) The program office should submit the RFC as early as possible to the contracting activity. The proposed period of time between the date of submission of the RFC and the date of contract award (or date of delivery of the product, service, study, etc.) should be determined by the project officer, contract negotiator, and, if necessary, the contracting officer. The amount of leadtime should be determined on a case-by-case basis and should reflect the characteristics and complexities of the individual acquisition. When lengthy and/or involved clearances or special approval are required, for example, they must be taken into account when the leadtime is determined. If a formal acquisition planning document is used, (see Subpart 307.1), the RFC should be submitted in accordance with the timetable set forth in that document. OPDIV, agency, and regional office contracting activities may prescribe specific leadtimes for submission of RFC's in their implementation of this subpart.

315.7003 Responsibilities.

It is the responsibility of the project officer to prepare the RFC so that it complies with the requirements of this subpart and any OPDIV, agency, or regional office guidance issued in accordance with this subpart. Prior to the submission of the RFC to the contracting activity, the head of the program office sponsoring the project shall review the RFC to ensure that all required information is provided in the prescribed format and a technical review of the statement of work has been made. The level and extent of the technical review is to be commensurate with the estimated cost, importance, and complexity of the proposed acquisition, and must be thorough enough to ensure that vague and ambiguous language is eliminated, the statement of work is structured by phases or tasks, if appropriate, and methods are available for assessing the contractor's technical, cost, and delivery performances.

315.7004 Transmittal.

The RFC will be conveyed to the contracting activity by use of a covering memorandum or other form of transmittal. The transmittal document must be signed by the head of the sponsoring program office and include both a statement attesting to the conclusiveness of the review discussed in the preceding section and a list identifying all attachments to the RFC. A standard format for the transmittal document may be prescribed by the OPDIV, agency, or regional office contracting activity.

315.7005 Format and content.

The Department does not prescribe a standard format for the RFC document, but recommends the use of a format similar to what is provided in this section. The subject areas addressed in paragraphs (a) and (b) must be included in every RFC document, whereas the areas addressed in paragraph (c) need only be included if applicable. An OPDIV, agency, or regional office contracting activity may prescribe a standard format for the RFC document and may include additional subject areas that are pertinent to that activity's needs. Some of the information to be furnished in the RFC document may be repetitive of that found in the acquisition planning document. If this information has not changed since the development of the acquisition planning document, the RFC document may either restate the information as it appears in the acquisition planning document or cross reference the applicable portion where the information appears.

(a) The RFC document must contain the following:

(1) *Purpose of contract.* A brief, general description of requirements, including the citation of the legislation which authorizes the program or project, is to be provided, along with a statement as to the intended purpose/use of the proposed contract.

(2) *Background and need.* The background history and necessity for the proposed contract are to be described. This section is to include prior, present, and planned efforts by the program office in the same or related areas, and a description of efforts by other departmental activities and Federal agencies in the same or related program areas, if known. In addition, specific project information such as the relevance or contribution to overall program objectives, reasons for the need, priority, and project overlap are to be provided.

(3) *Period of performance.* The number of months (or other time period) required for total performance, and, if applicable, for each phase of work indicated in the statement of work, is to be specified. The program office must indicate the proposed starting date and the required date of delivery for each deliverable.

(4) *Estimated cost and fund citation.* The project officer's estimate of the total cost of the proposed contract, and, if

applicable, the estimate for each phase indicated in the statement of work, is to be provided. The project officer must provide a cost breakdown of all contributing cost factors, to include an estimate of the technical staff hours, direct materials, subcontracting, travel, etc. The project officer may consult with contracting and cost advisory personnel in developing this information. This section must include the certification of funds availability for the particular proposed acquisition, along with the appropriation and accounting information citations. When funds are not currently available but are anticipated, a statement indicating that the financial plan includes provision for the funds for the proposed acquisition but the funds are not yet available for obligation shall be included in lieu of the certification of funds availability. (Contracts cannot be awarded unless funds are available, but see FAR 32.703–2.)

(5) *Reference material.* A list, by title and description, of study reports, plans, drawings, and other data to be made available to prospective offerors for use in preparation of proposals and/or the contractor for use in performance of the contract is to be provided. The project officer must indicate whether this material is currently available or when it will be available.

(6) *Technical evaluation criteria and instructions.* The project officer is to include the technical evaluation criteria, which have been developed based on the requirements of the specific project, and any instructions and information which will assist in the preparation of prospective offerors' technical proposals. For example, critical areas discussed in the statement of work and the relative order of importance and weights assigned to each of these areas for technical evaluation purposes must be identified. These areas may include understanding of the problem, technical approach, experience, personnel, facilities, etc.

(7) *Sources for solicitation.* The project officer is to develop and include a list of known potential sources by name and mailing address. The project officer is encouraged to use trade and professional journals and publications to identify new prospective sources to supplement the list of known sources. Efforts to identify set-aside possibilities, i.e., small, disadvantaged, and labor surplus areas, and women-owned businesses, must be explained.

(8) *Special approvals, clearances, and requirements.* All special approvals, clearances, and requirements pertinent to the proposed acquisition are to be listed in this section. Copies of the actual documents are to be attached to the RFC. If the approval, clearance, or requirement has been requested and is being processed, a footnote to this effect, including all pertinent details, must be included in this section. A list of Government-wide and Department imposed approvals, clearances, and requirements is set forth in 307.105–2. Comprehensive checklists of these and any OPDIV, agency, regional office, etc. special approvals, clearances, and requirements shall be provided for reference purposes to program offices by the servicing contracting activity.

(9) *Identification and disposition of data.* The project officer must identify the data expected to be generated by the acquisition and specify the data to be delivered to the Department (see 315.7005(b)(2)) and that to be retained by the contractor. The project officer must also include information relative to the use, maintenance, disclosure, and disposition of data. The project officer must include a statement as to whether or not another acquisition, based upon the data generated by the proposed acquisition, is anticipated. The project officer must also include a statement indicating whether the proposed acquisition is or is not subject to the Privacy Act (see FAR Subpart 24.1 and Subpart 324.1).

(10) *Project officer and alternate.* The project officer's name, title, organization, mailing address, and telephone number are to be provided in this section, along with the same data for the project officer's alternate. In addition, a statement that the project officer has completed the Department's project officer training course is to be provided (see 307.170).

(b) The following must be submitted with every RFC but are to be prepared as separate attachments so they may be readily adopted into the request for proposal format:

(1) *Statement of work or specification.* The statement of work describes the requirements to be performed and may describe the methods to be used (see 307.105–3 and FAR 35.005 for a detailed explanation). A specification is used in lieu of a statement of work when a clear and accurate description of the technical requirements for a product, material, or service can be provided along with the procedure to determine that the requirements have been met. It is essential that a complete and comprehensive statement of work or specification be provided by the project officer.

(2) *Schedule of deliverables or reporting requirements.* The project officer must specifically describe what is to be delivered and when it is to be delivered to ensure proper contract monitoring. Usually, technical and financial progress reports and the final report are prescribed in this section. These reports should be tailored to the instant acquisition and should avoid unnecessary and burdensome reporting requirements.

(c) The following may not be applicable to all RFC's but must be included as attachments whenever any do apply:

(1) *Government property.* The project officer must identify, as referenced in the statement of work, the types, individual items, and quantities of Government property to be furnished to or allowed to be acquired by, the resultant contractor, if known. The project officer must specify when the Government property is to be made available to the resultant contractor.

(2) *Special terms and conditions.* The project officer may suggest inclusion of any special terms and conditions applicable to the proposed acquisition not already covered in the statement of work or the applicable contract general provisions.

(3) *Justification for noncompetitive acquisition.* If the proposed acquisition is to be noncompetitive, a justification, prepared in accordance with the format in 315.7105 and citing the applicable criteria in 315.7103, must be submitted as an attachment to the RFC.

(4) *Justification for acceptance of an unsolicited proposal.* When an RFC is being prepared as a result of an unsolicited proposal, a justification, prepared in accordance with 315.507(d), must be submitted as an attachment to the RFC. The justification for acceptance of an unsolicited proposal is used in place of the justification for noncompetitive acquisition.

(5) *Privacy Act "system notice."* When the project officer has determined that the requirements of the Privacy Act are applicable to the proposed acquisition, a copy of the "system notice" must be attached to the RFC (see 324.103(d)).

315.7006 Review.

Upon receipt of the RFC, the contracting activity should review the contents to ensure that all pertinent information has been provided by the program office. If pertinent information is missing or if there are discrepancies in previously agreed upon information, such as significant alterations in the statement of work, the contracting activity should obtain or clarify the information so that the acquisition schedule is met. If the program office delays furnishing the information or

clarification, the acquisition schedule may have to be changed. When this circumstance arises, the contracting activity should notify the head of the sponsoring program office of the problem, in writing, of the possible slippage in the acquisition schedule, and the need for an expeditious remedy. If the head of the sponsoring program office is not responsive to the request for expediency, the matter should be referred to higher management authorities for resolution.

Subpart 315.71—Noncompetitive Acquisitions

315.7100 Scope of subpart.

This subpart sets forth policies and procedures applicable to all noncompetitive acquisitions. It describes the criteria for use in determining whether an acquisition may be made noncompetitively, describes the justification documents required, and prescribes review and approval requirements.

315.7101 Policy.

(a) All negotiated acquisitions are to be conducted competitively, as required by FAR 15.105, unless there are compelling and convincing reasons and/or circumstances which justify a noncompetitive acquisition. When a proposed acquisition appears to be noncompetitive, that is, only one source has been identified, the contracting activity is responsible for ensuring that competition is definitely not feasible, and that positive actions are taken to avoid the need for subsequent or continuing noncompetitive acquisitions. These actions should include an analysis of the reasons and/or circumstances leading to the determination of why the noncompetitive acquisition has resulted, and what steps can be initiated to preclude noncompetitive acquisitions in the future.

(b) A noncompetitive acquisition may also result from the submission of an unsolicited proposal. In this circumstance, the responsible program office may recommend that a noncompetitive acquisition be made to the submitting organization or individual to perform work or services. This recommendation must be in writing and prepared in the "Justification for Acceptance of Unsolicited Proposal" format, as required by 315.507(d), setting forth the information stated in FAR 15.506–2 and 15.507(b). The "Justification for Acceptance of Unsolicited Proposal" is used in place of the "Justification for Noncompetitive Acquisition." Negotiations with a source that has submitted an acceptable unsolicited proposal shall not be initiated until approval is obtained in accordance with this subpart.

315.7102 Exceptions.

The provisions of this subpart apply to all negotiated acquisitions except:

(a) Acquisitions of $500 or less (see FAR 13.106(a)(1));

(b) Acquisitions of professional services; e.g., for physician, veterinarian, dentist, or legal services negotiated under the authority of 41 U.S.C. 252(c)(4), or where the foregoing kinds of services are for $10,000 or less and are negotiated under 41 U.S.C. 252(c)(3);

(c) Acquisition of architect-engineer services (see FAR Subpart 36.6);

(d) Acquisitions of utility services where the services are available from only one source; and

(e) Acquisitions from or through other Federal Government agencies; e.g., interagency agreements, and contracts with the Small Business Administration pursuant to section 8(a) of the Small Business Act.

315.7103 Criteria.

The criteria provided below are to be used in determining whether a proposed noncompetitive acquisition is justifiable. The critical question to be answered in each justification is why the opportunity to meet an acquisition requirement cannot be made available to more than one source. It is critical to the justification of a noncompetitive acquisition that reasonable, informed opinions, which are supported by available facts, be provided. Each of the criteria is illustrative of possible reasons. The more facts that are offered and the more knowledgeable the opinions about the marketplace are, the greater is the support to conclude that a noncompetitive acquisition is justified. If the contracting officer or the approving official concludes that the support offered to justify a noncompetitive acquisition is not convincing, or where there is some unresolved doubt, a sources sought synopsis should be issued to test the marketplace. (The term "sources sought synopsis," as used in this subpart, means the type of synopsis specified in 305.205(a). When the requirement is for other than research and development, the notice in 305.205(a) should be appropriately modified to describe the specific type of service or item to be acquired. The sources sought synopsis does not permit potential sources to request solicitations and, therefore, is merely an opportunity for the marketplace to indicate its interest in submitting bids, offers, or quotations for a future acquisition.) If there is only one source identified as a result of the sources sought synopsis, this data may be used to support a justification for noncompetitive acquisition. As each justification for noncompetitive acquisition is reviewed against the following criteria, the reviewer should ask: why the acquisition cannot be competed, are there sufficient grounds for excluding all other actual or potential offerors, what action can be taken to obtain competition in the instant procurement, and what action is needed to avoid the need for a subsequent or a continuing noncompetitive acquisition? Each applicable criterion cited below should be addressed in the justification, and specific rationale supporting each criterion must be provided.

(a) There is only one source in existence which can perform the contract requirements. The existence of one source for the purposes of this regulation should be a matter of fact, and not a matter dependent upon the relative and limited knowledge of sources known by the project and contracting officers. This criterion may not be used to justify a noncompetitive acquisition prior to testing the marketplace by issuing a sources sought synopsis. If no new sources submit responses to the sources sought synopsis, this data may be used to support a justification for noncompetitive acquisition.

(b) One source controls copyrights, patent rights, trade secrets, technical data, secret processes, or other proprietary data which are essential to the performance of the contract requirements; the source refuses to license or otherwise make the foregoing data available to other sources; and the requirement cannot be revised to allow other sources to compete who do not have access to the foregoing data. Factual information should be provided to support the use of this criterion, such as the citation of copyrights, exactly what is covered by the copyright or other data which is necessary to the contract performance, and why the requirement cannot be revised to permit competition. The mere existence of the rights does not in and of itself justify a noncompetitive acquisition. It must be shown that the Government cannot meet its requirement(s) without the use of the proprietary data. Any doubts should be resolved by summarizing the requirement and issuing a sources sought synopsis. If no new sources submit responses to the sources sought synopsis, this data may be used to support a justification for noncompetitive acquisition.

Note.—When this criterion is to be used, the contracting officer is required to obtain legal advice from OGC–BAL.

(c) One source or individual has a truly unique idea, approach, or equipment which has no like or equal, and this represents the only known item which can meet the Government's needs. (Unsolicited proposals are excluded from the provisions of this paragraph and shall be processed in accordance with FAR Subpart 15.5 and Subpart 315.5). Except in very rare cases, the fact that a proposer submits a proposal containing a unique idea or approach does not, in itself, justify a noncompetitive acquisition. Mere claims of uniqueness must not be cited in justifications to deviate from the competitive process. There may be other potential sources with equally suitable approaches or ideas which could accomplish the same end results. Except in cases which are convincingly supported by a panel opinion or a consensus of experts who are very familiar with the sources available in the marketplace, the opinion of uniqueness should be tested. The claim that the unique item is the only one which can meet the Government's needs should be based on the objective requirements of the Government, not the personal preferences of the originator. When a test of the claim of uniqueness is appropriate, the project officer should draft a description of the program requirement that does not compromise the unique idea or proprietary data of the proposer, and the contracting activity shall issue a sources sought synopsis. If no new sources submit responses to the sources sought synopsis, this data may be used to support a justification for noncompetitive acquisition.

(d) A specific item of equipment must be obtained as part of an activity's program responsibility to test and evaluate certain kinds and types of products. This criterion is limited to testing and evaluation purposes only and may not be used for initial outfitting or repetitive acquisitions. Project officers should support the use of this criterion with citations from their agency's legislation and the technical rationale for the item or equipment required.

(e) Only one source has complex or specialized physical facilities and/or equipment which, by reason of exclusive use, access or ownership, or by reason of clear superiority to facilities and equipment available to other sources, is capable of adequately meeting the technical requirements of the proposed acquisition. It must be shown that the success of the proposed acquisition is critically dependent upon the use of the facilities and equipment of this one source. Specific details should be provided as to why the facilities and/or equipment are mandatory for the contract performance, and why the facilities and/or equipment of others cannot meet the contract requirements. This criterion should not be used to justify a noncompetitive acquisition without first defining what equipment and/or facilities are needed, and by issuing a sources sought synopsis asking for sources with comparable equipment and/or facilities. If no new sources submit responses to the sources sought synopsis, this data may be used to support a justification for noncompetitive acquisition.

(f) Government-owned facilities which are essential to the performance of the contract are available to only one source. Efforts should be made to determine from the cognizant Government agency whether the Government-owned facilities can be made available to more than one source. If this is not possible, then a noncompetitive acquisition may be justified.

(g) Full and free competition is precluded because of geographic, socio-economic, or epidemiologic considerations necessarily associated with the acquisition. This criterion is intended to recognize certain limits to achieving full and free competition which sometimes follow from certain program legislation and special program requirements. This criterion may not be used in the absence of these established limits, and may be used only when it can be shown that there is only one source which can perform the particular acquisition.

(h) The required services must be acquired from a certain State, interstate, or local government unit, or from a nonprofit organization comprised of officers or representatives of these governmental units, and the organization or unit is unique in its ability to meet the contract requirements. This criterion is intended to recognize that, when dealing with governmental entities or their representatives, there are certain cases when only one entity is available to perform, and/or has a unique ability to accomplish, the work. This criterion should not be used to obtain supplies or services which are or can be provided from the commercial marketplace. Where there is more than one unit or organization which can meet the contract requirements, a noncompetitive acquisition cannot be justified, unless a Federal or State statute dictates the source. The fact that the governmental units or other nonprofit organizations may offer a lower price or agree to cost share is not adequate reason to justify a noncompetitive acquisition.

(i) Time is of the essence and only one known source can meet the Government's needs within the required time frame, and/or time will not permit the testing of a product offered by a source, other than a sole source, to meet the delivery schedule. However, the recognized extreme of public exigency in FAR 15.202 is not to be taken lightly. Public exigency, or other reasons causing situations where time is of the essence, may not be used to justify a noncompetitive acquisition without first showing that a limited competition using abbreviated procedures is impossible. If a limited competition is impossible, it must be shown that the recommended contractor possesses the unique capability to perform the required work on time to the exclusion of all other firms. The considerable latitude of the contracting officer to determine the method best suited to satisfy the urgent need is limited by the need to try and achieve a limited competition, if at all possible, and, if not, to determine that the proposed contractor is uniquely able to meet the Government's requirements in time.

(j) There is existing equipment which, for reasons of compatibility and interchangeability, requires an item which is manufactured only by one source. This criterion is for use in acquisitions where a particular brand name item is required, and an "or equal" will not meet the Government's requirements. This criterion may not be used when there are other manufacturers available which may be able to produce acceptable items even though their products might require some adjustments and modifications. These other manufacturers must be given the opportunity to compete.

(k) The segments of the project are so intertwined that it is impossible to successfully accomplish the project objectives if all segments are not acquired from the same contractor (see 315.7108). This criterion is intended for use under research and development acquisition and the acquisition of studies. It is only to be used when there is a necessity to acquire the total package in order to successfully complete the project. This criterion cannot be used when segments of the project can be completed separately by different contractors. The possibility that additional work may be done more conveniently or even at less expense by

the original contractor is not sufficient reason to justify a noncompetitive acquisition.

315.7104 Procedures.

(a) The program office should discuss prospective noncompetitive acquisition requests with their supporting contracting activity as early as possible during the acquisition planning stage (see FAR Subpart 7.1 and Subpart 307.1), preferably before submitting the requisition or request for contract. The discussions may resolve uncertainties, provide program offices with names of other sources, allow proper scheduling of the acquisition, and avoid delays which might otherwise occur should it be determined that a noncompetitive acquisition is not justified.

(b) When a program office desires to obtain certain goods or services by contract without competition, it shall, at the time of forwarding the request for contract, furnish the contracting activity a "Justification for Noncompetitive Acquisition" prepared in accordance with this subpart. All justifications shall be submitted initially to the contracting officer.

(c) The contracting officer who receives a justification for processing shall ascertain whether the document is complete, shall request advice from pricing, audit, legal, and other staff offices as appropriate, and shall forward the justification, including his or her concurrence or nonconcurrence, to the appropriate approving official. When the contracting officer does not concur with the justification, a written explanation setting forth the reasons must be provided the approving official. If the noncompetitive acquisition is disapproved by the approving official, the contracting officer shall promptly notify the concerned program office.

(d) All required approvals shall be obtained prior to issuing a solicitation to, or commencement of contract negotiations with, the proposed contractor. Preliminary arrangements or agreements with the proposed contractor made by someone other than the contracting officer will have no effect or influence on the rationale to support a noncompetitive acquisition.

(e) It is the responsibility of the approving official to determine whether a contract may properly be awarded without competition. The program office and project officer are responsible for furnishing the contracting officer and approving official with pertinent factual information and opinions necessary to make such determinations. Other staff offices shall advise the contracting officer and approving official as requested.

315.7105 Format for the Justification for Noncompetitive Acquisition.

(a) The format for the justification for noncompetitive acquisition in excess of $10,000 will be a separate, self-contained document. Justifications for noncompetitive acquisitions of $10,000 or less may be in the form of a paragraph or paragraphs contained in the requisition or request for contract.

(b) Justifications for noncompetitive acquisition, whether over or under $10,000, shall fully express what is to be acquired and the reasons why the requirement should not be competed. Justifications must offer reasons which go beyond inconvenience and must explain why it is impossible to obtain competition. The justification will be documented only with information that is based on facts rather than untested and unsubstantiated conclusions or opinions. Documentation in the justification should be sufficient to permit an individual with technical competence in the area to follow the rationale.

(c) Justifications for noncompetitive acquisitions in excess of $10,000 will be presented in two parts.

(1) Part I will contain background information about the program and a description of the acquisition. The following information should be included:

(i) Date.

(ii) Agency, program office, and project officer (name, address, and telephone number).

(iii) Project identification (Program legislation including citations or other internal program identification data such as title, contract number, etc.)

(iv) Descriptive title of the project. (Attach a full description of the contract requirement. This may be a specification, purchase description, or statement of work.

If the acquisition, as contemplated at the outset, is a "whole project buy" (see 315.7108) and is expected to exceed $100,000, an acquisition plan, as required by Subpart 307.1, shall be prepared by the project officer and attached to the justification. The description of the whole project buy must include what is being acquired, the estimated cost of the whole and component parts, phases, options, continuations, etc., and the periods of time involved. The description is critical to the approving official's understanding of what he/she is being asked to approve, and for subsequent use by the contracting or project offices.)

(v) Explain whether the acquisition is an entity in itself, whether it is one in a series, or part of a related group of acquisitions.

(vi) Proposed contractor (name and address).

(2) Part II will include the facts and reasons to justify a noncompetitive acquisition.

(i) Part II will begin with the following statement:

I recommend that this acquisition be noncompetitively negotiated with _____ (name of proposed contractor) in the amount of _____(Amount) for the following reasons:

(ii) Immediately following the preceding statement, each of the applicable criteria listed in 315.7103 must be addressed, and specific support for each criterion's use must be included.

(iii) At the end of Part II, signatory lines should be provided as follows:

Recommended (Project Officer) _____
Date _____

Concur (Project Officer's Immediate Supervisor) _____
Date _____

Concur (Contracting Officer) _____
Date _____

Approved (Approving Official) _____
Date _____

315.7106 Review and approval.

Justifications for noncompetitive acquisitions shall be processed for review and approval as follows:

(a) For small purchases over $500, but not over $10,000, the justification, which must address the applicable criteria in 315.7103, may be in the form of a paragraph or paragraphs contained in the requisition or request for contract. The contracting officer is authorized to review and approve (or disapprove) the justification.

(b) For acquisitions over $10,000, but not over $99,999, the justification shall be submitted to the contracting officer for review. The contracting officer will either concur or nonconcur, and forward the justification to the principal official responsible for acquisition for approval. (When the contracting officer and principal official responsible for acquisition are the same individual, the approval will be made by the Noncompetitive Review Board or by the principal OPDIV or regional official responsible for administration (see (c), below)). The principal official responsible for acquisition may redelegate justification approval for acquisitions between $10,000 and $25,000 to the chief of the contracting office, provided that individual is at least one level above the contracting officer who will sign the contract.

(c) All justifications for noncompetitive acquisitions $100,000 or over shall be submitted through the

contracting officer to the Noncompetitive Review Board (see 315.7107) for approval, unless the OPDIV head or regional director has determined that the activity will not use a Noncompetitive Review Board. If the Board is not used, the justifications for $100,000 and over shall be submitted through the contracting officer for approval by the principal OPDIV or regional official responsible for administration.

(d) Each OPDIV or regional office may prescribe Board reviews for noncompetitive acquisitions under $100,000 if reduced levels of review would be more consistent with the dollar ranges of contracts awarded.

315.7107 Noncompetitive Review Board.

(a) The Noncompetitive Review Board, referred to as the "Board", is responsible for comparing the reasons given in justifications for noncompetitive acquisitions against the criteria cited in 315.7103 and for making judgments as to the applicability of the policy requirements for competition to specific acquisitions. If it is determined by the OPDIV head or regional director to use a Board, the Board shall be established and maintained in compliance with this section.

(b) Boards shall be established by the OPDIV head or regional director and be directly responsible to that individual. The OPDIV heads are responsible for establishing Boards as needed in their OPDIVs and respective elements. The Assistant Secretary for Management and Budget is responsible for establishing a Board in the Office of the Secretary. The regional directors are responsible for establishing Boards in their regional offices. The number and geographical location of Boards will be decided by the OPDIV heads based upon the volume of noncompetitive acquisitions to be reviewed and the need for timely decisions, provided that the composition of the Boards meet the requirements of the following paragraph.

(c) The OPDIV head or regional director, as appropriate, shall appoint the Board members. The Board shall be established and delegated the authority by the appointing official to represent and make decisions on behalf of the appointing official with respect to approving or disapproving certain justifications for noncompetitive acquisitions. The Board shall be comprised of five members, or their alternates, as specified below:

(1) *Chairperson.* There will be a permanent chairperson on the Board who shall be the principal official responsible for administration. The chairperson should represent the appointing official and be able to review actions submitted to the Board from an activity-wide point of view. The chairperson will designate which of the alternate members will attend individual Board meetings and will assure that the proceedings of each meeting are recorded.

(2) *Acquisition official.* There will be a key acquisition official appointed to the Board. This official will be the principal official responsible for acquisition. Where the activity has more than one contracting office, the principal officials responsible for acquisition of the respective contracting offices will be designated alternate members. In this case, a principal official responsible for acquisition will serve on the Board to review proposed noncompetitive acquisitions expected to be assigned to his/her office for acquisition action. Whenever the principal official responsible for acquisition and the contracting officer are the same individual, the official one administrative level above the principal official responsible for acquisition shall represent the contracting office in the Board actions.

(3) *Program officials.* Two representatives will be selected from officials at the activity level which have responsibility for program policy or operations, program planning and evaluation, scientific affairs, research, etc., and/or from the program divisions of the activity that sponsor contract projects. The members should be selected on the basis of their knowledge of a program as a whole, but should not ordinarily be involved in the initiation and management of particular or single projects.

(4) *Contracting officer.* The contracting officer responsible for the acquisition to which the justification for noncompetitive acquisition relates shall serve as a nonvoting member. When Board meetings consider justifications for acquisition involving more than one contracting officer, each contracting officer may attend and offer opinions on the justification pertinent to him/her. As a further note, the project officer, that individual in the program office who originated the justification and who will be responsible for the project management of the contract project, cannot be a member or alternate on the Board. However, the project officer may be invited by the chairperson to the Board meeting during which the justification will be discussed. The project officer should be prepared to answer questions raised by the Board.

(d) Meetings of the Board shall be conducted as follows:

(1) If the estimated amount of the acquisition is more than $500,000, a formal meeting of the Board is required. If the estimated amount of the acquisition is $500,000 or less, a formal meeting of the Board need not be held if the chairperson, acquisition official, and contracting officer concur that a noncompetitive acquisition is justified. If any one of these three persons is of the opinion that a noncompetitive acquisition is not justified, a formal meeting must be held. Formal meetings will include all appropriate members and will be convened by the chairperson. No action shall be considered by the Board unless the chairperson, acquisition official, and two program officials are present. Decisions of the Board will be by majority rule. In case of a tie vote, the action will be resolved in favor of seeking competition.

(2) The chairperson may seek independent counsel from any source inside or outside of the activity if he/she feels that additional advice is necessary for the Board to reach a sound decision.

(3) The Board shall maintain a written record of the justifications reviewed and the decision made on each. If a justification is approved, only Board approval need be indicated. If a justification is disapproved, the reasons should be stated in writing and forwarded to the originator of the justification. The written decision of the Board should be made a part of the contract file.

315.7108 Whole project buys.

(a) "Whole project buy" is a term used to describe an acquisition concept whereby a project consists of distinctly identifiable segments or phases which are so interdependent that they must be viewed as a total package and must be acquired from a single contractor to ensure consistency and to meet the overall project objectives. This concept is only to be used when it is necessary to acquire the whole project or total package from a single contractor in order to complete the project successfully; that is, the identifiable segments or phases cannot be separated and acquired individually from other than the single contractor without jeopardizing the successful completion of the project. The whole project buy concept serves as an excellent management tool in that it provides the Board or approving official with detailed and interrelated aspects of the proposed acquisition action of a complex project. It also serves to motivate program and contracting personnel to focus their attention on the various aspects of the

project and to plan and prepare an indepth analysis encompassing the total project and its component parts. This should result in the development of an acquisition plan which identifies all pertinent information concerning the segments or phases of a project, while providing a comprehensive overview of the total project.

(b) Any whole project buy which exceeds $100,000 in the aggregate and which contemplates any noncompetitive acquisition actions of any dollar value at any time during the project life shall be submitted to the Board or approving official for approval. This requirement applies even if the first of a series of related acquisitions in a whole project buy is less than $100,000. It applies to projects with several related acquisition actions where the first part of the project is either competitively or noncompetitively awarded, and there are to be subsesquent noncompetitive acquisitions with the original contractor. This requirement applies to all acquisitions regardless of whether the noncompetitive acquisition is called a renewal, follow-on, continuation, extension, etc., is to be effected by means of a contract modification, or is a new start.

(c) Justifications of whole project buys submitted to the Board or approving official shall fully describe what the complete requirement is, how the requirement will be divided into acquisition actions, the total estimated cost of the whole project and each individual acquisition action, the total period of time for the whole project and each acquisition action, and whether all or what parts of the whole project will be acquired noncompetitively. For projects where an end point cannot be forecast with certainty, as in the case of basic research, the whole project buy will be the circumscribed amount of time which the program office presently intends to continue the effort.

(d) If the Board or approving official clearly approves the noncompetitive acquisition action(s) at the outset of a whole project buy, and the whole project buy results in an original contract followed by either a noncompetitive new contract, or noncompetitive modification to the original contract for work, dollars, and time approved by the Board or approving official, these subsequent noncompetitive acquisition actions will not have to be resubmitted for approval. However, whole project buys may not be approved in excess of three (3) years, and approval is limited to that explicitly contained in the justification. If a part of the whole project buy is not included in the justification or there are changes in the project which would amend the whole project buy as approved, the excluded part and/or changes will require a separate review and approval. If there are questions as to what was approved, the questionable material shall be submitted to the Board or approving official for clarification.

(e) Once a whole project buy has been approved at an appropriate level, any RFP issued for the acquisition shall contain a notification to all potential offerors that the RFP is for the first phase of a whole project buy, the balance of which is projected to be awarded noncompetitively to the successful offeror. It shall also contain as complete a description as possible of the project so that potential offerors may gain an understanding of the full scope of the project. Finally, the notification shall also state that the Government reserves the right to conduct competitive acquisitions for the subsequent phases if this becomes possible.

PART 316—TYPES OF CONTRACTS

Subpart 316.3—Cost-Reimbursement Contracts

Sec.
316.301 General.
316.301–3 Limitations.
316.303 Cost-sharing contracts.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.601 Time-and-materials contracts.
316.603 Letter contracts.
316.603–2 Application.
316.603–3 Limitations.
316.603–70 Information to be furnished when requesting authority to issue a letter contract.
316.603–71 Approval for modifications to letter contracts.

Subpart 316.7—Agreements

316.702 Basic agreements.
316.770 Unauthorized types of agreements.
316.770–1 Letters of intent.
316.770–2 Memorandums of understanding.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 316.3—Cost-Reimbursement Contracts

316.301 General.

316.301–3 Limitations.

(a) and (b) [Reserved].

(c) The following format shall be used and executed by the contracting officer as the determination and findings authorizing the use of a cost-reimbursement contract:

Department of Health and Human Services—Determination and Findings

Authority to Use Cost-Reimbursement Contract

I hereby find that:

(1) The (agency title) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($———) (if contract is CPFF type, insert, "plus a fixed fee of ($———) which is —— percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.) I hereby determine that:

On the basis of the above findings, it is impracticable to secure the property or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus-a-fixed fee*) type of contract, *or* the (cost, cost-sharing, or cost-plus-a-fixed fee*) method of contracting is likely to be less costly than other methods.

Date ———

Signature ———

316.303 Cost-sharing contracts.

For detailed information concerning the use of cost-sharing contracts, see 335.070.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.601 Time-and-materials contracts.

(a) and (b) [Reserved.]

(c) *Limitations.* The format prescribed in 316.301–3(c) shall be used and executed by the contracting officer as the determination and findings authorizing the use of either a time-and-materials contract or a labor-hour contract, except that the final paragraph shall be changed to read as follows:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the acquisition of the required work or services.

316.603 Letter contracts.

316.603–2 Application.

It is the policy of the Department to refrain from issuing letter contracts. Exceptions to this policy will be permitted only in those cases where all matters of a substantive nature, such as statements of work, delivery schedules, and general and special clauses have been resolved and agreed upon.

316.603–3 Limitations.

The principal official responsible for acquisition shall be the approving official who executes the prescribed

*Use applicable word, words, or statement.

determination and findings. However, if the principal official responsible for acquisition is to sign the letter contract as the contracting officer, the approving official becomes the head of the contracting activity.

316.603–70 Information to be furnished when requesting authority to issue a letter contract.

The following information should be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of definitized contract.

(h) Type of definitive contract to be executed (fixed price, cost-reimbursement, etc.)

(i) Statement of the necessity and advantage to the Government of the use of the proposed letter contract.

(j) Statement of percentage of the estimated cost that the obligation of funds represents. In rare instances where the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included which would indicate the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must assure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of the proposed letter contract. If more than 180 days, complete justification must be given.

(l) Statement of any substantive matters that need to be resolved.

316.603–71 Approval for modifications to letter contracts.

All letter contract modifications (amendments) must be approved by the principal official responsible for acquisition. Requests for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and indicate approving official.

(d) Letter contract number and date issued.

(e) Complete justification as to why the letter contract cannot be definitized at this time.

(f) Complete justification as to why the level of funding must be increased.

(g) Complete justification as to why the period of effectiveness is increased beyond 180 days, if applicable.

(h) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 316.603–70(j) must be included.

Subpart 316.7—Agreements

316.702 Basic agreements.

(a) [Reserved]

(b) *Application.*

(1) [Reserved]

(2) Basic agreements shall continue in effect until termination, supersession, or expiration of the term.

(c) [Reserved]

(d) *Contracts incorporating basic agreements.*

(1) [Reserved]

(2) Any provision of a contract which conflicts with the terms of a basic agreement must be approved by the Director, Division of Procurement Policy.

(3) [Reserved]

(4) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts. Where negotiated overhead rates are included, the bases to which the rates apply and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs shall also be included as appropriate.

(e) *Content and format.* A basic agreement shall consist of an execution page(s), contents page, special provisions, and general provisions. The following is illustrative of an execution page:

Basic Agreement Number ____ Page 1 of—pages

Basic Agreement

Between the United States of America, as represented by the Department of Health and Human Services, and (Name of Contractor), this agreement, effective (Insert Date) by and between the United States of America, hereinafter called the "Government," as represented by the Department of Health and Human Services, and (Name of Contractor), a corporation organized and existing under the laws of the (State/Commonwealth) of ———— with its principal office in (City, State), hereinafter called the "Contractor".

Witnesseth That

Whereas, the Government and the Contractor desire to enter into a single basic agreement for use only in connection with negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this Agreement, and prior to its termination; and

Whereas, the parties understand that this Agreement shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the Contractor.

Now therefore, the Government and the Contractor agree that the provisions and clauses of the Special Provisions, as set forth herein, and the General Provisions, as set forth and modified herein, shall be incorporated in and constitute the terms and conditions applicable to all negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this Agreement, and prior to its termination.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written.

United States of America

Name of Contractor ————————

————————

Signature of Contracting Officer

By ————————

Signature of Authorized Official

Typed name ————————

Typed name ————————

Date ————————

(f) *Procedures.* (1) Negotiation of basic agreements may be undertaken by OPDIV contracting activities on behalf of the Department. When an OPDIV contracting activity decides to negotiate a basic agreement with an organization, prior authorization must be requested, in writing, from the Director, Division of Procurement Policy (DPP). When the Director, DPP, gives written authorization to the OPDIV contracting activity designated to conduct negotiations on behalf of the Department, all other OPDIVs will be notified of this designation. If another OPDIV elects, it may attend the negotiation or furnish special terms and conditions or provisions for inclusion in the proposed basic agreement by advising the designated negotiating activity in writing within ten (10) days from the date of the authorization. After review and resolution of all requests for inclusion of special terms and conditions or provisions, the designated negotiating activity will invite those OPDIVs which expressed an interest in attending the negotiations and make the necessary arrangements for the negotiation of the basic agreement.

(2) Prior to the conclusion of negotiations, the designated negotiating activity shall furnish the OPDIVs a draft copy of the proposed basic agreement together with:

(i) A resume of all salient features of the basic agreement which will facilitate review;

(ii) Any of the negotiating OPDIV's guides or procedures which are being considered for incorporation into the basic agreement by reference;

(iii) A listing of nonstandard clauses used, the genesis of such clauses, and the reasons for such clauses in the basic agreement; and

(iv) The contractor's comments, including the basis for requesting any deviation from the HHSAR and the designated negotiating activity's position with respect thereto.

(3) The OPDIVs shall have fifteen (15) days from the date of the memorandum transmitting the information to submit comments on the draft copy of the basic agreement. After receipt, analysis, and resolution of the comments of the OPDIVs, the designated negotiating activity will proceed to conclude the negotiation of the basic agreement.

(4) After conclusion of the negotiation, but prior to execution of the basic agreement, a copy of the basic agreement, together with the information specified in paragraph (f)(2) above, the comments of the OPDIVs, the designated negotiating activity's analysis of the OPDIV comments, and the basis for the action taken will be furnished to the Director, Division of Procurement Policy for review by DPP and the Office of General Counsel. Approval by the Director, DPP must be given prior to the execution of the basic agreement. After approval and execution of the basic agreement, the designated negotiating activity will distribute the executed document to the OPDIVs, Office of General Counsel, and the Director, DPP. The basic agreement is mandatory for use by all activities of the Department for all acquisitions falling within the scope of the basic agreement.

316.770 Unauthorized types of agreements.

316.770-1 Letters of intent.

A letter of intent is an informal unauthorized agreement between the Government and a prospective contractor which indicates that products or services will be produced after completion of funding and/or other contractual formalities. Letters of intent are often solicited by prospective contractors or may be originated by Government personnel. Letters of intent are not authorized by the FAR and are prohibited for use by Department personnel.

316.770-2 Memorandums of understanding.

A "memorandum of understanding" is an unauthorized agreement, usually drafted during the course of negotiations, to modify mandatory FAR and HHSAR provisions in such a manner as to make them more acceptable to a prospective contractor. It may be used to bind the contracting officer in attempting to exercise rights given the Government under the contract, or may contain other matters directly contrary to the language of the solicitation or prospective contractual document. Use of such memorandums of understanding is not authorized. Any change in a solicitation or contract shall be made by amendment or modification to that document. When a change to a prescribed contract clause is considered necessary, a deviation shall be requested.

PART 317—SPECIAL CONTRACTING METHODS

Subpart 317.2—Options

Sec.
317.201 Definition.
317.202 Use of options.
317.203 Solicitations.
317.206 Evaluation.

Subpart 317.70—Consolidated Acquisitions

317.7001 General.
317.7002 Policy.

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

317.7100 Scope of subpart.
317.7101 Applicable regulations.
317.7102 Methods of processing requests for training.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 317.2—Options

317.201 Definition.

(a) An option must:

(1) Identify the supplies or services as a discrete option quantity in addition to the basic quantity of supplies or services to be delivered under the initial contract award;

(2) Establish a price or specify a method of calculation which will make the price certain;

(3) Be agreed to and included in the initial contract award; and

(4) Permit the Government the right to exercise the option unilaterally.

(b) Contract provisions which provide the Government the right to buy additional requirements, subject to the written agreement of the contractor, do not meet the requirements of paragraph (a)(4) of this section and are not authorized. Further, any contract provision which merely extends the initial contract period without requiring delivery of additional supplies or services is not an option.

317.202 Use of options.

(a) and (b) [Reserved]

(c) (1)–(5) [Reserved]

(6) The primary purpose for inclusion would be the achievement of administrative convenience.

317.203 Solicitations.

(a)–(f) [Reserved]

(g)(1) [Reserved]

(2) When unusual circumstances exist, the principal official responsible for acquisition (not delegable) may approve a greater percentage (but see FAR 17.205).

317.206 Evaluation.

The determination referenced in FAR 17.206(a) shall be made by the chief of the contracting office.

Subpart 317.70—Consolidated Acquisitions

317.7001 General.

Studies have indicated that substantial savings can be realized through centralized and consolidated acquisitions of common use supplies, services, and equipment. The Department has identified common use items and has applied the principle of consolidated acquisition to these items.

317.7002 Policy.

(a) The following supplies, services, and equipment have been indentified as common use items and are to be acquired by the centralized contracting activity identified in paragraph (b):

(1) Administrative supplies, equipment, and services (i.e., general use office items or related services), as distinguished from functional or program requirements.

(2) Automated data processing services (but see ADP Systems Manual, Chapter 4).

(3) Stenographic reporting services.

(4) Visual arts, graphics, and supplementing services.

(5) Press clipping services.

(b) Activities within the metropolitan Washington, D.C. area are required to submit purchase requests for the above items to the applicable centralized contracting activity as follows:

(1) Activities located in the Southwest Washington complex; Procurement Branch, Division of Contract and Grant

Operations, Office of Management Services, Office of the Secretary.

(2) Parklawn Complex, Rockville, Maryland (Montgomery and Prince Georges Counties area); Division of Materiel Management, Administrative Services Center, Office of Management, Public Health Service.

(3) National Institutes of Health; Division of Administrative Services, National Institutes of Health.

(c) Activities outside the metropolitan Washington, D.C. area are encourage to establish centralized points to conduct acquisitions for common use items.

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

317.7100 Scope of subpart.

This subpart provides alternate methods for obtaining training in non-Government facilities under the Government Employees Training Act, 5 U.S.C. Chapter 41.

317.7101 Applicable regulations.

Basic policy, standards and delegations of authority to approve training are contained in HHS Personnel Manual Instructions 250–15 and 410–1. Travel expense instructions are contained in HHS Travel Manual Chapter 1–90.

317.7102 Methods of processing requests for training.

(a) HHS Form 350 may be processed as a request and authorization to the contracting office.

(b) As deemed desirable by OPDIVs and their subordinate elements, HHS Form 350 need not be processed through the contracting office provided the following conditions are met:

(1) The authorizing official has contracting authority delegated to his/her position.

(2) HHS Form 350 is acceptable to the OPDIV's fiscal office as an obligating document.

(c) Use of HHS Form 350 under the provisions of paragraph (b) above shall constitute an authorized deviation from the requirements of use of Optional Forms 347 and 348.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 319—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 319.2—Policies

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319.201 General policy.
319.201–70 Small and disadvantaged business utilization specialist.
319.270 Federal acquisition conferences.

Subpart 319.5—Set-Asides for Small Business

319.501 General.
319.503 Setting aside a class of acquisitions.
319.503–70 Small business class set-aside for construction, repair, and alteration work.
319.505 Rejecting set-aside recommendations.
319.506 Withdrawing or modifying set-asides.
319.570 Contract payments.

Subpart 319.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

319.705 Responsibilities of the contracting officer under the subcontracting assistance program.
319.705–2 Determining the need for a subcontracting plan.
319.705–3 Preparing the solicitation.
319.705–4 Reviewing the subcontracting plan.
319.705–5 Awards involving subcontracting plans.
319.705–6 Postaward responsibilities of the contracting officer.
319.706 Responsibilities of the cognizant administrative contracting officer.

Subpart 319.8—Contracting With the Small Business Administration (the 8(a) Program)

319.801 General.
319.803 Selecting acquisitions for the 8(a) program.
319.870 Acquisition of technical requirements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 319.2—Policies

319.201 General policy.

(a) and (b) [Reserved]

(c) The functional management responsibilities for the Department's small business, disadvantaged business, and labor surplus area programs are delegated to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU).

(1) The Director, OSDBU is responsible for:

(i) Recommending to the Under Secretary overall Department-wide operating concepts and policies relating to the Department's small business, disadvantaged business, and labor surplus area programs;

(ii) Implementing policy decisions through the issuance of operating procedures (Operating Divisions (OPDIVs) may develop alternative procedures for achieving departmental policy goals, and objectives. However, any change in procedures must be approved by the Under Secretary);

(iii) Reviewing and evaluating the Department's policies, practices, and procedures pertaining to the disadvantaged business, small business, and labor surplus area programs, as well as recommending changes or corrective actions to the OPDIV heads or to the Under Secretary, as appropriate;

(iv) Providing the Under Secretary with regular appraisals of performance and quality of effort, including timely notification of significant problems, events, and accomplishments, and the need for changes in Department-wide objectives and policies; and

(v) Providing technical assistance and support to the small and disadvantaged business utilization specialists.

(2) The Director, OSDBU is authorized to:

(i) Establish standards, procedures and operating guidelines controlling the manner in which the small business, disadvantaged business, and labor surplus areas programs are conducted throughout the Department;

(ii) Provide advice on proposed allocations of personnel, funds, and other resources in light of the total needs of the Department;

(iii) Prescribe, after coordination with appropriate concerned personnel, reporting requirements necessary to preserve openness in reporting, identifying emerging problems, monitor Department-wide activity, and provide a basis for appraisal and evaluation of performance. To the maximum extent, these reporting requirements will be satisfied through existing Department-wide reporting systems or by making modifications to them;

(iv) Conduct surveys and review of operating practices in the OPDIVs and regional offices; and

(v) Communicate directly with the small and disadvantaged business utilization specialists to assist them in carrying out their individual and collective responsibilities.

§ 319.201–70 Small and disadvantaged business utilization specialist.

(a) The Head of each OPDIV shall appoint a qualified full time small and disadvantaged business utilization specialist (SADBUS) in the following activities: Office of Human Development Services (OHDS), Health Care Financing Administration (HCFA), Social Security Administration (SSA), Public Health Service (PHS), to include the Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), National Institutes of Health (NIH), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Centers for Disease Control (CDC), and Administrative Services Center (ASC). A SADBUS shall also be appointed for the Office of the Secretary (OS) and for each Regional Office. In the regions, a SADBUS shall also be appointed for each Regional Operations for Facilities

Engineering and Construction. As deemed necessary, additional small and disadvantaged business utilization specialists may be appointed in larger contracting activities.

(b) When the volume of contracting does not warrant assignment of a full-time SADBUS, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over other responsibilities. The specialist shall be responsible directly to the appointing authority and shall be at an organizational level outside the direct acquisition chain of command, i.e., should report directly to the principal official responsible for acquistion, where appropriate.

(c) The Director, OSDBU will exercise functional management authority over small and disadvantaged business utilization specialist regarding small business, disadvantaged business, and labor surplus area matters. Appointments of SADBUS's shall only be made after consultation with the Director, OSDBU. A copy of each appointment and termination of appointment of specialists shall be forwarded to the Director, OSDBU.

(d) The SADBUS shall perform the following duties, as determined to be appropriate to the activity by the appointing official or by the Director, OSDBU. The SADBUS shall:

(1) Maintain a program designed to locate capable small business, disadvantaged business, and labor surplus area business sources for current and future acquisitions, through SBA or by using other methods;

(2) Coordinate inquiries and requests for advice from small business, disadvantaged business, and labor surplus area business concerns on acquisition matters;

(3) Prior to the issuance of solicitations (or contract modifications for additional supplies or services) in excess of $10,000, which have not been reviewed, reserved, or set-aside by the contracting officer, review the contracting officer's justification for such action;

(4) Assure that small business, disadvantaged business, and labor surplus area concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Review proposed requirements for possible breakout of items suitable for acquisitions from small business, disadvantaged business and labor surplus area concerns;

(6) Assure that financial assistance, available under existing regulations, is offered, and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts;

(7) Participate in determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participate in the evaluation of a prime contractor's small business, labor surplus area, and disadvantaged business subcontracting plans;

(9) Advise and assist contracting officers in discharging their responsibilities by:

(i) Monitoring and reviewing contractor performance to determine compliance with small and small disadvantaged business subcontracting plans, and

(ii) Developing and maintaining records and reports that reflect such compliance or noncompliance;

(10) Review and make appropriate recommendations to the contracting officer on proposals to furnish Government-owned facilities to contractors if this action may enhance the small business program;

(11) Assure that the participation of small businesses, disadvantaged businesses, and labor surplus area concerns is accurately reported;

(12) Make available to SBA copies of solicitations when so requested;

(13) When a bid or offer from a small business, disadvantaged business, or labor surplus area concern has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(14) Participate in government-industry conferences to assist small business, disadvantaged business, and labor surplus area concerns, including Business Opportunity/ Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars, and Business Opportunity Committee meetings;

(15) Advise potential sources how they can obtain information about formally advertised and negotiated acquisitions;

(16) Brief the head of the contracting activity at least once quarterly concerning the status of the activity's small business, disadvantaged business, and labor surplus area programs in relation to goals and objectives established;

(17) Participate in the development, implementation, and review of automated source systems to assure that the interests of small business, disadvantaged business and labor surplus area concerns are fully considered;

(18) Assure that the organization maintains a list of products and services which are categorized as repetitive small business set-aside;

(19) Provide small business, disadvantaged business, and labor surplus area concerns information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor, and others, including State agencies and trade associations;

(20) Be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, disadvantaged business and labor surplus areas programs; and

(21) Participate in interagency programs relating to small business, disadvantaged business, and labor surplus area matters as authorized by the Director, OSDBU.

319.270 Federal acquisition conference.

The Department of Commerce is responsible for coordinating the participation of Federal civilian agencies in a continuing series of conferences which are sponsored by members of Congress. The objectives of these conferences are:

(a) Location of additional acquisition sources to broaden the acquisition base of Federal agencies;

(b) Stimulation of local, regional, and national economic growth, national security, and cost reduction;

(c) Location of underutilized production capacity;

(d) Prevention or elimination of pockets of underemployment; and

(e) Assistance of small and small disadvantaged business concerns.

As notified by the OSDBU, contracting activities shall provide appropriate SADBUS or acquisition personnel to participate in person-to-person counseling at these conferences. Ordinarily, participation by contracting activities will be restricted to conferences held within the geographical areas adjacent to their officers. The brochure, "How To Do Business With DHHS" should be of great assistance in this counseling as it has been specifically prepared to assist

individuals, firms, and institutions who may wish to do business with this Department. It contains a brief description of the mission and programs of HHS and its Operating Divisions and provides a listing of contracting offices and the types of services and commodities acquired by each.

Subpart 319.5—Set-Asides for Small Business

319.501 General.

(a) and (b) [Reserved]

(c) Prior to the contracting officer's review, the SADBUS shall review each proposed acquisition to determine the feasibility of recommending award to the Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act. When it cannot be awarded to SBA pursuant to section 8(a), the SADBUS shall review the proposed acquisition to determine if it can be recommended as a set-aside under one of the set-aside priorities stated in FAR 19.504. The SADBUS's finding shall be entered on Form HHS–653, Small Business-Labor Surplus Set-Aside Review Form, with the reasons for the type of set-aside recommended, or the reasons for recommending against a set-aside, and provided to the contracting officer. Upon receipt of the Form HHS–653, the contracting officer shall promptly approve or disapprove the SADBUS's finding. If the SADBUS recommends against a set-aside and the contracting officer approves, the proposed acquisition will be handled as an open market acquisition. If the SADBUS recommends against a set-aside but the contracting officer disapproves, the contracting officer is to document his/her decision on the Form HHS–653, discuss the matter with the SADBUS, and attempt to agree on a decision; however, the contracting officer will make the final determination as to whether the proposed acquisition will be set-aside or not. If the contracting officer approves the SADBUS's set-aside recommendation, the proposed acquisition will be set-aside as specified. However, if the contracting officer disapproves the SADBUS's set-aside recommendation, the reasons must be documented on the Form HHS–653. (See 319.505 for options available to the SADBUS regarding the contracting officer's disapproval of a set-aside recommendation.) In all cases, the completed Form HHS–653 is to be retained by the contracting officer and placed in the contract file.

319.503 Setting aside a class of acquisitions.

319.503–70 Small business class set-aside for construction, repair, and alteration work.

A small business class set-aside is considered to have been made for each proposed acquisition for construction, repair, and alteration work in an estimated amount ranging from $2,500 to $2 million. Accordingly, the contracting officer shall set aside for small business each proposed acquisition. If, in his/her judgment, the particular acquisition falling within the dollar limits specified above is unsuitable for a set-aside for exclusive small business participation, the procedure set forth in FAR 19.506 shall apply. Proposed acquisitions for construction, repair, and alteration work in an estimated amount of more than $2 million shall be processed on a case by case basis.

319.505 Rejecting set-aside recommendations.

(a) If the contracting officer rejects the SADBUS's recommendation for a set-aside and an SBA procurement center representative (PCR) is not assigned or available, the SADBUS may appeal, in writing, to the head of the contracting activity (HCA) or his/her designee. The SADBUS shall provide the HCA or designee all the pertinent information concerning the set-aside disagreement, and the HCA shall respond in writing within seven business days. The HCA's decision is final and not appealable. The decision by the HCA shall be attached to the Form HHS–653 and placed in the contract file. After receipt of a final decision by the HCA, and if the decision approves the action of the contracting officer, the SADBUS shall forward, for information and management purposes, complete documentation of the case to the OSDBU Director. Documentation transmitted shall include, as a minimum, a copy of the appeal memorandum submitted to the HCA, a copy of the IFB or RFP, a list of proposed sources, a copy of the Form HHS–653 and attachments completed by the SADBUS and the contracting officer, a copy of the HCA's decision, and all other written material considered by the HCA in arriving at the decision. The SADBUS' transmittal memorandum shall contain an affirmative statement that the attachments constitute the complete file reviewed and considered by the HCA in making the final decision.

If the SADBUS refers the case to the SBA PCR, the SBA PCR may either concur with the decision of the contracting officer not to set-aside the proposed acquisition or recommend to the contracting officer that it be set-aside. In either instance, no further appeal action shall be taken by the SADBUS. (Refer to FAR 19.505 for the procedures available to the SBA PCR concerning a set-aside rejection.)

319.506 Withdrawing or modifying set-asides.

(a) [Reserved]

(b) If an SBA PCR is not assigned, the disagreement between the contracting officer and the SADBUS shall be referred to the HCA for resolution.

(c) [Reserved]

(d) Immediately upon notice from the contracting officer, the SADBUS shall provide telephone notification regarding all set-aside withdrawals to the OSDBU Director.

319.570 Contract payments.

Contract payments to small business concerns must be made on a timely basis. Payment of an invoice or voucher must be made within 30 days after receipt of the invoice or voucher or from acceptance of the goods or services. Each invoice or voucher from a small business concern not sent directly to the servicing finance office, but received by the contracting activity, shall be stamped or otherwise identified for expedited payment before it is forwarded to the servicing finance office.

Subpart 319.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

319.705 Responsibilities of the contracting officer under the subcontracting assistance program.

319.705–2 Determining the need for a subcontracting plan.

The dollar value of all proposed incremental funding actions shall be included in determining whether the acquisition meets the dollar threshold requiring a subcontracting plan. The subcontracting plan shall be based on the total value of the acquisition which will include the value of all option quantities or funding actions.

319.705–3 Preparing the solicitation.

The SBA PCR should be allowed a period of one to five business days for the review of the solicitation, depending upon the circumstances and complexity of the individual acquisition.

Whenever the clause "Small Business and Small Disadvantaged Business Subcontracting Program" (see FAR 52.219–9) is to be used in a solicitation for a negotiated acquisition, a notification must be included in the solicitation that advises prospective

offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range for negotiation with the apparent successful offeror.

319.705–4 Reviewing the subcontracting plan.

The offeror's/bidder's subcontracting plan for small business concerns shall be judged independently of the subcontracting plan for small disadvantaged business concerns. If a subcontracting plan is not obtained, the contracting officer must document the contract file to substantiate the reasons why the plan was not obtained. The contracting officer must obtain a satisfactory subcontracting plan prior to awarding the contract.

(a) and (b) [Reserved].

(c) During the source selection process, subcontracting plans may be requested from all concerns determined to be in the competitive range for negotiation with the apparent successful offeror.

(d) If the contracting officer determines that the subcontracting plan submitted reflects the best effort by the offeror/bidder to award subcontracts to small and small disadvantaged business concerns, but the SADBUS disagrees with the contracting officer's determination, a final determination shall be made by the principal official responsible for acquisition. The SADBUS shall submit this final determination to the Director, OSDBU with the appropriate supporting documentation.

(1) The contracting officer may accept the terms of an overall or "master" company subcontracting plan if it is incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bidder for a specific contract, if:

(i) The master plan contains all the elements required by the statute;

(ii) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory thresholds;

(iii) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification;

(iv) The contracting officer has copies of the entire plan; and

(v) The SBA PCR has had an opportunity to comment on the master plan.

(2) If the prime contract is for a commercial product, the required subcontracting plan may relate to the company's production of the item generally (both for the Government contract and for regular commercial sale) rather than solely to the item being acquired under the Government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year. The approved plan will remain in effect for the entire fiscal year and is applicable to all deliveries made under contracts entered into during the contractor's fiscal year, even though these deliveries are made in a succeeding fiscal year. The contractor shall submit a new plan to the first agency with which it enters into a contract (over the statutory threshold) during a succeeding fiscal year. The new plan shall apply to all deliveries made under contracts entered into during the succeeding fiscal year, no matter when the deliveries are made.

319.705–5 Awards involving subcontracting plans.

(a) (1) and (2) [Reserved].

(3) The SBA PCR shall be allowed a period of one to five business days to review the contract award package, depending upon the circumstances and complexity of the individual acquisition.

319.705–6 Postaward responsibilities of the contracting officer.

The SADBUS shall perform the distribution requirements stated in paragraphs (a) through (c) of FAR 19.705–6. A copy of any company-wide plans and associated approvals shall also be sent to the Director, OSDBU by the SADBUS. In addition, the SADBUS is responsible for summarizing and reporting to the Director, OSDBU, on a quarterly basis, all prime contracts $500,000 and over ($1 million for construction) using the following reporting format:

(a) Name of the OPDIV and program office;

(b) Number and dollar amount of contracts requiring subcontracting plans;

(c) Number of contracts with subcontracting plans;

(d) Number of contracts without subcontracting plans;

(e) Small and small disadvantaged business subcontracting goals; and

(f) Statements citing reasons why small and small disadvantaged business subcontracting plans were not included in the contracts.

319.706 Responsibilities of the cognizant administrative contracting officer.

Standard Form 294, Subcontracting Report for Individual Contracts, is to be used to monitor the contractor's progress.

Subpart 319.8—Contracting With the Small Business Administration (the 8(a) Program)

319.801 General.

The signing of the contract document may be accepted as SBA's certification that SBA is competent to perform a specific HHS requirement.

319.803 Selecting acquisitions for the 8(a) program.

Brochures of 8(a) concerns which have been interviewed by the Office of Small and Disadvantaged Business Utilization are forwarded to each SADBUS. These brochures are to be reviewed by the SADBUS to match HHS requirements with the capabilities of these concerns. The SADBUS will make the capabilities of these concerns known to program personnel and will obtain other information, as needed, by contacting OSDBU or the Small Business Administration.

319.870 Acquisition of technical requirements.

(a) *Source selection.* (1) The section 8(a) program is a business development program, and the policy expressed in FAR 15.105 does not apply. Additionally, SBA has ultimate responsibility for nomination of an 8(a) subcontrator for proposed 8(a) requirement and may elect to deviate from usual source nomination procedures.

(2) Except for cases where SBA selects a concern for an 8(a) award, or as provided in paragraph (a)(3) below, limited technical competition shall be conducted for requirements for consulting services, computer science and related services, research, development, test, evaluation, demonstration, and technical and professional services, where technical aspects, methodology, or approach are of primary importance rather than price. At the request of the program director, the contracting activity may, in consultation with the SBA, require that written technical proposals be submitted by the concerns participating in the limited technical competition. (However, SBA encourages the submission of "open requirements" (requirements without source recommendations) for most professional services so that assistance may be afforded to concerns having the greatest need that meet the requisite capabilities.

In particular, SBA has requested that requirements for CPA audit services be submitted as "open requirements" or as sole source offerings (see paragraph (a)(3), below). Only in extenuating circumstances will SBA accept CPA audit service requirements when technical evaluation of more than one concern is requested. SBA has also determined that the selection procedures outlined in the "Brooks Bill' must be utilized in the award of A & E requirements under the 8(a) program. Therefore, whenever feasible, at least three 8(a) A & E concerns shall be evaluated for each A & E acquisition. The contracting activity shall conduct the technical evaluation and transmit the results of the evaluation to SBA in writing, along with any source recommendation. Further, to the extent feasible and practical, A & E contracts awarded under the 8(a) program shall be made to concerns which have their home office located in the metropolitan area or state where the work is to be performed.)

(3) There may be circumstances where one 8(a) concern has exclusive or predominant capability among 8(a) concerns by reason of experience, specialized facilities, or technical competence to perform the work within the time required. In these circumstances, after coordinating with the SADBUS, the initiating program office may recommend, for approval by the contracting officer, that only that 8(a) concern be considered for nomination to SBA. This recommendation shall be in writing, setting forth full and complete justification for the nomination. The justification shall be submitted to the appropriate contracting officer, through the SADBUS, for concurrence and shall be maintained as a permanent record in the contract file. In addition, a copy of the justification shall be included in the offering letter to SBA.

(4) Where limited technical competition is required or is determined to be appropriate, the sources (i.e., concerns) which are to be included will be decided by the contracting activity in consultation with SBA. Consultation will be initiated by nomination of sources recommended by program officials and the SADBUS and, if SBA elects, by SBA.

(5) Each 8(a) concern or group of concerns nominated for a specific 8(a) requirement shall have been approved by SBA for that particular requirement prior to any discussion with the concern(s) about the requirement.

(6) It is conceivable that limited technical competition will assist in the development of 8(a) concerns. However, contracting activities should recognize that the policy expressed in FAR 15.105 does not apply to the process of identifying potential contractors to be nominated to SBA under the 8(a) program, and that to involve a large number of 8(a) concerns in a limited technical competition may have an adverse impact on the limited financial resources of these concerns. Usually, three to five concerns should be nominated, depending on the nature of the intended contract and subject to SBA's approval.

(7) When a limited technical evaluation is conducted, a technical evaluation report shall be prepared and signed by the technical evaluators, furnished the contracting officer and maintained as a permanent record in the contract file. The report shall reflect the ranking of the concerns and shall identify each as acceptable or unacceptable. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each concern, and any reservations or qualifications that might bear upon the selection of a source for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any concern shall be included.

(b) *Offering letter.* (1) When a decision has been made by the SADBUS, program director, and contracting officer to process an acquisition through the Small Business Administration, under provisions of section 8(a) of the Small Business Act, the contracting activity shall promptly furnish the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the SADBUS. The offering letter should transmit the complete acquisition package. Additionally, the offering letter should include, but not necessarily by limited to, the following:

(i) A description of work to be performed or items to be delivered;

(ii) The names of the concerns nominated for technical competition or the name of the concern nominated for award (For limited technical competition, indicate whether or not written technical proposals are desired. If only one concern is nominated, a written justification must be included to substantiate limiting the nomination to one source, as indicated in 319.870(a)(3));

(iii) Contracting activity dollar estimate of the requirement;

(iv) Acquisition history (e.g., first time offered, items or services not presently being provided by a small business concern, etc.);

(v) Period of performance;

(vi) Any special requirements, restrictions, or geographical limitations (e.g., turn-around time demands a concern within two hours travel time, etc.);

(vii) A statement to the effect that public solicitation for the acquisition has not been issued;

(viii) A statement to the effect that the acquisition cannot reasonably be expected to be won by an eligible 8(a) concern under normal competitive procedures;

(ix) Type of proposed contract (i.e., fixed-price, cost plus fixed-fee, requirements, etc.); and

(x) A list of contractors who have performed on the specific requirement during the previous 12 months.

(2) Within ten (10) business days after receipt of the offering letter, SBA is to acknowledge the offering letter and accept or reject the requirement. If SBA has not acknowledged the offering letter within this period, the contracting activity, after giving due regard to the urgency of the acquisition, may withdraw the offer by giving written notice to SBA.

(3) When the concerns to be included in the limited technical competition have been decided on by the contracting activity, in consultation with SBA, the contracting officer shall hold a technical competition among those concerns. Cost factors shall not be included in the technical proposals nor brought out in any manner during technical discussions of the proposals.

(4) The contracting officer has a greater latitude in holding discussions with the concerns solicited under an 8(a) acquisition than under a non-8(a) acquisition. The technical evaluation report required by 319.870(a)(7) must be carefully reviewed to determine if any source declared to be unacceptable is capable of being made acceptable; i.e., would the submission of clarifying data or obtaining additional information make an otherwise unacceptable proposal acceptable? Negotiations will normally proceed similarly to the process described in FAR 36.607. If it is determined that the highest rated concern cannot furnish the required goods or services, SBA will be notified, and, upon approval by SBA, negotiations will commence with the next highest rated concern. When extensive discussions with all sources fail to result in any acceptable proposals, the contracting officer will notify SBA. If within ten (10) business days, SBA has not notified the contracting officer of any additional sources or any methods of improving the existing source(s), the contracting

activity will proceed with the acquisition without further regard for the 8(a) procedures, unless additional time is requested by SBA and the additional time is granted by the contracting activity after giving due regard to the urgency of the acquisition.

(5) When requested by SBA, the contracting activity shall render all possible assistance to SBA with respect to SBA's negotiation of 8(a) subcontracts. However, SBA will usually delegate negotiation authority to the HHS contracting activity.

(6) Upon receipt of a delegation, the contracting activity will promptly negotiate with the selected 8(a) concern. After the conclusion of negotiations with the selected source, the contracting activity will prepare the contract between the contracting activity and SBA and the subcontract between SBA and the selected source. These documents will be prepared in accordance with FAR 19.809, and forwarded to SBA for signature. Contracting activities shall completely negotiate the 8(a) subcontract and prepare the definitive subcontract documents before submitting the prime contract to SBA for signature.

(7) The contracting officer is responsible for promptly notifying all offerors if an award is to be delayed beyond 30 days from the date of receipt of technical proposals. The contracting officer is also responsible for keeping the offerors informed of the situation if the delay persists or other problems arise which impede the award.

(c) *Debriefing.* Unsuccessful offerors shall be promptly notified of the contract award. A debriefing, when requested in writing, shall be provided by the cognizant contracting officer to an 8(a) concern that has been unsuccessful in an 8(a) limited technical competition.

(d) *Unacceptable offerors.* If it is determined during negotiations that the selected offeror is technically unacceptable, the contracting activity shall promptly notify the SBA. If it appears that an offeror would be unable to earn a profit if awarded the contract, both SBA and OSDBU shall be notified by the contracting officer.

(e) *Liaison with the Small Business Administration.* (1) Contracting activities will maintain a continuous liaison with the SBA to ensure that the overall goals of each activity are achieved. In the event there is a dispute between the contracting activity and an SBA representative regarding any aspects of 8(a) contracting, the contracting activity must promptly notify the OSDBU.

(2) The business development responsibility of SBA requires them to assist in and monitor the growth and development of all 8(a) concerns. Therefore, it is incumbent upon HHS to assist SBA in this effort by utilizing the source selection process in a manner that would make use of the largest possible number of 8(a) concerns.

(f) *Arriving at contract amount.* Contracts will be awarded at prices which are fair and reasonable (see FAR 19.805 and 19.806).

(g) *Advance payments.* 8(a) concerns requesting advance payments should be advised to submit the request to the SBA, in writing, in accordance with SBA operating procedures. SBA is responsible for reviewing and approving requests, and for making funds available, for advance payments under 8(a) contracts.

(h) *Contract modifications, inspections, etc.* The responsibility for subcontract administration and field inspection will, in most cases, be delegated by SBA to the contracting activity. The contracting activity shall keep SBA apprised of all contract modifications, progress payments, and any other pertinent data requested by SBA.

(i) *Subcontract administration.* Some concerns may need additional management expertise for optimal performance and completion of a particular contract. Therefore, when subcontract administration is delegated to HHS by SBA, the contracting activity shall promptly apprise the SBA, the SADBUS, and OSDBU whenever the contractor is experiencing problems. SBA should provide necessary technical assistance so the contractor can successfully complete the contract.

(j) *Contract termination.* The OSDBU, SADBUS, and SBA are to be notified prior to initiating final action to terminate an 8(a) contract.

PART 320—LABOR SURPLUS AREA CONCERNS

Subpart 320.1—General

320.102 General policy.

Contracting activities should obtain appropriate publications and other information identifying labor surplus areas from:

U.S. Department of Labor, Employment and Training Administration, Office of Policy Evaluation and Research, Division of Labor Market Information, Washington, D.C. 20530.

Contracting officers shall use the "Directory of Labor Surplus Area Contractors," provided by the Office of Small and Disadvantaged Business Utilization, as a source to identify labor surplus area concerns and to augment other labor surplus area source lists. Contracting officers should also seek to identify concerns from labor surplus areas by placing sources sought synopses in the Commerce Business Daily. Small and disadvantaged business utilization specialists shall assist contracting officers in developing and maintaining source lists of small business and other concerns in labor surplus areas. Department of Commerce and SBA regional and field offices should be contacted for assistance in identifying labor surplus area concerns.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 323—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 323.70—Safety and Health

Sec.

323.7000 Scope of subpart.
323.7001 General.
323.7002 Policy.
323.7003 Actions required.
323.7004 Contract clause.
323.7005 Solicitation notice—construction.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 323.70—Safety and Health

323.7000 Scope of subpart.

This subpart prescribes the use of a safety and health clause in contracts involving hazardous material or operations, and procedures for developing and administering safety and health provisions.

323.7001 General.

Various statutes and regulations (e.g., Walsh-Healey Act; Service Contract Act) require adherence to minimum safety and health standards by contractors engaged in potentially hazardous work. Positive action to reduce accidents and conditions hazardous to health under all contracts is in the Government's interest since the cost of such accident and health hazards is borne by the Government through higher prices and sometimes by direct indemnification of contractors against liability claims.

323.7002 Policy.

(a) The guidance contained in FAR Subpart 23.3 shall be used for hazardous material as a first line of reference. When that guidance is judged insufficient or does not meet the safety and health situation in the instant acquisition, this subpart is to be followed.

(b) Whenever the performance of a contract will require use of hazardous materials or operations, the contracting

activity shall require the prime contractor and subcontractors to:

(1) Provide protection for the life and health of HHS employees, contractor employees, other persons involved with work on HHS programs and projects, and the public;

(2) Avoid accidental work interruptions which could delay progress of HHS programs and projects;

(3) Maintain controls for the prevention of damage and loss to property; and

(4) Accumulate and provide data necessary for analysis of risk and loss factors relating to HHS programs and projects.

323.7003 Actions required.

(a) *Contracting activities.* Contracting activities shall use the clause set forth in 352.223–70 as a guide in developing appropriate safety and health clauses for use in prospective contracts involving the following:

(1) Services or products;

(2) Research, development, or test projects;

(3) Transportation of hazardous materials; and

(4) Construction, including construction of facilities on the contractor's premises.

(b) *Safety officers.* OPDIV safety officers shall advise and assist initiators of acquisition requests and contracting officers in:

(1) Determining whether safety and health provisions should be included in a prospective contract;

(2) Selecting or developing safety and health clause provisions for incorporation in a prospective contract;

(3) Evaluating a prospective contractor's safety and health programs; and

(4) Conducting post-award review and surveillance to the extent deemed necessary.

(c) *Initiators.* Initiators of acquisition requests for items described in paragraph (a) of this section shall:

(1) During the preparation of a request for contract, and in the RFP or IFB:

(i) Ensure that hazardous materials and operations to be utilized in the performance of the contract are clearly identified; and

(ii) Coordinate with the appropriate safety officer to ensure that all hazardous materials and operations are evaluated and that adequate safety requirements are established in the RFP or IFB.

(2) During the period of performance:

(i) Apprise the contracting officer of any noncompliance with safety and health provisions identified in the contract; and

(ii) Cooperate with the safety officer in conducting review and surveillance activities.

323.7004 Contract clause.

All contracts which require the use of hazardous materials or operations shall include a clause to provide adherence to minimum safety and health standards. The clause set forth in 352.223–70 may be used or appropriately modified to meet the needs of the individual contract.

323.7005 Solicitation notice—Construction.

The contracting officer is to include the notice in 352.223–71 in all solicitations for construction and construction services. A similar notice is to be included in all contracts resulting from those solicitations.

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 324.1—Protection of Individual Privacy

Sec.

324.100 Scope of subpart.
324.102 General.
324.103 Procedures.

Subpart 324.2—Freedom of Information Act

324.201 Authority.
324.270 Applicability.
324.271 Availability and nonavailability of specific records.
324.272 Procedures.

Subpart 324.70—Confidentiality of Information

324.7001 General.
324.7002 Policy.
324.7003 Applicability.
324.7004 Required clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 324.1—Protection of Individual Privacy

324.100 Scope of subpart.

This subpart implements 45 CFR Part 5b, Privacy Act Regulations, and FAR Subpart 24.1, Protection of Individual Privacy, which implement the Privacy Act of 1974 (Pub. L. 93–579, December 31, 1974; 5 U.S.C. 552a) and OMB Circular No. A–108, July 9, 1975.

324.102 General.

(a) It is the Department's policy to protect the privacy of individuals to the maximum possible extent while permitting the exchange of records required to fulfill the Department's administrative and program responsibilities and its responsibilities for disclosing records to which the general public is entitled under the Freedom of Information Act (5 U.S.C. 552). The Privacy Act of 1974 and the Department's implementation under 45 CFR Part 5b apply "when an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish any agency function . . ." The key factor is whether a departmental function is involved. Therefore, the Privacy Act requirements apply to a departmental contract when, under the contract, the contractor must maintain or operate a system of records to accomplish a departmental function.

(b)–(d) [Reserved.]

(e) The program official, and, as necessary, the official designated as the activity's Privacy Act Coordinator and the Office of General Counsel, shall determine the applicability of the Act to each proposed acquisition. The program official is required to include a statement in the request for contract indicating whether the Privacy Act is or is not applicable to the proposed acquisition.

(f) Whenever the contracting officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the contracting officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records (see Subpart 324.70).

324.103 Procedures.

(a) All requests for contract shall be reviewed by the contracting officer to determine whether the Privacy Act requirements are applicable. If applicable, the contracting officer shall include the solicitation notification and contract clause required by FAR 24.104 in the solicitation, and the contract clause in the resultant contract. In addition, the contracting officer shall ensure that the solicitation notification, contract clause, and other pertinent information specified in this subpart are included in any contract modification which results in the Privacy Act requirements becoming applicable to a contract.

(b)(1) The contracting officer shall identify the system(s) of records on individuals in solicitations, contracts, and contract modifications to which the Privacy Act and the implementing regulations are applicable.

(2) The contracting officer shall include a statement in the contract notifying the contractor that the contractor and its employees are subject to criminal penalties for violations of the Act (5 U.S.C. 552a(i)) to the same extent as employees of the Department. The statement shall require that the

contractor assure that each contractor employee knows the prescribed rules of conduct, and each contractor employee is aware that he/she can be subjected to criminal penalties for violations of the Act. The contracting officer shall provide the contractor with a copy of the rules of conduct and other requirements set forth in 45 CFR 5b.

(c) The contracting officer shall include in the contract the disposition to be made of the system(s) of records on individuals upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to the Department, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(d) Whenever an acquisition is determined to be subject to the Privacy Act requirements, a "system notice," prepared by the program official and describing the Department's intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system, is required to be published in the **Federal Register**. A copy of the "system notice" shall be attached to the request for contract or purchase request. If a "system notice" is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the program official for inclusion in the contract file. If a "system notice" has not been published in the **Federal Register**, the contracting officer may proceed with the acquisition but shall not award the contract until the "system notice" is published, and publication is verified by the contracting officer.

Subpart 324.2—Freedom of Information Act

324.201 Authority.

The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR Part 5. This subpart implements those aspects of the FOIA and 45 CFR Part 5 that apply to acquisition and contract records.

324.270 Applicability.

(a) The FOIA and 45 CFR Part 5 provide that Government records (see 45 CFR 5.5 for the definition of "records") are generally to be made available to the public after receipt of a request. However, the Department may withhold records if they fall within one or more of the specific categories exempted from disclosure by the FOIA.

(b) The FOIA exemption most often cited to deny disclosure of acquisition and contract records is exemption (b)(4)(5 U.S.C. 552(b)(4)), i.e., "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Trade secrets, within the meaning of 18 U.S.C. 1905, are exempt from disclosure. Commercial and financial information can be exempted from disclosure only if it is privileged and confidential and is obtained from a person (source) by the Government. Commercial or financial information is generally considered confidential under exemption (b)(4) if disclosure is likely to have either of the following effects:

(1) It would impair the Government's ability to obtain necessary information in the future; or

(2) It would cause substantial harm to the competitive position of the source from whom the information was obtained.

(c) Use of a restrictive legend on a document by the submitter of the document that purportedly identifies confidential information does not by itself place the document under an exemption. (See 324.272, below, for procedures to be followed by the contracting officer, and 315.413 for the treatment of data in proposals.)

324.271 Availability and nonavailability of specific records.

Subpart F of 45 CFR Part 5 identifies specific types of records that may or may not be disclosed under the FOIA. Refer to 5.71 (c) and (d) for general guidance and 5.72 (c), (d), and (e) for details on specific acquisition records. In addition, the Appendix to 45 CFR Part 5 provides a list of examples of specific records or information concerning contracts which are generally available and those which are not generally available under the FOIA. Note that these are general guidelines and application may vary based upon the circumstances of each individual case.

324.272 Procedures.

(a) The contracting officer, upon receiving an FOIA request, shall follow Department and operating division procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) and the Office of General Counsel.

(b) When evaluating a FOIA request for a contract or acquisition record which was obtained wholly or in part from a source outside the Department, the contracting officer must consider the origin of the record, its subject matter, and whether it was submitted under a restrictive legend. In instances when it is not certain whether a record or a portion of a record is to be withheld or disclosed under the FOIA, the following procedures shall be followed.

(1) If there is reason to believe the source may object to release of the record or part of the record, the contracting officer or FOI official shall notify the source in writing that a request has been received, and the Department is considering release of the requested material. The written notification must advise the source of the specific requested material and require that the source provide a justification for withholding the material under an exemption of the FOIA if the source objects to its release. The notification must inform the source that the justification should explain in detail how disclosure of the requested material would result in significant harm to the competitive position of the source or benefit its competitors. The notification must also advise the source that the justification must be provided to the contracting officer or FOI official within five (5) working days from the date of the written notification.

(2) Based on the justification submitted by the source in response to the notification described above and any other pertinent information, the contracting officer and the cognizant FOI official, in consultation with the Office of General Counsel, if necessary, shall consider whether to withhold the record or portions of the record from disclosure. Only the FOI official is authorized to make the determination to withhold the record or portions of the record from disclosure.

(3) If the source objects to the release of the information but the FOI official disagrees with the justification for withholding, the FOI official will notify the source and the requestor in writing of the determination. The notification to the source must include a copy of the material marked as the Department proposes to release it and must state that release will be made five (5) working days from the date of that notification.

Subpart 324.70—Confidentiality of Information

324.7001 General.

In the performance of certain HHS contracts, it is necessary for the contractor to generate data, or be furnished data by the Government, which is about individuals, organizations, or Federal programs. This subpart and the accompaying contract

clause require contractors to prudently handle disclosure of certain types of information not subject to the Privacy Act or the HHS human subject regulations set forth in 45 CFR Part 46. This subpart and contract clause address the kinds of data to be generated by the contractor and/or data to be furnished by the Government that are considered confidential and how it should be treated.

324.7002 Policy.

It is the policy of HHS to protect personal interests of individuals, corporate interests of non-governmental organizations, and the capacity of the Government to provide public services when information from or about individuals, organizations, or Federal agencies is provided to or obtained by contractors in performance of HHS contracts. This protection depends on the contractor's recognition and proper handling of such information. As a result, the "Confidentiality of Information" contract clause was developed.

324.003 Applicability.

(a) The "Confidentiality of Information" clause, set forth in 352.24–70, should be used in solicitations and resultant contracts whenever the need exists to keep information confidential. Examples of situations where the clause may be appropriate include:

(1) Studies performed by the contractor which generate information or invlove Government-furnished information that is personally identifiable, such as medical records, vital statistics, surveys, and questionnaires;

(2) Contracts which involve the use of salary structures, wage schedules, proprietary plans or processes, or confidential financial information of organizations other than the contractor's; and

(3) Studies or research which may result in preliminary or unvalidated findings which, upon disclosure to the public, might create erroneous conclusions which, if acted upon, could threaten public health or safety.

(b) With regard to protecting individuals, this subpart and contract clause are not meant to regulate or control the method of selecting subjects and performing studies or experiments involving them. These matters are dealt with in the HHS regulation entitled "Protection of Human Subjects," 45 CFR Part 46. If a system of records under contract, or portions thereof, is determined to be subject to the requirements of the Privacy Act, in accordance with FAR 24.1 and 324.1 and Title 45 CFR Part 5b, the procedures cited in those references are applicable and the Privacy Act contract clause shall be included in the contract. If the contract also involves confidential information, as described herein, which is not subject to the Privacy Act, the contract shall include the "Confidentiality of Information" clause in addition to the Privacy Act clause.

324.7004 Required clause.

The clause set forth in 352.224–70 shall be included in any RFP and resultant contract(s) where it has been determined that confidentiality of information provisions may apply. Any REP announcing the intent to include this clause in any resultant contract(s) shall indicate, as specifically as possible, the types of data which would be covered and requirements for handling such data.

PART 325—FOREIGN ACQUISITION

Subpart 325.1—Buy American Act—Supplies

Sec.
325.102 Policy.
325.108 Excepted articles, materials, and supplies.
325.108–70 Formats for nonavailability determinations.

Subpart 325.3—Balance of Payments Program

325.302 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 325.1—Buy American Act—Supplies

325.102 Policy.

(a) [Reserved]

(b) The head of the contracting activity shall make the determination required by FAR 25.102(a) (4) (see FAR 25.108 and 325.108). All other determinations shall be made by the agency head.

325.108 Excepted articles, material, and supplies.

(a) [Reserved]

(b) Articles, materials, and supplies not listed in FAR 25.108(d) may be excepted only after a written determination has been made by the head of the contracting activity. These determinations are required only in instances where it has been determined that only suppliers of foreign source end items shall be solicited. However, approvals and determinations covering individual acquisitions in the following categories may be made by the contracting officer:

(1) Acquisition of spare and replacement parts for foreign manufactured items, if the acquisition must be restricted to tghe original manufacturer or its supplier; and

(2) Acquisition of foreign drugs when it has been determined, in writing, by the responsible program official, that only the requested foreign drug will fulfill the requirement.

Formats for the above referenced written determinations are shown in 325.108–70.

325.108–70 Formats for nonavailability determinations.

(a) The following is the format for a nonavailability determination made by a contracting officer:

Determination of Nonavailability

Pursuant to the authority contained in section 2, Title III, of the Act of March 3, 1933, popularly called the Buy American Act (41 U.S.C. 10(a–d)), and authority delegated to me by 325.108(b), I hereby find that:

(a) (Insert a description of the item or items to be acquired, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

(b) (Enter the name and address of the proposed contractor or supplier, and country of origin of the item or items.)

(c) (Include a statement of the necessity for the acquisition.)

(d) (Include a statement of facts establishing the nonavailability of a similar item or items of domestic origin. If there is no known domestic item or items which can be used as a reasonable substitute, a statement to this effect will be made.)

Based upon these findings, it is determined that the above-described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that acquisition be made from domestic sources and that it be of domestic origin is not applicable to this acquisition, since the referenced acquisition is within the nonavailability exception stated in the Buy American Act. Authority is granted to acquire the above-described item(s) of foreign origin (country of origin) at an estimated total cost of $———, including duty and transportation cost to destination.

(Date)———

———

(Contracting Officer)

(b) The following is the format for a nonavailability determination made by the head of the contracting activity. Part 1 of the determination shall be signed by the preparing authority (contracting officer of official with contracting authority), and Part 2 shall be signed by the approving authority.

Determination of Nonavailability

Part 1

Date ———————————

Pursuant to the authority contained in Section 2, Title III, of the Act of March 3, 1933, popularly called the Buy American Act (41 U.S.C. 10(a–d)), I hereby find:

(a) (Insert a description of the item or items to be acquired, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

(b) (Insert a brief statement of the necessity for the acquisition.)

(c) (Include a statement of facts establishing the nonavailability of a similar item or items of domestic origin.)

Based upon the above showing of fact, it is determined that the above described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(Signature) ———————————

Part 2

The requirement of the Buy American Act that acquisition be made from domestic sources and that it be of domestic origin is not applicable to the above described acquisition, since the referenced acquisition is within the nonavailability exception stated in the Act. The feasibility of foregoing the requirement or providing a United States substitute has been considered. Authority is granted to acquire the above described item(s) of foreign origin (country of origin) at an estimated total cost of $———, including duty and transportation costs to destination.

(Signature) ———————————

Subpart 325.3—Balance of Payments Program

325.302 Policy.

All determinations addressed in FAR 25.302 shall be made by the principal official responsible for acquisition (not delegable).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 330—COST ACCOUNTING STANDARDS

Subpart 330.70—Cost of Money for Capital Employed on Facilities in Use and Capital Assets Under Construction

Sec.

330.7000 Scope and applicability.
330.7001 Cost of money for capital employed on facilities in use.
330.7001–1 Policy.
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330.7001–3 Estimating business unit facilities capital and cost of money.
330.7001–4 Contract facilities capital estimates.
330.7001–5 Preaward facilities capital applications.
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330.7001–7 Administrative procedures.
330.7002 Cost of money for capital employed on capital assets under construction.
330.7002–1 Policy.
330.7002–2 Definitions.
330.7002–3 Measurement.
330.7002–4 Composition and allocation of costs.
330.7002–5 Limitations.
330.7002–6 Preaward capital employed application.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 330.70—Cost of Money for Capital Employed on Facilities in Use and Capital Assets Under Construction

330.7000 Scope and applicability.

This subpart sets forth policies and procedures related to implementation of the "cost of money" cost principle set forth in FAR 32.205–10. This cost principle deals with costs provided for under Cost Accounting Standard 414, Cost of Money as an Element of the Cost of Facilities Capital, and Cost Accounting Standard 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction. Although these standards may not be specifically applicable to all contracts subject to the cost principles set forth in FAR Subpart 31.2, they have been extended to all such contracts by FAR 32.205–10 and the provisions of this subpart (but see FAR 15.902(b)).

330.7001 Cost of money for capital employed on facilities in use.

330.7001–1 Policy.

(a) It is Government policy to recognize facilities capital cost of money for facilities in use as an allowable cost on negotiated contracts subject to FAR Subpart 31.2 that are priced on the basis of cost analysis (see FAR 15.902(b) and 31.205–10(a)).

(b) This policy shall apply to new contracts and contract modifications adding new work awarded on or after June 15, 1981. It shall apply in the same manner to any tier subcontracts or modifications thereto, upon the subcontractor's request, provided the prime contract or modification was eligible as of the date of award for facilities capital cost of money in accordance with this paragraph.

330.7001–2 Definitions, measurement, and allocation.

Cost Accounting Standard (CAS) No. 414, Cost of Money as an Element of the Cost of Facilities Capital, reprinted in 4 CFR Part 414 establishes criteria for the measurement and allocation of the cost of capital committed to facilities as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB–CMF (Facilities Capital Cost of Money Factors Computation) with instructions. This 330.7001 adopts the techniques of CAS 414 as the approved method of measurement and allocation of facilities capital cost of money to overhead pools at the business unit level, and adds only supplementary procedures as are necessary to extend those techniques for contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria, and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this 330.7001 from the same data bank and programs.

330.7001–3 Estimating business unit facilities capital and cost of money.

The method of estimating the business unit facilities capital and cost of money uses the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB–CMF. Three elements are required to develop cost of money factors: business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury under Pub. L. 92–41. These elements are discussed in this section.

(a) *Business unit facilities capital data.* The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of: (1) The net book value of facilities recorded on the accounting records of the business unit, (2) the capitalized value of leases (see FAR 31.205–2 and 31.205–6), and (3) the net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403. Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (see FAR 31.205–17).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to

compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purposes of projection, the most recent interest rate promulgated by the Secretary of the Treasury under Pub. L. 92–41 will be used as the cost of money rate in Column 1 of Form CASB–CMF. Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred costs will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in forward pricing. Actual CMF's are required when it is necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and FAR 31.205–10(a).

330.7001–4 Contract facilities capital estimates.

(a) After the appropriate Forms CASB–CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861, Contract Facilities Capital and Cost of Money, is to be used for this purpose. An evaluated contract cost breakdown reduced to the contracting officer's prenegotiation cost objective, must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Forms CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB–CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or prenegotiation cost objective, and are listed against each separate Form CASB–CMF. Each allocation base is multiplied by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort. Total contract facilities capital cost of money is the sum of the yearly amounts.

(c) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, the contract facilities capital employed can be determined by dividing the contract cost of money by the same rate. DD Form 1861 is designed to record and compute all the above in the most direct way possible, and the end result is the contract facilities capital cost of money and capital employed. The capital employed amount may be used to identify the level of facilities investment to be employed in contract performance (see FAR 15.905–1(d)(1) and 315.905–73(b)(1)).

330.7001–5 Preaward facilities capital applications.

Facilities capital cost of money and capital employed as determined in 330–7001–4 are applied in establishing cost and price objectives as follows:

(a) *Cost of money.* (1) *Cost objective.* This special, imputed cost of money shall be used together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a prenegotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs (see 315.900–72(b) and 315.900–74(b)).

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed in accordance with the profit guidelines set forth in 315.905–73(b)(1).

330.7001–6 Postaward facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract facilities capital cost of money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual cost of money factors under CAS 414 and FAR 31.205–10(a) the new factors should be used to calculate contract facilities capital cost of money for the next accounting period.

(b) *Final settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's cost of money factors determined under CAS 414 and supported by separate Forms CASB–CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

330.7001–7 Administrative procedures.

(a) Contractor submission of Forms CASB–CMF will normally be initiated under the same circumstances as forward pricing rate agreements (see FAR 15.809) and evaluated as complementary documents and procedures. Separate forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate forward pricing rate agreements, submissions may nevertheless be made annually or with individual contract pricing proposals, as agreed to be the contractor and the contracting officer. The contracting officer shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) The contracting officer will complete a DD Form 1861, Contract Facilities Capital and Cost of Money, after evaluating the contractor's cost proposal and determining the Government prenegotiation cost objective, but before determining the Government prenegotiation profit objective.

(c) A final Form CASB–CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/of repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

330.7002 Cost of money for capital employed on capital assets under construction.

330.7002–1 Policy.

(a) It is Government policy to recognize a contractor's investment in capital assets while these are being

constructed, fabricated, or developed for the contractor's own use (see FAR 31.205–10(b)). This recognition is made through the allowance of an imputed cost of money amount which is (1) calculated in accordance with Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (see 4 CFR Part 417), and the instructions in 330.7002–3, (2) capitalized along with the other costs of the asset for which the investment is made, and (3) allocated to Government contracts in accordance with 330.7002–4.

330.7002–2 Definitions.

The following definitions have been taken or developed from CAS 417 which is reprinted in 4 CFR Part 417.

(a) *Intangible capital asset.* An asset that has no physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury under Pub. L. 92–41 (85 Stat. 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of month(s) each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period, or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

330.7002–3 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 330.7002–2(c)), to the representative investment amount (see 330.7002–2(d)).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 330.7002–2(d)(1)(i) or 330.7002–2(d)(2)(i), the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 330.7002–2(d)(1)(ii) or 330.7002–2(d)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month.

(Note.—Under this method, the cost of money calculation is made monthly and the total for the cost accounting period is the sum of the monthly calculations.)

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being contructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

330.7002–4 Composition and allocation of costs.

(a) The cost of money for a tangible capital asset determined in accordance with 330.7002–2 and 330.7002–3 shall be capitalized along with the other construction, fabrication, or development costs of that asset for purposes of depreciation under FAR 31.205–11.

(b) The cost of money for an intangible capital asset determined in accordance with 330.7002–2 and 330.7002–3 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 cost of money is allocated to construction, fabrication, or development effort in accordance with 330.7001, it will be recognized and considered an element of total construction costs and be included in all calculations of the asset's representative investment amount.

330.7002–5 Limitations.

If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

330.7002–6 Preaward capital employed application.

An offset to the profit objective as discussed in 315.905–74 for CAS 414 cost of money is not required for CAS 417 cost of money.

PART 332—CONTRACT FINANCING

Subpart 332.4—Advance Payments

Sec.

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Subpart 332.7—Contract Funding

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332.703 Contract funding requirements.
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332.704 Limitation of cost or funds.
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332.705–2 Clauses for limitation of costs or funds.
332.770 Prohibition against use of HHS funds to influence legislation or appropriations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 332.4—Advance Payments

332.402 General.

(a)–(d) [Reserved]

(e) The determination that the making of an advance payment is in the public interest (see FAR 32.402(c)(1) (iii)(A)) shall be made by the OPDIV, OS, and regional office officials as follows:

HCFA—Director, Office of Management and Budget
OHDS—Director, Office of Management Services
OS—Director, Office of Management Services
PHS—Director, Office of Management
SSA—Associate Commissioner, Office of Management, Budget, and Personnel
RO—Regional Director

This authority is not delegable by the referenced officials.

332.403 Applicability.

All contracts for research work with educational institutions located in the United States shall provide for financing by use of advance payments, in reasonable amounts, unless otherwise prohibited by law.

332.406 Letters of credit.

(a) and (b) [Reserved]

(c)(1) A blanket determination and findings authorizing interest free advance payments under a single letter of credit has been executed and remains in effect for each of the nonprofit organizations listed in Appendix A "Single Letter of Credit Recipients and Central Point Addressees." These determinations and findings are applicable to all existing and future contracts entered into by the Department, its operating divisions, OS staff offices, and regional offices. All contracts with the listed organizations which require advance payments (whether under section 305 of the Federal Property and Administrative Services Act of 1949, as amended, or other statutory authority) shall provide for payment to be made under the appropriate letter of credit. The clause set forth in 352.232–73 shall be included in all such contracts and the cognizant fiscal office shall be apprised of its inclusion.

(2) In those instances where it is practical and feasible to finance an advance payment under a letter of credit other than one which is incorporated under a single letter of credit described in paragraph (c)(1) above, a determination and findings shall be executed by the appropriate official indicated in 332.402(e) if the cited authority is to be section 305 of the Federal Property and Administrative Services Act. In cases where an authority other than section 305 is to be used, a determination and findings shall be submitted to the appropriate official authorized by the cited statute to approve the advance payment.

(3) The Treasury Department's letter of credit method of financing advance payments shall be employed, whenever feasible. Department-wide blanket letters of credit, which apply to the financing of research contracts and grants between the institution and all activities of the Department, shall be utilized to the maximum extent practicable. Where a particular educational institution is supported by research contracts and grants with only one operating division of the Department, a single letter of credit, applicable to all research contracts and grants between the institution and that operating division may be employed.

332.407 Interest.

(a)–(c) [Reserved]

(d) In addition to the interest-free advance payments for the types of contracts listed in FAR 32.407(d), advance payments without interest may be approved for nonprofit contracts which are without fee with educational institutions and other nonprofit organizations, whether public or private, which are for the performance of work involving health services, educational programs, or social service programs, including, but not limited to, programs such as:

(1) Community health representative services for an Indian Tribe or Band;

(2) Narcotic addict rehabilitative services;

(3) Comprehensive health care service program for Model Neighborhood programs;

(4) Planning and development of health maintenance organizations;

(5) Dissemination of information derived from educational research;

(6) Surveys or demonstrations in the field of education;

(7) Producing or distributing educational media for handicapped persons including captioned films for the deaf;

(8) Operation of language or area centers;

(9) Conduct of biomedical research and support services;

(10) Research surveys or demonstrations involving the training and placement of health manpower and health professionals, and dissemination of related information; and

(11) Surveys or demonstrations in the field of social service.

332.409 Contracting officer action.

332.409–1 Recommendation for approval.

The information in FAR 32.409–1 (or FAR 32.409–2) shall be transmitted to the approving official cited in 332.402(e) or referenced in 332.406(c)(2) in the form of a briefing letter.

Subpart 332.7—Contract Funding

332.702 Policy.

An incrementally funded contract is a contract in which the total work effort is to be performed over multiple time periods and funds are allotted to cover discernible phases or increments of performance.

(a) The incremental funding technique shall only be applied to cost-reimbursement type contracts for the acquisition of research and development services and other types of nonpersonal services such as studies, surveys, and socioeconomic demonstration projects. It shall not be applied to construction services, architect-engineer services, or services subject to the Service Contract Act of 1965, as amended. The incremental funding technique allows for contracts to be awarded for periods in excess of one year even though the total estimated amount of funds expected to be obligated for the contract are not available at the time of the contract award.

(b) It is departmental policy that contracts for projects of multiple year duration be fully funded, whenever possible, to cover the entire project. However, incrementally funded contracts may be used when:

(1) A project, which is part of an approved program, is anticipated to be of multiple year duration, but funds are not currently available to cover the entire project;

(2) The project represents a valid need of the fiscal year in which the contract is awarded and of the succeeding fiscal years of the project's duration, during which additional funds may be obligated by increasing the allotment to the contract;

(3) The project is so significant to the approved program that there is reasonable assurance that it will command a high priority for proposed appropriations to cover the entire multiple year duration; and

(4) The statement of work is specific and is defined by separate phases or increments so that, at the completion of each, progress can be effectively measured.

332.703 Contract funding requirements.

332.703–1 General.

(a) [Reserved]

(b) The following general guidelines are applicable to incrementally funded contracts:

(1) The estimated total cost of the project (all planned phases or increments) is to be taken into consideration when determining the requirements which must be met before entering into the contract; i.e., justification for noncompetitive acquisition, approval of award, etc.

(2) The RFP and resultant contract are to include a statement of work which describes the total project covering the proposed multiple year period of performance and indicating timetables consistent with planned phases or increments and corresponding allotments of funds.

(3) Offerors will be expected to respond to RFPs with technical and cost proposals for the entire project indicating distinct break-outs of the planned phases or increments.

(4) Negotiations will be conducted based upon the total project, including all planned phases or increments, and the multiple year period of performance.

(5) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance, unless the contracting officer determines it is advantageous to the Government to fund the contract for a lesser period. In that event, the contracting officer shall ensure that the obligated funds are sufficient to cover a complete phase or increment of performance representing a material and measurable part of the total project, and the contract period shall be reduced accordingly.

(6) Because of the magnitude of the scope of work and multiple year period of performance under an incrementally funded contract, there is a critical need for careful program planning. Program planning must provide for appropriate surveillance of the contractor's performance and adequate controls to ensure that projected funding will not impinge on the program office's ability to support, within anticipated appropriations, other equally important contract or grant programs.

(7) An incrementally funded contract must contain precise requirements for progress reports to enable the project officer to effectively monitor the contract. The project officer should be required to prepare periodic performance evaluation reports to facilitate the program office's ultimate decision to allot additional funds under the contract.

332.704 Limitation of cost or funds.

For detailed instruction regarding administrative actions in connection with anticipated cost overruns, see Subpart 342.71.

332.705 Contract clauses.

332.705–2 Clauses for limitation of costs or funds.

(a) and (b) [Reserved]

(c) (1) When using the Limitation of Funds clause (FAR 52.232–22) in the solicitation and resultant incrementally funded contract, the contracting officer shall insert the following legend between the clause title and the clause text:

(This clause supersedes the Limitation of Cost clause found in the General Provisions of this contract.)

(2) The contracting officer shall also include a clause reading substantially as that shown in 352.232–74 in the Special Provisions of the resultant incrementally funded contract.

(3) The request for proposals must inform prospective offerors of the Department's intention to enter into an incrementally funded contract. Therefore, the contracting officer shall include the provision at 352.232–75 in the request for proposals whenever the use of incremental funding is contemplated.

332.770 Prohibition against use of HHS funds to influence legislation or appropriations.

(a) This section provides guidance on the implementation of section 407 of the Title IV General Provisions of the Departments of Labor and Health, Education, and Welfare FY 1979 Appropriations Act (Pub. L. 95–480). Section 407, in part, prohibits the use of appropriated funds to pay the salaries or expenses of grantees and contractors, or their agents, incurred while engaging in activities to influence legislation or appropriations pending before Congress.

(b) The clause set forth in 352.232–72 implements this provision of section 407 and is to be included in every invitation for bids, request for proposals, contract, and small purchase funded in whole or in part under the FY 1979 Appropriations Act, or any succeeding Appropriations Act which contains the referenced provision.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 334—MAJOR SYSTEM ACQUISITION

334.003 Agency head responsibilities.

The Department's implementation of OMB Circular No. A–109 may be found in Chapter 1–150 of the General Administration Manual.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 335—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

335.070 Cost-sharing.
335.070–1 Policy.
335.070–2 Amount of cost-sharing.
335.070–3 Method of cost-sharing.
335.070–4 Institutional cost-sharing agreements.
335.070–5 Contract clauses.
335.070–6 Contract award.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

335.070 Cost-sharing.

335.070–1 Policy.

(a) In addition to utilizing cost-sharing type contracts when required by statute, the desirability of utilizing this type of contract should also be considered under certain circumstances when not required by statute. Contractors should be encouraged to contribute to the cost of performing research where there is a probability that the contractor will receive present or future benefits from participation, such as, increased technical know-how, training to employees, acquisition of equipment, use of background knowledge in future contracts, etc. Cost-sharing is intended to serve the mutual interest of the Government and the performing organization by helping to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by the performing organization. If cost-sharing is not required by statute, encouragement should be given to organizations to contribute to the cost of performing research under research contracts unless the contracting officer determines that a request for cost-sharing would not be appropriate because of the following circumstances:

(1) The particular research objective or scope of effort for the project is specified by the Government rather than proposed by the performing organization. This would usually include any formal Government requests for proposals for a specific project.

(2) The research effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the research primarily as a service to the Government.

(3) The organization has little or no non-Federal sources or funds from which to make a cost contribution. Cost-sharing should generally not be

requested if cost-sharing would require the Government to provide funds through some other means (such as fees) to enable the organization to cost-share. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(b) Cost-sharing may be negotiated in either of two ways. When cost-sharing is negotiated on a contract by contract basis, the responsibility for negotiating the cost-sharing arrangement is that of the contracting officer. In the case of institutional cost-sharing arrangements (see 335.070–4), the responsibility for negotiating cost-sharing is that of the Office of the Assistant Secretary for Health. Each research contract file should show whether the contracting officer considered cost-sharing appropriate for that particular contract and, except when an institutional cost-sharing agreement is applicable, in what amount. If cost-sharing was not considered appropriate, the file must indicate the factual basis for that decision, e.g., "Because the contractor will derive no benefits from this award that can be applied to its commercial activities, cost-sharing is not considered appropriate." The contracting officer may wish to coordinate with the project officer before documenting this decision.

(c) If the contracting officer considers cost-sharing to be appropriate for a research contract and the contractor refuses to accept this type of contract, the award may be made without cost-sharing, except when cost-sharing is required by statute, if the contracting officer concludes that payment of the full cost of the research effort is necessary in order to obtain the services of that particular contractor.

335.070–2 Amount of cost-sharing.

When cost-sharing is required by statute or determined to be appropriate, the following guidelines shall be utilized in determining the amount of cost participation by the contractor, except where an institutional cost-sharing agreement is applicable:

(a) Cost participation by educational institutions and other not-for-profit or nonprofit organizations should normally be at least 1 percent of the total project cost. In many cases, cost-sharing of less than 5 percent of the total project cost would be appropriate in view of the organizations' nonprofit status and their normally limited ability to recover the cost of such participation from non-Federal sources. However, in some cases, it may be appropriate for educational institutions to provide a higher degree of cost-sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members (or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities). The percentages stated above are not intended as a substitution for those set forth in any legislation and are not to be used in lieu of those contained in that legislation.

(b) The amount of cost participation by commercial or industrial organizations should depend to a large extent on whether the research effort or results are likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, cost participation by commercial or industrial organizations could reasonably range from as little as 1 percent or less of the total project cost, to more than 50 percent of the total project cost.

(c) If the performing organization will not acquire title to or the right to use inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost-sharing than in cases in which the performer acquires such rights.

(d) When cost-sharing is required by statute, cost participation of less than 1 percent may be appropriate if consistent with the provisions of the statute, and:

(1) A formal request for proposal is issued;

(2) The contractor proposes to perform the research primarily as a service to the Government; or

(e) The contractor has little or no non-Federal sources of funds from which to make a cost contribution.

(3) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the research is expected to be of only minor value to the performing organization and if cost-sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the project.

(f) The organization's participation may be considered over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another.

(g) A relatively low degree of cost-sharing may be appropriate if, in the view of the operating divisions or their subordinate elements, an area of research requires special stimulus in the national interest.

(h) In the final analysis, the amount of cost participation should reflect the mutual agreement of the parties, provided that it is consistent with any statutory requirements.

335.070 Method of cost-sharing.

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed, or by a fixed amount or stated percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocations to other grants or contracts as part of any independent research and development program).

335.070–4 Institutional cost-sharing agreements.

(a) An institutional cost-sharing agreement covers the aggregate of some or all of the research projects supported by HHS research contracts and grants at a given performing organization. With respect to contracts, these agreements will apply only to cost-sharing type contracts resulting from unsolicited proposals and awarded without fee or profit. Eligibility for institutional cost-sharing agreements is limited to nonprofit institutions of higher education and other public or private nonprofit or not-for-profit organizations. Usually, a single agreement will cover all applicable research projects at a given performing organization; however, in unusual cases, separate agreements for individual departments or locations of the performing organization may be negotiated if deemed advantageous.

(b) The institutional cost-sharing agreements establish an overall sharing ratio applicable to the aggregate of all covered projects. Individual awards will incorporate the institutional agreement by reference, but will not establish a specific sharing ratio for the individual project. The amount of sharing on any particular project will therefore be left to the discretion of the perfo-ming

organization, and relatively high contributions on some projects may offset relatively low contributions on other projects, provided that the agreed aggregate contribution is made during each of the contractor's fiscal years, and a contribution, even if nominal, is made to each covered project.

(c) The Public Health Service shall be responsible for negotiating all HHS institutional cost-sharing agreements. Agreements, when negotiated, will be binding upon all HHS activities. Eligible contractors wishing to negotiate institutional cost-sharing agreements should contact the Division of Grants and Contracts, Office of Resource Management, Public Health Service, Room 18 A 19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(1) All necessary implementing instructions to cover matters such as content of proposals, format of agreements, documentation, etc. shall be issued by the Public Health Service, subject to the prior approval of the Office of Procurement, Assistance and Logistics.

(2) The Public Health Service shall provide the Office of Procurement, Assistance and Logistics and the Department's operating divisions with current listings of all institutional cost-sharing agreements, indicating the date on which they became effective with respect to contracts. Copies of individual agreements will be made available to the Department's other activities upon request. Each activity shall designate only one individual who shall be authorized to make such requests.

(d) The amount of cost-sharing negotiated under an institutional cost-sharing agreement will be determined in accordance with the appropriate guidelines contained in "A Guide to Institutional Cost Sharing Agreements" issued by the Office of Resource Management, PHS. The extent to which the performing organization shared in the costs of HHS-sponsored research in the past, and its anticipated ability to do so in the future, should also be taken into account.

335.070–5 Contract clauses.

Clauses for cost sharing in individually negotiated contracts or under institutional agreements are set forth in 352.232–71.

335.070–6 Contract award.

In consonance with the Department's objectives of competition and support of the small business program, award of contracts should not be made solely on the basis of ability or willingness to cost-share. Awards should be made primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations whenever possible. The offeror's willingness to share costs should not be considered in the technical evaluation process but as a business consideration, which is secondary to selecting the best qualified source.

PART 337—SERVICE CONTRACTING

Subpart 337.1—Service Contracts—General

Sec.
337.101 Definitions.
337.103 Contracting officer responsibility.
337.104 Personal services contracts.
337.109 Services of quasi-military armed forces.

Subpart 337.2—Consulting Services

337.204 Policy.
337.270 Consulting services reporting.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 337.1—Service Contracts—General

337.101 Definitions.

"Service contract." A contract may require the furnishing of both property and services, such as a research and development contract which requires a final report. In a case such as this, this subpart will apply to the extent that the furnishing of services is involved. Other examples of service contracts include training and education, surveys and data collection, data processing, medical services, and stenographic services.

337.103 Contracting officer responsibility.

(a) [Reserved]

(b) Contract actions for the services of experts and consultants are also exempt from the requirements of FAR Part 37.103(a)(3); they are to be certified in accordance with the provisions in General Administration Manual Chapter 8–15.

(c) For negotiated acquisitions, the determination shall be included as a statement in the negotiation memorandum. For formally advertised acquisitions, the determination shall be included as a separate statement in the contract file.

(d) In most cases, gathering the information and data on which to base the determination should be a joint effort between contracting and program personnel. The contracting officer shall request the advice of the Office of General Counsel and/or the personnel office before processing any request to acquire services if there is doubt as to whether an employer-employee relationship would be involved in performance of the contract.

337.104 Personal services contracts.

(a) As indicated in FAR 37.104, the paramount consideration in determining if an employer-employee relationship exists is the presence of direction or supervision by Government personnel of contractor employees, as a result of either the inherent nature of the service or the manner in which the service is provided. A personal service relationship exists if this direction or supervision is necessary to:

(1) Adequately protect the Government's interest;

(2) Retain control of the function involved; and/or

(3) Retain full personal responsibility by a duly authorized Federal officer or employee for the function supported.

(b) [Reserved]

(c) (1) [Reserved]

(2) The degree of supervision necessary to establish an employer-employee relationship is relatively continuous, close supervision. Sporadic supervision is not sufficient to constitute an employer-employee relationship. (In determining whether the Government rather than the contractor exercises "relatively continuous, close supervision" of contractor personnel, the fact that an engineer, for example, may require less supervision and may exercise more independence of judgment than a food service worker is not itself determinative. If the Government takes over that degree of supervision that the contractor would otherwise exercise over either individual, the relationship created between the Government and either individual is tantamount to that of employer and employee.)

(d) The likelihood of the existence of an employer-employee relationship increases as the number and extent of the elements in FAR 37.104(d) increases. However, the mere existence of these elements does not constitute an employer-employee relationship unless continuous, close supervision exists. In determining the presence of the referenced elements, relevant factors including the following shall be considered:

(1) *The nature of the work.*

(i) If the Government can use Federal personnel to perform the required work, or if the Government has rights to the specialized knowledge or equipment which is needed to perform the work;

(ii) Whether the services represent the discharge of a Government function which calls for the exercise of personal judgment and discretion on behalf of the Government (This factor, if present in sufficient degree, may alone render the service personal in nature.); and/or

(iii) If the services are to be a one-time occurrence (or a continuing requirement of short term duration).

(2) *Contractual provisions concerning the contractor's employees.*

(i) To what extent the Government specifies the qualifications of, or has the right to approve, individual contractor employees (other than the Government's right to approve or disapprove new key personnel, remove key personnel, grant or deny security clearances, and provide for necessary health qualifications). (Also, it is permissible for the Government to specify the technical and experience qualifications of contractor employees, if this is necessary to assure satisfactory performance.);

(ii) To what extent the Government can assign tasks to, and prepare work schedules for, contractor employees during performance of the contract. (This does not preclude inclusion in the contract of work schedules for the contractor—but not individual employees—or the establishment of a time of performance for orders issued under a requirement or other indefinite delivery-type contract.);

(iii) To what extent the Government can supervise or control the method in which the contractor performs the service, the number of people that will be employed, the specific duties of individual employees, and similar details. (However, it is permissible to require that contractor employees comply with regulations for the protection of life and property. Also, it is permissible to recommend a specific number of people the contractor may employ, if this is necessary to assure performance; but in that event, the contract must specify that this does not in any way minimize the contractor's obligation to use as many employees as are necessary for proper contract performance.);

(iv) If the Government can review performance of each individual contractor employee (as opposed to reviewing the final product after completion of the work.); and/or

(v) If the Government has the right to have contractor employees removed from the job for reasons other than misconduct or security.

(3) *Other provisions of the contract.*

(i) Whether the contractor undertakes a specific task or project that is definable either at the inception of the contract or at some point during performance, or whether the work is defined on a day-to-day basis. (However, this does not preclude use of a requirement or other indefinite delivery-type contract, provided the nature of the work is specifically described in the contract, and orders are formally issued to the contractor rather than to individual employees.);

(ii) Whether payment will be for results accomplished or solely according to time worked. (This is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal.); and/or

(iii) Whether Government office or working space, facilities, equipment, and supplies will be used for contract performance. (This is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal.).

(4) *Administration of the contract.*

(i) If contractor employees are used interchangeably with Government personnel; and/or

(ii) If contractor employees are integrated into the Government's organizational structure.

(e) and (f) Reserved.

(g) The following are examples of personal and nonpersonal services, but are illustrative only and are not to be used as the basis for determination in any specific case.

(1) The following are examples of personal services contracts:

(i) A contract to furnish ordinary, day-to-day, stenographic and secretarial services in a Government office under direct Government supervision.

(ii) A contract for the testing of a substance where the project officer visits the contractor's facility several times each week to consult with the principal investigator, review data, specify methods of quality control, specify testing to be done, and provide instruction to investigators.

(iii) A contract for the performance of a function which management must perform in order to retain essential control over the conduct of agency programs (e.g., negotiating contract amounts).

(2) The following are examples of nonpersonal services contracts:

(i) A contract for technical assistance work requiring specialized equipment and trained personnel unavailable to the Government. The contractor performs work described in the contract free of Government supervision, and does not act on behalf of the Government.

(ii) A contract with an individual for delivery of lectures without Government supervision (even if they are to be given on specific dates, or on specialized subjects, or if payment will be by the hour).

(iii) A fixed price contract for janitorial services which provides for specific tasks to be performed in specific places, free of Government direction, supervision, and control over the contractor's employees.

(iv) A research and development contract providing for a level of effort which will be performed by the contractor independent of Government direction, supervision, and control.

337.109 Services of quasi-military armed forces.

As distinguished in FAR 37.109, solicitations for protective services shall include the following certification:

> The bidder/offeror certifies it is not a detective agency, nor an employee of such agency as contemplated by 5 U.S.C. 3108.

Subpart 337.2—Consulting Services

337.204 Policy.

General Administration Manual Chapter 8–15 prescribes policies and procedures concerning approvals required before contracting for expert or consulting services.

(a)–(d) [Reserved].

(e) Services of experts or consultants may be acquired by contract only when:

(1) The services will be nonpersonal in nature, are critical to the planning, development, operation, or evaluation of a Department program, cannot be accomplished by Government employees, and are economically available from the private sector; or

(2) The performance of the work by a consultant is directed by statute.

337.270 Consulting services reporting.

The clause set forth in 352.237–70 shall be included in every contract for expert or consulting services.

PART 339—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Subpart 339.70—ADP Clearances and Systems Security

Sec.

339.7001 ADP Clearances.
339.7002 ADP systems security.

Authority: 5 U.S.C. 301; 40 U.S.C. 486 (c).

Subpart 339.70—ADP Clearances and Systems Security

339.7001 ADP clearances.

In accordance with Chapter 4–10 of the HHS ADP Systems Manual, the Office of Management Analysis and Systems (OMAS), OASMB–OS, is responsible for the review and approval of all requests for proposed automatic data processing (ADP) systems and modifications to existing ADP systems which require the acquisition of ADP hardware, software packages, and

services, and telecommunications equipment, which exceed the dollar thresholds stated in Chapter 4–10.

(a) It is the responsibility of the program office to obtain written approval from OMAS on proposed ADP acquisitions which exceed the thresholds stated in Chapter 4–10 prior to submitting the request for contract to the contracting activity.

(b) The OMAS approval document is to be attached to the request for contract when it is submitted by the program office to the contracting activity. The contracting activity shall not initiate action on the request for contract until a properly executed approval document is obtained.

339.7002 ADP systems security.

(a) *Program responsibilities.* Whenever a proposed contract action requires the design, development, maintenance, or use of an ADP system or the use of ADP resources, the program office is required to designate a responsible individual to serve as the ADP system manager who is to ensure, in coordination with the cognizant systems security officer, that ADP security requirements are met and that each contractor maintains an acceptable security program.

(b) *Contracting responsibilities.* (1) The contracting officer is responsible for ensuring that a certification of ADP systems security requirements, signed by both the ADP system manager and the ADP systems security officer, is submitted with the request for contract. The contracting officer shall not initiate action on the request for contract until the properly executed certification is received. The certification will state that the security requirements specified are reasonably sufficient for the intended application and that they comply with current Federal and HHS computer security policies, procedures, standards, and guidelines.

(2) When developing the request for proposals, the contracting officer shall include in the technical proposal instructions a statement requiring that the offeror present a detailed outline of its proposed ADP system security program which complies with the requirements of the statement of work and applicable portions of Part 6, ADP Systems Security, of the HHS ADP Systems Manual.

(3) The contracting officer shall include a special provision reading substantially as follows in all applicable solicitations and resultant contracts:

> The Contractor agrees to comply with the ADP system security requirements set forth in the system of work and applicable portions of Part 6, ADP Systems Security, of the HHS ADP Systems Manual. The Contractor further agrees to include this provision in any subcontract awarded pursuant to this prime contract.

(4) The contracting officer shall ensure that a properly executed certification confirming that the offerors comply with the necessary security requirements is attached to the technical evaluation report received from the evaluation panel before proceeding with the acquisition process. This certification must be countersigned by the officials designated in paragraph (b)(1) above and must contain a similar statement of compliance.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 342—CONTRACT ADMINISTRATION

Subpart 342.5—Postaward Orientation

Sec.
342.504 Postaward letters.

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

Subpart 342.70—Contract Monitoring

342.7001 Purpose.
342.7002 Contract monitoring responsibilities.
342.7003 Withholding of contract payments.
342.7003–1 Policy.
342.7003–2 Procedures.
342.7003–3 Withholding payments.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.
342.7101 Applicability.
342.7102 General.
342.7103 Contract administration.
342.7103–1 General.
342.7103–2 Procedures.
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Subpart 342.72—Payments to Contractors

342.7200 Scope of subpart.
342.7201 Definitions.
342.7202 Policy and responsibilities.
342.7203 Exemptions.
342.7204 Contract clause-general.
342.7205 Payment terms in contracts.
342.7205–1 General requirements.
342.7205–2 Invoice requirements.
342.7205–3 Receiving reports.
342.7205–4 Processing invoices.
342.7205–5 Interest penalty payments.
342.7206 Method of payment.
342.7206–1 General.
342.7206–2 Method of payment.
342.7206–3 Coordination with paying offices.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 342.5—Postaward Orientation

342.504 Postaward letters.

To the extent practicable, contracting officers should use letters to accomplish postaward orientation objectives. A postaward orientation conference should only be arranged when letters cannot resolve key issues.

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

The Director, Division of Cost Allocation of the Regional Administrative Support Center within each HHS regional office has been delegated the authority to establish indirect cost rates, research patient care rates, and, as necessary, fringe benefit, computer, and other special costing rates for use in contracts and grants awarded to State and local governments, colleges and universities, hospitals, and other nonprofit organizations.

Subpart 342.70—Contract Monitoring

342.7001 Purpose.

Contract monitoring is an essential element of contract administration and the acquisition process. This subpart describes the Department's operating concepts regarding contract monitoring, performed jointly by the project officer and the contracting officer, to ensure that the required monitoring is performed, timely remedial action is taken when necessary, and a determination is made that contract objectives have been met.

342.7002 Contract monitoring responsibilities.

(a) Upon execution of the contract, the mutual obligations of the Government and the contractor are established by, and limited to, the written stipulations in the contract. Unless authorized by the contracting officer, HHS personnel shall not direct or request the contractor to assume any obligation or take any actions not specifically required by the contract. Only the contracting officer may impose a requirement which will result in a change to the contract. All contract changes must be directed in writing or confirmed in writing by the contracting officer.

(b) The contracting officer is responsible for assuring compliance with all terms of the contract, especially the statutory, legal, business, and regulatory provisions. Whether or not a postaward conference is held, the contracting officer shall inform the contractor by letter (if not already stipulated by contract provisions) of the authorities and responsibilities of the Government personnel with whom the contractor will be dealing throughout the life of the contract.

(c) The contracting officer must depend on program, technical, and other

personnel for assistance and advice in monitoring the contractor's performance, and in other areas of postaward administration. The contracting officer must assure that responsibilities assigned to these personnel are understood and carried out. The individual roles and corresponding responsibilities typically involve, but are not limited to, the following:

(1) The role of program and technical personnel in monitoring the contract to assist or advise the contracting officer (or act as his/her representative when so designated by the contracting officer) in activities such as:

(i) Providing technical monitoring during contract performance, and issuing letters to the contractor and contracting officer relating to delivery acceptance, or rejection in accordance with the terms of the contract;

(ii) Assessing contractor performance, including inspection and testing of products and evaluation of reports and data;

(iii) Recommending necessary changes to the schedule of work and period of performance in order to accomplish the objectives of the contract. This shall be accomplished by a written request to the contracting officer, together with an appropriate justification and funds availability citation;

(iv) Reviewing invoices/vouchers and recommending approval/disapproval action by the contracting officer, to include comments regarding anything unusual discovered in the review;

(v) Reviewing and recommending approval or disapproval of subcontracts, overtime, travel, and key personnel changes; and

(vi) Participating, as necessary, in various phases of the contract closeout process.

(2) The role of the project officer in performing required aspects of the contract monitoring process. In addition to those applicable activities set forth in (c)(1) above, the project officer shall:

(i) Submit periodic reports to the contracting officer that concisely explain the status of the contract, and include recommended actions for any problems reported. Provide the contracting officer with written notification of evaluation and approval/disapproval of contract deliverables and of completion of tasks or phases. The contracting officer will, in turn, provide the contractor with written notification of approval or disapproval unless the responsibility has been delegated by the contracting officer, in which case the person responsible for such action will notify the contractor and provide a copy to the contracting officer for inclusion in the contract file;

(ii) Monitor the technical aspects of the contractor's business and technical progress, identify existing and potential problems that threaten performance, and immediately inform the contracting officer of deviations from contract objectives, or from any technical or delivery requirements, so that remedial measures may be instituted accordingly;

(iii) Provide immediate notification to the head of the program office responsible for the program whenever it is determined that program objectives are not being met, together with specific recommendations of action to be taken. A copy of the project officer's report and recommendations shall be transmitted to the contracting officer for appropriate action;

(iv) Submit, within 120 days after contract completion, a final assessment report to the contracting officer. The report should include an analysis of the contractor's performance, including the contract and program objectives achieved and missed. A copy of the final assessment report shall be forwarded to the head of the program office responsible for the program for management review and followup, as necessary; and

(v) Accompany and/or provide, when requested, technical support to the HHS auditor in the conduct of floor checks.

(3) The role of the contract administrator, auditor, cost analyst, and property administrator in assisting or advising the contracting officer in postaward administration activities such as:

(i) Evaluation of contractor systems and procedures, to include accounting policies and procedures, purchasing policies and practices, property accounting and control, wage and salary plans and rate structures, personnel policies and practices, etc.;

(ii) Processing of disputes under the Disputes clause and any resultant appeals;

(iii) Modification or termination of the contract; and

(iv) Determination of the allowability of cost charges to incentive or cost-reimbursement type contracts and progress payments under fixed-price contracts. This is especially important when award is made to new organizations or those with financial weaknesses.

(d) The contracting officer is responsible for assuring that contractor performance and contract monitoring are carried out in conformance with contract provisions. If performance is not satisfactory or if problems are anticipated, it is essential that the contracting officer take immediate action to protect the Government's rights under the contract. The contracting officer shall notify his/her immediate supervisor of problems that cannot be resolved within contract limitations and whenever contract or program objectives are not met. The notification shall include a statement of action being taken by the contracting officer.

342.7003 Withholding of contract payments.

342.7003-1 Policy.

(a) All solicitations and resultant contracts shall contain a withholding of contract payments clause and an excusable delays clause or a clause which incorporates the definition of excusable delays. These clauses are contained in the Department's contract general provisions.

(b) The transmittal letter used to convey the contract to each contractor shall contain a notice which highlights the contractor's agreement with the withholding of contract payments clause.

(c) No contract payment shall be made when any report required to be submitted by the contractor is overdue, or the contractor fails to perform or deliver work or services as required by the contract.

(d) The contracting officer shall issue a ten-day cure notice or initiate appropriate termination action for any failure in the contractor's performance as stated in the preceding paragraph (c).

342.7003-2 Procedures.

(a) The contracting officer is responsible for initiating immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting provisions of the contract. Compliance with the reporting provisions includes those reports to be submitted directly to the payment office. If such a report is not submitted on time, the contracting officer is to be notified promptly by the payment office.

(b) When the contract contains a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a default in performance. In either circumstance, the contracting officer is to immediately issue a formal ten-day cure notice pursuant to the default clause. The cure notice is to follow the format prescribed in FAR 49.607 and is to include a statement to the effect that contract payments will be withheld if

the default is not cured or is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a failure to perform. In either circumstance, the contracting officer is to immediately issue a written notice to the contractor specifying the failure and providing a period of ten days, or a longer period as determined necessary by the contracting officer, in which the contractor is to cure the failure or establish an excusable delay. The contracting officer is to include a statement in the written notice to the effect that contract payments will be withheld if the failure is not cured or is not determined to be excusable.

(1) If the failure is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the failure is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for convenience or other action would be in the best interest of the Government.

(d) The contracting officer should consult FAR Subpart 49.4 for further guidance before taking any of the actions described in this section.

342.7003-3 Withholding payments.

(a) When making the determination that contract payments should be withheld in accordance with the Withholding of Contract Payments clause, the contracting officer is to immediately notify the servicing finance office in writing of the determination to suspend payments. The notice of suspension is to contain all elements of information required by the payment office to properly identify the contract and the applicable accounts involved.

(b) The contracting officer is to immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

(c) When the contractor cures the default or failure, the contracting officer is to immediately notify, in writing, all recipients of the notice of suspension that the suspension is to be lifted and contract payments are to be resumed.

(d) When exercising actions regarding the withholding of payment procedures, the contracting officer must be careful not to waive any of the Government's rights when corresponding with the contractor or when taking any other actions.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.

This subpart sets forth the procedures to be followed when a cost overrun is anticipated; i.e., the allowable actual cost of performing a cost-reimbursement type contract is expected to exceed the total estimated cost specified in the contract.

342.7101 Applicability.

This subpart applies to the administration of cost-reimbursement type contracts and the cost-reimbursement portion of other types of contracts. Nothing in this subpart shall be construed to relieve contractors from compliance with the Limitation of Cost clause or any other provisions of contracts.

342.7102 General.

Reimbursement for costs incurred under cost-reimbursement contracts shall not exceed the amount of funds obligated by the contract, unless increased by the contracting officer. Cost overruns shall be held to an absolute minimum, compatible with accomplishment of the statement of work.

342.7103 Contract administration.

342.7103-1 General.

Upon receipt of information that a contractor's accumulated cost and projected expenditures will exceed the limit of funds obligated by the contract, the contracting officer shall coordinate immediately with the appropriate program office to determine whether the contract should be modified or terminated. If the contracting officer receives information from a source other than the contractor that a cost overrun is anticipated, the contracting officer shall verify the information with the contractor, and remind the contractor of the notification requirements of the Limitation of Cost clause.

342.7103-2 Procedures.

(a) Upon notification that a cost overrun is anticipated, the contracting officer shall inform the contractor to submit a request for additional funds which is to include:

(1) Name and address of contractor.

(2) Contract number and expiration date.

(3) Contract item(s) and amount(s) creating the overrun.

(4) The elements of cost which changed from the original estimate (i.e., labor, material, travel, overhead, etc.) to be furnished in the following format:

(i) Original estimate,

(ii) Costs incurred to date,

(iii) Estimated cost to completion,

(iv) Revised estimate, and

(v) Amount of adjustment.

(5) The factors responsible for the increase, i.e., error in estimate, changed conditions, etc.

(6) The latest date by which funds must be available for commitment to avoid contract slippage, work stoppage, or other program impairment.

(b) When the contractor submits a notice of an impending overrun, the contracting officer shall:

(1) Immediately advise the appropriate program office and furnish a copy of the notice and any other data received;

(2) Request audit or cost advisory services, and technical support, as necessary, for evaluation of information and data received; and

(3) Maintain continuous follow-up with the program office in order to obtain a timely decision as to whether the work under the contract should be continued and additional funds provided, or the contract terminated. The decision of the program office must be supported by an appropriate written statement and funding authority, or a formal request for termination, when applicable. After a programming and funding decision is received from the program office, the contracting officer shall promptly notify the contractor in writing that:

(i) A specified amount of additional funds has been allotted to the contract by a contractual instrument; or

(ii) Work will be discontinued when the funds allotted to the contract have been exhausted, and that any work performed after that date is at the contractor's risk; or

(iii) The Government is considering whether additional funds should be allotted to the contract and will notify the contractor as soon as possible, but that any work performed after the funds then allocated to the contract have been exhausted is at the contractor's risk.

Timely, formal notification of the Government's intention is essential in order to preclude loss of contractual rights in the event of dispute, termination, or litigation.

(c) If program requirements permit, contracting officers should refrain from issuing any contractual documents which will require new work or an extension of time, pending resolution of an overrun or additional fund request.

342.7104 Contract modifications.

(a) Modifications to contracts containing the Limitation of Cost clause shall include either:

(1) A provision increasing the estimated or ceiling amount referred to in the Limitation of Cost clause of the contract and stating that the clause will thereafter apply in respect to the increase amount; or

(2) A provision stating that the estimated or ceiling amount referred to in the contract is not changed by the modification and that the Limitation of Cost clause will continue to apply with respect to the amount in effect prior to the modification.

(b) A fixed-fee provided in a contract shall not be changed when funding a cost overrun. Changes in fixed-fee will be made only to reflect changes in the scope of work which justify an increase or decrease in fee.

Subpart 342.72—Payments to Contractors

342.7200 Scope of subpart.

This subpart prescribes policies and procedures relating to: (a) The requirements of the Prompt Payment Act (Pub. L. 97–177), (b) the implementation of Pub. L. 97–177 by the Office of Management and Budget (OMB) Circular No. A–125, (c) invoice requirements and matters concerning payments to contractors, and (d) wire transfer payment procedures.

342.7201 Definitions.

The terms used in this subpart have the meanings set forth below:

"Applicable interest rate" means the interest rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611).

"Business concern (Contractor)" means any person or organization engaged in a profession, trade or business; and nonprofit entities (including State and local governments, Federally recognized Indian Tribal governments, and educational institutions, but excluding Federal entities) operating as contractors.

"Contract" means any enforceable agreement, including rental and lease agreements and purchase orders. This definition also includes basic ordering agreements, blanket purchase agreements and other types of agreements under which calls or orders may be issued.

"Designated payment office" means the place named in the contract where invoices will be forwarded for payment, or in certain instances, for approval.

"Due date" means the date on which Federal payment should be made.

"Discount date" means the date by which, if payment is made, a specified discount can be taken.

"Payment date" means the date on which a check for payment is dated or a wire transfer of funds is made.

"Proper invoice" means a bill or written request for payment provided by a business concern for property delivered or services rendered. A proper invoice must contain the data required by the contract.

"Receipt of invoice" means the later of:

—The date a proper invoice is actually received in the designated payment office, or

—The date on which HHS accepts the property or service.

"Receiving report" means written evidence of acceptance of property or services by the designated receiving official. Receiving reports must meet the requirements of 342.7205–3.

"Designated receiving official" means the individual designated:

—Pursuant to 103–27.5018 of the HHS Materiel Management Manual to receive property for his/her activity, or

—In the contract, e.g., the project officer, or by the agency to accept services rendered under a contract.

"Fiscal office" means the office responsible for: (a) Determining whether interest penalties are due a contractor and, if so, the amount, (b) determining whether an invoice offers a financially advantageous discount, (c) maintaining records for and submission of prompt payment reports to the Deputy Assistant Secretary, Finance (DASP), ASMB, OS, and (d) processing payments to the Treasury Department to allow for payment to a contractor when due.

342.7202 Policy and responsibilities.

(a) Each OPDIV and STAFFDIV head and regional director is responsible for ensuring timely payment and the payment of interest penalties when required.

(b) Contracting officers shall include payment provisions in all contracts and purchase orders and, when necessary, participate in the processing of invoices in a timely manner so that payment may be made as close as possible to, but not later than, the due date or, if appropriate, the discount date. Payment will be based on receipt of proper invoices and satisfactory performance of contract terms.

(c) Notice of an apparent error, defect, or impropriety in an invoice shall be given to a business concern within 15 days of receipt of an invoice (3 days for meat or meat food products and 5 days for perishable agricultural commodities). The notice shall be suitably documented.

(d) OPDIV and STAFFDIV heads and regional directors shall ensure that receipt and acceptance are executed as promptly as possible. Receiving reports shall be forwarded in time to be received by the designated payment office by the fifth business day after acceptance, unless other arrangements are made. Designated payment offices shall stamp receiving reports and invoices with the date received in those offices.

(e) Any OPDIV, STAFFDIV or regional office which acquires property or services from a business concern, but which does not make payment for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the business concern as provided in the Payment Due Date clause in the contract.

(f) It is the policy of the Government to defer payment until as close as administratively possible to the due date for payment or, if appropriate, the discount date. In addition, payments shall not be expedited to earn discounts for early payment unless discounts are determined to be economical. These practices will tend to maximize cash balances available to the Treasury, reduce the need for borrowing, and thus contribute to lowering the public debt.

(g) If a business concern offers an activity a discount from the amount otherwise due under a contract for property or services in exchange for payment within a specified period of time, the activity may make payment in an amount equal to the discounted price only if payment is made within the specified period of time. Each activity which violates this provision shall pay an interest penalty on any amount which remains unpaid and on which the agency fails to correct the underpayment within 15 days of the expiration of the discount period (3 days for meat and meat food products, and 5 days for perishable agricultural commodities).

(h) Interest penalties will be paid without the need for business concerns requesting them, except as provided in 342.7205–5. Interest penalty payments will be absorbed within funds available for the administration or operation of the program for which the penalty was incurred.

342.7203 Exemptions.

The provisions of this Subpart 342.72 are not applicable to the following types of contracts:

(a) Contracts when payments are made for financing purposes before receipt of complete delivered items of property or service.

(b) Contracts for utilities (gas, water, electricity, etc.) that include provisions for late payment charges established by tariff or State regulatory commissions.

(c) Informal contracts for the purchase of utilities under a tariff when the tariff provides for late payment charges.

(d) Cost-reimbursement contracts are exempt from the clause required by 342.7204, but must contain the clause required by 342.7205–(1)(d).

342.7204 Contract clause—general.

The contracting officer shall insert the clause at 352.242–72, Interest on Overdue Payments, in solicitations and contracts unless exempted by 342.7203.

342.7205 Payment terms in contracts.

342.7205–1 General requirements.

The contracting officer shall include the Government's terms of payment in each nonexempt contract and purchase order (see 342.7203) in accordance with the guidelines in this section. The clauses established by this section may be modified provided the basic features are included in the payment terms. For example, the contracting officer may modify the clause to provide for special billing instructions or other administrative matters or to allow for a due date for payment beyond 30 days if, in consultation with the designated receiving official, it is determined that the property or services may require additional time for inspection review (see 342.7205–3(c)).

(a) *Payment due dates based on receipt for invoices under purchase orders and fixed-price type contracts.* (1) The contracting officer should insert the clause at 352.242–73, Invoice Payment, in solicitations and contracts when invoices required to be furnished by contractors may be received before the Government has had an opportunity to inspect and accept the supplies or services. It shall be stipulated in the payment terms that payment will be due on the later of receipt of the invoice, or acceptance of the supplies or services.

(2) The contracting officer should insert the clause at 352.242–74, Payment Due Date, in solicitations and contracts when invoices may be required to reflect that delivery (or performance) and acceptance has already occurred. This would be the situation in the case of supplies purchased on an f.o.b. origin basis, with inspection and acceptance at source, and proof of shipment (e.g., a Government bill of lading) required to be furnished with the invoice. This may also be the case with respect to various contracts for services.

(b) *Due dates based on delivery.* (1) The Prompt Payment Act requires payment to be made not later than 7 days after the date of delivery of meat and meat food products, as defined in section 2(a)(3) of the Packers and Stockyards Act of 1921 (7 U.S.C. 182(3)). Contracts for these commodities should require invoices to be furnished with each shipment, and payment terms may stipulate that supplies will not be deemed to be delivered until the later of the date of actual delivery or the date of receipt of a proper invoice. The contracting officer should insert the clause at 352.242–75, Invoice Payment, in solicitations and resultant contracts for the acquisition of meat and meat food products as discussed in this 342.7205–1(b)(1).

(2) The circumstances regarding meats, as described in the preceding paragraph, also apply to perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), except that the required time for payment is 10 calendar days after delivery. This period is subject to changes based on any amendment to the Perishable Agricultural Commodities Act of 1930, or any implementing regulations issued thereunder. Contracts for these commodities should require invoices to be furnished with each shipment, and payment terms may stipulate that supplies will not be deemed to be delivered until the later of the day of actual delivery or the date of receipt of a proper invoice. The contracting officer should insert the clause at 352.242–76, Invoice Payment, in solicitations and resultant contracts for the acquisition of perishable agricultural commodities as discussed in this 342.7205–1(b)(2).

(c) *Recurring payments under leases of real property.*

Leases of real property usually provide for payment in arrears of a fixed amount, due on the first day of each month. Payment terms should provide that payment is due on a workday early in the month, but not in excess of the fifth workday.

(d) *Cost-reimbursement type contracts.* The contracting officer should insert the clause set forth at 352.242–77, Invoice Payment, in solicitations for which award of a cost-reimbursement type contract is contemplated and in resultant cost-reimbursement type contracts.

§ 342.7205–2 Invoice requirements.

(a) *Basic requirements of a proper invoice.*

(1) Public Law 97–177 provides, in section 6(3), that "an invoice shall be considered a 'proper invoice' when it contains or is accompanied by such substantiating documentation:

(i) As the Director of the Office of Management and Budget may require by regulation, and (ii) as the Federal agency involved may require by regulation or contract."

(2) OMB Circular A–125 provides that the following data must be included in an invoice for it to constitute a proper invoice:

(i) Name of the business concern and invoice date.

(ii) Contract number, or other authorization for delivery of property or services.

(iii) Description, price, and quantity of property and services actually delivered or rendered.

(iv) Shipping and payment terms.

(v) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(vi) Other substantiating documentation or information as required by the contract.

(b) *Invoice requirements clause.* The contracting officer should insert the clause set forth at 352.242–78, Invoice Submission, in nonexempt solicitations and contracts (see 342.7203). The clause may be modified to provide for agency needs.

§ 342.7205–3 Receiving reports.

(a) Employees responsible for the inspection and acceptance of property or services are to complete their actions and forward the necessary paperwork to the fiscal office within 5 Government working day of the receipt of the property or rendering of the service, or upon completion of special contract requirements, e.g., installation or testing.

(b) Programmatic review of invoices will be completed by the project officer and forwarded to the contracting officer within five calendar days of their receipt.

(c) The above employees must inform the contracting officer, prior to award, of any extraordinary inspection/review

requirements that may not allow for their effort to be completed within the five days period so that these requirements may be included in the contract.

(d) The contracting officer shall ensure that the contract file contains adequate documentation to substantiate the basis for extraordinary inspection/review requirements.

(e) Receiving reports for property must include:

(1) Contract or other authorization number.

(2) Name of contractor.

(3) Product or service description.

(4) Quantities received and accepted, if applicable.

(5) Date(s) property or services were accepted.

(6) Signature, printed name, title, phone number, and mailing address of the designated receiving official.

342.7205–4 Processing invoices.

(a) *Submission of invoices.*

(1) The "Invoice Submission" article of the contract shall instruct the contractor where all invoices will be submitted.

(2) Normally, the invoice will be submitted directly to the fiscal office. Immediately upon receipt, the payment officer shall date stamp and review the invoice to determine whether it is proper. If the invoice contains an apparent error, defect, or impropriety, written notification shall be given to the contractor as early as possible but in no event later than 15 calendar days of the receipt of the invoice (3 days for meat or meat food products and 5 days for perishable agricultural commodities).

(3) If the invoice is considered proper, the payment officer shall place it in a system where periodic follow-up action can be taken and forward a copy to the contracting officer if his/her approval is required before payment can be made so that the contracting officer can return the approved invoice in sufficient time for payment to be made by the payment due date. In the latter case, close coordination is essential between the paying office and the approving official.

(4) Fiscal and contracting officers may agree to allow for invoices requiring contracting officer approval to be submitted by the fiscal office directly to the project officer for review and subsequent submission to the contracting officer for approval. If a receiving report or invoice requiring contracting officer approval is not received in the fiscal office when due, the payment officer will request immediate submission from the responsible office.

(5) OPDIVs, STAFFDIVs and regional offices may elect to require contractors to submit invoices directly to the contracting officer for processing. However, when this option is used, the OPDIV, STAFFDIV, or regional office shall develop procedures to assure prompt approval and payment of invoices and shall maintain standards against which timely payment of invoices can be evaluated. These procedures and standards shall be developed in conjunction with the fiscal office and a copy shall be submitted through acquisition channels to the Director, Division of Procurement Policy (DPP), OPAL–OS. The Director, DPP, will submit a copy of the procedures and standards to the Director, Division of Cash Management Policy and Procedures (DCMPP), OS.

(b) *Receipt and processing invoices by the contracting officer.*

(1) Immediately upon receipt, the contracting officer shall date stamp each invoice and review it to determine if the submission is in accordance with the terms of the contract. This date will establish the payment due date or defective invoice notification date when the contracting office is identified as the designated payment office.

(2) When the contract identifies the contracting office as the designated payment (approval) office and a submission is deficient, the contracting officer shall give the contractor written notice of the apparent error, defect, or impropriety within 15 calendar days of the receipt of the invoice (3 days for meat or meat food products and 5 days for perishable agricultural commodities). A copy of the notice will be submitted to the fiscal office. However, payment of an invoice should not be delayed because a minor amount is in question. Generally, a minor amount is considered to be less than 10% of the invoiced amount. The contractor should be informed of the problems in writing and, if appropriate, the amount deleted from the invoice and payment made. The contract file should be documented as to the action taken.

(3) The contracting officer, with assistance from the project officer, must insure that payments are commensurate with technical progress under the contract.

(4) With respect to contracts where the work is budgeted by phase or task, payment to the contractor shall be limited to the amount specified for each phase or task. Approval of invoices is thus controlled by these incremental limitations. Special care should be exercised to assure payments are not made prematurely, e.g., when authorizations to proceed to subsequent tasks are contingent upon approval of the prior task. It is, therefore, mandatory that those contracts susceptible to phasing require billing and financial reporting by tasks or phases.

(5) The Fixed-Fee clause prescribed at FAR 52.216–8 provides that after payment of 85% of the fixed-fee the contracting officer may withhold further payment of fee, within specified limits, only if he/she considers withholding necessary to protect the interests of the Government. Fees shall not be withheld unless the contracting officer makes a determination that such action is in the best interest of the Government and informs the contractor in writing of the reasons for withholding within the time periods set forth in (b)(2) above. A copy of the notification shall be submitted to the fiscal office.

(6) The Allowable Cost and Payment clause prescribed at FAR 52.216–7 requires the contracting officer to make payment in amounts determined to be allowable. The contracting officer shall notify a contractor in writing, within the time periods set forth in (b)(2) above, of any determination to withhold costs. Notification shall be made orally and confirmed in writing if it cannot be made timely. A copy of the notification shall be submitted to the fiscal office. The contracting officer shall follow the procedures in FAR 42.801 if, during the course of contract performance, costs are withheld because they are determined to be unallowable (see FAR 31.001). The notice of intent to disallow costs shall contain the appropriate elements set forth in FAR 42.801(c).

(7) When a contract requires payment to be made within 30 days after receipt of a proper invoice, the contracting officer shall submit the approved invoice to the fiscal office no later than sixteen (16) calendar days from receipt of a proper invoice by the designated payment office. However, when a contract provides for a payment due date other than 30 days after receipt of a proper invoice, and if contracting officer approval of the invoice is required before payment can be made, the contracting officer shall reach agreement with the fiscal office prior to award, as to when the invoice must be received in the designated payment office.

(8) When an invoice offers a financially advantageous discount, the contracting officer shall submit the approved invoice to the fiscal office in sufficient time to insure payment within the discount period. The fiscal office is responsible for determining if a discount is financially advantageous to take in

accordance with Federal Cash Management Guidelines.

(c) *Alternative procedures for invoice processing.* In the event an OPDIV, STAFFDIV, or regional office is consistently unable to meet the prior review and approval requirements, it may submit an alternative plan to the Assistant Secretary for Management and Budget for approval that provides for:

(1) Submission of SF–1166, Voucher and Schedule of Payments, to the Treasury Department to allow for payment to be made when due or within the discount period;

(2) Review by the project officer and approval by the contracting officer of the invoice within 15 days after payment;

(3) Any necessary adjustments in the subsequent voucher payments; and

(4) Payment of completion and final vouchers only after approval by the contracting officer.

The plan must explain why the OPDIV, STAFFDIV, or regional office is unable to meet the review and approval period. All approved alternative payment plans will be subject to periodic review and reevaluation.

342.7205–5 Interest penalty payments.

(a) An interest penalty will be determined and paid automatically by the fiscal office when all of the following conditions are met:

(1) There is a contract or purchase order with a business concern which contains the Interest on Overdue Payments clause set forth in 352.242–72.

(2) Federal acceptance of property or services has occurred and there is no disagreement over quantity, quality, or other contract provisions.

(3) A proper invoice has been received (except where no invoice is required, e.g., some periodic lease payments) or the activity fails to give notice that the invoice is not proper within 15 days of receipt of an invoice (3 days for meat or meat food products, and 5 days for perishable agricultural commodities).

(4) Payment is made to the business concern more than 15 days after the due date (3 days for meat or meat food products, and 5 days for perishable agricultural commodities).

(b) An interest penalty for contracts containing the Interest on Overdue Payments clause set forth at 352.242–72 will also be paid if an activity takes a discount after the discount period has expired, and fails to correct the underpayment within 15 days of the expiration of the discount period (3 days for meat and meat food products, and 5 days for perishable agricultural commodities).

(c) Interest penalties are not required when payment is delayed because of a disagreement between a Federal agency and a business concern over the amount of the payment or other issues concerning compliance with the terms of a contract; nor are they required when payments are made solely for financing purposes, or for a period when amounts are withheld temporarily in accordance with the contract. Claims concerning disputes, and any interest that may be payable with respect to the period while the dispute is being settled, will be resolved in accordance with the provisions in the Contract Disputes Act of 1978 (41 U.S.C 601 *et seq.*).

342.7206 Method of payment.

342.7206–1 General.

(a) The Department of the Treasury has initiated a program to make contract payments by wire transfer through the Treasury Financial Communications System (TFCS). During its initial phases, payments will be made by both check and wire transfer. The determination of the method of payment will be directed by the Department of Treasury through establishment of a vendor payment amount threshold above which TFCS payments will be required.

(b) Procedures for processing payments through the TFCS may be found in Chapter 2500, Part 4, Volume 1, of the Treasury Fiscal Requirements Manual.

(c) To accommodate payments by either of the payment methods discussed in paragraph (a) of this section, it is necessary that the check payment address and appropriate bank account information be obtained from Government contractors. The contract clause discussed at 342.7206–2 is designed to elicit the necessary information.

342.7206–2 Method of payment.

(a) The contracting officer shall insert the clause set forth at 352.242–79, Method of Payment, in each solicitation and contract to give the Government the option to pay by check or wire transfer and require contractors to furnish the address where check payments should be sent and the appropriate bank account information needed to accomplish wire transfers.

(b) The office making payment shall be identified in the Method of Payment clause as the office designated to receive payment information. Payment information on assigned contracts will be obtained from the assignee by the office making payment if the contractor is unable to obtain it from the assignee.

342.7206–3 Coordination with paying offices.

The office designated to receive payment information shall establish procedures for handling the information and appropriate internal controls to preclude release of the information to unauthorized individuals. If the documented information is not received within five working days after it is due, the payment officer will request the contracting officer to require the contractor to submit the information in sufficient time to avoid a delay in payment.

PART 345—GOVERNMENT PROPERTY

Subpart 345.3—Providing Government Property to Contractors

Sec.
345.370 Providing Government property (in general).

Subpart 345.4—Contractor Use and Rental of Government Property

345.405 Contracts with foreign governments or international organizations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 345.3—Providing Government Property to Contractors

345.370 Providing Government property (in general).

(a) A contractor may be provided Government property or allowed to acquire such property at Government expense upon determination that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements, etc.;

(2) The Government receives adequate consideration for providing the property; or

(3) Furnishing Government property is likely to result in substantially lower cost to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the cost to the Government of the contractor's use of privately-owned property.

(b) The determination that it is necessary to provide a contractor or subcontractor with property will be made by the contracting officer with the advice of the agency property official.

(c) If the program office is aware, prior to the submission of the request for contract, that it will be necessary to provide prospective contractors with property, a written justification must accompany the request for contract to the contracting activity.

Subpart 345.4—Contractor Use and Rental of Government Property

345.405 Contracts with foreign governments or international organizations.

Upon the request of a foreign government or international organization, or a contractor certifying that it is acting on behalf of a foreign government or international organization, the contracting officer, with advice from the agency property official cognizant of Government property located in the United States, its possessions, or Puerto Rico, may give written approval for its use without charge on contracts or subcontracts thereunder if:

(a) The foreign government or international organization would be authorized to place the contract with the activity concerned under the Foreign Assistance Act of 1961, as amended, or such use is authorized by an agreement with the foreign government;

(b) The foreign government's placement of the contract directly with the contractor is consistent with the best interests of the United States;

(c) It appears that the foreign government will place the contract with the contractor whether or not use is authorized, and no competitive pricing advantage will accrue to the contractor by virtue of its use;

(d) The contractor agrees that no charge for the use of the property will be included in the price charged the foreign government under the contract; and

(e) The use will not interfere with foreseeable requirements of the United States.

SUBCHAPTER H—CLAUSES AND FORMS

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 352.2—Texts of Provisions and Clauses

Sec.

352.202–1 Definitions.
352.208–70 Printing.
352.215–12 Restriction on Disclosure and Use of Data.
352.215–70 Duplication of Cost Certification.
352.215–71 Employer's Identification Number.
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352.216–70 Negotiated Overhead Rates—Fixed.
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352.232–71 Cost Sharing.
352.232–72 Prohibition Against Use of HHS Funds to Influence Legislation or Appropriations.
352.232–73 Method of Payment—Letter of Credit.
352.232–74 Estimated Cost and Fixed Fee-Incrementally Funded Contract.
352.232–75 Incremental Funding.
352.233–70 Litigation and Claims.
352.237–70 Consulting Services Reporting.
352.237–71 Services of Consultants.
352.242–70 Notice to the Government of Delays.
352.242–71 Final Decisions on Audit Findings.
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352.242–73 Invoice Payment.
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352.243–70 Summarization Statements for Contracts Modifications.
352.247–70 Foreign Travel.
352.249–14 Excusable Delays.
352.252–2 Clauses Incorporated by Reference.
352.270–1 Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities.
352.270–2 Indian Preference.
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352.270–4 Pricing of Adjustments.
352.270–5 Key Personnel.
352.270–6 Publication and Publicity.
352.270–7 Paperwork Reduction Act.
352.270–8 Advertising of Awards.

Subpart 352.3—Provision and Clause Matrices

352.370 General.

General Provisions for A Cost-Plus-A-Fixed-Fee Contract

General Provisions for A Negotiated Cost-Reimbursement Contract with Nonprofit Institutions Other Than Educational Institutions.

General Provisions for A Negotiated Fixed-Price Research and Development Contract

General Provisions for A Negotiated Fixed-Price Supply Contract

General Provisions for A Negotiated Cost-Reimbursement Contract with Educational Institutions

General Provisions for A Cost-Reimbursement Supply Contract

General Provisions for A Formally Advertised Contract

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 352.2—Texts of Provisions and Clauses

352.202–1 Definitions.

Insert the following clause in solicitations and resultant fixed price contracts instead of the clause in FAR 52.202–1 except when contemplating (a) a fixed price research and development contract that is expected to be $2,500 or less or (b) a purchase order.

Definitions (Apr 1984)

(a) The term "Secretary" or "Head of the Agency" (also called "Agency Head") means the Secretary, Under Secretary, or any Assistant Secretary, Administrator or Commissioner, of the Department of Health and Human Services; and the term "his/her duly authorized representative" means any person, persons, or board authorized to act for the Secretary.

(b) The term "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(c) The term "Project Officer" means the person representing the Government for the purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term "Department" means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase order under this contract.

(End of clause)

Alternate I (Apr 1984). For cost-reimbursement contracts other than purchase orders, delete paragraph (c) above and replace with the following paragraph (c):

(c) The term "Project Officer" means the person representing the Government for the purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost of this contract or a change in performance period of this contract. In addition, the Project Officer is not authorized to receive or act upon the Contractor's notification of a revised cost estimate pursuant to the Limitation of Cost or Limitation of Funds clause of this contract.

352.208–70 Printing.

Insert the following clause in solicitations and contracts other than purchase orders:

Printing (Apr 1984)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except, that performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages will not be deemed to be printing. A production unit is defined as one sheet, size 8½ by 11 inches one side only, one color.

(End of clause)

352.215–12 Restriction of Disclosure and Use of Data.

Insert the following provision in all requests for proposals, and all requests for quotations other than those for information or planning purposes. This provision shall be used in lieu of the provision in FAR 52.215–12.

Restriction on Disclosure and Use of Data (Apr 1984)

The proposal submitted in response to this request may contain data (trade secrets; business data, e.g., commercial information, financial information, and cost and pricing data; and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; *provided,* that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following legend, specifying the particular portions of the proposal which are to be restricted in accordance with the conditions of the legend. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act:

Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) Officials of the Department of Health and Human Services, data contained in the portions of this proposal which have been specifically identified by page number, paragraph, etc. by the offeror as containing restricted information shall not be used or disclosed except for evaluation purposes.The offeror acknowledges that the Department may not be able to withhold a record (data, document, etc.) nor deny access to a record requested pursuant to the Act and that the Department's FOI Officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act.

The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, etc. or other identification).

In addition, the offeror should mark each page of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.

Offerors are cautioned that proposals submitted with restrictive legends or statements differing in substance from the above legend may not be considered for award. The Government reserves the right to reject any proposal submitted with a nonconforming legend.

(End of Provision)

352.215–70 Duplication of Cost Certification.

Insert the following in all solictations:

Duplication of cost (Apr 1984)

The offeror represents and certifies that any changes contemplated and included in its estimate of cost for performance are not duplicative of any charges against any other Government contract, subcontract, or other Government source.

(End of provision)

352.215–71 Employer's Identification Number.

Insert the following in all solicitations:

Employer's Identification Number (Apr 1984)

The offeror's Internal Revenue Service "Employer's Identification Number" is _____.

(End of provision)

352.215–72 Pre-Proposal Conference.

If a pre-proposal conference is to be held as indicated in FAR 15.409, insert the following provision in the affected solicitation:

Pre-Proposal Conference (Apr 1984)

A pre-proposal conference will be held with prospective offerors at (insert local prevailing time) on (insert date) in room (insert room number) at (insert name and location of building).

The pre-proposal conference will be held for the purpose of providing information concerning the Government's requirements which may be helpful in the preparation of proposals and for answering any questions which you have regarding this solicitation.

The success of this type of conference depends largely on the leadtime available to the Government for research in connection with questions submitted by prospective offerors. Therefore, you are requested to mail written questions concerning any areas of uncertainty which, in your opinion, require clarification or correction, in sufficient time to be received on or before (insert date).

Your questions should be submitted to the Contract-Officer, (insert name of Contracting Officer), and the envelope should be marked "Pre-Proposal Conference, RFP No. (insert number of RFP)." A set of questions and answers will be furnished to all prospective offerors whether or not they are in attendance.

Because of space limitations, each prospective offeror will be limited to a total of (insert number) representatives.

Attendance at the pre-proposal conference is recommended; however, attendance is not a prerequisite for proposal submission and will not be considered a factor in proposal evaluation.

(End of provision)

352.216–7 Allowable Cost and Payment.

Insert this clause in all cost-reimbursement contracts with nonprofit institutions other than educational institutions.

Allowable Cost and Payment (Apr. 1984)

(a) *Invoicing.* The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with:

(1) 45 CFR Part 74 for hospitals; or

(2) Subpart 31.6 of the FAR in effect on the date of this contract for State, local, and federally recognized Indian tribal governments; or

(3) Subpart 31.7 of the FAR in effect on the date of this contract for nonprofit organizations other than those identified in OMB Circular A–122, Attachment C; or

(4) Subpart 31.2 of the FAR in effect on the date of this contract for nonprofit organizations identified in OMB Circular A–122, Attachment C, except that costs of independent research and development and its proportionate share of indirect costs shall not be allowed.

In addition, the following shall apply:

(1) *Bid and proposal costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and agreements, including the development of scientific, cost, and other data needed to support the bids, proposals and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs.

Bid and proposal costs of past accounting periods are unallowable in the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs covered by the following paragraph, or preaward costs covered by Paragraph 33 of Attachment B to OMB Circular A–122.

(2) *Independent research and development costs.*

Independent research and development is research and development conducted by an organization which is not sponsored by Federal or non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:

(A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; *provided*, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify: (i) The agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established.

These billing rates:

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* When the Contractor and Contracting Officer agree, the quick-close-out procedures of Subpart 42.7 of the FAR may be used.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be: (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) The Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parites arising out of the performance of this contract; *provided*, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

352.216-70 Negotiated Overhead Rates—Fixed.

Insert the following clause in all cost-reimbursement contracts with educational institutions and nonprofit organizations when fixed rates subject to carryforward adjustments are used.

Negotiated Overhead Rates—Fixed (Apr 1984)

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. When the application of the negotiated fixed rates against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for such period, such greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The Contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the Secretary or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the Contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carryforward adjustments, if any, by the Contractor and the Secretary, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR) as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify: (1) The agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed overhead rate or rates or to the amount of any carryforward adjustment under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Allowable Cost and Payment" clause set forth in FAR 52.216-7, as in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the Contractor and the Secretary or the duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of paragraphs (b), (d), and (e), of this clause.

(End of clause)

352.216-71 Cost Principles—Hospitals.

Insert the following clause in all cost-reimbursement contracts with profit-making hospitals:

Cost Principles—Hospitals (Apr 1984)

If this contract is with a profit-making hospital, the cost principles referenced in the "Allowable Cost and Payment" clause of this contract are replaced by the cost principles for hospitals set forth in 45 CFR Part 78.

(End of clause)

352.223-70 Safety and Health.

The following clause is covered by the policy set forth in Subpart 323.70 and is to be used in accordance with the instructions set forth in 323.7002 and 323.7003.

Safety and Health (Apr 1984)

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to all property; and for avoidance of work interruptions in the performance of the contract; the Contractor will comply with the following standards: (Insert the codes, standards, and criteria (including any applicable State and local requirements) prescribed by the Safety Officer). Further, the Contractor shall take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary; *Provided*, that, if compliance with such additional safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with clause of this contract entitled "Changes."

(b) Prior to commencement of work, the Contractor will submit in writing its plan for complying with the safety and health provisions of this contract, and will meet with the Contracting Officer or his/her designated representative to discuss and develop a mutual understanding relative to administration of the overall safety program.

(c) During the performance of work under this contract, the Contractor shall comply with all procedures prescribed by the Contracting Officer for the control and safety of persons visiting the job site and will comply with such requirements to prevent accidents as may be prescribed by the Contracting Officer.

(d) The Contractor will maintain an accurate record of, and report to the Contracting Officer in such manner as the Contracting Officer may prescribe, all accidents and incidents resulting in death, traumatic injury, occupational disease, and/or damage to all property incident to work performed under the contract.

(e) The Contracting Officer shall notify (if otherwise, confirm in writing) the Contractor of any noncompliance with the provisions of this clause and corrective action to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action. (Such notice, when delivered to the Contractor or its representative at the site of the work, shall be deemed sufficient for the purpose.) If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be the subject of claim for extension of time or for costs or damages by the Contractor.

(f) The Contractor shall insert the substance of this clause in each subcontract involving the use of hazardous materials or operations. Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

(End of clause)

352.223-71 Safety and Health—Construction

Insert the following provision in all solicitations for construction and construction services, as required by 323.7005. In addition, a similar provision is to be included in all contracts resulting from the solicitations.

Safety and Health—Construction.

Your attention is invited to the regulations issued by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) entitled "Safety and Health Regulations for Construction" (29 CFR Part 1926). The Contractor is required to comply with the referenced regulations to the extent that the resultant contract involves construction.

(End of provision)

352.224-70 Confidentiality of Information.

The following clause is covered by the policy set forth in Subpart 324.70 and is to be used in accordance with the instructions set forth in 324.7004.

Confidentiality of Information (Apr 1984)

(a) Confidential information, as used in this clause, means (1) information or data of a personal nature about an individual, or (2) proprietary information or data submitted by or pertaining to an institution or organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of preliminary unvalidated findings could create erroneous conclusions which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information

which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the "Disputes" clause.

(d) If it is established elsewhere in this contract that information to be utilized under this contract, or a portion thereof, is subject to the Privacy, Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, that is information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization, shall not be disclosed without the prior written consent of the individual, institution, or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any objections in writing within the 45-day period, the Contractor may proceed with disclosure. Disagreements not resolved by the Contractor and the Contracting Officer will be settled pursuant to the "Disputes" clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor should obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) Contracting Officer determinations will reflect the results of internal coordination with appropriate program and legal officials.

(i) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of clause)

352.225-12 Country of Manufacturer Representation.

Insert the following representation in all solicitations and all contract awards which exceed $10,000:

Country of Manufacturer Representation (Apr 1984)

The product which the offeror proposes to furnish ☐ is, ☐ is not manufactured, mined, or grown in the United States. If the product is not manufactured, mined, or grown in the United States, the country of manufacturer is _____.

(End of provision)

352.227-1 Rights in Data.

Insert the following clause in all solicitations and contracts other than purchase orders:

Rights in Data (Apr 1984)

(a) *Subject Data.* As used in this clause, the term "Subject Data" means writings, sound recordings, pictorial reproductions, drawings, designs, or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The terms does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government rights.* Subject only to the provision of (c) below, the Government may use, duplicate or disclose in any manner, and for any purpose whatsoever, and have or permit others to do so, all Subject Data delivered under the contract.

(c) *License to copyright data.* In addition to the Government rights as provided in (b) above with respect to any Subject Data which may be copyrighted, the Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive, and irrevocable license throughout the world to uses, duplicate or dispose of such data in any manner and for any purpose whatsoever, and to have or permit others to do so; *Provided,* however, that such licenses shall be only to the extent that the Contractor now has, or prior to completion or final settlement of this contract may require, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) *Relation to patients.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(3) *Marking and identification.* The Contractor shall mark all Subject Data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The Contractors shall not affix any restrictive markings upon any Subject Data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any Subject Data is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor Subject Data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within two years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any Subject Data and any data not called for in the schedule of this contract but generated in performance of the contract, and the Contractor shall promptly prepare and deliver such data as is ordered. If the principal investigator is no longer associated with the Contractor, the Contractor shall exercise its best efforts to prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in Subject Data as provided in (b) above. The Contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of two years from the date it accepts such items. When data, other than Subject Data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

(End of clause)

352.228-70 Required Insurance.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

Required Insurance (Apr 1984)

(a) The Contractor shall procure and maintain such insurance as is required by law or regulation, including but not limited to the requirements of Subpart 28.3 of the Federal Acquisition Regulation or by the written direction of the Contracting Officer. Prior written approval of the Contracting Officer shall be required with respect to any insurance policy the premiums for which the Contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the Contracting Officer for approval upon request.

(b) Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government property.

(End of clause)

352.232-9 Withholding of Contract Payments.

Insert the following clause in all solicitations and contracts other than purchase orders:

Withholding of Contract Payments (Apr 1984)

Notwithstanding any other payment provisions of this contract, failure of the Contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, will result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Contractor as defined by the clause entitled "Excusable Delays" or "Default", as applicable. The Government shall promptly notify the Contractor of its intention to withhold payment of any invoice or voucher submitted.

(End of clause)

352.232-70 Additional Payment Provision.

The following clause is to be included in all solicitations and resultant contracts for construction which contain the "Payments Under Fixed-Price Construction Contracts" clause set forth in FAR 52.232-4:

Additional Payment Provision (Apr 1984)

Unless otherwise stated in this contract, there will be taken into consideration in computing progress payments material that will be incorporated into the structure if such material is delivered at the site, or is delivered to the Contractor and properly stored by it in a suitable warehouse, storage yard, or similar place either within 25 miles of the site or as otherwise approved by the Contracting Officer. Before each payment is made, the Contractor shall furnish to the Contracting Officer such evidence as he/she may require of the quantity and value of such material and that it will be incorporated into the structure. If such material is stored off the site, the Contractor shall also furnish to the Contracting Officer, before payment, properly executed bills of sale to the Government for the delivered material upon which such payment is to be made.

(End of clause)

352.232-71 Cost Sharing.

The policy relative to cost sharing is set forth in 335.070.

(a) In contracts for which cost-sharing has been individually negotiated, the clause set forth in FAR 52.232-20 shall be used. Also, an article reading substantially as follows, which includes a cost-sharing formula agreed upon by the contracting officer and the contractor that provides for the ratio of cost-sharing for both the originally established estimated cost and any increase pursuant to the FAR clause, shall be included in the contract.

Cost Sharing (Apr 1984)

The Contractor agrees to share in the cost of the work hereunder to the extent of not less than (indicate percent of the total cost or dollar amount, etc.) and shall maintain records of all costs so contributed, as well as costs to be paid by the Government. Such records shall be subject to audit. Costs contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(End of clause)

(b) In contracts for which cost-sharing will be in accordance with a previously negotiated institutional agreement, the clause set forth in FAR 52.232-20 shall also be used. However, instead of specifying a cost-sharing formula, the following shall be included as a special provision.

Cost Sharing Under Institutional Agreement (Apr 1984)

This contract is subject to an Institutional Cost-Sharing Agreement which became effective with respect to HHS research contracts on (date), and the Contractor agrees that the Government shall not bear the entire cost of the work hereunder.

(End of clause)

352.232-72 Prohibition Against Use of HHS Funds to Influence Legislation or Appropriations.

The following clause is to be used in accordance with 332.770:

Prohibition Against Use of HHS Funds to Influence Legislation or Appropriations (Apr 1984)

No part of any funds under this contract shall be used to pay the salary or expenses of any Contractor, or agent acting for the Contractor, to engage in any activity designed to influence legislation or appropriations pending before the Congress.

(End of clause)

352.232-73 Method of Payment—Letter of Credit.

When authorized by an individual or blanket determination, findings, and authorization for advance payment, under a letter of credit, the following clause shall be used: (See 332.406 for further instructions regarding use of the clause.)

Method of Payment—Letter of Credit (Apr 1984)

(a) The Contractor shall be paid with funds made available under the Federal Reserve Letter of Credit No. ——, established by ———— Department of Health and Human Services, against which the Contractor will withdraw funds pursuant to Federal Reserve Letter of Credit procedures contained in Treasury Department Circular 1075 (31 CFR Part 205).

(b) At the request of the Contractor and subject to the following conditions, the Government shall make an advance payment, or advance payments, from time to time, to the Contractor. No advance payment shall be made: (1) Without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (g)(2)) as to the financial necessity therefor (except in the case of educational institutions); (2) in an amount which, together with all advance payments made, exceeds the contract amount, and (3) without a properly certified invoice. The Contractor shall (1) initiate cash drawdowns only when actually needed for its disbursements, (2) report timely the case disbursements and balances as required by the Administering Office, and (3) impose the same standards of timing and amount upon any subcontractors including the furnishing of reports of cash disbursements and balances. Failure to adhere to these material provisions will be considered an event under paragraph (f) of this clause.

(c) The funds drawn by the Contractor against the Federal Reserve Letter of Credit shall be only for current allowable expenditures necessary for the performance of this contract.

(d) When requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the unliquidated balance of the advance payments as shall, in the opinion of the Contracting Officer, be in excess of the Contractor's current needs or in excess of the contract price.

(e) If, upon completion or termination of this contract, all amounts obtained by the Contractor under this letter of credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due to the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

(f) Upon the happening of any of the following events of default: (1) A finding by the Administering Office that the Contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provisions of this contract, or (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (2) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (3) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings; or (4) the commission of an act of bankruptcy; the Government, without limiting any rights it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals under the Letter of Credit and withhold further payments on this contract. Payment can also be stopped for lack of submission of timely and accurate reports in accordance with contract requirements. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

(1) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 80 Stat. 97 for the Renegotiation Board;

(2) Demand immediate repayment of the unliquidated balance of advance payments hereunder; and/or

(3) Take possession of and, with or without advertisement, sell at public sale at which the Government may be purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract, and after deducting any expenses

incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(g)(1) No interest shall be charged for advance payments made hereunder, except interest during a period of default as provided in paragraph (f)(2). The Contractor shall charge interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41 85 Stat. 97 for the Renegotiation Board on subadvances or downpayments to subcontractors and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on subcontracts with educational or research institutions provided such subcontracts are awarded without profit or fee for research, development or experimental work.

(2) The office administering advance payments is designated as ————————.

(End of clause)

352.232–74 Estimated Cost and Fixed Fee—Incrementally Funded Contract.

The following clause, or one reading substantially as it, shall be included in the Special Provisions of an incrementally funded contract:

Consideration—Estimated Cost and Fixed Fee (Apr 84)

(a) It is estimated that the total cost to the Government for full performance of this contract will be $————, of which the sum of $———— represents the estimated reimbursable costs and $———— represents the fixed-fee.

(b) Total funds currently available for payment and allotted to this contract are $————, of which $———— represents the estimated reimbursable costs and $———— represents the fixed-fee. For further provisions on funding, see the Limitation of Funds clause.

(c) It is estimated that the amount currently allotted will cover performance of Phase I which is scheduled to be completed by (date) ————————.

(d) The Contracting Officer may allot additional funds to the contract without the concurrence of the Contractor.

(End of clause)

352.232–75 Incremental Funding.

The following provision shall be included in all requests for proposals whenever the use of incremental funding is contemplated:

Incremental Funding (Apr 84)

(a) Sufficient funds are not presently available to cover the total cost of the complete multiple year project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause entitled Limitation of Funds. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover the first year of performance. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the contract, to accomplish the entire project. While it is the Government's intention to progressively fund this contract over the entire period of performance up to and including the full estimated cost, the Government will not be obligated to reimburse the Contractor for costs incurred in excess of the periodic allotments, nor will the Contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Funds clause to be included in the resultant contract shall supersede the Limitation of Cost clause found in the General Provisions.

(End of provision]

352.233–70 Litigation and Claims.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Litigation and Claims (Apr 1984)

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost and Payment." Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractors; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

352.237–70 Consulting Services Reporting.

The contracting officer shall include the following clause in every contract for consulting services, as defined in the General Administration Manual Chapter 8–15 and as required by 337.270.

Consulting Services Reporting (Apr 1984)

The Contractor shall set forth on the cover of every report submitted pursuant to this contract the following information: (a) Name and business address of the Contractor; (b) Contract number; (c) Contract dollar amount; (d) Whether the contract was competitively or noncompetitively awarded; (e) Name of the Department's project officer and complete office identification and address; and (f) Names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

352.237–71 Services of Consultants.

Insert the following clause in all solicitation and resultant cost-reimbursement contracts.

Services of Consultants (Apr 1984)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the Contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $150, exclusive of travel costs, or where the services of any consultant under this contract will exceed 10 days in any calendar year.

Whenever Contracting Officer approval is required, the Contractor will obtain and furnish to the Contracting Officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

(End of clause)

352.242–70 Notice to the Government of Delays.

Insert the following clause in all solicitations and contracts other than purchase orders.

Notice to the Government of Delays (Apr 1984)

Whenever the Contractor has knowledge that any actual or potential situation, including but not limited to labor disputes, is delaying or threatens to delay the timely performance of work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto to the Contracting Officer.

(End of clause)

352.242-71 Final Decisions on Audit Findings.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

Final Decisions on Audit Findings (Apr 1984)

For the purpose of issuing final decisions under the Disputes clause of this contract concerning monetary audit findings, the Contracting Officer shall be that person with ultimate responsibility for making that decision in accordance with Chapter 1-105, Resolution of Audit Findings, of the Department's Grants Administration Manual.

(End of clause)

352.242-72 Interest on Overdue Payments.

As prescribed in 342.7204, insert the following clause in solicitations and contracts unless it is determined the contract will be one or more of the categories specified in 342.7203:

Interest on Overdue Payments (Apr 1984)

(a) The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract and requires the payment to contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(End of clause)

352.242-73 Invoice Payment.

As prescribed in 342.7205-1(a)(1), insert the following clause in solicitations and contracts when invoices may be received before the Government has had an opportunity to inspect and accept the supplies or services:

Invoice Payment (Apr 1984)

(a) Payment will be made on this contract as close as possible to but not later than 30 calendar days after an invoice containing the information set forth in the Invoice Submission article of this contract is received in the payment office designated in this contract. An invoice will be deemed to have been received on the later of:

(1) The date the invoice is actually received in the designated payment office, or

(2) The date on which the Government accepts the property or service required under this contract.

(b) Unless a different time period is stated elsewhere in this contract, inspection/acceptance required by this contract will be completed by the Government no later than five Government working days after the goods are delivered or the service is rendered.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-74 Payment Due Date.

As prescribed in 342.7205-1(a)(2), insert the following clause in solicitations and contracts when invoices may be required to reflect that delivery (or performance) and acceptance has already occurred:

Payment Due Date (Apr 1984)

(a) Payments under this contract will be due on the ——* calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.

(b) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-75 Invoice Payment.

As prescribed in 342.7205-1(b)(1), insert the following clause in solicitations and contracts for the acquisition of meat and meat products:

Invoice Payment (Apr 1984)

(a) Payment for the delivery of products required by this contract as defined in Section 2(a)3 of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) will be made as close as possible to, but not later than, the seventh calendar day after the date of delivery.

(b) A proper invoice covering the supplies delivered is required to be submitted with the shipment. Delivery will be deemed to be made on the later of the actual date of delivery, or the date a proper invoice is received in the office designated to receive the invoice.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-76 Invoice Payment.

As prescribed in 342.7205-1(b)(2), insert the following clause in solicitations and resultant contracts for the acquisition of perishable agricultural commodities:

Invoice Payment (Apr 1984)

(a) Payment for the delivery of the commodities required by this contract as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a (4)), will be made as close as possible to, but not later than, the tenth calendar day after the date of delivery, unless another date is specified elsewhere in this contract.

(b) A proper invoice covering the supplies delivered is required to be submitted with the shipment. Delivery will be deemed to be made on the later of the actual date of delivery, or the date a proper invoice is received in the office designated to receive the invoice.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-77 Invoice Payment.

As prescribed in 342.7205-1(d), insert the following clause in solicitations for which award of a cost-reimbursement type contract is contemplated and in resultant cost-reimbursement type contracts:

Invoice Payment (Apr 1984)

(a) The target date for payment pursuant to the provisions of the allowable cost, fee (if any) and payment clause of this contract shall be 30 calendar days after an invoice containing the information set forth in the Invoice Submission article of this contract is received in the payment office designated in this contract.

(b) Upon receipt of the Contractor's "Completion Invoice" in the payment office designated in the Invoice Submission article of this contract, payment of any remaining cost and fee determined to be allowable pursuant to the allowable cost, fee (if any) and payment clause of this contract shall be due 30 calendar days after the Contracting Officer approves the completion invoice for payment.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-78 Invoice Submission.

As prescribed in 342.7205-2(b), insert the following clause in solicitations and contracts to specify documentation required to constitute a proper invoice:

Invoice Submission (Apr 1984)

(a) The Contractor shall submit an original and ( ) copies of its invoice(s) to (Insert required number of copies of the invoice, name where practicable, title, phone number, and complete mailing address of official in the designated payment office.)

(b) The Contractor agrees to include the following information on each invoice:

(1) Contractor's name and invoice date;

(2) Contract number, or other authorization for delivery of property and/or services;

*Contracting Officer to insert number of days.

(3) Description, cost or price, and quantity of property and/or services actually delivered or rendered;

(4) Shipping and payment terms;

(5) Other substantiating documentation or information as required by the contract; and

(6) Name where practicable, title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(End of clause)

352.242-79 Method of Payment.

As prescribed in 342.7206-2, insert the following clause in solicitations and contracts to require the contractor to provide necessary payment information:

Method of Payment (Apr 1984)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The Contractor shall forward the following information in writing to ——— * not later than seven days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) to whom check payments are to be sent, and who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's nine-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide the address and telegraphic abbreviation of the correspondent financial institution, and the correspondent financial institution's nine-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to ——— * in writing at least 30 days before the effective date of the change. It is the Contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(End of clause)

* Enter the name and address of the agency office designated to receive the information (see 342.7206-2).

352.242-80 HHS Contract Financial Report.

Financial reports are required on all cost-reimbursement type contracts financed under letter of credit or Departmental Federal Assistance Financing System (DFAFS) methods of payment regardless of dollar value, and all other cost-reimbursement type contracts of $100,000 or more. The reports should be required not less than quarterly. Financial reports can be required on cost-reimbursement contracts under $100,000 when financed by other than the letter of credit or DFAPS methods only if they are considered necessary for effective contract monitoring and administration. When financial and manpower information is to be submitted on Form HHS-646, Financial Report of Individual Project/Contract, the contracting officer shall insert the clause set forth below in the RFP and resultant contract. The contracting officer should insert appropriate wording to specify the reporting period agreed to, and should develop paragraph (d).

Contract Financial Report (Apr 1984)

(a) Financial reports on Form HHS-646, Financial Report of Individual Project/Contract, shall be submitted by the Contractor in accordance with the instructions which accompany the form, in an original and two copies, not later than thirty (30) working days after the close of the reporting period. The line entries for subdivisions of work and elements of cost (expenditure categories) to be reported within the total contract shall be stated in paragraph (d) below. Subsequent changes and/or additions in the line entries shall be made in writing.

(b) The first financial report shall cover the period consisting of the (*first full calendar month/first full three calendar months*) following the date of the contract, in addition to any fractional part of the initial month.

(c) If the final payment of this contract is to be made on the basis of a desk audit, the Contracting Officer may require the Contractor to submit detailed support for costs contained in one or more interim financial reports.

(d) (To be developed by the Contracting Officer.)

(End of clause)

352.243-70 Summarization Statements for Contract Modifications.

The statements set forth below shall be used as appropriate in contract modifications as concluding provisions of the modification.

(a) The contract amount is hereby (increased) (decreased) by $———, from $——— to $———, by reason of this modification.

(b) The contract amount is neither increased nor decreased by reason of this modification.

(c) The contract completion date is hereby changed from ——— to ——— by reason of this modification.

(d) Neither the contract amount nor the contract completion date is changed by reason of this modification.

352.247-70 Foreign Travel.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

Foreign Travel (Apr 1984)

Foreign travel shall not be performed without the prior written approval of the Contracting Officer. As used in this clause "Foreign Travel" means travel outside the United States, its Territories and Possessions, and Canada.

(End of clause)

352.249-14 Excusable Delays.

Insert the following clause in all solicitations and resultant contracts other than purchase orders which do not have either a default or excusable delays clause.

Excusable Delays (Apr 1984)

(a) Except with respect to failures of subcontractors, the Contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to have failed in performance of the contract, unless: (1) The supplies or services to be furnished by the subcontractor were obtainable from other sources, (2) The Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (3) The Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he/she shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the termination clause hereof. (As used in this clause, the terms

"subcontractor" and "subcontractors" mean subcontractor(s) at any tier.]

(End of clause)

352.252-2 Clauses Incorporated by Reference.

Using the format set forth in FAR 52.252–2, insert the applicable HHSAR general provisions found in the matrices in Subpart 352.3 into solicitations and contracts to incorporate the clauses by reference.

352.270–1 Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities.

The following clause is to be used in accordance with 370.102:

Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities (Apr 1984)

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth below. This plan shall include a provision for ascertaining the number and types of disabled individuals planning to attend the meeting, conference, or seminar. The plan shall be submitted to the project officer for approval prior to initiating action. (A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.)

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be accessible to persons with disabilities. The Contractor shall determine, by an on-site inspection if necessary, that the following minimum accessibility requirements are met, or suitable modifications are made to meet these requirements, before the meeting:

(1) *Parking.* (i) Where parking is available on or adjacent to the site, one 12' wide space must be set aside for the care of each mobility impaired attendee. The space need not be permanently striped but may be temporarily marked by signs, ropes, or other means satisfactory to carry out this provision.

(ii) Where parking is not available on or adjacent to the site, valet parking or other alternative means to assist a person who has a mobility impairment may be used. Alternate means must be satisfactory in the judgment of the Government project officer.

(2) *Entrances.* (i) "Entrances" shall include at least one accessible entrance from the street/sidewalk level, and at least one accessible entrance from any available parking facility.

(ii) The entrance shall be level or accessible by ramp with an incline that allows independent negotiation by a person in a wheelchair. In general, the slope of the incline shall be no more than 1" rise per foot of ramp length (1:12).

(iii) Entrance doorways shall be at least 30" in clear width and capable of operation by persons with disabilities. Revolving doors, regardless of foldback capability, will not meet this requirement.

(3) *Meeting Rooms.* (i) Meeting room access from the main entrance area must be level or at an independently negotiable incline (approximately 1:12) and/or served by elevators from the main entrance level. All elevators shall be capable of accommodating a wheelchair 29" wide by 45" long.

(ii) Meeting rooms shall be on one level or, if on different levels, capable of being reached by elevators or by ramps that can be independently negotiated by a person in a wheelchair. Doorways to all meeting rooms shall be at least 30" in clear width.

(iii) The interior of the meeting room shall be on one level or ramped so as to be independently negotiable for a person in a wheelchair.

(iv) Stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramps may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the project officer. Each case is to be judged on its own merits.

(v) If a meeting room with fixed seating is utilized, seating arrangements for persons in wheelchairs shall be made so that these persons are incorporated into the group rather than isolated on the perimeter of the group.

(4) *Restrooms.* (i) Restrooms shall have level access, signs indicating accessibility, and doorways at least 30" in clear width.

(ii) Sufficient turning space within restrooms shall be provided for independent use by a person in a wheelchair 29" wide by 45" long. A space 60" by 60" or 63" by 56" of unobstructed floor space as measured 12" above the floor is acceptable by standard; other layouts will be accepted if it can be demonstrated that they are usable as indicated.

(iii) There will be a restroom for each sex or a unisex restroom with at least one toilet stall capable of accommodating a wheelchair 29" wide by 45" long (by standard, the minimum is 3'–0" by 4'–6") with outswinging doors or privacy curtains. Wall mounted grab bars are required.

(iv) When separate restrooms have been set up for mobility impaired persons, they shall be located adjacent to the regular restrooms and shall be fully accessible.

(5) *Eating Facilities.* (i) Eating facilities in the meeting facility must be accessible under the same general guidelines as are applied to meeting rooms.

(ii) If the eating facility is a cafeteria, the food service area (cafeteria line) must allow sufficient room for independent wheelchair movement and accessibility to food for persons in wheelchairs, and cafeteria staff shall be available to assist disabled persons.

(6) *Overnight Facilities.* If overnight accommodations are required:

(i) Sufficient accessible guest rooms to accommodate each attendee who is disabled shall be located in the facility where the meeting, conference, or seminar is held, or in a facility housing the attendees which is conveniently located nearby, whichever is satisfactory to the project officer.

(ii) Overnight facilities shall provide for the same minimum accessiblity requirements as the facility utilized for the meeting, conference, or seminar. In addition, guest room access from the main entrance area shall be level, ramped at an independently negotiable incline (1:12), and/or served by elevators capable of accommodating a wheelchair 29" wide by 45" long.

(iii) Doorways to guest rooms, including the doorway to the bathroom, shall be at least 30" in clear width.

(iv) Bathrooms shall have wall mounted grab bars at the tub and water closet.

(v) Guest rooms for persons with a disability shall be provided at the same rate as a guest room for other attendees.

(7) *Water Fountains.* Water fountains shall be accessible to disabled persons, or have cup dispensers for use by persons in wheelchairs.

(c) *Provisions of Services for Sensory Impaired Attendees.* (1) The Contractor, in planning the meeting, conference, or seminar, shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to sensory impaired persons attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that sensory impaired persons may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a teletype number for the hearing impaired.

(2) The Contractor shall provide, at no cost to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For hearing impaired persons, qualified interpreters. Provisions will also be made for volume controlled phone lines and, if necessary, transportation to local teletype equipment to enable hearing impaired individuals to receive and send meeting related calls. If local teletype equipment is not available, the Contractor shall provide on site teletype equipment. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For vision impaired persons, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for the visually and hearing impaired. Readers, braille translations, and/or tape recordings are all acceptable. These materials shall be available to sensory impaired individuals upon their arrival.

(4) The Contractor is responsible for making every effort to ascertain the number of sensory impaired individuals who plan to attend the meeting, conference, or seminar. However, if it can be determined that there will be no sensory impaired person (deaf and/or blind) in attendance, the provision of those services under paragraph (c) for the

nonrepresented group, or groups, is not required.

(End of clause)

352.270-2 Indian Preference.

The following clause shall be used as prescribed in 370.202(a):

Indian Preference (Apr 1984)

(a) The Contractor agrees to give preference in employment opportunities under this contract to Indians who can perform required work, regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. To the extent feasible and consistent with the efficient performance of this contract, the Contractor further agrees to give preference in employment and training opportunities under this contract to Indians who are not fully qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts to the extent feasible and consistent with the efficient performance of this contract. The Contractor shall maintain statistical records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its employment and training opportunities after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organizations or Indian-owned economic enterprises are available under reasonable terms and conditions, including price, for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual to provide evidence within thirty (30) days from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian Tribe" means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active *operation* and *control* of the enterprise.

(f) The Contractor agrees to include the provisions of this clause, including this paragraph (f), in each subcontract awarded at any tier under this contract.

(g) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270-3 Indian Preference Program.

The following clause shall be used as prescribed in 370.202(b):

Indian Preference Program (Apr 1984)

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference," the Contractor agrees to establish and conduct an Indian preference program which will expand opportunities for Indians to receive perference for employment and training in connection with the work to be performed under this contract, and which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts. In this connection, the Contractor shall:

(1) Designate a liaison officer who will (i) Maintain liaison with the Government and the Tribe(s) on Indian perference matters; (ii) Supervise compliance with the provisions of this clause; and (iii) Administer the Contractor's Indian perference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not more than twenty (20) calendar days after award of the contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed that sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. The Contractor shall give public notice of existing subcontracting opportunities and, to the extent feasible and consistent with the efficient performance of this contract, shall solicit bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including:

(i) A clear description of the supplies or services required, including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) A statement indicating that preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Public Law 93-638 (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) Definitions for the terms "Indian organization" and "Indian-owned economic enterprise" as prescribed under the "Indian Preference" clause of this contract; (iv) A representation to be completed by the bidder or offeror that it is an Indian organization or "Indian-owned economic enterprise; and (v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids or proposals from Indian orgnizations and Indian-owned economic enterprises, no responsive bid or acceptable proposal is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract. If one or more responsive bids or acceptable proposals are received, award shall be made to the low responsible bidder or acceptable offeror if the price is determined to be reasonable. It the low responsive bid or acceptable proposal is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract. (5) Maintain written records under this contract which indicate: (i) The numbers of Indians seeking employment for each employment position available under this contract; (ii) the number and types of positions filled by Indians and non-Indians, and the total number of Indians employed under this contract; (iii) For those positions where there

are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (iv) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (v) Reasons why preference was not given to Indian firms as subcontracators or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract; and (vi) The number of Indian organizations and Indian-owned economic enterprises contacted, and the number receiving subcontract awards under this contract.

(6) Submit to the Contracting Officer for approval a quarterly report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled by Indians and non-Indians, and the dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.

(7) Maintain records pursuant to this clause and keep them available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian Allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.)

(3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not conflict with any Federal statutory or regulatory requirement dealing with the award and administration of contracts.

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in each subcontract awarded at any tier under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270–4 Pricing of Adjustments.

Insert the following clause in all solicitations and resultant fixed-priced contracts other than purchase orders.

Pricing of Adjustments (Apr 1984)

When costs are a factor in determination of a contract price adjustment pursuant to the "Changes" clause or any provision of this contract, such costs shall be determined in accordance with the applicable cost principles and procedures set forth below:

Principles	Types of organizations
(a) Subpart 31.2 of the Federal Acquisition Regulation.	Commercial.
(b) Subpart 31.3 of the Federal Acquisition Regulation.	Education.
(c) Subpart 31.6 of the Federal Acquisition Regulation.	State or local governments.
(d) 45 CFR Part 74	Hospitals.
(e) Subpart 31.7 of the Federal Acquisition Regulation.	Other nonprofit institutions.

(End of clause)

352.270–5 Key Personnel.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

Key Personnel (Apr 1984)

The personnel specified in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; *provided*, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by the clause. The contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

(End of clause)

352.270–6 Publication and Publicity.

Insert the following clause in all solicitations and contracts other than purchase orders.

Publication and Publicity (Apr 1984)

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish and make available through accepted channels the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other work is published and furnish a copy of it as finally published.

(b) The Contractor shall acknowledge the support of the Department of Health and Human Services whenever publicizing the work under this contract in any media. To effectuate the foregoing, the Contractor shall include in any publication resulting from work performed under this contract an acknowledgment substantially as follows:

This project has been funded at least in part with Federal funds from the Department of Health and Human Services under contract number———. The content of this publication does not necessarily reflect the views or policies of the Department of Health and Human Services, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

(End of clause)

352.270–7 Paperwork Reduction Act.

Insert the following clause in all solicitations and contracts.

Paperwork Reduction Act (Apr 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is outside the scope of their employment, for use by the Federal government or disclosure to third parties, the Paperwork Reduction Act of 1980 (Pub. L. 96–511) shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Assistant Secretary for Management and Budget (ASMB) within the Department of Health and Human Services (HHS) and the Office of Management and Budget (OMB). Contractors and Project Officers should be guided by the provisions of 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the HHS operating division or Office of the Secretary Reports Clearance Officer to determine the procedures for acquiring ASMB and OMB clearance.

(b) The Contractor shall obtain the required ASMB and OMB clearance through the Project Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and proceed with the collection of information shall be in writing by the Contracting Officer. The Contractor must plan at least 120 days for ASMB and OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

352.270–8 Advertising of Awards.

Insert the following clause in all solicitations and contracts including purchase orders.

Advertising of Awards (Apr 1984)

The Contractor agrees not to refer to awards issued by the Department of Health and Human Services in commercial advertising in such a manner as to state or

imply that the product or service provided is endorsed by the Federal Government or is necessarily considered by the Government to be superior to other products or services.

(End of clause)

Subpart 352.3—Provision and Clause Matrices

352.370 General.

(a) Contracting officers shall include additional clauses or substitute alternate clauses for those included in the general provisions in accordance with applicable instructions in Subpart 352.2 and FAR Part 52.

(b) Written deviation requests shall be submitted through acquisition channels to the Director, Division of Procurement Policy (DPP); Office of Procurement and Assistance Policy (OPAP); Office of Procurement, Assistance and Logistics (OPAL); Office of the Assistant Secretary for Management and Budget (OASMB–OS). The Director (DPP) will inform the contracting officer through acquisition channels of the disposition of the request. In the event expeditious action is required, contracting officers are authorized to request oral or written approval directly from the Director (DPP) who will notify the contracting officer of this disposition of the request.

(c) The general provisions for negotiated cost-reimbursement contracts with non-profit institutions other than educational institutions shall be utilized with the following modifications whenever a contract with a nonprofit institution provides for the payment of a fixed fee:

(1) Add the clause entitled "Facilities Capital Cost of Money" (APR 1984) (See FAR 52.215–30 for the text of the clause).

(2) Add the clause entitled "Fixed Fee" (APR 1984). (See FAR 52.216–8 for the text of the clause.)

(3) Delete "Alternate I" (APR 1984) of clause 36 entitled "Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contract)" (APR 1984).

GENERAL PROVISIONS FOR A COST-PLUS-A-FIXED-FEE CONTRACT

Required

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR Clause No.	Title and date
1	52.203–1	Officials Not to Benefit (April 1984).
2	52.203–3	Gratuities (April 1984).
3	52.203–5	Covenant Against Contingent Fees (April 1984).
4	52.215–1	Examination of Records by Comptroller General (April 1984).
5	52.215–2	Audit-Negotiation (April 1984).
6	52.215–22	Price Reduction for Defective Cost or Pricing Data (over $500,000) (April 1984)
7	52.215–24	Subcontractor Cost of Pricing Data (Over $500,000) (April 1984).
8	52.215–30	Facilities Capital Cost of Money (April 1984).
9	52.215–31	Waiver of Facilities Capital Cost of Money (April 1984).
10	52.216–7	Allowable Cost and Payment (April 1984).
11	52.216–8	Fixed Fee (April 1984).
12	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
13	52.219–13	Utilization of Women-Owned Small Businesses (April 1984).
14	52.220–3	Utilization of Labor Surplus Area Concerns (April 1984).
15	52.222–3	Convict Labor (April 1984).
16	52.222–20	Walsh-Healy Public Contracts Act (April 1984).
17	52.222–26	Equal Opportunity (April 1984).
18	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
19	52.222–36	Affirmative Action for Handicapped Workers (April 1984).
20	52.223–2	Clean Air and Water (Over $100,000) (April 1984).
21	52.225–3	Buy American Act—Supplies (April 1984).
22	52.232–8	Limitation on Withholding of Payments (April 1984).
23	52.232–17	Interest (April 1984).
24	52.232–20	Limitation of Cost (April 1984).
25	52.232–23	Assignment of Claims (April 1984).
26	52.233–1	Disputes (April 1984).
27	52.242–1	Notice of Intent to Disallow Costs (April 1984).
28	52.243–2	Changes—Cost-Reimbursement (April 1984)—Alternate V (April 1984).
29	52.244–2	Subcontracts Under Cost-Reimbursement and Letter Contracts (April 1984).
30	52.244–5	Competition in Subcontracting (April 1984).
31	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contract) (April 1984).
32	52.246–9	Inspection of Research and Development (Short Form) (April 1984).
33	52.246–23	Limitation of Liability (April 1984).
34	52.249–6	Termination (Cost-Reimbursement) (April 1984).
35	52.249–14	Excusable Delays (April 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR Clause No.	Title and date
1	352.202–1	Definitions (April 1984)—Alternate I (April 1984).
2	352.208–70	Printing (April 1984).
3	352.227–1	Rights in Data (April 1984).
4	352.228–70	Required Insurance (April 1984).
5	352.232–9	Withholding of Contract Payments (April 1984).
6	352.233–70	Litigation and Claims (April 1984).
7	352.237–71	Services of Consultants (April 1984).
8	352.242–70	Notice to the Government of Delays (April 1984).
9	352.242–71	Final Decisions on Audit Findings (April 1984).
10	352.247–70	Foreign Travel (April 1984).
11	352.270–5	Key Personnel (April 1984).
12	352.270–6	Publication and Publicity (April 1984).
13	352.270–7	Paperwork Reduction Act (April 1984).
14	352.270–8	Advertising of Awards (April 1984).

GENERAL PROVISIONS FOR A NEGOTIATED COST-REIMBURSEMENT CONTRACT WITH NONPROFIT INSTITUTIONS OTHER THAN EDUCATIONAL INSTITUTIONS

Required

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1	52.203–1	Officials Not to Benefit (April 1984).
2	52.203–3	Gratuities (April 1984).
3	52.203–5	Covenant Against Contingent Fees (April 1984).
4	52.215–1	Examination of Records by Comptroller General (April 1984).
5	52.215–2	Audit-Negotiation (April 1984).
6	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $500,000) (April 1984).
7	52.215–24	Subcontractor Cost or Pricing Data (Over $500,000) (April 1984).
8	52.216–11	Cost Contract—No Fee (April 1984).
9	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
10	52.219–13	Utilization of Women-Owned Small Businesses (April 1984).
11	52.220–3	Utilization of Labor Surplus Area Concerns (April 1984).
12	52.222–3	Convict Labor (April 1984).
13	52.222–20	Walsh-Healy Public Contracts Act (April 1984).
14	52.222–26	Equal Opportunity (April 1984).
15	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
16	52.222–36	Affirmative Action for Handicapped Workers (April 1984).
17	52.223–2	Clean Air and Water (Over $100,000) (April 1984).
18	52.225–3	Buy American Act—Supplies (April 1984).
19	52.232–8	Limitation on Withholding of Payments (April 1984).
20	52.232–20	Limitation of Costs (April 1984).
21	52.232–23	Assignment of Claims (April 1984).
22	52.233–1	Disputes (April 1984).
23	52.242–1	Notice of Intent to Disallow Costs (April 1984).
24	52.243–2	Changes—Cost-Reimbursement (April 1984)—Alternate V (April 1984).
25	52.244–2	Subcontracts Under Cost-Reimbursement and Letter Contracts (April 1984).
26	52.244–5	Competition in Subcontracting (April 1984).
27	52.215–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contract) (April 1984)—Alternate I (April 1984).
28	52.246–9	Inspection of Research and Development (Short Form) (April 1984).
29	52.246–23	Limitation of Liability (April 1984).
30	52.249–5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (April 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1	352.202–1	Definitions (April 1984)—Alternate I (April 1984)
2	352.208–70	Printing (April 1984).
3	352.216–7	Allowable Cost and Payment (April 1984)
		(The following clause is applicable when fixed rates subject to carryforward are used):
4	352.216–70	Negotiated Overhead Rates—Fixed (April 1984).
5	352.227–1	Rights in Data (April 1984).
6	352.228–70	Required Insurance (April 1984)
7	352.232–9	Withholding of Contract Payments (April 1984).
8	352.233–70	Litigation and Claims (April 1984).
9	352.237–71	Services of Consultants (April 1984)

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES—Continued

No.	HHSAR clause No.	Title and date
10	352.242-70	Notice to the Government of Delays (April 1984).
11	352.242-71	Final Decisions on Audit Findings (April 1984).
12	352.247-70	Foreign Travel (April 1984).
13	352.249-14	Excusable Delays (April 1984).
14	352.270-5	Key Personnel (April 1984).
15	352.270-6	Publication and Publicity (April 1984).
16	352.270-7	Paperwork Reduction Act (April 1984).
17	352.270-8	Advertising of Awards (April 1984).

GENERAL PROVISIONS FOR A NEGOTIATED FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACT

Required

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

No.	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984).
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contingent Fees (April 1984).
4	52.215-1	Examination of Records by Comptroller General (April 1984).
5	52.215-2	Audit-Negotiation (April 1984).
6	52.215-22	Price Reduction for Defective Cost or Pricing Data (Over $500,000) (April 1984).
7	52.215-24	Subcontractor Cost or Pricing Data (Over $500,000) (April 1984).
8	52.215-30	Facilities Capital Cost of Money (April 1984).
9	52.215-31	Waiver of Facilities Capital Cost of Money (April 1984).
10	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
11	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
12	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
13	52.222-3	Convict Labor (April 1984).
14	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
15	52.222-26	Equal Opportunity (April 1984).
16	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
17	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
18	52.223-2	Clean Air and Water (Over $100,000) (April 1984).
19	52.225-3	Buy American Act—Supplies (April 1984).
20	52.229-3	Federal, State, and Local Taxes (April 1984).
21	52.235-2	Payments Under Fixed-Price Research and Development Contracts (April 1984).
22	52.232-9	Limitation on Withholding of Payments (April 1984).
23	52.232-17	Interest (April 1984).
24	52.232-23	Assignment of Claims (April 1984).
25	52.233-1	Disputes (April 1984).
26	52.243-1	Changes—Fixed Price (April 1984)—Alternate V (April 1984).

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES—Continued

No.	FAR Clause No.	Title and date
27	52.244-1	Subcontracts Under Fixed-Price Contracts (Over $500,000) (April 1984).
28	52.244-5	Competition in Subcontracting (April 1984).

(If the contract prices are not based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the following clause is applicable):

29	52.245-2	Government Property (Fixed-Price Contracts) (April 1984)—Alternate I (April 1984).

or

(If the contract prices are not based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the following clause is applicable):

29	52.245-2	Government Property (Fixed-Price Contracts) (April 1984)—Alternate II (April 1984).
30	52.246-7	Inspection of Research and Development—Fixed Price (April 1984).
31	52.245-16	Responsibility for Supplies (April 1984).

(If the contract is awarded to other than an educational or nonprofit institution on a no-profit basis, the following clause is applicable):

32	52.249-2	Termination for Convenience of the Government (Fixed-Price) (April 1984).

or

(If the contract is awarded to an educational or nonprofit institution on a no-profit basis, the following clause is applicable):

32	52.249-5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (April 1984).

(This clause is not applicable if the contract is awarded on a no-fee basis to an educational or nonprofit institution):

33	52.249-9	Default (Fixed-Price Research and Development) (April 1984).

(If the contract is awarded on a fee basis, the following clause is applicable):

34	52.249-14	Excusable Delays (April 1984).

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984).
2	352.208-70	Printing (April 1984).
3	352.227-1	Rights in Data (April 1984).
4	352.232-8	Withholding of Contract Payments (April 1984).
5	352.242-70	Notice to the Government of Delays (April 1984).

(If the contract is awarded on the basis of no-profit to an educational or nonprofit institution, the following clause is applicable):

6	352.249-14	Excusable Delays (April 1984).
7	352.270-4	Pricing of Adjustments (April 1984).
8	352.270-6	Publication and Publicity (April 1984).

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES—Continued

No.	HHSAR Clause No.	Title and date
9	352.270-7	Paperwork Reduction Act (April 1984).
10	352.270-8	Advertising of Awards (April 1984).

GENERAL PROVISIONS FOR A NEGOTIATED FIXED-PRICE SUPPLY CONTRACT

Required

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

No.	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984).
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contingent Fees (April 1984).
4	52.212-15	Government Delay of Work (April 1984).
5	52.215-1	Examination of Records by Comptroller General (April 1984).
6	52.215-2	Audit-Negotiation (April 1984).
7	52.215-22	Price Reduction for Defective Cost or Pricing Data (Over $500,000) (April 1984).
8	52.215-24	Subcontractor Cost or Pricing Data (Over $500,000) (April 1984).
9	52.215-30	Facilities Capital Cost of Money (April 1984).
10	52.215-31	Waiver of Facilities Capital Cost of Money (April 1984).
11	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
12	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
13	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
14	52.222-3	Convict Labor (April 1984).
15	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
16	52.222-26	Equal Opportunity (April 1984).
17	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
18	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
19	52.223-2	Clean Air and Water (Over $100,000) (April 1984).
20	52.225-3	Buy American Act—Supplies (April 1984).
21	52.229-3	Federal, State, and Local Taxes (April 1984).
22	52.232-1	Payments (April 1984).
23	52.232-8	Discounts for Prompt Payments (April 1984).
24	52.232-9	Limitation on Withholding of Payments (April 1984).
25	52.232-11	Extras (April 1984).
26	52.232-17	Interest (April 1984).
27	52.232-23	Assignment of Claims (April 1984).
28	52.233-1	Disputes (April 1984).
29	52.243-1	Changes—Fixed Price (April 1984).
30	52.244-1	Subcontracts Under Fixed-Price Contracts (Over $500,000) (April 1984).
31	52.244-5	Competition in Subcontracting (April 1984).
32	52.245-2	Government Property (Fixed-Price Contracts (April 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR Clause No.	Title and date
		or
		(If the contract prices are not based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the following clause is applicable)
32	52.245-2	Government Property (Fixed-Price Contracts) (April 1984)—Alternate I (April 1984).
33	52.246-2	Inspection of Supplies-Fixed Price (April 1984).
34	52.246-16	Responsibility for Supplies (April 1984).
35	52.249-2	Termination for Convenience of the Government (Fixed-Price) (April 1984).
36	52.249-8	Default (Fixed-Price Supply and Service) (April 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984).
2	352.208-70	Printing (April 1984).
3	352.227-1	Rights in Data (April 1984).
4	352.232-9	Withholding of Contract Payments (April 1984).
5	352.242-70	Notice to the Government of Delays (April 1984).
6	352.270-4	Pricing of Adjustments (April 1984).
7	352.270-6	Publication and Publicity (April 1984).
8	352.270-7	Paperwork Reduction Act (April 1984).
9	352.270-8	Advertising of Awards (April 1984).

GENERAL PROVISIONS FOR A NEGOTIATED COST-REIMBURSEMENT CONTRACT WITH EDUCATIONAL INSTITUTIONS

Required

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984).
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contingent Fees (April 1984).
4	52.215-1	Examination of Records by Comptroller General (April 1984).
5	52.215-2	Audit-Negotiation (April 1984).
6	52.215-22	Price Reduction for Defective Cost or Pricing Data (Over $500,000) (April 1984).
7	52.215-24	Subcontractor Cost or Pricing Data (Over $500,000) (April 1984).
8	52.216-7	Allowable Cost and Payment (April 1984).
9	52.216-11	Cost Contract—No Fee (April 1984).
		(The following clause is applicable when predetermined rates are used):
10	52.216-15	Predetermined Indirect Cost Rates (April 1984).
11	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
12	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
13	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
14	52.222-3	Convict Labor (April 1984).
15	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
16	52.222-26	Equal Opportunity (April 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR Clause No.	Title and date
17	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
18	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
19	52.223-2	Clean Air and Water (Over $100,000) (April 1984).
20	52.225-3	Buy American Act—Supplies (April 1984).
21	52.232-8	Limitation on Withholding of Payments (April 1984).
22	52.232-20	Limitation of Cost (April 1984).
23	52.232-23	Assignment of Claims (April 1984).
24	52.233-1	Disputes (April 1984).
25	52.242-1	Notice of Intent to Disallow Costs (April 1984).
26	52.243-2	Changes—Cost-Reimbursement (April 1984)—Alternate V (April 1984).
27	52.244-2	Subcontracts Under Cost-Reimbursement and Letter Contracts (April 1984).
28	52.244-5	Competition in Subcontracting (April 1984).
29	52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contract) (April 1984)—Alternate I (April 1984).
30	52.246-9	Inspection of Research and Development (Short Form) (April 1984).
31	52.246-23	Limitation of Liability (April 1984).
32	52.249-5	Termination for Convenience of the Government (Educational and other Nonprofit Institutions) (April 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984)—Alternate I (April 1984).
2	352.208-70	Printing (April 1984).
		(The following clause is applicable when fixed rates subject to carryforward are used):
3	352.216-70	Negotiated Overhead Rates—Fixed (April 1984).
4	352.227-1	Rights in Data (April 1984).
5	352.228-70	Required Insurance (April 1984).
6	352.232-9	Withholding of Contract Payments (April 1984).
7	352.233-70	Litigation and Claims (April 1984).
8	352.237-71	Services of Consultants (April 1984).
9	352.242-70	Notice to the Government of Delays (April 1984).
10	352.242-71	Final Decisions on Audit Findings (April 1984).
11	352.247-70	Foreign Travel (April 1984).
12	352.249-14	Excusable Delays (April 1984).
13	352.270-5	Key Personnel (April 1984).
14	352.270-6	Publication and Publicity (April 1984).
15	352.270-7	Paperwork Reduction Act (April 1984).
16	352.270-8	Advertising of Awards (April 1984).

GENERAL PROVISIONS FOR A COST-REIMBURSEMENT SUPPLY CONTRACT

Required

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984)
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contingent Fees (April 1984).
4	52.215-1	Examination of Records by Comptroller General (April 1984).
5	52.215-2	Audit-Negotiation (April 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR Clause No.	Title and date
6	52.215-22	Price Reduction for Defective Cost or Pricing Data (Over $500,000) (April 1984).
7	52.215-24	Subcontractor Cost or Pricing Data (Over $500,000) (April 1984).
8	52.215-26	Facilities Capital Cost of Money (April 1984).
9	52.215-31	Waiver of Facilities Capital Cost of Money (April 1984).
10	52.216-7	Allowable Cost and Payment (April 1984).
11	52.216-8	Fixed Fee (April 1984).
12	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
13	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
14	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
15	52.222-3	Convict Labor (April 1984).
16	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
17	52.222-26	Equal Opportunity (April 1984).
18	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
19	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
20	52.223-2	Clean Air and Water (Over $100,000) (April 1984).
21	52.225-3	Buy American Act—Supplies (April 1984).
22	52.232-8	Limitation on Withholding of Payments (April 1984).
23	52.232-17	Interest (April 1984).
24	52.232-20	Limitation of Cost (April 1984).
25	52.232-23	Assignment of Claims (April 1984).
26	52.233-1	Disputes (April 1984).
27	52.242-1	Notice of Intent to Disallow Costs (April 1984).
28	52.243-2	Changes—Cost-Reimbursement (April 1984).
29	52.244-2	Subcontracts Under Cost-Reimbursement and Letter Contracts (April 1984).
30	52.244-5	Competition in Subcontracting (April 1984).
31	52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contract) (April 1984).
32	52.245-5	Inspection of Supplies—Cost-Reimbursement (April 1984).
33	52.246-23	Limitation of Liability (April 1984).
34	52.249-6	Termination (Cost-Reimbursement) (April 1984).
35	52.249-14	Excusable Delays (April 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984)—Alternate I (April 1984).
2	352.208-70	Printing (April 1984).
3	352.227-1	Rights in Data (April 1984).
4	352.228-70	Required Insurance (April 1984).
5	352.232-9	Withholding of Contract Payments (April 1984).
6	352.233-70	Litigation and Claims (April 1984).
7	352.237-71	Services of Consultants (April 1984).
8	352.242-70	Notice to the Government of Delays (April 1984).
9	352.242-71	Final Decisions on Audit Findings (April 1984).
10	352.247-70	Foreign Travel (April 1984).
11	352.270-5	Key Personnel (April 1984).
12	352.270-6	Publication and Publicity (April 1984).
13	352.270-7	Paperwork Reduction Act (April 1984).
14	352.270-8	Advertising of Awards (April 1984).

GENERAL PROVISIONS FOR A FORMALLY ADVERTISED CONTRACT

Required

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1)

No.	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984).
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contingent Fees (April 1984).
4	52.212-15	Government Delay of Work (April 1984).
5	52.214-26	Audit—Formal Advertising (Over $100,000) (April 1984).
6	52.214-27	Price Reduction for Defective Cost or Pricing Data—Modifications—Formal Advertising (Over $500,000) (April 1984).
7	52.214-28	Subcontractor Cost or Pricing Data—Modifications—Formal Advertising (Over $500,000) (April 1984).
8	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
9	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
10	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
11	52.222-3	Convict Labor (April 1984).

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1)—Continued

No.	FAR Clause No.	Title and date
12	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
13	52.222-26	Equal Opportunity (April 1984).
14	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
15	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
16	52.223-2	Clean Air and Water (Over $100,000) (April 1984).
17	52.225-3	Buy American Act—Supplies (April 1984).
18	52.229-3	Federal, State, and Local Taxes (April 1984).
19	52.232-1	Payments (April 1984).
20	52.232-8	Discounts for Prompt Payments (April 1984).
21	52.232-9	Limitation on Withholding of Payments (April 1984).
22	52.232-11	Extras (April 1984).
23	52.232-17	Interest (April 1984).
24	52.232-23	Assignment of Claims (April 1984).
25	52.233-1	Disputes (April 1984).
26	52.243-1	Changes—Fixed-Price (April 1984).
27	52.244-1	Subcontracts Under Fixed Price Contracts (Over $500,000) (April 1984).
28	52.245-2	Government Property (Fixed-Price Contracts) (April 1984).

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1)—Continued

No.	FAR Clause No.	Title and date
29	52.246-2	Inspection of Supplies—Fixed-Price (April 1984).
30	52.246-16	Responsibility for Supplies (April 1984).
31	52.249-2	Termination for Convenience of the Government (Fixed-Price) (April 1984).
32	52.249-8	Default (Fixed-Price Supply and Service) (April 1984).

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984).
2	352.208-70	Printing (April 1984).
3	352.227-1	Rights in Data (April 1984).
4	352.232-9	Withholding of Contract Payments (April 1984).
5	352.242-70	Notice to the Government of Delays (April 1984).
6	352.270-6	Publication and Publicity (April 1984).
7	352.270-7	Paperwork Reduction Act (April 1984).
8	352.270-8	Advertising of Awards (April 1984).

BILLING CODE 4150-04-M

PART 353—FORMS

Subpart 353.3—Illustrations of Forms

353.370–674 Form HHS 674, Structured Approach Profit/Fee Objective.

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Structured Approach Profit/Fee Objective

CONTRACTOR		APP/CONTRACT NO.	
BUSINESS UNIT		CONTRACT TYPE	
ADDRESS			

CONTRACTOR EFFORT

1. COST CATEGORY	GOVERNMENT'S COST OBJECTIVE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE (b) x (c) (d)
MATERIAL ACQUISITION		1% to 5%		
DIRECT LABOR		4% to 15%		
OVERHEAD		4% to 9%		
OTHER COSTS		1% to 5%		
GENERAL MANAGEMENT (G & A)		4% to 8%		
1.A TOTAL				

2 OTHER FACTORS

FACTOR	MEASUREMENT BASE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE (1.A (a) x (c)) (d)
COST RISK	TOTAL COST OBJECTIVE 1.A (a)	0% TO 3%		
INVESTMENT		-2% TO +2%		
PERFORMANCE		-1% TO +1%		
SOCIO ECONOMIC PROGRAMS		-.5% TO +.5%		
SPECIAL SITUATIONS				
2.A TOTAL OTHER FACTORS				
3 SUBTOTAL PROFIT/FEE LINES (1.A) + (2.A)				
4 *LESS FACILITIES CAPITAL COST OF MONEY*				
5 TOTAL PROFIT/FEE OBJECTIVE LINE (3) – (4)				

FORM HHS–674 (12/81)

(5 U.S.C. 301; 40 U.S.C. 486(c))

BILLING CODE 4150-04-C

SUBCHAPTER T—HHS SUPPLEMENTATIONS

PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

Sec.
370.101 Policy.
370.102 Responsibilities.

Subpart 370.2—Indian Preference in Employment, Training, and Subcontracting Opportunities

370.201 Statutory requirements.
370.202 Applicability.
370.203 Definitions.
370.204 Compliance enforcement.
370.205 Tribal preference requirements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

370.101 Policy.

(a) It is the policy of HHS that all meetings, conferences, and seminars be accessible to individuals with disabilities. For the purposes of this policy, accessibility is defined as both physical access to meeting, conference, and seminar sites, and aids and services to enable individuals with sensory disabilities to fully participate in meetings, conferences, and seminars.

(b) In regard to acquisition, the policy is applicable to all contracts where the statement of work requires the contractor to conduct meetings, conferences, or seminars that are open to the public or involve HHS personnel, but not to ad hoc meetings that may be necessary or incidental to contract performance.

370.102 Responsibilities.

(a) The contracting officer shall include the clause in 352.270–1 in every solicitation and resulting contract when the statement of work requires the contractor to conduct meetings, conferences, or seminars in accordance with 370.101(b).

(b) The project officer shall be responsible for obtaining, reviewing, and approving the contractor's plan, which is to be submitted in response to paragraph (a) of the contract clause in 352.270–1. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars will be acceptable. The project officer, prior to approving the plan, shall consult with the Office of Facilities Engineering, OMS, OS, or the Office of Regional Operations for Facilities Engineering and Construction in the region where the meeting, conference, or seminar is to be held, to assure that the contractor's plan meets the accessibility requirements of the contract clause. The Office of Facilities Engineering or the Office of Regional Operations for Facilities Engineering and Construction shall make a determination on the adequacy of the contractor's plan, and notify the project officer, in writing, within ten (10) working days of receiving the request from the project officer.

Subpart 370.2—Indian Preference in Employment, Training, and Subcontracting Opportunities

370.201 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 88 Stat. 2205; 25 U.S.C. 450e(b) requires:

> Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—
>
> (1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
>
> (2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

370.202 Applicability.

The Indian Preference clause set forth in 352.270–2 and the Indian Preference Program clause set forth in 352.270–3 have been developed to implement section 7(b) of Public Law 93–638 for all activities of the Department. The clauses shall be used by any affected departmental contracting activity as follows, except solicitations issued and contracts awarded pursuant to Title I of Public Law 93–638 (25 U.S.C. 450 et seq.) are exempted:

(a) The Indian Preference clause (352.270–2) shall be included in each solicitation and resultant contract, regardless of dollar amount:

(1) When the contract is to be awarded pursuant to an act specifically authorizing contracts with Indian organizations; or

(2) Where the work to be performed under the contract is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The Indian Preference Program clause (352.270–3) shall be included in each solicitation and resultant contract when:

(1) The dollar amount of the acquisition is expected to equal or exceed $50,000 for nonconstruction work or $100,000 for construction work;

(2) The Indian Preference clause is to be included in the solicitation and resultant contract; and

(3) The determination is made, prior to solicitation that the work to be performed under the resultant contract will take place in whole or in substantial part on or near an Indian reservation(s). In addition, the Indian Preference Program clause may be included in any solicitation and resultant contract below the $50,000 or $100,000 level for nonconstruction or construction contracts, respectively, but which meet the requirements of paragraphs (b) (2) and (3) of this section, and, in the opinion of the contracting activity, offer substantial opportunities for Indian employment, training, and subcontracting.

370.203 Definitions.

For purposes of this Subpart 370.2, the following definitions shall apply:

(a) "Indian" means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual to provide evidence within thirty (30) days from the Tribe concerned that the person is a member of that Tribe.

(b) "Indian Tribe" means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(c) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

(d) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active *operation* and *control*.

(e) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(f) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

370.204 Compliance enforcement.

(a) The concerned contracting activity shall be responsible for conducting periodic reviews to insure contractor compliance with the requirements of the clauses set forth in 352.270–2 and 352.270–3. These reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(b) Complaints of noncompliance with the requirements of the clauses set forth in 352.270–2 and 352.270–3 which are filed in writing with the contracting activity shall be promptly investigated and resolved by the contracting officer.

370.205 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the contracting activity may supplement the clause set forth in 352.270–3 by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the contracting activity and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Public Law 93–638 and must be approved by the affected program director and approved for legal sufficiency by the Business and Administrative Law Division, OGC, or a regional attorney before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause in 352.270–3 shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in these regulations shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in paragraph (a) above, become a requirement in contracts covered under this Subpart 370.2, and must not conflict with any Federal statutory or regulatory requirement concerning the award and administration of contracts.

APPENDIX A.—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES

State	Organization and payee No.	Recipient CRS-EIN [1]	Letter of credit
Alabama	University of Alabama Medical Center, 1–636005396–A4	1–636001138–A2, 1–636001138–A3, 1–636001138–A4, 1–636001138–A5,	75[illegible]0118
	Director, Office of Grants and Contracts Accounting, University of Alabama, University Station, Birmingham, Alabama 35296.	1–636001138–B1, 1–636005396–A3 1–636005396–A4, 1–636005396–A5, 1–636005396–A6, 1–636005396–A7, 1–636005396–A8.	
	University of Alabama, 1–636001138–A1	1–636001138–A1, 1–636001138–A6	75[illegible]0118
	Comptroller, University of Alabama, P.O. Box M, University, Alabama	1–636001138–A7, 1–636001138–A8, 1–636001138–A9, 1–636001138–B2, 1–636001138–B3, 1–636001138–B4.	
	Southern Research, Institute, 1–630288868–A2	1–630288868–A1, 1–630288868–A2	75[illegible]0537
	Financial Officer, Southern Research Institute, 2000 9th Avenue, South, Birmingham, Alabama 35205.		
Alaska	State of Alaska, 1–900001517–A1	1–000700369–A1, 1–926001185–A2, 1–926001185–A3	75[illegible]0071
	Director, Division of Finance, Department of Administration, Pouch C, Juneau, Alaska 99801.	1–926001185–A4, 1–926001185–A5, 1–926001185–A7, 1–926001185–B1, 1–926001185–B2, 1–926001185–B3, 1–926001185–B6, 1–926001185–B7, 1–926001185–B8, 1–926001185–B9, 1–926001185–C1, 1–926001185–C2.	
Arizona	State of Arizona, 1–866004791–B7	1–866004791–A1, 1–866004791–A2, 1–866004791–A3	75[illegible]0078
	State Treasurer's Office, State Capitol, Phoenix, Arizona, 85007	1–866004791–A4, 1–866004791–A5, 1–866004791–A6, 1–866004791–A7, 1–[illegible]4791–A8, 1–866004791–A9, 1–866004791–B2, 1–866004791–B3, 1–866004791–B7, 1–866004791–B8, 1–866004791–C2, 1–866004791–C5, 1–866004791–C7, 1–866004791–C8, 1–866004791–C9, 1–866004791–D1, 1–[illegible]004791–D2, 1–866004791–D3, 1–866004791–D5, 1–866004791–D6, 1–866004791–D7, 1–866004791–D8, 1–866004791–D9, 1–866004791–E3, 1–[illegible]004791–E5, 1–866004791–E6, 1–866004791–E7, 1–866004791–E8, 1–[illegible]004791–E9.	
California	County of San Diego, 1–95000934–A2	1–956000924–A1 1–956000924–A2	75080366
	Auditor and Controller, County of San Diego, County Administration Center, 1600 Pacific Highway, San Diego, California 92101.		
	University of California, 1–900001727–A1		75081471
	Letter of Credit, Universebes of California, Berkeley, California 94720		
	Santa Barbara	1–956006145–A1 1–956006145–A2	75081471
	San Diego	1–956006144–A1, 1–956006144–A2, 1–956006144–A3	75081471
	Davis	1–946036494–A1	75081471
	Los Angeles	1–956006143–A1, 1–956006143–A2, 1–956006143–A3, 1–956006143–A4, 1–956006143–A5.	75[illegible]1471
	Irvine	1–952226406–A1, 1–952226406–A2	75081471
	Berkeley	1–946002133–A1, 1–946002133–A2	75081471
	Riverside	1–237361894–A1, 1–956006142–A1	75081471
	Santa Cruz	1–941539563–A1	75[illegible]1471
	San Francisco	1–946036493–A1, 1–946036493–A6, 1–946036493–A7, 1–946036493–A8	75081471
	Los Alamos Lab	1–856004458–A1	75081471
	Lawrence Livermore Lab	1–946031193–A1	75[illegible]1471
	Scripps Clinic and Res. Fndn	1–951684089–A1	75067580
	Comptroller, Scripps Clinic and Res. Fndn. 476 Prospect Street, La Jolla, California 92037		
Connecticut	Yale University, 1–060646973–A1	1–060646973–A1, 1–060646973–A2, 1–060646973–A4	75[illegible]755
	Treasurer, Yale University, Grants and Contracts, 155 Whitney Avenue, New Haven, Conn. 06511.	1–060646973–A5, 1–060646973–A6, 1–060646973–A7, 1–060646973–A8	
District of Columbia	Georgetown University, 1–530196603–A1	1–530196603–A1, 1–530196603–A2, 1–530196603–A3	75[illegible]3450
	Treasurer, Georgetown University, 37th and O Streets NW., Washington, D.C. 20007.	1–530196603–A4, 1–530196603–A5, 1–530196603–A6, 1–530196603–A7	
	George Washington University, 1–530196584–A1	1–530196584–A1, 1–530196584–A3	75[illegible]441
	Treasurer, George Washington University, Rice Hall, Washington, D.C. 20006		
	Gorgas Memorial Institute, 1–530196518–A1	1–530196518–A1	75083522

APPENDIX A.—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES—Continued

State	Organization and payee No.	Recipient CRS-EIN [1]	Letter of credit
	Treasurer, Georges Memorial Institute, 2007 I Street NW., Washington, D.C. [redacted].		
	National Academy of Sciences, 1-530196932-A1	1-530196932-A1, 1-530196932-A2	75085992
	Treasurer, National Academy of Sciences, 2101 Constitution, Avenue NW., Washington, D.C. 20037.		
Florida	University of Florida, 1-596001874-C7, Fiscal Contract Officer, University of Florida, Room 106, R. Johnson Hall, Gainesville, Florida 32611.	1-596001874-C7, 1-596001874-F2	75083326
	University of Miami, 1-590624458-A1	1-590624458-A1, 1-590624458-A2, 1-590624458-A3	75085253
	Chief Accountant, University of Miami, P.O. Box 9057, Coral Gables, Florida 33124.	1-590624458-A6	
Georgia	State of Georgia, 1-581130678-A1	1-580973190-A2, 1-581130678-A1, 1-581130678-A5,	75083462
	Director, Department of Adm. Services, Fiscal Division, Pryor-Mitchell Building, Atlanta, Georgia 30334.	1-581130678-A6, 1-586000246-A2, 1-586002042-A1, 1-586002042-A2, 1-586002042-A3, 1-586002042-A4, 1-586002042-A6, 1-900000257-A1, 1-[redacted]-A1.	
Guam	Territory of Guam, 1-980018947-E6	1-000040215-A1, 1-000040218-A1, 1-000040228-A1	[redacted]
	Department of Administration, P.O. Box 884, Government of Guam, Agana, Guam 96110.	1-000040238-A1,1-000307495-A1,1-000313462-A1,1-900000270-A1,1-900000273-A1,1-900000274-A1,1-980018947-A1,1-980018947-A2,1-980018947-A3,1-980018947-A4,1-980018947-A7,1-980018947-A8,1-980018947-A9,1-980018947-B1,1-980018947-B2,1-980018947-B3,1-980018947-B5,1-980018947-D1,1-980018947-E5,1-980018947-E7,1-[redacted]-F1.	
Illinois	University of Illinois Medical Center, 1-376000511-A5	1-376000511-A1,1-376000511-A3,1-376000511-A5,1-376000511-A8	[redacted]
	Business Manager, University of Illinois, Chicago, Illinois, P.O. Box 6998, Chicago, Illinois 60680	01-376000511-A9,1-376000511-B2,1-376000511-B4,1-376000511-B5,1-376000511-C1,1-376000511-C2,1-376000511-C3.	
Kansas	Kansas State University 1-480771751-A1, Comptroller, Kansas State, University of Agriculture & Applied Sciences, Anderson Hall, Manhattan, Kansas 66502.	1-480771751-A1,1-480771751-A2	75084200
Louisiana	State of Louisiana, 1-900001516-A1,	1-000014399-A1,1-000014607-A1,1-237206290-A1	75080020
	Assistant State Treasurer, State Treasurer's Office, P.O. Box 44154, Capital Station, Baton Rouge, Louisiana 70804.	1-237206290-A2,1-720591509-A1,1-720637038-A1,1-720637038-A2,1-720645546-A1,1-720650883-A1,1-720695435-A1,1-720707278-A1,1-726000720-A1,1-726000733-A1,1-726000734-A1,1-726000734-A2,1-726000734-A3,1-726000743-A1,1-726000745-A1,1-726000756-A1,1-726000766-A1,1-726000800-A1,1-726000800-A2,1-726000813-A1,1-726000821-A1,1-726000821-A2,1-726000821-A3,1-726000821-A4,1-726000821-A5,1-726000826-A1,1-726001901-A1,1-726011595-A1,1-726011595-A3,1-726011595-A5,1-726011595-A6,1-726011595-A8,1-726011595-A9,1-726012498-A1,1-726014571-A1,1-726101595-A1,1-900001256-A1,1-900001342-A1,1-900002575-A1.	
Maine	Jackson Laboratories, 1-010211513-A1	1-01211513-A1	75087315
	Financial Officer, The Jackson Laboratories, Otter Creek Road, Bar Harbor, Maine 04609.		
[redacted]	Boston University, 1-042103547-A1	1-042103547-A1, 1-042103547-A2, 1-042103547-A4	75081272
	Comptroller, Boston University, 755 Commonwealth Avenue, Boston, Mass. 02215.		
	Forsyth Dental Center, 1-042104230-A2	1-042104230-A1, 1-042104230-A2	75083375
	Assistant Treasurer, Forsyth Dental Center, 140 Fenway, Boston, Mass. 02115.		
	Harvard University 1-042103580-B1	1-042103580-A2, 1-042103580-A3, 1-042103580-A4	75083630
	Office of the Comptroller	1-042103580-A5, 1-042103580-A6	
	President & Fellows of Harvard College Cambridge, Mass. 02138	1-042103580-A7, 1-042103580-A8, 1-042103580-A9, 1-042103580-B1	
	Massachusetts General Hospital, 1-041564655-A4	1-041564300-A1, 1-041564655-A3, 1-041564655-A4	75084810
	Treasurer, Massachusetts General Hospital, 45 Milk Street, Boston, Mass. 02114.	1-041564655-A5	
	Massachusetts Institute of Technology, 1-042103594-A1	1-042103594-A1, 1-042103594-A2	[redacted]
	Fiscal Officer, Division of Sponsored Research, Massachusetts Institute of Technology, Cambridge, Mass. 02139.		
	Worcester Foundation, 1-042121658-A1	1-042121658-A1	[redacted]
	Finance Officer, Worcester Foundation for Experimental Biology, Inc., 222 Maple Avenue, Shrewsbury, Massachusetts 01545.		
Maryland	Johns Hopkins University, 1-520595110-A5, University Budget Officer Johns Hopkins University, Garland Hall, Rm 327, Charles and 34th Streets, Baltimore, Md. 21218.	1-000701501-A1, 1-520595110-A1, 1-520595110-A2, 1-520595110-A3, 1-520595110-A4, 1-520595110-A5.	75084130
[redacted]	University of Michigan, 1-386006309-A1	1-386006309-A1, 1-386006309-A2, 1-386006309-A3	75085301
	University Cashier, Regents of the University of Michigan, 1015 L.S. & A. Bldg., Ann Arbor, Michigan 48104.	1-386006309-A4, 1-386006309-A5, 1-386006309-A6, 1-386006309-A7, 1-386006309-A8, 1-386006309-A9, 1-386006309-B1,1-386006309-B2.	
Minnesota	Mayo Foundation, 1-416011702-A1	1-4160011702-A1, 1-4160011702-A2	75084875
	Treasurer, Mayo Foundation, 200 First Street, SW., Rochester, Minnesota 55901.		
	University of Minnesota, 1-416007513-A5	1-416007513-A1, 1-416007513-A2, 1-416007513-A3	75085448
	Director, Research Administration, 105 Admin. Servs. Building, 2610 University Avenue, St. Paul, Minnesota 55114.	1-416007513-A5, 1-416007513-A8, 1-416007513-B2, 1-416007513-B3, 1-416007513-B4, 1-416007513-B5, 1-416007513-B7.	
Missouri	Midwest Research Institute, 1-440545878-A1	1-440545878-A1	75085361
	Treasurer, Midwest Research Institute, 425 Volker Blvd., Kansas City, Missouri 64110.		
Nebraska	State of Nebraska, 1-470491233-C5	1-000021900-A1, 1-210874761-A1, 1-470491233-A1	[redacted]
	State of Nebraska Accounting Dept., Administrative Services Office, State Capitol Bldg., Lincoln, Nebraska 68509.	1-470491233-A3, 1-470491233-A4, 1-470491233-A6, 1-470491233-A7, 1-470491233-A8, 1-470491233-A9, 1-470491233-B1, 1-470491233-B2, 1-470491233-B3, 1-470491233-B4, 1-470491233-B5, 1-470491233-B6, 1-470491233-B7, 1-470491233-B8, 1-470491233-B9, 1-470491233-C1, 1-470491233-C2, 1-470491233-C3, 1-470491233-C4, 1-470491233-C5, 1-470491233-C6, 1-470491233-C7, 1-470491233-C8, 1-470491233-C9, 1-470491233-D1, 1-470491233-D2, 1-470491233-D4, 1-476000479-A1, 1-476000535-A1, 1-476000535-A8, 1-741699874-A1, 1-900001910-A1, 1-900001919-A1, 1-900002209-A1, 1-900002333-A1, 1-900003427-A1, 1-900003437-A1.	
New York	Adelphi University, 1-111630741-A1	1-111630741-A1	[redacted]
	Business Manager, Adelphi University, South Avenue, Garden City, New York 11530.		
	Albany Medical Center, 1-141338310-A1,	1-141338310-A1	75080150
	Assistant Treasurer, Albany Medical College of Union University, 47 New Scotland Avenue, Albany, New York 12208.		

APPENDIX A.—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES—Continued

State	Organization and payee No.	Recipient CRS-EIN [1]	Letter of credit
	Children's Hospital of Buffalo, 1-160748423-A1	1-160748423-A1	[illegible]
	Comptroller, Children's Hospital of Buffalo, 219 Bryant Street, Buffalo, N.Y. 14222.		
	New York Medical College, 1-131099420-A1	1-131099420-A1	75086270
	Treasurer, New York Medical College, Flower/Fifth Avenue Hospitals, 1 East 105th Street, New York, N.Y. 10029.		
	New York University, 1-135562308-A1	1-135562308-A1, 1-135562308-A3, 1-135562308-A4	[illegible]
	Assistant Controller, New York University, 500 Kimball Hall, Washington Square, New York, New York 10003.	1-135562308-A5, 1-135562308-A6	
	New York University Medical Center, 1-135562309-A1	1-135562308-A2, 1-135562308-B1, 1-135562309-A1, 1-135562309-A2	75086333
	Comptroller, New York University Medical Center, 550 First Avenue, New York, New York 10016.	1-135562309-A3, 1-229124053-A1	
	University of Rochester, 1-160743209-A1, Research Accountant University of Rochester, River Campus, Rochester, New York 14627.	1-160743209-A1, 1-160743209-A2, 1-160743209-A3, 1-160743209-A4, 1-160743209-A5.	[illegible]
	Research Foundation of the State, University of New York, 1-14136861-J3, Comptroller, Research Foundation of State University of New York, P.O. Box 7126, Albany, New York 12224.	1-131819472-A1, 1-132633612-A1, 1-141363361-A1, 1-141368361-A1, 1-141365361-A2, 1-141368361-J3, 1-146013200-E4, 1-146013200-E5, 1-146013200-E6, 1-146013200-E7, 1-146013200-E8, 1-146013200-E9, 1-146013200-F1, 1-146013200-F2, 1-146013200-F3, 1-146013200-F4, 1-146013200-F5, 1-146013200-F6, 1-146013200-F7, 1-146013200-F8, 1-146013200-F9, 1-146013200-G1, 1-146013200-G2, 1-146013200-G3, 1-146013200-G4, 1-146013200-G5, 1-146013200-G6, 1-146013200-G7, 1-146013200-G8, 1-146013200-G9, 1-146013200-H1, 1-146013200-H2, 1-146013200-H3, 1-146013200-H4, 1-146013200-J3, 1-146013200-K4, 1-146013200-L5, 1-146013200-L6, 1-146013200-L7.	[illegible]
	Research Foundation of the City, University of New York, 1-131968190-A1	1-131968190-A1, 1-131968190-A2	[illegible]
	Treasurer, Research Foundation of the City, University of New York, 1411 Broadway, New York, New York 10018.		
	State of New York, 1-146013200-J7	1-146013200-A1, 1-146013200-A2, 1-146013200-A3	[illegible]
	Director, State Accounts, Alfred E. Smith, Building, Albany, New York 12225	1-146013200-A4, 1-146013200-A5, 1-146013200-A6, 1-146013200-A7, 1-146013200-A8, 1-146013200-A9, 1-146013200-B1, 1-146013200-B2, 1-146013200-B3, 1-146013200-B4, 1-146013200-B5, 1-146013200-B6, 1-146013200-B7, 1-146013200-B8, 1-146013200-B9, 1-146013200-C1, 1-146013200-C2, 1-146013200-C3, 1-146013200-C4, 1-146013200-C5, 1-146013200-C6, 1-146013200-C8, 1-146013200-C9, 1-146013200-D1, 1-146013200-D2, 1-146013200-D3, 1-146013200-D4, 1-146013200-D5, 1-146013200-D6, 1-146013200-D7, 1-146013200-D9, 1-146013200-E1, 1-146013200-E2, 1-146013200-E3, 1-146013200-H5, 1-146013200-H6, 1-146013200-H7, 1-146013200-H8, 1-146013200-H9, 1-146013200-I1, 1-146013200-I2, 1-146013200-I3, 1-146013200-I4, 1-146013200-I7, 1-146013200-I8, 1-146013200-J1, 1-146013200-J4, 1-146013200-J5, 1-146013200-J6, 1-146013200-J7, 1-146013200-J8, 1-146013200-J9, 1-146013200-K1, 1-146013200-K2, 1-146013200-K3, 1-146013200-K6, 1-146013200-K7, 1-146013200-K9, 1-146013200-L3, 1-146013200-L4, 1-146013200-L8.	
Ohio	Case Western Reserve University, 1-341018992-A1	1-341018992-A4, 1-341018992-A1, 1-341018992-A2	[illegible]
	Comptroller Case Western Reserve University, 2040 Adelbert Road, Cleveland, Ohio 44106.		
Tennessee	St. Jude's Children's Research Hospital, 1-620646012-A1	1-62646012-A1	[illegible]
	Treasurer, St. Jude's Children's Hospital, 332 N. Lauderdale, Memphis, Tennessee 38101.		
Texas	Baylor University College of Medicine, 1-741613878-A2	1-741613878-A1, 1-741613878-A2	[illegible]
	Business Manager, Baylor College of Medicine, 1200 Moursund Ave., Houston, Texas 77025.		
	University of Texas at Houston Health Center, 1-741761309-A4	1-741761309-A4, 1-741761309-A6	[illegible]
	Associate Dean for Business Affairs, University of Texas, Medical School, P.O. Box 20036 Houston, Texas 77025.		
	University of Texas Medical School, 1-756002868-A4	1-756002868-A3, 1-756002868-A4, 1-756002868-A5	[illegible]
	Business Manager, University of Texas, Southwestern Medical Schools, 5323 Harry Hines Blvd., Dallas, Tex 75235.		
	University of Texas, M.D. Anderson Hospital, 1-746001118-A1	1746001118-A1	[illegible]
	Supervisor, Grant Reporting, M.D. Anderson Hospital, University of Texas, 6723 Bertner Ave., Houston, Texas 77025.		
	University of Texas Medical Branch, Galveston, Texas, 1-74600949-A1	1-74600949-A1	[illegible]
	Business Manager, University of Texas, Medical Branch, 1000 Strand, Galveston, Texas 77550.		
Utah	University of Utah and University of Utah Research 1-876000525-A6	1-876000525-A1, 1-876000525-A2, 1-876000525-A3, 1-876000525-A6, 1-876000525-A7,.	[illegible]
	Controller, University of Utah, 122 Park Building, Salt Lake City, Utah 84112	1-876000525-A8	
Washington	University of Washington, 1-916001537-A5, Director, Office of Grant/Contract Services, University of Washington, 211 Administration Building, Seattle, Washington 98195.	1-916001537-A1, 1-916001537-A2, 1-916001537-A4, 1-916001537-A5, 1-916001537-A6, 1-916001537-A9.	[illegible]
Wisconsin	State of Wisconsin, 1-396006469-B1	1-000039594-A1, 1-000702000-A1, 1-396006464-A1	[illegible]
	Budget Operations, State Budget Office, One West Wilson St., Madison Wisconsin 53707.	1-391051231-A1, 1-396006436-A1, 1-396006443-A3, 1-396006447-A1, 1-396006461-A1, 1-396006461-A2, 1-396006461-A3, 1-396006461-A4, 1-396006461-A5, 1-396006461-A6, 1-396006461-A7, 1-396006461-A8, 1-396006461-A9, 1-396006461-B1, 1-396006466-A1, 1-396006469-A1, 1-396006469-A5, 1-396006469-A6, 1-396006469-A7, 1-396006469-B1, 1-396006469-B5, 1-396006487-A1, 1-396006487-A2, 1-396006488-A1, 1-396006492-A1, 1-396006492-A2, 1-396006492-A3, 1-396006492-A5, 1-396006492-A6, 1-396006492-A7, 1-396006492-A8, 1-396006492-B1, 1-396006492-B2, 1-396006492-B3, 1-396006492-B4, 1-396006492-B5, 1-396006492-B6, 1-396006492-B7, 1-396006492-B8, 1-396006492-B9, 1-396006492-C1, 1-396006492-C2, 1-396006492-C3, 1-396006492-C4, 1-396006492-C5, 1-396006492-C6, 1-396006492-C7, 1-396006492-C8, 1-396006492-C9, 1-396006492-D1, 1-396029867-A1, 1-396029867-A2, 1-396091677-A1, 1-396091677-A2, 1-396320507-A1, 1-900000022-A1, 1-900002012-A1, 1-900002564-A1, 1-900002685-A1, 1-900003134-A1.	[illegible]

[1] Central Registry-System Entity Identification Number (CRS-EIN).

CRS-EIN is a twelve digit number used to identify a recipient organization/individual in the HHS Central Registry System (CRS). This system utilizes a standard identification number within HHS to identify recipients of Federal assistance-like programs. The first digit identifies whether the recipient is an organization (1) or individual (2). The next nine (9) digits uniquely associate the organization/individual to an Employer Identification Number assigned by the Internal Revenue Service in the case of an organization, or a Social Security Number assigned by the Social Security Administration in the case of an individual. A two character suffix code is assigned by the Central Registry System, HHS, to identify component levels within the recipient organization, such as: School of Medicine, Research Division, Department of Biology, etc. A suffix is not applied to a Social Security Number since that number is unique to each individual.

[FR Doc. 84-9297 Filed 4-4-84; 2:54 pm]

BILLING CODE 4150-04-M

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federal register

Monday
April 9, 1984

Part III

Department of the Treasury

Office of the Assistant Secretary for International Affairs

31 CFR Part 129

Portfolio Investment Survey Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs

31 CFR Part 129

Portfolio Investment Survey Regulations

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This notice promulgates final regulations for a portfolio investment survey which, together with forms and instructions, implement the President's responsibilities under the International Investment Survey Act of 1976 (22 U.S.C. 3101 et seq., as amended) regarding studies, analyses, and mandatory surveys of foreign portfolio investment in the United States. The President's responsibilities concerning portfolio investment were delegated to the Secretary of the Treasury on January 19, 1977, pursuant to Executive Order 11961 (42 FR 4321), as amended. The final regulations set out below replace Part 129 of 31 CFR, which is hereby revoked because it pertains to a 1978 foreign portfolio investment survey that has been completed.

EFFECTIVE DATE: April 9, 1984.

FOR FURTHER INFORMATION CONTACT: Bertram Wolfe, Foreign Portfolio Investment Project, Office of the Assistant Secretary, International Affairs, U.S. Department of the Treasury, Washington, D.C. 20220, Telephone: (202) 566–8263.

SUPPLEMENTARY INFORMATION: On October 11, 1976, the President signed into law the International Investment Survey Act of 1976 (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101, et seq., as amended [the "Act"]), which requires the collection and analysis of data relating to international investment and its effect upon the national security, commerce, employment, inflation, general welfare, and foreign policy of the United States. The Act requires, *inter alia*, that a comprehensive benchmark survey be conducted at least once every five years to determine, as necessary and feasible, the magnitude and aggregate value of foreign portfolio investment, form of investments, types of investors, nationality and residence of investors, diversification of holdings by economic sector, and holders of record. The previous Foreign Portfolio Investment Survey [the "Survey"] collected data as of December 31, 1978, and the report on that Survey was issued by the Department of the Treasury [the "Treasury"] in December 1980. These final regulations are being promulgated to authorize the new Survey, as required by the Act, and they contain no substantive changes from the current regulations in Part 129 of 31 CFR that they revoke and replace.

The President designated the Secretary of the Treasury as the Federal executive responsible for collecting the required data on portfolio investment pursuant to Executive Order 11961 dated January 19, 1977 (42 FR 4321) as amended. The Secretary of the Treasury has delegated the day-to-day responsibility for the Survey to the Assistant Secretary for International Affairs. These final regulations implement new Forms TD F 90–19.1 and TD F 90–19.2, related forms, and their instructions [the "Forms"], which will reduce the number of legal persons having to report; allow persons reporting to use modern data processing techniques; and reduce the cost to the Government of carrying out the data collection programs provided for by the Act.

Notice and Comment

The Treasury finds that notice and public procedures and the general requirement for a delayed effective date under the provisions of 5 U.S.C. 553 are "impractical, unnecessary, or contrary to the public interest." Specifically, such procedures are unnecessary because these final regulations make no substantive changes in the current Part 129 of 31 CFR. These final regulations merely permit the use of specified reporting forms for the Survey, are minor in scope, and serve generally to reduce the reporting burden upon the public by reducing the number of respondents.

The means by which the reporting burden on the public has been reduced is chiefly by setting exemption levels in the proposed Survey forms and instructions, which will be published in the **Federal Register** in the near future, at higher levels than were used on the most recent survey. For purposes of the first survey to be carried out under this new regulation, the proposed forms and instructions contain an exemption level which requires a bank or non-bank with assets greater than $2 billion and $1 billion, respectively, to file a report as an issuer of U.S. securities. Also some issuers with assets of at least $100 million but less than the aforementioned levels might be asked to report as well. A holder of record is exempt if the combined investments of all its foreign customers amount to less than $10 million. For each successive survey under these regulations, the Department of the Treasury will provide notice of the applicable exemption levels.

In the one procedural change from the current regulations, these final regulations require that respondents submit some data requested by the Forms in machine readable format in order to reduce the cost to the Government of processing the data while not increasing the costs to respondents. However, respondents may file a written certified claim for exemption, included among the forms available from the Treasury, requesting that the Secretary of the Treasury grant a waiver from this requirement, and for good cause the Secretary shall grant the request.

Regulatory Flexibility Analysis

The provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.) are not applicable to this final rule because no notice of proposed rulemaking is required by 5 U.S.C. 553 or by any other statute.

Executive Order 12291

The Treasury has determined that this rule is not a major rule for the purpose of Executive Order 12291 signed on February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, in a major increase in costs to consumers, individual industries, Federal, State or local government agencies, or geographic regions, or in significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 31 CFR Part 129

Banks, Banking, Foreign investment in the United States, Reporting and recordkeeping requirements, Securities.

Accordingly, 31 CFR Part 129 is revised to read as follows:

PART 129—PORTFOLIO INVESTMENT SURVEY REGULATIONS

Subpart A—Basic Requirements

Sec.
129.1 Purpose.
129.2 General definitions.
129.3 Recordkeeping requirements.
129.4 Reporting requirements.
129.5 Response required.
129.6 Confidentiality.
129.7 Penalties.
129.8 Miscellaneous.

Subpart B—Rules and Regulations for Survey of Foreign Portfolio Investment in U.S. Securities

129.9 Basic requirements.
129.10 Form TD F 90–19.1 Report for U.S. Issuers of Securities (Form FPI–1).
129.11 Form TD F 90–19.2 Report for U.S. Holders of Record (Form FPI–2).

Authority: The provisions of this Part 129 are issued under Pub. L. 94–472, 90 Stat. 2059 (22 U.S.C. 3101, et seq.), as amended; E.O. 11961, 42 FR 4321, as amended.

Subpart A—Basic Requirements

§ 129.1 Purpose.

The purpose of this part is to set forth the rules and regulations necessary to implement the data collection programs and analyses with respect to portfolio investment provided for by the International Investment Survey Act of 1976 (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101, et seq., as amended [the "Act"]). The overall purpose of the Act is to provide comprehensive and reliable information concerning international investment, including portfolio investment, while minimizing the reporting burden on respondents.

§ 129.2 General definitions

(a) "United States", when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) "Foreign", when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) "Person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States.

(e) "Foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(f) "Foreign parent", for purposes of this Survey, means any foreign person who owns or controls, directly or indirectly, 10 percent or more of the voting securities of an incorporated United States business enterprise, or an equivalent interest in an unincorporated United States business enterprise.

(g) "Securities", for purposes of this Survey, means long-term marketable United States public and private issues of debt and equity. Long-term securities have no contractual maturity (stocks) or have an original maturity of more than one year from date of issue. Marketable securities include both bearer and registered securities that are publicly traded or privately placed in United States and/or foreign markets. The term "securities" includes common and preferred stocks or investment company shares, including rights, warrants, and scrip; bonds, debentures, equipment trust certificates and similar long-term corporate debt instruments; marketable long-term corporate debt instruments; marketable long-term debt obligations of the United States Treasury, Federal financing institutions, United States Government corporations and Federally-sponsored agencies; and marketable long-term debt obligations of State and local governments, including any agencies, corporations, financing institutions, or other instrumentalities thereof. Also included are certificates or receipts representing an interest in particular coupon or principal payments of marketable U.S. Treasury securities. Examples of such instruments are Treasury Investment Growth Receipts (TIGRs) issued by Merrill Lynch White Weld Capital Markets Group, Certificates of Accrual on Treasury Securities (CATS) issued by Salomon Brothers Inc., and Zero Coupon Treasury Bond Receipts (TBRs) issued by E.F. Hutton Inc.

(h) "United States issuer" means any United States person who issues, through public or private distribution, any security.

(i) "United States holder of record" means any United States person who is carried on stock transfer records or other ownership records as having title to any security of a United States issuer which is held on behalf of another person. United States holders of record include such persons as nominees, custodians, agents, trustees, other fiduciaries, banks, brokers, or other intermediaries, who hold title to investments on behalf of another person. The term also extends to any United States person acting as a custodian for bearer securities, even though such person is not carried on ownership records as holding title to such securities.

(j) "Reporter" means the United States person required to file a report, or for which the report is required to be filed, in this Survey.

(k) "Foreign official institutions" means central governments of foreign countries and their possessions, including recognized central banks of issue, including the following:

(1) The treasuries, including ministries of finance, or corresponding departments of national governments; central banks, including all departments thereof; stabilization funds, including official exchange stabilization funds, exchange control offices, or other governmental exchange authorities; and fiscal agents of the national governments which have as an important part of their functions, activities similar to those of a treasury, central bank, or stabilization fund (except that branches or agencies of foreign official banking institutions which are located in the United States shall not be considered foreign official institutions for purposes of these instructions).

(2) Diplomatic and consular establishments and other departments and agencies of national governments, such as military departments, purchasing commissions and state trading organizations except that the term "foreign official institution" does *not* include the following:

(i) Nationalized or other government-owned banks or corporations (nationalized or other government-owned banks should be regarded as "foreign banks" and nationalized or other government-owned corporations should be regarded as "other business firms" unless such banks or corporations fall within one of the categories set forth in paragraphs (k)(1) or (k)(2) of this section); and

(ii) Personal accounts of foreign diplomatic and other official representatives of foreign countries.

(3) Any international or regional organization, or subordinate or affiliated agency thereof, created by treaty or convention between sovereign states.

(l) "Treasury" means U.S. Department of the Treasury.

§ 129.3 Recordkeeping requirements.

Persons subject to the jurisdiction of the United States shall maintain all information as required by the Act (22 U.S.C. 3104(b)(1)). No person, however, shall be required to maintain such information for longer than three years from the date of submission of any reports and other information required pursuant to the Act and this Title.

§ 129.4 Reporting requirements.

Persons subject to the jurisdiction of the United States shall furnish under oath any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act. Such reports may be required from U.S. persons in which foreign persons hold portfolio investment and U.S. holders of record which hold, on behalf of foreign persons, portfolio investment in U.S. persons, as provided for in §§ 129.10 and 129.11.

§ 129.5 Response required.

Reports, as specified in Subpart B of this part, are required from all persons subject to the reporting requirements, regardless of whether they are contacted by the Treasury. In addition, any person that the Treasury contacts, either by sending reporting forms or by inquiring in writing whether the person is subject to the reporting requirements of a survey conducted pursuant to this Part, must reply in writing. The response must be made either by filing the properly completed reporting form or else by filing a written certified claim for exemption from filing a report. A claim for exemption must be filed within 30 days after the date for which forms are to be prepared or 30 days after the receipt of the forms, whichever is later.

§ 129.6 Confidentiality.

Information collected pursuant to this Part will be kept in confidence.

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) designated by the President, or the Secretary of the Treasury, to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President, or the Secretary of the Treasury, may authorize the exchange between agencies or officials designated by him of this information as he deems necessary to carry out the purposes of the Act.

(c) Nothing in this Part shall be construed to require any Federal Agency to disclose information otherwise protected by law.

(d) No person can compel the submission or disclosure of reports, or constituent parts thereof, or copies of such reports, or constituent parts thereof, prepared pursuant to this Part, without the prior written consent of the person who maintained or who furnished the report and the customer of the person who furnished the report where the information supplied is identifiable as being derived from the records of the customer. As required by the Act, any published reports issued by the Treasury based upon the information obtained by this Survey will only contain data aggregated in such a way that the person supplying the information and the customer of the person supplying the information cannot be identified.

§ 129.7 Penalties.

(a) Whoever fails to furnish any information required under the Act or by any other rule, regulation, order, or instruction promulgated under the Act may be subject to civil penalty not exceeding $10,000 or to injunctive relief commanding such person to comply, or both.

(b) Whoever willfully violates any rule, regulation, order, or instruction promulgated under this Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both, and any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment or both.

§ 129.8 Miscellaneous.

(a) *Time and place of filing reports.* Reports shall be filed no later than the "Due date" specified on the Form. Reports shall be mailed to: Foreign Portolio Investment Project, Office of the Assistant Secretary (International Affairs), U.S. Department of the Treasury, Washington D.C. 20220.

(b) *Method of filing reports.* Reporters submitting a large amount of data on Part II of Form FPI–2 (referred to below) are required to file this report in a machine readable format produced by data processing equipment according to the instructions and annexes to the Form. Reporters may request a waiver of this requirement by filing a written certified claim for exemption. The Secretary of the Treasury will grant the waiver of this requirement for good cause.

(c) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every question on the appropriate reporting form must be answered. However, line items and columns on schedules which are not applicable to a particular Reporter should be left entirely blank.

(d) *Estimates.* When actual information cannot be obtained, estimates will be acceptable but must be labeled as such.

(e) *Extension of reporting deadline.* Reporters may request an extension of time for filing the required information on the form provided by the treasury. A request for an extension of time will be considered by the Treasury provided it is received at least 15 days prior to the due date of the report.

(f) *Authorized Signature for the certification of Forms FPI–1 and FPI–2.* Each form should be signed by an authorized officer of the Reporter submitting the report.

(g) *Other.* Anyone desiring copies of the Forms or having any questions concerning preparation of reports should direct inquiries to the address in paragraph (c) of this section.

Subpart B—Rules and Regulations for Survey of Foreign Portfolio Investment in U.S. Securities

§ 129.9 Basic requirement.

In addition to the requirements contained in Subpart A herein, specific additional rules and regulations are given below for filing the required reporting forms.

§ 129.10 Form TD F 90-19.1—Report for U.S. Issuers of Securities (Form FPI–1).

(a) *Who must report.* The reporting obligations of United States issuers are governed by the following classifications:

(1) *Bank and nonbank issuer exemption level—asset test.* A report is required on Form FPI–1 from every United States business enterprise issuer (irrespective of whether it has evidence of foreign investment in its securities) which, as of the latest available closing date of its accounting records, has essets larger than the applicable exemption level as defined in the Form.

(2) *Seclective small issuer reporters—response required when contracted.* Except as otherwise provided in paragraph (a)(3) of this section, a report on Form FPI–1 is required from every United states issuer that is not a routine Reporter under paragraph (a)(1) of this section, and that is informed by Treasury that it must report. This requirement applies without regard to the size of the issuer's assets determined under paragraphs (a)(1) of this section.

(3) *Total exemption—asset test.* A report on Form FPI–1 is not required from any United States issuer, who, as of the latest available closing date of its books, had total consolidated assets less than the total exemption level as defined in the Form.

(b) *Consolidated reports.* Where several United States corporations are affiliated with or under the control of a single United States parent corporation, the parent corporation shall file a consolidated Form FPI–1 following generally accepted U.S. accounting principles as required for reports to shareholders. United States affiliates or subsidiaries that are not normally consolidated in the parent corporation's reports to shareholders must file their own Form FPI–1 if they meet the requirements above. When a United States corporation files a consolidated report, a list of the United States affiliates and subsidiaries consolidated in the report, including name, address, and Employer's Identification Number, must be filed with Form FPI–1.

§ 129.11 Form TD F 90-19.2—Report for U.S. Holders of Record Form FPI-2.

(a) *United States holders of record.* Except as otherwise provided in these instructions, a report on Form FPI-2 is required from any United States person who acts on behalf of a foreign person as a holder of record of any security of a United States issuer (including United States trustees who hold securities in United States trusts created by foreign insurance companies and other foreign companies or foreign governments). For example, a United States trust created by a foreign company or foreign government under indentures relating to the issuance of amortization of foreign dollar bonds or payments of interest thereon must be reported; however, a trust created by a U.S. branch or agency of a foreign insurance company should not be reported since the creator and beneficiary is not a foreign person. A United States holder of record may also be a United States issuer. In these cases two reports are required to be filed: Form FPI-1 and Form FPI-2.

(b) *Combined report.* Where several nominees, trustees, or other holders of record are affiliated with or under the common control of a single bank, broker, or other institution, the United States parent institution may file a combined Form FPI-2 on behalf of all such holders of record. When a United States entity files a combined report, a list of the covered United States holders of record specifying each holder's name, address, and Employer's Identification Number must be filed with Form FPI-2.

(c) *Holders of record exemption level—asset test.* A report on Form FPI-2 is not required from any holder of record who held for all its foreign customers combined investments in securities of United States issuers aggregating to less than the holder of record exemption level as defined in the Form. This exemption does not apply to holders of record under common management or control as described in paragraph (b) of this section, except where aggregate holdings of all holders of record under a single parent institution total to an amount less than or equal to the holder record exemption level as defined in the Form.

Dated: February 24, 1984.

George R. Hoguet,

Acting Assistant Secretary for International Affairs.

[FR Doc. 84-9307 Filed 4-6-84; 8:45 am]

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Monday
April 9, 1984

Part IV

Department of Energy

Federal Energy Regulatory Commission

National Gas Policy Act; Determinations by Jurisdictional Agencies; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1097]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: April 2, 1984.

Note.—By final rule issued by the Commission on Febuary 22, 1984 (Order No. 362, Docket RM83–50–000, 49 F.R. 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the **Federal Register**. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, D.C. 20426, to inquire about a subscribing to these notices. Copies of Order No. 362 are avilable from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated anual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
Section 102–2: New well (2.5 mile rule)
Section 102–3: New well (1000 ft rule)
Section 102–4: New onshore reservoir
Section 102–5: New res. on old OCS lease
Section 103: New onshore production well
Section 107–DP: 15,000 ft or deeper
Section 107–GB: Geopressured brine
Section 107–DV: Devonian shale
Section 107–CS: Coal seam gas
Section 107–PE: Production enhancement
Section 107–TF: New tight formation
Section 107–RT: Recompletion tight formation
Section 108: Stripper well
Section 108–SA: Seasonally affected
Section 108–ER: Enhanced recovery
Section 108–PB: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS
ISSUED APRIL 2, 1984

VOLUME 1097

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OKLAHOMA CORPORATION COMMISSION									
-ALVIN PETROLEUM INC				RECEIVED:	03/13/84	JA: OK			
8424417	26874	3511100000		103		CALVERT/DAVIE #2 111-82236-1	SCHULTER FIELD	103.3	SCHULTER GATHERI
8424418	26875	3511100000		103		SHANNON/DAVIE #1 OTC UT #111-82236	SCHULTER FIELD	20.4	SCHULTER GATHERI
8424419	26876	3511100000		103		WESTMINISTER/WESTMORELAND #2	SCHULTER FIELD	13.0	SCHULTER GATHERIN
-AMERICAN NAT GAS PROD CO				RECEIVED:	03/13/84	JA: OK			
8424370	23913	3509320491		108		CONDREAY #1	N SEILING	14.0	MICHIGAN WISCONSI
-AMES OIL AND GAS CORP				RECEIVED:	03/13/84	JA: OK			
8424405	24976	3511721491		102-2		MYRTIS R WILLS #2	PAWNEE "A" PROSPECT	12.8	COLORADO GAS COMP
8424398	24974	3511721690		102-2		RICHARD AMES BRYANT #14-1	PAWNEE "A" PROSPECT	9.0	COLORADO GAS COMP
-AN-SON CORPORATION				RECEIVED:	03/13/84	JA: OK			
8424436	24813	3503920914		102-2		NELDA RUTH #1-13	E CLINTON	3759.5	
-ARCO OIL AND GAS COMPANY				RECEIVED:	03/13/84	JA: OK			
8424375	3158	3507700000		108-PB		DAVIS "A" UNIT #1	WILBURTON	7.0	ARKANSAS LOUISIAN
8424376	12142	3505100000		108-PB		THOMAS CHARLSON #6	CHICKASHA	12.0	ARKANSAS LOUISIAN
-BARNES OIL CO				RECEIVED:	03/13/84	JA: OK			
8424411	26831	3503700000		103		MACHIR #2-B	OLIVE	7.2	ARCO OIL & GAS CO
-BOGERT OIL CO				RECEIVED:	03/13/84	JA: OK			
8424381	24646	3501121773		102-2		KATIE #1-6	SOONER TREND	300.0	ARKANSAS LOUISIAN
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	03/13/84	JA: OK			
8424441	25042	3509322535		103		JOSEPH WILSON #2 (RECOMPLETION)	E CHANEY DELL	0.0	CHAMPLIN PETROLEU
8424393	26161	3500300000		103		VOORHEES-WRIGHT #2	CHANEY DELL MISS	0.0	CHAMPLIN PETROLEU
-CLARK RESOURCES INC				RECEIVED:	03/13/84	JA: OK			
8424459	25675	3515321445		103		HOLLOWAY 13-1		210.0	NORTHERN NATURAL
8424461	25821	3507323792		103		MARY 3-1	SOONER TREND	10.0	EXXON CO USA
-CRAWLEY PETROLEUM CORPORATION				RECEIVED:	03/13/84	JA: OK			
8424384	26859	3508322334		103		MARCELLA #2A	SOONER TREND	80.0	EXXON CORP
-DAVIS OIL COMPANY				RECEIVED:	03/13/84	JA: OK			
8424437	24821	3512920837		102-4		BEULAH #1		529.9	UNITED GAS PIPELI
8424435	24801	3501121767		102-4		BUCKMASTER #1		803.0	TRANSOK PIPELINE
-DLB ENERGY CORP				RECEIVED:	03/13/84	JA: OK			
8424388	24432	3501722512		102-4	103	WITTROCK #14-13	SOONER TREND -	200.0	PHILLIPS PETROLE
-EARLSBORO ENERGIES CORP				RECEIVED:	03/13/84	JA: OK			
8424410	26821	3509322767		103		JORDAN #1-23	CHEYENNE VALLEY	60.0	AMINOIL INC
-EL PASO EXPLORATION CO				RECEIVED:	03/13/84	JA: OK			
8424425	22294	3515320416		108-PB		MCFEETERS #5	QUINLAN NW	0.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	03/13/84	JA: OK			
8424377	14512	3500935560		108-PB		PUCKETT #2	ERICK SOUTH	0.0	EL PASO NATURAL G
8424378	19132	3500920130		108-PB		PUCKETT A #2	ERICK SOUTH	0.0	EL PASO NATURAL G
8424442	[illegible]	3500935438		108-PB		VANNERSON #1	ERICK SOUTH	0.0	EL PASO NATURAL G
8424446	26399	3500986811		108		WATERS #1	ERIC SOUTH - BROWN DO	14.0	EL PASO NATURAL G
-ENSERCH EXPLORATION INC				RECEIVED:	03/13/84	JA: OK			
8424429	24675	3508720000		103		MIKE BASHARA #2-6	BLANCHARD	216.0	LONE STAR GAS CO
-EQUITY DRILLING CO INC				RECEIVED:	03/13/84	JA: OK			
8424403	24848	3511721905		102-4		DECKER #2 NW/4 S27-T21N-R6E	EAST CASEY	22.0	H J D CATTLE CO
8424402	24839	3511700000		102-4		DECKER #3 NW/4 S27-T21N-T6E	EAST CASEY	68.0	H J D CATTLE CO I
-EXXON CORPORATION				RECEIVED:	03/13/84	JA: OK			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8424379	24837	3500735082		108-FB		STATE-RICARDS C 490 #1	MOCANE-LAVERNE	0.0	COLORADO INTERSTA
8424457	24827	3514920345		102-2		STATE-SCHMIDT B #1	EAST BURNS FLAT	46.0	EL PASO NATURAL G
8424456	24825	3512920643		102-2		SWEETWATER UNIT B #1	WEST REYDON	7.0	
-FRED HARRIS				RECEIVED:	03/13/84	JA: OK			
8424412	26835	3511720665		108		HEWITT #3	LAUDERDALE	8.9	MJD GAS CO
8424413	26836	3511720665		108		HEWITT #5	LAUDERDALE	8.9	MJD GAS CO
-FUNK EXPLORATION INC				RECEIVED:	03/13/84	JA: OK			
8424452	24724	3500722511		102-4	103	BOBBITT #1-35	BOMBEY	182.0	GULF STATES UTILI
8424451	24723	3500722466		102-4	103	EVANS #1-21	BOMBEY	365.0	NORTHWEST PIPELIN
-GRACE PETROLEUM CORPORATION				RECEIVED:	03/13/84	JA: OK			
8424420	27489	3501521550		107-DP		DONALD GRAY 1-28	SICKLES EXTENSION	0.0	OKLAHOMA GAS & EL
-HAMM PRODUCTION CO				RECEIVED:	03/13/84	JA: OK			
8424389	26626	3507323426		108		RUTH #21-1	SOONER TREND	5.1	CONOCO INC
-HILLIARD OIL & GAS INC				RECEIVED:	03/13/84	JA: OK			
8424382	24691	3504922077		102-4		KNAPP #1		90.0	LONE STAR GAS CO
-HOLD OIL CORP				RECEIVED:	03/13/84	JA: OK			
8424438	24838	3506120612		102-2		CARMEN MACE #1-7	BROOKEN FIELD	200.0	ARKANSAS LOUISIAN
-HOLDEN ENERGY CORP				RECEIVED:	03/13/84	JA: OK			
8424467	26540	3501922822		103		DILLARD 6-1	ATLEE	2.0	AMINOIL USA INC
-INEXCO OIL COMPANY				RECEIVED:	03/13/84	JA: OK			
8424439	24841	3512921003		102-2		GENEVA #1-29	NORTH EAST STRONG CIT	365.0	DELHI GAS PIPELIN
8424404	24842	3512920978		102-4		HANNETTE #1-6	N E STRONG CITY	365.0	DELHI GAS PIPELIN
-INTREPID OIL CO				RECEIVED:	03/13/84	JA: OK			
8424371	24300	3511122931		103		MINNIE TIGER #2	MOUNDS	58.4	PHILLIPS PETROLEU
-JET OIL COMPANY				RECEIVED:	03/13/84	JA: OK			
8424460	25797	3504723451		103		BENNETT "B" #2		0.0	EASON OIL CO
8424464	25796	3504723455		103		MURPHY "B" #1		0.0	EASON OIL CO
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	03/13/84	JA: OK			
8424443	25311	3505120717		108-FB		HURST #1		0.0	ARKANSAS LOUISIAN
-LOU PETROLEUM CORP				RECEIVED:	03/13/84	JA: OK			
8424469	26788	3508322346		103		WILFONG 2-20 #8322346	SOONER TREND	0.0	CONOCO INC
-M M RESOURCES INC				RECEIVED:	03/13/84	JA: OK			
8424398	26822	3511721816		103		EVANS #2		54.8	EMPIRE PIPELINE C
-MARLINE OIL CORP				RECEIVED:	03/13/84	JA: OK			
8424396	25822	3505921130		103		MCNAUGHTON #1	MOCANE-LAVERNE	182.0	TRANSWESTERN PIPE
8424391	26817	3500722459		103		SLATTEN #1	MOCANE LAVERNE	36.0	NORTHERN NATURAL
-MCMORAN-FREEPORT OIL CO				RECEIVED:	03/13/84	JA: OK			
8424406	24990	3512900000		102-2		SCHOU #1-22	WILDCAT	180.0	
-MID-SOUTH PETROLEUM CO				RECEIVED:	03/13/84	JA: OK			
8424385	26866	3512121039		103		REEDER #1		87.2	ARKANSAS LOUISIAN
-MOBIL OIL CORP				RECEIVED:	03/13/84	JA: OK			
8424468	26776	3501900000		108		S SHOLEM ALECHEM DEESE #1-2 E SMITH SHO VEL TUM		0.0	LONE STAR GAS CO
-MR CJ OIL CO				RECEIVED:	03/13/84	JA: OK			
8424408	26740	3511900000		103		WILLIAMS 1-33		7.0	ENTERPRISE DEVELO
-NATURAL GAS COMPRESSION CORP				RECEIVED:	03/13/84	JA: OK			
8424462	25972	3504700000		108		WOODSON #1	MOCANE	0.0	MICHIGAN WISCONSI
-OXLEY PETROLEUM CO				RECEIVED:	03/13/84	JA: OK			
8424466	26468	3505100000		108		GOODWIN 08-1		2.9	TRANSOK PIPE LINE
-PELICAN PRODUCTION CORP				RECEIVED:	03/13/84	JA: OK			
8424414	26842	3508322265		103		CLEEK #2	S E GUTHRIE	0.2	BUCKEYE NATURAL G
8424415	26844	3508322174		103		HOPKINS #1	S E GUTHRIE	0.4	BUCKEYE NATURAL G
8424416	26845	3508322234		103		TOTTEN #1	S E GUTHRIE	0.2	BUCKEYE NATURAL G
-PETRA PETROLEUM CORP				RECEIVED:	03/13/84	JA: OK			
8424427	24378	3505121344		102-4	103	DRISKILL #20-1	GOLDEN TREND	300.0	TRANSOK PIPELINE
-PETROLEUM RESOURCES CO				RECEIVED:	03/13/84	JA: OK			
8424372	26794	3505300000		103		MCGIVNEY 853-80161	WILDCAT	11.0	UNION TEXAS PETRO
-PETROLIA DRILLING-OKLA INC				RECEIVED:	03/13/84	JA: OK			
8424463	26113	3501700000		103		WALLIS #1-16	MUSTANG	30.0	PHILLIPS PETROLEU
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	03/13/84	JA: OK			
8424422	11232	3501720394		108-ER		CROSE A #1	PIEDMONT	14.5	PANHANDLE EASTERN
8424423	13318	3504721469		108-ER		EHLERS "C" #2	SOONER TREND	8.6	TRANSOK PIPELINE
8424445	25974	3504721307		108-FB		KOSTED A #1	SOONER TREND	16.0	TRANSOK PIPELINE
8424424	14222	3501721506		108-ER		KUNNEMAN "A" #1		0.0	PANHANDLE EASTERN
8424426	23120	3504721571		108-PB		SLOUP B #2	SOONER TREND	14.2	TRANSOK PIPELINE
8424394	26052	3501721976		108-ER		TRUITT A #1	WATONGA	10.0	ONG WESTERN INC
8424397	25107	3504721622		108-PB		WHEELER U #2	SOONER TREND	15.0	TRANSOK PIPELINE
8424421	10158	3501720718		108-ER		WIEWEL "A" #1	NUMAN	7.5	OKLAHOMA NATURAL
-RH OPERATING CO				RECEIVED:	03/13/84	JA: OK			
8424399	24810	3514321883		102-4		J RYAN #5	SAND SPRINGS FIELD	1.1	COLORADO GAS COMP
-S K TUTHILL & B J BARBEE				RECEIVED:	03/13/84	JA: OK			
8424369	22718	3515120401		102-4		KERR #1-4	CAMPBELL	511.0	PANHANDLE EASTERN
-SANGUINE LTD				RECEIVED:	03/13/84	JA: OK			
8424401	24816	3501521544		102-4	103	SMITH #1		54.8	PIONEER GAS PRODU
-SANTA FE-ANDOVER OIL CO				RECEIVED:	03/13/84	JA: OK			
8424430	24773	3501121871		102-4	103	SCHOOL LANDS #36-4		570.0	OKLAHOMA GAS PIPE
-SEMECA OIL CO				RECEIVED:	03/13/84	JA: OK			
8424458	24698	3512120090		102-4		HACKLER #1-21		98.6	ARKANSAS LOUISIAN
8424428	24607	3504321717		102-4		PERCY #1-17		250.8	
-SHAR-ALAN OIL CO				RECEIVED:	03/13/84	JA: OK			
8424464	26215	3515321448		103		CLYDE RICHMOND 1-24	CEDARDALE NE	0.0	MICHIGAN WISCONSI
8424447	26590	3515100000		103		JULIA JULIAN 2-1	N E CEDARDALE	0.0	DELHI GAS PIPELIN
8424465	26375	3505921225		103		ORMA COTTER 1-17	LAVERNE	0.0	TRANSWESTERN PIPE
-SOUTHWESTERN EXPLOR CONSULTANTS INC				RECEIVED:	03/13/84	JA: OK			
8424448	26781	3508322383		103		FARLEY #1	CRESCENT	0.0	EASON OIL CO
-SPRING TIDE PETROLEUM INC				RECEIVED:	03/13/84	JA: OK			
8424395	25864	3511182995		108		KOERNER "C" #1	NORTH BEGGS	19.3	PHILLIPS PETROLEU
-STATEX PETROLEUM INC				RECEIVED:	03/13/84	JA: OK			
8424434	24794	3510920654		102-4		GROSS 03-17		23.9	PHILLIPS PETROLEU
-SUN EXPL. & PROD. CO. - HOUSTON				RECEIVED:	03/13/84	JA: OK			
8424386	26854	3505100000		108		NORGE MARCHAND UNIT TR 25 #1	CHICKASHA NW	4.0	PUBLIC SERVICE CO
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	03/13/84	JA: OK			
8424383	26856	3504722798		108		ANDERSON -BROOKS #2	SOONER TREND (MISS)	9.0	EXXON CO USA
8424407	26711	3510920716		103		HENRY J DAHL #1	EDMOND WEST	174.0	CONOCO INC
8424388	26847	3504700000		108		HUDDLESTON 'B' #1	CHITWOOD	19.0	MOBIL OIL CORP
8424392	26312	3505100000		108-FB		MARIE MEYER #1	S E FLYNN	0.0	CHAMPLIN PETROLEU
8424387	26848	3505700000		108		S E FLYNN UNIT #22-2	FLYNN SE (OSWEGO)	9.0	EXXON CO USA
-TEXACO INC				RECEIVED:	03/13/84	JA: OK			
8424489	26791	3507323867		103		C E MITCHELL #2	SOONER TREND	0.0	EXXON CO USA
8424455	24824	3505321130		102-2		J M LEFORCE #1-10		13.4	
-TEXAS AMERICAN OIL CORP				RECEIVED:	03/13/84	JA: OK			
8424431	24776	3504723372		102-2		MABLE #1	SOONER TREND	369.0	UNION TEXAS PETRO
8424432	24777	3504723373		102-2		MABLE ESTILL #2	SOONER TREND	328.5	UNION TEXAS PETRO
-TOWNER PETROLEUM CO				RECEIVED:	03/13/84	JA: OK			
8424433	24786	3501722529		102-4		BORNEMANN #1-3		0.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-TREND GAS & OIL INC				RECEIVED:	03/13/84	JA: OK			
8424453	24803	3513120867		102-2		WARD #7-1		18.0	DIAMOND "S" GAS S
8424454	24804	3513120868		102-2		WARD #7-2		18.0	DIAMOND "S" GAS S
-TXO PRODUCTION CORP				RECEIVED:	03/13/84	JA: OK			
8424448	24848	3505321899		102-2	103	HARDIMAN #1	WILDCAT	81.0	
8424458	25414	3500722554		103		MILLER-RAYNOR #1	SIX MILE	0.0	DELHI GAS PIPELIN
8424480	24812	3512121045		102-4	103	TRAVIS "C" #1		177.0	
-UNION OIL COMPANY OF CALIF				RECEIVED:	03/13/84	JA: OK			
8424374	26813	3501900000		108		HAMPTON #1-32	WEST ARDMORE	15.0	LONE STAR GAS CO
8424373	26812	3500700000		108		JUDY "A" UNIT #2	MOCANE	7.0	COLORADO INTERSTA
-WESSELY ENERGY CORPORATION				RECEIVED:	03/13/84	JA: OK			
8424449	24674	3504922104		102-4		BELL #3-A 049-80793	S STORY	250.0	WARREN PETROLEUM
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-ALAMCO INC				RECEIVED:	03/09/84	JA: WV			
8424368		4704102049		108		A-576	HACKERS CREEK	39.0	CONSOLIDATED GAS
-ASHLAND EXPLORATION INC				RECEIVED:	03/09/84	JA: WV			
8424353		4703903796		108		BRIAR MTN COAL & COKE #9 - 092841	PAINT CREEK	16.0	COLUMBIA GAS TRAN
8424366		4701900143		108		EASTERN GAS & FUEL #38 - 039560	PAINT CREEK	18.0	COLUMBIA GAS TRAN
-B & F EXPLORATION				RECEIVED:	03/09/84	JA: WV			
8424367		4708506475		103		PAUL PRUNTY #1	UNION DISTRICT	0.0	CONSOLIDATED GAS
-B & T EXPLORATION INC				RECEIVED:	03/09/84	JA: WV			
8424352		4708506142		103		KIRKPATRICK #3	UNION DISTRICT	0.0	CONSOLIDATED GAS
-BEREA OIL AND GAS CORPORATION				RECEIVED:	03/09/84	JA: WV			
8424344		4700121642		108		DURNAL #1	VALLEY	14.5	CONSOLIDATED GAS
8424346		4700121628		108		M PRICE #1	VALLEY	7.0	CONSOLIDATED GAS
8424345		4700121640		108		SFAMENI #1	VALLEY	19.0	CONSOLIDATED GAS
-BRAXTON OIL AND GAS CORP				RECEIVED:	03/09/84	JA: WV			
8424337		4702103661		108		J HUGH JOHN #1	ROSEDALE	10.0	CONSOLIDATED GAS
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	03/09/84	JA: WV			
8424354		4709702574		103		D L M COAL CO 12823	WASHINGTON	18.0	GENERAL SYSTEM PU
8424338		4703302777		108		E E YOUNG 12754	ELK	12.0	GENERAL SYSTEM PU
8424349		4703301078		108		JOHN HURST 12294	SARDIS	20.0	GENERAL SYSTEM PU
8424348		4704101662		108		M A LOVETT 11155	FREEMANS CREEK	5.0	GENERAL SYSTEM PU
8424361		4709702567		103		WOODY LUMBER CO 12826	WASHINGTON	39.0	GENERAL SYSTEM PU
-CONTINENTAL PETROLEUM CO				RECEIVED:	03/09/84	JA: WV			
8424363		4700101684		108		GERALD CLEAVENGER #1	PHILIPPI	25.0	CONSOLIDATED GAS
-FIVE STAR GAS CO				RECEIVED:	03/09/84	JA: WV			
8424340		4708703553		108		LLOYD LEE WELL #1	LOONEYVILLE GAS FIELD	0.0	COLUMBIA GAS TRAN
-FMF OIL & GAS PROPERTIES				RECEIVED:	03/09/84	JA: WV			
8424342		4708300565		107-DV		DOM PHILLIPS #2	MIDDLE FORK DISTRICT	43.0	COLUMBIA GAS TRAN
8424343		4708300573		107-DV		EMIGH #1A	ROARING CREEK DISTRIC	40.0	COLUMBIA GAS TRAN
8424341		4700101552		107-DV		THACKER/LUFF #1	VALLEY DISTRICT	42.0	COLUMBIA GAS TRAN
-GRUBSTAKE PRODUCTION CO				RECEIVED:	03/09/84	JA: WV			
8424351		4707901017		108		LINCOLNOGGER #1 47-079-1017	HURRICANE CREEK	16.3	PENNZOIL CO
8424350		4707901049		108		LINCOLNOGGER #3 47-079-1049	HURRICANE CREEK	16.3	PENNZOIL CO
-KEY OIL COMPANY				RECEIVED:	03/09/84	JA: WV			
8424355		4701702319		108		BETTY LANGFITT #1	UNION	0.0	COLUMBIA GAS TRAN
8424356		4701702317		108		J M L SMITH #1	UNION	5.6	COLUMBIA GAS TRAN
[illegible]		4701702283		108		J M MARKEY #1	UNION	6.0	COLUMBIA GAS TRAN
8424357		4701702284		108		J M MARKEY #2	UNION	6.0	COLUMBIA GAS TRAN
-LAWRENCE CARL M & WILLIAMS JERRY L				RECEIVED:	03/09/84	JA: WV			
8424339		4708506193		103		JOHN GOFF #2 WEST PALM #1	UNION DISTRICT	0.0	CARNEGIE NATURAL
-M & M INDUSTRIES INC				RECEIVED:	03/09/84	JA: WV			
8424362		4708503240		108		T-4	HARRISVILLE	0.0	CONSOLIDATED GAS
-PETRO-AM				RECEIVED:	03/09/84	JA: WV			
8424360		4708506263		107-DV		LANGFORD #1B	UNION DISTRICT	20.0	
-ROSS-WHARTON GAS CO				RECEIVED:	03/09/84	JA: WV			
8424333		4704103094		108		SPIKER #4	HACKERS CREEK	25.0	CONSOLIDATED GAS
-SHELDON & SHELDON INC				RECEIVED:	03/09/84	JA: WV			
8424359		4708506618		103		SHIELDS S-1	SCHULTZ	80.0	CONSOLIDATED GAS
-STONEWALL GAS CO				RECEIVED:	03/09/84	JA: WV			
8424347		4701702891		108		REX CUMPSTON #1 (27-S)	NEW MILTON	5.0	CONSOLIDATED GAS
-SWIFT ENERGY CO				RECEIVED:	03/09/84	JA: WV			
8424365		4709100343		102-2		A MATTHEWS #1	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
8424364		4709100353		102-2		A MCGUINNESS #1	FETTERMAN DISTRICT	25.0	TENNESSEE GAS PIP
-UNITED PETRO LTD				RECEIVED:	03/09/84	JA: WV			
8424336		4701303392		108		MAUDE BAILEY #3	MINNORA GAS	14.0	CONSOLIDATED GAS
8424335		4701303393		108		MAUDE BAILEY #4	MINNORA GAS	14.0	CONSOLIDATED GAS
8424334		4701303395		108		MAUDE BAILEY #5	MINNORA GAS	14.0	CONSOLIDATED GAS
-WEINER ENTERPRISES				RECEIVED:	03/09/84	JA: WV			
8424332		4708700940		108		KELLEY #2	WALKER FORK	8.3	EQUITABLE GAS CO

[FR Doc. 84-9427 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1098]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: April 2, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 382, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 382 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
- 102–2: New well (2.5 mile rule)
- 102–3: New well (1000 ft rule)
- 102–4: New onshore reservoir
- 102–5: New res. on old OCS lease

Section 103: New onshore production well

Section 107–DP: 15,000 ft or deeper
- 107–GB: Geopressured brine
- 107–DV: Devonian shale
- 107–CS: Coal seam gas
- 107–PE: Production enhancement
- 107–TF: New tight formation
- 107–RT: Recompletion tight formation

Section 108: Stripper well
- 108–SA: Seasonally affected
- 108–ER: Enhanced recovery
- 108–PB: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1098
ISSUED APRIL 2, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
MISSISSIPPI OIL & GAS BOARD									
-SHELL WESTERN E&P INC				RECEIVED:	03/13/84	JA: MS			
8424570	1-84-607	2312720084		107-DP		BOARD OF EDUCATION UNIT #1	HARRISVILLE	3000.0	TRANSCONTINENTAL
8424569	76-83-591	2300520234		102-4		JOHNSTON AND OWEN UNIT #1	LIBERTY	[illegible]	
8424568	75-83-591	2300520245		102-4		JOHNSTON UNIT #1	LIBERTY	300.0	
NORTH DAKOTA INDUSTRIAL COMMISSION									
-TEXACO INC				RECEIVED:	03/13/84	JA: ND			
8424572	907	3305301742		102-3		SILURIAN UNIT #21-1	CHARLSON	925.0	BRIDGELINE GAS DI
8424573	908	3305301753		102-3		SILURIAN UNIT #22-1	CHARLSON	353.0	BRIDGELINE GAS DI
-UNIVERSAL RESOURCES CORPORATION				RECEIVED:	03/13/84	JA: ND			
8424571	906	3305301724		102-4		ALMA #1-20	KEENE	703.5	AMINOIL USA INC
OHIO DEPARTMENT OF NATURAL RESOURCES									
-CAVENDISH PETROLEUM OF OHIO INC				RECEIVED:	03/14/84	JA: OH			
8424470		3411926709		103	107-TF	OHIO POWER 2-B	MEIGS	193.4	TEXAS EASTERN TRA
8424472		3411926913		103	107-TF	OHIO POWER 42-A	RICH HILL	289.4	TEXAS EASTERN TRA
8424471		3411926869		103	107-TF	OHIO POWER 50-A	RICH HILL	124.0	TEXAS EASTERN TRA
-DOME OIL & GAS #3				RECEIVED:	03/14/84	JA: OH			
8424473		3409321243		107-TF		BIGLER #1	COLUMBIA	8.0	
-DORSET CO INC				RECEIVED:	03/14/84	JA: OH			
8424477		3400720996		108		CAL HAINES #1		0.0	JONES & LAUGHLIN
8424476		3400720995		108		CAL HAINES #2		0.0	JONES & LAUGHLIN
8424480		3400721123		108		GORDON #1		0.0	JONES & LAUGHLIN
8424481		3400721124		108		GORDON #2		0.0	JONES & LAUGHLIN
8424482		3400721148		108		GORDON #3		0.0	JONES & LAUGHLIN
8424475		3400720989		108		RIPKA #4		0.0	JONES & LAUGHLIN
8424478		3400721012		108		RIPKA #5		0.0	JONES & LAUGHLIN
8424479		3400721013		108		RIPKA #6		0.0	JONES & LAUGHLIN
8424474		3400720666		108		RIPKA WINDECKER #3		6.0	EAST OHIO GAS CO
-ENVIROGAS INC				RECEIVED:	03/14/84	JA: OH			
8424483		3400922887		103	107-TF	PEABODY COAL #15D	DOVER	18.2	
-KEN-TRAK IX				RECEIVED:	03/14/84	JA: OH			
8424492		3410522857		107-TF		SHOEMAKER/DYKE #5 SOUTH	LOWER MISSISSIPPIAN	0.0	
-LANGASCO ENERGY CORP				RECEIVED:	03/14/84	JA: OH			
8424493		3402920964		107-TF		JESSE RUFENER #1	BUTLER	45.0	YANKEE RESOURCES
8424494		3402920971		107-TF		STEPHEN KNIZAT #1	BUTLER	47.0	YANKEE RESOURCES
-LIBERTY OIL & GAS CORP				RECEIVED:	03/14/84	JA: OH			
8424495		3410522424		107-TF		LAURA & O C GILPIN #2	OLIVE	18.0	COLUMBIA GAS TRAN
-MORGAN-PENNINGTON INC				RECEIVED:	03/14/84	JA: OH			
8424496		3403124438		107-TF		HERSHBERGER #1	CRAWFORD	18.6	EAST OHIO GAS CO
-POI ENERGY INC				RECEIVED:	03/14/84	JA: OH			
8424499		3400722207		103	107-TF	BURNETT #RM-2	ROME	26.0	
-POSTON OPERATING CO INC				RECEIVED:	03/14/84	JA: OH			
8424500		3407322309		108		WILLARD KIEFFER #3	BRENHOLTS	4.0	COLUMBIA GAS TRAN

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-RED HILL DEVELOPMENT			RECEIVED: 03/14/84		JA: OH				
8424490		3406720591	103		107-TF	B BERRY #1	STOCK	5.0	
8424484		3406720552	103		107-TF	M MCCONNELL #3	WASHINGTON	14.0	
8424491		3415723720	103		107-TF	J GARDNER #1	PERRY	5.0	
8424485		3406720556	103		107-TF	J P DAVIS #1	FRANKLIN	4.0	
8424487		3406720561	103		107-TF	J PEMSO #1	FRANKLIN	9.0	
8424486		3406720559	103		107-TF	OUR LAND CO #2	MONROE	4.0	
8424489		3406720567	103		107-TF	W HAMILTON #2	NOTTINGHAM	5.0	
8424488		3406720566	103		107-TF	X GREZLIK #1	MONROE	4.0	
-THE MUTUAL OIL & GAS COMPANY			RECEIVED: 03/14/84		JA: OH				
8424496		3415723967	103		107-TF	KADERLY-SEIKEL #3	GOSHEN	6.0	EAST OHIO GAS CO
8424497		3415723923	103		107-TF	MASTEN #3	UNION	5.5	EAST OHIO GAS CO
-WHITACRE ENTERPRISES			RECEIVED: 03/14/84		JA: OH				
8424501		3411123043	107-DV			D PIATT #2	GRAYSVILLE	15.0	
OKLAHOMA CORPORATION COMMISSION									
-APACHE CORP			RECEIVED: 03/13/84		JA: OK				
8424621	24991	3512920996	102-2			HARDEN #1-28		292.0	TRANSOK PIPE LINE
8424622	24992	3512920948	102-2			RUTNER #1-32		47.0	TRANSOK PIPELINE
-ASSOCIATES RESOURCE CORP			RECEIVED: 03/15/84		JA: OK				
8424605	23943	3510526226	102-2			LIEBERT #1		8.0	REM INDUSTRIES
8424607	23941	3510526227	102-2			LIEBERT #2		10.0	REM INDUSTRIES
8424608	23940	3510526301	102-2			LIEBERT #3		10.0	REM INDUSTRIES
8424609	23939	3510526313	102-2			LIEBERT #4		9.0	REM INDUSTRIES
8424606	23942	3510526302	102-2			LIEBERT #5		9.0	REM INDUSTRIES
8424610	23938	3510526294	102-2			LIEBERT #6		9.0	REM INDUSTRIES
-BAMCO OIL & GAS INC			RECEIVED: 03/15/84		JA: OK				
8424598	24873	3504723393	102-2			JBB #36-1	CARRIER	1.0	UNION TEXAS PETRO
8424599	24872	3504723393	102-2			MEIBERGEN #27-1	CARRIER	1.0	UNION TEXAS PETRO
-BROWN & BORELLI INC			RECEIVED: 03/15/84		JA: OK				
8424615	25737	3507323839	103			MARJORIE #1	SOONER TREND	73.0	EXXON CORP
-DAVIS OIL COMPANY			RECEIVED: 03/15/84		JA: OK				
8424602	24987	3512920806	102-4			FRANCINE #1	WASHITA CREEK	31.8	
-EXXON CORPORATION			RECEIVED: 03/15/84		JA: OK				
8424604	24037	3500735082	108-PB			STATE RICHARDS C498 #1		0.0	COLORADO INTERSTA
-FLINT & ASSOCIATES			RECEIVED: 03/15/84		JA: OK				
8424618	26888	3510721437	103			LOOKOUT #1	WEST ALABAMA	185.0	PUBLIC SERVICE CO
-IMCA OIL CO			RECEIVED: 03/15/84		JA: OK				
8424623	24999	3510321851	102-2			ZEMP #3		7.3	ARCO OIL & GAS CO
-IMDREX INC			RECEIVED: 03/15/84		JA: OK				
8424624	25619	3503920742	102-2			SNIDER #1-36	SNIDER	200.0	
-L W HOLSHOUSER JR			RECEIVED: 03/15/84		JA: OK				
8424612	13579	3510500000	103			ROGERS #2	NOWATA CLAGGETT	15.0	NOWATA GATHERING
-MAGIC CIRCLE ENERGY CORP			RECEIVED: 03/15/84		JA: OK				
8424619	23532	3515121364	103			FRAZER #2-10	S E WAYNOKA	125.0	
8424617	26827	3507323798	103			MCCARTHY #1-33	OKARCHE	75.0	PHILLIPS PETROLEU
-PALM-COOK PRODUCTION CO			RECEIVED: 03/15/84		JA: OK				
8424614	23598	3509722740	101			EHLERS #10		0.0	UNION TEXAS PETRO
8424613	23593	3504723416	103			YOUNG #5		0.0	UNION TEXAS PETRO
-RED STONE ENERGIES LTD			RECEIVED: 03/15/84		JA: OK				
8424601	24861	3501722308	102-2			REDING #20-2		0.0	
8424600	24862	3501722398	102-2			REDING #20-3		0.0	
-SANGUINE LTD			RECEIVED: 03/15/84		JA: OK				
8424620	24875	3501521454	102-4	103		CHARLES OPITZ #1		0.0	PIONEER GAS PRODU
-TENNECO OIL COMPANY			RECEIVED: 03/15/84		JA: OK				
8424603	24984	3507720278	102-3	103		ARKANSAS KRAFT #1-26	WILBURTON	360.0	
-WHITMAR EXPLORATION CO			RECEIVED: 03/15/84		JA: OK				
8424611	16634	3515121224	102-4			VORE #1-23	SOUTH DACOMA	0.0	PANHANDLE EASTERN
-WICKLUND PETROLEUM CORP			RECEIVED: 03/15/84		JA: OK				
8424616	26112	3501700000	111			ROBBERSON RANCH #9-1	MUSTANG	30.0	PHILLIPS PETROLEU
PENNSYLVAMIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
-ADOBE OIL & GAS CORPORATION			RECEIVED: 03/15/84		JA: PA				
8424561	22530	3706327653	103			GLENN ELLISON "C" #1	BRUSH VALLEY "D"	24.0	
8424560	22529	3703321698	103			JOHN RIGG #1	MCGEES MILLS "F"	24.0	
8424566	22551	3702120228	103			PAUL LAST #1	BARNESBORO "B"	22.0	
-ANGERMAN ASSOCIATES INC			RECEIVED: 03/15/84		JA: PA				
8424534	22421	3712922257	103			FRANK LUKAS #1 - WES-22257	W PA UPPER DEVONIAN S	45.0	PEOPLES NATURAL G
-ATLAS RESOURCES INC			RECEIVED: 03/15/84		JA: PA				
8424559	22520	3703900000	107-TF			ROGERS #1	SPRING	80.0	COLUMBIA GAS TRAN
-CNG DEVELOPMENT CO			RECEIVED: 03/15/84		JA: PA				
8424562	22536	3703321642	103			A FERGUSON #1 CNGD #113	FERGUSON	20.0	
8424546	22492	3702120231	102-3			WILLIAM BUTERBAUGH #2 CNGD #280	SUSQUEHANNA	15.0	
8424563	22538	3702120238	103			WILLIAM BUTERBAUGH #5 CNGD #402	SUSQUEHANNA	8.0	
8424564	22539	3702120239	103			WILLIAM BUTERBAUGH #6 CNGD #403	SUSQUEHANNA TWP	7.0	
8424558	22518	3702120240	103			WILLIAM BUTERBAUGH #7 CNGD #404	SUSQUEHANNA	36.0	
8424524	22334	3703321667	102-3			WILLIAM SOMERVILLE #1 CNGD #84	BURNSIDE	4.0	
-CONSOLIDATED GAS SUPPLY CORPORATION			RECEIVED: 03/15/84		JA: PA				
8424503	20034	3702120085	108			ROY D LEAMER #1 WN-1794	SUSQUEHANNA	12.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC			RECEIVED: 03/15/84		JA: PA				
8424520	22269	3712922158	103			ANNA STEEL #2 KK-7	UPPER DEVONIAN SANDS	30.0	T W PHILLIPS GAS
8424512	22130	3712922239	103			ROBERT OTT #1 KK-6	UPPER DEVIONAN SANDS	25.0	T W PHILLIPS GAS
-DORSO ENERGY			RECEIVED: 03/15/84		JA: PA				
8424549	22499	3712922299	103			FRANCIS J STERF #1 #186	PLEASANT - UNITY	35.0	PEOPLES NATURAL G
8424550	22500	3712922304	103			FRED ZARANEK #1 #185	SALTSBURG	30.0	T W PHILLIPS GAS
-ENERGY PRODUCTION CO			RECEIVED: 03/15/84		JA: PA				
8424510	21172	3706326501	108			EASTERN ORTHODOX #1	NOLO MOUNTAIN	4.3	COLUMBIA GAS TRAN
8424509	21171	3706326814	108			PHILIP HIBERT #1	NOLO MOUNTAIN	6.1	COLUMBIA GAS TRAN
-ENERGY QUEST INC			RECEIVED: 03/15/84		JA: PA				
8424516	22250	3706325438	108			RICHARD W OVERDORFF #1	STRONGSTOWN	9.0	COLUMBIA GAS TRAN
8424517	22251	3706325939	108			RICHARD W OVERDORFF #2	STRONGSTOWN	9.0	COLUMBIA GAS TRAN
8424518	22252	3706325940	108			RICHARD W OVERDORFF #3	STRONGSTOWN	9.0	COLUMBIA GAS TRAN
-ENVIROGAS INC			RECEIVED: 03/15/84		JA: PA				
8424504	20674	3704922633	107-TF			H MIKOVCH #5	ELK CREEK	18.0	
-FLANIGAN BROTHERS			RECEIVED: 03/15/84		JA: PA				
8424502	17200	3703921462	107-TF			RUSSELL #1	CUSSEWAGO	15.0	NATIONAL FUEL GAS
-KRIEBEL GAS CO INC			RECEIVED: 03/15/84		JA: PA				
8424524	22323	3706327651	103			RELLICK #6	FULTON RUN	25.0	
-KRIEBEL WELLS #3			RECEIVED: 03/15/84		JA: PA				
8424523	22322	3706327652	103			RELLICK #7	FULTON RUN	15.0	
-MARK RESOURCES CORP			RECEIVED: 03/15/84		JA: PA				
8424547	22496	3712135804	102-3			ALLIO #1	BORO OF COOPERSTOWN	30.0	NATIONAL FUEL GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8424548	22497	3712135804		107-TF		ALLIO #1	BORO OF COOPERSTOWN	30.0	NATIONAL FUEL GAS
8424545	22464	3705325259		103		SHANSON-FOX TRUST #6	HOWE	12.0	UNITED GAS INDUST
-MERIDIAN EXPLORATION CORP				RECEIVED:	03/15/84	JA: PA			
8424513	22192	3703922820		102-2		BUNTING UNIT #680-2	ROCKDALE	0.0	COLUMBIA GAS TRAN
8424514	22193	3703922928		107-TF		BUNTING UNIT #680-2	ROCKDALE	0.0	COLUMBIA GAS TRAN
8424535	22428	3703922011		102-2		GOURLEY #715-2	ROCKDALE	0.0	COLUMBIA GAS TRAN
8424536	22429	3703922011		107-TF		GOURLEY #715-2	ROCKDALE	0.0	COLUMBIA GAS TRAN
-MERIDIAN OIL & GAS ENT INC				RECEIVED:	03/15/84	JA: PA			
8424543	22458	3703921917		103		A T BOBAN SR WELL #2	BEAVER	12.0	NATIONAL FUEL GAS
8424544	22459	3703921917		107-TF		A T BOBAN SR WELL #2	BEAVER	12.0	NATIONAL FUEL GAS
8424528	22370	3703922021		103		A T BOBAN SR WELL #3	BEAVER	11.0	NATIONAL FUEL GAS
8424529	22371	3703922021		107-TF		A T BOBAN SR WELL #3	BEAVER	11.0	NATIONAL FUEL GAS
8424530	22372	3703922022		107-TF		W J HYDE SR - S T D CO WELL #1	BEAVER	11.0	NATIONAL FUEL GAS
8424531	22373	3703922022		103		W J HYDE SR - S T D CO WELL #1	BEAVER	11.0	NATIONAL FUEL GAS
8424532	22374	3703922023		107-TF		W J HYDE SR - S T D CO WELL #2	BEAVER	11.0	NATIONAL FUEL GAS
8424533	22375	3703922023		103		W J HYDE SR - S T D CO WELL #2	BEAVER	11.0	NATIONAL FUEL GAS
8424539	22454	3703921916		103		W J HYDE SR WELL #2	SPRING	12.0	NATIONAL FUEL GAS
8424540	22455	3703921916		107-TF		W J HYDE SR WELL #2	SPRING	12.0	NATIONAL FUEL GAS
8424541	22456	3703921918		103		WANDA S WORDEN WELL #1	BEAVER	12.0	NATIONAL FUEL GAS
8424542	22457	3703921918		107-TF		WANDA S WORDEN WELL #1	BEAVER	12.0	NATIONAL FUEL GAS
-NATIONAL FUEL GAS SUPPLY CORP				RECEIVED:	03/15/84	JA: PA			
8424527	22340	3706500000		108		FRAZIER BROTHERS 3461	HEATH	0.6	GENERAL SYSTEM PU
-NEA CROSS CO				RECEIVED:	03/15/84	JA: PA			
8424551	22506	3704923389		102-2		A E HAKKARAINEN #2	WATERFORD	10.0	NATIONAL FUEL GAS
8424552	22507	3704923389		107-TF		A E HAKKARAINEN #2	WATERFORD	10.0	NATIONAL FUEL GAS
8424553	22508	3704923065		102-2		LOUIS & RALPH BIZZARRO #2	WATERFORD	10.0	NATIONAL FUEL GAS
8424554	22509	3704923065		107-TF		LOUIS & RALPH BIZZARRO #2	WATERFORD	10.0	NATIONAL FUEL GAS
-NRM PETROLEUM CORPORATION				RECEIVED:	03/15/84	JA: PA			
8424507	20785	3704922619		107-TF		BOLERATZ #1	UNION CITY	0.0	COLUMBIA GAS TRAN
8424508	20786	3704922619		102-2		BOLERATZ #1	UNION CITY	0.0	COLUMBIA GAS TRAN
8424505	20779	3704922623		102-2		STYBORSKI #1	UNION CITY	26.0	COLUMBIA GAS TRAN
8424506	20780	3704922623		107-TF		STYBORSKI #1	UNION CITY	26.0	COLUMBIA GAS TRAN
-PC EXPLORATION INC				RECEIVED:	03/15/84	JA: PA			
8424519	22266	3712922287		103		BERNARD A CORNALI #1	LOYALHANNA	35.0	
-PEOPLES NATURAL GAS CO				RECEIVED:	03/15/84	JA: PA			
8424521	22282	3712922228		103		ANDREW A METZ #3 - WES-22228	W PENNA - UPPER DEVON	16.0	PEOPLES NATURAL G
8424522	22285	3712922219		103		EDWARD E ROSS #3 - WES-22219	W PENNA - UPPER DEVON	22.0	PEOPLES NATURAL G
-QUESTA PETROLEUM CO				RECEIVED:	03/15/84	JA: PA			
8424525	22331	3712922250		103		SUPER-VALU FOODS	NEW STANTON BORO	25.0	
-T W PHILLIPS GAS & OIL CO				RECEIVED:	03/15/84	JA: PA			
8424565	22548	3703100000		108		J M MCCORMICK #1	LIMESTONE	1.6	T W PHILLIPS GAS
-THO-JO ENTERPRISES INC				RECEIVED:	03/15/84	JA: PA			
8424567	22556	3706320900		108		ORVILLE M WATSON #1	CENTER	0.0	PEOPLES NATURAL G
-TRI-COUNTY OIL & GAS INC				RECEIVED:	03/15/84	JA: PA			
8424555	22510	3705900000		108		CHAMBERS WELL #1	ALEPPO	1.5	COLUMBIA GAS TRAN
8424556	22511	3705900000		108		CHAMBERS WELL #2	ALEPPO	1.5	COLUMBIA GAS TRAN
8424557	22512	3705900000		108		CHAMBERS WELL #3	ALEPPO	1.5	COLUMBIA GAS TRAN
-VICTORY ENERGY CO				RECEIVED:	03/15/84	JA: PA			
8424515	22231	3703321644		103		BARNES #2 CLE-21644	BELL	36.0	CONSOLIDATED GAS
8424511	22092	3703321604		103		ELLENBERGER #1 CLE-21604	BRADY	36.0	T W PHILLIPS OIL
-WAINOCO OIL & GAS CO				RECEIVED:	03/15/84	JA: PA			
8424537	22444	3703921979		107-TF		DONALD J PIER #1 (W-172A)	ATHENS	16.0	COLUMBIA GAS TRAN
8424538	22445	3703921979		102-3		DONALD J PIER #1 (W-172A)	ATHENS	16.0	COLUMBIA GAS TRAN
********** WEST VIRGINIA DEPARTMENT OF MINES **********									
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	03/14/84	JA: WV			
8424587		4703300615		108		HIRAM BURNSIDE 5631	GRANT	1.0	GENERAL SYSTEM PU
8424582		4705900801		108		W W MCDONALD LAND CO 11212	STAFFORD	18.0	GENERAL SYSTEM PU
-EASTERN AMERICAN ENERGY CORPORATION				RECEIVED:	03/14/84	JA: WV			
8424580		4704103039		107-DV		LOUDIN #2	COURTHOUSE	40.0	COLUMBIA GAS TRAN
-FMF OIL & GAS PROPERTIES				RECEIVED:	03/14/84	JA: WV			
8424585		4708300409		107-DV		CLARK TAHANEY #1	ROARING CREEK	50.0	COLUMBIA GAS TRAN
8424586		4708300395		107-DV		RICOTTILLI #1	ROARING CREEK	45.0	COLUMBIA GAS TRAN
8424584		4708300485		107-DV		RICOTTILLI #81-22	ROARING CREEK DISTRIC	53.0	COLUMBIA GAS TRAN
-HAUGHT INC				RECEIVED:	03/14/84	JA: WV			
8424591		4710701120		103		C E ELLIOTT H-1191	WALKER DISTRICT	15.0	CONSOLIDATED GAS
8424592		4708505030		103		J CUMMINGS H-896	GRANT DISTRICT	15.0	CONSOLIDATED GAS
8424596		4708504494		103		JOHN CUMMINGS H-897	GRANT DISTRICT	15.0	CONSOLIDATED GAS
8424595		4708504866		103		KARL C KNIGHT H-1032	CLAY DISTRICT	15.0	CONSOLIDATED GAS
8424588		4707301399		103		R UTTERBACK H-1301	JEFFERSON	21.0	CONSOLIDATED GAS
8424594		4708504989		103		W H SHIELDS H-1136	GRANT DISTRICT	15.0	CONSOLIDATED GAS
8424593		4708504990		103		W H SHITLDS HRS 1137	GRANT DISTRICT	15.0	CONSOLIDATED GAS
-J C BAKER AND SON INC				RECEIVED:	03/14/84	JA: WV			
8424583		4700701804		103		L J SHOCK	SALT LICK DIST	15.0	CONSOLIDATED GAS
-JAMES F SCOTT				RECEIVED:	03/14/84	JA: WV			
8424589		4704900739		102-4		ROGER CUNNINGHAM S-445	UNION	0.7	CONSOLIDATED GAS
8424590		4701703127		102-4		STONEYBROOK S-430	GREENBRIER	0.2	CONSOLIDATED GAS
8424597		4704900736		102-4		TERRY SAURBORN S-427	UNION	0.7	CONSOLIDATED GAS
-NRM PETROLEUM CORPORATION				RECEIVED:	03/14/84	JA: WV			
8424581		4709702030		103		HANZIAN #3	WASHINGTON	0.0	COLUMBIA GAS TRAN
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, DENVER, CO **********									
-COSEKA RESOURCES (USA) LIMITED				RECEIVED:	03/13/84	JA: CO F			
8424575	CD 0195-83	0510308603		108		FEDERAL #2-34-4-101	TRAIL CANYON	50.0	SOUTHWEST GAS COR
8424574	CD 0194-83	0510308451		108		FEDERAL 5-31-4-101	WILDCAT	74.2	SOUTHWEST GAS COR
-MITCHELL ENERGY CORPORATION				RECEIVED:	03/13/84	JA: CO F			
8424576	CD 0203-83	0510309104		103		FEDERAL #1-11-2-104 C-26940	HELLS HOLE CANYON (DA	112.5	
8424577	CD 0206-84	0510309104		102-2		FEDERAL #1-11-2-104 C-26940	HELLS HOLE CANYON (DA	112.5	
-TXO PRODUCTION CORP				RECEIVED:	03/13/84	JA: CO F			
8424578	CD 0200-83	0510308983		103		TEXAS MOUNTAIN	TEXAS MOUNTAIN	100.0	NORTHWEST PIPELIN
-UNICON PRODUCING CO				RECEIVED:	03/13/84	JA: CO F			
8424579	CD 0198-83	0506705030		108		UTE #4	MESA VERDE BLANCO	8.0	PEOPLES NATURAL G

[FR Doc. 84-9428 Filed 4-6-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1099]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: April 2, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 382, Docket RM83-50-000, 49 FR 7109-13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the **Federal Register**. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 382 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)
102-3: New well (2000 ft rule)
102-4: New onshore reservoir
102-5: New res. on old OCS lease

Section 103: New onshore production well

Section 107-DP: 15,000 ft or deeper
107-GB: Geopressured brine
107-DV: Devonian shale
107-CS: Coal seam gas
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation

Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
ISSUED APRIL 2, 1984

VOLUME 1099

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-ADOBE OIL & GAS CORPORATION		RECEIVED: 03/16/84 JA: TX							
8424854	F-09-077722	4209732459		102-4	103	BURRELL #6	DELAWARE BEND NO (HAN	110.0	LONE STAR GAS CO
-AMERICAN PETROFINA COMPANY OF TEXAS		RECEIVED: 03/16/84 JA: TX					SHERIFF EAST (8400' S	90.0	ESPERANZA TRANSMI
8424737	F-02-075350	4205731239		103		KNIPLING GAS UNIT #4			
-ARCO OIL AND GAS COMPANY		RECEIVED: 03/16/84 JA: TX					E SEVEN SISTERS (6-55	500.0	TEXAS EASTERN TRA
8424739	F-04-075385	4213136178		102-4		HAZELWOOD GAS UNIT #3	HAGIST RANCH (WILCOX	44.0	NATURAL GAS PIPEL
8424774	F-04-076428	4213136311		103		J R FOSTER #67			
-ARLEDGE TERRY		RECEIVED: 03/16/84 JA: TX					BRYAN (BUDA) FIELD	90.0	FERGUSON CROSSING
8424712	F-03-074552	4204130924		102-4		ARNOLD #1			
-ATI OIL CO		RECEIVED: 03/16/84 JA: TX					TRICKHAM	7.0	EL PASO HYDROCARB
8424673	F-7B-073498	4204933689		102-4		HORACE THOMPSON #6	TRICKHAM (CAPPS)	7.0	EL PASO HYDROCARB
8424672	F-7B-073497	4204900000		102-4		HORACE THOMPSON #7			
-AZMUTH PRODUCTION CO		RECEIVED: 03/16/84 JA: TX					WILDCAT (PROPOSED) WI	127.8	HOUSTON PIPE LINE
8424834	F-02-077310	4246932078		102-4		A SANDHOP #1			
-B & M PETROLEUM INC		RECEIVED: 03/16/84 JA: TX					OAK HILL S (COTTON VA	360.0	TEXAS EASTERN TRA
8424787	F-06-076892	4240131731		103	107-DP	BUFORD & BLOW #2	KATY (FIRST WILCOX)	365.0	HOUSTON PIPE LINE
-BARNHART CO		RECEIVED: 03/16/84 JA: TX							
8424727	F-03-074991	4247330403		102-3		JAMES W PARKER	EARNEST HILL	100.0	
-BEARD OIL COMPANY		RECEIVED: 03/16/84 JA: TX							
8424852	F-06-077688	4241930322		102-2		CRANE A-95 #1	LOUISE NORTH (4790)	75.0	DELHI GAS PIPELIN
-BETTIS BOYLE & STOVALL		RECEIVED: 03/16/84 JA: TX					GARVEY	0.0	MID-STATE GAS COR
8424642	F-03-067461	4248132466		103		HERRMANN #1 (NOT ASSIGNED)			
8424641	F-09-067062	4250300000		103		KUHKLE #2	SE BONUS (FRIO 3750)	602.0	VENTURE PIPELINE
-BILL FORNEY INC		RECEIVED: 03/16/84 JA: TX							
8424869	F-03-077858	4248132531		102-4		ANIELA PITTS #2-C	COLOGNE (4250)	100.0	
-BJB EXPLORATION CO		RECEIVED: 03/16/84 JA: TX					COLOGNE (4350)	100.0	
8424749	F-02-075776	4246900000		103		SALINAS #A-1-C			
8424750	F-02-075777	4246900000		102-4		SALINAS #A-1-T	SPRABERRY (TREND AREA	29.2	PHILLPS PETROLEUM
-BTA OIL PRODUCERS		RECEIVED: 03/16/84 JA: TX							
8424812	F-08-077161	4231732723		103		GRAVES #2	AWP (OLMOS)	0.0	HPI TRANSMISSION
-BURNETT OIL CO INC		RECEIVED: 03/16/84 JA: TX							
8424761	F-01-076011	4231131984		102-4	103	H D TAYLOR #1	WILDCAT LEGGETT (AUST	216.0	VAL-CAP INC
-C & K PETROLEUM INC		RECEIVED: 03/16/84 JA: TX							
8424683	F-03-073781	4237330516		102-4		WIRT DAVIS #4	TODD SW (SAN ANDRES L	0.0	APACHE GAS CORP
-C F LAWRENCE & ASSOC INC		RECEIVED: 03/16/84 JA: TX							
8424726	F-7C-074971	4218534558		103		TODD "R" #2	BEASLEY (Y-4)	550.0	HOUSTON PIPELINE
-CABOT PETROLEUM CORP		RECEIVED: 03/16/84 JA: TX							
8424745	F-03-075639	4215700000		102-4		M JUNKER #1	VAN WINKLE (CADDO)	70.0	WARREN PETROLEUM,
-CAL ENERGY PROPERTIES INC		RECEIVED: 03/16/84 JA: TX							
8424647	F-7B-069462	4242933619		102-4		VAN WINKLE "B" #1 (19767)	SAWYER (CANYON)	90.0	EL PASO NATURAL G
-CASS OIL CO		RECEIVED: 03/16/84 JA: TX					SAWYER (CANYON)	140.0	EL PASO NATURAL G
8424799	F-7C-077050	4243532979		103	107-TF	ALLISON MIERS 7408	SAWYER (CANYON)	120.0	EL PASO NATURAL G
8424795	F-7C-077046	4243533006		103	107-TF	ALLISON-MIERS 7003	SAWYER (CANYON)	80.0	EL PASO NATURAL G
8424796	F-7C-077047	4243533011		103	107-TF	ALLISON-MIERS 7005	SAWYER (CANYON)	55.0	EL PASO NATURAL G
8424794	F-7C-077045	4243532980		103	107-TF	ALLISON-MIERS 7103			
8424800	F-7C-077051	4242532977		103	107-TF	ALLISON-MIERS 7302			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8424803	F-7C-077054	4243532970		103	107-TF	ALLISON-MIERS 7403
8424801	F-7C-077052	4243532975		103	107-TF	ALLISON-MIERS 7404
8424797	F-7C-077048	4243532985		103	107-TF	ALLISON-MIERS 7406
8424798	F-7C-077049	4243532986		103	107-TF	ALLISON-MIERS 7407
8424802	F-7C-077053	4243532971		103	107-TF	ALLISON-MIERS 7907
8424714	F-7C-076650	4243532877		103	107-TF	DRAKE "71" - RRC 8108059
8424680	F-7C-073686	4238332549		103		HUGHES 1210 #2
-CENERGY EXPLORATION CO				RECEIVED:	03/16/84	JA: TX
8424674	F-06-073532	4200100000		103		HANKS #1
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	03/16/84	JA: TX
8424720	F-03-074787	4204130470		102-2		E M DANSBY #1
8424848	F-03-077582	4204131049		102-2		P RUFFINO JR "C" #1
-CHENOWETH GROVER L				RECEIVED:	03/16/84	JA: TX
8424772	F-7B-076392	4213335222		101		J WILLIAMSON #3 (GAS)
-COMANCHE RESOURCES INC				RECEIVED:	03/16/84	JA: TX
8424753	F-7B-075818	4204053206		102-4		D B GUNN #8
8424751	F-7B-075816	4204933292		102-4		D B GUNN #9
8424752	F-7B-075817	4204933288		102-4		D B GUNN "A" #7-A
-CONOCO INC				RECEIVED:	03/16/84	JA: TX
8424871	F-08-077905	4213534360		103		GIST UNIT #139 ID 19373
8424754	F-04-075833	4247933698		102-4	103	JOHN MARTIN JR #1
8424721	F-04-074803	4247933670		102-4	107-TF	P M FROST #3
8424765	F-04-076182	4247932600		102-2	107-TF	VAQUILLAS RANCH A #1
8424740	F-04-075390	4247933671		102-4	103	VAQUILLAS RANCH STATE - SEA #1
-CORDOVA RESOURCES INC				RECEIVED:	03/16/84	JA: TX
8424693	F-08-074035	4210333074		108		SHELL-MOSLEY #9
-COSEKA RESOURCES (USA) LIMITED				RECEIVED:	03/16/84	JA: TX
8424781	F-7C-076741	4246132071		103		COSEKA/SAXON DAVIDSON #4
8424742	F-08-075458	4232931213		103		COSEKA/SAXON GRAHAM #1
8424780	F-7C-076739	4238332754		103		COSEKA/SAXON UNIVERSITY "3-2" #2
-COSTA RESOURCES INC				RECEIVED:	03/16/84	JA: TX
8424645	F-08-069291	4237100000		102-4		ZAPALAC #1
-COTTON PETROLEUM CORPORATION				RECEIVED:	03/16/84	JA: TX
8424738	F-10-075355	4229531240		102-4		BECKER #1
-CRYSTAL OIL AND LAND COMPANY				RECEIVED:	03/16/84	JA: TX
8424711	F-06-074550	4206730427		102-4		CRYSTAL RAMBO #1-L
8424762	F-06-076058	4206730424		102-4		WALKER "A" #1-U
-D L WHITAKER OIL CO				RECEIVED:	03/16/84	JA: TX
8424773	F-7B-076420	4244733714		102-4		R G LITTLE WELL #1-A
-DELTA DRILLING CO				RECEIVED:	03/16/84	JA: TX
8424843	F-8A-077471	4203300000		103		ROY REEDER #3 64052
-DIRECTION ENERGY CORP				RECEIVED:	03/16/84	JA: TX
8424703	F-10-074471	4223331666		103		SANFORD COON "A" #1
-DON M HANVEY OIL INTERESTS INC				RECEIVED:	03/16/84	JA: TX
8424686	F-7B-073837	4213335046		102-4		HANVEY-FEE #4 LEASE NO 108365
8424748	F-7B-075718	4221333454		102-4		PITTS-MURDOCK #1
-DYNE OIL & GAS INC				RECEIVED:	03/16/84	JA: TX
8424835	F-10-077316	4217931559		103		MCCONNELL #8 (RRC 000287)
-EDEN EXPLORATION INC				RECEIVED:	03/16/84	JA: TX
8424729	F-7B-075009	4236732360		102-4		A HARRISON UNIT #1 (NEW)
-ENSERCH EXPLORATION INC				RECEIVED:	03/16/84	JA: TX
8424630	F-06-051437	4220300000		108-ER		HENRY ONEY #1
8424839	F-05-077353	4221300000		103		J E RYON #2
8424817	F-7B-077254	4242900000		103		J W STOUARD UNIT 5 #5
-ENSOURCE INC				RECEIVED:	03/16/84	JA: TX
8424628	F-06-027238	4220330705		102-4		MARY KAY STRODE #1
-ETERNAL EXPLORATION				RECEIVED:	03/16/84	JA: TX
8424699	F-7B-074253	4213335151		102-4		LEAH BROWN "A" #3
-EXPORT PETROLEUM CORP				RECEIVED:	03/16/84	JA: TX
8424662	F-09-072588	4223730855		108		WORTHINGTON EDWARDS #1
-EXXON CORPORATION				RECEIVED:	03/16/84	JA: TX
8424816	F-08-077211	4249531664		103		BROWN-ALTMAN B #42
8424838	F-7C-077332	4243131332		103		LOU E JOHNSON ESTATE A/C 1 #53
8424837	F-8A-077328	4216532528		103		ROBERTSON CLEARFORK UNIT #1603
-FARGO ENERGY CORP				RECEIVED:	03/16/84	JA: TX
8424700	F-03-074359	4214931527		102-2		BYLER "C" UNIT #1
8424701	F-03-074360	4214931583		102-2		MOORE #1
-FARGO TRADING CO INC				RECEIVED:	03/16/84	JA: TX
8424660	F-06-072479	4248930694		102-4		YTURRIA CATTLE CO #4
-FUNK EXPLORATION INC				RECEIVED:	03/16/84	JA: TX
8424668	F-10-073328	4235700000		102-4		JAMES #2-A
-G E M INC				RECEIVED:	03/16/84	JA: TX
8424676	F-7B-073556	4213332985		103		GAINES #1 18248
-GATHINGS OIL INC				RECEIVED:	03/16/84	JA: TX
8424776	F-03-076523	4248132358		102-4		KUTAC #1 - 107322
-GENE POWELL INVESTMENTS INC				RECEIVED:	03/16/84	JA: TX
8424691	F-06-074001	4218330587		103	107-TF	A J MONEY GAS UNIT #1
-GENERAL PRODUCTION CO INC				RECEIVED:	03/16/84	JA: TX
8424734	F-03-075200	4228731456		102-2		ALCOCER "A" #1
-GETTY OIL COMPANY				RECEIVED:	03/16/84	JA: TX
8424636	F-06-066034	4236500000		108-ER		R P DAVIDSON #2
-GHR ENERGY CORP				RECEIVED:	03/16/84	JA: TX
8424648	F-04-069487	4250531627		102-4	107-TF	MCMURREY #34
8424675	F-04-073547	4247933504		102-4	107-TF	R MARTINEZ #2
-GILLRING OIL CO				RECEIVED:	03/16/84	JA: TX
8424844	F-04-077475	4235532162		102-4		JOE MCNAIR #1
-GORDON OIL CO INC				RECEIVED:	03/16/84	JA: TX
8424657	F-09-072185	4218100000		108-ER		W M GARR #1
-GRACE PETROLEUM CORPORATION				RECEIVED:	03/16/84	JA: TX
8424688	F-09-073897	4218130591		102-4	103	D L SHANKLES #1
-GRAHAM ENERGY LTD				RECEIVED:	03/16/84	JA: TX
8424682	F-7C-073769	4235331404		103		JAMESON C-3
-GULF OIL CORPORATION				RECEIVED:	03/16/84	JA: TX
8424815	F-08-077199	4200333705		103		STATE "XK" #1
-GULF SANDS OIL CO				RECEIVED:	03/16/84	JA: TX
8424804	F-02-077058	4202531442		102-4		KARSCH-HARTZENDORF #1 107498
-H & S OPERATING INC				RECEIVED:	03/16/84	JA: TX
8424635	F-7B-063756	4234700000		103		CHRISTENBERRY #1
-HANLEY PETROLEUM INC				RECEIVED:	03/16/84	JA: TX
8424717	F-7C-074724	4210534367		103	107-TF	UNIVERSITY 30-36B #1
-HEFLIN OIL CO				RECEIVED:	03/16/84	JA: TX
8424728	F-06-073008	4206730404		103		BEAVER GAS UNIT #1
-HNG OIL COMPANY				RECEIVED:	03/16/84	JA: TX
8424735	F-04-075274	4247900000		102-4	107-TF	HIRSCH ESTATE "240" #1

FIELD NAME	PROD	PURCHASER
SAWYER (CANYON)	120.0	EL PASO NATURAL G
SAWYER (CANYON)	120.0	EL PASO NATURAL G
SAWYER (CANYON)	120.0	EL PASO NATURAL G
SAWYER (CANYON)	100.0	EL PASO NATURAL G
SAWYER (CANYON)	220.0	EL PASO NATURAL G
SAWYER (CANYON)	120.0	
SPRABERRY (TREND AREA	36.0	EL PASO NATURAL G
BLACKFOOT N	0.0	ESPERANZA PIPELIN
BRYAN (BUDA)	0.0	
KURTEN (BUDA)	40.9	
EASTLAND COUNTY REGUL	292.0	LONE STAR GAS CO
DALE (CADDO) FIELD	10.0	EL PASO HYDROCARB
DALE (CADDO) FIELD	10.0	EL PASO HYDROCARB
DALE (CADDO) FIELD	10.0	EL PASO HYDROCARB
FOSTER	0.7	EL PASO HYDROCARB
WILDCAT	529.0	E I DUPONT DE NEM
RUFFLE (LOBO)	392.0	UNITED TEXAS TRAN
VAQUILLAS RANCH (UPPE	69.0	E I DUPONT DE NEM
VAQUILLAS RANCH (CARR	239.0	HOUSTON PIPELINE
[illegible]	5.4	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	[illegible]	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
SPRABERRY TREND	0.0	PHILLIPS PETROLEU
VALENTINE	0.0	PERRY PIPELINE CO
MAMMOTH CREEK NW	0.0	
[illegible]	0.0	BRECKENRIDGE GASO
RODESSA (6320) PETTIT	127.5	BRECKENRIDGE GASO
KINGS CREEK CADDO	70.0	WOODSON GAS INC
MYRTLE W (STRAWN)	0.0	SUN EXPLORATION &
PANHANDLE HUTCHINSON	[illegible]	PANHANDLE PRODUCI
ARDINGER (LAKE SAND U	72.0	EL PASO HYDROCARB
HANVEY (LAKE SAND)	119.0	EL PASO HYDROCARB
PANHANDLE	0.0	KERR-MCGEE CORP
DENNIS WEST (STRAWN)	130.0	PARKER GAS INC
[illegible]	0.0	TEXAS EASTERN TRA
TRI-CITIES	0.0	TEXAS UTILITIES F
IVADELL	0.0	
LANSING NORTH TRAVIS	138.7	ARKANSAS LOUISIAN
LEERAY (LAKE SAND)	274.0	ODESSA NATURAL CO
BOOMESVILLE (BEND CON	2.7	SOUTHWESTERN GAS
EMPEROR EAST (CLEAR F	60.0	WESTAR TRANSMISSI
JAMESON (STRAWN)	0.0	
ROBERTSON N (CLEAR FO	15.0	PHILLPS PETROLEUM
GIDDINGS (AUSTIN CHAL	73.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	73.0	PHILLIPS PETROLEU
LA SARA	0.0	TENNESSEE GAS PIP
RICKS UPPER MORROW	100.0	HIGH PLAINS NATUR
EASTLAND COUNTY (REG)	12.6	LONE STAR GAS CO
HIBO FIELD	0.0	LONE STAR GAS CO
GLADEWATER S (HAYNESV	750.0	TEJAS GAS CORP
GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
CARTHAGE	0.0	UNITED GAS PIPELI
MCMURREY (LOBO)	900.0	NATURAL GAS PIPEL
LA MANGANA (LOBO 8800	250.0	GHR PIPELINE CORP
BRAYTON N	419.7	HOUSTON PIPE LINE
SHERMAN SOUTHEAST	0.0	LONE STAR GAS CO
GRACE - MAG (PENN COR	0.0	CHEVRON USA INC
SILVER CANYON (SAND)	0.0	SUN OIL CO
FUHRMAN MASCHO	0.0	
TYNAN (4025)	21.0	UNITED GAS PIPELI
RENO (CONGL)	120.0	SOUTHWESTERN GAS
OZONA (CANYON)	0.0	INTRATEX GAS CO
QUEEN CITY (SMACKOVER	650.0	PRODUCER'S GAS CO
JUANITA (LOBO)	200.0	HOUSTON PIPE LINE

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
-HOME PETROLEUM CORPORATION				RECEIVED:	03/16/84	JA: TX
8424634	F-03-060958	4220130963		102-4	103	WILLIAM VAN VORST #1
-HOUSTON OIL & GAS CO INC				RECEIVED:	03/16/84	JA: TX
8424767	F-7C-076234	4239933026		102-4		PORCH & CLARY #2 (10405)
-HPC OPERATING INC				RECEIVED:	03/16/84	JA: TX
8424777	F-06-076653	4236500000		108		CLAUDIA KELLER #1-C
-HUFO PRODUCTION CORP				RECEIVED:	03/16/84	JA: TX
8424646	F-10-069308	4206500000		103		ELLER #12
-HUGHES & HUGHES OIL AND GAS				RECEIVED:	03/16/84	JA: TX
8424741	F-04-075430	4235531928		102-4		BERNSEN WELTY #2
8424764	F-04-076171	4250531704		102-4		L A HINNANT G-2
-J C MCCABE				RECEIVED:	03/16/84	JA: TX
8424710	F-04-074535	4250531536		102-4		J AUSTIN TAYLOR #1
-J M HUBER CORPORATION				RECEIVED:	03/16/84	JA: TX
8424678	F-10-073646	4223300000		108-ER		PURE #2
-J R HAMILTON				RECEIVED:	03/16/84	JA: TX
8424778	F-01-076675	4212732429		101		KOTHMAN - BARNARD WELL #5
-JAKE L HAMON				RECEIVED:	03/16/84	JA: TX
8424725	F-10-074940	4221131551		101		SHALLER #4
-JOSEPH T DAWSON				RECEIVED:	03/16/84	JA: TX
8424843	F-04-077509	4235532226		102-4		ANDERSON TRUST #4
-KATLACO OPERATING CO INC				RECEIVED:	03/16/84	JA: TX
8424651	F-7B-070459	4213333962		102-4		J B BOGGS "A" #1 (20636)
8424644	F-7B-068256	4213334342		102-4	103	J B BOGGS "B" #1
8424638	F-7B-070164	4213300000		102-4		KATLACO FEE "B" #6
-KERR-MCGEE CORPORATION				RECEIVED:	03/16/84	JA: TX
8424842	F-10-077944	4223300000		103		PITTS #1
8424877	F-10-077936	4223300000		108		PITTS #2
8424881	F-10-077941	4223300000		108		PITTS #21
8424879	F-10-077938	4223300000		108		PITTS #22
8424874	F-10-077928	4223300000		108		PITTS #30
8424873	F-10-07792Y	4223300000		108		PITTS #31
8424888	F-10-077939	4223300000		108		PITTS #33
8424878	F-10-077937	4223300000		108		PITTS #7
8424872	F-10-07792	4223300000		108		PITTS MO 18
-KILROY CO OF TEXAS				RECEIVED:	03/16/84	JA: TX
8424766	F-03-076197	4236130473		102-4		E W BROWN #1
8424806	F-03-077097	4208931383		102-4		M COLEMAN #1
-LEWIS & ATKINS OIL & GAS INC				RECEIVED:	03/16/84	JA: TX
8424733	F-08-075163	4231732748		103		HASTING #1
-LOUTEX-ASOCO				RECEIVED:	03/16/84	JA: TX
8424724	F-03-074906	4204130864		102-2		LOUTEX-ASOCO SBY #1
-MABEE PETROLEUM CORP				RECEIVED:	03/16/84	JA: TX
8424755	F-08-075872	4231732756		103		BREEDLOVE "D" #3
-MAHADA ENERGY CORP				RECEIVED:	03/16/84	JA: TX
8424670	F-03-073433	4220131622		103		MAHADA #1 BLANCHE FOLEY
-MAJOR PETROLEUM CORP				RECEIVED:	03/16/84	JA: TX
8424875	F-7C-077929	4239932997		103		C R DEAN #1 10353
-MARIANAS OPERATING CO INC				RECEIVED:	03/16/84	JA: TX
8424860	F-7B-077792	4208333557		103		MARY FRANCES JOHNSON ESTATE #1 GAS
-MARSHALL EXPLORATION INC				RECEIVED:	03/16/84	JA: TX
8424757	F-06-075933	4222530477		103		CROWSON "A" #2 (11121)
8424744	F-03-075591	4231330457		102-4	103	M Y VICK #4 (LEASE NO 16781)
-MAYFIELD ENGINEERING SERVICE				RECEIVED:	03/16/84	JA: TX
8424692	F-09-074011	4223700000		108		FLO COOP - EASTER UNIT #1
-MEG PETROLEUM CORP				RECEIVED:	03/16/84	JA: TX
8424876	F-7C-077931	4232730540		102-4	103	PFLUGER RANCH SOUTH #1
-MELBOURNE OIL COMPANY				RECEIVED:	03/16/84	JA: TX
8424731	F-10-075074	4235700000		103	102-6	NORMAN #1 ID #N/A
8424731	F-10-075074	4235700000		107-TF		NORMAN #1 ID #N/A
8424654	F-10-071795	4229530753		103	107-TF	PEERY #8 ID # N/A
-MICHAEL PETROLEUM CORP				RECEIVED:	03/16/84	JA: TX
8424846	F-03-07757	4204131012		102-2		FRANZE R F #1
-MITCHELL ENERGY CORPORATION				RECEIVED:	03/16/84	JA: TX
8424629	F-03-042223	4237300000		108-ER		ARBRA BAILEY #1
8424637	F-09-066556	4249700000		105		B B POORE #2 #101358
8424811	F-7B-077148	4236732579		103		C L CAVNESS UNIT "D" #2
8424649	F-09-069888	4249700000		106		GEORGE W BORING TRUST #1 857274
8424626	F-09-020722	4249700000		106-ER		J J WILSON #1
8424694	F-03-074056	4229330682		103	107-TF	R F JACKSON "C" #1
8424625	F-09-004235	4249700000		108-ER		T J TINNEY B #1
-MONSANTO COMPANY				RECEIVED:	03/16/84	JA: TX
8424849	F-02-077613	4205700000		107-PE		STATE TRACT 38 NO 2
-MONSANTO OIL CO				RECEIVED:	03/16/84	JA: TX
8424666	F-10-073281	4235700000		108-ER		CLEM #1
-MONTERO OPERATING INC				RECEIVED:	03/16/84	JA: TX
8424885	F-7C-077068	4208131205		103		HIGGINS #4
-MORROW RESOURCES INC				RECEIVED:	03/16/84	JA: TX
8424658	F-7C-072304	4245131253		102-2	103	BROWN "E" #1
-MOSELEY PETROLEUM CORP				RECEIVED:	03/16/84	JA: TX
8424792	F-02-076982	4246932108		102-4		CRABTREE #2-T
-OXOCO OIL & GAS INC				RECEIVED:	03/16/84	JA: TX
8424847	F-03-077578	4231330476		103		SCHOLZ #4
-PARKER & PARSLEY INC				RECEIVED:	03/16/84	JA: TX
8424627	F-08-025174	4231732149		101		COGGINS #1
8424770	F-08-076341	4231700000		103		HAZELWOOD - 1
8424769	F-08-076337	4231700000		103		HAZLEWOOD - 2
8424809	F-7C-077110	4238300000		101		HICKMAN #4
8424808	F-7C-077109	4238300000		103		HICKMAN #5
8424807	F-08-077101	4232900000		101		MCALISTER "G" WELL #1
-PETROLEUM CORP OF DELAWARE				RECEIVED:	03/16/84	JA: TX
8424732	F-08-075140	4230130453		103		BASS 46 #5
-PETRUS OPERATING CO INC				RECEIVED:	03/16/84	JA: TX
8424870	F-03-077888	4224531720		102-4		WALTER CO "C" WELL #1
-PIONEER PRODUCTION CORPORATION				RECEIVED:	03/16/84	JA: TX
8424713	F-10-074569	4248300000		102-4	103	EVANS #1-7
-Q E D EXPLORATION INC				RECEIVED:	03/16/84	JA: TX
8424855	F-7C-077725	4223532164		102-2	103	FARMAR-SUGG 21 #2
-QUINTANA PETROLEUM CORP				RECEIVED:	03/16/84	JA: TX
8424643	F-02-067950	4239131605		101		MAUDE WILLIAMS ET AL "A" D-121
-RALPH L WAY INC				RECEIVED:	03/16/84	JA: TX
8424853	F-08-077707	4237134229		102-4	103	CROWLEY-STATE #1
8424883	F-08-077961	4237135479		102-4	103	CROWLEY-STATE #2
-RANCHO RESOURCES CORP				RECEIVED:	03/16/84	JA: TX

FIELD NAME	PROD	PURCHASER
M CLINTON (YEGUA 8360	362.0	HOUSTON PIPELINE
GRODY ROBERTS (GRAY)	78.0	UNION TEXAS PETRO
BETHANY (PETTIT)	42.0	ARKANSAS LOUISIAN
PANHANDLE (CARSON COU	0.0	CABOT PIPELINE CO
AS OF YET UNDETERMINE	91.0	FERGUSON CROSSING
GLEN SOUTH (WILCOX 92	920.0	HOUSTON PIPE LINE
HINNANT RANCH FIELD	36.0	HOUSTON PIPE LINE
WEST PANHANDLE	0.0	COLORADO INTERSTA
EAST ROCKY CREEK 2-B	180.0	VALERO TRANSMISSI
CANADIAN S E (DOUGLAS	845.0	NORTHWEST CENTRAL
SHELL POINT (6-B)(PRO	0.0	HOUSTON PIPE LINE
HANVEY (LAKE SAND)	58.0	EL PASO HYDROCARB
HANVEY (LAKE SAND)	20.0	EL PASO HYDROCARB
WILDCAT	0.0	EL PASO HYDROCARB
PANHANDLE (HUTCHINSON	4.0	GETTY OIL CO
PANHANDLE (HUTCHINSON	2.5	GETTY OIL CO
PANHANDLE (HUTCHINSON	3.5	GETTY OIL CO
PANHANDLE (HUTCHINSON	2.8	GETTY OIL CO
PANHANDLE (HUTCHINSON	2.8	GETTY OIL CO
PANHANDLE (HUTCHINSON	6.0	GETTY OIL CO
PANHANDLE (HUTCHINSON	1.0	GETTY OIL CO
PANHANDLE (HUTCHINSON	7.2	GETTY OIL CO
PANHANDLE (HUTCHINSON	3.7	GETTY OIL CO
KELLY (HARTBURG) (PRO	29.0	UNITED TEXAS TRAN
LAMBDA (FRIO)	730.0	VALERO TRANSMISSI
SPRABERRY (TREND AREA	54.0	ADOBE OIL & GAS C
WILDCAT	0.0	FERGUSON CROSSING
BREEDLOVE SOUTH (SPRA	0.0	NORTHERN NATURAL
FAIRBANKS N (YEGUA 70	64.0	
WINGATE W (GARDNER)	32.0	UNION TEXAS PETRO
CRESSWELL (MORRIS)	182.0	UNION TEXAS PETRO
PEARSON CHAPEL (EDWAR	75.0	SOUTH TEXAS GATHE
MADISONVILLE N E (GEO	200.0	LONE STAR GAS CO
SAM EASTER (CONGL)	0.0	SOUTHWESTERN GAS
CELERY (STRAWN 2975-G	224.1	J L DAVIS
TURNER (CLEVELAND)	20.0	TRANSWESTERN PIPE
TURNER (CLEVELAND)	20.0	TRANSWESTERN PIPE
PEERY (CLEVELAND) FIE	0.0	TRANSWESTERN PIPE
KURTEN (BUDA) FIELD	0.0	FERGUSON CROSSING
LEGGETT	0.0	HOUSTON PIPELINE
GENTRY-PERKINS (STRAW	0.0	NATURAL GAS PIPEL
RENO (CONGLOMERATE)	223.4	NATURAL GAS PIPEL
BOONSVILLE (BEND CONG	0.0	BRAZOS FUEL CO
BOONSVILLE	0.0	NATURAL GAS PIPEL
NORTH PERSONVILLE (CO	547.5	SOUTHWESTERN GAS
ALVORD	0.0	NATURAL GAS PIPEL
LAVACA BAY (F-36)	64.0	ALUMINUM CORP OF
PARSELL	0.0	TRANSWESTERN PIPE
JAMESON (STRAWN)	18.3	SUN EXPLORATION &
K M B (STRAWN)	0.0	LONE STAR GAS CO
HEYSER EAST (8040) FI	0.0	HOUSTON PIPE LINE
FT TRINIDAD - BARRETT	36.5	PECOS PRODUCING &
SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
SPRAYBERRY (TREND ARE	0.0	
SPRABERRY (TREND AREA	0.0	
PRICE (GRAYBURG)	1.0	CROCKETT COUNTY G
PRICE (GRAYBURG)	1.0	CROCKETT COUNTY G
SPRABERRY (TREND AREA	1.5	PHILLIPS PETROLEU
WHEAT/CHERRY CANYON	20.1	
CHINA SE FIELD	0.0	SOUTHWESTERN GAS
BUFFALO WALLOW (A-PRI	0.0	WESTAR TRANSMISSI
ROCK PEN (CANYON)	91.3	FARMLAND INDUSTRI
LAKE PASTURE (H-440 S	14.6	UNITED TEXAS TRAN
HEINER S (WICHITA ALB	540.2	
HEINER S (WICHITA-ALB	0.0	INTRATEX GAS CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8424864	F-04-077822	4204700000		102-4		RANCHO - M B RUPP #1	ANN - MAG FIELD	450.0	AMERICAN PIPELINE
-RETWELL CORP				RECEIVED:	03/16/84	JA: TX			
8424829	F-7B-077288	4225332252		102-4		AKERS #1	COTTONWOOD (BLUFF CRE	0.0	LONE STAR GAS CO
8424828	F-7B-077287	4225332381		102-4		AKERS #2	COTTONWOOD (BLUFF CRE	0.0	LONE STAR GAS CO
8424827	F-7B-077286	4225332455		102-4		AKERS #3	COTTONWOOD (BLUFF CRE	0.0	LONE STAR GAS CO
8424826	F-7B-077285	4225332412		102-4		AKERS #4	COTTONWOOD (BLUFF CRE	0.0	LONE STAR GAS CO
8424825	F-7B-077284	4225332519		102-4		AKERS #7	COTTONWOOD (BLUFF CRE	0.0	LONE STAR GAS CO
8424824	F-7B-077283	4225332316		102-4		BRADSHAW "B" #3	NUGENT NW (COOK SAND)	14.0	LONE STAR GAS CO.
8424823	F-7B-077282	4225332450		102-4		FLACHE #1	COTTONWOOD (BLUFF CRE	0.0	LONE STAR GAS CO
8424822	F-7B-077281	4225332484		102-4		FLACHE #2	COTTONWOOD (BLUFF CRE	0.0	LONE STAR GAS CO
8424821	F-7B-077280	4225332483		102-4		FLACHE #3	COTTONWOOD (BLUFF CRE	0.0	LONE STAR GAS CO
8424820	F-7B-077279	4225332485		102-4		FLACHE #4	COTTONWOOD (BLUFF CRE	0.0	LONE STAR GAS CO
8424818	F-7B-077264	4225332568		102-4		J HOBBS #5	COTTONWOOD ANNIE (BLU	0.0	LONE STAR GAS CO
8424819	F-7B-077270	4225332128		102-4		M GUIN "B" #1	NUGENT NW (BLUFF CREE	18.0	LONE STAR GAS CO
-RICHEY & CO INC				RECEIVED:	03/16/84	JA: TX			
8424783	F-7B-076855	4213335381		102-4		C J KLEINER ESTATE #1	[illegible]	0.0	ENSERCH EXPLORATI
8424784	F-7B-076856	4213335335		102-4		C J KLEINER ESTATE "A" #1	[illegible]	0.0	ENSERCH EXPLORATI
8424840	F-7B-077411	4213335460		102-4		J I BARTON "A"	REB (MARBLE FALLS)	32.0	SOUTHWESTERN GAS
-RIDGE OIL CO				RECEIVED:	03/16/84	JA: TX			
8424716	F-7B-074718	4213300000		102-4	103	J R DAVIS #1	RANGER NW (MARBLE FAL	9.1	COMPRESSOR RENTAL
-ROSELAND OIL & GAS INC				RECEIVED:	03/16/84	JA: TX			
8424685	F-06-073799	4221330372		102-4	103	TURLINGTON #1 RRC PERMIT NO 195208	TURLINGTON	0.0	
-ROSENTHAL STANLEY H				RECEIVED:	03/16/84	JA: TX			
8424663	F-03-072606	4232100000		102-4		LUCRETIA RANSOM #1	[illegible]	0.0	HOUSTON PIPELINE
-ROYAL OIL & GAS CORPORATION				RECEIVED:	03/16/84	JA: TX			
8424659	F-01-072453	4228330954		102-4	103	STOCKTON #1	SUN TSH (OLMOS) FIELD	183.0	HOUSTON PIPE LINE
-SAGE ENERGY CO				RECEIVED:	03/16/84	JA: TX			
8424653	F-03-071744	4214931537		102-2		DEVERS UNIT #1 RRC #16880	GIDDINGS (AUSTIN CHAL	35.8	PHILLIPS PETROLEU
-SAMSON RESOURCES COMPANY				RECEIVED:	03/16/84	JA: TX			
8424789	F-06-076914	4236500000		[illegible]		PAUL P ROGERS #1-T	CARTHAGE	0.0	TEXAS GAS TRANSMI
-SBO CORP				RECEIVED:	03/16/84	JA: TX			
8424775	F-8A-076492	4207900000		103		D S WRIGHT #1	LEVELLAND	18.3	CITIES SERVICE CO
-SENTINEL PETROLEUM CORP				RECEIVED:	03/16/84	JA: TX			
8424793	F-7B-076995	4213335028		102-2		SPENCER A-1	EASTLAND COUNTY REGUL	0.0	EL PASO HYDROCARB
-SHAR-ALAN OIL CO				RECEIVED:	03/16/84	JA: TX			
8424677	F-03-073589	4231330437		102-2		T COLEMAN #1	MADISONVILLE NE (GEOR	0.0	LONE STAR GAS CO
-SHELL WESTERN E&P INC				RECEIVED:	03/16/84	JA: TX			
8424702	F-04-074434	4250531597		107-DP		G L LEYENDECKER #2	FANDANGO (WILCOX UPPE	800.0	UNITED TEXAS TRAN
-SHIELD RESOURCES INC				RECEIVED:	03/16/84	JA: TX			
8424736	F-03-075311	4247130243		102-4		J H PAINTER #1	HUNTSVILLE NE	0.0	SOUTH TEXAS GATHE
-SOHIO PETROLEUM CO				RECEIVED:	03/16/84	JA: TX			
8424865	F-04-077828	4240931718		102-4		BARTOSH GAS UNIT #1	MIDWAY EAST (10700 -	1800.0	HOUSTON PIPE LINE
8424866	F-04-077829	4240931364		102-4		MAX M FLOERKE JR ET AL WELL #2-R	MIDWAY EAST (10700-FA	252.0	TEXAS EASTERN TRA
-STEPHENSON OIL & GAS INC				RECEIVED:	03/16/84	JA: TX			
8424861	F-7B-077793	4213335340		102-4		LYERLA #1 (108627)	SMD (FRY)	109.0	FLATWOOD GAS INC
-STEVE STAMPER				RECEIVED:	03/16/84	JA: TX			
8424746	F-09-075670	4223735484		103		T D WILLIAMS #5	JACK COUNTY REGULAR	42.7	SOUTHWESTERN GAS
-SUE-ANN OIL & GAS CO				RECEIVED:	03/16/84	JA: TX			
8424862	F-03-077815	4203900000		107-PE		JOSEPH M HEIM JR #3	CHENANGO (8700)	80.0	AMOCO GAS CO
8424863	F-03-077816	4203900000		107-PE		R J KELLY COMMUNITY #1	CHENANGO (8700)	80.0	AMOCO GAS CO
-SUN-KEY OIL CO INC				RECEIVED:	03/16/84	JA: TX			
8424684	F-7B-073792	4214330791		102-4		MCDONALD M D IU	JAY-JAY 2050	1160.7	CHRISTIE GAS TRAN
-TACKETT PRODUCTION				RECEIVED:	03/16/84	JA: TX			
8424758	F-7B-075964	4204900000		[illegible]		GEER J R "A" #6	BROWN COUNTY REGULAR	25.0	EL PASO HYDROCARB
-TED TRUE INC				RECEIVED:	03/16/84	JA: TX			
8424760	F-10-075973	4234131092		103		BRENT 20-01	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
8424759	F-10-075972	4234131124		103		BRENT 20-04	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
8424704	F-10-074514	4234100000		103		BRENT 20-2	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
8424705	F-10-074515	4234100000		103		BRENT 20-3	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
8424706	F-10-074517	4234100000		103		BRENT 21-2	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
8424707	F-10-074518	4234100000		103		BRENT 21-3	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
8424708	F-10-07451	4234100000		103		BRENT 21-4	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
8424709	F-10-074525	4234100000		103		BROWN 22-5	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
-TEE OPERATING CO				RECEIVED:	03/16/84	JA: TX			
8424664	F-03-072988	4236130470		102-4		HEARD #1	PEYETO (9600)	0.0	DOW PIPELINE CO
8424719	F-03-074728	4236130471		102-4		MALONE #1	PEYETO (9600)	0.0	DOW PIPELINE CO
-TENNECO OIL COMPANY				RECEIVED:	03/16/84	JA: TX			
8424842	F-10-077450	4239330967		103		BRAINARD 2-177	HANSFORD (LOWER MORRO	350.0	TRANSWESTERN GAS
-TEXACO INC				RECEIVED:	03/16/84	JA: TX			
8424786	F-8A-076881	4221900000		103		BOB SLAUGHTER BLOCK #343	SLAUGHTER	0.0	AMOCO PRODUCTION
8424858	F-8A-077776	4221934139		103		BOB SLAUGHTER BLOCK #344	SLAUGHTER	1.8	AMOCO PRODUCTION
8424814	F-10-077187	4217931390		103		J E WILLIAMS #58	PANHANDLE GRAY COUNTY	1.8	COLTEXO CORP
8424850	F-8A-077615	4221934095		103		MONTGOMERY ESTATE DAVIES NCT-2 #108	LEVELLAND	13.1	AMOCO PRODUCTION
8424788	F-8A-076896	4221934094		[illegible]		MONTGOMERY ESTATE-DAVIES NCT-2 #113	LEVELLAND	18.3	AMOCO PRODUCTION
8424813	F-7C-077183	4210534673		103		STATE OF TEXAS "CQ" #5	WEGER NORTH	63.2	
8424859	F-08-077779	4243131401		103		STERLING "E" FEE #15	BIG SALUTE (LEONARD "	23.7	REATA INDUSTRIAL
8424715	F-08-074663	4243131375		103		STERLING "J" FEE #8	CONGER (PENN)	8.4	REATA INDUSTRIAL
8424756	F-08-075917	4243131370		103		STERLING "M" FEE #7	CONGER (PENN)	305.9	VALERO TRANSMISSI
8424851	F-08-077666	4243131419		102-4		STERLING "U" FEE #2	CONGER SW	51.5	REATA INDUSTRIAL
-THOMAS C CANAN				RECEIVED:	03/16/84	JA: TX			
8424841	F-7B-077423	4242933743		103		FAMBROUGH 35 #1 - RRC #20263	STEPHENS COUNTY REGUL	17.5	SOUTHWESTERN GAS
-THRIFTY ENERGY				RECEIVED:	03/16/84	JA: TX			
8424669	F-7B-07336	4204900000		103		LEO GEORGE "A" #2	BROWN COUNTY REGULAR	0.0	EL PASO HYDROCARB
-TRINITY RESOURCES INC				RECEIVED:	03/16/84	JA: TX			
8424785	F-02-076872	4220995700		102-4		DUGGER-FITCH 1-T	PALMETTO BEND W (B-5)	8.0	LONE STAR GAS CO
-TUCKER DRILLING COMPANY INC				RECEIVED:	03/16/84	JA: TX			
8424791	F-7C-076971	4223531947		102-2	103	MERTZ "11" #1	MERTZ (CANYON)	110.0	FARMLAND INDUSTRI
-TXO PRODUCTION CORP				RECEIVED:	03/16/84	JA: TX			
8424665	F-03-073228	4248132523		103		ALLENSON #9	LOUISE NORTH (4600' E	0.0	TENNESSEE GAS PIP
8424679	F-02-073680	4229700000		102-4		BARTLETT A-1	OAKVILLE	0.0	DELHI GAS PIPELIN
8424656	F-04-072151	4226130413		102-4		ERCK 6	MCGILL	0.0	CHANNEL INDUSTRIE
8424856	F-10-077762	4235731445		102-4		GRAMSTORFF #4	BOOKER N (MORROW UPPE	183.0	DELHI GAS PIPELIN
8424695	F-06-074147	4245930586		[illegible]	107-TF	HERRMANN #1	GILMER (BOSSIER SAND)	0.0	DELHI GAS PIPELIN
8424652	F-05-071570	4229330670		103	107-TF	JOBE #1	POKEY (COTTON VALLEY	0.0	DELHI GAS PIPELIN
8424779	F-08-07670	4237100000		103		MCDONALD "6" #2	PUTNAM (WICHITA - ALB	182.0	DELHI GAS PIPELIN
8424747	F-03-075681	4219931900		102-4		MCRAE "A" #5	ARRIOLA (YEGUA 9100)	0.0	
8424723	F-10-074901	4239330960		102-4		MORRISON "A" #2	UNDESIGNATED	1500.0	DIAMOND CHEMICALS
8424687	F-04-073868	4240931793		103		PERSON #3	WILLMANN (STILLWELL)	0.0	UNITED GAS PIPELI
8424661	F-02-072544	4223931882		[illegible]		POWERS G-2	MORALES (FRIO 8-1)	0.0	DELHI GAS PIPELIN
8424698	F-02-074233	4223931904		102-4		POWERS G-4	MORALES	0.0	DELHI GAS PIPELIN
8424697	F-02-074232	4223931902		102-4		POWERS G-5	MORALES	0.0	DELHI GAS PIPELIN
8424722	F-02-074808	4217500000		102-4		SWICKHEIMER A-1	TERRELL POINT	0.0	DELHI GAS PIPELIN
8424730	F-7B-075018	4241735447		102-4		WALKER-BUCKLER 79 #3	ROCKWELL (PALO PINTO)	30.0	DELHI GAS PIPELIN
8424763	F-7B-076072	4241735557		102-4		WALKER-BUCKLER 79 #4	ROCKWELL (PALO PINTO)	30.0	DELHI GAS PIPELIN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8424810	F-7B-077126	4241735568		102-4		WALKER-BUCKLER 79 86
8424655	F-7B-071982	4241735224		102-4		WINDHAM 82
8424798	F-7B-076917	4236732619		1W3		WOODY "B" 82
	-UNION OIL COMPANY OF CALIF			RECEIVED:	03/16/84	JA: TX
8424671	F-83-07346	4270830263		102-4		HIGH ISLAND 55L 82
	-UNION TEXAS PETROLEUM			RECEIVED:	03/16/84	JA: TX
8424867	F-82-077830	4228531751		102-4		O A LAMPLEY 83
8424868	F-7C-077853	4223532130		102-2	103	SUGG "6" 81
	-UTX EXPLORATION INC			RECEIVED:	03/16/84	JA: TX
8424768	F-82-076298	4202531986		102-4	103	KATHLEEN D ROCHE B 4-T
8424718	F-82-074725	4202531987		141		KATHLEEN D ROCHE C-1
	-VALWOOD PRODUCTION CO			RECEIVED:	03/16/84	JA: TX
8424633	F-83-056905	4205131864		102-2	103	GERALD ZERNIAL 81
	-W C S PETROLEUM INC			RECEIVED:	03/16/84	JA: TX
8424743	F-83-075499	4205132473		102-2		BLM UNIT 82
	-W J WHITT			RECEIVED:	03/16/84	JA: TX
8424638	F-7B-066836	4204933214		102-4		4-WB 81
8424639	F-7B-066837	4204933213		102-4		4-WB 83
8424640	F-7B-06683	4204933321		102-4		4-WB 84
	-W R EDWARDS JR			RECEIVED:	03/16/84	JA: TX
8424833	F-10-077295	4223300000		103		BARNHILL 8401
8424830	F-10-077293	4234100000		103		WITHERBEE 83
8424831	F-10-077292	4234100000		103		WITHERBEE 84
	-WARREN PETR CO A DIV OF GULF OIL CO			RECEIVED:	03/16/84	JA: TX
8424836	F-08-077319	4200333740		103		TRIPLE-M GRAYBURG CONS 8A-9-P
	-WCS PETROLEUM CO			RECEIVED:	03/16/84	JA: TX
8424771	F-83-076376	4214931626		102-2		LUCKY 13 UNIT 82
	-WHITLEY & YOCHAM OIL CO			RECEIVED:	03/16/84	JA: TX
8424632	F-7C-055556	4238331585		1W3		SCOTT 81
8424631	F-7C-055551	4238331990		103		SCOTT B-2A
	-WINCHESTER PRODUCTION CO			RECEIVED:	03/16/84	JA: TX
8424782	F-86-076831	4220331868		103	107-TF	JONESVILLE 87
	-WINN EXPLORATION/DULCE CO			RECEIVED:	03/16/84	JA: TX
8424830	F-81-077298	4250731173		102-4		JACKSON 83
8424667	F-81-073321	4250731827		102-4		PRYOR RANCH 8138
	-WOODS PETROLEUM CORPORATION			RECEIVED:	03/16/84	JA: TX
8424689	F-8A-073923	4207931738		102-4		RJR RANCH 8701
8424681	F-8A-073737	4207931709		102-4		ROBB 8901
8424696	F-8A-074191	4207931727		102-4		ROBB 8902
8424698	F-8A-073924	4207931714		102-4		WELLS 81
	-ZINN PETROLEUM CO			RECEIVED:	03/16/84	JA: TX
8424857	F-82-077753	4212300000		102-4		ZINGERLE 81

FIELD NAME	PROD	PURCHASER
ROCKWELL (PALO PINTO)	30.0	DELMI GAS PIPELIN
ROCKWELL E (CONGL)	35.0	DELMI GAS PIPELIN
DICEY (CONGLOMERATE)	250.0	TEXAS UTILITIES F
HIGH ISLAND BLOCK 55L	50.0	HIGH ISLAND PIPE
DRY HOLLOW (FRIO 'B')	0.0	HOUSTON PIPE LINE
ANDREW A (CANYON)	210.0	FARMLAND INDUSTRI
HEARD RANCH (4330) PR	550.0	TRUNKLINE GAS CO
HEARD RANCH (4750)	146.0	HOUSTON PIPE LINE
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
WHITT (CADDO MIDDLE)	24.0	EL PASO HYDROCARB
WHITT (CADDO MIDDLE)	31.0	EL PASO HYDROCARB
WHITT (CADDO MIDDLE)	20.0	EL PASO HYDROCARB
PANHANDLE HUTCHINSON	0.0	TRANS-PAN PIPELIN
PANHANDLE MOORE CO	0.0	DIAMOND CHEMICALS
PANHANDLE MOORE CO	0.0	DIAMOND CHEMICALS
TRIPLE-M (GRAYBURG)	0.0	PHILLPS PETROLEUM
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
JOHN SCOTT (GRAYBURG)	11.0	NEW ENERGY CO
JOHN SCOTT (GRAYBURG)	2.2	NEW ENERGY CO
MASKOM (COTTON VALLEY	0.0	TEXAS EASTERN TRA
JUDGE MILLS	0.0	NORTHERN NATURAL
WINN-DULCE (OLMOS LOW	0.0	BOS ARCOS CORP
BONANZA (SAN ANDRES)	13.0	WARREN PETROLEUM
BONANZA (SAN ANDRES)	30.0	WARREN PETROLEUM
BONANZA (SAN ANDRES)	18.0	WARREN PETROLEUM
BONANZA (SAN ANDRES)	13.0	WARREN PETROLEUM
ANNA BARRE (YEGUA 485	5.0	TEXAS EASTERN TRA

[FR Doc. 84-9429 Filed 4-6-84; 8:45 am]
BILLING CODE 6717-01-C

federal register

Monday
April 9, 1984

Part V

Department of Education

34 CFR Part 503

Bilingual Education; State Educational Agency Projects for Coordinating Technical Assistance; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 503

Bilingual Education; State Educational Agency Projects for Coordinating Technical Assistance

AGENCY: Office of Bilingual Education and Minority Languages Affairs, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to amend the existing regulations for the State Educational Agency Projects for Coordinating Technical Assistance. This program provides financial assistance through grants to State educational agencies (SEAs) to coordinate technical assistance provided by other agencies to elementary and secondary schools that are carrying out or proposing to carry out programs of bilingual education funded under the Bilingual Education Act in their States.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Luis Catarineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 421, Reporters Building), Washington, D.C. 20202. Telephone (202) 245–2922.

SUPPLEMENTARY INFORMATION: The State Educational Agency Projects for Coordinating Technical Assistance Program is authorized under section 721(b)(5) of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95–561), 20 U.S.C. 3221.3261.

Regulations for this program were published initially in the **Federal Register** on April 4, 1980 (45 FR 23219). The Secretary recently reviewed those regulations for regulatory burden reduction. Based on that review, the Secretary proposed revisions to the regulations on October 31, 1983 (48 FR 50122).

These final regulations clarify and revise the types of activities eligible for assistance. These regulations add to the list of eligible activities in §503.10 an activity that authorizes an SEA to provide non-degree training to increase the skills of SEA personnel in coordinating technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act. This training activity will enhance the capacity of SEAs to coordinate technical assistance provided by other agencies to improve programs of bilingual education funded under the Act.

These final regulations delete the activity proposed under § 503.10(d) of the current regulations because dissemination of information on State certification requirements for teachers of bilingual education is more properly a State function and does not constitute the type of coordination activity for which Federal funds are made available under the Act.

These regulations delete the provision in §503.10(h) of the current regulations because this activity has rarely been proposed for support in the past and is not considered critical to the successful implementation of this program.

These final regulations require an SEA to include in its application an assurance that the SEA will work cooperatively with, and coordinate with, the support centers, such as the Support Services Projects Centers and the Multifunctional Support Centers, serving the local educational agencies (LEAs) in the State under the Act. This assurance is needed to clarify the role and responsibility of the SEA in accepting assistance under this program.

The selection criteria used to award a grant are contained in § 503.31. These final regulations modify slightly the language of the selection criteria to make it more consistent with the language of the generally applicable selection criteria in 34 CFR Part 75 (Direct Grant Programs) of the Education Department General Administrative Regulations (EDGAR). In addition, these regulations revise the selection criterion on capacity building in §503.31(b) so that the evaluation made under this criterion will be made only on the extent to which the project will increase the capacity of the SEA to coordinate technical assistance provided by other agencies when assistance under the Act is reduced or no longer available.

In response to a number of public comments which demonstrated misunderstanding of the purpose of assistance under this program, these regulations add language to clarify that the SEA serves as a coordinator of technical assistance provided to programs of bilingual education by other agencies, rather than as a direct provider of technical assistance. These regulations also add language to clarify that the SEA program is aimed only at programs of bilingual education in elementary and secondary schools that are assisted under the Act, not at all activities and services assisted under the Act. Finally, these regulations add a new provision §503.30(a) to explain that an award to an SEA under this program is based on the need for the coordination of technical assistance to elementary and secondary programs of bilingual education assisted under the Act, subject to the maximum for the award established by the Act.

These regulations will govern the award of new grants in Fiscal Year 1984. Noncompeting continuation awards will be governed by regulations in effect for Fiscal Year 1983. The following are the comments received on the NPRM and the Secretary's responses:

Section 500.4 What definitions apply to these programs?

Comment. One commenter recommended that a definition of "coordination" be added to 34 CFR Part 500, the Bilingual Education General Provisions.

Response. No change has been made. However, the final regulations revise the descriptions of the activities permitted under this program to clarify that the SEA's role is to coordinate technical assistance provided by other agencies to elementary or secondary schools that are carrying out or proposing to carry out programs of bilingual education assisted under the Act within the State.

Comment. One commenter recommended that a definition of a "State Plan" for the provision of services to limited English proficient (LEP) children be added to 34 CFR Part 500, the Bilingual Education General Provisions.

Response. No change has been made. The purpose of the SEA program is not to provide services, but to coordinate technical assistance provided by other agencies. Also, the SEA program is aimed only at "programs of bilingual education" in elementary or secondary schools within the States that are assisted under the Act, not to all activities and services assisted under the Act.

Section 503.10 What activities are eligible for assistance?

Comment. One commenter stated that the activities permitted under § 503.10 allow only for the coordination of assistance to LEA projects and not to other bilingual programs funded under the Act. The commenter stated further that this is a change from the present regulations. The commenter

recommended that the activities remain unchanged to allow other than LEA projects to participate in the activities of the SEA projects.

Response. No substantive change has been made. Both the current regulations and the NPRM authorize an SEA to coordinate technical assistance to "programs of bilingual education"; the statute has similar language. The statute and the Title VII regulations further define a program of bilingual education as a program in elementary or secondary schools. To clarify the purpose of this program, the final regulations make explicit that an SEA may coordinate technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act. This includes coordinating technical assistance provided by other agencies to institutions of higher education (IHEs) carrying out or proposing to carry out a program of bilingual education jointly with one or more LEA(s), elementary and secondary schools operated or funded by the Bureau of Indian Affairs (BIA), and elementary and secondary schools operated predominantly for Indian children by non-profit organizations of an Indian Tribe.

Comment. One commenter stated that the proposed regulations focus the activities under this program on the needs of LEAs and ignore the needs of IHEs that provide training for personnel who are participating in or planning to participate in bilingual education programs. The commenter recommended that IHEs be a part of SEA activities.

Response. No change has been made. The final regulations do not specifically identify IHEs as direct recipients of coordination services. However, as noted in the preceding response, SEAs may coordinate the provision of technical assistance by other agencies to IHEs carrying out or proposing to carry out, jointly with one or more LEA(s), programs of bilingual education that are assisted under the Act in elementary or secondary schools within the State.

Comment. One commenter stated that elimination of data gathering activities from the allowable activities will effectively signal the Education Department's lack of interest in improving data collection efficiency. The commenter recommended that data gathering activities be retained.

Response. No change has been made. The final regulations eliminate this activity from the list of allowable activities because it was rarely proposed by the SEAs. The Education Department recognizes the importance of data gathering. Although it is not listed as an activity, data gathering may be proposed under paragraph (j) (performing other activities approved in advance by the Secretary that are designed to further the coordination of technical assistance).

Comment. One commenter stated that the review of grant applications and grantee performance of LEAs would exclude the review of projects not operated by LEAs. The commenter recommended that this activity be eliminated because it does not appear consistent with the SEA review procedures of 34 CFR 500.20 of the Bilingual Education General Provisions and it would increase the burden on SEAs.

Response. No substantive change has been made. The final regulations include this activity to allow the SEA to make on-site reviews of programs of bilingual education in elementary or secondary schools for the purpose of determining the need to coordinate technical assistance to these programs. These final regulations revise the description of this activity to clarify that an SEA is permitted to use funds made available under this program to review programs of bilingual education that are assisted under the Act in elementary or secondary schools within the State. This may include elementary or secondary schools that are not within an LEA, such as elementary or secondary schools operated or funded by the BIA.

Comment. One commenter stated that the activity of coordinating assistance to LEAs to select instruments includes only the selection of instruments to evaluate trainees at IHEs, rather than the selection of instruments for all projects served under the Act. The commenter recommended that previous language be retained.

Response. No substantive change has been made. However, the final regulations revise the description of this activity to clarify that SEAs may coordinate technical assistance provided by other agencies to elementary or secondary schools for the selection and use of instruments to measure the language proficiency of trainers in bilingual education programs at IHEs that are carrying out or proposing to carry out, jointly with one or more LEA(s), programs of bilingual education that are assisted under the Act. We note again that the SEA program is aimed only at "programs of bilingual education" in elementary or secondary schools that are assisted under the Act, not at all activities and services assisted under the Act.

Comment. One commenter recommended that the new provision for non-degree training for SEA personnel should be removed from the allowable activities unless additional funds for its implementation are made available.

Response. No change has been made. Participation in the SEA Projects program is voluntary; in addition, of the activities listed in § 503.10, no one particular activity is required. An SEA may select one or more of the activities listed, or propose a different activity under § 503.10(j), depending on the priorities of that SEA. If an SEA feels that training of staff is a priority, funds may be budgeted and a plan developed for that purpose. If the SEA does not wish to use funds from this program for staff training, the SEA simply does not select this activity.

Comment. One commenter recommended the addition of an eligible activity for "coordinating the provision of technical assistance to LEAs in cooperation with the support centers in accordance with the approved State Plan."

Response. No change has been made. We note again that the SEA Project program authorizes SEAs to coordinate technical assistance provided by other agencies, but does not authorize the actual provision of technical assistance or any other services. Therefore, any reference to the provision of services by SEAs is inappropriate under this program.

Comment. One commenter recommended the addition of an eligible activity for "Coordinating procedures to identify promising practices or exemplary approaches in funded projects which can document effectiveness."

Response. No change has been made. An SEA may propose this activity, as it relates to programs of bilingual education in elementary and secondary schools, under § 503.10(j).

Section 503.20 What are the requirements when applying for a grant?

Comment. One commenter stated that the assurance required by § 503.20(b) of the proposed regulations which requires, in part, the SEA to assure it will work cooperatively with and coordinate with support services centers serving the State under the Act, appears duplicative and unnecessary because this requirement is readily accepted and traditionally accomplished by the State. The commenter recommended that this requirement be deleted.

Response. No change has been made. An assurance that the SEA cooperate and coordina e with support services

centers serving the State under the Act is necessary to ensure that the activities authorized under this program increase the effectiveness of, and do not counteract, other programs funded under the Act designed to enable other agencies to provide technical assistance to elementary or secondary schools carrying out or proposing to carry out programs of bilingual education.

Comment. One commenter recommended that the assurance required by § 503.20(b) be changed to make the SEA responsible for the overall State plan of providing services to LEP students and for reviewing and commenting on the delivery of services plan of the support centers.

Response. No change has been made. We note again that the statute authorizes SEAs only to coordinate technical assistance provided by other agencies. To include an assurance that would allow the SEA to be responsible for providing services to LEP students would not be consistent with the statute. Although it is neither obligated nor authorized to review and comment on the service delivery plan of the support services centers serving LEAs of its State, an SEA participating in this program may, on its own initiative and with its own funds, conduct such a review and provide its comments both to the support services centers and to the Department.

Section 503.30 How are funds distributed to State educational agencies?

Comment. One commenter asked why § 503.30 of the regulations does not state how the Department will determine the amount of an individual award to an SEA under this program.

Response. A change has been made. The final regulations add a new paragraph to § 503.30 to explain that an award to an SEA under this program is based on the need for coordination of technical assistance to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act, subject to the maximum for such an award established by the Act.

Section 503.31 What selection criteria does the Secretary use?

Section 503.31(a) Impact.

Comment. One commenter recommended that the selection criteria should not include a determination of whether the SEA's project will increase the quantity of technical assistance because quantity does not necessarily increase quality and the SEA itself does not provide the technical assistance or control the budgets of those providers that do.

Response. A change has been made. The final regulations revise this section of the criteria to describe more fully and accurately the results that the Secretary intends SEA projects to achieve. The Secretary intends that SEA projects for the coordination of technical assistance (1) prevent duplication in the provision of technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act; (2) increase the effectiveness of technical assistance; (3) increase the cooperation between SEAs, in their role as coordinators, and other agencies that provide technical assistance; and (4) increase the quantity and quality of technical assistance. The Secretary intends that an SEA focus its coordination activities assisted with funds made available under the Act on the achievement of these four purposes.

Section 503.31(b) Capacity building.

Comment. One commenter stated that a major function of a Title VII grant is to increase the capacity of local school districts to provide a program of bilingual education when assistance under the Act is reduced or no longer available and that the proposed modification of the capacity building criterion will not allow for SEA oversight of this important function. The commenter recommended that present language be retained.

Response. No substantive change has been made. The final regulations, as did the proposed regulations, modify the capacity building criterion so that it focuses only on the SEA's own capacity to coordinate technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act. The Secretary believes that SEAs must build their own capacity to coordinate technical assistance. Although the capacity building criterion used to evaluate an SEA's project refers only to an SEA's capacity, § 503.10(d) allows an SEA to use grant funds to coordinate technical assistance to LEAs with programs of bilingual education assisted under the Act to develop the LEAs' capacity to provide a program of bilingual education.

Section 503.31(d) Plan of operation.

Comment. One commenter stated that the addition of the requirements for high quality in the plan of operation statements does not add to the quality of the design of the project but rather increases the time necessary to write a proposal. The commenter recommended that present language be retained.

Response. No change has been made. In determining whether an application is of sufficient quality to be selected for funding, the Secretary considers, in part, the quality of the design of the project. The Secretary believes that the quality of the design of the project is one of several accurate predictors of the probable future success of the project and should be included as a selection criterion.

Section 503.31(f) Personnel.

Comment. On commenter stated that the strongest element in the SEA project—the description of the project administration—was removed from the personnel criterion in favor of the description of qualifications. The commenter recommended retaining the present language.

Response. No change has been made. The final regulations strengthen this criterion by ensuring that an application is evaluated based on the minimum qualifications established by an applicant for the director of the project and other key personnel rather than on the resume(s) of a person(s) who may or may not be hired by the applicant.

Comment. One commenter recommended the addition of a new section establishing "a national plan for coordinating services delineating the role of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA)."

Response. No change has been made. The Act establishes the functions and responsibilities of OBEMLA. Within the statutory parameters, the Secretary has broad discretion to establish specific goals and policies for the administration and operation of the Act. These goals and policies may change from year to year. The Secretary believes that it would be unwise to establish these goals and policies in regulations.

Paperwork Reduction Act of 1980

The information collection requirements are approved under OMB Control Number 1885–0003 under the Paperwork Reduction Act of 1980. Expiration Date 10/85.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 28158, June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a

strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 503

Bilingual education, Education, Elementary and secondary education, Grant program—education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education Program)

Dated: April 4, 1984.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 503 of Title 34 of the Code of Federal Regulations to read as follows:

PART 503—BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROJECTS FOR COORDINATING TECHNICAL ASSISTANCE

Subpart A—General

Sec.

503.1 What general provisions apply to this program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

503.10 What activities are eligible for assistance?

Subpart C—How Does a State Educational Agency Apply for a Grant?

503.20 What are the requirements when applying for a grant?

Subpart D—How Does the Secretary Make a Grant?

503.30 How are funds distributed to State educational agencies?

503.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Grantee?

503.40 What requirements apply to all grantees?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561 (20 U.S.C. 3221–3261; 92 Stat. 2268–2284), unless otherwise noted.

Subpart A—General

§ 503.1 What general provisions apply to this program?

The general provisions of 34 CFR Part 500 apply to this program.

(20 U.S.C. 3231(b)(5))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 503.10 What activities are eligible for assistance?

Through the following activities, an SEA is authorized to coordinate technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out a program of bilingual education assisted under the Act:

(a) Coordinating assistance provided by other agencies to elementary and secondary schools within the State to improve the quality and adequacy of instruction and management of programs of bilingual education assisted under the Act.

(b) Coordinating the evaluation by other agencies of programs of bilingual education assisted under the Act in elementary and secondary schools within the State to determine their effectiveness.

(c) Coordinating the exchange of information among elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act and with elementary and secondary schools within the State that are carrying out or proposing to carry out State, local, and Federal programs that share similar purposes, goals, and approaches.

(d) Coordinating assistance provided by other agencies to elementary and secondary schools within the State in developing budget and funding strategies for continuing programs of bilingual education assisted under the Act when assistance under the Act is reduced or no longer available.

(e) Coordinating assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act to improve the assessment and use of curriculum materials developed under the Act.

(f) Reviewing grant applications and grantee performance of elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act to determine the need for coordination of technical assistance.

(g) Coordinating assistance provided by other agencies to elementary and secondary schools within the State in the selection and use of instruments in programs of bilingual education assisted under the Act to measure the language proficiency of—

(1) Children of limited English proficiency;

(2) Personnel employed in these programs; and

(3) Trainers in bilingual education training programs at institutions of higher education that have applied jointly with one or more LEA(s) to carry out a program of bilingual education assisted under the Act.

(h) Coordinating the development by other agencies of formal assessment procedures to determine the need for training elementary and secondary school personnel who are participating in, or preparing to participate in, programs of bilingual education assisted under the Act within the State and communicating the identified training needs to the support service centers serving the State under the Act, such as the Support Services Projects Centers and Multifunctional Support Centers serving the State.

(i) Providing non-degree training to increase the skills of State educational agency (SEA) personnel in carrying out their responsibilities with regard to coordinating technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act.

(j) Performing other activities approved in advance by the Secretary that are designed to farther the coordination of technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act.

(20 U.S.C. 3231(b)(5)(A))

Subpart C—How Does a State Educational Agency Apply for a Grant?

§ 503.20 What are the requirements when applying for a grant?

An SEA must include the following assurances in its application:

(a) An assurance that it will comply with "the supplement, not supplant" requirement in section 721(b)(5)(A) of the Act.

(b) An assurance that the SEA will work cooperatively with and coordinate with support services centers serving the State under the Act, such as the Support Services Projects Centers and Multifunctional Support Centers providing services to elementary and secondary schools within the State that

are carrying out or proposing to carry out programs of bilingual education assisted under the Act.

(20 U.S.C. 3231(b)(5)(A))

(Approved by the Office of Management and Budget under OMB control number 1885–0003, expiration date 10/85)

Subpart D—How Does the Secretary Make a Grant?

§ 503.30 How are funds distributed to State educational agencies?

(a) Section 721(b)(5)(B) of the Act limits the amount of funds that may be awarded to an SEA under this program to a maximum of five percent of the total amount paid to LEAs within the State under Part A of the Act during the fiscal year preceding the year for which assistance is sought. Within this limit, the actual amount of an award to an SEA is based on the need to coordinate technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act during the same fiscal year for which assistance is sought.

(b) The Secretary awards a grant to each SEA that applies if the SEA—

(1) Meets the applicable requirements in the Act and in these regulations; and

(2) Submits an application that achieves a score of at least 50 points under the selection criteria.

(c) The Secretary permits an SEA to modify and resubmit an application that has been disapproved under paragraph (b)(2) of this section.

(20 U.S.C. 3231(b)(5))

§ 503.31 What selection criteria does the Secretary use?

In reviewing an SEA application for assistance the Secretary uses the following criteria worth a total of 100 possible points:

(a) *Impact.* (25 points)

(1) The Secretary considers the extent to which the project will improve the coordination of technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act.

(2) In making this determination the Secretary considers the extent to which the project—

(i) Prevents duplication in the technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act;

(ii) Increases the effectiveness of technical assistance;

(iii) Increases the cooperation between SEAs, in their roles as coordinators, and other agencies that provide technical assistance; and

(iv) Increases the quality and quantity of technical assistance.

(b) *Capacity building.* (25 points)

The Secretary considers the extent to which the project activities will increase the capacity of the SEA to coordinate technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act when assistance under the Act is reduced or no longer available.

(c) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and will produce data that are quantifiable.

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) A clear description of the way the applicant plans to use its resources and personnel to achieve each objective.

(e) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications established for the position of the project director;

(ii) The qualifications established for each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section will commit to the project, and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) The Secretary also considers the quality of the applicant's plan to recruit and employ bilingual personnel for the project.

(4) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(20 U.S.C. 3231 (b)(3)(H), (b)(5))

(Approved by the Office of Management and Budget under OMB control number 1885–0003, expiration date 10/85)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 503.40 What requirements apply to all grantees?

(a) A grantee shall use funds made available under this Part to supplement and, to the extent practical, increase the level of funds that, in the absence of the grant, would be made available by the State for activities authorized under § 503.10 for the coordination of technical assistance provided by other agencies to elementary and secondary schools within the State that are carrying out or proposing to carry out programs of bilingual education assisted under the Act, and in no case to supplant those funds.

(b) A grantee shall employ bilingual personnel for the project, to the extent possible.

(20 U.S.C. 3231 (b)(3)(H), (b)(5))

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[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Motor Vehicle Pollution
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 225 and 226

Summer Food Service Program, Child Care Food Program; Nondiscrimination Based on Age

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is amending the Summer Food Service Program (SFSP) and the Child Care Food Program (CCFP) (7 CFR Parts 225 and 226) to incorporate *age* into both these regulations to comply with the Age Discrimination Act of 1975 (Pub. L. 94–135). This change is being made to update the civil rights assurance categories to add *age* to the other protected classes.

EFFECTIVE DATE: This rule takes effect April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley C. Garnett, Acting Branch Chief, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday, or call (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in cost or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Pursuant to that review, Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. Because this rule serves only to conform program regulations to the prohibition against discrimination on the basis of age in the Child Care Food Program and the Summer Food Service Program as already required by the Age Discrimination Act of 1975, good cause exists for publishing this amendment as a final rule without soliciting public comment. Furthermore, because this rule simply provides further public notice of the prohibition on age discrimination which already applies to these programs pursuant to Department-wide regulations, good cause exists for making this rule effective upon publication.

No new reporting and recordkeeping requirements have been included that are subject to approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

In November 1975, Congress enacted the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.). The purpose of this Act is to prohibit discrimination based on age in programs and activities receiving Federal financial assistance.

Furthermore, this Act contains several exceptions which limit the general prohibition against age discrimination. The exception that is of particular applicability to the Child Care and Summer Food Service Programs is for any program or activity which provides benefits or assistance to persons based upon the age of such persons or establishes criteria for participation in age-related terms. The objective of these Programs is to serve nutritious meals to needy *children*. Moreover, the public laws governing the Programs specifically limit eligibility based on age. As a result, the use of age as an eligibility factor in these Programs is allowable, since it falls within the "statutory objective" exception to the general prohibition against age discrimination in the Age Discrimination Act of 1975. However, the nondiscrimination requirement does apply to other aspects of the CCFP and SFSP.

The Department has made every effort to incorporate age as a protected class into program documents as they are updated. On December 7, 1979, the Department issued a notice (44 FR 70450) announcing that it was operating under the government-wide nondiscrimination regulations published by the Department of Health and Human Services, formerly the Department of Health, Education, and Welfare (45 CFR Part 90). The Food and Nutrition Service (FNS) has recently been advised that it must revise all civil rights assurances to promulgate program policy and provide guidance on discrimination in the administration of its programs. The FNS has updated policy on civil rights compliance and enforcement by issuing: (1) FNS Instruction 113–4 (December 16, 1982), which provides guidance on nondiscrimination in the administration of the CCFP, and (2) FNS Notice 83–70 (May 27, 1983), which provides guidance for the administration of the SFSP. In addition to updating these policies, all Program publications, guidance materials, and handbooks are being revised to include comprehensive nondiscrimination statements.

The Department is now amending the current SFSP and CCFP regulations by inserting the word "age" in the list of protected classes. Inserting "age" into both the Program regulations, does not constitute an "open" policy for participants of all ages to apply. These Programs by law restrict eligibility based on age with the intent of serving nutritious meals to needy *children*. Children is generally defined in the SFSP as 18 years of age and under, and in the CCFP as 12 years of age and under. Both Programs have age exceptions for the handicapped and the CCFP provides benefits to migrant worker's children 15 years of age and under.

Section 226.6(e)(1) is also being changed slightly to include reference to Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973. Although sex and handicap were previously added to

the list of protected classes in this section, the citations to the statutes were inadvertently omitted.

The Department is therefore amending the SFSP and the CCFP regulations to include age to the other protected classes as follows:

List of Subjects

7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 225 and 226 are amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

1. In § 225.9, the first sentence of paragraph (h)(1) is revised to read as follows:

§ 225.9 Program monitoring and assistance.

* * * * *

(h) *Nondiscrimination.* (1) Each State agency shall comply with all requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR Parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program. * * *

* * * * *

2. In § 225.21, the last sentence in paragraph (c) is amended by inserting the word "age" between the words "sex," and "or" and paragraph (b)(6) is revised to read as follows:

§ 225.21 Free meal policy.

* * * * *

(b) * * *

(6) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, age, or handicap.

* * * * *

PART 226—CHILD CARE FOOD PROGRAM

1. In § 226.6, paragraph (d)(2)(i)(B) is amended by inserting the word "age" between the words "sex," and "or" and the second sentence of paragraph (e)(1) is revised to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(e) * * *

(1) * * * The Program agreement shall provide that the institution shall accept final financial and administrative responsibility for management of an effective food service, comply with all requirements under this Part, and comply with all requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Department's regulations concerning nondiscrimination (7 CFR Parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

* * * * *

§ 226.23 [Amended]

2. In § 226.23, paragraph (b), (c)(5), and the last sentence in paragraph (d) are amended to add the word "age" between the words "sex," and "or".

Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.)

Dated: April 3, 1984.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 84-9033 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 447

Popcorn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new Part 447 in Chapter IV of Title 7 of the Code of Federal Regulations prescribing procedures for insuring popcorn. The intended effect of this rule is to be responsive to producers growing popcorn who have expressed a desire for crop insurance protection. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under that memorandum. The sunset review date established for these regulations is September 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

In the past, crop insurance has not been available to growers of corn for processing as popcorn. Such crop is exposed to similar hazards as other crops insured by FCIC. Following several meetings with both producers and processors, FCIC determined that such a program of crop insurance

protection was needed. On May 24, 1983, the Board of Directors of FCIC approved Docket No. CI–Pc–84–1, authorizing FCIC to develop a program of popcorn insurance initially in Illinois, Indiana, Iowa, and Nebraska, effective for the 1984 and succeeding crop years, with expansion based on insuring experience into additional states at a later date. The regulations contained in this rule are effective for the 1984 and succeeding crop years offering protection against crop damage or loss from adverse weather conditions, fire, insects, plant disease, wildlife, earthquake, or volcanic eruption.

On Wednesday, November 30, 1983, FCIC published a notice of proposed rulemaking to prescribe procedures for insuring popcorn. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the Popcorn Institute, Washington, D.C., representing firms which contract for and represent approximately 90 percent of all popcorn grown in the United States. The Institute, in expressing its support of the program, offered two suggestions which have been considered by FCIC. The Institute recommended that the price elections offered to the producer be neither an artificial stimulant or artificial depressant to the production of popcorn, and that the average market price of the preceding year is not a reliable guide. The representative processors should be polled, recommended the Institute, to determine the range of contract prices being offered and to base the price election for purposes of popcorn crop insurance on an average price set under these contracts. FCIC has determined that, for the 1984 crop year, the time has passed when such a review may be made but that this suggestion would be given consideration for the 1985 crop year, and that FCIC would work with the popcorn industry in establishing price elections. The second suggestion by the Institute was to extend the insurance period to November 15 of the crop year in which popcorn is normally harvested, instead of the proposed October 31, because of weather delayed harvests that, in some years, may extend into November. FCIC has determined to adopt this latter suggestion for the reasons offered, but to establish the insurance period ending on December 10 of the crop year in which the crop is normally harvested. The regulations published herein reflect this change in the insurance period.

List of Subjects in 7 CFR Part 447

Crop insurance, Popcorn.

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby issues a new Part 447 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 447 Popcorn Crop Insurance Regulations, effective for the 1984 and succeeding crop years, to read as follows:

PART 447—POPCORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1984 and Succeeding Crop Years

Sec.

447.1 Availability of popcorn insurance.
447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
447.3 OMB control numbers.
447.4 Creditors.
447.5 Good faith reliance on misrepresentations.
447.6 The contract.
447.7 The application and policy.
Appendix A—Counties Designated for Popcorn Crop Insurance

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1984 and Succeeding Crop Years

§ 447.1 Availability of popcorn insurance.

Insurance shall be offered under the provisions of this subpart on popcorn in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which popcorn insurance will be offered.

§ 447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for popcorn which will be included in the county actuarial table on file in applicable service offices and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 447.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 447) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 447.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, an involuntary transfer, or similar interest shall not entitle the holder of the interest to any benefit under the contract except as provided by the policy.

§ 447.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the popcorn insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured, or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believes to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000 finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured persons relied thereon in good faith and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 447.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance. The contract shall cover the popcorn as provided in the policy. The contract shall consist of the application, the policy, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the

contract are available at the service office.

§ 447.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the popcorn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) Popcorn contracts in effect for the 1984 crop year may be amended from year to year and are continuous unless terminated in accordance with their terms. A new application is not required by these regulations for subsequent crop years unless the policy is terminated.

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38; first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Popcorn Insurance Policy for the 1984 and succeeding crop years, are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Popcorn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake; or
(7) Volcanic eruption; unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(6).

b. We shall not insure against any loss of production due to:

(1) The neglect mismanagement or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good popcorn farming practices or the grower provisions of the popcorn contract;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project;

(4) Damage resulting from frost or freeze after the date designated by the actuarial table; or

(5) Any cause not specified in subsection 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured shall be popcorn which is planted for harvest, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be popcorn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured popcorn at the time of planting.

d. We do not insure any acreage:

(1) Of popcorn not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage.);

(2) Which is destroyed and we determine it is practical to replant to popcorn and such acreage is not replanted;

(3) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(5) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(6) Of volunteer popcorn;

(7) Planted to a type or variety of popcorn not established as adapted to the area or excluded by the actuarial table;

(8) Planted with a crop other than popcorn; or

(9) Planted for the development or production of hybrid seed or planted for experimental purposes.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good popcorn irrigation practice at time of planting; and

(2) Any loss of production caused by failure to carry out a good popcorn irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitations established under any Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a "lease" under which you retain possession of the land on which the popcorn is grown and which provides for delivery of the popcorn under certain conditions and at a stipulated price(s) shall, for the purpose of this contract, be treated as a contract under which you have the share in the popcorn.

3. Report of acreage, share, yield, and practice.

You shall report on our form:

a. All the acreage of popcorn planted in the county in which you have a share;

b. The practice;

c. Your share at the time of planting; and

d. The most recent year's production for the insurable acreage on each unit.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any popcorn planted in the county. This report shall be submitted annually before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverge levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election before the closing date for submitting applications for the crop year, as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the preimum rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	156	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the popcorn is planted and ends at the earliest of:

a. Total destruction of the popcorn;

b. Harvest;

c. Final adjustment of a loss; or

d. December 10 of the calendar year in which the popcorn is normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant popcorn damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted shall be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.);

(b) During the period before harvest, the popcorn on any unit is damaged and you decide not to further care for it or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the popcorn and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage has been replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice shall be given and a representative sample of the unharvested popcorn (at least 10 feet wide and the entire length of the field) shall be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the popcorn on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the popcorn on which a replanting payment will be claimed until we give consent.

c. You must be given written consent by us before you destroy any of the popcorn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the popcorn on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of the popcorn on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of popcorn to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium than the actual premium determined by us, the indemnity shall be reduced proportionately.

e. The indemnity shall be reduced by the amount of any replanting payment.

f. The total production to be counted for a unit shall include all harvested and appraised production.

(1) Mature popcorn production:

(a) Which otherwise is not eligible for quality adjustment shall be reduced .12 percent for each .1 percentage point of moisture in excess of 15.0 percent; or

(b) Which, due to insurable causes, is not of merchantable popcorn quality and is rejected by the processor, shall be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

(2) Any production from yellow or white dent corn shall be counted as popcorn on a weight basis.

(3) Appraised production to be counted shall include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good popcorn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraisal production on unharvested acreage.

(4) Any appraisal we have made on insured acreage and given written consent to be put to another use shall be considered as production unless such acreage:

(a) Is not put to another use before harvest of popcorn becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(5) We may determine the amount of production of any unharvested popcorn on the basis of field appraisals conducted after the end of the insurance period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the popcorn is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI–78 "Request to Exclude Hail and Fire".

(7) The commingled production of units shall be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured popcorn replanted after we have given consent and the acreage replanted is at least the lessor of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but shall not exceed 150 pounds multiplied by the price election, the product of which is multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment shall be reduced proportionately.

Any replanting payment shall be considered as an indemnity.

h. You shall not abandon any acreage to us.

i. You cannot bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We shall pay the loss within 30 days after we reach agreement with you or entry or a final judgment. In no event shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the crop is planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire from the policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due to us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and access to farm.

You shall keep, for two years after the time of loss, records of the harvest, storage, shipment, sale, or other disposition of all of the popcorn produced on each unit including separate records showing the same information for production for any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided for in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice to the other on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date for the policy on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign the claim; or

(2) If deducted from payment under another program administered by United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. However, if such event occurs after insurance attaches, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table shall provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of popcorn crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage and related information regarding popcorn insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

(c) "Crop year" means the period within which the popcorn is normally grown and shall be designated by the calendar year in which the popcorn is normally harvested.

(d) "Harvest" means the completion of removing the grain from the stalk either by hand or machine.

(e) "Insurable acreage" means the land classified as insurable by us and shown as such in the actuarial table.

(f) "Insured" means the person who submitted the application accepted by us.

(g) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, political subdivision of a State, or any agency thereof.

(h) "Replant" means performing the cultural practices necessary to replant insured acreage to popcorn.

(i) "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

(j) "Tenant" means a person who rents land from another person for a share of the popcorn or a share of the proceeds therefrom.

(k) "Unit" means all insurable acreage of popcorn in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the popcorn on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. We shall determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy shall be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with appeal regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Appendix A.—Counties Designated for Popcorn Crop Insurance

The following counties are designated for Popcorn Crop Insurance under the provisions of 7 CFR 447.1.

Illinois	
Lee	Saline
Mason	
Indiana	
Huntington	Washington
LaGrange	White
Iowa	
Fremont	Sac
Monona	
Nebraska	
Chase	Dawson
Clay	Holt
Ohio	
Fairfield	Van Wert
Madison	

Done in Washington, D.C., on February 15, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

Dated: April 2, 1984.

[FR Doc. 84-9462 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Parts 925 and 944

[California Desert Grape Reg. 4; Table Grape Import Reg. #2]

Grapes Grown in a Designated Area of Southeastern California, and Table Grapes Imported into the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes minimum requirements for shipments of table grapes grown in southeastern California, and for such table grapes imported into the United States, except for the Emperor, Calmeria, Almeria, and Ribier varieties which are not grown in the production area in southeastern California. Such grapes are required to meet the minimum grade and size requirements for U.S. No. 1 Table Grade, as defined in the United States Standards for Grades of Table Grapes (European or Vinifera Type), and minimum maturity standards as defined in the California Administrative Code. For table grapes grown in southeastern California additional requirements are effective, including container and pack, container marking, and packing holidays. These actions are needed to assure the shipment of ample supplies of table grapes of acceptable quality and to promote orderly marketing in the interests of producers and consumers.

DATES: California Desert Grape Regulation 4 is effective April 23, 1984, through August 5, 1984; Table Grape Import Regulation 2 is effective May 1, 1984, through August 5, 1984. The Director of the **Federal Register** approves the incorporation by reference of certain publications in 7 CFR 925.303 and 944.502 during the specified periods.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The California Desert Grape Administrative Committee met March 23 and 26, 1984, and unanimously recommended grade, size, maturity, container, pack, and other requirements for 1984 season table grapes grown in southeastern California, to be effective for the period April 23–August 5, 1984. The committee has projected that shipments of grapes regulated under the Federal marketing order will begin on or about April 23, 1984, and that the California desert grape regulation should become effective by that date. This season's very early maturity of the grape crop is attributable to the mild weather last winter and the very warm temperatures in March of this year which resulted in advanced development of the crop. Establishment of an effective date later in the season could result in shipment of immature or otherwise substandard grapes early in the season and thereby negate the

objective of orderly marketing of the crop.

California Desert Grape Regulation 4 requires shipments of table grapes grown in the production area in southeastern California to meet the minimum grade and size requirements of U.S. No. 1 Table Grade as specified in the United States Standards for Grades of Table Grapes (European or Vinifera Type). In addition, such grapes will also be required to meet the minimum maturity requirements for table grapes as specified in the California Administrative Code. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties are excepted from regulation as they are not grown in the production area. The regulation also establishes certain container and pack requirements as well as container marking requirements in order to standardize packing practices. Experimental containers approved by the committee may also be used. A minimum of 22 pounds of grapes must be packed in each of the authorized containers, except for certain packs and experimental containers. Containers must bear the minimum net weight of the grapes in the container, the name of the grape variety, the name of the shipper, and the lot stamp inspection number on the outside of the container. Such requirements are designed to facilitate identification of shipments and promote orderly marketing of these grapes. Packing holidays on Saturdays and Sundays and certain holidays during the regulation period are also established and are designed to prevent an accumulation of excessive supplies of table grapes at distribution points during periods of reduced demand or market inactivity. The regulation exempts "organically-grown" table grapes from the minimum individual berry size requirement. Also, table grapes for processing are exempt from regulation if certain conditions and safeguards are met. The California desert grape regulation is issued under the marketing agreement and Order No. 925 (7 CFR Part 925), regulating the handling of table grapes grown in a designated area of southeastern California. This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Table Grape Import regulation 2 requires imports of table grapes to meet the same minimum grade, size, and maturity requirements as specified in California Desert Grape Regulation 4. The effective period of the import regulation shall be May 1, 1984, through August 5, 1984. Establishment of a beginning date for the import regulation later than the beginning date for the domestic regulation recognizes the additional time required for transportation of grapes from grape-exporting countries to the United States. Under the circumstances, it is concluded that the May 1, 1984, effective date provides adequate notice of grade, size, and maturity restrictions applicable to imported grapes. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties are exempt from import requirements as they are not regulated under the California desert grape regulation. The table grape import regulation is issued under Section 8e (7 U.S.C. 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 8e requires that when specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The Secretary finds that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the California table grape regulation at an open meeting at which the committee, without opposition, recommended regulations applicable to California desert grapes to become effective April 23, 1984. California table grape handlers have been apprised of these requirements and the effective date. The import requirements for table grapes are mandatory under § 8e of the Act and adequate notice is provided. It is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Marketing agreement and orders, Grapes, California, Incorporation by reference.

7 CFR Part 944

Fruits, Import regulations, Grapes, Incorporation by reference.

PART 925—[AMENDED]

Therefore, new §§ 925.303 and 944.502 are added to read as follows: (§§ 925.303 and 944.502 expire August 5, 1984, and will not be published in the annual Code of Federal Regulations).

§ 925.303 California Desert Grape Regulation 4.

During the period April 23, 1984, through August 5, 1984, no person shall handle any variety of grapes, except Emperor, Calmeria, Almeria, and Ribier varieties unless such grapes meet the following requirements: *Provided,* That no person shall pact any such grapes on any Saturday or Sunday, or on May 28 or July 4, 1984, unless approved in accordance with paragraph (e).

(a) *Grade, size, and maturity.* Such grapes shall meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

(b) *Container and Pack.* (1) Such grapes shall be packed in one of the following containers, which are new and clean, and which otherwise meet the requirements of sections 1380.19(14), 1436.37, and 1436.38 of the California Administrative Code (Title 3);

(i) Sawdust pack with inside dimensions of 7¾ x 14 15/16 x 18⅝ inches, specified as container 28;

(ii) Polystyrene lug with inside dimensions of 6¾ x 12½ x 15⅜ inches, specified as container 38J;

(iii) Standard grape lug with dimensions in inches of 4½ to 8½ (inside) x 13½ to 14½ (outside) x 16⅝ to 17½ (outside); specified as container 38K;

(iv) Polystyrene lug with inside dimensions of 6¼ or 8¼ x 11½ x 18⅛ inches, specified as containers 38Q;

(v) Grape lug with dimensions in inches of 4 to 7 inches (inside) x 15¾ outside) x 19 1/16 outside), specified as containers 38R;

(vi) Such other types and sizes of containers as may be approved by the committee for experimental or research purposes.

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing materials, and experimental containers, shall be 22 pounds based on the average net weight of grapes in a representative sample of containers.

(3) Such containers of grapes shall be plainly marked with the minimum net weight of grapes contained therein (with numbers and letters at least one-fourth inch in height), the name of the variety of the grapes and the name of the shipper.

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by a 3 box pallet configuration.

(c) *Organically grown grapes.* Organically grown grapes (defined to mean grapes which have been grown for market as natural grapes by performing all the normal cultural practices, but not using any inorganic fertilizers or agricultural chemicals including insecticides, herbicides, and growth regulators, except sulfur) need not meet the minimum individual berry size requirements of this section if the following conditions and safeguards are met: (1) the handler of such grapes has registered and certified with the committee on a date specified by the committee the location of the vineyard, the acreage and variety of grapes, and such other information as may be needed by the committee to carry out these provisions; (2) each container of organically grown grapes bears the words "organically grown" on one outside end of the container in plain letters in addition to requirements specified under paragraph (b)(3) of this section.

(d) *By-product grapes.* The handling of grapes for processing (raisins, crushing and other by-products) is exempt from requirements specified in paragraphs (a), (b), and (c) if the committee determines that the person handling such grapes has secured the appropriate permit or order from the County Agricultural Commissioner, and the by-product plant or packing plant to which the grapes are shipped has adequate facilities for commercial processing, grading, packing or manufacturing of by-products for resale.

(e) *Suspension of packing holidays.* Upon approval of the committee, the prohibition against packing grapes on any Saturday or Sunday, or on May 28 or July 4, 1984, may be modified or suspended to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the committee.

(f) Certain maturity, container, and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3), and are incorporated by reference. Copies of such requirements are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, N.W. Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register.

PART 944—[AMENDED]

§ 944.502 Table Grape Import Regulation 2.

(a) Applicability to imports: (1) Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period May 1, 1984, through August 5, 1984, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code of California (Title 3).

(2) Such minimum maturity standards are incorporated by reference, copies of which are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of table grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 4, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-9386 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Part 298

[Reg. ER-1378; Econ. Regs. Amend. No. 27 to Part 298]

Exemptions for Air Taxi Operations; Interpretive Amendment

AGENCY: Civil Aeronautics Board.

ACTION: Interpretative amendment.

SUMMARY: The CAB is revising its rules for air taxi operators and dual authority air carriers to conform to the recent comprehensive final rule on domestic baggage liability. This rule is adopted on the Board's initiative.

DATES: Adopted: April 4, 1984. Effective: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: Section 298.30. *Public disclosure of policy on consumer protection,* requires every air taxi to conspicuously post a counter sign that states the air taxi's policy on

baggage liability and denied boarding compensation. Since air taxis may have differing policies, each air taxi is free to write its own statement.

The Board recently completed its comprehensive rulemaking on domestic baggage liability. On December 23, 1983, the Board adopted a final rule (ER–1374, 49 FR 5064, February 10, 1984) that will be codified as 14 CFR Part 254. ER–1374 applies to all flight segments using large aircraft (60 or more passenger seats) or to any flight segment that is included on the same ticket as another flight segment that uses large aircraft. The rule provides that on such flights, air carriers shall not limit their liability for the disappearance of, damage to, or delay in delivery of, a passenger's personal property, including baggage, in its custody to less than $1250 per passenger. In addition, Part 254 requires air carriers to provide written notice to passengers on or with their tickets concerning their baggage liability limitations. Carriers have the choice of either providing notice of their monetary limitation or using the Board-mandated notice.

In ER–1374, the Board noted that it would have to consider the application of the rule to small aircraft operations in a separate proceeding. Part 254 is applicable only to flights on small aircraft that are included on the same ticket as a flight on a large aircraft. Therefore, carriers operating small aircraft may have different liability limitations for passengers on the same plane depending on the passengers' itineraries and how the tickets are written. This rule conforms the notice and applicability requirements of Part 298, *Exemptions for Air Taxi Operations*, to the general rule set forth in Part 254.

This rule revises § 298.30 by redesignating the present requirement as paragraph (a) and adding paragraphs (b) and (c). This amendment makes no change in the requirement that air taxis state their policy on baggage liability and denied boarding compensation. If an air taxi has two liability limitations, it should provide notice to passengers on its counter signs of that fact. Paragraph (b) cross references the requirement that air carriers provide written notice to passengers on or with their tickets as provided in 14 CFR 254.5. Such ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft. Paragraph (c) states that if the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the ticket notice govern.

The Board orders governing domestic baggage liability, which will be in effect until April 10, 1984, are directly applicable to only certificated air carriers. Because dual authority carriers have many of the characteristics of certificated carriers in their air taxi operations, the Board up until now has held them to the standards required for certificated air carriers for all of their operations. From a practical standpoint, this has meant that such air taxi operators could not limit their liability for lost, damaged or delayed baggage below $750 per person.

Under the new Part 254, the applicability of the minimum baggage liability limitations is based on aircraft size and how the passenger's ticket is written. This interpretative amendment conforms the baggage liability rules for air taxi operations by certificated carriers to the applicability section of Part 254. A dual authority carrier shall not, in the future, limit its liability below $1250 per passenger for a passenger whose ticket includes a flight segment that uses large aircraft. If a dual authority carrier chooses to provide the Board-mandated coverage for all of its passengers, however, it is free to do so.

Because this is an interpretative amendment, the Board finds that notice and comment on this change is unnecessary. In addition, the Board finds that the public interest requires that this interpretive amendment should be effective on less than 30 days' notice. The comprehensive final rule on domestic baggage liability will be effective on April 10, 1984. This amendment, which merely conforms the air taxi rules to the requirements of Part 254, must be effective as close to that date as possible in order to prevent unnecessary confusion within the industry and among passengers.

Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, the Board certifies that none of these changes will have a significant economic impact on a substantial number of small entities. This rule merely conforms the notice requirements for air taxis with the comprehensive rule on domestic baggage liability, and clarifies the applicability of Part 254 to dual authority carriers. A further discussion of the domestic baggage rule and its relation to the Regulatory Flexibility Act may be found at 49 FR 5067, February 10, 1984.

List of Subjects in 14 CFR Part 298

Air carriers, Postal Service, Reporting and recordkeeping requirements.

McConnell, Vice Chairman, concurring: I concur that this interpretative amendment supports the baggage liability standards enacted by the Board in December. However, the amendment demonstrates why I believe that government rules concerning baggage liability should be minimized.

In those rules another category of air carrier, air taxis, will be subject to requirements increasing their consumer notices at their ticket counter. The expanded notices could easily lead to confusion. Many passengers will receive two notices: one at the ticket counter and one on their ticket. Only those passengers who (1) read both notices, (2) recognize the difference, and (3) know this rule will realize that the fine print on the ticket actually applies to any lost or damaged bags.

I agree that passengers should be given notice of their rights and the terms of carriage. But conflicting notices serve only to confuse and are symptomatic of too much regulation.

Barbara E. McConnell.

PART 298—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 298, *Exemptions for Air Taxi Operations*, as follows:

1. The authority for Part 298 is:

Authority: Secs. 101(3), 204, 401, 404, 407, 416, 418, and 419, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 760, 766, 771 91 Stat. 1284, 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

2. Section 298.30 is amended by designating the previous text as paragraph (a) and by adding paragraphs (b) and (c) to read:

§ 298.30 Public disclosure of policy on consumer protection.

(a) Every air taxi shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States that is in charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by it to sell tickets to passengers, a sign located so as to be clearly visible and readable to the traveling public, containing a statement setting forth the air taxi's policy on baggage liability and denied boarding compensation.

(b) An air taxi shall provide a written notice on or with a passenger's ticket concerning baggage liability as provided in § 254.5 of this Chapter. These ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft (more than 60 seats).

(c) If the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the required ticket notice govern.

3. Section 298.95 is revised to read:

§ 298.95 Baggage liability.

The rules for baggage liability are set forth in Part 254 of this chapter. Certificated air carriers that operate under this part shall provide the notices set forth in §§ 298.30 and 254.5 of this chapter.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-8537 Filed 4-9-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 40124-07]

Amendments to the Commodity Control List

Correction

In FR Doc. 84-8438 beginning on page 12678 in the issue of Friday, March 30, 1984, make the following correction.

On page 12681, third column, first line from the top, in the heading for 1564A "Economic" should read "Electronic".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9156]

Cliffdale Associates, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Order.

SUMMARY: This order requires a Westport, Conn. firm and two individuals engaged in the advertising, sale and distribution of an automobile retrofit device variously known as the Ball-Matic, the Ball-Matic Valve, the Ball-Matic Gas Saver Valve, and the Gas Save Valve, among other things, to cease representing that the device is a unique or new product; and that it is needed on every vehicle except Volkswagens, diesels and fuel-injected vehicles. The company is barred from making fuel economy improvement claims for the device unless it can reasonably support those claims with competent and reliable substantiation. The order further prohibits the firm from representing that a consumer endorsement is a typical experience of a user of the product; using any endorsement unless they have good reason to believe that the endorser subscribes to the facts and opinions set forth in that endorsement; and failing to disclose any material relationship existing between the endorser and respondents. Additionally, the company may not make any unsubstantiated energy savings claims for any product or misrepresent the results of any test or survey.

DATES: Complaint issued July 7, 1981. Order issued March 23, 1984.*

FOR FURTHER INFORMATION CONTACT: FTC/PA, William Haynes, Washington, D.C. 20580. (202) 376-8720.

SUPPLEMENTARY INFORMATION: In the Matter of Cliffdale Associates, Inc., a corporation; Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc.; and Arthur N. Sussman, an individual. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: §13.42 Connection of others with goods; § 13.110 Endorsements, approval and testimonials; § 13.170 Qualities or properties of product or service; 13.170-34 Economizing or saving; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests; § 13.255 Surveys; § 13.280 Unique nature or advantages. Subpart—Claiming or Using Endorsements or Testimonials Falsely or Misleadingly: § 13.330 Claiming or using endorsements or testimonials falsely or misleadingly; 13.330-94 Users, in general. Subpart—Corrective Actions and/or Requirements: §13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: §13.1685 Endorsements; §13.1710 Qualities or properties; §13.1730 Results; §13.1740 Scientific or other relevant facts; §13.1770 Unique nature or advantages. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: §13.1863 Limitations of product; § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Automobile retrofit devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Order, including further order requiring report of compliance therewith, is as follows:

Before the Federal Trade Commission

[Docket No. 9156]

Order

In the Matter of Cliffdale Associates, Inc., a corporation; Jean-Claude Koven individually and as an officer of Cliffdale Associates, Inc., Arthur N. Sussman, an individual.

Part I

It is ordered that respondents Cliffdale Associates, Inc., a corporation, its successors and assigns, Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc., and Arthur N. Sussman, an individual, and respondents agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other devise, in connection with the advertising, offering for sale, sale or distribution of the automobile retrofit device variously known as the Ball-Matic, the Ball-Matic Valve, the Ball-Matic Gas Saver Valve and the Gas Save Valve, or any other automobile retrofit device (as "automobile retrofit device" is defined in Section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011) having substantially similar properties, in or affecting commerce as "commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

a. Representing, directly or by implication, that such device is a unique product or new invention; and

b. Representing, directly or by implication, that such device is needed on every vehicle except Volkswagens, diesel vehicles and fuel injection vehicles.

Part II

It is further ordered that respondents Cliffdale Associates, Inc., a corporation, its successors and assigns, and its officers, and Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc., and Arthur N. Sussman, an individual, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any automobile gasoline additive, engine oil additive, or automobile retrofit device (as

* Copies of the Complaint, Initial Decision, Opinion of the Commission, and the Order are filed with the original documents.

"automobile retrofit device" is defined in section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011), in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such device will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle unless, and only to the extent, respondents possess and rely upon a reasonable basis which substantiates such representation at the time of its initial and each subsequent dissemination. This reasonable basis shall consist of competent and reliable tests, such as:

a. Chassis dynamometer tests done according to procedures that simulate typical urban and highway driving patterns, such as the then current urban and highway driving test schedules established by the Environmental Protection Agency; or

b. Track or road tests done according to procedures that simulate urban and highway driving patterns, such as the then current procedures established in the Society of Automobile Engineers' J1082b test protocol.

A competent and reliable test means one in which persons qualified to do so conduct the test and evaluate its results in an objective manner using procedures that insure accurate and reliable results.

Respondents shall, when using the results of any tests required by this Part, clearly and conspicuously disclose the limitations upon the applicability of the results to any automobile, truck, recreational vehicle, or other motor vehicle. Where the results of such tests are used in connection with a representation of fuel economy improvement expressed in miles per gallon (or liter), miles per tankful, or percentage, or where the representation of the benefit is expressed as a monetary saving in dollars or percentages, all advertising and other sales promotional materials that contain the representation must also clearly and conspicuously disclose the following disclaimer: "Reminder: Your actual saving may vary. It depends on the kind of driving you do, how you drive and the condition of your car."

Part III

It is further ordered that respondents Cliffdale Associates, Inc., a corporation, its successors and assigns, and its officers, Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc., and Arthur N. Sussman, an individual, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any product or service in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

a. Using, publishing, or referring to any endorsement unless respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained;

b. Failing to disclose a material connection, where one exists, between an endorser of any product or service and any of the respondents. A "material connection" shall mean, for purpose of this order, any relationship between an endorser of any product or service and any individual or other entity marketing such product or service which relationship might materially affect the weight or credibility of the endorsement and which relationship would not reasonably be expected by consumers.

c. Representing, directly or by implication, any energy savings or energy consumption characteristics of any product, other than any gasoline additive, engine oil additive, or automobile retrofit device (as "automobile retrofit device" is defined in the Automobile Information and Cost Savings Act, 15 U.S.C. 20.11), unless, at the time of making the representation, respondents possess and reasonably rely upon competent and reliable evidence that substantiates such representation;

d. Representing, directly or by implication, that any consumer endorsement of a product or service represents the typical or ordinary experience of members of the public who use the product unless this is the case;

e. Misrepresenting, in any manner, the purpose, procedure, results, or conclusion of any test or survey pertaining to the energy saving or energy consumption characteristics of any product.

Part IV

It is further ordered that respondents Cliffdale Associates, Inc., a corporation, its successors and assigns, and its officers, and Jean-Claude Koven, individually and as an officer of Cliffdale Associates, Inc., and Arthur N. Sussman, an individual, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any fuel saving product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain accurately the following records which may be inspected by Commission staff members upon fifteen (15) days' notice: copies of and dissemination schedules for all advertisements, sales promotional materials, and post-purchase materials; documents relating to the use of or publication of endorsements; records of the number of pieces of direct mail advertising sent in each direct mail advertisement dissemination; documents which substantiate, contradict, or otherwise relate to any claim which is a part of the advertising, sales promotional materials, or post/purchase materials disseminated by respondents directly or through any business entity. Such documentation shall be retained by respondents for a period of three (3) years from the last date any such advertising, sale promotional materials, or post-purchase material is disseminated.

Part V

It is further ordered that the corporate respondent shall forthwith distribute a copy of this order to all operating divisions of said corporation, and to all present and future personnel, agents, or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this order and that the corporate respondent shall secure from each such person a signed statement acknowledging receipt of the order.

Part VI

It is further ordered that the corporate respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

Part VII

It is further ordered that the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with each new business or employment for a period of ten years from the effective date of this order. Each such

notice shall include the respondents' new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondsent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

Part VIII

It is further ordered that the respondents shall, within sixty (60) days after service upon them of this order, and also one (1) year thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

It is so ordered.

By the Commission. Commissioners Pertschuk and Bailey concurred in part and dissented in part.

Issued: March 23, 1984.

Emily H. Rock,

Secretary.

Commissioner Pertschuk, Concurring in Part and Dissenting in Part

I concur in the majority's findings that respondents violated Section 5. However, I disagree entirely with the legal analysis in the majority opinion and I dissent from the denial of complaint counsel's appeal on the issue of the order's record retention requirements.

Respondents' misrepresentations in this case were unambiguous and undoubtedly material. To put it simply, respondents grossly exaggerated the sole performance feature of their product, the Ball-Matic Gas Save Valve. Normally, there would be little more to say. However, this is the first deception case the Commission has decided since the announcement of the dubious Policy Statement on Deception of October 14, 1983. Since the validity of the bare majority vote on the Statement is open to question, apparently the new majority feels compelled to establish the Statement's legitimacy now by jumping this case through the hoops of its analytical framework for deception cases, regardless of how unhelpful that exercise may be.

Under the guise of making the law more "clear and understandable," the majority has actually raised the evidentiary threshold for deception cases. In this unusually simple case, the majority's approach does not affect the outcome. One has little difficulty in concluding that consumers reasonably relied on respondents' claims and suffered significant monetary loss as a direct result. However, in other cases the harm from the majority's legal analysis will be palpable and painful.

The majority opinion acknowledges that the Commission need not find actual deception to conclude that Section 5 has been violated. Furthermore, it admits that the courts have traditionally and recently recognized this fact by requiring the Commission to find only that an act or practice has the "tendency or capacity" to mislead consumers. So far, so good. However, three commissioners have found it necessary to improve on language long understood by the courts and previous commissioners, by substituting the word "likely" for "tendency or capacity." "Likely to mislead," they insist, expresses more clearly the notion that actual deception need *not* be found!

The avowed intentions of the majority are admirable, but the *results* of their effort to "fix" an unbroken legal standard are not. Their choice of language is unfortunate, because the word "likely" suggests that some particular degree of likelihood of actual deception must be found. Therefore, it may create the impression, intentionally or not, that the burden of proof is higher than it has always been under the traditional "tendency or capacity" standard.

The new deception analysis has a more serious effect that is clearly not unintentional. That is to withdraw the protection of Section 5 from consumers who do not act "reasonably."

There is, of course, no support in the caselaw or academic literature for the proposition that deception cannot occur unless reasonable consumers are misled. In a few deceptive advertising cases in which the Commission has determined that Section 5 was violated, it has premised its determination on a finding that consumers could "reasonably" interpret the advertiser's claims in a certain way.[1] Such findings do not mean that consumers must be "reasonable" in order to enjoy the protection of Section 5, just as findings that the "clear import" [2] of an advertisement was false do not mean that ads violate Section 5 only if they "clearly" express a falsity. A finding that consumers could reasonably be misled is a sufficient, but not necessary, way to establish deception.[3] neither the Commission nor the courts have ever before mandated this method of analysis.

One recent Commission opinion suggests that the Commission must judge ads according to their impression on "reasonable members of the public." [4] However, the correct interpretation of that statement is that the Commission cannot, when an ad is directed to the general public, hold the advertiser to an outlandish interpretation.[5]

In other opinions relied on by the majority, the Commission has stated that its interpretation of ad claims must

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[1] *E.g., American Home Products Corp.*, 98 F.T.C. 136, 367, 371–72, 386 *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982); *Bristol-Myers Co.*, —— F.T.C. ——, slip op. at 7, 11 (Docket No. 9017, July 5, 1983), *appeal filed*, No. 83–4167 (2d Cir., Sept. 12, 1983).

[2] *E.g., American Home Products*, 98 F.T.C. at 367. Similarly, a finding that a company intended to create a certain impression among consumers (*Id.* at 368), does not imply that the Commission must find intentional misconduct to rule that Section 5 has been violated.

[3] The *American Home Products* case illustrates several ways in which the Commission can reach the conclusion that an advertiser's claims are deceptive. In finding that the company falsely claimed that Anacin contains a pain reliever other than aspirin, the Commission concluded that this was the "clear import" of some ads. *Id.* at 367. As to other ads, it concluded that consumers would "reasonably have understood" such a claim to have been made. *Id.* at 367, 371–72. A third analysis was applied in finding that claims for tension relief had been made. That conclusion was based in large part on expert testimony and a copy test of one advertisement showing that 22% of viewers identified that claim as having been made. *Id.* at 393–94. (The Commission's analysis of tension relief claims was similar in *Bristol-Myers*, slip op. at 44–55.)

[4] *Bristol-Myers*, slip op. at 4–5 ("[T]he Commission may not inject novel meanings into ads and then strike them down as unsupported; ads must be judged by the impression they make on reasonable members of the public.")

[5] This statement of the law is supported by the cases cited in *Bristol-Myers* as authority for the language quoted in note 4. The first case cited is *Ward Laboratories, Inc.* v. *FTC*, 276 F.2d 952, 954 (2d Cir.), *cert. denied*, 364 U.S. 827 (1960). There the court upheld the Commission's decision to protect "the average male, of which there are millions, who because of masculine vanity will grasp at any straw [to] save his hair . . . ." The court went on to declare that advertisements should be judged by their effect on "the average member of the public who more likely will be influenced by the impression gleaned from a quick glance at the most legible words." *Id.* The second case cited is *International Parts Corp.* v. *FTC*, 133 F.2d 863, 866 (7th Cir. 1943), in which the court vacated the Commission's order forbidding the company from claiming that the finish on its mufflers permanently prevented rust or corrosion. The court concluded that the company had not claimed that its finish prevented rust permanently, finding that the common meaning of the word "prevents" carries no connotation of permanency. The law of this case is that a company "will be presumed to have used [a] word in its ordinary and commonly accepted understanding, in the absence of any showing to the contrary." The other cited case is *Kirchner*, 63 F.T.C. 1282, 1290 (1963), *aff'd*, 337 F.2d 751 (9th Cir. 1964), which provides that the Commission will not interpret an ad as it would be unreasonably misunderstood by only an "insignificant and unrepresentative" segment of consumers.

be "reasonable." [6] Such cases simply convey the Commission's recognition that the *Commission* must act reasonably (*i.e.*, not in an arbitrary or capricious fashion), in determining, in light of the evidence before it, whether an ad could mislead a substantial number of consumers.[7] In none of those cases did the Commission speak of "reasonable consumers."

In this particular case, there is no real dispute as to the meaning of respondents' representations about their product. Further, it is clear that consumers would be "reasonable" in accepting the scientific-sounding, plausible-seeming explanations or respondents as to how (and how well) the product performed. However, this is an easy case, and the majority opinion offers no guidance as to how more difficult matters will be decided.

How will the Commission judge the conduct of consumers who succumb to sales pitches for worthless or grossly over-valued investments? Do "reasonable consumers" buy diamonds or real estate, sight unseen, from total strangers? Is a consumer "acting reasonably" when he or she falls for a hard-sell telephone solicitation to buy "valuable" oil or gas leases from an unknown corporation? Can a consumer "reasonably" rely on oral promises that are expressely repudiated in a written sales contract?

The sad fact is that a small segment of our society makes its livelihood preying upon consumers who are very trusting and unsophisticated. Others specialize in weakening the defenses of especially vulnerable, but normally cautious, consumers. Through skillful exploitation of such common desires as the wish to get rich quick or to provide some measure of security for one's old age, professional con men can prompt conduct that many of their victims will readily admit—in hindsight—is patently unreasonable.

Of course, what strikes me as "unreasonable" consumer behavior may not seem so to other commissioners. The very subjective nature of the "reasonable consumer" standard is cause for concern. How can consumer conduct be measured for reasonableness? I know of no test for it, and I am fearful of the *ad hoc* determinations that will be made in the future.

Consumers are much better protected by the traditional test for deception, which requires only that a substantial number of consumers could be misled.[8] This standard does not put the Commission in the position of passing judgment on the credulity, impetuousness, or inattentiveness of the victims of alleged misconduct. Furthermore, the traditional standard allows the Commission to recognize that sellers frequently design their promotional efforts to appeal to specific groups of consumers, even when their conduct is ostensibly directed to the public at large. In such cases, the Commission need only find that a substantial number of consumers in the target group could be misled,[9] considering the sophistication of the persons in that group,[10] their mental state,[11] and their mental capabilities.[12] Thus, a fraudulent scheme may yield relatively few victims in absolute numbers but nevertheless satisfy the legal standard for deception, because the pool of potential buyers is small. The caselaw has made it clear that Section 5 protects unthinking and credulous consumers as well as those who act "reasonably" in all their commercial transactions.[13]

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[6] *Sears, Roebuck and Co.*, 95 F.T.C. 406, 511 (1980), *aff'd*, 676 R. 2d 385 (9th Cir. 1982) (Commission overturned the administrative law judge's interpretation of some ads, noting the rule that ads must be "reasonably subject to some interpretation that is false" in order for deception to be found); *Pfizer, Inc.*, 81 F.T.C. 23, 59 (1972) (Commission affirmed the law judge's dismissal of the complaint because alleged implied representations could not "reasonably be found" in the ads). *See also, National Dynamics Corp.*, 82 F.T.C. 488, 548 (1973), *aff'd as modified*, 492 F.2d 1333 (2d Dir.), *cert. denied*, 419 U.S. 993 (1974) (Commission overturned the administrative law judge's holding that an implied representation that the advertiser had substantiation for its claims could not reasonably be found).

[7] The Commission explained this obligation in *The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982) (citations omitted): It is settled that the Commission has sufficient expertise to determine an advertisement's meaning—express and implied—without necessarily resorting to evidence of consumer perceptions. This is not to say that an advertisement is susceptible to every reading that it may technically support, no matter how tenuous it might be; rather, the interpretation must be reasonable in light of the claims made in the advertisement, taken as a whole. In many cases, the Commission has refused to accept particular interpretations urged by complaint council because the advertisements themselves did not imply them and no extrinsic evidence had been offered to prove their apprehension by some reasonably significant number of consumers.

[8] *Statement of Basis and Purpose for the Funeral Industry Practices Rule*, 47 FR 42260, 42274 (1982) ("A statement is deceptive under Section 5 of the FTC Act if it actually misleads consumers, or has the tendency or capacity to deceive a substantial segment of the purchasing public in some material respect."); *The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982) ("In many cases, the Commission has refused to accept particular interpretations urged by complaint counsel because the advertisements themselves did not imply them and no extrinsic evidence had been offered to prove their apprehension by some reasonably significant number of consumers."); *Raymond Lee Organization, Inc.*, 92 F.T.C. 489, 649 (1978), *aff'd*, 679 F.2d 905 (D.C. Cir. 1980) (Section 5 is violated if "substantial numbers of the public are likely to make purchasing decisions based on false beliefs"); *Bristol-Myers Co.*, 85 F.T.C. 688, 744 (1975) ("we agree that a substantial number of consumers surveyed (probably somewhere between 14 percent and 33 percent) understood Dry Ban to be 'dry'"); *Statement of Basis and Purpose for the Cigarette Rule*, 29 FR 8325, 8350 (1964) ("[T]he test of unlawful deception under Section 5 is whether the advertisement in question is likely to deceive a substantial segment of the purchasing public, or of that part of the purchasing public to whom the representation is directed. . . ."); *see also, Firestone Tire & Rubber Co.* v. *FTC*, 481 F.2d 246, 249 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973); *Travel King, Inc.*, 86 F.T.C. 715, 759–60 (1975) (initial decision); *Benrus Watch Co., Inc.* v. *FTC*, 352 F.2d 313, 319–20 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966).

[9] *Statement of Basis and Purpose for the Cigarette Rule* (see quotation *supra* note 8); *Kirchner*, 63 F.T.C. 1282, 1290 (1963), *aff'd*, 337 F.2d 751 (9th Cir. 1964) ("If . . . advertising is aimed at a specially susceptible group of people (*e.g.*, children), its truthfulness must be measured by the impact it will make on them, not others to whom it is not primarily directed."); *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 383 note 37 (1977) (dictum) ("The determination whether an advertisement [for legal services] is misleading requires consideration of the legal sophistication of its audience.")

[10] *Horizon Corp.*, 97 F.T.C. 464, 610 note 13 (1981); *Raymond Lee Organization, Inc.*, 92 F.T.C. 489, 628 (1978), *aff'd* 679 F.2d 905 (D.C. Cir. 1980); *Tashof*, 74 F.T.C. 1361, 1401 (1968), *aff'd*, 437 F.2d 707 (D.C. Cir. 1970).

[11] *Travel King, Inc.*, 86 F.T.C. 715, 757, 759–60 (1975) (initial decision); *Porter & Dietsch, Inc.*, 90 F.T.C. 770, 865 (1977), *aff'd as modified*, 605 F.2d 294 (7th Cir. 1979), *cert. denied*, 445 U.S. 950 (1980); *Stauffer Laboratories, Inc.* v. *FTC*, 343 F.2d 75, 83 (9th Cir. 1965); *Ward Laboratories Inc.* v. *FTC*, 276 F.2d 952, 954 (2d Cir.) *cert. denied*, 364 U.S. 827 (1960); *Savitch*, 50 F.T.C. 828, 834 (1954), *aff'd*, 218 F.2d 817 (2d Cir. 1955).

[12] *Cigarette Statement, supra* note 8, 29 FR at 8358; *Ideal Toy Co.*, 64 F.T.C. 297, 310 (1964) (initial decision) ("False, misleading and deceptive advertising claims beamed at children tend to exploit unfairly a consumer group unqualified by age or experience to anticipate or appreciate the possibility that representations may be exaggerated or untrue."); *ITT Continental Baking Co.*, 83 F.T.C. 865 (1973), *modified*, 83 F.T.C. 1105 (1973), *aff'd*, 532 F.2d 207 (2d Cir. 1976); *Avalon Indus., Inc.*, 83 F.T.C. 1728, 1750 (1974); *Stupell Originals Inc.*, 67 F.T.C. 173, 186–87 (1965); Notice of Proposed Trade Regulation Rulemaking and Public Hearing on Children's Advertising, 43 FR 17967, 17969 (1978).

[13] *FTC* v. *Standard Education Society*, 302 U.S. 112, 116 (1937) ("Laws are made to protect the trusting as well as the suspicious."); *Doherty, Clifford, Steers & Shenfield, Inc.* v. *FTC*, 392 F.2d 921, 926 (6th Cir. 1968) ("the Commission is bound to protect the public in general, the unsuspecting as well as the skeptical"); *Aronberg* v. *FTC*, 132 F.2d 165, 167 (7th Cir. 1942) ("The law is not made for experts but to protect the public—that vast multitude which includes the ignorant, the unthinking, and the credulous. . . ."); *Feil* v. *FTC*, 285 F.2d 879, 887 (9th Cir. 1960); *Gold Bullion International, Ltd.*, 92 F.T.C. 196, 221 (1978), *modified*, 92 F.T.C. 867 (1978); *Niresk Indus., Inc.* v. *FTC*, 278 F.2d 337, 342 (7th Cir.), *cert. denied*, 364 U.S. 883 (1960) ("[T]he Commission's determination is not restricted to a consideration of what impression an expert or careful reader would draw from the advertisements."); *Indep. Directory Corp.* v. *FTC*, 188 F.2d 468, 470 (2d Cir. 1951) ("It was reasonably to be expected that a busy businessman might . . . [be misled]. Such a misconception is more probable in the case of the careless businessman who is also entitled to protection from deception.")

The third element of deception is materiality. As the Supreme Court has explained, Section 5 prohibits the misrepresentation of "any fact which would constitute a material factor in a purchaser's decision whether to buy.[14] Heretofore, any fact that is important to consumers has been considered material, regardless of whether consumer choices would actually turn on that fact. As the Commission has previously said, "[t]he fact that consumers were not harmed because they would have purchased the product anyway * * * is not relevant." [15] The Commission has not required a showing of reliance or injury to establish deception.[16]

The majority opinion in this case, however, suggests somewhat ambiguously that a misrepresentation is not material unless it is "likely to affect" consumers' conduct and "[c]onsumers thus are likely to suffer injury." [17] Similarly, the October 14, 1983, Policy Statement on Deception states: "a finding of materiality is also a finding that injury is likely to exist * * *. Injury exists if consumers would have chosen differently but for the deception." [18]

Respondents here misrepresented the sole performance feature of their product, and it is reasonable to assume in this case that their misrepresentations caused consumers to buy the product and suffer monetary loss. However, this is an unusually simple case. What if this case had concerned misrepresentations about a product with many important performance and design features, such as an automobile? If respondents had, for example, made a false fuel efficiency claim for an automobile, would complaint counsel have been required to show that that particular claim would have "tipped the scales" for consumers in their weighing of the many features of automobiles that are important to them? Such a requirement of proof would be exceedingly difficult, if not impossible, to meet in that and many other cases. Indeed, it could effectively preclude the Commission from challenging misrepresentations about complex products.

If the majority commissioners intend to require proof of actual or likely reliance on the misrepresentations of respondents in future cases, they have changed the meaning of materiality and made it more difficult to establish violations of Section 5. In any event, they have certainly not made the standard for deception more clear and understandable.

Finally, although I support the order adopted by the majority, I would not limit the recordkeeping requirements of Part IV to the promotion of fuel saving products. Part III of the order governs the use of endorsements for any product as well as any representations concerning "energy savings or energy consumption characteristics of any product." If this part of the order is justified, and I believe it is, then respondents should be required to maintain records that evidence compliance with it.

Issued: March 23, 1984.

Commissioner Patricia P. Bailey Concurring in the Result in Part and Dissenting in Part

March 23, 1984.

The issues pertaining to liability in this case are not complicated. Indeed, the application of established law to the facts in *Cliffdale* can lead to only one conclusion: These respondents have violated Section 5 of the Federal Trade Commission Act in a number of ways, as set forth in this opinion, in their marketing of the Ball-Matic Gas Save Valve. Thus, I concur fully in the findings of liability. However, I must disassociate myself from the confusing and wholly unorthodox reformulation of the traditional test for finding deception, which has been announced in this opinion as the relevant legal standard.[1] Additionally, I dissent from the Commission's failure to adopt a more expensive order provision concerning the retention of business records.

Legal Standard for Deception

This is an uncomplicated case involving a number of advertising claims, which are clearly false and deceptive, that could have been addressed with swift and sure justice under existing law. Unfortunately, a majority of the Commission has chosen to use the case as a vehicle to set forth a new legal standard which has little to do with the case and much to do with an ill-advised undertaking to rewrite the law of deception.

Applying a shorthand variant of the oft-repeated standard for deception, Administrative Law Judge Miles J. Brown concluded in the Initial Decision that "any representation that has a tendency or capacity to mislead or deceive a prospective purchaser is an unfair or deceptive practice which violates the Federal Trade Commission Act." [2] The Commission's opinion dismisses this articulation as being "circular and therefore inadequate to provide guidance on how a deceptive claim should be analyzed." [3] In its place is substituted a new formulation, promoted as "a clear and understandable standard", which states that the Commission will find deception where "first, there is a representation, omission, or practice that is likely to mislead, second, consumers acting reasonably under the circumstances, and third, the representation, omission or practice is material." [4]

Notwithstanding assertions to the contrary, none of these three elements, as defined in the opinion, (or for that matter in the appended Policy Statement) correctly states the factors expressly relied upon in prior Commission cases and by reviewing courts to determine whether a deceptive representation or practice has occurred. Rather, a complete and accurate statement of the elements of deception has typically and traditionally included the three-part formula that an act or practice have the tendency or capacity to mislead a substantial number of consumers in a material way.[5] While the two statements may at first glance seem semantically similar, the fact is that this reformulation departs from current law in several significant respects, all of which have the potential to heighten the Commission's evidentiary burden considerably and thereby limit the time-honored reach of its deception authority. For this reason, I dissent from the legal

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[14] *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 386 (1965).

[15] *Firestone Tire & Rubber Co.*, 81 F.T.C. 398, 451 (1972), *aff'd.*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973).

[16] *Id. See also, Simeon Management Corp.*, 87 F.T.C. 1184, 1229 (1976), *aff'd*, 579 F.2d 1137 (9th Cir. 1978); *Travel King, Inc.*, 86 F.T.C. 715, 774 (1975).

[17] Slip op. at 9.

[18] Deception Statement at 18.

[1] In May 1983, the Committee on Energy and Commerce of the U.S. House of Representatives asked the Federal Trade Commission to prepare and submit "an analysis of the law of its deception jurisdiction as presently applied by the Commission and interpreted in case law." In response to that request, on October 21, 1983, Chairman Miller forwarded the appended "Policy Statement on Deception" to the Honorable John D. Dingell, Chairman of the Committee. I dissented from the issuance of that statement. This case represents the first public pronouncement that the principles set forth in that policy statement are intended to be not just current agency enforcement policy, but also the legal standard for future Commission deception cases.

[2] ID 35, citing *Chrysler Corp.* v. *FTC*, 561 F.2d 357, 363 (D.C. Cir. 1977); *Charles of the Ritz Distrib. Corp.* v. *FTC*, 143 F.2d 676, 679–80 (2d Cir. 1944).

[3] Slip op. at 7.

[4] *Id.*

[5] An early version of this standard appeared in a 1919 Commission decision. *See Iron Clad Tire*, 1 F.T.C. 380, 385 (1919). The standard was affirmed by the Seventh Circuit the same year. *See Sears, Roebuck & Co. v. FTC*, 258 F. 307, 311 (7th Cir. 1919). Application of the tendency or capacity standard has continued regularly up to the present. *See American Home Products Corp. v. FTC*, 695 F.2d 681, 686–87 (3d Cir. 1982).

standard employed in the opinion and believe it is important to examine each of these new elements separately.

The majority's first criterion for deception is that there be a claim, omission or practice that is "likely to mislead" consumers. It is true that the courts have occasionally used this or similar phrasing, such as "the likelihood or propensity" of deception, interchangeably with tendency or capacity.[6] I certainly do not object to and indeed am sympathetic with such usage where the primary goal appears to be to avoid the repetitious use of standard phraseology in the discussion of well-grounded legal prinicples. Here, however, the majority makes unmistakable its intent to *exchange* the phrase tendency or capacity for the term likely, with only the brief explanation that it is meant to convey an understanding that "actual" deception need not be shown. As that was never in doubt, it does not explain the use of the term likely generally, and it certainly does not make clear how its use will be more instructive in assessing deception.

Unfortunately, neither the opinion nor the appended Policy Statement offers additional explanation for this stated preference, leaving us all to guess as to any real or intended distinction from the "tendency or capacity" analysis. A standard Webster's definition of likely, "having a high probability of occurring or being true", suggests, however, that the purposeful substitution of this term for tendency or capacity may well be intended to raise, or may be construed so as to raise, the burden of proof the Commission must meet in demonstrating that deception has occurred. A careful reading of the opinion and the Policy Statement lends support to this inference; recurring references are made to the need for extrinsic evidence of consumer interpretations in many instances where it is not presently required, suggesting a need for the Commission to establish a higher level of probability that deception may have occurred in any particular instance.

Although the Commission has often admitted and relied in the past upon evidence about the effect of an act or practice on consumers, such a showing has not been required by reviewing courts, which have regularly affirmed that such matters are committed to the discretion of the FTC.[7] Thus, use of the term "likely" here may be fairly perceived to be at least a partial retreat from the Commission's traditional position that it may on the basis of its own expertise determine what representations a seller has made to the public.

The second requirement is that an act or practice be likely to mislead consumers "acting reasonably under the circumstances." Of the three newly introduced elements, I believe this is on its face the most divorced from prior precedent and also the most likely to produce troubling results.

While the precise wording has varied a bit from decision to decision, the concept underlying the existing analytical construction has remained constant: a claim or practice must deceive a "substantial number" of consumers in order to trigger a finding of deception.[8] Importantly, this standard affords protection to consumers and business merchants alike. Thus, it is well recognized that, if a claim is directed at a particular audience, the test is whether it could deceive a significant portion of that group.[9] At the same time, while it is clear that a practice need not mislead all or even a majority of consumers, the Commission will not base findings of law violations on the idiosyncratic interpretations or the unreasonable misunderstandings of an insignificant and unrepresentative segment of a seller's audience.[10]

The substantial numbers test is not intended to lead to the strict quantification of the number of consumers who have been misled by a claim or practice and has, therefore, never required the introduction of external evidence concerning such numbers. Rather the concept provides the Commission with a flexible sliding scale upon which it can typically infer whether or not a significant number of consumers could be deceived from its own examination of the conduct at hand and surrounding circumstances,[11] often based on general information concerning the size and composition of a specific target audience.[12] Even when extrinsic evidence is available, the Commission does not rely exclusively on such documentation in reaching its decision.[13]

Despite the forty-odd-year application by the Commission and the courts of a substantial numbers formula, the opinion injects this alternative precept and unknown quantity, the "reasonable consumer," into the law of deception. Again, there is little helpful explanation as to why.

While the opinion states that the concept of a "consumer acting reasonably in the circumstances" is not new, and the Policy Statement includes citations to recent Commission cases which employ the term "reasonable", reliance on prior FTC decisions for that proposition is misplaced. For example, in several recent deceptive advertising cases, the Commission has based a finding of liability under Section 5 on its determination that consumers could "reasonably interpret" the advertiser's

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[6] *See, e.g., Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976); *Montgomery Ward & Co. v. FTC*, 379 F.2d 666, 670 (7th Cir. 1967); *Feil v. FTC*, 285 F.2d 879, 898, 899 (9th Cir. 1960).

[7] *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 391–92 (1965) ("Nor was it necessary for the Commission to conduct a survey of the viewing public before it could determine that the commercials had a tendency to mislead."). *See also American Home Products Corp. v. FTC*, 695 F.2d 681, 687–88 & n.10 (3d Cir. 1982); *Resort Car Rental System, Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir.), *cert. denied sub nom. MacKenzie v. United States*, 423 U.S. 827 (1975) (Commission could have reached conclusions regarding deceptive nature of ads without consumer witnesses "whose testimony merely supported the inferences which can logically be drawn by scrutinizing the advertising alone"); *J. B. Williams Co. v. FTC*, 381 F.2d 884, 890 (6th Cir. 1967) (the Commission need not "take a random sample to determine the meaning and impact of the advertisements"); *Carter Products, Inc. v. FTC*, 323 F.3d 523, 528 (5th Cir. 1963); *Exposition Press, Inc. v. FTC*, 295 F.2d 869, 872 (2d Cir. 1961), *cert. denied*, 370 U.S. 917 (1962) ("Actual consumer testimony is in fact not needed to support an inference of deceptiveness by the Commission."); *Zenith Radio Corp. v. FTC*, 143 F.2d 29, 31 (7th Cir. 1944) ("The Cmmission was not required to sample public opinion to determine what the petitioner was representing to the public."); *The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982); *National Dynamics Corp.*, 82 F.T.C. 488, 548 (1973), *aff'd*, 492 F.2d 1333 (2d Cir.), *cert. denied*, 419 U.S. 993 (1974).

[8] This element of the deception test has been variously described as requiring: a "substantial segment," *see Statement of Basis and Purpose for the Funeral Industry Practices Rule*, 47 Fed. Reg. 42,260, 42,274 (1982); *Statement of Basis and Purpose for the Cigarette Rule*, 29 Fed. Reg. 8325, 8350 (1964); a "substantial percentage," *see Benrus Watch Co., Inc.* v. *FTC*, 352 F. 2d 313, 319–20 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966); "substantial numbers," *see Raymond Lee Organization, Inc.*, 92 F.T.C. 489, 649 (1978), *aff'd*, 679 F.2d 905 (D.C. Cir 1980); *Bristol-Myers Co.*, 85 F.T.C. 688, 744 (1975); *Travel King, Inc.*, 86 F.T.C. 715, 759 (1975); or "some reasonably significant number," *see The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982).

[9] *Cigarette Statement*, *supra* note 8, 29 Fed. Reg. at 8350. *See Heinz W. Kirchner*, 63 F.T.C. 1282, 1290 (1963), *aff'd*, 337 F.2d 751 (9th Cir. 1964). *See also Bates* v. *State Bar of Arizona*, 433 U.S. 350, 383 n.37 (1977).

[10] *Heinz W. Kirchner*, 63 F.T.C. 1282 (1963), *aff'd*, 377 F.2d 751 (9th Cir. 1964). *See also The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982).

[11] *See, e.g., The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982).

[12] *See, e.g., Travel King, Inc.*, 86 F.T.C. 715, 759–60 (1975) ("Many thousands of ill persons for all over the world" constituted "substantial numbers" in finding deception where both physical harm (from the interruption or proper medical care and the rigors of international travel) and substantial loss of time and money resulted from trip to the Philippines for "psychic surgery.")

[13] *See, e.g., American Home Products Corp.*, 98 F.T.C. 136, 393–94 (1981), *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982); *Bristol-Myers Co.*,—F.T.C.—, slip op. at 44–45 (Docket No. 8917, July 5, 1983), *appeal filed*, No. 83–4167 (2d Cir., Sept. 12, 1983).

claims in a particular fashion.[14] While this language describes one approach among many available to the Commission in the exercise of its authority to determine whether or not a representation is deceptive, it by no means established a legal requirement that consumers act reasonably or that the Commission must examine consumer behavior in those cases in which it was used, nor was it intended to circumscribe, much less preclude, the continued use of other long-accepted methods for finding deception in Commission cases generally.[15] I believe other citations to recent Commission matters are equally inapposite.[16]

The consequences of this hastily constructed house of cards, devoid as it is of any support in Commission precedent, accompanying explanation, or meaningful application in this particular case, may be far reaching. Practically speaking, one obvious result may be to complicate and delay Commission trial proceedings. If the reasonableness of consumer interpretations become a litigable issue—and there is every reason to believe that future respondents' counsel will assure that it will be under the new standard—survey evidence or expert testimony regarding consumer attitudes and actions may be mandated in even the simplest Commission cases.[17] The introduction of such evidence will, in turn, raise difficult questions about related evidentiary issues, such as whether new discovery and cross-examination rights concerning survey methodology and results have been created.[18] It does not take a seer to predict that the real beneficiaries of these procedural complications and the ensuing delay will be FTC respondents and their counsel, and not the Commission or the public.

Another unfortunate but foreseeable consequence of the introduction of a reasonable consumer standard is to cast the courts adrift in their efforts to understand and apply to Commission cases what is clearly a departure from prior law. What, for example, are the elements of a reasonable consumer test? Without more, the courts may logically turn for guidance to certain common law principles, such as the standard of "ordinary prudence or care" attributable to the hypothetical "reasonable man" in tort law.[19] Although principles such as these are useful tools to establish objective standards for judging individual conduct which may result in physical or emotional harm to others, comparable concepts have no place in the examination of *consumer* behavior in the marketplace, as the Commission has made clear in the past.[20] Thus, while the Commission has indicated that it will not subject sellers to every interpretation made by an "insubstantial and unrepresentative segment" of the seller's audience, it has at the same time faithfully adhered to the enduring proposition that consumers are entitled to take commercial representations at face value and need not mistrust them.[21] I believe the imposition of a "reasonable consumer" test as an element of the legal standard for deception may seriously jeopardize this guiding principle of deception law, which has permitted and encouraged the Commission to spread its protective mantle over the uninformed and credulous,[22] those with understandable but often unreasonable hopes,[23] those with limited reasoning abilities, such as children,[24] and even "average" consumers whose guard may be down or who may behave somewhat carelessly in the face of deceptive conduct.[25]

Although the Policy Statement promises to continue the traditional protections afforded such groups, a reasonable consumer standard, like the rejected doctrine of caveat emptor, is analytically unsuited for such purposes. By definition the term reasonable means "possessing sound judgment." Thus, while the Commission may logically continue to consider "reasonable consumer interpretations"-in instances where it may be one acceptable

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[14] *See, e.g., American Home Products Corp.*, 98 F.T.C. 136, 367, 371–72, 388 (1981), *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982); *Bristol-Myers*, — F.T.C. —, slip op. at 7, 11 (Docket No. 8917, July 5, 1983), *appeal filed*, No. 83–4167 (2d Cir., Sept. 12, 1983).

[15] For a description of several different approaches used by the Commission to determine whether an advertiser's claims have a tendency to deceive, see *American Home Products Corp.*, 98 F.T.C. 136, 367, 371–72, 383–94 (1981), *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982).

[16] For example, in *National Dynamics Corp.*, 82 F.T.C. 488, 548 (1973), *aff'd as modified*, 492 F.2d 1333 (2d Cir.), *cert. denied*, 419 U.S. 993 (1974), the use of the term "reasonable" refers to the requirement that the *Commission* act in a reasonable (as opposed to arbitrary or capricious) way in determining that consumers could be misled by a claim or practice. For a general explanation of this obligation, see *The Kroger Co.*, 98 F.T.C. 639, 728 (1981), *modified*, 100 F.T.C. 573 (1982).

[17] Even in the instant matter, a particularly uncomplicated Commission case, the majority specifically notes that, while it is able to "interpret the claims as a reasonable consumer would have", evidence as to how consumers actually interpreted respondents' ads "would have been helpful." Slip op. at 12.

[18] *See* Pitofsky, *Beyond Nader: Consumer Protection and the Regulation of Advertising*, 90 Harv. L. Rev. 661, 679 (1977).

[19] *See, e.g.*, Restatement (Second) of Torts sections 281–328D (1965).

[20] *Exposition Press, Inc.* v. *FTC*, 295 F.2d 869 (2d Cir. 1961), *cert. denied*, 370 U.S. 917 (1962) ("[W]e think it plain that a deviation of one digit in the date on a coin is not likely to distinguish it sufficiently from the original to alert an 'unsuspecting person of ordinary observation and care' whom the criminal counterfeit law protects, let alone the 'ignorant, unthinking and credulous' who are not excluded from the protection of civil consumer law.").

The Commission has, however, applied an analogous concept to determine whether a *seller* possessed and relied upon a "reasonable basis" for believing a representation to be true. *See National Dynamics Corp.*, 82 F.T.C. 488, 553, 557 (1973), *aff'd as modified*, 492 F.2d 1333 (2d Cir.), *cert. denied*, 419 U.S. 993 (1974) (finding was based on whether the advertiser "acted upon information which would satisfy a reasonably prudent businessman" that the representation is true and that he acted in "good faith"). *See also Pfizer Inc.*, 81 F.T.C. 23, 64 (1972). While the Commission has not applied this standard often, it rightfully reflects, I think, society's general determination that the seller assumes certain risks and responsibilities in making product offerings—burdens which should not be shifted unfairly to consumers.

[21] *See FTC* v. *Standard Education Society*, 302 U.S. 112, 116 (1937).

[22] *See, e.g., Aronberg* v. *FTC*, 132 F.2d 165, 167 (7th Cir. 1942) ("The law is not made for experts but to protect the public—that vast multitude which includes the ignorant, the unthinking, and the credulous. . . ."); *Feil* v. *FTC*, 285 F.2d 879, 897 (9th Cir. 1960); *Gold Bullion International, Ltd.*, 92 F.T.C. 198, 221 (1978), *modified*, 92 F.T.C. 887 (1978).

[23] *See, e.g., Travel King, Inc.*, 86 F.T.C. 715, 757, 758–60 (1975); *Porter & Dietsch, Inc.*, 90 F.T.C. 770, 865 (1977), *aff'd as modified*, 605 F.2d 294 (7th Cir. 1979), *cert. denied*, 445 U.S. 950 (1980); *Stouffer Laboratories, Inc.* v. *FTC*, 343 F.2d 75, 83 (9th Cir. 1965); *Ward Laboratories, Inc.*, 276 F.2d 952, 954 (2d Cir.), *cert. denied*, 364 U.S. 827 (1960).

[24] *See, e.g., Cigarette Statement*, *supra* note 8, 29 Fed. Reg. at 8358 (quoting *FTC* v. *R.F. Keppel & Bro., Inc.*, 291 U.S. 304, 313 (1934)). *See also Ideal Toy Co.*, 64 F.T.C. 297, 310 (1964) (initial decision); *ITT Continental Baking Co.*, 83 F.T.C. 865, *modified*, 83 F.T.C. 1105 (1973), *aff'd*, 532 F.2d 207 (2d Cir. 1976); *Avalon Indus., Inc.*, 83 F.T.C. 1728, 1750 (1974); *Stupell Originals, Inc.*, 67 F.T.C. 173, 186–87 (1965); *Notice of Proposed Trade Regulation Rulemaking and Public Hearing on Children's Advertising*, 43 Fed. Reg. 17,967, 17,969 (1978).

[25] *See, e.g., Independent Directory Corp.* v. *FTC*, 188 F.2d 468, 470 (2d Cir. 1951) ("It was reasonably to be expected that a busy business man might . . . [be misled]. Such a misconception is more probable in the case of the careless business man who is also entitled to protection from deception."); *American Home Products Corp.* v. *FTC*, 695 F.2d 681, 689 (3d Cir. 1982) ("If accepted, AHP's position [on the meaning of its advertisements] might well preclude the Commission from taking action against advertisements that, when read with scrupulous care by vigilant and literal-minded consumers, could be seen to be making true claims."); *Colgate-Palmolive Co.* v. *FTC*, 310 F.2d 89, 91 (1st Cir. 1962), *rev'd on other grounds*, 380 U.S. 374, 391–92 (1965) ("It should be obvious by now to anyone that advertisements are not judged by scholarly dissection in a college classroom."); *Ward Laboratories, Inc.* v. *FTC*, 276 F.2d 952, 954 (2d Cir.), *cert. denied*, 364 U.S. 827 (1960) ("[A]dvertisements are not to be judged by their effect upon the scientific or legal mind which will dissect and analyze each phrase but rather by their effect upon the average member of the public who more likely will be influenced by the impression gleaned from a quick glance at the most legible words."); *Stupell Originals, Inc.*, 67 F.T.C. 173, 186 (1965) ("[W]hile the risk of injury [from respondent's product] . . . may be obvious to the person who pauses to consider such possibility, we seriously doubt that the ordinary purchaser would dwell on this eventuality.")

approach, such as in cases involving major national advertising campaigns aimed at mass audiences, traditional Commission fraud cases, focusing as they generally do on seller exploitation of *unreasonable* consumer judgments and actions, will never lend themselves in an appropriate way to such an analysis. Unlike the "substantial numbers" test, which by design encompasses both types of cases by focusing on the likely reactions of a seller's intended audience—whatever human frailties the group may exhibit—to a marketing message, the majority's approach will, I believe, require much analytical sleight of hand if the protections long promised and provided by the FTC to vulnerable consumers is to continue.

The third and last element of the new deception triumvirate is a requirement that the representation, practice, or omission be "material". Of the new requirements, this has the potential to be the wolf in sheep's clothing. The Commission has long held that a challenged act or practice must be misleading in a material respect in order to be found deceptive. Additionally, the opinion accurately states that materiality has been generally defined to include any sort of consumer preference which is likely to affect the purchasing decision [26] or post-purchase use of the product.[27] And, perhaps most significantly, the opinion carefully and correctly disavows any requirement of a specific finding that actual injury has occurred.[28]

Just when all appears to be going well, however, the opinion (and at greater length the Policy Statement) introduces a series of new concepts which appear to qualify standard principles of materiality in a restrictive fashion. At one point the opinion seems to equate materiality with the actual effects of claims or practices on consumer conduct,[29] and the Policy Statement expressly states that "injury and materiality are different names for the same concept" and that deception will be found where an act or practice "misleads * * * to the consumer's detriment." [30] (Detriment is, of course, legally defined as injury.) The Policy Statement also notes that injury exists if consumers would have chosen differently "but for" the misleading act or practice, suggesting that reliance and causation are elements of materiality.[31]

While I don't pretend to understand the full import of these statements, they certainly imply the possible imposition in at least some cases of new evidentiary requirements that are contrary to current law. Because Section 5 protects consumer preferences generally, including subjective preferences, materiality can be found without reference to objective injury or "detriment."[32] Moreover, because purchasers may be influenced by a combination or variety of factors, it may be virtually impossible to establish that a particular misrepresentation caused consumers to choose differently, much less that they were "injured" in some respect by the selection made. Hence, under the law, "(t)he fact that consumers were not harmed because they would have purchased the product anyway * * * is not relevant."[33]

Opinion and Policy Statement conclusions that injury and materiality are synonymous, that causation and reliance must be shown, or even that the likelihood of consumer detriment must be demonstrated in every case do not square with these accepted understandings of materiality. Like the other elements of the new deception standard, the effects of such requirements may well be to raise the burden of proof regarding materiality generally in FTC cases, while at the same time serioulsy jeopardizing more complicated cases in which specific consumer harm is not easily demonstrated. I am particularly concerned that a restrictive materiality test may serve to undermine the Commission's ad substantiation doctrine. If actual injury or even the likelihood of harm must be shown in all events, the Commission may, in addition to demonstrating a lack of substantiation, be forced to prove falsity in many advertising cases where it is not presently required, in order to establish the necessary link to concrete consumer detriment.

The effort to apply the new deception standard to the instant case is, I believe, a particularly confusing and profitless effort. As I noted at the outset, this case is unusually clearcut, involving as it does a variety of false performance claims, the meaning and import of which can be readily discerned from an examination of respondents' advertisements and the record generally. Nevertheless, the opinion strains valiantly at several junctures to introduce specific findings concerning the "reasonableness" of consumer behavior and the presence of materiality or "detriment" in *Cliffdale*. Again, I have no quarrel with the conclusions reached in this case, but analyzing it by applying these new elements is a wholly unnecessary exercise which demonstrates, I fear, the serious evidentiary difficulties and the exercise of even greater analytical gymnastics that will be necessary in future, more complicated Commission cases.

For the most part, however, the opinion concedes that this case precludes application of this purported new legal standard in any meaningful fashion, and, as a result, the lengthy discussion of it in the opinion and appended Policy Statement is a largely academic exercise. Rather than clarifying the law of deception, the opinion attempts to write new law which is destined to confound its readers. If applied literally, the new three part definition could narrow the Commission's authority to prosecute a range of dishonest or deceptive conduct, while creating complications and uncertainty about the cases we do bring. In the absence of further practical guidance from the Commission and the courts, however, I believe interested parties would be well advised to adhere to tried and true legal strictures governing deception in the conduct of their commercial affairs.

Record Retention Requirements

I also dissent from the failure to require that the record keeping

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[26] *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 387 (1965); *American Home Products Corp.*, 98 F.T.C. 136, 368 (1981), *aff'd as modified*, 695 F.2d 681 (3d Cir. 1982).

[27] Care Labeling of Textile Wearing Apparel Rule, 16 C.F.R. § 423 (1983) (requiring the disclosure of proper instructions for the laundering and cleaning of clothing).

Also, in the last several years the Commission has alleged in numerous settled cases that information pertaining to the use or care of a product is material to consumers. *See, e.g., American Motors Corp.*, 100 F.T.C. 229 (1982) (safe use of Jeeps in on-pavement driving); *Chrysler Corp.*, 99 F.T.C. 347 (1982) (use and care information pertaining to the replacement of oil filters in vehicles). The Commission has also issued complaints in matters still in litigation alleging the materiality of use and care information. *Volkswagen of America*, Docket No. 9154 (complaint issued Apr. 1, 1981) (use and care of Volkswagen and Audi vehicles); *International Harvester Co.*, Docket No. 9147 (complaint issued Oct. 10, 1980) (use and care of tractors).

[28] *See Colgate-Palmolive Co.*, 380 U.S. 374, 391–92 (1965); *Simeon Management Corp.*, 87 F.T.C. 1184, 1229 (1976), *aff'd*, 579 F.2d 1137 (9th Cir. 1978).

[29] *See* Slip op. at 9.

[30] Deception Policy Statement at 19.

[31] *Id.*

[32] *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 391–92 (1965); *Simeon Management Corp.*, 87 F.T.C. 1184, 1229 (1976), *aff'd*, 579 F.2d 1137 (9th Cir. 1978) (quoting *Resort Car Rental System, Inc.* v. *FTC*, 518 F.2d 962, 964 (9th Cir.), *cert. denied subl nom. Mackenzie* v. *United States*, 423 U.S. 827 (1975) ("Neither actual damage to the public nor actual deception need be shown.")].

[33] *Firestone Tire & Rubber Co.*, 81 F.T.C. 398, 451 (1972), *aff'd*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973). *See also Travel King, Inc.*, 86 F.T.C. 715, 774 (1975) ("it need not be shown that even one consumer actually relied on a particular false claim.")

provisions set forth in Part IV of the order be extended to apply to the marketing of all products, to the extent they are covered by the order. This omission seriously undermines the reach of Part III of the order which applies to non-fuel saving products marketed by Cliffdale.

Significantly, Part III expands order coverage to "all products" marketed by the respondents by requiring that they not misrepresent or misuse testimonials, misrepresent tests or survey results concerning energy savings or consumption, or use energy savings claims without a reasonable basis. In the circumstances of this case, this is a reasonable and justifiable order provision and the opinion does not contest the burden of imposing it on these respondents.

However, the majority has refused to include in the order parallel provisions requiring the retention of records with respect to the product coverage set forth in Part III. Unless records are retained, the Commission will be unable to monitor resondents' compliance with the order in an efficient or effective manner. As discussed by complaint counsel, under these circumstances a more expansive retention requirement is entirely consistent with the record keeping provisons contained in a number of recent Commission orders.[34] It is also consistent with the broad record keeping provisions of consent orders concerning other marketers of gas-saving products.[35]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Rule To Regulate Under the Consumer Product Safety Act Risks of Injury That May Be Associated With Baby Cribs Having Certain Hardware Failures or Omissions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is investigating the possibility that various items of hardware on baby cribs may break, become loose, detach, or otherwise fail to perform their intended function, or may have been omitted, so that risks of asphyxiation, concussion, laceration or other injury are created for children occupying such cribs. Should regulatory action become necessary to address any such risks (excluding any risk of injury associated with an item of crib hardware now subject to Commission regulations), the Commission will use the provisions of the Consumer Product Safety Act rather than those of the Federal Hazardous Substances Act. The Commission has determined that this transfer is in the public interest because, in the event the Commission finds that any such risks exist, public notification and remedial action can be accomplished more expeditiously under the CPSA than under the FHSA.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Lynn Lichtenstein, Trial Attorney, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION:

A. Introduction

By issuing the rule below, the Commission has decided to regulate under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051 *et seq.*)—rather than under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*)—risks of death and injury such as asphyxia, concussion, and laceration, which are associated with baby cribs having certain types of hardware failures or omissions [1] (referred to in this document as "crib hardware" and crib hardware risks"). The Commission proposed such a rule on December 27, 1983 (48 FR 56961) and received three comments on it.

Sections 30(d) of the CPSA (15 U.S.C. 2079(d)) governs the rule issued below. It provides that a risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the FHSA may be regulated under the CPSA only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under the CPSA.

The Commission has considered the applicable statutes, including section 30(d); the facts regarding possible crib hardware risks, including those associated with the malfunction, inadequacy and absence of crib hardware; the legal arguments and other points raised by the public commenters; and all other available information. The Commission has now determined that it is in the public interest to regulate under the CPSA, rather than the FHSA, the crib hardware risks included in the rule below.

B. Description of Risk

The risks of injury that the Commission is transferring to the CPSA *do not* include any of the ones already regulated under the FHSA:

1. Any risk of injury associated with release of locking or latching devices to secure dropside rails from a single action at a force of less than 4.5 kilograms (10 pounds);

2. Any risk of injury associated with any horizontal bar, ledge, projection from, or other surface attached to or forming a part of any end panel or side of a crib which is accessible to a child inside the crib and is capable of being used as a toehold, and which is located less than 51 centimeters (20 inches) above the mattress support in its lowest position when the side rail is in its highest position on a "full-size crib" (as that term is defined at 16 CFR 1508.1(a)), or less than 40.6 centimeters (16 inches) above the mattress support in its lowest adjustable position when the crib side is in its highest adjustable position on a "non-full-size crib" (as that term is defined in 16 CFR 1509.2); or

3. Any other risk of injury addressed by regulations applicable to cribs issued under the FHSA and published at 16 CFR 1500.18(a) (13) and (14), Part 1508, and Part 1509.

Several kinds of crib hardware failures or omissions create risks of asphyxiation, concussion, laceration, or other injuries. The *are* included in the risks being transferred to the CPSA and they are discussed in the remainder of this section:

Hangers which attach the mattress support to the hooks (see Figures 1 and 2) can detach or break. Recently the Commission learned of the death of a five-month-old boy in a crib which resulted after a mattress support hanger became detached from the hook on the crib corner post.

The crib involved in this accident was approximately five years old and had been used by two other families before the fatal accident. The current owner had used the crib for five months with

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[34] *See, e.g., Grolier, Inc.*, 91 F.T.C. 315 (1978), *remanded on other grounds*, 615 F.2d 1215 (9th Cir. 1980), *modified on other grounds*, 99 F.T.C. 379 (1982); *Sears, Roebuck and Co.*, 95 F.T.C. 406 (1980), *aff'd*, 676 F.2d 385 (9th Cir. 1982); *Jay Norris Corp.*, 91 F.T.C. 751 (1978), *aff'd*, 598 F.2d 1244 (2d Cir.), *cert. denied*, 444 U.S. 980 (1979); *Porter & Dietsch, Inc.*, 90 F.T.C. 770 (1977), *aff'd* 605 F.2d 294 (7th Cir. 1979), *cert denied*, 445 U.S. 950 (1980).

[35] *See, e.g., American Consumer, Inc.*, 94 F.T.C. 648 (1979); *R.R. International, Inc.*, 94 F.T.C. 312 (1979); *C.I. Energy Development, Inc.* 94 F.T.C. 1337 (1979)

[1] Commissioner Terrence M. Scanlon voted against issuance of a final rule in this proceeding and issued a dissenting statement. Chairman Nancy Harvey Steorts and Commissioners Stuart M. Statler and Saundra Brown Armstrong voted to issue the final rule and issued separate statements explaining their votes in this manner.

no indication of any safety-related problem.

On the day of the accident, the father had moved the crib to install bumper pads to protect the child from hitting against the slats. A hanger at one of the corners next to the wall became detached. The detached hanger went unnoticed.

The child was put to bed at 10:00 p.m. At 7:30 the next morning, the child was found dead. The body was positioned with the head downward, the chin almost touching the floor. The legs were caught between the mattress and the siderail of the crib next to the wall.

The medical examiner determined that the cause of death was positional asphyxia, or asphyxia caused by the position in which the body had become entrapped. If a child remains upside down for a sufficient period of time, the child will be unable to breathe.

In this case, the child apparently had moved or rolled to the corner of the crib where the hanger was detached. The mattress and mattress support at that corner then tilted downward, and the child's head and upper body slipped through the gap between the frame of the crib and the mattress. The child was caught when the mattress and mattress support returned to a horizontal position after most of the child's weight had fallen through the gap.

The Commission is also aware of the recent death which occurred when a bracket for the guide rod of the dropside (see Figure 3) became loose. The child became entrapped against the frame of the crib and died.

Other hardware failures involve machine screws or bolts which can pull out or loosen. In one incident, a 13-month-old girl was in a crib with one fixed siderail and one dropside. The bolt holding the top rail of the fixed siderail to an end panel at one corner of the crib became loose. The threaded metal insert which should have held the bolt in place either was never supplied or was missing. The siderail could then move out at the top away from the end panel. The child's head was caught between the loose siderail and the end panel of the crib. It is believed that she slid down into the opening formed by the siderail and the end panel. She was caught by the neck and strangled to death.

In another incident involving a machine screw, the screw or bolt securing the bottom of the fixed siderail became disconnected from the cornerpost. This allowed movement of the siderail. The two-year-old girl in the crib fell through the opening between the siderail and the mattress at the corner where the bolt had come out. The child cried one time, and her parents found her trapped with her head caught between the mattress and the siderail. Her body was hanging between the mattress and the siderail. The child's entire weight was supported solely by her head. The victim was blue in the face and unable to breathe when found. She suffered soft tissue damage to the neck and abrasions. Because the victim was unable to breathe, she could not give a second cry. This may explain the absence of any crying by the children involved in many of these cases. Examination of the bolt and the threaded insert into which it fit revealed that when the bolt was inserted through the siderail into the threaded insert, the bolt engaged by only ⅛ inch, or 2½ threads.

Wood screws may also fail by pulling out or loosening. In one case an entire crib collapsed because the wood screws pulled out of the wood components of the crib. A seven-month-old boy was standing up in the crib at the time suffered fractures to the hand and wrist of his right arm, torn ligaments, and possible permanent disability of the hand and wrist. In other cases, wood screws holding the hooks to the cornerposts have pulled out and could not be retightened.

Some failures involve the hooks supporting the mattress hangers (see Figure 2). These hooks may bend or break. In one incident the lowest metal hook on one cornerpost of a crib broke, causing the 21-month-old boy in the crib to fall to the floor. In another incident the plastic hooks on a crib broke, leaving the victim hanging to the crib rail. Breakage was across the plastic strip containing the hooks, occurring immediately above three of the hooks. The 18-month-old boy in the crib was left hanging onto the siderail. In a third incident, the plastic hooks themselves broke off. The ten-month-old boy in the crib was thrown to the floor and the mattress and spring fell on top of him. The child was found vomiting, and bleeding from the right ear.

The Commission and its staff are currently aware of 46 in-depth investigations describing failures or omissions of crib hardware which have been conducted since 1980. In 19 of these incidents, the children died. In 12 other cases, the children became entrapped but were freed, and in another 15 incidents, the children suffered minor injuries including bruises, or no injury.

These and other incidents involving crib hardware failures or omissions during this period are included in a document titled "Special Report—Structural and Hardware Failure of Cribs," dated March, 1984, which was compiled by the Commission's Directorate for Epidemiology. This document is available for inspection in the Commission's public reading room, 8th floor, 1111 18th Street, NW., Washington, D.C., or by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

The Commission staff is also aware of approximately 10 incidents of breakage or deformation of hooks which occurred in 1978 and 1979.

Data concerning injuries to children in cribs were previously collected and published by the Commission in a document entitled *Hazard Analysis: Cribs* (NIIC–1504–75–H007), dated December 1975. This report lists eight cases involving full-size cribs in which various items of crib hardware failed. These incidents occurred from 1972 through 1974. Three of the victims involved in these incidents died. The others suffered hematoma to the head, contusions, abrasions, bruises, or no injury.

The staff continues to update its data concerning injuries associated with crib hardware failures and omissions.

C. Regulation Under FHSA

The risks of injury associated with crib hardware, described above, could be regulated by the Commission under provisions of the FHSA. Baby cribs are already the subject of regulations under the FHSA (16 CFR Parts 1508 and 1509). These regulations could be amended to ban cribs that fail to comply with requirements addressing hardware failures or omissions.

The Commission could begin a proceeding for the issuance of an amended rule to declare that cribs presenting the hardware risks are children's articles that present a mechanical hazard. FHSA, secs. 3(e)–(i); 15 U.S.C. 1262(e)–(i). If issued on a final basis, such an amended rule would have the effect of classifying the cribs as "banned hazardous substances" under section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)), and would prohibit their distribution or sale in the United States and their importation into this country. If a children's article presents an "imminent hazard," provisions of section 3(e)(2) of the FHSA (15 U.S.C. 1262(e)(2)) authorize the Commission to issue an immediate order declaring the product to be a banned hazardous substance pending completion of a proceeding to issue a banning rule.

A final amended rule issued under provisions of sections 3 (e) through (i) of the FHSA would also make the products in question subject to provisions of

section 15 of the FHSA (15 U.S.C. 1274). That section authorizes the Commission to determine, after affording all interested persons opportunity for a hearing, that notification to the public of the hazard presented by a product which is a "banned hazardous substance" is necessary in order to adequately protect the public. That section also authorizes the Commission, after affording all interested persons opportunity for a hearing (which could be combined with a hearing regarding the need for public notification), to require the manufacturer, distributor or dealer of a product which is a banned hazardous substance to elect to repair or replace the product, or to refund the purchase price of the product.

However, the provisions of section 15 of the FHSA concerning public notification and corrective action would be applicable to the products which are the subject of this notice only if the Commission had first issued a rule under provisions of sections 3 (e) through (i) of the FHSA to announce the Commission's determination that the products present a mechanical hazard, unless the Commission publishes an order to declare that such products present an imminent hazard to the public health.

A proceeding to issue such a rule is initiated by publication of an advance notice of proposed rulemaking in the **Federal Register** to invite comments from all interested persons about the risk of injury associated with the product which is the subject of the proceeding and possible means of addressing that risk of injury, including voluntary standards now in existence or which might be developed. If, after consideration of all information received in response to the advance notice of proposed rulemaking, the Commission decides to continue the proceeding, publication of a second notice in the **Federal Register** is required to propose the rule and invite written comments on the proposal. The Commission must then analyze all comments received in response to the proposal; describe the costs and benefits of the rule; again consider alternative means to address the risk of injury, including voluntary standards; and publish a third notice in the **Federal Register** to issue the rule on a final basis. A substantive amendment to an FHSA regulation would have to follow the same procedure.

In summary, the Commission is authorized under the FHSA to issue a regulation (or amended regulation) declaring certain cribs to be banned hazardous substances. The rulemaking must consist of three stages—an advance notice of proposed rulemaking with public comment, a notice of proposed rulemaking with public comment, and a final rule that analyzes the public comments and includes a detailed regulatory analysis. Once rulemaking is completed, a process that could take two or more years, the Commission could initiate a proceeding to seek public notice and recall of the banned cribs, a process which itself would likely take about one year. In appropriate circumstances, the Commission could declare a product to be an imminent hazard to the public health, either before or during the rulemaking proceeding, which would have the effect of immediately banning the product and allowing the public notice and recall proceeding to be started. Whether or not a product is declared to be an imminent hazard, however, the rulemaking is expected to be continued.

D. Regulation Under CPSA

The CPSA has provisions for requiring public notification of substantial hazards which may be presented by these products and for ordering corrective action to be taken with regard to them without the necessity of first completing a rulemaking proceeding.

Additionally, the CPSA has provisions which authorize the Commission in certain cases to obtain an administrative order for public notification of the hazard presented by a product and for repair, or replacement of the product, or refund of the purchase price of the product without any necessity of first completing a rulemaking proceeding. Under the FHSA, the Commission may not initiate a proceeding to obtain public notification or corrective action with regard to a hazard presented by a toy or children's article until the Commission has issued a final banning rule (unless the Commission publishes an order declaring the product to be an imminent hazard to the public health).

Section 15 of the CPSA (15 U.S.C. 2064) confers upon the Commission the authority to order public notification of the hazard presented by a product if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that notification is required in order to adequately protect the public from that substantial product hazard. Additionally, section 15 of the CPSA authorizes the Commission to order any manufacturer, importer, distributor, or retailer of a product to elect to repair or replace the product, or to refund the purchase price of the product, if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that issuance of such an order is in the public interest.

If the products described in this notice were subject to regulation under the CPSA, no requirement for rulemaking would exist in order to invoke the provisions of section 15 of that Act.

Additionally, provisions of section 12 of the CPSA (15 U.S.C. 2061) authorize the Commission to file an action in a United States District Court against a manufacturer, importer, distributor, or retailer of a consumer product which presents an imminent and unreasonable risk of death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund of the purchase price. The court also has authority to order a firm to undertake extensive notification efforts to advise purchasers and the general public of the nature of the risk and of the firm's obligation for remedial action. The Commission may file an action under section 12 of the CPSA without any requirement for having first undertaken a rulemaking proceeding. As noted above, no corresponding provisions exist in the FHSA.

In summary, under the CPSA, the Commission may regulate a product in one or more different ways. First, after giving interested persons an opportunity for a hearing, the Commission may order that notice and recall be provided by firms manufacturing, importing, or distributing a product that presents a substantial product hazard. Unlike the FHSA, there are no requirements that the product first be declared a banned hazardous substance or that it first be subject to a consumer product safety rule. Second, the Commission may file an action in a United States District Court if a product presents an imminent and unreasonable risk of death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund of the purchase price. Third, the Commission may undertake rulemaking to declare the product a banned hazardous product or to subject the product to a consumer product safety standard.

Because notification to the public of any hazard which may be presented by the products described in this notice and remedial action with regard to those products could be accomplished more effectively and expeditiously under the CPSA than under the FHSA, the Commission preliminarily determined

that it would be in the public interest to regulate under the CPSA rather than the FHSA any crib hardware risks described in this notice. The Commission therefore, in December 1983, solicited written comments on a proposed transfer rule.

E. Comments on Proposal

In response to the proposal of December 27, 1983, the Commission received three comments. A comment from the Juvenile Products Manufacturers Association, Inc. (JPMA) contained many objections to the proposed rule, and urged the Commission not to issue it on a final basis. A comment from Evenflo Juvenile Products Company similarly objected, citing some of the same points made by JPMA. The third comment, from Simmons Juvenile Product Company, Inc., merely expressed support for the JPMA position.

JPMA's first objection to the proposal (the Evenflo comments will be addressed with the JPMA comments, even though they will not be separately mentioned) alleges that the transfer of regulation in this case is "solely for administrative convenience" of the Commission, and for that reason is prohibited by the recent decision of the U.S. Court of Appeals for the Fifth Circuit in *Gulf South Insulation et al.* v. *CPSC*, 701 F.2d 1137 (1983).

When the Commission proposed the transfer rule for crib hardware in December 1983, it was well aware of the *Gulf South* decision. The Commission believed then, and continues to believe, that the court's interpretation of the provisions of section 30(d) of the CPSA in that case is not applicable to the crib hardware transfer rule.

The action reviewed in the *Gulf South* case was the issuance of a rule under the CPSA banning urea formaldehyde foam insulation. Because the product involved in the *Gulf South* case was not a toy or children's article,the procedures for issuance of the banning rule under the CPSA differed considerably from those required for issuing a ban under the FHSA. In *Gulf South*, the court expressed particular concern about the "due process" considerations of regulating the insulation under the CPSA as opposed to the FHSA.

However, in the case of children's articles, such as crib hardware, the procedures required to issue a banning rule under the FHSA are almost identical to those required for such a rule under the CPSA. If the Commission sought public notification or remedial action with regard to the risk of injury associated with crib hardware, provisions of section 15 of the CPSA (15 U.S.C. 2064) require an adjudicatory hearing before the Commission could issue any order to require notification of the public or remedial action. Such a hearing would afford any affected person or firm with the "due process" safeguards which the court apparently believed to be lacking in the *Gulf South* case.

Finally, in *Gulf South* the court had limited its discussion of the requirements of section 30(d) of the CPSA to products which are not "extremely dangerous." Because crib hardware products have been associated with the deaths of twenty-seven children since 1980 (*see* "Summary of Sixty-seven Incidents Associated with Crib Hardware—January 1980–March 1983"), they are beyond the scope of the discussion of section 30(d) in the *Gulf South* case.

The JPMA comment contends that the Commission's emphasis on "due process" protections provided by section 15 of the CPSA (in a previous 30(d) rulemaking) is misplaced. JPMA puts aside such questions as constitutional requirements for due process, and argues that the thrust of the *Gulf South* decision is that "the extra procedures of the FHSA, whatever they may be, may not be discarded simply for administrative convenience or speed."

The Commission rejects JPMA's contention that the interpretation of section 30(d) of the CPSA enunciated in *Gulf South* prohibits issuance of a final transfer rule in this instance. As stated above, the Commission finds that transfer of regulation of the risk of injury associated with crib hardware is in the public interest because notification to the public and remedial action with regard to these products, if needed to protect the public from any hazard which they present, can be accomplished more expeditiously under the CPSA than under the FHSA. The Commission does not accept the comment's characterization of the basis of its public interest finding as one which is "solely for the administrative convenience" of the Commission. Rather, the Commission finds that expeditious action to prevent death and permanent injury to young children is clearly distinguishable from action taken for "administrative convenience."

The Commisison also rejects the contention expressed in JPMA's comment that the *Gulf South* decision requires the Commission to observe "the extra procedures of the FHSA" in this instance without regard to the purpose or end which those procedures are intended to serve. The Commission finds the opinion of the court in *Gulf South* to be totally devoid of any language which would support the mechanistic approach to application of section 30(d) of the CPSA advanced in this comment.

The comment also argues that the Commission has not even alleged in its proposal that crib hardware products are "extremely dangerous" products and for that reason outside the scope of the discussion of section 30(d) of the CPSA in the *Gulf South* decision. However, the Commission has received reports of the deaths of twenty-seven children, since 1980, associated with crib hardware. The Commission concludes that these reports provide adequate factual support for its belief that crib hardware products are beyond the scope of the discussion of section 30(d) in the *Gulf South* opinion.

In the notice of December 27, 1983, the Commission stated that it was proposing the transfer of regulation of the "possible" risks associated with crib hardware. After consideration of the injury information discussed above, the Commission concludes that more than "possible" risks are involved with these products. Consequently, § 1145.14(a) of the rule issued below states that the Commission is transferring regulation of "risks of death or injury that may be associated with" crib hardware to the CPSA from the FHSA.

F. Adequacy of FHSA

The JPMA comment expresses the view that the decision in *Gulf South* is not the only reason for continuing to regulate crib hardware under the FHSA. The comment states that, as children's articles, cribs have always been regulated under the FHSA. The comment outlines the rulemaking and enforcement provisions of the FHSA applicable to children's articles, and urges the Commission to continue regulation of cribs under the FHSA because the FHSA contains all provisions needed by the Commission to assure the safety of children's products, and at the same time contains protection for manufacturers and the public. The comment observes that, in appropriate cases, section 3(e)(2) of the FHSA (15 U.S.C. 1262(e)(2)) authorizes the Commission to declare children's articles to be "imminent hazards," which has the effect of categorizing them as "banned hazardous substances" pending completion of a rulemaking proceeding.

The Commission has considered the possibility of invoking the imminent hazard provisions of the FHSA before deciding to issue this rule on a final basis. However, the Commission observes that some products may present a "substantial product hazard"

warranting issuance of an order for public notification and corrective action under section 15 of the CPSA without amounting to an "imminent hazard" as that term is used in section 3(e)(2) of the FHSA. The Commission believes that, notwithstanding the "imminent hazard provisions" of section 3(e)(2) of the FHSA, use of the procedures of the CPSA may lead to more effective and expeditious notification and corrective action in the case of crib hardware than might be obtained by following the procedures of the FHSA.

On the same general subject, the JPMA comment observes that the Commission's proposal to transfer regulation of risks of injury associated with crib hardware to the CPSA was made "for no apparent reason other than the allegation that procedures of the FHSA are more time consuming than those of the CPSA."

Again, the Commission does not accept this characterization of the basis for its finding of public interest in transfering regulation of crib hardware to the CPSA. The Commission's finding of public interest for the issuance of the transfer rule published below is that protection of the public from any hazard presented by crib hardware can be accomplished more effectively and expeditiously under the CPSA than under the FHSA. In reaching this conclusion, the Commission has carefully considered the provisions of the FHSA and the CPSA, both before proposing the transfer rule and again before deciding to issue the rule on a final basis.

G. Economic Impact on Small Businesses

The JPMA comment also objects to issuance of a final transfer rule because the Commission has not prepared an initial analysis of the anticipated effect of the proposed rule on small businesses in accordance with provisions of section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603).

The comment states that some of the firms which manufacture cribs are small entities (a term used in the RFA which includes small businesses). The comment alleges that if the transfer rule is issued on a final basis and action is taken under provisions of section 15 of the CPSA (15 U.S.C. 2064) to order public notification or corrective action with regard to any hazard presented by crib hardware, manufacturers of cribs will lose procedural protections afforded by the rulemaking requirements of the FHSA. The comment argues that such a result will have a substantial impact on these firms.

As noted in this comment, section 605(b) of the RFA (5 U.S.C. 605(b)) provides that an agency is not required to prepare an initial analysis of the anticipated impact of a proposed rule if it certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small businesses.

In the proposal of December 27, 1983, the Commission made the certification required by section 605(b) of the RFA, stating that the rule, if issued on a final basis, will not impose any legal obligation on any person or firm. The proposal observed that if the Commission issues the rule on a final basis and then determines that it should act to address any risk of injury transferred by the rule, the Commission will be required to initiate and follow through to completion appropriate judicial or administrative proceedings under one or more sections of the CPSA before it can impose any obligation on any person or firm.

Although the comment contends that the proposal "indicates that the Commission intends to act pursuant to section 15 of the CPSA," neither the proposal nor the rule issued below will cause any action to be taken under section 15 of the CPSA or under any other provision of that act.

While the provisions of section 15 of the CPSA were discussed in the proposal and cited as a factor in the Commission's decision to propose the transfer rule, it would also be possible for the Commission to undertake rulemaking under provisions of sections 7, 8, and 9 of the CPSA (15 U.S.C. 2056, 2057, 2058).

If the Commission undertakes any rulemaking proceeding under the CPSA with regard to any risk associated with crib hardware, the Commission will comply with all applicable provisions of the RFA.

H. Desirability of Rulemaking

The JPMA comment also states that the Commission should address any risk of injury associated with crib hardware by rulemaking, or by reliance on voluntary action by manufacturers of these products. The comment states that because alleged crib hardware risks are "generic," any action taken by the Commission to address them will necessarily have an industry-wide effect. Because the rulemaking provisions of the FHSA which are applicable to children's articles are substantially similar to the rulemaking provisions of the CPSA, the comment further argues that no reason exists to transfer regulation from the FHSA to the CPSA.

In addition to the generic nature of the crib hardware risks, the comment cites the following additional factors as supporting the desirability of rulemaking, as distinguished from adjudication, to address any such risks:

1. Any action taken to address such risks of injury would be an abrupt change in established law because those products are in compliance with established crib regulations;

2. Adjudicative proceedings under section 15 of the CPSA would have a retroactive effect because they would be applicable to products already manufactured and sold; and

3. Adjudicative proceedings under provisions of section 15 of the CPSA would exclude various parties including consumers, consumer groups, pediatric experts, industry, and the public at large from participation.

4. Any such change in policy would be drastic and unexpected.

JPMA has also asserted that several judicial decisions require the Commission to proceed by rulemaking rather than by adjudication if the Commission seeks to "change the law and establish rules of widespread application," citing three cases decided by the U.S. Court of Appeals for the Ninth Circuit: *Ford Motor Co.* v. *FTC*, 673 F.2d 1008 (1981); *Patel* v. *INS*, 638 F.2d 1199 (1980); and *Ruangswang* v. *INS*, 591 F.2d 39 (1978); and one decided by a U.S. District Court: *Pharmaceutical Manufacturers Association* v. *Finch*, 307 F. Supp. 858 (D. Del. 1970).

Finally, the JPMA comment urges the Commission to rely on voluntary action proposed by manufacturers of cribs to address any risks of injury presented by their products. The comment states that CPSC and current administration policy favors voluntary action, and that JPMA—always a leader in developing voluntary juvenile product standards—is ready and willing to develop one in this area.

JPMA's objections to issuance of a final transfer rule seem to assume that the Commission would follow final issuance of such a rule with the initiation of adjudicative provisions of section 15 of the CPSA—and no other action. Although not discussed in the December 1983 proposed transfer rule, the possibility exists that the Commission might (after issuing a final transfer rule) initiate one or more adjudicative proceedings under section 15 of the CPSA *and* begin a proceeding for the issuance of a consumer product safety rule applicable to crib hardware. The Commission may determine that one or more adjudicative proceedings under section 15 of the CPSA are needed

to obtain public notification and remedial action with regard to products which are in channels of distribution and in the possession of consumers. At the same time, the Commission might also determine that issuance of a consumer product safety rule may be necessary to affect future production of such products. (it is also possible that voluntary action by crib manufacturers would make any mandatory action unnecessary, even after a final transfer rule were issued.)

In view of all possible actions which could be taken under various provisions of the CPSA, the Commission concludes that the cases and other authority cited by JPMA do not preclude issuance of a final transfer rule in accordance with section 30(d) of the CPSA in this proceeding.

With regard to the contention made in JPMA's comment that various parties, including consumers, consumer groups, pediatric experts, industry, and the general public, would be excluded from participation in an adjudicative proceeding under section 15 of the CPSA, the Commission observes that before public notification or corrective action can be ordered under that section, the Commission must afford opportunity for a hearing to "interested persons, including consumers and consumer organizations." See sections 15 (c) and (d). Additionally, the Commission's rules of practice for adjudicative proceedings (16 CFR Part 1025), which govern hearings in proceedings under section 15 of the CPSA, provide at § 1025.17 for intervention by "any person who desires to participate as a party" in such a proceeding. See 16 CFR 1025.17(a). For these reasons, the Commission concludes that if it initiates any proceeding under section 15 of the CPSA concerning crib hardware, all interested persons will have opportunity to participate in any hearing which may be conducted.

As noted above, the comment cites three decisions by the U.S. Court of Appeals for the Ninth Circuit in support of the contention that the Commission is obligated to proceed by rulemaking in this instance because any action taken with regard to crib hardware will have "widespread application." However, the comment does not discuss another case in which the same court recently stated that the decision of whether to establish administrative policies by adjudication or by rulemaking lies with the discretion of the agency. *Saavedra* v. *Donovan*, 700 F.2d 496, at 499 (1983).

JPMA does use yet another Ninth Circuit decision, *Montgomery Ward & Co.* v. *FTC*, 691 F.2d 1322 (1982), to support its position that adjudication is impermissible. Specifically, JPMA quotes language that discusses a situation in which "[a]n adjudicatory restatement of [a] rule becomes an amendment." The Commission's response to the quoted language is that it does not apply to the crib regulations or to any adjudications concerning crib hardware risks that the Commission might ever undertake. The situation in *Montgomery Ward* involved a recently-issued Federal Trade Commission rule that described required conduct in some detail, reliance by Montgomery Ward on the plain meaning of that rule, and an adjudicatory restatement of that rule. *Ward* at 1328–29. The crib hardware situation is completely different because the previously-issued crib regulations do not address the crib hardware risks that are included within the transfer rule issued below. In short, there is no "adjudicatory amendment" involved.

In any case, the Ninth Circuit stated in both *Saavedra* and *Montgomery Ward* that its authority to set aside an agency's decision to announce and implement policy by adjudication is limited to those instances in which such a decision amounts to an abuse of discretion by the agency. Both decisions are consistent with those of the United States Surprme court in *NLRB* v. *Bell Aerospace*, 416 U.S. 267 (1974); *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759 (1969); *FTC* v. *Universal Rundle Corp.*, 387 U.S. 244 (1967); *Moog Industries, Inc.* v. *FTC*, 355 U.S. 411 (1958); and *SEC* v. *Chenery*, 332 U.S. 194 (1947).

In addition, the Commission does not agree with JPMA that the crib hardware risks are "generic" in nature. Hardware is product specific because each crib manufacturer uses a different set of parts, usually in its own configuration. While there may be some overlap, the configurations are noticeably different. In addition, the crib hardware risks involve specific failures, and each particular failure usually involves only one manufacturer.

With regard to voluntary industry action to address crib hardware risks, the Commission agrees that such action has advantages over both mandatory and adjudicative proceedings.

The Commission has been informed that on March 27, 1984, crib manufacturers met to review injury and accident data related to the structural integrity of cribs. The Commission has been advised that at this meeting, manufacturers also discussed strategies to address various hazard patterns, including those related to hardware failures and omissions.

The Commission has also been advised that in June of 1984, ASTM Voluntary Standards Task Group F 15.21 is scheduled to meet and begin drafting requirements for a voluntary standard to address hazards associated with structural integrity of cribs, including those related to hardware failures and omissions.

The Commission applauds all efforts to develop voluntary standards to eliminate or reduce any risks of injury which may be associated with cribs. However, the Commission observes that no voluntary standard now in existence addresses any of the risks of injury which are the subject of the rule issued below, and that publication of a final voluntary standard to address those risks will require several months.

The Commission has carefully considered the nature and severity of the risks of injury presented by crib hardware; provisions of the FHSA and the CPSA which could be invoked to address such risks of injury; the need of the public for protection from the risks of injury; the interests of manufacturers, importers, distributors, and retailers of cribs; all issues raised by the comments received in response to the proposed transfer rule; and applicable judicial decisions. After consideration of all of these factors, the Commission concludes that to the extent that issuance of the final rule published below may result in the announcement or implementation of policy by adjudication, the decision to issue the rule is an exercise of sound discretion.

I. Effective Date

The Administrative Procedure Act requires at 5 U.S.C. 553 that a "substantive rule" must be published at least 30 days before its effective date, unless the agency finds for good cause that an earlier effective date is needed, and publishes that finding with the final rule.

As previously stated, the rule issued below will not, by itself, impose any new requirement or obligation on any person or firm. The rule simply announces that if the Commission takes action with regard to crib hardware, it will do so under provisions of the CPSA rather than those of the FHSA. Any action the Commission might take would provide adequate notice and opportunity to respond.

For this reason, the requirement of 5 U.S.C. 553 for publication of a substantive rule at least 30 days before its effective date is not applicable. The rule issued below shall become effective immediately.

J. Summary

The Commission concludes that if regulation of the risk of injury presented by crib hardware is necessary at all, it would be in the public interest to regulate such risk under the CPSA rather than under the FHSA. The FHSA would allow the product to be banned by a rulemaking procedure that would likely take at least two years. Following that, the Commission could, if appropriate, begin a proceeding to order firms to give notice of the risk and to recall the product, a process which itself could take about one year. Thus, if public notice and recall were found to be the appropriate remedies, it would take about three years to obtain these remedies under the FHSA. Although the process could be shortened, as discussed above, by declaring the product to be an imminent hazard to the public health, the Commission does not believe, based on presently available information, that that would be an appropriate approach. Under the CPSA, as discussed above, no rulemaking is necessary before public notice or recall is sought. Thus, if public notice or recall is found to be necessary because the product presents a substantial product hazard, either or both could be obtained at least two years sooner under the CPSA.

Therefore, the Commission finds that it is in the public interest to transfer regulation of any risks of injury which may be presented by crib hardware because public notification and corrective action can be accomplished more effectively and more expeditiously under the CPSA than under the FHSA.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children.

Accordingly, under provisions of the Consumer Product Safety Act (section 30(d), Pub. L. 92–573, 86 Stat. 1207, as amended, Pub. L. 94–284, 90 Stat. 503, Pub. L. 97–35, 95 Stat. 703; 15 U.S.C. 2079(d)), the Commission amends the Code of Federal Regulations, Title 16, Chapter II, Subchapter B, Part 1145, by adding new a section 1145.14, as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

§ 1145.14 Baby cribs with certain hardware failures or omissions; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act, risks of death or injury that are associated with baby cribs having items of hardware which break, become loose, detach, or otherwise fail to perform their intended function, or which have been omitted; except those risks of injuries associated with baby cribs which are addressed by provisions of 16 CFR 1500.18(a)(13), Part 1508; 1500.18(a)(14), Part 1509.

(b) Therefore, if the Commission finds regulation to be necessary, such risks of death or injury which are associated with baby cribs having any of the hardware failures or omissions described in § 1145.14(a) shall be regulated only under one or more provisions of the Consumer Product Safety Act.

(Sec. 30(d), Pub. L. 92–573, 86 Stat. 1207, as amended Pub. L. 94–284, 90 Stat. 503, Pub. L. 97–35, 95 Stat. 703; 15 U.S.C. 2079(d))

Effective date: This amendment shall be effective on April 10, 1984.

Dated: April 4, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

BILLING CODE 6355-01-M

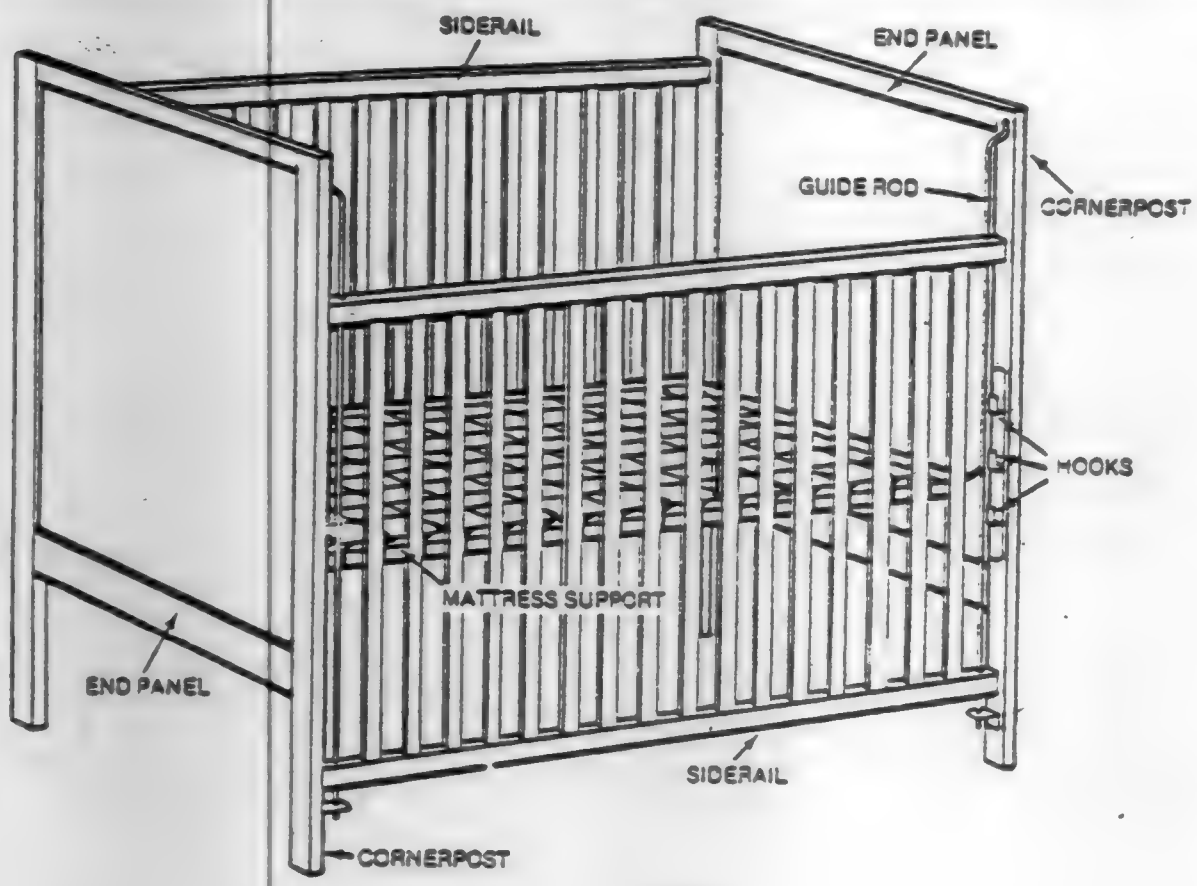

FIG. 1

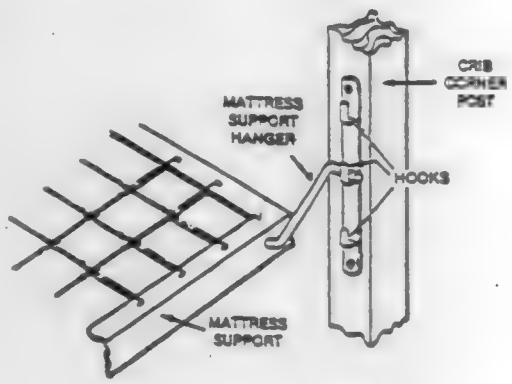

FIG. 2

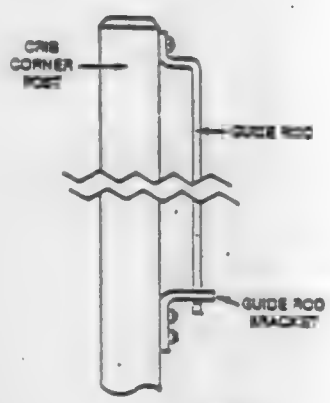

FIG. 3

[FR Doc. 84-9034 Filed 4-9-84; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Prochlorperazine, Isopropamide, With Neomycin Sustained-Release Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) sponsored by Norden Laboratories, Inc. The NADA provides for the use in dogs of capsules containing the drug combination prochlorperazine, is propamide, with neomycin for treatment of infectious gastroenteritis.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Inc., Lincoln, NE 68501, is sponsor of NADA 31–914 which provides for use of Neo-Darbazine® Spanule® Capsules containing sustained-release prochlorperazine dimaleate combined with isopropamide iodide and neomycin sulfate. The capsules are indicated for use in dogs in which infectious gastroenteritis is associated with emotional stress.

NADA 31–914 was originally approved by letter dated July 6, 1966. At that time approvals were not codified by publication in the **Federal Register**. Accordingly the regulations are now amended to codify Norden Laboratories' approved NADA. This action, codification of a previously approved NADA, does not constitute reaffirmation of the safety and effectiveness data supporting this approval. Because the NADA was approved before July 1, 1975, the sponsor was not required to submit a summary of the safety and effectiveness data and information in accordance with the freedom of information provisions of the animal drug regulations in 21 CFR 514.11(e)(2)(ii). However, a summary of the basis for approval is available upon request in accordance with § 514.11(e)(2)(i).

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.1921 to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.1921 Prochlorperazine, isopropamide, with neomycin sustained-released capsules.

(a) *Specifications.* Each capsule contains either:

(1) Capsule No. 1: 3.33 milligrams of prochlorperazine (as the dimaleate), 1.67 milligrams of isopropamide (as the iodide), and 25 milligrams of neomycin base (as the sulfate); or

(2) Capsule No. 3: 10 milligrams of prochlorperazine (as the dimaleate), 5 milligrams of isopropamide (as the iodide), and 75 milligrams of neomycin base (as the sulfate).

(b) *Sponsor.* See No. 011519 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer capsules orally twice daily to dogs as follows:

Animal weight (pounds)	Number of capsules per dose	
	Capsule No. 1	Capsule No. 3
10 to 20	1	
20 to 30	2	
Over 30	3	1
Over 60		2

(2) *Indications for use.* For treatement of dogs in which infectious bacterial gastroenteritis is associated with emotional stress.

(3) *Limitations.* Do not continue medication longer than 5 days. Overdosage or prolonged administration may produce nephrotoxicity as manifested by albuminuria, presence of granular casts and depressed urinary output. If it is desirable to administer a vasoconstrictor, norepinephrine is the drug of choice. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. April 10, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 3, 1984.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-9074 Filed 4-9-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 546

Tetracycline Antibiotic Drugs for Animal Use; Chlortetracycline Hydrochloride Tablets

Correction

In FR Doc. 84–3070 beginning on page 4373 in the issue of Monday, February 6, 1984, make the following correction: In column three, first complete paragraph, line three, "55–0108" should read "55–018".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Timber Sale Contract Extensions

AGENCY: Forest Service, USDA.

ACTION: Extension of deadline for interim modifications of timber sale contracts.

SUMMARY: On December 7, 1983 (48 FR 54812) the Forest Service announced adoption of a final policy for extending certain timber sale contracts. Under that policy, purchasers of contracts which already had been extended under previous extension policies could apply for interim modifications of those contracts by February 15, 1984.

The Forest Service hereby gives notice that the deadline for requesting interim modifications of these timber sale contracts is extended to April 16, 1984.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Wendall Jones, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, (202) 447–4051.

Dated: April 4, 1984.

R. Max Peterson,

Chief.

[FR Doc. 84-9040 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 465

[FRL-2561-2]

Coil Coating Point Source Category, Canmaking Subcategory; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice of correction of final rule.

SUMMARY: This document corrects the promulgated limitations and standards for the Coil Coating Point Source Category, Canmaking Subcategory that appeared in the **Federal Register** on Thursday, November 17, 1983 (48 FR 52380).

This action is necessary to correct typographical errors in the document.

ADDRESSES: Technical information may be obtained by writing to Ms. Mary L. Belefski, Effluent Guidelines Division (WH-552), EPA, 401 M Street SW., Washington. D.C. 20460, or by calling (202) 382-7126. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, VA 22161 (703) 487-4600.

The Record is available for public review in EPA's Public Information Reference Unit, Room 2004 (Rear) (EPA Library), 401 M St., SW., Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall, (202) 382-7126.

Corrections:

1. On page 52380, column 3, line 13, change "NSP" to "NSPS".
2. On page 52382, column 1, line 59, change "data supplied was used" to "data supplied were used".
3. On page 52382, column 2, line 32, change "Seamed cans" to "seamed cans".
4. On page 52383, column 1, line 23, change "Stokes law" to "Stokes' law".
5. On page 52384, column 3, line 50, change "215.0 1/1000 cans" to "215.0 l/1000 cans".
6. On page 52384, column 3, line 52, change "20.3 1/1000 cans" to "20.3 l/1000 cans".
7. On page 52384, column 3, line 53, change "964 1/1000 cans" to "964 l/1000 cans".
8. On page 52385, column 1, line 8, change "for which we have date" to "for which we have data".
9. On page 52385, column 1, line 30, change "Chromium " to "chromium".
10. On page 52385, column 1, line 52, change "Based limitations on the BPT" to "based limitations based on the BPT".
11. On page 52385, column 2, line 47, change "83.9 1/1000 cans" to "83.9 l/1000 cans".
12. On page 52385, column 3, line 6, change "Chromium" to "chromium".
13. On page 52385, column 3, line 53, change $0.017 million" to "$0.014 million".
14. On page 52385, column 3, line 59, change "14 1/1000 cans" to "14 l/1000 cans".
15. On page 52386, column 1, line 10, change "63.6 1/1000 cans" to "63.6 l/1000 cans".
16. On page 52386, column 1, line 26, change "Chromium" to "chromium".
17. On page 52386, column 3, line 26, change "0.01 mg/1" to "0.01 mg/l".
18. On page 52387, column 3, line 57, change "2-piece" to "two-piece".
19. On page 52388, column 2, line 29, change "2-piece" to "two-piece".
20. On page 52389, column 2, line 40, change "NSSP" to "NSPS".
21. On page 52390, column 1, line 12, change "0.11 million kilowatt-hours per year." to "0.30 million kilowatt-hours per year.".
22. On page 52390, column 1, line 29, change "2.93 million kilowatt hours per year." to "7.92 million kilowatt hours per year.".
23. On page 52391, column 3, line 38, change "83.9 1/1000 cans" to "83.9 l/1000 cans".
24. On page 52391, column 3, line 51, change "CMBD" to "CMDB".
25. On page 52394, column 1, line 40, change "(TTO))" to "(TTO)".
26. On page 52394, column 2, line 21, change "oil and grease solvents" to "oil and grease, solvents,".
27. On page 52394, column 2, line 54, insert a period after "15th ed".
28. On page 52394, column 2, line 62, insert closing parenthesis after "(Method 502E".
29. On page 52395, column 2, line 17, change "2-piece" to "two-piece".
30. On page 52396, column 1, line 30, insert "limitations guidelines" after "final effluent".
31. On page 52396, column 3, line 5, change "equipement" to "equipment".
32. On page 52397, columns 2 and 3, in the table that bridges the columns entitled "Indirect Dischargers Schedule for Submittal and Compliance", insert an "or" on the line between "60 days" and "60 days".
33. On page 52398, column 1, line 27, change "direct discharges" to "indirect discharges".
34. On page 52398, column 1, line 72, change "053 Hexachloromyclopentadiene" to "053 Hexachlorocyclopentadiene".
35. On page 52398, column 3, line 27, change "067 Butyl benzylphthalate" to "067 Butyl benzyl phthalate".
36. On page 52398, column 3, line 28, change "068 Di-N-butyl phthalate" to "068 Di-n-butyl phthalate".
37. On page 52398, column 3, line 48, change "067 Butyl benzylphthalate" to "067 Butyl benzyl phthalate".
38. On page 52398, column 3, line 49, change "Di-N-butyl phthalate" to "Di-n-butyl phthalate".

§ 465.03 [Amended]

39. On page 52399, column 2, paragraph (c)(5), delete the words "except where total O&G is specifically required".
40. On page 52399, columns 2 and 3, the equation in the center of the columns, that bridges the columns change

"mg (hydrocarbon oil and grease)/1= $\frac{E \times 1000}{ml/sample}$"

to

"mg (hydrocarbon oil and grease)/1= $\frac{E \times 1000}{ml/sample}$"

41. On page 52399, column 3, line 23 from the bottom of the page, change "reasd" to "read".

§ 465.41 [Amended]

42. On page 52400, column 1—§ 465.41 table, change "F . . . 12790.00 (28.197) 5676.00 (12.513)" to "F . . . 12792.50 (28.203) 5676.00 (12.514)".

§ 465.43 [Amended]

43. On page 52400, column 2—§ 465.43 table heading, change "SUBPART D—NSPS Effluent Limitations" to "SUBPART D—NSPS".

§ 465.44 [Amended]

44. On page 52400, column 3—§ 465.44 table heading, change "SUBPART D—PSES Effluent Limitations" to "SUBPART D—PSES".

§ 465.45 [Amended]

45. On page 52400, column 3—§ 465.45, change "Except as provided in § 403.7" to "Except as provided in 40 CFR 403.7".

Dated: March 29, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 84-9339 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Temp. Reg. D-68, Suppt. 1]

Assignment and Utilization of Space

AGENCY: Public Buildings Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends to May 15, 1985 the expiration date of FPMR Temporary Regulation D-68. D-68 sets forth simplified and streamlined GSA space management regulations, and mandates improved cost effectiveness in agencies' use of space.

DATES: Effective date: February 1, 1984. Expiration date: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Jo-Anne D. Venneberg, Acting Assistant Commissioner for Space Management (202) 566-1025.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purpose of Executive Order 12044.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Chapter 101—[Amended]

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter D.

Federal Property Management Regulations

Temporary Regulation D-68

Supplement 1

TO: Heads of Federal agencies

SUBJECT: Assignment and Utilization of Space

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D-68.

2. *Effective Date.* February 1, 1984.

3. *Expiration Date.* This supplement expires on May 15, 1985.

4. *Explanation of Changes.* The expiration date in paragraph 3 of FPMR Temporary Regulation D-68 is revised to May 15, 1985.

Ray Kline,

Acting Administrator of General Services.

March 8, 1984.

[FR Doc. 84-9542 Filed 4-9-84; 8:45 am]

BILLING CODE 6820-25-M

41 CFR Part 101-41

[FPMR Amendment G-55]

Cancel Standard Form 1131, U.S. Government Transit Bill of Lading

AGENCY: Office of the Comptroller, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the Code of Federal Regulations (CFR) and the Federal Property Management Regulations (FPMR) by removing reference to and illustrations of the U.S. Government Transit Bill of Lading (transit GBL) set, Standard Form (SF) 1131 through SF 1134. Inventory records indicate that no orders for this form have been received for more than one year. Cancelling this accountable transportation document will eliminate GSA's need to print and maintain an inventory for Federal agencies.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Claims Branch, Office of Transportation Audits (202 786-3014).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291, of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

The transit GBL has been in use by the Government for more than 40 years. Demands for this form, however, have slackened during the past few years. National Archives and Records Service (NARS) reports that no orders for this form were received from Federal agencies for more than a year. NARS suggested cancelling this form.

A proposed rulemaking was published in the **Federal Register** on October 13, 1983 (48 FR 46554), inviting comments for 45 days ending November 28, 1983. The Office of Transportation, Office of Federal Supply and Services, GSA, suggested some editorial changes that we adopted. The largest user of this form, the Department of Defense, advised us prior to publication of the proposed rulemaking that it had no objection to cancelling this form.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

Title 41, Part 101-41 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 101-41 is:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101-41 is amended by revising the following entries:

Sec.
101–41.305–1 General instructions for the preparation of GBL's involving transit.
101–41.305–3 Preparing GBL's covering free or surrendered transit.

3. Section 101–41.302–1 is amended by removing and reserving paragraphs (o) through (t) as follows:

§ 101–41.3021 Listing of forms.

* * * * *

(o)–(t) [Reserved].

* * * * *

4. Section 101–41.302–2 is amended by revising paragraph (a) introductory text, (d) and, (e) and by removing and reserving paragraph (b) to read as follows:

§ 101–41.302–2 Description and distribution of bills of lading.

(a) The U.S. Government bill of lading (GBL) consists of six basic forms and is available in sets of seven or nine parts, depending on the number of memorandum copies needed. The sets are carbon-interleaved for simultaneous preparation. The GBL set is arranged in the following order:

* * * * *

(b) [Reserved].

* * * * *

(d) The GBL continuation sheets (SF 1109 through 1112) are also available in seven- or nine-part sets and are arranged in order corresponding to the GBL sets. The continuation sheets are for use with the regular GBL and the personal property GBL.

(e) Separate sheets of the memorandum copies (SF 1103–A, SF 1109–A, and SF 1203–A) are available to Government agencies for addition to the seven- or nine-part sets.

5. Section 101–41.302–4 is amended by revising paragraph (a) to read as follows:

§ 101–41.302–4 General instructions for the preparation of GBL's and common problem areas.

(a) *Availability of guide.* Instructions for the preparation of GBL's and related forms are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610–00–682–6740). Agencies may obtain copies of the guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

* * * * *

6. Section 101–41.302–7 is revised to read as follows:

§ 101–41.302–7 GBL correction notice.

SF 1200 is used to alter or correct the GBL and the personal property GBL. It is a single sheet form, and the number of copies to be prepared and distributed will be a matter for each Federal agency to establish. Recipients of a correction notice will alter or correct the GBL as indicated on the notice and attach the form to the GBL. Preparation of SF 1200 is not required when alterations or corrections are made prior to the distribution of the GBL. The form is not subject to the provisions of the Paperwork Reduction Act of 1980 (94 Stat. 2812, 44 U.S.C. Chapter 35).

7. Section 101–41.305–1 is revised to read as follows:

§ 101–41.305–1 General instructions for preparing GBL's involving transit.

Availability of guide. Instructions necessary to provide carriers with inbound transit information are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610–00–682–6740). Agencies may obtain copies of the guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity. Transit information previously entered on obsolete Forms SF 1131 through SF 1134 (transit GBL) must now be entered on the regular GBL.

8. Section 101–41.305–2 is amended by revising paragraphs (b) and (c) introductory text to read as follows:

§ 101–41.305–2 Transit records; processing and distribution.

* * * * *

(b) *Application of transit tonnage.* Inbound transit information shall be provided in the "Description of Articles" block of the GBL or, lacking space, on a U.S. Government Bill of Lading continuation sheet which is to be attached to the GBL.

(c) *Furnishing transit certificates.* Transit certificates (record of transit tonnage and application) need not be prepared and furnished to GSA (BWAA/C) when the paying office normally verifies or enters the inbound billing information in the "Description of Articles" block of the GBL. If the paying office does not verify or provide inbound billing information, the certificates shall be furnished to General Services Administration (BWAA/C), Washington, D.C. 20405, as follows:

* * * * *

9. Sections 101–41.305–3, 101–41.305–4, and 101–41.305–5 are revised to read as follows:

§ 101.41.305–3 GBL's covering free or surrendered transit.

A GBL covering free or surrendered transit is issued for use with an outbound shipment from the transit installation where the line-haul charge to the transit installation equals or exceeds the through transportation charge plus the transit charge. After completing the "Certificate of Carrier Billing for Charges" section of the GBL covering free transit, the billing carrier shall attach the GBL to an SF 1113 bearing the carrier's bill number and submit both forms to the paying office of the agency concerned with a check for any amount due the United States.

§ 101–41.305–4 Billing for transit shipment.

A separate SF 1113 with the word "TRANSIT" typed immediately beneath the caption "ALPHA PREFIX AND SERIAL NO. OF SUBVOUCHER" shall be prepared for each GBL covering a transit shipment.

§ 101–41.305–5 Paying office action on transit billings.

The paying office shall verify and, if necessary, correct the transit information shown on the GBL. When the required transit information is not shown, the paying office shall enter the following information in the "Description of Articles" block of the GBL, or on a GBL continuation sheet, under a heading "TRANSIT RESHIPPING CERTIFICATE—INBOUND BILLING REFERENCES": the disbursing office (D.O.) voucher number, bureau voucher number, if any, the date of payment, and the D.O. symbol number of the inbound billing, before forwarding the SF 1113 and a notice of any refunds to GSA BWAA/C. Vouchers with the accompanying GBL covering free or surrendered transit shall be transmitted to GSA (BWAA/C) separate from other types of transportation vouchers.

10. Section 101–41.306 is amended by revising paragraph (b) to read as follows:

§ 101–41.306 Disposition of GBL forms upon delivery of property to carrier for shipment.

* * * * *

(b) The issuing office shall retain a certified memorandum copy; i.e., the issuing office copy (SF 1103–A and SF 1109–A, if any), and sent the consignee copy (SF 1103–B and SF 1109–B, if any) to the consignee. A contractor acting as shipper shall retain one certified memorandum copy, forward one copy to the issuing office, and send the consignee copy to the consignee.

* * * * *

11. Section 101–41.307–1 is revised to read as follows:

§ 101–41.307–1 Substitute document.

When the original GBL (SF 1103) has been lost or destroyed, the billing carrier shall use the freight waybill (original) (SF 1105), properly certified by the issuing office and by the carrier, as a substitute document for billing the charges. Execution of the "Certificate of Carrier Billing for Charges" on the substitute document is not required for charges billed under the exception procedures in § 101–41.312.

12. Section 101–41.307–6 is revised to read as follows:

§ 101–41.307–6 Lost GBL's and freight waybills (original).

When both the original GBL (SF 1103) and the original freight waybill (SF 1105) are lost or destroyed, the carrier shall request from the issuing office a certified true copy of that office's memorandum copy (SF 1103–A) of the GBL. The issuing office shall make its certification regarding the services requested on the reverse of that copy and forward it to the carrier for certification of delivery and billing. Execution of the carrier's certificate of delivery on the substitute document is not required for charges billed under the exception procedures in § 101–41.312. If the lost GBL (original) or freight waybill (original) is recovered, the procedures in § 101–41.307–4 and § 101–41.307–5, as applicable, shall be followed.

13. Section 101–41.308–1 is amended by revising paragraph (b) to read as follows:

§ 101–41.308–1 Agency control.

* * * * *

(b) The personal property GBL assemblies are sequentially numbered with six digits and a two-letter prefix, the second of which is always P; e.g., AP–000,001 through AP–999,999, then BP, CP, etc.

14. Section 101–41.310–2 is amended by revising paragraph (a) to read as follows:

§ 101–41.310–2 Preparation of carrier billing forms.

(a) Instructions for the preparation of SF 113, Public Voucher for Transportation Charges, are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610–00–682–6740). Agencies may obtain copies of this guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

* * * * *

§§ 101–41.4901–1131 through 101–41.4901–1134 [Removed]

15. Sections 101–41.4901–1131, 101–41.4901–1131–A, 101–41.4901–1131–B, 101–41.4901–1132, 101–41.4901–1133, and 101–41.4901–1134 are removed.

Dated: March 13, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–9543 Filed 4–9–84; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Public Land Order 6529

[C–28654]

Colorado; Partial Modification of Powersite Classification No. 932

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies Powersite Classification No. 392 insofar as it affects 37.23 acres of public land. This modification will open the land to private exchange subject to the provisions of section 24 of the Federal Power Act. The land remains closed to other forms of surface entry. It has been and remains open to mining and to mineral leasing.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–837–2592.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and the determination of the Federal Energy Regulatory Commission by DA–518–Colorado, it is ordered as follows:

1. The U.S. Geological Survey Order of July 29, 1948, creating Powersite Classification No. 392 is hereby modified to permit disposal by exchange subject to the provisions of section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818), as to the following described land:

Ute Principal Meridian

T. 1 S., R. 1 W.,
Sec. 36, lot 10.

The area described contains 37.23 acres in Mesa County.

2. Effective immediately, subject to valid existing rights, the land shall be available for exchange under section 206 of the Federal Land Policy and Management Act (90 Stat. 2756; 43 U.S.C. 1716), subject to section 24 of the Federal Power Act.

3. The State of Colorado has waived its rights to select the land for highway rights-of-way or material sites as provided by the Federal Power Act.

The land has been and remains open to applications and offers under the mineral leasing lands and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955 (30 U.S.C. 621).

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Dated: April 2, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84–9566 Filed 4–9–84; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

Privacy Act; Exempt Record System

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Office for Civil Rights of the Department of Health and Human Services maintains a system of records entitled "Complaint Files and Log. HHS/OS/OCR." The Department is exempting this system from certain provisions of the Privacy Act, 5 U.S.C. 552a. The exemption is authorized by subsection (k)(2) of the Privacy Act, which applies to investigative materials compiled for law enforcement purposes. The Office for Civil Rights (OCR) is authorized to gather information for civil and administrative law enforcement purposes pursuant to several statutes requiring nondiscrimination in programs or activities receiving Federal financial assistance. In order to maintain the integrity of the OCR investigative process and to assure that OCR will be able to obtain access to complete and accurate information, the Department is exempting this system, under subsection (k)(2), from the notification, access, correction and amendment provisions of the Privacy Act.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Velez, Office of Policy and Special Projects, Office for Civil Rights, Department of Health and Human Services, Room 5410 North Building, 330 Independence Avenue SW.,

Washington, D.C., 20201, telephone (202) 472-4256. (TTY No. 202-472-2916)

SUPPLEMENTARY INFORMATION: The Office for Civil Rights is responsible for enforcing Title VI of the Civil Rights Act of 1964, (nondiscrimination on the basis of race, color, or national origin), Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of handicap), the Age Discrimination Act of 1975 (nondiscrimination on the basis of age), and other statutes which prohibit discrimination in programs or activities which receive Federal financial assistance. This responsibility includes investigation of discrimination complaints filed against recipients of Federal financial assistance.

Under the Privacy Act, individuals generally have a right to access to information pertaining to them in government files. However, the Act permits agencies, by regulation, to exempt from the general access provision records which are investigative material compiled for law enforcement purposes. This exemption is qualified in that if the material results in the denial of any right, privilege, or benefit to the individual, the individual will have access to the material (except to the extent necessary to protect confidential sources).

OCR investigative files are records compiled for law enforcement purposes. In the course of investigations, OCR often has a need to obtain confidential information involving individuals other than the complainant. In these cases it is necessary for OCR to preserve the confidentiality of this information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that such information provided to OCR will be kept confidential. This assurance is often central to resolving disputes concerning access by OCR to the recipient's records, and is necessary to facilitate prompt and effective completion of the investigations.

Unrestricted disclosure of confidential information in OCR files can impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair the ability of the Office for Civil Rights to conduct investigations. For these reasons, the Department is exempting this system, under subsection (k)(2) of the Privacy Act, from the notification, access, correction and amendment provisions of the Privacy Act.

The final rule is identical to the proposed rule published at 48 FR 37440 (August 18, 1983). The Department received no comments during the 60-day public comment period provided by the notice of proposed rulemaking.

This rule does not meet the standards set forth in Executive Order 12291 for classification as a major rule, and no regulatory impact analysis is required.

The Secretary certifies that this rule will not have a significant impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

List of Subjects in 45 CFR Part 5b

Privacy.

Dated: February 8, 1984.

Approved:

Margaret M. Heckler,

Secretary.

For the reasons set out in the preamble the Department's Privacy Act Regulations, Part 5b of 45 CFR Subtitle A, are amended as follows:

PART 5b—PRIVACY ACT REGULATIONS

By adding paragraph (b)(2)(ii)(E) as follows:

§ 5b.11 Exemptions.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(E) Complaint Files and Log. HHS/OS/OCR.

* * * * *

[FR Doc. 84-8501 Filed 4-9-84; 8:45 am]

BILLING CODE 4150-04-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Grants

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final rule; Amendments to general program regulations.

SUMMARY: The Institute of Museum Services issues amendments to regulations relating to certain of its programs of Federal financial assistance. The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the General Operating Support and Special Projects Support programs for museums for Fiscal Year 1984.

EFFECTIVE DATE: These amendments are effective April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Michele Rossi, Confidential Assistant to the Director, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506. (786-0536.).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 6, 1976 and amended on December 4, 1980.

The purpose of the Act is stated in Section 202 as follows:

> It is the purpose of [the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and post-secondary education and with programs of non-formal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic and scientific heritage,and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museums, including museums relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational and cultural resources of the United States; and of the general public. In addition to the members appointed by the President, the following serve as members of the Board: the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Secretary of Education. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L. 97-100, December

23, 1981, Pub. L. 97–394, December 30, 1982.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public and providing education programs to the public. Other activities are designed to aid museums in developing and maintaining professionally trained staff, developing and carrying out specialized museum programs for specific segments of the public, and cooperating with other museums in developing traveling exhibitions, meeting transportation costs for these exhibitions, and identifying and locating collections available for loan. Assisting museums to carry out conservation activities is expressly authorized in the Act.

2. Need for Amendments

IMS regulations for the IMS General Operating Support (GOS) and Special Project Support (SP) programs were last published in June of 1983 (48 FR 27727). Amendments to these regulations are needed in order to implement provisions in the Fiscal Year (FY) 1984 appropriations legislation relating to these programs and to implement policy directions of the Board with respect to these programs for FY 1984 given at the Board's meetings of October 14 and December 9, 1983. The amendments fall into the following categories:

- A change in the regulations relating to eligibility for participation in IMS programs which is designed to reflect a provision in the FY 1984 Appropriation Act.
- Changes designed to clarify the applicability of certain provisions of the regulations to group applications or to relieve group applicants from limitations contained in the regulations.
- Changes designed to conform the regulations to revisions made in the application package as the result of Board consideration.
- Establishment of priorities for Special Project Support for FY 1984 growing out of Board consideration of the Special Projects program in light of prior experience.
- Other clarifying changes designed to meet particular concerns of museums expressed through members of the Board.

3. Amendment by Amendment Analysis

(a) Amendment No. 1 is designed to relieve applicants participating in a group application for a Special Project grant from the provisions in the regulations which prevent a museum from receiving both a Special Project grant and a General Operating Support grant in the same fiscal year (§ 1180.5(e)). The Board believes that the current provision (§ 1180.5(e)) may discourage the submission of potentially promising Special Project applications. This amendment is one of a number designed to encourage collaborative Special Projects from museums.

(b) Amendment No. 2 is designed to implement a statutory provision in the Department of the Interior and Related Agencies Appropriations Act, 1984, (Pub. L. No. 98–146) which precludes the establishment of IMS regulations which prohibit grants to any institution which is a recipient of a challenge grant from the National Endowment for the Arts or the National Endowment for the Humanities.

IMS regards this legislation as precluding the applicability of § 1180.5(g) (relating to receipt of Challenge Grants) to IMS grants made from FY 1984 funds. (IMS does not interpret this legislation as affecting the applicability of § 1180.5(g) to IMS grants made with FY 1983 funds.)

(c) Amendment No. 3 is designed to clarify the activities for which Special Project grants may be made. The amendment would change the regulations to indicate that conservation projects may *not* be assisted in FY 1984 with the portion of the appropriation earmarked for Special Project grants because another portion of the Fiscal Year 1984 appropriation has been earmarked for conservation projects. IMS believes that proposed conservation projects should be considered in connection with the competition for grants from that portion of the appropriation under guidelines and standards specifically developed for that competition. Clarifying language would also be added to reflect the availability of Special Project funds for programs or projects to serve the handicapped.

(d) Amendment No. 4 is designed to clarify the type of opinion which must be offered by an audit organization which provides an audited financial statement under § 1180.11(c) of the regulations for a museum which uses a cash basis of accounting. The amendment was suggested by a member of the Board at the October 14 meeting based upon concerns expressed on behalf of museums in that category and was adopted by the Board at that time. The amendment is designed to provide regulatory relief for such museums while at the same time maintaining the Board's policies with respect to the submission of financial information by applicants.

(e) Amendments No. 5 and No. 8 are designed to conform the regulations in § 1180.11(e) (relating to maintenance of effort) to the new GOS application package approved by the Board on October 14. The maintenance of effort requirement would no longer be an element in the review of an application but would be restated as a post-award condition and would be a matter involved in post-award review of grantee performance.

(f) Amendment No. 6 would restate the annual funding priorities for Special Project Support for FY 1984 in accordance with the policy direction of the Board under Section 206 of the Museum Services Act. For future fiscal years, priorities would be announced in annual program announcements published in the Federal Register. The priorities for FY 1984 were developed in connection with an extensive Board review of the Special Project program.

(g) Amendment No. 7, would clarify the applicability of § 1180.16(b) to group applications for Special Project support. In particular, a member of a group making a group application would not have to establish that the amount requested in the application was less than 10 percent of its individual nonfederal operating income. The amendment also makes a clarifying change in Section 1180.16(b) to conform to language in the revised application package approved by the Board.

4. Public participation

IMS has followed the practice of obtaining public participation in the development of its regulations and guidelines and has normally first published them in the form of a notice of proposed rulemaking inviting public comment. In the case of the instant amendments, this practice is not being followed. The amendments in question are designed to reflect statutory changes applicable to the programs made in the FY 1984 appropriations act; to clarify the applicability of current regulations to group applications; to clarify other provisions; or to implement policy directives of the Board providing relief to applicants from the applicability of certain provisions. To the extent that public participation would be appropriate, the public participation process could not be completed in time to permit orderly review of applications for General Operating Support and Special Project grants. The need of applicants for established final regulations in order to provide a clear frame of reference for application and the need of IMS to organize and convene panelists in addition to field

readers for certain programs preclude resort to this process for the current fiscal year. Thus, it is necessary that final regulations be in place promptly to support the conduct of the programs in question. Under these circumstances, it has been determined that resort to public participation procedures for the amendments in question is either not necessary or would be impracticable. See 5 U.S.C. 553(b).

5. Executive Order 12291

These amendments have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

6. Regulatory Flexibility Act Certification

The Director certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

To the extent that they affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These amendments will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision. They impose minimal requirements to ensure the proper expenditure of grant funds.

List of Subjects in 45 CFR Part 1180

Grant programs, Museums, National boards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance No. 43.301, Museum Services Program)

Dated: March 19, 1984.

Susan Phillips,

Director, Institute of Museum Services.

Dated: April 2, 1984.

C. Douglas Dillon,

Chairman, National Museum Services Board.

The Institute of Museum Services amends Part 1180 of Subchapter E of Chapter XI of Title 45 CFR of the Code of Federal Regulations by revising §§ 1180.5, 1180.8, 1180.11, 1180.12, and 1180.16, and by adding a new § 1180.18 as set forth below:

SUBCHAPTER E—INSTITUTE OF MUSEUM SERVICES

PART 1180—GRANTS REGULATIONS

1. Section 1180.5(e) is revised to read as follows:

§ 1180.5 Eligibility and burden of proof—who may apply.

* * * * *

(e) A museum is ineligible to apply for or receive funding in any fiscal year for both Special Project and General Operating Support. Notwithstanding the preceding sentence, a museum which applies for a Special Project grant as one of a group of museums making a group application under § 1180.35 (relating to group applications) may also apply for a General Operating Support grant in the same fiscal year.

2. Section 1180.5 further revised by adding a new paragraph (i) to read as follows:

* * * * *

(i) Notwithstanding paragraph (g) of this section, in accordance with Pub. L. No. 98–146, no museum is ineligible to apply for or receive funds available under the Act for Fiscal Year 1984 because of its application for, or receipt of, a Challenge Grant.

3. In § 1180.8 paragraphs (a)(4) and (a)(5) are revised to read as follows:

§ 1180.8 Special Project Support.

(a) * * *

(4) Conserve artifacts, objects, plants and animals, except that, for Fiscal Year 1984, IMS does not make grants in the Special Projects category under this section for conservation projects. Section 1180.29(c) defines the term "conservation" for this purpose;

(5) Develop and carry out specialized programs for specific segments of the public, such as programs for urban neighborhoods, rural areas, Indian reservations, and penal and other State institutions and programs to serve the handicapped;

* * * * *

4. Section 1180.11(c)(2) is revised to read as follows:

§ 1180.11 Basic requirements which a museum must meet to be considered for funding.

* * * * *

(c) * * *

(2)(i) Every applicant which has previously received an IMS award must submit its audited financial statement for the last fiscal year immediately preceding the fiscal year in which application is made or the immediately preceding fiscal year, prepared by an individual or organization meeting the qualifications of the Comptroller General of the United States for individuals or organizations conducting Government audits. Reference is made to GAO, *Standards for Audit of Governmental Organizations, Programs and Functions* (1981 revision).

(ii) In the case of a museum which does not use cash basis accounting, the individual or organization performing the audit must offer an opinion that the financial statement of the museum presents fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles. In the case of a museum which uses cash basis accounting, the individual or organization performing the audit must offer an opinion that the statement presents fairly (A) revenues collected and expenditures made and (B), where a balance sheet is involved, the assets, liabilities, and fund balances of the museum arising from cash transactions.

* * * * *

5. Section 1180.11(e), *Maintenance of effort* is removed. See amendment no. 8.

6. Section 1180.12(b) is revised to read as follows:

§ 1180.12. How applications are judged; priorities.

* * * * *

(b) The Institute annually sets priorities for Special Project applications and publishes these priorities in the **Federal Register** with the program announcement. The Institute particularly invites applications for Fiscal Year 1984 in the following areas:

(1) Projects to develop and carry out educational programs including cooperative education programs between museums and school boards, schools, or other public or private nonprofit educational institutions;

(2) Projects involving cooperative endeavors and collaboration among groups of museums;

(3) Projects to develop and maintain professionally trained or otherwise experienced staff;

(4) Projects to obtain outside expert assistance to enable a museum to carry out its functions or to provide expert assistance to other museums; and

(5) Projects to improve the management capacity of a museum such as projects involving innovative uses of electronic data processing.

* * * * *

7. Section 1180.16(b) is revised to read as follows:

§ 1180.16 IMS share of the cost of a proposal.

* * * * *

(b)(1) Subject to § 1180.9(a), IMS normally does not make grants for more than 10 percent (or $5,000 whichever is greater), of a museum's most recently completed fiscal year's non-federal operating income. For future fiscal years a different figure may be specified by notice published in the **Federal Register**. Non-federal operating income may be increased by an amount reflecting the reasonable and conservative value of volunteer services contributed in the most recently completed fiscal year.

(2) Notwithstanding paragraph (b)(1) of this section, in the case of an application by a group of museums under § 1180.35 for Special Project assistance, a grant may be made without regard to the percentage which the grant represents of the individual non-federal operating income of any museum in the group. *Example:* Museum A, B, and C apply under a group application for a $50,000 Special Project. Museum A's non-federal operating income is $60,000. If it applied alone, Museum A could not expect a grant for more than $6,000. Nevertheless, it may participate in the group application.

* * * * *

8. A new § 1180.18 is added to read as follows:

§ 1180.18 Maintenance of effort.

A grantee must be able to demonstrate a continuing effort to maintain or increase its base of financial support during the fiscal year for which it receives a grant from IMS. A grantee successfully demonstrates maintenance of effort if its non-federal operating income during the fiscal year of its award is at least equal to its non-federal operating income for its immediately preceding fiscal year.

(20 U.S.C. 961–68)

[FR Doc. 84-8929 Filed 4-9-84; 8:45 am]
BILLING CODE 7035-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80-286]

Amendment of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Deferral of Effective Date.

SUMMARY: The Commission defers the existing effective date of April 3, 1984, for previously adopted changes in the rules for jurisdictional separations to June 13, 1984. This is necessary because the effective date of the access charge tariffs has been extended to June 13, 1984. This action will allow the separations changes and the access charge tariffs to go into effect on the same date.

DATES: The deferral of the effective date is to take effect April 2, 1984. The separations changes will now go into effect June 13, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo of the Common Carrier Bureau at (202) 632–9342.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of part 67 of the Commission's rules and establishment of a joint board, [CC Docket No. 80–286].

Adopted: March 29, 1984.
Released: April 2, 1984.

By the Commission.

1. On December 1, 1983, the Commission adopted revisions in the procedures governing the allocation of telephone company plant costs between the federal and state jurisdictions. *Amendment of Part 67,* 49 FR 7934 (March 2, 1984). These changes in the jurisdictional separations rules were set to become effective on April 3, 1984 at the same time as the access charge tariffs. *Id.* at para. 75. The Commission recently deferred until June 13, 1984, the effective date of the access charge tariffs filed in mid-March by the National Exchange Carrier Association (NECA) and the individual exchange carriers. News Release "Effective Date for Access Service Tariffs Extended," CC Docket No. 83–1145, Phase I, Report No. 17907, released March 21, 1984. In order to avoid the need for separate tariff filings to reflect the changes in the jurisdictional separations procedures, we are deferring the effective date of the revisions in Part 67 of the Commission's rules to June 13, 1984.[1]

2. Accordingly, it is ordered, That the effective date for the changes in the jurisdictional separations procedures discussed above is deferred to June 13, 1984.[2]

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-8930 Filed 4-9-84; 8:45 am]
BILLING CODE 6712-01-M

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[1] The Commission will complete its review of the access charge tariffs expeditiously, and if possible, permit the tariffs to become effective, in whole or in part, prior to June 13, 1984. This may necessitate further changes in the effective date of the revised separations rules.

[2] This action is taken pursuant to sections 1, 4(i), 4(j), 221(c), and 410(c) of the Communications Act, 47 U.S.C. 151, 154(i), 154(j), 221(c) and 410(c) (1978).

Proposed Rules

Federal Register
Vol. 49, No. 70
Tuesday, April 10, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Administrative Rules and Regulations Governing Crediting for Marketing Promotion

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to change the creditable marketing promotion provisions of the administrative rules and regulations established under the Federal marketing order for California almonds. The change would increase the credit handlers of California almonds may receive for advertising almond butter against their pro rata expense assessment abligations. The change is designed to encourage the expansion of almond butter markets.

DATE: Comments must be received by April 25, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, Room 1077, South Buidling, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has bee reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Frank M. Grasberger has determined that this proposal should be published with less than a 30-day comment period. The change would relax restrictions on handlers, and handlers should have the opportunity to utilize that increased flexibility as soon as possible.

This proposal would revise § 981.441(c)(3)(iv) of Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474; 48 FR 11249). This subpart is issued under the marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on a unanimous recommendation of the Almond Board of California, hereinafter referred to as the "Board", which works with USDA in administering the order.

Section 981.441(c)(3)(iv) currently provides that handlers may receive credit for advertising almond products against their pro rata expense assessment obligations. The amount of such credit shall be the lesser of 50 percent of the total allowable payment to the advertising medium or 50 percent of the handler's actual payment. Section 981.441(c)(3)(iv) also stipulates that creditable almond products must not contain nuts other than almonds, must contain at least 50 percent raw shelled almonds by weight, and must display the handler's brand.

The proposal is to change § 981.441(c)(3)(iv) by increasing the amount of credit handlers could receive for advertising one specific almond product almond butter. The change would allow handlers to receive credit for almond butter advertising equal to the lesser of 100 percent of the total allowable payment to the advertising medium or 100 percent of the handler's actual payment. For the handler to receive credit, the almond butter would be required to meet the specifications contained in § 981.466 of the order, and the handler would be required to display his brand on the product.

The Board is currently involved in an ongoing project to use reserve almonds to develop a permanent market for almond butter. The Board hopes that, in time, the almond butter market will absorb a large quantity of almonds in the face of anticipated larger crops. This proposed change should help to develop that market by encouraging handlers to advertise almond butter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 981—[AMENDED]

Therefore, it is proposed to revise § 981.441(c)(3)(iv) of Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474; 48 FR 11249) as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(3) * * *

(iv) When almond products, other than almond butter, are advertised, the credit shall be 50 percent of the total allowable payment to the advertising medium or 50 percent of the handler's payment thereof, whichever is less: *Provided,* That (A) the almond product does not contain nuts other than almonds, (B) The almond product contains at least 50 percent raw shelled almonds by weight, and (C) the almond product displays the handler's brand. With respect to almond butter advertising, the credit shall be 100 percent of the total allowable payment to the advertising medium or 100 percent of the handler's payment thereof, whichever is less. For the handler to receive credit, the almond butter must meet the specifications contained in § 981.466, and the handler's brand must be displayed.

* * * * *

(Secs. 19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 4, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-9545 Filed 4-9-84; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, 234, and 235

[Docket No. R-84-1094; FR-1590]

Second Mortgages or Liens on FHA-Insured Mortgages; Escrow Accounts Associated With Interest Buy-Downs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would expand the current permissible use of secondary financing in connection with HUD-insured, unsubsidized single family mortgages. Existing regulations permit the execution of a second mortgage only if the loan is made, insured or held by a Federal, State or local agency or instrumentality. The proposed rule would specify circumstances under which a second lien could be held by non-governmental entities or an inferior mortgage could be executed to secure funds advanced by the seller of a property to "buy down" the interest rate on the first mortgage. These changes are expected to increase homeownership opportunities for low- and moderate-income persons.

DATES: Comments must be received by June 10, 1984.

ADDRESS: Interested parties are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Comments should refer to the docket number and date of publication of the rule. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Single Family Development Division, Room 9270, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Secondary Mortgages. Current HUD policy permits FHA mortgage insurance on a first mortgage loan secured by a one- to four-family property with a second mortgage only if the second mortgage or loan is made, insured, or held by a Federal, State, or local government agency. This rule would broaden HUD's policy on second mortgages. As home values continue to escalate, the goal of homeownership is becoming more difficult to achieve, especially homeownership by low- and moderate-income families. HUD believes that the use of secondary financing, in conjunction with FHA insurance of a first mortgage, for the purchase of a one- to four-family home, a cooperative apartment or a condominium can further the goal of homeownership by low- and moderate-income families.

The proposed rule contains a number of features designed to protect both the borrower and the Department. Thus, a second mortgage could be given to a mortgagee other than a Federal, State or local government agency only if (1) the first and second mortgages together do not exceed HUD's applicable maximum loan-to-value ratio and the maximum mortgage amount for the area, (2) the sum of required payments under the insured first mortgage and the second mortgage is not more than the mortgagor's reasonable ability to pay as determined by the Federal Housing Commissioner, (3) the second mortgage does not require a balloon payment before ten years, (4) any periodic payments made under the second mortgage are made on a monthly basis and are substantially the same in amount, (5) the interest rate on the second mortgage does not exceed the rate on the insured first mortgage, and (6) the borrower is permitted to prepay the second mortgage without penalty. Existing regulations which require a mortgagor to establish the adequacy and stability of the mortgagor's income to meet the required payments are retained without change.

The only limitation the existing regulations impose on government-related second liens is that the sum of the first and second mortgages must not exceed the mortgagor's reasonable ability to pay. The Department is considering changing this policy to extend most of the restrictions proposed in this rule on secondary financing provided by nongovernmental entities to second mortgages provided by governmental entities. The only restriction that the Department is not considering imposing on governmental entities is contained in § 203.32(c)(4) of this rule, which would subject the sum of the first and second liens to applicable loan-to-value ratios and maximum insurable amounts for the area. The Department particularly solicits comments concerning this issue, and, if appropriate, the final rule will include amendments dealing with secondary financing provided by both governmental and nongovernmental entities.

Escrow Accounts with Interest Buy-Downs. The Department is also revising its policy on the use of interest buy-downs. In an interest buy-down transaction, the seller places funds in escrow, with instructions to release a certain amount each month to the servicing mortgagee to reduce the monthly interest charged on the first mortgage to the buyer during the early years of the mortgage loan. Historically, the Department would consider any gift or monetary contribution by the seller to the buyer to be an "inducement to purchase" the property and, therefore, would reduce the acquisition cost to the buyer by the amount of the escrow. This would reduce the maximum amount of the insured mortgage. Recently, the Department modified its policy and determined that such a transfer, since it is not available as cash or the equivalent to the purchaser at the time of closing, need not be considered as an "inducement to purchase" the property. HUD no longer reduces the acquisition cost in instances where a seller or other interested party deposits money into an escrow account for an interest buy-down. This change in policy is reflected in an amendment to Handbook 4155.1 REV (Mortgage Credit Analysis for Mortgage Insurance on One- to Four-Family Properties).

The interest buy-down mechanism provides a significant benefit to prospective homebuyers because it reduces a borrower's monthly payments in the early years of the mortgage. However, many sellers are unable to assist homebuyers without an expectation of future repayment of the interest buy-down funds. The proposed rule would permit an FHA-insured mortgage on a property that has a junior (second or third) mortgage that secures a mortgagor's obligation to repay the funds advanced by a seller for an interest buy-down. Since mortgages to secure interest buy-down repayments would be permitted only under limited circumstances, the sum of the insured mortgage and such a mortgage (unlike general second mortgages contemplated by this rule) may exceed the applicable maximum loan-to-value ratios established for insured mortgages (but not the applicable maximum mortgage limits). However, no payments could be required under these mortgages until the property secured by the mortgage is sold, or the insured mortgage is refinanced. Also, the total amount of any required repayments could not exceed the least of (1) one-half of the mortgagor's equity in the property at the

time of sale or refinancing, (2) three times the amount of the buy-down funds advanced or (3) the sum of the original loan amount and the total accrued interest on the junior mortgage at the time of repayment.

The Department does not believe it is appropriate to apply these new secondary mortgage policies to the subsidized homeownership program under section 235 of the National Housing Act. Accordingly, the rule contains a technical amendment to Part 235 that has the effect of continuing to permit only secondary mortgages held by governmental entities in the section 235 program. The revised policies are made applicable to the Department's other single family insuring authorities through amendments to Part 203 (1–4 family units), Part 213 (cooperative units) and Part 234 (condominium units).

Findings and certifications. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address set forth above.

This rule does not constitute a "major rule" as that term is defined in Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is listed at 48 FR 47432 under agenda number H–84–82 in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47418), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The following numbers identify the program, as listed in the Catalog of Federal Domestic Assistance, affected by this regulation change.

Section 203(b)
=14.117 Mortgage Insurance—Home
=14.118 Mortgage Insurance—Homes for Certified Veterans
Section 213(b)=14.126 Mortgage Insurance—Management Type Cooperative Projects
Section 234(c)=14.133 Mortgage Insurance—Purchase of Units in Condominiums
Section 245 (a) and (b)=14.159 Section 245 Graduated Payment Mortgage Program

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not a significant economic impact on a substantial number of small entities. While the rule will provide a benefit to buyers and sellers of single family housing, some of whom may constitute small entities, it is not expected that the economic impact of the rule on them will be significant.

Lists of Subjects

24 CFR Part 203

Home improvement, loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, grant programs: housing and community development.

Accordingly, 24 CFR Parts 203, 213, 234 and 235 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. In § 203.32, paragraph (a) is revised and new paragraphs (c) and (d) are added, to read as follows:

§ 203.32 Mortgage lien.

(a) Except as otherwise provided in this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear from all liens other than such mortgage and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

* * * * *

(c) With the prior approval of the Commissioner, the mortgaged property may be subject to a second mortgage held by a mortgagee that is not a Federal, State or local government agency or instrumentality. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The interest rate shall not exceed the interest rate of the insured mortgage;

(4) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(5) The repayment terms shall not provide for a balloon payment before ten years; and

(6) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage in the early years following the date it is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payment until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The interest rate of the junior mortgage, if interest is charged, shall not exceed the interest rate of the insured mortgage;

(iii) The total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) Three times the amount of funds advanced to effect the interest rate buy-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iv) The junior mortgage shall contain a provison permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third morgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

2. In § 213.520, paragraph (a) is revised and new paragraphs (c) and (d) are added, to read as follows:

§ 213.520 Mortgage lien.

(a) Except as otherwise provided in this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear from all liens other than such mortgage and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the morgaged property.

* * * * *

(c) With the prior approval of the Commissioner, the mortgage property may be subject to a second mortgage held by a mortgagee that is not a Federal, State or local governmental agency or instrumentality. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The interest rate shall not exceed the interest rate of the insured mortgage;

(4) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(5) The repayment terms shall not provide for a balloon payment before ten years; and

(6) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments in the early years following the date the mortgage is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payments of principal or interest until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The interest rate of the junior mortgage, if interest is charged, shall not exceed the interest rate of the insured mortgage;

(iii) The total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) Three times the amount of funds advanced to effect the interest rate buy-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iv) The junior mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. In § 234.55, paragraph (a) is revised and new paragraphs (c) and (d) are added, to read as follows:

§ 234.55 Mortgage lien.

(a) Except as otherwise provided in of this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear from all liens other than such mortgage and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

* * * * *

(c) With the prior approval of the Commissioner, the mortgaged property may be subject to a second mortgage held by a mortgagee that is not a Federal, State or local governmental agency or instrumentality. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;

(2) Periodic payments, if any, shall be collected monthly and are substantially the same;

(3) The interest rate shall not exceed the interest rate of the insured mortgage;

(4) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(5) The repayment terms shall not provide for a balloon payment before ten years; and

(6) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments in the early years following the date the mortgage is insured, provided that:

(i) The junior mortgage shall not provide for any payments of principal or interest until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The interest rate of the junior mortgage, if interest is charged, shall not exceed the interest rate of the insured mortgage;

(iii) the total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) three times the amount of funds advanced to effect the interest rate by-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iv) The junior mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(2) The sum of the principal amount of the insured mortgage any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may exceed the loan-to-value limitation applicable to the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

4. In § 235.1(a), add in numerical order the following section heading:

§ 235.1 Cross-reference.

(a) * * *

235.32 Mortgage lien.

* * * * *

5. A new § 235.32 is added, to read as follows:

§ 235.32 Mortgage lien.

(a) Except as provided in paragraph (b) of this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear from all liens other than such mortgage and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

(b) With prior approval of the Secretary, the mortgaged property may be subject to a second mortgage made or insured, or other secondary lien held, by a Federal, State or local government agency or instrumentality. However, the required monthly payments under the insured mortgage and the second mortgage or lien shall not exceed the mortgagor's reasonable ability to pay, as determined by the Secretary.

Authority: Section 211, National Housing Act (12 U.S.C., 1715(b)); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 19, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-9504 Filed 4-9-84; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910

[Docket No. H-033C]

Occupational Exposure to Asbestos

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule and notice of hearing.

SUMMARY: On November 4, 1983, the Occupational Safety and Health Administration (OSHA) published an Emergency Temporary Standard (ETS) which amended OSHA's present standard regulating occupational exposure to asbestos, 29 CFR 1910.1001 (48 FR 51085). This supplemental proposal together with the November 4 **Federal Register** notice constitute proposed revisions to OSHA's permanent standard regulating occupational exposure to asbestos in all industries covered by the Act, including general industry, the maritime industry and the construction industry. The basis for this supplemental proposal is OSHA's determination that employees exposed to asbestos face a significant risk to their health and that the proposed permanent standard will substantially reduce that risk. This notice proposes two alternative permissible exposure limites: 0.2 fibers (5 micrometers or longer) per cubic centimeter of air as an eight hour time-weighted average (0.2 f/cc), or 0.5 fibers (5 micrometers or longer) per cubic centimeter of air as an eight hour time-weighted average (0.5 f/cc). Other changes such as the definition of asbestos are also being considered. OSHA also solicits comments, data and information concerning specific changes to requirements affecting the construction industry. This notice schedules an informal rulemaking hearing concerning this proposal and the other revisions proposed by the ETS.

DATES: Notices of intent to appear at the informal rulemaking hearing must be received on or before May 10, 1984. Comments concerning the proposed revisions to the asbestos standard including changes proposed by the ETS must be received on or before May 25, 1984. Parties requesting more than 10 minutes for their presentations at the hearings, and parties submitting documentary evidence at the hearings shall submit the full text of their testimony and all documentary evidence which must be received no later than May 25, 1984. The informal rulemaking hearing will begin at 10:00 a.m., June 19, 1984, in the Auditorium, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

ADDRESSES: Written comments should be submitted to the Docket Officer, Docket No. H-033C, Room S-6212, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210. Notices of intent to appear at the informal rulemaking hearing, testimony and documentary evidence should be sent in quadruplicate to: Mr. Thomas P. Hall, OSHA Division of Consumer Affairs, Docket No. H-033C, Room N-3662, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210; telephone (202) 523-7177.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-8151.

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I. Introduction

Pursuant to sections 6(b), 6(c), and 8(c) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 1596, 1599; 29 U.S.C. 655, 657), the Construction Safety Act (Pub. L. 91–54; 40 U.S.C. 333), the Longshoremen's and Harbor Workers Compensation Act (33 U.S.C. 941), the Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, this notice hereby proposes to amend and revise the current asbestos standard, 29 CFR 1910.1001. This proposal follows publication of an Emergency Temporary Standard (ETS) on November 4, 1983 (48 FR 51085).[1] The Notice published on November 4, 1983 also serves as a proposal for this rulemaking and is incorporated by reference in this document.

These proposed revisions to the permanent standard apply to all workplaces covered by the Act, including "general industry", construction and maritime. An earlier notice of proposed rulemaking, published on October 9, 1975 (40 FR 47652) excluded the constuction industry. Because of this fact and because of additional requirements imposed by the United States Supreme Court in *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*. 448 U.S. 601 (1980), the earlier notice of proposed rulemaking is hereby withdrawn and replaced with this notice of proposed rulemaking.

OSHA believes that employees exposed to asbestos at the previous 2 f/cc time-weighted average PEL face a significant risk to their health and that the proposed standard would substantially reduce that risk. OSHA also believes that a significant risk remains at exposures to the proposed alternative PELs. Recent available evidence indicates that either 0.2 f/cc or 0.5 f/cc is an appropriate limit to propose when considering the available information regarding feasiblity limitations, particularly regarding asbestos measurement accuracy at low levels.

The preliminary regulatory analysis prepared by OSHA pursuant to Executive Order 12291 explores the feasibility of meeting three possible permissible exposure limits, 0.5 f/cc, 0.2 f/cc and 0.1 f/cc. At the conclusion of this rulemaking, OSHA will adopt a PEL reflecting the record evidence concerning health risk and technical and economic feasibility and which may, therefore, be higher or lower than the limits proposed.

OSHA has consulted with the Environmental Protection Agency (EPA) concerning this proposal and other asbestos-related areas of common concern. EPA has reviewed and critiqued OSHA's asbestos risk assessment (Ex 84–292, Ex 86–6). In addition, both EPA and OSHA are initial members, along with the Consumer Product Safety Commission (CPSC), of the Federal Asbestos Task Force, established in June, 1983. The primary purpose of the Task Force is to develop a unified federal approach for the regulation of asbestos and to coordinate future actions by the participating agencies. To date, these agencies have participated in committee meetings concerning exposure assessment and health hazards of asbestos and will continue along with representatives of other interested federal agencies to coordinate their efforts with respect to asbestos regulation.

OSHA requests the widest public participation and submission of written comments, data, and other evidence from interested persons on all the issues addressed in the proposal, including the appropriate permissible exposure limits, the feasibility of the proposed limit, and any other possible exposure limits that should be considered by OSHA. In addition, this notice requests comments on issues relating to the construction industry. This proposal schedules an informal hearing to provide further opportunity for discussion of the issues raised by the ETS and this proposal. After the hearing, OSHA intends to issue a final standard based on the full record of the evidence. OSHA plans to codify the asbestos standard, as it applies to the construction industry, in 29 CFR Part 1926. Some of the major issues raised in this proceeding include the following:

1. What exposure limits would provide protection of employees against known and suspected workplace hazards of asbestos and what feasibility limitations exist in setting any given limit;

2. Whether the permissible ceiling limit should be reduced and, if so, what the revised limits should be. What feasibility limitations exist;

3. To what extent, if any, should the standard be modified for workplaces which are of a nonfixed nature or otherwise engage a highly transient workforce, e.g., the construction industry;

4. Whether the changes in the definitions of "asbestos" and "asbestos fiber" would clarify the standard's intended scope, and properly relate to known or suspected workplace hazards; whether specifying the mineralogic definition of asbestos, such as using the term "tremolite asbestos" rather than the current term "tremolite," would better define the health hazard;

5. Wheter OSHA shoud modify the existing medical surveillance provisions (29 CFR 1910.1001(j)) to change the frequency of exams, their content, or otherwise;

6. Whether an expanded medical removal program should be provided where, as a result of the medical surveillance program, it is determined that an employee is at an increased risk of material impairment of health from further exposure to asbestos;

7. Whether and under what circumstances and conditions it is feasible to reliably measure asbestos concentrations at levels of 0.1 f/cc, 0.2 f/cc and 0.5 f/cc;

8. Whether the evidence associating asbestos exposure with the following health effects is adequate and whether OSHA's assessment of risk is scientifically valid:

a. Lung Cancer;

b. Mesothelioma;

c. Gastrointestinal Cancer;

d. Asbestosis; and

e. Other Malignant and Nonmalignant Diseases;

9. Whether a linear model should be used to extrapolate the risks of certified disabling asbestosis from lifetime exposure levels below 0.5 f/cc;, whether OSHA should quantify risks for other stages of asbestosis and if so how;

10. Whether OSHA's analysis of the evidence for carcinogenicity and toxicity differentials by asbestos fiber types is appropriate or whether regulatory distinctions should be made for different asbestos fiber types;

11. Whether OSHA should permit any method of compliance to reach the new permissible exposure limits after 2 f/cc has been achieved by use of engineering and work practice controls or whether it should require the use of engineering and work practice controls down to the PEL established in the final standard;

12. Whether proposed procedures for initial and subsequent exposure monitoring are adequate to reliably determine employee exposure to asbestos;

13. Whether provisions for regulated areas are reasonably necessary and appropriate for all covered industries;

14. Whether provisions for hygiene facilities are reasonably necessary and appropriate for all covered industries;

[1] On March 7, 1984 the United States Court of Appeals for the 5th Circuit determined the ETS to be invalid and stayed enforcement of the ETS.

15. Whether the standard should have a delayed effective date for any industry sector and, if so, the extent to which a phased schedule for compliance would be appropriate;

16. What are the environmental impacts of the proposal; and

17. Whether the provisions of the proposed standard are cost-effective and, if not, how can they be made cost-effective.

II. Asbestos and Health

Asbestos exposure can cause a number of disabling and fatal diseases. the discussion of the evidence found in the ETS concerning the health effects of occupational exposure to asbestos will not be repeated here (see 48 FR 51086 to 51133), but a brief overview of the data concerning asbestos-related disease is presented below.

Industrial and other human studies have conclusively shown the association between asbestos exposure and cancer in humans. Lung cancer risk is greatly increased in asbestos-exposed persons and mesothelioma (cancer of the lining of the pleural or peritoneal cavities) occurs almost exclusively in asbestos-exposed persons. The mechanisms by which exposure to asbestos leads to cancer are not known. Fiber length and diameter may be one of the determinants of carcinogenicity, according to the results of experimental studies. Although differences in chemical and physical properties among different fiber types have also been suggested as affecting the biological activity of asbestos fibers, all fiber types covered by the current standard are implicated in causing asbestos-related disease in humans. All asbestos fiber types appear to have an equivalent potency for causing lung cancer, the major cause of occupational mortality from asbestos exposure. OSHA believes that the evidence is more than adequate to support its determination that workers exposed at the currently permitted levels of exposure (i.e. 2 f/cc as a time-weighted average)—and even lower—face a significant risk of asbestos-related cancer and asbestosis and that the proposed standard will substantially reduce that risk.

As pointed out at 48 FR 51009, the types of disease associated with asbestos exposure are:

Cancer of the lung—The relationship between lung cancer and asbestos exposure has been conclusively established by numerous epidemiologic studies of diverse occupational groups. Lung cancer usually has a latency period in excess of 20 years following initial exposure to asbestos. Few cases of lung cancer are curable despite advances in medical and surgical oncology. Only 9% of lung cancer patients survive five or more years after diagnosis (American Cancer Society, 1983; Ex. 84–160). In addition, asbestos exposure acts synergistically with cigarette smoke to multiply the risk of developing lung cancer.

Mesothelioma—Mesothelioma, cancer of the lining of the pleura and peritoneum, also has been conclusively shown to result from asbestos exposure. Mesothelioma tumors are diffuse and spread rapidly throughout the cavity of origin. They are rarely curable and death usually results within a year of diagnosis.

Malignant mesotheliomas of the pleura and peritoneum are extremely rare in persons not exposed to asbestos. In some asbetos-exposed occupational groups, 10%–16% of deaths have been attributable to malignant mesotheliomas. Generally, a latency period of at least 15 years and often more than 30 years is required in order to observe mesotheliomas in an occupational group. Some victims of mesothelioma have had a latency period exceeding 40 years since their initial exposure to asbestos. There is no evidence for a relationship between cigarette smoking and mesothelioma risk.

Digestive System and Other Cancers—A number of epidemiologic studies of asbestos workers have observed increases in esophageal, stomach, colo-rectal, kidney, laryngeal, pharyngeal, and buccal cavity cancers. While the magnitude of increased cancer risk for these sites is not as great as for lung cancer and mesothelioma, and the epidemiologic evidence is less consistent, the increased risk is nevertheless of considerable importance because of the high background rates for some of these tumors in the general population. For example, a 50% increase in the risk of a common cancer such as colo-rectal cancer results in many more excess deaths than a 50% increase in a rare cancer.

Other Chronic Effects of the Lung—Asbestosis is pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs. Adverse effects of asbestosis range from shortness of breath upon exertion to cyanosis, effusions of serous fluid, respiratory failure, cardiac decompensation, and death. Asbestosis can be a progressive disease, even in the absence of continued exposure. Symptoms of the disease are shortness of breath, cough, fatigue, and vague feelings of sickness. When the fibrosis worsens, shortness of breath occurs even at rest. Death results from the inability of the body to obtain requisite oxygen or from the heart's failure to pump blood through the scarred lungs. One clinical feature of early asbestosis, as well as other lung diseases, is end-inspiratory crackles (rales). Diagnosis of asbestosis is based upon the presence of characteristic radiologic changes, symptoms, rales, other clinical features of fibrotic lung disease and a history of exposure to asbestos.

The adverse health effects from exposure to asbestos have been observed consistently from occupational asbestos exposure and in many different occupational environments.

III. Pertinent Legal Authority

The primary purpose of the Occupational Safety and Health Act (29 U.S.C. 655 *et seq.*) (the Act) is to assure, so far as possible, safe and healthful working conditions for every American worker over the period of his or her working lifetime. One means prescribed by the Congress to achieve this goal is to mandate given to, and the concomitant authority vested in, the Secretary of Labor to set mandatory safety and health standards. The Congress specifically mandated that:

> The Secretary, in promulgating standards dealing with toxic materials, or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. (Section 6(b)(5).

Where appropriate, the standards are required to include provisions for labels or other appropriate forms of warning to apprise employees of hazards, suitable protective equipment, exposure control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, appropriate medical examinations, and training and education. Moreover, where a standard prescribes medical examinations or other tests, they must be available at no cost to the employees (section 6(b)(7)). Standards may also prescribe recordkeeping requirements where necessary or appropriate for enforcement of the Act or for developing

information regarding occupational accidents and illnesses (section 8(c)).

In vacating OSHA's revision to its benzene standard, the Supreme Court required in *Industrial Union Department, AFL–CIO* v. *American Petroloeum Institute,* 448 U.S. 601, 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (1980), that before the issuance of a new or revised standard pursuant to section 6(b)(5) of the Act, OSHA must make two threshold findings. These are that a significant risk exists under the current standard and that the issuance of a standard would reduce or eliminate that risk. The Court stated:

> We agree * * * that section 3(8) requires the Secretary to find, as a threshold matter, that the toxic substance in question poses a significant health risk in the workplace and that a new, lower standard is therefore "reasonably necessary or appropriate to provide safe and healthful employment and places of employment." 448 U.S. 607 at 614–15; 65 L. Ed. 2d 1010 at 1018–19.

The Court also stated:

> * * * before he can promulgate any permanent health or safety standard, the Secretary [of Labor] is required to make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices * * * (448 U.S. at 642, 65 L. Ed. 2d at 1035)

The decision, although it recognized the uncertainties involved, indicated that the determination of "significant risk" should, if at all possible, be established on the basis of an analysis of the best available evidence through such means as quantitative risk assessments. However, in making that determination, the Supreme Court in its general guidance for the future, noted that:

> * * * the requirement that a "significant" risk be identified is not a mathematical straitjacket. It is the Agency's responsibility to determine, in the first instance, what it considers to be a "significant risk". (448 U.S. at 655, 65 L. Ed. 2d at 1043)

It pointed out that while OSHA:

> must support its finding that a certain level of risk exists by substantial evidence, we recognize that its determination that a particular level of risk is "significant" will be based largely on policy considerations. (448 U.S. at 656, n. 62, 65 L. Ed. 2d at 1043, n.62)

Finally, the Court pointed out that:

> * * * OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty. Although the Agency's findings must be supported by substantial evidence * * * OSHA [has] some leeway where its findings must be made on the frontiers of scientific knowledge. (448 U.S. at 656, 65 L. Ed. 2d at 1043)

In the only concrete example of significance, the Court states:

> Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and take appropriate steps to decrease or eliminate it. id at 655, 656 L. Ed. 2d at 1043.

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employees will suffer material impairment of heath * * *." (Section 6(b)(5) of the Act). The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasiblity. *American Textile manufacturers, Institute, Inc.* v. *Donovan,* 452 U.S. 490 (1981).

IV. Regulatory History

OSHA first regulated occupational exposures to asbestos in 1971 when it adopted a 12 f/cc limit pursuant to section 6(a) of the Act. In June 1972, OSHA promulgated the present standard which is found at 29 CFR 1910.1001 (37 FR 11318). This standard established an 8-hour time-weighted average permissible exposure limit (PEL) of 5 f/cc (with a ceiling limit of 10 f/cc), mandated a further reduction in the PEL to 2 f/cc effective July 1976 and contained other requirements such as exposure monitoring and medical surveillance. This standard promulgated in 1972 was based upon the determination that it would prevent asbestosis and possibly reduce the risk of cancer to an undefined extent.

In 1975, OSHA proposed to lower the PEL from 2.0 f/cc to 0.5 f/cc and the ceiling limit from 10 f/cc to 5 f/cc (40 FR 47652). This notice of proposed rulemaking was based on a review of the then available evidence which OSHA believed had now "accumulated to warrant the designation of asbestos as a human carcinogen". That notice, however, explicity excluded the construction industry. As pointed out above, this notice withdraws the earlier 1975 proposal. On November 4, 1983, OSHA published an ETS (48 FR 51086) which has been held invalid by the U.S. Circuit Court of Appeals in the Fifth Circuit on March 7, 1984.

V. The Assessment of Asbestos Risk and Determination of Its "Significance"

As discussed above, the Supreme Court in the benzene case (*Industrial Union Department, AFL–CIO* v. *American Petroleum Institute* 448 U.S. 601 (1980)) ruled that prior to issuance of a new or revised standard regulating occuptional exposures to toxic materials, OSHA must make a determination that a "significant" risk exists and that the new standard will reduce or eliminate that risk.

OSHA believes that it is appropriate to consider a number of different factors in arriving at a determination of significant risk. The Court gave some general guidance as to the process to be followed. It recognized that while the Agency must support its finding with substantial evidence it also recognized that its determination that a particular level of risk is "significant" will be based largely on policy considerations (IUD v. API, 448 U.S. 655, 656, n. 62).

In a frequently quoted footnote, the Court suggested that determination of "significance" could be based on a quantative expression of the risk. The Court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (I.U.D. v. API 448 U.S. at 655).

The Supreme Court's language indicates that the examples given were of excess risk over a lifetime. It speaks of "regular inhalation" which implies that it takes place over a substantial period of time and refers to the "odds * * * that a person will die". The Court indicated, however, that the significant risk determination required by the OSHA Act is "not a mathematical straitjacket," and "OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty." "A reviewing court (is) to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge (and that) * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of

overprotection rather than under-protection (488 U.S. at 655, 656)."

OSHA has followed these guidelines in assessing the significance of the risk of material health impairment that results from asbestos exposure. OSHA's quantitative risk assessment concerning asbestos exposure is based on extensive evidence (Ex. 84–392). In large part, this assessment has impressive evidentiary weight because it relies upon studies of human worker populations and includes a variety of industrial situations, processes, and fiber types. Further, the predicted results of this quantitative assessment of risk at lower exposures are consistent with studies which observed excess risk at estimated or measured low cumulative exposures. The conclusion of significant risk is further supported by examining OSHA's weighing and interpretation of the quantitative estimates derived from the risk assessment. OSHA evaluated these data in the light of considerations such as the extent and kind of disease produced and the appropriateness of the models used to extrapolate risk. Finally, OSHA considered policy issues affecting the significant risk determination, such as comparison of the risk from asbestos exposure with other occupational risks; the regulatory treatment accorded to risks of similar magnitude and kind and the extent to which Congress and the public have expressed their concern with the risks resulting from asbestos exposure.

OSHA's risk estimates predict a risk of 64 excess cancer deaths (including lung, mesothelioma, and gastrointestinal cancer) per 1,000 workers exposed at the permissible exposure limit of 2 f/cc for 45 years, a working lifetime. Mesothelioma risk is predicted as 16 excess deaths per 1,000 workers exposed 45 years at 2 f/cc. Lung cancer risk is predicted as 44 excess deaths per 1,000 workers exposed 45 years to 2 f/cc. Excess deaths from gastrointestinal cancer are predicted as about 4 per 1,000 workers exposed to 2 f/cc for 45 years. (These estimates assume that the average age at initial occupational exposure is 25, as discussed in Ex. 84–392.)

OSHA also predicted the mortality from lung cancer, mesothelioma and gastrointestinal cancer at various potential PELs. In summary form, for a working lifetime of exposure, the estimates of lifetime risk are: 17 excess deaths per 1,000 workers at a 0.5 f/cc PEL, 7 excess deaths per 1,000 workers at a 0.2 f/cc PEL and 3 excess deaths per 1,000 workers at a 0.1 f/cc PEL. These estimates include only excess mortality from lung cancer, mesothelioma, and gastrointestinal cancer, and do not include excess mortality from asbestosis or other cancers. OSHA did not attempt to quantify the risk for cancer sites other than the lung, mesothelium and gastrointestinal tract. It should be noted that at all the reduced levels for which calculations were done, the residual excess cancer risks still exceed the Supreme Court's rough guideline of 1 per thousand lifetime risk of dying which was suggested as an example of a risk which a reasonable person might well consider significant.

OSHA has also estimated the risk of the incidence of asbestosis at the current permissible level of 2 f/cc. OSHA's best estimate is based on the results of a high quality study at an asbestos-cement factory in Ontario to determine the incidence of compensable (certified) asbestosis (Finkelstein, Ex. 84–240). A linear model using cumulative exposure was used to generate the risk estimated. OSHA estimated an incidence for asbestosis of approximately 50 per 1,000 workers exposed to 2 f/cc for 45 years.

For the risks associated with asbestos, OSHA believes the basis for determining "significance" at the 2 f/cc level and even lower is particularly strong. First, the underlying data upon which the quantitative risk assessment for asbestos is based are the results of high quality epidemiologic studies conducted in occupational environments. This gives OSHA great confidence that the estimates of risks derived from these studies are representative of actual workplace conditions. Second, OSHA emphasizes that the data bases for asbestos are of unusually high quality. More than most potential occupational carcinogens, asbestos has been studied often and thoroughly for evaluation of its effects on various occupational populations.

Third, the validity of the results of these studies is also underscored by the relatively consistent estimates of dose-response. The ranges of K_L (the potency factor for lung cancer risk—see Ex. 84–392 for a detailed explanation) as well as the ranges of K_M (for mesothelioma risk) derived from each study generally were overlapping. As described in the ETS, OSHA's best estimate of the potency factor K_L is 0.01, but an appropriate estimate of K_L could lie between 0.003 and 0.03. OSHA believes that the agreement is good among the K_L values considering the different statistical powers of the studies and the different types of workplaces studied. Similarly, a relatively narrow range (a factor of 10) represents the mesothelioma risk predicted by the four studies used to calculate K_M.

And finally, OSHA believes that it used the most appropriate models to calculate the risks. OSHA used a linear dose-response model in calculating the risks for lung cancer. OSHA believes this model is appropriate because dose-response information derived from several epidemiologic studies indicates that risk of asbestos-induced cancer increases linearly with total dose, including studies by Henderson and Enterline (1979, Ex. 84–048), Liddell et al. (1977, Ex. 84–059), and Dement et al (1983, Ex. 84–037). Further, OSHA notes that other scientists and scientific groups, such as Crump (Ex. 85–022), the Environmental Protection Agency (EPA) (Ex. 84–180) and the Chronic Hazard Advisory Panel on Asbestos of the Consumer Product Safety Commission (CHAP) (Ex. 84–256) and Acheson and Gardner of the British Advisory Committee on Asbestos (Ex. 84–243), have also chosen the linear model to predict lung cancer mortality due to asbestos exposure. Thus, OSHA's estimates of asbestos-related lung cancer risks appear to be very reasonable.

With regard to mesothelioma risk, OSHA believes that an absolute risk model provides the best means to estimate such risks. As explained by the preamble to the ETS, absolute risk for mesothelioma is calculated as observed deaths/person-years at risk (48 FR 51123). Because of the extreme rarity of the disease absent absestos exposure, use of Standardized Mortality Ratios (SMR's) is not appropriate for mesothelioma. (The SMR is calculated as the observed number of deaths in the exposed population divided by the number of deaths that would be expected in the exposed population. The expected number of deaths is derived from the mortality rate from a specific cause in an appropriate comparison population. The mortality rate from mesothelioma is close to zero in most populations against which asbestos workers have been compared.) This model is also different from that used for lung cancer because both duration of time since initial exposure and duration of exposure are more determinative of risk.

In sum, and as OSHA pointed out in the ETS, OSHA has estimated that at the present 2 f/cc level, employees exposed over a working lifetime of 45 years are predicted to have an excess risk of dying from cancer of 64 in 1000 and of contracting disabling and often fatal asbestosis of 50 in 1000. OSHA believes that each of these risks are significant and unacceptable. Risks at the 2 f/cc level have been acknowledged

as unacceptable by other governments (Ex. 84–378, 84–379), and they also are higher than other risks that OSHA has regulated or proposed to regulate in the past. For example, the risk to coke oven workers was estimated to be approximately 10 per 1,000 (48 FR 45975). The risk of byssinosis from cotton dust was estimated to be approximately 83 per 1,000 *(id.)*.

Congress passed the Occupational Safety and Health Act of 1970 because of a determination that occupational safety and health risks were too high. (OSHA has also performed a feasibility study in the form of a Regulatory Impact Analysis document (Ex. 84–422). A summary is provided later in this notice.) OSHA believes that the proposed standard for asbestos will substantially reduce the very significant risk from exposure to asbestos at the permissible exposure limit of 2 f/cc.

VI. Summary and Explanation of the Proposed Amendments and Other Relevant Issues

A. Issues Relating to Provisions of the Present Asbestos Standard

As stated above, the ETS serves as a proposal for a permenent standard. The regulatory text found at the end of this document is similar to the regulatory text found at 48 FR 51085, including the PEL of 0.5 f/cc, except that the regulatory text proposed herein adds an alternative proposed PEL of 0.2 f/cc. The permanent standard may differ from this set of proposed provisions, depending upon the testimony and evidence received during the public rulemaking procedures. The following discussion concerns those issues covered by the asbestos ETS, such as how asbestos should be defined, which OSHA believes will differ in the final standard. This discussion also covers additional changes under consideration by OSHA pertaining to the protective provisions in the asbestos standard not contained in the ETS. These include, for example, provisions for regulated areas, change rooms and showering facilities.

A separate section discussing regulation of asbestos in the construction industry follows this section. This proposal, and the current asbestos standard cover all workplaces where asbestos-exposed workers are employed, including general industry, maritime and construction. However, OSHA is aware of questions that have been raised concerning the appropriateness to the construction industry of certain protective requirements in the current standard such as monitoring and medical surveillance. OSHA intends to review the applicability of each provision of the present standard to construction. OSHA plans to codify the asbestos standard, insofar as it relates to the construction industry, at 29 CFR Part 1926.

1. *Scope and Application.* This standard, as revised, would continue to apply to all workplaces where occupational exposures to asbestos are present. The proposed standard, as does the current permanent standard includes the construction industry. As discussed more fully below, OSHA anticipates the promulgation of a separate standard for the construction industry.

2. *Definitions.* The present standard, promulgated in 1972, defined "asbestos" as chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite and defined "asbestos fiber" as asbestos fibers longer than 5 micrometers. OSHA is considering the addition of the following language to the definition of "asbestos": "and every product containing any of these minerals and any of these minerals that has been chemically treated and/or altered." Also, OSHA may amend the definition of "asbestos fiber" to "a particulate form of asbestos, 5 micrometers or longer, with a length-to-diameter ratio of at least 3 to 1, and with a maximum diameter of 5 micrometers."

OSHA does not believe that this modified definition would alter the manner in which the current standard is now enforced but rather clarifies the standard where areas of uncertainty have arisen in the past. The term "and every product containing any of these minerals" is intended to recognize that, in most asbestos exposure conditions today, airborne asbestos fibers are mixed with other dusts. The standard requires however, that only asbestos fibers be counted and assessed for determining worker exposure, and no change to the standard should occur in practice as a result of this change in definition.

The new definition of "asbestos fiber" would be consistent with experimental studies in the record suggesting that the fiber diameter and length-to-diameter (aspect) ratios influence the degree of carcinogenicity of asbestos fibers. The maximum diameter of 5 micrometers is the appropriate limit of respirability for asbestos fibers. That is, fibers with diameters greater than 5 micrometers are too large to enter the portions of the lung where asbestos disease ocurs. Also, OSHA hopes that this maximum diameter may include the most carcinogenic fibers, although the potential carcinogenicity of fibers with diameters exceeding 5 micrometers cannot be definitely excluded.

The current and proposed fiber length of 5 micrometers or more is consistent with experimental studies of Stanton et al. indicating carcinogenicity for fibers of these lengths. The aspect ratio has been suggested as a factor in carcinogenesis by Bertrand and Pezerat, which is not unexpected since the ratio incorporates two potential determinants of carcinogenicity, namely length and diameter. In addition, the proposed definition, including length, diameter, and aspect ratio, is consistent with the definition used by epidemiologic and experimental studies. Moreover, since 1972, OSHA, NIOSH, and virtually all other laboratories have been using the parameters of the proposed definition, which ensure that the fibers being counted are both respirable and visible using phase contrast microscopy. This change would be a clarification of the present requirements for determining what constitutes asbestos fibers and would not actually change the present scope of the standard with regard to inclusion of various types of asbestos fibers.

As discussed in the preamble to the ETS, OSHA has historically taken the position that all of the minerals listed in the current asbestos definition, namely chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite constitute forms of asbestos and that all forms of asbestos pose a significant health risk to exposed workers (48 FR 51115).

Currently, OSHA defines asbestos (29 CFR 1910.1001(a)) as follows:

> For the purpose of this section, (1) "asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

OSHA's asbestos definition, differs from that taken by other governmental agencies. The Mine Safety and Health Administration, at 30 CFR 57.51(b) defines asbestos as follows:

> "Asbestos" is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term "asbestos" as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophyllite asbestos, tremolite asbestos, and actinolite asbestos.

The Consumer Product Safety Commission, at 16 CFR 1304.3(b), defines asbestos this way:

> (b) "Asbestos" means a group of mineral fibers composed of hydrated silicates, oxygen, hydrogen, and other elements such as sodium, iron, magnesium, and calcium in diverse combinations and are: Amosite, chrysotile, crocidolite, anthophyllite asbestos, actinolite asbestos, and tremolite asbestos.

The Department of Education defines, at 34 CFR 230.10(b), asbestos as follows:

"Asbestos" means—
(a) Chrysotile, amosite, or crocidolite; or
(b) In fibrous form, tremolite-asbestos, anthophyllite-asbestos, or actinolite-asbestos.

EPA defines, at 40 CFR 763.103, asbestos in the following way:

(b) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

Therefore, OSHA appears to be the only governmental agency that regulates non-asbestiform tremolite as asbestos. Thus one commenter (Ex. 87–1) states that tremolitic talc is treated as asbestos by OSHA for enforcement and regulatory purposes. But, the commenter alleges, nonasbestiform tremolite is not regulated as asbestos by MSHA.

Such commenters basically state that the OSHA definition of asbestos is not consistent with the mineralogical definition of asbestos (Ex. 87–1). They state that there is a mineralogical difference between asbestiform fibers and nonasbestiform fibers of the same mineral type, and that these differences should be recognized in the OSHA asbestos definition. One scientist has suggested special provisions for counting asbestos present in talc, such as changing the optical microscopy technique to polarized light microscopy and a change in the fiber aspect ratio (Ex. 84–399).

Numerous studies have found that workers exposed to talc have an excess of non-malignant respiratory disease (listed in Ex. 84–161). In addition, several studies have reported an excess of respiratory system cancer (Exs. 84–181, 84–402, 84–141). See the discussion in 48 FR 5117, the asbestos ETS. Another consideration is that scientific data in the record indicate that a critical factor may be the morphology of the fiber, rather than its strict mineralogical designation (Ex. 84–83).

On the other hand, the evidence presented by proponents of adoption by OSHA of a mineralogic definition of asbestos which has the effect of excluding asbestos in talc is unrebutted from a mineralogic viewpoint (see Ex. 87–1).

Thus, OSHA anticipates it will adopt the mineralogic definition of asbestos advocated by the authors of the comments cited above. Of course, evidence presented in rebuttal to these comments, if any, and evidence resulting from cross examination will be considered in OSHA's final decision.

OSHA anticipates that it will change its definition by adding the adjective "asbestiform" in front of the nouns "tremolite, anthophyllite, and actinolite" in the current definition, or adopt similar language bring OSHA's definition into conformity with that of other federal agencies.

This change in definition would mean that mineral products such as tremolite in talc products that are now regulated as asbestos under the OSHA standard would no longer be specifically regulated under the asbestos standard. OSHA requests and encourages public comments on whether the mineralogic definition of asbestos fibers should be adopted in OSHA's definition for asbestos.

Another issue concerning the definition of asbestos is whether asbestos which has been chemically treated or altered should be regulated the same as untreated or unaltered asbestos. Some scientists have suggested that asbestos fibers have biochemically active sites on their surfaces that can be modified so as to reduce the hazardous potential of asbestos fibers (Ex. 84–333). In vitro tests (tests conducted on cells in test-tube simulations of living systems) have been conducted for normal asbestos fibers and chemically-treated asbestos fibers. Decreased toxicity of chemically-treated asbestos fibers compared to normal asbestos fibers has been reported (Ex. 84–333).

Despite these in vitro results, OSHA has reservations about the hypothesis that biochemically active sites on the surface of asbestos fibers determine the degree of carcinogenicity of the fibers. This is because many in vivo studies (studies of laboratory animals), especially those conducted by Stanton et al., have found that fiber dimensions rather than chemical properties appear to be the primary determinant of asbestos fiber carcinogenicity. Moreover, Stanton et al. found that a variety of non asbestos fibers could induce cancer if they were milled to specific dimensions. The results of the in vitro studies do not carry as much weight as the results of the in vivo studies because in vivo studies more closely approximate the human occupational situation. OSHA's compliance interpretation of the standard has been that chemically altered asbestos fibers are included within the scope of the current standard. OSHA believes that this interpretation should be retained, and is considering, therefore, adding specific language to clarify the definition of asbestos in this regard. Public comment is requested regarding whether asbestos that has been chemically treated and/or altered should be regulated to the same extent as other forms of asbestos.

3. *Permissible Exposure Limits (PEL).*
(a) *8 Hour Time-Weighted Average.* The proposal provides for a permanent reduction in the permissible exposure limit to two alternative levels: eight (8) hour time-weighted average (TWA) of 0.2 f./cc or an 8 hour TWA of 0.5 f/cc.

In the ETS issued November 4, 1983, OSHA reduced the PEL from 2 f/cc to 0.5 f/cc. The 0.5 f/cc exposure limit in the ETS was based upon data in the record, which indicates, as noted in the ETS preamble, that although grave dangers to employees are posed by exposures at 0.5 f/cc, 0.5 f/cc was the lowest level attainable and measurable during the limited time frame of the ETS. OSHA has also found that a significant risk of material impairment to employee health exists at the current PEL of 2 f/cc and that at the proposed alternative limits, the risk is not eliminated. Because, therefore, significant risk exists at all reduced limits under consideration, OSHA's primary consideration for setting a PEL is whether the limit chosen is technically and economically feasible for the affected industries. Based on information in OSHA's Regulatory Analysis, OSHA believes that for most industries, 0.2 f/cc may be feasible.

Accuracy and precision of asbestos measurements is another feasibility issue. It appears that f/cc may be measured by most employers with sufficient accuracy using techniques that are available at this time, and protocols that have been published recently. For example, both the British government and NIOSH have published revised protocols which are claimed to increase the accuracy and reliability of the phase contract microscopy method to 0.2 f/cc and below (EX. 84–446, 84–444).

Some suggested provisions that would improve the accuracy and precision of asbestos measurement procedures and possible modifications to the standard are discussed in paragraph V. B. 12, below. OSHA may promulgate some or all of these provisions in the permanent standard.

OSHA anticipates that data and information will be submitted to the record in the course of this rulemaking as to what constitutes the lowest feasible level of exposure to asbestos in affected industries using various compliance strategies. It should be noted that the PEL in the final rule will likely be the most protective level which is feasible and which significantly reduces risk, based upon the entire record of the proceeding, and may differ in that regard from the proposed limits.

Another issue to be addressed in this rulemaking is whether different PEL's

should be established for the different fiber types. The United Kingdom has set different limits by fiber type (for example, 1.0 f/cc for chrysotile and 0.2 f/cc for crocidolite) due to suggestive evidence in humans that amphiboles, particularly crocidolite, cause mesothelioma more readily than other types. The EEC and the Province of Ontario, Canada, have adopted similar standards (Ex. 84–379, 84–223). In the November 4 notice, OSHAl concluded that fiber type is not an important determinant of lung cancer mortality arising from asbestos exposure. Lung cancer is the major cause of excess mortality among asbestos workers and potential for developing lung cancer constitutes a significant risk to exposed employees. Therefore, OSHA does not deem it appropriate to permit higher levels of exposure to chrysotile than to other asbestos fiber types on the basis of the possibility that chrysotile may induce fewer mesotheliomas than the amphiboles. OSHA is encouraged that the British have had success with the 0.2 f/cc limits for certain fiber types. OSHA requests comments on whether the scientific evidence is sufficient to support different exposure limits, perhaps to lower than the proposed PELs for some fiber types, and whether such reduced levels are feasible to attain.

OSHA welcomes any and all data available as to the appropriate permissible exposure limits for asbestos, the feasibility of the proposed exposure limits and any other exposure limits which should be considered by OSHA.

(b) *Ceiling Limit.* OSHA is maintaining the current provision that sets a ceiling limit of 10 f/cc (1910.1001 (b)(3)) to be achieved by engineering and work practice controls. OSHA is also considering a reduced ceiling limit of 3.0 f/cc for a 15-minute period if a TWA of 0.5 f/cc is established, as well as considering a reduced ceiling limit of 2.0 f/cc if a TWA of 0.2 f/cc is established. The reduced ceiling limit could be achieved by any combination of engineering controls, work practices and respiratory protection. The ceiling limit of 3.0 f/cc is 6 times higher than the proposed TWA of 0.5 f/cc and the ceiling limit of 2.0 f/cc is 10 times higher than the proposed TWA of 0.2 f/cc. In comparison, the current ceiling of 10 f/cc is 5 times higher than the TWA of 2.0 f/cc to be achieved by engineering controls. Based on its history of enforcing health standards, OSHA believes that this ceiling limit may be necessary to ensure further that employees are not exposed to dangerous concentration of asbestos fibers. Also, a revised provision to reduce the ceiling would provide an additional measurement benchmark for employers to assess the effectiveness of their compliance stategies, particularly engineering and work practice controls, and aid OSHA in enforcing the reduced PEL.

OSHA believes that the ceiling limit for asbestos has been an aid in the successful control of asbestos exposures under the past standard. Where OSHA standards for other toxic substances have contained a ceiling limit, similar favorable results with regard to controlling exposures have occurred. In addition, OSHA is not aware of special feasiblity problems concerning the ceiling limit for asbestos. Generally, the use of ceiling limits appears to enhance the protection provided by a standard.

Exposures to the ceiling concentrations under consideration are essentially equivalent to time weighted averages which appear to pose a significant health risk according to the results of OSHA's risk assessment (Ex. 84–392). Certainly the current ceiling of 10 f/cc, if measured over a 15 minute period, would exceed the TWA level at which a significant risk is found. Further, in very dusty atmospheres, short term measurements of asbestos may be a more reliable way to measure actual airborne concentrations.

As stated earlier in this document, OSHA has utilized cumulative exposures to assess the risk of asbestos-related disease and OSHA is not aware of evidence suggesting that intensity of exposure would affect carcinogenic risk in a manner separate from that of cumulative exposure. However, OSHA is aware that the mechanism of asbestos carcinogenesis is not known with any degree of certainty, and that it is possible that intensity may yet prove to be an independent critical variable in inducing cancer.

For example, in testimony before the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, Dr. William Nicholson of the Mt. Sinai Environmental Sciences Laboratory states that:

> The possibility is that intense exposures may overwhelm clearance mechanisms and thus you have more fibers retained in such circumstances (Ex. 85–8, p. 69).

Also, Dr. Jolian Peto testified to the Ontario Royal Commission that:

> Another possibility * * * is that, in fact, transient high exposures are in fact a major source of risk, and this hasn't been examined in proper detail (Ex. 85–21, p. 55).

If in fact high intensities of exposure is a variable independently related to asbestos-induced diseases, a ceiling limit is essential to protect worker health. The agency will evaluate the need to limit exposure excursions to 2.0 f/cc or another feasible ceiling level during this rulemaking. OSHA specifically requests the public to submit comments on revising the ceiling limit, either to the limit discussed above or to other suggested limits. Information concerning the feasibility of achieving such a limit, particularly in industries with variable exposures, is sought. Based on the information in the record at the conclusion of this rulemaking, OSHA will decide how to revise the current ceiling limit provision to appropriately protect exposed employees.

4. *Action Level.* For a TWA of 0.5 f/cc, OSHA is considering an action level of 0.2 f/cc to trigger certain requirements, such as exposure monitoring, regulated areas, hygiene facilities, protective clothing and medical surveillane requirements of the asbestos standard. For a TWA of 0.2 f/cc, OSHA is considering triggering these requirements at 0.2 f/cc. Except for medical surveillance and regulated areas, these requirements are now imposed at the current PEL of 2 f/cc. For medical surveillance, past administrative interpretation has resulted in an action level of 0.1 f/cc and no current requirement exists for regulated areas.

OSHA believes it is appropriate to begin protective actions at the 0.2 f/cc level because in the case of asbestos, significant health risks are likely to be present at that level and supplemental protective measures are clearly warranted. Moreover, as the Supreme Court noted in the benzene decision, the salutory nature of actions such as monitoring and medical surveillance exist independently of any exposure reduction.

Further, OSHA believes that explicitly prescribing a trigger level provides a cut-off point for many of the required compliance activities under the standard. The standard necessarily encompasses some employers who are required to perform initial monitoring to determine the extent of their employees's exposures to asbestos. If, on the basis of the results of the initial measurement, an employee's exposure is below 0.2 f/cc, the employer may discontinue monitoring and most other compliance activities concerning that employee. The trigger thus provides an objective means for an employer to determine what further actions are required for compliance with the standard.

The concept of triggering such actions below the PEL, i.e. an "action level", has been utilized successfully in past OSHA standards. Reasons for adopting an action level were pointed out by ORC: "[The action level] provides employees with an extra margin of safety, and assures employers of continued compliance with the PEL" (1983, Ex. 86–004, p.9). A basis for determining an action level below the PEL has been discussed in connection with several OSHA health standards (see, for example, the preamble to the inorganic arsenic standard (May 5, 1978, FR 19584)). In brief, although all measurements on a given day may fall below the permissible exposure limit, some possibility exists that on unmeasured days the employee's actual exposure may exceed the permissible limit. Where exposure measurements are above the action level, the employer cannot reasonably be confident that his employees may not be overexposed (Leidel, N.A., et. al., *Exposure Measurement, Action Level and Occupational Environmental Variability*. DHEW, PHS, DCD, NIOSH, DLICK (August 1975)). Therefore, requiring the periodic employee exposure measurements to begin at an action level below the PEL provides the employer with a reasonable degree of confidence in the results of his measurement program.

OSHA seeks comments on whether compliance activities such as medical surveillance, measurement and regulated areas should be triggered at 0.2 f/cc regardless of whether a 0.5 f/cc or 0.2 f/cc PEL is chosen. In discussing an action level for a 0.2 f/cc PEL, OSHA requests comments on whether measurement is sufficiently reliable below 0.2 f/cc such that prescribing an action level below 0.2 f/cc would be feasible. Can greater uncertainty in measurement be tolerated when the purpose of measurement is to trigger supplemental activities, not to measure exposure reduction? Also OSHA seeks comments on what supplemental activities should be triggered at an action level or at the PEL.

5. *Exposure Monitoring.* OSHA is considering the modification of the existing requirement for employer monitoring 29 CFR 1910.1001(f) to make it consistent with other OSHA standards and good industrial hygiene practice. For example, OSHA may require monitoring at the proposed PELs or at an action level rather than the current PEL of 2 f/cc. Other possible changes might be increasing monitoring frequency from every 6 months to every 3 months for those employees exposed above the PEL. Other monitoring frequencies are also being considered. OSHA requests data, information and comments concerning any changes that should be made in the monitoring provisions of the current asbestos standard.

6. *Regulated Areas.* The current standard does not require that regulated areas be established and access limited to authorized persons. Other OSHA standards that regulate exposure to toxic substances do contain such a provision; for example, 4-Nitrobiphenyl, 29 CFR 1910.1003; Arsenic, 29 CFR 1910.1018; Lead, 29 CFR 1910.1025; and Vinyl Chloride, 29 CFR 1910.1017. OSHA will evaluate the need for the revised asbestos standard to have such a provision as a result of this rulemaking. Regulated areas and limited access are intended to aid in limiting exposure to asbestos. The revised standard may require the employer to prevent those persons who are not authorized to enter the regulated area from doing so and thereby being exposed to asbestos. Other purposes of regulated areas are to designate those locations in which precautionary signs are posted, and to designate those employees subject to exposure monitoring. Additionally, when working in regulated areas certain activities may be prohibited, such as smoking and eating.

OSHA is considering the approach of establishing regulated areas at the proposed PELs or at an action level. OSHA requests comments on the need for a provision requiring the designation of regulated areas, the appropriate trigger, and activities that should be required or prohibited.

7. *Methods of Compliance.* OSHA is proposing to permit any feasible combination of engineering controls, work practices, and personal protective equipment to reduce exposures from 2 f/cc to the new PEL.

OSHA believes that it is appropriate to adopt a standard that will protect workers from material impairment of health by allowing all compliance strategies that achieve the performance of this goal. As stated by Section 6(b)(5) of the Act, "whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired." This suggests that so long as the worker health is protected, OSHA may state the methods of compliance requirement in terms of performance to be achieved, rather than prescribing specific compliance methods. As explained in the preamble to the recent proposal revising the standard for ethylene dibromide (48 FR 45956), OSHA recognizes that respirators may provide acceptable protection when an employer establishes stringent procedures concerning the use of respirators and then carefully supervises their implementation on a continuous basis.

OSHA is now reviewing its general policy relating to the use of engineering controls and respirators for airborne contaminants. Two advance notices of proposed rulemakings were published on May 14, 1982 (47 FR 20803) and February 22, 1983 (48 FR 7473) respectively, concerning the possible revision of two general standards, namely 29 CFR 1910.1000(e) (Air Contaminants) and 29 CFR 1910.134(a)(1) (Respiratory Protection). Although this process of review of OSHA's general policy concerning methods of compliance is underway, OSHA intends to consider the issue in this rulemaking as it specifically relates to asbestos, especially in the construction context.

OSHA recognizes many of the shortcomings of respirators that have been pointed out in past rulemakings. For that reason, engineering and work practice controls have been mandated by OSHA in individual standards as the required means of protecting employees from occupational carcinogens to the extent feasible. Respirators were permitted only after feasible engineering and work practice controls had been installed because evidence placed in the records of those individual rulemakings indicated that respirators may not provide a comprehensive and reliable method of employee protection from those hazards.

However, recently OSHA has received submissions from the public which endorse a more flexible compliance strategy. Thus, in response to the advance notice a proposed rulemaking concerning possible revision to OSHA's standards concerning methods of compliance for health standards (48 FR 7473) the Atlantic Richfield Company stated that "a revised policy that permits greater compliance flexibility will assure, in a more cost effective manner, the continuing high level of protection provided to our employees" (Dkt. No. 5–6212, Comment 2–80). Relatedly, the National Paint and Coating's Association, Inc. stated that "in many cases respirators will perform not just equally but better than engineering controls" (Comment 2–78). Because of the records in past rulemaking, OSHA is maintaining the existing provision in the asbestos standard that requires the employer to implement feasible engineering and work practice controls to achieve the 2 f/cc exposure limit (see

29 CFR 1910.1001(c). Under the provisions set out in this proposal the employer would be permitted the choice of control strategies to achieve the new PEL but only after implementing feasible engineering and work practice controls to meet the 2 f/cc exposure limit. Half-mask respirators (which provide the lowest degree of protection—see Table 1, *infra*) are generally recognized to provide a protection factor of 10, one component of measuring respirator effectiveness. Since reduction of exposure from 2 f/cc to o.2 f/cc amounts to a 10-fold decrease, use of half-mask respirators in this range should provide adequate protection in many such cases. To the extent that existing or additional engineering and work practice controls reduce the ambient exposures below 2 f/cc, but still above the new PEL, using respirators to achieve the new limit should be accomplished with increased effectiveness.

In addition, OSHA is considering promulgation of other provisions that may increase the respirator's performance. OSHA may require the employer to use quantitative fit tests to ensure that the respirators fit properly, or may adopt qualitative fit test procedures. An example of qualitative fit tests procedures that have been determined to be effective is that described in the lead standard (see 29 CFR 1910.1025 Appendix D). OSHA may require that the employer provide several sizes of respirator face pieces so the employee can choose the one that fits the best; and OSHA may require the employer to provide a powered air purifying respirator in appropriate circumstances. These provisions should improve proper employee use.

OSHA is considering requiring the use of high efficiency filters when air purifying type respirators are used. OHSA notes that at both proposed levels, 0.2 f/cc and 0.5 f/cc, the NIOSH/MSHA certification criteria appear to require high efficiency filters to be used (See 30 CFR 11.130 (a) and (c)). NIOSH certification for other than high efficiency filters is not valid for toxic substances with PEL values less than 0.050 mg/m^3 or 2 mppcf. When OSHA lowers the PEL, the certification of other than high efficiency filters for asbestos becomes questionable. Using the conversion factor provided by CHAP (Ex. 84–246, p. II–137), a TWA of 0.5 f/cc equates to 15 ug/m^3 or 0.015 mg/m^3, well below the cut off for other than high efficiency filters in 30 CFR Part 11 (a TWA of 0.2 f/cc equates to 0.006 mg/m^3). In addition, NIOSH certification of respirator filters for other than high efficiency types involve testing the filter medium using a large particulate aerosol. Filter efficiency for asbestos has not been thoroughly tested. Weeks and Burns reported the testing of several filter media with asbestos dust and found, with one exception, all filter madia had breakthrough below 1 percent (Ex. 84–352). The study, however, used very high asbestos concentrations to challenge the filters and insensitive gravimetric methods to measure filter breakthrough. OSHA does not believe that the results of this study represent actual filter performance in field conditions. In addition, OSHA is considering other modifications to the respirator provisions of the asbestos standard that would update it to current practice, such as more specific provisions for fit testing (see the EDB proposal, 48 FR 459995 and 45997 to 45999). OSHA invites the public to submit all relevant comment and information on all respirator issues.

OSHA solicits comment concerning the methods of compliance. The Agency is particularly interested in receiving comments, information, data and other evidence concerning the extend to which respirators may provide effective protection against asbestos exposure and may be relied upon as a substitute for engineering or work practice controls.

If the evidence in the record shows respirators are an effective means of controlling occupational exposures to asbestos in meeting the PEL, OSHA intends to include in the final rule a flexible compliance requirement.

As an alternative to proposing a flexible compliance requirement for all asbestos workplaces, OSHA is considering a limited exemption from an engineering control requirement for intermittent exposure situations. Asbestos exposures are intermittent for some workers, in the exposures are intermittent for some workers, in the exposures occur only for short periods and for a few times a month. These may occur, for instance, when periodic maintenance work is performed on a part of a plant's operation where asbestos is used as insulation on the equipment, but not as part of the process or product. OSHA encountered a similar situation for exposure to ethylene dibromide (EDB). For this substance OSHA proposed the use of engineering controls and work practices, but allowed the use of respirators in intermittent use situations. It stated "for the purpose of this proposal, intermittent operations are defined as those which result in exposures occurring for 1 or 2 days at any one time. A total of 30 days per year of workplace exposure is meant to describe days of operation involving the use of EDB in the workplace and not the number of days an employee is exposed (48 FR 53384)." OSHA requests comments regarding the application of an exemption from engineering controls for intermittent exposures to asbestos and how it can be applied to the types of exposures in the affected industries. In any case, OSHA intends to maintain the existing requirement for engineering and work practice controls to reduce exposures to 2 f/cc. OSHA also intends to revoke the requirement in the current standard that personnel rotation should be used to control exposures to asbestos. Personnel roation merely increases the population at risk from asbestos exposure and would not reduce the absolute number of excess deaths attributable to asbestos, according to mathematical models. See Ex. 84–405 for an example of how excess deaths are not reduced by personnel rotation or employee turnover.

OSHA may also promulgate a requirement that the employer establish and implement a written program to reduce employee exposures to asbestos to or below the permissible exposure limits. For example, see the arsenic standard 29 CFR 1910.1018 (8) (2). As ORC pointed out: "A written compliance program to reduce employee exposures to levels at or below both the PEL and the ceiling limit is an integral part of any overall asbestos control program". (1983, Ex. 86–004, p. 36).

OSHA is not proposing any changes to the present requirements for local exhaust ventilation and work practices to meet certain requirements when relied on to achieve the 2 f/cc PEL. (29 CFR 1910.1001 (c) (1) (ii), (c) (1) (iii), (c) (2) (i) and (c) (2) (ii)).

8. *Supplied air Respirators.* OSHA is also considering changing certain respirator requirements such as the kind of respirator required to protect employees engaged in spraying, demolition and removal operations. When the asbestos standard was adopted in 1972, exposures in these operations were almost always very high. OSHA believes that advances in work practices since 1972 have reduced exposure levels in these operations. OSHA is considering what types of respirators should be required for this type of work if it is decided to specify types. For example, powered air purifying respirators have become widely available since 1972 and may suffice under present conditions in the workplace. OSHA recognizes, also, that a reduction in the PEL may require more protective respirators such as supplied air respirators. OSHA requests

information and comments regarding this issue and, in particular, whether it is practical to require the use of supplied air respirators on renovation and demolition worksites.

9. *Protective Clothing.* OSHA is considering requiring the employer to provide at no cost to the employee, personal protective clothing, such as coveralls and similar clothing, when the employees are exposed to or above the new PEL. It may also require the employer to launder protective clothing under certain circumstances. the present standard now requires protective clothing if employees are exposed above the 10 f/cc cealing limit. OSHA believes a modification appropriate in light of the evidence developed since 1971 that asbestos is a potent human carcinogen.

10. *Housekeeping and Waste Disposal.* The current standard provides for housekeeping requirements and waste disposal, § 1910.1001(h). OSHA proposes to clarify that cleaning shall be done to maintain surfaces free of accumulations of asbestos fibers if their dispersion could result in concentrations in excess of the PEL.

11. *Medical Surveillance Program.* OSHA welcomes comments and evidence for updating the current medical surveillance requirements found at 29 CFR 1910.1001(i). By administrative interpretation and judicial decision, the medical surveillance provisions are now triggered at the 0.1 f/cc level. OSHA is strongly considering the following modifications in the current medical surveillance requirements:

(a) Triggering medical surveillance at 0.2 f/cc;

(b) Decreasing the frequency of chest-X-ray examinations for young employees or employees with short durations of exposure;

(c) A clarification of the time within which the employer must conduct preplacement examinations after hiring employees; for example, 6 months after hire dates may be a reasonable time period for conducting preplacement examinations;

(d) Additional tests or procedures for the purposes of early diagnosis of any disease, including the administration of a respiratory disease questionnaire; and

(e) Additional specifications concerning the performance of pulmonary function testing, including completion of a NIOSH-approved course in spirometry by non-physicians who administer the tests, calculation of the percentage difference from predicted values, and use of standard predicted values (see 29 CFR 1910.1043(h)).

Comments are also requested on the appropriateness of requiring screening for colo-rectal cancer, including tests for occult blood in the feces. In addition, futher specifications for the interpretation and reading of chest X-rays may be appropriate.

12. *Methods of Measurement.* OSHA is considering, as part of this 6(b) rulemaking, adding specific sampling and analytic protocols to the permanent standard, either as mandated provisions or as guidelines in an appendix.

OSHA's existing standard requires that all measurements of airborne concentrations of asbestos fibers be made by the membrane filter method at 400–500 x (magnification) (4 millimeter objective) with phase contrast illuniation (29 CFR 1910.1001(e)). After reviewing the relevant evidence concerning methods of measurement, OSHA believes that phase contrast microscopy is a feasible and effecitve method for measuring airborne asbestos fibers to determine compliance with the permissible exposure levels set by the ETS and it is being proposed as the method of measurement for the revised permanent standard.

One issue raised in the record to date is whether phase contrast microscopy analysis is capable of reliably measuring airborne concentrations less than 0.5 fibers/cc OSHA acknowledges that asbestos airborne measurement procedures using phase contrast microscopy, as with any industrial hygiene analytical procedure, inherently contain several error sources. It may be possible that phase contrast microscopy errors can be reduced if improved and standardized procedures are followed, perhaps by adding requirements to the standard. For example, mandatory training has been shown to improve reproducibility between fiber counters (microscopists). (Ex. 84–341.) Mandatory laboratory and counter certification is a possible method to achieve proper counter training. In addition, Jeremiah Lynch has recommended: "All mocroscopists who are doing the actual counting for compliance determination should be brought together for an 'asbestos counting workshop' at least quarterly" (Ex. 84–62, p. 21).

OSHA's experience with blood lead testing in the lead standard, 29 CFR 1910.1025, indicates that mandatory passing grades for laboratories in a quarterly proficiency test administered by CDC improves laboratory performance and decreases errors. In revisions to the permanent asbestos standard, OSHA is considering whether to mandate technical training, laboratory certification, and laboratory participation in a round robin testing program. OSHA is also considering whether to require that laboratories receive passing grades in the program. Finally, OSHA is considering adopting, verbatim or with modifications, the procedures recommended by the AIA (Ex. 86–002), or procedures of the kind described by Chatfield (Ex. 84–319) or the recent British government and NIOSH protocol (Ex. 84–446, 84–444).

Therefore OSHA anticipates the addition of these and other requirements to its standard to improve asbestos measurement reliability. Such improvements in analysis techniques may allow sufficiently accurate and precise measurement of asbestos concentrations below 0.5 fibers/cc, including the alternate proposed PEL of 0.2 f/cc. Comments on this issue and on regulatory language to be used in these provisions are requested. OSHA also requests technical comments on which analytical procedure provides the best results and whether OSHA should specify the procedure in the revised asbestos standard.

Phase contrast microscopy does not easily permit distinctions between asbestos types, nor distinction between an asbestos fiber and other fiber types. Thus, using phase contrast microscopy, any particle meeting the geometric definition of a fiber (a particle 5 micrometers or greater in length with an aspect ratio greater than 3 to 1) would often be counted as an asbestos fiber. For most situations and environments, such a method appears to be adequate. OSHA's experience, however, indicates that it is sometimes appropriate to make differential counts, and to attempt to eliminate the nonasbestos fibers from the measurement. Such circumstances include those in which asbestos and other fibers, e.g. fiber glass, are found together in a work environment. In such cases, OSHA has used polarized light microscopy techniques and the electron microscope to adjust counts for nonasbestos fibers. OSHA does not believe that it is necessary to propose differential analysis for the standard, but rather, use of phase contrast microscopy, which has proved adequate for most situations in the past, should be retained as the prescribed method.

OSHA also has considered whether other analytical methods, in particular electron microscope analysis, should replace phase contrast microscopy as the required method for measuring airborne concentrations of asbestos. At this time OSHA believes that it is not practical or necessary to modify its standard to require electron microscopy analysis instead of phase contrast light microscopy. Electron microscopy costs more per analysis than phase contrast microscopy because the electron microscope itself is more expensive than.

the light microscope and counting fibers using the electron microscope is time consuming. Standard counting methods have only been recently developed for the electron microscope and it appears that improvements still need to be made (Ex. 84–238, Steel et al. p. 162 to 168). Further, causes of error exist with electron microscopy analysis that are similar to those encountered with phase contrast light microscopy methods (Ex. 84–238, Lee et al. p. 182).

OSHA recognizes that there appears to be a trend toward increased use of electron microscope analysis. The Environmental Protection Agency has developed provisional methods using electron microscopy analysis and has improved them (Ex. 84–230, Yamate and Beapel p. 183). Electron microscope analysis offers potential for minimizing some errors inherent in the phase contrast light microscope; for example, electron microscopy analysis is able to resolve very small particles, eliminating the potential error due to restrictions in optics in the phase contrast methods. Further, the electron microscope, because of its ability to count practically all fibers, is capable of counting all fibers of occupational health interest. Some of these fibers are smaller than those that can be seen using optical microscope, which cannot detect fibers less than approximately 0.3 micrometers in diameter. The counting which results from phase contrast microscopy is a measure of the larger fibers, and is only an index of the total asbestos fiber concentration.

However, phase contrast microscopy is an accepted and reliable indicator of asbestos concentrations that has been widely adopted and used internationally. At this time, there is only a limited amount of electron microscopy data available that describe workplace air concentrations; little is known about the relationship between measurements using electron microscopy and phase contrast microscopy or any other asbestos measurement method. In addition, OSHA's feasibility analysis for the permissible exposure limit includes dependence on the ability to measure air concentration levels. Since almost all workplace measurements are made with phase contrast microscopy, OSHA may have to modify its feasibility assessments if electron microscopy were the basis for asbestos measurements. Therefore, OSHA believes that phase contrast microscopy provides the best means for assessing worker exposure to asbestos in the working environment at this time. OSHA has retained its use for the ETS and proposes to retain the phase contrast microscopy method for the permanent standard. OSHA requests information relating to the relative merits of the electron microscopy and phase contrast microscope methods, and to the feasibility and appropriateness of other methods of measurement for airborne asbestos fibers. OSHA also requests data on the statistical limits of measurements at the 0.5 f/cc, 0.2 f/cc and 0.1 f/cc levels.

13. *Hygiene Facilities and Practices.* The current standard requires that the employer provide clean change room facilities, and two separate lockers for each employee for those employees exposed above the PEL (2 f/cc) or ceiling limit (10 f/cc) (29 CFR 1910.1001(d)(4)). OSHA is considering several modifications to these provisions. Rather than require only separate lockers, OSHA may require separate change room facilities, one for clean clothes, and one for dirty clothes. In addition, showering facilities may be added to allow the worker to remove all contamination from the body before changing into clean clothes. Such facilities could be required only in fixed places of employment, or could be required in all places of employment. These provisions would be required at the action level or at the new PELs.

Asbestos contaminated clothing taken out of the workplace has been shown to cause disease among household members, and probably increases the risk of disease to the asbestos worker. Comments are requested on these provisions.

14. *Signs and Labels.* Due to the evidence concerning the carcinogenicity of asbestos as discussed in the ETS, OSHA believes it appropriate to update the substantive requirements for signs and labels. For this reason, OSHA is considering adding a requirement for posting signs for regulated areas. The current standard requiring labels for products containing asbestos or their containers will continue to apply.

The signs to be posted at regulated areas inform employees of the carcinogenic hazards of asbestos and alert them to the fact that only persons authorized by the employer should enter the area. In addition, the language for signs and labels may be modified to include a hazard warning, such as "Cancer and Lung Disease Hazard" and the language for signs may restrict regulated areas to "Authorized Personnel Only":

DANGER
ASBESTOS HAZARD
CANCER AND LUNG DISEASE
HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS & PROTECTIVE
CLOTHING
MAY BE REQUIRED TO BE
WORN IN THIS AREA

15. *Recordkeeping.* The current standard requires the employer to maintain medical records, 29 CFR 1910.1001 (i)(6). OSHA is considering amending this provision to require that medical records be preserved and maintained for at least the duration of employment plus thirty years. This modification is necessary to account for the long latency period for asbestos-related diseases and makes the asbestos standard consistent with the access to medical records standard, 29 CFR 1910.20. Similarly, OSHA may modify 29 CFR 1910.1001 (i) to require that employers preserve and maintain monitoring data for 30 years (rather than 20 years).

B. Issues Concerning the Construction Industry

The present standard (29 CFR 1910.1001) is applicable to all occupational exposures to asbestos in every workplace and every industry covered by the Act. OSHA has received comments stating that the present standard for asbestos was designed more for fixed-site manufacturing operations than for nonfixed workplaces with a highly transient work force and therefore that the present standard is not entirely suited to construction worksites. This position has also been supported by the Building and Construction Trades Department of the AFL–CIO (Ex. 87–2). Moreover, the 1975 proposal itself excluded the construction industry on the basis that the apparent "* * * uniqueness of the construction industry itself (viz., the multiplicity of nonfixed workplaces, and the utilization of highly transient work forces) strongly suggests separate treatment" (40 FR 47657, Oct. 9, 1975).

OSHA's Construction Advisory Committee for Occupational Safety and Health (CACOSH) has cautioned that the usual approach followed in OSHA's health standards for general industry might not be the most effective way to regulate occupational exposures in the construction industry. Although these deliberations concerned all health standards, not just asbestos, OSHA believes they are pertinent to protecting construction workers against the hazards of asbestos exposure. Specifically, on May 16–17, 1979, CACOSH recommended that a separate set of health standards be developed to meet the special conditions of the construction industry. A report of a

CACOSH subgroup on health standards was issued on May 16, 1980 (Ex. 84–233). It included discussion of the major problem areas that construction employers and employees have encountered in attempting to comply with OSHA health standards. The report also contained recommendations aimed at facilitating compliance for employers while improving protection of workers. The recommendations are summarized in the discussion which follows.

OSHA has provided CACOSH with a copy of a draft (Ex. 84–423, of this proposal and supporting documentation pursuant to the requirement of OSHA's regulations (29 CFR 1911.10) and section 10 of the Contract Work Hours and Safety Standards Act.

The regulatory text of the draft proposal submitted to CACOSH is identical to the text in this notice except that the proposed PEL in the submitted text was 0.5 f/cc. The preamble in the draft document concerning health effects and revisions under consideration is virtually identical to the discussion in this notice except that the draft did not indicate OSHA's intention to revise the designation of tremolite to "asbestiform tremolite".

On January 11, 1984, OSHA officials met with CACOSH to consult with and receive recommendations concerning this proposal. The committee expressed its overall concern about providing adequate protection for construction employees exposed to asbestos. Accordingly, the CACOSH's major recommendation is that OSHA promulgate a separate and different standard regulating asbestos exposure in the construction industry which would address the special needs of that industry. Other major recommendations of the committee include the following: that OSHA set a permissible exposure limit at the lowest feasible level and require that feasible engineering and work practice controls be implemented to meet the PEL; that OSHA adopt the definition of asbestos recommended by the 1980 NIOSH–OSHA Task Force; that specific monitoring protocols be set out in an appendix; that it is feasible to reliably measure asbestos exposure down to the .1 f/cc level; that two types of regulated areas should be established; that a ceiling level be established and that its choice should depend on the TWA PEL; that current medical surveillance provisions should be modified; and that specific work practices be required whenever asbestos exposure may occur. OSHA has placed the transcript of this meeting in the record (Ex. 84–424) and invites public cement on all the recommendations made by the committee. The Agency has and will continue to consider CACOSH's advice in formulating revisions to the asbestos standard which apply to the construction industry.

Based upon the evidence available, OSHA believes that there are differences between the construction industry and other industries covered by the Act. In particular, the transient nature of most construction employment, the changing conditions of exposure due in large part to outdoor exposures and the short tenure for employment in some cases combine to pose special difficulties in designing worker protection programs.

Within the construction industry, the nature of worker exposure varies. For example, dry wall removal, major building renovation and demolition where asbestos installation is present exposes a large number of workers to high asbestos levels. Another type of exposure results from installation of new materials containing asbestos, such as asbestos-cement pipe. Other asbestos exposures involve a relatively large number of workers who perform maintenance in buildings, chemical plants, factories, power-generating plants and other locations where asbestos is used for insulation materials. Finally, a large number of construction workers not handling asbestos are exposed to asbestos on their job sites because of asbestos handling by other employees. OSHA believes the differing nature of these exposures should be assessed when developing a standard. OSHA requests additional information regarding the variety of exposures to construction employees, resulting from such factors as the frequency of exposure, the exposure levels, and the type of work performed.

OSHA is considering three different approaches to the format of regulations governing asbestos exposures in the construction industry. They are: (1) To continue to apply the same standards as amended, to all industries, perhaps adjusting certain requirements for the construction industry; (2) to limit the scope of an asbestos standard for the construction industry to setting permissible exposure limits, with additional protection provided by recourse to relevant OSHA standards of general applicability such as 29 CFR 1910.134 or 1926.103, governing respiratory protection; 29 CFR 1910.132, 133, 135 and 136, 29 CFR 1926.55, 100, and 102 relating to protective clothing and equipment; 29 CFR 1926.21 relating to employee training; 29 CFR 1910.141 (g)(2) relating to restricting eating and drinking; and 29 CFR 1926.51 (f) relating to washing facilities; and (3) to develop a separate standard for asbestos exposure in the construction industry. The discussion which follows concerns specific issues relating to the protection of construction employees. OSHA will discuss, where relevant, how applying these varying approaches may affect the protection offered employees.

1. *Permissible Exposure Limits.* OSHA believes that the PEL should be the same for construction as for other segments of industry. The PEL represents a given level of risk reduction, and, as such, OSHA believes that the goal for reduction of the risk of asbestos-related disease should be the same for construction as for other industries. In that regard, on May 24, 1983, CACOSH endorsed OSHA's position that changes in the PEL for asbestos made for general industry should also apply to the construction industry. Also, more generally CACOSH's Report of May 16, 1980 stated in pertinent part:

> In reviewing permissible exposure limits, it was agreed that the concept of limiting the exposure of employees to toxic materials is the appropriate means for controlling both acute and chronic health effects. Because all employees deserve equal protection against the effects of a given toxic material, the same exposure limits should be applied to all industries, including construction. (Ex. 84–233, p. 5).

OSHA requests comments concerning whether the TWA permissible exposure limit adopted for general industry should apply to the construction industry. OSHA solicits comments on whether a ceiling level should be adopted in the construction industry independent of the decision made concerning a ceiling level for other industries.

2. *Exposure Monitoring and Measurement.* Monitoring has always been one of the touchstones of OSHA health standards. Without some form of monitoring for asbestos, neither OSHA nor employers would know the extent to which controls were needed. Moreover, section 6(b)(7) of the Act mandates that any standard promulgated under this Act shall, where appropriate, "provide for monitoring or measuring employee exposures at such locations and intervals, and in such manner as may be necessary for the protection of employees."

In its 1980 recommendations covering all health standards, CACOSH endorsed the importance of monitoring; "as a general rule, monitoring was considered necessary to a comprehensive worker protection program." CACOSH,

however, enumerated several problem areas concerning monitoring on construction sites.

The Committee pointed out that because of the transient nature of most construction work sites, sampling and analysis of employee exposures may not be completed until well into the project or even after it has been completed. Further, because much construction work is outside and in highly variable conditions, one shift's sampling may not represent future exposures. Finally, employees may be exposed to asbestos concentrations where the sources of asbestos are under the control of the building owner.

OSHA agrees with CACOSH that monitoring as traditionally mandated by OSHA health standards for fixed workplaces may be less useful in nonfixed workplaces where conditions of employment change more rapidly (See the submission of AIA in this regard (Ex. 84–307)). OSHA also agrees that in many instances effective protection of construction employees may depend on information provided by the buildling owner regarding the presence of asbestos in the owner's building.

Recommendations concerning these problems have been made to OSHA. To meet the first problem, CACOSH has recommeded that safe work practices should be developed and accepted by OSHA in lieu of air testing. To meet the second problem CACOSH recommended that OSHA require building owners to provide historical and current monitoring results to the contractor before the initiation of work, and require building owners to conduct all periodic monitoring for on-site contractors where the source of asbestos is under the control of the building owner (Ex. 84–233, pp. 36–37).

Both industry and labor groups have suggested alternatives to monitoring under specified circumstances. AIA has suggested a detailed certification system for products and work practices. Thereafter employers would be exempt from monitoring when employees are working with products and/or employing work practices classified as incapable of generating asbestos air concentrations above the PEL (Ex. 84–307). The Building and Construction Trades Department of the AFL–CIO (BCTD) similarly would exempt employers from monitoring when employees were handling products and using work practices certified as unable to produce greater than an "ambient" level of airborne asbestos fibers (Ex. 87–2). However, because the standard recommended by the BCTD would permit a monitoring exemption only at very low concentrations, it would apply to far fewer work situations than the exemption suggested by AIA.

OSHA believes that alternatives to the present requirements for initial and periodic monitoring of employee exposures to asbestos in construction worksites must provide an adequate level of assurance that the methods used to control worker exposure do, in fact, reduce exposure to the permissible exposure limit. OSHA will consider evidence showing under what conditions prior evaluation of asbestos exposures provide an adequate basis for determining employee exposures in the future. This evidence may permit OSHA to adopt alternatives to traditional monitoring. Alternative approaches may include certification of work practices, with appropriate safeguards such as a certified competent person in charge of asbestos handling operations. OSHA encourages and directs public comment to this and the following issues regarding exposure monitoring and measurement:

1. Whether the present requirements for initial determinations for each place of employment are feasible for nonfixed workplaces that may exist for short periods of time;

2. Whether and under what conditions can a prior evaluation of asbestos exposures from specific work practices and materials provide an adequate basis for determining employee exposure in the future for employees engaged in the same type of operation e.g., installations of asbestos cement pipe;

3. Whether any change from the present standard should be permitted concerning sampling frequency and patterns;

4. Whether the nature of the exposure patterns in demolition (high exposures) necessitates special provisions; and

5. Whether the time required to receive the results of the asbestos air sample from the laboratory affects the usefulness of the monitoring; if so how, and how long does it take to receive results from the laboratory.

3. *Methods of Compliance.* As stated above in this notice, OSHA has recently undertaken a review of its general policy relating to the use of engineering controls and respirators for controlling employee exposure to airborne contaminants. Two advance notices of proposed rulemakings have been published on May 14, 1982 (47 FR 20603) and February 22, 1983 (48 FR 7473) concerning the possible revision of two general standards, namely 29 CFR 1910.1000(e) (Air Contaminants) and 29 CFR 1910.134(a)(1) (Respiratory Protection).

For this revised asbestos standard, OSHA is proposing to allow employers to choose among engineering controls, work practices and personal protective equipment to reduce asbestos exposure from 2.0 f/cc to the new PEL. This proposed provision marks a departure from OSHA's usual "methods of compliance" requirement in previous health standards, including the permanent asbestos standard which requires employers to first implement feasible engineering and work practice controls before relying on respirators to meet the PEL.

The 1980 CACOSH report endorsed this policy of preferring engineering and work practice controls whenever feasible. However, the committee pointed out that research and development of engineering controls suitable for the construction industry has lagged behind general industry (Ex. 84–233, pp. 49–52).

Since the 1980 CACOSH report, OSHA has received submissions relating to improved engineering and work practices for the construction industry. In particular, AIA has developed and tested devices and procedures aimed at reducing asbestos concentrations at construction work sites mostly applicable to the installation of new asbestos containing materials (Ex. 84–307). OSHA believes therefore, that for construction operations pertaining to handling and installation of new products, feasible engineering solutions to the containment of asbestos dust to relatively low levels may now exist. Comments are solicited on this issue.

OSHA's estimates of employee population and exposures set out in the ETS, indicate that by far, the construction segment with the highest exposure potential is drywall removal, renovation and demolition operations involving previously-installed asbestos products (see 48 Fr 51094). For some operations, feasible engineering solutions do not appear capable of reducing airborne levels to even the current PEL of 2 f/cc on a reliable basis. Work practices, however, such as wetting down the areas to be disturbed, are of proven value in reducing exposures. In this regard EPA has published procedures as guidelines for certain renovation and "ripout" operations, which rely primarily on carefully administered work practices, supplemented by respirator use to reduce exposures.

OSHA believes, therefore, that feasible engineering controls and practices exist which are capable of effecting significant exposure reductions

in many construction operations. Comments are solicited on actual field experience concerning the effectiveness of such controls.

OSHA is considering whether using the flexible compliance strategy proposed for general industry to reduce exposures from 2.0 f/cc to the new PEL should be adopted for the construction industry. Under this approach, employers would choose among engineering controls, work practices and respirators.

In addition, the agency will evaluate whether the choice of a more protective respirator would exempt employers from introducing otherwise required engineering and work practices e.g. using a supplied air respirator in situations where ambient levels are less than 100 times the new PEL.

OSHA has received suggestions concerning alternative new compliance approaches. For example, the AFL–CIO has suggested extensive work practice prohibitions and requirements (Ex. 87–2). AIA has suggested primarily reliance on certified work practices and engineering control (Ex. 84–307). OSHA believes these approaches deserve careful attention and invites public comment on their feasibility and appropriateness for various segments of the construction industry.

OSHA requests comments on all aspects of the compliance approach in the asbestos standard as it impacts on the construction industry. In particular, OSHA intends to examine carefully alternative methods of compliance for use in the construction arena which may provide reliable, cost-effective means of worker protection in activities involving asbestos. As pointed out above, OSHA is presently reviewing methods of compliance, including their impact on the construction industry. The Agency will assess alternative strategies such as licensing of construction firms and employees exposed to asbestos. The Building and Construction Trades Department, AFL–CIO, has made a recommendation that requires employer proficiency requirements and the use of qualified and competent persons to help ensure that the work practices are performed properly (Ex. 87–2). (Note: The definition of competent person is an employee who has been specifically trained and certified in the safe handling of asbestos.) The AIA has suggested reliance on certified work practice and engineering controls (Ex. 84–307). A more detailed discussion of alternative compliance approaches follows this section. OSHA solicits comments on these approaches.

4. *Respiratory Protection.* The present standard requires that whenever respirators are necessary to reduce exposure to or below the PEL, the employer must provide the respirators at no cost to the employee and assure their use. OSHA believes that as a result of this rulemaking, there will be increased reliance on respiratory protection in the construction industry. OSHA proposes to allow employers to choose among respirators, engineering controls and work practices to reduce exposures from 2 f/cc to the new PEL. Also historically, because of the variable conditions on most construction sites, employers frequently supplement engineering and work practice controls with respiratory protection. Therefore, for these operations, respiratory protection likely will be necessary regardless of the hierarchy of compliance methods adopted by OSHA.

In those operations where feasible engineering controls and work practices would be capable of reducing exposures to the new PEL, respiratory protection would still be necessary while such controls are being implemented and during emergency situations.

Because of the reliance on respiratory protection on many construction sites in meeting reduced PELs, OSHA is concerned about improving the reliability and effectiveness of respiratory protection. Proper selection of respirators is critical to this goal.

The respirator selection table proposed in this document ties respirator selection to the proposed PEL. Accordingly, reusable or single use air purifying respirators may be used where airborne asbestos concentrations do not exceed 10 times the PEL, and full facepiece air purfying respirators may be used where concentrations do not exceed 100 times the proposed PEL. In atmospheres where asbestos concentrations exceed 100 times the PEL, supplied air respirators must be used. In the ETS, OSHA stated that "It is likely that the main impact of the reduced PEL on respirator choice will be in operations and industries where exposure levels are between 5 f/cc and 20 f/cc." Under the current Standard of 2 f/cc, employees exposed in this range could use half-mask air purifying respirators; the proposal provides for protection by a powered air purifying respirator or a full facepiece respirator, or a supplied air respirator may be used.

OSHA has estimated that average exposures in the dry wall removal, renovation and demolition industry segment employee exposures are 20 f/cc where employees are not wearing respirators. Therefore many exposures fall within the 5 f/cc to 20 f/cc range. The revised respirator provision would allow such employees to use, in addition to supplied air respirators, powered air purifying respirators (PAPRs), or full facepiece respirators. OSHA invites comments concerning selection of appropriate respiratory protection for workers engaged in these segments.

Because of the heavy reliance on respirators in many construction operations, OSHA is also concerned with the adequacy of the current standards covering respirator programs and selection, sections 1910.134 and 1001. In particular OSHA is interested in whether more explicit fit testing requirements should be mandated for construction employment and the content of such programs.

5. *Personal Protective Equipment.* The standard now requires that the employer provide and assure that employees who are subject to asbestos exposure in excess of the ceiling limit use appropriate protective clothing (paragraph 1910.1001(d)(3)). The standard is sufficiently performance-oriented to allow the employer flexibility to provide only the protective clothing necessary to protect employees in each particular work operation from asbestos. The CACOSH report stated regarding this issue:

> *Protective Workclothing*—All of the health standards except cotton dust include requirements for protective garments, faceshields, goggles, footwear and other items of equipment to be worn by the worker for skin or eye protection. These requirements follow a common pattern in that they assign the responsibility for purchase, cleaning, maintenance, storage, and use to the employer.
>
> * * * * *
>
> * * * OSHA should consider past practices of industry with regard to types of protective clothing that are practicable, and also recognize that the cost of protective clothing goes far beyond the purchase of the clothing itself and includes the costs of storage lockers, change rooms, and laundering.
>
> In summary, OSHA standards should be more precise about the need for protective clothing. Such standards should require solutions to the problems of heat stress, clothing flammability and clothing quality that are created by certain jobs. (Ex. 84–233)

In light of CACOSH's comments, OSHA invites comments concerning the applicability of the present requirements for personal protective equipment to the construction industry. The public is requested to comment on whether the provisions of the present standard are adequate to protect asbestos workers in the construction industry.

6. *Hygiene Facilities and Practices.* The current asbestos standard requires that change rooms and clothes lockers be provided at "fixed" places of

employment essentially excluding construction sites (section 1910.1001 (d)(4)). OSHA is considering in this rulemaking requiring additional hygiene facilities such as showers and lunch rooms for general industry. The feasibility of providing such facilities at construction sites was discussed by CACOSH as follows:

Hygiene Facilities

* * * * *

Industrial construction, where most of the toxic exposures are found, are in remote areas. Water in large amounts is not always available. The disposition of large volumes of waste water containing toxic residues would be most difficult.

During the winter months in northern parts of the country, employees work both outside and inside and must dress accordingly. The requirement of employee showers is questionable as to feasibility in such an environment.

* * * * *

The Committee agreed that lunchroom facilities appropriate to the work place should be provided. If there are not clean eating areas available, then the employer should provide such a facility.

It was also agreed that a suitable space to change from contaminated work clothes should be provided. The employer shall insure that such clothing is decontaminated, clean and dry before reuse. (Ex. 84–233, pp. 53–54).

OSHA solicits the views of the impacted parties as to the concerns expressed by CACOSH. Specific issues that should be addressed in this rulemaking are:

1. What facilities and hygiene practices are appropriate to protect construction industry employees exposed to asbestos; and

2. What changes, if any, should be made to the present standard to assure that the provisions for hygiene facilities may be effectively implemented in light of varying weather, a transient work force and nonfixed workplaces.

OSHA agrees with CACOSH that the transient work conditions in nonfixed workplaces may make the traditional hygiene facilities and practices sometimes difficult to apply. Comments are encouraged to address the two specific issues raised above.

7. *Medical Surveillance.* Medical surveillance programs are mandated by the statute where appropriate and are required by the present asbestos standard (Section 6(b)(7) of the Act and paragraph 1910.1001 (i)). Where medical examinations are required, they must be provided without cost to the employee. Preplacement, periodic and termination examinations are now required, except that no examination is required if records show that an employee has had an examination within the last one year period. CACOSH has raised some concerns regarding the applicability of medical surveillance standards for the construction industry:

For the construction industry, medical examinations are considered a major economic and logistical problem. The primary reason is that employee turnover in the construction industry is high as compared to the manufacturing industry. In construction, employees may be hired for anywhere from one day to many years. One employee may work for three to ten employers throughout the country in the course of a year. The attempt to superimpose initial and periodic physical examinations on such a pattern on employment presents severe problems for both employees and employers.

* * * * *

There appears to be no mechanism in the OSHA standards which will prevent an employer from utilizing these medical examinations to exclude all but the most hardy human specimens. OSHA standards that require medical examinations should specify that physicians only give the employer an opinion regarding the employee's ability to perform or not perform the job from a medical standpoint. The specific values of medical testing and evaluation are confidential matters between physician and patient.

Good preventive medicine requires knowledge of environmental conditions on the job by the physician and the ability of the physician to follow the employee over time and to initiate treatment or change the employee's working conditions for the good of the employee. Achieving these objectives is difficult in construction. Employees who work for short periods are sometimes terminated before the complete results of the examination reach the employer. The multiple employer and multiple physician situation. Destroys the value of continuity of medical records. Neither the physicians involved nor the employers involved have the opportunity to provide the employee with the benefits of a useful medical record system because records are ofter scattered over a wide geographical area with no provisions for communication between physicians and/or employers.

* * * * *

While it was agreed that OSHA had the best interests of employees in mind when mandating initial and periodic examinations, there was disagreement in the subgroup and among the experts who testified before the subgroup that these best interests could be achieved in the construction industry. From the preventive point of view, an overdependence on medical control systems in lieu of environmental control systems may harm employees more than help them.

* * * * *

New standards for the construction industry should recognize the impracticability of attempting to include a requirement for medical surveillance in every health standard. Instead, attention within NIOSH and OSHA should be directed toward developing a generic standard for physical examinations and the identification and documentation of hazardous materials, processes, and work practices in the industry. Additionally, these agencies should mount a major effort to develop and publish economical and practical methods of controlling these hazards so that the work environment can be made inherently safe. New standards should emphasize environmental controls and deemphasize dependence on medical controls unless they are necessary. (Ex. 84–233)

Changes to the current standard have been suggested to meet some of these concerns. For example the BCTD's recommended standard explicitly provides that with the exception of examinations to determine an employee's fitness to wear a respirator, employees shall not be required to submit to medical examinations. (Ex. 87–2, p. 24). Further, the BCTD standard contains an explicit prohibition against conditioning hiring or otherwise discriminating on the basis of whether an employee is entitled to a medical examination (Id. p. 26).

AIA's recommended standard would exempt employees from medical examination who handle products classified in 2 of the 3 categories. Only employees exposed to products classified as "category C," the most hazardous, would be covered by the current medical surveillance provisions. Although AIA asserts that these provisions are generally inappropriate for construction workplaces, they "should nevertheless be enforced . . . to provide a strong incentive for developing safer products and work practices" (Ex. 84–304, p. 34). AIA's recommended standard, however, does not address situations where employees are exposed to previously installed asbestos, primarily in renovation, "rip-out" demolition operations.

The content of medical examinations is also an issue under consideration by OSHA. As stated above in the discussion applying to general industry, OSHA is considering reducing the frequency of X-rays by limiting the X-ray requirement to higher-risk workers. The AFL–CIO suggests a similar approach, X-rays every 3 years, although yearly examinations are required to be offered employees over 40 years old.

The frequency of examinations, now required to be offered yearly, are also under reevaluation by OSHA. The BCTD suggested standard uses both age and duration of employment in the building and construction industry as criteria for frequency of required examinations (Ex. 87–2 p. 27).

Comments on issues pertaining to medical examinations in the

construction industry including those listed in the general industry discussion are solicited.

8. *Recordkeeping.* The present standard requires that records of personnel regarding environmental monitoring results shall be maintained for at least 20 years and that medical records be maintained at least for that same period of time. OSHA is considering extending this time period to 30 years. Regarding recordkeeping CACOSH stated:

> To assess the protection provided by an environmental standard, health effects must be correlated with levels of exposure and occupational history. This may not often be possible in construction work where employment is temporary, the work location is continually changing, and environmental exposures are subject to the variability of wind and weather. Workers may use or be exposed to a given material for short periods of time, in some cases only a few days. These combined variables make it extremely difficult to accurately characterize any particular worker's exposure.
>
> Some construction firms are created to carry out a project and then are dissolved. For this reason, a great many of the medical records will be lost. There is also no provision for making use of these records in the future, except that they be sent to NIOSH. Most likely, these records will simply fill up government warehouses at significant cost to the taxpayers and to the employers who originally collected them.
>
> Because construction workers change employers regularly as described above, the records that are not lost through closure of the construction firm will be scattered among surviving construction firms located throughout a geographical region or sometimes throughout the country. These records also will have little value for epidemiological purposes or other long-term studies.
>
> The construction industry requireds a different approach to reaching the goals of recordkeeping. (Ex 84–233, pp 32–33).

In considering what, if any, recordkeeping requirements should be mandated for the construction industry, OSHA shares the same concerns as those expressed by CACOSH. Because of the complexities inherent in this area, OSHA solicits public comment.

9. *New Suggested Regulatory Provisions for Construction. A. Product Certification System.* AIA has submitted a recommended standard which relies on a classification and certification system for new products used in construction (Ex. 84–307). Depending on the classification given to a product, employers may be exempt from most duties imposed by the asbestos standard, such as monitoring and hygiene facilities. Classification for the most part depends on manufacturer certification, and is based on the potential for releasing airborne concentrations of asbestos. The highest classification is reserved for products which will not result in concentrations above the PEL using any foreseeable process or use; the next highest rank is given to products which will not release concentrations over the PEL when work practices "validated" by the manufacturer are used. For both product categories, a specially trained "compliance coordinator" must be designated to supervise work activities. As stated above, AIA's product certification system does not include demolition, renovation and "rip-out" operations, since they do not involve the installation of new products.

The BCTD's suggested standard (87–02) also contains a product categorization system. However, only categorization in the safest category would result in significant exemptions from most protective provisions. Further concentration cut-off which would qualify a product for such classification is essentially an ambient air level. For these reasons, the BCTD's product categorization system does not appear to eliminate many of the standard's requirements, as would the AIA system.

B. *Employer Reporting and Employee and Employer Certification System.* The BCTD's suggested standard would require employers to report to OSHA prior to doing a job where asbestos exposure occurs. Among other things, emloyers would have to report their asbestos-related job history, asbestos products to be used, all protective programs, identification of monitoring personnel, and identification of "competent" people on the job. Competency requirements for employees would be established. Only employees certified by their employer would be able to perform most asbestos work. Competency would be established in large part by the results of an examination. Specified supervisory and administrative duties could be performed only by specially trained "qualified" and "competent" persons. OSHA believes these approaches deserve serious consideration.

OSHA points out that a different type of work practice certification is found in OSHA's safety standard concerning ground-fault electrical protection for employees in the construction industry (29 CFR 1926.400(h)). These requirements permit the use of an assured equipment grounding program which includes a designation of one or more competent persons to be in charge, a written program, a testing program, and a record retention program tailored to meet the specific needs of occupational safety for employees dealing with electricity in the construction industry.

Employer certification may be new to OSHA standard setting, but it is not unique to governmental regulation of high hazard industries or operations. It involves the premise that only employers or employees exhibiting a unique skill and a specialized training—and so certified as such by OSHA or by the employer—should be permitted to engage in certain or all hazardous activities. The alternative would be that the noncertified construction industry employer or employers using noncertified employees would be bound by the requirements of 1910.1001. Moreover, this concept is one that could be used in conjunction with equipment and/or work practice certification, namely that such work practices could be used by an employer certified by OSHA or by workers certified as "competent".

An example of employer certification is that of the United States Nuclear Regulatory Commission. Except for persons who have exposure to minute amounts of radioactive material that the NRC has specifically exempted, all persons who posses, acquire, transport, etc. radioactive materials must be licensed by the NRC or by some other government agency such as the DOT. See 10 CFR Parts 1–150. There is a high premium on training and safety programs before certification is given. Further, employees named as performing work must be shown to have specific experience or training. In addition, Great Britain has established employer licensing requirements that become effective on August 1, 1984. (Ex. 84–406)

OSHA invites comments concerning additional options which would both provide full protection to affected construction employees and at the same time would minimize the administrative and economic burden on affected construction employers—especially those with small numbers of employees, nonfixed workplaces, or highly transient work forces. As the result of this rulemaking, OSHA will consider whether changes in the present standard for the construction industry are warranted, and if so, what those change should be and how they should be made. OSHA may, on the basis of information submitted as part of this rulemaking adopt specific changes in the current standard for the purpose of addressing the unique construction industry concerns. OSHA may also promulgate a separate standard, in whole or in part, dealing with occupational exposures to asbestos in the construction industry. In any case,

OSHA presently intends to codify the asbestos construction standard at the place designated for construction standards, namely 29 CFR Part 1926.

VII. Regulatory Impact Analysis and Regulatory Flexibility Analysis

Introduction

The Occupational Safety and Health Administration (OSHA) is required to assess the feasibility of the proposed standard and is required by Executive Order 12291 and the Regulatory Flexibility Act to assess the economic impact of the proposed standard. The following summary presents OSHA's analysis of the industries which would be covered, the technical feasibility, the benefits, costs, and overall economic impact of the proposed standards.

A. Industries Affected

The industries affected by the proposed standard include primary manufacturing, secondary manufacturing, automotive aftermarket, shipbuilding and ship repair, and construction.

The affected industries in primary manufacturing by Standard Industrial Classification (SIC) Code include: SIC 3292, Asbestos Products; SIC 2661, Building Paper and Building Board Mills; SIC 3292, Gaskets, Packings, and Sealing Devices; SIC 3996, Linoleum, Asphalted-Felt Base and Other Hard Surface Floor Coverings; and SIC 2952, Asphalt Felts and Coverings. Most of the establishments that produce asbestos products are classified in SIC 3292. The major product lines that are affected include cement pipe, cement sheet, friction materials, floor tile, paper, coatings, sealants, textiles, gaskets, and packings. The number of plants in this grouping and the numer of potentially exposed workers are presented in Table 1.

Secondary manufacturers alter an asbestos product to yield a final product or another intermediate product. The RTI report (Ex. 84–9) identifies the following SICs as being affected in the secondary manufacturing group: SIC 2451, Mobile Homes; SIC 3357, Drawing and Insulating of Nonferrous Wire; SIC 3523, Farm Machinery and Equipment; SIC 3531, Construction Machinery and Equipment; and SIC 3842, Dental Equipment and Supplies. Secondary fabrication of asbestos products in these groups, however, is limited. The Selikoff study (Ex. 84–90) identifies heating equipment manufacturers, boiler shops, manufacturers of industrial furnaces and ovens and manufacturers of electric housewares and fans as being secondary manufacturers using asbestos products. Secondary processing involves sawing, pressing, slitting or drilling of asbestos-containing materials and, hence, produces some relatively high exposure levels. OSHA does not have more recent survey data on which to base an estimate of numbers of plants using asbestos materials or the number of workers exposed. For analytical purposes, OSHA uses the SIC categories and exposure level provided by RTI. The number of plants and workers are presented in Table 1.

Three groups in the automotive aftermarket may be affected: (1) refacing or rebuilding of friction materials, (2) repackaging of friction materials, and (3) general brake repair and maintenance. The exposures during repacking of friction materials are assumed to be minimal. The major source of exposure to asbestos in this industry occurs during brake repair and maintenance. The number of plants and the number of potentially exposed workers are shown in Table 1.

The shipbuilding and ship repair industry which would be affected is classified as SIC 3731. The shipbuilding industry has increasingly phased out use of asbestos for new building, and, therefore, the primary source of asbestos exposure is during the removal of old asbestos insulation and during repair and maintenance of bulkheads. OSHA estimates that 30 commercial shipyards and 8 naval shipyards would be affected by the revised standard. The number of employees exposed is presented in Table 1.

TABLE 1.—OSHA ESTIMATE OF EMPLOYEE EXPOSURE TO ASBESTOS

Industry segment	Number of exposed workers[1]	Number of plants[2]	Current exposure level f/cc
Primary manufacturing:			
Asbestos-cement pipe	675	9	1.00
Asbestos-cement sheet	225	5	1.00
Friction materials	3,677	81	1.50
Floor tile	4,746	14	
Receiving, introductions mixing	1,187		0.50
Rest of plant	3,559		0.20
Asbestos paper	1,497	22	
Receiving, introduction mixing and preparation	474		0.75
Rest of plant	1,423		0.30
Gaskets, seals and packings	876	28	
Sheet formation, cutting and packaging	219		0.20
Rest of plant	657		0.75
Paintings, Coatings and Sealants	135	5	
Mixing, compounding and packaging	34		0.75
Rest of plant	101		0.00
Textiles	1,125	5	
Wet Process	375	2	0.75
Dry Process	750	3	1.50
Secondary fabricators: [3]			
Cement sheets	4,301	1,076	2.00
Paper products	4,301	1,076	2.00
Packings and gaskets	4,301	1,076	2.00
Textiles	4,301	1,076	1.00
Automotive aftermarket:			
Rebuilding and relacing	4,091	140	2.00
Brake repair:			
Garages and brake shops	176,205	68,089	0.15
Gasoline stations	84,981	77,886	<0.10
Shipbuilding and repair [5]	3,044	38	
Shipbuilding	1,522		0.50
Ship repair	304		5.00
	1,218		0.50
Construction: [6]			
Installation of new materials:			
Asbestos-cement pipe	5,430	546	0.75
Asbestos-cement sheet	1,785	177	2.00
Roofing felts	2,490	250	0.15
Repair and maintenance involving drywall removal, renovation and demolition [7]	12,955	1,298	20.00
	38,898	3,897	0.20
Repair and maintenance involving asbestos removal	14,845	1,485	0.15
Maintenance workers in schools, chemical plants electrical generating plants and foundries	NA	NA	0.15
Total workers exposed above 0.5 f/cc [8]			40,644
Total workers exposed above 0.2 f/cc [9]			92,571
Total exposed workers			375,399

[1] Population and facility estimates were based on the RTI report (Ex. 84–009) and updated to 1983 employment levels by JRB Associates.

[2] The number of plants in the SIC codes making up Secondary Fabricators (2451, 3357, 3523, 3531, and 3842) was derived by JRB Associates by taking the number of establishments with 20 or more employees, as listed in the Economic Information Systems data base for 1983, and expanding that number by the percent of establishments with fewer than 20 employees, as listed in *County Business Patterns*, 1980. Not knowing exactly how the 17,204 Secondary Fabrication (SF) workers and 4,304 SF plants were distributed among the 4 types of SF facilities, OSHA assumed that the workers and plants were distributed equally among the 4 types of SF facilities.

[3] Assumed that 20% of 1522 ship repair workers are not in compliance with current respirator requirements. Hence, the number of workers was adjusted to reflect the 20% of exposed workers.

[4] Assumed average firm employs 8–10 workers as is true of SIC 17 (construction, special trade contractors).

[5] Assumed that 25% of 51820 drywall removal, renovation, and demolition workers are not in compliance with current respirator requirements. Hence, the number of workers was adjusted to reflect the 25% of exposed workers.

[6] This figure excludes segments that are in compliance with a 0.5 f/cc PEL such as floor tile manufacturing and those in compliance with a 0.2 f/cc PEL.

[7] This figure excludes segments that are in compliance with a 0.2 PEL such as tile, brake repair, roofing felts, and repair and maintenance.

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory analysis, September 1983.

Asbestos exposures in construction are expected to occur when installing asbestos-cement pipe and sheet, sanding vinyl-asbestos floor tiles, installing built-up roofing, removing old insulation, removing or repairing drywall, demolishing buildings containing asbestos products, and removing old build-up roofing. Workers involved in maintenance and repair of pipes, boilers or furnaces in a wide variety of industries and buildings may also be exposed to some degree to asbestos.

Due to lack of information on these workers, OSHA has not included them in the economic analysis. Preliminary information for this group of maintenance workers is available in the JRB study (Ex. 84–393). The affected SICs in construction would include: SIC 1521, General Building Contractors, Single Family Houses; SIC 1522, General Building Contractors, Other Than Single family Houses; SIC 1531, Operative Builders; SIC 1541, General Building Construction: Industrial Buildings and Warehouses; SIC 1542, General Building Construction, Other than Industrial Buildings and Warehouses; SIC 1623, Water, Sewer, Pipeline, Communication, and Power Line Construction; SIC 1629, Heavy Construction; SIC 1711, Plumbing, Heating (Except Electrical), and Air Conditioning; SIC 1721, Painting, Paper Hanging, and Decorating; SIC 1752, Floor Hanging and Other Floorwork; SIC 1761, 1761, Roofing and Sheet Metal Work; SIC 1975, Wrecking and Demolition; SIC 1796, Installation or Erection of Building Equipment; and SIC 1799, Special Trade Contractors. The number of construction workers potentially exposed to asbestos is presented in Table 1.

B. Availability of Substitutes

The extensive tort litigation in the asbestos area and the awareness of the health effects associated with asbestos exposure has provided a strong inducement for producers and users of asbestos products to switch to substitutes. At present, however, substitute materials that are cost-effective replacements for asbestos in all applications are not available. Substitute materials have been developed for most of the primary asbestos product lines. Some of these materials, however, will not duplicate the performance of the asbestos product. To the extent that the proposed OSHA standard provides further inducement to switch to substitutes, this decline in performance will be a "hidden cost."

The replacement of asbestos in the product lines identified previously has been achieved with varying success. For example, approximately 50–75 percent of producers of phenolic molding compounds have substituted other materials such as clay or fiberglass for asbestos. Similar success has been achieved in the production of floor tile, where non-asbestos fibers and petrochemicals are being used. Replacement of asbestos in friction materials has been less promising, although the major automobile manufacturers indicate that all new automobiles will be equipped with non-asbestos brakes and clutch facings in the near future.

Fiberglass has been used as a substitute fiber for asbestos in many products. Roofing felts, pipeline felts, and asphalt coatings have all been produced using fiberglass in place of asbestos fibers.

In the past, the price of substitute materials has been much higher than the price of asbestos. The "full price" of using asbestos, which includes the potential cost of control methods, tort litigation, etc., however, has increased significantly in recent years. Hence, comparability in terms of price with many other substitute materials may have been achieved.

C. Nonregulatory Environment

Compensation Systems

Selikoff et al. have evaluated the adequacy of systems to compensate victims of occupational exposure to asbestos, particularly the Worker's Compensation System (Ex. 84–2). In many cases, they found that the worker or his or her survivors never made the connection between the occupation and the disease incurred and, hence, never filed a claim. The long latency associated with many asbestos-related diseases may contribute to the uncertainty regarding the link to the occupational exposure and may violate the time constraints for filing a claim as specified by some state programs. Overall, only 33 percent of the population of workers in the study by Selikoff and colleagues filed a Worker's Compensation claim and only 15 percent of those who filed received some benefits prior to death. Social Security was also a source of compensation for this group of workers: Approximately 66 percent of those disabled for 12–23 months, 77 percent of those disabled for 24–35 months, and 83 percent of those disabled for 3 years received some benefits from Social Security. Taking into account all sources of compensation, the average total income replacement ratio using annual after-tax income as the base was 39–40 percent.

Tort Litigation

Workers suffering from an asbestos-related disease may file a product liability suit against a third party manufacturer, processor, distributor, sales firm, installer, agency, or contractor. In many cases, however, absence of information may prohibit the initiation of a suit. For example, when a worker is removing or repairing asbestos products installed years ago, he or she may not be aware that the product is asbestos; thus, no "known" exposure will have occurred. Furthermore, because of the long latency associated with asbestos-related diseases, the link between occupation and disease is considerably less clear.

For the majority of workers who have filed suit, the basis for the legal action has been a failure by the company to warn the worker of the Asbestos hazards. Suits have been brought against producers, distributors, and users of asbestos products as well as insurance companies. MacAvoy has estimated that for the 1980–2015 period the total expected direct financial liability for these companies will be $38.2 billion (Ex. 84–12). As a consequence, the debt ratings of many of the companies involved have fallen and the insurance policies for some companies have simply been cancelled. For those plaintiffs who are ultimately compensated, the payment that they receive net of legal fees and administrative costs is a small fraction of the initial settlement of award: it has been estimated that for each $1 paid to a claimant, $3.40 is paid in legal fees (Ex. 84–369).

Although tort litigation has had a substantial impact of reducing worker exposure in certain areas, there are many industrial sectors that employ large numbers of workers who are exposed to significant concentrations of asbestos. Many of these sectors have not felt the impact of litigation. Most of the suits that were filed through 1982 involved shipyard workers, workers from primary manufacturing, and insulation workers (Ex. 84–369). Furthermore, there may be a considerable time lag before cases of cancer produce litigation that would reduce exposure levels in other industry segments.

D. Regulatory Alternatives

Industry Proposals

Asbestos Information Association Recommended Standard.—The Asbestos Information Association of North America (AIA/NA) has submitted a recommended standard for controlling asbestos exposure during construction installation work (Ex. 84–307). The AIA recommendation as it pertains to the current OSHA proposed standard would establish a method of classifying products according to their potential for releasing asbestos fibers in excess of the PEL. Given the reliance on a PEL as the trigger mechanism, the AIA classification scheme is similar to the action level approach used by OSHA for other toxic substance standards. This proposal is under consideration.

Organization Resource Counselors, Inc. Proposed Standard.—The Organization Resource Counselors, Inc. (ORC) has recommended a standard on asbestos exposure (Ex. 86–4) that raises several issues relevant to the current OSHA proposal. ORC recommends a PEL of 0.5 f/cc measured over an 8-hour TWA. The ORC proposal also recommends setting different PELs for different asbestos fiber types. This procedure is consistent with the British approach, but OSHA believes that because the lung cancer risk is the same from one type of fiber to another and since lung cancer is the major cause of asbestos disease mortality, setting different PELs for different fiber types is not appropriate.

Building Construction Trades Department, AFL–CIO.—On November 14, 1983, the Building and Construction Trades Department, AFL–CIO, submitted a proposal for an asbestos standard to OSHA (Ex. 87–2). The recommendations comprehensively address the application of an asbestos standard in the construction industry, by including provisions for many industrial hygiene program elements. They include, for example, provisions for employer competency to do asbestos work, employer reporting to OSHA all asbestos work in advance, use of competent and qualified persons on jobs, and requiring employee training, asbestos monitoring, medical surveillance and product categorization. The Building and Construction Trades Department recommends a PEL of 0.1 f/cc. OSHA is considering the applicability of these recommendations to the proposed standard.

Environmental Protection Agency Standards

The Environmental Protection Agency (EPA) has two standards that cover groups affected by the OSHA-proposed standard: Friable Asbestos Identification and Removal in Schools (40 CFR Part 763 F) and National Emission Standard for Asbestos (40 CFR 61.20). Both standards apply to removal operations of asbestos-containing materials, and since they mandate use of wet handling techniques, both are consistent with the OSHA-proposed regulation.

Alternative PELs

OSHA has considered alternative Pels of 2.0 (current level), 0.5, 0.2, and 0.1 f/cc. The evaluation of the technological feasibility and the costs and benefits are presented in the respective sections for these issues.

Sample Analysis

OSHA is considering several regulatory alternatives which would be designed to reduce the counting error during the analysis of asbestos fiber samples. OSHA may therefore mandate technical training, laboratory certification and laboratory participation in a round robin testing program. Finally, OSHA may adopt the NIOSH analytical procedure (Ex. 84–62), the procedures recommended by the AIA (Ex. 86–2), or procedures of the kind recommended by Chatfield (Ex. 84–395).

Currently, NIOSH offers a training program for asbestos fiber counters which costs $495 for members of the American Industrial Hygiene Association (AIHA) and $550 for non-members. No certification or refresher courses are offered. NIOSH also offers a Proficiency Analytical Testing (PAT) Program for laboratories to assist them in improving their analytical performance. Costs include a $50 application fee, $550 for annual accreditation and $250 plus travel expense for the visit of an approved laboratory appraiser. There are no significant cost differences between the sampling procedures recommended by NIOSH, AIA or Chatfield (Ex. 84–394).

OSHA is also considering whether to change its mandated method of sample analysis from phase contrast microscopy to either polarized light or electron microscopy methods. The advantages in changing are that polarized light methods can differentiate between non-asbestos and types of asbestos fibers while electron microscopy in addition to differentiating types of fibers can categorize fibers by length. The requirements for electron microscopy, however, are for more substantial than those for phase contrast microscopy. Thus, there are an estimated 1,000 laboratories that are equipped to analyze asbestos air samples using phase contrast methods, and 150 equipped to carry out the first level electron microscopy analysis. The costs range from $25–$30 per sample for phase contrast analysis to $50 per sample for polarized light analysis and $300–$400 for level I electron microscopy analysis (Ex. 84–394).

E. International Regulatory Environment

The risk to worker health caused by exposure to asbestos fibers has been recognized by regulatory action in many countries. The British response in 1981 to the increased awareness of the health risks associated with asbestos was to propose exposure limits of 1 f/ml for chrysotile, 0.5 f/ml for amosite, and 0.2 f/ml for crocidolite (Ex. 84–394). These limits became effective January 1, 1983. In August 1983, the British further reduced the control limit for chrysotile to 0.5 f/ml. These limits will take effect 1 August 1984 (Ex. 84–394). The British expect that all reasonable efforts will be made to keep exposures below these levels.

The Canadian Ministry of Labour produced a proposed regulation concerning asbestos, which applied the same exposure limits as the British standard. Sweden reduced the permissible fiber count to 1 f/ml of air on July 1, 1976. Furthermore, use of crocidolite was banned, as were certain uses of asbestos (i.e., sprayed asbestos and asbestos use in paint, glue, spackle, and joining materials). It was officially judged to eliminate asbestos use in the long run.

A comparison of the PELs required by various foreign standards is provided in Table 2. Also, a discussion of the treatment by these various standards of the ancillary requirements such as monitoring and medical surveillance and other issues such as respirator use and engineering controls is provided in Appendix C of the Regulatory Impact Analysis.

TABLE 2.—PERMISSIBLE ASBESTOS EXPOSURE LIMITS OF FOREIGN COUNTRIES, IN 1983

Country, province, or organization and fiber type	Permissible exposure limit (PEL)	Comments
Australia:		
chrysotile	2.0 f/ml	
Amosite	2.0 f/ml	
Belgium:		
Chrysotile	5.0 f/ml	For fibers less than 5 m in length.
Amosite	5.0 f/ml	
Crocidolite.	5.0 f/ml	
Britain:		
Chrysotile	1.0 f/ml	4-hour time-weighted average.
Amosite	0.5 f/ml	
Crocidolite.	0.2 f/ml	
Chrysotile	0.5 f/ml	After 1 August 1984.
Amosite	0.2 f/ml	Do.
Czechoslovakia:		
Chrysotile	2.0 mg/m³	When the asbestos content exceeds 10%; otherwise, the PEL is 4.0 mg/m³ (all types).
Amosite	2.0 mg/m³	
Crocidolite.	2.0 mg/m³	
Finland:		
Chrysotile	5.0 f/ml	
Amosite	5.0 f/ml	
Crocidolite.	5.0 f/ml	
Netherlands:		
Chrysotile	2.0 f/ml	
Amosite	2.0 f/ml	
Crocidolite.		
Ontario:		
Chrysotile	1.0 f/ml	4-hour time-weighted average.

TABLE 2.—PERMISSIBLE ASBESTOS EXPOSURE LIMITS OF FOREIGN COUNTRIES, IN 1983—Continued

Country, province, or organization and fiber type	Permissible exposure limit (PEL)	Comments
Amosite	0.5 f/ml	
Crocidolite.	0.2 f/ml	
Russia:		
Chrysotile	1.0 mg/m³	When the asbestos content exceeds 70%; otherwise the PEL is 2.0mg/m³ when the content is over 10%, and 4.0 mg/m³ when over 2% (all types).
Amosite	1.0 mg/m³	
Crocidolite.	1.0 mg/m³	
Sweden:		
Chrysotile	1.0 f/ml	
Amosite	1.0 f/ml	
Crocidolite.	0.0 f/ml	Banned completely since 1975.
Switzerland:		
Chrysotile	1.0 mg/m³	
Amosite	1.0 mg/m³ D	
Crocidolite.	1.0 mg/m³	
International Labour Office (Draft Code).		Airborne asbestos levels should not exceed limits approved by the "competent authority" of the member nation.
European Economic Community: (Asbestos Directive):		
Crocidolite.	0.2 f/ml	8-hour time-weighted average.
All other Forms.	1.0 f/ml	

Source: JRB Associates Inc., "Support Document for Portions of OSHA's Regulatory Impact Assessment on Asbestos," Mclean, VA., 1983

It is clear that considerable momentum has been established in the international arena towards implementing reductions in worker exposure to asbestos. The International Labor Organization through its Secretariat, the International Labor Office, promulgated a draft Code of Practise which was drawn up by a Meeting of Experts in October 1983 (Ex. 84–412). The International Labor Organization is a tripartite organization made up of labor, industry, and government representatives from each member country. As such, the draft Code of Practice represents a considerable achievement in obtaining consensus among these representatives, following a long history of discussion and debate (Ex. 84–400). Furthermore, although this draft Code is voluntary, it has been placed on the formal agenda of the Conference in 1985 and, therefore, may be the precursor to adoption of an International Convention which does not have binding force upon member countries.

In another related development, the European Economic Community promulgated a directive regarding worker exposure to asbestos (Ex. 84–397). This directive will come into force in member states on January 1, 1987. The specific provisions of this document are also included in the discussion in Appendix C of the Regulatory Impact Analysis.

F. Technological Feasibility

Primary Manufacturing

The production of asbestos products can be divided into receiving (unloading, transporting, and storing the raw asbestos fiber) and processing (mixing, drying, and finishing). The technological feasibility of the compliance activities associated with reducing the exposure level during these two production stages are discussed separately. Feasibility of complying with other elements of the standards are discussed at the end of this section.

Receiving.—Several methods of control and several newly developed packaging techniques would reduce asbestos exposure problems in the receiving areas. These include: lined rail cars, palletized loading, pelletized or blocked asbestos fibers, and double-sealed bags. Use of fully containerized shipments as opposed to shipment in bags would further reduce the exposures that occur when bags are damaged. If these control methods and proper work practices are implemented, then OSHA expects that the levels of exposure could be maintained below 0.3 f/cc TWA (Ex. 84–9, III–21).

Introduction.—The exposure during fiber introduction could be adequately controlled if the bags or containers of asbestos were opened by machine. If the bags or containers are opened manually, a semi-enclosed local exhaust ventilation system would be necessary to limit fiber emissions. Using these control methods and proper housekeeping, it is exected that the exposure level could be reduced to 0.4 f/cc TWA (Ex. 84–9, III–27).

Processing.—Fiber loss during mixing can be reduced by negative pressure, which is generally connected to a local exhaust dust control system. Complete enclosure of the mixer is also a method that can be used to reduce exposures during this step. During the cutting, sawing, and finishing steps, the installation of local exhaust and hooding could reduce exposures. Special tools, such as single-point cutting tools, could reduce fiber emissions during particular activities. In addition, regular vacuuming and good housekeeping practices would be necessary to limit exposures resulting from spillage.

After a review of attainable and reported exposure levels and control technology, OSHA expects that, except for the dry-woven textile segments, the primary manufacturers of asbestos products can achieve average exposures of 0.2 f/cc in the processing area (Ex. 84–9). In the dry-woven textile segments, it is believed that exposure levels cannot be reduced significantly below 1.0 f/cc without major breakthroughs in technology (Ex. 84–9, III–43). OSHA will solicit comment on the technological feasibility for all segments in primary manufacturing during the public hearing.

Secondary Manufacturing

The production processes in secondary manufacturing are similar to those in the end processes of primary manufacturing, viz., sawing, cutting, grinding, punching and drilling operations. OSHA assumes, therefore, that the same control techniques would apply. Hence achieving levels of 0.2 f/cc should be technologically feasible using existing equipment methods.

Automotive Aftermarket

The exposures in the automotive aftermarket occur primarily during refacing and rebuilding of friction materials and during general brake repair. Most establishments that rebuild asbestos friction parts have installed controls. In those few establishments where some raw asbestos may be used, the control methods available in primary manufacturing for similar processes could be used.

In brake repair operations, the main source of high exposure levels is the practice of cleaning out brake drums by using blown air. Other methods of cleaning out brake drums are available. Engineering control methods for cleaning brake drums utilize semi-portable or centralized vacuuming systems. Work practice methods include cleaning the drums with a stream of water or a wet rag. Through the use of these control methods and equipment, exposures could be reduced below 0.1 f/cc. Hence, no technological constraints are anticipated.

Shipbuilding and Ship Repair

Asbestos exposures during shipbuilding are currently being reduced through the use of substitutes for asbestos products. The movement toward prefabrication in ships where adequate controls are available is also contributing to exposure control. Ship repair, on the other hand, includes removal or refurbishing of old asbestos products on site (which is generally a narrow, small compartment). OSHA believes that the control techniques available for demolition activities could

be applied when asbestos products are removed. Since wet handling and ventilation procedures are not always practicable due to the confined space, OSHA anticipates that respirators will be necessary to meet reduced PELs. The refurbishing process in ship repair generally uses prefabricated materials where possible. Some limited finishing, however, may be necessary on site. It is expected that the control methods available for the finishing activities in construction could be used to reduce exposures during ship repair or that respirators will be used. Thus, no technological constraints are anticipated.

Construction

Engineering controls for construction activities include local exhaust ventilation systems, substitution of a non-asbestos product, and modification or isolation of a process. The installation of local exhaust ventilation systems on power tools or the use of mobile vacuum units could reduce the emission of asbestos fibers during cutting and finishing activities. Because some work sites are continually moving as the work progresses, the development and use of portable equipment would be necessary. Prefabrication where possible may limit the exposures to asbestos; some fitting and finishing, however, may still be necessary on site and, thus, exposures would still occur. Wet cutting could also be used to reduce exposures, although the reduced productivity due to the messy work conditions and the danger of electrical shock may limit adoption of this alternative. Repair, maintenance, and demolition activities could use an amended water method when asbestos materials are to be removed or altered. The wetting of the material significantly reduces the exposure levels by limiting the initial creation of dust and its subsequent entrainment in the air.

OSHA expects that these activities in conjunction with good work practices would significantly reduce asbestos exposure. In many cases, however, these control methods may be sufficient to achieve the proposed OSHA PEL or ceiling limit. Hence, the use of respirators would be necessary. Technological feasibility, however, is not expected to be a limiting factor.

Health Effects

The deleterious health effects of exposure to airborne asbestos fibers has been discussed in detail at 48 FR 51086, November 4, 1983. Inhalation of asbestos fibers has been associated with three clinical conditions: Asbestosis, mesothelioma (a cancer of the lining of the chest or abdomen) and lung cancer. Many studies have also observed increased gastrointestinal cancer risk, and risk from cancer at other sites such as the larynx, pharynx, and kidney is also suspected.

Initial exposure limits for asbestos were based on efforts to reduce asbestosis which has been long known to be associated with asbestos exposure. The reduction in the number of cases of asbestosis, however, may have resulted in workers living long enough to develop cancers which are now recognized to be associated with asbestos exposure. The discussion of benefits associated with a reduction in the PEL, therefore, focuses on number of cancer cases avoided. The results are expressed in terms of deaths avoided because these cancers almost always result in death within 1–2 years.

The benefits from a reduction in the PEL depend upon current exposure levels, the number of workers exposed and the risk associated with each exposure limit. The current ambient air levels estimated by OSHA and the estimated number of workers exposed to asbestos are presented in Table 1. The lifetime risk of lung cancer, mesothelioma and gastrointestinal (G.I.) cancer was estimated by OSHA and is presented in Table 3 for exposure periods of 1, 20, and 45 years.

The estimated number of cancer deaths avoidable by reducing exposure levels are presented in Table 4. A summary of the cancer deaths avoidable by reducing exposures in each major industry sector is presented in Table 5.

TABLE 3.—EXCESS NUMBER OF DEATHS FROM CANCER PER 100,000 MALE WORKERS EXPOSED TO ASBESTOS FOR 1, 20, OR 45 YEARS AT VARIOUS EXPOSURE LEVELS

Exposure level (f/cc)	1-year duration of exposure			20-year duration of exposure			45-year duration of exposure		
	Lung cancer	Mesothelioma	G.I.[2]	Lung cancer	Mesothelioma	G.I.[2]	Lung cancer	Mesothelioma	G.I.[2]
0.1	7.2	5.9	0.7	129	73	13.9	231	82	25.1
0.15a [1]	10.8	10.4	1.1	208	110	20.8	346	123	34.6
0.2	14.4	13.8	1.4	276	146	27.6	460	164	46.0
0.5	36.1	34.5	3.6	692	362	69.2	1,143	447	1,143.0
0.75 a [1]	54.2	51.9	5.4	1,038	543	103.8	1,714	810	171.4
1.0a [1]	72.2	69.2	7.2	1,384	724	138.4	2,286	814	228.6
1.5 [1]	108	104	10.8	2,076	1,086	207.6	3,429	1,221	342.9
2.0	144	138	14.4	2,713	1,408	271.3	4,416	1,354	441.6
5.0	360	344	36.0	6,509	3,317	650.9	10,318	3,547	1,031.8
10.0	715	684	71.5	12,177	6,024	1,217.7	18,515	6,141	1,851.5
20.a [1]	1,430	1,368	143.0	22,354	12,048	2,235.4	37,050	12,362	3,703.0

[1] Risk estimates associated with exposure levels of 0.15, 0.75, 1.0, 1.5, and 20.0 f/cc were calculated by JRB; the risk estimate for such exposure level is based on a proportional increase in the risk from the next lower exposure level. A linear relationship between exposure level and risk is assumed.

[2] The estimate of mortality risk from gastrointestinal tract cancer is one-tenth the risk of mortality by lung cancer (OSHA's quantitative risk assessment, Document No. HO 336, exhibit No. 84–349). The age at first exposure is assumed to be 25 for all risk estimates.

Source: JRB Associates; McLean, Va., October 1983; based on OSHA's quantitative risk assessment (Docket No. HO 336, Exhibit No. 84–349).

TABLE 4.—ESTIMATED NUMBER OF CANCER DEATHS AVOIDABLE BY REDUCING CURRENT INDUSTRY EXPOSURES TO EACH OF FOUR ALTERNATIVE ASBESTOS PERMISSIBLE EXPOSURE LEVELS (PEL) [1]

Alternative PEL f/cc	1-year duration of exposure				20-year duration of exposure				45-year duration of exposure			
	Lung cancer	Mesothelioma	G.I. cancer	Total	Lung cancer	Mesothelioma	G.I. cancer	Total	Lung cancer	Mesothelioma	G.I. cancer	Total
0.5	209	199	21	429	3,584	1,783	358	5,725	5,439	1,834	544	7,817
0.2	217	207	22	446	3,802	1,896	380	6,080	5,898	2,000	590	8,488
0.1	233	222	23	478	4,089	2,037	407	6,513	6,361	2,166	636	9,162

[1] Numbers rounded for presentation; all calculations were performed on unrounded numbers.
G.I. = Gastrointestinal.
Source: JRB Associates; based on OSHA's quantitative risk assessment (Docket No. HO 336, Exhibit No. 84–349).

TABLE 5.—ESTIMATE OF ALL CANCER DEATHS AVOIDED AT THREE PEL'S BY INDUSTRY SECTOR [1]

Industry segment	Assuming 1 year exposure			20 years exposure			45 years exposure		
	PEL (f/cc)			PEL (f/cc)			(PEL (f/cc)		
	0.5	0.2	0.1	0.5	0.2	0.1	0.5	0.2	0.1
Primary manufacturing	8	10	13	117	172	200	174	257	303
Secondary manufacturing	31	39	43	471	586	654	664	858	912
Automotive aftermarket	8	11	24	134	182	370	194	235	543
Shipbuilding/repair [2]	1	2	3	29	48	55	41	70	82
Construction [3]	378	385	396	4,874	5,108	5,282	6,722	7,071	7,323
Totals	426	447	476	5,725	6,078	6,511	7,815	8,486	9,163

[1] This table assumes exposures are reduced only to the designated PEL. The number of lives saved by promulgation of the lower PEL may be understated if control methods or respirators reduce exposures below the PEL in some industrial situations. However, in situations where respirators are used to effect compliance, the number of lives saved may be overstated if the respirators are not fully protective or are not consistently used.
[2] OSHA assumes that 80 percent of workers in the ship repair section are protected by respirators and only 20 percent may be exposed to the estimated ambient air level.
[3] OSHA assumes that 25 percent of construction workers may be exposed to the estimated ambient air levels.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, November 1983.

Summary of Costs

The costs of compliance are examined at three PELs: 0.5, 0.2, and 0.1 f/cc. OSHA has examined two sets of compliance costs. First, compliance costs associated with using engineering controls to reduce exposures from 2 f/cc and, where necessary for supplemental protection, the cost of a respirator program. Second, the cost of using only respirators to reduce exposures from the estimated current exposure to each of the PELs under consideration. For purposes of estimating engineering control cos.. OSHA assumes that primary m..ufacturing, secondary manufacturing, and refacing operations are in comp..nce with the current 2 f/cc PEL and th.. brake repair, ship repair, and constr..on industries are not fully in compli..e with the current standard.

OSHA a..mes that primary manufac.. except for textiles, can achieve ex..re levels as low as 0.2 f/cc through ..ligent application of current eng..ering controls but would have to im..ment a respiratory

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In the a.. ive aftermarket, it is expected .. posure levels as low as 0.2 f/cc ca.. achieved through applicati.. gineering controls in the refaci.. ion, but that respirators would be .. ed to be used to achieve a level of .. c. The general repair sector can .. ve 0.1 f/cc levels through the use of engineering controls. In shipbuilding and ship repair, the highest exposure levels occur during insulation removal operations. The ship repair sector cannot achieve levels below 2.0 f/cc through engineering controls and therefore must continue to rely on respirators to achieve compliance. OSHA assumes the shipbuilding sector already achieves levels below 0.5 f/cc through the use of engineering controls and by using substitute materials for asbestos.

The aggregate costs for all the industries that have been discussed above are presented in Table 6. These costs are based on the assumption that the best engineering controls available are the methods used to achieve compliance and that none of these controls are as yet in place. To the extent that different work practices can substitute for engineering controls, i.e., the automotive general repair sector where methods of cleaning brake drums using water may reduce exposures to the 0.1 to 0.2 f/cc level, and to the extent that engineering controls are already in place, the costs are overstated. The substantial incremental cost for achieving a PEL of 0.1 f/cc compared to 0.2 or 0.5 is largely the result of instituting respirator programs. In particular, the necessity to upgrade the respirators for construction workers engaged in asbestos removal operations and to provide them with bottled air accounts for much of the cost differential. To the extent that different work practices, i.e., wetting the asbestos-containing material prior to handling, would reduce the air concentration of asbestos fibers to a level such that air-line respirators would not be necessary, these costs are overstated.

TABLE 6.—TOTAL AGGREGATE COST FOR AFFECTED SECTORS [1]

[In thousands of 1982 dollars]

Industry sector	PEL (f/cc)					
	0.5		0.2		0.1	
	First year	Annual	First year	Annual	First year	Annual
Primary manufacturing	40,393	25,462	132,529	51,379	156,125	53,844
Secondary manufacturing	16,620	13,369	19,620	13,369	22,471	15,048
Automotive aftermarket	177,385	70,716	184,475	72,906	196,846	74,497
Shipbuilding and ship repair	971	865	2,330	2,080	2,330	2,080
Construction	29,214	23,215	34,972	29,914	443,296	422,367
Total	257,583	133,647	373,926	169,758	810,848	577,836

[1] Includes cost of warning signs and employee training in asbestos safety.
Note.—First year costs include total capital costs and operating costs for one year, while annual costs include annualized capital costs and annual operating costs.
Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis, 1983.

OSHA is considering allowing flexibility in the methods chosen to achieve compliance with a PEL below 2 f/cc. Rather than considering respirators as a supplemental method to be used only after engineering controls and work practices have achieved maximum feasible results, OSHA is considering allowing respirators to be used in place of engineering controls or work practices to reduce worker exposure from a TWA of 2 f/cc to the lower PELs of 0.5, 0.2, or 0.1 f/cc. Engineering controls and work practices, however, remain the mandated methods of achieving air concentrations of 2 f/cc [TWA]. For purposes of worst-case analysis, OSHA assumes that no

SUMMARY OF COSTS

The costs of compliance are examined at three PELs: 0.5, 0.2, and 0.1 f/cc. OSHA has examined two sets of compliance costs. First, compliance costs associated with using engineering controls to reduce exposures from 2 f/cc and, where necessary for supplemental protection, the cost of a respirator program. Second, the cost of using only respirators to reduce exposures from the estimated current exposure to each of the PELs under consideration. For purposes of estimating engineering control costs OSHA assumes that primary manufacturing, secondary manufacturing, and refacing operations are in compliance with the current 2 f/cc PEL and that brake repair, ship repair. and construction industries are not fully in compliance with the current standard.

OSHA assumes that primary manufacturers, except for textiles, can achieve exposure levels as low as 0.2 f/cc through stringent application of current engineering controls but would have to implement a respiratory program to achieve a 0.1 f/cc PEL. Textile producers, however, would only be able to achieve exposure levels of 1 f/cc through engineering controls. Compliance costs for engineering controls were not estimated for secondary manufacturers due to the lack of specific information regarding production processes and abatement controls. Instead the cost of implementing a respirator program for those industries and workers identified as secondary manufacturers was estimated for purposes of worst-case analysis. OSHA assumes no respirators are currently in use.

In the automotive aftermarket, it is expected that exposure levels as low as 0.2 f/cc can be achieved through application of engineering controls in the refacing action, but that respirators would be required to be used to achieve a level of 0.1 s/cc. The general repair sector can achieve 0.1 f/cc levels

respirators are currently in use except in ship repair and construction. Since the estimated current air concentrations are used to determine which respirator would be required, these costs are not exactly comparable to the costs calculated above for engineering controls, which assumed that most industries had asbestos air concentrations of 2.0 f/cc.

The types of respirators needed for each industry sector were determined using the respirator selection table with reference to the estimated current exposure conditions. OSHA assumed that the least costly approved respirator would be selected. For example, where industries have exposures less than 10 times the PEL, OSHA anticipated that disposable respirators would be purchased, because of their lower short-term costs. When exposures exceeded 10 times the PEL, OSHA assumed that some plants would either use air-line respirators, or full facepiece respirators, depending on the operation. To the extent that firms choose a higher-cost respirator to increase the protection factor or durability, respirator costs may be understated. Furthermore, OSHA has not included in the cost analysis a consideration for lost worker productivity due to wearing respirators. Costs may be understated by whatever amount productivity is reduced. Other necessary respirator program elements are included such as training, administrative costs, medical exams and fit tests.

The aggregate industry costs for complying through implementing respirator programs are presented in Table 7. The cost are overstated to the extent that some firms already have a current respirator program and to the extent that careful application of existing engineering controls and work practices would reduce concentrations in some firms to the PEL and thereby make respirator use unnecessary. Futhermore, the costs assume that dust masks will have to be replaced after every 8-hour day and filters after a 40-hour week. As is the case for the aggregate costs presented for engineering controls, the large difference between costs at 0.1 f/cc and the other PELs is attributable to the cost of using bottled air with air-line respirators in the demolition/renovation segment.

TABLE 7.—TOTAL INDUSTRY COSTS FOR ACHIEVING COMPLIANCE USING RESPIRATORS

[In thousands of 1982 dollars]

Industry sector	PEL					
	0.5		0.2		0.1	
	First year	Annual	First year	Annual	First year	Annual
Primary manufacturing	9,007	8,000	10,124	8,817	15,167	13,047
Secondary fabricators [1]	17,469	12,281	17,469	12,281	19,627	13,712
Automotive aftermarket	2,385	1,610	2,385	1,610	140,279	109,081
Shipbuilding repair	698	643	2,057	1,838	2,057	1,838
Construction	31,215	26,684	31,215	26,684	435,374	405,097
Warning signs [2]	284	78	284	78	284	78
Asbestos training [2]	5,075	4,470	5,075	4,470	5,075	4,470
Total—All segments	66,163	53,766	68,639	55,878	610,873	547,325

[1] These costs are slightly lower than those in Table 6 due to rounding differences between two methods of calculating the totals, and because the cost of warning signs and training are presented in each segment in Table 6 rather than being presented separately as here.

[2] These are the same costs for all segments as described in the first section.

Note.—First year costs include total capital costs and operating costs for one year, while annual costs include annualized capital costs and annual operating costs.

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis, September, 1983.

Best Estimate: Methods and Costs of Compliance

The following discussion presents an analysis of the probable methods of compliance based on the estimated current exposure levels. However, since no current surveys have been conducted to ascertain industry practices, quantification of a best estimate is not presently possible. The cost estimates presented in the first section represent a worst-case analysis using the air concentrations represented by the current PEL of 2 f/cc as the baseline for comparison for most segments. The second section presents the costs for a respirator program using the estimated current practices as the baseline, but assumes no improvement in work practices or engineering controls. Although no better quantitative results are available at this time, OSHA believes that it is reasonable to outline the areas where these estimates may be exaggerated.

Primary Manufacturing.—The estimated current exposure levels for all segments in primary manufacturing are under 2 f/cc. This fact indicates that engineering controls are currently in place in some plants. Reducing exposure levels to 0.5 f/cc may only require improved work practices in many of the plants and achieving 0.2 f/cc levels may only require the incremental costs between 0.5 and 0.2 f/cc rather than the full costs. Furthermore, most plants in primary manufacturing presently experience short-term air concentrations above the current peak. It is likely, therefore, that most facilities have some or all of the elements of a respirator program. Therefore, the incremental costs atributed to respirators may be reduced to the costs of expanding whatever program is already is place.

Secondary Manufacturing.—Little information currently exists regarding compliance methods for this sector, OSHA, however, has assumed that exposures are at 2 f/cc except in textile fabricating and that no measures for compliance have been undertaken. Many of the production activities associated with secondary fabrication, however, are similar to those in primary industry and in construction installation of new materials. The production process involves punching, drilling, cutting, and sawing the asbestos product. While these activities generate high amounts of dusts, they also lend themselves to engineering controls such as attaching local vacuums and shrouds to the tools and installing ventilation systems in the plants. To the extent that such controls are in use or that respirator programs exist, the costs as presented above would be overstated.

Automotive Aftermarket.—For the refacing sector, OSHA has assumed that no controls are currently in place. However, current exposure data suggests that this is not true for all facilities (Ex. 84–304). In fact some facilities may have exposure levels as low as 0.02–0.37 f/cc (Ex. 84–304). To the extent that these levels are representative of the industry, incremental costs for achieving PELs of 0.5 or 0.2 f/cc may be minimal.

For the general repair sector, OSHA has assumed the use of vacuum systems for brake cleaning to achieve compliance with reduced PELs. Exposures to high levels occur for brief periods during the brake cleaning method that uses blow-out by compressed air. Several alternate work practice methods exists, however, which can reduce the peak concentration levels to below 1.0 f/cc. If these methods were used in combination with half-mask respirators, the compliance costs would be substantially reduced.

Shipbuilding and Ship Repair

For purposes of estimating the impact of the proposed standard, OSHA has assumed a 20 percent failure of compliance in this section. To the extent that this is overestimated, the costs are overstated. Further, as asbestos-containing products are phased out of shipbuilding, the exposure levels during ship repair will decrease.

Construction

The costs presented above were developed under the assumption that no engineering controls were in place and no respirators were used in the installation of new materials sector. Since the industry-recommended work practices for handling asbestos recommend these methods outlined (Ex. 84–307), is is likely that at least some firms would be in compliance. To that extent, the costs have been overstated.

Finally, for removal activities OSHA has assumed a 25 percent rate of non-compliance with the current standard. Some information suggests that this figure may be too low (Ex. 84–394). Costs may, therefore, be understated. OSHA has also assumed, however, that the air concentration would be those associated with dry removal methods. To the extent that conscientious work practices and wet handling methods are used, upgrading respirators to air-line respirators to meet a PEL of 0.1 f/cc may not be necessary in all cases. Thus, these costs may be overstated to some extent.

Economic Impact

The expected cost of compliance for the alternate PELs of 0.5, 0.2 and 0.1 f/cc were presented above. The economic impact can be examined by determining the average annual cost per employee and per plant and the ratio of cost to sales receipts or payroll for each segment. For purposes of worst-case analysis, OSHA will examine the potential impact of the costs of engineering controls as presented above.

The average annual cost per employee to achieve a PEL of 0.2 f/cc varies in primary manufacturing between $2,540 in floortile, and $9,273 in asbestos-cement pipe, is $777 in secondary fabricating, varies in the automotive aftermarket between $42 in terminal and joint terminal maintenance and $1,281 in motor vehicle parts and accessories, is $683 in shipbuilding and ship repair and varies in construction between $0 in roofing and repair and maintenance to $1,468 in demolition.

The average annual cost per employee to achieve a PEL of 0.5 f/cc varies in primary manufacturing between $850 in painging, coatings and sealants and $2836 in asbestos-cement sheet, is $777 in secondary fabricating, varies in the automotive aftermarket between $42 in terminal and joint terminal maintenance and $724 in motor vehicle parts and accessories, is $291 in shipbuilding and ship repair and varies in contruction between $0 in roofing and repair and maintenance to $1,468 in demolition.

The average annual cost per firm to achieve a PEL of 0.2 f/cc also varies. In primary manufacturing the cost ranges from $75,600 per plant in paintings, coatings and sealants, to $861,071 in floor tile. The cost per firm is secondary fabricating would be $3,106. The cost would vary in the automotive aftermarket between $444 in gasoline stations, general automotive repair and automotive repair shops and $37,436 in motor vehicle parts and accessories. The cost would be $54,737 per shipyard. In construction the average annual cost would vary between zero in roofing and repair and maintenance and $14,676 in demolition.

The average annual cost per firm to achieve a PEL of 0.5 f/cc also varies. In primary manufacturing the cost ranges from $17,800 per plant in paintings, coatings and sealants to $380,000 in floor tile. The cost per firm in secondary fabricating would be $3,106. The cost would vary in the automotive aftermarket between $444 in gasoline stations, general automotive repair and automotive repair shops and $21,150 in motor vehicle parts and accessories. The cost would be $23,289 per shipyard. In construction the average annual cost would vary between zero in roofing and repair and maintenance and $14,676 in demolition.

Annual cost is compared to different data for each segment, depending on what statistics are available in each segment. The ratio of annual cost to achieve a PEL of 0.2 f/cc to annual sales in 1977 dollars for primary manufacturing would be less than 4 percent in all sectors. The ratio of annual cost in 1977 dollars would be less than 1 percent in secondary fabricating. For the automotive aftermarket, the ratio of annual costs compared to annual payroll in 1977 dollars would be less than 2 percent for all SIC codes except gasoline service stations and general automotive repair where it would be less than 4 percent. The ratio of annual costs in shipbuilding and ship repair compared to value of work completed in 1978 dollars would be less than 1 percent. In the construction industry the average annual compliance cost per worker compared to average annual receipts per worker in 1977 dollars would be less than 2 percent except in demolition where it would be 3.9 percent.

To achieve a PEL of 0.5 f/cc, the ratio of annual cost to annual sales in 1977 dollars for primary manufacturing would be less than 4 percent in all sectors and less than 1 percent in most sectors. The ratio of annual cost in 1977 dollars would be less than 1 percent in secondary fabricating. For the automotive aftermarket, the ratio of annual costs compared to annual payroll in 1977 dollars would be less than 1 percent for all SIC codes except gasoline service stations and general automotive repair where it would be less than 4 percent. The ratio of annual costs in shipbuilding and ship repair compared to value of work completed in 1978 dollars would be less than 1 percent. In the construction industry the average annual receipts per worker in 1977 dollars would be less than 1 percent except in demolition where it would be 3.9 percent.

The ratios represent the degree to which prices of the products or services would have to increase in order to pass through compliance costs or the additional proportion of costs which would have to be absorbed by the firm if costs could not be passed through. If compliance costs are overestimated, then these ratios may be even smaller than estimated above.

Foreign Trade Effects

It is difficult to isolate the potential effects of a reduced PEL on foreign trade due to the existence of other strong influences. In general, as the detrimental effects of asbestos have become more widely known through publicity and litigation, a widely-based movement has developed to reduce exposures to asbestos. This movement has resulted in a search for viable substitutes in most countries in which production or use of asbestos-containing products takes place. The section on the international regulatory environment has discussed the various standards and proposals in detail. In particular, Canada has followed the direction taken by Great Britain which reduced the permissible exposure level to chrysolite to 1.0 f/cc and then further to 0.5 f/cc and has virtually eliminated use of other forms. Further, the British have stressed that there is no known safe level and these exposure levels represent a ceiling limit. The overall effect of this international concern, in particular, the Canadian response since Canada is our largest single importer, is that the demand for U.S. exports may be reduced over time, independent of the results of any action promulgated by OSHA.

The immediate concern for the price effects of the proposed standard can be addressed through looking at the short term effect of increased prices for U.S. goods on the demand for U.S. asbestos exports. Most countries, including Canada, show that the price of U.S. goods increased in 1981 and 1982 compared to each preceding year due to fluctuations in the exchange rate. The value of imports and exports of asbestos-containing products, however, moved independently of this price increase. These data suggest that, in the short-run, the effects of any price increases should be masked by the impact of other forces.

Regulatory Flexibility Assessment

Pursuant to the Regulatory flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 (5 U.S.C. 60 et seq.), the Assistant Secretary has assessed the expected impacts of the proposed standard on small entities in each of the affected sectors.

OSHA is considering allowing the employer flexibility in choosing methods of compliance to reduce exposure levels from 2 f/cc to the proposed PEL. OSHA expects that small entities could substantially reduce their compliance costs by substituting suitable work practice methods in place of capital methods or respirator programs. Consequently, OSHA concludes there will be no adverse impacts on small entities.

VIII. Environmental Impact

OSHA has reviewed the proposed revisions to the asbestos standard and has concluded that no significant environmental impacts are likely to occur as a result of promulgation of this action. OSHA, of course, reserves the right to perform any additional environmental analyses that may be required as a result of information and comments received in response to this Notice.

The preceding description of the proposed standard and its supporting rationale, together with the following discussion, constitute a summary of OSHA's environmental assessment and finding of no significant impact. This assessment has been prepared in accordance with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4325 et seq.) as well as that of the Council on Environmental Quality (CEQ) regulations (40 CFR Part 1500), and DOL–NEPA Compliance regulations (29 CFR Part 11). Copies of the environmental impact assessment are available from the OSHA Docket Office (Docket No. H–033C).

In any OSHA regulatory action, two environments may be impacted upon: (1) The workplace environment and (2) the general human environment external to the workplace, including impacts on air and water pollution, solid waste, and energy, and land use. Usually, OSHA regulations have their most significant impacts on the workplace environment, because this environment is under the Agency's jurisdiction. These impacts have been beneficial to the workplace environment because they have reduced worker exposure to toxic and carcinogenic substances. An in-depth discussion and analysis of the occupational nature of asbestos disease, the workplace environment, and the benefits to workers as a result of the proposal are presented in earlier sections of this Notice.

In most cases, the effects of previous OSHA regulations on the external environment have been negligible because of their limited scope and application. The following sections summarize what are believed to be the limited potential environmental impacts that could result from provisions established by the proposed policy, such as the reduction in the permissible exposure limit (PEL), the compliance methods to achieve the reduced limit, work practices, and training.

Impact of the Regulation on the External Environment

Air Pollution

As an air pollutant, asbestos is important because it has been established that exposure by inhalation results in asbestos-related disease and cancer. Asbestos has a stable chemical composition and can be reentrained into the atmosphere. Because asbestos is used extensively in a variety of processes and products, the opportunity for its release into the atmosphere can occur at numerous points in asbestos manufacture and use. For example, asbestos fibers can be released during mining and milling operations, in primary and secondary manufacture, during construction and demolition, during disposal, and during extended periods of use.

Asbestos emissions can also occur from the numerous processes used to manufacture products containing asbestos. The control techniques implemented to contain emissions vary according to the process involved. For example, emissions can be controlled through the use of gas-cleaning devices, wetting agents and surface coatings, and by capturing and filtering devices such as baghouses, electrostatic precipitators, and wet scrubbers.

Under the proposed regulation, the permissible limit of exposure would be reduced from 2.0 f/cc to either 0.2 f/cc or 0.5 f/cc. In some operations, compliance to meet the PEL might be achieved by increased engineering control measures, including local exhaust ventilation and consequent fabric filter collection. This would improve the work environment and, in cases where no such controls were previously in existence, could potentially benefit the ambient atmosphere by reducing the level of airborne emissions that might otherwise be released. Where these controls are already in effect, there will be no significant change in the ambient atmosphere.

Where gas-cleaning devices such as baghouses continue to be used, the fibers would continue to be collected with the same current 99.9 percent efficiency rate, with no resultant change in ambient air emissions. In instances where less asbestos is used in a process as a means of achieving compliance, there would be a potential for fewer fibers to be vented to the outside atmosphere. Where wet processes and portable collection devices are used more extensively as a result of this rulemaking—for example, in construction and demolition work practices—the amount of fibers released into the ambient atmosphere would be reduced.

As with other Agency actions, reducing the worker exposure level to asbestos will benefit primarily the workplace environment. In certain instances, there may be some potential for reducing ambient air emissions with the introduction of particular control devices. For example, in the automotive aftermarket, the use of local vacuums or centralized vacuum systems would effectively reduce ambient levels of asbestos. Generally, most industry operations already use engineering controls to meet the present PEL and to comply with EPA's emissions standards (Ex. 84–414). Consequently, controls already in place are anticipated to continue to operate effectively in reducing emissions under the proposed PEL. In any event, irrespective of the type of controls implemented to meet the PEL, no significant adverse effect on air quality is expected to occur as a result of the proposal, and in cases where respirators are used to comply with the standard, there will be no effect on the ambient atmosphere.

Water Pollution

As a water pollutant, asbestos occurs naturally in ground formations, which can cause contamination of surface

waters, rivers, and ground waters through erosion. Asbestos fibers can also contaminate water systems as a result of leaching from asbestiform deposits or from myriad commercial applications. Contamination can also result from disposal of asbestos waste, such as effluents that are discharged directly into water systems, emitted to the atmosphere, or disposed of in landfills and then later enter surface or ground waters. The following paragraphs illustrate instances where asbestos may be present as wastewater effluents.

During asbestos manufacturing and mining/milling processes, fibers are often released into surface waters by wastewater discharges, particularly from those that are improperly disposed of. The Reserve Mining case of Duluth, Minnesota, serves to illustrate the effects of improper discharge. During 1955–1974, Reserve Mining dumped 200 million tons of taconite tailing containing asbestos into Lake Superior. Tests performed on Duluth's drinking water in 1974 showed that the number of asbestos fibers present amounted to 948,000 per liter (5 microns in length) and were from 10 to 100 times greater than ever found before in public drinking water (Ex. 84–415). In neighboring cities, fiber counts in drinking water were as high as 2.6 million per liter (Ex. 84–416).

Insufficient data make it difficult to assess the potential for asbestos contamination of water systems, but some studies have shown that plants manufacturing asbestos paper products have the greatest potential for contamination of surface waters (Ex. 84–417, p. 176). This most likely is due to the large amounts of asbestos raw materials used and the wet processes associated with the manufacture of asbestos paper products. It is estimated that the discharge of raw water from paper manufacturing processes contains approximately 19 pounds of suspended solids per ton of paper product (Ex. 84–417, p. 169). Also, an estimated 46–98 short tons of asbestos fibers are released to surface waters from paper manufacturing wastewaters.

The manufacture of asbestos-cement pipe also involves wet processes that discharge asbestos effluents. It has been calculated that about 6.3 pounds of suspended solid per ton of product are present in the raw water discharged from a typical asbestos-cement manufacturing process (Ex. 84–417, p. 120), while the total water effluent discharge amounts to about 12 tons per year (Ex. 84–417, p. 123). The suspended solids that are collected in clarifiers are usually coated, or encased, in cement and tend to solidify. For this reason, when these fibers are transported to landfills they rebound in a cement matrix, making release of the buried fibers unlikely.

In recent year, the use of asbestos-cement pipe for water conduits has been questioned in terms of the potential for release of fibers into potable water systems. Various studies (Ex. 84–418; 84–419) have been conducted on asbestos-cement pipe in an effort to determine if asbestos fibers are released from the pipe into public drinking water supplies and, if so, to establish a correlation between ingestion of these fibers and any increased incidence of gastrointestinal cancer.

Keeping these examples in mind, one can consider the potential impacts of the proposal on wastewater effluents. Under the prposed regulation, it is unlikely that there would be any significant increase in the amount of asbestos discharged in wastewaters, thereby having any significant impact on the external environment. To illustrate, to the extent that manufacturers change to wet-processing methods or that other industries increase wetting down procedures, there is a potential for an increased use of water and resultant increased amounts of wastewater containing asbestos, or increased amounts of suspended solids disposed of as waste. Lack of data, however, makes it difficult to determine to what degree this will occur and if it would significantly affect the environment. Moreover, any such occurrence could be offset, depending on the types of treatment facilities manufacturers use. In many cases, plants recirculate water from wastewater treatment facilities to the process, resulting in less effluents discharged.

In operations such as construction and demolition, asbestos-containing products are frequently wetted down in order to repair or tear out materials. In wetting down to reduce the levels of airborne asbestos, the once airborne fibers become effluents in wastewater run-off. In these types of operations, both the current OSHA standard and EPA regulations (Ex. 84–414) require work practices for the proper handling, sealing, storing, and disposing of any associated waste, debris, or wastewater. These regulations would not change as a result of the proposal, and consequently, such operations would not necessarily contribute to any increase in the amount of pollutants in wastewater run-off. To the extent that wetting down practices increase as a result of the proposal, however, there would be a potential for increased asbestos effluents in wastewater run-off at these sites. The overall net additional contribution to water pollution from these practices is generally not considered to be significant, however.

In cases where wastewater is discharged into local sewer systems, the proposed regulation would not significantly affect the amount of fibers discharged. EPA's effluent limitations guidelines (40 CFR Part 427 in 39 FR:526–7535, February 26, 1974; 40 FR:1874–1878, January 9, 1975; 40 FR:6444, February 11, 1975; FR 40:18172, April 25, 1975) include: (1) Standards of performance for all new point sources within specified categories of asbestos manufacture and (2) pretreatment standards for new plants discharging to municipal sewer systems. These limitations would serve to prevent the direct discharge of effluents into the environment without prior treatment. Moreover, the Federal Water Pollution Control Act Amendments of 1972 required that wastewater effluents be treated by the best practicable control technology (BPT) by December 31, 1977, and that the best available technology (BAT) economically achievable be used by December 31, 1983. The EPA effluent limitations establish the degree of effluent quality necessary to meet the BPT and BAT requirements. The BAT and pretreatment standards would essentially mean no discharge of process wastewater to navigable waters and no discharge of incompatible pollutants, respectively (Ex. 84–420). Consequently, where these requirements continue to be met, effluent quality will not be altered as a result of this rulemaking.

Solid Waste Disposal

In determining potential effects of the proposal on solid waste, it is necessary to present a brief overview of asbestos waste products and waste sites as potential sources of exposures. Waste dumps have been shown to emit significant numbers of fibers that can still be detected at considerable distances from the source (Ex. 84–421, p. iii). Consequently, waste dumps are major sources of emissions and pose a potentially serious source of nonoccupational exposure.

One concern is that waste materials may be disposed of without regard for their airborne emission potential, and as a result, they may be disposed of in open, municipal waste dumps and treated like non-asbestos waste, creating a long-term source of emissions and exposures to unaware workers and others.

Dumps and waste piles containing asbestos materials are frequently located in densely populated urban areas. Emissions of asbestos fibers can occur when the wastes are transferred to the dump and as the surfaces of the waste piles are eroded by weather conditions. This is particularly true during transfer operations where asbestos materials are dumped, crushed, and spread, causing visible dust emissions. Emissions that occur during the transporting and discharging of asbestos wastes from manufacturing process can be controlled, however, by using enclosures and gas-cleaning devices along transfer points of conveyor systems that move asbestos tailings and by using wetting-agents on the tailings as they are discharged. Once the tailings are dumped, they can be covered with a protective seal or covering to control further emissions.

Asbestos-containing products that have been disposed of in landfills and in dumps usually do not release any significant amount of free asbestos fibers, unless they are crushed or incinerated. Although there are insufficient data to determine how much asbestos is emitted from the incineration of waste products, one study suggests that this incineration could be significant in causing air pollution in the U.S. and that incineration of asbestos products annually emits about 220 tons of free asbestos fiber from all municipal incinerators (Ex. 84–417, p. 289).

Estimates also show that a total of 36,442 short tons of asbestos materials were released to landfills or waste piles from primary and secondary manufacturing processes during 1976. Of this amount, about 7,000 tons could be considered free fibers (Ex. 84–417, p. 289). The largest contributor to solid waste disposal during that period was from the asbestos-cement pipe manufacturing sector, which accounted for a total of 11,897 short tons of asbestos materials. the largest amount of free asbestos fibers resulted from friction materials and accounted for 6,100 short tons.

In addition, the total amount of free-fiber asbestos disposed of from baghouses has been estimated at 9,562 short tons for 1976, and about 75 percent of the free-fiber asbestos disposed of to landfills was collected in baghouses (Ex. 84–417, p. 238).

It does not appear that as a result of the proposal there would be any significant change in these waste disposal practices or in the maintenance of waste disposal sites, since these issues are under the jurisdiction of EPA. EPA's national emission standards (Ex. 84–414) will continue to provide for the control and maintenance of active and inactive disposals as well as require no visible emissions from these sites.

In evaluating the potential impacts of the proposal, the following other factors have been considered.

As already mentioned, under the OSHA proposal, the level of asbestos fibers in the workplace would be lowered either to 0.2 f/cc or 0.5 f/cc. As this reduction occurs, there is a potential for more fibers to be vented outside of that environment, depending on the job performed and control method used. For example, where baghouses and other gas-cleaning devices are used to capture fibers, the 99.9 percent efficiency rate of these devices will remain unchanged. Because these controls are capable of capturing fibers as small as 0.5 microns in diameter and even as small as 0.1 microns (but with less efficiency), more fibers would be captured, potentially benefiting the ambient atmosphere. Consequently, there would be a potential for more accumulation of these fibers in hoppers and their subsequent disposal as solid wastes.

Similarly, in cases where portable capture devices are employed at points of emissions, there would be a potential increase in the amount of fibers captured and subsequently disposed of as solid waste. The degree of environmental impact of these wastes will vary depending on the disposal methods employed.

In fact, OSHA's current standard requires that any abestos wastes that may produce airborne concentrations in excess of the 10 f/cc ceiling limit or the 2.0 f/cc PEL, at any time, must be collected and disposed of in impermeable bags or other closed, impermeable containers, which are properly labeled (29 CFR 1910.0001, g(2)(i); h(2)). Under the proposal, the housekeeping procedures would remain the same. This means that the potential for release of asbestos fibers into the atmosphere will continue to be contained by proper bagging and labeling. To the extent that these wastes continue to be properly bagged and disposed of, there should be no notable change in the level of emissions from these waste materials or in their effect on the external environment.

There are no data to indicate that as a result of the proposal wastes will be handled less efficiently than at present. Rather, as a result of the training provisions of the proposal, worker awareness of asbestos materials and their hazards would be increased, thereby providing a potential for the proper handling and use of these products which, in turn, could be of benefit to the external environment.

The amount of friable asbestos waste and other waste resulting from demolition and renovation operations would probably not change as a result of the proposal, since these are based largely on asbestos construction materials present in already-existing structures. There is a potential, however, for these materials to be reduced or replaced by suitable substitutes in future construction.

Finally, it is conceivable that as a result of the proposal, other materials will be used in place of asbestos in various products, which would result in fewer asbestos fibers being captured, dumped, or recycled. In such instances, fewer asbestos-containing products would be disposed of in landfills, thereby decreasing any potential source of emissions and benfiting the external environment.

Energy and Land Use

Implementation of required engineering controls or certain kinds of respiratory protection to comply with the proposed PELs could result in an increase in total energy requirements, or costs, for primary manufacturers, secondary fabricators, and the automative aftermarket of the asbestos industry. This would be particularly true, of course, where controls are not in place or where the current PEL of 2.0 f/cc is not met. To illustrate, some potential energy costs are briefly described here.

In the general repair sector of the automotive aftermarket, for example, energy costs of shop vacuums have been estimated at $47 per year for 145,985 establishments, excluding actual and maintenance costs (Ex. 84–422, pp. VI–49; VI–54), which does not appear to represent a significant increase in energy use. In primary manufacturing, total energy costs for makeupair units for local exhaust ventilation air exchange were estimated at $10,984 per year (Ex. 84–422, p. VI–30). For respiratory protection, energy costs associated with operating the air compressors were estimated at $83 per plant for 140 plants, for a total of $11,620 per year (Ex. 84–422, p. VI–57).

In terms of land use, OSHA does not project any significant impact on land use plans, policies, or controls. OSHA does not anticipate any significant impact on the short-term uses of man's environment or upon the maintenance and enhancement of long-term productivity beyond those presented in this environmental statement and in the Preamble to the proposal.

Other Impacts

Implementation of the proposed standard could have other indirect impacts that may affect the external environment. The proposed action could encourage the further use, research, and development of suitable substitutes. Where such substitutes are evaluated as "safe" in terms of health effects, their use would be of obvious benefit to the worker environment. This, in turn, would result in a positive environmental impact because less asbestos would be used and less would be exhausted to ambient air or discharged as wastewater effluent or as solid waste. Substitution for asbestos products, abandonment of operations, or foreign competition may reduce the amount of asbestos discharged into the environment. The magnitude or probability of these impacts, however, is impossible to quantify.

Conclusion

In sum, there is no evidence to indicate that there would be any significant adverse impacts to the external environment as a result of the proposal, but as with other OSHA regulations in the past, there is the potential for some benefit to the environment.

In achieving compliance with the proposal, industry will in some instances need to provide training and either install engineering controls, implement work practices, or provide personal protective equipment. Some of these measures could provide a potential benefit to the environment. In the case of engineering controls, for example, the placement of proper controls and filtering devices may mean that filtered air is vented to baghouses or other capture/retention devices, thereby lessening the potential for the release of airborne emissions.

The training of workers should provide an incentive for the proper use and handling of asbestos and asbestos-containing products. Training also has the potential to impact on the disposal of asbestos products in the environment. In the case of construction, for example, in an effort to reduce exposures in the workplace (i.e., external environment in this case), the proper disposal of these asbestos-containing products could potentially benefit the environment. Similary, work practices that involve the wetting down of these products would reduce airborne concentrations of asbestos. Moreover, the proper cleanup materials and wastes that result from wetting down during removal or repair operations may help to alleviate significant wastewater contamination.

IX. Public Participation and Notice of Public Hearing

Interested persons are invited to submit written data, views and arguments with respect to the revisions to the asbestos standard made by the notice published on November 4, 1983, and the issues raised in this document concerning other possible revisions to the permanent asbestos standard. These comments must be received on or before May 25, 1984 and sent to the Docket Officer, Docket No. H–033C, Occupational Safety & Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–6212, Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised in this document and concerning revisions to the standard, including economic and environmental impacts, will be provided at an informal public hearing scheduled to begin at 10:00 a.m. on June 19, 1984 in the Auditorium, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, DC.

Notice of Intention To Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear by May 10, 1984 addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–033C, Room N–3635, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 523–8024.

This notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (Room S–6212), telephone (202) 523–7895, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A detailed statement of the position that will be taken with respect to each issue addressed, and;

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of the evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to the OSHA Division of Consumer Affairs. This material must be received by May 25, 1984 and will be available for inspection and copying at the Technical Data Center-Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, less time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation, and may be requested to return for questioning at a later time.

Conduct of Hearing

In view of the nature of this rulemaking proceeding, the hearing will be conducted in as expedited a manner as possible consistent with full development of the record and the rights of the parties. The hearing will commerce at 10 a.m. on (the first Tuesday after 60 days after publication) with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers—

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections, and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To regulate the conduct of those present at the hearing by appropriate means; and

5. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceeding.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The proposed standard will be reviewed in light of all oral and written submissions

received as part of the record, and a revised standard for occupational exposure to asbestos will be issued based upon the entire record as a whole.

X. Authority and Signature

This document was prepared under the direction of R. Leonard Vance, Director, Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Pursuant to Sections 6(b), 6(c), 8(c) and 8(g) of the Act, 29 CFR Part 1910 is proposed to be amended as set forth below.

List of Subjects in 29 CFR Part 1910

Occupational safety and health, Asbestos, Health.

(Secs. 6(b), 6(c), 8(c) and 8(g). Pub. L. 91–596, 84 Stat. 1593, 1596, 1599, 1600; 29 U.S.C. 655, 657; Sec. 107, Pub. L. 91–54, 83 Stat. 96 (40 U.S.C. 333); 29 CFR Part 1911; Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 4th day of April, 1984

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

XI. Regulatory Text

29 CFR 1910.1001 is proposed to be amended by adding paragraphs (b)(4), (l), and (m) and revising Table 1 of paragraph (k) to read as follows:

§ 1910.1001 Asbestos

* * * * *

(b) *Additional exposure protection.*

* * *

(4) Notwithstanding any other requirements of this section, employers shall ensure that employee exposure to asbestos does not exceed [two-tenths (0.2) fibers or one half (0.5) fibers], 5 micrometers or longer, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section, using any feasible combination of engineering controls, work practices, and personal protective equipment and devices. Where respirators are used to achieve the limit of [0.2 f/cc or 0.5 f/cc], they shall be selected according to Table 1.

* * * * *

(k) * * *

TABLE 1.—Respiratory Protection for Airborne Concentrations of Asbestos

Airborne concentration of asbestos (TWA)	Required respirators
Not in excess of (2 or 5) f/cc (10 × PEL).	Reusable or single use air purifying respirator.
Not in excess of (20 or 50) f/cc (100 × PEL).	Full facepiece air purifying respirator, or a powered air purifying respirator.
Greater than (20 or 50) f/cc.[1]	A type "C" continuous flow or pressure demand, supplied air respirator.

[1] Respirators specified for high concentrations may be used at lower concentrations of asbestos.

(l) *Employee information and training.*

(1) The employer shall institute a training program for all employees exposed to airborne concentrations of asbestos in excess of (0.2 f/cc or 0.5 f/cc) without regard to the use of respirators and shall assure their participation in the program.

(2) Training shall be provided prior to or at the time of initial assignment and at least annually thereafter.

(3) The training program shall be conducted in a manner which the employee is able to understand. The employer shall assure that each such employee is informed of the following:

(i) The health effects associated with asbestos exposure;

(ii) The relationship between asbestos and smoking in producing lung cancer;

(iii) The nature of operations which could result in exposure to asbestos, the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping and protective clothing, and any necessary instruction in the use of these controls;

(iv) The purpose, proper use, fitting instructions and limitations of respirators permitted by the standard;

(v) The purpose for and a description of the medical surveillance program required by this standard;

(vi) Instructions for the handling of spills and emergency and clean-up procedures; and

(vii) A review of all the provisions contained in § 1910.1001.

(4) Access to training materials. (i) The employer shall make readily available, without cost, to all affected employees all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide, upon request, all information and training materials relating to the employee information and training program to the Assistant Secretary and Director.

(m) Warning signs. In addition to the requirement of paragraph (g)(1) of this section legible signs warning of the health hazards of asbestos shall be provided and displayed at each location where airborne concentrations of asbestos fibers may exceed (0.2 f/cc or 0.5 f/cc).

[FR Doc. 84-8377 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2563-2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental rulemaking notice proposes to disapprove an alternative emission strategy "bubble" for two coal-fired boilers and three polyvinyl chloride (PVC) resin storage silos at the B.F. Goodrich Plant located in Avon Lake (Lorain County), Ohio. B.F. Goodrich is located in the portion of Lorain County that is designated a secondary nonattainment area for particulates. The purpose of this notice is to discuss EPA's evaluation of the bubble strategy and to solicit public comments on this rulemaking action.

DATE: Comments on this revision to the Ohio SIP and EPA's proposed action must be received by May 10, 1984.

ADDRESSES: Copies of this revision are available at the following addresses:

Ohio Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Written Comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air and Radiation Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: On April 7, 1982 (47 FR 15076), the Environmental Protection Agency issued a proposed Emissions Trading Policy Statement, entitled "General Principles for Creation, Banking, and Use of Emission Reduction Credits". This statement indicated that it is the policy of EPA to

encourage use of emissions trades to achieve more flexible, rapid and efficient attainment of national ambient air quality standards. This policy statement described emissions trading, set out general principles EPA will use to evaluate emissions trades under the Clean Air Act, and expands opportunities for States and industry to use these less costly control approaches. The April 7, 1982, notice indicates that, until EPA takes final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed policy statement.

In accordance with the provisions contained in the proposed Emissions Trading Policy Statement, the State of Ohio, on September 2, 1982, submitted to EPA a revision to the total suspended particulate (TSP) portion of its State Implementation Plan (SIP). This revision is in the form of variance permits for two coal-fired boilers (B006–#4 and B007#3) and three PVC resin storage silos (PO13, PO14, and PO15) located at the B.F. Goodrich Chemical Plant in Avon Lake, Lorain County, Ohio. The State is requesting an alternative emission strategy "bubble" which would involve trading emissions between the boilers and the silos. Specifically, the trade consists of (1) an increase in allowable emissions for Boiler 3# (from 0.17 to 0.24 lbs/MMBTU @ 52.7 MMBTU/hr) and Boiler #4 (from 0.17 to 0.22 lbs/MMBTU @ 105.4 MMBTU/hr, and (2) a decrease in allowable emissions from PVC silos 3–5 (from 8.6 lbs/hr to 0.25 lbs/hr per silo) B.F. Goodrich is located in the portion of Lorain County that is designated a secondary nonattainment area for particulates (40 CFR 81.336).

EPA reviewed the variance permits and determined that the bubble concept was consistent with EPA's proposed Emissions Trading Policy Statement based upon the following criteria: (1) An acceptable reasonable available control technology (RACT) baseline (0.17 lbs/MMBTU for Boilers #3 and 4, and 8.6 lbs/hr per silo for PVC Silos 3–5) was established; (2) Under the bubble, B.F. Goodrich would achieve a greater emission reduction than if it had complied with RACT under applicable current State Rules 10 and 11 [TSP emissions from the coal-fired boilers and resin storage silos are regulated by Rules 10 and 11, respectively, of Chapter 3745–17 of the Ohio Administrative Code (OAC)], and (3) The bubble satisfied the requirements of a Level II analysis under the Emissions Trading Policy.

Therefore, on February 18, 1983 (48 FR 7211) EPA proposed to approve the bubble. Interested parties were given until May 5, 1983, to provide comments on the notice of proposed rulemaking. EPA received comments from the Natural Resources Defense Council, Inc., and the State of New Jersey.

One of the comments shared by both commentors was that EPA's baseline for the PVC silos (an allowable emission limit of 8.6 lbs/hr per silo) does not represent RACT. More specifically, they commented that the process weight rate curve contained in Rule 11, which establishes for this limit, is not representative of RACT for the B.F. Goodrich PVC silos since the pollution control equipment, baghouses, which control actual emissions to as low as 0.05 lb/hr have been in place on the B.F. Goodrich-Lorain silos since 1980.

Based upon these comments EPA has re-evaluated the baseline used for this bubble. According to the Emissions Trading Policy Statement, the baseline in nonattainment areas may be either allowable or actual historical emissions, depending upon which was used in developing the State's TSP attainment demonstration required pursuant to Part D of the Clean Air Act.

No attainment demonstration exists for TSP in Lorain County. For nonattainment areas with no approved attainment demonstration, the Emissions Trading Policy specifies RACT as the baseline, assuming RACT is already defined in the SIP.

As stated above, Rules 10 and 11 regulate TSP emissions from coal-fired boilers and resin storage silos. On September 21, 1982 (47 FR 41584), in its general rulemaking on the Ohio Part D TSP SIP, EPA proposed approval of the generic allowable emission limits contained in these rules as being representative of RACT. Thus, EPA believed these limits were an appropriate RACT baseline for the bubble trade and proposed to approve the bubble.

However, EPA now agrees that, although the general process weight rate curve in Rule 11 appears to represent RACT for a wide range of industrial processes, it does not represent RACT *for the B.F. Goodrich PVC silos.* It is not RACT because baghouses reducing actual emissions to about 0.05 lb/hr have been in place at the B.F. Goodrich-Lorain facilities since 1980. EPA believes that baghouse control technology represents RACT for B.F. Goodrich's PVC silos. Because the bubble baseline for these silos should be based on emission levels associated with baghouse control technology, Ohio's proposed bubble does not contain sufficient emission reductions to offset the 8.8 lbs/hr combined increase in allowable emissions from the two boilers. Consequently, EPA cannot propose approval of this bubble.

NRDC was also concerned that Ohio Rule 3745–17–11, the generic rule which governs sources such as the B.F. Goodrich PVC silos, did not represent RACT. They feel that EPA should have proposed to disapprove the rule as it applied to PVC silos, when EPA took rulemaking action on the proposed Ohio TSP SIP revisions on September 21, 1982. They also feel that the adequacy of the Ohio rule as it applies to other industrial categories must be re-examined in detail prior to final rulemaking on the Ohio TSP SIP.

EPA agrees that it is necessary to reconsider the appropriateness of the limitations established in Rule 3745–17–11 in light of the RACT requirement in section 172 of the Clean Air Act, at least for certain industrial processes, and plans to do so in its future rulemaking action on the Ohio TSP SIP, which will take place in a separate rulemaking notice. For this reason, EPA is not responding further today on this general issue.

The State of New Jersey questioned EPA's assumption in the bubble analysis that the PVC silos and the boilers were reasonably equivalent either in terms of environmental harm generated by regional dust and coal fly ash, or in quality of emissions from the two processes. Because EPA is no longer proceeding towards approval for this bubble, the Agency does not believe that this comment continues to be material. If, however, EPA receives notification that this comment continues to be applicable to today's rulemaking action, it will be addressed in the final rulemaking notice.

Interested parties are invited to submit comments on this proposed disapproval. EPA will consider all comments received within 30 days of publication of this notice.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the Region V office listed at the beginning of this notice.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certified that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (See 46 FR 8709). The affected source will remain

subject to the applicable provisions of the current Ohio TSP SIP. Thus, no additional requirements will be imposed upon these sources.

This notice is issued under the authority of Section 110 of the Clean Air Act, as amended.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Dated: December 27, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-9518 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

Amend Terms and Conditions Section of Standard Form 1103, U.S. Government Bill of Lading—Original

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) by adding a provision to the Terms and Conditions section of Standard Form 1103, U.S. Government Bill of Lading—Original (GBL), advising users that interest will be assessed on overcharges made on GBL's. This provision is the result of passage of the Debt Collection Act of 1982 (Pub. L. 97-365) that permits the Government to collect interest on debts owed to the United States. This statement added to the transportation document will serve as a notice to carriers of the Government's intent.

DATE: Written comments must be received by no later than 4 p.m. May 10, 1984.

ADDRESS: Comments should be sent to General Services Administration (BWCP), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Claims Branch, Office of Transportation Audits, (202-786-3014).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365) amended the Federal Claims Collection Act of 1966, 31 U.S.C. 3711 et seq. to provide for the collection of interest on debts owed to the United States. This proposal will revise page 2 of the GBL by adding a statement to the Terms and Conditions section advising users that interest will be assessed on overcharges made on GBL's. GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

Subpart 101-41.49—Illustrations of Forms

1. The authority citation for 41 CFR 101-41 is:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

§ 101-41.4901-1103 [Amended]

2. Section 101-41.4901-1103, page 2, is amended by adding the following paragraph to the Terms and Conditions section of the GBL:

* * * * *

Interest shall accrue from the voucher payment date on overcharges made hereunder and shall be paid at the same rate published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982.

Dated: March 7, 1984.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 84-9541 Filed 4-9-84; 8:45 am]

BILLING CODE 6820-AM-M

41 CFR Part 101-41

Revision of Standard Form 1169, U.S. Government Transportation Request

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) Part 101-41 by adding to the "CONDITIONS" section on the back of the Standard Form (SF) 1169, U.S. Government Transportation Request (GTR) (Original), the following information: (1) To incorporate a reference to the Code of Federal Regulations (CFR) as part of the contract of carriage, (2) to delete the non-discrimination clause reference to "Executive Order 11375" as the amending authority and substitute "as amended," and (3) to add a provision to advise the carrier industry that interest will be assessed on overcharges issued by the Office of Transportation Audits in connection with GTR procured travel. Incorporation of the CFR reference is made to avoid potential legal problems in connection with the use of the GTR. Specific reference to Executive Order 11375 is considered unnecessary because the basic document has been amended many times and the term "as amended" is considered sufficient for legal purposes. The Debt Collection Act of 1982 (Pub. L. 97-365) amended the Federal Claims Collection Act of 1966 (31 U.S.C. 3717) to provide for the collection of interest on debts owed the United States. This proposed revision will incorporate the interest assessment provisions on the GTR.

DATE: Written comments must be received by no later than 4 p.m. May 10, 1984.

ADDRESS: Comments should be sent to General Services Administration (BWCP), 18th and F Streets, NW., Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Claims Branch, Office of Transportation Audits, (202-786-3014).

SUPPLEMENTARY INFORMATION: The GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

This proposal amends the "CONDITIONS" section of the SF 1169

to incorporate by reference those regulations published in 41 CFR Part 101–41.2, and to facilitate the assessment of interest on overcharges.

List of Subjects in 41 CFR Part 101–41

Air carriers, Accounting, Claims, Government property management, Maritime carriers, Passenger services, Railroads, Transportation.

Title 41, Part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

Subpart 101–41.49—Illustrations of Forms

1. Authority: (31 U.S.C. 3711–3719 and 3726 and 40 U.S.C. 486(c)).

2. Section 101–41.4901–1169 is amended to illustrate the revised SF 1169 as follows:

§ 101–41.4901–1169 Standard Form 1169, U.S. Government Transportation Request (Original).

(a) Page 1 of Standard Form 1169.

(b) Page 2 of Standard Form 1169.

Note.—Page 2 of Standard Form 1169 is illustrated in this volume for examination to permit comment. The remaining forms illustrated in 101–41.4901—1169 are filed with the original document and do not appear in this volume.

Dated: March 19, 1984.

William B. Early, Jr.,

Acting Comptroller.

CONDITIONS

1. This transportation request incorporates the regulations published in Title 41, Subpart 101–41.2 of the Code of Federal Regulations.

2. The U.S. Government will not be responsible for charges exceeding those applicable to the transportation or accommodations of the type, class, or character authorized in this request. If a service costing more than that authorized is furnished, the difference must not be billed to the Government but be borne by the traveler. If circumstances require a service of a different type or of a lesser value than that authorized, the traveler shall state on the right, over his signature, the actual service furnished and the reason for the change.

3. The issuing official, by his signature on the face hereof, certifies that the requested transportation is for official business.

4. Carriers shall not honor requests showing erasures or alterations not validated by initials of the issuing official.

5. Carrier shall insert date on which travel commenced, if known.

6. The nondiscrimination clause contained in section 202 of Executive Order 11246, as amended, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor are incorporated herein.

7. INTEREST SHALL ACCRUE FROM THE VOUCHER PAYMENT DATE ON OVERCHARGES MADE HEREUNDER AND SHALL BE PAID AT THE SAME RATE PUBLISHED BY THE SECRETARY OF THE TREASURY PURSUANT TO THE DEBT COLLECTION ACT OF 1982.

INSTRUCTIONS

1. Money must not be furnished in exchange for transportation requests nor may transportation requests be passed through banks for collection.

2. Instructions for billing charges on Standard Form 1113, Public Voucher for Transportation charges, are found in GSA's Federal Property Management Regulations 101–41 (41 CFR) which may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. SF 1113 may be purchased from the Superintendent of Documents or reproduced in accordance with 41 CFR 101–41.202–5.

3. When charges are payable in foreign funds, designate currency in the block titled "Special Accommodations and Requirements."

4. Travelers must use American-flag carriers as prescribed by 46 U.S.C. 1241 and 49 U.S.C. 1517. Statement by authorizing official or traveler justifying use of foreign-flag carrier must accompany appropriate voucher. Lack of acceptable justification may render traveler financially liable. See General Accounting Office standards in 4 CFR 52.2.

FOR CARRIER USE ONLY
(See condition 4)

DATE TRAVEL COMMENCED

SERVICE REQUIRED, *Continued*

SERVICE FURNISHED, IF OTHER THAN REQUESTED

STANDARD FORM 1169 BACK (REV. 7-83)

[FR Doc. 84-9640 Filed 4-9-84; 8:45 am]
BILLING CODE 4320-AN-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Experimental Population Status for Certain Introduced Populations of Colorado Squawfish and Woundfin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to introduce Colorado squawfish (*Ptychocheilus lucius*) and woundfin (*Plagoterus argentissimus*) into the Gila River drainage in Arizona and to determine these populations to be "nonessential experimental" populations according to Section 10(j) of the Endangered Species Act of 1973. Section 10(j) of that Act authorizes "experimental" populations of endangered species to be treated as if they were threatened. The Service has much more discretion in divising a managment program for threatened species than for endangered species, especially on matters regarding regulated takings. Accordingly, a special rule to allow take in accordance with State law is proposed for these nonessential experimental populations. In the past, these fishes were more widespread in the State of Arizona where they occurred in several river drainages. This action is being taken in an effort to reestablish populations of Colorado squawfish and woundfin within their historic range.

DATES: Comments from the State of Arizona and the public must be received by May 10, 1984.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the Service's Regional Office in Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: For further information on the proposal, contract Mr. Conrad Fjetland, Assistant Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766-2321 or FTS 474-2321) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act Amendments of 1982, Pub. L. No. 97-304, became law on October 13, 1982. Among the significant changes made by the 1982 Amendments was the creation of a new Section 10(j) which established procedures for the designation of

specific populations of listed species as "experimental populations." Regulations implementing the experimental population designation were proposed on January 9, 1984 (49 FR 1166–1169). This proposal will not be finalized until the general regulations have been implemented. Under authorities in the Endangered Species Act (ESA) previous to the 1982 Amendments, the Service was permitted to translocate populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to translocation effort, however, severely handicapped the effectiveness of translocation as a management tool. This opposition stemmed from concerns regarding the restrictions and prohibitions on private and Federal activities affecting endangered species under Sections 7 and 9 of the Act. Under Section 10(j) of the 1982 Amendments, past and future translocated populations established outside the current range, but within the species' historic range, may now be designated at the discretion of the Service as "experimental." Such a designation will increase the Service's flexibility to manage these translocated populations because the Amendments provide that such experimental populations of species which are otherwise listed as endangered may be treated as threatened. The Services has much more discretion in devising management programs for threatened species than for endangered species, especally on matters regarding regulated takings. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question would not be afforded protection under Section 7(a)(2) of the Act, which requires Federal agencies to refrain from activities which are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. The individual organisms comprising the designated experimental population will be removed from an existing source or donor population only after it has been determined that their removal itself will not violate Section 7(a)(2) of the ESA and complies with the permit requirements in Section 10 (a)(1)(A) and (d). The two species of fishes included in this proposal are Colorado squawfish (*Ptychochoilus lucius*) and woundfin (*Plagopterus argentissimus*), both of which are currently listed as endangered.

Colorado squawfish were once widespread, occupying the entire Colorado River system including the Gila River system in Arizona. Squawfish were also present in tributaries of the Gila River, including the Salt, Verde, and San Pedro Rivers and likely several others. The last specimen known from Arizona waters was collected in the early 1950's and extensive sampling subsequent to that date has failed to locate specimens anywhere within the State of Arizona. The reason for the decline of the Colorado squawfish is dewatering, dams, and competition with exotic species of fish. However, good habitat remains in the stream areas proposed for the reintroduction of the Colorado squawfish and there is a good likelihood that it will become established in these areas. Establishment of experimental populations of Colorado squawfish will make a significant contribution to the recovery of the species. The Colorado Squawfish Recovery Plan calls for reintroduction of the species into selected streams in the lower basin where the species formerly occurred. The stock of Colorado squawfish to be reintroduced will come from an existing captive-bred population and will not result in the removal of any individuals from the wild population.

Woundfin were distributed in the mainstream Colorado, Gila, Salt, and Virgin Rivers. Dams and dewatering have made most of these habitats unsuitable, while exotic species, especially red shiners (*Notropis lutrensis*), have outcompeted woundfin in the few remaining flowing streams. Only the Virgin River continues to maintain a woundfin population. The Service proposes to remove 5,000 individuals from the extant population to stock the experimental populations. The removal of these individuals is not likely to jeopardize the continued existence of the woundfin. The Woundfin Recovery Plan calls for reintroduction of woundfin into central Arizona streams where this species formerly occurred. The stream areas proposed for reintroduction of the woundfin contain good habitat for this species, and the likelihood that these experimental populations will become established is good. If these experimental populations are successful they will make a significant contribution to the recovery of the woundfin. The release of these experimental populations as proposed will further the conservation of the species.

Status of Reintroduced Populations

The reintroduced populations of Colorado squawfish and woundfin are proposed as "nonessential" experimental populations according to the provisions of the 1982 Amendments to the Endangered Species Act. Nonessential experimental population status for the introduced Colorado squawfish and woundfin means that they would be subject only to provisions of Sections 7(a) (1) and (4) of the Endangered Species Act which authorize Federal agencies to establish programs furthering their conservation and which require Federal agencies to informally confer with the Secretary regarding actions which are likely to jeopardize the continued existence of the species. The restrictions on Federal agency activity in Section 7(a)(2) would not apply. Justification for the "nonessential" status for the proposed introduced experimental populations of Colorado squawfish and woundfin is as follows:

1. *Colorado squawfish.* Populations of this species are still viable in portions of the Green, Colorado, and Yampa Rivers in the upper basin. In addition, sufficient brood stock is available at Dexter NFH to produce many fry. Techniques for propagating and rearing this species have been developed and are in place. Reintroduction is a recovery action designed to increase the number of populations, rather than to prevent their further decline. The loss of these captive-reared specimens would not reduce the likelihood of the survival of Colorado squawfish in the wild.

2. *Woundfin.* The population in the Virgin River is relatively stable and the habitat is moderately secure. Fish numbers vary with amounts of spring flows and irrigation practices that dewater portions of the stream, but the recovery team sees no near-future significant alternation for the Virgin River habitat. Woundfin are being held at Dexter National Fish Hatchery (NFH), but spawning attempts have been only marginally successful. The removal of woundfin from the extent population is not expected to negatively affect the stability of that population. Therefore, the loss of the reintroduced populations would not reduce the likelihood of the survival of the woundfin in the wild.

This reintroduction is an action to increase the numbers of populations of woundfin rather than an attempt to prevent their further decline.

Location of Reintroduced Populations

All of the sites proposed for reintroduction of Colorado squawfish and woundfin are totally isolated from existing populations of these species. The nearest population of Colorado squawfish is above Lake Powell in the Green and Colorado Rivers, an upstream distance of at least 800 miles, 6 mainstream dams and 200 miles of dry riverbed from the proposed release site.

Woundfin are similarly isolated (450 miles distant, 200 miles of dry streambed and 5 mainstream dams from the proposed release site). All proposed reintroduction sites are within the historic range of these species.

Colorado Squawfish

1. *Arizona: Gila County.* Salt River from Roosevelt Dam upstream to U.S. Highway 60 bridge.

2. *Arizona: Gila and Yavapai Counties.* Verde River from Horseshoe Dam upstream to Perkinsville. The lower segments of large streams which flow into these two sections of river may, from time to time, be inhabited by Colorado squawfish. Downstream movement of squawfish in these areas will be restricted by dams and upstream movement is limited by habitat.

Woundfin

1. *Arizona:* Gila and Yavapai Counties. Verde River from backwaters of Horseshoe Reservoir upstream to Perkinsville.

2. *Arizona:* Graham and Greenlee Counties. Gila River from backwaters of San Carlos Reservoir upstream to the Arizona/New Mexico State line.

3. *Arizona:* Greenlee County. San Francisco River from its junction with the Gila River upstream to the Arizona/New Mexico State line.

4. *Arizona:* Gila County. Tonto Creek, from Punkin Center upstream to Gisela.

5. *Arizona:* Yavapai County. Hassayampa River, from Red Cliff upstream to Wagoner.

The movement of woundfin beyond these areas will be limited to the lower portion of larger tributaries where suitable habitat exists. Downstream movement is limited by dams, reservoirs, and dry streambed. Upstream movement from these areas is restricted due to the absence of suitable habitat. Upstream areas are too cold and the gradient is too steep to support populations of woundfin.

Management

The Service and the Arizona Game and Fish Department plan to initiate reintroduction as soon as possible. Present plans call for annual stocking for the next 10 years. The first stocking of Colorado squawfish could consist of as many as 100,000 individuals. These could be distributed in approximately equal numbers between the 2 sites identified above. All of the fish will come from the hatchery stock which was spawned and reared in the Dexter National Fish Hatchery in Dexter, New Mexico. Future Colorado squawfish stock will also come from the hatchery. The first stocking of woundfin will consist of approximately 5,000 individuals. The woundfin will be taken from the only extant population which inhabits the Virgin River in Arizona and Utah. The 5,000 woundfin will be distributed among the 5 areas identified above based on the available habitat in each area. Present plans call for the production of woundfin in the Dexter National Fish Hatchery to provide future stock for reintroduction.

The reintroduced populations will be checked annually to determine their condition. A seining survey will be used to determine population expansion or contraction, reproductive success, and general health condition of the fish. These proposed experimental populations of squawfish and woundfin will be treated as threatened species under all provisions of the Act other than Section 7(a)(2). All of the prohibitions referred to in 50 CFR 17.31 would apply to these populations, except that individual fishes of these populations may be taken in accordance with applicable State law.

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

Final promulgation of a rule to implement this proposed action will take into consideration any comments or additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft Environmental Assessment under NEPA has been prepared and is available to the public at the Office of Endangered Species, U.S. Fish and Wildlife Service, at the address listed above. This assessment will form the basis for a decision, to be made prior to the publication of a final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291; that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). Portions of the rivers selected for reintroduction occur near small towns in Arizona, but the majority of the reaches are far removed from inhabited areas. All of the water is allocated under Western Water Law, but many of the senior water rights are downstream from the areas of reintroduction. Salt River Project, a private water district supplying water to metropolitan Phoenix, owns most of the water rights. United States Forest Service owns most of the watershed, along with the San Carlos and White Mountain Apache Indian Tribes. Phelps Dodge and Mining Company owns significant water rights on the Gila and San Francisco Rivers. None of these private or State entities will be affected by the action. The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Authors

The principal authors of this proposal are James Williams and Peter G. Poulos, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2760).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order (following the existing entry) to the List of Endangered and Threatened Fish:

Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Fishes:							
Squawfish, Colorado	*Ptychocheilus lucius*			XN			17.84(a)
Woundfin	*Plagopterus argentissimus*			XN			17.84(a)

3. It is proposed that Title 50 CFR Part 17 be amended by adding a new § 17.84 as follows:

§ 17.84 Special rules—vertebrates.

(a) Colorado squawfish (*Ptychocheilus lucius*) and woundfin (*Plagopterus argentissimus*).

(1) The Colorado squawfish and woundfin populations identified in paragraph (4) below are experimental, nonessential populations.

(2) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For education purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) Incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(3) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraph (2).

(6) All of the sites for reintroduction of Colorado squawfish and woundfin are totally isolated from existing populations of these species. The nearest population of Colorado squawfish is above Lake Powell in the Green and Colorado rivers, an upstream distance of at least 800 miles including 6 mainstream dams, and 200 miles of dry riverbed. Woundfin are similarly isolated (450 miles distant, 200 miles of dry streambed and 5 mainstream dams). All reintroduction sites are within the historic range of these species and are as follows:

(i) *Colorado Squawfish—Arizona: Gila County.* Salt River from Roosevelt Dam upstream to U.S. Highway 60 bridge.

(ii) *Arizona: Gila and Yavapai Counties.* Verde River from Horseshoe Dam upstream to Perkinsville. The lower segments of large streams which flow into these two sections of river may, from time to time, be inhabitated by Colorado squawfish. Downstream movement of squawfish in these areas will be by dams and upstream movement is limited by habitat.

(i) *Woundfin—Arizona: Gila and Yavapai Counties.* Verde River from backwaters of Horseshoe Reservoir upstream to Perkinsville.

(ii) *Arizona: Graham and Greenlee Counties.* Gila River from backwaters of San Carlos Reservoir upstream to Arizona/New Mexico State line.

(iii) *Arizona: Greenlee County.* San Francisco River from its junction with the Gila River upstream to the Arizona/New Mexico State line.

(iv) *Arizona: Gila County.* Tonto Creek, from Punkin Center upstream to Gisela.

(v) *Arizona: Yavapai County.* Hassayampa River, from Red Cliff upstream to Wagoner.

The movement of woundfin beyond these areas will be limited to the lower portion of larger tributaries where suitable habitat exists. Downstream movement is limited by dams, reservoirs, and dry streambed. Upstream movement from these areas is restricted due to the absence of habitat. Upstream areas are too cold and the gradient is too steep to support populations of woundfin.

(5) The reintroduced populations will be checked annually to determine their condition. A seining survey will be used to determine population expansion or contraction, reproduction success, and general health condition of the fish.

(b) [Reserved]

Dated: January 16, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-9544 Filed 4-9-84; 8:45 am]
BILLING CODE 4310-07-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Endangered Status and Critical Habitats for Seven Plants and One Insect in Ash Meadows, Nevada, and of Public Hearing on the Proposal To Establish the Ash Meadows National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearing and comment period.

SUMMARY: Notice is given that a public hearing will be held and the comment period reopened on a proposal of endangered status for seven plant and one insect species in Ash Meadows, Nevada. At the same time, a hearing will be held on the proposal to establish the Ash Meadows National Wildlife Refuge. This hearing and comment period are to allow acceptance of comments from interested parties.

DATES: The combined public hearing will be held at the Amargosa Community Center, Star Route 15, Amargosa, Nevada, at 7:00 p.m. on April 24, 1984. The comment period opens effective with the publication of this notice and closes on April 25, 1984.

ADDRESSES: The Amargosa Community Center is on Star Route 15 in Amargosa, Nye County, Nevada. Comments should be addressed to the Regional Director U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Steeet, Portland, Oregon 97232 (503/231–6131), or Mr. John L. Spinks, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

On October 13, 1983, the Service published a proposal in the **Federal Register** (48 FR 46590–46598) to list seven plant and one insect species in

Ash Meadows as endangered and to determine their critical habitats. On December 9, 1983, Mr. Stephen T. Bradhurst, Nye County Planning Consultant, requested a public hearing on that proposal. This public hearing will be held at the Amargosa Community Center, Amargosa, Nevada, at 7:00 p.m. on April 24, 1984. This will be a combined hearing on these proposed listings and on the proposal to establish the Ash Meadows National Wildlife Refuge. The comment period on both proposals closes on April 25, 1984.

The primary author of this notice is Dr. Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wilflife Service, Washington, D.C. 20240 (703/235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Note.—Public Hearing and Reopening of Comment Period on Proposed Endangered Status and Critical Habitats for Seven Plants and One Insect in Ash Meadows, Nevada, and of Public Hearing on the Proposal to Establish the Ash Meadows National Wildlife Refuge.

Dated: April 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–9664 Filed 4–6–84; 2:36 pm]

BILLING CODE 4310-07-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 40309–26]

American Lobster Fishery

Correction

In FR Doc. 84–6852 beginning on page 9589 in the issue of Wednesday, March 14, 1984, make the following correction.

On page 9590, first column, second paragraph fifth line, "§ 639.20(f)" should read "§ 649.20(f)".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 49, No. 70
Tuesday, April 10, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Renewal

Notice is hereby given that the Secretary of Agriculture has renewed the National Advisory Committee on Tobacco Inspection Services for an additional period of two years.

This Committee advises the Secretary of the level of services needed and the establishment of fees and charges to recover the cost of such services.

Membership of the Committee consists of 14 producers of tobacco representing all production areas.

The Committee shall meet at the call of the Secretary.

Authority for this Committee is Section 5 of the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

This notice is given in compliance with Pub. L. 92–463.

Dated: April 3, 1984.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-9091 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

San Juan National Forest Grazing Advisory Board; Meeting

The San Juan National Forest Grazing Advisory Board will meet on Friday, May 25, 1984 at 1:00 P.M. at the San Juan National Forest Office, Conference Room, 701 Camino del Rio, Durango, Colorado. The Board was established in accordance with provisions of the Federal Land Policy and Management Act of 1976.

The Agenda for the meeting will include: (1) Recommendations for the utilization of range betterment funds; (2) recommendations for the development of allotment management plans; (3) discussion of the implementation of the San Juan National Forest Land and Resource Plan and the effects on the utilization of range betterment funds; and (4) discussion concerning the availability of vacant sheep allotments.

The meeting will be open to the public. Persons who wish to attend and participate should notify David W. Cook, San Juan National Forest (303–247–4874) prior to the meeting. The public may participate in discussion s during the meeting or may file a written statement following the meeting.

John R. Kirkpatrick,

Forest Supervisor.

March 29, 1984.

[FR Doc. 84-9092 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-11-M

Montana Department of State Lands; Stillwater Mining Co.; Platinum/Palladium Mine Development; Stillwater County, Montana; Intent To Revise an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, and Montana Environmental Policy Act of 1971, the Forest Service Department of Agriculture, and Montana Department of State Lands, will revise a joint environmental impact statement for the development of a proposed platinum/palladium mine on the Beartooth Ranger District and adjoining private lands. The draft environmental impact statement to be revised was published in June 1982 in response to a proposal by the Anaconda Minerals Company for a mine at the same site. Anaconda Minerals Company has since entered into a partnership with two other companies to form the Stillwater Mining Company. Stillwater Mining Company submitted a revised application in March 1984.

A range of alternatives for placement of facilities other than the mine site will be considered. Impacts and mitigation measures will be discussed. Lands in the area are open to mineral entry, and denial of the permit will not be considered if other State and Federal legal requirements are met.

A public meeting will be held at the High School in Absarokee, Montana, on April 23, 1984, to discuss the proposed operation and solicit comments from the public on the validity of the issues identified for the original environmental impact statement.

James F. Mann, Forest Supervisor, Custer National Forest, is the responsible Federal official. Dennis Hemmer, Commissioner of State Lands, is the responsible State official. Questions about the proposed action and environmental impact statement should be directed to John Inman, Resource Coordinator, in the Custer Forest Supervisor's Office (phone 406–657–6361), or Kit Walther, Montana Department of State Lands (phone 406–444–2711).

The revisions are expected to take about six months. The revised draft environmental impact statement should be available for public review by September 1984. The final environmental impact statement is scheduled to be completed in January 1985.

Written comments and suggestions concerning this revision should be sent to James F. Mann, Forest Supervisor, Custer National Forest, Billings, Montana 59103, or Dennis Hemmer, Montana Department of State Lands, Capitol Station, Helena, Montana 59620, by May 7, 1984.

James F. Mann,

Forest Supervisor.

March 30, 1984.

[FR Doc. 84-9093 Filed 4-9-84; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 13–84]

Foreign-Trade Zone 23—Erie County, New York; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Erie, New York, grantee of Foreign-Trade Zones 23, requesting authority to expand its general-purpose foreign-trade zone in Erie County, New York, to include seven sites in Grand Island, New York, adjacent to the Buffalo-Niagara Falls Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 28, 1984. The applicant is authorized to

make this proposal under Chapter 201 of the Laws of New York.

On March 31, 1976, the County received authority from the Board to establish a foreign-trade zone in the Buffalo area (Board Order 110, 41 FR 14824, 4/7/76). The zone has been expanded twice (Board Order 148, 44 FR 65802, 12/7/79 and Board Order 187, 47 FR 18014, 4/27/82), and currently includes 4 sites in the Buffalo area.

This expansion of Foreign-Trade Zone 23 will involve seven parcels totalling 282 acres in or near the Grand Island Research and Development Industrial Park off the New York State Thruway in Grand Island, near the Canadian border. Four of the parcels are owned by Ilona Lang/Tri-Lan Park, Inc., two by Sevenson Construction, and one by the Grand Island Central School Disctict. Although all the parcels are vacant, several have been prepared for industrial construction. The zone would be primarily for individual users requiring separate facilities. The Town of Grand Island will administer the project.

In accordance with 15 CFR Part 400, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. De Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Colonel Robert R. Hardiman, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara St., Buffalo, NY 14207.

As part of its investigation the examiners committee will hold a public hearing on May 8, 1984, beginning at 9:00 a.m., in the Town Meeting Room, Grand Island Town Hall, 2255 Baseline Rd., Grand Island, New York.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary by May 1. Instead of an oral presentation, written comments may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through June 11, 1984.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 111 W Huron Street, Buffalo, N.Y. 14202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, N.W., Washington, D.C. 20230.

Dated: April 5, 1984.

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-9601 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 5-84]

Foreign-Trade Zone 53, Rogers County, Oklahoma; Application for Subzone at Steel Tube Plant of Tubular Corporation in Muskogee, Oklahoma; Extension of Record

The period for comments on the above case involving special-purpose subzone status for the steel tube manufacturing plant of Tubular Corporation of America in Muskogee, Oklahoma (49 FR 9245, 3/12/84) is extended to May 11, 1984, to allow interested parties to review additional material which has been submitted by the applicant concerning the benefits of zone procedures in this proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available for public inspection at the same locations where the application and record has been available:

Port Directors Office, U.S. Customs Service, Tulsa International Airport, Tulsa, Oklahoma 74115.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Dept. of Commerce, 14th & Pennsylvania Ave., N.W., Rm 1872, Washington, D.C. 20230.

Dated: April 5, 1984.

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-9600 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-106. Applicant: University of Florida, Institute of Food & Agricultural Sciences, 2039 McCarty Hall, Gainesville, FL 32611. Instrument: Automatic Recording Spectropolarimeter, Model J-500 C with Accessories. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use: Studies of biopolymers including glycoproteins, enzymes, polysaccharides, peptide hormones and lipoproteins. Experiments will be conducted to obtain circular dichroism spectra of high quality (in the region of 185 to 1,000 nm wavelength light) of solutions of the biopolymers at varying temperatures and concentrations. Application received by Commissioner of Customs: February 23, 1984.

Docket No.: 84-137. Applicant: North Carolina State University, Purchases and Stores Division, Box 7212, Raleigh, NC 27695-7212. Instrument: LaB_6 Electron Gun Conversion Kit and Parts. Manufacturer: Hitachi, Japan. Intended use: The instrument is an accessory to an existing Scanning Transmission Electron Microscope which is being used routinely for research on the microstructure of defects and interfaces in metals, ceramics and electronic materials and for the analyses of composition and morphology of powders. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84-138. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Instrument: Excimer Laser/Excimer-Pumped Dye Laser, Model EMG 203/FL 2002. Manufacturer: Lambda Physik, West Germany. Intended use: As a source of intense tunable laser radiation for laser-induced fluorescence measurements in combustion gases (e.g., NO, OH, CN). The objective of the experiments is to establish new techniques for quantitatively measuring species concentrations and temperature in various combustion flows, with emphasis on techniques enabling high repetition rate measurements at multiple points in the flows. Such measurements effectively provide "images" of flow properties. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84-140. Applicant: Armed Forces Radiobiology Research Institute, NMC-NCR, Building 42, Bethesda, MD 20814. Instrument: Fluorescence Lifetime

Instrumentation. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: Studies of fluorescance lifetime quantum yields and fluorescence depolarization of chemical solutions as well as lipids and membranes or proteins. Time dependence fluorescence measurements of fluorescent labeled drugs and radioprotectant agents interacting with DNA will be performed. In addition, the rotational motion of specifically labeled lymphocyte memberane antigens will be probed. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–141. Applicant: National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709. Instrument: Tandem Double-Focusing Mass Spectrometer and Data System. Manufacturer: VG Analytical, United Kingdom. Intended use: Study of a wide variety of environmental and biological molecules which may occur in a complex matrix of other compunds. Typical examples include polypeptides, metabolites of environmental compounds and their conjugates, polynucleotides (both native and modified) and neurotransmitters. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–142. Applicant: Oregon Granduate Center, 19600 N.W. Walker Road, Beaverton, OR 97006. Instrument: Mass Spectrometer, Model 7070 EHF with Accessories. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: Mass analyses, gas chromatographic/mass analyses, and ion yield measurements of synthetic organic, bio-organic, bio-inorganic and biomedical molecules. The objectives of these experiments are characterization or confirmation of structures of synthetic intermediates and products, identification and/or quantitation of natural products of biological systems, identification and/or quantitation of organic species in the environment, elucidation of molecular mechanisms in biological processes, and elucidation of ionization and volatilization mechanisms which must necessarily precede mass analyses of organic compounds. Educational purposes—To teach the operating principles of mass spectrometers, to develop knowledge of the applications of mass spectrometry, to teach practical techniques (including instrument operation) associated with the applications of mass spectrometry, and to use the available instrumentation and associated mass spectrometric techniques in the conduct of original research. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–144. Applicant: University of California, Davis, Facility for Advanced Instrumentation, 9-Hutchison Hall, Davis, CA 95616. Instrument: GC/Mass Spectrometer with Data System, Model ZAB–2F–HS/11–250. Manufacturer: V.G. Instruments, Inc., United Kingdom. Intended use: Continuing research that includes but is not limited to the following: (1) Study of steroid metabolizing enzymes both for their intrinsic interest and as model systems for intra and extracellular steroid binding proteins. (2) Relative effects of mono-and disaccharides (glucose, fructose, galactose, lactose, maltose and sucrose) on lipid synthesis and secretion by hepatocytes in primary monolayer culture. (3) Metabolism of plant natural products. (4) Mammalian metabolism of epoxidized xenobiotics and action of these epoxides leading to mutagenicity and carcinogenicity; immunochemical methods for the analysis of xenobiotics in the environment, development of selective insect control agents based upon the endocrine systems; and comparative pesticide metabolism. (5) Study of the comparative toxicology of carcinogenic mycotoxins. (6) Mechanism of action of flavin enzymes, in particular, the enzymes involved in hydroxylation and bioluminescence. (7) Isolation and characterization of crosslinking amino acids in collagen, elasting and related proteins. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–145. Applicant: NCI-Frederick Cancer Research Facility, P.O. Box B, Frederick, MD 21701. Instrument: Electron Microscope, Model EM 410LS, with Accessories. Manufacturer: Philips Electronic Instruments, NVD, The Netherlands. Intended use: Studies of isolated cells and tissues from experimental animals or obtained by tissue culture techniques. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–146. Applicant: National Insitutes of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709. Instrument: Quadrupole Mass Spectrometer System, Model 12–250. Manufacturer: VG Analytical, United Kingdom. Intended use: Characterization of individual components of complex samples of biological or environmental origin, analyze low to middle molecule weight (1–1,200 daltons) biological samples. Research will include the uptake, distribution, modification and excretion of manmade chemicals by biological systems and the study of any adverse response associated with this chemical exposure. Application received by Commissioner of Customs: March 21, 1984.

Docket No.: 84–107. Applicant: Trustees of the University of Pennsylvania, Purchasing Department, 3451 Walnut Street/16, Philadelphia, PA 19104. Instrument: Sample Exchange System (Manipulator). Manufacturer: High Voltage Engineering, The Netherlands. Intended use: Research in the area of the basics of semiconductor surface physics (clean semiconductor surfaces and metal-semiconductor interfaces). Fundamental studies of clean metal surfaces (reconstructed metal surfaces and vibrational amplitudes). Studies of adsorbed and segregated atoms on metal—implications for chemical reactivity. Application received by Commissioner of Customs: February 29, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-9623 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-010]

Carbon Steel Wire Rod From Brazil; Early Determination of Antidumping Duty

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of early determination of antidumping duty.

SUMMARY: The Department of Commerce has conducted an early determination of the antidumping duty to be assessed upon imports of carbon steel wire rod manufactured by Companhia Siderurgica Belgo-Mineira and Companhia Siderurgica da Guanabara and entered, or withdrawn from warehouse, for consumption from May 4, 1983 through November 7, 1983. The determination will also be the basis for the cash deposit of estimated antidumping duties on future entries of such merchandise from Brazil.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Hempel or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–2923/1130.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 52110) an antidumping duty order on carbon steel wire rod from Brazil. In accordance with the order, the Department directed Customs officers to require a cash deposit of estimated antidumping duties on entries of the merchandise pending liquidation.

On November 10, 1983, Companhia Siderurgica Belgo-Mineira and Companhia Siderurgica da Guanabara ("COSIGUA") requested that the Department waive the cash deposit requirement and make an early determination of antidumping duty. On December 19, 1983, we announced in the Federal Register (48 FR 56098) that, in accordance with section 736(c) of the Tariff Act of 1930 ("the Tariff Act"), we would determine the foreign market values and United States prices for shipments of Brazilian carbon steel wire rod manufactured by Belgo-Mineira and COSIGUA and entered from the date of our preliminary affirmative determination of sales at less than fair value to the date of final affirmative injury determination by the International Trade Commission ("ITC"). We waived the cash deposit of estimated antidumping duties pending the early determination of duty. Effective February 14, 1984, the waiver was terminated. We have now completed the section 736(c) determination.

Scope of the Determination

Imports covered by the determination are shipments of carbon steel wire rod manufactured by Belgo-Mineira and COSIGUA. Carbon steel wire rod is a coiled, semi-finished, hot-rolled, carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Carbon steel wire rod is currently classifiable under item 607.17 of the Tariff Schedules of the United States.

We examined all imports of carbon steel wire rod manufactured by Belgo-Mineira and COSIGUA and entered, or withdrawn from warehouse, for consumption during the period May 4, 1983 through November 7, 1983.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. packed price to an unrelated purchaser in the United States. We made deductions for foreign inland freight and port charges. To account for taxes imposed in Brazil but not collected on export, as required by section 772(d)(1)(C) of the Tariff Act, we have made the adjustment by subtraction from home market price. For COSIGUA, we made an additional deduction for a commission paid to an unrelated Brazilian selling agent. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used the home market price, in accordance with section 773 of the Tariff Act. For Belgo-Mineira, our determination of similar merchandise under section 771(16) of the Tariff Act was based upon a comparison of grade and rod diameters.

Home market price was based on the weighted-average delivered, packed price to customers who purchased during the 15 days prior and subsequent to the date of sale to the U.S. purchaser. We made deductions, where applicable, for inland freight and early payment discounts actually received by purchasers. We also adjusted for differences in credit terms. For COSIGUA, we deducted an amount for indirect selling expenses up to the amount of the commission paid on the sale to the U.S. purchaser. For Belgo-Mineira, we also adjusted for differences in packing costs. No other adjustments were claimed or allowed.

Analysis of Comments Received

We gave interested parties an opportunity to request disclosure and to submit written comments or request a hearing on the disclosed results. At the request of the petitioners, five United States wire rod producers, the Department held a public hearing on February 8, 1984.

Comment 1. The petitioners argue that this review, which is the basis for establishing estimated cash deposits on future entries, is not warranted because it covers home market sales data for only one month, an insufficient number of sales to the United States, and because the reductions in the dumping margins found for this period are principally attributable to a temporary decline in the U.S. dollar value of respondents' home market prices caused by the February, 1983, maxi-devaluation, rather than to price revisions by the respondents.

Department's Position. At the time the respondents requested this review under section 736(c) of the Tariff Act, they submitted information that we considered sufficient to determine the foreign market value and United States price of their shipments of wire rod to the United States entered on or after the date of publication of the preliminary determination of sales at less than fair value and before the date of publication of the ITC's final affirmative injury determination. During that period, each respondent concluded a single transaction. We found that each transaction was of commercial quantity and that landed values were comparable to shipments from other wire rod producing countries. We are satisfied that these shipments form a sufficient basis to warrant this review.

The review examines home market sales data covering 15 days before and after each sale to the United States because we based foreign market value on home market selling prices as of the date of purchase of the merchandise sold to the United States. Because both U.S. sales occured at the end of August, our consideration of home market sales data was limited to a single 30 day period.

During the period of this review, both the February, 1983, maxi-devaluation of the cruzeiro and the respondents' change in pricing policies (i.e., controlled increases in home market prices at rates less than the rate of inflation in the home market) contributed to significant reductions in margins from those found during the fair value investigation.

Comment 2. The petitioners contend that the Department should consider only those home market sales that occurred within 15 days prior to or subsequent to the date of sale to the United States as appropriate for the basis of foreign market value. This approach is required because Brazilian home market prices are constantly adjusted upward to reflect the high rate of inflation in Brazil, and because this bracketing method was adopted in the final determination of sales at less than fair value and departure from it in this review would be arbitrary.

Department's Position. We agree that, in this case, we should consider home market transactions bracketing the sale to the United States, because of the dramatic inflation rate in Brazil and the respondents' practice of revising home market prices upward approximately twice each month. For each manufacturer, we have applied the methodology used during the fair value investigation, and have determined foreign market value on the basis of the weighted-average of home market selling prices during the 15 days preceding and the 15 days following the date of sale to the U.S.

Comment 3. The respondents argue that a bracketing approach that considers home market sales occurring before and after a sale to the United States is inconsistent with a determination of foreign market value under section 773 of the Tariff Act, which provides for ascertainment of foreign market value as of the date of purchase of the merchandise sold to the United States.

Department's Position. In this review, we found no sale of comparable merchandise in the home market made by either respondent on the same date as the sales to the United States. For the reasons stated in our position to *Comment 2*, we determined that a weighted-average of home market selling prices during a period bracketing the date of the sale to the U.S. was the most appropriate basis for ascertaining foreign market value as of that date.

Comment 4. The repondents argue that an adjustment to foreign market value for differences in credit terms is appropriate, and that the value of the home market credit terms should be quantified as equivalent to the amount of discount each manufacturer grants to purchasers who pay upon delivery rather than at the expiration of the delayed payment term. Respondents argue that such an approach is appropriate because it reflects the market value of the credit terms, and is the method used during the fair value investigation.

Department's Position. We agree that a circumstance of sale adjustment to foreign market value is appropriate for differences in credit terms. However, we do not agree that an early payment discount constitutes an appropriate basis for an adjustment for differences in credit terms because it does not necessarily reflect the market value or the manufacturer's costs of extending credit. Rather, such a discount is a distinct circumstance of sale for which an adjustment to foreign market value may be appropriate where differences exist between the two markets. During the fair value investigation, the manufacturers' early payment discount yielded the same result as the Banco do Brasil's rate for discounting accounts receivable, a rate that we have considered to be a benchmark of the cost of short-term financing in Brazil. During the period of this review, however, the manufacturers' early payment discount rates increased and the Banco do Brasil's discount rate on receivables fell. Therefore, we have relied upon the Banco do Brasil rate as indicative of the cost to the seller of extending credit to purchasers in the home market. As noted above, we also took account of early payment discounts where appropriate.

Comment 5. Respondents argue that if the Department quantifies an adjustment for the differences in credit terms on the basis of the Banco do Brasil's rate for discounting accounts receivable, that rate must be compounded to arrive at an effective annual interest rate and then applied to the sales price for the period during which credit was extended.

Department's Position. We disagree. In our *Preliminary Affirmative Countervailing Duty Determinations on Certain Carbon Steel Products from Brazil* (49 FR 5157, February 10, 1984), we calculated an effective annual interest rate based upon the Banco do Brasil's nominal discount rates in order to quantify the benefit from a preferential financing program that provided loans with terms of up to one year. No such comparison to other forms of financing is necessary here. Where a manufacturer makes a sale in the home market with delayed payment terms, it may immediately negotiate that receivable for an amount less than its face value. The receivable is discounted at the nominal rate in effect. Therefore, the nominal Banco do Brasil discount rate is indicative of the seller's cost of extending credit.

We recognize that a company may rely upon a variety of sources to obtain working capital. For purposes of determining the costs to a seller of extending credit to its purchasers, we intend to examine individual manufacturer's sources of alternative short-term financing, and, to the extent possible, rely upon the particular manufacturer's short-term financing experience in ascertaining credit costs in the course of future administrative reviews of this order.

Comment 6. COSIGUA claims that a mathematical error in the calculation of indirect selling expenses in the home market improperly reduced the offset for the commission paid on the sale to the United States, thereby increasing foreign market value.

Department's Position. We agree. We recalculated the indirect selling expenses incurred by COSIGUA and found that they exceed the amount of commission paid on the U.S. sale. Therefore, we have corrected the results disclosed to COSIGUA and have allowed an offset to foreign market value for indirect selling expenses up to the amount of the commission paid on the sale to the United States.

Early Determination

As a result of our comparison of United States price to foreign market value, we determine that the weighted-average margins for Brazilian carbon steel wire rod manufactured by Belgo-Mineira and COSIGUA and entered during the period May 4, 1983 through November 7, 1983 are as follows:

Manufacturer	Percent
Belgo-Mineira	0.00
COSIGUA	7.43

The Department shall determine, and the Customs Service shall assess, antidumping duties on shipments of Brazilian carbon steel wire rod manufactured by COSIGUA and entered, or withdrawn from warehouse, for consumption on or after May 4, 1983 and before November 7, 1983. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 353.48 of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of carbon steel wire rod from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For future entries from a new exporter not covered in this review, whose first shipments occurred after November 7, 1983, and who is unrelated to a covered firm, a cash deposit of 7.43 percent shall be required. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of November 1985.

This early determination and notice are published pursuant to section 736(c) of the Tariff Act (19 U.S.C. 1673e(c)) and § 353.49 of the Commerce Regulations (19 CFR 353.49).

Dated: March 31, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9067 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

Harvard University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651,

80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 84–8. Applicant: Harvard University, Boston, MA 02115. Instrument: 170 Small Mammal Traps (Longworth Type). Manufacturer: Penlon Ltd., United Kingdom. Intended Use: See notice at 49 FR 57581.

Comments: None received.

Decision: Approved. No apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign apparatus protects trapped animals from rain or cold, provides bedding and may be baited using oats. The National Institutes of Health advises in its memorandum dated February 9, 1984 that : (1) The capability of the foreign apparatus described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic device or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

We know of no other device or apparatus of equivalent scientific value to the foreign article which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-9524 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

Railway Track Maintenance Equipment from Austria; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On February 14, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on railway track maintenance equipment from Austria. The review covers the one known exporter of this merchandise to the United States and the period February 1, 1982 through January 31, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: April 10, 1984.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or John R. Kugelman, Office of Compliance, International Trade Administration, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 5644) the preliminary results of its administrative review of the antidumping finding on railway track maintenance equipment from Austria (43 FR 6837, February 17, 1978). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of ballast regulators and tamping machines, two specific types of railway track maintenance equipment. Other types of machinery used in the maintenance of railway track are excluded from this finding. All railway track maintenance equipment is currently classifiable under item 690.2000 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Austrian railway track maintenance equipment to the United States, Plasser and Theurer GmbH, and the period February 1, 1982 through January 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review.

Further, because there were no margins on the last shipments by Plasser and Theurer, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on shipments of Austrian railway track maintenance equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: April 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-9525 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

The University of Iowa Hospital & Clinics; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 84–22. Applicant: The University of Iowa Hospitals & Clinics, Iowa City, IA 52242. Instrument: Installation Kit Components for use in Osseointegration. Manufacturer: AB Bofors Nobelpharma, Sweden. Intended Use: See notice at 49 FR 922.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is necessary to the intended research on jawbone-anchored bridgework based upon the principle of Osseointegration. The National Institutes of Health advises in its memorandum dated February 9, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-9625 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on this application must be submitted on or before April 30, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84–00013."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377–0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10595–10604 (Mar. 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards For Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–40 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Equinomics, Inc., 4994 Baccich Street, New Orleans, Louisiana 70122

Application No.: 84–00013

Date Deemed Submitted: March 28, 1984

Members in Addition to Applicant: None

Summary of the Application

Equinomics, Inc., a Louisiana corporation, has submitted an application seeking certification for certain activities and methods of operation relating to the export of products and services worldwide.

Equinomics intends to act as a commission agent, distributor, consultant, or representative for U.S. suppliers of goods and services for export. These suppliers may include minority-controlled companies that are clients of the Minority Business Development Agency and the Small Business Administration. The products that the applicant intends to export or represent for export will be all-inclusive and limited only by the laws of the United States.

Equinomics intends to offer the following export facilitation services: consulting, international market research, product research and design, transportation, freight forwarding, trade documentation, customs brokerage, finance, foreign exchange transactions, advertising, marketing, foreign order processing, insurance, licensing of foreign manufacturers, modification of products for export resale, warehousing, provision of barter and countertrade assistance, legal and translation aid, and provision of accounting and collection services.

Equinomics intends to enter into exclusive and non-exclusive agency, distributorship, consulting and representation agreements with U.S. suppliers of goods and services for export, including competing suppliers in the same industry. Equinomics also proposes to enter into and terminate exclusive and non-exclusive agreements with distributors, sales representatives, agents and customers located in foreign countries and in the United States for

goods and services being exported. All of the aforementioned types of agreements may contain territorial, customer, price and/or quantity restrictions.

Equinomics intends to coordinate and share business information among competing suppliers of goods and services in the same industry for the packaging of quotations responsive to foreign bid invitations. Equinomics also proposes to consult and exchange information with its competitors to ascertain the existence of, prepare bids for, and share business from foreign customers.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued. Information submitted by any person in connection with this application will be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

Dated: April 5, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84-9632 Filed 4-9-84; 8:45 am]
BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Listing Endangered and Threatened Species and Designating Critical Habitat: Denial of a Petition to List the Chesapeake Bay Strain of Striped Bass

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of determination on petition.

SUMMARY: On December 12, 1983, Mr. James Pollock, on behalf of Stripers Unlimited, submitted a petition to the National Marine Fisheries service to list the Chesapeake Bay "strain" of striped bass *(Morone saxatilis)* under the Endangered Species Act of 1973 (ESA). The Assistant Administrator for Fisheries has determined that the petition does not meet the requirements of Section 4(b)(3)(A) of the ESA because it does not present substantial scientific or commercial information indicating that the proposed listing may be warranted.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia A. Montanio, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235 (tel. 202/634–7529), or Mr. Douglas Beach, Habitat Protection Branch, Northeast Region, National Marine Fisheries Service, Gloucester, Massachusetts 01930 (tel. 617/281–3600 ext. 288).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act of 1973 (ESA) contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to or remove a species from the List of Endangered and Threatened Wildlife (List). Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition the Secretary must determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This information standard for petitions is the result of an amendment made to Section 4 of the ESA in 1982. Proposed regulations implementing these amendments were published in the **Federal Register** (48 FR 36062–36069) on August 8, 1983. These regulations have not yet been finalized. The National Marine Fisheries Service (NMFS) interprets "substantial scientific or commercial information" to mean the amount of information that would lead a reasonable person to believe that the proposed measure may be warranted. The criteria used in making such determinations are found in 50 CFR 424.14(b). These criteria are essentially the same as those contained in the proposed regulations implementing the 1982 amendments to Section 4 of the ESA (48 FR 36062–36069).

On February 2, 1982, Stripers Unlimited, Inc., South Attleboro, Massachusetts, submitted a previous petition to list the Chesapeake Bay "strain" of striped bass as an endangered or threatened species under the ESA. That petition identified the well documented decline of striped bass stocks in the Chesapeake Bay, the decline of commercial catches, and the low reproductive success of striped bass in the Chesapeake Bay for over a decade. The NMFS determined that the petition contained substantial information indicating that the proposed action may be warranted and conducted a status review of the striped bass. Based on the results of the status review, the NMFS determined that listing the striped bass as endangered or threatened was not warranted. This finding was published in the **Federal Register** on January 14, 1983 (48 FR 1728).

Petition Received

On December 23, 1983, the NMFS, NOAA, Department of Commerce, received a petition from Mr. James Pollock of Sherburne, Powers, & Needham, Boston, Massachusetts, on behalf of Stripers Unlimited, to list the portion of the Chesapeake Bay "strain" of striped bass over 50 pounds as endangered and those under 50 pounds as threatened. This petition is similar to and restates much of the information presented in the Stripers unlimited 1982 petition describing the decline of striped bass commercial catches on the East Cost and the long term failure of striped bass spawning within Chesapeake Bay. The petitioner's basis for resubmitting the petition centers on a rebuttal of the NMFS January 14, 1983, status review and reports of the Stripers Unlimited observations of hatchery-raised striped bass eggs. This information is used by the petitioner in support of the hypothesis that since the late 1950's the Chesapeake Bay "strain" of striped bass has suffered genetic damage, possibly due to poor environmental conditions on its spawning grounds. The petition states that this genetic damage is manifested in physical and physiological differences in the striped bass eggs, causing them to be less viable and resulting in higher mortality of young. It is the petitioner's view that fish born before this genetic damage occurred should be protected to allow for recruitment of viable young and ensure the survival of the Chesapeake Bay "strain" of striped bass. Therefore, the petitioner believes that the portion of the Chesapeake Bay "strain" of striped bass over 50 pounds should be listed as an endangered species, and those under 50 pounds as a threatened species.

Conclusions

The petition was reviewed by NMFS staff familiar with the striped bass and current research and management programs for this species to determine if the petition presented substantial new information, not considered in the status review, indicating that the proposed listing may be warranted. The NMFS concludes that the December 12, 1983, petition submitted by Mr. James Pollock, on behalf of Stripers unlimited, does not contain sufficient information to refute the conclusions reached in the January 14, 1983, status review. The NMFS believes that the information in the

petition to substantiate the genetic damage that allegedly affects the Chesapeake Bay "strain" of striped bass is either not supported by scientific data, or is contradicted by information available in the scientific literature. For these reasons, the NMFS determines that the petition does not present substantial scientific or commercial information indicating that the proposed action may be warranted, and therefore, the petition is denied.

Related Activities

The NMFS, other Federal agencies, State agencies and the Congress have been aware of the decline in the striped bass stock for some time and have implemented a number of management and research efforts to identify and reverse the processes that have contributed to the observed decline in the abundance of striped bass. The 1983 status review presented by NMFS stated that the long-range research conducted under the Emergency Striped Bass Study as well as other studies would enable NMFS to assess more reliably the status of the striped bass. An interim Emergency Striped Bass Study Report, summarizing the results of research completed to date, will soon be available. Implementation of the Interstate Fisheries Management Plan for Striped Bass by the State has progressed and other measures to reduce fishing mortality are being developed. The NMFS will continue to review this information and other research results as they become available to monitor the status of the striped bass and the need for consideration of protective measures under the ESA.

Dated: April 4, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 84-9527 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Import Restraint Level for Certain Cotton Textile Products Exported From Haiti

April 5, 1984.

On February 14, 1984, a notice was published in the **Federal Register** (49 FR 5651) announcing that, on January 30, 1984, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested that the Government of Haiti enter into consultations concerning exports to the United States of cotton dressing gowns in Category 350, produced or manufactured in Haiti.

The United States Government has decided, pending further consultations with the Government of Haiti to reach a mutually satisfactory solution concerning this category, to control imports of cotton textile products in Category 350, produced or manufactured in Haiti and exported during the twelve-month period which began on January 30, 1984 and extends through January 29, 1985 at a level of 18,754 dozen.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textiles Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 350 exported during the twelve-month period which began on January 30, 1984 in excess of the designated restraint level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

EFFECTIVE DATE: April 11, 1984.

FOR FURTHER INFORMATION CONTACT:
Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 5, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 25 and April 1, 1982; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on April 11, 1984, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 350, produced or manufactured in Haiti and exported during the twelve-month period which began on January 30, 1984, in excess of 18,754 dozen.[1]

Textile products in Category 350 which have been exported to the United States prior to January 30, 1984 shall not be subject to this directive.

Textile products in Category 350 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Haiti and with respect to imports of cotton textile products from Haiti has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9521 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DR-M

Announcing an Import Restraint Limit for Certain Cotton Textile Products Exported From Peru

April 5, 1984.

On February 14, 1984, a notice was published in the **Federal Register** (49 FR 5652) announcing that, on January 31, 1984, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested that the Government of Peru enter into consultations concerning exports to the United States of cotton duck fabric in Category 319, produced or manufactured in Peru.

The United States Government has decided, inasmuch as consultations with the Government of Peru to reach a mutually satisfactory solution concerning this category have not been held, to control imports of cotton textile products in Category 319, produced or

[1] The level of restraint has not been adjusted to reflect any imports exported after January 29, 1984.

manufactured in Peru and exported during the twelve-month period which began on January 31, 1984 and extends through January 30, 1985 at a level of 15,076,495 square yards.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 319 exported during the twelve-month period which began on January 31, 1984 in excess of the designated restraint limit.

EFFECTIVE DATE: April 11, 1984.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 5, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed effective on April 11, 1984, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 319, produced or manufactured in Peru and exported during the twelve-month period which began on January 31, 1984, in excess of 15,076,495 square yards.[1]

Textile products in Category 319 which have been exported to the United States prior to January 31, 1984 shall not be subject to this directive.

Textile products in Cateogory 319 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

[1] The level of restraint has not been adjusted to reflect any imports exported after January 30, 1984.

The action taken with respect to the Government of Peru and with respect to imports of cotton textile products from Peru has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9522 Filed 4-9-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Harbor Project, Southeast Missouri Port, Cape Girardeau and Scott Counties, Missouri

AGENCY: Army Corps of Engineers, St. Louis District, DOD.

ACTION Notice.

SUMMARY:

1. *Proposed Action.* The proposed action includes construction of a 1,800-foot long, 130-foot wide, 9-foot deep slackwater harbor channel on the Mississippi River approximately at River Mile 48.0, near Gray's Point, Missouri. Material excavated form the channel, as well as material from a nearby quarry disposal site, would be placed around the harbor channel to provide 57 flood-free acres suitable for industrial development.

2. *Alternatives.* Reasonable alternatives that have been considered in some detail include a fastwater port along the Mississippi River near Gray's Point, as well as enlarged (2,800-foot and 2,200-foot) designs of the proposed slackwater harbor.

3. *Scoping.* A draft Detailed Project Report and Environmental Assessment for this project was furnished to pertinent agencies, organizations, and private interests for review and comment in October 1983. In conjunction with this, a public meeting was held October 17, 1983, to further discuss and request comments on the project.

Comments were received from the U.S. Fish and Wildlife Service (FWS) and the Missouri Department of Conservation (MDC) alleging significant adverse impacts on wetlands in the project area. These comments prompted a decision by the St. Louis District (SLD) to prepare an EIS for the project.

Scoping activities associated with preparation of this DEIS will primarily be directed toward accurately determining the extent of wetlands in the project area and the magnitude of impacts on those wetlands. A joint field trip to the project area with FWS, MDC, and SLD personnel is planned.

No public meeting associated with this scoping process is considered necessary, and none is planned.

The DEIS will be mailed out in May 1984 for a 45-day public review.

ADDRESS: For further information, contact Ms. Sharon Cotner, U.S. Army Corps of Engineers, Plan Formulation Branch, 210 Tucker Boulevard, North, St. Louis, Missouri 63101. Commercial phone (314) 263–5015, FTS 273–5015.

Dated: March 28, 1984.

Gary D. Beech,

Colonel, CE, District Engineer.

[FR Doc. 84-9504 Filed 4-9-84; 8:45 am]

BILLING CODE 3710-55-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Anti-Submarine Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Anti-Submarine Warfare Task force will meet on April 30–May 1, 1984, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy anti-submarine warfare long term strategies. The entire agenda for the meeting will consist of discussions of anti-submarine warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Alexandria, Virginia 22311. Telephone: (703) 756–1205.

Dated: April 5, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-9177 Filed 4-9-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Ship Decoy Systems will meet on April 25 and 26, 1984 at HRA Inc., 1701 No. Ft. Myer Drive, Suite 1105, Arlington, Virginia. Sessions of the meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on April 25, 1984; and commence at 9:00 a.m. and terminate at 4:00 p.m. on April 26, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to receive various briefings relating to the ship decoy systems program, its test plans, and trainable versus fixed launchers. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: April 5, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-9178 Filed 4-9-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Cordele Operating Co.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Cordele Operating Company (Cordele) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by: May 10, 1984.

ADDRESS: Send comments to: James O. Neet, Jr., Chief Counsel, Economic Regulatory Administration, Dallas Office, 1341 West Mockingbird Lane, Suite 200E, Dallas, Texas 75247.

FOR FURTHER INFORMATION CONTACT: James O. Neet, Jr., Chief Counsel, Economic Regulatory Administration, Dallas Office, 1341 W. Mockingbird Lane, Suite 200E, Dallas, Texas 75247, 214/767–7401. Copies of the Consent Order may be obtained free of charge by writing or calling this office.

SUPPLEMENTARY INFORMATION: On March 2, 1984, the ERA executed a proposed Consent Order with Cordele Operating Company. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. The Consent Order

Cordele produced and sold crude oil during the period covered by the Consent Order and therefore was subject to the price rules imposed by 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D. To resolve certain potential civil liability arising in connection with the first sales of crude oil by Cordele during the period covered by the Consent Order, the ERA and Cordele entered into a Consent Order. Cordele produced and sold domestic crude oil at prices in excess of the applicable ceiling prices. Cordele denied these allegations, but determined that this Consent Order was an equitable resolution of these allegations which avoided the disruption of its orderly business functions and the expense and inconvenience of protracted and complex litigation.

II. Refunds

Under the Consent Order, Cordele Operating Company, will pay the sum of $1,300,000.00 to the Department of Energy (DOE). The DOE will hold the funds in an appropriate account pending a determination of the disposition of the funds in accordance with applicable statutes and regulations. Payment is to be made on or before fifteen (15) days after the effective date of the Consent Order. If payment is not made within the specified period of time, Cordele agrees to pay interest on the unpaid balance. Upon full satisfaction of the terms and conditions of this Consent Order by Cordele, the DOE releases Cordele from any civil claims that the DOE may have arising out of the specified transactions during the period covered by this Consent Order.

The foregoing provisions for payment of the refund amount were concurred in after ERA attempted to determine and identify all injured parties. These attempts were unsuccessful due to the nature of the business transactions in which Cordele was engaged during the settlement period. Cordele's activities were of such nature so as to make it impossible to identify specific parties who or which may have been injured.

III. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation, "Comments on Cordele Operating Company Consent Order." The ERA will consider all comments it receives by 4:30 p.m., local time, on 30 days after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Tex., on the 6th day of March 1984.

Ben L. Lemos,

Director, Dallas Office, Economic Regulatory Administration.

[FR Doc. 84-9180 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

[6COC00249]

Holly Energy Inc. and Holly Corp.; Proposed Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Holly Energy, Inc. and Holly Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Holly Energy, Inc. and Holly Corporation of Dallas, Texas. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.79, 212.73 and 212.74. The total violation alleged during January 1978 through December 1980 is $773,098.79.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Room 6G–030, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Tulsa, Okla., on the 20th day of March 1984.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 84-9485 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

Saxon Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Saxon Oil Company (Saxon), 1001 Wall Towers West, Midland, Texas 79703. This Proposed Remedial Order charges Saxon with pricing violations in the amount of $275,107.04 connected with the sale of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D during the time period of September 1, 1973 through September 30, 1978.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James A. Martin, Manager, Litigation Support Group, Economic Regulatory Administration, Department of Energy, 1341 W. Mockingbird Lane, Suite 200E, Dallas, Texas 75247 or by calling (214) 767–7483. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Tex., on the 23d day of March 1984.

Ben Lemos,

Director, Dallas Field Office, Economic Regulatory Administration.

[FR Doc. 84-9484 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

Storey Oil Co., Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order (PRO) which was issued to Storey Oil Company, Inc. ("Storey") of Seymour, Indiana. This PRO charges Storey with pricing violations in the amount of $87,311.04 exclusive of interest, connected with the sale of motor gasoline from September 1, 1979 through November 30, 1979.

On April 8, 1983 the ERA issued a PRO to Storey in the amount of $192,799.76 which was immediately rescinded by the ERA because the document did not accurately represent the ERA's determinations. This subsequent PRO supercedes the PRO issued April 8, 1983 and covers the matters addressed in that prior PRO.

A copy of the PRO, with confidential information deleted, may be obtained from David H. Jackson, Director, Kansas City Office, ERA (816)374–2092. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, in accordance with 10 CFR § 205.193.

Issued in Kansas City, Mo., on the 22d day of March 1984.

David H. Jackson,

Director, Kansas City Office, Office of Special Counsel, Economic Regulatory Administration.

[FR Doc. 84-9486 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

[6C0C00255]

Texakota, Inc.; Proposed Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Texakota, Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Texakota, Inc. of Houston, Texas. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.79, 212.73 and 212.74. The total violation alleged during January 1978 through December 1980 is $409,622.24.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Room 6G–030, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Tulsa, Okla., on the 20th day of March 1984.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 84-9487 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

[6COX002798]

Traco Petroleum Co., Proposed Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Traco Petroleum Company.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Traco Petroleum Company of Houston, Texas. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.186 and 212.183. The total violation alleged during October 1979 through December 1980 is $8,955,218.78.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S.

Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 308, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Room 6G-030, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Tulsa, Oklahoma on the 20th day of March 1984.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 84-9089 Filed 4-9-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA84-2-48-000]

ANR Pipeline Co.; Notice of PGA Rate Change Filing

April 5, 1984.

Take notice that on April 2, 1984, ANR Pipeline Company (ANR), pursuant to Section 15 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission (Commission) Twenty-Second Revised Sheet No. 7 and Tenth Revised Sheet No. 7a to Original Volume No. 1 of its Tariff to be effective May 1, 1984.

Twenty-Second Revised Sheet No. 7 reflects a net decrease in ANR's rates applicable to Rate Schedule SGS-1 and LVS-1 of 22.20¢ and 22.18¢, respectively, per dekatherm (dth), a 22.13¢ per dth decrease in the Gas Cost Component of its CD-1 and MC-1 Rate Schedules, a .3¢ decrease in the monthly demand rate applicable to the CD-1 and MC-1 Rate Schedules, a decrease of .04¢ per dth in the non-gas commodity component of the CD-1 Rate Schedule and a $9,334 decrease in the monthly fixed charge of the non-gas commodity component of the MC-1 Rate Schedule.

ANR states that the reason for the net decrease in its rates results from producer price increases associated with the Natural Gas Policy Act of 1978, the replacement of older lower cost sources of supply with new, more expensive sources and the payment to producers of production related costs authorized by the Commission's Order No. 94, *et al.*, offset by certain credits required by the agreements reached in *Michigan Wisconsin Pipe Line Company*, Docket Nos. RP82-80, *et al.*, *Michigan Wisconsin Pipe Line Company*, Docket Nos. RP80-100-107, *et al.*, and *Offshore Construction Costs of Natural Gas Pipelines*, Docket Nos. RP79-28-000, together with a reduction of the surcharge associated with its deferred purchase gas costs.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Comissionin determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9091 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-300-000]

Consolidated Gas Supply Corp.; Notice of Application

April 5, 1984.

Take notice that on March 13, 1984, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP84-300-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of gas under an October 31, 1983, exchange agreement, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Consolidated and Pennzoil Exploration and Production Company (Pennzoil) have entered an exchange agreement which consolidates the terms and conditions of Consolidated's Rate Schedules F3, F4, and F5, Consolidated's non-jurisdictional sales contract S158, and Pennzoil's Rate Schedule RS-10. The application further states that the proposed consolidation would ease the administrative and accounting burden associated with administering five separate contracts. The application indicates that upon receiving Commission authorization, Consolidated's Rate Schedules F3, F4, and F5 and sales contract S158 would be cancelled and that Consolidated would file to delete Rate Schedules F3, F4, and F5 from Volume No. 3 of its FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9090 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-22-004 (PGA84-2) (IPR84-1) and RD&D84-1)]

Consolidated Gas Transmission Corp.; Notice of PGA Compliance Filing

April 5, 1984.

Take notice that on April 2, 1984, Consolidated Gas Transmission

Corporation (Consolidated) filed Substitute Thirty-Eighth Revised Sheet No. 16 of the Third Revised Volume No. 1 of its Tariff to comply with the February 28, 1984, order in this proceeding.

The filing eliminated certain gas costs computed in accordance with Order No. 93 and also reflects downward adjustments to rates made by Consolidated's pipeline suppliers.

Consolidated states that copies of the filing were served on all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9587 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-51-000 (PGA84-2 and IPR84-2)]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

April 5, 1984.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on March 30, 1984, tendered for filing Forty-Sixth Revised Sheet No. 57, and Eighth Revised Sheet No. 57-A to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective May 1, 1984.

Forty-Sixth Revised Sheet No. 57 includes a revised purchased gas cost adjustment which reflects an increase in the cost of gas purchased from TransCanada PipeLines Limited, its sole supplier of natural gas, as a result of an increase in the heat content of the gas.

In addition, the revised tariff sheet reflects a purchased gas cost surcharge resulting from maintaining an unrecovered purchased gas cost account for the period commencing September 1, 1983 and ending February 29, 1984.

Eighth Revised Sheet No. 57-A reflects the estimated incremental pricing surcharge for the six month period commencing May 1, 1984 and ending October 31, 1984. No incremental costs are estimated for this period.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 Capitol Street, NE., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9590 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-46-009]

Kentucky West Virginia Gas Co.; Notice of Proposed Change in Rates

April 5, 1984.

Take notice that Kentucky West Virginia Gas Company (Kentucky West] on March 30, 1984, tendered for filing with the commission its Thirtieth Revised Sheet No. 27 and Ninth Revised Sheet No. 27A to its FERC Gas Tariff, First Revised Volume No. 1, to become effective May 1, 1984.

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Section 18, General Terms and Conditions of FERC Gas Tariff, First Revised Volume No. 1. Kentucky West's effective tariff rate is reduced from 405.07¢/dth to 366.34¢/dth, effective May 1, 1984.

Kentuck West states that effective February 1, 1984, the Company has exercised its rights under the economic or market-out clauses of various contracts of its producer affiliates, Kepco and Philadelphia Oil Company; for Devonian Shale gas purchased under Section 107 of the NGPA, Kentucky West has specified that it would pay a wellhead price of $3.525 per dth plus applicable severance taxes and gathering allowances.

Kentucky West further states that, in making the instant filing, it does not waiver or prejudice its right to continue to prosecute its petition for review with the Untied States Court of Appeals for the Fifth Circuit of the Commission's Order dated December 2, 1982, denying Kentucky West's application for rehearing of the Order issued April 30, 1982 in Docket Nos. TA82-2-46-001 (PGA-2) (IPR82-2). (*Kentucky West Virginia Gas Company* vs *FERC*, Case No. 82-4595—filed December 3, 1983).

Kentucky West further states that, in making the instant filing, it does not waive any rights it may have to a filing to charge and collect NGPA prices for all Company-owned production retroactive to December 1, 1978, nor does it waive any rights to collect any carrying charges or interest charges applicable thereto.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commission and upon each party on the service list of Docket No. RP83-46.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9591 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-284-000]

K N Energy, Inc.; Notice of Application

April 5, 1984.

Take notice that on March 6, 1984, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP84-284-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing K N to transport gas on behalf of Union Oil Co. of California (Union) under a gas transportation agreement dated October 31, 1983, and to construct and operate a tap on its pipeline in Fremont County, Wyoming, to effectuate redelivery of the gas, all as more fully set forth in the

application which is on file with the Commission and open to public inspection.

K N is proposing to transport for Union, on a best-efforts basis, up to 4,000 Mcf of gas per day for a period of 24 months. K N would charge 2.64 cents per Mcf of gas transported, it is explained. To effectuate the proposed transportation, K N is proposing to construct a side tap in Sec. 10, T. 32 N., R. 95 W., Fremont County, Wyoming, at a total cost of $5,000. It is stated that on September 5, 1958, Union was authorized in Docket No. G–7193 to sell and deliver to Montana-Dakota Utilities (MDU) surplus gas from Union's working interest of gas in the Worland area of Wyoming. It is explained that on January 20, 1983, MDU advised Union of the necessity of curtailing its purchases and on March 17, 1983, Union made application to the Commission to abandon partially the service related thereto for a limited period of time (Docket No. G–7193–004). Union stated its intent to use all or a portion of the gas released by MDU in an enhanced oil recovery project as fuel for steam generators. Union and K N entered into the subject agreement for the transportation of gas by K N on behalf of Union for delivery for Union's account.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9592 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84–62–000]

Montana-Dakota Utilities Co.; Notice of Proposed Change in Rates

April 5, 1984.

Take notice that on April 2, 1984, Montana-Dakota Utilities Co. ("MDU"), a Delaware corporation, whose mailing address is 400 North Forth Street, Bismark, North Dakota 58501, filed proposed changes in rates to its jurisdictional gas sales and transportation customers.

More specifically, MDU filed the following tariff sheets to its FERC Gas Tariff, which reflect an increase in jurisdictional rates:

Original Volume No. 4

Twenty-Ninth Revised Sheet No. 3A

First Revised Volume No. 2

Twenty-Second Revised Sheet No. 10
Second Revised Sheet No. 10.1

The proposed effective date is May 3, 1984.

Increased revenues from the rates as proposed by MDU would amount to $1,151,328 annually under MDU's Rate Schedules G–1 PR–1, X–1, I–1, X–3, X–5, and X–6.

The filing indicates that MDU has experienced increases in most areas of its cost of service and sharp decreases in its level of sales. Consequently, MDU states, it was required to file for an increase in its jurisdictional rates.

Any person desiring to be heard or to make any protest with reference to said filing should on or before April 16, 1984, file with the Federal Energy Regulatory Commission, 825, North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate in any hearing therein must file a petition to intervene in accordance with the Commission's Rules of Practice and Procedure.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9594 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84–214–000]

ARCO Metals Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, ARCO Metals Company (Applicant), of Ansonia Plant 75, Liberty Street, Ansonia, Connecticut 06401 submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2,500 kilowatt hydroelectric facility (P. 6985) consists of two developments: a proposed new hydroelectrtric plant which is located adjacent to the Kinneytown Dam in Seymour, Connecticut; and an existing hydroelectric plant located on the premises of Applicant's manufacturing plant in Ansonia, Connecticut.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by

the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9562 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-212-000]

Birch Creek Hydro, Inc.—Lone Pine; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 12, 1984, Birch Creek Hydro, Inc., (Applicant) of 2210 Wilshire Blvd., No. 789, Santa Monica, California 70403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3,000 kilowatt hydroelectric facility (P. 7230) will be located near the town of Lone Pine, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9563 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-213-000]

Birch Creek Hydro, Inc.—Independence; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 12, 1984, Birch Creek Hydro, Inc. (Applicant) of 2210 Wilshire Blvd., No. 789 Santa Monica, California 90403 submitted for filing an application for certification of a facility as qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3,400 kilowatt hydroelectirc facility (P. 7343) will be located near the town of Independence, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9564 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-230-000]

City of Covington, Va.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 23, 1984, City of Covington, Virginia (Applicant) James L. Samison, Mayor, 158 North Court Avenue, Covington, Virginia 24426 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 6.9 megawatt hydroelectric facility (P. 3348) will be located at the existing Gaithright Dam on the Jackson River in Alleghany County, Virginia.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9505 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-425-001]

Electrodyne Research Corp., Gilberton, Pennsylvania; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 5, 1984.

On March 15, 1984, Electrodyne Research Corporation (Applicant), of 1617 Sweetbriar Road, Gladwyne, Pennsylvania 19035, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Gilberton, Pennsylvania. The primary energy source for the facility will be anthracite coal culm. The useful thermal energy output, which will be in the form of process steam, will be utilized in a drying process for carbonaceous materials. The electric power production capacity of the facility will be 79.5 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9506 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-210-000]

Fluid Energy Systems, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 12, 1984, Fluid Energy Systems, Inc. (Applicant) of 2210 Wilshire Blvd. No. 699, Santa Monica, California 90403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 15,250 kilowatt hydroelectric facility (P. 7372) will be located 150 miles north of Los Angeles, California, 25 miles west of U.S. Highway 395, near the town of Inyokern, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9509 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-6-001]

Mercy Hospital and Medical Center; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 5, 1984.

On March 26, 1984, Mercy Hospital and Medical Center, 4077 Fifth Avenue, San Diego, California 92103, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be a topping cycle facility utilizing a single 800 kilowatt turbine generator and waste heat recovery boiler with economizer capable of producing 6000 pounds of steam per hour at 117 PSI. The primary energy source will be natural gas. The steam produced by the waste heat recovery boiler will be introduced into the existing high pressure steam header and used principally for heating and cooling loads. Cooling will be accomplished by the installation of a two stage steam absorption chiller which will be tied into the existing steam header.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9503 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

[Docket No. TA84-2-43-000]

Montana-Dakota Utilities Co.; Purchased Gas Cost Adjustment Filing

April 5, 1984.

Montana-Dakota Utilities Co. (MDU), on March 30, 1984, submitted for filing

as part of its FERC Gas Tariff the following tariff sheets:

Original Volume No. 4

Twenty-Eight Revised Sheet No. 3A
Third Revised Sheet No. 3B

First Revised Volume No. 2

Twenty-First Revised Sheet No. 10
First Revised Sheet No. 10.1
Third Revised Sheet No. 10A

The proposed effective date of MDU's PGA filing is May 1, 1984.

MDU states that this tariff filing is being made pursuant to the Purchased Gas Cost Adjustment Provisions of its FERC Gas Tariff. The proposed changes include a gas cost adjustment of 64.447 cents per Mcf for Rate Schedules G–1, PR–1, I–1, and X–1. In addition, MDU proposes a surcharge adjustment of 8.381 cents per Mcf applicable to Rate Schedules G–1, PR–1, and I–1.

Rate Schedule X–4 shows a gas cost adjustment of 50.573 cents per Mcf and no surcharge adjustment for this filing. The proposed changes are supported by exhibits attached to the filing.

In addition, MDU states that First Revised Sheet No. 10.1 reflects a gas cost adjustment for the sales under Rate Schedule X–5 of 34.125 cents per Mcf.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9565 Filed 4-9-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-299-000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

April 5, 1984.

Take notice that on March 12, 1984, National Fuel Gas Supply Corporation (Supply), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP84–299–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 156.205) that Supply proposes to add an additional point of delivery to its affiliate, National Fuel Gas Distribution Corporation (Distribution), under authorization issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Supply proposes to construct and operate tap facilities necessary to provide an additional point of delivery to Distribution in Benzinger Township, Elk County, Pennsylvania. Supply states that the volumes of gas to be provided through the new point of delivery are within its currently authorized level of sales. Supply further states that it would provide this service pursuant to its Rate Schedule RQ.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9566 Filed 4-9-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-304-000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

April 5, 1984.

Take notice that on March 16, 1984, National Fuel Gas Supply Corporation (Supply), 10 Lafayette Square, Buffalo, New York 12403, filed in Docket No. CP84–304–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Supply proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Supply proposes to transport up to 166 Mcf of gas per day and 60,590 Mcf of gas per year, for the account of Ramco Fitzsimons Steel Co., Inc. (Ramco), to National Fuel Gas Distribution Corporation (Distribution) which, in turn, would deliver the gas to Ramco at Ramco's facilities in Buffalo, New York, pursuant to the terms of the gas transportation agreement dated February 1, 1984 (transportation agreement). Supply states that the current transportation rate is 31.72 cents per Mcf, which includes an added incentive charge of 5.0 cents per Mcf, plus 2 percent retainage for shrinkage which is in accordance with its transportation Rate Schedule T–2. In addition, the current transportation rate charged by Distribution is currently 88.0 cents per Mcf plus the surcharge to reflect the tax rates applicable within the municipality where Ramco is taking service plus 2.5 percent of the gas for loss allowance in accordance with Distribution's New York Tariff (P.S.C. No. 7-Gas), it is asserted.

Supply states that the gas to be purchased by Ramco involves gas supplies previously under contract to and released by Supply. Ramco would use the gas transported by Supply in industrial furnaces, which are qualified end-uses pursuant to §157.209(e)(2) of the Regulations, it is asserted. Supply states that no new facilities are necessary to effectuate the proposed transportation. It is stated that the proposed transportation would commence on May 31, 1984, and terminate at 11:59 a.m. on June 30, 1985, or upon termination of the contract which term is for three months, effective February 1, 1984, and month to month thereafter, whichever occurs first.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedual Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9627 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-305-000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

April 5, 1984.

Take notice that on March 16, 1984, National Fuel Gas Supply Corporation (Supply), 10 Lafayette Square, Buffalo, New York 12403, filed in Docket No. CP84-305-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Supply proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP83-4-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Supply proposes to transport up to 300 Mcf of gas per day and 40,990 Mcf of gas per year, for the account of Hope's Architectural Products, Inc. (Hope's Architectural), to National Fuel Gas Distribution Corporation (Distribution) which, in turn, would deliver the gas to Hope's Architectural at Hope's Architectural's facilities in Jamestown, New York, pursuant to the terms of the gas transportation agreement dated February 1, 1984 (transportation agreement). Supply states that the current transportation rate is 31.72 cents per Mcf, which includes an added incentive charge of 5.0 cents per Mcf, plus 2 percent retainage for shrinkage which is in accordance with its transportation Rate Schedule T-2. In addition, the current transportation rate charged by Distribution is currently 88.0 cents per Mcf plus the surcharge to reflect the tax rates applicable within the municipality where Hope's Architectural is taking service plus 2.5 percent of the gas for loss allowance in accordance with Distribution's New York Tariff (P.S.C. No. 7-Gas), it is asserted.

Supply states that the gas to be purchased by Hope's Architectural involves gas supplies previously under contract to and released by Supply. Hope's Architectural would use the gas transported by Supply in boilers and space heaters, which are qualified end-uses pursuant to § 157.209(e)(2) of the Regulations, it is asserted. Supply states that no new facilities are necessary to effecutuate the proposed transportation. It is stated that the proposed transportation would commence on May 31, 1984, and terminate at 11:59 a.m. on June 30, 1985, or upon termination of the contract which term is for three months, effective February 1, 1984, and month to month thereafter, whichever occurs first.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9628 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-60-000]

National Fuel Gas Supply Corp.; Compliance Filing

April 5, 1984.

Take notice that on March 29, 1984, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective April 1, 1984.

National states that the purpose of this First Revised Volume No. 1 is: (1) To comply with the Federal Energy Regulatory Commission's order to convert to a dekatherm measurement basis; and (2) to clean up the format of Original Volume No. 1. In this regard, National represents that the tendered First Revised Volume No. 1 does not contain any changes beyond those necessary to convert to dekatherm measurement and to more effectively organize National's tariff.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a peition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9629 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-250-005]

Northwest Pipeline Corp.; Amendment

April 5, 1984.

Take notice that on March 15, 1984, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110-1526, filed in Docket No. CP82-250-006 an amendment to its pending petition to amend the order issued September 30, 1982, in Docket No. CP82-250-000 pursuant to Section 7(c) of the Natural Gas Act so as to authorize certain limitations to the scope of the transportation service provided for the account of Beker Industries Corp. (Beker), all as more fully set forth in the amendment which is on file with the Commission and open to public insection.

Northwest states that on September 30, 1982, it was authorized to transport up to 10,000 Mcf of natural gas per day for the account of Beker on a best-efforts basis from various receipt points in the San Juan Basin area in New Mexico to Beker's ammonia plant in Conda, Idaho.

Northwest proposes herein to limit the transportation service authorized by Commission orders dated September 30, 1982, and May 13, 1983, to volumes of up to 3.3 billion Btu per day.

It is asserted that the limitations to the previously authorized transportation service are consistent with the current availability of gas supplies purchased by Beker for transportation.

Northwest indicates that on September 2, 1983, it had filed in Docket No. CP82-250-004 for authorization to amend its transportation service for Beker by reducing daily best-efforts transportation volumes from up to 10 billion Btu to up to 2 billion Btu and by deleting receipt points in the San Juan Basin area of New Mexico. Northwest states that no change is proposed in that request except for the change in daily

transportation volumes from 2 billion Btu 3.3 billion Btu.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 26, 1984, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9570 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-59-000]

Northwest Pipeline Corp. v. Colorado Interstate Gas Co.; Complaint

April 5, 1984.

Take notice that on March 21, 1984, Northwest Pipeline Corporation (Northwest) tendered for filing a Complaint and Petition against Colorado Interstate Gas Company (CIG). Northwest requests a Commission order declaring CIG's liability under section 4.3 of Northwest's Rate Schedule PL–1 for minimum bill payments due and owing; and, for an order requiring CIG's compliance with the terms of Section 4.3 of Rate Schedule PL–1 and requiring CIG to pay an outstanding minimum bill charge of $17,918,945.86 and late charges of $162,006.91. Northwest also requests expedited action on its Complaint.

Northwest states that pursuant to Section 4.3 of its Rate Schedule PL–1, CIG incurred minimum bill liability during the contract year of 1983 in the amount of $17,918,945.86. This amount was invoiced during December of 1983 and pursuant to Section 5 of the General Terms and Conditions of Northwest's tariff, became due on January 25, 1984. CIG, by a letter dated January 20, 1984, gave notice that it would not pay the minimum bill charge and requested the commencement of discussions for the purpose of obtaining an interim waiver agreement of the minimum bill provisions.

Northwest states that it responded to CIG's January 20, 1984, letter with a letter dated February 24, 1984, in which it indicated a willingness to enter into discussions concerning future modifications of the minimum bill requirements, but demanded immediate payment of the minimum bill charges incurred during the 1983 contract year, plus applicable late charges.

Northwest calculated the late charges as of February 24, 1984, as being $162,006.91, pursuant to the General Terms and Conditions of Northwest's Tariff, and states that no such payment has been made by CIG.

Furthermore, Northwest acknowledges its awareness of the pending Notice Of Proposed Rulemaking in Docket No. RM83–71–000, but states that its minimum bill provision calls for obligations in the amount of 60% of CIG's contracted quantities. Northwest states that the proposed rulemaking expresses the Commission's concern for minimum bill obligations above 66⅔% and since its minimum bill provisions are set at 60%, the proposed rulemaking should not affect its Complaint.

Northwest also states that it does not propose to retain the gas cost component of the minimum bill payment due and owing and that it proposes to flow through to its jurisdictional customers the gas component it seeks to collect from CIG.

Northwest certifies that a copy of its complaint has been served upon CIG.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Captiol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9571 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-345-000]

Pacific Power & Light Co.; Filing

April 5, 1984.

The filing Company submits the following:

Take notice that on March 28, 1984, Pacific Power & Light Company (PP&L) tendered for filing, Pacific's Revised Appendix 1 for the state of Oregon. The Revised Appendix 1 calculates an average system cost for the state of Oregon applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

PP&L requests an effective date of November 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Bonneville, the Oregon Public Utility Commissioner and Bonneville's District Service Industrial Customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9575 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-28-004]

Panhandle Eastern Pipe Line Co.; Change in Tariff

April 5, 1984.

Take notice that on March 29, 1984 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Forty-Eighth Revised Sheet No. 3–A

First Substitute Twenty-Fifth Revised Sheet No. 3–B

An effective date of March 1, 1984 is proposed.

Panhandle states that by Order dated February 28, 1984, the Federal Energy Regulatory Commission (Commission)

accepted for filing, subject to refund and certain conditions, tariff sheets filed by Panhandle Eastern Pipe Line Company (Panhandle) in the above-referenced proceeding.

Ordering Paragraphs (B)(1)(a), (B)(1)(b), and (B)(1)(c) of the Commission's Order dated February 28, 1984 conditioned acceptance of these tariff sheets upon Panhandle filing revised tariff sheets within thirty days to reflect (1) elimination from Account No. 191 cost determined on an "as delivered" basis, (2) utilization of more representative estimated sales volumes in Account No. 191 and (3) removal of carrying charges from Account No. 191 associated with the unrecovered gas costs for the months of June 1983 through August 1983.

Panhandle states that these substitute revised tariff sheets reflect compliance with Ordering Paragraphs (B)(1)(a), (B)(1)(b), and (B)(1)(c) of the Commission's Order dated February 28, 1984.

Panhandle further states that concurrently with this compliance filing, Panhandle filed a Request for Rehearing of the Commission's Order dated February 28, 1984, and that the compliance filing was made without prejudice to Panhandle's claims stated in its Request for Rehearing.

Among other things, the Request for Rehearing states that the Commission erred in not putting into effect Panhandle's alternate revised tariff sheets because the Stipulation and Agreement in Docket No. RP82–58 on which the first set of revised tariff sheets were based, has not been accepted. Accordingly, Panhandle also submitted for filing, to become effective March 1, 1984, six (6) copies of the following Substitute Alternate Revised Sheets to its FERC Gas Tariff, Original Volume No. 1, which are based on Panhandle's currently effective tariff provisions and do not reflect the Docket No. RP82–58 settlement:

First Substitute Alternate Forty-Eighth Revised Sheet No. 3–A
First Substitute Alternate Twenty-Fifth Sheet No. 3–B

These sheets also reflect the three compliance adjustments described above, and Panhandle requests that such sheets should be made effective upon grant of Panhandle's Request for Rehearing.

Supporting computation sheets are enclosed and copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9676 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP65-392-000, and CP65-392-001]

South Georgia Natural Gas Co; Petitions To Amend

April 5, 1984.

Take notice that on February 29, 1984, and March 12, 1984, South Georgia Natural Gas Company (Applicant), 1217 Old Albany Road, Thomasville, Georgia 31792, filed in Docket Nos. CP65–392–000, and CP65–392–001, respectively petitions to amend the order issued July 27, 1965, as amended March 14, 1966, pursuant to Section 7(c) of the Natural Gas Act so as to authorize a volumetric increase on sales to Occidental Chemical Company (Occidental), continued delivery of natural gas to Occidental's Suwannee River Plant, and construction and operation of a new sales tap, all as more fully set forth in the petitions to amend which are on file with the Commission and open to public inspection.

It is stated that pursuant to the order issued July 27, 1965, as amended March 14, 1966, Applicant was authorized to transport natural gas for direct sales to Occidental. It is also stated that the March 14, 1966, order authorized deliveries of 4,125 Mcf of gas per day to Occidental and covered only two delivery points. Applicant avers that in accordance with its direct sales agreement with Occidental dated June 7, 1965, as amended December 20, 1965, Applicant has historically supplied Occidental's entire fuel requirements. Applicant further avers that Occidental relies on Applicant as its sole supplier of natural gas and that Applicant has delivered in excess of its 4,125 Mcf per day and made deliveries to Occidental at three delivery points. Applicant submits that Occidental's increased requirements have been recognized in its tariff which is on file at the Commission and that the Index of Requirements for Applicant's curtailment plan developed in 1973 listed three points of delivery to Occidental. Applicant proposes an increase in its authority to transport natural gas for direct sales to Occidental of up to 15,250 Mcf per day, which Applicant claims is based on Occidental's historical maximum take and would enable Applicant to meet Occidental's presently anticpated fuel requirements. Applicant further requests authority to continue delivering natural gas to Occidental's Suwannee River Plant, the third point of delivery to Occidental as specified in Applicant's tariff, which Applicant avers is not covered in the Commission's March 14, 1966, order.

Applicant also proposes to construct and operate a sales tap to establish a new delivery point to Occidental. Applicant assets that Occidental is shifting most or all of its phosphate drying operation to a new location and the proposed sales tap would enable Occidental to receive gas at that location. Applicant further asserts that Occidental estimates that it would purchase approximately 2,500 Mcf of gas per day through the proposed sales tap, which is approximately the same quantity that it currently purchases for its drying operations at its present location.

Applicant states that in accordance with the pricing provisions of a direct sales agreement between Applicant and Occidental dated April 1, 1975, gas delivered through the proposed sales tap would be purchased by Occidental at a base rate of $4.50 per Mcf. Applicant further states that this rate would be adjusted to reflect changes in the price payable by Applicant to its supplier, Southern Natural Gas Company, under Southern's Rate Schedule OCD–2 when calculated at a load factor of 100 percent.

Applicant states that the estimated cost of the proposed facilities is $160,000.

Any person desiring to be heard or to make any protest with reference to said petitions to amend should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be

considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8577 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-18-001]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 5, 1984.

Take notice that South Georgia Natural Gas Company (South Georgia) on March 30, 1984 tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. The purpose of these tariff sheets is to update the cost of gas in Docket No. RP84-18-000 to reflect the current level of purchased gas costs as represented in South Georgia's Purchased Gas Adjustment (PGA) filing which became effective January 1, 1984.

On October 31, 1983 South Georgia filed revised tariff sheets which increased jurisdictional revenues by approximately $1.0 million. The Commission accepted for filing and suspended those proposed tariff sheets to become effective May 1, 1984, subject to refund. The purchased cost of gas included in the tariff sheets filed on October 31, 1983 were the gas costs reflected in South Georgia's July 1, 1983 PGA filing. South Georgia states that the purpose of the proposed tariff sheets is to update the tariff sheets filed October 31, 1983 to reflect the gas cost in South Georgia's currently effective PGA. Since the proposed tariff sheets contain the same costs as included in South Georgia's original rate filing, modified only to reflect South Georgia's current purchased gas costs, South Georgia requests that the Commission allow the proposed tariff sheets to become effective on May 1, 1984, subject to refund in accordance with Ordering Paragraph (B) of the Commission's November 28, 1983 order in this proceeding and that the Commission grant any waivers that may be necessary.

Copies of this filing have been served upon South Georgia's jurisdiction customers, interested state public service commissions and all parties of record.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8578 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-307-000]

Southern Natural Gas Co.; Application

April 5, 1984.

Take notice that on March 19, 1984, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP84-307-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of Tenneco Oil Company's (Tenneco) offshore gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to transport up to 1.6 billion Btu of uncommitted gas reserves per day on an interruptible basis, on behalf of Tenneco for ultimate delivery to Air Products and Chemicals, Inc. (Air Products), to satisfy a contractual obligation Tenneco owes Air Products and/or for use in Tenneco's Chalmette Refinery in Orleans Parish, Louisiana. Applicant states that such volumes of uncommitted reserves are located under Viosca Knoll Blocks 899 and 900, offshore Louisiana.

Applicant further states that Tenneco would deliver its uncommitted gas to Applicant at the existing point of interconnection at the inlet of Applicant's measuring facilities on Shell Oil Company's B Platform in Block 62, South Pass Area, offshore Louisiana. Applicant proposes to redeliver a thermally equivalent quantity of gas (less Tenneco's prorated share of gas lost, vented or unaccounted-for during transportation) to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), for Tenneco's account at the onshore terminus of that 26-inch pipeline jointly owned by Tennessee and Columbia Gulf Transmission Company known as Project SP77. Applicant states that Tenneco agreed to pay Applicant a transportation charge of 43.7 cents per million Btu for this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-8579 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-183-001]

Transcontinental Gas Pipe Line Corporation; Amendment to Application

April 6, 1984.

Take notice that on March 21, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP84-183-001 an amendment to its pending application filed in Docket No. CP84-183-000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Transco originally sought permission and approval to abandon certain facilities related to purchases of natural gas from Valero Interstate Transmission Company (Vitco), and to abandon the jurisdictional service, if any, rendered by means of such facilities. In the amendment, Transco amends its application by withdrawing the request for permission and approval to abandon facilities and transportation arrangement with Vitco.

Transco states that pursuant to a service agreement dated September 3, 1980, between Transco and Vitco, Vitco transports on a best-efforts basis gas which Transco purchases from several producers in the South McAllen Field, Hidalgo County, Texas. Transco states that the facilities which it sought to abandon in its original application are used to accept from Vitco both redelivery of gas transported pursuant to the service agreement and delivery of gas purchased by Transco from Vitco. Transco states that it does not seek to terminate or abandon its transportation arrangement with Vitco. As amended, Transco's application seeks only permission and approval to abandon the jurisdictional service, if any, which Transco renders by its purchase of natural gas from Vitco.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9560 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

April 5, 1984.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 30, 1984 Thirtieth Revised Sheet No. 12, Thirtieth Revised Sheet No. 15, and Eleventh Revised Sheet No. 16 (the "proposed" sheets) to Second Revised Volume No. 1 of Transco's FERC Gas Tariff. These "proposed" tariff sheets, which are proposed to be effective May 1, 1984, reflect a net increase of 27.4¢ pe dekatherm (dt) in the commodity or delivery charge of Transco's CD, G, OG, E, PS, ACQ and S-2 rate schedules.

In the alternative, Transco has tendered for filing, to be effective May 1, 1984, Alternate Thirtieth Revised Sheet No. 12 and Altenate Thirtieth Revised Sheet No. 15 (the "alternate" sheets), which reflect the same increase as the "proposed" sheets.

Transco states that the proposed sheet nos. 12 and 15 are designed on top of the sheets based upon the modified fixed-variable method of rate design contained in Appendix A to the March 1, 1984 filing in Docket No. RP83-137, while the alternate sheet nos. 12 and 15 are designed on top of the sheets in Appendix B to the March 1 filing which are based upon the *Atlantic Seaboard* method of rate design. In either case, sheet no. 16 is the same.

Whichever of the sheet nos. 12 and 15 are accepted by the Commission will depend upon its determination of which of the alternate rate designs in Docket No. RP83-137 is made effective by the Commission. In either case, the proposed effective date herein is May 1, 1984, as is the proposed effective date for enclosed sheet no. 16.

Transco describes the foregoing changes as follows:

1. Tracking Rate Adjustment Under PGA Clause (Section 22)

The PGA tracking rate change increase of 27.4¢ per dt is comprised of: (a) A 24.5¢ per dt increase in the current gas cost adjustment; (b) a 1.9¢ per dt increase in the Deferred Adjustment; and (c) a 1.0¢ per dt increase in the Industrial Sales Program described below. The 1.9¢ increase in the Deferred Adjustment represents the difference between the currently effective positive Deferred Adjustment of 7.8¢ per dt and the proposed positive Deferred Adjustment of 9.7¢ per dt, which is made up of the following proposed surcharges:

(i) A 17.6¢ per dt positive surcharge, required to eliminate over the six-month period commencing May 1, 1984, the debit balance of $61,066,241 accumulated in Transco's applicable subaccount of the Unrecovered Purchased Gas Cost Account (FERC Account No. 191) as of February 29, 1984;

(ii) A 5.1¢ per dt negative surcharge, designed to flow through to Transco's customs during the six-month PGA period commencing May 1, 1984, approximately one-half of the amount of refunds which Transco estimates are due from producers as a result of the recent reversal of FERC Orders 93 and 93A; and

(iii) A 2.8¢ per dt negative surcharge, representing the estimated reduction in gas costs to be recorded in FERC Account No. 191 in subsequent months due to lags in receiving allocation statements from producers during the actual six-month period beginning November 1, 1983.

2. Industrial Sales Program (ISP) Surcharge (RP83-11 Settlement Agreement, Article II C)

In Transco's Revised PGA rates filed November 18, 1983, the ISP surcharge amounted to 8.2¢ per dt, designed to eliminate over the 12-month period commencing November 1, 1983 a balance of $66,531,850 in the ISP subaccount within Account No. 191. As of April 30, 1984, it is estimated that that balance will have been reduced to $32 million. The amortization of that amount during the remainder of the original 12-month period (i.e., the six-month period commencing May 1, 1984) results in a 9.2¢ per dt surcharge, which is an increase of 1.0¢ per dt in the Revised PGA rates filed November 18, 1983 with respect to this item.

Transco states that copies of the filing are being mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules

of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9561 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-302-000]

Trunkline Gas Co.; Application

April 5, 1984.

Take notice that on March 15, 1984, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-302-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in the delivery of natural gas to The Alpha Corporation, formerly Alpha Chemical Corporation (Alpha), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to sell and deliver an additional 450 Mcf of natural gas per day on an interruptible basis to Alpha at its plant in Collierville, Tennessee. Currently, Applicant states that it delivers 350 Mcf of gas per day (200 Mcf firm and 150 Mcf interruptible) to Alpha; therefore, with the new contract, total deliveries would be 800 Mcf per day.

Applicant states that Alpha uses gas in the production of fiber-glass and resins for boat construction at its plant in Collierville, Tennessee, and requires an increase in service from Applicant to accommodate peak requirements.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessarity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9562 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA-84-2-50-000]

Valley Gas Transmission, Inc., Purchased Gas Cost Adjustment Filing

April 5, 1984.

Valley Gas Transmission, Inc. ("Valley"), on March 30 1984 submitted for filing as part of its FERC Gas Tariff, Original Volume No. 1, its proposed "Twenty-Eighth Revised Sheet No. 2A" and Original Volume No. 2, its First Revised Sheet No. 10. The proposed effective date is May 1, 1984.

Valley states that this tariff is filed pursuant to its currently effective Purchased Gas Cost Adjustment Provision. The proposed changes involve Valley's "Current Surcharge Adjustment" and "Current Gas Cost Adjustment." The adjustments are supported by computations attached to the filing.

Any person desiring to be heard or protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9563 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-52-000; PGA 84-2]

Western Gas Interstate Company; Proposed PGA Rate Adjustment

April 5, 1984.

Take notice that on March 30, 1984, Western Gas Interstate Company ("Western") filed herein Twenty-Fifth Revised Sheet No. 3A and Eighth Revised Sheet No. 3B to its FERC Gas Tariff, Original Volume No. 1. Said tariff sheets are proposed to become effective on May 1, 1984.

Western states the proposed change in rates reflected on Twenty-Fifth Revised Sheet No. 3A is being filed in accordance with its Tariff's PGA clause which permits the recovery of increases in the cost of gas and of unrecovered purchased gas cost. Western further states the proposed Purchased Gas Cost Adjustment for the Northern Division is 5.03¢ per Mcf; for the Western Division it is 16.83¢ per Mcf; and for the Southern Division it is (33.47)¢ per Mcf. The proposed Purchased Gas Surcharge is 27.25¢ per Mcf for the Northern Division; (124.88)¢ per Mcf for the Western Division and 89.10¢ per Mcf for the Southern Division.

Western also states that Eighth Revised Sheet No. 3B reflects the Projected Incremental Pricing Surcharge for the Period May 1, 1984 through October, 1984 as required by § 282.602(a)(ii) of the CFR.

Western states that copies of this filing were served upon Western's transmission system customers and the interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 211). All such petitions or protests should be filed on or before April 16, 1984. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9504 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-231-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 23, 1984, Pacific Lighting Energy Systems (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, to be located in Montgomery County, Maryland, will have an electric power production capacity of 5 megawatts. The primary energy source will be biomass, in the form of biogas obtained from a sanitary landfill.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9572 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-232-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 23, 1984, Pacific Lighting Energy Systems (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, to be located at 9011 Lantana Road, Lake Worth, Florida, will have an electric power production capacity of 5 megawatts. The primary energy source will be biomass, in the form of biogas obtained from a sanitary landfill.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9573 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-233-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 23, 1984, Pacific Lighting Energy Systems (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, to be located at 200 North Pike Road, West Palm Beach, Florida, will have an electric power production capacity of 2 megawatts. The primary energy source will be biomass, in the form of biogas obtained from a sanitary landfill.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9574 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-216-000]

Synergics, Inc.; Hackett Mills Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc. (Applicant), of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Little Androscoggin River near the towns of Minot and Poland, Androscoggin County, Maine. The hydroelectric facility (P-6398) will consist of an existing dam, an existing power canal, a new powerhouse, and two turbine generator sets. The electric power production capacity of the facility will be 470 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy

Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not be serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9553 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-222-000]

Synergics, Inc., High Falls Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Towaliga River near the town of Forsyth, Monroe County, Georgia. The hydroelectric facility (P-6907) will consist of an existing dam, an existing power canal, an existing penstock, a rebuilt powerhouse, and a turbine generator set. The electric power production capacity of the facility will be 2000 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9559 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-220-000]

Synergics, Inc.—Goose Creek Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Goose Creek near the town of Leesburg, Lounoun County, Virginia. The hydroelectric facility (P-5927) will consist of an existing dam, a new siphon penstock, a new powerhouse, and a turbine generator set. The electric power production capacity of the facility will be 350 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9557 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-215-000]

Synergics, Inc., Great Falls Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Passaic River in the City of Patterson, New Jersey. The hydroelectric facility (P-2814) will consist of an existing dam, four existing penstocks, an existing powerhouse, and three turbine generator sets. The electric power production capacity of the facility will be 10,950 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9052 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-217-000]

Synergics, Inc., Little Falls Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Willow River near the town of Hudson, St. Croix County, Wisconsin. The hydroelectric facility (P-7484) will consist of an existing dam, an existing powerhouse, and three turbine generator sets. The electric power production capacity of the facility will be 270 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9054 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-219-000]

Synergics, Inc., Mound Pond Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Willow River near the town of Burhardt, St. Croix County, Wisconsin. The hydroelectric facility (P-7483) will consist of an existing dam, an existing penstock, an existing powerhouse, and two turbine generator sets. The electric power production capacity of the facility will be 490 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9056 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-221-000]

Synergics, Inc., W. J. Dickey Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Patapsco River near town of Oella, Baltimore County, Maryland. The hydroelectric facility (P-4380) will consist of an existing dam, an existing power canal,an existing

penstock, an existing powerhouse, and a refurbished turbine generator set. The electric power production capacity of the facility will be 600 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9558 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-218-000]

Synergics, Inc., Willow Falls Hydropower Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 5, 1984.

On March 15, 1984, Synergics, Inc., (Applicant) of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on the Willow River near the town of Hudson, St. Croix County, Wisconsin. The hydroelectric facility (P-7444) will consist of an existing dam, an existing penstock, a new powerhouse, and a turbine generator set. The electric power production capacity of the facility will be 1200 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in detemining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-9555 Filed 4-9-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL 2563-1]

Control Techniques Guideline Document; VOC Equipment Leaks From Synthetic Organic Chemical and Polymer Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of final control techniques guideline (CTG) document.

SUMMARY: The final CTG document for control of equipment leaks of volatile organic compounds (VOC) from synthetic organic chemical and polymer manufacturing plants is available. This final CTG document provides guideance for the States in determining reasonably available control technology (RACT) for VOC equipment leaks from synthetic organic chemical and polymer manufacturing plants.

ADDRESSES: Copies of the final CTG document may be obtained by contacting the Environmental Research Library (MD-35) (919), 541-2777, Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Please refer to "Guidelines Series—Control of Volatile Organic Compound Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing," EPA-450/3-83-006. Comments received on the draft CTG document are attached as an appendix to the final CTG document and are also available for public inspection and copying between 8:30 a.m. and 4:00 p.m., Monday through Friday at the Chemicals and Petroleum Branch, Room 736, Environmental Protection Agency, 411 West Chapel Hill Street, Durham, North Carolina

FOR FURTHER INFORMATION CONTACT: Mr. J. F. Durhan, (919) 541-5671, Chemicals and Petroleum Branch (MD-13), Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On December 7, 1981 (45 FR 59360), the EPA announced the availability of the draft CTG document for VOC equipment leaks from synthetic organic chemical and polymer manufacturing plants for public review. Twenty-two comments were received from industry representatives and trade groups. The final CTG document was prepared based on the evaluation of the public comments and consideration of supplemental data analyses provided subsequent to the issuance of the draft CTG document in "Fugitive Emission Sources of Organic Compounds—Additional Information on Emissions, Emission Reductions, and Costs," or AID, EPA-450/3-82-010 (April 982). The major changes made to the draft CTG document included the incorporation of the new emission factors and the emission reduction estimates presented in the AID and exemptions for units with very low VOC emission potential. In addition, process units producing methyl tert-butyl ether were added to the list of process units covered by the CTG, while styrene-butadiene latex units were deleted from coverage by this CTG.

This CTG document is part of the third group of CTG documents published to assist the States in determining RACT for various stationary sources of VOC emissions. CTG documents provide State and local air pollution control

agencies with an initial information based for proceeding with their own analysis of RACT for specific stationary source categories of VOC emissions located within areas where an extension was granted to the attainment of the national ambient air quality standard for ozone. The CTG documents review existing information and data concerning the technology and cost of various control techniques to reduce VOC emissions.

This CTG is not a "rule" as defined by the Administrative Procedure Act (5 U.S.C. 551 et seq.). It is a "rule" for purposes of Executive Order 12291, because it is designed to implement an EPA policy. Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirements of a regulatory impact analysis. This CTG document is not a "major rule" because it does not impose any new requirements. This notice and the final CTG document was submitted to the Office of Management and Budget (OMB) for review. Any written comments from the OMB to the EPA and any EPA responses to those comments are available for public inspection. See the ADDRESSES section of this notice for the times and addresses.

Dated: April 3, 1984.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-9519 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

[[OPP-30000/25E] PH-FRL 2562-7]

Ethylene Dibromide; Amendment of Notice of Intent To Cancel Registrations of Pesticide Products Containing Ethylene Dibromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment of Notice of Intent to Cancel.

SUMMARY: A Notice of Intent to Cancel the Registrations of Pesticide Products Containing Ethylene Dibromide (EDB) was issued on September 28, 1983. This Notice amends that Notice of Intend to Cancel to permit continued registration and use of EDB as a quarantine fumigant for exported citrus and papaya provided additional worker protection measures are instituted.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Stanley H. Abramson, Pesticides and Toxic Substances Division, Office of General Counsel (LE-132P), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-7505.

The docket of the administrative hearing (FIFRA Docket No. 503, *et al.*) is available for public inspection in the Office of the Hearing Clerk, Room 3708A, 401 M Street, SW., Washington, D.C., from 7:30 am to 4:00 pm, Monday through Friday, except legal holidays. An administrative file containing public comments and publicly released Agency documents relating to this action is available for public inspection from 8 am to 4 pm, Monday through Friday, except legal holidays, in Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Regulatory Background

On September 28, 1983, EPA issued a Notice of Intent to Cancel Registration of Pesticide Products Containing Ethylene Dibromide (EDB) which was published in the **Federal Register** of October 11, 1983 (48 FR 46234). The Notice, in relevant part, proposed cancellation of the registrations for pesticide products containing EDB for use as a quarantine fumigant. The quarantine use of EDB involves the fumigation of agricultural commodities, including fresh citrus fruit and papaya, to prevent the spread of several species of fruit flies from regions where they are present to regions where they are absent.

The decision to cancel registrations for the quarantine use was the result of a careful evaluation of the long-term risks to the public health and the economic consequences of cancellation. The economic consequences of this cancellation action were not insignificant. The September 28 Notice, therefore, provided that concellation of registrations for the quarantine use would not become effective until September 1, 1984. This phase out period was provided in order to allow additional time to implement alternative quarantine controls on a commercial scale. While the Agency recognized that continued use of EDB for quarantine purposes during the phase-out period posed some additional risk, it determined that this risk would be acceptable for the brief interim period necessary to permit implementation of alternative control techniques.

Section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides that a Notice of Intent to Cancel does not become a final order of cancellation if a person adversely affected by the Notice properly requests an adjudicatory hearing to contest the cancellation. A registrant, Great Lakes Chemical Co., and a number of users of EDB as a quarantine fumigant on citrus and papaya did request a hearing. The users included the Florida Department of Citrus, Florida Citrus Mutual, Florida Citrus Packers, the Indian River Citrus League, Texas Citrus Mutual, the California Citrus Quality Council, and the Hawaii Papaya Industry Association. Because of these requests for a hearing, the Great Lakes Chemical Company registration, 5785-29, and the state local need registrations, CA-810015, FL-760004, HI-780008, and TX-770008 have not been finally cancelled and will not be finally cancelled until conclusion of the ongoing hearing on these registrations (FIFRA Docket No. 503, *et al.*). All other registrations for products containing EDB and labeled for use as a quarantine fumigant will be cancelled by operation of law on September 1, 1984, under the terms of the September 28, 1983 Notice.

B. Amendment to Notice

This amendment to the September 28, 1983 Notice of Intent to Cancel modifies EPA's determination that registrations of EDB for use as post-harvest quarantine fumigant for citrus fruit and papaya are to be cancelled, effective September 1, 1984. Under the terms of the September 28 Notice as amended by this Notice, the terms and conditions of use of the registration of these products may be amended in accordance with this Notice and, if so amended, the registration may continue in effect. In order to remain in effect under the terms of the amended Notice, these registrations must be amended to prohibit use of EDB as a quarantine fumigant, after September 1, 1984, on citrus fruit and papaya for United States consumption and to require certain additional restrictions on the continued use to treat exported citrus and papaya. These additional restrictions, which are detailed below, are intended to provide additional worker protections to further reduce the occupational exposures which have been associated with the post-harvest quarantine use of EDB. Continued authorization for registration of EDB for the limited post-harvest quarantine treatment of exported fruit reflects the Administrator's determination that it is appropriate to ensure that citrus fruit and papaya leading this country be able to meet the quarantine requirements of U.S. trading partners, provided that use can continue without unreasonable adverse effects to American workers. This principle of deference to importing nations' determinations regarding acceptable quarantine procedures is

also consistent with consideration of the benefits of such export markets to United States agriculture. Taking into account the benefits of continued registration of EDB as a post-harvest fumigant for exported citrus and papaya as well as the risks of adverse effects, primarily occupational health risks, which would continue under the required amendments to the registration terms, the Agency has determined that continued registration under these terms and conditions will not cause unreasonable adverse effects on the environment. Detailed below are specific requirements for modification of the terms and conditions for EDB registration as a post-harvest citrus and papaya fumigant for exported fruit and the bases for the determination that such registration will not cause unreasonable adverse effects.

II. Requirements for Modification of Registration Terms and Conditions

In order to avoid cancellation under the terms of the September 28, 1983 Notice of Intent to Cancel, any EDB registration for post-harvest fumigation of citrus fruit and papaya must be modified in the following manner, and the labeling of any pesticide product sold under such registration must reflect these modifications:

1. The registration must be limited to use on fresh citrus fruit and papaya for quarantine control of fruit flies and must otherwise conform to the Agency's ordinary requirements for labeling as to dose, application directions, toxicity warnings, and related matters.

2. Treatment after September 1, 1984, of fresh citrus fruit or papaya for United States consumption must be expressly prohibited.

3. After September 1, 1984, citrus fruit for export outside the territorial United States may be treated only during the months of October, November, December, and January. The label may state that treatment of citrus fruit for export in any other month is permitted only after a written determination by the U.S. Environmental Protection Agency that a significant fruit fly outbreak has resulted in quarantine requirements for exported fruit which cannot be met by appropriate alternative quarantine treatments and that treatment with EDB for such purposes will not cause unreasonable adverse effects on the environment.

4. Fumigation may be conducted only by a certified applicator, and fumigation operations may be conducted only under the supervision of an authorized employee of a state or the United States government.

5. All persons actively engaged in the application or handling of EDB or in the cleanup of any EDB spills must wear self-contained breathing apparatus (SCBA) respirators approved by MSHA/NIOSH, and EDB-resistant gloves (butyl rubber only) and boot covers and apron (made of butyl rubber, nitrile, or polyethylene). All persons entering the fumigation chambers for any purpose within 24 hours following application must wear SCBA respirators approved by MSHA/NIOSH.

6. Fumigation chambers must have ventilation stacks which extend at least 30 feet above the rooftop of each fumigation chamber.

7. The label must provide that when fumigated fruits are shipped by truck directly from the fumigation chambers without interim storage at the site of fumigation, trucks must be aerated in transit to warehouse storage or loading areas.

8. Disposal of unused pesticide products containing EDB must be in accordance with the requirements of the Resource Conservation and Recovery Act and the regulations implementing it, and quantities exempted from those disposal requirements by virtue of small volume or the "farmer exemption" must be disposed of in an approved landfill or incinerator.

III. Bases for Determinations for Amendment to Cancellation Notice

The September 28, 1983 Notice of Intent to Cancel Registrations of Pesticide Products Containing Ethylene Dibromide identified the risks to the general public from dietary exposure to treated fruits and the risks to workers from occupational exposures resulting from treatment as the primary bases for cancellation of EDB registrations for post-harvest quarantine treatment of fruits. The Notice further stated:

> The effective date of this cancellation * * * has been delayed until September 1, 1984, to allow USDA/APHIS and the industry time to implement alternative means of quarantine fruit fly disinfestation. After consideration of the disruption likely to be caused by cancellation at this time, and an evaluation of the risk posed by a one-year phase out, the Agency has concluded that continuation of registrations for this use until September 1, 1984, will not pose an unacceptable risk. (October 11, 1983, 48 FR 46234).

In the period since the issuance of that Notice, substantial progress has been made toward the development and implementation of alternatives. For the interstate shipment of citrus from one citrus-producing region to another, recent information indicates that alternatives have almost completely replaced the use of EDB. Quarantine control for this purpose is now obtained by a combination of methods, including fly-free certification programs and use of the chemical fumigant methyl bromide. Efforts to develop further alternatives for citrus quarantine control are continuing. A hot water treatment process for interstate shipment of papayas appears very close to approval for quarantine purposes. As a result of these developments, United States dietary exposure to EDB from post-harvest quarantine treatments is sharply declining. Under the terms of the amended Notice of Intent to Cancel, all dietary exposure to EDB in the United States from these quarantine uses will be eliminated by the express prohibition of post-harvest quarantine treatment of fruit for United States consumption after September 1, 1984.

The only treatment of citrus fruit and papaya permitted after September 1, 1984, will be for export outside the United States, principally to Japan. The governments of importing nations generally require quarantine control of fruit flies for all imported citrus and papaya. EDB remains an established means of achieving this quarantine security. Cold treatment to control fruit flies in citrus, however, has gained acceptance in Japan as an alternative to EDB. United States exporters and the United States Department of Agriculture communicate regularly with the governments of receiving nations on developing information about other alternative quarantine treatments. Determinations regarding the acceptability of quarantine treatments for fruit fly control for citrus and papaya exported by the United States are properly made by the importing nation. Consequently, continued registration of EDB for use on exported citrus and papaya will provide flexibility for importing countries to establish their own quarantine requirements and to make their own decisions on acceptable pesticide residues.

Continued registration of EDB for treatment of citrus and papaya for export, however, would be appropriate under FIFRA only if the benefits of that registration outweigh the risks to workers exposed to EDB from the treatment of exported fruit. EPA has carefully evaluated the occupational risks associated with continued registration for export and has determined that certain modifications in the terms and conditions of registration can reduce the occupational risks to an acceptable level in light of the benefits

Workers are exposed to EDB from fumigation of exported fruit at the site of application (the fumigation centers) and during any handling of the fruit prior to its export. Exported citrus represents an average of 80 percent of the citrus which was being treated with EDB prior to September 28, 1983. About 15–20 percent of the production of fresh papayas for sale outside Hawaii is exported to other nations. Consequently, potential occupational exposures will be reduced by 20 percent for citrus and by 80 percent for papaya by termination of EDB use on fruit for United States consumption. The Notice of Intent to Cancel, as amended, further prohibits EDB treatment of citrus exported in months other than October, November, December, and January, primarily because cold treatment has been proven satisfactory for the remaining portion of the growing/shipping season. This restriction reduces by about 70 percent the amount of exported citrus which could be treated with EDB. Information supplied to EPA by the citrus industry demonstrates that Florida dockside warehouse workdays in the 1981–1982 season included 517 person days in October–January and 1257 person days in February–May. The comparable figures for the 1982–1983 season were 1156 person days in October–January and 1339 person days in February–May.

In addition to reducing occupational exposure sharply through reductions in the volume of EDB treatment for post-harvest fumigation, the amended Notice of Intent to Cancel contains restrictions which will reduce occupational hazard in several other ways. By requiring application by certified applicators under governmental supervision and with full protective equipment, the Agency (1) is further reducing the potential that misuse or accident will create occupational hazards, and (2) is reducing the levels of routine exposure to protected persons, probably by more than 90 percent. Protective respirators are also required for persons directly exposed through contact with the fumigation chambers. Workers exposed because of conducting activities near the fumigation chambers during the ventilation of the chambers typically will receive additional protection from the requirement that ventilation stacks be raised to 30 feet above the roof line. Finally, trucks which transport fumigated fruit to warehouses or shipping docks must be aerated in transit to facilitate off-gassing, thereby reducing exposure to workers who unload the trucks or handle fruit in and around the warehouse area.

Workers who handle treated fruit after the fumigation operation is completed generally fall under the jurisdiction of the Occupational Safety and Health Administration (OSHA). Exposure to those workers is the subject of a Notice of Proposed Rulemaking published by OSHA on October 7, 1983 (48 FR 45956). OSHA has proposed that, for those places of employment which handle EDB-fumigated materials or commodities, the permissible exposure limit would be reduced from 20 parts per million of air to 0.1 part per million (8 hour time weighted average), with a short term exposure limit of 0.5 part per million. Requirements also would be imposed for exposure monitoring, methods of control, personal protective equipment and clothing, hygiene practices, medical surveillance, employee training and education, and restriction of dermal exposure to liquid EDB.

In sum, the substantial reduction in percentage of citrus and papaya treated with EDB together with the imposition of worker protection requirements will serve to reduce the risk to United States workers who are exposed to EDB from continued registration and use of EDB to treat exported citrus and papaya.

The Agency has also evaluated the economic effects of meeting the restrictive labelling required by EPA for continued registration of EDB for quarantine treatment of exported citrus fruits and papaya. The economic effects of these requirements will fall into four categories: (1) The cost of adopting alternative treatments for fresh citrus and papaya shipped interstate under quarantine; (2) the cost of adopting alternative quarantine treatments for exported citrus during February through September; (3) the cost of purchasing and maintaining self-contained breathing apparatus respirators approved by NIOSH or the Bureau of Mine Safety; and (4) the cost of increasing the height of fumigation chamber ventilation stacks to 30 feet above the chamber rooftops where necessary. Other restrictive labelling requirements are anticipated to be met with no significant increase in costs to fumigation chamber operators and/or fruit shippers.

The costs of adopting alternative quarantine treatments for interstate shipment of citrus and papaya fruit currently fumigated with EDB were identified in the Agency's March 2, 1984, Ethylene Dibromide Technical Support Document for Quarantine Fumigation Uses (U.S. Environmental Protection Agency, 1984). The substitution of methyl bromide for EDB as a post-harvest quarantine fumigant for citrus shipped interstate is expected to increase quarantine costs approximately $25,000 annually. The substitution of papaya double-dip heat treatments for EDB applications for domestically consumed papaya was expected to increase treatment costs of Hawaiian papaya approximately $40,000–$70,000 annually. However, more recent information indicates that the double-dip treatment is less costly than EDB fumigation, and therefore, adoption of this quarantine treatment may reduce costs to the Hawaiian papaya industry.

The restrictive labelling will allow EDB treatment of early-season citrus exported to Japan under quarantine. However, citrus (primarily grapefruit) shipped to Japan from Florida between the months of February and September likely will be cold-treated to meet quarantine standards. It is estimated that approximately 70 percent of the grapefruit exported to Japan under quarantine is shipped between February and September. It is estimated that the substitution of cold treatment for EDB treatments on this fruit will increase costs approximately $1,205,000–$1,919,000 annually.

The total increase in costs to the citrus and papaya industry of meeting quarantine requirements due to substitution of alternative techniques will range from approximately $1.2–$1.9 million annually dependent on the costs of alternative techniques.

In addition to increased costs due to adoption of new treatment methods (i.e., EDB alternatives), the costs of EDB treatments will also increase. The restrictive labelling requires that self-contained breathing apparatus respirators approved by NIOSH or the Bureau of Mine Safety be worn by individuals involved in EDB post-harvest fumigations. The cost of an ultra-light, self-contained breathing apparatus is approximately $1,100. Costs of charging air tanks is estimated at $15–$20 per tank. The number of respirators required and the tank recharge rate under the EDB restrictive labelling requirements have not been estimated.

The restrictive labelling also requires that ventilation stacks extend at least 30 feet from the rooftop of each fumigation chamber. Costs of increasing stack height, if required, for the various chambers throughout the United States (primarily Florida and Hawaii) have not been identified, but are not expected to be significant.

IV. Procedural Matters

This Notice announces the Administrator's amendment of the

September 28, 1983 Notice of Intent to Cancel Registrations of Pesticide Products Containing EDB. This action is taken pursuant to the authority granted by section 6(b) of FIFRA and by the Agency's procedural regulations (40 CFR 164.21(b)). This amendment is effective immediately, and only affects those registrations which have been preserved by requests for a hearing on the September 28 Cancellation Notice. Registrations for which there have been no requests for a hearing will be cancelled effective September 1, 1984, by the terms of the September 28 Notice.

This Notice of Amendment creates no new opportunity to request a hearing pursuant to section 6 of FIFRA. Section 6(b) provides adversely affected persons the right to request a hearing to challenge a notice of intent to cancel a registration of a pesticide product within 30 days. The Notice of Intent to Cancel the use of EDB as a quarantine fumigant was issued on September 28, 1983. This Notice of Amendment merely modifies the terms of the September 28 Notice to allow the continued registration of EDB as a quarantine fumigant of citrus and papaya for export and to require additional worker protection measures if EDB is still used for that purpose. Therefore, this Notice of Amendment is not a notice of intent to cancel nor can any person be adversely affected by this Notice under the terms of section 6 of FIFRA.

The registrant of the EDB quarantine fumigation product which is not already subject to a final order of cancellation may comply with the terms of the amended notice of cancellation by amending the registration to make the necessary corrections. The application for an amended registration, together with a copy of the amended labeling must be submitted by May 10, 1984 to:

William Miller, Product Manager (PM–16), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring material to: Room 211, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2600).

Parties to the EDB cancellation hearing (FIFRA Docket No. 503, et al.) are permitted as a matter of right to amend their objections to the September 28, 1983 Notice to reflect the terms of this Notice of Amendment. 40 CFR 164.22(c). Any amendments to objections should be filed within 30 days of the date of publication of this Notice with the Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Dated: April 3, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-9616 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

[SAB–FRL 2563–6]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a one-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on April 27, 1984, in Conference Room 3906–3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:15 a.m. and adjourn no later than 5:00 p.m.

The principal purpose of the meeting will be to review and comment on the scientific adequacy of the draft Health Assessment Document for Vinylidene Chloride, External Review Draft EPA–600/8–83–031A, dated October 1983, prepared by the Office of Health and Environmental Assessment of EPA's Office of Research and Development.

For information on how to obtain a copy of the draft document please contact: ORD Publications Office, Center for Environmental Research Information, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, telephone: (513) 684–7562. Requestors should be sure to cite the EPA number assigned to the document.

The agenda will also include discussion of suggested upcoming issues for Environmental Health Committee review, brief reports, and informational items of current interest to the Members.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact the Executive Secretary, Environmental Health Committee, Science Advisory Board (A–101), U.S. Environmental Protection Agency, Washington, D.C. 20460 by c.o.b. April 20, 1984. Please ask for Mrs. Patti Howard or Mr. Ernst Linde. The telephone number is (202) 382–2552.

Dated: April 3, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-9615 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

[ER–FRL–2561–6]

Discharges of Dredged or Fill Material into Navigable Waters, State of Michigan; Public Hearing and Request for State Program Approval

The Federal Clean Water Act (33 U.S.C. 1251 et seq.; hereinafter the CWA) established the section 404 Permit Program, under which the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (Corps), may issue permits for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

Section 404(g) of the CWA provides that the Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible for use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto), within its jurisdiction may submit to the Administrator of the USEPA a full and complete description of the program it proposes to establish and administer under State law, including a statement from the State Attorney General that the laws of the State provide adequate authority to carry out the described program.

The Administrator is required to approve such submitted program unless the program does not meet the requirements of section 404(h) of the CWA. Among other authorities, the State must have: (1) Adequate authority to issue permits which comply with all pertinent requirements of the CWA, including the guidelines developed under section 404(b)(1); (2) adequate authority, including civil and criminal penalties, to abate violations of the permit or the permit program; and (3) authority to ensure that the Administrator, the public, any other affected State, and other affected agencies, are given notice of each application for permit and are provided an opportunity for a public hearing before a ruling on each such application. The regulations establishing the requirements for the approval of State 404 Permit Programs were published in Volume 48, Number 64 of the Federal

Register, April 1, 1983 (40 CFR Part 233), beginning at page 14206.

The State of Michigan has submitted a full and complete Request for State Program Approval and proposes that the Michigan Department of Natural Resources Stevens T. Mason Building, Box 30028, Lansing, Michigan, 48909 (517–373–0244) operate the State 404 Permit Program for discharges of dredged or fill material into the navigable waters within the jurisdiction of the State in accordance with the CWA.

Valdas V. Adamkus, Regional Administrator of the USEPA, Region V, has scheduled a public hearing to consider this request and enable all interested parties to present their views on the State's submission. The hearing will be held in the Law Building Auditorium of the State Capitol Complex at Ottawa and Pine Streets in Lansing, Michigan on Thursday, May 10, 1984, from 1:00 PM until 5:30 PM and from 7:00 PM until 10:00 PM.

A three member hearing panel will hear the matter. The panel will consist of the Administrator of the USEPA or his representative, the Director of the Michigan Department of Natural Resources or his representative and the Regional Administrator of the USEPA, Region V, or his representative. Either the Administrator or the Regional Administrator or their respective representative will serve as the Presiding Officer. Oral statements will be heard and considered, but for the accuracy of the record, all testimony should be submitted in writing. Statements should summarize extensive written material so there will be time for all interested parties to be heard. Persons are encouraged to bring extra copies of their written statements for the use of the hearing panel and other interested persons.

The Presiding Officer may, at his or her discretion, exclude oral testimony if it is overly repetitious of previous testimony heard or if it is not relevant to the decision to approve or require revision to the State program as submitted. The hearing record will be left open for a period of 15 days following the hearing to allow any person to submit additional written statements or to present views or evidence tending to rebut testimony presented during the hearing.

Any interested person may comment upon the State submission by writing to the USEPA, Region V Office, Attention: Jeanette Morris (5WQD–11), 230 South Dearborn Street, Chicago, Ill. 60604. Such comments will be made available to the public for inspection and copying. All comments or objections received by May 25, 1984, or presented at the public hearing, will be considered by the USEPA before taking final action on the Michigan Request for State Program Approval.

The State's submission, related documents, and all comments received are on file and may be inspected and copied (at 20¢ per page) at the USEPA Region V Office in Chicago. In addition, copies of the complete submission are available for review at the Michigan Department of Natural Resources, Stevens T. Mason Building in Lansing, Michigan.

Copies of this notice are available upon request from the Water Division of USEPA Region V (312/886–6677).

Please bring the foregoing to the attention of persons you know would be interested.

Dated: April 3, 1984.

David G. Davis,

Acting Director, Office of Federal Activities, U.S. Environmental Protection Agency.

[FR Doc. 84-9391 Filed 4-9-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 83–1230 (12–30–83; 48 FR 57620)]

International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes; Order

Adopted: March 29, 1984.
Released: March 30, 1984

By the Chief, Common Carrier Bureau.

1. On March 26, 1984, Omnicom, Inc., submitted a request for extension of the time for filing reply comments in the above-captioned proceeding from April 2, 1984 until May 2, 1984. In support of its request Omnicom notes that Study Group VII of the International Telephone and Telegraph Consultative Committee (CCITT) is meeting in Geneva, Switzerland, March 26–30, 1984, and that its experts attending that meeting will not be available to prepare comments for filing on April 2, 1984. Omnicom also notes that Recommendation X.121, which covers the Data Network Identification Code which is the subject of this proceeding, will be voted upon at that meeting of Study Group VII. The request is not opposed.

2. We believe that the petitioner has shown good cause for a grant of an extension. However, in the interests of expedition we will not grant the full requested extension.

3. Accordingly, it is ordered, pursuant to § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291 (1984), that the time for filing reply comments in CC Docket No. 83–1230 is hereby extended until April 20, 1984.

Jack D. Smith,

Chief, Common Carrier Bureau.

[FR Doc. 84-9470 Filed 4-9-84; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1453]

Petition for Reconsideration of Action in Rulemaking Proceeding

April 2, 1984.

Reconsideration of Staff denial of their petition for rule making and request for issuance of an order to show cause is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Assignments FM Broadcast Stations to substitute Channel 283 for Channel 284 at Charlotte, North Carolina.

Filed By: Rainer K. Kraus for Koteen & Naftalin, on behalf of E.Z. Communications, Inc. on 2–27–84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9469 Filed 4-9-84; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 2, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632–7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–4814.

Title: Section 73.1620
Action: Revision

Respondents: Businesses (including small businesses), nonprofit institutions
Estimated Annual Burden: 10,714 Recordkeepers; 4,071 Hours
Title: Section 74.537
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 150 Respondents; 600 Hours
Title: Section 74.551
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 100 Respondents; 100 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9466 Filed 4-9-84; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 2, 1984.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 232-7513. Persons wishing to comment on this information collection should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

Title: Application of Alien Amateur Radio Licensee for Permit to Operate in the United States
Form No.: FCC 610-A/610-AL
Action: Revision
Respondents: Aliens with a valid amateur license issued by the country of which they are a citizen
Estimated Annual Burden: 1,660 Respondents; 137 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9473 Filed 4-9-84; 8:45 am]
BILLING CODE 6712-01-M

Subcommittee Meetings of the FCC Industry Advisory Committee on Technical Standards for Direct Broadcasting Satellite (DBS) Service

There will be a series of subcommittee meetings of the FCC Industry Advisory Committee on DBS Standards. These will be held on the dates indicated below:

S.C. on Transmission Standards: *April 25,* 1984; 1 to 3 PM CBS Network Inc.; third floor 1800 M Street, NW
S.C. Receiver Standards: *April 26,* 1984; @ 9:00; all day FCC/OST Conf. Room No. 7317 2025 M Street, NW
S.C. on Encryption Standards: *April 27,* 1984; @ 9:30 FCC/OST Conf. Room 7317 2025 M Street, NW

The various working groups under their respective subcommittees will present near-final drafts of their final reports. In addition, outline of the subcommittee report outlines will be discussed. Other matters will include approval of minutes of previous meetings, approval of the agenda, other business and dates of next meetings.

Those seeking further information may contact the chairmen of the above groups and/or B. Pattan, FCC/OST (202) 653-9098.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9467 Filed 4-9-84; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

North Carolina; Amendment to Notice of Major-Disaster Declaration

[FEMA-699-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of North Carolina (FEMA-699-DR), dated March 30, 1984, and related determinations.

DATED: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

The notice of a major disaster for the State of North Carolina dated March 30, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 30, 1984: Gates, Lenoir, Nash and Perquimans Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-9478 Filed 4-9-84; 8:45 am]
BILLING CODE 6718-02-M

[FEMA-700-DR]

South Carolina; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of South Carolina (FEMA-700-DR), dated March 30, 1984, and related determinations.

DATED: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

The notice of a major disaster for the State of South Carolina dated March 30, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 30, 1984: Chesterfield County for Individual Assistance.

(Catalog of Federal Domestic Assistance No 83.516, Disaster Assistance. Billing Code 6718-02)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-9479 Filed 4-9-84; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal

Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T–4175.

Title: City of Los Angeles and American President Lines, Inc., Sale and Assignment of Container Cranes.

Parties:

City of Los Angeles (City)

American President Lines (APL)

Synopsis: Agreement No. T–4175 provides for the sale and assignment of the City's right, title and interest in and to container cranes at the APL terminal in Los Angeles in accordance with the terms and conditions set forth in the Agreement.

Filing Party: Raymond P. Bender, Assistant City Attorney, City of Los Angeles, Harbor Division, Post Office Box 51, San Pedro, California 90731–0151.

By Order of the Federal Maritime Commission.

Dated: April 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-9018 Filed 4-9-84; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 832]

Sopac Transport Corporation; Order of Revocation

On April 4, 1984, Sopac Transport Corporation, P.O. Box 520995, Miami, FL 33152, requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 832.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(e) dated September 27, 1983;

It is order, that Independent Ocean Freight Forwader License No. 832, be revoked effective April 4, 1984 without prejudice to reapplication for a license in the future.

It is further order, that a copy of this Order be published in the Federal Register and served upon Sopac Transport Corporation.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-9005 Filed 4-9-84; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2064]

Transeurope Shipping Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that not independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Transeurope Shipping Inc. was cancelled effective March 31, 1984.

By letter dated March 12, 1984, Transeurope Shipping Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2064 would be automatically revoked unless a valid surety bond was filed with the Commission.

Transeurope Shipping Inc. has failed to furnish a valid bond.

By virtue of authority vestes in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission order No. 1 (Revised), section 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2064 be and is hereby revoked effective March 31, 1984.

It is ordered, that Independent Ocean Frieght Forwarder License No. 2064 issued to Transeurope Shipping Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Transeurope Shipping Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-9006 Filed 4-9-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Application To Engage de Novo in Permissible Nonbanking Activities; BankAmerica Corp.

The company listed in this notice has filed an application under section 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board Governors not later than May 1, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation,* San Francisco, California; to engage *de novo* through its subsidiary BA Insurance Company, Inc., San Francisco, California, to expand the geographic scope in which it conducts the activity of underwriting, initially as reinsurer, to the extent permitted by relevant state or District law, for credit-related life insurance and credit-related accident

and health insurance which is directly related to extensions of credit by BankAmerica Corporation and its nonbank subsidiaries. This activity will expand into Montana and the District of Columbia.

Board of Governors of the Federal Reserve System, April 4, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9460 Filed 4-9-84; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies; Mansfield Bankstock, Inc.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (49 FR 794) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 2, 1984.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mansfield Bankstock, Inc.*, Mansfield, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Mansfield, Mansfield, Arkansas. Mansfield Bankstock, Inc., Mansfield, Arkansas, also proposes to engage in the activity of real estate appraisal.

Board of Governors of the Federal Reserve System, April 4, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9458 Filed 4-9-84; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Minnesota Assets Management Corporation, et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 2, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Minnesota Assets Management Corporation*, St. Louis Park, Minnesota; to acquire 94.1 percent of the voting shares of Summit State Bank of Richfield, Inc., Richfield, Minnesota.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Schmidt Bancshares, Inc.*, Marysville, Kansas; to acquire at least 20 percent of the voting shares of Berbanc, Inc., Gypsum, Kansas, and Gypsum Valley Bank, Gypsum, Kansas.

2. *Waynoka Bancshares, Inc.*, Waynoka, Oklahoma; to become a bank holding company by acquiring at least 80 percent of the voting shares of First State Bank, Waynoka, Oklahoma.

Board of Governors of the Federal Reserve System, April 4, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9459 Filed 4-9-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Report; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Pub. L. 92-463 (5 U.S.C. Appendix I), the calendar year 1983 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress: Immunization Practices Advisory Committee.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C. (telephone 202/287-6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436 300 Independence Avenue, SW., Washington, D.C. (telephone 202/245-6791).

Dated: March 30, 1984.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 84-9039 Filed 4-9-84; 8:45 am]

BILLING CODE 4160-18-M

Childhood Lead Poisoning Prevention Advisory Committee; Establishment

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, the Centers for Disease Control announces the establishment by the Secretary of Health and Human Services, on March 29, 1984, of the following Federal advisory committee:

Designation: Childhood Lead Poisoning Prevention Advisory Committee

Purpose: This Committee shall provide advice and make recommendations to the Secretary, the Assistant Secretary for Health, and the Director, Centers for Disease Control, and his staff on revisions to the policy statement dated April 1978, "Preventing Lead Poisoning in Young Children". The revised policy statement shall reflect new research findings since 1978.

Authority for this committee will expire March 28, 1985, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: April 3, 1984.

William C. Watson, Jr.,

Acting Director, CDC.

[FR Doc. 84-9484 Filed 4-9-84; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 84M-0091]

Ciba Vision Care; Premarket Approval of Cibasoft®, Cibathin®, Torisoft®, and Bi-Soft® (Tefilcon) Hydrophilic Contact Lenses With Cibatint™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the CIBASOFT®, CIBATHIN®, TORISOFT®, and BI-SOFT® (tefilcon) Hydrophilic Contact Lenses with CIBATINT ™, sponsored by Ciba Vision Care, Atlanta, GA. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, and after listing, by regulation, the color additives for use in coloring the devices, FDA notified the sponsor that the application was approved because the devices had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by May 10, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ–402). Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On December 20, 1982, Ciba Vision Care, Atlanta, GA 30348, submitted to FDA an application for premarket approval of the CIBASOFT®, CIBATHIN®, TORISOFT®, and BI-SOFT® (tefilcon) Hydrophilic Contact Lenses with CIBATINT ™. The lenses are tinted with one or more of four color additives to tint the lenses blue, green, aqua, or amber. The tinted CIBASOFT® and CIBATHIN® lenses range in powers from −25.00 diopters (D) to +25.00 D, and they are indicated for daily wear for the correction of visual acuity in persons with nondiseased eyes who are aphakic or not-aphakic and have astigmatism of 1.50 D or less. The tinted TORISOFT® lenses are indicated for daily wear for the correction of astigmatism of 0.50 D to 6.00 D in persons with nondiseased eyes who are aphakic or not-aphakic and require lens powers in the range from −25.00 D to +25.00 D. The tinted BI-SOFT® lenses are indicated for daily wear by not-aphakic presbyopic persons with nondiseased eyes who have no more than 1.50 D of astigmatism and require powers from −8.00 D to +8.00 D and add powers from 0.25 D to 4.00 D. The lenses may be disinfected using a heat or chemical lens care system. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On February 8, 1984, FDA approved the application by letter to the sponsor from the Acting Director of the Office of Device Evaluation of the Center for Devices and Radiological Health.

In the **Federal Register** of January 4, 1984 (49 FR 372), FDA published a final rule (21 CFR 73.3121) listing the color additives poly(hydroxyethyl methacrylate)-dye copolymers for use to color contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect. The use of these color additives in coloring the CIBASOFT®, CIBATHIN®, TORISOFT®, and BI-SOFT® (tefilcon) Hydrophilic Contact Lenses with CIBATINT ™ conforms to the color additive listing requirements specified in 21 CFR 73.3121.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved draft labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The approved labeling for the contact lenses states that the lenses are to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses. However, the restrictive labeling needs to be updated periodically to refer to new lens solutions that FDA approves for use with approved contact lenses made of polymers other than PMMA. A sponsor

who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 10, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 4, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9075 Filed 4-9-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-84-1361]

Privacy Act of 1974; Notice of a Matching Program

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of a Matching Program.

SUMMARY: In accordance with the Privacy Act of 1974, and the Office of Management and Budget's Revised Supplemental Guidance for Conducting Matching Programs (47 FR 21656, May 19, 1982), the Department is issuing a public notice of its intent to conduct a computer matching program with the objective of obtaining salary and benefit attachments to discharge debts owed to the U.S. Government. The program will match debtors having Title I defaulted notes (Property Improvement and Manufactured (Mobile) Home Loans—Default, HUD/DEPT–28) against systems of records of current employees and retirees provided by the U.S. Postal Service (USPS) and the Office of Personnel Management (CPM).

EFFECTIVE DATE: Data exchange will begin in the first half of Calendar Year 1984, and, unless comments are received which will result in a contrary determination, will be accomplished at least once every six months thereafter.

ADDRESS: Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, Telephone number (202) 755–6050. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department insures loans to finance improvements, alterations, and repairs of individual home and nonresidential structures and to facilitate the financing of manufactured (mobile) home purchases. Upon default, private lenders can assign a loan to the Department and collect on an insurance claim. The Department then attempts to locate each defaulted debtor and establish a repayment plan. To preserve the integrity of the U.S. Government, and to ensure the collection of debts owed to it, the Department desires to identify those current or former U.S. Government or Postal employees who are receiving remuneration from the Government while owing it money under the Title I Program. Below is the information required by paragraph 5.f.1 of the OMB supplemental guidance. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Issued at Washington, DC, March 29, 1984.

Judith L. Tardy,

Assistant Secretary for Administration.

Report of a Matching Program

a. *Authority:* The legal authority under which the computer match is being conducted is Title I, Sec. 2, National Housing Act, 12 U.S.C. 1703; the Federal Claims Collection Act of 1966 (Pub. L. 89–508), and the Debt Collection Act of 1982 (Pub. L. 97–365).

b. Program Description:

1. Purpose. The program will identify debtors with Title I defaulted loans who are Government or Postal employees or retirees, for the purpose of discharging debts owed the U.S. Government through salary and benefit offsets.

2. Procedure. After the Department has obtained matches, it intends to verify all debts. In each case involving a current or former employee of the U.S. Government or U.S. Postal Service who does not have a current repayment plan for a defaulted Title I note, the Department intends to arrange attachment of salary or benefit payments in order to discharge the debt if some other repayment plan cannot be arranged after first contacting the debtor.

C. *Records To Be Matched:* The program will match the Department's existing system of records, *HUD/DEPT 28, Property Improvement and Manufactured (Mobile) Home Loans—Default* (46 FR 56936, November 19, 1981) with systems of records provided by OPM and the U.S. Postal Service. The OPM systems of records to be used are the Central Personnel Data File contained in *OPM/GOVT–1, General Personnel Records* (48 FR 37124, August 16, 1983), and the Retirement Annuity Master file contained in *OPM/CENTRAL–1, Civil Service Retirement and Insurance Records* (48 FR 37120, August 16, 1983). The U.S. Postal Service system of records to be used is *USPS 050.020, Finance Records—Payroll System* (48 FR 55790, December 15, 1983).

d. *Period of Match:* The match program will begin in the first half of

Calendar Year 1984, and will be accomplished at least once every six months thereafter.

e. *Security Safeguards:* Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel.

f. *Disposition of Records:* Tapes received by the Department from other agencies will be returned to the source agencies within 48 hours of each match. Tapes produced by the Department will be maintained in a secured area in the custody of the Department until erased after a 60-day period. Reports produced as a result of the match will be disposed of in accordance with HUD Handbook 2225.6, Records Disposition Management.

[FR Doc. 84-9000 Filed 4-9-84; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-84-369]

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Amendments to existing Privacy Act systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended by the Debt Collection Act of 1982, the Department is giving notice that it intends to amend four Privacy Act systems of records.

EFFECTIVE DATE: Amendments pertaining to disclosure of information to consumer reporting agencies are effective upon publication of this notice. Amendments concerning administrative and salary offset shall become effective without notice 30 calendar days from the publication date of this notice (May 10, 1984) unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, (202) 755-6050. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Four systems of records are being amended to provide for compatible disclosures to other Federal agencies for the purpose of collecting debts owed the Federal government through administrative or salary offset. These system notices are also being amended to provide for disclosures to consumer reporting agencies to facilitate the collection of debts pursuant to the provisions of 5 U.S.C. 552a(b)(12) and the Debt Collection Act of 1982 (31 U.S.C. 3711(f)). The systems are: (1) HUD/DEPT-25, Legal Actions Files, published at 46 FR 54886; (2) HUD/DEPT-28, Property Improvement and Manufactured (Mobile) Home Loans-Delinquent/Default, published at 46 FR 54887 and previously amended at 46 FR 56936; (3) HUD/DEPT-32, Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program, published at 46 FR 54888 and amended at 48 FR 10757; and (4) HUD/CPD-1, Rehabilitation Loans-Delinquent/Default, published at 46 FR 54905.

The words "to other Federal agencies for the purpose of collecting debts owed the Federal government by administrative or salary offset" are added to the routine use section of each system description. Further, a new section entitled "Disclosures to Consumer Reporting Agencies" is added to each system description. The notices are published below in their entirety, as amended. The prefatory statement containing General Routine Uses applicable to most of the Department's systems of records was published at 46 FR 34322 (August 6, 1982). Appendix A, which lists the addresses of HUD's Field Offices, was published at 46 FR 34331 (August 6, 1982).

(5 U.S.C. 552a, 88 Stat. 1896; Section 7(d) Department of HUD Act (42 U.S.C. 3535(d))

Issued at Washington, D.C. March 29, 1984.

Judith L. Tardy,

Assistant Secretary.

HUD/DEPT-25

SYSTEM NAME:

Legal Actions Files.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Litigants; potential and past claimants against the government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Threatened, pending and past litigation involving HUD as a party; summons; writs; indictments; pleadings; decisions; legal memoranda; litigation reports; deposition; deficiencies on court judgments; notices of levy; settlement negotiations; legal rulings; claims against the government; employee claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C 3533; 42 U.S.C. 3535.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to Justice Department—information for purposes of litigation, and representation of HUD before the courts and performance of all legal work incident thereto; to HEW—for investigation and litigation; to IRS—for investigation, litigation and collection of levies; to Local Housing Authorities—for investigation and litigation; to local governments—for investigation and litigation; to parties to litigation—to provide status and facts in litigations; to private individuals and corporations—to assist co-defendants or to provide documents and information as required by the Federal Rules or Civil Procedure; various uses under the Freedom of Information Act; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets.

RETRIEVABILITY:

Name, case names; case numbers assigned by courts.

SAFEGUARDS:

Records maintained in locked and lockable metal file cabinets with access limited to authorized personnel.

RETENTION AND DISPOSAL:

Files are partly active and partly historical; disposal in accordance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Administrative Services Staff, Office of General Counsel, GA, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individuals concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by containing: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; other individuals; current or previous employers; financial institutions; firms and corporations; Federal government agencies; non-Federal government agencies; and Federal, state, and local courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), all investigatory material in the record which meets the criteria of these subsections is exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the agency regulations in order for the Department's legal staff to perform its functions properly.

HUD/DEPT-28

SYSTEM NAME:

Property Improvement and Manufactured (Mobile) Home Loans—Default.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, credit applications, Social Security Number where available, case histories of borrowers; records of payment; financing statements; notes; mortgages and other evidences of indebtedness; delinquent and defaulted loan records and account cards; collection and field reports; records of claims and chargeoffs; creditor requests for collection assistance; justifications for closing collection action; related correspondence and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, Sec. 2, National Housing Act, 12 U.S.C. 1703; Federal Claims Collection Act of 1966 (Sec. 1, Pub. L. 89-506).

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Use paragraphs in prefatory statement. Other routine uses: Department of Justice—for prosecution of fraud revealed in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims; FBI—investigation of possible fraud revealed in the course of claims collection efforts; General Accounting Office—for audit purposes; private employers and Federal agencies—to facilitate collection of claims against employees; Office of Personnel Management—for offsetting retirement payments; consumer reporting and commercial credit agencies—to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4; to financial institutions that originated or serviced loans—to give notice of disposition of claims; to title insurance companies—for payment of liens; to local recording offices—for filing assignments of legal documents, satisfactions, etc.; to bankruptcy courts—for filing of proofs of claim; to HUD Contractor—for debt servicing; to state motor vehicle agencies and Internal Revenue Service—to obtain current addresses of debtors; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Claim number, name or other identification number.

SAFEGUARDS:

Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel.

RETENTION AND DISPOSAL:

Files are partly active and partly historical and are disposed of in accordance with HUD Handbook 2225.6, Records Disposition Management: HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Title I Insured Loans, HSI, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed, in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of

Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual; current and previous employers; credit bureaus; financial institutions; business firms; federal and non-federal agencies; law enforcement agencies; title companies and abstractors; bankruptcy courts.

HUD/DEPT-32

SYSTEM NAME:

Delinquent/Default/Assigned/ Temporary Mortgage Assistance Payments (TMAP) Program.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A. Office of HUD TMAP contractor will maintain some records on TMAP cases.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors with HUD/FHA insured single-family mortgages that are delinquent or in default; mortgagors seeking assistance to prevent foreclosures; and mortgagors whose mortgages are held by HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notices of delinquent mortgages; requests for forebearance or assignment; forebearance or assignment reviews include data on mortgage amount and payments made, employment and income, debts and expenses, reasons for delinquency, recommendations and actions on requests; credit reports; forebearance agreements; deeds of trust; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

See 114(a), Housing Act of 1959, (Pub. L. 86-372), 12 U.S.C. 1702 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to FHA—for insurance investigations; to IRS and GAO—for investigations; to state banking agencies—to aid in processing mortgagor complaints; to state housing and redevelopment agencies—for follow-up servicing; to mortgagees—to check on the status of cases and referrals of complaints; to counseling agencies—for counseling; to Legal Aid—to assist mortgagors; to HUD TMAP contractor—for processing TMAP; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

In file folders and on magnetic tapes, drums, and discs.

RETRIEVABILITY:

Name; case file number, property address.

SAFEGUARDS:

Records maintained in desks and lockable file cabinets; access to automated systems is by passwords and code identification cards; access limited to authorized personnel.

RETENTION AND DISPOSAL:

Obsolete records destroyed or shipped to Federal Records Center in compliance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Single Family Servicing Division, HSSI, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual; other individuals; current or previous employers; credit bureaus; financial institutions; other corporations or firms; Federal Government agencies; non-federal government (including foreign, state and local) agencies; law enforcement agencies.

HUD/CDP-1

SYSTEM NAME:

Rehabilitation Loans-delinquent/ Default.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Rehabilitation loan debtors who are delinquent or in default on their loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; credit applications; Social Security Number where available, loan and grant documents, including promissory note, mortgage, deed of trust, title evidence; HUD Section 312 forms and documents; statement of account; sales contract; assumption agreements; compromise agreements; subordination agreements; repayment agreements; collection history, including correspondence with borrower, servicer, and LPA; credit reports; financing statements; records of foreclosures; charge-offs; judgments on the note and deficiency judgments; creditor requests for collection assistance; insurance documents; bankruptcy records and documents; property appraisals; rehabilitation contracts; correspondence with the LPA's and related correspondence and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. Sec. 1452b, Housing Act of 1964.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine use paragraphs in prefatory statement. Other routine uses: Department of Justice—for prosecution of fraud revealed in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims; FBI—for

investigation of possible fraud revealed in the course of claims collection efforts; General Accounting Office—for audit purposes; private employers and Federal agencies—to facilitate collection of claims against employees; Office of Personnel Management—for offsetting retirement payments; consumer reporting and commercial credit agencies—to facilitate claims collection conistent with Federal Claims Collection Standards, 4 CFR Section 102.4; to financial institutions that serviced loans—to give notice of disposition of claims; to title insurance companies—for payment of liens; to local recording offices—for filing assignments of legal documents, satisfaction, etc.; to bankruptcy courts—for filing of proofs of claims; to local agencies that service HUD Section 312 (Rehabilitation) loans—to aid in the collection of delinquent loans, to counseling agencies—to provide counseling and assistance in the collection of delinquent Section 312 loans in accordance with HUD/DEPT–22; to state motor vehicle agencies and Internal Revenue Service—to obtain addresses of debtors; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Case file (Claim) number, name or other identification number.

SAFEGUARDS:

Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are primarily active with some historical information; disposal is in accordance with HUD Handbook 2225.6, Appendix 66.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Rehabilitation Management Division, CRM, Office of Urban Rehabilitation, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned, appear in CFR Part 16. If additional information or assistance is needed, it may be obtained by containing: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; current and previous employers; credit bureaus; financial institutions; business firms; federal and non-federal agencies; law enforcement agencies; title companies and abstractors; bankruptcy courts.

[FR Doc. 84-9507 Filed 4-9-84; 8:45 am]
BILLING CODE 4210-01-M

Office of Administration

[Docket No. N–84–1363]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755–6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposal forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Rental Rehabilitation Program.

Office: Community Planning and Development.

Form No. SF–424 and Narrative.

Frequency of Submission: Annually.

Affected Public: State or Local Governments.

Estimated Burden Hours: 48,930.

Status: New.

Contact: Nancy Blauvelt, HUD, (202) 755–5970; Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 21, 1984.

Donald C. Demitros,

Acting Director, Office of Information Policies and Systems.

[FR Doc. 84-8806 Filed 4-9-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1364]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (MB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20504.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. CHapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Insurance of Indexed Mortgages.

Office: Housing.

Form No. None.

Frequency of Submission: On Occasion.

Affected Public: Business or Other For-Profit and Small Businesses or Organizations.

Estimated Burden Hours: 1,001,400.

Status: Revision.

Contact: Joseph Emmi, HUD, (202) 426-7212; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 30, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-8808 Filed 4-9-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1365]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should referr to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Statement and Voucher for Basic Annual Contribution—Leased Housing.

Office: Public and Indian Housing.

Form No. HUD-52981.

Frequency of Submission: Annually.

Affected Public: State or Local Governments and Non-Profit Institutions.

Estimated Burden Hours: 389.

Status: Extension.

Contact: Robert Fisher, HUD, (202) 426-1872; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 25, 1984.

Donald C. Demitros,

Acting Director, Office of Information Policies and Systems.

[FR Doc. 84-8811 Filed 4-9-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1366]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Requirements Associated with the Office of Interstate Land Sales Registration.
Office: Housing.
Form No.: None.
Frequency of Submission: On Occasion and Annualy.
Affected Public: Individuals or Households and Businesses or Other For-Profit.
Estimated Burden Hours: 48,502.
Status: Revision.
Contact: John L. Brady, HUD, (202) 755–6314; Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 20, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-9510 Filed 4-9-84; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N–84–1367]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Certificate of Eligibility for a Historic Preservation Loan
Office: Housing
Form Number: FH–1 (HP)
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Small Businesses or Organizations
Estimated Burden Hours: 50
Status: Extension
Contact: James L. Anderson, HUD, (202) 755–6880; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 23, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Electricity Data, Gas Data, and Water and Sewage Disposal Data
Office: Public and Indian Housing
Form Number: HUD–51466a, HUD–51466b, and HUD–51466c
Frequency of Submission: On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 48,000
Status: New
Contact: Charles Ashmore, HUD, (202) 755–6640; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 23, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-9609 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fort Hall Indian Reservation, Idaho; Ordinance Providing for the Introduction, Use and Distribution of Alcoholic Beverages

March 26, 1984.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Ordinance No. LWOR–84–S1 was duly adopted on January 6, 1984 by the Fort Hall Business Council. Ordinance No. LWOR–84–S1 relates to the application of the Federal Indian Liquor Laws within the areas of Indian country under the jurisdiction of the Shoshone-Bannock Tribes. The ordinance reads as follows:

Kenneth Smith,

Assistant Secretary—Indian Affairs.

Shoshone-Bannock Tribal Alcoholic Beverage Control Ordinance

Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Adopted by the Business Council of the Shoshone-Bannock Tribes on January 6, 1984

[Ordinance LWOR–84–S1]

Whereas, the Shoshone-Bannock Tribes are organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended; and

Whereas, under its Constitution and By Laws, adopted on March 31, 1936, the Fort Hall Business Council is designated as the governing body of the Shoshone-Bannock Tribes of the Fort Hall Reservation; and

Whereas, the Business Council is authorized to protect the health, security and general welfare of the Shoshone-Bannock Tribes and to regulate all commerce inside the Fort Hall Indian Reservation to levy assessments or license fees upon all persons doing the business within the Fort Hall Indian Reservation pursuant to the Tribal Constitution; and

Whereas, 18 U.S.C. 1161 recognizes the authority of the Business Council to regulate transactions involving liquor in Indian country; and

Whereas, the regulation and control of the sale and distribution of alcoholic beverages is necessary for the protection of tribal members and others who are residents of the reservation; now

Therefore, be it enacted by the Business Council of the Shoshone-Bannock Tribes, that the following Tribal Alcoholic Beverage Control Ordinance is hereby adopted.

Authority for the foregoing ordinance is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended under Article VI, Section 1 (a, h, i, k, l and s) of the Constitution and By Laws of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho.

Dated this 6th day of January, 1984.

James Osborne,

Chairman, Fort Hall Business Council.

Certification

I hereby certify, that the foregoing ordinance was passed while a quorum of the Business Council was present by a vote of 4 in favor, 1 opposed, 1 absent, and 1 not voting on the date this bears.

Cathy Weiser,

Acting Secretary, Fort Hall Business Council.

Approved: January 20, 1984.

Duane F. Thompson,

Superintendent, Fort Hall Agency, Fort Hall, ID 83203.

Shoshone-Bannock Tribes Alocholic Beverage Control Ordinance

Whereas, the Fort Hall Business Council is the governing body of the Shoshone-Bannock Tribes of Idaho by authority of the Constitution and Bylaws of the tribes approved on April 30, 1936 by the Secretary of the Interior; and

Whereas, the Business Council is charged with the responsibility of promoting and protecting the health, security, safety, moral values, and general welfare of members of the Shoshone-Bannock Tribes and others residing within the boundaries of the Fort Hall Indian Reservation; and

Whereas, the Business Council is authorized to regulate commerce inside the reservation and to levy assessments or license fees upon persons doing business within the reservation pursuant to the tribe's Constitution; and

Whereas, Section 1161 of Title 18 of the United States Code also clearly recognizes the authority of the tribal government to regulate transactions involving alcoholic beverages within the reservation; and

Whereas, the regulation of all transactions involving the distribution, sale, use and possession of alcoholic beverages is necessary for the protection of the health, safety, and general welfare of all people residing at or passing through the reservation; and

Whereas, the public interest requires that traffic in alcoholic beverages be regulated and controlled by the Shoshone-Bannock Tribes through the governmental medium of the Tribal Alcoholic Beverage Control Commisson which shall be vested with authority to license the distribution, sale, use and possession of alcoholic beverages within the reservation;

Now, therefore, be it enacted by the business council of the Shoshone-Bannock tribes that the following ordinance is hereby adopted to fully control and regulate the sale, distribution, use and possession of alcoholic beverages within the Fort Hall Indian Reservation:

Section 1—General Provisions and Purposes

A. Title—The ordinance shall be known as the "Shoshone-Bannock Tribal Alcholic Beverage Control Ordinance."

B. Effective Date—This ordinance shall be effective upon publication in the **Federal Register** and certification by the Secretary of the Interior.

C. Declaration of Public Policy and Purpose—The introduction, distribution, sale, possession and consumption of alcholic beverages within "Indian Country" has historically been a matter of special concern to Indian tribes and the United States of America. The Shoshone-Bannock Tribes have deep-rooted feelings against liberal sale and consumption of alcoholic beverages within the Fort Hall Indian Reservation. The tribe's concern is due to the detrimental impact which alcohol misuse and abuse has caused to vital tribal interests. Despite these strong feelings the Business Council of the Shoshone-Bannock Tribes realizes that a total ban on alcoholic beverages within the reservation is ineffective and unrealistic in view of changing times and circumstances. Nevertheless, the Business Council recognizes a need for strict regulation and control over all transactions involving alcoholic beverages within the reservation because of many potential problems associated with unregulated and inadequately regulated distribution, sale, possession and consumption of alcoholic beverages. The Business Council believes that tribal control is necessary to protect the health, safety and welfare of tribal members and other persons residing on the reservation, and to address specific tribal concerns relating to alcohol use on the

reservation. The Business Council also believes that enactment of a tribal ordinance governing alcoholic beverages on the reservation will help provide revenue for the continued operation of tribal government and the delivery of vital tribal social services. Therefore, this ordinance is enacted for the protection of the health, safety, welfare, morals and peace of the people residing on the Fort Hall Indian Reservation, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is hereby declared to be the public policy that alcoholic beverages shall be regulated to the extent of prohibiting all traffic in alcoholic beverages, except as expressly authorized in this ordinance.

D. Jurisdictional Statement—This ordinance is enacted pursuant to the inherent governing power of the Shoshone-Bannock Tribes and under authority recognized by federal law, in accordance with provisions of the Constitution and By Laws of the Shoshone-Bannock Tribes. All persons, businesses, lands, transactions and activities either located on or occurring within the exterior boundaries of the Fort Hall Indian Reservation shall be subject to provisions of the ordinance.

E. Rescision of Prior Inconsistent Enactments—All prior enactments of the Business Council of the Shoshone-Bannock Tribes which are inconsistent with or contrary to provisions of this ordinance are hereby rescined.

Section 2—Definitions

A. Terms Defined—As used in this ordinance the following words shall have the following meanings unless the context clearly indicates otherwise.

(1) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances, including all dilutions and mixtures of such substances.

(2) "Alcoholic Beverage" or "Liquor" as used in this ordinance, includes

(a) "Alcohol" meaning the product of distillation of any fermented liquor, rectified either once or more, whatever may be the origin thereof, or synthetic ethyl alcohol;

(b) "Spirits" meaning any beverage which contains alcohol obtained by distillation mixed with drinking water and other substances in solution, including, among other things, brandy, rum, whiskey and gin;

(c) "Wine" meaning any alcoholic beverage obtained by the alcoholic fermentation of the natural sugar content of fruits or other agricultural products containing sugar, and which contains not more than fourteen percent (14%) of alcohol by volume;

(d) "Beer" meaning any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt, hops, and/or other ingredients in drinking water, containing not more than four percent (4%) of alcohol by volume;

(e) Any liquid or solid, patented or not, containing alcohol, spirits, wine or beer and susceptible of being consumed by human beings, for beverage purposes.

(3) "Application" shall mean a formal written request for the issuance of a license supported by a verified statement of facts.

(4) "Commission" means the "Shoshone-Bannock Tribes Alcoholic Beverage Control Commission" as constituted in this ordinance.

(5) "Council" or "Business Council" means the Business Council of the Shoshone-Bannock Tribes.

(6) "Election Days" means the general, primary and special elections as defined in §§ 34–101, 102 and 103 of the Idaho Code and all Shoshone-Bannock Tribal elections.

(7) "Indian" means a person who is either enrolled in a federally recognized Indian tribe, or who possesses one-fourth (¼) or more degree of Indian blood in a federally recognized tribe(s) and is identified in the community as being Indian.

(8) "Person" includes partnership, association, enterprise, company or corporation, as well as a natural person.

(9) "Premises" shall mean the area from which the licensee or permittee is authorized to sell, dispense, or serve alcoholic beverages under provisions of the license or special permit.

(10) "Reservation" means the Fort Hall Indian Reservation.

(11) "Sale" or "Sell" include exchange, barter, and traffic; and also include the selling, supplying or distributing, by any means whatsoever of liquor or alcoholic beverage.

(12) "Substantial Evidence shall mean that a reasonable mind might accept as adequate such evidence to support a conclusion.

(13) "Tribal Court" means the Shoshone-Bannock Tribal Court.

(14) "Tribes" means the Shoshone-Bannock Tribes.

B. Other Words—All other words and phrases used in this ordinance, the definiton of which is not herein given, shall be given the ordinary and commonly understood and accepted meaning.

Section 3—Tribal Alcoholic Beverage Control Commission

A. Creation of Alcoholic Beverage Control Commission—There is hereby created and established a Shoshone-Bannock Tribal Alcoholic Beverage Control Commission. The Commission shall be composed of three members and shall perform the duties specified in this ordinance.

B. Appointment—Members of the Commission shall be appointed by the Business Council of the Shoshone-Bannock Tribes.

C. Term of Office—Members of the Commission shall initially hold office for periods of one, two and three years, respectively: After the original terms of office have expired, each member shall hold office for three years. The Council may reappoint any member to an additional term or terms of office.

D. Removal from Office—A Commissioner may be removed prior to the normal expiration of his of her term by the Business Council only for good cause shown after notice and hearing by the Council. The Council's decision to remove a member of the Commission shall be final.

E. Vacancy and Interim Appointment—If a member of the Commission shall die, resign, be incapacitated or permanently leave the reservations, or be removed from office, a vacancy on the Commission shall be automatically created and the unexpired term shall be filled by appointment of the Business Council.

F. Chairman—A Chairman of the Commission shall be elected by the Commission on an annual basis. The Chairman shall preside at all formal and informal meetings of the Commission. The Chairman shall exercise only such powers as are delegated to him by the Commission, and such powers as are expressly set forth in this ordinance.

G. Powers and Duties—In addition to all specific powers and duties conferred upon it by other sections of this ordinance, the Commission, and its duly authorized representative, shall have the following powers and duties:

(1) To administer this ordinance by exercising general control, management and supervision of all alcoholic beverage sales, places of sale and sales outlets.

(2) To establish administrative procedures as are necessary to govern the operation of the Tribal Alcoholic Beverage Control Commission.

(3) To make, promulgate and publish such rules and regulations as the Commission may deem necessary for carrying out the provisions of this

ordinance and for the orderly and efficient administration hereof.

(4) To permit, license, inspect and regulate the sale, transportation, delivery, storage, importation and manufacture of alcoholic beverages within the boundaries of the Fort Hall Indian Reservation.

(5) To prescribe specific conditions and qualifications, consistent with the general requirements set forth in this ordinance, necessary for obtaining licenses and permits, and the conditions of use of privileges under them; and to provide for the inspection of the records and the conduct of licensees and permittees.

(6) To regulate the issuance, suspension and revocation of licenses and permits to sell, manufacture, handle or traffic in alcoholic beverages in accordance with specific provisions of this ordinance.

(7) To prescribe the kind, quality and character of alcoholic beverages which may be sold under any and all licenses and permits, including the quantity which may be sold at any one time or within a specified period of time.

(8) To collect license fees, taxes, fines and penalties which may be assessed by authority of the Commission or the Shoshone-Bannock Tribes relating to alcoholic beverage sales.

(9) To make at any time an examination of the premises of any licensee or special permit holder to determine whether the provisions of this ordinance, and any rules and regulations promulgated hereunder, are being complied with. This right of inspection shall include all financial records relating to purchase or sale of alcoholic beverages.

(10) To enforce rules and regulations adopted in furtherance of the purposes of this ordinance and the performance of its administrative functions.

(11) To sue in an appropriate court to enforce the provisions of this ordinance with the consent of the Business Council of the Shoshone-Bannock Tribes. The Commission shall not, without the express written consent of the Business Council, waive the Commission's or the Tribe's immunity from suit.

(12) To exercise all other powers which are necessary and reasonable in order to accomplish the purposes of this ordinance.

H. Meetings—The Commission shall meet on the first Tuesday of January, April, July, and October of each year, and at such other times as the Chairman may prescribe.

I. Method of Decision Making—The Commission shall attempt whenever possible to administer this ordinance and execute its powers hereunder by a consensus approach. If a consensus cannot be achieved, the affirmative vote of at least two members of the Commission shall control the decision or action of the Commission. The Chairman shall be entitled to vote on any decision or action.

J. Compensation of Commission Members—Compensation for members of the Commission shall be set by resolution of the Business Council.

K. Prohibited Conduct of Commission Members—Members of the Commission may not accept any gratuity related to their authorizing alcoholic beverage sales, and may not have a personal business interest in such sales on the reservation.

L. Liability of Commission Members—Commission members, and employees or agents of the Commission, shall not be liable for damage sustained by any person because of any act done in the performance of their respective duties under this ordinance.

M. Reporting Requirement—The Commission shall submit an annual written report and accounting to the Business Council regarding sales of alcoholic beverages on the reservation and the activities of the Commission and its financial status. The annual report shall be submitted to the Business Council by April 1 of each year and shall address activities of concern in the preceding calendar year. The Business Council may require the Commission to report more frequently if it deems necessary.

Section 4—Regular Licenses for Retail Sales

A. License Requirement—All sales and dispensing of alcoholic beverages within the Fort Hall Indian Reservation must be made pursuant to express authorization of the Shoshone-Bannock Tribes given in the form of a regular license or special permit issued by the Commission.

B. Commission Empowered to Issue Licenses—The Tribal Alcoholic Beverage Control Commission is hereby empowered and authorized to issue regular licesnes to qualified applicants, as herein provided, whereby the licensee shall be authorized to sell and dispense alcoholic beverages on a retail basis for on-premises consumption only, in accordance with rules and regulations promulgated by the Commission and the provisions of this ordinance.

C. Nature of License—A regular license shall be considered to be a personal privilege extended by the tribal government, subject to denial, revocation, or suspension for abuse. It shall not constitute property; nor shall it be subject to attachment and execution; nor shall it be alienable or assignable. Every regular license shall be issued in the name of the applicant and no person holding such license shall allow any other person to use the same.

D. License Fees for Regular Retail Sales—(1) Each person or business licensed for regular retail sales under the provisions of this section shall pay an annual license fee of $50 to the Commission, plus the amount specified below for each type of beverage to be sold:

(a) For beer—$50 per annum.

(b) For wine—$150 per annum.

(c) For liquor—$450 per annum.

(2) The fees set forth in (a), (b) and (c) of subsection (1) above shall be exclusive of each other and must be paid separately.

(3) License fees may be prorated by the Commission at its discretion when applicants request a license to be effective only during a part of a calendar year. However, once a license is issued there shall be no refund of the whole or part of the license fee for any reason.

E. License Fees in Addition to Other Tribal License Fees—License fees provided for in this and other sections of this ordinance are exclusive of and in addition to other kinds of license fees chargeable by the Shoshone-Bannock Tribes.

F. Standards and Conditions for Issuance of Licenses—(1) The number of regular licenses issued for retail sale of alcoholic beverages on the reservation shall not exceed one (1) license for each fifteen-hundred (1,500) of population of the Reservation, as established in the last preceding census, or any subsequent special census conducted by the United States Bureau of the Census or the Land Use Policy Commission of the Shoshone-Bannock Tribes. For purposes of this section, a retail license issued for at least one type of alcoholic beverage listed in Section 4 D(1) above shall preclude issuance of other regular retail licenses which exceed the population restriction even though the new applicant intends to sell different types of alcoholic beverages.

(2) A regular license shall not be issued for any premises in any neighborhood which is predominantly residential or within one thousand (1,000.00) feet of any public school, Indian religious ceremonial area, church or other place of religious worship, measured in a straight line to the nearest entrance to the licensed premises; provided, that this limitation shall not apply to any duly licensed premises that at the time of licensing did not come within the restricted area but subsequent to licensing came therein.

(3) It shall be unlawful for any licensee under this section to sell, keep for sale, dispense, give away, or otherwise dispose of any alcoholic beverage other than for on-premises consumption.

(4) Regular licenses shall be issued only to applicants who dispense alcoholic beverages in connection with a restaurant business, where such restaurant is deemed by the Commission to be the primary business operation.

(5) In addition to the above-listed standards and conditions, the Commission may impose other reasonable requirements through written rules and regulations designed to safeguard the health, safety and welfare of reservation residents.

G. Bond Requirement—The Commission shall be empowered to require applicants to post a reasonable cash bond or other appropriate security in order to assure compliance with tribal laws, rules and regulations. Such bond or security shall not exceed the amount of $1,000.00. Such bonds or other security shall be required at the discretion of the Commission.

H. Expiration of License—Every regular license issued by the Commission shall expire on December 31st of the year in which issued, unless an earlier expiration date is established by the Commission.

Section 5—Special Permits for Beer Sales and Consumption

A. Scope of Special Permit—A special beer permit may be issued by the Commission in connection with special activities occurring on the reservation in order to authorize sale and consumption of beer within a special area for a short period while the activity is taking place.

B. Nature of Special Permit—A special permit shall be of the same character as a regular license and may be restricted, denied, revoked or suspended under the same procedures as supply to regular license.

C. Permit Fee—The fee for a special beer permit shall be set by the Commission at its discretion for each separate and distinct activity. The amount of the permit fee shall depend upon such factors as the anticipated gross sales, number of persons involved in the activity, duration of the activity, type of activity, and potential for encountering law and order disturbances.

D. Conditions for Issuance—A special beer permit shall be issued under the following conditions:

(1) A special beer permit shall not be issued for an activity which takes place in predominantly a residential area or within one-thousand (1,000') feet of any public school, Indian religious ceremonial area, church or other place of religious worship, measured in a straight line to the nearest entrance to the licensed premises, unless expressly authorized by the Business Council.

(2) Prior to issuance of a special beer permit applicants will be required to give reasonable assurance that consumption of beer sold or dispensed at the activity will not take place outside of the designated activity area specified in the special permit.

(3) An applicant for a special beer permit shall be required to submit some form of reasonable assurance to the Commission that beer sold or dispensed at the subject activity will not cause law enforcement problems for tribal authorities.

(4) The Commission, at its discretion, may refuse to issue a special beer permit, or may refuse to issue a renewal thereof, it not satisfied with the integrity and good faith of the applicant.

(5) In addition to the above listed conditions, the Commission may impose other reasonable requirements through written rules and regulations designed to safeguard the health, safety and welfare of reservation residents.

E. Bond Requirement—The Commission may require a reasonable cash bond or other appropriate security to be posted prior to issuance of special beer permit in order to assure compliance with tribal laws, rules and regulations. Such bond or other security shall not exceed the amount of $1,000.00.

F. Permit Expiration—The date and time of expiration for each special beer permit shall be set by the Commission and shall be set forth on the face of each permit.

Section 6—Application Procedures for Licenses and Special Permits

A. Applicant Eligibility—No license or special permit shall be issued to:

(1) An individual who is not a citizen of the United States; or to a partnership unless all members thereof are citizens of the United States or to a corporation or association unless the same is organized under the laws of the Shoshone-Bannock Tribes or the laws of a state of the United States and unless the principal officers and the members of the governing board are citizens of the United States.

(2) Any person, or any one (1) of the members, officers, governing board of a business, corporation, or association, who has, within five (5) years prior to the date of making application, been convicted of any violation of the laws of the United States, or any Indian tribal government, or any state of the United States, or the resolutions or ordinances of any county or city of a state, relating to the importations, transportation, manufacture or sale of alcoholic beverages; or who was convicted, paid any fine, been placed on probation, received a deferred sentence, received a withheld judgment or completed any sentence of confinement for any felony within ten (10) years prior to the date of making application for any license or permit.

(3) A person who has been convicted of any crime or misdemeanor opposed to decency and morality.

(4) A person whose license or permit issued under this ordinance has been revoked, or who was associated in any manner whatsoever with the business affairs of a partnership, association or corporation whose license or permit has been revoked.

B. Filing of Application—Prior to the issuance of any license provided for herein, the applicant shall file with the Commission an application, in writing, signed by the applicant under oath, and attested to by a person authorized to administer oath, verifying the truth of the information and statements contained in the application. The full amount of the license fee, in the form of a money order or cashier check, must accompany the application at the time of filing.

C. Application Contents—In addition to setting forth the qualifications required by other provisions of this ordinance, the application must show:

(1) A detailed description of the premises for which a license or permit is sought and its location.

(2) A detailed statement of the assets and liabilities of the applicant.

(3) The names and addresses of all persons who will have any financial interest in any business to be carried on in or upon the licensed or permitted premises, whether such interest results from open loans, mortgages, conditional sales contracts, silent partnerships, trusts or any other basis than open trade accounts incurred in the ordinary course of business, and the amounts of such interests.

(4) If the premises to be licensed or permitted are not owned by the applicant, a certified copy of the lease by which the applicant will occupy the premises showing that the owner consents to the sale of alcoholic beverages on such premises.

(5) The name and addresses of the applicant, which shall include all members of a partnership or other business association, and the officers, board of directors or principal stockholders of a corporation.

(6) A copy of the articles of incorporation and by laws of any corporation, the articles of association and by law of any association, or the partnership agreement of any partnership.

(7) If during the period of any license or permit issued hereunder any change shall occur in any of the requirements of subparagraphs (c), (d), (e), or (f) of this section, the licensee or permittee shall forthwith make a verified report of such change to the Commission.

D. False Statements—If any false statement is made in any part of an application for a license or special permit, or in any report required to be filed, the applicant, or applicants, shall be deemed to have violated this ordinance and shall be subject to the penalties and sanctions set forth in this ordinance.

E. Investigation and Fact Finding—Upon receipt of an application for a license or special permit under this ordinance, accompanied by the necessary fee, the Commission, within sixty (60) days thereafter, shall cause to be made a thorough investigation. The Commission may require the applicant to provide relevant books and records relating to the business affairs of the applicant to be submitted to the Commission for examination as a condition precedent to issuing any license or permit. If the Commission shall determine that the contents of the application are true, that such applicant is qualified under provisions of this ordinance to receive a license or permit, that the subject premises are suitable for carrying on the business, and that all requirements of this ordinance and the rules and regulations promulgated by the Commission are met and complied with, including an optional public hearing process, a license or permit shall be issued; otherwise the application shall be denied and the fee, less the costs and expense of investigation, shall be returned to the applicant.

F. Public Hearing Procedures—The Commission may at its discretion conduct public hearings for purposes of ascertaining the views of the general public as to whether applications for a regular license or special permits shall be issued. Comments from the general public may be received either in the form of in person testimony or by written statement. The Commission shall be given notice of such public hearings at least 10 days in advance by publishing a notice in the Sho-Ban News or other local newspaper. The Commission shall give due consideration to the comments submitted at a public hearing, but shall be free to exercise its independent judgment as to whether a license or permit shall be issued.

G. Rendering of Decision—Within ninety (90) days after the date of filing of an application the Commission shall render a decision as to whether a license or permit shall be issued. The decision shall be set forth in writing and shall contain the factual findings upon which it is based. A copy of the Commission's decision shall be immediately sent by certified mail to the applicant.

H. Appeal Procedure—

(1) An applicant may appeal a decision of the Commission by filing a Notice of Appeal with the Commission within ten (10) days after receipt of notice of the Commission's decision. Upon receiving a Notice of Appeal the Commission shall tranfer a complete record of its administrative proceedings relating to the application to the Chairman of the Fort Hall Business Council. Within twenty (20) days after receiving the record from the Commission the Business Council shall fully consider the record and grant the applicant an opportunity to present oral and written arguments in support of his or her position. However, the Business Council shall consider only factual information contained in the record developed in the proceedings before the Commission. In reviewing the decision of the Commission the Business Council shall, after reviewing all the evidence presented before the Commission, uphold the Commission's decision if it finds tht the decision was supported by substantial evidence. If substantial evidence does not support the decision of the Commission, then the Business Council shall overrule the Commission and remand the matter to the Commission for appropriate action.

(2) In the event that either the applicant or the Commission is dissatisfied with the appeal decision of the Business Council, then the matter may be further appealed within twenty (20) days after the Business Council's decision to the Appellate Division of the Shoshone-Bannock Tribal Court. However, the jurisdiction of the tribal court shall be limited to questions of jurisdiction, interpretation of the ordinance provisions, fair procedure and substantial evidence as contrasted to a *de novo* considertion of all the facts and the substitution of its judgment for that of the Commission. In all other respects the Rules of Appellate Procedure of the tribal court shall govern.

Section 7—Revocation and Suspension of Licenses and Permits

A. Complaints and Investigations—The Commission may upon its own motion, and shall upon a written verified complaint of any other person, investigate the action and operation of any licensee or permittee hereunder to determine whether there is compliance with the provisions of this Ordinance.

B. Grounds for Revocation and Suspension—If the Commission shall have reasonable cause to believe that any licensee or permittee has violated any of the provisions of this ordinance, or any of the rules or regulations of the Commission promulgated hereunder, it may, at its discretion, and in addition to other penalties and sanctions herein prescribed, revoke the license or permit of any such licensee or permittee or it may suspend the same for a period not to exceed six (6) months.

C. Notice and Hearing Requirement—Prior to issuing any order of revocation or suspension of a license or permit the Commission shall give reasonable notice to the licensee or permittee that such action is being considered by the Commission and it shall afford such licensee or permittee an opportunity for a fair hearing before the Commission as to whether a revocation or suspension is justified under the circumstances.

D. Rendering of Decision—The Commission shall render a decision based upon a "preponderance of the evidence" as the standard of proof. Only that evidence which is adduced at the fair hearing or which is incorporated in the official administrative record, shall be considered in rendering a decision. If the Commission decides to revoke or suspend any license or permit previously granted, it shall give such licensee or permittee, as the case may be, fifteen (15) days notice of its intended action in writing by certified mail addressed to the licensee or permittee at the address listed in the application on file with the Commission, stating generally the basis for its intended action.

E. Tribal Court Review—(1) Within fifteen (15) days of receiving a notice of revocation or suspension a licensee or permittee may institute a proceeding for injunctive relief in the Shoshone-Bannock Tribal Court to have the intended action of the Commission reviewed.

(2) If the tribal court in such proceedings determines that the licensee or permittee has violated the provisions of this ordance, said proceedings shall be dismissed.

(3) Pending a determination of said cause on the merits the tribal court may, based upon a showing of undue hardship to the licensee or permittee and upon posting a proper bond, stay the effective date of the intended action

of the Commission for such time as the tribal court may deem proper. If no stay is issued, or has expired, the Commission shall issue its order of revocation or suspension.

(4) If the tribal court shall determine that cause did not exist for the intended action of the Commission it shall issue a decreee accordingly and the Commission shall comply therewith.

(5) Under this section the tribal court's review shall be limited to consideration of jurisdiction, ordinance interpretation, fair procedure and evidence and the court shall not conduct a trial *de novo*. The court shall instead serve the function of determining whether the Commission abused the discretion delegated to it. In this regard the standard of review shall be whether the decision of the Commission is supported by substantial evidence.

(6) In all judicial proceedings under this section the Rules of Civil Procedure and General Rules of Court shall apply unless otherwise specified in this ordinance.

F. Restrictions After Revocation—The Commission shall notify all licensees and permittees of revocations and suspensions. Whenever a license or permit shall have been revoked or suspended the holder thereof shall forthwith deliver the same to the Commission. No license or permit shal be issued to a person whose license or permit has been revoked within a period of six (6) months from the date of revocation of his former license or permit.

G. Bond Option—In response to a violation of this ordance, the Commission or tribal court may as a condition precedent to a continuance of his license or permit, in any case where the licensee or permittee has not theretofore given bond, exact from him a bond, written by a surety company authorized to do business in Idaho, in the sum of $1,000.00, conditioned on the observance of the provisions of this ordinance and any regulations of the Commission promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the Shoshone-Bannock Tribes, and any recovery thereon shall be distributed in accordance with Section 15 hereof.

H. Automatic Revocation—Whenever a licensee or permittee has been found guilty of any crime in any jurisdiction in which the illegal handling of alcoholic beverage was involved, such conviction shall automatically operate to revoke the license or permit of such person and any and all privileges thereunder.

Section 8—Tribal Court Jurisdiction and Enforcement Procedure

Proceedings to enforce provisions of this ordinance, whether they be criminal or civil, shall be initiated by the filing of appropriate complaint in the Shoshone-Bannock Tribal Court. The interest of the Shoshone-Bannock Tribes and Tribal Alcoholic Beverage Control Commission shall be represented by the Tribal Prosecutor. Rules of the Tribal Court relating to criminal and civil proceedings shall govern the manner in which the judicial proceedings are conducted. However, judicial review of decisions of the Commission concerning issuance, revocation and suspension of licenses and permits shall be conducted strictly in accordance with the provisions of Sections 6 and 7 hereof.

Section 9—Criminal Penalties

A. Application Only to Indians—Indians, be they members or non-members of the Shoshone-Bannock Tribes, who commit a violation of any provision of this ordinance shall be subject to criminal prosecution and penalties set forth hereunder. However, nothing in this ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians.

B. Maximum Criminal Penalty—Any Indian adjudged to be in violation of any provision of this ordinance shall be subject to a criminal penalty not to exceed six-months in jail, or a five-hundred dollar fine, or both, for each separate violation.

Section 10—Civil Fines

Any person, whether Indian or non-Indian, adjudged to be in violation of this ordinance shall be subject to a civil fine of not more than five-hundred dollars ($500.00) for each such violation. Imposition of all such civil fines shall be under the jurisdiction of the Shoshone-Bannock Tribal Court. The tribal court may impose a civil fine only upon a petition filed by the Commission, represented by the tribal prosecutor, setting forth specific allegations amounting to a violation of the ordinance. Notice and hearing on such petition shall be provided in accordance with the Rules of Civil Procedure generally applicable in tribal court. The tribal court shall exercise discretion as to the appropriate fine amount, taking into account its seriousness and the threat it may pose to the general health and welfare of residents of the reservation. A decision of the tribal court may be appealed in accordance with Rules of Appellate Procedure applicable in tribal court.

Section 11—Abatement of Nuisance

A. Declaration of Nuisance—Any room, house, building, boat, vessel, vehicle, structure, or other place where an alcoholic beverage is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of alcoholic beverages, and all property kept in and used in maintaining such place, are hereby declared to be a common nuisance.

B. Institution of Action—The Commission, represented by the tribal prosecutor shall institute and maintain an action in the tribal court in the name of the tribes to abate and perpetually enjoin any nuisance declared under this section. The plaintiff shall not be required to give bond in the action, but restraining orders, temporary injunctions, and permanent injunctions may be granted the same as in other injunction proceedings, and upon final judgment against the defendant, the court may also order the room, house, building, boat, vessel, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient surety to be approved by the court in the sum of not less than One-Thousand Dollars ($1,000.00), payable to the tribes and conditioned that alcoholic beverage will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of therein in violation of the provisions of this ordinance or of any other applicable tribal law, and that he will pay all fines, costs, and damages assessed against him for any violation of this ordinance. If any conditions of the bond be violated, the whole amount may be recovered as a penalty for the use of the tribes. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance.

C. Abatement—In all cases where any person has been adjudged to be in violation of this ordinance or other tribal laws relating to the manufacture, importation, possession, distribution or sale of an alcoholic beverage, an action may be brought in tribal court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action, a certified copy of the record of such judgment shall be admissible in evidence as prima facie evidence that the room, house, vessel, boat, building,

vehicle, structure, or place against which such action is brought is a public nuisance.

Section 12—Contraband-Seizure and Forfeiture

A. Contraband Defined—All alcoholic beverages within the reservation held, owned, or possessed by any person or business outlet operating in violation of this ordinance are hereby declared to be contraband and subject to forfeiture to the Shoshone-Bannock Tribes.

B. Application of Seizure—Upon proper application of official representatives of the Shoshone-Bannock Tribes and/or the Tribal Alcoholic Beverage Control Commission, a trial judge shall issue an order directing tribal law enforcement officers to seize contraband alcoholic beverages within the reservation and to deliver them to or hold them on behalf of the Commission.

C. Temporary Storage of Contraband—Any tribal law enforcement officer seizing contraband shall preserve the contraband by placing it in a secured area provided for storage of impounded property and shall promptly prepare and file an inventory list with the tribal court.

D. Tribal Court Hearing—Within two weeks following the seizure of the contraband a hearing shall be held in tribal court, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities. The interest of the tribes shall be represented at such hearing by the tribal prosecutor on behalf of the Commission.

E. Notice of Hearing—Adequate notice of the hearing shall be given to the person from whom the property was seized if known. If the person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at some other public place. The notice shall describe the property seized, and the time, place, and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized.

F. Forfeiture—If upon hearing the evidence warrants, or if no person appears as claimant, the tribal court shall thereupon enter judgment of forfeiture and the person adjudged to be in violation of this ordinance shall forfeit all right, title and interest in the items seized. The forfeited items shall be sold for the benefit of the Shoshone-Bannock Tribes and proceeds distributed in accordance with Section 15; provided, that the forfeited items shall not be sold to any person not entitled to possess them under applicable law.

Section 13—Exclusion From Reservation

In addition to other sanctions contained in this ordinance, tribal law enforcement officers shall be authorized to exclude violators of this ordinance from the Fort Hall Indian Reservation under procedures set forth in Chapter XV of the Law and Order Code of the Shoshone-Bannock Tribes.

Section 14—Prohibitions and Limitations Concerning Sale and Distribution of Alcoholic Beverages

A. Manufacture, Sale, Possession, Consumption and Transport—It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, possess, consume, or transport intoxicating liquor or alcoholic beverage within the exterior boundaries of the Fort Hall Indian Reservation except on the terms, conditions, limitations, and restrictions specified in this ordinance.

B. Unauthorized Purchase—It shall be a violation of this ordinance for any person to buy any alcoholic beverage from any person or business within the boundaries of the Fort Hall Indian Reservation other than at a business, outlet or location that has been properly authorized by the Commission.

C. Illegal Dispensing by Licensees and Permittees—It shall be unlawful for any licensee or permittee to sell, give away, dispense, vend, or deliver any alcoholic beverage in any manner or by any means, except upon licensed premises or within a permit area.

D. Nineteen Year Age Limitation—Except in the case of an alcoholic beverage given or permitted to be given to a person under the age of nineteen (19) years by his or her parent or guardian for medicinal purposes, or administered to him or her by his or her physician or dentist for medicinal purposes, no person under the age of nineteen (19) years shall consume, acquire, or have in his or her possession any alcoholic beverages, except when such beverage is being used in connection with religious services. No person shall give or otherwise supply an alcoholic beverage to any person under the age of nineteen (19) years nor shall he or she permit any person under the age of nineteen (19) years to consume an alcoholic beverage on his or her premises or on any premises under his or her control, except as allowed in this section. Any person violating this section shall be in violation of this ordinance.

E. Serving Persons Under Age—No licensee or permittee or his or its employed agents, servants or bartenders shall sell, deliver or give away, or cause or permit to be sold, delivered, or given away, any alcoholic beverage to any person under the age of nineteen (19).

F. Identification—Any one of the following which shows the person's current age and bears his signature and photograph shall be suitable for identification purposes, if valid:

(1) Liquor Control Authority Card of any State;

(2) Driver's license of any State or "Identification Card" issued by any State Department of Motor Vehicles;

(3) United States active duty military identification;

(4) Passport; and

(5) Tribal identification or enrollment card.

G. Misrepresentation of Age—Any person under the age of nineteen (19) years, or other person, who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from a licensee or permittee shall be in violation of this ordinance.

H. Transfer of Identification—It shall be a violation of this ordinance for any person to transfer in any manner an identification of age to a person under the age of nineteen (19) years for the purpose of permitting such minor to obtain an alcoholic beverage.

I. Refusal to Present Identification—It shall be a violation of this Ordinance for any person to refuse to present identification indicating age, when requested by the tribal law enforcement officer when: (a) he or she shall possess, purchase, attempt to purchase or consume an alcoholic beverage; or (b) he or she is on a premises licensed to sell alcoholic beverages for consumption on the premises.

J. Authorized Areas for Under Age Persons—It shall not be unlawful for any person under the age of nineteen (19) years to enter or be:

(1) Upon the premises of any restaurant, as herein defined, or in any railroad observation or club car or any airplane of a commercial airline, notwithstanding that such premises may also be licensed for the sale of alcoholic beverages for consumption on the premises.

(2) In any building, a part or portions of which is used as a place of selling and consuming alcoholic beverages, provided such place is separate or partitioned from the remainder of said building and access to such place through a doorway or doorways or other means of ingress can be controlled to prevent persons under the age specified from entering.

(3) In any sports activity area or fairgrounds, notwithstanding that such premises or any portion thereof may be licensed or permitted for the sale and consumption of alcoholic beverages on the premises.

K. Illegal Employment of Under Age Persons—It shall be a violation of this ordinance for any licensee or permittee or their agent(s) to employ a person under the age of nineteen (19) years to sell, dispense, or dispose alcoholic beverages.

L. Entering, Remaining and Loitering on Licensed Premises by Under Age Persons—No person under the age of nineteen (19) years shall enter, remain in or loiter in or about any place licensed for sale of alcoholic beverages for consumption on the premises; nor shall any licensee of such place, or person in charge thereof, permit or allow any person under the specified age to remain in or loiter in or about such place. Provided, however, it is lawful for persons who are musicians and singers, eighteen (18) years of age or older, to enter and to remain in any place while performing as employed musicians and singers. Provided further, that the foregoing shall not permit the sale of distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beveages.

M. Intoxication and Drunkeness—Any person who shall be intoxicated or drunk at any place, either public or private, within the reservation, shall be in violation of this ordinance.

N. Selling or Dispensing Alcohol to Intoxicated Persons—Any person who sells, gives, or dispenses any alcoholic beverages to another person who is intoxicated or apparently intoxicated shall be in violation of this ordinance.

O. Refusal to Sell—All vendors of alcoholic beverages within the reservation shall refuse to sell alcohol to persons under the following circumstances:

(1) When that person does not provide satisfactory proof that he is at least nineteen years of age;

(2) When that person is apparently intoxicated, or;

(3) When the Commission has determined that the particular person and/or his family is significantly and detrimentally affected by the abuse of alcohol.

P. Holidays and Hours of Sale— No alcoholic beverage shall be sold, offered for sale, or given away upon any licensed permises during the following hours:

(1) Sunday, Memorial Day, Thanksgiving and Christmas from 1 o'clock a.m. to 10 o'clock a.m. the following day;

(2) On any other day between 1 o'clock a.m. and 10 o'clock a.m.; and

(3) On any election day until after the time when the polls are closed. Provided, however, any patron present on the licensed premises after the sale of alcoholic beverages has stopped in accordance with the provisions above shall have a reasonable time, not to exceed thirty (30) minutes, to consume any beverage aleady served.

Q. Intoxication and Use of Alcohol Restricted Near Sundance and Other Religious Ceremonies—It shall be a violation of this ordinance for any person to be in a state of intoxication or to sell, attempt to sell, solicit, consume, possess, acquire or transfer liquor within one-thousand (1,000) feet of a Sundance or other religious ceremonies.

R. Use of Alcohol for Religious Purposes—A minister, priest, rabbi or other recognized clergy shall have the privilege of serving wine for sacramental purposes within the reservation.

S. False Representations in Obtaining License or Permit—Any person who procures, or attempts to procure, a license or special permit under provisions of this ordinance by false or fraudulent representation, or under a false or fictitious name, shall be in violation of this ordinance.

Section 15—Distribution of Revenue

All fees collected from assessments made by the Commission for licenses, permits and penalties shall be transferred to the Financial Management Division of the tribes and shall be placed in a special account designated as the Liquor Fund. The Business Council shall have sole authority to authorize expenditures from the Liquor Fund through its regular budgeting process. The Business Council shall first distribute Liquor Fund money by appropriating such money as is necessary to properly administer the functions of the Tribal Liquor Control Commission. Thereafter, distribution of Liquor Fund money shall be made only for purposes of alcohol and drug rehabilitation and counseling, law enforcement, judicial administration, and education in such amount as the Business Council deems proper.

Section 16—Application of Federal Laws

Federal law currently prohibits the introduction of alcoholic beverages into Indian country (18 U.S.C. 1154), and expressly delegated to the tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C. 1161). Persons involved in acts and transactions not authorized by this ordinance shall be subject to federal criminal prosecution, as well as civil legal action in the courts of the United States.

Section 17—Applicability of Other Tribal Laws

Nothing contained in this ordinance shall be interpreted to circumvent the application of other tribal laws, such as in the area of zoning and land use regulation.

Section 18—Powers Reserved to Business Council

All powers relating to regulations and control over alcoholic beverages which are not expressly delegated to the Commission by this ordinance shall be retained by the Business Council. In addition, the Business Council expressly reserves authority to set the fiscal year budget of the Commission. The Commission shall also be subject to other general tribal administrative laws, procedures and practices adopted by the Business Council unless expressly exempted.

Section 19—Sovereign Immunity

A. Immunity Preserved—Nothing in this ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Shoshone-Bannock Tribes, except for the limited tribal court review provisions of Sections 6 and 7.

B. Method of Waiver—No Commissioner or employee of the Commission shall be authorized to waive immunity for the tribes. Waiver of sovereign immunity shall only be authorized by specific written resolution of the Business Council of the Shoshone-Bannock Tribes.

Section 20—Severability

Should any section, clause, sentence, or provision of this ordinance, be held invalid for any reason, such holding or decree shall not be construed as affecting the validity of any of the remaining portions hereof, it being declared that the Business Council of the Shoshone-Bannock Tribes would have adopted the remainder of this ordinance, notwithstanding the invalidity of any such section, clause, sentence, or provision.

Section 21—Amendments

Amendments to the ordinance may be made only by the Business Council of the Shoshone-Bannock Tribes.

[FR Doc. 84-9017 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-02-M

Shakopee Mdewakanton Sioux Community; Resolution and Ordinance Providing for On-Sale Transactions of Intoxicating Beverages

March 26, 1984.

This Notice is published in accordnace with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 01–11–19–83 was duly adopted on September 21, 1983 by the Shakopee Mdewakanton Sioux Community General Council. The accompanying ordinance provides for on-sale liquor transactions. A previously enacted ordinance, published on March 3, 1983, 48 FR 9072, and providing for off-sale liquor transactions, remains in effect. The instant ordinance relates to the application of the Federal Indian Liquor laws within the areas of Indian country under the jurisdiction of the Shakopee Mdewakanton Indian Community. The ordinance reads as follows:

Kenneth Smith,

Assistant Secretary—Indian Affairs.

Shakopee Mdewakanton Sioux Community Liquior Ordinance—On Sale

Section I—Definitions

A. "License" shall mean permission to operate an on-sale retail liquor outlet on the Shakopee Mdewakanton Sioux Reservation issued under the provisions of this ordinance.

B. "Vendor" shall mean a person holding a current valid license.

C. "Liquor Commissioner" shall mean a person appointed by the Shakopee Mdewakanton Sioux Community General Council to oversee liquor sales operations on the reservation, or land held in trust for reservation status.

Section II—Liquor Commissioner

A. The term of the Liquor Commissioner shall be two years from the date of his/her appointment.

B. The Liquor Commissioner must be a member of the Shakopee Mdewakanton Sioux Community 21 years of age or older.

C. The Liquor Commissioner shall report at least monthly to the General Council of liquor sales operations within the reservation, shall promptly upon receipt remit any excise taxes, application or license fees collected to the Treasurer, and shall perform all other duties as set forth in this ordinance.

Section III—Licenses

There is hereby authorized to be issued a maximum of five (5) annual licenses to operate as on-sale vendors under the terms and conditions of this ordinance.

1. Licenses shall be for the term of one year or less, running from the date of issuance to December 31 of the calendar year of issuance.

2. A fee for issuance of a licensed shall be $1000.00 payable upon receipt of the license.

3. Application procedure.

a. An applicant for a license must be a member of the Shakopee Mdewakanton Sioux Community 21 years of age or older.

b. The applicant shall complete an application form, as provided by the Liquior Commissioner, and shall submit it to him/her within 20 days after announcement that one or more licenses under this ordinance are available for issuance.

c. The applicant shall accompany his/her application with;

i. A non-refundable application fee of $10.00.

ii. Proof that the applicant's financial assests [sic] exceed his/her liabilities by an amount equal to or greater than $5000.00.

d. 20 days after announcement that one or more licenses are available the Liquor Commissioner shall declare the application period closed, shall promptly reject any incomplete application notifying the applicant at once, and shall proceed to evaluate the balance of the applications for the available licenses, according to the information contained therein and accompanying documents. He/she shall issue the available license(s) to the applicant(s) most qualified to operate as a vendor under the terms and conditions of this ordinance.

4. Upon receipt of a license hereunder, an applicant shall post a bond in an amount to be established by the liquor Commissioner annually, sufficient to ensure payment to the community of the projected annual excise tax.

Section IV—Excise Tax

A. There is hereby imposed an excise tax on the sale of each bottle or other container of liquor sold by a vendor in the amount of 5¢ a bottle, 5¢ a glass.

B. Each vendor must file, with the Liquor Commissioner, a complete report of sales during a month and remit the excise tax on such sales. Such report and remittance must be made no later than the 15th day of the month following that to which the report applies.

Section V—Operations under license.

A. The license issued hereunder shall authorize the vendor to operate an on-sale operation for the sale of liquor.

B. All vendors must conform their operations to those laws of the State of Minnesota relating to the sale or possession of intoxicating beverages or beer as indicated in Minnesota Statutes Annotated.

C. A vendor must keep complete and accurate records of inventory, sales, payrolls, taxes paid and withheld, and all other facets of business operations. The books and records maintained by each vendor operating under a license shall be open for inspection by the Liquor Commissioner at all times during normal business hours.

Section VI—Revocation or suspension of license.

A. The Liquor Commissioner may suspend a license issued under this ordinance for violation of any of the terms of this ordinance.

1. For failure to submit the report or remit the excise tax required by Section IV (B), or for refusal to permit inspection of books or records as required by Section V (C), such suspension shall cease upon compliance with the indicated section.

2. No suspension shall continue for more than ninety days, provided, however, that the Liquor Commissioner may make a recommendation at any time to the General Council that a license be revoked.

B. The General Council may revoke a license issued under this ordinance for violation of any of the terms of this ordinance.

1. Upon receiving a request, from the Liquor Commissioner or his/her assistant, to consider revocation of a license, the General Council shall schedule the matter for a hearing at a regular or special meeting of the General Council.

2. The General Council shall provide written notice at least 3 days in advance to the vendor that revocation of his/her licenses will be considered.

3. The General Council shall permit statements or testimony by any person wishing to give such at the revocation hearing.

4. The General Council may, by majority vote, revoke a license.

C. A [sic] on-sale liquor license will be immediately revoked if any sales are conducted a the Little Six Bingo Palace.

D. One prior license revocation shall not prevent a person, otherwise qualified, from applying for a subsequent license under Section III.

Two prior license revocations shall render a person ineligible from applying for subsequent licenses.

Accepted By:

Norman N. Crooks,

Chairman.

Darlene Matta,

Vice-Chairman.

Amy E. Stade

Secretary/Treasurer.

Resolution 01–11–19–83

Whereas, the Shakopee Mdewakanton Sioux General Council has the power under the Constitution of the Shakopee Mdewakanton Community to promulgate resolutions governing the conduct of business in the community, and

Whereas, the Shakopee Mdewakanton Sioux Community hereby desires the right for on-sale liquor to be conducted on the reservation, and

Whereas, Shakopee Mdewakanton Sioux Community wishes to further the economic enterprises and development by conducting on-sale liquor sales and businesses, and

Now therefore be it resolved, that the Shakopee Mdewakanton Sioux Community hereby wishes to submit an on-sale liquor ordinance to the appropriate agencies, and

Be it further resolved, that the Shakopee Mdewakanton Sioux Community authorizes the Chairman to sign any and all documents concerning on-sale liquor on the reservation.

Certification

This resolution was passed at a Special General Council meeting at which a quorum was present with the vote of 17 yes, 10 no, 2 abstentions held on September 21, 1983 at the Shakopee Mdewakanton Sioux Community Building.

Norman M. Crooks,

Chairman.

Darlene Matta,

Vice-Chairperson.

Amy E. Stade,

Secretary/Treasurer.

Bureau of Land Management

California: Realty Action—Redding Resource Area; Amendment to Realty Action of Public Land for Sale in Shasta County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to Notice of Realty Action, Sale of Public Lands.

SUMMARY: The Notice of Realty Action, published in the **Federal Register,** Vol. 48, No. 185, on September 22, 1983, at page 43225, regarding the sale of public lands in Shasta County, California, is hereby amended.

The parcels of public land offered for sale at the appraised fair market value were generally rejected by the public. As a result, few parcels were sold. Therefore, sale of unsold parcels has been temporaily suspended, pending review and evaluation of the appraised fair market values.

Unsold parcels will be reoffered competitively by sealed bid only, at a later date. Thereafter, parcels identified for sale will be available over the counter, by sealed bid only, until August 23, 1985. Lot 31, Section 10, Township 32 North, Range 5 West, M.D.B.&M., was studied, but inadvertently omitted from the legal description published for Sale Parcel Number 24, serialized as Case Number CA 14270. The subject Lot 31 contains 0.47 acres, and is contiguous to the north bundary of Lot 3, Section 15, Township 32 North, Range 5 West, M.D.B.&M. We propose to sell Lot 31 by direct sale to the successful purchaser of Parcel Number 24.

All other conditions stated in the original Notice of Realty Action remain in effect.

DATE: No later than May 25, 1984. Interested parties may submit comments.

ADDRESS: Comments and suggestions should be sent to: State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Robert J. Bainbridge, (916) 246–5325.

Robert J. Bainbridge,

Redding Area Manager.

[FR Doc. 84–9650 Filed 4–9–84; 8:45 am]

BILLING CODE 4310–40–M

New Mexico; Known Geothermal Resources Area

Pursuant to the authority vested in the Secretary by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual 220.2.1 G, and subsequent redelegations under Secretarial Order 3071 to the Director, Minerals Management Service, and Secretarial Order 3087 to the Director, Bureau of Land Management, the following described lands are hereby deleted from the following Known Geothermal Resources Areas, effective February 1, 1984.

(31) New Mexico

New Mexico Principal Meridian

Baca Location No. 1 KGRA

T. 21 N., R. 3 E.,
- Sec. 33, lots 1, 2, NE¼NE¼, and W½NW¼;
- Sec. 34, lots 1, 2, 3, 4, N½N½;
- Sec. 35, lots 1, 2, 3, 4, N½N½;
- Sec. 26, lots 5, 6, 7, 8, N½N½.

T. 21 N., R. 4 E.,
- Sec. 25, E½, E½W½, NW¼NW¼, and SW¼SW¼;
- Sec. 26, N½NE¼;
- Sec. 28, W½E½, E½W½, E½W½, and SW¼SW¼;
- Sec. 29, NW¼, and W½SW¼;
- Sec. 30;
- Sec. 31, lots 1, 5, 6, 7, 18, 19, 20, and 21;
- Sec. 32, lots 1, 3, 4, 13, and 14;
- Sec. 33, lots 1, 2, 3, 4, 13, 14, 15, and 16;
- Sec. 36, lots 1, 2, 3, 4, 13, 14, 15, and 16.

(Rio Arriba County—4,065.23 acres)

Kilbourne Hole KGRA

T. 27 S., R. 1 W.,
- Secs. 43 10 inclusive;
- Secs. 17 to 21 inclusive;
- Secs. 27 to 31 inclusive;
- Secs. 33, 34, and 35.
- Sec. 1;
- Secs. 3 to 9 inclusive;
- Secs. 11 and 12;
- Secs. 17 to 20 inclusive.

(Dona Ana County—21,890.21 acres)

There being no lands remaining, Kilbourne Hole KGRA is now revoked.

Radium Springs KGRA

T. 21 S., R. 1 W.,
- Sec. 5, SW¼NE¼, S½NW¼, SW¼, and NW¼SE¼;
- Sec. 8;
- Sec. 9, lots 2, 3, 4, 6, 7, 8, SE¼SW¼ and SW¼SE¼;
- Sec. 17, N½, N½S½, S½SW¼, and SW¼SE¼;
- Sec. 20, SE¼NE¼, and NW¼.

(Dona Ana County—1,959.50 acres)

Socorro Peak KGRA

T. 3 S., R. 1 W.,
- Secs. 34 and 35.

T. 4 S., R. 1 W.,
- Secs. 3, 10, and 11.

(Socorro County—3,193.68 acres)

The area described aggregates 31,108.62 acres.

Dated: March 6, 1984.
Charles W. Luecher,
State Director.
[FR Doc. 84-8897 Filed 4-9-84; 8:45 am]
BILLING CODE 4310-FB-M

[NM 24829]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, Mayfair Minerals, Inc., and Harrison W. Pace petitioned for reinstatement of oil and gas lease NM 24829 covering the following described lands located in Guadalupe County, New Mexico:

T. 4 N., R. 19 E., NMPM,
Sec. 9: E½, NW¼.
Containing 480.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, June 1, 1983.

Dated: March 30, 1984.
Alvin D. Pack,
Acting State Director.
[FR Doc. 84-8898 Filed 4-9-84; 8:45 am]
BILLING CODE 4310-FB-M

[CA 12436]

Realty Action; Exchange of Public Lands; Lassen and Modoc Counties, California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of California Realty Action, exchange of public lands in Lassen and Modoc Counties, California.

SUMMARY: This document corrects a proposed patent reservation in a Notice of Realty Action for an exchange (CA 12436), published on March 15, 1984 (49 FR 9781). In that notice, on 49 FR 9782, it was erroneouly stated that the patent would be subject to a right-of-way described as follows:

6. S4320, a right-of-way granted for road and highway purposes, to the Fish and Wildlife Service, U.S. Department of Interior, its successors or assigns, under R.S. 2477 (43 U.S.C. 932, repealed October 21, 1976).

The proposed patent will not be subject to the above right-of-way. Instead, the patent will contain an additional reservation to the United States. This reservation should be inserted in the notice published on March 15, 1984, on 49 FR 9781, in the third column, after the third paragraph of text describing the reservation of ditches and canals. The additional patent reservation will be as follows:

There will also be reserved to the United States an appropriation under 44 LD 513, serial number S–4320, for access road purposes, and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described and the right of the United States, its agents or employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

DATES: The publication date of this correction will commence the 45 day comment period on this correction. Within that period, interested parties may submit comments to the District Manager.

ADDRESSES: Comments should be sent to the Susanville District Manager, Bureau of Land Management, P.O. Box 1090, Susanville, California, 96130.

Dated: March 29, 1984.
C. Rex Cleary,
District Manager
[FR Doc. 84-8895 Filed 4-9-84; 8:45 am]
BILLING CODE 4310-84-M

Geological Survey

National Earthquake Prediction Evaluation Council; Reestablishment

This notice is published in accordance with the provisions of Section 7(a) of the Office of Management and Budget Circular A–63 (Revised). Pursuant to the authority contained in section 14(a) of the Federal Advisory Committee Act (Pub. L. 92–463), the Secretary has determined that reestablishment of the National Earthquake Prediction Evaluation Council is necessary and is in the public interest.

The purpose of the committee is to advise the Director of the U.S. Geological Survey (USGS) whether and when to issue prediction or other information pertinent to the potential for a future significant earthquake.

The General Services Administration has concurred in the reestablishment of this advisory committee.

Further information regarding this reestablishment may be obtained from John R. Filson, Chief, Office of Earthquakes, Volcanoes and Engineering, Reston, Virginia 22092, (703) 860–6471.

Dated: April 2, 1984.
Dallas L. Peck,
Director.
[FR Doc. 84-9483 Filed 4-9-84; 8:45 am]
BILLING CODE 4310-31-M

Bureau of Reclamation

[INT DES 84–19]

Combined Planning Report/Draft Supplemental Environmental Statement, Santa Margarita Project, California; Availability of Draft Supplemental Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft environmental statement for the proposed Santa Margarita Project, San Diego County, California.

This statement describes the environmental impacts resulting from the proposed construction of two dams and reservoirs on the Santa Margarita River in northern San Diego County, California. The project would supply supplemental irrigation and municipal and industrial water to the Fallbrook Public Utility District and supplemental municipal and industrial water to the Marine Corps Base at Camp Pendleton. In addition, the project would provide regulation of imported water, flood control, recreation, fishing, and wildlife mitigation. Development of the proposed project is contingent upon Administration and congressional consideration of the results of the planning study and environmental review process. Written comments may be submitted to the Regional Director (address below) on or before June 4, 1984.

In accordance with Bureau of Reclamation Planning Instruction 83–02, dated January 25, 1983, the statement is integrated with the planning report on the project. Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7622, Department of the Interior, Washington, D.C. 20240, Telephone: (202) 343–4991
Division of Management Support, General Service, Library Section, Code 950, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 234–3007
Regional Director, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 427, Boulder City, Nevada 89005, Telephone: (702) 293–8464
San Diego County Library Headquarters, 5555 Overland Avenue, San Diego, California 92123

San Diego Library, Ranchero Bernardo Branch, 16840 Bernardo Center Drive, San Diego, California 92128
San Diego County Library, Fallbrook Branch, 124 South Mission, Fallbrook, California 92028
San Diego County Library, Encinitas Branch, 540 Cornish Drive, Encinitas, California 92024
Oceanside Public Library, 614 Fourth Street, Oceanside, California 92054
Los Angeles County Library, 3200 West Temple Street, Los Angeles, California 90053
Escondido Public Library, Escondido, California 92025
Carlsbad Public Library, 1250 Elm Avenue, Carlsbad, California 92008.

Single copies of the draft statement may be obtained on request to the Commissioner of the Bureau of Reclamation or the Regional Director. Please refer to the statement number above.

Dated: April 5, 1984.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 84-9483 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-09-M

Santa Margarita Project, San Diego County, Calif.; Public Hearings on Draft Supplemental Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a supplemental draft statement for the Santa Margarita Project. This statement (INT DES 84–19 dated 4/5/84), filed with the Environmental Protection Agency, is available to the public as specified in the Notice of Availability.

The purpose of the proposed construction of two dams and reservoirs on the Santa Margarita River is to supply supplemental irrigation and municipal and industrial water to the Fallbrook Public Utility District and supplemental municipal and industrial water to the Marine Corps Base at Camp Pendleton. In addition, the project would provide regulation of imported water, flood control, recreation, fishing, and wildlife mitigation.

Public hearings to receive comments on the draft statement will be held in Oceanside, California, on May 17, 1984, at 1 p.m. and 7 p.m. in the City Council Chambers located at 321 North Nevada.

Oral statements at the hearings will be limited to 5 minutes or less. Speakers may not trade time to obtain a longer oral presentation; however, the presiding officer conducting the hearings may allow any speaker additional time for oral comment after all persons wishing to make comments have been heard.

Requests for scheduled presentations at the hearings will be accepted until 4 p.m., May 10, 1984. Speakers will be scheduled according to the time preference mentioned in their letters or telephone request, whenever possible. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order, but will be recalled at the end of the scheduled speakers. Nonscheduled speakers will be handled on a first-come, first-serve basis following the scheduled presentations.

Organizations or individuals desiring to present statements at the hearings should contact the Office of Environment, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 427, Boulder City, Nevada 89005, telephone (702) 293–8464, and announce their intention to participate. Written comments from those unable to attend the hearings, or from those wishing to supplement their oral presentations, will be accepted until May 21, 1984. Written comments should be sent to the address above, and should specify that they are to be included in the hearing record.

Dated: April 5, 1984.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 84-9482 Filed 4-9-84; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 30, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 25, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Tempe, *Bankhead Highway (Tempe MRA)*, Rural Rd. to Hayden Rd.
Tempe, *Borden Milk Co. Creamery and Ice Factory (Tempe MRA)*, 1300–1360 E. Eight St.
Tempe, *Elias-Rodriguez House (Tempe MRA)*, 927 E. 8th St.
Tempe, *Elliott House (Tempe MRA)*, 1010 Maple Ave.
Tempe, *Gonzales-Martinez House (Tempe MRA)*, 320 W. First St.
Tempe, *Goodwin Building (Tempe MRA)*, 512–518 S. Mill Ave.
Tempe, *Green, Mary and Moses, House (Tempe MRA)*, W of Carver St.
Tempe, *Harrington-Birchett House (Tempe MRA)*, 202 E. 7th St.
Tempe, *Hayden, C. T., House (La Casa Vieja) (Tempe MRA)*, 3 W. 1st St.
Tempe, *Hiatt House (Tempe MRA)*, 1104 Ash Ave.
Tempe, *Johnson, Joseph E., House (Tempe MRA)*, 720 Mill Ave.
Tempe, *Kloss, Rev. Daniel, House (Tempe MRA)*, 202 E. 6th St.
Tempe, *Laird, Hugh, House (Tempe MRA)*, 821 S. Farmer
Tempe, *Main Building, Tempe Normal School (Tempe MRA)*, ASU campus
Tempe, *Miller Block (Farmers and Merchants Bank) (Tempe MRA)*, 418–422 Mill Ave.
Tempe, *Miranda, Jesus, Homestead (Tempe MRA)*, 1992 E. University.
Tempe, *Moeru, W. A., House (Tempe MRA)*, 850 Ash Ave.
Tempe, *Morrow-Hudson House (Tempe MRA)*, 1203 E. Alameda Dr.
Tempe, *Mullen, C. P., House (Tempe MRA)*, 918 Mill Ave.
Tempe, *Ollerton House (Tempe MRA)*, 1004 S. Mill Ave.
Tempe, *Openshaw, Samuel, House (Tempe MRA)*, 104 W. 6th St.
Tempe, *President's House (Tempe MRA)*, ASU campus
Tempe, *Redden, Byron, House (Tempe MRA)*, 948 Ash Ave.
Tempe, *Redden, Lowell, House (Tempe MRA)*, 333 Carver St.
Tempe, *Rohrig School (Tempe MRA)*, 2328 E. University Dr.
Tempe, *Sampson House (Tempe MRA)*, 109 W. 6th St.
Tempe, *Scudder, B. H., Rental House (Tempe MRA)*, 919 S. Maple Ave.
Tempe, *Steward House (Tempe MRA)*, 612 Maple St.
Tempe, *Tempe Beach Stadium (Tempe MRA)*, Ash at First St.
Tempe, *Tempe Concrete Arch Highway Bridge (Tempe MRA)*, Mill Ave. and Salt River.
Tempe, *Tempe Cotton Exchange Cotton Gin Seed Storage Building (Tempe MRA)*, 215 W. Seventh St.
Tempe, *Tempe Depot (Tempe MRA)*, 3rd St. and Railroad Ave.
Tempe, *Walker, Harry, House (Tempe MRA)*, 118 E. 7th St.
Tempe, *White, E. M., Dairy Barn (Tempe MRA)*, 1810 E. Apache

CONNECTICUT

Fairfield County

Wilton, *Marvin Tavern*, 405 Danbury Rd.

FLORIDA

Monroe County

Key West, *U.S. Naval Station*, Roughly Front, Whitehead, Eaton, and Caroline Sts.

MAINE

Knox County

Camden, *Stephen Taber (schooner)*, Camden Harbor

MISSISSIPPI

Madison County

Pushshunubbee-Haley Site,

NEW YORK

Westchester County

Tarrytown, *Washington Irving High School*, 18 N. Broadway

NORTH CAROLINA

Chatham County

Goldston, *Paschal-Womble House*, 421 Main St.

OREGON

Clatsop County

Kappa Vicinity, *Hlilusqahih Site (35 CL T37)*, N of Knappa
Svensen vicinity, *Indian Point Site (35 CL T34)*, E of Svensen

Multnomah County

Portland, *Vista Avenue Viaduct*, SW Vista Ave.
Portland, *West, Nathaniel, Buildings*, 711–727 SE Grand Ave.

TENNESSEE

Maury County

McCains, *A mis, Jonathan, House*, Covey Hollow Rd.

TEXAS

Galveston County

Galveston, *Building at 1921–1921 ½ Avenue D (Central Business District MRA)*, 1921–1921 ½ Ave.
Galveston, *Building at 1925–1927 Market Street (Central Business District MRA)*, 1925–1927 Market St.
Galveston, *City Hall (Central Business District MRA)*, 823 25th St.
Galveston, *City National Bank (Central Business District MRA)*, 2219 Ave. D.
Galveston, *Eiband's (Central Business District MRA)*, 2001 Central Plaza
Galveston, *First Evangelical Lutheran Church (Central Business District M R A)*, *2401 Ave. G.*
Galveston, *House at 2017 Avenue I (Central Business District MRA)*, 2017 Ave. I.
Galveston, *House at 2019 Avenue I (Central Business District MRA)*, 2019 Ave. I.
Galveston, *House at 2021 Avenue I (Central Business District MRA)*, 2021 Ave. I.
Galveston, *House at 2023 Avenue I (Central Business District MRA)*, 2023 Ave. I.
Galveston, *House at 2528 Postoffice St. (Central Business District MRA)*, *2528 Postoffice St.*
Galveston, *I.O.O.F. Lodge (Central Business District MRA)*, 505 20th St.
Galveston, *Jean Lafitte Hotel (Central Business District MRA)*, 2105 Ave. F.
Galveston, *Marschner Building (Central Business District MRA)*, 1914–1916 Mechanic St.
Galveston, *Model Laundry (Central Business District MRA)*, 513–523 25th St.
Galveston, *Moser House (Central Business District MRA)*, 509 19th St.
Galveston, *Pix Building (Central Business District MRA)*, 2128 Postoffice St.
Galveston, *Robinson Building (Central Business District MRA)*, 2009–2011 Postoffice St.
Galveston, *Rosenberg Library (Central Business District MRA)*, 2310 Sealy St.
Galveston, *Scottish Rite Cathedral (Central Business District M R A)*, 2128 Church St.
Galveston, *Shaw, M.W., Building (Central Business District MRA)*, 2427 Ave. D.
Galveston, *Star Drug Store (Central Business District MRA)*, 510 23rd St.
Galveston, *Texas Building (Central Business District MRA)*, 2200 Central Plaza
Galveston, *Texas Heroes Monument (Central Business District MRA)*, 25th and Broadway
Galveston, *U.S. National Bank (Central Business District MRA)*, 2201 Ave. D.

UTAH

Salt Lake County

Salt Lake City, *Fairbanks, J. Leo, House*, 1228 Bryan Ave.

Tooele County

Grantsville, *Rich, John T., House*, 275 W. Clark St.
Vernon, *Sharp, John C., House*, off UT 36

WEST VIRGINIA

Harrison County

Clarksburg, *Trinity Memorial Methodist Episcopal Church*, 420 Ben St.

[FR Doc. 84–9456 Filed 4–9–84; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 82–28]

Coleman Preston McCown, D.D.S., Rockville, Maryland; Rescheduling of Hearing

On March 16, 1984, notice was given at 49 FR 9969 of the scheduling of a hearing in this matter.

The date and the location of the hearing have been changed. Notice is hereby given that these proceedings will now be held on Tuesday, April 17, 1984, commencing at 10:00 a.m., in Courtroom No. 2, Federal Trade Commission, 2120 L Street, NW., Lower Level, Washington, D.C.

Dated: April 4, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84–9569 Filed 4–9–84; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the Public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected,

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of

Management and Budget, Room 3208, NEOB, Washington, D.C. 209503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Departmental Management

Guidelines for Reviewing State Methods of Administration Used to Ensure Equal Opportunity in JTPA Programs
One time
State or local governments
50 responses; 1,000 hours

Office of Civil Rights has been delegated responsibility within DOL for assuring nondiscrimination among recipients of DOL funds. These review guidelines enable OCR to determine whether a State's Methods of Administration give reasonable guarantee of equal opportunity in its JTPA programs and activities.

Employment and Training Administration

State Employment Security (SESA) Financial Reporting
ETA-RC74
Quarterly; Annually
State or local governments
265 responses; 2650 hours

The USDOL, ETA, requires State Employment Security Agencies (SESAs) to submit financial information regarding the administration of grants and agreements. The information collected will enable ETA and SESAs to meet their accountability responsibilities, and provides necessary data to budget, allocate, and manage SESA resources.

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Class Exemption 77-8]
Other
Businesses and other for profit; small businesses or organizations
4,623 responses; 771 hours

The class exemption exempts from the prohibited transaction restrictions of ERISA the sale of individual life insurance of annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, or other employee benefit plans which are parties in interest.

[Prohibited Transaction Class Exemption 82-63]
On occasion
Businesses and other for-profit
5,868 responses; 1,467 hours

The class exemption allows the payment of compensation under certain conditions for the provision by an employee benefit plan fiduciary of securities lending services to the plan.

[Prohibited Transaction Class Exemption 80-83]
Recordkeeping
Businesses or other for-profit
1 hour

This class exemption exempts from the prohibited transaction provisions of ERISA certain transactions involving an employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

[Prohibited Transaction Class Exemption 79-1 and Recapture Exemption]
Other
Businesses and other for-profit; small businesses or organizations
555,585 responses; 111,115 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the effecting or executing of securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting in such transactions as agent for the plan.

ERISA Exemption Procedure
On occasion
Businesses or other for-profit; non-profit institutions; small businesses or organizations
1,074 respondents; 28,029 hours

The ERISA Exemption Procedure provides guidance to the affected public regarding the procedures to be followed and the information to be supplied to the Department when requesting an exemption from the ERISA prohibited transaction provisions.

[Prohibited Transaction Class Exemption 81-6]
On occasion
Businesses and other for-profit
11,736 responses; 978 hours

The class exemption allows banks and registered broker-dealers to borrow securities that are assets of employee benefit plans.

[Prohibited Transaction Class Exemption 81-8]
Other
Businesses and other for-profit
29,340 responses; 4,890 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the investment of plan assets which involve the purchase or other acquisition, holding sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term investments.

EXTENSION

Employment and Training Administration

Job Corps Data Sheet
1205-0025; ETA 652
On occasion
State or local governments; non-profit institutions
100,000 responses; 50,000 hours; 1 form

This form is used to obtain information for screening and enrollment purposes and to determine eligibility for the Job Corps program.

Employment Standards Administration

Black Lung Program Provider Information and Determination Physician
Forms
1215-0137; CM-1168/CM-1169
On occasion
Small businesses or organizations
1,440 responses; 225 hours; 2 forms

This report requests identification information from providers of medical services to claimants under the Black Lung Benefits Act, as amended. The data is necessary to process payment of providers' bills.

Signed at Washington, D.C. this 5th day of April, 1984.

Paul E. Larson,
Departmental Clearance Officer.

[FR Doc. 84-9619 Filed 4-6-84; 8:45 am]
BILLING CODE 4510-28-M
BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-14, 924]

Clark Equipment Co., Buchanan, Michigan; Affirmative Determination Regarding Application for Reconsideration

By an application dated March 12, 1984, the United Auto Workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Elibility to Apply for worker Adjustment Assistance on behalf of former workers at the Clark Equipment Company, Buchanan, Michigan. The determination was published in the Federal Register on March 2, 1984 (49 FR 7885).

The application claims, among other things, that Clark's Buchanan plant not only shipped axles to Clark's Battle Creek plant but they also shipped axles to Clark's Benton Harbor plant whose workers were also certified for trade adjustment assistance, TA-W-14. 171.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of Department of Labor's prior decision. The applicaiton is therefore, granted.

Signed at Washington, D.C., this 2nd day of April 1984

Robert A. Scharfl,

Director, Office of Program Management, UIS.

[FR Doc. 84-9031 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Cooper Industries, Inc., et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 26, 1984–March 30, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,020; Cooper Industries, Inc., Grand Haven, MI

TA–W–15,033; Universal Foundry Co., Oshkosh, WI

TA–W–15,076; Jackson Div., Hayes-Albion Corp., Jackson, MI

TA–W–15,052; Abex Corp., Denison Div., Delaware, OH

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–15,055; Weyerhaeuser Co., Columbia River Lumber Corp., Longview, WA

TA–W–15,032; Towmotor Corp., Mentor, OH

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA–W–15,057; Genstar Cement and Lime Co., San Andreas, CA

Aggregate U.S. imports of hydraulic cement did not increase during the period under investigation.

Affirmative Determinations

TA–W–15,053; Canton Drop Forge Co., Plant A, Canton OH

A certification was issued covering all workers separated on or after October 3, 1982 and before July 1, 1983.

TA–W–14,842; Paulsen Wire Rope Corp., Sunbury, PA

A certification was issued covering all workers separated on or after July 7, 1982.

TA–W–14,900; NAP Consumer Electronics Corp., Electronics Div., Jefferson City, TN

A certification was issued covering all workers separated on or after July 27, 1982 and before July 1, 1983.

TA–W–14,978; Interstate Drop Forge Co., Milwaukee, WI

A certification was issued covering all workers separated on or after August 31, 1982.

I hereby certify that the aforementioned determinations were issued during the period March 26, 1984–March 30, 1984. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 3, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-9029 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; East Coast Molding Operation, et al.

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 20, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 20, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 30th day of March 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Dated received	Date of petition	Petition number	Articles produced
East Coast Molding Operation (Plastic & Leather Workers Union)	No. Brunswick, NJ	3/26/84	3/21/84	TA-W-15,277	Parts—toy, plastic, mold.
Ingersoll Rand Co. (IUE)	Painted Post, NY	3/23/84	3/19/84	TA-W-15,278	Compressors—air, I-40.
Inland Steel Coal Co., mine No. 25 (workers)	Nicktown, PA	3/20/84	3/14/84	TA-W-15,279	Coal—metallurgical.
International Shoe Co. (workers)	Salem, MO	3/23/84	3/19/84	TA-W-15,280	Shoes—women's, dress & casual.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Dated received	Date of petition	Petition number	Articles produced
Penn-Transformer Corp. (IBEW)	Wingate, PA	3/26/84	3/21/84	TA-W-15,281	Devices—magnetic.
Reilly Plating Co., Inc. (workers)	Nanticoke, PA	3/22/84	3/14/84	TA-W-15,282	Finishing—metal, transistors, components.
Reltoc Manufacturing Co. (ACTWU)	Forrest City, AR	3/26/84	3/22/84	TA-W-15,283	Slacks—men's.
Wishire Fashions, Inc. (workers)	Bo. River, NJ	3/26/84	3/24/84	TA-W-15,284	Jackets, coats, suits—ladies.
White Packing Co. (workers)	No. Bergen, NJ	3/22/84	3/15/84	TA-W-15,285	Ham, bacon, hot salami, cold cuts, etc.
Foote Mineral Co. (company)	New Johnsville, TN	3/22/84	3/15/84	TA-W-15,286	Manganese, electrolytic.

[FR Doc. 84-9022 Filed 4-9-84; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-44C]

American Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

American Coal Co., Inc., P.O. Box 626, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 19 (I.D. No. 15-076321) located in Leslie County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety by a certified person on a weekly basis.

2. The return airways affected are numbers 4, 5 and 6 entries and breaks of the 001 section. Petitioner states that weekly examinations would expose miners to hazardous conditions because roof falls have occurred. These roof falls have not affected the mine's ventilation system and no escapeways travel through the affected entries. Rehabilitation of these areas would expose miners to extremely hazardous conditions, resulting in a diminution of safety.

3. As an alternate method, petitioner proposes to establish and maintain an air measuring station in the main return airway at the mouth of the first right entries off the mains. Tests for methane, and the velocity and direction of air flow will be made by a qualified person at least every seven days, and the results of these tests will be recorded in a date book or on a date board located at the measuring station.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9020 Filed 4-9-84; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-84-41-C]

Everidge & Nease Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Everidge & Nease Coal Co., Inc., Route 2, Box 763, Whitesburg, Kentucky 41858, has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 15-07044) located in Letcher County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9024 Filed 4-9-84; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-84-38-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its No. 4 Mine (I.D. No. 01-01247) located in Tuscaloosa County, Alabama. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns that requirement of 30 CFR 75.326 that intake and return aircourses be separated from belt haulage entries.

2. Conditions in the mine require high volumes of intake air to dilute the large quantity of methane liberated from the coal at the working face.

3. On August 27, 1979, petitioner was granted a modification of 30 CFR 75.326 to use belt haulage entries as intake aircourses to ventilate active working places (docket number M-76-692). Petitioner was granted a modification of the standard to isolate the belt entries which are used as intake entries from other intake and return entries with the use of continuous permanent-type stoppings.

4. Petitioner now proposes to contruct permanent-type stoppings of substantial, incombustible material, such as concrete, concrete blocks, cinder blocks, bricks or tile with mortared joints. The blocks may be stacked, providing the stoppings are plastered on both sides with a material having the same strength as that of mortared joints. In order to take advantage of technological advancements in stopping construction techniques and materials, petitioner proposes to construct permanent stoppings and other ventilation controls with other equivalent, incombustible material not specified above as may be approved in the mine's Ventilation Systems and Methane and Dust Control Plan.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9623 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-7-C]

John Behm Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

John Behm Coal Company, 37 Branch Street, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Castle-Cumber Tunnel (I.D. No. 36-05862) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage resistance grounded systems include a failsafe ground check circuit to monitor continuously the grounding circuit.

2. The mine generates 480-volt, 3-phase power with a diesel-powered generator, which energizes one 13 hp sump-pump and one 40 hp pump. The power conductors are 4/0 aluminum and the grounding conductor, which is continuous from the surface grounding electrodes to the underground electrical equipment, is 4/0 aluminum.

3. There are no personnel in the mine while electrical circuits are energized. There is no high voltage at the mine. There is no portable or mobile equipment in the mine.

4. Water is pumped from the mine before or after personnel are in the mine. Pump repairs are made by outside contractors and not at the mine. Since there are no personnel in the mine during pumping, there is no chance of personnel contacting the energized frames of mining machinery which might become energized through failure of the insulation of the power conductors.

5. As an alternate method, petitioner proposes that:

(a) No personnel will enter the mine while circuits are energized;

(b) The pumps, which are controlled from the surface, will be locked out at the disconnect switch by the mine superintendent before personnel enter the mine; and

(c) A warning sign of adequate size will be posted at the mine's entry.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9628 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-72-C]

North River Energy Co.; Petition for Modification of Application of Mandatory Safety Standard

North River Energy Company, P.O. Drawer 519, Berry, Alabama 35546 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its North River No. 1 Mine (I.D. No. 01-00759) located in Fayette County, Alabama. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries.

2. Continuous miner sections are developed by driving five to nine entries, and room development and pillar extraction is practiced. Longwall sections are typically developed by driving three to five entry sections. Mine ventilation is provided by one intake air shaft, one intake air slope and one return air shaft. One fan, located above the return air shaft, is used to draw air through the mine. Ventilation is provided to the working sections by one or two intake entries, one (3 entry longwall development) or two return entries and one to three neutral entries which are separated from the intake and return aircourses by permanent stoppings. One of the neutral entries serves as a combination belt and track

entry. Track mounted equipment in this entry is operated by battery power or an electric trolley system.

3. Adverse roof conditions in the outby area of the aircourses have necessitated the installation of substantial amounts of additional supports consisting of timbers and cribbing. Adverse roof conditions in areas where rock falls have occurred have rendered complete removal of the falls impossible. These factors, together with the low seam height and the extended length of some aircourses, have resulted in considerable restrictions to normal air flow.

4. The belt-track entry is brushed to an average height of six feet and is developed 22 feet wide, and is relatively restriction free. As a result, intake air has a tendency to pull into the neutral entry. The belt-track entry is regularly traveled and inspected by mine personnel each coal producing shift.

5. As an alternate method, petitioner proposes to use the belt-track entries as intake aircourses. This will ensure positive ventilation of the belt and eliminate potential dead air areas or air reversals due to pressure changes. In addition, because of the increased area and lower restriction, additional velocity and volume of ventilation air will be provided at the working face and in the last open crosscut of working sections.

6. In support of the proposed alternate method, petitioner proposes that:

a. The belt entries will be separated from other intake and return entries with permanent-type stoppings and controls as approved by the District Manager in the mine's Ventilation System and Methane and Dust Control Plan;

b. The respirable dust concentrations in the belt entry will be within the requirements of applicable standards;

c. The belt entries will continue to be used as travelways, ensuring regular and frequent inspections by mine personnel;

d. An MSHA approved, or equivalent, carbon monoxide monitoring system will be installed in all belt entries used as intake aircourses. Low-level carbon monoxide monitors will be installed along the beltline at intervals not exceeding 3,000 feet to monitor the air on the beltline at least every 20 minutes. Location of the monitors will be submitted for approval in the mine's Ventilation System and Methane and Dust Control Plan;

e. A communication system will be installed which will transmit data from the carbon monoxide detectors to a central location either on the surface or underground where a responsible person, equipped with a mine phone or equivalent system, will be on duty at any time personnel are in the monitored area(s) of the mine;

f. Any time a monitor detects a concentration of 20 p.p.m. above the ambient level for the mine, an alert signal will be given at the central location. The communication system installed at the central location will be capable of identifying the activated detector signal and will have a map or schematic to identify the location of the signal;

g. When an alert signal is transmitted to the central station, the person on duty will immediately notify the mine foreman for that shift, who will investigate the cause of the activated signal. The alert signal will continue until the concentration of carbon monoxide falls below 20 p.p.m. above ambient;

h. The monitor located at or near each section loading point will give an audible alarm signal when it detects carbon monoxide concentration of 30 p.p.m. above ambient. When this alarm sounds, all miners in the affected section, except those necessary to correct the condition, will be withdrawn to the nearest communication station;

i. The carbon monoxide monitors will be visually checked once each working day and calibrated with a known concentration of carbon monoxide at least once each 30 days. The results of the daily and monthly checks will be recorded in a book for that purpose and made available for inspection by an authorized MSHA representative.

7. Petitioner further proposes that at any time the carbon monoxide monitoring system has been deenergized, for reasons such as power outages or maintenance, the belt conveyor be allowed to continue to operate, provided the entry or entries affected will be continuously partrolled and physically monitored by a qualified person with carbon monoxide detector tubes or equivalent means until the system returns to normal operation.

8. Petitioner states that the proposed alternate method will provide the same measure of protection to the miners affected as that afforded by this standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9622 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-55-C]

Powellton Co.; Petition for Modification of Application of Mandatory Safety Standard

Powellton Company, Box 8, Mallory, West Virginia 25634 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Preparation Plant (I.D. No. 46-02127) located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires anot over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay-electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified

prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9625 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-34-C]

Turris Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634, has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Elkhart Mine (I.D. No. 11-02664) located in Logan County, Illinois; and its Vanderrick Mine (I.D. No. 12-01677) located in Vanderburgh County, Indiana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures or areas.

2. Petitioner seeks a modification of the standard to permit the use of mobile battery charging stations that are not housed in fireproof structures or areas. In support of this request, petitioner states that:

(a) The mobile stations are kept on the working section and vented directly to the return;

(b) Each time a belt extension is installed, the battery charger is moved so it will remain even with the end of the belt;

(c) A 20-pound fire extinguisher and 250 pounds of rockdust are stored at each station; and

(d) Both batteries and chargers are housed in metal enclosures.

3. Petitioner states that removing batteries from the scoop car for charging creates less of a hazard than charging on the scoop car because:

(a) Removal from the car eliminates the possibility of igniting hydraulic oil, grease or gear oil on the scoop car itself; and

(b) Batteries are removed and charged in the mobile station during working hours instead of charging during idle hours while batteries are on the scoop cars. With two batteries underground, one is charged during working hours while the other is being used. This allows for earlier fire detection because charging is done while the section is manned.

4. For these reasons, petitioner seeks a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Date: April 4, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9629 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-37-C]

Washington Irrigation & Development Company; Petition for Modification of Application of Mandatory Safety Standard

Washington Irrigation & Development Company, 1015 Big Hanaford Road, Centralia, Washington 98531 has filed a petition to modify the application of 30 CFR 77.1605(K) (berms or guards) to its Centralia Coal Mine (I.D. No. 45-00416) located in Lewis County, Washington. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. The haul roads are maintained nearly as smooth as blacktopped roads, and the road widths range up to 120 feet in many places.

3. As an alternate method, petitioner proposes that:

a. The speed of pickups will be limited to 45 mph; haulage and maintenance equipment will be limited to a maximum speed of 35 mph;

b. Unobstructed speed limit signs will be posted on the roadways;

c. Electric lights and/or flare pots will be used to warn drivers of the road width limits; and

d. The main haulage and permanent pit roads will be maintained at a minimum 80 foot running width.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 3, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9627 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-70-C]

Jewell Ridge Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Jewell Ridge Coal Corporation, P.O. Box 26, Jewell Ridge, Virginia 24622 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Seaboard No. 1 Mine (I.D. No. 44-02253) located in Tazewell County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. The mine is ventilated by a single fan exhausting approximately 396,384 cubic feet of air per minute. The mine liberates 571,000 cubic feet of methane per 24 hours. Intake airways, return airways, and belt and track entries are separated by permanent stoppings.

Both belt and track haulage, in some locations, are in the same entry. The mine uses a split-type face ventilation system on the four sections. Line curtains are kept within 10 feet of the working face.

3. As an alternate method, petitioner proposes to use a carbon monoxide monitoring system in lieu of automatic fire warning devices.

4. In support of this request, petitioner proposes to install an automatic fire detection system on the underground belt conveyors, as follows:

a. Sensors will be installed that will give early warning automatically when a fire occurs in the belt entry and provide both audible and visual signals that permit rapid location of the fire;

b. The automatic fire detection system will be calibrated to activate the warning signals should the carbon monoxide concentration reach 10 p.p.m. above ambient;

c. The automatic fire detection system will, upon activation, provide an effective warning signal to a manned location on the surface where personnel have an assigned post of duty, and have telephone or equivalent communication with all persons who may be endangered. The automatic fire detection system will provide indentification of any activated sensor. In addition, the detector located at or near the section loading point will activate when carbon monoxide is detected and give a warning signal that may be heard on the working section. All persons, except those required to investigate and take appropriate action in the event of a fire in the belt entry, will be immediately withdrawn from the endangered area to a safe location;

d. The location of the sensors for the automatic fire detection system will be submitted to the District Manager for approval in the mine's Ventilation System and Methane and Dust Control Plan; and

e. Each carbon monoxide monitor will be visually examined at least once each 24 hours to ensure proper functioning. The units will be checked weekly for proper operation of the built-in safety features and other checks recommended by the manufacturer. At least every 30 calendar days, the monitors will be checked for operating accuracy with a known concentration of carbon monoxide and calibrated as necessary. A record will be kept of the weekly and 30-day checks and made available to all interested persons.

5. Petitioner further proposes that should the automatic fire detection system be affected by a power interruption or other malfunctions, that the belt conveyors continue to operate if a person qualified to make such test is stationed in the area to continuously monitor for carbon monoxide with a suitable instrument.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1984. Copies of the petition are available for inspection at that address.

Dated: April 4, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-9030 Filed 4-9-84; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84-35]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Shuttle Science Working Group.

DATE: April 25-27, 1984, 8:30 a.m. to 4:30 p.m. on the first two days, 8:30 a.m. to 12 noon on the third.

ADDRESS: National Aeronautics and Space Administration, Federal Building 6, 400 Maryland Avenue S.W., Room 5026 on the first day, Room 5092 on the second and third days.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Daniels, National Aeronautics and Space Administration, Code NI, Washington, DC 20546 (202/453-2975).

SUPPLEMENTARY INFORMATION: The Shuttle Science Working Group was established under the NASA Advisory Council for the purpose of addressing issues related to cost effective utilization of the Space Shuttle for scientific and engineering research. The overall goal of the Working Group is to assess the scientific and engineering needs and to investigate the NASA and industry plans for experiment accommodations on the Shuttle and Space Station. Recommendation for low cost, convenient, high flight frequency schemes will be made to the council and to NASA. The working Group is chaired by Dr. John E. Naugle and is composed of 15 other members.

The meetings will be open to the public at the locations indicated by time and date up to the seating capacity of the designated rooms (approximately 25-30 persons, including the committee members and invited meeting participants).

Type of Meeting: Open.
Agenda:

April 25, 1984

8:30 a.m.—Introductory Discussions and Planning.
9:30 a.m.—Presentation and Discussion of Trends in Commercial Support for Shuttle Payload Integration.
12 noon—Lunch.
1 p.m.—Continuation of Commercial Support Discussions.
4.30 p.m.—Adjourn.

April 26, 1984

8:30 a.m.—Presentation and Discussion of Office of Space Science and Applications Trend in Shuttle Useage.
10 a.m.—Formulation of Working Group Findings, Recommendations and Resolutions.
11:30 a.m.—Lunch.
1 p.m.—Continued Development of Findings, Recommendations and Resolutions.
4:30 p.m.—Adjourn.

April 27, 1984

8:30 a.m.—Continued Development of Findings, Recommendations and Resolutions.
11 a.m.—Closing Discussions.
12 noon—Adjourn.

Dated: April 4, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-9031 Filed 4-9-84; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Advancement Section) to the National Council on the Arts will be held on April 26–27, 1984, from 9:00 a.m.–5:30 p.m., in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 2, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-9010 Filed 4-9-84; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge Section) to the National Council on the Arts will be held on April 25, 1984, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 2, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-9009 Filed 4-9-84; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Photography Fellowships Section) to the National Council on the Arts will be held on April 23–27, 1984, from 9:00 a.m.—5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 2, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-9008 Filed 4-9-84; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–528, Construction Permit No. CPPR–141, EA 83–30, EA 83–130]

Arizona Public Service Co., Palo Verde Nuclear Generating Station Unit No. 1; Order Imposing a Civil Monetary Penalty

I

Arizona Public Service Company, P.O. Box 21666, Phoenix, Arizona 85036 (the "Licensee"), is the holder of Construction Permit CPPR–141 issued by the Nuclear Regulatory Commission ("NRC" or the "Commission"). The Construction Permit authorizes construction of the Palo Verde Nuclear Generating Station facility in Maricopa County, Arizona. The Construction Permit was issued on May 25, 1976, and is due to expire on December 31, 1984.

II

A special inspection of the licensee's activities under the Construction Permit was conducted at the Palo Verde plant by an NRC special inspection team during the period of September 6–November 1, 1983. As a result of the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated December 12, 1983. The Notice stated the nature of the violations, the provision of the NRC regulations violated, and the amount of the civil penalties proposed for each of the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties in a letter dated January 31, 1984.

III

Upon consideration of the licensee's reply to the Notice of Violation and arguments for mitigation of the proposed civil penalty, the Director of the Office of Inspection and Enforcement, for the reasons set forth in the Appendix to this Order, has determined that the penalty proposed for the violation identified in paragraph I.A. in the Notice of Violation and Proposed Imposition of Civil Penalties should be mitigated by 50% based upon the licensee's prompt and extensive corrective action. The violation identified in Paragraph I.B. of said Notice shall be the subject of future action as requested by the licensee.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act

of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Twenty Thousand Dollars ($20,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings; if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considerd at such hearing shall be:

(a) Whether the licensee violated Appendix B requirements as set forth in paragraph I.A. of the Notice of Violation and Proposed Imposition of Civil Penalties; and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 3rd day of April 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

In the licensee's January 31, 1984 response to NRC's Notice of Violation and Proposed Imposition of Civil Penalties dated December 12, 1984, the licensee admits that: (1) The discrepant conditions identified in the four examples cited in Section I.A. did exist in September 1983, (2) there was no documentation or records of such discrepant conditions, and (3) such conditions were identified by the NRC Construction Assessment Team. Nevertheless, the licensee denies that the discrepant conditions constitute a violation of NRC requirements and protests the imposition of civil penalties, and if such is disallowed, requests remission or mitigation of the civil penalty proposed by the notice. A statement of the violation, a summary of the licensee's response, and NRC's evaluation and conclusions are presented as follows:

Statement of Violation

I.A. 10 CFR Part 50, Appendix B, Criterion II, as implemented by Chapter 17 of the licensee's PSAR and FSAR, requires in part that: "The quality assurance program shall provide control over activities affecting the quality of the identified structures, systems, and components, to an extent consistent with their importance to safety."

Contrary to the above requirements, the licensee's quality assurance program did not maintain adequate control over activities affecting quality as evidenced by the following examples:

1. On September 10, 1983, it was determined that the containment pressure instrumentation was incapable of performing its intended safety function in that caps had been installed on the sensing lines. Construction of the containment and pressure sensing systems had been completed, turned over from the constructor to the licensee, and tested. Subsequently, the quality assurance organization directed that the caps be installed without following established QA procedures for correcting potential deficiencies. No administrative requirement existed to assure that the caps would have been discovered until the next scheduled containment leak rate test, pursuant to the operating license requirements. This containment pressure instrumentation is required to automatically initiate the HPSI and other safety systems on high containment pressure.

2. On September 7, 1983, the manual operator for valve SI V470 on the suction of the HPSI "A" pump was disconnected and resting on the sprinkler system piping. Construction of the subsystem had been completed, turned over to the licensee, and was undergoing preoperational testing. There was no record of the defective and/or nonconforming condition which included a missing stud nut and leaking flange.

3. On September 28, 1983, the position indicator for valve SI V402 on the suction of the HPSI "B" pump was positioned so that the valve could only be opened 30 to 35 percent of its full open position.

Construction of this subsystem had been completed, turned over to the licensee, and was undergoing preoperational testing. There was no record of the defective and/or nonconforming condition.

4. On September 14, 1983, 87 ⅜-inch bolts were missing from the base frames for six motor control centers (MCC) of the vital AC onsite power distribution system. These bolts are necessary to ensure the structural integrity of the MCCs.

This is a Severity Level III Violation, (Supplement II). (Civil Penalty—$40,000)

Summary of Licensee Response

I.A.1 *Containment Pressure Sensing Line Caps.* The licensee admits to the conditions of the sensing line caps, states some preoperational tests had been done, and states that the caps were installed by direction of QA but not documented. The licensee also states that the system had not been turned over to operations. The licensee further states there was no regulatory requirement to document the installation of the caps and that the required action in response to IE Notice 84–23 would have assured cap removal.

I.A.2 *Manual Operator Disconnected, and Missing Stud Nut with Leaking Flange.* The licensee admits to the conditions found, but states preoperational testing was not complete, the valve had not been accepted by operations and that further preoperational testing would have discovered the problems. The licensee further states, that the as found condition of the valve would have had no impact on the safe operation of the system. The licensee further states the valve was improperly reassembled after turnover to the startup organization.

I.A.3 *Improper Installation of a Position Indicator Limited Valve Travel.* The licensee admits to the conditions found, but states the valve had not been accepted by operations, preoperational testing was not complete, and no uncontrolled work had been performed on the valve. The licensee also states the as-found condition would have had no impact on the safe operation of the system. The licensee further stated the valve had been stroked by APS operators and the valve was assumed to be full open.

I.A.4 *Missing Bolts.* The licensee admits that any bolts necessary for structural integrity are missing from the MCCs. However, the licensee states that the vendor installation drawings indicate that a portion of the eighty-seven identified missing bolts should have been installed but subsequent analysis showed that they were not essential for the structural integrity of the MCCs.

NRC Evaluation

As stated in the introduction of 10 CFR Part 50, Appendix B, the NRC quality assurance requirements apply to all activities affecting the safety-related functions of structures, systems and components in nuclear power plants that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public; these activities include designing, purchasing, fabricating, handling, shipping, storing, cleaning, erecting, installing, inspecting, testing, operating, maintaining, repairing, refueling and modifying.

In addition, as stated in Criterion I of 10 CFR Part 50, Appendix B, safety-related activities include both the performing functions of attaining quality objectives and the quality assurance functions. The quality assurance functions are those of (a) assuring that an appropriate quality assurance program is established and effectively executed and (b) verifying, such as by checking, auditing, and inspection, that activities affecting safety-related functions have been correctly performed.

Although strictly speaking, failure to properly perform a work function is a violation of the NRC quality assurance criteria (Criterion V), the NRC's Enforcement Policy (10 CFR Part 2, Appendix C) provides that Notices of Violation will not be issued for a particular violation when the defective condition is identified; is of a Severity Level IV or V; is reported, if required; is corrected within a reasonable time; and is not a violation that could reasonably be expected to have been prevented by a previous corrective action.

In essence the NRC quality assurance criteria require that all safety-related work be performed pursuant to approved instructions, procedures or drawings and verified, as appropriate, by inspection, checking, testing or auditing.

As admitted in the licensee's response, summarized above, the identified discrepant conditions occurred as a result of individuals performing work or otherwise doing an act or not doing an act that should have been done that affects safety-related structures, systems and components without the use of and contrary to approved instructions, procedures and drawings. As discussed above, all work on safety-related items must be controlled subsequent to initial installations and inspection to assure that the original quality of the items are not degraded and that any modifications are appropriately reviewed and approved as provided for in the NRC quality assurance criteria.

The licensee's contention that each of the items when viewed singularly should not represent a significant safety concern on the part of the NRC and, therefore, its inference that the cumulative aspects of the items are also insignificant does not have merit. Discrepant conditions were found by the NRC inspection staff in three vital safety-related systems (containment, emergency core cooling, and electrical) that should have been prevented and/or identified by the licensee had the licensee's quality assurance program been functioning as required by the NRC requirements. A malfunctioning quality assurance program is significant to safety and must be corrected. In view of the foregoing the NRC viewed the conditions as cause for significant concern in that the circumstances surrounding the conditions evidenced a breakdown in the quality assurance program amounting to more than isolated instances. Therefore, the cited violation was properly categorized a Severity Level III.

Request for Remission or Mitigation

In Attachment E of the licensee's response, the licensee protests the imposition of a civil penalty, and if disallowed, requests remission or mitigation of the civil penalty proposed by the Notice. The licensee has not provided adequate reasons for disallowing or remitting the civil penalty; however, mitigation of the civil penalty for actions taken by the licensee was reviewed and considered appropriate. The corrective action taken which includes, among other actions, initiation of an independent assessment immediately following the special team inspection, suspension of startup work taken on the licensee's own initiative, reorganization of the management structure, and the direct involvement of the most senior corporate management was found to be unusually prompt and extensive. Therefore, mitigation of the penalty in the amount of 50% is allowed.

Conclusion

The violation identified in Section I.A. of the Notice of Violation and proposed Imposition of Civil Penalties did occur as originally stated. However, as discussed above, the civil penalty has been mitigated 50% based upon the licensee's prompt and extensive corrective action.

[FR Doc. 84-9635 Filed 4-9-84; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on May 2, 1984, Room 1046, 1717 H Street, NW., Washington, D.C.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only be members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necesary to discuss proprietary information. One or more closed sessions may be necesary to discuss such information (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the pubic in attendance.

The agenda for subject meeting shall be as follows: Wednesday, May 2, 1984—8:30 a.m. Until the Conclusion of Business. The Subcommittee will continue its review of the joint NRC/B&W Owners Group/B&W/EPRI integral test program.

During the initial portion of the meeting, the Subcommittee along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of Babcock and Wilcox, the B&W Owners Group, the NRC Staff, their respective consultants, and other interested persons regarding this subject.

Further information regarding topics to be discussed, whether the meeting has been cancelled or reshceduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone

202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necesary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: April 5, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-9583 Filed 4-9-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Operations; Meeting

The ACRS Subcommittee on Reactor Operations will hold a meeting on May 3, 1984, Room 1046, 1717 H Street, NW., Washington, DC. The Subcommittee will review NRC's Office for Analysis and Evaluation of Operational Data's Trends and Patterns program plan. The Subcommittee will also discuss methods that will allow the ACRS to hear and discuss reports of significant plant operating experience.

In accordance with the procedures outlined in the Federal Register on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recording will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, May 3, 1984—8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on request for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Richard K. Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EST.

Dated: April 5, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-9584 Filed 4-9-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Co. (Turkey Point Plant Unit Nos. 3 and 4); Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41 which authorize the operation of the Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) at steady-state power level not in excess of 2200 megawatts thermal. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Dade County, Florida. The licensee provide, among other things, that the facilities are subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.48 of 10 CFR Part 50 requires that licensed operating reactors be subject to the requirements in Appendix R of 10 CFR Part 50. Appendix R contains the general and some of the specific requirements for fire protection programs at licensed nuclear facilities. On February 17, 1981, the fire protection rule for nuclear power plants, 10 CFR 50.48 and Appendix R, became effective. This rule required all licensees of the plants licensed prior to January 1, 1979, to submit by March 19, 1981: (1) Plans and schedules for meeting the applicable requirements of Appendix R, (2) a design description of any modifications proposed to provide alternative safe shutdown capability pursuant to Paragraph III.G.3 of Appendix R, and (3) exemption requests for which the tolling provision of § 50.48(c)(6) was to be invoked. The licensee responded to these requirements by letter dated February 4, 1981, and supplemented by letters dated March 19, 1981, November 9, 1981, July 1, 1982 and October 22, 1982.

By letter dated March 19, 1981, the licensee requested exemptions from Sections III.G, III. J, and III.O of Appendix R to 10 CFR Part 50. However, we denied exemption requests on Section III.J for lack of specificity and III.G for those areas where the justification was based only on previous approval in the fire protection Safety Evaluation (SE). We indicated that the licensee needs to either meet the requirements of Section III.G for previously closed areas, or provide a detailed fire hazard analysis supporting an alternative approach. In the fire protection SE, we reported the following open items:

Item 3.1.2/3.2.3, Fire Water Supply
Item 3.2.4, Auxiliary Building Corridor
Item 3.2.5, Cable Spreading Room
Item 6.0, Fire Brigade Size

By letters dated February 4, 1981 and March 19, 1981, the licensee committed to meet our guidelines for fire brigade size and requirements of Section III.A for the fire water supply. The remaining open items are resolved in the following evaluation. We, therefore, consider all open items to be resolved.

By letter dated July 1, 1982 and supplemented on October 22, 1982, the licensee requested additional exemptions from Section III.G and III.J of Apendix R. In our draft Safety Evaluation (SE), we recommended granting five of the exemption requests and denying fifteen. The licensee was evaluating fire protection from the "design basic fire" approach instead of the "protective features" approach.

By letter dated Apirl 8, 1983 and supplemented on May 12, June 6, and September 30, 1983, the licensee superseded the previous submittals and utilized the protective features approach in evaluating fire protection for the Turkey Point facilities.

III

The April 8, 1983 submittal, as supplemented on May 12, June 6, and September 30, 1983, requested twenty-two exemptions from Appendix R to 10 CFR Part 50 (twenty from III.G, one from III.J and one frm III.O).

Unit 4 Component Cooling Water Area (Fire Zone 47)

Unit 3 Component Cooling Water Area (Fire Zone 54)

The licensee requests exemptions from Section III.G.2 to the extent it requires 20 feet of separation and the installation of total area coverage automatic fire suppression systems.

Fire Zone 47 is outdoors and separated from other plant areas by 3-hour fire rated walls. This area contains 3 redundant component cooling water (CCW) pumps for Unit No. 4. Control

cables for each pump are located in a common enclosure. The licensee proposes to reroute the local controls for one pump to achieve 20 feet of separation free of intervening combustibles. This area also contains manholes and duct banks which contain redundant intake cooling water cables. The licensee proposes to install 2-inch curbs around each covered manhole to preclude flammable liquid spills from entering.

The fuel load in the area is low and manual hose stations and portable fire extinguishers are available. The licensee proposes to install an automatic wet pipe sprinkler system, an additional open head deluge sprinkler system activated by Ultra Violet (UV) fire detectors and early warning fire detection systems throughout the area.

Fire Zone 54 contains the 3 redundant component cooling water pumps for Unit 3. It is similar to Zone 47 except it does not contain manholes and duct banks. The proposed modifications for Zone 47 are applicable to Zone 54 with the exception of the modifications for the manholes.

For the protection of redundant cables and equipment separated by less than 20 feet free of intervening combustibles, Section III.G.2 requires automatic suppression and detection throughout the area in conjunction with 1-hour fire barriers to separate one train of components.

The committed additional open head deluge sprinkler system will be activated by UV fire detectors. The UV fire detectors will respond to fires within milliseconds to activiate the deluge sprinkler system. Because the in-situ fuel load in the zones is low and the licensee has committed to install additional automatic fire detection and suppression systems, which will provide fast total coverage of the CCW pumps, we have reasonable assurance that one train of CCW pumps will remain free of fire damage. The 12 feet separation between the CCW pumps will provide adequate passive protection until the deluge sprinkler system is activated and extinguishes fire. There is also adequate time for the fire brigade to intervene.

Based on the above evaluation, the existing protection combined with the proposed modifications provides a level of fire protection in the Unit 3 and Unit 4 Component Cooling Water Pump Areas (Fire Zones 47 and 54) equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Ground Floor Vestibule Unit 4 Containment Area (Fire Zone 79)

Auxiliary Feedwater Pump Area (Fire Zone 84)

Condensate Storage Area Unit 3 (Fire Zone 89)

Main Steam Platform Unit 4 (Fire Zone 114)

Main Steam Platform Unit 3 (Fire Zone 115)

The licensee requests exemptions from Section III.G.2 to the extent it requires the installation of automatic fire detection and suppression systems.

Fire Zone 79 is located outside and the fuel load in the zone is light. Manual hose stations and portable fire extinguishers are available. Redundant safe shutdown cables with less than 20 fet of separation, free of intervening combustibles, are installed in this area. The licensee proposes to either separate the Train B redundant cables from the Train A cables by 20 feet, free of intervening comnbustibles, or wrap the Train B cables in an approved 1-hour fire rated barrier until 20 feet of separation, free of intervening combustibles, is achieved.

Fire Zone 84 is an outside area which houses all three auxiliary feedwater pumps and redundant safe shutdown cables are routed through the area. Portable fire extinguishers, standpipe and hose stations are available. The licensee proposes to provide alternative shutdown capability for the auxiliary feedwater pumps by installing two 100% capacity standby steam generator feed pumps independent of this area capable of operation upon a loss of offsite power. In addition, the licensee will either reroute one train of redundant cables to achieve 20 feet of separation, free of intervening combustibles, or wrap one train of cables in an approved 1-hour fire rated barrier until 20 feet of separation, free of intervening combustibles, is achieved.

Fire Zone 89 is an open area with limited combustibles containing the condensate storage tank, transfer pumps and safe shutdown related equipment and cables. Portable fire extinguishers, standpipe and hose stations are available. The licensee proposes to either separate one train of redundant cables by 20 feet, free of intervening combustibles, or wrap one train in an approved 1-hour fire rated barrier until 20 feet of separation, free of intervening combustibles, is achieved.

Fire Zones 114 and 115 are outside areas which contain the main steam isolation and atmospheric dump valves. Portable fire extinguishers, standpipe and hose stations are available.

These areas do not comply with Section III.G because automatic suppression and detection systems are not installed in the areas.

For redundant cables in the areas, other than the specific cables proposed to be changed, it is our opinion that the possibility of a fire of sufficient magnitude to affect redundant systems is slight due to the open area and height of cables above the floor. Therefore, we have reasonable assurance that one train will be maintained free of fire damage. In addition, we agree with the licensee's conclusion that the fire protection modifications proposed along with the physical arrangement of Fire Zones 79, 84, 89, and 114 and 115 will provide sufficient protection for the redundant safe shutdown equipment in this area and full compliance with the specific provisions of Section III.G would not add significantly to overall fire protection of the plant.

Based on the above evaluation, the existing protection combined with the proposed modifications provide a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Fire Zones 113 and 116—Unit 4 and Unit 3 Respectively

Feedwater Platform

The licensee requests an exemption from III.G to the extent that it requires redundant safe shutdown equipment be protected by a 1-hour rated fire barrier and the installation of automatic fire suppression systems in the areas.

Zones 113 and 116 are the feedwater platforms for Unit 4 and Unit 3, respectively. They contain safe shutdown equipment and associated cables for their respective units. Portable fire extinguishers, standpipe and hose stations are available. The licensee proposes to install early warning fire detection in both zones. The licensee also proposes to either separate one train of redundant cables in each fire zone to achieve 20 feet separation free of intervening combustibles, or wrap one train of redundant cables in an approved 1-hour fire rated barrier until 20 feet separation, free of intervening combustibles, is achieved.

These areas do not comply with Section III.G because redundant Auxiliary Feedwater (AFW) components are not separated by 1-hour fire barriers and automatic fire

suppression systems have not been installed in the areas.

These areas are outdoors. Redundant cables are separated by 20 feet, free of intervening combustibles, or will be rerouted and the redundant AFW valves are separated vertically by approximately 8 feet in both areas with a minimum of a ¼' inch thick steel platform installed between the redundant valves. It is our opinion that due to the open area, separation and protection of the redundant cables, early warning fire detection and the configuration of the redundant AFW valves between the feedwater platform, the possibility of a fire of sufficient magnitude to affect redundant AFW systems components is slight. Therefore, we have reasonable assurance that one train will be maintained free of fire damage.

Based on the above evaluation, the existing protection combined with the proposed modifications and commitments provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Unit 4 Intake Area (Fire Area 119)

Unit 3 Intake Area (Fire Zone 120)

The licensee requests exemptions from Section III.G to the extent that it requires the installation of automatic fire suppression systems.

The Unit Nos. 3 and 4 intake structures are contiguous and are designated Fire Zones 119 and 120. The zones contain the intake cooling water pumps and associated cables. The licensee proposes to wrap the 4C and 3C power and control cables from the embedded conduit to the motor terminal block of the pumps. In addition, the local control stations for the 4B, 4C, 3B and 3C pumps will be enclosed with a 1-hour fire rated barrier. The floor has numerous openings to the intake water and combustible are limited to lubricating oil in the steel motor housings. The oil provides unpressurized lubrication. The oil has a flashpoint of greater than 400[1]° F. These zones do not contain hot surfaces to ignite the oil. Fire protection in the zones consist of manual hose stations and portable fire extinguishers. The licensee proposes to install early warning fire detectors in that portion of the zones containing the intake cooling water pumps.

These areas do not comply with Section III.G because automatic suppression systems are not installed in the zones.

These areas are open without a ceiling. We find this arrangement will prevent the accumulation of hot stratified gases from anticipated fires. Redundant cables and equipment are separated by 28 feet or will be enclosed in a 1-hour fire rated barrier. It is our opinion that due to the open area, separation of redundant equipment and early warning fire detection, the possibility of a fire of sufficient magnitude to affect redundant systems prior to the arrival of the fire brigade is slight. Therefore, we have reasonable assurance that one train of equipment will be maintained free of fire damage.

Based on the above evaluation, the existing protection combined with the proposed modifications provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Diesel Radiator Room (Fire Zone 131)

The licensee requests an exemption from Section III.G to the extent that it requires the total enclosure of one Diesel Radiator Room by 3-hour rated fire barriers.

This area houses radiators and cooling fans for both units' diesel generators. The in-situ combustibles are insignificant and portable fire extinguishers, standpipe and hose stations are available. The licensee proposes to install a partial height (10 feet high) 3-hour fire rated barrier between the radiators for the Unit 3 and 4 diesel generators; provide curbing 2 inches high directly against the west side of the diesel generator radiators; and reroute, independent of the area or separate with a 3-hour fire rated barrier, control cables for Diesel Generator 3 Breaker to Bus 4A.

This area does not comply with Section III.G because redundant diesel radiator rooms are not enclosed by complete 3-hour fire rated barriers.

There are no in-situ combustibles in this area and any exposure fires would be of limited severity and duration. The proposed 3-hour fire barrier between the redundant cooling fans will protect one unit from a floor level fire in the redundant unit. Because the west wall of the area is open to the atmosphere, rising hot gases will be vented and dissipated before redundant equipment is damaged. This combination of features compensates for the lack of a complete 3-hour fire barrier.

Based on the above evaluation and proposed modifications, the protection provided for the diesel generator radiator area provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemption is granted.

Fire Zones 11, 12, and 13 (Fire Area B) Unit 3 Residual Heat Removal Area

Fire Zones 14, 15, and 16 (Fire Area C) Unit 4 Residual Heat Removal Area

The licensee requests an exemption from Section III.G to the extent that it requires 1-hour rated fire barrier for protection of redundant safe shutdown cables and equipment and the installation of automatic fire suppression capability throughout these areas.

These two areas are essentially identical areas consisting respectively of the Unit 3 and Unit 4 residual heat removal (RHR) pumps and heat exchangers in the Auxiliary Building.

For analysis purposes, because of the unprotected openings in the floor/ceiling assemblies, the licensee has combined these zones into one fire area. Each area contains redundant RHR pumps, heat exchangers, associated components and other safe shutdown cables. The combustible loading is limited to the oil and grease associated with pumps and motor operated valves in the areas. The licensee proposes the following Unit 4 modifications: Upgrade perimeter walls and ceilings of Fire Area B to a 3-hour barrier by sealing all piping and other penetrations and by installing 3-hour rated fire doors and dampers in all doorways and ventilation duct penetrations; upgrade the partial height wall between Zones 12 and 13 by sealing all penetrations to a 3-hour rating; upgrade the wall between Zone 11 and Zones 12 and 13 by sealing all penetrations to a 3-hour rating with the exception of the 5' by 8' access way to Zone 13; provide fire detection in Zones 11, 12, and 13; and provide 1-hour rated protection for RHR Pump 3A power and control cables routed through Zone 13.

The licensee proposes the following Unit 3 modifications: Upgrade perimeter walls and ceiling of Fire Area C to 3-hour barriers by sealing all piping and other penetrations and by installing 3-hour rated fire doors and dampers in all doorways and ventilation duct penetrations, respectively; upgrade partial height wall between Fire Zones 15 and 16 by sealing all penetrations in the partial height wall to a 3-hour rating and; upgrade the wall between Zones 14, 15 and 16 by sealing all penetrations to a 3-hour rating with the exception of the 5' by 8' access way to Zone 16.

These areas do not comply with Section III.G because complete 3-hour barriers are not used to separate the redundant equipment.

In the RHR area, the licensee proposes to provide a 16 feet, partial height, 3-hour fire barrier to separate the

redundant RHR pumps in each fire area. In addition, the licensee proposes to provide early warning fire detection in each area. The only significant in-situ combustible in the fire area is grease and the pump motor lubricating oil. We agree with the licensee that the probability of ignition of the oil is low because the lubricating oil has a high flashpoint (approximately 450°F) and that sufficiently hot surfaces do not exist in this fire area to cause the ignition of the lube oil. Because of the low in-situ fuel load and early warning fire detection, we have reasonable assurance that the partial height barrier will provide adequate protection for the RHR pumps for anticipated fires in the areas and that one train of RHR systems will be maintained free of fire damage.

Based on the above evaluation, the existing protection combined with the proposed modifications, provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Unit 4 Charging Pump Room (Fire Area N)

Unit 3 Charging Pump Room (Fire Area O)

The licensee requests exemptions from Section III.G.2 to the extent it requires the installation of an automatic fire suppression system in the entire fire area and the installation of fire doors.

These two areas are essentially identical areas consisting of the Unit 4 and Unit 3 charging pumps. The areas are separated from other plant areas by 3-hour fire rated barriers. Fire protection in each area consists of early warning fire detection, manual hose stations and portable fire extinguishers. The combusible loading in these areas is light.

The licensee proposes the following modifications: Upgrade perimeter walls in each area to 3-hour rated barriers by sealing all piping and other penetrations and by installing 3-hour rated doors and dampers in doorways and ventilation penetrations respectively, protect conduits and reroute or protect control cables for charging pumps 4B and 3B with 1-hour rated protection and protect the 4A and 3A charging pump cables; protect the local control stations for charging pumps 4B and 3B by providing an enclosure fabricated from 1-hour rated materials or relocate outside of this fire area; reroute in conduit and protect with 1-hour rated materials, the cables for LCV–4–115B, and LEV–3–115B, wherever the separation from cables for MOV–4–350 and MOV–3–350 is less than 20 feet, free of intervening combustibles; provide a water suppression system in each area with coverage protecting the charging pumps, associated cables and valves and all combustibles in the area. The activation of the automatic water suppression system will not adversely affect the operation of the charging pumps.

This area does not comply with Section III.G because the proposed automatic suppression systems do not protect the entire fire areas.

It is our opinion that due to the configuration and protection provided for the charging pumps and the low in-situ fuel load, the proposed partial suppression system provides reasonable assurance that one train will be maintained free of fire damage.

Based on the above evaluation, the existing protection combined with the proposed modifications, provides a level of fire protection equivalent to the technical requirements of section III.G of Appendix R. Therefore, the exemptions are granted.

Fire Area P—Containment Building—Unit 4

Fire Area Q—Containment Building—Unit 3

The licensee requests exemptions from Section III.G to the extent that it requires the installation of a noncombustible radiant energy shield between redundant safe shutdown equipment and cables separated by a distance of less than 20 feet.

Each Containment Building is essentially open and considered to be one fire area. Access is available via the personnel air lock, emergency air lock and the access hatch. No hose stations or automatic suppression is provided; however, portable fire extinguishers are available and ionization type fire detectors are installed. Redundant shutdown equipment and cables are located in the containments. Combustibles consist of lubricating oils and cables. Controlled access limits the possibility of transient combustibles.

The licensee proposes the following modifications to Unit 4: Reroute the control cables for valve AOV–4–460 through the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valves AOV–4–200 A, B and C as far as physically possible; reroute the control cables for valve AOV–4–387 throught the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valve HCV–4–137 as far as physically possible; reroute the control cables for AOV–4–310A through the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valve AOV–4–310B as far as physically possible; and provide a minimum of 20 feet of separation for cables between two trains of reactor coolant system hot and cold leg temperature instrumentation, wherever physically possible. Route the two trains through separate penetration areas; provide 1-hour rated protection to the conduit for LT–4–460 to the maximum extent possible, in the pressurizer missile shield wall area where separation from conduits for LT–4–459 is less than 20 feet; provide dedicated portable emergency lighting outside the containment for containment entry to facilitate manual operation of the valves; and install radiant energy shields to separate the charging line isolation valve and associated cabling.

The licensee proposes the following modifications to Unit 3: Reroute the control cables for valve AOV–3–460 through the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valves AOV–3–200A, B and C; reroute the control cables for AOV–3–310A through the West Penetration Area and maintain the separation in excess of 20 feet from the cables for valve AOV–3–310B; provide a minimum of 20 feet of separation for cables between two trains of reactor coolant system hot and cold leg temperature instrumentation, where physically possible. Route the two trains, when provided, through separate penetration areas; provide 1-hour rated protection on the conduit for LT–3–460 to the maximum extent possible in the pressurizer missile shield wall area where separation from conduits for LT–3–459 is less than 20 feet; provide dedicated portable emergency lighting units outside the containment for containment entry to facilitate manual operation of valves; and install radiant energy shields to separate the charging line, isolation valves and associated cabling.

The technical requirements of Section III.G are not met because radiant energy barriers are not provided for redundant trains of safe shutdown equipment and cabling separated by less than 20 feet. The licensee proposes rerouting of cables or the installation of fire barriers and radiant energy shields for all the redundant equipment, except pressurizer equipment associated with operation and located within the missile shield wall. These areas are void of in-situ combustibles. These areas are inaccessible during plant operation. All cabling inside the missile shield walls are routed in conduit. Due to their configuration and location within the containment and to the restricted access

of these sub-areas during plant operations, an exposure fire involving the accumulation of significant quantities of transient combustible materials is unlikely. Because there are only a few cables in these subareas and all cables are routed in conduit, a fire of sufficient magnitude to damage redundant cables or components is also unlikely.

Based on the above evaluation, the existing protection combined with the proposed modifications for the containment areas, provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemptions are granted.

Units 3 and 4 Control Room (Fire Area MM)

The licensee requests an exemption from Section III.G.3 to the extent that it requires the installation of a fixed suppression system in the control room.

The control room is a continuously occupied space which houses controls and instruments necessary to remotely operate valves, pumps, motors, etc. required for plant operation. Most of these controls and instruments are mounted on centrally located panels. Redundant safe shutdown related cables are routed in the area to various control panels. Ionization type fire detectors are installed, portable fire extinguishers and hose stations are available. The licensee proposes to provide a single train alternative shutdown for each unit independant of this fire area.

This area does not comply with Section III.G, because the control room is not provided with fixed suppression. The control room is equipped with the area fire detectors, and is provided with both a hose station and fire extinguishers for manual fire fighting. The fire load in the area is low. In addition, the licensee proposes an alternate shutdown system with control capabilities for those systems necessary to maintain safe-shutdown capability which is independent of the main control room. The fire protection features currently installed in the control room and the continuous manning of the control room provide adequate defense-in-depth fire fighting capability for this area.

Based on the above evaluation, we conclude that the installation of a fixed fire suppression system will not significantly increase the level of fire protection in the control room. The existing protection combined with the proposed modifications provides a level of fire protection equivalent to the technical requirements of Section III.G of Appendix R. Therefore, the exemption is granted.

Exterior Wall Penetrations

The licensee requests an exemption from installing 3-hour fire rated doors and dampers in exterior wall penetrations in the Auxiliary Building, Control Building, Diesel-Generator Building and Switchgear Building. We have reviewed the licensee's requests and find that the exterior walls in these buildings do not separate redundant safe shutdown equipment and no fire hazards exist within 50 feet of the buildings or automatic water curtains have been provided. Therefore, no exemptions from Section III.G of Appendix R are needed.

Emergency Lighting In Containment Units 3 and 4

The licensee has performed an analysis of the effects on safe shutdown capability following a fire. The analysis identified the equipment requiring manual operation to achieve cold shutdown which is located inside the containments.

The licensee requests an exemption from Section III.J to the extent that it requires 8-hour battery powered lighting units inside the containments to enable operator access to the shutdown cooling valves. The licensee proposes to provide dedicated portable emergency lighting for containment entry.

Because manual operation of the shutdown cooling return valves may not be needed for several hours after the loss of onsite power, the benefits provided by 8-hour emergency lighting units may be marginal. Since additional personnel will be available during this time frame to carry and position the lights, we agree with the licensee that dedicated portable lighting units will provide acceptable illumination for containment access and the installation of 8-hour emergency lighting units inside the containments will not greatly enhance safety.

The proposed dedicated portable lighting units provide a level of fire protection equivalent to the technical requirements of section III.J of Appendix R. Therefore, the request for exemption is granted.

Oil Collection System for Reactor Coolant Pumps

An exemption is requested from Section III. to the extent it requires an oil collection tank sized to hold the lube oil inventory of all three RCP motors.

Each unit has three reactor coolant pumps with an oil collection system which drains to a vented closed collection tank. The quantity of lubricating oil in each pump is 200 gallons. The capacity of the oil collection tank is 265 gallons. The components have been designed to be capable of withstanding a safe shutdown earthquake (SSE).

The collection tank is arranged such that if a failure of more than one RCP motor lube system occurred, the oil collection tank would overflow onto the lower containment floor. The lubricating oil used in the RCP motors has a flashpoint of approximately 450°F. There are no ignition sources at the floor level of th lower containment.

The RCP motor lube oil system does not comply with Section III.0 because the oil collection tank is not sized to contain the entire lube oil system inventory. The oil collection tank is provided with sufficient capacity to hold the total lube oil inventory of one reactor coolant pump with margin and is designed so that any overflow will be drained to a safe area. We agree with the licensee that this combination of features is acceptable.

Based on the above evaluation, the existing RCP motor lube oil collection system provides a level of safety equivalent to the technical requirements of Section III.O of Appendix R. Therefore, the exemption is granted.

IV

Summary

Based on our evaluation as detailed in Section III above and the Safety Evaluation dated March 27, 1984, the following exemptions are granted.

Exemptions from Section III.G of Appendix R:

1. Unit 4 Component Cooling Water Area (Fire Zone 54)
2. Unit 3 Component Cooling Water Area (Fire Zone 53)
3. Unit 4 Ground Floor Vestibule Containment Area (Fire Zone 79)
4. Auxiliary Feedwater Pump Area (Fire Zone 84)
5. Units Condensate Storage Area (Fire Zone 89)
6. Unit 4 Feedwater Platform and Below (Fire Zone 113)
7. Unit 4 Main Steam Platform (Fire Zone 114)
8. Unit 3 Main Steam Platform (Fire Zone 115)
9. Unit 3 Feedwater Platform and Below (Fire Zone 116)
10. Unit 4 Intake Area (Fire Zone 119)
11. Unit 3 Intake Area (Fire Zone 120)
12. Diesel Generator Radiator Room (Fire Zone 131)
13. Unit 3 RHR Equipment Room (Fire Area B)

14. Unit 3 RHR Equipment Room (Fire Area C)
15. Unit 4 Charging Pump Area (Fire Area N)
16. Unit 3 Charging Pump Area (Fire Area O)
17. Unit 4 Containment Building (Fire Area P)
18. Unit 3 Containment Building (Fire Area Q)
19. Unit 3 and 4 Control Room (Fire Area MM)

Exemptions from Section III.O of Appendix R:

Emergency Lights Inside Containment Units 3 and 4

Exemptions from Section III.J of Appendix R:

Oil Collection System Units 3 and 4

Based on our evaluation as detailed in Section III above and Safety Evaluation dated March 27, 1984, the following exemption requests from Section III.G of Appendix R are not needed: Exterior Wall Penetrations.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions requested by the licensee's letters as referenced and discussed in III. and IV. above are authorized by law, will not endanger life or property or the common defense and security, are otherwise in the public interest, and are hereby granted.

The Commission has determined that the granting of these exemptions will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this section.

A copy of the Safety Evaluation dated March 27, 1984 related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 27th day of March 1984.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-9036 Filed 4-9-84 8:45 am]
BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating To Sale of Assets by an Employer Who Contributes to a Multiemployer Plan: Manley Truck Line, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted Manley Truck Line Inc. an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, in connection with Manley's purchase of assets of the Chicago Kansas City Freight Line, Inc. A notice Manley's request for exemption from the requirement was published on January 4, 1982 (47 FR 118) and, after the submission by Manely of new information, was republished on December 12, 1983 (48 FR 55361). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption, the comments received, and the PBGC's responses to the request and the comments are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7103, 2020 K Street NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Corporate Policy and Regulations Department (611), 2020 K Street NW., Washington, D.C. 20006, (202) 254-4860.

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (29 CFR Part 2643), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA sections 4204(c) and 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On January 4, 1982 (47 FR 118), the PBGC published a request from the Manley Truck Line, Inc. ("Manley") to waive the bond/escrow requirement of section 4204(a)(1)(B) of ERISA in connection with the March 13, 1981 purchase by Manley of the operating assets of Chicago Kansas City Freight Line, Inc. ("CKC"). On the basis of new and updated financial information, the PBGC republished the request from Manley on December 12, 1983 (48 FR 55361).

The republished notice provided additional information on the combined withdrawal liability of CKC and Manley to the Central States, Southeast and Southwest Areas Pension Fund ("Central States Fund"), since both companies were contributing employers to that plan prior to the sale. In addition, the notice provided information from Manley on the financial condition of the controlled group of corporations of which Manley is a member, including new financial statements reflecting the fair market value of assets and liabilities and independent appraisals of certain of those assets.

CKC contributed to the following multiemployer plans: Central States

Fund, Local 710 of the International Brotherhood of Teamsters Pension Fund ("Local 710 Fund"), and Chicago Independent Truck Drivers, Helpers, and Warehouse Workers Union Pension Fund ("Chicago Independent Fund"). The following chart lists the three multiemployer plans for which an exemption is requested, the estimated amount of CKC's and Manley's withdrawal liability (where applicable, and excluding, in Manley's case, the liability attributable to the purchased operations), and the estimated amount of the bond/escrow that would be requried under ERISA section 4204(a)(1)(B) with respect to each plan:

Fund	Estimate of seller's liability	Estimate of purchaser's liability (if applicable)	Amount of bond/escrow[1]
Central States Fund	$1,200,000	$1,400,000	$167,092
Local 710 Fund	200,000	N/A	57,501
Chicago Independent Fund	387,820	N/A	47,584
Total	1,787,820	1,400,000	272,147

[1] The bond/escrow amount for each plan represents the average annual contribution that CKC made to that plan for the three plan years preceding the plan year in which the sale occurred.

Thus the total combined withdrawal liability of Manley and CKC to all of the plans affected by this transaction is $3,187,820.

Manley is a wholly owned subsidiary of Overland Enterprises, Inc. ("Overland"). According to its consolidated unaudited financial statements, Overland and its subsidiaries have net tangible assets of $3,738,465. Most of the assets were valued as of October 31, 1981, although the valuations for certain other assets are as current as December 1982. Overland and its subsidiaries had a net income after taxes of $142,649 for 1980 and $114,059 for 1979. The consolidated group suffered a loss of $66,747 in 1978.

In response to the original notice of pendency, the PBGC received opposition comments from each of the plans affected by this request. After republication of the notice, the Central States Fund indicated that it neither supported nor opposed the request. The Chicago Independent Fund indicated that it would concur with the position taken by the Central States Fund. However, the Local 710 Fund renewed the objection it had initially filed in response to Manley's application, and requested that the PBGC consider that objection. The Local 710 Fund objection did not allege that Manley would be unable to meet its obligations to the Local 710 Fund or offer any evidence to that effect. The Local 710 Fund comment argued that, if the variance request were granted, the PBGC should impose several conditions on the approval.

The first condition suggested by the Local 710 Fund was that Manley ensure CKD's compliance with the seller's bond requirement under ERISA section 4204(a)(3)(A), by requiring that Manley annually report on the seller's financial condition to determine whether a seller's bond is required and by requiring that Manley post a bond equal to the CKC's withdrawal liability in the event of the seller's failure to do so. The PBGC does not believe that these conditions are justified. The plan does not have to rely on the purchaser in order to obtain financial information on the seller. Under ERISA section 4219(a), the seller would be obligated, upon written request by the plan, to provide such information as the plan sponsor reasonably determines is necessary to enable the plan sponsor to "comply with the requirements of this part." Since the liquidation bond is a requirement of ERISA, and since the plan has the responsibility for monitoring that requirement, the necessary financial information may be obtained by the plan pursuant to its authority under section 4219(a). In addition, the purchaser should not be made responsible for the seller's failure to post the bond. Section 4204 establishes two distinct bonding requirements in a sale of assets, one for the purchaser and one for the seller. To compel the purchaser to post the seller's bond would impose an additional obligation on the purchaser beyond that contained in the statute.

The Local 710 Fund would also have the PBGC condition its approval on the requirement that Manley annually provide a financial statement to the plan to ensure that there has been no adverse change in the purchaser's financial situation since the exemption was granted. This condition suggests that the plan will determine, on an annual basis, whether the purchaser's financial condition is such to warrant a continued variance from the section 4204(a)(1)(B) bonding requirement. This is inappropriate however, since section 4204(c) gives the PBGC, not the plan, the authority to grant variances or exemptions from the bond/escrow provision.

In summary, the PBGC does not believe that the Local 710 comment demonstrates that this exemption will significantly increase the risk of financial loss to the plans.

The PBGC has reviewed the exemption request on the basis of the purchaser's ability to meet its obligations to the Plan. *James River-Dixie/Northern Inc.*, 48 FR 35057 (Aug. 2, 1983). The net tangible assets of Overland exceed not only the withdrawal liability of the pruchaser, but the combined withdrawal liability to the plans of both parties to this sale of assets. Thus, this case meets the standard for an exemption established in *Kohlberg, Kravis, Roberts and Co.*, 47 FR 40261, 40262 (Sept. 13, 1982).

Therefore, based on the facts of this case and the representations and statements made in connection with the request for exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purpose of Title IV of ERISA and would not significantly increase the risk of financial loss to the plans. Accordingly, the PBGC hereby grants the request by Manley for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction statisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisifies such other requirements is made by the plan sponsor.

Issued at Washington, D.C., on this 3rd day of April 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-9451 Filed 4-9-84; 8:45 am]

BILLING CODE 7705-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13862; 812-4314]

Pioneer Fund, Inc., and Pioneering Management Corp.; Application for an Order Granting Certain Exemptions and Permitting Certain Transactions

April 3, 1984.

Notice is hereby given that Pioneer Fund, Inc. ("Fund"), 60 State Street, Boston, MA 02109, a Massachusetts corporation registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end management investment company, and Pioneering Management Corporation ("Adviser," collectively with the Fund, "Applicants"), the Fund's investment adviser, filed an application on November 8, 1983, and amendments thereto on February 21, and March 15, 1984, requesting an order of the Commission (i) pursuant to Section 6(c)

of the Act exempting the Fund from the provisions of Section 12(d)(1) of the Act to the extent necessary to allow the Fund to form a wholly-owned subsidiary open-end investment company (the "Subsidiary"); (ii) pursuant to Section 17(d) of the Act exempting the Fund and its Subsidiary from the provisions of Section 17(a) of the Act to the extent necessary to permit the Fund to transfer assets to the Subsidiary; and (iii) pursuant to Section 17(d) of the Act and Rule 17d–1 thereafter to permit the Fund, the Adviser, and the Subsidiary to participate in the organization, funding, operation, and spin-off of the Subsidiary. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of its relevant provisions.

According to the application, the Fund is one of four open-end investment companies managed by the Adviser, a Delaware corporation. As of December 31, 1983, the Fund had net assets of $1,352,430,183, and 61,246,283 outstanding shares beneficially owned by over 175,000 shareholders.

Applicants state that the Adviser has attempted to meet investor demand for smaller mutual funds by organizing Pioneer II, Inc., in 1968 (net assets of $1,139,997,116 at December 31, 1983) and Pioneer Three, Inc., which first offered its shares to the public in November, 1982, and had net assets of $147,300,349 at December 31, 1983. (The fourth fund managed by the Adviser is Pioneer Bond Fund.) Based on its average monthly sales during 1983, Pioneer Three will have over $250,000,000 of net assets by the end of 1984, notwithstanding maximum permitted aggregate investments of $100,000 by any record holder. On the basis of these experiences, Adviser has concluded that its attempts to satisfy investor demand for smaller mutual funds by organizing new funds have succeeded only temporarily.

The application states that the Fund proposes to organize a wholly-owned subsidiary open-end investment company. The Subsidiary would be initially funded over a six-month period (beginning on the date the Subsidiary commences operations) by the transfer to the Subsidiary of ten percent (10%) of the net assets of the Fund (determined on the date the Subsidiary commences operations). Thereafter, the Subsidiary would receive an additional amount from the Fund on the first business day of each calendar month equal to ten percent (10%) of the net proceeds, if any, from sales of Fund shares during the preceeding calendar month. (Net proceeds would reflect reinvestments of dividends and capital gain distributions and redemptions of Fund shares during that month.) Shares of the Subsidiary would not be offered directly to the public.

Applicant's Subsidiary would pursue the identical investment objectives and polices of Pioneer except that all of the investments made by the Subsidiary would be in companies whose outstanding common stock had an aggregate market value not exceeding $200,000,000 on the date of the Subsidiary's initial investment ("Qualifying Portfolio Investments"). The Subsidiary would be permitted to make follow-on investments notwithstanding any growth in the aggregate market value of any of the Qualifying Portfolio Investments following the Subsidiary's initial investment therein.

After approximately five years from the date it commences business (or sooner if the net assets of the Subsidiary will have exceed $300,000,000 for six consecutive months) shares of the Subsidiary would be spun off as a stock dividend to those who are then shareholders of the Pioneer on the basis of one share of the Subsidiary for each share of the Fund outstanding. No further stockholder or Commission action is anticipated with respect to that stock dividend. Recipients of shares of the Subsidiary would be able to exchange them for shares of the Fund, if they wish to do so, without incurring any sales charge.

Applicants state that the principal reason for the proposed transaction is to give Fund shareholders the opportunity to have a portion of their investment in the Fund, one of the largest equity mutual funds, allocated to a smaller investment company which will have investments only in Qualifying Portfolio Investments. The fund has always had the right and opportunity to make Qualifying Portfolio Investments for its own account. However, there are usually not sufficient publicly-traded shares in smaller companies to permit the Fund to invest in them in a way meaningful to a billion dollar investment company. Applicants argue that the formation to the Subsidiary will afford the Fund the opportunity to develop through the Subsidiary a meaningful portfolio of such investments. The Fund believes its shareholders will support the proposal because (i) it will provide them with an indirect investment in a much smaller investment company without having to liquidate their investments in the Fund and pay resulting federal or state income taxes, (ii) the Subsidiary is likely to remain a relatively small investment company until it is spun off, and (iii) shareholders of the Fund will be able to look forward to a distribution of shares of the Subsidiary without the recognition of material taxable income (if any).

The Fund also asserts that the proposal will generate positive cash flow for the Fund. According to the application, the Fund's directors believe that this positive cash flow will provide the Adviser with added flexibility in identifying and acquiring new portfolio investments for the Fund as well as for the Subsidiary.

Applicants state that assets to be transferred from the Fund to the Subsidiary would consist of Qualifying Portfolio Investments of the Fund to the extent there are sufficient Qualifying Portfolio Investments. If it is necessary to transfer assets in addition to Qualifying Portfolio Investments, the Fund will transfer cash to the Subsidiary. Since it is consistent with the Fund's existing objectives and policies to invest in Qualifying Portfolio Investments and since the Fund intends to make a number of Qualifying Portfolio Investments irrespective of whether the proposed transactions are consummated, the Fund does not anticipate that any transfer of its assets to the Subsidiary will result in any adverse effect on its liquidity or any material increase in its portfolio turnover rate. The Fund reserves the right to make Qualifying Portfolio Investments for its own account after the organization and funding of the Subsidiary. However, the portfolios of Pioneer and the Subsidiary would not contain investments in the same Qualifying Portfolio Investments prior to the spin-off to the Subsidiary.

Applicants state that at the next annual meeting of its stockholders, the Fund plans to present to its shareholders its proposal with respect to the organization and funding of the Subsidiary. Since the Fund believes that the proposed transactions should not be effected without substantial stockholder support, it will condition consummation of the proposed transactions on the affirmative vote of the holders of at least seventy-five percent (75%) of the shares represented in person or by proxy at the annual meeting. Implementation of the proposal will also be subject to the receipt of an order of the Commission granting the requested exemptions, the effectiveness of a registration statement on form N–1A covering the Subsidiary and an indefinite number of shares of its

Common Stock and an amendment to Pioneer's registration statement on Form N–1A with respect to the proposed transactions.

Applicants represent that the management contract between the Subsidiary and the Adviser would be identical to the one between the Fund and the Adviser except that it would provide for a management fee of .45 of 1% of the average daily net assets of the Subsidiary. The existing management contract between the Fund and the Adviser provides for a management fee of .50 of 1% of the Fund's average daily assets up to $250,000,000, .48 of 1% of average daily assets between $250,000,000 and $300,000,000 and .45 of 1% of such assets over $300,000,000. The Adviser would not receive any additional management fee solely by reason of the organization, funding or spin-off of the Subsidiary.

According to the application, the Subsidiary would register under the Act as an open-end investment company prior to its commencing operations. Immediately prior to the spin-off of the Subsidiary, the Fund will hold shares of the Subsidiary's Common Stock equal to the number of shares of the Fund common stock then outstanding. The Subsidiary's directors would initially be the same individuals who are the directors of the Fund. Before the spin-off, directors' fees paid by the Fund would be allocated between the Fund and the Subsidiary on the basis of their respective net assets. After the spin-off, the Fund and the Subsidiary will each pay directors' fees which are then determined to be reasonable. No increase is contemplated in the aggregate directors' fees to be paid. The Fund does not, and the Subsidiary would not, pay any remuneration to officers. The Subsidiary would be named on a joint fidelity bond as an insured and maintain separate custody arrangements, all in compliance with the Act and the rules and regulations thereunder. Before the spin-off, all published financial statements of the Fund would include separate audited financial statements of the Subsidiary. The Fund's prospectus would include specific disclosures relating to the Subsidiary. Expenses with respect to the formation of the Subsidiary, approal of shareholders of the transactions contemplated by the proposal, the registration of the Subsidiary under the Act, the filing of this application and other organizational expenses would be borne by the Adviser, provided that the Subsidiary will pay state filing fees with respect to its authorized capital stock.

Applicants state that the Subsidiary would be an "investment company" as defined in Section 3(a) of the Act. Accordingly, the Fund's ownership of the Subsidiary would violate the proscription against ownership of more than 3% of the capital stock of another investment company in Section 12(d))(1) of the Act. Applicants further state that transfers of securities and cash from the Fund to the Subsidiary may be prohibited by Section 17(a) of the Act and that the Subsidiary's organization, funding, operations and eventual spin-off may be considered to involve the joint participation of the Fund, the Subsidiary, and/or the Adviser in one or more joint transactions prohibited by Section 17(d) of the Act and Rule 17d–1 thereunder.

Applicants assert that Section 12(d)(1) of the Act is designed, *inter alia*, to prevent the pyramiding of management fees which would result from mutual funds investing in other mutual funds. They contend that since the Fund will pay only one management fee, based on the combined net assets of the Fund and the Subsidiary, there would not be any pyramiding of management fees. Applicants, in arguing that this proposal meets the standards of section 17(b) of the Act, further assert that the proposed transfers of assets from the Fund to the Subsidiary would not prejudice the Fund or the Subsidiary in any respect. Securities transferred from the Fund to the Subsidiary will be transfered at fair market value as of the close of business on the preceding business day in accordance with the Fund's procedures for computing its net asset value each day. Since the Subsidiary will be wholly owned until it is spun off, transactions between the Fund and the Subsidiary would neither prejudice any Fund shareholder nor benefit the Adviser or any other affiliated person of any affiliated person.

In arguing that the standards of Rule 17d–1 have been met, Applicants assert that the Fund and the Adviser have taken appropriate steps to assure that the Fund and the Subsidiary will be treated fairly in all respects. The Subsidiary's organizational costs will be paid by the Adviser which, notwithstanding that additional staffing will probably be required to manage the Subsidiary's portfolio, will not receive any additional management fee solely as a result of the organization, funding or spin-off of the Subsidiary. Prior to the spinoff, directors' fees will be allocated between the Fund and the Subsidiary in accordance with their respective net assets. Prior to the spinoff of the Subsidiary, investments will be allocated to Fund and the Subsidiary in accordance with their respective investment policies. If a proposed investment satisfies such policies of both the Fund and the Subsidiary, the Adviser will make the investment for the portfolio for which it is then most desirable.

According to the application, sharholders of the Fund may exchange their shares of the Fund (without paying a sales charge) for shares of Pioneer II, a mutual fund which is about the same size as the Fund and which has the same investment objectives and policies. Thus, shareholders who do not want to own shares of the Subsidiary may choose to exchange their shares for shares of a fund that is virtually idential to the Fund, or they similary may choose to exchange shares of the Subsidiary for shares of the Fund after the spin-off.

According to the application, the Fund believes that the proposed transaction would not favor the Adviser over other promoters in connection with the organization of new mutual funds. The funding of the Subsidiary with Qualifying Portfolio Investments and the management of a new portfolio of such investments will probably require additional staffing by the Adviser, but the Adviser will not receive a higher management fee on the combined assests of the Fund and the Subsidiary than it would receive on the same amount of assets of the Fund. Accordingly, the proposed transaction is considerably less attractive to the Adviser from a profit perspective than the more customary procedure for organizing new investment companies (which the Adviser recently followed in connection with the organization of Pioneer Three, Inc., referred to above, in November 1982). It is not the intention to the Adviser to utilize the proposed transactions for the purpose of proliferating investment companies for it to manage.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 30, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact of law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated below. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be

issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9531 Filed 4-9-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13012]

Storage Equities, Inc.; Application and Opportunity for Hearing

April 4, 1984.

Notice is hereby given that Storage Equities, Inc., a California corporation ("Applicant") has filed an Application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of First Interstate Bank of California, a California banking corporation ("FICAL") under an existing indenture qualified under the Act, a supplement to that indenture, and a proposed second supplement to that indenture are not so likely to involve material conflicts of interest as to make it necessary in the public interest or for the protection of investors to disqualify FICAL from acting as Trustee under such Indenture and each supplement thereto.

Section 310(b) of the Act provides in part that, if a Trustee under an Indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a Trustee under a qualified Indenture shall be deemed to have a conflicting interest if such Trustee is Trustee under another Indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another Indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified Indenture and such other Indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such Trustee from acting as Trustee under either of such Indentures.

The Applicant alleges that:

1. FICAL currently is acting as a Trustee under an Indenture and one Supplement thereto under which the Applicant is an obligor. The Indenture, dated as of August 9, 1983, is between Applicant and FICAL and provides for the periodic issuance of secured notes in partial consideration for the purchase of property by Applicant. This Indenture was filed as Exhibit 4.3 to Applicant's Registration Statement No. 2-80850 filed under the Securities Act of 1933 and has been qualified under the TIA under file no. 22-12633, and is incorporated herein by this reference. No notes have been issued directly under this Indenture, and it is not anticipated that any will be. Applicant has also entered into and filed, by way of post-effective amendment to the Registration Statement stated above, a First Supplemental Indenture under which FICAL is a trustee, and such First Supplemental Indenture appears as Exhibit 4.4 to the Registration Statement. That post-effective amendment was declared effective on January 26, 1984. Applicant has issued Series 1 through 9 of its secured convertible notes under this First Supplemental Indenture. Applicant intends to execute a Second Supplemental Indenture, the form of which is attached to Applicant's application, and thereafter Applicant will file a post-effective amendment to the above Registration Statement for the Second Supplement Indenture. Applicant proposes to issue Series 10 of its secured convertible notes under such supplement.

2. SEI wishes to appoint FICAL as Trustee under the Second Supplemental Indenture, and to receive approval for FICAL to serve under the First Supplemental Indenture.

3. The Applicant is not in default in any respect under the Indenture or the First Supplement thereto, nor, when the Second Supplemental Indenture is delivered, will it be in default thereunder or under any of the provisions of the Indenture or the First Supplemental Indenture.

4. Each series of secured notes issued or to be issued under the Indenture, the First Supplement thereto and the Second Supplement thereto are or will be secured by separate and distinct assets of Applicant, so that should FICAL have occasion to proceed against the security under any series of notes, such action would not affect the security, or the use of any security, under any other series. Thus, the existence of the other trusteeships should not inhibit or discourage FICAL's action under any one series.

The Applicant has waived notice of hearing, hearing on the issues raised by its Application and all rights to specify procedures under Rule 8(b) of the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C.

Notice is further given that any interested person may, not later than April 30, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request shold be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9530 Filed 4-9-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20814; File No. SR-MSRB-84-10]

Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board

April 3, 1984.

The Municipal Securities Rulemaking Board ("MSRB") on March 23, 1984, submitted copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Rule A-8(a) concerning the signing of Forms 19b-4 submitted to the securities and Exchange Commission for proposed rules adopted by the MSRB. The rule change would allow the Secretary of the MSRB or any other person designated by the MSRB to sign Forms 19b-4, in addition to the Chairman of the MSRB.

This proposed rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act. At any time within sixty days of filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the act.

Publication of the submission is expected to be made in the **Federal Register** during the week of April 2, 1984. Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons submitting written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to file No. SF–MSRB–84–10.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the MSRB.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–9529 Filed 4–9–84; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/10–0086]

Delta Capital, Inc.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Busines Administration (SBA), pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1984)), for transfer of ownership and control of Delta Capital, Incorporated (DCI), 227 North Tryon Street, Suite 201, Charlotte, North Carolina 28202, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of DCI, which was licensed November 29, 1961, is subject to the prior written approval of SBA.

DCI is presently wholly-owned by Delta Associates, Inc. (DAI). Mr. Alexander B. Wilkins, Jr. is the beneficial owner of approximately 37 percent of DAI.

DAI proposes to sell substantially all of its assets, including all of the issued and outstanding capital stock of DCI, to Southgate Venture Partners (Southgate), a proposed North Carolina limited partnership. Mr. Wilkins will own, in the aggregate, a 70.25 percent undivided interest in the profits and losses of the partnership, and he will be the sole general partner to the partnership. The other shareholders of DAI will not participate as partners in Southgate.

Mr. William D. Humphries, the only limited partner owning 10 percent or more of the partnership (16.36), is the managing general partner of Walnut Street Capital Company, a licensed SBIC in New Orleans, Louisiana. Mr. Humphries will have no fiduciary responsibility in the affairs of DCI and will participate only as a limited partner of Southgate.

Following consummation of the sale of assets of DAI to Southgate, it is contemplated that there will be no initial change in the present officers or directors of DCI. The location of DCI will not change as a result of the change of ownership interests, nor will its plan of operations, area of operations, or portfolio composition be amended. DCI will continue to operate as a corporation.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owner of DCI, and the probability of successful operation of DCI under this ownership, including adequate profitability, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than (fifteen days from the date of publication of this notice), submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Charlotte, North Carolina.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 28, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–9494 Filed 4–9–84; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2116, Amdt. No. 1]

Florida; Declaration of Disaster Loan Area

The above-numbered Declaration (49 FR 7017), is amended by extending the deadline for filing applications for physical damage until June 23, 1984. All other information remains the same.

(Catalog of Federal Register Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 3, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–9497 Filed 4–9–84; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2123]

North Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the Counties of Bertie, Cumberland, Duplin, Greene, Hertford, Pitt, Robeson, Sampson, Scotland, and Wayne in the State of North Carolina, constitute a disaster loan area because of damage resulting from severe storms and tornadoes beginning on or about March 28, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 31, 1984, and for economic injury until December 31, 1984, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

Interest rates are—	Percent
Homeowners with credit available elsewhere	12.750
Homeowners without credit available elsewhere	6.375
Business with credit available elsewhere	11.500
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (nonprofit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 212312 for physical damage and for economic injury the number is 615600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 3, 1984.

Jean P. Lewis,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-9495 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 08/08-0061]

Rocky Mountain Ventures, Ltd.; Issuance of a License To Operate as a Small Business Investment Company

On January 4, 1984, a notice was published in the **Federal Register** (Vol. 49, 541), stating that an application had been filed by Rocky Mountain Ventures, Ltd., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), for a license as a small business investment company.

Interested parties were given until close of business January 19, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301C of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/08-0061 on March 20, 1984, to Rocky Mountain Ventures, Ltd. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 50.011, Small Business Investment Companies)

Dated: March 28, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-9493 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2122]

South Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the Counties of Abbeville, Fairfield, Kershaw, Laurens, Marlboro, and Newberry in the State of South Carolina, constitute a disaster loan area because of damage resulting from servere storms and tornadoes beginning on or about March 28, 1984. Eligible persons, firms, and organizations may file applications for loans for physicial damage until the close of business on Mary 31, 1984, and for economic injury until December 31, 1984, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

Interest rates are—	Percent
Homeowners with credit available elsewhere	12.750
Homeowners without credit available elsewhere	6.375
Businesses with credit available elsewhere	11.500
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (nonprofit) organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 212212 for physicial damage and for economic injury the number is 615500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 3, 1984.

Jean P. Lewis,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-9496 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting from 6 p.m.–10 p.m., on Thursday, May 3, 1984, and 8 a.m.–4 p.m. on Friday May 4, 1984, at the Viscount Hotel, 1960 Harbor Island Drive, San Diego, CA 92101, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Cy Fritz, U.S. Small Business Administration, 450 Golden Gate Avenue, Box 36044, San Francisco, CA 94102, (415) 556–2543.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 4, 1984.

[FR Doc. 84-9498 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting

The Small Business Administration, Region VIII Advisory Council, located in the geographical area of Salt Lake City, will hold a public meeting at 10:00 to 12:00 p.m., Monday, May 7, 1984, at the Salt Lake Art Center, 20 South West Temple, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah, (801) 524–5800.

Dated: April 5, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-9615 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License Application Nos. 04/04-0231; 04/04-0232]

NCNB SBIC Corp. and NCNB Venture Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business companies (13 CFR 107.102 (1984)), under the names of NCNB Venture Corporation and NCNB SBIC Corporation; One NCNB Plaza, Charlotte, North Carolina 28255, for licenses to operate as a small business investment companies (SBICs) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.),* and the Rules and Regulations promulgated thereunder.

The proposed officers and directors of NCNB Venture Corporation are as follows:

S. Epes Robinson, 2039 Queens Road, East Charlotte, North Carolina 28207, President Director

David C. Vorhoff, 419—50 W. 8th Street, Charlotte, North Carolina 28202, Vice President, Treasurer, Assistant Secretary

Rowena C. Foushee, 7700 Tuckaseegee Road, Charlotte, North Carolina 28214, Secretary

James M. Berry, 2730 Meade Court, Charlotte, North Carolina 28211, Director

J. G. Richards Roddey, 2920 Wickersham Road, Charlotte, North Carolina 28211, Director

James B. Sommers, 228 Huntley Place, Charlotte, North Carolina 28207, Director

F. William Vandiver, Jr., 3015 Wickersham Road, Charlotte, North Carolina 28211, Director

The proposed officers and directors of NCNB SBIC Corporation are:

Troy S. McCrory, Jr., 657 Boyce Road, Charlotte, North Carolina 28211, President, Director

Rowena C. Foushee, 7700 Tuckaseegee Road, Charlotte, North Carolina 28214, Secretary

Mary G. Covington, 300 Chiswick Road, Charlotte, North Carolina 28211 Assistant Secretary
Francis B. Kemp, 301 Eastover Road, Charlotte, North Carolina 28207, Director
John B. Pipkin, II, Carmel on Providence Apartments, Charlotte, North Carolina 28211, Director

NCNB National Bank of North Carolina will be the sole shareholder of both applicants. NCNB Corporation, a North Carolina corporation, is sole shareholder of NCNB National Bank of North Carolina. As of January 1, 1984, there were 20,165 holders of record of common stock of NCNB Corporation.

The applicants will have different investment policies. NCNB Venture Corporation (Venture) will concentrate on making equity investments in emerging growth companies; NCNB SBIC Corporation (NCNB SBIC) will make debt investments in companies that are beyond the start-up stage.

Venture will provide financing in larger amounts than will NCNB SBIC. The latter also intends to apply for Leverage from SBA from time to time; Venture does not.

NCNB SBIC intends to operate primarily in the States of North Carolina, South Carolina and Florida. Venture will seek it opportunities in the entire Southeastern United States.

Management of Venture has been associated with the Corporation Finance Group of its parent; NCNB SBIC's President has been associated with the parent's Specialized Industries Group.

Both Applicants will begin operations with $0.1 million private capital. In addition, Venture has an irrevocable commitment from the parent for an additional $4.0 million to be contributed from time to time.

Because both applicants will have a common owner and one common officers SBA's prior written approval is necessary under § 107.602 of the Regulations.

Matters involved in SBA's consideration of the applications include the general business reputation and character of shareholders and management, and the probability of successful operation of the new companies in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA, in writing, comments on the proposed licensing of these companies. Any such communications should be addresses to: Deputy Associate Administrative for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Charlottee, North Carolina.

Dated: March 30, 1984.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-9613 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #615400]

Texas; Designation of Disaster Loan Area

Bexar County in the State of Texas constitutes a disaster area because of a freeze which occurred during December 1983. Eligible small businesses may file applications for economic injury assistance until the close of business on January 3, 1985, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations. The interest rate for eligible applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 3, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-9611 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #615300]

Utah; Designation of Disaster Loan Area

Grand County in the State of Utah constitutes a disaster area because of landslides during April 1983 which closed the main highway and rail access to the county for a number of months (to December 1983). Eligible small businesses may file applications for economic injury assistance until the close of business on January 3, 1985, at the address listed below:

Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, 916-440-3651

or other locally announced locations. The interest rate for eligible applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 3, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-9612 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0456]

Venray Capital Corp; License Surrender

Notice is hereby given that Venray Capital Corporation, 981 Route 22, P.O. Box 6817, Bridgewater, New Jersey 08807, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Venray Capital Corporation was licensed by the Small Business Administration on March 30, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on March 27, 1984, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 30, 1984.

Robert G. Lineberry,

Deputy Associate Admininstrator for Investment.

[FR Doc. 84-9614 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-5473]

U.C. Capital, Inc.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the amended Act (15 U.S.C. 661 *et seq.*), has been filed by U.C. Capital, Inc. (applicant) with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1984).

The Officers, Directors, and the Stockholder of the Applicant are as follows:

Stephen Shou-Quio Ko, 47 King Road, Landing, New Jersey 07850—President, Treasurer, Director, 100 percent Stockholder
Christina Yue-Sang Yeung-Ko, 47 King Road, Landing, New Jersey 07850—Secretary, Director
Raymond B. Curran, 1100 Clove Road, Staten Island, New York 10301—General Manager

John Kwai-Sang Yang, 7411 Ashburn Street, Vancouver, British Columbia, Canada—Director

The Applicant, a New Jersey corporation with its principal place of business at 121 Shelley Drive, Hackettstown, New Jersey 07840, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of common stock.

The Applicant will initially conduct its operations in the State of New Jersey.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under this management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Hackettstown, New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 30, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-9500 Filed 4-9-84; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Marquez (New Mexico) Uranium Mine; Record of Decision

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Record of decision for the Marquez (New Mexico) uranium mine.

SUMMARY: In accordance with TVA procedures implementing the National Environmental Policy Act (NEPA), 48 FR 19264 (April 28, 1983), and consistent with 40 CFR 1506.3 (1982), TVA prepared an environmental impact statement (EIS) on a proposed underground uranium mining project to be located in the Canon de Marquez, McKinley County, New Mexico. Notice of intent to prepare an EIS and invitation for public comment on the scope of the document was published in 46 FR 45233 (September 10, 1981). A public meeting to solicit comments on the scope of the project was held on October 1, 1981, in Marquez, New Mexico. The draft EIS was sent to the U.S. Environmental Protection Agency (EPA) and made available to the public on August 5, 1983. Notice of availability of the draft statement was published in the **Federal Register** on August 19, 1983. The final EIS was sent to EPA and made available to the public on January 18, 1984, and a notice of availability of the final document was published in the **Federal Register** on February 3, 1984.

TVA, a corporate agency and instrumentality of the United States created by the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831–831dd (1982)), consistent with its statutory mandate to supply an ample amount of electrical power, has under construction or in operation a number of uranium-fueled generating plants. As one of many activities TVA has undertaken to ensure an adequate supply of uranium for these plants, TVA is planning to underground mine, through its operator, the uranium deposits located in the Canon de Marquez in McKinley County, New Mexico.

Construction and operation of the underground mine would be expected to have the following environmental effects: (a) A temporary change in land use for 48.5 hectares (120 acres) from wildlife habitat and recreation to mineral extraction; (b) a minor alteration in topography near the proposed pond sites due to reclamation of waste rock piles; (c) minimal impacts on land due to limited vehicular traffic and road construction; (d) temporary depression of groundwater levels in the Westwater Canyon Member of the Morrison Formation in the mine vicinity during mine life; (e) short-term project-induced impacts to surface water and shallow groundwater quality; (f) a temporary decrease in air quality in the vicinity of the mining operations due to fugitive dust and exhaust emissions from combustion-driven mining and support vehicles, and releases of radon and short-lived radon progeny from ventilation shafts and ore piles; (g) a temporary decrease of plant and animal species at the mine site; (h) a minor and temporary effect on aquatic systems downstream from the mine and settling ponds due to sedimentation; and (i) a minor increase of noise levels in the immediate vicinity of mine shafts and vents.

The no action alternative and alternatives for securing uranium ore by other methods were considered but were found insufficient to meet TVA objectives. None of the alternatives explored were environmentally preferable. TVA also evaluated site specific alternatives including the following: different shaft and support building siting, mining techniques, and reclamation options.

TVA will proceed with implementing the preferred alternative identified in the Marquez Uranium Mine Final Environmental Impact Statement. TVA has decided that pursuing the preferred alternative will help assure a future supply of uranium for use as fuel in its existing and future lightwater reactors. The preferred alternative will also ensure that this uranium will be acquired under a set of controlled environmental conditions with emphasis on the protection of the environment. It is concluded that the mining of uranium ore at Marquez under the conditions stated in the final EIS is an environmentally acceptable action and that the mining of this ore at Marquez is the most reasonable (preferred) alternative.

FOR FURTHER INFORMATION CONTACT: Write Martin E. Rivers, Director of Environmental Quality, Tennessee Valley Authority, Knoxville, Tennessee 37902, or call TVA's Citizen Action Office toll free: 1–800–362–9250 (in Tennessee) or 1–800–251–9242 (in Alabama, Georgia, Kentucky, Mississippi, North Carolina, Virginia, Missouri, and Arkansas).

SUPPLEMENTARY INFORMATION: TVA is a corporate agency and instrumentality of the United States, created by the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831–831dd (1982)). Consistent with its statutory mandate to supply an ample amount of electrical power, TVA has under construction or in operation a number of uranium-fueled generating plants. As one of many activities TVA has undertaken to ensure an adequate supply of uranium for these plants, TVA is planning to underground mine through its operator and 50-percent co-owner, Kerr-McGee Nuclear Corporation (Quivira Mining Company), uranium deposits located in the Canon de Marquez in the southeast corner of McKinley County, New Mexico. The activity would take place on 577 hectares (1,426 acres) of land in the Canon de Marquez area in which TVA holds rights to a 50-percent interest in mineral leases.

In carrying out its responsibilities under the TVA Act, TVA follows a policy designed to develop and enhance a quality environment. As a result of this policy, TVA has long considered environmental matters in its decisionmaking. Offices and divisions within TVA employ personnel with a wide diversity of experience and academic training which enables TVA to utilize a systematic, interdisciplinary approach to ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking. As a Federal agency, TVA is subject to the requirements of the National Environmental Policy Act of 1969 (NEPA).

The environmental impacts associated with the construction and operation of the uranium mine near Marquez, as well as the combined impacts associated with transporting and processing the ore at an existing uranium mill have been evaluated. Alternatives also considered include no-action, purchase of uranium, participation in alternative projects, borrowing equivalent uranium, and delaying the action.

Each alternative requires the eventual mining and processing of uranium ore with an associated set of environmental impacts similar to the preferred action, whose control and mitigation would occur outside of TVA's zone of influence. The preferred action alternative would permit TVA to acquire the needed uranium under a set of controlled environmental conditions with emphasis on the protection of the environment.

Adverse unavoidable impacts for the preferred action alternative and the other (except no action) alternatives would be similar; therefore, only the unavoidable impacts associated with the preferred action are described. Potential construction and operational impacts include: (a) A temporary change in land use for 48 hectares (120 acres) from wildlife habitat and recreation to mineral extraction; (b) a minor alteration in topography near the proposed pond sites due to reclamation of waste rock piles; (c) minimal impacts on land due to limited vehicular traffic and road constuction; (d) temporary depression of groundwater levels in the Westwater Canyon Member of the Morrison Formation in the mine vicinity; (e) short-term project-induced degradation of surface water and shallow groundwater quality; (f) a temporary decrease in air quality in the vicinity of the mining operations due to fugitive dust and exhaust emissions for combustion-driven mining and support vehicles, and releases of radon and short-lived radon progeny from ventilation shafts and ore piles; (g) a decrease of plant and animal species at the mine site; (h) a minor and temporary effect on aquatic system downstream from the mine and settling ponds due to sedimentation; and (i) a minor increase of noise levels in the immediate vicinity of mine shafts and vents.

Site specific environmental impacts associated with three sites which could be potential processing sites were not addressed in detail. Impacts for these sites have been previously discussed in Environmental Reports prepared by the mill licensee for the State of New Mexico for licensing of these mills. (Bokum Resources Corporation, 1978; Woodward-Envicon, Inc., 1974; and Kerr-McGee Nuclear Corporation, 1975.)

Mitigative measures which may reduce or minimize impacts include; best management practices during construction to reduce soil erosion and potential sedimentation, revegetating disturbed areas, using best available control equipment technology to reduce potential air pollution, treatment of any point source discharges to receiving drainages, disposal of solid wastes in an approved sanitary landfill, implementation of spill prevention control and countermeasure plans, the protection of groundwater quality, careful selection of facility locations, timing of activities, recovery or protection of cultural resources, and mitigation of wildlife impacts. Monitoring programs will be established to determine the effectiveness of these mitigative measures, and audits will be performed to ensure compliance with these measures and applicable regulations.

There would be no significant long-term effects on the environment due to the Marquez Project. In the short-term, while the area is being mined, a total surface area of approximately 48.5 hectares (120 acres) would be unavailable for other uses. This area would be reclaimed after mining activity ceased and would then be available for essentially the same purposes as prior to mining. The groundwater levels in the Westwater Canyon Member of the Morrison Formation, a principal water supply aquifer in the San Juan Basin, would be depressed during mining operations in the area. However, water levels in the aquifer should rise again to preproject levels after mine dewatering ceases.

The major irreversible and irretrievable commitment of resources would be the use of mined uranium for energy production. It is estimated that 6.8 million pounds (3.1 million kg) of U_3O_8 would be extracted. About 0.25 gallons (0.95 l) of petroleum fuel would be used to produce each ton of ore and waste rock. It is estimated that approximately 6.3×10^9 kWh of electricity would be required over the life of the project. About 1.5 million cubic feet of propane or natural gas would be used monthly. Some of the materials used in the mine and support buildings and equipment would also be unrecoverable.

W. F. Willis,

General Manager, Tennessee Valley Authority.

[FR Doc. 84-9054 Filed 4-9-84; 8:45 am]
BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

April 3, 1984.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from April 16, at 1 p.m., through April 20, 1984, at 1 p.m., at FAA Headquarters, 800 Independence Avenue SW., Washington, D.C.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and

upgrading of terminology and procedures.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than the day before the meeting, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic Service, AAT-301, 800 Independence Avenue SW., Washington, D.C. 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is scheduled to be held from July 23 through July 27, 1984, in Seattle, Washington.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on April 3, 1984.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 84-9459 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-84-6]

Petitions for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 30, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 4, 1984.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
[illegible]	Beech Aircraft Co	14 CFR 23.49(b)(1)	To permit type certification of the Beechcraft Model 38P Series, single engine pressurized turboprop, airplanes with a stall speed greater than 61 knots.
[illegible]	Northern Air Cargo, Inc.	14 CFR 91.39 & 121.157	To reconsider Denial of Exemption 770N which permits petitioner to use its restricted category C-82 airplanes to carry cargo for compensation or hire subject to certain conditions and limitations and any operations specifications issued by the Regional Director, Alaska Region.
23895	Cam Aircraft Inc	14 CFR 65.91(c)(2)	To permit petitioner to apply for an inspection authorization without having been actively engaged in maintaining aircraft for at least the 2-year period before he applies.
23879	Comair Inc	14 CFR 121.411 & 121.413	To permit petitioner to use Flight Safety International flight instructors for initial factory flight training of Comair pilots in the SAAB/Fairchild SF-340 airplanes.
[illegible]	United Airlines	14 CFR 61.157(e)	To permit petitioner to use its Phase II simulators in lieu of aircraft for certain pilot training and flight checks of pilots not employed by petitioner.
[illegible]	Mead	14 CFR 21.181	To permit petitioner to operate two Falcon 20 aircraft using an FAA-approved minimum equipment list.
[illegible]	Helicopters Unlimited	14 CFR 141.35(d)(3)(i)	To permit petitioner to use Mr. Kenneth Suzuki as an assistant chief flight instructor without having the required 1000 hours of flight instruction experience.
[illegible]	Flight Dynamics, Inc	14 CFR 21.195(b)	To permit petitioner to conduct market surveys and sales demonstrations while operating under an experimental certificate.
[illegible]	TCOM Corp	14 CFR 101.13(a)(2) & (4)	To permit the operation of a moored balloon more than 500 feet above the surface of the earth and within five miles of the boundary of any airport.
[illegible]	Kenneth Norton	14 CFR 61.161(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotocraft rating without having 1,200 hours of flight time as a pilot within the 6 years before the date of application.
[illegible]	Federal Express Corp	14 CFR 121.583	To permit employees of petitioner's Canadian licensee, Canaica Inc., to fly aboard petitioner's all-cargo aircraft using flight observer and courier seats.
23935	EMS Helicopters	14 CFR 135.261(b)	To permit petitioner to operate Bell 206L and Augusta 109 Mark II helicopters in a hospital emergency service without complying with certain of the duty time limitations of that section.
23936	Flying Tigers	14 CFR 121.583 & 121.547	To permit petitioner to provide free transportation for employee dependents on its B-727-100 freighter aircraft.
23940	Virgin Islands Air Service	14 CFR 91.303 & 91.305	To allow petitioner to operate three DC-6 airplanes in noncompliance with the operating noise limits.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23821	John E. Rotelaar, Sr	14 CFR 61.63(c)(1) & (2)	To permit petitioner to transfer class ratings from his Canadian lowlet permit to his U.S. private pilot certificate. *Denied 3/22/84.*
23841	Dr. Donald E. Beise, D.D.S	14 CFR 61.19(d)(2)	To extend the validity of petitioner's flight instructor certificates for 1 year without completion of the required biennial flight instructor course. *Denied 3/20/84.*
23820	KSL Television News	14 CFR 45.27 & 45.29	To allow petitioner to use its Bell Jet Ranger Helicopter displaying 3-inch registration markings on the side of the fuselage and 20-inch bottom markings instead of 12" side marks. *Denied 3/22/84.*
23774	Eli Lilly Int'l. Corp	14 CFR 91.32(b)	To allow petitioner to operate its Gulfstream II (G–II) aircraft, serial numbers 66 and 250, up to flight level (FL) 430 without requiring one pilot to wear and use an oxygen mask at all times above FL 410 so long as there are two pilots at the aircraft controls, and each pilot has a quick-donning type of oxygen mask. *Denied 3/20/84.*
23806	Southern California Air Service Inc	14 CFR 135.183(a)	To allow the operation of its single-engine airplane, over water, below an altitude that will allow it to reach land in the event of an engine failure. *Denied 3-29-84*
23233	Regional Airline Assn	14 CFR Portions of Part 121	To permit the operation of propeller driven airplanes with more than 30 but less than 61 passengers seats pursuant to the domestic air carrier rules of Part 121 without complying, with dispatch system requirements. *Denied 3/28/84.*
23460	United Air Lines, Inc	14 CFR 91.32(b)(1)(ii) & 121.333(c)(2)	To permit petitioner to operate its Boeing 767 (B–767) type airplanes above flight level (FL) 410 and up to the maximum operating altitude of FL 431 without one pilot at the controls of the airplane wearing and using an oxygen mask secured, sealed, and supplying oxygen. *Denied 3/28/84.*
18554	Continental Helicopters Inc	14 CFR 135.261(b)	Extension of Exemption 2701A to permit petitioner to operate a helicopter in a hospital emergency service without meeting the flight and duty time limitations of this section, subject to conditions and limitations. *Partial grant 3/22/84.*
23829	Sowell Aviation Co., Inc	14 CFR 61.71(a) & Appendices A, B, C, D, & E of Part 141.	To permit petitioner to graduate students from its Part 141 approved courses when they have been trained to a specific performance level rather than the minimum flight time requirements. Additionally, an exemption would permit certain graduates to be eligible to take the instrument practical test when that student does not hold at least a valid second-class medical certificate issued under Part 67. *Partial grant 3/29/84.*
22576	Ray's Flight Systems, Inc	14 CFR 61.157(d)(1), & 61.63(d) (2) and (3)	To amend Exemption 3544 to allow trainees to complete a practical test for issuance of a type rating to be added to any grade airplane simulator as set forth in Appendix A of Part 61. *Granted 3/14/84.*
23843	Hendrik A. Gideonse	14 CFR 61.161(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotorcraft rating without having had at least 1200 hours of flight time as a pilot within the 8 years before the date of exemption. *Granted 3/13/84.*
23578	Florida Marine Patrol	14 CFR 91.79(c) & 91.65(b)	To permit operations of law enforcement aircraft below minimum safe altitudes and through airport traffic areas without landing or taking-off. *Granted 3/12/84.*
23339	Air Canada	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 35 DC–9–32: C-FTLH; CFTLI; C-FTLL; C-FTLM; C-FTLO; C-FTLQ; C-FTLR; C-FTLS; C-FTLT; C-FTLW; C-FTLX; C-FTLZ; C-FTMA; C-FTMB; C-FTMC; C-FTMD; C-FTME; C-FTMF; C-FTMG; C-FTMH; C-FTMI; C-FTMJ; C-FTMK; C-FTML; C-FTMO; C-FTMP; C-FTMQ; C-FTMT; C-FTMU; C-FTMV; C-FTMW; C-FTMX; C-FTMY; C-FTMZ; & C-FTMM. *Granted 3/23/84.*
23855	Dept. of Navy, MCAS, Beaufort, SC	14 CFR 101.23(b) & (c)	To permit petitioner to fire Missile Plume Simulator GTR–18 Class B Fireworks, "Smokey Sam." Firings will be done within established Controller Firing Areas at MCAS Beaufort. *Granted 3/12/84.*
23429	Amos J. Peaslee, Jr.	14 CFR 91.90(b)(1)(ii)	To permit aircraft operating to and from Peaslee Airport to enter and exit the Philadelphia Terminal Control Area from the south without maintaining contact with ATC. *Granted 3/12/84.*
23854	Airline Training Institute	14 CFR 61.157(d)(1), 61.63(d)(2) & (3)	To permit trainees to complete a practical test for the issuance of an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate, by substituting for the flight test required by § 61.63(d) (2) and (3) the test requirements in Appendix A to Part 61. *Granted 3/22/84.*
23835	Aircraft at your call d/b/a/ Hospital Air Transport	14 CFR 135.261	To permit petitioner to operate a helicopter in hospital emergency medical evacuation service without complying with the duty time limitations. *Granted 3/29/84.*
16787	Petroleum Helicopters, Inc	14 CFR 133.1(a), & 133.45(a)(3)	To renew Exemption 2534C, as amended, to permit petitioner to use for hire, certain helicopters to lower and hoist harbor pilots, on an external hoise, to and from ships at sea, on a test basis. *Granted 3/29/84.*
23836	Icelandair, S.A. (Icelandair)	14 CFR Portions of Parts 21 and 91	To extend Exemption 3531D, which allows petitioner to operate a leased U.S.-registered DC–8–55 aircraft using an FAA-approved minimum equipment list. *Granted 3/20/84.*

[FR Doc. 84-9455 Filed 4-9-84; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 154—Airborne Thunderstorm Detection Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 154 on Airborne Thunderstorm Detection Equipment to be held on May 2–4, 1984 in Conference Room 233, Building 1244, National Aeronautics and Space Administration, Langley Research Center, Hampton, Virginia commencing at 9:00 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the First Meeting Held on February 2–3, 1984; (3) Presentation by the NASA Special Projects Office; (4) Review First Draft of Committee Report on Minimum Operational Standards for Airborne Thunderstorm Detection Equipment; (5) Assignment of Tasks; and (6) Other Business.

Attendance is open to the interested public but limited to space available.

With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, N.W., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on April 2, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-9452 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 150—Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on April 26–27, 1983 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fifth Meeting Held on November 29–30, 1983; (3) Review and Discussion of the FAA Altimetry Data Collection Program; (4) Review and Discussion of Working Group Activities on System Performance Requirements, Altimetry System Errors, and Flight Technical Errors; (5) Status Briefing on the Report Drafting Group Activities; (6) Discussion on the Glossary Preparation Group Report; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005, (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on March 27, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-9454 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Washtenaw County, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Recision of Notice of Intent published in the February 1, 1984 **Federal Register.**

SUMMARY: The FHWA is issuing this notice to advise the public that it is rescinding the notice of intent to prepare a supplement to the final environmental impact statement for the treatment of the I-94/Wiard Road interchange at US–12 in Ypsilanti Township, Washtenaw County, Michigan published in the **Federal Register** February 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Fort, Jr., District Engineer, Federal Highway Administration, P.O. Box 10147, Lansing, Michigan 48901, Telephone (FTS) 374–1879 or (Commercial) (517) 377–1879 or Mr. Ross E. Lowes, Manager, Social and Economic Studies Section, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 373–2226.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Michigan Department of Transportation (MDOT), has determined that the work covered by the Final Environmental Statement, FHWA–MI–EIS–80–01–F, approved by the FHWA on May 29, 1981 for the proposed improvement of the I–94/Wiard Road interchange and the minor design changes proposed to accommodate the traffic movements from northbound Wiard Road to the neighborhood west of Wiard Road and at McCartney Street, do not constitute a significant change in the proposed action, the affected environment, the anticipated impacts or the proposed mitigation measures. The minor design changes described above have been made in response to the concerns of local residents and agencies as indicated on page 65 of the approved Final EIS. A supplement to the Final EIS for those changes is not considered necessary and will not be prepared as indicated in the notice published in the February 1, 1984 **Federal Register** and is rescinded.

The proposed improvement of the US–12 overpass and relocation of the eastbound ramp connection to I–94 referred to in the February 1, 1984 notice has been determined by FHWA to be a separate action independent of the proposed I–94/Wiard Road interchange improvement and will be processed separately in accordance with established FHWA procedures.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: April 2, 1984.

David A. Merchant,

Division Administrator, Lansing, Michigan.

[FR Doc. 84-9607 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition(s) for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition(s) are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before May 24, 1984 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for

examination during regular business hours (9 a.m.–5 p.m.) in Room 5101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

West Virginia Northern Railroad, Incorporated

(Waiver Petition Docket Number SA–84–0)

The West Virginia Northern Railroad, Incorporated (WVN) seeks a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231). The WVN seeks a permanent waiver of compliance with § 231.30(d)(2) of the regulation for three locomotives. Section 231.30(d)(2) requires that locomotives used in switching service built before April 1, 1975, may not be equipped with end footboards or pilot steps after September 30, 1978. Whenever end footboards are removed from a locomotive, the uncoupling mechanism and horizontal end handholds of the locomotive must be modified to comply with paragraphs (f) and (g) of this section. The WVN indicates that it seeks this waiver because "no personal injuries resulting from the use of the footboards has occurred for at least the past ten years . . .".

Richmond, Fredericksburg and Potomac Railroad Company

(Waiver Petition Docket Number RSFC–84–9)

The Richmond, Fredericksburg and Potomac Railroad Company (RFP) seeks a waiver of compliance with certain provisions of the Railroad Freight Car Safety Standards (49 CFR Part 215). The RFP seeks a temporary waiver of compliance with § 215.121(d) of the regulation for 152 freight cars. Section 215.121(d) requires that a railroad may not place or continue in service a car, if after December 1, 1983, the car is a box car and its side doors are not equipped with operative safety hangers, or the equivalent, to prevent the doors from becoming disengaged. The RFP indicates that it seeks this waiver because a twelve (12) month extension (until December 31, 1984), is needed to locate the 152 off-line cars and make suitable arrangements for the necessary modifications.

Old Colony and Newport Railway

(Waiver Petition Docket Number LI–84–5)

The Old Colony and Newport Railway seeks a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229), Safety Glazing Standards (49 CFR Part 223), Railroad Safety Appliance Standards (49 CFR Part 231), and Railroad Power Brakes and Drawbars (49 CFR Part 232). The Old Colony and Newport Railway seeks a temporary waiver of compliance with several sections of these regulations for a BRE-Leyland manufactured "USA Demonstrator Railbus". Part 229 prescribes minimum Federal safety standards for all locomotives except those propelled by steam power. Part 223 prescribes minimum requirements for glazing materials used in windows of locomotives and passenger cars. Part 231 requires that locomotives and cars be equipped with a minimum complement of safety appliances. Part 232 specifies minimum power brake and drawbar requirements including rules for inspection, testing, and maintenance of air brake equipment. The Old Colony and Newport Railway indicates that it seeks this waiver in order to allow the National Railroad Foundation and Museum to operate this vehicle in revenue service between June 11, 1984, and October 1, 1984, to assess the suitability of the vehicle for their operating requirements and to permit BRE-Leyland to demonstrate the capabilities of the vehicle.

Issued in Washington, D.C. on March 23, 1984

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 84-9520 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-06-M

Urban Mass Transportation Administration

Uniform System of Accounts and Records and Reporting System

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of change in operating procedures for storing and publishing transit data collected under Section 15 of the Urban Mass Transportation Act of 1964, as amended.

SUMMARY: Section 15 of the Urban Mass Transportation Act of 1964, as amended (UMT Act), prohibits the Secretary of Transportation from making any grants under section 5 or 9 of the UMT Act unless the applicant for such grant and any person or organization to receive benefits directly from that grant are each subject to a prescribed Reporting System and Uniform System of Accounts and Records. Section 15 reports are due to the Urban Mass Transportation Administration (UMTA) 120 days after the end of reporting agencies' fiscal years. UMTA's operating procedures for administering the Section 15 program provide for storing on computer tape and publishing in annual reports data submitted over a 1 year period. The 1 year period, or Section 15 reporting year, includes transit financial and operating data reported for fiscal years ending between July 1 of a given year and June 30 of the following year. This notice changes the Section 15 reporting year to a calendar year basis, i.e., January 1 to December 31, effective January 1, 1983. This does not affect transit agencies' fiscal years or the due dates for annual Section 15 reports, but changes the grouping of these repors for statistical analyses and for annual report publication purposes.

FOR FURTHER INFORMATION CONTACT: Ronald J. Fisher, Director, Information Services, Office of Technical Assistance, Urban Mass Transportation Administraion, Room 6419, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–9157.

SUPPLEMENTARY INFORMATION: Section 15(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611) (UMT Act) requires the Secretary of Transportation to ". . . develop, test, and prescribe a reporting system to accumulate public mass transportation financial and operating information by uniform categories and a uniform system of accounts and records." Section 15(b) of the UMT Act states that "After July 1978, the Secretary shall not make any grants under Section 5 or 9 unless the applicant for such grant and any person or organization to receive benefits directly from that grant are each subject to both the reporting system and the uniform system of accounts and records * * *."

The Secretary has delegated the above responsibilities to the Urban Mass Transportation Administration (49 CFR 1.51). UMTA published regulations to implement Section 15 on January 19, 1977 (42 FR 3772). These regulations are codified at 49 CFR Part 630—Uniform System of Accounts and Records and Reporting System (Section 15 regulations) and have been amended several times (43 FR 58928, December 18, 1978; 44 FR 4493, January 22, 1979; 44 FR 26052, May 3, 1979; and 48 FR 22926, May 23, 1983).

Section 15 reports are due to UMTA 120 days after the end of reporting agencies' fiscal years. UMTA prepares Section 15 annual reports and annual data bases from the financial and operating information contained in the agencies' reports. Each Section 15

annual report and annual data base includes data submitted by transit agencies for their fiscal years ending on or between July 1 and June 30. This 1 year period is referred to as the Section 15 reporting year. It was designed to match the majority of grantees' fiscal years and the Federal fiscal year at the time it was established.

The establishment and use of a Section 15 reporting year is an operating procedure for administering the Section 15 program. These procedures provide for the storing on computer tapes and publishing in annual reports, *National Urban Mass Transportation Statistics*, transit data submitted over a one year period. Each Section 15 reporting year runs from July 1 of a given year to June 30 of the following year. Thus, the FY 1979 Section 15 Annual Report contains data from transit agencies whose fiscal years ended between July 1, 1978 and June 30, 1979, the FY 1980 Section 15 Annual Report contains data from agencies whose fiscal years ended between July 1, 1979 and June 30, 1980, and so on.

This notice announces the change of the Section 15 reporting year to a calendar year basis, i.e., January 1 to December 31. The change is effective January 1, 1983. Thus, the FY 1983 Section 15 reporting year runs from January 1 to December 31, 1983, the FY 1984 reporting year is January 1 to December 31, 1984, and so on. The period of time between the end of the old reporting year and the beginning of the new reporting year, i.e., fiscal years ending between July 1, 1982 through December 31, 1982, will be considered a transition period and these data will not be published. The data will be stored on computer tape.

Several benefits result from this change. First, a calendar year Section 15 reporting year will help clear up long-standing confusion over the fiscal year information covered in the annual reports and in the annual data bases. Under the July 1 to June 30 reporting year, the annual reports and data bases from which they are derived contain data from 2 fiscal year "groupings." The FY 1982 Section 15 annual report, for example, combines information from agencies reporting on their own 1981 fiscal years (approximately 50% of the reporting agencies) with information from agencies reporting on their own 1982 fiscal years (another 50%, approximately). By contrast an annual report based on data from a January 1 to December 31 reporting year will bring together information from the same fiscal year groupings for over 99% of all reporting agencies.

The second benefit of changing to a calendar year Section 15 reporting year relates to the administration of the Section 9 program. Section 9 of the UMT Act allocates Federal transit assistance to urbanized areas with populations over 200,000 partly on the basis of several Section 15 data elements. The new reporting year will enable UMTA to use more recent Section 15 statistics for computing Section 9 funding apportionments. For example, under the calendar year reporting year the FY 1985 Section 9 funds will be apportioned using Section 15 data for fiscal years ending on or between January 1 and December 31, 1983. Under the July 1 to June 30 reporting year, FY 1985 Section 9 funds would have been apportioned using data for fiscal years ending on or between July 1, 1982 and June 30, 1983.

Another benefit relates to recent modifications in Section 15 reporting requirements. Changes have been made to Section 15 reporting and certification requirements to accommodate specific needs of the Section 9 program and to handle new reporting entitles. The combination of new reporting requirements and new reporters signals a period of learning and adjustment for all Section 15 reporting entities. UMTA has sought to ease the adjustment by issuing guidance outling the new reporting requirements and procedures. Nevertheless, the transition is proving to be difficult. Many transit agencies, particularly new reporters, are experiencing problems filing accurate and complete FY 1983 Section 15 reports. The shift in reporting years will help ease the adjustment for agencies with fiscal years ending on or between July 1 and December 31, 1982, i.e., those agencies whose fiscal years end in the transition period between the old and new reporting years. Under the July 1 to June 30 reporting year, information supplied by these agencies would have appeared in the FY 1983 Annual Report. Due to the change to a January 1 to December 31 reporting year, UMTA will include this information in the computer data base but not publish it in the FY 1983 Section 15 Annual Report. Instead, the FY 1983 Section 15 Annual Report will contain information supplied by these transit agencies for their fiscal years ending between July 1, 1983 and December 31, 1983.

Excluding the information furnished by transit agencies with fiscal years ending on or between July 1 and December 31, 1982 will not create gaps in the Section 15 data base. UMTA will incorporate the information into the Section 15 computer data base, thus making it available for use by researchers and analysts. These data will not be used for apportioning Section 9 funds. Rather, the data that these reporters submit in calendar 1983 will be used for this purpose.

The change from a July 1–June 30 to a January 1–December 31 Section 15 reporting year will result in an additional change to the Section 15 annual report. The scheduled publication date for each annual report will shift from May to November.

The change to a calendar year Section 15 reporting year does not have a significant effect on the age of transit agencies' Section 15 reports at the time the annual report is released to the public. The difference in the total age of all reports between the July 1 to June 30 reporting year and the January 1 to December 31 reporting year is negligible.

UMTA carefully considered the benefits and implications summarized above in deciding to change to a calendar year Section 15 reporting year. The action does not affect transit agencies' fiscal years or the due dates for their annual Section 15 reports, but only changes the grouping of these reports for statistical analyses and for annual report publication purposes.

Issued on March 30, 1984.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 84-9355 Filed 4-9-84; 8:45 am]

BILLING CODE 4910-57-M

VETERANS ADMINISTRATION

Advisory Committee on Women Veterans; Meeting

The Veterans Administration gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Women Veterans will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. on May 14–15, 1984. The purpose of the Advisory Committee on Women Veterans is to advise the Administrator regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Veterans Administration; and the activities of the Veterans Administration designed to meet such needs. The Committee will make recommendations to the Administrator regarding such activities.

The session will convene at 9 a.m. both days. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is

limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Program Assistant, Office of the Administrator, Veterans Administration Central Office (phone 202/389–5518) prior to May 7, 1984.

Dated: April 3, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84–9402 Filed 4–9–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 70
Tuesday, April 10, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 4, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, April 11, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Corporation, Docket Nos. WEST 82-146-RM, WEST 82-207-M. (Issues include whether the administrative law judge erred in concluding that the operator violated 30 CFR § 57.6-5, a mandatory safety standard dealing with the storage of blasting agents.)

CONTACT PERSON FOR MORE INFORMATION: Jeal Ellen, (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-9653 Filed 4-6-84; 11:38 am]

BILLING CODE 6735-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 16, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Request by the General Accounting Office for Board comment on a draft report regarding System pricing of check clearing activities.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, assistant to the Board; (202) 452-3204.

Dated: April 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9714 Filed 4-6-84; 3:54 pm]

BILLING CODE 6210-01-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Correction

On March 22, 1984, the Equal Employment Opportunity Commission published a notice of a meeting of the Commission to be held March 27, 1984. The document was assigned an incorrect Federal Register Document number, FR Doc. No. 84-7668. The document has been re-numbered as 84-9481.

BILLING CODE 1505-01-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-18]

TIME AND DATE: 9:30 a.m., Tuesday, April 17, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 731-TA-131, -132, and -138 [Final] (Welded Carbon Steel Pipes and Tubes from the Republic of Korea and Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202)523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-9716 Filed 4-6-84; 3:54 pm]

BILLING CODE 7020-02-M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-12]

TIME AND DATE: 9 a.m., Tuesday, April 17, 1984.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., S.W., Washington, D.C. 20594.

STATUS: The first three items will be open to the public; the last three items will be closed under Exemption 10 of the Government in the Sunshine Act. Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report:* Sinking of the U.S. Tug TECO #2 While Assisting in the Docking of the U.S.S. WILLIAM V. PRATT, Pensacola Bay, Florida, October 12, 1983.
2. *Pipeline Accident Report:* Mid-America Pipeline Company Liquefied Petroleum Gas Pipeline Rupture, near West Odessa, Texas, March 15, 1983.
3. *Brief* of Major Field Aviation Accident Investigation, File No. 3045, Charlotte, Texas, May 5, 1982.
4. *Opinion and Order:* Adminstrator v. York, Docket SE-5944; disposition of respondent's appeal.
5. *Opinion and Order:* Commandant v. Foedisch, Docket ME-95; disposition of appellant's appeal.
6. *Opinion and Order:* Administrator v. Wagner, Docket SE-5727, disposition of the Administrator's appeal.
7. *Opinion and Order:* Administrator v. Simon, Docket SE-5825; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

April 6, 1984.

[FR Doc. 84-9715 Filed 4-6-84; 3:54 pm]

BILLING CODE 4910-58-M

Federal Register

Tuesday
April 10, 1984

Part II

Environmental Protection Agency

40 CFR Parts 86 and 600

Standards for Emissions From Methanol-Fueled Motor Vehicles and Methanol-Gasoline Fuel Equivalency Factor; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[AMS-FRL 2554-8]

Standards for Emissions From Methanol-Fueled Motor Vehicles and Methanol-Gasoline Fuel Equivalency Factor

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This action announces EPA's intent to establish emission standards and test procedures for the certification of methanol-fueled motor vehicles and engines. The Agency also intends to develop a fuel equivalency factor for methanol so that methanol-fueled vehicles may be appropriately included in corporate-average fuel economy determinations and have appropriate fuel economy labels. This action is being taken to remove the possibility that the absence of specific emission standards for methanol in EPA's regulations and of a fuel equivalency factor could hinder the development of methanol as a transportation fuel. The Agency invites all interested parties to comment in writing on both aspects of this rulemaking action.

DATES: A one-day workshop on this rulemaking will be held on May 30, 1984, convening at 9:00 a.m. Written comments on this ANPRM should be submitted to EPA by June 29, 1984.

ADDRESSES: The workshop will be held in the Conference Room of the U.S. Environmental Protection Agency, Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Written comments, other than those given directly to EPA at the workshop, should be submitted (in duplicate if possible) to: Central Docket Section (LE–131A), Environmental Protection Agency, Attention: Docket No. A–84–05, 401 M Street, SW., Washington, D.C. 20460.

Materials relevant to this rulemaking have been placed in Docket No. A–84–05 by EPA. The docket is located at the above address in the West Tower Lobby, Gallery I, and may be inspected between 8 a.m. and 4 p.m. on weekdays. A reasonable fee may be charged by EPA for copying of docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Rykowski, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4339.

SUPPLEMENTARY INFORMATION:

I. Background

There has been active interest in the use of essentially pure (neat) alcohols as alternative transportation fuels for over a decade.[1] Work in this area has increasingly centered on methanol (CH_3OH) for three general reasons. First, the technology to produce methanol from U.S.-based energy sources such as natural gas, coal, wood, or other biomass is well known, and its production economics appear significantly better than other synthetic fuels from these sources. Second, engines designed to operate on methanol are more energy efficient (work output per thermal energy input) than similar gasoline engines and, when used in diesel engines, methanol appears to have the same, and potentially better, energy efficiency than the traditional diesel engine operated on diesel fuel. Third, engines operating on methanol, including diesel engines, have relatively low emissions of both nitrogen oxides (NO_x) and particulate. As the control of these two pollutants from diesel engines is technologically difficult, yet environmentally desirable, the reduction of these two emissions without losing the fuel efficiency advantage of the diesel engine is a significant attribute from the Agency's point of view. In addition, methanol does not need octane enhancers to prevent engine knock, so additives such as lead, ethylene dibromide, and benzene are avoided.

The interest in methanol is not just academic. Methanol-fueled vehicles have been built in limited production runs by major automobile companies (i.e., Ford and Volkswagen), and large test fleets are being run in California and several other parts of the world. For example, the California Energy Commission is currently testing over 500 methanol-fueled vehicles and the Bank of American is testing over 250 such vehicles. These programs demonstrate the possibility that methanol-fueled vehicles could enter the marketplace in significant numbers in the near future.

Before being mass-produced in significant numbers, however, methanol-fueled vehicles would have to comply with certain emission standards. EPA's current emission standards and test procedures purport to apply only to gasoline- and diesel-fueled vehicles, although the Clean Air Act (CAA) specifies or authorizes EPA to adopt such requirements for all vehicles regardless of fuel type. Thus, methanol-fueled vehicles could become the third major type of certified vehicle and would be subject to both pre-production and in-use requirements. The Agency has not adopted standards specifically for methanol-fueled vehicles to date, since the timing of their introduction in the marketplace in significant numbers was not clear.

Methanol producers and vehicle manufacturers are now indicating a reluctance to make the substantial investments necessary to create a national methanol vehicle/fuel market without prior knowledge of the applicable emission standards and associated test procedures. Similar concerns apply to the uncertain treatment of methanol-fueled vehicles with respect to the Corporate Average Fuel Economy. (CAFE) standards and the fuel economy labeling requirements under the Energy Policy and Conservation Act (EPCA), 15 U.S.C. 2001 et seq. In this regard, even though those EPCA programs are currently applicable only to gasoline- and diesel-fueled vehicles, EPA has the responsibility under section 503(d)(2) of EPCA to determine the proper method of calculating the gasoline-equivalent fuel economy of vehicles operating on other fuels, so that the Department of Transportation can determine if such alternative fuels should be included in such programs. Additionally, these potential impediments to the development of methanol as a transportation fuel were raised in a report by the General Accounting Office [2] and, along with other issues, have led to the formation of a Cabinet Council Work Group on methanol.

To eliminate any such hindrance, EPA is hereby initiating the development of suitable emission standards and test procedures for the certification of methanol-fueled light-duty vehicles (LDVs), light-duty trucks (LDTs), heavy-duty engines (HDEs), and motorcycles (MCs). Furthermore, the Agency is developing a suitable method to include methanol-fueled vehicles appropriately in the fuel economy programs.

II. Emission Standards

As discussed previously, the emission control requirements of the CAA generally do not differentiate between vehicles operating on different fuels, but generally apply to all vehicles regardless of fuel type. To date, EPA has

[1] Neat methanol fuel, as discussed herein, is to be distinguished from methanol blends, where a small amount of methanol (e.g., 2–5 percent) is mixed with gasoline and sold as gasoline.

[2] The report, entitled "Removing Barriers to the Market Penetration of Methanol Fuels," is available for review in EPA Docket No. A–84–05.

promulgated emission standards and test procedures which purport to apply only to gasoline- and diesel-fueled vehicles, as these are the only types of vehicles mass-produced for sale. For gasoline-fueled vehicles, the standards apply to exhause hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NO_x), and evaporative HC. For vehicles using diesel engines, the standards apply to exhaust HC, CO, NO_x, particulate, and smoke.

With respect to those pollutants already regulated, EPA expects to apply the CO and NO_x standards for each vehicle class to methanol-fueled versions of these vehicles. There are four reasons for taking this approach. First, this has generally been the approach taken in setting standards for diesel-fueled vehicles relative to standards for gasoline-fueled vehicles. Second, other than the type of fuel, methanol-fueled vehicles are expected to be similar in type, size, and function to their gasoline- and diesel-fueled counterparts. Hence, they generally should comply with the same emission standards. Third, the emission characteristics of methanol-fueled vehicles and those of current vehicles utilizing the same engine cycle (i.e., Otto or Diesel) should be sufficiently similar to allow the use of the same emission control technology that is used on vehicles produced today. Actually, the application of much of this technology to methanol-fueled vehicles should generally be less complex and costly. Fourth, because these pollutants are chemically identical regardless of the fuel used in the vehicle, this approach should provide equal protection to the environment regardless of the emission source. However, based on additional development work, EPA will consider the applicability of different standards (where allowed by statute) for methanol-fueled vehicles.

Smoke emissions from methanl-fueled vehicles do not appear to be a concern. The smoke levels associated with these engines are extremely low compared to current diesel engines. Therefore, EPA anticipates that no smoke standards will be necessary for methanol-fueled vehicles.

Setting particulate standards for methanol-fueled vehicles is slightly more comlex than that for CO and NO_x. The particulate levels of methanol engines appear to be well below those of current diesel engines. However, little is known of the chemical composition of the particulate from such engines and, thus, it may not be comparable to the composition of particulate from current engines. At the present time EPA does not expect to establish a particulate standard for methanol-fueled vehicles unless their composition is of particular concern. However, because of the high efficiencies of methanol-fueled engines, the Agency anticipates that methanol engines will be in direct competition with diesel engines and, therefore, is considering allowing manufacturers to include methanol-fueled engines/vehicles in their compliance determination for the corporate average diesel particulate standards. Of course, EPA welcomes comments on all these points.

The standard-setting approach for HC emissions (both exhaust and evaporative) may be even more complex. The HC standards for current vehicles set in the CAA were primarily intended to control ozone formation in the atmosphere. Methanol-fueled vehicles emit very small amounts of the types of hydrocarbons emitted by gasoline- and diesel-fueled vehicles. However, they do emit significant levels of unburned methanol and, to a lesser extent, aldehydes, both of which are oxygenated hydrocarbons. Methanol is less photochemically reactive than most hydrocarbons, but aldehydes are very photochemically reactive. Thus, while the existing HC standards might easily be met by methanol-fueled vehicles if the definition of hydrocarbons were restricted to those currently being emitted, it appears appropriate to have an additional standard for methanol-fueled vehicles to control oxygenated hydrocarbons.

There are several options available to control the oxygenated hydrocarbons from methanol-fueled vehicles. The simplest approach would probably be to apply the existing HC standards and measure "hydrocarbons" using the current HC analyzer (flame ionization detector) calibrated for methanol. This approach would essentially define hydrocarbons as methanol, plus traditional hydrocarbons. A second, fairly simple approach would be to accurately measure the important individual oxygenated hydrocarbons, as well as traditional hydrocarbons, and require that their combined level comply with the existing hydrocarbon standards. A more complex approach that is being considered would be to compare the relative photochemical oxidation potential of methanol engine exhaust to that of gasoline- or diesel-engine exhaust. The standards for methanol-fueled vehicles would then be set to ensure that emissions of oxygenated hydrocarbons caused no more ozone production than the allowable amount of HC emissions from current gasoline- and diesel-fueled vehicles. This approach might very well result in separate standards for unburned methanol and aldehydes.

An oxygenated HC standard would address the ozone-producing aspects of the emissions of methanol-fueled vehicles. However, there are other environmental concerns related to the organic compounds in the exhaust, particularly those of methanol and formaldehyde. A preliminary study has suggested that under extreme worst-case exposure scenarios, ambient concentrations of methanol might reach levels which raise concern about risks to the public health.[3] This analysis, along with all other data available, will be used to determine if a specific methanol standard is necessary. Of course, it is possible that the standards for CO and for oxygenated HC may provide sufficient control to eliminate the need for a specific methanol standard based on direct health effects.

Formaldehyde emissions from methanol-fueled vehicles also raise potential concerns about risks to the public health since they can be much greater than those from current vehicles. Formaldehyde is a strong irritant and has been shown to be a carcinogen in animals. A preliminary study on the toxic effects of this pollutant has also suggested that under extreme worst-case situations, ambient concentrations of formaldehyde might reach levels of concern.[4] Again, however, there may be no need for a separate formaldehyde emission standard due to control inherently provided by other emission stndards (e.g., CO, oxygenated HC).

III. Test Procedures

As mentioned above regarding emission standards, methanol-fueled vehicles are very similar to gasoline- and diesel-fueled vehicles in most respects. Thus, most of the established certification and emission test protocols of 40 CFR Parts 86 and 600 can be applied to methanol-fueled vehicles without change. Two areas where changes definitely will be required involve organic emission measurement instrumentation and fuel composition.

The current HC measurement instrument, the flame ionization detector (FID), appears to provide an inaccurate

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[3] This document, entitled "Determination of a Range of Concern for Mobile Source Emissions of Methanol," is available for review in EPA Docket No. A-84-05.

[4] This document, entitled "Determination of a Range of Concern for Mobile Source Emissions of Formaldehyde Based Only on its Toxicological Properties," is available for review in EPA Docket No. A-84-05.

measure of oxygenated HC emissions from methanol-fueled vehicles. However, current FIDs are not calibrated for these emissions, so this could be part of the problem. Thus, it is not possible at this time to specify what type of analyzer (or method of analysis) may be required for oxygenated HC. If methanol or formaldehyde standards were necessary, new instrumentation would be needed for their measurement.

The final form of methanol when used as a transportation fuel is uncertain. It could have impurities (e.g., water) or include additives (e.g., isopentane for cold startability). For the purposes of emission and fuel economy testing, EPA expects to require the use of a methanol fuel which would be representative of that available in-use.

IV. Fuel Economy

Section 503(d)(2) of EPCA directs EPA to determine the amount of an alternative fuel that is equivalent to a gallon of gasoline, so that the gasoline-equivalent fuel economy of vehicles operating on such fuels can be determined. It is then the responsbility of the Department of Transportation to determine if such fuels should be included in the CAFE and fuel economy labeling programs (section 501(5) of EPCA). Because of differences in fuel characteristics, the fuel economies of methanol-fueled vehicles and gasoline-fueled vehicles are not directly comparable. Methanol has only about half the energy (or Btu) content of gasoline per unit volume. Therefore, when the fuel efficiencies of otherwise identical vehicles are directly compared in terms of miles per gallon, as is currently the case, methanol appears to be significantly less fuel efficient.

However, as pointed out above, methanol may actually be a more efficient transportation fuel than gasoline in terms of miles per Btu. Therefore, a direct comparison of methanol and gasoline, in terms of miles per gallon, would not only be counter to the fuel conservation intent of the EPCA, but could also adversely affect the development and sale of methanol-fueled vehicles. If included in the CAFE regulations under a direct comparison approach, these vehicles would adversely affect manufacturers' overall fuel economy ratings, thereby discouraging their production. This would be true even though the fuel cost per mile may be comparable because of methanol's inherent fuel efficiency and because the cost per gallon of this fuel should be cheaper than gasoline or diesel fuel. Therefore, the choice of a suitable fuel equivalency factor is important.

At the present time, the most straightforward way to determine the fuel equivalency factor for methanol appears to be to base it on the relative amounts of energy contained in methanol fuel and gasoline. In equation form, such a fuel equivalency factor (FEF) would be:

$$FEF = \frac{\text{Btu/gallon of gasoline}}{\text{Btu/gallon of methanol}}$$

The gasoline-equivalent fuel economy of a methanol-fueled vehicle would be the measured fuel economy in terms of miles per gallon of methanol times the fuel equivalency factor. Using lower heats of combustion, the fuel equivalency factor as defined above appears to be between 2.02 and 2.06. (The range is due to errors present when measuring heats of combustion.) The Agency would expect to use a nominal value of about 2.04.

However, the Agency invites comments on whether there are alternative ways to calculate an equivalency factor which would be appropriate for calculation of corporate average fuel economy (CAFE). For example, one alternative is to calculate fuel economy on the basis of miles per gallon of petroleum-derived fuel, rather than either a miles-per-gallon or miles-per-BTU basis, all fuels being considered. The purpose of the CAFE standards is to reduce dependence on foreign oil. To the extent that vehicles are fueled on methanol, vehicle miles are being travelled without any use of petroleum-based fuel.

V. Workshop and Request for Comments

The Agency will hold a workshop to provide an opportunity for the informal presentation and discussion of views regarding the subjects raised in this ANPRM. The time and place of the workshop is specified in the DATES and ADDRESSES sections of this notice.

To aid the Agency in preparing the proposed rule, we encourage comments on all aspects of emission standards and associated test procedures and on the proper fuel equivalency factor pertaining to methanol-fueled vehicles. In particular, responses are requested to the following questions:

1. What provisions of 40 CFR parts 86 and 600 may require revision, other than those associated with measurement instrumentation and fuel composition?
2. What should be the fuel specifications (chemical and physical) for methanol used in emission certification and fuel economy testing?
3. What is the most appropriate method for determining a methanol/gasoline equivalency factor?
4. What is the most appropriate standard-setting approach for controlling ozone precursors from methanol-fueled vehicles?
5. What are the highest levels of formaldehyde likely to be emitted from a methanol-fueled light-duty vehicle designed to comply with a 3.4 g/mi CO standard?
6. Are separate standards for formaldehyde and unburned methanol necessary to protect the public health and welfare?

In addition, comments are specifically requested on the two referenced "level of concern" reports which are available for review in the EPA docket.

List of Subjects

40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Energy conservation, Electric power, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Administrative practice and procedure, Fuel economy.

Authority:
Clean Air Act (sec. 202 (a), (b))

Dated: April 3, 1984.

William D. Ruckelshaus,
Administrator.

[FR Doc. 84-9368 Filed 4-9-84; 8:45 am]
BILLING CODE 6560-50-M

federal register

Tuesday
April 10, 1984

Part III

Department of Health and Human Services

Office of Human Development Services

FY 1984 and FY 1985 Grants to Indian Tribes for Supportive and Nutritional Services for Older Indians; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13655–841]

FY 1984 and FY 1985 Grants to Indian Tribes for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), Office of Human Development Services, HHS.

ACTION: Notice.

SUBJECT: Announcement of Opportunity for Indian Tribes To Apply for Grants for Supportive and Nutritional Services Under Title VI of the Older Americans Act.

SUMMARY: The Administration on Aging announces that applications will be accepted for grants under Title VI of the Older Americans Act, Supportive and Nutritional Services for Older Indians.

FOR FURTHER INFORMATION CONTACT: Mr. Michio Suzuki, Associate Commissioner for State and Tribal Programs, Administration on Aging, Office of Human Development Services, Department of Health and Human Services, North Building, Room 4282, 330 Independence Avenue SW., Washington, D.C. 20201, (202) 245–0011.

DATE: The closing date for receipt of applications is June 29, 1984.

1. Background and Program Purpose

Title VI was added to the Older Americans Act by the Amendments of 1978, and final regulations (45 CFR Part 1328) were published in the **Federal Register** July 18, 1980 (45 FR 48380–48395). The first grants were awarded to 85 Indian tribal organizations on September 30, 1980. The appropriation for each of the first two years was $6,000,000, and was $5,735,000 for the third and fourth years. Because current appropriations had not significantly increased, funding to existing grantees, and thus to older Indians whom they serve, would have had to be reduced before awards to additional grantees could be made. Therefore, as indicated in the preamble to the 1980 regulations, AoA continued to give first priority to those applicants that had successfully performed under a previous Title VI grant.

There have been inquiries from other interested Tribes which had not applied for funds in 1980, but which would now like to be considered for funding. Since additional funds have been requested for the program, it has been decided to invite applications from other eligible Tribes with the understanding that funding for new projects will be limited to: (1) The amount of funds remaining, if any, in the FY 1984 appropriation after funding grantees who submit approvable applications for continuation of currently approved projects; and (2) the amount of any additional funds appropriated in FY 1985 over the FY 1984 level of $5,735,000.

All applications received, both from currently funded grantees and new applicants, will be reviewed for approval in accord with the procedures and criteria described in this announcement.

The purpose of grants to Indian tribal organizations under Title VI is to promote the delivery of supportive services, including nutritional services, for older Indians that are comparable to services provided under Title III of the Older Americans Act. The primary goal of Title III is to provide supportive and nutritional services designed, in part, to "secure and maintain maximum independence and dignity in a home environment for older individuals." The unique characteristic of Title VI is that it is designed to accomplish these goals for older Indians.

2. Available Funds

Applications for Fiscal Year 1984 funds, for which $5,735,000 has been appropriated, will be accepted from current grantees and new applicants until June 29, 1984. AoA anticipates funding approximately 80 to 85 grants in FY 1984 in amounts ranging from $50,000 to $100,000. Priority will be given in FY 1984 and FY 1985 to funding current grantees who submit approvable requests for continued funding. Awards to new grantees will be made from any FY 1984 funds remaining after approved applications from current grantees have been funded. For FY 1985, awards to new grantees will be made from any additional funds appropriated during that fiscal year above the FY 1984 level of $5,735,000. The President has requested $7,500,000 for Title VI programs for FY 1985, but the actual amount of funds available for FY 1985 will not be known until an appropriation is signed into law. AoA anticipates funding 20 to 25 new projects in amounts ranging from $50,000 to $100,000, contingent upon final appropriation of the amount requested in the FY 1985 Budget.

3. Application Process

Application kits will be sent to the 83 current grantees. Tribes not currently funded under Title VI which are interested in applying should obtain an application kit from the Administration on Aging. The kit will include the "Instructions for Applying for Federal Assistance from HDS Programs," together with the necessary forms. New applicants should request a kit from: Mr. Michio Suzuki, Associate Commissioner for State and Tribal Programs; Administration on Aging, Office of Human Development Services, Department of Health and Human Services, North Building, Room 4228, 330 Independence Avenue, SW., Washington, D.C. 20201, (202) 245–0011.

The closing date for all applications is June 29, 1984. One (1) signed original and two (2) copies of the application including all attachments must be submitted to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Department of Health and Human Services, North Building, Room 1740, 330 Independence Avenue, SW., Washington, D.C. 20201, Attn: William J. McCarron.

Applications may be mailed or hand delivered. Hand delivered applications will be accepted Monday through Friday (except Federal Holidays) from 9:00 a.m. to 5:30 p.m. through June 29, 1984.

The office of Human Development Services will not accept for review any application received after 5:30 p.m. on June 29, 1984 unless it is postmarked no later than midnight June 25, 1984.

4. Eligibility of a Tribal Organization To Receive a Grant

To be eligible to receive a grant, a tribal organization must represent a federally recognized Indian Tribe and meet the three requirements in Section 602(a) of the Act:

A. Age of Older Indians

The tribal organization must represent at least 75 individuals who have attained 60 years of age or older (Note: Two or more Tribes may form a consortium to meet the requirement of representing at least 75 Indians age 60 or over). In order to meet this requirement, the application must indicate the number of members of the grantee Tribe, and of any other federally recognized Tribes, age 60 or over who live in the proposed Title VI service area, excluding spouses who are not elderly Indians.

B. Ability to Deliver Services

The tribal organization must demonstrate the ability to delivery supportive and nutrition services. In order to meet this requirement, the application must include a description of the Tribe's past experience in, or future

plans for, the delivery of supportive and nutrition services. Currently funded grantees will normally cite their past experience under title VI; new applicants may describe services formerly or currently being provided with other funds, or their plans to begin service delivery.

C. Non-Overlapping Between Titles III and VI of the Older Americans Act

The applicant must assure that individuals to be served by the tribal organization will not receive, for the period for which application under this Title is made, services under Title III.

5. Content of the Application

In order to receive funding under this program announcement, all tribal organizations must submit a full application, including those tribal organizations currently funded under Title VI. Applications for continuation grants in future years generally will be required to report only significant changes from prior information submitted.

Section 604(a) of the Older Americans Act lists eleven requirements or assurances which the application must contain in order to be approved. In addition, the regulations at 45 CFR part 1328 require additional information and assurances.

Any narrative information required for any part of the application may be supplied in any form convenient to the tribal organization.

The basic application form is the Form SF–424. The application kit contains instructions for filling out the SF–424, including a form entitled "Instructions for Completing the Program Narrative," for Form SF–424, Part IV. This instruction form, which has been approved by OMB for use through 9–30–86, contains all the statutory requirements and provides an optional suggested format for submitting this information. The application kit will also contain a copy of the regulations and a list of regulation requirements that must be met.

6. Determination of Funding Levels for Projects

In view of the limited amount of funding available, and the extent of need which exists among the older Indian population, it is critical that applicants carefully describe in their applications the ways in which Title VI funds will be used to address the most critical needs of the older Indian population to be served through their project. Section 604(a) of the Older Americans Act requires that, prior to submission of a Title VI application, each applicant evaluate the need for social and nutrition services among the older Indians who will be served by the tribal organization. Applicants must include in their application the results of this evaluation of needs (needs assessment), the degree to which other resources (including in-kind and other tribal resources) are available to meet those needs, and the methods which will be used to assure that Title VI funds will be used with maximum efficiency and effectiveness in meeting critical needs. Budget requests must clearly reflect the information presented in this description. Funding levels for approved projects will be determined after consideration is given to the information described above as well as the following fctors:

a. *For currently funded applicants,* primary consideration will be given to maintaining the current level of services designed to meet the most critical needs of older Indians in the planning and service area. Consideration also will be given to any change which has occurred in the size of the population of Indians age 60 and over in the Title VI service area since initial funding of the project. Such applicants also may apply for awards above or below their previously approved levels with the understanding that the availability of funds to expand current projects will be very limited. In doing so, applicants should clearly describe the additional activities they will be able to provide if they receive additional funds in the amounts requested. This description should include the types and costs of additional services to be provided, the estimated additional number of older Indians to be served (if any), and how these additional funds will be used to meet the most critical needs of the population to be served,

b. *For new applicants,* budget requests will be reviewed in terms of the types and costs of services to be provided in meeting the most critical needs of the population to be served, and the number of older Indians to be served. A primary consideration in determining the appropriate level of funding for new projects will be the level of funding approved for currently funded projects of similar size and scope.

7. Action on Applications

Funds available in FY 1984 and FY 1985 will be used in the following manner:

1. Applications from currently funded grantees, if approved again, will be funded from the $5,735,000 available in FY 1984.

2. Applications for new projects will be funded from any amounts remaining in FY 1984 after funding currently funded projects, and from any amounts available in FY 1985 above the FY 1984 appropriation level of $5,735,000. The President's FY 1985 Budget includes a request of $7,500,000 for the Title VI program.

3. Budget periods for approved projects will be for one year. Project periods will be for three years.

Successful applicants funded from FY 1984 funds will be announced during the fourth quarter of FY 1984 (July–September 1984). Successful applicants funded from additional funds available in FY 1985 will be announced when those additional funds become available. Awards will be made through the issuance of a Notice of Financial Assistance Awarded from the Office of Human Development Services. This Notice will set forth the amount of funds awarded, the terms and conditions of the grant, the budget period for which support is given, and the project period.

A tribal organization must notify the area agency(ies) and the State Agency on Aging in the planning and service area(s) of its intent to apply for and of its receipt of a grant under Title VI.

8. Cooperative Management Initiative (CMI)

The CMI is an Office of Human Development Services (HDS) management initiative to strengthen local coordination and enhance the efficiency of HDS supported Indian programs by reducing the administrative burden associated with administering multiple HDS grants, and encouraging grantee management improvements and joint use of facilities.

All eligible Indian Tribes are strongly encouraged to join in this cooperative effort. Eligible Tribes are those which have grants from two or more HDS programs, i.e., Head Start grants from the Administration for Children, Youth and Families; Social and Economic Development grants from the Administration for Native Americans; and Title VI grants from the

Administration on Aging. Indian Tribes that are currently participating in CMI or that are interested in joining CMI should indicate their intent in the narrative portion of their application. For further information on CMI, contact: Bernice Harris, CMI Coordinator, Office of Human Development Services, Department of Health and Human Services, North Building, Room 5323, 330 Independence Avenue, SW., Washington, D.C. 20201, (202) 245–7730.

Dated: March 27, 1984.

Lennie-Marie P. Tolliver, Ph.D.,

Commissioner on Aging.

Dated: April 3, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 84-9502 Filed 4-9-84; 8:45 am]

BILLING CODE 4130-01-M

federal register

Tuesday
April 10, 1984

Part IV

Department of the Interior

Office of the Secretary

48 CFR Ch. 14
Acquisition Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Ch. 14

Department of the Interior Acquisition Regulation (DIAR)

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule contains the Department of the Interior Acquisition Regulation (DIAR) which implements and supplements the Federal Acquisition Regulation (FAR). The DIAR will replace the current Interior Procurement Regulations (41 CFR 14) on April 1, 1984.

The proposed rule was published on February 13, 1984 (49 FR 5472–5496).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: William Opdyke, Chief, Branch of Policy and Regulations, Division of Acquisition and Grants, Office of Acquisition and Property Management, telephone (202) 343–3433.

SUPPLEMENTARY INFORMATION:

Explanation

The acquisition regulations under this rulemaking action contain only those Department-wide policies, procedures, contract clauses, and solicitation provisions which directly govern the contracting process or control the relationship between the Department's bureaus and offices and contractors or prospective contractors. Internal guidance involving designations, delegations of authority, administrative procedures, and reporting requirements necessary to implement the FAR within the Department is not contained in this action since such guidance is not required to be published in the **Federal Register** pursuant to FAR 1.301(b).

Since the DIAR implements and supplements the FAR, which is to be effective on April 1, 1984, it is necessary for the DIAR to be effective on the same date, rather than the usual thirty days after publication in the **Federal Register**.

Comments

Comments were requested by March 14, 1984. No comments were received from the public. Some internal comments were received which will result in a few minor changes to the text. However, there are no significant differences between the proposed rule and the final rule.

Primary Author

The primary author of this rule is William Opdyke, Office of Acquisition and Property Management, telephone (202) 343–3433.

Executive Order 12291 and Regulatory Flexibility Act

The Director, Office of Management and Budget has exempted agency procurement regulations from the requirements of Executive Order 12291 by memorandum dated December 15, 1983. The Department has certified that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Ch. 14

Government procurement.

For the reasons set out in the preamble, Chapter 14 of Title 48 of the Code of Federal Regulations is published as set forth below pursuant to the authority of the Secretary of the Interior contained in Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Dated: April 4, 1984.

Joseph E. Doddridge,

Deputy Assistant Secretary of the Interior.

Title 48 of the Code of Federal Regulations is amended by establishing Chapter 14 to read as follows:

CHAPTER 14—DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—GENERAL

Part 1401—Department of the Interior Acquisition Regulation System
Part 1403—Improper Business Practices and Personal Conflicts of Interest
Part 1404—Administrative Matters

SUBCHAPTER B—ACQUISITION PLANNING

Part 1407—Acquisition Planning
Part 1409—Contractor Qualifications
Part 1410—Specifications, Standards and Other Purchase Descriptions

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 1413—Small Purchases and Other Simplified Purchase Procedures
Part 1414—Formal Advertising
Part 1415—Contracting by Negotiation

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 1419—Small Business and Small Disadvantaged Business Concerns
Part 1420—Labor Surplus Area Concerns
Part 1424—Protection of Privacy and Freedom of Information
Part 1425—Foreign Acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 1428—Bonds and Insurance
Part 1432—Contract Financing
Part 1433—Disputes and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 1436—Construction and Architect—Engineering Contracts
Part 1437—Service Contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 1442—Contract Administration

SUBCHAPTER H—CLAUSES AND FORMS

Part 1452—Solicitation Provisions and Contract Clauses
Part 1453—Forms

SUBCHAPTER A—GENERAL

PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM

Subpart 1401.1—Purpose, Authority, Issuance

Sec.
1401.105 OMB approval under the Paperwork Reduction Act.

Subpart 1401.3—Agency Acquisition Regulations

1401.301 Policy.
1401.302 Limitations.
1401.303 Codification and public participation.
1401.304 Agency control and compliance procedures.

Subpart 1401.6—Contracting Authority and Responsibilities

1401.601 General.
1401.602 Contracting officers.
1401.602–1 Authority.
1401.603 Selection, appointment and termination of appointment.
1401.603–1 General.
1401.670 Appointment and termination of appointment of contracting officers' representatives.
1401.670–1 General.
1401.670–2 Appointment.
1401.670–3 Limitations.
1401.670–4 Termination.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1401.1—Purpose, Authority, Issuance

1401.105 OMB approval under the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The following OMB control numbers:

DIAR segment	OMB control No.
1452.204–72	1084–0019
1452.210–70	1084–0017
1452.225–70	1084–0018

Subpart 1401.3—Agency Acquisition Regulations

1401.301 Policy.

(a) Subject to the authorities in (c) below, the Department issues acquisition regulations which implement or supplement the FAR under the Department of the Interior Acquisition Regulations (DIAR) System. The regulations, as part of the FAR system, are issued in accordance with the policy in FAR 1.301(a).

(b) Subject to the authorities in (c) below, the Department also issues internal guidance and instructions under the DIAR System in accordance with the policy in FAR 1.301(b).

(c) Regulations and internal guidance under the DIAR System are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C. 301 and 40 U.S.C. 486(c). This authority has been delegated to the Assistant Secretary—Policy, Budget and Administration under Part 209, Chapter 4.1A of the Departmental Manual (209 DM 4.1A).

1401.302 Limitations.

DIAR System regulations and internal guidance conform to the limitations in FAR 1.301 and consist of—

(a) Published and codified Department-wide regulations which implement or supplement FAR policies and procedures and directly govern the contracting relationship between the Department's bureaus and offices and existing or potential contractors;

(b) Published and codified bureau-wide regulations which supplement FAR policies and procedures and govern the relationship between a bureau and existing or potential contractors to satisfy specific and unique needs of the particular bureau;

(c) Unpublished Department-wide internal guidance related to administrative implementation of FAR policies and procedures which does not directly affect existing or potential contractors; and

(d) Unpublished bureau-wide internal guidance which is necessary for administrative implementation of FAR or DIAR System requirements at organizational levels.

1401.303 Codification and public participation.

(a) Implementing and supplementing regulations issued under the DIAR System are codified under Chapter 14 in Title 48, Code of Federal Regulations and conform to the requirements in FAR 1.303.

(b) Department-wide regulations (see 1401.302(a)) are assigned Parts 1401 through 1479 under 48 CFR.

(c) Bureau-wide regulations (see 1401.302(b)) are assigned Parts 1480–1499 under 48 CFR as follows—

1480–1481	Bureau of Indian Affairs
1482	Office of the Secretary
1483	Bureau of Reclamation
1484	Bureau of Land Management
1485	Bureau of Mines
1486	Geological Survey
1487	Office of Surface Mining
1488	Minerals Management Service
1489	National Park Service
1490	Fish and Wildlife Service
1491–1499	[Reserved]

(d) Public participation in the promulgation of the acquisition regulations which are published in the **Federal Register** shall follow the Department's rulemaking procedures prescribed in Part 318, Chapter 6 of the Departmental Manual (318 DM 6) and the procedures in FAR Subpart 1.5.

(e) Copies of Department-wide and bureau-wide acquisition regulations and Department-wide internal guidance may be obtained from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

1401.304 Agency control and compliance procedures.

(a) The DIAR system is under the direct oversight and control of the Director, Office of Acquisition and Property Management, who is responsible for i and preparation for issuance of all Department-wide and bureau-wide acquisition regulations published in the **Federal Register** to assure compliance with FAR Part 1. Review procedures are contained in Part 401 of the Departmental Manual (401 DM).

(b) The Director, Office of Acquisition and Property Management is also responsible for review and issuance of unpublished, Department-wide internal guidance under the DIAR System.

(c) Heads of contracting activities are responsible for establishment and implementation of formal procedures for oversight and control of all unpublished bureau-wide internal guidance issued to implement FAR or DIAR requirements. These procedures shall be reviewed and approved by the Director, Office of Acquisition and Property Management and shall include—

(1) Provisions for centralized issuance of all guidance and instructions using a directives system;

(2) Methods for periodic review and updating of all issuances;

(3) Distribution processes which assure timely receipt by all affected contracting offices; and

(4) Provisions for maintaining compliance with FAR 1.304.

(d) The Director, Office of Acquisition and Property Management is responsible for evaluating coverage under the DIAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

Subpart 1401.6—Contracting Authority and Responsibilities

1401.601 General.

(a) The authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to Assistant Secretaries.

(b) The contracting authority and responsibility delegated to Assistant Secretaries may be redelegated to heads of bureaus and offices under their supervision in accordance with Part 200, Chapter 3 of the Departmental Manual (200 DM 3). Such redelegations are published in bureau chapters of the Part 200 series of the Departmental Manual.

(c) Bureau heads and assistant or associate heads thereof (known as heads of contracting activities as defined in 1402.1) may redelegate contracting authority only as prescribed in 1401.603.

1401.602 Contracting officers.

1401.602–1 Authority.

Information on the limits of contracting officers' authority shall be maintained by the head of the contracting activity as required in FAR 1.602–1. The Office of Acquisition and Property Management shall also maintain this information.

1401.603 Selection, appointment and termination of appointment.

1401.603–1 General.

Heads of contracting activities (see 1402.1) are authorized to select and appoint contracting officers and terminate their appointment as prescribed in the Department's "Contracting Officers' Warrant System Manual". Copies of the manual may be obtained upon request from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

1401.670 Appointment and termination of appointment of contracting officers' representatives.

1401.670-1 General.

A contracting officer may select and appoint an individual to act as an authorized representative in the administration of a contract based on the technical, professional and administrative qualifications of the individual.

1401.670-2 Appointment.

(a) Contracting officers' representatives shall be appointed in writing by the contracting officer. The appointment shall state the scope and limitations of authority (see 1401.670-3) and identify the contract(s) which the representative will administer.

(b) Changes in the scope or limitations of authority shall be made by written amendments to the existing appointment or by issuance of a new appointment.

(c) A copy of the appointment shall be promptly forwarded to the contractor after issuance by the contracting officer.

1401.670-3 Limitations.

Each appointment of a contracting officers' representative made by the contracting officer shall clearly state that the representative is not authorized under any circumstances to—

(a) Award, agree to, or execute any contract, contract modification, or notice of intent;

(b) Obligate, in any way, the payment of money by the Government;

(c) Make a final decision on any contract matter which is subject to the clause at FAR 52.233-1, Disputes; or

(d) Terminate, for any cause, the contractor's right to proceed.

1401.670-4 Termination.

Termination of a contracting officer's representative appointment shall be made in writing by the contracting officer and shall state the date such termination is effective. A copy of the termination shall be promptly forwarded to the contractor after issuance by the contracting officer.

PART 1403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1403.1—Safeguards

Sec.
1403.101 Standards of conduct.
1403.101-3 Agency regulations.

Subpart 1403.2—Contractor Gratuities to Government Personnel

1403.203 Reporting suspected violations of the Gratuities clause.

Sec.
1403.203 Procedures.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1403.1—Safeguards

1403.101 Standards of conduct.

1403.101-3 Agency regulations.

Department of the Interior regulations governing the conduct and responsibilities of regular and special employees are contained in 43 CFR Part 20. Authorized exceptions to FAR 3.101-2 are contained in 43 CFR 20.735-7 and 20.735-8.

Subpart 1403.2—Contractor Gratuities to Government Personnel

1403.203 Reporting suspected violations of the Gratuities clause.

1403.203-70 Procedures.

(a) *Action Official.* The Director, Office of Acquisition and Property Management, is the Departmental official authorized to take action pursuant to FAR 3.204(c) against a contractor if it is determined that a violation of the clause at FAR 52.203-3, Gratuities, has occurred. This authority may not be delegated.

(b) *Referral.* Whenever a suspected violation of the clause at FAR 52.203-3, Gratuities, becomes known to a Department employee, the matter shall be reported to the cognizant contracting officer or the contracting officer's supervisor, as appropriate. The report shall be in writing and shall clearly state the circumstances surrounding the incident or incidents where it is alleged that the contractor offered or gave a gratuity to a Department employee and intended by the gratuity to obtain a contract or favorable treatment under a contract. The date(s), location(s) and name(s) of all parties involved in the incident shall be included in the report. The report shall also include a recommended course of action in accordance with FAR 3.204(c) and shall be submitted through the head of the contracting activity to the Director, Office of Acquisition and Property Management for disposition.

(c) *Notice to contractor.* After review of the report and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall determine further action to be taken. If required, the contractor shall be provided with a formal notice which summarizes the events involving the suspected violation and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a time limit for reply and shall be sent by certified mail return receipt requested.

(d) *Decision.* Based on the contractor's response to the notice, the results of any further discussion with the contractor, its counsel or witnesses, the review of additional documentary evidence, and other pertinent information, the Director, Office of Acquisition and Property Management shall make a final and binding decision on the action to be taken in accordance with FAR 3.204(c) and shall provide the contractor with a formal notice of such action. If the decision involves termination of a contract (see FAR 3.204(c)(1)) the head of the contracting activity shall be responsible for implementing the decision.

PART 1404—ADMINISTRATIVE MATTERS

Subpart 1404.4—Safeguarding Classified Information Within Industry

Sec.
1404.402 General.

Subpart 1404.7—Contractor Records Retention

1404.701 Purpose.
1404.702 Applicability.

Subpart 1404.8—Contract Files

1404.804 Closeout of contract files.
1404.804-70 Release of claims.

Subpart 1404.70—Indian Preference

1404.7000 Scope of subpart.
1404.7001 Definitions.
1404.7002 Statutory requirements.
1404.7003 Applicability and contract clause.
1404.7004 Compliance enforcement.
1404.7005 Tribal preference requirements.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and 5 U.S.C. 301.

Subpart 1404.4—Safeguarding Classified Information Within Industry

1404.402 General.

(a) The Department of the Interior has entered into an agreement with the Department of Defense (DOD) to be covered by the Defense Industrial Security Program (DISP). The agreement is contained in Appendix 1, Part 443, Chapter 1 of the Department Manual (443 DM 1).

(b) Classified acquisitions or contracts (see FAR 4.401) shall be subject to the instructions contained in the DOD publications listed in FAR 4.402(b).

Subpart 1404.7—Contractor Records Retention

1404.701 Purpose.

This subpart contains additional record retention requirements of the Department of the Interior.

1404.702 Applicability.

In addition to the clauses listed under FAR 4.702(a), FAR Subpart 4.7 shall apply to records generated under contracts containing the clause at 1452.215–70, Examination of Records by the Department of the Interior.

Subpart 1404.8—Contract Files

1404.804 Closeout of contract files.

1404.804–70 Release of claims.

(a) The contracting officer shall insert the clause at 1452.204–70, Release of Claims, in all construction contracts which exceed $25,000 and in all cost-reimbursement contracts which exceed $25,000. A release of claims clause may be inserted in other types of contracts when the contracting officer determines that the release is necessary to protect the interests of the Government.

(b) Form DI–137, Release of Claims (see 1453.204–70), shall be used for obtaining a release of claims.

Subpart 1404.70—Indian Preference

1404.7000 Scope of subpart.

This subpart prescribes policies and procedures for implementation of section 7(b) of the Indian Self-Determination and Education Assistance Act (Public Law 93–638, 88 Stat. 2205, 25 U.S.C. 450e(b)).

1404.7001 Definitions.

For purposes of this subpart the following definitions shall apply:

"Indian" means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of the Tribe.

"Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

"Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

"Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

"Indian Tribe" means an Indian Tribe, band, nation, or other recognized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"On or near an Indian reservation" means on a reservation or the distance within that area surrounding an Indian reservation(s) that a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

1404.7002 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act requires that any contract or subcontract entered into pursuant to that Act, the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452), as amended, (the Johnson-O'Malley Act), or any other Act authorizing contracts with Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible, (a) preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians, and (b) preference in the award of subcontracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. L. 93–262; 88 Stat. 77; 25 U.S.C. 1452).

1404.7003 Applicability and contract clause.

(a) The contracting officer shall insert the clause at 1452.204–71, Indian Preference—Department of the Interior, in solicitations issued and contracts awarded by (1) the Bureau of Indian Affairs, except solicitations issued and contracts awarded pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Pub. L. 93–638 (25 U.S.C. 450 et seq., and 25 U.S.C. 455 et seq., respectively), (2) a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations and (3) a contracting activity other than the Bureau of Indian Affairs where the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The contracting officer shall insert the clause at 1452.204–72, Indian Preference Program—Department of the Interior, in all solicitations issued and contracts awarded by a contracting activity which may exceed $50,000, which contain the clause required by paragraph (a) above and where it is determined by the contracting officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed $50,000, but which contain the clause required by paragraph (a) above and which, in the opinion of the contracting officer, offer substantial opportunities for Indian employment, training or subcontracting.

1404.7004 Compliance enforcement.

(a) The contracting officer is responible for conducting periodic reviews of the contractor to ensure compliance with the requirements of the clauses prescribed in 1404.7003. There reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(b) Complaints of noncompliance with the requirements of the clauses prescribed under 1404.7003 which are received in writing by the contracting activity shall be promptly investigated by the contracting officer and a written disposition of the complaint shall be prepared.

1404.7005 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the contracting officer may supplement the clause at 1452.204–72, Indian Preference Program—Department of the Interior, by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the contracting officer and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Pub. L. 93–638 and must be approved by the

Office of the Solicitor for legal sufficiency before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause at 1452.204–72 shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in these regulations shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in (a) above, become a requirement in contracts covered under this subpart 1404.70 and must not hinder the Government's right to award contracts and to administer their provisions.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1407—ACQUISITION PLANNING

Subpart 1407.3—Contractor Versus Government Performance

Sec.
1407.302 General.
1407.307 Appeals.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1407.3—Contractor Versus Government Performance

1407.302 General.

The Department has implemented the requirements of OMB Circular A–76 and FAR Subpart 7.3 in Part 403 of the Departmental Manual (403 DM).

1407.307 Appeals.

The Department's appeals procedures required by OMB Circular A–76 and FAR 7.307 are codified in 43 CFR Part 4, Subpart M.

PART 1409—CONTRACTOR QUALIFICATIONS

Subpart 1409.4—Debarment, Suspension and Ineligibility

Sec.
1409.400 Scope of subpart.
1409.404 Consolidated list of debarred, suspended and ineligible contractors.
1409.405 Effect of listing.
1409.405–1 Continuation of current contracts.
1409.406 Debarment.
1409.406–1 General.
1409.406–3 Procedures.
1409.407 Suspension.
1409.407–1 General.
1409.407–3 Procedures.

Authority: 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1409.4—Debarment, Suspension and Ineligibility

1409.400 Scope of subpart.

As required by FAR 9.402(c), this subpart prescribes Departmental policies and procedures governing the debarment and suspension of contractors, the listing of the debarred and suspended contractors, and dissemination of this listing.

1409.404 Consolidated list of debarred, suspended and ineligible contractors.

(a) The Division of Acquisition and Grants, Office of Acquisition and Property Management, is responsible for accomplishing the actions required in FAR 9.404(c).

(b) Monthly issues of the consolidated list shall be disseminated by the heads of contracting activities to all contracting offices after receipt from GSA.

(c) Weekly supplements to monthly lists shall be furnished to each bureau headquarters office by the Division of Acquisition and Grants, Office of Acquisition and Property Management. Each bureau shall maintain list supplements at a central location and issue instructions requiring contracting officers to contact this location in order to obtain current information and ensure effective use of the list as required by FAR 9.405.

1409.405 Effect of listing.

The Director, Office of Acquisition and Property Management, is authorized to make the determinations listed in FAR 9.405(a). Requests for such determinations shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management.

1409.405–1 Continuation of current contracts.

The Director, Office of Acquisition and Property Management, is authorized to take action listed in FAR 9.405–1.

1409.406 Debarment.

1409.406–1 General.

(a) The Director, Office of Acquisition and Property Management is the debarring official for the Department and is authorized to debar a contractor for any of the causes in FAR 9.406–2, using the procedures in 1409.406–3.

(b) The Director, Office of Acquisition and Property Management is authorized to make the statement regarding debarment by another agency debarring official under the conditions in FAR 9.406–1(c).

1409.406–3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406–2, becomes known to a Department employee, the matter shall be referred to the head of the contracting activity involved. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of Inspector General, as appropriate, and submit a formal recommendation which documents the cause for debarment to the Director, Office of Acquisition and Property Management.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall initiate proposed debarment by taking the actions listed in FAR 9.406–3(c) and advising the contractor of the Department's rules under this Subpart 1409.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.406–3(b)(2), the Director, Office of Acquisition and Property Management shall afford the contractor the opportunity to appear at a hearing as required by FAR 9.406–3(b)(2)(i). The hearing shall be conducted by the Director, Office of Acquisition and Property Management, or designee, and shall be held at a location convenient to the parties concerned as determined by the Director and on a date and time stated. Subject to the provisions of 43 CFR Part 1, the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings shall be made available to the contractor under the conditions in FAR 9.406–3(b)(2)(ii).

(d) *Decision and notice.* The Director, Office of Acquisition and Property Management shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406–3(d) and the conditions in FAR 9.406–4 and 9.406–5. Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.406–3(e).

1409.407 Suspension.

1409.407-1 General.

(a) The Director, Office of Acquisition and Property Management is the suspension official for the Department and is authorized to suspend a contractor for any of the causes in FAR 9.407-2, using the procedures in 1409.407-3.

(b) The Director, Office of Acquisition and Property Management is authorized to make the statement regarding suspension by another agency suspending official under the conditions in FAR 9.407-1(d).

1409.407-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.407-2, becomes known to a Department employee, the matter shall be referred to the head of the contracting activity involved. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of Inspector General, as appropriate, and submit a formal recommendation which documents the cause for suspension to the Director, Office of Acquisition and Property Management.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of Inspector General, as appropriate, the Director, Office of Acquisition and Property Management shall initiate suspension by taking the actions listed in FAR 9.407-3(c) and advising the contractor of the Department's rules under this Subpart 1409.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.407-3(b)(2), the Director, Office of Acquisition and Property Management shall afford the contractor the opportunity to appear at a hearing as required by FAR 9.407-3(b)(2)(i). The hearing shall be conducted under the conditions in 1409.406-3(c).

(d) *Suspension decision.* The Director, Office of Acquisition and Property Management shall make a final decision on suspension as prescribed in FAR 9.407-3(d). Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.407-3(d)(4).

PART 1410—SPECIFICATIONS, STANDARDS AND OTHER PURCHASE DESCRIPTIONS

Sec.
1410.004 Selecting specifications or descriptions for use.
1410.004-70 Brand name products or equal.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

1410.004 Selecting specifications or descriptions for use.

(a) In accordance with FAR 10.004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless it is determined in writing by the office initiating the purchase request that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet their requirements. This determination shall be in writing and shall accompany the purchase requisition.

(b) A "brand name or equal" purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the policies and procedures in 1410.004-70.

(c) Bureaus and offices shall be responsible for requiring adequate packing, packaging, and marking requirements when acquiring supplies in accordance with FAR 10.004(e).

1410.004-70 Brand name products or equal.

(a) *Limitations on use.* The identification of a requirement in a purchase description by use of one or more brand name products followed by the words "or equal" shall be used only under the conditions listed in FAR 10.004(b)(3). A "brand name product" means a current commercial product of a manufacturer described by its brand name, make, model number, catalog designation or other description by which it is regularly offered for sale to the public in the commercial market place.

(b) *Solicitation requirements.* (1) "Brand name or equal" purchase descriptions in solicitations shall identify salient characteristics of the product (see subparagraph (b)(2) of this 1410.004-70) and contain the following information to describe the specific item—

(i) Identification of the item by generic descriptions;

(ii) Make, model number, catalog designation (or other description), and identification of commercial catalog where it is listed; and

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(2) In accordance with the policy in FAR 10.002, whenever a "brand name or equal" purchase description is used, bidders/offerors shall be given the opportunity to offer products equal to the brand name if those products (including modifications thereto) satisfy the minimum needs of the Government. Therefore, all salient characteristics of the brand name or equal product which are determined by the office initiating the purchase request to be essential to the Government's minimum needs shall be separately identified under the heading of "salient characteristics" and included in the purchase description contained in the solicitation so the bidder/offeror understands the information to be submitted when offering an "equal" product for evaluation. In addition, the following statement shall be included at the end of each "brand name or equal" description in a solicitation for a bidder/offeror to identify its "equal" product:

Bidders/Offerors (select one) proposing to furnish an "equal" product, in accordance with the "Brand Name or Equal" provision of this solicitation, shall insert the following description for the product.

Bidding on/proposing:
Manufacturer's name:_____
Address: _____
Product name (if any): _____
Product make, model, or catalog description:

_____

Bidders/offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the "brand name" as listed in the solicitation.

(3) In addition, the provision at 1452.210-70, Brand Name or Equal—Department of the Interior, shall be inserted by the contracting officer in solicitations where a "brand name or equal" purchase description is used.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1413—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1413.1—General

Sec.
1413.103 Policy.

Subpart 1413.4—Imprest Fund

1413.404 Conditions for use.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1413.1—General

1413.103 Policy.

Small purchases and other simplified purchase methods shall be conductd in accordance with FAR Part 13 and the Department's "Sources of Supply and Small Purchase Handbook" or equivalent bureau procedures approved by the Director, Office of Acquisition

and Property Management. Copies of the Handbook may be obtained upon written request from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

Subpart 1413.4—Imprest Fund

1413.404 Conditions for use.

The Department of the Treasury has approved for the Department dollar limits other than those in FAR 13.404(a) for small purchase transactions using imprest funds. Imprest funds may be used for small purchases when the transaction does not exceed $300 under normal conditions or $500 under emergency conditions.

PART 1414—FORMAL ADVERTISING

Subpart 1414.4—Opening of Bids and Award of Contract

Sec.
1414.406 Mistakes in bid.
1414.406–3 Other mistakes disclosed before award.
1414.407 Award.
1414.407–8 Protest against award.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1414.4—Opening of Bids and Award of Contract

1414.406 Mistakes in bids.

1414.406–3 Other mistakes disclosed before award.

(a) The Director, Office of Acquisition and Property Management is authorized to make the administrative determinations under FAR 14.406–3, except as set forth in (b) below.

(b) If a bidder requests permission to withdraw a bid rather than correct it, and (1) the evidence is clear and convincing as to the mistake or (2) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the chief of the contracting office is authorized to make a written determination permitting the bidder to withdraw the bid after review in accordance with bureau procedures and concurrence by the appropriate Office of the Solicitor. (See FAR 14.406–3 (c) and (e).) Copies of all determinations made pursuant to this authority must be promptly transmitted to the Director, Office of Acquisition and Property Management. If the evidence of the intended bid is clear and convincing, even though the bidder has not requested permission to correct the bid, the case shall be processed in accordance with (d) below.

(c) As required by FAR 14.406–3(f), each proposed administrative determination shall have the concurrence of the Office of the Solicitor prior to submission to the Director, Office of Acquisition and Property Management.

(d) Suspected or alleged mistakes in bids shall be processed in accordance with the requirements of FAR 14.406–3(g). Except as prescribed in (b) above, the contracting officer shall submit a report together with the supporting data described in FAR 14.406–3(g)(3) through the head of the contracting activity to the Director, Office of Acquisition and Property Management. Incomplete reports may result in a delay in obtaining a determination.

(e) The Director, Officer of Acquisition of Property Management is responsible for maintaining records of administrative determinations as required in FAR 14.406–3(h).

1414.407 Award.

1414.407–8 Protests against award.

(a) *Responsibility.* The Office of the Solicitor shall be responsible for handling bid protests lodged with the General Accounting Office (GAO). All communications relative to protests at the GAO shall be coordinated with the Assistant Solicitor for Procurement and Patents.

(b) *Determination to make award.* (1) If a written protest before award has been lodged with the contracting activity only, the appropriate procedures of FAR 14.407–8 (a) and (b) shall be followed. Prior to making an award of a contract under the circumstances in FAR 14.407–8(b)(4), the contracting officer shall obtain the advice of the Assistant Solicitor for Procurement and Patents.

(2) If a protest before award has been lodged directly with the GAO and the contracting officer determines in writing that it is necessary to make an award under the circumstances in FAR 14.407–8(b)(4), such determination must be submitted by the head of the contracting activity concerned to the Director, Office of Acquisition and Property Management for approval before award of the contract. The Director, Office of Acquisition and Property Management shall be responsible for coordination with GAO as required in FAR 14.407–8(b)(3).

(c) *Notice of protest.* Upon being advised by the GAO of the receipt of a protest before or after award, the Office of the Solicitor shall inform the appropriate contracting activity which shall immediately notify the contracting officer. As required by FAR 14.407–8(a)(3), the contracting officer shall then promptly notify all interested persons, including bidders (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been lodged with the GAO and the basis for the protest. A written record of such telephonic notices shall be placed in the contract file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Solicitor will promptly furnish the same to the contracting activity involved which shall, in turn, promptly transmit copies to the contracting officer and request a written report. The contracting officer shall promptly transmit by letter a copy of the protest to all interested persons previously notified and include a statement requiring furnishing of views and information directly to the GAO. Copies of such cover letters shall be sent concurrently to the Assistant Solicitor for Procurement and Patents. Cover letters shall contain the advice contained in FAR 14.407–8(a)(3), including instructions that any comments submitted to GAO should also be submitted to the contracting officer and the Assistant Solicitor for Procurement and Patents.

(d) *Submission of report.* (1) All personnel shall handle protests on a priority basis. Within 25 working days after receipt by the Office of the Solicitor of the GAO's request for an administrative report, such report or a statement setting forth the reasons for delay and the expected date of submission shall be submitted to the GAO. The contracting activity shall have no more than 15 working days from receipt of the request for an administrative report from the Office of the Solicitor to deliver such report to the Assistant Solicitor for Procurement and Patents.

(2) The administrative report responsive to the protest shall be appropriately titled and dated; shall cite the GAO file number; shall include the documents and statements required by FAR 14.407–8(a)(2), and shall be signed by the contracting officer or representative. Reports shall be prepared with the assistance of the local attorney-advisor of the Office of the Solicitor. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The contracting activity shall submit an original and four complete copies of the

contracting officer's report to the Assistant Solicitor for Procurement and Patents, plus one complete copy for each interested person. Contracting officers shall assure that no trade secrets or commercial or financial information which is privileged or confidential is disclosed to unauthorized parties. Transmittal letters forwarding the report to the GAO and to interested persons shall be prepared by the Office of the Solicitor. All reports to GAO shall be reviewed and surnamed by the Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management, prior to submittal to GAO within three working days of receipt from the Office of the Solicitor.

PART 1415—CONTRACTING BY NEGOTIATION

Subpart 1415.1—General Requirements for Negotiation

Sec.
1415.106 Contract clauses.
1415.106–1 Examination of records by the Department of the Interior clause.

Subpart 1415.4—Solicitation and Receipt of Proposals and Quotations

1415.413 Disclosure and use of information before award.
1415.413–70 Department of the Interior procedures.

Subpart 1415.5—Unsolicited Proposals

1415.506 Agency Procedures.

Subpart 1415.6—Source Selection

1415.607 Disclosure of mistakes before award.

Subpart 1415.8—Price Negotiation

1415.803 General.
1415.804 Cost or pricing data.
1415.804–3 Exceptions from or waiver of submission of certified cost or pricing data.

Subpart 1415.9—Profit

1415.902 Policy.
1415.905 Profit analysis factors.
1415.905–1 Common factors.
1415.905–70 Calculation of profit objective.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1415.1—General Requirements for Negotiation

1415.106 Contract clauses.

1415.106–70 Examination of records by the Department of the Interior clause.

The contracting officer shall insert the clause at 1452.215–70, Examination of Records by the Department of the Interior, in all contracts requiring the clause a FAR 52.215–1, Examination of Records by the Comptroller General, as prescribed in FAR 15.106–1(b).

Subpart 1415.4—Solicitation and Receipt of Proposals and Quotations

1415.413 Disclosure and use of information before award.

1415.413–70 Department of the Interior procedures.

(a) *General.* This section establishes alternate requirements and procedures, which shall be used instead of those prescribed in FAR 15.413, for the use and disclosure of trade secret information and confidential commercial and financial information contained in solicited proposals.

(b) *Definitions.* For the purposes of this section and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meanings set forth below:

(1) "Trade Secret" means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities.

(2)(i) "Confidential commercial or financial information" means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act (5 U.S.C. 552).

(ii) Exemptions from mandatory disclosure which may be applicable to business information contained in proposals includes exemption (4), which covers "commercial and financial information obtained from a person and privileged or confidential," and exemption (9), which covers "geological and geophysical information, including maps, concerning wells."

(c) *Marking of solicited proposals.* A solicited proposal may contain trade secrets or confidential commercial or financial information which the offeror, or its subcontractors, perfers not to be disclosed to the public or used by the Government for any purpose other than evaluation of the proposal. To notify the Government of trade secrets and confidential commercial or financial information contained in a proposal, offerors shall mark the cover page of the proposal and each affected page of the proposal with the legends specified in the solicitation provision at 1452.215–71, Use and Disclosure of Proposal Information—Department of the Interior. Contracting officers and other government personnel evaluating a proposal shall not refuse to consider the proposal because it contains information identified as trade secret information or confidential commercial or financial information.

(d) *Use of information.* (1) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that (i) if a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(2)(i) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to an offeror's view that the information constitutes trade secrets or confidential commercial or financial information.

(ii) The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

(e) *Failure to mark.* The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraph (c) of this section. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraph (c) of this section, the offeror concerned shall be notified promptly of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial and financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(f) *Solicitation provision.* The provision at 1452.215–71, Use and Disclosure of Proposal Information—

Department of the Interior shall be inserted in all requests for proposals and requests for quotations.

(g) *Government handling notice.* The following Government notice shall be placed by the contracting officer on the cover page of each solicited proposal upon receipt in order to ensure proper handling. This is a Government notice for internal handling purposes and does not affect any obligations or rights of the Government may have with regard to the use or disclosure of information contained in the proposal or quotation:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any restrictive legends used by the offeror to mark trade secrets or confidential commercial or financial information in accordance with solicitation provision, "Use and Disclosure of Proposal Information—Department of the Interior", shall also be strictly complied with.

Subpart 1415.5—Unsolicited Proposals

1415.506 Agency procedures.

Procedures for the disposition of unsolicited proposals as required by FAR 15.506 are contained in the Department's "Handbook for Submission of Unsolicited Proposals". Copies of the handbook may be obtained upon request from the Office of Acquisition and Property Management, Department of the Interior, Washington, D.C. 20240.

Subpart 1415.6—Source Selection

1415.607 Disclosure of mistakes before award.

The head of the contracting office is authorized to make the determination permitting proposal correction in accordance with the conditions in FAR 15.607(c)(3) after approval of the determination by the Office of the Solicitor has been obtained.

Subpart 1415.8—Price Negotiation

1415.803 General.

(a) Where the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions to resolve the matter (see FAR 15.803), the contract action shall be referred to the head of the contracting activity or designee at a level higher than the contracting officer, for final resolution.

(b) Resolution under (a) above shall be documented, signed by the head of the contracting activity or designee, and included in the contract file.

1415.804 Cost or pricing data.

1415.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) The chief of the contracting office is authorized to approve the contracting officer's finding supporting the unreasonableness of the lowest price (see FAR 15.804–3(b)(2)(iii).

(b) The Director, Office of Acquisition and Property Management is authorized to waive the requirement for submission of certified cost or pricing data. (See FAR 15.804–3(i).)

(c) Requests for waiver under (b) above shall be submitted in writing by the head of the contracting activity and shall contain a statement as to the reasons the waiver is necessary and the efforts made to obtain the data from the contractor or prospective contractor.

Subpart 1415.9—Profit

1415.902 Policy.

(a) It is the Department's policy to use a structured approach for determining the profit or fee prenegotiation objective in acquisition actions that require cost analysis based on the profit analysis factors in FAR 15.905, as implemented and supplemented in 1415.905.

(b) The following types of acquisitions are exempt from the requirements of the structured approach in 1415.905, but the contracting officer shall comply with FAR 15.905–1 when analyzing profit for these contracts or actions—

(1) All actions which do not require cost analysis;

(2) Architect-engineer contracts;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements; and

(6) Cost-plus-award-fee contracts.

(c) In developing a profit or fee objective, the contracting officer shall comply with the requirements in FAR 15.903.

(d) When profit analysis is required, any amount proposed by the prospective contractor for the cost of money for facilities capital allowable under FAR 31.205–10 shall be deducted from the prenegotiation cost base objective before calculating the profit objective (see 1415.905–1(a)(5) and 1415.905–70(b)(1)).

(e) The head of the contracting activity is responsible for establishing procedures to ensure compliance with this subpart.

1415.905 Profit-analysis factors.

(a) The Department uses the factors listed in FAR 15.905–1 in its structured approach. 1415.905–1 contains additional guidance on evaluating each factor and subfactor for purposes of determining a weighted profit or fee for the factor or subfactor.

(b) The Department has added another subfactor to those prescribed for contractor effort in FAR 15.905–1(a). This subfactor, "other costs", is described under 1415.905–1(a)(5).

(c) Procedures for calculating profit or fee prenegotiation objectives are prescribed in 1415.905–70.

(d) Form DI–1920, Structured Approach for Profit/Fee Objective—Department of the Interior (1453.215–17), shall be used to facilitate the calculation of the profit or fee objective.

1415.905–1 Common factors.

The following guidance supplements the policy prescribed for profit-analysis factors in FAR 15.905–1. Weight ranges are prescribed for each factor or subfactor, as appropriate, for use in evaluating and calculating the specific weighted profit or fee objective (see 1415.905–70).

(a) *Contractor effort.* This factor measures the prospective contractor's contribution to the overall effort to meet contract performance requirements in an efficient and cost-effective manner. Considerations include the resources necessary for the prospective contractor to accomplish the conversion of labor and materials into the required contract items, the difficulty or complexity of the work to be performed, and the degree to which the contract requires a new approach or technique to be utilized for successful performance. This factor requires an analysis of the cost content of subfactors in FAR 15.905–1(a) as supplemented below, and includes an additional subfactor covering other costs. These subfactors may be modified, as necessary, to maintain consistency with cost categories used by prospective contractors. Any amount proposed for cost of money for facilities capital and allowable under FAR 31.205–10 shall be deducted from the cost base objective used for calculating the profit objective as prescribed in 1415.905–70.

(1) *Material acquisition (1 to 4%).* In evaluating the prospective contractor's managerial and technical effort under this subfactor, consideration shall also include (i) how the purchasing and subcontracting programs will contribute to the performance of the contract, and (ii) the extent of competition to be achieved in the award of subcontracts.

(2) *Conversion of direct labor (4 to 12%).* In evaluating the contribution of direct labor, considerations include (i) the amount of scientific or unusual or scarce engineering expertise needed in

comparison to journeyman labor or supporting personnel, (ii) the diversity (or lack thereof) of scientific and engineering disciplines required for contract performance and the corresponding need for engineering supervision and coordination, (iii) the quality of professional or engineering type skills required for service contract labor in comparison to semi-professional or other type skills to be employed, and (iv) the variety and complexity of manufacturing and other types of related skills and experience required and the prospective contractor's resources for meeting these requirements.

(3) *Conversion-related indirect costs (3 to 8%).* Elements of overhead and other indirect items of expense of the prospective contractor shall be individually analyzed to determine the extent to which they directly contribute to the conversion of labor and materials into the contract items.

(4) *General management (4 to 8%).* In evaluating the prospective contractor's other indirect costs and G&A expense, consideration shall include the degree to which management problems may occur during contract performance and the management expertise which may be required to resolve them.

(5) *Other costs (1 to 3%).* This subfactor, which is not included under FAR 15.905–1, measures the contribution of all other direct costs including travel, direct support, and hiring of consultants to contract performance. Any amount proposed for facilities capital cost of money and allowable under FAR 31.205–10 shall be subtracted from the cost objective established for this subfactor and shall not be considered in the cost base used for calculating the profit objective (see 1415.905–70(b)(1)).

(b) *Contract cost risk (0 to 7%).* This factor is measured by evaluating the cost risk in terms of the degree of cost responsibility the prospective contractor assumes, the reliability of the cost estimates in relation to type of work under the contract, and the complexity of the work to be performed. Consideration shall also be given the degree to which the prospective contractor's subcontracting program may transfer real cost risk to subcontractors.

(1) *Cost reimbursement contracts (0 to 3%).* Generally, a cost-plus-fixed-fee contract would not justify compensation for risk in excess of 0%, unless the contract contains cost risk features such as overhead ceilings where ½ to 1% may be justified. Cost-plus-incentive fee contracts may justify weightings of 1 to 3% depending on target cost reliability, the share ratio of the fee, and whether cost incentives or multiple incentives are involved.

(2) *Fixed-price contracts (3 to 7%).* The range of weightings for fixed-price contracts is wide to accommodate the many types of fixed-price arrangements and the varying cost risks associated with these arrangements. Generally, a firm fixed-price contract for complex work involving a critical performance schedule would justify a weighting near the top of the range.

(c) *Federal socioeconomic programs (−.5 to +.5%).* This factor measures the extent of the prospective contractor's successful participation and proposed positive actions in support of Federal socioeconomic programs, including women-owned business programs. The prospective contractor's policies and procedures which display unusual initiative in support of socioeconomic programs and have achieved successful results shall be given a positive weighting. A failure or unwillingness on the part of the prospective contractor to support these programs shall be considered inadequate performance and shall result in a corresponding weighting.

(d) *Capital investments (−2 to +2%).* In evaluating investments, consideration shall include an analysis of the cost impact the facilities to be provided by the prospective contractor will have on total contract costs. If the prospective contractor furnishes its own facilities which significantly lowers the contract cost, a positive profit weighting is justified. Government financing or furnishing of required facilities, however, shall result in a negative weighting. Consideration shall also include the frequency of payment by the Government and the impact the contract is anticipated to have on the prospective contractor's cash flow. Generally, a negative weighting shall be given for payments more frequent than monthly. For payments less frequent than monthly, a positive weighting is justified.

(e) *Cost control and other past accomplishments (−1 to +1%).* This factor measures present and previous demonstration of efficient and economic contract performance for related work by the prospective contractor. Consideration shall include quality of work, ability to meet performance and delivery schedules, productivity improvements, efficiency in cost control and reduction, accuracy and reliability of cost estimates, and compliance with contract terms and conditions. Consistent excellent performance by the prospective contractor in the areas above, in comparison with other contractors in similar circumstances, shall justify a positive weighting. Unsuccessful or poor performance shall result in a corresponding rating.

(f) *Independent development.* No weight ranges are set forth for this factor since its significance in contributing to contract performance depends on the degree the development efforts, if any, are relevant to the contract end items. Other considerations include initiative of the prospective contractor in determining the need and application of the development, the extent of the prospective contractor's cost risks in the development, and the extent of direct or indirect development cost recovery from Government sources.

1415.905–70 Calculation of profit objective.

(a) Development of a profit or fee objective shall not begin until the contracting officer has—

(1) Made a thorough review of the work to be performed under the acquisition action;

(2) Collected and analyzed all available information on the prospective contractor; and

(3) Analyzed the prospective contractor's cost proposal and compared the cost elements of the proposal with the elements of the Government's cost estimate for the contract work (see FAR 15.803(b)).

(b) The contracting officer shall calculate a dollar profit amount for each of the factors and subfactors in FAR 15.905–1 and 1415.905–1 by using a percentage within the designated weight range for each factor as prescribed in 1415.905–1. Form DI–1920, Structured Approach for Profit/Fee Objective—Department of the Interior (see 1453.215–71), shall be used to facilititate calculation of the objective in accordance with the following steps—

(1) Using the prenegotiative objective established as required in FAR 15.807, determine the Government's cost objective for each of the subfactors listed in FAR 15.905–1(a) and 1415.905–1(a). An additional subfactor, "other costs", shall be used to consider all other direct costs (see 1415.905–1(a)(5)). Subtract from the "other cost" objective any amount proposed for the cost of money for facilities capital and allowable under FAR 31.205–10, as this amount is not to be included in the cost base for calculation of the profit objective.

(2) Using the weight ranges in 1415.905–1(a), determine a specific percentage for each subfactor and multiply this percentage by the cost objective determined for the subfactor under (b)(1) above to calculate a

weighted profit amount for each subfactor.

(3) Total the individual cost objectives for each of the subfactors in (b)(1) above to calculate the Government's total prenegotiation objective.

(4) Using the weight ranges in 1415.905–1 (b)–(f), determine a specific percentage for each of the factors in FAR 15.905–1 (b)–(f).

(5) Multiply the percentages determined for each of the factors in (b)(4) above by the Government's total prenegotiation objective calculated in (b)(3) above to obtain a weighted profit amount for each factor.

(6) Total the individual weighted profit amounts calculated in (b) (2) and (5) above to obtain the total profit or fee prenegotiation objective amount.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1419.2—Policies

Sec.
1419.201 General policy.

Subpart 1419.5—Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions.
1419.503–70 Class set-aside for construction acquisitions.
1419.505 Rejection of set-aside recommendations.

Subpart 1419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1419.705 Responsibilities of the contracting officer under the subcontracting assistance program.
1419.705–70 Requesting a subcontracting plan.

Subpart 1419.8—Contracting With the Small Business Administration (the 8(a) program)

1419.810 Contract administration.
1419.810–70 Evaluation of 8(a) contractor performance.

Subpart 1419.9—Contracting Opportunities for Women-Owned Business

1419.901 Policy.

Authority: Sec 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1419.2—Policies

1419.201 General policy.

(a) In accordance with Part 111, Chapter 8 of the Departmental Manual (111 DM 8), the Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for performing all functions and duties prescribed in FAR 19.201(c) and for—

(1) Developing and maintaining policies, procedures, regulations, and guidelines for the effective administration of the Department's small business and small disadvantaged business programs; and

(2) Providing functional direction and policy guidance to personnel in the implementation of the programs under (1) above.

(b) In addition to the requirements of FAR 19.201(b), heads of contracting activities or their designees shall be responsible for:

(1) Establishment of annual goals in accordance with Subpart 1419.70; and

(2) Appointment of a full-time Business Utilization and Development Specialist (BUDS), as prescribed in FAR 19.201(d), for each contracting office where—

(i) Annual contract obligations regularly exceed $20 million or represent a substantial part of the Bureau's total contracting program; and

(ii) The number, type, and size of contract transactions provide sufficient opportunities for small business and small disadvantaged business participation.

(3) Appointment of a part-time BUDS for each contracting office where the nature of the contracting program requires such action to ensure accomplishment of annual program goals.

(c) Business Utilization and Development Specialists appointed as prescribed in (b) above shall be responsible for:

(1) Assisting contracting officers in carrying out the policies as set forth in FAR Part 19 and Part 1419.

(2) Establishing an effective outreach program, which shall include but not be limited to:

(i) Locating new and emerging small business and small disadvantaged business concerns which have actual or potential capabilities to fulfill Interior's acquisition requirements, assuring that such firms are included on bidders mailing lists or source lists;

(ii) Advising and counseling small business and small disadvantaged business concerns on ways to increase their participation in contract and subcontract opportunities by: explaining bid and proposal submission requirements; serving as the focal point to ensure that small business and small disadvantaged business concerns have access to appropriate acquisition, management, technical and other program and project personnel; and directing small business and small disadvantaged business concerns to the Small Business Administration or the Minority Business Development Agency (Department of Commerce) for assistance when appropriate;

(iii) Participating in the activities of local small business and disadvantaged business associations, Minority Business Opportunity Committees, and Indian tribal councils to apprise them of the contracting activity's needs and to increase small business and disadvantaged business contracting opportunities; and

(iv) Performing outreach efforts through interaction with Federal, state and local entities and other pertinent associations and groups; participating in business and economic development conferences, and providing training opportunities in support of business and economic development programs.

(3) Assisting in the acquisition process by:

(i) Assuring that the contracting office(s) or activity is kept abreast of new or revised small business and small disadvantaged business concern regulations, policies, procedures and other related information;

(ii) Assisting in the advance acquisition planning process (see Subpart 1407.1);

(iii) Reviewing each acquisition requirement over $25,000 as well as a reasonable sample of small purchases;

(iv) Participating in proposal evaluation activities (when appropriate or when requested by the contracting officer);

(v) When appropriate, attending debriefings to unsuccessful small business and small disadvantaged business concerns; and

(vi) Assuring that a fair proportion of eligible small business and small disadvantaged business concerns are included on solicitation mailing lists and source lists.

(4) Maintaining all records and files necessary to demonstrate maximum support for the program; assuring compilation of current, accurate, and complete data, preparing all reports pertaining to small business and small disadvantaged business activities.

Subpart 1419.5—Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions.

1419.503–70 Class set-aside for construction acquisitions.

(a) To assure that a fair portion of the Department's contracts are placed with small business concerns, all acquisitions

for construction (as defined in FAR 36.102) estimated to cost $1 million or less shall be set aside on a class basis for exclusive participation by small business concerns except where small purchase procedures are used to accomplish the acquisition or when the acquisition involves emergency repair work. If the construction site is located in a labor surplus area, the acquisition shall be set aside for the exclusive participation of small businesses located in labor surplus areas (see FAR 19.504(a)). Any modification of this policy by the contracting officer shall be conducted in accordance with FAR 19.506.

(b) All acquisitions for construction estimated to cost in excess of $1 million shall be set aside on a case-by-case basis for exclusive participation of small business concerns or small business concerns located in labor surplus areas under the conditions in FAR 19.502–2 and 20.201–1.

419.505 Rejections of set-aside recommendations.

(a) As prescribed in FAR 19.505, the Assistant Secretary—Policy, Budget and Administration is authorized to reply to the Administrator of SBA on any SBS appeal of a contracting officer's set-aside recommendation.

(b) A written justification in support of the contracting officer's decision to reject the set-aside recommendation shall be approved by the head of the contracting activity (or designee). It shall then be forwarded for sequential review through the Director, Office of Small and Disadvantaged Business Utilization and the Director, Office of Acquisition and Property Management, for action by the Assistant Secretary—Policy, Budget and Administration.

Subpart 1419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1419.705–70 Requesting a subcontracting plan.

When a subcontracting plan is requested, the contracting officer shall—

(a) Send the offeror or bidder a request for the plan and include a copy of a sample subcontracting plan outline (see 1453.219–71).

(b) Specify a time limit for submission of the plan.

Subpart 1419.8—Contracting With the Small Business Administration (the 8(a) program)

1419.810 Contract administration.

1419.810–70 Evaluation of 8(a) contractor performance.

(a) It is the policy of the Department to require evaluation of SBA 8(a) contractor performance by the contracting activity using form DI–1919, Performance Evaluation 8(a)]. (See 1453.219–72.)

(b) The report shall be prepared at the time of final acceptance of the work or after contract termination. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance. The authorized representative of the contracting officer shall provide timely evaluation of the SBA 8(a) contractor's performance.

(c) If the evaulation official concludes that the contractor's overall performance was poor or unsatisfactory, the contractor shall be advised in writing that a report of this performance is being proposed and the basis for the evaluation. If the contractor submits any comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(d) Each performance report shall be filed in accordance with bureau procedures and a copy of the report shall be promptly forwarded to the Office of Small and Disadvantaged Business Utilization.

Subpart 1419.9—Contracting Opportunities for Women-Owned Business

1419.901 Policy.

(a) The Office of Small and Disadvantaged Business Utilization is responsible for carrying out the Department's women-owned business enterprise program in accordance with Part 111, Chapter 8 of the Departmental Manual (111 DM 8).

(b) Annual goals for contract awards to women-owned businesses shall be established as prescribed in 1419.202–70.

(c) Small women-owned businesses shall be considered for subcontracting opportunities under FAR 19.702 and subcontract awards shall be reported as prescribed in FAR 19.704.

PART 1420—LABOR SURPLUS AREA CONCERNS

Subpart 1420.1—General

Sec.
1420.102 General policy.

Subpart 1420.2—Set-asides

Sec.
1420.201 Set-asides for labor surplus area concerns.
1420.201–70 Set-asides for construction acquisitions.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1420.1—General

1420.102 General policy.

As prescribed under Part III, Chapter 8 of the Departmental Manual (III DM 8), the Office of Small and Disadvantaged Business Utilization is responsible for carrying out the Department's labor surplus area program in accordance with the policies in FAR Part 20.

Subpart 1420.2—Set-asides

1420.201 Set-asides for labor surplus area concerns.

1420.201–70 Set-asides for construction acquisitions.

(a) As prescribed in 1419.503–70, all acquisitions for construction, alteration, or repair of buildings, structures, or other real property which are estimated to cost $1 million or less shall be set aside on a class basis for combined small business, labor surplus area concerns when the construction site is located in a labor surplus area.

(b) Construction acquisitions estimated to exceed $1 million in cost may be set aside for labor surplus area concerns by the contracting officer under the conditions prescribed in FAR 20.201–1.

PART 1424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1424.1—Protection of Individual Privacy

Sec.
1424.102 General.
1424.103 Procedures.
1424.104 Contract clauses.

Subpart 1424.2—Freedom of Information Act

1424.202 Policy.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1424.1—Protection of Individual Privacy

1424.102 General.

Procedures for implementing the Privacy Act of 1974 and Departmental regulations under 43 CFR 2, Subpart D, are contained in Part 317 of the Departmental Manual (317 DM).

1424.103 Procedures.

When required by FAR 24.103(b)(2), the contracting officer shall provide the contractor with a copy of the Department's Privacy Act regulations codified in 43 CFR 2, Subpart D.

1424.104 Contract clauses.

The clause at FAR 52.224–1, Privacy Act Notification, as prescribed in FAR 24.104(a), shall be supplemented in accordance with 1452.224–1.

Subpart 1424.2—Freedom of Information Act

1424.202 Policy.

(a) The Department's implementation of the Freedom of Information Act is codified in regulations under 43 CFR 2.11–2.20.

(b) It is the policy of the Department to alert prospective contractors which place restrictions on the disclosure and use of proposal data that certain data may be subject to disclosure under a Freedom of Information Act request. (See 1415.413 and 1452.215–71.)

Part 1425—FOREIGN ACQUISITION

Subpart 1425.2—Buy American Act—Construction Materials

Sec.

1425.202 Policy.
1425.203 Evaluating offers.
1425.204 Violations.
1425.205 Solicitation provision.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1425.2—Buy American Act—Construction Materials

1425.202 Policy.

(a) The Assistant Secretary—Policy, Budget and Administration shall make the determinations prescribed in FAR 25.202(a)(2) and FAR 25.203(a).

(b) The Director, Office of Acquisition and Property Management shall make the determination prescribed in FAR 25.202(a)(3) in accordance with the procedures in 1425.108.

(c) Determinations under (a) above shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

(d) Determinations approved under FAR 25.202(a)(2) shall require listing of excepted material in the contract as prescribed in FAR 25.202(c).

1425.203 Evaluating offers.

(a) Unless the Assistant Secretary—Policy, Budget and Administration determines otherwise, when the cost of a comparable domestic construction material exceeds by more than 6 percent the cost of a foreign construction material proposed in an offer, use of the domestic construction material would unreasonably increase the cost of the contract and use of the foreign construction material is authorized and acceptable. This evaluation shall be made for each foreign construction material proposed in an offer and not specifically excepted by the solicitation. The cost of construction material shall be computed to include all delivery costs to the construction site, and the cost of foreign construction material shall also include any applicable duty (whether or not a duty-free entry certificate may be issued).

(b) The provision at 1452.225–70, Buy American Act Notice—Department of the Interior, requires offerors proposing to use foreign construction materials to provide adequate information for Government evaluation under (a) above, and permits alternate offers for comparable domestic construction materials at stated prices. When a foreign construction material is not authorized under (a) above, evaluation of the offer shall be made on the basis of the stated price for comparable domestic construction material. If the offer does not state a price for comparable domestic construction material, and use of the foreign construction material is not authorized under (a) above, the offer shall be rejected.

(c) The acceptable offer that remains low after adding (for evaluation purposes only) 6 percent of the cost of all foreign construction materials authorized for use under (a) above shall be considered the successful offer. The contract awarded under these circumstances shall contain a list of the authorized foreign construction materials as required by FAR 25.202(c) and the clause at FAR 52.225–5, Buy American Act—Construction Materials.

(d) Determinations for authorization to use evaluation methods other than those prescribed in this section shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action. The determination shall specify particular domestic construction materials which are expected to unreasonably increase the cost or are impracticable, and the percentage differential to be used in evaluating such materials. If the determination is approved, the Director, Office of Acquisition and Property Management shall authorize appropriate revisions to the provision at 1452.225–70.

1425.204 Violations.

Failure of the contractor to comply with the clause at FAR 52.225–5, Buy American Act—Construction Materials, shall be documented in a report by the contracting officer and submitted to the head of the contracting activity for initiation of debarment action in accordance with Subpart 1409.4.

1425.205 Solicitation provision.

In addition to the requirements of FAR 25.205, the contracting officer shall insert the provision at 1452.225–70, Buy American Act Notice—Department of the Interior, in solicitations for construction inside the United States. For determinations made under FAR 25.202(a)(2) that use of a domestic construction material would be impracticable (see 1425.202), the material shall be listed under paragraph (a) of the provision at 1452.225–70.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1428—BONDS AND INSURANCE

Subpart 1428.1—Bonds

Sec.

1428.101 Bid guarantees.
1428.101–70 Annual bid bonds.
1428.104 Annual performance bonds.

Subpart 1428.3—Insurance

1428.301 Policy.
1428.306 Insurance under fixed-price contracts.
1428.306–70 Insurance for aircraft services contracts.
1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
1428.311–2 Contract clause.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1428.1—Bonds

1428.101 Bid guarantees.

1428.101–70 Annual bid bonds.

(a) Bidders shall submit annual bid bonds to the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

(b) The Office of Acquisition and Property Management will maintain and disseminate all information regarding annual bid bonds.

1428.104 Annual performance bonds.

Annual performance bonds shall be submitted to the location prescribed in 1428.101–70.

Subpart 1428.3—Insurance

1428.301 Policy.

It is the policy of the Department of the Interior to insure its own risks only when such action is in the best interest of the Government. Circumstances where contractors are required to carry insurance are listed under FAR 28.301 and 28.306. In these circumstances, the clause at 1452.228–70, Indemnification—Department of the Interior, shall be inserted in the contract.

1428.306 Insurance under fixed-price contracts.

1428.306–70 Insurance for aircraft services contracts.

(a) *Policy.* In accordance with FAR 28.306(a), it is the policy of the Department of the Interior to establish minimum insurance requirements for certain types of aircraft services contracts in order to protect the Government and its contractors.

(b) *Applicability.* The clauses prescribed by paragraph (c) of this section are applicable to all fixed-price contracts involving use of aircraft with either contractor-furnished or Government-furnished pilot except for one-time charters when Government exposure is minimal and time limitations are present.

(c) *Clauses.* The following clauses shall be used as prescribed:

(1) The contracting officer shall insert the clause at 1452.228–71, Risk and Indemnities—Department of the Interior, in all fixed price contracts for operation of aircraft with contractor-furnished pilot.

(2) The contracting officer shall insert the clause at 1452.228–72, Liability for Loss or Damage—Department of the Interior, in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government does not have a property interest in the aircraft.

(3) The contracting officer shall insert the clause at 1452.228–73, Liability for Loss or Damage—Department of the Interior, (Property Interest), in all fixed-price controls involving the use of aircraft with Government-furnished pilot where the Government has a property interest in the aircraft (e.g., lease with purchase option).

1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1428.311–2 Contract clause.

The clause at FAR 52.228–7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311–2, shall be modified for use in accordance with the instructions in 1452.228–7.

PART 1432—CONTRACT FINANCING

Subpart 1432.3—Loan Guarantees for Defense Production

Sec.
1432.304 Procedures.
1432.304–2 Certificate of eligibility.

Subpart 1432.4—Advance Payments

1432.402 General.
1432.404 Exclusions.

Subpart 1432.8—Assignment of Claims

1432.805 Procedure.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1432–3—Loan Guarantees for Defense Production

1432.304 Procedures.

1432.304–2 Certificate of eligibility.

(a) The Assistant Secretary—Policy, Budget and Administration shall authorize guaranteed loan applications and transmit them to the Federal Reserve Bank as prescribed in FAR 32.304–2(h).

(b) Applications for loan guarantees (see FAR 32.304–1) and the contracting officer's certificate of eligibility (see FAR 32.304–2) shall be submitted by the head of the contracting activity to the Director, Office of Acquisition of Property Management for further action under (a) above.

Subpart 1432.4—Advance Payments

1432.402 General.

(a) Except for contracts excluded under (b) below and under 1432. 404, the Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management, is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4.

(b) The Assistant Secretary for Indian Affairs is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4 for—

(1) Contracts with States or similar public bodies for foster home care of Indian children for periods not in excess of 90 days;

(2) Contracts with state universities or similar public bodies for surveys of physical resources and the development of studies of social and economic factors affecting Indian tribes without specific security for periods not in excess of 90 days; or

(3) Contracts with Indian tribal contractors which are totally Indian-owned and controlled nonprofit businesses and which qualify for contracts with the Bureau of Indian Affairs. The amount of the advance payments authorized shall not exceed $250,000.

(c) The contracting officer shall review and analyze the contractor's application for advance payments to determine if it meets the information requirements of FAR 32.408. Applications which do not contain the required information shall not be processed until it is obtained from the contractor.

(d) The contracting officer shall submit a recommendation for approval or disapproval of the contractor's request through the head of the bureau finance office (see FAR 32.402(e)(2)) to the head of the contracting activity for transmittal to the Chief, Division of Acquisition and Grants under (a) above. Recommendations which do not contain the information required by FAR 32.409–1 or FAR 32.409–2 will not be processed by the Division of Acquisition and Grants.

(e) The Assistant Secretary for Indian Affairs is required to make a detailed report to the Assistant Secretary—Policy, Budget and Administration on all advance payments authorized under (b)(1) and (b)(2) above at the close of each fiscal year.

1432.404 Exclusions.

Advance payments may be used under Bureau of Indian Affairs service contracts (including services which may extend beyond the current fiscal year) made pursuant to the Act of June 4, 1936 (25 U.S.C. 452), the Act of August 3, 1956 (25 U.S.C. 309), and statutes terminating Government supervision over certain Indian tribes, without regard to FAR 32.402(e), when the current Department Appropriations Act authorizes and requires advance payments in these circumstances.

Subpart 1432.8—Assignment of Claims

1432.805 Procedure.

Department of the Interior form DI–83, Notice of Assignment, and form DI–84, Instrument of Assignment, shall be used by an assignee when complying with the requirements in FAR 32.803(e). (See 1453. 232–70).

PART 1433—DISPUTES AND APPEALS

Sec.
1433.003 Applicability.
1433.003–70 Interior Board of Contract Appeals.
1433.011 Contracting officer's decision.
1433.012 Contracting officer's duties upon appeal.

Sec.
1433.014 Contract clauses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

1433.003 Applicability

(a) The Assistant Secretary—Policy, Budget and Administration shall make the determination prescribed under FAR 33.003(b).

(b) Determinations under (a) above shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

1433.003–70 Interior Board of Contract Appeals.

(a) The Interior Board of Contract Appeals, IBCA, is authorized by the Secretary to consider and determine appeals from decisions of a contracting officer arising under a contract or relating to a contract made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has duly designated the IBCA to decide the appeal.

(b) The address of the IBCA is 4015 Wilson Boulevard, Arlington, Virginia 22203.

(c) The IBCA rules of procedures are in 43 CFR Part 4, Subpart C.

1433.011 Contracting officer's decision.

The written decision required by FAR 33.011(a)(4) shall include, in the paragraph listed under FAR 33.011(a)(4)(v), specific reference to the Interior Board of Contract Appeals (IBCA), 4015 Wilson Boulevard, Arlington, Virginia, 22203 and its procedures under 43 CFR Part 4. The IBCA optional small claims (expedited) procedures and accelerated procedures under 43 CFR 4.113 shall also be referenced as required by FAR.

1433.012 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to the IBCA by certified mail within 5 days of receipt. The Office of the Solicitor shall also be notified of the appeal by the contracting officer. (See 43 CFR 4.103).

(b) The contracting officer shall prepare and transmit the data, documentation, and information required by 43 CFR 4.104 in the form of an appeal file to the IBCA, appropriate office of the Solicitor, and appellant or appellant's counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by the IBCA.

1433.014 Contract clause

The Disputes clause contained in FAR 52.233–1 shall be used with its Alternate I in all solicitations and contracts of the Department.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1436—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

Subpart 1436.2—Special Aspects of Contracting for Construction

Sec.
1436.209 Construction contracts with architect-engineer firms.

Subpart 1436.5—Contract Clauses

1436.570 Prohibition against use of lead based paint.

Subpart 1436.6—Architect-Engineer Services

1436.602 Selection of firms for architect-engineer contracts.
1436.602–1 Selection criteria.
1436.602–4 Selection authority.
1436.602–5 Short selection processes for contracts not to exceed $10,000.
1436.603 Collecting data on and appraising firms' qualifications.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1436.2—Special Aspects of Contracting for Construction

1436.209 Construction contracts with architect-engineer firms.

(a) As required by FAR 36.209, no contract for construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates without the written approval of the Director, Office of Acquisition and Property Management.

(b) Requests for approval under (a) above shall be made by the head of the contracting activity, through the appropriate Office of the Solicitor, to the Director, Office of Acquisition and Property Management. The request shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 1436.5—Contract Clauses

1436.570 Prohibition against use of lead-based paint.

(a) *Policy.* The Lead-Based Paint Poisoning Prevention Act, (42 U.S.C. 4831), as amended by the National Consumer Health Information and Health Promotion Act of 1976 (Sec. 204, Pub. L. 94–317 (42 U.S.C. 4831)), prohibits the use of lead-based paint in Federal or federally assisted construction or rehabilitation of residential structures. Implementing regulations of the Secretary of Housing and Urban Development under 24 CFR Part 35 requires agencies to include appropriate provision in contracts or subcontracts for construction or rehabilitation of residential structures.

(b) *Definitions.* As used in this section, "residential structure" means any house, apartment, or structure intended for human habitation including any institutional structure where persons reside such as an orphanage, boarding school dormitory, day care center, or extended care facility.

(c) *Procedures.* The contracting officer shall insert the clause at 1452.236–70, Prohibition Against Use of Lead-Based Paint, in solicitations and contracts when construction of residential structures or rehabilitation (including dismantling, demolition, or removal) of residential structures is contemplated.

Subpart 1436.6—Architect-Engineer Services

1436.602 Selection of firms for architect-engineer contracts.

1436.602–1 Selection criteria.

(a) In addition to the selection criteria under FAR 36.602–1(a), the following additional criteria shall be used in the evaluation of each potential contractor when applicable to a particular acquisition:

(1) Computer assisted design capability and capacity (where such design is required.)

(2) Adequacy of facilities for performance of the work including those necessary to provide specialized services that may be required.

(3) Volume and nature of present workload as it relates to the ability to perform the work required.

(4) Experience and qualifications of proposed key personnel including specialized technical skills, project coordination and management skills, and experience in working together as a team.

(5) Availability of additional contractor personnel or consultants to support expansion or acceleration of the project.

(6) Other specific criterion as may be required.

(b) Heads of contracting activities are authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

1436.602–4 Selection authority.

The head of the contracting activity or designee is authorized to serve as the designated selection authority in accordance with FAR 36.602–4.

1436.602–5 Short selection processes for contracts not to exceed $10,000.

The selection process prescribed in FAR 36.602–5(a) shall be used for architect-engineer contracts not expected to exceed $10,000.

1436.603 Collecting data on and appraising firms' qualifications.

(a) Heads of contracting activities which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under (a) above shall be submitted to the Director, Office of Acquisition and Property Management for review and approval. The procedures shall include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually and submitted to the Director, Office of Acquisition and Property Management no later than 30 days after the beginning of each fiscal year.

PART 1437—SERVICE CONTRACTING

Subpart 1437.70—Appraisal Services (Real Property)

Sec.
1437.7000 Scope of subpart.
1437.7001 Policy.
1437.7002 Contractor qualification requirements.
1437.7003 Appraisal standards.

Subpart 1437.71—Information Collection Services

1437.7100 Scope of subpart.
1437.7103 Clause.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1437.70—Appraisal Services (Real Property)

1437.7000 Scope of subpart.

This subpart prescribes policies and procedures for acquiring real property appraisal services by contract.

1437.7001 Policy.

Real property appraisal services shall be acquired by negotiation under the authority in FAR 15.204. The procedures for acquiring architect—engineer services, as prescribed in FAR Subpart 36.6, shall not be used to acquire real property appraisal services.

1437.7002 Contractor qualification requirements.

(a) If it is anticipated that a real property appraisal to be acquired by contract may be subject to future court action, the contractor shall be a qualified appraiser as listed in the file maintained by the Land and Natural Resources Division, U.S. Department of Justice. This requirement shall be treated as a special standard of responsibility (see FAR 9.104–2).

(b) The contracting officer shall include the requirements of (a) above in all solicitations for real property appraisal services which may be subject to future court action.

1437.7003 Appraisal standards.

(a) All real property appraisals made under a contract shall conform to the requirements of the Interagency Land Acquisition Conference publication "Uniform Appraisal Standards for Federal Land Acquisitions" published by the Government Printing Office.

(b) The Standards in (a) above shall be made a part of all solicitations and resulting contracts for real property appraisal services.

Subpart 1437.71—Information Collection Services

1437.7100 Scope of subpart.

This subpart prescribed policies and procedures for acquiring information collection services which are subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

1437.7103 Clause.

The contracting officer shall insert the clause at 1452.237–70, Information Collection—Department of the Interior, in all solicitations and contracts which are subject to the Paperwork Reduction Act of 1980.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1442—CONTRACT ADMINISTRATION

Subpart 1442.12—Novation and Change of Name Agreements

1442.1204 Agreement to recognize a successor in interest (novation agreement).

For protection of Government rights in accrual of inventions, patents and data, the novation agreement format prescribed in FAR 42.1204(e) shall be supplemented by adding the following item (10) under Section (b) of the agreement—

(10) The transferor agrees that any rights in inventions, patents, and data which accrue to the Government or to third party beneficiaries under the contracts between the transferor and the Government shall not be diminished as a result of the transfer instruments or this agreement.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301)

SUBCHAPTER H—CLAUSES AND FORMS

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1452.000 Scope of part.

Subpart 1452.2—Texts of Provisions and Clauses

1452.200 Scope of subpart.
1452.204–70 Release of claims.
1452.204–71 Indian preference.
1452.204–72 Indian preference program.
1452.210–70 Brand name or equal.
1452.215–70 Examination of records by the Department of the Interior.
1452.215–71 Use and disclosure of proposal information.
1452.224–1 Privacy Act notification.
1452.225–70 Buy American Act notice.
1452.228–7 Insurance—Liability to third persons.
1452.228–70 Indemnification.
1452.228–71 Risk and indemnities.
1452.228–72 Liability for loss or damage.
1452.228–73 Liability for loss or damage (property interest).
1452.236–70 Prohibition against use of lead-based paint.
1452.237–70 Information collection.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

1452.000 Scope of part.

This part prescribes Department of the Interior provisions and clauses for use in acquisition.

Subpart 1452.2—Texts of Provisions and Clauses

1452.200 Scope of subpart.

This subpart sets forth the texts of all DIAR provisions and clauses. Consistent with the numbering scheme prescribed in FAR 52.101 and the approach used in Far Subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DIAR in which provisions and clause requirements are addressed.

1452.204–70 Release of Claims.

As prescribed in 1404.804–70, insert the following clause in all construction contracts which exceed $25,000 and in all cost-reimbursement contracts which exceed $25,000.

Release of Claims—Department of the Interior (Apr. 1984)

After completion of work and prior to final payment, the contractor shall furnish to the contracting officer a release of claims (DI–

137) against the United States relating to this contract, other than claims excepted from the operation of the release.

[End of Clause]

1452.204-71 Indian Preference.

As prescribed in 1404.7003(a), insert the following clause in solicitations issued and contracts awarded (a) by the Bureau of Indian Affairs except those pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Pub. L. 93-638 (25 U.S.C. 450 et seq. and 25 U.S.C. 455 et seq., respectively); (b) a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations, and (c) a contracting activity other than the Bureau of Indian Affairs when the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

Indian Preference—Department of the Interior (Apr. 1984)

(a) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity".

(d) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus are concerns.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(f) The Contractor agrees to include the provisions of the clause including this paragraph (f) in each subcontract awarded under this contract.

(g) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Government.

(End of clause)

1452.204-72 Indian Preference Program.

As prescribed in 1404.7003(b), insert the following clause in all solicitations and contracts, awarded by the contacting activity which may exceed $50,000, and which contain the clause at 1452.204-71, and where it is determined by the Contracting Officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed $50,000 but which contain the clause at 1452.204-71 and which, in the opinion of the contracting officer, offer substantial opportunities for Indian employment, training, and subcontracting.

Indian Preference Program—Department of the Interior (Apr. 1984)

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference—Department of the Interior", the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the contractor shall:

(1) Designate a liaison officer who will: (i) Maintain liaison with the Government and Tribe(s) on Indian preference matters; (ii) supervise compliance with the provisions of this clause; and (iii) administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate number and types of employees needed, the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunties. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contract in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including: (i) A clear description of the supplies or services required including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) a statement indicating the perference will be given to Indian organizations and Indian-owned economic

enterprises in accordance with section 7(b) of Pub. L. 93–638; (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) definitions for the tems "Indian organization" and "Inidan-owned economic enterprise" as prescribed under the "Indian Preference—Department of the Interior" clause of this contract; (iv) a represenatation to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and (v) a closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian owned economic enterprises, no responsive bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior"clause of this contract. If one or more responsive bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of the contract.

(5) Maintain written records under this contract which indicate: (i) The names and addresses of all Indians seeking employment for each employment position available under this contract; (ii) the number of types of positions filled by (A) Indians and (B) non-Indians, and the name, address and position of each Indian employed under this contract; (iii) for those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (iv) actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (v) reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and (vi) the names and addresses of all Indian organizations and Indian-owned economic enterprises (A) contacted, and (B) receiving subcontract awards under this contract.

(6) The Contractor shall submit to the Contracting Officer for approval a semiannual report which summarizes the Contractor's Indian preference program and indicates (i) the number and types of available positions filled and dollar amounts of all subcontracts awarded to (a) Indian organizations and Indian-owned economic enterprises and (b) all other firms.

(7) Records maintained pursuant to this clause will be kept available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Government's right to award contracts and to administer their provisions.

(d) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Government.

(End of clause)

1452.210–70 Brand Name or Equal.

As prescribed in 1410.004–70(b)(3), insert the following provision in solicitations which contain a "brand name or equal" purchase decription:

Brand Name or Equal—Department of the Interior (Apr. 1984)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids or proposals offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids or proposals and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the bidder/offeror clearly indicates in its bid that it is offering an "equal" product, its bid shall be considered as offering a brand name product referenced in the solicitation.

(c)(1) If the bidder/offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the bid or proposal. The evaluation of bids or proposals and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder/offeror or identified in its bid or proposal as well as other information reasonably available to the contracting activity. Caution to Bidders/Offerors: The contracting activity is not responsible for locating or securing any information which is not identified in the bid or proposal and reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the bidder/offeror must furnish as a part of its bid or proposal all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to: (i) Determine whether the product offered meets the salient characteristics requirement of the solicitation; and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If the bidder/offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (i) Include in its bid or proposal a clear description of such proposed modifications; and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

1452.215–70 Examination of Records by the Department of the Interior.

As prescribed in 1415.106–1, insert the following clause in all contracts containing the clause at FAR 52.215–1, Examination of Records by the Comptroller General (see FAR 15.106–1(b)):

Examination of Records by the Department of the Interior (Apr. 1984)

For purposes of the Examination of Records by the Comptroller General (APR 1984) clause of this contract (FAR 52.214–1), the Secretary of the Interior, the Inspector General, and their duty authorized representative(s) from the Department of the Interior shall have the same access and examination rights as the Comptroller General of the United States.

(End of clause)

1452.215–71 Use and Disclosure of Proposal Information.

As prescribed in 1415.413–70, insert the following provision in requests for proposals and requests for quotations instead of the provision at FAR 52.215–12:

Use and Disclosure of Proposal Information—Department of the Interior (Apr. 1984)

(a) Definitions. For the purposes of this provision and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meaning set forth below:

(1) "Trade Secret" means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for making, preparing, compounding, treating or processing articles or materials, which are trade commodities.

(2) "Confidential commerical or financial information" means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act, 5 U.S.C. 552. Exemptions from mandatory disclosure which may be applicable to business information contained in proposals include exemption (4), which covers "commercial and financial information obtained from a person and privileged or confidential," and exemption (9), which covers "geological and geophysical information, including maps, concerning wells."

(b) If the offeror, or its subcontactor(s), believes that the proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552), the cover page of each copy of the proposal shall be marked with the following legend:

"The information specifically identified on pages —— of this proposal constitutes trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act. The offeror requests that this information not be disclosed to the public, except as may be required by law. The offeror also requests that this information not be used in whole or part by the Government for any purpose other than to evaluate the proposal, except that if a contract is awarded to the offeror as a result of or in connection with the submission of the proposal, the Government shall have the right to use the information to the extent provided in the contract."

(c) The offeror shall also specifically identify trade secret information and confidential commerical and financial information on the pages of the proposal on which it appears and shall mark each such page with the following legend:

"This page contains trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act and which is subject to the legend contained on the cover page of this proposal."

(d) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that: (i) If a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract, and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(e) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to the offeror's view that the information constitutes trade secrets or confidential commercial or financial information. The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

(f) The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraphs (b) and (c) of this provision. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraphs (b) and (c) of this provision, the offeror concerned shall be promptly notified of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial or financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(End of provision)

1452.224-1 Privacy Act Notification.

(a) As prescribed in 1424.104, the clause at FAR 52.224-1, Privacy Act Notification, shall be modified before insertion into solicitations and contract by—

(1) Changing the title of the clause to read "Privacy Act Notification (Apr. 1984) (Deviation)"; and

(2) Adding the following sentence to the end of the clause:

Applicable Department of the Interior regulations are set forth in 43 CFR 2, Subpart D, and may be obtained by submitting a written request to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, Department of the Interior, Washington, D.C. 20240.

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviation in Clauses, shall be inserted into solicitations and contracts containing the clause in (a) above.

1452.225-70 Buy American Act Notice.

As prescribed in 1425.205, insert the following provision in solicitations for construction inside the United States:

Buy American Act Notice—Department of the Interior (Apr. 1984)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in the performance of this contract (see the clause titled "Buy American Act—Construction Materials"). This requirement does not apply to the following construction materials:

(List excepted material or indicate "none")

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) comparable domestic construction material in sufficient and reasonably available quantities, of a satisfactory quality, is unavailable; or

(2) use of comparable domestic construction material is impracticable or would unreasonably increase the cost.

(c) Any offer based on the use of one or more other foreign construction materials shall include data, in the format listed in paragraph (e) below, clearly demonstrating that the cost of each foreign construction material, plus 6 percent, is less than the cost of each comparable domestic construction material. The cost of construction material shall be computed to include all delivery costs to the construction material and shall also include any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government shall add to the offer 6 percent of the cost of foreign material which qualifies for acceptance under paragraph (c) above.

(e) For foreign construction material which does not qualify for acceptance under paragraph (c) above, the Government shall evaluate the offer on the basis of the stated price for comparable domestic construction material, and the offeror shall be required to furnish such domestic construction material at that price. *Therefore, if the offer does not state a price for a comparable domestic construction material, and the foreign construction material does not qualify for acceptance under paragraph (c) above, the offer shall be rejected as nonresponsive.*

(f) For evaluation purposes under paragraph (c) above, the following information shall be included in the offer for the use of one or more foreign construction materials:

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit	Quantity	Cost including all delivery costs to construction site [1] (dollars)
Item 1:			
Foreign construction material	.....	.....	$
Comparable domestic construction material	.....	.....	$
Item 2:			
Foreign construction material	.....	.....	$

Construction material description	Unit	Quantity	Cost including all delivery costs to construction site [1] (dollars)
Comparable domestic construction material	.....	.....	$

[1] Also include applicable duty for foreign material.

(End of provision)

1452.228-7 Insurance—Liability to Third Persons.

(a) As prescribed in 1428.311-2, the clause at FAR 52.228-7, Insurance—Liability to Third Persons, shall be modified before insertion into solicitations and contracts by—

(1) Changing the title of the clause to read "Insurance—Liability to Third Persons (Apr. 1984) (Deviations)"; and

(2) Changing the first sentence in subparagraph (c)(2) of the clause to read "For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise but subject to the 'Limitation of Cost' or 'Limitation of Funds' clause of this contract."

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviations in Clauses, shall be inserted into solicitations and contracts containing the clause in (a) above.

1452.228-70 Indemnification.

As prescribed in 1428.301, insert the following clause in all contracts where circumstances warrant the carrying of insurance by the contractor (see FAR 28.301 and 28.306):

Indemnification—Department of the Interior (Apr. 1984)

(a) The Contractor shall indemnify and hold the Government harmless for any and all losses, damages, or liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made, arising out of the activities of the Contractor, its employees, subcontractors, or agents under the contract. For the purpose of fulfilling its obligations under this paragraph, the Contractor shall procure and maintain during the term of this contract and any extension thereof liability insurance in form satisfactory to the Contracting Officer by an insurance company which is acceptable to the Contracting Officer. The name insured parties under the policy shall be the Contractor and the United States of America. The amounts of the insurance shall be not less than as follows:

$——— each person.*

$——— each occurrence.*

$——— property damage.*

(b) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or termination of the policy or certificate or any modification of the policy or certificate which adversely affects the interest of the Government in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy and the insured.

(c) Prior to the commencement of work hereunder the Contractor shall furnish the Contracting Officer with acceptable evidence showing that the insurance coverage described in this clause has been obtained.

*These amounts to be set by the Contracting Officer.

(End of clause)

1452.228-71 Risk and indemnities.

As prescribed in 1428.306-70(c)(1), insert the following clause in all fixed-price contracts for operation of aircraft with contractor-furnished pilot:

Risk and Indemnities—Department of the Interior (Apr. 1984)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, a Certificate of Insurance shall be delivered to the Contracting Officer.

(End of clause)

1452.228-72 Liability for loss or damage.

As prescribed in 1428.306-70(c)(2), insert the following clause in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government does not have a property interest in the aircraft:

Liability for Loss or Damage—Department of the Interior (Apr. 1984)

(a) The Contractor shall indemnify and hold the Government harmless from any and all loss or damage to the aircraft furnished under this contract except as provided in paragraph (d) below. For the purpose of fulfilling its obligation under this clause, the Contractor shall procure and maintain during the term of this contract, and any extension thereof, hull insurance acceptable to the Contracting Officer. The Contractor's insurance coverage shall apply to pilots furnished by the Government who operate the aircraft. The contractor may request a list of Government pilots by name and qualification who are potential pilots.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a copy of the insurance policy or policies or a certificate of insurance issued by the underwriter(s) showing that the coverage required by this clause has been obtained.

(c) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or termination of any policy or certificate or any modification of a policy or certificate which adversely affects the interests of the Government in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy, and the insured.

(d) If the aircraft is damaged or destroyed while in the custody and control of the Government, the Government will reimburse the Contractor for the deductible stipulated in the insurance coverage (if any) as follows:

(1) In-Motion Accidents—Up to 5% of the current insured value of the aircraft stated in the policy, or $10,000.00, whichever is less.

(2) Not In-Motion Accidents—Up to $250.00 per accident. Such reimbursement shall not be made, however, for loss or damage to the aircraft resulting from: (1) Normal wear and tear, (2) negligence or fault in maintenance of the aircraft by the Contractor, or (3) a defect in construction of the aircraft or a component thereof.

(e) If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract. The Government may, at its option, make necessary repairs or return the aircraft to the Contractor for repair. In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

1452.228-73 Liability for Loss or Damage (Property Interest).

As prescribed in 1428.306-70(c)(3), insert the following clause in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government has a property interest in the aircraft (e.g., lease with purchase option):

Liability for Loss or Damage—Department of the Interior (Apr. 1984)

(a) The Government assumes all risk and liability for damage to or loss of the aircraft for the term of this contract, while the aircraft is in the Government's possession, except for: (1) Normal wear and tear to the aircraft, or (2) loss which occurs as a result of negligence or fault in maintenance of the aircraft by the contractor, or (3) loss resulting from a latent

defect in the construction of the aircraft or a component thereof.

(b) In the event of damage to the aircraft, the Government may, at its option, make the necessary repairs with its own facilities, or by contract, or pay the Contractor the reasonable cost of repair of the aircraft. If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract.

(c) In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter, but the Government will pay to the Contractor a sum equal to the fair market value of the aircraft just prior to such loss, destruction, or extensive damage less the salvage value of the aircraft.

(d) The Contractor certifies that the contract price does not include any cost attributable to insurance or to any reserve fund it has established to protect its interests in or use of the aircraft, regardless of whether or not the insurance coverage applies for the period during which the Government has possession of the aircraft. If, in the event of loss or damage to the aircraft, the Contractor receives compensation for such loss or damage, in any form, from any source, the amount of such compensation shall be credited to the Government in determining the amount of the Government's liability under this clause; except that this shall not apply to proceeds of insurance received solely as an advance of insurance pending determination of Government liability, or for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss or damage, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and such rights shall be immediately assigned to the Government. Except as the Contracting Officer may permit in writing, the Contractor shall neither release nor discharge any third party from liability for such loss or damage nor otherwise compromise or adversely affect the Government's subrogation or other rights hereunder. The Contractor shall cooperate with the Government in any suit or action undertaken by the Government against any such third party.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

1452.236–70 Prohibition Against Use of Lead-based Paint.

As prescribed in 1436.570, insert the following clause in solicitations and contracts when construction of residential structures or rehabilitation (including dismantling, demolition, or removal) of residential structures is contemplated:

Prohibition Against Use of Lead-based Paint—Department of the Interior (Apr. 1984)

No lead-based paint containing more than .5 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of paint, or the equivalent measure of lead in the dried film of paint already applied, or both, or with respect to paint manufactured after June 23, 1977, no lead-based paint containing more than .06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, shall be used in the construction or rehabilitation of residential structures under this contract or any resulting subcontracts.

(End of clause)

1452.237–70 Information Collection.

As prescribed in 1437.7103, insert the following clause in solicitations and contracts where collection of information upon identical items from ten or more public respondents is required or may be required:

Information Collection—Department of the Interior (Apr. 1984)

If performance of this contract requires the contractor to collect information upon identical items from ten or more public respondents, no action shall be taken or funds expended in the solicitation or collection of such information until the contractor has received from the Contracting Officer written notification that approval has been obtained from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980. The Contractor agrees to provide all information requested by the Contracting Officer which is necessary to obtain approval from OMB.

(End of clause)

PART 1453—FORMS

Sec.

1453.000 Scope of part.

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1453.303–DI–1919 Department of the Interior, Form DI–1919, Performance. Evaluation 8(a)).
1453.303–DI–1920 Department of the Interior, Form DI–1920, Structured Approach for Profit/fee Objective.
1453.303–70 Sample subcontracting plan outline format.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

1453.000 Scope of part.

This part (a) prescribes Department of the Interior (DI) forms for use in acquisition, (b) illustrates these forms, and (c) contains procedures for exceptions to forms prescribed in FAR Part 53 or this Part 1453.

Subpart 1453.2—Prescription of forms.

1453.200 Department of the Interior forms.

This subpart prescribes Department of the Interior (DI) forms for use in acquisition. Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DIAR in which the form usage requirements are addressed.

1453.204 Administration matters.

1453.204–70 Release of claims (DI–137).

DI–137, Release of claims, is precribed for use in obtaining a contractor release of claims as specified in 1404.804–70.

1453.215 Contracting by negotiation.

1453.215–71 Structured approach for profit/fee objective (DI–1920).

Form DI–1920, Structured Approach for Profit/Fee Objective—Department of the Interior is prescribed for use in calculating the profit or fee prenegotiation objective as required in 1415.905.

1453.219 Small business and small disadvantaged business concerns.

1453.219–71 Sample subcontracting plan outline.

The Sample Subcontracting plan Outline format is prescribed for use in requesting subcontracting plans as specified in 1419.705–70.

1453.219–72 Performance Evaluation (8(a)) (DI–1919).

DI–1919, Performance Evaluation (8(a)), is prescribed for use in evaluating the performance of SBA 8(a) contractors as specified in 1419.810–70.

1453.232 Contract financing.

1453.232-70 Assignment of claims (DI's 83, 84).

The following forms are prescribed for use in connection with making a written notice of assignment as specified in FAR Subpart 32.8 and Subpart 1432.8:

(a) DI–83 (1/72), Notice of Assignment. (See 1432.805.)

(b) DI–84 (1/72), Instrument of Assignment. (See 1432.805.)

Subpart 1453.3—Illustrations of Forms

1453.300 Scope of subpart.

This subpart contains illustrations of Department of the Interior (DI) forms used in acquisition as prescribed by the DIAR.

1453.303 Agency forms.

This section illustrates Department of the Interior (DI) forms specified by the DIAR for use in acquisition. The forms are illustrated in numerical order. The subsection numbers correspond with the DI numbers.

BILLING CODE 4310-10-M

1453.303-DI-83 Department of the Interior, Form DI-83, Notice of Assignment.

Form DI-83
(January 1972)

UNITED STATES
DEPARTMENT OF THE INTERIOR

NOTICE OF ASSIGNMENT

SEE INSTRUCTIONS ON REVERSE BEFORE COMPLETING FORM

To: *(check one)*

☐ Contracting Officer, or

☐ Surety _____
(Name)

Re Contract Number _____ Dated _____

With _____ of _____
(Contractor) (City) (State) (Zip Code)

For _____
(Project Identification)

PLEASE TAKE NOTICE that moneys due or to become due under the contract described above have been assigned to the undersigned pursuant to the provisions of the Assignment of Claims Act of 1940, as amended, 54 Stat. 1029; 65 Stat. 41 (31 U.S.C. 203, 41 U.S.C. 15). A true copy of the instrument of assignment executed by the contractor on *(date)* _____, is attached to the original hereof.

Payments due or to become due under such contract shall be made to the undersigned assignee.

Please complete and return all copies of this Notice as indicated on the reverse hereof.

_____ By _____
(Name of Assignee) (Name and Title of Officer of Assignee)

_____ _____
(Street Address) (Signature)

_____ _____
(City) (State) (Zip Code) (Date)

Receipt is hereby acknowledged of the above Notice and a copy of the instrument of assignment. These were received at ☐ a.m. ☐ p.m., on *(date)* _____

FOR USE OF CONTRACTING OFFICER	FOR USE OF SURETY
	(Surety Name)
(Name of Contracting Officer)	By _____ (Name and Title of Signing Officer)
(Signature)	(Signature of Surety Officer)

INSTRUCTIONS

Under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), moneys due or to become due from the United States under a contract providing for payments aggregating $1,000 or more may be assigned to a bank, trust company, Federal lending agency, or other recognized financing institution in the absence of a contract provision forbidding assignment. Unless otherwise permitted by the contract: (1) an assignment must cover all further amounts payable under the contract; (2) shall not be subject to further assignment; and (3) shall not be made to more than one party, except that assignment may be made to one party acting as agent or trustee for two or more parties participating in the financing. The assignee is required to provide a notice of assignment to the Contracting Officer; to the surety, if there is one; and to the disbursing officer, if any, designated in the contract to make payments.

In order to avoid possible invalidity of an assignment, and to provide a notice of assignment to all parties concerned, the following instructions should be followed carefully:

1. *Assignee:*

(a) Send an original and two copies of this *Notice of Assignment* (DI–83), together with one true copy* of an instrument of assignment**, *to the Contracting Officer.*

(b) Send by certified mail, return receipt requested, another original and three copies of this Notice of Assignment, together with one true copy* of the instrument of assignment, *to the surety*—if bond(s) were provided by a surety under the contract. *(See Instruction 4 below for additional required action by assignee.)*

2. *Contracting Officer:*

(a) Acknowledge receipt of this Notice of Assignment on the original and all copies.

(b) Forward one acknowledged copy of this Notice of Assignment plus the true copy of the instrument of assignment *to the appropriate finance officer.*

(c) Return one acknowledged copy of this Notice of Assignment *to the assignee.*

(d) Retain the original Notice of Assignment.

3. *Surety:*

(a) Acknowledge receipt of this Notice of Assignment on the original and all copies.

(b) Return three acknowledged copies of this Notice of Assignment *to the assignee.*

(c) Retain the original Notice of Assignment and the true copy of the instrument of assignment.

4. *Assignee:*

(a) Retain one copy of this Notice of Assignment acknowledged by the surety.

(b) Forward two copies of this Notice of Assignment acknowledged by the surety, *to the Contracting Officer.* If the surety has refused to acknowledge receipt of this Notice of Assignment, the assignee *must* prepare an affidavit to that effect, attach the postal return receipt which covered the mailing of this Notice of Assignment to the surety, and forward them *to the Contracting Officer.*

5. *Contracting Officer:*

(a) Retain either the affidavit and postal receipt from the assignee or one of the copies of this Notice of Assignment acknowledged by the surety.

(b) Forward a copy of the affidavit, or the copy of this Notice of Assignment acknowledged by the surety *to the appropriate finance officer.*

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* *A true copy of an instrument of assignment may be a*

(a) complete machine copy of the original;

(b) complete duplicate copy of the original; or

(c) certified copy of the original, typewritten or otherwise, if it is accurate and complete in all respects and is accompanied by a certificate, executed by a Notary Public or other officer legally authorized to administer oaths. to the effect that it is a true copy.

** *DI–84 completed, may be used as the instrument of assignment.*

1453.303-DI-84 Department of the Interior, Form DI-84, Instrument of Assignment.

Form DI-84
(January 1972)

UNITED STATES
DEPARTMENT OF THE INTERIOR

INSTRUMENT OF ASSIGNMENT

KNOW ALL MEN THAT pursuant to the provisions of the Assignment of Claims Act of 1940 as amended (31 U.S.C. 203, 41 U.S.C. 15), for value received, the undersigned Assignor (Contractor) does hereby assign irrevocably unto

of

as Assignee, all right, title, and interest in all moneys now due or to become due from, and not already paid by the United States of America under Contract No. , dated , for , previously entered into by and between the United States of America and the Assignor. The Assignor states that no previous assignment has been made, and no additional assignment will be made under the said contract; and authorizes payment of moneys now due or to become due to be made by checks drawn to the order of the said Assignee.

IN WITNESS WHEREOF, The undersigned Assignor has caused this assignment to be executed this day of 19

(Assignor) By (Signature)

(Street Number or R.F.D.) (Name)

(City) (State) (Zip Code) (Title)

ACKNOWLEDGMENT

(Complete only if Assignor is an individual or partnership)

State of)
ss:
County of)

I, , a Notary Public in and for the County of , State of , do hereby certify that on this day of , 19 , personally appeared before me the above signator , to me personally known, who, being by me duly sworn, duly acknowledged the execution of the above assignment to be his voluntary act and deed.

[NOTARIAL SEAL]

My commission expires (Signature of Notary Public)

AUTHORITY TO MAKE ASSIGNMENT

(Complete only if Assignor is a corporation)

I, certify that I am of the corporation named as Assignor herein; that who executed this assignment on behalf of the said corporation was then of the said corporation, acting for and on its behalf by authority of its governing body.

[SEAL]

(Date) (Signature)

1453.303–DI–137 Department of the Interior, Form DI–137, Release of claims.

UNITED STATES
DEPARTMENT OF THE INTERIOR

(Bureau or Office)

Contract Number

Contract Date

RELEASE OF CLAIMS

WHEREAS, by the terms of the above-identified contract for

entered into by the United States of America, hereinafter also referred to as the United States, and the contractor whose name appears on the contract as

it is provided that after completion of all work, and prior to final payment, the contractor will furnish the United States with a release of all claims;

NOW, THEREFORE, in consideration of the above premises and the payment by the United States to the contractor of the amount now due under the contract, to wit, the sum of

dollars

($), the contractor hereby remises, releases, and forever discharges the United States, its officers, agents, and employees, of and from all manner of debts, dues, liabilities, obligations, accounts, claims, and demands whatsoever, in law and equity, under or by virtue of the said contract except:

IN WITNESS WHEREOF, the contractor has executed this release this day of , 19

(Contractor)

(Street Number or R.F.D.)

(City) (State) (Zip Code)

By

(Signature)

(Name – Type or Print)

(Title)

COMPLETE ONLY IF CONTRACTOR IS A CORPORATION

I, , CERTIFY That I am the of the corporation named as contractor herein; that , who signed this release on behalf of the corporation, was then of said corporation; and that said release was duly signed for and on behalf of said corporation by authority of its governing body.

[SEAL]

(Signature)

U.S. GOVERNMENT PRINTING OFFICE : 1973–728-818/1364 3-1 DI–137 (Rev. August 1972)

1453.303-DI-1919 Department of the Interior, Form DI-1919, Performance Evaluation (8(a)).

Department of the Interior

EVALUATION REPORT ON 8(a) CONTRACTOR PERFORMANCE

1. Purchasing Office and Address: _____

2. Name of Contractor and Address: _____

3. Contract Number: _____ 4. Date of Award: _____ 5. Cost: _____

6. Number of Modifications: _____
Reasons for Modifications (Explain) _____

7. Contractor's Overall Performance: Excellent ___ Good ___ Fair ___ Poor ___

8. Quality of Product Or Service Provided: Excellent __ Good __ Fair __ Poor __

9. Compliance With Essential Contract Terms And Specifications: Yes __ No __
If no, explain. _____

10. Was Required Delivery Schedule Met? Yes ___ No ___ If no, explain.

11. Was Contract Performed Within Negotiated Price? Yes ___ No ___ (Explain)

12. Lessons Learned/Additional Comments: _____

13. Signature/Date: _____ Contracting Officer _____ Contracting Officer's Technical Representative

DI-1919 (10/83)

1453.303-DI-1920 Department of the Interior, Form DI-1920, Structured Approach for Profit/Fee Objective.

STRUCTURED APPROACH FOR PROFIT/FEE OBJECTIVE
DEPARTMENT OF THE INTERIOR

CONTRACTOR	RFP/CONTRACT NO.	MOD. NO.

FACTOR/SUBFACTOR	WEIGHT RANGE	Column A(%) WEIGHT ASSIGNED		Column B($) PRENEGOTIATION COST OBJECTIVE		Column C($) PROFIT/FEE OBJECTIVE (COLUMN A X COLUMN B
CONTRACTOR EFFORT						
Material Acquisition	1% to 4%		X		=	
			X		=	
			X		=	
			X		=	
			X		=	
Conversion of Direct Labor	4% to 12%		X		=	
			X		=	
			X		=	
			X		=	
			X		=	
Conversion-Related Indirect Costs	3% to 8%		X		=	
			X		=	
			X		=	
			X		=	
			X		=	
General Management	4% to 8%		X		=	
			X		=	
			X		=	
			X		=	
			X		=	
Other Cost (Subtract Facilities Capital Cost of Money)			X		=	
			X		=	
			X		=	
			X		=	
			X		=	
Total Contractor Effort (Add Columns)				$		$

	OTHER FACTORS	WEIGHT RANGE	WEIGHT ASSIGNED		TOTAL COST OBJECTIVE (FROM LINE 1, COLUMN B)		PROFIT/FEE OBJECTIVE (COLUMN A X COLUMN B)
2	Contract Cost Risk	0% to 7%		X		=	
3	Federal Socioeconomic Programs	+ - .5%		X		=	
4	Capital Investments	+ - 2%		X		=	
5	Cost Control and Other Past Accomplishments	+ - 1%		X		=	
6	Independent Development			X		=	
	TOTAL PROFIT/FEE OBJECTIVE (ADD LINES 1-6, COLUMN C)						$

DIAR (48 CFR) 1453.215-70 APRIL 84 DI-1920

BILLING CODE 4310-10-C

1453.303-70 Sample subcontracting plan outline format.

Small Business and Small Disadvantaged Business Subcontracting Plan Outline Format

Date:

Contractor:
Address:
Solicitation or Contract Number:
Item/Service:

The following, together with any attachments, is hereby submitted as a Subcontracting Plan to satisfy the applicable requirements of Public Law 95-507.

1. (a) The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) will be applicable to any contract awarded as a result of this solicitation.

(i) Small Business Concerns: —— % of total planned subcontracting dollars under this contract will go to subcontractors who are small business concerns.

(ii) Small Disadvantaged Business Concerns: —— % of total planned subcontracting dollars this contract will go to subcontractors who are small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The following dollar values correspond to the percentage goals shown in (a) above.

(i) Total dollars planned to be subcontracted to small business: $——.

(ii) Total dollars planned to be subcontracted to small disadvantaged business: $——.

(c) The total estimated dollar value of all planned subcontracting (to all types of business) under this contract is $——.

(d) The following principal products and/or services will be subcontracted under this contract, and the distribution among small and small disadvantaged business is as follows: (Products/services planned to be subcontracted to Small Business Concerns are identified by * and to Small Disadvantaged by **).

(e) The following method was used in developing subcontract goals (e.g., what source lists were used and what organizations were or will be contacted to obtain SB and SDB sources).

Indirect and overhead costs (check one): have been —— have not been —— included in the goals specified in 1 (a) and (b).

If "have been" is checked, explain the method used in determining the proportionate share of indirect and overhead costs to be incurred with small business and small disadvantaged business subcontractors.

2. The following individual will administer the subcontracting program:

Name:
Address:
Telephone:
Title:

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows: General overall responsibility for review, monitoring and execution of the plan including but not limited to:

(a) Obtaining small and small disadvantaged business sources from all applicable agencies such as SBA and MBDA.

(b) Assuring inclusion of SB and SDB firms in all solicitations where appropriate.

(c) Attending or arranging for attendance at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs.

(d) Conducting or arranging for conduct of motivational training for purchasing personnel pursuant to the intent of P.L. 95-507.

(e) Monitoring attainment of proposed goals.

(f) Reviewing solicitations to remove statements, clauses, etc., which may tend to prohibit SB and SDB participation.

(g) Additions to (or deletions from) to the duties specified above are as follows:

3. The following efforts will be taken to assure that small and small disadvantaged concerns will have an equitable opportunity to compete for subontracts:

(a) Outreach efforts will be made as follows:

(i) Contacts with minority and small business trade associations. Name at least three (3).

(ii) Contacts with business development organizations. Name at least two (2).

(iii) Attendance at small and minority business procurement conferences and trade fairs. Provide examples.

(b) The following internal efforts will guide and encourage buyers:

(i) Workshops, seminars, and training programs will be conducted.

(ii) Activities will be monitored to evaluate compliance with this subcontracting plan.

(c) Small and disadvantaged business source lists, guides, and other data identifying small and disadvantaged business vendors will be maintained and utilized by buyer in soliciting subcontract.

(d) Additions to (of deletions from) the above listed efforts are as follows:

4. The bidder (offeror) agrees that the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals will be included in all subcontracts which offer further subcontracting opportunities, and all subcontractors except Small Business Concerns who receive subcontracts in excess of $500,000 or in the case of a contract for the construction of any public facility, $1,000,000, will be required to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of Public Law 95-507, and assuring that all minimum requirements of an acceptable subcontracting plan shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small and disadvantaged subcontractors, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits of subcontractors facilities or review applicable records and subcontracting program progress.

5. The bidder (offeror) agrees to submit such periodic reports and cooperate in any studies surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan.

6. The bidder (offeror) agrees to maintain at least the following types of records to document compliance with this subcontracting plan:

(a) Small and disadvantaged business source lists, guides and other data indentifying SB and SDB vendors.

(b) Organizations contacted for small and disadvantaged business sources.

(c) On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (1) whether small business was solicited, and if not, why not; (2) whether small disadvantaged business was solicited, and if not, why not; and (3) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.

(d) Records to support other outreach efforts: Contacts with Minority and Small Business Trade Associations, etc. Attendance at small and minority business procurement conferences and trade fairs.

(e) Records to support internal activities to guide and encourage buyers: workshops, seminars, training programs, etc. Monitoring activities to evaluate compliance.

(f) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

(g) Records to be maintained in addition to the above are as follows:

Signed:
Typed Name:
Title:
Date:

[FR Doc. 84-9528 Filed 4-5-84; 3:01 p.m.]
BILLING CODE 4510-10-M

federal register

Tuesday
April 10, 1984

Part V

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1983 Through 1985 Crops of Peanuts

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1983 Through 1985 Crops of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: An Interim Rule, which was published at 48 FR 9214, is adopted as a final rule with minor amendments. The Interim Rule, as adopted and amended by the final rule, sets forth the regulations which are applicable to the 1983 through 1985 crops of peanuts and provides for: (1) Establishing state farm poundage quotas and farm yields; (2) providing for transfers of quota; (3) determining undermarketings; (4) identifying marketings; (5) determining marketing penalties; and (6) handling marketing violations. The amendments to the Interim Rule include changes relating to the requirements for spring and fall transfers of poundage quotas. Also, a number of clarifying changes have been made and clearance numbers assigned by the Office of Management and Budget have been added with regard to the information collection requirements of the Paperwork Reduction Act.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Kathryn Cuff (ASCS), 202–447–7406. A Final Regulatory Impact Analysis describing the options considered in developing this rule is available upon request.

SUPPLEMENTARY INFORMATION: This Final Rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of rulemaking with respect to the subject matter of this rule.

The title and number of the Federal assistance program to which this Final Rule applies are: Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

The information collection requirements contained in the regulations adopted by this Final Rule and the information requiests authorized by the regulations have been reviewed and approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB numbers 0560–0003, 0560–0006, 0560–0014, 0560–0027, and 0560–0051. The regulations in §§ 729.231, 729.244, 729.265, 729.278, 729.279, 729.286, 729.290, 729.291, 729.292, 729.293, 729.294, 729.300, 729.301, 729.302, 729.303, and 729.306 have been modified in this Final Rule to reflect the appropriate clearance numbers.

Comments and Determinations

On March 4, 1983, an Interim Rule was published in the **Federal Register** (48 FR 9214) setting forth regulations governing peanut quotas and the marketing of peanuts for the 1983–85 crop years. A 60-day comment period was provided. Six comments were received. Of these six comments, one was from a state farm bureau, one was from a county office of an agricultural organization and four were from individuals. With the exception of one comment, the comments were addressed to those provisions of the Interim Rule relating to reductions in peanut quotas. Those provisions of the Interim Rule were promulgated in accordance with section 358 of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. § 1358), which provides for the annual reductions in the national peanut quota for each of the 1982 through 1985 crops of peanuts. Specifically, section 358 provides for reducing the 1981 national quota of 1,440,000 tons to: 1,200,000 tons in 1982, 1,167,300 tons in 1983, 1,134,700 tons in 1984, and 1,100,000 tons in 1985. Section 358 further provides that the national poundage quota shall be apportioned among individual States on the basis of each State's share of the national poundage quota for the 1981 marketing year. The State poundage quota is then apportioned to individual farms. The yearly reductions in the State poundage quotas are to be made "insofar as practicable and on such fair and equitable basis as the Secretary may by regulation prescribe * * * by reducing the farm poundage quota for each farm in the State to the extent that the farm poundage quota has not been produced on such farm."

Under section 358, three categories of quotas were identified for a "priority" in making reductions—i.e., three categories were identified as being subject to reduction before reductions of quotas not falling into one of the identified categories. For the 1983 crop year only, the Interim Rule followed the practice adopted previously for the 1982 crop of only breaking out separately for reduction purposes so-called "category 1" and "category 2" quotas. "Category 1" quotas are quotas which are subject to reduction to the extent that there was inadequate tillable cropland on the farm to produce the quota in the preceding year. Quotas fall in category 2 to the extent that the quota has not been produced in two of the three preceding crop years. The third special reduction category provided for in section 358 is "category 3" which consists of quotas which have, in two of the three preceding years, been produced by another operator on a farm to which the poundage quota (or the acreage allotment on which the poundage quota was based) was transferred by lease. This category, as in 1982, was not broken out separately for quota reductions for the 1983 crop.

The Interim Rule provided with respect to the 1983 crop that, to the extent the reductions in categories 1 and 2 were not sufficient in any State to produce the reduction required for that crop year, a uniform factor was applied to all quotas in the State (including those partially reduced by category 1 and category 2 reductions) to achieve the additional reduction.

One comment opposed the reduction method adopted for the 1983 crop. Four comments supported the provisions of the Interim Rule with respect to this issue.

The opposing comment objected that the 1983 crop reduction method utilized with respect to the handling of "category 3" quotas (leased quotas) did not serve to preserve the quota of active producers and was contrary to the statutory intent of section 358. However, the focus of the quota reduction provisions of section 358 is not, as such, on whether the quota holder is an active peanut producer. The leasing of a quota by itself does not result in that quota being considered to be in a "priority" reduction category. On the contrary, a quota is considered to be in "category 3" only to the extent that the quota is produced by a different operator on another farm to which it was transferred by lease. Further, reductions in quotas

which have been leased and produced on a different farm by another operator can directly and adversely affect producers who have produced the leased quota. Those producers who have recently purchased farms with quotas or have purchased a quota independently of the purchase of a farm are also affected since all such purchases carry with them the leasing history of the quota. In any event, section 358 specifically provides that quota reductions shall be made on such fair and equitable basis as the Secretary may prescribe by regulation. As indicated in the supplementary information of the Interim Rule, breaking out "category 3" quotas would have, as a result of the state-by-state method in which quota reductions must be apportioned, produced widely disparate treatment for farms otherwise identically situated. More generally, breaking out "category 3" quotas separately for the 1983 crop year would have produced a windfall in favor of certain producers with tillable acreage over other producers with tillable acreage based on cropping decisions which may have been temporary and fortuitous. On weighing these and the other factors set forth in the Interim Rule, it was determined that "category 3" quotas should not be broken out for purposes of making quota reductions for the 1983 crop year. This determination effectively allowed a second year in which "category 3" quotas were not broken out separately for purposes of making quota reductions pursuant to section 358. For the reasons given in the Interim Rule, it continues to be the view of the Department that the policy adopted with respect to "category 3" quotas for the 1983 crop year was appropriate. The Interim Rule, published on March 4, 1983, provided that "category 3" quotas would be broken out separately for the purpose of making quota reductions for the 1984 and 1985 crop years. Two comments objected to breaking out "category 3" quotas for those crop years. One of the two comments generally expressed the desire to have the 1982-and 1983-crop quota reduction methods continued for the 1984 crop of peanuts. The other comment pointed out that, because of advancing age or lack of planting and harvesting equipment or other reasons, some quota holders may not be able to actually produce the quota. No other comments were received with respect to this policy.

The Department has again carefully considered, but rejected, a continuation for the 1984 and 1985 crop years of the policy which was adopted for the 1982 and 1983 crop years with respect to not breaking out "category 3" quotas for the purpose of making quota reductions. That policy was a temporary measure adopted pursuant to the Secretary's discretionary authority under section 358 of the 1938 Act in order to implement the required reductions on a fair and equitable basis. It was not intended to abrogate the clear statutory schedule of priorities for reduction of poundage quotas as set forth in section 358. Because "category 3" quotas were not broken out separately for reduction purposes for two crop years, no reductions in "category 3" quotas will now result strictly from cropping activities which preceded the enactment in 1981 of the statutory provisions with respect to quota reductions. Also, the effect of quota losses on local have dissipated. Also, the effect of quota losses on local communities, where there are high concentrations of "category 3" quotas, is reduced since the amount of quotas considered to be in "category 3" for the 1984 crop is considerably less in all major peanut growing regions than at the time the policy with respect to the 1982 and 1983 quota reductions was adopted. While under the priorities set forth in section 358 quotaholders in "category 4" were in the most protected category, they shared any quota reductions in the previous two crop years with quotaholders in "category 3." The Department believes that a continuation of that policy would clearly be inequitable to quotaholders in "category 4."

With respect to the comments concerning the difficulties which may be encountered by some producers in producing their own crops due to their age or a lack of peanut equipment, such difficulties do not justify an exemption from quota reductions. The clear purpose of section 358 is not to have the reduced national quota serve as a vehicle for maintaining leasing income but rather to have the reduced national quota apportioned to those quotaholders who are active peanut producers.

The remaining issue raised by the comments involves a suggestion by one commenter that peanut quotas should be apportioned on the basis of production history. Apportionment of quotas on the basis of production history would require new legislation. This comment, therefore, goes beyond the scope of this rulemaking procedure.

For the foregoing reasons, it has been determined that the Interim Rule should be adopted as a final rule, except for the following revisions. First, § 729.244(a), which relates to "spring transfers" of quota, has been revised. Spring transfers are planting-season transfers. The Interim Rule specified that such transfers must be made by the "final planting date" established by the State Agricultural Stabilization and Conservation (ASC) Committee so long as the date is not later than June 15. It has been reported that the establishment of a final planting date might be misconstrued by producers as being a date by which peanuts must actually be planted, rather than simply a last date for spring transfers. To avoid such confusion, the rule has been revised to delete the reference to the establishment of a final planting date. The substance of the rule, however, has been maintained. As revised, § 729.244 provides that the last date for spring transfers shall be the date established by the State Committee but not later than June 15. Also, the reference to the establishment of a last transfer date for spring transfers of quota by area has been removed to avoid having § 729.244 misconstrued as requiring State committees to establish different dates for areas within the same State regardless of the degree of difference in planting conditions. The revised rule would permit State committees to establish a different final Spring transfer date for counties or areas within the same State if it is determined to be necessary for program administration. The language of § 729.244(a) involving the establishment of a final planting date was referred to in § 729.244, § 729.246, § 729.248. These sections have been revised accordingly.

Section 729.248(b) has been revised by breaking out separately for purposes of clarity the requirements applicable to receiving and transferring farms. Also, the provisions of § 729.248(b), which specified that the transferring farm had to meet certain planting requirements before making such a transfer, have been amended to limit these requirements to those farms which have previously been the recipient of a transfer of quota during that crop year. This revision is intended to clarify the intent of the regulations to avoid the use of the fall transfer allowance as a means of brokering quotas. Also with respect to fall transfers, § 729.248(a) has been modified slightly for the purpose of clarity.

In addition, the following sections have been revised: (1) Section 729.244(b) has been reorganized and modified slightly for purposes of clarity, and a new provision added to explicitly address the handling of permanent transfers in relation to quota reductions; (2) § 729.300 has been revised to reflect the change in the form number for the

Application for Peanut Handler Card from MO–86 to ASCS–1006; (3) in the second sentence of § 729.304, the word "producer" has been corrected to read "production"; and (4) OMB clearance numbers, as indicated, have been added to comply with the information collection requirements of the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 729

Poundage quotas, Penalties, Reporting requirements.

Final Rule

PART 729—[AMENDED]

Accordingly, the Interim Rule published at 48 FR 9214 on March 4, 1983, is adopted as a Final Rule, with the following changes:

Authority: Secs. 301, 357, 358, 358a, 359, 372, 373, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 62, as amended, 63, as amended, 64, 65, as amended, 66, as amended, 70 Stat. 206, as amended, Secs. 801, 802, 803, 804, 805, 91 Stat. 944, as amended, 95 Stat. 1248 (7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375, as amended); Sec. 108A, 95 Stat. 1254 (7 U.S.C. 1445c–1).

1. In § 729.224, paragraph (b)(1)(iii) text is revised and a new paragraph (b)(1)(iv) is added to read as follows:

§ 729.224 Determination of farm poundage quota.

* * * * *

(b) *1984 and 1985 Poundage quota reductions*—(1) *Poundage quota reductions.*

* * * * *

(iii) *Quota transferred by lease and produced on another farm by a different farm operator.* Except as provided in Subparagraph (E), the preliminary farm poundage quota for a farm shall be reduced, or further reduced, to the extent the county committee determines that any of the following situations apply:

(A) For two or more of the years of the base period, the farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts, i.e., leases filed by the time prescribed in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984; and (*2*) was produced or considered produced on a receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm; or

(B) The farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984 and was produced or considered produced on the receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm for 2 or more years of the base period; and (*2*) was not 100 percent produced or considered produced in 1 or more of the same base period years.

(C) The farm poundage quota: (*1*) Was not 100 percent produced or considered produced in 2 or more of the years of the base period; (*2*) was transferred, in whole or in part, as a result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984 and was produced or considered produced in part on a receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm in 1 or more of the same base period years.

(D) The farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for 1983 and 1984 crop years and was produced or considered produced on the receiving farm and the operator of the receiving farm was a different person than the operator of the transferring farm for 1 or more of the base period years; and (*3*) was not 100 percent produced or considered produced in 1 or more of the other base period years.

(E) In applying the provisions of subparagraphs (A) through (D), if the constitution of the farm differs from the constitution of the farm for any one or more of the base period years, an individual determination shall be made for separately identifiable farm tracts as they were constituted for that year of the base period.

(iv) If a farm received quota by permanent transfer during any year of the base period, an individual determination shall be made for the quota permanently transferred as if such quota was established on a separate farm for each year of the base period.

2. Section 729.231 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.231 Request for reconsideration or appeal.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

3. The text of § 729.244 (a) and (b) is revised to read as follows:

§ 729.244 Filing record of transfer and time for filing.

* * * * *

(a) *Record of transfer filed during the normal planting period (spring transfers.)* In order to be effective during the normal planting period, a record of transfer shall be filed by the date established by the State committee, but not later than June 15. A record of transfer filed after the date established by the State committee but prior to July 1 may be considered to be timely filed if the county committee finds that: (i) The lease was agreed upon no later than the date established by the State committee, and (ii) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

(b) *Record of transfer filed after the normal planting period (fall transfers.)* A record of transfers which in filed after the date established by the State committee for "spring tranfers" pursuant to § 729.244(a) shall not become effective unless filed not later than December 31 of the current year. A record of transfer filed after December 31 but prior to January 31 may be considered timely filed by December 31 if the county committee with approval of the State committee finds that: (1) The transfer was agreed upon no later than December 31, and (2) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

(Approved by the Office of Management and Budget under Control No. 0560–0051.)

4. The text of § 729.246(d) is revised to read as follows:

§ 729.246 Transfer not to be approved.

* * * * *

(d) Transfers for more than one marketing year filed after the date established by the State committee for

"spring transfers" pursuant to § 729.244(a).

* * * * *

5. The text of § 729.248 (a) and (b) is revised to read as follows:

§ 729.248 Transfer to and from the same farm (subleasing).

(a) *Record of transfer filed during the normal planting period.* The county committee shall not approve a record of transfer which is filed (or considered filed) on or before the date established by the State committee for "spring transfers" pursuant to § 729.244(a) if the approval would result in a transfer both to and from either the transferring or receiving farm during the period ending on such date of the same crop year, except that in such instance a record of tranfer may be approved if a poundage quota has been transferred temporarily from a farm for one or more years (and the transfer remains in effect) and the farm is combined subsequent to such temporary transfer with another farm that is otherwise eligible to receive poundage quota by transfer.

(b) *Record of transfer filed after the normal planting period.* The county committee shall not approve a temporary transfer of poundage quota which is filed (or considered filed) after the date established by the State committee for "spring transfers" pursuant to § 729.244(a) if it would result in a temporary transfer both to and from the farm during the period beginning on such date and ending on December 31. In order for any transfer filed after the date established by the State committee to be approved by the county committee, the following conditions must be met, as applicable:

(1) *Receiving farm.* The operator of the receiving farm must certify and the county committee must determine that the poundage quota to be transferred is not more than will be required to market the entire production of peanuts from the receiving farm as quota peanuts in the current year.

(2) *Transferring farm.* In those instances where the transferring farm had quota transferred by lease to the farm on or before the date established by the State committee for "spring transfers" pursuant to § 729.244(a), the operator of the transferring farm must certify and the county committee must determine that: (i) The acreage of peanuts planted on the transferring farm was equal to at least 80 percent of the acreage determined by dividing the effective farm poundage quota by the larger of the current farm yield or the highest actual yield for the farm in any one of the preceding three years; and (ii) the production of peanuts on the transferring farm was limited to less than the effective farm poundage quota because of conditions beyond the control of the producer.

6. Section 729.265 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.265 Issuance of Cards

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

7. Section 729.278 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.278 Reduction or waiver of penalty.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

8. Section 729.279 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.279 Appeals.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

9. Section 729.286 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.286 Identification of producer marketings.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

10. Section 729.290 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.290 Report of marketing green peanuts.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

11. Section 729.291 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.291 Report of acquisition of seed peanuts.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

12. Section 729.292 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.292 Peanuts marketed to persons who are not registered handlers.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

13. Section 729.293 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.293 Report on marketing card.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

14. Section 729.294 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.294 Report of production and disposition.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

15. Section 729.300 is amended by revising the last sentence of (b), revising (c), and adding the OMB reference following the section to read as follows:

§ 729.300 Registration of handlers.

* * * * *

(b) *Persons acquiring noninspected peanuts.* * * * A person may register by completing an ASCS–1006, Application for Peanut Handler Card, and submitting it to the appropriate State ASCS office.

(c) *Persons acquiring inspected peanuts.* A person who plans to acquire peanuts that have been inspected by a duly authorized inspector of the Federal-State Inspection Service must register as a handler by completing an ASCS–1006, Application for Peanut Handler Card, and submitting it to the Virginia, Georgia, or Texas State ASCS Office in the marketing area in which the handler is located.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

16. Section 729.301 is amended to add the OMB reference following that last sentence of the section as follows:

§ 729.301 Records and reports required of handlers.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

17. Section 729.302 is amended to add the OMB reference following that last sentence of the section as follows:

§ 729.302 Persons engaged in more than one business.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

18. Section 729.303 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.303 Penalty for failure to keep records and make reports.

* * * * *

(Approved by the Office of Management and Budget under Control Nos. 0560–0003 and 0560–0014)

19. The second sentence of § 729.304, is corrected to read as follows:

§ 729.304 Examination of records and reports.

* * * Upon request from any such person, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under his control which any person hereby authorized to examine records has reason to believe are relevant to any matter under investigation which relates to the provisions of this subpart.

20. Section 729.306 is amended t the OMB reference following the l sentence of that section as follows

§ 729.306 Information confidential.

* * * * *

(Approved by the Office of Manageme Budget under Control Nos. 0560–0003 a 0560–0014)

Signed at Washington, D.C., on Apri 1984.

Everett Rank,

Administrator.

[FR Doc. 84–9752 Filed 4–6–84; 4:45 pm]

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Part VI

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 113 and 114
Viruses, Serums, Toxins, and Analogous Products; Standard Requirements; Proposed Rule

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1453.303-DI-1919 Department of the Interior, Form DI-1919, Performance Evaluation (8(a)).

Department of the Interior

EVALUATION REPORT ON 8(a) CONTRACTOR PERFORMANCE

1. Purchasing Office and Address: _____

2. Name of Contractor and Address: _____

3. Contract Number: _____ 4. Date of Award: _____ 5. Cost: _____

6. Number of Modifications: _____
Reasons for Modifications (Explain) _____

7. Contractor's Overall Performance: Excellent ___ Good ___ Fair ___ Poor

8. Quality of Product Or Service Provided: Excellent __ Good __ Fair __ Poor

9. Compliance With Essential Contract Terms And Specifications: Yes __ No
If no, explain. _____

10. Was Required Delivery Schedule Met? Yes ___ No ___ If no, explain.

11. Was Contract Performed Within Negotiated Price? Yes ___ No ___ (Explain

12. Lessons Learned/Additional Comments: _____

13. Signature/Date: _____ Contracting Officer _____ Contracting Officer's Technical Representati

DI-1919 (10/8

1453.303-DI-1920 Department of the Interior, Form DI-1920, Structured Approach for Profit/Fee Objective.

STRUCTURED APPROACH FOR PROFIT/FEE OBJECTIVE
DEPARTMENT OF THE INTERIOR

CONTRACTOR	RFP/CONTRACT NO.	MOD. NO.

FACTOR/SUBFACTOR	WEIGHT RANGE	Column A(%) WEIGHT ASSIGNED		Column B($) PRENEGOTIATION COST OBJECTIVE		Column C($) PROFIT/FEE OBJECTIVE (COLUMN A X COLUMN B)
CONTRACTOR EFFORT						
Material Acquisition	1% to 4%		X		-	
Conversion of Direct Labor	4% to 12%		X		-	
Conversion-Related Indirect Costs	3% to 8%		X		-	
General Management	4% to 8%		X		-	
Other Cost (Subtract Facilities Capital Cost of Money)			X		-	
1 Total Contractor Effort (Add Columns)				$ TOTAL COST OBJECTIVE (FROM LINE 1, COLUMN B)		$
OTHER FACTORS	WEIGHT RANGE	WEIGHT ASSIGNED				PROFIT/FEE OBJECTIVE (COLUMN A X COLUMN B)
2 Contract Cost Risk	0% to 7%		X		-	
3 Federal Socioeconomic Programs	+ - .5%		X		-	
4 Capital Investments	+ - 2%		X		-	
5 Cost Control and Other Past Accomplishments	+ - 1%		X		-	
6 Independent Development			X		-	
TOTAL PROFIT/FEE OBJECTIVE (ADD LINES 1-6, COLUMN C)						$

DIAR (48 CFR) 1453.215-70

APRIL 84

DI-1920

BILLING CODE 4310-10-C

1453.303-70 Sample subcontracting plan outline format.

Small Business and Small Disadvantaged Business Subcontracting Plan Outline Format

Date:

Contractor:
Address:
Solicitation or Contract Number:
Item/Service:

The following, together with any attachments, is hereby submitted as a Subcontracting Plan to satisfy the applicable requirements of Public Law 95-507.

1. (a) The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) will be applicable to any contract awarded as a result of this solicitation.

(i) Small Business Concerns: —— % of total planned subcontracting dollars under this contract will go to subcontractors who are small business concerns.

(ii) Small Disadvantaged Business Concerns: —— % of total planned subcontracting dollars this contract will go to subcontractors who are small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The following dollar values correspond to the percentage goals shown in (a) above.

(i) Total dollars planned to be subcontracted to small business: $——.

(ii) Total dollars planned to be subcontracted to small disadvantaged business: $——.

(c) The total estimated dollar value of all planned subcontracting (to all types of business) under this contract is $——.

(d) The following principal products and/or services will be subcontracted under this contract, and the distribution among small and small disadvantaged business is as follows: (Products/services planned to be subcontracted to Small Business Concerns are identified by * and to Small Disadvantaged by **).

(e) The following method was used in developing subcontract goals (e.g., what source lists were used and what organizations were or will be contacted to obtain SB and SDB sources).

Indirect and overhead costs (check one): have been —— have not been —— included in the goals specified in 1 (a) and (b).

If "have been" is checked, explain the method used in determining the proportionate share of indirect and overhead costs to be incurred with small business and small disadvantaged business subcontractors.

2. The following individual will administer the subcontracting program:

Name:
Address:
Telephone:
Title:

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows: General overall responsibility for review, monitoring and execution of the plan including but not limited to:

(a) Obtaining small and small disadvantaged business sources from all applicable agencies such as SBA and MBDA.

(b) Assuring inclusion of SB and SDB firms in all solicitations where appropriate.

(c) Attending or arranging for attendance at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs.

(d) Conducting or arranging for conduct of motivational training for purchasing personnel pursuant to the intent of P.L. 95-507.

(e) Monitoring attainment of proposed goals.

(f) Reviewing solicitations to remove statements, clauses, etc., which may tend to prohibit SB and SDB participation.

(g) Additions to (or deletions from) to the duties specified above are as follows:

3. The following efforts will be taken to assure that small and small disadvantaged concerns will have an equitable opportunity to compete for subontracts:

(a) Outreach efforts will be made as follows:

(i) Contacts with minority and small business trade associations. Name at least three (3).

(ii) Contacts with business development organizations. Name at least two (2).

(iii) Attendance at small and minority business procurement conferences and trade fairs. Provide examples.

(b) The following internal efforts will guide and encourage buyers:

(i) Workshops, seminars, and training programs will be conducted.

(ii) Activities will be monitored to evaluate compliance with this subcontracting plan.

(c) Small and disadvantaged business source lists, guides, and other data identifying small and disadvantaged business vendors will be maintained and utilized by buyer in soliciting subcontract.

(d) Additions to (of deletions from) the above listed efforts are as follows:

4. The bidder (offeror) agrees that the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals will be included in all subcontracts which offer further subcontracting opportunities, and all subcontractors except Small Business Concerns who receive subcontracts in excess of $500,000 or in the case of a contract for the construction of any public facility, $1,000,000, will be required to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of Public Law 95-507, and assuring that all minimum requirements of an acceptable subcontracting plan shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small and disadvantaged subcontractors, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits of subcontractors facilities or review applicable records and subcontracting program progress.

5. The bidder (offeror) agrees to submit such periodic reports and cooperate in any studies surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan.

6. The bidder (offeror) agrees to maintain at least the following types of records to document compliance with this subcontracting plan:

(a) Small and disadvantaged business source lists, guides and other data indentifying SB and SDB vendors.

(b) Organizations contacted for small and disadvantaged business sources.

(c) On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (1) whether small business was solicited, and if not, why not; (2) whether small disadvantaged business was solicited, and if not, why not; and (3) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.

(d) Records to support other outreach efforts: Contacts with Minority and Small Business Trade Associations, etc. Attendance at small and minority business procurement conferences and trade fairs.

(e) Records to support internal activities to guide and encourage buyers: workshops, seminars, training programs, etc. Monitoring activities to evaluate compliance.

(f) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

(g) Records to be maintained in addition to the above are as follows:

Signed:
Typed Name:
Title:
Date:

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federal register

Tuesday
April 10, 1984

Part V

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1983 Through 1985 Crops of Peanuts

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1983 Through 1985 Crops of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: An Interim Rule, which was published at 48 FR 9214, is adopted as a final rule with minor amendments. The Interim Rule, as adopted and amended by the final rule, sets forth the regulations which are applicable to the 1983 through 1985 crops of peanuts and provides for: (1) Establishing state farm poundage quotas and farm yields; (2) providing for transfers of quota; (3) determining undermarketings; (4) identifying marketings; (5) determining marketing penalties; and (6) handling marketing violations. The amendments to the Interim Rule include changes relating to the requirements for spring and fall transfers of poundage quotas. Also, a number of clarifying changes have been made and clearance numbers assigned by the Office of Management and Budget have been added with regard to the information collection requirements of the Paperwork Reduction Act.

EFFECTIVE DATE: April 6, 1984.

FOR FURTHER INFORMATION CONTACT: Kathryn Cuff (ASCS), 202–447–7406. A Final Regulatory Impact Analysis describing the options considered in developing this rule is available upon request.

SUPPLEMENTARY INFORMATION: This Final Rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of rulemaking with respect to the subject matter of this rule.

The title and number of the Federal assistance program to which this Final Rule applies are: Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

The information collection requirements contained in the regulations adopted by this Final Rule and the information requiests authorized by the regulations have been reviewed and approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB numbers 0560–0003, 0560–0006, 0560–0014, 0560–0027, and 0560–0051. The regulations in §§ 729.231, 729.244, 729.265, 729.278, 729.279, 729.286, 729.290, 729.291, 729.292, 729.293, 729.294, 729.300, 729.301, 729.302, 729.303, and 729.306 have been modified in this Final Rule to reflect the appropriate clearance numbers.

Comments and Determinations

On March 4, 1983, an Interim Rule was published in the **Federal Register** (48 FR 9214) setting forth regulations governing peanut quotas and the marketing of peanuts for the 1983–85 crop years. A 60-day comment period was provided. Six comments were received. Of these six comments, one was from a state farm bureau, one was from a county office of an agricultural organization and four were from individuals. With the exception of one comment, the comments were addressed to those provisions of the Interim Rule relating to reductions in peanut quotas. Those provisions of the Interim Rule were promulgated in accordance with section 358 of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. § 1358), which provides for the annual reductions in the national peanut quota for each of the 1982 through 1985 crops of peanuts. Specifically, section 358 provides for reducing the 1981 national quota of 1,440,000 tons to: 1,200,000 tons in 1982, 1,167,300 tons in 1983, 1,134,700 tons in 1984, and 1,100,000 tons in 1985. Section 358 further provides that the national poundage quota shall be apportioned among individual States on the basis of each State's share of the national poundage quota for the 1981 marketing year. The State poundage quota is then apportioned to individual farms. The yearly reductions in the State poundage quotas are to be made "insofar as practicable and on such fair and equitable basis as the Secretary may by regulation prescribe * * * by reducing the farm poundage quota for each farm in the State to the extent that the farm poundage quota has not been produced on such farm."

Under section 358, three categories of quotas were identified for a "priority" in making reductions—i.e., three categories were identified as being subject to reduction before reductions of quotas not falling into one of the identified categories. For the 1983 crop year only, the Interim Rule followed the practice adopted previously for the 1982 crop of only breaking out separately for reduction purposes so-called "category 1" and "category 2" quotas. "Category 1" quotas are quotas which are subject to reduction to the extent that there was inadequate tillable cropland on the farm to produce the quota in the preceding year. Quotas fall in category 2 to the extent that the quota has not been produced in two of the three preceding crop years. The third special reduction category provided for in section 358 is "category 3" which consists of quotas which have, in two of the three preceding years, been produced by another operator on a farm to which the poundage quota (or the acreage allotment on which the poundage quota was based) was transferred by lease. This category, as in 1982, was not broken out separately for quota reductions for the 1983 crop.

The Interim Rule provided with respect to the 1983 crop that, to the extent the reductions in categories 1 and 2 were not sufficient in any State to produce the reduction required for that crop year, a uniform factor was applied to all quotas in the State (including those partially reduced by category 1 and category 2 reductions) to achieve the additional reduction.

One comment opposed the reduction method adopted for the 1983 crop. Four comments supported the provisions of the Interim Rule with respect to this issue.

The opposing comment objected that the 1983 crop reduction method utilized with respect to the handling of "category 3" quotas (leased quotas) did not serve to preserve the quota of active producers and was contrary to the statutory intent of section 358. However, the focus of the quota reduction provisions of section 358 is not, as such, on whether the quota holder is an active peanut producer. The leasing of a quota by itself does not result in that quota being considered to be in a "priority" reduction category. On the contrary, a quota is considered to be in "category 3" only to the extent that the quota is produced by a different operator on another farm to which it was transferred by lease. Further, reductions in quotas

which have been leased and produced on a different farm by another operator can directly and adversely affect producers who have produced the leased quota. Those producers who have recently purchased farms with quotas or have purchased a quota independently of the purchase of a farm are also affected since all such purchases carry with them the leasing history of the quota. In any event, section 358 specifically provides that quota reductions shall be made on such fair and equitable basis as the Secretary may prescribe by regulation. As indicated in the supplementary information of the Interim Rule, breaking out "category 3" quotas would have, as a result of the state-by-state method in which quota reductions must be apportioned, produced widely disparate treatment for farms otherwise identically situated. More generally, breaking out "category 3" quotas separately for the 1983 crop year would have produced a windfall in favor of certain producers with tillable acreage over other producers with tillable acreage based on cropping decisions which may have been temporary and fortuitous. On weighing these and the other factors set forth in the Interim Rule, it was determined that "category 3" quotas should not be broken out for purposes of making quota reductions for the 1983 crop year. This determination effectively allowed a second year in which "category 3" quotas were not broken out separately for purposes of making quota reductions pursuant to section 358. For the reasons given in the Interim Rule, it continues to be the view of the Department that the policy adopted with respect to "category 3" quotas for the 1983 crop year was appropriate. The Interim Rule, published on March 4, 1983, provided that "category 3" quotas would be broken out separately for the purpose of making quota reductions for the 1984 and 1985 crop years. Two comments objected to breaking out "category 3" quotas for those crop years. One of the two comments generally expressed the desire to have the 1982-and 1983-crop quota reduction methods continued for the 1984 crop of peanuts. The other comment pointed out that, because of advancing age or lack of planting and harvesting equipment or other reasons, some quota holders may not be able to actually produce the quota. No other comments were received with respect to this policy.

The Department has again carefully considered, but rejected, a continuation for the 1984 and 1985 crop years of the policy which was adopted for the 1982 and 1983 crop years with respect to not breaking out "category 3" quotas for the purpose of making quota reductions. That policy was a temporary measure adopted pursuant to the Secretary's discretionary authority under section 358 of the 1938 Act in order to implement the required reductions on a fair and equitable basis. It was not intended to abrogate the clear statutory schedule of priorities for reduction of poundage quotas as set forth in section 358. Because "category 3" quotas were not broken out separately for reduction purposes for two crop years, no reductions in "category 3" quotas will now result strictly from cropping activities which preceded the enactment in 1981 of the statutory provisions with respect to quota reductions. Also, the effect of quota losses on local have dissipated. Also, the effect of quota losses on local communities, where there are high concentrations of "category 3" quotas, is reduced since the amount of quotas considered to be in "category 3" for the 1984 crop is considerably less in all major peanut growing regions than at the time the policy with respect to the 1982 and 1983 quota reductions was adopted. While under the priorities set forth in section 358 quotaholders in "category 4" were in the most protected category, they shared any quota reductions in the previous two crop years with quotaholders in "category 3." The Department believes that a continuation of that policy would clearly be inequitable to quotaholders in "category 4."

With respect to the comments concerning the difficulties which may be encountered by some producers in producing their own crops due to their age or a lack of peanut equipment, such difficulties do not justify an exemption from quota reductions. The clear purpose of section 358 is not to have the reduced national quota serve as a vehicle for maintaining leasing income but rather to have the reduced national quota apportioned to those quotaholders who are active peanut producers.

The remaining issue raised by the comments involves a suggestion by one commenter that peanut quotas should be apportioned on the basis of production history. Apportionment of quotas on the basis of production history would require new legislation. This comment, therefore, goes beyond the scope of this rulemaking procedure.

For the foregoing reasons, it has been determined that the Interim Rule should be adopted as a final rule, except for the following revisions. First, § 729.244(a), which relates to "spring transfers" of quota, has been revised. Spring transfers are planting-season transfers. The Interim Rule specified that such transfers must be made by the "final planting date" established by the State Agricultural Stabilization and Conservation (ASC) Committee so long as the date is not later than June 15. It has been reported that the establishment of a final planting date might be misconstrued by producers as being a date by which peanuts must actually be planted, rather than simply a last date for spring transfers. To avoid such confusion, the rule has been revised to delete the reference to the establishment of a final planting date. The substance of the rule, however, has been maintained. As revised, § 729.244 provides that the last date for spring transfers shall be the date established by the State Committee but not later than June 15. Also, the reference to the establishment of a last transfer date for spring transfers of quota by area has been removed to avoid having § 729.244 misconstrued as requiring State committees to establish different dates for areas within the same State regardless of the degree of difference in planting conditions. The revised rule would permit State committees to establish a different final Spring transfer date for counties or areas within the same State if it is determined to be necessary for program administration. The language of § 729.244(a) involving the establishment of a final planting date was referred to in § 729.244, § 729.248, § 729.249. These sections have been revised accordingly.

Section 729.248(b) has been revised by breaking out separately for purposes of clarity the requirements applicable to receiving and transferring farms. Also, the provisions of § 729.248(b), which specified that the transferring farm had to meet certain planting requirements before making such a transfer, have been amended to limit these requirements to those farms which have previously been the recipient of a transfer of quota during that crop year. This revision is intended to clarify the intent of the regulations to avoid the use of the fall transfer allowance as a means of brokering quotas. Also with respect to fall transfers, § 729.248(a) has been modified slightly for the purpose of clarity.

In addition, the following sections have been revised: (1) Section 729.244(b) has been reorganized and modified slightly for purposes of clarity, and a new provision added to explicitly address the handling of permanent transfers in relation to quota reductions; (2) § 729.300 has been revised to reflect the change in the form number for the

Application for Peanut Handler Card from MO–86 to ASCS–1008; (3) in the second sentence of § 729.304, the word "producer" has been corrected to read "production"; and (4) OMB clearance numbers, as indicated, have been added to comply with the information collection requirements of the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 729

Poundage quotas, Penalties, Reporting requirements.

Final Rule

PART 729—[AMENDED]

Accordingly, the Interim Rule published at 48 FR 9214 on March 4, 1983, is adopted as a Final Rule, with the following changes:

Authority: Secs. 301, 357, 358, 358a, 359, 372, 373, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 62, as amended, 63, as amended, 64, 65, as amended, 66, as amended, 70 Stat. 206, as amended, Secs. 801, 802, 803, 804, 805, 91 Stat. 944, as amended, 95 Stat. 1248 (7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375, as amended); Sec. 108A, 95 Stat. 1254 (7 U.S.C. 1445c–1).

1. In § 729.224, paragraph (b)(1)(iii) text is revised and a new paragraph (b)(1)(iv) is added to read as follows:

§ 729.224 Determination of farm poundage quota.

* * * * *

(b) *1984 and 1985 Poundage quota reductions*—(1) *Poundage quota reductions.*

* * * * *

(iii) *Quota transferred by lease and produced on another farm by a different farm operator.* Except as provided in Subparagraph (E), the preliminary farm poundage quota for a farm shall be reduced, or further reduced, to the extent the county committee determines that any of the following situations apply:

(A) For two or more of the years of the base period, the farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts, i.e., leases filed by the time prescribed in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984; and (*2*) was produced or considered produced on a receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm; or

(B) The farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984 and was produced or considered produced on the receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm for 2 or more years of the base period; and (*2*) was not 100 percent produced or considered produced in 1 or more of the same base period years.

(C) The farm poundage quota: (*1*) Was not 100 percent produced or considered produced in 2 or more of the years of the base period; (*2*) was transferred, in whole or in part, as a result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for crop years 1983 and 1984 and was produced or considered produced in part on a receiving farm where the operator of the receiving farm was a different person than the operator of the transferring farm in 1 or more of the same base period years.

(D) The farm poundage quota: (*1*) Was transferred, in whole or in part, as the result of a lease which was filed during the normal planting period for peanuts as determined in accordance with the provisions of § 729.30(b)(1) for crop year 1981, by July 31 for crop year 1982, and by the date established by the State committee for "spring transfers" pursuant to § 729.244(a) for 1983 and 1984 crop years and was produced or considered produced on the receiving farm and the operator of the receiving farm was a different person than the operator of the transferring farm for 1 or more of the base period years; and (*3*) was not 100 percent produced or considered produced in 1 or more of the other base period years.

(E) In applying the provisions of subparagraphs (A) through (D), if the constitution of the farm differs from the constitution of the farm for any one or more of the base period years, an individual determination shall be made for separately identifiable farm tracts as they were constituted for that year of the base period.

(iv) If a farm received quota by permanent transfer during any year of the base period, an individual determination shall be made for the quota permanently transferred as if such quota was established on a separate farm for each year of the base period.

2. Section 729.231 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.231 Request for reconsideration or appeal.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

3. The text of § 729.244 (a) and (b) is revised to read as follows:

§ 729.244 Filing record of transfer and time for filing.

* * * * *

(a) *Record of transfer filed during the normal planting period (spring transfers.)* In order to be effective during the normal planting period, a record of transfer shall be filed by the date established by the State committee, but not later than June 15. A record of transfer filed after the date established by the State committee but prior to July 1 may be considered to be timely filed if the county committee finds that: (i) The lease was agreed upon no later than the date established by the State committee, and (ii) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

(b) *Record of transfer filed after the normal planting period (fall transfers.)* A record of transfers which in filed after the date established by the State committee for "spring tranfers" pursuant to § 729.244(a) shall not become effective unless filed not later than December 31 of the current year. A record of transfer filed after December 31 but prior to January 31 may be considered timely filed by December 31 if the county committee with approval of the State committee finds that: (1) The transfer was agreed upon no later than December 31, and (2) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

(Approved by the Office of Management and Budget under Control No. 0560–0051.)

4. The text of § 729.246(d) is revised to read as follows:

§ 729.246 Transfer not to be approved.

* * * * *

(d) Transfers for more than one marketing year filed after the date established by the State committee for

"spring transfers" pursuant to § 729.244(a).

* * * * *

5. The text of § 729.248 (a) and (b) is revised to read as follows:

§ 729.248 Transfer to and from the same farm (subleasing).

(a) *Record of transfer filed during the normal planting period.* The county committee shall not approve a record of transfer which is filed (or considered filed) on or before the date established by the State committee for "spring transfers" pursuant to § 729.244(a) if the approval would result in a transfer both to and from either the transferring or receiving farm during the period ending on such date of the same crop year, except that in such instance a record of tranfer may be approved if a poundage quota has been transferred temporarily from a farm for one or more years (and the transfer remains in effect) and the farm is combined subsequent to such temporary transfer with another farm that is otherwise eligible to receive poundage quota by transfer.

(b) *Record of transfer filed after the normal planting period.* The county committee shall not approve a temporary transfer of poundage quota which is filed (or considered filed) after the date established by the State committee for "spring transfers" pursuant to § 729.244(a) if it would result in a temporary transfer both to and from the farm during the period beginning on such date and ending on December 31. In order for any transfer filed after the date established by the State committee to be approved by the county committee, the following conditions must be met, as applicable:

(1) *Receiving farm.* The operator of the receiving farm must certify and the county committee must determine that the poundage quota to be transferred is not more than will be required to market the entire production of peanuts from the receiving farm as quota peanuts in the current year.

(2) *Transferring farm.* In those instances where the transferring farm had quota transferred by lease to the farm on or before the date established by the State committee for "spring transfers" pursuant to § 729.244(a), the operator of the transferring farm must certify and the county committee must determine that: (i) The acreage of peanuts planted on the transferring farm was equal to at least 80 percent of the acreage determined by dividing the effective farm poundage quota by the larger of the current farm yield or the highest actual yield for the farm in any one of the preceding three years; and (ii) the production of peanuts on the transferring farm was limited to less than the effective farm poundage quota because of conditions beyond the control of the producer.

6. Section 729.265 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.265 Issuance of Cards

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

7. Section 729.278 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.278 Reduction or waiver of penalty.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

8. Section 729.279 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.279 Appeals.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

9. Section 729.286 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.286 Identification of producer marketings.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

10. Section 729.290 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.290 Report of marketing green peanuts.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

11. Section 729.291 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.291 Report of acquisition of seed peanuts.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

12. Section 729.292 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.292 Peanuts marketed to persons who are not registered handlers.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

13. Section 729.293 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.293 Report on marketing card.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

14. Section 729.294 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.294 Report of production and disposition.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

15. Section 729.300 is amended by revising the last sentence of (b), revising (c), and adding the OMB reference following the section to read as follows:

§ 729.300 Registration of handlers.

* * * * *

(b) *Persons acquiring noninspected peanuts.* * * * A person may register by completing an ASCS–1006, Application for Peanut Handler Card, and submitting it to the appropriate State ASCS office.

(c) *Persons acquiring inspected peanuts.* A person who plans to acquire peanuts that have been inspected by a duly authorized inspector of the Federal-State Inspection Service must register as a handler by completing an ASCS–1006, Application for Peanut Handler Card, and submitting it to the Virginia, Georgia, or Texas State ASCS Office in the marketing area in which the handler is located.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

16. Section 729.301 is amended to add the OMB reference following that last sentence of the section as follows:

§ 729.301 Records and reports required of handlers.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

17. Section 729.302 is amended to add the OMB reference following that last sentence of the section as follows:

§ 729.302 Persons engaged in more than one business.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0560–0006)

18. Section 729.303 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.303 Penalty for failure to keep records and make reports.

* * * * *

(Approved by the Office of Management and Budget under Control Nos. 0560–0003 and 0560–0014)

19. The second sentence of § 729.304, is corrected to read as follows:

§ 729.304 Examination of records and reports.

* * * Upon request from any such person, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under his control which any person hereby authorized to examine records has reason to believe are relevant to any matter under investigation which relates to the provisions of this subpart.

20. Section 729.306 is amended to add the OMB reference following the last sentence of that section as follows:

§ 729.306 Information confidential.

* * * * *

(Approved by the Office of Management and Budget under Control Nos. 0560–0003 and 0560–0014)

Signed at Washington, D.C., on April 6, 1984.

Everett Rank,

Administrator.

[FR Doc. 84–9752 Filed 4–6–84; 4:45 pm]

BILLING CODE 3410–05–M

Federal Register

Tuesday
April 10, 1984

Part VI

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 113 and 114

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 113 and 114

[Docket No. 83-100]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements and Production Requirements for Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would reduce restrictions on movement of partially prepared veterinary biological products, or serials of complete fractions of combination products between licensed establishments by removing the requirement for common ownership and by removing the provision limiting bulk shipments to inactivated materials only. Preparation of certain products from beginning to final use form in a single licensed manufacturing facility is sometimes not feasible and frequently less economical than partial preparation in more than one licensed establishment. This would permit licensure of establishments for preparation and shipment of veterinary biological products for further manufacture.

DATE: Comments must be received on or before June 10, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MC 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, USDA, APHIS, VS, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The proposed rule would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets. These revisions would reduce regulatory requirements.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not result in a significant economic impact on a substantial number of small entities. Small entities are defined as independently owned businesses not dominant in the field of veterinary biologics manufacturing.

Background

Preparation of certain products from beginning to final use form in a single licensed manufacturing facility is sometimes not feasible and frequently less economical than partial preparation in more than one licensed establishment. This is especially true of products of synthetic origin or those resulting from new advanced technologies. Producers of the immunogenic portions of these products frequently have no facilities or marketing capability for final use products. Firms capable of completing and marketing final use products often do not have the capability for preparing these basic immunogenic components. At present, 9 CFR 114.3(d) restricts combined use of separate producing establishments to those licensed establishments under common ownership. It also restricts bulk shipments to inactivated materials. This proposed revision would permit the use of licensed facilities not under common ownership to share in the preparation of final use products and would remove the restrictions prohibiting shipment of live cultures. Such proposed changes would permit use of facilities where most economical methods are available for preparation of fractions to be used in products of other licensed manufacturers or for export. If adopted, establishments could be licensed for preparation of final use products, as at present, for products for further manufacture, or for both.

Provisions for exporting bulk liquid products and concentrates in large containers is made in 9 CFR 112.8. Tests to be conducted on these products are prescribed in 9 CFR 113.10. This proposed revision would extend the provisions for testing to include bulk material shipped for further manufacture.

The Department would require that the methods of shipment would not result in harm to the product or the environment.

Alternatives

The alternatives considered are:

1. Not amend the regulations. This would result in continued restriction on manufacturers to prepare only final use products unless under common ownership with a firm with extended capability. Certain useful products would not be licensed or would be unacceptably expensive. Therefore, this alternative was not chosen.

2. Amend the regulations. This would result in adequately regulated products to be prepared in more than one establishment not under common ownership, permitting most economical and effective use of production facilities. The number of useful products available at acceptable cost would be increased. Therefore, this alternative was accepted.

List of Subjects in 9 CFR Parts 113 and 114

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Section 113.10 would be revised to read:

§ 113.10 Testing of bulk material for export or for further manufacture.

When a product is prepared for export in large multiple-dose containers as provided in § 112.8(d) or (e) of this subchapter or for further manufacturing purposes as provided in § 114.3(d) of this subchapter, samples of the bulk material shall be subjected to all required tests prescribed in the filed Outline of Production or Standard Requirements for the product. Samples of concentrated liquid product shall be diluted to a volume equal to the contents of the sample times the concentration factor prior to initiating potency tests.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

In § 114.3, paragraph (d) would be revised to read:

§ 114.3 Separation of establishments.

* * * * *

(d) Partially prepared products or serials of completed products for further manufacture may be moved from one licensed establishment to another licensed establishment or exported under conditions prescribed in an Outline of Production filed with Veterinary Services. Licensed products may be prepared and recommended for final use, for further manufacturing purpose, or both. All serials shall be subject to the requirements for testing and release specified in § 113.8 or § 113.10 and to the requirements for identification specified in § 114.4.

* * * * *

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 3rd day of April 1984.

D. F. Schwindaman,

Acting Deputy Administrator Veterinary Services.

Doc. 84-8528 Filed 4-9-84, 11:03 am]

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